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of America

PROCEEDINGS AND DEBATES OF THE 102^d CONGRESS, SECOND SESSION

SENATE—*Wednesday, October 7, 1992*

(Legislative day of Wednesday, September 30, 1992)

The Senate met at 12 noon, on the expiration of the recess, and was called to order by the Honorable CHARLES S. ROBB, a Senator from the State of Virginia.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Behold, how good and how pleasant it is for brethren to dwell together in unity!—Psalm 133:1.

Eternal God, gracious Father in heaven, thank You for the wisdom and patience of leadership in resolving a frustrating and potentially explosive situation in the Senate. Guide and direct in these closing hours that all that ought to be done will be and that the Senate will adjourn, satisfied that it has accomplished all it could in the 102d Congress. May these final hours be ones of blessing and a sense of achievement.

To the glory of God and the welfare of the Nation. Amen.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 2 p.m. with Senators permitted to speak therein for not to exceed 5 minutes each.

THE JOURNAL

The ACTING PRESIDENT pro tempore. The Chair recognizes the majority leader, Senator MITCHELL.

Mr. MITCHELL. Mr. President, am I correct in my understanding that the Journal of proceedings has been approved to date?

The ACTING PRESIDENT pro tempore. The Senator is correct.

SCHEDULE

Mr. MITCHELL. Mr. President and Members of the Senate, as just stated by the Chair, there will now be a period for morning business not to extend beyond the hour of 2 p.m., and during this period for morning business I anticipate that under the leadership of Senators FORD and SIMPSON, the Senate will be acting on a number of measures which have been cleared on both sides of the aisle.

At 2 p.m., pursuant to an agreement reached late last evening, the Senate will proceed to debate the pending Reclamation Act under an agreement which provides that 4 hours will be under the control of Senator SEYMOUR and 2 hours under the control of Senator BRADLEY.

As I announced last night and I repeat today for the information of Senators, the agreement which was reached last evening is printed on pages 2 and 3 of the calendar, and as Senators will note there will be rollcall votes tomorrow beginning at 11 a.m. on the energy conference report, followed by votes with intervening debate as set forth in the order on the reclamation bill conference report and finally on the tax bill conference report.

It is my hope and my intention that the Senate will complete its business tomorrow following the disposition of those measures and other matters which we hope to clear prior to the time of adjournment tomorrow.

I thank my colleagues for their cooperation.

Mr. President, I thank the distinguished whips, Senator FORD and Senator SIMPSON, for their cooperation and participation in the discussions which led to this agreement yesterday, and I now yield the floor.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Wyoming [Mr. SIMPSON].

Mr. SIMPSON. Mr. President, I want to commend Senator MITCHELL and Senator DOLE for their extraordinary work yesterday in getting us through a very troublesome situation. It was done with great comity and cooperation, and I am very pleased we have reached that result. I want to pay my respects to both of them and to the staff on both sides of the aisle.

It is a remarkable staff, professional staff. The reason it functions well for all of us is because there is a great element of trust between the two staffs. Yes, we have our partisan agendas. We do our partisan work. But when it comes down to giving one's word, I do not think I have ever seen a more positive relationship between the Democratic staff and the Republican staff on the professional level in this Chamber. And thanks to the Senate staff who must be approaching fatigue, there will be a long golden October waiting for you in a very few hours.

And so with that, the former Governor of Kentucky and I are left with 1 metric yard of material to churn through, and we will do it with great skill and grace, I am sure.

Mr. FORD. Mr. President, let me join with my colleague and friend from Wyoming, the assistant Republican leader, in saying how good it is to work together. I was brought up, as he was, that our word is our bond, and I feel that once that word is given here between the leadership, it is the goal and the path we follow.

Let me reiterate a point or two that he made about the staff. No group of men and women could work any harder, any better, and with more patience. That is on both sides of the aisle. I personally am grateful for not only their hard work but their friendship and their willingness to stay long hours and to work diligently to accomplish the goals of the Senators that they work for and in the best interests of our constituents.

JOHN HEINZ CONGRESSIONAL FELLOWSHIP PROGRAM

Mr. FORD. So, Mr. President, I ask unanimous consent the Senate proceed

• This "bullet" symbol identifies statements or insertions which are not spoken by a member of the Senate on the floor.

to the immediate consideration of Senate Resolution 356, the John Heinz Senate Fellowship Program, a resolution submitted earlier today by Senators WOFFORD, SPECTER, and WIRTH.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 356) to establish a John Heinz Congressional Fellowship Program.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. WOFFORD. Mr. President, I came to the Senate 18 months ago under tragic circumstances, the death of John Heinz. At that time I vowed to do my best to carry on the strong legacy of the man who had served Pennsylvania with such grace and distinction.

Today, as the 102d Congress ends, I join with Senator Heinz' colleague, Senator SPECTER and his close friend, Senator WIRTH to submit legislation to create a congressional fellowship for children's issues to honor the life and continue the legacy of Senator John Heinz.

From his earliest days in Congress, John Heinz was a strong voice for children. John Heinz fought to decrease infant mortality by improving access to prenatal care. He led the effort to expand Medicaid eligibility for poor children, and to improve access to drug treatment, especially for pregnant women. And he was a crusader for a better American educational system—fighting for early intervention programs, for our public schools and for building opportunities for more children to attend college. It is up to each one of us to continue work on John Heinz' children's agenda.

The resolution I submit today creates the John Heinz Congressional Fellowship. These fellows will bring their firsthand experience in children's issues to the work of Congress. Teachers will spend a year to help us to learn about the effects of Federal policies on our schools. Social workers will help us find better ways to protect our Nation's children from abuse and neglect. And child health care providers will help us to build a health care system where no child falls through the cracks.

The fellowship will also enable us to identify and train new leaders in child protection, children's health, and education policy. The fellows will return to their work and their communities with new understanding about how to work with Government to build better lives for children.

The Heinz Family Foundation—which has a long history of work on behalf of children—is ideally suited to help administer and oversee the John Heinz Congressional Fellowship Program. Teresa Heinz is the chairman and CEO of the Heinz Family Foundation, and will be involved in the program. Recipients will be placed on the staff of a committee which works on children's issues—or on the personal staff of a member whose focus is children's issues.

John Heinz was dedicated to building a safer, more caring world for our children. John Heinz congressional fellows will help the Senate continue that commitment to our Nation's children.

Mr. President, in closing, I am reminded of words used to describe the life of Martin Luther King: "His life informed us, his dreams sustain us yet."

Mr. President, I yield the floor.

Mr. SPECTER. Mr. President, this resolution to establish a John Heinz Congressional Fellowship Program is a fitting tribute to my late colleague and dear friend.

During his 20 years in the Congress, John Heinz compiled an enviable record of accomplishments. While he was successful in many areas, he built a national reputation for his strong commitment to the welfare and education of our Nation's children. As John traveled throughout Pennsylvania, he saw first hand the concern for the infant mortality rate, the lack of adequate health care for children and families, and poor nutritional diets of infants and children.

These concerns led Senator Heinz to lead the effort to improve Medicaid coverage for pregnant women and children, improve access to vital nutrition programs for pregnant women, infants, and children, and provide drug treatment and prenatal care for pregnant women in an effort to improve the health of infants.

Mr. President, the resolution we are introducing today will help continue the efforts of Senator Heinz to give our Nation's children a healthy start. The fellowship will be offered to two individuals who have demonstrated achievement in the areas of child abuse, drug prevention, day care, and child support.

As I have traveled through Pennsylvania since the loss of Senator Heinz, I have heard frequent comments about how much the people of the Commonwealth miss his service. I think this resolution to recognize the efforts of a great American is truly worthwhile. I urge the Senate's consideration and prompt enactment.

Mr. WIRTH. Mr. President, I rise in support of the resolution authorizing the creation of a congressional fellowship in honor of our late friend and colleague Senator John Heinz. This legislation would appropriately recognize Senator Heinz' contribution and commitment to children, by allowing those with experience in children's issues to learn about and contribute to our public policy efforts here in the Senate.

It is widely known that senior citizens had no greater friend than John Heinz. His work, however, was dedicated not only to the last leg of life's journey, but also to the dawning of it. Throughout his career, John Heinz dedicated himself to enhancing opportunities for America's children.

He believed Government should look after children, particularly children of the poor. He was devoted to ending the horror of child abuse, and outraged at the emergence of crack-addicted babies. He joined with Senator MOYNIHAN to introduce the Healthy Mothers, Healthy Babies Act to provide basic care for pregnant women in the throes of drug dependency. This commonsense approach was based on the premise that by treating one life, we might save many more.

John Heinz was also disturbed by the tragedy of infant mortality and the neglect of our disadvantaged children. "Literally millions of children enter life with less than a fair chance at a dream," he wrote. And he did something about it. He authored legislation to provide Medicaid benefits to poor children.

He created a Government endowment to produce educational children's television programming and wrote a bill to establish special nutrition projects at food banks. He wrote the Excellence in Education Act. He fought to eliminate discrimination with regard to coverage for treatment of mental illness under Medicare.

I have highlighted only a small part of the extraordinary legacy Senator John Heinz has left to our children and their grandchildren. It would be most fitting if, through this legislation, we in this body could further his commitment to our kids. This legislation would utilize Senate contingency funding to bring teachers, social and health care workers—anyone engaged in the often thankless task of aiding our children—to the Senate to further their experience and contribution.

By establishing such a program to help train a new generation of leaders—in child protection, health, welfare, and education policy—we can help ensure that public policy in the future is characterized by the same attention and care to issues of our children as they were by Senator Heinz in the past.

The ACTING PRESIDENT pro tempore. Is there further debate? If not, the question is on agreeing to the resolution.

The resolution (S. Res. 356) was agreed to, as follows:

S. RES. 356

Resolved,

SECTION 1. SHORT TITLE.

This resolution may be cited as the "John Heinz Senate Fellowship Program Resolution".

SEC. 2. FINDINGS.

The Senate finds that—

(1) Senator John Heinz believed that congress has a special responsibility to serve as the guardian for those who cannot protect themselves;

(2) Senator Heinz dedicated much of this congressional career to improving the lives of children; and

(3) it is especially appropriate to honor the memory of Senator Heinz through the creation of a Senate fellowship program to encourage the identification and training of new leadership in child protection, health, welfare and education policy and to bring experts with firsthand experience of children's issues to the assistance of the Congress in order to advance the development of public policy in issues that affect children.

SEC. 3. FELLOWSHIP PROGRAM.

(a) IN GENERAL.—In order to encourage the identification and training of new leadership in issues affecting children and to advance the development of public policy with respect thereto, there is established a John Heinz Senate Fellowship Program.

(b) SENATE FELLOWSHIPS.—The Heinz Family Foundation, in consultation with the Secretary of the Senate, is authorized to select Senate fellowship participants.

(c) SELECTION PROCESS.—The Heinz Family Foundation shall—

(1) publicize the availability of the fellowship program;

(2) develop and administer an application process for Senate fellowships; and

(3) conduct a screening of applicants for the fellowship program.

SEC. 4. COMPENSATION; NUMBER OF FELLOWSHIPS; PLACEMENT.

(a) COMPENSATION.—The Secretary of the Senate is authorized, from funds made available under section 5, to appoint and fix the compensation of each eligible participant selected under this resolution for a period determined by the Secretary.

(b) NUMBER OF FELLOWSHIPS.—No more than 2 fellowship participants shall be so employed. Any individual appointed pursuant to this resolution shall be subject to all laws, regulations and rules in the same manner and to the same extent as any other employee of the Senate.

(c) PLACEMENT.—The Secretary of the Senate, after consultation with the Majority Leader and Minority Leader of the Senate, shall place eligible participants in positions in the Senate that are, within practical considerations, supportive of the fellowship participants' areas of expertise.

SEC. 5. FUNDS.

The funds necessary to compensate eligible participants under this resolution for fiscal year 1993 shall be paid from the contingent fund of the Senate. Such funds shall not exceed, for fiscal year 1993, $71,000. There are authorized to be appropriated $71,000 for each of the fiscal years 1994 through 1997 to carry out the provisions of this resolution.

Mr. FORD. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ENVIRONMENTAL PROGRAMS ASSISTANCE ACT OF 1984 AMENDMENTS

Mr. FORD. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of S. 814, the Environmental Programs Assistance Act of 1984 amendments of 1991, and the Senate then proceed to its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 814) to amend the Environmental Programs Assistance Act of 1984.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3409

Mr. SIMPSON. Mr. President, I send an amendment to the desk on behalf of Senators CHAFEE, MOYNIHAN, and GRASSLEY, for immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON] for Mr. CHAFEE, (for himself, Mr. MOYNIHAN, and Mr. GRASSLEY), proposes an amendment numbered 3409.

Mr. SIMPSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 1, line 5, strike "1991" and insert "1992".

Beginning on page 2, strike line 1 and all that follows through the end of the bill, and insert the following:

SEC. 2. AMENDMENTS TO THE ENVIRONMENTAL PROGRAMS ASSISTANCE ACT.

(a) IN GENERAL.—Section 2 of the Environmental Program Assistance Act of 1984 (42 U.S.C. 4368a) is amended by adding at the end the following new subsection:

"(d) Notwithstanding any other provision of law, any individual whose talents are authorized by section (a) to be used in connection with the programs administered by the Administrator of the Environmental Protection Agency shall have the same access as Federal employees have to, and shall be subject to the same penalties as Federal employees ares subject to for unauthorized disclosure of, trade secrets and confidential business information—

"(1) submitted in connection with—

"(A) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

"(B) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

"(D) the Clean Air Act (42 U.S.C. 7401 et seq.);

"(E) the Public Health Service Act (42 U.S.C. 201 et seq.), including section 1445(d) of such Act (42 U.S.C. 300j-4(d));

"(F) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

"(G) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

"(H) the Noise Control Act of 1972 (42 U.S.C. 4901 et seq.), including section 13(b) of such Act (42 U.S.C. 4912(b));

"(I) section 408(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(f)); or

"(J) the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 1101 et seq.);

"(2) submitted pursuant to any contract or other agreement with the United States; or

"(3) otherwise obtained by an officer or employee of the Environmental Protection Agency under any authority.

(b) APPLIABILITY OF ETHICS AND CONFLICT OF INTEREST PROVISIONS UNDER TITLE 18, UNITED STATES CODE.—Section 2 of such Act (42 U.S.C. 4368a), as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(e) Any individual whose talents and authorized by subsection (a) to be used in connection with the programs administration by the Administrator of the Environmental Protection Agency shall be subject to the requirements of sections 201 through 209 of title 18, United States Code (relating to ethics and conflict of interest).".

(c) TRADE SECRETS AND CONFIDENTIAL BUSINESS INFORMATION DEFINED.—Section 2 of such Act (42 U.S.C. 4368a), as amended by subsection (b), is further amended by adding at the end the following new subsection:

"(f) For purposes of this section, the term 'trade secrets and confidential business information' includes all information prohibited from disclosure by section 1905 of title 18, United States Code (relating to trade secrets), or by any other law referred to in this section.".

SEC. 3. SUNSET PROVISION.

The amendment made by section 2(a) shall be effective during the 2-year period beginning on the date of enactment of this Act.

The ACTING PRESIDENT pro tempore. Without objection, the amendment (No. 3409) is agreed to.

Mr. MOYNIHAN. Mr. President, I am pleased to support the passage of S. 814, a bill by Senator GRASSLEY to amend to the Environmental Programs Assistance Act of 1984. Senator CHAFEE, Senator GRASSLEY and I are offering amendments to the bill.

The Senior Environmental Employment Program, established by the Environmental Programs Assistance Act, has greatly strengthened the Environmental Protection Agency. Currently, SEE employees comprise 11 percent of EPA's work force, performing a variety of critical functions that range from the opening of mail to staffing hot lines and the compilation of data.

EPA's Office of General Counsel recently issued an opinion that SEE employees are largely prohibited from viewing confidential business information. EPA responded immediately and responsibly by prohibiting SEE employees from viewing such information. Legislation is now needed to provide the authority for SEE employees to review confidential data. Unless we provide such statutory authority, environmental protection will suffer, and meaningful employment will be denied to a dedicated and talented group of senior citizens.

The SEE Program has bipartisan support, and it is strongly supported by the administration. Mr. President, I urge my colleagues to support the passage of this bill.

Mr. CHAFEE. Mr. President, I want to express my strong support for passage of S. 814, a bill authored by Senator GRASSLEY, which will allow members of the Senior Environmental Employment Program at the Environmental Protection Agency to better perform their jobs. In short, this bill will provide SEE enrollees the same access to confidential business information as Federal employees.

You may ask why SEE enrollees need this access. The mission of the agency involves receipt of a large amount of confidential business information. The affected SEE enrollee staff perform functions such as opening mail, filing, answering phones, staffing hot lines, providing support to agency enforcement activities, and compiling data, etc. In order for SEE enrollees to continue performing these functions of support, EPA has informed us that it must have the authority to provide SEE enrollees access to confidential business information.

However, SEE enrollees, under this bill, as amended, will be subject to the same penalties as Federal employees for unauthorized disclosure of confidential business information. These penalties include criminal prosecution under the Trade Secrets Act and the Toxic Substances Control Act.

Most importantly, Mr. President, this legislation will allow SEE employees to more effectively perform their jobs. Legislation creating the SEE Program was developed in 1982, and supported by a number of Senators, including Senators GRASSLEY, MITCHELL, BAUCUS, STAFFORD, and myself. Since this program was signed into law in 1984, SEE enrollees have demonstrated beyond a doubt that they are a valuable asset to EPA in accomplishing its mission.

The SEE Program draws upon the vast pool of talent, experience and skills possessed by retired and older workers who wish to supplement retirement income. The purposes of the SEE Program are:

To give Americans age 55 and older an opportunity to use their skills in creative and meaningful jobs.

To demonstrate to the public and private sectors the tremendous productive wealth and talent of older Americans.

To supplement EPA staff in critical skill areas.

It is clear that the work being performed by SEE enrollees provides critical support in accomplishing the goals and objectives of EPA in protecting the environment. I hope my colleagues will join with me in supporting this bill.

Mr. GRASSLEY. Mr. President, I rise today to support passage by the Senate of legislation which would provide Senior Environmental Employment [SEE] Program enrollees at the Environmental Protection Agency with the same access to information needed to do their jobs that regular EPA employees presently have. I want to stress to my colleagues that it is very important to pass this legislation before the Senate adjourns this year, for reasons I will make clear shortly.

The Senior Environmental Employment Program began some years ago as a demonstration project jointly supported by the Administration on Aging in the then Department of Health, Education and Welfare, and the Environmental Protection Agency. The primary purpose of the project was to demonstrate ways in which older Americans could be effectively employed in jobs relating to the prevention, abatement and control of environmental pollution.

Over several years, considerable experience was accumulated with older workers in environmental protection activities. Older workers surveyed waste dumps, conducted surveys of hazardous waste products produced by industries, studied the extent to which migrant workers were exposed to pesticides, among other activities.

Then, in 1984, Senators Stafford, Heinz, SPECTER, PELL and myself introduced legislation to make the program permanent. The Environment and Public Works Committee agreed unanimously to report the legislation, and it was passed by the Senate on March 26, 1984, and signed by the President on June 12, 1984.

The SEE Program has been supported consistently by the leadership of EPA. The legislation which made the program permanent was strongly supported by the then EPA Administrator, William Ruckelshaus. The program has also caused no problems for other, career, EPA employees, since the managers of the program and the agency personnel office must insure that employment of SEE workers does not displace currently employed individuals, interfere with the employment of any Federal employee in layoff status, or affect existing contracts for services.

Older workers are hired by the SEE Program through contracts or cooperative agreements that EPA concludes with several of the national aging organizations. Prominently, involved have been the American Association of retired persons, the National Council of Aging, and the National Caucus and Center on the Black Aged.

Mr. President, this is a program which has conclusively demonstrated that older workers constitute a valuable resource whose talents we should make every effort to continue to use. In this program, the SEE workers are knowledgeable, often former EPA employees, or professionals who have worked in related fields.

It is important to pass this legislation today because the general counsel at the Environmental Protection Agency has ruled that the workers in question do not have the legal authority to review, in the course of their work, materials considered to contain proprietary information.

Many of the SEE Program enrollees perform functions such as opening mail, filing documents, clerical support, answering telephones, staffing hot lines, providing support to agency enforcement activities and compiling data. The general counsel's ruling will make it impossible for these enrollees to perform these functions. As a consequence, many, if not most of them, face the loss of their jobs. Furthermore, given that SEE enrollees constitute some 10 percent of the EPA's total employment, the agency will lose the considerable useful work now done by these enrollees.

The legislation now under consideration would make it clear that these enrollees are empowered to review such materials.

It is important to stress that these workers are under the close supervision of EPA officials. Furthermore, they are mature individuals with long histories of work comparable to work they would be performing for EPA. In other words, I believe they would be able to handle such information in a responsible way.

Mr. President, I urge my colleagues to support this legislation.

The ACTING PRESIDENT pro tempore. Are there further amendments. If not, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 814

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Environmental Programs Assistance Act of 1984 Amendments of 1992".

SEC. 2. AMENDMENTS TO THE ENVIRONMENTAL PROGRAMS ASSISTANCE ACT.

(a) IN GENERAL.—Section 2 of the Environmental Program Assistance Act of 1984 (42 U.S.C. 4368a) is amended by adding at the end the following new subsection:

"(d) Notwithstanding any other provision of law, any individual whose talents are authorized by subsection (a) to be used in connection with the programs administered by the Administrator of the Environmental Protection Agency shall have the same access as Federal employees have to, and shall be subject to the same penalties as Federal employees are subject to for unauthorized disclosure of, trade secrets and confidential business information—

"(1) submitted in connection with—

"(A) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

"(B) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

"(D) the Clean Air Act (42 U.S.C. 7401 et seq.);

"(E) the Public Health Service Act (42 U.S.C. 201 et seq.), including section 1445(d) of such Act (42 U.S.C. 300j-4(d));

"(F) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

"(G) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

"(H) the Noise Control Act of 1972 (42 U.S.C. 4901 et seq.), including section 13(b) of such Act (42 U.S.C. 4912(b));

"(I) section 408(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(f)); or

"(J) the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.);

"(2) submitted pursuant to any contract or other agreement with the United States; or

"(3) otherwise obtained by an officer or employee of the Environmental Protection Agency under any authority.

(b) APPLICABILITY OF ETHICS AND CONFLICT OF INTEREST PROVISIONS UNDER TITLE 18, UNITED STATES CODE.—Section 2 of such Act (42 U.S.C. 4368a), as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(e) Any individual whose talents are authorized by subsection (a) to be used in connection with the programs administered by the Administrator of the Environmental Protection Agency shall be subject to the requirements of sections 201 through 209 of title 18, United States Code (relating to ethics and conflict of interest).".

(c) TRADE SECRETS AND CONFIDENTIAL BUSINESS INFORMATION DEFINED.—Section 2 of such Act (42 U.S.C. 4368a), as amended by subsection (b), is further amended by adding at the end the following new subsection:

"(f) For purposes of this section, the term 'trade secrets and confidential business information' includes all information prohibited from disclosure by section 1905 of title 18, United States Code (relating to trade secrets), or by any other law referred to in this section.".

SEC. 3. SUNSET PROVISION.

The amendment made by section 2(a) shall be effective during the 2-year period beginning on the date of enactment of this Act.

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUDIO HOME RECORDING ACT OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives in S. 1623.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1623) entitled "An Act to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Audio Home Recording Act of 1992".

SEC. 2. IMPORTATION, MANUFACTURE, AND DISTRIBUTION OF DIGITAL AUDIO RECORDING DEVICES AND MEDIA.

Title 17, United States Code, is amended by adding at the end the following:

"CHAPTER 10—DIGITAL AUDIO RECORDING DEVICES AND MEDIA

"SUBCHAPTER A—DEFINITIONS

"Sec.
"1001. Definitions.

"SUBCHAPTER B—COPYING CONTROLS

"1002. Incorporation of copying controls.

"SUBCHAPTER C—ROYALTY PAYMENTS

"1003. Obligation to make royalty payments.
"1004. Royalty payments.
"1005. Deposit of royalty payments and deduction of expenses.
"1006. Entitlement to royalty payments.
"1007. Procedures for distributing royalty payments.

"SUBCHAPTER D—PROHIBITION ON CERTAIN INFRINGEMENT ACTIONS, REMEDIES, AND ARBITRATION

"1008. Prohibition on certain infringement actions.
"1009. Civil remedies.
"1010. Arbitration of certain disputes.

"SUBCHAPTER A—DEFINITIONS

"§1001. Definitions

"As used in this chapter, the following terms have the following meanings:

"(1) A 'digital audio copied recording' is a reproduction in a digital recording format of a digital musical recording, whether that reproduction is made directly from another digital musical recording or indirectly from a transmission.

"(2) A 'digital audio interface device' is any machine or device that is designed specifically to communicate digital audio information and related interface data to a digital audio recording device through a nonprofessional interface.

"(3) A 'digital audio recording device' is any machine or device of a type commonly distributed to individuals for use by individuals, whether or not included with or as part of some other machine or device, the digital recording function of which is designed or marketed for the primary purpose of, and that is capable of, making a digital audio copied recording for private use, except for—

"(A) professional model products, and

"(B) dictation machines, answering machines, and other audio recording equipment that is designed and marketed primarily for the creation of sound recordings resulting from the fixation of nonmusical sounds.

"(4)(A) A 'digital audio recording medium' is any material object in a form commonly distributed for use by individuals, that is primarily marketed or most commonly used by consumers for the purpose of making digital audio copied recordings by use of a digital audio recording device.

"(B) Such term does not include any material object—

"(i) that embodies a sound recording at the time it is first distributed by the importer or manufacturer; or

"(ii) that is primarily marketed and most commonly used by consumers either for the purpose of making copies of motion pictures or other audiovisual works or for the purpose of making copies of nonmusical literary works, including computer programs or data bases.

"(5)(A) A 'digital musical recording' is a material object—

"(i) in which are fixed, in a digital recording format, only sounds, and material, statements, or instructions incidental to those fixed sounds, if any, and

"(ii) from which the sounds and material can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

"(B) A 'digital musical recording' does not include a material object—

"(i) in which the fixed sounds consist entirely of spoken word recordings, or

"(ii) in which one or more computer programs are fixed, except that a digital musical recording may contain statements or instructions constituting the fixed sounds and incidental material, and statements or instructions to be used directly or indirectly in order to bring about the perception, reproduction, or communication of the fixed sounds and incidental material.

"(C) For purposes of this paragraph—

"(i) a 'spoken word recording' is a sound recording in which are fixed only a series of spoken words, except that the spoken words may be accompanied by incidental musical or other sounds, and

"(ii) the term 'incidental' means related to and relatively minor by comparison.

"(6) 'Distribute' means to sell, lease, or assign a product to consumers in the United States, or to sell, lease, or assign a product in the United States for ultimate transfer to consumers in the United States.

"(7) An 'interested copyright party' is—

"(A) the owner of the exclusive right under section 106(1) of this title to reproduce a sound recording of a musical work that has been embodied in a digital musical recording or analog musical recording lawfully made under this title that has been distributed;

"(B) the legal or beneficial owner of, or the person that controls, the right to reproduce in a digital musical recording or analog musical recording a musical work that has been embodied in a digital musical recording or analog musical recording lawfully made under this title that has been distributed;

"(C) a featured recording artist who performs on a sound recording that has been distributed; or

"(D) any association or other organization—

"(i) representing persons specified in subparagraph (A), (B), or (C), or

"(ii) engaged in licensing rights in musical works to music users on behalf of writers and publishers.

"(8) To 'manufacture' means to produce or assemble a product in the United States. A 'manufacturer' is a person who manufactures.

"(9) A 'music publisher' is a person that is authorized to license the reproduction of a particular musical work in a sound recording.

"(10) A 'professional model product' is an audio recording device that is designed, manufactured, marketed, and intended for use by recording professionals in the ordinary course of a lawful business, in accordance with such requirements as the Secretary of Commerce shall establish by regulation.

"(11) The term 'serial copying' means the duplication in a digital format of a copyrighted musical work or sound recording from a digital reproduction of a digital musical recording. The term 'digital reproduction of a digital musical recording' does not include a digital musical recording as distributed, by authority of the copyright owner, for ultimate sale to consumers.

"(12) The 'transfer price' of a digital audio recording device or a digital audio recording medium—

"(A) is, subject to subparagraph (B)—

"(i) in the case of an imported product, the actual entered value at United States Customs (exclusive of any freight, insurance, and applicable duty), and

"(ii) in the case of a domestic product, the manufacturer's transfer price (FOB the manufacturer, and exclusive of any direct sales taxes or excise taxes incurred in connection with the sale); and

"(B) shall, in a case in which the transferor and transferee are related entities or within a single entity, not be less than a reasonable arms-length price under the principles of the

regulations adopted pursuant to section 482 of the Internal Revenue Code of 1986, or any successor provision to such section.

"(13) A 'writer' is the composer or lyricist of a particular musical work.

"SUBCHAPTER B—COPYING CONTROLS

"§1002. Incorporation of copying controls

"(a) PROHIBITION ON IMPORTATION, MANUFACTURE, AND DISTRIBUTION.—No person shall import, manufacture, or distribute any digital audio recording device or digital audio interface device that does not conform to—

"(1) the Serial Copy Management System;

"(2) a system that has the same functional characteristics as the Serial Copy Management System and requires that copyright and generation status information be accurately sent, received, and acted upon between devices using the system's method of serial copying regulation and devices using the Serial Copy Management System; or

"(3) any other system certified by the Secretary of Commerce as prohibiting unauthorized serial copying.

"(b) DEVELOPMENT OF VERIFICATION PROCEDURE.—The Secretary of Commerce shall establish a procedure to verify, upon the petition of an interested party, that a system meets the standards set forth in subsection (a)(2).

"(c) PROHIBITION ON CIRCUMVENTION OF THE SYSTEM.—No person shall import, manufacture, or distribute any device, or offer or perform any service, the primary purpose or effect of which is to avoid, bypass, remove, deactivate, or otherwise circumvent any program or circuit which implements, in whole or in part, a system described in subsection (a).

"(d) ENCODING OF INFORMATION ON DIGITAL MUSICAL RECORDINGS.—

"(1) PROHIBITION ON ENCODING INACCURATE INFORMATION.—No person shall encode a digital musical recording of a sound recording with inaccurate information relating to the category code, copyright status, or generation status of the source material for the recording.

"(2) ENCODING OF COPYRIGHT STATUS NOT REQUIRED.—Nothing in this chapter requires any person engaged in the importation or manufacture of digital musical recordings to encode any such digital musical recording with respect to its copyright status.

"(e) INFORMATION ACCOMPANYING TRANSMISSIONS IN DIGITAL FORMAT.—Any person who transmits or otherwise communicates to the public any sound recording in digital format is not required under this chapter to transmit or otherwise communicate the information relating to the copyright status of the sound recording. Any such person who does transmit or otherwise communicate such copyright status information shall transmit or communicate such information accurately.

"SUBCHAPTER C—ROYALTY PAYMENTS

"§1003. Obligation to make royalty payments

"(a) PROHIBITION ON IMPORTATION AND MANUFACTURE.—No person shall import into and distribute, or manufacture and distribute, any digital audio recording device or digital audio recording medium unless such person records the notice specified by this section and subsequently deposits the statements of account and applicable royalty payments for such device or medium specified in section 1004.

"(b) FILING OF NOTICE.—The importer or manufacturer of any digital audio recording device or digital audio recording medium, within a product category or utilizing a technology with respect to which such manufacturer or importer has not previously filed a notice under this subsection, shall file with the Register of Copyrights a notice with respect to such device or medium, in such form and content as the Register shall prescribe by regulation.

"(c) FILING OF QUARTERLY AND ANNUAL STATEMENTS OF ACCOUNT.—

"(1) GENERALLY.—Any importer or manufacturer that distributes any digital audio recording device or digital audio recording medium that it manufactured or imported shall file with the Register of Copyrights, in such form and content as the Register shall prescribe by regulation, such quarterly and annual statements of account with respect to such distribution as the Register shall prescribe by regulation.

"(2) CERTIFICATION, VERIFICATION, AND CONFIDENTIALITY.—Each such statement shall be certified as accurate by an authorized officer or principal of the importer or manufacturer. The Register shall issue regulations to provide for the verification and audit of such statements and to protect the confidentiality of the information contained in such statements. Such regulations shall provide for the disclosure, in confidence, of such statements to interested copyright parties.

"(3) ROYALTY PAYMENTS.—Each such statement shall be accompanied by the royalty payments specified in section 1004.

"§1004. Royalty payments

"(a) DIGITAL AUDIO RECORDING DEVICES.—

"(1) AMOUNT OF PAYMENT.—The royalty payment due under section 1003 for each digital audio recording device imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 2 percent of the transfer price. Only the first person to manufacture and distribute or import and distribute such device shall be required to pay the royalty with respect to such device.

"(2) CALCULATION FOR DEVICES DISTRIBUTED WITH OTHER DEVICES.—With respect to a digital audio recording device first distributed in combination with one or more devices, either as a physically integrated unit or as separate components, the royalty payment shall be calculated as follows:

"(A) If the digital audio recording device and such other devices are part of a physically integrated unit, the royalty payment shall be based on the transfer price of the unit, but shall be reduced by any royalty payment made on any digital audio recording device included within the unit that was not first distributed in combination with the unit.

"(B) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have been distributed separately at any time during the preceding 4 calendar quarters, the royalty payment shall be based on the average transfer price of such devices during those 4 quarters.

"(C) If the digital audio recording device is not part of a physically integrated unit and substantially similar devices have not been distributed separately at any time during the preceding 4 calendar quarters, the royalty payment shall be based on a constructed price reflecting the proportional value of such device to the combination as a whole.

"(3) LIMITS ON ROYALTIES.—Notwithstanding paragraph (1) or (2), the amount of the royalty payment for each digital audio recording device shall not be less than $1 nor more than the royalty maximum. The royalty maximum shall be $8 per device, except that in the case of a physically integrated unit containing more than 1 digital audio recording device, the royalty maximum for such unit shall be $12. During the 6th year after the effective date of this chapter, and not more than once each year thereafter, any interested copyright party may petition the Copyright Royalty Tribunal to increase the royalty maximum and, if more than 20 percent of the royalty payments are at the relevant royalty maximum, the Tribunal shall prospectively increase such royalty maximum with the goal of having no more than 10 percent of such payments at the new royalty maximum; however the amount of any such increase as a percentage of the royalty maximum shall in no event exceed the percentage increase in the Consumer Price Index during the period under review.

"(b) DIGITAL AUDIO RECORDING MEDIA.—The royalty payment due under section 1003 for each digital audio recording medium imported into and distributed in the United States, or manufactured and distributed in the United States, shall be 3 percent of the transfer price. Only the first person to manufacture and distribute or import and distribute such medium shall be required to pay the royalty with respect to such medium.

"§1005. Deposit of royalty payments and deduction of expenses

"The Register of Copyrights shall receive all royalty payments deposited under this chapter and, after deducting the reasonable costs incurred by the Copyright Office under this chapter, shall deposit the balance in the Treasury of the United States as offsetting receipts, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing United States securities for later distribution with interest under section 1007. The Register may, in the Register's discretion, 4 years after the close of any calendar year, close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year. The Register shall submit to the Copyright Royalty Tribunal, on a monthly basis, a financial statement reporting the amount of royalties under this chapter that are available for distribution.

"§1006. Entitlement to royalty payments

"(a) INTERESTED COPYRIGHT PARTIES.—The royalty payments deposited pursuant to section 1005 shall, in accordance with the procedures specified in section 1007, be distributed to any interested copyright party—

"(1) whose musical work or sound recording has been—

"(A) embodied in a digital musical recording or an analog musical recording lawfully made under this title that has been distributed, and

"(B) distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions, during the period to which such payments pertain; and

"(2) who has filed a claim under section 1007.

"(b) ALLOCATION OF ROYALTY PAYMENTS TO GROUPS.—The royalty payments shall be divided into 2 funds as follows:

"(1) THE SOUND RECORDINGS FUND.—66⅔ percent of the royalty payments shall be allocated to the Sound Recordings Fund. 2⅝ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Musicians (or any successor entity) to be distributed to nonfeatured musicians (whether or not members of the American Federation of Musicians or any successor entity) who have performed on sound recordings distributed in the United States. 1⅜ percent of the royalty payments allocated to the Sound Recordings Fund shall be placed in an escrow account managed by an independent administrator jointly appointed by the interested copyright parties described in section 1001(7)(A) and the American Federation of Television and Radio Artists (or any successor entity) to be distributed to nonfeatured vocalists (whether or not members of the American Federation Television and Radio Artists or any successor entity) who have performed on sound recordings dis-

tributed in the United States. 40 percent of the remaining royalty payments in the Sound Recordings Fund shall be distributed to the interested copyright parties described in section 1001(7)(C), and 60 percent of such remaining royalty payments shall be distributed to the interested copyright parties described in section 1001(7)(A).

"(2) The Musical Works Fund.—

"(A) 33⅓ percent of the royalty payments shall be allocated to the Musical Works Fund for distribution to interested copyright parties described in section 1001(7)(B).

"(B)(i) Music publishers shall be entitled to 50 percent of the royalty payments allocated to the Musical Works Fund.

"(ii) Writers shall be entitled to the other 50 percent of the royalty payments allocated to the Musical Works Fund.

"(c) Allocation of Royalty Payments Within Groups.—If all interested copyright parties within a group specified in subsection (b) do not agree on a voluntary proposal for the distribution of the royalty payments within each group, the Copyright Royalty Tribunal shall, pursuant to the procedures specified under section 1007(c), allocate royalty payments under this section based on the extent to which, during the relevant period—

"(1) for the Sound Recordings Fund, each sound recording was distributed in the form of digital musical recordings or analog musical recordings; and

"(2) for the Musical Works Fund, each musical work was distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions.

"§1007. Procedures for distributing royalty payments

"(a) Filing of Claims and Negotiations.—

"(1) Filing of claims.—During the first 2 months of each calendar year after the calendar year in which this chapter takes effect, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the Copyright Royalty Tribunal a claim for payments collected during the preceding year in such form and manner as the Tribunal shall prescribe by regulation.

"(2) Negotiations.—Notwithstanding any provision of the antitrust laws, for purposes of this section interested copyright parties within each group specified in section 1006(b) may agree among themselves to the proportionate division of royalty payments, may lump their claims together and file them jointly or as a single claim, or may designate a common agent, including any organization described in section 1001(7)(D), to negotiate or receive payment on their behalf; except that no agreement under this subsection may modify the allocation of royalties specified in section 1006(b).

"(b) Distribution of Payments in the Absence of a Dispute.—Within 30 days after the period established for the filing of claims under subsection (a), in each year after the year in which this section takes effect, the Copyright Royalty Tribunal shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Tribunal determines that no such controversy exists, the Tribunal shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a), after deducting its reasonable administrative costs under this section.

"(c) Resolution of Disputes.—If the Tribunal finds the existence of a controversy, it shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments. During the pendency of such a proceeding, the Tribunal shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy. The Tribunal shall, before authorizing the distribution of such royalty payments, deduct its reasonable administrative costs under this section.

"SUBCHAPTER D—PROHIBITION ON CERTAIN INFRINGEMENT ACTIONS, REMEDIES, AND ARBITRATION

"§1008. Prohibition on certain infringement actions

"No action may be brought under this title alleging infringement of copyright based on the manufacture, importation, or distribution of a digital audio recording device, a digital audio recording medium, an analog recording device, or an analog recording medium, or based on the noncommercial use by a consumer of such a device or medium for making digital musical recordings or analog musical recordings.

"§1009. Civil remedies

"(a) Civil Actions.—Any interested copyright party injured by a violation of section 1002 or 1003 may bring a civil action in an appropriate United States district court against any person for such violation.

"(b) Other Civil Actions.—Any person injured by a violation of this chapter may bring a civil action in an appropriate United States district court for actual damages incurred as a result of such violation.

"(c) Powers of the Court.—In an action brought under subsection (a), the court—

"(1) may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain such violation;

"(2) in the case of a violation of section 1002, or in the case of an injury resulting from a failure to make royalty payments required by section 1003, shall award damages under subsection (d);

"(3) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof; and

"(4) in its discretion may award a reasonable attorney's fee to the prevailing party.

"(d) Award of Damages.—

"(1) Damages for section 1002 or 1003 violations.—

"(A) Actual damages.—(i) In an action brought under subsection (a), if the court finds that a violation of section 1002 or 1003 has occurred, the court shall award to the complaining party its actual damages if the complaining party elects such damages at any time before final judgment is entered.

"(ii) In the case of section 1003, actual damages shall constitute the royalty payments that should have been paid under section 1004 and deposited under section 1005. In such a case, the court, in its discretion, may award an additional amount of not to exceed 50 percent of the actual damages.

"(B) Statutory damages for section 1002 violations.—

"(i) Device.—A complaining party may recover an award of statutory damages for each violation of section 1002 (a) or (c) in the sum of not more than $2,500 per device involved in such violation or per device on which a service prohibited by section 1002(c) has been performed, as the court considers just.

"(ii) Digital musical recording.—A complaining party may recover an award of statutory damages for each violation of section 1002(d) in the sum of not more than $25 per digital musical recording involved in such violation, as the court considers just.

"(iii) Transmission.—A complaining party may recover an award of damages for each transmission or communication that violates section 1002(e) in the sum of not more than $10,000, as the court considers just.

"(2) Repeated violations.—In any case in which the court finds that a person has violated section 1002 or 1003 within 3 years after a final judgment against that person for another such violation was entered, the court may increase the award of damages to not more than double the amounts that would otherwise be awarded under paragraph (1), as the court considers just.

"(3) Innocent violations of section 1002.—The court in its discretion may reduce the total award of damages against a person violating section 1002 to a sum of not less than $250 in any case in which the court finds that the violator was not aware and had no reason to believe that its acts constituted a violation of section 1002.

"(e) Payment of Damages.—Any award of damages under subsection (d) shall be deposited with the Register pursuant to section 1005 for distribution to interested copyright parties as though such funds were royalty payments made pursuant to section 1003.

"(f) Impounding of Articles.—At any time while an action under subsection (a) is pending, the court may order the impounding, on such terms as it deems reasonable, of any digital audio recording device, digital musical recording, or device specified in section 1002(c) that is in the custody or control of the alleged violator and that the court has reasonable cause to believe does not comply with, or was involved in a violation of, section 1002.

"(g) Remedial Modification and Destruction of Articles.—In an action brought under subsection (a), the court may, as part of a final judgment or decree finding a violation of section 1002, order the remedial modification or the destruction of any digital audio recording device, digital musical recording, or device specified in section 1002(c) that—

"(1) does not comply with, or was involved in a violation of, section 1002, and

"(2) is in the custody or control of the violator or has been impounded under subsection (f).

"§1010. Arbitration of certain disputes

"(a) Scope of Arbitration.—Before the date of first distribution in the United States of a digital audio recording device or a digital audio interface device, any party manufacturing, importing, or distributing such device, and any interested copyright party may mutually agree to binding arbitration for the purpose of determining whether such device is subject to section 1002, or the basis on which royalty payments for such device are to be made under section 1003.

"(b) Initiation of Arbitration Proceedings.—Parties agreeing to such arbitration shall file a petition with the Copyright Royalty Tribunal requesting the commencement of an arbitration proceeding. The petition may include the names and qualifications of potential arbitrators. Within 2 weeks after receiving such a petition, the Tribunal shall cause notice to be published in the Federal Register of the initiation of an arbitration proceeding. Such notice shall include the names and qualifications of 3 arbitrators chosen by the Tribunal from a list of available arbitrators obtained from the American Arbitration Association or such similar organization as the Tribunal shall select, and from potential arbitrators listed in the parties' petition. The arbitrators selected under this subsection shall constitute an Arbitration Panel.

"(c) Stay of Judicial Proceedings.—Any civil action brought under section 1009 against a party to arbitration under this section shall, on application of one of the parties to the arbitration, be stayed until completion of the arbitration proceeding.

"(d) Arbitration Proceeding.—The Arbitration Panel shall conduct an arbitration proceed-

ing with respect to the matter concerned, in accordance with such procedures as it may adopt. The Panel shall act on the basis of a fully documented written record. Any party to the arbitration may submit relevant information and proposals to the Panel. The parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the Panel shall direct.

"(e) REPORT TO COPYRIGHT ROYALTY TRIBUNAL.—Not later than 60 days after publication of the notice under subsection (b) of the initiation of an arbitration proceeding, the Arbitration Panel shall report to the Copyright Royalty Tribunal its determination concerning whether the device concerned is subject to section 1002, or the basis on which royalty payments for the device are to be made under section 1003. Such report shall be accompanied by the written record, and shall set forth the facts that the Panel found relevant to its determination.

"(f) ACTION BY THE COPYRIGHT ROYALTY TRIBUNAL.—Within 60 days after receiving the report of the Arbitration Panel under subsection (e), the Copyright Royalty Tribunal shall adopt or reject the determination of the Panel. The Tribunal shall adopt the determination of the Panel unless the Tribunal finds that the determination is clearly erroneous. If the Tribunal rejects the determination of the Panel, the Tribunal shall, before the end of that 60-day period, and after full examination of the record created in the arbitration proceeding, issue an order setting forth its decision and the reasons therefor. The Tribunal shall cause to be published in the Federal Register the determination of the Panel and the decision of the Tribunal under this subsection with respect to the determination (including any order issued under the preceding sentence).

"(g) JUDICIAL REVIEW.—Any decision of the Copyright Royalty Tribunal under subsection (f) with respect to a determination of the Arbitration Panel may be appealed, by a party to the arbitration, to the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the publication of the decision in the Federal Register. The pendency of an appeal under this subsection shall not stay the Tribunal's decision. The court shall have jurisdiction to modify or vacate a decision of the Tribunal only if it finds, on the basis of the record before the Tribunal, that the Arbitration Panel or the Tribunal acted in an arbitrary manner. If the court modifies the decision of the Tribunal, the court shall have jurisdiction to enter its own decision in accordance with its final judgment. The court may further vacate the decision of the Tribunal and remand the case for arbitration proceedings as provided in this section.".

SEC. 3. TECHNICAL AMENDMENTS.

(a) FUNCTIONS OF REGISTER.—Chapter 8 of title 17, United States Code is amended—

(1) in section 801(b)—

(A) by striking "and" at the end of paragraph (2);

(B) by striking the period at the end of paragraph (3) and inserting "; and"; and

(C) by adding the following new paragraph at the end:

"(4) to distribute royalty payments deposited with the Register of Copyrights under section 1003, to determine the distribution of such payments, and to carry out its other responsibilities under chapter 10"; and

(2) in section 804(d)—

(A) by inserting "or (4)" after "801(b)(3)"; and

(B) by striking "or 119" and inserting "119, or 1007".

(b) DEFINITIONS.—Section 101 of title 17, United States Code, is amended by striking "As used" and inserting "Except as otherwise provided in this title, as used".

(c) MASK WORKS.—Section 912 of title 17, United States Code, is amended—

(1) in subsection (a) by inserting "or 10" after "8"; and

(2) in subsection (b) by inserting "or 10" after "8".

(d) CONFORMING AMENDMENT TO SECTION 337 OF THE TARIFF ACT OF 1930.—The second sentence of section 337(b)(3) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(3)) is amended to read as follows: "If the Commission has reason to believe that the matter before it (A) is based solely on alleged acts and effects which are within the purview of section 303, 671, or 673, or (B) relates to an alleged copyright infringement with respect to which action is prohibited by section 1008 of title 17, United States Code, the Commission shall terminate, or not institute, any investigation into the matter.".

SEC. 4. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

Mr. FORD. Mr. President, I move that the Senate concur in the amendment of the House.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONCERNING UNITED STATES PARTICIPATION IN A CASCADIA CORRIDOR COMMISSION

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6077, a bill concerning U.S. participation in the Corridor Commission.

The legislative clerk read as follows:

A bill (H.R. 6077) concerning United States participation in a Cascadia Corridor Commission.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3410

(Purpose: To Express the sense of the Congress with respect to the Cascadia Corridor Commission)

Mr. FORD. Mr. President, I send a substitute amendment to the desk, and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. ADAMS (for himself and Mr. GORTON), proposes an amendment numbered 3410.

Mr. FORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. It is the sense of the Congress that—

(A) CASCADIA CORRIDOR COMMISSION.—The United States should continue negotiations with the Government of Canada and State, provincial, and local governments in the urbanized Cascadia corridor along Interstate 5/Highway 99 from Vancouver, British Columbia (including Vancouver Island), to Eugene, Oregon, in order to establish a commission to—

(1) act as a forum to coordinate consideration of regional issues in the Cascadia area by representatives from the private sector, nonprofit organizations, and local, State, provincial, regional, and national governments;

(2) develop a strategy for environmentally sound economic development in the Cascadia region which includes consideration of environmental issues, urban development, transportation, communications, and education; and

(3) submit a plan, developed by the commission and incorporating such strategy, to the Congress, the Canadian Parliament, the legislature of British Columbia, and the State legislatures of Oregon and Washington.

(B) ADVISORY COMMISSION.—The commission should be authorized to function only in an advisory capacity and should have no authority concerning any local, State, or Federal agency or government.

(C) COMPOSITION OF UNITED STATES DELEGATION.—If the United States and Canada conclude an agreement to establish such a commission concerning the Cascadia region, the United States delegation to the commission should include—

(1) 1 member appointed by the President, who should be a nonvoting member;

(2) a Washington State delegation; and

(3) an Oregon delegation.

(D) COST-SHARING AMONG U.S. DELEGATION.—Upon appointment of a United States delegation to such a commission, the United States delegation should decide the cost-sharing arrangements among the Federal, State, and local participants of the delegation. Federal Government contributions of the United States should not exceed one-fourth of the total budget of the commission for any fiscal year. If a Cascadia commission is established, it is the sense of the Congress that of funds appropriated for "International Commissions" for the Department of State $200,000 for fiscal year 1993 and $200,000 for fiscal year 1994 should be available for the commission.

The ACTING PRESIDENT pro tempore. Is there further debate?

If there is no further debate, the question is on agreeing to the amendment of the Senator from Washington.

The amendment (No. 3410) was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The ACTING PRESIDENT pro tempore. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 6077), as amended, was passed.

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONCERNING UNITED STATES PARTICIPATION IN A CASCADIA CORRIDOR COMMISSION

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 383, a concurrent resolution concerning the Corridor Commission; that the concurrent resolution be agreed to; the motion to reconsider be laid upon the table; and statements thereon appear in the RECORD at the appropriate place as though read.

The ACTING PRESIDENT pro tempore. Without objection it is so ordered.

So the concurrent resolution (S. Con. Res. 383) was agreed to.

THEODORE ROOSEVELT FEDERAL BUILDING

CONTAMINATED WATER TREATMENT AUTHORIZATION

GEORGE C. YOUNG UNITED STATES COURTHOUSE AND FEDERAL BUILDING

RONALD REAGAN FEDERAL BUILDING AND COURTHOUSE

ROBERT A. ROE FEDERAL BUILDING

ROBERT A. GRANT FEDERAL BUILDING AND UNITED STATES COURTHOUSE

MARTIN LUTHER KING, JR. FEDERAL BUILDING

JOHN PAUL HAMMERSCHMIDT FEDERAL BUILDING AND UNITED STATES COURTHOUSE

Mr. FORD. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged en bloc from consideration of the following bills: H.R. 3118, H.R. 3673, H.R. 3818, H.R. 4281, H.R. 5222, H.R. 5431, H.R. 5432, and H.R. 5831; and that the Senate then proceed en bloc to their immediate consideration; that the bills be deemed read three times, passed; and the motion to reconsider be laid upon the table en bloc; further, that any statements relative to the passage of these bills be placed in the RECORD at the appropriate place; and, the consideration of these items appear individually in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So the bill (H.R. 3118) to designate Federal Office Building No. 9 located at 1900 E Street, NW., in the District of Columbia, as the "Theodore Roosevelt Federal Building" was deemed read three times and passed.

So the bill (H.R. 3673) to authorize a research program through the National Science Foundation on the treatment of contaminated water through membrane processes was deemed read three times and passed.

So the bill (H.R. 3818) to designate the building located at 80 North Hughey Avenue in Orlando, FL, as the "George C. Young United States Courthouse and Federal Building" was deemed read three times and passed.

So the bill (H.R. 4281) to designate the U.S. Federal Building and courthouse to be constructed at 5th and Ross Streets in Santa Ana, CA, as the "Ronald Reagan Federal Building and Courthouse" was deemed read three times and passed.

So the bill (H.R. 5431) to designate the Federal building located at 200 Federal Plaza in Paterson, NJ, as the "Robert A. Roe Federal Building" was deemed read three times and passed.

So the bill (H.R. 5222) to designate the Federal building and U.S. courthouse located at 204 South Main Street in South Bend, IN, as the "Robert A. Grant Federal Building and United States Courthouse" was deemed read three times and passed.

So the bill (H.R. 5831) to designate the Federal building located at Main and Church Streets in Victoria, TX, as the "Martin Luther King, Jr. Federal Building" was deemed read three times and passed.

So the bill (H.R. 5432) to designate the Federal building and U.S. courthouse located at the corner of College Avenue and Mountain Street in Fayetteville, AR, as the "John Paul Hammerschmidt Federal Building and United States Courthouse" was deemed read three times and passed.

ROBERT A. ROE BUILDING

• Mr. LAUTENBERG. Mr. President, I am pleased to support legislation to name the new Federal building in Paterson, NJ, for my retiring colleague and friend from New Jersey, Congressman BOB ROE.

This bill is a fitting tribute to the accomplishments of a man who has spent his adult life working for the people of New Jersey, and who has left such a mark on the infrastructure of this country.

Mr. President, I have known BOB ROE for more than 25 years. I am proud to have been able to call him my Congressman. I first knew him when I was a citizen and businessman actively involved in community affairs in New Jersey. Over the last 9 years, I have had the pleasure of working with him as a partner in the Congress in efforts to help our State and advance the cause of increasing American productivity and quality of life through investment in infrastructure across this country.

In 1967, in his capacity as Commissioner of the New Jersey Department of Conservation and Economic Development, BOB ROE attended the ground breaking of the Clifton, NJ, headquarters of my former company, ADP. Along with Joseph and Henry Taub, I founded ADP, and worked to build it into an industry leader that now employs more than 20,000 people worldwide. That ground breaking was an important event in my life and the lives of the people of ADP, and I was proud to have BOB ROE join us there.

BOB ROE was elected to Congress in 1969 to represent New Jersey's Eighth District. He rose through the ranks in the House, becoming chairman of the Science, Space, and Technology Committee in 1987, and then chairman of the Public Works and Transportation Committee in 1990. In that role, and as chairman of the Subcommittee on Water Resources for many years, BOB ROE established himself as a leader and an expert on infrastructure issues.

Last year, I worked closely with BOB ROE to help enact the landmark Intermodal Surface Transportation Efficiency Act of 1991, or ISTEA. This bill represented the largest shift in Federal transportation policy in 35 years. And, it was BOB ROE who led the efforts to get a bill through the House, and who chaired the conference committee that eventually worked out the details of ISTEA. As a member of the conference committee, I can assure my colleagues that managing that conference was no easy task. Significant policy positions were at stake, as was the question of transportation funding for every congressional district, and every State.

Mr. President, as a son of Paterson, I speak for all the residents of that city in saying that we will be proud to have the new Federal building named for BOB ROE. It is a building that he worked hard to have authorized and built. With enactment of this legislation, this building will serve as a lasting reminder of the efforts and accomplishments of BOB ROE.•

TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT

Mr. FORD. Mr. President. I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1579.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1579) entitled "An Act to provide for regulation and oversight of the development and application of the telephone technology known as pay-per-call, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE, FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the "Telephone Disclosure and Dispute Resolution Act".

(b) FINDINGS.—The Congress finds the following:

(1) The use of pay-per-call services, most commonly through the use of 900 numbers, has grown exponentially in the past few years. This payment mechanism is convenient to consumers, cost-effective to vendors, and profitable to communications common carriers.

(2) The interstate nature of the pay-per-call industry means that its activities are beyond the reach of individual States and therefore requires Federal regulatory treatment to protect the public interest.

(3) The lack of nationally uniform regulatory guidelines has led to confusion for consumers, industry, and regulatory agencies as to the rights of callers and the oversight responsibilities of regulatory authorities, and has allowed some pay-per-call businesses to engage in practices which abuse the rights of callers.

(4) Because the consumer most often incurs a financial obligation as soon as a pay-per-call transaction is initiated, the accuracy and descriptiveness of vendor advertisements become crucial in avoiding consumer abuse. The obligation for accuracy should include price-per-call and duration-of-call information, odds disclosure for lotteries, games, and sweepstakes, and obligations for obtaining parental consent from callers under 18.

(5) The continued growth of the legitimate pay-per-call industry is dependent upon consumer confidence that unfair and deceptive behavior will be effectively curtailed and that consumers will have adequate rights of redress.

(6) Vendors of telephone-billed goods and services must also feel confident in their rights and obligations for resolving billing disputes if they are to use this new marketplace for the sale of products of more than nominal value.

(7) Many applications employing audiotext technology such as lotteries, games, and sweepstakes, sometimes erroneously have informed consumers that they must utilize audiotext services to claim or win a prize, or have not adequately informed consumers of the right to participate in the same applications through other forms of entry.

(8) Some interstate audiotext services have offered programs aimed at children, inducing them to call such services without their parents' permission.

(9) Consequently, Congress should enact legislation that will offer consumers and vendors necessary protections and help facilitate the growth of a robust and competitive pay-per-call marketplace.

TITLE I—AUDIOTEXT INDUSTRY OBLIGATIONS AND CONSUMER RIGHTS

SEC. 101. AMENDMENT TO COMMUNICATIONS ACT OF 1934

Title II of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

"SEC. 228. REGULATION OF AUDIOTEXT SERVICES.

"(a) PURPOSE.—It is the purpose of this section—

"(1) to put into effect a system of national regulation and review that will oversee the audiotext business;

"(2) to give the Commission authority to prescribe regulations and enforcement procedures and conduct oversight to afford reasonable protection to consumers and to assure that violations of this Act do not occur.

"(b) AUTHORITY FOR REGULATIONS.—

"(1) IN GENERAL.—The Commission shall, within 270 days after the date of enactment of this section, complete a rulemaking proceeding to establish a system for oversight and regulation of audiotext services in order to provide for the protection of consumers and providers in accordance with this Act and other applicable Federal statutes and regulations. The Commission's final rules shall—

"(A) include measures that provide a consumer of audiotext services with adequate and clear descriptions of the rights of the caller;

"(B) define the obligations of common carriers with respect to the provision of the audiotext services;

"(C) include requirements on such carriers to protect against abusive practices by providers of audiotext services;

"(D) prohibit customers from being disconnected from local exchange services for refusal to pay for audiotext services; and

"(E) identify procedures by which common carriers and providers of audiotext services may take affirmative steps to protect against nonpayment of legitimate charges.

"(2) MINIMUM STANDARDS FOR PROVIDERS OF AUDIOTEXT SERVICES.—The regulations required by paragraph (1) shall prohibit any common carrier from offering audiotext services of any provider of such services who fails—

"(A) to include in each audiotext message an introductory disclosure message that (i) describes the service being provided, (ii) specifies clearly and at a reasonably understandable volume the total cost or the cost per minute and any other fees for that service, and for any other audiotext service to which the caller may be transferred, (iii) informs the caller of the option to hang up at the end of the introductory message without incurring any charge, and (iv) informs the caller that parental consent is required for calls made by children;

"(B) to disable any bypass mechanism which allows frequent callers to avoid listening to the disclosure message described in subparagraph (A) after the institution of any price increase and for a period of time sufficient to give such frequent callers adequate and sufficient notice of the price change;

"(C) to stop the assessment of time-based charges immediately upon disconnection by the caller;

"(D) to include an appropriate and clear signal, at intervals determined by the Commission, where technically feasible, during live interactive group programs, to alert callers to the passage of time, and explain this signal in the disclosure required by subparagraph (A) for such programs, except that the requirements of this subparagraph do not apply to programs for which the caller is required to preregister or presubscribe; and

"(E) to comply with such additional standards as the Commission may prescribe to prevent abusive practices.

"(3) COMMON CARRIER OBLIGATIONS.—The regulations required by paragraph (1) shall require that any common carriers offering audiotext services shall—

"(A) require, pursuant to contract or tariff, that a provider of audiotext services comply with the regulations issued pursuant to paragraph (2), and terminate, in accordance with procedures specified in such regulations, the offering of an audiotext service of a provider if such service is not provided in compliance with such regulations;

"(B) ensure that a caller is not billed—

"(i) with respect to audiotext services provided in violation of the regulations issued pursuant to paragraph (2); or

"(ii) under such other circumstances as the Commission determines necessary in order to protect callers from abusive practices;

"(C) establish a local or a toll-free telephone number to answer questions and provide information on callers' rights and obligations with regard to their use of audiotext services and to provide to callers the name and mailing address of any provider of audiotext services offered by the common carrier;

"(D) within 60 days after the issuance of final regulations pursuant to paragraph (1), provide, either directly or through contract with any local exchange carrier that provides billing or collection services to the common carrier, to all of such common carrier's telephone subscribers, to all new subscribers, and to all subscribers requesting service at a new location, a disclosure statement that—

"(i) sets forth in clear, standard English, or other languages as specified by regulation, all rights and obligations held by the subscriber and the carrier with respect to the use and payment for audiotext services;

"(ii) describes any nonpayment option prescribed by the Commission under subparagraph (B) and the applicable blocking option; and

"(iii) provides an explanation of live interactive programming;

"(E) ensures that charges for audiotext services are stated separately on the bill from the sections relating to local and long distance telephone charges and that such statement includes the toll-free telephone number specified in subparagraph (C);

"(F) notify in writing the State regulatory commission of any State within which the carrier intends to offer audiotext services of such intention, which notification shall include a description of the service to be provided to telephone users within that State as well as a list of the carrier's policies and procedures;

"(G) subsequently make available to the State regulatory commission, upon request, a list of audiotext telephone numbers accessible by callers within that State through such carrier, which list shall include the name, business address, and business telephone number of the audiotext provider; and

"(H) obtain from any provider of audiotext services that solicits charitable contributions proof of the tax exempt status of any person or organization for which contributions are solicited.

"(4) BLOCKING REQUIREMENTS.—The regulations required by paragraph (1) shall require that any local exchange carrier carrying audiotext services shall offer callers the option of blocking access to all audiotext services from their telephone, whenever technologically feasible. Such regulation may permit the costs of such blocking to be recovered by contract or tariff, but such costs may not be recovered from local or long distance ratepayers. Such option shall be offered at no charge to the caller for a reasonable and appropriate period (established by the Commission in such regulations) after (A) the effective date of such regulation, (B) an ini-

tial connection, or (C) subscription for any new telephone line.

"(5) EXEMPTIONS FROM INTRODUCTORY MESSAGE REQUIREMENTS.—The regulations prescribed by the Commission pursuant to paragraph (2)(A) may exempt from the requirements of such paragraph—

"(A) calls from frequent callers or regular subscribers using a bypass mechanism to avoid listening to the disclosure message required by such regulations; or

"(B) audiotext services provided at nominal charges, as defined by the Commission in such regulations.

"(6) CONSUMER REFUND REQUIREMENTS.—The regulations required by paragraph (1) shall establish procedures, consistent with the provisions of titles II and III of the Telephone Disclosure and Dispute Resolution Act, to ensure that carriers offering audiotext services and other parties provide appropriate refunds to callers who have been billed for audiotext services pursuant to programs that have been found to have violated this subsection or such regulations or any other Federal, State, or local consumer protection law.

"(7) RECOMMENDATIONS ON DATA PAY-PER-CALL.—The Commission, within one year after the date of enactment of this section, shall submit to the Congress the Commission's recommendations with respect to the extension of regulations under this section to services that provide, for a per call charge, data services that are not audiotext services.

"(c) EFFECT ON OTHER LAW.—

"(1) NO PREEMPTION OF ELECTION LAW.—Nothing in this section shall relieve any information provider, common carrier, local exchange carrier, or any other person from the obligation to comply with Federal, State, and local election laws and regulations.

"(2) CONSUMER PROTECTION LAWS.—Nothing in this section shall relieve any provider of audiotext services, common carrier, local exchange carrier, or any other person from the obligation to comply with Federal, State, or local laws relating to consumer protection or unfair trade.

"(3) GAMBLING LAWS.—Nothing in this section shall preclude any State from enforcing its statutes and regulations with regard to lotteries, wagering, betting, and other gambling activities.

"(4) STATE AUTHORITY.—Nothing in this section shall preclude any State from enacting and enforcing additional and complementary oversight and regulatory systems or procedures, or both, so long as such systems and procedures do not significantly impede the enforcement of this section or other Federal statutes.

"(5) LIABILITY.—No cause of action may be brought in any court or administrative agency against any common carrier or any of its affiliates on account of any act of the carrier or affiliate, and which the carrier or affiliate shows to be in good faith, to terminate any audiotext service in order to comply with the regulations prescribed under subsection (b).

"(d) DEFINITIONS.—For purposes of this section—

"(1) The term 'audiotext services' means any service—

"(A) in which any person provides, through interstate telecommunications—

"(i) audio information or audio entertainment produced or packaged by such person; or

"(ii) access to simultaneous voice conversation services;

"(B) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

"(C) the charge for which is billed and collected by a common carrier or local exchange carrier.

Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate or any service the charge for which is tariffed.

"(2) A common carrier 'offers audiotext services' by transmitting an audiotext service through interstate communications. A local exchange carrier shall not be considered to 'offer audiotext services' if the local exchange carrier only provides exchange access services or billing services, or both, to a common carrier in connection with the common carrier's offering of audiotext services.".

SEC. 102. TECHNICAL AMENDMENT.

Section 3(c) of the Telephone Consumer Protection Act of 1991 is amended by striking "section 228" and inserting "section 227".

TITLE II—USE OF THE 900 TELEPHONE NUMBER

SEC. 201. REGULATIONS.

(a) IN GENERAL.—

(1) The Federal Trade Commission shall prescribe rules, as described in this subsection, for any advertisement for services or products procured through the use of a telephone number with a 900 service access code or any other access code under which liability for the service or product provided attaches to the telephone bill of the individual calling such number. Such rules shall require that the person offering such services or products—

(A) clearly and conspicuously disclose in any advertising the cost of the use of such telephone number, including the rate per minute and, if applicable, for the duration of the call,

(B) in the case of an advertisement which offers a prize or award or a service or product at no cost or for a reduced cost, clearly and conspicuously disclose the odds of being able to receive such prize, award, service, or product at no cost or reduced cost, or, if such odds are not calculable in advance, disclose the factors determining such odds,

(C) in the case of individuals under the age of 18 using such telephone number, clearly and conspicuously state, where appropriate, in any advertising that such individual must have the consent of such individual's parent or legal guardian for the use of such telephone number, and

(D) be prohibited from using advertisements that emit electronic tones which can automatically dial a pay-per-call telephone number.

(2) The Commission shall by rule require a common carrier that provides telephone services to a vendor who uses the telephone number described in paragraph (1) to make available to the Commission any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and vendor.

(3) A rule issued under paragraph (1) or (2) shall be treated as a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) RULEMAKING.—The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, United States Code.

(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) regarding unfair or deceptive acts or practices. Notwithstanding section 5(a)(2) of such Act (15 U.S.C. 45(a)(2)), communications common carriers shall be subject to the jurisdiction of the Commission for purposes of this Act.

SEC. 202. ACTIONS BY STATES.

(a) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule of the Commission under section 201(a)(1), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such telemarketing, to enforce compliance with such rule of the Commission, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

(b) NOTICE.—The State shall serve prior written notice of any civil action under subsection (a) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall prevent an attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE COMMISSION.—Whenever the Commission has instituted a civil action for violation of any rule prescribed under section 201, no State may, during the pendency of such action instituted by the Commission, institute a civil action under subsection (a) against any defendant named in the Commission's complaint for acts or omissions alleged in the complaint for violation of any rule as alleged in the Commission's complaint.

(e) ACTIONS BY OTHER STATE OFFICIALS.—

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection (a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers and who are designated by the Commission to bring an action under subsection (a) against persons that the Commission has determined have or are engaged in a pattern or practice of telemarketing which violates a rule of the Commission under section 201.

SEC. 203. ADMINISTRATION AND APPLICABILITY OF TITLE.

(a) IN GENERAL.—Except as otherwise provided in section 202, this title shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this Act, except for purposes of this title.

(b) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating a rule of the Commission under section 201 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this title. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal

Trade Commission Act were incorporated into and made a part of this title.

SEC. 204. DEFINITIONS.

For purposes of this title:

(1) The term "attorney general" means the chief legal officer of a State.

(2) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(3) The term "Commission" means the Federal Trade Commission.

TITLE III—TELEPHONE SERVICES BILLING AND COLLECTION

SEC. 301. CORRECTION OF BILLING ERRORS.

(a) INITIATION OF BILLING REVIEW.—A customer may initiate a billing review under this section with respect to a telephone-billed purchase by sending, within 30 days after receipt of a billing statement from a billing carrier that contains a charge for such telephone-billed purchase, a written notice to that billing carrier in which the customer—

(1) sets forth or otherwise enables the billing carrier to identify the name of the customer and the phone number to which the charge was billed;

(2) indicates the customer's belief that the statement contains a billing error that relates to a telephone-billed purchase and the amount of such billing error; and

(3) sets forth the reasons for the customer's belief (to the extent applicable) that the statement contains a billing error.

(b) RESPONSE TO CUSTOMER NOTICE.—

(1) RESPONSE BY BILLING CARRIER.—A billing carrier that receives a notice from any customer under subsection (a) shall—

(A) if the billing error is described in section 308(6) (D), (E), or (F) or otherwise relates to the calculation of amounts due, be deemed to be a providing carrier for purposes of paragraph (2) of this subsection; or

(B) transmit such notice within 15 days to the providing carrier for the telephone-billed purchase to which the alleged billing error relates.

(2) RESPONSE BY PROVIDING CARRIER.—A providing carrier that receives from any customer a notice that meets the requirements of subsection (a) shall, unless the customer has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct—

(A) not later than 30 days after the receipt of the notice, unless the action required in subparagraph (B) is taken within such 30-day period, send a written acknowledgement thereof to the customer, which acknowledgement shall include the name, mailing address, and business telephone number of the vendor that is the subject of the notice, and

(B) not later than two complete billing cycles of the billing carrier (in no event later than 90 days) after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the customer under subsection (a)(2) either—

(i) make appropriate corrections in the account of the customer, including the crediting of any related charges on amounts erroneously billed, and transmit to billing carrier and the customer a notification of such corrections and the providing carrier's explanation of any change in the amount indicated by the customer under subsection (a)(2) and, if any such change is made and the customer so requests, copies of documentary evidence of the customer's indebtedness; or

(ii) send a written explanation or clarification to the customer, after having conducted an investigation (including, where appropriate, contact with the vendor), setting forth to the extent applicable the reasons why the providing carrier believes the account of the customer was correctly shown in the statement and, upon request of the customer, provide copies of documentary evidence of the customer's indebtedness.

(3) INVESTIGATIONS CONCERNING DELIVERY OF TELEPHONE-BILLED PURCHASES.—In the case of a billing error where the customer alleges that the billing statement reflects goods or services not delivered to the customer in accordance with the stated terms of the transaction, a providing carrier may not construe such amount to be correctly shown unless the providing carrier investigates, with reasonable diligence, whether such goods or services were actually delivered or otherwise sent to the customer and provides the customer with a written statement of the results of such investigation.

(4) TERMINATION OF PROVIDING CARRIER RESPONSIBILITY.—After complying with the provisions of this subsection with respect to an alleged billing error, a providing carrier has no further responsibility under this section if the customer continues to make substantially the same allegation with respect to such error.

(5) PERMITTED ACTIONS BY BILLING CARRIERS.—Nothing in this title shall prohibit a billing carrier from removing a charge from a customer's billing statement upon receipt of a billing inquiry from the customer if the billing carrier—

(A) informs the appropriate providing carrier that the charge has been removed;

(B) informs the customer that removal of the charge does not limit customer liability for that charge if the vendor or providing carrier or its agent elects to pursue collection of the charge; and

(C) informs the customer that, to assure the protection of the customer's rights under this title, the customer must send a written notice in accordance with subsection (a).

(c) COLLECTION ACTIONS.—

(1) DEFINITION.—For the purposes of subsection (b)(2)(B) of this section, "action to collect the amount, or any part thereof, indicated by the customer under subsection (a)(2)" does not include the sending of statements of account, which may include late charges on amounts in dispute, to the customer following written notice from the customer as specified under subsection (a), if—

(A) the customer's account is not restricted or closed because of the failure of the customer to pay the amount indicated under subsection (a)(2), and

(B) the billing carrier indicates to the customer that the payment of such amount is not required pending the providing carrier's compliance with this section.

(2) NO EFFECT ON AMOUNTS NOT SUBJECT TO REVIEW.—Nothing in this section shall be construed to prohibit any action by a vendor, providing carrier, or billing carrier to collect any amount which has not been indicated by the customer under subsection (a)(2) to contain a billing error.

(d) FORFEITURE OF RIGHTS.—Any billing carrier or providing carrier who fails to comply with the requirements of this section or section 302 forfeits any right to collect from the customer the amount indicated by the customer under subsection (a)(2) of this section, and any late charges thereon.

SEC. 302. REGULATION OF REPORTS.

(a) ADVERSE REPORTS PROHIBITED.—After receiving a notice from a customer as provided in section 301, a vendor, billing carrier, providing carrier, or its agent may not directly or indirectly threaten to report to any person adversely on the customer's credit rating or credit standing because of the customer's failure to pay the amount indicated by the customer under section 301(a)(2), and such amount may not be reported as delinquent to any third party until the billing carrier or providing carrier has met the requirements of section 301 and has allowed the customer 20 days thereafter to make payment.

(b) REPORTS DURING CONTINUATION OF DISPUTE.—If a billing carrier or providing carrier receives a further written notice from a customer that an amount is still in dispute within the time allowed for payment under subsection (a) of this section, a vendor, billing carrier, or providing carrier or its agent may not report to any third party that the account of the customer is in arrears because the customer has failed to pay an amount indicated under section 301(a)(2), unless the vendor, billing carrier, providing carrier, or its agent also reports that the amount is in dispute and, at the same time, notifies the customer of the name and address of each party to whom the vendor, billing carrier, providing carrier, or its agent is reporting information concerning the arrearage.

(c) REPORTS OF RESOLUTIONS.—A vendor, billing carrier, providing carrier, or its agent shall report any subsequent resolution of any matter reported pursuant to subsection (b) to the parties to whom such matter was initially reported.

SEC. 303. PROMPT NOTIFICATION OF CREDIT.

With respect to any telephone-billed purchase where the vendor is a person other than the billing carrier, and where the vendor accepts or allows a forgiveness of a debit for the telephone-billed purchase, the vendor shall promptly transmit to the billing carrier a credit statement with respect thereto and the billing carrier shall credit the account of the customer for the amount of the purchase.

SEC. 304. RIGHTS OF CUSTOMERS.

A billing carrier or providing carrier who seeks to collect charges for a telephone-billed purchase from a customer for a vendor shall be subject to all claims (other than tort claims) and defenses arising out of any telephone-billed purchase in which the customer's telephone billing account is used as a method for collection, if the customer has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the purchase from the vendor or providing carrier. In no event shall the billing carrier be liable for any amount greater than the amount billed to the customer for the purchase.

SEC. 305. RELATION TO STATE LAWS.

(a) STATE LAW APPLICABLE UNLESS INCONSISTENT.—This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with, the laws of any State with respect to telephone billing practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The Commission is authorized to determine whether such inconsistencies exist. The Commission may not determine that any State law is inconsistent with any provision of this chapter if the Commission determines that such law gives greater protection to the consumer.

(b) REGULATORY EXEMPTIONS.—The Commission shall by regulation exempt from the requirements of this title any class of telephone-billed purchase transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

SEC. 306. ENFORCEMENT.

The Commission shall enforce the requirements of this title. For the purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All the functions and powers of the Federal Trade Commission *under that Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in that Act. The Commission may prescribe such regulations as are necessary or appropriate to implement the provisions of this title.*

SEC. 307. STUDY OF NEED FOR ADDITIONAL REMEDIES.

(a) STUDY REQUIRED.—The Commission shall conduct an ongoing study of the need to develop and implement additional provisions to prevent evasions of the requirements of this title, through the use of alternative billing or other procedures, that undermine the rights provided to customers under this title. In examining such additional provisions, the Commission shall consider the extent to which such additional provisions may be implemented under the Commission's rulemaking authority pursuant to section 306.

(b) REPORTS REQUIRED.—The Commission shall submit to the Congress, not later than 18 months after the date of enactment of this Act, a report on the results (as of the end of such period) of the study required by subsection (a), and shall submit such additional reports to the Congress as are merited by later findings of such study. Such reports shall include such recommendations for legislation as the Commission considers necessary to carry out the purposes of this title.

SEC. 308. DEFINITIONS.

As used in this title—

(1) The term "providing carrier" means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error complaint.

(2) The term "billing carrier" means a local exchange or interexchange common carrier that transmits to a customer a statement of charges for a telephone-billed purchase.

(3) The term "vendor" means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.

(4) The term "customer" means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase.

(5) The term "telephone-billed purchase" means any goods or services (including information services) acquired through the use of the telephone, any part of the charges for which are compiled and transmitted through the use of billing services provided by a local exchange or interexchange common carrier, except that such term does not include—

(A) local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines, by rule—

(i) is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(ii) is subject to billing dispute resolution procedures required by Federal or State statute or regulation; or

(B) the purchase of goods or services which is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

(6) A "billing error" consists of any of the following:

(A) A reflection on a billing statement from a billing carrier of a telephone-billed purchase which was not made by the customer or, if made, was not in the amount reflected on such statement.

(B) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.

(C) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or not provided to the customer in accordance with the stated terms of the transaction.

(D) The billing carrier's failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.

(E) A computation error or similar error of an accounting nature of the billing carrier on a statement.

(F) Failure to transmit the billing statement to the last address of the customer which has been disclosed to the billing carrier, unless that address was furnished less than twenty days before the end of the billing cycle for which the statement is required.

(G) Any other error described in regulations prescribed by the Commission pursuant to section 553 of title 5, United States Code.

(7) The term "Commission" means the Federal Trade Commission.

Amend the title so as to read: "An Act to protect the public interest and the future development of interstate pay-per-call technology by providing for the regulation and oversight of the applications and growth of the pay-per-call industry, and for other purposes.".

Mr. FORD. I move that the Senate concur in the House amendments, with the substitute amendment, which I now send to the desk on behalf of Senators INOUYE, MCCAIN, and HOLLINGS.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. INOUYE, Mr. MCCAIN, and Mr. HOLLINGS, proposes an amendment numbered 3411.

Mr. FORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be inserted by the House amendment to the bill, insert the following:

SECTION 1. SHORT TITLE, FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the "Telephone Disclosure and Dispute Resolution Act".

(b) FINDINGS.—The Congress finds the following:

(1) The use of pay-per-call services, most commonly through the use of 900 telephone numbers, has grown exponentially in the past few years into a national, billion-dollar industry as a result of recent technological innovations. Such services are convenient to consumers, cost-effective to vendors, and profitable to communications common carriers.

(2) Many pay-per-call businesses provide valuable information, increase consumer choices, and stimulate innovative and responsive services that benefit the public.

(3) The interstate nature of the pay-per-call industry means that its activities are beyond the reach of individual States and therefore requires Federal regulatory treatment to protect the public interest.

(4) The lack of nationally uniform regulatory guidelines has led to confusion for callers, subscribers, industry participants, and regulatory agencies as to the rights of callers and the oversight responsibilities of regulatory authorities, and has allowed some pay-per-call businesses to engage in practices that abuse the rights of consumers.

(5) Some interstate pay-per-call businesses have engaged in practices which are misleading to the consumer, harmful to the public interest, or contrary to accepted standards of business practices and thus cause harm to the many reputable businesses that are serving the public.

(6) Because the consumer most often incurs a financial obligation as soon as a pay-per-call transaction is completed, the accuracy and descriptiveness of vendor advertisements become crucial in avoiding consumer abuse. The obligation for accuracy should include price-per-call and duration-of-call information, odds disclosure for lotteries, games, and sweepstakes, and obligations for obtaining parental consent from callers under 18.

(7) The continued growth of the legitimate pay-per-call industry is dependent upon consumer confidence that unfair and deceptive behavior will be effectively curtailed and that consumers will have adequate rights of redress.

(8) Vendors of telephone-billed goods and services must also feel confident in their rights and obligations for resolving billing disputes if they are to use this new marketplace for the sale of products of more than nominal value.

TITLE I—CARRIER OBLIGATIONS AND CONSUMER RIGHTS CONCERNING PAY-PER-CALL TRANSACTIONS

SEC. 101. AMENDMENT TO COMMUNICATIONS ACT OF 1934.

Title II of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

"SEC. 228. REGULATION OF CARRIER OFFERING OF PAY-PER-CALL SERVICES.

"(a) PURPOSE.—It is the purpose of this section—

"(1) to put into effect a system of national regulation and review that will oversee interstate pay-per-call services;

"(2) to recognize the Commission's authority to prescribe regulations and enforcement procedures and conduct oversight to afford reasonable protection to consumers of pay-per-call services and to assure that violations of Federal law do not occur.

"(b) GENERAL AUTHORITY FOR REGULATIONS.—The Commission by regulation shall, within 270 days after the date of enactment of this section, establish a system for oversight and regulation of pay-per-call services in order to provide for the protection of consumers in accordance with this Act and other applicable Federal statutes and regulations. The Commission's final rules shall—

"(1) include measures that provide a consumer of pay-per-call services with adequate and clear descriptions of the rights of the caller;

"(2) define the obligations of common carriers with respect to the provision of pay-per-call services;

"(3) include requirements on such carriers to protect against abusive practices by providers of pay-per-call services;

"(4) identify procedures by which common carriers and providers of pay-per-call services may take affirmative steps to protect against nonpayment of legitimate charges; and

"(5) require that any service described in subparagraphs (A) and (B) of subsection (i)(1) be offered only through the use of certain telephone number prefixes and area codes.

"(c) COMMON CARRIER OBLIGATIONS.—Within 270 days after the date of enactment of this section, the Commission shall, by regulation, establish the following requirements for common carriers:

"(1) CONTRACTUAL OBLIGATIONS TO COMPLY.—Any common carrier assigning to a provider of pay-per-call services a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) shall require by contract or tariff that such provider comply with the provisions of titles II and III of the Telephone Disclosure and Dispute Resolution Act and the regulations prescribed by the Federal Trade Commission pursuant to those titles.

"(2) INFORMATION AVAILABILITY.—A common carrier that by tariff or contract assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) to a provider of a pay-per-call service shall make readily available on request to Federal and State agencies and other interested persons—

"(A) a list of the telephone numbers for each of the pay-per-call services it carries;

"(B) a short description of each such service;

"(C) a statement of the total cost or the cost per minute and any other fees for each such service;

"(D) a statement of the pay-per-call service's name, business address, and business telephone; and

"(E) such other information as the Commission considers necessary for the enforcement of this section and other applicable Federal statutes and regulations.

"(2) COMPLIANCE PROCEDURES.—A common carrier that by contract or tariff assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) to a provider of pay-per-call services shall terminate, in accordance with procedures specified in such regulations, the offering of a pay-per-call service of a provider if the carrier knows or reasonably should know that such service is not provided in compliance with title II or III of the Telephone Disclosure and Dispute Resolution Act or the regulations prescribed by the Federal Trade Commission pursuant to such titles.

"(3) SUBSCRIBER DISCONNECTION PROHIBITED.—A common carrier shall not disconnect or interrupt a subscriber's local exchange telephone service or long distance telephone service because of nonpayment of charges for any pay-per-call service.

"(4) BLOCKING AND PRESUBSCRIPTION.—A common carrier that provides local exchange service shall—

"(A) offer telephone subscribers (where technically feasible) the option of blocking access from their telephone number to all, or to certain specific, prefixes or area codes used by pay-per-call services, which option—

"(i) shall be offered at no charge (I) to all subscribers for a period of 60 days after the issuance of the regulations under subsection (b), and (II) to any subscriber who subscribes to a new telephone number until 60 days after the time the new telephone number is effective; and

"(ii) shall otherwise be offered at a reasonable fee; and

"(B) offer telephone subscribers (where the Commission determines it is technically and economically feasible), in combination with the blocking option described under subparagraph (A), the option of presubscribing to or blocking only specific pay-per-call services for a reasonable one-time charge. The regulations prescribed under subparagraph (A)(i) of this paragraph may permit the costs of such blocking to be recovered by contract or tariff, but such costs may not be recovered from local or long-distance ratepayers. Nothing in this subsection precludes a common carrier from filing its rates and regulations regarding blocking and presubscription in its interstate tariffs.

"(5) VERIFICATION OF CHARITABLE STATUS.—A common carrier that assigns by contract or tariff a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) to a provider of pay-per-call services that the carrier knows or reasonably should know is engaged in soliciting charitable contributions shall obtain from such provider proof of the tax exempt status of any person or organization for which contributions are solicited.

"(6) BILLING FOR 800 CALLS.—A common carrier shall prohibit by tariff or contract the use of any 800 telephone number, or other telephone number advertised or widely understood to be toll free, in a manner that would result in—

"(A) the calling party being assessed, by virtue of completing the call, a charge for the call;

"(B) the calling party being connected to a pay-per-call service;

"(C) the calling party being charged for information conveyed during the call unless the calling party has a preexisting agreement to be charged for the information or discloses a credit or charge card number during the call; or

"(D) the calling party being called back collect for the provision of audio information services or simultaneous voice conservation services.

"(d) BILLING AND COLLECTION PRACTICES.—The regulations required by this section shall require that any common carrier that by tariff or contract assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) to a provider of a pay-per-call service and that offers billing and collection services to such provider—

"(1) ensure that a subscriber is not billed—

"(A) for pay-per-call services that such carrier knows or reasonably should know was provided in violation of the regulations issued pursuant to title II of the Telephone Disclosure and Dispute Resolution Act; or

"(B) under such other circumstances as the Commission determines necessary in order to protect subscribers from abusive practices;

"(2) establish a local or a toll-free telephone number to answer questions and provide information on subscribers' rights and obligations with regard to their use of pay-per-call services and to provide to callers the name and mailing address of any provider of pay-per-call services offered by the common carrier;

"(3) within 60 days after the issuance of final regulations pursuant to subsection (b), provide, either directly or through contract with any local exchange carrier that provides billing or collection services to the common carrier, to all of such common carrier's telephone subscribers, to all new subscribers, and to all subscribers requesting service at a new location, a disclosure statement that sets forth all rights and obligations of the subscriber and the carrier with respect to the use and payment for pay-per-call services, including the right of a subscriber not to be billed and the applicable blocking option; and

"(4) in any billing to telephone subscribers that includes charges for any pay-per-call service—

"(A) display any charges for pay-per-call services in a part of the subscriber's bill that is identified as not being related to local and long distance telephone charges;

"(B) for each charge so displayed, specify, at a minimum, the type of service, the amount of the charge, and the date, time, and duration of the call; and

"(C) identify the toll-free number established pursuant to paragraph (2).

"(e) LIABILITY.—

"(1) COMMON CARRIERS NOT LIABLE FOR TRANSMISSION OR BILLING.—No common carrier shall be liable for a criminal or civil sanction or penalty solely because the carrier provided transmission or billing and collection for a pay-per-call service unless the carrier knew or reasonably should have known that such service was provided in violation of a provision of, or regulation prescribed pursuant to, title II or III of the Telephone Disclosure and Dispute Resolution Act or any other Federal law. This paragraph shall not prevent the Commission from imposing a sanction or penalty on a common carrier for a violation by that carrier of a regulation prescribed under this section.

"(2) CIVIL LIABILITY.—No cause of action may be brought in any court or administrative agency against any common carrier or any of its affiliates on account of any act of the carrier or affiliate to terminate any pay-per-call service in order to comply with the regulations prescribed under this section, title II or III of the Telephone Disclosure and Dispute Resolution Act, or any other Federal law unless the complainant demonstrates that the carrier or affiliate did not act in good faith.

"(f) SPECIAL PROVISIONS.—

"(1) CONSUMER REFUND REQUIREMENTS.—The regulations required by subsection (d) shall establish procedures, consistent with the provisions of titles II and III of the Telephone Disclosure and Dispute Resolution Act, to ensure that carriers and other parties providing billing and collection services with respect to pay-per-call services provide appropriate refunds to subscribers who have been billed for pay-per-call services pursuant to programs that have been found to have violated this section or such regulations, any provision of, or regulations prescribed pursuant to, title II or III of the Telephone Disclosure and Dispute Resolution Act, or any other Federal law.

"(2) RECOVERY OF COSTS.—The regulations prescribed by the Commission under this section shall permit a common carrier to recover its cost of complying with such regulations from providers of pay-per-call services, but shall not permit such costs to be recovered from local or long distance ratepayers.

"(3) RECOMMENDATIONS ON DATA PAY-PER-CALL.—The Commission, within one year after the date of enactment of this section, shall submit to the Congress the Commission's recommendations with respect to the extension of regulations under this section to persons that provide, for a per-call charge, data services that are not pay-per-call services.

"(g) EFFECT ON OTHER LAW.—

"(1) NO PREEMPTION OF ELECTION LAW.—Nothing in this section shall relieve any provider of pay-per-call services, common carrier, local exchange carrier, or any other person from the obligation to comply with Federal, State, and local election statutes and regulations.

"(2) CONSUMER PROTECTION LAWS.—Nothing in this section shall relieve any provider of pay-per-call services, common carrier, local exchange carrier, or any other person from the obligation to comply with any Federal, State, or local statute or regulation relating to consumer protection or unfair trade.

"(3) GAMBLING LAWS.—Nothing in this section shall preclude any State from enforcing its statutes and regulations with regard to lotteries, wagering, betting, and other gambling activities.

"(4) STATE AUTHORITY.—Nothing in this section shall preclude any State from enacting and enforcing additional and complementary oversight and regulatory systems or procedures, or both, so long as such systems and procedures govern intrastate services and do not significantly impede the enforcement of this section or other Federal statutes.

"(5) ENFORCEMENT OF EXISTING REGULATIONS.—Nothing in this section shall be construed to prohibit the Commission from enforcing regulations prescribed prior to the date of enactment of this section in fulfilling the requirements of this section to the extent that such regulations are consistent with the provisions of this section.

"(h) EFFECT ON DIAL-A-PORN PROHIBITIONS.—Nothing in this section shall affect the provisions of section 223 of this Act.

"(i) DEFINITION OF PAY-PER-CALL SERVICES.—For purposes of this section—

"(1) The term 'pay-per-call services' means any service—

"(A) in which any person provides or purports to provide—

"(i) audio information or audio entertainment produced or packaged by such person;

"(ii) access to simultaneous voice conversation services; or

"(iii) any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

"(B) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

"(C) which is accessed through use of a 900 telephone number or other prefix or area code designated by the Commission in accordance with subsection (b)(5).

"(2) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.".

SEC. 102. TECHNICAL AMENDMENT.

Section 3(c) of the Telephone Consumer Protection Act of 1991 is amended by striking "section 228" and inserting "section 227".

TITLE II—REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH PAY-PER-CALL SERVICES

SEC. 201. FEDERAL TRADE COMMISSION REGULATIONS.

(a) IN GENERAL.—

(1) ADVERTISING REGULATIONS.—The Commission shall prescribe rules in accordance with this subsection to prohibit unfair and deceptive acts and practices in any advertisement for pay-per-call services. Such rules shall require that the person offering such pay-per-call services—

(A) clearly and conspicuously disclose in any advertising the cost of the use of such telephone number, including the total cost or the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred;

(B) in the case of an advertisement which offers a prize or award or a service or product at no cost or for a reduced cost, clearly and conspicuously disclose the odds of being able to receive such prize, award, service, or product at no cost or reduced cost, or, if such odds are not calculable in advance, disclose the factors determining such odds;

(C) in the case of an advertisement that promotes a service that is not operated or expressly authorized by a Federal agency but that provides information on a Federal program, include at the beginning of such advertisement a clear disclosure that the service is not authorized, endorsed, or approved by any Federal agency;

(D) shall not direct such advertisement at children under the age of 12, unless such service is a bona fide educational service;

(E) in the case of advertising directed primarily to individuals under the age of 18, clearly and conspicuously state in such advertising that such individual must have the consent of such individual's parent or legal guardian for the use of such services;

(F) be prohibited from using advertisements that emit electronic tones which can automatically dial a pay-per-call telephone number;

(G) ensure that, whenever the number to be called is shown in television and print media advertisements, the charges for the call are clear and conspicuous and (when shown in television advertisements) displayed for the same duration as that number is displayed;

(H) in delivering any telephone message soliciting calls to a pay-per-call service, specify clearly, and at no less than the audible volume of the solicitation, the total cost and the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred; and

(I) not advertise an 800 telephone number, or any other telephone number advertised or widely understood to be toll free, from which callers are connected to an access number for a pay-per-call service.

(2) PAY-PER-CALL SERVICE STANDARDS.—The Commission shall prescribe rules to require that each provider of pay-per-call services—

(A) include in each pay-per-call message an introductory disclosure message that—

(i) describes the service being provided;

(ii) specifies clearly and at a reasonably understandable volume the total cost or the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred;

(iii) informs the caller that charges for the call begin at the end of the introductory message;

(iv) informs the caller that parental consent is required for calls made by children; and

(v) in the case of a pay-per-call service that is not operated or expressly authorized by a Federal agency but that provides information on any Federal program, a statement that clearly states that the service is not authorized, endorsed, or approved by any Federal agency;

(B) enable the caller to hang up at or before the end of the introductory message without incurring any charge whatsoever;

(C) not direct such services at children under the age of 12, unless such service is a bona fide educational service;

(D) stop the assessment of time-based charges immediately upon disconnection by the caller;

(E) disable any bypass mechanism which allows frequent callers to avoid listening to the disclosure message described in subparagraph (A) after the institution of any price increase and for a period of time sufficient to give such frequent callers adequate and sufficient notice of the price change;

(F) be prohibited from providing pay-per-call services through an 800 number or other telephone number advertised or widely understood to be toll free;

(G) be prohibited from billing consumers in excess of the amounts described in the introductory message and from billing for services provided in violation of the rules prescribed by the Commission pursuant to this section;

(H) ensure that any billing statement for such provider's charges shall—

(i) display any charges for pay-per-call services in a part of the consumer's bill that is identified as not being related to local and long distance telephone charges; and

(ii) for each charge so displayed, specify, at a minimum, the type of service, the amount of the charge, and the date, time, and duration of the call;

(I) be liable for refunds to consumers who have been billed for pay-per-call services pursuant to programs that have been found to have violated the regulations prescribed pursuant to this section or title III of this Act or any other Federal law; and

(J) comply with such additional standards as the Commission may prescribe to prevent abusive practices.

(3) ACCESS TO INFORMATION.—The Commission shall by rule require a common carrier that provides telephone services to a provider of pay-per-call services to make available to the Commission any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any provider of pay-per-call services.

(4) EVASIONS.—The rules issued by the Commission under this section shall include provisions to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under this title, including through the use of alternative billing or other procedures.

(5) EXEMPTIONS.—The regulations prescribed by the Commission pursuant to paragraph (2)(A) may exempt from the requirements of such paragraph—

(A) calls from frequent callers or regular subscribers using a bypass mechanism to avoid listening to the disclosure message required by such regulations, subject to the requirements of paragraph (2)(E); or

(B) pay-per-call services provided at nominal charges, as defined by the Commission in such regulations.

(6) CONSIDERATION OF OTHER RULES REQUIRED.—In conducting a proceeding under this section, the Commission shall consider requiring, by rule or regulation, that providers of pay-per-call services—

(A) automatically disconnect a call after one full cycle of the program; and

(B) include a beep tone or other appropriate and clear signal during a live interactive group program so that callers will be alerted to the passage of time.

(7) SPECIAL RULE FOR INFREQUENT PUBLICATIONS.—The rules prescribed by the Commission under subparagraphs (A) and (G) of paragraph (1) may permit, in the case of publications that are widely distributed, that are printed annually or less frequently, and that have an established policy of not publishing specific prices, advertising that in

lieu of the cost disclosures required by such subparagraphs, clearly and conspicuously disclose that use of the telephone number may result in a substantial charge.

(8) TREATMENT OF RULES.—A rule issued under this subsection shall be treated as a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) RULEMAKING.—The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, United States Code.

(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule respecting unfair or deceptive acts or practices under section 5 of the Federal Trade Commission Act (15 U.S.C. 45). Notwithstanding section 5(a)(2) of such Act (15 U.S.C. 45(a)(2)), communications common carriers shall be subject to the jurisdiction of the Commission for purposes of this title.

SEC. 202. ACTIONS BY STATES.

(a) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice which violates any rule of the Commission under section 201(a), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such pattern or practice, to enforce compliance with such rule of the Commission, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

(b) NOTICE.—The State shall serve prior written notice of any civil action under subsection (a) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(c) VENUE.—Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(d) INVESTIGATORY POWERS.—For purposes of bringing any civil action under this section, nothing in this Act shall prevent the attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) EFFECT ON STATE COURT PROCEEDINGS.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal antifraud statute of such State.

(f) LIMITATION.—Whenever the Commission has instituted a civil action for violation of any rule or regulation under this Act, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

(g) ACTIONS BY OTHER STATE OFFICIALS.—

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection (a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers and who are designated by the Commission to bring an action under subsection (a) against persons that the Commission has determined have or are engaged in a pattern or practice which violates a rule of the Commission under section 201(a).

SEC. 203. ADMINISTRATION AND APPLICABILITY OF TITLE.

(a) IN GENERAL.—Except as otherwise provided in section 202, this title shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this Act, except for purposes of this title.

(b) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating a rule of the Commission under section 201 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this title. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this title.

SEC. 204. DEFINITIONS.

For purposes of this title:

(1) The term "pay-per-call services" has the meaning provided in section 228 of the Communications Act of 1934.

(2) The term "attorney general" means the chief legal officer of a State.

(3) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(4) The term "Commission" means the Federal Trade Commission.

TITLE III—BILLING AND COLLECTION

SEC. 301. REGULATIONS.

(a) IN GENERAL.—

(1) RULES REQUIRED.—The Commission shall, in accordance with the requirements of this section, prescribe rules establishing procedures for the correction of billing errors with respect to telephone-billed purchases. The rules prescribed by the Commission shall also include provisions to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under this title.

(2) SUBSTANTIAL SIMILARITY TO CREDIT BILLING.—The Commission shall promulgate rules under this section that impose requirements that are substantially similar to the requirements imposed, with respect to the resolution of credit disputes, under the Truth in Lending and Fair Credit Billing Acts (15 U.S.C. 1601 et seq.).

(3) TREATMENT OF RULE.—A rule issued under paragraph (1) shall be treated as a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57(a)(1)(B)).

(b) RULEMAKING SCHEDULE AND PROCEDURE.—The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, United States Code.

(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) regarding unfair or deceptive acts or practices. Notwithstanding section 5(a)(2) of such Act (15 U.S.C. 45(a)(2)), communications common carriers shall be subject to the jurisdiction of the Commission for purposes of this title.

(d) CORRECTION OF BILLING ERRORS AND CORRECTION OF CREDIT REPORTS.—In prescribing rules under this section, the Commission shall consider, with respect to telephone-billed purchases, the following:

(1) The initiation of a billing review by a customer.

(2) Responses by billing entities and providing carriers to the initiation of a billing review.

(3) Investigations concerning delivery of telephone-billed purchases.

(4) Limitations upon providing carrier responsibilities, including limitations on a carrier's responsibility to verify delivery of audio information or entertainment.

(5) Requirements on actions by billing entities to set aside charges from a customer's billing statement.

(6) Limitations on collection actions by billing entities and vendors.

(7) The regulation of credit reports on billing disputes.

(8) The prompt notification of credit to an account.

(9) Rights of customers and telephone common carriers regarding claims and defenses.

(10) The extent to which the regulations should diverge from requirements under the Truth in Lending and Fair Credit Billing Acts in order to protect customers, and in order to be cost effective to billing entities.

SEC. 302. RELATION TO STATE LAWS.

(a) STATE LAW APPLICABLE UNLESS INCONSISTENT.—This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with, the laws of any State with respect to telephone billing practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The Commission is authorized to determine whether such inconsistencies exist. The Commission may not determine that any State law is inconsistent with any provision of this chapter if the Commission determines that such law gives greater protection to the consumer.

(b) REGULATORY EXEMPTIONS.—The Commission shall by regulation exempt from the requirements of this title any class of telephone-billed purchase transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

SEC. 303. ENFORCEMENT.

The Commission shall enforce the requirements of this title. For the purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All the functions and powers of the Commission under that Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in that Act. The Commission may prescribe such regulations as are necessary or appropriate to implement the provisions of this title.

SEC. 304. DEFINITIONS.

As used in this title—

(1) The term "telephone-billed purchase" means any purchase that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include—

"(A) a purchase by a caller pursuant to a preexisting agreement with the vendor;

(B) local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines, by rule—

(i) is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(ii) is subject to billing dispute resolution procedures required by Federal or State statute or regulation; or

(C) the purchase of goods or services which is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

(2) A "billing error" consists of any of the following:

(A) A reflection on a billing statement for a telephone-billed purchase which was not made by the customer or, if made, was not in the amount reflected on such statement.

(B) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.

(C) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or not provided to the customer in accordance with the stated terms of the transaction.

(D) A reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll free telephone number.

(E) The failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.

(F) A computation error or similar error of an accounting nature on a statement.

(G) Failure to transmit the billing statement to the last known address of the customer, unless that address was furnished less than twenty days before the end of the billing cycle for which the statement is required.

(H) Any other error described in regulations prescribed by the Commission pursuant to section 553 of title 5, United States Code.

(3) The term "Commission" means the Federal Trade Commission.

(4) The term "providing carrier" means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error complaint.

(5) The term "vendor" means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.

(6) The term "customer" means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase.

Mr. INOUYE. Mr. President, I rise to offer a substitute amendment to S. 1579. The substitute amendment, like S. 1579 as passed by the Senate, is designed to address problems that have arisen due to the use of pay-per-call services, better known as 900 numbers. The substitute before us today resolves the differences between the measures approved by the House and Senate. I am especially grateful to the coauthor of this measure, Senator McCAIN, for his efforts on this bill. I wish to thank the members of the House Commerce Committee and the Senate Commerce Committee for their work on this legislation. I also want to thank the Federal Communications Commission, the Federal Trade Commission, the telephone companies, and the 900 services industry, all of whom have worked with us to reach this compromise.

Let me take a few minutes to describe the industry and the problems that this substitute is intended to address. Pay-per-call services give callers access to a variety of information services through the telephone network. Customers can obtain access to this information by calling a 10 digit number whose prefix is typically 900 or 700. When consumers call one of these numbers, they are then assessed a charge in addition to the regular long distance charge. Generally, callers are charged either a flat fee per call, or by the minute. The charge appears on the caller's telephone bill and can be as high as $25 per call or $10 per minute.

These numbers are used to: provide information like stock quotes, and sports data; conduct polls, call one number for yes and another number for no; provide legal and other advice; provide mass announcements which play prerecorded messages; promote sweepstakes; sell goods; raise funds for charitable and political organizations; provide dating services and group access bridging, gab lines or party lines.

Most 900 service providers enter into a contract with a telephone company, most often long distance companies. The telephone company makes telephone lines available to the information service provider and also handles the billing and collection. The 900 service provider offers the information, such as stock quotes. The service provider then advertises the service and the 900 number. When a consumer calls the stock quote 900 number, he or she is then billed directly on his or her telephone bill. The telephone company collects the charge for the consumer, takes out its share to cover the cost of providing the lines and the billing service, and passes the remainder of the charge to the service provider. It is important to note that the telephone company does not provide the information; the telephone company provides the telephone lines and billing but generally does not provide the information content.

The 900 pay-per-call business, which began in the early 1980's, has developed into a $759 million industry and is projected to grow into a $1.6 billion industry this year. Testimony presented at a Communications Subcommittee hearing on this issue estimated that there are over 14,000 different pay-per-call programs available.

In recent years, the increased usage of 900 numbers has resulted in many consumer complaints. The most frequent complaints concern false or deceptive disclosure of rates and products. Advertisements often fail to disclose the cost of calls to 900 numbers, or the cost of the call is printed in small, illegible mice print. Some ads only state the cost of the call once, or in slurred, last minute voice-overs, but repeat the 900 numbers frequently throughout the advertisement.

Some of these services target children who do not appreciate the costs of dialing these numbers. Given the fact that children, particularly children under the age of 12, are impressionable and unable to understand and make fully informed decisions, we believed that it was important to adopt provisions to protect children. Especially dangerous are those that run TV and radio advertisements telling children to hold the phone up to the TV or radio. The tones associated with each telephone number are then broadcast over the TV or radio so that the call is dialed automatically. As a result, children do not even have to know how to dial to be connected to one of these services.

Finally, this problem is exacerbated by the fact that these charges are collected through the monthly telephone bill. This not only lends legitimacy to the charge, because it looks like the telephone company is responsible for the charge, but the consumer believes that he or she must pay the charge or the telephone company will disconnect his or her service.

These problems have not gone unnoticed. Some telephone companies have voluntarily begun to institute measures to provide some protections to consumers. For example, GTE Hawaiian Telephone Co. has made call blocking of 900 and 700 numbers available to all of its customers. The blocking service is free the first time it is requested by a customer. If the customer cancels the service and then reinstates it, there will be a charge. However, this only addresses part of the problem and this service is not universally available.

To address these problems the substitute expands the jurisdiction of the Federal Communications Commission and the Federal Trade Commission to address the problems raised by the explosive growth of the pay-per-call industry. The major provisions of this substitute are essentially the same as in the bill approved by the Senate. This bill will: Require that 900 services provide a preamble stating the cost of the call and all per-call charges, describing the information, product or service to be provided, and giving the caller the option to hang up after the preamble without being charged. Ban 900 services aimed at children under the age of 12; Require the phone companies to give their subscribers the option to block all calls to 900 numbers from their phone; prohibit local telephone companies from disconnecting subscribers for failure to pay interstate 900 number charges; prohibit advertisements that emit tones that automatically dial a telephone number when the phone is held up to the radio or television; require full and clear disclosure of the rates of these calls in all advertisements; require the telephone company who contracts with 900 service providers to make available on request the information concerning the 900 service providers it contracts with, including the name and address of the 900 service provider, the costs of the service and any other information the FCC deems appropriate; give the FCC, FTC, and the States the authority to enforce the provisions of this legislation.

The two most significant differences between the Senate bill as originally passed and the substitute before us today are: That the provision concerning the use of 800 numbers has been revised to clarify that consumers that call 800 numbers—or toll free numbers—cannot be charged for calls to such numbers; and that the FTC must establish dispute resolution procedures similar to those used for credit card customers for anyone who bills and collects for 900 service providers.

The provision involving 800 numbers was revised because it has come to our attention that some pay-per-call services urge people to call an 800 number, which most people assume to be free calls, when in fact the caller is subsequently charged for the call. This provision was revised to ensure that this practice is stopped. This provision does not affect the ability of catalog companies to give consumers an 800 number to call if the consumers are paying with a credit card or similar arrangement.

Title III, the dispute resolution provision, was in the House measure. However, the House bill specified the rules that had to be adopted by the FTC in great detail. Because of the concerns raised by the telephone industry and the 900 service providers, we amended this title to provide that the FTC must conduct a rulemaking to adopt rules substantially similar to, but not identical, to those contained in the Truth in Lending and Fair Credit Billings Acts which provide protections for consumers who dispute credit card bills.

Title III contains a number of issues that the FTC must consider in this rulemaking: it no longer specifies in detail what the content of those rules should be. In fact, it requires the FTC to consider if any of the provisions of the Truth in Lending and Fair Bills Act should not be applied to pay-per-call service transactions. In other words, the FTC is not expected to simply modify all the provisions of the Truth in Lending and Fair Credit Billings Acts to have all of those provisions apply to the 900 services industry and carriers and others who bill for those services.

On the contrary, I expect that the FTC will use the Truth in Lending and Fair Credit Billings Acts as models recognizing that while some provisions or concepts addressed in those acts may well be applicable or needed in the pay-per-call area, there may also be provisions or concerns that are not appropriate for pay-per-call transactions. It is also our intention that the FTC weigh the costs and burdens on the subscribers as well as the entities doing the billing as part of its rulemaking. For example, the FTC could determine, after notice and comment, that there is no need for any rules to apply to disputes over nominal charges, as such rules may cost the billing entities and the consumer more than the cost of the call in dispute to comply with the provisions of this title. While the FTC is given some flexibility in implementing these provisions, I want to reiterate that consumers should be given protection against billing errors. That is the purpose of this provision.

For the record, there are a few issues that I want to clarify. The provisions of this substitute are not intended to prevent telephone companies or 900 service providers from taking steps they deem appropriate to protect themselves against consumers who abuse the provisions of this Act. For example, should a consumer make 900 calls over a period of many months and repeatedly refuse to pay the charges for the calls and also fail to take advantage of the option to block calls from that number, then the telephone company or the 900 service provider should be able to block that consumer's ability to call 900 services or take such other legal action as may be appropriate.

In addition, as set out in the committee report accompanying S. 1579, the provisions of this bill do not apply to services where consumers pay for products, services or information with a credit card or charge card. There is no need to apply the provisions of this bill to credit card purchases made over the telephone because the consumer who chooses to pay with a credit card is not automatically billed merely by placing or completing the call. Similarly, the substitute is not intended to cover services offered by telephone companies such as conference calling. The substitute also does not cover data services. The FCC is required to conduct a study on this issue and make recommendations to Congress concerning whether any data services, including facsimile services, should be subject to regulation.

The provision of this legislation that concerns State authority—section 228(g)(4)—does not preclude any State from enacting complementary oversight and regulatory procedures with regard to 900 services. However, such regulatory procedures as the States may devise cannot thwart or impede other Federal policy objectives of the FCC, the enforcement of this section, or any other Federal statutes.

I need to make one other point clear: I do not intend that telephone companies should at any time monitor 900 service providers' calls to ensure compliance with this provision. Telephone companies should remain common carriers and should not invade the privacy of callers by monitoring calls, whether they provide transmission or billing and collection services. The substitute provides that common carriers shall not assign telephone lines to 900 service providers unless they agree to comply with the terms of this act. In addition, common carriers are required to terminate service to 900 providers only when the common carrier knows, or reasonably believes, that the 900 service provider is not in compliance with or has violated this act.

I also want to note that nothing in titles II and III of the substitute are intended to give the FTC the authority to adopt rules and regulations on the basis that the activities are unfair. In addition, in promulgating its rules concerning advertisements that offer a prize or award, the FTC's rules must require that the advertisement state the odds of receiving the prize or award. The requirement to disclose odds is not intended to apply to discounts that are intended to be received by every caller during a specified period.

In closing, I believe that this legislation is very important, and I urge all of my colleagues to support this effort. This substitute has virtually no opposition. It ensures that consumers are protected against abuses by pay-per-call service providers while permitting legitimate service providers to expand their business opportunities.

The ACTING PRESIDENT pro tempore. Are there additional amendments?

AMENDMENT NOS. 3412 THROUGH 3415

Mr. FORD. I now ask unanimous consent it be now in order to send to the desk en bloc four amendments to the substitute, and I ask unanimous consent the amendments be agreed to en bloc; that the motion to reconsider be laid upon the table; that the substitute amendment, as amended, then be agreed to; and the motion to reconsider the adoption of this amendment and previous motion be laid upon the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. FORD. Mr. President, I send these amendments in behalf of Senator BRYAN, Senator PRESSLER, Senator LEAHY, and Senator GORTON; I further ask unanimous consent that various statements appear in the RECORD at the appropriate place.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendments (Nos. 3412 through 3415) considered and agreed to en bloc, are as follows:

(Purpose: To provide an exemption for chapter 61 of title 18, United States Code, to permit certain radio and television advertising)

AMENDMENT NO. 3412

At the end of the proposed amendment in the nature of a substitute, add the following new title:

TITLE IV—MISCELLANEOUS

SEC. 401. EXEMPTION FROM CHAPTER 61 OF TITLE 18, UNITED STATES CODE.

Section 1307(a)(2) of title 18, United States Code, is amended by striking "that is authorized" and all that follows and inserting "that is conducted in a State in which it is authorized by statute to be conducted throughout the State.".

Mr. BRYAN. Mr. President, I am amending S. 1579, the 900 Service Consumer Protection Act of 1991 to permit gaming advertising in Nevada.

In 1934, Congress enacted legislation prohibiting the broadcasting of lottery information. Since that time, the prohibition has been lifted for Governments, Indian tribes, nonprofit organizations, and certain for-profit businesses including horse and dog tracks. It is time to remove this archaic provision for for-profit casino advertising.

This amendment takes the first step in fixing this inequity by permitting casinos to advertise in States where gaming is authorized statewide by statute. Nevada has such a statute, and the television and radio stations in Nevada should be permitted to carry casino advertising upon the enactment of this legislation.

I believe former Federal Communications Commission Chairman Dennis Patrick stated it best when he said that the current prohibition "unnecessarily restricts the free flow of information concerning legal activities." Afterall, 48 States allow some form of legal gaming.

I believe this is a good first step toward totally lifting this outdated, inequitable restriction. I appreciate the support of my colleagues.

AMENDMENT NO. 3413

(Purpose: To provide for the protection of cellular telecommunications)

SEC. . INTERCEPTION OF CELLULAR TELECOMMUNICATIONS.

(a) AMENDMENT.—Section 302 of the Communications Act of 1934 (47 U.S.C. 302) is amended by adding the following new subsection:

"(d)(1) INTERCEPTION OF CELLULAR TELECOMMUNICATIONS. Within 180 days after the date of enactment of the Telephone Disclosure and Dispute Resolution Act, the Commission shall prescribe and make effective regulations denying equipment authorization (under part 15 of title 47, Code of Federal Regulations, or any other part of that title) for any scanning receiver that is capable of—

"(A) receiving transmissions in the frequencies allocated to the domestic cellular radio telecommunications service,

"(B) readily being altered by the user to receive transmissions in such frequencies, or

"(C) being equipped with decoders that convert digital cellular transmissions to analog voice audio.

"(2) MANUFACTURE OR IMPORT OF NONCOMPLYING EQUIPMENT.—Beginning one year after the effective date of the regulations adopted pursuant to subsection (a), no receiver having the capabilities described in subparagraph (A), (B), or (C) of paragraph (1), as such capabilities are defined in such regulations, shall be manufactured in the United States or imported for use in the United States."

(b) REPORT TO CONGRESS.—The Commission shall report to Congress no later than June 1, 1993, on available security features for both analog and digital radio signals. This report shall include a study of security technologies currently available as well as those in development. The study shall assess the capabilities of such technologies, level of security afforded, and cost, with widespread deployment of such technologies.

(c) EFFECT ON OTHERS LAWS.—This section shall not effect Section 2512 (2) of title 18, United States Code."

(d) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of the Telephone Disclosure and Dispute Resolution Act.

AMENDMENT TO TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT

Mr. PRESSLER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

Mr. President, the amendment I am introducing today will stop the manufacturing of radio scanners designed to monitor cellular calls. The amendment makes it illegal to manufacture or import radio scanners that intercept cellular frequencies by denying FCC part 15 equipment authorization to scanners that do not comply with the law. Currently, equipment approval is required for all radio scanners before they are sold in the United States; however, part 15 rules do not cover the interception of cellular frequencies.

My amendment requires that the Federal Communications Commission will, within 180 days after enactment of the underlying legislation, develop rules to deny part 15 equipment authorization for any radio scanner that is capable of receiving cellular frequencies, can be easily altered to receive cellular frequencies, or can be equipped with decoders that can convert digital cellular transmissions to analog voice audio. One year after these rules are established it will be illegal to manufacture or import any radio scanner that has those capabilities.

Mr. President, my amendment is similar to section 9 of the FCC reauthorization bill (H.R. 1674) that passed the House of Representatives last year. This amendment is not intended to ban scanners that are not capable of receiving cellular transmissions. The Commission should take this into account when considering its rules to carry out this amendment.

This bill is not intended to deny equipment authorization to or ban the manufacture of all scanners. The purpose of the amendment is to require manufacturers of scanners to design their equipment so that the equipment does not allow users to listen to cellular calls. I expect the FCC, in adopting regulations to enforce this provision, to be conscious of the fact that some uses of scanners are perfectly legal. My intention in offering this amendment is simply to increase the privacy protections of cellular telephone users without causing harm to legitimate users of scanners.

Mr. President, I urge the adoption of my amendment and ask unanimous consent to insert the legislative history accompanying the House passed provision, which sets forth the intent of my amendment.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION 9. INTERCEPTION OF CELLULAR TELECOMMUNICATIONS

The Committee finds that scanning receivers continue to be manufactured with the capability of monitoring the frequencies allocated to cellular telephone service. Such equipment enables users to violate the provisions of the 1986 Electronic Communications Privacy Act (ECPA), which extends Federal privacy protections to cellular telephone users. Equally disturbing, even equipment that blocks out cellular calls can often be easily modified to receive cellular transmissions, often by cutting a single wire. Moreover, the Committee has received numerous examples of "how-to" manuals for modifying scanners so that they can be used to eavesdrop on cellular calls. The Committee has obtained copies of advertisements for scanners that do not block out the cellular frequencies or that pitch easy restoration of such frequencies. This amendment is intended to address these ongoing problems, and bring the Commission's certification process in line with ECPA.

Section 8 of the bill amends the Communications Act of 1934 by adding a new subsection (d) to section 302. Subsection 302(d) requires the Commission to promulgate regulations denying equipment authorization under Part 15 (or any other part) of the Commission's rules for any scanning receiver that can (1) receive transmissions in the cellular frequencies; (2) readily be altered to receive such transmissions; or (3) be equipped with a decoder that can convert cellular transmissions to analog voice audio. The bar on scanners equipped with digital-to-analog converters that work in the cellular bands is intended to ensure that the additional privacy protection afforded by the conversion of cellular systems from analog to digital transmission is not undermined. Any question of whether such a receiver complies with the regulations shall be determined by the Commission.

Subsection 302(d)(2) prohibits the manufacture or importation of scanning receivers with the prohibited capabilities beginning one year after the effective date of the regulations required under subsection 302(d)(1). Subsection 302(d)(2) does not bar the sale or use of non-complying scanning receivers, since the Committee expects that the stock of new non-complying scanners available for sale or use will diminish rapidly once the regulations are adopted. The Committee takes note that this subsection contrasts with subsection 302(a) and (b), which do bar the sale or use of certain radio frequency devices. As such, the section 510 enforcement powers, which apply to violations of section 302, would not be applicable to scanners other than those manufactured or imported subsequent to adoption of regulations required by this section. Subsection 302(b) applies to scanning receivers only to the extent that they fail to comply with the Commission's rules governing their interference potential.

For a number of years, several manufacturers have blocked voluntarily the reception of cellular frequencies in their scanning receivers. Additionally, some have refused to repair modified equipment that is returned for service, or have restored such equipment to its original configuration. However, methods of converting equipment have been devised and distributed by third parties. The Committee believes that as long as the equipment complies with the Commission's regulations adopted pursuant to subsection 302(d)(1), there shall be no liability under this section for manufacturers due to the actions of third parties.

COMPUTER ABUSE AMENDMENTS

Mr. LEAHY. Mr. President, I am also pleased to join with Senators BROWN and KOHL in offering the Computer Abuse Amendments Act of 1992 as an amendment to S. 1579.

It is important to update our laws to stay abreast of rapid changes in computer technology and computer abuse techniques. In the 101st Congress, the Senate responded to the threat posed by new forms of computer abuse—destructive viruses, worms, and Trojan horses—by unanimously passing S. 2476. That bill was not considered by the House of Representatives in the last Congress, so I joined with Senators BROWN and KOHL in reintroducing the bill, S. 1322, in this Congress. S. 1322 passed the Senate as an amendment to S. 1241, the Violent Crime Control Act. The provision was altered slightly in the crime conference with the House in November 1991. It passed the House in this modified form as part of the conference report to H.R. 3371, the Violent Crime Control Act.

The Computer Abuse Amendments Act of 1992 is the product of over 2 years of work by the Subcommittee on Technology and the Law. In the 101st Congress, I chaired two hearings on computer abuse. This proposal has been drafted and revised on the basis of careful review of issues raised in the subcommittee's hearings, and with the benefit of consultation with computer experts. The bill has been broadly supported by the computer industry and by computer users. At the subcommittee's hearing on July 31, 1990, Deputy Assistant Attorney General Mark Richard testified that this bill "* * * provides a useful improvement over and clarification of, the scope of existing law."

The free flow of information is vital to our competitiveness as a nation. Innovations in computer technology create new opportunities for improving the flow of information and advancing America's economic future, but they also create new opportunities for abuse by those who seek to undermine our computer systems. The maintenance of the security and integrity of computer systems has become increasingly critical to interstate and foreign commerce, communications, education, technology, and national security.

The National Research Council [NRC] published a major study, "Computers at Risk: Safe Computing in the Information Age." The study finds that we risk computer breaches that could cause economic disaster and even threaten human life. According to the NRC study, "Tomorrow's terrorist may be able to do more damage with a keyboard than with a bomb." The NRC study underscores the need for immediate action to protect our computer systems.

This legislation deals with new technologies and newly discovered forms of computer abuse. An alarming number of new techniques—computer viruses, worms, and Trojan horses—can be used to enter computers secretly. Their simple names belie their insidious nature. Thousands of virus attacks have been reported and hundreds of different viruses have been identified. Computer breaches can cause economic disaster and even threaten human life.

Hidden programs can destroy or alter data. For example, a Michigan hospital reported that its patient information had been scrambled or altered by a virus that came with a vendor's image display system. Hidden programs can also hopelessly clog computer networks, as we saw with the Internet worm of November 1988.

Other computer incidents, using the same kinds of programs, have been inadvertent. For example, in December 1989, the Vermont State computer network froze. It was impossible to sign on to the system. Rather than a virus or sabotage, it turned out to be a security device in the form of a time bomb, built into the system's hardware to deter outside access. The manufacturer of the software had failed to inform the State that a special code would be triggered after a given date, locking out access through normal channels. It was a nuisance to be sure, but certainly not criminal.

The subcommittee held a hearing on May 15, 1989, to explore the threat to computers and the information stored in them posed by new forms of computer abuse. We heard testimony from FBI Director William Sessions, who stressed the seriousness of the threat posed by computer viruses and other techniques.

The subcommittee also heard testimony from Dr. Clifford Stoll, an astrophysicist at the Harvard-Smithsonian Center for Astrophysics. He testified that many researchers throughout the United States were prevented from using their computers for 2 days as a result of a worm that was introduced onto the Internet computer network in November 1988. While managing the computer system at the Lawrence Berkeley Laboratory, Dr. Stoll caught a West German spy using computer networks to try to gain access to military information.

As a prosecutor for more than 8 years in Vermont, I learned that the best deterrent to crime was the threat of swift apprehension, conviction, and punishment. Whether the offense is murder, drunk driving, or computer crime, we need clear laws to bring offenders to justice. Trespassing, breaking and entering, vandalism, and stealing are against the law. They have always been against the law because they are contrary to the values and principles that society holds dear. That has not changed and will not change.

In crafting this legislation we have been mindful of the need to balance clear punishment for destructive conduct with the need to encourage legitimate experimentation and the free flow of information. As several witnesses testified in the subcommittee's hearings, the open exchange of information is crucial to scientific development and the growth of new industries. We cannot unduly inhibit that inquisitive 13-year-old who, if left to experiment today, may tomorrow develop the telecommunications or computer technology to lead the United States into the 21st century. He or she represents our future and our best hope to remain a technologically competitive nation.

Mr. President, this amendment clarifies the intent standards, the actions prohibited, and the jurisdiction of the current Computer Fraud and Abuse Act [CFAA], section 1030 of title 18, United States Code. Under the current statute, prosecution of computer abuse crimes must be predicated upon the violator's gaining "unauthorized access" to the affected "Federal interest computers." However, computer abusers have developed an arsenal of new techniques which result in the replication and transmission of destructive programs or codes that inflict damage upon remote computers to which the violator never gained access in the commonly understood sense of that term. The new subsection of the CFAA created by this bill places the focus on harmful intent and resultant harm, rather than on the technical concept of computer access.

The amendment makes it a felony intentionally to cause harm to a computer or the information stored in it by transmitting a computer program or code—including destructive computer viruses—without the knowledge and authorization of the person responsible for the computer attacked. This is broader than existing law, which prohibits "intentionally access[ing] a Federal interest computer without authorization," if that causes damage.

This legislation recognizes that some computer incidents are not malicious—or even intentional—and they are treated differently. The amendment creates a parallel misdemeanor for knowingly transmitting a computer program with reckless disregard of a substantial and unjustifiable risk that the transmission will cause harm. The standard for recklessness is taken from the Model Penal Code. This provision will give prosecutors and juries greater flexibility to get convictions for destructive conduct.

The amendment creates a new, civil remedy for those harmed by violations of the CFAA. This would boost the deterrence of the statute by allowing aggrieved individuals to obtain relief.

The legislation expands the jurisdiction of the CFAA. It would cover all computers involved in interstate commerce, not just Federal interest computers, as the current law does. This is appropriate because of the interstate nature of computer networks. American society is increasingly dependent on computer networks that span State and national boundaries. The potential for abuse of computer networks knows no boundaries. The act addresses this threat by expanding the jurisdiction of the CFAA to the full extent of the powers of Congress under the commerce clause of the U.S. Constitution, article I, section 8.

I want to thank Senators BROWN and KOHL for joining me in offering this amendment. I urge my colleagues to join us in supporting this measure. Enactment of this sound and balanced legislation would help ensure that our laws keep pace with new forms of computer abuse.

Mr. President, I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS

SECTION (a)

This title, when enacted, may be cited as the "Computer Abuse Amendments Act of 1992."

SECTION (b)

Subsection (b)(1) would amend subsection (a)(5) of the Computer Fraud and Abuse Act of 1986, 18 U.S.C. 1030. It clarifies the intent standards, the actions prohibited and the jurisdiction of the statute. The amendments would cover all computers involved in interstate commerce, not just "Federal interest computers," as the current law does. This is appropriate because of the interstate nature of computer networks and the ease with which computer abuse, such as destructive computer viruses or worms, can spread across State lines. The legislation retains the jurisdictional threshold of $1,000 worth of damage, except for tampering with medical records, where no dollar amount is required.

The new statutory subsection (a)(5)(A)(i) would prohibit knowingly transmitting or causing to be transmitted a program or computer code, if the perpetrator intends that the program will damage or prevent the use of the affected computer. The new subsection focuses on criminal intent, making it clear that the perpetrator must intend to transmit the code and intend to cause damage. This clarifies the existing felony provision, which prohibits "intentionally access[ing] a Federal interest computer without authorization." 18 U.S.C. 1030(a)(5). The act adopts the Justice Department's formulation of the actions that should be prohibited in 18 U.S.C. 1030(a)(5) as a more precise formulation than the original language in the computer abuse bill in the 101st Congress.

The new subsection (a)(5)(A)(ii), requires that, in order to be criminal, actions would have to be taken without the authorization of the person responsible for the computer system receiving the program. This would prevent criminal liability for honest mistakes and legitimate experimentation under the guidance of a system manager.

The legislation also would create a misdemeanor, in the new subsection (a)(5)(B), for knowingly transmitting a computer program with reckless disregard of a substantial and unjustifiable risk that the transmission will cause harm. The standard for recklessness used in the bill is taken from the Model Penal Code. The misdemeanor parallels the felony created above in new subsection (a)(5)(A).

Subsection (b)(2) creates penalties for violations of the new felony and misdemeanor, modifying 18 U.S.C. 1030(c). This provision tracks current law for the felony penalty: Up to 5 years in prison and/or a fine of up to $250,000. It creates an appropriate penalty for the misdemeanor: Up to 1 year in prison and/or a fine of up to $5,000.

Subsection (b)(3) would create a civil cause of action for those who suffer violations of the Computer Fraud and Abuse Act. Plaintiffs would still have to meet the $1,000 threshold, except for medical records violations. This remedy would authorize private suits in an area that law enforcement has sometimes been reluctant to investigate or prosecute. Deterrence is another goal. The act narrows the damages available and adds a 2-year statute of limitations from earlier versions of the bill. Damages are limited to economic damages, except for violations of the medical records section, when pain and suffering damages would be permitted.

Subsection (b)(4) requires the Attorney General and the Secretary of the Treasury to report to Congress annually for the first 3 years after this legislation is enacted, about prosecutions under the new subsections (a)(5)(A) and (B). This provision will both enable Congress to evaluate the effectiveness of the new law in an area of continually changing technology and provide oversight on the prosecution brought. The reporting requirement is patterned after the original reporting requirement in the Computer Fraud and Abuse Act of 1984, Public Law 98-473.

Finally, Subsection (b)(5) clarifies that a violation of 18 U.S.C. 1030(a)(3), regarding gaining unauthorized access to Federal Government computers, occurs only if the unauthorized access adversely affects the Government's use of the computer. Merely signing on to a Government computer can "affect" the Government's use of the computer, without causing harm.

AMENDMENT NO. 3414

(Purpose: To provide for a study of security features for analog and digital radio signals, and for other purposes)

At the appropriate place, insert the following:

SEC. . FCC STUDY OF SECURITY FEATURES FOR ANALOG AND DIGITAL RADIO SIGNALS

(c) The Commission shall report to Congress, no later than June 1, 1993, on available security features for both analog and digital radio signals. This report shall include a study of security technologies currently available as well as those in development. The study shall assess the technological capabilities, level of security afforded, and cost, with widespread deployment, of any given system.

SEC. . FBI ACCESS TO TELEPHONE SUBSCRIBER INFORMATION.

(a) REQUIRED CERTIFICATION.—Section 2709(b) of title 18, United States Code, is amended to read as follows:

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director, may—

"(1) request the name, address, length of service, and toll billing records of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

"(2) request the name, address, and length of service of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with—

"(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

"(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.".

(b) REPORT TO JUDICIARY COMMITTEES.—Section 2709(e) of title 18, United States Code, is amended by inserting after "Senate" the following: "and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,".

SEC. . COMPUTER ABUSE AMENDMENTS ACT OF 1992.

(a) SHORT TITLE.—This section may be cited as the "Computer Abuse Amendments Act of 1992".

(b) AMENDMENTS TO THE COMPUTER FRAUD AND ABUSE ACT.—

(1) PROHIBITION.—Section 1030(a)(5) of title 18, United States Code, is amended to read as follows:

"(5)(A) through means of a computer used in interstate commerce or communications, knowingly causes the transmission of a program, information, code, or command to a computer or computer system if—

"(i) the person causing the transmission intends that such transmission will—

"(I) damage, or cause damage to a computer, computer system network information date or program; or

"(II) withhold or deny, or cause the withholding or denial of the use of a computer, computer services, system or network, information, data or program; and

"(ii) the transmission of the harmful component of the program information code or command—

"(I) occurred without the knowledge and authorization of the persons or entities who own or are responsible for the computer system receiving the program, information, code, or command; and

"(II)(aa) causes loss or damage to one or more other persons of value aggregating $1,000 or more during any 1-year period; or

"(bb) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals; or

"(B) through means of a computer used in interstate commerce or communication, knowingly causes the transmission of a program, information, code, or command to a computer or computer system—

"(i) with reckless disregard of a substantial and unjustifiable risk that the transmission will—

"(I) damage, or cause damage to, a computer, computer system, network, information, data or program; or

"(II) withhold or deny or cause the withholding or denial of the use of a computer, computer services, system, network, information, data or program; and

"(ii) if the transmission of the harmful component of the program, information, code, or command—

"(I) occurred without the knowledge and authorization of the persons or entities who own or are responsible for the computer system receiving the program, information, code, or command; and

"(II)(aa) causes loss or damage to one or more other persons of a value aggregating $1,000 or more during any 1-year period; or

"(bb) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals;"

(2) PENALTY.—Section 1030(c) of title 18, United States Code, is amended—

(A) in paragraph (2)(B) by striking "and" after the semicolon;

(B) in paragraph (3)(A) by inserting "(A)" after "(a)(5)";

(C) in paragraph (3)(B) by striking the period at the end thereof and inserting ", and"; and

(D) by adding at the end thereof the following:

"(4) a fine under this title or imprisonment for not more than 1 year, or both, in the case of an offense under subsection (a)(5)(B).".

(3) CIVIL ACTION.—Section 1030 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) Any person who suffers damage or loss by reason of a violation of the section, other than a violation of subsection (a)(5)(B), may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief. Damages for violations of any subsection other than subsection (a)(5)(A)(ii)(II)(bb) or (a)(5)(B)(ii)(II)(bb) are limited to economic damages. No action may be brought under this subsection unless such action is begun within 2 years of the date of the act complained of or the date of the discovery of the damage.".

(4) REPORTING REQUIREMENTS.—Section 1030 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(h) The Attorney General and the Secretary of the Treasury shall report to the Congress annually, during the first 3 years following the date of the enactment of this subsection, concerning investigations and prosecutions under section 1030(a)(5) of title 18, United States Code.".

(5) PROHIBITION.—Section 1030(a)(3) of title 18, United States Code, is amended by inserting "adversely" before "affects the use of the Government's operation of such computer".

Mr. LEAHY. Mr. President, the purpose of the amendment is to enable the FBI to identify the subscribers to telephones that are used to communicate with foreign powers or foreign agents who engage in clandestine intelligence activities or international terrorism. This section amends section 2709 of the Electronic Communication Privacy Act [ECPA], 18 U.S.C. 2709, to require that a wire or electronic communication service provider give the FBI access, without a court order or subpoena, to information identifying certain telephone subscribers for use in foreign counterintelligence and international terrorism investigations.

The administration initially proposed an earlier version of this amendment in September 1989 and again in successive intelligence authorization acts. Indeed, I am advised that FBI Director William S. Sessions testified in favor of the amendment at a closed Intelligence Committee hearing on May 10, 1990, and that the amendment was publicly endorsed by a special counterintelligence panel established by the Intelligence Committee on May 23, 1990. The amendment, as it was originally introduced, however, was not acted upon, largely because of civil liberties concerns raised with respect to the original wording.

In 1991, however, new wording was worked out by the House and Senate Judiciary Committee, responding to these concerns, and this provision was included in the 1991 crime bill.

BACKGROUND

In adopting ECPA in 1986, Congress established certain privacy protections for subscriber records and other information held by telephone companies and other electronic communication service providers. Congress provided that the Government could obtain a subscriber's transactional records or other information from a telephone company without the subscriber's permission only pursuant to a subpoena, search warrant or court order where there is reason to believe that the information is relevant to a legitimate law enforcement inquiry. 18 U.S.C. 2703.

Congress created a limited exception to this rule for use in counterintelligence and international terrorism cases. In 18 U.S.C. 2709, Congress gave the FBI authority to compel production of identifying information and toll records with a so-called "national security letter," signed by an FBI official without judicial review and without a relevance to a criminal investigation, where the subscriber is believed to be a foreign power or agent of a foreign power, as defined in the Foreign Intelligence Surveillance Act. "Foreign power" includes international terrorist groups.

The FBI has concluded that the authority in section 2709 is, in one specific respect, too narrow. To illustrate the problem, the Bureau cites the case of a former employee of the U.S. Government who called a foreign embassy and offered to provide sensitive U.S. Government information. The conversation was monitored, but the former employee did not identify himself. The former employee subsequently met with representatives of the foreign nation and compromised highly sensitive information about U.S. intelligence capabilities. The FBI argues that if it had been able to trace the number from which the first call offering information was placed, it might have been able to identify the former employee sooner or prevent the loss of information.

However, under sections 2703 and 2709 as they were adopted in 1986, the FBI could not, without a subpoena or court order, obtain the identity of a subscriber, unless there was a reason to believe that the subscriber was a foreign power or agent of a foreign power. In the case described above, the FBI did not have reason to believe that the caller was a foreign agent. Instead, the caller appeared to be a possible volunteer to be an agent, and therefore did not meet the section 2709 standard.

In response to this limitation, the FBI asked Congress to expand the reach of section 2709, to allow the FBI certification to require phone companies to identify not only suspected agents of foreign powers but also persons who have been in contact with foreign powers or suspected agents of foreign powers. As originally proposed by the FBI, the amendment would have applied to any caller to a foreign diplomatic establishment and any caller to official foreign visitors such as scholars from government universities abroad. This was deemed by the Judiciary Committee to be too broad.

Exempt from the judicial scrutiny normally required for compulsory process, the national security letter is an extraordinary device. New applications are disfavored. However, after careful study, the committee concluded that a narrow change in section 2709 to meet the FBI's focused and demonstrated needs was justified. The provision reported by the committee is a modification of the language originally proposed by the FBI. It allows access where: First, there is a contact with a suspected intelligence officer or a suspected terrorist; or second, the circumstances of the conversation indicate, as they did in the case described above, that it may involve spying or an offer of information.

In addition to covering a future case like the one described above, this new authority would allow the FBI to identify subscribers in the following types of cases, cited by the FBI in justifying its need for this amendment:

First, persons whose phone numbers were listed in an address book seized from a suspected terrorist;

Second, all persons who call an embassy and ask to speak with a suspected intelligence officer; and

Third, all callers to the home of a suspected intelligence officer or the apartment of a suspected terrorist.

Section 2709 as enacted in 1986 used the phrase "subscriber information and toll billing records information" to describe the information that the FBI could obtain. Instead of "subscriber information," the amendment here uses more specific terms: "names, address, length of service." As used in this section, toll billing records consist of information maintained by a wire or electronic communication service provider identifying the telephone numbers called from a particular phone or attributable to a particular account for which a communication service provider might charge a service fee. The Committee intends, and the FBI agrees, that the authority to obtain subscriber information and toll billing records under section 2709 does not require communications service providers to create records which they do not maintain in the ordinary course of business.

This amendment strengthens congressional oversight of the exercise of this authority by amending section 2709(e) to add a requirement that the FBI report on its use of the authority to both House and Senate Judiciary Committees as well as both Intelligence Committees. It is the Committee's intent regarding this section that the FBI should, without identifying the subjects of pending investigations, inform the committees, as part of this report, of the facts and circumstances that are the basis for obtaining information concerning any domestic political organization or groups under section 2709.

Under section 2703(e), wire or electronic communication service providers who provide information in response to a "court order, warrant, subpoena or certification under this chapter" are protected from liability for such disclosure. The certification signed by the Director or the Director's designee under the section 2709(b) is a certification for purposes of section 2703(e).

I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS

Section amends 18 U.S.C. section 2709 by striking subsection (b) and inserting in lieu thereof a new subsection containing two paragraphs.

Paragraph (1) of the new section 2709(b) reenacts the existing authority for FBI access to the names, address, length of service and toll billing records of a person or entity when the Director or the Director's designee certifies in writing to the wire or electronic communication service provider to which the request is made—(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and (B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in the Foreign Intelligence Surveillance Act.

Paragraph (2) of the new section 2709(b) authorizes the FBI Director or the Director's designee to obtain the name, address and length of service of a person or entity if the Director or the director's designee certifies in writing to the wire or electronic communications service provider to which the request is made that—(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and (B) there is reason to believe that communications facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with (i) an individual who is engaging or has engaged in international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States or (ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism or clandestine intelligence activities.

Section adds the House and Senate Judiciary Committees to the oversight provision in section 2709(e).

AMENDMENT NO. 3415

Purpose: To require a proposal for demonstrating the potential of innovative communications equipment and services

At the appropriate place, insert the following new section:

SEC. . PROPOSAL FOR DEMONSTRATING THE POTENTIAL OF INNOVATIVE COMMUNICATIONS EQUIPMENT AND SERVICES.

(a) DEMONSTRATION PROPOSAL.—Within 180 days after the date of enactment of this Act, the Assistant Secretary of Energy for Conservation and Renewable Energy, in consultation with the Assistant Secretary of Commerce for Communications and Information, shall submit to Congress a proposal for demonstrating the ability of new and innovative communications equipment and services to further the national goals of conserving energy and protecting public health and safety.

(b) FACTORS TO BE ADDRESSED.—The demonstration proposal required by subsection (a) shall address—

(1) the feasibility of using communications technologies to read meters from remote locations;

(2) the feasibility of managing the consumption of electrical power and natural gas by residences and businesses, thereby reducing the demand for new and additional sources of energy, and controlling the cost of providing improved utility services; and

(3) the public safety implications of monitoring utility services outages during earthquakes, hurricanes, typhoons, tornados, volcanos, and other natural disasters.

(c) PROJECT TO DEMONSTRATE ENERGY CONSERVATION POTENTIAL.—Upon submission of the demonstration proposal to the Congress, the Secretary of Energy shall consider requesting from the Assistant Secretary of Commerce for Communications and Information the authority to use radio frequencies, pursuant to section 305 of the Communications Act of 1934 (47 U.S.C. 305), to carry out demonstration projects consistent with the proposal that are designed to demonstrate the energy conservation potential of communications technologies and which are administered by the Secretary of Energy.

SEC. . TECHNICAL AMENDMENTS.

Section 227(h)(2) of the Communications Act of 1934 (47 U.S.C. 227(b)(2)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) may, by rule or order, exempt from the requirements of paragraph (1)(A)(iii) of this subsection calls to a telephone number assigned to a cellular telephone service that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights this section is intended to protect.".

Mr. GORTON. Mr. President, the legislation before the Senate today includes an important provision to promote energy conservation. I would like to thank Senators MCCAIN, INOUYE, DANFORTH, and HOLLINGS for working with me and with Speaker FOLEY to include this provision.

Washington Water Power Co. is a major participant in a separate corporation known as ITRON which was organized to develop advanced technologies that benefit utilities and their customers by promoting the most efficient use of energy. ITRON, together with AMRplus Partners which was formed by other domestic and international utilities, have developed an automatic meter reading unit and two way communications system that will improve customer service, reduce power outage durations, and lower overall utility system maintenance costs. This technology will allow local utilities to better manage their energy consumption between peak and offpeak times by offering rate inducements to their customers for using energy at certain times of the day or week. This technology is wireless and utilizes the radio frequency spectrum.

The provision which I have asked to be included in the legislation today directs an office in the Department of Energy to work with the National Telecommunications and Information Administration [NTIA] to put forward a proposal within 180 days that demonstrates the feasibility, among other requirements, of using communications technologies to read meters from remote locations and for managing the consumption of electrical power and natural gas. Upon submission of this proposal, the Secretary of Energy is then directed to consider requesting spectrum managed by the NTIA for the purpose of carrying out demonstration projects that are consistent with the proposal. It is my hope that the Secretary will recognize the need for advancing innovative energy conserving devices such as that which has been developed by ITRON and AMRplus Partners.

Mr. HOLLINGS. Mr. President, today the Senate considers S. 1579, the Telephone Disclosure and Dispute Resolution Act. I commend Senator INOUYE, the Communications Subcommittee chairman, for all of his work on this measure. The bill before us today represents a compromise with the House of Representatives, and it has taken much hard work to get to this point.

Mr. President, consumers are under attack. Everywhere they turn they are bombarded with advertisements for pay-per-call services—so-called 900 services. A recent advertisement in a Washington area paper reads: "if you want to be sure you are going to heaven call 1-900-535-4900." 900 services are used to promote anything and everything. Unfortunately, these advertisements often deceive customers as to the cost of these calls. The charges can be as high as $50 per call or $10 per minute. Further, when a consumer calls, the provider often fails to give the consumer what was advertised.

The South Carolina Department of Consumer Affairs has received more complaints about 900 services than any other issue except computerized phone calls. The 900 pay-per-call business is close to a billion-dollar-a-year industry which is expected to double within 2 years. The complaints seem to be growing faster than the industry.

These services prey upon people's hopes and dreams and add to their despair. At hearings in Greenville and Columbia, SC, I heard from my constituents, and there is no doubt in my mind that this legislation is needed. One woman received a call on a night while she was trying to figure out which bills she could afford to pay that month. The call promised that she would receive a VISA card if she called a 900 number. She was charged $50 for the call and got nothing, not even an application to complete.

Another constituent had charges for 900 calls on his phone bill one month. When he called his local phone company to complain, he was told to call the long distance carrier. While he was waiting for a response from the long distance company, his phone was disconnected for failing to pay these charges. This went on for several months, each time because of the same charges that appeared on one bill. He finally gave up and decided to do without a phone. Then he lost his job, and now has no home phone to use in his job search.

S. 1579 will address these problems. The bill before us continues to provide the same protections to consumers as were provided in the bill passed by the Senate. It will prohibit telephone companies from disconnecting basic phone service for failure to pay charges for 900 calls; it will require that callers be informed about the charges they will incur, and the service or product to be provided; and, most importantly, it will impose penalties on information service providers and telephone companies for failure to comply with the requirements of this legislation.

The bill, like the Senate's earlier version, will prohibit the use of 900 services aimed at children under 12. In addition, a new provision has been added to this bill to require the Federal Trade Commission [FTC] to adopt procedures to protect consumers from unscrupulous billing and collection practices by 900 service providers. I note that none of the provisions requiring the FTC to adopt rules is intended to vest in the FTC the authority to promulgate rules on the grounds that activities are unfair. This authority has been restricted since 1980, and this legislation does not restore any authority that has been limited.

As with most industries, many 900 service providers are operated by responsible individuals who do not take advantage of consumers. However, there are clearly those who abuse consumers. We need this legislation to provide consumers with information and additional protection against fraud and abuses perpetrated by certain unprincipled 900 service providers. Even the 900 service providers realize that this is an issue Congress needs to address and have worked with the committee on this legislation.

I believe that we cannot assume a hands-off attitude while consumers are being harmed. We must act to prevent further abuses from 900 services, and I urge my colleagues to support this legislation.

Mr. McCAIN. Mr. President, the passage of the Telephone Disclosure and Dispute Resolution Act by this Congress is an important event for consumers in this country.

The growth of fraudulent practices by pay-per-call service providers has led to increasing concern among consumers. I introduced S. 471, the 900 Services Consumer Protection Act of 1991 on February 21, 1991 because of the flagrant abuses against consumers perpetrated by some information services providers, more commonly referred to as 900 service providers or pay-per-call services. Senator INOUYE later introduced S. 1166, the Telephone Consumer Assistance Act, on April 25, 1991. S. 1166 also sought to address the issue of consumer fraud in the 900 services industry.

S. 471 and S. 1166 were merged following a hearing on the two bills on July 16, 1991. S. 1579, the 900 Services Consumer Protection Act of 1991, was the result of this collaboration. This legislation was passed by the Senate on October 29, 1991. The House of Representatives passed companion legislation on February 25, 1992.

Pay-per-call fraud is committed in a variety of ways. Of the many methods commonly used to defraud consumers, nondisclosure and misinformation stand as the most prevalent. Many of the services offered through the pay-per-call industry have shown this to be true time and time again.

For example, advertisements of services may not disclose the full price of the call, or may fail to state the price in a manner which is clear to the consumer. Thus, consumers are not always aware of the cost of the call, and are confused when they receive the charge on their phone bill.

In addition to nondisclosure concerns, there have been complaints to both the Federal Communications Commission [FCC] and the Federal Trade Commission [FTC] about 800 telephone number calls. The newest scams involving 800 numbers, which are commonly perceived to be toll free, include the use of 800 numbers used to charge unsuspecting callers without their knowledge. Another abuse of 800 numbers occurs where a consumer places a toll-free call, then is called back collect, or charges reversed, for the provision of services the caller was led to believe would be toll free.

There is also great concern about the fact that the identity of the information provider is not available on the phone bill where the charge appears. The charge is attributed to the long-distance carrier. Therefore, the consumer cannot verify whether they did indeed call that service. This creates a burden for both the consumer and the long-distance carrier, and leads to increased confusion in the dispute resolution process.

Abuses by pay-per-call service providers have become increasingly problematic for parents of young children.

Children are the most common victims of consumer fraud in this industry. Minors are not in a position where they can make an informed decision about whether or not they should incur the cost of pay-per-call services. This has been recognized by Federal policymakers in the area of communications since the 1960's. For this reason, the FCC has placed restrictions on certain kinds of television advertisements aimed at children. Because of their youth and inexperience, children cannot distinguish between actual programming and the purpose of advertisements. This necessitates the consideration of children as a protected consumer class.

So-called latchkey kids are particularly susceptible to the temptation of placing a toll call as a result of watching a commercial, since they cannot ask their parents for permission or guidance because their parents are away at work.

Some of these services do not even deliver what they promise. One notorious example of this is the Santa Claus line which promised a conversation with Santa. This is particularly enticing to young children during the Christmas holiday season. In this particular case, upon calling one particular Santa line, the child was informed that Santa was in the restroom, and that the child should call back in 10 minutes. The result is a disappointed child and an angry, frustrated parent. Regardless of whether or not the call was authorized by an adult, the child did not receive the service he or she was promised. If the child is still interested enough in contacting Santa Claus, he will continue to call in the hopes of speaking to him and rack up the charges in the process.

Another case involves a different Santa Claus advertisement which directed children to put the phone up to the television set and delivered a series of tones which automatically dialed the phone number for the service. Clearly, the advertisement was aimed at very young children who may have difficulty dialing the telephone. If a child is too young to dial a telephone, then that child is obviously too young to make an informed consumer decision.

In the case of unmonitored pay-per-call services usage, this unmonitored time often results in costly phone bills, up into the hundreds of dollars per month, because children were enticed to place a call by advertisement aimed directly at them, the innocent consumer.

These abuses led the National Association of Attorneys General to issue a report in March 1991 on the state of the pay-per-call industry. The report concluded that consumer abuses required Federal regulation of the industry. It particularly stressed the importance of protecting children, and recommended a ban on services aimed at children.

I believe that all consumers have a right to all of the information they need to make an informed decision about the service for which they will be chaired. This legislation facilitates the exercise of that right by:

First, requiring that pay-per-call services provide a preamble, free of charge, that describes the service being provided, specifies clearly and at a reasonable understandable volume the total cost or the cost per minute, informs the caller that charges for the call begin at the end of the introductory message, informs the caller that parental consent is required for calls made by children, and, in the case of a pay-per-call service providing information on any Federal program, a statement that clearly states that the service is not authorized, endorsed, or approved by any Federal agency;

Second, prohibiting services directed at children under the age of 12, unless such service is a bona fide educational service;

Third, requiring the local phone companies to give each subscriber the option of blocking access from their telephone number to all, or to certain specific, prefixes or area codes used by pay-per-call services;

Fourth, requiring that common carriers contracting with pay-per-call services providers terminate the contract if that service provider does not comply with the requirements set forth in this act;

Fifth, prohibiting common carriers from disconnecting a subscriber's telephone service for failure to pay interstate 900 number charges;

Sixth, prohibiting the use of electric tones in advertisements which can automatically dial a pay-per-call telephone number;

Seventh, requiring that any common carrier engaged in billing and collection for a pay-per-call service display in bills sent to subscribers the charges for pay-per-call services in a part of the subscriber's bill that is identified as not being related to local and long distance telephone charges, and, for each charge displayed, specify the type of service, the amount of the charge, and the date, time, and duration of the call, and identify the toll-free number established to provide further information about the pay-per-call service provider;

Eighth, requiring full and clear disclosure of the rates for these calls in all advertisements;

Ninth, prohibiting use of 800 numbers, or toll-free calls, that automatically connect a consumer to pay-per-call telephone numbers for which the caller is ultimately charged;

Tenth, prohibiting the use of any 800 telephone number, or other telephone number advertised or widely understood to be toll free, in a manner that would result in a charge for the call for merely completing the call, the calling party being charged for information conveyed during the call, or the calling party being called back collect for the provision of the service;

Eleventh, requiring common carriers that contract with pay-per-call service providers to make available on request the name, business address, and phone number of pay-per-call service providers contracting with that provider, a short description of the service provided, the access number for the service, and the maximum charges for the service;

Twelfth, giving the FCC, the FTC, and the States the authority to enforce the provisions of this legislation;

Thirteenth, requiring the establishment of dispute resolution procedures over billing errors following telephone-billed purchases, including the establishment of rules to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers.

Mr. President, this is only a partial list of the benefits to consumers prescribed in this bill. It is my hope that with all of the provisions in the bill, consumers will be able to use pay-per-call service without concern that they will become victims of fraud. This industry has afforded consumers a broad array of choices, giving them the convenience of receiving services and entertainment through an interactive system. Consumers have benefited from the growth of this industry, which is largely comprised of honest, legitimate pay-per-call service providers.

The passage of this legislation represents a joint cooperation between the telecommunications industry, the pay-per-call service providers, consumers, the FCC, the FTC, and Congress. I look forward to this continued cooperation in an effort to ultimately strengthen the industry and foster consumer confidence.

I would like to thank Senator INOUYE for his commitment to bringing consumer protection to the forefront in this area. His support, as always, has been unwavering and I am pleased to have had this opportunity to work with him in this effort.

Mr. FORD. Mr. President, I ask unanimous consent the title be appropriately amended.

The title was amended so as to read: "An Act to protect the public interest and the future development of pay-per-call technology by providing for the regulation and oversight of the applications and growth of the pay-per-call industry, and for other purposes."

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

INDIAN EMPLOYMENT TRAINING AND RELATED SERVICES DEMONSTRATION ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1530.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives.

Resolved, That the bill from the Senate (S. 1530) entitled "An Act to authorize the integration of employment, training, and related services provided by Indian tribal governments," do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Employment, Training and Related Services Demonstration Act of 1992".

SEC. 2. STATEMENT OF PURPOSE.

The purposes of this Act are to demonstrate how Indian tribal governments can integrate the employment, training and related services they provide in order to improve the effectiveness of those services, reduce joblessness in Indian communities and serve tribally-determined goals consistent with the policy of self-determination.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the following definitions apply:

(1) Indian tribe.—The terms "Indian tribe" and "tribe" shall have the meaning given the term "Indian tribe" in section 4(e) of the Indian Self-Determination and Education Assistance Act.

(2) Indian.—The term "Indian" shall have the meaning given such term in section 4(d) of the Indian Self-Determination and Education Assistance Act.

(3) Secretary.—Except where otherwise provided, the term "Secretary" means the Secretary of the Interior.

SEC. 4. INTEGRATION OF SERVICES AUTHORIZED.

The Secretary of the Interior, in cooperation with the appropriate Secretary of Labor, Secretary of Health and Human Services, or Secretary of Education, shall, upon the receipt of a plan acceptable to the Secretary of the Interior submitted by an Indian tribal government, authorize the tribal government to coordinate, in accordance with such plan, its federally funded employment, training, and related services programs in a manner that integrates the program services involved into a single, coordinated, comprehensive program and reduces administrative costs by consolidating administrative functions.

SEC. 5. PROGRAMS AFFECTED.

The programs that may be integrated in a demonstration project under any such plan referred to in section 4 shall include any program under which an Indian tribe is eligible for receipt of funds under a statutory or administrative formula for the purposes of job training, tribal work experience, employment opportunities, or skill development, or any program designed for the enhancement of job opportunities or employment training.

SEC. 6. PLAN REQUIREMENTS.

For a plan to be acceptable pursuant to section 4, it shall—

(1) identify the programs to be integrated;

(2) be consistent with the purposes of this Act authorizing the services to be integrated in a demonstration project;

(3) describe a comprehensive strategy which identifies the full range of potential employment opportunities on and near the tribal government's service area, and the education, training and related services to be provided to assist Indian workers to access those employment opportunities;

(4) describe the way in which services are to be integrated and delivered and the results expected from the plan;

(5) identify the projected expenditures under the plan in a single budget;

(6) identify the agency or agencies of the tribal government to be involved in the delivery of the services integrated under the plan;

(7) identify any statutory provisions, regulations, policies, or procedures that the tribal government believes need to be waived in order to implement its plan; and

(8) be approved by the governing body of the affected tribe.

SEC. 7. PLAN REVIEW.

Upon receipt of the plan from a tribal government, the Secretary of the Interior shall consult with the Secretary of each Federal department providing funds to be used to implement the plan, and with the tribal government submitting the plan. The parties so consulting shall identify any waivers of statutory requirements or of Federal departmental regulations, policies, or procedures necessary to enable the tribal government to implement its plan. Notwithstanding any other provision of law, the Secretary of the affected department shall have the authority to waive any regulation, policy, or procedure promulgated by that department that has been so identified by such tribal government or department, unless the Secretary of the affected department determines that such a waiver is inconsistent with the purposes of this Act or those provisions of the statute from which the program involved derives its authority which are specifically applicable to Indian programs.

SEC. 8. PLAN APPROVAL.

Within 90 days after the receipt of a tribal government's plan by the Secretary, the Secretary shall inform the tribal government, in writing, of the Secretary's approval or disapproval of the plan. If the plan is disapproved, the tribal government shall be informed, in writing, of the reasons for the disapproval and shall be given an opportunity to amend its plan or to petition the Secretary to reconsider such disapproval.

SEC. 9. JOB CREATION ACTIVITIES AUTHORIZED.

The plan submitted by a tribal government may involve the expenditure of funds for the creation of employment opportunities and for the development of the economic resources of the tribal government or of individual Indian people if such expenditures are consistent with an overall regional economic activity which has a reasonable likelihood of success and consistent with the purposes specifically applicable to Indian programs in the statute under which the funds are authorized.

SEC. 10. PRIVATE SECTOR TRAINING PLACEMENTS.

A tribal government participating in a demonstration program under this Act is authorized to utilize funds available under such plan to place participants in training positions with private employers and pay such participants a training allowance or wage for a period not to exceed 12 months, if the tribal government obtains a written agreement from the private employer to provide on-the-job training to such participants and, upon satisfactory completion of the training period, to guarantee permanent employment to such participants for a minimum of 12 months.

SEC. 11. FEDERAL RESPONSIBILITIES.

(a) Responsibilities of the Department of the Interior.—Within 180 days following the date of enactment of this Act, the Secretary of the Interior, the Secretary of Labor, the Secretary of Health and Human Services and the Secretary of Education shall enter into an interdepartmental memorandum of agreement providing for the implementation of the demonstration projects authorized under this Act. The lead agency for a demonstration program under this Act shall be the Bureau of Indian Affairs, Department of the Interior. The responsibilities of the lead agency shall include—

(1) the use of a single report format related to the plan for the individual project which shall be used by a tribal government to report on the activities undertaken under the project;

(2) the use of a single report format related to the projected expenditures for the individual project which shall be used by a tribal government to report on all project expenditures;

(3) the development of a single system of Federal oversight for the project, which shall be implemented by the lead agency; and

(4) the provision of technical assistance to a tribal government appropriate to the project, except that a tribal government shall have the authority to accept or reject the plan for providing such technical assistance and the technical assistance provider.

(b) Report Requirements.—The single report format shall be developed by the Secretary, consistent with the requirements of this Act. Such report format, together with records maintained on the consoldiated program at the tribal level shall contain such information as will allow a determination that the tribe has complied with the requirements incorporated in its approved plan and will provide assurances to each Secretary that the tribe has complied with all directly applicable statutory requirements and with those directly applicable regulatory requirements which have not been waived.

SEC. 12. NO REDUCTION IN AMOUNTS.

In no case shall the amount of Federal funds available to a tribal government involved in any demonstration project be reduced as a result of the enactment of this Act.

SEC. 13. INTERAGENCY FUND TRANSFERS AUTHORIZED.

The Secretary of the Interior, Secretary of Labor, Secretary of Health and Human Services, or the Secretary of Education, as appropriate, is authorized to take such action as may be necessary to provide for an interagency transfer of funds otherwise available to a tribal government in order to further the purposes of this Act.

SEC. 14. ADMINISTRATION OF FUNDS AND OVERAGE.

(a) Administration of Funds.—

(1) In general.—Program funds shall be administered in such a manner as to allow for a determination that funds from specific programs (or an amount equal to the amount attracted from each program) are spent on allowable activities authorized under such program.

(2) Separate records not required.—Nothing in this section shall be construed as requiring the tribe to maintain separate records tracing any services or activities conducted under its approved plan to the individual programs under which funds were authorized, nor shall the tribe be required to allocate expenditures among such individual programs.

(b) Overage.—All administrative costs may be commingled and participating Indian tribes shall be entitled to the full amount of such costs (under each program or department's regulations), and no overage shall be counted for Federal audit purposes, provided that the overage is used for the purposes provided for under this Act.

SEC. 15. FISCAL ACCOUNTABILITY.

Nothing in this Act shall be construed so as to interfere with the ability of the Secretary or the lead agency to fulfill the responsibilities for the safeguarding of Federal funds pursuant to the Single Audit Act of 1984.

SEC. 16. REPORT ON STATUTORY OBSTACLES TO PROGRAM INTEGRATION.

(a) PRELIMINARY REPORT.—Not later than two years after the date of the enactment of this Act, the Secretary shall submit a preliminary report to the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives on the status of the implementation of the demonstration program authorized under this Act.

(b) FINAL REPORT.—Not later than five years after the date of the enactment of this Act, the Secretary shall submit a report to the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs and the Committee on Education and Labor of the House of Representatives on the results of the implementation of the demonstration program authorized under this Act. Such report shall identify statutory barriers to the ability of tribal governments to integrate more effectively their employment, training, and related services in a manner consistent with the purposes of this Act.

SEC. 17. LABOR MARKET INFORMATION ON THE INDIAN WORK FORCE.

(a) REPORT.—The Secretary, in consultation with the Secretary of Labor, shall, in a consistent and reliable manner, develop, maintain and publish, not less than biennially, a report on the population, by gender, eligible for the services which the Secretary provides to Indian people. The report shall include, but is not limited to, information at the national level by State, Bureau of Indian Affairs Service area, and tribal level for the—

(1) total service population;

(2) the service population under age 16 and over 64;

(3) the population available for work, including those not considered to be actively seeking work;

(4) the employed population, including those employed with annual earnings below the poverty line; and

(5) the numbers employed in private sector positions and in public sector positions.

(b) INDIAN DEMOGRAPHIC INFORMATION.—The Secretary, in consultation with the Bureau of the Census of the Department of Commerce, and the National Center for Native American Studies and Policy Development authorized by Public Law 101-301, shall prepare a report on the need for comprehensive, accurate and periodically updated information on the size and characteristics of the Indian and Alaska Native population throughout the entire United States. This report shall include the need for information, together with the cost of acquiring such information, on the characteristics and need for education, health, housing, job training, and other basic needs of such population, and shall take into consideration the need for this information by Indian tribes and organizations serving Indians in nonreservation areas. The report shall be submitted to the Select Committee on Indian Affairs of the Senate and the Committee on Interior and Insular Affairs and the Committee on Education and Labor of the House of Representatives not later than 12 months after the date of enactment of this Act.

SEC. 18. ASSIGNMENT OF FEDERAL PERSONNEL TO STATE INDIAN ECONOMIC DEVELOPMENT PROGRAMS.

Any State with an economic development program targeted to Indian tribes shall be eligible to receive, at no cost to the State, such Federal personnel assignments as the Secretary, in accordance with the applicable provisions of the Intergovernmental Personnel Act of 1970, may deem appropriate to help ensure the success of such program.

Mr. FORD. Mr. President, I move that the Senate concur in the House amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the moiton.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ROBERT C. BYRD LOCKS AND DAM

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3345, a bill to designate the Gallipolis Locks and Dams, Ohio River, Ohio and West Virginia, as the "Robert C. Byrd locks and dam," introduced earlier today by Senators ROCKEFELLER and MOYNIHAN; that the bill be deemed read three times, passed; and the motion to reconsider laid upon the table; that a statement by Senator ROCKEFELLER appear in the RECORD at the appropriate place.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (S. 3345) was deemed read three times and passed.

RENAMING GALLIPOLIS LOCKS AND DAM FOR SENATOR ROBERT C. BYRD

Mr. ROCKEFELLER. Mr. President, I am exceedingly proud to report the passage of legislation that will rename the Gallipolis locks and dam for the senior Senator from West Virginia, ROBERT C. BYRD. It has been my privilege to sponsor this amendment legislation, honoring this great servant of the people of the State of West Virginia and the Nation. His lifetime has been devoted to public service. Senator BYRD has held more legislative elective offices than any other individual in the history of West Virginia, and he has the distinct honor of having held more Senate leadership positions than any other Senator in Senate history.

I am privileged every day to serve at his side. I have watched him lead, and I have watched him fight. He has been my mentor and he is my friend. He is the epitome of a West Virginia Mountaineer. He is proud, tough, and independent, and he cares about the people he serves. He is more than deserving of this tribute that we pay him today.

Senator BYRD has been the driving force behind this project, which has taken many years to plan and construct. As Governor, I worked along with Senator BYRD in pushing for improvements to this facility—a project that is not only vital to West Virginia commerce, but to all of the States that use the Ohio River for shipment of their goods.

The replacement locks and dam that we are renaming in honor of Senator BYRD were originally constructed in the mid-1930's. As soon as construction was completed, the lock chambers were operating at capacity. Delays of up to 10 hours to get through the locks are not infrequent. The inadequate size of the lock chambers and the dangerous approach are responsible for massive congestion. This project, that will be dedicated next week, will alleviate both the danger and the delays that have been associated with Gallipolis for over 55 years.

Each year, 42 million tons are locked through this facility to move coal, steel, chemicals, and other products to ports for export. The Ohio River is a vital link in the transportation system of this Nation. Without the efforts of Senator ROBERT C. BYRD, one of the worst bottlenecks to naviagation commerce in the Nation would not have been eliminated. Because of his efforts, we will spur more jobs, more opportunity, and more hope for the people we serve.

I would like to take a moment to thank the floor staff for their assistance in helping to get this legislation to the floor, especially Lula Davis who has gone above and beyond what is required to make this happen in a very short amont of time.

CHILD SUPPORT RECOVERY ACT OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1002.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1002) entitled "An Act to impose a criminal penalty for flight to avoid payment of arrearages in child support", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Child Support Recovery Act of 1992".

SEC. 2. FAILURE TO PAY LEGAL CHILD SUPPORT OBLIGATIONS.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 11 the following new chapter:

"CHAPTER 11A—CHILD SUPPORT

"Sec.

"228. Failure to pay legal child support obligations.

“§228. Failure to pay legal child support obligations

“(a) OFFENSE.—Whoever willfully fails to pay a past due support obligation with respect to a child who resides in another State shall be punished as provided in subsection (b).

“(b) PUNISHMENT.—The punishment for an offense under this section is—

“(1) in the case of a first offense under this section, a fine under this title, imprisonment for not more than 6 months, or both; and

“(2) in any other case, a fine under this title, imprisonment for not more than 2 years, or both.

“(c) RESTITUTION.—Upon a conviction under this section, the court shall order restitution under section 3663 in an amount equal to the past due support obligation as it exists at the time of sentencing.

“(d) DEFINITIONS.—As used in this section—

“(1) the term ‘past due support obligation’ means any amount—

“(A) determined under a court order or an order of an administrative process pursuant to the law of a State to be due from a person for the support and maintenance of a child or of a child and the parent with whom the child is living; and

“(B) that has remained unpaid for a period longer than one year, or is greater than $5,000; and

“(2) the term ‘State’ includes the District of Columbia, and any other possession or territory of the United States.”.

(b) TECHNICAL AMENDMENT.—The part analysis for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 11 the following new item:

“11A. Child support .... 228”.

SEC. 3. DISCRETIONARY CONDITION OF PROBATION.

Section 3563(b) of title 18, United States Code, is amended—

(1) by striking “or” at the end of paragraph (20);

(2) by redesignating paragraph (21) as paragraph (22); and

(3) by inserting after paragraph (20) the following new paragraph:

“(21) comply with the terms of any court order or order of an administrative process pursuant to the law of a State, the District of Columbia, or any other possession or territory of the United States, requiring payments by the defendant for the support and maintenance of a child or of a child and the parent with whom the child is living; or”.

SEC. 4. CRIMINAL CHILD SUPPORT ENFORCEMENT.

(a) AMENDMENT OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(1) by redesignating part P as part Q;

(2) by redesignating section 1601 as section 1701; and

(3) by inserting after part O the following new part:

“PART P—CRIMINAL CHILD SUPPORT ENFORCEMENT

“SEC. 1601. GRANT AUTHORIZATION.

“(a) IN GENERAL.—The Director of the Bureau of Justice Assistance may make grants under this part to States, for the use by States, and local entities in the States to develop, implement, and enforce criminal interstate child support legislation and coordinate criminal interstate child support enforcement efforts.

“(b) USES OF FUNDS.—Funds distributed under this part shall be used to—

“(1) develop a comprehensive assessment of existing criminal interstate child support enforcement efforts, including the identification of gaps in, and barriers to, the enforcement of such efforts;

“(2) plan and implement comprehensive long-range strategies for criminal interstate child support enforcement;

“(3) reach an agreement within the State regarding the priorities of such State in the enforcement of criminal interstate child support legislation;

“(4) develop a plan to implement such priorities; and

“(5) coordinate criminal interstate child support enforcement efforts.

“SEC. 1602. STATE APPLICATIONS.

“(a) IN GENERAL.—(1) To request a grant under this part, the chief executive of a State shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

“(2) An application under paragraph (1) shall include assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part.

“(b) STATE OFFICE.—The office designated under section 507 of title I—

“(1) shall prepare the application required under section 1602; and

“(2) shall administer grant funds received under this part, including review of spending, processing, progress, financial reporting, technical assistance, grant adjustments, accounting, auditing, and fund disbursement.

“SEC. 1603. REVIEW OF STATE APPLICATIONS.

“(a) IN GENERAL.—The Bureau shall make a grant under section 1601(a) to carry out the projects described in the application submitted by an applicant under section 1602 upon determining that—

“(1) the application is consistent with the requirements of this part; and

“(2) before the approval of the application, the Bureau has made an affirmative finding in writing that the proposed project has been reviewed in accordance with this part.

“(b) APPROVAL.—Each application submitted under section 1602 shall be considered approved, in whole or in part, by the Bureau not later than 45 days after first received unless the Bureau informs the applicant of specific reasons for disapproval.

“(c) DISAPPROVAL NOTICE AND RECONSIDERATION.—The Bureau shall not disapprove any application without first affording the applicant reasonable notice and an opportunity for reconsideration.

“SEC. 1604. LOCAL APPLICATIONS.

“(a) IN GENERAL.—(1) To request funds under this part from a State, the chief executive of a local entity shall submit an application to the office designated under section 1602(b).

“(2) An application under paragraph (1) shall be considered approved, in whole or in part, by the State not later than 45 days after such application is first received unless the State informs the applicant in writing of specific reasons for disapproval.

“(3) The State shall not disapprove any application submitted to the State without first affording the applicant reasonable notice and an opportunity for reconsideration.

“(4) If an application under paragraph (1) is approved, the local entity is eligible to receive funds under this part.

“(b) DISTRIBUTION TO LOCAL ENTITIES.—A State that receives funds under section 1601 in a fiscal year shall make such funds available to a local entity with an approved application within 45 days after the Bureau has approved the application submitted by the State and has made funds available to the State. The Director may waive the 45-day requirement in this section upon a finding that the State is unable to satisfy the requirement of the preceding sentence under State statutes.

“SEC. 1605. DISTRIBUTION OF FUNDS.

“The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the project described in the application submitted under section 1602(a) for the fiscal year for which the project receives assistance under this part.

“SEC. 1606. EVALUATION.

“(a) IN GENERAL.—(1) Each State and local entity that receives a grant under this part shall submit to the Director an evaluation not later than March 1 of each year in accordance with guidelines issued by the Director and in consultation with the Director of the National Institute of Justice.

“(2) The Director may waive the requirement specified in subsection (a) if the Director determines that such evaluation is not warranted in the case of the State or local entity involved.

“(b) DISTRIBUTION.—The Director shall make available to the public on a timely basis evaluations received under subsection (a).

“(c) ADMINISTRATIVE COSTS.—A State or local entity may use not more than 5 percent of the funds it receives under this part to develop an evaluation program under this section.

“SEC. 1607. DEFINITIONS.

“For purposes of this part, the term ‘local entity’ means a child support enforcement agency, law enforcement agency, prosecuting attorney, or unit of local government.”.

(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking the matter relating to part P and inserting the following:

“PART P—CRIMINAL CHILD SUPPORT ENFORCEMENT

“Sec. 1601. Grant authorization.
“Sec. 1602. State applications.
“Sec. 1603. Review of State applications.
“Sec. 1604. Local applications.
“Sec. 1605. Distribution of funds.
“Sec. 1606. Evaluation.
“Sec. 1607. Definitions.

“PART Q—TRANSITION—EFFECTIVE DATE—REPEALER

“Sec. 1701. Continuation of rules, authorities, and proceedings.”.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended—

(1) by redesignating the last three paragraphs sequentially as paragraphs (7), (8), and (9); and

(2) by adding at the end the following new paragraph:

“(10) There are authorized to be appropriated $10,000,000 for each of the fiscal years 1994, 1995, and 1996 to carry out projects under part P.”.

SEC. 5. COMMISSION ON CHILD AND FAMILY WELFARE.

(a) ESTABLISHMENT.—There is established a commission to be known as the Commission on Child and Family Welfare (referred to in this section as the “Commission”).

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 15 members of whom—

(A) 3 shall be appointed by the President, in consultation with the Attorney General and the Secretary of Health and Human Services;

(B) 4 shall be appointed by the President pro tempore of the Senate;

(C) 2 shall be appointed by the minority leader of the Senate;

(D) 4 shall be appointed by the Speaker of the House of Representatives; and

(E) 2 shall be appointed by the minority leader of the House of Representatives.

(2) QUALIFICATIONS.—Members of the Commission shall be—

(A) persons who have expertise in family law, children's issues, mental health, and related policies;

(B) persons who have expertise, through research and practice, in laws and policies related to child and family welfare;

(C) persons who represent organizations that seek to protect the civil rights of children;

(D) persons who represent advocacy groups that work for the interests of children;

(E) persons who represent advocacy groups that work for the interests of both custodial and noncustodial parents; and

(F) persons who have conducted extensive research on, or delivered services to, children adversely affected by divorce.

(3) DATE.—The appointments of the members of the Commission shall be made no later than June 1, 1993.

(c) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(d) INITIAL MEETING.—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(e) MEETINGS.—The Commission shall meet at the call of the Chairman.

(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) CHAIRMAN AND VICE CHAIRMAN.—The Commission shall select a Chairman and Vice Chairman from among its members.

(h) DUTIES.—The Commission shall—

(1) compile information and data on the issues that affect the best interests of children, including domestic issues such as abuse, family relations, services and agencies for children and families, family courts and juvenile courts;

(2) compile a report that lists the strengths and weaknesses of the child welfare system as it relates to placement (including child custody and visitation), summarizes State laws and regulations relating to visitation, and makes recommendations for changing the system or developing a Federal role in strengthening the system;

(3) study the strengths and weaknesses of the juvenile and family courts as they relate to visitation, custody, and child support enforcement and suggest any recommendations for changing these systems; and

(4) study domestic issues that relate to the treatment and placement of children (such as child and spousal abuse) and suggest recommendations for any needed changes, including models for mediation and other programs.

(i) REPORT.—Not later than January 1, 1994, the Commission shall submit to the President and the Congress an interim report, and not later than January 1, 1995, a final report, which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers to be appropriate.

(j) HEARINGS.—

(1) IN GENERAL.—Subject to paragraph (2), the Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this section.

(2) BROAD PUBLIC PARTICIPATION.—The Commission shall conduct hearings in various areas of the country, including inner cities, suburbs, and rural areas, to gather a broad spectrum of information on the issues to be addressed. Parents, children, experts, religious leaders, and public and private agency officials shall be afforded the opportunity to give testimony at such hearings.

(k) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this Act. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission to the extent permitted by law.

(l) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(m) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(n) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(o) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(p) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(q) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(r) TERMINATION OF THE COMMISSION.—(1) The Commission shall terminate 90 days after the date on which the Commission submits its final report under subsection (i).

(2) Any funds held by the Commission on the date of termination of the Commission shall be deposited in the general fund of the Treasury of the United States and credited as miscellaneous receipts. Any property (other than funds) held by the Commission on that date shall be disposed of as excess or surplus property.

(s) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Commission $2,000,000 for fiscal years 1993 and 1994 to carry out this section.

(2) AVAILABILITY.—Any sums appropriated under the authorization contained in this subsection shall remain available, without fiscal year limitation, until expended.

Mr. KOHL. Mr. President, I am pleased that the Senate will pass the amended version of S. 1002, the so-called deadbeat parents bill. This measure—authored by myself, Senator SHELBY, and Congressmen HYDE and SCHUMER—makes it a Federal offense for noncustodial parents who live in another State to evade their child support obligations.

All too often around here, partisan politics and gridlock undermine even the most substantive proposals. In fact, that could be the epitaph of the 102d Congress. So, I am especially grateful that this legislation represents a triumph of bipartisan spirit over a legislative traffic jam.

Today, we're sending the message that the best interests of the child are held paramount by all of us.

And here's more good news: This bipartisan concern for children who suffer without needed child support has reached even our Presidential candidates.

Both Bill Clinton and President Bush have vowed to make deadbeat parents face their financial responsibility to their children and pay up. Both candidates have developed several child support reform proposals of their own. And, both Bush and Clinton have a particular interest in deadbeat parents who are involved in interstate child support cases and are not paying up. All of us are speaking with the same voice when we say it's time to stop letting noncustodial parents who deliberately ignore their children's financial needs get away with neglect.

Mr. President, back in July I chaired a Juvenile Justice Subcommittee hearing on S. 1002. The subcommittee heard from custodial and noncustodial parents' groups, the legal community, and the recently concluded U.S. Commission on Interstate Child Support.

This bill is a step in the right direction, and Senator SHELBY is to be commended for his efforts.

But some improvements have been made in S. 1002 since that hearing. As originally drafted, the bill seemed to create a presumption that any nonpayment was intentional. We changed the language so the Government will now have to prove willful failure to pay child support

This change makes sense for two reasons: First, because it protects noncustodial parents who are not able to pay child support; second, because it tells real deadbeats, pay up or go to jail.

Another change calls for the creation of a Commission on Child and Family Welfare. The commission is not an attempt to link child support and child access; in fact, I do not believe that linkage is legitimate. But I do believe that some noncustodial parents, many of whom faithfully pay their child support, have legitimate concerns. They want to contribute to the emotional, as well as the financial, well-being of their children. We should look at this issue just as we studied interstate nonpayment, and that is what this provision charges the commission to do.

A third improvement is a provision that authorizes funds to States so they can develop, implement, and enforce interstate child support criminal laws.

Mr. President, in sum, I am confident that when this measure reaches President Bush's desk, he will sign it into law. And I am convinced that our collective, bipartisan efforts will help improve the financial and emotional welfare of millions of children.

Mr. FORD. Mr. President, I move that the Senate concur in the amendment of the House.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LAND REMOTE SENSING POLICY ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 760, the Land Remote Sensing act of 1992.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2297) to enable the United States to maintain its leadership in land remote sensing by providing data continuity for the Landsat program, by establishing a new national land remote sensing policy, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Land Remote Sensing Policy Act of 1992".

SEC. 2. FINDINGS.

The Congress finds and declares the following:

(1) The continuous collection and utilization of land remote sensing data from space are of major benefit in studying and understanding human impacts on the global environment, in managing the Earth's natural resources, in carrying out national security functions, and in planning and conducting many other activities of scientific, economic, and social importance.

(2) The Federal Government's experimental Landsat system established the United States as the world leader in land remote sensing technology.

(3) The national interest of the United States lies in maintaining international leadership in satellite land remote sensing and in broadly promoting the beneficial use of remote sensing data.

(4) The cost of unenhanced Landsat data has impeded the use of such data for scientific purposes, such as for global environmental change research, as well as for other public sector applications.

(5) Given the importance of the Landsat program to the urgent actions of the United States, including expedited procurement procedures, must be followed in order to provide data continuity.

(6) Full commercialization of the Landsat program cannot be achieved within the foreseeable future, and thus should not serve as the near-term goal of national policy on land remote sensing.

(7) Despite the success and importance of the Landsat system, funding and organizational uncertainties over the past several years have placed its future in doubt and have jeopardized United States leadership in land remote sensing.

(8) Recognizing the importance of the Landsat program in helping to meet national and commercial objectives, the President approved, on February 11, 1992, a National Space Policy Directive which was developed by the National Space Council and commits the United States to ensuring the continuity of Landsat coverage into the 21st century.

(9) Because unenhanced Landsat data is particularly important for global environmental change and national security purposes, management responsibilities for the program should be transferred from the Department of Commerce to an integrated program management involving the National Aeronautics and Space Administration and the Department of Defense.

(10) Regardless of management responsibilities for the Landsat program, the Nation's broad civilian, national security, commercial, and foreign policy interests in remote sensing will best be served by ensuring that Landsat remains an unclassified program that operates according to the principles of open skies and nondiscriminatory access.

(11) Technological advances aimed at reducing the size and weight of satellite systems hold the potential for dramatic reductions in the cost, and substantial improvements in the capabilities, of future land remote sensing systems, but such technological advances have not been demonstrated for land remote sensing and therefore cannot be relied upon as the sole means of achieving data continuity for the Landsat program.

(12) A technology demonstration program involving advanced remote sensing technologies could serve a vital role in determining the design of a follow-on spacecraft to Landsat 7, while also helping to determine whether such a spacecraft should be funded by the United States Government, by the private sector, or by an international consortium.

(13) To maximize the value of the Landsat program to the American public, unenhanced Landsat 1 through 6 data should be made available, at a minimum, to Federal agencies, to global environmental change researchers, and to other researchers who are financially supported by the United States Government, at the cost of fulfilling user requests, and unenhanced Landsat 7 data should be made available to all users at the cost of fulfilling user requests.

(14) Development of the remote sensing market and the provision of commercial value-added services based on remote sensing data should remain exclusively the function of the private sector.

(15) It is in the best interest of the United States to maintain a permanent, comprehensive Government archive of global Landsat and other land remote sensing data for long-term monitoring and study of the changing global environment.

SEC. 3. DEFINITIONS.

In this Act, the following definitions apply:

(1) The term "Administrator" means the Administrator of the National Aeronautics and Space Administration.

(2) The term "data continuity" means the continued acquisition and availability of unenhanced data which are, from the point of view of the user—

(A) sufficiently consistent (in terms of acquisition geometry, coverage characteristics, and spectral characteristics) with previous Landsat data to allow comparisons for global and regional change detection and characterization; and

(B) compatible with such data and with methods used to receive and process such data.

(3) The term "data preprocessing" includes—

(A) rectification of system and sensor distortions in land remote sensing data as it is received directly from the satellite in preparation for delivery to a user; and

(B) calibration of spectral response with respect to such data, but does not include conclusions, manipulations, or calculations derived from such data or a combination of such data with other data.

(4) The term "land remote sensing" means the collection of data which can be processed into imagery of surface features of the Earth from an unclassified satellite or satellites, other than an operational United States Government weather satellite.

(5) The term "Landsat Program Management" means the integrated program management structure—

(A) established by, and responsible to, the Administrator and the Secretary of Defense pursuant to section 101(a); and

(B) consisting of appropriate officers and employees of the National Aeronautics and Space Administration, the Department of Defense, and any other Federal agencies the President designates as responsible for the Landsat program.

(6) The term "Landsat system" means Landsats 1, 2, 3, 4, 5, and 6, and any follow-on land remote sensing system operated and owned by the United States Government, along with any related United States Government-owned ground equipment, systems, and facilities.

(7) The term "Landsat 6 contractor" means the private sector entity which was awarded the contract for spacecraft construction and data marketing rights for the Landsat 6 spacecraft.

(8) The term "Landsat 7" means the follow-on satellite to Landsat 6.

(9) The term "noncommercial purposes"—

(A) except as provided in subparagraph (B), refers to those activities undertaken by individuals or entities on the condition, upon receipt of unenhanced data, that—

(i) such data shall not be used in connection with any bid for a commercial contract or any other activity that is expected, or has the potential, to be profitmaking, except in any case where a Government agency contracts with the private sector for services; and

(ii) the results of such activities are disclosed in a timely and complete fashion in the open technical literature or other method of public release; and

(B) includes those activities undertaken by individuals and entities to provide services to a Federal agency pursuant to a contract entered into with the agency.

(10) The term "Secretary" means the Secretary of Commerce.

(11) The term "unenhanced data" means land remote sensing signals or imagery products that

are unprocessed or subject only to data preprocessing.

(12) The term "United States Government and its affiliated users" means—

(A) Federal agencies;

(B) researchers involved with the United States Global Change Research Program and its international counterpart programs; and

(C) other researchers and international entities that have signed with the United States Government a cooperative agreement involving the use of Landsat data for noncommercial purposes.

(13) The term "cost of fulfilling user requests" means the costs associated with the product generation, reproduction, and distribution of data in response to a user request, and does not include capital acquisition, administrative, fixed operational, or other costs which are not directly associated with the task of fulfilling a user request.

(14) The term "National Satellite Land Remote Sensing Data Archive" means the archive, established by the Secretary of the Interior pursuant to the archival responsibilities defined in section 502, that is located at the EROS Data Center of the United States Geological Survey, Sioux Falls, South Dakota.

SEC. 4. REPEAL OF LAND REMOTE-SENSING COMMERCIALIZATION ACT OF 1984.

The Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4201 et seq.) is repealed.

TITLE I—LANDSAT

SEC. 101. LANDSAT PROGRAM MANAGEMENT.

(a) ESTABLISHMENT.—The Administrator and the Secretary of Defense shall be responsible for management of the Landsat program. Such responsibility shall be carried out by establishing an integrated program management structure for the Landsat system.

(b) MANAGEMENT PLAN.—The Administrator, the Secretary of Defense, and any other Federal official the President designates as responsible for part of the Landsat program shall establish, through a management plan, the roles, responsibilities, and funding expectations for the Landsat Program of the appropriate Federal agencies. The management plan shall—

(1) specify that the fundamental goal of the Landsat Program Management is the continuity of unenhanced Landsat data through the acquisition and operation of a Landsat 7 satellite as quickly as practicable which is, at a minimum, functionally equivalent to the Landsat 6 satellite, with the addition of a tracking and data relay satellite communications capability;

(2) include a baseline funding profile that—

(A) is mutually acceptable to the National Aeronautics and Space Administration and the Department of Defense for the period covering the development and operation of Landsat 7; and

(B) provides for total funding responsibility of the National Aeronautics and Space Administration and the Department of Defense, respectively, to be approximately equal to the funding responsibility of the other as spread across the development and operational life of Landsat 7;

(3) specify that any improvements over the Landsat 6 functional equivalent capability for Landsat 7 will be funded by a specific sponsoring agency, if the required funding exceeds the baseline funding profile required by paragraph (2), and that additional improvements will be sought only if the improvements will not jeopardize data continuity; and

(4) provide for a technology demonstration program whose objective shall be the demonstration of advanced land remote sensing technologies that may potentially yield a system which is less expensive to build and operate, and more responsive to data users, than is the current Landsat system.

(c) RESPONSIBILITIES.—The Landsat Program Management shall be responsible for—

(1) Landsat 7 procurement, launch, and operations;

(2) ensuring that the operation of the Landsat system is responsive to the broad interests of the civilian, national security, commercial, and foreign users of the Landsat system;

(3) ensuring that all unenhanced Landsat data remains unclassified and that, except as provided in section 506 (a) and (b), no restrictions are placed on the availability of unenhanced data;

(4) ensuring that land remote sensing data of high priority locations will be acquired by the Landsat 7 system as required to meet the needs of the United States Global Change Research Program, as established in the Global Change Research Act of 1990, and to meet the needs of national security users;

(5) Landsat data responsibilities pursuant to this Act;

(6) oversight of Landsat contracts entered into under sections 102 and 103;

(7) coordination of a technology demonstration program, pursuant to section 303; and

(8) ensuring that copies of all data acquired by the Landsat system are provided to the National Satellite Land Remote Sensing Data Archive.

(d) AUTHORITY TO CONTRACT.—The Landsat Program Management may, subject to appropriations and only under the existing contract authority of the Federal agencies that compose the Landsat Program Management, enter into contracts with the private sector for services such as satellite operations and data preprocessing.

(e) LANDSAT ADVISORY PROCESS.—

(1) ESTABLISHMENT.—The Landsat Program Management shall seek impartial advice and comments regarding the status, effectiveness, procurement, and operation of the Landsat system, using existing advisory committees and other appropriate mechanisms. Such advice shall be sought from individuals who represent—

(A) a broad range of perspectives on basic and applied science and operational needs with respect to land remote sensing data;

(B) the full spectrum of users of Landsat data, including representatives from Federal agencies, State and local government agencies, academic and research institutions, nonprofit organizations, value-added companies, the agricultural and mineral extraction industries, and the public; and

(C) a broad diversity of age groups, sexes, and races.

(2) REPORTS.—Within 1 year after the date of the enactment of this Act and biennially thereafter, the Landsat Program Management shall prepare and submit to the Congress a report that summarizes the findings and conclusions of the advice provided under this section and any recommendations for policy or programmatic changes to improve the utility and operation of the Landsat system.

SEC. 102. PROCUREMENT OF LANDSAT 7.

(a) CONTRACT NEGOTIATIONS.—The Landsat Program Management shall, subject to appropriations and only under the existing contract authority of the Federal agencies that compose the Landsat Program Management, expeditiously contract with a United States private sector entity for the development and delivery of Landsat 7.

(b) DEVELOPMENT AND DELIVERY CONSIDERATIONS.—In negotiating a contract under this section for the development and delivery of Landsat 7, the Landsat Program Management shall—

(1) seek, as a fundamental objective, to have Landsat 7 operational by the expected end of the design life of Landsat 6;

(2) seek to ensure data continuity by the development and delivery of a satellite which is, at a minimum, functionally equivalent to the Landsat 6 satellite; and

(3) seek to incorporate in Landsat 7 any performance improvements required to meet United States Government needs that would not jeopardize data continuity.

(c) NOTIFICATION OF COST AND SCHEDULE CHANGES.—The Landsat Program Management shall promptly notify the Congress of any significant deviations from the expected cost, delivery date, and launch date of Landsat 7 that are specified by the Landsat Program Management upon award of the contract under this section.

(d) UNITED STATES PRIVATE SECTOR ENTITIES.—The Landsat Program Management shall, for purposes of this Act, define the term "United States private sector entities", taking into account operations, the location of assets, employment, and other such factors.

SEC. 103. DATA POLICY FOR LANDSATS 1 THROUGH 6.

(a) CONTRACT NEGOTIATIONS.—Within 30 days after the date of enactment of this Act, the Landsat Program Management shall enter into negotiations, with the Landsat 6 contractor, with respect to pricing, distribution, acquisition, archiving, and access of unenhanced data gathered by Landsats 1 through 6.

(b) CONSIDERATIONS.—In carrying out negotiations under this section, the Landsat Program Management shall—

(1) seek to ensure that such unenhanced data shall be provided, at a minimum, to the United States Government and its affiliated users at the cost of fulfilling user requests, on the condition that such unenhanced data is used solely for noncommercial purposes;

(2) seek to ensure that instructional data sets, selected from the Landsat data archives, will be made available to educational institutions exclusively for noncommercial, educational purposes at the cost of fulfilling user requests;

(3) seek to ensure that Landsat data users are able to acquire unenhanced data contained in the collective archives of foreign ground stations as easily and affordably as practicable;

(4) seek to ensure that adequate data to meet the needs of global environmental change researchers and national security users is acquired;

(5) seek to ensure that the United States Government and its affiliated users shall not be prohibited from reproduction or dissemination of unenhanced data to other agencies of the United States Government and other affiliated users, as long as the unenhanced data will be used solely for noncommercial purposes;

(6) seek to ensure the provision of vouchers and data grants, for providing unenhanced data to nonprofit, public interest entities, at the cost of fulfilling user requests as long as the unenhanced data will be used solely for noncommercial purposes;

(7) seek to ensure a viable role for the private sector in the promotion and development of the commercial market for value added and other services using unenhanced data from the Landsat system;

(8) seek to ensure that the data policy for data gathered by Landsats 1 through 6 is consistent with the data policy for Landsat 7 data upon the date of initial operations of Landsat 7; and

(9) seek to ensure that a copy of all unenhanced Landsat data is provided to the National Satellite Land Remote Sensing Data Archive at no more than the cost of fulfilling the user request.

(c) FAILURE TO REACH AGREEMENT.—If negotiations under subsection (a) have not, within 120 days after the date of enactment of this Act, resulted in an agreement that the Landsat Program Management determines generally achieves the goals stated in subsection (b)(1) through (9), the Administrator and the Sec-

retary of Defense shall, within 30 days after the date of such determination, jointly certify and report such determination to the Congress. The report shall include a review of options and projected costs for achieving such goals, and shall include recommendations for achieving such goals. The options reviewed shall include—

(1) retaining the existing or modified contract with the Landsat 6 contractor;

(2) terminating existing contracts for the exclusive marketing rights of Landsat unenhanced data; and

(3) establishing an alternative private sector mechanism for the marketing and commercial distribution of such data.

SEC. 104. TRANSFER OF LANDSAT 6 PROGRAM RESPONSIBILITIES.

The responsibilities of the Secretary with respect to Landsat 6 shall be transferred to the Landsat Program Management, as agreed to between the Secretary, the Secretary of Defense, and the Administrator pursuant to section 101.

SEC. 105. DATA POLICY FOR LANDSAT 7.

(a) LANDSAT 7 DATA POLICY PLANS.—The Landsat Program Management, in consultation with the Secretary and appropriate officers of other appropriate Federal agencies, shall develop and implement a data policy for Landsat 7 which shall—

(1) provide data to all users at the cost of fulfilling user requests;

(2) ensure timely and dependable delivery of unenhanced data to the full spectrum of civilian, national security, commercial, and foreign users and the National Satellite Land Remote Sensing Data Archive;

(3) ensure that the United States retains ownership of all unenhanced data generated by Landsat 7;

(4) not extend exclusive marketing rights for Landsat 7 data to any contractor;

(5) ensure that the proposed data distribution system contributes to the commercialization goal for land remote sensing; and

(6) to the extent possible, ensure that the data distribution system for Landsat 7 is compatible with the Earth Observing System Data Information System.

TITLE II—LICENSING OF PRIVATE REMOTE SENSING SPACE SYSTEMS

SEC. 201. GENERAL LICENSING AUTHORITY.

(a) LICENSING AUTHORITY OF SECRETARY.—(1) In consultation with other appropriate Federal agencies, the Secretary is authorized to license private sector parties to operate private remote sensing space systems for such period as the Secretary may specify and in accordance with this title.

(2) In the case of a private space system that is used for remote sensing and other purposes, the authority of the Secretary under this title shall be limited only to the remote sensing operations of such space system.

(b) COMPLIANCE WITH LAW, REGULATIONS, INTERNATIONAL OBLIGATIONS, AND NATIONAL SECURITY.—No license shall be granted by the Secretary unless the Secretary determines in writing that the applicant will comply with the requirements of this Act, any regulations issued pursuant to this Act, and any applicable international obligations and national security concerns of the United States.

(c) DEADLINE FOR ACTION ON APPLICATION.—The Secretary shall review any application and make a determination thereon within 120 days of the receipt of such application. If final action has not occurred within such time, the Secretary shall inform the applicant of any pending issues and of actions required to resolve them.

(d) IMPROPER BASIS FOR DENIAL.—The Secretary shall not deny such license in order to protect any existing licensee from competition.

(e) REQUIREMENT TO PROVIDE UNENHANCED DATA.—(1) The Secretary, in consultation with other appropriate Federal agencies and pursuant to paragraph (2), shall designate in a license issued pursuant to this title any unenhanced data required to be provided by the licensee under section 202(b)(3).

(2) The Secretary shall make a designation under paragraph (1) after determining that—

(A) such data is generated by a system whose development, fabrication, launch, or operations costs have been or will be paid for in part by the United States Government; or

(B) it is in the interest of the United States to require such data to be provided by the licensee consistent with section 202(b)(3), after considering the impact on the licensee and the importance of promoting widespread access to remote sensing data from United States and foreign systems.

(3) A designation made by the Secretary under paragraph (1) shall not be inconsistent with any contract or other arrangement entered into between a Federal agency and the licensee.

SEC. 202. CONDITIONS FOR OPERATION.

(a) LICENSE REQUIRED FOR OPERATION.—No person who is subject to the jurisdiction or control of the United States may, directly or through any subsidiary or affiliate, operate any private remote sensing space system without a license pursuant to section 201.

(b) LICENSE REQUIREMENTS.—Any license issued pursuant to this title shall specify that the licensee shall comply with all of the requirements of this Act and shall—

(1) operate the system in such manner as to preserve the national security of the United States and to observe the international obligations of the United States in accordance with section 507;

(2) make available to the government of any country (including the United States) unenhanced data collected by the system concerning the territory under the jurisdiction of such government as soon as such data is available and on reasonable terms and conditions;

(3) make unenhanced data designated by the Secretary in the license pursuant to section 201(e) available to all users without preference, bias, or any other special arrangement regarding delivery, format, pricing, or technical considerations which would favor one customer or class of customers over another;

(4) upon termination of operations under the license, make disposition of any satellites in space in a manner satisfactory to the President;

(5) promptly make available all unenhanced data which the Secretary may request pursuant to section 502;

(6) furnish the Secretary with complete orbit and data collection characteristics of the system, and inform the Secretary immediately of any unintended deviation; and

(7) notify the Secretary of any agreement the licensee intends to enter with a foreign nation, entity, or consortium involving foreign nations or entities.

SEC. 203. ADMINISTRATIVE AUTHORITY OF THE SECRETARY.

(a) FUNCTIONS.—In order to carry out the responsibilities specified in this title, the Secretary may—

(1) grant, condition, or transfer licenses under this Act;

(2) seek an order of injunction or similar judicial determination from a United States District Court with personal jurisdiction over the licensee to terminate, modify, or suspend licenses under this title and to terminate licensed operations on an immediate basis, if the Secretary determines that the licensee has substantially failed to comply with any provision of this Act, with any terms, conditions, or restrictions of such license, or with any international obligations or national security concerns of the United States;

(3) provide penalties for noncompliance with the requirements of licenses or regulations issued under this title, including civil penalties not to exceed $10,000 (each day of operation in violation of such licenses or regulations constituting a separate violation);

(4) compromise, modify, or remit any such civil penalty;

(5) issue subpoenas for any materials, documents, or records, or for the attendance and testimony of witnesses for the purpose of conducting a hearing under this section;

(6) seize any object, record, or report pursuant to a warrant from a magistrate based on a showing of probable cause to believe that such object, record, or report was used, is being used, or is likely to be used in violation of this Act or the requirements of a license or regulation issued thereunder; and

(7) make investigations and inquiries and administer to or take from any person an oath, affirmation, or affidavit concerning any matter relating to the enforcement of this Act.

(b) REVIEW OF AGENCY ACTION.—Any applicant or licensee who makes a timely request for review of an adverse action pursuant to subsection (a)(1), (a)(3), or (a)(6) shall be entitled to adjudication by the Secretary on the record after an opportunity for an agency hearing with respect to such adverse action. Any final action by the Secretary under this subsection shall be subject to judicial review under chapter 7 of title 5, United States Code.

SEC. 204. REGULATORY AUTHORITY OF THE SECRETARY.

The Secretary may issue regulations to carry out this title. Such regulations shall be promulgated only after public notice and comment in accordance with the provisions of section 553 of title 5, United States Code.

SEC. 205. AGENCY ACTIVITIES.

(a) LICENSE APPLICATION AND ISSUANCE.—A private sector party may apply for a license to operate a private remote sensing space system which utilizes, on a space-available basis, a civilian United States Government satellite or vehicle as a platform for such system. The Secretary, pursuant to this title, may license such system if it meets all conditions of this title and—

(1) the system operator agrees to reimburse the Government immediately for all related costs incurred with respect to such utilization, including a reasonable and proportionate share of fixed, platform, data transmission, and launch costs; and

(2) such utilization would not interfere with or otherwise compromise intended civilian Government missions, as determined by the agency responsible for such civilian platform.

(b) ASSISTANCE.—The Secretary may offer assistance to private sector parties in finding appropriate opportunities for such utilization.

(c) AGREEMENTS.—To the extent provided in advance by appropriation Acts, any Federal agency may enter into agreements for such utilization if such agreements are consistent with such agency's mission and statutory authority, and if such remote sensing space system is licensed by the Secretary before commencing operation.

(d) APPLICABILITY.—This section does not apply to activities carried out under title III.

(e) EFFECT IN FCC AUTHORITY.—Nothing in this title shall affect the authority of the Federal Communications Commission pursuant to the Communications Act of 1934 (47 U.S.C. 151 et seq.).

TITLE III—RESEARCH, DEVELOPMENT, AND DEMONSTRATION

SEC. 301. CONTINUED FEDERAL RESEARCH AND DEVELOPMENT.

(a) ROLES OF NASA AND DEPARTMENT OF DEFENSE.—(1) The Administrator and the Secretary

of Defense are directed to continue and to enhance programs of remote sensing research and development.

(2) The Landsat Program Management is authorized and encouraged to—

(A) conduct experimental space remote sensing programs (including applications demonstration programs and basic research at universities);

(B) develop remote sensing technologies and techniques, including those needed for monitoring the Earth and its environment; and

(C) conduct such research and development in cooperation with other Federal agencies and with public and private research entities (including private industry, universities, State and local governments, foreign governments, and international organizations) and to enter into arrangements (including joint ventures) which will foster such cooperation.

(b) Roles of Department of Agriculture and Department of the Interior.—(1) In order to enhance the United States ability to manage and utilize its renewable and nonrenewable resources, the Secretary of Agriculture and the Secretary of the Interior are authorized and encouraged to conduct programs of research and development in the applications of remote sensing, using funds appropriated for such purposes.

(2) Such programs may include basic research at universities, demonstrations of applications, and cooperative activities involving other Government agencies, private sector parties, and foreign and international organizations.

(c) Role of Other Federal Agencies.—Other Federal agencies are authorized and encouraged to conduct research and development on the use of remote sensing in fulfillment of their authorized missions, using funds appropriated for such purposes.

SEC. 302. AVAILABILITY OF FEDERALLY GATHERED UNENHANCED DATA.

(a) General Rule.—All unenhanced land remote sensing data gathered and owned by the United States Government, including unenhanced data gathered under the technology demonstration program carried out pursuant to section 303, shall be made available to users in a timely fashion.

(b) Protection for Commercial Data Distributor.—The President shall seek to ensure that unenhanced data gathered under the technology demonstration program carried out pursuant to section 303 shall, to the extent practicable, be made available on terms that would not adversely affect the commercial market for unenhanced data gathered by the Landsat 6 spacecraft.

SEC. 303. TECHNOLOGY DEMONSTRATION PROGRAM.

(a) Establishment.—As a fundamental component of a national land remote sensing strategy, the President shall establish, through appropriate Federal agencies, a technology demonstration program. The goals of such program shall be to—

(1) seek to launch advanced land remote sensing system components within the period beginning 5 years after the date of enactment of this Act;

(2) demonstrate within such 5-year period advanced sensor capabilities suitable for use in the anticipated land remote sensing program; and

(3) demonstrate within such 5-year period an advanced land remote sensing system design that could be less expensive to procure and operate than the Landsat system in effect on the date of enactment of this Act, and that therefore holds greater potential for private sector investment and control.

(b) Execution of Program.—In executing the technology demonstration program, the President shall seek to apply United States National Technical Means of intelligence gathering, to the extent that such technologies are appropriate for the technology demonstration and can be declassified for such purposes without causing adverse harm to United States national security interests.

(c) Broad Application.—To the greatest extent practicable, the technology demonstration program established under subsection (a) shall be designed to be responsive to broad civilian, national security, commercial, and foreign policy interests in land remote sensing.

(d) Private Sector Funding.—The technology demonstration program under this section may be carried out in part with private sector funding.

(e) Landsat Program Management Coordination.—The Landsat Program Management shall have a coordinating role in the technology demonstration program carried out under this section.

(f) Report to Congress.—The President shall assess the progress of the technology demonstration program under this section and, within 2 years after the date of enactment of this Act, submit a report to the Congress on such progress.

TITLE IV—ASSESSING OPTIONS FOR SUCCESSOR LAND REMOTE SENSING SYSTEM

SEC. 401. ASSESSING OPTIONS FOR SUCCESSOR LAND REMOTE SENSING SYSTEM.

(a) Assessment.—Within 5 years after the date of enactment of this Act, the Landsat Program Management, in consultation with representatives of appropriate Federal agencies, shall assess and report to the Congress on the options for a successor land remote sensing system to Landsat 7. The report shall include a full assessment of the advantages and disadvantages of—

(1) private sector funding and management of a successor land remote sensing system;

(2) establishing an international consortium for the funding and management of a successor land remote sensing system;

(3) funding and management of a successor land remote sensing system by the United States Government; and

(4) a cooperative effort between the United States Government and the private sector for the funding and management of a successor land remote sensing system.

(b) Goals.—In carrying out subsection (a), Landsat Program Management shall consider the ability of each of the options to—

(1) encourage the development, launch, and operation of a land remote sensing system that adequately serves the civilian, national security, commercial, and foreign policy interests of the United States;

(2) encourage the development, launch, and operation of a land remote sensing system that maintains data continuity with the Landsat system; and

(3) incorporate system enhancements, including any such enhancements developed under the technology demonstration program under section 303, which may potentially yield a system that is less expensive to build and operate, and more responsive to data users, than is the Landsat system in effect on the date of enactment of this Act.

TITLE V—GENERAL PROVISIONS

SEC. 501. ARCHIVING OF DATA.

(a) Public Interest.—It is in the public interest for the United States Government to—

(1) maintain an archive of land remote sensing data for historical, scientific, and technical purposes, including long-term global environmental monitoring;

(2) control the content and scope of the archive; and

(3) assure the quality, integrity, and continuity of the archive.

(b) Archiving Practices.—The Secretary of the Interior, in consultation with the Landsat Program Management, shall provide for long-term storage, maintenance, and upgrading of a basic, global, land remote sensing data set (hereinafter referred to as the "basic data set") and shall follow reasonable archival practices to assure proper storage and preservation of the basic data set and timely access for parties requesting data.

(c) Determination of Content of Basic Data Set.—In determining the initial content of, or in upgrading, the basic data set, the Secretary of the Interior shall—

(1) use as a baseline the data archived on the date of enactment of this Act;

(2) take into account future technical and scientific developments and needs, paying particular attention to the anticipated data requirements of global environmental change research;

(3) consult with and seek the advice of users and producers of remote sensing data and data products;

(4) consider the need for data which may be duplicative in terms of geographical coverage but which differ in terms of season, spectral bands, resolution, or other relevant factors;

(5) include, as the Secretary of the Interior considers appropriate, unenhanced data generated either by the Landsat system, pursuant to title I, or by licensees under title II;

(6) include, as the Secretary of the Interior considers appropriate, data collected by foreign ground stations or by foreign remote sensing space systems; and

(7) ensure that the content of the archive is developed in accordance with section 507.

(d) Rights of Licensees.—Any licensee under title II shall have the exclusive right to sell all data that the licensee provides to the United States remote sensing data archive for a period to be determined by the Secretary of the Interior but not to exceed 10 years from the date the data are sensed. A licensee under title II may relinquish the exclusive right and consent to distribution from the archive before the period of exclusive right has expired by terminating the offer to sell particular data.

(e) Public Domain.—After the expiration of any exclusive right to sell, or after relinquishment of such right, the data provided to the United States remote sensing data archive shall be in the public domain and shall be made available to requesting parties by the Secretary at the cost of fulfilling the user request.

SEC. 502. NONREPRODUCTION.

Unenhanced data distributed by any land remote sensing system operator under this Act may be sold on the condition that such data will not be reproduced or disseminated by the purchaser except as provided in section 103(b)(5).

SEC. 503. REIMBURSEMENT FOR ASSISTANCE.

The Administrator, the Secretary of Defense, and the heads of other Federal agencies may provide assistance to land remote sensing system operators under the provisions of this Act. Substantial assistance shall be reimbursed by the operator, except as otherwise provided by law.

SEC. 504. ACQUISITION OF EQUIPMENT.

The Secretary may, by means of a competitive process, allow a licensee under title II or any other private party to buy, lease, or otherwise acquire the use of equipment from the Landsat system, when such equipment is no longer needed for the operation of such system or for the sale of data from such system. Officials of other Federal civilian agencies are authorized and encouraged to cooperate with the Secretary in carrying out this section.

SEC. 505. RADIO FREQUENCY ALLOCATION.

(a) Application to Federal Communications Commission.—To the extent required by the Communications Act of 1934 (47 U.S.C. 151 et

seq.), an application shall be filed with the Federal Communications Commission for any radio facilities involved with the commercial remote sensing space system.

(b) DEADLINER FOR FCC ACTION.—It is the intent of Congress that the Federal Communications Commission complete the radio licensing process under the Communications Act of 1934 (47 U.S.C. 151 et seq.) upon the application of any private sector party or consortium operator of any commercial land remote sensing space system subject to this Act, within 120 days after the receipt of an application for such licensing. If final action has not occurred within 120 days after the receipt of such an application, the Federal Communications Commission shall inform the applicant of any pending issues and of actions required to resolve them.

(c) DEVELOPMENT AND CONSTRUCTION OF UNITED STATES SYSTEM.—Authority shall not be required from the Federal Communications Commission for the development and construction of any United States land remote sensing space system (or component thereof, other than radio transmitting facilities or components), while any licensing determination is being made.

(d) CONSISTENCY WITH INTERNATIONAL OBLIGATIONS AND PUBLIC INTEREST.—Frequency allocations made pursuant to this section by the Federal Communications Commission shall be consistent with international obligations and with the public interest.

SEC. 506. CONSULTATION.

(a) CONSULTATION WITH SECRETARY OF DEFENSE.—The Landsat Program Management shall consult with the Secretary of Defense on all matters under this Act affecting national security. The Secretary of Defense shall be responsible for determining those conditions, consistent with this Act, necessary to meet national security concerns of the United States and for notifying the Secretary and the Landsat Program Management promptly of such conditions.

(b) CONSULTATION WITH SECRETARY OF STATE.—(1) The Landsat Program Management shall consult with the Secretary of State on all matters under this Act affecting international obligations. The Secretary of State shall be responsible for determining those conditions, consistent with this Act, necessary to meet international obligations and policies of the United States and for notifying promptly the Secretary and the Landsat Program Management of such conditions.

(2) Appropriate Federal agencies are authorized and encouraged to provide remote sensing data, technology, and training to developing nations as a component of programs of international aid.

(3) The Secretary of State shall promptly report to the Secretary and Landsat Program Management any instances outside the United States of discriminatory distribution of Landsat data.

(c) STATUS REPORT.—The Landsat Program Management shall, as often as necessary, provide to the Congress complete and updated information about the status of ongoing operations of the Landsat system, including timely notification of decisions made with respect to the Landsat system in order to meet national security concerns and international obligations and policies of the United States Government.

(d) REIMBURSEMENTS.—If, as a result of technical modifications imposed on a land remote sensing system operator on the basis of national security concerns, the Secretary, in consultation with the Secretary of Defense or with other Federal agencies, determines that additional costs will be incurred by the land remote sensing system operator, or that past development costs (including the cost of capital) will not be recovered by the land remote sensing system operator, the Secretary may require the agency or agencies requesting such technical modifications to reimburse the land remote sensing system operator for such additional or development costs, but not for anticipated profits. Reimbursements may cover costs associated with required changes in system performance, but not costs ordinarily associated with doing business abroad.

SEC. 507. ENFORCEMENT.

(a) IN GENERAL.—In order to ensure that unenhanced data received solely for noncommercial purposes is not used for any commercial purpose, the Secretary (in collaboration with private sector entities responsible for the marketing and distribution of unenhanced data generated by land remote sensing systems of the United States Government) shall develop and implement a system for enforcing the pricing structure for such unenhanced data, in the event that unenhanced data is made available for noncommercial applications at a different price than the price at which it is made available for commercial applications.

(b) AUTHORITY OF SECRETARY.—Subject to subsection (d), the Secretary may impose any of the enforcement mechanisms described in subsection (c) against a person who—

(1) receives unenhanced data under this Act solely for noncommercial purposes (and at a different price than the price at which such data is made available for commercial applications); and

(2) uses such data for commercial purposes.

(c) ENFORCEMENT MECHANISMS.—Enforcement mechanisms referred to in subsection (b) may include civil penalties of not more than $10,000 per day per violation, denial of further unenhanced data purchasing privileges, and any other penalties or restrictions the Secretary considers necessary to ensure, to the greatest extent practicable, that unenhanced data acquired for noncommercial purposes is not used to unfairly compete in the commercial market against private sector entities not eligible for data at the cost of fulfilling user requests.

(d) PROCEDURES AND REGULATIONS.—The Secretary shall issue any regulations necessary to carry out this section and shall establish standards and procedures governing the imposition of enforcement mechanisms under subsection (b). The standards and procedures shall include a procedure for potentially aggrieved parties to file formal protests with the Secretary alleging instances where such unenhanced data has been, or is being, used for commercial purposes in violation of the terms of receipt of such data. The Secretary shall promptly act to investigate any such protest, and shall report annually to the Congress on instances of such violations.

TITLE VI—PROHIBITION OF COMMERCIALIZATION OF WEATHER SATELLITES

SEC. 601. PROHIBITION.

Neither the President nor any other official of the United States Government shall make any effort to lease, sell, or transfer to the private sector, or commercialize, any portion of the weather satellite systems operated by the Department of Commerce or any successor agency.

SEC. 602. FUTURE CONSIDERATIONS.

Regardless of any change in circumstances subsequent to the date of enactment of this Act, even if such change makes it appear to be in the national interest to commercialize weather satellites, neither the President nor any official shall take any action prohibited by section 601 unless this title has first been repealed.

AMENDMENT NO. 3416

(Purpose: To make an amendment in the nature of a substitute)

Mr. SIMPSON. Mr. President, in behalf of Mr. PRESSLER, I send an amendment to the desk in the nature of a substitute, and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. PRESSLER, proposes an amendment numbered 3416.

Mr. SIMPSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be inserted by the Committee amendment in the nature of a substitute, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Land Remote Sensing Act of 1992".

SEC. 2. FINDINGS.

The Congress finds and declares the following:

(1) The continuous collection and utilization of land remote sensing data from space are of major benefit in studying and understanding human impacts on the global environment, in managing the Earth's natural resources, in carrying out national security functions, and in planning and conducting many other activities of scientific, economic, and social importance.

(2) The Federal Government's Landsat system established the United States as the world leader in land remote sensing technology.

(3) The national interest of the United States lies in maintaining international leadership in satellite land remote sensing and in broadly promoting the beneficial use of remote sensing data.

(4) The cost of Landsat data has impeded the use of such data for scientific purposes, such as for global environmental change research, as well as for other public sector applications.

(5) Given the importance of the Landsat program to the United States, urgent actions, including expedited procurement procedures, are required to ensure data continuity.

(6) Full commercialization of the Landsat program cannot be achieved within the foreseeable future, and thus should not serve as the near-term goal of national policy on land remote sensing; however, commercialization of land remote sensing should remain a long-term goal of United States policy.

(7) Despite the success and importance of the Landsat system, funding and organizational uncertainties over the past several years have placed its future in doubt and have jeopardized United States leadership in land remote sensing.

(8) Recognizing the importance of the Landsat program in helping to meet national and commercial objectives, the President approved, on February 11, 1992, a National Space Policy Directive which was developed by the National Space Council and commits the United States to ensuring the continuity of Landsat coverage into the 21st century.

(9) Because Landsat data are particularly important for national security purposes and global environmental change research, management responsibilities for the program should be transferred from the Department of Commerce to an integrated program management involving the Department of Defense and the National Aeronautics and Space Administration.

(10) Regardless of management responsibilities for the Landsat program, the Nation's

broad civilian, national security, commercial, and foreign policy interests in remote sensing will best be served by ensuring that Landsat remains an unclassified program that operates according to the principles of open skies and nondiscriminatory access.

(11) Technological advances aimed at reducing the size and weight of satellite systems hold the potential for dramatic reductions in the cost, and substantial improvements in the capabilities, of future land remote sensing systems, but such technological advances have not been demonstrated for land remote sensing and therefore cannot be relied upon as the sole means of achieving data continuity for the Landsat program.

(12) A technology demonstration program involving advanced remote sensing technologies could serve a vital role in determining the design of a follow-on spacecraft to Landsat 7, while also helping to determine whether such a spacecraft should be funded by the United States Government, by the private sector, or by an international consortium.

(13) To maximize the value of the Landsat program to the American public, unenhanced Landsat 4 through 6 data should be made available, at a minimum, to United States Government agencies, to global environmental change researchers, and to other researchers who are financially supported by the United States Government, at the cost of fulfilling user requests, and unenhanced Landsat 7 data should be made available to all users at the cost of fulfilling user requests.

(14) To stimulate development of the commercial market for unenhanced data and value-added services, the United States Government should adopt a data policy for Landsat 7 which allows "competition within the private sector for distribution of unenhanced data and value-added services.

(15) Development of the remote sensing market and the provision of commercial value-added services based on remote sensing data should remain exclusively the function of the private sector.

(16) It is the best interest of the United States to maintain a permanent, comprehensive Government archive of global Landsat and other land remote sensing data for long-term monitoring and study of the changing global environment.

SEC. 3. DEFINITIONS.

In this Act, the following definitions apply:

(1) The Term "Administrator" means the Administrator of the National Aeronautics and Space Administration.

(2) The term "cost of fulfilling user requests" means the incremental costs associated with providing product generation, reproduction, and distribution of unenhanced data in response to user requests and shall not include any acquisition, amortization, or depreciation of capital assets originally paid for by the United States Government or other costs not specifically attributable to fulfilling user requests.

(3) The term "data continuity" means the continued acquisition and availability of unenhanced data which are, from the point of view of the user—

(A) sufficiently consistent (in terms of acquisition geometry, coverage characteristics, and spectral characteristics) with previous Landsat data to allow comparisons for global and regional change detection and characterization; and

(B) compatible with such data and with methods used to receive and process such data.

(4) The term "data preprocessing" may include—

(A) rectification of system and sensor distortions in land remote sensing data as it is received directly from the satellite in preparation for delivery to a user;

(B) registration of such data with respect to features of the Earth; and

(C) calibration of spectral response with respect to such data, but does not include conclusions, manipulations, or calculations derived from such data, or a combination of such data with other data.

(5) The term "land remote sensing" means the collection of data which can be processed into imagery of surface features of the Earth from an unclassified satellite or satellites, other than an operational United States Government weather satellite.

(6) The term "Landsat Program Management" means the integrated program management structure—

(A) established by, and responsible to, the Administrator and the Secretary of Defense pursuant to section 101(a); and

(B) consisting of appropriate officers and employees of the National Aeronautics and Space Administration, the Department of Defense, and any other United States Government agencies the President designates as responsible for the Landsat program.

(7) The term "Landsat system" means Landsats 1, 2, 3, 4, 5, and 6, and any follow-on land remote sensing system operated and owned by the United States Government, along with any related ground equipment, systems, and facilities owned by the United States Government.

(8) The term "Landsat 6 contractor" means the private sector entity which was awarded the contract for spacecraft construction, operations, and data marketing rights for the Landsat 6 spacecraft.

(9) The term "Landsat 7" means the follow-on satellite to Landsat 6.

(10) The term "National Satellite Land Remote Sensing Data Archive" means the archive established by the Secretary of the Interior pursuant to the archival responsibilities defined in section 502.

(11) The term "noncommercial purposes" refers to those activities undertaken by individuals or entities on the condition, upon receipt of unenhanced data, that—

(A) such data shall not be used in connection with any bid for a commercial contract, development of a commercial product, or any other non-United States Government activity that is expected, or has the potential, to be profitmaking;

(B) the results of such activities are disclosed in a timely and complete fashion in the open technical literature or other method of public release, except when such disclosure by the United States Government or its contractors would adversely affect the national security or foreign policy of the United States or violate a provision of law or regulation; and

(C) such data shall not be distributed in competition with unenhanced data provided by the Landsat 6 contractor.

(12) The term "Secretary" means the Secretary of Commerce.

(13) The term "unenhanced data" means land remote sensing signals or imagery products that are unprocessed or subject only to data preprocessing.

(14) The term "United States Government and its affiliated users" means—

(A) United States Government agencies;

(B) researchers involved with the United States Global Change Research Program and its international counterpart programs; and

(C) other researchers and international entities that have signed with the United States Government a cooperative agreement involving the use of Landsat data for noncommercial purposes.

SEC. 4. REPEAL OF LAND REMOTE-SENSING COMMERCIALIZATION ACT OF 1984.

The Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4201 et seq.) is repealed.

TITLE I—LANDSAT

SEC. 101. LANDSAT PROGRAM MANAGEMENT.

(a) ESTABLISHMENT.—The Administrator and the Secretary of Defense shall be responsible for management of the Landsat program. Such responsibility shall be carried out by establishing an integrated program management structure for the Landsat system.

(b) MANAGEMENT PLAN.—The Administrator, the Secretary of Defense, and any other United States Government official the President designates as responsible for part of the Landsat program, shall establish, through a management plan, the roles, responsibilities, and funding expectations for the Landsat Program of the appropriate United States Government agencies. The management plan shall—

(1) specify that the fundamental goal of the Landsat Program Management is the continuity of unenhanced Landsat data through the acquisition and operation of a Landsat 7 satellite as quickly as practicable which is, at a minimum, functionally equivalent to the Landsat 6 satellite, with the addition of a tracking and data relay satellite communications capability;

(2) include a baseline funding profile that—

(A) is mutually acceptable to the National Aeronautics and Space Administration and the Department of Defense for the period covering the development and operation of Landsat 7; and

(B) provides for total funding responsibility of the National Aeronautics and Space Administration and the Department of Defense, respectively, to be approximately equal to the funding responsibility of the other as spread across the development and operational life of Landsat 7;

(3) specify that any improvements over the Landsat 6 functional equivalent capability for Landsat 7 will be funded by a specific sponsoring agency or agencies, in a manner agreed to by the Landsat Program Management, if the required funding exceeds the baseline funding profile required by paragraph (2), and that additional improvements will be sought only if the improvements will not jeopardize data continuity; and

(4) provide for a technology demonstration program whose objective shall be the demonstration of advanced land remote sensing technologies that may potentially yield a system which is less expensive to build and operate, and more responsive to data users, than is the current Landsat system.

(c) RESPONSIBILITIES.—The Landsat Program Management shall be responsible for—

(1) Landsat 7 procurement, launch, and operations;

(2) ensuring that the operation of the Landsat system is responsive to the broad interests of the civilian, national security, commercial, and foreign users of the Landsat system;

(3) ensuring that all unenhanced Landsat data remain unclassified and that, except as provided in section 506 (a) and (b), no restrictions are placed on the availability of unenhanced data;

(4) ensuring that land remote sensing data of high priority locations will be acquired by the Landsat 7 system as required to meet the

needs of the United States Global Change Research Program, as established in the Global Change Research Act of 1990, and to meet the needs of national security users;

(5) Landsat data responsibilities pursuant to this Act;

(6) oversight of Landsat contracts entered into under section 102 and 103;

(7) coordination of a technology demonstration program, pursuant to section 303; and

(8) ensuring that copies of data acquired by the Landsat system are provided to the National Satellite Land Remote Sensing Data Archive.

(d) AUTHORITY TO CONTRACT.—The Landsat Program Management may, subject to appropriations and only under the existing contract authority of the United States Government agencies that compose the Landsat Program Management, enter into contracts with the private sector for services such as, but not limited to, satellite operations and data preprocessing.

(e) LANDSAT ADVISORY PROCESS.—

(1) ESTABLISHMENT.—The Landsat Program Management shall seek impartial advice and comments regarding the status, effectiveness, and operation of the Landsat system, using existing advisory committees and other appropriate mechanisms. Such advice shall be sought from individuals who represent—

(A) a broad range of perspectives on basic and applied science and operational needs with respect to land remote sensing data;

(B) the full spectrum of users of Landsat data, including representatives from United States Government agencies, State and local government agencies, academic institutions, nonprofit organizations, value-added companies, the agricultural, mineral extraction, and other user industries, and the public; and

(C) a broad diversity of age groups, sexes, and races.

(2) REPORTS.—Within 1 year after the date of the enactment of this Act and biennially thereafter, the Landsat Program Management shall prepare and submit a report to the Congress which—

(A) reports the public comments received pursuant to paragraph (1); and

(B) includes—

(i) a response to the public comments received pursuant to paragraph (1);

(ii) information on the volume of use, by category, of data from the Landsat system; and

(iii) any recommendations for policy or programmatic changes to improve the utility and operation of the Landsat system.

SEC. 102. PROCUREMENT OF LANDSAT 7.

(a) CONTRACT NEGOTIATIONS.—The Landsat Program Management shall, subject to appropriations and only under the existing contract authority of the United States Government agencies that compose the Landsat Program Management, expeditiously contract with a United States private sector entity for the development and delivery of Landsat 7.

(b) DEVELOPMENT AND DELIVERY CONSIDERATIONS.—In negotiating a contract under this section for the development and delivery of Landsat 7, the Landsat Program Management shall—

(1) seek, as a fundamental objective, to have Landsat 7 operational by the expected end of the design life of Landsat 6;

(2) seek to ensure data continuity by the development and delivery of a satellite which is, at a minimum, functionally equivalent to the Landsat 6 satellite; and

(3) seek to incorporate in Landsat 7 any performance improvements required to meet United States Government needs that would not jeopardize data continuity.

(c) NOTIFICATION OF COST AND SCHEDULE CHANGES.—The Landsat Program Management shall promptly notify the Congress of any significant deviations from the expected cost, delivery date, and launch date of Landsat 7, that are specified by the Landsat Program Management upon award of the contract under this section.

(d) UNITED STATES PRIVATE SECTOR ENTITIES.—The Landsat Program Management shall, for purposes of this Act, define the term "United States private sector entities", taking into account the location of operations, assets, personnel, and other such factors.

SEC. 103. DATA POLICY FOR LANDSAT 4 THROUGH 6.

(A) CONTRACT NEGOTIATIONS.—Within 30 days after the date of enactment of this Act, the Landsat Program Management shall enter into negotiations with the Landsat 6 contractor to formalize an arrangement with respect to pricing, distribution, acquisition, archiving, and availability of unenhanced data for which the Landsat 6 contractor has responsibility under its contract. Such arrangement shall provide for a phased transition to a data policy consistent with the Landsat 7 data policy (developed pursuant to section 105) by the date of initial operation of Landsat 7. Conditions of the phased arrangement should require that the Landsat 6 contractor adopt provisions so that by the final phase of the transition period—

(1) such unenhanced data shall be provided, at a minimum, to the United States Government and its affiliated users at the cost of fulfilling user requests, on the condition that such unenhanced data are used solely for noncommercial purposes;

(2) instructional data sets, selected from the Landsat data archives, will be made available to educational institutions exclusively for noncommercial, educational purposes at the cost of fulfilling user requests;

(3) Landsat data users are able to acquire unenhanced data contained in the collective archives of foreign ground stations as easily and affordable as practicable;

(4) adequate data necessary to meet the needs of global environmental change researchers and national security users are acquired;

(5) the United States Government and its affiliated users shall not be prohibited from reproduction, or dissemination of unenhanced data to other agencies of the United States Government and other affiliated users, on the condition that such unenhanced data are used solely for noncommercial purposes;

(6) non-profit, public interest entities receive vouchers, data grants, or other such means of providing them with unenhanced data at the cost of fulfilling user requests, on the condition that such unenhanced data are used solely for noncommercial purposes.

(7) a viable role for the private sector in the promotion and development of the commercial market for value added and other services using unenhanced data from the Landsat system is preserved; and

(8) unenhanced data from the Landsat system are provided to the National Satellite Land Remote Sensing Data Archive at no more than the cost of fulfilling user requests.

(b) FAILURE TO REACH AGREEMENT.—If negotiations under subsection (a) have not, by September 30, 1993, resulted in an agreement that the Landsat Program Management determines generally achieves the goals stated in subsection (b)(1) through (8), the Administrator and the Secretary of Defense shall, within 30 days after the date of such determination, jointly certify and report such determination to the Congress. The report shall include a review of options and projected costs for achieving such goals, and shall include recommendations for achieving such goals. The options reviewed shall include—

(1) retaining the existing or modified contract with the Landsat 6 contractor;

(2) the termination of existing contracts for the exclusive right to market unenhanced Landsat data; and

(3) the establishment of an alternative private sector mechanism for the marketing and commercial distribution of such data.

SEC. 104. TRANSFER OF LANDSAT 6 PROGRAM RESPONSIBILITIES.

The responsibility of the Secretary with respect to Landsat 6 shall be transferred to the Landsat Program Management, as agreed to between the Secretary and the Landsat Program Management, pursuant to section 101.

SEC. 105. DATA POLICY FOR LANDSAT 7.

(a) LANDSAT 7 DATA POLICY.—The Landsat Program Management, in consultation with other appropriate United States Government agencies, shall develop a data policy for Landsat 7 which should—

(1) ensure that unenhanced data are available to all users at the cost of fulfilling user requests;

(2) ensure timely and dependable delivery of unenhanced data to the full spectrum of civilian, national security, commercial, and foreign users and the National Satellite Land Remote Sensing Data Archive;

(3) ensure that the United States retains ownership of all unenhanced data generated by Landsat 7;

(4) support the development of the commercial market for remote sensing data;

(5) ensure that the provision of commercial value-added services based on remote sensing data remains exclusively the function of the private sector; and

(6) to the extent possible, ensure that the data distribution system for Landsat 7 is compatible with the Earth Observing System Data and Information System.

(b) In addition, the data policy for Landsat 7 may provide for—

(1) United States private sector entities to operate ground receiving stations in the United States for Landsat 7 data;

(2) other means for direct access by private sector entities to unenhanced data from Landsat 7; and

(3) the United States Government to charge a per image fee, license fee, or other such fee to entities operating ground receiving stations or distributing Landsat 7 data.

(c) LANDSAT 7 DATA POLICY PLAN.—Not later than July 15, 1994, the Landsat Program Management shall develop and submit to Congress a report that contains a Landsat 7 Data Policy Plan. This plan shall define the roles and responsibilities of the various public and private sector entities that would be involved in the acquisition, processing, distribution, and archiving of Landsat 7 data and in operations of the Landsat 7 spacecraft.

(d) REPORTS.—Not later than 12 months after submission of the Landsat 7 Data Policy Plan, required by subsection (c), and annually thereafter until the launch of Landsat 7, the Landsat Program Management, in consultation with representatives of appropriate United States Government agencies, shall prepare and submit a report to the Congress which—

(1) provides justification for the Landsat 7 data policy in terms of the civilian, national security, commercial, and foreign policy needs of the United States; and

(2) provides justification for any elements of the Landsat 7 data policy which are not consistent with the provisions of subsection (a).

TITLE II—LICENSING OF PRIVATE REMOTE SENSING SPACE SYSTEMS

SEC. 201. GENERAL LICENSING AUTHORITY.

(a) LICENSING AUTHORITY OF SECRETARY.—(1) In consultation with other appropriate United States Government agencies, the Secretary is authorized to license private sector parties to operate private remote sensing space systems for such period as the Secretary may specify and in accordance with the provisions of this title.

(2) In the case of a private space system that is used for remote sensing and other purposes, the authority of the Secretary under this title shall be limited only to the remote sensing operations of such space system.

(b) COMPLIANCE WITH THE LAW, REGULATIONS, INTERNATIONAL OBLIGATIONS, AND NATIONAL SECURITY.—No license shall be granted by the Secretary unless the Secretary determines in writing that the applicant will comply with the requirements of this Act, any regulations issued pursuant to this Act, and any applicable international obligations and national security concerns of the United States.

(c) DEADLINE FOR ACTION ON APPLICATION.—The Secretary shall review any application and make a determination thereon within 120 days of the receipt of such application. If final action has not occurred within such time, the Secretary shall inform the applicant of any pending issues and of actions required to resolve them.

(d) IMPROPER BASIS FOR DENIAL.—The Secretary shall not deny such license in order to protect any existing licensee from competition.

(e) REQUIREMENT TO PROVIDE UNENHANCED DATA.—(1) The Secretary, in consultation with other appropriate United States Government agencies and pursuant to paragraph (2), shall designate in a licensee issued pursuant to this title any unenhanced data required to be provided by the licensee under section 202(b)(3).

(2) The Secretary shall make a designation under paragraph (1) after determining that—

(A) such data are generated by a system for which all or a substantial part of the development, fabrication, launch, or operations costs have been or will be directly funded by the United States Government; or

(B) it is in the interest of the United States to require such data to be provided by the licensee consistent with section 202(b)(3), after considering the impact on the licensee and the importance of promoting widespread access to remote sensing data from United States and foreign systems.

(3) A designation made by the Secretary under paragraph (1) shall not be inconsistent with any contract or other arrangement entered into between a United States Government agency and the licensee.

SEC. 202. CONDITIONS FOR OPERATION

(a) LICENSE REQUIRED FOR OPERATION.—No person who is subject to the jurisdiction or control of the United States may, directly or through any subsidiary or affiliate, operate any private remote sensing space system without a license pursuant to section 201.

(b) LICENSING REQUIREMENTS.—Any license issued pursuant to this title shall specify that the licensee shall comply with all of the requirements of this Act and shall—

(1) operate the system in such manner as to preserve the national security of the United States and to observe the international obligations of the United States in accordance with section 506;

(2) make available to the government of any country (including the United States) unenhanced data collected by the system concerning the territory under the jurisdiction of such government as soon as such data are available and on reasonable terms and conditions;

(3) make unenhanced data designated by the Secretary in the license pursuant to section 201(e) available in accordance with section 501;

(4) upon termination of operations under the license, make disposition of any satellites in space in a manner satisfactory to the President;

(5) furnish the Secretary with complete orbit and data collection characteristics of the system, and inform the Secretary immediately of any deviation; and

(6) notify the Secretary of any agreement the licensee intends to enter with a foreign nation, entity, or consortium involving foreign nations or entities.

(c) ADDITIONAL LICENSING REQUIREMENTS FOR LANDSAT 6 CONTRACTOR.—In addition to the requirements of paragraph (b), any license issued pursuant to this title to the Landsat 6 contractor shall specify that the Landsat 6 contractor shall—

(1) notify the Secretary of any value added activities (as defined by the Secretary by regulation) that will be conducted by the Landsat 6 contractor or by a subsidiary or affiliate; and

(2) if such activities are to be conducted, provide the Secretary with a plan for compliance with section 501 of this Act.

SEC. 203. ADMINISTRATIVE AUTHORITY OF THE SECRETARY

(a) FUNCTIONS.—In order to carry out the responsibilities specified in this title, the Secretary may—

(1) grant, condition, or transfer licenses under this Act;

(2) seek an order of injunction or similar judicial determination from a United States District Court with personal jurisdiction over the licensee to terminate, modify, or suspend licenses under this title and to terminate licensed operations on an immediate basis, if the Secretary determines that the licensee has substantially failed to comply with any provisions of this Act, with any terms, conditions, or restrictions of such license, or with any international obligations or national security concerns of the United States;

(3) provide penalties for noncompliance with the requirements of licenses or regulations issued under this title, including civil penalties not to exceed $10,000 (each day of operation in violation of such licenses or regulations constituting a separate violation);

(4) compromise, modify, or remit any such civil penalty;

(5) issue subpoenas for any materials, documents, or records, or for the attendance and testimony of witnesses for the purpose of conducting a hearing under this section;

(6) seize any object, record, or report pursuant to a warrant from a magistrate based on a showing of probable cause to believe that such object, record, or report was used, is being used, or is likely to be used in violation of this Act or the requirements of a license or regulation issued thereunder; and

(7) make investigations and inquiries and administer to or take from any person an oath, affirmation, or affidavit concerning any matter relating to the enforcement of this Act.

(b) REVIEW OF AGENCY ACTION.—Any applicant or licensee who makes a timely request for review of an adverse action pursuant to subsection (a)(1), (a)(3), (a)(5), or (a)(6) shall be entitled to adjudication by the Secretary on the record after an opportunity for an agency hearing with respect to such adverse action. Any final action by the Secretary under this subsection shall be subject to judicial review under chapter 7 of title 5, United States Code.

SEC. 204. REGULATORY AUTHORITY OF THE SECRETARY

The Secretary may issue regulations to carry out this title. Such regulations shall be promulgated only after public notice and comment in accordance with the provisions of section 553 of title 5, United States Code.

SEC. 205. AGENCY ACTIVITIES

(a) LICENSE APPLICATION AND ISSUANCE.—A private sector party may apply for a license to operate a private remote sensing space system which utilizes, on a space-available basis, a civilian United States Government satellite or vehicle as a platform for such system. The Secretary, pursuant to this title, may license such system if it meets all conditions of this title and—

(1) the system operator agrees to reimburse the Government in a timely manner for all related costs incurred with respect to such utilization, including a reasonable and proportionate share of fixed, platform, data transmission, and launch costs; and

(2) such utilization would not interfere with or otherwise compromise intended civilian Government missions, as determined by the agency responsible for such civilian platform.

(b) ASSISTANCE.—The Secretary may offer assistance to private sector parties in finding appropriate opportunities for such utilization.

(c) AGREEMENTS.—To the extent provided in advance by appropriation Acts, any United States Government agency may enter into agreements for such utilization if such agreements are consistent with such agency's mission and statutory authority, and if such remote sensing space system is licensed by the Secretary before commencing operation.

(d) APPLICABILITY.—This section does not apply to activities carried out under title III.

(e) EFFECT ON FCC AUTHORITY.—Nothing in this title shall affect the authority of the Federal Communications Commission pursuant to the Communications Act of 1934 (47 U.S.C. 151 et seq.).

TITLE III—RESEARCH, DEVELOPMENT, AND DEMONSTRATION

SEC. 301. CONTINUED FEDERAL RESEARCH AND DEVELOPMENT.

(a) ROLES OF NASA AND DEPARTMENT OF DEFENSE.—(1) The Administrator and the Secretary of Defense are directed to continue and to enhance programs of remote sensing research and development.

(2) The Administrator is authorized and encouraged to—

(A) conduct experimental space remote sensing programs (including applications demonstration programs and basic research at universities);

(B) develop remote sensing technologies and techniques, including those needed for monitoring the Earth and its environment; and

(C) conduct such research and development in cooperation with other United States Government agencies and with public and private research entities (including private industry, universities, non-profit organizations, State and local governments, foreign governments, and international organizations) and to enter into arrangements (including joint ventures) which will foster such cooperation.

"(b) Roles of Department of Agriculture and Department of Interior.—

(1) In order to enhance the ability of the United States to manage and utilize its renewable and nonrenewable resources, the Secretary of Agriculture and the Secretary of the Interior are authorized and encouraged to conduct programs of research and development in the applications of remote sensing using funds appropriated for such purposes.

(2) Such programs may include basic research at universities, demonstrations of applications, and cooperative activities involving other Government agencies, private sector parties, and foreign and international organizations.

(c) Role of Other Federal Agencies.—Other United States Government agencies are authorized and encouraged to conduct research and development on the use of remote sensing in the fulfillment of their authorized missions, using funds appropriated for such purposes.

SEC. 302. AVAILABILITY OF FEDERALLY GATHERED UNENHANCED DATA.

(a) General Rule.—All unenhanced land remote sensing data gathered and owned by the United States Government, including unenhanced data gathered under the technology demonstration program carried out pursuant to section 303, shall be made available to users in a timely fashion.

(b) Protection for Commercial Data Distributor.—The President shall seek to ensure that unenhanced data gathered under the technology demonstration program carried out pursuant to section 303 shall, to the extent practicable, be made available on terms that would not adversely affect the commercial market for unenhanced data gathered by the Landsat 6 spacecraft.

SEC. 303. TECHNOLOGY DEMONSTRATION PROGRAM.

(a) Establishment.—As a fundamental component of a national land remote sensing strategy, the President shall establish, through appropriate United States Government agencies, a technology demonstration program. The goals of such program shall be to—

(1) seek to launch advanced land remote sensing system components within 5 years after the date of the enactment of this Act.

(2) demonstrate within such 5-year period advanced sensor capabilities suitable for use in the "anticipated land remote sensing program; and

(3) demonstrate within such 5-year period an advanced land remote sensing system design that could be less expensive to procure and operate than the Landsat system projected to be in operation through the year 2000, and that therefore holds greater potential for private sector investment and control.

(b) Execution of Program.—In executing the technology demonstration program, the President shall seek to apply technologies associated with United States National Technical Means of intelligence gathering, to the extent that such technologies are appropriate for the technology demonstration and can be declassified for such purposes without causing adverse harm to United States national security interests.

(c) Broad Application.—To the greatest extent practicable, the technology demonstration program established under subsection (a) shall be designed to be responsive to the broad civilian, national security, commercial, and foreign policy needs of the United States.

(d) Private Sector Funding.—The technology demonstration program under this section may be carried out in part with private sector funding.

(e) Landsat Program Management Coordination.—The Landsat Program Management shall have a coordinating role in the technology demonstration program carried out under this section.

(f) Report to Congress.—The President shall assess the progress of the technology demonstration program under this section and, within 2 years after the date of enactment of this Act, submit a report to the Congress on such progress.

TITLE IV—ASSESSING OPTIONS FOR SUCCESSOR LAND REMOTE SENSING SYSTEM

SEC. 401. ASSESSING OPTIONS FOR SUCCESSOR LAND REMOTE SENSING SYSTEM.

(a) Assessment.—Within 5 years after the date of the enactment of this Act, the Landsat Program Management, in consultation with representatives of appropriate United States Government agencies, shall assess and report to the Congress on the options for a successor land remote sensing system to Landsat 7. The report shall include a full assessment of the advantages and disadvantages of—

(1) private sector funding and management of a successor land remote sensing system;

(2) establishing an international consortium for the funding and management of a successor land remote sensing system;

(3) funding and management of a successor land remote sensing system by the United States Government; and

(4) a cooperative effort between the United States Government and the private sector for the funding and management of a successor land remote sensing system.

(b) Goals.—In carrying out subsection (a), the Landsat Program Management shall consider the ability of each of the options to—

(1) encourage the development, launch, and operation of a land remote sensing system that adequately serves the civilian, national security, commercial, and foreign policy interests of the United States;

(2) encourage the development, launch, and operation of a land remote sensing system that maintains data continuity with the Landsat system; and

(3) incorporate system enhancements, including any such enhancements developed under the technology demonstration program under section 303, which may potentially yield a system that is less expensive to build and operate, and more responsive to data users, than is the Landsat system projected to be in operation through the year 2000.

(c) Preference for Private Sector System.—If a successor land remote sensing system to Landsat 7 can be funded and managed by the private sector while still achieving the goals stated in subsection (b) without jeopardizing the domestic, national security, and foreign policy interests of the United States, preference should be given to the development of such a system by the private sector without competition from the United States Government.

TITLE V—GENERAL PROVISIONS

SEC. 501. NONDISCRIMINATORY DATA AVAILABILITY

(a) General Rule.—Except as provided in subsection (b) of this section, any unenhanced data generated by the Landsat system or any other land remote sensing system funded and owned by the United States Government shall be made available to all users without preference, bias, or any other special arrangement (except on the basis of national security concerns pursuant to section 506) regarding delivery, format, pricing, or technical considerations which would favor one customer or class of customers over another.

(b) Exceptions.—Unenhanced data generated by the Landsat system or any other land remote sensing system funded and owned by the United States Government may be made available to the United States Government and its affiliated users at reduced prices, in accordance with this Act, on the condition that such unenhanced data are used solely for noncommercial purposes.

SEC. 502. ARCHIVING OF DATA.

(a) Public Interest.—It is in the public interest for the United States Government to—

(1) maintain an archive of land remote sensing data for historical, scientific, and technical purposes, including long-term global environmental monitoring;

(2) control the content and scope of the archive; and

(3) assure the quality, integrity, and continuity of the archive.

(b) Archiving Practices.—The Secretary of Interior, in consultation with the Landsat Program Management, shall provide for long-term storage, maintenance, and upgrading of a basic, global, land remote sensing data set (hereinafter referred to as the "basic data set") and shall follow reasonable archival practices to assure proper storage and preservation of the basic data set and timely access for parties requesting data.

(c) Determination of Content of Basic Data Set.—In determining the initial content of, or in upgrading, the basic data set, the Secretary of Interior shall—

(1) use as a baseline the data archived on the date of enactment of this Act;

(2) take into account future technical and scientific developments and needs, paying particular attention to the anticipated data requirements of global environmental change research;

(3) consult with and seek the advice of users and producers of remote sensing data and data products;

(4) consider the need for data which may be duplicative in terms of geographical coverage but which differ in terms of season, spectral bands, resolution, or other relevant factors;

(5) include, as the Secretary of Interior considers appropriate, unenhanced data generated either by the Landsat system, pursuant to title I, or by licensees under title II;

(6) include, as the Secretary of Interior considers appropriate, data collected by foreign ground stations or by foreign remote sensing space systems; and

(7) ensure that the content of the archive is developed in accordance with section 506.

(d) Public Domain.—After the expiration of any exclusive right to sell, or after relinquishment of such right, the data provided to the National Satellite Land Remote Sensing Data Archive shall be in the public domain and shall be made available to requesting parties by the Secretary of the Interior at the cost of fulfilling user requests.

SEC. 502. NONREPRODUCTION

Unenhanced data distributed by any licensee under Title II of this Act may be sold on the condition that such data will not be reproduced or disseminated by the purchaser for commercial purposes.

SEC. 503. REIMBURSEMENT FOR ASSISTANCE

The Administrator, the Secretary of Defense, and the heads of other United States Government agencies may provide assistance to land remote sensing system operators under the provisions of this Act. Substantial assistance shall be reimbursed by the operator, except as otherwise provided by law.

SEC. 504. ACQUISITION OF EQUIPMENT

The Landsat Program Management may, by means of a competitive process, allow a licensee under title II or any other private party to buy, lease, or otherwise acquire the use of equipment from the Landsat system, when such equipment is no longer needed for the operation of such system or for the sale of data from such system. Officials of other United States Government civilian agencies are authorized and encouraged to cooperate with the Secretary in carrying out this section.

SEC. 505. RADIO FREQUENCY ALLOCATION

(a) APPLICATION TO FEDERAL COMMUNICATIONS COMMISSION.—To the extent required by the Communications Act of 1934 (47 U.S.C. 151 et seq.), an application shall be filed with the Federal Communications Commission for any radio facilities involved with commercial remote sensing space systems licensed under title II.

(b) DEADLINE FOR FCC ACTION.—It is the intent of Congress that the Federal Communications Commission complete the radio licensing process under the Communications Act of 1934 (47 U.S.C. 151 et seq.), upon the application of any private sector party or consortium operator of any commercial land remote sensing space system subject to this Act, within 120 days of the receipt of an application for such licensing. If final action has not occurred within 120 days of the receipt of such an application, the Federal Communications Commission shall inform the applicant of any pending issues and of actions required to resolve them.

(c) DEVELOPMENT AND CONSTRUCTION OF UNITED STATES SYSTEMS.—Authority shall not be required from the Federal Communications Commission for the development and construction of any United States land remote sensing space system (or component thereof), other than radio transmitting facilities or components, while any licensing determination is being made.

(d) CONSISTENCY WITH INTERNATIONAL OBLIGATIONS AND PUBLIC INTEREST.—Frequency allocations made pursuant to this section by the Federal Communications Commission shall be consistent with international obligations and with the public interest.

SEC. 506. CONSULTATION

(a) CONSULTATION WITH SECRETARY OF DEFENSE.—The Secretary and the Landsat Program Management shall consult with the Secretary of Defense on all matters under this Act affecting national security. The Secretary of Defense shall be responsible for determining those conditions, consistent with this Act, necessary to meet national security concerns of the United States and for notifying the Secretary and the Landsat Program Management promptly of such conditions.

(b) CONSULTATION WITH SECRETARY OF STATE.—(1) The Secretary and the Landsat Program Management shall consult with the Secretary of State on all matters under this Act affecting international obligations. The Secretary of State shall be responsible for determining those conditions, consistent with this Act, necessary to meet international obligations and policies of the United States and for notifying promptly the Secretary and the Landsat Program Management of such conditions.

(2) Appropriate United States Government agencies are authorized and encouraged to provide remote sensing data, technology, and training to developing nations as a component of programs of international aid.

(3) The Secretary of State shall promptly report to the Secretary and Landsat Program Management any instances outside the United States of discriminatory distribution of Landsat data.

(c) STATUS REPORT.—The Landsat Program Management shall, as often as necessary, provide to the Congress complete and updated information about the status of ongoing operations of the Landsat system, including timely notification of decisions made with respect to the Landsat system in order to meet national security concerns and international obligations and policies of the United States Government.

(d) REIMBURSEMENTS.—If, as a result of technical modifications imposed on a licensee under title II on the basis of national security concerns, the Secretary, in consultation with the Secretary of Defense or with other Federal agencies, determines that additional costs will be incurred by the licensee, or that past development costs (including the cost of capital) will not be recovered by the licensee, the Secretary may require the agency or agencies requesting such technical modifications to reimburse the licensee for such additional or development costs, but not for anticipated profits. Reimbursements may cover costs associated with required changes in system performance, but not costs ordinarily associated with doing business abroad.

SEC. 507. ENFORCEMENT.

(a) IN GENERAL.—In order to ensure that unenhanced data from the Landsat system received solely for noncommercial purposes are not used for any commercial purpose, the Secretary (in collaboration with private sector entities responsible for the marketing and distribution of unenhanced data generated by the Landsat system) shall develop and implement a system for enforcing this prohibition, in the event that unenhanced data from the Landsat system are made available for noncommercial purposes at a different price than such data are made available for other purposes.

(b) AUTHORITY OF SECRETARY.—Subject to subsection (d), the Secretary may impose any of the enforcement mechanisms described in subsection (c) against a person who—

(1) receives unenhanced data from the Landsat system under this Act solely for noncommercial purposes (and at a different price than the price at which such data are made available for other purposes); and

(2) uses such data for other than noncommercial purposes.

(c) ENFORCEMENT MECHANISMS.—Enforcement mechanisms referred to in subsection (b) may include civil penalties of not more than $10,000 (per day per violation), denial of further unenhanced data purchasing privileges, and any other penalties or restrictions the Secretary considers necessary to ensure, to the greatest extent practicable, that unenhanced data provided for noncommercial purposes are not used to unfairly compete in the commercial market against private sector entities not eligible for data at the cost of fulfilling user requests.

(d) PROCEDURES AND REGULATIONS.—The Secretary shall issue any regulations necessary to carry out this section and shall establish standards and procedures governing the imposition of enforcement mechanisms under subsection (b). The standards and procedures shall include a procedure for potentially aggrieved parties to file formal protests with the Secretary alleging instances where such unenhanced data has been, or is being, used for commercial purposes in violation of the terms of receipt of such data. The Secretary shall promptly act to investigate any such protest, and shall report annually to the Congress on instances of such violations.

TITLE VI—PROHIBITION OF COMMERCIALIZATION OF WEATHER SATELLITES

SEC. 601. PROHIBITION.

Neither the President nor any other official of the Government shall make any effort to lease, sell, or transfer to the private sector, or commercialize, any portion of the weather satellite systems operated by the Department of Commerce or any successor agency.

SEC. 602. FUTURE CONSIDERATIONS.

Regardless of any change in circumstances subsequent to the enactment of this Act, even if such change makes it appear to be in the national interest to commercialize weather satellites, neither the President nor any official shall take any action prohibited by section 601 unless this title has first been repealed.

THE LAND REMOTE SENSING ACT OF 1992

Mr. PRESSLER. Mr. President, for the past 2 years I have worked on the legislation we have before us today. In February of this year, after consultation with several Government agencies and numerous user groups I introduced S. 2297 the Land Remote Sensing Act of 1992. In May of this year, Senator GORE and I held hearings on this legislation in the Commerce, Science, and Transportation Subcommittee on Science, Technology, and Space. There are two primary purposes for this bill. First, the United State's has long needed the establishment of a new policy framework for civil land satellite remote sensing. Second, Congress has needed to act to ensure the continuity and availability of Landsat data into the next century.

The legislation accomplishes these two goals by assigning new roles and responsibilities for the Landsat program within the U.S. Government and by providing for the procurement of the Landsat 7 spacecraft and associated ground data processing components. The legislation also authorizes an advanced technology demonstration program and establishes data policy goals. Through these provisions, the bill seeks to maintain United States' leadership in land remote-sensing.

Mr. President, the first satellite in the Landsat series was launched 20 years ago on July 23, 1972. At that time, the system was called the Earth Resources Technology Satellite [ERTS]. ERTS-1 was launched specifically to gather data for the scientific community working in the area of terrestrial resources analysis and management. ERTS-1 was the first civil land remote-sensing satellite. Since this launch, four additional satellites have been put into orbit. The program was renamed the Landsat Program in 1975. Landsat satellites collect multispectral images that are used by Government, private industry, nongovernmental organizations, and academia. Uses of these data currently include: crop identification and yield estimation; oil; gas and mineral exploration; urban and environmental planning and management; water resources modeling; map-making; and environmental hazards risk assessment.

Early Landsat satellites orbited the Earth at an altitude of approximately 900 km. Current Landsat satellites orbit the earth at an altitude of approximately 700 km, with the satellite passing over the same point on the earth every 16 days. Thematic mapper [TM] and multispectral scanner [MSS] data from Landsats 4 and 5 are either directly downlinked to ground receiving stations, or are transmitted via the Tracking and Data Relay Satellite [TDRSS] to a receiving station in the United States.

Both TM and MSS images cover an area 185 km by 185 km. MSS acquires 80-meter resolution data in four spectral bands while TM gathers 30-meter data in six spectral bands in the visible and near infrared and one band in the thermal infrared whose resolution is 120 meters. Because of the decay in the health of the transmission equipment on Landsats 4 and 5 because of old age, this TDRSS link must currently be used very sparingly. Landsat 6 will have only the direct downlink capability, augmented by on-board tape recorders which can be played back when the satellite passes over ground stations in the United States. There are data receiving stations located in 13 nations in addition to the United States.

A civil land remote sensing satellite program was initiated by the United States Geological Survey of the Department of the Interior as the earth resources observations systems [EROS] program in the mid-1960's. The ERTS/Landsat program was begun by the National Aeronautics and Space Administration [NASA] in 1969. Under NASA's management, Landsat was operated as an experimental satellite. In 1979, Landsat operations were transferred to the National Oceanic and Atmospheric Administration. In 1981 the Administration deleted from its budget initial funding for Landsats 4 and 5. In 1984, at the urging of the Reagan administration, Congress passed the Land Remote-Sensing Commercialization Act of 1984 (Public Law 98–365), which led to the selection of the Earth Observation Satellite Co. [EOSAT] as the Landsat contractor in 1985. Although the original contract was to have included funding for the construction of both Landsats 6 and 7, it was later modified to include only Landsat 6 after the U.S. Government failed to meet funding obligations. Landsat 6 is currently scheduled for launch in January, 1993. Erratic funding for the program, coupled with the high cost of data, $4,400 per scene, have resulted in restricted use of the data and caused concern—especially on the part of the scientific and academic communities—over the future of the program. This concern is shared by State and local government officials and environmental organizations.

Fortunately, Landsat 4 and 5 spacecraft have survived and continue to provide data despite the delays in the launch of Landsat 6. This situation will not continue indefinitely. This legislation is needed to provide adequate funding, and to establish a management infrastructure to build and launch Landsat 7. Most importantly, the continuation of the Landsat program will ensure that all users will be able to obtain Landsat data at reasonable prices.

In 1981, the Department of Commerce established the Civil Operational remote-Sensing Satellite Advisory Committee. This committee was formed by the Reagan administration to determine the best method of transferring the Landsat systems to the private sector. This committee issued a report, known as the "Halbouty Report", advising that Landsat commercialization be done gradually, starting with the ground distribution infrastructure. The consensus of three additional Government studies all urged caution in Landsat commercialization. I along with many others agreed that revenues from a commercial Landsat operation would not, in the short term, support the estimated costs of the Landsat program.

Ignoring these warnings, the Reagan administration continued down the path of commercialization. Originally, it was intended that weather satellites as well would be commercialized, with the revenues from the weather satellites making up the shortfall in the Landsat program. However, when Congress finally passed legislation (Public Law 98–365) in July 1984, whether satellites were specifically excluded from commercialization because of the fear on the part of Congress that commercialization of weather satellites might jeopardize the future of a system which was vital to the public safety.

A 1985 report by the U.S. National Academy of Sciences Space Applications Board termed the U.S. Civil Land Remote Sensing effort a Program in Crisis. The U.S. Congress, Office of Technology Assessment [OTA] said "In the next 5–10 years, the market is not likely to sustain commercial operations of the entire satellite land remote sensing system without substantial direct or indirect Government funding." In the spring of 1987, after 2 years of sporadic funding of the EOSAT contract, the contract was modified to include only one additional satellite, Landsat 6. The design parameters of Landsat 6 were modified to reduce cost, and to permit the satellite to be launched on a Titan II expendable launch vehicle rather than the Space Shuttle, as was the previous EOSAT plan.

In 1988, three independent studies were again conducted under contract to the Department of Commerce through NOAA. These studies, conducted independently by the Egan Group, Kodak Remote Sensing, and the Analytical Science Corp., reached essentially the same conclusion as the OTA study. The conclusion was that commercialization was not currently working, nor would it work in the foreseeable future. EOSAT was criticized in each of these reports for making no progress in developing the remote-sensing market as a commercial venture. During this entire period, the high cost of Landsat data inhibited its use by the scientific and academic communities. Later, a University of California at Santa Barbara survey of the academic community showed overwhelmingly that commercialization had a deleterious effect on uses of Landsat data in American colleges and research institutions. Eight-six percent said operation of the Landsat program should be conducted by the U.S. Government.

The number of Landsat scenes purchased by the academic community has fallen dramatically in the period from 1976 to 1990. Part of this decline in due, to doubt, to the fact that Landsat is no longer the novelty that it was in 1976. On the other hand, the high cost of data, coupled with the decreased tasking necessitated by the degraded state of the Landsat 4 and 5 spacecraft, make it less likely that a desired area will have been imaged at the time required for a specific research effort. Many times research projects cannot predict when images should be taken, because the event of interest has already occurred. Analysis of change is not possible if images were not taken of the desired area in the past because of a lack of commercial demand for the image.

For this reason, we included a provision in the legislation that stipulates all users will have access to Landsat 7 data at the "cost of fulfilling user requests" and the requirement for phasing down Landsats 4 through 6 data costs to reflect Landsat 7 data policy stated in section 105. I am pleased with the preliminary agreements reached between NASA and the Landsat 6 contractor so far, and understand that the price of Landsat 4 and 5 data for the U.S. Government and its affiliated users has already been agreed to at an average cost of $1,600 per scene. We expect the negotiations on a data purchase price to move forward in the required statutory phase down from this point in the negotiations with respect to Landsats 4 and 5. Additionally, since the contractor has represented that the Landsat 6 system will be new and more efficiently run, we expect that the agreed price for Landsat 6 data for the U.S. Government and its affiliated users will in no case be higher than the $1,600 price already agreed to for Landsats 4 and 5 data. Due to this new found increase in efficiency, we also believe it is realistic that Landsat 6 data can be made available all users at marginal cost within 3 years of the passage of this legislation.

In section 105 we mandate a single tier pricing policy at marginal cost of fulfilling user requests by directing that the administration should adopt such policy. The Landsat Program Management office should know that Congress is committed to a marginal cost, single tier price for Landsats 6 and 7 data. We expect the administration will in fact, formulate in no uncertain terms a marginal cost, single price for Landsat 7 data from the inception of Landsat 7 policy. There can be no deviation from this policy without the strongest burden of proof. In defining "United States Government and its affiliated users," we recognize that ultimately all environmental and natural resources research is global change research. The aggregate of local environmental change—much of which is studied by State and local governments and non-profit organizations locally, regionally and internationally—is global environmental change. It is imperative that the U.S. global change research program share data with and receive data from, State, and to the extent applicable, local governments, as well as non-profit organizations engaged in local, regional and international environmental research. This is important both to maximize the benefits of U.S. taxpayer investment in Landsat, as well as to gain the greatest understanding possible of regional and local impacts on climate change. For this reason, we have included independent environmental research by State and local governments, universities, Indian tribes, and non-profit public interest organizations in the definitions of the U.S. global change research program. We expect that through the open sharing of research results, this data will be made part of the U.S. global change research program, and its international counterpart programs where applicable.

Section 103(a) does not relieve the Landsat 6 contractor from the responsibility, of carrying out substantial revisions of its data policy, including major reductions in cost of data for the U.S. Government and its affiliated users specified in section 103(a), during all earlier phases of the transition. Section 103(b) is not meant to preclude other options if such options appear to be more efficient or cost effective, such as the EROS Data Center. Section 501(b) reflects our intent that this requirement apply throughout the transition period.

The definition of noncommercial purposes in Section 3 is not intended to preclude the sharing of data between States, local governments, Indian Tribes or non-profit research organizations to the extent that this sharing furthers non-commercial research purposes. The definition of "data preprocessing" is intended to provide the option of ordering additional preprocessing functions, with the understanding that those data requesters who order such preprocessing by the Landsat 6 contractor will be charged a premium over and above the marginal cost of fulfilling users requests.

Mr. President, I would like to thank Science Subcommittee Chairman Senator GORE, for all his assistance in creating this legislation. I also would like to thank Chairman GEORGE BROWN of the House of Representatives for his tireless efforts in bringing this legislation together. This legislation is needed, and I urge my colleagues to support it.

The ACTING PRESIDENT pro tempore. Is there further debate on the substitute amendment?

Without objection, the substitute amendment (No. 3416) is agreed to.

The ACTING PRESIDENT pro tempore. Without objection, the bill is considered read three times. The bill was deemed read the third time.

Mr. FORD. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of H.R. 3614, the House companion; that the Senate proceed its immediate consideration; that all after the enacting clause be stricken and the text of S. 2297, as amended, be inserted in lieu thereof; that the bill be advanced to third reading, passed; and, the motion to reconsider laid upon the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So the bill (H.R. 3614), as amended, was passed.

Mr. SIMPSON. Mr. President, on behalf of Senator PRESSLER, I now send to a desk a title amendment, and ask unanimous consent that the amendment be agreed to.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The title was amended so as to read: "An act to secure United States leadership in land remote-sensing by providing data continuity for the Landsat program and by establishing a new national Landsat policy, and for other purposes."

MEASURE RETURNED TO THE CALENDAR—S. 2297

Mr. FORD. Mr. President, I ask unanimous consent that S. 2297 be returned to the calendar.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PERSIAN GULF VETERANS HEALTH

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3346, relating to Persian Gulf veterans health introduced earlier today by Senators CRANSTON, SPECTER, KENNEDY, NUNN, SIMPSON, and others; that the bill be deemed read a third time, and passed; that the motion to reconsider be laid upon the table, any statements relative to the passage of this item appear at the appropriate place in the RECORD.

So the bill (S. 3346) was deemed read the third time, and passed, as follows:

S. 3346

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Persian Gulf War Veterans' Health Status Act".

SEC. 2. PERSIAN GULF WAR VETERANS HEALTH REGISTRY.

(a) ESTABLISHMENT OF REGISTRY.—The Secretary of Veterans Affairs shall establish and maintain a special record to be known as the "Persian Gulf War Veterans Health Registry" (in this section referred to as the "Registry").

(b) CONTENTS OF REGISTRY.—Except as provided in subsection (c), the Registry shall include the following information:

(1) A list containing the name of each individual who served as a member of the Armed Forces in the Persian Gulf theater of operations during the Persian Gulf War and who—

(A) applies for care or services from the Department of Veterans Affairs under chapter 17 of title 38, United States Code;

(B) files a claim for compensation under chapter 11 of such title on the basis of any disability which may be associated with such service;

(C) dies and is survived by a spouse, child, or parent who files a claim for dependency and indemnity compensation under chapter 13 of such title on the basis of such service;

(D) requests from the Department a health examination under section 3 of this Act; or

(E) receives from the Department of Defense a health examination similar to the health examination referred to in subparagraph (D) and requests inclusion in the Registry.

(2) Relevant medical data relating to the health status of, and other information that the Secretary considers relevant and appropriate with respect to, each individual described in paragraph (1) who—

(A) grants to the Secretary permission to include such information in the Registry; or

(B) at the time the individual is listed in the Registry, is deceased.

(c) INDIVIDUALS SUBMITTING CLAIMS OR MAKING REQUESTS BEFORE DATE OF ENACTMENT.—If in the case of an individual described in subsection (b)(1) the application, claim, or request referred to in such subsection was submitted, filed, or made, before the date of the enactment of this Act, the Secretary shall, to the extent feasible, include in the Registry such individual's name and the data and information, if any, described in subsection (b)(2) relating to the individual.

(d) DEPARTMENT OF DEFENSE INFORMATION.—The Secretary of Defense shall furnish to the Secretary of Veterans Affairs such information maintained by the Department of Defense as the Secretary of Veterans Affairs considers necessary to establish and maintain the Registry.

(e) RELATION TO DEPARTMENT OF DEFENSE REGISTRY.—The Secretary of Veterans Affairs, in consultation with the Secretary of Defense, shall ensure that information is collected and maintained in the Registry in a manner that permits effective and efficient cross-reference between the Registry and the registry established under section 734 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190; 105 Stat. 1411; 10 U.S.C. 1074 note), as amended by section 4 of this Act.

(f) ONGOING OUTREACH TO INDIVIDUALS LISTED IN REGISTRY.—The Secretary of Veterans Affairs shall, from time to time, notify individuals listed in the Registry of significant developments in research on the health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War.

SEC. 3. HEALTH EXAMINATIONS AND COUNSELING FOR VETERANS ELIGIBLE FOR INCLUSION IN CERTAIN HEALTH-RELATED REGISTRIES.

(a) IN GENERAL.—(1) The Secretary of Veterans Affairs—

(A) shall, upon the request of a veteran described in subsection (b)(1), provide the veteran with a health examination and consultation and counseling with respect to the results of the examination; and

(B) may, upon the request of a veteran described in subsection (b)(2), provide the veteran with such an examination and such consultation and counseling.

(2) The Secretary shall carry out appropriate outreach activities with respect to the provision of any health examinations and consultation and counseling services under paragraph (1).

(b) COVERED VETERANS.—(1) In accordance with subsection (a)(1)(A), the Secretary shall provide an examination, consultation, and counseling under that subsection to any veteran who is eligible for listing or inclusion in the Persian Gulf War Veterans Health Registry established by section 2 of this Act.

(2) In accordance with subsection (a)(1)(B), the Secretary may provide an examination, consultation, and counseling under that subsection to any veteran who is eligible for listing or inclusion in any other similar health-related registry administered by the Secretary.

SEC. 4. EXPANSION OF COVERAGE OF PERSIAN GULF REGISTRY.

Section 734 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190; 105 Stat. 1411; 10 U.S.C. 1074 note) is amended—

(1) by amending subsections (a) and (b) to read as follows:

"(a) ESTABLISHMENT OF REGISTRY.—The Secretary of Defense shall establish and maintain a special record (in this section referred to as the 'Registry') relating to the following members of the Armed Forces:

"(1) Members who, as determined by the Secretary, were exposed to the fumes of burning oil in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

"(2) Any other members who served in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

"(b) CONTENTS OF REGISTRY.—(1) The Registry shall include—

"(A) with respect to each class of members referred to in each of paragraphs (1) and (2) of subsection (a)—

"(i) a list containing each such member's name and other relevant identifying information with respect to the member; and

"(ii) to the extent that data are available and inclusion of the data is feasible, a description of the circumstances of the member's service during the Persian Gulf conflict, including the locations in the Operation Desert Storm theater of operations in which such service occurred and the atmospheric and other environmental circumstances in such locations at the time of such service; and

"(B) with respect to the members referred to in subsection (a)(1), a description of the circumstances of each exposure of each such member to the fumes of burning oil as described in such subsection (a)(1), including the length of time of the exposure.

"(2) The Secretary shall establish the Registry with the advice of an independent scientific organization.";

(2) in subsection (c)(1), by striking out "subsection (a)" and inserting in lieu thereof "subsection (a)(1)"; and

(3) in subsection (d), by inserting "pursuant to subsection (a)(1)" after "Registry".

SEC. 5. STUDY OF PERSIAN GULF REGISTRY AND PERSIAN GULF WAR VETERANS HEALTH REGISTRY.

(a) STUDY.—The Director of the Office of Technology Assessment shall, in a manner consistent with the provisions of the Technology Assessment Act of 1972 (2 U.S.C. 471 et seq.), assess—

(1) the potential utility of each of the Persian Gulf Registry and the Persian Gulf War Veterans Health Registry for scientific study and assessment of the intermediate and long-term health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War;

(2) the extent to which each registry meets the requirements of the provisions of law under which the registry is established;

(3) the extent to which data contained in each registry—

(A) are maintained in a manner that ensures permanent preservation and facilitates the effective, efficient retrieval of information that is potentially relevant to the scientific study of the intermediate and long-term health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War; and

(B) would be useful for scientific study regarding such health consequences;

(4) the adequacy of any plans to update each of the registries;

(5) the extent to which the Department of Defense or the Department of Veterans Affairs, as the case may be, is assembling and maintaining information on the Persian Gulf theater of operations (including information on troop locations and atmospheric and weather conditions) in a manner that facilitates the usefulness of, maintenance of, and retrieval of information from, the applicable registry; and

(6) the adequacy and compatibility of protocols for the health examinations and counseling provided under section 3 and health examinations provided by the Department of Defense to members of the Armed Forces for the purpose of assessing the health status of members of the Armed Forces who served in the Persian Gulf theater of operations during the Persian Gulf War.

(b) ACCESS TO INFORMATION.—The Secretary of Veterans Affairs and the Secretary of Defense shall provide the Director with access to such records and information under the jurisdiction of each such secretary as the Director determines necessary to permit the Director to carry out the study required under this section.

(c) REPORTS.—The Director shall—

(1) not later than 270 days after the date of the enactment of this Act, submit to Congress a report on the results of the assessment carried out under this section of the Persian Gulf Registry and health-examination protocols; and

(2) not later than 15 months after such date, submit to Congress a report on the results of the assessment carried out under this section of the Persian Gulf War Veterans Health Registry.

(d) DEFINITIONS.—For the purposes of this section—

(1) The term "Persian Gulf Registry" means the registry established under section 734 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190; 105 Stat. 1411; 10 U.S.C. 1074 note), as amended by section 4 of this Act.

(2) The term "Persian Gulf War Veterans Health Registry" means the Persian Gulf War Veterans Health Registry established under section 2 of this Act.

SEC. 6. AGREEMENT WITH NATIONAL ACADEMY OF SCIENCES FOR REVIEW OF HEALTH CONSEQUENCES OF SERVICE DURING THE PERSIAN GULF WAR.

(a) AGREEMENT.—(1) The Secretary of Veterans Affairs and Secretary of Defense jointly shall seek to enter into an agreement with the National Academy of Sciences for the Medical Follow-Up Agency (MFUA) of the Institute of Medicine of the Academy to review existing scientific, medical, and other information on the health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War.

(2) The agreement shall require MFUA to provide members of veterans organizations and members of the scientific community (including the Director of the Office of Technology Assessment) with the opportunity to comment on the method or methods MFUA proposes to use in conducting the review.

(3) The agreement shall permit MFUA, in conducting the review, to examine and evaluate medical records of individuals who are included in the registries referred to in section 5(d) for purposes MFUA considers appropriate, including the purpose of identifying illnesses of such individuals.

(4) The Secretary of Veterans Affairs and the Secretary of Defense shall seek to enter into the agreement under this section not later than 180 days after the date of the enactment of this Act.

(b) REPORT.—(1) The agreement under this section shall require the National Academy of Sciences to submit to the committees and secretaries referred to in paragraph (2) a report on the results of the review carried out under the agreement. Such report shall contain the following:

(A) An assessment of the effectiveness of actions taken by the Secretary of Veterans Affairs and the Secretary of Defense to collect and maintain information that is potentially useful for assessing the health consequences of the military service referred to in subsection (a).

(B) Recommendations on means of improving the collection and maintenance of such information.

(C) Recommendations on whether there is a sound scientific basis for an epidemiological study or studies on the health consequences of such service, and if the recommendation is that there is a sound scientific basis for such a study or studies, the nature of the study or studies.

(2) The committees and secretaries referred to in paragraph (1) are the following:

(A) The Committees on Veterans' Affairs of the Senate and House of Representatives.

(B) The Committees on Armed Services of the Senate and House of Representatives.

(C) The Secretary of Veterans Affairs.

(D) The Secretary of Defense.

(c) FUNDING.—(1) The Secretary of Veterans Affairs and the Secretary of Defense shall make available up to a total of $500,000 in fiscal year 1993, from funds available to the Department of Veterans Affairs and the Department of Defense in that fiscal year, to carry out the review. Any amounts provided by the two departments referred to in the previous sentence shall be paid in equal portions by the two departments.

(2) If the Secretary of Veterans Affairs and the Secretary of Defense enter into an agreement under subsection (a) with the National Academy of Sciences—

(A) the Secretary of Veterans Affairs shall make available $250,000 in each of fiscal years 1994 through 2003, from amounts available to the Department of Veterans Affairs in each such fiscal year, to the National Academy of Sciences for the general purpose of conducting epidemiological research with respect to military and veterans populations; and

(B) the Secretary of Defense shall make available $250,000 in each of fiscal years 1994 through 2003, from amounts available to the Department of Defense in each such fiscal year, to the National Academy of Sciences for the purposes of carrying the research referred to in subparagraph (A).

SEC. 7. COORDINATION OF GOVERNMENT ACTIVITIES ON HEALTH-RELATED RESEARCH ON THE PERSIAN GULF WAR.

(a) DESIGNATION OF COORDINATING ORGANIZATION.—The President shall designate, and may redesignate from time to time, the head of an appropriate department or agency of the Federal Government to coordinate all research activities undertaken or funded by the Executive Branch of the Federal Government on the health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War.

(b) REPORT.—Not later than March 1 of each year after 1992, the head of the department or agency designated under subsection (a) shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the status and results of all such research activities undertaken or by the Executive Branch of the Federal Government during the previous year.

SEC. 8. DEFINITION.

For the purposes of this Act, the term "Persian Gulf War" has the meaning given such term in section 101(33) of title 38, United States Code.

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I today introduced a bill, S. 3346, to address concerns raised about the health of the courageous men and women who served in our Armed Forces in Operations Desert Shield and Desert Storm. I am very pleased to be joined in introducing this measure by the committee's ranking Republican member, Mr. SPECTER; the Senator from Massachusetts [Mr. KENNEDY]; the chairman of the Armed Services Committee, Mr. NUNN; the chairman of the Armed Services Committee's Subcommittee on Manpower and Personnel, Mr. GLENN; Veterans' Affairs Committee members DECONCINI, GRAHAM, ROCKEFELLER, AKAKA, DASCHLE, SIMPSON, THURMOND, MURKOWSKI, JEFFORDS, and Senator KOHL.

SUMMARY OF PROVISIONS

Mr. President, the proposed Persian Gulf War Veterans' Health Status Act contains freestanding provisions and amendments to Public Law 102-190 that would:

PERSIAN GULF WAR VETERANS HEALTH REGISTRY

First, require the Secretary of Veterans Affairs to establish and maintain a Persian Gulf war veterans health registry listing the name of each individual who served in the Persian Gulf war theater of operations during the war and who, first, applies for Department of Veterans' Affairs [VA] care or services; second, files a claim for VA compensation based on any disability that might be associated with this service; third, dies and is survived by a spouse, child, or parent who files a claim for dependency and indemnity compensation [DIC] based on this service; fourth, requests a health examination from VA, as authorized in section 3 of the bill, or fifth, receives from the Department of Defense [DOD] a health examination similar to the health examination given by VA to veterans under section 3 of the bill and requests inclusion in the registry. (Section 2(b)(1).)

Second, require that the registry include relevant medical data relating to the health status of, and other information that the Secretary considers relevant and appropriate with respect to, each individual listed in the registry who either grants permission to include this type of information in the Registry or is deceased at the time the individual is listed in the Registry. (Section 2(b)(2).)

Third, require the Secretary to include in the registry, to the extent feasible, similar information about such individuals who served in the Persian Gulf that is developed in connection with similar actions occurring prior to enactment of this legislation. (Section 2(c).)

Fourth, require the Secretary of Defense to provide to the Secretary of Veterans' Affairs any information the Secretary of Veterans' Affairs considers necessary to establish and maintain the Registry. (Section 2(d).)

Fifth, require the Secretary of Veterans' Affairs, in consultation with the Secretary of Defense, to ensure that information in the registry is collected and maintained in a manner that permits effective and efficient cross-reference between the registry and the Department of Defense [DOD] Persian Gulf registry, established under section 734 of the National Defense Authorization Act for fiscal years 1992 and 1993, Public Law 102-190, as modified by the proposed legislation (Section 2(e).)

Sixth, require VA, from time to time, to notify individuals listed in the registry of significant research developments regarding the health consequences of military service in the Persian Gulf war. (Section 2(f).)

HEALTH EXAMINATIONS AND COUNSELING FOR VETERANS ELIGIBLE FOR INCLUSION IN CERTAIN HEALTH-RELATED REGISTRIES

Seventh, require VA to provide, upon the request of a veteran, a health examination and consultation and counseling concerning the results of the examination to any veteran eligible for listing or inclusion in the VA Persian Gulf war veterans health registry and authorize these services for any veteran eligible for listing or inclusion in any other health-related registry established by VA who requests the services. (Section 3(a) and (b).)

Eighth, require VA to carry out appropriate outreach activities to inform veterans of the availability of the health examinations. (Section 3(a)(2).)

EXPANSION OF COVERAGE OF PERSIAN GULF WAR REGISTRY

Tenth, expand the DOD registry—established under section 734 of Public Law 102-190 for listing members of the Armed Forces who were exposed to the fumes of burning oil in the Operation Desert Storm theater of operations during the Persian Gulf conflict—to include any other member of the Armed Forces who served in the Operation Desert Storm theater of operations during the Persian Gulf conflict. (Section 4(1), adding proposed section 734(a)(2).)

Eleventh, expand the contents of the DOD registry to include, in addition to the name of listed members, other relevant identifying information and, to the extent that data are available and inclusion of the data is feasible, a description of the circumstances of the member's service during the war, including the locations in the theater of operations in which the member's service occurred and the atmospheric and other environmental circumstances in those locations at the time. (Section 4(1), adding section 734(b)(1)(A).)

Twelfth, recodify the requirement in current law that the DOD registry include, with respect to the listed members exposed to the fumes of burning oil, a description of the circumstances of each exposure of each such member to the fumes, including the length of time of the exposure. (Section 4(1), adding section 734(b)(1)(B).)

Thirteenth, recodify the requirement in current law that the Secretary establish the DOD registry with the advice of an independent scientific organization. (Section 4(1), adding proposed section 734(b)(2).)

STUDY OF PERSIAN GULF REGISTRY AND PERSIAN GULF WAR VETERANS HEALTH REGISTRY

Fourteenth, require the Director of the Office of Technology Assessment [OTA] to assess—

First, the potential utility of each of the VA and DOD registries for scientific study of the health consequences of military service in the Persian Gulf theater of operations:

Second, the extent to which each of the registries meets the requirements of the respective laws establishing that registry:

Third, the extent to which data in each registry, first, are maintained in a manner that ensures permanent preservation and allows effective, efficient retrieval of information potentially relevant to scientific study of the health consequences of military service in the Persian Gulf, and second, would be useful for scientific study regarding these health consequences;

Fourth, the adequacy of any plans to update each of the registries;

Fifth, the extent to which VA and DOD are gathering and maintaining information on the Persian Gulf theater of operations, including troop locations and environmental conditions, in a manner that facilitates the usefulness, maintenance, and retrieval of information from the respective registry; and

Sixth, the adequacy and compatibility VA and DOD's protocols for health examinations provided for the purpose of determining the health status of any member of the Armed Forces or any reserve component thereof who served in the Persian Gulf war. (Section 5(a).)

Fifteenth, require VA and DOD to give OTA access to the records and information under each department's jurisdiction that OTA determines is necessary to permit OTA to carry out the assessments. (Section 5(b).)

Sixteenth, require OTA to report to Congress on the assessments regarding the DOD registry and the compatibility of health-examination protocols within 270 days after enactment of the legislation and regarding the VA registry within 15 months after enactment. (Section 5(c).)

AGREEMENT WITH NATIONAL ACADEMY OF SCIENCES FOR REVIEW OF HEALTH CONSEQUENCES OF SERVICE DURING THE PERSIAN GULF WAR

Seventeenth, require the Secretaries of Veterans' Affairs and of Defense, within 180 days after enactment, to seek to contract with the National Academy of Sciences [NAS] to have the NAS Medical Follow-up Agency [MFUA] review existing scientific, medical, and other information on the health consequences of in-theater service during the Persian Gulf war. (Section 6(a)(1) and (4).)

Eighteenth, provide that the agreement shall require MFUA to provide veterans organizations and the scientific community—including the Director of the Office of Technology Assessment—with an opportunity to comment on the method or methods that MFUA proposes to use to conduct the review. (Section 6(a)(2).)

Nineteenth, require that the agreement allow MFUA, in conducting the review, to examine and evaluate medical records of individuals included in the two registries for purposes MFUA considers appropriate, including the purpose of identifying illnesses of these individuals. (Section 65(a)(3).)

Twentieth, require MFUA to report the results of its review to the Senate and House Committees on Veterans' Affairs and on Armed Services and to the Secretaries of Veterans' Affairs and of Defense, including MFUA's, assessment of the effectiveness of actions by the two Secretaries to collect and maintain information potentially useful for assessing the health consequences of in-theater service; recommendations on how to improve collection and maintenance of this information; and recommendations on whether there is a sound scientific basis for an epidemiological study or studies of the health consequences of this service and, if so, the nature of any such study. (Section 6(b).)

Twenty-first, require the two Secretaries to make available, up to $500,000 in fiscal year 1993, from funds available to the two respective departments for that fiscal year, divided equally between the departments, to carry out the review. (Section 6(c)(1).)

Twenty-second, if VA and DOD contract with NAS for the MFUA study, require each department to provide $250,000 in each of fiscal years 1994 through 2003, from amounts available to each department in each of these fiscal years, to NAS for the general purpose of conducting epidemiological research with respect to military and veterans populations. (Section 6(c).)

COORDINATION OF GOVERNMENT ACTIVITIES ON HEALTH-RELATED RESEARCH ON THE PERSIAN GULF WAR

Twenty-third, required the President to designate the head of an appropriate Federal agency to coordinate all research activities undertaken or funded by the executive branch of the Federal Government on the health consequences of in-theater service during the Persian Gulf war. The coordinator would be required to report to the Committees on Veterans' Affairs by March 1 of each year after 1992 on the status and results of this research. (Section 7.)

Mr. President, since the need for this legislation is pressing and the time remaining in this Congress is very short, I am seeking unanimous consent for the Senate to proceed immediately to the bill and pass it. Following Senate passage of this measure, I will work with Members of the House of Representatives to seek prompt action on this legislation before adjournment so that it can be sent to the White House for signature this month.

Mr. President, my colleagues are well aware that some veterans and current active duty service members who served in the Persian Gulf war theater of operations are experiencing serious, unexplained health problems that some suspect are related to in-theater service before, during, or after the war. A small number also have experienced certain health problems that clearly are related to this service, such as leishmaniasis, which results from infection by a certain tropical parasite.

All of us have seen the press reports of what the articles refer to as mysterious illnesses in Persian Gulf veterans. Some of the 540,000 American troops who served in the Persian Gulf have reported lingering health problems, such as joint pain, chronic fatigue, hair loss, bleeding gums, and skin rashes. Some concern has focused on the effects of the burning oil from wells in Kuwait that were set afire by enemy troops. Scientists have not as yet, however, been able to establish a link between the undiagnosed symptoms and the oil fires. In fact, environmental scientists have advised our committee that the oil fires burned so hot that they emitted only soot and other particulate matter, with practically no detectable levels of volatile petrochemicals that might cause health problems.

Mr. President, military health authorities have reported that some of the symptoms could be related to the stresses of combat. Some have misinterpreted this as a denial of the observed medical problems. This is not the case. Our experience with posttraumatic stress disorder clearly shows that stress can create or aggravate real physical symptoms that require treatment. On this point, the Army physician in charge of the Office of Professional Services and Chief of Medical Corps Affairs of the Office of the Surgeon General, Brig. Gen. Ronald Blanck, readily acknowledges that "these people have a real disease."

Mr. President, Senators KOHL and DASCHLE and I coauthored an amendment to last year's defense authorization measure, Public Law 102–190, that established a Department of Defense registry of all service members who were exposed to the fumes of burning oil during service in the Persian Gulf. The registry is intended to preserve information about these troops that could prove vital in assessing the health impact of the oil fires.

The Senate adopted our amendment less than 6 months after Operation Desert Storm began. I believe that quick action in the Congress demonstrated how much we have learned from our experience with agent orange. One of the great difficulties in trying to resolve whether certain diseases are related to exposure to agent orange in Vietnam has been the effort to document who was exposed, using old and inadequate information about troop locations and other circumstances of veterans' service in Vietnam. Establishing a DOD registry was an attempt to compile and analyze this type of data about Persian Gulf veterans before the information is lost or hopelessly dispersed.

Mr. President, with the appearance of these newly recognized, unexplained medical problems in Persian Gulf veterans, it is clear that a DOD registry limited to servicemembers exposed to fumes, by itself, is not sufficient. The DOD registry must be expanded and we must require the Department of Veterans' Affairs to collect and preserve information about the health of these veterans.

Mr. President, I congratulate former Secretary of Veterans Affairs, Edward J. Derwinski and Deputy Secretary Anthony J. Principi, now the Acting Secretary, for VA's request for legislation to establish a VA health registry and authorize medical examinations for Persian Gulf veterans. Their leadership on this issue is an encouraging sign of how far our Government has come in recognizing its responsibilities to veterans exposed to environmental dangers during service. This is an especially welcome signal to those of us who have spent so many years seeking equitable compensation and medical treatment for veterans exposed to radiation or agent orange.

NEED FOR SCIENTIFIC APPROACH

Mr. President, while I applaud VA's proposal, I believe that it left out some important elements. Even VA was careful to point out that the registry it proposed, which would include a largely self-selected group of veterans, is not very useful scientifically. In announcing the proposed registry and health examinations, however, VA asserted that the registry and examinations would "reassure veterans that VA will keep ahead of the science and remain committed to long-term monitoring" of these veterans. The VA proposal itself, however, did not address the scientific issues involved in determining whether or not those who served in the Persian Gulf experience long-term adverse health consequences.

Mr. President, the legislation we are introducing today does address the need for valid, long-term scientific study of these reported medical problems—without reaching any conclusions at this time about specific conditions or mandating any particular studies. The best scientific advice available to us at this point indicates that such legislation would be premature.

Our legislation, in addition to creating a VA health registry and authorizing health examinations, would require VA and DOD to contract with the National Academy of Sciences' Medical Follow Up Agency [MFUA] to review the existing scientific, medical, and other information on the health consequences of military service in the Persian Gulf theater of operations. MFUA also would assess the effectiveness of VA's and DOD's efforts to collect and maintain information potentially useful for assessing these health consequences. Finally, MFUA would evaluate and recommend whether there is a scientific basis for VA and DOD to undertake an epidemiological study or studies, and, if so, what types of studies would be appropriate.

ADEQUACY OF VA AND DOD REGISTRY DATA

Mr. President, our bill also would direct the Office of Technology Assessment, an agency of the Congress, to evaluate the potential scientific usefulness of both the new VA registry and the existing DOD registry.

Mr. President, the DOD registry currently must include only those service members who were exposed to the fumes of burning oil during the war, as determined by the Secretary of Defense. Our bill would expand the DOD registry to include all others who served in the Persian Gulf war theater of operations. The expanded registry would be required to include information about the circumstances of the service of all service members who served in the Persian Gulf, such as troop-location data and atmospheric and environmental measurements for specific locations and times. I thank the distinguished chairman of the Armed Services Committee and cosponsor of this legislation, Mr. NUNN, for his leadership on the provisions expanding the DOD registry.

Mr. President, the VA registry in this legislation is modeled closely on the ionizing radiation registry created by the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, Public Law 99-576, which I coauthored in the Senate with the Senator from Wyoming [Mr. SIMPSON].

COORDINATION OF FEDERAL RESEARCH REGARDING HEALTH EFFECTS OF PERSIAN GULF SERVICE

Mr. President, a final part of the bill would require the President to designate a senior Government official to coordinate all research activities undertaken or funded by the executive branch on the health consequences of military service in the Persian Gulf. This provision is modeled on another law I coauthored, the Veterans Health Programs Extension and Improvement Act of 1979, Public Law 96-151, which required the President to ensure that agencies coordinate all Federal research on agent orange. The White House Domestic Policy Council currently has the responsibility for coordinating Federal research on agent orange, and I expect that an official at a similarly high-ranking level would be appointed to coordinate Federal research on Persian Gulf war health issues.

EXPEDITED CONSIDERATION

Mr. President, I am seeking expedited consideration of this measure for several reasons. One obvious reason is the extremely short time we have left in this Congress. There simply is not time to follow the regular legislative procedure for this bill and still have any chance of enacting it this year.

More important, however, is that every day we delay in setting in place the mechanism needed to address the health concerns of Persian Gulf veterans could result in the loss or dispersion of information that might prove essential for resolving existing health concerns—or concerns that might arise in the future—about service in the Persian Gulf. Each day, it may become more difficult to collect and authenticate necessary information. The positive actions taken by the Secretaries of Veterans' Affairs and Defense to date highlight the importance of taking immediate steps to preserve this information in usable forms; the additional actions this legislation would require will help to ensure that their is no undue delay of long-term scientific investigation of the health consequences of Persian Gulf service or any avoidable loss of data necessary for such inquiry.

Mr. President, this legislation has been developed in consultation with a wide range of interested and responsible parties, including various scientific experts; the Department of Veterans Affairs; the Department of Defense; Senator KENNEDY, who as chairman of the Committee on Labor and Human Resources, has vast experience regarding health research issues; the very able chairman of the Armed Services Committee, Senator NUNN; Senator KOHL, with whom I coauthored the provision creating DOD's Persian Gulf registry; the ranking majority member of our committee, Senator DECONCINI; Senator DASCHLE, a member of our committee with whom I coauthored the Agent Orange Act of 1991 and a coauthor of the provision creating the DOD registry; the ranking Republican member of our committee, Senator SPECTER; and the distinguished chairman and ranking minority Member of the House Committee on Veterans' Affairs, Mr. MONTGOMERY and Mr. STUMP.

Mr. President, this legislation has been through many drafts and I am pleased to report to the Senate that the bill I will introduce generally is acceptable to the leadership of the House Committee on Veterans' Affairs and that the House will act promptly on the bill.

Mr. President, this bill is an excellent demonstration of bipartisan cooperation. I believe it represents Government at its most responsive in the service of those who have given so much for the rest of us. I urge my colleagues to support the measure.

Mr. KENNEDY. Mr. President, as an original cosponsor of S. 3346, the proposed Persian Gulf War Veterans' Health Status Act, I congratulate my good friend, the chairman of the Committee on Veterans' Affairs, Senator CRANSTON for his excellent work on this legislation. I am extremely pleased that the Senate is considering this legislation that addresses the health concerns of Persian Gulf war veterans.

The bill we are considering today would authorize the Department of Veterans Affairs to provide a health examination, and counseling regarding the results of any exam, to any veteran who served in the Persian Gulf war theater of operations. The veterans' names would be placed on a VA registry of Persian Gulf war veterans along with data from their examinations if the veterans give permission.

Many Persian Gulf war veterans, even those with no present health problems, are concerned by media reports of mysterious illnesses among their colleagues. The health examinations that are provided in the bill will help to allay these concerns. Periodically, VA would be able to provide veterans listed on the registry with current information about the health consequences of military service in the Persian Gulf war.

The registry and health examinations that this legislation would authorize are very important to these veterans, and I want to be sure that Congress' intentions are clear.

As I understand it, under the proposal before us today, if the veteran seeking the exam has a current health problem, VA should make every reasonable effort to diagnose the condition. The diagnosis might require some necessary and reasonable medical tests. Nothing in the bill would prohibit VA from providing more than one health examination to veterans requesting additional examinations. Is my understanding on these points correct?

Mr. CRANSTON. Mr. President, the distinguished Senator from Massachusetts is correct.

The legislation we are considering today would authorize VA to provide health examinations to any veteran who served in the theater of operations of the Persian Gulf war. Nothing in the bill limits the number of examinations that VA may provide to a veteran. I expect that VA would provide as many additional examinations to eligible veterans as are necessary and reasonable. I have in mind particularly those cases in which the veteran has received an examination and later develops significant symptoms that are of concern to the veteran. Further, I intend that VA make necessary efforts to diagnose illnesses reported by a veteran, including conducting such diagnostic tests as are reasonable and appropriate in individual cases.

On this point, I note that VA has designated three medical centers as referral centers, where Persian Gulf war veterans with symptoms difficult to diagnose are being sent and observed by multidisciplinary teams of experts on environmental illnesses. The referral centers are at VA medical centers located in Washington, DC, Houston, TX, and Los Angeles, CA. I am pleased that VA appears to be committed to learning the cause or causes of these illnesses being reported by Persian Gulf war veterans.

Mr. KENNEDY. Mr. President, I thank my friend from California for his response.

I also note that the legislation will require VA and DOD to seek to contract with the National Academy of Sciences to have the medical followup agency conduct a review of scientific, medical, and other information on the health consequences of military service in the Persian Gulf war. The followup agency will also be required to assess the effectiveness of VA's and DOD's efforts to collect and maintain information potentially useful for assessing these conditions and to recommend whether VA and DOD should undertake epidemiological studies of Persian Gulf war veterans.

The legislation provides the followup agency with access to health records of individuals listed in the registry who have reported an illness. However, the legislation does not explicitly require that DOD and VA give the followup agency access to other information that might be necessary to conduct the review. As I understand it, Congress expects the followup agency to have full access to any data it considers necessary. VA and DOD must be totally forthcoming in sharing this information with the followup agency, and the followup agency must, as it has in the past, respect the confidential nature of this information.

Does the chairman of the Committee on Veterans' Affairs agree with my understanding on this point?

Mr. CRANSTON. Mr. President, the Senator from Massachusetts certainly is correct to expect that VA and DOD will provide MFUA with access to any data MFUA feels is necessary to complete a thorough review.

Since concerns first surfaced about possible health problems related to service in the Persian Gulf war, VA and DOD have been extremely forthcoming and cooperative. I believe the administration's actions to date indicate an appropriate attitude toward the health consequences of possible exposure to toxic environmental agents or other hazards during military service.

Mr. President, I thank my good friend, Senator KENNEDY, for his cooperation and assistance in developing this important legislation. Senator KENNEDY's work on this legislation, and other veterans issues, demonstrates his genuine concern for the welfare of our Nation's veterans.

Mr. KENNEDY. Mr. President, I thank the distinguished and able chairman of the Committee on Veterans' Affairs for his comments.

Mr. DASCHLE. Mr. President, I would like to take a moment to follow up on the discussions that have just taken place between the chairman of the Veterans' Affairs Committee and Senator KENNEDY in order to answer some additional questions that veterans and others may have about the bill.

The legislation before the Senate today is not complicated, and it is designed to establish by law the need for greater attention to and tracking of the health problems that may develop or have developed among Persian Gulf veterans. The legislation is intentionally broad, and I understand that this is necessary to allow us the flexibility to respond to a changing situation. However, because of the broad nature of the language and since we are moving this legislation without a committee report, I believe its very important to clarify some of the language, as Senator KENNEDY has done, now for the RECORD.

First, this legislation includes a requirement that the Secretary of Veterans Affairs provide veterans with health exams and counseling. Would the chairman of the Veterans' Affairs Committee agree that the words "health examination" would also include mental health exams? It is my concern that many veterans will suffer psychological stress as a result of their service, and I want to make certain that mental stress is recognized as a serious health problem for many veterans.

Mr. CRANSTON. Mr. President, I agree with Senator DASCHLE on that point. We chose the words "health examination" because they encompass the many different types of examinations that should be offered to veterans. It certainly is my intention that the examination be designed to look for signs of psychological stress and its effects and for mental disorders. Mental health definitely is integral to a person's overall health status.

Mr. DASCHLE. I thank the distinguished chairman.

Mr. President, I also wanted to clarify the amendment that section 4 of the bill would make in section 734(b)(1)(A)(ii) of Public Law 102-190. That amendment would expand the scope of the registry now being kept at the Department of Defense. If enacted, this provision would require the Secretary of Defense to include in the registry a description of the circumstances of the service member's service, including the location of such service and any atmospheric and other environmental circumstances in those locations, to the extent that information is available.

It is my understanding that the broad nature of this section would allow the Defense Department to include information in the registry that would track, for example, whether a service member was exposed to burning trash or possibly to viruses or parasites unique to the Persian Gulf region or part of it. In addition, for those service members who were given antichemical or biological weapons injections or drugs based on the probability that service in a given location put them at risk of being exposed to such weapons, this section would also provide for the tracking of individuals who were given such drugs and the identification of those drugs. Would the Senator from California agree?

Mr. CRANSTON. Mr. President, I agree and add that there are many other possibilities for inclusion in the DOD and the VA registries. We felt that an attempt to limit the registries to particular information would be a mistake at this point. We have had a relatively short amount of time during which to evaluate the factors in the gulf that could have caused some of the health problems veterans are now experiencing and, thus, felt that including broad language would be the best approach at this point.

Mr. DASCHLE. I thank the chairman for that clarification. It is very important that Persian Gulf war veterans understand that this is a first step in what will undoubtedly be a long process of determining just which diseases or health ailments may be linked to service and which are only coincidental. It is important to know that we will continue to work to see that veterans who are afflicted with service-related problems receive the help and compensation they deserve.

Mr. President, I am pleased to be an original cosponsor of this legislation. It is an extremely important measure for veterans of the Persian Gulf war and will prove to be a very important basis for future legislative action. The Persian Gulf War Veterans' Health Status Act is designed to protect those veterans who may have been exposed to hazardous environmental conditions during their service by tracking those veterans as a group and by coordinating Federal research and study on the health status of those veterans. It is my hope that this legislation will ensure that any abnormal levels of disease or health disorders will be easily identified in the upcoming months or years, so that the VA is able to provide treatment, compensation, and other services immediately to those veterans, rather than waiting years and years and asking veterans to prove that their conditions are service connected.

Mr. President, for 13 years I have worked with Vietnam veterans, veterans organizations, and other Members of the House and Senate to ensure that those Vietnam veterans who were exposed to and harmed by agent orange receive the compensation they deserve. Part of the reason this has taken so many years is the many difficulties that arose when we attempted to conduct studies utilizing the agent orange registry established for Vietnam veterans. Had this registry been established properly, immediately following the end of the war, and had it been evaluated and updated on a regular basis, compensation for Vietnam veterans would have come much sooner. It is essential that we avoid the mistakes of the past and ensure that these Persian Gulf registries are established in a way that will facilitate both meaningful scientific research and outreach efforts.

Although Congress has to learn the hard way about the long-term consequences of military service, we can say today that this body has, in fact, learned its lesson. Today we will approve this legislation which will, I hope, help us to evaluate in the future what health effects, if any, there are for veterans who served downwind from oil fires. It will help us to see whether the veterans who have complained of fatigue, hair loss, or other problems, are in fact suffering from service-connected illnesses.

It is important to understand that authors and cosponsors of this legislation would have preferred to have more time to evaluate the situation and recommend comprehensive health studies, including a longitudinal study, since there is sufficient indication that such studies will be necessary. However, we are still in the early stages of this process, and we felt it was important to put a registry in place and get the process moving, so that we may have the time to evaluate the situation without losing the progress that could be gained in the meantime. Passage of this legislation will enable us to compile a complete registry and evaluate the evidence now available on this issue.

Thus, Mr. President, I urge my colleagues to support the Persian Gulf War Veterans' Health Status Act, and I look forward to working with my colleagues who have cosponsored this measure to ensure that the remaining issues are addressed in the 103d Congress. There is much work still to be done for our Nation's veterans who served in the Persian Gulf, but I wanted to take this opportunity to congratulate the chairman for his continued leadership on this issue, and on all veterans' issues.

While many of us are saddened by the chairman's decision to retire, the legislation we will approve today is a fitting reminder of the lasting legacy he leaves behind. I have enjoyed working with him on this measure and on the many veterans bills he has brought before this Chamber. There are many veterans who could attest to the difference his work has made in their lives and in their families' lives, and I join my colleagues in the Senate who will miss his dedication to, and leadership on behalf of, our Nation's veterans.

Mr. KENNEDY. I am pleased to be a sponsor of the Persian Gulf War Veterans' Health Status Act. This important legislation addresses the health needs of the large number of men and women who served in the Persian Gulf during Operation Desert Storm.

In recent weeks, many of us have become increasingly concerned by the growing number of instances of unexplained illnesses affecting those who served in the gulf. According to some reports, over 300 gulf war veterans have reported a wide assortment of unexplained ailments. They deserve assurances from their Government that their conditions are being taken seriously and the cause is being investigated. Recent hearings in Boston and Washington have highlighted the concerns of veterans with this gulf war syndrome.

We must move quickly to reassure our veterans and active members of the Armed Forces that any possible health effects from their service will be fully evaluated, and that appropriate care will be provided. They deserve to know what they were exposed to in the gulf and if their service has caused them to become sick. They deserve straight and complete answers. Swift passage of this bill by the Senate today and similar action in the House will demonstrate that Congress is committed to finding these answers.

For now, the cause of these mysterious symptoms remains unknown, but hundreds of young men and women who served in the gulf are sick and in pain, and we must make every reasonable attempt to make sure that their health needs are met.

The legislation which Senator CRANSTON and I are proposing today is an important step in meeting our Nation's commitment. It gives the Veterans' Administration the authority it needs to provide health examinations for returning veterans.

This legislation authorizes free medical evaluations for returning veterans and service personnel, and establishes a registry to track their health status and provide followup treatment. The legislation also mandates an independent review by the National Academy of Sciences of the adequacy of the steps being taken by the Department of Defense and the Department of Veterans' Affairs to answer these current concerns. Another independent review by the National Academy of Sciences will make recommendations on whether epidemiologic studies should be conducted.

In addition, the legislation asks the Congressional Office of Technology Assessment to review information being collected on troop locations and exposure to various environmental conditions in the gulf.

These independent reviews will provide the credibility needed to assure veterans that their concerns are being pursued in an efficient and effective manner. The approach taken in this legislation will provide solid answers to the many questions that exist about their health.

I commend Senator CRANSTON for his leadership in developing this needed measure. All of us hope we have learned the painful lesson of agent orange, and that the Federal Government will act in time, this time, to deal responsibly with these troubling reports.

(At the request of Mr. DOLE, the following statement was ordered to be printed in the RECORD:)

• Mr. SPECTER. Mr. President, as ranking Republican member of the Committee on Veterans' Affairs, and as an original cosponsor, I am pleased to support passage of S. 3346.

Hundreds of thousands of our courageous men and women won a great victory for our Nation in the Persian Gulf. Some, unfortunately, have paid a high price for that victory. The injuries and diseases of those brave men and women have been an issue of major concern to me and I am determined to see that they receive proper care and the benefits that they deserve from a grateful Nation. I have been honored to work closely with the survivors of the infamous Scud attack on the 14th Quartermaster Detachment from Greensburg, PA.

Recently, questions have been raised about other delayed effects of service in the Persian Gulf. In the wake of the environmental disasters triggered by the enemy, unexplained illnesses in Persian Gulf veterans have raised concerns and fears not unlike those raised by Vietnam veterans, and by those exposed to radiation and environmental hazards. Mr. President, these concerns are felt not only by veterans, but also by the Congress and the administration. In his letter of July 14, 1992, former Secretary of Veterans Affairs Derwinski urged the Congress to provide medical examinations to these veterans, and to establish a health registry similar to those provided to Vietnam veterans concerned about agent orange.

This bill would provide the authority for VA to embark on the important mission of investigating the health problems of the service members who served in the Persian Gulf, and would also ensure that the information, both regarding health and environmental factors, will be preserved in VA and DOD to provide for later study. It may be some time before we discover the nature and extent of the problems suffered by our Persian Gulf veterans. I hope that these problems prove to be neither extensive nor severe. Nevertheless, just as we owed answers to the veterans of prior wars, we owe to our Persian Gulf veterans answers concerning the health effects of their service. This bill is a necessary step in that direction.

I urge my colleagues to support this important measure.•

EXECUTIVE SESSION

U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Executive Calendar No. 48, the U.N. Framework Convention on Climate Change. I further ask unanimous consent that the treaty be considered as having been advanced to the various parliamentary stages, up to and including the presentation of the resolution of ratification; that no amendments provisos, understandings, reservations be in order; that any statements appear as if read in the RECORD; that the Senate vote on the resolution of ratification without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE GLOBAL CLIMATE CHANGE TREATY

Mr. CHAFEE. Mr. President, I rise in strong support of this historic treaty on global climate change and urge all of our colleagues to vote for it. On behalf of myself and many others, I want to thank and commend my colleague from Rhode Island, Senator PELL, the chairman of the Committee on Foreign Relations and the ranking member, Senator HELMS, for their diligence and prompt consideration of this matter.

This treaty represents a sound first step in response to the environmental threat of global climate change. This threat is frequently referred to as "the greenhouse effect".

Now, what is the greenhouse effect—is it really a serious environmental threat? Briefly, Mr. President, as a member of the Committee on Environment and Public Works and as the vice chair of the Senate delegation that went to the Rio Earth summit last June, I have spent more than 6 years examining this problem.

Is the problem real? The answer is yes. There is no doubt in my mind that the problem is real and we must act quickly to deal with the threat of massive, uncontrolled global climate change.

The skeptics like to point out that the greenhouse effect is natural and that, without a greenhouse effect—without an atmospheric thermal blanket consisting of carbon dioxide, methane and similar greenhouse gases—our planet could not support life as we know it. They also like to argue that there is no proof that pollution has already caused any climate change—that the current warming trend is within the range of natural variability. And they are right.

But the problem is not a greenhouse effect per se. It is the expected intensification of the greenhouse effect—an intensified effect caused by human pollution.

The problem is not a simple, gradual warming trend. It is the likelihood that there will be wild shifts in global climate patterns—changes in rainfall, more frequent hurricanes like the recently disastrous Hurricane Andrew, shifting ocean currents.

There is also the probability that these changes will not be gradual at all. Before we know it, we could reach the point of no return. Rather than experiencing a gradual change in climate, we may see a rapid, uncontrollable collapse of the climate system as we know it.

If we wait until all of the evidence is in and every last scientist is willing to say "yes, this is definitely a problem and we have hard evidence to prove it"—it will probably to too late to do anything about it. Each day of delay increases the cost and severity of the steps we will have to take to cope with this problem. This is not simply a matter of paying the piper now or later. If we do not pay now we may not be given the chance to pay later.

Mr. President, this treaty represents the classic case of the glass being half full or half empty. We have heard a great deal about the evil United States and the President's alleged efforts to weaken the treaty. In my view, those who complain about the final treaty are seizing defeat from the jaws of victory.

This treaty was not watered down by the United States. It was strengthened by the position of the United States. It was expanded to cover more greenhouse gases—at U.S. insistence it now covers methane as well as carbon dioxide. And it is now an action oriented document. Rather than relying on arbitrary, unenforceable targets and timetables, the United States insisted on inclusion of a provision that will force each nation to prepare concrete, specific action plans—plans that will lay out the steps each nation will take to reduce emissions of greenhouse gases.

This treaty is an historic document. It is the first time that the world's governments have jointly declared that the global environment is threatened by the greenhouse effect, that it is everyone's problem, and that we must act together to solve the problem. We no longer have to argue about the existence of the problem. That is now a given. The debate now is what do we do about it?

Those who complain about the lack of targets and timetables were pushing for a commitment to stabilize emissions at 1990 levels by the year 2000. That commitment is not included in the treaty but stabilization at 1990 levels by 2000 is the target—it is the standard that will be used to judge each nation's action plan. So, in effect, we do have a target and timetable.

Nevertheless, as I noted before, the treaty includes a formal recognition of the problem and, more importantly, it includes a goal that is much tougher than stabilization of emissions. Article 2 of the treaty states, in relevant part, that:

> The ultimate objective of this Convention * * * is to achieve * * * stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

It is important for everyone here to understand that stabilization of atmospheric concentrations will require significant reductions in emissions—not the simple stabilization of emissions that has received so much attention. This is a major provision of the treaty and it gives me hope for the future.

Mr. President, I see this glass as being half full. In 1986, I called upon then-President Reagan and the leaders of numerous other countries to negotiate a global climate treaty. With the help of several Senate colleagues, I continued to press for a treaty. Now, here we are 6 years later and my hope has become a reality. We have made great strides in this area and I am pleased to rise in support of this treaty.

This is by no means the last we will hear about the threat of global climate change. More work needs to be done. Thankfully, plans are already underway for additional international cooperation and for the development of the action plans that are required by the treaty.

This is a good treaty, it is an important treaty, it should be approved by the Senate, and I commend the President for his leadership on this critical environmental matter.

FRAMEWORK CONVENTION ON CLIMATE CHANGE

Mr. McCONNELL. Mr. President, as the Senate takes up the Framework Convention on Climate Change, I want to make a few observations on this important treaty.

This document is viewed by all as the most far-reaching environmental agreement ever negotiated and concluded by 156 countries. I think it is important to once again point out that President Bush's commitment to cost effective policies to prevent climate change will preserve jobs as they protect our environment. The President was farsighted in his regard for real long-term prosperity and environmental protection. This convention prepares the Nations of the world to come up with a sober assessment of the climate change issue and calls for voluntary action plans to address the potential impacts of human activities.

I want to commend President Bush for his leadership at the U.N. Conference on Environment and Development [UNCED] in the face of outrageous criticism from those attempting to cloud our Nation's efforts to protect the environment. He braved a barrage of predictable rhetoric from the liberal media, the developing world, the developed world, and Congress.

Looking back at UNCED, there were several groups who delighted in bashing the administration, but whose true interests appear to be far from that of sustainable development.

Our European allies, appeasing their strong green lobbies back home, cynically cried alligator tears, with their pecuniary interests foremost in mind. Carbon dioxide targets and timetables would give these countries an enormous competitive advantage over the United States which relies on its natural endowment of coal. The representatives of Third World countries wanted more aid with fewer strings attached. The emotionally charged pleas of environmental groups trying to pump up their membership rolls make great direct mail, but poor environmental policy. And the politically driven diatribes of liberal politicians in the United States now appear to be their best bet at getting off the political endangered species list.

While most critics had agendas far removed from reasonable environmental protection, there were those critics with no hidden agendas: The apologists for U.S. policies who fail to recognize that no Nation has done more, or spent more, to protect the environment than the United States. A case in point was a news report that Fidel Castro received the largest round of applause of all the world leaders who spoke at the conference, while President Bush was only politely acknowledged. This reflects a world conference with a very warped view of our Nation's real, long-term commitment to the environment.

The President's firm stand against targets and timetables for greenhouse gases was not a fashionable position at UNCED. However, it was the only position supported by the facts. There is no conclusive evidence of significant long-term global warming. Our understanding of the Earth's climate is quite primitive and does not take into account the dynamic interaction of such factors as water vapor, sunspots, volcanic activity, variations in the Earth's orbit around the Sun, and the effect of oceans and ocean currents. While these forces have been at work for eons, some self-proclaimed environmental saviors can only cite the latest weather report, and prepare thirty second political ads.

According to a recent survey of the scientific community, 47 percent of scientists did not believe that current policies would lead to global warming. This is hardly a consensus on global climate change requiring us to limit economic growth for an amorphous fear that the sky is falling. Clearly, the potential for climate change is something that must be carefully watched. But based on our limited understanding of the atmosphere, we are not justified in pursuing drastic changes in our industrial policy.

I agree with many in the environmental community that measures must be taken to minimize the potential for climate change. But these measures should be the least cost alternatives in light of the many uncertainties. Many such alternatives have been incorporated into the President's national energy strategy.

The President led the way at UNCED by crafting a thoughtful, reasoned response in the face of shrill rhetoric. In the end, the President's initiative was adopted by the rest of the world. It requires Nations to submit action plans to monitor and limit greenhouse gas emissions. It provides for technology cooperation and commits funding.

The United States has pledged $50 million in contributions to the World Bank's global environmental facility to assist developing countries in reducing greenhouse emissions. President Bush has proposed over a billion dollars per year in funding for climate change research in fiscal year 1991 and 1992. And this year the President requested $1.37 billion.

Initially, I had reservations that the Framework Convention on Climate Change could be convoluted in a way that would devastate the U.S. economy and the economy of my State. I was concerned that it could be interpreted unilaterally by the executive branch to bind the United States to targets and timetables for greenhouse gas emissions. However, I am satisfied that we have clarified this issue in the Foreign Relations Committee.

In pressing for a unilateral interpretation to include targets and timetables, some draw a parallel to the experience we had with chlorofluorocarbons and the Montreal protocol: Once the United States signed the agreement, everyone else fell in line. However, there is no evidence, no experience, or no record to indicate that developing countries will be willing to similarly commit to meaningful and binding reductions in carbon dioxide emissions.

The negotiations leading up to the Rio summit demonstrated the reluctance of the developing world to join in a binding interpretation of this convention to limit carbon dioxide emissions without broad disclaimers that they not interfere with economic growth. The commitments of this convention simply to study and analyze greenhouse gas emissions are subject to overriding priorities of economic development. An interpretation by the executive branch that would recognize binding targets and timetables would not be reciprocated by the developing world, and would do little to reduce atmospheric carbon dioxide levels.

A unilateral commitment to targets and timetables would be a tragic mistake. It would have a negligible effect in mitigating the potential for climate change, leave unchecked the burgeoning emissions from developing countries, and constrain our own economic growth.

Because of these concerns, I felt compelled to discuss the possibility of a unilateral interpretation with the chairman of the Foreign Relations Committee who has given me his public assurances that if this treaty is amended or interpreted by the executive branch to commit the United States to stabilize greenhouse gas emissions, that it would be subject to ratification by the Senate. The Foreign Relations Committee has included language to this effect in the committee report accompanying this treaty to make the record on this point absolutely clear.

The executive branch is precluded from interpreting this convention as a binding commitment to targets and timetables unless ratified by the Senate. Interpreting the aim of this convention in binding terms would amount to a material change in the treaty requiring the Senate's advice and consent.

With the chairman's assurances, I am pleased to support this fine agreement. I congratulate President Bush on his courageous leadership on the issue of global climate change.

In this year of sloganeering and poll watching, it may be an irresistible urge to gloss over the facts, and smear prudent policies in favor of environmental extremism. I am heartened that the one-sided coverage of the UNCED conference did not undermine the level-headed policies advanced by President Bush, and adopted by the rest of the world in this important treaty.

Mr. LOTT. Mr. President I shall vote in favor of ratification by the Senate of the U.N. Framework Convention on Climate Change.

I believe that the approach to the issue of potential global climate change in the convention is responsible and realistic, considering the uncertainties of the science and the risk of tremendous adverse economic impacts from ill-advised policies. It is clear that the convention does not obligate the United States or any other country to achieve any particular target or timetable for limitation of greenhouse gas emissions. The convention's statement of objective does not detract in any way from the fact that the commitments section contains no such requirement. To me, that is the correct and responsible approach and is the result which President Bush and his administration wisely negotiated and achieved.

We have a responsible approach to limiting the growth of greenhouse gas emissions. The U.S. national action strategy, outlined in the environmental documentation furnished by the Department of State to the Committee on Foreign Relations, is a bold strategy that fully meets U.S. obligations concerning greenhouse gas emissions. It contains initiatives in the areas of energy efficiency, transportation, energy supply, agriculture and natural resources, and technology research and development. Its estimated effects are to reduce otherwise projected emissions by the equivalent of 125 to 200 million metric tons of carbon in the year 2000, a 7- to 11-percent reduction from anticipated emissions levels.

Those results would mean that U.S. net greenhouse gas emissions in the year 2000 would be only 1.4 to 6 percent above 1990 levels. Some may say that is not sufficient. I say that such a result would be remarkable, given that greenhouse gas emissions typically bear some relationship to economic growth, and we all desire economic recovery that enables our gross national product to be substantially higher—far more than just 1.4 to 6 percent higher—in the year 2000 than it was a decade earlier. Even a meager 2 percent average annual growth in GNP during the decade would mean that our economy would be 20 percent larger in 2000 than it was in 1990. That economic growth would be more than 3 to 14 times greater than the projected increase in greenhouse gas emissions under the U.S. national action strategy, a very impressive result.

Growth of GNP is only one of several factors affecting the level of greenhouse gas emissions. Others include population growth, the resource mix in the energy sector, the penetration of energy efficiency technologies, reforestation programs, and efforts to constrain methane emissions from landfills and natural gas pipelines. Those important variables are extremely difficult to predict with confidence.

The Climate Change Convention wisely takes all these factors into account. It rejects the artificiality of rigid emissions levels, which no nation could be assured of meeting by prescribed deadlines. This was articulated by Mr. Jean Ripert, the chairman of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change. On May 4, 1992, in response to a reporter's question as to why the draft of the convention he supported did not contain targets and timetables, he replied: "No government is in the position to guarantee levels of emissions."

Some have suggested that carbon taxes could achieve specified emissions levels. I disagree. Carbon taxes could not give us that assurance if for no other reason than that we cannot know with confidence what the price elasticities of different types of energy supply and demand would be at any particular tax level. Nor would carbon dioxide emissions caps on major sources of emissions give us the assurance. This is because, unlike the case of sulfur dioxide emissions, carbon dioxide, not to mention other greenhouse gases, comes from so many different sources—including millions of homes, automobiles, trucks, and small businesses.

The Department of Commerce engaged DRI/McGraw-Hill to conduct a study on the impacts of carbon taxes. That study forecast that carbon taxes necessary to keep carbon dioxide emissions in the year 2000 at 1988 levels would deprive American workers of more than 560,000 jobs and reduce our GNP by $92 billion from what we otherwise would expect.

A newer study by the same firm, "Potential U.S. Regional and State Impacts of International Carbon Taxes," shows electricity prices in the year 2000 up 53 percent in the Pacific Northwest over the base case; and up more than 65 percent in the east north central region of Illinois, Indiana, Michigan, Ohio, and Wisconsin. As for manufacturing employment in the year 2000, almost 12,000 lost jobs in Missouri compared to the base case, more than 15,000 jobs lost in Florida, and more than 21,000 lost jobs in Texas. Nationally, this new study forecasts over 800,000 nonfarm jobs lost by the year 2000 as a result of carbon taxes.

As the new DRI study points out, "because manufacturing accounts for a high share of my own State of Mississippi's economic activity, the effects of the carbon tax on the State's economy would be significant." Personal income in the year 2000 would drop by 3 percent from the base-case forecast for that year; employment in electrical machinery manufacturing would decline by 4.6 percent from the base-case forecast; nonelectrical machinery manufacturing would suffer an employment loss of 5.2 percent; and lumber and wood products manufacturing would face a 3.7-percent job loss. The people of Mississippi cannot stand such impacts.

Some say that taxation or regulatory schemes to limit carbon dioxide emissions would not hurt the economy. This is based on some pretty amazing economic assumptions. For example, the assumption that there is perfect and instantaneous movement of both labor and capital from one industry to another. If that were true, policies could cause tens or even hundreds of thousands of coal miners and steelworkers to lose their jobs, but they instantly—without substantial retraining—could be reemployed as computer operators or insurance agents; and the huge investments in idled manufacturing plants would be turned overnight into investments in activities not as severely hurt by the taxes or regulations, such as video stores. As Raymond J.

Kopp, senior fellow and director of the Quality of the Environment Division of Resources for the Future, an environmental group, noted this year, "while environmental programs may be desirable, they are not free."

Unless and until we can develop at least a general consensus among economists as to what the most probable results would be of Federal schemes to achieve specific levels of greenhouse gas emissions, my view is that we simply cannot gamble with the economic future of American workers and consumers. Not with information before us such as I have described.

The need for deliberateness has been underscored by the Intergovernmental Panel on Climate Change, whose findings and recommendations are quoted so often by others. In its formal report, it cautioned:

> The consideration of climate change response strategies presents formidable difficulties for policymakers. *The information available to make sound policy analyses is inadequate* because of (a) uncertainty with respect to how effective specific response options or groups of options would be in actually averting potential climate change; (b) uncertainty with respect to the costs, effects on economic growth, and other economic and social implications of specific options or groups of options. [Italic added].

We all should applaud those who understand how complex these issues are and who, therefore, negotiated a climate change convention that provides for flexibility, and rejects arbitrary rigidity, in light of the enormous economic, not to mention scientific, uncertainties that confront us.

I urge my colleagues to support ratification of this convention.

Mr. PELL. Mr. President, I am very pleased that the Senate is able to consider the U.N. Framework Convention on Climate Change, and I urge my colleagues to vote in favor of granting advice and consent to its ratification.

The Convention on Climate Change marks a significant advance in international efforts to address the threat of climate change caused by anthropogenic emissions of green house gases. However, it is only a first step, more is needed. In my view, the parties to the convention should begin now to negotiate a protocol to establish targets and timetables for reducing carbon dioxide emissions.

The administration has objected to the adoption of targets and timetables out of two principal concerns: First, that the uncertainty associated with projections of climate change precluded us from taking serious action; and second, that efforts to reduce greenhouse gas emissions will be extremely costly and harmful to the economy.

I disagree with both of these propositions, and will address each of them in turn. First, the issue of uncertainty. It is true that there is uncertainty about the timing, magnitude, and rate of climate change, and that this presents policymakers with difficult decisions, but uncertainty must not become an excuse for inaction. Indeed, Congress regularly makes decisions in the face of uncertainty. The budget resolution, for instance, depends heavily on uncertain projections of GNP growth.

In light of some of the misleading statements that have been made about our state of knowledge about climate change, I think is it useful to summarize the current best available scientific projections of climate change. At the fifth round of INC negotiations, the administration submitted a document entitled "U.S. Views on Global Climate Change" which presented a consensus view of scientists on climate change:

> While scientists cannot yet establish that a human-induced warming has already occurred, best estimates indicate that increased concentrations of greenhouse gases are likely to increase atmospheric and ocean temperatures and alter their associated circulation and weather patterns. However, the magnitude, timing and regional details of these changes cannot be predicted with much certainty. Climate models predict changes in the average temperature of the globe's atmosphere as consequence of a doubling of atmospheric concentrations of carbon dioxide are unlikely to lie out the range of 1.5° to 4.5°C (2.7° to 8.1°F), with a best estimate, based on model results taking into account the observed climate record of 2.5°C (4.5°F). Associated sea-level rise has been estimated to range between a few tens of centimeters and approximately 1 meter (less than 1 foot to approximately three feet). In addition, observed warming in recent years is of the same magnitude as that predicted by the models but also of the same magnitude as natural variability. Thus, the observed increase could be due predominately to natural variability or could be part of a larger warming offset by other human factors.

Another way to look at the issue is that the current rates of increase in greenhouse gas concentrations are faster than at any time in the past 10,000 years and will result in a doubling of preindustrial atmospheric CO_2 equivalent concentrations by the middle of the next century. The rate of increase in CO_2 emissions is 30 to 100 times faster than the natural rate of fluctuation indicated by the climate record, the rate of increase of CH_4 is roughly 400 times that of natural fluctuations.

In its report "Changing by Degrees: Steps to Reduce Greenhouse Gases," the Office of Technology Assessment stated:

> (W)e appear to be pushing the climate system beyond the limits of natural rates of change experienced by the Earth for hundreds of thousands and probably millions of years. The projected rate of climate change may outpace the ability of natural and human systems to adapt in some areas.

In my view, these facts suggest that we should begin now to examine limiting emissions of these greenhouse gases. My views are reinforced by the fact that, contrary to the claims of proponents of such measures, authoritative studies indicate that U.S. emissions of greenhouse gases could be stabilized at little or no cost or perhaps even a profit.

By the administration's own estimate, by adhering to existing measures, projected U.S. net emissions of greenhouse gases in the year 2000 will be 7 to 11 percent below emissions otherwise projected or 1 to 6 percent above 1990 levels. These projections depend in part upon GNP and population growth, the energy intensity of economy, and the rate of diffusion of energy efficiency technologies. These measures nearly stabilize emissions and are voluntary as well as profitable.

It is notable that in statements up to the release of this estimate, the administration had asserted that there were no programs beyond those in the national energy strategy, that could reduce greenhouse emissions without additional costs. The new estimate suggests that the original estimates were inadequate, and that indeed there may be even more opportunities in this area.

This view is reinforced by authoritative studies released by the National Academy of Sciences and the Office of Technology Assessment. In its study of climate change, the National Academy of Sciences concluded that:

> The United States could reduce its greenhouse gas emissions by between 10 and 40 percent of the 1990 level at very low cost. Some reductions may even be at a net savings if the proper policies are implemented.

In testimony before the committee, Dr. John Gibbons, the Director of the Office of Technology Assessment stated that the United States could return to its 1990 level of carbon dioxide emissions "at little or no net cost until 2005 if we start now."

Dr. Gibbons went on to note that:

> The longer we wait to make the commitment to stabilize or reduce greenhouse gases, the more difficult it becomes. The short term goal of emissions reductions becomes less attainable because more retrofits are required. The long term goal of concentration reductions fades into the more distant future because of a momentum similar to population momentum. We know that the delay between the time the gases are produced and the time when the climatic and ecological impacts are fully felt is considerable (many decades).

Early in this administration, then-Secretary of State Baker addressed the Intergovernmental Panel on Climate Change and articulated four principles to guide the international response to climate change.

They are: First, that we cannot afford to wait until all uncertainties have been resolved before we act; second, that while efforts to refine our knowledge are underway, we should focus immediately on prudent steps that are already justified on grounds other than climate change—this has come to be called the no regrets policy;

third, that actions taken to address global climate should be as specific and cost effective as possible; and fourth, that the solutions should reconcile the need for economic growth and environmental protection.

Unfortunately, the administration appears to have abandoned these principles. This despite strong evidence that controlling emissions of greenhouse gases will be essential in limiting the increase in atmospheric concentrations of greenhouse gases and thus in limiting climate change, and authoritative analysis which shows that such measures would not adversely affect the economy, and could in fact promote economic growth.

Indeed, as was noted at the committee's hearing, faithful implementation of the convention may be essential to future U.S. competitiveness in world markets. In his testimony, Dr. Gibbons noted that:

> (A)nalysis underway at OTA and in other organizations reveals potential negative repercussions for the U.S. economy if we fail to adhere to commitments and objectives such as those established in the Convention. If other countries, for instance Germany and/or Japan, elect to engage in a more rigorous pursuit of emissions reductions, more efficient products and industrial processes, and nonfossil energy sources, their industries and products may become more competitive than ours.

In light of the key role energy efficiency will place in future U.S. economic competitiveness, I had hoped the administration would have pursued an aggressive program to increase energy efficiency and to reduce our reliance on fossil fuels. Unfortunately, this is not the case. The administration is pursuing policies that reinforce the status quo, or may in fact actually be making matters worse.

For example, the national energy strategy will continue our Nation's unfortunate reliance on imported oil and in fact is likely to increase them in the future. Further, the NES fails to pursue aggressive energy conservations policies; OTA and National Academy of Sciences analyses identify two to three times the low-cost energy conservation that the NES does. Moreover, the NES will actually reduce the percentage of electricity generated in the United States from renewable energy sources.

Mr. President, all of this points to the fact that the administration has simply not responded adequately to one of the most serious environmental and foreign policy issues facing our Nation today. The convention we have before us is an essential first step, but it is only that. The Senate should advise and consent to its ratification and then push for the initiation of a new round of negotiations on a protocol that would limit anthropogenic greenhouse gas emissions.

Mr. BAUCUS. The Framework Convention on Climate Change before the Senate is a first step toward addressing this Nation's need to curb its greenhouse gas emissions as part of a global effort. We are playing roulette with the planet by not taking more aggressive action to curb greenhouse gas emissions.

The President claims it costs jobs to protect the environment. This is an old-fashioned way of thinking that is simply not supported by the facts. In today's highly competitive, computerized marketplace, pollution itself is a sign of inefficiency. This inefficiency costs jobs when our competitors eliminate this inefficiency.

Japan has set up the International Center for Environmental Technology Transfer. You can be sure they are most interested in transferring Japanese technology to developing countries. America should be in the forefront of such efforts. Thirty-five percent of our exports go to developing countries. An international environmental agreement on greenhouse gas emissions would only increase the demand for U.S. environmental goods and services.

But the President's turns his back on these types of jobs. He wants to give workers in the 1990's jobs of the 1950's. Only we aren't building Studebakers anymore, Mr. President. We are building electrostatic precipitators, computerized monitors for a wide variety of air pollution, and a host of other technologies.

We need to provide Americans jobs with a future. These are high-paying, skilled jobs; not just flipping burgers at minimum wage.

The President seems blind to the opportunities he is missing. He cannot lead us forward, he can only turn toward the past.

I attended the Earth Summit and I was astonished at how out of step the administration's negotiating team was from the rest of the industrialized world.

Other nations—and business in those nations—recognize this rare opportunity to gain market share in a bull market. Other nations understand we can have greater prosperity and better environmental protection.

I was deeply disappointed in the failure of American leadership at the Earth Summit. I support the climate change treaty before us today, but only as a minimal first step. There is more we must do.

We must prepare an action agenda, to which we are committed by the terms of the treaty. We must have public comment on the agenda so that it can be a document we can all support.

Parties to the convention should meet soon to decide on the next step. We can start this process at the next meeting of the Intergovernmental Negotiating Committee.

We run the risk of losing an enormous trade and economic opportunity if we remain imprisoned by past ideas.

The administration needs to change its outlook on the environment and see the opportunity that exists. Jobs are created when we improve our environmental performance. I hope we are not the last nation to recognize this truth.

Mr. MITCHELL. I am pleased that the Senate today is prepared to consider the Framework Convention on Climate Change. This convention does not take the action I believe is necessary to adequately protect this planet from the risks associated with climate change. The Bush administration prevented a meaningful convention from being signed at the Earth summit last June.

The Bush administration resists agreements for meaningful reductions in greenhouse gases because it says that controlling emissions will harm the economy. This is false reasoning on two counts.

First, controlling pollution can create jobs and enhance our economic health. In fact, pollution may be the most tangible sign of economic inefficiency. Reducing pollution can create jobs by increasing efficiency and creating products in demand elsewhere. A global effort to protect the environment would create demand for environmental goods and services. Japan and Germany are already consciously targeting this market. We need to seize the opportunity if we are to compete successfully in this growing international market.

Second, the administration claims a need to wait for more scientific certainty. There is no certainty on every aspect of climate change, but there is consensus that greenhouse gas emissions from industrialized societies are placing the globe at risk. This was the conclusion of the Intergovernmental Panel on Climate Change. Waiting for absolute certainty as to every aspect of this risk is a delay we cannot afford.

The administration seems to assume that more science will justify their delay. But experience teaches us otherwise. In the case of ozone depletion, another, major international air pollution issue, science, showed us that the situation was worse, not better, then science first anticipated. We need not wait for more science to adopt a prudent course of action and reduce our greenhouse gas emissions.

Despite my great concerns about the shortcomings of the convention before the Senate, I recommend we ratify this convention as a first, small step.

The treaty calls for an action agenda on climate change by January 1993. We need to move quickly to act on this agenda. The public must be involved and able to comment on development of such a plan, and justification for the various provisions of the plan should be made public.

There should be a meeting of the parties to the convention to review progress and we should begin to take action now to develop a protocol to the convention. That protocol should address the need to reduce greenhouse gas emissions, not merely count them. We have an opportunity to take the next step at the meeting of the Intergovernmental Negotiating Committee in December.

The IPCC must also continue its work. We need meaningful information, not a political analysis, about the science of climate change and what strategies can best counter the program.

It is within our power as a Nation to address this program. It only remains to see if the administration has the will to do so.

Mr. GORE. Mr. President, I rise today to urge my colleagues to join me in support of the Framework Convention on Climate Change that the president signed in June at the Earth summit in Rio de Janeiro. While I believe that this treaty falls far short of what is necessary effectively to address the serious threat of global climate change—and I think it is clear that the responsibility for the treaty's shortcomings rests squarely with President Bush—it is nevertheless an important step forward and a foundation upon which responsible policy can be built.

The process leading to the conclusion of the Climate Change Treaty was initiated—and driven—by the virtual unanimous opinion of the world scientific community that, by overloading the atmosphere with carbon dioxide and other greenhouse gases, we are risking disruptions in the climate system more severe than any in the past 10,000 years. More severe storm systems in some areas; intense bouts of drought in others; rising sea levels and flooding of coastal communities would be among the consequences. The imperative—to most of the world community—was clear; we need to take action now.

What became clear during the course of the discussions—again, to most of the world community—was that taking action to combat climate change is also an economic imperative. The fact is that cutting CO_2 emissions can most readily and effectively be achieved by improving efficiency in every sector of the economy. And improving efficiency means reducing waste; enhancing productivity and profits.

Apparently all of this was lost on President Bush. As we all are now all too well aware, the Bush administration was—throughout these negotiations—the single largest obstacle to progress. While our major industrialized trading partners and competitors called for decisive action to forestall this global threat, the United States alone refused. Germany, Japan, the United Kingdom—all of our G-7 partners—urged our President to join in a treaty with substance to its emissions limitations commitments. But we stonewalled the world and in the end, our intransigence meant that the final agreement is completely devoid of any legally binding commitments to action.

As I mentioned, we signed the convention at the Earth summit in Rio. The real meaning of the Earth summit was also lost on the President. This is a turning point in history. Leaders of nearly every nation on Earth gathered together in a profound awareness of the true nature and magnitude of the global environmental crisis we face.

Perhaps even more significantly, they realized that the alleviation of human suffering around the globe is inextricably intertwined with our efforts to relieve the building pressures on the environment. They understood that—to combat the poverty, suffering, and pain that afflicts so many in the world today—we have to pursue economic growth that is not destructive of the environment.

In addition, while clearly a milestone in terms of international diplomatic relations, the Earth summit was also a powerful coming together of concerned citizens from all parts of the world. They were parents who are concerned about the quality of life their children will enjoy; they were children who are determined to clean up the damage that has been done and move forward to a brighter future.

Citizens of the United States were there too, in strong numbers. Proud of the many positive steps we have taken in this country to clean our air and water, they wanted to demonstrate United States resolve to lead the world in confronting the larger, global challenges we now face.

They were disappointed. Together with a bipartisan delegation of Senators, I travelled to Rio hoping to amplify their voices. All of our voices were drowned out, however, by the firestone of protest against the United States. Rather than lead the world, President Bush had instructed our negotiators to block progress and drag the talks to a halt. This was nothing new, of course, it had been the President's tack throughout the negotiations. But the world community had had enough of his obstructionism and in Rio, the depth of their disdain and frustration became clear.

In response to the outcry, President Bush presses on the American public a false choice. He says that we can't take a lead on environmental issues if we want to have a strong economy. This just isn't so. The truth is that we won't be able to revitalize our economy unless we move aggressively forward—away from the polluting ways of the past and toward the cleaner more efficient means of production that are the way of the future.

Japan and Germany are sounding an economic wakeup call. Honda's new president, for example, made 99 speeches to his employees around the world on the imperative of environmentally sound production processes. Specifically with regard to increased fuel efficiency—a policy that President Bush has strongly opposed—he stated in an interview with Business Week that "If a car maker doesn't build more efficient cars, it can't survive."

Mr. Bush should know that taking action to protect the environment will also help our economy. Indeed, the reports of his own experts say just that. A recent report by the EPA, for example, concludes that effective policies to stem carbon dioxide emissions will increase economic growth.

The National Academy of Sciences, the Office of Technology Assessment, and other private analyses all point to the same conclusion: job creation; increased efficiency; enhanced productivity and competitiveness will come with progress in confronting global climate change.

The environmental and economic imperatives are therefore clear. It's time for us to move ahead.

While the climate change convention—at Mr. Bush's insistence—is a nonbinding and very weak document, it does lay an important foundation on which we can build.

We need to move quickly to ratify the convention and then to begin discussions with the conference of the parties to develop a protocol to the convention that would contain effective and binding commitments to action. We also should act quickly to develop a national dialogue on climate change and specifically, provide a forum for citizens groups, scientists, and industry to help craft and comment on our action strategy to stem greenhouse gas emissions.

The challenges that the threat of climate change poses are not too great for the world to meet—if there is strong U.S. commitment and leadership. I believe that our Nation can, and must, meet the challenge. Our industry is innovative and resourceful. In the past, as we have committed ourselves to achieving serious goals in solving environmental problems, our industries have risen to the occasion to meet—and not infrequently exceed—the mark. Our effort—and remarkable success—in phasing our ozone-destroying chemicals pursuant to the precise target and timetables laid out in the Montreal protocol is but one example of this. Let's ratify this convention and work with industry and with concerned citizens to regain the leadership position on the environment—and on the economy—that the United States has always proudly held.

Mr. SIMPSON. Mr. President, I trust that all of my colleagues will vote in favor of ratification of the U.N. Framework Convention on Climate Change, as I shall. The formal negotiations lasted almost 17 months and were difficult. Notwithstanding the many differences that existed among the parties before the final document was agreed upon, there was unanimous agreement, upon conclusion of the negotiations, as to what the convention meant in terms of the issue that had captured so much of the attention of the media and the public. President Bush deserves a great deal of credit for negotiating a realistic agreement.

Specifically, as we vote to ratify the convention, we do so with the confidence that all of the participants in the negotiation of the convention and many of the observers of that process understood and agreed that the wording of the convention was carefully chosen so as not to constitute or imply the commitment, binding or otherwise, of any country to a specific level of carbon dioxide or other greenhouse gas emissions at any time.

Instead, the convention provides for a flexible approach by which nations will develop action plans appropriate to the specific circumstances of the country. For example, industrialized nation's plans to limit greenhouse gas emissions may take into account important factors such as economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies, and other individual circumstances. The U.S. national action strategy fully meets our Nation's obligations concerning greenhouse gas emissions.

Some of the participants were pleased with the conventions's approach to commitments to limit emissions, and others were not. But, the important point for the Senate, Mr. President, is that, regardless of their policy preferences, they had a common understanding of what the convention did and did not prescribe. I would like the record to reflect some examples of this unanimous understanding, which was contemporaneous with the final negotiation of the convention text and the agreement to its provisions by the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change, [INC] the international negotiating body that had been established by resolution of the U.N. General Assembly.

Mr. Jean Ripert, chairman of the INC, spoke with reporters concerning his proposed text of commitments by the industrialized countries to limit greenhouse gas emissions, which text subsequently was agreed upon by all the participating nations. The May 4, 1992 issue of the Bureau of National Affairs' Environment Reporter reported: "Explaining why his draft did not contain targets and timetables, Ripert said 'No government is in the position to guarantee levels of emissions.'"

On May 8, 1992, once the parties had agreed to the provisions concerning commitments regarding limitations on greenhouse gas emissions by the industrialized countries, as set forth in article 4, paragraph 2 of the convention, Clayton Yeutter, who then was Counselor to the President for Domestic Policy and who was coordinating the administration's negotiating policies and position, wrote to Chairman JOHN DINGELL of the House Committee on Energy and Commerce.

With reference to convention article 4, paragraph 2(a), which refers to "recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions * * * would contribute to * * * modification" of long-term emissions trends, Mr. Yeutter's letter stated: "But there is nothing in any of the language which constitutes a commitment to a specific level of emissions at any time." With reference to convention article 4, paragraph 2(b), which refers to reports of nations about their policies and measures, "with the aim of returning" greenhouse gas emissions to their 1990 levels, Mr. Yeutter stated: "The word 'aim' was carefully chosen, and it does not constitute a commitment, binding or otherwise. Nor does this sentence prescribe or imply any kind of timetable."

The Department of State has furnished the Committee on Foreign Relations with a comprehensive document, entitled "Environmental Documentation: United Nations Framework Convention on Climate Change," dated September 1992. Among other things, that document was intended to "provide a description of the obligations parties will undertake on ratifying the Convention and upon its entry into force." Included in its description of the goals sought to be achieved by the convention is "specifically avoiding the imposition of uniform, rigidly specified requirements—in favor of a more flexible approach enabling countries to develop strategies that best meet their individual situations, needs and capabilities."

The many environmental groups who had been active in the negotiations from the beginning also understood this. Their joint, formal policy statement, delivered to the plenary session of the INC on May 4, state: "And yet in front of you is a text which not only does not commit the developed countries to reducing carbon dioxide emissions, it does not even guarantee stabilization * * *".

There are many other illustrations that the governments which negotiated the Climate Change Convention, as well as the environmental and business organizations participating in those negotiations, were in total agreement, at the time the convention was agreed upon, as to what its provisions were intended to mean. I have set these matters forth, as part of the record of Senate ratification, so that, as we vote, we, too, have a clear understanding of the meaning and intent of these important provisions of the convention.

I want to add that I am pleased the United States stood up to certain interest groups and foreign governments and did not go along with pressure to turn political rhetoric into legally binding commitments.

My point, Mr. President, is that accusing the United States of having frustrated a more far-reaching convention, as some nations advocated, presupposes that it makes more sense to listen to rhetoric than to look at real plans. As demonstrated by the U.S. national action strategy, our country has a real plan, not an illusory one, to deal with the issue of potential global climate change.

I am glad we saw through the posturing of others and that we effectively resisted them. My hope is that we will continue to do so in the interest of the American people.

Mr. CRAIG. Mr. President, I will be voting in favor of Senate ratification of the U.N. Framework Convention on Climate Change.

At the same time, I strongly disagree with those who argue that the convention did not go far enough and that the United States should have agreed to legally binding targets and timetables for limitations on U.S. emissions of carbon dioxide and other greenhouse gases. Those who make such criticisms, in my opinion, fail to reckon with facts concerning the issue of potential global climate change.

Interestingly, one of the most important of those facts has been acknowledged by the junior Senator from Tennessee, our colleague AL GORE. On April 7, 1992, during Senate debate on comprehensive energy legislation, as reported in the CONGRESSIONAL RECORD at page S4890, the Senator stated:

> If the United States not only stabilizes emissions but reduces greenhouse gas emissions by 50 percent, and if every other industrial country also reduces greenhouse emission by 50 percent, and the developing countries continue on their current path, then worldwide greenhouse gas emissions will, by the year 2030, increase by 250 percent.

Senator GORE'S observation was confirmed by the Department of State's Environmental Documentation, which it submitted to the Committee on Foreign Relations. Commenting on the thinking of the nations that negotiated the Climate Change Convention, it noted:

> [T]here was awareness that the 'savings' achieved by the industrialized countries—the only countries to which binding limits would apply—could be eclipsed by increased emissions of developing countries.

The industrialized countries now account for around half of global greenhouse gas emissions. However, the relative contribution of different countries is shifting. Emissions from the developing countries are increasing rapidly, as their populations grow and they seek improved standards of living through economic development. Once the countries of the former U.S.S.R.

and of Eastern Europe make the transition to market economies, their economies will grow, rather than shrink, as has been the case during the last few years. That means more emissions from those nations. As a consequence of the increased greenhouse gas emissions from these other countries, it is estimated that, by 2025, the net carbon dioxide emissions from developing nations and from those with economies in transition will constitute two-thirds of the world total, and, when all greenhouse gases are considered, the emissions from these other nations jumps to as much as three-quarters of the world total.

The correct point made by Senator GORE and by the State Department is that the projected growth of developing countries' greenhouse gas emissions will more than offset—indeed, will dwarf—any amount of greenhouse gas emissions that would be avoided by the United States and other industrialized countries if they and we had agreed in the Climate Change Convention, or in the future would agree, to so-called stabilization of such emissions at 1990 levels by the year 2000.

What we have to remember, Mr. President, is that proponents of limiting carbon dioxide emissions of the industrialized countries in 2000 to their 1990 levels simply cannot tell us how much unacceptable, potential global climate change, if any, would be avoided during the next century as a result of such policies. Moreover, even if there were some *de minimis* avoidance of climate change, as a result of what industrialized nations did, there is no credible scientific evidence that it would last more than a very few years at most, because of the huge, ongoing increases in emissions from the developing nations in particular.

We also have to consider the economic cost of such proposals. There are studies by eminent economists that policies necessary to stabilize U.S. carbon dioxide emissions at 1990 levels by the year 2000 could cost American workers hundreds of thousands of their jobs and cost the economy more than $90 billion of gross national product. Whether those predictions are better than those which forecast less drastic consequences ignores the crucial point, which is this: Now is not the time to gamble recklessly with our Nation's economic future, especially when, as on this issue, nobody can tell us how we or the world would benefit from that gamble.

Unless and until we have persuasive evidence that binding emissions targets and timetables for the United States and other industrialized countries will actually avert any material amount of global climate change, there is no justification for our taxpayers and consumers to be asked to endure the economic burdens.

The Climate Change Convention, as written, goes quite far enough from the standpoint of U.S. obligations. We should only ratify it and talk about increasing the burdens on our citizens, if ever, when we have sound scientific reasons for doing so.

Mr. BIDEN. Mr. President, I have supported efforts to put global warming on the U.S. agenda and to create national and international strategies for lessening the threat posed by accumulating greenhouse gases. So it is with mixed emotions that I support ratification of the U.N. Framework Treaty on Climate Change that is only a faint call to global action.

I am encouraged by the participation of nearly every country in the world in the arduous task of negotiating the global responsibilities of nations. The countries of the world, the United State included, have recognized the magnitude of the dangers of the current emissions trends. One of the positive elements of the treaty is a call for a coordinated global research effort to further document the climate changes that are underway and understand their effect on our global environment.

However, I am disappointed in the short-sightedness of the agreement. The convention creates no targets or timetables to stem the documented increases in carbon dioxide, methane, chlorine and other greenhouse gases. Due to the administration's efforts, the treaty mandates only good intentions.

The climate convention declares a goal of restoring emissions of greenhouse gases to 1990 levels by the year 2000. But, participating countries are not bound by this goal. Section 4 of the document, which contains the binding elements of the agreement, commits the countries to inventory their emissions and issue progress reports on reduction efforts to a conference of the parties. This is much closer to the pledge and review approach, which was widely criticized for its inadequacy to the task at hand, than it is to a global response to this threat.

The Rio treaty was intended to couple worldwide recognition with an international commitment to reduce the threat of global warming. An obligation merely to assess emissions and report on efforts to reduce them does not create the depth of commitment many of us had envisioned. In an effort to block any commitment by the United States, the administration's negotiators deprived everyone of assurance of mutual commitments.

In 1988, President Bush used the White House effect to battle the greenhouse effect. But, in my quarters, the United States' role in the treaty negotiations has been assessed as a failure. In one respect, though, the final treaty is a testament to United States' influence and leadership, to the "White House effect."

At the outset, the United States stood almost alone in opposing targets and timetables, but the administration triumphed over the wishes of more than 150 countries to have its way. The White House effect was shown to be a truly powerful influence in international environmental affairs, although in exactly the opposite manner that the President had promised. The true judges of the success or failure of these efforts will be future generations who will live with the administration's results.

We need to take steps now to avoid the worst effects of global climate change. Contrary to the administration's predictions, these steps do not involve drastic lifestyle changes or economic ruin. We can admit the dangers of our current wasteful ways and we can take steps to change them.

The framework convention is not what we need or what we hope for to address emissions of greenhouse gases. But it is a foundation we can build upon in the years ahead. Although some may be tempted to eject this treaty for falling far short of its goal, truly we will be better off with the convention than without it, providing that we do build upon it and not allow it to languish. That will be one of our challenges for the years ahead.

Mr. FORD. Mr. President, I ask for consideration of the resolution before the Senate by a division vote.

The ACTING PRESIDENT pro tempore. A division vote is requested.

All of those in favor of the resolution of ratification will please stand and be counted.

Those opposed please stand and be counted.

On a division, two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification is agreed to, as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the United Nations Framework Convention on Climate Change, adopted May 9, 1992, by the Resumed Fifth Session of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change ("Convention"), and signed on behalf of the United States at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro on June 12, 1992.

Mr. FORD. I ask unanimous consent that the motion to reconsider the vote be tabled, that the President be notified of the Senate's action, and that the Senate return to legislative session.

LEGISLATIVE SESSION

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senate will now return to legislative session.

AUTHORIZING CERTAIN ADDITIONAL USES OF THE LIBRARY OF CONGRESS SPECIAL FACILITIES CENTER

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5575, a bill to authorize certain additional uses of the Library of Congress special facilities center just received from the House; that the bill be deemed read the third time, passed, the motion to reconsider be laid upon the table, any statements relating to this measure be placed in the RECORD at the appropriate place.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So the bill (H.R. 5575) was deemed read the third time, and passed.

PRIVATE RELIEF FOR ANNA MASSARI

Mr. FORD. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from and that the Senate proceed to the immediate consideration of H.R. 5923, the private relief bill for an A.C. Massari; that the bill be deemed read the third time, passed, and that the motion to reconsider be laid upon the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So the bill (H.R. 5923) was deemed read the third time, and passed.

ENHANCING THE FINANCIAL SAFETY OF THE BANKS ASSOCIATION FARM CREDIT SYSTEM—H.R. 6125

PROVIDING FOR USE OF ELECTRONIC COTTON WAREHOUSE RECEIPTS—H.R. 6128

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration, en bloc, of the following bills just received in the House: H.R. 6125, a bill to enhance the financial safety and soundness of the Banks Association Farm Credit System, and H.R. 6128, a bill to provide for the use of electronic cotton warehouse receipts; that the bills be deemed read the third time, passed, the motions to reconsider laid upon the table, en bloc, and that any statements relative to these measures be placed in the RECORD at the appropriate place.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So the bills (H.R. 6125 and H.R. 6128) were deemed read the third time, and passed.

Mr. LEAHY. Mr. President, this recession has created huge increases in the demand for emergency food relief. This year food stamp participation is at record levels.

In cities and rural areas alike, hunger has returned with a vengeance. America's first line of defense against hunger has become TEFAP—The Emergency Food Assistance Program—and related food shelf and food bank programs.

These programs provide bags of groceries to those in need. They are particularly important to those whose unemployment benefits have run out or for those who have not yet received their first food stamp coupon.

As the recession stretches on—with no end in sight—our nutrition programs are pushed beyond their means. With so many in need, there is not enough food to go around.

In Vermont, and in many Northeastern States, nutrition programs are overburdened, forcing programs to reduce benefits or to cut food distribution from once a month to once every other month.

The administration refuses to see the magnitude of the problem.

I asked the Secretary of Agriculture to reconsider his recent position not to provide additional funding for TEFAP. I informed him of the results of the survey that the Committee on Agriculture, Nutrition, and Forestry conducted. More than 10 States advised me that they needed double the amount of TEFAP commodities to handle demand. One State needed six times as much food as it was slated to receive.

Those running Vermont's TEFAP Program estimate they require at least twice their current allocation of commodities to meet demand.

To help alleviate some of the Nation's hunger, I pushed to make TEFAP a permanent program in the 1990 farm bill, authorizing funding at $220 million for the current fiscal year. I also pushed for $50 million to help States and local agencies with the costs of distributing commodities.

Unfortunately, the administration proposed substantially less funding—only $120 million. This is 45 percent less.

I felt then, as I do now, that the President's request of $120 million and $45 million for distribution costs was inadequate, particularly during this recession. Unfortunately our worst fears have come true.

In Vermont alone, unemployment figures show a 130-percent increase in the number of those unemployed since January 1989. Food stamp participation has climbed 40 percent in the same period.

The shortfall in commodities coupled with the dismal economy has forced TEFAP distributors in Vermont to make a very difficult decision. They have concluded that the funding only allows distributions every other month. Vermont has decided that it is simply not cost efficient in terms of storage, transportation, and volunteer availability to make the allocations more often.

To help counter this shortfall, I have added a provision to a bill concerning the Farm Credit System that will provide more funds for TEFAP without costing taxpayers anything.

The bill will increase the amount of food provided by TEFAP by about 25 percent for each State. That is the equivalent of 3 months' worth of food in Vermont for fiscal year 1993.

I will continue to work for even greater levels of funding for TEFAP in the future.

I wish to thank several Vermonters who have been very helpful regarding TEFAP. Avram Patt, director of State Office of Economic Opportunity of Vermont, and Mary Carlson, food and nutrition programs coordinator, deserve a great deal of credit. They have been instrumental in getting me the information that I needed to keep the TEFAP Program going in 1988, to make TEFAP a permanent program in 1990, and to expand TEFAP funding with this bill

Also, I appreciate the efforts of Sue Weilbrenner, Dot Dennis, and Vicki Leszko, who have done a marvelous job regarding Vermont commodity distribution programs. I am very proud of these, and other Vermonters, who have done such a great job in providing emergency food assistance to those in need. Vicki supervised the program up until last May.

I also have to mention the great job the Vermont community action agencies have done. All Vermonters owe them, and their dedicated staffs, a great deal of thanks.

I want to thank the dedicated volunteers that provide TEFAP, food shelf, food bank, and soup kitchen foods to needy families. Vermont volunteers, and volunteers in every other State, have dedicated their time and efforts in aiding low-income hungry families. The area Agencies on Aging have done a great job donating time and vehicles and in getting additional volunteers. Most of the Vermont volunteers are senior citizens.

At the national level, the American Commodity Distribution Association deserves a lot of credit. My staff distributed questionnaires at their annual conference in Harrisburg, PA, so that I could obtain additional information about the need for TEFAP assistance throughout the Nation.

I want to single out three members for their recent efforts: Valerie Buechner, Wisconsin Department of Health and Social Services; Michael Levenson, of Washington State; and Foylen Bryant, food distribution office for Florida.

Foylen has had to put in countless additional hours recently to provide emergency assistance to south Florida. I commend her efforts in this regard.

ACDA members have been extremely helpful in getting information to me regarding the need for TEFAP increases. I would also like to thank:

Barry Shutt, director, Bureau of Government Donated Food of Pennsylvania; John Naylor, Commodity Distribution Program of Arkansas; and Maria Balakshin, Division of Child Nutrition and Food Distribution for California.

Many others deserve credit for all they have done over the years.

AGRICULTURAL CREDIT, RURAL DEVELOPMENT, AND COMMODITY MARKETING IMPROVEMENTS ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1709.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1709) entitled "An Act to amend the Farm Credit Act of 1971 to enhance the financial safety and soundness of the Farm Credit System, and for other purposes," do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Agricultural Credit, Rural Development, and Commodity Marketing Improvements Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FARM CREDIT BANKS AND ASSOCIATIONS SAFETY AND SOUNDNESS ACT OF 1992

Sec. 1001. Short title.
Sec. 1002. References to the Farm Credit Act of 1971.

SUBTITLE A—FARM CREDIT SYSTEM INSURANCE CORPORATION

Sec. 1101. Statutory successor to Assistance Board agreements.

SUBTITLE B—REMOVAL OF HINDRANCE TO MERGERS

Sec. 1201. Sectional representation on boards of directors.

SUBTITLE C—CLARIFICATION OF OBLIGATION OF FARM CREDIT BANKS FOR REPAYMENT OF DEBT ISSUED BY FARM CREDIT SYSTEM ASSISTANCE CORPORATION

Sec. 1301. Capital preservation.
Sec. 1302. Preferred stock.
Sec. 1303. Systemwide repayment obligation.
Sec. 1304. Repayment of Treasury-paid interest.
Sec. 1305. Transfer of obligations from associations to banks, and other matters.
Sec. 1306. Defaults.
Sec. 1307. Authority of Financial Assistance Corporation.
Sec. 1308. Technical amendments.

SUBTITLE D—CLARIFICATION OF CERTAIN AUTHORITIES

Sec. 1401. Clarification of the status and powers of certain institutions of the Farm Credit System.

SUBTITLE E—DISCLOSURE REQUIREMENTS

Sec. 1501. Financial disclosure and conflict of interest reporting by directors, officers, and employees of Farm Credit System institutions.

TITLE II—AGRICULTURAL CREDIT IMPROVEMENT ACT OF 1992

Sec. 2001. Short title.

SUBTITLE A—AMENDMENTS TO THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

Sec. 2101. Beginning farmer and rancher program.
Sec. 2102. Processing of applications for farm operating loans.
Sec. 2103. Time period within which county committee is required to meet to consider applications for farm ownership and operating loans and guarantees and beginning farmer plans.
Sec. 2104. Debt service margin requirements; certified lender program.
Sec. 2105. Federal-State beginning farmer partnership.
Sec. 2106. Graduation of borrowers with operating loans or guarantees to private commercial credit.
Sec. 2107. Simplified application for guaranteed loans of $50,000 or less.
Sec. 2108. Targeting of loans to members of groups whose members have been subjected to gender prejudice.
Sec. 2109. Recordkeeping of loans by borrower's gender.
Sec. 2110. Increase in period during which county committee loan eligibility certification continues in effect.
Sec. 2111. Limitation on aggregate indebtedness.
Sec. 2112. Graduation of seasoned borrowers to the loan guarantee program.
Sec. 2113. Deadline for issuance of regulations.

SUBTITLE B—AMENDMENTS TO THE FARM CREDIT ACT OF 1971

Sec. 2201. Valuation of reserves of production credit associations.
Sec. 2202. Elimination of authority of Farm Credit System Insurance Corporation to appoint nonvoting member of Farm Credit System Funding Corporation Board.
Sec. 2203. Expansion of water and sewer lending authority of banks for cooperatives.
Sec. 2204. Equity voting for one director of each bank for cooperatives.
Sec. 2205. Per diem compensation of bank directors.
Sec. 2206. Frequency of examinations of system institutions.
Sec. 2207. Authority to examine system institutions.
Sec. 2208. Repeal of prohibition against guarantee of certain instruments of indebtedness.
Sec. 2209. Clarification of treatment of Farm Credit Administration operating expenses.
Sec. 2210. Approval of competitive charters.

SUBTITLE C—TECHNICAL CORRECTIONS

Sec. 2301. Technical corrections.

SUBTITLE D—EFFECTIVE DATE

Sec. 2401. Effective date.

TITLE III—RURAL ELECTRIFICATION ADMINISTRATION IMPROVEMENT ACT OF 1992

Sec. 3001. Short title.
Sec. 3002. Discounted loan prepayment.
Sec. 3003. Repeal of section 412.
Sec. 3004. Repeal of section 311.
Sec. 3005. Grants to enable providers of health care and educational services in rural areas to implement interactive telecommunications systems.
Sec. 3006. Increase in limitation on population of rural areas for purposes of telephone loans.
Sec. 3007. Sense of the Congress.
Sec. 3008. Regulations.

TITLE IV—PERISHABLE AGRICULTURAL COMMODITIES ACT TECHNICAL AMENDMENTS OF 1992

Sec. 4001. Short title.
Sec. 4002. Reaffirmation of findings.
Sec. 4003. Technical amendment.

TITLE V—EQUITABLE TREATMENT FOR SUGARCANE PRODUCERS

Sec. 5001. Equitable treatment for producers.
Sec. 5002. Adjustment after disaster.
Sec. 5003. Clarifying and conforming amendments.

TITLE VI—USE OF ELECTRONIC COTTON WAREHOUSE RECEIPTS

Sec. 6001. Use of electronic cotton warehouse receipts.

TITLE I—FARM CREDIT BANKS AND ASSOCIATIONS SAFETY AND SOUNDNESS ACT OF 1992

SEC. 1001. SHORT TITLE.

(a) SHORT TITLE.—This title may be cited as the "Farm Credit Banks and Associations Safety and Soundness Act of 1992".

SEC. 1002. REFERENCES TO THE FARM CREDIT ACT OF 1971.

Whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), except to the extent otherwise provided.

Subtitle A—Farm Credit System Insurance Corporation

SEC. 1101. STATUTORY SUCCESSOR TO ASSISTANCE BOARD AGREEMENTS.

(a) IN GENERAL.—Section 5.58(2) (12 U.S.C. 2277a-7(2)) is amended by adding at the end thereof the following: "The Corporation shall succeed to the rights of the Farm Credit System Assistance Board under agreements between the Farm Credit System Assistance Board and System institutions that certify such institutions as eligible to issue preferred stock pursuant to title VI on the termination of the Assistance Board on the date provided in section 6.12.".

(b) CONFORMING AMENDMENTS.—Section 5.35(4) (12 U.S.C. 2271(4)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(C) after December 31, 1992, mean any significant noncompliance by a System institution (as determined by the Farm Credit Administration, in consultation with the Farm Credit System Insurance Corporation) with any term or condition imposed on the institution by the Farm Credit System Assistance Board under section 6.6 or by the Farm Credit System Insurance Corporation under section 5.61.".

Subtitle B—Removal of Hindrance to Mergers

SEC. 1201. SECTIONAL REPRESENTATION ON BOARDS OF DIRECTORS.

Section 4.15 (12 U.S.C. 2203) is amended—

(1) by amending the section heading to read as follows:

"NOMINATION AND ELECTION OF BANK AND ASSOCIATION DIRECTORS.—";

(2) by inserting, before the text thereof, the following:

"(a) NOMINATION OF DIRECTORS.—"; and

(3) by adding at the end thereof the following new subsection:

"(b) SECTIONAL REPRESENTATION ON BANK AND ASSOCIATION BOARDS.—

"(1) IN GENERAL.—To ensure representation of geographical sections within the territory served by a bank or association of the Farm Credit System, each such bank (other than the National Bank for Cooperatives) or association may include in its bylaws governing the election of its board of directors provisions for the election of some or all of its members of the board to be elected by the stockholders:

"(A) at large;

"(B) from designated geographical sections of the territory served by the bank or association; or

"(C) as provided in both subparagraphs (A) and (B).

"(2) PROPORTIONALITY.—If members of the board of directors are elected by stockholders from designated geographical sections, the membership on the board elected from each section should reflect proportionately—

"(A) in the case of an association, the same number of stockholders; or

"(B) in the case of a bank, the same number of stockholder-borrowers of associations that accept, make, or otherwise provide loans in the designated sections of the bank's territory and that hold voting stock in the bank.

"(3) EXAMINATION OF SECTIONS.—The boundaries of the designated geographical sections shall be examined by the bank or association, as appropriate, at least once every three years and shall be readjusted, as necessary, to ensure such proportional representation of membership on the board.".

Subtitle C—Clarification of Obligation of Farm Credit Banks for Repayment of Debt Issued by Farm Credit System Assistance Corporation.

SEC. 1301. CAPITAL PRESERVATION.

Section 6.9(e)(3) (12 U.S.C. 2278a–9(e)(3)), is amended—

(1) by adding at the end of subparagraph (C) the following: "Any bank leaving the Farm Credit System pursuant to Section 7.10 of this Act shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of such future payment had the bank remained in the System. With respect to any bank undergoing liquidation under this Act, a liability to the Financial Assistance Corporation in said amount (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of such bank. The obligations of other banks shall not be reduced in anticipation of any such recoveries from banks leaving the System or in liquidation, but the Financial Assistance Corporation shall apply such recoveries, when received, and all earnings thereon, to reduce the other banks' payment obligations, or, to the extent such recoveries are received after the other banks have met their entire payment obligation, shall refund such recoveries, when received, to the other banks in proportion to the other banks' payments.";

(2) by redesignating subparagraph (D) as subparagraph (E);

(3) by adding a new subparagraph (D) as follows:

"(D)(i) In order to provide for the orderly funding and discharge over time of the obligation of each System bank to the Financial Assistance Corporation under subparagraph (C), each System bank shall enter into or continue in effect an agreement with the Financial Assistance Corporation under which the bank will make annual annuity-type payments to the Financial Assistance Corporation, beginning no later than December 1991 (except for any bank that did not meet its interim capital requirement on December 31, 1990, in which case such bank shall begin making such payments no later than December 31, 1993) in amounts designed to accumulate, in total, including earnings thereon, to 90% of the bank's ultimate obligation, and the Financial Assistance Corporation will partially discharge the bank from its obligation under subparagraph (C) to the extent of each such payment and the earnings thereon as earned.

"(ii) Such agreement shall not require payments to be made to the extent that making a particular payment or part thereof would cause the bank to fail to satisfy applicable regulatory permanent capital requirements, but shall provide for recalculation of subsequent payments accordingly.

"(iii) The funds received by the Financial Assistance Corporation pursuant to such agreements shall be invested in eligible investments as defined in Section 6.25(a)(1) of this Act, and such funds and the earnings thereon shall be available only for the payment of the principal of the bonds issued by the Financial Assistance Corporation under this subsection."; and

(4) by adding before the period at the end of subparagraph (E), as redesignated by paragraph (2) of this section, the following: ", nor shall the obligation to make future annuity payments to the Financial Assistance Corporation under subparagraph (D) be considered a liability of any System bank".

SEC. 1302. PREFERRED STOCK.

Section 6.26(d)(1)(B) (12 U.S.C. 2278b–6(d)(1)(B)), is amended by adding at the end thereof the following: "Each year beginning in 1992, as soon as practicable following the end of the prior year, each such institution (except institutions in receivership) shall appropriate from its earnings in the prior year to an appropriated unallocated surplus account with respect to preferred stock, the sum of—

"(i) the greater of—

"(I) such amount as the institution may be required to appropriate under any assistance agreement it has with the Farm Credit System Assistance Board or the Farm Credit System Insurance Corporation; or

"(II) the amount that, if appropriated to such account in equal amounts in each year thereafter until the maturity of the obligation referred to in subparagraph (A), would cause the amount in such account to equal the par value of the preferred stock issued by such institution with respect to such obligation; plus

"(ii) any amount that had been appropriated to said account in a previous year but had thereafter been offset by losses;

"*Provided, However*, that an annual appropriation shall not be made to the extent that it would exceed the institution's net income (as determined pursuant to generally accepted accounting principles) in that year or to the extent that it would cause the institution's preferred stock to be impaired. The amount in such appropriated unallocated surplus account shall be unavailable to pay dividends or other allocations or distributions to shareholders or holders of participation certificates, and said account shall be senior to all other unallocated surplus accounts but junior to all preferred and common stock for purposes of the application of operating losses. Such appropriations of surplus by an institution shall not affect the treatment of its preferred stock (and of the appropriated unallocated surplus) as equity for purposes of regulatory permanent capital requirements."

SEC. 1303. SYSTEMWIDE REPAYMENT OBLIGATION.

Section 6.26(d)(1)(C) (12 U.S.C. 2278b–6(d)(1)(C)), is amended by adding at the end thereof the following: "The annual increase in the present value of the estimated obligation of each bank to the Financial Assistance Corporation hereunder shall be recorded each year as an expense item, in accordance with generally accepted accounting principles, on the books of the bank. A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either directly, or indirectly through loan pricing or otherwise) all or part of such payment requirement to its affiliated direct lender associations based on proportionate average accruing retail loan volumes for the preceding 15 years, but the bank shall remain primarily liable for such amount. Any bank leaving the Farm Credit System pursuant to Section 7.10 of this Act shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of such future payment had the bank remained in the System, and a liability to the Financial Assistance Corporation in said amount (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of any bank undergoing liquidation. The obligations of other banks shall not be reduced in anticipation of any such recoveries from banks leaving the System or in liquidation, but the Financial Assistance Corporation shall apply such recoveries, when received, and all earnings thereon, to reduce the other banks' payment obligations, or, to the extent such recoveries are received after the other banks have met their entire payment obligation, shall refund such recoveries, when received, to the other banks in proportion to the other banks' payments. Any association leaving the Farm Credit System pursuant to Section 7.10 of this Act shall be required, under regulations of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the present value of such future payment, and a liability to the bank in said amount (calculated as if the association had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the bank against the estate of any association undergoing liquidation."

SEC. 1304. REPAYMENT OF TREASURY-PAID INTEREST

(a) CONFORMING AMENDMENT.—Section 6.26(c)(5) (12 U.S.C. 2278b–6(c)(5)), is amended to read as follows:

"(5) REPAYMENT OF TREASURY-PAID INTEREST.—

"(A) IN GENERAL.—On the maturity date of the last-maturing debt obligation issued under subsection (a) of this section, the Financial Assistance Corporation shall repay to the Secretary of the Treasury the total amount of any annual interest charges on such debt obligations that Farm Credit System institutions (other than the Financial Assistance Corporation) have not previously paid, and the Financial Assistance Corporation shall not be required to pay any additional interest charges on such payments.

(B) ASSESSMENT.—In order to provide for the orderly funding and discharge of the obligation of the Financial Assistance Corporation under subparagraph (A), each System bank shall enter into or continue in effect, and comply with, an agreement with the Financial Assistance Corporation under which the bank will make annual annuity-type payments to the Financial Assistance Corporation, beginning no later than December 31, 1992 (except for any bank that did not meet its interim capital requirement on December 31, 1990, in which case such bank shall begin making such payments no later than December 31, 1993) in amounts designed to accumulate, in total, including earnings thereon, to an amount equal to the bank's ultimate obligation, and the Financial Assistance Corporation will partially discharge the bank from its obligation under this subparagraph to the extent of each such payment and the earnings thereon as earned. Except in the last five years prior to the date the Financial Assistance Corporation is obligated to make such repayment, no annual payment may exceed .0006 times the bank's and its affiliated associations' average accruing retail loan volume for the preceding year.

"(C) INVESTMENT OF FUNDS.—The Financial Assistance Corporation shall invest funds derived from such investment in eligible investments as defined in section 6.25(a)(1) of this Act, and such funds and the earnings thereon shall be available only for the repayment to the Secretary of the Treasury provided for in subparagraph (A).

"(D) PASS THROUGH.—A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either directly, or indirectly through loan pricing or otherwise) all or part of such assessments to its affiliated direct lender associations based on proportionate average accruing retail loan volumes for the preceding year, but the bank shall remain primarily liable for such amounts.

"(E) LIABILITY.—

"(i) BANKS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any bank terminating System status pursuant to Section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of all future such assessments against the bank had the bank remained in the System, and a liability to the Financial Assistance Corporation in such amount (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of any bank undergoing liquidation.

"(ii) NO ANTICIPATORY REDUCTIONS IN OTHER OBLIGATIONS.—The obligations of other banks shall not be reduced in anticipation of any such recoveries from banks leaving the System or in liquidation.

"(iii) REFUND OF RECOVERIES.—The Financial Assistance Corporation shall apply such recoveries, when received, and all earnings thereon, to reduce the other banks' payment obligations, or, to the extent such recoveries are received after the other banks have met their entire payment obligation, shall refund such recoveries, when received, to the other banks in proportion to the other banks' payments.

"(F) ASSOCIATIONS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any association terminating System status pursuant to Section 7.10 of this Act shall be required, under regulations of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the estimated present value of all future such assessments against the bank, and a liability to the bank in said amount (calculated as if the association had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the bank against the estate of any association undergoing liquidation.

"(G) CAPITAL REQUIREMENTS.—

"(i) IN GENERAL.—Until the date that is five years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), all assessments paid by banks to the Financial Assistance Corporation pursuant to subparagraph (B), and any part of the obligation to pay future assessments to the Financial Assistance Corporation under subparagraph (B) that is recognized as an expense on the books of any System bank or association, shall nonetheless be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements.

"(ii) DURING THE FINAL FIVE YEARS PRIOR TO REPAYMENT.—During the period beginning on the date that is—

"(I) five years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), sixty percent;

"(II) four years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), thirty percent; and

"(III) three years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), zero percent;

of all assessments paid by banks to the Financial Assistance Corporation pursuant to subparagraph (B), and of any part of the obligation to pay future assessments to the Financial Assistance Corporation under subparagraph (B) that is recognized as an expense on the books of any System bank or association, shall nonetheless be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements.".

(b) CONFORMING AMENDMENT.—Section 6.28 of the Farm Credit Act of 1971 (12 U.S.C. 2278b–8) is amended by striking subsection (b) and redesignating subsection (c) as subsection (b).

SEC. 1305. TRANSFER OF OBLIGATIONS FROM ASSOCIATIONS TO BANKS, AND OTHER MATTERS.

Section 6.26 (12 U.S.C. 2278b–6), is amended—

(1) in subsection (c)—

(A) by striking "INSTITUTIONS" in the heading of paragraph (2)(B) and inserting "BANKS";

(B) by striking the word "institutions" each time it appears in paragraphs (2)(B), (3) and (4) and inserting in lieu thereof the word "banks";

(C) by amending paragraph (2)(C) to read as follows:

"(C) ALLOCATION.—During each year of the second 5-year period, each System bank shall pay to the Financial Assistance Corporation a proportion, as calculated by the Financial Assistance Corporation, of the interest due from System banks under this paragraph equal to—

"(i) the amount of the average accruing retail loan volume of the bank and its affiliated associations for the preceding year; divided by

"(ii) the total average accruing retail loan volume of all such banks and their affiliated associations for the preceding year."; and

(D) by striking paragraph (2)(D);

(2) in subsection (d)—

(A) in paragraph (1)(C)—

(i) by striking the word "institution" the first time it appears and inserting in lieu thereof the word "bank";

(ii) by striking "under section 6.7(a)" and inserting in lieu thereof "or the Financial Assistance Corporation under sections 6.7(a) and 6.24, respectively,";

(iii) by adding after "proportion" the following ", as calculated by the Financial Assistance Corporation,";

(iv) by amending clauses (i) and (ii) to read as follows:

"(i) the average accruing retail loan volume of the bank and its affiliated associations for the preceding 15 years; divided by

"(ii) the average accruing retail loan volume of all such banks and their affiliated associations for the same period.";

(B) by striking paragraph (1)(D); and

(C) by redesignating paragraph (1)(E) as paragraph (1)(D); and

(3) by adding at the end thereof the following new subsections:

"(e) ADMINISTRATION.—

"(1) DEFINITION OF RETAIL LOAN VOLUME.—As used in this section, the term 'retail loan volume' means all loans (as defined in accordance with generally accepted accounting principles) by a System bank or association, excluding loans by such a bank or association to another System institution.

"(2) CALCULATION OF AVERAGE ANNUAL LOAN VOLUMES.—For purposes of this section and section 6.9, average annual loan volumes shall be calculated using month-end balances.

"(3) EXCLUSION OF BANKS UNDERGOING LIQUIDATION.—For purposes of this section and section 6.9, the term 'bank' shall not include a bank that had entered liquidation prior to the enactment of this subsection.".

SEC. 1306. DEFAULTS.

Section 6.26(d) (12 U.S.C. 2278b–6(d)), is amended—

(1) by amending the heading of paragraph (3)(A) to read as follows: "CERTAIN PRINCIPAL AND INTEREST OBLIGATIONS.—";

(2) in paragraph (3)(A)(i)—

(A) by striking "subsection (a)," and inserting the following: "subsection (a) of this section, on the payment of principal or interest due under subparagraphs (B) and (C) of section 6.9(e)(3), on the payment of principal due under paragraph (1)(C) of this section, or on the payment of an assessment due under subsection (c)(5)(B) of this section,";

(B) by striking "of the interest" in the two places it appears; and

(C) by striking "institution" wherever it appears, and inserting in lieu thereof "bank";

(3) in paragraph (3)(A)(ii)—

(A) by striking "of interest";

(B) by striking "institution" and inserting in lieu thereof "bank"; and

(C) by striking "such uncollected interest", and inserting in lieu thereof "any uncollected amount";

(4) in paragraph (3)(A)(iii), by striking "added" and all that follows through the period at the end and inserting "allocated to other System banks in accordance with the allocation mechanism applicable under this Act to the particular defaulted obligation.";

(5) by amending the heading of subparagraph (B) of paragraph (3) to read as follows: "PRINCIPAL OF BONDS ISSUED TO FUND PURCHASE OF PREFERRED STOCK.—";

(6) in paragraph (3)(C)—

(A) by striking "INSTITUTIONS" in the heading to paragraph (3)(C) and inserting "BANKS";

(B) by striking "institution" and inserting "bank";

(C) by striking "institutions" both places it appears and inserting "banks"; and

(D) by striking "the amount of any interest", and inserting in lieu thereof "any amounts";

(7) in paragraph (4)(A), by adding after "subsection (a)" "of this section or section 6.9(e)(3)(A)";

(8) in paragraph (4)(B)(i)—

(A) by amending the clause heading to read as follows: "CERTAIN PRINCIPAL AND INTEREST OBLIGATIONS.—";

(B) by striking "subsection (c)," and inserting "subsection (c) of this section, on the payment of principal or interest due under subparagraphs (B) and (C) of section 6.9(e)(3), on the payment of principal due under paragraph (1)(C) of this subsection, or on the payment of an assessment due under subsection (c)(5)(B) of this section,"; and

(C) by striking "institution" wherever it appears, and inserting in lieu thereof "bank"; and

(9) in paragraph (4)(B)(ii), by amending the clause heading to read as follows: "PRINCIPAL OF BONDS ISSUED TO FUND PURCHASE OF PREFERRED STOCK.—".

SEC. 1307. AUTHORITY OF FINANCIAL ASSISTANCE CORPORATION.

(a) PURPOSE.—Section 6.21 (12 U.S.C. 2278b–1) is amended by adding before the period at the end thereof: "and to assist, pursuant to section 6.9(e) and subsections (c) through (g) of section 6.26, in the repayment by System institutions of those who provided funds in connection with such program".

(b) Section 6.31(a) (12 U.S.C. 2278b–11(a)) is amended by adding striking "terminate on" and inserting the following: "terminate on the complete discharge by the Financial Assistance Corporation of its responsibilities under Section 6.9(e) and subsections (c) through (g) of section 6.26 with regard to repayments by System institutions, but in no event later than two years following".

SEC. 1308. TECHNICAL AMENDMENTS.

(a) TECHNICAL AMENDMENT TO THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT AMENDMENTS OF 1991.—Section 204(3) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (P.L. 102–237; 105 Stat. 1855) is amended by striking "in section 1221(1)(D) (16 U.S.C. 3821(1)(D))" and inserting "in section 1221(a)(1)(D) (16 U.S.C. 3821(a)(1)(D))".

(b) TECHNICAL AMENDMENTS TO THE FARM CREDIT ACT OF 1971.—

(1) Section 8.11(a)(1)(B)(ii) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa–11(a)(1)(B)(ii)) is amended by striking "the date of enactment of this section" and inserting "December 13, 1991".

(2) Section 8.32 of such Act (12 U.S.C. 2279bb–1) is amended—

(A) in each of subsections (a), (b)(1)(D), and (b)(2), by striking "the date of the enactment of this section" each place such term appears and inserting "December 13, 1991"; and

(B) in subsection (b)(1)(E), by striking "the date of the enactment of such Act" and inserting "December 13, 1991".

(3) Section 8.3(c)(13) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa–3(c)(13)) is amended by striking "8.11(g)" and inserting "8.11(e)".

Subtitle D—Clarification of Certain Authorities

SEC. 1401. CLARIFICATION OF THE STATUS AND POWERS OF CERTAIN INSTITUTIONS OF THE FARM CREDIT SYSTEM.

(a) CLARIFICATION OF AUTHORITY REGARDING REMAINING FEDERAL INTERMEDIATE CREDIT BANK.—Section 410 of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note) is amended by adding at the end the following new subsection:

"(e) CLARIFICATION OF AUTHORITY REGARDING REMAINING FEDERAL INTERMEDIATE CREDIT BANK.—

"(1) BORROWER VOTE.—Notwithstanding any other provision of law, within 30 days after the date of the enactment of this subsection, the Farm Credit Administration shall conduct and compile the results of a referendum of the farmer-borrowers of the production credit associations that are stockholders in the Federal Intermediate Credit Bank of Jackson to determine whether the merger required under this subsection shall be completed in accordance with the provisions of paragraph (2) or paragraph (3) of this subsection. The Farm Credit Administration shall make available to such farmer-borrowers such information as it determines is appropriate under the circumstances to reasonably inform the farmer-borrowers of the anticipated benefits and potential disadvantages of each of the two merger completion options. Each such farmer-borrower shall be entitled to one vote. The Farm Credit Administration shall establish record dates and other procedures for conducting the referendum. The Federal Intermediate Credit Bank of Jackson and the production credit associations shall cooperate in the conduct of the referendum, as determined necessary by the Farm Credit Administration.

"(2) ARBITRATED MERGER.—

"(A) APPROVAL BY BORROWERS.—If at least fifty percent of the farmer-borrowers voting in the referendum under paragraph (1) vote to complete the merger required under this subsection under the provisions of this paragraph, then a merger of the Federal Intermediate Credit Bank of Jackson into the Farm Credit Bank of Texas shall be completed in accordance with the provisions of this paragraph not later than 1 year after the date of the enactment of this subsection.

"(B) ARBITRATOR.—

"(i) IN GENERAL.—If at least fifty percent of the farmer-borrowers voting in the referendum under paragraph (1) vote to complete the merger required under this subsection under the provisions of this paragraph, then, not later than 60 days after the date of the enactment of this subsection, an arbitrator (or panel of arbitrators) shall be named by the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association toserve as the arbitrator referred to in this paragraph.

"(ii) DUTIES.—The arbitrator shall determine the terms and conditions of the merger required under this paragraph, such that the terms and conditions are fair and equitable to the two banks, their affiliated associations, the stockholders and borrowers of such associations, and the other institutions of the Farm Credit System, and are designed to protect or enhance the safety and soundness of the Farm Credit System. The arbitrator shall have the authority to hire staff and secure the services of consultants as necessary to discharge the duties of the arbitrator under this paragraph.

"(iii) EXPENSES.—Notwithstanding any other provision of law, the compensation and expenses of the arbitrator, the fees and expenses of the American Arbitration Association, and any expenses associated with the referendum required under subparagraph (C) shall be paid from the Farm Credit Assistance Fund established under section 6.25.

"(C) REFERENDUM ON ASSOCIATION STRUCTURE.—

"(i) IN GENERAL.—Within 120 days after the date of the enactment of this subsection, the American Arbitration Association shall conduct, and compile the results of, a vote of current farmer-borrowers of the production credit associations and the Federal land bank associations in the States of Alabama, Louisiana, and Mississippi in accordance with the Election Rules of the American Arbitration Association to determine whether the farmer-borrowers of each association prefer to have credit delivered—

"(I) in the case of production credit association farmer-borrowers, through a production credit association or through an agricultural credit association; and

"(II) in the case of Federal land bank association farmer-borrowers, through a Federal land bank association or through an agricultural credit association.

Each farmer-borrower shall be entitled to one vote. The arbitrator shall establish record dates and other procedures for conducting the referendum. The Federal Intermediate Credit Bank of Jackson and the production credit associations shall cooperate in the conduct of the referendum, as determined necessary by the Arbitrator.

"(ii) DISCLOSURE.—The arbitrator shall send to farmer-borrowers eligible to vote under this subparagraph, with their ballot, a statement describing the potential consequences to the farmer-borrowers, and to the associations from which they borrow, of the two alternatives presented in the ballots and setting forth factors that farmer-borrowers might consider relevant to the choice between the two alternatives. The arbitrator shall develop such disclosure materials in cooperation with the Farm Credit Administration and ensure that the materials are not inconsistent with applicable laws and regulations.

"(iii) TABULATION OF RESULTS.—The results of the vote under this subparagraph shall be compiled separately for production credit association farmer-borrowers and Federal land bank association farmer-borrowers in each of the following seven geographic areas:

"(I) The area served by the Federal Land Bank Association of South Mississippi.

"(II) The area served by the Federal Land Bank Association of North Mississippi.

"(II) The area served by the Federal Land Bank Association of North Mississippi.

"(III) The area served by the Federal Land Bank Association of South Alabama.

"(IV) The area served by the Federal Land Bank Association of North Alabama.

"(V) The area served by the Federal Land Bank Association of South Louisiana.

"(VI) The area served by both the Federal Land Bank Association of North Louisiana and the First South Production Credit Association.

"(VII) The area served by both the Federal Land Bank Association of North Louisiana and the Northwest Louisiana Production Credit Association.

"(iv) PUBLICATION OF RESULTS.—The results of the vote under this subparagraph, as tabulated by the American Arbitration Association, shall be made promptly available to the public in a manner determined appropriate by the Farm Credit Administration.

"(D) DEVELOPMENT OF MERGER PLANS.—

"(i) IN GENERAL.—Within 210 days after the date of the enactment of this subsection, the arbitrator shall develop a plan specifying the terms and conditions of the merger of the two banks (and any related association mergers) required under this paragraph, such that the terms and conditions are fair and equitable to the two banks, their affiliated associations, the stockholders or farmer-borrowers of such associations, and the other institutions of the Farm Credit System, and are designed to protect or enhance the safety and soundness of the Farm Credit System. In devising the plan the arbitrator shall, to the extent practicable, achieve the following objectives:

"(I) Implementation of the preference expressed by the majority vote of the farmer-borrowers voting under subparagraph (C) in accordance with subparagraph (D)(iv), and expressed by the affected and interested parties under clause (ii).

"(II) Valuation of assets fairly, equitably, and consistently for all parties involved.

"(III) Establishment of capitalization and funding terms in a manner that treats farmer-borrowers and stockholders in the two involved farm credit districts equitably and takes account of risk.

"(IV) Ensure the viability of the resulting Farm Credit Bank and associations of such bank and the ability of the resulting bank and associations of such bank to lend to eligible borrowers at reasonable and competitive rates of interest.

"(ii) SUBMISSION OF VIEWS AND INFORMATION.—The arbitrator shall receive from affected and interested parties written submissions, in accordance with fair and reasonable procedures established by the arbitrator, regarding the terms and conditions of an appropriate plan for the merger of the two banks (and any related association mergers) required under this paragraph. The Federal Intermediate Credit Bank of Jackson, the Farm Credit Bank of Texas, and their affiliated associations in the states of Alabama, Louisiana, and Mississippi, shall make available all books, records, financial information, and other material that the arbitrator determines is directly necessary to the development of the plan or the fulfillment of any other requirement under this paragraph. A copy of any submission or information provided to the arbitrator by any party under this paragraph shall be furnished to the Federal Intermediate Credit Bank of Jackson or the Farm Credit Bank of Texas upon the written request of such bank and at such bank's expense. The arbitrator shall provide both banks with a reasonable opportunity to review and respond to any submission or information provided by any party.

"(iii) CONTENT OF PLAN.—In accordance with the standards in clause (i) and giving due consideration to the views and information submitted or made available under clause (ii), the arbitrator shall develop and submit to the Farm Credit Administration for certification a merger plan that shall include provisions regarding the following matters:

"(I) The initial composition, following the merger, of the board of directors of the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the provisions of the Farm Credit Act of 1971 and any applicable regulations).

"(II) The initial association structure following the merger, as required under clause (iv), in the States of Alabama, Louisiana, and Mississippi (which shall be subject to change thereafter in accordance with the provisions of the Farm Credit Act of 1971 and any applicable regulations).

"(III) The initial composition, following the merger, of the board of directors of any association whose chartered territory or lending authority is altered under the plan (which shall be subject to change thereafter in accordance with the provisions of the Farm Credit Act of 1971 and any applicable regulations).

"(IV) The valuation, for purposes of the merger, of the assets and liabilities of the merging banks and any merging associations. The arbitrator shall consult with the Farm Credit System Insurance Corporation regarding the valuation of such assets and liabilities in accordance with clause (v).

"(V) The terms and conditions upon which the shares of capital stock of the Federal Intermediate Credit Bank of Jackson, and of any associations that may merge under the plan, will be converted into shares of the Farm Credit Bank of Texas, and shares of the resulting associations, respectively.

"(VI) The capital structure and capitalization levels of the resulting Farm Credit Bank, the associations described in subclause (III), and such other associations in the States of Alabama, Louisiana, and Mississippi as the arbitrator determines necessary to carry out the purposes of this paragraph (which shall be subject to change thereafter in accordance with the provisions of the Farm Credit Act of 1971 and any applicable regulations).

"(VII) The terms of financing agreements between any production credit associations or associations described in subclause (III), and the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the provisions of the Farm Credit Act of 1971 and any applicable regulations).

"(VIII) Any other terms and conditions or other matters that the arbitrator considers necessary.

"(iv) CONTENT OF PLAN; AGRICULTURAL CREDIT ASSOCIATIONS.—The plan shall—

"(I) in any of the geographic areas described in subparagraph (C)(iii) where a majority of the farmer-borrowers of both the production credit association and the Federal land bank association voted under subparagraph (C)(i) that they preferred to have credit delivered through an agricultural credit association, provide for the delivery of credit through an agricultural credit association in such territory; and

"(II) in any of the geographic areas described in subparagraph (C)(iii) where a majority of the farmer-borrowers of the production credit association or the Federal land bank association voted that they preferred to have credit delivered through a production credit association or a Federal land bank association, as appropriate, not provide for the delivery of credit through an agricultural credit association, or otherwise alter the existing association structure.

"(v) CONSULTATION WITH INSURANCE CORPORATION.—The arbitrator shall consult with the Farm Credit System Insurance Corporation regarding the valuation of the assets and liabilities under the plan of merger, the capitalization of the Farm Credit System institutions resulting under the plan, and any other matters relevant to the assistance to be provided by the Insurance Corporation under subparagraph (H).

"(E) CERTIFICATION OF PLAN.—Within 45 days after the receipt of the plan developed by the arbitrator, the Farm Credit Administration shall—

"(i) certify; or

"(ii) recommend to the arbitrator revisions to the plan that, if incorporated into the plan, will allow the Farm Credit Administration to certify,

that the resulting bank and associations are organized in such a fashion such that they will, upon implementation of the plan, operate in compliance with applicable laws and regulations. The arbitrator and the Farm Credit Administration shall work cooperatively to ensure the expeditious issuance of the certification. If the Farm Credit Administration recommends to the arbitrator revisions to the plan that, if incorporated into the plan, will allow the Farm Credit Administration to certify the plan, the arbitrator shall, within 15 days of receipt of such recommended revisions, incorporate such revisions into the plan as the arbitrator deems appropriate to secure such certification.

"(F) REVIEW.—Actions and determinations of the arbitrator or the Farm Credit Administration pursuant to this paragraph shall not be subject to judicial review, and the actions and determinations of the arbitrator shall not be subject to the requirements of the Administrative Procedures Act.

"(G) IMPLEMENTATION.—Within 90 days after the date of the receipt of the plan under subparagraph (E), the Farm Credit Administration shall issue such charters or charter amendments and take any such other regulatory actions as may be necessary to implement the merger or mergers as provided for under the certified plan.

"(H) Facilitation.—

"(i) Beginning on the date of the enactment of this subsection, the Farm Credit System Insurance Corporation shall expend amounts in the Farm Credit Insurance Fund to the extent necessary to facilitate the merger prescribed in the plan. Assistance shall be on such terms and conditions as the Farm Credit System Insurance Corporation deems appropriate.

"(ii) Until the expiration of five years from the effective date of a merger authorized by this subsection, or the final resolution of any litigation against the Federal Intermediate Credit Bank of Jackson or any of its stockholders pending on the date of the enactment of this subsection, whichever is later, the Insurance Corporation shall guarantee prompt payment of any loss experienced by the merged bank, which loss is caused by the failure of any association-stockholder of the merged bank that was a stockholder of the Federal Intermediate Credit Bank of Jackson immediately prior to such merger, or any successor to such association, to pay when due any obligation of principal or interest owed by such association or its successor to the resulting bank.

"(I) DEFINITIONS.—As used in this paragraph—

"(i) the term 'agricultural credit association' means an association having the same authorities, attributes and obligations as, and for all purposes an agricultural credit association resulting from the implementation of the plan under this paragraph shall be deemed to be, an association resulting from the merger of a production credit association and a Federal land bank association under section 7.8; and

"(ii) the term 'farmer-borrower' means a borrower from a Farm Credit System association or bank in the states of Alabama, Louisiana, or Mississippi who is an individual and who holds voting stock, or is eligible to hold voting stock, in such institution.

"(3) NEGOTIATED OR REGULATORY MERGER.—

"(A) APPROVAL BY BORROWERS.—If a majority of the farmer-borrowers voting in the referendum under paragraph (1) vote to complete the merger required under this subsection under the provisions of this paragraph, then a merger of the Federal Intermediate Credit Bank of Jackson shall be completed in accordance with the provisions of this paragraph not later than 1 year after the date of the enactment of this subsection.

"(B) MERGER AUTHORITY.—

"(i) EFFECTIVE DATES.—If a majority of the farmer-borrowers voting in the referendum under paragraph (1) vote to complete the merger required under this subsection in accordance with the provisions of this paragraph, then the provisions of clause (ii) shall take effect as if such clause had become law at the time the amendment referred to in such clause (ii) took effect, and shall remain in effect until 1 year after the date of enactment of this subsection.

"(ii) AUTHORITY.—Effective only as provided in clause (i), the Federal Intermediate Credit Bank of Jackson may operate subject to such provisions of part A of title II of the Farm Credit Act of 1971 (as in effect immediately before the amendment made by section 401 of the Agricultural Credit Act of 1987 took effect) and such provisions of the Farm Credit Act of 1971 (as in effect after the amendment), as the Farm Credit Administration may deem appropriate to carry out the purposes of this subsection and such Act.

"(C) REQUIREMENT.—Within 11 months after the date of enactment of this subsection, the Federal Intermediate Credit Bank of Jackson shall merge with a Farm Credit Bank pursuant to the procedures prescribed by section 7.12 of the Farm Credit Act of 1971.

"(D) EFFECT OF FAILURE TO MERGE.—If the Federal Intermediate Credit Bank of Jackson fails to comply with subparagraph (C), the Farm Credit Administration shall, within 30 days after the end of the 11 month period described in subparagraph (C), order the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank which is willing to merge with the Federal Intermediate Credit Bank of Jackson pursuant to a plan of merger prescribed by the Farm Credit Administration, after consultation with the Farm Credit System Insurance Corporation with respect to the assistance to be provided by the Insurance Corporation under subparagraph (F). The order provided for in this paragraph shall specify the effective date of the merger, which shall be in the sole discretion of the Farm Credit Administration.

"(E) REVIEW.—Actions and determinations of the Farm Credit Administration pursuant to subparagraph (D) shall not be subject to judicial review.

"(F) FACILITATION.—

"(i) If a merger under this paragraph is ordered pursuant to subparagraph (D), then beginning on the date of such order the Farm Credit System Insurance Corporation shall expend amounts in the Farm Credit Insurance Fund to the extent necessary to facilitate the merger prescribed in the order.

"(ii) Until the expiration of five years from the effective date of the order under subparagraph (D), or the final resolution of any litigation against the Federal Intermediate Credit Bank of Jackson or any of its stockholders pending on the date of the enactment of this subsection, whichever is later, the Insurance Corporation shall guarantee prompt payment of any loss experienced by the merged bank, which loss is caused by the failure of any association-stockholder of the merged bank that was a stockholder of the Federal Intermediate Credit Bank of Jackson immediately prior to such merger, or any successor to such association, to pay when due any obligation of principal or interest owed by such association or its successor to the resulting bank.".

(b) LONG-TERM LENDING AUTHORITY OF THE FARM CREDIT BANK OF TEXAS WITH RESPECT TO THE STATES OF ALABAMA, LOUISIANA, AND MISSISSIPPI.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Farm Credit Bank of Texas may act in accordance with the exclusive charter of the bank, as amended by the Farm Credit Administration on February 7, 1989, and effective February 9, 1989 (except to the extent that such charter may be further amended by the Farm Credit Administration).

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect as if such paragraph had become law on February 7, 1989.

(c) DENIAL OF COMPETITIVE CHARTERS.—Section 5.17(a)(2) of the Farm Credit Act of 1971 (12 U.S.C. 2252(a)(2)) is amended by adding at the end the following: "The Farm Credit Administration shall not issue a charter to, or approve an amendment to the charter of, any institution of the Farm Credit System to operate in the states of Alabama, Louisiana, or Mississippi under title I or II which would authorize the institution to exercise lending authority, whether directly or indirectly as an agent of a Farm Credit Bank, in a territory in which the charter of another such institution authorizes such other institution to exercise like authority, whether directly or indirectly as an agent of a Farm Credit Bank, except with the approval of—

(A) in a case affecting only the charter of an association—

((i) a majority of the shareholders (present and voting or voting by proxy) of each of the associations that would have like lending authority (whether directly or indirectly as an agent of a Farm Credit Bank) in any of that territory if such charter action were taken; and

(ii) the board of directors of the Farm Credit Bank with which the affected associations are affiliated; or

(B) in a case affecting the charter of a bank—

(i) a majority of the shareholders (present and voting or voting by proxy) of the affiliated associations of each of the banks that would have like lending authority in any of that territory if such charter action were taken; and

(ii) a majority of the shareholders (present and voting or voting by proxy) of each of the banks that would have like lending authority in any of that territory if such charter were taken."

Subtitle E—Disclosure Requirements

SEC. 1501. FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST REPORTING BY DIRECTORS, OFFICERS, AND EMPLOYEES OF FARM CREDIT SYSTEM INSTITUTIONS.

(a) FINDINGS.—The Congress finds that—

(1) the disclosure of the compensation paid to, loans made to, and transactions made with a Farm Credit System institution by, directors and senior officers of such institution provides the stockholders of such institutions with information necessary to better manage such institutions, provides the Farm Credit Administration with information necessary to efficiently and effectively regulate such institutions, and enhances the financial integrity of the Farm Credit System by making such information available to potential investors;

(2) the reporting of potential conflicts of interest by directors, officers, and employees of institutions of the Farm Credit System benefits the stockholders of such institutions, helps to ensure the financial viability of such institutions, provides information valuable to the Farm Credit Administration in periodic examinations of such institutions, and therefor enhances the safety and soundness of the Farm Credit System; and

(3) the directors, officers, or employees of some Farm Credit System institutions may not be subject to the regulations of the Farm Credit Administration requiring the disclosure of such financial information and the reporting of such potential conflicts of interest.

(b) PURPOSE.—It is the purpose of this section to ensure that the information reported by the directors, officers, and employees of Farm Credit System institutions under regulations of the Farm Credit Administration requiring the disclosure of financial information and the reporting of potential conflicts of interest—

(1) provides the stockholders of all Farm Credit System institutions with information to assist such stockholders in making informed decisions regarding the operation of such institutions,

(2) provides investors and potential investors with information necessary to assist them in making investment decisions regarding Farm Credit System obligations or institutions; and

(3) provides the Farm Credit Administration with information necessary to allow the Farm Credit Administration to effectively and efficiently examine and regulate all Farm Credit System institutions and thus enhance the safety and soundness of the Farm Credit System.

(c) REVIEW.—Not later than 120 days after the date of enactment of this section, the Farm Credit Administration shall complete a review of the current regulations of the Farm Credit Administration regarding the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of Farm Credit System institutions. Consistent with the purpose of this section as provided in subsection (b), such review shall address whether the regulations—

(1) are adequate to fulfill the purpose of this section and such other purposes as the Farm Credit Administration determines to be consistent with the Farm Credit Act of 1971, and other applicable law, and to be otherwise necessary or appropriate;

(2) currently require the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of all Farm Credit System institutions; and

(3) currently require the disclosure or reporting of such information by all of the appropriate directors, officers, or employees of Farm Credit System institutions.

(d) IMPLEMENTATION.—Not later than 360 days after the date of enactment of this section, the Farm Credit Administration shall amend its current financial disclosure and conflict of interest regulations as it determines necessary to carry out the purpose of this section and to address any deficiencies in such regulations that the Farm Credit Administration determines necessary pursuant to the review conducted under subsection (c).

TITLE II—AGRICULTURAL CREDIT IMPROVEMENT ACT OF 1992

SEC. 2001. SHORT TITLE.

This title may be cited as the "Agricultural Credit Improvement Act of 1992".

Subtitle A—Amendments to the Consolidated Farm and Rural Development Act

SEC. 2101. BEGINNING FARMER AND RANCHER PROGRAM.

(a) Operating Loans; Guarantees of Operating Loans.—Subtitle B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1941–1947) is amended by adding at the end the following:

"SEC. 318. ASSISTANCE TO BEGINNING FARMERS AND RANCHERS.

"(a) In General.—The Secretary shall provide assistance in accordance with this section to enable individuals to conduct viable farming or ranching operations. For purposes of this section, the term 'individual' means a natural person or an entity (other than a corporation) (1) all of whose owners or members are related by blood or marriage, and (2) none of whose owners or members has operated a farm or ranch for more than 5 years.

"(b) Submission of Plan of Farm Operation.—An individual may seek assistance under this section for a proposed or ongoing farming or ranching operation by submitting to the county committee of the county in which the operation is (or is to be) located, not later than 60 days before such assistance is to be first provided, a plan which—

"(1) describes, for each of the first 5 years for which assistance under this section is sought for the operation—

"(A) how the operation is to be conducted;

"(B) the types and amounts of commodities to be produced by the operation;

"(C) the production methods and practices to be employed by the operation;

"(D) the conservation measures to be taken in the operation;

"(E) the equipment needed to conduct the operation (including any expected replacements therefor) and, with respect to each item of needed equipment, whether the individual owns, leases, or otherwise has access to the item, or proposes to purchase, lease, or otherwise gain access to the item;

"(F) the expected income and expenses of the operation;

"(G) the expected credit needs of the operation, including the types and amounts of assistance to be sought under this section; and

"(H) the site or sites at which the operation is (or is to be) located; and

"(2) projects the financial status of the operation after assistance under this section has been provided for such period, not exceeding 10 years, as is necessary for the operation to become financially viable without further assistance from the Secretary.

"(c) Determinations by the County Committee; Approval of Plan.—The county committee shall approve a plan submitted by an individual in accordance with subsection (b) if the county committee determines that—

"(1) the individual has not operated a farm or ranch, or has operated a farm or ranch for not more than 5 years;

"(2) during the 5-year period ending with the submission of the plan, the individual has had sufficient education and experience to indicate that the individual is able to conduct a successful farming or ranching operation, as the case may be;

"(3) the individual owns, leases, or has a commitment to have leased to the individual the site or sites of the operation;

"(4) there is, or will be, available to the individual equipment sufficient to conduct the operation in accordance with the plan;

"(5) the individual agrees to participate in such loan assessment, borrower training, and financial management programs as the Secretary may require; and

"(6) the individual, or in the case of an entity, each owner or member of the entity meets the requirements of paragraphs (1) and (3) of section 311(a).

"(d) Determination by the Secretary; Approval of Application for Assistance.—The Secretary shall approve an application for assistance under this section for an operation described in a plan approved by a county committee under subsection (c) if the Secretary determines that—

"(1) the operation (taking into account the types of agricultural commodities produced, and the average size of similar operations, in the area in which the operation is, or is to be, located) would generate income sufficient to cover the expenses of the operation, debt service, and adequate family living expenses of the individual, to the extent that other income would not cover such living expenses, if the operation received assistance under this section as provided for in the plan; and

"(2) not later than 10 years after first receiving assistance under this section, the operation will be financially viable without further assistance from the Secretary.

"(e) Provision of Assistance.—

"(1) Determination of Commitment Period.—

"(A) Initial Determination.—Upon approval of an application under subsection (d), the Secretary shall, subject to subparagraph (C) of this paragraph, determine the period during which assistance under this section is to be provided for the operation described in the application (in this subsection referred to as the 'commitment period').

"(B) Authority to Extend Period; No Authority to Reduce Period.—At any time, the Secretary may, subject to subparagraph (C) of this paragraph and subsections (f) and (g), extend the duration of the commitment period. The Secretary may not reduce the duration of the commitment period.

"(C) Limitation.—The duration of any commitment period (including any extensions thereof) shall not exceed 10 years.

"(2) Operating Loans; Loan Guarantees.—

"(A) In General.—To the extent that an applicant whose application is approved under subsection (d) is unable to obtain sufficient credit from commercial or cooperative lenders to finance the operation described in the application at reasonable rates and terms (taking into consideration prevailing private and cooperative rates, and terms in the community in which the operation is, or is to be, located, for loans for similar purposes and periods of time), the Secretary shall, subject to the availability of funds therefor and subject to subsections (f) and (g), make a commitment to the applicant—

"(i) for each of the 1st, 2nd, 3rd, and 4th years of the commitment period—

"(I) to make a loan under this subtitle to the applicant at the interest rate charged to low income, limited resource borrowers under this subtitle, in the amount specified in the plan contained in the application; or

"(II) to provide to any commercial or cooperative lender who makes a loan to the applicant that is within the credit needs of the operation (as specified in the plan contained in the application)—

"(aa) a guarantee under section 309(h) for the repayment of 90 percent of the loan principal and interest; and

"(bb) if the Secretary determines that, despite the provision of the guarantee referred to in item (aa), the applicant will not qualify for such a loan, an interest subsidy payment sufficient to ensure that the effective rate of interest payable by the applicant on the loan equals the rate of interest charged to low income, limited resource borrowers on insured operating loans under this subtitle of comparable size and maturity;

"(ii) for each of the 5th, 6th, 7th, and 8th years of the commitment period—

"(I) to provide to any commercial or cooperative lender who makes a loan to the applicant that is within the credit needs of the operation (as specified in the plan contained in the application) a guarantee under section 309(h) for the repayment of 90 percent of the loan principal and interest; and

"(II) if the Secretary determines that, despite the provision of the guarantee referred to in subclause (I), the applicant will not qualify for such a loan, then—

"(aa) to offer the lender an interest subsidy payment in the amount necessary to ensure that the applicant qualifies for such a loan but not more than the amount necessary to ensure that the effective rate of interest on the loan equals the rate of interest charged to low income, limited resource borrowers on insured operating loans under this subtitle of comparable size and maturity; or

"(bb) if funds are not available for the interest subsidy payment described in item (aa), to provide to the applicant a loan under this subtitle that is comparable to one for which a person not receiving assistance under this section (but otherwise in the same situation as the applicant) would be eligible; and

"(iii) for each of the 9th and 10th years of the commitment period, to provide to any commercial or cooperative lender who makes a loan to the applicant that is within the credit needs of the operation (as specified in the plan contained in the application) a guarantee under section 309(h) for the repayment of not more than 90 percent of the loan principal and interest.

"(B) Special Rule.—In the case of an application approved under subsection (d) with respect to which the commitment period is less than 10 years, the Secretary shall make the commitments described in subparagraph (A) for such portions of the commitment period as the Secretary deems appropriate.

"(3) Loans or Guarantees for New or Improved Equipment.—The Secretary shall make a commitment to any applicant whose application is approved under subsection (d) of this section to provide the applicant with loans under this subtitle or loan guarantees under section 309(h) to finance the acquisition, improvement, or repair of equipment needed in the operation described in the application if the plan contained in the application provides for the commitment, to the extent that the applicant is unable to obtain sufficient credit from commercial or cooperative lenders for such purposes at reasonable rates and terms (taking into consideration prevailing private and cooperative rates, and terms in the community in which the operation is, or is to be, located, for loans for similar purposes and periods of time).

"(4) Priority in Purchase of Inventory Equipment; Loans or Guarantees for Such Purchases in Certain Cases.—During the commitment period, the Secretary shall—

"(A) accord the applicant whose application is approved under subsection (d) priority in the purchase of equipment in the inventory of the Farmers Home Administration necessary for the success of the operation described in the application; and

"(B) provide the applicant with loans under this subtitle or loan guarantees under section 309(h) to finance such purchases if the plan contained in the application provides for such assistance, to the extent that the applicant is unable to obtain sufficient credit from commercial or cooperative lenders for such purpose at reasonable rates and terms (taking into consideration prevailing private and cooperative rates, and terms in the community in which the operation is, or is to be, located, for loans for similar purposes and periods of time).

"(5) OTHER KINDS OF ASSISTANCE.—During the commitment period, the Farmers Home Administration, the Agricultural Extension Service, the Soil Conservation Service, and the other entities of the Department of Agriculture shall provide the applicant with such other assistance and information as may be needed in developing and implementing the operation described in the application.

"(6) NO LOAN GUARANTEE FEES.—The Secretary may not charge a fee to any lender in connection with any loan guarantee provided in accordance with this subsection.

"(f) ANNUAL PLAN REVISIONS REQUIRED AS CONDITION OF CONTINUED ASSISTANCE.—The Secretary shall not provide assistance under this section for an operation for any particular year after the first year for which such assistance is provided, unless—

"(1) not later than 60 days before such assistance is to be first provided for the particular year, the applicant has revised the plan describing the operation, based on the experience of the year preceding the particular year, to provide the information required by subsection (b) for the 5-year period beginning with the particular year (or, if shorter, the period beginning with the particular year and ending with the year in which the plan projects the operation as becoming financially viable); and

"(2) the county committee has approved the revised plan.

"(g) EFFECTS OF AVOIDABLE FAILURE TO ACHIEVE GOALS.—

"(1) TERMINATION OF COMMITMENTS.—The Secretary shall revoke any commitment for assistance made to an applicant under this section if the applicant's operation fails, for 2 consecutive years, to meet the goals specified in the plan, unless the failure is due to circumstances beyond the control of the applicant and has not materially reduced the likelihood of the operation becoming financially viable.

"(2) SUSPENSION OF ELIGIBILITY FOR ASSISTANCE.—During the 3-year period that begins with the date the commitments made to an applicant are revoked under paragraph (1), the applicant shall not be eligible for assistance under this section.".

(b) DOWN PAYMENT LOAN PROGRAM.—Subtitle A of such Act (7 U.S.C. 1922–1934) is amended by adding at the end the following:

"SEC. 310E. DOWN PAYMENT LOAN PROGRAM.

"(a) IN GENERAL.—Notwithstanding any other section of this subtitle, the Secretary shall establish within the farm ownership loan program under this subtitle a program under which loans are made under this section to eligible beginning farmers and ranchers for down payments on farm ownership loans.

"(b) LOAN TERMS.—

"(1) PRINCIPAL.—Each loan made under this section shall be of an amount equal to 30 percent of the price of the farm or ranch to be acquired, unless the borrower requests a lesser amount.

"(2) INTEREST RATE.—The interest rate on any loan made under this section shall not exceed the minimum interest rate at which loans are made under subtitle C.

"(3) DURATION.—Each loan under this section shall be made for a period of 10 years, or less, at the option of the borrower.

"(4) REPAYMENT.—Each borrower of a loan under this section shall repay the loan to the Secretary in equal annual installments.

"(5) NATURE OF RETAINED SECURITY INTEREST.—The Secretary shall retain an interest in each farm or ranch acquired with a loan made under this section, which shall—

"(A) be secured by the farm or ranch;

"(B) be junior only to such interests in the farm or ranch as may be conveyed at the time of acquisition to the person from whom the borrower obtained a loan used to acquire the farm or ranch; and

"(C) require the borrower to obtain the permission of the Secretary before the borrower may grant an additional security interest in the farm or ranch.

"(c) LIMITATIONS.—

"(1) BORROWERS REQUIRED TO MAKE MINIMUM DOWN PAYMENT.—The Secretary shall not make a loan under this section to any borrower with respect to a farm or ranch if the contribution of the borrower to the down payment on the farm or ranch will be less than 10 percent of the price of the farm or ranch.

"(2) MAXIMUM PRICE OF PROPERTY TO BE ACQUIRED.—The Secretary shall not make a loan under this section with respect to a farm or ranch the price of which exceeds $250,000.

"(3) PROHIBITED TYPES OF FINANCING.—The Secretary shall not make a loan under this section with respect to a farm or ranch if the farm or ranch is to be acquired with other financing which contains any of the following conditions:

"(A) The financing, other than that provided by the Secretary under this section, is to be amortized over a period of less than 30 years.

"(B) A balloon payment will be due on the financing during the 10-year period beginning on the date the loan is to be made by the Secretary.

"(d) ADMINISTRATION.—The Secretary shall, to the maximum extent practicable—

"(1) facilitate the transfer of farms and ranches from retiring farmers and ranchers to persons eligible for insured loans under this subtitle;

"(2) make efforts to widely publicize the availability of loans under this section among—

"(A) potentially eligible recipients of such loans;

"(B) retiring farmers and ranchers; and

"(C) applicants for farm ownership loans under this subtitle;

"(3) encourage retiring farmers and ranchers to assist in the sale of their farms and ranches to eligible beginning farmers or ranchers by providing seller financing; and

"(4) coordinate the loan program established by this section with State programs that provide farm ownership or operating loans for beginning farmers.

"(e) ELIGIBLE BEGINNING FARMER OR RANCHER DEFINED.—As used in this section, the term 'eligible beginning farmer or rancher' means an individual—

"(1) who is eligible for assistance under this subtitle;

"(2) who has operated a farm or ranch for not less than 5 nor more than 10 years;

"(3)(A) in the case of an owner or operator of a farm or ranch, who, individually or with the immediate family of the owner or operator—

"(i) materially and substantially participates in the farm or ranch; and

"(ii) provides substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the State or county in which the farm or ranch is located; and

"(B) in the case of an individual seeking to own or operate a farm or ranch, who, individually or with the immediate family of the individual, will—

"(i) materially and substantially participate in the farm or ranch; and

"(ii) provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the State or county in which the farm or ranch is located;

"(4) who agrees to participate in such loan assessment, borrower training, and financial management programs as the Secretary may require;

"(5) who—

"(A) does not own land; or

"(B) directly or through interests in family farm corporations, owns land the aggregate acreage of which does not exceed 15 percent of the median acreage of the farms or ranches, as the case may be, in the county in which the individual is to obtain land is located, as reported in the most recent census of agriculture taken under section 142 of title 13, United States Code;

"(6) who demonstrates that the available resources of the individual and the spouse (if any) of the individual are not sufficient to enable the individual to continue farming or ranching on a viable scale; and

"(7) in the case of an individual whose application for assistance under section 318 has been approved by the Secretary, the individual meets the requirements of section 310F(b)(1).".

(c) AVAILABILITY OF FARM OWNERSHIP LOANS AND LOAN GUARANTEES FOR CERTAIN BEGINNING FARMERS AND RANCHERS.—Subtitle A of such Act (7 U.S.C. 1922–1934) is amended by adding after the section added by subsection (b) of this section the following:

"SEC. 310F. AVAILABILITY OF FARM OWNERSHIP LOANS AND LOAN GUARANTEES FOR CERTAIN BEGINNING FARMERS AND RANCHERS.

"(a) ASSISTANCE PROHIBITED FOR A LIMITED PERIOD.—Except as otherwise provided in this section, if the Secretary approves the application of an individual for assistance under section 318, the Secretary may not make a loan under this subtitle to the individual or provide a guarantee under section 309(h) with respect to any farm real estate loan made to the individual.

"(b) AVAILABILITY OF DOWN PAYMENT LOANS.—After the applicable period, the Secretary may make an insured loan under this subtitle, or a down payment loan under section 310E, to an individual referred to in subsection (a) of this section if—

"(1) throughout the applicable period, the individual conducted an operation for which assistance is provided under section 318 in accordance with the plan contained in the application for such assistance;

"(2) the plan provides for such a loan; and

"(3) the individual is otherwise eligible for the loan.

"(c) AVAILABILITY OF LOAN GUARANTEES.—After the applicable period, the Secretary may guarantee under section 309(h) the repayment of a commercial or cooperative loan made to an individual referred to in subsection (a) of this section if—

"(1) throughout the applicable period, the individual conducted the operation for which assistance is provided under section 318 in accordance with the plan contained in the application for such assistance;

"(2) the plan provides for such a loan guarantee; and

"(3) the individual is otherwise eligible for the loan guarantee.

"(d) APPLICABLE PERIOD DEFINED.—As used in this section, the term 'applicable period' means—

"(1) in the case of an individual who, at the time the application referred to in this section was approved, had not operated a farm for more than 3 years, the first 5 years for which the individual is provided assistance under section 318; or

"(2) in any other case, the first 3 years for which the individual is provided assistance under section 318.".

(d) TARGETING OF FUNDS.—

(1) FARM OPERATING LOANS FOR BEGINNING FARMERS AND RANCHERS.—Section 346(b) of such Act (7 U.S.C. 1994(b)) is amended by adding at the end the following:

"(5) In expending the following percentages of the funds available for insured operating loans under subtitle B for any fiscal year beginning after September 30, 1993, the Secretary shall, to the maximum extent practicable, give priority to making such loans under section 318:

"(A) Not less than 20 percent, for the first 6 months of fiscal year 1994.

"(B) Not less than 30 percent, for the first 6 months of each of fiscal years 1995 and 1996.

"(C) Not less than 40 percent, for the first 6 months of each of fiscal years 1997 and 1998.

"(D) Not less than 50 percent, for first 6 months of each of the succeeding fiscal years.".

(2) FARM OWNERSHIP LOANS.—

(A) PERCENTAGE OF INSURED FARM OWNERSHIP LOAN FUNDS RESERVED FOR BEGINNING FARMERS OR RANCHERS.—Section 346(b)(3) of such Act (7 U.S.C. 1994(b)(3)) is amended by adding at the end the following:

"(D)(i) To the extent not inconsistent with an exercise of authority under section 355, not less than the applicable percentage of the amounts available for insured farm ownership loans for any fiscal year shall be for such loans to beginning farmers or ranchers.

"(ii) For purposes of clause (i), the term 'applicable percentage' means—

"(I) 50 percent, for the first 6 months of each of the fiscal years 1994 and 1995; and

"(II) 80 percent, for the first 6 months of each succeeding fiscal year.".

(B) FUNDS RESERVED FOR DOWNPAYMENT LOAN PROGRAM.—Section 346(b)(3) of such Act (7 U.S.C. 1994(b)(3)) is amended by adding after the subparagraph added by subparagraph (A) of this paragraph the following:

"(E)(i) To the extent not inconsistent with an exercise of authority under section 355, not less than the applicable percentage of the amounts reserved for beginning farmers or ranchers under subparagraph (D) for any fiscal year shall be for downpayment loans under section 310E.

"(ii) For purposes of clause (i), the term 'applicable percentage' means—

"(I) 50 percent, for the first 6 months of each of the fiscal years 1994 and 1995; and

"(II) 80 percent, for the first 6 months of each succeeding fiscal year.".

(C) CERTAIN UNOBLIGATED DOWNPAYMENT LOAN PROGRAM FUNDS AVAILABLE FOR ANY TYPE OF INSURED FARM OWNERSHIP LOANS FOR BEGINNING FARMERS AND RANCHERS.—Section 346(b)(3) of such Act (7 U.S.C. 1994(b)(3)) is amended by adding after the subparagraph added by subparagraph (B) of this paragraph the following:

"(F) To the extent not inconsistent with an exercise of authority under section 355, any funds reserved for downpayment loans under section 310E for a fiscal year by reason of subparagraph (E) of this paragraph that are not obligated by the end of the 2nd quarter of the fiscal year shall be available throughout the remainder of the fiscal year for any type of insured farm ownership loans, with priority to be given to beginning farmers and ranchers.".

(3) PORTIONS OF FARM OWNERSHIP LOAN GUARANTEE FUNDS TARGETED TO BEGINNING FARMERS OR RANCHERS.—Section 346(b)(2) of such Act (7 U.S.C. 1994(b)(2)) is amended by adding at the end the following:

"Not less than 25 percent of the amounts appropriated for guarantees of farm ownership loans for each of the fiscal years 1994, 1995, 1996, and 1997 shall be available during the first 6 months of the respective fiscal year for guarantees of farm ownership loans to beginning farmers or ranchers.".

(4) INTEREST RATE ASSISTANCE PROGRAM.—Section 346(b)(3) of such Act (7 U.S.C. 1994(b)(3)) is amended by adding after the subparagraphs added by paragraph (2) of this subsection the following:

"(G) Not less than 40 percent of the amounts available for the interest rate reduction program under section 351 shall be reserved for the first 6 months of each fiscal year for assistance to beginning farmers or ranchers.".

SEC. 2102. PROCESSING OF APPLICATIONS FOR FARM OPERATING LOANS.

Section 333A(a)(2) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983a(a)(2)) is amended—

(1) by inserting "(A)" after "(2)";

(2) by inserting "(other than under subtitle B)" after "under this title"; and

(3) by adding after and below the end the following new subparagraph:

"(B)(i) Within 10 calendar days after the Secretary receives an application for an operating loan or loan guarantee under subtitle B, the Secretary shall notify the applicant of any information required before a decision may be made on the application. Upon receipt of such an application, the Secretary shall request from other parties such information as may be needed in connection with the application.

"(ii) Within 15 calendar days after the date an agency of the Department of Agriculture receives a request for information made pursuant to clause (i), the agency shall provide the Farmers Home Administration with the requested information.

"(iii) If, within 20 calendar days after the date a request is made pursuant to clause (i) with respect to an application, the Farmers Home Administration has not received the information requested, the Farmers Home Administration county office shall notify the applicant, in writing, as to the outstanding information.

"(iv) A county office shall notify the district office of the Farmers Home Administration of each application for an operating loan or loan guarantee under subtitle B that is pending more than 45 calendar days after receipt by the Secretary, and the reasons therefor.

"(v) A district office that receives a notice provided under clause (iv) with respect to an application shall immediately take steps to ensure that final action is taken on the application within 15 calendar days after the date of the receipt of the notice.

"(vi) The district office shall notify the State office of the Farmers Home Administration of each application for an operating loan or loan guarantee under subtitle B that is pending more than 45 calendar days after receipt by the Secretary, and the reasons therefor.

"(vii) Each month, the Secretary shall notify the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, on a State-by-State basis, as to each application for an operating loan or loan guarantee under subtitle B on which final action had not been taken within 60 calendar days after receipt by the Secretary, and the reasons therefor.".

SEC. 2103. TIME PERIOD WITHIN WHICH COUNTY COMMITTEE IS REQUIRED TO MEET TO CONSIDER APPLICATIONS FOR FARM OWNERSHIP AND OPERATING LOANS AND GUARANTEES AND BEGINNING FARMER PLANS.

Section 332 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1982) is amended—

(1) in subsection (c), by striking "The committee" and inserting "Subject to subsection (e), the committee"; and

(2) by adding at the end the following:

"(e) The county committee shall meet to consider approval of an application received by the committee for a farm ownership or farm operating loan under this title, a guarantee under section 309(h), or a plan of farm operation under section 318, within—

"(1) 5 calendar days after receipt if at the time of the receipt there is at least 1 other such application or plan pending; or

"(2) 15 calendar days after receipt if at the time of the receipt there are no other such applications or plans pending.".

SEC. 2104. DEBT SERVICE MARGIN REQUIREMENTS; CERTIFIED LENDER PROGRAM.

Section 339 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1989) is amended—

(1) by inserting "(a)" before "The Secretary"; and

(2) by adding at the end the following:

"(b) Notwithstanding subsection (a), in providing farmer program loan guarantees under this title, the Secretary shall consider the income of the borrower adequate if the income is equal to or greater than the income necessary—

"(1) to make principal and interest payments on all debt obligations of the borrower, in a timely manner;

"(2) to cover the necessary family living expenses; and

"(3) to pay all other obligations and expenses of the borrower not financed through debt obligations referred to in paragraph (1), including expenses of replacing capital items (determined after taking into account depreciation of such items).

"(c) CERTIFIED LENDER PROGRAM.—

"(1) IN GENERAL.—The Secretary shall establish a program under which the Secretary shall guarantee loans (other than loans with respect to which a guarantee is provided under section 318) for any purpose specified in subtitle B that are made by lending institutions certified by the Secretary.

"(2) CERTIFICATION REQUIREMENTS.—The Secretary shall certify any lending institution that meets such criteria as the Secretary may prescribe in regulations, including the ability of the institution to properly make, service, and liquidate its loans.

"(3) CONDITION OF CERTIFICATION.—As a condition of such certification, the Secretary shall require the institution to undertake to service the loans guaranteed by the Secretary under this subsection using generally accepted banking standards concerning loan servicing employed by prudent commercial or cooperative lenders. The Secretary shall, at least annually, monitor the performance of each certified lender to ensure that the conditions of such certification are being met.

"(4) EFFECT OF CERTIFICATION.—Notwithstanding any other provision of law, the Secretary shall—

"(A) guarantee 80 percent of an approved loan made by a certified lending institution as described in paragraph (1), subject to county committee certification that the borrower meets the eligibility requirements or such other criteria as may be applicable to loans guaranteed by the Secretary under other provisions of this title;

"(B) permit certified lending institutions to make all decisions, with respect to loans to be guaranteed by the Secretary under this subsection, relating to creditworthiness and loan closing, and to accept appropriate certifications, as provided by regulations issued by the Secretary, that the borrower is in compliance with all requirements of law or regulations promulgated by the Secretary; and

"(C) be deemed to have guaranteed 80 percent of a loan made by a certified lending institution as described in paragraph (1), if the Secretary fails to approve or reject the application within 14 calendar days after the date that the lending institution presented the application to the Secretary. If the Secretary rejects the application within the 14-day period, the Secretary shall state, in writing, the reasons the application was rejected.".

SEC. 2105. FEDERAL-STATE BEGINNING FARMER PARTNERSHIP.

(a) COORDINATION OF ASSISTANCE FOR ELIGIBLE BEGINNING FARMERS AND RANCHERS.—Section 309 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929) is amended by adding at the end the following:

"(i)(1) Within 60 days after any State expresses to the Secretary, in writing, a desire to coordinate the provision of financial assistance to eligible beginning farmers and ranchers in the State, the Secretary and the State shall conclude a joint memorandum of understanding which shall govern how the Secretary and the State are to do so.

"(2) The memorandum of understanding shall provide that if a State beginning farmer program makes a commitment to provide an eligible beginning farmer or rancher (as defined in section 310E(e)) with financing to establish or maintain a viable farming or ranching operation, the Secretary shall, subject to applicable law, normal loan approval criteria, and the availability of funds, provide the farmer or rancher with—

"(A) a downpayment loan under section 310E;

"(B) a guarantee of the financing provided by the State program; or

"(C) such a loan and such a guarantee.

"(3) The Secretary may not charge any person any fee with respect to the provision of any guarantee under this subsection.

"(4) As used in paragraph (1), the term 'State beginning farmer program' means any program which is—

"(A) carried out by, or under contract with, a State; and

"(B) designed to assist persons in obtaining the financial assistance necessary to enter agriculture and establish viable farming or ranching operations.".

(b) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT; PURPOSE.—Within 18 months after the date of the enactment of this section, the Secretary of Agriculture shall establish an advisory committee, to be known as the "Advisory Committee on Beginning Farmers and Ranchers", which shall provide advice to the Secretary on—

(A) the development of the program of coordinated assistance to eligible beginning farmers and ranchers under section 309(i) of the Consolidated Farm and Rural Development Act;

(B) ways to maximize the number of new farming and ranching opportunities created through such program;

(C) ways to encourage States to participate in such program;

(D) the administration of such program; and

(E) other methods of creating new farming or ranching opportunities.

(2) MEMBERSHIP.—The Secretary shall appoint the members of the Advisory Committee which shall include representatives from the following:

(A) The Farmers Home Administration.

(B) State beginning farmer programs (as defined in section 309(i)(3) of the Consolidated Farm and Rural Development Act).

(C) Commercial lenders.

(D) Private nonprofit organizations with active beginning farmer or rancher programs.

(E) The Cooperative Extension Service.

(F) Community colleges or other educational institutions with demonstrated experience in training beginning farmers or ranchers.

(G) Other specialists in lending or technical assistance for beginning farmers and ranchers.

SEC. 2106. GRADUATION OF BORROWERS WITH OPERATING LOANS OR GUARANTEES TO PRIVATE COMMERCIAL CREDIT.

Subtitle B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1941–1947) is amended by adding after the section added by section 2101(a) of this Act the following:

"SEC. 319. GRADUATION OF BORROWERS ASSISTED UNDER THIS SUBTITLE TO PRIVATE COMMERCIAL CREDIT.

"(a) GRADUATION PLAN.—The Secretary shall establish a plan, in coordination with activities under sections 359, 360, 361, and 362, to encourage each borrower with an outstanding loan under this subtitle or with respect to whom there is an outstanding guarantee under this subtitle to graduate to private commercial or other sources of credit.

"(b) LIMITATION ON PERIOD FOR WHICH BORROWERS ARE ELIGIBLE FOR ASSISTANCE UNDER THIS SUBTITLE.—Notwithstanding any other provision of this subtitle:

"(1) GENERAL RULE.—Except as provided in paragraph (2), the Secretary may not—

"(A) make a loan to a borrower under this subtitle for any year after the 10th year for which such a loan is made to the borrower; or

"(B) guarantee for any year a loan made to the borrower for a purpose specified in this subtitle, after the 15th year for which loans under this subtitle are made to, or such a guarantee is provided with respect to, the borrower.

"(2) TRANSITION RULE.—If, as of the date of the enactment of this section, the Secretary has made loans to a borrower under this subtitle for 5 or more years, or has provided guarantees for 10 or more years with respect to 1 or more loans made to the borrower for a purpose specified in this subtitle, the Secretary may not make a loan to the borrower under this subtitle, or provide such a guarantee with respect to a loan made to the borrower for a purpose specified in this subtitle, after the 5th year occurring after such date of enactment for which a loan is made under this subtitle to, or such a guarantee is provided with respect to, the borrower.".

SEC. 2107. SIMPLIFIED APPLICATION FOR GUARANTEED LOANS OF $50,000 OR LESS.

Section 333A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983a) is amended by adding at the end the following:

"(f)(1) The Secretary shall provide to lenders a short, simplified application form for guarantees under this title of loans the principal amount of which is $50,000 or less.

"(2) In developing the application, the Secretary shall—

"(A) consult with commercial and cooperative lenders; and

"(B) ensure that—

"(i) the form can be completed manually or electronically, at the option of the lender;

"(ii) the form minimizes the documentation required to accompany the form;

"(iii) the cost of completing and processing the form is minimal; and

"(iv) the form can be completed and processed in an expeditious manner.".

SEC. 2108. TARGETING OF LOANS TO MEMBERS OF GROUPS WHOSE MEMBERS HAVE BEEN SUBJECTED TO GENDER PREJUDICE.

Section 355(e)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e)(1)) is amended by striking "or ethnic" and inserting ", ethnic, or gender".

SEC. 2109. RECORDKEEPING OF LOANS BY BORROWER'S GENDER.

Subtitle D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981–2008c) is amended by adding at the end the following:

"SEC. 369. RECORDKEEPING OF LOANS BY BORROWER'S GENDER.

"The Secretary shall classify, by gender, records of applicants for loans and guarantees under this title.".

SEC. 2110. INCREASE IN PERIOD DURING WHICH COUNTY COMMITTEE LOAN ELIGIBILITY CERTIFICATION CONTINUES IN EFFECT.

Section 333(2)(A)(iii) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983(2)(A)(iii)) is amended by striking "2 years" and inserting "5 years".

SEC. 2111. LIMITATION ON AGGREGATE INDEBTEDNESS.

Section 305 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1925) is amended by striking "and 310D of this title" and inserting "310D, and 310E".

SEC. 2112. GRADUATION OF SEASONED BORROWERS TO THE LOAN GUARANTEE PROGRAM.

Section 333A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983a) is amended by adding after the subsection added by section 2007 of this Act the following:

"(g) GRADUATION OF SEASONED BORROWERS TO THE LOAN GUARANTEE PROGRAM.—

"(1) IN GENERAL.—The Secretary shall annually review the operating loans made under section 312 to each seasoned borrower, and if, based on the review, the Secretary determines that the borrower is able to obtain a loan, guaranteed by the Secretary, from commercial or cooperative lenders at reasonable rates and terms, and for purposes and periods of time similar to those for which the operating loan was made to the borrower, then the borrower shall be ineligible to receive a new operating loan under section 312 for similar purposes, unless the borrower demonstrates to the Secretary that the borrower is unable to obtain such a guaranteed loan.

"(2) LISTING OF SEASONED BORROWERS.—Within 180 days after the date of the enactment of the Agricultural Credit Improvement Act of 1992, and annually thereafter, the Secretary may direct all county offices to make available to qualified lenders a listing of all seasoned borrowers, as provided in regulations issued by the Secretary.

"(3) QUALIFIED LENDERS.—Upon request and upon application for a guaranteed loan to a qualified lender, by a seasoned borrower, the Farmers Home Administration shall provide the lender with all current and past documentation relating to the approval and the continued compliance with the terms of the direct operating loan then held by the borrower.

"(4) INTEREST RATE.—To the extent necessary for the borrower to obtain a loan, guaranteed by the Secretary, from a commercial or cooperative lender, the Secretary shall provide interest rate reductions under section 351.

"(5) DEFINITIONS.—As used in this subsection:

"(A) SEASONED BORROWER.—The term 'seasoned borrower' means a borrower—

"(i) to whom a loan has been made under section 312; and

"(ii) who has maintained a satisfactory borrowing relationship with the Farmers Home Administration for at least 24 consecutive months.

"(B) QUALIFIED LENDER.—The term 'qualified lender' means a lender approved by the Secretary under—

"(i) the approved lender program established by exhibit A to subpart B of part 1980 of title 7, Code of Federal Regulations, January 1, 1991, edition;

"(ii) the certified lender program established under section 339(c); or

"(iii) any program that is a successor to either of such programs.".

SEC. 2113. DEADLINE FOR ISSUANCE OF REGULATIONS.

Not later than September 30, 1993, the Secretary of Agriculture shall issue interim final regulations to implement the amendments made by this subtitle.

Subtitle B—Amendments to the Farm Credit Act of 1971

SEC. 2201. VALUATION OF RESERVES OF PRODUCTION CREDIT ASSOCIATIONS.

Section 2.3(b) of the Farm Credit Act of 1971 (12 U.S.C. 2074(b)) is amended to read as follows:

"(b) APPLICATION OF EARNINGS.—At the end of each fiscal year, each production credit association shall apply the amount of the earnings of the association for the fiscal year in excess of the operating expenses of the association (including provision for valuation of reserves against loan assets in accordance with generally accepted accounting principles)—

"(1) first to the restoration of the impairment (if any) of capital; and

"(2) second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Farm Credit Bank.".

SEC. 2202. ELIMINATION OF AUTHORITY OF FARM CREDIT SYSTEM INSURANCE CORPORATION TO APPOINT NONVOTING MEMBER OF FARM CREDIT SYSTEM FUNDING CORPORATION BOARD.

Section 4.9(d)(2) of the Farm Credit Act of 1971 (12 U.S.C. 2160(d)(2)) is amended—

(1) in the paragraph heading, by striking "REPRESENTATIVES" and inserting "REPRESENTATIVE";

(2) by striking subparagraph (B) and redesignating subparagraph (C) as subparagraph (B); and

(3) in subparagraph (B), as so redesignated, by striking "persons" and all that follows through "Insurance Corporation" and inserting "person so designated".

SEC. 2203. EXPANSION OF WATER AND SEWER LENDING AUTHORITY OF BANKS FOR COOPERATIVES.

Section 3.7(f) of the Farm Credit Act of 1971 (12 U.S.C. 2128(f)) is amended—

(1) by striking "the installation, expansion, or improvement of" and inserting "installing, maintaining, expanding, improving, or operating"; and

(2) by striking "to extend" and inserting "extending".

SEC. 2204. EQUITY VOTING FOR ONE DIRECTOR OF EACH BANK FOR COOPERATIVES.

Section 3.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2123(a)) is amended by inserting ", and, notwithstanding section 3.3(d), the bylaws may provide for 1 director to be elected on the basis of 1 vote for each share of voting stock of the bank" before the period.

SEC. 2205. PER DIEM COMPENSATION OF BANK DIRECTORS.

(a) IN GENERAL.—Section 4.21 of the Farm Credit Act of 1971 (12 U.S.C. 2209) is amended to read as follows:

"SEC. 4.21. COMPENSATION OF DIRECTORS.

"Each member of the board of directors of a System bank may receive compensation only for days during the year in which engaged in the performance of duties of such a director, and in an amount not exceeding $300 for each such day, adjusted annually to reflect any increase in the cost of living since the end of 1991, as determined under regulations prescribed by the Farm Credit Administration.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 1993.

SEC. 2206. FREQUENCY OF EXAMINATIONS OF SYSTEM INSTITUTIONS.

Section 5.19(a) of the Farm Credit Act of 1971 (12 U.S.C. 2254(a)) is amended by striking the 1st and 2nd sentences and inserting "Not less frequently than once every 3 years, Farm Credit Administration examiners shall examine each institution of the Farm Credit System at such times as the Farm Credit Administration Board may determine.".

SEC. 2207. AUTHORITY TO EXAMINE SYSTEM INSTITUTIONS.

(a) AUTHORITY OF FARM CREDIT SYSTEM INSURANCE CORPORATION.—Section 5.59(b) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-8(b)) is amended to read as follows:

"(b) EXAMINATION OF SYSTEM INSTITUTIONS.—

"(1) EXAMINATION AUTHORITY.—

"(A) IN GENERAL.—If the Board of Directors deems it necessary to examine an insured System bank, a production credit association, an association making direct loans under the authority provided under section 7.6, or any System institution in receivership, the Board may, using Farm Credit Administration examiners, conduct the examination using reports and other information on the System institution prepared or held by the Farm Credit Administration.

"(B) REQUEST FOR ADDITIONAL EXAMINATION OR OTHER INFORMATION.—If the Board determines that such reports or information are not adequate to enable the Corporation to carry out the duties of the Corporation under this part, the Board shall request the Farm Credit Administration to examine or to obtain other information from or about the System institution and provide to the Corporation the resulting examination report or such other information.

"(2) APPOINTMENT OF EXAMINERS.—If the Farm Credit Administration informs the Corporation that the Farm Credit Administration is unable to comply with a request made under paragraph (1)(B) with respect to a System institution, the Board may appoint examiners to examine the institution.

"(3) POWERS AND REPORT.—Each examiner appointed under paragraph (2) shall make such examination of the affairs of the System institution as the Board may direct, and shall make a full and detailed report of the examination to the Corporation.

"(4) APPOINTMENT OF CLAIM AGENTS.—The Board of Directors of the Corporation shall appoint claim agents who may investigate and examine all claims for insured obligations.".

(b) DUTIES OF THE FARM CREDIT ADMINISTRATION.—Section 5.19 of such Act (12 U.S.C. 2254) is amended by adding at the end the following:

"(d) Upon receipt of a request made under section 5.59(b)(1)(B) with respect to a System institution, the Farm Credit Administration shall—

"(1) furnish for the confidential use of the Corporation reports of examination of the institution and other reports or information on the institution; and

"(2)(A) examine, or obtain other information on, the institution and furnish for the confidential use of the Corporation the report of the examination and such other information, or

"(B) if the Farm Credit Administration Board determines that compliance with the request would substantially impair the ability of the Farm Credit Administration to carry out the other duties and responsibilities of the Farm Credit Administration under this Act, notify the Board of Directors of the Farm Credit System Insurance Corporation that the Farm Credit Administration will be unable to comply with the request.".

SEC. 2208. REPEAL OF PROHIBITION AGAINST GUARANTEE OF CERTAIN INSTRUMENTS OF INDEBTEDNESS.

Section 4.16 of the Farm Credit Act of 1971 (12 U.S.C. 2204) is hereby repealed.

SEC. 2209. CLARIFICATION OF TREATMENT OF FARM CREDIT ADMINISTRATION OPERATING EXPENSES.

Section 5.15(b)(1) of the Farm Credit Act of 1971 (12 U.S.C. 2250(b)(1)) is amended—

(1) by inserting ", for purposes of sequestration," after "regard"; and

(2) by striking "or any other law".

SEC. 2210. APPROVAL OF COMPETITIVE CHARTERS.

Section 5.17(a) of the Farm Credit Act of 1971 (12 U.S.C. 2252(a)) is amended by adding at the end the following:

"(13)(A) Subject to subparagraph (B), the Farm Credit Administration may approve an amendment to the charter of any institution of the Farm Credit System operating under title I or II, which would authorize the institution to exercise lending authority in any territory—

"(i) in the geographic area served by an association that was reassigned pursuant to section 433 of the Agricultural Credit Act of 1987 (where such geographic area was a part of the association's territory as of the date of such reassignment); and

"(ii) in which the charter of an institution that is not seeking the charter amendment authorizes such institution to exercise the type of lending authority that is the subject of the charter request.

"(B) The Farm Credit Administration may approve a charter amendment under subparagraph (A) only upon the approval of—

"(i) the respective boards of directors of the associations that, if the charter request is approved, would exercise like lending authority in any of the territory that is the subject of the charter request;

"(ii) a majority of the stockholders of each association described in clause (i) voting, in person or by proxy, at a duly authorized stockholders' meeting; and

"(iii) the respective boards of directors of the Farm Credit Banks which, if the charter request is approved, would exercise, either directly or through associations, like lending authority in any of the territory described in subparagraph (A)(i).

"(14)(A) Subject to subparagraph (B), the Farm Credit Administration may approve a request to charter an association of the Farm Credit System to operate under title II where the proposed charter—

"(i) will include any of the geographic area included in the territory served by an association that was reassigned pursuant to section 433 of the Agricultural Credit Act of 1987 (where such geographic area was a part of the association's territory as of the date of such reassignment); and

"(ii) will authorize the association to exercise lending authority in any territory in such geographic area in which the charter of an association that is not requesting the charter authorizes such association to exercise the type of lending authority that is the subject of the charter request.

"(B) The Farm Credit Administration may approve a charter request under subparagraph (A) only upon the approval of—

"(i) the respective boards of directors of the associations that, if the charter request is approved, would exercise like lending authority in any of the territory that is the subject of the charter request;

"(ii) a majority vote of the stockholders (if any) of each association described in clause (i) voting, in person or by proxy, at a duly authorized stockholder's meeting; and

"(iii) the respective boards of directors of the Farm Credit Banks which, if the charter request is approved, would exercise, either directly or through associations, like lending authority in any of the territory described in subparagraph (A)(i).".

Subtitle C—Technical Corrections

SEC. 2301. TECHNICAL CORRECTIONS.

(a) Correction of Reference to Section 1236 of the Food Security Act of 1985.—Title I of the Department of the Interior and Related Agencies Appropriations Act, 1991 is amended, in the item designated "construction and anadronomous fish" under the heading "United States Fish and Wildlife Service", by striking "title 16 U.S.C. section 3832(a)(6)" and inserting "section 1232(a)(6) of the Food Security Act of 1985 (16 U.S.C. 3832(a)(6))".

(b) Section 1245(b) of the Food Security Act of 1985.—

(1) Correction.—Section 1245(b) of the Food Security Act of 1985 (16 U.S.C. 3845(b)) is amended by striking "(A) through (G)" and inserting "A through G".

(2) Effective date.—The amendment made by paragraph (1) of this subsection shall take effect immediately after section 1443 of the Food, Agriculture, Conservation, and Trade Act of 1990 took effect.

(c) Section 307(a)(6)(B) of the Consolidated Farm and Rural Development Act.—

(1) Correction.—Section 307(a)(6)(B) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1927(a)(6)(B)) is amended by striking clause (ii), and by redesignating clauses (iii) through (viii) as clauses (ii) through (vii), respectively.

(2) Effective date.—The amendments made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by subsection (a) of section 501 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 took effect.

(d) Section 310D(a) of the Consolidated Farm and Rural Development Act.—

(1) Correction.—Section 310D(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1934(a)) is amended by striking "304(d)(1)" and inserting "304(a)(1)".

(2) Effective date.—The amendment made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by subsection (a) of section 501 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 took effect.

(e) Section 312(a) of the Consolidated Farm and Rural Development Act.—

(1) Replacement of unexecutable amendment made by the food, agriculture, conservation, and trade act of 1990.—

(A) Correction.—Section 1818(b) of the Food, Agriculture, Conservation, and Trade Act of 1990 (P.L. 101-624; 104 Stat. 3830) is amended to read as follows:

"(b) Operating Loan Purposes.—The first sentence of section 312(a) (7 U.S.C. 1942(a)) is amended—

"(1) by striking 'and' at the end of clause (11); and

"(2) by inserting ', and (13) borrower training under section 359' before the period at the end.".

(B) Effective date.—The amendment made by subparagraph (A) shall take effect as if included in the Food, Agriculture, Conservation, and Trade Act of 1990 at the time such Act became law.

(2) Repeal of unexecutable amendment made by the food, agriculture, conservation, and trade act amendments of 1991.—Subsection (b) of section 501 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (P.L. 102-237; 105 Stat. 1866) is hereby repealed, and the Consolidated Farm and Rural Development Act shall be applied and administered as if such subsection had never become law.

(f) Amendments to Section 331E of the Consolidated Farm and Rural Development Act.—

(1) Correction.—Section 331E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981e) is amended—

(A) in subsection (a), by striking "Disaster Relief Act of 1974" and inserting "the Robert T. Stafford Disaster Relief and Emergency Assistance Act"; and

(B) in subsection (b), by inserting "Robert T. Stafford" before "Disaster Relief".

(2) Effective date.—The amendments made by paragraph (1) of this subsection shall take effect immediately after subsection (d) of section 501 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 took effect.

(g) Section 335(e)(1)(A)(i) of the Consolidated Farm and Rural Development Act.—

(1) Corrections to amendment made by the food, agriculture, conservation, and trade act amendments of 1991.—Paragraph (1) of section 501(f) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (P.L. 102-237; 105 Stat. 1867) is amended—

(A) by inserting "the 1st place such term appears" before "and all that follows"; and

(B) by striking "borrower-owner (as defined in subparagraph (F)" and inserting "the borrower-owner (as defined in subparagraph (F))".

(2) Effective date.—The amendments made by paragraph (1) of this subsection shall take effect immediately after subsection (f) of section 501 of the Food, Agriculture, Conservation, and Trade Act of 1990 took effect.

(h) Section 352(a) of the Consolidated Farm and Rural Development Act.—Section 352(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2000(a)) is amended by redesignating the second paragraph (4) as paragraph (5).

(i) Section 352(b)(2) of the Consolidated Farm and Rural Development Act.—

(1) Correction.—Section 352(b)(2) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2000(b)(2)) is amended by striking "borrower's" and inserting "borrower-owner's".

(2) Effective date.—The amendment made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by subsection (f) of section 501 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 took effect.

(j) Section 702(h)(2) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991.—Section 702(h)(2) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (P.L. 102-237; 105 Stat. 1881) is amended by inserting "section" before "2388(h)(3)".

(k) Section 306C(b)(1) of the Consolidated Farm and Rural Development Act.—Section 306C(b)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c(b)(1)) is amended by striking "or connecting such systems to the residences of such individuals" and inserting ", connecting such systems to the residences of such individuals, or installing plumbing and fixtures within the residences of such individuals to facilitate the use of the water supply and waste disposal systems".

(l) Section 306C of the Consolidated Farm and Rural Development Act.—Section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c) is amended by adding at the end the following:

"(f) Within 30 days after the date of the enactment of this subsection, the Secretary shall issue interim final regulations, with a request for public comments, implementing this section.".

Subtitle D—Effective Date

SEC. 2401. EFFECTIVE DATE.

Except as otherwise provided in this title, the amendments and repeal made by this title shall take effect on the date of the enactment of this Act.

TITLE III—RURAL ELECTRIFICATION ADMINISTRATION IMPROVEMENT ACT OF 1992

SEC. 3001. SHORT TITLE.

This title may be cited as the "Rural Electrification Administration Improvement Act of 1992".

SEC. 3002. DISCOUNTED LOAN PREPAYMENT.

(a) In General.—Subsection (a) of section 306B of the Rural Electrification Act of 1936 (7 U.S.C. 936b(a)) is amended to read as follows:

"(a) Discounted Prepayment by Borrowers of Electric Loans.—

"(1) In general.—Except as provided in paragraph (2), a direct or insured loan made under this Act shall not be sold or prepaid at a value that is less than the outstanding principal balance on the loan.

"(2) Exception.—On request of the borrower, an electric loan made under this Act, or a portion thereof, that was advanced before May 1, 1992, or has been advanced for not less than 2 years, shall be sold to or prepaid by the borrower at the lesser of—

"(A) the outstanding principal balance on the loan; or

"(B) the loan's present value discounted from the face value at maturity at the rate established by the Administrator.

"(3) DISCOUNT RATE.—The discount rate applicable to the prepayment under this subsection of a loan or loan advance shall be the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the remaining term of the loan.

"(4) TAX EXEMPT FINANCING.—If a borrower prepays a loan under this subsection using tax exempt financing, the discount shall be adjusted to ensure that the borrower receives a benefit that is equal to the benefit the borrower would receive if the borrower used fully taxable financing. The borrower shall certify in writing whether the financing will be tax exempt and shall comply with such other terms and conditions as the Administrator may establish that are reasonable and necessary to carry out this subsection.

"(5) ELIGIBILITY.—

"(A) IN GENERAL.—A borrower that has prepaid an insured or direct loan shall remain eligible for assistance under this Act in the same manner as other borrowers, except that—

"(i) a borrower that has prepaid a loan, either before or after the date of the enactment of this subsection, at a discount rate as provided by paragraph (3), shall not be eligible, except at the discretion of the Administrator, to apply for or receive direct or insured loans under this Act for 60 months after the prepayment; and

"(ii) a borrower that prepaid a loan before such date of enactment at a discount rate greater than that provided by paragraph (3), shall not be eligible—

"(I) except at the discretion of the Administrator, to apply for or receive such direct or insured loans until 120 months after the date of the prepayment; or

"(II) to apply for or receive such direct or insured loans until the borrower has repaid to the Federal Government the sum of—

"(aa) the amount (if any) by which the discount the borrower received by reason of the prepayment exceeds the discount the borrower would have received had the discount been based on the cost of funds to the Department of the Treasury at the time of the prepayment; and

"(bb) interest on the amount described in item (aa), for the period beginning on the date of the prepayment and ending on the date of the repayment, at a rate equal to the average annual cost of borrowing by the Department of the Treasury.

In cases where a borrower and the Administrator have entered into an agreement with respect to a prepayment occurring before such date of enactment, this paragraph shall supersede any provision in the agreement relating to the restoration of eligibility for loans under this Act.

"(B) DISTRIBUTION BORROWERS.—A distribution borrower not in default on the repayment of loans made or insured under this Act shall be eligible for discounted prepayment as provided in this subsection.For the purpose of determining eligibility for discounted prepayment under this subsection or eligibility for assistance under this Act, a default by a borrower from which a distribution borrower purchases wholesale power shall not be considered a default by the distribution borrower.

"(6) DEFINITIONS.—As used in this subsection:

"(A) DIRECT LOAN.—The term 'direct loan' means a loan made under section 4.

"(B) INSURED LOAN.—The term 'insured loan' means a loan made under section 305.".

(b) CONFORMING AMENDMENT.—Section 306B(b) of such Act (7 U.S.C. 936b(b)) is amended by striking "(b) Notwithstanding" and inserting the following:

"(b) MERGERS OF ELECTRIC BORROWERS.—Notwithstanding".

SEC. 3003. REPEAL OF SECTION 412.

Section 412 of the Rural Electrification Act of 1936 (7 U.S.C. 950b) is hereby repealed.

SEC. 3004. REPEAL OF SECTION 311.

Section 311 of the Rural Electrification Act of 1936 (7 U.S.C. 940a) is hereby repealed.

SEC. 3005. GRANTS TO ENABLE PROVIDERS OF HEALTH CARE AND EDUCATIONAL SERVICES IN RURAL AREAS TO IMPLEMENT INTERACTIVE TELECOMMUNICATIONS SYSTEMS.

(a) FINDINGS.—The Congress finds that—

(1) interactive telecommunications systems hold the potential to alleviate many of the problems rural Americans face in obtaining access to adequate health care and expanded educational services; and

(2) access to such systems by providers of health care services and educational institutions in rural areas would greatly increase their ability to provide more comprehensive health care and education to rural, underserved populations.

(b) GRANT PROGRAM.—Subtitle D of title XXIII of the Food, Agriculture, Conservation, and Trade Act of 1990 is amended by adding at the end the following:

"CHAPTER 3—IMPROVEMENT OF HEALTH CARE SERVICES AND EDUCATIONAL SERVICES THROUGH TELECOMMUNICATIONS

"SEC. 2338. GRANT PROGRAM.

"(a) ESTABLISHMENT.—The Administrator of the Rural Electrification Administration (in this chapter referred to as the 'Administrator') shall establish a program for providing grants to any qualified consortium to assist the consortium in obtaining access to modern interactive telecommunications systems through the public switched network.

"(b) DEFINITIONS.—

"(1) QUALIFIED CONSORTIUM.—As used in this chapter, the term 'qualified consortium' means a consortium which—

"(A) provides health care services or educational services in a rural area of a qualified State; and

"(B) is composed of—

"(i) a tertiary care facility, rural referral center, or medical teaching institution, or an educational institution accredited by the State;

"(ii) any number of institutions that provide health care services or educational services; and

"(iii)(I) in the case of a consortium seeking a grant under this chapter to improve health care services, not less than 3 rural hospitals, clinics, community health centers, migrant health centers, local health departments, or similar facilities; or

"(II) in the case of a consortium seeking a grant under this chapter to improve educational services, not less than 3 educational institutions accredited by the State.

"(2) QUALIFIED STATE.—The term 'qualified State' means a State which has adopted, within 1 year after the date final regulations are prescribed to carry out this chapter, a plan for the upgrading and modernization of the rural telecommunications infrastructure of the State which, among other things—

"(A) provides for the elimination of party line service in rural areas of the State;

"(B) encourages and improves the use of telecommunications, computer networks, and related advanced technologies to provide educational and medical benefits to people in rural areas of the State;

"(C) provides for an enhancement in the quality and availability of educational opportunities for students in rural areas of the State;

"(D) provides for improvement in the quality of medical care provided, and access to medical care afforded, to people in rural areas of the State;

"(E) provides incentives for local telephone exchange carriers to improve the quality of telephone service and access to advanced telecommunications services for subscribers in rural areas of the State, including facsimile document transmission, multifrequency tone signaling services, interactive audio and video transmissions, voicemail services, and other telecommunications services;

"(F) provides for the full participation of rural areas in the modernization of the telecommunications network through the implementation of joint coordinated network planning, design, and cooperative implementation among all local telephone exchange carriers in the provision of public switched network infrastructure and services;

"(G) provides for the achievement, preservation, and enhancement of universal service by bringing reasonably priced, high-quality, advanced telecommunications network capabilities to the people of the rural areas of the State, including through the sharing of public switched network infrastructure and functionality by local telephone exchange carriers at the request of local telephone exchange carriers lacking economies of scale or scope to provide such infrastructure or functionality on their own;

"(H) provides for the achievement of such goals within 10 years after the adoption of the plan; and

"(I) does not alter the boundaries of any local telephone exchange company franchised service area designated or recognized by the State, or the equivalent in the State.

"(3) RURAL AREA.—The term 'rural area' has the meaning given such term in section 203(b) of the Rural Electrification Act of 1936.

"(4) TELEPHONE SERVICE.—The term 'telephone service' has the meaning given such term in section 203(a) of the Rural Electrification Act of 1936.

"(c) SELECTION OF GRANT RECIPIENTS.—

"(1) APPLICATION REQUIREMENT.—

"(A) IN GENERAL.—Any qualified consortium that provides services in a State and desires to obtain a grant under this chapter shall submit to a State agency designated by the Governor of the State an application in such form, containing such information and assurance, and at such time, as the Administrator may require.

"(B) CONTENTS OF APPLICATION.—The application shall contain or be accompanied by—

"(i) a copy of the State plan described in subsection (b)(2);

"(ii) the plan of the applicant, for obtaining access to interactive telecommunications systems, which—

"(I) specifies, consistent with subsection (f), the uses to be made of such systems;

"(II) demonstrates that the systems will be capable of being readily connected to the established public switched network; and

"(III) is compatible with the State plan; and

"(iii) a commitment by the State to make a grant to the applicant in an amount equal to 20 percent of the funds required to carry out the plan of the applicant, conditional upon a commitment by the Administrator to make 1 or more grants to the applicant under this chapter in an amount equal to 80 percent of the funds required to carry out the plan of the applicant.

"(2) REVIEW AND COMMENT.—The State agency shall review the application and the applicant's plan and, after any revisions made by the applicant are incorporated, transmit to the Administrator the application and plans, and the comments of the State agency.

"(3) SELECTION OF GRANTEES.—The Administrator shall—

"(A) review the applications and plans transmitted pursuant to paragraph (2);

"(B) consider the comments of the State agency with respect to the application; and

"(C) make grants in accordance with paragraph (4) to each applicant therefor that complies with the requirements of this chapter and the regulations prescribed by the Administrator to carry out this chapter.

"(4) PRIORITIES.—Priority for grants under this chapter shall—

"(A) be accorded to applicants whose applications demonstrate—

"(i) the greatest likelihood of successfully and efficiently carrying out the activities described in subsection (f)(1);

"(ii) the participation of the local telephone exchange carrier in providing and operating the telecommunications transmission facilities required by the plan; and

"(iii) unconditional financial support from the local community; and

"(B) so as to ensure, to the extent possible, that various regions of the United States benefit from the use of the grants.

"(d) MAXIMUM AMOUNT OF GRANT.—The amount of each grant under this chapter shall not exceed $1,500,000.

"(e) DISTRIBUTION OF GRANTS.—Grants to any qualified consortium under this chapter shall be disbursed over a period of not more than 3 years.

"(f) USE OF FUNDS.—

"(1) IN GENERAL.—Grants under this chapter may be used to support the costs of activities involving the sending and receiving of information to improve health care services or educational services in rural areas, including—

"(A) in the case of grants to improve health care services—

"(i) consultations between health care providers;

"(ii) transmitting and analyzing x-rays, lab slides, and other images;

"(iii) developing and evaluating automated claims processing, and transmitting automated patient records; and

"(iv) developing innovative health professions education programs;

"(B) in the case of grants to improve educational services—

"(i) developing innovative education programs and expanding curriculum offerings;

"(ii) providing continuing education to all members of the community;

"(iii) providing the means for libraries of educational institutions or public libraries to share resources;

"(iv) providing the public with access to State and national data bases;

"(v) conducting town meetings; and

"(vi) covering meetings of agencies of State government; and

"(C) in all cases—

"(i) transmitting financial information; and

"(ii) such other related activities as the Administrator deems to be consistent with the purposes of this chapter.

"(2) LIMITATION ON ACQUISITION OF INTERACTIVE TELECOMMUNICATIONS EQUIPMENT.—Not more than 40 percent of the amount of any grant made under this chapter may be used to acquire interactive telecommunications end user equipment.

"(3) LIMITATION ON USE OF CONSULTANTS.—Not more than 5 percent of the amount of any grant made under this chapter may be used to employ or contract with any consultant or similar person.

"(4) PROHIBITIONS.—Grants made under this chapter may not be used, in whole or in part, to establish or operate a telecommunications network or to provide any telecommunications service for hire.

"(g) LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—

"(1) GRANTS TO IMPROVE RURAL HEALTH CARE SERVICES.—For grants under this chapter to improve health care services, there are authorized to be appropriated to the Administrator not to exceed $30,000,000 for each fiscal year.

"(2) GRANTS TO IMPROVE RURAL EDUCATIONAL SERVICES.—For grants under this chapter to improve educational services, there are authorized to be appropriated to the Administrator not to exceed $20,000,000 for each fiscal year.

"(3) AVAILABILITY OF FUNDS.—Sums appropriated pursuant to this subsection are authorized to remain available until expended.".

(c) ELIMINATION OF PREFERENCE FOR RURAL TELEPHONE BANK LOANS FOR BORROWERS LOCATED IN STATES WITH PLANS FOR UPGRADING RURAL TELECOMMUNICATIONS INFRASTRUCTURE.—Section 408(b)(2) of the Rural Electrification Act of 1936 (7 U.S.C. 948(b)(2)) is amended by inserting "which is not located in a qualified State (as defined in section 2338(b)(2) of the Food, Agriculture, Conservation, and Trade Act of 1990)" after "any borrower".

SEC. 3006. INCREASE IN LIMITATION ON POPULATION OF RURAL AREAS FOR PURPOSES OF TELEPHONE LOANS.

(a) IN GENERAL.—Section 203(b) of the Rural Electrification Act of 1936 (7 U.S.C. 924(b)) is amended by striking "one thousand five hundred" and inserting "10,000".

(b) CONFORMING AMENDMENT.—Section 13 of such Act (7 U.S.C. 913) is amended by inserting "(except in title II)" before "shall be deemed to mean any area".

SEC. 3007. SENSE OF THE CONGRESS.

It is the sense of the Congress that persons who are eligible for telephone loans under the Rural Electrification Act of 1936 and are interested in upgrading telecommunications in rural areas should obtain financial assistance under such Act through a subsidiary in order to limit the assets subject to the lien requirements of such Act.

SEC. 3008. REGULATIONS.

Within 180 days after the date of the enactment of this Act, the Administrator of the Rural Electrification Administration and the Governor of the Rural Telephone Bank shall prescribe such regulations as may be necessary to carry out the amendments made by this title.

TITLE IV—PERISHABLE AGRICULTURAL COMMODITIES ACT TECHNICAL AMENDMENTS OF 1992

SEC. 4001. SHORT TITLE.

This title may be cited as the "Perishable Agricultural Commodities Act Technical Amendments of 1992".

SEC. 4002. REAFFIRMATION OF FINDINGS.

Congress hereby reaffirms the findings of section 5(c)(1) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499(c)(1)) that a burden on commerce in perishable agricultural commodities is caused by financing arrangements under which commission merchants, dealers, or brokers, who have not made payment for perishable agricultural commodities purchased, contracted to be purchased, or otherwise handled by them on behalf of another person, encumber or give lenders a security interest in, such commodities, or on inventories of food or other products derived from such commodities or products, and any receivables or proceeds from the sale of such commodities or products, and that such arrangements are contrary to the public interest; and that section 5(c) of such Act is intended to remedy such burden on commerce in perishable agricultural commodities and to protect the public interest.

SEC. 4003. TECHNICAL AMENDMENT.

Section 5(c)(2) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)(2)) is amended to read as follows:

"(2) Perishable agricultural commodities received by a commission merchant, dealer, or broker in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held in trust by such commission merchant, dealer, broker, or by a lender who finances the business operations of such a commission merchant, dealer, or broker, whether or not the lender holds a security interest in such trust assets, for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction, until full payment of the sums owing in connection with such transactions has been received by such unpaid suppliers, sellers, or agents. Payment shall not be considered to have been made if the supplier, seller, or agent receives a payment instrument which has been dishonored. The provisions of this subsection shall not apply to transactions between a cooperative association (as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)), and its members.".

TITLE V—EQUITABLE TREATMENT FOR SUGARCANE PRODUCERS

SEC. 5001. EQUITABLE TREATMENT FOR PRODUCERS.

Section 359f(b)(5) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359ff(b)(5)) (hereinafter referred to as "the 1938 Act"), is amended by striking subparagraph (B) and inserting the following:

"(B) DETERMINATION OF VIOLATION.—No producer shall be considered to have violated subparagraph (A) unless the processor of the sugarcane harvested by such producer from acreage in excess of the proportionate share of the farm markets an amount of sugar that exceeds the allocation of such processor for a fiscal year.

"(C) CIVIL PENALTY.—Any producer on a farm who violates subparagraph (A) by knowingly harvesting, or allowing to be harvested, an acreage of sugarcane in excess of the farm's proportionate share shall be liable to the Commodity Credit Corporation for a civil penalty equal to one and one-half times the United States market value of the quantity of sugar that is marketed by the processor of such sugarcane in excess of the allocation of such processor for the fiscal year. The Secretary shall prorate penalties imposed under this subparagraph in a fair and equitable manner among all the producers of sugarcane harvested from excess acreage that is acquired by such processor.".

SEC. 5002. ADJUSTMENT AFTER DISASTER.

Section 359f(b) of the 1938 Act, as amended by section 5001 of this Act, is further amended by inserting after paragraph (6) the following new paragraph:

"(7) ADJUSTMENTS.—Whenever the Secretary determines that, because of a natural disaster or other condition beyond the control of producers that adversely affects a crop of sugarcane subject to proportionate shares, the amount of sugarcane produced by producers subject to the proportionate shares will not be sufficient to enable processors in the State to meet the State's cane sugar allotment and provide a normal carryover inventory of sugar, the Secretary may uniformly allow producers to harvest an amount of sugarcane in excess of their proportionate share, or suspend proportionate shares entirely, as necessary to enable processors to meet the State allotment and provide a normal carryover inventory of sugar.".

SEC. 5003. CLARIFYING AND CONFORMING AMENDMENTS.

Section 359f(b) of the 1938 Act, as amended by sections 5001 and 5002 of this Act, is further amended—

(1) in paragraph (1)(B), by—

(A) striking "production of sugar" and inserting "production of sugarcane"; and

(B) inserting "of sugar" before the period at the end;

(2) in the first sentence of paragraph (2), by—

(A) striking "sugar processed from all crops by all processors" and inserting "sugarcane produced by producers in the area"; and

(B) inserting "of sugar" after "provide a normal carryover inventory"; and

(3) in the second sentence of paragraph (2), by inserting "paragraph (7) and" after "under".

TITLE VI—USE OF ELECTRONIC COTTON WAREHOUSE RECEIPTS

SEC. 6001. USE OF ELECTRONIC COTTON WAREHOUSE RECEIPTS.

Section 17 of the United States Warehouse Act (7 U.S.C. 259) is amended—

(1) in paragraph (1)(A) of subsection (c)—

(A) by striking "The Secretary of Agriculture, or" and inserting "Notwithstanding any other provisions of State or Federal law, the Secretary of Agriculture, or";

(B) by striking "licensed under this Act" and inserting "licensed under this Act or in any other warehouse";

(C) by striking "section 18" and inserting "section 18 or under any applicable State law";

(2) in paragraph (2)(A) of subsection (c), by striking "of this Act" and inserting "of this Act or State law";

(3) in paragraph (2)(B) of subsection (c), by striking "the Secretary may" and inserting "with respect to cotton stored in a warehouse licensed under this Act, the Secretary may";

(4) in paragraph (3) of subsection (c), by striking "licensed under this Act" and inserting "covered under this subsection"; and

(5) by adding the following new subsection at the end thereof:

"(e) Notwithstanding any other provision of State or Federal law, any person designated as a holder of an electronic cotton warehouse receipt on a record in a system of records applicable to cotton maintained on an electronic cotton warehouse receipt system approved by the Secretary of Agriculture pursuant to regulations issued under this section shall, for the purposes of perfecting the security interest of such person under State or Federal law with respect to the cotton covered by such warehouse receipt, be considered to be in possession of the warehouse receipt. This subsection is applicable to electronic cotton warehouse receipts covering cotton stored in a cotton warehouse, whether or not such warehouse is licensed under this Act.".

AMENDMENT NO. 3417

Mr. FORD. I move that the Senate concur in the amendment of the House with a further amendment, which I send to the desk on behalf of Senators LEAHY and LUGAR.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. LEAHY, for himself, and Mr. LUGAR, proposes an amendment numbered 3417.

Mr. FORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(The text of the amendment appears in today's RECORD under "Amendments Submitted.")

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FOWLER. Mr. President, this legislation is extremely important to the beginning farmers of America and I am pleased to support its passage. However, we have failed to address an important provision expanding the lending authority of the Farm Credit System. I have worked long and hard with the chairman of the Agriculture Committee on this matter and we have come to an agreement which temporarily resolves some of my concerns.

Mr. LEAHY. The interest of the Senator from Georgia in this matter is well documented and he should be commended for his commitment to expanding economic development opportunities in rural America.

Mr. FOWLER. I thank my distinguished chairman and want to clarify our agreement. It is my understanding the Senate Committee on Agriculture, Nutrition, and Forestry will hold a full committee hearing on the expansion of the Farm Credit System's lending authority early next year?

Mr. LEAHY. The distinguished Senator from Georgia is correct. The committee will hold a hearing on that matter at the beginning of the 103d Congress early next year.

Mr. FOWLER. It is also my understanding that after the hearing the committee members will examine the testimony to determine if there is interest in moving forward with legislation. If there is significant interest in moving forward with legislation expanding the lending authority of the Farm Credit System, the committee will act accordingly.

Mr. LEAHY. If after the hearing there is a desire by the members of the committee to address the expansion of lending authority, the committee will act accordingly.

Mr. FOWLER. I thank the Senator from Vermont and also want to recognize his continued leadership on the many issues facing rural America.

Mr. LEAHY. Mr. President, it is with great pleasure that I discuss one section of S. 1709. This act will revitalize the Industrial Development Grant Program. In the past, that program far too narrowly focused on aiding employers—instead of also aiding employees who want job advancement or persons that need job training.

The bureaucratic rules became a straitjacket, preventing dedicated Vermont staff—and USDA staff in other States—from doing their job.

Attracting businesses to Vermont and training Vermonters for quality jobs in Vermont should be top priority for any Vermont business development program.

All too often stacks of regulations written in Washington hinder operations at the local level. The program become buried in red tape. Paperwork and auditing requirements should not be more important than effective educational instruction for job advancement or training.

This act is intended to cut through the paperwork. It will greatly help in Vermont if the USDA officials in Washington properly implement this law. It should be noted that the law is effective on enactment.

The act is designed to permit a much closer coordination between businesses that are considering locating in Vermont and job training and education programs.

Vermont Interactive Television, for example, wants to provide courses and programming aimed at preparing a quality Vermont work force. They were just issued a $400,000 grant to provide technical assistance and training to rural businesses. But red tape would have made it harder to achieve its goals.

This act specifically allows those funds to be used for the expansion and operation of rural distance learning networks, including the VIT network, so as to provide educational instruction or job training to adult students.

I want to thank several people that have played key roles in the expansion of this great program. Dr. Charles Bunting, chancellor of Vermont State Colleges, and Dr. Robert Clarke, president of the Vermont Technical College, provided the key leadership.

Dr. Patricia Thomas, chair of the coordination council for VIT and Judy

Hastings, program manager for Vermont interactive television, should be recognized for their tremendous contributions and for the long hours they have spent making VIT a great success.

Joe Mora, of the Vermont State Colleges, has been extremely helpful in assisting in this effort. USDA staff in Vermont, Rhonda Shippee and Bert MacIntyre, have done their best to help with this project. I greatly appreciate the time and effort they have spent on this program and their dedication to improving rural America.

I intend to carefully monitor USDA's issuance of regulations in Washington to make sure they do not interfere with VIT's ability to offer outstanding programming to Vermonters. I want to stress again that this act is effective when it is signed by the President and I urge the Department not to delay implementation.

Mr. DOMENICI. Mr. President, I would like to take this time to express my sincere appreciation to the distinguished chairman and ranking member of the Committee on Agriculture, Nutrition, and Forestry for including a technical amendment to the Consolidated Farm and Rural Development Act in this bill.

The amendment corrects a technicality that will help small rural communities along our southern border.

Mr. President, H.R. 5487, the Agriculture, Rural Development, Food and Drug Administration, and related agencies appropriations public law for fiscal year 1993, includes $25 million for these small rural communities known as colonias under the Rural and Waste Disposal Grants Program.

The funding for these small rural communities was requested by the President to address the serious water and wastewater deficiencies in those communities.

I am very pleased that the Agriculture appropriations conferees included funding for this very important program in the Agriculture appropriations bill which is now public law. But Mr. President, it has been brought to my attention that many of the colonias in my State may not even qualify for the grants because of technicalities in the final legislative language.

Mr. President, let me first explain the significance of this very important funding for the colonias.

The colonias are small, unincorporated rural communities with population ranging from about 250 persons to about 5,000 persons.

Many of the colonias were originally settled over 100 years ago, and the majority of the residents are low-income families of Mexican and Mexican-American descent.

There are hundreds of individuals that live in the colonias that will suffer from a lack of adequate water and sanitation facilities.

This situation is truly dangerous in terms of sanitation and health hazards from the lack of proper water and sewer systems.

Others have recognized the serious nature of this problem and funding for the colonias.

In fact, Mr. President, the conference report accompanying the Agriculture appropriations bill includes language asking the President of the United States to urge the appropriate agencies, to develop a comprehensive and coordinated strategy and plan of action for the delivery of assistance and programs to improve the adverse environmental and health problems of the colonias.

It seems to me that both the Congress and the President see the urgent needs of the colonias. But because of some technicalities that have arisen the colonias, at least 12 of the 14 colonias in my State of New Mexico, would not have qualified for this important funding without the amendment being adopted here.

According to the Consolidated Farm and Rural Development Act, section 306C(a)(2), moneys under this program will be distributed to a particular county only if that county's unemployment rate is not less than 125 percent of the National average and the per capita income of the residents is not more than 70 percent of the national average per capita income.

The majority of the colonias are located in Dona Ana County in my State of New Mexico.

Mr. President, presently the County of Dona Ana, does not qualify because its unemployment rate ranges around 110 percent of the national average. This is due, in part, because Dona Ana is a very large county and includes the thriving city of Las Cruces, New Mexico State University and the White Sands missile range which bring down the County's overall unemployment rate.

Because the county does not qualify the colonias in that county would not have received funding under this initiative. The colonias and the surrounding rural areas in Dona Ana County paint a much gloomier picture than the city of Las Cruces. I believe the colonias are well above 125 percent of the national unemployment average.

Mr. President, the technical change in this bill will amend section 306C(a)(2) of the Consolidated Farm and Rural Development Act to include a rural area which was recognized as a colonia as of October 1, 1989.

Because of this technical change, the colonia in Dona Ana County, as well as colonias in other counties, will have a chance to receive funding to address their water and wastewater needs.

Mr. LUGAR. Mr. President, today the Senate is considering a series of provisions addressing issues relating to agricultural credit, rural development and improvements of a technical nature to existing farm programs.

These bills contain many important provisions that deserve the attention and support of the Senate. One of the bills, S. 1709, H.R. 6125—pertaining to the Farm Credit System, contains provisions that address issues raised by the Treasury Department and the General Accounting Office [GAO] in their 1991 review of Government sponsored enterprises [GSE]. Importantly, it contains language that unequivocally restates the obligation of the Farm Credit System to repay the Federal assistance authorized in the 1987 Farm Credit Act. This bill also establishes an orderly schedule for the repayment of that debt. The farmers and ranchers comprising the Farm Credit System should be commended for their efforts to implement this repayment schedule.

For the Members not as close to the farm credit situation, I am pleased to report that net income for the System and individual banks has been up for the past several years, and every year marks a drop in the level of nonaccruing loans is dropping in virtually every farm credit district. Further the System is continuing to contribute to its own self insurance fund to protect against future requests for Federal assistance. Currently that fund is capitalized at a level of approximately $660 million.

The language of the bill requires each System bank to enter into or continue in effect an agreement with the Farm Credit System Financial Assistance Corporation [FAC] such that each bank will make annual annuity-type payments to the Financial Assistance Corporation that will provide for the orderly funding of each bank's obligation under section 6.9(e) of the Farm Credit Act of 1971, as amended.

In December of 1990, the three banks for cooperatives entered into agreements under which certain payments have been made to FAC consistent with the requirement. The remaining System banks entered into similar agreements at the end of 1991, but these never became operable. It is the intent of this bill that the agreements executed by the System banks, to the extent that they are consistent with the requirements of this bill, qualify as the agreements required by the section of this legislation dealing with the repayment of capital preservation commitments.

Another bill, contains provisions that would assist beginning farmers and ranchers begin their farming ventures. I strongly support that objective. The bill also contains a provision that establishes a timeframe under which FmHA borrowers are directed to leave the FmHA umbrella and seek private sources of capital. This bill requires graduation from FmHA lending after 10 years. I also strongly favor that graduation provision.

I believe it is important that Congress take all possible steps to redirect the lending focus of the FmHA away from being source of subsidized credit to marginal farmers almost in perpetuity toward a proactive focus of assisting new farmers to acquire the experience and land to begin a career in farming.

Mr. President, these bills have been carefully reviewed over the past several weeks and I believe have been tailored to address any concerns raised by Members. I urge their swift consideration.

ELHAM GHANDOUR CICIPPIO RELIEF ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar 779, S. 2499, a bill for the relief of Elham Ghandour Cicippio.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2499) for the relief of Elham Ghandour Cicippio.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. WAIVER OF PERIOD OF RESIDENCY REQUIREMENT.

Elham Ghandour Cicippio shall be considered to have satisfied the requirements of section 316 of the Immigration and Nationality Act relating to required periods of residence and physical presence within the United States, and, notwithstanding section 310(d) of that Act, may be naturalized if she is otherwise eligible for naturalization under that Act.

SEC. 2. LIMITATION OF WAIVER.

Section 1 shall apply only if Elham Ghandour Cicippio files an application for naturalization within 60 days after the date of the enactment of this Act.

AMENDMENT NO. 3418, EN BLOC

(Purpose: For the relief of Elham Ghandour Cicippio)

Mr. SIMPSON. Mr. President, on behalf of Senator SPECTER, I send two amendments to the desk, en bloc, and ask for their immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. SPECTER, proposes amendments, en bloc, numbered 3418.

Mr. SIMPSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendments are as follows:

On page 1, line 9, strike "310(d)" insert "316(a)(1)".

On page 1, line 6, strike "316" insert "319(a)".

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendments, en bloc.

The amendments (No. 3418), en bloc, were agreed to.

The ACTING PRESIDENT pro tempore. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2499

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. WAIVER OF PERIOD OF RESIDENCY REQUIREMENT.

Elham Ghandour Cicippio shall be considered to have satisfied the requirements of section 319(a) of the Immigration and Nationality Act relating to required periods of residence and physical presence within the United States, and, notwithstanding section 316(a)(1) of that Act, may be naturalized if she is otherwise eligible for naturalization under that Act.

SEC. 2. LIMITATION OF WAIVER.

Section 1 shall apply only if Elham Ghandour Cicippio files an application for naturalization within 60 days after the date of the enactment of this Act.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DAIRY AND DISASTER ASSISTANCE ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar 280, H.R. 2893, the Disaster and Dairy Assistance Act of 1991.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2893) to extend to 1991 crops the disaster assistance provisions of the Food, Agriculture, Conservation and Trade Act of 1990.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Agriculture, Nutrition, and Forestry, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Dairy and Disaster Assistance Act of 1991".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—DAIRY PRICE SUPPORT AND STABILIZATION PROGRAM

Sec. 101. Findings.
Sec. 102. Policy and purpose.
Sec. 103. Price support operations; surplus reduction program.
Sec. 104. Standards of identity for milk.
Sec. 105. Mandated dairy sales to the Soviet Union.
Sec. 106. Regulations.
Sec. 107. Effective date.

TITLE II—EMERGENCY CROP LOSS ASSISTANCE

Sec. 201. Extension of emergency crop loss assistance to 1990 and 1991 crops.
Sec. 202. Emergency grants to assist low-income migrant and seasonal farmworkers.
Sec. 203. Emergency aquaculture program.
Sec. 204. Emergency livestock feed assistance.
Sec. 205. Emergency forage program.

TITLE I—DAIRY PRICE SUPPORT AND STABILIZATION PROGRAM

SEC. 101. FINDINGS.

Congress finds that—

(1) milk and dairy products are basic foods and as a valuable part of the human diet a primary source of required nutrients, such as calcium;

(2) the production of milk and dairy products plays a significant role in the economy of the United States, in that—

(A) milk and dairy products are consumed by millions of people in the United States every day; and

(B) the production of milk and dairy products involves approximately 200,000 dairy farmers and requires substantial handling, processing, and marketing resources;

(3) dairy farmers have a relatively limited ability to protect themselves from price risk in that—

(A) the commodity they produce is not easily storable;

(B) they are restricted in their access to forward pricing or hedging; and

(C) dairy farming is so specialized that they cannot mitigate price risk by diversifying the mix of commodities they produce;

(4) unstable farm prices are detrimental to the nation's consumers of milk because processors, in order to manage their risk, will increase margins above levels expected with stable prices;

(5) current dairy program policies, which do not include an inventory management component, have failed to prevent the producer market price for milk from collapsing in 1990 and in 1991;

(6) the all-milk price is expected to be less than the cost of production, subjecting dairy farmers to financial stress not experienced in decades;

(7) without further action, producer milk prices in future years will continue to be unstable, making it difficult to maintain an economically healthy dairy sector;

(8) the measures resulting from the amendments made by this title, including the surplus reduction program, are needed to—

(A) ensure consumers of a reliable and adequate supply of pure and wholesome milk and dairy products at reasonable prices;

(B) respond adequately to current and anticipated future dairy supply and demand problems; and

(C) ensure a level of farm income for dairy producers adequate to maintain productive capacity sufficient to meet the anticipated future needs; and

(9) the measures resulting from the amendments made by this title should avoid any increase in net Federal outlays in the milk price support program.

SEC. 102. POLICY AND PURPOSE.

(a) IN GENERAL.—It is declared to be the policy of Congress that it is in the public interest to—

(1) balance milk production and consumption in order to improve and stabilize farm income and limit Government expenditures;

(2) reduce undesirable fluctuations in supplies and prices of milk and stabilize the price of milk at fair and reasonable levels to protect the interests of consumers and producers; and

(3) facilitate orderly marketing conditions for milk and dairy products to enable dairy farmers in the United States to respond adequately to the needs of consumers.

(b) PROTECTION OF CONSUMERS.—It is the sense of Congress that the authorities provided by this title and the amendments made by this title shall be used to ensure the production of pure and wholesome milk and dairy products at the level required to meet the needs of consumers in the United States.

SEC. 103. PRICE SUPPORT OPERATIONS; SURPLUS REDUCTION PROGRAM.

(a) PRICE SUPPORT.—Subsection (b) of section 204 of the Agricultural Act of 1949 (7 U.S.C. 1446e(b)) is amended to read as follows:

"(b) RATE.—

"(1) 1991.—During the period beginning on January 1, 1991, and ending on December 31, 1991, the price of milk shall be supported at a rate of not less than $10.10 per hundredweight for milk containing 3.67 percent milkfat.

"(2) 1992 THROUGH 1995.—

"(A) IN GENERAL.—During the period beginning on January 1, 1992, and ending on December 31, 1995, the price of milk shall be supported at a rate of not less than $11.10 per hundredweight for milk containing 3.67 percent milkfat.

"(B) ADJUSTMENT FOR PROGRAM OPERATION.—Notwithstanding any other provision of law, if net removals by the Commodity Credit Corporation exceed 5 billion pounds of milk and products of milk (milk equivalent, total milk solids basis) for any year, the Secretary shall support the price in the immediately subsequent year at a rate of not less than $12.10 per hundredweight for milk containing 3.67 percent milkfat.".

(b) BUTTER AND NONFAT DRY MILK.—Paragraph (3) of section 204(c) of such Act is amended to read as follows:

"(3) BUTTER AND NONFAT DRY MILK.—

"(A) ESTABLISHED PURCHASE PRICES.—

"(i) 1992.—In calendar year 1992, the Secretary shall establish the purchase price for butter at not more than $0.9425 per pound, and the purchase price for nonfat dry milk at not less than $0.995 per pound.

"(ii) 1993 THROUGH 1995.—In each of the calendar years 1992 through 1995, the Secretary shall establish the purchase price for butter and nonfat dry milk as the Secretary determines to be appropriate.

"(B) NOTIFICATION.—If the Secretary determines that the rate of price support between the purchase prices for nonfat dry milk and butter should be allocated in a manner that does not result in the lowest level of expenditures by the Commodity Credit Corporation, the Secretary shall notify the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate of the alternative allocation and the justification for the alternative allocation.

"(C) TIMING OF PURCHASE PRICE ADJUSTMENT.—The Secretary may make adjustments in the purchase prices for nonfat dry milk and butter the Secretary considers to be necessary not more than twice in each calendar year.".

(c) RECOURSE LOANS FOR PROCESSED MILK PRODUCTS.—Subsection (e) of section 204 of such Act is amended to read as follows:

"(e) RECOURSE LOANS FOR PROCESSED MILK PRODUCTS.—

"(1) IN GENERAL.—Beginning on January 1, 1993, if the Secretary determines that operation of a recourse loan program will improve the orderly marketing of dairy products and the stability of dairy product prices, the Secretary may make available to processors of milk a recourse loan on products of milk (butter, cheese, and nonfat dry milk).

"(2) RATE.—The Secretary shall offer loans on the products at a rate that will enable plants of average efficiency to pay producers, on average, a price that is at least 95 percent but not more than 100 percent of the simple average price received by producers for manufacturing grade milk containing 3.67 percent milkfat for the immediately preceding 5 years, excluding the year in which the average price was the highest and the year in which the average price was the lowest.

"(3) TERMS.—Loans shall be made under this section only in the first 5 months of the calendar year and shall mature at the earlier of—

"(A) the end of 6 months; or

"(B) the end of the fiscal year.

"(4) ASSESSMENT.—

"(A) IN GENERAL.—No later than December 1, 1992, the Secretary shall assess the extent to which the operation of a recourse loan program, made available to the processors of the products of milk, will improve the performance and functioning of dairy markets.

"(B) EFFECT ON ORDERLY MARKETING.—The Secretary shall consider the extent to which the operation of a recourse loan program will improve the orderly marketing of dairy products and the stability of dairy product prices within a marketing year.

"(C) CONSULTATION.—In conducting the assessment and as soon as possible after the assessment is completed, the Secretary shall consult with the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate and, as determined by the Secretary, appropriate representatives from the dairy industry.".

(d) SURPLUS REDUCTION PROGRAM.—Subsection (g) of section 204 of such Act is amended to read as follows:

"(g) SURPLUS REDUCTION AND PREVENTION PROGRAM.—

"(1) IN GENERAL.—The Secretary shall enter into contracts in each of the 1992 through 1995 calendar years with producers in the United States to reduce the marketings of milk for commercial use to ensure that annual net removals by the Commodity Credit Corporation do not exceed 4.5 billion pounds (milk equivalent, total milk solids basis).

"(2) NATIONAL REDUCTION IN MILK MARKETINGS.—

"(A) ANNUAL DETERMINATION.—Not later than November 15 of each of the calendar years 1991 through 1994, the Secretary shall determine the national reduction in milk marketings necessary in the following calendar year to limit net removals by the Commodity Credit Corporation in the year to a level of not more than 4.5 billion pounds (milk equivalent, total milk solids basis).

"(B) CRITERIA.—In making the reduction determination required under subparagraph (A), the Secretary shall—

"(i) use the rate of price support that will be effective for the calendar year subsequent to the year in which the determination is made under this section; and

"(ii) assume there will be no new entrants during that calendar year in the surplus reduction and prevention program established under this subsection.

"(3) REGIONAL REDUCTION IN MILK MARKETINGS.—

"(A) IN GENERAL.—The Secretary shall ensure that participation in the surplus reduction and prevention program shall be proportionately distributed, based on the quantity of milk produced, among the regions identified in subparagraph (B).

"(B) DEFINITION OF REGIONS.—For purposes of this subsection, the United States shall be divided into seven geographic regions as follows:

"(i) California, Oregon, and Washington.

"(ii) Arizona, Arkansas, Colorado, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Texas, Utah, and Wyoming.

"(iii) Illinois, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

"(iv) Wisconsin.

"(v) Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.

"(vi) Delaware, Indiana, Maryland, Michigan, New Jersey, Ohio, Pennsylvania, and West Virginia.

"(vii) Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.

"(C) REGIONAL MARKETING PERCENTAGE.—Not later than November 15 of each of the calendar years 1991 through 1994, the Secretary shall determine a regional marketing percentage for each region that is equal to the ratio of—

"(i) the total quantity of milk marketed in the region in the 12 months prior to the determination; to

"(ii) the total quantity of milk marketed in the United States in the 12 months prior to the determination.

"(D) REGIONAL ALLOCATION.—To the extent practicable (taking into consideration the regional supply and demand for fluid milk), the Secretary shall determine the total reduction in the quantity of milk marketed for a region under the surplus reduction and prevention program to be equal to the product obtained by multiplying—

"(i) the national reduction in milk marketings, as determined under paragraph (2); by

"(ii) the regional marketing percentage for that region, as determined under subparagraph (C).

"(4) SURPLUS REDUCTION CONTRACTS.—

"(A) IN GENERAL.—Beginning on January 1, 1992, the Secretary shall provide cash payments from the Commodity Credit Corporation to producers who enter into surplus reduction contracts to reduce the quantity of milk the producers market for commercial use during the relevant time period.

"(B) RATE OF PAYMENTS.—In determining the amount to be paid to producers under the contracts, the Secretary may offer payments to, or accept bids from, producers at a level that is necessary to achieve the national and regional reductions in milk marketings required under this subsection.

"(C) PERIOD OF CONTRACT.—In those cases in which contracts are entered into, the Secretary shall offer to enter into contracts in which a participant shall reduce the quantity of milk marketed by the participant over a period of 24 to 36 months, as determined by the Secretary. The Secretary may offer contracts for a shorter period to permit the dairy industry to adjust to unforeseen changes in factors affecting milk production, prices, and the demand for milk products, as determined by the Secretary. In no case shall contracts be for a period of less than 12 months.

"(D) ANNUAL LEVEL OF REDUCTION.—For each year of a contract, the level of reduction in the

quantity of milk marketed shall be equal to the product obtained by multiplying—

"(i) not less than 5 percent, nor more than 30 percent; by

"(ii) the producer's relevant milk marketing history for that contract year, as determined pursuant to subparagraph (E).

"(E) MILK MARKETING HISTORY.—For purposes of surplus reduction contracts entered into under this subsection, a producer's milk marketing history shall be equal to—

"(i) for a producer entering into a surplus reduction contract for reduction beginning in calendar year 1992, the quantity of milk marketed by a producer during 1991;

"(ii) for a producer entering into a surplus reduction contract for reduction beginning in calendar year 1993, the average quantity of milk that is marketed and considered marketed by the producer during 1991 and 1992; and

"(iii) for a producer entering into a surplus reduction contract for reduction beginning in calendar year 1994 or 1995, the average quantity of milk that is marketed and considered marketed by the producer during the previous 3 years.

"(F) ENROLLMENT PERIOD.—

"(i) FREQUENCY OF ENROLLMENT PERIODS.—The Secretary shall offer to enter into surplus reduction contracts on at least three occasions during 1992, and on as many occasions during 1993 through 1995 as the Secretary determines necessary.

"(ii) INITIAL PERIOD.—The Secretary shall allow producers to enroll in the surplus reduction program for an initial period of at least 30 days prior to the beginning of the program. Subsequent enrollment periods shall be of such duration as determined by the Secretary.

"(G) PAYMENTS TO PARTICIPANTS.—

"(i) TIMING.—The Secretary shall make conditional whole or partial payments to participants in the surplus reduction program on at least a quarterly basis, or more frequently at the option of the Secretary.

"(ii) ANNUAL SETTLEMENT PAYMENT.—If necessary, the Secretary shall make an annual settlement payment at the end of each year of the contract period, based on the total reduction in the quantity of milk marketings by the producer during the year.

"(iii) REDUCTION IN PRICE RECEIVED.—Any producer that participates in the surplus reduction program shall not be subject to the reduction in price received under subsection (h) on milk marketed during the term of the contract.

"(H) FUNDING.—The Secretary shall make payments to participants in the surplus reduction program from funds of the Commodity Credit Corporation.

"(I) SEASONAL STABILITY.—The Secretary shall, to the maximum extent practicable and consistent with the other obligations and objectives of this section, administer the surplus reduction program in a manner that will reduce the seasonal fluctuation in the supply of milk produced in the United States.

"(J) OTHER TERMS.—Each contract may include such other terms and conditions as are necessary to ensure that the goals and objectives of the surplus reduction program are met, as determined by the Secretary.

"(5) SURPLUS PREVENTION CONTRACTS.—

"(A) IN GENERAL.—Beginning on January 1, 1992, the Secretary shall offer to enter into contracts with producers not to increase the level of their marketings of milk from the immediately preceding year, as determined in subparagraph (D).

"(B) REDUCTION IN PRICE RECEIVED.—Any producer that participates in the surplus prevention program shall not be subject to the reduction in price received under subsection (h) on milk marketed during the term of the contract.

"(C) PERIOD OF CONTRACT.—The Secretary shall offer to enter into contracts in which a participant shall agree not to exceed the quantity of milk marketed by the participant over a period of 12 months.

"(D) ANNUAL LEVEL OF MARKETINGS.—For each year of a surplus prevention contract, the level of milk marketed by the participant shall not exceed the quantity of milk marketed and considered marketed in the year immediately preceding the term of the contract.

"(E) ENROLLMENT PERIOD.—The Secretary shall allow producers to enroll in the surplus reduction program for an initial period of at least 30 days prior to the beginning of the program. Subsequent enrollment periods shall be of such duration as determined by the Secretary.

"(F) OTHER TERMS.—Each contract may include such other terms and conditions as are necessary to ensure that the goals and objectives of the surplus prevention program are met, as determined by the Secretary.

"(6) CONSIDERED MARKETED.—For purposes of calculating a marketing history under paragraphs (4) and (5), the producer may receive an allowance for amounts considered marketed in previous years only to the extent that for a year the producer enters into a contract under paragraph (4). The quantity of milk considered marketed for the year shall equal the quantity of contracted reduction for the year, except that there shall be no allowance made under this paragraph for quantities considered marketed if the quantity actually marketed in the year exceeded the quantity permitted by the year's contract.

"(7) RECORDS.—

"(A) MARKETING HISTORY.—Any producer of milk who seeks to enter into a contract for payments under this subsection shall provide the Secretary with evidence of the quantity of milk marketed by the producer in previous years to establish the producer's marketing history, as the Secretary considers necessary and appropriate.

"(B) OTHER RECORDS AND REPORTS.—Each producer who enters into a contract with the Secretary to reduce marketings under this subsection shall keep such records and make such reports as the Secretary determines necessary to carry out this subsection.

"(8) MODIFICATION OF CONTRACTS.—

"(A) AUTHORITY.—Subject to subparagraph (B), the Secretary may, in accordance with such rules or procedures as are prescribed by the Secretary, offer to modify contracts entered into under this subsection.

"(B) DETERMINATION.—Prior to a modification under subparagraph (A), the Secretary shall determine that, in the absence of the modification, net removals by the Commodity Credit Corporation would fall excessively below 4.5 billion pounds (milk equivalent, total milk solid basis) during the year.

"(9) ASSIGNMENT OF CONTRACTS.—A producer may, with the approval of the Secretary, assign a contract entered into under this paragraph only if—

"(A) the producer's interest in the entire milk production facility and the entire dairy herd used by the producer to produce milk for commercial marketings have been transferred as a unit to the person to whom the assignment is to be made;

"(B) the producer and the assignee agree in writing that the assignee shall succeed to all rights and liabilities of the producer under the contract; and

"(C) a copy of the writing is submitted to the Secretary before the transfer occurs.

"(10) DECEASED PRODUCERS.—A contract entered into under this subsection by a producer who by reason of death cannot perform or assign the contract may be performed or assigned, in accordance with paragraph (9), by the estate of the producer.

"(11) COMPLIANCE.—

"(A) IN GENERAL.—The Secretary shall ensure compliance by producers with the contracted level of reductions in the quantity of milk marketed, including contracts for a term in excess of 1 year. The Secretary shall ensure compliance with surplus reduction contracts on at least a quarterly basis, consistent with payments to producers under paragraph (4)(G)(i).

"(B) INITIAL ENROLLMENT.—During the initial enrollment period specified in paragraph (4)(F), the Secretary shall, at the option of the participant, not require full compliance with the terms and conditions of the surplus reduction contract until 45 days after entering into the contract. Full compliance with the terms and conditions of the contract shall be required on a quarterly basis, as provided in this paragraph.

"(C) VIOLATIONS OF SURPLUS REDUCTION CONTRACTS.—

"(i) REFUNDS.—If a producer violates a contract entered into under paragraph (4), the Secretary shall, as considered appropriate, require that all payments made under the contract be refunded by the producer, with interest at the rate equal, to the extent practicable, to the cost to the Commodity Credit Corporation of its borrowings from the United States Treasury for the relevant time period. The refund shall not relieve the producer from the obligations of the contract.

"(ii) PENALTIES.—A producer who enters into a contract under paragraph (4) shall be liable to the Secretary for marketing penalties, in addition to other remedies available under this section, if the producer—

"(I) fails to make a required reduction in milk marketings;

"(II) retains or acquires an interest in dairy cattle or the production of milk in violation of a contract entered into under this subsection;

"(III) makes a false statement in a bid submitted under paragraph (4) as to the producer's milk marketing history;

"(IV) makes a false statement as to the producer's reduction in milk marketings required under the contract; or

"(V) fails to meet such other terms and conditions of the contract, as the Secretary considers appropriate.

"(iii) LEVEL OF PENALTIES.—The amount of a marketing penalty shall be an amount determined by the Secretary that is the higher of—

"(I) $5,000 for the violation; or

"(II) the quantity of milk involved in the violation multiplied by the current support price, as determined under this section.

"(iv) EXCEPTION.—The Secretary may waive penalties under clause (iii) for a violation that is the result of inadvertent errors in reduction of marketings, as determined by the Secretary, except that the amount of a waiver may not exceed 5 percent of the quantity of the reduction in annual milk marketings by the producer provided for under the contract.

"(D) VIOLATIONS OF SURPLUS PREVENTION CONTRACTS.—

"(i) PENALTY.—If a producer violates a contract entered into under paragraph (5), the Secretary shall, as considered appropriate, require that the producer pay a penalty to the Commodity Credit Corporation for the relevant time period.

"(ii) VIOLATION.—The Secretary shall find a producer in violation of a contract if the producer—

"(I) exceeds the level of milk marketings provided in the contract;

"(II) makes a false statement as to the producer's level of milk marketings required under the contract; or

"(III) fails to meet such other terms and conditions of the contract, as the Secretary considers appropriate.

"(iii) LEVEL OF PENALTY.—The level of the penalty authorized under clause (i) shall equal the sum of—

"(I) the product obtained by multiplying—

"(aa) the amount of the reductions in price received by the producer that would have applied under subsection (h) had that producer not participated in the surplus prevention program during the year; by

"(bb) the total quantity of milk marketed by the producer in that year; and

"(II) an amount determined by the Secretary that is the higher of—

"(aa) $5,000 for the violation; or

"(bb) the quantity of milk involved in the violation multiplied by the current support price, as determined under this section.

"(iv) EXCEPTION.—The Secretary may reduce any penalties under clause (iii)(II) by such amount as the Secretary determines equitable in any case in which the Secretary determines that the failure was unintentional or without knowledge on the part of the person concerned.

"(12) EFFECT ON THE LIVESTOCK INDUSTRY.—In order to minimize the adverse effect of the surplus reduction program on beef, pork, and poultry producers in the United States, the Secretary shall vary the beginning and ending dates of surplus reduction contracts in a region so that the slaughter of dairy animals as a result of the surplus reduction program will occur on a random basis.

"(13) USE OF GOVERNMENT RESOURCES.—In carrying out this subsection, the Secretary may, as the Secretary considers appropriate—

"(A) use the services of State and county committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)); and

"(B) enter into agreements to use, on a reimbursable basis, the services of administrators of the Federal milk marketing orders and State milk marketing programs.".

(e) REDUCTION IN PRICE RECEIVED.—Subsection (h) of section 204 of such Act is amended to read as follows:

"(h) REDUCTION IN PRICE RECEIVED.—

"(1) SURPLUS REDUCTION CONTRACTS.—

"(A) IN GENERAL.—During the period beginning on January 1, 1992, and ending on December 31, 1998, the Secretary shall provide for a reduction in the price received on all milk marketed in the United States for commercial purposes by producers that do not enter into surplus reduction or surplus prevention contracts under subsection (g).

"(B) RATE OF REDUCTION.—

"(i) 1992.—During calendar year 1992, the Secretary shall establish the rate of the reduction under subparagraph (A) in the price received by producers at an amount that is not more than $0.56 per hundredweight of milk marketed.

"(ii) 1993.—During calendar year 1993, the Secretary shall establish the rate of the reduction under subparagraph (A) in the price received by producers at an amount that is equal to the sum of—

"(I) the amount that is necessary to reimburse the Commodity Credit Corporation for all payments to producers who participate in the surplus reduction program under subsection (g)(4) in 1993; and

"(II) the amount, in excess of the funds collected under clause (i), that is necessary to reimburse the Commodity Credit Corporation for payments to producers who participated in the surplus reduction program under subsection (g)(4) in 1992.

"(iii) 1994 THROUGH 1998.—During each of the calendar years 1994 through 1998, the Secretary shall establish the rate of the reduction under subparagraph (A) in the price received by producers in an amount that is equal to the amount that is necessary to reimburse the Commodity Credit Corporation for all payments to producers who participate in the surplus reduction program under subsection (g)(4) in the corresponding year.

"(2) RECONCILIATION COMMITMENTS.—

"(A) 1991.—

"(i) AUTHORITY.—During the period beginning on January 1, 1991, and ending on December 31, 1991, the Secretary shall provide for a reduction in the price received by producers for all milk produced in the United States and marketed by producers for commercial use, in addition to any reduction in price required under paragraph (1).

"(ii) AMOUNT.—The amount of the reduction under clause (i) in the price received by producers shall be 5 cents per hundredweight of milk marketed.

"(iii) REFUND.—The Secretary shall provide a refund of the entire reduction under clause (ii) in the price of milk received by a producer during a calendar year if the producer provides evidence that the producer did not increase marketings in 1991 as compared to marketings by the producer in 1990.

"(B) 1992.—

"(i) AUTHORITY.—During the period beginning on May 1, 1992, and ending on December 31, 1992, the Secretary shall provide for a reduction in the price of milk received by producers that do not enter into surplus reduction or surplus prevention contracts under subsection (g) for all milk produced in the United States and marketed by those producers for commercial use during a contract year, in addition to any reduction in price required under paragraph (1).

"(ii) AMOUNT.—The amount of the reduction under clause (i) in the price received by producers shall be an amount, on a per hundredweight basis of milk marketed, that is sufficient to compensate for refunds made under subparagraph (A)(iii) on the basis of marketings in 1991.

"(C) 1993 THROUGH 1995.—

"(i) AUTHORITY.—During the period beginning on January 1, 1993, and ending on December 31, 1995, the Secretary shall provide for a reduction in the price of milk received by producers that do not enter into surplus reduction or surplus prevention contracts under subsection (g) for all milk produced in the United States and marketed by those producers for commercial use during a contract year, in addition to any reduction in price required under paragraph (1).

"(ii) AMOUNT.—The amount of the reduction under clause (i) in the price received by producers shall be an amount, on a per hundredweight basis of milk marketed, so that total collections shall, to the extent practicable, equal—

"(I) $7,000,000 during calendar year 1993;

"(II) $40,000,000 during calendar year 1994; and

"(III) $80,000,000 during calendar year 1995.

"(3) COLLECTION OF FUNDS.—The funds resulting from the application of any reduction in the price received by producers for milk under paragraph (1) shall be collected and remitted to the Commodity Credit Corporation at such time and in such manner as are prescribed by the Secretary. The funds shall be remitted by any person that purchases milk from a producer, except that in the case of a producer who markets milk of the producer's own production directly to consumers, or other cases as determined by the Secretary, the funds shall be remitted directly to the Corporation by the producer.

"(4) MINIMUM PRICE PROVISIONS.—The funds remitted to the Corporation under this paragraph shall be considered as included in the payments to a producer of milk for purposes of the minimum price provisions of the Agricultural Adjustment Act (7 U.S.C. 601 et seq.), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937.".

(f) DEFINITIONS.—

(1) IN GENERAL.—Section 204 of such Act is amended—

(A) by redesignating subsections (j) and (k) as subsections (k) and (l), respectively; and

(B) by inserting after subsection (i) the following new subsection:

"(j) DEFINITIONS.—As used in this section:

"(1) MILK EQUIVALENT, TOTAL MILK SOLIDS BASIS.—The term 'milk equivalent, total milk solids basis', of milk and the products of milk purchased by the Commodity Credit Corporation, shall be equal to the weighted-average of the milk equivalent (as computed on a milkfat basis and on a milk solids nonfat basis) of such products, with weighting factors equal to not more than 40 percent for the milk equivalent, milkfat basis, and not more than 70 percent for the milk equivalent, solids nonfat basis. The weighting factors shall total 100 percent.

"(2) NET REMOVALS.—The term 'net removals' means the level of purchases of milk and the products of milk by the Commodity Credit Corporation under this section, less sales under section 407 for unrestricted use.

"(3) UNITED STATES.—The term 'United States' means the 48 contiguous States in the continental United States.".

(2) ADMINISTRATION.—Section 204(d)(5) of such Act is amended by striking "(5) ADMINISTRATION.—" and all that follows through "In estimating" in subparagraph (B) and inserting "(5) ADMINISTRATION.—In estimating".

(h) CONFORMING AMENDMENTS.—Section 204(i) of such Act is amended by striking "subsection (g) or (h)" each place it appears and inserting "subsection (h)".

(i) PERIOD.—Section 204(l) of such Act (as redesignated by subsection (f)(1)(A) of this section) is amended by inserting after "this section" the following: ", other than as provided in subsection (h)(1),".

SEC. 104. STANDARDS OF IDENTITY FOR MILK.

(a) IN GENERAL.—Section 8c(5) of the Agricultural Adjustment Act (7 U.S.C. 608c(5)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937 (hereafter in this section referred to as "the Act"), is amended—

(1) in paragraph (G), by striking "No" and inserting "Except as provided in paragraph (H), no"; and

(2) by striking paragraph (H) and inserting the following new paragraph:

"(H) Beginning on January 1, 1994, an order issued pursuant to this section shall contain terms and conditions that require handlers of fluid milk, subject to the order, to market as the highest class milk for fluid use in the geographic area covered by the order only milk that meets the following requirements:

"(i) Milk marketed as whole milk shall contain not less than 12 percent total milk solids consisting of not less than—

"(I) 8.7 percent milk solids not fat; and

"(II) 3.25 percent milk fat.

"(ii) Milk marketed as low fat milk shall contain not less than 12 percent total milk solids consisting of not less than—

"(I) 10 percent milk solids not fat; and

"(II) 2 percent milk fat.

"(iii) Milk marketed as light milk shall contain not less than 12 percent total milk solids consisting of not less than—

"(I) 11 percent milk solids not fat; and

"(II) 1 percent milk fat.

"(iv) Milk marketed as skim milk shall contain not less than 9 percent total milk solids consisting of—

"(I) not less than 9 percent milk solids not fat; and

"(II) not more than 0.25 percent milk fat.

The Federal Milk Market Order Administrators shall test milk sold at the retail level in the geographic area covered by the order to ensure compliance with this paragraph. Violations of this paragraph shall be subject to the penalties provided in subsection (14).".

(b) EXEMPTION FROM REFERENDUM.—The Secretary of Agriculture shall not conduct a referendum under paragraphs (8), (9), and (19) of section 8c(5)(H) of the Act among producers or polling of processors on the amendment made by subsection (a).

(c) APPLICATION TO STATE MILK MARKETING ORDERS.—The requirements of section 8c(5)(H) of the Act, as amended by subsection (a), shall apply with regard to milk marketed for fluid use under State milk marketing orders.

SEC. 105. MANDATED DAIRY SALES TO THE SOVIET UNION.

Section 1163(a) of the Food Security Act of 1985 (7 U.S.C. 1731 note) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following new subsection:

"(b) During calendar year 1991, the Secretary shall sell for export to the Union of Soviet Socialist Republics and its former constituent republics, at such prices as the Secretary determines appropriate, not less than 250,000,000 pounds of dairy products owned by the Commodity Credit Corporation, of which not less than 175,000,000 pounds shall be nonfat dry milk and not less than 55,000,000 pounds shall be butter.".

SEC. 106. REGULATIONS.

Not later than 60 days after the date of the enactment of this Act, the Secretary of Agriculture shall issue such regulations as are necessary to carry out this title and the amendments made by this title.

SEC. 107. EFFECTIVE DATE.

This title and the amendments made by this title shall become effective on the date of the enactment of this Act.

TITLE II—EMERGENCY CROP LOSS ASSISTANCE

SEC. 201. EXTENSION OF EMERGENCY CROP LOSS ASSISTANCE TO 1990 AND 1991 CROPS.

(a) EXTENSION OF ASSISTANCE TO 1990 AND 1991 CROPS.—Chapter 3 of subtitle B of title XXII of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421 note; 104 Stat. 3962) is amended to read as follows:

"CHAPTER 3—EMERGENCY CROP LOSS ASSISTANCE

"SEC. 2240. SHORT TITLE.

"This chapter may be cited as the 'Agricultural Disaster Assistance Act'.

"Subchapter A—Annual Crops

"SEC. 2241. PAYMENTS TO PROGRAM PARTICIPANTS FOR TARGET PRICE COMMODITIES.

"(a) DISASTER PAYMENTS—

"(1) IN GENERAL.—Effective only for producers on a farm who entered into a contract to participate in the production adjustment program established under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) for an eligible crop of wheat, feed grains, upland cotton, extra long staple cotton, or rice, except as otherwise provided in this subsection, if the Secretary determines that, because of damaging weather or related condition, the total quantity of the crop of the commodity that the producers are able to harvest on the farm is less than the result of multiplying 65 percent of the farm program payment yield established by the Secretary for the crop by the sum of the acreage planted for harvest and the acreage prevented from being planted (because of damaging weather or related condition) to the crop on the farm, as determined by the Secretary, the Secretary shall make a disaster payment available to the producers as provided in this subsection.

"(2) PAYMENTS.—

"(A) PAYMENTS FOR PAYMENT ACRES.—

"(i) ASSIGNMENT OF LOSS.—Except as provided in subparagraph (C), in making payments available under this subsection, the Secretary shall assign any deficiency in production of the eligible crop by producers to payment acres for the crop based on the ratio the payment acres for the crop on the farm bears to the total acres planted for harvest and prevented from being planted to the crop (because of damaging weather or related condition).

"(ii) PAYMENT RATE.—The Secretary shall make a payment available to producers for the deficiency in production for the crop assigned to payment acres at a rate equal to 65 percent of the established price for the crop for any deficiency in production greater than 35 percent for the crop.

"(B) PAYMENTS FOR NONPAYMENT ACRES.—

"(i) ASSIGNMENT OF LOSS.—Except as provided in subparagraph (C), in making payments available under this subsection, the Secretary shall assign the deficiency in production of the eligible crop by producers to nonpayment acres for the crop based on the ratio the nonpayment acres for the crop on the farm bears to the total acres planted for harvest and prevented from being planted to the crop (because of damaging weather or related condition).

"(ii) PAYMENT RATE.—The Secretary shall make a payment available to producers for the deficiency in production for the crop assigned to nonpayment acres at a rate equal to 65 percent of the basic county loan rate for the crop for any deficiency in production greater than 35 percent for the crop.

"(C) PAYMENTS FOR EXTRA LONG STAPLE COTTON AND PRODUCERS OF WHEAT, FEED GRAINS, UPLAND COTTON, OR RICE DURING A CROP YEAR PRIOR TO 1991.—The Secretary shall make a payment under this subsection available to producers of an eligible crop of extra long staple cotton and an eligible crop of wheat, feed grains, upland cotton, or rice that is prior to the 1991 crop at a rate equal to 65 percent of the established price for the crop for any deficiency in production greater than 35 percent for the crop.

"(D) LIMITATION.—Payments shall be made available to producers under this section only if the Secretary determines that—

"(i) the producer entered into a contract to participate in the production adjustment program for the eligible crop of wheat, feed grains, upland cotton, extra long staple cotton, or rice; and

"(ii) the producer is in compliance with the contract.".

"(3) OTHER PROVISIONS.—

"(A) DEFINITIONS.—As used in this section:

"(i) NONPAYMENT ACRES.—The term 'nonpayment acres' means the total acreage planted to wheat, feed grains, upland cotton, or rice, as applicable, by a participant in the production adjustment programs for the commodities under sections 101B, 103B, 105B, 107B, or 504 of the Agricultural Act of 1949 (7 U.S.C. 1441-2, 1444-2, 1444f, 1445b-3a, or 1464) less the amount of payment acres planted to the crop.

"(ii) PAYMENT ACRES.—The term 'payment acres' has the same meaning as in sections 101B(c)(1)(C), 103B(c)(1)(C), 105B(c)(1)(C), or 107B(c)(1)(C) of such Act, as applicable.

"(B) CROP INSURANCE.—Payments provided under this section for a crop of a commodity may not be made available to producers on a farm unless the producers enter into an agreement to obtain multiperil crop insurance, to the extent required under section 2247.

"(4) REDUCTION IN DEFICIENCY PAYMENTS.—The total quantity of a crop of a commodity on which deficiency payments otherwise would be payable to producers on a farm under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) shall be reduced by the quantity on which a payment is made to the producers for the crop under this section.

"(5) ELECTION OF PAYMENTS.—

"(A) APPLICATION OF PARAGRAPH.—This paragraph shall apply only to producers of an eligible crop of wheat, feed grains, upland cotton, extra long staple cotton, or rice on a farm who—

"(i) had failed wheat, feed grain, upland cotton, extra long staple cotton, or rice acreage during the crop year; or

"(ii) were prevented from planting acreage to the commodity because of damaging weather or related condition.

"(B) ELECTION.—The Secretary of Agriculture shall (within 30 days after the date on which assistance is made available under this subchapter for a crop year) permit producers referred to in subparagraph (A) to elect whether to receive disaster payments for the crop for the crop year in accordance with this section in lieu of payments received for the crop under section 101B(c)(1)(D), 103B(c)(1)(D), 105B(c)(1)(E), or 107B(c)(1)(E) of the Agricultural Act of 1949 (7 U.S.C. 1441–2(c)(1)(D), 1444-2(c)(1)(D), 1444f(c)(1)(E), 1445b–3a(c)(1)(E)) (or the corresponding provision in the case of the 1990 crop).

"(6) SPRING WHEAT AS REPLACEMENT CROP FOR WINTER WHEAT.—In providing assistance under this section or section 2242 for a crop of winter wheat, the Secretary shall disregard spring wheat that is planted as a replacement crop for the winter wheat.

"(b) ADVANCE DEFICIENCY PAYMENTS.—

"(1) APPLICATION OF SUBSECTION.—This subsection shall apply only to producers on a farm who elect to participate in the production adjustment program established under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) for the crop of wheat, feed grains, upland cotton, extra long staple cotton, or rice for an eligible crop.

"(2) FORGIVENESS OF REFUND REQUIREMENT.—

"(A) IN GENERAL.—Subject to subparagraph (B), if because of damaging weather or related condition the total quantity of an eligible crop of the commodity that the producers are able to harvest on the farm is less than the result of multiplying the farm program payment yield established by the Secretary for the crop by the sum of the acreage planted for harvest and the acreage prevented from being planted (because of a natural disaster, as determined by the Secretary) for the crop (hereinafter in this section referred to as the 'qualifying amount'), the producers shall not be required to refund any advance deficiency payment made to the producers for the crop under section 114 of the Agricultural Act of 1949 (7 U.S.C. 1445j) (or, in the case of 1990 crops, section 107C of such Act (7 U.S.C. 1445b-2) as in effect on November 27, 1990) with respect to that portion of the deficiency in production that does not exceed 35 percent of the qualifying amount.

"(B) CROP INSURANCE.—Producers on a farm shall not be eligible for the forgiveness provided for under subparagraph (A), unless the producers enter into an agreement to obtain multiperil crop insurance to the extent required under section 2247.

"(3) ELECTION FOR NONRECIPIENTS.—The Secretary shall allow producers on a farm who, before the date on which assistance is made available under this subchapter for a crop year, elected not to receive advance deficiency payments made available for the crop for the crop year under section 114 of the Agricultural Act of 1949 (7 U.S.C. 1445j) (or, in the case of 1990 crops, section 107C of such Act (7 U.S.C. 1445b–2) as in effect on November 27, 1990) to elect (within 30 days after such date) whether to receive the advance deficiency payments.

"(4) DATE OF REFUND FOR PAYMENTS.—If the Secretary determines that any portion of the advance deficiency payment made to producers for a crop of wheat, feed grains, upland cotton, extra long staple cotton, or rice under section

114 of the Agricultural Act of 1949 (7 U.S.C. 1445j) (or, in the case of 1990 crops, section 107C of such Act (7 U.S.C. 1445b–2) as in effect on November 27, 1990) must be refunded, the refund shall not be required prior to July 31 of the year following the determination for that portion of the crop for which a disaster payment is made under subsection (a).

"SEC. 2242. PAYMENTS TO PROGRAM NON-PARTICIPANTS.

"(a) DISASTER PAYMENTS.—

"(1) IN GENERAL.—Effective only for producers on a farm who elected not to participate in the production adjustment program established under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) for an eligible crop of wheat, feed grains, upland cotton, extra long staple cotton, or rice for the crop year, if the Secretary of Agriculture determines that, because of damaging weather or related condition, the total quantity of the crop of the commodity that the producers are able to harvest on the farm is less than the result of multiplying 65 percent of the county average yield established by the Secretary for the crop by the sum of acreage planted for harvest and the acreage for which prevented planted credit is approved by the Secretary for the crop under subsection (b), the Secretary shall make a disaster payment available to the producers.

"(2) PAYMENT RATE.—The payment shall be made to the producers at a rate equal to 65 percent of the basic county loan rate (or a comparable price if there is no current basic county loan rate) for the crop, as determined by the Secretary, for any deficiency in production greater than 35 percent.

"(b) PREVENTED PLANTING CREDIT.—

"(1) IN GENERAL.—The Secretary shall provide prevented planting credit under subsection (a) with respect to acreage for an eligible crop that producers on a farm were prevented from planting to the crop of the commodity for harvest because of damaging weather or related condition, as determined by the Secretary.

"(2) MAXIMUM ACREAGE.—The acreage may not exceed the greater of—

"(A) a quantity equal to the acreage on the farm planted (or prevented from being planted due to a natural disaster or other condition beyond the control of the producers) to the commodity for harvest in the immediately preceding crop year minus acreage actually planted to the commodity for harvest in the crop year involved;

"(B) a quantity equal to the average of the acreage on the farm planted (or prevented from being planted due to a natural disaster or other condition beyond the control of the producers) to the commodity for harvest in the 3 immediately preceding crop years minus acreage actually planted to the commodity for harvest in the crop year involved; or

"(C) with respect to crops planted as provided under section 504 of the Agricultural Act of 1949 (7 U.S.C. 1464) for which no such planting history is established, a quantity of acreage determined to be fair and reasonable by the Secretary.

"(3) ADJUSTMENTS.—The Secretary shall make appropriate adjustments in applying the limitations contained in paragraph (2) to take into account crop rotation practices of the producers.

"(c) LIMITATIONS.—

"(1) ACREAGE LIMITATION PROGRAM.—The amount of payments made available to producers on a farm who elect not to participate in the production adjustment program for an eligible crop of a commodity under subsection (a) shall be reduced by a factor equivalent to the acreage limitation program percentage established for the crop under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.).

"(2) CROP INSURANCE.—Payments provided under subsection (a) for a crop of a commodity may not be made available to the producers on a farm unless the producers enter into an agreement to obtain multiperil crop insurance to the extent required under section 2247.

"SEC. 2243. PEANUTS, SUGAR, AND TOBACCO.

"(a) DISASTER PAYMENTS.—

"(1) IN GENERAL.—Effective only for an eligible crop of peanuts, sugar beets, sugarcane, and tobacco, if the Secretary of Agriculture determines that, because of damaging weather or related condition, the total quantity of the crop of the commodity that the producers on a farm are able to harvest is less than the result of multiplying 65 percent of the county average yield (or program yield, in the case of peanuts) established by the Secretary for the crop by the sum of the acreage planted for harvest and the acreage for which prevented planted credit is approved by the Secretary for the crop under subsection (b), the Secretary shall make a disaster payment available to the producers.

"(2) PAYMENT RATE.—The payment shall be made to the producers at a rate equal to 65 percent of the applicable payment level under paragraph (3), as determined by the Secretary, for any deficiency in production greater than—

"(A) 35 percent for the crop; or

"(B) with respect to a crop of burley tobacco or flue-cured tobacco, 35 percent of the farm's effective marketing quota for the crop for the crop year.

"(3) PAYMENT LEVEL.—For purposes of paragraph (1), the payment level for a commodity shall be equal to—

"(A) for peanuts, the price support level for quota peanuts or the price support level for additional peanuts, as applicable;

"(B) for tobacco, the national average loan rate for the type of tobacco involved, or (if there is none) the market price, as determined under section 2244(a)(2); and

"(C) for sugar beets and sugarcane, a level determined by the Secretary to be fair and reasonable in relation to the level of price support established for crops of sugar beets and sugarcane for the crop year involved, and that, insofar as is practicable, shall reflect no less return to the producer than under the price support levels in effect for the crop year.

"(b) PREVENTED PLANTING CREDIT.—

"(1) IN GENERAL.—The Secretary shall provide prevented planting credit under subsection (a) with respect to acreage for an eligible crop that producers on a farm were prevented from planting to the crop of the commodity for harvest because of damaging weather or related condition, as determined by the Secretary.

"(2) MAXIMUM ACREAGE.—The acreage may not exceed the greater of—

"(A) a quantity equal to the acreage on the farm planted (or prevented from being planted due to a natural disaster or other condition beyond the control of the producers) to the commodity for harvest in the immediately preceding crop year minus acreage actually planted for harvest in the crop year involved;

"(B) a quantity equal to the average of the acreage on the farm planted (or prevented from being planted due to a natural disaster or other condition beyond the control of the producers) to the commodity for harvest in the 3 immediately preceding crop years minus acreage actually planted to the commodity for harvest in the crop year involved; or

"(C) with respect to crops planted on flexible acres as provided under section 504 of the Agricultural Act of 1949 (7 U.S.C. 1464) for which no such planting history is established, a quantity of acreage determined to be fair and reasonable by the Secretary.

"(3) ADJUSTMENTS.—The Secretary shall make appropriate adjustments in applying for a crop year the limitations contained in paragraph (2) to take into account crop rotation practices of the producers and any change in quotas for crops of tobacco for the crop year.

"(c) LIMITATION.—Payments provided under subsection (a) for a crop of a commodity may not be made available to the producers on a farm unless the producers enter into an agreement to obtain multiperil crop insurance to the extent required under section 2247.

"(d) SPECIAL RULES FOR PEANUTS.—Notwithstanding any other provision of law—

"(1) a deficiency in production of quota peanuts from a farm, as otherwise determined under this section, shall be reduced by the quantity of peanut poundage quota that was the basis of the anticipated production that has been transferred from the farm;

"(2) payments made under this section shall be made taking into account whether the deficiency for which the deficiency in production is claimed was a deficiency in production of quota or additional peanuts and the payment rate shall be established accordingly; and

"(3) the quantity of undermarketings of quota peanuts from a farm for a crop that may otherwise be claimed under section 358–1 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1358–1) (or, in the case of 1990 crops of peanuts, section 358 of such Act (7 U.S.C. 1358) as in effect on November 27, 1990) for purposes of future quota increases shall be reduced by the quantity of the deficiency of production of the peanuts for which payment has been received under this section.

"(e) SPECIAL RULES FOR TOBACCO.—Notwithstanding any other provision of law—

"(1) the quantity of undermarketings of quota tobacco from a farm for a crop that may otherwise be claimed under section 317 or 319 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314c or 1314e) for purposes of future quota increases shall be reduced by the quantity of the deficiency of production of the tobacco for which payment has been received under this section; and

"(2) disaster payments made to producers under this section may not be considered by the Secretary in determining the net losses of the Commodity Credit Corporation under section 106A(d) of the Agricultural Act of 1949 (7 U.S.C. 1445–1(d)).

"(f) SPECIAL RULE FOR SUGARCANE.—For purposes of determining the total quantity of a crop of sugarcane that the producers on a farm are able to harvest, the Secretary shall make the determination based on the quantity of recoverable sugar.

"SEC. 2244. OILSEEDS AND NONPROGRAM CROPS.

"(a) DISASTER PAYMENTS.—

"(1) IN GENERAL.—

"(A) ELIGIBILITY.—Effective only for an eligible crop of oilseeds (as defined in section 205(a) of the Agricultural Act of 1949 (7 U.S.C. 1446f(a)) and nonprogram crops, the Secretary shall make a disaster payment under this section available to the producers on a farm if the Secretary of Agriculture determines that, because of damaging weather or related condition, the total quantity of the crop of the commodity that the producers are able to harvest is less than—

"(i) with respect to oilseeds, the result of multiplying 65 percent of the State, area, or county yield, adjusted for adverse weather conditions during the 3 immediately preceding crop years, as determined by the Secretary, for the crop by the sum of the acreage planted for harvest and the acreage for which prevented planting credit is approved by the Secretary for the crop under subsection (b);

"(ii) with respect to nonprogram crops (other than as provided in clauses (i), (iii), and (iv)), the result of multiplying 65 percent of the yield established by the Commodity Credit Corporation under subsection (d)(2) for the crop by the

sum of the acreage planted for harvest and the acreage for which prevented planting credit is approved by the Secretary for the crop under subsection (b);

"(iii) with respect to crops covered in section 207 of the Agricultural Act of 1949 (7 U.S.C. 1446h) (or, in the case of 1990 crops, section 201(b) of such Act (7 U.S.C. 1446(b)) as in effect on November 27, 1990), 65 percent of the historical annual yield of the producers for the crops, as determined by the Secretary; and

"(iv) with respect to fish or seafood described in subsection (d)(1)(A)(ii)(III), 65 percent of the historical annual yield of the acreage of the pond or other aquatic areas in which the fish or seafood are produced or prevented from being produced.

"(B) PAYMENT RATE.—The payment shall be made to the producers at a rate equal to 65 percent of the applicable payment level under paragraph (2), as determined by the Secretary, for any deficiency in production greater than 35 percent for oilseeds and other nonprogram crops for the crop.

"(C) SPECIAL RULE FOR 1990 CROPS.—In the case of 1990 crops, assistance under this section shall be available only to the extent that assistance was not made available under the Disaster Assistance Act of 1989 (Public Law 101–82; 103 Stat. 564) or any other Act for the same losses of the crops.

"(2) PAYMENT LEVEL.—For purposes of paragraph (1), the payment level for a commodity shall equal the simple average price received by producers of the commodity, as determined by the Secretary subject to paragraph (3), during the marketing years for the immediately preceding 5 crops of the commodity, excluding the year in which the average price was the highest and the year in which the average price was the lowest in the period.

"(3) CALCULATION OF PAYMENTS FOR DIFFERENT VARIETIES.—

"(A) CROP-BY-CROP BASIS.—The Secretary shall make disaster payments under this subsection on a crop-by-crop basis, with consideration given to markets and uses of the crops, under regulations issued by the Secretary.

"(B) DIFFERENT VARIETIES.—For purposes of determining the payment levels on a crop-by-crop basis, the Secretary shall consider as separate crops, and develop separate payment levels insofar as is practicable for, different varieties of the same commodity, and commodities for which there is a significant difference in the economic value in the market.

"(C) DOUBLE CROPPING.—

"(i) TREATED SEPARATELY.—In the case of a crop that is historically double cropped (including 2 crops of the same commodity) by the producers on a farm, the Secretary shall treat each cropping separately for purposes of determining whether the crop was affected by damaging weather or related condition and the total quantity of the crop that the producers are able to harvest.

"(ii) APPLICATION OF SUBPARAGRAPH.—This subparagraph shall not apply in the case of a replacement crop.

"(D) NAVEL AND VALENCIA ORANGES TREATED AS SEPARATE CROPS.—For the purpose of programs administered under this chapter and the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), navel oranges and valencia oranges shall be considered separate crops.

"(4) EXCLUSIONS FROM HARVESTED QUANTITIES.—For purposes of determining the total quantity of a nonprogram crop of the commodity that the producers on a farm are able to harvest under paragraph (1), the Secretary shall—

"(A) exclude commodities that cannot be sold in normal commercial channels of trade;

"(B) exclude dockage, including husks and shells, if the dockage is excluded in determining yields under subsection (d)(2); and

"(C) adjust such quantity to take into consideration declines in the value of the crop of the commodity that are attributable to a deterioration in the quality of the commodity caused by the damaging weather or related condition.

"(b) PREVENTED PLANTING CREDIT.—

"(1) IN GENERAL.—The Secretary shall provide prevented planting credit under subsection (a) with respect to acreage for a crop year that producers on a farm were prevented from planting to the crop of the commodity for harvest because of damaging weather or related condition, as determined by the Secretary.

"(2) MAXIMUM ACREAGE.—The acreage may not exceed the greater of—

"(A) a quantity equal to the acreage on the farm planted (or prevented from being planted due to a natural disaster or other condition beyond the control of the producers) to the commodity for harvest in the immediately preceding crop year minus acreage actually planted for harvest in the crop year involved;

"(B) a quantity equal to the average of the acreage on the farm planted (or prevented from being planted due to a natural disaster or other condition beyond the control of the producers) to the commodity for harvest in the 3 immediately preceding crop years minus acreage actually planted to the commodity for harvest in the crop year involved; or

"(C) with respect to crops planted as provided under section 504 of the Agricultural Act of 1949 (7 U.S.C. 1464) for which no such planting history is established, a quantity of acreage determined to be fair and reasonable by the Secretary.

"(3) ADJUSTMENTS.—The Secretary shall make appropriate adjustments in applying the limitations contained in paragraph (2) to take into account crop rotation practices of the producers.

"(c) LIMITATION.—Payments provided under subsection (a) for a crop of a commodity may not be made available to the producers on a farm unless the producers enter into an agreement to obtain multiperil crop insurance to the extent required under section 2247.

"(d) SPECIAL RULES FOR NONPROGRAM CROPS.—

"(1) NONPROGRAM CROP DEFINED.—

"(A) INCLUDED IN DEFINITION.—Except as provided in subparagraph (B), for purposes of this section, the term 'nonprogram crop' means—

"(i) all crops for which crop insurance through the Federal Crop Insurance Corporation was available for a crop year; and

"(ii) other commercial crops for which the insurance was not available for the crop year, including—

"(I) ornamentals, such as flowering shrubs, flowering trees, field or container grown roses, or turf;

"(II) sweet potatoes; and

"(III) fish or seafood produced or prevented from being produced in established freshwater commercial aquaculture operations.

"(B) EXCEPTION.—The term 'nonprogram crop' in subparagraph (A) shall not include a crop covered under section 2241, 2242, or 2243, or oilseeds.

"(2) FARM YIELDS.—

"(A) ESTABLISHMENT.—The Commodity Credit Corporation shall establish disaster program farm yields for nonprogram crops to carry out this section.

"(B) PROVEN YIELDS AVAILABLE.—If the producers on a farm can provide satisfactory evidence to the Commodity Credit Corporation of actual crop yields on the farm for at least 1 of the immediately preceding 3 crop years, the yield for the farm shall be based on the proven yield.

"(C) PROVEN YIELDS NOT AVAILABLE.—If the data do not exist for any of the 3 preceding crop years, the Commodity Credit Corporation shall establish a yield for the farm by using a county average yield for the commodity, or by using other data available to it.

"(D) COUNTY AVERAGE YIELDS.—In establishing county average yields for nonprogram crops, the Commodity Credit Corporation shall use the best available information concerning yields. The information may include extension service records, credible nongovernmental studies, and yields in similar counties.

"(3) RESPONSIBILITY OF PRODUCERS.—It shall be the responsibility of the producers of nonprogram crops to provide satisfactory evidence of crop losses for a crop year resulting from damaging weather or related condition in order for the producers to obtain disaster payments under this section.

"(e) SPECIAL RULE FOR VALENCIA ORANGES.—For the purposes of this section, the 1990 crop of valencia oranges shall include any crop of valencia oranges, regardless of the year in which those oranges would be harvested, that was destroyed or damaged by damaging weather or related condition in 1990.

"SEC. 2245. CROP QUALITY REDUCTION DISASTER PAYMENTS.

"(a) IN GENERAL.—To ensure that all producers of crops covered under sections 2241 through 2244 are treated equitably, the Secretary of Agriculture shall make additional disaster payments to producers of the crops for a crop year who suffer losses resulting from the reduced quality of the crops caused by damaging weather or related condition, as determined by the Secretary.

"(b) ELIGIBLE PRODUCERS.—Producers on a farm of a crop described in subsection (a) shall be eligible to receive reduced quality disaster payments only if the producers incur a deficiency in production of not less than 40 percent (as determined under section 2241, 2242, 2243, or 2244, as appropriate).

"(c) MAXIMUM PAYMENT RATE.—The Secretary shall establish the reduced quality disaster payment rate, except that the rate shall not exceed 10 percent, as determined by the Secretary, of—

"(1) the established price for the crop, for commodities covered under section 2241;

"(2) the basic county loan rate for the crop (or a comparable price if there is no current basic county loan rate), for commodities covered under section 2242;

"(3) the payment level under section 2243(a)(3), for commodities covered by section 2243; and

"(4) the payment level under section 2244(a)(2), for commodities covered under section 2244.

"(d) DETERMINATION OF PAYMENT.—The amount of payment to a producer under this section shall be determined by multiplying the payment rate established under subsection (c) by the portion of the actual harvested crop on the producer's farm that is reduced in quality by the natural disaster, as determined by the Secretary.

"SEC. 2246. EFFECT OF FEDERAL CROP INSURANCE PAYMENTS.

"In the case of producers on a farm who obtained crop insurance for a crop of a commodity under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), the Secretary of Agriculture shall reduce the amount of payments made available under this subchapter for the crop to the extent that the amount determined by adding the net amount of crop insurance indemnity payment (gross indemnity less premium paid) received by the producers for the deficiency in the production of the crop and the disaster payment determined in accordance with this chapter for the crop exceeds the amount determined by multiplying—

"(1) 100 percent of the yield used for the calculation of disaster payments made under this chapter for the crop; by

"(2) the sum of the acreage of the crop planted to harvest and the acreage for which prevented planting credit is approved by the Secretary (or, in the case of disaster payments under section 2241, the eligible acreage established under paragraphs (1) and (3)(A) of section 2241(a)); by

"(3)(A) in the case of producers who participated in a production adjustment program for the crop of wheat, feed grains, upland cotton, extra long staple cotton, or rice for the crop year, the established price for the crop of the commodity;

"(B) in the case of producers who did not participate in a production adjustment program for the crop of wheat, feed grains, upland cotton, extra long staple cotton, or rice for the crop year (and, with respect to flexible acres as provided under section 2241(a)(2), in the case of those producers who did participate in the program for the year), the basic county loan rate (or a comparable price, as determined by the Secretary, if there is no current basic county loan rate) for the crop of the commodity;

"(C) in the case of producers of sugar beets, sugarcane, peanuts, or tobacco, the payment level for the commodity established under section 2243(a)(3); and

"(D) in the case of producers of oilseeds or a nonprogram crop (as defined in section 2244(d)(1)), the simple average price received by producers of the commodity, as determined by the Secretary, during the marketing years for the immediately preceding 5 crops of the commodity, excluding the year in which the average price was the highest and the year in which the average price was the lowest in the period.

"SEC. 2247. CROP INSURANCE COVERAGE.

"(a) REQUIREMENT.—To be eligible to receive for an eligible crop year a disaster payment under this subchapter, an emergency loan under subtitle C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961 et seq.) for crop losses due to damaging weather or related condition, or forgiveness of the repayment of advance deficiency payments under section 2241(b), the producers on a farm shall agree to obtain multiperil crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) for the 1992 crop.

"(b) LIMITATIONS.—Notwithstanding subsection (a), producers on a farm shall not be required to agree to obtain crop insurance under subsection (a) for a commodity—

"(1) unless the producers' deficiency in production, with respect to the crop for which a disaster payment under this chapter otherwise may be made, exceeds 75 percent;

"(2) where, or if, crop insurance coverage is not available to the producers for the commodity for which the payment, loan, or forgiveness is sought;

"(3) if the producers' annual premium rate for the crop insurance is an amount greater than 125 percent of the average premium rate for insurance on that commodity for the preceding crop year in the county in which the producers are located;

"(4) in any case in which the producers' annual premium for the crop insurance is an amount greater than 25 percent of the amount of the payment, loan, or forgiveness received; or

"(5) if the producers can establish by appeal to the county committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590(b)), or to the county committee established under section 332 of the Consolidated Farm and Rural Development Act (17 U.S.C. 1982), as appropriate, that the purchase of crop insurance would impose an undue financial hardship on the producers and that a waiver of the requirement to obtain crop insurance should, in the discretion of the county committee, be granted.

"(c) IMPLEMENTATION.—

"(1) COUNTY COMMITTEES.—The Secretary of Agriculture shall ensure (acting through the county committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act and located in the counties in which the assistance programs provided for under sections 2241 through 2245 are implemented, and through the county committees established under section 332 of the Consolidated Farm and Rural Development Act in counties in which emergency loans, as described in subsection (a), are made available) that producers who apply for assistance, as described in subsection (a), obtain multiperil crop insurance as required under this section.

"(2) OTHER SOURCES.—Each producer who is subject to the requirements of this section may comply with the requirements by providing evidence of multiperil crop insurance coverage from sources other than through the county committee office, as approved by the Secretary.

"(3) COMMISSIONS.—The Secretary shall provide by regulation for a reduction in the commissions paid to private insurance agents, brokers, or companies on crop insurance contracts entered into under this section sufficient to reflect that the insurance contracts principally involve only a servicing function to be performed by the agent, broker, or company.

"(d) REPAYMENT OF BENEFITS.—Notwithstanding any other provision of law, if (before the end of the crop year for which multiperil crop insurance is obtained pursuant to subsection (a)) the crop insurance coverage is canceled by the producer, the producer—

"(1) shall make immediate repayment to the Secretary of any disaster payment or forgiven advance deficiency payment that the producer otherwise is required to repay; and

"(2) shall become immediately liable for full repayment of all principal and interest outstanding on any emergency loan described in subsection (a) made subject to this section.

"SEC. 2248. CROPS HARVESTED FOR FORAGE USES.

"Not later than 45 days after funds are appropriated to carry out this subchapter for a crop year, the Secretary of Agriculture shall announce the terms and conditions by which producers on a farm may establish a yield for that crop year with respect to crops that were, or will be, harvested during the crop year for silage and other forage uses.

"SEC. 2249. PAYMENT LIMITATIONS.

"(a) LIMITATION.—Subject to subsections (b) and (c), the total amount of payments that a person shall be entitled to receive for a crop year under one or more of the programs established under this subchapter may not exceed $100,000.

"(b) NO DOUBLE BENEFITS.—No person may receive disaster payments for a crop year under this subchapter to the extent that the person receives a livestock emergency benefit for lost feed production in that year under section 606 of the Agricultural Act of 1949 (7 U.S.C. 1471d).

"(c) COMBINED LIMITATION.—

"(1) IN GENERAL.—No person may receive any payment under this subchapter or benefit under title VI of the Agricultural Act of 1949 (7 U.S.C. 1471 et seq.) for livestock emergency losses suffered in a crop year if the payment or benefit will cause the combined total amount of the payments and benefits received by the person in the year to exceed $100,000.

"(2) ELECTION.—If a producer is subject to paragraph (1), the person may elect (subject to the benefits limitations under section 609 of the Agricultural Act of 1949 (7 U.S.C. 1471g) whether to receive the $100,000 in the payments, or the livestock emergency benefits (not to exceed $50,000), or a combination of payments and benefits specified by the person.

"(d) REGULATIONS.—The Secretary of Agriculture shall issue regulations prescribing such rules as the Secretary determines necessary to ensure a fair and reasonable application of the limitations established under this section.

"SEC. 2250. SUBSTITUTION OF CROP INSURANCE PROGRAM YIELDS.

"(a) IN GENERAL.—Notwithstanding any other provision of this chapter, the Secretary of Agriculture may permit each eligible producer of a crop of a commodity who has obtained multiperil crop insurance for the crop for a crop year or, as provided in subsection (c), the preceding crop year under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) to substitute, at the discretion of the producer, the crop insurance yield for the crop, as established under such Act, for the farm yield otherwise assigned to the producer under this subchapter, for the purposes of determining the producer's eligibility for a disaster payment on the crop under this subchapter for the crop year involved and the amount of the payment.

"(b) ADJUSTMENT OF ADVANCED DEFICIENCY PAYMENTS.—

"(1) IN GENERAL.—Notwithstanding any other provision of this chapter, if an eligible producer of wheat, feed grains, upland cotton, extra long staple cotton, or rice for a crop year elects to substitute yields for the producer's crop under subsection (a), the producer's eligibility for a waiver of repayment of an advance deficiency payment on the crop under this chapter shall be adjusted as provided in paragraph (2).

"(2) AMOUNT.—The amount of production of the crop on which the producer otherwise would be eligible for waiver of repayment of advance deficiency payments under this subchapter shall be reduced by an amount of production equal to the difference between—

"(A) the amount of production eligible for disaster payments under this subchapter using a substituted yield under this section; and

"(B) the amount of production that would have been eligible for disaster payments using the farm program payment yield otherwise assigned to the producer under this chapter.

"(c) MULTIPERIL CROP INSURANCE NOT AVAILABLE.—A producer may use the crop insurance yield for the producer's crop of a commodity for the preceding crop year for purposes of substituting yields under subsection (a) if the producer demonstrates to the Secretary that, through no fault of the producer, multiperil crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) was not made available to the producer for the producer's crop of the commodity for the crop year involved.

"(d) DEFINITION OF ELIGIBLE PRODUCER.—For purposes of this section, the term 'eligible producer' means a producer of a crop of wheat, feed grains, upland cotton, extra long staple cotton, rice, or oilseeds.

"SEC. 2251. DE MINIMIS YIELDS.

"(a) IN GENERAL.—The Secretary of Agriculture may determine a de minimis yield for each crop eligible for reduced yield disaster payments under this subchapter.

"(b) LEVEL.—The de minimis yield shall be set at a level that will minimize any incentive (because of the prospect of disaster payments) for a producer to abandon crops that have a value that exceeds the cost of harvesting. In no case may the de minimis yield be less than the amount of production that, when valued at current market prices, equals the average cost of harvesting the crop, as determined by the Secretary.

"(c) ACTUAL YIELDS OF ZERO.—Any producer whose actual yield for a crop is equal to or less than the de minimis yield for the crop shall be considered as having an actual yield of zero for the purpose of calculating any reduced yield disaster payments for the crop under this subchapter.

"SEC. 2252. PRODUCER ELIGIBILITY.

"A producer on a farm who produces any crop of a commodity for which disaster payments are made available under this subchapter shall qualify for a disaster payment if the total quantity of the commodity that the producer is able to harvest on that farm is reduced as a result of damaging weather or related condition in an amount that meets the criteria of section 2241, 2242, 2243, or 2244, even though the producers on the farm, collectively, may not meet the criteria.

"SEC. 2253. DEFINITIONS.

"For purposes of this chapter:

"(1) DAMAGING WEATHER.—The term 'damaging weather' includes but is not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, earthquake, or excessive wind (or any combination thereof).

"(2) PERSON.—The term 'person' shall have the meaning given the term by the Secretary in regulations, which shall conform, to the extent practicable, to the regulations defining the term issued under section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) and the Disaster Assistance Act of 1988 (7 U.S.C. 1421 note).

"(3) RELATED CONDITION.—The term 'related condition' includes but is not limited to insect infestations, plant diseases (including fire blight), or other deterioration of a crop of a commodity, including aflatoxin, that is accelerated or exacerbated naturally as a result of damaging weather.

"Subchapter B—Orchards

"SEC. 2255. ELIGIBILITY.

"(a) LOSS.—The Secretary of Agriculture shall provide assistance under section 2256 to eligible orchardists that planted trees for commercial purposes but lost the trees as a result of damaging weather or related condition occurring in 1990 or 1991, as determined by the Secretary.

"(b) LIMITATION.—An eligible orchardist shall qualify for assistance under subsection (a) only if the orchardist's tree mortality, as a result of the damaging weather or related condition, exceeds 35 percent (adjusted for normal mortality).

"SEC. 2256. ASSISTANCE.

"The assistance provided by the Secretary of Agriculture to eligible orchardists for losses described in section 2255 shall consist of either—

"(1) reimbursement of 65 percent of the cost of replanting trees lost and rehabilitating trees damaged as a result of damaging weather or related condition in the calendar year involved in excess of 35 percent mortality (adjusted for normal mortality); or

"(2) at the discretion of the Secretary, sufficient seedlings to reestablish the stand.

"SEC. 2257. LIMITATION ON ASSISTANCE.

"(a) LIMITATION.—The total amount of payments that a person shall be entitled to receive under this subchapter for a calendar year may not exceed $25,000, or an equivalent value in tree seedlings.

"(b) REGULATIONS.—The Secretary of Agriculture shall issue regulations prescribing such rules as the Secretary determines necessary to ensure a fair and reasonable application of the limitation established under this section.

"SEC. 2258. DEFINITION.

"For purposes of this subchapter, the term 'eligible orchardist' means a person who produces annual crops from trees for commercial purposes and owns 500 acres or less of the trees.

"SEC. 2259. DUPLICATIVE PAYMENTS.

"The Secretary of Agriculture shall establish guidelines to ensure that no person receives duplicative payments under this subchapter and the forestry incentives program, agricultural conservation program, or other Federal program.

"Subchapter C—Forest Crops

"SEC. 2261. ELIGIBILITY.

"(a) LOSS.—The Secretary of Agriculture shall provide assistance, as specified in section 2262, to eligible tree farmers that planted tree seedlings in 1990 or 1991 for commercial purposes but lost the seedlings as a result of damaging weather or related condition occurring in 1990 or 1991, respectively, as determined by the Secretary.

"(b) LIMITATION.—An eligible tree farmer shall qualify for assistance under subsection (a) only if the tree farmer's tree seedling mortality, as a result of the damaging weather or related condition, exceeds 55 percent (adjusted for normal mortality).

"SEC. 2262. ASSISTANCE.

"The assistance provided by the Secretary of Agriculture to eligible tree farmers for losses described in section 2261 shall consist of either—

"(1) reimbursement of 65 percent of the cost of replanting seedlings lost due to damaging weather or related conditions in the calendar year involved in excess of 35 percent mortality (adjusted for normal mortality); or

"(2) at the discretion of the Secretary, sufficient tree seedlings to reestablish the stand.

"SEC. 2263. LIMITATION ON ASSISTANCE.

"(a) LIMITATION.—The total amount of payments that a person shall be entitled to receive under this subchapter may not exceed $25,000 for a calendar year, or an equivalent value in tree seedlings.

"(b) REGULATIONS.—The Secretary of Agriculture shall issue regulations prescribing such rules as the Secretary determines necessary to ensure a fair and reasonable application of the limitation established under this section.

"SEC. 2264. DEFINITION.

"For purposes of this subchapter, the term 'eligible tree farmer' means a person who grows trees for harvest for commercial purposes and owns 1,000 acres or less of the trees.

"SEC. 2265. DUPLICATIVE PAYMENTS.

"The Secretary of Agriculture shall establish guidelines to ensure that no person receives duplicative payments under this subchapter and the forestry incentives program, agricultural conservation program, or other Federal program.

"Subchapter D—Administrative Provisions

"SEC. 2266. INELIGIBILITY.

"(a) GENERAL RULE.—A person who has qualifying gross revenues in excess of $2,000,000 annually, as determined by the Secretary of Agriculture, shall not be eligible to receive any disaster payment or other benefits under this chapter.

"(b) QUALIFYING GROSS REVENUES.—For purposes of this section, the term 'qualifying gross revenues' means—

"(1) if a majority of the person's annual income is received from farming, ranching, and forestry operations, the gross revenue from the person's farming, ranching, and forestry operations; and

"(2) if less than a majority of the person's annual income is received from farming, ranching, and forestry operations, the person's gross revenue from all sources.

"SEC. 2267. TIMING AND MANNER OF ASSISTANCE.

"(a) TIMING OF ASSISTANCE.—

"(1) ASSISTANCE MADE AVAILABLE AS SOON AS PRACTICABLE.—Subject to paragraph (2), the Secretary of Agriculture shall make disaster assistance available under this chapter, as soon as practicable after the date on which appropriations are made available to carry out this chapter.

"(2) COMPLETED APPLICATION.—No payment or benefit provided under this chapter shall be payable or due until such time as a completed application for the payment or benefit for a crop of a commodity has been approved.

"(b) MANNER.—The Secretary may make payments available under subchapter A in the form of cash, commodities, or commodity certificates, as determined by the Secretary.

"SEC. 2268. COMMODITY CREDIT CORPORATION.

"(a) USE.—Except as provided in section 2271, the Secretary of Agriculture shall use the funds, facilities, and authorities of the Commodity Credit Corporation in carrying out this chapter.

"(b) EXISTING AUTHORITY.—The authority provided by this chapter shall be in addition to, and not in place of, any authority granted to the Secretary or the Commodity Credit Corporation under any other provision of law.

"SEC. 2269. EMERGENCY LOANS.

"Section 321(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961(b)) shall not apply for a calendar year to persons who otherwise would be eligible for an emergency loan under subtitle C of such Act, if the eligibility is the result of damage to an annual crop planted for harvest in the year.

"SEC. 2270. REGULATIONS.

"The Secretary of Agriculture or the Commodity Credit Corporation, as appropriate, shall issue regulations to implement this chapter as soon as practicable after the date on which appropriations are made to carry out this chapter, without regard to the requirement for notice and public participation in rulemaking prescribed in section 553 of title 5, United States Code, or in any directive of the Secretary.

"Subchapter E—Authorization of Appropriations

"SEC. 2271. AUTHORIZATION OF APPROPRIATIONS.

"Any benefits or assistance (including the forgiveness of unearned advanced deficiency payments or any emergency loans) made available under this chapter shall be provided for a year only to the extent provided for in advance in appropriations Acts. To carry out this chapter, there are authorized to be appropriated such sums as may be necessary for fiscal year 1992. Sums appropriated under this section shall remain available until expended.

"SEC. 2272. PRORATION OF BENEFITS.

"Any funds made available for carrying out this chapter for a calendar year in appropriations Acts shall be prorated to all producers eligible for assistance under this chapter in the year.

"Subchapter F—Application of Chapter

"SEC. 2273. ELIGIBLE CROP.

"(a) ELIGIBLE CROP.—For the purposes of this chapter, the term 'eligible crop' means the 1990 or 1991 crop of wheat, feed grains, upland cotton, extra long staple cotton, rice, peanuts, oilseeds, sugarcane, sugar beets, tobacco, or nonprogram crop.

"(b) ADVERSE IMPACT OF DAMAGING WEATHER.—Assistance under this chapter shall be provided for—

"(1) the 1990 crops of wheat, feed grains, upland cotton, extra long staple cotton, rice, peanuts, oilseeds, sugarcane, sugar beets, tobacco, and nonprogram crops only with respect to crop damage caused by damaging weather or related condition occurring during 1990 (or with respect to a fall seeded crop, the fall of 1989); and

"(2) the 1991 crops of wheat, feed grains, upland cotton, extra long staple cotton, rice, peanuts, oilseeds, sugarcane, sugar beets, tobacco, and nonprogram crops only with respect to crop damage caused by damaging weather or related condition occurring during 1991 (or with respect to a fall seeded crop, the fall of 1990).

"(c) ELECTION OF APPLICABLE BENEFITS.—Producers on a farm eligible for benefits under this chapter with respect to both the 1990 and 1991 crop years of a commodity may elect to receive benefits with respect to either the 1990 or 1991 crop year of the commodity, but not both.".

(b) CLERICAL AMENDMENTS.—The table of contents in section 1(b) of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 3359) is amended—

(1) by inserting after the item relating to the chapter heading of chapter 3 of subtitle B of title XXII of such Act the following new item:

"Sec. 2240. Short title.";

(2) by striking the item relating to section 2242 and inserting the following new item:

"Sec. 2242. Payments to program nonparticipants.";

(3) by striking the item relating to section 2244 and inserting the following new item:

"Sec. 2244. Oilseeds and nonprogram crops.";

(4) by striking the item relating to section 2247 and inserting the following new item:

"Sec. 2247. Crop insurance coverage.";

(5) by striking the item relating to section 2251 and inserting the following new items:

"Sec. 2251. De minimis yields.
"Sec. 2252. Producer eligibility.
"Sec. 2253. Definitions."; and

(6) by inserting after the item relating to section 2272 the following new items:

"SUBCHAPTER F—APPLICATION OF CHAPTER

"Sec. 2273. Eligible crop.".

SEC. 202. EMERGENCY GRANTS TO ASSIST LOW-INCOME MIGRANT AND SEASONAL FARMWORKERS.

(a) INCLUSION OF PERMANENT FARMWORKERS AND PACKINGHOUSE WORKERS.—Section 2281 of the Food, Agriculture, Conservation, and Trade Act of 1990 (42 U.S.C. 5177a) is amended—

(1) by inserting ", permanent," after "migrant" each place it appears; and

(2) in subsection (b)—

(A) by inserting "(including a packinghouse worker)" after "an individual"; and

(B) by inserting "or packinghouse work" after "farm work" both places it appears.

(b) CLERICAL AMENDMENTS.—

(1) SECTION HEADING.—The section heading of such section is amended to read as follows:

"SEC. 2281. EMERGENCY GRANTS TO ASSIST LOW-INCOME FARMWORKERS AND PACKINGHOUSE WORKERS.".

(2) TABLE OF CONTENTS.—The item relating to such section in the table of contents in section 1(b) of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624; 104 Stat. 3359) is amended to read as follows:

"Sec. 2281. Emergency grants to assist low-income farmworkers and packinghouse workers.".

SEC. 203. EMERGENCY AQUACULTURE PROGRAM.

Subtitle B of title XXII of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421 note, 104 Stat. 3962) is amended by adding at the end the following new chapter:

"CHAPTER 5—EMERGENCY AQUACULTURE PROVISIONS

"SEC. 2276. EMERGENCY AQUACULTURE PROGRAM.

"(a) IN GENERAL.—The Secretary shall implement an emergency aquaculture program to assist owners and operators of established commercial fresh water aquaculture operations in restoring the retention levees and other structural improvements that have been damaged by damaging weather or related condition in 1991.

"(b) COST-SHARE.—Assistance under this section shall be provided through cost-share agreements entered into by the Secretary with the owners and operators for the restoration of the damaged levees and other structural improvements. The Secretary shall share half the costs incurred under each agreement based on damage surveys made pursuant to regulations issued by the Secretary.

"(c) FUNDING.—

"(1) IN GENERAL.—The Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out this section as provided in section 2268.

"(2) AUTHORIZATION OF APPROPRIATIONS.—Any benefits or assistance made available under this section shall be provided for a year only to the extent provided for in advance in appropriations Acts. To carry out this section, there are authorized to be appropriated $1,000,000 for fiscal year 1992. Sums appropriated under this subsection shall remain available until expended.

"(3) PRORATION.—To ensure the equitable award of funds for agreements under this section as a result of the limitations in paragraphs (1) and (2), the Secretary may prorate, and adopt procedures to facilitate the proration of, funds made available under this section.".

SEC. 204. EMERGENCY LIVESTOCK FEED ASSISTANCE.

Section 604 of the Agricultural Act of 1949 (7 U.S.C. 1471b) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

"(d) The Secretary shall consider, if appropriate, the level of precipitation during a growing season in a State, county, or area in a State in making a determination whether to provide emergency livestock feed assistance or other additional assistance under this title.".

SEC. 205. EMERGENCY FORAGE PROGRAM.

(a) IN GENERAL.—The Secretary of Agriculture shall implement an emergency forage program for established pasture damaged by damaging weather or related condition in 1991, under which the Secretary shall enter into cost-share agreements with owners or operators of the damaged land to provide for reseeding of forage crops on the land in order to facilitate late fall 1991 and early spring 1992 grazing and haying. Assistance may be provided to the owners and operators only when—

(1) the forage crop will not regenerate naturally;

(2) reseeding is the most cost-effective method for reestablishing the forage crop; and

(3) reseeding is not undertaken simply to improve the forage crop damaged by the drought.

(b) COST-SHARE.—The Secretary shall share half the costs incurred under each agreement entered into under subsection (a), including the costs of seed, fertilizer, and other inputs on reseeded pasture.

(c) LIMITATIONS ON ASSISTANCE.—

(1) TOTAL ASSISTANCE.—The total amount of payments an owner or operator of pasture land shall be entitled to receive under this section shall be $3,500.

(2) RESEEDING.—The Secretary may cost-share for reseeding under this section only if the reseeding is to be used for nonannual crops planted for pasture purposes.

(d) FUNDING.—

(1) IN GENERAL.—The Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out this section.

(2) AUTHORIZATION OF APPROPRIATIONS.—Any benefits or assistance made available under this section shall be provided for a year only to the extent provided for in advance in appropriations Acts. To carry out this section, there are authorized to be appropriated $50,000,000 for fiscal year 1992. Sums appropriated under this subsection shall remain available until expended.

(3) PRORATION.—To ensure the equitable award of agreements under this section, as limited under paragraph (2), the Secretary may prorate, and adopt procedures to facilitate the proration of, funds made available under this section.

(e) DEFINITIONS.—As used in this section, the terms "damaging weather" and "related condition" have the same meanings provided such terms under section 2253 of the Food, Agriculture, Conservation, and Trade Act of 1990 (as amended by section 201(a) of this Act).

AMENDMENT NO. 3419

Mr. FORD. Mr. President, I send a substitute amendment to the desk on behalf of Mr. LEAHY and Mr. LUGAR, and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. LEAHY (for himself and Mr. LUGAR) proposes an amendment numbered 3419.

Mr. FORD. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(The text of the amendment appears in today's RECORD under "Amendments Submitted.")

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3419) was agreed to.

The ACTING PRESIDENT pro tempore. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to engrossed for a third reading, was read the third time, and passed, as follows:

(The bill H.R. 2893, will appear in a subsequent issue of the RECORD.)

The title was amended so as to read: "An Act to enhance the financial safety and soundness of the banks and associations of the Farm Credit System, and for other purposes."

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INTERSTATE RAIL PASSENGER NETWORK COMPACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5602, a bill granting consent of Congress to the interstate rail passenger network compact between Indiana and Tennessee, and also covering Illinois, Kentucky, Georgia, and Florida, received today from the House; that the bill be deemed read the third time, passed, and the motion to reconsider be laid upon the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So the bill (H.R. 5602) was deemed read the third time, and passed.

Mr. SIMON. The Senate today will pass H.R. 5602, a bill granting consent to the interstate rail passenger network compact.

This bill will authorize Illinois, Indiana, Kentucky, Tennessee, Georgia, and Florida to take the first preliminary steps toward developing an Amtrak route spanning from Chicago to Florida. The western route, as it has been called, will stimulate economic growth and create jobs throughout the designated areas.

At the same time, development of the western route must proceed in a prudent and careful manner. In this regard, I would like to emphasize the limited scope of the legislation approved by the Senate today. First, the legislation only authorizes participating States to undertake a feasibility study, carrying forward research previously performed by the National Railroad Passenger Corporation [Amtrak]. The compact cannot and will not obligate any participating State to contribute toward any other project, including the development, implementation, management, or operation of the interstate railroad system contemplated by the study. Thus, for example, the determination by the Interstate Rail Passenger Advisory Council of the proportionate share that each State will contribute toward the implementation and management of the proposed restoration will not be binding on the participating States and will not create any obligation under the compact.

Second, a State's obligation to provide funds, equipment, or other things of value for the implementation of the feasibility study is specifically subject to appropriation by the individual State legislatures. This is implicit, if not explicit, in section 4, subsection (2) of the Federal bill, which says that the States will "[p]rovide financial assistance * * * that is available." In general, a State will not incur any obligation to provide funds, equipment, or other things of value under the compact's terms unless these obligations are approved by the legislature of that State.

Once again, in closing, I think this legislation is an important step in the development of a new Amtrak route linked to Illinois. I look forward to further progress in the future on this issue.

PENNSYLVANIA AND NEW JERSEY DELAWARE RIVER PORT AUTHORITY SUPPLEMENTAL COMPACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 783, H.R. 5452; that statements with respect to the passage of this bill be inserted at the appropriate place in the RECORD; and that the bill be deemed read the third time, passed, and the motion to reconsider passage be laid upon the table.

So the bill (H.R. 783) was deemed read the third time, and passed.

HOMELESS VETERANS COMPREHENSIVE SERVICE PROGRAMS ACT OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5400.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 5400) entitled "An Act to establish in the Department of Veterans Affairs a program of comprehensive service for homeless veterans," with the following amendment:

In lieu of the matter inserted by the amendment of the Senate to the text of the bill, insert:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Homeless Veterans Comprehensive Service Programs Act of 1992".

SEC. 2. PILOT PROGRAM.

(a) IN GENERAL.—Subject to the availability of appropriations provided for under section 12, the Secretary of Veterans Affairs shall establish and operate, through September 30, 1995, a pilot program under this Act to expand and improve the provision of benefits and services by the Department of Veterans Affairs to homeless veterans.

(b) COMPREHENSIVE CENTERS.—The pilot program shall include the establishment of no more than four demonstration programs (in addition to any existing programs providing similar services) at sites under the jurisdiction of the Secretary to be centers for the provision of comprehensive services to homeless veterans. The services to be provided at each site shall include a comprehensive and coordinated array of those specialized services which may be provided under existing law.

(c) PLACEMENT OF VBA EMPLOYEES.—The pilot program shall also include the services of such employees of the Veterans Benefits Administration as the Secretary determines appropriate at—

(1) no more than 45 sites at which the Secretary provides services to homeless chronically mentally ill veterans pursuant to section 115 of Public Law 100–322 (38 U.S.C. 1712 note);

(2) no more than 26 sites at which the Secretary furnishes domiciliary care to homeless veterans pursuant to section 801(b) of Public Law 100–628 (102 Stat. 3257);

(3) no more than 12 centers which provide readjustment counseling services under section 1712A of title 38, United States Code; and

(4) each of the demonstration sites established under subsection (b).

SEC. 3. GRANTS.

(a) AUTHORITY TO MAKE GRANTS.—Subject to the availability of appropriations provided for under section 12, the Secretary of Veterans Affairs, during fiscal years 1993, 1994, and 1995, shall make grants to assist eligible entities in establishing new programs to furnish outreach, rehabilitative services, vocational counseling and training, and transitional housing assistance to homeless veterans.

(b) CRITERIA FOR AWARD OF GRANTS.—The Secretary shall establish criteria and requirements for the award of a grant under this section, including criteria for entities eligible to receive such grants. The Secretary shall publish such criteria and requirements in the Federal Register not later than 90 days after the date of the enactment of this Act. In developing such criteria and requirements, the Secretary shall consult with organizations with experience in the area of providing service to homeless veterans and to the maximum extent possible shall take into account the findings of the assessment of the Secretary under section 107 of the Veterans' Medical Programs Amendments of 1992. The criteria established under this section shall include the following:

(1) Specification as to the kinds of projects for which such grant support is available, which shall include (A) expansion, remodeling, or alteration of existing buildings, or acquisition of facilities, for use as service centers, transitional housing, or other facilities to serve homeless veterans, and (B) procurement of vans for use in outreach to, and transportation for, homeless veterans to carry out the purposes set forth in subsection (a).

(2) Specification as to the number of projects for which grant support is available, which shall include provision for no more than 25 service centers and no more than 20 programs which incorporate the procurement of vans as described in paragraph (1).

(3) Appropriate criteria for the staffing for the provision of the services for which a grant under this section is furnished.

(4) Provisions to ensure that the award of grants under this section (A) shall not result in duplication of ongoing services, and (B) to the maximum extent practicable, shall reflect appropriate geographic dispersion and an appropriate balance between urban and nonurban locations.

(5) Provisions to ensure that an entity receiving a grant shall meet fire and safety requirements established by the Secretary, which shall include such State and community requirements that may apply, but fire and safety requirements applicable to buildings of the Federal Government shall not apply to real property to be used by a grantee in carrying out the grant.

(6) Specifications as to the means by which an entity receiving a grant may contribute in-kind services to the start-up costs of any project for which support is sought and the methodology for assigning a cost to that contribution for purposes of subsection (c).

(c) FUNDING LIMITATIONS.—A grant under this section may not be used to support operational costs. The amount of a grant under this section may not exceed 65 percent of the estimated cost of the expansion, remodeling, alteration, acquisition, or procurement provided for under this section.

(d) ELIGIBLE ENTITIES.—The Secretary may not make a grant under this section unless the applicant for the grant—

(1) is a public or nonprofit private entity with the capacity (as determined by the Secretary) to effectively administer a grant under this section;

(2) has demonstrated that adequate financial support will be available to carry out the project for which the grant has been sought consistent with the plans, specifications, and schedule submitted by the applicant; and

(3) has agreed to meet the applicable criteria and requirements established under subsection (b) (and the Secretary has determined that the applicant has demonstrated the capacity to meet those criteria and requirements).

(e) APPLICATION REQUIREMENT.—An entity described in subsection (d) desiring to receive assistance under this section shall submit to the

Secretary an application. The application shall set forth—

(1) the amount of the grant requested with respect to a project;

(2) a description of the site for such project;

(3) plans, specifications, and the schedule for implementation of such project in accordance with requirements prescribed by the Secretary under subsection (b); and

(4) reasonable assurance that upon completion of the work for which assistance is sought, the program will become operational and the facilities will be used principally to provide to veterans the services for which the project was designed, and that not more than 25 percent of the services provided will serve clients who are not receiving such services as veterans.

(f) PROGRAM REQUIREMENTS.—The Secretary may not make a grant to an applicant under this section unless the applicant, in the application for the grant, agrees to each of the following requirements:

(1) To provide the services for which the grant is furnished at locations accessible to homeless veterans.

(2) To maintain referral networks for, and aid homeless veterans in, establishing eligibility for assistance, and obtaining services, under available entitlement and assistance programs.

(3) To ensure the confidentiality of records maintained on homeless veterans receiving services under the grant.

(4) To establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant and to such payments as may be made under section 4.

(5) To seek to employ homeless veterans and formerly homeless veterans in positions created for purposes of the grant for which those veterans are qualified.

(g) SERVICE CENTER REQUIREMENTS.—In addition to criteria established under subsection (b), the Secretary shall, in the case of an application for a grant for a service center for homeless veterans, require that—

(1) such center shall provide services to homeless veterans during such hours as the Secretary may specify and shall be open to such veterans on an as-needed, unscheduled basis;

(2) space at such center will be made available, as mutually agreeable, for use by staff of the Department of Veterans Affairs, the Department of Labor, and other appropriate agencies and organizations in assisting homeless veterans served by such center;

(3) such center shall be equipped and staffed to provide, or to assist in providing, health care, mental health services, hygiene facilities, benefits and employment counseling, meals, transportation assistance, and such other services as the Secretary determines necessary; and

(4) such center may be equipped and staffed to provide, or to assist in providing, job training and job placement services (including job readiness, job counseling, and literacy and skills training), as well as any outreach and case management services that may be necessary to carry out this paragraph.

SEC. 4. PER DIEM PAYMENTS.

(a) PER DIEM PAYMENTS FOR FURNISHING SERVICES TO HOMELESS VETERANS.—Subject to the availability of appropriations provided for under section 12, the Secretary of Veterans Affairs, pursuant to such criteria as the Secretary shall prescribe, shall provide to a recipient of a grant under section 3 (or an entity eligible to receive a grant under section 3 which after the date of enactment of this Act establishes a program which the Secretary determines carries out the purposes described in section 3) per diem payments at such rates as the Secretary shall prescribe by regulation for services furnished to any homeless veteran—

(1) whom the Secretary has referred to the grant recipient (or entity eligible for such a grant); or

(2) for whom the Secretary has authorized the provision of services.

In a case in which the Secretary has authorized the provision of services, per diem payments may be paid retroactively for services provided not more than 3 days before the authorization was provided.

(b) LIMITATION.—The amount of per diem payments made with respect to a veteran under this section may not exceed one-half of the cost to the grant recipient (or other eligible entity) of providing such service.

(c) IN-KIND ASSISTANCE.—In lieu of per diem payments under this section, the Secretary may, with the approval of the grant recipient, provide in-kind assistance (through the services of Department employees and the use of other Department resources) to a grant recipient (or entity eligible for such a grant) under section 3.

(d) INSPECTIONS.—The Secretary may inspect any facility of an entity eligible for payments under subsection (a) at such times as the Secretary considers necessary. No per diem payment may be made to an entity under this section unless the facilities of that entity meet such standards as the Secretary shall prescribe.

SEC. 5. OUTREACH SERVICES.

Section 7722 of title 38, United States Code, is amended by adding at the end thereof the following:

"(e) In carrying out this section, the Secretary shall assign such employees of the Veterans Benefits Administration as the Secretary considers appropriate to conduct outreach programs and provide outreach services for homeless veterans. Such outreach services may include site visits through which homeless veterans can be identified and provided assistance in obtaining benefits and services that may be available to them.".

SEC. 6. EXPANSION OF PROGRAMS FOR HOMELESS VETERANS.

Section 801 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Public Law 100–628; 102 Stat. 3257) is amended in subsection (c), by striking out "to homeless" and inserting in lieu thereof "with a primary emphasis on those homeless".

SEC. 7. AUTHORITY TO LEASE CERTAIN PROPERTY OF THE DEPARTMENT OF VETERANS AFFAIRS FOR EXTENDED LEASE TERMS.

(a) AUTHORITY.—Notwithstanding section 8122(a)(1) of title 38, United States Code, and subject to subsection (b), the Secretary of Veterans Affairs may lease to a representative of the homeless for a term in excess of three years any real property at the West Los Angeles Veterans Affairs Medical Center for which an application of the representative for the use of the property has been approved by the Secretary of Health and Human Services under section 501(e) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411(e)). Any such lease shall be subject to the provisions of section 501(f) of such Act (42 U.S.C. 11411(f)).

(b) LIMITATION.—The Secretary may not lease real property under subsection (a) for a term in excess of three years to a representative of the homeless unless the representative agrees to use the property only as a location for the provision of services to homeless veterans and the families of such veterans.

(c) DEFINITION.—In this section, the term "representative of the homeless" has the meaning given such term in section 501(h)(4) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411(h)(4)).

SEC. 8. AUTHORITY TO MAKE PROPERTIES AVAILABLE FOR HOMELESS PURPOSES.

(a) LEASE OR DONATION.—Section 3735(a) of title 38, United States Code, is amended—

(1) in paragraph (2)—

(A) by inserting ", lease, lease with an option to purchase, or donate" after "sell"; and

(B) by inserting "or lease or donation" after "sale";

(2) in paragraph (3)(B), by inserting ", leased, or donated" after "sold";

(3) by redesignating paragraph (4) as paragraph (6); and

(4) by inserting after paragraph (3) the following new paragraphs:

"(4) The term of any lease under this subsection may not exceed three years.

"(5) An approved entity that leases a property from the Secretary under this section shall be responsible for the payment of any taxes, utilities, liability insurance, and other maintenance charges or similar charges that apply to the property.".

(b) EXTENSION OF AUTHORITY.—Section 3735(b) of such title is amended by striking out "September 30, 1993" and inserting in lieu thereof "December 31, 1995".

SEC. 9. FINANCING OF PROPERTIES TO ASSIST HOMELESS VETERANS.

(a) FINANCING.—Section 3735 of title 38, United States Code (as amended by section 8), is further amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following new subsection (b):

"(b)(1) Subject to paragraphs (2) and (3), the Secretary may make loans to organizations described in paragraph (1)(A) of subsection (a) to finance the purchase of property by such organizations under such subsection.

"(2) In making a loan under this subsection, the Secretary—

"(A) shall establish credit standards to be used for this purpose;

"(B) may, pursuant to section 3733(a)(6) of this title, provide that the loan will bear interest at a rate below the rate that prevails for similar loans in the market in which the loan is made; and

"(C) may waive the collection of a fee under section 3729 of this title in any case in which the Secretary determines that such a waiver would be appropriate.".

SEC. 10. ANNUAL REPORTS.

Not later than May 1 of each of 1994, 1995, and 1996, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the implementation of this Act. Each such report shall, to the extent feasible, include information on (1) the number of veterans assisted, (2) the services provided, and (3) the Secretary's analysis of the operational and clinical effectiveness and cost-effectiveness of the programs established under, or with assistance provided by, this Act.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS FOR HOMELESS VETERANS' REINTEGRATION PROJECTS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 738 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11448) is amended by adding at the end the following new subsection:

"(e) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to carry out this section the following amounts:

"(A) $10,000,000 for fiscal year 1993.

"(B) $12,000,000 for fiscal year 1994.

"(C) $14,000,000 for fiscal year 1995.

"(2) Funds obligated for any fiscal year to carry out this section may be expended in that fiscal year and the succeeding fiscal year.".

(b) CONFORMING AMENDMENTS.—(1) Section 739 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11449) is amended—

(A) in subsection (a)(3)—

(i) by striking out "$17,000,000" and inserting in lieu thereof "$14,800,000"; and

(ii) by striking out "1993," and all that follows through "this subtitle" and inserting in lieu thereof "1993"; and

(B) in subsection (b), by striking out "other than section 738 of this subtitle and for the program under section 738 of this subtitle".

(2) Section 741 of such Act (42 U.S.C. 11451) is amended by inserting "738 and" before "740".

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act (other than section 8) $48,000,000 for each of the fiscal years 1993, 1994, and 1995. No funds may be used to carry out the provisions of sections 2, 3, and 4 of this Act unless expressly provided for in an appropriation law. Nothing in this Act shall be construed to diminish funds for, continuation of, or expansion of existing programs administered by the Secretary of Veterans Affairs to serve veterans.

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I urge my colleagues to approve H.R. 5400, the proposed Homeless Veterans Comprehensive Programs Act of 1992. The measure, as it comes before the Senate, reflects a compromise agreement reached by the Committees on Veterans' Affairs of the Senate and House of Representatives on provisions relating to homeless veterans contained in H.R. 5400 as passed by the House on July 27, 1992, and in S. 2512 as passed by the Senate on September 8, 1992, as an amendment in the nature of a substitute to H.R. 5400.

This compromise agreement would assist the Nation's homeless veterans and their families by creating new programs to provide needed services, improving and expanding existing VA and Department of Labor programs, and by encouraging the coordination of VA and other Federal, State, and local services. I am extremely pleased that both committees were able to arrive at this far-reaching compromise before the end of the 102d Congress.

Mr. President, I will at this time summarize the compromise agreement and discuss certain key provisions. Detailed descriptions of all provisions are set forth in the explanatory statement prepared by the two committees to accompany this compromise agreement. My counterpart, Representative SONNY MONTGOMERY, chairman of the House Veterans' Affairs Committee, inserted this explanatory statement in the RECORD during House consideration of this measure.

SUMMARY OF PROVISIONS

The compromise agreement includes provisions that would:

First, require VA, subject to the availability of expressly provided appropriations, to carry out a pilot program under which (a) up to four comprehensive service centers for homeless veterans would be established and, second, employees of VA's Veterans Benefits Administration would provide benefits counseling at VA sites at which VA provides services to homeless veterans.

Second, authorize VA, subject to the availability of expressly provided appropriations, to assist eligible entities in establishing programs to provide services to homeless veterans by providing grants of up to 65 percent of the costs of establishing these programs.

Third, authorize VA, subject to the availability of expressly provided appropriations, to make per diem payments to VA-approved entities which provide services to homeless veterans whom VA has either referred to the entities or for whom VA has authorized the entities to provide services. The amount of per diem would be limited to 50 percent of the entities' costs of furnishing the services.

Fourth, amend section 7722 of title XXXVIII, which contains a general requirement that VA conduct outreach to inform all eligible veterans of the benefits for which they may be eligible, to add a specific requirement that VA conduct outreach to homeless veterans.

Fifth, expand the scope of VA's homeless chronically mentally ill [HCMI] veterans program so as to authorize the provision of services to all homeless veterans, with a primary emphasis being given to homeless veterans who have a chronic mental illness.

Sixth, authorize VA, with respect to any property at the West Los Angeles VA Medical Center made available under title V of the McKinney Act, to enter into leases for more than 3 years if the organization approved to use the property agrees to use the property to provide services to homeless veterans and their families.

Seventh, amend VA's authority to sell at a discount VA-repossessed properties to nonprofit organizations and State agencies so as to authorize VA, first, to finance such sales by extending credit to the buyer, and second, to lease, lease with an option to purchase, or donate VA-repossessed properties to eligible nonprofit organizations and State agencies for use as shelters for homeless veterans and their families.

Eighth, require VA to submit annual reports in fiscal years 1994–96 on the implementation of the provisions contained in the compromise agreement.

Ninth, authorize appropriations for fiscal years 1993 through 1995 for the homeless veterans reintegration projects administered by the Department of Labor pursuant to the McKinney Act. The authorized appropriations would increase from the currently authorized fiscal year 1993 level of $2.2 million to $10 million for fiscal year 1993, $12 million for fiscal year 1994, and $14 million for fiscal year 1995.

Tenth, authorize appropriations of $48 million for each of fiscal years 1993 through 1995 for the purpose of carrying out the provisions contained in the compromise agreement and prohibit the expenditure of funds to carry out sections 2, 3, and 4 of the compromise agreement unless funds are expressly provided for in an appropriation law.

Mr. President, at this time I would like to highlight certain provisions of this compromise agreement.

UTILIZATION OF VA-ACQUIRED PROPERTIES TO ASSIST HOMELESS VETERANS

Mr. President, section 9 of the compromise agreement would amend section 3735 of title XXXVIII—which authorizes VA to sell acquired properties at a discount to nonprofit organizations and Government agencies that will use them to shelter or house homeless veterans and their families—so as to authorize VA to make loans directly to nonprofit organizations and State agencies for such purchases. VA would be required to develop credit standards that would apply to such loans and would be authorized to charge purchasers less than the market rate of interest on the loans.

I believe that these modifications would provide eligible nonprofit and Government entities a more realistic opportunity to purchase acquired properties under the discount-sale program, which has been woefully underutilized since it was established in 1987. Enabling VA to finance sales of properties by extending credit to nonprofit organizations buying them could significantly improve participation in the acquired property sale program.

Under the current program, although VA offers as much as a 50-percent discount on acquired properties, an organization must finance a purchase either through its own cash reserves or by a conventional mortgage from a lending institution—options which are ill-suited for nonprofit organizations that put their resources into badly needed services and thus seldom have substantial accumulations of cash on hand. By allowing VA to finance the sales directly, and by permitting the Secretary to develop credit standards specifically for this program, this provision should make it possible for many more properties to be used to provide housing for homeless veterans and their families.

Mr. President, section 8 of the compromise agreement would further improve this VA program by authorizing VA to lease, lease with an option to purchase, or donate VA-repossessed properties to nonprofit organizations and State agencies for the purpose of providing housing to homeless veterans. An approved entity leasing a property would be responsible for payment of taxes, utilities, insurance, and maintenance costs associated with the property and would be required to collect rent from the homeless individuals living in the properties.

I believe that the program improvements that would be made by sections 8 and 9 of the compromise agreement would encourage the development of new opportunities for housing homeless veterans through collaborative ventures with nonprofit organizations.

HOMELESS VETERANS REINTEGRATION PROJECTS

Mr. President, section 11 of the compromise agreement would extend the program authority, and increase the authorized levels of appropriations, for the homeless veterans reintegration projects [HVRP] program administered by the Department of Labor. The HVRP program is a grant program under which grantees hire formerly homeless veterans to conduct outreach to homeless veterans and provide supportive services, job training, job readiness skills, and job placement.

At an April 9, 1992, committee hearing, the Deputy Assistant Secretary for Labor for Veterans Employment and Training, Robin Higgins, testified that, in fiscal year 1990, 11,493 homeless veterans were contacted through outreach efforts, 5,204 of them were enrolled in the program, and 2,309 of those enrolled in the program were placed in jobs, a placement rate of 44 percent.

I have received very favorable comments regarding the HVRP Program from community service providers, the National Coalition for the Homeless, and individual veterans who have been assisted. Up to this point, however, it has been a very small-scale demonstration program—with only 18 projects in 15 cities. The program has shown more than sufficient promise to warrant an increase in its scope. Thus, section 11 of the compromise agreement would increase the authorized level of appropriations from the current fiscal year 1993 level of $2.2 million to $14 million by fiscal year 1995.

Mr. President, it is a national disgrace that many thousands of veterans of the U.S. Armed Forces are sleeping on the streets of our Nation. These men and women are in desperate need of assistance to meet their most basic human needs and to rejoin the mainstream of American life. They answered the call to serve and defend their country, and I believe that we as a nation should respond to their individual and collective crises and assist them in their time of need. This legislation would provide for housing opportunities that would not otherwise exist, and I urge my colleagues to support this measure.

In closing, I thank our committee's ranking Republican member, Senator SPECTER, for his support of this legislation and all members of the committee for their cooperation and assistance regarding this measure. I would also like to note the valuable contributions made by Joan Alker of the National Coalition for the Homeless, the members of the National Coalition for Homeless Veterans, and the individual veterans—Stanley Jordan, William Sherman, and Raymond Tracey—who shared with the committee their personal experiences of homelessness and sought assistance for their fellow veterans.

I also express my gratitude for their work on this legislation to committee minority staff members Yvonne Santa Anna, who has since moved to Senator SPECTER's personal staff, Carrie Gavora, Bill Tuerk, and Tom Roberts and majority staff members Virginia Rowthorn-Apel, Kimberly Morin, who recently left the committee staff, Thomas Tighe, Bill Brew, and Ed Scott.

Mr. President, I urge all of my colleagues to support this important legislation, and I ask unanimous consent that the joint explanatory statement prepared by the Committees on Veterans' Affairs be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXPLANATORY STATEMENT OF H.R. 5400, THE HOMELESS VETERANS COMPREHENSIVE SERVICE PROGRAMS ACT OF 1992

This document explains the provisions of two measures relating to programs for homeless veterans that have been passed by the Senate and House of Representatives, upon which the Committees on Veterans' Affairs of the Senate and House have reached agreement, and which are offered as a proposed House amendment to the Senate amendments to H.R. 5400.

The measures referred to above are H.R. 5400, the proposed "Comprehensive Service Programs For Homeless Veterans Act of 1992", as passed by the House on July 27, 1992 (hereinafter referred to as the "House bill"), and the text of S. 2512 as reported in the Senate, which was passed by the Senate on September 8, 1992, as a substitute amendment for H.R. 5400 (hereinafter referred to as the "Senate amendment").

The differences between the provisions of the House bill and the Senate amendment are noted in this document, except for clerical corrections, conforming changes made necessary by the compromise agreement, and minor drafting, technical, and clarifying changes.

COMPREHENSIVE CENTERS PILOT PROGRAM

Current law: Nothing in current law requires the establishment of comprehensive service centers for homeless veterans or the assignment of veterans benefits counselors at any particular sites in order to serve homeless veterans.

House bill: Section 2 would require VA, subject to the availability of appropriations expressly provided for in an appropriation law, to establish and operate through FY 1995 a pilot program under which (a) there would be established not more than 4 VA comprehensive service centers for homeless veterans, and (b) veterans benefits counselors would provide services at not more than 45 sites at which VA carries out the homeless chronically mentally ill veterans program, 26 sites at which VA carries out the domiciliary care for homeless veterans program, 12 centers which provide readjustment counseling, and each of the comprehensive service centers established under the program.

Senate amendment: No provision.

Compromise agreement: Section 2 follows the House bill with amendments to (a) clarify that any comprehensive service centers established under the demonstration program would be in addition to any existing programs providing similar services, (b) omit specific reference to the services that may be provided at the comprehensive centers created under this program and instead authorize the Secretary to provide any services which are authorized to be provided under current law, and (c) clarify that benefits counseling provided at the specified sites is to be furnished by employees of the Veterans Benefits Administration.

GRANT PROGRAM FOR THE ESTABLISHMENT OF PROGRAMS TO ASSIST HOMELESS VETERANS

Current law: Current law does not authorize VA to make grants for the establishment of programs to assist homeless veterans.

House bill: Section 3(a) would require VA, subject to the availability of appropriations, to make grants during FYs 1993 through 1995 to assist eligible entities in establishing new programs to furnish outreach, rehabilitative services, vocational counseling and training, and transitional housing assistance to homeless veterans.

Senate amendment: No provision.

Compromise agreement: Section 3(a) follows the House bill.

The Committees note that the intent of the grant program is to assist in the establishment of new programs, or new components of existing programs, that will provide needed services to homeless veterans. In this regard, both newly established organizations and existing organizations would be eligible for grant support for the furnishing of specified assistance that is needed in an area or community so long as, in the case of existing organizations, they are not already providing that kind of assistance in such area or community.

Development of criteria for award of grants

House bill: Section 3(b) would require VA to (a) establish and publish in the Federal Register, within 90 days after the date of enactment, criteria and requirements for the awarding of grants under the program, and (b) in developing such criteria, consult with the National Coalition for Homeless Veterans and to the maximum extent possible take into account homeless veterans' needs as indicated by the findings of the assessment required under section 5 of the bill (described below).

Senate amendment: No provision.

Compromise agreement: Section 3(b) follows the House bill with an amendment that would require the Secretary, in developing criteria for the award of grants under this program, to consult with organizations with experience in the area of serving homeless veterans.

The Committees note that this modification is intended to broaden the consultation requirement so as to facilitate broader participation by organizations with experience in providing services to homeless veterans. The Committees fully expect, however, that the National Coalition of Homeless Veterans would be among the entities consulted in view of the organization's members' extensive experience in providing services to homeless veterans.

The Committees also note that the assessment referred to in the House bill is not included in the compromise agreement because a similar assessment requirement was included in section 107 of the conference report on S. 2344, which passed the House of Representatives on September 23, 1992, and the Senate on September 25, 1992. However, the Committees intend that the assessments required under that legislation be taken into account by the Secretary in the development of grant criteria in the same manner that the House bill would have required.

Specific criteria for award of grants

House bill: Section 3(b) would also require that criteria established for the award of grants include: (a) specification as to the kind of projects eligible for grant support, which would be required to include renovation or acquisition of existing facilities for use as service centers, transitional housing or other facilities to serve homeless veterans and procurement of vans for use in outreach to and transportation for homeless veterans; (b) specification as to the number of projects for which grants are available, which would be limited to no more than 25 service centers and 20 programs that incorporate the procurement of vans; (c) appropriate criteria for staffing; (d) provisions to ensure that the award of grants does not result in a duplication of ongoing services in excess of identified needs and reflects appropriate geographic dispersion and appropriate balance between urban and nonurban locations; (e) provisions to ensure that grantees meet applicable State and community—not federal—fire and safety requirements; and (f) specifications as to how a grantee may contribute in-kind services to the start-up costs of any project for which grant support is sought and the methodology for assigning a cost to that contribution.

Senate amendment: No provision.

Compromise agreement: Section 3(b) follows the House bill with an amendment that requires VA to establish fire and safety standards, which, at a minimum, shall include a requirement of compliance with applicable State and community fire and safety standards.

The Committees note that this requirement is consistent with that applicable to VA's approval of a residential-care facility under section 1730(b)(2)(A) of title 38, United States Code.

Funding limitations

House bill: Section 3(c) would prohibit the use of a grant to support operational costs of a grantee, except as provided in section 4 of this bill, relating to per diem payments to eligible entities for services provided to homeless veterans, and would prohibit the award of a grant in excess of 65% of the estimated cost of the expansion, remodeling, alteration, acquisition, or procurement authorized under the program.

Senate amendment: No provision.

Compromise agreement: Section 3(c) follows the House bill with an amendment clarifying the different nature of grants—which may only be used for acquiring, expanding, or renovating facilities or for procuring vans—and per diem payments, which are intended to cover a portion of an organization's operational costs.

Eligible entities

House bill: Section 3(d) would require that, to be eligible for a grant under the program, an applicant (a) must be a public or nonprofit private entity with the capacity (as determined by the Secretary) to administer a grant effectively; (b) must have demonstrated that adequate financial support will be available to carry out the project for which the grant is sought consistent with the plans, specifications, and schedule submitted by the applicant; and (c) must have agreed to meet applicable criteria and regulations (and the Secretary determines that the applicant is capable of compliance). A nonprofit entity established by VA employees under section 1718(b)(2) of title 38 would be prohibited from receiving a grant.

Senate amendment: No provision.

Compromise agreement: Section 3(d) follows the House bill with an amendment deleting language that would make nonprofit entities established under section 1718(b)(2) of title 38 ineligible for grants.

The Committees intend that nonprofit organizations which contract with VA to furnish rehabilitative services under section 1718 be eligible to apply for grant support. However, while the Committees intend that such organizations be eligible, the Committees also intend that the grant program be eavilable to the broadest possible range of eligible entities. In this regard, the Committees are concerned that organizations with ongoing contractual relations with Va may be perceived as having an advantage in the awarding of grants, and thus direct VA to ensure that such organizations do not receive an inappropriate advantage in the award of grants.

Application requirements

House bill: Section 3(e) would require that a grant applicant submit an application which sets forth (a) the amount of the grant requested with respect to a project; (b) a description of the site of the proposed project; (c) plans, specifications, and the schedule for implementation of the project in accordance with the requirements prescribed by the Secretary; and (d) reasonable assurance that upon completion of the project for which a grant is sought, the program will become operational and the facilities will be used to provide to the veterans the services for which the project was designed and that not more than 25 percent of the services will be provided to clients not receiving services as veterans.

Senate amendment: No provision.

Compromise agreement: Section 3(e) follows House bill.

Program requirements for programs awarded grants

House bill: Section 3(f) would require that an applicant, in order to receive a grant, agree to (a) provide the services for which the grant is furnished at locations accessible to homeless veterans; (b) maintain referral networks for, and aid homeless veterans in, establishing eligibility for assistance and obtaining services under available entitlement and assistance programs; (c) ensure the confidentiality of records maintained on homeless veterans receiving services under the grant; (d) establish procedures for fiscal control and fund accounting necessary to ensure proper disbursement and accounting with respect to the grant and to receipt of per diem payments; and (e) seek to employ homeless veterans and formerly homeless veterans in positions created for purposes of the grant for which those veterans are qualified.

Senate provision: No provision.

Compromise amendment: Section 3(f) follows the House bill.

Requirements for the award of grants to establish homeless veterans service centers

House bill: Section 3(f)(5) would require, in addition to the general program requirements, that an applicant for a grant to establish a homeless veterans service center agree that the center would (a) provide services during hours specified by the Secretary and shall be open to homeless veterans on an as-needed, unscheduled basis; (b) make space at the center available, as mutually agreeable, for use by staff of VA, Department of Labor, and other appropriate agencies and organizations to assist homeless veterans in the center; (c) be equipped and staffed to provide, or to assist in providing, health care, mental health services, hygiene facilities, benefits and employment counseling, transportation assistance, and other services the Secretary determines are necessary; and (d) be equipped and staffed to provide, or to assist in providing, job training and job placement services (including job readiness, job counseling, and literacy and skills training) and any outreach and case management services that may be necessary to carry out such services.

Senate amendment: No provision.

Compromise agreement: Section 3(g) generally follows the House bill.

PER DIEM PAYMENTS

Current law: Current law does not authorize VA to make per diem payments to organizations for providing services specifically to homeless veterans.

House bill: Section 4(a) would require VA, subject to the availability of appropriations expressly provided for in an appropriation law, to provide to a grantee (or to an entity eligible to receive a grant which establishes a program consistent with the purposes of the grant program) per diem payments at rates prescribed by the Secretary for services furnished to any homeless veteran (a) referred by the Secretary to the grantee (or eligible entity) or (b) for whom the Secretary, within three working days, has authorized the provision of services if the veteran is eligible for such services from VA.

Senate amendment: No provision.

Compromise agreement: Section 4(a) follows the House bill with an amendment omitting the limitation that per diem payments may only be made for services which VA itself is authorized to provide.

Limitation on per diem payments

House bill: Section 4(b) would limit the amount of per diem paid with respect to a veteran to 50 percent of the grantee's (or eligible entity's) cost of providing the services furnished.

Senate bill: No provision.

Compromise agreement: Section 4(b) follows the House bill.

The Committee notes that payments may be made for services such as benefits and employment counseling and job training that would involve periodic visits of relatively brief duration and not necessarily overnight shelter or day-long visits. The Committees expect that the Secretary will develop appropriate criteria for the payment of per diem for various kinds of services under the compromise agreement.

Authority to provide in-kind assistance in lieu of per diem payments

House bill: Section 4(c) would authorize VA to provide, with the approval of the grantee, in-kind assistance in lieu of per diem.

Senate amendment: No provision.

Compromise agreement: Section 4(c) follows the House bill.

VA inspections of facilities of entities eligible for per diem payments

House bill: Section 4(d) would authorize VA to inspect any facility of an entity eligible to receive per diem payments and prohibits the payment of per diem if an entity's facilities do not meet VA standards.

Senate amendment: No provision.

Compromise agreement: Section 4(d) follows the House bill.

ASSESSMENT OF NEEDS OF HOMELESS VETERANS

Current law: Under section 107 of the conference report on S. 2344, the Veterans' Medical Programs Amendments of 1992, which the House passed on September 23, 1992, and the Senate passed on September 25, 1992, the director of each VA regional benefits offices or the director of each VA medical center would be required to conduct assessments of the needs of homeless veterans in their respective catchment areas. The assessments would include the needs of homeless veterans with respect to (a) health care, (b) education and training, (c) employment, (d) shelter, (e) counseling, and (f) outreach services and the extent to those needs are being met adequately by VA and other federal programs, State and local government programs, and programs of nongovernmental organizations.

House bill: Section 5 is substantively similar to the provisions included in section 107 of the conference report on S. 2344, the Veterans' Medical Programs Amendments of 1992.

Senate bill: No provision.

Compromise agreement: No provision.

OUTREACH SERVICES

Current law: Section 7722 of title 38 requires VA to conduct outreach services to ensure that all veterans are informed of the benefits for which they may be eligible or to which they may be entitled.

House bill: Section 6 would require VA to assign such employees of the Veterans Benefits Administration as the Secretary considers appropriate to conduct outreach services for homeless veterans, including site visits to identify homeless veterans and provide such veterans assistance in obtaining benefits.

Senate amendment: No provision.

Compromise agreement: Section 5 would amend section 7722 of title 38 so as to require the Secretary to conduct appropriate outreach services for homeless veterans, including assigning Veterans Benefits Administration employees to conduct site visits to identify homeless veterans and provide such veterans assistance in obtaining benefits.

EXTENSION AND EXPANSION OF PROGRAMS FOR HOMELESS VETERANS

Current law: Under section 115(d) of the Veterans' Benefits and Services Act of 1988 (Public Law 100–322) (as amended by section 201(c) of the Veterans' Benefits Amendments of 1989 (Public Law 101–237) and as would be amended by section 107(h) of the Veterans' Medical Programs Amendments of 1992, which the House passed on September 23, 1992, and the Senate passed on September 25, 1992), VA is authorized to conduct a program to provide care and treatment and rehabilitative services (directly or by contract) in halfway houses, therapeutic communities, psychiatric residential treatment centers, and other community-based treatment facilities to homeless veterans suffering from chronic mental illness disabilities. Public Law 100–628, the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, authorized appropriations of $30 million for each of FYs 1989 and 1990 and required that 50 percent of the funds so appropriated in those years be available for that program and for VA's domiciliary care for homeless veterans program, which was authorized in Public Law 100–71, the Supplemental Appropriations Act of 1987. Public Law 101–237 extended the authority for the homeless chronically mentally ill veterans program through September 30, 1992, and Public Law 100–645 authorized appropriations of $31.5 million for FY 1991 and $33.075 million for FY 1992 to be divided equally between the programs. Section 107 of the conference report on S. 2344 would extend the authority for the homeless chronically mentally ill veterans program through September 30, 1995, and authorize FY 1993 appropriations of $50 million, with funds appropriated in that year to be allocated between those two programs at the Secretary's discretion.

House bill: Section 7 would (a) extend through FY 1995 VA's authority under section 115(d) of the Veterans' Benefits and Services Act of 1988 (Public Law 100–322) to conduct a program of rehabilitative services for homeless chronically mentally ill veterans; and (b) authorize funds appropriated for that program, if available, to be expended to assist homeless veterans who are not currently eligible for the HCMI program, but require that chronically mentally ill homeless veterans be given a priority for assistance.

Senate bill: No provision.

Compromise agreement: Section 6 of the compromise agreement would amend section 115(d) of the Veterans' Benefits and Services Act of 1988 (Public Law 100–322) so as to expand the scope of the homeless chronically mentally ill veterans program to include all homeless veterans, with primary emphasis being given to homeless veterans who have a chronic mental illness.

The Committees note that the underlying program authority for the existing program would be extended through September 30, 1995, as proposed in the House bill, in section 107(g) of the Veterans' Medical Programs Amendments of 1992, which passed the House on September 23, 1992, and the Senate on September 25, 1992.

AUTHORITY TO LEASE PROPERTIES TO ASSIST HOMELESS VETERANS

Current law: Section 3735 of title 38 authorizes VA, through September 30, 1993, to sell VA-acquired properties at a discount to nonprofit organizations and State agencies that agree to use the properties as a shelter for homeless veterans and their families.

House bill: Section 8 would amend section 3735 to authorize VA to lease, lease with an option to purchase, or donate, to nonprofit or State agencies VA-acquired properties for use as shelter for homeless veterans and their families.

Senate amendment: Section 2 would add to title 38 a proposed new section 3736, that would require VA to carry out through September 30, 1997, a program under which VA would be required annually to make available to nonprofit organizations and State agencies not more than 10 percent of eligible VA-acquired properties for use solely as transitional housing for homeless veterans and their families. Properties would be made available for a nominal fee by lease or by lease with an option to purchase. An approved entity leasing a property would be required (a) to collect rent from veteran occupants in an amount that does not exceed the lesser of (i) the costs of operating and maintaining the property or (ii) 30% of the occupants' income; and (b) to the maximum extent practicable, to (i) utilize the services of homeless veterans in maintaining, operating, and renovating the property, and (ii) provide veteran occupants appropriate information and referrals regarding available services. Properties eligible for lease would be those acquired by default on a loan made, insured, or guaranteed by VA, which are vacant, have been listed for sale for at least 60 days, and are not subject to a sales contract.

Compromise agreement: Section 8 would amend section 3735 of title 38 to authorize VA, through FY September 30, 1997, to lease, lease with an option to purchase, or donate, to nonprofit or State agencies VA-acquired properties for use as shelter for homeless veterans and their families. Any lease would be limited to three years, although the Secretary could include provisions for leases to be renewed; an approved entity leasing a property would be required to collect rent from veteran occupants; and an approved entity that leases a property would be responsible for the payment of any taxes, utilities, liability insurance, and other maintenance charges that apply to the property.

AUTHORITY TO LEASE CERTAIN VA PROPERTY FOR EXTENDED LEASE TERMS

Current law: Title V of the Stewart B. McKinney Homeless Assistance Act (Public Law 100–77; 41 U.S.C. 11411 et seq.) authorizes federal properties, including VA properties, that are surplus, excess, unutilized, or underutilized to be made available by lease for the purpose of assisting homeless persons. Section 8122 of title 38 prohibits VA from entering into a lease of any of its properties for a term in excess of three years.

House bill: Section 9 would authorize VA, with respect to any property at the West Los Angeles VA Medical Center made available under title V of the McKinney Act, to enter into a lease for a term in excess of 3 years with an approved applicant if the applicant agrees to use the property as a location for the provision of services to homeless veterans and their families.

Senate bill: Section 3 is similar to the House provision, except the authority to enter into a lease for a term in excess of three years would apply generally to all VA facilities and not be limited to the West Los Angeles VAMC.

Compromise agreement: Section 7 follows the House bill.

VA FINANCING OF PROPERTIES TO ASSIST HOMELESS VETERANS

Current law: Section 3735(a) of title 38 authorizes VA to sell at a discount VA-acquired properties to nonprofit organizations and State organizations for the purpose of providing shelter for homeless veterans and their families. Under section 3710(g)(2)(a) of title 38, the Secretary is required to establish credit underwriting standards to be used in evaluating VA guaranteed loans.

House bill: No provision.

Senate amendment: Section 1 would amend section 3735 of title 38 to authorize VA to (a) finance directly sales of VA-acquired properties which VA may sell at a discount under section 3735(a) of title 38; (b) waive one or more of the credit underwriting standards that would otherwise apply to direct VA financing under section 3710(g)(2)(A); (c) charge lower-than-market-rate interest; and (d) limit the number of loans in order to protect the interest of the Federal Government. VA would be prohibited from collecting a loan fee for a loan made pursuant to this authority.

Compromise agreement: Section 9 follows the Senate amendment, with amendments that would (a) require the Secretary to establish credit standards to be used to carry out the purposes of this program, and (b) authorize the Secretary to waive a loan fee for loans made under this authority.

HOMELESS VETERANS REINTEGRATION PROJECTS

Current law: Section 738 of the Steward B. McKinney Homeless Assistance Act (Public Law 100–77) authorizes the Secretary of Labor to conduct, directly or through grant or contract, programs to expedite the reintegration of homeless veterans into the labor force. Under this authority, the Secretary of Labor has established the Homeless Veterans Reintegration Projects (HVRP) program, a grant program under which grantees hire formerly homeless veterans to conduct outreach to homeless veterans and provide supportive services, job training, job readiness skills, and job placement. The HVRP program's authority expires on October 1, 1993.

House bill: No provision.

Senate amendment: Section 4 would extend until October 1, 1995, the HVRP program's authority and increase the authorized levels of appropriations from the currently authorized FY 1993 level of $2.2 million to $10 million for FY 1993, $12 million for FY 1994, and $14 million for FY 1995.

Compromise agreement: Section 11 follows the Senate amendment.

ANNUAL REPORTS

House bill: Section 11 would require VA to submit, by May 1 in each of 1994, 1995, and 1996, a report on the implementation of the bill containing, to the extent practicable, information on the number of veterans assisted, the services provided, and the Secretary's analysis of the operational and clinical effectiveness and cost-effectiveness of programs carried out under the bill.

Senate amendment: No provision.

Compromise agreement: Section 10 follows the House bill.

AUTHORIZATION OF APPROPRIATIONS

House bill: Section 10 would (a) authorize appropriations of $48 million for each of FYs 1993 through 1995; (b) prohibit the use of funds to carry out the House bill (except for section 8, regarding VA's authority to lease or donate VA-acquired properties to nonprofit and State organizations) unless expressly provided for in an appropriaton law; and (c) provide that nothing in the House bill be construed to diminish funds for, or continuation of, existing programs administered by VA.

Senate amendment: No provision.

Compromise agreement: Section 12 follows the House bill with amendments to (a) clarify that nothing in the compromise agreement shall be construed to limit expansion of existing programs administered by VA, and (b) prohibit the expenditure of funds to carry out sections 2, 3, and 4 of the bill unless expressly provided for in an appropriation law.

Mr. FORD. Mr. President, I move that the Senate concur in the House amendment.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONSUMER PROTECTION ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1392.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1392) entitled "An Act to strengthen the authority of the Federal Trade Commission regarding fraud committed in connection with sales made with a telephone, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Consumer Protection Telemarketing Act".

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) Telemarketing differs from other sales activities in that it can be carried out by sellers across State lines without direct contact. Telemarketers can also be very mobile, easily moving from State to State.

(2) Interstate telemarketing fraud has become a problem of such magnitude that the resources of the Federal Trade Commission are not sufficient to insure adequate consumer protection from such fraud.

(3) Consumers and others are estimated to lose $1 billion a year in telemarketing fraud.

(4) Consumers are victimized by other forms of telemarketing deception and abuse.

(5) Consequently, Congress should enact legislation that will offer consumers necessary protection from telemarketing deception (including fraud) and abuse.

SEC. 3. TELEMARKETING RULES.

(a) In General.—

(1) The Commission shall prescribe rules prohibiting deceptive (including fraudulent) telemarketing activities and other abusive telemarketing activities.

(2) The Commission shall include in such rules respecting deceptive telemarketing activities—

(A) a definition of deceptive telemarketing activities, and

(B) criteria that are symptomatic of deceptive telemarketing as distinguished from ordinary telemarketing business practices.

(3) The Commission shall include in such rules respecting other abusive telemarketing activities a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy. In prescribing the rules described in this paragraph, the Commission shall consider—

(A) including a requirement that goods or services offered by telemarketing be shipped or provided within a specified period and that if the goods or services are not shipped or provided within such period, a refund be required, and

(B) including, where practicable, authority for a person who orders a good or service through telemarketing to cancel the order within a specified period.

(b) Rulemaking.—

(1) The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, United States Code.

(2) A rule issued under subsection (a) shall be considered a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act.

(c) Enforcement.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) regarding unfair or deceptive acts or practices.

(d) Securities and Exchange Commission Rules.—

(1) Promulgation.—

(A) In general.—Except as provided in subparagraph (B), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under subsection (a), the Securities and Exchange Commission shall promulgate rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing activities by persons described in paragraph (2).

(B) Exception.—The Securities and Exchange Commission is not required to promulgate a rule under subparagraph (A) if it determines that—

(i) Federal securities laws or rules adopted by the Securities and Exchange Commission thereunder provide protection from deceptive and other abusive telemarketing by persons described in paragraph (2) substantially similar to that provided by rules promulgated by the Federal Trade Commission under subsection (a); or

(ii) such a rule promulgated by the Securities and Exchange Commission is not necessary or appropriate in the public interest, or for the protection of investors, or would be inconsistent with the maintenance of fair and orderly markets.

If the Securities and Exchange Commission determines that an exception described in clause (i) or (ii) applies, the Commission shall publish in the Federal Register its determination with the reasons for it.

(2) Application.—

(A) In general.—The rules promulgated by the Securities and Exchange Commission under paragraph (1)(A) shall apply to a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company, or any individual associated with a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company. The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in the preceding sentence.

(B) Definitions.—For purposes of subparagraph (A)—

(i) the terms "broker", "dealer", "transfer agent", "municipal securities dealer", "municipal securities broker", "government securities broker", and "government securities dealer" have the meanings given such terms by paragraphs (4), (5), (25), (30), (31), (43), and (44) of section 3(a) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4), (5), (25), (30), (31), (43), and (44));

(ii) the term "investment adviser" has the meaning given such term by section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)); and

(iii) the term "investment company" has the meaning given such term by section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)).

(e) Commodity Futures Trading Commission Rules.—

(1) Application.—The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in subsection (f)(1) of section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 15, 13b, 9a).

(2) Promulgation.—Section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 15, 13b, 9a) is amended by adding at the end the following new subsection:

"(f)(1) Except as provided in paragraph (2), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under section 3(a) of the Consumer Protection Telemarketing Act, the Commission shall promulgate rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing activities by any person registered or exempt from registration under this Act in connection with such person's business as a futures commission merchant, introducing broker, commodity trading advisory, commodity pool operator, leverage transaction merchant, floor broker, or floor trader, or a person associated with any such person.

"(2) The Commission is not required to promulgate rules under paragraph (1) if it determines that—

"(A) rules adopted by the Commission under this Act provide protection from deceptive and abusive telemarketing by persons described under paragraph (1) substantially similar to that provided by rules promulgated by the Federal Trade Commission under section 3(a) of the Consumer Protection Telemarketing Act; or

"(B) such a rule promulgated by the Commission is not necessary or appropriate in the pub-

lic interest, or for the protection of customers in the futures and options markets, or would be inconsistent with the maintenance of fair and orderly markets.

If the Commission determines that an exception described in subparagraph (A) or (B) applies, the Commission shall publish in the Federal Register its determination with the reasons for it.".

SEC. 4. ACTIONS BY STATES.

(a) In General.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule of the Commission under section 3, the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such telemarketing, to enforce compliance with such rule of the Commission, to obtain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such further and other relief as the court may deem appropriate.

(b) Notice.—The State shall serve prior written notice of any civil action under subsection (a) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(c) Construction.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall prevent an attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(d) Actions by the Commission.—Whenever the Commission has instituted a civil action for violation of any rule prescribed under section 3, no State may, during the pendency of such action instituted by the Commission, institute a civil action under subsection (a) against any defendant named in the Commission's complaint for acts or omissions alleged in the complaint for violation of any rule as alleged in the Commission's complaint.

(e) Actions by Other State Officials.—

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection (a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers and who are designated by the Commission to bring an action under subsection (a) against persons that the Commission has determined have or are engaged in a pattern or practice of telemarketing which violates a rule of the Commission under section 3.

SEC. 5. ACTIONS BY PRIVATE PERSONS.

(a) In General.—Any person adversely affected by any pattern or practice of telemarketing which violates any rule of the Commission under section 3 or an authorized person acting on such person's behalf may, within 3 years after discovery of the violation, bring a civil action in an appropriate district court of the United States against a person who has engaged or is engaging in such pattern or practice of telemarketing if the amount in controversy exceeds the sum or value of $50,000 in actual damages for each person adversely affected by such telemarketing. Such an action may be brought to enjoin such telemarketing, to enforce compliance with any rule of the Commission under section 3, to obtain damages, or to obtain such further and other relief as the court may deem appropriate.

(b) Notice.—The plaintiff shall serve prior written notice of the action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the person shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(c) Actions by the Commission.—Whenever the Commission has instituted a civil action for violation of any rule prescribed under section 3, no person may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

(d) Costs and Fees.—The court, in issuing any final order in any action brought under subsection (a), may award costs of suit and reasonable fees for attorneys and expert witnesses to the prevailing party.

(e) Construction.—Nothing in this section shall restrict any right which any person may have under any statute or common law.

SEC. 6. CLEARINGHOUSE.

(a) In General.—The Commission shall establish a clearinghouse for inquiries made to Federal agencies concerning telemarketing. The clearinghouse will provide information (other than information which may not be disclosed under section 552(b) of title 5, United States Code, or under regulations prescribed by the Commission to implement such section) to anyone making inquiries respecting persons engaged in telemarketing or direct such inquiries to the appropriate Federal or State agency.

(b) Liability for Providing Information.—No person who provides information to the clearinghouse established under subsection (a) shall be liable for damages for the provision of such information unless such person provided such information knowing it to be false.

SEC. 7. ADMINISTRATION AND APPLICABILITY OF ACT.

(a) In General.—Except as otherwise provided in sections 4 and 5, this Act shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this Act.

(b) Actions by the Commission.—The Commission shall prevent any person from violating a rule of the Commission under section 3 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.

SEC. 8. DEFINITIONS.

For purposes of this Act:

(1) The term "attorney general" means the chief legal officer of a State.

(2) The term "Commission" means the Federal Trade Commission.

(3) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(4) The term "telemarketing" means a plan, program, or campaign which is conducted to induce purchases of goods or services by significant use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which—

(A) contains a written description or illustration of the goods or services offered for sale,

(B) includes the business address of the seller,

(C) includes multiple pages of written material or illustrations, and

(D) has been issued not less frequently than once a year,

where the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation.

SEC. 9. REVIEW.

Upon the expiration of 5 years following the date of the enactment of this Act, the Federal Trade Commission shall review the implementation of this Act and its effect on deceptive telemarketing activities and report the results of the review to the Congress.

AMENDMENT NO. 3420

(Purpose: To make an amendment in the nature of a substitute)

Mr. FORD. I move that the Senate concur in the amendments of the House with a further amendment which I send to the desk now on behalf of Senator BRYAN.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. BRYAN, proposes an amendment numbered 3420.

Mr. FORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be inserted by the House amendment to the bill, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Telemarketing and Consumer Fraud and Abuse Prevention Act".

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) Telemarketing differs from other sales activities in that it can be carried out by sellers across State lines without direct contact with the consumer. Telemarketers can also be very mobile, easily moving from State to State.

(2) Interstate telemarketing fraud has become a problem of such magnitude that the resources of the Federal Trade Commission are not sufficient to ensure adequate consumer protection from such fraud.

(3) Consumers and others are estimated to lose $40 billion a year in telemarketing fraud.

(4) Consumers are victimized by other forms of telemarketing deception and abuse.

(5) Consequently, Congress should enact legislation that will offer consumers nec-

essary protection from telemarketing deception (including fraud) and abuse.

SEC. 3. TELEMARKETING RULES.

(a) IN GENERAL.—

(1) The Commission shall prescribe rules prohibiting deceptive (including fraudulent) telemarketing activities and other abusive telemarketing activities.

(2) The Commission shall include in such rules respecting deceptive telemarketing activities—

(A) a definition of deceptive telemarketing activities, and

(B) criteria that are symptomatic of deceptive telemarketing as distinguished from ordinary telemarketing business practices.

(3) The Commission shall include in such rules respecting other abusive telemarketing activities (A) a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy, and (B) restrictions on the hours of the day and night when unsolicited telephone calls can be made to consumers. In prescribing the rules described in this paragraph, the Commission shall also consider—

(A) including a requirement that goods or services offered by telemarketing be shipped or provided within a specified period and that if the goods or services are not shipped or provided within such period, a refund be required;

(B) including, where practicable, authority for a person who orders a good or service through telemarketing to cancel the order within a specified period; and

(C) recordkeeping requirements.

(b) RULEMAKING.—

(1) The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, Unites States Code.

(2) A rule issued under subsection (a) shall be considered a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts of practices.

(d) SECURITIES AND EXCHANGE COMMISSION RULES.—

(1) PROMULGATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under subsection (a), the Securities and Exchange Commission shall promulgate, or require any national securities exchange or registered securities association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing activities by persons described in paragraph (2).

(B) EXCEPTION.—The Securities and Exchange Commission is not required to promulgate a rule under subparagraph (A) if it determines that—

(i) Federal securities laws or rules adopted by the Securities and Exchange Commission thereunder provide protection from deceptive and other abusive telemarketing by persons described in paragraph (2) substantially similar to that provided by rules promulgated by the Federal Trade Commission under subsection (a); or

(ii) such a rule promulgated by the Securities and Exchange Commission is not necessary or appropriate in the public interest, or for the protection of investors, or would be inconsistent with the maintenance of fair and orderly markets.

If the Securities and Exchange Commission determines that an exception described in clause (i) or (ii) applies, the Securities and Exchange Commission shall publish in the Federal Register its determination with the reasons for it.

(2) APPLICATION.—

(A) IN GENERAL.—The rules promulgated by the Securities and Exchange Commission under paragraph (1)(A) shall apply to a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company, or any individual associated with a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company. The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in the preceding sentence.

(B) DEFINITIONS.—For purposes of subparagraph (A)—

(i) the terms "broker", "dealer", "transfer agent", "municipal securities dealer", "municipal securities broker", "government securities broker", and "government securities dealer" have the meanings given such terms by paragraphs (4), (5), (25), (30), (31), (43), and (44) of section 3(a) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4), (5), (25), (30), (31), (43), and (44));

(ii) the term "investment adviser" has the meaning given such term by section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(11)); and

(iii) the term "investment company" has the meaning given such term by section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)).

(e) COMMODITY FUTURES TRADING COMMISSION RULES.—

(1) APPLICATION.—The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in subsection (f)(1) of section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 15, 13b, 9a).

(2) PROMULGATION.—Section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 15, 13b, 9a) is amended by adding at the end the following new subsection:

"(f)(1) Except as provided in paragraph (2), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under section 3(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Commission shall promulgate, or require each registered futures association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing activities by any person registered or exempt from registration under this Act in connection with such person's business as a futures commission merchant, introducing broker, commodity trading advisory, commodity pool operator, leverage transaction merchant, floor broker, or floor trader, or a person associated with any such person.

"(2) The Commission is not required to promulgate rules under paragraph (1) if it determines that—

"(A) rules adopted by the Commission under this Act provide protection from deceptive and abusive telemarketing by persons described under paragraph (1) substantially similar to that provided by rules promulgated by the Federal Trade Commission under section 3(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act; or

"(B) such a rule promulgated by the Commission is not necessary or appropriate in the public interest, or for the protection of customers in the futures and options markets, or would be inconsistent with the maintenance of fair and orderly markets.

If the Commission determines that an exception described in subparagraph (A) or (B) applies, the Commission shall publish in the Federal Register its determination with the reasons for it.".

SEC. 4. ACTIONS BY STATES.

(a) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule of the Commission under section 3, the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such telemarketing, to enforce compliance with such rule of the Commission, to obtain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such further and other relief as the court may deem appropriate.

(b) NOTICE.—The State shall serve prior written notice of any civil action under subsection (a) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(c) VENUE; SERVICE OF PROCESS.—Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the telemarketing occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(d) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall prevent an attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) ACTIONS BY THE COMMISSION.—Whenever the Commission has instituted a civil action for violation of any rule prescribed under section 3, no State may, during the pendency of such action instituted by the Commission, institute a civil action under subsection (a) against any defendant named in the Commission's complaint for acts or omissions alleged in the complaint for violation of any rule as alleged in the Commission's complaint.

(f) ACTIONS BY OTHER STATE OFFICIALS.—

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection

(a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers and who are designated by the Commission to bring an action under subsection (a) against persons that the Commission has determined have or are engaged in a pattern or practice of telemarketing which violates a rule of the Commission under section 3.

SEC. 5. ACTIONS BY PRIVATE PERSONS.

(a) In General.—Any person adversely affected by any pattern or practice of telemarketing which violates any rule of the Commission under section 3, or an authorized persons acting on such person's behalf, may, within 3 years after discovery of the violation, bring a civil action in an appropriate district court of the United States against a person who has engaged or is engaging in such pattern or practice of telemarketing if the amount in controversy exceeds the sum or value of $50,000 in actual damages for each person adversely affected by such telemarketing. Such an action may be brought to enjoin such telemarketing, to enforce compliance with any rule of the Commission under section 3, to obtain damages, or to obtain such further and other relief as the court may deem appropriate.

(b) Notice.—The plaintiff shall serve prior written notice of the action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the person shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(c) Actions by the Commission.—Whenever the Commission has instituted a civil action for violation of any rule prescribed under section 3, no person may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

(d) Costs and Fees.—The court, in issuing any final order in any action brought under subsection (a), may award costs of suit and reasonable fees for attorneys and expert witnesses to the prevailing party.

(e) Construction.—Nothing in this section shall restrict any right which any person may have under any statute or common law.

SEC. 6. PROCESS.

(a) Civil Suits.—In any suit brought against a person, partnership, or corporation under section 13(b) of the Federal Trade Commission Act (15 U.S.C. 53(b)) to enjoin—

(1) deceptive telemarketing activities or other abusive telemarketing activities in violation of the rules prescribed under this Act, or

(2) unfair or deceptive telemarketing acts or practices in or affecting commerce (within the meaning of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1)),

the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be summoned without regard to whether they reside or transact business in the district in which the suit is brought, and to that end process may be served wherever such other person, partnership, or corporation may be found.

(b) Criminal Contempt Actions.—In any case described in subsection (a)(1) or (2), the Commission may bring a criminal contempt action for violations of orders obtained in such case in the same manner as civil penalty and other Federal court actions apply under section 16(a)(1) of the Federal Trade Commission Act (15 U.S.C. 56(a)(1)). Such criminal cases may be initiated by the Commission pursuant to the appointment as a Special Assistant United States Attorney by the Attorney General of an attorney employed full-time by the Commission to assist the Attorney General in the prosecution of such cases. Such appointment may be instituted at the request of the court which has entered the order for which contempt is sought. The Attorney General shall decide on the appointment within 45 days after receipt of such request for appointment of a Commission lawyer as a Special Assistant United States Attorney. The authority to bring criminal contempt actions under this subsection expires 3 years after the date of enactment of this Act.

SEC. 7. INVESTIGATION.

(a) Civil Investigative Demand for Physical Evidence.—In any investigation by the Commission with respect to—

(1) deceptive telemarketing activities or other abusive telemarketing activities in violation of the rules prescribed under this Act, or

(2) unfair or deceptive telemarketing acts or practices in or affecting commerce (within the meaning of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1)),

the Commission's powers with respect to a civil investigative demand shall include a demand for the production of physical evidence.

(b) Issuance of Demand.—A civil investigative demand in an investigation described in subsection (a)(1) or (2) may require the person upon whom the demand is served to produce physicial evidence for inspection, to give oral testimony concerning physical evidence, or to furnish such physical evidence and testimony in combination with documentary material, answers, or testimony described in section 20(c)(1) of the Federal Trade Commission Act (15 U.S.C. 57b-1(c)(1)).

(c) Contents.—Each such civil investigative demand for the production of physical evidence shall—

(1) describe each class of physical evidence to be produced under the demand with such definiteness and certainty as to permit such evidence to be fairly identified;

(2) prescribe a return date or dates which will provide a reasonable period of time within which the physical evidence so demanded may be assembled and made available for inspection and copying or reproduction; and

(3) identify the custodian to whom such physical evidence shall be made available.

(d) Production of Evidence in Response to Demand.—The production of physical evidence in response to such civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the physical evidence required by demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(e) Other Requirements.—Except as provided in this section, the requirements of section 20 of the Federal Trade Commission Act (15 U.S.C. 57b-1) apply to a civil investigative demand in an investigation described in subsection (a)(1) or (2).

(f) Definition.—In this subsection, the term "physical evidence" means any object or device.

SEC. 8. ADMINISTRATION AND APPLICABILITY OF ACT.

(a) In General.—Except as otherwise provided in sections 4 and 5, this Act shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this Act.

(b) Actions by the Commission.—The Commission shall prevent any person from violating a rule of the Commission under section 3 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.

SEC. 9. DEFINITIONS.

For purposes of this Act:

(1) The term "attorney general" means the chief legal officer of a State.

(2) The term "Commission" means the Federal Trade Commission.

(3) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(4) The term "telemarketing" means a plan, program, or campaign which is conducted to induce purchases of goods or services by significant use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which—

(A) contains written description or illustration of the goods or services offered for sale,

(B) includes the business address of the seller,

(C) includes multiple pages of written material or illustrations, and

(D) has been issued not less frequently than once a year,

where the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation.

SEC. 10. REVIEW.

Upon the expiration of 5 years following the date of the enactment of this Act, the Commission shall review the implementation of this Act and its effect on deceptive telemarking activities and report the results of this review to the Congress.

Mr. BRYAN. As chairman of the Commerce Committee Consumer Subcommittee, I am pleased by the consideration by the full Senate of S. 1392, legislation to protect consumers from telemarketing fraud.

It is now common knowledge that the telemarketing business has become a fertile ground for fraudulent operators. The FTC estimates that telemarketing fraud costs consumers billions of dollars each year. The Consumer Federation of America, along with the National Association of Consumer Agency Administrators, completed a survey of State and local consumer protection agencies which identified telemarketing as one of the worst consumer ripoffs and abuses. A recent report by the National Consumers League shows that over 5.5 million people have bought something by telephone they now feel was a definite fraud.

Under these practices, consumers are typically offered goods and services that are what we call too good to be true. The offers include luxury items and fabulous trips at little or no cost. The consumer is often required to pay in advance, and is generally asked to pay by credit card. The reality, however, is that many of these deals are indeed too good be to be true. Sometimes the items are never delivered, or are not of the value which the consumer expected. Many of these operations are fly-by-night boilerroom shops, whose contact with the consumer is limited to the telephone, and whose mobility permit the consumer no recourse in the event the goods are deficient or not delivered. The quick movement and deceptive tactics by these scam operators also make it difficult for enforcement and prosecution, particularly for State law enforcement officials.

As I have stated before, no one knows the problems of telemarketing abuse better than the citizens of my own State of Nevada. During the 1980's, fraudulent telemarketing boilerrooms were a growth industry in Nevada. The State's consumer affairs division has recorded over 15,000 written complaints and over 66,000 telephone inquiries from consumers concerned about such fraud. Estimates show that Nevada consumers lost about $8 million between 1984 and 1989 because of fraudulent telemarketing schemes.

The State government, together with the Federal strike force, has done an admirable job in attempting to deal with this overwhelming problem. The boilerroom industry has gone into sharp decline, from 400 telemarketing firms with 20,000 employees in 1988 to 60 operations with 5,000 salespeople in 1989. The State has enacted creative and effective legislation to address this problem, requiring licensing of telemarketers and establishing tough antifraud provisions in the securities area, which I was pleased to sign into law when I served as Governor.

The effects of telemarketing fraud, however, are felt throughout the Nation, both by consumers and legitimate telemarketers. The FTC and the National Association of State Attorneys General have both stated that they consider telemarketing fraud a grave threat to consumers, and that the problem is one of their top priorities.

In the last Congress, I introduced legislation to strengthen the FTC's authority, and the ability of State attorneys general and individual consumers, to combat fraudulent telemarketing. I was joined in that effort by Senator MCCAIN. At the beginning of this Congress, Senator MCCAIN and I reintroduced the legislation. The bill, S. 1392, was passed unanimously by the full Senate. Similar legislation introduced by Congressman SWIFT, H.R. 3203, was passed by the House.

The legislation that I am introducing today retains provisions from S. 1392 as originally passed, and also incorporates provisions from H.R. 3203. This legislation directs the Federal Trade Commission to undertake a rulemaking to prohibit fraudulent and abusive telemarketing activities. It also provides new enforcement tools for the FTC. Equally important, S. 1392 provides a new cause of action for State attorneys general and other State officials, and for private parties.

The bill provides that the FTC rules respecting deceptive and abusive telemarketing activities shall be considered rules issued under section 18(a)(2)(B) of the Federal Trade Commission Act. In determining whether to make a finding under section 18(f)(1) of the Federal Trade Commission Act that the acts or practices of banks, savings associations, or Federal credit unions are not unfair or deceptive in this connection, it is the intention of the Congress that the appropriate Federal banking regulator include in its consideration, first, whether banks, savings associations, or credit unions in fact engage in deceptive or abusive telemarketing, and, second, whether existing laws or regulations provide protection from deceptive or abusive telemarketing substantially similar to the protection provided by the rules promulgated by the FTC under this bill.

Second, it is the intention of the Congress that the rules the FTC will promulgate under this bill concerning deceptive and abusive telemarketing activities expressly prohibit credit card laundering. Credit card laundering is the practice by which fraudulent telemarketers, sometimes acting in conjunction with third-party intermediaries as brokers, persuade merchants with access to the credit card system to submit, in the name of that merchant, the fraudulent telemarketers' sales drafts into the credit card system. This practice enables the fraudulent telemarketer to avoid the safeguards the credit card systems and the financial institutions participating in these systems have established to preclude access by the fraudulent telemarketer to the credit care system.

The FTC's prohibition of credit card laundering should be broad enough to cover all of the parties involved in credit card laundering—the fraudulent telemarketer, the merchant submitting the fraudulent telemarketer's sales drafts into the credit card system, and any third-party intermediaries causing or arranging the credit card laundering. However, this credit card laundering prohibition should not cover the activities of a legitimate servicing organization which, as an authorized agent of a member of a credit card system, provides services directly to merchants, including, among other things, processing sales drafts. It should not cover an act or practice expressly permitted in a valid agreement with a member of a credit card system or the member's authorized agent. An agreement in violation of the rules of the application credit card system should not constitute a valid agreement for these purposes. In addition, this prohibition generally should not apply to a messenger or other delivery service that is used by a telemarketer merely to physically transport sales drafts, if the messenger or delivery service does not arrange for the sales drafts to be presented to a member of the credit card system or the member's agent.

Finally, the bill provides that the private party actions provided for in the bill may be brought by a victim or an authorized person acting on the victim's behalf. It is the intention of the Congress that such an authorized person includes, among others, a financial institution that has incurred loss or damage, such as through reimbursement of a victimized credit card holder, as well as a member organization comprising financial institution members, or any parent organization of such member organization, if one or more of its financial institution members is eligible to bring a civil action under the bill.

It should be noted that both the National Association of Attorneys General and the U.S. Department of Justice strongly support the provision that would allow all the State attorneys general to enforce a Federal telemarketing rule both on behalf of consumers and State entities. The parens patriae language is not intended to introduce any additional procedural requirements that would delay or otherwise hinder the ability of the State attorneys general to move quickly to enforce the rights of citizens of their States.

Mr. President, this legislation is vitally important. S. 1392 will protect all consumers, as well as legitimate businesses and financial institutions, from becoming unwilling victims of unscrupulous and fraudulent telemarketers. I ask for the unanimous support of my colleagues.

Mr. MCCAIN. Mr. President, I am pleased at the passage of the conference report on S. 1392, the Telemarketing and Consumer Fraud and Abuse Prevention Act. This legislation is long overdue. It addresses the issue of telemarketing fraud which continues to prey upon innocent victims in my State of Arizona, and around the country. Advancements in communications technology have ironically proven to be both a benefit and a liability to consumers. While new technologies have provided greater choices to consumers in the marketplace, they have also widened the options of scam operators in selecting a vehicle for cheating consumers out of their earnings.

We all know too well the prevalence of these practices. Senator BRYAN and I have worked together on two telemarketing fraud bills, S. 2494, which was unanimously passed in the Senate in the fall of 1990, and S. 1392 which was again approved in the fall of 1991. This legislation has become increasingly more imperative as the practice becomes more and more sophisticated and less apparent even to the most alert consumer. The need for enacting Federal legislation has never been greater.

I have stated repeatedly that this legislation is not directed at the legitimate telemarketing industry. This industry has provided consumers greater options for obtaining information, entertainment, and home shopping opportunities. A great many of these telemarketing companies are legitimately operated by honest business men and women. Nevertheless, the increases in telemarketing fraud have been a scourge on the industry, and consumers have lost money, in some cases their health, and, in all cases, their patience.

Telemarketing and consumer fraud costs American taxpayers tens of billions of dollars per year. Such fraud is often committed by individuals who escape legal action by dismantling their operation and relocating to begin the operation again. In the cases of these so-called boilerroom scams, both the victims and the perpetrators are difficult to locate since the operations often consist of nothing more than phone banks which do not readily provide detailed evidence of illegal activity.

Of even greater concern are the so-called root organizations which support the boiler rooms and facilitate credit card laundering, an activity which has been shown to be integral to the telemarketing fraud industry. The Federal Trade Commission [FTC] has focused its efforts on bringing cases against these root organizations in order to bring down their client boiler-room outfits, and stop credit card laundering.

The impact of credit card laundering has been harmful to both consumers and banking institutions throughout the Nation. This is exemplified by the situation where a fraudulent telemarketer uses the credit card privileges of a merchant to obtain legitimate credit card drafts as records of transactions to receive payment from the unsuspecting customer's bank.

This exact scenario played out in my State of Arizona. On February 15, 1990, Gateway National Bank in Phoenix was declared insolvent by the Office of the Comptroller of the Currency. Just 1 year prior to insolvency, Gateway claimed assets of $11 million. One of the main reasons attributed to its demise was the overwhelming number of chargebacks the bank had to absorb because of merchants' failure to pay. These chargebacks ate away at the bank's equity capital, depleting it so as to render the bank insolvent.

The message here is clear: With credit card fraud, and all kinds of telemarketing fraud, the consumer and the banking communities are the big losers.

The cases involving telemarketing fraud continue to make news. In April 1991, the FTC brought charges against the makers and marketers of the Arizona-based Amerdream Corp. which misrepresented its product, the so-called ultimate solution diet program, falsely claiming that a Harvard study showed an ingredient in the ultimate solution's night trim diet tablets to be effective in achieving significant weight loss and reducing cholesterol levels and blood pressure. The program also promised consumers of the ultimate solution a 100-percent moneyback guarantee and a $1,000 U.S. Treasury bond just for buying and testing a 2-month supply, which has now been found to be false.

In July 1991, the FTC brought additional charges against the president of Amerdream for false claims made through another one of his companies, also based in Arizona, Advanced Automotive Technologies, Inc., the maker of the Petromizer. A Federal court found that Advanced Automotive falsely represented that the Petromizer increases gas mileage by more than 28 percent, increases automobile horsepower and acceleration by 11 percent, and reduces automobile emissions, including a 100-percent reduction in carbon monoxide emissions, and that various Federal and State organizations helped develop or had tested the product and proven its effectiveness. This marketing technique was very effective in the period during the conflict in the Persian Gulf, where concerns about gasoline supplies were heightened.

As a result of the FTC's efforts in these two cases, a Federal court ordered the companies to pay nearly $675,000 for consumer redress.

I wish these were isolated cases, but we all know they are not. Every segment of society is victimized by telemarketing fraud. The elderly are always targeted by scam operators peddling phony health care products.

Every consumer cries out for greater law enforcement protection. Congressional action has been long overdue, and I am pleased that the Senate and the House of Representatives have passed this legislation.

One of the most important aspects of this legislation are the enforcement provisions which will help the FTC catch these scam operators, wherever they may go, and bring them to justice. The bill also assists the State attorneys general in fighting telemarketing fraud as well. Each part of this bill is extremely important within the framework of helping those on a State and Federal level fight telemarketing fraud and protect consumers.

I appreciate the efforts that have been made by the legitimate members of the telemarketing community and by the consumer advocacy groups, both of whom have worked together in a successful partnership to fight against fraud.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INTER-AMERICAN SCIENTIFIC COOPERATION ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of H.R. 3215, the Inter-American Scientific Cooperation Act of 1992, and that the Senate then proceed to its immediate consideration.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The bill will be stated by title.

The assistant legislative clerk read as follows:

> A bill (H.R. 3215) to reinvigorate cooperation between the United States and Latin America in science and technology.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3421

(Purpose: To make an amendment in the nature of a substitute)

Mr. FORD. Mr. President, on behalf of Senator BINGAMAN and Senator LIEBERMAN, I send a substitute amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Kentucky [Mr. FORD] for Mr. BINGAMAN (for himself and Mr. LIEBERMAN) proposes an amendment numbered 3421.

Mr. FORD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Inter-American Scientific Cooperation Act of 1992".

SEC. 2. FINDINGS AND DEFINITION.

(a) FINDINGS.—The Congress finds the following:

(1) Latin America shares a wide range of scientific and technological concerns with the United States.

(2) The need for science and technology cooperation with Latin America has increased significantly since the 1970s, but mechanisms for cooperation have decreased significantly since many countries in Latin America graduated from programs sponsored by the Agency for International Development.

(3) Latin American scientists and engineers have increasingly looked to Europe and Japan for advanced training and research. This trend may result in a loss of mutually beneficial commerce and scientific cooperation between Latin America and the United States.

(4) Investment by the United States in the Latin American science and technology infrastructure and participation of United States scientists and engineers in short-term and long-term assignments in Latin America can further improve relations between the United States and Latin America, and bring many benefits to the United States, including scientific access, enhanced trade and investment relations, and the opportunity to contribute to economic growth and democratization in the hemisphere.

(5) Science and technology cooperation with the United States, and advanced training and research in the United States, can bring many benefits to Latin America. In developing countries, cooperation can contribute to the strengthening of basic science and technology infrastructure. In industrially advanced Latin American countries, cooperation can increase opportunities in many scientific disciplines and in the frontier scientific fields.

(6) Considerable progress in science and technology cooperation can be made with relatively modest investments.

(7) The return to democracy in a number of Latin American countries provides renewed vigor for freedom of scientific inquiry, cooperation, and progress, as well as a focus for the reversal of the decline in science and technology cooperation between the United States and Latin America.

(b) DEFINITIONS.—As used in this Act—

(1) the term "debt-for-science exchange" means an agreement, between a grantee under section 4 and a Latin American country, that provides that the grantee shall cancel its right to collect payment on a portion of the commercial external debt of that Latin American country, in exchange for the country's contribution to the grantee of local currencies or other assets to support scientific and technological research in the country;

(2) the term "Director" means the Director of the National Science Foundation; and

(3) the term "Latin America" means Mexico, the Caribbean basin, Central America, and South America.

SEC. 3. ESTABLISHMENT OF THE PROGRAM.

The National Science Foundation shall establish an Inter-American Scientific Cooperation Program (hereafter in this Act referred to as the "Program") aimed at increasing the level of science and technology cooperation between the United States and Latin America. The National Science Foundation, in establishing the Program, shall identify and cooperate with private and governmental funding bodies, both in Latin America and in the United States. The Program shall include the following elements:

(1) Encouragement and funding of project development interchanges and joint research projects between United States and Latin American scientists and engineers. Joint projects and interchanges funded by the National Science Foundation shall, whenever possible, include cost sharing from sources within the Latin American countries whose citizens participate. The Director shall determine the amount of cost sharing which is required.

(2) Establishment in accordance with section 13 of the National Science Foundation Act of 1950 (42 U.S.C. 1872) of an Inter-American Scientific Exchange. The Exchange's activities shall include collection and dissemination of information to Latin Americans on avenues for advanced study in science and engineering in the United States; United States assistance to Latin American institutions, at the institutions' request, for development of courses, seminars, and curricula in science and engineering; and other forms of scientific and technological cooperation as may be mutually agreeable, such as research projects in furtherance of professional development. In carrying out this paragraph the Director shall coordinate with other Federal agencies offering programs for foreign nationals for advanced study and research in the sciences and in engineering.

(3) Exchange of information and technical assistance between United States and Latin American scientists and engineers interested in establishing data bases and connecting to computer networks such as the National Research and Education Network.

(4) Exchange of information to facilitate the routing of scientific equipment between the United States and Latin America, including information with respect to matching equipment with need, identifying technical maintenance requirements, and meeting customs regulations

(5) Promotion of research programs which utilize unique natural environments or existing or potential centers of scientific research excellence in Latin America.

SEC. 4. DEBT-FOR-SCIENCE EXCHANGES

"(a) GRANTS.—The Director is authorized to make grants to nongovernmental organizations within the United States, including colleges and universities, for the purpose of acquiring the commercial external debt of Latin American Countries and undertaking such other activities as are necessary to carry out debt-for-science exchanges. Before making any grant under this section, the Director shall ascertain that—

(1) funds received from a Latin American country in connection with the debt-for-science exchange to which the grant applies will be expended only for cooperative research and development projects, including those described in section 3; or to fund endowments for the long-term support of cooperative research and development projects;

(2) the debt-for-science exchange will result in making funds available for such cooperative projects which otherwise would not be available;

(3) the amount of local currency provided by the Latin American country as a result of the debt-for-science exchange will be substantially greater than the cost of acquiring the country's commercial external debt;

(4) the grantee certifies that the Latin American country has accepted the terms of the exchange and that an agreement has been reached to cancel the commercial debt in an agreed upon fashion; and

(5) Federal grants made under this section will be equally matched by non-Federal contributions to acquire the commercial external debt of the Latin American country.

"(b) RETENTION OF INTEREST.—Grantees or subgrantees of funds provided under this section may retain, without deposit in the Treasury of the United States and without further appropriation, interest earned on the proceeds of any resulting debt-for-science exchange pending disbursements of such proceeds and interest for approved program purposes, which may include the establishment of an endowment, the income of which is used for such purposes.

"(c) COORDINATION WITH OTHER FEDERAL AGENCIES.—In carrying out subsection (a) the Director shall coordinate with Federal agencies, such as the Agency for International Development, that have expertise in debt exchanges.

SEC. 5. REPORT ON BINATIONAL SCIENCE FOUNDATIONS.

"(a) REPORT TO CONGRESS.—Within 180 days after the date of enactment of this Act, the Director shall submit to Congress a report which—

(1) describes existing Binational Science Foundations in Latin America and elsewhere and the research funded by them;

(2) identifies successful binational foundations in Latin America in areas other than sciences and technology;

(3) evaluates the advantages and disadvantages of Binational Science Foundations in comparison to direct funding of joint research projects;

(4) identifies countries in Latin America that might benefit by establishment of a Binational Science Foundation between that country and the United States;

(5) identifies types of cooperative scientific research and educational projects that might most effectively be funded through Binational Science Foundations;

(6) assesses, by country, the availability of private-sector funding and in-country funding to match United States funding of Binational Science Foundations in Latin America; and

(7) identifies legislative or administrative changes needed if the National Science Foundation is to fund establishment of Binational Science Foundations.

(b) CONSULTATION.—In carrying out subsection (a), the Director shall consult with Federal agencies, such as the Department of State and the Agency for International Development, that have participated in binational foundations in Latin America and elsewhere.

SEC. 6. REPORT ON PROGRAM.

Within 180 days after the date of enactment of this Act, the Director shall submit to Congress a report which—

(1) details activities funded by the National Science Foundation and carried out by or in cooperation with Latin American countries during the preceding fiscal year;

(2) includes a description of how activities of the Program relate to other ongoing and prospective National Science Foundation activities in Latin America;

(3) describes plans for the current and upcoming fiscal years' activities of the Program;

(4) recommends priorities for the Program for cooperation in terms of scientific disciplines and geographic regions; and

(5) recommends necessary legislative or administrative changes in the Program.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Director for carrying out this Act—

(1) $10,000,000 for fiscal year 1993; and

(2) $10,000,000 for fiscal year 1994.

Mr. BINGAMAN. Mr. President, on behalf of myself and Senator LIEBERMAN, I send to the desk a substitute amendment to H.R. 3215, the Inter-American Scientific Cooperation Act of 1992, which authorizes the National Science Foundation [NSF] to establish an Inter-American Scientific Cooperation Program to increase efforts to support joint research projects in Latin America. I appreciate the help of Senator HOLLINGS, who is chairman of the primary committee of jurisdiction on this legislation, the Commerce Committee, in developing this compromise amendment.

I first introduced this legislation in 1990 (S. 2733) as a companion bill to a bill introduced by Congressman BROWN (H.R. 2152). My interest derived really from the efforts of my former New Mexico colleague Congressman Manuel Lujan, now Secretary of the Interior who championed very similar legislation during his tenure in the House. In this Congress I introduced S. 2733 and am pleased to have Senators SEYMOUR and LIEBERMAN as cosponsors of the bill. Over the past 2 years this legislation has gone through several iterations. As originally conceived, and still retained in this amendment, the legislation seeks to establish a strong alliance in joint research and education between Latin America and the United States.

This legislation is aimed at increasing our scientific and technological ties with the nations of Latin America. The United States is known as a world leader in science and technology. In order to maintain and strengthen our leadership, the United States needs to reevaluate our current process for science and technology cooperation. Unfortunately, cooperative efforts between the United States and one of our most important partners, Latin America, have declined in the past 20 years. The amendment seeks to reverse this trend by establishing a strong alliance in joint research and education between Latin America and the United States.

As scientific cooperation between Latin America and the United States has declined, Latin America has looked increasingly to Europe and Japan for scientific and technological training. This trend, in conjunction with the increased emphasis on science and technology in the national development plans of many Latin American nations, will mean a loss of United States influence if we do not act to reassert our interest in this area. Such a reawakening of United States-Latin American cooperation is not only possible but imperative. The amendment is but one step, albeit an important step, toward reinvigorating cooperation between the United States and Latin America.

The amendment will help American scientists working with their colleagues in Latin America to cooperatively develop new technologies and address and monitor environmental problems. We need to develop policies with our Latin American neighbors which are consistent and which support common interests in science and technology. As the Latin American nations strive to increase the standard of living for their people and as we strive to become more economically competitive with other industrialized nations in Europe and Asia, the need for cooperation between the nations of Latin America and the United States becomes evident. It is good policy for us to forge scientific and technological partnerships with Latin America now, as a basis for establishing economic markets later. The United States would not only aid Latin America but would also benefit from expanded trade and investment opportunities.

Unique natural environments and conditions make Latin America a critical area for research opportunities for United States scientists. For example, to thoroughly investigate such topics as the deforestation of the Amazon Basin and its contribution to global climate change and species diversity, United States scientists need stable working relationships with Latin American scientists as well as access to these environments.

The new Inter-American Scientific Cooperation Program within the NSF would consist of several elements. The first is an expansion of funds. At present, NSF funds joint research projects between the United States and Latin America through its international division, with funding under $1 million. The amendment would expand the scope of joint research activities with an authorization of up to $10 million in fiscal year 1993 and up to $10 million in fiscal year 1994.

This amendment would also increase the number of Latin American exchange students eligible to study in the United States. Since the peak year of 1982, enrollment of Latin American students in the United States has dropped by 31 percent and more Latin American students have elected to study in Europe and in Japan. This trend has been fostered by several factors including the Latin American debt crisis, devaluation of currencies, decline of oil revenues, rise in the cost of education in the United States, improvement in indigenous opportunities, and increased opportunities in other Latin American countries, Europe, and Japan.

In order to reverse these trends, this amendment establishes the Inter-American Scientific Educational Development Exchange to provide graduate and post-doctoral fellowships, both for Latin Americans studying in the United States and for United States students who wish to study in Latin America. There will also be an exchange of information and technical assistance between the scientists and engineers of both countries interested in establishing data bases and computer linkages.

In addition, this amendment authorizes NSF to provide grants to colleges and universities so that they may enter into debt-for-science swaps in order to leverage NSF research dollars. Under these arrangements, colleges and universities purchase, from American banks, commercial debt issued by Latin American countries. Due to the Latin American debt crisis, this debt is often available for a fraction of its face value.

I would have preferred that the amendment go further with respect to binational science foundations in Latin America. I favored language that would facilitate the establishment of binational science foundation encouraging, whenever possible, each participating country in Latin America to make financial contributions to the establishment of such foundations. But because of concerns from the Senate Foreign Relations Committee this amendment calls for the National Science Foundation to report to Congress on how binational science foundations could be used to provide long-term funding for cooperative research projects in Latin American countries.

We have already had reports written on this topic. There are other binational science foundations, like those established between Israel and the United States, and more recently in the Freedom Support Act, which will hopefully be passed within the next few days, with Russia and the other States of the former Soviet Union, which can serve as models for foundations with Latin American countries. I can only hope we will receive a positive report from NSF allowing us to move forward with establishing the foundation in the next Congress.

Mr. President, the viability of the United States economy is inescapably linked to the world economy. A successful Latin America will be fundamental to world economic growth and thus to our own. Increased cooperation by the United States and Latin America in the areas of science and technology will provide new research and development opportunities and, as a consequence, positively impact economic growth. I urge my colleagues to support this important legislation.

AMENDMENT NO. 3422

(Purpose: To establish a wind engineering program within the National Institute of Standards and Technology)

Mr. FORD. Mr. President, on behalf of Senator HOLLINGS, I send an amendment regarding wind engineering to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] for Mr. HOLLINGS (for himself and Mr. THURMOND) proposed an amendment numbered 3422.

Mr. FORD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

At the end, add the following:

SEC. 8. SHORT TITLE.

(a) This section may be cited as the "Wind Engineering Program Act of 1992".

(b) FINDINGS AND PURPOSES.—The Congress finds the following:

(1) Hurricanes and tornadoes kill more Americans and destroy more property than any other natural disaster.

(2) Each year, in the United States, extreme winds cause billions of dollars of damage to homes, schools, and other buildings, roads and bridges, electrical power distribution networks, and communications networks.

(3) Research on wind and wind engineering has resulted in improved methods for making buildings and other structures less vulnerable to extreme winds, but additional research funding is needed to develop new, improved, and more cost-effective methods of wind-resistant construction.

(4) Federal funding for wind engineering research has decreased over the last twenty years.

(5) Wind research has been hampered by a lack of data on near-surface wind speed and distribution during hurricanes, tornadoes, and other severe storms.

(6) Many existing methods for wind-resistant construction are inexpensive and easy to implement but often they are not applied because the construction industry and the general public are unaware of such methods.

(7) Various Federal agencies have important roles to play in wind engineering research, but at present there is little interagency cooperation or coordination in this area.

(8) Establishment of a Federal Wind Engineering Program would result in new technologies for wind-resistant construction, broader application of such technologies in construction, and ultimately decreased loss of life and property due to extreme winds.

(c) PURPOSE.—The purpose of this section is to create a Wind Engineering Program within the National Institute of Standards and Technology, which would—

(1) provide for wind engineering research;

(2) serve as a clearinghouse for information on wind engineering; and

(3) improve interagency coordination on wind engineering research between the National Institute of Standards and Technology, the National Oceanic and Atmospheric Administration, the National Science Foundation, the Federal Aviation Administration, and other appropriate agencies.

(d) ESTABLISHMENT.—Within the National Institute of Standards and Technology, there shall be established a Wind Engineering Program which shall—

(1) conduct research and development, in cooperation with the private sector and academia, on new methods for mitigating wind damage due to tornadoes, hurricanes, and other severe storms;

(2) fund construction and maintenance of wind tunnels and other research facilities needed for wind engineering research;

(3) promote the application of existing methods for, and research results on, reducing wind damage to buildings that are usually incompletely- or non-engineered, such as single family dwellings, mobile homes, light industrial buildings, and small commercial structures;

(4) transfer technology developed in wind engineering research to the private sector so that it may be applied in building codes, design practice, and construction;

(5) conduct, in conjunction with the National Oceanic and Atmospheric Administration, post-disaster research following hurricanes, tornadoes, and other severe storms to evaluate the vulnerability of different types of buildings to extreme winds;

(6) serve as a point of contact for dissemination of research information on wind engineering and work with the private sector to develop education and training programs on construction techniques, develop from research results, for reducing wind damage;

(7) work with the National Oceanic and Atmospheric Administration, the Federal Aviation Administration, and other agencies as is appropriate, on meteorology programs to collect and disseminate more data on extreme wind events; and

(8) work with the National Science Foundation to support and expand basic research on wind engineering.

(e) AUTHORIZATIONS.—(1) There are authorized to be appropriated to the National Institute of Standards and Technology for the purpose of this section $1,000,000 for fiscal year 1993 and $3,000,000 for fiscal year 1994.

(2) Of the amounts authorized under paragraph (1), no less than 50 percent shall be used for cooperative agreements with the National Oceanic and Atmospheric Administration, the National Science Foundation, the Federal Aviation Administration, or other agencies, for wind engineering research, development of improved practices for structures, and the collection and dissemination of meteorological data needed for wind engineering.

Mr. HOLLINGS. Mr. President, the amendment that Senator THURMOND and I are offering is nearly identical to S. 3273, the Wind Engineering Program Act of 1992, which I introduced, along with Senators INOUYE, BREAUX, AKAKA, and BENTSEN, on September 25. A companion bill, H.R. 6039, was introduced in the House by Representatives TOM LEWIS, GEORGE BROWN, and several others.

This is a small but important bill that will do a great deal to prevent the type of wind damage caused by Hurricane Hugo in South Carolina, Hurricane Andrew in Florida and Louisiana, and Hurricane Iniki in Hawaii. Houses ripped to pieces by the wind—entire neighborhoods flattened—block after block without a single house or tree standing; these are the terrible effects of the recent storms that have ravaged several of our States.

By taking a few extra precautions, architects and builders can construct buildings to withstand hurricane-force winds, and it does not require a great deal of special, expensive hardware or sophisticated, new building techniques. Engineers have developed inexpensive, simple techniques for ensuring that roofs stay in place and windows remain intact—even if wind speeds top 120 or 130 miles per hour. Yet, too often, home owners and builders do not know about these techniques.

This amendment would create a Wind Engineering Program at the National Institute of Standards and Technology [NIST] of the Department of Commerce. For years, the Center for Building Technology at NIST has helped builders and architects to design better buildings. The Center is well-known for developing new ways to design and build earthquake-resistant buildings. It helps builders to evaluate new building materials and techniques.

The Wind Engineering Program Act would authorize a total of $4 million over the next 2 years to create a Wind Engineering Program at NIST. The program would coordinate wind engineering research being done at the National Oceanic and Atmospheric Administration [NOAA], the National Science Foundation [NSF], and other agencies. One-half of the money authorized would be used for joint projects with other agencies. For instance, this money could be used by NOAA and Department of Defense meteorologists to provide better data on wind speeds in severe storms so that wind engineers at NIST, in universities, and in industry can understand better how winds damage structures. NIST could also join with NSF to fund wind engineering research in universities and to ensure that the results of that research are disseminated to the architects and builders who can put them into practice.

In this area of wind engineering, there is some very exciting, useful research being done in our universities. I am most familiar with research being done at Clemson University by Dr. Bell Sill, Dr. Peter Sparks, and others. They have constructed a wind tunnel that enables them to test the response of different types of roofs to hurricane-force winds. In addition, after Hurricane Hugo they used their expertise to assess the damage and determine how communities could prepare better for the next hurricane. This amendment will ensure that such important work in continued.

The program created by this amendment is similar to that called for in a recently released National Research Council report, "Wind and the Built Environment: U.S. Needs in Wind Engineering and Hazard Mitigation." That report documents how wind engineering could save lives and billions of dollars throughout the country and makes clear the inadequacy of Federal wind engineering programs.

The Wind Engineering Program created by this bill will be small, but I believe it can do a great deal to reduce the damage caused by hurricanes in the future. During the 1980's, severe wind storms—hurricanes, tornadoes, mountain winds like chinooks, and Santa Anas—caused an average of about $3.7 billion in damage to buildings and other facilities each year. According to some estimates, without new efforts to reduce wind damage, by the year 2000, the average annual cost could rise to $8.8 billion. This bill represents a solid investment—in terms of dollars and, more importantly, in terms of lives saved.

I urge my colleagues to support this legislation.

The ACTING PRESIDENT pro tempore. Without objection, the amendment is agreed to.

So the amendment (No. 3422) was agreed to.

The ACTING PRESIDENT pro tempore. Without objection, the substitute amendment, as amended, is agreed to.

So the substitute amendment (No. 3421), as amended, was agreed to.

The ACTING PRESIDENT pro tempore. Without objection, the bill is considered deemed read a third time and passed.

So the bill (No. 3215), as amended, was deemed read the third time and passed.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UNITED STATES AND STATE OF UTAH LAND EXCHANGE ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 758, H.R. 5118, relating to a Utah land exchange.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5118) to exchange lands within the State of Utah, between the United States and the State of Utah.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The ACTING PRESIDENT pro tempore. Are there any additional floor amendments.

AMENDMENT NO. 3423

Mr. FORD. Mr. President, on behalf of Senator GARN, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] for Mr. GARN proposes an amendment numbered 3423.

Mr. FORD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 3, lines 9 and 10, strike "Nevada, amounting to about" and insert "Nevada, comprising approximately".

On page 5, line 2, strike "Act, credit to" and insert "Act, compensate".

On page 5, line 3, strike "Utah the" and insert "Utah for".

On page 5, line 11, strike "shall send" and insert "shall transmit to".

On page 6, line 6, strike "coal in" and insert "coal located in".

On page 6, line 8, strike "coal in" and insert "coal located in".

On page 6, starting on line 11, strike "Secretary may" and insert "Secretary shall".

On page 6, line 12, strike "the right to receive".

On page 7, strike lines 1 through 3 and insert "royalties under this section exceeding $12,500,000 annually."

On page 7, line 22, strike "shall arrange" and insert "shall provide".

On page 8, strike lines 3 through 14 and insert:

"(b) DEADLINE AND DISPUTE RESOLUTION.—(1) If after two years from the date of enactment of this Act, the parties have not agreed upon the final terms of some or all of the exchanges authorized by this Act, including the value of the lands involved in some or all of such exchanges, notwithstanding any other provisions of law, the United States District Court for the District of Utah, Central Division, shall have jurisdiction to hear, determine, and render judgment on the value of any and all lands, or interests therein, involved in the exchange."

On page 8, strike lines 15 through 24.

On page 9, after line 5 insert:

"(c) ADJUSTMENT.—If the State shares revenue from the selected Federal properties the value of such properties shall be the value otherwise established under this section, less the percentage which represents the Federal revenue sharing obligation, but such adjustment shall not be considered as reflecting a property right of the State of Utah.

"(d) INTEREST.—Any royalty offer by the Secretary pursuant to subsection 7(b) shall be adjusted to reflect net present value as of the effective date of the exchange. The State shall be entitled to receive a reasonable rate of interest at a rate equivalent to a five year treasury note on the balance of the value owed by the United States from the effective date of the exchange until full value is received by the State and mineral rights revert to the United States as prescribed by subsection 9(a)(3).".

On page 12, line 24, strike "establish funding," and insert "establish a funding mechanism,".

Mr. GARN. Mr. President, I am pleased to join with my colleague from Utah, Senator HATCH, to legislatively address a situation which was placed upon the State of Utah by the Federal Government at the time it entered the Union in 1896. Many people, including the Governor and representatives of PTA's throughout Utah have worked tirelessly to bring us closer together on a State land exchange bill than we have ever previously been.

The amendments now before the Senate resolve the shortcomings of a bill passed earlier this week by the House, H.R. 5118. Specifically, the amendments allow the State of Utah to recoup revenues due it from the Federal Government from a broad cross section of Federal lands and royalties, in addition to those lands which are specifically listed in the bill. The House bill capped such revenues for these additional offers at $25 million total. The Senate amendments would allow the State to receive $12.5 million per year until the value of the land it traded to the Federal Government is met. Since no more than 50 percent of the revenues can come from so-called additional offers, this means the State could receive more money for the operation of its school system, sooner than if the House provision were left in place. It is a fair proposition to both the Federal Government and the State of Utah.

The effect of this legislation would be to remove State inholdings from within Utah's national parks, forests, and Indian reservations, in exchange for receiving revenue producing lands based on a recommendation put forth by the Secretary of the Interior and agreed to by the State.

Stated simply, at the time of statehood, the Congress granted Utah land sections numbered 2, 16, 32, and 36 "* * * for the support of the common schools * * *." A quick glance at a Utah State map reveals a hodgepodge system of land ownership that is inefficient, cumbersome, and one which deprives the school system of Utah tens of millions of dollars which, if available would reduce the tax burden of every property owner in the State.

Today, this checkerboard management scheme has the effect of giving every management decision over State lands to the various Federal land managers by default. When small, 1-square-mile sections are all surrounded by Federal land, this result is inevitable. For example, when the U.S. Forest Service or the Bureau of Land Management decides certain lands containing developable coal or other resources are better suited for other nondevelopment purposes, then, even though the State of Utah may want to develop those captive State lands for the benefit of the schools, the Federal land manager can effectively veto any decision the State may make concerning such lands. The end result of this ongoing dilemma is that in 1991, State lands generated less than 2 percent of the State of Utah's school budget. Two percent. The 98-percent difference is made up by Utahns paying inordinately high property taxes.

Mr. President, Utah spends more on education as a percent of its total State budget than any other State. Yet, per capita expenditures on students is the lowest of the 50 States. People may ask how can this be? Well, it's really very simple. The people of Utah have more kids per family than in any other State. We don't complain about the kids because they represent our future. But it is no longer possible to sit idly by while the Federal Government's land management policies effectively deprive Utah's State school trust lands of their revenue producing potential. So, parents and teachers and PTA's everywhere in Utah have begun to tell their elected Representatives to fix the problem, to obtain Utah's fair share. To accomplish this requires legislation. That is why this legislation is so important.

For nearly 18 years, it has been my privilege to represent the State of Utah here in the U.S. Senate. I have always tried to be a representative of all of the people. I haven't always succeeded, but I have always tried.

The bill before the Senate, includes lands with commercial value for selection by the Secretary of the Interior for possible transfer to the State. Regrettably, it does not include all available public land with commercial value in Utah. If it did, rural communities and the State school trust would benefit even more than they will from this limited measure.

In my view, Utah's new Governor, whoever he may be, should be entitled to choose from among all the revenue producing lands in the State, no matter how controversial, no matter where those lands are located. The State school trust and thus every school child in the State should be entitled to benefit from school trust lands in Utah. The PTA's around the State have worked long and hard to support measures which would realize the revenue producing potential available to the State school trust. I share their concerns and have done all that I can to amend the House bill in order to maximize the benefits to Utah's schoolchildren and equally as important, to their taxpaying parents.

In 1896, the Congress specifically set aside these State lands for the purpose of providing the maximum possible revenue to operate the school system in Utah. Now, 96 years later, the taxpaying parents of Utah's schoolchildren are demanding of their Representatives in Congress that this statehood promise finally be put into effect.

Mr. President, in summary, Utahns don't want a handout. We simply want what has been taken away from us—de facto—by the Federal land management agencies, whose mandates often differ from the legal mandate of the State to provide money for the education of its children.

Mr. HATCH. Mr. President, I am pleased to have this opportunity to join with Senator GARN in stating my support for this legislation that will address a problem that has been vexing Utah governmental and school leaders for generations.

When Utah gained its statehood, it was given one-ninth of all acres in the State for the support of its public schools. Out of every 36-square-mile township, Utah was given four sections. Unfortunately, much of that land now lies in the middle of Indian reservations, Forest Service units, national parks, national recreation areas, and land managed by the Bureau of Land Management. These lands, referred to as inholdings, are scattered throughout Utah. In many cases, these inholdings are in remote, inaccessible areas.

The isolated nature of these sections has made it impossible for the State to control, the management or economic development of its land, and as a result, the Utah school trust fund has been deprived of much-needed revenues.

The revenues from school trust land sales, mineral leases, and mineral royalties goes into a permanent account. Interest earnings from that account go into the State's annual education budget. At the end of 1991, Utah's permanent school trust fund contained $44 million. When compared to its other school trust fund neighbors of Arizona, Colorado, Idaho, New Mexico, and Wyoming, Utah is far behind. Colorado's trust fund, which is the next smallest, is over $200 million. New Mexico has over $2.5 billion in its trust fund.

Utah school districts are struggling to provide the necessary services to a growing school age population and are feeling a great deal of financial stress. Utah must have the ability to fully utilize its school trust lands. It is essential that a legislative process be provided to facilitate the exchange or purchase of Utah's inholdings.

This legislation would be beneficial to both the Federal Government and the State of Utah. The Federal Government would gain ownership of lands of great scenic value while maintaining the integrity of our national parks and forests. Utah would be able to better manage its school lands and generate the revenues that are desperately needed by Utah school districts.

Mr. President, I am pleased to join with my colleague in urging passage of this proposal that is so important to Utah's future.

The ACTING PRESIDENT pro tempore. Without objection, the amendment is agreed to.

So the amendment (No. 3423) was agreed to.

The ACTING PRESIDENT pro tempore. Without objection, the bill is considered deemed read the third time and passed.

So the bill (H.R. 5118), as amended, was deemed read the third time and passed.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, I ask unanimous consent that the Calendar 717 be indefinitely postponed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

JEMEZ NATIONAL RECREATION AREA

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 729, H.R. 2502, relating to the Jemez National Recreation Area.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2502) to establish the Jemez National Recreation Area in the State of New Mexico, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

H.R. 2502

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ESTABLISHMENT.

(a) PURPOSE AND ESTABLISHMENT.—In order to conserve, protect, and restore the recreational, ecological, cultural, religious, and wildlife resource values of the Jemez Mountains, there is hereby established the Jemez National Recreational Area (hereinafter in this Act referred to as the "recreation area"), to be administered by the Secretary of Agriculture (hereinafter the Secretary).

(b) AREA INCLUDED.—The recreation area shall be comprised of approximately [100,000 acres] 57,000 acres of lands and interests in lands within the Santa Fe National Forest as generally depicted on the map entitled "Jemez National Recreation Area-Proposed" [and dated October, 1991.] and dated September 1992. The map shall be on file and available for public inspection in the offices of the Chief of the Forest Service, Department of Agriculture, Washington, D.C. The Secretary may from time to time make minor revisions in the boundary of the recreation area to promote management effectiveness and efficiency in furtherance of the purposes of this Act.

(c) MAP AND DESCRIPTION.—As soon as practicable after enactment of this Act, the Secretary shall file a map and legal description of the recreation area with the Committee on Interior and Insular Affairs of the

House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Each such map and description shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in such legal description and map may be made. Each such map and legal description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture.

SEC. 2. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer the recreation area in accordance with this Act and the laws, rules, and regulations applicable to National Forest System lands in manner that will further the purposes of the recreation area. Management of the natural resources within the recreation area shall be permitted only to the extent that such management is compatible with and does not impair the purposes for which the recreation area is established. Recreational activities within the recreation area shall include (but not be limited to) hiking, camping, hunting, fishing, skiing, backpacking, rock climbing, and swimming.

(b) MANAGEMENT PLAN.—The Secretary shall, no later than 5 years after the enactment of this Act, develop a management plan for the recreation area as an amendment to the Santa Fe National Forest Land and Resource Management Plan to reflect the establishment of the recreation area and to conform to the provisions of this Act: *Provided*, That nothing in this Act shall require the Secretary to revise the Santa Fe Forest Land and Resource Management Plan pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974.

As part of the management plan for the recreation area, the Secretary shall study newly designated land within the recreation area, and adjacent National Forest Land. The Secretary shall, no later than 5 years after enactment of this Act, submit recommendations with respect to future boundaries for the recreation area.

(c) CULTURAL RESOURCES.—In administering the recreation area, the Secretary shall give particular emphasis to the preservation, stabilization, and protection of cultural resources located within the recreation area in furtherance of the Archaeological Resources Protection Act of 1979 and the National Historic Preservation Act.

(d) NATIVE AMERICANS.—In recognition of the past use of portions of the recreation area by Indian peoples for traditional cultural and religious purposes, the Secretary shall protect religious and cultural sites and provide access from time-to-time to those sites by Indian peoples for traditional cultural and religious purposes. Such access shall be consistent with the purpose and intent of the Act of August 11, 1978 (42 U.S.C. 1991) (commonly referred to as the "American Indian Religious Freedom Act"). The Secretary, in accordance with such Act, upon request of an Indian tribe or pueblo, may from time to time temporarily close to general public use one or more specific portions of the recreational area in order to protect the privacy of religious activities and cultural uses in such portion by Indian peoples. Any such closure shall be made so as to affect the smallest practicable area for the minimum period necessary for such purposes.

(2) In preparing and implementing management plans for the recreation area, the Secretary shall request that the Governor of the Pueblo of Jemez and the chief executive officers of other appropriate Indian tribes and pueblos make recommendations on methods of—

(A) assuring access to religious and cultural sites;

(B) enhancing the privacy and continuity of traditional cultural and religious activities in the recreation area; and

(C) protecting traditional cultural and religious sites in the recreation area.

(e) WILDLIFE RESOURCES.—In administering the recreation area, the Secretary shall give particular emphasis to the conservation and protection of wildlife resources, including species listed as sensitive by the United States Forest Service, within the recreation area and shall comply with applicable Federal and State laws relating to wildlife, including the Endangered Species Act of 1973.

(f) HUNTING.—The Secretary shall permit hunting and fishing on lands and waters under the jurisdiction of the Secretary within the recreation area in accordance with applicable Federal and State law. The Secretary may designate zones where, and establish periods when, such activities will not be permitted for reasons of public safety, administration, fish and wildlife management or public use and enjoyment. Except in emergencies such designation by the Secretary under this subsection shall be put into effect only after consultation with the appropriate State agencies responsible for hunting and fishing activities.

(g) TIMBER HARVESTING.—The Secretary may permit timber harvesting in the recreation area for commercial purposes, including (but not limited to) vigas, latillas, the gathering of fuelwood, and for purposes of public safety, recreation, wildlife, and administration, insofar as the harvesting is compatible with the purposes of the recreation area. The Secretary may provide for timber harvesting in the recreation area insofar as harvesting is compatible with the purposes of this Act. Trees damaged or downed due to fire, disease, or insect infestation may be utilized, salvaged or removed from the recreation area as authorized by the Secretary in furtherance of the purposes of this Act. Nothing in this Act shall be construed to affect the timber sales under contract on the date of enactment of this Act. Nothing in this Act shall be construed to effect the Los Griegos timber sale in the Los Griegos Diversity Unit number 0322 as shown on the West Half Diversity Unit map of the Santa Fe National Forest dated November 1991; except that the Secretary shall manage such sale using uneven aged management including the individual tree selection method.

(b) GRAZING.—The Secretary may permit grazing within the recreation area in accordance with regulations prescribed by the Secretary. Riparian areas will be managed in such a manner as to protect their important resource values.

(i) TRANSPORTATION PLAN.—(1) Within 1 year after the date of enactment of this Act, the Secretary shall prepare a transportation plan that provides for the most efficient use of existing roads and trails to accomplish the purposes of this Act. The plan shall provide for a comprehensive trails system that provides for dispersed recreation while minimizing impact on significant archaeological and religious sites.

(2) The Secretary shall construct, maintain, and close roads within the recreation area only in accordance with such plan.

(j) RECREATIONAL FACILITIES.—The Secretary shall provide for recreational facilities within the recreation area. Such facilities shall be constructed so as to minimize impacts on scenic beauty and the natural character of the recreation area.

(k) VISITOR FACILITIES.—The Secretary shall establish a visitor center and interpretive facilities in or near the recreation area for the purpose of providing for education relating to the interpretation of cultural and natural resources of the recreation area.

(l) POWER TRANSMISSION LINES.—In accordance with Federal and State laws and regulations, the Secretary may permit a utility corridor for high power electric transmission lines only when the Secretary determines that—

(1) there is not a feasible alternative for the location of such corridor;

(2) damage to the recreational and scenic quality of the recreation area will not be significant;

(3) it is in the public interest that such corridor be located in the recreation area; and

(4) a plan to minimize harm to the resources of the recreation area has been developed.

(m) SCIENTIFIC INVESTIGATIONS.—The Secretary may permit scientific investigations within the recreation area upon the Secretary's determination that such investigations are in the public interest and are compatible with the purposes of this Act.

SEC. 3. ACQUISITION OF LAND.

(a) STATE LANDS.—Lands, and interests in lands, within the boundaries of the recreation area which are owned by the State of New Mexico, or any political subdivision thereof, may be acquired only by donation or exchange.

(b) OFFERS TO SELL.—In exercising the authority to acquire property under this Act, the Secretary shall give prompt and careful consideration to any offer made by any person owning property within the boundaries of the recreation area established under this Act to sell such property.

(b) OFFERS TO SELL.—The Secretary is authorized to acquire lands and interest in land within the boundaries of the recreation area by donation, purchase with donated or appropriated funds, or exchange: *Provided*, That no lands or interests in land may be added to the recreation area after date of enactment of this Act without specific authorization by Congress and the consent of the owner of such land or interest therein.

SEC. 4. MINERALS AND MINING.

(a) LIMITATION ON PATENT ISSUANCE.—(1) Notwithstanding any other provision of law, no patents shall be issued after the date of May 30, 1991 for any location or claim made in the recreation area under the mining laws of the United States.

(2) Notwithstanding any statute of limitations or similar restriction otherwise applicable, any party claiming to have been deprived of any property right by enactment of paragraph (1) may file in the United States Claims Court a claim against the United States within 1 year after the date of enactment of this Act seeking compensation for such property right. The United States Claims Court shall have jurisdiction to render judgment upon any such claim in accordance with section 1491 of title 28, United States Code.

(b) WITHDRAWAL.—Subject to valid existing rights, after the date of enactment of this Act, lands within the recreation area are withdrawn from location under the general mining laws and from the operation of the mineral leasing, geothermal leasing, and mineral material disposal laws.

(c) RECLAMATION.—No mining activity involving any surface disturbance of lands or waters within such area, including disturbance through subsidence, shall be permitted except in accordance with requirements imposed by the Secretary, including requirements for reasonable reclamation of disturbed lands to a visual and hydrological condition as close as practical to their premining condition.

(d) MINING CLAIM VALIDITY REVIEW.—The Secretary of Agriculture shall undertake and complete within 3 years after the date of enactment of this Act an expedited program to examine all unpatented mining claims, including those for which a patent application has been filed, within the recreation area. Upon determination by the Secretary of Agriculture that the elements of a contest are present, the Secretary of the Interior shall immediately determine the validity of such claims. If a claim is determined to be invalid, the Secretary shall promptly declare the claim to be null and void.

(e) PUBLIC PURPOSES.—The Secretary may utilize mineral materials from within the recreation area for public purposes such as maintenance and construction of roads, trails, and facilities as long as such use is compatible with the purposes of the recreation area.

SEC. 5. ADJOINING LANDS.

The Secretary may from time to time evaluate lands adjoining the recreation area for possible inclusion in the recreation area and make recommendations to Congress, including but not limited to, that area authorized for study by section 5 of Public Law 101-556, known as the Baca Location Number 1.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

"SEC. 7. TAOS RANGER DISTRICT.

(a) CONVEYANCE OF PROPERTY.—

Not later than 6 months after the date of enactment of this Act, the Secretary of Agriculture shall convey by quit-claim deed to the town of Taos, New Mexico, subject to the terms and conditions stated in section 2, all right, title, and interest of the United States in and to the land and improvements thereon described as follows:

That property locally referred to as the "Old Taos Ranger District Office and Warehouse" located in the town of Taos, Taos County, New Mexico, containing approximately 0.633 acres, specifically described in that certain warranty deed dated January 22, 1937, by William T. and Mary E. Hinde, husband and wife, to the United States, as recorded on January 23, 1937, in book A-34, page 415, of the Record of Deeds of Taos County, New Mexico.

(b) TERMS AND CONDITIONS.—

(1) CONSIDERATION.—The conveyance described in section 1 shall be in consideration of the amount of $360,000, payable in full within the 6-month period referred to in section 1, or, at the option of the town of Taos, in 20 annual payments of $18,000 due on January 1 of the first year following enactment of this Act and annually thereafter until the total amount due has been paid, as agreed upon by the Secretary of Agriculture. The cash so received shall be deposited into a special fund in the Treasury which will remain available until expended by the Secretary for purpose of acquiring, within the State of New Mexico, lands or administrative facilities on National Forest System lands. The town of Taos shall not be charged interest on amounts owed the United States for such conveyance.

(2) RELEASE.—On transfer of the property under section 1 the town of Taos shall release the United States from any liability for claims relating to the property.

(3) REVERSION.—The conveyance described in section 1 shall be a conveyance of fee simple title to the property, subject to reversion to the United States if the property is used for other than public purposes or if the compensation requirements described in subsection (a) are not met.

AMENDMENT NO. 3424

(Purpose: To authorize the Secretary of the Interior to contract with the Smithsonian Institution for the completion of the Prehistoric Trackways Study)

Mr. FORD. Mr. President, on behalf of Senator DOMENICI and Senator BINGAMAN I send two amendments to the desk and ask that they be considered en bloc.

The ACTING PRESIDENT pro tempore. The clerk will report the amendments en bloc.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] for Mr. BINGAMAN (for himself and Mr. DOMENICI) proposes an amendment numbered 3424, en bloc.

Mr. FORD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following new section:

SEC. 8. COMPLETION OF PREHISTORIC TRACKWAYS STUDY.

The Secretary of the Interior is authorized to contract with the Smithsonian Institution for the completion of the prehistoric trackways study required under section 303 of the Act entitled "An Act to conduct certain studies in the State of New Mexico", approved November 15, 1990 (Public Law 101-578).

On page 9, lines 1 through 19, strike section 3 in its entirety and insert in lieu thereof the following:

"SEC. 3. ACQUISITION OF LAND.

"(a) IN GENERAL. —The Secretary is authorized to acquire lands and interests therein within the boundaries of the recreation area by donation, purchase with donated or appropriated funds, or exchange: *Provided*, That no lands or interests therein may be acquired except with the consent of the owner thereof.

"(b) STATE LANDS.—Lands or interests therein owned by the State of New Mexico or a political subdivision thereof may be acquired only by donation or exchange.

"(c) OFFERS TO SELL.—The Secretary shall give prompt and careful consideration to any offer made by any person owning property within the boundaries of the recreation area to sell such property.

"(d) NO ADDITIONAL LANDS.—No lands or interests therein outside of the boundaries of the recreation area may be added to the recreation area without specific authorization by Congress.".

The ACTING PRESIDENT pro tempore. Is there further debate? If not, without objection, the amendments are agreed to.

So the amendment (No. 3424) was agreed to.

The ACTING PRESIDENT pro tempore. Are there additional amendments.

If there is no objection the committee amendments are considered and agreed to en bloc.

So the committee amendments were agreed to.

The ACTING PRESIDENT pro tempore. Without objection, the bill is considered deemed read a third time and passed.

So the bill (H.R. 2502), as amended, was deemed read the third time and passed.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DELAWARE RIVER WILD AND SCENIC RIVERS ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 732, H.R. 3457 relating to the Delaware River.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3457) to amend the Wild and Scenic Rivers Act to designate certain segments of the Delaware River in Pennsylvania and New Jersey as components of the National Wild and Scenic Rivers System.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Delaware River Study Act of 1992".

SEC. 2. WILD AND SCENIC RIVER STUDY.

(a) STUDY.—Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding at the end thereof the following new paragraph:

"( ) DELAWARE RIVER, PENNSYLVANIA AND NEW JERSEY.—(A) The approximately 3.6-mile segment from the Erie Lackawanna Railroad Bridge to the southern tip of Dildine Island.

"(B) The approximately 2-mile segment from the southern tip of Mack Island to the northern border of the town of Belvidere, New Jersey.

"(C) The approximately 12.5-mile segment from the southern border of the town of Belvidere, New Jersey, to the northern border of the city of Easton, Pennsylvania.

"(D) The approximately 9.5-mile segment from the southern border of the town of Phillipsburg, New Jersey, to a point just north of the Gilbert Generating Station.

"(E) The approximately 14.2-mile segment from a point just south of the Gilbert Generating Station to a point just north of the Point Pleasant Pumping Station.

"(F) The approximately 6.5-mile segment from a point just south of the Point Pleasant Pumping Station to the north side of the Route 202 bridge.

"(G) The approximately 6-mile segment from the southern boundary of the town of New Hope, Pennsylvania, to the town of Washington Crossing, Pennsylvania.

"(H) The Cook's Creek tributary.

"(I) The Tinicum Creek tributary.

"(J) The Tohickon Creek tributary.".

(b) ELIGIBILITY STUDY AND REPORT.—Section 5(b) of the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1276(b)) is amended by adding at the end the following new paragraph:

"( )(A) The study of the Delaware River segments and tributaries designated for potential addition to the National Wild and Scenic Rivers System by the amendment made by section 3(a) of this Act shall be completed and the report submitted to Congress not later than 1 year after the date of enactment of this paragraph.

"(B) The Secretary shall—

"(i) prepare the study in cooperation and consultation with appropriate Federal, State, regional, and local agencies, including but not limited to, the Pennsylvania Department of Environmental Resources, the New Jersey Department of Environmental Protection and Energy, the Delaware and Lehigh Navigational Canal National Heritage Corridor Commission, and the Delaware and Raritan Canal Commission; and

"(ii) consider previous plans for the protection of affected cultural, recreational, and natural resources (including water supply and water quality) and existing State and local regulations, so as to avoid unnecessary duplication.

"(C) Pursuant to section 11(b)(1) of this Act, the Secretary shall undertake a river conservation plan for the segment of the Delaware River from the northern city limits of Trenton, New Jersey, to the southern boundary of Bucks County, Pennsylvania.".

SEC. 3. EXISTING FACILITIES AND POSSIBLE ADDITIONS THERETO.

The study of the river segments and tributaries designated for potential addition to the National Wild and Scenic Rivers System under section 2 of this Act shall not be used in any proceeding or otherwise to preclude, prevent, restrict, or interfere with the completion, continued or changed operation, maintenance, repair, construction, reconstruction, replacement, or modification of the Gilbert Generating Station and associated facilities, the Point Pleasant Pumping Station and associated facilities, the Portland Generating Station and associated facilities, or the Merrill Creek Reservoir Project and associated facilities, or with the licensing, permitting, relicensing, or repermitting of such projects, stations, and associated facilities. Such study designation shall not preclude or interfere with the licensing, permitting, construction, operation, maintenance, repair, relicensing, or repermitting of any additions to any such facilities, so long as such additions are outside the segments of the Delaware River designated for study by this Act and impounded backwater from any such addition does not intrude on any such segment, and so long as the values present in such segments on the date of enactment of this Act are not unreasonably diminished thereby.

SEC. 4. TRANSMISSION AND DISTRIBUTION FACILITIES.

The study of the river segments and tributaries designated for potential addition to the National Wild and Scenic Rivers System under section 2 of this Act shall not be used in any proceeding or otherwise to preclude, prevent, restrict, or interfere with the present or future access to or operation, maintenance, repair, construction, reconstruction, replacement, or modification of electric or gas transmission or distribution lines across or adjacent to such segments, or with the licensing, permitting, relicensing, or repermitting of such lines across such segments: *Provided, however*, That during the administration of the study of such segments, each new electric or gas transmission or distribution line across any such segment shall be located no further than ½ mile from the center line of any transmission or distribution line across any such segment in existence on the date of enactment of this Act.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

AMENDMENT NO. 3425

Mr. FORD. Mr. President, on behalf of Senator BUMPERS, I send an amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] for Mr. BUMPERS proposes an amendment numbered 3425.

Mr. FORD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 7, line 6, strike "Pennsylvania." and insert in lieu thereof, "Pennsylvania, excluding river mile 196.0 to 193.8.".

On page 8, line 4, strike "3(a)" and insert in lieu thereof, "5(a)".

On page 9, line 14, strike "or" and insert in lieu thereof, "the Martins Creek Steam Electric Station and associated facilities, or".

On page 10, line 14, strike "the administration of".

The ACTING PRESIDENT pro tempore. Without objection, the amendment is agreed to.

So the amendment (No. 3425) was agreed to.

The ACTING PRESIDENT pro tempore. Without objection, the committee substitute amendment, as amended, is agreed to.

So the committee amendment, as amended, was agreed to.

The ACTING PRESIDENT pro tempore. Without objection, the bill is considered read a third time and passed.

So the bill (H.R. 3457), as amended, was deemed read the third time and passed.

The title was amended so as to read: "A bill to amend the Wild and Scenic Rivers Act to designate certain segments and tributaries of the Delaware River in Pennsylvania and New Jersey for study for potential addition to the National Wild and Scenic Rivers System.".

Mr. BRADLEY. Mr. President, I want to applaud the Senate's action today on passing H.R. 3457, which begins the effort to preserve 55 miles of the Delaware River. This legislation calls for a formal study of the river by the National Park Service to determine which river segments merit inclusion in the Nation's Wild and Scenic River System.

This study will allow for an assessment of detailed data on the historic and ecological values. It will allow for the public meetings and comments that are so necessary to the development of a feasible and effective management plan. Such a plan, which forms the heart of an overall preservation effort, must be based in the understanding and commitment of the local citizens. It is on them that much of the responsibility for protection falls.

These stretches of the Delaware River are within an hour or two drive of roughly 25 million Americans, and it must be considered in this context. This is not Idaho or Montana. People have been settled in the Delaware River valley for over 300 years. Yet it is hard to travel this riverway and not feel compelled by its lasting beauty and rustic nature. Along its banks, are still rolling hills and forests, farms, and sleepy country towns. It may not be completely undeveloped, but it is largely unspoiled.

This river should not be overlooked or disregarded because of its long history. On the contrary, its situation and history provide the rationale for preservation and protection.

Mr. President, it would not be appropriate to close this statement without a special acknowledgement. My friend and colleague, Congressman KOSTMAYER, has played an enormous role in this effort to protect this river. Since coming to Congress, he has stood up for the Delaware River, its beauty and its preservation. That we act today is a testament to his ability and tenacity.

My colleagues are to be commended for the actions taken today. My constituents and I thank them for their support and vision.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ARMED FORCES WORLD WAR II MEMORIAL ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 712, S. 2244, relating to a memorial for World War II Armed Forces, that the committee substitute amendment be agreed to; and that the bill be deemed read a third time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So the committee substitute amendment was agreed to as follows:

SECTION 1. AUTHORITY TO ESTABLISH MEMORIAL.

(a) IN GENERAL.—The American Battle Monuments Commission (hereinafter in this Act referred to as the "Commission") is authorized to establish a memorial on Federal land in the District of Columbia or its environs to honor members of the Armed Forces who served in World War II and to commemorate the participation of the United States in that war.

(b) COMPLIANCE WITH STANDARDS FOR COMMEMORATIVE WORKS.—The establishment of the memorial shall be in accordance with the Act entitled "An Act to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes" approved November 14, 1986 (40 U.S.C. 1001, et seq.).

(c) HANDICAPPED ACCESS.—The plan, design, construction, and operation of the memorial pursuant to this section shall provide fro accessibility by, and accommodations for, the physically handicapped.

SEC. 2. ADVISORY BOARD.

(a) ESTABLISHMENT OF BOARD.—There is hereby established a World War II Memorial Advisory Board, consisting of 12 members, who shall be appointed by the President from among veterans of World War II, historians of World War II, and representatives of veterans organizations, historical associations, and groups knowledgeable about World War II.

(b) APPOINTMENTS.—Members of the Board shall be appointed not later than 3 months after the date of the enactment of this Act and shall serve for the life of the Board. The President shall make appointments to fill such vacancies as may occur on the Board.

(c) RESPONSIBILITIES OF BOARD.—The Board shall—

(1) in the manner specified by the Commission, promote establishment of the memorial and encourage donation of private contributions for the memorial; and

(2) upon the request of the Commission, advise the Commission on the site and design for the memorial.

(d) TERMINATION.—The Board shall cease to exist on the last day of the third month after the month in which the memorial is completed or the month of the expiration of the authority for the memorial under section 10(b) of the Act referred to in section 1(b), whichever first occurs.

SEC. 3 PRIVATE CONTRIBUTIONS.

The Commission shall solicit and accept private contributions for the memorial.

SEC. 4. FUND IN THE TREASURY FOR THE MEMORIAL.

(a) IN GENERAL.—There is hereby created in the Treasury of fund which shall be available to the American Battle Monuments Commission for the expenses of establishing the memorial. The fund shall consist of—

(1) amounts deposited, and interest and proceeds credited, under subsection (b);

(2) obligations obtained under subsection (c); and

(3) the amount of surcharges paid to the Commission for the memorial under the World War II 50th Anniversary Commemorative Coins Act.

(b) DEPOSITS AND CREDITS.—The Chairman of the Commission shall deposit in the fund the amounts accepted as contributions under subsection (a). The Secretary of the Treasury shall credit to the fund the interest on, and the proceeds from sale or redemption of, obligations held in the fund.

(c) OBLIGATIONS.—The Secretary of the Treasury shall invest any portion of the fund that, as determined by the Chairman of the Commission, is not required to meet current expenses. Each investment shall be made in an interest bearing obligation of the United States or an obligation guaranteed as to principal and interest by the United States that, as determined by the Chairman of the Commission, has a maturity suitable for the fund.

(d) ABOLITION.—Upon the final settlement of the accounts of the fund, the Secretary of the Treasury shall submit to the Congress a draft of legislation (including technical and conforming provisions) recommended by the Secretary for the abolition of the fund.

SEC. 5. DEPOSIT OF EXCESS FUNDS.

If, upon payment of all expenses of the establishment of the memorial (including the maintenance and preservation amount provided for in section 8(b) of the Act referred to in section 1(b)), or upon expiration of the authority for the memorial under section 10(b) of that Act, there remains a balance in the fund created by section 4, the Chairman of the Commission shall transmit the amount of the balance to the Secretary of the Treasury for deposit in the account provided for in section 8(b)(1) of that Act.

THE ESTABLISHMENT OF A WORLD WAR II MEMORIAL IN WASHINGTON, DC

Mr. THURMOND. Mr. President, as a veteran of World War II, it is a pleasure to rise today to support S. 2244, a bill, which I introduced, that would establish a memorial to honor members of the Armed Forces who served in World War II and to commemorate the U.S. participation in that conflict.

World War II was one of the most significant wars in all of history. Involving more than 16 million Americans, it was the war which preserved freedom for the Western World. Yet, it was not without a heavy toll. The damage and the human suffering were extreme. More than 670,000 Americans were wounded and over 400,000 made the ultimate sacrifice by giving their lives. A tribute to these Americans is richly deserved.

World War II memorials are located all over the world. However, there is no single monument that honors the American veterans of World War II as a group. Our Nation's Capital would be an especially fitting location for such a monument, and the legislation I have introduced would provide for such a location.

Mr. President, I introduced S. 2244 on February 20, 1992. The Senate Committee on Energy and Natural Resources held a hearing on August 6, 1992 and unanimously approved it on September 22, 1992.

S. 1244, as introduced, would have authorized a private group to raise the funds necessary to plan, design and oversee the construction of the memorial with no Federal funds involved. The House of Representatives companion bill, H.R. 1624, as introduced by Congresswoman KAPTUR on March 22, 1991, would have appropriated to the American Battle Monuments Commission [ABMC] "such funds as are necessary" to build the memorial. After many negotiations concerning the differences between the two bills, I believe the bill, as reported by the Senate Committee on Energy and Natural Resources, has been revised and amended to better reflect a bipartisan effort to honor the American veterans of World War II.

According to the compromise legislation, the ABMC will be authorized to plan, design, and oversee the construction of the Memorial. The necessary funds will be raised through the sale of commemorative coins, as provided in S. 3195, the World War II Commemorative Coin Act of 1992, and private donations, as passed by Congress.

While S. 2244 is nearly identical to H.R. 1624 as passed by the House on June 22, 1992, there is one difference. Section 3, of S. 2244 directs the ABMC to actively seek private contributions.

My concern is that no Federal tax dollars should be used for construction of the memorial in this time of scarce Federal resources. I want to emphasize this point. The taxpayer should not be stuck with having to rescue a failed attempt to raise enough money through the sale of commemorative coins alone. I strongly feel that this memorial should be funded through private donations and not be placed as a burden on the taxpayer. I believe that the ABMC has proven its ability in raising private donations and I encourage the ABMC to do so.

Mr. President, I urge my colleagues to join me in support of this worthy measure for our faithful and deserving veterans.

So the bill was deemed read the third time.

Mr. FORD. Mr. President, I ask unanimous consent that the Rules Committee be discharged from further consideration of H.R. 1624; that the Senate proceed to its immediate consideration; that all after the enacting clause be stricken and the text of S. 2244, as amended be inserted in lieu thereof, that the bill be deemed read a third time, passed; and that the motion to reconsider be laid upon the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So the bill (H.R. 1624), as amended, was deemed read the third time and passed.

Mr. FORD. Mr. President, I ask unanimous consent that the Calendar No. 712 be indefinitely postponed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

U.S. HOLOCAUST MEMORIAL COUNCILS

Mr. FORD. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further consideration of H.R. 2660, a bill authorizing appropriations for the U.S. Holocaust Memorial Councils and that the Senate proceed to its immediate consideration; that the bill be deemed read a third time, passed; and that the motion to reconsider be laid upon the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So the bill (H.R. 2660) was deemed read the third time and passed.

LOWER MERCED RIVER WILD AND SCENIC RIVERS ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2431.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 2431) entitled "An Act to amend the Wild and Scenic Rivers Act by designating a segment of the Lower Merced River in California as a component of the National Wild and Scenic Rivers System," with the following amendment: Strike out all after the enacting clause, and insert:

SECTION 1. DESIGNATION OF THE LOWER MERCED RIVER FOR INCLUSION IN THE WILD AND SCENIC RIVERS SYSTEM.

Section 3(a)(62) of the Wild and Scenic Rivers Act (16 U.S.C. 127(a)(62)) is hereby amended—

(1) by striking "The main stem" and inserting in lieu thereof, "(A) The main stem";

(2) by striking "paragraph" whenever it appears and inserting in lieu thereof "subparagraph"; and

(3) by adding the following new subparagraph at the end thereof:

"(B)(i) The main stem from a point 300 feet upstream of the confluence with Bear Creek downstream to the normal maximum operating pool water surface level of Lake McClure (elevation 867 feet mean sea level) consisting of approximately 8 miles, as generally depicted on the map entitled 'Merced Wild and Scenic River', dated April, 1990. The Secretary of the Interior shall administer the segment as recreational, from a point 300 feet upstream of the confluence with Bear Creek downstream to a point 300 feet west of the boundary of the Mountain King Mine, and as wild, from a point 300 feet west of the boundary of the Mountain King Mine to the normal maximum operating pool water surface level of Lake McClure. The requirements of subsection (b) of this section shall be fulfilled by the Secretary of the Interior through appropriate revisions to the Sierra Management Framework Plan for the Sierra Planning Area of the Folsom Resource Area, Bakersfield District, Bureau of Land Management. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this subparagraph.

"(ii) To the extent permitted by, and in a manner consistent with section 7 of this Act (16 U.S.C. 1278), and in accordance with other applicable law, the Secretary of the Interior shall permit the construction and operation of such pumping facilities and associated pipelines as identified in the Bureau of Land Management right-of-way application CACA 26084, filed by the Mariposa County Water Agency on November 7, 1989, and known as the 'Saxon Creek Project', to assure an adequate supply of water from the Merced River to Mariposa County.

"(C) With respect to the segments of the main stem of the Merced River and the South Fork Merced River designated as recreational or scenic pursuant to this paragraph or by the appropriate agency pursuant to subsection (b), the minerals to Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.".

SEC. 2. STUDY OF THE NORTH FORK OF THE MERCED RIVER.

Section 5(a) of the Wild and Scenic Rivers Act, as amended, (16 U.S.C. 1276(a)), is further amended by adding the following new paragraph at the end thereof:

"( ) NORTH FORK MERCED, CALIFORNIA.—The segment from its headwaters to its confluence with the Merced River, by the Secretary of Agriculture and the Secretary of the Interior.".

SEC. 8. NEW EXCHEQUER PROJECT.

The designation of the river segments referred to in section 1 of this Act as components of the Wild and Scenic Rivers System shall not affect the continued operation and maintenance (including flood control operations) of the New Exchequer Project (Project No. 2179) as licensed by the Federal Energy Regulatory Commission on the date of enactment of this Act or the Commission's authority to issue a new license to the existing license for such project within the project boundaries set forth in the license on the date of enactment of this Act: *Provided* that if the Commission issues a new license to the existing licensee for such a project, the normal maximum operating pool water surface level authorized in the project's license shall not exceed elevation 867.0 mean sea level.

Mr. FORD. Mr. President, I move that the Senate concur in the House amendment.

The ACTING PRESIDENT pro tempore. Without objection, the motion is agreed to.

So the motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ARKANSAS-IDAHO LAND EXCHANGE ACT OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2572.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2572) entitled "An Act to authorize an exchange of lands in the States of Arkansas and Idaho," do pass with the following amendment: Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Arkansas-Idaho Land Exchange Act of 1992".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the Potlatch Corporation has offered to the United States Government an exchange of lands under which Potlatch would receive approximately 17,625 acres of scattered tracts of Federal lands in the State of Idaho in return for conveying to the United States lands owned by Potlatch consisting of approximately 40,922 acres of undisturbed bottomland hardwood lands in the State of Arkansas and approximately 1,170 acres of lands with important recreational and fisheries values in the State of Idaho;

(2) the lands in Arkansas that Potlatch has offered to convey to the United States are surrounded by Federal and State lands on the Cache and White Rivers which are designated as a "Wetland of International Importance" under the Convention on Wetlands of International Importance (commonly referred to as the "Ramsar Convention"), one of only 10 areas in the United States so designated;

(3) acquisition of these lands by the United States will remove the lands from sustained timber production and other development in the heart of this critical wetland ecosystem;

(4) the lands Potlatch has offered to convey to the United States will qualify for inclusion as a Wetland of International Importance under the Ramsar Convention;

(5) the lands Potlach has offered to convey to the United States are outstanding fish and wildlife habitat and should continue to be made available for activities such as public hunting, fishing, trapping, nature observation, enjoyment, and education;

(6) the lands the United States would convey to Potlatch do not contain comparable fish, wildlife, or wetland values;

(7) appraisals of all lands to be conveyed in the exchange have been completed; and

(8) the United States and Potlatch have agreed to the values and boundaries of all lands to be conveyed in the exchange and concur that the lands to be conveyed by Potlatch and the lands to be conveyed by the United States are of equal value.

(b) PURPOSE.—The purpose of this Act is to authorize and require the Secretary and the Secretary of Agriculture to participate in an exchange of lands that will provide environmental and economic benefits to the States of Arkansas and Idaho and to the Nation.

SEC. 3. EXCHANGE.

(a) INTER-AGENCY LAND TRANSFERS.—

(1) TRANSFERS BETWEEN SECRETARY AND SECRETARY OF AGRICULTURE.—

(A) TRANSFER TO SECRETARY OF AGRICULTURE.—Notwithstanding the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), not later than 30 days after the date of the enactment of this Act, the Secretary shall transfer to the jurisdiction of the Secretary of Agriculture for inclusion in the National Forest System approximately 9,114 acres of public lands in the State of Idaho, as identified upon a map entitled "Arkansas-Idaho Exchange—Idaho Lands", dated July 1992 and available for inspection in appropriate offices of the Secretary.

(B) TRANSFER TO SECRETARY OF AGRICULTURE.—Subsequent to the exchange required by subsection (b), the Secretary shall transfer to the Secretary of Agriculture for inclusion in the National Forest System approximately 891 acres of public lands in the State of Idaho identified for postexchange transfer upon the map referenced in subparagraph (A).

(2) TRANSFER TO SECRETARY.—Not later than 30 days after the date of the enactment of this Act, the Secretary of Agriculture shall transfer

to the Secretary for conveyance to Potlatch pursuant to subsection (b), approximately 7,979 acres of lands within the National Forest System in the State of Idaho, as identified upon the map referenced in subparagraph (A).

(b) EXCHANGE OF LANDS.—

(1) IN GENERAL.—Notwithstanding the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), within 60 days after the date of the enactment of this Act, the Secretary shall convey to Potlatch, in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) and subject to paragraph (2) and any valid existing rights, approximately 17,625 acres of public lands in the State of Idaho identified for transfer to Potlatch on the map referenced in subsection (a)(1)(A) in exchange for lands owned by Potlatch consisting of—

(A) approximately 40,921 acres in the State of Arkansas, as depicted for transfer to the United States upon a map entitled "Arkansas-Idaho Land Exchange—Arkansas Lands," dated July 1992 and available for inspection in appropriate offices of the Secretary, and

(B) approximately 1,170 acres in the State of Idaho, as identified for transfer to the United States upon the map referenced in subsection (a)(1)(A).

(2) LIMITATION.—The Secretary may not convey any lands to Potlatch under this subsection unless title to the lands to be conveyed by Potlatch in exchange is in accordance with the Department of Justice standards for the preparation of title evidence in land acquisitions by the United States.

(c) GENERAL PROVISIONS.—

(1) MAPS CONTROLLING.—To ensure the management benefits of consolidating isolated tracts of lands, any conflict between a number of acres of lands referred to in this Act and a depiction of the lands on a map referenced in this Act shall be resolved in favor of the map.

(2) CANCELLATION.—Prior to implementation of the exchange required by subsection (b), if Potlatch notifies the Secretary in writing that it no longer intends to complete the exchange, the lands referenced in subsection (a) shall revert to their status as of the day before the date of enactment of this Act, and shall be managed in accordance with applicable management plans.

(3) FINAL MAPS.—Not later than 6 months after the conclusion of the exchange required by subsection (b), the Secretary shall transmit maps accurately depicting the lands transferred and conveyed pursuant to this Act and the acreages and legal descriptions of such lands to the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the Senate.

(4) WITHDRAWAL.—Subject to valid existing rights, the lands depicted for conveyance to Potlatch on the map referenced in subsection (a)(1)(A) are withdrawn from all forms of entry and appropriation under the public land laws (including the mining laws) and from operation of the mineral leasing and geothermal leasing laws effective upon the date of the enactment of this Act. Such withdrawal shall terminate on the date of completion of the exchange required by subsection (b) or on the date of any notification by Potlatch of a decision not to complete the exchange pursuant to paragraph (2).

(5) POWER SITE RESERVATIONS.—The following Executive Orders shall have no effect insofar as they involve the following described lands:

(A) The Executive order dated July 2, 1910, which established Powersite Reserve No. 91, with respect to those lands at Boise Meridian, T. 45 N., R. 4 E., Sec. 18, SW¼NE¼, comprising approximately 40 acres.

(B) The Executive order dated July 2, 1910, which established Powersite Reserve No. 106, with respect to those lands at Boise Meridian, T. 32 N., R. 5 E., Sec. 14, W½NE¼NE and SE¼NE¼NE¼, comprising approximately 30 acres.

(C) The Executive order dated August 31, 1917, which established Power Reservation No. 654, with respect to those lands at Boise Meridian, T. 48 N., R. 1 W., Sec. 3, SE¼NE¼, comprising approximately forty acres, and T. 46 N., R. 2 W., Sec. 14, lot 1, comprising approximately 28.15 acres.

(6) INDEMNITY LIST CLASSIFICATION ORDER.—Bureau of Land Management Indemnity List Classification Orders on public lands to be conveyed to Potlatch as required by subsection (b) are hereby removed from such classification.

(7) CONVEYANCE DOCUMENTS; BEFORE SURVEY.—Lands to be conveyed by the United States pursuant to subsection (b) on which any boundary is required to be surveyed in order to describe remaining public lands shall be conveyed by an interim conveyance. An interim conveyance under this paragraph shall convey to and vest in the recipient the same right, title, and interest in and to such lands as the recipient would have received in a patent issued pursuant to this Act. Upon completion of the survey, the Secretary shall issue a patent for such lands. The boundaries of such lands shall be those which were defined in and conveyed by the interim conveyance, except that the boundaries shall be corrected and redescribed in the patent, where necessary, as a result of the survey of such lands.

SEC. 4. USE OF ACQUIRED LANDS.

(a) NATIONAL WILDLIFE REFUGE SYSTEM.—

(1) ADDITION TO THE SYSTEM.—The Secretary shall add the lands conveyed to the United States in Arkansas pursuant to section 3(b), to the Cache River and White River National Wildlife Refuges, as depicted upon the map described in such section. The Secretary shall manage such lands in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee).

(2) PLAN PREPARATION.—Within 24 months after the completion of the exchange required by section 3(b), the Secretary shall prepare and implement a single refuge management plan for the Cache River and White River Refuges, as expanded by this Act. Such plan shall recognize the important public purposes served by nonconsumptive activities, other recreational activities, and wildlife-related public use, including hunting, fishing, and trapping. The plan shall permit, to the maximum extent practicable, such uses to the extent that they are consistent with sound wildlife management and in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) and other applicable law. Any regulations promulgated by the Secretary with respect to fishing, hunting, and trapping on those lands shall, to the extent practicable, be consistent with State fish and wildlife laws and regulations. In preparing the management plan and regulations, the Secretary shall consult with the Arkansas Game and Fish Commission.

(3) INTERIM USE OF LANDS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), during the period beginning on the date of the completion of the exchange of lands under subsection 3(b) and ending on the first date of the implementation of the plan prepared under paragraph (2), the Secretary shall administer all lands added to the Cache River and White River National Wildlife Refuges pursuant to this Act in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668d–668ee) and other applicable law.

(B) HUNTING SEASONS.—During the period described in subparagraph (A), the duration of any hunting seasons on the lands referred to in subsection (a) shall comport with State law.

(b) PUBLIC LANDS.—

(1) STATUS.—Except as provided in section 3(a)(1)(B), the lands referred to in section 3(b)(1)(B) shall be public lands, as defined in section 103(e) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and shall be managed in accordance with the provisions of such Act.

(2) GRANDMOTHER MOUNTAIN AREA.—Subject to valid existing rights, those Federal and non-Federal lands within the Grandmother Mountain Wilderness Study Area which are transferred to the jurisdiction of the Forest Service pursuant to section 3(b) shall be managed so as to preserve their suitability for designation as wilderness, pursuant to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)), until the Congress determines otherwise. Nothing in this Act shall be construed as permitting or prohibiting continued use of motorized vehicles on existing routes within such area at the level of such use as was permitted on August 1, 1992.

(3) PLAN AMENDMENTS AND ENVIRONMENTAL ANALYSIS.—Within 24 months after the completion of the exchange under section 3(b), the Secretary and the Secretary of Agriculture shall prepare amendments to applicable resource management plans and accompanying documents pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712), section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604), and section 102(2) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)) for lands in Idaho conveyed to the United States pursuant to section 3(b).

SEC. 5. DEFINITIONS.

For purposes of this Act, the term—

(1) "Potlatch" means the Potlatch Corporation, chartered in the State of Delaware;

(2) "Secretary" means the Secretary of the Interior; and

(3) "lands" means both the surface and subsurface estates whenever both estates are owned by the United States or Potlatch, as applicable.

SEC. 6. OUACHITA NATIONAL FOREST BOUNDARY ADJUSTMENT.

(a) IN GENERAL.—The boundaries of the Ouachita National Forest are hereby adjusted to include those lands generally depicted on the map entitled "Proposed Proclamation Boundary Extension, East End of Lake Ouachita" and dated August 3, 1992.

(b) MAP AND LEGAL DESCRIPTION.—The map described in subsection (a) and a legal description of the lands depicted on the map shall be on file and available for public inspection in the appropriate offices of the Forest Service, United States Department of Agriculture. Not later than 90 days after the date of enactment of this Act, the Secretary of Agriculture shall prepare a legal description of the lands depicted on the map referred to in subsection (a). Such map and legal descriptions shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors.

(c) RULE OF CONSTRUCTION.—For the purpose of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9), the boundaries of the Ouachita National Forest, as adjusted by this Act, shall be considered to be the boundaries of such forest as of January 1, 1965.

Mr. BUMPERS. Mr. President, I want to express my extreme pleasure that we are enacting the Arkansas-Idaho Land Exchange Act today. This act will cause more than 40,000 acres of rare wetlands in an area that has been designated a wetland of international importance—one of only 10 such areas in the United States—to be transferred from a private timber company to the Fish and Wildlife Service. The Service will manage the lands to conserve and enhance their wetland and fish and wildlife values.

Mr. President, passage of this act will have an extremely beneficial impact in Arkansas. The wetlands to be transferred provide wintering habitat for approximately 10 percent of the Mississippi flyway mallard population and are also important habitat for wood ducks. A number of threatened or endangered species are located in these river basins including: The bald eagle, least tern, fat pocketbook pearly mussel, and pond berry. In addition, there are populations of native wildlife and rare animals, such as the black bear. Many species of migrant songbirds nest in the bottomland hardwoods.

Mr. CRAIG. Mr. President, I would like to engage the chairman of the Public Lands, National Parks and Forests Subcommittee, the senior Senator from Arkansas, in a brief colloquy. When S. 2572 passed the Senate and was sent to the House, the House Interior and Insular Affairs Committee made certain changes to section 4(b)(2) which governs the management of the Grandmother Mountain Area in Idaho. I would like to inquire about the Senator from Arkansas' interpretation of the meaning of these changes.

Mr. BUMPERS. Certainly.

Mr. CRAIG. The bill, as sent back from the House, states: "Nothing in this act shall be construed as permitting or prohibiting continued use of motorized vehicles on existing routes within the Grandmother Mountain Wilderness Study Area at the level of such use as was permitted on August 1, 1992." Is it your understanding that this provision maintains the status quo in the area with regard to motorized vehicle use as it existed on or before August 1, 1992?

Mr. BUMPERS. Yes; Senator, that is my understanding.

Mr. CRAIG. In addition, I have a question regarding the management of the Grandmother Mountain Wilderness Study Area following the land exchange. It is my understanding that after the exchange takes place, the Forest Service will take over the management responsibilities for the area from the Bureau of Land Management [BLM]. Will the Forest Service continue to manage the land under the same standards which governed the BLM?

Mr. BUMPERS. Yes; currently, the BLM manages the area so as not to impair its suitability for designation as wilderness, pursuant to section 603(c) of the Federal Land Policy and Management Act of 1976 [FLPMA]. Once the exchange takes place, the Forest Service will manage the area under the same FLPMA provision.

Mr. CRAIG. I thank the Senator.

Mr. SIMPSON. Mr. President, I am pleased to support S. 2572, the Arkansas-Idaho Land Exchange Act of 1992. Substantial credit for passage should be allocated in true bipartisan fashion to the administration, members of the Committee on Energy and Natural Resources, and to Senators SYMMS, CRAIG, BUMPERS, and PRYOR. Also, members of the Idaho and Arkansas delegations in the House and members of the House committees of jurisdiction—Agriculture, Merchant Marine and Fisheries, and Interior and Insular Affairs—reported the bill in an expeditious fashion on September 23. It passed the House on September 29.

I am impressed with the considerable benefits to the United States that should result from this exchange. For that reason, I cosigned a letter with Senator WALLOP 2 years ago urging that legislation authorizing the exchange be passed in the 102d Congress. Congressman JOE SKEEN of New Mexico also played an important role in securing administration support for this important environmental initiation.

Mr. President, I ask unanimous consent that a letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, September 20, 1990.

Hon. MANUEL LUJAN, Jr.,
Secretary of the Interior, Washington, DC.

DEAR MANUEL: We would take this opportunity to comment on a proposed land exchange between the Potlatch Corporation and the Federal Government. In essence, the Potlatch Corporation has an interest in swapping a large block of forested wetlands in Arkansas and a small strip of Idaho property for scattered federally owned parcels of timberland of equal economic value in northern Idaho.

We believe that the potential acquisition of such a large continuous track of wetlands including bottom land, which bridges the gap between two extraordinary existing wildlife refuges, in exchange for scattered woodlands in Idaho would be a rare opportunity to promote both increased efficiency in management of federal lands and compelling environmental values.

While it is unlikely that any legislation will pass on the closing days of this congressional session, it is expected that there could be definite legislative action regarding this issue during the next session of Congress if the appraisals and other necessary evaluations are conducted in the coming months. We trust that you share our view that there are positive benefits to the Federal Government and the public that could accrue as a result of such a land exchange.

We are aware that you are already in receipt of a letter from Senator Bumpers and Senator McClure in support of this concept. We would like to add our support for the exchange.

We would appreciate it if you would keep us informed of any significant developments regarding this matter in the coming months.

Thank you for considering our comments with regard to the Potlatch land exchange.

Sincerely,
ALAN K. SIMPSON,
U.S. Senator,
MALCOLM WALLOP,
U.S. Senator.

Mr. FORD. Mr. President, I move the Senate concur in the House amendment.

The ACTING PRESIDENT pro tempore. Without objection, the motion is agreed to.

So the motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TACOMA, WA, LAND EXCHANGE

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4489, relating to a Tacoma, WA land exchange, just received from the House; that the bill be deemed read a third time and passed; and that the motion to reconsider be laid upon the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So the bill (H.R. 4489) was deemed read the third time and passed.

Mr. FORD. Mr. President, I ask unanimous consent that Calendar No. 713 be indefinitely postponed.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

OFFICE OF GOVERNMENT ETHICS AMENDMENTS OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1145.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1145) entitled "An Act to amend the Ethics in Government Act of 1978 to remove the limitation on the authorization of appropriations for the Office of Government Ethics", do pass with the following amendment: Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Office of Government Ethics Amendment of 1992".

SEC. 2. REMOVAL OF THE CAP ON THE AUTHORIZATION OF APPROPRIATIONS.

Section 405 of the Ethics in Government Act of 1978 (5. U.S.C. App.) is amended—

(1) in paragraph (1) by striking "and";

(2) in paragraph (2) by striking "each of the 5 fiscal years thereafter." and inserting "the fiscal year ending September 30, 1990; and"; and

(3) by adding after paragraph (2) the following new paragraph:

"(3) such sums as may be necessary for each of the 4 fiscal years thereafter.".

Mr. LEVIN. Mr. President, this is a very simple piece of legislation. The

Office of Government Ethics [OGE] is a freestanding agency that is charged with developing standards and promoting ethics in the Executive Branch. It began in 1978 as a component of the Office of Personnel Management, but over the years, Congress has given it more autonomy and responsibility.

Unlike most other freestanding agencies, however, OGE's authorizing legislation contains a cap on the authorization of appropriations—now set at $5 million for each of the fiscal years 1990 through 1994. This cap has caused OGE to ask Congress to raise OGE's authorization level from time to time when the administration and Congress agree that OGE needs more money to do its job.

The administration asked Congress to simply remove the cap on OGE's authorization of appropriations to avoid these periodic adjustments, and S. 1145 does that. The only difference between the Senate version and the House bill, H.R. 2828, was the date in the short title.

S. 1145 authorizes OGE to receive such sums as may be necessary. Since OGE is authorized only through 1994, Congress will have ample incentive and opportunity to oversee OGE's performance, to make sure that OGE uses its new funding wisely.

Mr. FORD. Mr. President, I move that the Senate concur in the amendment of the House.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

U.S. INFORMATION AND EDUCATION EXCHANGE ACT AMENDMENT

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be discharged and the Senate proceed to the immediate consideration of H.R. 6047, a bill to amend the U.S. Information Educational Exchange Act of 1948 just received from the House; that the bill be deemed read a third time and passed, and the motion to reconsider be laid upon the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So the bill (H.R. 6047) was deemed read the third time and passed.

SUPPORTING THE PLANTING OF 500 REDWOOD TREES FROM CALIFORNIA IN SPAIN

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Joint Resolution 529, a joint resolution supporting the planting of 500 California redwood trees in Spain as a commemorative of the quincentenary of the voyage of Christopher Columbus, just received from the House.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A Joint Resolution (H.J. Res. 529) supporting the planting of 500 redwood trees from California in Spain in commemoration of the quincentenary of the voyage of Christopher Columbus and designating the trees as a gift to the people of Spain.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

The ACTING PRESIDENT pro tempore. Without objection, the joint resolution is deemed read three times and passed.

Without objection, the preamble is agreed to.

So the joint resolution (H.J. Res. 529), with its preamble, was deemed read three times and passed.

Mr. FORD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RIDGEFIELD NATIONAL WILDLIFE REFUGE INTERPRETIVE CENTER

Mr. FORD. Mr. President, I ask unanimous consent that the Environment and Public Works Committee be discharged from further consideration of H.R. 5809 regarding the Ridgefield National Wildlife Refuge in Clark County, WA; that the Senate then proceed to its immediate consideration; that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table; and a statement by Senator ADAMS relating to this bill appear in the RECORD at the appropriate place.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So the bill (H.R. 5809) was deemed read three times and passed.

Mr. ADAMS. Mr. President, H.R. 5809, introduced by Representative UNSOELD, urges the U.S. Fish and Wildlife Service to work with local sponsors and the public on a proposal for an interpretive center at the Ridgefield National Wildlife Refuge.

Showcasing the natural history of the Columbia River wetlands and the rich human history of native Americans, the center would also highlight the activities of explorers, including the 1804 Lewis and Clark Expedition, and early settlers at the site. The refuge, located less than 5 miles from the Interstate-5 corridor, north of the Portland-Vancouver metropolitan area, would be accessible to the region's students and to the millions of visitors who travel to other natural attractions in the area—Mount St. Helens, the Columbia River Gorge, and Mount Rainier.

One of the unique and important features of this legislation is the willingness of local sponsors, who view the center as an important means of diversifying the local economy, to share in the costs of the facility. Local sponsors would cover a large part of the construction costs and virtually all of the maintenance costs of the facility. The interpretive center would also provide offices for refuge staff, saving the cost of leased office space.

At a time when Federal deficits and tight budgets make investments in new facilities difficult, the kind of cost-sharing partnership embodied in H.R. 5809 is the way of the future. I applaud Representative UNSOELD for taking the initiative with this project, and appreciate the assistance of the Environment and Public Works Committee in moving this bill. I urge the Senate to approve this legislation.

INDIAN HEALTH AMENDMENTS OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2481, the Indian health care amendments.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2481) entitled "An Act to amend the Indian Health Care Improvement Act to authorize appropriations for Indian health programs, and for other purposes", do pass with the following amendment: Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Health Amendments of 1992".

SEC. 2. AMENDMENTS TO INDIAN HEALTH CARE IMPROVEMENT ACT.

Except as otherwise specifically provided, whenever in this Act a section or other provision is amended or repealed, such amendment or repeal shall be considered to be made to that section or other provision of the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

SEC. 3. FINDINGS; POLICY; AND DEFINITIONS.

(a) FINDINGS.—Section 2 of the Act (25 U.S.C. 1601) is amended—

(1) in the matter preceding paragraph (a), by striking "finds that—" and inserting "finds the following:";

(2) in paragraph (d), by striking out the second sentence; and

(3) by striking out paragraphs (e), (f), and (g).

(b) DECLARATION OF POLICY.—Section 3 of the Act (25 U.S.C. 1602) is amended to read as follows:

"DECLARATION OF HEALTH OBJECTIVES

"SEC. 3. (a) The Congress hereby declares that it is the policy of this Nation, in fulfillment of its special responsibilities and legal obligation to the American Indian people, to assure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy.

"(b) It is the intent of the Congress that the Nation meet the following health status objectives with respect to Indians and urban Indians by the year 2000:

"(1) Reduce coronary heart disease deaths to a level of no more than 100 per 100,000.

"(2) Reduce the prevalence of overweight individuals to no more than 30 percent.

"(3) Reduce the prevalence of anemia to less than 10 percent among children aged 1 through 5.

"(4) Reduce the level of cancer deaths to a rate of no more than 130 per 100,000.

"(5) Reduce the level of lung cancer deaths to a rate of no more than 42 per 100,000.

"(6) Reduce the level of chronic obstructive pulmonary disease related deaths to a rate of no more than 25 per 100,000.

"(7) Reduce deaths among men caused by alcohol-related motor vehicle crashes to no more than 44.8 per 100,000.

"(8) Reduce cirrhosis deaths to no more than 13 per 100,000.

"(9) Reduce drug-related deaths to no more than 3 per 100,000.

"(10) Reduce pregnancies among girls aged 17 and younger to no more than 50 per 1,000 adolescents.

"(11) Reduce suicide among men to no more than 12.8 per 100,000.

"(12) Reduce by 15 percent the incidence of injurious suicide attempts among adolescents aged 14 through 17.

"(13) Reduce to less than 10 percent the prevalence of mental disorders among children and adolescents.

"(14) Reduce the incidence of child abuse or neglect to less than 25.2 per 1,000 children under age 18.

"(15) Reduce physical abuse directed at women by male partners to no more than 27 per 1,000 couples.

"(16) Increase years of healthy life to at least 65 years.

"(17) Reduce deaths caused by unintentional injuries to no more than 66.1 per 100,000.

"(18) Reduce deaths caused by motor vehicle crashes to no more than 39.2 per 100,000.

"(19) Among children aged 6 months through 5 years, reduce the prevalence of blood lead levels exceeding 15 ug/dl and reduce to zero the prevalence of blood lead levels exceeding 25 ug/dl.

"(20) Reduce dental caries (cavities) so that the proportion of children with one or more caries (in permanent or primary teeth) is no more than 45 percent among children aged 6 through 8 and no more than 60 percent among adolescents aged 15.

"(21) Reduce untreated dental caries so that the proportion of children with untreated caries (in permanent or primary teeth) is no more than 20 percent among children aged 6 through 8 and no more than 40 percent among adolescents aged 15.

"(22) Reduce to no more than 20 percent the proportion of individuals aged 65 and older who have lost all of their natural teeth.

"(23) Increase to at least 45 percent the proportion of individuals aged 35 to 44 who have never lost a permanent tooth due to dental caries or periodontal disease.

"(24) Reduce destructive periodontal disease to a prevalence of no more than 15 percent among individuals aged 35 to 44.

"(25) Increase to at least 50 percent the proportion of children who have received protective sealants on the occlusal (chewing) surfaces of permanent molar teeth.

"(26) Reduce the prevalence of gingivitis among individuals aged 35 to 44 to no more than 50 percent.

"(27) Reduce the infant mortality rate to no more than 8.5 per 1,000 live births.

"(28) Reduce the fetal death rate (20 or more weeks of gestation) to no more than 4 per 1,000 live births plus fetal deaths.

"(29) Reduce the maternal mortality rate to no more than 3.3 per 100,000 live births.

"(30) Reduce the incidence of fetal alcohol syndrome to no more than 2 per 1,000 live births.

"(31) Reduce stroke deaths to no more than 20 per 100,000.

"(32) Reverse the increase in end-stage renal disease (requiring maintenance dialysis or transplantation) to attain an incidence of no more than 13 per 100,000.

"(33) Reduce breast cancer deaths to no more than 20.6 per 100,000 women.

"(34) Reduce deaths from cancer of the uterine cervix to no more than 1.3 per 100,000 women.

"(35) Reduce colorectal cancer deaths to no more than 13.2 per 100,000.

"(36) Reduce to no more than 11 percent the proportion of individuals who experience a limitation in major activity due to chronic conditions.

"(37) Reduce significant hearing impairment to a prevalence of no more than 82 per 1,000.

"(38) Reduce significant visual impairment to a prevalence of no more than 30 per 1,000.

"(39) Reduce diabetes-related deaths to no more than 48 per 100,000.

"(40) Reduce diabetes to an incidence of no more than 2.5 per 1,000 and a prevalence of no more than 62 per 1,000.

"(41) Reduce the most severe complications of diabetes as follows:

"(A) End-stage renal disease, 1.9 per 1,000.

"(B) Blindness, 1.4 per 1,000.

"(C) Lower extremity amputation, 4.9 per 1,000.

"(D) Perinatal mortality, 2 percent.

"(E) Major congenital malformations, 4 percent.

"(42) Confine annual incidence of diagnosed AIDS cases to no more than 1,000 cases.

"(43) Confine the prevalence of HIV infection to no more than 100 per 100,000.

"(44) Reduce gonorrhea to an incidence of no more than 225 cases per 100,000.

"(45) Reduce chlamydia trachomatis infections, as measured by a decrease in the incidence of nongonococcal urethritis to no more than 170 cases per 100,000.

"(46) Reduce primary and secondary syphilis to an incidence of no more than 10 cases per 100,000.

"(47) Reduce the incidence of pelvic inflammatory disease, as measured by a reduction in hospitalization for pelvic inflammatory disease to no more than 250 per 100,000 women aged 15 through 44.

"(48) Reduce viral hepatitis B infection to no more than 40 per 100,000 cases.

"(49) Reduce indigenous cases of vaccine-preventable diseases as follows:

"(A) Diphtheria among individuals aged 25 and younger, 0.

"(B) Tetanus among individuals aged 25 and younger, 0.

"(C) Polio (wild-type virus), 0.

"(D) Measles, 0.

"(E) Rubella, 0.

"(F) Congenital Rubella Syndrome, 0.

"(G) Mumps, 500.

"(H) Pertussis, 1,000.

"(50) Reduce epidemic-related pneumonia and influenza deaths among individuals aged 65 and older to no more than 7.3 per 100,000.

"(51) Reduce the number of new carriers of viral hepatitis B among Alaska Natives to no more than 1 case.

"(52) Reduce tuberculosis to an incidence of no more than 5 cases per 100,000.

"(53) Reduce bacterial meningitis to no more than 8 cases per 100,000.

"(54) Reduce infectious diarrhea by at least 25 percent among children.

"(55) Reduce acute middle ear infections among children aged 4 and younger, as measured by days of restricted activity or school absenteeism, to no more than 105 days per 100 children.

"(56) Reduce cigarette smoking to a prevalence of no more than 20 percent.

"(57) Reduce smokeless tobacco use by youth to a prevalence of no more than 10 percent.

"(58) Increase to at least 65 percent the proportion of parents and caregivers who use feeding practices that prevent baby bottle tooth decay.

"(59) Increase to at least 75 percent the proportion of mothers who breast feed their babies in the early postpartum period, and to at least 50 percent the proportion who continue breast feeding until their babies are 5 to 6 months old.

"(60) Increase to at least 90 percent the proportion of pregnant women who receive prenatal care in the first trimester of pregnancy.

"(61) Increase to at least 70 percent the proportion of individuals who have received, as a minimum within the appropriate interval, all of the screening and immunization services and at least one of the counseling services appropriate for their age and gender as recommended by the United States Preventive Services Task Force.

"(c) It is the intent of the Congress that the Nation increase the proportion of all degrees in the health professions and allied and associated health profession fields awarded to Indians to 0.6 percent.

"(d) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, a report on the progress made in each area of the Service toward meeting each of the objectives described in subsection (b).".

(c) DEFINITIONS.—Section 4 of the Act (25 U.S.C. 1603) is amended by adding at the end the following new subsections:

"(m) 'Service area' means the geographical area served by each area office.

"(n) 'Health profession' means family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, podiatric medicine, nursing, public health nursing, dentistry, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering, and allied health professions.

"(o) 'Substance abuse' includes inhalant abuse.

"(p) 'FAE' means fetal alcohol effect.

"(q) 'FAS' means fetal alcohol syndrome.".

TITLE I—INDIAN HEALTH PROFESSIONALS

SEC. 101. PURPOSE.

Section 101 of the Act (25 U.S.C. 1611) is amended to read as follows:

"PURPOSE

"SEC. 101. The purpose of this title is to increase the number of Indians entering the health professions and to assure an adequate supply of health professionals to the Service, Indian tribes, tribal organizations, and urban Indian organizations involved in the provision of health care to Indian people.".

SEC. 102. HEALTH PROFESSIONS.

(a) Recruitment Program.—Section 102(a) of the Act (25 U.S.C. 1612(a)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) identifying Indians with a potential for education or training in the health professions and encouraging and assisting them—

"(A) to enroll in courses of study in such health professions; or

"(B) if they are not qualified to enroll in any such courses of study, to undertake such postsecondary education or training as may be required to qualify them for enrollment;";

(2) in paragraph (2)—

(A) by striking out "school" both places it appears and inserting in lieu thereof the following: "course of study"; and

(B) by striking out "clause (1)(A)" and inserting in lieu thereof the following: "paragraph (1)"; and

(3) in paragraph (3)—

(A) by striking out "Indians," and inserting in lieu thereof "Indians in,";

(B) by inserting a comma before "courses";

(C) by striking out ", in any school"; and

(D) by striking out "clause (1)(A)" and inserting in lieu thereof the following: "paragraph (1)".

(b) Preparatory Scholarship Program.—Section 103 of the Act (25 U.S.C. 1613) is amended—

(1) by amending subsection (a)(2) to read as follows:

"(2) have demonstrated the capability to successfully complete courses of study in the health professions.";

(2) in subsection (b)(1), by inserting before the period at the end the following: "on a full-time basis (or the part-time equivalent thereof, as determined by the Secretary)";

(3) by amending subsection (b)(2) to read as follows:

"(2) Pregraduate education of any grantee leading to a baccalaureate degree in an approved course of study preparatory to a field of study in a health profession, such scholarship not to exceed 4 years (or the part-time equivalent thereof, as determined by the Secretary).";

(4) in subsection (c), by striking out "full time"; and

(5) by amending subsection (e) to read as follows:

"(e) The Secretary shall not deny scholarship assistance to an eligible applicant under this section solely by reason of such applicant's eligibility for assistance or benefits under any other Federal program.".

(c) Health Professions Scholarships.—Section 104 of the Act (25 U.S.C. 1613a) is amended—

(1) in subsection (a)—

(A) by striking out "Indian communities" and inserting in lieu thereof the following: "Indians, Indian tribes, tribal organizations, and urban Indian organizations";

(B) by striking out "full time" and inserting in lieu thereof the following: "full or part time"; and

(C) by striking out "of medicine" and all that follows through "social work" and inserting in lieu thereof the following: "and pursuing courses of study in the health professions";

(2) in subsection (b)—

(A) in paragraph (2)—

(i) by striking out "full time" and inserting in lieu thereof "full or part time"; and

(ii) by striking out "health profession school" and inserting in lieu thereof "course of study";

(B) in paragraph (3)—

(i) by striking "(3)" and inserting "(3)(A)";

(ii) by redesignating subparagraphs (A), (B), (C), and (D) as clauses (i), (ii), (iii), and (iv), respectively; and

(iii) by inserting at the end the following new subparagraphs:

"(B) A recipient of an Indian Health Scholarship may, at the election of the recipient, meet the active duty service obligation prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m) by service in a program specified in subparagraph (A) that—

"(i) is located on the reservation of the tribe in which the recipient is enrolled; or

"(ii) serves the tribe in which the recipient is enrolled.

"(C) Subject to subparagraph (B), the Secretary, in making assignments of Indian Health Scholarship recipients required to meet the active duty service obligation prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m), shall give priority to assigning individuals to service in those programs specified in subparagraph (A) that have a need for health professionals to provide health care services as a result of individuals having breached contracts entered into under this section."; and

(C) by adding at the end the following new paragraph:

"(4) In the case of an individual receiving a scholarship under this section who is enrolled part time in an approved course of study—

"(A) such scholarship shall be for a period of years not to exceed the part-time equivalent of 4 years, as determined by the Secretary;

"(B) the period of obligated service specified in section 338A(f)(1)(B)(iv) of the Public Health Service Act (42 U.S.C. 254m(f)(1)(B)(iv)) shall be equal to the greater of—

"(i) the part-time equivalent of one year for each year for which the individual was provided a scholarship (as determined by the Secretary); or

"(ii) two years; and

"(C) the amount of the monthly stipend specified in section 338A(g)(1)(B) of the Public Health Service Act (42 U.S.C. 254m(g)(1)(B)) shall be reduced pro rata (as determined by the Secretary) based on the number of hours such student is enrolled.";

(3) by amending subsection (c) to read as follows:

"(c) The Secretary shall, acting through the Service, establish a Placement Office to develop and implement a national policy for the placement, to available vacancies within the Service, of Indian Health Scholarship recipients required to meet the active duty service obligation prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m) without regard to any competitive personnel system, agency personnel limitation, or Indian preference policy."; and

(4) by striking out subsection (d).

(d) Effective Date.—The amendments made by subsection (c)(1)(C) and subsection (c)(2)(B) shall apply with respect to scholarships granted under section 104 of the Indian Health Care Improvement Act after the date of the enactment of this Act.

(e) Extern Program.—Section 105 of the Act (25 U.S.C. 1614) is amended—

(1) in subsection (a), by striking out "section 757 of the Public Health Service Act" and inserting in lieu thereof "section 104"; and

(2) in subsection (b), by striking out "school of medicine" and all that follows through "health professions" and inserting in lieu thereof "course of study in the health professions".

SEC. 103. BREACH OF CONTRACT PROVISIONS RELATING TO INDIAN HEALTH SCHOLARSHIPS.

Section 104(b) of the Act (25 U.S.C. 1613a(b)) (as amended by section 102(c) of this Act) is amended by adding at the end the following new paragraph:

"(5)(A) An individual who has, on or after the date of the enactment of this paragraph, entered into a written contract with the Secretary under this section and who—

"(i) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary),

"(ii) is dismissed from such educational institution for disciplinary reasons,

"(iii) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract before the completion of such training, or

"(iv) fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.

"(B) If for any reason not specified in subparagraph (A) an individual breaches his written contract by failing either to begin such individual's service obligation under this section or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula specified in subsection (l) of section 108 in the manner provided for in such subsection.".

SEC. 104. NURSING.

(a) Continuing Education Allowances.—Section 106(a) of the Act (25 U.S.C. 1615(a)) is amended by inserting "nurses," after "dentists,".

(b) Quentin N. Burdick American Indians Into Nursing Program.—Section 112 of the Act (25 U.S.C. 1616e) is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following new subsection:

"(e) The Secretary shall provide one of the grants authorized under subsection (a) to establish and maintain a program at the University of North Dakota to be known as the 'Quentin N. Burdick American Indians Into Nursing Program'. Such program shall, to the maximum extent feasible, coordinate with the Quentin N. Burdick Indian Health Programs established under section 114(b) and the Quentin N. Burdick American Indians Into Psychology Program established under section 217(b).".

(c) Training for Nurse Midwives, Nurse Anesthetists, and Nurse Practitioners.—Section 112(g) of the Act (25 U.S.C. 1616e(g)) (as redesignated by subsection (b)(1) of this section) is amended to read as follows:

"(g) Beginning with fiscal year 1993, of the amounts appropriated under the authority of this title for each fiscal year to be used to carry out this section, not less than **$1,000,000** shall be used to provide grants under subsection (a) for the training of nurse midwives, nurse anesthetists, and nurse practitioners.".

(d) Retention Bonus for Nurses.—Section 117 (25 U.S.C. 1616j) of the Act is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively;

(2) by adding after subsection (a) the following new subsection (b):

"(b) Beginning with fiscal year 1993, not less than 25 percent of the retention bonuses awarded each year under subsection (a) shall be awarded to nurses."; and

(3) by amending subsection (f) (as amended by paragraph (1)) to read as follows:

"(f) The Secretary may pay a retention bonus to any physician or nurse employed by an organization providing health care services to Indians pursuant to a contract under the Indian Self-Determination Act if such physician or nurse is serving in a position which the Secretary determines is—

"(1) a position for which recruitment or retention is difficult; and

"(2) necessary for providing health care services to Indians.".

(e) Residency Program.—Title I of the Act is amended by adding at the end the following new section:

"NURSING RESIDENCY PROGRAM

"Sec. 118. (a) The Secretary, acting through the Service, shall establish a program to enable licensed practical nurses, licensed vocational nurses, and registered nurses who are working in an Indian health program (as defined in section 108(a)(2)(A)), and have done so for a period of not less than one year, to pursue advanced training.

"(b) Such program shall include a combination of education and work study in an Indian health program (as defined in section 108(a)(2)(A)) leading to an associate or bachelor's degree (in the case of a licensed practical nurse or licensed vocational nurse) or a bachelor's degree (in the case of a registered nurse).

"(c) An individual who participates in a program under subsection (a), where the educational costs are paid by the Service, shall incur an obligation to serve in an Indian health program for a period of obligated service equal to at least three times the period of time during which the individual participates in such program. In the event that the individual fails to complete such obligated service, the United States shall be entitled to recover from such individual an amount determined in accordance with the formula specified in subsection (l) of section 108 in the manner provided for in such subsection.".

(f) Grants for the Provision of Primary Care Services on or Near Indian Country.—Title I of the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.) is amended by adding immediately after section 112 the following new section:

"NURSING SCHOOL CLINICS

"Sec. 112A. (a) Grants.—In addition to the authority of the Secretary under section 112(a)(1), the Secretary, acting through the Service, is authorized to provide grants to public or private schools of nursing for the purpose of establishing, developing, operating, and administering clinics to address the health care needs of Indians, and to provide primary health care services to Indians who reside on or within 50 miles of Indian country, as defined in section 1151 of title 18, United States Code.

"(b) Purposes.—Grants provided under subsection (a) may be used to—

"(1) establish clinics, to be run and staffed by the faculty and students of a grantee school, to provide primary care services in areas in or within 50 miles of Indian country (as defined in section 1151 of title 18, United States Code);

"(2) provide clinical training, program development, faculty enhancement, and student scholarships in a manner that would benefit such clinics; and

"(3) carry out any other activities determined appropriate by the Secretary.

"(c) Amount and Conditions.—The Secretary may award grants under this section in such amounts and subject to such conditions as the Secretary deems appropriate.

"(d) Design.—The clinics established under this section shall be designed to provide nursing students with a structured clinical experience that is similar in nature to that provided by residency training programs for physicians.

"(e) Regulations.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.

"(f) Authorization To Use Amounts.—Out of amounts appropriated to carry out this title for each of the fiscal years 1993 through 2000 not more than $5,000,000 may be used to carry out this section.".

SEC. 105. MAINTENANCE OF COMMUNITY HEALTH REPRESENTATIVE PROGRAM.

Section 107(b) of the Act (25 U.S.C. 1616(b)) is amended—

(1) in paragraph (2), in the material preceding subparagraph (A), by inserting "and maintain" after "develop";

(2) in paragraph (2)(B), by adding at the end the following: "with appropriate consideration given to lifestyle factors that have an impact on Indian health status, such as alcoholism, family dysfunction, and poverty,";

(3) in paragraphs (3) and (5), by striking out "develop" each place it appears and inserting in lieu thereof "maintain"; and

(4) in paragraph (4), by striking out "develop and".

SEC. 106. CHANGES TO INDIAN HEALTH SERVICE LOAN REPAYMENT PROGRAM.

(a) Eligibility Requirements.—Section 108 of the Act (25 U.S.C. 1616a(b)) is amended—

(1) in subsection (a)(1), by striking out "physicians," and all that follows through "professionals" and inserting in lieu thereof "health professionals"; and

(2) in subsection (b)—

(A) in paragraph (1)(A)—

(i) by amending clause (i) to read as follows:

"(i) in a course of study or program in an accredited institution, as determined by the Secretary, within any State and be scheduled to complete such course of study in the same year such individual applies to participate in such program; or"; and

(ii) in clause (ii), by striking out "medicine" and all that follows through "health profession" and inserting in lieu thereof the following: "a health profession";

(B) in paragraph (1)(B)—

(i) by inserting "and" at the end of clause (i), by striking out clause (ii), and by redesignating clause (iii) as clause (ii);

(ii) in clause (i), by striking out "medicine, osteopathy, dentistry, or other health profession" and inserting in lieu thereof the following: "a health profession"; and

(iii) in clause (ii) (as redesignated by clause (i) of this subparagraph), by striking out "medicine, osteopathy, dentistry, or other health profession" and inserting in lieu thereof the following: "a health profession"; and

(C) in paragraph (2), by inserting "and" at the end of subparagraph (D), by striking out paragraphs (3) and (4), and by inserting after paragraph (2) the following:

"(3) submit to the Secretary an application for a contract described in subsection (f).".

(b) Priority.—Section 108(d) of the Act (25 U.S.C. 1616a(d)) is amended—

(1) in paragraph (1), by striking out "The" and inserting "Consistent with paragraph (3), the"; and

(2) by adding at the end the following new paragraph:

"(3)(A) Subject to subparagraph (B), of the total amounts appropriated for each of the fiscal years 1993, 1994, and 1995 for loan repayment contracts under this section, the Secretary shall provide that—

"(i) not less than 25 percent be provided to applicants who are nurses, nurse practitioners, or nurse midwives; and

"(ii) not less than 10 percent be provided to applicants who are mental health professionals (other than applicants described in clause (i)).

"(B) The requirements specified in clause (i) or clause (ii) of subparagraph (A) shall not apply if the Secretary does not receive the number of applications from the individuals described in clause (i) or clause (ii), respectively, necessary to meet such requirements.".

(c) Becoming a Participant.—Paragraph (1) of section 108(e) (25 U.S.C. 1616a(e)) is amended to read as follows:

"(1) An individual becomes a participant in the Loan Repayment Program only upon the Secretary and the individual entering into a written contract described in subsection (f).".

(d) Extension of Obligated Service.—Paragraph (2)(A) of section 108(e) (25 U.S.C. 1616a(e)) is amended by inserting before the semicolon the following: ", including extensions resulting in an aggregate period of obligated service in excess of 4 years".

(e) Clarification Regarding Undergraduate Loans.—Paragraph (1) of section 108(g) (25 U.S.C. 1616a(g)) is amended in the matter preceding subparagraph (A) by striking out "loans received by the individual for—" and inserting in lieu thereof "loans received by the individual regarding the undergraduate or graduate education of the individual (or both), which loans were made for—".

(f) Payment.—Section 108(g)(2)(A) (25 U.S.C. 1616a(g)(2)(A)) is amended to read as follows:

"(2)(A) For each year of obligated service that an individual contracts to serve under subsection (f) the Secretary may pay up to $35,000 (or an amount equal to the amount specified in section 338B(g)(2)(A) of the Public Health Service Act) on behalf of the individual for loans described in paragraph (1). In making a determination of the amount to pay for a year of such service by an individual, the Secretary shall consider the extent to which each such determination—

"(i) affects the ability of the Secretary to maximize the number of contracts that can be provided under the Loan Repayment Program from the amounts appropriated for such contracts;

"(ii) provides an incentive to serve in Indian health programs with the greatest shortages of health professionals; and

"(iii) provides an incentive with respect to the health professional involved remaining in an Indian health program with such a health professional shortage, and continuing to provide primary health services, after the completion of the period of obligated service under the Loan Repayment Program.".

(g) TAX LIABILITY.—(1) Paragraph (3) of section 108(g) (25 U.S.C. 1616a(g)(3)) is amended to read as follows:

"(3) For the purpose of providing reimbursements for tax liability resulting from payments under paragraph (2) on behalf of an individual, the Secretary—

"(A) in addition to such payments, may make payments to the individual in an amount not less than 20 percent and not more than 39 percent of the total amount of loan repayments made for the taxable year involved; and

"(B) may make such additional payments as the Secretary determines to be appropriate with respect to such purpose.".

(2) The amendment made by paragraph (1) shall apply only with respect to contracts under section 108 of the Indian Health Care Improvement Act entered into on or after the date of enactment of this Act.

(h) STAFFING NEEDS.—Section 108(k) (25 U.S.C. 1616a(k)) is amended to read as follows:

"(k) The Secretary, in assigning individuals to serve in Indian health programs pursuant to contracts entered into under this section, shall—

"(1) ensure that the staffing needs of Indian health programs administered by an Indian tribe or tribal or health organization receive consideration on an equal basis with programs that are administered directly by the Service; and

"(2) give priority to assigning individuals to Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached contracts entered into under this section.".

(i) ANNUAL REPORT.—Subsection (n) of section 108 is amended to read as follows:

"(n) The Secretary shall submit to the President, for inclusion in each report required to be submitted to the Congress under section 801, a report concerning the previous fiscal year which sets forth—

"(1) the health professional positions maintained by the Service or by tribal or Indian organizations for which recruitment or retention is difficult;

"(2) the number of Loan Repayment Program applications filed with respect to each type of health profession;

"(3) the number of contracts described in subsection (f) that are entered into with respect to each health profession;

"(4) the amount of loan payments made under this section, in total and by health profession;

"(5) the number of scholarship grants that are provided under section 104 with respect to each health profession;

"(6) the amount of scholarship grants provided under section 104, in total and by health profession;

"(7) the number of providers of health care that will be needed by Indian health programs, by location and profession, during the three fiscal years beginning after the date the report is filed; and

"(8) the measures the Secretary plans to take to fill the health professional positions maintained by the Service or by tribes or tribal or Indian organizations for which recruitment or retention is difficult.".

SEC. 107. RECRUITMENT ACTIVITIES.

Section 109 of the Act (25 U.S.C. 1616b) is amended—

(1) by amending the heading to read as follows:

"RECRUITMENT ACTIVITIES"; AND

(2) by amending subsection (b) to read as follows:

"(b) The Secretary, acting through the Service, shall assign one individual in each area office to be responsible on a full-time basis for recruitment activities.".

SEC. 108. ADVANCED TRAINING AND RESEARCH.

Section 111 of the Act (25 U.S.C. 1616d) is amended—

(1) in subsection (b), by amending the last sentence to read as follows: "In such event, with respect to individuals entering the program after the date of the enactment of the Indian Health Amendments of 1992, the United States shall be entitled to recover from such individual an amount to be determined in accordance with the formula specified in subsection (l) of section 108 in the manner provided for in such subsection."; and

(2) by striking out subsection (d).

SEC. 109. INMED PROGRAM.

Section 114(b) of the Act (25 U.S.C. 1616g(b)) is amended—

(1) by inserting after "North Dakota," the following: "to be known as the 'Quentin N. Burdick Indian Health Programs',"; and

(2) by adding at the end the following: "Such program shall, to the maximum extent feasible, coordinate with the Quentin N. Burdick American Indians Into Psychology Program established under section 217(b) and the Quentin N. Burdick American Indians Into Nursing Program established under section 112(e).".

SEC. 110. SCHOLARSHIP AND LOAN REPAYMENT RECOVERY FUND.

Title I of the Act is amended by inserting after section 108 the following new section:

"SCHOLARSHIP AND LOAN REPAYMENT RECOVERY FUND

"SEC. 108A. (a) There is established in the Treasury of the United States a fund to be known as the Indian Health Scholarship and Loan Repayment Recovery Fund (hereafter in this section referred to as the 'Fund'). The Fund shall consist of such amounts as may be appropriated to the Fund under subsection (b). Amounts appropriated for the Fund shall remain available until expended.

"(b) For each fiscal year, there is authorized to be appropriated to the Fund an amount equal to the sum of—

"(1) the amount collected during the preceding fiscal year by the Federal Government pursuant to—

"(A) the liability of individuals under subparagraph (A) or (B) of section 104(b)(5) for the breach of contracts entered into under section 104; and

"(B) the liability of individuals under section 108(l) for the breach of contracts entered into under section 108; and

"(2) the aggregate amount of interest accruing during the preceding fiscal year on obligations held in the Fund pursuant to subsection (d) and the amount of proceeds from the sale or redemption of such obligations during such fiscal year.

"(c)(1) Amounts in the Fund and available pursuant to appropriation Acts may be expended by the Secretary, acting through the Service, to make payments to an Indian tribe or tribal organization administering a health care program pursuant to a contract entered into under the Indian Self-Determination Act—

"(A) to which a scholarship recipient under section 104 or a loan repayment program participant under section 108 has been assigned to meet the obligated service requirements pursuant to sections; and

"(B) that has a need for a health professional to provide health care services as a result of such recipient or participant having breached the contract entered into under section 104 or section 108.

"(2) An Indian tribe or tribal organization receiving payments pursuant to paragraph (1) may expend the payments to recruit and employ, directly or by contract, health professionals to provide health care services.

"(d)(1) The Secretary of the Treasury shall invest such amounts of the Fund as such Secretary determines are not required to meet current withdrawals from the Fund. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired on original issue at the issue price, or by purchase of outstanding obligations at the market price.

"(2) Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.".

SEC. 111. COMMUNITY HEALTH AIDE PROGRAM.

Title I of the Act (as amended by section 104 of this Act) is amended by adding at the end the following new section:

"COMMUNITY HEALTH AIDE PROGRAM FOR ALASKA

"SEC. 119. (a) Under the authority of the Act of November 2, 1921 (25 U.S.C. 13; popularly known as the Snyder Act), the Secretary shall maintain a Community Health Aide Program in Alaska under which the Service—

"(1) provides for the training of Alaska Natives as health aides or community health practitioners;

"(2) uses such aides or practitioners in the provision of health care, health promotion, and disease prevention services to Alaska Natives living in villages in rural Alaska; and

"(3) provides for the establishment of teleconferencing capacity in health clinics located in or near such villages for use by community health aides or community health practitioners.

"(b) The Secretary, acting through the Community Health Aide Program of the Service, shall—

"(1) using trainers accredited by the Program, provide a high standard of training to community health aides and community health practitioners to ensure that such aides and practitioners provide quality health care, health promotion, and disease prevention services to the villages served by the Program;

"(2) in order to provide such training, develop a curriculum that—

"(A) combines education in the theory of health care with supervised practical experience in the provision of health care;

"(B) provides instruction and practical experience in the provision of acute care, emergency care, health promotion, disease prevention, and the efficient and effective management of clinic pharmacies, supplies, equipment, and facilities; and

"(C) promotes the achievement of the health status objectives specified in section 3(b);

"(3) establish and maintain a Community Health Aide Certification Board to certify as community health aides or community health practitioners individuals who have successfully completed the training described in paragraph (1) or can demonstrate equivalent experience;

"(4) develop and maintain a system which identifies the needs of community health aides and community health practitioners for continuing education in the provision of health care, including the areas described in paragraph (2)(B), and develop programs that meet the needs for such continuing education;

"(5) develop and maintain a system that provides close supervision of community health aides and community health practitioners; and

"(6) develop a system under which the work of community health aides and community health practitioners is reviewed and evaluated to assure the provision of quality health care, health promotion, and disease prevention services.".

SEC. 112. MATCHING GRANTS TO TRIBES.

Title I of the Act (as amended by section 111 of this Act) is amended by adding at the end the following new section:

"MATCHING GRANTS TO TRIBES FOR SCHOLARSHIP PROGRAMS

"SEC. 120. (a)(1) The Secretary shall make grants to Indian tribes and tribal organizations for the purpose of assisting such tribes and tribal organizations in educating Indians to serve as health professionals in Indian communities.

"(2) Amounts available for grants under paragraph (1) for any fiscal year shall not exceed 5 percent of amounts available for such fiscal year for Indian Health Scholarships under section 104.

"(3) An application for a grant under paragraph (1) shall be in such form and contain such agreements, assurances, and information as the Secretary determines are necessary to carry out this section.

"(b)(1) An Indian tribe or tribal organization receiving a grant under subsection (a) shall agree to provide scholarships to Indians pursuing education in the health professions in accordance with the requirements of this section.

"(2) With respect to the costs of providing any scholarship pursuant to paragraph (1)—

"(A) 80 percent of the costs of the scholarship shall be paid from the grant made under subsection (a) to the Indian tribe or tribal organization; and

"(B) 20 percent of such costs shall be paid from non-Federal contributions by the Indian tribe or tribal organization through which the scholarship is provided.

"(3) In determining the amount of non-Federal contributions that have been provided for purposes of subparagraph (B) of paragraph (2), any amounts provided by the Federal Government to the Indian tribe or tribal organization involved or to any other entity shall not be included.

"(4) Non-Federal contributions required by subparagraph (B) of paragraph (2) may be provided directly by the Indian tribe or tribal organization involved or through donations from public and private entities.

"(c) An Indian tribe or tribal organization shall provide scholarships under subsection (b) only to Indians enrolled or accepted for enrollment in a course of study (approved by the Secretary) in one of the health professions described in section 104(a).

"(d) In providing scholarships under subsection (b), the Secretary and the Indian tribe or tribal organization shall enter into a written contract with each recipient of such scholarship. Such contract shall—

"(1) obligate such recipient to provide service in an Indian health program (as defined in section 108(a)(2)(A)), in the same service area where the Indian tribe or tribal organization providing the scholarship is located, for—

"(A) a number of years equal to the number of years for which the scholarship is provided (or the part-time equivalent thereof, as determined by the Secretary), or for a period of 2 years, whichever period is greater; or

"(B) such greater period of time as the recipient and the Indian tribe or tribal organization may agree;

"(2) provide that the amount of such scholarship—

"(A) may be expended only for—

"(i) tuition expenses, other reasonable educational expenses, and reasonable living expenses incurred in attendance at the educational institution; and

"(ii) payment to the recipient of a monthly stipend of not more than the amount authorized by section 338A(g)(1)(B) of the Public Health Service Act (42 U.S.C. 254m(g)(1)(B)), such amount to be reduced pro rata (as determined by the Secretary) based on the number of hours such student is enrolled; and

"(B) may not exceed, for any year of attendance for which the scholarship is provided, the total amount required for the year for the purposes authorized in subparagraph (A);

"(3) require the recipient of such scholarship to maintain an acceptable level of academic standing (as determined by the educational institution in accordance with regulations issued by the Secretary); and

"(4) require the recipient of such scholarship to meet the educational and licensure requirements necessary to be a physician, certified nurse practitioner, certified nurse midwife, or physician assistant.

"(e)(1) An individual who has entered into a written contract with the Secretary and an Indian tribe or tribal organization under subsection (d) and who—

"(A) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary),

"(B) is dismissed from such educational institution for disciplinary reasons,

"(C) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract before the completion of such training, or

"(D) fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,

in lieu of any service obligation arising under such contract, shall be liable to the United States for the Federal share of the amount which has been paid to him, or on his behalf, under the contract.

"(2) If for any reason not specified in paragraph (1), an individual breaches his written contract by failing either to begin such individual's service obligation required under such contract or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula specified in subsection (l) of section 108 in the manner provided for in such subsection.

"(3) The Secretary may carry out this subsection on the basis of information submitted by the tribes or tribal organizations involved, or on the basis of information collected through such other means as the Secretary determines to be appropriate.

"(f) The recipient of a scholarship under subsection (b) shall agree, in providing health care pursuant to the requirements of subsection (d)(1)—

"(1) not to discriminate against an individual seeking such care on the basis of the ability of the individual to pay for such care or on the basis that payment for such care will be made pursuant to the program established in title XVIII of the Social Security Act or pursuant to the program established in title XIX of such Act; and

"(2) to accept assignment under section 1842(b)(3)(B)(ii) of the Social Security Act for all services for which payment may be made under part B of title XVIII of such Act, and to enter into an appropriate agreement with the State agency that administers the State plan for medical assistance under title XIX of such Act to provide service to individuals entitled to medical assistance under the plan.

"(g) The Secretary may not make any payments under subsection (a) to an Indian tribe or tribal organization for any fiscal year subsequent to the first fiscal year of such payments unless the Secretary determines that, for the immediately preceding fiscal year, the Indian tribe or tribal organization has complied with requirements of this section.".

SEC. 113. TRIBAL HEALTH PROGRAM ADMINISTRATION.

Title I of the Act (as amended by section 112 of this Act) is amended by adding at the end the following new section:

"TRIBAL HEALTH PROGRAM ADMINISTRATION

"SEC. 121. The Secretary shall, by contract or otherwise, provide training for individuals in the administration and planning of tribal health programs.".

SEC. 114. TRIBALLY CONTROLLED VOCATIONAL INSTITUTIONS.

(a) NURSING PROGRAM GRANTS.—Section 112(a)(2) of the Act (25 U.S.C. 1616e(a)(2)) is amended by inserting before the comma the following: "and tribally controlled postsecondary vocational institutions (as defined in section 390(2) of the Tribally Controlled Vocational Institutions Support Act of 1990 (20 U.S.C. 2397h(2))".

(b) TRIBAL CULTURE AND HISTORY PROGRAMS.—Section 113(b)(1) of the Act (25 U.S.C. 1616f(b)(1) is amended by inserting before the comma "and tribally controlled postsecondary vocational institutions (as defined in section 390(2) of the Tribally Controlled Vocational Institutions Support Act of 1990 (20 U.S.C. 2397h(2))".

SEC. 115. CONTINUING EDUCATION ALLOWANCES.

Section 106(b) of the Act (25 U.S.C. 1615(b)) is amended to read as follows:

"(b) Of amounts appropriated under the authority of this title for each fiscal year to be used to carry out this section, not more than $1,000,000 may be used to establish postdoctoral training programs for health professionals.".

SEC. 116. UNIVERSITY OF SOUTH DAKOTA MODEL HEALTH PROGRAM.

Title I of the Act (as amended by section 113 of this Act) is amended by adding at the end the following new section:

"UNIVERSITY OF SOUTH DAKOTA PILOT PROGRAM

"SEC. 122. (a) The Secretary may make a grant to the School of Medicine of the University of South Dakota (hereafter in this section referred to as 'USDSM') to establish a pilot program on an Indian reservation at one or more service units in South Dakota to address the chronic manpower shortage in the Aberdeen Area of the Service.

"(b) The purposes of the program established pursuant to a grant provided under subsection (a) are—

"(1) to provide direct clinical and practical experience at a service unit to medical students and residents from USDSM and other medical schools;

"(2) to improve the quality of health care for Indians by assuring access to qualified health care professionals; and

"(3) to provide academic and scholarly opportunities for physicians, physician assistants, nurse practitioners, nurses, and other allied health professionals serving Indian people by identifying and utilizing all academic and scholarly resources of the region.

"(c) The pilot program established pursuant to a grant provided under subsection (a) shall—

"(1) incorporate a program advisory board composed of representatives from the tribes and communities in the area which will be served by the program; and

"(2) shall be designated as an extension of the USDSM campus and program participants shall be under the direct supervision and instruction of qualified medical staff serving at the service unit who shall be members of the USDSM faculty.

"(d) The USDSM shall coordinate the program established pursuant to a grant provided under subsection (a) with other medical schools in the region, nursing schools, tribal community colleges, and other health professional schools.

"(e) The USDSM, in cooperation with the Service, shall develop additional professional opportunities for program participants on Indian reservations in order to improve the recruitment and retention of qualified health professionals in the Aberdeen Area of the Service.".

SEC. 117. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—Title I of the Act (as amended by section 116 of this Act) is amended by adding at the end the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 123. There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this title.".

(b) CONFORMING AMENDMENTS.—Title I of the Act is amended—

(1) in section 102, by striking out subsection (c);

(2) in section 105, by striking out subsection (d);

(3) in section 108, by striking out subsection (o);

(4) in section 110, by striking out subsection (c);

(5) in section 113, by striking out subsection (c);

(6) in section 114, by striking out subsection (e);

(7) in section 115, by striking out subsection (f); and

(8) in section 116, by striking out subsection (e).

TITLE II—HEALTH SERVICES

SEC. 201. INDIAN HEALTH CARE IMPROVEMENT FUND.

(a) IN GENERAL.—Section 201 of the Act (25 U.S.C. 1621) is amended—

(1) in subsection (a)—

(A) in the material preceding paragraph (1), by striking out "subsection (h)" and inserting in lieu thereof "this section";

(B) by amending paragraph (1) to read as follows:

"(1) eliminating the deficiencies in health status and resources of all Indian tribes,"; and

(C) in paragraph (4), in the material preceding subparagraph (A)—

(i) by inserting after "responsibilities" the following: ", either through direct or contract care or through contracts entered into pursuant to the Indian Self-Determination Act,"; and

(ii) by striking out "resources deficiency" and inserting in lieu thereof the following: "status and resource deficiencies";

(2) in subsection (b)—

(A) in paragraph (1), by striking out "subsection (h)" and inserting in lieu thereof "this section";

(B) by striking out paragraph (2) and redesignating paragraph (3) as paragraph (2); and

(C) in paragraph (2)(A) (as redesignated by subparagraph (B))—

(i) by striking out "subsection (h)" and inserting in lieu thereof "this section";

(ii) in the first sentence, by striking out "but such allocation" through "met";

(iii) in the second sentence—

(I) by striking out "(in accordance with paragraph (2))"; and

(II) by striking out "raise the deficiency level" and inserting in lieu thereof the following: "reduce the health status and resource deficiency"; and

(D) in paragraph (2)(B) (as redesignated by subparagraph (B)), by inserting after "consultation with" the following: ", and with the active participation of,";

(3) in subsection (c)—

(A) by striking out paragraph (1) and redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively;

(B) by amending paragraph (1) (as redesignated by subparagraph (A) above) to read as follows:

"(1) The term 'health status and resource deficiency' means the extent to which—

"(A) the health status objectives set forth in section 3(b) are not being achieved; and

"(B) the Indian tribe does not have available to it the health resources it needs, taking into account the actual cost of providing health care services given local geographic, climatic, rural, or other circumstances."; and

(C) in paragraph (3) (as redesignated by subparagraph (A) above)—

(i) by striking out "Under regulations, the" and inserting in lieu thereof "The"; and

(ii) by striking out "health resources deficiency level" and inserting in lieu thereof "extent of the health status and resource deficiency";

(4) in subsection (d)(1), by striking out "subsection (h)" and inserting in lieu thereof "this section";

(5) in subsection (e)—

(A) in the material preceding paragraph (1)—

(i) by striking out "60 days" and inserting in lieu thereof "3 years";

(ii) by striking out "Indian Health Care Amendments of 1988" and inserting in lieu thereof "Indian Health Amendments of 1992"; and

(iii) by striking out "health services priority system" and inserting in lieu thereof "health status and resource deficiency";

(B) in paragraph (1), by striking out "health resources deficiencies" and inserting in lieu thereof "health status and resource deficiencies";

(C) in paragraph (2), by striking out "the level of health resources deficiency for" and inserting in lieu thereof the following: "the extent of the health status and resource deficiency of";

(D) in paragraph (3), by striking "raise all" and all that follows through the semicolon and insert in lieu thereof the following: "eliminate the health status and resource deficiencies of all Indian tribes served by the Service; and"; and

(E) by striking out paragraphs (4) and (5) and redesignating paragraph (6) as paragraph (4); and

(6) in subsection (f), by striking out "(f)(1)" and all that follows through the paragraph designation for paragraph (2) and inserting in lieu thereof "(f)".

(b) EFFECTIVE DATE.—Except with respect to the amendments made by subsection (a)(5), the amendments made by subsection (a) shall take effect three years after the date of the enactment of this Act. The amendments made by subsection (a)(5) shall take effect upon the date of the enactment of this Act.

(c) TECHNICAL AMENDMENT.—The heading for section 201 of the Act (25 U.S.C. 1621) is amended to read as follows:

"INDIAN HEALTH CARE IMPROVEMENT FUND".

SEC. 202. CATASTROPHIC HEALTH EMERGENCY FUND.

(a) IN GENERAL.—Section 202 of the Act (25 U.S.C. 1621a) is amended—

(1) in subsection (a)(1)(B), by striking out "under subsection (e)" and inserting in lieu thereof "to the Fund under this section";

(2) in subsection (b)(2), by striking out "shall establish at not less than $10,000 or not more than $20,000;" and inserting in lieu thereof the following: "shall establish at—

"(A) for 1993, not less than $15,000 or not more than $25,000; and

"(B) for any subsequent year, not less than the threshold cost of the previous year increased by the percentage increase in the medical care expenditure category of the consumer price index for all urban consumers (United States city average) for the 12-month period ending with December of the previous year;"; and

(3) in subsection (c), by striking out "Funds appropriated under subsection (e)" and inserting in lieu thereof "Amounts appropriated to the Fund under this section".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(2) shall take effect January 1, 1993.

SEC. 203. HEALTH PROMOTION AND DISEASE PREVENTION.

Section 203 of the Act (25 U.S.C. 1621b) is amended—

(1) in subsection (a), by inserting before the period at the end the following: "so as to achieve the health status objectives set forth in section 3(b)";

(2) in subsection (b), in the material preceding paragraph (1), by striking out "section 201(f)" and inserting in lieu thereof "section 801"; and

(3) by striking out subsection (c).

SEC. 204. DIABETES PREVENTION, TREATMENT, AND CONTROL.

Section 204 of the Act (25 U.S.C. 1621c) is amended—

(1) by amending subsection (c) to read as follows:

"(c)(1) The Secretary shall continue to maintain through fiscal year 2000 each model diabetes project in existence on the date of the enactment of the Indian Health Amendments of 1992 and located—

"(A) at the Claremore Indian Hospital in Oklahoma;

"(B) at the Fort Totten Health Center in North Dakota;

"(C) at the Sacaton Indian Hospital in Arizona;

"(D) at the Winnebago Indian Hospital in Nebraska;

"(E) at the Albuquerque Indian Hospital in New Mexico;

"(F) at the Perry, Princeton, and Old Town Health Centers in Maine;

"(G) at the Bellingham Health Center in Washington;

"(H) at the Fort Berthold Reservation;

"(I) at the Navajo Reservation;

"(J) at the Papago Reservation;

"(K) at the Zuni Reservation; or

"(L) in the States of Alaska, California, Minnesota, Montana, Oregon, or Utah.

"(2) The Secretary may establish new model diabetes projects under this section taking into consideration applications received under this section from all service areas, except that the Secretary may not establish a greater number of such projects in one service area than in any other service area until there is an equal number of such projects established with respect to all service areas from which the Secretary receives qualified applications during the application period (as determined by the Secretary).''; and

(2) in subsection (d)—

(A) in paragraph (2), by striking out "and" after the semicolon;

(B) in paragraph (3), by striking out the period and inserting in lieu thereof the following: "; and"; and

(C) by adding at the end the following new paragraph:

"(4) evaluate the effectiveness of services provided through model diabetes projects established under this section.".

SEC. 205. MENTAL HEALTH PREVENTION AND TREATMENT SERVICES.

Section 209 of the Act (25 U.S.C. 1621h) is amended—

(1) in subsection (j) (as redesignated by section 902(3)(B) of this Act), by striking out "submit to the Congress an annual report" and inserting in lieu thereof the following: "submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, a report"; and

(2) by adding at the end the following new subsections:

"(l) LICENSING REQUIREMENT FOR MENTAL HEALTH CARE WORKERS.—Any person employed as a psychologist, social worker, or marriage and family therapist for the purpose of providing mental health care services to Indians in a clinical setting under the authority of this Act or through a contract pursuant to the Indian Self-Determination Act shall—

"(1) in the case of a person employed as a psychologist, be licensed as a clinical psychologist or working under the direct supervision of a licensed clinical psychologist;

"(2) in the case of a person employed as a social worker, be licensed as a social worker or working under the direct supervision of a licensed social worker; or

"(3) in the case of a person employed as a marriage and family therapist, be licensed as a marriage and family therapist or working under the direct supervision of a licensed marriage and family therapist.

"(m) INTERMEDIATE ADOLESCENT MENTAL HEALTH SERVICES.—(1) The Secretary, acting through the Service, may make grants to Indian tribes and tribal organizations to provide intermediate mental health services to Indian children and adolescents, including—

"(A) inpatient and outpatient services;

"(B) emergency care;

"(C) suicide prevention and crisis intervention; and

"(D) prevention and treatment of mental illness, and dysfunctional and self-destructive behavior, including child abuse and family violence.

"(2) Funds provided under this subsection may be used—

"(A) to construct or renovate an existing health facility to provide intermediate mental health services;

"(B) to hire mental health professionals;

"(C) to staff, operate, and maintain an intermediate mental health facility, group home, or youth shelter where intermediate mental health services are being provided; and

"(D) to make renovations and hire appropriate staff to convert existing hospital beds into adolescent psychiatric units.

"(3) Funds provided under this subsection may not be used for the purposes described in section 216(b)(1).

"(4) An Indian tribe or tribal organization receiving a grant under this subsection shall ensure that intermediate adolescent mental health services are coordinated with other tribal, Service, and Bureau of Indian Affairs mental health, alcohol and substance abuse, and social services programs on the reservation of such tribe or tribal organization.

"(5) The Secretary shall establish criteria for the review and approval of applications for grants made pursuant to this subsection.

"(6) There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.".

SEC. 206. NEW STUDIES AND DEMONSTRATION PROGRAM.

(a) HOSPICE CARE.—Title II of the Act is amended by inserting after section 204 the following:

"HOSPICE CARE FEASIBILITY STUDY

"SEC. 205. (a) The Secretary, acting through the Service and in consultation with representatives of Indian tribes, tribal organizations, Indian Health Service personnel, and hospice providers, shall conduct a study—

"(1) to assess the feasibility and desirability of furnishing hospice care to terminally ill Indians; and

"(2) to determine the most efficient and effective means of furnishing such care.

"(b) Such study shall—

"(1) assess the impact of Indian culture and beliefs concerning death and dying on the provision of hospice care to Indians;

"(2) estimate the number of Indians for whom hospice care may be appropriate and determine the geographic distribution of such individuals;

"(3) determine the most appropriate means to facilitate the participation of Indian tribes and tribal organizations in providing hospice care;

"(4) identify and evaluate various means for providing hospice care, including—

"(A) the provision of such care by the personnel of a Service hospital pursuant to a hospice program established by the Secretary at such hospital; and

"(B) the provision of such care by a community-based hospice program under contract to the Service; and

"(5) identify and assess any difficulties in furnishing such care and the actions needed to resolve such difficulties.

"(c) Not later than the date which is 12 months after the date of the enactment of this section, the Secretary shall transmit to the Congress a report containing—

"(1) a detailed description of the study conducted pursuant to this section; and

"(2) a discussion of the findings and conclusions of such study.

"(d) For the purposes of this section—

"(1) the term 'terminally ill' means any Indian who has a medical prognosis (as certified by a physician) of a life expectancy of six months or less; and

"(2) the term 'hospice program' means any program which satisfies the requirements of section 1861(dd)(2) of the Social Security Act (42 U.S.C. 1395x(dd)(2)); and

"(3) the term 'hospice care' means the items and services specified in subparagraphs (A) through (H) of section 1861(dd)(1) of the Social Security Act (42 U.S.C. 1395x(dd)(1)).".

(b) MANAGED CARE.—Title II of the Act is amended by adding at the end the following new section:

"MANAGED CARE FEASIBILITY STUDY

"SEC. 210. (a) The Secretary, acting through the Service, shall conduct a study to assess the feasibility of allowing an Indian tribe to purchase, directly or through the Service, managed care coverage for all members of the tribe from—

"(1) a tribally owned and operated managed care plan; or

"(2) a State licensed managed care plan.

"(b) Not later than the date which is 12 months after the date of the enactment of this section, the Secretary shall transmit to the Congress a report containing—

"(1) a detailed description of the study conducted pursuant to this section; and

"(2) a discussion of the findings and conclusions of such study.".

(c) CONTRACT CARE.—Title II of the Act (as amended by subsection (b) of this Act) is amended by adding at the end the following new section:

"CALIFORNIA CONTRACT HEALTH SERVICES DEMONSTRATION PROGRAM

"SEC. 211. (a) The Secretary shall establish a demonstration program to evaluate the use of a contract care intermediary to improve the accessibility of health services to California Indians.

"(b)(1) In establishing such program, the Secretary shall enter into an agreement with the California Rural Indian Health Board to reimburse the Board for costs (including reasonable administrative costs) incurred, during the period of the demonstration program, in providing medical treatment under contract to California Indians described in section 809(b) throughout the California contract health services delivery area described in section 810 with respect to high-cost contract care cases.

"(2) Not more than 5 percent of the amounts provided to the Board under this section for any fiscal year may be for reimbursement for administrative expenses incurred by the Board during such fiscal year.

"(3) No payment may be made for treatment provided under the demonstration program to the extent payment may be made for such treatment under the Catastrophic Health Emergency Fund described in section 202 or from amounts appropriated or otherwise made available to the California contract health service delivery area for a fiscal year.

"(c) There is hereby established an advisory board which shall advise the California Rural Indian Health Board in carrying out the demonstration pursuant to this section. The advisory board shall be composed of representatives, selected by the California Rural Indian Health Board, from not less than 8 tribal health programs serving California Indians covered under such demonstration, at least one half of whom are not affiliated with the California Rural Indian Health Board.

"(d) The demonstration program described in this section shall begin on January 1, 1993, and shall terminate on September 30, 1997.

"(e) Not later than July 1, 1998, the California Rural Indian Health Board shall submit to the Secretary a report on the demonstration program carried out under this section, including a statement of its findings regarding the impact of using a contract care intermediary on—

"(1) access to needed health services;

"(2) waiting periods for receiving such services; and

"(3) the efficient management of high-cost contract care cases.

"(f) For the purposes of this section, the term 'high-cost contract care cases' means those cases in which the cost of the medical treatment provided to an individual—

"(1) would otherwise be eligible for reimbursement from the Catastrophic Health

Emergency Fund established under section 202, except that the cost of such treatment does not meet the threshold cost requirement established pursuant to section 202(b)(2); and

"(2) exceeds $1,000.

"(g) There are authorized to be appropriated for each of the fiscal years 1993, 1994, 1995, 1996, and 1997 such sums as may be necessary to carry out the purposes of this section.".

SEC. 207. COVERAGE OF SCREENING MAMMOGRAPHY.

(a) IN GENERAL.—Title II of the Act (as amended by section 206(c) of this Act) is amended by adding at the end the following new section:

"COVERAGE OF SCREENING MAMMOGRAPHY

"SEC. 212. The Secretary, through the Service, shall provide for screening mammography (as defined in section 1861(jj) of the Social Security Act) for Indian and urban Indian women 35 years of age or older at a frequency, determined by the Secretary (in consultation with the Director of the National Cancer Institute), appropriate to such women, and under such terms and conditions as are consistent with standards established by the Secretary to assure the safety and accuracy of screening mammography under part B of title XVIII of the Social Security Act.".

(b) CONFORMING AMENDMENT.—Section 201(a)(4)(B) of the Act (25 U.S.C. 1621(a)(4)(B)) is amended by striking the semicolon at the end and inserting the following: ", including screening mammography in accordance with section 212;".

SEC. 208. PATIENT TRAVEL COSTS.

Title II of the Act (as amended by section 207 of this Act) is amended by adding at the end the following new section:

"PATIENT TRAVEL COSTS

"SEC. 213. (a) The Secretary, acting through the Service, shall provide funds for the following patient travel costs associated with receiving health care services provided (either through direct or contract care or through contracts entered into pursuant to the Indian Self-Determination Act) under this Act—

"(1) emergency air transportation; and

"(2) nonemergency air transportation where ground transportation is infeasible.

"(b) There are authorized to be appropriated to carry out this section $15,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.".

SEC. 209. THIRD PARTY REIMBURSEMENT.

(a) RECOVERY BY INDIAN TRIBE.—Section 206 of the Act (25 U.S.C. 1621e) is amended—

(1) by inserting ", an Indian tribe, or a tribal organization" after "United States" each place it appears;

(2) in subsection (a), by inserting ", an Indian tribe, or a tribal organization" after "Service";

(3) in subsection (a) and subsection (e)(1)(A), by inserting ", an Indian tribe, or a tribal organization" after "Secretary" each place it appears; and

(4) in subsection (b), by striking ", or any political subdivision of a State,".

(b) SPECIAL RULE WITH RESPECT TO SELF-INSURANCE PLAN.—Section 206 of the Act (25 U.S.C. 1621e) is amended—

(1) by striking "(a) The" and inserting the following: "(a) Except as provided in subsection (f), the"; and

(2) by adding at the end the following new subsection:

"(f) The United States shall not have a right of recovery under this section if the injury, illness, or disability for which health services were provided is covered under a self-insurance plan funded by an Indian tribe or tribal organization.".

SEC. 210. EPIDEMIOLOGY CENTERS.

Title II of the Act (as amended by section 208 of this Act) is amended by adding at the end the following new section:

"EPIDEMIOLOGY CENTERS

"SEC. 214. (a)(1) The Secretary shall establish an epidemiology center in each Service area to carry out the functions described in paragraph (3).

"(2) To assist such centers in carrying out such functions, the Secretary shall perform the following:

"(A) In consultation with the Centers for Disease Control and Indian tribes, develop sets of data (which to the extent practicable, shall be consistent with the uniform data sets used by the States with respect to the year 2000 health objectives) for uniformly defining health status for purposes of the objectives specified in section 3(b). Such sets shall consist of one or more categories of information. The Secretary shall develop formats for the uniform collecting and reporting of information on such categories.

"(B) Establish and maintain a system for monitoring the progress made toward meeting each of the health status objectives described in section 3(b).

"(3) In consultation with Indian tribes and urban Indian communities, each area epidemiology center established under this subsection shall, with respect to such area—

"(A) collect data relating to, and monitor progress made toward meeting, each of the health status objectives described in section 3(b) using the data sets and monitoring system developed by the Secretary pursuant to paragraph (2);

"(B) evaluate existing delivery systems, data systems, and other systems that impact the improvement of Indian health;

"(C) assist tribes and urban Indian communities in identifying their highest priority health status objectives and the services needed to achieve such objectives, based on epidemiological data;

"(D) make recommendations for the targeting of services needed by tribal, urban, and other Indian communities;

"(E) make recommendations to improve health care delivery systems for Indians and urban Indians;

"(F) work cooperatively with tribal providers of health and social services in order to avoid duplication of existing services; and

"(G) provide technical assistance to Indian tribes and urban Indian organizations in the development of local health service priorities and incidence and prevalence rates of disease and other illness in the community.

"(4) Epidemiology centers established under this subsection shall be subject to the provisions of the Indian Self-Determination Act (25 U.S.C. 450f et seq.).

"(5) The director of the Centers for Disease Control shall provide technical assistance to the centers in carrying out the requirements of this subsection.

"(6) The Service shall assign one epidemiologist from each of its area offices to each area epidemiology center to provide such center with technical assistance necessary to carry out this subsection.

"(b)(1) The Secretary may make grants to Indian tribes, tribal organizations, and eligible intertribal consortia or Indian organizations to conduct epidemiological studies of Indian communities.

"(2) An intertribal consortia or Indian organization is eligible to receive a grant under this subsection if—

"(A) it is incorporated for the primary purpose of improving Indian health; and

"(B) it is representative of the tribes or urban Indian communities in which it is located.

"(3) An application for a grant under this subsection shall be submitted in such manner and at such time as the Secretary shall prescribe.

"(4) Applicants for grants under this subsection shall—

"(A) demonstrate the technical, administrative, and financial expertise necessary to carry out the functions described in paragraph (5);

"(B) consult and cooperate with providers of related health and social services in order to avoid duplication of existing services; and

"(C) demonstrate cooperation from Indian tribes or urban Indian organizations in the area to be served.

"(5) A grant awarded under paragraph (1) may be used to—

"(A) carry out the functions described in subsection (a)(3);

"(B) provide information to and consult with tribal leaders, urban Indian community leaders, and related health staff, on health care and health services management issues; and

"(C) provide, in collaboration with tribes and urban Indian communities, the Service with information regarding ways to improve the health status of Indian people.

"(6) There are authorized to be appropriated to carry out the purposes of this subsection not more than $12,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.".

SEC. 211. COMPREHENSIVE SCHOOL HEALTH EDUCATION PROGRAMS.

Title II of the Act (as amended by section 210 of this Act) is amended by adding at the end the following new section:

"COMPREHENSIVE SCHOOL HEALTH EDUCATION PROGRAMS

"SEC. 215. (a) The Secretary, acting through the Service and in consultation with the Secretary of the Interior, may award grants to Indian tribes to develop comprehensive school health education programs for children from preschool through grade 12 in schools located on Indian reservations.

"(b) Grants awarded under this section may be used to—

"(1) develop health education curricula;

"(2) train teachers in comprehensive school health education curricula;

"(3) integrate school-based, community-based, and other public and private health promotion efforts;

"(4) encourage healthy, tobacco-free school environments;

"(5) coordinate school-based health programs with existing services and programs available in the community;

"(6) develop school programs on nutrition education, personal health, and fitness;

"(7) develop mental health wellness programs;

"(8) develop chronic disease prevention programs;

"(9) develop substance abuse prevention programs;

"(10) develop accident prevention and safety education programs;

"(11) develop activities for the prevention and control of communicable diseases; and

"(12) develop community and environmental health education programs.

"(c) The Secretary shall provide technical assistance to Indian tribes in the development of health education plans, and the dissemination of health education materials and information on existing health programs and resources.

"(d) The Secretary shall establish criteria for the review and approval of applications for grants made pursuant to this section.

"(e) Recipients of grants under this section shall submit to the Secretary an annual report on activities undertaken with funds provided under this section. Such reports shall include a statement of—

"(1) the number of preschools, elementary schools, and secondary schools served;

"(2) the number of students served;

"(3) any new curricula established with funds provided under this section;

"(4) the number of teachers trained in the health curricula; and

"(5) the involvement of parents, members of the community, and community health workers in programs established with funds provided under this section.

"(f)(1) The Secretary of the Interior, acting through the Bureau of Indian Affairs and in cooperation with the Secretary, shall develop a comprehensive school health education program for children from preschool through grade 12 in schools operated by the Bureau of Indian Affairs.

"(2) Such program shall include—

"(A) school programs on nutrition education, personal health, and fitness;

"(B) mental health wellness programs;

"(C) chronic disease prevention programs;

"(D) substance abuse prevention programs;

"(E) accident prevention and safety education programs; and

"(F) activities for the prevention and control of communicable diseases.

"(3) The Secretary of the Interior shall—

"(A) provide training to teachers in comprehensive school health education curricula;

"(B) ensure the integration and coordination of school-based programs with existing services and health programs available in the community; and

"(C) encourage healthy, tobacco-free school environments.

"(g) There are authorized to be appropriated to carry out this section $15,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.".

SEC. 212. INDIAN YOUTH GRANT PROGRAM.

Title II of the Act (as amended by section 211 of this Act) is amended by adding at the end the following new section:

"INDIAN YOUTH GRANT PROGRAM

"SEC. 216. (a) The Secretary, acting through the Service, is authorized to make grants to Indian tribes, tribal organizations, and urban Indian organizations for innovative mental and physical disease prevention and health promotion and treatment programs for Indian preadolescent and adolescent youths.

"(b)(1) Funds made available under this section may be used to—

"(A) develop prevention and treatment programs for Indian youth which promote mental and physical health and incorporate cultural values, community and family involvement, and traditional healers; and

"(B) develop and provide community training and education.

"(2) Funds made available under this section may not be used to provide services described in section 209(m).

"(c) The Secretary shall—

"(1) disseminate to Indian tribes information regarding models for the delivery of comprehensive health care services to Indian and urban Indian adolescents;

"(2) encourage the implementation of such models; and

"(3) at the request of an Indian tribe, provide technical assistance in the implementation of such models.

"(d) The Secretary shall establish criteria for the review and approval of applications under this section.

"(e) There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.".

SEC. 213. AMERICAN INDIANS INTO PSYCHOLOGY PROGRAM.

Title II of the Act (as amended by section 212 of this Act) is amended by adding at the end the following new section:

"AMERICAN INDIANS INTO PSYCHOLOGY PROGRAM

"SEC. 217. (a) The Secretary may provide grants to at least 3 colleges and universities for the purpose of developing and maintaining American Indian psychology career recruitment programs as a means of encouraging Indians to enter the mental health field.

"(b) The Secretary shall provide one of the grants authorized under subsection (a) to develop and maintain a program at the University of North Dakota to be known as the 'Quentin N. Burdick American Indians Into Psychology Program'. Such program shall, to the maximum extent feasible, coordinate with the Quentin N. Burdick Indian Health Programs authorized under section 114(b), the Quentin N. Burdick American Indians Into Nursing Program authorized under section 112(e), and existing university research and communications networks.

"(c)(1) The Secretary shall issue regulations for the competitive awarding of the grants provided under this section.

"(2) Applicants for grants under this section shall agree to provide a program which, at a minimum—

"(A) provides outreach and recruitment for health professions to Indian communities including elementary, secondary and community colleges located on Indian reservations that will be served by the program;

"(B) incorporates a program advisory board comprised of representatives from the tribes and communities that will be served by the program;

"(C) provides summer enrichment programs to expose Indian students to the varied fields of psychology through research, clinical, and experiential activities;

"(D) provides stipends to undergraduate and graduate students to pursue a career in psychology;

"(E) develops affiliation agreements with tribal community colleges, the Service, university affiliated programs, and other appropriate entities to enhance the education of Indian students;

"(F) to the maximum extent feasible, utilizes existing university tutoring, counseling and student support services; and

"(G) to the maximum extent feasible, employs qualified Indians in the program.

"(d) The active duty service obligation prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m) shall be met by each graduate student who receives a stipend described in subsection (c)(2)(D) that is funded by a grant provided under this section. Such obligation shall be met by service—

"(1) in the Indian Health Service;

"(2) in a program conducted under a contract entered into under the Indian Self-Determination Act;

"(3) in a program assisted under title V of this Act; or

"(4) in the private practice of psychology if, as determined by the Secretary, in accordance with guidelines promulgated by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.".

SEC. 214. PREVENTION, CONTROL, AND ELIMINATION OF TUBERCULOSIS.

Title II of the Act (as amended by section 213 of this Act) is amended by adding at the end the following new section:

"PREVENTION, CONTROL, AND ELIMINATION OF TUBERCULOSIS

"SEC. 218. (a) The Secretary, acting through the Service after consultation with the Centers for Disease Control, may make grants to Indian tribes and tribal organizations for—

"(1) projects for the prevention, control, and elimination of tuberculosis;

"(2) public information and education programs for the prevention, control, and elimination of tuberculosis; and

"(3) education, training, and clinical skills improvement activities in the prevention, control, and elimination of tuberculosis for health professionals, including allied health professionals.

"(b) The Secretary may make a grant under subsection (a) only if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains the assurances required by subsection (c) and such other agreements, assurances, and information as the Secretary may require.

"(c) To be eligible for a grant under subsection (a), an applicant must provide assurances satisfactory to the Secretary that—

"(1) the applicant will coordinate its activities for the prevention, control, and elimination of tuberculosis with activities of the Centers for Disease Control, and State and local health agencies; and

"(2) the applicant will submit to the Secretary an annual report on its activities for the prevention, control, and elimination of tuberculosis.

"(d) In carrying out this section, the Secretary—

"(1) shall establish criteria for the review and approval of applications for grants under subsection (a), including requirement of public health qualifications of applicants;

"(2) shall, subject to available appropriations, make at least one grant under subsection (a) within each area office;

"(3) may, at the request of an Indian tribe or tribal organization, provide technical assistance; and

"(4) shall prepare and submit a report to the Committee on Energy and Commerce and the Committee on Interior and Insular Affairs of the House and the Select Committee on Indian Affairs of the Senate not later than February 1, 1994, and biennially thereafter, on the use of funds under this section and on the progress made toward the prevention, control, and elimination of tuberculosis among Indian tribes and tribal organizations.

"(e) The Secretary may, at the request of a recipient of a grant under subsection (a), reduce the amount of such grant by—

"(1) the fair market value of any supplies or equipment furnished the grant recipient; and

"(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee.

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which the grant under subsection (a) is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.".

SEC. 215. CONTRACT HEALTH SERVICES.

Title II of the Act (as amended by section 214 of this Act) is amended by adding at the end the following new sections:

"CONTRACT HEALTH SERVICES PAYMENT STUDY

"SEC. 219. (a) The Secretary, acting through the Service and in consultation with representatives of Indian tribes and tribal organizations operating contract health care programs under the Indian Self-Determination Act (25 U.S.C. 450f et seq.) or under self-governance compacts, Service personnel, private contract health services providers, the Indian Health Service Fiscal Intermediary, and other appropriate experts, shall conduct a study—

"(1) to assess and identify administrative barriers that hinder the timely payment for services delivered by private contract health services providers to individual Indians by the Service and the Indian Health Service Fiscal Intermediary;

"(2) to assess and identify the impact of such delayed payments upon the personal credit histories of individual Indians who have been treated by such providers; and

"(3) to determine the most efficient and effective means of improving the Service's contract health services payment system and ensuring the development of appropriate consumer protection policies to protect individual Indians who receive authorized services from private contract health services providers from billing and collection practices, including the development of materials and programs explaining patients' rights and responsibilities.

"(b) The study required by subsection (a) shall—

"(1) assess the impact of the existing contract health services regulations and policies upon the ability of the Service and the Indian Health Service Fiscal Intermediary to process, on a timely and efficient basis, the payment of bills submitted by private contract health services providers;

"(2) assess the financial and any other burdens imposed upon individual Indians and private contract health services providers by delayed payments;

"(3) survey the policies and practices of collection agencies used by contract health services providers to collect payments for services rendered to individual Indians;

"(4) identify appropriate changes in Federal policies, administrative procedures, and regulations, to eliminate the problems experienced by private contract health services providers and individual Indians as a result of delayed payments; and

"(5) compare the Service's payment processing requirements with private insurance claims processing requirements to evaluate the systemic differences or similarities employed by the Service and private insurers.

"(c) Not later than 12 months after the date of the enactment of this section, the Secretary shall transmit to the Congress a report that includes—

"(1) a detailed description of the study conducted pursuant to this section; and

"(2) a discussion of the findings and conclusions of such study.

"PROMPT ACTION ON PAYMENT OF CLAIMS

"SEC. 220. (a) The Service shall respond to a notification of a claim by a provider of a contract care service with either an individual purchase order or a denial of the claim within 5 working days after the receipt of such notification.

"(b) If the Service fails to respond to a notification of a claim in accordance with subsection (a), the Service shall accept as valid the claim submitted by the provider of a contract care service.

"(c) The Service shall pay a completed contract care service claim within 30 days after completion of the claim.

"DEMONSTRATION OF ELECTRONIC CLAIMS PROCESSING

"SEC. 221. (a) Not later than June 15, 1993, the Secretary shall develop and implement, directly or by contract, 2 projects to demonstrate in a pilot setting the use of claims processing technology to improve the accuracy and timeliness of the billing for, and payment of, contract health services.

"(b) The Secretary shall conduct one of the projects authorized in subsection (a) in the Service area served by the area office located in Phoenix, Arizona.

"LIABILITY FOR PAYMENT

"SEC. 222. (a) A patient who receives contract health care services that are authorized by the Service shall not be liable for the payment of any charges or costs associated with the provision of such services.

"(b) The Secretary shall notify a contract care provider and any patient who receives contract health care services authorized by the Service that such patient is not liable for the payment of any charges or costs associated with the provision of such services.".

SEC. 216. OFFICE OF INDIAN WOMEN'S HEALTH CARE.

Title II of the Act (as amended by section 215 of this Act) is amended by adding at the end the following new section:

"OFFICE OF INDIAN WOMEN'S HEALTH CARE

"SEC. 223. There is established within the Service an Office of Indian Women's Health Care to oversee efforts of the Service to monitor and improve the quality of health care for Indian women of all ages through the planning and delivery of programs administered by the Service, in order to improve and enhance the treatment models of care for Indian women.".

SEC. 217. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—Title II of the Act (as amended by section 216 of this Act) is amended by adding at the end the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 224. Except as provided in sections 209(m), 211, 213, 214(b)(5), 215, and 216, there are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this title.".

(b) CONFORMING AMENDMENTS.—Title II of the Act is amended—

(1) in section 201(h), by striking out the first sentence and striking out "subsection" and inserting in lieu thereof "section".

(2) in section 202, by striking out subsection (e);

(3) in section 204(e), by striking out the first sentence and striking out "subsection (c)" and inserting in lieu thereof "this section"; and

(4) in section 209 (as amended by section 902(3)(B) of this Act)—

(A) by striking out subsections (c)(5), (d)(6), (f)(4), and (g)(5);

(B) in subsection (h)—

(i) by striking out paragraph (2) and by striking out "(1)";

(ii) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively;

(iii) by striking out "subparagraph (A)" and inserting "paragraph (1)"; and

(iv) by striking out "subparagraph (B)" and inserting "paragraph (2)";

(C) in subsection (i), by striking out paragraph (2) and by striking out "(1)";

(D) in subsection (d)(3)(B), by striking out "this subsection" and inserting in lieu thereof "this section"; and

(E) in subsection (k)(6), by striking out the first sentence and in the second sentence by striking out "subsection" and inserting in lieu thereof "section".

TITLE III—HEALTH FACILITIES

SEC. 301. HEALTH FACILITIES CLOSURE AND PRIORITIES.

Section 301 of the Act (25 U.S.C. 1631) is amended—

(1) in subsection (a)(2), by striking out "Hospitals" and inserting "Health Care Organizations";

(2) in subsection (b)(1)—

(A) in the material preceding subparagraph (A), by striking out "other" before "outpatient";

(B) by striking out "and" at the end of subparagraph (D);

(C) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof a semicolon; and

(D) by adding at the end the following new subparagraphs:

"(F) the level of utilization of such hospital or facility by all eligible Indians; and

"(G) the distance between such hospital or facility and the nearest operating Service hospital.";

(3) by striking out subsection (c) and redesignating subsections (d) and (e) as subsections (c) and (d), respectively;

(4) in subsection (c)(1) (as redesignated by paragraph (2) of this subsection), by amending the material preceding subparagraph (A) to read as follows:

"(c)(1) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, a report which sets forth—"; and

(5) by striking out paragraph (2) of subsection (c) (as redesignated by paragraph (2)) and redesignating paragraphs (3), (4), and (5) of such subsection as paragraphs (2), (3), and (4), respectively.

SEC. 302. SAFE WATER AND SANITARY WASTE DISPOSAL FACILITIES.

Section 302 of the Act (25 U.S.C. 1632) is amended—

(1) by amending subsection (e) to read as follows:

"(e)(1) The Secretary is authorized to provide financial assistance to Indian tribes and communities in an amount equal to the Federal share of the costs of operating, managing, and maintaining the facilities provided under the plan described in subsection (c).

"(2) For the purposes of paragraph (1), the term 'Federal share' means 80 percent of the costs described in paragraph (1).

"(3) With respect to Indian tribes with fewer than 1,000 enrolled members, the non-Federal portion of the costs of operating, managing, and maintaining such facilities may be provided, in part, through cash donations or in kind property, fairly evaluated.";

(2) in subsection (f)(1), by striking out "subsection (h)" and inserting in lieu thereof "this section"; and

(3) in subsection (g)—

(A) in paragraph (1), by striking out "The Secretary" through "report" and inserting in lieu thereof the following: "The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, a report"; and

(B) by striking out paragraph (2) and redesignating paragraphs (3), (4), (5), and (6) as paragraphs (2), (3), (4), and (5), respectively.

SEC. 303. AMBULATORY CARE FACILITIES GRANT PROGRAM.

Section 306 of the Act (25 U.S.C. 1636) is amended to read as follows:

"GRANT PROGRAM FOR THE CONSTRUCTION, EXPANSION, AND MODERNIZATION OF SMALL AMBULATORY CARE FACILITIES

"SEC. 306. (a)(1) The Secretary, acting through the Service, shall make grants to tribes and tribal organizations for the construction, expansion, or modernization of facilities for the provision of ambulatory care services to eligible Indians (and noneligible persons as provided in subsection (c)(1)(C)). A grant made under this section may cover up to 100 percent of the costs of such construction, expansion, or modernization. For the purposes of this section, the term 'construction' includes the replacement of an existing facility.

"(2) A grant under paragraph (1) may only be made to a tribe or tribal organization operating an Indian health facility (other than a facility owned or constructed by the Service, including a facility originally owned or constructed by the Service and transferred to a tribe or tribal organization) pursuant to a contract entered into under the Indian Self-Determination Act.

"(b)(1) A grant provided under this section may be used only for the construction, expansion, or modernization (including the planning and design of such construction, expansion, or modernization) of an ambulatory care facility—

"(A) located apart from a hospital;

"(B) not funded under section 301 or section 307; and

"(C) which, upon completion of such construction, expansion, or modernization will—

"(i) have a total capacity appropriate to its projected service population;

"(ii) serve no less than 500 eligible Indians annually; and

"(iii) provide ambulatory care in a service area (specified in the contract entered into under the Indian Self-Determination Act) with a population of not less than 2,000 eligible Indians.

"(2) The requirements of clauses (ii) and (iii) of paragraph (1)(C) shall not apply to a tribe or tribal organization applying for a grant under this section whose tribal government offices are located on an island.

"(c)(1) No grant may be made under this section unless an application for such a grant has been submitted to and approved by the Secretary. An application for a grant under this section shall be submitted in such form and manner as the Secretary shall by regulation prescribe and shall set forth reasonable assurance by the applicant that, at all times after the construction, expansion, or modernization of a facility carried out pursuant to a grant received under this section—

"(A) adequate financial support will be available for the provision of services at such facility;

"(B) such facility will be available to eligible Indians without regard to ability to pay or source of payment; and

"(C) such facility will, as feasible without diminishing the quality or quantity of services provided to eligible Indians, serve noneligible persons on a cost basis.

"(2) In awarding grants under this section, the Secretary shall give priority to tribes and tribal organizations that demonstrate—

"(A) a need for increased ambulatory care services; and

"(B) insufficient capacity to deliver such services.

"(d) If any facility (or portion thereof) with respect to which funds have been paid under this section, ceases, at any time after completion of the construction, expansion, or modernization carried out with such funds, to be utilized for the purposes of providing ambulatory care services to eligible Indians, all of the right, title, and interest in and to such facility (or portion thereof) shall transfer to the United States.".

SEC. 304. INDIAN HEALTH CARE DELIVERY DEMONSTRATION PROJECT.

(a) AWARDING OF GRANTS.—Section 307(c) of the Act (25 U.S.C. 1637(c)(3)) is amended—

(1) in paragraph (1)(A), by inserting "or program" immediately after "facility" each place it appears;

(2) in paragraph (3)(A)—

(A) by striking "The" and inserting "On or before September 30, 1995, the"; and

(B) by adding before the colon the following: "and for which a completed application has been received by the Secretary"; and

(3) by striking subparagraph (B) and inserting the following:

"(B) The Secretary may also enter into contracts or award grants under this section taking into consideration applications received under this section from all service areas. The Secretary may not award a greater number of such contracts or grants in one service area than in any other service area until there is an equal number of such contracts or grants awarded with respect to all service areas from which the Secretary receives applications during the application period (as determined by the Secretary) which meet the criteria specified in paragraph (1).".

(b) REPORTS.—Section 307(h) of the Act (25 U.S.C. 1637(h)) is amended to read as follows:

"(h)(1) The Secretary shall submit to the President, for inclusion in the report which is required to be submitted to the Congress under section 801 for fiscal year 1997, an interim report on the findings and conclusions derived from the demonstration projects established under this section.

"(2) The Secretary shall submit to the President, for inclusion in the report which is required to be submitted to the Congress under section 801 for fiscal year 1999, a final report on the findings and conclusions derived from the demonstration projects established under this section, together with legislative recommendations.".

SEC. 305. EXPENDITURE OF NONSERVICE FUNDS FOR RENOVATION.

Section 305 of the Act (25 U.S.C. 1634) is amended to read as follows:

"EXPENDITURE OF NONSERVICE FUNDS FOR RENOVATION

"SEC. 305. (a)(1) Notwithstanding any other provision of law, the Secretary is authorized to accept any major renovation or modernization by any Indian tribe of any Service facility, or of any other Indian health facility operated pursuant to a contract entered into under the Indian Self-Determination Act, including—

"(A) any plans or designs for such renovation or modernization; and

"(B) any renovation or modernization for which funds appropriated under any Federal law were lawfully expended,

but only if the requirements of subsection (b) are met.

"(2) The Secretary shall maintain a separate priority list to address the needs of such facilities for personnel or equipment.

"(3) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, the priority list maintained pursuant to paragraph (2).

"(b) The requirements of this subsection are met with respect to any renovation or modernization if—

"(1) the tribe or tribal organization—

"(A) provides notice to the Secretary of its intent to renovate or modernize; and

"(B) applies to the Secretary to be placed on a separate priority list to address the needs of such new facilities for personnel or equipment; and

"(2) the renovation or modernization—

"(A) is approved by the appropriate area director of the Service; and

"(B) is administered by the tribe in accordance with the rules and regulations prescribed by the Secretary with respect to construction or renovation of Service facilities.

"(c) If any Service facility which has been renovated or modernized by an Indian tribe under this section ceases to be used as a Service facility during the 20-year period beginning on the date such renovation or modernization is completed, such Indian tribe shall be entitled to recover from the United States an amount which bears the same ratio to the value of such facility at the time of such cessation as the value of such renovation or modernization (less the total amount of any funds provided specifically for such facility under any Federal program that were expended for such renovation or modernization) bore to the value of such facility at the time of the completion of such renovation or modernization.".

SEC. 306. LAND TRANSFER.

Title III of the Act is amended by adding at the end the following new section:

"LAND TRANSFER

"SEC. 308. The Bureau of Indian Affairs is authorized to transfer, at no cost, up to 5 acres of land at the Chemawa Indian School, Salem, Oregon, to the Service for the provision of health care services. The land authorized to be transferred by this section is that land adjacent to land under the jurisdiction of the Service and occupied by the Chemawa Indian Health Center.".

SEC. 307. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—Title III of the Act (as amended by section 306 of this Act) is amended by adding at the end the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 309. There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this title.".

(b) CONFORMING AMENDMENTS.—Title III of the Act is amended—

(1) in section 302, by striking out subsection (h); and

(2) in section 307, by striking out subsection (i).

SEC. 308. BUY AMERICAN REQUIREMENT.

Title III of the Act (as amended by section 307 of this Act) is amended by adding at the end the following new section:

"APPLICABILITY OF BUY AMERICAN REQUIREMENT

"SEC. 310. (a) The Secretary shall ensure that the requirements of the Buy American Act apply to all procurements made with funds provided pursuant to the authorization contained in section 309.

"(b) The Secretary shall submit to the Congress a report on the amount of procurements from foreign entities made in fiscal years 1993 and 1994 with funds provided pursuant to the authorization contained in section 309. Such report shall separately indicate the dollar value of items procured with such funds for which the Buy American Act was waived pursuant to the Trade Agreement Act of 1979 or any international agreement to which the United States is a party.

"(c) If it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a 'Made in America' inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, such person shall be ineligible to receive any contract or subcontract made with funds provided pursuant to the authorization contained in section 309, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

"(d) For purposes of this section, the term "Buy American Act" means title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved March 3, 1933 (41 U.S.C. 10a et seq.).".

TITLE IV—ACCESS TO HEALTH SERVICES

SECTION 401. TREATMENT OF PAYMENTS TO INDIAN HEALTH SERVICE FACILITIES UNDER MEDICARE AND MEDICAID PROGRAMS.

(a) MEDICARE PROGRAM.—Section 401 of the Act (42 U.S.C. 1395qq note) is amended to read as follows:

"TREATMENT OF PAYMENTS UNDER MEDICARE PROGRAM

"SEC. 401. (a) Any payments received by a hospital or skilled nursing facility of the Service (whether operated by the Service or by an Indian tribe or tribal organization pursuant to a contract under the Indian Self-Determination Act) for services provided to Indians eligible for benefits under title XVIII of the Social Security Act shall not be considered in determining appropriations for health care and services to Indians.

"(b) Nothing in this Act authorizes the Secretary to provide services to an Indian beneficiary with coverage under title XVIII of the Social Security Act, as amended, in preference to an Indian beneficiary without such coverage.".

(b) MEDICAID PROGRAM.—(1) Section 402 of the Act is amended to read as follows:

"TREATMENT OF PAYMENTS UNDER MEDICAID PROGRAM

"SEC. 402. (a) Notwithstanding any other provision of law, payments to which any facility of the Service (including a hospital, nursing facility, intermediate care facility for the mentally retarded, or any other type of facility which provides services for which payment is available under title XIX of the Social Security Act) is entitled under a State plan by reason of section 1911 of such Act shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of such title. In making payments from such fund, the Secretary shall ensure that each service unit of the Service receives at least 80 percent of the amounts to which the facilities of the Service, for which such service unit makes collections, are entitled by reason of section 1911 of the Social Security Act.

"(b) Any payments received by such facility for services provided to Indians eligible for benefits under title XIX of the Social Security Act shall not be considered in determining appropriations for the provision of health care and services to Indians.".

(2) The increase (from 50 percent) in the percentage of the payments from the fund to be made to each service unit of the Service specified in the amendment made by paragraph (1) shall take effect beginning with payments made on January 1, 1993.

SEC. 402. REPORT.

Section 403 of the Act (25 U.S.C. 1671 note) is amended by striking out "The Secretary" and all that follows through "section 701" and inserting in lieu thereof the following: "The Secretary shall submit to the President, for inclusion in the report required to be transmitted to the Congress under section 801,".

SEC. 403. APPLICATION ASSISTANCE.

Section 404 of the Act (25 U.S.C. 1622) is amended—

(1) by amending subsection (b)(4) to read as follows:

"(4) develop and implement—

"(A) a schedule of income levels to determine the extent of payments of premiums by such organizations for coverage of needy individuals; and

"(B) methods of improving the participation of Indians in receiving the benefits provided under titles XVIII and XIX of the Social Security Act."; and

(2) by amending subsection (c) to read as follows:

"(c) The Secretary, acting through the Service, may enter into an agreement with an Indian tribe, tribal organization, or urban Indian organization which provides for the receipt and processing of applications for medical assistance under title XIX of the Social Security Act and benefits under title XVIII of the Social Security Act at a Service facility or a health care facility administered by such tribe or organization pursuant to a contract under the Indian Self-Determination Act.".

SEC. 404. EXTENSION OF DEMONSTRATION PROGRAM.

Section 405 of the Act (42 U.S.C. 1395qq note) is amended—

(1) in subsection (c)(2), by striking "1995" and inserting "1996"; and

(2) in subsection (e), by striking "1995" and inserting "1996".

SEC. 405. AUTHORIZATION FOR EMERGENCY CONTRACT HEALTH SERVICES.

Title IV of the Act is amended by adding at the end the following new section:

"AUTHORIZATION FOR EMERGENCY CONTRACT HEALTH SERVICES

"SEC. 406. With respect to an elderly or disabled Indian receiving emergency medical care or services from a non-Service provider or in a non-Service facility under the authority of this Act, the time limitation (as a condition of payment) for notifying the Service of such treatment or admission shall be 30 days.".

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.

Title IV of the Act is amended by adding at the end the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 407. There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this title.".

TITLE V—HEALTH SERVICES FOR URBAN INDIANS

SEC. 501. GRANT AUTHORITY.

(a) IN GENERAL.—Section 502 of the Act (25 U.S.C. 1652) is amended—

(1) by striking "contracts with" and inserting the following: "contracts with, or make grants to,";

(2) by inserting after "enters into with" the following: ", or in any grant the Secretary makes to,"; and

(3) by amending the heading to read as follows:

"CONTRACTS WITH, AND GRANTS TO, URBAN INDIAN ORGANIZATIONS".

(b) CONFORMING AMENDMENTS.—(1) Section 503 of the Act (25 U.S.C. 1653) is amended—

(A) in subsection (a), in the material preceding paragraph (1)—

(i) by inserting ", or make grants to," after "contracts with"; and

(ii) by inserting "or grant" after "such contract";

(B) in subsection (b)—

(i) in the material preceding paragraph (1), by inserting "or receive grants" after "enter into contracts"; and

(ii) in paragraph (5), by inserting "or to meet the requirements for receiving a grant" after "Secretary";

(C) in subsection (c)(1), by inserting before the period at the end the following: "or receiving grants under subsection (a)";

(D) in subsection (d)(1), by inserting before the period at the end the following: "or receiving grants under subsection (a)";

(E) in subsection (e)(1), by inserting before the period at the end the following: "or receiving grants under subsection (a)";

(F) in subsection (f), by inserting "or receiving grants under subsection (a)" after "this section"; and

(G) by amending the heading to read as follows:

"CONTRACTS AND GRANTS FOR THE PROVISION OF HEALTH CARE AND REFERRAL SERVICES".

(2) Section 504 of the Act (25 U.S.C. 1654) is amended—

(A) by striking "SEC. 504." and all that follows through the end of subsection (a) and inserting the following:

"SEC. 504. (a) Under authority of the Act of November 2, 1921 (25 U.S.C. 13), popularly known as the Snyder Act, the Secretary, through the Service, may enter into contracts with, or make grants to, urban Indian organizations situated in urban centers for which contracts have not been entered into, or grants have not been made, under section 503. The purpose of a contract or grant made under this section shall be the determination of the matters described in subsection (b)(1) in order to assist the Secretary in assessing the health status and health care needs of urban Indians in the urban center involved and determining whether the Secretary should enter into a contract or make a grant under section 503 with respect to the urban Indian organization which the Secretary has entered into a contract with, or made a grant to, under this section.";

(B) in subsection (b)—

(i) in the material preceding paragraph (1), by inserting ", or grant made," after "contract entered into"; and

(ii) in paragraph (2), by striking "within one year" and all that follows through the period at the end and inserting the following:

", or carry out the requirements of the grant, within one year after the date on which the Secretary and such organization enter into such contract, or within one year after such organization receives such grant, whichever is applicable.";

(C) in subsection (c), by inserting ", or grant made," after "entered into"; and

(D) by amending the heading to read as follows:

"CONTRACTS AND GRANTS FOR THE DETERMINATION OF UNMET HEALTH CARE NEEDS".

(3) Section 505 of the Act (25 U.S.C. 1655) is amended—

(A) in subsection (a), by inserting "compliance with grant requirements under this title and" before "compliance with,";

(B) in subsection (b)—

(i) by inserting "or received a grant" after "entered into a contract"; and

(ii) by inserting before the period at the end the following: "or the terms of such grant";

(C) in subsection (c)—

(i) by inserting "the requirements of a grant or complied with" after "complied with";

(ii) by inserting "or grant" after "such contract" each place it appears;

(iii) by inserting "or make a grant" after "enter into a contract"; and

(iv) by inserting "or grant" after "whose contract";

(D) in subsection (d), by inserting "or grant" after "a contract" each place it appears; and

(E) by amending the heading to read as follows:

"EVALUATIONS; RENEWALS".

(4) Section 506 of the Act (25 U.S.C. 1656) is amended—

(A) in subsection (b), by inserting "or grants" after "any contracts";

(B) in subsection (d), by inserting "or grant" after "contract" each place it appears;

(C) in subsection (e)—

(i) by inserting ", or grants to," after "Contracts with"; and

(ii) by inserting "or grants" after "such contracts"; and

(D) by amending the heading to read as follows:

"OTHER CONTRACT AND GRANT REQUIREMENTS".

(5) Section 507 of the Act (25 U.S.C. 1657) is amended—

(A) in subsection (a)—

(i) in the material preceding paragraph (1), by inserting ", or a grant received," after "entered into"; and

(ii) in paragraphs (1) and (2), by inserting "or grant" after "contract" each place it appears; and

(B) in subsections (b) and (c), by inserting "or grant" after "contract" each place it appears.

(6) Section 509 of the Act (25 U.S.C. 1659) (as amended by section 902(5)(A) of this Act) is amended by inserting "or grant recipients" after "contractors" each place it appears.

(7) Section 510(a) of the Act (25 U.S.C. 1660(a)) (as amended by section 902(5)(B) of this Act) is amended by inserting before the period at the end the following: "and for providing central oversight of the programs and services authorized under this title".

SEC. 502. ALCOHOL AND SUBSTANCE ABUSE.

Title V of the Act is amended by inserting after section 510 (as redesignated by section 902(5)(B) of this Act) the following new section:

"GRANTS FOR ALCOHOL AND SUBSTANCE ABUSE RELATED SERVICES

"SEC. 511. (a) GRANTS.—The Secretary may make grants for the provision of health-related services in prevention of, treatment of, rehabilitation of, or school and community-based education in, alcohol and substance abuse in urban centers to those urban Indian organizations with whom the Secretary has entered into a contract under this title or under section 201.

"(b) GOALS OF GRANT.—Each grant made pursuant to subsection (a) shall set forth the goals to be accomplished pursuant to the grant. The goals shall be specific to each grant as agreed to between the Secretary and the grantee.

"(c) CRITERIA.—The Secretary shall establish criteria for the grants made under subsection (a), including criteria relating to the—

"(1) size of the urban Indian population;

"(2) accessibility to, and utilization of, other health resources available to such population;

"(3) duplication of existing Service or other Federal grants or contracts;

"(4) capability of the organization to adequately perform the activities required under the grant;

"(5) satisfactory performance standards for the organization in meeting the goals set forth in such grant, which standards shall be negotiated and agreed to between the Secretary and the grantee on a grant-by-grant basis; and

"(6) identification of need for services.

"The Secretary shall develop a methodology for allocating grants made pursuant to this section based on such criteria.

"(d) TREATMENT OF FUNDS RECEIVED BY URBAN INDIAN ORGANIZATIONS.—Any funds received by an urban Indian organization under this Act for substance abuse prevention, treatment, and rehabilitation shall be subject to the criteria set forth in subsection (c).".

SEC. 503. TREATMENT OF DEMONSTRATION PROJECTS.

Title V of the Act (as amended by section 502 of this Act) is amended by adding at the end the following new section:

"TREATMENT OF CERTAIN DEMONSTRATION PROJECTS

"SEC. 512. (a) Notwithstanding any other provision of law, the Oklahoma City Clinic demonstration project and the Tulsa Clinic demonstration project shall be treated as service units in the allocation of resources and coordination of care and shall not be subject to the provisions of the Indian Self-Determination Act for the term of such projects. The Secretary shall provide assistance to such projects in the development of resources and equipment and facility needs.

"(b) The Secretary shall submit to the President, for inclusion in the report required to be submitted to the Congress under section 801 for fiscal year 1999, a report on the findings and conclusions derived from the demonstration projects specified in subsection (a).".

SEC. 504. URBAN NIAAA TRANSFERRED PROGRAMS.

Title V of the Act (as amended by section 503 of this Act) is amended by adding at the end the following new section:

"URBAN NIAAA TRANSFERRED PROGRAMS

"SEC. 513. (a) The Secretary shall, within the Branch of Urban Health Programs of the Service, make grants or enter into contracts for the administration of urban Indian alcohol programs that were originally established under the National Institute on Alcoholism and Alcohol Abuse (hereafter in this section referred to as 'NIAAA') and transferred to the Service.

"(b) Grants provided or contracts entered into under this section shall be used to provide support for the continuation of alcohol prevention and treatment services for urban Indian populations and such other objectives as are agreed upon between the Service and a recipient of a grant or contract under this section.

"(c) Urban Indian organizations that operate Indian alcohol programs originally funded under NIAAA and subsequently transferred to the Service are eligible for grants or contracts under this section.

"(d) For the purpose of carrying out this section, the Secretary may combine NIAAA alcohol funds with other substance abuse funds currently administered through the Branch of Urban Health Programs of the Service.

"(e) The Secretary shall evaluate and report to the Congress on the activities of programs funded under this section at least every two years.".

SEC. 505. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—Title V of the Act (as amended by section 504 of this Act) is amended by adding at the end the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 514. There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this title.".

(b) CONFORMING AMENDMENTS.—Title V of the Act (25 U.S.C. 1650 et seq.) is amended—

(1) in section 503—

(A) in subsection (c), by striking out "(c)(1)" and inserting "(c)" and by striking out paragraph (2);

(B) in subsection (d), by striking out paragraph (4);

(C) in subsection (e), by striking out paragraph (4); and

(D) in subsection (f), by striking out paragraph (5); and

(2) in section 509 (as redesignated by section 902(5)(A) of this Act), by striking out the last sentence.

TITLE VI—ORGANIZATIONAL IMPROVEMENTS

SEC. 601. INDIAN HEALTH SERVICE.

Section 601(c) of the Act (15 U.S.C. 1661(c)) is amended—

(1) in paragraph (2), by striking out "and" after the semicolon;

(2) in paragraph (3), by striking out the period at the end and inserting in lieu thereof "; and"; and

(3) by adding at the end the following new paragraph:

"(4) all scholarship and loan functions carried out under title I.".

SEC. 602. DIRECTOR OF INDIAN HEALTH SERVICE.

(a) CONFIRMATION BY SENATE.—

(1) IN GENERAL.—Section 601(a) of the Act (25 U.S.C. 1661(a)) is amended in the second sentence by striking "Secretary" and inserting "President, by and with the advice and consent of the Senate".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect January 1, 1993.

(b) INTERIM APPOINTMENT.—The President may appoint an individual to serve as Interim Director of the Service from January 1, 1993, until such time as a Director is appointed and confirmed as provided in section 601(a) of the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.) (as amended by subsection (a) of this section).

(c) TERM.—Section 601(a) of the Act (25 U.S.C. 1661(a)) is amended by adding at the end the following: "Effective with respect to an individual appointed by the President, by and with the advice and consent of the Senate, after January 1, 1993, the term of service of the Director shall be 4 years. A Director may serve more than 1 term.".

SEC. 603. AUTHORIZATION OF APPROPRIATIONS.

Title VI of the Act (25 U.S.C. 1661 et seq.) is amended by adding at the end the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 603. There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this title.".

TITLE VII—SUBSTANCE ABUSE PROGRAMS

SEC. 701. REDESIGNATION OF EXISTING TITLE VII.

(a) TITLE HEADING.—Title VII of the Act (25 U.S.C. 1671 et seq.) is redesignated as title VIII and the title heading is amended to read as follows:

"TITLE VIII—MISCELLANEOUS"

(b) REDESIGNATION OF SECTIONS.—Sections 701 through 720 of the Act (25 U.S.C. 1671 et seq.) are hereby redesignated as sections 801 through 820, respectively.

(c) CONFORMING AMENDMENTS.—The Act is amended—

(1) in section 207(a), by striking out "section 713" and inserting in lieu thereof "section 813";

(2) in section 307(e), by striking out "section 713" and inserting in lieu thereof "section 813"; and

(3) in section 405(b)—

(A) in paragraph (1), by striking out "sections 402(c) and 713(b)(2)(A)" and inserting in lieu thereof "sections 402(a) and 813(b)(2)(A)"; and

(B) in paragraph (4), by striking out "section 402(c)" each place it appears and inserting in lieu thereof "section 402(a)".

(d) REFERENCES.—Any reference in a provision of law other than the Indian Health Care Improvement Act to sections redesignated by subsection (b) shall be deemed to refer to the section as so redesignated.

SEC. 702. SUBSTANCE ABUSE PROGRAMS.

(a) IN GENERAL.—The Act is amended by inserting after title VI the following new title:

"TITLE VII—SUBSTANCE ABUSE PROGRAMS

"INDIAN HEALTH SERVICE RESPONSIBILITIES

"SEC. 701. The Memorandum of Agreement entered into pursuant to section 4205 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2411) shall include specific provisions pursuant to which the Service shall assume responsibility for—

"(1) the determination of the scope of the problem of alcohol and substance abuse among Indian people, including the number of Indians within the jurisdiction of the Service who are directly or indirectly affected by alcohol and substance abuse and the financial and human cost;

"(2) an assessment of the existing and needed resources necessary for the prevention of alcohol and substance abuse and the treatment of Indians affected by alcohol and substance abuse; and

"(3) an estimate of the funding necessary to adequately support a program of prevention of alcohol and substance abuse and treatment of Indians affected by alcohol and substance abuse.

"INDIAN HEALTH SERVICE PROGRAM

"SEC. 702. (a) COMPREHENSIVE PREVENTION AND TREATMENT PROGRAM.—(1) The Secretary, acting through the Service, shall provide a program of comprehensive alcohol and substance abuse prevention and treatment which shall include—

"(A) prevention, through educational intervention, in Indian communities;

"(B) acute detoxification and treatment;

"(C) community-based rehabilitation;

"(D) community education and involvement, including extensive training of health care, educational, and community-based personnel; and

"(E) residential treatment programs for pregnant and post partum women and their children.

"(2) The target population of such program shall be members of Indian tribes. Efforts to train and educate key members of the Indian community shall target employees of health, education, judicial, law enforcement, legal, and social service programs.

"(b) CONTRACT HEALTH SERVICES.—(1) The Secretary, acting through the Service, may enter into contracts with public or private providers of alcohol and substance abuse treatment services for the purpose of assisting the Service in carrying out the program required under subsection (a).

"(2) In carrying out this subsection, the Secretary shall provide assistance to Indian tribes to develop criteria for the certification of alcohol and substance abuse service providers and accreditation of service facilities which meet minimum standards for such services and facilities as may be determined pursuant to section 4205(a)(3) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2411(a)(3)).

"(c) GRANTS FOR MODEL PROGRAM.—(1) The Secretary, acting through the Service shall make a grant to the Standing Rock Sioux Tribe to develop a community-based demonstration project to reduce drug and alcohol abuse on the Standing Rock Sioux Reservation and to rehabilitate Indian families afflicted by such abuse.

"(2) Funds shall be used by the Tribe to—

"(A) develop and coordinate community-based alcohol and substance abuse prevention and treatment services for Indian families;

"(B) develop prevention and intervention models for Indian families;

"(C) conduct community education on alcohol and substance abuse; and

"(D) coordinate with existing Federal, State, and tribal services on the reservation to develop a comprehensive alcohol and substance abuse program that assists in the rehabilitation of Indian families that have been or are afflicted by alcoholism.

"(3) The Secretary shall submit to the President for inclusion in the report to be transmitted to the Congress under section 801 for fiscal year 1995 an evaluation of the demonstration project established under paragraph (1).

"INDIAN WOMEN TREATMENT PROGRAMS

"SEC. 703. (a) The Secretary may make grants to Indian tribes and tribal organizations to develop and implement a comprehensive alcohol and substance abuse program of prevention, intervention, treatment, and relapse prevention services that specifically addresses the cultural, historical, social, and child care needs of Indian women, regardless of age.

"(b) Grants made pursuant to this section may be used to—

"(1) develop and provide community training, education, and prevention programs for Indian women relating to alcohol and substance abuse issues, including fetal alcohol syndrome and fetal alcohol effect;

"(2) identify and provide appropriate counseling, advocacy, support, and relapse prevention to Indian women and their families; and

"(3) develop prevention and intervention models for Indian women which incorporate traditional healers, cultural values, and community and family involvement.

"(c) The Secretary shall establish criteria for the review and approval of applications for grants under this section.

"(d)(1) There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

"(2) Twenty percent of the funds appropriated pursuant to this subsection shall be used to make grants to urban Indian organizations funded under title V.

"INDIAN HEALTH SERVICE YOUTH PROGRAM

"SEC. 704. (a) DETOXIFICATION AND REHABILITATION.—The Secretary shall develop and implement a program for acute detoxification and treatment for Indian youth who are alcohol and substance abusers. The program shall include regional treatment centers designed to include detoxification and rehabilitation for both sexes on a referral basis. These regional centers shall be integrated with the intake and rehabilitation programs based in the referring Indian community.

"(b) TREATMENT CENTERS OR FACILITIES.—(1) The Secretary shall construct, renovate, or, as necessary, purchase, and appropriately staff and operate, a youth regional treatment center in each area under the jurisdiction of an area office. For the purposes of this subsection, the area offices of the Service in Tucson and Phoenix, Arizona, shall be considered one area office and the area office in California shall be considered to be two area offices, one office whose jurisdiction shall be considered to encompass the northern area of the State of California, and one office whose jurisdiction shall be considered to encompass the remainder of the State of California.

"(2) For the purpose of staffing and operating such centers or facilities, funding shall be pursuant to the Act of November 2, 1921 (25 U.S.C. 13).

"(3) A youth treatment center constructed or purchased under this subsection shall be constructed or purchased at a location within the area described in paragraph (1) agreed upon (by appropriate tribal resolution) by a majority of the tribes to be served by such center.

"(4)(A) Notwithstanding any other provision of this title, the Secretary may, from amounts authorized to be appropriated for the purposes of carrying out this section, make funds available to—

"(i) the Tanana Chiefs Conference, Incorporated, for the purpose of leasing, constructing, renovating, operating and maintaining a residential youth treatment facility in Fairbanks, Alaska; and

"(ii) the Southeast Alaska Regional Health Corporation to staff and operate a residential youth treatment facility without regard to the proviso set forth in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)).

"(B) Until additional residential youth treatment facilities are established in Alaska pursuant to this section, the facilities specified in subparagraph (A) shall make every effort to provide services to all eligible Indian youth residing in such State.

"(c) Federally Owned Structures.—

"(1) The Secretary, acting through the Service, shall, in consultation with Indian tribes—

"(A) identify and use, where appropriate, federally owned structures suitable as local residential or regional alcohol and substance abuse treatment centers for Indian youth; and

"(B) establish guidelines for determining the suitability of any such federally owned structure to be used as a local residential or regional alcohol and substance abuse treatment center for Indian youth.

"(2) Any structure described in paragraph (1) may be used under such terms and conditions as may be agreed upon by the Secretary and the agency having responsibility for the structure.

"(d) Rehabilitation and Aftercare Services.—

"(1) The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each Service service unit community-based rehabilitation and follow-up services for Indian youth who are alcohol or substance abusers which are designed to integrate long-term treatment and to monitor and support the Indian youth after their return to their home community.

"(2) Services under paragraph (1) shall be administered within each service unit by trained staff within the community who can assist the Indian youth in continuing development of self-image, positive problem-solving skills, and nonalcohol or substance abusing behaviors. Such staff shall include alcohol and substance abuse counselors, mental health professionals, and other health professionals and paraprofessionals, including community health representatives.

"(e) Inclusion of Family in Youth Treatment Program.—In providing the treatment and other services to Indian youth authorized by this section, the Secretary shall provide for the inclusion of family members of such youth in the treatment programs or other services as may be appropriate. Not less than 10 percent of the funds appropriated for the purposes of carrying out subsection (d) shall be used for outpatient care of adult family members related to the treatment of an Indian youth under that subsection.

"(f) Multidrug Abuse Study.—(1) The Secretary shall conduct a study to determine the incidence and prevalence of the abuse of multiple forms of drugs, including alcohol, among Indian youth residing on Indian reservations and in urban areas and the interrelationship of such abuse with the incidence of mental illness among such youth.

"(2) The Secretary shall submit a report detailing the findings of such study, together with recommendations based on such findings, to the Congress no later than two years after the date of the enactment of this section.

"TRAINING AND COMMUNITY EDUCATION

"Sec. 705. (a) Community Education.—The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each service unit a program of community education and involvement which shall be designed to provide concise and timely information to the community leadership of each tribal community. Such program shall include education in alcohol and substance abuse to political leaders, tribal judges, law enforcement personnel, members of tribal health and education boards, and other critical members of each tribal community.

"(b) Training.—The Secretary shall, either directly or by contract, provide instruction in the area of alcohol and substance abuse, including instruction in crisis intervention and family relations in the context of alcohol and substance abuse, youth alcohol and substance abuse, and the causes and effects of fetal alcohol syndrome to appropriate employees of the Bureau of Indian Affairs and the Service, and to personnel in schools or programs operated under any contract with the Bureau of Indian Affairs or the Service, including supervisors of emergency shelters and halfway houses described in section 4213 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2433).

"(c) Community-Based Training Models.—In carrying out the education and training programs required by this section, the Secretary, acting through the Service and in consultation with tribes and Indian alcohol and substance abuse prevention experts, shall develop and provide community-based training models. Such models shall address—

"(1) the elevated risk of alcohol and substance abuse faced by children of alcoholics;

"(2) the cultural and multigenerational aspects of alcohol and substance abuse prevention and recovery; and

"(3) community-based and multidisciplinary strategies for preventing and treating alcohol and substance abuse.

"GALLUP ALCOHOL AND SUBSTANCE ABUSE TREATMENT CENTER

"Sec. 706. (a) Grants for Residential Treatment.—The Secretary shall make grants to the Navajo Nation for the purpose of providing residential treatment for alcohol and substance abuse for adult and adolescent members of the Navajo Nation and neighboring tribes.

"(b) Purposes of Grants.—Grants made pursuant to this section shall (to the extent appropriations are made available) be used to—

"(1) provide at least 15 residential beds each year for adult long-term treatment, including beds for specialized services such as polydrug abusers, dual diagnosis, and specialized services for women with fetal alcohol syndrome children;

"(2) establish clinical assessment teams consisting of a clinical psychologist, a part-time addictionologist, a master's level assessment counselor, and a certified medical records technician which shall be responsible for conducting individual assessments and matching Indian clients with the appropriate available treatment;

"(3) provide at least 12 beds for an adolescent shelterbed program in the city of Gallup, New Mexico, which shall serve as a satellite facility to the Acoma/Canoncito/Laguna Hospital and the adolescent center located in Shiprock, New Mexico, for emergency crisis services, assessment, and family intervention;

"(4) develop a relapse program for the purposes of identifying sources of job training and job opportunity in the Gallup area and providing vocational training, job placement, and job retention services to recovering substance abusers; and

"(5) provide continuing education and training of treatment staff in the areas of intensive outpatient services, development of family support systems, and case management in cooperation with regional colleges, community colleges, and universities.

"(c) Contract for Residential Treatment.—The Navajo Nation, in carrying out the purposes of this section, shall enter into a contract with an institution in the Gallup, New Mexico, area which is accredited by the Joint Commission of the Accreditation of Health Care Organizations to provide comprehensive alcohol and drug treatment as authorized in subsection (b).

"(d) Authorization of Appropriations.—There are authorized to be appropriated—

"(1) to carry out the purposes of subsection (b)(1)—

"(A) $400,000 for fiscal year 1993;

"(B) $400,000 for fiscal year 1994; and

"(C) $500,000 for fiscal year 1995;

"(2) to carry out the purposes of subsection (b)(2)—

"(A) $100,000 for fiscal year 1993;

"(B) $125,000 for fiscal year 1994; and

"(C) $150,000 for fiscal year 1995;

"(3) to carry out the purposes of subsection (b)(3)—

"(A) $75,000 for fiscal year 1993;

"(B) $85,000 for fiscal year 1994; and

"(C) $100,000 for fiscal year 1995;

"(4) to carry out the purposes of subsection (b)(4), $150,000 for each of fiscal years 1993, 1994, and 1995; and

"(5) to carry out the purposes of subsection (b)(5)—

"(A) $75,000 for fiscal year 1993;

"(B) $90,000 for fiscal year 1994; and

"(C) $100,000 for fiscal year 1995.

"REPORTS

"Sec. 707. (a) Compilation of Data.—The Secretary, with respect to the administration of any health program by a service unit, directly or through contract, including a contract under the Indian Self-Determination Act, shall require the compilation of data relating to the number of cases or incidents in which any Service personnel or services were involved and which were related, either directly or indirectly, to alcohol or substance abuse. Such report shall include the type of assistance provided and the disposition of these cases.

"(b) Referral of Data.—The data compiled under subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan under section 4206 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2471 et seq.).

"(c) Comprehensive Report.—Each service unit director shall be responsible for assembling the data compiled under this section and section 4214 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2434) into an annual tribal comprehensive report. Such report shall be provided to the affected tribe and to the Director of the Service who shall develop and publish a biennial national report based on such tribal comprehensive reports.

"FETAL ALCOHOL SYNDROME AND FETAL ALCOHOL EFFECT GRANTS

"Sec. 708. (a)(1) The Secretary may make grants to Indian tribes and tribal organizations to establish fetal alcohol syndrome and fetal alcohol effect programs as provided in this section for the purposes of meeting the health status objectives specified in section 3(b).

"(2) Grants made pursuant to this section shall be used to—

"(A) develop and provide community and in-school training, education, and prevention programs relating to FAS and FAE;

"(B) identify and provide alcohol and substance abuse treatment to high-risk women;

"(C) identify and provide appropriate educational and vocational support, counseling, advocacy, and information to FAS and FAE affected persons and their families or caretakers;

"(D) develop and implement counseling and support programs in schools for FAS and FAE affected children;

"(E) develop prevention and intervention models which incorporate traditional healers, cultural values and community involvement;

"(F) develop, print, and disseminate education and prevention materials on FAS and FAE; and

"(G) develop and implement, through the tribal consultation process, culturally sensitive assessment and diagnostic tools for use in tribal and urban Indian communities.

"(3) The Secretary shall establish criteria for the review and approval of applications for grants under this section.

"(b) The Secretary, acting through the Service, shall—

"(1) develop an annual plan for the prevention, intervention, treatment, and aftercare for those affected by FAS and FAE in Indian communities;

"(2) conduct a study, directly or by contract with any organization, entity, or institution of higher education with significant knowledge of FAS and FAE and Indian communities, of the special educational, vocational, school-to-work transition, and independent living needs of adolescent and adult Indians and Alaska Natives with FAS or FAE; and

"(3) establish a national clearinghouse for prevention and educational materials and other information on FAS and FAE effect in Indian and Alaska Native communities and ensure access to clearinghouse materials by any Indian tribe or urban Indian organization.

"(c) The Secretary shall establish a task force to be known as the FAS/FAE Task Force to advise the Secretary in carrying out subsection (b). Such task force shall be composed of representatives from the National Institute on Drug Abuse, the National Institute on Alcohol and Alcoholism, the Office of Substance Abuse Prevention, the National Institute of Mental Health, the Service, the Office of Minority Health of the Department of Health and Human Services, the Administration for Native Americans, the Bureau of Indian Affairs, Indian tribes, tribal organizations, urban Indian communities, and Indian FAS/FAE experts.

"(d) The Secretary, acting through the Substance Abuse and Mental Health Services Administration, shall make grants to Indian tribes, tribal organizations, universities working with Indian tribes on cooperative projects, and urban Indian organizations for applied research projects which propose to elevate the understanding of methods to prevent, intervene, treat, or provide aftercare for Indians and urban Indians affected by FAS or FAE.

"(e)(1) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, a report on the status of FAS and FAE in the Indian population. Such report shall include, in addition to the information required under section (3)(d) with respect to the health status objective specified in section (3)(b)(27), the following:

"(A) The progress of implementing a uniform assessment and diagnostic methodology in Service and tribally based service delivery systems.

"(B) The incidence of FAS and FAE babies born for all births by reservation and urban-based sites.

"(C) The prevalence of FAS and FAE affected Indian persons in Indian communities, their primary means of support, and recommendations to improve the support system for these individuals and their families or caretakers.

"(D) The level of support received from the entities specified in subsection (c) in the area of FAS and FAE.

"(E) The number of inpatient and outpatient substance abuse treatment resources which are specifically designed to meet the unique needs of Indian women, and the volume of care provided to Indian women through these means.

"(F) Recommendations regarding the prevention, intervention, and appropriate vocational, educational and other support services for FAS and FAE affected individuals in Indian communities.

"(2) The Secretary may contract the production of this report to a national organization specifically addressing FAS and FAE in Indian communities.

"(f)(1) There are authorized to be appropriated to carry out this section $22,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

"(2) Ten percent of the funds appropriated pursuant to this section shall be used to make grants to urban Indian organizations funded under title V.

"PUEBLO SUBSTANCE ABUSE TREATMENT PROJECT FOR SAN JUAN PUEBLO, NEW MEXICO

"SEC. 709. The Secretary, acting through the Service, shall continue to make grants, through fiscal year 1995, to the 8 Northern Indian Pueblos Council, San Juan Pueblo, New Mexico, for the purpose of providing substance abuse treatment services to Indians in need of such services.

"THUNDER CHILD TREATMENT CENTER

"SEC. 710. (a) The Secretary, acting through the Service, shall make a grant to the Intertribal Addictions Recovery Organization, Inc. (commonly known as the Thunder Child Treatment Center) at Sheridan, Wyoming, for the completion of construction of a multiple approach substance abuse treatment center which specializes in the treatment of alcohol and drug abuse of Indians.

"(b) For the purposes of carrying out subsection (a), there are authorized to be appropriated $2,000,000 for fiscal years 1993 and 1994. No funding shall be available for staffing or operation of this facility. None of the funding appropriated to carry out subsection (a) shall be used for administrative purposes.

"SUBSTANCE ABUSE COUNSELOR EDUCATION DEMONSTRATION PROJECT

"SEC. 711. (a) The Secretary, acting through the Service, may enter into contracts with, or make grants to, accredited tribally controlled community colleges, tribally controlled postsecondary vocational institutions, and eligible community colleges to establish demonstration projects to develop educational curricula for substance abuse counseling.

"(b) Funds provided under this section shall be used only for developing and providing educational curricula for substance abuse counseling (including paying salaries for instructors). Such curricula may be provided through satellite campus programs.

"(c) A contract entered into or a grant provided under this section shall be for a period of one year. Such contract or grant may be renewed for an additional one year period upon the approval of the Secretary.

"(d) Not later than 180 days after the date of the enactment of this section, the Secretary, after consultation with Indian tribes and administrators of accredited tribally controlled community colleges, tribally controlled postsecondary vocational institutions, and eligible community colleges, shall develop and issue criteria for the review and approval of applications for funding (including applications for renewals of funding) under this section. Such criteria shall ensure that demonstration projects established under this section promote the development of the capacity of such entities to educate substance abuse counselors.

"(e) The Secretary shall provide such technical and other assistance as may be necessary to enable grant recipients to comply with the provisions of this section.

"(f) The Secretary shall submit to the President, for inclusion in the report which is required to be submitted under section 801 for fiscal year 1999, a report on the findings and conclusions derived from the demonstration projects conducted under this section.

"(g) For the purposes of this section, the following definitions apply:

"(1) The term 'educational curriculum' means one or more of the following:

"(A) Classroom education.

"(B) Clinical work experience.

"(C) Continuing education workshops.

"(2) The term 'eligible community college' means an accredited community college that—

"(i) is located on or near an Indian reservation;

"(ii) has entered into a cooperative agreement with the governing body of such Indian reservation to carry out a demonstration project under this section; and

"(iii) has a student enrollment of not less than 10 percent Indian.

"(3) The term 'tribally controlled community college' has the meaning given such term in section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)(4)).

"(4) The term 'tribally controlled postsecondary vocational institution' has the meaning given such term in section 390(2) of the Tribally Controlled Vocational Institutions Support Act of 1990 (20 U.S.C. 2397h(2)).

"(h) There are authorized to be appropriated for each of the fiscal years 1993, 1994, 1995, 1996, and 1997, such sums as may be necessary to carry out the purposes of this section. Such sums shall remain available until expended.

"GILA RIVER ALCOHOL AND SUBSTANCE ABUSE TREATMENT FACILITY

"SEC. 712. (a) The Secretary, acting through the Service, shall establish a regional youth alcohol and substance abuse prevention and treatment center in Sacaton, Arizona, on the Gila River Indian Reservation. The center shall be established within facilities leased, with the consent of the Gila River Indian Community, by the Service from such Community.

"(b) The center established pursuant to this section shall be known as the 'Regional Youth Alcohol and Substance Abuse Prevention and Treatment Center'.

"(c) The Secretary, acting through the Service, shall establish, as a unit of the regional center, a youth alcohol and substance abuse prevention and treatment facility in Fallon, Nevada.

"ALASKA NATIVE DRUG AND ALCOHOL ABUSE DEMONSTRATION PROJECT

"SEC. 713. (a) The Secretary, acting through the Service, shall make grants to the Alaska Native Health Board for the conduct of a two-part community-based demonstration project to reduce drug and alcohol abuse in Alaska Native villages and to rehabilitate families afflicted by such abuse. Sixty percent of such grant funds shall be used by the Health Board to stimulate coordinated community development programs in villages seeking to organize to combat alcohol and drug use. Forty percent of such grant funds shall be transferred to a qualified nonprofit corporation providing alcohol recovery services in the village of St. Mary's, Alaska, to enlarge and strengthen a family life demonstration program of rehabilitation for families that have been or are afflicted by alcoholism.

"(b) The Secretary shall submit to the President for inclusion in the report required to be submitted to the Congress under section 801 for fiscal year 1995 an evaluation of the demonstration project established under subsection (a).

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 714. Except as provided in sections 703, 706, 708, 710, and 711, there are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out the provisions of this title.".

(b) REDESIGNATION AND REPEAL OF EXISTING PROVISIONS.—

(1) REDESIGNATION.—The Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2401 et seq.) is amended by redesignating section 4224 as section 4208A.

(2) REPEAL.—Part 6 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2471 et seq.), as amended by paragraph (1), is hereby repealed.

SEC. 703. INDIAN ALCOHOL AND SUBSTANCE ABUSE PREVENTION AND TREATMENT ACT OF 1986 AMENDMENTS.

The Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2401 et seq.) is amended—

(1) in section 4206—

(A) in subsection (c)—

(i) in paragraph (2)—

(I) by striking "(2) the" and inserting "(B) the";

(II) by striking "(3) the" and inserting "(C) the";

(III) by striking "(4) the" and inserting "(D) the";

(IV) in subparagraph (D) (as redesignated by subclause (III)), by striking "and" at the end;

(V) in subparagraph (E), by striking the period at the end and inserting ", and"; and

(VI) by adding at the end the following new subparagraph:

"(F) an evaluation component to measure the success of efforts made."; and

(ii) by adding at the end the following new paragraph:

"(3) All Tribal Action Plans shall be updated every 2 years."; and

(B) in subsection (d), by amending paragraph (2) to read as follows:

"(2) There are authorized to be appropriated for grants under this subsection not more than $2,000,000 for fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000."; and

(C) by adding at the end the following new subsection:

"(f)(1) The Secretary of the Interior may make grants to Indian tribes adopting a resolution pursuant to subsection (a) to implement and develop community and in-school training, education, and prevention programs on alcohol and substance abuse, fetal alcohol syndrome and fetal alcohol effect.

"(2) Funds provided under this section may be used for, but are not limited to, the development and implementation of tribal programs for—

"(A) youth employment;

"(B) youth recreation;

"(C) youth cultural activities;

"(D) community awareness programs; and

"(E) community training and education programs.

"(3) There are authorized to be appropriated to carry out the provisions of this subsection $5,000,000 for fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.";

(2) in section 4207(b), by amending paragraph (3) to read as follows:

"(3) The Assistant Secretary of the Interior for Indian Affairs shall appoint such employees to work in the Office of Alcohol and Substance Abuse, and shall provide such funding, services, and equipment as may be necessary to enable the Office of Alcohol and Substance Abuse to carry out its responsibilities.";

(3) in section 4210, by amending subsection (b) to read as follows:

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $500,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.";

(4) in section 4212(a), by striking out "1989, 1990, 1991, and 1992" and inserting in lieu thereof "1993, 1994, 1995, 1996, 1997, 1998, 1999, and 2000";

(5) in section 4213(e), by amending paragraphs (1) and (2) to read as follows:

"(1) For the planning and design, construction, and renovation of, or purchase or lease of land or facilities for, emergency shelters and half-way houses to provide emergency care for Indian youth, there are authorized to be appropriated $10,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

"(2) For the staffing and operation of emergency shelters and half-way houses, there are authorized to be appropriated $5,000,000 for fiscal year 1993 and $7,000,000 for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.";

(6) in section 4216(a)(1)—

(A) in subparagraph (A), by striking "and" at the end;

(B) in subparagraph (B), by striking the period at the end and inserting ", and"; and

(C) by adding at the end the following new subparagraph:

"(C) the Makah Indian Tribe of Washington for the investigation and control of illegal narcotic traffic on the Makah Indian Reservation arising from its proximity to international waters.";

(7) by amending section 4216(a)(3) to read as follows:

"(3) For the purpose of providing the assistance required by this subsection, there are authorized to be appropriated—

"(A) $500,000 under paragraph (1)(A) for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000,

"(B) $500,000 under paragraph (1)(B) for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000, and

"(C) $500,000 under paragraph (1)(C) for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.";

(8) by amending section 4216(b) to read as follows:

"(b)(1) MARIJUANA ERADICATION AND INTERDICTION.—The Secretary of the Interior, in cooperation with appropriate Federal, tribal, and State and local law enforcement agencies, shall establish and implement a program for the eradication of marijuana cultivation, and interdiction, investigation, and control of illegal narcotics trafficking within Indian country as defined in section 1152 of title 18, United States Code. The Secretary shall establish a priority for the use of funds appropriated under paragraph (2) for those Indian reservations where the scope of the problem is most critical, and such funds shall be available for contracting by Indian tribes pursuant to the Indian Self-Determination Act (25 U.S.C. 450f et seq.).

"(2) For the purpose of establishing the program required by paragraph (1), there are authorized to be appropriated $2,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.";

(9) in section 4218, by amending subsection (b) to read as follows:

"(b) AUTHORIZATION.—For the purposes of providing the training required by subsection (a), there are authorized to be appropriated $2,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999 and 2000."; and

(10) in section 4220(b), by amending paragraphs (1) and (2) to read as follows:

"(1) For the purpose of constructing or renovating juvenile detention centers as provided in subsection (a), there are authorized to be appropriated $10,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.

"(2) For the purpose of staffing and operating juvenile detention centers, there are authorized to be appropriated $7,000,000 for fiscal year 1993 and such sums as may be necessary for each of the fiscal years 1994, 1995, 1996, 1997, 1998, 1999, and 2000.".

TITLE VIII—MISCELLANEOUS

SEC. 801. REPORTS.

Section 801 of the Act (25 U.S.C. 1671) (as redesignated by section 701(b) of this Act) is amended to read as follows:

"REPORTS

"SEC. 801. The President shall, at the time the budget is submitted under section 1105 of title 31, United States Code, for each fiscal year transmit to the Congress a report containing—

"(1) a report on the progress made in meeting the objectives of this Act, including a review of programs established or assisted pursuant to this Act and an assessment and recommendations of additional programs or additional assistance necessary to, at a minimum, provide health services to Indians, and ensure a health status for Indians, which are at a parity with the health services available to and the health status of, the general population;

"(2) a report on whether, and to what extent, new national health care programs, benefits, initiatives, or financing systems have had an impact on the purposes of this Act and any steps that the Secretary may have taken to consult with Indian tribes to address such impact;

"(3) a report on the use of health services by Indians—

"(A) on a national and area or other relevant geographical basis;

"(B) by gender and age;

"(C) by source of payment and type of service; and

"(D) comparing such rates of use with rates of use among comparable non-Indian populations.

"(4) a separate statement which specifies the amount of funds requested to carry out the provisions of section 201;

"(5) a separate statement of the total amount obligated or expended in the most recently completed fiscal year to achieve each of the objectives described in section 814, relating to infant and maternal mortality and fetal alcohol syndrome;

"(6) the reports required by sections 3(d), 108(n), 203(b), 209(j), 301(c), 302(g), 305(a)(3), 403, 708(e), and 817(a), and 822(f);

"(7) for fiscal year 1995, the report required by sections 702(c)(3) and 713(b);

"(8) for fiscal year 1997, the interim report required by section 307(h)(1); and

"(9) for fiscal year 1999, the reports required by sections 307(h)(2), 512(b), 711(f), and 821(g).".

SEC. 802. REGULATIONS.

Section 802 of the Act (25 U.S.C. 1672) (as redesignated by section 701(b) of this Act) is amended to read as follows:

"REGULATIONS

"SEC. 802. Prior to any revision of or amendment to rules or regulations promulgated pursuant to this Act, the Secretary shall consult with Indian tribes and appropriate national or regional Indian organizations and shall publish any proposed revision or amendment in the Federal Register not less than sixty days prior to the effective date of such revision or amendment in order to provide adequate notice to, and receive comments from, other interested parties.".

SEC. 803. EXTENSION OF TREATMENT OF ARIZONA AS A CONTRACT HEALTH SERVICE DELIVERY AREA.

Section 808 of the Act (25 U.S.C. 1678) (as redesignated by section 701(b) of this Act) is amended by striking out "1991" and inserting in lieu thereof "2000".

SEC. 804. INFANT AND MATERNAL MORTALITY; FETAL ALCOHOL SYNDROME.

Section 814 of the Act (25 U.S.C. 1680d) (as redesignated by section 701(b) of this Act) is amended—

(1) by striking out "(a)"; and

(2) by striking out subsection (b).

SEC. 805. REALLOCATION OF BASE RESOURCES.

Section 817(a) of the Act (25 U.S.C. 1680(g)) (as redesignated by section 701(b) of this Act) is amended by striking out "Secretary has submitted to the Congress" and inserting in lieu thereof the following: "Secretary has submitted to the President, for inclusion in the report required to be transmitted to the Congress under section 801,".

SEC. 806. CHILD SEXUAL ABUSE TREATMENT PROGRAMS.

Section 819 of the Act (25 U.S.C. 1680i) (as redesignated by section 701(b) of this Act) is amended to read as follows:

"CHILD SEXUAL ABUSE TREATMENT PROGRAMS

"SEC. 819. (a) The Secretary and the Secretary of the Interior shall, for each fiscal year through fiscal year 1995, continue the demonstration programs involving treatment for child sexual abuse provided through the Hopi Tribe and the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

"(b) Beginning October 1, 1995, the Secretary and the Secretary of the Interior may establish, in any service area, demonstration programs involving treatment for child sexual abuse, except that the Secretaries may not establish a greater number of such programs in one service area than in any other service area until there is an equal number of such programs established with respect to all service areas from which the Secretary receives qualified applications during the application period (as determined by the Secretary).".

SEC. 807. TRIBAL LEASING.

Section 820 of the Act (25 U.S.C. 1680j) (as redesignated by section 701(b) of this Act) is amended to read as follows:

"TRIBAL LEASING

"SEC. 820. Indian tribes providing health care services pursuant to a contract entered into under the Indian Self-Determination Act may lease permanent structures for the purpose of providing such health care services without obtaining advance approval in appropriation Acts.".

SEC. 808. EXTENSION OF TERMINATION DATE OF CERTAIN DEMONSTRATION PROJECTS; JOINT VENTURE PROJECTS.

Section 818 of the Act (25 U.S.C. 1680h) (as redesignated by section 701(b) of this Act) is amended—

(1) in subsection (d)—

(A) in paragraph (1), by inserting before the period at the end the following: ", or, in the case of a demonstration project for which a grant is made after September 30, 1990, three years after the date on which such grant is made"; and

(B) in paragraph (2), by striking "1994" and inserting "1996"; and

(2) by amending subsection (e) to read as follows:

"(e)(1) The Secretary, acting through the Service, shall make arrangements with Indian tribes to establish joint venture demonstration projects under which an Indian tribe shall expend tribal, private, or other available nontribal funds, for the acquisition or construction of a health facility for a minimum of 20 years, under a no-cost lease, in exchange for agreement by the Service to provide the equipment, supplies, and staffing for the operation and maintenance of such a health facility. A tribe may utilize tribal funds, private sector, or other available resources, including loan guarantees, to fulfill its commitment under this subsection.

"(2) The Secretary shall make such an arrangement with an Indian tribe only if the Secretary first determines that the Indian tribe has the administrative and financial capabilities necessary to complete the timely acquisition or construction of the health facility described in paragraph (1).

"(3) An Indian tribe or tribal organization that has entered into a written agreement with the Secretary under this subsection, and that breaches or terminates without cause such agreement, shall be liable to the United States for the amount that has been paid to the tribe, or paid to a third party on the tribe's behalf, under the agreement. The Secretary has the right to recover tangible property (including supplies), and equipment, less depreciation, and any funds expended for operations and maintenance under this section. The preceding sentence does not apply to any funds expended for the delivery of health care services, or for personnel or staffing, shall be recoverable.".

SEC. 809. HOME AND COMMUNITY BASED CARE DEMONSTRATION PROJECT.

Title VIII of the Act (as redesignated by subsections (a) and (b) of section 701 of this Act) is amended by adding at the end the following new section:

"HOME- AND COMMUNITY-BASED CARE DEMONSTRATION PROJECT

"SEC. 821. (a) The Secretary, acting through the Service, is authorized to enter into contracts with, or make grants to, Indian tribes or tribal organizations providing health care services pursuant to a contract entered into under the Indian Self-Determination Act, to establish demonstration projects for the delivery of home- and community-based services to functionally disabled Indians.

"(b)(1) Funds provided for a demonstration project under this section shall be used only for the delivery of home- and community-based services (including transportation services) to functionally disabled Indians.

"(2) Such funds may not be used—

"(A) to make cash payments to functionally disabled Indians;

"(B) to provide room and board for functionally disabled Indians;

"(C) for the construction or renovation of facilities or the purchase of medical equipment; or

"(D) for the provision of nursing facility services.

"(c) Not later than 180 days after the date of the enactment of this section, the Secretary, after consultation with Indian tribes and tribal organizations, shall develop and issue criteria for the approval of applications submitted under this section. Such criteria shall ensure that demonstration projects established under this section promote the development of the capacity of tribes and tribal organizations to deliver, or arrange for the delivery of, high quality, culturally appropriate home- and community-based services to functionally disabled Indians;

"(d) The Secretary shall provide such technical and other assistance as may be necessary to enable applicants to comply with the provisions of this section.

"(e) At the discretion of the tribe or tribal organization, services provided under a demonstration project established under this section may be provided (on a cost basis) to persons otherwise ineligible for the health care benefits of the Service.

"(f) The Secretary shall establish not more than 24 demonstration projects under this section. The Secretary may not establish a greater number of demonstration projects under this section in one service area than in any other service area until there is an equal number of such demonstration projects established with respect to all service areas from which the Secretary receives applications during the application period (as determined by the Secretary) which meet the criteria issued pursuant to subsection (c).

"(g) The Secretary shall submit to the President, for inclusion in the report which is required to be submitted under section 801 for fiscal year 1999, a report on the findings and conclusions derived from the demonstration projects conducted under this section, together with legislative recommendations.

"(h) For the purposes of this section, the following definitions shall apply:

"(1) The term 'home- and community-based services' means one or more of the following:

"(A) Homemaker/home health aide services.

"(B) Chore services.

"(C) Personal care services.

"(D) Nursing care services provided outside of a nursing facility by, or under the supervision of, a registered nurse.

"(E) Respite care.

"(F) Training for family members in managing a functionally disabled individual.

"(G) Adult day care.

"(H) Such other home- and community-based services as the Secretary may approve.

"(2) The term 'functionally disabled' means an individual who is determined to require home- and community-based services based on an assessment that uses criteria (including, at the discretion of the tribe or tribal organization, activities of daily living) developed by the tribe or tribal organization.

"(i) There are authorized to be appropriated for each of the fiscal years 1993, 1994, 1995, 1996, and 1997 such sums as may be necessary to carry out this section. Such sums shall remain available until expended.".

SEC. 810. SHARED SERVICES DEMONSTRATION PROJECTS.

Title VIII of the Act (as redesignated by subsections (a) and (b) of section 701 and amended by section 809 of this Act) is amended by adding at the end the following new section:

"SHARED SERVICES DEMONSTRATION PROJECT

"SEC. 822. (a) The Secretary, acting through the Service and notwithstanding any other provision of law, is authorized to enter into contracts with Indian tribes or tribal organizations to establish not more than 6 shared services demonstration projects for the delivery of long-term care to Indians. Such projects shall provide for the sharing of staff or other services between a Service facility and a nursing facility owned and operated (directly or by contract) by such Indian tribe or tribal organization.

"(b) A contract entered into pursuant to subsection (a)—

"(1) may, at the request of the Indian tribe or tribal organization, delegate to such tribe or tribal organization such powers of supervision and control over Service employees as the Secretary deems necessary to carry out the purposes of this section;

"(2) shall provide that expenses (including salaries) relating to services that are shared between the Service facility and the tribal facility be allocated proportionately between the Service and the tribe or tribal organization; and

"(3) may authorize such tribe or tribal organization to construct, renovate, or expand a nursing facility (including the construction of a facility attached to a Service facility), except that no funds appropriated for the Service shall be obligated or expended for such purpose.

"(c) To be eligible for a contract under this section, a tribe or tribal organization, shall, as of the date of the enactment of this Act—

"(1) own and operate (directly or by contract) a nursing facility;

"(2) have entered into an agreement with a consultant to develop a plan for meeting the long-term needs of the tribe or tribal organization; or

"(3) have adopted a tribal resolution providing for the construction of a nursing facility.

"(d) Any nursing facility for which a contract is entered into under this section shall meet the requirements for nursing facilities under section 1919 of the Social Security Act.

"(e) The Secretary shall provide such technical and other assistance as may be necessary to enable applicants to comply with the provisions of this section.

"(f) The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, a report on the findings and conclusions derived from the demonstration projects conducted under this section.".

SEC. 811. RESULTS OF DEMONSTRATION PROJECTS.

Title VIII of the Act (as redesignated by subsections (a) and (b) of section 701 and amended by section 810 of this Act) is amended by adding at the end the following new section:

"RESULTS OF DEMONSTRATION PROJECTS

"SEC. 823. The Secretary shall provide for the dissemination to Indian tribes of the findings and results of demonstration projects conducted under this Act.".

SEC. 812. PRIORITY FOR INDIAN RESERVATIONS.

Title VIII of the Act (as redesignated by subsections (a) and (b) of section 701 and amended by section 811 of this Act) is amended by adding at the end the following new section:

"PRIORITY FOR INDIAN RESERVATIONS

"SEC. 824. (a) Beginning on the date of the enactment of this section, the Bureau of Indian Affairs and the Service shall, in all matters involving the reorganization or development of Service facilities, or in the establishment of related employment projects to address unemployment conditions in economically depressed areas, give priority to locating such facilities and projects on Indian lands if requested by the Indian tribe with jurisdiction over such lands.

"(b) For purposes of this section, the term "Indian lands" means—

"(1) all lands within the limits of any Indian reservation; and

"(2) any lands title which is held in trust by the United States for the benefit of any Indian tribe or individual Indian, or held by any Indian tribe or individual Indian subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.".

SEC. 813. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—Title VIII of the Act (as redesignated by subsections (a) and (b) of section 701 and amended by section 812 of this Act) is amended by adding at the end the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 825. Except as provided in section 821, there are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2000 to carry out this title.".

(b) CONFORMING AMENDMENTS.—Section 807 of the Act (25 U.S.C. 1677) (as redesignated by subsections (a) and (b) of section 701 of this Act) is amended by striking out subsection (f).

SEC. 814. TRIBAL SELF-GOVERNANCE PROJECT.

The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f note) is amended—

(1) in section 301, by inserting after "Interior" the following: "and the Secretary of Health and Human Services (hereafter in this title referred to as the 'Secretaries') each";

(2) in sections 302, 303, 304, and 305, by striking "Secretary" each place it appears and inserting in lieu thereof "Secretaries";

(3) in section 303(a)(1), by inserting after "Interior" the following: "and the Indian Health Service of the Department of Health and Human Services"; and

(4) by adding after section 309 the following new section:

"SEC. 310. For the purposes of providing one year planning and negotiations grants to the Indian tribes identified by section 302, with respect to the programs, activities, functions, or services of the Indian Health Service, there are authorized to be appropriated such sums as may be necessary to carry out such purposes. Upon completion of an authorized planning activity or a comparable planning activity by a tribe, the Secretary is authorized to negotiate and implement a Compact of Self-Governance and Annual Funding Agreement with such tribe.".

TITLE IX—TECHNICAL CORRECTIONS

SEC. 901. REPEAL OF EXPIRED REPORTING REQUIREMENTS.

The Act is amended—

(1) in section 116, by striking out subsection (d);

(2) in section 204(a)—

(A) by striking out paragraph (2);

(B) by striking out "(a)(1)" and inserting in lieu thereof "(a)";

(C) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(D) in paragraph (2) (as redesignated by subparagraph (C)), by striking out "subparagraph (A)" and inserting in lieu thereof "paragraph (1)";

(3) in section 602, by striking out subsection (a)(3); and

(4) by striking out section 803 (as redesignated by section 701(b) of this Act).

SEC. 902. OTHER TECHNICAL CORRECTIONS.

The Act is amended—

(1) in section 4(c), by striking out "sections 102, 103, and 201(c)(5)," and inserting in lieu thereof the following: "sections 102 and 103,";

(2) in title I—

(A) in section 102(b)(1), by striking ": *Provided*, That the" and inserting in lieu thereof ". The";

(B) in section 105(c), by striking out "Department of Health, Education, and Welfare" and inserting in lieu thereof "Department of Health and Human Services";

(C) in section 108(d)(1)(A), by striking out "Indian Health" and inserting in lieu thereof "Indian health"; and

(D) in section 108(i), by striking out "Service manpower programs" and inserting in lieu thereof "health professional programs of the Service".

(3) in title II—

(A) by striking out "**SEC. 209. MENTAL HEALTH PREVENTION AND TREATMENT SERVICES.**" and inserting in lieu thereof the following:

"MENTAL HEALTH PREVENTION AND TREATMENT SERVICES

"SEC. 209."; and

(B) in section 209, by redesignating subsections (c) through (l) as subsections (b) through (k), respectively;

(4) in title III—

(A) by striking out "**SEC. 307. INDIAN HEALTH CARE DELIVERY DEMONSTRATION PROJECT.**" and inserting in lieu thereof the following:

"INDIAN HEALTH CARE DELIVERY DEMONSTRATION PROJECT

"SEC. 307."; and

(B) in section 301(d) (as redesignated by section 301(2) of this Act), by striking out "sections 102 and 103(b)" and inserting in lieu thereof "section 102";

(5) in title V—

(A) by striking out "**SEC. 409. FACILITIES RENOVATION.**" and inserting in lieu thereof the following:

"FACILITIES RENOVATION

"SEC. 509."; and

(B) by striking out "**SEC. 511. URBAN HEALTH PROGRAMS BRANCH.**" and inserting in lieu thereof the following:

"URBAN HEALTH PROGRAMS BRANCH

"SEC. 510.";

(6) in section 601(c)(3)(D), by striking out "(25 U.S.C. 2005, et seq.)" and inserting in lieu thereof "(42 U.S.C. 2005 et seq.)";

(7) in section 601(d)(1)(C), by striking out "appropriate" and inserting in lieu thereof "appropriated";

(8) in section 813(b)(2)(A) (as redesignated by section 701(b) of this Act), by striking out

"section 402(c)" and inserting in lieu thereof "section 402(a)"; and

(9) by amending the heading for section 816 (as redesignated by section 701(b)) to read as follows:

"INDIAN HEALTH SERVICE AND DEPARTMENT OF VETERANS AFFAIRS HEALTH FACILITIES AND SERVICES SHARING".

Mr. INOUYE. Mr. President, I rise today to urge the prompt passage of S. 2481, a bill to amend the Indian Health Care Improvement Act. This legislation reflects the efforts of the three committees of jurisdiction in the House and Senate to assure that the provisions of both House and Senate bills are reconciled and incorporated into a substitute measure which the House of Representatives has now acted upon. I wish to commend my colleagues in the House, Chairman MILLER and Congressman RHODES of the House Interior and Insular Affairs Committee, and Chairman WAXMAN of the House Energy and Commerce Subcommittee on Health, for their leadership on this measure under somewhat difficult circumstances. I also want to take this opportunity to thank the vice-chairman of the select committee for his work on this legislation.

The major objective of this comprehensive legislation is to improve the health status of the American Indian and Alaska Native populations in the United States. S. 2481 would seek to stabilize the programs authorized by the "Indian Health Care Improvement Act through the year 2000". Specific health care objectives set forth in S. 2481 are drawn from the Surgeon General's "Healthy People 2000" report of the Department of Health and Human Services which has set forth national health promotion and disease prevention objectives. This reauthorization measure would set more stringent standards by which to measure progress toward the goal of raising the health status of American Indians and Alaska Natives to the highest possible level.

The Federal Government has a unique historical and legal relationship with the Indian people, whose health status is substantially inferior to that of the general U.S. population. According to the Indian Health Service, the mortality rates of American Indians and Alaska Natives continue to exceed that of the general U.S. population, including all races. In 1987, the Indian age-adjusted mortality rates for the following causes exceeded those for the United States all races population by the following percentages: Tuberculosis, 400 percent; alcoholism, 332 percent; diabetes mellitus, 139 percent; accidents, 139 percent; homicide, 64 percent; pneumonia and influenza, 44 percent; and, suicide, 28 percent.

In 1990, the Department of Health and Human Services noted in the report referenced above, "Healthy People 2000," that relative to other populations, the American Indian and Alaska Native population is young and impoverished, with more than one in four living below the poverty level. The Department suggested that:

> One reason for the youthfulness of the population is the large proportion of the population who die before age 45. Most of the excess deaths—those that would not have occurred if American Indian death rates were comparable to those of the total population—can be traced to six causes: Unintentional injuries, cirrhosis, homicide, suicide, pneumonia, and complications of diabetes.

Since its enactment in 1976, the Health Care Improvement Act has enabled impressive progress in activities intended to enhance the quality, effectiveness, and efficiency of health care delivery services in Indian country. The Indian Health Service [IHS], the tribal health delivery system administered by tribal governments, and the urban Indian health organizations have accomplished remarkable feats in reversing epidemic infectious diseases such as tuberculosis, smallpox, hepatitis B, pneumonia, and influenza. However, the IHS data indicate that many of these disease entities are resurfacing once again and chronic degenerative diseases such as cirrhosis, cerebrovascular diseases, and diseases of the heart are on the rise. The reauthorization of the Indian Health Care Improvement Act will continue this important work, especially in the critical areas such as alcoholism and substance abuse treatment, mental health, diabetes, and tuberculosis.

During the past 18 months, the Select Committee on Indian Affairs and the two committees of jurisdiction in the House of Representatives held nine hearings on the proposed amendments to the Indian Health Care Improvement Act, here in Washington, DC, and in the States of Alaska, Arizona, North Dakota, and South Dakota. An additional hearing was held here in Washington, DC, on the subject of fetal alcohol syndrome and fetal alcohol effect. These 10 hearings represent the concerns of over 85 tribal governments and 30 Indian and other professional organizations who advocate for improved health care delivery which have helped to shape the legislation we are about to consider.

I believe that it is important to note that the administration has worked closely with the committees of jurisdiction to ensure that many of the provisions of S. 2481 are acceptable and allow for optimum effectiveness. We have been advised by the Office of Management and Budget that there is no objection to the enactment of this bill from the standpoint of the administration's program. Unfortunately, the administration strongly opposed two provisions in the Senate bill: First, the payment of Medicare premiums by the Indian Health Service; and second, a requirement that IHS enter into certain leasing arrangements. These provisions were deleted during deliberations among the committees of jurisdiction.

The Senate bill originally contained a provision which would have expanded medical coverage and medical provider options for low-income older and disabled Indians by authorizing IHS to pay Medicare Part B premiums. Many users of IHS or tribal health facilities who have Medicare Part A coverage have great difficulty in paying part B premiums because of their very limited income. The Senate provision would have, if adopted, authorized IHS to make part B premium payments for the estimated 15,000 Medicare-eligible Indians using IHS or tribal facilities who are between 100 percent and 200 percent of the Federal poverty level. I am particularly sorry that we could not secure the support of the administration because the provision would have simply expanded upon existing, but little used, Indian Health Care Improvement Act provisions which encourage additional Medicare participation by Indian people through IHS/tribal contractor payment of part B premiums. IHS already pays Medicare Part B copayments and deductibles for those with part B coverage. All we hoped to do here was to assure that all low-income Indians with Medicare Part A are able to have access to part B coverage as well.

Another Senate provision which was objected to by the Indian Health Service, and subsequently not included in the substitute bill, would have required IHS to treat more fairly those tribes and tribal organizations which own health facilities and, at the same time, contract to administer health programs in those facilities. It has been brought to the committee's attention that IHS refuses to enter into lease arrangements with tribes and tribal organizations when such organizations own their health facility. However, the Service does enter into lease arrangements for these same facilities when the IHS operates the health program directly. This disparate treatment is contrary to the policy of Indian self-determination. The select committee has urged tribal governments to seek alternate sources of revenue to fund the construction of facilities. When they do so, they should not be denied adequate funding to maintain those facilities.

Statutory language presently in the Indian Health Care Improvement Act (Public Law 94-437 and Public Law 100-713) and the Indian Self-Determination Act (Public Law 93-638) requires the IHS to fund tribally contracted programs on the same basis as IHS programs are funded. The discretionary authority to enter into leases with tribes and tribal organizations contained in section 701 of the Indian Health Care Improvement Act, should not be used by the IHS to circumvent its statutory responsibilities to fund tribal lease-type costs of contractors on an equitable basis with IHS programs. I strongly urge the IHS to revise its leasing priority system [LPS] to permit leases with tribes and tribal organizations that own facilities and contract to administer the health program under Public Law 93-638. Unless the IHS reverses its present policy, I shall ask the committee to revisit this issue in the 103d Congress and may issue a request of the General Accounting Office to undertake a study of IHS leasing activities.

Finally, the Senate bill included an amendment to section 1880a of the Social Security Act, yet was deleted during House-Senate deliberations. This technical, but important, amendment would have permitted tribal health care providers to collect Medicare payments for outpatient services offered in tribal clinics, as it does now from Medicaid and, as IHS owned and operated clinics do. Failure to correct this inconsistency in the Medicare Program means that Indian Medicare recipients cannot benefit from this coverage without disrupting their relationship with their usual health care provider and using more expensive health services. In the coming year, I will be working closely with the Finance Committee to ensure that this importnt amendment to the Social Security Act is enacted into law.

While there were a number of other provisions which were deleted during the House-Senate negotiations, I am confident that the final legislative proposal will assist the Indian Health Service, tribal governments, and the urban Indian organizations to enhance their capacity to provide the highest level of quality health care in the decade of the 1990's.

The improvements to the Indian Health Care Improvement Act will allow the Federal Government to utilize the health care objectives contained in the bill to assess the need for adequate health resources. Under title I, a number of health professional programs have been enhanced to draw more native people into the IHS, particularly in nursing and mental health professions. The loan repayment program has been improved to comport with the National Health Service Corps Program. Provision is included to statutorily authorize the community health aide/practitioner program. There is provision for a tribal matching scholarship grant program and the IHS is encouraged to consider a tribal members' ties to their community in placement activities, to name a few of the improvements.

Title II provisions will encourage efforts to assess tribal health status based on the health objectives with the emphasis on creating a system to determine health needs based on addressing health status deficiencies rather than on historical funding. Hospice care and managed care feasibility studies are authorized. The amendments also provide for comprehensive school health education programs and an Indian youth grant program, available to tribal governments, urban and tribal organizations, to develop innovative mental and physical health programs for Indian youth. An Office of Indian Women's Programs is also established.

Language to provide tribal self-determination contractors with the right of recovery for third-party insurance purposes is included. The tribal right to recover encompasses all expenses which arose under a program administered by the tribal health contractor, including those which arose prior to the effective date of the applicable self determination contract. This provides an incentive for the collection of existing claims, and prevents insurance companies from receiving a windfall from past discrimination against Indian policyholders.

Section 209 of the Indian Health Care Improvement Act Amendments of 1992 takes effect November 23, 1988. November 23, 1988, is the effective date of section 206 of the act, which section 209 of the 1992 amendments clarifies, to further carry out the intent of the Congress. Although original section 206 has not raised problems for most third-party payors, in a few instances such payors have refused to meet their statutory obligation to pay, resulting in many accumulated claims. The section 209 clarifying amendment will assure that these payors do not escape their obligations under the law.

Title III amendments authorize the IHS to provide financial assistance to tribal governments for safe water and sanitary waste disposal facilities program covering up to 80 percent for the operation and maintenance of safe water and sanitation facilities. An ambulatory grant program is authorized to allow tribal governments to construct, renovate, or modernize on Indian health facilities to provide ambulatory care services to eligible Indians.

Under title IV, the bill exempts payments received by a hospital or skilled nursing facility operated by the IHS, or Indian tribe, or tribal organization from consideration in determining appropriations for services to Indians. As amended, the IHS may enter into an agreement with any tribal government to provide for the receipt and processing of Medicare/Medicaid assistance at tribally operated facilities. Finally, the IHS is to not deny contract health services coverage to Indian recipients, if they are 65 or older or disabled if they apply for care within 30 days of emergency care. The time limit is now 72 hours.

Improvements to title V, will provide that urban Indian program funding may be issued under grants, as well as contracts. Language is also provided to protect the funding originally awarded to urban Indian programs by the National Institute of Alcoholism and Alcohol Abuse, and now managed by the IHS, in future budget distribution activities.

An amendment offered under title VI by Senator McCain would provide that after January 1, 1993, the position of the Director of the Indian Health Service shall be subject to confirmation with the advice and consent of the Senate.

The amendments to the Indian Health Care Improvement Act redesignate title VII as title VIII. The new title VII includes a series of amendments to continue the Omnibus Anti-Drug Abuse Act Programs contained in Public Law 99-570 and Public Law 100-690. The amendments will require the IHS to address inhalant abuse in the context of substance abuse. Aside from continuing the basic alcohol and substance abuse prevention and treatment programs, a number of tribal specific programs are included to provide for alcohol and drug abuse treatment at Gallup, NM; continuation of the pueblo substance abuse project, in San Juan Pueblo, NM; continuation of the Gila River Indian Youth Treatment Center in Arizona and development of the satellite facility at Fallon, NV; development of the Alaska Native drug and alcohol demonstration project; and a provision to address the construction needs of the Thunderchild Treatment Center in Wyoming, to name a few.

A series of new programs are authorized to address fetal alcohol syndrome and fetal alcohol effect prevention and treatment. Provision is made to establish substance abuse counselor training in colleges, universities and tribally controlled community colleges.

Under title VIII, a variety of reports required under the act will be required for presentation in the President's budget request each year. Language is included to continue child sexual abuse treatment programs on the Hopi and Ft. Peck Reservations and includes additional authority to expand the availability of these model programs in other areas. The amendments will provide that tribal governments and tribal organizations may lease permanent structures without obtaining advance approval under the Interior Appropriations Acts. This allows tribal contractors additional flexibility in leasing program facilities.

Two of the new provisions address vitally needed long-term care needs of the elderly and disabled. The first would authorize the IHS to make grants or to enter into contracts for home- and community-based health care services on a demonstration basis. At least 24 demonstration programs are authorized to be established. The second demonstration program would authorize the IHS to enter into shared services agreements with tribal governments whereby the IHS may agree to share staff and other services with long-term care facilities operated by a tribal government. At least six demonstrations are authorized to be established.

S. 2481 definitively authorizes tribal governments participating in the self-governance project to receive planning grants from the IHS for self-governance purposes as is authorized in the Bureau of Indian Affairs.

Another of the amendments included in title VIII authorizes the IHS to establish a joint venture demonstration project under which tribal governments may expend tribal, private, and other resources for the acquisition or construction of a health facility. In return, the IHS will provide equipment, supplies, and staffing for operation and maintenance of such health centers.

The above mentioned amendments to the Indian Health Care Improvement Act are only a few of those contained in this very comprehensive bill. A number of new categorical program authorities and requirements are included in this 170-page bill, many of which are meritorious and certain to improve the health status of American Indians and Alaska Natives through the year 2000.

In conclusion, I again want to urge my colleagues in the Senate to concur in the House amendments. The administration has indicated its willingness to support this bill and I hope that the President will act at the earliest date possible to give it final approval. This year, 1992, has been declared the "Year of the American Indian." I am certain that my colleagues will want to ensure the Nation's first Americans that we are doing our best to raise their health status to the highest level possible by the year 2000.

Mr. FORD. Mr. President, I move that the Senate concur in the House amendment.

The ACTING PRESIDENT pro tempore. Without objection, the motion is agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

JICARILLA APACHE WATER RIGHTS SETTLEMENT ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Indian Affairs Committee be discharged from further consideration of H.R. 5122, the Jicarilla Apache Water Rights Settlement Act; that the Senate proceed to its immediate consideration; that the bill be deemed read for a third time and passed; the motion to reconsider be laid upon the table; and that any statements thereon appear in the RECORD at the appropriate place as though read.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So, the bill (H.R. 5122) was deemed read the third time and passed.

CIVIL TILTROTOR DEVELOPMENT ADVISORY COMMITTEE ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of S. 2105, the Civil Tiltrotor Development Advisory Committee Act; that the Senate then proceed to its immediate consideration; that the bill be deemed read three times and passed; that the motion to reconsider be laid upon the table; and that any statements relating to this bill appear in the RECORD at the appropriate place.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So, the bill (S. 2105) was deemed read the third time and passed, as follows:

S. 2105

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Civil Tiltrotor Development Advisory Committee Act of 1991".

CIVIL TILTROTOR DEVELOPMENT ADVISORY COMMITTEE

SEC. 2. (a) ESTABLISHMENT.—The Secretary of Transportation shall establish in the Department of Transportation a Civil Tiltrotor Development Advisory Committee (hereinafter referred to as the "Advisory Committee") to evaluate the technical feasibility and economic viability of developing civil tiltrotor aircraft and a national system of infrastructure to support the incorporation of tiltrotor aircraft technology into the national transportation system.

(b) MEMBERSHIP.—(1) The Advisory Committee shall be composed of members appointed by the Secretary of Transportation, not later than 60 days after the date of the enactment of this Act, as follows:

(A) At least one representative of the Department of Transportation.

(B) At least one representative of the Federal Aviation Administration.

(C) At least one representative of the National Aeronautics and Space Administration.

(D) Representatives of other Federal departments and agencies, State and local governments, and private industry, as considered appropriate and necessary by the Secretary.

(2) Members appointed pursuant to subparagraphs (A), (B), and (C) of paragraph (1) shall be appointed from among individuals employed within the Federal departments and agencies described in such subparagraphs who receive an annual rate of basic pay which equals or exceeds the rate payable for level VI of the Senior Executive Service.

(3) The Secretary of Transportation shall appoint a Chairperson of the Advisory Committee from among individuals employed within the Department of Transportation who receive an annual rate of basic pay which equals or exceeds the rate payable for level IV of the Executive Schedule.

(c) DUTIES.—The Advisory Committee shall—

(1) determine the costs, feasibility, and economic viability of developing a civil tiltrotor aircraft and establishing the necessary infrastructure to incorporate such aircraft and other advanced vertical takeoff and landing aircraft into the national transportation system;

(2) determine the benefits to the national economy and transportation system, including the potential for improved linkages and connections with other modes of transportation, or incorporating civil tiltrotor aircraft and other advanced vertical takeoff and landing aircraft into the national transportation system;

(3) determine further aeronautical research and development requirements needed to incorporate civil tiltrotor aircraft and other advanced vertical takeoff and landing aircraft into the national transportation system;

(4) determine changes to regulatory standards governing use of the airspace which would be required to incorporate civil tiltrotor aircraft and other advanced vertical takeoff and landing aircraft into the national transportation system; and

(5) recommend which of the costs of developing civil tiltrotor aircraft and establishing the infrastructure necessary to support civil tiltrotor aircraft and other advanced vertical takeoff and landing aircraft should be paid by the Federal Government and which of such costs should be paid by private industry.

(d) REPORT.—Not later than the three hundred and sixty-fifth day following the date of the first meeting of the Advisory Committee, the Advisory Committee shall transmit to Congress a report containing its determinations and recommendations under subsection (c).

(e) TERMINATION.—The Advisory Committee shall terminate on the thirtieth day following the date of submission of its report under subsection (d).

AMTRAK AUTHORIZATION DEVELOPMENT ACT—CONFERENCE REPORT

Mr. FORD. Mr. President, I submit a report of the committee of conference on H.R. 4250 and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4250) to authorize appropriations for the National Railroad Passenger Corporation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 3, 1992.)

Mr. HOLLINGS. Mr. President, I rise in support of the conference agreement on H.R. 4250, the Amtrak Authorization and Development Act. This measure will help to assure the long-term viability of the Nation's rail passenger system.

Earlier this year, the Surface Transportation Subcommittee reviewed carefully the extent to which insufficient capital funding in the past may have prevented Amtrak from investing adequately in necessary equipment and facility improvements. As a result of this examination, the Commerce Committee concluded that the operating and capital needs of Amtrak must be met to ensure the viability of the Nation's present rail passenger system. I am pleased to note that the conference agreement as passed by the House and before us today incorporates the original Senate measure's focus on these important financial objectives.

In addition, the conference agreement includes a number of important provisions, including a separate authorization for new State-supported and other services to provide Amtrak with greater flexibility to promote expansion in areas where ridership potential can be documented. The legislation also retains and strengthens language from the Senate bill addressing locomotive visibility and requiring the formation of a task force comprised of representatives from the Federal Railroad Administration, Amtrak and each of the on-board service employee and operating crafts to consider recommendations for improving emergency training and performance of on-board crew members. My concern as to whether Amtrak is providing sufficient emergency training for these employees stems, in part, from questions raised about inadequate response to those injured in the Amtrak accident that occurred in Lugoff, SC, during the summer of 1991. I believe that this task force will provide the needed examination in this area.

Finally, the legislation provides a mandate for Amtrak to continue its progress in high-speed rail and demonstrate further new high-speed rail technologies. In this regard I am pleased to note that the conference agreement highlights the importance of Amtrak's recent solicitation for the development of a prototype high-speed lightweight locomotive. One of the bidders for this procurement, Republic Locomotive of Greenville, SC, has pioneered an innovative turbine technology for this application, which holds the promise of implementing high-speed rail between densely populated city pairs without the expense of corridor electrification.

In conclusion, Mr. President, the conference agreement on H.R. 4250 is important for the future of rail passenger service, and I urge my colleagues to support its passage.

Mr. EXON. Mr. President, I rise in support of the conference report to H.R. 4250, the Amtrak Authorization and Development Act. This legislation culminates months of work and dedicated effort by Members and staff alike from both sides of the aisle, from the Senate and the House, and I thank all of my distinguished colleagues who have contributed to the realization of this important legislation.

As reported by the conferees, H.R. 4250 improves rail safety, advances high-speed rail initiatives, and provides for a realistic 2-year authorization for Amtrak. I am especially pleased that this legislation creates for the first time a new account dedicated to new passenger service. This measure will bring the Amtrak system squarely into the future by enabling the planning for the expansion of the basic system. We are closer to the day when additional Amtrak service can be offered between Omaha and Chicago and further ahead, service between Omaha and Kansas City. With this provision, the authorization for the Northeast Corridor Improvement Program, and other vital sections in the bill, Congress takes another meaningful step toward the restoration of passenger rail service to its proper role in our Nation's national transportation strategy.

Of particular note, the conference report incorporates legislation originally introduced by Senator KASSEBAUM to improve the visibility of locomotives through the use of ditch lights, strobe lights, and other illuminating devices. The conferees labored to craft a provision which advances public safety and facilitates the transition to permanent locomotive visibility rules. The so-called grandfather clause in this section is intended to encourage the railroad industry immediately to make their locomotives more visible rather than delay current safety initiatives until the Federal Railroad Administration issues final visibility rules by the end of 1995. In this regard, I am pleased to report that the Union Pacific Railroad in Omaha, NE, has launched an aggressive locomotive visibility improvement program. I would hope and expect that progress on this safety program, as well as similar visibility initiatives now underway at other railroads, will not be interrupted or delayed.

In concluding their deliberations, the conferees made it possible to accommodate in this legislation the specific requests of Senators BREAUX, LOTT, PRESSLER, MOYNIHAN, BOREN, and NICKLES. These initiatives as incorporated into the bill highlight the importance of rail service to many communities across the United States. I trust that all of these Members will join me in my continuing efforts to secure sufficient funding for national passenger train service in the Senate Budget and Appropriations Committees.

Mr. President, the importance of rebuilding our Nation's transportation infrastructure has emerged as a key issue in the Presidential debate. I am confident that this legislation will give the next president a firm base from which to build a revitalized passenger rail system in the United States, and I urge my colleagues to join me in working for passage of the conference report to H.R. 4250.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the conference report.

So the conference report was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

STOCK RAISING HOMESTEAD ACT AMENDMENTS

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1187, the Stock Raising Homestead Act.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1187) entitled "An Act to amend the Stock Raising Homestead Act to provide certain procedures for entry onto Stock Raising Homestead Act lands, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. MINING CLAIMS ON STOCK RAISING HOMESTEAD ACT LANDS.

(a) MINERAL ENTRY UNDER THE STOCK RAISING HOMESTEAD ACT.—Section 9 of the Act of December 29, 1916, entitled "An act to provide for stock-raising homesteads, and for other purposes (43 U.S.C. 299) is amended by adding the following at the end thereof:

"(b) EXPLORATION; LOCATION OF MINING CLAIMS; NOTICES.—

"(1) IN GENERAL.—(A) Notwithstanding subsection (a) and any other provision of law to the contrary, after the effective date of this subsection no person other than the surface owner may enter lands subject to this Act to explore for, or to locate, a mining claim on such lands without—

"(i) filing a notice of intention to locate a mining claim pursuant to paragraph (2); and

"(ii) providing notice to the surface owner pursuant to paragraph (3).

"(B) Any person who has complied with the requirements referred to in subparagraph (A) may, during the authorized exploration period, in order to locate a mining claim, enter lands subject to this Act to undertake mineral activities related to exploration that cause no more than a negligible disturbance of surface resources and do not involve the use of mechanized equipment, explosives, the construction of roads, drill pads, or the use or toxic or hazardous materials.

"(C) The authorized exploration period referred to in subparagraph (B) shall begin 30 days after notice is provided under paragraph (3) with respect to lands subject to such notice and shall end with the expiration of the 60-day

period referred to in paragraph (2)(A) or any extension provided under paragraph (2)(B).

"(2) NOTICE OF INTENTION TO LOCATE A MINING CLAIM.—Any person seeking to locate a mining claim on lands subject to this Act in order to engage in the mineral activities relating to exploration referred to under paragraph (1)(B) may file with the Secretary of the Interior a notice of intention to locate a claim on the lands concerned. The notice shall be in such form as the Secretary shall prescribe. The notice shall contain the name and mailing address of the person filing the notice and a legal description of the lands to which the notice applies. The legal description shall be based on the public land survey or on such other description as is sufficient to permit the Secretary to record the notice on his land status records. Whenever any person has filed a notice under this subparagraph with respect to any lands, during the 60-day period following the date of such filing, no other person (including the surface owner) may—

"(A) file such a notice with respect to any portions of such lands;

"(B) explore for minerals or locate a mining claim on any portion of such lands; or

"(C) acquire any interest in any portion of such lands pursuant to section 209 of the Federal Land Policy and Management Act of 1977 (43 U.S.C. 1719).

"(3) NOTICE TO SURFACE OWNER.—Any person who has filed a notice of intention to locate a mining claim under paragraph (2) for any lands subject to this Act shall provide written notice of such filing by registered or certified mail with return receipt to the surface owner (as evidenced by local tax records) of the lands covered by the notice under paragraph (2). Possession of the return receipt signed by the surface owner shall be necessary prior to entering such lands. The notice shall be provided at least 30 days before entering such lands and shall contain each of the following:

"(A) A brief description of the proposed mineral activities.

"(B) A map and legal description of the lands to be subject to mineral exploration.

"(C) The name, address and phone number of the person managing such activities.

"(D) A statement of the dates on which such activities will take place.

"(4) ACREAGE LIMITATIONS.—The total acreage covered at any time by notices of intention to locate a mining claim under paragraph (2) filed by any person and by affiliates of such person may not exceed 6,400 acres of lands subject to this Act in any one State and 160 acres or one-tenth of any contiguous parcel of land, whichever is greater (except that in no instance shall the total acreage exceed 640 acres), for a single surface owner. For purposes of this paragraph, the term 'affiliate' means, with respect to any person, any other person which controls, is controlled by, or is under common control with, such person.

"(c) CONSENT.—Notwithstanding subsection (a) and any other provision of law, after the effective date of this subsection no person may engage in the conduct of mineral activities (other than those relating to exploration referred to in subsection (b)(1)B)) on a mining claim located on lands subject to this Act without the written consent of the surface owner thereof unless the Secretary has authorized the conduct of such activities under subsection (d).

"(d) AUTHORIZED MINERAL ACTIVITIES.—The Secretary may authorize a person to conduct mineral activities (other than those relating to exploration referred to in subsection (b)(1)(B)) on lands subject to this Act without the consent of the surface owner thereof if such person complies with the requirements of subsections (e) and (f).

"(e) BOND.—(1) Before the Secretary may authorize any person to conduct mineral activities the Secretary shall require such person to post a bond or other financial guarantee in an amount to insure the completion of reclamation satisfying the requirements of this subsection and subsection (h). The bond or other financial guarantee shall be held for the duration of the mineral activities and for an additional period to cover the responsibility of the person conducting such mineral activities for revegetation under subsection (h)(6). Such bond or other financial guarantee shall also insure—

"(A) payment to the surface owner, after the completion of such mineral activities and reclamation, compensation for any permanent damages to crops and tangible improvements of the surface owner that resulted from mineral activities; and

"(B) payment to the surface owner of compensation for any permanent loss of income of the surface owner due to loss or impairment of grazing, or other uses of the land by the surface owner to the extent that reclamation required by the plan of operations would not permit such uses to continue at the level existing prior to the commencement of mineral activities.

"(2) In determining the bond amount to cover permanent loss of income under paragraph (1)(B), the Secretary shall consider, where appropriate, the potential loss of value due to the estimated permanent reduction in utilization of the land.

"(f) PLAN OF OPERATIONS.—(1) Before the Secretary may authorize any person to conduct mineral activities on lands subject this Act, the Secretary shall require such person to submit a plan of operations. The Secretary shall require that mineral activities and reclamation under such plan be conducted in such a way so as to minimize adverse impacts to the environment. A plan under this subsection shall also include procedures for—

"(A) the minimization of damages to crops and tangible improvements of the surface owner;

"(B) the minimization of disruption to grazing or other uses of the land by the surface owner; and

"(C) payment of a fee equivalent to the loss of income to the ranch operation as established pursuant to subsection (g).

"(2) The Secretary shall provide a copy of the proposal plan of operations to the surface owner at least 60 days prior to the date the Secretary makes a determination as to whether such plan complies with the requirements of this subsection. During such 60-day period the surface owner may submit comments and recommend modifications to the proposed plan of operations to the Secretary.

"(3) The Secretary may approve, require modifications to, or deny a proposed plan of operations. To approve a plan of operations, the Secretary shall make each of the following determinations:

"(A) The proposed plan of operations is complete and accurate.

"(B) The person submitting the proposed plan of operations has demonstrated that reclamation as required under subsection (h) can be accomplished under the plan and would have a high probability of success based on an analysis of such reclamation measures in areas of similar geochemistry, topography and hydrology.

"(C) The person submitting the proposed plan of operations has demonstrated that all other applicable Federal and State requirements have been met.

"(4) Final approval of a plan of operations under this subsection shall be conditioned upon compliance with subsections (e) and (g).

"(g) FEE.—The fee referred to in subsection (f)(2) shall be—

"(1) paid to the surface owner by the person submitting the plan of operations;

"(2) paid in advance of any mineral activities or at such other time or times as may be agreed to by the surface owner and the person conducting such activities; and

"(3) established by the Secretary taking into account the acreage involved and the degree of potential disruption to existing surface uses (including the loss of income to the surface owner and such surface owner's operations due to the loss or impairment of existing surface uses for the duration of the mineral activities).

"(h) RECLAMATION.—Except as provided under paragraphs (5) and (7), lands affected by mineral activities under a plan of operations approved pursuant to subsection (f)(3) shall be reclaimed to a condition capable of supporting the uses to which such lands were capable of supporting prior to surface disturbance. Except as provided under paragraphs (5) and (7), the surface area disturbed by mineral activities shall be backfilled, graded and contoured to its natural topography. Reclamation shall proceed as contemporaneously as practicable with the conduct of mineral activities. For the purposes of such reclamation, the Secretary shall establish reclamation standards which shall include, but not necessarily be limited to, provisions to require each of the following; except that any such standard may be modified only with the consent of the surface owner as part of an approved plan of operations:

"(1) TOPSOIL.—(A) Topsoil removed from lands affected by mineral activities shall be segregated from other spoil material and protected for later use in reclamation. If such topsoil is not replaced on a backfill area within a timeframe short enough to avoid deterioration of the topsoil, vegetative cover or other means shall be used so that the topsoil is preserved from wind and water erosion, remains free of any contamination by acid or other toxic material, and is in a useable condition for sustaining vegetation when restored during reclamation.

"(B) In the event the topsoil from lands affected by mineral activities is of insufficient quantity or of inferior quality for sustaining vegetation, and other suitable growth media removed from the lands affected by the mineral activities are available that shall support vegetation, the best available growth medium shall be removed, segregated and preserved in a like manner as under subparagraph (A) for sustaining vegetation when restored during reclamation.

"(2) STABILIZATION.—All surface areas affected by mineral activities, including spoil material piles, waste material piles, ore piles, subgrade ore piles, and open or partially backfilled mine pits which meet the requirements of paragraph (5) shall be stabilized and protected during mineral activities and reclamation so as to effectively control erosion and minimize attendant air and water pollution.

"(3) EROSION.—Facilities such as but not limited to basins, ditches, streambank stabilization, diversions or other measures, shall be designed, constructed and maintained where necessary to control erosion and drainage of the area affected by mineral activities including spoil material piles and waste material piles prior to the use of such material to comply with the requirements of this subsection, and for the purposes of paragraph (7), and including ore piles and subgrade ore piles.

"(4) HYDROLOGIC BALANCE.—(A) Mineral activities shall be conducted to minimize disturbances to the prevailing hydrologic balance of the area subject to mineral activities and adjacent areas and to the quality and quantity of water in surface and ground water systems in the area subject to mineral activities and adjacent areas.

"(B) Mineral activities shall, to the extent possible, prevent the generation of acid or toxic drainage during the mineral activities and reclamation; and the operator shall prevent the

contamination of surface and ground water with acid or other toxic mine drainage and shall prevent or remove water from contact with acid or toxic producing deposits.

"(C) Mineral activities shall be conducted to prevent, to the extent possible, disruption to streamflow, or runoff outside the area covered by the plan of operations, and in no event shall be in excess of requirements set by applicable State or Federal law.

"(D) Reclamation shall, to the extent possible, also include restoration of the recharge capacity of the area subject to mineral activities to approximate premining condition; except that where surface or underground water sources used for domestic or agricultural use have been diminished, contaminated or interrupted as a proximate result of mineral activities, such water resource shall be restored or replaced.

"(5) PIT BACKFILLING/GRADING VARIANCE.—(A) The requirement to backfill, grade and contour land to its natural topography shall not apply with respect to an open mine pit if the Secretary finds that such open pit or partially backfilled pit would not pose a threat to the public health or safety or have an adverse effect on the environment in terms of surface or ground water pollution.

"(B) In instances where complete backfilling of an open pit is not required, the pit shall be graded to blend with the surrounding topography as much as practicable and revegetated in accordance with paragraph (6).

"(6) REVEGETATION.—(A) Except in such instances where the complete backfill of an open mine pit is not required under paragraph (5), the area affected by mineral activities, including any excess spoil material pile and excess waste pile, shall be revegetated in order to establish a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area affected by mineral activities, capable of self-regeneration and plant succession and at least equal in extent of cover to the natural revegetation of the surrounding area.

"(B) In order to insure compliance with subparagraph (A), the period for determining successful revegetation shall be for a period of 5 full years after the last year of augmented seeding, fertilizing, irrigation or other work, except that such period shall be 10 full years where the annual average precipitation is 26 inches or less.

"(7) EXCESS SPOIL AND WASTE.—(A) Excess spoil material and excess waste material shall be transported and placed in approved areas, in a controlled manner in such a way so as to assure long-term mass stability and to prevent mass movement. In addition to the measures described under paragraph (3), internal drainage systems shall be employed, as may be required, to control erosion and drainage. The design of such excess spoil material piles and excess waste material piles shall be certified by a qualified professional engineer.

"(B) Excess spoil material piles and excess waste material piles shall be graded and contoured to blend with the surrounding topography as much as practicable and revegetated in accordance with paragraph (6).

"(8) SEALING.—All drill holes, and openings on the surface associated with underground mineral activities, shall be sealed when no longer needed for the conduct of mineral activities to ensure protection of the public, wildlife and the environment.

"(9) STRUCTURES.—All buildings, structures or equipment constructed, used or improved during the mineral activity shall be removed, unless the Secretary determines that the buildings, structures or equipment shall be of beneficial use in accomplishing the post-mining uses or for environmental monitoring.

"(i) STATE LAW.—(1) Nothing in this Act shall be construed as affecting any reclamation, bonding, inspection, enforcement, air or water quality standard or requirement of any State law or regulation which may be applicable to mineral activities on lands subject to this Act to the extend that such law or regulation is not inconsistent with this title.

"(2) Nothing in this Act shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, his interest in water resources affected by mineral activities.

"(j) INSPECTIONS.—(1) The Secretary shall make such inspections of mineral activities under a plan of operations approved under subsection (f) so as to ensure compliance with the terms and conditions of such plan. The Secretary shall establish a frequency of inspections for mineral activities conducted under such an approved plan of operations, but in no event shall such inspection frequency be less than one complete inspection per calendar quarter.

"(2) Any surface owner of land subject to this Act has reason to believe that they are or may be adversely affected by mineral activities due to any violation of the terms and conditions of a plan of operations approved under subsection (f), such surface owner may request an inspection. The Secretary shall determine within 10 days of the receipt of the request whether the request states a reason to believe that a violation exists, except in the event the surface owners alleges and provides reason to believe that an imminent danger, as provided in subsection (k)(2), exists the 10 day period shall be waived and the inspection conducted immediately. When an inspection is conducted under this paragraph, the Secretary shall notify the surface owner and such surface owner shall be allowed to accompany the inspector on the inspection.

"(k) ENFORCEMENT.—(1) If the Secretary or the authorized representative of the Secretary determines, on the basis of an inspection that the operator is in violation of the terms and conditions of a plan of operations approved under subsection (f), the Secretary or his authorized representative shall issue a notice of violation to the operator describing the violation and the corrective measures to be taken. The Secretary or his authorized representative shall provide such operator with a reasonable period of time to abate the violation. If, upon the expiration of time provided for such abatement, the Secretary or his authorized representative finds that the violation has not been abated he shall immediately order a cessation of all mineral activities or the portion thereof relevant to the violation.

"(2) If the Secretary or his authorized representative determines, on the basis of an inspection, that any condition or practice exists with respect to mineral activities conducted on lands subject to this Act, or that an operator is in violation of the surface management requirements established pursuant to this section, and such condition, practice or violation is causing, or can reasonably be expected to cause—

"(A) an imminent danger to the health or safety of the surface owner of land subject to this Act, or

"(B) significant, imminent environmental harm to land, air or water resources,

the Secretary or his authorized representative shall immediately order a cessation of such mineral activities or the portion thereof causing such condition, practice or violation.

"(3)(A) A cessation order by the Secretary or his authorized representative pursuant to paragraphs (1) or (2) shall remain in effect until the Secretary or his authorized representative determines that the condition, practice or violation has been abated, or until modified, vacated or terminated by the Secretary or his authorized representative. In any such order, the Secretary or his authorized representative shall determine the steps necessary to abate the violation in the most expeditious manner possible, and shall include the necessary measures in the order. The Secretary shall require appropriate financial assurances to insure that the abatement obligations are met.

"(B) Any notice or order issued pursuant to paragraphs (1) or (2) may be modified, vacated or terminated by the Secretary or his authorized representative. An operator, or person conducting mineral activities under section 201(b)(2), issued any such notice or order shall be entitled to a hearing on the record.

"(4) If, after 30 days of the date of the order referred to in paragraph (3)(A), the required abatement has not occurred the Secretary shall take such alternative enforcement action against the responsible parties as will most likely bring about abatement in the most expeditious manner possible. Such alternative enforcement action shall include, but is not necessarily limited to, seeking appropriate injunctive relief to bring about abatement.

"(5) In the event an operator conducting mineral activities under a plan of operations approved under subsection (f) is unable to abate a violation or defaults on the terms of the plan of operation the Secretary may cause forfeiture of the bond or other financial guarantee for the plan of operations to the extent necessary to ensure abatement and reclamation.

"(l) COMPLIANCE.—The Secretary may request the Attorney General to institute a civil action for relief, including a permanent or temporary injunction or restraining order, in the district court of the United States for the district in which the mineral activities are located whenever an operator: (A) violates, fails or refuses to comply with any order issued by the Secretary under subsection (k); or (B) interferes with, hinders or delays the Secretary in carrying out an inspection under subsection (j). Such court shall have jurisdiction to provide such relief as may be appropriate. Any relief granted by the court to enforce an order under clause (A) shall continue in effect until the completion or final termination of all proceedings for administrative review of such order, unless the district court granting such relief sets it aside or modifies it.

"(m) PENALTIES.—(1) Any operator who fails to comply with the terms and conditions of a plan of operations approved under subsection (f) shall be liable for a penalty of not more than $5,000 per violation. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. No civil penalty under this subsection shall be assessed until the operator charged with the violation has been given the opportunity for a hearing.

"(2) An operator who fails to correct a violation for which a cessation order has been issued under subsection (k) within the period permitted for its correction shall be assessed a civil penalty of not less than $1,000 per violation for each day during which such failure continues, but in no event shall such assessment exceed a 30-day period.

"(n) DAMAGES FOR FAILURE TO COMPLY.—(1) Whenever the surface owner of any land subject to this Act has suffered any permanent damages to crops or tangible improvements of the surface owner, or any permanent loss of income due to loss or impairment of grazing, or other uses of the land by the surface owner, the surface owner may bring an action in the appropriate United States district court for treble damages, and the court may award such damages if such damages or loss results—

"(A) from any mineral activity undertaken without the consent of the surface owner under subsection (c) or an authorization by the Secretary under subsection (d); or

"(B) from the failure of a person conducting mineral activities on lands subject to this Act

approved under subsection (f) to abate a violation under subsection (k).

"(2) The surface owner of any land subject to this Act may also bring an action in the appropriate United States district court for treble damages against any person undertaking any mineral activities on lands subject to this Act in violation of any requirement of subsection (b).

"(3) Treble damages awarded by the court under this subsection shall be reduced by the amount of any compensation which the surface owner has received (or is eligible to receive) pursuant to the bond or financial guarantee required under subsection (e).

"(o) PAYMENT OF DAMAGES.—The surface owner of any land subject to this Act may petition the Secretary for payment of all or any portion of a bond or other financial guarantee required under subsection (e) as compensation for any permanent damages to crops and tangible improvements of the surface owner, or any permanent or temporary loss of income due to loss or impairment of grazing, or other uses of the land by the surface owner. Pursuant to such a petition, the Secretary may use such bond or other guarantee to provide compensation to the surface owner for such damages and to insure the required reclamation.

"(p) BOND RELEASE.—The Secretary shall release the bond or other financial guarantee required under subsection (e) upon the successful completion of all requirements pursuant to a plan of operations approved under subsection (f).

"(q) CONVEYANCE TO SURFACE OWNER.—(1) The Secretary may convey interests owned by the United States (including mineral interests) in lands subject to this Act to the surface owner pursuant to the provisions of section 209 of the Federal Land Policy and Management Act of 1976 without regard to the requirements contained in such provisions that findings be made under subsection (b) of such section.

"(2) The Secretary shall take such actions as may be necessary to simplify the procedures which must be complied with by surface owners of lands subject to this Act who apply to the Secretary to obtain title to interests in such lands owned by the United States.

"(3) Notwithstanding any other provision of law, the Secretary may not convey mineral interests in lands subject to this Act to any person other than the surface owner of such lands without obtaining the consent of such surface owner.

"(r) DEFINITIONS.—For the purposes of subsections (b) through (q)—

"(1) The term 'mineral activities' means any activity for, related to or incidental to mineral exploration, mining, and beneficiation activities for any locatable mineral on a mining claim. When used with respect to this term—

"(A) The term 'exploration' means those techniques employed to locate the presence of a locatable mineral deposit and to establish its nature, position, size, shape, grade and value;

"(B) The term 'mining' means the processes employed for the extraction of a locatable mineral from the earth; and

"(C) The term 'beneficiation' means the crushing and grinding of locatable mineral ore and such processes are employed to free the mineral from other constituents, including but not necessarily limited to, physical and chemical separation techniques.

"(2) The term 'mining claim' means a claim located under the general mining laws of the United States (which generally comprise 30 U.S.C. chapters 2, 12A, and 16, and sections 161 and 162) subject to the terms and conditions of subsections (b) through (q) of this section.

"(3) The term 'tangible improvements' includes agricultural, residential and commercial improvements, including improvements made by residential subdividers.

"(s) MINERALS COVERED.—Subsections (b) through (q) of this section apply only to minerals not subject to disposition under—

"(1) the Mineral Leasing Act (30 U.S.C. 181 and following);

"(2) the Geothermal Steam Act of 1970 (30 U.S.C. 100 and following); or

"(3) the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following).".

(b) FEES.—The Secretary may establish such user fees as may be necessary to reimburse the United States for expenses incurred in administering this section.

(c) TECHNICAL CONFORMING AMENDMENT.—Section 9 of the Act of December 29, 1916, entitled "An Act to provide for stock-raising homesteads, and for other purposes" (43 U.S.C. 299) is amended by inserting "(a) GENERAL PROVISIONS.—" before the words "That all entries made".

(d) EFFECTIVE DATE.—The amendments made by this Act shall take effect 180 days after the date of enactment.

(e) REGULATIONS.—The Secretary of the Interior shall issue final regulations to implement the amendments made by this Act not later than the effective date of this Act. Failure to promulgate these regulations by reason of any appeal or judicial review shall not delay the effective date as specified in paragraph (d).

SEC. 2. REPORT TO CONGRESS ON FOREIGN INTEREST LANDHOLDINGS.

(a) The Secretary of the Department of the Interior is directed to report annually to Congress on the control by foreign firms of the acreage and facilities on lands covered by the 1916 Stock Raising Homestead Act.

(b) DEFINITIONS.—For purposes of this amendment:

(1) The term "domestic firm" means a business entity that is incorporated in the United States, conducts business operations in the United States, and at least 50 percent of its assets are held by private citizens and/or business entities of the United States.

(2) The term "foreign firm" means a business entity that is not described under paragraph (1).

Amend the title so as to read: "An Act to amend the Stock Raising Homestead Act to resolve certain problems regarding subsurface estates, and for other purposes.".

Mr. BINGAMAN. Mr. President, I rise to encourage Members to support passage of S. 1187, amendments to the Stock Raising Homestead Act.

We have been working on this legislation for two Congresses now. It is a sensitive issue that deals with conflicts arising where the mineral estate is federally owned and the surface estate was patented under the Stock Raising Homestead Act for ranching and grazing purposes.

Reaching resolution on this issue has required that the interests of the Federal Government, ranchers, and miners be balanced. This has been a difficult task, but I believe the bill before us now reflects such balance.

The legislation is somewhat different from the which passed the House of Representatives last month, although the basic structure of the bill remains the same. It is my understanding that the bill represents a compromise that the House Of Representatives should find acceptable.

In 1916, Congress passed legislation popularly known as the Stock Raising Homestead Act [SRHA]. This act made available unappropriated public lands for stock raising homestead entries. Patents issue pursuant to SRHA reserved to the United States the mineral estate, thus creating split estates where ownership of the surface, and the mineral estate differs. Conflicts arise between those interested in exploring for, and developing, the Federal mineral estate, and surface owners engaged in raising livestock.

Approximately 70 million acres of land were patented under SRHA prior to repeal of the entry provision in 1976. The Bureau of Land Management [BLM] estimates that there are approximately 17,000 unpatented mining claims recorded on SRHA lands. BLM estimates that roughly 50 prospecting or mining operations are being conducted on these 17,000 claims.

Current law regulates mineral activity on SRHA lands in two stages. During the prospecting phase, compensation is required for damage to crops from mining, and provides that permanent improvements on the lands may not be damaged. For mining operations, if a miner does not have the surface owners' consent to mine, a bond to the United States may be executed to secure payment of any damages.

S. 1187 would provide additional procedures for gaining access to, and undertaking mining activities on, stock raising homestead lands. The bill would require notice to both the surface owner and the Secretary of the Interior prior to entry for exploration purposes. Such notification triggers an exploration period, whereby the person filing the notice has exclusive exploration right for the authorization period.

Any person interested in going forward with development and production must obtain consent from the surface owner. Absent such consent, the miner must submit a plan of operations to the Secretary for approval, pay a surface use fee to the surface owner, and post a bond prior to conducting mineral activities to guarantee reclamation of the surface.

The bill also provides for inspections by the Secretary if a surface owner believes that he or she will, or may be, adversely affected from any violation of the plan of operations, and establishes a cause of action for damages under certain circumstances. In addition, the Secretary of the Interior is directed to take such actions as may be necessary to simplify the procedures to be compiled with by surface owners who apply to obtain title to the mineral estate.

I strongly urge passage of this legislation.

AMENDMENT NO. 3426

Mr. FORD. Mr. President, I move that the Senate concur in the House amendments with a further amendment, which I now send to the desk on behalf of Senator BINGAMAN.

The PRESIDING OFFICER (Mr. GRAHAM). The Clerk will report the amendment by the Senator from New Mexico.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. BINGAMAN, proposes an amendment numbered 4326.

Mr. FORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert:

SECTION 1. MINING CLAIMS ON STOCK RAISING HOMESTEAD ACT LANDS.

(a) MINERAL ENTRY UNDER THE STOCK RAISING HOMESTEAD ACT.—Section 9 of the Act of December 29, 1916, entitled "An Act to provide for stock-raising homesteads, and for other purposes" (43 U.S.C. 299), is amended by adding the following at the end thereof:

"(b) EXPLORATION; LOCATION OF MINING CLAIMS; NOTICES.—

"(1) IN GENERAL.—(A) Notwithstanding subsection (a) and any other provision of law to the contrary, after the effective date of this subsection no person other than the surface owner may enter lands subject to this Act to explore for, or to locate, a mining claim on such lands without—

"(i) filing a notice of intention to locate a mining claim pursuant to paragraph (2); and

"(ii) providing notice to the surface owner pursuant to paragraph (3).

"(B) Any person who has complied with the requirements referred to in subparagraph (A) may, during the authorized exploration period, in order to locate a mining claim, enter lands subject to this Act to undertake mineral activities related to exploration that cause no more than minimal disturbance of surface resources and do not involve the use of mechanized earthmoving equipment, explosives, the construction of roads, drill pads, or the use of toxic or hazardous materials.

"(C) The authorized exploration period referred to in subparagraph (B) shall begin 30 days after notice is provided under paragraph (3) with respect to lands subject to such notice and shall end with the expiration of the 90-day period referred to in paragraph (2)(A), or any extension provided under paragraph (2).

"(2) NOTICE OF INTENTION TO LOCATE A MINING CLAIM.—Any person seeking to locate a mining claim on lands subject to this Act in order to engage in the mineral activities relating to exploration referred to under paragraph (1)(B) shall file with the Secretary of the Interior a notice of intention to locate a claim on the lands concerned. The notice shall be in such form as the secretary shall prescribe. The notice shall contain the name and mailing address of the person filing the notice and a legal description of the lands to which the notice applies. The legal description shall be based on the public land survey or on such other description as is sufficient to permit the Secretary to record the notice on the land status records of the Secretary. Whenever any person has filed a notice under this paragraph with respect to any lands, during the 90-day period following the date of such filing, or any extension thereof pursuant to this paragraph, no other person (including the surface owner) may—

"(A) file such a notice with respect to any portions of such lands;

"(B) explore for minerals or locate a mining claim on any portion of such lands; or

"(C) file an application to acquire any interest in any portion of such lands pursuant to section 209 of the Federal Land Policy and Mangement Act of 1976 (43 U.S.C. 1719).

If, within such 90-day period, the person who filed a notice under this paragraph files a plan of operations with the Secretary pursuant to subsection (f), such 90-day period shall be extended until the approval or disapproval of the plan by the Secretary pursuant to subsection (f).

"(3) NOTICE TO SURFACE OWNER.—Any person who has filed a notice of intention to locate a mining claim under paragraph (2) for any lands subject to this Act shall provide written notice of such filing, by registered or certified mail with return receipt, to the surface owner (as evidenced by local tax records) of the lands covered by the notice under paragraph (2). The notice shall be provided at least 30 days before entering such lands and shall contain each of the following:

"(A) A brief description of the proposed mineral activities.

"(B) A map and legal description of the lands to be subject to mineral exploration.

"(C) The name, address and phone number of the person managing such activities.

"(D) A statement of the dates on which such activities will take place.

"(4) ACREAGE LIMITATIONS.—The total acreage covered at any time by notices of intention to locate a mining claim under paragraph (2) filed by any person and by affiliates of such person may not exceed 6,400 acres of lands subject to this Act in any one State and 1,280 acres of such lands for a single surface owner. For purposes of this paragraph, the term 'affiliate' means, with respect to any person, any other person which controls, is controlled by, or is under common control with, such person.

"(c) CONSENT.—Notwithstanding subsection (a) and any other provision of law, after the effective date of this subsection no person may engage in the conduct of mineral activities (other than those relating to exploration referred to in subsection (b)(1)(B)) on a mining claim located on lands subject to this Act without the written consent of the surface owner thereof unless the Secretary has authorized the conduct of such activities under subsection (d).

"(d) AUTHORIZED MINERAL ACTIVITIES.—The Secretary shall authorize a person to conduct mineral activities (other than those relating to exploration referred to in subsection (b)(1)(B)) on lands subject to this Act without the consent of the surface owner thereof if such person complies with the requirements of subsections (e) and (f).

"(e) BOND.—(1) Before the Secretary may authorize any person to conduct mineral activities the Secretary shall require such person to post a bond or other financial guarantee in an amount to insure the completion of reclamation pursuant to this Act. Such bond or other financial guarantee shall insure—

"(A) payment to the surface owner, after the completion of such mineral activities and reclamation, compensation for any permanent damages to crops and tangible improvements of the surface owner that resulted from mineral activities; and

"(B) payment to the surface owner of compensation for any permanent loss of income of the surface owner due to loss or impairment of grazing, or other uses of the land by the surface owner to the extent that reclamation required by the plan of operations would not permit such uses to continue at the level existing prior to the commencement of mineral activities.

"(2) In determining the bond amount to cover permanent loss of income under paragraph (1)(B), the Secretary shall consider, where appropriate, the potential loss of value due to the estimated permanent reduction in utilization of the land.

"(f) PLAN OF OPERATIONS.—(1) Before the Secretary may authorize any person to conduct mineral activities on lands subject to this Act, the Secretary shall require such person to submit a plan of operations. Such plans shall include procedures for—

"(A) the minimization of damages to crops and tangible improvements of the surface owner;

"(B) the minimization of disruption to grazing or other use of the land by the surface owner; and

"(C) payment of a fee equivalent to the loss of income to the ranch operation as established pursuant to subsection (g).

"(2) The Secretary shall provide a copy of the proposed plan of operations to the surface owner at least 45 days prior to the date the Secretary makes a determination as to whether such plan complies with the requirements of this subsection. During such 45 day period the surface owner may submit comments and recommend modifications to the proposed plan of operations to the Secretary.

"(3)(A) The Secretary shall, within 60 days of receipt of the plan, approve the plan of operations if it complies with the requirements of this Act, including each of the following:

"(i) The proposed plan of operations is complete and accurate.

"(ii) The person submitting the proposed plan of operations has demonstrated that all other applicable Federal and State requirements have been met.

"(B) The Secretary shall notify the person submitting a plan of operations of any modifications to such plan required to bring it into compliance with the requirements of this Act. If the person submitting the plan agrees to modify such plan in a manner acceptable to the Secretary, the Secretary shall approve the plan as modified. In the event no agreement can be reached on the modifications to the plan which, in the opinion of the Secretary, will bring such plan into compliance with the requirements of this Act, then the Secretary shall disapprove the plan and notify both the surface owner and the person submitting the plan of the decision.

"(C) The 60-day period referred to in paragraph (A) may be extended by the Secretary where additional time is required to comply with other applicable requirements of law.

"(D) The Secretary shall suspend or revoke a plan of operation whenever the Secretary determines, on the Secretary's own motion or on a motion made by the surface owner, that the person conducting mineral activities is in substantial noncompliance with the terms and conditions of an approved plan of operations and has failed to remedy a violation after notice from the Secretary within the time required by the Secretary.

"(4) Final approval of a plan of operations under this subsection shall be conditioned upon compliance with subsections (e) and (g).

"(g) FEE—The fee referred to in subsection (f)(1) shall be—

"(1) paid to the surface owner by the person submitting the plan of operations;

"(2) paid in advance of any mineral activities or at such other time or times as may be agreed to by the surface owner and the person conducting such activities; and

"(3) established by the Secretary taking into the account the acreage involved and the degree of potential disruption to existing surface uses (including the loss of income to the surface owner and such surface owner's operations due to the loss or impairment of existing surface uses for the duration of the mineral activities), except that such fee shall not exceed the fair market value for the surface of the land.

"(h) RECLAMATION.—Lands affected by mineral activities under a plan of operations approved pursuant to subsection (f)(3) shall be reclaimed, to the maximum extent practicable, to a condition capable of supporting the uses to which such lands were capable of supporting prior to surface disturbance. Reclamation shall proceed as contemporaneously as practicable with the conduct of mineral activities.

"(i) STATE LAW.—(1) Nothing in this Act shall be construed as affecting any reclamation, bonding, inspection, enforcement, air or water quality standard or requirement of any State law or regulation which may be applicable to mineral activities on lands subject to this Act to the extent that such law or regulation is not inconsistent with this title.

"(2) Nothing in this Act shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, the interest of such person in water resources affected by mineral activities.

"(j) INSPECTIONS.—Should any surface owner of land subject to this Act have reason to believe that they are or may be adversely affected by mineral activities due to any violation of the terms and conditions of a plan of operations approved under subsection (f), such surface owner may request an inspection of such lands. The Secretary shall determine within 10 days of the receipt of the request whether the request states a reason to believe that a violation exists, except in the event the surface owner alleges and provides reason to believe that an imminent danger exists the 10-day period shall be waived and the inspection conducted immediately. When an inspection is conducted under this paragraph, the Secretary shall notify the surface owner and such surface owner shall be allowed to accompany the inspector on the inspection.

"(k) DAMAGES FOR FAILURE TO COMPLY.—(1) Whenever the surface owner of any land subject to this Act has suffered any permanent damages to crops or tangible improvements of the surface owner, or any permanent loss of income due to loss or impairment of grazing, or other uses of the land by the surface owner, if such damages or loss results from:

"(A) any mineral activity undertaken without the consent of the surface owner under subsection (c) or an authorization by the Secretary under subsection (d); or

"(B) from the failure of the person conducting mineral exploration, development, or production activities to remedy to the satisfaction of the Secretary any substantial non-compliance with the terms and conditions of a plan under subsection (f);

the surface owner may bring an action in the appropriate United States district court for, and the court may award, double damages plus costs for willful misconduct or gross negligence.

"(2) The surface owner of any land subject to this Act may also bring an action in the appropriate United States district court for double damages plus costs for willful misconduct or gross negligence against any person undertaking any mineral activities on lands subject to this Act in violation of any requirement of subsection (b).

"(3) Any double damages plus costs awarded by the court under this subsection shall be reduced by the amount of any compensation which the surface owner has received (or is eligible to receive) pursuant to the bond or financial guarantee required under subsection (e).

"(l) FULL PAYMENT OF DAMAGES.—The surface owner of any land subject to this Act may petition the Secretary for payment of all or any portion of a bond or other financial guarantee required under subsection (e) as compensation for any permanent damages to crops and tangible improvements of the surface owner, or any permanent or temporary loss of income due to loss or impairment of grazing, or other uses of the land by the surface owner. Pursuant to such a petition, the Secretary may use such bond or other guarantee to provide compensation to the surface owner for such damages and to insure the required reclamation.

"(m) BOND RELEASE.—The Secretary shall release the bond or other financial guarantee required under subsection (e) upon the successful completion of all requirements pursuant to a plan of operations approved under subsection (f).

"(n) CONVEYANCE TO SURFACE OWNER.—The Secretary shall take such actions as may be necessary to simplify the procedures which must be complied with by surface owners of lands subject to this Act who apply to the Secretary to obtain title to interests in such lands owned by the United States.

"(o) DEFINITIONS.—For the purposes of subsections (b) through (n)—

"(1) The term 'mineral activities' means any activity for, related to or incidental to mineral exploration, mining, and beneficiation activities for any locatable mineral on a mining claim. When used with respect to this term—

"(A) The term 'exploration' means those techniques employed to locate the presence of a locatable mineral deposit and to establish its nature, position, size, shape, grade and value;

"(B) The term 'mining' means the processes employed for the extraction of a locatable mineral from the earth; and

"(C) The term 'beneficiation' means the crushing and grinding of locatable mineral ore and such processes are employed to free the mineral from the other constituents, including but not necessarily limited to, physical and chemical separation techniques.

"(2) The term 'mining claim' means a claim located under the general mining laws of the United States (which generally comprise 30 U.S.C. chapters 2, 12A, and 16, and sections 161 and 162) subject to the terms and conditions of subsections (b) through (n) of this section.

"(3) The term 'tangible improvements' includes agricultural, residential and commercial improvements, including improvements made by residential subdividers.

"(p) MINERALS COVERED.—Subsections (b) through (n) of this section apply only to minerals not subject to disposition under—

"(A) the Mineral Leasing Act (30 U.S.C. 181 and following);

"(B) the Geothermal Steam Act of 1970 (30 U.S.C. 100 and following); or,

"(C) the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following).".

(b) TECHNICAL CONFORMING AMENDMENT.—Section 9 of the Act of December 29, 1916, entitled "An Act to provide for stock-raising homesteads, and for other purposes" (43 U.S.C. 299) is amended by inserting "(a) GENERAL PROVISIONS.—" before the words "That all entries made".

(c) EFFECTIVE DATE.—The amendments made by this Act shall take effect 180 days after the date of enactment.

(d) REGULATIONS.—The Secretary of the Interior shall issue final regulations to implement the amendments made by this Act not later than the effective date of this Act. Failure to promulgate these regulations by reason of any appeal or judicial review shall not delay the effective date as specified in paragraph (d).

SEC. 2. REPORT TO CONGRESS ON FOREIGN MINERAL INTEREST.

(a) The Secretary of the Interior is directed to submit a report to the Congress within two years after the date of enactment of this Act on the acquisition of mineral interests made after the date of enactment of this Act by foreign firms on lands subject to the Act of December 29, 1916, entitled "Act to provide for stock-raising homesteads, and for other purposes" (43 U.S.C. 299), as amended.

(b) DEFINITION.—For purposes of this section the term "foreign firm" means a business entity that conducts business operations in the United States and is 51 percent or more owned and controlled by a foreign person or entity.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDING THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6138, a bill to amend the Consolidated Farm and Rural Development Act just received from the House; that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table; further, that any statements relating to this measure appear in the RECORD at the appropriate place and as if read.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 6138) was deemed read the third time and passed.

Mr. DOMENICI. Mr. President, this bill corrects a technicality that will help small rural communities along our southern border.

Mr. President, H.R. 5487, the Agriculture, Rural Development, Food and Drug Administration, and related agencies appropriations public law for fiscal year 1993, includes $25 million for these small rural communities known as colonias under the rural and waste disposal grants program.

The funding for these small rural communities was required by the President to address the serious water and wastewater deficiencies in those communities.

I am very pleased that the agriculture appropriations conferees included funding for this very important program in the agriculture appropriations bill which is now public law. But Mr. President, it has been brought to my attention that many of the colonias in may State may not even qualify for the grants because of technicalities in the final legislative language.

Mr. President, let me first explain the significance of this very important funding for the colonias.

The colonias are small, unincorporated rural communities with populations ranging from about 250 persons to about 5,000 persons.

Many of the colonias were originally settled over 100 years ago, and the majority of the residents are low-income families of Mexican and Mexican-American descent.

There are hundreds of individuals that live in the colonias that will suffer from a lack of adequate water and sanitation facilities.

This situation is truly dangerous in terms of sanitation and health hazards from the lack of proper water and sewer systems.

Others have recognized the serious nature of this problem and funding for the colonias.

In fact, Mr. President, the conference report accompanying the Agriculture appropriations bill includes language asking the President of the United States to urge the appropriate agencies, to develop a comprehensive and coordinated strategy and plan of action for the delivery of assistance and programs to improve the adverse environmental and health problems of the colonias.

It seems to me that both the Congress and the President see the urgent needs of the colonias. But because of some technicalities that have arisen the colonias, at least 12 of the 14 colonias in my State of New Mexico, would not have qualified for this important funding without the technical change in this bill.

According to the Consolidated Farm and Rural Development Act, section 306C(a)(2), monies under this program will be distributed to a particular county only if that county's unemployment rate is not less than 125 percent of the national average and the per capita income of the residents is not more than 70 percent of the national average per capita income.

The majority of the colonias are located in Dona Ana County in my State of New Mexico.

Mr. President, presently the county of Dona Ana, does not qualify because its unemployment rate ranges around 110 percent of the national average. This is due, in part, because Dona Ana is a very large county and includes the thriving city of Las Cruces, New Mexico State University and the White Sands missile range which bring down the county's overall unemployment rate.

Because the county does not qualify, the colonias in that county would not have received funding under this initiative. The colonias and the surrounding rural areas in Dona Ana County paint a much gloomier picture than the city of Las Cruces. I believe the colonias are well above 125 percent of the national unemployment average.

Mr. President, the technical change in this bill will amend section 306C(a)(2) of the consolidated farm and rural development to include a rural area which was recognized as a colonia as of October 1, 1989.

Because of this technical change the colonias in Dona Ana County, as well as colonias in other counties, will have a chance to receive funding to address their water and wastewater needs.

ENTERPRISE FOR THE AMERICAS INITIATIVE ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of H.R. 4059, the Enterprise for the Americas Initiative Act of 1992; that the Senate proceed to its immediate consideration; that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table; and that any statements relating to this bill appear in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 4059) was deemed read the third time and passed.

DESIGNATING CERTAIN LAND IN MISSOURI AS PART OF THE MARK TWAIN NATIONAL FOREST

Mr. FORD. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of H.R. 6014, a bill to designate certain land in the State of Missouri as part of the Mark Twain Memorial Forest; that the Senate then proceed to its immediate consideration; that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table; and any statements appear in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

So, the bill (H.R. 6014) was deemed read the third time and passed.

PRESCRIPTION DRUG USER FEE ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 6181, the FDA user fee bill, now at the desk; that the bill be read three times and passed; the motion to reconsider be laid upon the table; and any statements thereon appear in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

So, the bill (H.R. 6181) was deemed read the third time and passed.

Mr. DURENBERGER. Mr. President, I rise to express my personal concern over the manner in which this Congress has decided to introduce user fees on America's drug products for purposes of accelerating Food and Drug Administration approval of new drugs.

My concerns are twofold. They relate to specific problems relevant to the structure of the legislation itself. But I am also troubled by its implications for broader issues of health policy.

I am not opposed to user fees in principle. I believe that those who benefit from Government should share in its expense. Clearly, the FDA is a world leader in assuring the safety and effectiveness of our drug supply for the American people, so tax dollars should help support this agency.

And, unquestionably, the pharmaceutical industry is one of the most prosperous in the Nation. Drug companies benefit enormously from efficient FDA review. The industry recognizes that a faster drug review process will get their products to the market more quickly and generate revenues as a result. The New York Times on August 11, 1992, noted, "It costs an average of $10 million a month, per drug, for every additional month of delay that a product is held off the market."

However, I am skeptical that greater regulatory efficiencies will be accomplished under this bill. Indeed, the result may be just the opposite. This bill could institutionalize inefficiency and cause other unanticipated side effects.

My trepidation is based on the dramatic promises made by Dr. David Kessler, the present FDA Commissioner, to reduce drug application review times. At the one and only hearing on this subject, held by the Labor and Human Resources Committee on September 15, 1992, he said this would be accomplished by hiring 600 new staff with the revenue from new user fees.

I have heard many complaints from my constituents and others in the medical technology industry about the FDA's inexplicable delays, seemingly unrelated to issues of safety and effectiveness.

How do we know that these additional staff reviewers will not represent "business as usual"? How do we know that user fees will not just buy more people doing the status quo? What problems will the FDA experience in recruiting qualified, competent medical reviewers?

What we have here, Mr. President, is authorization for a tax on consumer drug purchases premised on a promise of an FDA commissioner.

Although we have been assured that Dr. Kessler's letter was approved by the Department of Health and Human Services and the Office of Management and Budget, we have received no written assurances that the new employees necessary to achieve the goals set forth by Dr. Kessler will be exempt from personnel and consultant services restrictions. If they are not, this grand hiring scheme might fall through.

I am also concerned about the timing of this bill. Why now? The Secretary has asked the FDA to prepare a strategic plan which will establish goals for the agency into the 21st century. Before that project is completed, we are creating a system of user fees that builds upon the status quo. Wouldn't it be better to establish these fees after the strategic plan is complete, and the agency develops a more efficient system of assuring the safety and effectiveness of drugs?

User fees will not solve all of the problems that the FDA faces and that the FDA must solve. In my book, throwing money at a problem has never led to beneficial or long-lasting solutions to many challenges.

Moreover, Dr. Kessler's dramatic promises focus only on review times for drugs. Will this quest to reduce review times twofold and threefold divert resources from other activities of the agency? Will the pressure to meet the deadlines overemphasize drugs at the expense of other obligations and duties? Will anticipated efficiencies in one area of FDA responsibility lead to neglect of other critically important duties like medical device approvals?

Whenever we look at pharmaceutical issues in the narrow context of the FDA, I am troubled by larger health policy questions. Why is the organized pharmaceutical industry so enthusiastic about paying millions of dollars in fees to the Government? Are we just bolstering a revenue stream from an industry whose prices are soaring, according to the GAO?

Surely these fees either will be added to the price of approved drugs, or we will all pay more through expanded sales. Given the grave concerns on both sides of the aisle about cost containment, we should not impose these new costs on this health care industry without careful thought.

I recognize that many pharmaceuticals provide significant benefits to many patients. However, we remain poorly equipped, in both the public and private sector, to deal with issues of the cost-effectiveness of drugs. Pricing strategies of drug companies are not well-understood. Drug buyers, whether they are doctors or patients, are often not armed with comparative price and efficacy information.

I am not unmindful of the enormous investments that drug firms make in research and development. However, I am also troubled by the fact that American consumers pay for all the costs of the innovation. We are the only developed nation that does not control drug prices. Many foreign buyers pay far less than Americans do for identical drugs.

I realize that some Members are enthusiastic about this user fee proposal. I also recognize that organized representatives of the drug industry have been pushing hard for it.

I believe this bill requires a leap of faith. Has either the FDA or the drug industry earned such a leap? We shall see.

As a member of the Labor and Human Resources Committee, and as a Senator deeply committed to health care reform, I will watch the progress of this experiment with great care.

At this point I ask unanimous consent that a news report from the Washington Post of October 7, 1992, be printed in the RECORD.

There being no objection the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 7, 1992]

HOUSE GIVES VITAMIN MAKERS A BREAK

(By Carole Sugarman)

In an unusual case of bicameral bartering, the House yesterday passed legislation that would give vitamin supplement manufacturers a one-year break from conforming to new labeling requirements designed to curb misleading health claims.

The same House bill also gives the Food and Drug Administration authority to charge user fees to pharmaceutical companies applying for new drug applications.

The bill addressing two completely different issues is the result of a deal struck between Sen. Orrin G. Hatch (R–Utah)—whose state's vitamin manufacturers are a $700 million industry—and Rep. John D. Dingell (D–Mich.), Rep. Henry A. Waxman (D–Calif.) and Sen. Edward M. Kennedy (D–Mass.). Those Democrats have been pushing for fees from pharmaceutical companies, which will go toward improving FDA resources for expediting new drug applications.

Hatch said he would not oppose the Democratic wish to impose user fees so long as the one-year moratorium was granted to vitamin manufacturers, according to sources.

Yesterday, Hatch said he wanted the one-year period to develop "a more intelligent approach" to regulating vitamin supplements, and complained that the "FDA appears to be trying to impose severe prior restraints" on supplement manufacturers.

The bill would exempt makers of vitamin and mineral pills, herbs and similar "alternative-medicine" products from FDA regulations to be issued in November. The new set rules were drafted to cover food and supplement manufacturers who make claims that their products may reduce the risk of a disease.

Since 1938, the government has prohibited food or supplement manufacturers from making claims that their products reduce the risk of a disease. But in recent years, some food and supplement manufacturers have circumvented the law, and the federal government has done little to enforce it, critics say.

Under the 1990 Nutrition Labeling and Education Act (NLEA), manufacturers may only make health claims if the FDA determines they are supported by "significant agreement" within the scientific community. If a claim is not approved by the FDA, manufacturers may not use it.

The House bill passed yesterday still would allow supplement manufacturers to make health claims approved by the FDA, but would not specifically prohibit them from making unapproved claims.

Bruce Silverglade, director of legal affairs for the Center for Science in the Public Interest, a consumer advocacy group, said the bill passed yesterday "provides the supplement industry with a license to continue barraging the public with misleading and potentially dangerous health claims for products such as milk thistle extract promoted as providing protection from the ill effects of air pollution." The 1938 law still will apply to supplement manufacturers, Silverglade said, "but it's not much reassurance to the consumer, because [the law] hasn't been enforced."

The legislation comes in the midst of a highly charged debate between vitamin manufacturers—who mounted a public-information campaign suggesting that the FDA's new rules would amount to a ban on supplements—and the FDA, which has long opposed the use of supplementation for the general public. FDA officials said the NLEA is a labeling law that was not intended to prohibit vitamin sales.

FDA officials declined to comment on yesterday's House action pending the outcome of a companion bill slated to be introduced in the Senate this week.

Mr. KENNEDY. Mr. President, the Prescription Drug User Fee Act of 1992 offers a major opportunity to improve the drug review and approval process of the Food and Drug Administration. The idea of asking drug manufacturers to pay user fees to expedite the drug review and approval process has been considered for several years. But it acquired new urgency in 1991, when the Edwards Committee's report on FDA reform urged Congress and the private sector to rely on industry funding to supplement the annual Federal appropriation.

Unitil recently, there has been no agreement on fundamental issues such as the amount of the user fees, the base they would be assessed on, and the services to be carried out by the FDA. However, in recent months, significant progress has been made in consultations with Congress, consumers, industry and the administration.

The bill that Senator HATCH and I offer today has already been passed by the House. The legislation is the result of welcome bipartisan cooperation by Numbers of both the House and Senate. The statutory proposal has been carefully designed to ensure that the fees are reasonable, and that all funds collected go only for those activities directly related to the FDA drug review and approval process. All of us who have worked on this legislation are gratified by the strong support of prescription drug manufacturers for this approach.

The legislation establishes three kinds of user fees: First, drug manufacturers will pay a fee for each new drug application; in the first year, the fee will be $100,000, second, and it will rise to $233,000 by the fifth year; second, manufacturers will pay an annual fee on each establishment which produces prescription drug products; in the first year the fee will be $60,000, and it will rise to $138,000 in the fifth year; third, manufacturers will pay an annual fee for each prescription drug product marketed; the fee will be $5,000 per product in the first year, and it rises to $14,000 in the fifth year.

The fee schedule was developed in cooperation with industry, and represents a consensus about how best to structure an orderly expansion of the FDA's current drug review and approval capabilities. Because the fees are raised by three different methods, no single user fee will be excessively large. Any of the three fees may be reduced or waived by the Secretary of Health and Human Services to protect small businesses, or to minimize economic barriers for the development of drugs that are important for public health.

It is estimated that in fiscal year 1993 the fees established in this legislation will raise $36 million. In fiscal year 1997, approximately $94 million will be raised, and the 5-year total will be an estimated $337 million. FDA currently expands approximately $120 million per year for drug application review. The user fees will therefore provide about a one-third increase in the FDA budget for this purpose. The annual Federal appropriations for FDA must keep pace with overall domestic spending increases or the user fees will not take effect. In other words, the fees must supplement, not replace, Federal funds.

The need for this legislation is obvious. The current Federal budget situation offers little prospect that adequate resources will be available to the FDA to do the job it should be doing in the years ahead. Without the additional funds that user fees will provide, the FDA faces the prospect of being unable to keep up with new scientific advances. Applications for clinical drug investigations have nearly doubled in the last decade. In the vital area of biotechnology, the number of applications has increased from 1 to 299.

While applications have risen sharply, FDA staff resources have declined. The mismatch between accelerating pharmaceutical research and declining FDA resources is severely delaying the health benefits of medical advances, and some remedy must be found. Without additional funds, we risk a serious bottleneck in the FDA approval process.

The legislation that Senator HATCH and I are putting forward today will raise over $300 million in the next 5 years, and provide resources to hire up to 600 new medical reviewers. In return, FDA Commissioner Kessler has developed a set of specific performance goals that will enable the agency to cut approval times dramatically—almost in half. The goal is to cut review times down to 6 months for applications for most breakthrough drugs, and 12 months for most standard applications. The Commissioner has also committed the agency to a timetable for eliminating current backlogs of applications. These actions will have a significant, long-term impact on health care in this country. Faster drug approval will save patients' lives, and benefit the industry too.

At the time, we must ensure that user fees are not a disincentive to the development of new drugs by small businesses, especially innovative biotechnology firms. The legislation contains reduced fees for small businesses, and allows a complete waiver of fees in special circumstances. We will continue to monitor this measure to see that users fees do not retard the development of promising therapies.

The bill establishes limited fees for over-the-counter drugs. These fees will provide an additional $300,000 per year. The over-the-counter drug industry has already expressed a willingness to explore the establishment of additional user fees, including fees on drug establishments and products.

The bill also instructs the Secretary of Health and Human Services to conduct a study of the advisability of user fees for veterinary drugs.

In a time of severe budgetary constraints, we have a unique opportunity to achieve a quantum jump in FDA's performance.

In addition, title II of the bill institutes a moratorium on the implementation of the Nutrition Labeling and Education Act of 1990 [NLEA] with respect to dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances. The NLEA provides a framework for major improvements in the nutrition information provided on foods, and establishes guidelines for health claims that will be permitted on foods and dietary supplements. The new legislation requires the Secretary of Health and Human Services to develop new proposed regulations by June 15, 1993, applicable to dietary supplements and to issue final regulations by December 31, 1993. The moratorium will also postpone the implementation of changes in the method used by the Federal Government to determine recommended daily allowances of essential nutrients.

The purpose of the moratorium is to provide additional time for Congress, the Department of Health and Human Services, consumer groups, industry, and other affected parties to consider the public health issues associated with use of dietary supplements.

I urge my colleagues to vote to adopt this important measure.

TITLE I: PRESCRIPTION DRUG USER FEES

H.R. 6181 is similar to an earlier House-passed bill (H.R. 5952) on prescription drug user fees. Explanation of the legislative intent for parts of the two bills that are the same are contained in the committee report for H.R. 5952. Senator HATCH and I have agreed to the following statement of explanation as to the legislative intent of the sections of the bills that have been changed or would benefit from additional comment.

Section 735(1) excludes from the definition of "human drug application" those applications or licenses for the approval of the following products: Whole blood or a blood component for transfusion; a bovine blood product for topical application licensed before September 1, 1992; an allergenic extract product; an in vitro diagnostic biologic product licensed under section 351 of the Public Health Service Act; or a large volume parenteral drug product approved before September 1, 1992.

Sections 735(1) and 735(3) of the bill exempt both bovine blood products licensed before September 1, 1992 and large volume parenteral drug products [LVP's] approved before September 1, 1992 from the definition of human drug application and prescription drug product.

For the purposes of this bill, bovine blood products for topical application include thrombin products which are approved for use during surgery to reduce bleeding and speed blood clotting.

For the purposes of this bill, large volume parenterals are single-dose sterile fluids that are intended for parenteral or irrigation use in humans and packaged in containers containing 100 milliliters or more. Some examples of LVP's include caloric supplements, fluid and electrolyte replacements or replenishers, blood washing solutions and irrigating solutions. The prior approval process and regulatory status of previously approved LVP's is similar to generic drugs. Because generic drugs are excluded from user fees under the bill, previously approved LVP's will also be excluded from fee requirements.

For the purposes of this bill, renovation means remodeling or alternation, conversion or reconfiguration of a buildings' interior spaces, systems, and feature or exterior surfaces and openings to meet the space and housing requirements of client agencies.

In section 736(b)(2), provision is made for small businesses, that is those with less than 500 employees, to pay only 50 percent of the drug application fee if the company does not already have a prescription drug product on the market. The bill also allows manufacturers to defer payment of application fees until 1 year after the date of submission of the application to the FDA.

This deferral is designed to allow startup companies an additional period of time to raise the capital needed to successfully develop a product. The bill's sponsors believe that the 1-year deferral will be of particular assistance to small companies attempting to develop products in research intensive areas such as biotechnology.

During discussion of the legislation, concerns were raised about fees applicable to applications which included multiple strengths or potencies of a drug. The bill's sponsors would like to clarify that for the purposes of this act, a human drug application which included several different strengths or potencies would be subject to a single application fee.

The bill's sponsors would also like to address concerns that have been raised regarding whether generic drugs would be covered under the act. The bill defines "prescription drug product" as a drug for which a human drug application has been approved. The definition of "human drug application" does not include generics approved under an abbreviated new drug application [ANDA] in section 505(j). The definition of prescription drug establishment is defined as a place where prescription drug products are made. Thus, by its terms the definition of "prescription drug establishment" excludes generics approved under an ANDA under 505(j). Similarly, a product fee only applies to each prescription drug product, as defined in the bill. As stated, the definition of "prescription drug product," which incorporates the definition of "human drug application," excludes generic drugs and all paper new drug applications, except for certain new indications or new chemical entities.

Section 736(d) directs the Secretary to grant a waiver or reduction of one or more fees in situations where the waiver is necessary to protect the public health or where the fee would pose a barrier to innovation. The bill's sponsors do not intend for the fees authorized under this act to serve as a disincentive to the research and development of important prescription drug products, nor should the fees impose an undue financial burden on any company.

The bill's sponsors intend the Secretary to construe broadly, on a case-by-case basis, the appropriateness of fee waivers or reductions. A key assessment in making such waiver decisions clearly should be the extent to which application, product or establishment fees may interfere with a company's ability to develop a specific innovative product. However, it is also expected that the Secretary will consider the financial burden imposed by fees on the ability of companies, especially small companies, to continue innovative research and development programs. In section 736(d)(2) the Secretary is granted broad authority to provide fee waivers for circumstances other than resource limitations in order to allow maximum flexibility to limit barriers to innovation.

Orphan drugs are often developed by small companies and usually have limited commercial potential because of small patient populations. The bill's sponsors are aware that companies may be discouraged from pursuing orphan drug research if any additional constraints are placed on the resources available for this purpose. Accordingly, except in the rare situation in which the commercial potential of a specific orphan drug product is clearly adequate to assure development of the product, the bill's sponsors assume that fees will be waived for orphan drugs.

The bill defines the costs of resources allocated for human drug application review, and describes the additional resources needed to ensure successful implementation of an enhanced prescription drug approval program.

The intent of the legislation is to provide for additional full-time equivalent [FTE] positions to be dedicated to the drug approval process. The bill clarifies that the full-time equivalent positions, including Senior Executive Service and Biomedical Research Service, are intended to be additive to existing personnel levels and should not be offset by FTE losses in other parts of the FDA, PHS or the Departments of Health and Human Services.

TITLE II: DIETARY SUPPLEMENTS

The purpose of title II of this legislation is to institute a moratorium, through December 31, 1993, on the implementation of the provisions of the Nutrition Labeling and Education Act of 1990 (Public Law 101-535; 104 Stat. 2353) [NLEA] with respect to dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances.

Dietary supplements can play a beneficial role in nutrition. We encourage efforts to continue rigorous scientific research, conducted by qualified experts, into the function of dietary supplements.

This title will permit the Congress and the Food and Drug Administration [FDA] of the U.S. Department of Health and Human Services [HHS] to examine issues related to the regulation of dietary supplements and specifically the provisions of the NLEA as they relate to these products.

As both the statutory text and legislative record reveal, the NLEA primarily addresses food products. Because of the differences in the history of use and function of dietary supplements and conventional foods, it is appropriate for Congress to enact this moratorium so that the issue of how best to regulate dietary supplements may be carefully considered.

Specifically, this legislation creates a moratorium in the implementation of the NLEA with respect to dietary supplements. This legislation also requires the Secretary to repropose NLEA regulations applicable to dietary supplements no later than June 15, 1993. Final regulations will be issued by December 31, 1993.

The moratorium will provide time for the Congress, HHS, consumer groups, industry, and other affected parties to identify more fully and to consider the public health issues associated with use of dietary supplements, and to develop a comprehensive approach for reforming the regulation of dietary supplements.

The general policy goal is clear: The American public must be assured that the dietary supplements they choose to consume are safe, made to quality standards, bear informative labeling, and that health or disease-related claims are properly supported. Both the regulator—the FDA—and the regulated—including manufacturers, distributors, and suppliers of dietary supplements—have important responsibilities in meeting this goal. In attempting to improve the regulatory framework for these products, the moratorium will advance this goal.

The FDA has proposed that the existing U.S. recommended daily allowances [U.S. RDA's] be replaced as the food label standard for vitamins and minerals by a new concept, the reference daily intakes [RDI's]. The NLEA does not mandate changing the U.S. RDA and does not contain the RDI concept. This legislation enacts a moratorium delaying the implementation of the RDI proposal in order to allow additional time for obtaining a thorough assessment of the scientific rationale for any proposed changes from the existing U.S. RDA's.

While this moratorium is in effect, dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances not in the form of conventional food shall be subject to the provisions of the Federal Food, Drug, and Cosmetic Act [FFDC Act], as in effect on November 7, 1990. Under the terms of the moratorium, the labeling of dietary supplements may contain claims identified under clauses (vi) and (x) of section 3(b)(1)(A) of the NLEA for which the Secretary determines that a significant scientific agreement exists.

Two studies are called for by this act. The first will be conducted by the Comptroller General to determine how FDA utilizes resources to regulate potential health risk and risk from deception with respect to using dietary supplements. The second study requests the Office of Technology Assessment to examine how other industrialized countries regulate dietary supplements and the health effects of these regulatory schemes.

During the moratorium, it is expected that attention will be focused on the issue of what standards and procedures should be applied to dietary supplements, including standards for claims under section 403(r)(5)(D) of the FFDC Act. In order to take advantage of the new information and developments that may occur under the moratorium, it is possible that FDA may wish to propose new regulations, guidelines, and enforcement criteria affecting dietary supplements, or to repropose rules under section (r)(5)(D) of the NLEA.

In the course of the moratorium, FDA's enforcement policies and practices with respect to dietary supplements will be examined. While it is clear that the existing legal mechanisms will continue to be in effect during the moratorium, one of the key questions to be considered next year is the proper role of the food additive provisions contained in section 409 of the FFDC Act in the regulation of dietary supplements and whether section 409 should be replaced by a new statutory standard for dietary supplements.

Mr. BINGAMAN. Mr. President, I rise in support of the Dietary Supplement Act of 1992, and I commend Senator HATCH for his leadership and hard work on this issue. Two weeks ago, the Senate overwhelmingly approved an amendment similar to the one before us today. Unfortunately, the amendment was dropped in conference, making today's action necessary.

The Dietary Supplement Act of 1992 accomplishes four key objectives. it would:

First, impose a 14-month moratorium on the Food and Drug Administration's proposed health claims labeling regulations for dietary supplements;

Second, direct the Commissioner to review the proposed dietary supplement regulations and re-issue proposed regulations by June 15, 1993;

Third, authorize three studies, by the Department of Health and Human Services, the General Accounting Office, and the Office of Technology Assessment, on the issue of dietary supplement regulation; and

Fourth, freeze for 1 year the promulgation of any regulation that requires the use of RDI's, or reference daily intakes, in labeling, as a replacement for RDAs, or recommended daily allowances, in labeling.

Mr. President, this measure does not impact in any way the FDA's existing authority to monitor the safety of dietary supplements, vitamins, and minerals. That authority—and duty—exists now, and it will continue to exist. This measure simply gives us time to develop a comprehensive, thoughtful, and fair solution to the question of dietary supplement regulation, which has confused the Federal Government and the American people for decades.

More important, this amendment gives us time to educate ourselves on the intent, scope, and effect of the proposed regulations. Based on the amount of anxiety caused by the proposed regulations and encouraged by a national antiregulation campaign, I believe we need the time this measure would give us. We need time to better educate the health conscience public on the intent and scope of any regulatory proposal. We need time to ensure that the regulations are fair to the manufacturers, wholesalers, and distributors of dietary supplements, many of whom own small businesses and fear for their livelihoods. We need time to ensure that this group of businessmen and businesswomen clearly and fully understand the scope of the regulations and their responsibilities when making health claims. And as I mentioned earlier, we need time to better develop and articulate the Federal Government's role vis-a-vis the manufacture, packaging, and sale of dietary supplements.

Mr. President, I did not reach the decision to advocate a delay lightly. In fact, since my election to the Senate, I have spent much more time and energy urging the administration to implement regulations than I have spent advocating delay. I am proud to have been a cosponsor and strong supporter of the Nutrition Labeling and Education Act. I worked for 6 years to get the National Nutrition Monitoring Act signed into law and implemented. I founded HealthNet New Mexico 7 years ago to try to help New Mexicans improve their cardiovascular and physical fitness, stop smoking, and eat healthful foods. This year, Senator COHEN and I introduced the Healthy Students-Healthy Schools Act, a bill to help states and localities establish comprehensive, high quality health education programs in all schools, from kindergarten through 12th grade.

I care about the health status of all Americans, Mr. President, and I firmly believe that each and every one of us has the right to know whether the health claims we read in magazines and see on store shelves are truthful and scientifically valid. Yet today, there are compelling reasons to delay implementation of the proposed rules:

First, the statutory classification of dietary supplements, for purposes of regulation, remains unclear. Should dietary supplements be treated as foods, drugs, or a new, third category? Should dietary supplement health claims be regulated in the same manner food product health claims are currently regulated? Or should we create a new system that would allow the FDA to issue a seal of disclaimer or approval with respect to dietary supplement health claims? These are questions that need to be thoughtfully resolved.

Second, the final report and recommendations of the commissioner's dietary supplements task force have not been made public, but should contain important, expert information on how best to proceed in this area. Adding to our basis of knowledge will be the newly commissioned reports by the DHHS, the GAO, and the OTA and Congressional oversight hearings, to be conducted in the 103d Congress.

Third, finally, as I mentioned earlier, there is a great need to educate the consuming public about the true intent, scope, and effect of the Nutrition Labeling and Education Act and any proposed regulations. This has not been done. Too many consumers believe that on November 9, 1992, the day after the regulations are scheduled to go into effect, that the vitamins, minerals, and other dietary supplements they use will be stripped from the shelves. They believe many of the vitamins they depend on will no longer be available without a prescription from a licensed medical doctor. Neither one of these scenarios is true. Vitamins, minerals, and other dietary supplements will continue to be available, without prescription. Only the labels—and unsubstantiated health claims—will change because the proposed regulations deal only with health *claims*. This needs to be made clear to the American public, and any lingering questions should be resolved when the proposed regulations are republished next summer.

I urge my colleagues to support the Dietary Supplement Act of 1992 and this amendment and to work with us on this issue when the 103d Congress convenes in January.

Mr. KENNEDY. Mr. President, I ask unanimous consent that a joint statement by myself and Senator HATCH be printed in the RECORD at this point.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

JOINT STATEMENT OF SENATOR EDWARD M. KENNEDY AND SENATOR ORRIN HATCH

Mr. President, the Prescription Drug User Fee Act of 1992 represents a major opportunity to improve the drug review process of the Food and Drug Administration [FDA]. The idea of charging user fees to drug manufacturers to help expedite the drug review and approval process has been around for several years. But it acquired greater urgency in 1991, when the Edwards committee's report on FDA reform urged Congress and the private sector to seek industry funding to supplement the annual public appropriations.

Until recently, there has been no agreement on fundamental issues such as the nature of the user fees to be charged, and the type of services to be carried out by the FDA. However, over the last several weeks significant progress has been made in consultation between Congress, consumers, industry, and the administration.

This legislation is the result of tremendous bipartisan cooperation by Members of both bodies of Congress. The statutory framework has been carefully designed to ensure that the fees are reasonable, and that all monies collected go only for those activities directly related to the FDA drug review and approval process. All of us that have worked on this legislation have been very pleased by the enthusiastic support offered by prescription drug manufacturers.

The need for this legislation is obvious. The current Federal budget situation offers little prospect that adequate resources will be available to the FDA to do the job it should be doing in the years ahead. Without the additional funds that user fees would provide, the FDA faces the prospect of being unable to keep up with new scientific advances. Applications for clinical drug investigations have nearly doubled in the last decade. In the vital area of biotechnology, the number of applications has increased from 1 to 299.

However, FDA staff resources have declined for most of that period. The mismatch between accelerating pharmaceutical research and declining FDA resources is severely delaying the health benefits of medical advances, and some remedy must be found.

Without additional funds, we risk a serious bottleneck in the FDA approval process. The legislation that Senator HATCH and I are putting forward today will raise over $300 million over 5 years and provide resources to hire up to 600 new medical reviewers. In return, FDA Commissioner Kessler has articulated a set of specific performance goals that will enable the agency to cut approval times dramatically—almost in half. The goal is to cut review times down to 6 months for applications for most breakthrough drugs, and 12 months for most standard applications. The Commissioner has also committed to a timetable for eliminating backlogs of overdue applications. These actions would have a significant, long-term impact on health care in this country.

Faster drug approval will save patients' lives, and benefit the industry too. At the same time, we must ensure that user fees does not become disincentives to the development of new drugs by small businesses, especially innovative biotechnology firms. The legislation contains reduced fees for small businesses, and allows a complete waiver of fees in special circumstances. We will continue to work to see that user fees do not retard the development of promising therapies.

The bill includes limited fees for over-the-counter [OTC] drugs that will provide approximately $300,000 per year. More importantly, the OTC industry has already expressed a willingness to explore additional user fees, including fees on drug establishments and products. The bill also instructs the Secretary of Health and Human Services to conduct a study of the advisability of user fees for the animal drug industry.

In a time of severe budgetary constraints we have a unique opportunity to improve FDA's performance. I urge my colleagues to vote to adopt this important measure.

TITLE I: PRESCRIPTION DRUG USER FEES

Senator HATCH and I have agreed to the following statement of explanation as to the legislative intent. The proposed amendments leave intact most of the language from the House bill, and the managers make reference to the legislative history of the House report for all issues not explicitly addressed by our comments:

Section 735(1) is amended to exclude from the definition of "human drug application" those applications or licenses for the approval of the following products: whole blood or a blood component for transfusion; a bovine blood product for topical application licenses before September 1, 1992; an allergenic extract product; an in vitro diagnostic biologic product licensed under section 351 of the Public Health Service Act; or a large volume parenteral drug product approved before September 1, 1992. Whole blood, allergenic extracts and in vitro diagnostic biologic products were unintentionally included in the definition of human drug application in the House bill. The Senate amendments rectify the omission in the House bill.

Sections 735(1) and 735(3) of the Senate amendments except both bovine blood products licensed before September 1, 1992 and large volume parenteral drug products [LVP's] approved before September 1, 1992 from the definition of human drug application and prescription drug product.

For the purposes of this bill, bovine blood products for topical application include thrombin products which are approved for use during surgery to reduce bleeding and speed blood clotting.

For the purposes of this bill, large volume parenterals are single-dose sterile fluids that are intended for parenteral or irrigation use in humans and packaged in containers containing 100 milliliters or more. Some examples of LVP's include caloric supplements, fluid and electrolyte replacements or replenishers, blood washing solutions and irrigating solutions. The prior approval process and regulatory status of previously approved LVP's is similar to generic drugs. Because generic drugs are excluded from user fees under the bill, previously approved LVP's will also be excluded from fee requirements.

For the purposes of this bill, "renovation" means remodeling or alteration, conversion or reconfiguration of a buildings' interior spaces, systems, and feature or exterior surfaces and openings to meet the space and housing requirements of client agencies.

The House passed bill allowed a small business with less than 500 employees to pay only 50 percent of the drug application fee if the company did not already have a prescription drug product on the market. In section 736(b)(2) the Senate amendments retain the 50-percent fee reduction for small business and add an additional benefit for small business. The amendments allow manufacturers to defer payment of application fees until 1 year after the date of submission of the application to the FDA.

This deferral is designed to allow start-up companies an additional period of time to raise the capital needed to successfully develop a product. The bill's sponsors believe that the 1-year deferral will be of particular assistance to small companies attempting to develop products in research intensive areas such as biotechnology.

During discussion of the legislation, concerns were raised about fees applicable to applications which included multiple strengths or potencies of a drug. The bill's sponsors would like to clarify that for the purposes of this act, a human drug application which included several different strengths or potencies would be subject to a single application fee.

The bill's sponsors would also like to address concerns that have been raised regarding whether generic drugs would be covered under the act. The bill defines "prescription drug product" as a drug for which a "human drug application" has been approved. The definition of "human drug application" does not include generics approved under an abbreviated new drug application [ANDA] in section 505(j). The definition of prescription drug establishment is defined as a place where "prescription drug products" are made. Thus, by its terms the definition of "prescription drug establishment" excludes generics approved under an ANDA under 505(j). Similarly, a product fee only applies to each "prescription drug product," as defined in the bill. As stated, the definition of "prescription drug product," which incorporates the definition of "human drug application," excludes generic drugs and all paper new drug applications, except for certain new indications or new chemical entities.

Section 736(d) directs the Secretary to grant a waiver or reduction of one or more fees in situations where the waiver is necessary to protect the public health or where the fee would pose a barrier to innovation. The bill's sponsors do not intend for the fees authorized under this act to serve as a disincentive to the research and development of important prescription drug products, nor should the fees impose an undue financial burden on any company.

The bill's sponsors intend the Secretary to construe broadly, on a case-by-case basis, the appropriateness of fee waivers or reductions. A key assessment in making such waiver decisions clearly should be the extent to which application, product or establishment fees may interfere with a company's ability to develop a specific innovative product. However, it is also expected that the Secretary will consider the financial burden imposed by fees on the ability of companies, especially small companies, to continue innovative research and development programs. In section 736(d)(2) the Secretary is granted broad authority to provide fee waivers for circumstances other than resource limitations in order to allow maximum flexibility to limit barriers to innovation.

Orphan drugs are often developed by small companies and usually have limited commercial potential because of small patient populations. The bill's sponsors are aware that companies may be discouraged from pursuing orphan drug research if any additional constraints are placed on the resources available for this purpose. Accordingly, except in the rare situation in which the commercial potential of a specific orphan drug product is clearly adequate to assure development of the product, the bill's sponsors assume that fees will be waived for orphan drugs.

The bill defines the costs of resources allocated for human drug application review, and describes the additional resources needed to ensure successful implementation of an enhanced prescription drug approval program.

The intent of the legislation is to provide for additional full-time equivalent [FTE] positions to be dedicated to the drug approval process. The bill clarifies that the full-time equivalent positions, including Senior Executive Service and Biomedical Research Service, are intended to be additive to existing personnel levels and should not be offset by FTE losses in other parts of the FDA, PHS or the Departments of Health and Human Services.

TITLE II: DIETARY SUPPLEMENTS

The purpose of the Dietary Supplement Act of 1992 is to institute a moratorium, through December 31, 1993, on the implementation of the provisions of the Nutrition Labeling and Education Act of 1990 (Public Law 101-535; 104 Stat. 2353) [NLEA] with respect to dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances.

Dietary supplements can play a beneficial role in nutrition. We encourage efforts to continue rigorous scientific research, conducted by qualified experts, into the function of dietary supplements.

The Dietary Supplement Act of 1992 will permit the Congress and the Food and Drug Administration [FDA] of the U.S. Department of Health and Human Services [HHS] to examine issues related to the regulation of dietary supplements and specifically the provisions of the NLEA as they relate to these products.

As both the statutory text and legislative record reveal, the NLEA primarily addresses food products. Because of the differences in the history of use and function of dietary supplements and conventional foods, it is appropriate for Congress to enact this moratorium so that the issue of how best to regulate dietary supplements may be carefully considered.

Specifically, this legislation creates a moratorium in the implementation of the NLEA with respect to dietary supplements. This legislation also requires the Secretary to repropose NLEA regulations applicable to dietary supplements no later than June 15, 1993. Final regulations will be issued by December 31, 1993.

The moratorium will provide time for the Congress, HHS, consumer groups, industry, and other affected parties to identify more fully and to consider the public health issues associated with use of dietary supplements, and to develop a comprehensive approach for reforming the regulation of dietary supplements.

The general policy goal is clear: The American public must be assured that the dietary supplements they choose to consume are safe, made to quality standards, bear informative labeling, and that health or disease-related claims are properly supported. Both the regulator—the FDA—and the regulated—including manufacturers, distributors, and suppliers of dietary supplements—have important responsibilities in meeting this goal. In attempting to improve the regulatory framework for these products, the moratorium will advance this goal.

The FDA has proposed that the existing U.S. recommended daily allowances [U.S. RDA's] be replaced as the food label standard for vitamins and minerals by a new concept, the reference daily intakes [RDI's]. The NLEA does not mandate changing the U.S. RDA and does not contain the RDI concept. This legislation enacts a moratorium delaying the implementation of the RDI proposal in order to allow additional time for obtaining a thorough assessment of the scientific rationale for any proposed changes from the existing U.S. RDA's.

While this moratorium is in effect, dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances not in the form of conventional food shall be subject to the provisions of the Federal Food, Drug, and Cosmetic Act [FFDC Act], as in effect on November 7, 1990. Under the terms of the moratorium, the labeling of dietary supplements may contain claims identified under clauses (vi) and (x) of section 3(b)(1)(A) of the NLEA for which the Secretary determines that a significant scientific agreement exists.

Two studies are called for by this act. The first will be conducted by the Comptroller General to determine how FDA utilizes resources to regulate potential health risk and risk from deception with respect to using dietary supplements. The second study requests the Office of Technology Assessment to examine how other industrialized countries regulate dietary supplements and the health effects of these regulatory schemes.

During the moratorium, it is expected that attention will be focused on the issue of what standards and procedures should be applied to dietary supplements, including standards for claims under section 403(r)(5)(D) of the FFDC act. In order to take advantage of the new information and developments that may occur under the moratorium, it is possible that FDA may wish to propose new regulations, guidelines, and enforcement criteria affecting dietary supplements, or to repropose rules under section (r)(5)(D) of the NLEA.

In the course of the moratorium, FDA's enforcement policies and practices with respect to dietary supplements will be examined. While it is clear that the existing legal mechanisms will continue to be in effect during the moratorium, one of the key questions to be considered next year is the proper role of the food additive provisions contained in section 409 of the FFDC act in the regulation of dietary supplements and whether section 409 should be replaced by a new statutory standard for dietary supplements.

MAMMOGRAPHY QUALITY STANDARDS ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to consideration of H.R. 6182, the mammography standards bill, now at the desk; that the bill be deemed read three times and passed; that the motion to reconsider be laid upon the table; and that any statements thereon appear in the RECORD at the appropriate place as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

So, the bill (H.R. 6182) was deemed read the third time and passed.

Mr. KENNEDY. The Mammography Quality Improvement Act of 1992 is an important part of our current initiatives in Congress on women's health. This bill is intended to establish uniform national standards to ensure the safety and accuracy of mammograms.

Breast cancer is the most common type of cancer in women. It is second only to lung cancer as the leading cause of cancer death in women age 15 to 54. A total of 181,000 new cases and 46,000 deaths are estimated in 1992. One in nine women will develop the disease at some point in their lives.

Mammography, when properly used, can detect breast cancer at an early stage when proper treatment has a high probability of cure. Mammography, itself, does not prevent or cure breast cancer. But its timely use is one of the most effective weapons we have against this deadly disease. Unfortunately, there is no guarantee that current procedures are safe and accurate.

Poor quality mammography poses a serious health threat to women. Mammograms are among the most difficult radiological examinations to perform and among the most difficult to read. If the image is poor or the interpretation is inaccurate, an early cancer can easily be missed.

Delays in diagnosis inevitably lead to delays in treatment and unnecessary deaths or mastectomies. False positive mammograms can lead to unnecessary biopsies or other procedures.

Currently, there is no uniform mammography quality assurance system. This legislation will assure that women will be able to seek out facilities that have been inspected and certified to meet high standards, and that will provide greater assurance of quality care.

The pending legislation establishes quality assurance standards for all facilities providing mammography. Such facilities must use only radiological equipment designed specificially for mammography. They must use only qualified personnel to perform the radiological imaging, and use only qualified rediologists to interpret the results. They must establish a program for quality assurance and control.

In addition, all mammography facilities must receive certification by the Department of Health and Human Services that the facilities meet basic standards for equipment, personnel, and quality. The facilities must have an annual on-site inspection, and must be accredited as a condition of receiving such certification.

If a facility fails to obtain certification or is not in compliance with the quality standards established by the legislation, the Secretary may impose sanctions in lieu of revoking, suspending or limiting a certificate. The first priority of the bill is to restore a mammography facility to compliance through a plan for corrective action which is developed by the Secretary.

When used properly mammography can be a life-saving procedure, and we must do all we can to assure that it is used effectively. This legislation is a major advance in assuring that women will receive quality mammography service.

I commend Senator ADAMS and the other Members of the Senate who have worked closely with us to develop this bipartisan measure, and I urge the Senate to appove it.

I ask unanimous consent that a summary of the bill be printed in the RECORD following my remarks.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

BILL SUMMARY—MAMMOGRAPHY QUALITY STANDARDS ACT OF 1992

The bill establishes national, uniform quality standards for mammography. All facilities providing mammography will be required to be certified by the Secretary of Health and Human Services as meeting quality standards for mammography established by the Secretary in the following areas: equipment, personnel, and quality assurance. Certification is for a three-year period and is renewable. Provisional certificates may be issued for new facilities and units. Provisional certificates are valid for six months, and may be extended only for 90 days, and then only in highly unusual situations.

The bill allows and encourages states to carry out the certification program requirements and to implement standards no less stringent than those of the national program.

The bill requires that facilities use only radiological equipment designed specifically for mammography.

The bill requires that facilities use only qualified radiological technologists to perform mammography. These individuals must meet state licensing requirements or be certified by the appropriate professional organizations. They must also meet ongoing training and education requirements.

The bill requires that facilities use only qualified physicians to interpret the results of the mammogram. These individuals must be either certified by an approved professional board or program to interpret mammography. They must also meet training and continuing medical education requirements.

The bill requires that all facilities establish a quality assurance and control program to ensure the reliability, clarity, and accurate interpretation of mammograms. In order to be certified by the Secretary, all facilities must undergo an on-site physics consultation and evaluation (i.e. survey) performed by a qualified medical physicist and submit the results of the survey to the accreditation body.

The bill requires that all facilities be inspected annually by qualified inspectors. The Secretary or State agency acting on behalf of the Secretary will conduct inspections of the beam quality, average glandular dose, phantom image quality and other features to ensure the facility is in compliance with the quality standards required in the bill.

The bill requires that facilities be accredited by an accrediting body approved by the Secretary. Approved accreditation bodies will provide comprehensive peer evaluation and oversight of all components of the mammography facility, including equipment and technical considerations, quality assurance and control programs, and the evaluation of the clinical image quality.

The bill requires that the Secretary establish sanctions. The Secretary may impose sanctions on facilities that do not comply with the certification requirements, including directed plans of correction, civil money penalties, and the cost for on-site monitoring. The Secretary may also suspend, revoke, or limit a certificate if the facility misrepresents itself or fails to comply with intermediate sanctions. The Secretary may shut down facilities that are a significant hazard to the public health.

The bill provides adequate funding to ensure that all facilities can be certified and inspected through the collection of fees to cover such costs, while research grants will be provided such funds as necessary through appropriations.

Mr. ADAMS. Mr. President, I rise today in support of H.R. 6182, the Mammography Quality Standards Act, which will establish national quality standards for mammography. This bill is long overdue. Most of us believe—or would like to believe—that we are getting the highest quality health care possible when we receive medical tests. Where mammography screening is concerned, this is too often not the case.

There is absolutely no guarantee that the mammogram a woman receives today is safe and accurate, even when her doctor recommends the facility. Nor is there a guarantee that the mammogram a woman receives is of the highest quality possible. There are no uniform quality standards for mammography that apply to all 11,000 mammography facilities in the United States. What we have is a disjointed patchwork of Federal, State, and private voluntary standards. And these overlapping and conflicting regulations are riddled with holes.

Congress is no stranger to this issue. We tried to establish quality standards for mammography under the Medicare Program as part of the catastrophic health coverage bill in 1988. When that bill was repealed, Congress passed a separate provision in 1990 to cover the cost of breast cancer screening of women eligible for Medicare, and require again that mammography facilities meet key quality standards as a condition for reimbursement.

But 2 years later, we still do not have a final regulation implementing these standards. Under an interim rule, facilities are required only to self-certify, inspections have yet to be carried out, and there is no requirement that inspections—when they are done—will be performed by qualified personnel.

Even now less than half of the facilities in the country are certified under the Medicare Program. Facilities do not have to comply because the program is entirely voluntary.

At its best the Medicare Program won't work for all women—it doesn't provide protection for the more than 30 million women who the NCI recommends get annual or biannual screening but who under the age of 65 are not eligible for Medicare.

And what happens under Medicare if a facility provides substandard mammography? Very little. It would lose Federal reimbursement, but would not be prohibited from providing a mammogram to any woman walking in the door.

A few States have tried to fill the gap. States like Michigan, Rhode Island, Maryland, Indiana. But 80 percent of the States have no standards. And even the best of State programs do not evaluate clinical images—the very key to high quality mammography.

Probably the best hope for high quality mammography is the private accreditation program established by the American College of Radiology. The ACR has done a tremendous job. But again, the program is entirely voluntary. And only 40 percent of all facilities are accredited. The ACR program is a professional organization and lacks any enforcement power. It has no way to ensure continued compliance once the facility is accredited. Nor does it have any authority to shut down a substandard facility.

What we have is a regulatory system in disarray in the middle of a breast cancer epidemic.

Breast cancer is the single most common form of cancer in women, and a major cause of death second only to lung cancer. This year alone 181,000 women will be diagnosed with the disease. And over 46,000 women will die.

To defeat lung cancer we tell women to stop smoking. To detect breast cancer early, we tell women to get a mammogram—because we know that early detection of breast cancer through mammography can reduce mortality from breast cancer by 30 percent.

But the truth is we can recommend that a woman get a mammogram, but we can't guarantee that it will be safe or accurate.

During subcommittee hearings we learned all too well the consequences of poor quality mammography—women suffered needlessly and in some cases lost their life.

Many of you will remember Mary Stupp. She testified here last October. She told us how she had two mammograms over a 3-year period and that her doctors missed her cancer despite her repeated efforts to get them to look again because she felt something was wrong. By the time the doctors diagnosed Mary with breast cancer, the cancer had spread to her liver. Her doctors told her she had a few months to live, but that if they had read the mammogram right the first time she would have had a good prognosis.

Well, Mary died this summer. During the hearing she asked that we pass this bill so that other women would not have to die needlessly. And that's what I hope we'll do.

H.R. 6182 will establish strong uniform national standards for quality mammography. The bill will require that all facilities: use only equipment designed specifically for mammography; establish an ongoing program for quality assurance and control; use only qualified personnel to perform the mammogram; use only qualified physicians to interpret the result of the mammogram and be certified every 3 years and be inspected every year.

Facilities not meeting these standards will face civil sanctions for failure to comply.

The bottom line is that the burden for getting the highest quality mammogram should not have to fall to women. It should be a guarantee. And this bill does that.

At our hearing we received many helpful suggestions and this legislation incorporates those recommendations and others by my colleagues, particularly Senator HATCH, on the committee.

The amendment: First, clarifies the role of the Federal Government, the States, and private accreditation and provides for a stronger State role; second, builds more directly on the private accreditation system that provides essential professional review of clinical images; third, establishes a new authority for getting the program up and running and makes clear that facilities will be responsible for sharing inspection costs; fourth, eliminates unnecessary bureaucracy and reporting requirements; and fifth, establishes a separate authority for States that wish to run the program themselves.

Other technical changes were made as well. These changes in no way compromise the integrity of the bill. H.R. 6182 sets out to establish tough national quality standards for mammography and it does that.

Several concerns have been raised about the impact of the requirements of the bill on the cost of mammography and access to mammography facilities in rural and underserved areas. I'd like to take a moment to put those concerns to rest. The available data do not support the argument that either cost or access to mammography services in rural or underserved areas will be adversely affected by the requirements of this bill.

The GAO and witnesses from the State of Michigan—which has already enacted a similar program—testified before the Labor Committee that the standards established by S. 1777 would not increase the cost of mammography. Other studies show that the average cost of providing quality mammography is about $3 per mammogram.

Second, no data indicate that there is an access problem for women in rural or underserved areas. The greatest barrier to quality mammography is reimbursement. The majority of private plans do not pay for the cost of breast cancer screening. The National Cancer Institute has in fact, identified an oversupply of mammography equipment, and the American College of Radiology has identified only one community in the United States with fewer than 25,000 people that does not have an ACR accredited facility.

We must consider the cost of not providing high quality mammography. The Secretary of the Michigan State Department of Public Health testified that the State program costs about $240,000 per year to run—approximately the same amount paid out for an average malpractice claim involving women with breast cancer. Malpractice claims in this area are the most expensive and the second most common area of malpractice claims.

Early detection of breast cancer is the only way we successfully fight breast cancer. A good mammogram is key to that success. But without quality standards for mammography, a woman has no guarantee that she will receive a safe and accurate mammogram. This bill will provide that guarantee.

I would like to point out that the bill has the strong endorsement and support of the American Cancer Society, the National Breast Cancer Coalition, which represents 127 breast cancer organizations, the American College of Radiology, the Susan G. Komen Foundation, the American College of Obstetricians and Gynecologists, the Association of State and Territorial Health Officials, and the Conference of Radiation Control Program Directors.

I hope we can make our vote unanimous and tell women in this country, that no matter where they get a mammogram, in whatever facility or State, that they will receive the same high-quality care.

I urge you to vote yes on this bill.

A SPECIAL NOTE OF THANKS

Mr. ADAMS. Mr. President, I'd like to take a minute now before we vote to thank the individuals and groups who have worked tirelessly on behalf of this legislation. About 3 years ago, my administrative assistant, Ellen Globokar, came to me after seeing a very shocking story on NBC Nightly News about the poor quality of mammography some women were receiving. We had already seen the horrible tragedy resulting from poor quality Pap smears, and we decided right then, to get to the bottom of this problem and see if something needed to be done.

Robyn Lipner, my chief health policy staff member, has been spearheading the effort for me ever since. Her tireless efforts on behalf of women's health issues are well known, and her work on this bill, the Mammography Quality Standards Act, has been outstanding. Not only do I, but the women in America, owe her a debt of gratitude for her dedication over the last 3 years to improving women's health and getting tough Federal quality standards for mammography adopted.

I'd also like to give a special thanks to Lucia Giudice, a health fellow in my office, for her excellent work and endless hours of preparation on this bill. I'd also like to thank Van Dunn, David Nexon, Phyllis Albritton, Kevin Quinn, Ann LaBelle, Mike Nelson, Donald Shriber, Mike Hash, and Ruth Katz for their excellent staff work on this bill. And finally, I'd like to thank the organizations who have supported my efforts and led the fight to pass this bill, they are: The American Cancer Society, the Susan G. Komen Foundation, the Breast Cancer Coalition, the American College of Radiology, the American College of Obstetricians and Gynecologists, the Association of State and Territorial Health Officers, and the Conference of Radiation Control Program Directors.

And finally, I'd like to dedicate this bill to two very special people, Mary Stupp who passed away this summer, and Marie Ann Domsalla, who has shown such courage and determination in her fight against breast cancer. Thank you all.

Mr. FORD. Mr. President, I rise today in support of this bill, H.R. 6182 that is so vitally important to the women of this Nation. Breast cancer is a most horrible disease. It strikes all generations and is unrelenting in the attack on its helpless victims. If there is anything that can be done to stop it, we must pursue that effort with all the resources that we possess.

Mr. President, there is something that we can do. A properly performed mammography can help catch this dreaded disease in its early stages, when chances are highest for a full recovery. It is not perfect, it is not 100 percent effective, but it is a start. However, too many women go through the hassles of having a mammogram, only to have it improperly read or improperly taken. Many women do what their doctors, health providers, and friends say they should in getting this service performed, only to leave with a false sense of security.

There must be nationwide standards set regarding this oftentimes life or death diagnosis. This bill will do that. The regulation of mammography services is the least that we, as caring human beings, can do. In my home State of Kentucky, I am proud to say that we are on the forefront in mammography services. All States and all women should be so lucky. But it is not luck. It is the following through on a commitment to the women of this great Nation. Establishing standards and bringing regulation to mammography services and radiological equipment is not the solution, but it is a positive first step in the fight against breast cancer, and I say again, the least that can be done. It is with that sentiment that I ask colleagues to join me in my support for this most meaningful legislation.

Ms. MIKULSKI. Mr. President, I am delighted to be an original cosponsor of the Senate companion to the Mammography Quality Assurance Act of 1992. This bill will assure women that no matter which office they walk into to get a mammogram, it will be done right.

The breast cancer rate in the United States has increased dramatically. Today, 1 in 9 women will develop breast cancer in her lifetime, up from only 1 in 20 in 1961. The death rate from breast cancer is up 24 percent from 1979 to 1986. Researchers presently have no explanation for these dramatic increases. While there still is no 100 percent cure for breast cancer, we do know how to treat the disease at earlier stages to save lives.

Women in America are getting the message that we need to have regular mammograms to protect ourselves from breast cancer. We also have to make sure that the facilities we use to get mammograms are fit for duty. We have to make sure that the results of all mammograms will be accurate and consistent.

Mammograms can detect breast cancer early so that women can get the treatments they need to survive this disease. But a mammogram is among the most difficult radiographic images to read. If it is done wrong, women suffer from delayed treatment which can have drastic consequences for them, including death or avoidable deformity.

Currently, there are no Federal standards for all mammography clinics. Only 50 percent of clinics choose to participate in voluntary quality assurance programs established by the American College of Radiology. Almost a third of those applying fail to meet the standards.

Forty States have passed laws relating to mammography. But only 10 States, including Maryland, have passed laws that make sure mammograms are safe and accurate. But why should women in other States go without those basic protections? Why should they suffer and even die because the equipment or personnel that are used for mammograms are not adequate or reliable?

These gaps are unacceptable. This bill will fill the gaps. I urge my colleagues to vote for this bill and work with Senator ADAMS, Senator DURENBERGER, and me to make sure our technology, our testing, our techniques, and our technicians are fit for duty.

Mr. JOHNSTON. Mr. President, I would like to take the opportunity to express my support for this important women's legislation. This year, breast cancer will take the lives of approximately 44,500 women and occur in approximately 175,000 more women. It is the second leading cause of death of American women after lung cancer. It will invade 1 in 8 women during their lifetime. Experts say the value of early detection is that it could save the lives of 30 percent of women who might otherwise die of the disease.

Clearly, mammography is an extremely sensitive radiologic process that, if carried out with inaccurate equipment and poorly trained technicians, can provide inaccurate results. Women today need to have the assurance that mammograms they receive are safe and accurate. Our current system is a patchwork of Federal, State and private voluntary standards for mammography quality assurance and there is a dire need for consistency at all levels of care.

The proposed legislation is important to make certain that women who undergo mammograms get a competent, thorough procedure. There is no question that women have died who have undergone mammograms in which cancer has not been detected. Legislation like this legislation will save thousands of lives and is long overdue. I urge the Senate to pass it.

Mr. DODD. Mr. President, I rise today in support of H.R. 6182, the Mammography Quality Standards Act. Every woman in this country lives with the fear that someday she will develop breast cancer. To date, the best method of treatment is early intervention. In fact, if detected at an early stage, breast cancer is 95 percent to almost 100 percent curable. If not, it can be deadly.

Unfortunately, there is no guarantee to women today that the mammography services they receive are reliable. Presently, the only accreditation system in this country is voluntary. There is no enforcement to encourage facilities to meet quality standards. Consequently, problems with misreading images or faulty interpretation can lead to serious medical conditions that easily could have been prevented with proper diagnosis.

The current lack of Federal regulations and patchwork of State and voluntary standards threatens the quality of mammography services, and ultimately the lives of millions of women. Women seeking mammograms must be assured that they are receiving the highest quality of services. The Mammography Quality Standards Act will do just that. It requires that all mammography facilities be accredited to ensure the highest quality mammography and establishes an effective system of checks and balances to maintain those standards.

H.R. 6182 comes at a critical time. Breast cancer is the leading cause of death among women 35 to 55 years old. In the next few years, we will see this age group grow, so it is imperative that we take the necessary precautions now to eradicate breast cancer.

I am pleased to see the passage of the Mammography Quality Standards Act and commend my colleague, Senator ADAMS, for bringing this legislation before the Senate.

Mr. HATCH. Mr. President, I am pleased to submit a substitute amendment to H.R. 5938, the Mammography Quality Improvement Act of 1992. This legislation will provide uniform and required standards across the Nation for the performance of this valuable test for breast cancer. Because mammography, when properly performed, can detect cancer at a very early point in the disease, cure or improved survival are more likely. For this reason, it is important to bring the benefits of quality mammography to our citizens.

This bill addresses the need to ensure that mammographic procedures are performed properly and interpreted by properly trained physicians. This should assure women that they are receiving screening and diagnostic mammography services that are accurate and consistent with good radiologic practice. Such an approach makes the potential benefits of good practice available to all.

Senator ADAMS has focused our attention on this important issue and has engaged with us in the lengthy task of developing appropriate legislation. I want to commend him for these efforts. I believe we have arrived at legislation that addresses the need for quality performance of this valuable and essential test.

Initially, we were concerend that the transition from the existing voluntary program to a mandatory program might require some special considerations in order to avoid unintended consequences. Rural and inner-city facilities were the subjects of our concern. We sought to ensure that the legislation was supportive of improved care, rather than punitive in nature, in order to ensure the availability of quality care to the vulnerable populations served by these facilities. In short, we did not want mammographic facilities in rural and inner-city areas to be inadvertently forced out of existence by this bill.

The aim of this legislation is to raise the quality of mammography, both in performance and interpretation, across the Nation. Although adverse action against facilities may be necessary on occasion, it is not the primary focus of this bill. Rather, improvement of performance is the objective.

A category of provisional certification was provided so that additional time would be available for facilities to meet the important standards of this program. This certification is to be used generously for facilities seeking self-improvement, but is not intended to be provided indefinitely, or to those who do not seek to comply. Accordingly, it may be provided and renewed once only, and then only for a very limited time.

Local adherence to national standards may well be accomplished through the involvement of State governments. This legislation provides such an opportunity. For those States that do not choose such a role, the Secretary of the Department of Health and Human Services will ensure that the mammography available in those States will be of acceptable quality.

Sanctions are provided in this legislation to ensure that misrepresentation, falsification of information provided to the program, or provision of care in violation of the program will not be tolerated.

It is also my hope that the Department of Veterans Affairs will adopt these standards to provide uniform protection to American women. I do not believe we should have a double standard. America's women veterans should be accorded the same assurances that the quality of this key diagnostic test.

Again, I am pleased that we were able to work out this legislation and I commend the Senator from Washington for his diligence in pursuing passage of this bill. We made several key changes that I believe will make this an even more effective piece of legislation. I am pleased to support it.

Mr. DURENBERGER. Mr. President, I would like to say how pleased I am as an original cosponsor of the Mammography Quality Standards Act that the Senate has passed this important legislation. It will go a long way toward assuring women that they are receiving quality mammography.

Regular mammography screening is the most effective way we have to reduce the number of women who die from breast cancer. Mammography can spot cancerous lesions the size of a speck of dust, allowing definitive diagnosis before the cancer grows. According to Dr. Bill Roper, director of the Centers for Disease Control, "Controlled studies have shown that a one-third reduction in mortality related to breast cancer is possible, but that is possible only if quality services are given."

And that's the reason this bill was introduced: to ensure that mammography done to find breast cancer is *quality* mammography. Mammography is difficult to do—much harder, for example, than x raying a solid structure such as a bone. The equipment must be carefully calibrated, the patient properly positioned and the images reviewed by physicians particularly skilled in interpretation.

There are now over 10,000 mammography facilities, ranging from teaching hospitals to doctors' offices and mobile clinics. Many of these participate in a voluntary accreditation program run by the American College of Radiology, and the college is to be commended for its leadership in this area. But it is troubling that 30 percent of facilities fail their first attempt at accreditation, especially since it is the better facilities who would want to be accredited.

This legislation builds on the college's work and sets up a nationwide system of mandatory certification that will replace the patchwork of mostly voluntary standards we now have. Starting in October 1994, the Department of Health and Human Services or particular States—if a State chooses to do so—will certify that facilities meet national quality standards.

One requirement for certification is accreditation of the facility by a State agency or a nonprofit organization such as the American College of Radiology; the accreditation process will involve randomized review of how well mammograms are taken and interpreted. Women today have no assurance when they walk into a mammogram facility that outside organizations have reviewed the quality of the facility's work, but when this legislation takes effect they will.

While I have been a strong supporter of quality mammography, I have been concerned that we not set up an unnecessarily bureaucratic regulatory regime. There is always a balance to be struck between regulation and overregulation, and I believe this legislation strikes that balance much better now than it did a year ago. I also am pleased that facilities have 2 years to prepare before this legislation takes effect and that several provisions have been included that give facilities flexibility in meeting the standards.

I commend Senator ADAMS as well as Senator HATCH, the ranking minority member of the Labor Committee, for the improvements in the bill.

Mr. President, throughout the health care system we need to be more concerned with quality and more concerned with outcomes. This legislation will improve the quality of mammography across the Nation and reduce the number of people who die unnecessarily from a disease that could have been treated—and that's the best outcome of all.

Mr. RIEGLE. Mr. President, I rise today in support of the Breast Cancer Screening Safety Act, S. 1777. The mammography screening test is an excellent tool for early detection of breast cancer. Survival rates for women with breast cancer increase dramatically with early detection. But without proper maintenance of the mammography equipment, trained technicians and professional interpretation of the mammogram, the test is of compromised value.

The Breast Cancer Screening Safety Act will create national standards that will assure high quality mammography screening tests. This legislation will provide States the resources to develop and administer quality assurance programs. I am especially pleased that Senator ADAMS has added provisions to this legislation to provide states, like Michigan, with the adequate financial and technical resources to meet these new standards. This was done, in part, to address the concerns constituents from my home state of Michigan had expressed.

Mr. President, the woman of Michigan are fortunate to live in a State that has been a leader in ensuring high quality mammography screening. Michigan has one of the highest professional standards for mammography equipment, technicians, and the interpretation of mammography screens in the Nation. More importantly, Michigan has taken steps, by committing the resources and the staff necessary to periodically inspect all the Michigan facilities, to endorse these high standards. It is time that national standards be adopted and enforced so women across this Nation can be assured of receiving as high a quality mammogram as the women of Michigan enjoy.

Mr. President, I would also like to praise the work of Michigan State Representative Maxine Berman and the Michigan Department of Public Health for leading the way in quality assurance for mammography screening tests. Representative Berman early on recognized the need to take legislative action to ensure the safety and accuracy of mammography screenings. She has testified in support of the bill. Her pioneering efforts at the State level, in close cooperation with the Michigan Department of Public Health, has brought this important public health concern to national focus. I also consulted with several health officials in Michigan's Department of Public Health, who have taken a lead on assuring mammography exams, and they too enthusiastically support the Breast Cancer Screening Safety Act.

I urge my colleagues to support passage of the Breast Cancer Screening Safety Act so that women across the country will be assured of high quality mammography screening exams. I also commend the efforts of Senator ADAMS in pushing forward this important legislation.

Mr. D'AMATO. Mr. President, I rise today to support the passage of S. 1777, the Breast Cancer Screening Safety Act of 1991. This bill addresses the urgent need for expanded access to quality mammography screening for all American women.

Expanding access to mammography screening and ensuring that such screenings meet the highest standards of quality is vital to reducing the unacceptably high death rate associated with breast cancer in this country. It is estimated that in 1992, 180,000 women will be diagnosed with breast cancer, and 46,000 women will die from the disease. Breast cancer is the leading cause of cancer death among women ages 35–52 in the United States.

Mr. President, I and many of my colleagues have worked hard this year in a bipartisan effort to provide sufficient funding to speed research on effective treatments for breast cancer. I and several of my colleagues have also successfully fought for increased funding for the Centers for Disease Control's prevention programs for breast and cervical cancers. Increased research funding in combination with increased prevention funding can make a real difference in fighting the war against breast cancer.

Next to a cure, at this time, our best defense against this horrible disease is early detection and treatment. Such early detection, through regular mammography screening, can, according to the Center for Disease Control, reduce breast cancer mortality by 30 to 40 percent for women aged 50 and older.

Unfortunately, far too few American women receive early cancer detection tests on a regular basis. In 1987, only 25 percent of women over age 50 reported having a mammogram within the preceding 2 years. We need to encourage and facilitate increased use of these tests by American women.

S. 1777 establishes badly needed national quality standards for mammography to assure that every mammogram a woman receives is safe and accurate. The need to establish national standards was underscored by the findings of a recent General Accounting Office report which found that existing professional standards are not uniformly followed at many screening facilities. The same study found a need for strong Federal standards to assure the quality of mammography screening, and sufficient legal mechanisms to enforce them. S. 1777 addresses this need by requiring the Secretary of Health and Human Services to develop national quality standards in the areas of equipment, personnel, oversight, quality control, and enforcement. I commend my colleague from Washington, Senator ADAMS, for introducing and steering this bill through the legislative process. I am convinced that bill, by improving the quality of mammography screening, will surely save numerous lives.

Mr. President, we know that one in every nine American women will develop breast cancer at some point in her life. We need to guarantee these women access to the best preventive health care available. S. 1777 will help us do just that. I encourage my colleagues to join me in voting for this bill.

Mr. GRASSLEY. Mr. President, I am proud to be a cosponsor of the Mammography Quality Standards Act. It is fitting that the Senate will pass this legislation on the eve of Breast Cancer Awareness month.

Over the last 20 years, the risk of developing breast cancer has increased dramatically. In 1990, 1 woman in 10 could expect to develop breast cancer in her lifetime. This year, a woman's risk of developing breast cancer has increased to one in nine. This means that there will be 175,000 newly diagnosed cases of breast cancer this year alone.

Fortunately, we have determined that early detection of breast cancer can dramatically increase a woman's chance of defeating breast cancer. It is, therefore, vital that women are aware of the prevalence of the disease and their vulnerability to developing it. I am painfully aware of the need to increase public awareness about breast cancer as a result of my wife, Barbara's, personal victory over breast cancer several years ago. We believe that early detection through a routine mammogram saved Barbara's life and is the key to saving the lives of other women who develop the disease.

Although public awareness is important, it is also important that women are screened routinely for breast cancer. The goal of a mammogram is to produce a high quality image, which can be accurately interpreted to determine the presence of a cancerous lesion. This is a highly complex process which requires great precision. In order to obtain a good quality mammogram, obtained with a low radiation dose to the patient, a number of quality standards must be adhered to. Such quality standards include using dedicated equipment and employing qualified personnel.

A recent report by the General Accounting Office found that most of the features considered necessary for guaranteeing quality screening contribute significantly to the goal of obtaining good image quality with minimal risk to the patient. Because a mammogram is among the radiographic images most difficult to read, it must have optimal clarity. If image quality is poor or the interpretation is faulty, the interpreter may miss cancerous lesions. And on the other hand, a poor image or interpretation can lead to unnecessary testing and biopsies if normal tissue is misread as abnormal.

Surprisingly, there are no national, uniform, quality standards for mammography. Only a few States have enacted legislation establishing quality standards, and the only Federal standards applies to the Medicare Program. The only other standards that exist are voluntary standards developed by the American College of Radiology.

The Mammography Quality Standards Act would change this. The act directs the Secretary of Health and Human Services to develop standards which would apply to the equipment used in mammography and the personnel involved in the process. Facilities offering mammograms would have to apply for certification and would be inspected on an annual basis. The standards established by this bill will be an important step in assuring a good mammogram, and successfully contribute to future treatment.

Although we have made significant steps in detecting this disease and treating it, we still do not know what factors place a woman at risk. It is worrisome that the risk of developing breast cancer continues to grow. We need to continue to focus on research efforts and promoting public awareness. It is my hope that one day our daughters and granddaughters will not have to face the risk of this disease.

Mr. MCCAIN. Mr. President, I am pleased to join my colleague from Washington, Senator ADAMS, in proposing this amendment to establish standards for the performance of mammography services.

Mr. President, breast cancer has become the most common form of cancer for women in our society today. We have taken steps this year to increase the amount of money being spent on breast cancer research. But, until we have more knowledge about what causes breast cancer and whether it can be prevented, the best weapons we have are education, early detection and aggressive treatment.

One of the critical tools in the arsenal of early detection is regular screening mammograms. While we know that good, accurate mammograms have an 85- to 95-percent success rate as a tool in early detection, there is strong concern about the safety and accuracy of mammograms.

The problems uncovered with mammograms have been very serious. And, the effects of a faulty mammogram or interpretation can be catastrophic. For example, if the mammogram's image is faulty, a technician can miss cancerous lesions, thus resulting in delayed treatment and possibly an unwarranted mastectomy or death.

There are currently no minimum Federal, and few State, standards to assure the quality and accuracy of mammography. In fact, only 13 States have enacted legislation to establish quality assurance standards for mammography.

The amendment we are proposing today is virtually identical to legislation just reported from the Health and Human Resources Committee.

It has 10 major components.

First, it would establish national, uniform quality standards for mammography.

Second, it would require that facilities use only radiological equipment designed specifically for mammography.

Third, it would require that facilities employ certified radiologists to perform mammography.

Fourth, it would require that all facilities establish a quality assurance and control program to ensure the reliability, clarity, and accurate interpretation of mammography.

Fifth, it would require that all facilities use only qualified physicians to interpret the results of the mammogram.

Sixth, it would require that all facilities be inspected annually by qualified inspectors.

Seventh, it would require facilities to be accredited by an accrediting body approved by the Secretary.

Eighth, it would require that the Secretary establish tough sanctions on facilities that do not comply with certification requirements.

Ninth, it would permit States to become the accrediting body if they so choose—assuming that they comply with and adopt all of the standards.

And, tenth, it would provide funding to ensure that all facilities can be certified and inspected.

Mr. President, while I don't generally like the idea of legislating things like this from the Federal level, this is one area where an exception must be made. Given the critical nature of mammograms to the lives of women in America, it is essential that their accuracy be assured. The quality assurance that will result from this amendment, if it is adopted, will provide the type of certainty that all of us should not only expect, but demand, of those providing mammograms to our loved ones.

It is my hope that the Senate will adopt this important amendment, and that it will be accepted in conference. It is time that we assure the women of our Nation, and their loved one's, that they can place their confidence in this critical early detection tool.

PROVIDING THAT THE GEORGIA BAPTIST HOSPITAL COLLEGE OF NURSING BE DEEMED AS SATISFYING CERTAIN ACCREDITATION REQUIREMENTS

Mr. FORD. Mr. President, I ask unanimous consent that Senate proceed to the consideration of S. 3362, introduced earlier today by Senator FOWLER, making technical corrections in the Higher Education Act of 1965; that the bill be deemed read three times and passed; that the motion to reconsider be laid upon the table; and that any statements thereon appear in the RECORD as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

So, the bill (S. 3362) was deemed read the third time and passed, as follows:

S. 3362

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Notwithstanding the provisions of section 1201(a)(5) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)(5)), the Georgia Baptist Hospital College of Nursing shall be deemed as satisfying, for academic year 1992–1993, the accreditation requirements described in such section.

Mr. FOWLER. Mr. President, I rise today to introduce a bill which has been cleared on both sides and has no revenue impact at all, which will make a much-needed technical correction in order to prevent a gross inequity from occurring.

Georgia Baptist Hospital College of Nursing, an outstanding, 90-year old institution in my State, began transitioning from a 3-year diploma program to a 4-year baccalaureate program in 1988 and has been counseled throughout the entire process by both the State and Federal Departments of Education. Once the school began the formal transition, it submitted a program participation application to obtain Federal financial aid for its college of nursing students. This application was approved by the U.S. Department of Education in 1989. Based on this approval, the students have been eligible for and received Pell, SEOG, Stafford loans, PLUS/SLS, and other forms of Federal financial aid for both the diploma and baccalaureate programs.

In June of this year, the Department of Education notified the college that all of the students who had applied for financial aid and had that aid approved, were no longer eligible because Georgia Baptist Hospital College of Nursing is not yet accredited by the Southern Association of Colleges and Schools [SACS]. For those not familiar with this process, in order to receive Federal financial aid, schools must be accredited by their regional accrediting board. The problem for Georgia Baptist Hospital College of Nursing is that SACS will not consider a school for accreditation until that school graduates its first class. Georgia Baptist Hospital College of Nursing will graduate its first class in March 1993. The College of Nursing has received initial approval status by the Georgia Board of Nursing for continued operation annually since June 1989 but, as I stated earlier, the school needs SACS accreditation in order to be eligible for Federal financial aid.

This bill makes Georgia Baptist Hospital College of Nursing an eligible institution for purposes of receiving Federal financial aid for the 1992–93 academic year only. After that time, they will be considered an eligible institution for financial aid purposes under the Higher Education Act.

Mr. President, before I close let me add that Georgia Baptist Hospital College of Nursing has graduated over 5,000 nursing students since it opened its doors in 1902. The school has a zero default rate on its student loans which is something they can and should take great pride in. I do not have to remind my colleagues of the shortages we have in the nursing profession and what a vital role they play in our health care system. The loss of financial aid for these students is devastating to their families, the school and the nursing profession and I urge passage of this bill.

JOHN F. KENNEDY CENTER ACT AMENDMENTS OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 3363, a bill introduced earlier today by Senator MITCHELL reauthorizing the John F. Kennedy Center for the Performing Arts; that the bill be deemed read a third time and passed; that the motion to reconsider be laid upon the table; and that any statements thereon appear in the RECORD at the appropriate place as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

So, the bill (S. 3363) was deemed read the third time and passed, as follows:

S. 3363

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. BUREAU, BOARD OF TRUSTEES, AND ADVISORY COMMITTEE.

Section 2 of the John F. Kennedy Center Act (20 U.S.C. 76h) is amended—

(1) by redesignating subsections (a), (b), and (c) as subsections (b), (c), and (d);

(2) by inserting before subsection (b) (as redesignated in paragraph (1)) the following new subsection:

"(a) The Congress finds that—

"(1) the late John Fitzgerald Kennedy served with distinction as President of the United States, and as a Member of the Senate and the House of Representatives;

"(2) by the untimely death of John Fitzgerald Kennedy this Nation and the world have suffered a great loss;

"(3) the late John Fitzgerald Kennedy was particularly devoted to education and cultural understanding and the advancement of the performing arts;

"(4) it is fitting and proper that a living institution of the performing arts, designated as the National Center for the Performing Arts, named in the memory and honor of this great leader, shall serve as the sole national monument to his memory within the city of Washington and its environs;

"(5) such a living memorial serves all of the people of the United States by preserving, fostering, and transmitting the performing arts traditions of the people of this Nation and other countries by producing and presenting music, opera, theater, dance and other performing arts; and

"(6) such a living memorial should be housed in the John F. Kennedy Center for the Performing Arts, located in the District of Columbia.";

(3) in subsection (b) (as redesignated in paragraph (1))—

(A) in the first sentence, by inserting "as the National Center for the Performing Arts and as a living memorial to John Fitzgerald Kennedy," after "thereof"; and

(B) in the second sentence—

(i) by striking "Secretary of Health and Human Services" and inserting "Secretary of State"; and

(ii) by striking "Chairman of the District of Columbia Recreation Board" and inserting "Superintendent of Schools of the District of Columbia";

(4) by amending subsection (c) (as redesignated in paragraph (1)) to read as follows:

"(c) The general trustees shall be appointed by the President of the United States and each such trustee shall hold office as a member of the Board for a term of six years, except that—

"(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term;

"(2) a member shall continue to serve until such member's successor has been appointed; and

"(3) the term of office of a member appointed prior to the date of enactment of this subsection shall expire as designated at the time of appointment."; and

(5) in the last sentence of subsection (d) (as redesignated in paragraph (1)), by striking "him" and inserting "the member".

(6) EFFECTIVE DATE FOR CERTAIN APPOINTMENTS.—The appointments made pursuant to the amendments made by clauses (i) and (ii) of subparagraph (3)(B) of section 1 of this Act shall not commence until the expiration of the terms of the Secretary of Health and Human Services and the Chairman of the District of Columbia Recreation Board, respectively, serving as Trustees of the John F. Kennedy Center for the Performing Arts on the date of enactment of this Act.

SEC. 2. PRESENTATIONS, PROGRAMS, FACILITIES FOR ACTIVITIES, AND MEMORIAL IN HONOR OF THE LATE PRESIDENT; RESTRICTION ON ADDITIONAL MEMORIALS.

Subsection (a) of section 4 of the John F. Kennedy Center Act (20 U.S.C. 76j) is amended to read as follows:

"(a)(1) The Board shall—

"(A) present classical and contemporary music, opera, drama, dance and other performing arts from the United States and other countries;

"(B) promote and maintain the Center as the National Center for the Performing Arts by—

"(i) developing and maintaining, in consultation with the Secretary of Education and the heads of other Federal agencies involved in performing arts education, a leadership role in national performing arts education policy and programs, including developing and presenting original and innovative performing arts and educational programs for children, youth, families, adults and educators designed specifically to foster an appreciation and understanding of the performing arts;

"(ii) develop and maintain, in consultation with the Secretary of Education and the heads of other Federal agencies involved in performing arts education, a comprehensive and broad program for national and community outreach, including establishing model programs for adaptation by other presenting and educational institutions; and

"(iii) conducting joint initiatives with the national education and outreach programs of the Very Special Arts, an affiliate of the John F. Kennedy Center for the Performing Arts which has an established program for the identification, development and implementation of model programs and projects in the arts for disabled individuals;

"(C) in consultation with the Secretary of Education and the heads of other Federal agencies involved in performing arts education, strive to ensure that the John F. Kennedy Center for the Performing Arts education and outreach programs and policies meet the highest level of excellence and reflect the cultural diversity of the Nation;

"(D) provide facilities for other civic activities at the John F. Kennedy Center for the performing Arts;

"(E) provide within the John F. Kennedy Center for the Performing Arts a suitable memorial in honor of the late President; and

"(F) develop a comprehensive building needs plan for the existing features of the John F. Kennedy Center for the Performing Arts. This building needs plan shall not include expansion of the building or construction of a new building.

"(2)(A) The Board, in accordance with applicable law, may enter into contracts or other arrangements with, and make payments to, public agencies or private organizations or persons in order to carry out the Board's functions under this Act.

"(B) Notwithstanding any other provisions of law, a contract or other arrangement described in subparagraph (A) that is entered into for an environmental system, a protection system or a repair to or restoration of the John F. Kennedy Center for the Performing Arts may be negotiated with selected contractors and awarded on the basis of contractor qualifications as well as price.".

SEC. 3. TRUST FUNDS, OFFICERS AND EMPLOYEES, REVIEW OF BOARD ACTIONS.

Section 5 of the John F. Kennedy Center Act (20 U.S.C. 76k) is amended—

(1) in the first sentence of subsection (a), by striking "Smithsonian Institution" and inserting "John F. Kennedy Center for the Performing Arts, as a bureau of the Smithsonian Institution,";

(2) in subsection (b)—

(A) in the first sentence, by striking "director, an assistant director, and a secretary of the John F. Kennedy Center for the Performing Arts and of" and inserting "a Chairperson of the John F. Kennedy Center for the Performing Arts (hereinafter in this Act referred to as the 'Chairperson'), who shall serve as the chief executive officer of such Center, and a secretary of such Center. The Chairperson shall appoint"; and

(B) in the second sentence, by striking "director, assistant director," and inserting "Chairperson"; and

(3) by adding at the end the following new subsection:

"(d) The Secretary of the Interior and the Board shall enter into a cooperative agreement regarding major capital projects for the Center. Such cooperative agreement shall—

"(1) provide that the Board or the Board's designated representative shall plan, design, and construct all major capital projects at the John F. Kennedy Center for the Performing Arts; and

"(2) contain assurances that—

"(A) all planning, design, and construction of major capital projects shall be approved by the Secretary of the Interior or such Secretary's designee prior to commencement of such activities;

"(B) the Secretary of the Interior shall transfer to the Board or other entities from amounts available to such Secretary for the John F. Kennedy Center for the Performing Arts the funds necessary to carry out the activities described in subparagraph (A) in accordance with the terms of such cooperative agreement; and

"(C) the Board shall report quarterly to the Secretary of the Interior or such Secretary's designee regarding the progress of all planning, design, and construction performed pursuant to such cooperative agreement.".

SEC. 4. OFFICIAL SEAL, BOARD VACANCIES AND QUORUM, TRUSTEE POWERS AND OBLIGATIONS, REPORTS, SUPPORT SERVICES, AND REVIEW AND AUDIT.

Section 6 of the John F. Kennedy Center Act (20 U.S.C. 76l) is amended—

(1) in subsection (c)—

(A) by striking "its" and inserting "the Board's"; and

(B) by striking "it" and inserting "the Board";

(2) in subsection (e)—

(A) by striking the title and inserting "MAINTENANCE, REPAIR, AND SECURITY SERVICES.—";

(B) by striking "alteration of the building" and all that follows in paragraph (1) and inserting "security services.";

(C) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(D) by inserting after paragraph (1) the following new paragraph:

"(2) SPECIAL RULE.—The Board, with the concurrence of the Secretary of the Interior or such Secretary's designee, shall designate the services to be performed pursuant to paragraph (1) in order to ensure that such services will meet the requirements for high quality operations, except that in no event shall the Board require the expenditure of funds in excess of those appropriated pursuant to the authority of section 13(b)."; and

(3) in paragraph (3) (as redesignated in subparagraph (2)(C) of section 4 of this Act), by adding at the end the following new sentence: "Such agreement shall be reviewed and updated, if necessary, every five years.".

SEC. 5. TECHNICAL AMENDMENT.

Section 10 of the John F. Kennedy Center Act (20 U.S.C. 76p) is amended—

(1) by striking "he" and inserting "the Secretary"; and

(2) by striking "his" and inserting "the Secretary's".

SEC. 6. DEFINITIONS AND AUTHORIZATION OF APPROPRIATIONS.

The John F. Kennedy Center Act (20 U.S.C. 76h et seq.) is amended by inserting at the end the following new sections (with section 12 being codified at 20 U.S.C. 76r, and section 13 being codified at 20 U.S.C. 76s):

"SEC. 12. DEFINITIONS.

"For the purpose of this Act—

"(1) the term 'capital projects' means capital repairs, replacements, improvements, rehabilitations, alterations, and modifications to the existing features of the John F. Kennedy Center for the Performing Arts building and all existing features of interior and exterior Center spaces, including the existing theaters, garage, roadways, and walkways;

"(2) the term 'existing' means existing on the date of enactment of the John F. Kennedy Center Act Amendments of 1992; and

"(3) the term 'maintenance, repair, and security services' means all services and equipment necessary or desirable to maintain and operate the existing features of the John F. Kennedy Center for the Performing Arts building and all existing interior and exterior building spaces, including the existing theaters, garage, roadways, and walkways, in a manner consistent with the requirements for high quality operations as determined by the concurrence of the Board and the Secretary of the Interior or the Secretary's designee and in accordance with the cooperative agreement described in section 6(e)(3) (as redesignated in subparagraph (2)(C) of section 4 of the John F. Kennedy Center Act Amendments of 1992).

"SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

"(a) Capital Projects.—There are authorized to be appropriated to the Secretary of the Interior $15,000,000 for fiscal year 1993 and each succeeding fiscal year through fiscal year 1997 to carry out subparagraph (F) of section 4(a)(1), subparagraph (A) of section 4(a)(2), and subsection (d) of section 5.

"(b) Maintenance, Repair, and Security.—There are authorized to be appropriated to the Secretary of the Interior $12,000,000 for fiscal year 1993 and each succeeding fiscal year through fiscal year 1997 to carry out paragraph (1) of section 6(e).

"(c) Education and Outreach Programs.—There are authorized to be appropriated to the Secretary of Education $4,000,000 for each of the fiscal years 1993 and 1994, and $5,000,000 for each of the fiscal years 1995, 1996, and 1997, to be granted to the Board to carry out subparagraphs (B) and (C) of section 4(a)(1).

"(d) Special Rule.—No funds appropriated pursuant to the authority of subsection (a) or (b) for capital projects or for maintenance, repair, and security services for existing theaters shall be used for performing arts related production expenses.".

SEC. 7.

This Act may be cited as the "John F. Kennedy Center Act Amendments of 1992".

WOMEN IN APPRENTICESHIP AND NONTRADITIONAL OCCUPATIONS ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate Labor Committee be discharged from further consideration of H.R. 3475, the Women in Apprenticeship and Nontraditional Occupations Act; that the Senate proceed to its immediate consideration; that the bill be deemed read for a third time and passed; that the motion to reconsider be laid upon the table; and that any statements appear at the appropriate place in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

So, the bill (H.R. 3475) was deemed read the third time and passed.

Mrs. KASSEBAUM. Mr. President, I rise today to ask my colleagues to support the passage of H.R. 3475, the Women in Apprenticeship and Nontraditional Occupations Act. This legislation is important because it would help to increase the retention of women in nontraditional occupations—jobs which pay women 30 percent more than conventional occupations in which women are employed. Jobs in the skilled trades and technical positions provide low-income women and welfare recipients with a true path to economic self-sufficiency. Just last week in my own State of Kansas, two women were placed by the Topeka YWCA in nontraditional manufacturing jobs at a starting wage of $16 per hour.

Unfortunately, women in male-dominated occupations often face a hostile work environment and pervasive sexual harassment from both supervisors and coworkers. This does not have to be the case. There are successful models for integrating women into male-dominated occupations. House Resolution 3475 is based on one such award-winning model—the female employment initiative of Stein & Co. Stein is a Chicago real estate developer which has made a concerted, aggressive effort to bring women into the construction trades on its job sites and to keep them there. Stein has had up to 85 women at a time working on a Federal construction site. Most construction sites have no women or one, at most, at any point in time.

Under H.R. 3475, the Department of Labor would provide technical assistance to employers and labor unions to assist them in successfully integrating women into male-dominated occupations. This bill is aimed at preventing the problems which typically arise in such occupations—minimizing the likelihood of sexual harassment and discrimination—and averting the need for employee grievances which are expensive and time consuming for both employer and employee.

In November 1991, the Senate passed the Nontraditional Employment for Women Act by unanimous consent. As an amendment to the Jobs Training Partnership Act, this legislation requires service-delivery areas to train women in nontraditional jobs. The bill was signed into law by President Bush. But what good is that training, if employers are not ready to integrate women into the workplace or if the barriers to getting and keeping the job are insurmountable? If we want the women who will be trained for nontraditional jobs through the Job Training Partnership Act to face a receptive work environment, we must ensure that the workplace will be prepared to receive them.

Ensuring that women work in nontraditional fields is as important to our economy as it is to women and their families. By the year 2000, the majority of new entrants into the labor force will be women and minorities. This Nation must ensure that women are working throughout all sectors of the economy. Our Nation's productivity and economic development will hinge upon our ability to redeploy women from the small number of traditionally female sectors to the broader range of occupations which make up our economy as a whole. The Women in Apprenticeship Occupations and Nontraditional Occupations Act is an important step in this direction.

PREVENTIVE HEALTH AMENDMENTS OF 1992 CONFERENCE REPORT

Mr. FORD. Mr. President, I submit a report of the committee of conference on H.R. 3635 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3635) to amend the Public Health Service Act to revise and extend the program of block grants for preventive health and health services, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the Record of October 5, 1992.)

Mr. KENNEDY. Mr. President, the legislation is a significant expansion of the Federal Government's role in health promotion and disease prevention in assuring a healthy America. The goals of this legislation are to provide resources to States to assist them in achieving the year 2000 national health objectives, develop initiatives for preventing disease, illness, and disability, and promote healthy lives through risk reduction and preventive measures for women, adolescents, and racial and ethnic minorities.

Programs and activities strengthened by this legislation include the preventive health and health services block grant, the Lead Poisoning Prevention Program, the Comprehensive Perinatal Care Program, the Breast and Cervical Cancer Screening Program, the Vaccine Injury Compensation Program, and the Bulk Purchase of Vaccines Program.

New programs authorized by this legislation include an Office of Adolescent

Health, the screening and early detection of prostate cancer, the prevention of cases of infertility from sexually transmitted diseases, a birth defects surveillance and epidemiology research program, and the establishment of a Centers for Disease Control Foundation.

The legislation revises and extends the preventive health and health services block grant. The authorization of the program is increased to $205 million for fiscal year 1993. It also increases the set-aside for services for rape victims and rape prevention to $7 million.

The legislation stresses that block grant funds be used to make progress toward the goals identified in the Department of Health and Human Services report, "Healthy People 2000: National Health Promotion and Disease Prevention Objectives." The funds are intended to improve the health status of the general population as well as work toward eliminating disparities between the general population and racial and ethnic minorities.

The legislation addresses the need to reduce the incidence and severity of diseases and conditions that disproportionately affect women and racial and ethnic minorities. Minorities and the poor continue to suffer poorer overall health status than the general population; many preventable diseases occur at higher rates, and access to quality health promotion and disease prevention services are inadequate. The States are also authorized to use block grant funds for the improvement of the health of women and the racial and ethnic minorities.

Adolescents need greater health services too. One in five of today's adolescents have at least one serious health problem. The future contributions of young people are too often lost because of the senseless violence of suicide and homicide, or the tragedy of malnutrition or chronic despair. This legislation establishes an Office of Adolescent Health. The Office will coordinate the diverse activities of Federal agencies as they related to adolescents. It will monitor the health status of adolescents, support training of health providers who work with adolescents, and support research projects relating to conditions and diseases of adolescents.

The legislation also establishes a prostate cancer prevention program at the Centers for Disease Control which will provide early detection, screening, and prevention services to high-risk and low-income individuals. The program will address the growing concern about the increasing number of men developing prostate cancer and the alarming death rate from that disease. The legislation will ensure that existing screening methods are evaluated, surveillance systems are improved, information is disseminated to health professionals, and research is expedited for the early detection of prostate cancer.

The legislation also establishes a program to screen and treat preventable cases of infertility arising from sexually transmitted diseases in women. The program was established in response to the growing concerns about the nationwide epidemic of chlamydia, its devastating impact on women, and with the hope that new methods for the diagnosis and treatment of this disease will allow progress to be made in controlling this epidemic and reducing the cases of infertility.

Lead poisoning is the No. 1 preventable environmental disease of children. Yet only meager efforts have been undertaken to eliminate lead exposure and detect lead toxicity. For more than a decade it has been known that even healthy appearing children with modest lead elevations show poor academic performance as evidenced by low IQ scores, impaired hearing, speech, and language development, and disruptive classroom behavior.

This legislation revises and extends programs for screening infants and children for lead poisoning. It also creates a program to educate health professionals, paraprofessionals, and the public on the importance of preventing lead poisoning, establishes an interagency task force to coordinate the efforts of Federal agencies to prevent lead poisoning, and supports the development of more improved and more cost-effective testing measures for detecting lead poisoning.

Birth defects, alone and in combination with low birthweight, are a leading cause of infant mortality. The legislation establishes a program to improve State collection and analysis of data of birth defects.

The legislation supports the expansion of the current Comprehensive Perinatal Care Program within the Office of Special Populations as a vital element in an overall strategy to reduce infant mortality. The legislation also addresses the concerns of community health centers on health care financing. It allows them flexibility using nongrant funds to maintain fiscal viability.

An outstanding preventive health initiative is currently being undertaken at the Medical Center of Central Massachusetts. It is establishing a new center as a model that will focus on providing preventive health care to the citizens of central Massachusetts. Of particular importance will be a comprehensive outreach program to provide preventive health care to women, children, and families. In addition to providing much needed preventive health services to the Worcester region, the center will serve as a national model for institutions seeking to offer on-site neonatal and gynecological services, and family practice services.

The current measure builds on the strengths of existing law and enhances the Federal-State partnership in promoting health and preventing disease and disability. With this legislation, we take a major step toward better health care for millions of our citizens, and I urge the Senate to approve it.

Mr. HARKIN. Mr. President, I rise in strong support of the conference report accompanying H.R. 3635, the Preventive Health Amendments of 1992. I want to commend the distinguished chairman of the Labor and Human Resources Committee, Senator KENNEDY, for his continuing leadership in efforts to improve the health care available to Americans. I also want to thank him and his excellent staff for their great work and commitment to bring H.R. 3635 to this point. I was very pleased to have had the opportunity to join him as a conferee on this measure. The conference agreement, while not everything that I would have wanted, includes a major package of health promotion and disease prevention initiatives and is among the most important pieces of health legislation we will approve this session.

Mr. President, as I have said may times, I believe that the most fundamental flaw in our health care system today is its preoccupation with patching and mending and its virtual neglect of prevention and health promotion. What we really have is not a health care system but a sick care system. This year we will spend billions of dollars to treat diseases and disabilities that could have been prevented or caught at an earlier stage. Yet, only a tiny fraction of our health care budget is spend on keeping people healthy and preventing disease and disability. As a result of this flaw in our national health policy, not only are health costs increased, but the quality and length of the lives of many Americans are needlessly reduced. We need to overhaul our sick care system into an American health care systems of which we can all be proud. The conference agreement before the Senate today takes us an important step further toward completing that task.

At the beginning of this Congress, I introduced a package of seven bills, which I call the Prevention First, designed to begin reordering our health care priorities towards commonsense prevention. S. 510, the Older Americans Disease Prevention and Health Promotion Act, which provides for a national program to expand access to health promotion services to senior citizens at senior centers, congregate meal sites and through the Meals-on-Wheels Program, was recently signed into law as part of the Older Americans Act Amendments last month. I am very pleased that a number of other components of my Prevention First initiative and other suggestions are contained in this bill.

A major component of the conference agreement is its reauthorization of the preventative health and health services block grant. This important program is the backbone of State and local public health and prevention efforts. It funds a full range of key disease prevention and health promotion services provided to Americans in every State and locality—from hypertension screening, to health education, to breast cancer screening to smoking cessation programs. H.R. 3635 would expand and strengthen this program, building upon my legislation of last Congress, the Health Objectives 2000 Act. A revised version of this bill, the Year 2000 Health Objectives Planning Act was signed into law by the President and helped pave the way for implementation of the National Health Promotion and Disease Prevention Objectives for the Year 2000.

The conference report before us provides increased capacity and resources to States and localities to assist them in achieveing the Year 2000 National Health Objectives, addressing improvements in health status, risk reduction, public and professional awareness, health services and protective measures, and surveillance and evaluations. Second, it creates and develops an effective partnership of Federal, State, and local health agencies, voluntary health organizations, and other health groups, including minority community-based organizations, to develop initiatives for preventing disease and disability. These provisions will greatly improve not only the preventive health services block grant, but the efficiency and effectiveness of our public health system in general as well.

The conference agreement also incorporates the provisions of S. 507, the Lead Poisoning Prevention Act, legislation I introduced on behalf of myself and a number of our colleagues. Inclusion of S. 507 attacks the No. 1 preventable disease among children—lead poisoning. Conservative estimates indicate that more than 3.5 million American children from all walks of life have dangerous levels of lead in their blood. And we know the devastating impact lead poisoning can have on our children. We know that even healthy-appearing children with modest lead elevations often display poor academic performance, low IQ scores, impaired hearing, unsatisfactory speech and language development, and disruptive classroom behavior. A recent study found that lead poisoned children are seven times more likely to drop out of school before graduating from high school.

The costs of lead poisoning are staggering and the cost-effectiveness of screening for it is clear. The annual cost of remedial education and health care needed as a result of childhood lead poisoning alone totals over $1 billion. Screening and early detection for lead poisoning saves by more than 50-fold the immediate cost of treatment. Yet, there is a sorrowful lack of awareness regarding the perils of lead poisoning, the benefits of screening and the resulting preventive and treatment measures that can be taken to combat this problem.

The conference report attacks this problem by authorizing and expansion of support to States and localities to screen children, establishing a national education program to increase awareness among children, parents, teachers and health professionals about lead poisoning, developing a more cost effective accurate test to screen for lead poisoning, and finally to make certain that the actions of different Federal agencies responding to the problem of lead poisoning are properly coordinated. These steps will save lives and money.

Mr. President, the report before us also incorporates the provisions of S. 505, another component of my Prevention First legislation package. This bill would change the name of our nation's flagship Federal agency on prevention, the Centers for Disease Control [CDC], to the Centers for Disease Control and Prevention [CDC]. This change appropriately recognizes CDC's central role in our national efforts to prevent disease and disability and will give greater national visibility to these efforts. This simple change will also demonstrate our commitment to increasing the focus of our efforts in health care on prevention and elevate prevention to its appropriate high level within the structure of Government health care programs. I want to commend CDC for their strong work and commitment to improving the public health. I want to especially commend Dr. Bill Roper who I think is doing a find job heading up CDC and for his strong support for this change.

The agreement before us contains a number of other prevention-oriented initiatives. It will strengthen our efforts to reduce the rate of preventable injuries, infertility, and adolescent violence. Each of these are very important and would significantly contribute to improved health.

Mr. President, I have been placing top priority in my capacity as chairman of the Senate subcommittee that funds health, education and social services programs on programs that prevent disease and disability and promote health. In the fiscal year 1993 Labor, Health and Human Services Appropriations bill, given final approval by the Senate Saturday, we have provided significant increases in funding for prenatal care, chronic and environmental disease prevention, disability prevention, childhood immunizations and many other critical preventive programs. In the past 2 years alone, we have been able to increase funding for the prevention block grant by more than 50 percent, from $92 to $148 million. We have increased funding for lead poisoning prevention nearly fourfold, from $8 million to nearly $30 million. We have increased funding for the maternal and child health block grant by $78 million and increased funding for childhood immunizations by nearly 50 percent, from $217 to $341 million.

So through these appropriations and through adoption of this authorizing legislation, we are making a downpayment on what needs to be done to turn our sick care system into an American health care system of which we can be proud. We will take further steps next year to assure that all Americans are guaranteed access to quality health and long-term care at a price they can afford. I will be working to assure that preventive measures are at the centerpiece of these efforts.

Mr. President, I urge prompt passage of this conference report and hope that we can move without hesitation to send it to the President for final approval.

Mr. FORD. Mr. President, I ask unanimous consent that the conference report be agreed to; that the motion to reconsider be laid upon the table; and that any statements thereon appear in the RECORD at the appropriate place as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

So, the conference report was agreed to.

HARD WORK IS THE PROCESS OF THE SENATE

Mr. SIMPSON. Mr. President, I want to thank my friend from Kentucky for that abbreviated version and thank the Chair for alacrity and swiftness in recognizing our efforts here in a most extraordinary way. The exchanges of the friend of Kentucky and my own do not often appear reported in the RECORD, nor would they make light evening reading sometimes.

I enjoy working with him. We work with vigor and loyalty to our leaders and try to promote the flow of the Senate's business as best we can so that the Senate might work its will, as the senior colleague and the most respected colleague from West Virginia often says. That is what Senator FORD and I try to do in our work in our own unique way. We disagree vigorously sometimes, but his word, indeed, is his bond.

Mr. FORD. I thank my good friend.

Mr. President, I thank you for your indulgence here and ability.

So that those who are watching might understand, a great deal of work, long hours, several days have gone into working out agreements on bills that were developed in the House and sent here or developed in the Senate and sent over there. Some were conference reports. Other were negotiations between Senators to bring it to a point where we have that agreement.

What we have seen here today between Senator SIMPSON from Wyoming and myself has been the culmination of all that hard work, which is the process of the Senate. These are unanimous-consent agreements. There is a long, tough trail sometimes to get to that point. There is a lot of give and take. It is given in the best interest of our constituency as it relates to the efficiency of the Senate. It all comes down to one point where we are able to make it work.

I again appreciate the kind words of my friend. I do not imagine the day is over yet. As the Senator says, we are getting ready to hear the dean of all parliamentary procedure and rules of the Senate and an individual who was honored today—not enough, but hopefully there will be some more—when certain items in his home State were agreed to to put his name on it.

Mr. President, I see we now have a couple of items we might be able to work through here.

Mr. SIMPSON. Mr. President, may I before the Senator from Kentucky propounds his unanimous-consent request, I think it is very important that the American people understand what he just said. Some of this material has been here since the first session of this Congress, and people have been working diligently on it. It is my experience after 25 years of legislating that legislating is pretty dry work, if done properly. It is not done for press releases and ribbon-cutting exercises. It is called legislating.

It is a very difficult process of learning to compromise an issue without compromising yourself, learning to do the Nation's business in a highly nondramatic way. What you have seen in this last hour is a true compilation of blood, sweat, and tears on the part of many persons on both sides of the aisle, on both sides of the Capitol building coming to fruition when the final give and take is a very simple one: Either you get it passed or you have to start all over. That is where a lot of give and take is made in the legislative process in the conference committees. It is unreported upon largely because it is unable to be described properly. But it is the essence of democracy.

MONUMENT HONORING THOMAS PAINE

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3364, introduced earlier today by Senator SYMMS, to authorize the construction of a monument in the District of Columbia, or its environs, to honor Thomas Paine; that the bill be deemed read the third time, passed, and the motion to reconsider be laid upon the table; and that any statements relating to passage of this item be included at the appropriate place in the CONGRESSIONAL RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So the bill (S. 3364) was deemed read the third time and passed, as follows:

S. 3364

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That effective as of the enactment of the Act entitled "An Act to authorize the construction of a monument in the District of Columbia or its environs to honor Thomas Paine, and for other purposes" (H.R. 1628, One Hundred Second Congress), such Act is amended to read as follows:

"SECTION 1. AUTHORITY TO ESTABLISH MEMORIAL.

"(a) IN GENERAL.—The Thomas Paine National Historical Association is authorized to establish a memorial on Federal land in the District of Columbia or its environs to honor Thomas Paine.

"(b) COMPLIANCE WITH STANDARDS FOR COMMEMORATIVE WORKS.—The establishment of the memorial shall be in accordance with the Act entitled 'An Act to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes' approved November 14, 1986 (40 U.S.C. 1001, et. seq.).

"SEC. 2. PAYMENT OF EXPENSES.

"The Thomas Paine National Historical Association shall be solely responsible for acceptance of contributions for, and payment of the expenses of, the establishment of the memorial. No Federal funds may be used to pay any expense of the establishment of the memorial.

"SEC. 3. DEPOSIT OF EXCESS FUNDS.

"If, upon payment of all expenses of the establishment of the memorial (including the maintenance and preservation amount provided for in section 8(b) of the Act referred to in section 1(b)), or upon expiration of the authority for the memorial under section 10(b) of that Act, there remains a balance of funds received for the establishment of the memorial, the Thomas Paine National Historical Association shall transmit the amount of the balance to the Secretary of the Treasury for deposit in the account provided for in section 8(b)(1) of that Act.".

THOMAS PAINE MEMORIAL PROJECT

Mr. SYMMS. Mr. President, our colleagues have heard me speak repeatedly about Thomas Paine. Sometimes my mission has been to generate support for the Thomas Paine Memorial Project, other times it has been to give a status report on our project.

Mr. President, today, I rise with a very special mission, and that is to bring to the attention of the Congress the extraordinary generosity of the private sector's support of a very memorable and important facet of this effort.

As many of our colleagues recall, on the evening of Thursday, September 24, we joined in the Presidents Room of the Capitol Building, EF–100, for a wonderful evening of great food and refreshments as we honored the lifelong contributions to the study of history by Dr. Thomas Clark, of Lexington, KY.

Dr. Clark is known throughout the Nation as a result of his work, and leadership as past president of the Organization of American Historians. In Kentucky, Dr. Clark is nearly beatified for his diligence as a teacher, author, editor, and friend—I have heard only secondhand reports about his golf game, however.

Many of our colleagues were joined in honoring Dr. Clark by Prof. Fred Friendly and his wife Ruth; Felix DeWeldon, who sculpted the magnificent Iwo Jima among others and Florence Stapleton, the past president of the Thomas Paine Association among others.

Mr. President, I want to remind our colleagues of the fact that the wonderful evening would not have been possible if the private sector had not reached deep into its pockets and donated to the worthy cause of honoring Dr. Clark and Thomas Paine.

These donors are: the Bingham Fund, a charitable organization established by Kentucky's Bingham family which was joined by Toyota, U.S.A. of Kentucky, Humana, Inc., Long John Silvers, and Texas Gas & Transmission in giving generously of their financial resources along with the Keith Stein Co. of Boise, ID, and one of my truest friends and my historian/ophthalmologist, Dr. Chuck Howarth.

Additionally, we were very fortunate to receive generous in-kind, support from the Henley Park Hotel here in Washington, Hiram Walker & Sons, Walton Thomas International of Washington, Schneider's of Capitol Hill, Broadbent Meats who supplied that wonderful ham all the way from Cadiz, KY, Premier Beverage of Tampa, FL, and of course Kentucky's Maker's Mark Distillery.

Mr. President, without generosity of these people and the hard work of people like Shirley Felix of the Capitol Catering Office, Karen Portik and Celeste Farmer of the Senate Republican Conference, and Jeremy Chou and Trevor Norris of my staff, this very memorable evening would not have taken place.

Mr. President, with an expression of my deep appreciation to each of these people, I yield the floor.

Mr. President, I ask unanimous consent that the supportive letter regarding Thomas Paine expressing the will of the Rules Committee be printed in the RECORD for the benefit of our colleagues and researchers in the future.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON RULES AND
ADMINISTRATION,
Washington, DC, October 2, 1992.

JOHN G. PARSONS,
Chairman, National Capital Memorial Commission, Washington, DC.

DEAR MR. PARSONS: Congress has passed H.R. 1628, a bill to authorize the construction of a memorial to Thomas Paine, and the President is expected to sign the bill soon. We hope that the Commission will consider promptly this authorization.

In the legislative review of this authorization, there was strong support in both Houses to permit its placement on the Capitol Grounds. In fact there were 78 Senate cosponsors of a resolution proposing such a location. There is, however, a long and strong sentiment that no more memorials be placed on the Capitol Grounds. For that reason, Congress chose to authorize the erection of the monument in the District of Columbia as set forth in this bill.

A memorial to Thomas Paine has strong support in Congress and across America. In keeping with that sentiment, we are writing to urge the Commission to work with The Thomas Paine National Historical Association to select a suitable location within the District to assure that this monument will be erected in a place of dignity and prominence appropriate to a person who played such an important role in the history of this Nation.

We look forward to the day when our Committee, and the Congress, has the opportunity to review the site selected by the Commission and pass the necessary legislation to authorize the issuance of a building permit. It is time to put an end to the capital city's silence on the contributions of Thomas Paine.

Sincerely,

TED STEVENS,
Ranking Republican Member,
WENDELL H. FORD,
Chairman.

EXTENSION OF NATIONAL AIR AND SPACE MUSEUM

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of calendar No. 258, S. 289.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 289) to authorize the Board of Regents of the Smithsonian Institution to plan and design an extension of the National Air and Space Museum at Washington Dulles International Airport, and for other purposes.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Rules and Administration, with an amendment.

On page 2, line 5, strike "1" and insert in lieu thereof "2". So as to make the bill read:

S. 289

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Board of Regents of the Smithsonian Institution is authorized to plan and design an extension of the National Air and Space Museum at Washington Dulles International Airport.

SEC. 2. Effective October 1, 1992, there is authorized to be appropriated to the Board of Regents of the Smithsonian Institution $9,000,000 to carry out the purposes of this Act.

AMENDMENT NO. 3427

(Purpose: To designate an appropriate public area within the extension of the National Air and Space Museum, Washington Dulles International Airport, to honor Edwin Jacob Garn)

Mr. SIMPSON. Mr. President, I send an amendment on behalf of Senator WARNER to the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. Simpson], for Mr. Warner, proposes an amendment numbered 3427.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 4, immediately after the period, add the following: "The Board of Regents of the Smithsonian Institution shall designate and name an appropriate public area within such extension to honor Edwin Jacob Garn, currently a member of the Board of Regents, Smithsonian Institution, having served since 1981, and the first Member of Congress to fly in space while serving as a Member.".

The ACTING PRESIDENT pro tempore. The question is on agreeing to the amendment.

The amendment (No. 3427) was agreed to.

Mr. GARN. Mr. President, S. 289 reflects the need of the Smithsonian to provide a replacement facility for the inadequate and outmoded structures near Suitland, MD. That facility currently houses the restoration laboratory, exhibition production and maintenance services, archives, and storage functions of the National Air and Space Museum, which cannot be stored in the Museum's existing building on the Mall. To meet these requirements, it is important to extend those functions at a nearby location while relying on nonappropriated sources of funding to a major extent.

On at least six occasions over the past 9 years, the Board of Regents of the Smithsonian Institution has recommended that an extension of the National Air and Space Museum be constructed at Washington Dulles International Airport so the Museum may continue to fulfill its historic mandate to "memorialize the national development of aviation and space flight * * *." Twice before authorizing legislation has passed the Senate, only to fail in the House.

The existing National Air and Space Museum on the Mall is the most popular museum in the world. Its approval stems from the manner in which its artifacts, from the Wright Flyer to the *Pioneer 10* spacecraft, are exhibited to the public, as well as from the fact that the American people are captivated by the idea of flight and space exploration.

The crucial matter of preserving a collection is the heart of any museum's functions. In spite of the wonderful job that is currently being done, it is obvious that the present site of the museum's restoration and preservation activities, the Paul E. Garber facility at Suitland, is totally inadequate for the existing collection, and absolutely unsuitable for the needs of the future.

The icons of air and space are large: The prototype Boeing 707—whch introduced the commercial jet age, generated billions of dollars for U.S. workers and investors, and shrank the world—should be available as an example of our aviation heritage. But it is too large for the Mall Museum. The space shuttle *Enterprise*—which I was pleased to help obtain for the Smithsonian—should be available for close inspection. The speedy and mysterious SR–71 *Blackbird* is also awaiting exhibit space, as are other examples of our achievements. These machines are too large to be exhibited in the museum on the Mall; indeed, most of them cannot even be disassembled for transportation to the Mall. The Regents of the Smithsonian Institution believe the best location is at nearby Dulles International Airport.

I am aware that there are those who would like to disperse the Air and Space Museum to the many corners of the land, but I believe that bridge has already been crossed in the numerous studies within and without the Smithsonian Institution, and by the many decisions of the Board of Regents pursuant to its statutory authority. Under the accepted criteria the decisions always and unequivocally designated Dulles International Airport as the site of the extension. I recognize that there is room for regional air and space museums, and I am committed to assist and foster these developments. But I believe there should be but one National Air and Space Museum, and that should be kept as compact and unified in display, administration and support as possible.

The Smithsonian does not seek to expand museum activities through extensive new construction that would be costly in itself and would require the long-term commitment of increased levels of Federal program and operating funds. Locating the extension at Washington Dulles International Airport, where a number of its aircraft are stored, will permit the new facility to be managed as part of the existing Museum, thereby avoiding the costs of an additional administrative and support superstructure.

The Dulles location also will permit the Institution to take advantage of the very generous financial package offered by the Commonwealth of Virginia, which several years ago enacted bonding authority for the extension. While a modest increment of Federal funding may be required for the overall project, the Smithsonian expects to explore a variety of financing options, including fund-raising in the private sector, to complement the Virginia offer and ease Federal requirements for its support.

The extension will provide adequate space and modern systems that will enhance the Institution's capacity to enter into collaborative programs with other organizations and share the resources of the National Air and Space Museum with communities beyond the immediate Washington, DC, area. Clearly, the utilization of emerging technologies is key to accelerating the distribution of information about the Museum's resources such as collections, exhibitions, and public programming, as well as to establishing real-time communications between organizations.

Mr. President, I ask that my colleagues approve S. 289 so that this important and thoughtful initiative can proceed.

Mr. ROBB. Mr. President, earlier today the Senate passed S. 289, Senator GARN's bill to authorize $9 million to design an extension of the National Air and Space Museum at Dulles International Airport. Because I was presiding over the Senate at the time, I was unable to speak to the issue. I would like to say just a few words at this time in support of the measure.

Passage of this bill today represents the fourth time that the Senate has approved legislation reaffirming the sound decision of the Smithsonian's Board of Regents to locate the much-needed annex to the Air and Space Museum at Dulles Airport. Just 4 days ago, in fact, the Senate passed the text of S. 289 as part of Senator SIMON's bill establishing a National African-American Memorial Museum—S. 523.

The Commonwealth of Virginia and I have been avid supporters of the Air and Space Museum extension at Dulles since the Smithsonian first broached the idea in 1983, while I was Governor. My distinguished successors in that office, Jerry Baliles and Doug Wilder, have maintained the Commonwealth's commitment to the project.

Unfortunately, attempts have been made over the years to tamper with the Regents' decision to site the annex at Dulles. The most recent attempt to do so came in the form of H.R. 3281, a bill to reopen the site selection process for the extension. I am pleased that the House overwhelmingly rejected that effort on September 30 by a vote of 317-106.

It is my hope that the recent House vote will put to rest the attempts to reopen what should be a settled question, and I wholeheartedly support the Senate's passage of Senator GARN's bill today.

The ACTING PRESIDENT pro tempore. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

The ACTING PRESIDENT pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 289

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Board of Regents of the Smithsonian Institution is authorized to plan and design an extension of the National Air and Space Museum at Washington Dulles International Airport. The Board of Regents of the Smithsonian Institution shall designate and name an appropriate public area within such extension to honor Edwin Jacob Garn, currently a member of the Board of Regents, Smithsonian Institution, having served since 1981, and the first Member of Congress to fly in space while serving as a Member.

SEC. 2. Effective October 1, 1992, there is authorized to be appropriated to the Board of Regents of the Smithsonian Institution $9,000,000 to carry out the purposes of this Act.

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

RECOMMENDATIONS OF FEDERAL COURTS STUDY COMMITTEE

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6185, a bill to implement the recommendations of the Federal Courts Study Committee, just received from the House; that the bill be deemed read the third time, passed and the motion to reconsider be laid upon the table; and that statements with respect to passing this bill appear at the appropriate place in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So the bill (H.R. 6185) was deemed read the third time and passed.

Mr. HEFLIN. Mr. President, I rise today to urge immediate passage of H.R. 6185, the Federal Courts Administration Act of 1992. This comprehensive legislation, which began as S. 1569 when I introduced it in the Senate over 1 year ago, would implement recommendations of the Federal Courts Study Committee and make other changes which are necessary to facilitate the operation of our Federal courts system.

The 100th Congress created within the Judicial Conference of the United States a 15-member Federal Courts Study Committee and directed it to "make a complete study of the courts of the United States and of the several States and transmit a report * * * on such study." The Federal Courts Study Committee included members of the Federal executive, legislative, and judicial branches and representatives from State governments, universities and private practice, all of whom worked toward the goal of developing a long-range plan for the judicial system. I was privileged to serve as a member of this committee, as did Senator GRASSLEY.

The 101st Congress saw the first phase of Federal Courts Study Committee legislative recommendations enacted into law as title III of the Judicial Improvements Act of 1990. H.R. 6185 incorporates additional recommendations of the Federal Courts Study Committee. These important provisions are as follows:

Section 101 would delegate authority to the Supreme Court, under the Rules Enabling Act, to define what constitutes a final decision; and to define circumstances in which orders and actions of district courts not otherwise subject to appeal under acts of Congress may be appealed to the courts of appeals.

Section 102 would provide jurisdiction for magistrate judges to revoke, modify or terminate the supervised release or probation of a defendant sentenced by a magistrate judge.

Section 103 would allow the Chief Justice of the United States, upon request, to designate and assign temporarily any circuit judge to another circuit.

Title II of H.R. 6185 addresses important needs and issues affecting the surviving spouses and dependents of Federal judges. This proposal would reduce the contribution of judges from 5 percent of salary to 2.2 percent of salary while in active service or while serving in senior or recalled status, and would set the rate of contribution at 3.5 percent of retirement salary for those judges leaving office. The reductions in the judges' contributions would attract more participants and extend protection to survivors of judges who otherwise would remain vulnerable to financial crises.

Titles III–VII of H.R. 6185 contain various judicial housekeeping items which were included at the request of the Judicial Conference of the United States. These sections focus on judicial financial administration; jury matters; judiciary personnel administration, benefits, and protections; and criminal administrative matters.

The legislation which originally passed the Senate (S. 1569) contained a provision, section 403, since deleted, dealing with compensation for loss or damage to personal property of jurors. It is our opinion that it is within the power of the Judicial Conference of the United States to delegate to the Administrative Office of the U.S. Courts the authority to pay for such losses, without the need for further legislation.

Moreover, section 602 of H.R. 6185 allows the Federal Judicial Center to work with other organizations to assist in the development of judicial systems in foreign countries. With new democracies forming all over the world, it is essential that our judicial branch officers and employees be authorized to share their expertise in judicial administration and the basic tenets of freedom that this country holds dear. I anticipate that there will be many beneficial developments from the efforts of the Federal Judicial Center, the Judicial Conference, and the Administrative Office of the U.S. Courts in this regard.

Title VIII of H.R. 6185 would reauthorize the State Justice Institute from 1993 to 1996. This reauthorization, which I strongly support, would continue the mission of the State Justice Institute to improve the administration of justice in our Nation's State court systems.

Title IX would improve the Federal claims litigation process before the U.S. Claims Court and assist the court in providing better and more efficient service to its litigants. It would also ensure fair treatment for the judges of the court by providing certain benefits equivalent to those available to other Federal trial judges.

Section 907, amending the Contract Disputes Act, is intended to make clear that the claim certification requirements of 41 United States Code, section 605 are not intended to be jurisdictional—in the sense of being an absolute prerequisite to court jurisdiction. Certification has always been intended to ensure that complete, clear, and honest claims are presented to Federal contracting officers, and this requirement remains: Contracting officers are not required to address claims that do not comply with the provisions of title 41, United States Code, section 605. However, a defect in the certification, discovered after a claim is in litigation, may be cured by the contractor to avoid repetition of the entire administrative claim process and waste of judicial or board resources. See generally *United States* v. *Grumman Aerospace Corp.*, 927 F.2d 575 (Fed. Cir. 1991); *Ball, Ball & Brosamer, Inc.* v. *United States*, 878 F.2d 1426 (Fed. Cir. 1986).

The term technically defective is intended to cover the full range of defects found by the courts that do not involve a substantive defect such as bad faith, fraud, or reckless and intentional disregard of the statutory certification requirements. Examples of technically defective certifications made curable by this amendment include certification language that is incomplete, failure to supply a certification with each document submitted as part of the claim when all claim documentation is not submitted simultaneously, missing certifications when two or more claims not requiring certification are deemed by the court or board to be a larger claim requiring certification, and certification by the wrong or incorrect representative of the contractor—when the person making the certification was duly authorized by the contractor to certify on its behalf. This list is not intended to be exclusive, but to illustrate that use of the word "technically" does not narrowly and unreasonably limit the scope of this amendment.

Contractors whose certifications are defective as the result of innocent mistake or inadvertence should not be penalized where their claims are otherwise meritorious and a good faith effort appears to have been made to provide a responsive certification in the first instance, including recertifications filed in response to contracting officer inquiries after the initial claim was filed. This amendment continues protection for the Government against false, bad faith, or fraudulent claims. But it is consistent with the goal of preventing wasteful or duplicative litigation by allowing a contractor to cure a defect after the case is before a court or board, and thus permitting the court or board to proceed to the merits of the litigation.

Finally, title X would provide a civil cause of action in Federal court for victims of terrorism. This provision has strong bipartisan support in the Congress, and I am pleased to support its inclusion here.

Mr. President, H.R. 6185 is the product of much effort on the part of many people. In particular, I would like to extend my deep gratitude to my colleagues on the Senate Judiciary Committee, especially Senators THURMOND and GRASSLEY. I would also like to thank Representative HUGHES, chairman of the House Judiciary Subcommittee on Intellectual Property and Judicial Administration, and Representative MOORHEAD, ranking minority member of the subcommittee and fellow Federal Courts Study Committee member. In addition, the staffs of these Members of Congress are to be commended for their fine work and dedication.

In formulating this Federal Courts Administration legislation, we have been mindful of the concerns of many parties expressing an interest. I feel that these efforts have produced a consensus bill which will benefit our Federal judiciary in many ways, for years to come.

Mr. GRASSLEY. Mr. President, I rise in support of final passage of H.R. 6185/S. 1569, the Federal courts bill, and ask that Senator HEFLIN add my name as a cosponsor of the bill.

A little more than 2 years ago, Senator HEFLIN and I were privileged to be members of the Federal Courts Study Committee. The committee issued an extensive report with recommendations for improving the Federal courts. We implemented some of those recommendations with a bill in 1990, and today we implement several more. We are empowering magistrates to make modifications in probation or supervised release, as well as making it easier for appeals court judges to be transferred temporarily to another circuit to accommodate heavier dockets.

There are many more good recommendations from the Federal Court Study Committee, including changes in prisoner litigation procedures, that have not yet been adopted. I hope that Senator HEFLIN and I will have the opportunity to continue working on the improvement of the Federal courts. It cannot be disputed that our courts are clogged and the judges need assistance with some reforms.

This bill also contains a series of recommendations from the Administrative Office of the U.S. Courts which will enable the courts to function more efficiently. And, in this bill, we have made needed changes in the Judicial Survivor Annuity Act, which will enable the families and survivors of judges to have a more rational benefit plan. I am generally cautious on salaries and benefits for Federal employees, and have long been a fighter against congressional pay raises. But this improvement will be a small initial cost to the Government, and the judges will be contributing to the plan. The result will be a better plan for the families of very important public servants—Federal judges.

We have also provided for some changes in the U.S. Claims Court, the court with jurisdiction over money disputes with the Federal Government. The most significant change is an improvement in the contractor certification procedure. Under the Contract Disputes Act, a contractor is required to certify a claim against the Government. Often, that certification—a technical form—can be the subject of extensive litigation. Under the changes provided in this bill, the claims court or the board of contract appeals may allow a certification to be corrected for technical defects at any time prior to a final decision, unless the defective certification was fraudulent, made in bad faith, or made with reckless or gross negligence. Some contractors sought more expansive changes in the claims certification requirement, but this change should relieve the claims court of needless and wasteful litigation over the validity of certifications. But it also preserves the Government's need for the certification requirement—much needed insurance against bad faith claims against the Government.

Finally, Mr. President, I am pleased that this bill incorporates my legislation to create a new civil action for American victims of terrorism. The tragedies of Pan Am 103 and the *Achilles Lauro* still burn in our minds. Those responsible have not been called to account for destroying precious American lives. This provision, the product of 3 years of effort, is now finally coming to fruition. American victims will be able to bring a claim against a terrorist group for money damages. The Justice Department had some concerns about protecting its criminal investigations in these kinds of cases. And we have been able to accommodate the Department's interests. After all, we agree that the first and best remedy is to bring these terrorists to justice in our courts of law. But often, the terrorists elude justice, as in the *Achilles Lauro* case where Leon Klinghoffer, an elderly American was callously murdered by PLO terrorists. And in the Pan Am 103 case, two Libyans have been indicted, but have not been apprehended. While this bill will not permit civil actions against sovereign leaders, it will allow the victims to pursue renegade terrorist organizations and their leaders, and go after the resource that keeps them in business—their money. We all hope that this new provision will not be invoked—that is, that there will not be American victims of terrorism. But in the event tragedy strikes, victims will be armed with this civil remedy.

FEDERAL COURTS ADMINISTRATION ACT OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1569.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1569) entitled "An Act to implement the recommendations of the Federal Courts Study Committee, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Courts Administration Act of 1992".

TITLE I—IMPLEMENTATION OF FEDERAL COURTS STUDY COMMITTEE RECOMMENDATIONS

SEC. 101. SUPREME COURT AUTHORITY TO PRESCRIBE RULES FOR APPEAL OF INTERLOCUTORY DECISIONS.

Section 1292 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(e) The Supreme Court may prescribe rules, in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under subsection (a), (b), (c), or (d).".

SEC. 102. ABOLITION OF TEMPORARY EMERGENCY COURT OF APPEALS.

(a) APPEALS UNDER ECONOMIC STABILIZATION ACT.—Section 211 of the Economic Stabilization Act of 1970 (Public Law 91–379; 84 Stat. 799) is amended by striking subsections (b) through (h) and inserting the following:

"(b) Appeals from orders or judgments entered by a district court of the United States in cases and controversies arising under this title shall be brought in the United States Court of Appeals for the Federal Circuit if the appeal is from a final decision of the district court or is an interlocutory appeal permitted under section 1292(c) of title 28, United States Code.".

(b) JUDICIAL REVIEW OF EMERGENCY ORDERS UNDER THE NATURAL GAS POLICY ACT.—Section 506(c) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3416(c)) is amended—

(1) in the first sentence, by striking "the Temporary Emergency Court of Appeals, established pursuant to section 211(b) of the Economic Stabilization Act of 1970, as amended," and inserting "the United States Court of Appeals for the Federal Circuit"; and

(2) by striking "Temporary Emergency Court of Appeals" each place it appears and inserting "United States Court of Appeals for the Federal Circuit".

(c) CONFORMING AMENDMENTS.—Section 1295(a) of title 28, United States Code, is amended—

(1) by striking "and" at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

"(11) of an appeal under section 211 of the Economic Stabilization Act of 1970;

"(12) of an appeal under section 5 of the Emergency Petroleum Allocation Act of 1973;

"(13) of an appeal under section 506(c) of the Natural Gas Policy Act of 1978; and

"(14) of an appeal under section 523 of the Energy Policy and Conservation Act.".

(d) ABOLITION OF COURT.—The Temporary Emergency Court of Appeals created by section 211(b) of the Economic Stabilization Act of 1970 is abolished, effective 6 months after the date of the enactment of this Act.

(e) PENDING CASES.—(1) Any appeal which, before the effective date of abolition described in subsection (d), is pending in the Temporary Emergency Court of Appeals but has not been submitted to a panel of such court as of that date shall be assigned to the United States Court of Appeals for the Federal Circuit as though the appeal had originally been filed in that court.

(2) Any case which, before the effective date of abolition described in subsection (d), has been submitted to a panel of the Temporary Emergency Court of Appeals and as to which the mandate has not been issued as of that date shall remain with that panel for all purposes and, notwithstanding the provisions of sections 291 and 292 of title 28, United States Code, that panel shall be assigned to the United States Court of Appeals for the Federal Circuit for the purpose of deciding such case.

SEC. 103. JURISDICTION OF MAGISTRATE JUDGES TO MODIFY OR REVOKE PROBATION OR SUPERVISED RELEASE AFTER IMPRISONMENT.

Section 3401 of title 18, United States Code, is amended—

(1) in subsection (d) by striking "and to revoke or reinstate the probation of any person granted probation by him." and inserting "and to revoke, modify, or reinstate the probation of any person granted probation by a magistrate judge."; and

(2) by adding at the end the following new subsections:

"(h) The magistrate judge shall have power to modify, revoke, or terminate supervised release of any person sentenced to a term of supervised release by a magistrate judge.

"(i) A district judge may designate a magistrate judge to conduct hearings to modify, revoke, or terminate supervised release, including evidentiary hearings, and to submit to the judge proposed findings of fact and recommendations for such modification, revocation, or termination by the judge, including, in the case of revocation, a recommended disposition under section 3583(e) of this title. The magistrate judge shall file his or her proposed findings and recommendations.".

SEC. 104. INTERCIRCUIT TRANSFERS.

Section 291(a) of title 28, United States Code, is amended to read as follows:

"(a) The Chief Justice of the United States may, in the public interest, designate and assign temporarily any circuit judge to act as circuit judge in another circuit upon request by the chief judge or circuit justice of such circuit.".

TITLE II—JUDICIAL SURVIVORS' ANNUITIES IMPROVEMENTS

SEC. 201. JUDICIAL SURVIVORS' ANNUITIES AMENDMENTS.

(a) ELECTION.—Section 376(a)(1) of title 28, United States Code, is amended in the matter following subparagraph (G)—

(1) by striking "or" at the end of clause (v); and

(2) by inserting before the semicolon at the end of clause (vi) ", or (vii) the date of the enactment of the Federal Courts Administration Act of 1992".

(b) CONTRIBUTIONS.—Section 376(b) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(b)";

(2) in the first sentence by striking "including any 'retirement salary', a sum equal to 5 percent of that salary." and inserting "a sum equal to 2.2 percent of that salary, and a sum equal to 3.5 percent of his or her retirement salary. The deduction from any retirement salary—

"(A) of a justice or judge of the United States retired from regular active service who is described in section 371(b)(1) of this title,

"(B) of a justice or judge of the United States retired under section 372(a) of this title who is willing and able to perform judicial duties in accordance with section 294 of this title,

"(C) of a judge of the United States Court of Federal Claims retired under section 178 (a) or (b) of this title who meets the requirements of section 178(d) of this title, or

"(D) of a judicial official on recall under section 155(b), 797, 373(c)(4), 375, or 636(h) of this title,

shall be an amount equal to 2.2 percent of retirement salary.";

(3) by redesignating all that follows the first sentence (as amended by paragraph (2) of this subsection) as paragraph (3) and inserting before such paragraph (3) the following new paragraph:

"(2) A judicial official who is not entitled to receive an immediate retirement salary upon leaving office but who is eligible to receive a deferred retirement salary on a later date shall file, within 90 days before leaving office, a written notification of his or her intention to remain within the purview of this section under such conditions and procedures as may be determined by the Director of the Administrative Office of the United States Courts. Every judicial official who files a written notification in accordance with this paragraph shall be deemed to consent to contribute, during the period before such a judicial official begins to receive his or her retirement salary, a sum equal to 3.5 percent of the deferred retirement salary which that judicial official is entitled to receive. Any judicial official who fails to file a written notification under this paragraph shall be deemed to have revoked his or her election under subsection (a) of this section."; and

(4) in paragraph (3), as redesignated by paragraph (3) of this subsection, by striking "so deducted and withheld from the salary of each such judicial official" and inserting "deducted and withheld from the salary of each judicial official under paragraphs (1) and (2) of this subsection".

(c) Deposits.—Section 376(d) of title 28, United States Code, is amended—

(1) in paragraph (1) by striking "5 percent" and inserting "3.5 percent"; and

(2) in paragraph (2) by striking "5 percent" and inserting "3.5 percent".

(d) Refund of Deposits.—Section 376(g) of title 28, United States Code, is amended to read as follows:

"(g) If any judicial official leaves office and is ineligible to receive a retirement salary or leaves office and is entitled to a deferred retirement salary but fails to make an election under subsection (b)(2) of this section, all amounts credited to his or her account established under subsection (e), together with interest at 4 percent per annum to December 31, 1947, and at 3 percent per annum thereafter, compounded on December 31 of each year, to the date of his or her relinquishment of office, minus a sum equal to 2.2 percent of salary for service while deductions were withheld under subsection (b) or for which a deposit was made by the judicial official under subsection (d), shall be returned to that judicial official in a lump-sum payment within a reasonable period of time following the date of his or her relinquishment of office. For the purposes of this section, a 'reasonable period of time' shall be presumed to be no longer than 1 year following the date upon which such judicial official relinquishes his or her office.".

(e) Payment of Annuities.—Section 376(h)(1) of title 28, United States Code, is amended by striking "or while receiving 'retirement salary,' " and inserting "while receiving retirement salary, or after filing an election and otherwise complying with the conditions under subsection (b)(2) of this section".

(f) Creditable Service.—Section 376(k) of title 28, United States Code, is amended—

(1) in paragraph (3) by striking "and" at the end;

(2) in paragraph (4) by striking the period and inserting ", and"; and

(3) by adding at the end the following new paragraph:

"(5) those years during which such judicial official had deductions withheld from his or her retirement salary in accordance with subsection (b)(1) or (2) of this section.".

(g) Computation of Annuity.—Section 376(l) of title 28, United States Code, is amended—

(1) in paragraph (1) by striking "(i) during those three years of such service in which his or her annual salary" and inserting "(i) during those three years of such service, or during those three years while receiving a retirement salary, in which his or her annual salary or retirement salary"; and

(2) in paragraph (1) by redesignating subparagraph (D) as subparagraph (E) and inserting after subparagraph (C) the following:

"(D) the number of years during which the judicial official had deductions withheld from his or her retirement salary under subsection (b) (1) or (2) of this section; plus".

(h) Termination.—Section 376 of title 28, United States Code, is amended by adding at the end of that section the following new subsection:

"(v) Subject to the terms of a decree, court order, or agreement described in subsection (t)(1), if any judicial official ceases to be married after making the election under subsection (a), he or she may revoke such election in writing by notifying the Director of the Administrative Office of the United States Courts. The judicial official shall also notify any spouse or former spouse of the application for revocation in accordance with such requirements as the Director of the Administrative Office of the United States Courts shall by regulation prescribe. The Director may provide under such regulations that the notification requirement may be waived with respect to a spouse or former spouse if the judicial official establishes to the satisfaction of the Director that the whereabouts of such spouse or former spouse cannot be determined.".

(i) Adjustment of Contribution Rate.—Section 376 of title 28, United States Code, is amended by adding at the end of that section the following new subsection:

"(w) The Comptroller General of the United States shall, at the end of each 3-fiscal year period, determine whether the contributions by judicial officials under subsection (b) during that 3-year period accounted for 50 percent of the costs of the Judicial Survivors' Annuities Fund and if not, then what adjustments in the contribution rates under subsection (b) should be made to achieve that 50 percent figure. The Comptroller General shall report the results of each determination under this subsection to the Congress.".

(j) Credit for Prior Contributions at Higher Rate.—Notwithstanding any other provision of law, the contribution under section 376(b) (1) or (2) of title 28, United States Code (as amended by this section), of any judicial official who is within the purview of such section 376 on the effective date of this title shall be reduced by 0.5 percent for a period of time equal to the number of years of service for which the judicial official has made contributions or deposits before the enactment of this Act to the credit of the Judicial Survivors' Annuities Fund or for 18 months, whichever is less, if such contributions or deposits were never returned to the judicial official. For purposes of this subsection, the term "years" shall mean full years and twelfth parts thereof.

(k) Redeposit of Prior Contributions.—Any judicial official as defined in section 376(a)(1) of title 28, United States Code, who makes an election under section 376(b) of title 28, United States Code, may make a redeposit, as required by section 7 of Public Law 94–554 and section 2(c)(2) of Public Law 99–336, to the credit of the Judicial Survivors' Annuities Fund in installments, in such amounts and under such conditions as may be determined in each instance by the Director of the Administrative Office of the United States Courts. If a judicial official elects to make a redeposit in installments—

(1) the Director shall require that the first installment payment made shall be in an amount no smaller than the last 18 months of salary deductions or deposits previously returned to that judicial official in a lump-sum payment; and

(2) the election under section 376(b) of title 28, United States Code, shall be effective upon payment of the first such installment.

(l) Audit by GAO.—The Comptroller General shall—

(1) conduct an audit of the judicial survivors annuities program under section 376 of title 28, United States Code, for the 3-year period beginning on the date of the enactment of this Act; and

(2) report to the Congress, not later than 60 days after the end of that 3-year period, on the results of such audit, comparing such program to other survivors annuities programs within the Federal Government.

SEC. 202. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE III—JUDICIAL FINANCIAL ADMINISTRATION

SEC. 301. AWARD OF FILING FEES IN FAVOR OF THE UNITED STATES.

(a) Actions Commenced by the United States.—Section 2412(a) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following new paragraph:

"(2) A judgment for costs, when awarded in favor of the United States in an action brought by the United States, may include an amount equal to the filing fee prescribed under section 1914(a) of this title. The preceding sentence shall not be construed as requiring the United States to pay any filing fee.".

(b) Disposition of Filing Fees.—Section 1931 of title 28, United States Code, is amended by striking "The following" and all that follows through the end and inserting the following:

"(a) Of the amounts paid to the clerk of court as a fee under section 1914(a) or as part of a judgment for costs under section 2412(a)(2) of this title, $60 shall be deposited into a special fund of the Treasury to be available to offset funds appropriated for the operation and maintenance of the courts of the United States.

"(b) If the court authorizes a fee under section 1914(a) or an amount included in a judgment for costs under section 2412(a)(2) of this title of less than $120, the entire fee or amount, up to $60, shall be deposited into the special fund provided in this section.".

TITLE IV—JURY MATTERS

SEC. 401. JURY SELECTION.

Section 1863(b)(2) of title 28, United States Code, is amended by adding at the end the following: "The plan for the district of Massachusetts may require the names of prospective jurors to be selected from the resident list provided for in chapter 234A, Massachusetts General Laws, or comparable authority, rather than from voter lists.".

SEC. 402. GRAND JURY TRAVEL.

Section 1871(c) of title 28, United States Code, is amended by adding at the end the following new paragraph:

"(5) A grand juror who travels to district court pursuant to a summons may be paid the travel expenses provided under this section or, under guidelines established by the Judicial Conference, the actual reasonable costs of travel by aircraft when travel by other means is not feasible and when certified by the chief judge of the district court in which the grand juror serves.".

SEC. 403. PERMANENT AUTHORIZATION FOR OPTIONAL USE OF NEW JURY SELECTION PROCESS.

(a) Authority To Use One-Step Procedure.—Section 1878 of title 28, United States Code, is amended to read as follows:

"§ 1878. Optional use of a one-step summoning and qualification procedure

"(a) At the option of each district court, jurors may be summoned and qualified in a single procedure, if the court's jury selection plan so authorizes, in lieu of the two separate procedures otherwise provided for by this chapter. Courts shall ensure that a one-step summoning and qualification procedure conducted under this section does not violate the policies and objectives set forth in sections 1861 and 1862 of this title.

"(b) Jury selection conducted under this section shall be subject to challenge under section 1867 of this title for substantial failure to comply with the provisions of this title in selecting the jury. However, no challenge under section 1867 of this title shall lie solely on the basis that a jury was selected in accordance with a one-step summoning and qualification procedure authorized by this section.".

(b) CONFORMING AMENDMENT.—The item relating to section 1878 in the table of sections for chapter 121 is amended to read as follows:

"1878. Optional use of a one-step summoning and qualification procedure.".

(c) SAVINGS PROVISION.—For courts participating in the experiment authorized under section 1878 of title 28, United States Code (as in effect before the effective date of this section), the amendment made by subsection (a) of this section shall be effective on and after January 1, 1992.

TITLE V—MISCELLANEOUS

SEC. 501. PRETERMISSION OF REGULAR SESSIONS OF COURT OF APPEALS.

Section 48(c) of title 28, United States Code, is amended by striking ", with the consent of the Judicial Conference of the United States,".

SEC. 502. REPORTS AND STATISTICS.

(a) ELIMINATION OF DUPLICATIVE REPORTING REQUIREMENT.—After January 1, 1992, the Director of the Administrative Office of the United States Courts is not required to send a report under section 1121(a) of Public Law 95-630 (12 U.S.C. 3421(a)).

(b) TRANSFER OF REPORTING DUTY TO ADMINISTERING AGENCY.—Section 2412(d)(5) of title 28, United States Code, is amended by striking "The Director" and all that follows through "this title," and inserting "The Attorney General shall report annually to the Congress on".

(c) EXTENSION FOR JUDICIAL CENTER REPORT.—Section 302(c) of the Judicial Improvements Act of 1990 (Public Law 101-650; 104 Stat. 5104) is amended by striking "2 years" and inserting "2 years and 9 months".

SEC. 503. RECYCLING AND REUSE OF RECYCLABLE MATERIALS.

Section 604(g) of title 28, United States Code, is amended by adding at the end the following new paragraph:

"(3)(A) In order to promote the recycling and reuse of recyclable materials, the Director may provide for the sale or disposal of recyclable scrap materials from paper products and other consumable office supplies held by an entity within the judicial branch.

"(B) The sale or disposal of recyclable materials under subparagraph (A) shall be consistent with the procedures provided in section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) for the sale of surplus property.

"(C) Proceeds from the sale of recyclable materials under subparagraph (A) shall be deposited as offsetting collections to the fund established under section 1931 of this title and shall remain available until expended to reimburse any appropriations for the operation and maintenance of the judicial branch.".

SEC. 504. VENUE IN DIVERSITY AND FEDERAL QUESTION CASES.

Section 1391(a)(3) of title 28, United States Code, is amended by inserting before the period ", if there is no district in which the action may otherwise be brought".

SEC. 505. SUMMARIES OF REPORTS TO CONGRESS.

Section 103(c)(4)(B) of the Civil Justice Reform Act of 1990 (Public Law 101-650) is amended by striking "the reports" and inserting "summaries of the reports".

SEC. 506. COSTS AND FEES IN THE UNITED STATES COURT OF VETERANS APPEALS.

(a) IN GENERAL.—Section 2412(d)(2)(F) of title 28, United States Code, is amended by inserting before the semicolon "and the United States Court of Veterans Appeals".

(b) APPLICATION TO PENDING CASES.—The amendment made by subsection (a) shall apply to any case pending before the United States Court of Veterans Appeals on the date of the enactment of this Act, to any appeal filed in that court on or after such date, and to any appeal from that court that is pending on such date in the United States Court of Appeals for the Federal Circuit.

(c) FEE AGREEMENTS.—Section 5904(d) of title 38, United States Code, shall not prevent an award of fees and other expenses under section 2412(d) of title 28, United States Code. Section 5904(d) of title 38, United States Code, shall not apply with respect to any such award but only if, where the claimant's attorney receives fees for the same work under both section 5904 of title 38, United States Code, and section 2412(d) of title 28, United States Code, the claimant's attorney refunds to the claimant the amount of the smaller fee.

(d) EFFECTIVE DATE.—This section, and the amendment made by this section, shall take effect on the date of the enactment of this Act.

TITLE VI—JUDICIARY PERSONNEL ADMINISTRATION, BENEFITS, AND PROTECTIONS

SEC. 601. JUDICIAL RETIREMENT MATTERS.

(a) JUDICIAL RETIREMENT FUNDS.—Section 255(g)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(B)) is amended by inserting after "Judicial survivors' annuities fund (10-8110-0-7-602);" the following:

"Judicial Officers' Retirement Fund (10-8122-0-7-602);

"Court of Federal Claims Judges' Retirement Fund (10-8124-0-7-602);".

(b) JUDICIARY TRUST FUNDS.—Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended by inserting after "Payment to civil service retirement and disability fund (24-0200-0-1-805);" the following:

"Payment to Judiciary Trust Funds (10-0941-0-1-752);".

SEC. 602. FEDERAL JUDICIAL CENTER.

(a) FUNCTIONS.—Subsection 620(b) of title 28, United States Code, is amended—

(1) in paragraph (4) by striking "and" at the end;

(2) in paragraph (5) by striking the period and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(6) insofar as may be consistent with the performance of the other functions set forth in this section, to cooperate with and assist agencies of the Federal Government and other appropriate organizations in providing information and advice to further improvement in the administration of justice in the courts of foreign countries and to acquire information about judicial administration in foreign countries that may contribute to performing the other functions set forth in this section.".

(b) CLERICAL COMPENSATION.—Subsection 625(c) of title 28, United States Code, is amended by striking "competitive service and" and inserting "competitive service without regard to".

TITLE VII—CRIMINAL ADMINISTRATIVE MATTERS

SEC. 701. NEW AUTHORITY FOR PROBATION AND PRETRIAL SERVICES OFFICERS.

(a) PROBATION OFFICERS.—Section 3603 of title 18, United States Code, is amended—

(1) in paragraph (7) by striking "and" at the end;

(2) by redesignating paragraph (8) as paragraph (9) and inserting after paragraph (7) the following new paragraph:

"(8)(A) when directed by the court, and to the degree required by the regimen of care or treatment ordered by the court as a condition of release, keep informed as to the conduct and provide supervision of a person conditionally released under the provisions of section 4243 or 4246 of this title, and report such person's conduct and condition to the court ordering release and to the Attorney General or his designee; and

"(B) immediately report any violation of the conditions of release to the court and the Attorney General or his designee; and".

(b) PRETRIAL SERVICES.—Section 3154 of title 18, United States Code, is amended—

(1) by redesignating paragraph (12) as paragraph (13); and

(2) by inserting after paragraph (11) the following new paragraph:

"(12)(A) As directed by the court and to the degree required by the regimen of care or treatment ordered by the court as a condition of release, keep informed as to the conduct and provide supervision of a person conditionally released under the provisions of section 4243 or 4246 of this title, and report such person's conduct and condition to the court ordering release and the Attorney General or his designee.

"(B) Any violation of the conditions of release shall immediately be reported to the court and the Attorney General or his designee.".

SEC. 702. GOVERNMENT RATES OF TRAVEL FOR CRIMINAL JUSTICE ACT ATTORNEYS AND EXPERTS.

The Administrator of General Services, in entering into contracts providing for special rates to be charged by Federal Government sources of supply, including common carriers and hotels (or other commercial providers of lodging) for official travel and accommodation of Federal Government employees, shall provide for charging the same rates for attorneys, experts, and other persons traveling primarily in connection with carrying out responsibilities under section 3006A of title 18, United States Code, including community defender organizations established under subsection (g) of that section.

SEC. 703. TECHNICAL CORRECTION.

Section 3143(b)(1) of title 18, United States Code, is amended by striking "paragraph (b)(2)(D)" and inserting "subparagraph (B)(iv) of this paragraph".

TITLE VIII—STATE JUSTICE INSTITUTE REAUTHORIZATION

SEC. 801. AUTHORIZATION OF APPROPRIATIONS.

The text of section 215 of the State Justice Institute Act of 1984 (Public Law 98-620; 42 U.S.C. 10713) is amended to read as follows:

"SEC. 215. There are authorized to be appropriated to carry out the purposes of this title $20,000,000 for fiscal year 1993, $20,000,000 for fiscal year 1994, $25,000,000 for fiscal year 1995, and $25,000,000 for fiscal year 1996. Amounts appropriated for each such year are to remain available until expended.".

SEC. 802. INTERAGENCY AGREEMENTS.

Section 206(b) of the State Justice Institute Act of 1984 (42 U.S.C. 10705(b)) is amended—

(1) in paragraph (1)—

(A) by striking "shall give priority to grants, cooperative agreements, or contracts" and inserting "may award grants to or enter into cooperative agreements or contracts"; and

(B) in subparagraph (A) by striking the comma and inserting a semicolon;

(2) in paragraph (2) by inserting "to" after "award grants";

(3) by striking paragraph (3) and inserting the following:

"(3) Upon application by an appropriate State or local agency or institution and if the arrangements to be made by such agency or institution will provide services which could not be provided adequately through nongovernmental arrangements, the Institute may award a grant or enter into a cooperative agreement or contract with a unit of State or local government other than a court.";

(4) by redesignating paragraph (4) as paragraph (5); and

(5) by inserting after paragraph (3) the following new paragraph:

"(4) The Institute may enter into contracts with Federal agencies to carry out the purposes of this title.".

SEC. 803. TECHNICAL AMENDMENTS.

(a) BOARD OF DIRECTORS.—Section 204(a)(3) of the State Justice Institute Act of 1984 (42 U.S.C. 10703(a)(3)) is amended in the second sentence by striking "conference" and inserting "Conference".

(b) USES OF FUNDS.—Section 206(c)(7) of the State Justice Institute Act of 1984 (42 U.S.C. 10705(c)(7)) is amended by striking "effect" and inserting "affect".

SEC. 804. EFFECTIVE DATE.

The provisions of this title shall take effect on the date of the enactment of this Act.

TITLE IX—COURT OF FEDERAL CLAIMS

SEC. 901. SHORT TITLE.

This title may be cited as the "Court of Federal Claims Technical and Procedural Improvements Act of 1992".

SEC. 902. COURT DESIGNATION.

(a) IN GENERAL.—Chapters 7, 51, 91, and 165 of title 28, United States Code, are amended—

(1) by striking "United States Claims Court" each place it appears and inserting "United States Court of Federal Claims"; and

(2) by striking "Claims Court" each place it appears and inserting "Court of Federal Claims".

(b) OTHER PROVISIONS OF LAW.—Reference in any other Federal law or any document to—

(1) the "United States Claims Court" shall be deemed to refer to the "United States Court of Federal Claims"; and

(2) the "Claims Court" shall be deemed to refer to the "Court of Federal Claims".

SEC. 903. MILITARY RETIREMENT PAY FOR RETIRED JUDGES.

(a) IN GENERAL.—Chapter 7 of title 28, United States Code, is amended by adding at the end the following new section:

"§180. Military retirement pay for retired judges

"Section 371(e) of this title applies to judges of the United States Court of Federal Claims, and for the purpose of construing section 371(e) of this title, a judge of the United States Court of Federal Claims shall be deemed to be a judge of the United States as defined in section 451 of this title.".

(b) TABLE OF SECTIONS.—The table of sections for chapter 7 of title 28, United States Code, is amended by adding at the end the following:

"179. Insurance and annuities programs.
"180. Military retirement pay for retired judges.".

SEC. 904. RECALL OF COURT OF FEDERAL CLAIMS JUDGES ON SENIOR STATUS.

(a) IN GENERAL.—Section 375 of title 28, United States Code, is amended—

(1) in the first sentence of subsection (a)(1) by striking ", a judge of the Claims Court," and ", judge of the Claims Court,";

(2) by amending paragraph (2) of subsection (a) to read as follows:

"(2) For purposes of paragraph (1) of this subsection, a certification may be made, in the case of a bankruptcy judge or a United States magistrate, by the judicial council of the circuit in which the official duty station of the judge or magistrate at the time of retirement was located.";

(3) by amending paragraph (3) of subsection (a) to read as follows:

"(3) For purposes of this section, the term 'bankruptcy judge' means a bankruptcy judge appointed under chapter 6 of this title or serving as a bankruptcy judge on March 31, 1984."; and

(4) in subsection (f)—

(A) by striking ", a judge of the Claims Court,"; and

(B) by striking ", a commissioner of the Court of Claims,".

(b) RECALL OF RETIRED JUDGES.—Section 797(d) of title 28, United States Code, is amended in the second sentence by striking "civil service".

SEC. 905. LAW CLERKS.

The first sentence of section 794 of title 28, United States Code, is amended by inserting after "may approve" the following: "for district judges".

SEC. 906. SITES FOR HOLDING COURT.

(a) IN GENERAL.—Section 798(a) of title 28, United States Code, is amended to read as follows:

"(a) The United States Court of Federal Claims is authorized to use facilities and hold court in Washington, District of Columbia, and throughout the United States (including its territories and possessions) as necessary for compliance with sections 173 and 2503(c) of this title. The facilities of the Federal courts, as well as other comparable facilities administered by the General Services Administration, shall be made available for trials and other proceedings outside of the District of Columbia.".

(b) HEARING IN A FOREIGN COUNTRY.—Section 798 of title 28, United States Code, is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following:

"(b) Upon application of a party or upon the judge's own initiative, and upon a showing that the interests of economy, efficiency, and justice will be served, the chief judge of the Court of Federal Claims may issue an order authorizing a judge of the court to conduct proceedings, including evidentiary hearings and trials, in a foreign country whose laws do not prohibit such proceedings, except that an interlocutory appeal may be taken from such an order pursuant to section 1292(d)(2) of this title, and the United States Court of Appeals for the Federal Circuit may, in its discretion, consider the appeal.".

(c) APPEAL JURISDICTION.—Section 1292(d)(2) of title 28, United States Code, is amended by inserting after "When" the following: "the chief judge of the United States Court of Federal Claims issues an order under section 798(b) of this title, or when".

SEC. 907. JURISDICTION.

(a) CERTIFICATIONS.—(1) Section 6(c) of the Contract Disputes Act of 1978 (41 U.S.C. 605(c)) is amended—

(A) in paragraph (1) in the second sentence—

(i) by striking "and" after "belief,"; and

(ii) by inserting before the period at the end of the sentence the following: ", and that the certifier is duly authorized to certify the claim on behalf of the contractor"; and

(B) by adding at the end the following:

"(6) The contracting officer shall have no obligation to render a final decision on any claim of more than $50,000 that is not certified in accordance with paragraph (1) if, within 60 days after receipt of the claim, the contracting officer notifies the contractor in writing of the reasons why any attempted certification was found to be defective. A defect in the certification of a claim shall not deprive a court or an agency board of contract appeals of jurisdiction over that claim. Prior to the entry of a final judgment by a court or a decision by an agency board of contract appeals, the court or agency board shall require a defective certification to be corrected.

"(7) The certification required by paragraph (1) may be executed by any person duly authorized to bind the contractor with respect to the claim.".

(2) The amendment made by paragraph (1)(B) shall be effective with respect to all claims filed before, on, or after the date of the enactment of this Act, except for those claims which, before such date of enactment, have been the subject of an appeal to an agency board of contract appeals or a suit in the United States Claims Court.

(3) If any interest is due under section 12 of the Contract Disputes Act of 1978 on a claim for which the certification under section 6(c)(1) is, on or after the date of the enactment of this Act, found to be defective shall be paid from the later of the date on which the contracting officer initially received the claim or the date of the enactment of this Act.

(4) The amendments made by paragraph (1)(A) shall be effective with respect to certifications executed more than 60 days after the effective date of amendments to the Federal Acquisition Regulation implementing the amendments made by paragraph (1)(A) with respect to the certification of claims.

(b) JURISDICTION OF COURT OF FEDERAL CLAIMS.—(1) Section 1491(a)(2) of title 28, United States Code, is amended in the last sentence by inserting before the period at the end the following: ", including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, and other nonmonetary disputes on which a decision of the contracting officer has been issued under section 6 of that Act".

(2) The amendment made by paragraph (1) shall be effective with respect to all actions filed before, on, or after the date of the enactment of this Act, except for those actions which, before such date of enactment, have been the subject of—

(A) a final judgment of the United States Claims Court, if the time for appeal of that judgment has expired without an appeal having been filed, or

(B) a final judgment of the Court of Appeals for the Federal Circuit.

SEC. 908. AWARDABLE COSTS.

(a) AWARD OF COSTS.—Section 1919 of title 28, United States Code, is amended—

(1) by striking "district court or" and inserting "district court,"; and

(2) by inserting after "Trade" the following: ", or the Court of Federal Claims".

(b) TECHNICAL AMENDMENTS.—(1) The section caption for section 1919 of title 28, United States Code, is amended to read as follows:

"§ 1919. Dismissal for lack of jurisdiction".

(2) The item relating to section 1919 in the table of sections for chapter 123 of title 28, United States Code, is amended to read as follows:

"1919. Dismissal for lack of jurisdiction.".

SEC. 909. PROCEEDINGS GENERALLY.

Section 2503 of title 28, United States Code, is amended by adding at the end the following:

"(d) For the purpose of construing sections 1821, 1915, 1920, and 1927 of this title, the United States Court of Federal Claims shall be deemed to be a court of the United States.".

SEC. 910. SUBPOENAS AND INCIDENTAL POWERS.

(a) IN GENERAL.—Section 2521 of title 28, United States Code, is amended—

(1) by amending the section caption to read as follows:

"§ 2521. Subpoenas and incidental powers";

(2) by inserting "(a)" before "Subpoenas requiring"; and

(3) by adding at the end the following new subsections:

"(b) The United States Court of Federal Claims shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority as—

"(1) misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

"(2) misbehavior of any of its officers in their official transactions; or

"(3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

"(c) The United States Court of Federal Claims shall have such assistance in the carrying out of its lawful writ, process, order, rule, decree, or command as is available to a court of the United States. The United States marshal for any district in which the Court of Federal Claims is sitting shall, when requested by the chief judge of the Court of Federal Claims, attend any session of the Court of Federal Claims in such district.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 165 of title 28, United States Code, is amended by amending the item relating to section 2521 to read as follows:

"2521. Subpoenas and incidental powers.".

SEC. 911. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE X—ADDITIONAL PROVISIONS

SEC. 1001. VICTIMS' RIGHTS FUNDING.

Section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) is amended—

(1) by striking subsection (c) and inserting the following:

"(c) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this subsection for grants under this chapter without fiscal year limitation."; and

(2) by striking subsection (d) and inserting the following:

"(d) The Fund shall be available as follows:

"(1) The first $6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first $3,000,000 in each fiscal year thereafter shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18, United States Code.

"(2) Of the next $100,000,000 deposited in the Fund in a particular fiscal year—

"(A) 49.5 percent shall be available for grants under section 1403; and

"(B) 45 percent shall be available for grants under section 1404(a).

"(3) The next $5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 1404(a).

"(4) The next $4,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 1404(a).

"(5) Any deposits in the Fund in a particular fiscal year that remain after the funds are distributed under paragraphs (1) through (4) shall be available as follows:

"(A) 47.5 percent shall be available for grants under section 1403.

"(B) 47.5 percent shall be available for grants under section 1404(a).

"(C) 5 percent shall be available for grants under section 1404(c).".

SEC. 1002. AUTHORITY TO LIMIT COLLECTION OF PRETRIAL INFORMATION IN CLASS A MISDEMEANOR CASES.

Section 3154(1) of title 18, United States Code, is amended by inserting before the period "; except that a district court may direct that information not be collected, verified, or reported under this paragraph on individuals charged with Class A misdemeanors as defined in section 3559(a)(6) of this title".

SEC. 1003. TERRORISM CIVIL REMEDY.

(a) TERRORISM.—Chapter 113A of title 18, United States Code, is amended—

(1) in section 2331 by striking subsection (d) and redesignating subsection (e) as subsection (d);

(2) by redesignating section 2331 as 2332 and striking the caption for section 2331 and inserting the following:

"§ 2332. Criminal penalties";

(3) by inserting before section 2332 as redesignated the following:

"§ 2331. Definitions

"As used in this chapter—

"(1) the term 'international terrorism' means activities that—

"(A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;

"(B) appear to be intended—

"(i) to intimidate or coerce a civilian population;

"(ii) to influence the policy of a government by intimidation or coercion; or

"(iii) to affect the conduct of a government by assassination or kidnapping; and

"(C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;

"(2) the term 'national of the United States' has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act;

"(3) the term 'person' means any individual or entity capable of holding a legal or beneficial interest in property; and

"(4) the term 'act of war' means any act occurring in the course of—

"(A) declared war;

"(B) armed conflict, whether or not war has been declared, between two or more nations; or

"(C) armed conflict between military forces of any origin.";

(4) by adding after section 2332, as redesignated by paragraph (2) of this subsection, the following new sections:

"§ 2333. Civil remedies

"(a) ACTION AND JURISDICTION.—Any national of the United States injured in his or her person, property, or business by reason of an act of international terrorism, or his or her estate, survivors, or heirs, may sue therefor in any appropriate district court of the United States and shall recover threefold the damages he or she sustains and the cost of the suit, including attorney's fees.

"(b) ESTOPPEL UNDER UNITED STATES LAW.—A final judgment or decree rendered in favor of the United States in any criminal proceeding under section 1116, 1201, 1203, or 2332 of this title or section 902(i), (k), (l), (n), or (r) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(i), (k), (l), (n), or (r)) shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

"(c) ESTOPPEL UNDER FOREIGN LAW.—A final judgment or decree rendered in favor of any foreign state in any criminal proceeding shall, to the extent that such judgment or decree may be accorded full faith and credit under the law of the United States, estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding under this section.

"§ 2334. Jurisdiction and venue

"(a) GENERAL VENUE.—Any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district where any plaintiff resides or where any defendant resides or is served, or has an agent. Process in such a civil action may be served in any district where the defendant resides, is found, or has an agent.

"(b) SPECIAL MARITIME OR TERRITORIAL JURISDICTION.—If the actions giving rise to the claim occurred within the special maritime and territorial jurisdiction of the United States, as defined in section 7 of this title, then any civil action under section 2333 of this title against any person may be instituted in the district court of the United States for any district in which any plaintiff resides or the defendant resides, is served, or has an agent.

"(c) SERVICE ON WITNESSES.—A witness in a civil action brought under section 2333 of this title may be served in any other district where the defendant resides, is found, or has an agent.

"(d) CONVENIENCE OF THE FORUM.—The district court shall not dismiss any action brought under section 2333 of this title on the grounds of the inconvenience or inappropriateness of the forum chosen, unless—

"(1) the action may be maintained in a foreign court that has jurisdiction over the subject matter and over all the defendants;

"(2) that foreign court is significantly more convenient and appropriate; and

"(3) that foreign court offers a remedy which is substantially the same as the one available in the courts of the United States.

"§ 2335. Limitation of actions

"(a) IN GENERAL.—Subject to subsection (b), a suit for recovery of damages under section 2333 of this title shall not be maintained unless commenced within 4 years after the date the cause of action accrued.

"(b) CALCULATION OF PERIOD.—The time of the absence of the defendant from the United States or from any jurisdiction in which the same or a similar action arising from the same facts may be maintained by the plaintiff, or of any concealment of the defendant's whereabouts, shall not be included in the 4-year period set forth in subsection (a).

"§ 2336. Other limitations

"(a) ACTS OF WAR.—No action shall be maintained under section 2333 of this title for injury or loss by reason of an act of war.

"(b) LIMITATION ON DISCOVERY.—If a party to an action under section 2333 seeks to discover the investigative files of the Department of Justice, the Assistant Attorney General, Deputy Attorney General, or Attorney General may object on the ground that compliance will interfere with a criminal investigation or prosecution of the incident, or a national security operation related to the incident, which is the subject of the civil litigation. The court shall evaluate any such objections in camera and shall stay the discovery if the court finds that granting the discovery request will substantially interfere with a criminal investigation or prosecution of the incident or a national security operation related to the incident. The court shall consider the likelihood of criminal prosecution by the Government and other factors it deems to be appropriate. A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure. If the court grants a stay of discovery under this subsection, it may stay the action in the interests of justice.

"(c) STAY OF ACTION FOR CIVIL REMEDIES.—(1) The Attorney General may intervene in any civil action brought under section 2333 for the purpose of seeking a stay of the civil action. A stay shall be granted if the court finds that the continuation of the civil action will substantially interfere with a criminal prosecution which involves the same subject matter and in which an indictment has been returned, or interfere with national security operations related to the terrorist incident that is the subject of the civil action. A stay may be granted for up to 6 months. The Attorney General may petition the court for an extension of the stay for additional 6-month periods until the criminal prosecution is completed or dismissed.

"(2) In a proceeding under this subsection, the Attorney General may request that any order issued by the court for release to the parties and the public omit any reference to the basis on which the stay was sought.

"§ 2337. Suits against Government officials

"No action shall be maintained under section 2333 of this title against—

"(1) the United States, an agency of the United States, or an officer or employee of the United States or any agency thereof acting within his or her official capacity or under color of legal authority; or

"(2) a foreign state, an agency of a foreign state, or an officer or employee of a foreign state or an agency thereof acting within his or her official capacity or under color of legal authority.

"§ 2338. Exclusive Federal jurisdiction

"The district courts of the United States shall have exclusive jurisdiction over an action brought under this chapter."; and

(5) by amending the table of sections to read as follows:

"CHAPTER 113A—TERRORISM

"Sec.
"2331. Definitions.
"2332. Criminal penalties.
"2333. Civil remedies.
"2334. Jurisdiction and venue.
"2335. Limitation of actions.
"2336. Other limitations.
"2337. Suits against government officials.
"2338. Exclusive Federal jurisdiction.

(b) TABLE OF CONTENTS.—The table of contents of part 1 of title 18, United States Code, is amended by striking

"113A. Extraterritorial jurisdiction over terrorist acts abroad against United States nationals .... 2331"

and inserting

"113A. Terrorism .... 2331".

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall apply to any pending case or any cause of action arising on or after 4 years before the date of enactment of this Act.

TITLE XI—EFFECTIVE DATE

SEC. 1101. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this Act, the provisions of this Act and the amendments made by this Act shall take effect on January 1, 1993.

(b) AVAILABILITY OF APPROPRIATIONS.—Notwithstanding any provision of this Act, all sums expended pursuant to this Act shall be subject to the availability of appropriations.

Mr. HEFLIN. Mr. President, I rise today to urge immediate passage of the House substitute to S. 1569, the Federal Courts Administration Act of 1992. This comprehensive legislation would implement recommendations of the Federal Courts Study Committee and make other changes which are necessary to facilitate the operation of our Federal courts system.

The 100th Congress created within the Judicial Conference of the United States a 15-member Federal Courts Study Committee and directed it to "make a complete study of the courts of the United States and of the several States and transmit a report * * * on such study." The Federal Courts Study Committee included members of the Federal executive, legislative, and judicial branches and representatives from State governments, universities, and private practice, all of whom worked toward the goal of developing a long-range plan for the judicial system. I was privileged to serve as a member of this committee, as did Senator GRASSLEY.

The 101st Congress saw the first phase of Federal Courts Study Committee legislative recommendations enacted into law as title III of the Judicial Improvements Act of 1990. S. 1569 incorporates additional recommendations of the Federal Courts Study Committee. These important provisions are as follows:

Section 101 would delegate authority to the Supreme Court, under the Rules Enabling Act, to define what constitutes a final decision; and to define circumstances in which orders and actions of district courts not otherwise subject to appeal under acts of Congress may be appealed to the courts of appeals.

Section 102 would abolish the temporary emergency court of appeals and vest its remaining caseload in the court of appeals for the Federal circuit.

Section 103 would provide jurisdiction for magistrate judges to revoke, modify, or terminate the supervised release or probation of a defendant sentenced by a magistrate judge.

Section 104 would allow the Chief Justice of the United States, upon request, to designate and assign temporarily any circuit judge to another circuit.

Title II of S. 1569 addresses important needs and issues affecting the surviving spouses and dependents of Federal judges. This proposal would reduce the contribution of judges from 5 percent of salary to 2.2 percent of salary while in active service or while serving in senior or recalled status, and would set the rate of contribution at 3.5 percent to retirement salary for those judges leaving office. The reductions in the judges' contributions would attract more participants and extend protection to survivors of judges who otherwise would remain vulnerable to financial crisis.

Titles III–VII of S. 1569 contain various judicial housekeeping items which were included at the request of the Judicial Conference of the United States. These sections focus on judicial financial administration; jury matters; judiciary personnel administration, benefits, and protections; and criminal administrative matters.

The version of S. 1569 which originally passed the Senate contained a provision, section 403, since deleted, dealing with compensation for loss or damage to personal property of jurors. It is our opinion that it is within the power of the judicial Conference of the United States to delegate to the Administrative Office of the U.S. Courts the authority to pay for such losses, without the need or further legislation.

Moreover, section 602 of S. 1569 allows the Federal Judicial Center to work with other organizations to assist in the development of judicial systems in foreign countries. With new democracies forming all over the world, it is essential that our judicial branch officers and employees be authorized to share their expertise in judicial administration and the basic tenants of freedom that this country holds dear. I anticipate that there will be many beneficial developments from the efforts of the Federal Judicial Center, the Judicial Conference, and the Administrative Office of the U.S. Courts in this regard.

Title VIII of S. 1569 would reauthorize the State Justice Institute from 1993–96. This reauthorization, which I strongly support, would continue the mission of the State Justice Institute to improve the administration of justice in our Nation's State court systems.

Title IX would improve the Federal claims litigation process before the U.S. claims court and assist the court in providing better and more efficient service to its litigants. It would also ensure fair treatment for the judges of the court by providing certain benefits equivalent to those available to other Federal trial judges.

Finally, title X would provide a civil cause of action in Federal court for victims of terrorism. This provision has strong bipartisan support in the Congress, and I am pleased to support its inclusion here.

Mr. President, S. 1569 is the product of much effort on the part of many people. In particular, I would like to extend my deep gratitude to my colleagues on the Senate Judiciary Committee, especially Senators THURMOND and GRASSLEY. I would also like to thank Representative HUGHES, chairman of the House Judiciary Subcommittee on Intellectual Property and Judicial Administration, and Representative MOORHEAD, ranking minority member of the subcommittee and fellow Federal Courts Study Committee member. In addition, the staffs of these Members of Congress are to be commended for their fine work and dedication.

In formulating this Federal Courts Administration legislation, we have been mindful of the concerns of many parties expressing an interest. I feel that these efforts have produced a consensus bill which will benefit our Federal judiciary in many ways, for years to come.

Mr. GRASSLEY. Mr. President, I rise in support of final passage of S. 1569, the Federal courts bill, and ask that Senator HEFLIN add my name as a cosponsor of the bill.

A little more than 2 years ago, Senator HEFLIN and I were privileged to be members of the Federal Courts Study Committee. The committee issued an extensive report with recommendations for improving the Federal courts. We implemented some of those recommendations with a bill in 1990, and today we implement several more. Finally, we are abolishing the temporary emergency court of appeals. And we are empowering magistrates to make modifications in probation or supervised release, as well as making it easier for appeals court judges to be transferred temporarily to another circuit to accommodate heavier dockets.

There are many more good recommendations from the Federal Courts Study Committee, including changes in prisoner litigation procedures, that have not yet been adopted. I hope that Senator HEFLIN and I will have the opportunity to continue working on the improvement of the Federal courts. It cannot be disputed that our courts are clogged and the judges need assistance with some reforms.

This bill also contains a series of recommendations from the Administrative Office of the U.S. Courts which will enable the courts to function more efficiently. And, in this bill, we have made needed changes in the Judicial Survivor Annuity Act, which will enable the families and survivors of judges to have a more rational benefit plan. I am generally cautious on salaries and benefits for Federal employees, and have long been a fighter against congressional pay raises. But this improvement will be a small initial cost to the Government, and the judges will be contributing to the plan. The result will be a better plan for the families of very important public servants—Federal judges.

We have also provided for some changes in the U.S. Claims Court, the court with jurisdiction over money disputes with the Federal Government. The most significant change is an improvement in the contractor certification procedure. Under the Contract Disputes Act, a contractor is required to certify a claim against the Government. Often, that certification—a technical form—can be the subject of extensive litigation. Under the changes provided in this bill, the claims court or the board of contract appeals may allow a certification to be corrected for technical defects at any time prior to a final decision, unless the defective certification was fraudulent, made in bad faith, or made with reckless or gross negligence. Some contractors sought more expansive changes in the claims certification requirement, but this change should relieve the claims court of needless and wasteful litigation over the validity of certifications. But it also preserves the Government's need for the certification requirement—much needed insurance against bad faith claims against the Government.

Finally, Mr. President, I am pleased that this bill incorporates my legislation to create a new civil action for American victims of terrorism. The tragedies of Pan Am 103 and the *Achilles Lauro* still burn in our minds. Those responsible have not been called to account for destroying precious American lives. This provision, the product of 3 years of effort is now finally coming to fruition. American victims will be able to bring a claim against a terrorist group for money damages. The Justice Department had some concerns about protecting its criminal investigations in these kinds of cases. And we have been able to accommodate the Department's interests. After all, we agree that the first and best remedy is to bring these terrorists to justice in our courts of law. But often, the terrorists elude justice, as in the *Achilles Lauro* case where Leon Klinghoffer, an elderly American was callously murdered by PLO terrorists. And in the Pan Am 103 case, two Libyans have been indicted, but have not been apprehended. While this bill will not permit civil actions against sovereign leaders, it will allow the victims to pursue renegade terrorist organizations and their leaders, and go after the resource that keeps them in business—their money. We all hope that this new provision will not be invoked—that is, that there will not be American victims of terrorism. But in the event tragedy strikes, victims will be armed with this civil remedy.

Mr. FORD. Mr. President, I move that the Senate concur in the amendment of the House.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LATE PAYMENT OF MAINTENANCE FEES

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H.R. 5328, a bill to amend title 35, United States Code, with respect to the late payment of maintenance fees; that the bill be deemed read the third time, passed, and the motion to reconsider be laid upon the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So the bill (H.R. 5328) was deemed read the third time and passed.

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT AUTHORIZATION ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5194.

The ACTING PRESIDENT pro tempore laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendments of the Senate to the bill (H.R. 5194) entitled "An Act to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to authorize appropriations for fiscal years 1993, 1994, 1995, and 1996, and for other purposes," with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. FINDINGS AND DECLARATION OF PURPOSE.

(a) FINDINGS.—Section 101(a) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601(a)) is amended—

(1) by redesignating paragraphs (2), (3), (4), (5), (6), (7), and (8) as paragraphs (4), (5), (6), (7), (8), (9), and (10), respectively;

(2) by inserting after paragraph (1) the following new paragraphs:

"(2) recent trends show an upsurge in arrests of adolescents for murder, assault, and weapon use;

"(3) the small number of youth who commit the most serious and violent offenses are becoming more violent;";

(3) in paragraph (4), as redesignated by paragraph (1), by inserting "prosecutorial and public defender offices," after "juvenile courts,";

(4) by striking "and" at the end of paragraph (9), as redesignated by paragraph (1);

(5) by striking the period at the end of paragraph (10), as redesignated by paragraph (1), and inserting ";"; and

(6) by adding at the end the following new paragraphs:

"(11) emphasis should be placed on preventing youth from entering the juvenile justice system to begin with; and

"(12) the incidence of juvenile delinquency can be reduced through public recreation programs and activities designed to provide youth with social skills, enhance self esteem, and encourage the constructive use of discretionary time.".

(b) PURPOSE.—Section 102 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5602) is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking "delinquency" and inserting "justice and delinquency prevention";

(B) in paragraph (2) by striking "agencies, institutions, and individuals in developing and implementing juvenile delinquency programs" and inserting "nonprofit juvenile justice and delinquency prevention programs";

(C) by striking "and" at the end of paragraph (7);

(D) by redesignating paragraph (8) as paragraph (9);

(E) by inserting after paragraph (7) the following new paragraph:

"(8) to strengthen families in which juvenile delinquency has been a problem;";

(F) by striking the period at the end of paragraph (9), as redesignated by subparagraph (D), and inserting a semicolon; and

(G) by adding at the end the following new paragraphs:

"(10) to assist State and local governments in improving the administration of justice and services for juveniles who enter the system; and

"(11) to assist States and local communities to prevent youth from entering the justice system to begin with."; and

(2) in subsection (b)—

(A) by striking "maintaining and strengthening the family unit" and inserting "preserving and strengthening families";

(B) by striking "and (4)" and inserting "(4)"; and

(C) by inserting "; (5) to encourage parental involvement in treatment and alternative disposition programs; and (6) to provide for coordination of services between State, local, and community-based agencies and to promote interagency cooperation in providing such services" before the period at the end.

(c) DEFINITIONS.—Section 103 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5603) is amended—

(1) by amending paragraph (16) to read as follows:

"(16) the term 'valid court order' means a court order given by a juvenile court judge to a juvenile—

"(A) who was brought before the court and made subject to such order;

"(B) who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States;

"(C) with respect to whom an appropriate public agency (other than a court or law enforcement agency), before the issuance of such order—

"(i) reviewed the behavior of such juvenile and the circumstances under which such juvenile was brought before the court and made subject to such order;

"(ii) determined the reasons for the behavior that caused such juvenile to be brought before the court and made subject to such order;

"(iii) determined that all dispositions (including treatment), other than placement in a secure detention facility or a secure correctional facility, have been exhausted or are clearly inappropriate; and

"(iv) submitted to the court a written report stating the results of the review conducted under clause (i) and the determinations made under clauses (ii) and (iii);";

(2) by striking "and" at the end of paragraph (17);

(3) by striking the period at the end of paragraph (18) and inserting a semicolon; and

(4) by adding at the end the following new paragraphs:

"(19) the term 'comprehensive and coordinated system of services' means a system that—

"(A) ensures that services and funding for the prevention and treatment of juvenile delinquency are consistent with policy goals of preserving families and providing appropriate services in the least restrictive environment so as to simultaneously protect juveniles and maintain public safety;

"(B) identifies, and intervenes early for the benefit of, young children who are at risk of developing emotional or behavioral problems because of physical or mental stress or abuse, and for the benefit of their families;

"(C) increases interagency collaboration and family involvement in the prevention and treatment of juvenile delinquency; and

"(D) encourages private and public partnerships in the delivery of services for the prevention and treatment of juvenile delinquency;

"(20) the term 'gender-specific services' means services designed to address needs unique to the gender of the individual to whom such services are provided;

"(21) the term 'home-based alternative services' means services provided to a juvenile in the home of the juvenile as an alternative to incarcerating the juvenile, and includes home detention;

"(22) the term 'jail or lockup for adults' means a locked facility that is used by a State, unit of local government, or any law enforcement authority to detain or confine adults—

"(i) pending the filing of a charge of violating a criminal law;

"(ii) awaiting trial on a criminal charge; or

"(iii) convicted of violating a criminal law; and

"(23) the term 'nonprofit organization' means an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986.".

SEC. 2. JUVENILE JUSTICE AND DELINQUENCY PREVENTION.

(a) OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION.—Section 201(b) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 (b)) is amended by amending the third sentence to read as follows: "The Administrator shall have the same reporting relationship with the Attorney General as the directors of other offices and bureaus within the Office of Justice Programs have.".

(b) PERSONNEL, SPECIAL PERSONNEL, EXPERTS, AND CONSULTANTS.—Section 202 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5612) is amended—

(1) in subsection (b) by striking "prescribes for GS–18 of the General Schedule by section 5332" and inserting "payable under section 5376";

(2) in subsection (c) by striking "Act" and inserting "title"; and

(3) in subsection (d) by striking "prescribed for GS–18 of the General Schedule by section 5332" and inserting "payable under section 5376".

(c) CONCENTRATION OF EFFORT.—Section 204 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5614) is amended—

(1) in subsection (a)—

(A) in the first sentence—

(i) by inserting "(1)" after "(a)"; and

(ii) by striking "implement overall policy and develop objectives and priorities" and inserting "develop objectives, priorities, and a long-term plan, and implement overall policy and a strategy to carry out such plan,"; and

(B) by adding at the end the following new paragraph:

"(2)(A) The plan described in paragraph (1) shall—

"(i) contain specific goals and criteria for making grants and contracts, for conducting research, and for carrying out other activities under this title; and

"(ii) provide for coordinating the administration programs and activities under this title with the administration of all other Federal juvenile delinquency programs and activities, including proposals for joint funding to be coordinated by the Administrator.

"(B) The Administrator shall review the plan described in paragraph (1) annually, revise the plan as the Administrator considers appropriate, and publish the plan in the Federal Register—

"(i) not later than 240 days after the date of enactment of this paragraph, in the case of the initial plan required by paragraph (1); and

"(ii) except as provided in clause (i), in the 30-day period ending on October 1 of each year.";

(2) in subsection (b)—

(A) by striking "and" at the end of paragraph (5); and

(B) by striking the period at the end of paragraph (6) and inserting "; and";

(3) by adding at the end the following new paragraph:

"(7) not later than 1 year after the date of the enactment of this paragraph, issue model standards for providing health care to incarcerated juveniles."; and

(4) by striking subsections (f) and (g).

(d) COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION.—Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5616) is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking "the Director of the Office of Community Services" and all that follows through the period and inserting "the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Director of the Office of National Drug Control Policy, the Director of the ACTION Agency, the Commissioner of Immigration and Naturalization, such other officers of Federal agencies who hold significant decisionmaking authority as the President may designate, and individuals appointed under paragraph (2)."; and

(B) by amending paragraph (2) to read as follows:

"(2)(A) Nine members shall be appointed, without regard to political affiliation, to the Council in accordance with this paragraph from among individuals who are practitioners in the field of juvenile justice and who are not officers or employees of the United States.

"(B)(i) Three members shall be appointed by the Speaker of the House of Representatives, after consultation with the minority leader of the House of Representatives.

"(ii) Three members shall be appointed by the majority leader of the Senate, after consultation with the minority leader of the Senate.

"(iii) Three members shall be appointed by the President.

"(C)(i) Of the members appointed under each of clauses (i), (ii), and (iii)—

"(I) 1 shall be appointed for a term of 1 year;

"(II) 1 shall be appointed for a term of 2 years; and

"(III) 1 shall be appointed for a term of 3 years;

as designated at the time of appointment.

"(ii) Except as provided in clause (iii), a vacancy arising during the term for which an appointment is made may be filled only for the remainder of such term.

"(iii) After the expiration of the term for which a member is appointed, such member may continue to serve until a successor is appointed.";

(2) in subsection (c)—

(A) by inserting "(1)" after "(c)";

(B) in the first sentence by inserting "(in cooperation with State and local juvenile justice programs) all Federal programs and activities that detain or care for unaccompanied juveniles," after "delinquency programs";

(C) in the second sentence—

(i) by inserting "shall examine how the separate programs can be coordinated among Federal, State, and local governments to better serve at-risk children and juveniles and" after "Council"; and

(ii) by inserting "and all Federal programs and activities that detain or care for unaccompanied juveniles" before the period; and

(D) by adding at the end the following new paragraph:

"(2) In addition to performing their functions as members of the Council, the members appointed under subsection (a)(2) shall collectively—

"(A) make recommendations regarding the development of the objectives, priorities, and the long-term plan, and the implementation of overall policy and the strategy to carry out such plan, referred to in section 204(a)(1); and

"(B) not later than 180 days after the date of the enactment of this paragraph, submit such recommendations to the Administrator, the Chairman of the Committee on Education and Labor of the House of Representatives, and the Chairman of the Committee on the Judiciary of the Senate."; and

(3) in subsection (f)—

(A) by inserting "Members appointed under subsection (a)(2) shall serve without compensation." after "(f)"; and

(B) by striking "who are employed by the Federal Government full time".

(e) ANNUAL REPORT.—Section 207(1) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5617(1)) is amended—

(1) in subparagraph (D)—

(A) by inserting "(including juveniles treated as adults for purposes of prosecution)" after "juveniles"; and

(B) by striking "and" at the end;

(2) in subparagraph (E) by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(F) the educational status of juveniles, including information relating to learning disabilities, failing performance, grade retention, and dropping out of school.".

(f) FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS.—

(1) AUTHORITY TO MAKE GRANTS AND CONTRACTS.—Section 221(b)(2) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5613(b)(2)) is amended—

(A) in the first sentence by striking "existence" and inserting "experience"; and

(B) in the second sentence by striking "section 291(c)(1)" and inserting "section 299(c)(1)".

(2) ALLOCATION.—Section 222 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5632) is amended—

(A) by striking "allotted" each place it appears and inserting "allocated" and striking "allotment" each place it appears and inserting "allocation";

(B) in subsection (a)—

(i) in paragraph (2)(A)—

(I) by striking "part D" and inserting "parts D and E";

(II) by inserting "or such greater amount, up to $400,000, as is available to be allocated without reducing the amount of any State or territory's allocation below the amount allocated for fiscal year 1992" after "$325,000,"; and

(III) by inserting ", or such greater amount, up to $100,000, as is available to be allocated without reducing the amount of any State or territory's allocation below the amount allocated for fiscal year 1992," after "$75,000";

(ii) in paragraph (2)(B)—

(I) by inserting "or such greater amount, up to $600,000, as is available to be allocated if appropriations have been enacted and made available to carry out parts D and E in the full amounts authorized by section 299(a) (1) and (3)" after "$400,000,"; and

(II) by inserting ", or such greater amount, up to $100,000, as is available to be allocated without reducing the amount of any State or territory's allocation below the amount allocated for fiscal year 1992" after "$100,000"; and

(iii) in paragraph (3) by striking "1988" each place it appears and inserting "1992"; and

(C) in subsection (c)—

(i) in the first sentence by striking "and evaluation" and inserting ", evaluation, and one full-time staff position"; and

(ii) in the second sentence by striking "7½ per centum" and inserting "10 percent".

(3) STATE PLANS.—(A) Section 223 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633) is amended—

(i) in subsection (a)—

(I) in the second sentence by striking "programs, and the State" and inserting "programs and challenge activities subsequent to State participation in part E. The State";

(II) in paragraph (1) by striking "section 291(c)(1)" and inserting "section 299(c)(1)";

(III) by amending paragraph (3) to read as follows:

"(3) provide for an advisory group, which—

"(A) shall consist of not less than 15 and not more than 33 members appointed by the chief executive officer of the State—

"(i) which members have training, experience, or special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice;

"(ii) which members include—

"(I) at least 1 locally elected official representing general purpose local government;

"(II) representatives of law enforcement and juvenile justice agencies, including juvenile and family court judges, prosecutors, counsel for children and youth, and probation workers;

"(III) representatives of public agencies concerned with delinquency prevention or treatment, such as welfare, social services, mental health, education, special education, recreation, and youth services;

"(IV) representatives of private nonprofit organizations, including persons with a special focus on preserving and strengthening families, parent groups and parent self-help groups, youth development, delinquency prevention and treatment, neglected or dependent children, the quality of juvenile justice, education, and social services for children;

"(V) volunteers who work with delinquents or potential delinquents;

"(VI) youth workers involved with programs that are alternatives to incarceration, including programs providing organized recreation activities;

"(VII) persons with special experience and competence in addressing problems related to school violence and vandalism and alternatives to suspension and expulsion; and

"(VIII) persons with special experience and competence in addressing problems related to learning disabilities, emotional difficulties, child abuse and neglect, and youth violence;

"(iii) a majority of which members (including the chairperson) shall not be full-time employees of the Federal, State, or local government;

"(iv) at least one-fifth of which members shall be under the age of 24 at the time of appointment; and

"(v) at least 3 members who have been or are currently under the jurisdiction of the juvenile justice system;

"(B) shall participate in the development and review of the State's juvenile justice plan prior to submission to the supervisory board for final action;

"(C) shall be afforded the opportunity to review and comment, not later than 30 days after their submission to the advisory group, on all juvenile justice and delinquency prevention grant applications submitted to the State agency designated under paragraph (1);

"(D) shall, consistent with this title—

"(i) advise the State agency designated under paragraph (1) and its supervisory board;

"(ii) submit to the chief executive officer and the legislature of the State at least annually recommendations regarding State compliance with the requirements of paragraphs (12), (13), and (14) and with progress relating to challenge activities carried out pursuant to part E; and

"(iii) contact and seek regular input from juveniles currently under the jurisdiction of the juvenile justice system; and

"(E) may, consistent with this title—

"(i) advise on State supervisory board and local criminal justice advisory board composition;

"(ii) review progress and accomplishments of projects funded under the State plan.";

(IV) in paragraph (8)—

(aa) by inserting "(A)" after "(8)";

(bb) by striking "(A) an" and inserting "(i) an";

(cc) by striking "(B)" and inserting "(ii)";

(dd) by striking "(C)" and inserting "(iii)";

(ee) by inserting "(including educational needs)" after "delinquency prevention needs" each place it appears; and

(ff) by adding at the end the following new subparagraphs:

"(B) contain—

"(i) an analysis of gender-specific services for the prevention and treatment of juvenile delinquency, including the types of such services available and the need for such services for females; and

"(ii) a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency;

"(C) contain—

"(i) an analysis of services for the prevention and treatment of juvenile delinquency in rural areas, including the need for such services, the types of such services available in rural areas, and geographically unique barriers to providing such services; and

"(ii) a plan for providing needed services for the prevention and treatment of juvenile delinquency in rural areas; and

"(D) contain—

"(i) an analysis of mental health services available to juveniles in the juvenile justice system (including an assessment of the appropriateness of the particular placements of juveniles in order to receive such services) and of barriers to access to such services; and

"(ii) a plan for providing needed mental health services to juveniles in the juvenile justice system;";

(V) in paragraph (9) by inserting "recreation," after "special education,";

(VI) by amending paragraph (10) to read as follows:

"(10) provide that not less than 75 percent of the funds available to the State under section 222, other than funds made available to the State advisory group under section 222(d), whether expended directly by the State, by the unit of general local government, or by a combination thereof, or through grants and contracts with public or private nonprofit agencies, shall be used for—

"(A) community-based alternatives (including home-based alternatives) to incarceration and institutionalization, specifically—

"(i) for youth who can remain at home with assistance: home probation and programs providing professional supervised group activities or individualized mentoring relationships with adults that involve the family and provide counseling and other supportive services;

"(ii) for youth who need temporary placement: crisis intervention, shelter, and aftercare; and

"(iii) for youth who need residential placement: a continuum of foster care or group home alternatives that provide access to a comprehensive array of services;

"(B) community-based programs and services to work with—

"(i) parents and other family members to strengthen families, including parent self-help groups, so that juveniles may be retained in their homes;

"(ii) juveniles during their incarceration, and with their families, to ensure the safe return of such juveniles to their homes and to strengthen the families; and

"(iii) parents with limited English-speaking ability, particularly in areas where there is a large population of families with limited-English speaking ability;

"(C) comprehensive juvenile justice and delinquency prevention programs that meet the needs of youth through the collaboration of the many local systems before which a youth may appear, including schools, courts, law enforcement agencies, child protection agencies, mental health agencies, welfare services, health care agencies, and private nonprofit agencies offering youth services;

"(D) projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting the rights of youth affected by the juvenile justice system;

"(E) educational programs or supportive services for delinquent or other juveniles, provided equitably regardless of sex, race, or family income, designed to—

"(i) encourage juveniles to remain in elementary and secondary schools or in alternative learning situations, including—

"(I) education in settings that promote experiential, individualized learning and exploration of academic and career options;

"(II) assistance in making the transition to the world of work and self-sufficiency;

"(III) alternatives to suspension and expulsion; and

"(IV) programs to counsel delinquent juveniles and other juveniles regarding the opportunities that education provides; and

"(ii) enhance coordination with the local schools that such juveniles would otherwise attend, to ensure that—

"(I) the instruction that juveniles receive outside school is closely aligned with the instruction provided in school; and

"(II) information regarding any learning problems identified in such alternative learning situations are communicated to the schools;

"(F) expanded use of home probation and recruitment and training of home probation officers, other professional and paraprofessional personnel, and volunteers to work effectively to allow youth to remain at home with their families as an alternative to incarceration or institutionalization;

"(G) youth-initiated outreach programs designed to assist youth (including youth with limited proficiency in English) who otherwise would not be reached by traditional youth assistance programs;

"(H) programs designed to develop and implement projects relating to juvenile delinquency and learning disabilities, including on-the-job training programs to assist community services, law enforcement, and juvenile justice personnel to more effectively recognize and provide for learning disabled and other handicapped youth;

"(I) projects designed both to deter involvement in illegal activities and to promote involvement in lawful activities on the part of gangs whose membership is substantially composed of youth;

"(J) programs and projects designed to provide for the treatment of youths' dependence on or abuse of alcohol or other addictive or nonaddictive drugs;

"(K) law-related education programs (and projects) for delinquent and at-risk youth designed to prevent juvenile delinquency;

"(L) programs for positive youth development that assist delinquent and other at-risk youth in obtaining—

"(i) a sense of safety and structure;

"(ii) a sense of belonging and membership;

"(iii) a sense of self-worth and social contribution;

"(iv) a sense of independence and control over one's life;

"(v) a sense of closeness in interpersonal relationships; and

"(vi) a sense of competence and mastery including health and physical competence, personal and social competence, cognitive and creative competence, vocational competence, and citizenship competence, including ethics and participation;

"(M) programs that, in recognition of varying degrees of the seriousness of delinquent behavior and the corresponding gradations in the responses of the juvenile justice system in response to that behavior, are designed to—

"(i) encourage courts to develop and implement a continuum of post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting (including expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, electronic monitoring, boot camps and similar programs, and secure community-based treatment facilities linked to other support services such as health, mental health, education (remedial and special), job training, and recreation); and

"(ii) assist in the provision by the Administrator of information and technical assistance, including technology transfer, to States in the design and utilization of risk assessment mechanisms to aid juvenile justice personnel in determining appropriate sanctions for delinquent behavior;

"(N) programs designed to prevent and reduce hate crimes committed by juveniles, including educational programs and sentencing programs designed specifically for juveniles who commit hate crimes and that provide alternatives to incarceration; and

"(O) programs (including referral to literacy programs and social service programs) to assist families with limited English-speaking ability that include delinquent juveniles to overcome language and cultural barriers that may prevent the complete treatment of such juveniles and the preservation of their families.";

(VII) in paragraph (12)(A) by inserting "or alien juveniles in custody," after "court orders,";

(VIII) in paragraph (13)—

(aa) by striking "regular", and

(bb) by inserting before the semicolon at the end "or with the part-time or full-time security staff (including management) or direct-care staff of a jail or lockup for adults";

(IX) in paragraph (14)—

(aa) by striking "; beginning after the five-year period following December 8, 1980,";

(bb) by striking "1993" and inserting "1997"; and

(cc) by striking "areas which" and all that follows through the end of the paragraph and inserting "areas that are in compliance with paragraph (13) and—

"(A)(i) are outside a Standard Metropolitan Statistical Area; and

"(ii) have no existing acceptable alternative placement available;

"(B) are located where conditions of distance to be traveled or the lack of highway, road, or other ground transportation do not allow for court appearances within 24 hours, so that a brief (not to exceed 48 hours) delay is excusable; or

"(C) are located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel;";

(X) by amending paragraph (16) to read as follows:

"(16) provide assurance that youth in the juvenile justice system are treated equitably on the basis of gender, race, family income, and mentally, emotionally, or physically handicapping conditions;"; and

(XI) in paragraph (17)—

(aa) by striking "and maintain the family units" and inserting "the families";

(bb) by striking "deliquency. Such" and inserting "delinquency (which"; and

(cc) by inserting "and the provision of family counseling during the incarceration of juvenile family members and coordination of family services when appropriate and feasible)" before the semicolon;

(XII) by striking "and" at the end of paragraph (23);

(XIII) by striking the period at the end of paragraph (24) and inserting "; and"; and

(XIV) by adding at the end the following new paragraph:

"(25) provide an assurance that if the State receives under section 222 for any fiscal year an amount that exceeds 105 percent of the amount the State received under such section for fiscal year 1992, all of such excess shall be expended through or for programs that are part of a comprehensive and coordinated community system of services."; and

(ii) by amending subsection (c) to read as follows:

"(c)(1) Subject to paragraph (2), the Administrator shall approve any State plan and any modification thereof that meets the requirements of this section.

"(2) Failure to achieve compliance with the subsection (a)(12)(A) requirement within the 3-year time limitation shall terminate any State's eligibility for funding under this part for a fiscal year beginning before January 1, 1993, unless the Administrator determines that the State is in substantial compliance with the requirement, through achievement of deinstitutionalization of not less than 75 percent of such juveniles or through removal of 100 percent of such juveniles from secure correctional facilities, and has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time not exceeding 2 additional years.

"(3) If a State fails to comply with the requirements of subsection (a), (12)(A), (13), (14), or (23) in any fiscal year beginning after January 1, 1993—

"(A) subject to subparagraph (B), the amount allotted under section 222 to the State for that fiscal year shall be reduced by 25 percent for each such paragraph with respect to which noncompliance occurs; and

"(B) the State shall be ineligible to receive any allotment under that section for such fiscal year unless—

"(i) the State agrees to expend all the remaining funds the State receives under this part (excluding funds required to be expended to comply with section 222 (c) and (d) and with section 223(a)(5)(C)) for that fiscal year only to achieve compliance with any such paragraph with respect to which the State is in noncompliance; or

"(ii) the Administrator determines, in the discretion of the Administrator, that the State—

"(I) has achieved substantial compliance with each such paragraph with respect to which the State was not in compliance; and

"(II) has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time."; and

(iii) in subsection (d)—

(I) by inserting ", excluding funds the Administrator shall make available to satisfy the requirement specified in section 222(d)," after "section 222(a)";

(II) by striking "the purposes of subsection (a)(12)(A), subsection (a)(13), or subsection (a)(14)" and inserting "activities of the kinds described in subsection (a) (12)(A), (13), (14) and (23)"; and

(III) by striking "subsection (a)(12)(A) and subsection (a)(13)" and inserting "subsection (a) (12)(A), (13), (14) and (23)".

(B) Notwithstanding the amendment made by subparagraph (A)(ii), section 223(c)(3) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633(c)(3)), as in effect on the day prior to the date of enactment of this Act, shall remain in effect to the extent that it provides the Administrator authority to grant a waiver with respect to a fiscal year prior to a fiscal year beginning before January 1, 1993.

(f) NATIONAL PROGRAMS.—

(1) NATIONAL INSTITUTE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION.—Section 241(d) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5651(d)(2)) is amended—

(A) in subsection (d)—

(i) by inserting "recreation and park personnel," after "special education personnel"; and

(ii) by inserting "prosecutors and defense attorneys," after "probation personnel,"; and

(B) in subsection (e)—

(i) in paragraph (5) by striking "prescribed for GS-18 of the General Schedule by section 5332" and inserting "payable under section 5376"; and

(ii) in paragraph (6) by striking "Act" and inserting "title".

(2) INFORMATION FUNCTION.—Section 242(3) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5652(3)) is amended by inserting "(including drug and alcohol programs and gender-specific programs)" after "treatment programs".

(3) RESEARCH, DEMONSTRATION, AND EVALUATION FUNCTIONS.—Section 243 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5653) is amended—

(A) by striking "The" and inserting "(a) The";

(B) in paragraph (1) by striking "maintain the family unit" and inserting "preserve families";

(C) by redesignating paragraphs (3), (4), (5), (6), (7), (8), and (9) as paragraphs (5), (6), (7), (8), (9), (10), and (11), respectively;

(D) by inserting after paragraph (2) the following new paragraphs:

"(3) establish or expand programs that, in recognition of varying degrees of the seriousness of delinquent behavior and the corresponding gradations in the responses of the juvenile justice system in response to that behavior, are designed to—

"(i) encourage courts to develop and implement a continuum of post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting (including expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, electronic monitoring, boot camps and similar programs, and secure community-based treatment facilities linked to other support services such as health, mental health, education (remedial and special), job training, and recreation); and

"(ii) assist in the provision by the Administrator of information and technical assistance, including technology transfer, to States in the design and utilization of risk assessment mechanisms to aid juvenile justice personnel in determining appropriate sanctions for delinquent behavior;

"(4) Encourage the development of programs which, in addition to helping youth take responsibility for their behavior, take into consideration life experiences which may have contributed to their delinquency when developing intervention and treatment programs;

"(5) encourage the development and establishment of programs to enhance the States' ability to identify chronic serious and violent juvenile offenders who commit crimes such as rape, murder, firearms offenses, gang-related crimes, violent felonies, and serious drug offenses;";

(E) in subparagraph (D) of paragraph (7), as redesignated by subparagraph (C), by inserting "(including the productive use of discretionary time through organized recreational" after "lawful activities";

(F) by striking "and" at the end of paragraph (10), as redesignated by subparagraph (C);

(G) by striking the period at the end of paragraph (11), as redesignated by subparagraph (C), and inserting "; and"; and

(H) by adding at the end the following new paragraphs and subsection:

"(12) support independent and collaborative research, research training, and consultation on social, psychological, educational, economic, and legal issues affecting children and families;

"(13) support research related to achieving a better understanding of the commission of hate crimes by juveniles and designed to identify educational programs best suited to prevent and reduce the incidence of hate crimes committed by juveniles; and

"(14) routinely collect, analyze, compile, publish, and disseminate uniform national statistics concerning—

"(A) all aspects of juveniles as victims and offenders;

"(B) the processing and treatment, in the juvenile justice system, of juveniles who are status offenders, delinquent, neglected, or abused; and

"(C) the processing and treatment of such juveniles who are treated as adults for purposes of the criminal justice system.

"(b) The Administrator shall make available to the public—

"(1) the results of evaluations and research and demonstration activities referred to in subsection (a)(8); and

"(2) the data and studies referred to in subsection (a)(9);

that the Administrator is authorized to disseminate under subsection (a).".

(3) TECHNICAL ASSISTANCE AND TRAINING FUNCTIONS.—Section 244 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5654) is amended—

(A) in paragraph (2) by inserting "(including juveniles who commit hate crimes)" after "offenders";

(B) in paragraph (3)—

(i) by inserting "prosecutors and defense attorneys," after "judges";

(ii) by striking "and" at the end;

(C) by striking the period at the end of paragraph (4) and inserting "; and"; and

(D) by adding at the end the following new paragraph:

"(5) provide technical assistance and training to assist States and units of general local government to adopt the model standards issued under section 204(b)(7).".

(4) ESTABLISHMENT OF TRAINING PROGRAM.—Section 245 of the Juvenile Justice and De-

linquency Prevention Act of 1974 (42 U.S.C. 5659) is amended in the first sentence by inserting ", including methods and techniques specifically designed to prevent and reduce the incidence of hate crimes committed by juveniles" before the period.

(5) CURRICULUM FOR TRAINING PROGRAM.—Section 246 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5660) is amended in the second sentence by inserting "and shall include training designed to prevent juveniles from committing hate crimes" before the period.

(6) SPECIAL STUDIES AND REPORTS.—Section 248 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5662) is amended—

(A) by striking "(a) Not later than 1 year after the date" and inserting "(a) PURSUANT TO 1988 AMENDMENTS.—(1) Not later than 1 year after the date";

(B) by striking "(1) to review" and inserting "(A) to review";

(C) by striking "(A) conditions" and inserting "(i) conditions";

(D) by striking "(B) the extent" and inserting "(ii) the extent";

(E) by striking "(2) to make" and inserting "(B) to make";

(F) by striking "(b)(1) Not later" and inserting "(2)(A) Not later";

(G) by striking "(A) how" and inserting "(i) how";

(H) by striking "(B) the amount" and inserting "(ii) the amount";

(I) by striking "(C) the extent" and inserting "(iii) the extent";

(J) by striking "(2)(A) for purposes" and inserting "(B)(i) for purposes";

(K) by striking "(B) For purposes" and inserting "(ii) for purposes";

(L) by striking "(c) Not later" and inserting "(3) Not later";

(M) by striking "subsection (a) or (b)" and inserting "paragraph (1) or (2)"; and

(N) by adding at the end the following new subsection:

"(b) PURSUANT TO 1992 AMENDMENTS.—(1) Not later than 1 year after the date of enactment of this subsection, the Comptroller General shall—

"(A) conduct a study with respect to juveniles waived to adult court that reviews—

"(i) the frequency and extent to which juveniles have been transferred, certified, or waived to criminal court for prosecution during the 5-year period ending December 1992;

"(ii) conditions of confinement in adult detention and correctional facilities for juveniles waived to adult court; and

"(iii) sentencing patterns, comparing juveniles waived to adult court with juveniles who have committed similar offenses but have not been waived; and

"(B) submit to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate a report (including a compilation of State waiver statutes) on the findings made in the study and recommendations to improve conditions for juveniles waived to adult court.

"(2) Not later than 1 year after the date of enactment of this subsection, the Comptroller General shall—

"(A) conduct a study with respect to admissions of juveniles for behavior disorders to private psychiatric hospitals, and to other residential and nonresidential programs that serve juveniles admitted for behavior disorders, that reviews—

"(i) the frequency with which juveniles have been admitted to such hospitals and programs during the 5-year period ending December 1992; and

"(ii) conditions of confinement, the average length of stay, and methods of payment for the residential care of such juveniles; and

"(B) submit to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings made in the study and recommendations to improve procedural protections and conditions for juveniles with behavior disorders admitted to such hospitals and programs.

"(3) Not later than 1 year after the date of enactment of this subsection, the Comptroller General shall—

"(A) conduct a study of gender bias within State juvenile justice systems that reviews—

"(i) the frequency with which females have been detained for status offenses (such as frequently running away, truancy, and sexual activity), as compared with the frequency with which males have been detained for such offenses during the 5-year period ending December 1992; and

"(ii) the appropriateness of the placement and conditions of confinement for females; and

"(B) submit to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings made in the study and recommendations to combat gender bias in juvenile justice and provide appropriate services for females who enter the juvenile justice system.

"(4) Not later than 1 year after the date of enactment of this subsection, the Comptroller General shall—

"(A) conduct a study of the Native American pass-through grant program authorized under section 223(a)(5)(C) that reviews the cost-effectiveness of the funding formula utilized; and

"(B) submit to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings made in the study and recommendations to improve the Native American pass-through grant program.

"(5) Not later than 1 year after the date of enactment of this subsection, the Comptroller General shall—

"(A) conduct a study of access to counsel in juvenile court proceedings that reviews—

"(i) the frequency with which and the extent to which juveniles in juvenile court proceedings either have waived counsel or have obtained access to counsel during the 5-year period ending December 1992; and

"(ii) a comparison of access to and the quality of counsel afforded juveniles charged in adult court proceedings with those of juveniles charged in juvenile court proceedings; and

"(B) submit to Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate a report on the findings made in the study and recommendations to improve access to counsel for juveniles in juvenile court proceedings.

"(6)(A) Not later than 180 days after the date of enactment of this subsection, the Administrator shall begin to conduct a study and continue any pending study of the incidence of violence committed by or against juveniles in urban and rural areas in the United States.

"(B) The urban areas shall include—

"(i) the District of Columbia;

"(ii) Los Angeles, California;

"(iii) Milwaukee, Wisconsin;

"(iv) Denver, Colorado;

"(v) Pittsburgh, Pennsylvania;

"(vi) Rochester, New York; and

"(vii) such other cities as the Administrator determines to be appropriate.

"(C) At least one rural area shall be included.

"(D) With respect to each urban and rural area included in the study, the objectives of the study shall be—

"(i) to identify characteristics and patterns of behavior of juveniles who are at risk of becoming violent or victims of homicide;

"(ii) to identify factors particularly indigenous to such area that contribute to violence committed by or against juveniles;

"(iii) to determine the accessibility of firearms, and the use of firearms by or against juveniles;

"(iv) to determine the conditions that cause any increase in violence committed by or against juveniles;

"(v) to identify existing and new diversion, prevention, and control programs to ameliorate such conditions;

"(vi) to improve current systems to prevent and control violence by or against juveniles; and

"(vii) to develop a plan to assist State and local governments to establish viable ways to reduce homicide committed by or against juveniles.

"(E) Not later than 3 years after the date of enactment of this subsection, the Administrator shall submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate detailing the results of the study addressing each objective specified in subparagraph (D).

"(7)(A) Not later than 1 year after the date of the enactment of this subsection, the Administrator shall—

"(i) conduct a study described in subparagraph (B); and

"(ii) submit to the chairman of the Committee on Education and Labor of the House of Representatives and the chairman of the Committee on the Judiciary of the Senate the results of the study.

"(B) The study required by subparagraph (A) shall assess—

"(i) the characteristics of juveniles who commit hate crimes, including a profile of such juveniles based on—

"(I) the motives for committing hate crimes;

"(II) the age, sex, race, ethnicity, education level, locality, and family income of such juveniles; and

"(III) whether such juveniles are familiar with publications or organized groups that encourage the commission of hate crimes;

"(ii) the characteristics of hate crimes committed by juveniles, including—

"(I) the types of hate crimes committed;

"(II) the frequency with which institutions and natural persons, separately determined, were the targets of such crimes;

"(III) the number of persons who participated with juveniles in committing such crimes;

"(IV) the types of law enforcement investigations conducted with respect to such crimes;

"(V) the law enforcement proceedings commenced against juveniles for committing hate crimes; and

"(VI) the penalties imposed on such juveniles as a result of such proceedings; and

"(iii) the characteristics of the victims of hate crimes committed by juveniles, including—

"(I) the age, sex, race, ethnicity, locality of the victims and their familiarity with the offender; and

"(II) the motivation behind the attack.".

(7) AUTHORITY TO MAKE GRANTS AND CONTRACTS.—Section 261 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5665) is amended—

(A) in subsection (a)—

(i) by striking "(a) The" and inserting "(a) Except as provided in subsection (f), the";

(ii) in paragraph (1) by inserting "(including home-based treatment programs)" after "alternatives"; and

(iii) by amending paragraph (3) to read as follows:

"(3) Establishing or supporting advocacy programs and services that encourage the improvement of due process available to juveniles in the juvenile justice system and the quality of legal representation for such juveniles.";

(iv) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7), and (8), respectively;

(v) by inserting after paragraph (3) the following new paragraph:

"(4) Establishing or supporting programs stressing advocacy activities aimed at improving services to juveniles affected by the juvenile justice system, including services that provide for the appointment of special advocates by courts for such juveniles.";

(vi) in paragraph (4), as redesignated by clause (iv)—

(I) by inserting "(including self-help programs for parents)" after "programs"; and

(II) by inserting ", including programs that work with families during the incarceration of juvenile family members and which take into consideration the special needs of families with limited-English speaking ability" before the period at the end;

(vii) in paragraph (7), as redesignated by clause (iv)—

(I) by striking the period at the end of subchapter (C) and inserting a comma; and

(II) by adding at the end the following: "that targets juveniles who have had contact with the juvenile justice system or who are likely to have contact with the system."; and

(viii) by adding at the end the following new paragraph:

"(9) Establishing or supporting programs designed to prevent and to reduce the incidence of hate crimes by juveniles, including—

"(A) model educational programs that are designed to reduce the incidence of hate crimes by means such as—

"(i) addressing the specific prejudicial attitude of each offender;

"(ii) developing an awareness in the offender of the effect of the hate crime on the victim; and

"(iii) educating the offender about the importance of tolerance in our society; and

"(B) sentencing programs that are designed specifically for juveniles who commit hate crimes and that provide alternatives to incarceration."; and

(B) in subsection (b)(5) by inserting "community service personnel," after "law enforcement personnel,";

(C) in subsection (b)—

(i) by striking "(b) The" and inserting "(b) Except as provided in subsection (f), the"; and

(ii) in paragraph (2) by inserting "to assist in identifying learning difficulties (including learning disabilities)," after "schools,"; and

(D) by adding at the end the following new subsection:

"(f) The Administrator shall not make a grant or a contract under subsection (a) or (b) to the Department of Justice or to any administrative unit or other entity that is part of the Department of Justice.".

(g) CONSIDERATIONS FOR APPROVAL OF APPLICATIONS.—Section 262(d)(1) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5665a(d)(1)) is amended—

(1) by amending subparagraph (B) to read as follows:

"(B) The competitive process described in subparagraph (A) shall not be required if the Administrator makes a written determination waiving the competitive process—

"(i) with respect to programs to be carried out in areas with respect to which the President declares under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) that a major disaster or emergency exists; or

"(ii) with respect to a particular program described in part C that is uniquely qualified."; and

(2) by striking subparagraph (C).

(h) PREVENTION, INTERVENTION, AND TREATMENT PROGRAM RELATING TO JUVENILE GANGS AND DRUG ABUSE AND DRUG TRAFFICKING.—Part D of title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5667 et seq.) is amended to read as follows:

"PART D—GANG-FREE SCHOOLS AND COMMUNITIES; COMMUNITY-BASED GANG INTERVENTION

"Subpart I—Gang-Free Schools and Communities

"AUTHORITY TO MAKE GRANTS AND CONTRACTS

"SEC. 281. (a) The Administrator shall make grants to or enter into contracts with public agencies (including local educational agencies) and private nonprofit agencies, organizations, and institutions to establish and support programs and activities that involve families and communities and that are designed to carry out any of the following purposes:

"(1) To prevent and to reduce the participation of juveniles in the activities of gangs that commit crimes. Such programs and activities may include—

"(A) individual, peer, family, and group counseling, including the provision of life skills training and preparation for living independently, which shall include cooperation with social services, welfare, and health care programs;

"(B) education and social services designed to address the social and developmental needs of juveniles which such juveniles would otherwise seek to have met through membership in gangs;

"(C) crisis intervention and counseling to juveniles, who are particularly at risk of gang involvement, and their families, including assistance from social service, welfare, health care, mental health, and substance abuse prevention and treatment agencies where necessary;

"(D) the organization of neighborhood and community groups to work closely with parents, schools, law enforcement, and other public and private agencies in the community; and

"(E) training and assistance to adults who have significant relationships with juveniles who are or may become members of gangs, to assist such adults in providing constructive alternatives to participating in the activities of gangs.

"(2) To develop within the juvenile adjudicatory and correctional systems new and innovative means to address the problems of juveniles convicted of serious drug-related and gang-related offenses.

"(3) To target elementary school students, with the purpose of steering students away from gang involvement.

"(4) To provide treatment to juveniles who are members of such gangs, including members who are accused of committing a serious crime and members who have been adjudicated as being delinquent.

"(5) To promote the involvement of juveniles in lawful activities in geographical areas in which gangs commit crimes.

"(6) To promote and support, with the cooperation of community-based organizations experienced in providing services to juveniles engaged in gang-related activities and the cooperation of local law enforcement agencies, the development of policies and activities in public elementary and secondary schools which will assist such schools in maintaining a safe environment conducive to learning.

"(7) To assist juveniles who are or may become members of gangs to obtain appropriate educational instruction, in or outside a regular school program, including the provision of counseling and other services to promote and support the continued participation of such juveniles in such instructional programs.

"(8) To expand the availability of prevention and treatment services relating to the illegal use of controlled substances and controlled substances analogues (as defined in paragraphs (6) and (32) of section 102 of the Controlled Substances Act (21 U.S.C. 802) by juveniles, provided through State and local health and social services agencies.

"(9) To provide services to prevent juveniles from coming into contact with the juvenile justice system again as a result of gang-related activity.

"(10) To provide services authorized in this section at a special location in a school or housing project.

"(11) To support activities to inform juveniles of the availability of treatment and services for which financial assistance is available under this subpart.

"(b) From not more than 15 percent of the amount appropriated to carry out this part in each fiscal year, the Administrator may make grants to and enter into contracts with public agencies and private nonprofit agencies, organizations, and institutions—

"(1) to conduct research on issues related to juvenile gangs;

"(2) to evaluate the effectiveness of programs and activities funded under subsection (a); and

"(3) to increase the knowledge of the public (including public and private agencies that operate or desire to operate gang prevention and intervention programs) by disseminating information on research and on effective programs and activities funded under this subpart.

"APPROVAL OF APPLICATIONS

"SEC. 281A. (a) Any agency, organization, or institution desiring to receive a grant, or to enter into a contract, under this subpart shall submit an application at such time, in such manner, and containing such information as the Administrator may prescribe.

"(b) In accordance with guidelines established by the Administrator, each application submitted under subsection (a) shall—

"(1) set forth a program or activity for carrying out one or more of the purposes specified in section 281 and specifically identify each such purpose such program or activity is designed to carry out;

"(2) provide that such program or activity shall be administered by or under the supervision of the applicant;

"(3) provide for the proper and efficient administration of such program or activity;

"(4) provide for regular evaluation of such program or activity;

"(5) provide an assurance that the proposed program or activity will supplement, not supplant, similar programs and activities already available in the community;

"(6) describe how such program or activity is coordinated with programs, activities, and services available locally under parts B or C of this title, and under chapter 1 of subtitle B of title III of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11801–11805);

"(7) certify that the applicant has requested the State planning agency to review and comment on such application and summarizes the responses of such State planning agency to such request;

"(8) provide that regular reports on such program or activity shall be sent to the Administrator and to such State planning agency; and

"(9) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subpart.

"(c) In reviewing applications for grants and contracts under section 281(a), the Administrator shall give priority to applications—

"(1) submitted by, or substantially involving, local educational agencies (as defined in section 1471 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891));

"(2) based on the incidence and severity of crimes committed by gangs whose membership is composed primarily of juveniles in the geographical area in which the applicants propose to carry out the programs and activities for which such grants and contracts are requested; and

"(3) for assistance for programs and activities that—

"(A) are broadly supported by public and private nonprofit agencies, organizations, and institutions located in such geographical area; and

"(B) will substantially involve the families of juvenile gang members in carrying out such programs or activities.

"Subpart II—Community-Based Gang Intervention

"SEC. 282. (a) The Administrator shall make grants to or enter into contracts with public and private nonprofit agencies, organizations, and institutions to carry out programs and activities—

"(1) to reduce the participation of juveniles in the illegal activities of gangs;

"(2) to develop regional task forces involving State, local, and community-based organizations to coordinate enforcement, intervention, and treatment efforts for juvenile gang members and to curtail interstate activities of gangs; and

"(3) to facilitate coordination and cooperation among—

"(A) local education, juvenile justice, employment, and social service agencies;

"(B) community-based programs with a proven record of effectively providing intervention services to juvenile gang members for the purpose of reducing the participation of juveniles in illegal gang activities; and

"(4) to support programs that, in recognition of varying degrees of the seriousness of delinquent behavior and the corresponding gradations in the responses of the juvenile justice system in response to that behavior, are designed to—

"(A) encourage courts to develop and implement a continuum of post-adjudication restraints that bridge the gap between traditional probation and confinement in a correctional setting (including expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, electronic monitoring, boot camps and similar programs, and secure community-based treatment facilities linked to other support services such as health, mental health, education (remedial and special), job training, and recreation); and

"(B) assist in the provision by the provision by the Administrator of information and technical assistance, including technology transfer, to States in the design and utilization of risk assessment mechanisms to aid juvenile justice personnel in determining appropriate sanctions for delinquent behavior.

"(b) Programs and activities for which grants and contracts are to be made under subsection (a) may include—

"(1) developing within the juvenile adjudicatory and correctional systems new and innovative means to address the problems of juveniles convicted of serious drug-related and gang-related offenses;

"(2) providing treatment to juveniles who are members of such gangs, including members who are accused of committing a serious crime and members who have been adjudicated as being delinquent;

"(3) promoting the involvement of juveniles in lawful activities in geographical areas in which gangs commit crimes;

"(4) expanding the availability of prevention and treatment services relating to the illegal use of controlled substances and controlled substances analogues (as defined in paragraphs (6) and (32) of section 102 of the Controlled Substances Act (21 U.S.C. 802) by juveniles, provided through State and local health and social services agencies;

"(5) providing services to prevent juveniles from coming into contact with the juvenile justice system again as a result of gang-related activity; or

"(6) supporting activities to inform juveniles of the availability of treatment and services for which financial assistance is available under this subpart.

"APPROVAL OF APPLICATIONS

"SEC. 282A. (a) Any agency, organization, or institution desiring to receive a grant, or to enter into a contract, under this subpart shall submit an application at such time, in such manner, and containing such information as the Administrator may prescribe.

"(b) In accordance with guidelines established by the Administrator, each application submitted under subsection (a) shall—

"(1) set forth a program or activity for carrying out one or more of the purposes specified in section 282 and specifically identify each such purpose such program or activity is designed to carry out;

"(2) provide that such program or activity shall be administered by or under the supervision of the applicant;

"(3) provide for the proper and efficient administration of such program or activity;

"(4) provide for regular evaluation of such program or activity;

"(5) provide an assurance that the proposed program or activity will supplement, not supplant, similar programs and activities already available in the community;

"(6) describe how such program or activity is coordinated with programs, activities, and services available locally under parts B or C of this title, and under chapter 1 of subtitle B of title III of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11801–11805);

"(7) certify that the applicant has requested the State planning agency to review and comment on such application and summarizes the responses of such State planning agency to such request;

"(8) provide that regular reports on such program or activity shall be sent to the Administrator and to such State planning agency; and

"(9) provide for such fiscal control and fund accounting procedures as may be necessary to ensure prudent use, proper disbursement, and accurate accounting of funds received under this subpart.

"(c) In reviewing applications for grants and contracts under section 285(a), the Administrator shall give priority to applications—

"(1) submitted by, or substantially involving, community-based organizations experienced in providing services to juveniles;

"(2) based on the incidence and severity of crimes committed by gangs whose membership is composed primarily of juveniles in the geographical area in which the applicants propose to carry out the programs and activities for which such grants and contracts are requested; and

"(3) for assistance for programs and activities that—

"(A) are broadly supported by public and private nonprofit agencies, organizations, and institutions located in such geographical area; and

"(B) will substantially involve the families of juvenile gang members in carrying out such programs or activities.

"Subpart III—General Provisions

"DEFINITION

"SEC. 283. For purposes of this part, the term 'juvenile' means an individual who is less than 22 years of age.".

(i) ADDITIONAL PARTS IN TITLE II.—(1) Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611 et seq.) is amended—

(A) by redesignating part E as part I;

(B) by redesignating sections 291, 292, 293, 294, 295, and 296 as sections 299, 299A, 299B, 299C, 299D, and 299E, respectively; and

(C) by inserting after part D the following new parts:

"PART E—STATE CHALLENGE ACTIVITIES

"ESTABLISHMENT OF PROGRAM

"SEC. 285. (a) IN GENERAL.—The Administrator may make a grant to a State that receives an allocation under section 222, in the amount of 10 percent of the amount of the allocation, for each challenge activity in which the State participates for the purpose of funding the activity.

"(b) DEFINITIONS.—For purposes of this part—

"(1) the term 'case review system' means a procedure for ensuring that—

"(A) each youth has a case plan, based on the use of objective criteria for determining a youth's danger to the community or himself or herself, that is designed to achieve appropriate placement in the least restrictive and most family-like setting available in close proximity to the parents' home, consistent with the best interests and special needs of the youth;

"(B) the status of each youth is reviewed periodically but not less frequently than once every 3 months, by a court or by administrative review, in order to determine the continuing necessity for and appropriateness of the placement;

"(C) with respect to each youth, procedural safeguards will be applied to ensure that a dispositional hearing is held to consider the future status of each youth under State supervision, in a juvenile or family court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, not later than 12 months after the original placement of the youth and periodically thereafter during the continuation of out-of-home placement; and

"(D) a youth's health, mental health, and education record is reviewed and updated periodically; and

"(2) the term 'challenge activity' means a program maintained for 1 of the following purposes:

"(A) Developing and adopting policies and programs to provide basic health, mental health, and appropriate education services, including special education, for youth in the juvenile justice system as specified in standards developed by the National Advisory Committee for Juvenile Justice and Delinquency Prevention prior to October 12, 1984.

"(B) Developing and adopting policies and programs to provide access to counsel for all juveniles in the justice system to ensure that juveniles consult with counsel before waiving the right to counsel.

"(C) Increasing community-based alternatives to incarceration by establishing programs (such as expanded use of probation, mediation, restitution, community service, treatment, home detention, intensive supervision, and electronic monitoring) and developing and adopting a set of objective criteria for the appropriate placement of juveniles in detention and secure confinement.

"(D) Developing and adopting policies and programs to provide secure settings for the placement of violent juvenile offenders by closing down traditional training schools and replacing them with secure settings with capacities of no more than 50 violent juvenile offenders with ratios of staff to youth great enough to ensure adequate supervision and treatment.

"(E) Developing and adopting policies to prohibit gender bias in placement and treatment and establishing programs to ensure that female youth have access to the full range of health and mental health services, treatment for physical or sexual assault and abuse, self defense instruction, education in parenting, education in general, and other training and vocational services.

"(F) Establishing and operating, either directly or by contract or arrangement with a public agency or other appropriate private nonprofit organization (other than an agency or organization that is responsible for licensing or certifying out-of-home care services for youth), a State ombudsman office for children, youth, and families to investigate and resolve complaints relating to action, inaction, or decisions of providers of out-of-home care to children and youth (including secure detention and correctional facilities, residential care facilities, public agencies, and social service agencies) that may adversely affect the health, safety, welfare, or rights of resident children and youth.

"(G) Developing and adopting policies and programs designed to remove, where appropriate, status offenders from the jurisdiction of the juvenile court to prevent the placement in secure detention facilities or secure correctional facilities of juveniles who are nonoffenders or who are charged with or who have committed offenses that would not be criminal if committed by an adult.

"(H) Developing and adopting policies and programs designed to serve as alternatives to suspension and expulsion from school.

"(I) Increasing aftercare services for juveniles involved in the justice system by establishing programs and developing and adopting policies to provide comprehensive health, mental health, education, and vocational services and services that preserve and strengthen the families of such juveniles.

"(J) Developing and adopting policies to establish—

"(i) a State administrative structure to coordinate program and fiscal policies for children who have emotional and behavioral problems and their families among the major child serving systems, including schools, social services, health services, mental health services, and the juvenile justice system; and

"(ii) a statewide case review system.

"PART F—TREATMENT FOR JUVENILE OFFENDERS WHO ARE VICTIMS OF CHILD ABUSE OR NEGLECT

"DEFINITION

"SEC. 287. For the purposes of this part, the term 'juvenile' means a person who is less than 18 years of age.

"AUTHORITY TO MAKE GRANTS

"SEC. 287A. The Administrator, in consultation with the Secretary of Health and Human Services, shall make grants to public and nonprofit private organizations to develop, establish, and support projects that—

"(1) provide treatment to juvenile offenders who are victims of child abuse or neglect and to their families so as to reduce the likelihood that the juvenile offenders will commit subsequent violations of law;

"(2) based on the best interests of juvenile offenders who receive treatment for child abuse or neglect, provide transitional services (including individual, group, and family counseling) to juvenile offenders—

"(A) to strengthen the relationships of juvenile offenders with their families and encourage the resolution of intrafamily problems related to the abuse or neglect;

"(B) to facilitate their alternative placement; and

"(C) to prepare juveniles aged 16 years and older to live independently; and

"(3) carry out research (including surveys of existing transitional services, identification of exemplary treatment modalities, and evaluation of treatment and transitional services) provided with grants made under this section.

"ADMINISTRATIVE REQUIREMENTS

"SEC. 287B. The Administrator shall administer this part subject to the requirements of sections 262, 299B, and 299E.

"PRIORITY

"SEC. 287C. In making grants under section 287A, the Administrator—

"(1) shall give priority to applicants that have experience in treating juveniles who are victims of child abuse or neglect; and

"(2) may not disapprove an application solely because the applicant proposes to provide treatment or transitional services to juveniles who are adjudicated to be delinquent for having committed offenses that are not serious crimes.

"PART G—MENTORING

"PURPOSES

"SEC. 288. The purposes of this part are—

"(1) to reduce juvenile delinquency and gang participation;

"(2) to improve academic performance; and

"(3) to reduce the dropout rate,

through the use of mentors for at-risk youth.

"DEFINITIONS

"SEC. 288A. For purposes of this part—

"(1) the term 'at-risk youth' means a youth at risk of educational failure or dropping out of school or involvement in delinquent activities; and

"(2) the term 'mentor' means a person who works with an at-risk youth on a one-to-one basis, establishing a supportive relationship with the youth and providing the youth with academic assistance and exposure to new experiences that enhance the youth's ability to become a responsible citizen.

"GRANTS

"SEC. 288B. The Administrator shall, by making grants to and entering into contracts with local educational agencies (each which agency shall be in partnership with a public or private agency, institution, or business), establish and support programs and activities for the purpose of implementing mentoring programs that—

"(1) are designed to link at-risk children, particularly children living in high crime areas and children experiencing educational failure, with responsible adults such as law enforcement officers, persons working with local businesses, and adults working for community-based organizations and agencies; and

"(2) are intended to achieve 1 or more of the following goals:

"(A) Provide general guidance to at-risk youth.

"(B) Promote personal and social responsibility among at-risk youth.

"(C) Increase at-risk youth's participation in and enhance their ability to benefit from elementary and secondary education.

"(D) Discourage at-risk youth's use of illegal drugs, violence, and dangerous weapons, and other criminal activity.

"(E) Discourage involvement of at-risk youth in gangs.

"(F) Encourage at-risk youth's participation in community service and community activities.

"REGULATIONS AND GUIDELINES

"SEC. 288C. (a) REGULATIONS.—The Administrator, after consultation with the Secretary of Health and Human Services, the Secretary of Education, and the Secretary of Labor, shall promulgate regulations to implement this part.

"(b) GUIDELINES.—The Administrator shall develop and distribute to program participants specific model guidelines for the screening of prospective program mentors.

"USE OF GRANTS

"SEC. 288D. (a) PERMITTED USES.—Grants awarded pursuant to this part shall be used to implement mentoring programs, including—

"(1) hiring of mentoring coordinators and support staff;

"(2) recruitment, screening, and training of adult mentors;

"(3) reimbursement of mentors for reasonable incidental expenditures such as transportation that are directly associated with mentoring; and

"(4) such other purposes as the Administrator may reasonably prescribe by regulation.

"(b) PROHIBITED USES.—Grants awarded pursuant to this part shall not be used—

"(1) to directly compensate mentors, except as provided pursuant to subsection (a)(3);

"(2) to obtain educational or other materials or equipment that would otherwise be used in the ordinary course of the grantee's operations;

"(3) to support litigation of any kind; or

"(4) for any other purpose reasonably prohibited by the Administrator by regulation.

"PRIORITY

"SEC. 288E. (a) IN GENERAL.—In making grants under this part, the Administrator shall give priority for awarding grants to applicants that—

"(1) serve at-risk youth in high crime areas;

"(2) have 60 percent or more of their youth eligible to receive funds under chapter 1 of the Elementary and Secondary Education Act of 1965; and

"(3) have a considerable number of youth who drop out of school each year.

"(b) OTHER CONSIDERATIONS.—In making grants under this part, the Administrator shall give consideration to—

"(1) the geographic distribution (urban and rural) of applications;

"(2) the quality of a mentoring plan, including—

"(A) the resources, if any, that will be dedicated to providing participating youth with opportunities for job training or postsecondary education; and

"(B) the degree to which parents, teachers, community-based organizations, and the local community participate in the design and implementation of the mentoring plan; and

"(3) the capability of the applicant to effectively implement the mentoring plan.

"APPLICATIONS

"SEC. 288F. An application for assistance under this part shall include—

"(1) information on the youth expected to be served by the program;

"(2) a provision for a mechanism for matching youth with mentors based on the needs of the youth;

"(3) an assurance that no mentor will be assigned to more than one youth, so as to ensure a one-to-one relationship;

"(4) an assurance that projects operated in secondary schools will provide youth with a variety of experiences and support, including—

"(A) an opportunity to spend time in a work environment and, when possible, participate in the work environment;

"(B) an opportunity to witness the job skills that will be required for youth to obtain employment upon graduation;

"(C) assistance with homework assignments; and

"(D) exposure to experiences that youth might not otherwise encounter;

"(5) an assurance that projects operated in elementary schools will provide youth with—

"(A) academic assistance;

"(B) exposure to new experiences and activities that youth might not encounter on their own; and

"(C) emotional support;

"(6) an assurance that projects will be monitored to ensure that each youth benefits from a mentor relationship, with provision for a new mentor assignment if the relationship is not beneficial to the youth;

"(7) the method by which mentors and youth will be recruited to the project;

"(8) the method by which prospective mentors will be screened; and

"(9) the training that will be provided to mentors.

"GRANT CYCLES

"SEC. 288G. Grants under this part shall be made for 3-year periods.

"REPORTS

"SEC. 288H. Not later than 120 days after the completion of the first cycle of grants under this part, the Administrator shall submit to Congress a report regarding the success and effectiveness of the grant program in reducing juvenile delinquency and gang participation, improving academic performance, and reducing the dropout rate.

"PART H—BOOT CAMPS

"ESTABLISHMENT OF PROGRAM

"SEC. 289. (a) IN GENERAL.—The Administrator may make grants to the appropriate agencies of 1 or more States for the purpose of establishing up to 10 military-style boot camps for juvenile delinquents (referred to as "boot camps").

"(b) LOCATION.—(1) The boot camps shall be located on existing or closed military installations on sites to be chosen by the agencies in one or more States, or in other facilities designated by the agencies on such sites, after consultation with the Secretary of Defense, if appropriate, and the Administrator.

"(2) The Administrator shall—

"(A) try to achieve to the extent possible equitable geographic distribution in approving boot camp sites; and

"(B) give priority to grants where more than one State enters into formal cooperative arrangements to jointly administer a boot camp; and

"(c) REGIMEN.—The boot camps shall provide—

"(1) a highly regimented schedule of discipline, physical training, work, drill, and ceremony characteristic of military basic training;

"(2) regular, remedial, special, and vocational education; and

"(3) counseling and treatment for substance abuse and other health and mental health problems.

"CAPACITY

"SEC. 289A. Each boot camp shall be designed to accommodate between 150 and 250 juveniles for such time as the grant recipient agency deems to be appropriate.

"ELIGIBILITY AND PLACEMENT

"SEC. 289B. (a) ELIGIBILITY.—A person shall be eligible for assignment to a boot camp if he or she—

"(1) is considered to be a juvenile under the laws of the State of jurisdiction; and

"(2) has been adjudicated to be delinquent in the State of jurisdiction or, upon approval of the court, voluntarily agrees to the boot camp assignment without a delinquency adjudication.

"(b) PLACEMENT.—Prior to being placed in a boot camp, an assessment of a juvenile shall be preformed to determine that—

"(1) the boot camp is the least restrictive environment that is appropriate for the juvenile considering the seriousness of the juvenile's delinquent behavior and the juvenile's treatment need; and

"(2) the juvenile is physically and emotionally capable of participating in the boot camp regimen.

"POST-RELEASE SUPERVISION

"SEC. 289C. A State that seeks to establish a boot camp, or participate in the joint administration of a boot camp, shall submit to the Administrator a plan describing—

"(1) the provisions that the State will make for the continued supervision of juveniles following release; and

"(2) provisions for educational and vocational training, drug or other counseling and treatment, and other support services.

"PART I—WHITE HOUSE CONFERENCE ON JUVENILE JUSTICE

"SEC. 291. (a) IN GENERAL.—The President may call and conduct a National White House Conference on Juvenile Justice (referred to as the "Conference") in accordance with this part.

"(b) PURPOSES OF CONFERENCE.—The purposes of the Conference shall be—

"(1) to increase public awareness of the problems of juvenile offenders and the juvenile justice system;

"(2) to examine the status of minors currently in the juvenile and adult justice systems;

"(3) to examine the increasing number of violent crimes committed by juveniles;

"(4) to examine the growing phenomena of youth gangs, including the number of young women who are involved;

"(5) to assemble persons involved in policies and programs related to juvenile delinquency prevention and juvenile justice enforcement;

"(6) to examine the need for improving services for girls in the juvenile justice system;

"(7) to create a forum in which persons and organizations from diverse regions may share information regarding successes and failures of policy in their juvenile justice and juvenile delinquency prevention programs; and

"(8) to develop such specific and comprehensive recommendations for executive and legislative action as may be appropriate to address the problems of juvenile delinquency and juvenile justice.

"(c) SCHEDULE OF CONFERENCES.—The Conference under this part shall be concluded not later than 18 months after the date of enactment of this part.

"(d) PRIOR STATE AND REGIONAL CONFERENCES.—

"(1) IN GENERAL.—Participants in the Conference and other interested persons and organizations may conduct conferences and other activities at the State and regional levels prior to the date of the Conference, subject to the approval of the executive director of the Conference.

"(2) PURPOSE OF STATE AND REGIONAL CONFERENCES.—State and regional conferences and activities shall be directed toward the consideration of the purposes of this part. State conferences shall elect delegates to the National Conferences.

"(3) ADMITTANCE.—No person involved in administering State juvenile justice programs or in providing services to or advocacy of juvenile offenders may be denied admission to a State or regional conference.

"CONFERENCE PARTICIPANTS

"SEC. 291A. (a) IN GENERAL.—The Conference shall bring together persons concerned with issues and programs, both public and private, relating to juvenile justice, and juvenile delinquency prevention.

"(b) SELECTION.—

"(1) STATE CONFERENCES.—Delegates, including alternates, to the National Conference shall be elected by participants at the State conferences.

"(2) DELEGATES.—(A) In addition to delegates elected pursuant to paragraph (1)—

"(i) each Governor may appoint 1 delegate and 1 alternate;

"(ii) the majority leader of the Senate, in consultation with the minority leader, may appoint 10 delegates and 3 alternates;

"(iii) the Speaker of the House of Representatives, in consultation with the minority leader, may appoint 10 delegates and 3 alternates;

"(iv) the President may appoint 20 delegates and 5 alternates;

"(v) the chief law enforcement official and the chief juvenile corrections official of each State may appoint 1 delegate and 1 alternate each; and

"(vi) the Chairperson of the Juvenile Justice and Delinquency Prevention Advisory Committee of each State, or his or her designate, may appoint 1 delegate.

"(B) Only persons involved in administering State juvenile justice programs or in providing services to or advocacy of juvenile offenders shall be eligible for appointment as a delegate.

"(c) PARTICIPANT EXPENSES.—Each participant in the Conference shall be responsible for his or her expenses related to attending the Conference and shall not be reimbursed from funds appropriated pursuant to this Act.

"(d) NO FEES.—No fee may be imposed on a person who attends a Conference except a registration fee of not to exceed $10.

"STAFF AND EXECUTIVE BRANCH

"SEC. 291B. (a) IN GENERAL.—The President may appoint and compensate an executive director of the National White House Conference on Juvenile Justice and such other directors and personnel for the Conference as the President may deem to be advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates. The staff of the Conference may not exceed 20, including the executive director.

"(b) DETAILEES.—Upon request by the executive director, the heads of the executive and military departments may detail employees to work with the executive director in planning and administering the Conference without regard to section 3341 of title 5, United States Code.

"PLANNING AND ADMINISTRATION OF CONFERENCE

"SEC. 291C. (a) FEDERAL AGENCY SUPPORT.—All Federal departments, agencies, and instrumentalities shall provide such support and assistance as may be necessary to facilitate the planning and administration of the Conference.

"(b) DUTIES OF THE EXECUTIVE DIRECTOR.—In carrying out this part, the executive director of the White House Conference on Juvenile Justice—

"(1) shall provide such assistance as may be necessary for the organization and conduct of conferences at the State and regional levels authorized by section 291(d);

"(2) may enter into contracts and agreements with public and private agencies and organizations and academic institutions to assist in carrying out this part; and

"(3) shall prepare and provide background materials for use by participants in the Conference and by participants in State and regional conferences.

"REPORTS

"SEC. 291D. (a) IN GENERAL.—Not later than 6 months after the date on which a National Conference is convened, a final report of the Conference shall be submitted to the President and the Congress.

"(b) CONTENTS.—A report described in subsection (a)—

"(1) shall include the findings and recommendations of the Conference and proposals for any legislative action necessary to implement the recommendations of the Conference; and

"(2) shall be made available to the public.

"OVERSIGHT

"SEC. 291E. The Administrator shall report to the Congress annually during the 3-year period following the submission of the final report of a Conference on the status and implementation of the findings and recommendations of the Conference.".

(2) REPEALER.—Subtitle G of title II of the Crime Control Act of 1990 (42 U.S.C. 13051 et seq.) is repealed effective September 30, 1993.

(j) GENERAL AND ADMINISTRATIVE PROVISIONS.—Section 299 of the Juvenile Justice and Delinquency Prevention Act of 1974, as redesignated by subsection (g), is amended—

(1) by amending subsection (a) to read as follows:

"(a)(1) To carry out the purposes of this title (other than parts D, E, F, G, H, and I) there are authorized to be appropriated $150,000,000 for fiscal years 1993, 1994, 1995, and 1996. Funds appropriated for any fiscal year shall remain available for obligation until expended.

"(2)(A) Subject to subparagraph (B), to carry out part D, there are authorized to be appropriated—

"(i) to carry out subpart 1, $25,000,000 for fiscal year 1993 and such sums as are necessary for fiscal years 1994, 1995, and 1996; and

"(ii) to carry out subpart 2, $25,000,000 for fiscal year 1993 and such sums as are necessary for fiscal years 1994, 1995, and 1996.

"(B) No funds may be appropriated to carry out part D, E, F, G, or I of this title or title V or VI for a fiscal year unless the aggregate amount appropriated to carry out this title (other than part D, E, F, G, or I of this title or title V or VI) for the fiscal year is not less than the aggregate amount appropriated to carry out this title (other than part D, E, F, G, or I of this title or title V or VI) for the preceding fiscal year.

"(3) To carry out part E, there are authorized to be appropriated $50,000,000 for fiscal year 1993 and such sums as are necessary for each of the fiscal years 1994, 1995, and 1996.

"(4)(A) Subject to subparagraph (B), there are authorized to be appropriated to carry out part F—

"(i) $15,000,000 for fiscal year 1993; and

"(ii) such sums as are necessary for fiscal years 1994, 1995, and 1996.

"(B) No amount is authorized to be appropriated for a fiscal year to carry out part F unless the aggregate amount appropriated to carry out this title for that fiscal year is not less than the aggregate amount appropriated to carry out this title for the preceding fiscal year.

"(C) From the amount appropriated to carry out part F in a fiscal year, the Administrator shall use—

"(i) not less than 85 percent to make grants for treatment and transitional services;

"(ii) not to exceed 10 percent for grants for research; and

"(iii) not to exceed 5 percent for salaries and expenses of the Office of Juvenile Justice and Delinquency Prevention related to administering part F.

"(5)(A) Subject to subparagraph (B), there are authorized to be appropriated to carry out part G such sums as are necessary for fiscal years 1993, 1994, 1995, and 1996.

"(6)(A) There are authorized to be appropriated to carry out part H such sums as are necessary for fiscal year 1993, to remain available until expended, of which—

"(i) not more than $12,500,000 shall be used to convert any 1 closed military base or to modify any 1 existing military base or other designated facility to a boot camp; and

"(ii) not more than $2,500,000 shall be used to operate any 1 boot camp during a fiscal year.

"(B) No amount is authorized to be appropriated for a fiscal year to carry out part H unless the aggregate amount appropriated to carry out parts A, B, and C of this title for that fiscal year is not less than 120 percent of the aggregate amount appropriated to carry out those parts for fiscal year 1992.

"(7)(A) There are authorized to be appropriated such sums as are necessary for each National Conference and associated State and regional conferences under part I, to remain available until expended.

"(B) New spending authority or authority to enter into contracts under part I shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts.

"(C) No funds appropriated to carry out this Act shall be made available to carry out part I other than funds appropriated specifically for the purpose of conducting the Conference.

"(D) Any funds remaining unexpended at the termination of the Conference under part I, including submission of the report pursuant to section 291D, shall be returned to the Treasury of the United States and credited as miscellaneous receipts."; and

(2) by adding at the end the following new subsection:

"(e) Of such sums as are appropriated to carry out section 261(a)(6), not less than 20 percent shall be reserved by the Administrator for each of fiscal years 1993, 1994, 1995, and 1996, for not less than 2 programs that have not received funds under subpart II of part C prior to October 1, 1992, which shall be selected through the application and approval process set forth in section 262.".

SEC. 3. RUNAWAY AND HOMELESS YOUTH.

(a) FINDINGS.—Section 302 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5701) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) juveniles who have become homeless or who leave and remain away from home without parental permission, are at risk of developing serious health and other problems because they lack sufficient resources to obtain care and may live on the street for extended periods thereby endangering themselves and creating a substantial law enforcement problem for communities in which they congregate;";

(2) by striking "and" at the end of paragraph (4);

(3) in paragraph (5) by striking "temporary" and all that follows through the period at the end and inserting "care (including preventive services, emergency shelter services, and extended residential shelter) outside the welfare system and the law enforcement system;" and

(4) by adding at the end the following new paragraphs:

"(6) runaway and homeless youth have a disproportionate share of health, behavioral, and emotional problems compared to the general population of youth, but have less access to health care and other appropriate services and therefore may need access to longer periods of residential care, more intensive aftercare service, and other assistance;

"(7) to make a successful transition to adulthood, runaway youth, homeless youth, and other street youth need opportunities to complete high school or earn a general equivalency degree, learn job skills, and obtain employment;

"(8) in view of the interstate nature of the problem, it is the responsibility of the Federal Government to develop an accurate national reporting system and to develop an effective system of care including prevention, emergency shelter services, and longer residential care outside the public welfare and law enforcement structures;

"(9) early intervention services (such as home-based services) are needed to prevent runaway and homeless youth from becoming involved in the juvenile justice system and other law enforcement systems; and

"(10) street-based services that target runaway and homeless youth where they congregate are needed to reach youth who require assistance but who would not otherwise avail themselves of such assistance or services without street-based outreach.".

(b) AUTHORITY TO MAKE GRANTS.—

(1) AUTHORITY.—Section 311(a) of the Runaway and Homeless Youth Act (42 U.S.C. 5711(a)) is amended by striking "structure and" and inserting "system, the child welfare system, the mental health system, and".

(2) ALLOTMENT OF FUNDS.—Section 311(b) of the Runaway and Homeless Youth Act (42 U.S.C. 5711(b)) is amended—

(A) in paragraph (2)—

(i) by striking "$75,000" and inserting "$100,000"; and

(ii) by striking "$30,000" and inserting "$45,000"; and

(B) in paragraph (3) by striking "1988" each place it appears and inserting "1992".

(3) STREET-BASED SERVICES; HOME-BASED SERVICES.—Section 311 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5633) is amended by striking subsection (c) and inserting the following:

"(c)(1) If for a fiscal year the amount appropriated under section 385(a)(1) exceeds $50,000,000, the Secretary may make grants under this subsection for that fiscal year to entities that receive grants under subsection (a) to establish and operate street-based service projects for runaway and homeless youth.

"(2) For purposes of this part, the term 'street-based services' includes—

"(i) street-based crisis intervention and counseling;

"(ii) information and referral for housing;

"(iii) information and referral for transitional living and health care services; and

"(iv) advocacy, education, and prevention services for—

"(I) alcohol and drug abuse;

"(II) sexually transmitted diseases including HIV/AIDS infection; and

"(III) physical and sexual assault.

"(d)(1) If for a fiscal year the amount appropriated under section 385(a)(1) exceeds $50,000,000, the Secretary may make grants for that fiscal year to entities that receive grants under subsection (a) to establish and operate home-based service projects for families that are separated, or at risk of separation, as a result of the physical absence of a runaway youth or youth at risk of family separation.

"(2) For purposes of this part—

"(A) the term 'home-based service project' means a project that provides—

"(i) case management; and

"(ii) in the family residence (to the maximum extent practicable)—

"(I) intensive, time-limited, family and individual counseling;

"(II) training relating to life skills and parenting; and

"(III) other services;

designed to prevent youth from running away from their families or to cause runaway youth or to return to their families;

"(B) the term 'youth at risk of family separation' means an individual—

"(i) who is less than 18 years of age; and

"(ii)(I) who has a history of running away from the family of such individual;

"(II) whose parent, guardian, or custodian is not willing to provide for the basic needs of such individual; or

"(III) who is at risk of entering the child welfare system or juvenile justice system, as a result of the lack of services available to the family to meet such needs; and

"(C) the term 'time-limited' means for a period not to exceed 6 months.".

(c) ELIGIBILITY.—Section 312 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5712) is amended—

(1) in subsection (a) by striking "facility providing" and inserting "project (including a host family home) that provides"; and

(2) in subsection (b)—

(A) by amending paragraph (2) to read as follows:

"(2) shall use such assistance to establish, to strengthen, or to fund a runaway and homeless youth center, or a locally controlled facility providing temporary shelter, that has—

"(A) a maximum capacity of not more than 20 youth; and

"(B) a ratio of staff to youth that is sufficient to ensure adequate supervision and treatment;";

(B) in paragraph (3)—

(i) by striking "child's parents or relatives and assuring" and inserting "parents or other relatives of the youth and ensuring"; and

(ii) by striking "child" each place it appears and inserting "youth";

(C) by amending paragraph (4) to read as follows:

"(4) shall develop an adequate plan for ensuring—

"(A) proper relations with law enforcement personnel, health and mental health care personnel, social service personnel, school system personnel, and welfare personnel;

"(B) coordination with personnel of the schools to which runaway and homeless youth will return, to assist such youth to stay current with the curricula of those schools; and

"(C) the return of runaway and homeless youth from correctional institutions;";

(D) in paragraph (5)—

(i) by striking "aftercare" and all that follows through "assuring" and inserting "providing counseling and aftercare services to such youth, for encouraging the involvement of their parents or legal guardians in counseling, and for ensuring"; and

(ii) by striking "children" and inserting "youth";

(E) in paragraph (6) by striking "children and family members which it serves" and inserting "youth and family members whom it serves (including youth who are not referred to out-of-home shelter services)";

(F) by redesignating paragraphs (6), (7), (8), (9), and (10) as paragraphs (7), (8), (9), (10), and (11), respectively;

(G) by inserting after paragraph (5) the following new paragraph:

"(6) shall develop an adequate plan for establishing or coordinating with outreach programs designed to attract persons (including, where applicable, persons who are members of a cultural minority and persons with limited ability to speak English) who are eligible to receive services for which a grant under subsection (a) may be expended;"; and

(H) by adding at the end the following new subsections:

"(c) To be eligible for assistance under section 311(c), an applicant shall propose to establish, strengthen, or fund a street-based service project for runaway and homeless youth and shall submit to the Secretary a plan in which the applicant agrees, as part of the project—

"(1) to provide qualified supervision of staff, including on-street supervision by appropriately trained staff;

"(2) to provide backup personnel for on-street staff;

"(3) to provide informational and health educational material to runaway and homeless youth in need of services;

"(4) to provide initial and periodic training of staff who provide services under the project;

"(5) to carry out outreach activities for runaway and homeless youth and to collect statistical information on runaway and homeless youth contacted through such activities;

"(6) to develop referral relationships with agencies and organizations that provide services or assistance to runaway and homeless youth, including law enforcement, education, social services, vocational education and training, public welfare, legal assistance, mental health and health care;

"(7) to submit to the Secretary an annual report that includes information regarding the activities carried out with funds received under section 311(c), the achievements of the project under section 311(c) carried out by the applicant, and statistical summaries describing the number and the characteristics of the runaway and homeless youth who participate in such project in the year for which the report is submitted;

"(8) to implement such accounting procedures and fiscal control devices as the Secretary may require;

"(9) to submit to the Secretary an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant under subsection 311(c);

"(10) to keep adequate statistical records that profile runaway and homeless youth whom it serves and not to disclose the identity such youth in reports or other documents based on such statistical records;

"(11) not to disclose records maintained on an individual runaway and homeless youth without the informed consent of the youth, to any person other than an agency compiling statistical records; and

"(12) to provide to the Secretary such other information as the Secretary may reasonably require.

"(d) To be eligible for assistance under section 311(d), an applicant shall propose to establish, strengthen, or fund a home-based service project for runaway youth or youth at risk of family separation and shall submit to the Secretary a plan in which the applicant agrees, as part of the project—

"(1) to provide counseling and information services needed by runaway youth, youth at risk of family separation, and the family (including unrelated individuals in the family household) of such youth, including services relating to basic life skills, interpersonal skill building, educational advancement, job attainment skills, mental and physical health care, parent training, financial planning, and referral to sources of other needed services;

"(2) to provide directly, or through an arrangement made by the applicant, 24-hour service to respond to family crises (including immediate access to temporary shelter for runaway youth and youth at risk of family separation affected by family crises);

"(3) to establish in partnership with the families of runaway youth and youth at risk of family separation, objectives and measures of success to be achieved as a result of participating in such project;

"(4) to provide informational and health educational material to runaway youth and youth at risk of family separation in need of services;

"(5) to provide initial and periodic training of staff who provide services under the project;

"(6) to carry out outreach activities for runaway youth and youth at risk of family separation, and to collect statistical information on runaway youth and youth at risk of family separation contacted through such activities;

"(7) to ensure that—

"(i) caseloads will remain sufficiently low to allow for intensive (5 to 20 hours per week) involvement with each family participating in such project; and

"(ii) qualified supervision will be provided to staff who provide services under the project;

"(8) to submit to the Secretary an annual report that includes information regarding the activities carried out with funds under section 311(d), the achievements of the project under this part carried out by the applicant and statistical summaries describing the number and the characteristics of the runaway youth and youth at risk of family separation who participate in such project in the year for which the report is submitted;

"(9) to implement such accounting procedures and fiscal control devices as the Secretary may require;

"(10) to submit to the Secretary an annual budget that estimates the itemized costs to be incurred in the year for which the applicant requests a grant under section 311(d);

"(11) to keep adequate statistical records that profile runaway youth and youth at risk of family separation whom it serves and not to disclose the identity of such youth in reports or other documents based on such statistical records;

"(12) not to disclose records maintained on an individual runaway youth or youth at risk of family separation without the informed consent of the youth, to any person other than an agency compiling statistical records; and

"(13) to provide to the Secretary such other information as the Secretary may reasonably require.".

(d) APPROVAL BY SECRETARY.—Section 316 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5713) is amended—

(1) in the first sentence by striking "section 311(a)" each place it appears and inserting "section 311 (a), (c), or (d)"; and

(2) in the second sentence by striking "$150,000" and inserting "$200,000".

(e) GRANTS TO PRIVATE ENTITIES; STAFFING.—Section 317 of the Runaway and Homeless Youth Act (42 U.S.C. 5714) is amended—

(1) by striking "part" each place it appears and inserting "title";

(2) in the first sentence inserting "and the programs, projects, and activities they carry out under this title" after "center"; and

(3) in the last sentence by inserting "under this title" before the period.

(f) TRANSITIONAL LIVING GRANT PROGRAM.—Section 322(a) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5714-2(a)) is amended—

(1) in paragraph (1) by inserting "which shall include money management, budgeting, consumer education, and use of credit" after "basic life skills"; and

(2) in paragraph (13)—

(A) by striking "consent of the individual youth and parent or legal guardian" and inserting "informed consent of the individual youth"; and

(B) by striking "or a government agency involved in the disposition of criminal charges against youth".

(g) NATIONAL COMMUNICATION SYSTEM; STREET-BASED SERVICES PROGRAM; HOME-BASED SERVICES PROGRAM; COORDINATING ACTIVITIES.—

(1) ADDITIONAL PARTS.—The Runaway and Homeless Youth Act (42 U.S.C. 5701 et seq.) is amended—

(A) in part D—

(i) by striking "PART D" and inserting "PART F"; and

(ii) by redesignating sections 361, 362, 363, 364, and 366 as sections 381 through 385, respectively;

(B) in part C—

(i) by striking PART C" and inserting "PART E"; and

(ii) by redesignating sections 341 and 342 as sections 371 and 372, respectively; and

(C) by inserting after part B the following new parts:

"PART C—NATIONAL COMMUNICATIONS SYSTEM

"AUTHORITY TO MAKE GRANTS

"SEC. 331. With funds reserved under section 385(a)(3), the Secretary shall make grants for a national communication system to assist runaway and homeless youth in communicating with their families and with service providers. The Secretary shall give priority to grant applicants that have experience in providing telephone services to runaway and homeless youth.

"PART D—COORDINATING, TRAINING, RESEARCH, AND OTHER ACTIVITIES

"COORDINATION

"SEC. 341. With respect to matters relating to the health, education, employment, and housing of runaway and homeless youth, the Secretary shall coordinate the activities of agencies of the Department of Health and Human Services with the activities of other Federal entities and with the activities of entities that are eligible to receive grants under this title.

"GRANTS FOR TECHNICAL ASSISTANCE AND TRAINING

"SEC. 342. The Secretary may make grants to statewide and regional nonprofit organizations (and combinations of such organizations) to provide technical assistance and training to public and private entities (and combinations of such entities) that are eligible to receive grants under this title, for the purpose of carrying out the programs, projects, or activities for which such grants are made.

"AUTHORITY TO MAKE GRANTS FOR RESEARCH, DEMONSTRATION, AND SERVICE PROJECTS

"SEC. 343. (a) The Secretary may make grants to States, localities, and private entities (and combinations of such entities) to carry out research, demonstration, and service projects designed to increase knowledge concerning, and to improve services for, runaway youth and homeless youth.

"(b) In selecting among applications for grants under subsection (a), the Secretary shall give special consideration to proposed projects relating to—

"(1) youth who repeatedly leave and remain away from their homes;

"(2) home-based and street-based services for, and outreach to, runaway youth and homeless youth;

"(3) transportation of runaway youth and homeless youth in connection with services authorized to be provided under this title;

"(4) the special needs of runaway youth and homeless youth programs in rural areas;

"(5) the special needs of programs that place runaway youth and homeless youth in host family homes;

"(6) staff training in—

"(A) the behavioral and emotional effects of sexual abuse and assault;

"(B) responding to youth who are showing effects of sexual abuse and assault; and

"(C) agency-wide strategies for working with runaway and homeless youth who have been sexually victimized;

"(7) innovative methods of developing resources that enhance the establishment or operation of runaway and homeless youth centers;

"(8) training for runaway youth and homeless youth, and staff training, related to preventing and obtaining treatment for infection by the human immunodeficiency virus (HIV);

"(9) increasing access to health care (including mental health care) for runaway youth and homeless youth; and

"(10) increasing access to education for runaway youth and homeless youth.

"(c) In selecting among applicants for grants under subsection (a), the Secretary shall give priority to applicants who have experience working with runaway youth or homeless youth.

"TEMPORARY DEMONSTRATION PROJECTS TO PROVIDE SERVICES TO YOUTH IN RURAL AREAS

"SEC. 344. (a)(1) With funds appropriated under section 385(c), the Secretary may make grants on a competitive basis to States, localities, and private entities (and combinations of such entities) to provide services (including transportation) authorized to be provided under part A, to runaway and homeless youth in rural areas.

"(2)(A) Each grant made under paragraph (1) may not exceed $100,000.

"(B) In each fiscal year for which funds are appropriated to carry out this section, grants shall be made under paragraph (1) to eligible applicants carry out projects in not fewer than 10 States.

"(C) Not more than 2 grants may be made under paragraph (1) in each fiscal year to carry out projects in a particular State.

"(3) Each eligible applicant that receives a grant for a fiscal year to carry out a project under this section shall have priority to receive a grant for the subsequent fiscal year to carry out a project under this section.

"(b) To be eligible to receive a grant under subsection (a), an applicant shall—

"(1) submit to the Secretary an application in such form and containing such information and assurances as the Secretary may require by rule; and

"(2) propose to carry out such project in a geographical area that—

"(A) has a population under 20,000;

"(B) is located outside a Standard Metropolitan Statistical Area; and

"(C) agree to provide to the Secretary an annual report identifying—

"(i) the number of runaway and homeless youth who receive services under the project carried out by the applicant;

"(ii) the types of services authorized under part A that were needed by, but not provided to, such youth in the geographical area served by the project;

"(iii) the reasons the services identified under clause (ii) were not provided by the project; and

"(iv) such other information as the Secretary may require.".

(2) TECHNICAL AMENDMENTS.—(A) Section 313 of the Runaway and Homeless Youth Act (42 U.S.C. 5712a) is repealed.

(B) Section 314 of the Runaway and Homeless Youth Act (42 U.S.C. 5712b) is repealed.

(C) Section 315 of the Runaway and Homeless Youth Act (42 U.S.C. 5712c) is repealed.

(D) Sections 316 and 317 of the Runaway and Homeless Youth Act (42 U.S.C. 5713, 5714) are redesignated as sections 313 and 314, respectively.

(E) Section 365 of the Runaway and Homeless Youth Act (42 U.S.C. 5733) is repealed.

(h) REPORTS.—Section 361 of the Juvenile Justice and Delinquency Act of 1974 (42 U.S.C. 5715) is amended to read as follows:

"REPORTS

"SEC. 361. (a) Not later than 180 days after the end of each fiscal year, the Secretary shall submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate on the status, activities, and accomplishments of the runaway and homeless youth centers that are funded under parts A, B, C, D, and E, with particular attention to—

"(1) in the case of centers funded under part A—

"(A) their effectiveness in alleviating the problems of runaway and homeless youth;

"(B) their ability to reunite children with their families and to encourage the resolution of intrafamily problems through counseling and other services;

"(C) their effectiveness in strengthening family relationships and encouraging stable living conditions for children; and

"(D) their effectiveness in helping youth decide upon a future course of action; and

"(2) in the case of centers funded under part B—

"(A) the number and characteristic of homeless youth served by such projects;

"(B) describing the types of activities carried out under such projects;

"(C) the effectiveness of such projects in alleviating the immediate problems of homeless youth;

"(D) the effectiveness of such projects in preparing homeless youth for self-sufficiency;

"(E) the effectiveness of such projects in helping youth decide upon future education, employment, and independent living;

"(F) the ability of such projects to strengthen family relationships, and encourage the resolution of intrafamily problems through counseling and the development of self-sufficient living skills; and

"(G) plans for the following fiscal year.".

(2) by adding at the end the following:

"(b)(1) The Secretary shall include in the report required by subsection (a) an evaluation of the results of Federal evaluation of the programs, projects, and activities carried out under this title and a description of the training provided to the persons who carry out the evaluation.

"(2) As part of the evaluation described in paragraph (1), the Secretary shall require the persons who carry out the evaluation to visit each grantee on-site not less frequently than every 3 years.".

(i) AUTHORIZATION OF APPROPRIATIONS.—Section 366 of the Juvenile Justice and Delinquency Act of 1974 (42 U.S.C. 5751) is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

"(1) There are authorized to be appropriated to carry out this title (other than part B and section 344) $75,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996."; and

(B) by adding at the end the following new paragraphs:

"(3) After making the allocation required by paragraph (2), the Secretary shall reserve for the purpose of carrying out section 331—

"(A) for fiscal year 1993 not less than $912,500, of which $125,000 shall be available for the acquisition of communications equipment;

"(B) for fiscal year 1994 not less than $826,900;

"(C) for fiscal year 1995 not less than $868,300; and

"(D) for fiscal year 1996 not less than $911,700.

"(4) In the use of funds appropriated under paragraph (1) that are in excess of $38,000,000 but less than $42,600,000, priority may be given to awarding enhancement grants to programs (with priority to programs that receive grants of less than $85,000), for the purpose of allowing such programs to achieve higher performance standards, including—

"(A) increasing and retaining trained staff;

"(B) strengthening family reunification efforts;

"(C) improving aftercare services;

"(D) fostering better coordination of services with public and private entities;

"(E) providing comprehensive services, including health and mental health care, education, prevention and crisis intervention, and vocational services; and

"(F) improving data collection efforts.

"(5) In the use of funds appropriated under paragraph (1) that are in excess of $42,599,999—

"(A) 50 percent may be targeted at developing new programs in unserved or underserved communities; and

"(B) 50 percent may be targeted at program enhancement activities described in paragraph (3).";

(2) in subsection (b) by amending paragraph (1) to read as follows:

"(1) Subject to paragraph (2), there are authorized to be appropriated to carry out B $25,000,000 for fiscal year 1993 and such sums as may be necessary for fiscal years 1994, 1995, and 1996."

(3) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(4) by inserting after subsection (b) the following new subsection:

"(c) There is authorized to be appropriated to carry out section 344 $1,000,000 for each of fiscal years 1993, 1994, 1995, and 1996.".

SEC. 4. MISSING CHILDREN.

Section 407 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5777) is amended by striking "fiscal years 1989, 1990, 1991, and 1992" and inserting "fiscal years 1993, 1994, 1995, and 1996".

SEC. 5. INCENTIVE GRANTS FOR LOCAL DELINQUENCY PREVENTION PROGRAMS.

(a) ESTABLISHMENT OF PROGRAM.—The Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.) is amended by adding at the end the following new title:

"TITLE V—INCENTIVE GRANTS FOR LOCAL DELINQUENCY PREVENTION PROGRAMS

"SEC. 501. SHORT TITLE.

"This title may be cited as the 'Incentive Grants for Local Delinquency Prevention Programs Act'.

"SEC. 502. FINDINGS.

"The Congress finds that—

"(1) approximately 700,000 youth enter the juvenile justice system every year;

"(2) Federal, State, and local governments spend close to $2,000,000,000 a year confining many of those youth;

"(3) it is more effective in both human and fiscal terms to prevent delinquency than to attempt to control or change it after the fact;

"(4) half or more of all States are unable to spend any juvenile justice formula grant funds on delinquency prevention because of other priorities;

"(5) few Federal resources are dedicated to delinquency prevention; and

"(6) Federal incentives are needed to assist States and local communities in mobilizing delinquency prevention policies and programs.

"SEC. 503. DEFINITION.

"In this title, the term 'State advisory group' means the advisory group appointed by the chief executive officer of a State under a plan described in section 223(a).

"SEC. 504. DUTIES AND FUNCTIONS OF THE ADMINISTRATOR.

"The Administrator shall—

"(1) issue such rules as are necessary or appropriate to carry out this title;

"(2) make such arrangements as are necessary and appropriate to facilitate coordination and policy development among all activities funded through the Department of Justice relating to delinquency prevention (including the preparation of an annual comprehensive plan for facilitating such coordination and policy development);

"(3) provide adequate staff and resources necessary to properly carry out this title; and

"(4) not later than 180 days after the end of each fiscal year, submit a report to the Chairman of the Committee on Education and Labor of the House of Representatives and the Chairman of the Committee on the Judiciary of the Senate—

"(A) describing activities and accomplishments of grant activities funded under this title;

"(B) describing procedures followed to disseminate grant activity products and research findings;

"(C) describing activities conducted to develop policy and to coordinate Federal agency and interagency efforts related to delinquency prevention; and

"(D) identifying successful approaches and making recommendations for future activities to be conducted under this title.

"SEC. 505. GRANTS FOR PREVENTION PROGRAMS.

"(a) PURPOSES.—The Administrator may make grants to a State, to be transmitted through the State advisory group to units of general local government that meet the requirements of subsection (b), for delinquency prevention programs and activities for youth who have had contact with the juvenile justice system or who are likely to have contact with the juvenile justice system, including the provision to children, youth, and families of—

"(1) recreation services;

"(2) tutoring and remedial education;

"(3) assistance in the development of work awareness skills;

"(4) child and adolescent health and mental health services;

"(5) alcohol and substance abuse prevention services;

"(6) leadership development activities; and

"(7) the teaching that people are and should be held accountable for their actions.

"(b) ELIGIBILITY.—The requirements of this subsection are met with respect to a unit of general local government if—

"(1) the unit is in compliance with the requirements of part B of title II;

"(2) the unit has submitted to the State advisory group a 3-year plan outlining the unit's local front end plans for investment for delinquency prevention and early intervention activities;

"(3) the unit has included in its application to the Administrator for formula grant funds a summary of the 3-year plan described in paragraph (2);

"(4) pursuant to its 3-year plan, the unit has appointed a local policy board of no fewer than 15 and no more than 21 members with balanced representation of public agencies and private, nonprofit organizations serving children, youth, and families and business and industry;

"(5) the unit has, in order to aid in the prevention of delinquency, included in its application a plan for the coordination of services to at-risk youth and their families, including such programs as nutrition, energy assistance, and housing;

"(6) the local policy board is empowered to make all recommendations for distribution of funds and evaluation of activities funded under this title; and

"(7) the unit or State has agreed to provide a 50 percent match of the amount of the grant, including the value of in-kind contributions, to fund the activity.

"(c) PRIORITY.—In considering grant applications under this section, the Administrator shall give priority to applicants that demonstrate ability in—

"(1) plans for service and agency coordination and collaboration including the colocation of services;

"(2) innovative ways to involve the private nonprofit and business sector in delinquency prevention activities; and

"(3) developing or enhancing a statewide subsidy program to local governments that is dedicated to early intervention and delinquency prevention.

"SEC. 506. AUTHORIZATION OF APPROPRIATIONS.

"To carry out this title, there are authorized to be appropriated $30,000,000 for fiscal year 1993 and such sums as are necessary for fiscal years 1994, 1995, and 1996.".

(b) STUDY.—After the program established by subsection (a) has been funded for two years, the General Accounting Office shall prepare and submit to Congress a study of the effects of the program in encouraging States and units of general local government to comply with the requirements of part B of title II.

SEC. 6. CHILDREN'S ADVOCACY PROGRAM.

(a) FINDINGS.—Section 211 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13001) is amended—

(1) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (6), and (7), respectively;

(2) by inserting after paragraph (2) the following new paragraph:

"(3) traditionally, community agencies and professionals have different roles in the prevention, investigation, and intervention process;" and

(3) by inserting after paragraph (4), as redesignated by paragraph (1), the following new paragraph:

"(5) there is a national need to enhance coordination among community agencies and professionals involved in the intervention system;".

(b) REGIONAL CHILDREN'S ADVOCACY PROGRAM.—Subtitle A of the Victims of Child Abuse Act (42 U.S.C. 13001 et seq.) is amended—

(1) by redesignating sections 212, 213, and 214 as sections 214, 214A, and 214B, respectively; and

(2) by inserting after section 211 the following new sections:

"SEC. 212. DEFINITIONS.

"For purposes of this subtitle—

"(1) the term 'Administrator' means the agency head designated under section 201(b) of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5611(b));

"(2) the term 'applicant' means a child protective service, law enforcement, legal, medical and mental health agency or other agency that responds to child abuse cases;

"(3) the term 'board' means the Children's Advocacy Advisory Board established under section 213(e);

"(4) the term 'census region' means 1 of the 4 census regions (northeast, south, midwest, and west) that are designated as census regions by the Bureau of the Census as of the date of enactment of this section;

"(5) the term 'child abuse' means physical or sexual abuse or neglect of a child;

"(6) the term 'Director' means the Director of the National Center on Child Abuse and Neglect;

"(7) the term 'multidisciplinary response to child abuse' means a response to child abuse that is based on mutually agreed upon procedures among the community agencies and professionals involved in the intervention, prevention, prosecution, and investigation systems that best meets the needs of child victims and their nonoffending family members;

"(8) the term 'nonoffending family member' means a member of the family of a victim of child abuse other than a member who has been convicted or accused of committing an act of child abuse; and

"(9) the term 'regional children's advocacy program' means the children's advocacy program established under section 213(a).

"SEC. 213. REGIONAL CHILDREN'S ADVOCACY CENTERS.

"(a) ESTABLISHMENT OF REGIONAL CHILDREN'S ADVOCACY PROGRAM.—The Administrator, in coordination with the Director and with the Director of the Office of Victims of Crime, shall establish a children's advocacy program to—

"(1) focus attention on child victims by assisting communities in developing child-focused, community-oriented, facility-based programs designed to improve the resources available to children and families;

"(2) provide support for nonoffending family members;

"(3) enhance coordination among community agencies and professionals involved in the intervention, prevention, prosecution, and investigation systems that respond to child abuse cases; and

"(4) train physicians and other health care and mental health care professionals in the multidisciplinary approach to child abuse so that trained medical personnel will be available to provide medical support to community agencies and professionals involved in the intervention, prevention, prosecution, and investigation systems that respond to child abuse cases.

"(b) ACTIVITIES OF THE REGIONAL CHILDREN'S ADVOCACY PROGRAM.—

"(1) ADMINISTRATOR.—The Administrator, in coordination with the Director, shall—

"(A) establish regional children's advocacy program centers;

"(B) fund existing regional centers with expertise in the prevention, judicial handling, and treatment of child abuse and neglect; and

"(C) fund the establishment of freestanding facilities in multidisciplinary programs within communities that have yet to establish such facilities,

for the purpose of enabling grant recipients to provide information, services, and technical assistance to aid communities in establishing multidisciplinary programs that respond to child abuse.

"(2) GRANT RECIPIENTS.—A grant recipient under this section shall—

"(A) assist communities—

"(i) in developing a comprehensive, multidisciplinary response to child abuse that is designed to meet the needs of child victims and their families;

"(ii) in establishing a freestanding facility where interviews of and services for abused children can be provided;

"(iii) in preventing or reducing trauma to children caused by multiple contacts with community professionals;

"(iv) in providing families with needed services and assisting them in regaining maximum functioning;

"(v) in maintaining open communication and case coordination among community professionals and agencies involved in child protection efforts;

"(vi) in coordinating and tracking investigative, preventive, prosecutorial, and treatment efforts;

"(vii) in obtaining information useful for criminal and civil proceedings;

"(viii) in holding offenders accountable through improved prosecution of child abuse cases;

"(ix) in enhancing professional skills necessary to effectively respond to cases of child abuse thorough training; and

"(x) in enhancing community understanding of child abuse; and

"(B) provide training and technical assistance to local children's advocacy centers in its census region that are grant recipients under section 214.

"(c) OPERATION OF THE REGIONAL CHILDREN'S ADVOCACY PROGRAM.—

"(1) SOLICITATION OF PROPOSALS.—Not later than 1 year after the date of enactment of this section, the Administrator shall solicit proposals for assistance under this section.

"(2) MINIMUM QUALIFICATIONS.—In order for a proposal to be selected, the Administrator may require an applicant to have in existence, at the time the proposal is submitted, 1 or more of the following:

"(A) A proven record in conducting activities of the kinds described in subsection (c).

"(B) A facility where children who are victims of sexual or physical abuse and their nonoffending family members can go for the purpose of evaluation, intervention, evidence gathering, and counseling.

"(C) Multidisciplinary staff experienced in providing remedial counseling to children and families.

"(D) Experience in serving as a center for training and education and as a resource facility.

"(E) National expertise in providing technical assistance to communities with respect to the judicial handling of child abuse and neglect.

"(3) PROPOSAL REQUIREMENTS.—

"(A) IN GENERAL.—A proposal submitted in response to the solicitation under paragraph (1) shall—

"(i) include a single or multiyear management plan that outlines how the applicant will provide information, services, and technical assistance to communities so that communities can establish multidisciplinary programs that respond to child abuse;

"(ii) demonstrate the ability of the applicant to operate successfully a multidisciplinary child abuse program or provide training to allow others to do so; and

"(iii) state the annual cost of the proposal and a breakdown of those costs.

"(B) CONTENT OF MANAGEMENT PLAN.—A management plan described in paragraph (3)(A) shall—

"(i) outline the basic activities expected to be performed;

"(ii) describe the entities that will conduct the basic activities;

"(iii) establish the period of time over which the basic activities will take place; and

"(iv) define the overall program management and direction by—

"(I) identifying managerial, organizational, and administrative procedures and responsibilities;

"(II) demonstrating how implementation and monitoring of the progress of the children's advocacy program after receipt of funding will be achieved; and

"(III) providing sufficient rationale to support the costs of the plan.

"(4) SELECTION OF PROPOSALS.—

"(A) COMPETITIVE BASIS.—Proposals shall be selected under this section on a competitive basis.

"(B) CRITERIA.—The Administrator, in coordination with the Director, shall select proposals for funding that—

"(i) best result in developing and establishing multidisciplinary programs that respond to child abuse by assisting, training, and teaching community agencies and professionals called upon to respond to child abuse cases;

"(ii) assist in resolving problems that may occur during the development, operation, and implementation of a multidisciplinary program that responds to child abuse; and

"(iii) carry out the objectives developed by the Board under subsection (e)(2)(A);

"(C) to the greatest extent possible and subject to available appropriations, ensure that at least 1 applicant is selected from each of the 4 census regions of the country; and

"(D) otherwise best carry out the purposes of this section.

"(5) FUNDING OF PROGRAM.—From amounts made available in separate appropriation Acts, the Administrator shall provide to each grant recipient the financial and technical assistance and other incentives that are necessary and appropriate to carry out this section.

"(6) COORDINATION OF EFFORT.—In order to carry out activities that are in the best interests of abused and neglected children, a grant recipient shall consult with other grant recipients on a regular basis to exchange ideas, share information, and review children's advocacy program activities.

"(d) REVIEW.—

"(1) EVALUATION OF REGIONAL CHILDREN'S ADVOCACY PROGRAM ACTIVITIES.—The Administrator, in coordination with the Director, shall regularly monitor and evaluate the activities of grant recipients and shall determine whether each grant recipient has complied with the original proposal and any modifications.

"(2) ANNUAL REPORT.—A grant recipient shall provide an annual report to the Administrator and the Director that—

"(A) describes the progress made in satisfying the purpose of the children's advocacy program; and

"(B) states whether changes are needed and are being made to carry out the purpose of the children's advocacy program.

"(3) DISCONTINUATION OF FUNDING.—

"(A) FAILURE TO IMPLEMENT PROGRAM ACTIVITIES.—If a grant recipient under this section substantially fails in the implementation of the program activities, the Administrator shall not discontinue funding until reasonable notice and an opportunity for reconsideration is given.

"(B) SOLICITATION OF NEW PROPOSALS.—Upon discontinuation of funding of a grant recipient under this section, the Administrator shall solicit new proposals in accordance with subsection (c).

"(e) CHILDREN'S ADVOCACY ADVISORY BOARD.—

"(1) ESTABLISHMENT OF BOARD.—

"(A) IN GENERAL.—Not later than 120 days after the date of enactment of this section, the Administrator and the Director, after consulting with representatives of community agencies that respond to child abuse cases, shall establish a children's advocacy advisory board to provide guidance and oversight in implementing the selection criteria and operation of the regional children's advocacy program.

"(B) MEMBERSHIP.—(i) The board—

"(I) shall be composed of 12 members who are selected by the Administrator, in coordination with the Director, a majority of whom shall be individuals experienced in the child abuse investigation, prosecution, prevention, and intervention systems;

"(II) shall include at least 1 member from each of the 4 census regions; and

"(III) shall have members appointed for a term not to exceed 3 years.

"(ii) Members of the Board may be reappointed for successive terms.

"(2) REVIEW AND RECOMMENDATIONS.—

"(A) OBJECTIVES.—Not later than 180 days after the date of enactment of this section and annually thereafter, the Board shall develop and submit to the Administrator and the Director objectives for the implementation of the children's advocacy program activities described in subsection (b).

"(B) REVIEW.—The board shall annually—

"(i) review the solicitation and selection of children's advocacy program proposals and make recommendations concerning how each such activity can be altered so as to better achieve the purposes of this section; and

"(ii) review the program activities and management plan of each grant recipient and report its findings and recommendations to the Administrator and the Director.

"(3) RULES AND REGULATIONS.—The Board shall promulgate such rules and regulations as it deems necessary to carry out its duties under this section.

"(f) REPORTING.—The Attorney General and the Secretary of Health and Human Services shall submit to Congress, by March 1 of each year, a detailed review of the progress of the regional children's advocacy program activities.".

(c) LOCAL CHILDREN'S ADVOCACY PROGRAM.—Section 214 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13002), as redesignated by subsection (b)(1), is amended—

(1) by amending the heading to read as follows:

"SEC. 214. LOCAL CHILDREN'S ADVOCACY CENTERS.";

(2) in subsection (a) by striking "The Director of the Office of Victims of Crime (hereinafter in this subtitle referred to as the 'Director'), in consultation with officials of the Department of Health and Human Services," and inserting "The Administrator, in coordination with the Director and with the Director of the Office of Victims of Crime,";

(3) in subsection (b)(2)(B) by inserting "and nonoffending family members" after "neglect"; and

(4) by adding at the end the following new subsection:

"(d) CONSULTATION WITH REGIONAL CHILDREN'S ADVOCACY CENTERS.—A grant recipient under this section shall consult from time to time with regional children's advocacy centers in its census region that are grant recipients under section 213.".

(d) SPECIALIZED TECHNICAL ASSISTANCE AND TRAINING PROGRAMS.—Section 214A of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13003), as redesignated by subsection (b)(1), is amended in subsections (a) and (c)(1) by striking "Director" and inserting "Administrator".

(e) AUTHORIZATION OF APPROPRIATIONS.—Section 214B of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13004), as redesignated by subsection (b)(1), is amended to read as follows:

"SEC. 214B. AUTHORIZATION OF APPROPRIATIONS.

"(a) SECTIONS 213 AND 214.—There are authorized to be appropriated to carry out sections 213 and 214—

"(1) $15,000,000 for fiscal year 1993; and

"(2) such sums as are necessary for fiscal years 1994, 1995, and 1996.

"(b) SECTION 214A.—There are authorized to be appropriated to carry out section 214A—

"(1) $5,000,000 for fiscal year 1993; and

"(2) such sums as are necessary for fiscal years 1994, 1995, and 1996.".

SEC. 7. HEAD START TRAINING IMPROVEMENT.

(a) PURPOSE.—It is the purpose of this section—

(1) to promote continued access for Head Start and other early childhood staff to the Child Development Associate credential;

(2) to increase the ability of Head Start staff to address the problems facing Head Start families;

(3) to create a systematic approach to training, thereby improving the quality of Head Start instruction and using training funds more efficiently and effectively; and

(4) to allow the use of training funds for creative approaches to learning for children.

(b) TECHNICAL ASSISTANCE, TRAINING, AND STAFF QUALIFICATIONS.—Section 648 of the Head Start Act (42 U.S.C. 9843) is amended—

(1) in subsection (a) by striking "(2) training" and all that follows through the end of the subsection and inserting "(2) training for specialized or other personnel needed in connection with Head Start programs, including funds from programs authorized under this subchapter to support an organization to administer a centralized child development and national assessment program leading to recognized credentials for personnel working in early childhood development and child care programs, training for personnel providing services to non-English language background children, training for personnel in helping children cope with community violence, and resource access projects for personnel working with disabled children."; and

(2) by adding at the end the following new subsections:

"(c) The Secretary shall—

"(1) develop a systematic approach to training Head Start personnel, including—

"(A) specific goals and objectives for program improvement and continuing professional development;

"(B) a process for continuing input from the Head Start community; and

"(C) a strategy for delivering training and technical assistance; and

"(2) report on the approach developed under paragraph (1) to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives.

"(d) The Secretary may provide, either directly or through grants to public or private nonprofit entities, training for Head Start personnel in the use of the performing and visual arts and interactive programs using electronic media to enhance the learning experience of Head Start children.".

SEC. 8. AMENDMENTS TO CHILD CARE AND DEVELOPMENT BLOCK GRANT ACT.

(a) SPENDING OF FUNDS BY STATES.—Section 658J(c) of the Child Care and Development Block Grant Act Amendments of 1992 (42 U.S.C. 9858h(c)) is amended—

(1) by striking "obligated" and inserting "expended"; and

(2) by striking "succeeding fiscal year" and inserting "succeeding 3 fiscal years".

(b) PAYMENTS EXCLUDED FROM INCOME.—The Child Care and Development Block Grant Act Amendments of 1992 (42 U.S.C. 9858a et seq.) is amended by adding at the end the following new section:

"SEC. 658S. MISCELLANEOUS PROVISIONS.

"Notwithstanding any other law, the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under this subchapter shall not be treated as income for purposes of any other Federal or Federally-assisted program that bases eligibility, or the amount of benefits, on need.".

(c) TECHNICAL AMENDMENTS.—

(1) CORRECTION IN CITATION.—Section 5082 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) is amended by striking "title IV" and inserting "title VI".

(2) DEFINITIONS.—Section 658P of the Child Care and Development Block Grant Act Amendments of 1992 (42 U.S.C. 9858n) is amended—

(A) in paragraph (7), by striking "4(b)" and inserting "4(e)"; and

(B) in paragraph (14), by striking "4(c)" and inserting "4(l)".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of enactment of this Act.

(2) APPLICATION.—The amendments made by this section shall not apply with respect to fiscal years beginning before October 1, 1992.

SEC. 9. AMENDMENT TO THE CHILD ABUSE PREVENTION AND TREATMENT ACT.

(a) FINDINGS.—The Congress finds that—

(1) circumstances surrounding the death of a young boy named Adam Mann in New York City prompted a shocking documentary focusing on the inability of child protection services to protect suffering children;

(2) the documentary described in paragraph (1) showed the serious need for systemic changes in our child welfare protection system;

(3) thorough, coordinated, and comprehensive investigation will, it is hoped, lead to the prevention of abuse, neglect, or death in the future;

(4) an undue burden is placed on investigation due to strict Federal and State laws and regulations regarding confidentiality;

(5) while the Congress recognizes the importance of maintaining the confidentiality of records pertaining to child abuse, neglect, and death, often the purpose of confidentiality laws and regulations are defeated when they have the effect of protecting those responsible;

(6) comprehensive and coordinated interagency communication needs to be established, with adequate provisions to protect against the public disclosure of any detrimental information need to be established;

(7) Certain States, including Georgia, North Carolina, California, Missouri, Arizona, Minnesota, Oklahoma, and Oregon, have taken steps to establish by statute interagency, multidisciplinary fatality review teams to fully investigate incidents of death believed to be caused by child abuse or neglect;

(8) teams such as those described in paragraph (7) should be established in every State, and their scope of review should be expanded to include egregious incidents of child abuse and neglect before the child in question dies; and

(9) teams such as those described in paragraph (7) will increase the accountability of child protection services.

(b) MODIFICATION OF CONFIDENTIALITY PROVISION REGARDING STATE GRANTS UNDER CHILD ABUSE PREVENTION AND TREATMENT ACT.—Section 107(b)(4) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106A(b)(4)) is amended to read as follows:

"(4) provide for—

"(A) methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians, including methods to ensure that disclosure (and redisclosure) of information concerning child abuse or neglect involving specific individuals is made only to persons or entities that the State determines have a need for such information directly related to purposes of this Act; and

"(B) requirements for the prompt disclosure of all relevant information to any Federal, State, or local governmental entity, or any agent of such entity, with a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect;".

(c) SENSE OF THE CONGRESS.—It is the sense of the Congress that each State should review and reform of the system in the State for protecting against child abuse and neglect, including implementing formal interagency, multidisciplinary teams—

(1) to review—

(A) all cases of child death in which the child was previously known by the State to have been abused or neglected; and

(B) incidents of child abuse before a child dies when there is evidence of negligent handling by the State,

in order to hold the State accountable; and

(2) to make recommendations regarding the outcomes of individual cases and systemic changes in the State's procedures for protecting against child abuse and neglect.

Mr. KOHL. Mr. President, when they write the epitaph for the 102d Congress, they will say that too many good proposals were killed by partisan politics and gridlock. That is why I am so gratified that today the Senate will pass—and soon President Bush will sign—the reauthorization of the Juvenile Justice and Delinquency Prevention Act of 1974. The compromise bill—a merger of S. 2792 and H.R. 4194—is a truly bipartisan measure.

Mr. President, the American juvenile justice system is in crisis. Even by conservative estimates, some 700,000 juveniles enter the justice system a year. It costs close to $2 billion annually to confine many of these young people in facilities that fail them, their families, and communities. Given dramatic increases in arrests of adolescents for murder, assault, and weapon use nationwide, this legislation comes none too soon.

Our bill reauthorizes and strengthens the Juvenile Justice Act by focusing on six key areas. First, the bill expands the existing State Formula Grant Program, providing much needed funding to deter delinquency and violence. Second, the bill sets up a new State challenge program composed of 10 goals. To encourage States to pursue these goals, the bill authorizes a 10-percent increase in formula grant funds for every goal that a State achieves. Such challenge goals include setting up alternatives to incarceration for nonviolent teens, providing appropriate services for girls in the system, and establishing small, secure confinement programs for violent teens.

Third, the bill sets up a new title on delinquency prevention, which will help communities keep youth from getting into trouble in the first place. According to the National Association of Counties, fewer than half the States direct any formula grant funds toward community-based delinquency prevention programs. For example, Milwaukee County in my State of Wisconsin is unable to spend more than 2 percent of its entire juvenile justice budget on prevention. Under this new provision, counties like Milwaukee will be better able to focus on front-end investment strategies.

Fourth, the bill strengthens the juvenile gang prevention and intervention provisions, providing incentives for local schools and community coalitions to get involved. For this language, we are indebted to several colleagues, including Senator SIMON and Representatives MARTINEZ and KILDEE. Elementary schools are to be a primary target for these gang prevention efforts, as specified in Senator SIMON's original proposal.

Fifth, the bill expands existing programs to help provide justice for abused and neglected children—a critical component of delinquency prevention. Within this area, a provision authored by Senator NICKLES, Representative CRAMER, and Chairman BIDEN provided funding for child advocacy centers. Representative MOLINARI added a proposal to ensure that child abuse investigations will not be impeded by overly prescriptive confidentiality regulations. And I added language to establish treatment grants for juveniles in the justice system who have suffered previous physical or sexual abuse.

The sixth priority area strengthens title III of JJDPA, the Runaway and Homeless Youth Act. At least one-half million young people run away from home every year—to escape family violence, sexual abuse, or parental alcohol and drug problems. Our bill expands existing basic grants for runaway centers to include street-based crisis intervention and home-based services. Given the risks of sexual exploitation and sexually transmitted diseases facing the majority of runaways, street-based services are essential. And home-based services will help reunite more runaways with their families. For young people who cannot return home yet need help to achieve full independence, the legislation reauthorizes the transitional living program.

Mr. President, our bill is strengthened by a number of additional provisions. Senator GRAHAM has added a provision calling for a White House conference on juvenile justice. Senator KASSEBAUM has proposed a new juvenile boot camp program. And Senator LAUTENBERG's provision authorizes mentoring programs as a further means of preventing delinquency and youth gangs. This provision was enhanced by language offered by Representative GOODLING, who has had a longstanding interest in mentoring and education. And Senator INOUYE added a provision authorizing the consortium on children, families, and the law.

Senator DODD added two technical amendments to the Child Care and Development Block Grant Act and one technical amendment to the Head Start Program. Experts like David Hamburg at Carnegie and Ed Zigler at Yale University tell us children who participate in such quality, early childhood programs are much less likely to engage in delinquent behavior later on. So such amendments are a welcome addition to this juvenile justice bill.

Mr. President, as I said before, the legislation before us, H.R. 5194, is the result of bipartisan negotiations between the Senate and the House of Representatives. Several Members deserve special praise. So in closing, I wish to commend the distinguished ranking minority member of the Juvenile Justice Subcommittee, Senator BROWN, for working so closely with me to hold hearings, craft the bill, and get it enacted. I also wish to thank the distinguished chair and ranking minority member of the Judiciary Committee, Senators BIDEN and THURMOND, for their help and encouragement. And I want to congratulate Chairman MARTINEZ of the House Human Resources Subcommittee and its ranking minority member, Congressman FAWELL—as well as Chairman FORD and ranking minority member, Mr. GOODLING of the full Education and Labor Committee—for their important contributions.

All the staff who worked so long and so hard with mine on this reauthorization also deserve a great deal of thanks. They include Tracey Carnes, Manus Cooney, Kevin Howard, Mike Bertman, Kimberly Barnes O'Connor, Bruce King, Adam Eisgrau, and Stacey Williams in the Senate. And they include Roger McClellan, Terry Deschler, Lynn Selmser, Lee Cowan, Rebecca Franck, Jeff McFarland, and Wendel Chambliss in the House of Representatives. I commend them for their diligence and commitment.

This Nation's problems with youth crime and violence did not develop overnight. Although no legislation can provide a magic bullet for these problems, H.R. 5194 provides the necessary Federal, State, and local incentives for some significant steps forward. I thank my colleagues for enacting this legislation and the President in advance for signing it.

• Mr. LAUTENBERG. Mr. President, I want to bring to my colleagues' attention a provision in this conference report that is based on legislation I introduced, the Juvenile Mentoring Program Act [JUMP], that will encourage the development of mentoring programs that link children in high crime areas with law enforcement officers and other responsible adults. I am very pleased that my proposal has been incorporated in this legislation, and I want to express my sincere thanks to Senator KOHL and his staff, for their support and assistance in this effort.

Mr. President, JUMP is a competitive grant program under which local educational agencies and nonprofit groups may apply for funding to implement juvenile mentoring programs. Funds may be used to hire mentoring coordinators and support staff; to recruit, screen, and train adult mentors; and to reimburse mentors for reasonable incidental expenditures directly associated with mentoring.

JUMP will be administered by the Office of Juvenile Justice and Delinquency Prevention, which will select grantees based on the quality of their proposed mentoring plans and their ability to implement them.

Mr. President, too many young people today are growing up in environments bereft of hope. They live surrounded by violence and drug dealers. They attend second-rate schools that do not prepare them to function in our economy. And they have few responsible adults to take care of them, to lead them in the right direction.

Clearly, Mr. President, there is no magic answer to the problems of these youth. We need systemic improvements in our schools, more jobs, and better job training. But, Mr. President, we also have to work on a smaller scale—one by one, child by child. That is where mentoring can make an enormous difference.

Mr. President, I am personally involved in a program known as I Have a Dream. The program puts responsible adults together with economically disadvantaged children, to give them the guidance and assistance they need, but so often lack. I also have personally been involved with the Drug Abuse Resistance Education Program [DARE], which brings police officers into schools to talk with children about drug abuse. That program has helped children see the police in a new and more positive light, while bringing the police themselves in closer touch with the community's young people.

Unfortunately, Mr. President, too many children see the police as the enemy, and the resulting tensions can have horrible consequences, as we have seen recently. By involving mentors from the law enforcement community, JUMP will begin to bridge the gap between many children in high crime areas and the police. The resulting improvement in police-community relations will be an important benefit of the program.

Mr. President, my own experience, and the experience of many existing programs, clearly demonstrates the promise of mentoring. When children and adults establish solid, caring relationships, young people often are set on a different and better path. Yet, for all the good work that's already being done, too few children benefit from mentoring. We can and ought to do more. That's what JUMP is all about.

The program will provide children with trained mentors who know and care about them as individuals, who accept them, and who are there to help them when needed. Mentors who can point them away from crime, away from drugs, and toward a future worth working for.

Again, Mr. President, I want to thank Senator KOHL and his staff for their help with this bill. Also, I want to express my appreciation to the many child advocates and others who have helped in the development of this legislation. In particular, I would like to thank the Children's Defense Fund, Big Brothers/Big Sisters of America, the National Collaboration for Youth, the One-to-One Partnership, and the National Association of Police Athletic Leagues, for their advice and their endorsement of the bill. The Boys and Girls Clubs of America and the Amelior Foundation also provided valuable comments. I look forward to working with all these organizations to ensure that the program is funded next year.•

Mr. SIMON. Mr. President, I would like to extend my appreciation to my esteemed colleague and friend from Wisconsin for his efforts as chairman of the Juvenile Justice Subcommittee to focus attention on our youth at risk, and to reauthorize the Juvenile Justice Act of 1974.

The Senator from Wisconsin has done a terrific job with the reauthorization of this legislation. With his assistance, we have been able to include hate crimes provisions which would authorize funding for research projects, training assistance and hate crime prevention programs, and which would also call for a study on juvenile hate crimes. I am particularly grateful for his help in including legislation that I originally introduced to establish an Early Gang Prevention Center which would specifically target children at the elementary level who are seriously thinking of gang membership.

Mr. KOHL. I thank the Senator from Illinois for his kind words and I am glad that we could work together to include these provisions.

Mr. SIMON. I understand, however, that in the conference committee, my original gang prevention provision was expanded to address a much wider array of issues, which I fear may take away the emphasis from targeting at-risk elementary school children. While I certainly recognize the extent of gang violence in America and the need for programs to address all aspects of this problem, I do still hope that the initial intent of my gang prevention bill will be remembered.

Mr. KOHL. The conference agreement does include additional language from the House gang prevention provisions, but I want to assure the Senator from Illinois that all of the original components of his bill are included in the conference agreement. It is obvious that there are many ways that we can address the gang problem, but I agree that an important step in solving this problem is to concentrate on prevention and targeting those young people who are at risk of becoming a gang member.

I am hopeful that the administrator will focus on prevention programs for elementary school children.

• Mr. LAUTENBERG. Mr. President, I would like to engage in a brief colloquy with the distinguished chairman of the Juvenile Justice Subcommittee, Senator KOHL.

Mr. President, this legislation would establish a new competitive grant program to promote the implementation of mentoring programs for at-risk youth. This new program, included in title II, part G, is based on legislation I introduced, the Juvenile Mentoring Program Act [JUMP].

I would like to clarify with the chairman of the subcommittee the entities that are eligible to apply for and receive such grants under that part.

Would the Senator confirm that nonprofit groups are eligible to directly apply for and receive these grants?•

• Mr. KOHL. Mr. President, I want to confirm that it was the intention of the conferees to allow local educational agencies, nonprofit groups, and any of the entities listed in section 288B of part G, to directly apply for and receive grants under this part. Local educational agencies, however, must be in partnership with at least one other eligible entity. Similarly, any eligible entity other than a local educational agency must be in partnership with a local educational agency.

So, for example, if a local nonprofit organization, such as Big Brother/Big Sister, sought funds, it would be eligible to apply for and receive a grant. However, the organization would have to work with a local educational agency in developing the proposal.•

• Mr. LAUTENBERG. I thank the Senator.

Mr. President, let me again thank Senator KOHL and his excellent staff for their extraordinary cooperation and assistance with this legislation. I want to specially recognize Marsha Renwanz of Senator KOHL's staff, who really has gone the extra mile to make this program a reality. I appreciate it, and know that this legislation would not have progressed to this point without her help.•

Mr. THURMOND. Mr. President, I wish to examine the Coordinating Council provisions contained in this juvenile justice bill. At present, the Attorney General, the Secretary of Health and Human Services, the Secretaries of Labor, Education, and Housing and Urban Development, and the directors of a wide array of other Federal agencies and offices all serve on this Coordinating Council. First authorized by the Juvenile Justice and Delinquency Prevention Act of 1974, the Council is directed to coordinate all Federal programs and efforts. The administration is concerned about an amendment added by the House, which would change the composition of this council to include nine private citizens—three of whom are to be nominated by the Senate, three by the House of Representatives, and three by the President. Such congressional involvement in the nominating process has led the Justice Department to express concern that this component may be unconstitutional.

Mr. KOHL. Because the Coordinating Council has neither rulemaking nor enforcement powers, it is my understanding that the House proposal is likely to pass constitutional muster. Existing law does state that the function of the Council is to coordinate all Federal juvenile justice programs. The act further states, however, that this coordination is to be accomplished by means of policy and program recommendations and review. For example, the Council is charged with making annual recommendations to the President and Congress on ways to improve Federal practices and facilities for holding juveniles in custody and the coordination of all Federal juvenile justice programs and policies. The Council is further entrusted with reviewing the degree to which all such programs and policies are consistent with the mandates of the act. And last but not least, the council is authorized to review joint funding proposals. In other words, the Council is directed to serve solely in an advisory capacity.

Nevertheless, I assure my distinguished colleague from South Carolina that in the unlikely event this provision is declared unconstitutional, I will work closely with him to change the provisions accordingly.

Mr. THURMOND. I thank my colleague for this clarification.

Mr. BIDEN. Mr. President, today the Senate has passed H.R. 5194 the juvenile justice reauthorization bill. I am pleased that Senate has acted to reauthorize this vital legislation before the close of the 102d Congress. The Juvenile Justice Office is the most important Federal office addressing the challenge of children in our juvenile justice system. Its reauthorization is imperative.

Also, I would like to take this opportunity to commend Senator KOHL for his outstanding efforts not only to reauthorize the Juvenile Justice Act, but improve it, as well.

Today, more and more children are dropping out of school, becoming involved with gangs, committing crimes, and entering the criminal justice system—amounting to an urgent threat to the future of the Nation.

Prevention is the most effective tool at our disposal to fight the pressing problem of juvenile delinquency—a problem made so much more severe by the epidemic of drug abuse by our children. However, for years the administration has been unwilling to utilize prevention tools to combat juvenile crime and delinquency. In fact, the President's fiscal year 1993 budget request for State and local law enforcement cuts juvenile justice programs from $68 million to $7.5 million—a 90-percent cut.

Despite this demonstrated ambivalence toward at-risk youth, H.R. 5194 is a bipartisan package that takes an innovative approach toward delinquency prevention. At the same time, this legislation continues to achieve the original jail removal mandates of the act—mandates that all must concede have not been achieved.

Through new and creative programs like the State challenge grants and incentive grants that will enable local governments to invest in prevention programs, this legislation attacks juvenile delinquency head on. These programs focus on the appropriate Federal interest in juvenile justice—providing the necessary resources, leadership, and coordination in developing and implementing effective means of preventing and reducing juvenile crime and delinquency.

Mr. President, the Juvenile Justice and Delinquency Prevention Act forms the vital link between the Federal Government and the State and local officials on the front lines of the national effort to fight juvenile crime and prevent juvenile delinquency. I am glad that the Senate has recognized the urgent need to strengthen and improve these programs.

Mr. FORD. Mr. President, on behalf of Senator KOHL, I move that the Senate concur in the amendment of the House.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ASIAN PACIFIC AMERICAN HERITAGE MONTH

EXTENDING FOR 2 YEARS AUTHORIZATIONS FOR CERTAIN PROGRAMS UNDER TITLE I OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT

AMENDING TITLE I OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration, en bloc, of the following bills that have been received from the House: H.R. 5572, H.R. 5716 and H.R. 5862; that the bills be deemed read for the third time, passed, the motion to reconsider be laid upon the table; that any statements with respect to the passage of these bills appear at the appropriate place in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So the bills (H.R. 5572, H.R. 5716 and H.R. 5862) were deemed read the third time and passed.

STATE JUSTICE INSTITUTE

AMENDING STATE JUSTICE INSTITUTE ACT OF 1984

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration, en bloc, of the following bills that have been received from the House: H.R. 1252 and H.R. 1253; that the bills be deemed read the third time, passed, and the motion to reconsider be laid upon the table; that any statements with respect to passage of these bills appear at the appropriate place in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

So the bills (H.R. 1252 and H.R. 1253) were deemed read the third time and passed.

Mr. HATCH. Mr. President, I am pleased to rise in strong support of H.R. 1252, and H.R. 1253, two bills introduced in the House by Representative CONNIE MORELLA and recently moved through the Subcommittee on Intellectual Property and the Administration of Justice through the efforts of Representative BILL HUGHES, the chairman of that House subcommittee. These are excellent pieces of legislation that answer important needs of women involved in the criminal justice system, the subject of H.R. 1252, and of women involved in child custody litigation, the subject of H.R. 1253. Specifically, these bills address fundamental issues that battered women face every day as they go to court to fight for custody of their children or to fight for equal justice in criminal cases.

As Congresswoman MORELLA vividly stated on the House floor last Saturday, "For many American women, real terror is not walking alone down a city street late at night. Real terror is being 'home alone' with their loved ones." I join Congresswoman MORELLA in underscoring the need for our judicial system to recognize this unpleasant, but nonetheless true, fact.

While there are a number of significant pieces of legislation now pending in the Senate dealing generically with the many problems related to violence against women—I specifically note legislation that has been championed by Chairman BIDEN and by Senator DOLE—these two bills, limited though they are, are nonetheless quite significant, and I am very glad that we are passing them today rather than waiting until such time as a more comprehensive package on violence against women could be enacted.

The bills we consider today ensure that battered women involved in the judicial process are treated properly, particularly with respect to preserving their full right to offer proof of their history of abuse. H.R. 1252, is the Battered Women's Testimony Act. It authorizes the State Justice Institute to study this issue and to disseminate information regarding the admissibility and proper uses of expert testimony relating to battered women. H.R. 1253 is the Judicial Training Act. It provides funds to the State Justice Institute to develop programs for judges and other court personnel about domestic violence, especially its impact on children, and to review child custody decisions where evidence of spousal abuse has been presented.

In setting the ground rules for the admission of expert testimony, the Federal rules of evidence, as well as most State codes, properly balance the many conflicting factors that a court must consider. However, this balancing of factors is necessarily subjective and the discretion properly placed in the court's hands can, and is, sometimes abused. H.R. 1252 will more specifically focus the court's attention on the potential value to be derived from the use of expert testimony in criminal trials and will make sure that no judge doubts the necessity, in a proper case, for the use of such evidence.

Although H.R. 1252 strongly endorses the use of expert testimony in appropriate situations, I should add that I am not unmindful of the ways in which expert testimony can be misused. Nor am I unmindful of the more limited scope for the use of experts in criminal trials. We are all familiar with the so-called battle of the experts that too often characterizes civil trials, particularly in the product liability area. It is unfortunate that experts sometimes get in the way of finding the truth rather than assist in that search. But I am confident that the State Justice Institute will be mindful of these problems and will seek to find ways in which expert testimony can be effectively used to help and not to hinder juries in seeking the truth.

I strongly support the bills we pass today, Mr. President. I should, however, note that similar legislation recently introduced by myself on the Senate side, S. 3317 and S. 3318, dealt with these issues in slightly different language. I view those differences as points of clarification, not divergences in approach. For example, my bill, S. 3318, parallels H.R. 1252, except that it specifically recognizes that the use of expert testimony to be studied by the State Justice Institute should include the use of experts on behalf of the prosecution as well as on behalf of the defense.

While the language of H.R. 1252 might be read to mean that it is concerned only with the problems that battered women face when charged with crimes of violence, I believe that it also covers the problems of battered women, such as rape victims, who may also need assistance in the form of expert testimony in a criminal trial. The problems are equally great for battered women who have difficulty testifying as the prosecuting witness in rape and abuse cases, and there may be an equally important role for experts to play in informing juries about the unique difficulties those women sometimes have in explaining why their pattern of conduct may not have conformed to what juries would perhaps be conditioned to expect.

Also, it is important when expert witnesses are produced by the defense, that the prosecution have an equal opportunity to produce experts that may counter or further explain the testimony of the defense expert. This result is implicit in the bill language and would be the natural inference that the State Justice Institute would draw. It is only fair that when one side is permitted to rely on an expert the other side must be allowed to counter that evidence with expert testimony of its own.

I referred earlier to the major pieces of legislation dealing with violence against women that have been studied by the Senate in this Congress. Before leaving this subject today, I would like to publicly salute Senator BIDEN for his recent press conference drawing attention to this problem and for his announcement that passage of the Violence Against Women Act will be a cornerstone of the work of the Judiciary Committee in the next Congress. I very much look forward to working with him to see that the needs of millions of battered women affected by this legislation will become reality early in the next Congress.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE WORK OF CONGRESS

Mr. BYRD. Mr. President, I overheard the distinguished Senator from Wyoming, Mr. SIMPSON, and the distinguished Senator from Kentucky, Mr. FORD, talking about the process here whereby many people, Members, staff persons, and otherwise, spend numerous hours on the work of the people, perhaps a year, maybe work going back to the very first session, and then it all comes finally to a close in the last minutes of a session.

As Senator SIMPSON pointed out, the work of the legislative branch that is done efficiently and well appears to be, and is in many ways, a rather dry process. It does not make the headlines, the process itself does not, and the media do not dwell upon the hours or days or, in some instances, the years of labor that go into bringing a piece of legislation to its final fruition.

The media and a good many people even in this body pay little attention to the process. Their eyes glaze over when there is talk of the process.

Mr. President, it is very fashionable these days, and as a matter of fact it has been fashionable over the years, to lampoon a Congress, criticize the House and Senate for their work or for the delays, and fault is easily found with the people's branch, the House and the Senate. Some of it is justified. There is no question but that we are entitled to some criticism—constructive, as it should be.

But in the main, Mr. President, I believe that the people, as a whole, are really not aware of the importance of the Congress to representative democracy, and they are easily misled by the critics, the critics on the inside and the critics on the outside.

John Heywood said that, "It is a foule bird that fouleth his owne nest," and we are treated often to the fouling of the nest by Members of this body. Criticism, of course, comes easy for those who want to play to the galleries, appeal to the masses, and bring into critical light the work of the Congress and the elected Members of the House and the Senate.

Most Members of the House and Senate are hardworking, they are honest, and they contribute a great deal to the progress of the country.

Congress has always been the butt of cartoonists, the editorial critics, the columnists who lampoon the people's branch. Congress is a moving target. It is a kind of faceless entity, and it is easy to criticize.

It reminds me of Plutarch's reference to the plebeians of Rome, who seceded from the city. Plutarch speaks about this, particularly in his "Life of Coriolanus." Plutarch does not dwell on it at length, but he refers to the time when the plebeians seceded from the city and went to the Holy Mount and separated themselves from the Senate and the patricians.

Other historians refer to this event. I particularly like the reference to it by Cassius Dio Cocceianus, the Bithynian historian, writing about the history of Rome. Cocceianus lived, circa, 155 to 240 A.D. He writes about this situation in which the plebeians separated themselves from the city.

The Roman Senate was apprehensive as to what might be the outcome. So, the Senate chose Menenius Agrippa, one of the more moderate and popular members of the Senate, to reason with the secessionists. Therefore, he entreated them to reconsider their secession.

Menenius Agrippa told the fable in which the members of the body were critical of the belly. The eyes said: We provide light for the hands to work, and the feet to walk. The tongue and the lips said: Through us the counsels of the heart are made known. And the ears said: Through us the words of others are conveyed to the mind. The hands said: We do the work that stores up the wealth. And the feet said: We carry the entire body everywhere it goes, walking, standing, and working, and we grow tired. And they all complained in a chorus about the belly, saying that while the food and sustenance go to the belly, the belly does not labor. The belly receives all the benefit that flows from the work of the other members of the body, the other members labor and grow tired while the belly languishes.

They, therefore, voted to stop supplying the belly with food. They voted that the hands no longer convey food to the mouth, and the mouth no longer convey food to the belly.

But after a little while, the various components of the body began to grow tired and to atrophy until the body almost collapsed. Whereupon, Plutarch tells us, and so does Cassius Dio Cocceianus, that the members of the body began to realize that it was, after all, the work of the belly in its digestion of the food that made it possible then for energy to flow therefrom and to be conveyed to the hands, and to the feet, and to the eyes, and to the ears, and to the lips, and to the tongue, and so on. The other members of the body came to their senses when they understood that the much-criticized belly was that organ from which all of their blessings flowed.

And Plutarch tells us that those people from the city who had seceded and gone to the Holy Mount came to the conclusion, after hearing Menenius Agrippa's fable of the belly, that, after all, the much-criticized Senate, was, in the final analysis, their salvation, and that their blessings, indeed, flowed from the counsels, the debates, and the actions of the Senate.

In my judgment, Agrippa's fable could well be applied to the American House and Senate. It is easy to criticize, as I have indicated, and these two bodies are the butts of criticism, always have been, and people should take with a grain of salt many of the criticisms that are directed against the Congress.

Mr. President, Franklin D. Roosevelt said, "If we were to eliminate the Congress, we would automatically cease to be a Republic." That was a sound statement. I also believe that people should stop and think when the critics of the Congress are attempting to light the fires of opprobrium, calumny, and criticism under the Congress.

People should remember that it is the Congress that makes this a Republic. I would say to the veterans, when they hear the critics, they would do well to remember that all of the veterans programs from which they benefit are enacted by the Congress. The senior citizens of the country would do well to pause and reflect that all of the programs which benefit the senior citizens are enacted by the Congress.

Those who are interested in the parks and the forests, the lakes and the rivers, the harbors of the Nation, would do well amidst the clouds of criticism that sweep over the land, especially in a campaign year, to pause and reflect upon the fact that the authorizing measures, the appropriations for these are made by the Congress. The vilified Congress passes the legislation that benefits every person in the land—man, woman, boy, and girl.

Those who are interested in education, those who are interested in the environment, those who are interested in law enforcement, those who are interested in the war on crime, the war on drugs, they should stop and think that, whatever programs are applicable, have been enacted by the Congress. The highly criticized, the greatly vilified, the overly castigated House and Senate, they make all of these programs possible.

The President has made it his campaign to bash the Congress. I regret that the President has done that.

I regret it when I hear Members of this body wrongly criticize the Congress of which they are a part. I say as the Master did: "Lord, forgive them, they know not what they do."

THE APPROPRIATIONS COMMITTEE

Mr. BYRD. Mr. President, with reference to the Appropriations Committee, Congress has now completed action and the President has signed into law all 13 fiscal year 1993 appropriations bills.

This has been a very difficult year for the Appropriations Committee. The committee's fiscal year 1993 allocation for domestic discretionary spending was not sufficient to cover fiscal year 1992 spending levels plus inflation. Therefore, real cuts had to be made to critical domestic programs in nearly every subcommittee.

I have here a table which sets forth, by subcommittee, total fiscal year 1993 appropriations as contained in the conference agreements on all 13 fiscal year 1993 appropriations bills.

This table also provides a breakout between mandatory and discretionary appropriations for each of the 13 bills, as well as a comparison of the 1993 appropriations versus 1992 enacted levels, and versus the President's 1993 budget requests.

In total, including both mandatory and discretionary amounts, fiscal year 1993 appropriations for all 13 appropriation bills equal $761.5 billion. This is $23.7 billion above the fiscal year 1992 enacted levels, and it is $13.2 billion below the President's requests. However, as Senators are aware, the Appropriations Committee has no control over mandatory appropriations. The committee is simply required by the authorizing statutes to appropriate these mandatory amounts to cover the costs of entitlement programs.

Discretionary appropriations, on the other hand, are under the control of the Appropriations Committee, and they cover defense, domestic discretionary, and foreign aid programs. For these programs, the total of all 13 appropriations acts for fiscal year 1993 will equal $502.1 billion, as viewers will see on the chart to my left. This total is $10.1 billion below fiscal year 1992 discretionary appropriations and $8.7 billion below the President's fiscal year 1993 requests.

We have heard all year long about the so-called profligacy of the Appropriations Committee. I have heard it time and time again, ad nauseam, from Members on this floor, about the profligacy of the Appropriations Committee. We have heard it from the unthinking media, the President, from certain Senators who attempt to place the blame for the recordbreaking budget deficits of the past 4 years—the past 12 years, for that matter—on the Congress, and from those who support the line-item veto and enhanced rescissions. This year's total discretionary appropriations should answer these critics. Let me repeat—total discretionary appropriations for fiscal year 1993 equal $502.1 billion.

As shown on this chart, fiscal year 1992 discretionary appropriations totaled $512.2 billion; therefore, fiscal year 1993 appropriations are $10.1 billion less than last year, less than fiscal year 1992. The second bar on the chart shows that the President's fiscal year 1993 requests for discretionary appropriations total $510.8 billion. That is what the President asked.

The third bar, as I have indicated previously, shows the $502.1 billion enacted by Congress for the 13 fiscal year 1993 appropriations bills, which is $8.7 billion less than the President's requests.

Of these fiscal year 1993 discretionary appropriations, national defense—function 050—will total $275.8 billion in budget authority. That amount is $2.2 billion below the budget resolution. Foreign aid—function 150—appropriations total $21.3 billion, or $635 million below the budget resolution. Domestic discretionary appropriations for fiscal year 1993 total $204.9 billion, $1.2 billion less than the budget resolution allowed.

As these numbers make clear, the Appropriations Committee and the Congress, again this year, have acted responsibly in enacting appropriations which, in total, are $13.2 billion below the President's requests. This would not have been possible without the cooperation and support of Senators on both sides of the aisle. I particularly appreciate the assistance of the leadership throughout the consideration of not only the regular appropriations bills this year, but also the rescission bill, which cut fiscal year 1992 spending by $8.2 billion, and the fiscal year 1992 supplemental bill, which contained vital assistance for the victims of Hurricanes Andrew and Iniki, and Typhoon Omar. And it is with great pride that I reflect on the speed with which the Senate enacted the emergency appropriations measure.

The majority and minority leaders, without exception, did everything possible to encourage Senators to work with our subcommittee chairmen and ranking members on all of these appropriations bills, and to hold off extraneous amendments. For the support and guidance, I am deeply grateful.

I particularly am grateful to the minority leader in this respect. Most of the amendments would have come from the Republican side of the aisle. We knew about the amendments that were being written, and we knew that many of these amendments would have resulted in delay in action on appropriations bills, especially in these final days of the session.

It was the Republican leader who counseled with his colleagues on the other side of the aisle, and who used his arts of persuasion and his talents to convince his colleagues that the amendments should not be offered. His actions expedited the work of the Senate on the appropriations bills.

In several instances, there were desires on the part of Senators, particularly again on the part of Senators on the other side of the aisle, may I say, to amend the conference reports that come over from the House.

But, in most instances, those conference reports were all wrapped into one package and there were not any amendments in disagreement between the two Houses.

I congratulate the other body on this procedure, and I congratulate members of my own subcommittees for their work in the conferences which helped to make it possible for the conference reports to be taken up without amendments in disagreement between both Houses.

But there were threats to filibuster and to delay, and I think it is rather remarkable the work the minority leader did in smoothing waters and calming nerves and quieting the threats of those who might otherwise have slowed down the legislation.

Mr. President, to the members of the Appropriations Committee, I say thank you for a job well done. Election year politics complicated the process, and funds were in shorter supply than in past years. It was more difficult this year than last, more difficult last year than the previous year.

I regret the election year politics injected by the President with his veto threats. But the committee did its work and we only needed a 5-day continuing resolution, 2 of which days were weekend days—all bills passed, all appropriations bills passed and are on the President's desk.

I should say, Mr. President, being an appropriator is a thankless job in many ways. The Appropriations Committee rarely receives praise for the work that it does. Rarely do the media praise the Appropriations Committees of the Congress for a job well done.

We only hear about the alleged pork in the bills. We do not hear that this so-called pork is, in great measure, infrastructure. It is an investment in our own country and in our own people; an investment in the rivers and harbors of the country, the highways and the bridges, the airports, the water and sewer facilities in countless communities throughout the land; it is also funding for education, health services, the war on crime, the FBI, law enforcement—all these and more.

This is infrastructure, and yet the media would have people believe that this is pork. Having been in this city now for 40 years, I fully understand that the viewpoint, in the media and otherwise, is that anything that is spent beyond the beltway is pork. Nothing is said about the millions that are spent on the museums, the bridges, the highways, the Metro system, and other important infrastructure here in the city all of which is necessary, of course.

We should have these things in the Nation's Capital. But the people outside the beltway are likewise entitled to infrastructure. It is their taxes as well, their tax dollars that are spent for infrastructure inside the beltway and outside the beltway. So, we should live and let live.

To those who continue the old chant about the budget-busting ways of Congress, let me refer again to the fact that the appropriators have spent $8.7 billion less than the President requested. The President challenged us with his veto threat on appropriations bills.

Mr. President, the Appropriations Committees of the Congress have not broken the pledges that were made in the budget summit in 1990. We have kept our pledges. We have kept our part of the agreement. We have never gone over the caps, and we have consistently lived within our allocations provided by that agreement and by the budget resolutions enacted annually here.

And when the President chose to threaten to veto appropriations bills that were over this budget request, that was not a part of the agreement in my judgment. That was in violation of the agreement. The elected representatives of the people have a right to readjust the priorities as long as we stay within the caps and within our allocations. The total of the various appropriations bills when added up would have been below the President's total budget requests even before he issued his veto threat. One or two or a few of the appropriations bills might have been above the President's budget request while others were below.

The totality of all of the appropriations bills would have come under the total request of the President included in his budget. We were well within the President's total budget request before he threatened to veto. That is the important thing to remember.

But the President threatened to veto any one of the appropriations bills that came to his desk in which the total amount exceeded his budget request for that particular department. That was unfair. That was not right.

But when the President challenged us with his veto threat, I concluded that rather than subject the Nation to a prolonged political ping-pong match with the President—who was only trying to prove that he had some sort of domestic agenda—I would do everything that I could to carry out the responsibilities of the Appropriations Committee to the people of the country. As I have stated, we were already below the President's total budget request when he made that threat. Yet, I suppose he needed an issue. But the American people needed someone to take care of their business.

So, in talking with my various subcommittee chairmen on the Appropriations Committee, it was our unanimous viewpoints that we ought not to engage in a charade of sending down to the President bills that were a little over his budget request, even though the total of all those bills would be under the President's total request. He would merely veto the bills, and then bash Congress.

Rather than engage in such a demagogical game of political football, we would act like adults and bring each bill's total under the President's request for that particular Department, with the exception of the Agriculture appropriations bill, which was already sent to the President's desk and signed before he issued his veto threat.

Hence, the committee worked and cut a little more in order to avoid gridlock and to move the people's business along.

I thank the subcommittee chairmen, Mr. President. I thank the members of the Appropriations Committee in the other body. We have a very, very good working relationship with the Appropriations Committee in the other body. They are entitled to commendations, likewise.

I thank the members of the staff on the Appropriations Committee, Jim English, the staff director on the majority side, and Keith Kennedy, the staff director on the minority side. We have excellent working relationships between these two staff directors and among the various staff members on both sides of the aisle.

Once again, I call attention to the fact that the appropriations staff on the Senate side, composed of staff people representing both the majority and minority, are only 82 in number. They do the work for the entire Government insofar as Senate appropriations are concerned—for all of the Departments and agencies. All of this is done by 82 appropriations staff members. They do the work for the entire Government.

And if one looks at many of the Departments downtown, they have hundreds of people who are engaged in the budget process; and, of course, the White House is the foremost lobbyist, hands down, of any lobby in town.

We have 82 members on the staff here of the Appropriations Committee that do the entire work, all of the appropriations work, year in and year out, for the Senate.

Yet, we are treated to excoriation on the part of inside critics about bloated staffs of Congress. Well, the Appropriations Committee staff is not bloated. We turn back money every year. I am proud of the hard-working staff members on the Appropriations Committee.

I have heard reports of the President's criticism in this regard, talking about the staffs of Congress being so bloated. Little is said about the growth of the staffs in the executive branch or growth of personnel in the judiciary: nothing is ever said about that. I never hear anything said about the growth of administrative costs in the judiciary. The criticism is always directed at the Congress.

I just want to take this moment to commend the appropriators.

There are those who criticize the appropriators for including authorizing legislation on appropriations bills. The truth of that matter is that, in many instances, if the appropriations bills did not include certain authorizations, the Government would come to a stop.

I recall that, for example, last year there was no authorization for the Federal Communications Commission, the Federal Trade Commission, the FBI, the Immigration and Naturalization Service, the Office of Management and Budget, the Securities and Exchange Commission and others. The appropriators had to move ahead, fund the Departments and the agencies, and do virtually the authorizing and the appropriations.

Earlier, I mentioned Keith Kennedy and Jim English. I also should mention Jack Conway. He does the numbers for Republicans and the Democrats on our Appropriations Committee.

Finally, let me thank my colleague, Senator HATFIELD, a former chairman of the Appropriations Committee in the Senate. He is the ranking member. I want to thank him for his valuable contributions to the work of the committee and to the work of the Nation.

On our committee, there is no partisanship. We do not play political games on the Appropriations Committee. We work together. I think we demonstrate a fine team, bipartisan, working for the good of the country.

I could not ask for better cooperation than I receive from Senator HATFIELD. He is always very supportive of our work, and I receive a great deal of encouragement from him. It is a fine team—the Democrats working with the Republicans on that committee. Thank God for the Congress of the United States and for the appropriators.

Mr. HATFIELD. Will the Senator yield? Is this an appropriate time?

Mr. BYRD. It is, if I may momentarily withhold.

I ask unanimous consent that the table to which I have referred be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

(As of) 06-Oct-92	New BA FY 1992 Enacted	New BA FY 1993 Estimates	New BA FY 1993 Conference	Conference vs FY 1992 Enacted	Conference vs Estimates
SUBCOMMITTEE					
Agriculture, Rural Dev. & Rel. Agencies: (a)					
Mandatory	39,352,155,000	47,659,307,000	46,878,819,000	7,526,664,000	-780,488,000
Discretionary	12,284,502,000	12,902,575,000	13,872,636,000	1,588,134,000	970,061,000
Total, Agriculture, Rural Dev. & Rel. Agen.	51,636,657,000	60,561,882,000	60,751,455,000	9,114,798,000	189,573,000
Commerce-Justice-State-Judiciary:					
Mandatory	900,912,000	661,524,000	661,524,000	-239,388,000	----
Discretionary	20,814,424,000	22,942,458,000	22,478,653,000	1,664,229,000	-463,805,000
Total, Commerce-Justice-State-Judiciary	21,715,336,000	23,603,982,000	23,140,177,000	1,424,841,000	-463,805,000
Defense:					
Mandatory	164,100,000	168,900,000	168,900,000	4,800,000	----
Discretionary	269,935,240,000	260,964,606,000	253,617,763,000	-16,317,477,000	-7,346,843,000
Total, Defense	270,099,340,000	261,133,506,000	253,786,663,000	-16,312,677,000	-7,346,843,000
District of Columbia:					
Mandatory	----	----	----	----	----
Discretionary	699,850,000	688,084,000	688,000,000	-11,850,000	-84,000
Total, District of Columbia	699,850,000	688,084,000	688,000,000	-11,850,000	-84,000
Energy and Water Development:					
Mandatory	----	----	----	----	----
Discretionary	21,870,150,000	22,465,938,000	22,079,547,000	209,397,000	-386,391,000
Total, Energy and Water Development	21,870,150,000	22,465,938,000	22,079,547,000	209,397,000	-386,391,000
Foreign Assistance:					
Mandatory	41,351,000	42,677,000	42,677,000	1,326,000	----
Discretionary	14,358,675,946	15,070,121,602	14,070,843,903	-287,832,043	-999,277,699
Total, Foreign Assistance	14,400,026,946	15,112,798,602	14,113,520,903	-286,506,043	-999,277,699
Interior and Related Agencies:					
Mandatory	78,305,000	50,975,000	78,695,000	390,000	27,720,000
Discretionary	12,862,451,000	12,595,592,000	12,504,605,000	-357,846,000	-90,987,000
Total, Interior and Related Agencies	12,940,756,000	12,646,567,000	12,583,300,000	-357,456,000	-63,267,000
Labor, Health & Human Services & Education: (b)					
Mandatory	158,606,130,000	178,821,191,000	179,146,978,000	20,540,848,000	325,787,000
Discretionary	60,657,311,000	62,151,282,000	62,145,195,000	1,487,884,000	-6,087,000
Total, Labor, H.H.S., & Education	219,263,441,000	240,972,473,000	241,292,173,000	22,028,732,000	319,700,000
Legislative: (c)					
Mandatory	81,660,400	87,900,000	87,900,000	6,239,600	----
Discretionary	2,306,353,700	2,670,364,500	2,275,148,057	-31,205,643	-395,216,443
Total, Legislative	2,388,014,100	2,758,264,500	2,363,048,057	-24,966,043	-395,216,443

NOTE: These numbers include CBO scorekeeping adjustments.

(As of) 06-Oct-92	New BA FY 1992 Enacted	New BA FY 1993 Estimates	New BA FY 1993 Conference	Conference vs FY 1992 Enacted	Conference vs Estimates
Military Construction:					
Mandatory	----	----	----	----	----
Discretionary	8,426,526,000	8,389,833,000	8,389,000,000	-37,526,000	-833,000
Total, Military Construction	8,426,526,000	8,389,833,000	8,389,000,000	-37,526,000	-833,000
Transportation:					
Mandatory	539,436,569	571,513,569	571,513,569	32,077,000	----
Discretionary	13,897,534,000	12,377,876,000	12,625,760,778	-1,271,773,222	247,884,778
Total, Transportation	14,436,970,569	12,949,389,569	13,197,274,347	-1,239,696,222	247,884,778
Treasury-Postal Service:					
Mandatory	8,735,431,000	11,203,202,000	11,203,318,000	2,467,887,000	116,000
Discretionary	10,844,327,000	11,400,439,000	11,282,900,000	438,573,000	-117,539,000
Total, Treasury-Postal Service	19,579,758,000	22,603,641,000	22,486,218,000	2,906,460,000	-117,423,000
VA HUD-Independent Agencies:					
Mandatory	17,145,669,000	24,665,947,000	20,600,957,000	3,455,288,000	-4,064,990,000
Discretionary	63,239,596,000	66,128,029,810	66,043,316,000	2,803,720,000	-84,713,810
Total, HUD-Independent Agencies	80,385,265,000	90,793,976,810	86,644,273,000	6,259,008,000	-4,149,703,810
Unassigned:					
Mandatory	----	----		----	----
Discretionary	----	----		----	----
Total, Unassigned	----	----	----	----	----
GRAND TOTAL	737,842,090,615	774,680,335,481	761,514,649,307	23,672,558,692	-13,165,686,174
Mandatory	225,645,149,969	263,933,136,569	259,441,281,569	33,796,131,600	-4,491,855,000
Discretionary	512,196,940,646	510,747,198,912	502,073,367,738	-10,123,572,908	-8,673,831,174

(a) Includes Sec. 32 funds.

(b) Includes advance appropriations.

(c) Includes compensation of Members.

Mandatory using Bipartisan Budget Agreement definitions.

NOTE: These numbers include CBO scorekeeping adjustments.

Mr. BYRD. Mr. President, I yield the floor.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I am terribly sorry I was not on the floor when the chairman of the Appropriations Committee, Senator BYRD, first began his recitation of these statistics and the role of the Appropriations Committee. He may well have used a statistic when I think is also very illustrative of the often misunderstood relationship between Presidential request levels of spending and the congressional responses to those requests.

If the chairman has not already referred to that, I think it is still worth the repetition. I remember when I was in education, one of those golden rules was repetition is the first law of learning. I think that there has to be a lot of relearning on the part of many people as to the facts of the case that often create the imagery of conflict between the executive branch and the congressional branch, legislative branch of Government on levels of spending. And that is I ask the chairman on that span of time of some 38, years, 40 years now perhaps, has the, and this includes Democratic and Republican Presidents alike—I am not playing partisan politics in this instance either—over that span of, say, the last 38, 40 years, looking at the President's budget requests year in and year out, and the legislative responses to those year by year, have they been higher or lower as to the final conference statistics and figures, from the request level and the congressional level of spending?

Mr. BYRD. For the years 1947, I believe, through 1991, the total of the congressional appropriations, including the general appropriations bills, the supplementals, deficiencies—we used to have deficiencies, deficiency bills; we used to have an appropriations committee on deficiencies and supplementals, which I chaired for a while—the total was, not including this year, $188 billion over those years under the total of the requests by all of the Presidents in that period, Republican and Democrat, $188 billion under.

Mr. HATFIELD. Under the Presidents' request?

Mr. BYRD. Yes.

Mr. HATFIELD. Mr. President, I will further comment on that statistic to the effect that this did not happen in 1 or 2 years, which made a great differential to give us that cumulative figure, but I believe with perhaps the exception of 2 or 3, not more, than that was true each year in that period of time. We did not have an aberration or a great differential one year that gave us that final end figure that the Senator quoted of $188 billion; is that correct?

Mr. BYRD. It was true in a great majority of the years.

I ask unanimous consent, Mr. President, that I may print in the RECORD a chart for that period of years which will indicate the annual requests by the Presidents and the annual appropriations and annually the difference between the final appropriations and the Presidents' request in each instance.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

REGULAR ANNUAL, SUPPLEMENTAL, AND DEFICIENCY APPROPRIATION ACTS COMPARISON OF BUDGET REQUESTS AND ENACTED APPROPRIATIONS

	Administration requested	Enacted appropriations	Difference under (−)/over (+)
Calendar year:			
1945	$62,453,310,868	$61,042,345,331	−$1,410,965,537
1946	30,051,109,870	28,459,502,172	−1,591,607,698
1947	33,367,507,923	30,130,762,141	−3,236,745,782
1948	35,409,550,523	32,699,846,731	−2,709,703,792
1949	39,545,529,108	37,825,026,214	−1,720,502,894
1950	54,316,658,423	52,427,926,629	−1,888,731,794
1951	96,340,781,110	91,059,713,307	−5,281,067,803
1952	83,964,877,176	75,355,434,201	−8,609,442,975
1953	66,568,694,353	54,539,342,491	−12,029,351,862
1954	50,257,490,985	47,642,131,205	−2,615,359,780
1955	55,044,333,729	53,124,821,215	−1,919,512,514
1956	60,892,420,237	60,647,917,590	−244,502,647
1957	64,638,110,610	59,589,731,631	−5,048,378,979
1958	73,272,859,573	72,653,476,248	−619,383,325
1959	74,859,472,045	72,977,957,952	−1,881,514,093
1960	73,845,974,490	73,634,335,992	−211,638,498
1961	91,597,448,053	86,606,487,273	−4,990,960,780
1962	96,803,292,115	92,260,154,659	−4,543,137,456
1963	98,904,155,136	92,432,923,132	−6,471,232,004
1964	98,297,358,556	94,162,918,996	−4,134,439,560
1965	109,448,074,896	107,037,566,896	−2,410,508,000
1966	131,164,926,586	130,281,568,480	−883,358,106
1967	147,804,557,929	141,872,346,664	−5,932,211,265
1968	147,908,612,996	133,339,868,734	−14,568,744,262
1969	142,701,346,215	134,431,463,135	−8,269,883,080
1970	147,765,358,434	144,273,528,504	−3,491,829,930
1971	167,874,624,937	165,225,661,865	−2,648,963,072
1972	185,431,804,552	178,960,106,864	−6,471,697,688
1973	177,959,504,255	174,901,434,304	−3,058,069,951
1974	213,667,190,007	204,012,311,514	−9,654,878,493
1975	267,224,774,434	259,852,322,212	−7,372,452,222
1976	282,142,432,093	282,536,694,665	+394,262,572
1977	364,867,240,174	354,025,780,783	−10,841,459,391
1978	348,506,124,701	337,859,466,730	−10,646,657,971
1979	388,311,676,432	379,244,865,439	−9,066,810,993
1980	446,690,302,845	441,290,587,343	−5,399,715,502
1981	541,827,827,909	544,457,423,541	+2,629,595,632
1982	507,740,133,484	514,832,375,371	+7,092,241,887
1983	542,956,052,209	551,620,505,328	+8,664,453,119
1984	576,343,258,980	559,151,835,986	−17,191,422,994
1985	588,698,503,939	583,446,885,087	−5,251,618,852
1986	590,345,199,494	577,279,102,494	−13,066,097,000
1987	618,268,048,956	614,526,518,150	−3,741,530,806
1988	621,250,663,756	625,967,372,769	+4,716,709,013
1989	652,138,432,359	666,211,680,769	+14,073,248,410
1990	704,510,961,506	697,257,739,756	−7,253,221,750
1991	756,223,264,591	748,262,835,695	−7,960,428,896
Totals	11,710,201,833,552	11,521,432,604,188	−188,769,229,364

Source: House Committee on Appropriations.

Mr. HATFIELD. Mr. President, I appreciate the chairman's review of this record because, again, it is counter to the popular imagery that somehow the Congress is always the big spender in this constitutional process of requests and appropriations, and so forth, and that the President or the White House has always been the fiscal constraint or the fiscal restraint in this process. The opposite is true.

I can recall during the 6 years that I was chairman of the Appropriations Committee, and that was 6 of the 8 years of the Reagan administration, Republican White House, Republican Senate. And I can remember what the chairman has already referred to of Presidents', of both parties, favorite target in trying to explain fiscal policies of this Nation to lambaste the Congress. It was always the fault of the Congress, the fault of the Congress not appropriating, or overappropriating, or pork barreling that has led to a lot of these quick-fix conundrums that float around in the political arena: Line-item veto, enhanced rescissions, balanced budget amendments, that somehow are going to fix the deficit problem and bring the Congress under control and into accountability.

Those 6 years out of the 8, and I do not want to just restrict my time of chairmanship, but let us take the full 2 terms of the Reagan administration, one of the favorite targets of the rhetoric of that administration was the Congress as the big spenders. If you take those 8 years and add up each of those 8, your fiscal years, as to what President Reagan requested of the Congress and take that 8 years as to what the Congress appropriated, we were under the Reagan years of request levels, budget request levels.

That certainly was one of the highlights or one of the high points of this Congress bashing and the so-called tension between the executive and legislative branches of Government.

The chairman says, well, this has been a popular subject for many Presidents—which it has. Has it always been so? Well, that also reminded me of the fact that we have together been very much involved in the bicentennial of the Constitution and its efforts and its programs under former Chief Justice Warren Burger. Of course, as the Chief Justice, we had a number of publications which had become the legacy and the heritage of the bicentennial celebration. On one of them particularly, one of these publications concentrating on the history of the judicial branch of Government, and there was a brief respite from the early days when Congress was getting all the bashing, even under the beginning of the first Republican President, Washington. When President Jefferson came into power, that interlude was the tension between the executive and the judiciary. I am not so sure that Thomas Jefferson in his heart of hearts really believed in a three-branch Government. He really was a supporter of two branches. Fortunately, we had a Chief Justice at the time to confront the Jefferson antagonism by the name of John Marshall.

When you go through that early history, and by the way, let me recommend an interesting highlight history of the Supreme Court by Chief Justice Rehnquist. He has now written two books, one of the highlights of the history of the Supreme Court, and the other now on the impeachment trails, major impeachment trials, not only of Andrew Johnson but Justice Chase and a few of the others.

You can get very quickly the flavor of that tension which existed between President Jefferson and what the role of the judiciary was to play in this Republic.

So I guess for that exception and maybe a few others that I do not recall immediately, it has been pretty much the hee and the haw between the executive and the legislative.

That is the nature, I guess, of our system, I would say to the chairman. I do not think we are being overly sensitive to respond from time to time to set the record straight. I wish I sometimes could sit down and draft the whole budget. I am sure the chairman has thought of that, and the distinguished chairman of the Subcommittee on Energy and Water of the Appropriations Committee, Mr. JOHNSTON. We each probably could draft up a better budget than the whole committee put together, or any President. But that is not our system. Our system is consensus. We are a pluralistic society. We are a pluralistic structure of Government—three branches.

I often have to remind my constituents that the Constitution gave to the Congress the purse strings. I believe that is still one of the most fundamental demonstrations of checks and balances and of the sustaining of the democratic system within a Republic, the control of the purse strings—he who controls the purse strings, the elected representatives of the people.

It is like I used to argue about the draft. If a President is given the power of unlimited manpower and womanpower to engage in unilateral warfare, he has power so great that, in my humble opinion, we would never have been in Vietnam if we had not had the draft.

I think there is an analogy here. The President, by nature of the focus of one man—someday one woman—by Executive powers of Government has to be checked by not only an elected body of Representatives but an independent judiciary. One is as dependent on the other, and the total makes the democratic system really work.

As these emerging countries of Europe coming out of communism begin to perceive the role that we have established here as a model for the world, with all of its warts, all of its mistakes, I think they will see it as the best system of government ever conceived by human mind, as did Mr. Churchill.

So I really feel, in spite of the fact that this is inherent in the system, it behooves us as Members of the Congress, and particularly appropriators, to set the record straight, as the chairman has done once again on this matter of spending.

Now, if we want to fix blame for the deficit, there is enough blame to go around everywhere. But I do think on the matter of the spending, this particular issue today is very, very timely.

I hope we can reproduce the charts.

This is the visual understanding of the 1992 level of spending, the 1993 request level, and the 1993 conference report level of the Congress. Each is lower. And the most important thing is that of those discretionary programs, the President's request was $8 billion, whatever the figure was, almost $8 billion higher than what we appropriated.

Mr. BYRD. Eight point seven.

Mr. HATFIELD. Eight point seven, almost $9 billion lower than President Bush's budget request. And that is not an erratic.

As the record shows now, from what has been placed in the RECORD by the chairman, starting in 1945, this is in keeping with that long tradition over those many years.

I thank the Senator for making this available.

Mr. BYRD. Mr. President, I thank the Senator.

I ask unanimous consent to proceed for 30 seconds.

The PRESIDING OFFICER (Mr. BRYAN). Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank the Senator from Oregon, my colleague, the ranking member.

As to his reference to the years from 1945 through 1991, in which he indicated that in a great majority of those years Congress appropriated less than the President requested, in each of those—for most of them certainly—I call his attention to the fact that out of those 46 years, 1945 through 1991— 1945 through 1991, inclusive—only in 6 years, in 6 of the 46 years did the appropriations by the Congress exceed the request by the President. In 6 years, only in 6 years out of the 46 years did Congress exceed the Presidents' requests.

In all the other years, Congress appropriated less money than the Presidents requested. And the total again, the total difference for the years 1945 through 1991 is $188,769,229,364.00. The total of the congressional appropriations under the totality of the Presidents' requests for those years was $188,769,229,364,00.

I thank the Chair for its courtesy.

Mr. BRADELY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey, Mr. BRADLEY.

Mr. BRADELY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SEYMOUR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CENTRAL VALLEY PROJECT FISH AND WILDLIFE ACT OF 1992

Mr. SEYMOUR. Mr. President, I call up the Central Valley Project Fish and Wildlife Act of 1992.

The PRESIDING OFFICER. Without objection, it is so ordered.

There will now be 6 hours of debate on the bill, S. 3365, which the clerk will now report.

The assistant legislative clerk read as follows:

A bill (S. 3365) entitled the "Central Valley Project Fish and Wildlife Act of 1992."

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Chair informs the Senate that under the previous order, 4 hours of debate are under the control of the junior Senator from California [Mr. SEYMOUR], and 2 hours are under the control of the senior Senator from New Jersey [Mr. BRADLEY].

Mr. SEYMOUR. Thank you, Mr. President.

Mr. President, the reason we are here and the reason we are taking this bill up now is the result of years and years of debate as to how do we ensure, with limited water resources in the State of California, that we adequately supply the water needs of human beings and their jobs, whether they are farmers or urban dwellers; and how do we adequately meet the needs and requirements to protect our fish and wildlife resources in California, which all of us in California and those outside of California respect greatly and want to do everything we can to enhance them.

Senator BRADLEY, who will be speaking later, has labored many years with his ideas as to what form this reform of the Central Valley water project will take. I commend him for his efforts. He has worked hard.

I, on the other hand, am new to the scene. I came here to Washington in January 1991. But since that time, every month of the 21 months that I have been here, I have been involved and committed to try to seek a compromise to meet those needs which, again, are people and their jobs, and fish and wildlife resources, animals, and plants.

I have been unsuccessful. I have tried the best I know how to reach accommodations for those whose priorities might be different from mine, but to try to find a balance, so that the bottom line is we allocate this very precious and limited resource of water to meet the needs of all Californians.

Over the last 21 months, I do not know how many days and weeks and hours have been invested in trying to find this compromise, but I know that a very substantial amount of time, whether it be through public hearings or private negotiations or meetings of the committee, meeting separately with Senator BRADLEY and Senator JOHNSTON, has been dedicated to trying to find a way to balance the diverse needs of my State.

I said I failed in that effort because we have pending on this floor a bill that came from a conference committee entitled H.R. 429. Why have I fought so hard, not only to find an acceptable compromise within the priorities I have laid out, but failing that, why have I fought so hard on the floor to oppose that bill? And the fight concluded over the last 48 hours or so when I joined with Senator D'AMATO on an unsuccessful filibuster that started at 8 p.m. on Monday evening and did not conclude until 1 p.m. the following day. And then beyond that filibuster, since I was prevented from having an opportunity to have my own filibuster, to have my own right to speak on this floor at that time, parliamentarily I asked for the reading of H.R. 429, the conference committee report, a bill that is some 375 pages long. Here it is, a bill that I contend will be an economic disaster to my State of California. That economic disaster has been defined by the California Department of Food and Agriculture as causing an economic loss annually of $4.5 billion and putting tens of thousands of farmworkers and farmers out of business.

Again, let me restate, Mr. President, that my priorities have been people and jobs first and then do whatever we can in every way possible to enhance fish and wildlife resources in our State. Clearly, I do not deny, I do not apologize, I do not take a half a step backward for those priorities.

So in this debate, I am sure we are going to hear that my priorities, although perhaps well meaning, really are not appropriately balanced; that, in fact, they do not address the needs of fish and wildlife to the degree they need to be addressed. Of course, I would argue, on the other hand, I have done the best I can. This bill before us right now outlines it and I will be talking about that. But, on the other hand, I do not deny that my number one priority has been and will continue to be.

So, after we completed the filibuster and I asked that this bill be read into the RECORD, that consumed approximately 26 hours I spent on this floor yesterday and the day before. I believe, as a result, we were able to hammer out a unanimous-consent agreement under which this bill is now being heard, wherein I have one more opportunity to send a bill to the House of Representatives that I think offers a balanced approach, keeping those priorities in mind. We did that once.

I introduced, on November 21, 1991, after long and hard negotiating sessions between farmers and urban water users, people, and industrial water users, jobs—after 9 months of hard negotiations, a bill which included a historic compromise. For the first time in the history of California, there was a compromise between farmers, urban water users, and industrial jobs needs.

That bill, Senate bill 2016, was passed by this body and sent to the House of Representatives. I cannot say, because I know it is not true, that the bill was embraced by 100 U.S. Senators. To the contrary; that is not true. In fact, if the distinguished Senator from New Jersey, Senator BRADLEY, and chairman of the committee, Senator BENNETT JOHNSTON, from Louisiana, had their way, that bill would not have gone to the House of Representatives. So I do not contend in any way that that bill represented all of the views of the Members of the U.S. Senate. But, nevertheless, it went, to be met in conference with the alternative bill, the one that is now in the water conference committee report, H.R. 429, that lies before this body and will be taken up tomorrow.

So late last night, we reached an agreement that I would have this opportunity. Provided I did not filibuster any more or delay the taking up of this bill, I would have the opportunity to send the bill that is now before us, which, quite frankly, is Senate bill 2016 with further modifications—and we will talk abut that—I would have the opportunity to send this bill to the House of Representatives over there. And on Thursday, tomorrow, this body will take up the water conference committee report to H.R. 429.

Let me say, Mr. President, for my part, that was a much less than satisfactory agreement, but I had no alternative. The time clock had begun to run on me, and it was a choice, relative to H.R. 429, the conference committee report, my attempts to amend, change, and finally my attempts to stop it, it was a choice of either dying on Thursday—"dying" meaning passage of that bill which I opposed—or dying on Saturday.

So faced with those choices, I agree that I would withdraw my attempts at a filibuster or delaying of action of other very important measures on this floor if I was provided this opportunity to introduce a further compromise, I think a balanced approach, debate it on this floor, and send it to the House of Representatives.

I can only hope—I can only hope—that the Members of the House of Representatives, and more specifically Congressman MILLER, will recognize in these closing hours of the session that if, in fact, we truly want to have a more balanced delivery of water in meeting the needs of thirsty Californians, that they would come back into session, consider this bill that we are about to send over there that deals with the Central Valley project and then vote it up or down. I feel fairly confident, if they were to do that, they would vote it up and they would send it to the President, because tomorrow, the Senate will approve—I do not have the votes, it will roll over me—they will approve the alternative H.R. 429, and that will go to the President's desk.

Why have I not been able to convince, with logic, why have I not been able to convince other Members of this body, other Members of the House, as to the need to find a balanced approach? The reason I have not been able to do that is there is more in this water conference committee bill, H.R. 429, than what I have been talking about. A sound political strategy was used by Congressman MILLER, Senator BRADLEY, and Senator JOHNSTON in pushing this bill that reforms the CVP in California. Very simply, as so many times happens here, they put provisions in the bill which enough Senators cannot say no to and let them hold their nose and vote for the other provision. So that is what we have in this conference committee report.

What is in there that has caused Members of the House to pass it and what will cause tomorrow the Senate to pass it are water projects, important water projects. I am sure, for example, some time tomorrow on this floor Senator JAKE GARN, from the great State of Utah, a Senator whom I admire, a Senator whom I respect, and a Senator who has fought long and hard, will tell us tomorrow that for 25 years he has fought to get this water project for his own State of Utah. And it is true, he has, and it is tied up in this bill.

So what he will say to me, as he has said before is: "John, I hear you, I'm with you. I know that H.R. 429 as it impacts your State of California is something that you don't want and the people of California don't want. But I need this water project that I have fought for for 25 years."

(Mr. BYRD assumed the chair.)

Mr. SEYMOUR. That is an example of one Senator's—there are others with other water projects in the bill, and that is why, quite frankly, I have been less than successful in getting my point of view across. Some have said that this strategy was holding hostage those water projects, so that this CVP, Central Valley project, reform bill that is unpalatable to so many and will be such an economic disaster to my State of California can go through.

So this bill will go, the one we are discussing now, to the House of Representatives. If they choose to come back into session and consider it as a separate bill with no water projects in it, I think there is a chance it would pass, and it could go to the President's desk. And if it gets to the President's desk, I guarantee you he will sign it.

But I have to say, with all candor, that probably will not happen because probably the House of Representatives will not come back into session. And if they do, I know that Congressman GEORGE MILLER, who has been so committed to his idea of what the Central Valley project should be and how reallocation of water should take place, is a very strong and influential Member of the House of Representatives, and I respect that. He feels very strongly and passionately about his position. I respect that. But with that power, even if they were to come back, it would be a close battle. But standing alone and separate from the water projects that have been held hostage, I think it has a chance.

If that does not occur, then tomorrow, as I said, this House will vote out the water conference committee report. It will go to the President's desk. The Secretary of Agriculture, a member of his Cabinet, has advised him to veto it, should that happen. The Secretary of the Department of the Interior, a member of his Cabinet, has advised him to veto it, should that happen. The Secretary of the Department of Interior, a member of his Cabinet, has also advised that he should veto it. And the read I can get is he may veto it. I hope so. It is sad, but I hope so.

Somebody has to send a message to Congress that we are not going to play games of holding things hostage so that you can pour the caster oil down somebody else's throat, whether they want it or not. And so if that should be the ultimate conclusion, then it is my intention to continue to work as hard as I can to ensure a Presidential veto of that bill.

Let me proceed, Mr. President, if I can, to talk about why this project is important, the Central Valley project, to the great State of California. What are the dynamics of what we are trying to do, whether it is my measure that is before us now or this water conference committee report, H.R. 429, that will be up tomorrow.

Let me say that there were and are many areas of agreement between those two bills, many areas of agreement. There is no disagreement whatsoever, certainly not on my part, that what we need to do is take this precious resource—and let me describe it because I am going to talk about it a lot more, but let me describe this precious resource called water in its most simple terms.

We measure water by acre feet. More specifically, what that means is one foot of water covering an acre. One foot of water a foot deep on an acre of land.

There is no disagreement, none whatsoever, on my part—as a matter of fact, I know we must transfer water from the Central Valley project to meet the needs of people and jobs, whether that is in northern California or whether it is in southern California where two-thirds of the population resides and works. I know we have to transfer that water. I know and the farmers know, as a matter of fact, that they have to conserve water. Now in the sixth year of a drought in California, they have not had much choice but to conserve water because there has not been much going around.

As a matter of fact, this year, Mr. President, the Central Valley project will deliver 4.5 million acre feet of water. Imagine the cup as a bucket.

Now, the question becomes, of this bucket that is limited in its resource—and right now it is under the control of the farmers in the Central Valley of California in this project—how much will be taken out and provided for people and their jobs in urban areas in the State of California and provided for fish and wildlife and the protection of animals and plants.

That is where the great debate is: How much do we take out of that bucket so that we can spread this limited resource around?

It is also important to add that it is not only the scooping out of the bucket that is important as to how much remains but also important is who gets to drink first. Who gets the first scoop? What happens in dry years such as we are in right now with only 4.5 million acre feet in the bucket?

And so there is no argument whatsoever that some of the bucket has to be spread around. Water has to be moved from farming to urban areas, to people and jobs, and, yes, we must deliver more water for fish and wildlife purposes, for animals and plants.

So therein lies one of the cornerstones of this debate: How much water do you take out of the bucket and move it elsewhere?

The other argument of reform of this Central Valley project—and I really only see two basic arguments. There are a lot ancillary arguments. I have made the first argument.

The second question is: How do we change or reform the relationship that was created in the days of FDR between the Federal Government, which built the Central Valley project, and the people who use the Central Valley project—not only the farmers in the Central Valley but the people who live and work in cities like Sacramento, people who live and work in Contra Costa County, up near the bay area? And so primarily it is farming interests in the Central Valley with some cities. How do we reform and change their relationship with the Federal Government, which built this project?

That has to do with the very critical issue, economically, if you are concerned about people and jobs, of contracts, contracts between the users of the water from the CVP and the Federal Government and taxpayers who built the Central Valley project. The question becomes: Shall you let the farmers continue to have 40-year contracts on water at a given price or should you change that?

I think we should change it. I know that Senator BRADLEY and Congressman MILLER and others want it changed, too. So the debate becomes how do you change it.

And so, Mr. President, what we have to remember in this is, No. 1, there is no doubt whatsoever that water needs to be reallocated. Everybody agrees to that. It is how you do it, and who gets what out of the bucket. And then, No. 2, how do you change and reform this contractual relationship that started historically back in the days of FDR?

Let me talk for a moment about the project itself because I think it is important to put it in perspective, get a little feel for this project. And I will tell you, Mr. President, in the last 21 months I have gotten more than a feel for the Central Valley project.

I am sure Senator BRADLEY when he has the opportunity to speak is going to tell you that he has had a similar experience, going out there looking at the project and the dams and reservoirs that were built, a very creative and imaginative canal system that transports their water. Truly, a historic accomplishment was the Central Valley project. Quite frankly, without FDR, and the creation of this project back in the early part of this century, the Central Valley of California would be a desert. There would be no water. So it was ingenious when it was created.

The Central Valley of California is almost completely enclosed by mountains with the only outlet through the Central Valley, through San Francisco Bay. That is a very important area. In fact, it is that area of San Francisco Bay and the delta that caused the rightful concern that we need to move more water out of the bucket for fish and wildlife purposes, and for water quality purposes for the people of San Francisco.

The valley itself is nearly 500 miles long. That is longer than most States, Mr. President. It averages about 120 miles in width, 500 miles long, 120 miles wide. The northern half of the Central Valley is drained by the Sacramento River, the southern portion of the valley by the San Joaquin River, the Tulare Basin tributary streams. That is how that water moves through the Central Valley of California. Those are its two outlets. It is almost like a pipe with a faucet at each end.

The climate of this valley is characterized by hot, dry summers and cool, moist winters, but severe floods and devastating droughts often occur.

If you live and work in this Central Valley, let me tell you, you are a gambler. You may even do better in Las Vegas. You may have better odds there. Because if you have to make a decision today as to what crop you are going to plant, you do not know what the water is going to be. You do not know how much is going to be in that bucket. We know this.

California currently is suffering from the sixth year of a drought. This Central Valley project has the capacity of filling a much bigger pail if it would rain—as I recall, 8½ million acre feet. That is a big bucket.

If it would rain, I would not be here talking about this. If it would rain, Senator BRADLEY would not have fought so hard over the last, he will tell us, 4 years. But it has not rained. Lord, we know that California is in the 6th year of a drought.

We take a look at people and their jobs and their water needs. We see California over the last 4 years, citizens having to cut back on their water supply, severely in some cases—take a shower, but put the bucket in the shower so you can catch the water from the shower, so you can take the bucket out to water your plants—severe.

When you turn that water on for the shower, do not let it run while you lather up. Turn it off.

Companies wanting to expand, hire people, and put people to work are faced with the dilemma that they cannot get the permit to create jobs from the government. Why? Not enough water.

So truly California faces a crisis. Again, there is no dispute as to the need to take this precious resource and spread it around, try to maximize and have utility of every drop of this precious resource.

Some might say why do you not just get a bigger bucket of water? Why do you not build some resources for water? Why do you let this water when it does rain and the snow melts in the Sierra Mountains and water runs off from these mountaintops, why do you let it run into the ocean? Why do you not stop that? Catch it in a reservoir. Save it for when you need it later in the year. That makes sense.

I do not know, however, Mr. President, when the last time it was that California was able to develop any new water resource. We, Senator BRADLEY and I, Senator JOHNSTON and I, talked about the development of a new resource. Let us get a bigger bucket instead of fighting over the limited amount of water in the bucket. We talked about the need to build new reservoirs like Los Banos Grande, like Las Vacaros, like expanding the Shasta Trinity Dam. If you did projects like that, you could have a bigger bucket of water.

In fact, I promised before, and let me promise here on the floor of the U.S. Senate. If the people who support this water conference committee report will join with me in committing new resource development, a bigger budget, they can have it for fish and wildlife purposes, for animals and plants, and let the Central Valley and the farmers, and let the people who live in our cities, work in our cities, let them share in this smaller bucket that we are fighting over. But, no, we do not have any commitment whatsoever to build any new resources.

You might say why is that? Because there are legitimate concerns that, if you build a new reservoir, if you expand Shasta Trinity Dam, you are invading the environment.

You may displace some animals or plants by digging a hole so you can catch some of that water coming off of the mountains, rushing into the sea. So we do not want to do that. Therefore, we must go back and fight over the smaller bucket of water, and make these very important, sometimes emotional but critical decisions as to what we do with the limited amount of water we have.

So therein lies the argument, Mr. President. The Central Valley project was really a creation of genius. In fact, as I said, it started back in the days of FDR. I think it is important to note that back then, what kind of deal did the Federal Government drive with the farmers in the Central Valley; what did they give up so that taxpayers' money could be used to construct this truly remarkable project?

Well, what they gave up is certain water rights. When you buy a piece of property, along with that property, you get water rights, the right to the water that is underneath that land. You may pump it. You may use it. It is as important as the title to the property itself.

I do not know too many people who are willing to invest dollars to buy land where you do not have water. And if you do not have water, or if your water is being cut off, the value of your property that you own obviously drops. So back when the Central Valley project was created, there was a deal struck, a bargain.

The deal was: The Federal Government will put up the money to build this fantastic project. But you people who are going to be getting water from this project have to give up certain rights—primarily farmers.

And so they did; they gave up their water rights. But they said: Look, I do not trust you, Federal Government; I do not trust you. If I give my water rights up now, they are gone. I do not get them back. Yes, you tell me you are going to build this project. But then, how do I know that you are not going to take that water away from me that you are telling me I am going to get for this project, in exchange for giving up my water rights?

The Government says: Do not worry; do not fret. We will give you a water contract, guaranteed as long as it rains. And the water comes through the Central Valley. You have a bona fide contract that you can count on your share of that water,

Well, the farmers went one step further and said: OK; now that is starting to sound better. But tell me, how long will this contract be?

So what they negotiated when this project was built is that farmers would have a 40-year contract. And those who have been involved in the reform of these contracts—as you recall, I said that is one of the very contentious points of this bill. See, they do not need 40-year contracts. I cannot even get a 40-year mortgage on my house. I can get 30; I can get 20 or 25. Some people will go for 15. But you do not need 40. They are right: We do not need 40 years.

What does a farmer use his contract for, anyhow? Why does he have to have a contract at all? Well, how would you like, if you were a farmer, to go down to your local bank and say: Mr. Banker, I want to buy some new equipment for my farm. In fact, what I really want to do is buy another 50 acres. I want to expand the farming operation. So I want you to make me a loan to either buy equipment or expand my farming operation.

And the banker wisely says: OK; you have run a pretty solid operation, very productive. I have looked at your books and your financial statements, and it sounds like a pretty good deal to me. But wait a minute, before I give you the loan. Without water, you do not have an operation; you are dry; you are fallow. So what kind of guarantee do I have as a banker that you are going to have the water to grow your crops, so you can sell the crops and pay me back?

Can you imagine the farmer having to say: Well, the best contract I have is 2 or 3 years.

The banker would say: Well, wait a minute. You want me to make you this loan to expand your operation, and you want this loan to be a 10-year loan, or 7-year loan, and you can only tell me that you have water for 2 or 3 years? Sorry; I cannot do it.

On the other hand, in all fairness, the banker does not need a 40-year water contract, and the farmer does not need one, either. So we should reduce the length of those contracts.

In fact, this bill that is before the House right now cuts the length of those water contracts from 40 years to 25 years. Senator BRADLEY and Congressman MILLER have come a long way in trying to find a compromise—a long way. I think they started out with no contract—no, no, no; it was not that. They started out with legislation that said you get a 1-year contract, and for every additional year you want, up to 10 years, you have to give up 1 percent of your water for fish and wildlife purposes.

And so you can get a maximum contract of 10 years. But, in exchange, you must provide 10 percent of the water off the top of your little bucket for fish and wildlife purposes.

Well, that has been changed. On water, as Senator BRADLEY will tell you, they have become flexible on that point. They now provide for 25-year water contracts. But there is a little catch, and I will talk about that.

Getting back to my analogy of length of contract, if you have too short a contract, or if the contract is uncertain that you will get water, even though it may be a dry year, the banker is willing to say: OK; you are going to get less water, and I will live with whether it rains or not. But I have to be guaranteed you will get some water. Otherwise, you may not pay my loan.

I have compared this crucial position of the farmer in water contracts to somebody who might be interested in buying a home. Let us say you find the home of your dreams. I mean, it is something you have just wanted. And you go through it and say: This is it. The family and kids say: What a place. I love it; I want to buy it.

Well, I do not have the cash to buy it, so I have to get a mortgage. Everybody does.

How would you like to be in the position of going to the banker and saying: I want to buy this home, and I want a mortgage.

The banker says: OK; you have it. I will give you a 2-year mortgage. If things are OK 2 years from now, come back and I will refinance it for another 2 years, or I will give you a 3-year mortgage. If things are OK 3 years from now, come back and I will give you another mortgage.

Boy, if you go for that deal, I have a bridge I want to sell you. It is a bad deal. Just like the contract provisions in the bill we will take up tomorrow is a bad deal.

That is one of the reasons why the California Department of Food and Agriculture has said, if the bill we take up tomorrow becomes law, then tens of thousands of farm workers and farmers are going to join the unemployment lines, and the economy of the State of California, which is already on its back suffering from the worst recession since the Great Depression, will lose $4.5 billion a year out of their economy. Those are not my numbers; those are the numbers from the California Department of Food and Agriculture.

Let us talk a minute about these farmers because they have been much maligned. They have been described as greedy. They have been described as wasteful people. They flood their fields, they grow rice, they flood the fields. What a waste of water. Many of these farmers, small as they might be, have not put in drip irrigation systems yet. They are bad folks. And we who live in urban areas, work in urban areas, and we who are concerned about the very valuable resource of fish and wildlife and the need to enhance that resource and protect it, why should it not be right, since these farmers have the water, let us just take 18 percent of the water from them. They can get by with much much less.

I want to talk for a moment, Mr. President, about these farmers who have been so maligned, who have been described as being so greedy, so unreasonable, so let us just take their water.

It is hard for me or anyone else who was raised in the city, who never farmed for a living to really appreciate what it is like to live the life of a farmer. Earlier I said farmers are the greatest gamblers in the world. They should go to Las Vegas. I think maybe they would have better odds there, because they gamble every year, a huge gamble. They decide what crop they are going to grow, not knowing tomorrow what the rain is going to do, what the pests are going to do. Right now in California in Imperial County—that is down near the southern border of California—there has been severe crop loss as a result of the white fly. And how many around this country have laughed at California's plight over the medfly, helicopters coming over residential areas spraying to kill the medfly?

So they fight pestilence, they fight water, these farmers, and they do not even know, when they have to make these decisions, what the market is going to be like for the crop. This year, for an example, has been a horrible year for lettuce. There is a glut of lettuce on the market. Too many of these farmers sat down separately and individually and said, "I am growing lettuce this year; it is going to be a good market." So here comes this glut of lettuce on the market and, instead of being able to sell that lettuce here, they have to sell it there.

Tell me, Mr. President, these farmers are not gambling. Most of these farmers are little people. I have met them, I have talked to them, I have seen their families. They are small farmers. They are family farmers. They grew up in that Central Valley. "Grandma and Grandpa farmed here, Mom and Dad farmed here, and I am going to farm here." That is their way of life. They could give it up, I guess, and go to the city, but this is a way of life for these people.

During this last 21 months, Mr. President, I have been privileged to be a United States Senator representing these people and all Californians, I have grown to respect them, to love them, and, thank goodness, I have had the opportunity to begin to understand them and their plight.

But forget that. Forget that. Let us talk about dollars and cents. Forget the family side of what these greedy water users are, these people who waste this water forget that. Let us forget about the trials and tribulations they face in their daily life in taking the risk they take.

Let us talk about the dollars and cents. Why should we care whether or not we take this bucket, this limited bucket, and scoop off the top 17 percent of the water and redistribute it, leaving them with 82 percent of what they had? What does that mean to the economy? And what will happen to these tens of thousand of farm workers and small farmers who either will be out of work or out of the farming business? What about the importance of $4.5 billion a year out of the economy of the State of California?

Let me tell you a little I have learned about the farmers and how important agriculture is to the State of California. That is a laugher, is it not—agriculture? Important to the State of California? I mean, California is not agriculture. California is Hollywood. In my case, it is Disneyland where millions of people come every year not only to enjoy themselves but to spend their money. California is aerospace. We build more and bigger and better airplanes than anyone else in the world. California is high technology. California is biotechnology. It is the venture capital of the world. And California is the defense industry. It receives 20 cents out of every defense contract dollar spent in this country. California is the center of financial institutions on the west coast. California really is a nation-state. It is the sixth largest economy in the entire world. That is big.

But how about agriculture? How about it?

Mr. President, a little unknown fact about agriculture in this hustling, bustling metropolis of 30 million people: Agriculture is California's No. 1 industry. It is the single largest industry in the entire State of 30 million people. It is the Nation's bread basket.

So let me tell you a little bit about these little people we call farmers and what they do in this No. 1 industry in the State of California.

Each California farmer produces enough food and fiber for 128 people. One farmer produces enough food and fiber for 128 people. If my math is somewhere correct, Mr. President, three and a half farmers produce enough food and fiber for the Members of the House of Representatives. Some have said maybe they are too well fed.

Fresno County. Fresno. Boy, I have gotten to know Fresno. This Central Valley, interestingly enough, talk about problems, when I took office in January 1991, the Central Valley was suffering from a disaster of a freeze. It was not pestilence, it was not drought. It was a freeze that destroyed millions of dollars worth of crops.

Fresno got particularly hard hit. They recovered from that. I would like to believe I gave them a little help in restoring some jobs and their life and their livelihood.

They recovered from that only to be faced at that time with a 5-year drought. Tell me that farming is not a high-risk and a gambling kind of business.

But Fresno County, that one county, is the leading farm county in the State of California. It produces $2.9 billion, that one county, $2.9 billion in total production. Now there are 39 other counties in that valley, in addition to Fresno, and each one of these produce at least $100 million or more in value of produce and product.

In fact, if we want to talk about California's farmers collectively, there are 85,000 farms, Mr. President, 85,000 farms—that produce $18.3 billion in farm commodities.

Do you want to compare that to something? Let us compare it to the great State of Texas. Everything is bigger and better in Texas, at least that is what my colleagues here from Texas tell me.

Well, you can compare California's agriculture to Texas agriculture. Texas leads the Nation in the number of farms. It has 186,000 compared to California's 85,000. But it comes in second to California in its production of $11.8 billion in Texas, compared to $18.3 billion in California.

Now you think they are big farmers in California, megabuck agri-operations to those who do not have particular empathy for these. Well, I would like to share with them that more than 60 percent of California's farms are less than 50 acres in size. Mr. President, 50 acres is not much to farm. I would call that a small farm.

Yes, California leads the Nation in the production of crops. If we want to talk about the land—I was talking about earlier land and water, and water making land valuable.

As thousands and tens of thousands of acres go fallow, they dry up. As a result of the bill that we will be taking up tomorrow and, sad to say, will pass the U.S. Senate, think about what that fallow land, dry land, is going to be worth. Because land of any kind, whether it is farm, or agriculture, or residential, is important.

More important are the people that own that, the people that own their own homes, the small farmer who owns 50 acres or less and farms it as a family business. How about the land, their investment? What is going to happen to that?

Well, let me share with you, relative to that land, the market value of farm land in this Central Valley. For range land—that is grazing land for cattle primarily—that is worth $600 an acre.

Now, other farmland goes up. If you want to get over into another very important industry within the agriculture industry, it is the production of wine. I believe it is the highest quality wine in the world. And I know there are those from France who would argue that.

But I have some economic numbers to show them how important the California wine industry is. That land in the wine industry could be worth $22,000 per acre. So what we are talking about bottom line is some land for grazing that is, at the low end of the scale, $600 an acre to the upper end of the scale where we have a vineyard, probably $22,000 an acre value in that.

Now how long has California agriculture been so important? Well, Mr. President, California has been the No. 1 ranking agriculture State in the United States for 43 years. California's 30 million acres of farmland accounts for only 4 percent of the United States farmland.

But talk about efficiency—30 million acres, it accounts for 4 percent of the countries entire farmland. But, do you know what? With just 4 percent of the country's farmland, California produces 50 percent, one-half, of the Nation's fruit, nuts, and vegetables.

Well, let me get back to water.

Let me talk about water and food. Water and food. Before I got this job, I would go into a market, I guess, like most, go to the fresh vegetables, and, oh, there is a good-looking orange. Maybe an orange from California, maybe from Florida. Gee, there is a watermelon. My kids love watermelon. Put that in the cart. I like apples. Give me some apples. I want some of those apples. Need some lettuce. Let us have some lettuce.

Then you go to the meat department. Let us have chicken tonight. Let us have steak. And you put these things in your basket and you go and check them out and you go home and you enjoy them.

But have you ever stopped to think what it takes to get it there in the market in the first place? Has anybody ever stopped to think how much water it takes to put that food in the market and on our tables. I do not think so.

And if I seem a little angry about the fact that we do not understand that, I am. I am sick and tired of hearing: The farmers have the water. Let us just scoop it out and take it without intellectualizing what that means to the food that every one of the Members of this body eat, and their families eat, and every American family eats.

Let me just take a few examples. Apples. I love apples. For one apple, one apple, it takes 16 gallons of water to produce one apple.

You like beef? Want to put some beef in your cart, your grocery shopping cart, next time you go to the market? As you put that beef into the cart think: One steak, one serving of steak, takes 2,607 gallons of water.

How about chicken? For one serving, chicken on your plate takes 408 gallons of water.

Milk, a glass of milk. A glass of milk. How much to get one glass of milk? Sixty-six gallons of water. And how about that watermelon that I threw in my cart because my kids love watermelon? That watermelon, as I take it off the counter, put it in the cart, because the family loves watermelon, 100 gallons of water to grow that one watermelon.

Let me put it all in perspective on the water and what it takes to eat. On the average, it takes 4,533 gallons of water to produce the food consumed by one human being in 1 day; 4,533 gallons of water per day to feed me, to feed you, to feed every Member in this Senate, to feed their families and to feed every human being in the United States. That is a lot of water.

And so as we think and we proceed to take the water out of that bucket—and we should take the water out of that bucket; the question is how much—but as we take the water out of that bucket, we should think very carefully about us and what impact it is going to have on our ability today—and I think it is wonderful, I never want to see it change—to push cart down the aisle in the store and grab that watermelon, grab that steak, grab that chicken, and get those apples. We should think about that.

Let me share, Mr. President, a little bit about my involvement in this most emotional and contentious debate over water in the Central Valley of California and what we should do about reallocating. And again, there is no question that we need to reallocate. We need to reallocate it, as I said earlier, to people and jobs, to put people back to work, and we need to do everything we can secondarily to enhance the environment and protect fish and wildlife.

Back in March 1991, Mr. President, we had a hearing, and I want to thank, by the way, Senator BRADLEY. Senator BRADLEY has been working on this issue for, as I said earlier, 4 or 5 years. When I came to the Senate, I said, "Senator BRADLEY, let's have some hearings in California. Let's go out and see what the people think about your legislation because they are the ones who are going to be impacted." And he very graciously—very graciously—agreed to a number of hearings.

I think he would agree with me that we heard all sides of this debate in question. So anybody who says, "Senator BRADLEY, really didn't hold any hearings; you didn't care about what the people of California really thought, "I will stand up there and tell them they are wrong; he did. He was very gracious about providing hearings in California. I might dispute whether he heard it all or not, but he held the hearings, and I thank him for that. He did not have to do that.

That hearing of March 1991 was a hearing held in Los Angeles. It was the first opportunity we had to review what became known as Senator BRADLEY's proposal, Senate bill 484.

Without going into a long dissertation of the whys and the wherefores of that hearing, let me merely say, Mr. President, that I expressed my concerns at that time with Senator BRADLEY's bill. That was the bill we were discussing at that time. So I made comments as follows in talking about what the needs of California are:

> Mr. Chairman, what California needs is flexibility from the Federal Government. What we need in California is a Federal Government willing to work with us to assist us but not preempt us.

I talked about the fact that we were in the fifth year of a drought and that we had a need to reallocate the State's water at the Federal Government's request and the need to do that within California.

I had thanked him for his willingness not only to hold that hearing but to hold further hearings in California.

I also said that what California does not need is legislation from the banks of the Potomac and the wisdom of the Potomac imposing on Californians how they should use their water, how they should allocate this resource, but rather the people of California and those who represent them in California ought to make that decision.

I said in that statement:

> My basic concern with Senator Bradley's legislation is that it would have substituted the wisdom of the Potomac and control of the Federal Government for the political will of the citizens of the State of California. California does not need the Federal Government to dictate how it should use its scarce water resources.

I said, however, as much as I may agree with the objectives—which is a redistribution of water—but if we let the Federal Government do that for us, do it to us rather than have it done by ourselves in California, that is fact we would have sold our birthright or we would have had it stolen from us. I, quite frankly, think it is about to be stolen tomorrow as we proceed to the conference report.

Senator BRADLEY held another hearing. This one in Washington, DC, on May 8, 1991. Again, I raised concerns about many of the components of his bill. I raised concerns that his bill would place limitations on contracting for the unallocated yield to the project and it would specifically prohibit the Secretary of Interior from entering into any contract—water contracts—or other agreements to sell or deliver water on any basis for any purpose other than fish and wildlife until a list of conditions had been met.

Then another hearing Senator BRADLEY held was on May 30, 1991. That one was held in Sacramento, CA. I said then, as I said again today, that I applauded his willingness to hold such a meeting. But again I raised my concerns about the provisions of his bill, many of which are in this bill which we will vote on tomorrow. I said that the fact that that bill made many promises for fish and wildlife refuges, those promises would actually run counter to one another and that the promise that was extended, in my opinion, promised unreal things, things that would not happen.

In that hearing and other hearings, we had experts testify that the bill preempted States' rights, California's right to determine their own water policy.

I said at that particular time that in addition to the human and economic cost, or as I have described it earlier, people and jobs cost, a $4.5 billion hit on the economy and tens of thousands of jobs, I said that I was also concerned about environmental costs because the bill ended water diversions from the Trinity River, for example. I said that would have a significant impact on the fisheries of Sacramento Bay and the delta areas.

And then as we proceeded through these hearings, Mr. President, and after 9 months of negotiations, hard negotiations with Californians, not with people from the banks of the Potomac, there was concluded in California, and I think it was September or October of 1991, a historic compromise on what we should do relative to dipping out of the limited pail of water, who is going to get it and how it should be spread among people and jobs and animals and plants.

That historic compromise was not mine, although it became the bill I introduced, Senate bill 2016, a lot of which is in the bill that is pending today and at the conclusion of our debate will go over to the House of Representatives. That bill was a historic compromise. Quite frankly, in the 9 months that it was negotiated, I never thought it would happen. There were times when I gave up and just walked away shaking my head.

I did not think it would be possible. I did not think it would be possible that the farmers, these so-called greedy water users, could ever possibly reach an agreement with the water needs of urban interests—people and jobs, particularly—in southern California. But I was wrong. They found a way, without me and without any Senator from the banks of the Potomac saying: Here is how you should do it; I know better.

They found a way to do it themselves, in this historic compromise between the farmers of the Central Valley, and specifically the Metropolitan water district, that represents over 16 million water consumers in California. That is over half the population.

So the Met, as we call it, the metropolitan water district and the farmers of the Central Valley reached an agreement: Here is how we will use the limited resources in this pail, and here is how much water we will dip out of it, right off the top, and provide for fish and wildlife purposes.

That compromise became a bill that I introduced on November 21, 1991, almost 1 year ago.

It was for the first time in California's history that one interest, representing over half of the people of the State of California, the metropolitan water district, sat down and hammered out an agreement with the farmers.

(Mr. CONRAD assumed the chair.)

Mr. SEYMOUR. Mr. President, when I stood on the floor on November 21, 1991, I said:

> Mr. President, I rise today to introduce the Central Valley Project Fish and Wildlife Act

> of 1991. Mr. President, this bill is but a beginning. It is the product of California groups—urban, agricultural, and conservation organizations working together to develop legislation to address the fish and wildlife needs in the Central Valley.
>
> This is a first step in an attempt to resolve the water dilemma, which has torn at the State of California for decades. Specifically, the bill provides a mechanism for water transfers—

Get it out of the bucket, redistribute it.

> from agricultural to urban use, and it also includes actions for the restoration of fish and wildlife and mandates firm water supplies—

Firm means you get it. Nobody else may get any water but you have a firm water supply, so you can count on it—

> for wildlife refuges and fishery habitat.

And I said:

> This bill preserves the agricultural economy which is so vital to our State.

What we have before us today is that bill, Senate bill 2016, yet compromised again and again and again. I guess what the bill before us now represents is the best, the very best I could do through the entire process in trying to find a balance. All I ever wanted was a balanced approach, something where we could have a transfer of water to people in jobs in urban areas, somewhere where we could have a reasonable transfer of water to protect fish and wildlife resources and wildlife refuges; but a balanced approach, one that had its priorities based in people and jobs first, and then do whatever we can to enhance our environment and fish and wildlife that is so important to all of us.

I said in that statement that that bill was the beginning of a responsible and equitable solution. And I also said that I was willing to consider any ideas on how to improve it, and we sure have. As that bill rests before us today, to be passed out of here later today, let me say that from my view it embodies plenty of compromise relative to the needs of fish and wildlife. One of the most contentious areas of disagreement between the proponents of H.R. 429 and myself is in this area of fish and wildlife.

When I introduced the bill back in November 1991, I said that it was important that:

> We restore the north coast and river fisheries, and that the bill include several provisions to try to address that, such as the rehabilitation of the Coleman National Fish Hatchery, the installation of a temperature control device at Shasta Dam, and a program for replenishing of river gravels for spawning.

I said:

> While these projects will help restore the fisheries, I realize that any restoration bill will not be complete without increased water supplies.

So I am not saying, as we take the first scoop of water out of that small bucket, that some of it should not go directly to fish and wildlife. In fact, let me go to the bottom line on that one. We will talk more about it later.

The question is, Mr. President, how much is in that first scoop, and who gets it? Well, for fish and wildlife, that first scoop, some might say—in fact, I know they will say—"Not enough, Seymour, not enough," but the first scoop is 246,000 acre feet of water. And then the bill provided that that would grow to 525,000 acre feet of water in 10 years, water that they could count on, water that they knew they could depend on. But that was not enough, not nearly enough.

So we introduced Senate bill 2016.

That bill went before the committee, and was passed out of the committee. As I said earlier, it was not a bill that was embraced, by any stretch of the imagination, by all. But the statement I made before the committee when that bill was passed out—and, as I said, it was not a bill that everybody was happy with.

As a matter of fact, Senator BRADLEY—again I commend him for his willingness to try to negotiate a fair compromise between the bill I have been talking about and his bill, Senate bill S. 484. When that bill passed, it was not embraced by all. It was sent over to the House of Representatives where it met up with H.R. 429.

Let me now turn, Mr. President, to what others think and have to say about this alternative to the bill that is before us now. I am speaking of the water conference bill that will pass tomorrow and go to the President.

Let me read, Mr. President, a letter signed by the Secretary of the Interior, Secretary Lujan, a long letter. I am not going to read it all, but I will read some important components, I think.

The letter was sent to every member of the committee. It had to do with the water conference committee bill that dealt with S. 2106 and H.R. 429. The letter is dated October 5 of this year, just a little more than 2 days ago.

It was sent to the chairman, directed to Senator BENNETT JOHNSTON, chairman of the Energy and Natural Resources Committee.

It says:

> DEAR MR. CHAIRMAN: On September 15, I sent you a letter expressing the administration's position on provisions in H.R. 429 which were then being considered by a House-Senate conference committee with the exception of the National Historic Preservation Act Amendments, title XI of the Senate-passed version.
>
> On September 25, 1992 Assistant Secretary Hayden communicated the administration's concern. In these letters, we expressed the administration's strong and fundamental opposition to both the House and Senate-passed versions of H.R. 429 because of objectionable provisions which should be deleted, or amended, in order that a modified bill at much less Federal expense could be sent to the President.
>
> Unfortunately, the conference report of H.R. 429 still includes many of the objectionable provisions of the earlier House and Senate passed versions.

Then he goes on to cite his concerns relative to various portions of the bill. But relating to the Central Valley project, he includes the following objections.

> The portion relating to the Central Valley project includes many objectionable provisions, including the following:
>
> It provides for a number of expensive measures many of which have not been subjected to feasibility analysis and would be largely financed at Federal expense.
>
> It affects the State of California's authority in matters of water allocation, distribution, and use. And,
>
> It conflicts with the equitable distribution of responsibilities embodied in the coordinated operations agreement, the management of the CVP.
>
> Contrary to one of its stated purposes, the title of the bill reduces the operational flexibility needed to achieve increased multiple uses of water including the ability to provide water for wildlife refuges.

I believe what he is referring to there is Project Purpose. We will talk about Project Purpose. It is an important portion of this bill, a portion of the bill that I say gets the priorities distorted. If your priorities are people and jobs first, and protection of fish and wildlife for animals and plants second, then that is what you ought to state in the bill. The bill does not state that.

Frankly, what the bill states is it is all equal. People and their jobs have no more rights than fish and wildlife, animals and plants—no more rights. They are all equal.

So what is left in that bucket we divvy up? Everybody gets an equal share. Some would say "I am an antienvironmentalist. Why don't you care more for plants and animals?" I do. In fact, the bill we have before us today has 22 different, separate provisions to improve fish, the resource, wildlife, wildlife refuges. So I do.

But let me make one thing clear. I do not take a step back for anybody on this. I think people and jobs are the most important thing. Suppose we double the fish resource. That is what I want to see done. I think that is what Senator BRADLEY wants to see done. How we get there are two different ways. But suppose we achieve our goal and double it. Great. I want it. But suppose you do not have a job. That is little solace for somebody who cannot feed their family.

So I do not apologize to anybody. But I put people and jobs first.

In addition to the letter of opposition from the Secretary of the Interior, I would like to share, Mr. President, with the Members, a letter from the Governor of the State of California. The Governor of the State of California has been opposed to this water conference committee report from day 1.

Quite honestly, although when he read my version, he said "yes, I think California can live with that, John." He did not even want that. The Governor of California said "John, it is not the answer. It is a good bill. But it is not the answer. The answer to California's water problems are found in California."

So what the Governor wanted from day 1—and I support him on this—he wants the State of California to either buy the Central Valley project from the Federal Government, except I am afraid, quite honestly, the price tag would be so high and the more California offered for the project, the higher the price would go, I am afraid, that Californians could not pay it.

So as an alternative to that, what the Governor wants and what I support him on is that California be permitted to manage, to run the Central Valley project. The bottom line of that is let California decide how to allocate their water between people and jobs, animals, and plants. Let them decide.

So the Governor on October 4 wrote every Member of Congress. He said about this bill that will come up tomorrow:

DEAR MEMBER OF CONGRESS: This letter is to state in no uncertain terms that the Western water package, H.R. 429, is completely unacceptable to the State of California.

Our objections are exclusively directed to the provisions affecting California and in no way relate to the projects proposed in other States.

Mr. President, you will recall that I said earlier that this bill has water projects for Western States that I believe have been held hostage, to pour the castor oil down the throat of Californians to reform the CVP. The Governor, like myself, says, "Let those hostages go, let those Western water projects stand on their own, and let the CVP stand on its own. Change it, amend it, but let us not tie the two together."

He says:

Our objections are exclusively directed to the provisions affecting California and in no way relate to the projects proposed in other States.

Indeed, the California provisions are unrelated to the other projects in the bill and should not be linked to them. The California provisions should be served from H.R. 429.

The bill before us today, that will pass at the conclusion of my allotted time and Senator BRADLEY's allotted time, is a stand-alone bill that deals only with the Central Valley project. It does not have any Western State projects in it. That is what I said earlier. We should have that bill over in the House. If they are going to act responsibly, they should vote it up or down. I think it would have a good change of passage. They should have the opportunity to vote it up or down.

The Governor says:

This 30-title measure includes a provision that would dramatically reallocate 20 percent of our State's water.

There is the bucket. We are going to take 20 percent right out of the bucket.

It would strike a vicious economic blow to California, and create a second century of California water wars, whose only winners—

When you get into a legal war, who wins? The attorneys? You got it. The Governor of California says:

a second century of California water wars, whose only winners will be the litigators—

And he goes on. Governor Wilson says:

Senator Seymour and other members of California's congressional delegation were excluded from the negotiations over the Central Valley reform proposal that was pushed upon the conferees. A back room deal, hastily negotiated in the final days of session, with no analysis to explain its impacts, is no substitute for the care and fairness needed to make the policy that will allocate California's critically important water supply.

Such political maneuvering is unconscionable given the grave harm this measure threatens to California. Anyone who has been even casually involved with this issue knows that lasting and beneficial reform of the Central Valley Project can be achieved only through solutions that take into consideration and effectively balance the needs of all the California water user groups, metropolitan, industrial, or, as I have called it, people in jobs, agricultural and environmental.

Sadly, the measure currently before you is so skewed that, far from solving the problem of water allocation, it instead will drive a wedge between environmental, agricultural, and urban water interests, making the needed and possible consensus for solution all the more difficult to achieve, despite all of our hard work in the State to do so.

The Governor goes on by saying:

As California struggles to deal with almost 10 percent unemployment and the loss of over 700,000 jobs during the current recession, it is simply inexcusable to cripple our agricultural sector, and threaten the loss of the hundred of thousands of jobs in the processing, packaging, distribution, and marketing of California product—

Remember, it is an $18 billion annual industry we are talking about.

by the cavalier passage of this measure.

The Governor goes on:

Water is California's life blood. There can be no justification for Members of Congress to exclude California's elected representatives and arrogate this decisionmaking process that will determine California's water future to those from other States. Doing so will set a dangerous and indefensible precedent. Decisions that should be taken up in the Statehouses will be made in the closed hearing room of the Congress, closed even to the representatives of the State whose future is being decided, closed even to that State's conferees.

That is what happened. He says:

There can be no justification for this result. Those who know better and who would object strenuously were they and their states subjected to this treatment should not succumb to extortion.

That is a strong word. I talked about hostages. He talks about extortion. He says:

They should instead insist upon the decoupling of the authorizations for needed water projects in other States from the provisions of H.R. 429 that threaten to inflict on California such grave harm and such great inequity. I cannot urge too strongly either to decouple and sever the California provisions, or do whatever is required to refuse passage to H.R. 429 as presently drafted.

Sincerely, Peter Wilson, Governor of the State of California.

As I said earlier, this conference report I have been talking about and that has in it the water projects and reform of the CVP will be voted on in this house tomorrow. It will go the President's desk, and although we have had some indications that he will veto it, there is no certainty in that. I say we have had indications he will veto it because, as I have shared with you the letter from the Secretary of the Interior, I am about to share with you a letter from the Secretary of Agriculture, Ed Madigan. He is recommending a veto as well. This is a short letter, sent to Congressman GEORGE MILLER, chairman of the Committee on Interior and Insular Affairs.

DEAR GEORGE: On May 20, 1992, I sent a letter outlining briefly my objections to provisions of legislation on the Central Valley Project. Then, on September 15, 1992, Secretary of the Interior Lujan expressed my continuing concerns in a letter concerning H.R. 429. Secretary Lujan has also sent a letter today stressing that the full conference report continues to warrant a veto by the President.

The conference report on H.R. 429 contains language that remains unnecessarily detrimental to agriculture. Title XXXIV severely reduces water availability for agriculture, causes substantial increases in water prices for agricultural users, restricts the renewal of contracts—

Remember, I talked about contracts, comparing them to the home mortgage, the mortgage on your home.

restricts the renewal of contracts to 2 or 3 years for the foreseeable future—until a new and extremely broad environmental impact statement is finally completed, assesses a $50 million surcharge on water and power users, taxes renewal of water contracts in a way that may well be prohibitive for agricultural contractors, and places unwarranted restrictions on water transfers.

I want to repeat that.

and places unwarranted restrictions on water transfers.

What we talked about at the outset and what we all want is to transfer water from the Central Valley to urban and industrial uses, people and jobs, and also transfer water to fish and wildlife, animals and plants.

Why do we want to restrict that? Why do we want to tie it up? That is why I have said if that conference committee report becomes law, the one we will pass out of here tomorrow, if that becomes law all it will ensure is that the scoop coming out for environmental purposes that will go on that will take place, but as far as transferring water to people and jobs that is going to be tied up in a decade of litigation. The only people who are going to get rich off that one are the attorneys on both sides.

Some might say, well, John Seymour, you are standing there all alone on the floor of the U.S. Senate. Obviously, there are not a great number of your colleagues that feel as strongly as you do.

And I can understand that. By the way, they do not represent California. I represent California in the U.S. Senate, and Senator ALAN CRANSTON who is on the other side of this issue is our other Senator.

But how about over in the House of Representatives? How does California's congressional delegation feel about this water conference committee report?

Let me share with you a letter signed by 18 Members of the California congressional delegation, and it was sent to their colleagues in the House of Representatives, to all 435. It says:

> DEAR COLLEAGUE: We urge you to support a motion to recommit the conference report for H.R. 429—

Recommit, and in referencing that as we all know is a way of saying we do not like it, send it back and do it over.

They said we want you to support this motion to recommit.

> If the recommittal fails, we urge you to vote No on the conference report.
>
> We are not opposed to reforming the CVP to make it more responsive to the needs of the environment, agriculture and California's growing cities, but the conference report doesn't do that. It seeks to solve environmental problems by severely and arbitrarily reducing CVP water deliveries to Central Valley farms and urban areas.
>
> The Department of the Interior states that if H.R. 429 were law, farms and cities in the southern part of the Central Valley would have received no water at all from the CVP during 1990, 1991, and 1992.
>
> No water at all. That's not "sharing." That's not compromise. That's not acceptable.
>
> H.R 429 also would drastically increase the price of water for both farmers and urban areas while removing the certainty of future supplies.
>
> In a letter to all members of Congress, California Governor Pete Wilson has said that the CVP provisions of H.R. 429 are "Completely unacceptable to the State of California" because they will "strike a vicious economic blow to California, and create a second century of California water wars whose only winners will be the litigators."
>
> The Secretaries of Interior and Agriculture have said that they will recommend a veto of H.R. 429 because of the CVP title.
>
> We don't oppose the other worthy projects in H.R. 429, and we regret that they have been held hostage to this misguided effort to "reform" the Central Valley Project. But we cannot sit back and allow the livelihoods of our constituents to be destroyed.
>
> If you support the other projects in H.R. 429 and want to bring about an equitable solution to California's water problems, vote yes on the recommittal motion to remove the CVP title from the conference report.
>
> If the CVP title isn't removed, vote No on the conference report.

You might add, well, that was the letter asking the Members to vote in a certain fashion. How did they vote? And particularly important, how did Californians vote? This project is not about New Jersey. Although I know the Senator from New Jersey has a very deep sincere and abiding interest relative to the reform of California's Central Valley project. This is not about the State of Louisiana, although I know the chairman of our committee, Senator BENNETT JOHNSTON has a very sincere and deep abiding interest in the Central Valley project. This is about California.

And the fact that this Senator who is a member not only of the committee not only participated in the process, not only was a member of the conference committee itself, this Senator from California when it came to California's interest, the Central Valley project, was totally excluded from the conference process.

We did have one meeting. We did have one meeting, and I was there. The chairman of the meeting we decided at that meeting would be Congressman GEORGE MILLER. That was action we took. Nobody opposed that. I did not oppose that.

And then in that meeting, that one meeting that I was permitted in, and the public was permitted in that one meeting, Congressman MILLER laid out his proposal. He said: "Here it is. I have talked to a lot of folks, talked to Senator JOHNSTON from Louisiana and Senator BRADLEY from New Jersey. I also talked with one or two Members from California of the House." I do not know who they were. They were not named. I suspect one of them was Congressman VIC FAZIO who has also tried very diligently to find a compromise. But they did not talk to any other Californians on the conference committee.

He never talked to me. I only had one conversation with Congressman MILLER in the 21 months I have been working on this. That occurred on an airplane flight from Washington, DC back to California. We were both going home and it occurred, as I best recall, it was either spring or summer of 1991.

Congressman MILLER said: "We really should work this out."

I said: "You are right. I want to work it out, GEORGE."

He said: "Well, you know agriculture has just got to give up some water."

I said: "You are right, they do. I want to work that out. But," I said, "you know your demands for water for fish and wildlife purposes, animals and plants, are too severe. You are going to hurt people. You are going to hurt jobs. We need to have a better balance."

He said: "Well, John, you just do not understand."

I said: "Maybe I do not." I said: "I will tell you what, let us have a bigger bucket of water. Let us develop some water resources in California. If we can develop some water resource in California, some new real water, so they have millions of acre feet runoff into the ocean and do not catch it, I will be happy to go along with the 2 million acre-feet of water you want scooped off the top for animals and plant, fish and wildlife. I will be happy to do that."

The fact is, as I said earlier today, I said to Senator BRADLEY who at that time he wanted 2 million acre-feet, I said you can have it all. You can have every drop of water, new water that we can put into the bucket.

That conversation I had with Congressman MILLER back on that flight to California was the only time that I was ever permitted an opportunity to be in the process.

I was plenty in the process with Senator BRADLEY and Senator JOHNSTON. I will just share with you that they had one public meeting that I was invited to and I attended. We selected Congressman MILLER as the chairman. Congressman MILLER then laid out this proposal and it was like a take it or leave it. I had not even seen it much less been a part of the process of developing it. I also know that members of the conference committee who represent the human beings and jobs in the Central Valley were excluded from this process.

They did not get to go to the meetings either. So why, then, wouldn't the members of the California delegation of the House of Representatives, or at least 18 of the Members, sign this letter that says send that conference committee report back and let them sever the other water projects away from the California Central Valley project?

Well, how did they vote? I mean that is what is important. We all do a lot of talking around here, but what really counts is how you vote. You can talk all day, but how do you vote?

I have done business here in the U.S. Senate with my colleagues, did it for 8 years in the California State Legislature as a State senator, and so many times I have had members say, "John, I'm with you," until the rollcall. Then they are not with you.

And so the important thing is how do you vote? Well, here is how the California delegation voted. Against the bill were 25 California Members of the House of Representatives. For the bill were 19 Members.

Well, I have been going on for some time now. My distinguished colleague, Senator BRADLEY, who represents the other side of this debate and argument, has asked that he might debate for an hour, and then I would be recognized to pick up on the remainder of my time according to the unanimous-consent agreement which afforded me a total of 4 hours.

And so at this particular time, Mr. President, I yield the floor to Senator BRADLEY, reserving my right to the remainder of my time.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. BRADLEY. Mr. President, let me begin by expressing to my colleague from California that I was very pleased with his agreement to the procedure that we would follow. I think this is an important debate for us to have. I think the issue is a very important one. I do think there is a difference of opinion. I think we have worked well together and I respect the way the junior Senator from California works.

I hope this issue will be resolved in such a way that, over time, he will agree with its resolution.

Let me begin by making an obvious point. California is a desert State, a fact that is often forgotten in the rush for development and for growth.

California is home to nearly 28 million people, with as many as 800,000 people arriving there each year. In other words, the State of California grows each year by a size the equivalent of the city of San Francisco. A new San Francisco arrives in California each year.

Water has shaped the growth and the culture of California in ways that are obvious to all. Water comes from two main sources: one is ground water, which is obtained by sticking a pipe or a well into the ground and pumping the water out.

The second source is surface water, mainly obtained from rivers that are frequently dammed to create reservoirs. These supplies allow for the availability of water to people who live in a desert. Without the dams and reservoirs, people would not be able to live in a desert.

In California, about one-third of the State's water supply comes from surface water: the reservoirs, lakes and dams. Twenty percent of all California water comes from the Central Valley project.

The Central Valley project is a massive public works project. Until you have flown over the Central Valley project, as I have, and had the opportunity to see it in its entirety, there is no ability to comprehend the size of this project.

As the distinguished Senator from California said, the valley is 500 miles long and 120 miles wide. This project spans the length of the valley from the Shasta Dam in the north, continuing all the way down to the southern end of the valley. It is a remarkable, remarkable public works project.

The Central Valley project is really a collection of numerous individual project units that Congress has authorized over a period of 50 years .

Generally, what the Central Valley project does is collect and distribute waters from north of the San Francisco Bay Sacramento-San Joaquin Delta, and transmit that water south through the tracey pumping station, into the valley. It supplies about 7 million acre-feet a year, about 20 percent of California's water. In dry years, the project supplies a little less.

Initial elements of the Bureau of Reclamation's Central Valley project were authorized in 1935. Shasta Dam on the Sacramento River and Friant Dam on the San Joaquin River are diverted to the Madera and Friant-Kern Canals; the Delta-Mendota Canal; the Contra Costa Canal. All of these features flowed from that initial decision.

In 1949, Congress authorized the American River Division of the CVP, and in 1950, the Sacramento Canal Unit; in 1960, the San Luis Unit; 1962, the New Melones Unit; 1965 the Auburn-Folsom South Unit; and 1967, the San Felipe Unit.

Mr. President, this is a public works project that was built with U.S. taxpayer dollars. The present value of the Central Valley project is about $3.7 billion in terms of construction costs alone. By the year 2030, a little over $200 million of that debt will have been repaid. This translates into a Federal subsidy in this project of 95 percent—A 95-percent Federal subsidy. As you can see it is clear why we have an interest in this project.

In California as a whole, the way water is used is also very important for us to understand—80 to 85 percent of the water is used in agriculture. If agriculture simply saved 10 percent of its water, you would double the amount of water available for the residential and commercial sectors of California. Water prices vary greatly in the State of California even for agriculture. If you are a farmer in San Diego County, you will pay as much as $400 an acre-foot. An acre-foot contains approximately 325,000 gallons. If you are a farmer in the area serviced by this project, however you pay in the neighborhood of $16 to $20 an acre-foot. The breakdown is from $400 an acre-foot if you are in San Diego to $16 to $20 an acre-foot if you are in the Central Valley.

There are, in fact, four crops—rice, cotton, irrigated pasture and hay—that represent 11 percent of the crop value in California but consume 50 percent of the water. In the Central Valley, it is the low value crop that is produced primarily in large part because the water is so cheap, $16 to $18 an acre-foot, versus $400 an acre-foot in San Diego. In San Diego, the farmers produce a higher value product. The farmers in the Central Valley, a low value product. Again, this disparity is best illustrated by the fact that rice, cotton, hay, and irrigated pasture, the major commodities in the Central Valley, use 50 percent of the water and produce 11 percent of the crop value.

What is also important to remember is that California is not simply an agricultural State. California has a gross State economic product of over $760 billion. Of that State product, agriculture respresents, as the distinguished Senator from California has stated on the floor today, about $18.5 billion. Therefore, out of a State economic product of $760 billion, agriculture accounts for $18.5 billion of that $760 billion while using 80 to 85 percent of all the water in California.

The price for water in the State, varies more dramatically from the $10 an acre-foot you pay as a preproject user of the CVP, that is someone who had a water right prior to the project being built and a price as high as $1,700 to $1,800 an acre-foot for those residents of Santa Barbara, for example, who have to contemplate desalination for their water supply.

California is now in the sixth year of a drought. There are first graders in California who have never seen a green lawn, and yet every year 800,000 more people move into the State; another San Francisco every year. If the drought continues and the people keep coming, the message is going to be clear; bring your own water because there will not be enough water in California. That implies water has to be used differently and more efficiently.

In addition to questions of what is the nature of the agricultural economy and what is the composition of the total economy, the question of what is the role of the environment is relevant when one thinks about water in California. The environment in California is diverse and rich and is directly related to water. It is in peril because of the shortage of water.

There were once 4 million acres of wetlands in the Central Valley—4 million. That now seems like a long time ago. There are now about 300,000 acres of wetland in the Central Valley; 100,000 acres have disappeared since 1950 due to the operations of the CVP alone. There were once 6,000 miles of spawning streams for salmon in California. Now there are 300 miles. Eighty million juvenile striped bass every year are sucked through the delta pumps. Salmon are headed toward the endangered species list in many places. Only 200 Chinook moved up the Sacramento River just a short time ago.

In addition to fish being a potentially endangered species, there is the Pacific flyway where waterfowl populations are affected by the loss of wetlands, where birds fly from South of Mexico to Alaska and rest and feed in the wetlands. Because of the operation of the CVP, the Pacific flyway now wasteland with selenium contamination of increasing toxicity.

The point to be made in this brief opening is that when you talk about water in California, you are talking about the lifeblood of the State.

(Mr. BINGAMAN assumed the chair.)

Mr. BRADLEY. It affects every citizen whose home is in California. It affects agriculture, an $18.5 billion industry. It affects consumers, industry, business, the environment—the economic well-being of the whole State. It affects the future in a very real way.

The key concept for California's future when it comes to water is balance—balance among the competing interests, balance in use, balance in efficiency. Balance is also important in the transfer and allocation of water among the competing needs of the State of California.

As the distinguished Senator from California has mentioned, this is an issue which the Water and Power Subcommittee, of which I am chairman, has studied carefully over the last 4 years. I held my first hearing in California in August of 1989, in Sacramento, sitting through 7 or 8 hours of hearing. Subsequently, we have had hearings in Los Angeles and San Francisco, back in Sacramento, and here in Washington.

I have visited farms in the valley and farms in San Diego County. I have talked with fishermen whose livelihoods have been endangered by the drought and the way water is allocated. I have talked to businesses that need the water desperately for their own industrial processes and now have difficulty getting it because 80 to 85 percent of the water is used for agriculture. I have talked to farmers concerned about their livelihood, worried about any change and how it might affect that livelihood. I have talked to community leaders in cities in the valley, who have concerns that need to be addressed. I have talked to environmentalists, friends of the environment, people who care about California's natural resources. I have talked to politicians, to local politicians, to State politicians, to Federal politicians. I have tried to listen.

In our hearings, we have had testimony from over 75 witnesses, but that total does not count the hundreds who have moved through my office in this meeting and that meeting, in California and in Washington, to talk about California water. It is after these many years of listening that I came forward with the bill that was modified by the chairman further modified by the bill we sent out of the Senate, and then still later modified by an initial conference agreement, and then finally brought together in the CVP title that we have in this omnibus water bill, H.R. 429.

There are really three elements in dealing with the problem of water in California. One is you are not going to solve the problems without using water more efficiently. You cannot have two farmers growing the same crops in the same water district 3 miles from each other with the same soils and yet one farmer is using two, three, four times more water than the other farmer. You have to use water more efficiently.

You need to solve the problems that come from the fact that California is a desert State and water is a scarce quantity. There are competing needs, and every competing need grows with another passing year, with another 800,000 people coming into the State, with a giant economy of which agriculture is only $18.5 billion although it continues to get 80 to 85 percent of all of California's water. What you need is water. You cannot solve endangered species problems with air. You need water. You cannot solve the problems of electronics firms that need water to create new jobs without water. You cannot solve the problem of fishermen who have lost their livelihood because the streams have been depleted without water. The first thing you need is water.

The second thing you need is money. There has been an incredible deterioration of the resources of the valley which needs to be mitigated. That takes money.

Finally you need flexibility, flexibility for the State of California to begin to address the competing demands of water in the State.

The Central Valley project represents 20 percent of all California water, 20 percent of all California water which is totally off limits for California. When Governor Wilson established the water bank a few years ago, he could only draw from the State water project, a little over 3 million acre-feet he could tell the farmers that use it, "Sell your water to the water bank and then we will reallocate it the way California would like to see it used." He could not touch 7 million, 8 million acre-feet of water that is the Central Valley project. It was not a flexible system. Flexibility is the third principle.

As you think about the principles, it is also important to think what happens if we do nothing, if business continues as usual. If this bill is not signed, what happens? You can probably count on the extinction of several species, not the least of which might be California fishermen. The demise of the fishing industry will be followed by the collapse of many northern California coastal towns. During the next drought, people, just average people, will end up paying hundreds of dollars for every acre-foot of water they use, and they will watch their lawns and their gardens die while just over the hill in the Central Valley hundreds of thousands of acres of subsidized cotton and rice will flourish in the desert.

They will see Federal courts and State courts which will soon be running the Central Valley project, and every other water project which takes its water from the rivers of the Central Valley. The courts will be running not just the Central Valley but also the State water project and maybe even the San Francisco system. The Delta smelt could become to California what the spotted owl has become to Oregon and Washington. Silicon Valley electronics firms and other businesses will begin to flee California, more jobs being lost in search of clean, reliable water supplies in other areas. The ports of San Francisco and Oakland will lose a significant part of their shipping business as thousands of jobs go to other ports without dredging restrictions, dredging restrictions due in large part to the absence of an adequate flow through the San Francisco Bay/Sacramento-San Joaquin Valley Delta.

The Bureau of Reclamation and Central Valley agribusiness will, however, under a world where nothing happens, still be sitting on 20 percent of the State's water and running it as they choose. Parched communities throughout the State will be left with no choice but to beg for water from irrigation districts under a system in which the growers and others will not be able to provide that much needed water.

The farmers—not the small farmers, but the big farmers—will continue to force small family farms out of business, and continue to take subsidized water originally intended for those small farms.

This bill does not deal with the issue of reclamation reform. But make no mistake; the Central Valley is not all small farmers. Some farms are over 20,000 acres, through interlocking ownerships, and they will continue to get the benefit of subsidized water as well as subsidized crops.

The California cities unable to get ready access to new water through voluntary transfer will be left with no obvious choice but to spend billions of dollars on polluting and expensive desalination plants, or lobbying for the construction of the Peripheral Canal or the Auburn Dam, or diversion of wild north coast rivers.

If nothing happens, Canada and Mexico and the Confederation of Independent States will confront the World Court, arguing that the Central Valley farmers and the Bureau of Reclamation have engaged in a calculated effort to exterminate the waterfowl on the Pacific flyway.

The Central Valley itself, if no action is taken, will be dotted with thousands of acres of agricultural drainage ponds, each one of which will be a mini-Kesterson, laden with toxic runoff and the carcasses of dead waterfowl.

Mr. President, what we are faced with is nothing less than the decision whether the next generation of Californians will see this State's water shared fairly, or whether the State's economy and environment will be sacrificed to the demands of a very few. It is a question of whether the water of the Central Valley should be for the many, or for the few. It is a very basic question.

So I would argue, as I have throughout, that to do nothing is to bring about the possibility, if not the reality, of all the things that I just talked about. That is unacceptable. It should be unacceptable to everyone. Yet, if this bill is not passed, or if it is vetoed, that is the prospect that is on the horizon.

So it is important to note, Mr. President, that the Central Valley project's importance is not just to California; it has an importance to the entire West. What do I mean by that? It seems, from an environmental perspective, the project has caused significant injury to the migratory fish and waterfowl California shares with Oregon, Washington, Idaho, Montana, Nevada, Alaska, and Canada.

Proper management of the CVP is essential if we are going to protect and expand the Pacific flyway and the west coast salmon and steelhead trout.

The proper management of the CVP is also vital to the protection of the other States' own water resources. What do I mean by that? To the extent California is unable to use its own water to meet its growing urban needs—800,000 people coming into the State every year—the State will be obliged to try to find water somwhere else.

I think—as Senators from Arizona, Colorado, Wyoming, Utah, New Mexico, and elsewhere are acutely aware—perhaps the single greatest threat to the stability of the water allocation agreements on the Colorado River is the prospect that Central Valley water will not be available for use by Californians outside the Central Valley.

You have already begun to see this. For a number of years, California benefited from Arizona's allocation under the Colorado River compact: 300,000 or 400,000 acre feet of water. Arizona now says that it needs that water. California faced the prospect of losing that water for its own consumers. What did it do? It went to the Colorado Basin States and petitioned to get more water. Of course, the answer was no.

Clearly, unless water is used more efficiently, unless it is allowed to be transferred flexibly out of the valley to the growing and diverse needs of a growing and diverse State, the pressure will increase on other Colorado Basin States.

Mr. President, my fundamental objective in sponsoring CVP reform legislation has been to eliminate or modify Federal policies and practices which have left the Central Valley project strikingly out of step with the California water law and policy. The result of these Federal policies and practices is that the Central Valley project functions as a State within a State. It has become like some sort of Federal preserve, insulated against State law and environmental accountability

It has been a long process to bring the bill this far. As I said, we started in 1989. There have been some ironies along the way. one of them is that, although in four to five hearings that we had, we heard strong support from municipal and State officials and from environmentalists, and from others inside and outside the CVP, we also heard some interesting criticism from some Central Valley agricultural interests.

We were told that in the bill that we originally introduced and even this bill were examples of imperial Washington trying to tell the State of California what to do—States rights were at risk; proper notions of federalism were offended.

The truth of the matter is that the clearest case of Federal interference in California affairs can be seen in the Department of the Interior's ongoing effort to renew CVP water contracts for another 40 years. The Department of the Interior wants to lock all of the CVP's flaws into place for another 40 years, into the middle of the next century.

Those water contracts parcel out 20 percent of California's water supply to several thousand lucky landholders, who are largely out of the reach of State regulators or policymakers. If the Governor wanted to create a water bank, as he did 2 years ago, he could not get access to this water.

It is controlled by the Federal Government and the Central Valley project. The Governor of California, under current law, cannot get access to it. The State of California did not get to set the terms of the original contracts and, according to the Department of the Interior, they will get no opportunity to set the terms for these new contracts.

States rights? The 40-year contract in the Central Valley project is the exact opposite of States rights. It is a Federal preserve operating in the State without the control of the State's elected authorities.

The original 40-year Central Valley water contracts began expiring in 1989. And most such contracts will expire before the turn of the century.

The Department of the Interior plans to renew the expiring contracts on the same terms as the originals: The same lucky beneficiaries—the same generous quantity of water, the same 40-year length, the same permissive conditions—as if California has not changed in the last 40 years; as if 800,000 people are not moving into the State every year; as if the $760 billion economy had not $18.5 billion of it in agriculture, but much, much more.

The Secretary of Interior wants to renew the contracts—same terms, same conditions. Which means no water conservation required; no voluntary transfers outside the valley to thirsty Californians in Los Angeles County or elsewhere. No water for fish and wildlife. No solution to agricultural drainage problems, no sense of responsibility to anything but the fondly remembered past.

Mr. President, it is really an inexplicable situation. California, as I made the point over and over, is strikingly different than it was 40 years ago: Millions more people, a rapidly changing economy. Under the terms of the CVP contracts, what made sense in 1949 apparently is carved in stone forever.

It is not only inexplicable, but absurd. Under the legislation in the bill, State law would be enforced and determine allocation of water in 1999. A 7-year transition. In my original bill, I was prepared to say that the water under the CVP should be allocated immediately according to State law. Who did not want water allocated right away, which is the ultimate States' rights position, the position I was prepared to take? The farmers, the growers. They wanted a time of transition. Senator SEYMOUR's bill has I think 1996 or 1997. I have 1999. So it is a 3-year difference, at which time the State of California will determine it.

So the States' rights argument just does not stand up to the facts. The opposite of States' rights is to do nothing, which you would be doing if you voted against this bill. You would be allowing the Secretary of the Interior to execute, once again, 40-year contracts, outside of the control of the government of California.

What about the contracts themselves? The Department of the Interior's policy on the Central Valley contract renewals threatens to put a Federal straitjacket on California's water system. CVP contracts have shielded a select group of irrigators for the past 40 years from any change in the State's water needs. In the process, the needs of the environment, of urban areas, and other agricultural areas have been hurt or denied. If contracts are renewed, unchanged for another 40 years, the damage would only be compounded.

Mr. President, Washington set the rules for the CVP. Washington is going to have to fix the rules for the CVP. Federal law has to change. With the contracts now up for renewal, it is the Congress' responsibility to act swiftly to make sure that the CVP is at long last integrated into the contemporary law and policy of California. California cannot adequately plan for its future until that is done. Nor can other Western States be sure that their fish, waterfowl, and water resources are out of jeopardy, out of the grasp and the reach of a California that does not have the benefit of Federal legislation reforming the Central Valley project.

So it is with that in mind that we came to this bill. Title XXXIV. It would open the project to voluntary water transfers, improved water usage and efficiency, and require the project to pay its environmental costs. I think these changes are essential if we are going to meet California's basic needs for clean and ample water supplies and a healthy environment.

It is perfectly reasonable for Congress in California to ask the CVP to take responsibility for its environmental problems. After all, the taxpayer has been unusually generous with all these vast dams, canals, and reservoirs. Central Valley farmland is an oasis; it is a miracle. It is some of the most productive in the world. Central Valley agribusiness is enormously profitable.

In 1989, alone, Central Valley project growers reaped over $3.5 billion in gross crop values. That is out of the $18.5 billion for the whole State of California. Why was it so low in relation to the total value of crops? Because they grow low value crops. Remember, 50 percent of the water goes to 11 percent of the crop values, embodied in four crops: cotton, rice, hay, and irrigated pasture.

Since the CVP began delivering water in the 1940's, the Central Valley project growers have produced crops worth over $47 billion. So business is pretty good. Yet, the Central Valley growers have yet to repay any of the taxpayers' money used to build the project, and routinely fail to pay even the annual cost of Central Valley operations and maintenance.

Mr. President, get this. The Federal taxpayer will spend about $3.8 billion, according to a conservative estimate, to build the Central Valley project, and in the year 2030, the growers may repay about $203 million—approximately 5 percent of the total Central Valley construction costs measured in 1989 dollars. In other words, about $3.6 billion of the construction costs will be a Federal subsidy, never repaid.

This expected repayment will return only about 13 percent of the cost normally repayable in other Bureau of Reclamation irrigation projects elsewhere in California or the West. What do I mean by that? Take another project, not the CVP, what a project in the State of New Mexico, has to repay, or Wyoming or Colorado, what those projects have to repay versus what the Central Valley will repay.

The Central Valley will repay only 13 to 16 percent of what the projects have to repay in the State of the distinguished Senator from New Mexico, and in most of the other Bureau of Reclamation States—all over the West.

We are talking about what it repays, but it is even worse than that. The story is even worse than that. In recent years, it has cost the Federal taxpayers somewhere between $30 and $40 million just to run the CVP every year. Forget about repaying what it cost to build. Just to run it.

Each year CVP growers pay the Federal taxpayers somewhere between $20 and $30 million for the water they received; what the farmers pay, that is how they get $16 water. And these revenues, what the farmers pay, rarely meet expenses. Indeed, between 1986 and 1990, payments from the Central Valley project growers fell $30 million short of covering the taxpayer's cost of the project over those 4 years. That is over 4 years, not 1 year, but over a 4-year period. In 1989, when the Central Valley growers enjoyed crop values of $3.5 billion, they paid the U.S. Government $29.3 million which is $2.2 million less than it cost to run the project that year.

So do we have a Federal interest? We are certainly paying the bill. I think we have a Federal interest. The public contributions to the CVP do not end with billions of dollars in construction and operation costs. Southern California and the Bay area cities draw their drinking water from the San Francisco Bay-Sacramento-San Joaquin Delta. That same waterway has been polluted by agricultural drainage. Irrigation water leaches toxic elements such as selenium, arsenic, and cadmium out of the Central Valley soils and into the rivers. Agrichemicals wash off fields and crops into the waters and flow into other communities.

This represents another cost, Mr. President, another cost.

Recent State investigations found toxic levels of diazinon, parathion, carbaryl, and carbofuran pesticides in runoff from the San Joaquin Valley orchard and row crops. Samples taken from a 35-mile stretch of the river exceeded EPA safety levels of diazinon and parathion by 141 and 177 times their permitted levels.

This is the brew that is then pumped south and west toward millions of California homes and faucets before it reaches the tap. Of course, the water has to be treated and rid of this agricultural waste.

The cost of treatment is reflected in Californians' water bills. If treatment fails, the cost of Central Valley agricultural drainage may be reflected in Californians' health.

This title, title 34, would require Central Valley project irrigation districts to take responsibility for meeting all applicable water quality standards, no longer allowing pesticides to wash off in the river, floating downstream as if it were the other guy's problem. No. Each district has to take responsibility for these water quality standards, which should help the environment in every downstream community.

Mr. President, once again just to make the point, it is not like we have the option of doing nothing here. The certainty of much of California's water supply is actually threatened by the way the CVP is operated today.

The Central Valley project is the largest source of salmon and bass. What is going to happen here is very clear. A court is going to take over and run the Central Valley project. There is going to be a lawsuit in court over the Delta smelt, the equivalent of the spotted owl in the Northwest. Who will benefit? Nobody will benefit.

Mr. President, I would argue now is the time to act on the substantive question.

I ask unanimous consent that a court document from a Bureau of Reclamation economist, Mr. David A. Kubichek, taken in a deposition in a court case in California, be printed in the RECORD at the appropriate point in my remarks in which I talked about subsidies.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DAVID F. LEVI,
U.S. Attorney.

David A. Kubichek, Attorney, United States Department of Justice, J.C. O'Mahoney Federal Building, 2120 Capital Mall, Room 2141, Cheyenne, WY 82001

Sandra K. Dunn, Attorney, U.S. Department of Justice, Land and Natural Resources Division, 3305 Federal Building, 650 Capitol Mall, Sacramento, California 95814, Telephone: (916) 551–2700
Attorneys for Federal Defendants

[IN THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA, Civil No. F–79–106–EDP

BARCELLOS & WOLFSEN, INC., ET AL., PLAINTIFFS, *v.* WESTLANDS WATER DISTRICT, ET AL., DEFENDANTS

Related Cross- and Counter-actions

[Civil No. F–81–245–EDP Consolidated]

WESTLANDS WATER DISTRICT, ET AL., PLAINTIFFS-IN-CONSOLIDATION; *v.* UNITED STATES OF AMERICA, ET AL., DEFENDANTS-IN-CONSOLIDATION

Related Cross-and Counter-Actions

DECLARATION OF DAVID F. SCHUY

I, David F. Schuy, declare as follows:

1. I am a Resource Economist currently employed as an Acreage Limitation Specialist by the U.S. Department of the Interior, Bureau of Reclamation. I have prepared an estimate of the federal subsidy to irrigation water users in the Central Valley Project (CVP) and the Westlands Water District (WWD) based upon data provided by the Mid-Pacific Regional Office in Sacramento. If called upon to testify, I will testify as set forth in this declaration. I hold the degree Doctor of Philosophy in Resource Economics from Washington State University and have over 25 years experience in water resources planning and research.

1. The irrigation subsidy is the difference between the cost of constructing, operating and maintaining an irrigation project including interest on investment and the share of these costs paid by the water user. The subsidy is calculated as a present value in 1987, which means that federal expenditures and water users' payment prior to the data are accumulated with interest, and subsequent payments are discounted.

The interest rates used in these computations are the long-term Federal borrowing rates in effect at the beginning of ten-year intervals over the period 1902 to 1978 as reported in the U.S. Department of Interior's Acreage Limitation Environmental Impact Statement. From 1979 to the present time the interest rates were calculated in an equivalent manner, but for shorter periods, by the Office of Program and Policy Analysis, U.S. Department of Interior. The current long term rate of 8.875 percent is used to discount future repayment revenues, and to amortize present values to average annual values. The data and procedures used in my calculations are attached as Tables 1 through 6.

CENTRAL VALLEY PROJECT

2. As of 1987, the Federal investment in the CVP including interest allocated to irrigation was $6,838 million (Table 1) Assuming the irrigation water users pay back the current net federal construction expenditures allocated to irrigation amounting to $1,667 million by 2030 in equal annual installments, the present value of future repayment is $428 million, leaving the present value of the subsidy in 1987 at $6,410 million. This amounts to $1684 per acre foot of water delivered in 1987. The present value of future repayment is actually less than shown in this estimate because payments will be lower than average in the near term future, and water users might not repay the project cost by 2030.

WESTLANDS WATER DISTRICT

3. The present value of the subsidy for the irrigation distribution and collector drainage system for the WWD in 1987 is $476 million or $373 acre foot of water delivered in 1987 (Table 2).

4. The total present value of the subsidy per acre foot of water delivered in 1987 is therefore $2057. The long term average annual CVP water delivery to WWD is 2.5 acre feet per acre, which results in a total present value of the subsidy in 1987 of $5,142 per acre. The annual value of this subsidy determined by amortizing it over 43 years to 2030 at 8.875 percent interest is $468 per acre. This is the subsidy in terms of cost to the United States for delivering water to each acre of land in the WWD in 1987.

BOSTON RANCH AND WESTHAVEN FARMING COMPANIES

5. Boston Ranch Company has 23,711 acres of excess land under recordable contract. Westhaven Farming Company has 5,044 acres of excess land under recordable contract. Based on the average subsidy per acre of $468 given in the preceding paragraph, the subsidy to Boston Ranch Company for the 1987 water year was $11.1 million. Similarly, the total subsidy to westhaven Farming Company was $2.4 million

6. Boston Ranch Company has had land under recordable contract since 1972. The annual subsidies per irrigated acre were calculated from 1972 through 1987 (Tables 3, 4, and 5). The total annual subsidy to land in the WWD from 1972 through 1987 is $3,189 per acre irrigated. Therefore, the total irrigation subsidy to Boston Ranch Company for its excess land under recordable contract since 1972 is estimated at $76 million (Table 6).

7. Part of the Westhaven Farming Company's excess lands were placed under recordable contract in 1973 and the balance in 1974. The total subsidy to the owners of these lands by 1987 estimated in the same way was $15 million (Table 6). The average value per acre is $3,025.

8. The estimated total irrigation subsidies to Boston Ranch and Westhaven Farming Companies are $91 million.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26 day of April, 1988.

DAVID F. SCHUY.

ESTIMATED IRRIGATION SUBSIDY, CENTRAL VALLEY PROJECT

[In thousands of dollars]

	Interest rate	Irrigation investment	Capital repayment	Net investment	Interest	Cumulative investment
Year:						
1937	0.0342	16,178	0	16,178	277	16,455
1938	.0259	16,178	0	16,178	636	33,288
1939	.0259	16,178	0	16,178	1,071	50,517
1940	.0259	16,178	0	16,178	1,518	68,213
1941	.0259	16,178	0	16,178	1,976	86,368
1942	.0259	16,178	0	16,178	2,446	104,992
1943	.0259	16,178	0	16,178	2,929	124,099
1944	.0259	16,178	0	16,178	3,424	143,701
1945	.0259	16,179	0	16,179	3,931	163,811
1946	.0259	16,179	0	16,179	4,452	184,442
1947	.0259	16,179	278	15,901	4,983	205,326
1948	.0230	16,179	279	15,900	4,905	226,131
1949	.0230	16,179	279	15,900	5,384	247,415
1950	.0230	16,179	279	15,900	5,873	269,189
1951	.0230	16,179	279	15,900	6,374	291,463
1952	.0230	16,179	279	15,900	6,886	314,249
1953	.0230	16,179	279	15,900	7,411	337,560
1954	.0230	16,179	279	15,900	7,947	361,407
1955	.0230	16,179	279	15,900	8,495	385,802
1956	.0230	16,179	279	15,900	9,056	410,758
1957	.0233	16,179	279	15,900	9,756	436,414
1958	.0377	1,107	678	429	16,461	453,304
1959	.0377	9,645	2,095	7,550	17,232	478,086
1960	.0377	871	490	381	18,031	496,498
1961	.0377	4,895	846	4,049	18,794	519,341
1962	.0377	2,608	1,558	1,050	19,599	539,990
1963	.0377	137,743	2,855	134,888	22,900	697,778
1964	.0377	31,529	4,954	26,575	26,807	751,161
1965	.0377	7,179	1,301	5,878	28,430	785,468
1966	.0377	2,246	186	2,060	29,651	817,179
1967	.0377	1,626	2,429	(803)	30,793	847,169
1968	.0580	229,701	8,490	221,211	66,551	1,123,931
1969	.0580	9,068	(436)	9,504	65,464	1,198,898
1970	.0580	25,334	3,962	21,372	70,156	1,290,426
1971	.0580	25,335	3,962	21,373	75,465	1,387,264
1972	.0580	25,334	3,962	21,372	81,081	1,489,717
1973	.0580	25,335	3,962	21,373	87,023	1,598,113
1974	.0580	25,334	3,962	21,372	93,310	1,712,795
1975	.0580	(6,916)	7,031	(13,947)	98,938	1,797,786
1976	.0580	13,213	5,337	7,876	104,500	1,910,162
1977	.0580	26,285	(568)	26,853	111,568	2,048,583
1978	.0842	85,660	2,001	83,659	176,013	2,308,255
1979	.0842	5,594	11,771	(6,177)	194,095	2,496,173
1980	.0842	210,988	6,949	204,040	218,768	2,918,981
1981	.0842	52,867	9,247	43,620	247,615	3,210,215
1982	.0842	95,038	2,676	92,362	274,189	3,576,766
1983	.1218	95,504	(341)	95,845	441,487	4,114,098
1984	.1218	25,741	8,916	16,825	502,122	4,633,045
1985	.1218	28,660	(1,371)	30,031	566,134	5,229,209
1986	.1218	24,130	(2,182)	26,312	638,520	5,894,041
1987	.1218	227,114	13,919	213,193	730,878	6,838,114
Total		1,788,520	111,709	1,676,811		

Mr. BRADLEY. Mr. President, it is in this court document that a Bureau of Reclamation economist asserts the subsidy is not $3.5 or $3.6 billion but closer to $6 billion.

Mr. President, this is where we are. A rough recap: total water in California is about 35- to 40-million acre-feet, of which 5 million is urban, and 30 million is agriculture. Total use in Central Valley is 22 million acre-feet.

Central Valley project water, remember, is groundwater and surface water. Central Valley project water is approximately 7 million acre-feet. What this bill does is require a million acre-feet in normal years, only 750,000 acre-feet in drier years, be allocated for fish and wildlife. That requirement represents about 2.1 to 2.8 percent of California's water, about 4 percent of Central Valley water, about 11 percent of the CVP water in a normal year, and only about 16 percent in even the driest year, 1992.

Mr. President, in attempt to get a bill we though was responsive to everyone, I literally reached out to thousands of people through requests and suggestions. We now have a bill that provides major contract reform, renews contracts automatically for 25 years and at the end of 25 years they may be renewed, provides water transfer language which will allow the transfer of water out of the Central Valley project to other places in California over which Central Valley users have right of first refusal, and says no more than 20 percent of the water can be removed out of that district without the district's approval. The bill says the transfer has to be consistent with State law. The bill speaks of water metering, and water conservation standards. The bill contains tiered pricing wherein the last bit of water is a little more expensive than the first part of the water, thereby encouraging conservation. The bill sets aside 800,000 acre-feet for fish which would be reduced along with other project purposes in dry years.

The bill takes no water from the Friant Unit on the eastern side of the valley. None. It asks only them to pay a small surcharge to help mitigate some of the environmental damage. The bill says we will reach Level II water, which is about 108,000 acre-feet more for wildlife refuges immediately, in 10 years 140,000 acre-feet, which is Level IV; and established a $50 million restoration fund. The money would come from water and power users, from Friant Unit and tiered pricing, from those who would pay instead of renewing their contracts under these terms, and from the difference in the repayment rate between agriculture and municipal and industrial.

The restoration fund is an attempt to get money to do many of the things the distinguished Senator from California had included in his original bill—fish ladders, fish screens, temperature control devices—all of which are meritorious and which will improve the environment but cost money. Without money, you cannot achieve it.

We made major efforts to accommodate the growers in this process.

Mr. President, I ask unanimous consent that I simply print in the RECORD all of the changes which were made in the legislation in response to the agricultural interests.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Subsection 3403(f), which defines the term "Central Valley Project water" has been amended to eliminate any uncertainty as to the application of this title to prior rights contractors:

Paragraph 3404(b)(1), which authorized auction of 100,000 acre-feet of CVP water, has been deleted, and the subsection has been amended to permit execution of certain water contracts with El Dorado County, the Tuolumne Regional Water District, the San Joaquine Valley Veterans Cemetery, as well as contracts for delivery of flood water and class II water in the Friant Unit:

Subsection 3404(c), which sets terms for renewal of CVP water contracts, has been amended to make it clear that the Secretary must, if asked, renew existing CVP water contracts for 25 years, and may issue subsequent renewals for up to 25 years each;

Paragraph 3404(c)(3) has been amended to clarify that water contracts renewed after January 1, 1988 and prior to enactment of this title are not subject to certain surcharges designed to encourage early renewal of existing contracts;

Subsection 3404(d), which required the Secretary to include terms in renewed contracts providing for involuntary reallocation of water, has been deleted;

Subsection 3405(a) has been amended to make it clear that water rights and exchange contractors, as well as project agricultural contractors, may engage in voluntary water transfers;

Subparagraph 3405(a)(1)(C), which provided for a surcharge on the net proceeds received by water contractors from water transfers outside the Central Valley Project service area has been deleted;

Subsection 3405(d) has been amended to eliminate a provision requiring inflation adjustment of tiered water prices, and the structure of the tiers has been changed from 60–20–20 to 80–10–10;

Paragraphs 3406(a)(1)–(3), which authorize the CVP to be operated for fish and wildlife purposes, match the project purpose language contained in the draft bill circulated by Congressman Dooley and Lehman last week, except that the language has been changed to place "enhancement" in a secondary priority among project purposes;

Paragraph 3406(b)(1) has been amended to provide that the Secretary will have met his responsibilities established by this bill to operate the project for fish and wildlife purposes when the restoration program and projects defined in section 3406 are completed;

Subparagraph 3406(b)(1)(B) has been amended to strike the reference to "resident" fish;

Subparagraph 3406(b)(1)(C) has been amended to strike language that defined how "credits" for CVP contributions to Bay/Delta standards would be assessed, while retaining in the bill the important concept of crediting;

Subparagraph 3406(b)(1)(C) has been amended to direct the Secretary to undertake the fish and wildlife restoration program and projects defined in the bill in a way that avoids imposition of inconsistent or duplicative requirements on project water and power contractors;

Paragraph 3406(b)(2) has been amended to cut the amount of project yield committed to fish and wildlife purposes under the bill from 1 million acre-feet to 800,000 acre-feet, a total that matches the level of upfront water identified in Congressman FAZIO's draft legislation and that, when combined with our changes to subsection 3404(b) and 3406(b)(24), reduces the amount of water reallocated under the bill by approximately 540,000 acre-feet per year. Additional language has been included to make it clear that water allocated to fish and wildlife purposes under this section may be used for other project purposes, including irrigation, if not needed for fish and wildlife;

Subparagraph 3406(b)(2)(C) and subsection 3406(d) have been amended to link dry year shortages for fish water and waterfowl refuge water to reductions imposed on agricultural service, not prior rights, contractors;

Paragraph 3406(b)(6) has been amended to clarify the Secretary's responsibility with respect to operation of the Shasta temperature control device for the upper Sacramento River;

Paragraph 3406(b)(24), which deals with the Trinity River, has been added as a replacement for title XXX of H.R. 429. This provision deletes language in title XXX that allocated more water to Trinity River flows than was dedicated under the Secretary of the Interior's 1991 decision on Trinity flows;

Paragraph 3406(c)(1) has been amended to include language barring the Secretary of the Interior from making releases from Friant Dam to implement this bill without specific subsequent congressional authorization. As now written, this section does not require restoration of upper San Joaquin flows, and would premise any fishery restoration activities in that area upon (1) a comprehensive study of the costs and benefits and, (2) congressional authorization;

Paragraph 3406(c)(1) has also been amended to reduce the "in-lieu" charge applied to Friant Unit contracts from the House's $4–$8–$12 formula to a more moderate $4–$5–$7 formula.

Section 3407 has been amended to reflect Congressman FAZIO's proposal for the Restoration Fund, and has been amended further to ensure that funds derived from water and power contractors will remain available to implement the bill, even if all funds are not expended in a given year. This section has been amended to add significant flexibility to the collection of funds from project contractors and to cap the amounts to be collected from current water contractors at reasonable levels;

Subsection 3408(j), which authorized citizen suits has been deleted;

A new subsection 3408(j) has been included. This subsection charges the Secretary of the Interior with development of a comprehensive plan to increase the yield of the CVP in order to restore to irrigators and other project users water supplies allocated to fish and wildlife purposes under this bill;

A new subsection 3408(k) has been included. This subsection is a broad savings clause applying to final judicial decrees involving CVP water rights;

Section 3409 has been amended to provide that the cost of preparing the programmatic environmental impact statement required by this title will be considered a capital expense; and

Section 3411 has been added to ensure that the Secretary of the Interior complies with California water law and the Coordinated Operating Agreement in implementing the bill.

Section 3412 has been added to provide for the extension of the Tehama-Colusa Canal service area.

Mr. BRADLEY. Mr. President, the question is who supports what we are doing?

It is true the distinguished Senator from California, Senator SEYMOUR, is opposed to this bill. It is true the distinguished Senator from California, Senator CRANSTON, supports this bill. It is also true 25 U.S. Representatives from California voted against this particular bill in the House and 18 voted for it.

It is true the Governor of California has written a letter opposing this bill although he made no specific suggestions throughout this whole negotiations process.

The distinguished Senator from California has been very forthcoming in terms of his original bill. It is true some political appointees in Washington have written letters urging the

President to veto it, namely the Secretary of Interior and the Secretary of Agriculture. But what about other people? What about people who live in California who are not politicians? What do they do?

I would like to list the following organizations that support H.R. 429: Bay Area Economic Forum, California Association of Family Farmers, Bay Area Council, Metropolitan Water District of Southern California, Western Urban Water Coalition, American Fishing Tackle Manufacturers Association, City of Oakland, City of San Francisco, Port of San Francisco, Port of Oakland, Sacramento Municipal Utility District, Mendocino County, Trinity County, Contra Costa County, Humboldt County, Ducks Unlimited, Grasslands Water District, Central Basin Water District, West Basin Municipal Water District, Three Valleys Municipal Water District, and this list goes on and on.

Mr. President, I ask unanimous consent the list be printed in the RECORD at this time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LETTERS OF SUPPORT FOR CONFERENCE REPORT ON H.R. 429

Bay Area Economic Forum.
California Association of Family Farmers.
Bay Area Council.
Metropolitan Water District of Southern California.
Western Urban Water Coalition.
American Fishing Tackle Manufacturers Association.
City of Oakland.
City of San Francisco.
Port of San Francisco.
Port of Oakland.
Sacramento Municipal Utility District.
Mendocino County.
Trinity County.
Contra Costa County.
Humboldt County.
Ducks Unlimited.
Grasslands Water District, Los Banos, CA.
Central Basin Municipal Water District, Carson, CA.
West Basin Municipal Water District.
Three Valleys Municipal Water District.
Las Virgenes Municipal Water District.
Calleguas Municipal Water District.
California Advisory Committee on Salmon and Steelhead Trout.
City of Eureka.
East Bay Regional Park District.
Las Vegas Valley Water District.
Citizens for a Better Environment.
Audubon Society.
Bay Institute of San Francisco.
California League of Conservation Voters.
California Striped Bass Association.
Golden Gate Fishermen's Association.
Trout Unlimited.
Environmental Defense Fund.
Natural Resources Defense Council.
Friends of the River.
Sacramento River Council.
Sierra Club.
Wilderness Society.
Pacific Coast Federation of Fishermens' Association.
National Wildlife Federation.
Committee for Water Policy Consensus.
Central Utah Water Conservancy District.
National Wildlife Refuge Association.
United Anglers of California.
California Waterfowl Association.
Clean Water Action.
Friends of the Earth.

Mr. BRADLEY. I would simply like to call attention to two or three very relevant endorsements to this bill.

First, the Metropolitan Water District represents 15 million Californians. They have issued a press release that says the following:

"H.R. 429, a Western water omnibus bill, is good for California in general and Southern California in particular," said Carl Boronkay, general manager of Metropolitan Water District of Southern California. "It is California's first major water policy advancement in decades and provides benefits for farmers, cities and the environment," he said.

It goes on to say:

"If managed properly, California has ample water supplies to take care of the reasonable needs of cities, farms and the environment for some time to come," Boronkay said. "Passage of this bill is a crucial element of good water supply management."

That is from the Metropolitan Water District of Southern California, serving 15 million Californians.

I ask unanimous consent that it be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA,
Los Angeles, CA.

PENDING FEDERAL LEGISLATION COULD MEAN MORE WATER FOR SOUTHERN CALIFORNIA

LOS ANGELES.—Legislation nearing congressional vote could reform the massive Central Valley Project (CVP) irrigation system and allow for the voluntary transfer of water to help meet the needs of California's water-short urban economy.

"H.R. 429, a Western water omnibus bill, is good for California in general and Southern California in particular," said Carl Boronkay, general manager of Metropolitan Water District of Southern California. "It is California's first major water policy advancement in decades and provides benefits for farmers, cities and the environment," he said.

The CVP improvement provision of H.R. 429 would permit farmers in California to voluntarily sell their federal water on the open market. Most likely buyers include the state's cities that have struggled in recent years to meet the increasing water demands of growing urban centers.

The legislation also provides water for the rehabilitation of California's drought-stressed fisheries and wildlife.

"If managed properly, California has ample water supplies to take care of the reasonable needs of cities, farms, and the environment for some time to come," Boronkay said. "Passage of this bill is a crucial element of good water supply management," he said, supporting the adoption of H.R. 429 before Congress adjourns this week.

Through its 27-member public agencies, Metropolitan provides almost 60 percent of the water used by more than 15 million people in Los Angeles, Orange, San Diego, Riverside, San Bernardino and Ventura counties.

Mr. BRADLEY. Also, today, I received a letter from the California Business Roundtable. The argument has been made that H.R. 429 is bad for California jobs. This group speaks for the 100 largest companies in California, and they support it.

I will just quote from the chairman, Mr. James Harvey, of Transamerica, who says:

> I think the water compromise for California is great and supported by a majority of business in California.
>
> JIM.

Now who are the Business Roundtable Water Task Force members? James Harvey; John Bryson, Southern California Edison; Harry Conger, Homestake Mining; Lawrence Del Santo, Lucky Stores; San Gin, Pacific Telesis; Paul Hazen, Wells Fargo.

Mr. President, I ask unanimous consent that the remainder of this list—and it is a long list—be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CALIFORNIA BUSINESS ROUNDTABLE WATER TASK FORCE MEMBERS

James R. Harvey, Chairman, Transamerica Corp.
John E. Bryson, Chairman & CEO, Southern California Edison Company.
Harry M. Conger, Chairman & CEO, Homestake Mining Company.
Lawrence A. Del Santo, Chairman & CEO, Lucky Stores, Inc.
Sam Ginn, Chairman & CEO, Pacific Telesis Group.
Paul Hazen, President, Wells Fargo Bank.
Bruce Karatz, President & CEO, Kaufman & Broad Home Corp.
Thomas L. Lee, Chairman & CEO, The Newhall Land & Farming Company.
Richard M. Rosenberg, Chairman & CEO, Bank of America.
Alan Seelenfreund, Chairman & CEO, McKesson Corp.
Raymound L. Watson, Vice Chairman, The Irvine Company.
Phillip L. Williams, Vice Chairman, The Times Mirror Company.

Mr. BRADLEY. The point here is that support for this bill is broad and deep in the business community, in the environmental community, in the community outside of the Central Valley itself.

Mr. President, I know that we will continue this discussion, but there is no question in my mind that after months and months and months of discussion, we are now at a point of decision, and tomorrow will be that decision.

I will reserve the remainder of my comments for a little later in the debate and further discussion tomorrow.

Mr. SEYMOUR addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. SEYMOUR. Mr. President, the distinguished Senator from New Jersey [Mr. BRADLEY] has made a number of points and arguments relative to the Central Valley project. I intend to address those as directly as I can.

Let me say, first, that I want to commend Senator BRADLEY. I want to commend his staff. There is no doubt in my mind that they were and have been totally committed to pursue legislation for the reform of the Central Valley project based upon what they believe is to be in the best interest of California. And for that I commend them. They have done it openly. They have done it fairly. And Senator BRADLEY has been more than forthcoming in his relationships and discussions with me over these last 21 months relative to what is the right answer for California.

Sadly, his priorities for the people of California are different from my priorities. I said it earlier. My priorities are simple. My priorities, first, are people and their jobs, and, second, the enhancement of fish and wildlife, restoration of refuges, and restoration of the value of environmental resources, of fish as well as wildlife.

Senator BRADLEY's priorities are reversed, and if not reversed, if that is an unfair characterization of his priorities, then let me go an extra step and say his priorities say that people in jobs ought to occupy a level playing field, as level a playing field as animals and plants, fish and wildlife.

That has really been one of the bones of contention, what should our priorities be. What is the most important.

I was talking about jobs and the economy earlier.

Mr. President, I want to refer to a memorandum dated October 3, 1992, from the U.S. Department of the Interior that addresses H.R. 429, the measure that we will take up and, unfortunately, pass in the U.S. Senate and send to the President tomorrow.

In this memorandum, they talk about jobs and people. They do not talk about them in exactly those terms, but they talk about them in terms of what if H.R. 429, the conference committee water bill, had been law during 1990 and 1991. And in their analysis, had H.R. 429 been law in 1991, then all of agriculture in the Central Valley would receive zero percent of water.

Then, of course, there are cities involved in the Central Valley project, the city of Redding, the city of Roseville, the city of Sacramento, Contra Costa County, the Sacramento Municipal Water District, Santa Clara Water District. Had H.R. 429 been law in 1990 and 1991, those cities would have received zero water.

Now, without H.R. 429, how would the Central Valley have done as far as the percentage of water? What water allocation would they receive compared to zero? Well, in 1990, compared to zero under H.R. 429, agriculture would receive 50 percent of the water allocation and cities, urban users, people in jobs, would receive 75 percent instead of, under H.R. 429, zero percent. And in 1991, a drought year, agriculture would receive 25 percent of the water allocation compared to zero.

And people and jobs in urban areas represented by the Central Valley project, those cities in 1991, would have received 75 percent of the water allocation as opposed to zero. Those are not my numbers. Those are numbers that come from the U.S. Department of Interior.

So if I make a statement and I say that if H.R. 429 were law in 1990 and 1991, many farms and cities that belonged to the Central Valley project would have received no water at all, as far as an allocation under 429, and that that would have cost in 1990 and 1991 thousands and thousands of jobs. I make that statement based on the Department of the Interior analysis.

I want to refer to an Associated Press story from Fresno, CA. The date is March 20, 1992. The story reads as follows, in fact, the headline in the story says, "San Joaquin Valley Farming Could Be Slowly Crushed." That is the headline in the article. So I put this in perspective when I talk about San Joaquin Valley. Let me talk about some real cities: city of Fresno, city of Visalia, city of Modesto, city of Bakersfield. Those are some of the major cities in the San Joaquin Valley.

This is what the article said on March 20, 1992:

> The San Joaquin Valley's farm economy suffered a $545 million blow last year because of the drought and will be slowly crushed unless irrigation water returns to normal, a study said. 9,000 jobs were lost and 253,000 acres—

That is a quarter of a million acres of land were left fallow because there was not enough water for all the vegetables, the cotton, the nuts, the fruits that were grown in the valley. If these shortages continue, the agricultural industry which provides 50 percent of the San Joaquin Valley's jobs—one-half of the jobs—will slowly be crushed. Economists are already beginning to see the symptoms of an economic death spiral in which the number of farmers remaining in business decreases as water supplies dry up. Lost farm revenue totaled $281.5 million in 1991, and that represents 2.5 percent of the $11.2 billion gross crop value for the eight-county region in 1990. Lost sales by businesses that supply valley farmers added another $264.3 million in lost revenue. So, total in that year because of a lack of water, they lost over a half a billion dollars, economic loss alone in the San Joaquin Valley.

Then the story ends by saying, "People driving on Interstate 5"—that is a major freeway that runs through California—

> "People driving on Interstate 5 may think farmers aren't hurting because they see so many crops," said Dwayne Paul, Vice President of the firm that made the survey. But what they don't see are the jobs that were lost and the suffering in all businesses in the valley community.

That is what we have been talking about, Mr. President, is people and jobs. I contend that should H.R. 429, the bill that Senator BRADLEY and Congressman MILLER support, become law, not only, as according to the Department of the Interior, will we see zero percent of water allocation going to the cities I referenced and to agriculture in the Central Valley, but we will see a total economic loss annually of $4.5 billion, and we will see tens of thousands—not of big farmers. Senator BRADLEY was talking about big farmers. Not of big farmers. They will always find a way to do business, either that or they will sell out and move on. It is not any big deal for them. Well, it is a big deal for them. I should not say that. It is a big deal for any large enterprise. But I am talking about the little guy. The small family farmer who is farming an average of 50 acres. If there are those who think those small family farmers are not worrying about this whole issue, they just do not know. I have been there, I talked with them, I met with them, I met their kids, their families. I heard about their hopes, their dreams, their troubles, their concerns. They are very real people.

Let me talk about another segment of our society in California that is going to be heard and they sure are not big. They are the farm workers, the people who work the farms. Farm laborers, many of them Hispanic, minorities, not getting rich, but at least feeding their families.

I remember in the spring of 1991, the valley having suffered billion dollar losses as a result of an Arctic freeze that hit the Central Valley, San Joaquin Valley, and I looked into the eyes of the farm workers and their kids. Not only were they out of work, they were out of money, they could not pay their rent. They did not have food to feed their families. They were sending their kids to school and the kids were falling asleep. The reason they were falling asleep is they had not been properly fed. I talked to mothers, the wives of some of the farm workers who had babies. And because they were out of work, because they had no other source of income, their babies were getting formula with double the amount of water, taking half of the sustenance of that baby formula that would feed that child. They were hurting. They were not big farmers. They were not even small farmers. They were farm workers.

In that instance, we were able to help them out, thank God. We were able to call on the Department of Agriculture and bring truck loads of food in there, formula for their babies, food for their kids. We helped them through that very tough time of suffering from the Arctic freeze, only to be followed, just when they get on their feet, by a drought.

So I am talking about little people. I am not talking about big farmers. I am not talking about the corporate enterprises. You cannot get much smaller than the farm workers. Tens of thousands of them will be out of a job if H.R. 429 becomes law.

Senator BRADLEY rightly pointed out that to do nothing would be absolutely wrong. I agree. To do nothing at this critical time in California's history would be a tragedy. We do need to do something.

Senator BRADLEY suggested that H.R. 429 is the answer. I have argued that that is a bad bill. But that does not mean I should not have the responsibility to come up with a better idea. You just cannot afford to go around here saying no, no, no, no. You cannot be against everything. You have to support some things. And I think every one of us has a responsibility that if we do not like something, then you come up with a better idea.

So when it comes to people and jobs first, and wanting to do everything possible, second, to enhance fish and wildlife, to restore that resource, I came up with a bill. The bill, S. 2016. It passed this House, went into the conference committee and then it was destroyed, thrown to the wayside, and H.R. 429, and Congressman MILLER and Senators BRADLEY and JOHNSTON took over.

So let us take a look at an alternative, because I agree we have to do something. And that is what I thought I was doing when I introduced S. 2016. So let me quickly, Mr. President, if I could, go through this bill and talk about some of the very important provisions in answering the needs of the people of California for water, answering the needs of the farmers in Central Valley, answering the needs of urban water users.

Let me say, this bill, Mr. President, is not my bill. This is not JOHN SEYMOUR's. My name is on it. I am the fellow who was to get this bill into law. It was not my bill. This bill was not written in Washington, DC. The wisdom and the thoughts that make up this bill are not from the banks of Potomac. This is a bill that was written in California, for Californians and by Californians.

This bill represents a historic compromise between farmers in the Central Valley and the metropolitan water district. I will have more to say about them later because they now support the other bill. But when we wrote this bill, they wrote this bill, and this historic accord was reached between farmers and the metropolitan water district representing over half the people of the State of California, the metropolitan water district thought that was a great idea. In fact, when it went before their board of directors to either have the board of directors say, it is a bad bill, we oppose it; it is a so-so bill, we like it but we do not like some of this; or it is a good bill, we support it—when their board of directors was asked that question, on a 49-to-2 vote, their board of directors said we want this. We want it.

So it is not my bill. I happen to be the fellow who was selected to be responsible, as a Senator from California, to carry forward this bill on behalf of Californians.

S. 2016, is very much a part of the bill that is currently pending on this floor and at the conclusion of this day will be passed over to the House of Representatives. Although there have been some major changes in this bill that I will also talk about, this is where we started.

So let me, if I can, Mr. President, go through what some of those ideas included.

First of all, let me talk about fish and wildlife and the environment. In fact, I want to commend Senator BRADLEY and Congressman MILLER for at least recognizing that this bill I introduced on behalf of California had some good ideas of what we should do about fish and wildlife refuges. As a matter of fact, this bill contains 22 specific improvement provisions for fish and wildlife restoration habitats. In fact, we did not even create those 22 provisions. We did not create them back here.

They went to the California Department of Fish and Game and said, "Give us a list of the projects that need to be improved so that we can restore this resource that is most valuable to us."

As I said, apparently Senator BRADLEY thought it was a pretty good idea and Congressman MILLER thought it was a pretty good idea because they listed them and put them in their bill. So at least we gave them a specific roadmap out of their efforts of what needs to be done to improve fish and wildlife habitat in California.

In the bill, we talk about doing such things as negotiating and executing an agreement with the California Department of Fish and Game by December 31, 1992. I guess we are not going to make that date, are we? Of course, the bill was introduced almost a year ago. But, anyhow, we gave them a definite time, by December 31, 1992, a given date, gave them a little more than 1 year is what we were giving them—California Department of Fish and Game will enter into an agreement, and that agreement will mitigate the direct fishery losses associated with the operation of the Tracy pumping plant.

We said you come up with an agreement that is satisfactory to the California Fish and Game, and we will give you 1 year to do it, and this agreement will mitigate the direct fishery losses associated with the operation of the Tracy pumping plant.

Then we said we also want another agreement that has to be satisfactory to the California Department of Fish and Game. This one we will give you 3 years, roughly, to get it together, but when you get it together, it has to be satisfactory to the California Department of Fish and Game. This will mitigate for direct fishery losses associated with the operation of the Contra Costa Canal pumping plant, the same kind of problem.

Then we said up at the Shasta Dam we need a temperature control device so that we can ensure colder water coming out of the Shasta Dam. So we said install and make operational a structural temperature control device at Shasta Dam and develop whatever modification you need and you do it all by December 1995. We will give you 4 years to get it done, for control of water temperatures in the Upper Sacramento River sufficient to protect salmon. We said the Coleman National Fish Hatchery will be rehabilitated and expanded by implementing the U.S. Fish and Wildlife Service's Coleman National Fish Hatchery development plan, and you want to get that one done again within 4 years. We said get another agreement that is satisfactory to the California Department of Fish and Game and we are going to give you 1 year to do this. What you are going to do there is eliminate, to the extent practical, losses of salmon and steelhead trout due to flow fluctuations occasioned by the operation of Keswick, Nimbus, and Lewiston regulating dams.

And then we said we want to have a gravel replenishment program. We want you to develop that, and we want you to implement it in 2 years for the purpose of restoring and replenishing on a continuous basis spawning gravel loss due to the construction and operation of Shasta, Folsom, and New Melones Dam bank protection programs and other actions that have reduced the availability of spawning gravel.

We said we want you to have a Delta Cross Channel monitoring and operational program, and we want you to do that in 1 year. You see, we set deadlines. We did not just throw some language in this bill and say do it if you can, do it maybe. We said you are going to do it, and here is the timeframe in which you are going to do it. So we said to the Delta Cross Channel issue, a program be developed in 1 year for the purpose of protecting striped bass eggs and larvae as they approach the Delta Cross Channel gates. The program includes, but is not limited to, closing the Delta Cross Channel gates during times when significant numbers of striped bass eggs and larvae approach the Sacramento River intake to the Delta Cross Channel.

We said the Secretary of the Interior shall—not maybe, not directly—shall, through an agreement with the State of California, provide dependable water supplies of suitable quality to the Central Valley refuges, in accordance with level 2 quantity and delivery schedules of the dependable water supply needs table for that refuge.

We said: We are going to make you give them water. You have to. Not if you want to; not if you think it is a good idea. We are telling you to do it.

Habitat restoration actions. We have plans in the bill for 13 different projects, specific projects. So for anybody to say we are doing nothing—it is either H.R. 429, or it is nothing—this is a lot more than nothing.

How about people and jobs? Well, we took care of people and jobs in this bill. Like creating an orderly, commonsense kind of approach to transfer water from farmers in the Central Valley to people and jobs in urban areas. We did it by saying that any CVP contractor can negotiate freely into the transfer of an allocation of their water to other users, whether it be municipal or urban, whether it be industrial or jobs, even whether it meet fish and wildlife purposes. They can sell that water, too. So we provided for a water transfer, as well.

Mr. President, the bill that is currently pending before this House is S. 2016, modified for about the fourth time, I guess. And it is a proposal that will transfer water; it is a proposal that will provide up-front water. That is a cliche that is used very often to describe the Central Valley project: We need up-front water.

This bill provides up-front water, an intial up-front commitment to 236,000 acre feet of water, and then requires growth of that up to 525,000 acre feet of water to fish and wildlife within the 10-year period.

So it does those things.

Now we need to do more. That is not enough. As I said, we had offered a number of compromises. But the compromise we have before us today in this bill, that will soon pass to the House of Representatives, I think, was a very generous compromise. It was reaching back to find the last drop of water, so to speak, wring it out of the sponge, so that I might be able to meet the objectives of those on the other side supporting H.R. 429.

What do we do? One issue, a very important issue—Senator BRADLEY talked about that—contract deals, no more 40-year contracts. That is bad. I hope the U.S. Senate, the House of Representatives, and the Federal Government do not decide one day that you cannot get a 40-year mortgage on your home. But farmers really do not need 40-year contracts. They can get by with less, as long as they are good enough, as I said earlier today, to get them to the bank to be able to get a loan.

So what is the compromise? It is that the compromise we have before us today, which is an alternative to H.R. 429, is 25 years.

Then, another very contentious issue: project purpose. We will talk about that as it pertains to H.R. 429. But, at the moment, let me just say that what we are doing in this compromise proposal currently pending is we say fish and wildlife shall be a project purpose.

Let me explain, Mr. President, for those who, like I 21 months ago, did not know what project purpose meant, certainly did not know it had anything to do with water, project purpose says in the law who gets the water. Who gets the water? People and jobs? Fish and wildlife?

So when we refer to project purpose for fish and wildlife, that means that fish and wildlife as a project purpose shall be equal to people and jobs. I have said my priorities are people and jobs first, and fish and wildlife second.

What I am offering in the bill before us says that for the purpose of those projects—I cited them, 22 different provisions—for the purpose of those projects and the restoration, that fish and wildlife will be a project purpose. It will be equal to people and jobs, in those specific projects.

Senator BRADLEY was referring to water pricing. Water pricing is the concept that we are trying to deal with to provide incentives, which is what I do. Or, on the other hand, use a stick. Set up a pricing schedule that will act as an incentive for farmers to conserve water, or just use a stick and take it away.

In our water pricing aspect of our bill, we provide financial incentives for those farmers to conserve. So we are using a carrot as opposed to a stick.

Water transfers: Absolutely critical. We have been talking a lot about water transfers. Here is the alternative to H.R. 429. We would provide that on every water transfer that takes place from a farmer, a contract user, to an urban user, people and jobs, that 20 percent—if they transfer 100,000 acre-feet, they negotiate, they come to a price on 100,000 acre-feet—20 percent of the water will come right off the top of 100,000 acre feet.

Obviously, that would be 20,000 acre-feet of the water right off the top of that transfer sale to be set aside for fish and wildlife purposes.

It also had a provision in the original bill that said: We will take some water off the top, but we will only take 10 percent.

So the compromise is an additional 10 percent. So it is a full 20 percent right off the top of any amount of water that is transferred, and it goes specifically and solely for the purposes of fish and wildlife.

Then Senator BRADLEY provides for a fish and wildlife restoration fund. We would collect money so we would have money in order to do those 22 different, specific provisions included in my bill. And then they were lifted and they were put in H.R. 429. We need money to complete all those projects.

In the original bill I introduced on behalf of the metropolitan water district and the Central Valley farmers, we had no provision for such a fund. We had formulas for getting them some money, but we had not created a fund.

The proposal that is currently pending before this House establishes a $20 million annual fund to restore fish and wildlife habitat.

So those are some of the additional compromises we made to the original bill, S. 2016. I think most who have listened to this description of S. 2016 would have to conclude: Does SEYMOUR have water transfer in this bill?

Is there another answer to water transfers, to ensure water transfers, other than H.R. 429? I think the answer to that question is absolutely, yes, there is water transfer. Well, is there improvement to fish and wildlife? Is there another way to go other than H.R. 429? Do we have any improvement for fish and wildlife in this bill? I think absolutely the answer is yes, unequivocally.

And so for anyone to say that there is no alternative, if we do not pass H.R. 429 we are going to do nothing, it is going to be business as usual, I think that is either misunderstood or patently untrue. This is a plausible, reasonable approach that is currently before us.

Mr. President, I want to talk for a moment about H.R. 429, and the differences between H.R. 429 and this bill that is currently before us that I introduced and will shortly be passed and sent to the House of Representatives. How do we differ? We are both after the same objectives—maybe with different priorities, but the same objectives—to move water around, to help protect fish and wildlife, get water and jobs to people in urban areas. We have some vast differences as to how we achieve those objectives. First of all, let us talk about water off the top.

Water off the top refers to—you have a bucket and there is only so much water in there. This year, it is 4½ million acre-feet for the entire valley. In wet years—although we have not seen one in six—but in wet years it could go as high as 8 million acre-feet. There have been some dryer years, but this year the bucket contains 4½ million acre-feet. So I will talk about that. What H.R. 429 would do is, out of that bucket of 4½ million acre-feet, it would scoop off of the top 1 million acre-feet—800,000 acres, plus 236,000, over 1 million acre-feet. What would be left for fish and wildlife purposes? What is left in the bucket? Common sense should tell us that it is not enough to support an agricultural economy in the State of California, much less get any water to people and jobs in urban areas. So we have a tremendous difference in that.

Let me read about that particular portion of the water off the top, from H.R. 429. It is pretty clear here. It says:

> Upon enactment of this title, dedicate and manage annually 800,000 acre feet of Central Valley Project yield for the primary purpose of implementing the fish, wildlife and habitat restoration purposes and measures authorized by this title to assist the State of California in its efforts to protect the waters of the San Francisco bay, Sacramento, San Joaquin delta estuary, and to help meet such obligations as may be legally imposed upon the Central Valley Project under State or Federal law following the date of enactment of this title, including but not limited to additional obligations under the Federal Endangered Species Act. For the purpose of this section, the term Central Valley Project yield means the delivery capability of the Central Valley Project during the 1928 to 1934 drought period, after fishery, water quality and other flow and operational requirements imposed by terms and conditions existing and licenses permits and other agreements pertaining to the Central Valley project under Federal, State or local law existing at the time of enactment of this bill.

The bottom line of what I read, in addition to the 236,000 acre-feet that my bill commits, right off the top, there is 800,000 acre-feet more off the top. And in dry years, is there any provision for letting up, a lessening of that tremendous burden, as you scoop off the top of the bucket 1 million acre-feet of water?

The answer to the question is, yes, there is some relief. I believe that relief is a reduction of the 1 million acre-feet of 25 percent. In other words, first off the bucket comes water for fish and wildlife, and then what is left, you can move to urban areas, people and jobs, or to the Central Valley agriculture, the No. 1 industry of our State.

But in a dry year, what do they do in H.R. 429? It says here on page 250 of the conference report:

> The Secretary may temporarily reduce deliveries of the quantity of water dedicated under this paragraph up to 25 percent of such total whenever reductions due to hydrologic circumstances are imposed upon agricultural deliveries of Central Valley project water, provided that such reductions shall not exceed in percentage terms and reductions imposed on agricultural service contractors.

In other words, in dry years, we know that the delivery of water is going to be reduced to urban areas and to farmers. What we are saying here, and what they are saying in H.R. 429, is you are not going to reduce fish and wildlife any more than you are farmers, than you are people and their jobs.

I was listening to Senator BRADLEY as he talked about the need to protect the delta smelt. I think he is right. I think we should protect the delta smelt. We have to do everything we can to enhance the resource of the delta smelt. But should we put people out of work for the delta smelt? Do you want to drive farmers out of business? Do you want farm workers who cannot feed their families? Do you want a $4.5 billion hit on the economy of California, putting tens of thousands of people in unemployment lines for the delta smelt?

Something is not right. I want to protect the delta smelt. We all want to protect the delta smelt, but if you do not have a job and you cannot feed your family, do you really care about the delta smelt?

So you see one of the problems with H.R. 429 is that it says the delta smelt is as important as the farm worker and his family, as the small farmer, as the person living in San Francisco, or living in Los Angeles.

The delta smelt is as important as your kids. That is wrong. That does not mean that we should not do everything we can to protect the delta smelt. I suggest that we do that in this bill. But we sure do not make it equal to people and jobs.

We get to the restoration fund. I cited that in the bill pending before us we provide 22 different provisions to improve fish and wildlife refuges, to restore the resources of salmon and steelhead trout, an important resource. We want to do that. That is a worthwhile goal.

How do the two bills go about it? How does H.R. 429 do it? How does the bill before us do it? H.R. 429, the measure this House will vote over my objections, vote it out of here tomorrow, sets up a $50 million fund. I guess I should be more direct—a $50 million tax, a tax on all CVP, Central Valley project, water and power users.

Do you think for a moment that this $50 million of tax is going to be paid for by farmers? Not unless they are crazy. I was a businessman for 17 years and when I had additional costs placed on the back of my business, I passed it on to the consumers if I could. If I could not, I ate it. And if it got too big, I just got out. But if I could, I passed it on.

So where does that $50 million come from? It will come from the price of apples, it will come from the price of oranges, it will come from the price of steaks, and it will come from the price of avocados, and so forth. That does not mean we do not need a restoration fund, but let us use a little common sense. Let us not hit them so hard. That is why in my bill I do not ask for $50 million. I ask for $20 million.

Let us get to another very important and critical and contentious issue—contracts, water contracts. No longer a 40-year contract. That went out the window in 1991 when we first began to discuss this bill. I never thought for a moment, quite honestly, that we would end up with a bill if we were going to get one that would still have a 40-year contract. I have already talked about the bill that is pending before us. It has a 25-year contract.

Here is what my bill, that is currently before us, says about contracts and renewal of existing long-term contracts. And understand, the only importance, by the way, the only importance other than directly to the landowner, the farmer, or the urban dweller that is also part of the CVP, the only importance of any water contracts is to the value of your land. If you have a contract and it is long-term, your land is obviously more valuable than if you did not have a contract.

But it is important in another way that it keeps people working and in business. It is important that you have a contract that you can take to the bank, a contract that you can take to the bank and say, Mr. Banker, water which is an essential commodity not only to the value of my land, but more importantly, water which is the essential commodity for growing my crops is going to be there and, therefore, I have a contract sufficient in length that you can count on the fact that I am going to get some water. I am not going to get a full allocation everywhere. I will get full allocations in wet years and a little less and maybe a lot less, but I will get some water even in dry years. So on the important issue of contracts here is what I say in the bill that is before us:

"Notwithstanding the provisions of the act of July 2, 1956, the Secretary shall upon request renew all existing long-term repayment contracts providing for the delivery of water or water service contracts from the Central Valley Project for a period of 25 years"—not 40, 25 years—"and for successive periods of 25 years each."

The renewals, they are renewals.

That is the approach that is before us today.

The one we will be voting on tomorrow, H.R. 429, they offer a 25-year contract but, like in most contracts, you have to read the small print. I will read the print.

For H.R. 429, renewal of existing long-term contracts.

> Notwithstanding the provisions of the act of July 2, 1956 the Secretary shall upon request renew any existing long-term payment or water service contract to the delivery of water from the Central Valley project for a period of 25 years and may renew such contracts for successive periods of up to 25 years each.

We agree. The bill before us and this bill is the same. No, because it goes on. There are conditions, a couple of conditions applied to getting this 25-year contract.

One, no such renewals shall be authorized until appropriate environmental review, including the preparation of the environmental impact statement. It is new, brand new—let me repeat it—requiring the preparation of the environmental impact statement required in section 3409 of this title has been completed.

Contracts which expire prior to completion of the environmental impact statement required by section 3409 may be renewed, they may be renewed, for an interim period not to exceed 3 years in length. And for successive interim periods after the first 3—and I am going to tell you about this these environmental impact statements, they can take a long time to be completed.

So if you do not get it done after your first 3-year contract you get renewals. For successive interim periods for not more than 2 years in length, until the environmental impact statement required by section 3409 has been finally completed at which time such interim renewal contracts shall be eligible for long-term renewal as provided above. Such interim renewal contract shall be modified to comply with the existing law, including provisions of this title.

With respect to all contracts renewed by the Secretary since January 1, 1988, the Secretary shall incorporate in such contracts a provision requiring payment of the charge mandated in subsection 3406(c), subsection 3407(b) of this title and all other modifications needed to comply with existing law, et cetera.

So, yes, both the bill before us and H.R. 429 have 25-year contracts. The big difference is do not try to take that 25-year contract in H.R. 429 to the bank unless you have completed an environmental impact statement. That does not sound bad, does it? An environmental impact statement.

So what? What you have to do and I know a little about that. I was a planning commissioner in the city of Anaheim for about 4 years. And anytime anybody wanted to come in to develop their land, whether it be one lot or 2,000 acres, we would typically require an EIS.

So what is an environmental impact statement? The environmental impact statement was intended by law to assess any potential damages to the environment prior to completion of the project—and that makes a lot of sense. You should do that.

What was well-intended in creating the law of environmental impact statements has been abused and abused and abused.

You see you can argue so much and so long over an environmental impact statement that you will need a battery of attorneys, and you can spend up to a decade in court.

So now let us apply this requirement of H.R. 429 on contract renewals. You can get a 25-year contract provided you have completed the environmental impact statement.

How about the relief? the relief is you will get a 2-year contract or a 3-year contract. First, you get a year contract, and then while you are combating it out on the environmental impact statement, you get 2-year contracts until you either do it, or you do not. If you do it, you get 25 years.

If you do not, then for perpetuity, forever, you will operate under a 3-year contract. Now, is that so bad? It is probably no worse, as I said earlier today, than somebody who wants to go out and buy a home and they cannot pay cash for it—and there are not too many people that can pay cash for houses—so they go to the bank and get a mortgage.

The bank says: I will give you a 2-year mortgage, and then come back in 2 years. We will see about it.

Would any of you—would any of you—buy a home under those conditions? The answer is no. And I think that would be the wise answer, by the way. Then how do we expect farmers to stay in business when all they get is a 2- or 3-year contract?

So yes, in the bold print, it says 25 years in H.R. 429. But read the fine print, that is not there.

Talking about water transfers, that is another important agreement and another objective in the bill. We want water transfers. We all want water transfers. Senator BRADLEY wants water transfers, Senator JOHNSTON, Congressman MILLER. I want water transfers. It is all how you go about doing it.

Well, H.R. 429, the one we will vote on tomorrow, imposes a $25 surcharge per acre-foot transferred. Is that heavy duty?

And what do you do with the money? First of all, I want to tell you, it is heavy duty. If you are a city, and you are paying $400 per acre-foot for your water right now, and many of them are, if you buy 1 acre-foot of water, you are going to pay another $25; your price is now $425. And what happens to that $25 per acre-foot?

Well, let us look at the bill, H.R. 429.

> *Provided further*, That the Secretary shall impose an additional annual charge of $25.00 per acre-foot (October 1992 price levels) for Central Valley Project water sold or transferred to any State or local agency or other entity which has not previously been a Central Valley Project customer and which contracts with the Secretary or any other individual or district receiving Central Valley Project water to purchase or otherwise transfer any such water for its own use for municipal and industrial purposes—

That is people and jobs; and what do you do with it—

> to be deposited in the Restoration Fund—

That is the restoration fund set up so that we have money and we can do the projects outlined in the bill—

> and provided further, that upon the completion of the fish, wildlife, an habitat mitigation and restoration actions mandated under section 3406 of this title—

Those are those 22 provisions I was talking about—

> the Secretary shall reduce the sums described in the paragraph (c)(2) of this section to $35 million per year—

Reduce it to $35 million a year; the projects are already completed, now so the Secretary is authorized to reduce it to $35 million per year in stead of the $50 million per year where it sets while we are doing the project—

> and shall reduce the annual mitigation and restoration payment ceiling established under this subsection to $15 million on a three-year rolling average basis.

Now, that is in comparison to an alternative. In my bill, the one that is before us now, we provide for water transfer of $15 per acre foot instead of $25.

Is that important? You bet it is. And so here is what it says in the bill that is currently before us, the bill that I say is an alternative.

> New Central Valley Project Customer Access Charge. The Secretary shall impose an additional annual charge of up to $15 per acre foot for Central Valley Project water sold by or transferred to any state or local agency which is not within the area watershed or county of origin as those terms are defined in California law and has not previously been a Central Valley Project customer, and which contracts with the Secretary or with any other individual or district receiving Central Valley Project water, to purchase or otherwise transfer any such water for its own use, to be deposited in the Restoration Fund.

A difference to one approach in H.R. 429, this approach in the bill that is before us. I say it is a dramatic, dramatic difference.

Well, Mr. President, those are the primary differences.

Well, perhaps I can expand a little more on one primary purpose—I have already talked about it—my priorities being people and jobs first, and animals and plants second. I talked about the delta smelt. And I talked about the fact that the bill we have before us, as changed, does provide for project purposes; that is putting animals and plants on the same level as people and jobs, as it pertains to those specific 22 provisions.

But there is a big difference between project purposes as defined in this bill that we have before us, and what is in H.R. 429.

This is H.R. 429:

> **FISH, WILDLIFE AND HABITAT RESTORATION.**
>
> (a) AMENDMENTS TO CENTRAL VALLEY PROJECT AUTHORIZATIONS.—Act of August 26, 1937.
>
> (1) in the second proviso of subsection (a), by inserting "and mitigation, protection, and restoration of fish and wildlife" after "Indian reservations,";
>
> (2) in the last proviso of subsection (a), by striking "domestic uses;" and inserting "domestic uses and fish and wildlife mitigation, protection and restoration purposes;"

That is it. It is that clause that sets the delta smelt on a level playing field with people and their jobs. As I have said, that is wrong.

And as hard as I have tried to accept this concept where we take plants and animals and we put them at the same level as human beings, people and their jobs—and I have done that on the specific 22 provisions enumerated in the bill—I just think it is wrong to say that is forever in the future how the Central Valley project water will be distributed; how we will determine who gets what out of the bucket of water.

So that is where we stand today, Mr. President.

Let me close my remarks by talking about a number of points that I have made, and Senator BRADLEY has made in his opening hour. And he has about another hour to go, once I wind down.

Senator BRADLEY said that to do nothing would be wrong. And he is right; I said he is right. We have to do something.

But I have also argued that it should not be H.R. 429. It should be the proposal that we have before us today.

Senator BRADLEY said, if we do not pass H.R. 429, ports might be threatened, might be closed because they need to dredge. Silt builds up in a port. As that silt builds up you cannot get the huge freighters in. They run aground so you need to dredge. And he is right about that. We want to keep the ports open.

But there is another way to do it than placing the delta smelt on par with people and jobs. In fact, I am reminded of the port of Oakland, an extraordinarily important economic force in the entire bay area of California, San Francisco, and Oakland, that entire bay area.

I was visiting that port in August of 1991, and they gave me a tour of the port. And they sure enough said, "Senator, we have a problem here."

I said, "What is your problem?"

They said, "Well, Senator, if we cannot get dredging permits"—that very dredging Senator Bradley was referring to—"we may have close the port."

I said, "What does it mean if you have to close the port?"

They said, "Senator, it means about 100,000 jobs to the bay area and about a $4.5 billion hit on the economy of the bay area when those jobs go."

I said, "Why can you not get dredging permits?"

And they said—as Senator BRADLEY was pointing out—"The reason we cannot get dredging permits is because if we dredge we will threaten an endangered species."

I said, "What endangered species?"

They said, "The winter run of Chinook salmon."

I said, "Gee whiz, 100,000 jobs, $4.5 billion out of the economy, that is pretty important. I am going to go back to Washington and I am going to find out if there is anything I can do about this."

So I did, I called into my office the Department of Commerce, the National Marine Fisheries, and the Corps of Engineers. Those are the folks that issue the permits. I told them about the story.

I said, "Is it true?"

They said, "Yes, Senator, it is true."

I said, "Well, tell me about this endangered species, the winter run of Chinook salmon. How many fish are there in a winter run?"

They said, "Senator, the winter run this year is estimated to be 191 to 200 Chinook salmon."

I said, "Wait a minute." Is aid, "On one hand we are talking about 100,000 jobs, $4.5 billion out of the economy, and on the other side of the scale is 191 to 200 salmon? There has to be a way. There has to be a way."

They said, "Look, Senator, we do not write the laws. We just enforce them and regulate them."

I said, "I do not want you to violate the law. But there has to be a way. Have you folks ever sat down and talked to one another, figured out a way you can protect the salmon, and by all means protect 100,000 jobs?"

They said, "Well, Senator, no, we have not."

I said, "Well, I have news for you. You and I are going to become very good friends. Because we are going to meet in this office every Tuesday morning until we find a way."

Sometimes you succeed in an approach like that. Sometimes you fail. And I have done both.

In that case, within 3 weeks we had found a way to protect 191 to 200 estimated winter run of Chinook salmon, but most important, to protect and save those jobs in the port of Oakland.

Mr. President, I will be very brief in winding up here. I think now is the time to try to draw together the various arguments made throughout the time that I have been afforded this afternoon for which I am thankful.

First of all, regarding the Central Valley project in California, what should be done with it?

Mr. President, I think what should be done and what is being accomplished, as we meet here today, is a transfer of the Central Valley project to the State of California. And, barring that, an agreement under which the State of California would manage and control the Central Valley project and could, in their own wisdom, determine how allocations of water will be made in that most important project.

I think the State of California, the contractors to the Central Valley project, owe the Federal Government full payment, whatever this Nation's taxpayers have invested into the Central Valley project on their behalf. On the other hand, the management and control, the ability to determine their own destiny, their own future, should be left in the hands of Californians, not Washington, DC, and not the Federal bureaucracy.

We are not there yet. The Governor of the State of California, Pete Wilson, has been in close negotiations with the Department of the Interior relative to that objective. He has not achieved it yet, but I believe they are getting close. I am hopeful for, one, that that process is completed in an expeditious fashion so that California and Californians can control their own destiny, as well as their future.

However, in the interim, we do have a responsibility to address a reallocation of water from the Central Valley project to urban areas, to people and jobs, as I refer to it, as well as to fish and wildlife and the improvement of it for California. We need to do it in a way that the water is moved from Central Valley contractors, farmers, to these two other areas, not in a way to destroy the rich economy of the No. 1 industry of the State.

The bill we have currently pending before this body and will soon now pass to the House of Representatives is our best attempt to reach an appropriate compromise, to reach an appropriate balance in the interest of people and their jobs, agriculture, and fish and wildlife purposes. All three are important. And each of those interests in water believe their particular interest is absolutely critical, not just important. So we need to address those three interests. The bill before us, I argue, does that, and H.R. 429 does not.

It is important to protect our environment. It is important to protect fish and wildlife, and it is particularly important to protect those small businesses that work in the fishing industry.

So we need an approach that, in fact, will address their needs, those small entrepreneurs who worked very hard to eke out a living in the fishing industry. We need to protect them and help them. We also need to do whatever we can to protect the environment. I think the measure before us does those things.

Alternatively, the bill we will vote on tomorrow, I argue—and will argue just a bit more tomorrow, but not long—that H.R. 429 will go a long way toward addressing the needs, the real needs, of fish and wildlife. There is no doubt about that. But I argue that it will do it at the expense of the other important parts of the equation—people and their jobs, and agriculture. That, in fact, if passed and if signed—and I will do what I can to ensure that the President does not sign the bill and vetoes it—but if passed and signed, it will lead us to a decade of litigation, a fight over water that the State of California has never seen.

If one is familiar with the history of California, one well realizes that we in California have been fighting many years. Water fights between northeastern California and southern California, between the various users of water, have been violent even at times. In fact, it was Mark Twain that once said: Whiskey is for drinking, and water is for fighting.

So it has been the history of California in its battles over water. I hope that this bill before us, as it makes its way over to the House, that the House would come back and pass that bill to the President of the United States for his signature, and he will sign it, because I think that will avert yet another water war, a decade of litigation, in California.

So, in closing, I want to thank our majority leader, Senator MITCHELL, our minority leader, Senator DOLE. I thank Senator BRADLEY, who has been more than generous, Senator WALLOP for his efforts on my behalf, Senator JOHNSTON, the chairman of our committee, who has also been very generous, and my colleagues who have worked so closely with me on this issue so critical to California, and the water projects part of the bill we will take up tomorrow in their interests in their States.

It has been a learning process for me. It has been a process in which, for my part, I hope that the people that I have worked with would say that he tried. He tried. That is about all we can ask of anyone, Mr. President, is that they try.

So, Mr. President, at this particular time, I will yield to the floor to Senator BRADLEY and yield all of my remaining time.

Mr. BRADLEY addressed the chair.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. BRADLEY. Mr. President, before the distinguished Senator from California leaves the floor, let me say to him that I cannot think of anything else that he could have done to represent and push his position than he has done.

So when he said he hopes he will be thought of as someone who tried, let me say as the subcommittee chairman who has worked with him, that I salute him. He, indeed, has tried and tried very hard.

Mr. President, if I could address some of the loose ends of this argument, so that the RECORD will reflect clearly the strong and broad support for H.R. 429.

I want simply to, once again, read into the RECORD all of those people who have written in support of H.R. 429.

As I said earlier, the Bay Area Council, composed of 250 of the largest employers in the San Francisco Bay area; board of directors, Robert D. Perry, Federal Reserve Bank of San Francisco; James Brown, treasurer, Building Construction Trades; Council of Alameda County; Robert Fisher, director of San Francisco Foundation; William Seton, Chairman and CEO for American President Companies; Michael McGill, Bay Area Economic Forum and various mayors. Quite a distinguished group.

I will ask unanimous consent that the list be printed in the RECORD in support of H.R. 429.

Mr. President, in addition to the Bay Area Council, there is the Bay Area Economic Forum which is a strong supporter of this bill.

I ask unanimous consent that the membership of this group be printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

THE BAY AREA ECONOMIC FORUM

The Bay Area Economic Forum is a public/private partnership of regional leaders concerned with economic issues facing the San Francisco Bay Area. Forum members are committed to fulfilling the economic potential of the area while maintaining its unique quality of life.

BOARD OF DIRECTORS

Chairman: Robert T. Parry, President & CEO, Federal Reserve Bank of San Francisco.

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James L. Brown, Secretary/Treasurer, Building & Construction Trades, Council of Alameda County.

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George M. Keller, Chairman of the Board, Retired, Chevron Corporation.

Dr. Donald Kennedy, President, Stanford University.

Dr. Julius R. Krevans, Chancellor, University of California, San Francisco.

Michael S. McGill, Executive Director; Bay Area Economic Forum.

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W.B. Seaton, Chairman & CEO American President Companies, Ltd.

Angelo J. Siracusa, President Bay Area Council.

Hon. Richard L. Spees, Council Member, City of Oakland.

William E. Terry, Executive Vice President, Hewlett-Packard Company.

Chang-Lin Tien, Chancellor University of California, Berkeley.

RADM Robert L. Toney, USN (Ret.), President & CEO, Oakland Chamber of Commerce.

Revan A.F. Tranter, Executive Director Association of Bay Area Governments.

James A. Vohs, Chairman, Bay Area Council and Chairman of the Board Kaiser Foundation Health Plan, Inc.

Forum Staff

Michael S. McGill, Executive Director; Sally DiDomenico, Assistant Director.

"Using Water Better" has been produced by the Bay Area Economic Forum. For copies of this report, call or write the Forum at 200 Pine Street, Suite 300, San Francisco CA 94104, 415/981-7117.

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Richard Roos—Collins, Friends of the River.

Larry Serituk, Sage Clearing.

Robert Skinkle, Regional Economist, Wells Fargo Bank.

Mr. BRADLEY. Then, of course, a very important endorsement comes from the California Business Roundtable. I have already read into the RECORD the note from Mr. James Harvey. I simply want to read into the RECORD the names of those in the California Business Roundtable Water Task Force members, representing the 100 largest corporations and banks in California.

The task force consists of Mr. James Harvey, chairman of Transamerica Corp.; John E. Bryson, chairman and CEO, Southern California Edison Co.; Harry M. Conger, chairman and CEO of Homestake Mining Co.; Lawrence A. Del Santo, chairman and CEO, Lucky Stores, Inc.; Sam Ginn, chairman and CEO of Pacific Telesis Group; Paul Hazen, president of Wells Fargo Bank; Bruce Karatz, president and CEO of Kaufman & Broad Home Corp.; Thomas L. Lee, chairman and CEO of the Newhall Land & Farming Co.; Richard M. Rosenberg, chairman and CEO of Bank of America.

Mr. BRADLEY. That list also includes Alan Seelenfreund, chairman and CEO of McKesson Corp.; Phillip L. Williams, vice chairman of the Times Mirror Co.

This is a distinguished list of people who have one objective, and that is to create jobs in California. They strongly support this bill, because they recognize that it will create jobs in California, and they recognize that water is needed in the commercial and industrial sector. Without that water, they cannot expand to create the number of jobs that they otherwise would create.

I want to address, if I could, the letter from the Secretary of the Interior, Mr. Lujan. I would like to quote certain segments of the letter and then offer my analysis of them.

He says, for example: "It provides for a number of expensive measures," referring to H.R. 429, "many of which have not been subjected to feasibility analyses and would be financed largely at Federal expense."

The structural measures in title XXXIV came from Senator SEYMOUR's bill and from Senator Wilson's bill in the 101st Congress. They were proposed by growers and by a State-based task force so the only measures in here have actually come from California Representatives.

Next Secretary of the Interior Lujan states: "It affects" meaning H.R. 429, "the State of California's authority in matters of water allocation, distribution and use; and conflicts with the equitable distribution of responsibilities embodied in the Coordinated Operating Agreement".

To the contrary the bill contains a detailed savings clause requiring the Secretary to comply with State water law and the Coordinated Operations Agreement in implementing the bill.

The bill contains a section—opposed by the growers—that preserves the State of California's authority to condition the CVP's water rights for any purpose. I would like to repeat that. The bill contains a section that preserves the State of California's authority to condition the CVP's water rights for any purpose.

Mr. President, the greatest threat to California's authority over CVP water is the Secretary's continuing efforts to renew CVP water contracts for another 40 years. That is the fact. The Secretary goes on to say:

> Contrary to one of its stated purposes, the title reduces the operational flexibility needed to achieve increased multiple uses of water, including the ability to provide water for wildlife refuges.

The only flexibility that this bill reduces is the Secretary's flexibility to dry up rivers and wildlife refuges. This bill authorizes voluntary water transfers, water conservation, conjunctive use facilities, new conveyance facilities, and requires the Secretary to develop a plan to increase the overall water supply of the CVP by as much as 1 million acre-feet.

Next, the Secretary says:

> It diverts repayment revenues to a special interest fund.

The bill does nothing of the kind. It diverts increased repayment revenues raised from water transfers, which would be impossible without this bill. It diverts—it actually raises it in places—to a fund to be used to mitigate for the project's environmental damage. The money is raised in the CVP and used in the CVP.

Next the Secretary says:

> It mandates operational changes which fail to consider the consequences on other statutory or current contractual obligations. The current delivery infrastructure and contractual water commitments are not designed to accommodate such a large mandatory allocation to fish and wildlife flows. In most years, reclamation would be unable to meet current contracts or provide stable water levels for reservoir recreation and power generation.

Just a couple points on that.

Current operations fail to consider the consequences on fish and wildlife. That's why the project is in so much trouble under State and Federal environmental laws.

The current delivery structure and contractual water commitments must be changed so that the project stops causing so much damage. That's why the bill authorizes changes in the project's delivery structure and contractual water commitments.

The Bureau's inability to meet—this is an important point—current contracts is simply a result of the fact that current contracts is the project's water.

And the Chair, the distinguished Senator from Colorado, I am sure would be interested in this point. The Bureau's inability to meet current contracts is simply the result of the fact that they have overcontracted the project's water. In other words, the CVP has about 9 million acre-feet under contract but in a normal year it delivers only about 6–7 million acre-feet.

This is one of the mind-boggling facts of this whole issue which I think the distinguished Senator from Colorado, who is in the Chair, has indeed an abiding interest in. I know he will look carefully at this whole area which is the overcontracting of water. The project has never produced 9 million acre-feet. So why did the Bureau of Reclamation contract for 9 million acre feet?

That is a mystery that we hope to get to the bottom of next year.

Further, reservoir recreation is not an authorized project purpose, and power generation is a subordinate purpose behind irrigation, municipal and industrial fish, and—under this bill—fish and wildlife mitigation.

Next, the Secretary of Interior in his letter goes on to state:

> The title's goal of "all reasonable efforts" to double the natural production of anadromous fish imposes unnecessary uncertainly on CVP users and makes it difficult to plan for either implementing the bill or mitigating its effects on agriculture.

The bill's doubling goal is taken directly from State law. It does nothing more than put the CVP under the same duty as the State Water Project.

The doubling goal, if enacted all by itself, might impose uncertainty on CVP users, but it is not by itself, it's accompanied by the explicit caps on the amount of water and money the CVP users can be called upon to contribute toward meeting the doubling goal.

Finally, Secretary Lujan states:

> The title also introduces a significant uncertainty in water contract provisions by reducing the length of renewed contracts, creating the ability to allocate water to fish and wildlife as contracts are renewed, and providing no requirement to renew contracts after an initial 25-year period.

I know the Chair, the distinguished Senator from Colorado, would like to hear this point. The Secretary of Interior has written in this letter that it is not enough to renew a contract guaranteed for 25 years. In my view that just reflects the Bureau's unbelievable determination to try to renew water contracts indefinitely. The Bureau wants to lock in 40-year-old patterns of water use for another 40 years and more 40 year periods after that.

I knew that this situation was very difficult to get compromised when, after we agreed that anyone holding a water contract will automatically get another 25 years and, at the end of that 25-year period, the Secretary may renew for another 25. I mean, 25 years from the time the contract expires—which would be in the middle of the 21st century—California might be a little different place than it is now. Those receiving the benefit said, "no," we want that benefit for the next 50 years. At that point I realized that ultimately we were not going to be able to get 100-percent agreement.

Now, there is one thing I would like to place also in the RECORD. One of the more disturbing features of whole debate on CVP reform has been the Bureau of Reclamation's steadfast opposition to even the most modest proposals to improve the CVP's environmental accountability. For example, just last week, the Bureau circulated a letter criticizing the offer House conferee's offered on CVP reform. In an ideal world, where good public policy reigned, the Bureau would have tried to help the conferees weigh the proposal. Instead, the Bureau did its best to mislead the conferees with dubious numbers, specious assumptions, and flawed conclusions.

To begin with, the Bureau's analysis completely ignores the future the project faces even in the absence of CVP reform legislation. The Bureau wants the reader to compare the House offer to some long-gone perfect world scenario, overlooking the inescapable fact that the easy days of CVP irrigation are gone for good—largely due to the Bureau's resistance to fixing environmental problems before they became emergencies. Some changes are coming soon; some have already happened. We know, what they are going to be. For example:

Winter-run chinook salmon will require, for the foreseeable future, at least 300,000 acre-feet per year of additional project yield. CVP bay-delta obligations will require at least 250,000 acre-feet per year of additional project yield. This sum amounts to only 5 to 10 percent of the additional bay/delta water needs identified by State and Federal fish and wildlife agencies in recent testimony before the State water resources control board. It would be significantly more than the 250,000.

Minimum releases to the Trinity River were increased to 340,000 acre-feet per year by secretarial decision in May 1991, thereby reallocating up to 117,000 acre-feet per year more than the Bureau's cited historic release levels.

Finally, there is a general agreement, reflected, among other places, in the Seymour and Dooley-Lehman-Condit proposals for CVP reform that the CVP should provide up to 424,000 acre-feet per year of level 2 refuge supplies during normal water years, up to 188,000 acre-feet per year more than the historic refuge supplies referenced by the Bureau.

Taken together, the above elements alone could result in a reallocation of CVP yield totaling almost 900,000 acre-feet per year, but, in the absence of legislation, this reallocation could happen by virtue of court decree, could happen by secretarial decision, could happen a number of ways up to 900,000 acre-feet. This reallocation would happen with no Federal support or authority for conservation, no off-project transfers, no conjunctive use or water banking. None of those factors was incorporated in the Bureau's retrospective analysis.

The Bureau's also focuses on a period of severe and unprecedented drought. In sum, they've put together a scare story. To merely superimpose on historic project operations the nominal requirements of the House offer completely ignores: First, the normal flux of wet and dry years in western surface water hydrology; and second, the demand side of the equation including price response—prices go up consumption down.

Moreover, the letter entirely ignores project supplies and deliveries in the Friant Division, which ranged from 540,000 AF/yr to 1.1 million AF/yr during the study period selected.

The Bureau asserts, without any documentation, that the House offer would severely restrict the CVP's ability to provide water to municipalities, farms, households and industries in most years. Yet the Bureau completely ignores the effects on water supply and demand resulting from improved water management, conservation, banking, transfers, and conjunctive use—all primary elements of the House offer. These techniques may not be how things were done during the Bureau's heyday, they may not like them, but they are certainly major features of the way everyone in California expects to manage water today and in the future.

The Bureau asserts that drought relief associated with water transfers under the House offer is highly questionable because otherwise available water supplies are irrevocably dedicated to fish and wildlife purposes. This ignores, at a minimum, the potential for normal-year/drought-year alternatives, such as options and exchanges with other sources of supply—alternatives that any creative water manager would pursue as an element of a CVP water-transfer portfolio. Finally, it also ignores the importance of water banking, and more generally the use of CVP conveyance capacity by all Project entities in the marketing of supplies "off Project."

In other words, Mr. President, the Bureau wants the reader of this document to leap to the conclusion that changes in CVP deliveries translate immediately and inescapably into economic ruin. Actual experience during this drought indicates that the CVP agricultural water users are far more resilient than the Bureau would have us believe. Consider, for example, the case of Westlands Water District. From data presented in a report entitled "Analysis of the Economic Impacts of the Central Valley Project Improvement Act" (Zilberman et al., March 1992), what can be observed for the period 1987–90 is as follows:

First, a 31-percent decline in available CVP supplies;

Second, a 17-percent decline in total water use—including groundwater;

Third, a 5-percent increase in irrigated acreage;

Fourth, an 8-percent increase in crop receipts; and fifth, a 30-percent increase in crop receipts per acre-foot of water.

Now what they did was shift to higher value crops and use water more efficiently.

According to the Congressional Research Service, actual experience during the present drought indicates that:

> The end result of a significant reduction in surface water deliveries or a significant increase in the cost of water to agriculture would probably include:
>
> Reductions in the acreage of farm program crops such as rice, cotton, and grain.

Remember, 50 percent of the water goes to 4 crops which produce 11 percent of all the crop value. People should stop investing water in those crops and go to higher value crops.

> Maintenance of tree and vine crop acreage, with perhaps some yield reductions, at least through their economic life.
>
> More specialization in high value crops, as dictated by current market conditions. At present these include vegetables, along with tree and vine crops.
>
> Retirement of marginal farmland. . . .

Do not grow if it is not producing.

> Lower agricultural land values leading to increased municipal and industrial development of farmland in some areas. However, declining land values may be more than offset by increases in land values in areas that either receive more water or have a more stable assurance of long-term supplies.
>
> Additional capital investment in technology that improves the conservation and efficiency of irrigation water.
>
> More rapid depletion of underground aquifers with reduced supplies and higher costs for all underground water users.

In other words, what happens in a drought is you use water more efficiently, you conserve, you move to a higher value crop. Pretty simple. A lot of farmers know it, and they are doing it. That is why even in drought circumstances farmers are able to increase the value of their crop.

The Bureau's letter complains about—and completely misstates—the House offer's "obligation to concurrently mitigate project operations." The third paragraph on page 1 of the Bureau's letter implies that "concurrent mitigation of operations, the achievement of as yet undetermined San Francisco Bay and Delta outflows, and the implementation of a program to fully mitigate fishery impacts associated with the operations of the Tracy Pumping Plant" are somehow additive obligations, one burden heaped upon another. Again, the contrary is true. These are concurrent and complementary obligations—not additive. They are, in fact, merely three ways of restating the same environmental obligation.

The Bureau is correct in asserting that meeting these obligations may require some pumping curtailments during the late winter and spring months. This will not, however, necessarily adversely affect the ability to deliver irrigation water south of the Delta, although it may, and should, entail some change in the timing of the pumping. As additional south-of-Delta storage becomes available—Kern water bank, Los Banos Grandes, or demand is reduced—dry-year land fallowing, retirement of drainage problem lands, improved conjunctive use of groundwater—supply impacts associated with this temporal displacement in pumping would become negligible.

The Bureau's letter objects to the House offer's requirement that the CVP meet or attempt to meet temperature requirements in the Sacramento River, suggesting that to do so may not be operationally feasible. In fact, the contrary is true: meeting temperature requirements would be one of the purposes of the block of water dedicated to fish and wildlife purposes under the bill. That new asset, combined with the ability to carry the water over from year to year, will greatly improve the ability of Shasta reservoir to meet Sacramento River temperature requirements.

Moreover, in making their case on this point, the Bureau suggests that it is currently bound to meet certain goals for storage in Shasta that, in fact, don't match the Bureau's actual practice in recent years. "Watch what we say, not what we do". Consider, for example, assumption No. 2 in the Bureau's analysis, which states that "storage of 8 million acre-feet as of September 30 each year is desirable to provide reasonable assurance of an adequate water supply to all beneficial uses * * *" including, presumably, temperature control for endangered salmon.

Why, then, did the Bureau sustain 100 percent deliveries—including the sale of surplus water—through 1989, in the midst of the current drought, thereby depleting carryover storage to 4.6 million acre-feet?

Why, in the same year, was the Bureau attempting to market and commit an additional 1.5 million acre-feet for consumptive uses?

Recognizing the potential tension between increased minimum flows to improve temperatures for fish and desired increases in carryover storage, the House offer provides not only for improved operations and revised carryover objectives, but for construction and funding of temperature control devices at Shasta, Trinity, and Lewiston Dams.

By the way, the House offer does not create new temperature standards for the Sacramento. They are in place today, under existing State law. If the Bureau had complied with State law, the winter run chinook very probably would not be in anything like the dire condition it is in today. Unfortunately, State law does not seem to be something the Bureau has shown much concern about in the past.

Mr. President, I will make one last point. Throughout this debate, the distinguished Senator from California has said if H.R. 429 passed, there would be a loss in farm income in the State of $4.5 billion. I would respectfully disagree with my colleague from California.

The reason I do not believe this bill would produce a loss of $4.5 billion in the sector is because the total agriculture sector of the State is $18.5 billion. The total agriculture value attributable to the Central Valley project is $3.5 billion. The Senator from California is asserting that if we reduce the amount of water going to Central Valley agriculture by 15 percent, the result will be a loss which is greater than the total value of all of the crops produced in the Central Valley project. It is on its face an unsupportable position, to say the least.

How could he have asserted that if you simply cut back on the amount of water going to Central Valley project agriculture by 15 percent, you will lose more agriculture product, economic product, than exists in the entire Central Valley project? One could have to say because he was using a bad economic model, to be generous.

He is probably using a bad economic model. I think I have discovered that model. It is called the California Department of Food and Agriculture. It is that model he has used to get his $4.5 billion figure, which on its face is nonsensical.

I then asked the most respected economic consulting group in the Central Valley of California, Law & Economics Consulting Group out of the University of California, Davis, to take a look at this and tell me what they thought. Their response was:

CDFA's prediction of lost farm income represent a very unlikely outcome of the proposed legislation. The CDFA analysis strongly overestimates the possible impact of the water supply reduction for the simple reason that growers will cease production of low-value crops before they will alter their production decisions concerning high-value crops. The experience of California's recent drought shows clearly that when farmers are denied water, they reduce irrigation to the lowest-value crops while continuing to irrigate high-value crops.

That is the point I made in my previous comments.

A more appropriate analysis of the impacts of the CVPIA must recognize that the reduction in water use will primarily affect lower-value crops and compute outcomes accordingly.

In other words the model is flawed.

I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD as follows:

LAW & ECONOMICS
CONSULTING GROUP, INC.,
Berkeley, CA, May 14, 1992.

Hon. GEORGE MILLER,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Longworth Office Building, Washington, DC.

DEAR CHAIRMAN MILLER: The Law & Economics Consulting Group, Inc., has been requested to review two analyses of the economic impacts of the Central Valley Project Improvement Act (CVPIA); one prepared by the California Department of Food and Agriculture (CDFA) in March 1992 and one generated recently by the California Agricultural Resources Management (CARM) model developed by economists at the University of California. It is our opinion that the CDFA analysis is fundamentally flawed and grossly overstates the actual economic impacts of the proposed legislation. We conclude further that the CARM impact analysis is a far more accurate representation of the economic effects of the proposed legislation. This model predicts a reduction in gross farm income of $262 million and an elimination of 570,000 acres from production following a 1.5 million acre feet reduction in water supplied to farmers by the CVP.[1]

CDFA ANALYSIS

The CDFA analysis assumes extreme rigidity in the allocation of supply reductions and in the response on individual farmers. Specifically, the analysis assumes that there will be no water trading and that agricultural output will be reduced in proportion to water reductions.

CDFA's prediction of lost farm income represent a very unlikely outcome of the proposed legislation. The CDFA analysis strongly overestimates the possible impact of the water supply reduction for the simple reason that growers will cease production of low-value crops before they will alter their production decisions concerning high-value crops. The experience of California's recent drought shows clearly that when farmers are denied water, they reduce irrigation to the lowest-value crops while continuing to irrigate high-value crops. A more appropriate analysis of the impacts of the CVPIA must recognize that the reduction in water use will primarily affect lower-value crops and compute outcomes accordingly.

CARM ANALYSIS

A far more accurate and sophisticated analysis is that incorporated in the 1987 California Agricultural Resources Management (CARM) model developed at the University of California to conduct policy impact analyses. CARM is a quadratic programming model that gauges the response of farmers to policy and environmental changes in six subregions: the Sacramento Valley, the Northern San Joaquin Valley, the Central San Joaquin Valley, the Southern San Joaquin Valley, and remainder categories for counties north and south of the Bay area. The Table below summarizes the changes anticipated by the CARM model:

The Impact of a 1.5 MAF Reduction in CVP Water Supply on Gross Farm Income:

Change in Gross Farm Income

[In millions of dollars]

Region:	*Amount*
SACV	-27
NSJV	6
CSJV	-174
SSJV	-79
NR	1
SR	11
Total	-262

The model predicts that the loss in gross farm income associated with the reallocation of 1.5 million acre feet of water is only $262 million. The CARM model further suggests that the proposed legislation will result in the elimination of 570,000 acres of land from production; most of this removal will be in low- or medium-value crops, including cotton, alfalfa, hay, rice, and wheat. These estimates are significantly below the CDFA's predictions of between $1.6 and $2.2 billion in lost farm income and the elimination of over 800,000 acres of farmland.

The CARM model is not a perfect predictor of the impacts of the CVPIA for several reasons. Most importantly, the CARM model assumes a well-functioning market for water. To the extent that such a market will function imperfectly, at least the short-run, the model underestimates the actual impact on the farm sector. On the other hand, the CARM model understates the actual impacts of a reduction in supply in that it does not consider the possibility for adoption of water-saving irrigation technologies by farmers in the affected regions. While there has been some movement towards adoption of advanced drip irrigation in response to the recent drought, farmers have been far more likely to increase their attention to irrigation management by adjusting the quality of existing furrows. There is clearly room for adoption of more advanced technologies. With these considerations in minds, it is our opinion that the impact analysis generated by the CARM model represent the actual consequences of the CVPIA far more closely than do the estimates offered by the CDFA.

We hope that this brief analysis is helpful in your efforts to resolve this important matter and responsive to the requests we have received to address the economic impacts of the proposed legislation. If you have any questions regarding this letter, or wish to discuss our work further, please do not hesitate to write or call.

Sincerely,

DAVID ZILBERMAN,
Professor of Agricultural and Resource Economics, University of California at Berkeley.

DAVID SUNDING,
Assistant Professor of Economics and Law, Boston College.

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[1] It is our understanding that the 1.5 MAF of fish and wildlife water in question will normally result in substantially less than 1.5 MAF reduction in water supplied to farmers. In above average years, available supplies tend to exceed total CVP demands and the "surplus" would be used to meet the CVPIA's fish and wildlife requirements; in drought years, the 1.5 MAF will itself be reduced by applicable deficiency criteria. To the extent that CVP supply reductions are minimized, the impacts stated herein will also be reduced.

Mr. BRADLEY. Mr. President, one should not need even that to realize that the estimate is wrong. How could 15 percent reduction of water produce a loss in crop value that exceeds the total crop value of the whole Central Valley Project?

I might say this consulting group goes on to say that, instead of $4.5 billion economic value loss from Agriculture, they conclude that, even with a reallocation of 1.5 million acre-feet, the total lost value in farm income would be $262 million. Since here we are only talking about 800,000 acre-feet, we are really talking about a half of that, $130 million, $140 million out of $3.5 billion.

One final comment points out that the State of California has a gross State economic product of close to $700 billion. In 1992, it is projected to be $752 billion, of which agriculture is projected to be about $16 billion, $18 billion manufacturing is $117 billion; finance, insurance, and real estate is $139 billion; services is $146 billion; transportation is $49 billion; wholesale trade is $46 billion.

So clearly it is a very diverse State, and yet a State in which out of $700 billion-plus, $760 billion gross State economic products, agriculture is $18 billion, and it uses 80 to 85 percent of the water. A 10-percent reduction in agriculture water use means you double the amount available in the commercial and residential sector.

The economic growth and diversity of California requires that we alter the way water is used in California. We simply cannot continue committing those amounts for agriculture.

In terms of employment, the State has 12.7 million people employed of which agriculture represents 400,000. Government services is 3.5 million; finance is 800,000; retail is 2.1 million; manufacturing is 1.9 million; transportation and utilities is 600,000; Government is 2 million; and construction is 521,000. All of these groups have more workers.

Mr. President, one final set of statistics so anyone reading this RECORD will be able to see we have tried to be fair. You have a gross economic product in the State of about $750 billion; $760 billion, with agriculture products of about $18 billion, and CVP agriculture products at $3.5 billion.

The CVP share of the economic product is 0.45 percent of the California economic product, and the CVP environmental water as a share of the California economic product is about .063. Basically, it is a little more than six one-hundredths of a percent. It is ludicrous to argue this would ultimately be the end of California agriculture. Or have a significant adverse impact on the state of the economy.

So, Mr. President, one last point. And this is, earlier in the debate the distinguished Senator from California made the argument that he is all against the project purpose section that we have in the bill. Let me just point out that the project purpose that we have in the bill is taken directly from the bill that was introduced by Congressman DOOLEY, by Congressman LEHMAN, and endorsed by the distinguished Senator from California himself. So the language in project purpose that he criticized earlier came directly from a bill he supported.

Mr. President, I am about ready to wrap up this phase of this debate and move on to tomorrow. Tomorrow, of course, we will be dealing with the whole of H.R. 429. At that time we will have an up-or-down vote. It is my hope there will be strong support for the legislation. But before we close this debate, I would like one last bit of information to be in the RECORD, because some people have asserted that 800,000 acre-feet of water for fish and wildlife is excessive; it will never be achieved; it will create an agricultural depression.

Let me suggest several ways that that 800,000 acre-feet could easily be obtained.

First, water conservation in areas tributary to the Delta;

Second, conjunctive use—ground water pumping in lieu of surface water diversions—in the Delta and Sacramento Valley, 200,000 to 300,000 acre-feet; $40 to $60 per acre-foot;

Third, dry year fallowing in areas tributary to the Delta—300,000 to 500,000 acre-feet; $125 to $200 per acre-foot;

Fourth, delta islands water storage and release—150,000 to 270,000 acre-feet; $150 per acre-foot;

Fifth, increased use of the four new State project pumps—66,000 acre-feet up to 344,000 acre-feet if Los Banos Grandes reservoir is built;

Sixth, rice field water storage—little new water, but much better timing of releases for fish and much improved wildlife habitat; $4 per acre-foot;

Seventh, purchase of stored water from the west slope of the northern Sierra, including Yuba and Placer counties—130,000 to 200,000 acre-feet; $5 to $125 per acre-foot; and

Eighth, Stanislaus River Basin and Calaveras River water use program—155,000 acre-feet.

That is all on the supply side. Those are all suggestions, how you could end up improving the supply side by a total of way over 800,000 acre-feet.

On the demand side of course, which none of the Bureau's analyses ever looked at, are the following options to reduce demands for pumping from the delta.

First, water conservation in urban and agricultural areas south and west of the delta—urban estimate 1 to 1.8 million acre-feet; $300 per acre-foot;

Second, conjunctive use of surface and ground water in the San Joaquin Valley—50,000 to 300,000 acre-feet;

Third, dry year fallowing in agricultural areas south of the delta—included in 300,000 to 500,000 acre-foot estimate in A(3) above;

Fourth, reduction of water use in the drainage problem area of the San Joaquin Valley—100,000 to 240,000 acre-feet by year 2000, additional 150,000 to 300,000 by 2020;

Fifth, water recycling in urban areas—250,000 to 400,000 acre-feet.

Then we finally get to water recycling and urban areas, some of the waste water recycling that we have in this bill for San Diego and a number of other places in California, could save about 250,000 to 400,000 acre-feet. Getting to 800,000 acre-feet is not a serious problem, or a serious burden on anyone.

So, Mr. President, I have done my best to accommodate the distinguished Senator from California. We held many hearings. We worked on things together for a long time. And the Senate tomorrow will vote on H.R. 429, that includes not only the Central Valley project that we have discussed here for nearly 6 hours today but also 20 other western water projects, many of which have landmark environmental provisions.

Mr. President, I would be prepared to yield back the remainder of my time with the understanding, when we are finished, the bill of the distinguished Senator from California will be read three times, passed, and go to the House. Where it will remain. I want to thank the distinguished Senator from California.

I would also like to say to the Chair I appreciate his forbearance here, and I look forward to tomorrow's debate.

The PRESIDING OFFICER. Under the previous order, S. 3365, a bill entitled the Central Valley Project Fish and Wildlife Act of 1992 is considered read three times, passed, and the motion to reconsider the vote is laid upon the table.

So the bill (S. 3365) was passed as follows:

S. 3365

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Central Valley Project Fish and Wildlife Act of 1992."

SEC. 2. STATEMENT OF PURPOSE.

The purposes of this Act are:

(a) to mitigate, protect and restore fish and wildlife habitat in the Central Valley of California as specifically provided for within this Act;

(b) to partially mitigate the impacts of the Central Valley Project on fish and wildlife habitat by requiring the implementation of specific habitat restoration actions;

(c) to provide for the continued orderly operation of the Central Valley Project;

(d) to encourage, through cost sharing and other related actions, the cooperation and contribution by the State of California and other non-Central Valley Project entities toward the mitigation, protection, and restoration of fish and wildlife habitat within the Central Valley of California;

(e) to increase the benefits provided by the Central Valley Project to California through the expanded use of water conservation and water transfers;

(f) to achieve the purposes of this Act through implementation of projects, procedures and programs which do not result in further degradation of resources, including, but not limited to, groundwater, of the area presently served by the Central Valley project; and

(g) to coordinate the efforts and actions authorized in this Act with other activities being undertaken within the State of California to insure that work is not unnecessarily duplicated and is coordinated to minimize inconsistent and counterproductive results and maximize the benefits to be obtained.

(h) to study transfer of the Central Valley Project to the State of California.

SEC. 3. DEFINITIONS.

As used in this Act:

(a) The term "anadromous fisheries" includes runs of salmon, striped bass, steelhead trout, sturgeon, and American shad that ascend the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Delta to reproduce after maturing in the San Francisco Bay and/or the ocean.

(b) The terms "artificial propagation" and "artificial production" include spawning, hatching, incubating, and rearing fish in a hatchery or other facility constructed for fish production.

(c) The term "Central Valley" means the watershed of the Sacramento and San Joaquin Rivers and their tributaries including the Sacramento-San Joaquin Delta.

(d) The term "Central Valley Project" means the Central Valley Project, California, as authorized in the Act of August 26, 1937 (50 Stat. 850) and all acts amendatory thereto.

(e) The term "Central Valley Project Service Area" means that area where the Secretary is authorized by law to provide water service and other benefits of the Central Valley Project.

(f) The term "Central Valley Project water" means all water that is diverted, stored or delivered by the Bureau of Reclamation pursuant to water rights acquired pursuant to California law, including water made available under the so-called "exchange" and Sacramento River settlement contracts.

(g) The term "Central Valley Project Water Contractor" means any entity which contracts for Central Valley Project water.

(h) The term "Central Valley Project Water Contractors Fund" means the fund established in section 4(h) of this Act.

(i) The term "Central Valley Refuges" includes the Sacramento, Delevan, Colusa, Sutter, Kesterson, San Luis, Merced, Pixley, and Kern National Wildlife Refuges, the Grassland Resource Conservation District, the Gray Lodge, Los Banos, Volta, and Mendota State Wildlife Areas, and those National Wildlife Refuges and State Wildlife Areas identified in the Bureau of Reclamation's report entitled "San Joaquin Basin Action Plan/Kesterson Mitigation Plan" (1989).

(j) The term "critically overdrafted groundwater basin" means those areas defined by the California Department of Water Resources, in its Bulletin No. 118-80, to have a critical groundwater overdraft problem.

(k) The term "natural production" means fish produced to adulthood without the direct intervention of man in the spawning or rearing processes.

(l) The term "Refuge Water Supply Report" means the report entitled "Report on Refuge Water Supply Investigations" published in March 1989 by the Bureau of Reclamation, Department of the Interior.

(m) The term "Secretary" means the Secretary of the Interior or his designee, except as otherwise provided.

(n) The term "transfer" means:

(1) all conjunctive use programs that provide for the transfer of all or a portion of the surface water made available by the use of groundwater as a substitute supply to another water use,

(2) exchanges between water users,

(3) groundwater storage programs that provide for transfer of all or a portion of the stored water to another water user directly or through exchange,

(4) conservation programs that provide for all or a portion of the water conserved to be transferred to another water user, or

SEC. 4. LIMITATION ON CONTRACTING AND CONTRACT REFORM

(A) NEW CONTRACTS.—The Secretary shall not enter into any new short-term, temporary, or long-term contracts or agreements for water supply from the Central Valley Project, with terms in excess of three years, for any purpose other than fish and wildlife before:

(1) the provisions of subsections 6(c)(1) and 6(c)(2) of this Act are met;

(2) the California State Water Resources Control Board concludes the review ordered by the California Court of Appeal in the *United States* versus *State Water Resources Control Board*, 182 Cal. App. 3d 82(1986), of San Francisco Bay/Sacramento-San Joaquin Delta Estuary water quality standards and determines the means of implementing such standards, including any obligations of the Central Valley Project; and

(3) at least one hundred and twenty days shall have passed after the Secretary provides a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives explaining the obligations, if any, of the Central Valley Project system, including its component facilities and contracts, with regard to achieving San Francisco Bay/Sacramento-San Joaquin Delta Estuary water quality standards as finally established and approved relevant State and Federal authorities, and the impact of such obligations on Central Valley Project operations, supplies, and commitments.

(b) RENEWAL OF EXISTING LONG-TERM CONTRACTS.—

(1) Notwithstanding the provisions of the Act of July 2, 1956 (70 Stat. 483), the Secretary shall, upon request, renew all existing long-term repayment contracts providing for the delivery of water or water service contracts from the Central Valley Project for a period of 25 years; and for successive periods of 25 years each:

(2) Upon renewal of any long-term repayment contract providing for the delivery of water or water service contracts from the Central Valley Project, the Secretary shall insure that all pricing requirements of reclamation law which exist at the time of renewal are incorporated within such renewed contracts.

(c) WATER THROUGH COURT DECREE.—Notwithstanding any other provision of this act, the provisional water provisions in the Stipulation, and the Order and Judgment, dated December 30, 1986, by the United States District Court for the Eastern District of California in the consolidated cases entitled Barcellos and Wolfsen, Inc. et al v. Westlands Water District, et al. (No. CV 79-106 EDP) and Westlands Water District, et al v. United States, et al. (No. CV F-81-245 EDP) shall, for the purposes of this section, be deemed to be an existing long-term water service contract; subject to renewal;

(d) Exceptions to Limits on New Contracts; the prohibition on execution of new contracts under subsection (a) of this section shall not apply to contracts authorized pursuant to Public Law 101-514, Sec. 206; Stat. 2087; Public Law 102-250; section 203 of the flood control act of 1962, to enter into a long-term contract in accordance with the reclamation laws with the Tuolumne Regional Water District, California, for the delivery of water from the New Melones project to the county's water distribution system and a contact with the Secretary of Veteran Affairs to provide for the delivery in perpetuity of water from the project in quantities sufficient, but not to exceed 850 acre-feet per year, to meet the needs of San Joaquin Valley National Cemetery, California, and to enter into a water service contract authorized for the Watsonville subarea of the San Felipe Division of the Central Valley Project pursuant to Public Law 90-72 upon completion of the plan of study.

SEC. 5. WATER PRICING REFORM.

(a) All Central Valley Project repayment contracts providing for water service and water service contracts for agricultural, municipal, or industrial purposes that are renewed after the date of enactment of this Act shall provide that all project water subject to contract shall be made available to districts, agencies, and other contracting entities pursuant to a system of tiered water pricing. Such a system shall specify rates for each district, agency or entity based upon an inverted block rate structure with the following provisions:

(1) The first rate tier shall apply to a quantity of water up to 20 percent of the contract total and shall be set at one-half the applicable contract rate;

(2) The second rate tier shall apply to the quantity of water over 20 percent and under 80 percent of the contract total and shall be set applicable to contract rate;

(3) The third rate tier shall apply to that quantity of water over 80 percent of the contract total and shall be set at one and one-half times the applicable rate; and

(4) The Secretary shall charge contractors only for water actually delivered.

The tiered water pricing system established in this subsection shall apply only to class I water, and not to class II water, in the Friant Division of the project. It shall also apply only to firm, and not to interim, intermittent and provisional water in other divisions of the water project.

(b) All Central Valley Project repayment contracts providing for water service and water service contracts for agricultural, municipal, or industrial purposes that are entered into after the date of enactment of this Act, shall provide that all project water subject to contract shall be made available to districts, agencies, and other contracting entities pursuant to a system tiered water pricing. Such a system shall specify rates for each district, agency, or entity based on an inverted block rate structure with the following provisions:

(1) The first rate tier shall apply to a quantity of water up to 80 percent of the contract total and shall be the applicable contract rate;

(2) The second tier shall apply to the quantity of water over 80 percent of the contract total and shall be one and one-half times the applicable contract rate; and

(3) The Secretary shall charge contractors only for water actually delivered.

The tiered water pricing system established in this subsection shall apply only to firm, and not to interim, intermittent and provisional water.

SEC. 6. PROTECTION, RESTORATION, AND MITIGATION OF CENTRAL VALLEY FISH AND WILDLIFE HABITAT.

(a)(1) Amendments to Central Valley Project Authorizations.—Act of August 26, 1937. Section 2 of the Act of August 26, 1937 (Chapter 832, 50 Stat. 850), as amended, is amended—

(A) in the second proviso of subsection (a), by inserting "and mitigation, protection and restoration of fish and wildlife," after "Indian reservations,".

(B) in the last proviso of subsection (a), by striking "domestic uses;" and inserting "domestic uses and fish and wildlife mitigation, protection and restoration purposes;"

(2) Mitigation, Protection, and Restoration.—The Secretary's participation in the development and implementation of the programs, activities and facilities authorized in this section shall be deemed to meet the mitigation, protection and restoration purposes of subsection 6(a).

(b) General Authority.—The Secretary shall:

(1) Implement the actions established by sections 6(c)(1), 6(c)(2) and 6(c)(3) and 6(c)(4).

(2) Develop, select, and implement actions, using the criteria established in section 6(e), that address the fish and wildlife habitat issues listed in sections 6(c)(1), 6(c)(2), 6(c)(3) and 6(c)(4).

(c)(1) Actions and Facilities.—Subject to limitations contained in sections 6(f)(6) and 6(f)(7), the following fish and wildlife habitat protection, restoration, and enhancement actions shall be implemented by the Secretary.

(A) Negotiation and execution of an agreement with the California Department of Fish and Game by December 31, 1992 which, when implemented, will mitigate the direct fishery losses associated with the operation of the Tracy Pumping Plant. Direct losses are defined as fish lost after they enter the Tracy Pumping Plant intake channel, taking into account numbers of fish that survive and are returned to the Sacramento-San Joaquin Delta. The cost of this action shall be allocated under section 6(f)(1).

(B) Negotiation and execution of an agreement with the California Department of Fish and Game by December 31, 1994 which, when implemented, will mitigate for direct fishery losses associated with the operation of the Contra Costa Canal Pumping Plant No. 1. Direct fishery losses are defined as fish lost after they enter Rock Slough. The cost of this action shall be allocated in the same manner as costs associated with the Contra Costa Canal are currently paid.

(C) Installation and operation of a structural temperature control device at Shasta Dam and development and implementation of modifications in Central Valley Project operations, if needed, by December 31, 1995, to allow for control of water temperatures in the upper Sacramento River from Keswick Dam to Red Bluff Diversion Dam sufficient to protect salmon. The cost of this action shall be allocated under section 6(f)(1).

(D) Coleman National Fish Hatchery shall be rehabilitated and expanded by implementing the United States Fish and Wildlife Service's Coleman National Fish Hatchery Development Plan by December 31, 1995. The Secretary shall negotiate and execute a contract for the operation of the hatchery by the California Department of Fish and Game. The contract shall provide that its operation shall be coordinated with all other mitigation hatcheries in California. In addition, the Keswick Dam Fish Trap shall be modified to provide for its operation at all project flow release levels. The cost of this action shall be allocated under section 6(f)(1).

(E) The negotiation and execution of an agreement with the California Department of Fish and Game, within one year after the enactment of this Act, which, when implemented, will eliminate, to the extent practical, losses of salmon and steelhead trout due to flow fluctuations caused by the operation of Keswick, Nimbus, and Lewiston Regulating Dams. The agreement shall be patterned after the agreement between the California Department of Water Resources and the California Department of Fish and Game with respect to the operation of the California State Water Project Oroville Dam complex. Any costs associated with this Agreement shall be non-reimbursable.

(F) A gravel replenishment program shall be developed and implemented by December 31, 1993 for the purpose of restoring and replenishing, on a continuous basis, spawning gravel lost due to the construction and operation of Shasta, Folsom and New Melones Dams, bank protection programs, and other actions that have reduced the availability of spawning gravel in the upper Sacramento River from Keswick Dam to Red Bluff Diversion Dam, and in the American and Stanislaus Rivers downstream of Nimbus and Goodwin Dams, respectively. The cost of this action shall be allocated under section 6(f)(2).

(G) A Delta Cross Channel monitoring and operational program shall be develop and implemented, within one year after the enactment of this Act, for purpose of protecting striped bass eggs and larvae as they approach the Delta Cross Channel gates. This program includes, but is not limited to, closing the Delta Cross Channel gates during times when significant numbers of striped bass eggs and larvae approach the Sacramento River intake to the Delta Cross Channel. Since this action will, by its nature, also restrict pumping at the Tracy Pumping Plant, other restrictions on the operation of the Delta Tracy Pumping Plant, which may currently exist to protect striped bass eggs and larvae, shall be modified, relaxed or eliminated to comport with this action. The cost of this action shall be allocated under section 6(f)(1).

(H) The Secretary, in coordination with the California Department of Fish and Game, shall, within one year after the enactment of this Act, establish a comprehensive assessment program to monitor fish and wildlife resources in the Central Valley and to assess the biological results of actions implemented pursuant to sections 6(c)(1) and 6(c)(2). The cost of this action shall be allocated under section 6(f)(2).

(c)(2) Habitat Restoration Actions.—Subject to the limitations contained in sections 6(f)(6) and 6(f)(7), and utilizing the criteria in section 6(e), the Secretary shall develop, evaluate, select, and, unless otherwise specifically provided, by December 31, 2000, implement actions that will address the following fish and wildlife protection, restoration, and enhancement issues.

(A) The Secretary shall develop and implement a program to eliminate the need to reduce Keswick Dam releases every Spring to place the Anderson-Cottonwood irrigation District's Diversion Dam into operation, and every Fall to take the Dam out of operation. Additionally, the program will include structural measures need to address upstream migrating adult salmon passage problems at the Diversion Dam due to inadequate ladder attraction flows. The cost of this action shall be allocated under section 6(f)(3).

(B) The Secretary shall develop and implement a program to minimize fish passage problems for salmon at the Central Valley Project Red Bluff Diversion Dam. The cost of this action shall be allocated under section 6(f)(4).

(C) The Secretary shall develop and implement a program to augment natural production of salmon and steelhead trout population levels in the San Joaquin River system in above normal water years through means of artificial production. The cost of this action shall be allocated under section 6(f)(2).

(D) The Secretary shall construct and operate a new satellite hatchery to augment the single and dual purpose channels at the Tehama Colusa Fish Facility and to further mitigate the impact of Shasta Dam on fishery resources. The new satellite hatchery shall be located at a suitable location upstream of the Red Bluff Diversion Dam. This new hatchery shall be operated by the California Department of Fish and Game under contract with the Secretary. The cost of this action shall be allocated under section 6(f)(2).

(E) The Secretary shall construct a salmon and steelhead trout hatchery on the Yuba River. The Secretary shall negotiate and execute a contract with the California Department of Fish and Game to operate the hatchery. The objective of such hatchery is to assist in California's efforts to realize the full potential of salmon and steelhead trout natural production on that river and to assist in maintaining the existing runs of salmon and steelhead trout and create enhancement potential for natural production in above normal water years. The cost of this action shall be allocated under section 6(f)(3).

(F) The Secretary shall negotiate and execute an agreement with the California Department of Fish and Game by December 31, 1993 that requires the release of the minimum flows necessary to take full advantage of the spawning, incubation, rearing and outmigration potential of the upper Sacramento River and the Lower American River for salmon subject to the physical capabilities of the Central Valley Project facilities involved. The Agreement shall provide for less than these minimum flows in dry and critical water years if the Secretary determines that in so doing he can minimize the impacts of providing the fishery flows on other Central Valley Project authorized purposes, provided the fishery benefits lost in those years are offset by enhancing spawning, incubation, rearing and outmigration conditions in other water years. The cost of this action shall be allocated under section 6(f)(1). The Secretary is authorized to assist in the funding of biological studies, in cooperation with the California Department of Fish and Game and the California State Water Resources Control Board, focused on furthering the scientific understanding of the salmon fishery in these rivers and to provide the information needed to verify that the intended fishery benefits are being provided by the minimum fishery requirements in this agreement and to allow for adjustments to the flow requirements in the future, if needed. If the Secretary and the California Department of Fish and Game determine that the flow conditions in the upper Sacramento River and the lower American River provided by the Central Valley Project under this agreement are better than conditions that would have existed in the absence of the Central Valley Project facilities, the enhancement provided shall become credits to be provided Central Valley Project water and power contractors to offset future mitigation responsibilities identified pursuant to section 6(d).

(G) The Administrator of the Environmental Protection Agency is directed to expedite and by no later than December 31, 1995, complete efforts to clean up mines causing intermittent releases of lethal concentrations of dissolved metals from the Spring Creek Debris Dam. In the interim, the Secretary shall provide water from Keswick Dam sufficient to dilute the Spring Creek Debris Dam discharges to concentration levels that allow survival of fish life below Keswick Dam except when the United States Corps of Engineers' flood control criteria for Shasta Dam limit that capability. The cost of this action, not including the cost of EPA actions, shall be allocated under section 6(f)(3). If the Administrator of the Environmental Protection Agency fails to complete such efforts by December 31, 1995, all such costs shall be assumed by the Agency.

(H) The Secretary shall provide flows to allow sufficient spawning, incubation, rearing and outmigration conditions for salmon and steelhead trout from Whiskeytown Dam as determined by instream flow studies conducted by the California Department of Fish and Game after Clear Creek has been restored and a new fish ladder has been constructed at the McCormick-Saeltzer Dam. The cost of providing the required flows shall be allocated under section 6(f)(1). Any federal cost associated with the restoration of the Clear Creek or in the construction of a fish ladder at the McCormick-Saeltzer Dam shall be allocated under section 6(f)(3).

(I) The Secretary is authorized to construct, in partnership with the State of California, a barrier at the head of Old River in the Sacramento-San Joaquin Delta, by December 31, 1995 to partially mitigate the impact of the Central Valley Project and State Water Project pumping plants in the south Sacramento-San Joaquin Delta on the survival of young outmigrating salmon that are diverted from the San Joaquin River to the pumps. The Secretary shall consider the effect of this barrier on South Delta channels, and if determined appropriate, shall construct other necessary South Delta barriers. The cost of constructing, operating and maintaining the barrier shall be shared 50% by the State of California and 50% by the federal government. The federal share shall be allocated under section 6(f)(1).

(J) The Secretary shall participate with the State of California and other federal agencies in the implementation of the ongoing program to mitigate fully for the fishery impacts associated with the operations of the Glenn-Colusa Irrigation District's Hamilton City Pumping Plant. Such participation shall include replacement of the defective fish screens and fish recovery facilities associated with the Hamilton City Pumping Plant. This authorization shall not be deemed to supersede or alter existing authorizations for the participation of other federal agencies in the mitigation program. The cost of this action shall be allocated under section 6(f)(3).

(K) The Secretary shall assist in the funding, in coordination with the California Department of Fish and Game, of enforcement measures that will reduce the numbers of striped bass illegally taken from the San Francisco Bay Estuary and Sacramento-San Joaquin Delta. The cost of this action shall be allocated under section 6(f)(3).

(L) The Secretary shall provide such assistance as may be requested by the State of California to develop and implement fishing regulations that will protect the older more productive striped bass females in order to maintain a viable reproducing striped bass population.

(c)(3) SAN JOAQUIN RIVER PLAN.—With respect to mitigation or restoration of upper San Joaquin River fish, wildlife, and habitat, the Secretary is directed to participate in the San Joaquin River Management Program under development by the State of California. In support of the objectives of the San Joaquin River Management Program and the Stanislaus and Calaveras Basin Environmental Impact Statement, and in furtherance of the purposes of this Act, the Secretary, in consultation with the Fish and Wildlife Advisory Committee and affected counties and interests, shall evaluate inbasin needs in the Stanislaus River basin, and shall investigate alternative storage, release, and delivery regimes for satisfying both in-basin and out-of-basin needs. Alternatives to be investigated shall include, but shall not be limited to, conjunctive use operations, conservation strategies, exchange arrangements, and the use of base and channel maintenance flows to assist in efforts to restore fish and wildlife populations and riparian habitat values in the San Joaquin River. Nothing in this Act or the amendments to the Act of August 26, 1937 shall be construed as requiring a reestablishment of flows between Gravelly Ford and the Mendota Pool for mitigation or restoration of fish, wildlife and habitat.

(c)(4) WETLAND HABITAT AREAS.—In support of the objectives of the Central Valley Habitat Joint Venture and in furtherance of the goals and objectives of this Act, the Secretary, directly and/or in cooperation with other State, Federal and local agencies, is authorized and directed to provide firm water supplies of suitable quality to maintain and improve wetland habitat areas on units of the National Wildlife Refuge System in the Central Valley of California; in the Gray Lodge, Los Banos, Volta, North Grasslands, and Mendota state wildlife management areas; and in the Grassland Resources Conservation District in the Central Valley of California. The Secretary shall implement his obligation to provide such firm water supplies through long-term contracts where the primary source of supply is the Central Valley Project or other federal sources; shall enter into contracts or take other appropriate action to firm up supplies provided by state, local and private water suppliers; and shall provide supplemental or interim contracts where needed to supplement supplies from non-federal sources.

(A) Upon enactment of this Act, the quantity and delivery schedules of water for each wetland habitat area described in this paragraph shall be in accordance with Level 2 of the "Dependable Water Supply Needs" table for those habitat areas as set forth in the Refuge Water Supply Report, and two-thirds of the water supply needed for full habitat development for those habitat areas identified in the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation. Such water shall be supplemented by the incremental water supply provided for in subparagraph (B) of this paragraph. Central Valley Project costs associated with the implementation of this subparagraph shall be treated as costs of main project features and shall be first allocated among Central Valley Project purposes, with reimbursable costs then allocated between Central Valley Project water and power contractors pursuant to applicable statutory and regulatory procedures; Provided, that costs for Level 1 water supplies identified on the "Dependable Water Supply Needs" table for those habitat areas set forth in the Refuge Water Supply Report shall not be allocated for reimbursement by the Central Valley Project to the extent such costs were not costs of the Central Valley Project or were non-reimbursable costs of the Central Valley Project prior to the date of enactment of this Act. The discharge of obligations by the Secretary under this subparagraph (A) provides full mitigation for wetland impacts of the Central Valley Project.

(B) Not later than ten years after enactment of this Act, the quantity and delivery schedules of water for each wetland habitat area described in this paragraph shall be in accordance with Level 4 of the "Dependable Water Supply Needs" table for that habitat area as set forth in the Refuge Water Supply Report, and the full water supply needed for full habitat development for those habitat areas identified in the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation. The increment of water required to supplement the quantities provided under subparagraph (A) of this paragraph shall be acquired by the Secretary in cooperation with the State of California, the Central Valley Habitat Joint Venture, and other interests under the authority of section 7 of this Act. Fifty percent of the costs associated with implementation of this subparagraph shall be considered a nonreimbursable Federal expenditure, and 50 percent shall be paid by the State of California.

(C) The Secretary may temporarily reduce deliveries of Central Valley Project water provided under subparagraph (A) of this paragraph only when reductions are imposed upon agricultural deliveries of Central Valley Project water; Provided, that such temporary reductions shall be equal to reductions imposed on non-water rights Central Valley Project agricultural contractors; Provided further, that the Secretary shall be authorized and directed to utilize money available in the Restoration Fund created pursuant to section 6(h) of this Act, in order to acquire supplemental sources of water for the purposes of subparagraph (A) of this paragraph during all years when such shortages are imposed on agricultural deliveries. The Secretary may temporarily reduce deliveries of Central Valley Project water provided under subparagraph (B) of this paragraph only when reductions are imposed upon agricultural deliveries of Central Valley Project water; the delivery priority or priorities applicable to the increment of water provided under subparagraph (B) of this paragraph shall be the priority or priorities which applied to the water in question prior to its acquisition for the purpose of providing such increment.

(D) The Secretary is authorized and directed to construct and/or to acquire from non-federal entities such water conveyance facilities and conveyance capacity, and to construct or acquire such wells as are necessary to implement the requirements of this paragraph, including, but not limited to, conveyance needed to avoid an adverse effect on the Secretary's ability to deliver water pursuant the Secretary Central Valley Project contractual obligations because of limitations in conveyance capacities. Central Valley Project costs associated with the implementation of this subparagraph shall be treated as capital expenditures. To the extent new or supplemental conveyance is acquired or constructed to allow delivery of water to and through, but not exclusively within, the wildlife habitat areas described in subparagraph (A) of this paragraph, costs shall be allocated and recovered in accordance with subparagraph (A); to the extent such conveyance is acquired or constructed to allow delivery of the incremental water supply set forth in subparagraph (B) of this paragraph, costs shall be allocated in accordance with subparagraph (B).

(E) The Secretary, in consultation with the State of California, the Central Valley Habitat Joint Venture, and other interests, shall investigate and report on the following supplemental wetland habitat actions on or before September 30, 1997:

(i) alternative means of improving the reliability and quality of water supplies currently available to privately owned wetlands in the Central Valley and the need, if any, for additional supplies; and (ii) water supply and delivery requirements necessary to permit full habitat development for water dependent wildlife on 120,000 acres supplemental to the existing wetland habitat acreage identified in Table 8 of the Central Valley Habitat Joint Venture's "Implementation Plan" dated April 19, 1990, as well as feasible means of meeting associated water supply requirements.

(d) ADDITONAL HABITAT RESTORATION ACTIONS.—Subject to the criteria in section 6(e), the Secretary in consultation with the Governor of California shall identify additional actions that would provide mitigation of Central Valley Project impacts on Central Valley fish and wildlife habitat and would protect and restore Central Valley fish and wildlife habitat. The Secretary shall develop the information needed to evaluate these actions technically, determine the economic and biological feasibility using the criteria established in section 6(e), determine appropriate cost allocations specific to each action, and select actions to recommend to Congress for authorization to implement. The Secretary shall make its first report to Congress no later than December 31, 1996 and shall report every five years thereafter, at a minimum, until the year 2010. Fish and wildlife habitat issues to be evaluated by the Secretary shall include, but not be limited, to the following:

(1) Determination of the flows and habitat restoration measures needed to protect, restore and enhance salmon and steelhead trout in the San Joaquin River below the confluence with the Merced River, Mokelumne River, and Calaveras River and in the Butte, Deer, Mill, and Battle Creeks, which are tributary to the Sacramento River, and development of feasible means of maintaining those flows and implementing the habitat restoration measures identified.

(2) Investigation of actions allowing closure or screening of the Delta Cross Channel and Georgiana Slough to prevent the diversion of out-migrating salmon and steelhead trout through those facilities.

(3) As a means of increasing survival of migrating young fish, investigation of the feasibility of using short pulses of increased water flows to move salmon, steelhead trout, and striped bass into and through the Sacramento-San Joaquin Delta.

(4) Investigation of ways to maintain suitable temperatures for young salmon survival in the lower Sacramento River and in the Sacramento-San Joaquin Delta by controlling or relocating the discharge of irrigation return flows and sewage effluent.

(5) Investigation of the need for additional hatchery production to mitigate the impacts of water development on Central Valley fisheries where no other feasible means of mitigation is available or where hatchery production would enhance efforts to increase natural production of a particular species.

(6) Investigation of measures available to correct flow pattern problems in the Sacramento-San Joaquin Delta created by the operation of the Central Valley Project and the California State Water Project as well as San Francisco Bay inflow pattern changes caused by the operation of water development projects in the Central Valley.

(7) Evaluation of measures to avoid unquantified losses of juvenile anadromous fish due to unscreened or inadequately screened diversions on the Sacramento and San Joaquin Rivers, their tributaries, and in the Sacramento-San Joaquin Delta such as construction of screens on unscreened diversions, rehabilitation of existing screens, replacement of existing non-functioning screens, and relocation of diversions to less fishery-sensitive areas.

(8) Elimination of barriers to upstream migration of salmon and steelhead trout adults to spawning areas downstream of existing storage facilities in the Central Valley caused by agriculture diversions and other obstructions which reduce the natural production of these species as well as removal programs or programs for the construction of new fish ladders.

(e) SOCIAL, ECONOMIC AND BIOLOGICAL CONSIDERATIONS.—In fulfilling their responsibilities as specified in sections 6(c)(2) and 6(d), the Secretary shall consider the following criteria and factors, and issue findings thereon, when determining which alternate programs, policies or procedures should be implemented to protect and restore fish and wildlife conditions. The alternative programs available to implement specific actions in sections 6(c)(2) and 6(d) that best meets all of the following criteria shall be selected.

(1) Natural production alternatives shall be given priority over artificial production alternatives when possible;

(2) Alternatives that have the highest biological probability of achieving the desired objective shall be preferred.

(3) Alternatives that provide a greater magnitude of potential benefits shall be given priority over alternatives which have a lesser magnitude of potential benefits.

(4) Alternatives that are determined to be the most cost effective, measured in economic terms considering impacts within the Central Valley Project service area's water and power resources and related industries.

(f) COST ALLOCATIONS.—The fiscal cost of implementing actions listed in sections 6(c)(1) and selected pursuant to section 6(c)(2) shall be allocated as follows:

(1) Costs specified within sections 6(c)(1) and 6(c)(2) as allocated under this subsection shall be first allocated among Central Valley Project purposes, with reimbursable costs then allocated between Central Valley Project water and power contractors pursuant to applicable statutory and regulatory procedures and assessed pursuant to the provisions of section 6(h) of this Act.

(2) Costs specified within sections 6(c)(1) and 6(c)(2) as allocable under this subsection shall be allocated 37.5% to the Central Valley Project, 37.5% as a Federal non-reimbursable cost, and 25% payable by the State of California. Central Valley Project costs shall be first allocated among Central Valley Project purposes with reimbursable costs then allocated between Central Valley Project water and power contractors and assessed pursuant to the provisions of section 6(h) of this Act. Central Valley Project costs determined to be non-reimbursable shall be added to the Federal non-reimbursable costs.

(3) Costs specified within sections 6(c)(1) and 6(c)(2) as allocable under this subsection shall be allocated 50% as a Federal non-reimbursable cost and 50% to the State of California.

(4) Costs associated with actions that are determined to be a Central Valley Project responsibility under sections 6(f)(1) and 6(f)(2) that pay for the replacement of existing Central Valley Project facilities that have not properly mitigated the effects of the Central Valley Project on the environment because of design errors by Federal agencies, shall be allocated as a Federal non-reimbursable cost.

(5) Central Valley Project power shall be used to supply the capacity and energy needs of actions identified in sections 6(c)(1) and 6(c)(2) where the costs or a portion of the costs have been allocated to the Central Valley Project as a reimbursable cost pursuant to subsections (1) and (2) of this section. The value of the Central Valley Project power, calculated as the cost of obtaining dependable power from other available sources, shall be credited against the Central Valley Project power contractors' share of the cost of actions that are mitigating the effects of the Central Valley Project and the effects of others on Central Valley fish and wildlife habitat as determined pursuant to section 6(f)(2).

(6) Notwithstanding any other provisions of this Act, the Secretary shall not undertake any action authorized herein unless the State of California makes appropriate commitments to participate in the actions identified in this Act, provides relevant state approvals for identified actions, and agrees to participate in the cost sharing provisions of this Act. Where local agency action or approval is required within this Act, the Secretary shall not proceed unless that local agency approval or participation is secured: *Provided*, however, that nothing herein is intended to require Central Valley Project water or power contractors' approval or participation as a condition on the Secretary's ability to proceed with the mandated actions.

(7) Notwithstanding any other provisions of this Act, no actions authorized in this Act shall be implemented unless such actions are consistent with state water law and will not constitute an unreasonable use of water as that term is used within Article X, section 2, of the Constitution of the State of California.

(g) ADDITIONAL AUTHORITIES.—

(1) The Secretary is authorized to promulgate such regulations and enter into such agreements as may be necessary to implement the purposes and provisions of this Act.

(2) In order to carry out the purposes and provisions of this section, the Secretary is authorized, consistent with state law, to obtain water supplies from any source available to the Secretary: Provided, that such acquisition shall be pursuant to State law and any purchases shall be from willing sell-

ers only. The Secretary, however, except as specifically provided herein, shall not diminish water supplies available to Central Valley Project contractors without compensation.

(3) The Secretary is authorized to increase, on a permanent basis, the yield of the Central Valley Project.

(4) The Secretary shall determine and implement the actions mandated in this act in the most efficient and cost effective means available, and in a manner consistent with the transfer of the Central Valley Project to the State of California. Should the Secretary determine that the State of California or a local agency of the State of California is best able to implement an action authorized by this Act, the Secretary shall negotiate with the State of California or a local agency of the State of California an agreement which would allow the State of California or a local agency of the State of California to undertake the identified action. In the event no such agreement can be negotiated, the Secretary shall proceed to implement the action through means available to him.

(5) The Secretary is hereby authorized and directed as an integral part of this Act, to initiate studies of any and all facilities that would assist in fully meeting the fish and wildlife purposes of this Act. The Secretary shall, for each facility identified, also study the feasibility of these facilities for other purposes, including, but not limited to, water and power supplies. Cost allocations for identified multiple purpose facilities should be in accordance with the allocation of water developed or conveyed or otherwise made available by those facilities.

(h) FUNDING.—

(1) Authorization. There are authorized to be appropriated such sums as may be necessary to carry out the purposes and provisions of this Act. Funds appropriated under this section are authorized to remain available until expended.

(2) Central Valley Project Water Contractors Repayment. The amount to be repaid by water contractors under sections 6(f)(1) and 6(f)(2) of this Act shall be collected as follows:

(i) Notwithstanding the provisions of section 105 of P.L. 99-546, the amount to be repaid by the Central Valley Project water contractors under sections 6(f)(1) and 6(f)(2) shall be capitalized for a period necessary to insure repayment, consistent with the provisions of sub-section 6(h)(2)(ii).

(ii) Annual payment of the capitalized costs to be repaid by the Central Valley Project agricultural water contractors under sections - 6(f)(1) and 6(f)(2) shall not exceed an amount within the probable ability of water users to pay.

(iii) The annual payments set forth in subsection 6(h)(2)(ii), together with interest thereon, shall be placed into a Central Valley Project Water Contractors Fund to be established by the Secretary. The first assessment shall be collected as part of water charges during the first water year which commences at least ninety days after enactment. The Central Valley Project Water Contractors Fund shall be utilized exclusively to repay costs to Central Valley Project water contractors incurred under sections 6(f)(1) and 6(f)(2). The Secretary is authorized to use the funds within the Central Valley Project Water Contractors Fund, for these purposes, without further authorization, but subject to appropriation.

(iv) The provisions of this sub-section 6(h)(2)(i) shall apply only to Central Valley Project water delivered to Central Valley water contractors for water delivered under contract with the Bureau of Reclamation pursuant to which additional payments for such water are required.

(3) Central Valley Project Power Contractors Repayment. The amount to be repaid by Central Valley Project power contractors, pursuant to sections 6(f)(1) and 6(f)(2), shall be collected by the Secretary in accordance with existing law, policy, and practices for the repayment, by Central Valley Project power contractors, of operation and maintenance and capital costs allocated to those power contractors.

(4) Cost Sharing. The State of California and other parties identified in sections 6(f)(2) and 6(f)(3) shall pay an amount equal to the amount allocated within those sections each year. In addition to cost outlays or payments to the Treasury of the United States, the Secretary may consider as a financial contribution by the State of California, Central Valley Project contractors, or other parties identified in sections 6(f)(2) and 6(f)(3) the value of contributions of personal or real property or personnel which the Secretary determines is beneficial to the achievement of the objectives of this Act. Such contributions may include the provisions of water or water conveyance capacity to meet the requirements of this Act.

(5) Remaining Costs. The remaining costs shall be considered non-reimbursable costs as a federal contribution for preserving, protecting, restoring and enhancing fish and wildlife resources within the Central Valley of California.

(6)(A) RESTORATION FUND ESTABLISHED.—There is hereby established in the Treasury of the United States the "Central Valley Project Restoration Fund" (hereafter "Restoration Fund") which shall be available for deposit of charges and donations from any source provided under this Act. Amounts deposited shall be credited as offsetting collections.

(B) AUTHORIZATION OF APPROPRIATIONS.—Such sums as necessary, of at least $20,000,000 per year, are authorized to be appropriated to the Secretary to be derived from the Restoration Fund to carry out the programs and plans adopted pursuant to section 6(c), section 6(d), section 6(g)(2) and the habitat restoration, improvement, and acquisition (from willing sellers) provisions of this Act. Any funds paid in to the Restoration Fund by Central Valley Project water and power contractors and which are also utilized to pay for the projects and facilities set forth in section 6(c) and section 6(d) shall act as an offset against any water contractor cost share obligations that are otherwise provided for in this Act.

(C) ADDITIONAL CHARGE FOR WATER USERS.—

(i) General Authority. To the extent required in appropriation Acts, the Secretary shall assess and collect an additional annual charge consisting of charges of direct beneficiaries of the Central Valley Project under (D) of this subsection in order to recover a portion of all of the costs of fish, wildlife and habitat restoration programs and projects authorized under this Act.

(ii) Charges Contingent on Appropriation Authority. The charge described in (C)(i) of this subsection shall be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such year to carry out activities authorized pursuant to (B) of this subsection.

(D) ADJUSTMENT AND ASSESSMENT OF CHARGES.—

(i) Adjustment Procedure. In assessing the charge to carry out (C) of this subsection, the Secretary shall, prior to each fiscal year, estimate the maximum amount that could be collected in each fiscal year under (D)(ii) of this subsection. The Secretary shall decrease all such charges on a proportionate basis from amounts contained in the estimate so that an aggregate amount is collected pursuant to the requirements of paragraph (c)(ii) of this subsection.

(ii) Assessment and Collection of charges. The Secretary shall assess and collect the following charges subject to the requirements of (D)(i) of this subsection:

(A) Additional Charges Allocated to CVP agricultural water users. The Secretary shall impose on Central Valley Project agricultural water contractors such additional annual charges as are necessary, up to $20,000,000, to be deposited in the Restoration Fund: *Provided*, that such charges shall be allocated so as to not exceed $4.00 per acre-foot for agricultural water sold and delivered by the Central Valley Project; $2.00 per acre-foot for municipal and industrial water sold and delivered by the Central Valley Project; *Provided further*, that the charge imposed on agricultural water shall be reduced, if necessary, to an amount within the probable ability of the water users to pay.

(B) New Central Valley Project Customer Access Charge. The Secretary shall impose an additional annual charge of up to $15.00 per acre foot for Central Valley Project water sold by or transferred to any state or local agency which is not within the area watershed or county of origin as those terms are defined in California law and has not previously been a Central Valley Project customer, and which contracts with the Secretary or with any other individual or district receiving Central Valley Project water, to purchase or otherwise transfer any such water for its own use, to be deposited in the Restoration Fund.

(E) FUNDING TO NON-FEDERAL ENTITIES.—If the Secretary determines that the State of California or an agency thereof, or other non-profit entity concerned with water management, restoration, protection or enhancement of fish, wildlife, habitat, or environmental values is best able to implement an action authorized by this Act in an efficient, timely and cost effective manner, the Secretary is authorized to provide funding to such entity to implement the identified section.

(F) RESTORATION FUND FINANCIAL REPORTS.—The Secretary shall, not later than the first full fiscal year after enactment of this Act, and annually thereafter, submit a detailed report to the Committee on Energy and Natural Resources and the Committee on Appropriations of the Senate and the Committee on Interior and Insular Affairs and the Committee on Appropriations of the House of Representatives. Such report shall describe all uses made of moneys within the Restoration Fund during the prior fiscal year and include the Secretary's projection with respect to the uses to be made of the funds during the next upcoming fiscal year.

SEC. 7. PROVISIONS FOR TRANSFER OF CENTRAL VALLEY PROJECT WATER.

(a) TRANSFERS WITHIN THE CENTRAL VALLEY PROJECT SERVICE AREA.—Subject to the provisions of section 7(f), the Secretary is authorized to approve all transfer agreements among Central Valley Project contractors and between Central Valley Project contractors and non-contractors involving Central Valley Project water within the authorized Central Valley Project service area.

(b) Transfers Which Result in No Net Export of Water Outside the Central Valley Project Service Area.—Subject to the provisions of section 7(f), the Secretary is authorized to approve all transfer agreements between Central Valley Project contractors and parties outside of the Central Valley Project service area upon the determination that as a result of the proposed transaction over the term of the transfer agreement there is no net export of water out of the Central Valley Project service area of the transferor.

(c) Transfers Which Result in a Net Export of Water Outside the Central Valley Project Service Area.—Except for transactions authorized under sections 7(d) and 7(e) and subject to the provisions of section 7(f), the Secretary is authorized to approve all transfers between Central Valley Project water contractors and parties outside of the Central Valley Project service area where the Secretary determines that as a result of the proposed transaction over the term of transfer agreement there will be a net export of water out of the service area of the transferor, provided that the transfer meets the following conditions:

(1) The water being transferred would not otherwise be available to other consumptive beneficial uses absent implementation of the program; and

(2) Over the term of the agreement in question, the transfer will have no significant, long-term, adverse impact on groundwater conditions in the transferor's service area.

(d) Transfers of Water Developed Through Temporary Fallowing or Permanent Land Fallowing.—Subject to the provisions of section 7(f), the Secretary is authorized and directed to approve transfers of Central Valley Project water within or outside of the authorized Central Valley Project service area where the water to be transferred is available for transfer because of the implementation, by the transferor or landowner, of a temporary fallowing or permanent land fallowing program, including land retirement, provided that the involved Central Valley Project water contractor determines that the following conditions are satisfied:

(1) The program will have no significant long-term adverse impact on groundwater conditions.

(2) The water developed under the program shall be that water that would have been consumptively used on crops had those crops been produced during the year(s) of the transfer or water that would have otherwise been lost for beneficial use.

(3) No more than 70% of the water developed under such transfer shall be made available for export out of the Central Valley Project service area with 10% distributed within the transferor's service area to assist in the protection of groundwater resources and 20% applied to fish and wildlife purposes within the Central Valley Project service area pursuant to a program approved by the Secretary.

(4) In order to avoid adverse third party impacts the total quantity of water exported under all such transfers by the transferor or landowner shall not exceed 20% of the total annual water supply delivered by the Central Valley Project that otherwise would have been available in any particular year for use within the service area of the transferor or 3,000 acre-feet, whichever is greater.

(5) The program will have no unreasonable impacts on water supply, operations or financial condition of the water contractor or its water users.

(f) General Provisions.—The following provisions shall also apply to any transfer:

(1) No program and/or agreements authorized under this Act shall be approved unless the action is between a willing buyer and a willing seller under such terms and conditions as may be mutually agreed upon;

(2) No program and/or agreements authorized under this Act shall be approved unless the proposed action is consistent with State law including, but not limited to, the provisions of the California Environmental Quality.

(3) All programs and/or agreements authorized under this Act must include a Central Valley Project water contractor as a transferor and as a contracting party. The criteria established within section 7(d) are intended to govern the exercise of a Central Valley Project water contractor's approval of a transfer proposed by a landowner within the service area of the Central Valley Project water contractor. The provisions of this Act are only intended to govern the transfer of Central Valley Project water.

(4) Notwithstanding any contrary provisions contained within Central Valley Project water contracts, in implementing programs and/or agreements authorized under this Act, there shall be no limitations on the use of agricultural water for municipal and industrial purposes or municipal and industrial water for agricultural purposes. All transferees of Central Valley Project water shall strictly comply with acreage and pricing requirements of reclamation law applicable to the actual use of Central Valley Project water by the transferee, rates for the applicable uses of water by the transferee shall apply to the transferee during the year or years of actual transfer and shall not be applied to the transferor.

(5) All agreements entered into pursuant to this Act between Central Valley Project water contractors and entities outside of the Central Valley Project service area shall be subject to a right of first refusal on the same terms and conditions by entities within the Central Valley Project service area. The right of first refusal must be exercised within ninety days from the date that notice is provided of the proposed transfer. Should an entity exercise the right of first refusal, it must compensate the transferee who had negotiated the agreement upon which the right of first refusal is being exercised for that entity's full costs associated with the development and negotiation of the agreement.

(6) Agreements entered into pursuant to this Act shall not be considered as conferring new, supplemental or additional benefits, nor shall they be otherwise subject to the provisions of section 203 of P.L. 97-293 [43 U.S.C. §390(cc)].

(7) No programs and/or agreements authorized under this Act shall be approved unless the Secretary has determined that the action will have no adverse effect on the Secretary's ability to deliver water pursuant to the Secretary's Central Valley Project contractual obligations because of limitations in conveyance or pumping capacity.

(8) Notwithstanding any other provisions of this Act, after September 30, 1996 or upon enactment of California State Law, whichever is first, all Central Valley Project water transfers shall be governed by the provisions of section 7(f) of this Act and State law.

(g) The Establishment of Central Valley Project Water Contract Transfer Security and Certainty.—

(1) All existing and future contracts for Central Valley Project water shall be deemed to allow for the transfers and exchanges provided for within this section.

(2) All agreements entered into under sections 7(b), 7(c), 7(d) and 7(e) of this Act shall provide that, during the year(s) of actual transfer, Central Valley Project water subject to transfer shall be repaid at "full cost" as that term is defined at 43 U.S.C. Sec. 390(bb).

SEC. 8. AGRICULTURAL WATER CONSERVATION FEASIBILITY STUDIES.

(a) General.—The objective of this section is to encourage implementation of financially feasible water conservation practices. Water conservation practices include those practices which make water available that would not otherwise have been available to Central Valley streams or which do not worsen groundwater conditions. Water conservation, for the purposes of this Act, does not include land following.

(b) Water Conservation Feasibility Studies.—All existing Central Valley Project agricultural contractors shall submit a report to the Secretary which identifies water conservation practices within two years after enactment of this Act. For such practices identified, the report shall analyze the cost and benefits to that entity and its customers of implementing each of the water conservation practices listed in this section, to the extent they apply to that entity, and any additional practices the Secretary determines should be analyzed.

(1) Water management:

(i) monitoring water supplies, deliveries and accounting;

(ii) providing farmers with crop evapotranspiration information; and providing scheduling procedures for ordering water which correspond with demand for irrigation water to the extent practical;

(iii) monitoring of surface water qualities and quantities;

(iv) monitoring of groundwater elevations and quality; and,

(v) monitoring of quantity and quality of drainage waters within facilities the district owns or controls.

(2) District Facility Improvements:

(i) improving the maintenance or upgrading of water measuring devices;

(ii) automating canal structures;

(iii) lining or piping ditches and canals;

(iv) modifying distribution facilities to increase water delivery flexibility;

(v) constructing or lining regulatory reservoirs;

(vi) developing recharge basins, implementing in lieu recharge programs or other means of recharging groundwater basins when adequate supplies are available; and

(vii) evaluating and improving pump efficiencies of district pumping facilities.

(3) District Institutional Adjustments:

(i) improving communications and cooperation among districts, farmers and other agencies;

(ii) adjusting the water fee structure to provide incentives for efficient use of water and to reduce drainage discharges;

(iii) increasing flexibility in the ordering and timing of deliveries to meet crop demands; and

(iv) increasing conjunctive use of groundwater and surface water.

(4) District Water User Water Management Programs:

(i) assisting the facilitation of the financing of physical improvements for district and on-farm irrigation systems;

(ii) providing educational seminars for staff and farmers; and conducting public information programs, which seminars and programs shall address the following subjects, to the extent applicable to the area; and

(A) improving existing on-farm and district-wide irrigation efficiency;

(B) monitoring of soil moisture and salinity;

(C) promoting of efficient per-irrigation techniques;

(D) promoting of on-farm irrigation system evaluations;

(E) constructing tail-water deliveries;

(F) improving on-farm irrigation and drainage systems; and

(G) evaluating and improving water user pump efficiencies.

(iii) providing water users with crop evapotranspiration data and information.

(c) BENEFITS AND COSTS.—The benefits and costs of implementation of specific water conservation practices shall be evaluated through analysis of, but not limited to, the impact on the following:

(1) water usage;

(2) electrical energy usage;

(3) labor and equipment required, including costs of training personnel;

(4) crop yields;

(5) reduction or increase in drainage related problems;

(6) fish and wildlife habitat conditions;

(7) costs of construction;

(8) costs of operation and maintenance;

(9) costs of water information programs; and

(10) costs of computer equipment and software.

SEC. 9. IMPLEMENTATION.

(a) AGRICULTURAL CONTRACT WATER CONSERVATION REQUIREMENTS.—All Central Valley Project agricultural contractors shall develop a plan for implementation of water conservation practices determined by the entity within the water conservation report required under section 8 of this Act to be financially and otherwise feasible for the specific entity. The entity shall complete the plan for implementation within one year after completion of the report required in section 8. Financially feasible conservation practices which will cause environmental harm, including, but not limited to, adversely affecting groundwater conditions, or are inconsistent with other requirements of law, shall not be required to be implemented.

(b) ON-FARM WATER CONSERVATION INCENTIVE PROGRAM.—There is hereby established a Water Conservation Incentive Program, which shall be administered by the Secretary to encourage and assist with the on-farm implementation of the water conservation practices set forth in section 8(b)(4). Said program shall be a Guarantee Loan Program, and the Secretary may enter into a Memorandum of Understanding with the Secretary of Agriculture to administer such program in conjunction with other programs offered through the Department of Agriculture.

(c) MUNICIPAL AND INDUSTRIAL CONTRACT WATER CONSERVATION REQUIREMENTS.—The Secretary shall require all Central Valley Project municipal and industrial water users, to the extent they provide retail, municipal and industrial water service, to comply with the provisions of the September 19, 1991, "Memorandum of Understanding regarding Urban Water Conservation in California".

(d) SECRETARIAL REVIEW.—The Secretary shall evaluate the benefits and cost analysis for each of the water conservation practices found by the specific water user preparing the water conservation reports required by section 8 of this Act to be not feasible and determined the following:

(1) Which water conservation practices, if implemented, would make additional water available to Central Valley streams or to a usable groundwater basin that would not otherwise be available in the absence of implementation of the water conservation practice.

(2) For each water conservation practice identified in section 9(d)(1), the benefit/cost ratio of implementing that water conservation practice if that water were used to fulfill wildlife supply obligations established by this Act; or made available to other water agencies through the transfer provisions established by this Act.

(e) WATER CONSERVATION PRACTICES.—The Secretary may implement those water conservation practices identified which conserve water, are economically feasible, and which the Secretary determined are prudent, through implementation of the identified water conservation practice with the entity holding the contractual right to the water conserved and then making that water available to use by Central Valley refuges as required by provisions of this Act, provided that an agreement is entered into between the entity and Secretary that insures the entity and its water users are not damaged by such measures, including, but not limited to, increasing cost to the entity of its water users or interferes with the ability of the entity water users to produce crops. The Secretary shall fund the implementation of a specific water conservation practice in exchange for the use of the saved water. If the Secretary determines that purchasing water for the Central Valley refuges by implementing specific water conservation practices found to meet the requirements of section 9(d)(1) is not feasible, he shall make that water available to other California water agencies by negotiating and executing agreements between the United States, the entity holding the Central Valley Project contractual right to the saved water and entities interested in obtaining the conserved water in exchange for funding the implementation of the water conservation practice.

SEC. 10. CENTRAL VALLEY PROJECT TRANSFER.

(a) The Secretary shall cooperate with the Governor of the State of California to explore and negotiate provisions for the transfer of the Central Valley Project to the State of California. The Secretary shall report to the Congress on or before February 1 of each year on the Status of efforts to negotiate a transfer, the progress on steps necessary to comply with the requirements of the National Environmental Policy Act, the Development of any interim measures designed to achieve closer cooperation and operational efficiency between the Central Valley Project and the State Water Project, and the steps being taken to assure that any time deadlines agreed to between the Secretary and the Governor for completion of the NEPA process and the negotiations are being met.

(b) the Secretary shall credit any expenditures by the State of California in this act for fish and wildlife mitigation, protection and restoration to the purchase price negotiated by the Secretary and the State of California for the sale of the Central Valley Project.

The PRESIDING OFFICER. Under the same order the Finance Committee is discharged from further consideration of H.R. 3837, the Federal Program Improvement Act, all after the enacting clause is stricken and the text of that amendment 3408 is substituted in lieu thereof, the bill is considered read a third time and passed and the motion to reconsider that vote is laid upon the table.

So the bill (H.R. 3837) was passed, as follows:

Strike all after the enacting clause and insert:

The following text is added as subsection 781(c) of the Tariff Act of 1930 (19 U.S.C. 1677j(a)) and subsections (c)–(e) are renumbered subsections (d)–(f) respectively.

"(c) SPECIAL MERCHANDISE COMPLETED OR ASSEMBLED IN THE UNITED STATES OR IN OTHER FOREIGN COUNTRIES.—

"(1) SPECIAL PROVISION.—If—

"(A) merchandise sold in the United States is the same class or kind as any merchandise that is the subject of an antidumping duty order issued under section 736 on May 9, 1980 or August 28, 1991,

"(B)(i) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which the relevant order applies or supplied directly or indirectly by an exporter or producer covered by the order, or from parts or components from suppliers that have historically supplied the producer or to any other exporter or producer covered by the order, or from any party related to the exporter, producer, or historical supplier, whether such parts or components are supplied from the foreign country or any third country(ies), or

"(ii) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which—

(I) is subject to the relevant order.

(II) is produced in the foreign country with respect to which such order applies, or

(III) is supplied by an exporter or producer covered by the order, or by suppliers that have historically supplied that merchandise to that exporter or producer or to any other exporter or producer covered by the order, or by any party related to the exporter, producer, or historical supplier, whether such merchandise is supplied from the foreign country or any third country(ies), and

"(C) with respect to merchandise under paragraph (B)(ii), the administering authority determines that action is appropriate under such paragraph to prevent evasion of such order, and

"(D) the difference between the value of such merchandise sold in the United States and the value of the imported parts or components referred to in subparagraph (B)(1), or the merchandise referred to in subparagraph (B)(ii), is small, the administering authority, after taking into account any advice provided by the Commission under subsection (f), may include within the scope of the relevant order the imported parts or components referred to in subparagraph (B)(i) that are used in the completion or assembly of the merchandise in the United States, or such imported merchandise referred to in subparagraph (B)(ii), at any time such order is in effect. Parts or components not identified in subsection (c)(1)(B)(i) and merchandise not identified in subsection (c)(1)(B)(ii) shall not be included within the scope of the outstanding order if a finding of circumvention is made under this section.

"(2) FACTORS TO CONSIDER.—In determining whether to include parts or components, or merchandise assembled or completed in a foreign country, in the relevant antidumping duty order under paragraph (1), the administering authority shall take into account such factors as—

"(A) the pattern of trade,

"(B) (i) whether the manufacturer or exporter of the parts or components described in (1)(B)(i) is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order described in subparagraph (1)(A) applies, or

"(ii) whether the manufacturer or exporter of the merchandise described in paragraph (1)(B)(ii) is related to the person who uses the merchandise described in paragraph (1)(B)(ii) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and

"(iii) whether imports into the United States of the parts or components described in subparagraph (1)(B)(i), or imports into the foreign country of the merchandise described in paragraph (1)(B)(ii)(I), (II) and (III), have increased after the filing of the petition, issuance of such order or, if the allegation of circumstance has been raised more than one year after the issuance of such order, have increased since the time circumvention is alleged to have commenced.

"(C) FORCE AND EFFECT.—This section shall have no force or effect if the petitioner in the investigations referenced in paragraph (a)(1) ceases production or final assembly if such products in the U.S. or shifts the sourcing of major components to a foreign country.".

The Chair recognizes the Senator from Colorado.

Mr. BROWN. Mr. President, I ask unanimous consent to proceed for 30 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

CENTRAL VALLEY PROJECT

Mr. BROWN. Mr. President, I want to address briefly and concisely four subjects this evening. The first relates to the Central Valley project that was just discussed in depth by both the Senator from California and the distinguished Senator from New Jersey. I might say, as having spent my productive lifetime earning a living in agriculture, I wanted to share one viewpoint that I think may be somewhat foreign, or seem somewhat unusual to people who have not worked in agriculture.

The enormous impact indicated by the Senator from California, if, indeed, the Central Valley project measure goes through as was debated, is indeed significantly larger than simply the impact on the agriculture in the Central Valley.

How in the world can that be, some ask? Let me simply give, in answer, an analogy. Many people do not realize the enormous impact agriculture has, because it is not a final product. It is a raw material. Some agricultural production generates an enormous amount of spinoff economic activity.

In Colorado, for example, 200 to 300 workers in a feed lot finish enough cattle to generate many, many times their number of jobs. Those 200 to 300 workers in the feed lot will supply enough cattle to keep a packing plant busy. For those 200 to 300 feed lot workers the packing plant needs 1,100 workers.

The total number of workers is far more than simply those in the feed lot—in some cases, 5 to 6 times as many.

Those 1,100 packing plant workers are not the only impact. Other jobs are created from the byproducts. For instance, more workers are needed to cure hides, process the inedible meat products, and process the tallow. The fact is, there are another 1,000 jobs in addition to the packing plant jobs simply from the necessary processing of byproducts. But the impact does not stop yet.

A portion food plant that cuts those packing plant products into individual steaks could well employ another 4,500 more employees. A meat processing plant that would take a product and cook it, prepare it for the consumer and for grocery stores, might employ 200, 300, 400, 500, or even 1,000 more employees, depending upon how extensive the processing was. So, you see when you talk about economic impact of agricultural products as raw materials you barely scratch the surface.

A multiple such as the distinguished Senator from California used is very feasible and quite reasonable when you look at the total complete economic impact. I would assume the figure being quoted by the Senator from California in this debate related to this number. Whether you favor or oppose the project in California, the simple fact is, it is going to have an enormous impact on the economy of the State.

SENATOR WIRTH

Mr. BROWN. Mr. President, the second item I wanted to discuss are some remarks about the distinguished senior Senator from Colorado. Senator WIRTH'S announcement earlier this year that he would not seek reelection came as a surprise and a shock to many in Colorado. For Republicans it was an announcement greeted with great relief. Senator WIRTH is the toughest competitor we have had to face in the last two decades. He has been elected six times to the House of Representatives, one time to the U.S. Senate, and has never been beaten.

As senior Senator from Colorado he has compiled a distinguished record. He is as bright, as competitive and as aggressive as any Member we have had from Colorado.

He is bright, far more than his competitors would have wished. A bachelor's degree from Harvard, a masters in education from Harvard graduate school, a Ph.D. from Stanford University merely started him on his way.

That early ability was recognized when he was named as a White House Fellow in 1967 and 1968—a rare honor. I choose to think that he received that honor partly because he was bright enough to be a Republican in his early years, but there are those who would dispute that fact.

Education clearly is one of his fondest interests and one of his greatest dedications. It is not simply the field in which he holds a masters and a Ph.D.

He served in the old Department of Health, Education and Welfare in 1969 and 1970 as a special assistant to the Secretary and later as a deputy assistant to the Secretary of Education.

He has further demonstrated his commitment to education while serving in the House of Representatives and the U.S. Senate, and in his spare time working with young men and women, whether pages in the U.S. Senate or talking to classes throughout the State of Colorado.

One knows not what he will choose to do when he leaves this Chamber. Some of us have speculated that he will be a Cabinet member should there be a new administration. Others of us hope very much that things work out so that he teaches at a university rather than serves in a new Cabinet, but the election will decide that particular issue.

Regardless of what the future brings, the past demonstrates his record clearly. Senator WIRTH has had a major impact on many national issues, including his work in the telecommunications, banking, and financial industries. He is perhaps best known for his leadership in addressing environmental and energy issues. As the chairman of the House Subcommittee on Telecommunications and Finance, he played a key role in developing innovative proposals and educating the country on telephone, broadcasting, and banking deregulation.

Senator WIRTH has been passionately dedicated to the protection and preservation of our public lands and natural resources. He put aside partisan differences which had plagued earlier wilderness negotiations and, together, we forged a strong, balanced Colorado wilderness bill. The Wirth-Brown bill will protect nearly 700,000 acres of Colorado lands as wilderness and conservation areas, while ensuring protection of water resources within the areas.

If, indeed, it passes tomorrow—as we hope it will—it culminates an effort of over 12 years. Not only that, but it is a symbol of the bipartisan efforts he has made to bring common sense to this particular issue.

Senator WIRTH also has fought to protect forest resources in Colorado and around the Nation. He has cosponsored legislation to protect old-growth forests and was an advocate of protections for the spotted owl in the Endangered Species Act.

He has been a true leader in the Senate in examining the possibility of global climate change. In addition to calling attention to this issue on the Senate floor, he has chaired numerous hearings to bring it to public attention. In 1990, he authored the National Energy Policy Act, which was passed in the Senate. It addresses the issue of global warming, and aims to develop an energy policy focused on reducing emissions of carbon dioxide.

Senator WIRTH also is chairman of the Alliance to Save Energy. He has been a long-time supporter of natural gas, both as a legislator and has set an example as a consumer in using natural gas as fuel for his jeep. His efforts to encourage the use of alternative fuels played an important role in crafting the comprehensive national energy policy legislation, which will hopefully be signed into law in this Congress.

As an outspoken advocate for the environment and a member of the Senate Environment Committee, Senator WIRTH's dedication to our national and global environment has been of great significance. He worked toward approval of the Strategic Environment Program, which opens Defense Department data up for use in global environmental analysis. He has fought hard for what he believes.

Some of us who have not always agreed with him, but there is no question that he is effective. In 1989, he led a delegation from the United States of the Senate and House of Representatives to the Amazon Basin to examine tropical rain forests. He has pushed for consideration of environmental issues as part of the negotiations on the North American Free Trade Agreement.

Anyone who remembers the fight over the Clean Air Act will recall the close relationship between Senator WIRTH and his close friend, Senator John Heinz. Together they negotiated a successful act. It changed the record of clean air in this country. He has also led the effort to require the Environmental Protection Agency to test the ability of existing car models to continue to meet the pollution emission standards. Senator WIRTH introduced legislation to control toxic pollution and to ban leaded gasoline.

Mr. President, this exceptional, talented individual has made a difference in our country. He has made a difference in the House, he has made a difference in the Senate, he has made a difference in Colorado, he has made a difference in America. He has never shrunk from a fight, he has never pulled his punches, he has never failed to stand up for what he believes in. He carries the respect of everyone who knows him.

Public service has not simply been his commitment, it has been a family commitment. His wife, Wren, is an accomplished national cochair of the Environmental Defense fund and cofounder of the Congressional Wives for Human Rights. Their commitment, their team commitment, has made an enormous difference in people's lives.

When I began my term in the Senate, the Wirths went out of their way to make Nan and me feel welcome. Their friendship, warmth, guidance, and cooperation will be missed.

Senator WIRTH will be missed by all of us. Perhaps, more than anything else, he will be missed as a strong dedicated, committed champion of what he believes in.

I know not what will be the next chapter in his life. Without wishing him ill, I do hope it is not necessarily as a Cabinet member, but, if it is, I know he will bring the same commitment and the same hard work and the same creative mind to that task that he has shown throughout his life.

Nan and I appreciate the Wirths' friendship and wish them and their children, Christopher and Kelsey, the best as they begin the next chapter in their lives.

DESTRUCTION OF NUCLEAR WEAPONS OF THE FORMER SOVIET UNION

Mr. BROWN. Mr. President, the third item that I wish to address deals with the institution of a very special award. It will highlight the taxpayer's ripoff of the month. This particular award will be awarded on a monthly basis, when Congress is in session, to the most outstanding example of Government ripoff of the taxpayers that can be found. Some, of course, are concerned that there would not be enough examples to award this on a monthly basis. Far from there being a shortage of candidates, I think that we will find we have far too many.

The amount of this month's winner will be made at 10:30 a.m. tomorrow. Tonight, I want to share with the Senate one of the front runners for that award: A $400 million appropriation this session of Congress voted to destroy the stockpile of nuclear weapons in the Soviet Union. Let me make it clear that we all have a very significant and important interest in seeing those weapons are destroyed.

Almost 1 year ago, I voted against an amendment later passed by the Congress that set aside $400 million to aid the newly independent States of the former Soviet Union under the guise that it would be used to dismantle their nuclear weapons. Destroying nuclear weapons has great merit, but using our funds to do something the independent states are already committed to do by international treaty frees funds in military budgets for use in developing other military weapons. With the newly independent states in chaos and disorder, I was doubtful that $400 million would be effectively used to decrease the former Soviet Union's nuclear threat.

Those concerns appear to be well-founded. Nearly half of the $400 million has been committed for support functions, not for dismantling nuclear weapons; $191 million has been committed to date, and the only thing that is planned for destruction are the wallets of the American taxpayer. The money will go for fissile material storage containers, armored blankets, accident response equipment and training, modification kits for Russian railway cars, material control and accountability for fissile materials, including assistance with computer hardware and software to inventory the materials, physical security, and the International Science and Technology Centers in Moscow and Kiev that will be used to retrain their weapons scientists.

Mr. President, even worse than the fact that nearly one-half of the $400 million has been spent on support functions that will keep their nuclear weapons SAFE—not destroyed—is the fact that never has there been a study done that decides, from the United States' perspective, how the money should be spent. Instead, it is my understanding that we solicited from the Russians their list of places and functions on which they would like us to spend $400 million. Funny thing is, they came back with a list of ways to store their nuclear weapons better, to improve the safety of transportation of the weapons within Russia, and so forth. But actual destruction of those weapons was not on the list. That does not make sense.

What does make sense is a process by which the United States decides which functions are in our interest to do first—like disassemble the nuclear weapons—and then negotiate with the Russians to fund that project. To my knowledge, though, no overall assessment of U.S. interests in the weapons destruction process has been accomplished, nor has a game plan been assembled to ensure we fund these activities first. We must take the lead to ensure that the United States is not spending hundreds of millions of American taxpayer dollars just to improve the Russian military's storage infrastructure. We must spend it to actually dismantle nuclear weapons. The State Department and Defense Department need to develop a clear plan for the use of the $400 million that reflects our interests, not the Russians.

One thing that seems to have been overlooked is the involvement of American industry. Reports we have received indicate that few plans include the use of the huge talent base of American companies that exists in the area of nuclear weapons destruction. We have the world's experts. In fact, when the $400 million was announced, some of our leading companies combined their expertise to best respond to this new challenge. But instead of looking to these companies who employ the Nation's leading experts, the Defense and State Departments started sending armies of bureaucrats to Russia to investigate. One week's worth of meetings in Moscow that saw nearly

100 Washington bureaucrats in attendance caused 1 government official to note that probably all the United States would get for its $400 million was a lot of airline tickets.

In the view of many experts, the United States must develop a list of projects that puts American objectives first by putting nuclear weapons accountability at the top, a plan to assist the Russians in the destruction of the weapons next, and a clear blueprint for involving American industry in the process. A plan like this should be negotiated immediately.

The conference report accompanying this year's defense authorization bill seems to agree on both the importance of the destruction of these assets and the involvement of the U.S. private sector. I wish to compliment the Senate Armed Services Committee, and particularly Senator JOHN WARNER, for their attention to these issues. It is my hope that we will lay a planning foundation that will ensure accelerated dismantlement and destruction of these weapons.

In spite of the fact that we have literally hundreds of people situated in the Moscow Embassy and in consulates around Russia and the other embassies in the old Soviet Union, it was thought necessary to send almost 100 United States experts to visit the Soviet Union.

THE BUDGET

Mr. BROWN. Mr. President, this body is known for Members with a very striking sense of humor. Some of those Members have addressed the serious subject of the budget and the budget deficit in recent years and have done it by suggesting that this Congress is significantly more fiscally responsible than the President. In that regard, they have referred to figures which seem to indicate this Congress has appropriated and spent less money than the President has recommended.

That is a significant subject. It is an important one. I think it deserves a close look. So I took the opportunity to dig through and get the facts from the Congressional Research Service. This is a publication put out by Congress itself, not the executive branch but the Congress.

I asked a pretty simple question of the Congressional Research Service: How much money did the President ask for in his budget, how large was the deficit he recommended, and what action did Congress take.

The figures from the CRS report of March 4, 1992 with updates are very clear.

In fiscal 1990, the President recommended a budget deficit of $91.1 billion. But the actual deficit for that year, the one Congress presided over and voted for was $220.5 billion. Congress' deficit in fiscal year 1990 was more than double what the President had recommended. Let me repeat that—Congress' deficit in 1990 was more than two times the deficit President Bush recommended.

What happened in 1991? The contrast is even more dramatic. As reported by the Congressional Research Service, the President that year called for budget deficit of $63.1 billion. Congress' actual deficit was $269 billion.

Mr. President, this is not from some campaign folder. These are figures from the Congressional Research Service on the actual budget. They describe what the President asked for and what Congress delivered—a $63 billion he asked for; he got a staggering $269 billion in deficit spending.

What happened in 1992? As I think all Members know, we are not through the year yet. The President had originally recommended $280.9 billion in the way of a deficit, part of that necessitated by the runaway deficits of the prior years. Thus far, the latest estimate is that Congress will deliver a deficit of $333 billion, dramatically higher still than what the President asked for—$29.5 billion more.

How is it possible then for Members to come to this chamber and imply that the President has asked for more spending and bigger deficits than Congress has given?

Part of the answer—and it is a complicated one—lies in a variety of topics. First, estimates can vary. The fact is the President's estimates for the economy are the same ones Congress has adopted except in one instance. For the budget for this coming year, Congress took more optimistic estimates than those the President had recommended to make their numbers look better than the President's numbers.

Some say that we ought to look at only appropriated monies, I believe the figures which have been shown on this floor and discussed publicly do, indeed, deal with appropriated money.

Mr. President, it is totally accurate to say that in these years the President has asked for more appropriated funds for defense than Congress has provided. If the statements—that the President's requests for appropriated funds—were mentioned strictly in terms of defense spending, they would be accurate.

But to imply that overall the President's spending requests exceed the Congress's actual allocations is simple misrepresentation. It does not square the facts as reported by the Congressional Research Service.

The argument thus is something like this. There is a category of spending in which Congress has spent less than the president has asked, and thus, the argument goes, Congress is more frugal and more protective of the taxpayers than the President.

But that is a little like the folks who were caught in the House banking scandal for their ills. Some blamed their dog or their secretaries for their ills, but the more creative blamed their spouses. Why? Because they claim the checks their spouses wrote on the account were the ones that bounced. The checks the Members themselves wrote on their checking account was balanced. But, whether it is your own account or the Nation's, the other side of the checking account cannot be ignored. All of the figures in the checking account must be reviewed to balance a budget. To simply blame it on your spouse or to blame it on your dog or to blame it on a different category of spending is not enough.

This Congress controls every penny our Nation spends, including entitlements. This Congress can say yes or not to the entitlement reforms the President recommends. In fact, we had votes in this Chamber to control increases in entitlements this year. Only 28 Senators voted to control those entitlements in any way.

Your have to look at the whole picture: entitlement, defense spending, and every other category of spending. We must look at the whole ball of wax, and not try to mislead our listeners with only some of the facts. According to our own Congressional Research Service, all the facts are:

In fiscal 1990, Congress spent ($95 billion in outlays) Almost $100 billion more spending by Congress than what the President requested.

In 1991, Congress spent $89.7 billion more than the President requested.

Thus far, using the estimates for 1992, Congress has spent $29.5 billion more than the President's request.

The budget is complicated. The figures are involved. Let me be the first to acknowledge that both the executive and the legislative branches could have and should have done a better job to control spending and hold down the deficit. But to claim that Congress has spent less than the President simply does not square with the facts our own research service has produced.

Mr. President, I yield back the remainder of my time.

Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

THE EXTRA EFFORT

Mr. FORD. The Journal of our proceedings—the CONGRESSIONAL RECORD—is an essential tool in the conduction of the day-to-day business of Congress.

Particularly in periods like this one we are completing—periods of intense legislative activity, the RECORD is sometimes the only written account of an amendment or bill.

My hat is off to the men and women in both Chambers—in the Secretary of the Senate's office and on the staff of the Clerk of the House who get this job done. My appreciation includes those men and women at the Government Printing Office who get the copy, compose it into print, print it, bind it, and get it back up to the Senate and House floors the following morning.

For years the work force at the Government Printing Office has come through for us against adverse conditions. GPO's management has not always fully understood the immediate need in a vital legislature.

In the past the RECORD has backed up for days at the end of the session. Not so this year, even though both floors sent record amounts of copy to GPO during the night. I think it only proper that we give these men and women the recognition they are due for doing a difficult job well. And my thanks for the extra effort many of you extended.

REPUBLIC OF CHINA'S REPRESENTATIVE DING MOU-SHIH ADDRESSES THE CHAUTAUQUA INSTITUTION

Mr. DOLE. Mr. President, much has been written about Taiwan's progress in democratization and economic development, but few reports are as comprehensive as Representative Ding Mou-Shih's recent address to the Chautauqua Institution in New York. In his address, Representative Ding comments on the end of the cold war, the North-South gap, the conflict between rich and poor nations, and Taiwan's pivotal role in the Pacific region.

In detailing Taiwan's political and economic progress, Representative Ding argues that Taiwan is a "showcase model of success for other developing nations," including mainland China. In addition, he discusses Taiwan's hopes for a peaceful and democratic unification with mainland China.

Representative Ding characterizes Taiwan's relationship with the United States as harmonious and fully functional. In a post-cold-war era of trade tension and economic protectionism, Taiwan remains a dependable partner of the United States and looks forward to working with the United States and other democratic countries to achieve global peace and prosperity.

For a more up-to-date study of the Republic of China on Taiwan, I urge my colleagues to review Representative Ding's address with diligence and care. I ask unanimous consent that his address be reprinted in full.

There being no objection, the address ordered to be printed in the RECORD, as follows:

POLITICAL AND ECONOMIC DEVELOPMENT OF THE REPUBLIC OF CHINA ON TAIWAN, AND ITS RELATIONS WITH THE UNITED STATES

Ladies and gentleman: I am honored to address this prestigious and historic center for education and the arts. For generations, your Institution has inspired literacy and intellectual discourse among Americans, two elevating principles for mankind that are highly valued in my own Chinese culture as well. The vast political and social issues confronting us today are no less daunting than those our forebears contended with, and they merit thoughtful discussion in forums such as this whenever possible. What a pleasure it is to contribute perhaps a little perspective and wisdom to your proceedings here today.

As general euphoria over the end of the Cold War fades, we realize that a new array of political and security issues confronts us. Perhaps we have entered a new era, but every age has its threats and challenges. As the old East-West security concerns recede, different problems emerge, or re-emerge with greater clarity.

Old ethnic and territorial rivalries threaten to resurface in the void left by the end of superpower confrontation. The growing contract in income and social welfare between the richest and poorest nations, or "North-South gap," jeopardizes global stability and peace. Beset by their own economic problems, the wealthiest nations will have perhaps even more difficulty focusing on problems of developing nations. Trade tension and economic protectionism, even among old friends and allies, is resurgent. And the continuing destruction of our national resources by pollution and waste is a tragic by-product of this generations's rapid progress.

I understand you will focus this week on the Pacific, a dynamic and emerging power in global commercial relations. It is, as you may know, a distinctly heterogeneous and socially diverse region, stretching thousands of miles from the Kuril Islands in the North, down to the South Pacific Islands. The nations of the Pacific are at different stages of political and economic development. Yet together they comprise a major influence on international developments, and will continue to do so throughout the coming century.

There are important currents of change underway, perhaps less sensational in terms of daily headlines, but not less important than the historic transitions in Eastern Europe and other areas of the world. East Asia and the Pacific is the fastest growing region in terms of economic output, with average area-wide growth rates far higher than those of the European Community. Tensions have eased dramatically with the passage of old regimes and the new atmosphere of gradual reconciliation and cooperation. Political democratization is now a prevailing trend throughout the region, with a few notable exceptions like North Korea and Mainland China.

It is true that many political and social issues in the region remain unresolved. Still the region generally is advancing at a remarkable pace, and promises to be a significant factor in the world's destiny for years to come.

The Republic of China on Taiwan shares the same principles, interests, and goals as the majority of our neighbors. As one who has been at the forefront of change this past decade, the ROC expects to be a significant player in the region's modernization. Many of our neighboring states already rely increasingly on Taiwan's investment, trade, technical expertise, and aid programs. Indeed, the level of trade and investment between Northeast and Southeast Asia have soared in recent years. We believe in integrated regional approaches to common problems, such as those concerning natural resources, environmental protection, and energy resource development. The ROC accepts its responsibility to participate in regional planning and development.

I want to take this opportunity this morning to inform you about the broad range of dynamic and progressive developments taking place in my own country. We have embarked upon an historic program to fully democratize the Republic of China on Taiwan. Five years into that effort, we can say confidently that it is pervasive and irreversible. Every member of our legislative and representative institutions has now been closer through free and open elections. Our multiparty political system encourages broad scale representations and freewheeling campaigns. The individual's rights of speech, assembly, and petition are virtually unrestricted, even though we, as a society, still face a potential and unpredictable threat one hundred miles from our shores.

For us, this has been a dramatic and extensive transformation in a very short period of time. For every three decades, we clung to survival as an anti-communist outpost on the periphery of the world's largest communist enclave. We managed to do so only through vigilance and social discipline. Certain restrictions on political and social activity were necessary to protect our people and our governing institutions, similar to those undertaken by the United States during wartime. Even in that environment, opportunities for political participation and commercial initiative were widely available to our enterprising citizens. As our economic health and national security stabilized over time, the ROC leadership recognized the need for evolution in our society's freedom as well. Our government took the initiative in the 1980s to eliminate outdated restrictions, and to introduce democratic reforms that brought our society very quickly into the ranks of the world's freest nations.

It has been the perfect counterpart to our free enterprise tradition, expanding the liberalized climate in which prosperity and democracy are now thriving. Not only is the Republic of China on Taiwan the freest Chinese society in five thousand years of history, we are also among the most progressive nations in the world today, striving ever onward to complete our democratization program.

Political freedoms are reflected most vividly in the regular election forums now conducted on Taiwan. Since 1989, a large spectrum of legally registered political parties have fielded candidates in our Legislative Yuan contests. Like the United States, the ROC has two predominant political parties with significantly contrasting platforms and policy objectives. In addition, dozens of minor parties dot the political landscape, and legally compete in our open elections. Last December, historic elections were held for my country's Second National Assembly. This was a milestone toward fulfilling President Lee Teng-hui's commitment to reform the ROC Constitution and allow the popular election of all members of the nation's representative bodies.

The election itself says a lot about our political modernization process. Some 68 percent of our voters turned out for the smooth and orderly balloting. For weeks prior to the election, our citizens witnessed spirited competition among candidates representing numerous political parties. Our ruling Nationalist Party (KMT) platform advocated prosperity and reform; and was vindicated by receiving over 71 percent of the vote. The Democratic Progressive Party (DPP), received about 24 percent of the ballots cast.

U.S. observers hailed the historic importance of our democratic elections. Your State Department termed them "an important milestone in Taiwan's political reform process," and declared "we are pleased that they were held in an open and democratic fashion which promotes continued peace and stability in the region." The New York Times noted this was "the most democratic vote for a legislature ever held in China." Some opposition candidates tried to characterize this election as a referendum on the issue of "Taiwan independence." Contrary to government policy and our Constitution, the DPP Party platform contained a plank calling for establishment of an independent "Republic of Taiwan." Election results indicated strong popular opposition to this approach; and a clear preference for continuation of the ruling party's policies of economic prosperity, social stability, reform, and a gradual approach to reunification of China under free democratic principles. With its landslide victory in the December elections, the KMT Party emerged with a new popular mandate for the important tasks ahead. This coming December, our Legislative Yuan elections will provide yet another occasion for the vigorous airing of issues and proposals in an island-wide campaign.

Our new National Assembly has the responsibility to review and implement constitutional reform proposals. During its 1992 session, completed on May 30th, the National Assembly adopted eight constitutional amendments for structural reform in the ROC government. These include direct election of provincial governors and county magistrates, and popular election of the ROC president and vice president beginning in 1996. The method or the presidential election—whether by direct ballot or by delegate system—is to be decided within three years, after a careful review of public opinion on the matter. In addition, the amendments provide for national health insurance; environmentally conscious development of the economy; and protection of the rights of women, the handicapped, and minorities. These actions comprise a major step in my country's constitutional development.

In yet another significant step for democratic reform, the ROC Legislature in May revised the sedition clause of our Criminal Code, to apply only to those who commit overt acts of violence and coercion to overthrow the government. Previously, any action that might "tend" to incite rebellion was strictly prohibited. This significant step will liberalize even further our laws regarding freedom of speech and political activity.

Such actions to date signify the historic transition underway to implement western-style democracy and freedom in the Republic of China on Taiwan. Our commitment to this course is clear and firm.

Our successful story of national economic development on Taiwan is well known throughout the world. In the space of three decades, we were able to transform ourselves from an undeveloped, agrarian community into a highly productive consumer-oriented society on par with enterprising countries in the West.

The development of the Republic of China on Taiwan in the past thirty years has been phenomenal. In 1959, our population was 10.4 million; by last year it had doubled. In 1959, our per capita Gross National Product (GNP) was the equivalent of US$120; in 1991 it reached well over US$8,000, ranking 25th in the world. Disposable family income has reached an average of US$19,265 per household, and is still growing.

For the past thirty years, our economic growth rate has averaged 8.8% annually. At the same time, the high savings rate among our people and substantial foreign exchange reserves held by our government, together with low rates of inflation and unemployment, contributed to an atmosphere of increasing prosperity. The jobless rate in Taiwan remains less than two percent, as it has for several years. We are proud of our record in this area. We are also proud of the fact that extremely equitable income distribution has enabled everyone in our country to share the prosperity. In fact, the income gap between the top 20 percent and the bottom 20 percent in my country remains among the world's smallest. Moreover, according to a recent edition of Business Week magazine, the people on Taiwan rank first in the world in housing ownership, at 79.1%.

All this has been accomplished despite necessary heavy expenditures for national defense. We take pride in the fact that we have not grown by "mortgaging" our future and that of our children. On the contrary, our growth has generated government budget surpluses in every year except one (1982). Furthermore, we have not grown by enriching some at the expense of others.

By the end of 1992, we expect our gross national product to surge past $200 billion, ranking us 20th among all nations. Our per capita GNP will reach US$10,000. Moreover, our foreign trade will surpass US$150 billion, making us the 14th largest global trading actor. Despite the fact that our domestic economic structure is still in transition, we are moving toward an increasingly open economy aimed at liberalizing our trade, foreign exchange, and investment regimes. Our goal is to create a system in which private entrepreneurship, national prosperity, and political democracy can continue to flourish.

Taiwan earned its prosperity and its reputation for productivity as a manufacturer of labor-intensive goods, such as footwear and textiles. Today, we are making the transition to that producer of high-tech goods like computers and optic-fibers. As part of our modernization process, we are promoting automation, expanding technical training programs, and pursuing new joint ventures with our international financial partners. We believe Taiwan is destined to became a financial, transit, and technological center in the Western Pacific during the Twenty-first Century.

As I mentioned, we have managed to keep inflation and unemployment well under control in recent years, even as our economic growth rate—more than seven percent last year—has surpassed that of most western industrial countries. The spirit of entrepreneurship, coupled with intellectual creativity and efficient manpower, has provided for balanced growth in all sectors of our society. That same drive will carry us into the ranks of the fully developed economies in a very short time.

Despite our triumphs, we now face a number of economic challenges which we are determined to overcome. These challenges include:

a. a shortage of labor and rising wages;

b. an intensified labor movement and more complex industrial relations;

c. environmental pollution, which has triggered a strong domestic environmental protection movement;

d. rising energy costs and unstable prices of key resources;

e. soaring real estate prices; and

f. the NT dollar's appreciation against the U.S. dollar at a rate of nearly 47% since 1986, with all that this implies.

These factors are being addressed with the same vision and determination which brought us successfully to this point.

The Republic of China's policy abroad is to engage in free and fair trading competition as we pursue greater market diversification overseas, and less restrictive import regulations. While we are not yet a member of GATT (the General Agreement of Tariffs and Trade), we voluntarily adhere to many of its global trading principles, and hope to gain accession in the very near future.

Thirty years ago, the ROC on Taiwan engaged in total global trade of only about US$400 million, with a net trade deficit of some $80 million. By contrast, in 1991, our worldwide trade volume reached nearly US$140 billion. So we do feel our economic stature has been well established, both at home and abroad.

For many years, exports abroad were the engine of our economic progress. But the percentage of Taiwan's foreign trade in our GNP has gone down substantially in recent years, as a result of our policy of expanding domestic demand. Statistics show that our reliance on foreign trade has declined year by year since the late 1980s. The ratio of our foreign trade to the GNP fell from a high of 106% in 1980, to 90% in 1989, and to 84% in the first half of this year. Domestic demand will be accelerated even further by our current National Development Plan.

Perhaps you already know that in September 1990 my government announced a six-year, $300 billion "National development Plan" to upgrade infrastructure on the island. This plan includes a number of major expenditures for housing, schools, medical and transportation facilities. The goal is to improve the national well-being of every citizen. There will be more affordable housing, better schools, and better transportation facilities between schools and towns.

The plan is expected to increase the per capita Gross National Product from the present $8,000 to $14,000 in 1996. As an added bonus, the plan should spur private investment, thereby increasing public demand and reducing Taiwan's trade surplus. The anticipated 775 projects will offer important opportunities for overseas participation in developing our communications and transportation systems; energy resources; environmental protection; flood prevention; science and technology; and health and medical care programs.

Indeed, many of the areas where the ROC requires the most assistance are precisely those areas where US firms have goods and services to offer. For example, American companies are world leaders in the development of environmental technology and in the management of environmental programs. Your companies should be able to provide us with machinery and equipment needed for protecting and preserving our natural heritage and with the management expertise needed for enforcing government environmental policies throughout the nation.

The U.S. Commerce Department recently described us as a prosperous market that "represents significant opportunities for American companies to bid on contracts for major projects, including flood control, city transportation networks, water and sewage plants, and highway construction."

U.S. business already is heavily involved in my country in the fields of pollution control, computers, automated production equipment, telecommunications, household furnishings and appliances, transportation, high-tech instruments, petrochemicals and processed foods. Ford Motor Company, for instance, which established plants in Taiwan in the 1970's, has gained the largest market share for automobiles in my country, competing against ten other manufacturers. IBM Taiwan Corporation and Hewlett-Packard Taiwan Limited are major distributors of computers, while AT&T is one of our largest telecommunications product suppliers.

I sincerely hope that the success and confidence shown in the ROC on Taiwan by certain U.S. companies will lead other American firms to explore and undertake significant commercial ventures in our market.

In 1991 alone, United States engineering companies won more than a billion dollars worth of major contracts in Taiwan. Some 200 U.S. firms either bid on, or participated in the 50 largest projects covered by the Six-Year Development Plan last year. We hope this trend may continue. Of course, product quality, realistic prices, and after-sales service will help U.S. business sustain its favored position in our market.

Commercial interaction between my country and the United States has always been extensive, and it remains so today. In fact, Taiwan is the sixth largest trading partner of your country, and you remain one of our largest overseas markets. American exports to Taiwan have nearly tripled in the last six years. We have successfully reduced our trade surplus with you by ten percent a year, over the past five years; from $16 billion in 1987 to $9.1 billion in 1990, and to $8.2 billion last year. In addition, an ever-increasing portion of our private investment abroad—more than fifty percent, in fact—is targeted at the United States, where high-tech industries, financial institutions, and construction companies are attracting Chinese investors. Total amounts already run into the billions of dollars, and Taipei intends to encourage our businessmen to set up additional plants and take part in mergers of U.S. companies. Last year, the United States ranked as the number one investor in Taiwan, at about forty percent of the total amount.

In the meantime, the two of us have been able to resolve successfully those few areas of disagreement over commercial policies and practices. In June of this year, we jointly agreed to phase out export curbs of machine tools from Taiwan by the end of 1993. This accord follows the expiration last year of our five-year-old voluntary restraint agreement. Our new Voluntary Restraint Understanding on machine tool exports had been welcomed by U.S. manufacturers.

Also in June, we reached an agreement on intellectual property rights protection after extensive discussions. Taiwan will strengthen its measures for protecting international property rights, including patents and publication copyrights. My government strongly believes that counterfeiting is not only immoral but also damaging to research and development efforts. Our executive branch will work with our legislature to complete the enactment of laws for enhancing and enforcing intellectual property protection.

We are gratified by your government's open support last year for our admission to the Asian Pacific Economic Cooperation forum, and prospectively to the GATT. Our participation in those organizations will enhance their effectiveness and relevance over the long run.

Of course, not all cooperation between our two countries is in the economic or financial realm. The range of our common interests, and the extent of our goodwill, is vast. Educational, cultural, scientific, and technological links between us are well advanced. We have entered dozens of bilateral agreements involving such U.S. agencies as the National Science Foundation, National Institutes of Health, and the Nuclear Regulatory Commission. Exchange of research visits involve hundreds of your citizens and ours each year.

I know that the Chautauqua Institution is a major champion of scholarly discourse. Intellectual dialogue and interaction is a well-established tradition between your country and mine. Chinese students have been coming to the United States to study for well over a century. Among all foreign students currently studying in the United States, Taiwan has the third largest number, at 33,000. Among those foreign students now attending schools on Taiwan, the thousand-plus Americans studying Chinese language and culture far outnumber those from anywhere else.

Three years ago, the Chiang Ching-kuo Foundation for International Scholarly Exchange was established by donations from private and public sectors in my country, in honor of our late president. The Foundation funds research by foreign scholars on subjects related to the Republic of China. With more than $100 million principal, the Foundation also is contributing to educational programs at various overseas institutions, primarily American universities. Since its inception, $11 million dollars has been committed to 176 U.S. universities and research institutions. We expect these projects to significantly upgrade academic cooperation in Chinese-area studies.

As all of you well appreciate, education tends to reinforce those political and social values and objectives which free societies like ours embrace. So it is these scholarly ties between your country and mine that have bolstered our common commitment to democracy, liberty, and justice. Truly, it can be said that the democratic reform movement in the Republic of China on Taiwan was inspired, and has been stimulated by the American model of liberty, free speech, and universal political participation.

Before closing, I want to say a word about the issue of China in general. My government stands for the peaceful and democratic unification of China. The present reality is that China is temporarily separated into two areas—the mainland and Taiwan—with two political entities. The timing and method of China's eventful reunification must respect the rights and interests of the Chinese people on Taiwan, safeguard their safety and welfare, and recognize the rights of the Chinese people on the mainland to freedom and democracy.

In his inaugural address of May 1990, President Lee Teng-hui advocated the institution of democratic and free market reforms on the mainland. He held forth the possibility of broader exchanges and discussions with Peking once it renounces the use of military force against Taiwan and pledges not to interfere with the R.O.C.'s external relationships.

The growing network of private contacts and exchanges between Chinese people on Taiwan and on the mainland already enhances prospects for eventual reunification. To date, Taiwan residents have made more than 2 million trips to the mainland, while over 17,000 mainland residents have visited Taiwan. Indirect trade through Hong Kong surpassed $5 billion in 1991.

The Guidelines for National Unification which my government adopted last year include these essential points:

(1) The ROC adheres to the Principle of "one China," and seeks China's unification.

(2) It insists on peaceful unification, and opposes the use of force.

(3) The rights and interests of the people in the Taiwan area should be respected.

(4) Peaceful unification of China should proceed in three phases: near-, mid-, and long-term.

In the "near-term phase of exchanges and reciprocity," the ROC government encourages people-to-people contacts between two sides of the Straits. At present, the ROC government has set up the Straits Exchange Foundation (SEF) to act as an intermediary organization for handling affairs concerning both sides of the Straits. In the "mid-term phase of mutual trust and cooperation," we hope that both sides of the Straits would establish official communication channels on an equal footing, and we propose joint development of the south-eastern coastal area of the mainland. in the "long-term phase of consultation and unification," the Guidelines suggest that a consultative organization for unification be established for joint discussion of the grand task of unification. This is our constructive program to reunite the Chinese people.

Last month, our legislature approved a "Statute for Relations across the Taiwan Straits" to provide a legal basis for bi-coastal contact between people on Taiwan and the Chinese Mainland. It authorizes our Executive Branch to initiate the set-up of direct trade, shipping, and postal links. But any move in that direction must first be approved by the legislature, based on assurances of Peking's sincerity in improving bi-coastal ties. Such assurances remain elusive.

Allow me to close this morning with the observation that the Republic of China's longtime friendship and cooperation with the United States is a cornerstone of my country's international policy. The Cold War "victory" of the free world is due as much to the cohesion of global democracies as it is to the disintegration within the communist system. The same common vision of universal freedom and peace which brought us, together, to this point will sustain us all in the future as we contend with new challenges and circumstances.

The broad range of interests, objectives, and principles which our two countries share means that we view many global issues in the same way. Your country, as leader of the progressive nations, can count on the ROC as a dependable partner in the era ahead. We have much to offer. Though small geographically, Taiwan today is a showcase model of success for other developing nations, large and small. Our example, and our assistance, can serve the interests of East Asian progress over time. We look forward to working with the United States and other democratic countries to achieve global peace and prosperity for this generation and those to come.

Thank you very much.

STATEMENT ON SENATOR CRANSTON AND THE STAFF OF THE VETERANS' AFFAIRS COMMITTEE

Mr. AKAKA. Mr. President, before we adjourn for the year, I wanted to take a few moments to wish Godspeed to our dear friend and colleague, ALAN CRANSTON, who is departing the Senate after 24 stellar years as a legislator and statesman of international stature, as well as to thank the staff of the Veterans' Affairs Committee for their many years of outstanding service to the Nation's veterans.

During his four terms as a U.S. Senator, ALAN CRANSTON left an indelible mark on virtually, every major issue of the day. Think of any of the following—arms control, improved relations with the then Soviet Union, SALT II, START, the Panama Canal Treaty, the Mideast peace process, affordable housing, environmental protection, national parks, mass transit, a woman's right to choose, the disabled, civil rights, civil liberties, health, immigration reform—and one cannot help associating them in some way with the Senator from California.

But my own experience with Senator CRANSTON has been largely confined to my acquaintance with him as a member of the Veterans' Affairs Committee, which he has chaired so ably over the years. For the 2½ years that I have served as a member of that panel, I have some to know and appreciate the full extent of ALAN CRANSTON's grand legacy to veterans.

ALAN CRANSTON, as chairman or ranking member or member of the Committee, and of its precursor, the Subcommittee on Veterans' Affairs, has either written or helped write every major veterans initiative of the last two decades, from the Montgomery GI bill to creation of the Readjustment Counseling Service, from the Job Training Partnership Act to agent orange compensation, from expansion of the Home Loan Guaranty Program to passage of the Judicial Review Act, from reform of the Dependency and Indemnity Compensation Program to services for women veterans who have been sexually abused. He will be given special credit for drawing attention to the needs of Vietnam veterans, women, minorities, and veterans of such recent conflicts as Grenada, Panama, and the Persian Gulf. The depth of his commitment to those who served will be forever engraved in the thousands of improvements he made to title 38, of the United States Code. His philosophy of veterans benefits—that the Nation owes a fundamental, continuing obligation to veterans, particularly to disabled veterans, and to the survivors of those who died in battle—will serve as a standard for all those who follow.

Apart from his legislative accomplishments, Senator CRANSTON was a delight to work with. As chairman, he was unfailingly courteous, ever willing to entertain dissenting views, and eager to offer assistance to his less experienced junior colleagues. Though it was his right, he never abused the authority conferred by seniority, preferring accommodation to raw displays of power, and gentle persuasion to parliamentary legalisms. For ALAN CRANSTON is that rare man: A politician with a conscience, a statesman for whom goals and means are inextricably linked, an individual whose public ideals are more than matched by an inner grace.

And so, Mr. President, I will miss this good man who has taught this junior Member much about what it means to be a U.S. Senator. I honor his service to the Nation, and I cherish him for his humanity.

Mr. President, in wishing the best of luck to Senator CRANSTON, I also would like to bid farewell to the outstanding staff of the Veterans' Affairs Committee, including staff director and chief counsel Ed Scott, general counsel Bill Brew, associate counsels Michael Cogan and Thomas Tighe, professional staff members Janet Coffman, Chuck Lee, and Susan Thaul, and the rest of the staff, including Charlotte Hughes, Neil Koren, Virginia Rowthorn-Apel, Kelly Cordes, Tom Hart, Chris Mohr, Jo Meuse, and Rosalie Dukasin.

Mr. President, I do not exaggerate when I say that these individuals collectively represent the finest staff I have ever had the privilege of working with in my 16 years on Capitol Hill. They are bright, hard working, knowledgeable, and truly dedicated to their mission—which is to help us help veterans. I know that I have relied on them for advice and background material on any and every conceivable veterans issue—to the point where I often thought they were really just extensions of my personal staff.

I am particularly grateful to Ed, Bill, Michael, Thomas, and Neil for their assistance in working on specific initiatives I have supported, including my efforts to establish a VA medical center on Oahu to help native American veterans obtain direct VA home loans, to make members of the National Guard and reservists eligible for the VA home loan program, to establish a special center in Hawaii to assist veterans suffering from combat-related psychological problems, to require VA to undertake a comprehensive study of posttraumatic stress disorder in minority veterans, and to establish the position of Chief Minority Affairs Officer within the Department of Veterans Affairs.

In addition, Ed, Bill, and Thomas accompanied me on several different occasions to Hawaii to help me conduct oversight hearings and inspection tours on VA health care matters, activities which materially aided the veterans of my State.

Mr. President, I will miss the Veterans' Affairs Committee staff. I will miss their earnestness. I will miss their youthful idealism. I will miss their enthusiasm. I truly hope that their energy and experience will not be lost to the Senate or the Nation, that their services will be utilized by the next chairman of the committee or by the new administration.

Thank you, Mr. President. Senator CRANSTON and his staff represent the best traditions of public service. I know that I speak for the entire Senate when I thank them for their service to the Nation and urge their continued involvement in the great public issues of the day.

JEWISH GERIATRIC SERVICES, INC. OF LONGMEADOW—80 YEARS OF SERVICE TO THE ELDERLY

Mr. KENNEDY. Mr. President, it is a privilege to take this opportunity to congratulate the Jewish Geriatric Services, Inc., of Longmeadow, MA, which is celebrating 80 years of excellent service and tireless dedication to older Americans.

Established in 1912, the Jewish Geriatric Center was pioneered by a group of 18 women and 1 man. Bound by a common goal, they combined their efforts to raise funds to provide food for elderly citizens throughout the Springfield Jewish community. Today, after 80 years of outstanding service, this distinguished organization still maintains its funding commitment to provide needed services and support for elderly residents in the area.

In keeping with its longstanding tradition, the women's division of today's Jewish Geriatric Services continues its efforts to carry on these services. This year's celebration marks a milestone. It continues to enrich the lives of those in need, by offering comfort and dignity to all those assisted by its services.

Jewish Geriatric Services, Inc., is an exemplary institution that offers indispensable aid to the community. It has become one of the most effective organizations serving the elderly, and I commend it for its success, and I extend my best wishes for many more years of successful accomplishments.

THE NEWS ON THE PRESCRIPTION DRUG PRICE FRONT: BAD, AND GETTING WORSE

Mr. PRYOR. Mr. President, today, I want to update my colleagues on an issue that is very important to me and vital to millions of older Americans: their ability to afford prescription medications. Day after day, older Americans write to me as chairman of the Special Committee on Aging, pleading that Congress do something about the high cost of drugs.

PLEAS FOR HELP COMING IN BY THE THOUSANDS

In the past 6 months, new reports have been released which demonstrate that millions of older Americans are unable to obtain their drugs. Before I describe these reports, however, I want to share with my colleagues the events of the past few days, which, in my opinion, put a more compelling human face on the prescription drug cost crisis facing the United States than any report can.

This past Monday night, CBS aired a special segment on their nightly news program describing the impact that rising drug prices have had on Americans of all ages. The segment also described a new report developed by the Senate Special Committee on Aging staff which lists all the programs that drug manufacturers have to make their prescription drugs available free of charge to patients that cannot afford them.

Since the airing of that report, the committee has been absolutely deluged with thousands of requests from individuals of all ages and from all across the country, asking desperately for a copy of this report. Extra phone lines had to be installed to accommodate the number of calls that have been coming in, validating what I have been saying all along: That people are hurting and cannot afford their medications. In call after call, we are hearing the heart-wrenching stories of individuals who describe the astronomical cost of medication that they absolutely have to take, and how they often wonder whether they will be able to afford them the next time they need a refill.

Even more startling is the news that we are hearing from many physicians that are also calling in. These physicians are telling us that they were shocked to hear that these free drug programs existed and that, in spite of the drug companies' claims to the contrary, they have never heard about them from the drug manufacturers that regularly visited them.

Mr. President, why have we reached this sorry state of affairs in the United States today? The lion's share of the blame rests squarely on the shoulders of the drug manufacturers of this country. These five reports will clearly and unequivocally illustrate that all we receive in return for the extravagant tax credits and tax breaks, monopolistic patent protection, and generous Federal Government research subsidies that we give to the drug industry is the highest medication prices in the industrialized world. It is these pricing policies that are responsible for the thousands of calls that we have received over the last few days, and the thousands of more I am sure that we will receive over the next few days and months.

GAO REPORT ON SECTION 936 DRUG INDUSTRY TAX BREAKS

Mr. President, last May, the General Accounting Office released a report that shocked and startled even those of us who have long known that the pharmaceutical industry is the beneficiary of some of the most lavish tax breaks and tax credits given to any industry in the United States. Not only does this industry receive hundreds of millions of dollars in research and development tax credits, orphan drug tax credits, and marketing and advertising deductions, it also receives the largest share—about $2 billion dollars each year—of a tax credit which is clearly the mother of all tax credits: section 936.

Under the section 936 tax credit bonanza, the pharmaceutical industry is able to close up manufacturing operations in the United States and move them to Puerto Rico, transfer drug patents to the island, avoid paying millions of dollars in taxes on the sales of these items, and then receive a credit of about $70,000 per employee on an average salary of about $24,000 that they pay to each employee. This tax credit, which was designed to stimulate the growth of jobs in Puerto Rico, has done more—much more—to add to the drug industry's already-bloated bottom line rather than create jobs.

In fact, while the drug industry receives 56 percent of all section 936 tax credits, it only employs 18 percent of all section 936 employees. And, for some companies, the tax credit received per employee hired is higher—much higher—than the $70,000 average.

For example, Pfizer receives a tax credit of $156,000 for every employee that they hire in Puerto Rico, 636 percent more than the salary that they pay that employee. Merck receives $110,000 for every employee that they hire, 450 percent more than the salary that they pay. No wonder why these companies hired an army of lobbyists to defeat my proposal that would use this tax credit as an incentive for drug companies to contain drug prices.

In March 1992, I offered an amendment to the tax bill that would pare back these section 936 windfall tax credits to drug manufacturers that increased their prices faster than the rate of inflation. While I was not successful in convincing my colleagues in March to enact this amendment, had this report been in my hands on the Senate floor during that debate, I believe that the outcome would have been much different. This report provides more weight to the argument that we should target this windfall tax credit as a good first step in reducing drug costs in the United States.

AMERICAN ASSOCIATION OF RETIRED PERSONS REPORT

In 1982 and 1986, the American Association of Retired Persons released reports on the ability of older Americans to afford their medications. In 1986, the report found that three of four older Americans said that their highest out-of-pocket medical cost was for prescription medications. Last year, the association did a telephone survey of thousands of older Americans to determine whether this sorry situation had improved or deteriorated. Unfortunately, the July 1992 report showed that the situation had definitely deteriorated:

About 8 million Americans over 45 now say that they have to cut back on necessary items such as food or fuel to pay for their medications. This sorry statistic is being validated this very day by the number of requests that we have been receiving for the Aging Committee report on the drug manufacturer indigent patient programs.

About 18.4 million older Americans over 65 report that they have trouble paying for their medications.

About 43 percent of older Americans age 55 and over have absolutely no prescription drug coverage. That means 23 million older Americans are left exposed to potential financial catastrophe from exorbitant medication bills.

The problem is worse—much worse—for older Americans over age 75. Only 40 percent of this population group has drug insurance coverage, leaving 8 million older Americans in this age group without drug coverage.

REPORT OF THE SENATE SPECIAL COMMITTEE ON AGING

Mr. President, the staff of the Senate Special Committee on Aging completed its own report in August, 1992 on the ability of older Americans to afford their medications. Here is what that report showed:

Because of 12 years of triple digit price inflation for medications, the ability of older Americans to afford their drugs has reached a crisis situation in this country. Many older Americans are having to skip doses or cut their tablets in half to stretch their prescription.

The majority of older Americans do not have private or public health insurance for prescription drugs. In fact, over 64 percent of all medication costs for older Americans are paid out-of-pocket. It is the near-poor elderly that do have have Medicaid that have the highest out-of-pocket drug costs, and the hardest time paying for their medications.

While Medicaid's prescription drug program can act as a safety-value in helping the poorest of the poor obtain their medications, only about 16 percent of older Americans—about 1.9 million—that are classified as poor or near poor qualify for Medicaid. That means that 84 percent of poor or near poor Americans—about 10 million—do not qualify for Medicaid's prescription drug coverage.

Although many manufacturers say that they have special programs to make their medications available free-of-charge to patients that cannot afford them, the report found that only a handful of the millions of older Americans that could benefit from the programs are actually taking advantage of them. The thousands of requests that we have received over the last few days for information about these programs are all the evidence we need that patients and physicians are unaware of these programs. In addition, these programs are not particularly user-friendly. Indigent patients often have to wait weeks before they are able to get the medications that they need to live.

GAO REPORT ON SKYROCKETING PRESCRIPTION DRUG PRICES

Another report about the high costs of medications was released in August by the General Accounting Office [GAO]. In that report, manufacturers of 29 widely used prescription drugs were asked to explain the reasons for the excessive price increases that we have seen on some of their products over the last few years. As we might expect, the report found that the drug manufacturers gave their standard boilerplate argument that their price increases were needed to fund research and development of new drugs.

Although that argument is now threadbare, the fact is that a manufacturer which is spending 15 percent of its sales on R&D would only have to increase its prices by 1.5 percent each year to increase R&D by 10 percent. Where are all these excess price increases going? To marketing, advertising, and profits. That is the bottom line.

Not only are drug manufacturers increasing prices on drugs that are still on patent, but some of the stiffest price increases occurred on drugs that have been off patent for decades, such as Dilantin, used to treat epilepsy, Synthroid, used as a thyroid replacement, and Nitrostat, used for angina. Price increases of the magnitude described in this report for products that have been off patent for decades are totally inexcusable and the most blatant example of price gouging the American public.

FAMILIES USA REPORT

Just last month, in September 1992, Families USA released a most compelling indictment of the pharmaceutical industry's pricing practices. We know that the industry has wrecked havoc on the American public by increasing drug prices over the past 12 years by three times the rate of inflation. This report went one step further. It showed us how the industry abuses the monopoly power that we have given them by granting patents on their products. Patents are needed to encourage innovation in all areas of our society. Patents allow the inventor assurance of adequate time to recover their investment in discovering and making the product. However, Congress did not create patents to encourage price gouging, especially on products as vital as medications. Here's what the Families USA Report found:

Over the past 6 years—from 1985 through 1991—the top 20 prescription drugs used by older Americans almost quadrupled in price. Many of these medications are still on patent, and no lower-cost generic alternative is yet available.

The profits of the manufacturers of the top 20 drugs used by Americans have increased at 5 times the average of the Fortune 500 companies. That is, while the average Fortune 500 company was making profits of 3.2 percent, the average profit of the manufacturer of the top 20 drugs was 15.1 percent. They have been able to make these monopoly profits because they have been abusing the patent that we have given them.

Because of this incredible price gouging on patented pharmaceutical products, older Americans at the lowest income level, who are unprotected by Medicaid, have the highest out-of-pocket prescription drug costs of any income group of older Americans. These Americans spend 10 percent of their total income on prescription drugs. No wonder that 8 million older Americans say that they have to make choices between paying for food and medications. These older Americans go to bed at night wondering whether they will be able to afford a pill to treat their diabetes or their high blood pressure. These are choices that no American should have to make.

VOLUNTARY EFFORTS FALL FAR SHORT OF WHAT IS NEEDED

Mr. President, we have heard much rhetoric from the drug companies and their supporters that they are voluntarily going to restrain their drug price increases in 1992. Well, recent data do not show that the drug manufacturers are putting their money where their mouth is.

In fact, drug inflation is increasing at an even faster rate. According to the Bureau of Labor Statistics, during the period between August 1991 and August 1992, while the overall inflation rate was 1.5 percent, drug prices 6.3 percent, more than 4 times the amount. Unfortunately, these data show why voluntary approaches to pharmaceutical cost containment can not and will not work.

First, not all manufacturers have taken the pledge to keep their price increases to inflation. In fact, only six drug companies have taken this pledge, and we have no idea whether these manufacturers will continue to show restraint if we take their outrageous behavior out of the spotlight. Second, these voluntary commitments do nothing about the astronomical cost of new drugs coming to the market. In recent years, we have seen some drugs come to market at a cost of $3,000 to $4,000 a dose. The bottom line is this: nothing short of legislative initiatives will assure that the American public will pay fair prices for medications.

Mr. President, when the 103d Congress convenes, I will continue to seek enactment of practical, reasonable approaches to pharmaceutical cost containment. We must also find ways to expand access to needed medications among various vulnerable population groups. Health care reform is inevitable, and whether prescription drug costs are 5 percent or 10 percent of the health care dollar, they are too important and too expensive to be left out of meaningful health care cost containment mechanisms.

The only real solution to the crisis so vividly described in these reports lies in strong mechanisms that reduce the cost of pharmaceuticals for all Americans. We have to be sure that Americans are not being price-gouged by an industry that has clearly abused the patent protection on their products.

We have to protect Americans against paying high drug prices to subsidize lavish and extravagant drug manufacturer marketing campaigns which have little or no educational value for health care professionals. We have to be certain that the American taxpayer pays a fair price for those drugs that are developed with financial support from Federal Government laboratories and institutions, such as the National Institutes of Health.

Finally, Americans want to know why we should continue to allow the drug industry to reap the benefits of a $2 billion a year windfall tax credit when all we get in return are drug prices that climb higher and higher into the outer stratosphere. Mr. President, these are among the issues that I intend to take up once again shortly after we convene the 103d Congress next January.

IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOXSCORE

Mr. HELMS. Mr. President, the Federal debt run up by the U.S. Congress stood at $4,059,483,157,798.59 as of the close of business on October 5, 1992.

Anybody familiar with the U.S. Constitution knows that no President can spend a dime that has not first been authorized and appropriated by the Congress of the United States.

During fiscal year 1991, it cost the American taxpayers $286,022,000,000 just to pay the interest on Federal spending approved by Congress—spending over and above what the Federal Government collected in taxes and other income. Averaged out, this amounts to $5.5 billion every week, or $785 million every day, just to pay the interest on the existing Federal debt.

On a per capita basis, every man, woman and child owes $15,804.33—thanks to the big-spenders in Congress for the past half century. Paying the interest on this massive debt, averaged out, amounts to $1,127.85 per year for each man, woman, and child in America—or, to look at it another way, for each family of four, the tab—to pay the interest alone—comes to $4,511.40 per year.

What would America be like today if there had been a Congress that had the courage and the integrity to operate on a balanced budget?

IN TRIBUTE TO THE FIREFIGHTERS WHO DIED IN THE LINE OF DUTY IN 1991

Mr. DODD. Mr. President, on October 11, 1992, firefighters who died in the line of duty during 1991 will be honored at the 11th Annual National Fallen Firefighters' Memorial Service in Emmitsburg, MD. Since I am unable to attend the memorial service, I would like to take this opportunity to extend my condolences to the families and friends of our fallen firefighters.

Our Nation owes a great debt to the brave men and women of the fire service who work tirelessly and risk much to protect us. No matter how dangerous or difficult the emergency, they are always there. Whether they are battling the intense flames, heat, and smoke of a fire raging out of control, freeing a motorist from the twisted wreckage of his car, or helping a town rebuild after a natural disaster; our dedicated firefighters are there to perform their lifesaving duties with courage and compassion.

Tragically, the dangers of the job take a terrible toll. Last year, 105 firefighters made the ultimate sacrifice for their communities. Included in their number are four firefighters from Connecticut: Ronald C. Altieri who served with the Hamden Fire Department; Robert A. Cole who served with the Beacon Hose Co. No. 1; Michael Moriarty who served with the Canterbury Volunteer Fire Co.; and Daniel E. Wannagot who served with the Shelton Fire Department. These men worked hard to make their communities a better and safer place and they will live on in our hearts and minds. To their families and friends I extend my sympathy. My thoughts and prayers are with them.

DEDICATION OF THE FEDERAL JUDICIARY BUILDING

Mr. CHAFEE. Mr. President, last Wednesday, the city of Washington was presented with a grand architectural achievement: The new Federal Judiciary Building. The building is a brilliant complement to Daniel Burnham's Union Station and newly restored Postal Square. Wednesday's dedication ceremony was graced with the words of the chairman of the Environment and Public Works Committee, Senator MOYNIHAN, who served as chairman of the Commission for the Judiciary Office Building, Chief Justice William Rehnquist, and the Honorable L. Ralph Mecham, Director of the Administrative Office of the U.S. Courts.

Mr. President, dedication of any new Federal building, let alone one of this magnificence, is a special and rare ceremony. It is not something we do every day, nor should we take it lightly. The words of Senator MOYNIHAN, Chief Justice Rehnquist, and Mr. Mecham were dignified and celebratory, and should be shared with the full Senate. Accordingly, I ask unanimous consent that their statements be entered into the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

REMARKS BY DANIEL PATRICK MOYNIHAN

One of the engaging features of the American experiment, as we persist in calling it, is the counterpoint between our insistent association with classical republican forms of government, and equal insistence that ours is indeed a wholly "New Order of the Ages". As proclaimed in Latin on the Great Seal.

The founders had few illusions about the "fugitive existence", as Madison put it, of those ancient republics. Yet, you cannot doubt their dream that the mind of man might yet devise a mode of republican government that would endure.

The experiment goes on, not least in the evolution of the Nation's Capital, a wholly new city designed to facilitate and to celebrate this republic, and to illustrate its character with Greek and Roman architectural forms. In this regard, there have been good times, and, well less good. (The Persian drinking horns that festoon the Rayburn Building being one not altogether fortunate example.) But one of the finest moments came at the beginning of this century with the Report of the Senate Committee on the District of Columbia on the Improvement of the Park System of the District of Columbia, named for its chairman, Senator James McMillan of Michigan. The Commission recovered the neoclassical clarity of the L'Enfant plan for the city, most particularly by proposing to clear the Mall of existing and prospective railroad stations. Instead, we would have one station on the present sight. But no ordinary railroad shed.

"The plans call for a station eight feet and eight inches longer than the Capitol, the building to be of white marble, the facade to be Roman in stile of architecture, and the construction and arrangements to be so planned as to make this station superior to any structure ever erected for railway. Facing the Capitol, and yet not too near that edifice, the new station will front upon a plaza six hundred feet in width and twelve hundred feet in length, where bodies of troops or large organizations can be formed during inaugural times or on other like occasions. Thus located and constructed, the union depot will be in reality the great and impressive gateway to Washington.[1]

Daniel Burnham, who could make no little plans, conceived an arrangement of three buildings, and in turn design the station itself and the Post Office to the west, bequeathing the present eastern site to our age. As chairman of the Commission for the Judiciary Office Building, I hope you will agree with us that the American genius has never been more on display than here and now. The critic Benjamin Forgey has described this work of Edward Larrabee Barnes and his associates as "an abstract variation of classicism." We are now beyond Greek and Roman. Yet, the antiphony persists. As President Kennedy would say Pericles would say, "We do not imitate, but are an example to others."

Not only in the arts, but also in government. The McMillan Commission report concluded with this passage:

"By the patient and steadfast cooperation of all those persons charged with the upbuilding of the District of Columbia, a result may be attained such as has been reached in no other capital city of the modern world. The task is indeed a stupendous one; it is much greater than any one generation can hope to accomplish. The very hearty and intelligent cooperation that the plans have received by the officers of the Government, the committees of Congress, and by the public generally makes it reasonably certain that the development of the National Capital will be prosecuted along the general lines proposed; and that the city which Washington and Jefferson planned with so much care and with such prophetic vision will continue to expand, keeping pace with national advancement, until it becomes the visible expression of the power and taste of the people of the United States.[2]

Lest too much gravitas descend, let us recall Mencken's observation that "No one ever went broke underestimating the taste of the American people." As for McMillan, it would seem closest *he* ever came to going broke was in the elections of 1895 and 1899, when, as his biographer notes, as sometime Republican State chairman, "he took considerable trouble and expense to insure his unanimous election by the Michigan legislature.[3] This required that he buy every Democratic vote in Lansing.[4] Money well spent, say I.

REMARKS OF THE CHIEF JUSTICE

I am pleased to join you in dedicating our new Federal Judiciary Building. My predecessor, Warren Burger, recognized more than twenty years ago the need for a building to house in one location the various agencies which comprise the support system of the federal judiciary. Today, his vision has become reality. Its realization has been much aided by the efforts of those in the judicial branch—especially Ralph Mecham and his colleagues in the Administrative Office of United States Courts—and by those in the executive and legislative branches—particularly by Senator Moynihan.

We also express our appreciation to George White, the Barnes/Lee architectural partnership and those who brought their design to fruition. This handsome structure surely provides a fitting complement to Union Station and Postal Square, both of which were recently refitted to their original splendor, albeit modified to serve contemporary needs and functions. It has often been said that the public buildings of an era reflect the mood of its times. Adjacent to us on Columbus Circle, Union Station's architectural style exemplified an era of robust optimism and a sense of limitless potential that, as many historians have noted, has been considerably toned down as the century has advanced. What can be said of this building and its style, which evokes so many of the patterns of its predecessors?

We can speak of the timelessness of the classical architectural elements that make up both buildings—and a timeless style is particularly appropriate in a building dedicated to the administration of justice. The strong classical elements symbolize the timeless strength of the system left to us by the framers of the Constitution, who themselves consciously referred to classical models. The modern elements of the design—the glass walls around us and the glass canopy above us, floating on few visible means of support—do not detract from the classical symbolism. The German philosopher Schelling called architecture "music in space, as it were a frozen music"—and this building admirably fits that description.

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[1] "The Improvement of the Park System of the District of Columbia," Report of the Senate Committee on the District of Columbia, 57th Cong., 1st sess., Senate Report No. 166 (Washington, D.C.: Government Printing Office, 1902), p. 16.

[2] Ibid., p. 19.

[3] Marie Heyda, O.P., "Senator James McMillan and the Flowering of the Spoils System," Michigan History, LIV:3 (Fall, 1970), p. 194.

[4] Ibid.

It will soon teem with more than one thousand employees who staff the Administrative Office of the United States Courts, The Federal judicial Center, the United States Sentencing Commission, and the Panel on Multidistrict Litigation—agencies whose purpose is to support the programs, policies, and goals of the federal judicial branch. Their integration at last from many scattered locations into this central structure symbolizes the nation's need for a unified, efficient, and properly focused federal court system to meet the serious challenges confronting it today.

Most Americans—indeed, probably most people everywhere—from their impression of the system of justice under which they live by their experience with that system in their own community. For them, the local courthouse is the tangible symbol of the availability of justice, and of its quality. By contrast, most Americans—indeed, most lawyers and probably many judges—will not know the purpose which this building serves. Most of those who have noticed it probably passed it on their way to and from Union Station—their momentary curiosity limited to the progress of the construction, and the unfolding of its architectural design. To them, it will undoubtedly seem just another large government building housing yet another Washington bureaucracy. But we should make no mistake about the importance of this building in the administration of justice.

The federal judiciary has experienced tremendous changes since 1907, when the first train pulled into the newly built Union Station. At that time Melville Fuller presided over the Supreme Court, but not over the federal judicial system, principally because the organization of the federal judiciary 85 years ago bore little resemblance to that today. The local federal courts enjoyed nearly complete independence in the conduct of their business and in the appointment of staff. The circuit courts of appeal had been in existence a mere sixteen years and the beginnings of centralized administration of the federal judiciary—the establishment of the Judicial Conference of the United States—would not take place until 1922.

Until 1939, funding for the administration of the federal courts came from the budget of the Department of Justice. The report of the Judicial Conference of the United States was submitted to the Attorney General of the United States, who incorporated it into his own annual budget. To alleviate the potential interbranch friction this arrangement occasioned, Congress passed legislation in 1939 creating the Administrative Office, Circuit Conferences, and Circuit Councils. And, as some of you know, for the first three decades of its existence, the Administrative Office had quarters on the ground floor of the Supreme Court Building.

Almost thirty years after creation of the AO, President Johnson in 1967 proposed the establishment of the Federal Judicial Center to promote a more effective federal judiciary through research, planning and education. The President included the proposal in his "Message on Crime in America" partly because the federal courts were inundated by the federalization of criminal laws. It is interesting to note parenthetically that today, twenty-five years later, we face a similar inundation of federal courts as a result of the accumulation of congressional decisions to transfer matters previously handled in state courts to the federal courts. What a fitting illustration of the French proverb "Plus ca change, plus c'est le meme chose"—(the more things change, the more they remain the same). The United States Sentencing Commission and the Panel on Multidistrict Litigation are of even more recent vintage and, like the other judicial agencies, were created to promote more effective administration of criminal and civil justice in the federal courts.

Although the frontline administration of justice will continue to be done in courthouses throughout the United States, the work that will transpire within these walls will do much to support it. The federal judiciary has become too complex and large-scale an organization to continue to grow in a purely reactive way; it must develop plans for future growth that may be presented to Congress in order to aid that body in making the necessary determinations. That work, and the other work done in this building, will contribute importantly to the maintenance of our national ideals of respect for the rule of law and equal justice for all. To these ideals we today dedicate this building.

REMARKS OF L. RALPH MECHAM

Chief Justice Rehnquist, Chief Justice (Ret.) Burger, Senator Moynihan, Judge Pauline Newman, Architect White, justices and judges, members of the Judiciary Building Commission and distinguished and honored guests, it is a privilege and honor for me to proffer a few words at the dedication ceremony for this magnificent building. This monumental structure represents the culmination of a long-term dream to consolidate the third branch agencies into one facility. For decades, we have been scattered like the ten Lost Tribes of Israel throughout downtown Washington, DC. Now we are to be gathered into a building of our own which gives the judiciary an administrative promised land where we can work together instead of apart.

Although the Federal Judiciary Building took only 5 years to design and build, it was over two decades in the making. It was the dream of Chief Justice Warren Burger, who worked for over 17 years to provide housing under one roof for the various national administrative agencies of the Federal Judiciary including the Administrative Office, the Federal Judicial Center, and other judiciary agencies. When I was hired by the Supreme Court to serve as Director of the Administrative Office on July 15, 1985, one of my first charges from Chief Justice Burger was to work to get such a building, and to get the job done.

I took that charge seriously and did get right to work to make Chief Justice Burger's dream a reality first, by testifying before the Senate Environment and Public Works Committee just 2 days after taking office. We had to gain congressional approval of not one but three bills starting in 1985 in order to secure all the needed authorization and funding for the building. First, Congress had to authorize the Architect of the Capitol and the Secretary of Transportation, in consultation with the Chief Justice, to study alternatives for construction of a judiciary office building. This was enacted in December of 1985 in part through the good work of Senator Robert Stafford, then chairman of the Senate Committee on Environment and Public Works with important help both from his committee colleagues and from the House Public Works Committee leaders.

Then it was necessary for the judiciary to secure $1.3 million to fund the study. This money was approved in July of 1986 through the effective leadership of our House and Senate Appropriations subcommittees. I then transferred our $1.3 million to the Architect of the Capitol, George White, who had also "dreamed" for years of our new building, so that he could undertake the feasibility study.

Upon the completion of the feasibility study, the patron saint of our building who made it all possible came to the fore, Senator Daniel Patrick Moynihan who was by then the subcommittee chairman. He introduced authorizing legislation in December 1987. Through his outstanding leadership coupled with valiant support from Senator John Chafee and from their counterparts in the House Public Works Committee, congressional approval of the authorizing legislation was secured, which on October 7, 1988 was signed into law by President Ronald Reagan.

In virtually unprecedented fashion, the developer, architect and contractor completed this building on time and under budget. It is a prototype for what we think the judiciary could do on all of our judiciary building projects if it were granted the approval to do so by Congress.

Given the fiscal situation prevailing in 1988 when Congress authorized our building, to say nothing of the present fiscal circumstances, our building would never have been built had it not been for the congressional initiative led by Senator Moynihan in authorizing a lease-purchase arrangement to pay for the new structure. Thus, there were no initial capital outlays. By special arrangement, there was no budget "scoring" or charge in advance for the total cost of the building, that would otherwise have been required. The judiciary occupants of the building will pay the equivalent of rent for 30 years and then we will own the building outright.

Creative financing has resulted in converting future rent payments into current working capital at rates very slightly above the cost of 30-year treasury bonds. The judiciary will enjoy a virtually rent-free period until August 1994. This represents a savings of approximately $17,230,000 per year. Thereafter, the bulk of the annual payments equivalent to rent will remain flat for 30 years. Only the much smaller operation and maintenance payments will increase with inflation. Consequently, we estimate that the judiciary, and therefore the taxpayer, will save many millions of dollars over the 30-year life of the project. This is because rent in a GSA or privately owned building charged to the judiciary escalates every year. We will be paying off our own mortgage, rather than someone else's, as we pay our annual rent. In fact we estimate that in a very short time, the rates the judiciary tenants would have been paying in our old and scattered buildings would actually exceed the rate that we will pay in the new Federal Judiciary Building, where we will also enjoy the many operational efficiencies of consolidation.

I have stressed the dream theme. Perhaps that is why I am reminded of the movie "Field of Dreams" in which a mysterious voice continually whispers to Kevin Costner to "Build it and he will come." Against almost insuperable odds, Mr. Costner builds a lighted baseball field in the middle of his

Iowa cornfield and first "Shoeless" Joe Jackson, then other Hall of Fame players, and finally his deceased father, come to play baseball thus fulfilling not only his dreams but also those of the baseball greats who had gone before.

Through your good efforts as in the "Field of Dreams," we "built it" and we "will come." More than 1,200 judicial branch employees will come to this building by October 6th from ten locations scattered throughout the District of Columbia.

The voice of Kevin Costner not only said "Built it and he will come", but the voice also said "Ease his pain." This building will ease retired Chief Justice Burger's pain and I can assure you that it will ease the pain of the judicial administrators such as myself who have tried to run complex, even though modest sized agencies, from multiple locations throughout Washington. We will serve the judiciary much more effectively, and more efficiently while at the same time improve both staff morale and esprit de corps. It has been said that the quality, inspiration, and performance of the world's political and governmental institutions varies inversely with the grandeur of their buildings. You have my solemn pledge that we in the judicial branch shall disprove this adage for we shall not succumb to an edifice complex.

Because of the vital role played by three of the dreamers who have made this building a reality, I thought initially that the Federal Judiciary Building should more correctly have been denominated the "BMW" building, the acronym for Burger, Moynihan and White, not the well-tooled German automobile. Moreover, the "M" had the added utility of permitting two backbench dreamers to surreptitiously claim that the "M" also stood for Ralph Mecham and for my deputy Jim Macklin. Likewise, the "B" in BMW has a trio of added applications, namely to the building's great developer/architect team Boston Properties and Edward Larrabee Barnes as well as for the late Senator Quinton Burdick who until he died a few days ago, sadly, chaired the Senate Environment and Public Works Committee. He has been replaced by Senator Moynihan.

Unfortunately, the "BMW" name while somewhat comprehensive left out many other important players such as all of you who supported the project over the years especially the Federal Judiciary Building Commission, members of the Senate Committee on Environment and Public Works, and the House Public Works and Transportation Committee, to say nothing of the appropriations committees who played a critical role at a vital juncture and will continue to do so as the rental payments kick in 2 years from now. A number of leading House and Senate staffers ought to be mentioned but I shall single out just two as representative of many others. I all but took up residence for about a year and half beginning on July 17, 1985 in the offices of Harold Brayman then on the Senate staff and Dick Sullivan who for decades headed the House staff.

At the risk of making this sound like the Academy Award presentations, I am compelled to mention and indeed must thank the indefatigable project manager, Yong-Duk Chyun along with the distinguished architects, John M.Y. Lee and Ted Oldham of Oldham and Seltz. The Oscar winner for best supporting actor is Ray Karam, Assistant Director of the Administrative Office who did such an outstanding job managing our efforts, and for best supporting actress Kathy Bloom on his staff who has toiled effectively day and night for over a year.

We have already set up a special calendar of solemn, yet joyous, working-holidays that we shall observe here in this splendid new edifice. The first momentous observance will occur on March 17th when we shall give new meaning to St. Patrick's Day by adding to our hagiography the sainted name of Daniel Patrick Moynihan. By driving the snakes off Capitol Hill and from along Pennsylvania Avenue, he has made our building possible. On the next Saints Day, April 23rd, we shall honor as they do in the United Kingdom the memory of a new St. George; who else but Capitol Architect George White. He has slain the dragons and made our building a reality. Happily April 23rd is also my birthday, so once again I can sneak in the back door and bask in the vicarious light of these prime movers.

Then, we shall pay tribute on September 23rd to the United States Constitution, which is virtually holy writ in our Republic. I am delighted to point out that this is also the birthday of Chief Justice (Ret.) Warren Burger. To my knowledge there is no counterpart to St. Warren but we shall not let that deter us. Last but by no means least, we shall on October 1st do homage to Chief Justice William H. Rehnquist who made the planning for and the successful completion of this building his personal concern since he became Chief Justice in October of 1986.

I am pleased now to make way for the true titans of this project who most certainly win the starring role Oscars for their inspired performances. They, with you, have made possible this field of dreams for truly they have built it, and we have come. Our pain indeed will be eased. The ten lost tribes shall gather here in our new Jerusalem.

TRIBUTE TO SENATOR TIM WIRTH

Mr. PELL. Mr. President, I rise today to pay tribute to TIM WIRTH who will be retiring from the Senate at the end of this Congress.

Public service has been a way of life for TIM WIRTH for at least a quarter century. Starting with his White House fellowship in 1967, he continued his public service in posts at the Department of Health, Education, and Welfare and then put in a dozen years in the House, before he was elected to the Senate in 1986.

He has focused on promoting economic development and has played a key role in infrastructure and transportation projects in his State. He also has been a tireless proponent of a rational national energy policy and he has worked hard to correct problems in banking and S&L industries.

I know TIM WIRTH best as a voice for environmental protection and as an effective advocate for clean air and water legislation and for the protection of conservation areas ranging from the Arctic National Wildlife Refuge and Alaska's Tongass National Forest to Colorado's own wilderness areas.

He has worked hard on global warming, ozone depletion, and protection of rainforests around the world, but he also has provided critical leadership on international population issues and has fought hard for reproductive rights for women.

TIM WIRTH has been a tremendous asset to the Senate and the Nation. He is one of our colleagues who has been a force for reason and he has made a difference. I will be sorry to see him leave and I wish him well.

EXECUTIVE SESSION

PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY

Mr. FORD. I ask unanimous consent that the Senate proceed to executive session to consider Executive Calendar 47, the Protocol on Environmental Protection to the Antarctic Treaty.

I further ask unanimous consent that the treaty be considered as having been advanced through the various parliamentary stages up to and including the presentation of the resolution of ratification, that no amendments, provisos, understandings or reservations be in order; that any statements appear, as if read, in the RECORD, and that the Senate vote on the resolution of ratification without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The treaty will be considered to have passed through the various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The resolution of ratification was read as follows:

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol on Environmental Protection to the Antarctic Treaty, with Annexes, done at Madrid October 4, 1991, and an Additional Annex done at Bonn October 17, 1991.

PROTOCOL ON ENVIRONMENTAL PROTECTION TO THE ANTARCTIC TREATY

Mr. PELL. Mr. President, I am delighted that the Senate is considering the protocol on environmental protection to the Antarctic Treaty. The protocol will enhance environmental protection in the Antarctic and should help ensure that the frozen continent remains pristine for years to come. It is a sound treaty and one that my colleagues should support.

I would be remiss if I did not acknowledge at the outset of my remarks, the outstanding, leadership role played by two of our colleagues in the Senate in shaping U.S. policy on the Antarctic: Senator GORE and Senator KERRY.

In 1988, the parties to the Antarctic Treaty concluded negotiation of the Convention on the Regulation of Antarctic Mineral Resource Activities or CRAMRA. That convention alarmed many people, who argued that it would not adequately protect the Antarctic environment.

Senator GORE quickly recognized the dangers in the convention, not only to the Antarctic environment, but also to one of the keystones of international cooperation on the continent, the principle of free and open exchange of scientific data gathered within Antarctica.

In September 1989, Senator GORE introduced Senate Joint Resolution 206 which declared Antarctica to be a "global ecological commons," called for a new agreement or protocol to provide comprehensive environmental protection for the Antarctic, and called upon the President not to submit CRAMRA to the Senate for its advice and consent pending entry into force of such an environment agreement. The measure was adopted by the Senate and signed into law in 1990.

In addition to this measure, Senator KERRY and Congressman Silvio O. Conte introduced, and the Congress passed, the Antarctic Protection and Conservation Act of 1990 which made it a crime for U.S. persons or entities "to engage in, finance, or otherwise knowingly provide assistance to any Antarctic mineral resource activity." It also called upon the Secretary of State to negotiate a new agreement providing permanent protection for the natural environment of Antarctica, including an indefinite ban on mineral resource activities.

Together, these distinguished Members of Congress brought about a change in course in U.S. policy on the Antarctica. And, it is in part due to their efforts that we are considering this protocol here today.

Let me now provide my colleagues with some brief background information on the Antarctic Treaty system and the major provisions of the protocol.

First, the background. For 30 years, activity in the Antarctic has been governed by the terms of the Antarctic Treaty of 1961 and associated conventions and recommendations. These include: the agreed measures for the conservation of antarctic fauna and flora, the Convention for the Conservation of Antarctic Seals, and the Convention for the Convention on the Conservation of Antarctic Marine Living Resources. Collectively these agreements are known as the Antarctic Treaty system and apply to the area south of 60 degrees south latitude.

Three principles undergird the treaty and are incorporated in its articles; first, that Antarctic shall be used for peaceful purposes only; second, that the continent shall be open for cooperative scientific investigation; and third, that the treaty shall not derogate from or add to a party's territorial claim or potential claim.

As I noted earlier, in 1988, the parties to the Antarctic Treaty concluded negotiation of CRAMRA. Because of their concerns about the treaty, three nations—France, Australia, and, New Zealand—whose approval was necessary for the treaty to enter into force announced their opposition to the regime. Consequently the regime never took effect.

In late 1990, the parties to the Antarctic Treaty initiated a round of new negotiations to resolve the impasse over CRAMRA. The negotiations also aimed at achieving "further elaboration, maintenance and effective implementation of a comprehensive system for the protection of the Antarctic environment." These negotiations were completed on October 1991 and produced the Antarctic environment protocol. The central issue in this negotiation was mineral resources. France, Australia pushed for the adoption of a permanent ban on commercial mineral activities, a position the United States strongly opposed.

The protocol supplements the Antarctic Treaty of 1961 and does the following:

Designates Antarctica as a "natural reserve, devoted to peace and science";

Establishes environmental principles to guide the planning and conduct of activities in the Antarctic;

Establishes detailed mandatory rules for environmental protection in a system of five annexes on: environmental impact assessment, conservation of Antarctic fauna and flora; waste disposal and waste management; the prevention of marine pollution; and area protection and management;

Obligates parties to conduct environmental impact assessments for activities conducted in the Antarctic pursuant to procedures outlined in the annex on such assessments;

Establishes a Committee for Environmental Protection to assess the effectiveness of measures taken pursuant to the protocol and its annexes and to make recommendations to improve their implementation; and

Establishes compulsory dispute settlement procedures for controversies over the interpretation or application of, and compliance with, provisions relating to mineral resource activities; environmental impact assessment and response action as well as most aspects of the annexes to the protocol.

The issue receiving the most attention in the protocol's negotiations was the limitation on commercial mineral activity. The protocol places a 50-year moratorium on nonscientific mineral resource activity, unless there is unanimous agreement during that period to suspend the moratorium. Several countries advocated a permanent ban on mineral resource activities or a ban of at least 50 years that could only be lifted by the unanimous consent of the parties. The United States opposed both of these proposals.

After expiration of the moratorium, a party may propose an amendment to lift the moratorium. To enter into force, such an amendment would require the approval of three-fourths of the Antarctic Treaty consultative parties, or ATCP's, including all of the current ATCP's. The amendment's acceptance is also contingent upon entry into force of a binding legal regime which sets forth agreed means for determining whether, and, if so, under which conditions, any such mineral resource activities would be acceptable. If an amendment does not enter into force within three years of its adoption, a party may announce its withdrawal from the protocol, which would take place 2 years from the date of notification of the depositary.

This provision on minerals is notable also in that, for the first time in the history of the Antarctic Treaty, unanimous approval of the ATCP's has not been required.

The committee held a hearing on the protocol in early May, receiving testimony from the administration and public witnesses. The committee has found no opposition to the protocol and urge my colleagues to support it.

Mr. FORD. Mr. President, I ask for the division on a vote.

The PRESIDING OFFICER. A division vote has been requested. Senators in favor of the resolution of ratification will rise and stand until counted. (After a pause.) Those opposed to the resolution of certification will rise and stand until counted.

On a division, two-thirds of the Senators present having voted in the affirmative, the resolution of ratification is agreed to.

Mr. FORD. Mr. President, I ask unanimous consent that the motion to reconsider the vote be tabled and that the President be notified of the Senate's action and the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

THE CALENDAR

Mr. SEYMOUR. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar numbers 555, 556, 629, 708, 709, 718, 723, 724, 726, 733, 750, and 757 en bloc; that the amendment at the desk to the calender 723 and the committee substitute amendments and committee amendments, where appropriate, be agreed to, en bloc; that the several bills each be deemed read a third time, passed; that the motion to reconsider the passage of these items be laid upon the table en bloc; that the amendments to the titles where appropriate be agreed to; that the consideration of each bill be included separately in the Record; and that statements with respect to the passage of each bill be included in the Record where appropriate.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATUS OF CERTAIN PUBLIC LANDS

The Senate proceeded to consider the bill (H.R. 1514) to resolve the status of certain lands relinquished to the United States under the act of June 4, 1987 (30 Stat. 11, 36), and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment on page 4, line 12, striking the word "conditionally" so as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS AND PURPOSE.

(a) Findings.—Congress finds the following:

(1) Pursuant to the invitation and requirements contained in the 15th paragraph under the heading "Surveying the Public Lands" in the Act of June 4, 1897 (30 Stat. 11, 36), as amended or supplemented by the Acts of June 6, 1900 (31 Stat. 588, 614), March 4, 1901 (31 Stat. 1010, 1037), and September 22, 1922 (42 Stat. 1067), certain landowners or entrymen within forest reserves acted to transfer their lands to the United States as the basis for an in lieu selection of other Federal lands (hereafter in this Act referred to as "lieu lands") in exchange for such lands within such reserves (hereafter in this Act referred to as "base lands").

(2) By the Act of March 3, 1905 (33 Stat. 1264), Congress repealed the in lieu selection provisions of the Act of June 4, 1897, as amended, and terminated the right to select lieu lands, but expressly preserved the rights of land owners who had valid pending applications for in lieu selections, most of which have subsequently been granted.

(3) Other persons affected by the Acts cited in paragraphs (1) and (2) who acted to transfer base lands, or their successors in interest, have never obtained either (A) a patent to the lieu lands or any other consideration for their relinquishment, or (B) a quitclaim of their base lands, notwithstanding relief legislation enacted in 1922 and 1930.

(4) By the Act of July 6, 1960 (74 Stat. 334), Congress established a procedure to compensate persons affected by the Acts cited in paragraphs (1) and (2) who had not received appropriate relief under prior legislation. However, no payments of such compensation were made under that Act.

(5) Section 4 of the Act of July 6, 1960, further provided that lands with respect to which compensation under that Act were or could have been made, and not previously disposed of by the United States, shall be a part of any national forest, national park, or other area withdrawn from the public domain wherein they are located.

(6) Absent further legislation, lengthy and expensive litigation will be required to resolve existing questions about the title to lands covered by section 4 of the 1960 Act.

(b) Purpose.—The purpose of this Act is to resolve the status of the title to base lands affected by the past legislation cited in subsection (a).

SEC. 2. IDENTIFICATION AND QUITCLAIM OF FEDERAL INTEREST IN BASE LANDS.

(a) Quitclaim.—Except as otherwise provided by this Act, and subject to valid existing rights, but notwithstanding any other provision of law, the United States hereby quitclaims to the listed owner or entryman, his heirs, devisees, successors, and assigns, all right, title, and interest of the United States in and to the base lands described on a final list published pursuant to subsection (d)(1), effective on the date of publication of such list.

(b) Preparation of Initial Lists.—(1) Not later than 6 months after the date of enactment of this Act, the Secretary of the Interior, with respect to lands under such Secretary's jurisdiction, and the Secretary of Agriculture with respect to National Forest System lands, shall each prepare an initial list of all parcels of base lands that were relinquished to the United States pursuant to the Act of June 4, 1897 (as amended), and for which selection or other rights under that Act or supplemental legislation were not realized or exercised.

(2) The initial lists prepared under paragraph (1) shall be based on information in the actual possession of the Secretaries of the Interior and Agriculture on the date of enactment of this Act, including information submitted to Congress pursuant to the directive contained in Senate Report No. 98–578, issued for the Fiscal Year 1985 Interior and Related Agencies Appropriation, as revised and updated. The initial lists shall be published and distributed for public review in accordance with procedures adopted by the Secretary concerned.

(3) For a period of 180 days after publication of a list pursuant to paragraph (2), persons asserting that particular parcels omitted from such a list should have been included may request the Secretary concerned to add such parcels to the appropriate list. The Secretary concerned shall add to the list any such parcels which the Secretary determines meet the conditions specified in paragraph (1).

(c) Nationally Significant Lands.—(1) During preparation or revision of an initial list under subsection (b), the Secretary concerned shall identify those listed lands which are located wholly or partially within any conservation system unit and all other listed lands which Congress has designated for specific management or which the Secretary concerned decides, in the concerned Secretary's discretion, should be retained in order to meet public, resource protection, or administrative needs. For purposes of this paragraph, the term "conservation system unit" means any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, or National Wilderness Preservation System, a national forest monument, or a national conservation area, a national recreation area, or any lands being studied for possible designation as part of such a system or unit.

(2) The provisions of subsection (a) shall not apply to any lands identified by the Secretary concerned pursuant to paragraph (1). The Secretary concerned shall not include any such lands on any list prepared pursuant to subsection (d). Subject to valid existing rights arising from factors other than those described in subsection (b)(1), any right, title, and interest in and to lands identified pursuant to paragraph (1) and not previously vested in the United States is hereby vested and confirmed in the United States.

(3) In the same manner as the initial list was published and distributed pursuant to subsection (b)(2), the Secretary concerned shall publish and distribute an identification of all lands in which right, title, and interest is vested and confirmed in the United States by paragraph (2).

(d) Final Lists.—(1) As soon as possible after considering any requests made pursuant to subsection (b)(3) and the identification of lands pursuant to subsection (c), the Secretary of the Interior and the Secretary of Agriculture shall each publish a final list, consisting of lands included on each Secretary's initial list not identified pursuant to subsection (c)(1). Unless a Secretary has published a final list on or before the date 18 months after the date of publication, pursuant to subsection (b)(2), of such Secretary's initial list, the initial list prepared by such Secretary shall be deemed on such date to be the final list required to be published by such Secretary, and thereafter no lands included on such initial list shall be excluded from operation of subsection (a).

(2) If a court makes a final decision that a parcel of land was arbitrarily and capriciously excluded from operation of subsection (a), such parcel shall be deemed to have been included on a final list published pursuant to paragraph (1), unless such parcel is located wholly or partially inside a conservation system unit or any other area which Congress has designated for specific management, in which case such parcel shall be subject to the provisions of subsection (c)(2).

(e) Issuance of Instruments.—(1) Except as otherwise provided in this Act, no later than 6 months after the date on which the Secretary concerned publishes a final list of lands pursuant to subsection (d), the Secretary concerned shall issue deeds confirming the quitclaim made by subsection (a) of this section of all right, title, and interest of the United States in and to the lands included on such final list, subject to valid existing rights arising from factors other than a relinquishment to the United States of the type described in subsection (b). Each such confirmatory deed shall operate to estop the United States from making any claim of right, title, or interest of the United States in and to the base lands described in the deed, shall be made in the name of the listed owner or entryman, his heirs, devisees, successors, and assigns, and shall be in a form suitable for recordation and shall be filed and recorded by the United States with the recorder of deeds or other like official of the county or counties within which the lands covered by such confirmatory deed are located so that the title to such lands may be determined in accordance with applicable State law.

(2) The United States shall not adjudicate and, notwithstanding any provision of law to the contrary, does not consent to be sued in any suit instituted to adjudicate the ownership of, or to quiet title to, any base land included in a final list and described in a confirmatory deed.

(3) Neither the Secretary of the Interior nor the Secretary of Agriculture shall be required to inspect any lands included on a final list nor to inform any member of the public regarding the condition of such lands prior to the issuance of the confirmatory deeds required by this subsection, and nothing in this Act shall be construed as affecting any valid rights with respect to lands covered by a confirmatory deed issued pursuant to this subsection that were in existence on the date of issuance of such confirmatory deed.

(f) Waiver of Certain Claims Against the United States.—Any person or entity accepting the benefits of this Act or failing to act to seek such benefits within the time allotted by this Act with respect to any base or other lands shall be deemed to have waived any claims against the United States, its agents or contractors, with respect to such lands, or with respect to any revenues received by the United States from such lands prior to the date of enactment of this Act. All non-Federal, third party rights granted by the United States with respect to base lands shall remain effective subject to the terms and conditions of the authorizing document. The United States may reserve any rights-of-way currently occupied or used for Government purposes.

SEC. 3. OTHER CLAIMS.

(a) JURISDICTION AND DEADLINE.—(1) Subject to the requirements and limitations of this section, a party claiming right, title, or interest in or to land vested in the United States by section 2(c)(2) of this Act may file in the United States Claims Court a claim against the United States seeking compensation based on such vesting. Notwithstanding any other provision of law, the Claims Court shall have exclusive jurisdiction over such claim.

(2) A claim described in paragraph (1) shall be barred unless the petition thereon is filed within 1 year after the date of publication of a final list pursuant to section 2(d) of this Act.

(3) Nothing in this Act shall be construed as authorizing any claim to be brought in any court other than a claim brought in the United States Claims Court based upon the vesting of right, title, and interest in and to the United States made by section 2(c)(2) of this Act.

(b) LIMITATIONS, DEFENSES, AND AWARDS.—(1) Nothing in this Act shall be construed as diminishing any existing right, title, or interest of the United States in any lands covered by section 2(c), including but not limited to any such right, title, or interest established by the Act of July 6, 1960 (74 Stat. 334).

(2) Nothing in this Act shall be construed as precluding or limiting any defenses or claims (including but not limited to defenses based on applicable statutes of limitations, affirmative defenses relating to fraud or speculative practices, or claims by the United States based on adverse possession) otherwise available to the United States.

(3) Nothing in this Act shall be construed as entitling any party to compensation from the United States. However, in the event of a final judgment of the United States Claims Court in favor of a party seeking such compensation, or in the event of a negotiated settlement agreement made between such a party and the Attorney General of the United States, the United States shall pay such compensation from the permanent judgment appropriation established pursuant to section 1304 of title 31, United States Code.

(c) SAVINGS CLAUSE.—This Act does not include within its scope selection rights required to be recorded under the Act of August 5, 1955 (69 Stat. 534), regardless of whether compensation authorized by the Act of August 31, 1964 (78 Stat. 751) was or was not received.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

SEC. 5. TIME EXTENSION.

Section 103(c) of the Wildfire Disaster Recovery Act of 1989 (16 U.S.C. 551 note) is amended in the first sentence by striking out "1991" and inserting in lieu thereof "1992".

The amendment was agreed to.

The amendment was ordered to be engrossed, the bill was read the third time, and passed.

The title was amended so as to read: "An Act to resolve the status of certain lands relinquished to the United States under the Act of June 4, 1897 (30 Stat. 11, 36), and for other purposes.".

MINUTE MAN NATIONAL HISTORICAL PARK AMENDMENTS

The bill (H.R. 2896) to authorize the Secretary of the Interior to revise the boundaries of the Minute Man National Historical Park in the State of Massachusetts, and for other purposes was considered, ordered to be engrossed for a third reading, read the third time, and passed.

ISSUANCE OF SKI PERMITS ON NATIONAL FOREST SYSTEM LANDS

The Senate proceeded to consider the bill (S. 2606) to further clarify authorities and duties of the Secretary of Agriculture in issuing ski permits on National Forest System lands, which had been reported from the Committee on Energy and National Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. FINDINGS AND PURPOSES.

(a) The Congress finds and declares that—

(1) although ski areas occupy less than one-twentieth of 1 percent of national forest lands nationwide, in many rural areas of the United States, ski areas and investments by ski area permittees on national forest lands form the backbone of the local economy and preponderance of the employment base;

(2) ski area operations and their attendant communities provide revenues to the United States in the form of permit fees, income taxes, and other revenues which are extremely significant in proportion to the limited Federal acreage and Forest Service administration and contractual obligations required to support such operations;

(3) in addition to alpine skiing, many ski area permittees provide multiseason facilities and enhanced access to national forest lands which result in greater public use and enjoyment of such lands than would otherwise occur;

(4) unlike many other private sector users of Federal lands, ski areas in almost all cases finance, construct, maintain, and market all recreational facilities and improvements on such lands;

(5) many ski areas on Federal lands operate in a competitive environment which requires a continuing high level of capital investment to upgrade existing facilities and install new facilities to serve the public, including lifts, trails, snowmaking and trail grooming equipment, restaurants, and day care centers;

(6) despite an outward appearance of economic well-being resulting from an intensive capital infrastructure, many ski area operations are marginally profitable due to the competition and capital investments referenced in subparagraph (5), weather conditions, insurance premiums, the national economy, and other factors beyond their control;

(7) because of the aforementioned contributions of ski areas to the economy and rural communities and to the enhanced use and enjoyment of national forest lands, it is in the public interest for the United States, where consistent with national forest management objectives, to take actions with respect to such ski areas and associated communities as will assist their long-term economic health and stability; and

(8) the National Forest Ski Area Permit Act of 1986 has been of assistance to ski area operations on national forest lands by providing longer term tenure and stability to permittees, but further adjustments and policy direction are warranted to address problems related to permit fees and fee calculations and conflicts with certain mineral activities.

(b) In furtherance of the findings of subsection (a) of this section, it is the purpose of this Act to—

(1) legislate a ski area permit fee which returns fair market value to the United States and at the same time provides ski area permittees and the United States with a simplified, consistent, predictable, and equitable fee formula which is commensurate with long-term ski area, planning, financing and operation needs and which simplifies bookkeeping and other administrative burdens on ski area permittees and Forest Service personnel; and

(2) prevent future conflicts between ski area operations and mining and mineral leasing programs by withdrawing lands within ski area permit boundaries from the operation of the mining and mineral leasing laws.

SEC. 2. SKI AREA PERMIT FEE.

(a) The Secretary shall charge a fee for all ski area permits issued pursuant to the National Forest Ski Area Permit Act of 1986, the Act of March 4, 1915, and the Act of June 4, 1897, on National Forest System lands as set forth in subsection (b) of this section. The Secretary shall require that fees for all existing ski area permits issued pursuant to the Act of March 4, 1915, and the Act of June 4, 1897, be calculated as set forth in subsection (b) of this section.

(b)(1) The ski area permit fee (SAPF) to be charged shall be calculated by adding the permittee's gross revenues from lift ticket/year-round ski area use pass sales plus revenue from ski school operations (LT+SS) and multiplying such total by the slope transport feet percentage (STFP) on National Forest System land. Add to that amount gross year-round revenue from ancillary facilities (GRAF) physically located on national forest land, including all permittee or subpermittee lodging, food service, rental shops, parking and other ancillary operations, to determine the adjusted gross revenue (AGR) subject to the permit fee. Calculate the final fee by multiplying adjusted gross revenue by the following percentages for each revenue bracket and adding the total for each revenue bracket:

(i) 1.5 percent of all adjusted gross revenue below $3,000,000;

(ii) 2.5 percent for adjusted gross revenue between $15,000,000 and $15,000,000;

(iii) 2.75 percent for adjusted gross revenue between $15,000,000 and $50,000,000; and

(iv) 4.0 percent for the amount of adjusted gross revenue that exceeds $50,000,000.

Utilizing the abbreviations indicated in this subsection the ski area permit fee (SAPF) formula can be simply illustrated as:

SAPF = (LT + SS STFP) + GRAF = AGR;
AGR % BRACKETS

(2) In cases where ski areas are only partially located on national forest lands, the

slope transport feet percentage on national forest land referred to in subsection (b) of this section is hereby determined to most accurately reflect the percent of an alpine ski area permittee's total skier service capacity which is located on National Forest System land. It shall be calculated as generally described in the Forest Service Manual in effect as of January 1, 1992. Revenues from nordic ski operations shall be included or excluded from the fee calculation according to the percentage of trails physically located on national forest land.

(3) In order to insure that the fee legislated herein remains fair and equitable to both the United States and ski area permittees, the adjusted gross revenue figures for each revenue bracket in subparagraph (b)(1) (i)-(iv) shall be adjusted annually by the percent increase or decrease in the national Consumer Price Index for the preceding calendar year. No later than five years after the date of enactment of this Act and every ten years thereafter the Secretary shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Agriculture and Interior and Insular Affairs of the United States House of Representatives a report analyzing whether the ski area permit fee system legislated by this Act is returning a fair market value rental to the United States together with any recommendations the Secretary may have for modifications in the system.

(c) The fee set forth in subsection (b) shall be due on June 1 of each year and shall be paid or pre-paid by the permittee on a monthly, quarterly, annual or other schedule as determined appropriate by the Secretary in consultation with the permittee. It is the intention of Congress that unless mutually agreed otherwise by the Secretary and the permittee, the payment or prepayment schedule shall conform to the permittee's schedule in effect prior to enactment of this Act. To simplify bookkeeping and fee calculation burdens on the permittee and the Forest Service, the Secretary shall each year provide the permittee with a standardized form and worksheets (including annual fee calculation brackets and rates) to be utilized for fee calculation and submitted with the fee payment. Information provided on such forms shall be compiled by the Secretary annually and kept in the Office of the Chief, U.S. Forest Service.

(d) The ski area permit fee legislated herein shall become effective on June 1, 1993, and cover receipts retroactive to June 1, 1992: *Provided, however*, That if a permittee has paid fees for the period June 1, 1992, to June 1, 1993, under the graduated rate fee system formula in effect prior to this Act, such fees shall be credited toward the new fee due on June 1, 1993. In order to insure increasing fee receipt levels to the United States during transition from the Graduated Rate Fee System formula to the formula of this Act, the fee paid by any individual permittee for the 1992–1993 permit year shall be either the fee paid for the preceding 1991–1992 base year or the fee calculated pursuant to this Act, whichever is higher. For the 1993–1994 permit year, the fee paid shall be either the fee paid for the 1991–1992 base year or the fee calculated pursuant to this Act, whichever is higher: *Provided, however*, That in the event an individual permittee's adjusted gross revenue for either the 1992–1993 or 1993–1994 permit years falls more than 10 percent below the 1991–1992 base year, the fee paid shall then be the fee calculated pursuant to this Act.

(e) Under no circumstances shall revenue, or subpermittee revenue (other than lift ticket, area use pass, or ski school sales) obtained from operations physically located on nonnational forest land be included in the ski area permit fee calculation.

(f) To simplify bookkeeping and administrative burdens on ski area permittees and the Forest Service, as used in this section, the terms "revenue" and "sales" shall mean actual income from sales and shall not include sales of operating equipment, refunds, rent paid to the permittee by sublessees, sponsor contributions to special events or any amounts attributable to employee gratuities or employee lift tickets, discounts, or other goods or services (except for bartered goods and complimentary lift tickets) for which the permittee does not receive money.

(g) In cases where an area of national forest land is under a ski area permit but the permittee does not have revenue or sales qualifying for fee payment pursuant to subsection (a) of this section, the permittee shall pay an annual minimum rental fee of $2 for each national forest acre under permit or a percentage of appraised land value, as determined appropriate by the Secretary.

SEC. 3. WITHDRAWALS.

SEC. 3. Subject to valid existing rights, all lands located within the boundaries of ski area permits issued prior to, on or after the date of enactment of this Act pursuant to authority of the Act of March 4, 1915, and the Act of June 4, 1897, or the National Forest Ski Area Permit Act of 1986 are hereby and henceforth automatically withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral and geothermal leasing and all amendments thereto. Such withdrawal shall continue for the full term of the permit and any modification, reissuance, or renewal thereof. Unless the Secretary requests otherwise of the Secretary of the Interior, such withdrawal shall be canceled automatically upon expiration or other termination of the permit and the land automatically restored to all appropriation not otherwise restricted under the public land laws.

So the bill (S. 2606) was passed.

REMOVAL OF RESTRICTIONS ON CERTAIN LANDS

The Senate proceeded to consider the bill (S. 1925) to remove a restriction from a parcel of land owned by the city of North Charleston, SC, in order to permit a land exchange, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendment; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REMOVAL OF RESTRICTION.

(a) IN GENERAL.—

(1) IN GENERAL.—Subject to the condition described in paragraph (2), the Secretary of the Interior shall execute such instruments as are necessary to remove the restrictions described in subsection (b) to which the parcel of land described in subsection (c) is subject.

(2) CONDITION.—The condition referred to in paragraph (1) is that the City of North Charleston, South Carolina, exchange the parcel for—

(A) another parcel to be used as a park or recreation area; and

(B) such sums as are necessary to equalize the values of the parcels exchanged.

(3) Any sums received by the city pursuant to subparagraph (2)(B) shall be used only for park or recreation purposes.

(b) RESTRICTIONS.—The restrictions referred to in subsection (a) are those reservations, exceptions, restrictions, conditions, and covenants described in the Quitclaim Deed of the United States to the City of North Charleston, South Carolina, dated August 9, 1978 (Deed Books of Charleston County, South Carolina, book 1116, page **[318]**. *318): Provided, however, That the United States shall retain all mineral rights to the parcel described in subsection (c) as provided in such deed.*

(c) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a)(1)—

(1) consists of approximately 21.60 acres;

(2) is located in Charleston County, South Carolina; and

(3) **[**has the legal description given**]** *is described* on page 318 of book 1116 of the Deed Books of Charleston County, South Carolina.

So the bill (S. 1925) was passed.

THE WENATCHEE NATIONAL FOREST TRANSFER ACT

The Senate proceeded to consider the bill (S. 1990) to authorize the transfer of certain facilities and lands in the Wenatchee National Forest, WA, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. LAND EXCHANGE, WENATCHEE NATIONAL FOREST, WASHINGTON.

(a) CONVEYANCE.—The Secretary of Agriculture may convey to the Public Utility District No. 1 of Chelan County, Washington (in this section referred to the "District"), all right, title, and interest of the United States in and to—

(1) the sewage collection and treatment system facilities located at the Lake Wenatchee Ranger District, Wenatchee National Forest, Washington; and

(2) a parcel of real property of approximately 60 acres of National Forest System land in the Wenatchee National Forest partially occupied by the existing treatment plant and ponds, as depicted on the map of record entitled "Chelan County Land Exchange 1" and dated June 24, 1992.

(b) CONSIDERATION.—As consideration for the conveyance authorized under subsection (a), the District shall convey to the United States a parcel of real property of approximately 110 acres owned by the District and depicted on the map of record entitled "Chelan County Land Exchange" and dated June 24, 1992.

(c) EQUALIZING THE VALUE OF THE EXCHANGE.—If the value of the real property to be conveyed by the Secretary of Agriculture under subsection (a) does not equal the value of the real property to be conveyed by the District under subsection (b), the value of the properties shall be equalized in the manner provided for in section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)).

(d) APPRAISALS.—The value of the real property to be exchanged pursuant to this section shall be determined by appraisals conducted in the manner and within the time frame provided for in section 206(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)).

(e) LEGAL DESCRIPTION AND SURVEY.—The exact acreage and legal description of the property to be exchanged pursuant to this section shall be determined by surveys that are satisfactory to the Secretary of Agriculture. The cost of such surveys shall be shared equally by the Secretary and the District.

(f) OTHER TERMS AND CONDITIONS.—The Secretary of Agriculture may require such other terms and conditions with respect to the conveyance as the Secretary considers appropriate to protect the interests of the United States.

LAKE CUSHMAN, LAKE WENATCHEE AND THE OLYMPIC EXPERIEMENTAL STATE FOREST

Mr. GORTON. Mr. President, today I ask the Senate to pass two bills on unanimous consent. The two bills are H.R. 4489 and S. 1990. The first, H.R. 4489, is identical to a Senate bill—S. 2353—that was reported by the Senate Energy Committee and placed on the Senate calendar Cal. No. 713. This bill will allow the National Park Service to exchange lands with the city of Tacoma, WA and adjust its boundary in order to avoid a trespass dispute with the Olympic National Park over the city's reservoir at Lake Cushman. The second, S. 1990, is a bill that has been reported by the Energy Committee and was placed on the Senate calendar, Cal. No. 709. S. 1990 will allow the Forest Service to transfer an important sewage facility to the Chelan County Public Utility District in order to place the private property owners at Lake Wenatchee on the sewage system.

Lake Wenatchee is a beautiful, glacier-fed lake in the Wenatchee National Forest in the eastern portion of Washington State. More than 300 private individuals own property on the lake and more than 100 make it their summer and winter vacation spot. The beauty of this spot, however, is deceiving. Below the surface lies evidence that these property owners are dumping most of their sewage directly into Lake Wenatchee. The residents of Lake Wenatchee need a sewage treatment system to replace their failing septic system.

The U.S. Forest Service operates a ranger station and campground of Lake Wenatchee. A small sewage treatment system, built in the 1920's, serves these facilities. Although this treatment system is relatively small, it can be expanded to serve the entire Lake Wenatchee area. In fact, Supervisor Sonny O'Neal and his staff have suggested that they are willing to transfer the sewage system and the underlying land to the Chelan County Pubic Utility District No. 1 for expansion and use by all the property owners at Lake Wenatchee. In order to accomplish this, however, Congress must authorize the Secretary of Agriculture to make the transfer. In exchange, the PUD will transfer to the Forest Service up to 110 acres of land.

Supervisor O'Neal has taken steps to mitigate this problem during the short-term. He has issued a special-use permit that allows the PUD to operate the sewage treatment system. A permit does not, however, grant sufficient control to the PUD over the land upon which the treatment facility is situated. He still believes that the 80 acres of land that the facility occupies must be transferred, in fee, to the PUD. This transfer is the only long-term solution to the problem at Lake Wenatchee.

S. 1990 authorizes the Secretary of Agriculture to transfer the sewage treatment facility and the underlying land to the PUD in exchange for up to 110 acres of land. For the sake of the health of Lake Wenatchee and the property owners there, I hope this amendment can be passed into law as soon as possible.

The other bill that I ask be passed by unanimous consent, H.R. 4489, is really two bills in one. It was originally a bill providing for the exchange of lands and the adjustment of a National Park boundary at Lake Cushman in Washington State. This bill is designed to resolve a long-standing dispute between the Olympic National Park and the city of Tacoma over the relicensing of a dam at Lake Cushman. The park contends that a few acres of its land lies beneath the surface of the lake at its normal water level. When Tacoma City Light recently lowered the reservoir to do work on the dam, the Park claimed that the acreage would be inundated if the reservoir were raised and that this would constitute an illegal trespass on park property. Tacoma offered to purchase the small parcel and the park demanded a land exchange instead. This legislation will establish a mechanism for completing that land exchange.

The residents of the Lake Cushman area, as well as the residents of the city who Tacoma who rely on power from the Lake Cushman Dam, have been anxiously awaiting the resolution of this dispute. The level of the reservoir was kept at an unreasonably low level, decreasing the generation of power from the dam and leaving docks high and dry. The park and the city of Tacoma have been negotiating a land exchange and, once those negotiations are completed, the park will adjust its boundaries. The only remaining step is the passage of this legislation.

The Lake Cushman legislation also contains legislation relating to the Olympic Experimental State Forest. This amendment will end 3 years of dispute over the management of State-owned lands on the Olympic Peninsula in Washington State. In 1989, a group of environmentalists, industry leaders, and community representatives came together to form the Commission on Old Growth Alternatives for Washington's Forest Trust Lands. That consensus group recommended, among other things, that a 260,000-acre experimental forest be established on the Olympic Peninsula and that its purpose be to produce a level of timber harvest comparable with contemporary forest practices and simultaneously to provide for ecological values.

The same year, the northern spotted owl was listed as a threatened species and the dream of creating an experimental forest was placed on hold. Today's legislation will free up the Olympic Experimental Forest to be the forest laboratory the Commission intended.

This Olympic Experimental State Forest bill will allow the State of Washington to submit a plan for the management of the forest to the Secretary of the Interior. If this plan is both sufficient to provide for the conservation of the northern spotted owl and is consistent with a final or draft recovery plan for the spotted owl, the Secretary shall approve the plan. If the plan is approved and the State complies with the plan, actions taken pursuant to the plan shall not be considered a prohibited taking under the Endangered Species Act.

The Olympic Experimental Forest is not only an ecological laboratory. It will also be a laboratory for experiments in commercial output. The Washington State Commissioner of Public Lands, Brian Boyle, estimates that under today's legislation the experimental forest will produce 143 million board feet of timber per year. This would provide a significant boost to a forest that produced just 81 million board feet last year as a result of spotted owl restrictions. This legislation will not return the area to pre-spotted owl harvest levels, nor do I advocate such a return. It will, however, allow the forest in that area to produce a reasonably certain level of timber production.

The people of Washington State, and particularly the Olympic Peninsula, have been waiting three years for Congress to solve a timber supply crisis in the Pacific Northwest. Today's legislation will not solve that crisis, but it is one part of the solution.

These various provisions are of great importance to the State of Washington. I ask the Senate to pass both H.R. 4489 and S. 1990 by unanimous consent.

So the bill (S. 1990) was passed.

USE AND OCCUPANCY OF CERTAIN LANDS IN YOSEMITE NATIONAL PARK

The Senate proceeded to consider the bill (S. 2749) to grant a right of use and occupancy of a certain tract of land in Yosemite National Park to George R. Lange and Lucille F. Lange, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment on page 2, line 16, to strike "reasonable.", and inserting in lieu thereof the following: "reasonable: *Provided*, That the base rental rate as a percentage of the permittee's annual gross income shall not exceed the most recent American Housing Survey median monthly housing cost for renters inclusive of utilities, as a percentage of current income."

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. GRANT OF RIGHT OF USE AND OCCUPANCY IN YOSEMITE NATIONAL PARK.

(a) IN GENERAL.—Subject to subsection (b), the Secretary of the Interior shall grant George R. Lange and Lucille F. Lange a right of use and occupancy of the tract numbered 16–118 in Foresta, Yosemite National Park, California, for a term ending at the death of George R. Lange or the death of Lucille F. Lange, whichever is later.

(b) TERMS AND CONDITIONS.—The right granted pursuant to subsection (a)—

(1) shall be for such use and occupancy of the property as the Secretary of the Interior determines is reasonable;

(2) shall be subject to such terms and conditions as the Secretary of the Interior determines are necessary to ensure that the right does not unreasonably diminish the scenic, natural, historic, and other values for which Yosemite National Park was established; and

(3) shall be conditioned on the payment by the grantees of an annual fee that the Secretary of the Interior determines is reasonable: *Provided*, That the base rental rate as a percentage of the permittee's annual gross income shall not exceed the most recent American Housing Survey median monthly housing cost for renters inclusive of utilities, as a percentage of current income.

LIFETIME TENANCY IN YOSEMITE FOR MR. AND MRS. GEORGE LANGE

Mr. SEYMOUR. Mr. President, I rise in support of S. 2749, a bill to prevent the eviction of Mr. and Mrs. George Lange from their home in Yosemite National Park, CA.

Lucille and George Lange are both in their seventies and are the only year-round residents of Foresta, which is located in Yosemite National Park. The Langes bought the property on which they live in 1957. In 1976, they sold their cabin to the National Park Service with the understanding that they would be allowed to live on the property for the rest of their lives. Unfortunately, that agreement, along with the Langes future at Foresta, is in peril.

Following the disastrous 1990 fires in Foresta, when more than 80 homes and 13 units of park ranger housing were destroyed, the Park Service notified the Langes that they would be evicted from their home.

The Park Service claims it needs the Langes' cabin for additional ranger housing. I understand, Mr. President, ranger housing is a very real problem in the National Park System. I fail to see, however, how evicting an elderly couple from their only home—a 600-square-foot A-frame—is going to constructively address Yosemite's housing shortage.

I first became aware of the Langes' plight when they contacted my office late last year and requested my assistance with their problem. We were unsuccessful in attempting to work out a solution with the Park Service, and it became apparent that the Langes would not get relief from their eviction notice without congressional action. I therefore introduced S. 2749 to instruct the Park Service to grant the couple a lifetime tenancy in Yosemite.

When I introduced S. 2749 in May, the Park Service agreed to hold off on eviction proceedings until October to give the Congress time to act on my bill. During hearings on S. 2749 in the Senate Energy Committee, the Park Service testified that it does not oppose my legislation.

I am pleased that the Senate will act to prevent the Langes' eviction from their home, and I urge the House to consider this bill before adjournment.

So the bill (S. 2749) was passed.

BIG THICKET NATIONAL PRESERVE ADDITION ACT

The Senate proceeded to consider the bill (H.R. 1592) to increase the size of the Big Thicket National Preserve in the State of Texas by adding the Village Creek Corridor unit, the Big Sandy Corridor unit, the Canyonlands unit, the Sabine River Blue Elbow unit, and addition to the Lower Neches Corridor unit, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Big Thicket National Preserve Addition Act of 1992".

SEC. 2. ADDITIONS TO THE BIG THICKET NATIONAL PRESERVE.

(a) ADDITIONS.—Subsection (b) of the first section of the Act entitled "An Act to authorize the establishment of the Big Thicket National Preserve in the State of Texas, and for other purposes", approved October 11, 1974 (16 U.S.C. 698), hereinafter referred to as the "Act". is amended as follows:

(1) Strike out "map entitled 'Big Thicket National Preserve'" and all that follows through "Secretary of the Interior (hereafter referred to as the 'Secretary')" and insert in lieu thereof "map entitled 'Big Thicket National Preserve', dated October 19, 1990 and numbered 20031 C, which shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior, and the offices of the Superintendent of the preserve. After advising the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives, in writing, the Secretary of the Interior (hereafter referred to as the 'Secretary') may make minor revisions to the boundaries of the preserve when necessary by publication of a revised drawing or other boundary description in the Federal Register. The Secretary".

(2) Strike out "and" at the end of the penultimate undesignated paragraph relating to Little Pine Island-Pine Island Bayou corridor unit.

(3) Strike out the period in the ultimate undesignated paragraph relating to Lance Rosier unit and insert in lieu thereof ";".

(4) Add at the end thereof the following:

"Village Creek Corridor unit, Hardin County, Texas, comprising approximately four thousand seven hundred and ninety-three acres;

"Big Sandy Corridor unit, Hardin, Polk, and Tyler Counties, Texas, comprising approximately four thousand four hundred and ninety-seven acres; and)

"Canyonlands unit, Tyler County, Texas, comprising approximately one thousand four hundred and seventy-six acres.".

(b) ACQUISITION.—(1) Subsection (c) of the first section of such Act is amended by striking out the first sentence and inserting in lieu thereof the following:

"The Secretary is authorized to acquire by donation, purchase with donated or appropriated funds, transfer from any other Federal agency, or exchange, any lands, waters, or interests therein which are located within the boundaries of the Preserve: *Provided*, That privately owned lands located within the Village Creek Corridor, Big Sandy Corridor and Canyonlands units may be acquired only with the consent of the owner: *Provided further*, That the Secretary may acquire lands owned by commercial timber companies only by donation or exchange: *Provided further*, That any lands owned by the State of Texas, or a political subdivision thereof, may be acquired by donation only.".

(2) Add at the end of the first section of such Act the following new subsections:

"(d) Within sixty days after the date of enactment of this subsection, the Secretary and the Secretary of Agriculture shall identify lands within their jurisdiction located within the vicinity of the preserve which may be suitable for exchange for commercial timber lands within the preserve. In so doing, the Secretary of Agriculture shall seek to identify for exchange National Forest lands that are near or adjacent to private lands that are already owned by the commercial timber companies. Such National Forest lands shall be located in the Sabine National Forest in Sabine County, Texas, in the Davey Crockett National Forest south of Texas State Highway 7, or in other sites deemed mutually agreeable, and within reasonable distance of the timber companies' existing mills. In exercising this exchange authority, the Secretary and the Secretary of Agriculture may utilize any authorities or procedures otherwise available to them in connection with land exchanges, and which are not inconsistent with the purposes of this Act. Land exchanges authorized pursuant to this subsection shall be of equal value, and shall be completed as soon as possible, but no later than two years after date of enactment of this subsection.

"(e) With respect to the thirty-seven acre area owned by the Louisiana-Pacific Corporation or its subsidiary, Kirby Forest Industries, Inc., on Big Sandy Creek in Hardin County, Texas, and now utilized as part of the Indian Springs Youth Camp (H.G. King Abstract 8922), the Secretary shall not acquire such area without the consent of the owner so long as the area is used exclusively as a youth camp.".

(c) PUBLICATION OF BOUNDARY DESCRIPTION.—Not later than six months after the date of enactment of this subsection, the Secretary shall publish in the Federal Register a detailed description of the boundary of the Village Creek Corridor unit, the Big Sandy Corridor unit, and the Canyonlands unit of the Big Thicket National Preserve.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 6 of such Act is amended by adding at the end thereof the following new sentence: "Effective upon the date of enactment of this sentence, there is authorized to be appropriated such sums as may be necessary to carry out the purposes of subsections (c) and (d) of the first section.".

So, the Bumpers amendment No. 3428 was agreed to, as follows:

On page 7, lines 5 and 6, strike "dated October 19, 1990, and numbered 20031 C," and insert in lieu thereof, "dated October 1992, and numbered 80,0008,".

THE BIG THICKET NATIONAL PRESERVE ADDITION ACT OF 1992

Mr. GRAMM. Mr. President, I rise to support H.R. 1592, the Big Thicket National Preserve Addition Act of 1992, with Senate amendments. On April 9, 1991, I introduced S. 780, the Big Thicket National Preserve Act of 1991. Additionally, Senator BENTSEN introduced separate legislation, S. 1105, the Big Thicket National Preserve Act of 1991. Since that time, Senator BENTSEN and I have worked to improve upon the original legislative proposals and have agreed upon this compromise which is before the Senate today.

Mr. President, I am pleased to report that H.R. 1592, as reported by the Senate Energy and Natural Resources Committee, proposes a logical conclusion to the long standing debate on how to expand the Big Thicket National Preserve in southeast Texas. Because I believe that property ownership is a sacred right, one of my primary goals in this debate has been to ensure the protection of individuals' private property rights. In that regard, it is important to note that no provision in the bill may be used to take privately owned property through condemnation procedures.

Mr. President, this legislation proposes to protect the Village Creek corridor, Big Sandy corridor, and the Canyonlands unit by exchanging U.S. Forest Service lands for 10,766 acres of land in these three units. These areas, which I have visited firsthand, would be added to the existing 86,115-acre Big Thicket National Preserve in the State of Texas. The Big Thicket area is often referred to as a "biological crossroads" due to the unique ecosystem which exists in the preserve. Addition of these three units will enhance the diversity of the preserve and future recreation opportunities. Mr. President, I urge adoption of this measure.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time and passed.

The title was amended so as to read: "An Act to modify the boundaries of the Big Thicket National Preserve in the State of Texas by adding the Village Creek Corridor unit, the Big Sandy Corridor unit, and the Canyonlands unit.".

REVERE, MASSACHUSETTS STUDY ACT

The bill (H.R. 2109) to direct the Secretary of the Interior to conduct a study of the feasibility of including Revere Beach, located in the city of Revere, MA, in the National Park System, was considered, ordered to a third reading, read the third time, and passed.

CUYAHOGA NATIONAL RECREATION AREA LAND EXCHANGE ACT

The bill (H.R. 2181) to permit the Secretary of the Interior to acquire by exchange lands in the Cuyahoga National Recreation Area that are owned by the State of Ohio, was considered, ordered to a third reading, read the third time, and passed.

ALASKA MARITIME NATIONAL WILDLIFE REFUGE AMENDMENT ACT

The bill (H.R. 3638) making technical amendments to the law which authorizes modification of the boundaries of the Alaska Maritime National Wildlife Refuge, was considered, ordered to a third reading, read the third time, and passed.

FOX-WISCONSIN RIVER NATIONAL HERITAGE CORRIDOR STUDY ACT OF 1992

The Senate proceeded to consider the bill (S. 2006) to establish the Fox River National Heritage corridor in Wisconsin, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fox-Wisconsin River National Heritage Corridor Study Act of 1992."

SEC. 2. FINDINGS.

The Congress finds that—

(1) the Fox-Wisconsin waterway is famous as the discovery route of Marquette and Joliet;

(2) as the connecting route between the Great Lakes and the Mississippi River, the waterway was critical to the opening of the Northwest Territory, and served as a major artery in bringing commerce to the interior of the United States and providing a vital communication link for early explorers, missionaries, and fur traders;

(3) within the Fox and Lower Wisconsin River corridor are an abundance of historic and archeological sites and structures representing early Native Americans, European exploration, and 19th-century transportation and settlement; and

(4) the unique aspects of the waterway, from the heavily developed portions of the Fox River to the pristine expanses of the Lower Wisconsin River, should be studied to determine the waterway's suitability and feasibility for designation as a National Heritage Corridor.

SEC. 3. STUDY OF FOX-WISCONSIN RIVER CORRIDOR.

(a) IN GENERAL.—Within 2 years after the date funds are made available for the purposes of this section, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall prepare a study on the suitability and feasibility of designating the Fox and Lower Wisconsin River Corridors in the State of Wisconsin as a National Heritage Corridor.

(b) REPORT TO CONGRESS.—Upon completion of the study referred to in subsection (a), the Secretary shall submit such study to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

SEC. 4. FOX-WISCONSIN RIVER STUDY ADVISORY COMMISSION.

(a) IN GENERAL.—There is established the Fox-Wisconsin River Study Advisory Commission (hereinafter referred to as the "Commission") to advise the Secretary in the preparation of the study referred to in section 2.

(b) MEMBERSHIP.—The Commission shall consist of 16 members, appointed by the Secretary as follows—

(1) four members from recommendations submitted by the Governor of the State of Wisconsin, to represent affected State agencies;

(2) four members representing local governments from affected communities along the Fox and lower Wisconsin river corridor; and

(3) eight members from the general public, who shall have knowledge and experience in appropriate fields of interest relating to the preservation, use and interpretation of the Fox and lower Wisconsin river corridor, of whom—

(i) four members shall be residents of the Fox River region; and

(ii) four members shall be residents of the lower Wisconsin region.

(c) CHAIRPERSON.—The members of the Commission shall elect a chairperson from among its members.

(d) VACANCIES.—Vacancies on the Commission shall be filled in the same manner in which the original appointment was made.

(e) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(f) COMPENSATION.—Members of the Commission shall receive no compensation on account of their service on the Commission. While away from their homes or regular places of business in the performance of services for the Commission, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(g) WAIVER.—The provisions of section 14(b) of the Act of October 6, 1972 (86 Stat. 776) are hereby waived with respect to this Commission.

(h) ANNUAL REPORTS.—The Commission shall publish and submit to the Secretary and the Governor of the State of Wisconsin an annual report concerning the Commission' activities.

(i) TERMINATION.—The Commission shall terminate upon the completion of the study referred to in section 3(a).

SEC. 5. AUTHORIZATIN OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to direct the Secretary of the Interior to conduct a study to determine the suitability and feasibility of designating the Fox and Lower Wisconsin River corridor in the State of Wisconsin as a national heritage corridor, and for other purposes.".

GREAT EGG HARBOR RIVER ACT OF 1992

The bill (H.R. 5853) to designate segments of the Great Egg Harbor River and its tributaries in the State of New Jersey as components of the National Wild and Scenic Rivers System, was considered, ordered to a third reading, read the third time, and passed.

THE GREAT EGG HARBOR RIVER DESIGNATION AS PART OF THE WILD AND SCENIC RIVER SYSTEM

Mr. BRADLEY. Mr. President, I am pleased that today the Senate has passed H.R. 5853, which designates the Great Egg Harbor River as part of the Nation's Wild and Scenic River System. With this Senate action, we can now forward this legislation to the President. In the very near term, I am confident, this legislation will become public law.

This legislation represents the final state in a process initiated long ago. The late Warren Fox spent many years of his long and productive life championing the unique qualities of the Great Egg. Six years ago, Congress called for a Federal study of this river.

Every river community has played a role. Literally hundreds of citizens have taken part in public hearings and in the development of a river management plan which is crucial to this process. Each of the affected communities—Winslow, Corbin City, Hammonton, Buena Vista, Weymouth, Estell Manor, Egg Harbor, Somers Point, Monroe, Folsom, and Hamilton Townships—cooperated fully.

Unlike many of the western rivers that make up the bulk of those in the National Wild and Scenic River Systems, the Great Egg River flows through no Federal land. Without a solid commitment to preservation by the grassroots, this effort be doomed. But such a commitment does exist. Those who live along the river deserve our highest compliments for their vision, their sense of history and willingness to maintain the natural beauty that they've inherited for the generations to come.

The Great Egg Harbor River is located in a largely undeveloped area of southern New Jersey. A large portion of the river is within the Pinelands National Reserve. The main stem of the river is 60 miles in length. It rises in urbanized Camden County and flows through Gloucester and Atlantic Counties before it empties into the Atlantic Ocean behind the barrier island of Ocean City.

The Great Egg Harbor River is one of New Jersey's greatest and most beautiful natural resources. Those who live in south Jersey would like to ensure that the river's water quality and recreational opportunities are maintained through sound planning and management.

The Wild and Scenic Rivers Act has been successful in preserving a number of our Nation's free-flowing rivers. The Great Egg Harbor River is an ideal candidate for inclusion with these natural wonders as the Park Service clearly stated during the study process.

We're at a crossroad: Our actions will determine what this river will look like in the future. The natural qualities I've described have always been here. But they will only continue to be here if the citizens of this area decide positively that they commit themselves to a pristine future for the river.

This legislation is geared to provide environmental protection within the river communities and by the surrounding communities. Government has got to be willing to lend a hand to many citizens who wrestle everyday with creating a future beauty, health and opportunity. With our action today, we indicate our intentions to help those on the Great Egg River. I am proud that the Senate has acted today and commend my colleagues, especially Senators BUMPERS and his staff and Congressman BILL HUGHES for their support.

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar numbers 567, 710, 711, 715, 728, 730, 731, 736, and 737 en bloc; that the committee substitute amendments and the committee amendments, where appropriate, be agreed to, en bloc; that the several bills and joint resolution each be deemed read a third time, passed; that the preamble where appropriate be agreed to; that the motion to reconsider the passage of these items be laid upon the table en bloc; that the title amendments where appropriate be agreed to; that the consideration of each bill be included separately in the RECORD; and that statements with respect to the passage of each bill be included in the RECORD where appropriate.

The PRESIDING OFFICER. Without objection, it is so ordered.

CAVE CREEK CANYON PROTECTION ACT

The Senate proceeded to consider the bill (H.R. 2790) to withdraw certain lands located in the Coronado National Forest from the mining and mineral leasing laws of the United States, and for other purposes, which had been reported from the Committee on Energy and Natural Resources with an amendment to strike out all after the enacting clause and inserting in lieu thereof the following:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Cave Creek Canyon Protection Act of 1992".

SEC. 2. WITHDRAWAL OF LANDS WITHIN CAVE CREEK CANYON DRAINAGE.

(a) WITHDRAWAL.—Subject to valid existing rights, after the date of enactment of this Act lands within the Cave Creek Canyon Drainage are withdrawn from location under the general mining laws, the operation of the mineral and geothermal leasing laws and the mineral material disposal laws.

(b) DEFINITION.—For the purposes of this Act, the term "Cave Creek Canyon Drainage" means lands and interest in lands owned by the United States within the area depicted on the map of record entitled "Cave Creek Mineral Withdrawal", dated November 1, 1991. The map shall be on file and available for public inspection in the offices of the Forest Service, Department of Agriculture.

So the bill (H.R. 2790) was passed.

RIO GRANDE DESIGNATION ACT OF 1992

The Senate proceeded to consider the bill (S. 2021) to amend the Wild and Scenic Rivers Act by designating a segment of the Rio Grande in New Mexico as a compoment of the National Wild and Scenic Rivers System, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE

This Act may be cited as the "Rio Grande Designation Act of 1992".

SEC. 2. DESIGNATION OF SCENIC RIVER

Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by adding at the end the following new paragraph:

"( ) RIO GRANDE, NEW MEXICO.—The main stem from the southern boundary of the segment of the Rio Grande designated pursuant to paragraph (4), downstream approximately 12 miles to the west section line of Section 15, Township 23 North, Range 10 East, to be administered by the Secretary of the Interior as a scenic river.".

SEC. 3. DESIGNATION OF STUDY RIVER.

(a) STUDY.—Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding at the end the following new paragraph:

"( ) RIO GRANDE, NEW MEXICO.—The segment from the west section line of Section 15, Township 23 North, Range 10 East, downstream approximately 8 miles to the southern line of the northwest quarter of Section 34, Township 23 North, Range 9 East.".

(b) STUDY REQUIREMENTS.—Section 5(b) of the Wild and Scenic Rivers Act (16. U.S.C. 1276(b)) is amended by adding at the end the following new paragraph:

"( ) The study of the Rio Grande in New Mexico shall be completed and the report submitted not later than 3 years after the date of enactment of this paragraph.".

SEC. 4. RIO GRANDE CITIZENS ADVISORY BOARD.

Not later than 90 days after the date of enactment of this Act, the Secretary of the Interior (hereinafter referred to as the "Secretary") shall establish the Rio Grande Citizens Oversight Review Board (hereinafter referred to as the "Board") to advise the Secretary on matters pertaining to the development and implementation of a management plan for the segment of the Rio Grande designated as a component of the Wild and Scenic Rivers System pursuant to section 2, and the preparation of the study pursuant to section 3. The Board shall consist of 11 members, appointed by the Secretary, ten of whom are property owners along the segments of the Rio Grande designated and studied pursuant to this Act, and one member to represent the village of Pilar.

SEC. 5. WITHDRAWAL OF ORILLA VERDE RECREATION AREA.

(A) IN GENERAL.—Subject to valid existing rights, the lands described in subsection (b) are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the mining laws; and from disposition under all laws pertaining to mineral and geogthermal leasing, and all amendments thereto.

(b) LANDS.—(1) The lands referred to in subsection (a), comprise an area known as the "Orilla Verde Recreation Area", totaling approximately 1,349 acres, which were conveyed by the State of New Mexico to the United States on July 23, 1980, April 20, 1990, and July 17, 1990, as generally depicted on the map entitled "Proposed Recreation Addition to Rio Grande Wild and Scenic River" and dated September, 1992.

(2) The map referred to in paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

So the bill (S. 2021) was passed.

CASAS GRANDES CULTURE STUDY ACT

The Senate proceeded to consider the bill (S. 2045) to authorize a study of the prehistoric Casas Grandes Culture in the State of New Mexico, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Casas Grandes Culture Study Act of **[**1991**]** *1992*".

SEC. 2. FINDINGS.

Congress finds that—

(1) about A.D. 1150, a prehistoric culture spread northward into what is now northwestern Chihuahua, Mexico, southwestern New Mexico, and southeastern Arizona;

(2) this culture was a regional version of the Mesoamerican civilization known as the "Casas Grandes Culture";

(3) while this culture was centered around the major town site of Casas Grandes, Chihuahua, Mexico, hundreds of other sites developed along regional drainages;

(4) the core area of this great culture extends into the United States, primarily into southern Hidalgo County, New Mexico;

(5) for more than 200 years, until at least A.D. 1400, the Casas Grandes Culture was situated at the connecting point between the rest of Mesoamerica to the south and the Anasazi and other puebloan cultures to the north;

(6) this culture represents a key aspect of understanding the relationships between the cultures of the American Southwest and of Mesoamerica;

(7) there are more than 25 known Casas Grandes sites in Hidalgo County, New Mexico, which are in varying condition; and

(8) these sites contain extraordinary polychrome pottery, detailed metal work, including rare copper bells, and many other types of artifacts that bring a high market value when sites are vandalized.

SEC. 3. AUTHORIZATION OF STUDY.

(a) IN GENERAL.—The Secretary of the Interior, acting through the Director of the National Park Service, **[**may**]** *shall* conduct a study of the Casas Grandes Culture in southwestern New Mexico to determine its significance in illustrating and commemorating the prehistory of the Southwest.

(b) CONTENTS.—

(1) IN GENERAL.—The study shall examine—

(A) the geographic extent of the Casas Grandes Culture;

(B) the significance of the Casas Grandes Culture and remaining Casas Grandes sites in the context of Southwestern prehistory;

(C) the integrity of Casas Grandes sites;

(D) the relationships between the Casas Grandes Culture and the Mogollon Culture; and

(E) potential interpretive opportunities.

(2) RECOMMENDATIONS.—The study shall include recommendations with respect to—

(A) measures for the preservation of cultural resources associated with the Casas Grandes Culture located in and around Hidalgo County, New Mexico;

(B) a broad range of interpretive opportunities involving the National Park Service, other Federal and State agencies, the Mexican government, and **[**The Nature Conservancy;**]** *other public and private entities;* and

(C) general facility **[**needs (including general location and anticipated costs), including**]** *needs, including the nature, location, and anticipated costs thereof, as well as* road improvements that would be required for public enjoyment and interpretive use of Casas Grandes sites.

(c) COOPERATION WITH MEXICO.—

(1) PARTICIPATION.—Representatives of the State of Chihuahua, Mexico, shall be invited to participate in the study process.

(2) COOPERATIVE RELATIONSHIPS.—The study shall recommend potential cooperative relationships with Mexico for interpretation and visitor use.

[(d) COMPLETION OF STUDY.—The study shall be completed and transmitted to the Committee on Interior and Insular Affairs of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate not later than 2 years after the date on which funds are appropriated for the study.**]**

(d) COMPLETION OF STUDY.—The study shall be completed and transmitted to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives no later than 2 complete fiscal years after the date of enactment of this Act.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

So the bill (S. 2045) was passed.

COLONIAL NEW MEXICO COMMEMORATIVE ACT

The Senate proceeded to consider the bill (S. 2544) to establish in the Department of the Interior the Colonial New Mexico Preservation Commission, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

S. 2544

SECTION 1. SHORT TITLE.

This Act may be cited as the "Colonial New Mexico Commemorative Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) in 1598, almost a decade before the first permanent English settlement was established at Jamestown, Spanish colonists entered New Mexico, beginning more than 2 centuries of colonization that would indelibly mark the character of the American Southwest;

(2) because of the flow of history, New Mexico has remained a unique area of the Spanish borderlands;

(3) as a result of its remoteness, New Mexico changed more slowly than other settlements and has retained many significant remnants of colonial customs, language, and attitudes; and

(4) the interaction of the American Indian and Hispanic colonial heritages resulted in customs, architecture, and many other manifestations that are unique to today's American culture.

(b) PURPOSE.—In order to enhance the preservation, interpretation, and public understanding of various aspects of colonial New Mexico, the purpose of this Act is to authorize the Secretary of the Interior to formulate a program for the research, interpretation, and preservation of various aspects of colonial New Mexico history.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) COMMITTEE.—The term "Committee" means the Colonial New Mexico Preservation Advisory Committee established by section 6.

(2) PLAN.—The term "plan" means the comprehensive management plan described in section 5.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 4. DUTIES OF SECRETARY.

(a) PLAN.—

(1) PREPARATION.—The Secretary shall prepare the comprehensive management plan in accordance with section 5.

(2) IMPLEMENTATION.—In close consultation with the Office of Cultural Affairs of the State of New Mexico and the Committee, the Secretary shall—

(A) coordinate the activities of Federal, State, and local governments, and private businesses and organizations, to carry out the plan and the purpose of this Act; and

(B) consistent with standards established by the Secretary for the preservation of historic properties and for educational programs, and consistent with the National Historic Preservation Act (16 U.S.C. 470 et seq.), prepare guidelines and standards for projects, as identified in the plan, that will further public understanding of colonial New Mexican history.

(b) GRANTS.—

(1) IN GENERAL.—From funds appropriated, donated, or otherwise made available to the Secretary, the Secretary shall award grants to tribal, governmental, and nongovernmental entities to conserve and protect structures, objects, and sites, and help support cultural events, that have outstanding significance in the commemoration of colonial New Mexico, except that the Federal share shall not exceed 50 percent of the cost of each project.

(2) NON-FEDERAL SHARE.—The non-Federal share may be in the form of cash or services, including donation of labor for project implementation.

(c) SURVEYS AND ARCHAEOLOGICAL INVESTIGATIONS.—The Secretary shall contract for surveys and archaeological and historical investigations of sites relating to colonial New Mexico, including the preparation of reports and maps, and the curation of artifacts.

(d) PUBLICATIONS.—The Secretary shall publish study reports and educational materials.

(e) NOMINATIONS TO NATIONAL REGISTER OF HISTORIC PLACES.—The Secretary shall prepare thematic nominations to the National Register of Historic Places of colonial sites and resources in New Mexico.

(f) STAFF OF OTHER AGENCIES.—On a reimbursable basis, the Secretary may procure the services of personnel detailed from the State of New Mexico or other Federal agencies.

(g) DONATIONS.—The Secretary may seek and accept donations of funds or services from public and private entities to carry out this Act.

SEC. 5. COMPREHENSIVE MANAGEMENT PLAN.

(a) IN GENERAL.—Not later than 2 years after funds are made available for purposes of this Act, the Secretary, in consultation with the Committee, the State of New Mexico, units of local government, and private groups, shall prepare a comprehensive management plan to provide direction for commemorative actions and projects.

(b) CONTENTS.—The plan shall—

(1) establish a process and procedures for undertaking research relating to colonial New Mexico and a program for regular publication of research materials and findings;

(2) develop a survey program to further evaluate known resources and identify sites and features that require additional study;

(3) identify a core system of interpretive sites and features that would provide a comprehensive overview of the colonial New Mexico story;

(4) prepare interpretive materials to address the colonial New Mexico story and identify locations where this material will be available to the public;

(5) evaluate and recommend high priority sites and resources that need protection and assistance;

(6) with the assistance of site owners, prepare options for the protection and management of high priority colonial New Mexico resources;

(7) evaluate and recommend highway routes, in existence on the date of the plan, that could be designated by the State of New Mexico as colonial New Mexico tour routes; and

(8) evaluate the feasibility of and need for developing commemorative centers in New Mexico in accordance with section 7(a).

SEC. 6. ESTABLISHMENT OF ADVISORY COMMITTEE.

(a) IN GENERAL.—There is established in the Department of the Interior the Colonial New Mexico Preservation Advisory Committee to advise the Secretary with respect to the administration of this Act.

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Committee shall be composed of 15 members who have knowledge of New Mexico colonial history and culture and who shall be appointed by the Secretary, of whom—

(A) three members shall be appointed from recommendations submitted by the Governor of New Mexico, of whom one member shall represent the Office of Cultural Affairs of the State of New Mexico;

(B) one member shall be appointed from recommendations submitted by the All Indian Pueblo Council;

(C) one member—

(i) shall be from the general public; and

(ii) shall have knowledge of colonial history in New Mexico;

(D) four members—

(i) shall be appointed from recommendations submitted by local governments in New Mexico; and

(ii) shall represent Hispanic communities;

(E) one member shall be appointed from recommendations submitted by the President of the University of New Mexico;

(F) one member shall be appointed from recommendations submitted by the President of New Mexico State University;

(G) one member shall be appointed from recommendations jointly submitted by the Navajo and Apache tribal governments;

(H) one member shall have professional expertise in the colonial history of New Mexico;

(I) one member shall have professional expertise in architectural history; and

(J) one member shall be the Secretary or the Secretary's designee and shall serve in an ex-officio capacity.

(2) CHAIRPERSON.—

(A) IN GENERAL.—The Committee shall elect a chairperson from among its members.

(B) TERM.—The chairperson shall serve for a term of 2 years.

(3) VACANCIES.—A vacancy in the Committee shall be filled in the manner in which the original appointment was made.

(4) TERMS.—

(A) IN GENERAL.—Each member of the Committee shall be appointed for a term of 5 years.

(B) MEMBERS FILLING VACANCIES.—A member appointed to fill a vacancy shall serve for the remainder of the term for which the member's predecessor was appointed.

(C) EXTENDED SERVICE.—A member of the Committee may serve after the expiration of the member's term until a successor is appointed.

(5) COMPENSATION.—Members of the Committee shall serve without compensation.

(6) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(c) MEETINGS.—

(1) IN GENERAL.—The Committee shall meet at least twice annually or at the call of the chairperson or a majority of the members of the Committee.

(2) QUORUM.—A simple majority of members of the Committee shall constitute a quorum.

(d) HEARINGS.—To carry out this section, the Committee may hold public hearings, take testimony, and record the views of the public regarding the plan and implementation of the plan.

(e) TERMINATION.—The Committee shall terminate 10 years after completion of the appointment of the first group of members.

SEC. 7. COMMEMORATIVE CENTERS.

(a) IN GENERAL.—

(1) IN GENERAL.—The Secretary may develop commemorative centers, operate educational programs, provide technical assistance, conduct cultural events, and prepare media materials, except that the Federal share of a project shall not exceed 50 percent of the total cost of development.

(2) NON-FEDERAL SHARE.—The non-Federal share may be in the form of cash or services.

(b) ESPAÑOLA PLAZA CENTER.—

(1) IN GENERAL.—In consultation with the Committee, the Secretary may pay to the city of Española, New Mexico, the Federal share of planning, developing, and operating a commemorative center as an element of the Spanish Commemorative Plaza.

(2) FEDERAL SHARE.—The Federal share may not exceed 50 percent of the total cost of the Española Plaza project.

(3) NON-FEDERAL SHARE.—The non-Federal share may be in the form of cash or services.

SEC. 8. GALISTEO BASIN STUDY.

In accordance with the National Park Service document entitled "Alternative Concepts for Commemorating Spanish Colonization" and dated February 1991, the Secretary shall undertake a special resource study of the major prehistoric and historic sites in the Galisteo Basin relating to colonial New Mexico. The study shall include evaluations of significance, site integrity, threats, and protection and management options.

SEC. 9. ANNUAL REPORTS.

(a) IN GENERAL.—The Secretary shall submit an annual report to Congress that lists with respect to this Act—

(1) actions taken by the Secretary;

(2) entities to which any grants were made during the fiscal year and any recipients of technical assistance; and

(3) actions taken to protect and interpret significant sites, structures, and objects relating to colonial New Mexico.

(b) COST ESTIMATES.—The report shall include detailed cost estimates of projects that are proposed to be funded under this Act during the next fiscal year.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of the Interior $5,000,000 to carry out this Act, to remain available until expended.

SEC. 11. PUEBLO TRAIL.

(a) The Masau Trail, as designated by Title II of the Act of December 31, 1987 (101 Stat. 1540), is hereby redesignated as the Pueblo Trail.

(b) Any reference in any record, map, or other document of the United States of America to the Masau Trail shall hereafter be deemed to be a reference to the Pueblo Trail.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time and passed.

The title was amended so as to read: "A bill to authorize the Secretary of the Interior to formulate a program for the research, interpretation, and preservation of various aspects of colonial New Mexico history, and for other purposes."

GEORGE WASHINGTON BIRTHPLACE NATIONAL MONUMENT BOUNDARIES REVISION ACT

The Senate proceeded to consider the bill (H.R. 2444) to revise the boundaries of the George Washington Birthplace National Monument, which had been reported from the Committee on Energy and Natural Resources, with an amendment on page 2, beginning on line 8, to strike "numbered NPS 332/80011, and dated May 1991", and insert in lieu thereof "numbered NPS 332/80011A, and dated September 1992".

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. BOUNDARIES OF GEORGE WASHINGTON BIRTHPLACE NATIONAL MONUMENT.

The boundaries of the George Washington Birthplace National Monument are hereby modified to include the area comprising approximately 125 acres as generally depicted as "National Monument Boundary" on the map entitled "George Washington Birthplace National Monument Boundary May", *Numbered NPS 332/800011A, and dated September 1991*, which shall be on file and available for public inspection in the Office of the Director of the National Park Service, Department of the Interior.

SEC. 2. ACQUISITION OF LANDS.

The Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") may acquire land or interests in land within the boundaries of the George Washington Birthplace National Mounument by donation, purchase with donated or appropriated funds, or exchange.

SEC. 3. ADMINISTRATION OF NATIONAL MONUMENT.

In administering the George Washington Birthplace National Monument, the Secretary shall take such action as is necessary to preserve and interpret the history and resources associated with George Washington, the generations of the Washington family who lived in the vicinity and their contemporaries, as well as 18th century plantation life and society.

So the bill (H.R. 2444) was passed.

LYNN, MA, HISTORICAL STUDY ACT

The bill (H.R. 2859) to direct the Secretary of the Interior to conduct a study of the historical and cultural resources in the vicinity of the city of Lynn, MA, and make recommendations on the appropriate role of the Federal Government in preserving and interpreting such historical and cultural resources, was considered, ordered to a third reading, read the third time, and passed.

NATIONAL TRAILS SYSTEM ACT AMENDMENTS

The Senate proceeded to consider the bill (H.R. 3011) to amend the National Trails System Act to designate the American Discovery Trail for study to determine the feasibility and desirability of its designation as a national trail, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. DESIGNATION OF AMERICAN DISCOVERY TRAIL AS A STUDY TRAIL.

Section 5(c) of the National Trails System Act (18 U.S.C. 1244(c)) is amended by adding at the end the following new paragraph:

"(34) American Discovery Trail, extending from Pt. Reyes, California, across the United States through Nevada, Utah, Colorado, Kansas, Nebraska, Missouri, Iowa, Illinois, Indiana, Ohio, West Virginia, Maryland, and the District of Columbia, to Cape Henlopen State Park, Delaware; to include in the central United States a northern route through Colorado, Nebraska, Iowa, Illinois, and Indiana and a southern route through Colorado, Kansas, Missouri, Illinois, and Indiana.".

SEC. 2. DESIGNATION OF ALA KAHAKAI TRAIL AS A STUDY TRAIL.

Section 5(c) of the National Trails System Act (16 U.S.C. 1244(c)) is amended by adding at the end the following new paragraph:

"(35) Ala Kahakai Trail in the State of Hawaii, an ancient Hawaiian trail on the Island of Hawaii extending from the northern tip of the Island of Hawaii approximately 175 miles along the western and southern coasts to the northern boundary of Hawaii Volcanoes National Park.".

TO DESIGNATE THE AMERICAN DISCOVERY TRAIL STUDY

Mr. BROWN. Mr. President, today I would like to rise in support of legislation to authorize the study of our Nation's first coast-to-coast hiking trail, the American Discovery Trail. While the Appalachian, Continental Divide, and Pacific Crest Trails each provide hiking opportunities traversing the United States from north to south, we lack an east-west backbone with which to link up these trails. The ADT would serve as this backbone, totaling nearly 5,500 miles in length.

The American Discovery Trail will give the American people greater access to some of our country's most beautiful scenic vistas. People all across this country would be able to hike, bike, horseback, or simply walk along such historic trails as the Pony Express route and Santa Fe National Trail which played an important part in America's history.

The trail begins at Point Reyes National Seashore near San Francisco, and travels eastward through Nevada, Utah, Colorado, Kansas, Missouri, Illinois, Indiana, Ohio, West Virginia, and Maryland, ending at Cape Henlopen State Park in Delaware. By linking over 17 existing scenic and historic trails, the ADT will form a national network of trails encompassing 27 States and over 30,000 trail miles.

In Colorado, the American Discovery Trail is routed through some of the State's most beautiful and historic areas. On the west slope, hikers would pass through the Colorado National Monument and cross the Grand Mesa and Gunnison National Forests. Heading north, the route would scale the Collegiate Peaks and then hitchup with the Colorado Trail. Once the trail descends from the Rockies into the suburban areas of Denver, it follows along the foothills of the front range through Cripple Creek to Canon City and then heads west to hook up with the Santa Fe Trail.

Support for such a comprehensive system of trails has been spectacular. In fact, members of the Nebraska delegation contacted me to specifically request that a northern leg of the trail following the South Platte River through Nebraska and Iowa be studied for possible inclusion in the ADT. This has been included in the bill reported by the Energy and Natural Resources Committee.

Thanks to the efforts of the American Hiking Society, Backpacker magazine, as well as many other State and local trails organizations, a three-person team successfully led a scouting expedition in June of 1990 from California to Delaware in order to determine a feasible route for the ADT. Nearly 2 years later, this expedition completed much of the groundwork for the ADT utilizing existing trails wherever possible.

In addition, committees in each State participated to make sure that local interest existed for such a trail and that potential conflicts were avoided.

Because of this groundwork, the cost of studying the proposed route for designation will be small. Within 3 years, the National Park Service must conduct the study and provide its recommendations to Congress. At that time, additional legislation will provide for the actual designation of the trail.

Because the ADT has been purposefully routed in and around major metropolitan areas to link up with urban greenways and rail-to-trail conversions, the ADT also helps achieve the goal set forth by the President's Commission on Americans Outdoors—that everyone live within 15 minutes of a trail. This same commission found that walking for pleasure is the No. 1 activity for Americans. In addition, the presence of trails has been shown to positively impact real estate property value, small business revenues, and tourism.

Mr. President, I was happy to sponsor this legislation. In these times of physical awareness and fiscal restraint, the American Discovery Trail provides healthy, inexpensive entertainment opportunities for all age groups.

It is my hope that the trail also will foster increased appreciation of and responsibility for our public lands, as well as heightened awareness of our cultural heritage.

So the bill (H.R. 3011) was passed.

PENNSYLVANIA AVENUE DEVELOPMENT ACT

The bill (H.R. 4999) to authorize additional appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House, was considered, ordered to a third reading, read the third time, and passed.

JAPANESE-AMERICANS PATRIOTISM MEMORIAL

The joint resolution (H. J. Res. 271) authorizing the Go For Broke National Veterans Association Foundation to establish a memorial in the District of Columbia or its environs to honor Japanese-American patriotism in World War II, was considered, ordered to a third reading, read the third time, and passed.

ADAMHA REORGANIZATION TECHNICAL AMENDMENTS ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 3366, a bill introduced earlier today by Senators KENNEDY and HATCH, the ADAMHA Reorganization Technical Amendments Act of 1992; that the bill be read a third time and passed; the motion to reconsider be laid upon the table, and any statements thereon appear in the RECORD at the appropriate place as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE ADAMHA TECHNICAL AMENDMENTS ACT OF 1992

Mr. KENNEDY. Mr. President, the bill we have just passed consists of minor and technical amendments to the ADAMHA Reorganization Act (Public Law 102–321), which was enacted into law on July 10 of this year. An earlier set of technical amendments, primarily concerning the new block grant formula, was included in Public Law 102–352.

I ask unanimous consent that a section-by-section analysis of these additional technical amendments be included in the RECORD at this point.

There being no objection, the material was ordered to be printed as follows:

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

Section 2(a)(1). Exempts protection and advocacy grants from the requirement of state review. The state review requirement was inluded in the Reorganization Act to facilitate coordination and state involvement in federal treatment and prevention funding. That goal is inapplicable to the protection and advocacy program because of the unique nature of protection and advocacy activities.

Section 2(a)(2). Makes clear that the Substance Abuse and Mental Health Services Administration (SAMHSA) will maintain separate clearinghouses for substance abuse and mental health.

Section 2(a)(3). Provides for the appointment of an Associate Administrator for AIDS Policy and Programs within SAMHSA.

Section 2(b). Eliminates an unnecessary limitation on members of the general public who may sit on advisory councils.

Section 2(c). Eliminates references to the promulgation of regulations in regard to the peer review process of the Substance Abuse and Mental Health Services Administration. This section also exempts from the peer review requirement protection and advocacy grants because of their unique nature.

Section 2(d). Provides that states may receive demonstration grants under section 506 of the Public Health Service Act so that they may in turn provide grants to political subdivisions and non-profit entities within the state.

Section 2(e). Provides that grantees under section 508 may provide treatment services to women with dependent children who are neither pregnant nor post-partum. The primary purpose of section 508 is to provide comprehensive services to pregnant and post-partum substance abusers. This focus exists because of the immediate physiological danger to the fetuses and infants of substance abusers. Nonetheless, the incidental expenditure of funds for women with dependent children who are neither pregnant or post-partum is not prohibited.

Section 2(f). Specifies that violation of the confidentiality requirement set forth in section 543 is a class A misdemeanor.

Section 2(g). Revises the amount of money that must be spent on technical assistance under the childhood mental health program.

Section 3(a). Conforming amendment.

Section 3(b). Clarifies the definition of "pharmacotherapeutics" within the medications development program and revises a study deadline.

Section 4. Expands the scope of certain CDC grant-making authority in light of the fact that there are certain geographic regions in which non-profit mammography screening units may not exist.

Section 5(a). Conforming amendment.

Section 5(b). Clarifies that the cost of services index in the block grant formula is to be recalculated for fiscal year 1995 and every three years thereafter.

Section 5(c). Revises the section requiring certain coordinated drug treatment and HIV services so that the latter may be provided off-site.

Section 5(d). Corrects an incorrect statutory reference.

Section 5(e). Corrects an incorrect statutory term.

Section 5(f). Permits capacity expansion funds to be used for inpatient hospital treatment to the same extent as under the substance abuse block grant.

Section 6(a). Extends the deadline for obligation of FY92 block grant funds.

Section 6(b). Requires additional consultation on a study.

Section 6(c). Repeals an unnecessary provision of law.

So the bill (S. 3366) was passed as follows:

S. 3366

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "ADAMHA Reorganization Technical Amendments Act of 1992".

SEC. 2. AMENDMENTS TO TITLE V.

(a) ORGANIZATION AND ADMINISTRATION.—Section 501 of the Public Health Service Act (42 U.S.C. 290aa) is amended

(1) in subsection (d)—

(A) by inserting "(except for grants under the Protection and Advocacy for Mentally Ill Individuals Act)" after "this title" in paragraph (13); and

(B) by striking out "substance abuse and mental health" and inserting in lieu thereof "substance abuse information and a clearinghouse for mental health" in paragraph (16);

(2) by redesignating subsections (g) through (m) as subsections (h) through (n), respectively; and

(3) by inserting after subsection (f), the following new subsection:

"(g) ASSOCIATE ADMINISTRATOR FOR AIDS POLICY AND PROGRAMS.—The Administrator, with the approval of the Secretary, shall appoint an Associate Administrator for AIDS Policy and Programs (who shall not hold any other position within the Administration). The Associate Administrator shall be responsible for promoting, monitoring and evaluating activities of the Administration that relate to the transmission of the human immunodeficiency virus, including AIDS outreach and training activities.".

(b) ADVISORY COUNCILS.—Section 502(b)(3)(B) of such Act (42 U.S.C. 290aa-1(b)(3)(B)) is amended by striking out "and shall include" and all that follows through "management".

(c) PEER REVIEW.—Section 504 of such Act (42 U.S.C. 290aa-3) is amended—

(1) in subsection (a), by inserting after "contract" the following: "(excluding contracts for program resources)";

(2) in subsection (b)—

(A) by striking out "under regulations" in the first sentence; and

(B) by striking out "established under such regulation" in the second sentence;

(3) in subsection (c), by striking out "Regulations promulgated" and inserting in lieu thereof "Procedures developed"; and

(4) in subsection (d)—

(A) by striking out "by regulations" each place that such term appears; and

(B) in paragraph (2), by inserting ", except for grants under the Protection and Advocacy for Mentally Ill Individuals Act" after "subsection (a)".

(d) GRANTS FOR THE BENEFITS OF THE HOMELESS.—Section 506(a) of such Act (42 U.S.C. 290aa-5(a)) is amended—

(1) by inserting "States or" before "community-based"; and

(2) by inserting the following new sentence at the end thereof: "Grants to States under this section shall be expended solely to make grants to political subdivisions of the State and to private nonprofit entities.".

(e) RESIDENTIAL TREATMENT.—Section 508 of such Act (42 U.S.C. 290bb-1) is amended by adding at the end thereof the following new subsection:

"(s) CONSTRUCTION.—Funds expended under this section may be used to provide services to women with dependent children who are neither pregnant nor post-partum.".

(f) CONFIDENTIALITY OF RECORDS.—Subsection (f) of section 543 of such Act (42 U.S.C. 290dd-2(f)) is amended to read as follows:

"(f) PENALTIES.—A violation of any provision of this section or any regulation issued pursuant to this section shall constitute a class A misdemeanor and any person found guilty of such violation shall be fined in accordance with title 18, United States Code.".

(g) GENERAL PROVISIONS.—Paragraph 2 of section 565(f) of such Act (42 U.S.C. 290ff-4(f)(2)) is amended to read as follows:

"(2) TECHNICAL ASSISTANCE.—Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall make available not less than 10 percent and not more than $3,000,000 for the purposes of carrying out subsection (b).".

SEC. 3. AMENDMENTS TO TITLE IV.

(a) NATIONAL ALCOHOL RESEARCH CENTER.—Section 464J(a) of the Public Health Service Act (42 U.S.C. 285n-2(a)) is amended by striking out "The Secretary acting through" and inserting in lieu thereof "The Director of"

(b) MEDICATION DEVELOPMENT PROGRAM.—Section 464P of such Act (42 U.S.C. 285o-4) is amended—

(1) in subsection (c)(1), by striking out "December 31, 1992" and inserting in lieu thereof "June 30, 1993"; and

(2) in subsection (d)—

(A) by inserting "or reduce" after "block" in paragraph (1);

(B) by inserting "or use of" after "for" in paragraph (2);

(C) by inserting ", reduce" after "block" in paragraph (4); and

(D) by inserting "or reduce" after "prevent" in paragraph (5).

SEC. 4. AMENDMENTS TO TITLE XV.

(a) GRANTS.—Section 1501(b) of the Public Health Service Act (42 U.S.C. 300k(b)) is amended by striking out "nonprofit".

(b) INTENDED USES.—Section 1505(3) of such Act (42 U.S.C. 300n-1(3)) is amended by striking out "nonprivate" and inserting in lieu thereof "private".

SEC. 5. AMENDMENTS TO TITLE XIX.

(a) APPLICATION FOR GRANT.—Section 1917(a)(1) of the Public Health Service Act (42 U.S.C. 300x-6(a)(1)) is amended by striking out "as being the date" and all that follows through "date)".

(b) DETERMINATION OF AMOUNT OF ALLOTMENT.—Section 1918(a)(8)(D)(i) of such Act (42 U.S.C. 300x-7(a)(8)(D)(i)) is amended by inserting after "recalculated" the following "for fiscal year 1995 and".

(c) TUBERCULOSIS AND HIV.—Section 1924(b)(1)(A) of such Act (42 U.S.C. 300x-24(b)(1)(A)) is amended by striking out "the sites at" and inserting in lieu thereof "the program site, or in coordination with the program in".

(d) FUNDING.—Section 1935(b)(2) of such Act (42 U.S.C. 300x-35(b)(2)) is amended by striking out "section 1949(a)" and inserting in lieu thereof "section 1948(a)".

(e) AVAILABILITY TO STATE OF GRANT PAYMENTS.—Section 1952(b) of such Act (42 U.S.C. 300x-62(b)) is amended in the matter preceding paragraph (1)—

(1) by striking out "financial assistance" and inserting in lieu thereof "funding"; and

(2) by striking out "assistance" each place that such term appears and inserting in lieu thereof "funding".

(f) CATEGORICAL GRANTS.—Section 1971(h)(1) of such Act (42 U.S.C. 300y(h)(1)) is amended by inserting before the semicolon the following: "except under the circumstances set forth in section 1931(b)".

SEC. 6. OTHER AMENDMENTS.

(a) ADAMHA REORGANIZATION ACT.—Section 205 of the ADAMHA Reorganization Act (42 U.S.C. 300x note) is amended by adding at the end thereof the following new subsection:

"(e) AVAILABILITY OF APPROPRIATIONS.—Notwithstanding section 1952(a) of the Public Health Service Act and section 205(a)(2) of this Act, amounts appropriated for fiscal year 1992 shall be available for obligation until December 31, 1992.".

(b) STUDY OF BARRIERS TO INSURANCE COVERAGE.—Section 704(a) of the ADAMHA Reorganization Act (42 U.S.C. 285p(a)) is amended by inserting "and the Administrator of the Substance Abuse and Mental Health Services Administration" after "Administration".

(c) STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT.—Section 612 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 290aa-3 note) is repealed.

THE 100TH HAWAII ANNIVERSARY AND APOLOGY

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 804, Senate Joint Resolution 335, a joint resolution acknowledging the 100th anniversary of the overthrow of the Kingdom of Hawaii; that the resolution be read for a third time and passed; that the preamble be agreed to; that the motion to reconsider be laid upon the table; and that any statements be placed in the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the Senate proceeded to consider the joint resolution (S.J. Res. 335) to acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii, which had been reported from the Select Committee on Indian Affairs with amendments.

The amendment were agreed to.

The joint resolution was ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, as amended, and the preamble are as follows:

S.J. RES. 335

Whereas, prior to the arrival of the first Europeans in 1778, the Native Hawaiian people lived in a highly organized, self-sufficient, subsistent social system based on communal land tenure with a sophisticated language, culture, and religion;

Whereas a unified monarchical government of the Hawaiian Islands was established in 1810 under Kamehameha I, the first King of Hawaii;

Whereas, from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

Whereas the Congregational Church (now known as the United Church of Christ), through its American Board of Commissioners for Foreign Missions, sponsored and sent more than 100 missionaries to the Kingdom of Hawaii between 1820 and 1850;

Whereas, on January 14, 1893, John L. Stevens (hereafter referred to in this Resolution as the "United States Minister"), the United States Minister assigned to the sovereign and independent Kingdom of Hawaii conspired with a small group of non-Hawaiian residents of the Kingdom of Hawaii, including citizens of the United States to overthrow the indigenous and lawful Government of Hawaii;

Whereas, in pursuance of the conspiracy to overthrow the Government of Hawaii, the United States Minister and the naval representatives of the United States caused armed naval forces of the United States to invade the sovereign Hawaiian nation on January 16, 1893, and to position themselves near the Hawaiian Government buildings and the Iolani Palace to intimidate Queen Liliuokalani and her Government;

Whereas, on the afternoon of January 17, 1893, a Committee of Safety that represented the American and European sugar planters, descendents of missionaries, and financiers deposed the Hawaiian monarchy and proclaimed the establishment of a Provisional Government;

Whereas the United States Minister thereupon extended diplomatic recognition to the Provisional Government that was formed by the conspirators without the consent of the Native Hawaiian people or the lawful Government of Hawaii and in violation of treaties between the two nations and of international law;

Whereas, soon thereafter, when informed of the risk of bloodshed with resistance, Queen Liliuokalani issued the following statement yielding her authority to the United States Government rather than to the Provisional Government:

"I Liliuokalani, by the Grace of God and under the Constitution of the Hawaiian Kingdom, Queen, do hereby solemnly protest against any and all acts done against myself and the Constitutional Government of the Hawaiian Kingdom by certain persons claiming to have established a Provisional Government of and for this Kingdom.

"That I yield to the superior force of the United States of America whose Minister Plenipotentiary, His Excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the Provisional Government.

"Now to avoid any collision of armed forces, and perhaps the loss of life, I do this under protest and impelled by said force yield my authority until such time as the Government of the United States shall, upon facts being presented to it, undo the action of its representatives and reinstate me in the authority which I claim as the Constitutional Sovereign of the Hawaiian Islands.".

Done at Honolulu this 17th day of January, A.D. 1893.;

Whereas, without the active support and intervention by the United States diplomatic and military representatives, the insurrection against the Government of Queen Liliuokalani would have failed for lack of popular support and insufficient arms;

Whereas, on February 1, 1893, the United States Minister raised the American flag and proclaimed Hawaii to be a protectorate of the United States;

Whereas the report of a Presidentially established investigation conducted by former Congressman James Blount into the events surrounding the insurrection and overthrow of January 17, 1893, concluded that the United States diplomatic and military representatives had abused their authority and were responsible for the change in government;

Whereas, as a result of this investigation, the United States Minister to Hawaii was recalled from his diplomatic post and the military commander of the United States armed forces stationed in Hawaii was disciplined and forced to resign his commission;

Whereas, in a message to Congress on December 18, 1893, President Grover Cleveland reported fully and accurately on the illegal acts of the conspirators, described such acts as an "act of war, committed with the participation of a diplomatic representative of the United States and without the authority of Congress", and acknowledged that by such acts the government of a peaceful and friendly people was overthrown;

Whereas President Cleveland further concluded that a "substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires that we should endeavor to repair" and called for the restoration of the Hawaiian monarchy;

Whereas the Provisional Government protested President Cleveland's call for the restoration of the monarchy and continued to hold state power and pursue annexation to the United States;

Whereas the Provisional Government successfully lobbied the Committee on Foreign Relations of the Senate (hereafter referred to in this Resolution as the "Committee") to conduct a new investigation into the events surrounding the overthrow of the monarchy.

Whereas the Committee and its chairman, Senator John Morgan, conducted hearings in Washington, D.C., from December 27, 1893, through February 26, 1894, in which members of the Provisional Government justified and condoned the actions of the United States Minister and recommended annexation of Hawaii;

Whereas, although the Provisional Government was able to obscure the role of the United States in the illegal overthrow of the Hawaiian monarchy, it was unable to rally the support from two-thirds of the Senate needed to ratify a treaty of annexation;

Whereas, on July 4, 1894, the Provisional Government declared itself to be the Republic of Hawaii;

Whereas, on January 24, 1895, while imprisoned in Iolani Palace, Queen Liliuokalani was forced by representatives of the Republic of Hawaii to officially abdicate her throne;

Whereas, in the 1896 United States Presidential election, William McKinley replaced Grover Cleveland;

Whereas, on July 7, 1898, as a consequence of the Spanish-American War, President McKinley signed the Newlands Joint Resolution that provided for the annexation of Hawaii;

Whereas, through the Newlands Resolution, the self-declared Republic of Hawaii ceded sovereignty over the Hawaiian Islands to the United States;

Whereas the Republic of Hawaii also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawaii, without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government;

Whereas the Congress, through the Newlands Resolution, ratified the cession, annexed Hawaii as part of the United States, and vested title to the lands in Hawaii in the United States;

Whereas the Newlands Resolution also specified that treaties existing between Hawaii and foreign nations were to immediately cease and be replaced by United States treaties with such nations;

Whereas the Newlands Resolution effected the transaction between the Republic of Hawaii and the United States Government;

Whereas the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum;

Whereas, on April 30, 1900, President McKinley signed the Organic Act that provided a government for the territory of Hawaii and defined the political structure and powers of the newly established Territorial Government and its relationship to the United States;

Whereas, on August 21, 1959, Hawaii became the 50th State of the United States;

Whereas the health and well-being of the Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land;

Whereas the long-range economic and social changes in Hawaii over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people;

Whereas, the Native Hawaiian people are determined to preserve, develop and transmit to future generations their ancestral territory, and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions;

Whereas, in order to promote racial harmony and cultural understanding, the Legislature of the State of Hawaii has determined that the year 1993 should serve Hawaii as a year of special reflection on the rights and dignities of the Native Hawaiians in the Hawaiian and the American societies;

Whereas the Eighteenth General Synod of the United Church of Christ in recognition of the denomination's historical complicity in the illegal overthrow of the Kingdom of Hawaii in 1893 directed the Office of the President of the United Church of Christ to offer a public apology to the Native Hawaiian people and to initiate the process of reconciliation between the United Church of Christ and the Native Hawaiians; and

Whereas it is proper and timely for the Congress on the occasion of the impending one hundredth anniversary of the event, to acknowledge the historic significance of the illegal overthrow of the Kingdom of Hawaii, to express its deep regret to the Native Hawaiian people, and to support the reconciliation efforts of the State of Hawaii and the United Church of Christ with Native Hawaiians: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ACKNOWLEDGEMENT AND APOLOGY.

The Congress—

(1) on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawaii on January 17, 1893, acknowledges the historical significance of this event which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people;

(2) recognizes and commends efforts of reconciliation initiated by the State of Hawaii and the United Church of Christ with Native Hawaiians;

(3) apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893 with the participation of agents and citizens of the United States, and the deprivation of the rights of Native Hawaiians to self-determination;

(4) expresses its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people; and

(5) urges the President of the United States to also acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and the Native Hawaiian people.

SEC. 2. DEFINITIONS.

As used in this Joint Resolution, the term "Native Hawaiian" means any individual who is a descendent of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes of the State of Hawaii.

SEC. 3. DISCLAIMER.

Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States.

Mr. AKAKA. Mr. President, I rise today to support Senate Joint Resolution 335, a joint resolution I introduced with Senators INOUYE and SIMON which would acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii and offer an apology to Native Hawaiians on behalf of the United States for its complicity in this event.

While Senate Joint Resolution 335 seeks to educate Congress and the American public on the events surrounding the 1893 overthrow and the impact that this action has had on the destiny of the Native Hawaiian people, the resolution would also provide the proper foundation for reconciliation between the United States and native Hawaiians.

As the 100th anniversary of the overthrow approaches, many individuals and organizations are reevaluating the events of 1893. A good example of this is the action taken by the Church of Christ in June 1991, during its 18th General Synod. As many of you know, the United Church of Christ, which now has 110 churches in the State of Hawaii, through its American Board of Commissioners for Foreign Missions, sent the first 100 missionaries to the Kingdom of Hawaii between 1820 and 1850. In recognition of the denomination's historical complicity in the 1893 overthrow of Queen Liliuokalani, the 18th General Synod directed the office of the president of the United Church to offer a public apology to the Native Hawaiian people and to initiate the process of reconciliation between the United Church of Christ and native Hawaiians. This action was a significant gesture by the United Church of Christ and has had a profound impact upon the United Church of Christ churches in Hawaii and native Hawaiians.

Mr. President, our Nation must also begin the healing process. The 100th anniversary of the January 17, 1893 overthrow of Queen Liliuokalani provides the proper occasion for a U.S. apology for its complicity in this event. Because of this episode in U.S. history, the political relationship between Native Hawaiians and the United States remains unresolved.

Not until our Nation understands the significance of the events surrounding the 1893 overthrow of the Kingdom of Hawaii will the American people appreciate the meaning of the native Hawaiian rights movement which grows stronger every day.

Nearly a century ago, President Grover Cleveland, in a message to Congress on December 18, 1893, courageously acknowledged U.S. complicity in the overthrow of the Kingdom of Hawaii and stated, "A substantial wrong has thus been done which a due regard for our national character as well as the rights of the injured people requires we should endeavor to repair." Mr. President, January 17 of next year will mark the 100th anniversary of that substantial wrong, yet no official apology has ever been made by the United States to the native Hawaiian people nor has there ever been an attempt by the United States to develop a Federal policy addressing their rights.

Support of Senate Joint Resolution 335 would be the first step toward Federal reconciliation with the native Hawaiian people. I ask my colleagues to support this important gesture of good faith and contribute to the healing process.

CANCER REGISTRIES AMENDMENT ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 3312.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 3312) entitled "An Act entitled the "Cancer Registries Amendment Act," do pass with the following amendment:

Page 14, line 6, strike [there are authorized to be appropriated] and insert in lieu thereof "the Secretary may use"; and

Page 14, line 8, strike [appropriated] and insert in lieu thereof "used".

SECTION 1. SHORT TITLE.

This Act may be cited as the "Cancer Registries Amendment Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) cancer control efforts, including prevention and early detection, are best addressed locally by State health departments that can identify unique needs;

(2) cancer control programs and existing statewide population-based cancer registries have identified cancer incidence and cancer mortality rates that indicate the burden of cancer for Americans is substantial and varies widely by geographic location and by ethnicity;

(3) statewide cancer incidence and cancer mortality data, can be used to identify cancer trends, patterns, and variation for directing cancer control intervention;

(4) the American Association of Central Cancer Registries (AACCR) cites that of the 50 States, approximately 38 have established cancer registries, many are not statewide and 10 have no cancer registry; and

(5) AACCR also cites that of the 50 States, 39 collect data on less than 100 percent of their population, and less than half have adequate resources for insuring minimum standards for quality and for completeness of case information.

(b) PURPOSE.—It is the purpose of this Act to establish a national program of cancer registries.

SEC. 3. NATIONAL PROGRAM OF CANCER REGISTRIES.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by adding at the end the following new part:

"PART M—NATIONAL PROGRAM OF CANCER REGISTRIES

"SEC. 399H. NATIONAL PROGRAM OF CANCER REGISTRIES.

"(a) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control, may make grants to States, or may make grants or enter into contracts with academic or nonprofit organizations designated by the State to operate the State's cancer registry in lieu of making a grant directly to the State, to support the operation of population-based, statewide cancer registries in order to collect, for each form of in-situ and invasive cancer (with the exception of basal cell and squamous cell carcinoma of the skin), data concerning—

"(1) demographic information about each case of cancer;

"(2) information on the industrial or occupational history of the individuals with the cancers, to the extent such information is available from the same record;

"(3) administrative information, including date of diagnosis and source of information;

"(4) pathological data characterizing the cancer, including the cancer site, stage of disease (pursuant to Staging Guide), incidence, and type of treatment; and

"(5) other elements determined appropriate by the Secretary.

"(b) MATCHING FUNDS.—

"(1) IN GENERAL.—The Secretary may make a grant under subsection (a) only if the State, or the academic or nonprofit private organization designated by the State to operate the cancer registry of the State, involved agrees, with respect to the costs of the program, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 25 percent of such costs or $1 for every $3 of Federal funds provided in the grant.

"(2) DETERMINATION OF AMOUNT OF NON-FEDERAL CONTRIBUTION; MAINTENANCE OF EFFORT.—

"(A) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

"(B) With respect to a State in which the purpose described in subsection (a) is to be carried out, the Secretary, in making a determination of the amount of non-Federal contributions provided under paragraph (1), may include only such contributions as are in excess of the amount of such contributions made by the State toward the collection of data on cancer for the fiscal year preceding the first year for which a grant under subsection (a) is made with respect to the State. The Secretary may decrease the amount of non-Federal contributions that otherwise would have been required by this subsection in those cases in which the State can demonstrate that decreasing such amount is appropriate because of financial hardship.

"(c) ELIGIBILITY FOR GRANTS.—

"(1) IN GENERAL.—No grant shall be made by the Secretary under subsection (a) unless an application has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such a manner, and be accompanied by such information, as the Secretary may specify. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approved application and in accordance with the requirements of this section, that the application will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under subsection (a) of this section, and that the applicant will comply with the peer review requirements under sections 491 and 492.

"(2) ASSURANCES.—Each applicant, prior to receiving Federal funds under subsection (a), shall provide assurances satisfactory to the Secretary that the applicant will—

"(A) provide for the establishment of a registry in accordance with subsection (a);

"(B) comply with appropriate standards of completeness, timeliness, and quality of population-based cancer registry data;

"(C) provide for the annual publication of reports of cancer data under subsection (a); and

"(D) provide for the authorization under State law of the statewide cancer registry, including promulgation of regulations providing—

"(i) a means to assure complete reporting of cancer cases (as described in subsection (a)) to the statewide cancer registry by hospitals or other facilities providing screening, diagnostic or therapeutic services to patients with respect to cancer;

"(ii) a means to assure the complete reporting of cancer cases (as defined in subsection (a)) to the statewide cancer registry by physicians, surgeons, and all other health care practitioners diagnosing or providing treatment for cancer patients, except for cases directly referred to or previously admitted to a hospital or other facility providing screening, diagnostic or therapeutic services to patients in that State and reported by those facilities;

"(iii) a means for the statewide cancer registry to access all records of physicians and surgeons, hospitals, outpatient clinics, nursing homes, and all other facilities, individuals, or agencies providing such services to patients which would identify cases of cancer or would establish characteristics of the cancer, treatment of the cancer, or medical status of any identified patient;

"(iv) for the reporting of cancer case data to the statewide cancer registry in such a format, with such data elements, and in accordance with such standards of quality timeliness and completeness, as may be established by the Secretary;

"(v) for the protection of the confidentiality of all cancer case data reported to the statewide cancer registry, including a prohibition on disclosure to any person of information reported to the statewide cancer registry that identifies, or could lead to the identification of, an individual cancer patient, except for disclosure to other State cancer registries and local and State health officers;

"(vi) for a means by which confidential case data may in accordance with State law be disclosed to cancer researchers for the purposes of cancer prevention, control and research;

"(vii) for the authorization or the conduct, by the statewide cancer registry or other persons and organizations, of studies utilizing statewide cancer registry data, including studies of the sources and causes of cancer, evaluations of the cost, quality, efficacy, and appropriateness of diagnostic, therapeutic, rehabilitative, and preventative services and programs relating to cancer, and any other clinical, epidemiological, or other cancer research; and

"(viii) for protection for individuals complying with the law, including provisions specifying that no person shall be held liable in any civil action with respect to a cancer case report provided to the statewide cancer registry, or with respect to access to cancer case information provided to the statewide cancer registry.

"(d) RELATIONSHIP TO CERTAIN PROGRAMS.—

"(1) IN GENERAL.—This section may not be construed to act as a replacement for or diminishment of the program carried out by the Director of the National Cancer Institute and designated by such Director as the Surveillance, Epidemiology, and End Results Program (SEER).

"(2) SUPPLANTING OF ACTIVITIES.—In areas where both such programs exist, the Secretary shall ensure that SEER support is not supplanted and that any additional activities are consistent with the guidelines provided for in subsection (c)(2)(C) and (D) and are appropriately coordinated with the existing SEER program.

"(3) TRANSFER OF RESPONSIBILITY.—The Secretary may not transfer administration responsibility for such SEER program from such Director.

"(4) COORDINATION.—To encourage the greatest possible efficiency and effectiveness of Federally supported efforts with respect to the activities described in this subsection, the Secretary shall take steps to assure the appropriate coordination of programs supported under this part with existing Federally supported cancer registry programs.

"(e) REQUIREMENT REGARDING CERTAIN STUDY ON BREAST CANCER.—In the case of a grant under subsection (a) to any State specified in section 399K(b), the Secretary may establish such conditions regarding the receipt of the grant as the Secretary determines are necessary to facilitate the collection of data for the study carried out under section 399C.

"SEC. 399I. PLANNING GRANTS REGARDING REGISTRIES.

"(a) IN GENERAL.—

"(1) STATES.—The Secretary, acting through the Director of the Centers for Disease Control, may make grants to States for the purpose of developing plans that meet the assurances required by the Secretary under section 399B(c)(2).

"(2) OTHER ENTITIES.—For the purpose described in paragraph (1), the Secretary may make grants to public entities other than States and to nonprofit private entities. Such a grant may be made to an entity only if the State in which the purpose is to be carried out has certified that the State approves the entity as qualified to carry out the purpose.

"(b) APPLICATION.—The Secretary may make a grant under subsection (a) only if an application for the grant is submitted to the Secretary, the application contains the certification required in subsection (a)(2) (if the application is for a grant under such subsection), and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"SEC. 399J. TECHNICAL ASSISTANCE IN OPERATIONS OF STATEWIDE CANCER REGISTRIES.

"The Secretary, acting through the Director of the Centers for Disease Control, may, directly or through grants and contracts, or both, provide technical assistance to the States in the establishment and operation of statewide registries, including assistance in the development of model legislation for statewide cancer registries and assistance in establishing a computerized reporting and data processing system.

"SEC. 399K. STUDY IN CERTAIN STATES TO DETERMINE THE FACTORS CONTRIBUTING TO THE ELEVATED BREAST CANCER MORTALITY RATES.

"(a) IN GENERAL.—Subject to subsections (c) and (d), the Secretary, acting through the Director of the National Cancer Institute, shall conduct a study for the purpose of determining the factors contributing to the fact that breast cancer mortality rates in the States specified in subsection (b) are elevated compared to rates in other States.

"(b) RELEVANT STATES.—The States referred to in subsection (a) are Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and the District of Columbia.

"(c) COOPERATION OF STATE.—The Secretary may conduct the study required in subsection (a) in a State only if the State agrees to cooperate with the Secretary in the conduct of the study, including providing information from any registry operated by the State pursuant to section 399H(a).

"(d) PLANNING, COMMENCEMENT, AND DURATION.—The Secretary shall, during each of the fiscal years 1993 and 1994, develop a plan for conducting the study required in subsection (a). The study shall be initiated by the Secretary not later than fiscal year 1994, and the collection of data under the study may continue through fiscal year 1998.

"(e) REPORT.—Not later than September 30, 1999, the Secretary shall complete the study required in subsection (a) and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings and recommendations made as a result of the study.

"SEC. 399L. AUTHORIZATION OF APPROPRIATIONS.

"(a) REGISTRIES.—For the purpose of carrying out this part, there are authorized to be appropriated $30,000,000 for each of the fiscal years 1993 through 1997. Out of any amounts appropriated for any such fiscal year, the Secretary may obligate not more than 25 percent for carrying out section 399I, and not more than 10 percent may be expended for assessing the accuracy, completeness and quality of data collected, and not more than 10 percent of which is to be expended under subsection 399J.

"(b) BREAST CANCER STUDY.—Of the amounts appropriated for the National Cancer Institute under subpart 1 of part C of title IV for any fiscal year in which the study required in section 399K is being carried out, the Secretary shall expend not less than $1,000,000 for the study.".

Mr. FORD. Mr. President, I move the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ALZHEIMER'S DISEASE RESEARCH, TRAINING, AND EDUCATION AMENDMENTS

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1577.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1577) entitled "An Act to amend the Alzheimer's Disease and Related Dementias Services Research Act of 1986 to reauthorize the Act, and for other purposes," do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Alzheimer's Disease Research, Training, and Education Amendments of 1992".

SEC. 2. SHORT TITLE OF ACT.

(a) IN GENERAL.—Section 901 of the Alzheimer's Disease and Related Dementias Services Research Act of 1986 (42 U.S.C. 11201 note) is amended by striking "Services Research Act of 1986" and inserting "Research Act of 1992".

(b) CONFORMING AMENDMENT.—The Alzheimer's Disease and Related Dementias Research Act of 1992 (42 U.S.C. 12201 et seq.) is amended in the heading for title IX by striking "SERVICES".

SEC. 3. REFERENCES.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Alzheimer's Disease and Related Dementias Research Act of 1992 (42 U.S.C. 11201 et seq.).

SEC. 4. FINDINGS.

Section 902 (42 U.S.C. 11201) is amended—

(1) by redesignating paragraphs (7) through (12) as paragraphs (9) through (14);

(2) by striking paragraphs (4), (5), and (6); and

(3) by inserting after paragraph (3) the following new paragraphs:

"(4) the cost of caring for individuals with Alzheimer's disease and related dementias is great, and conservative estimates range between $38,000,000,000 and $42,000,000,000 per year solely for direct costs;

"(5) progress in the neurosciences and behavioral sciences has demonstrated the interdependence and mutual reinforcement of basic science, clinical research, and services research for Alzheimer's disease and related dementias;

"(6) programs initiated as part of the Decade of the Brain are likely to provide significant progress in understanding the fundamental mechanisms underlying the causes of, and treatments for, Alzheimer's disease and related dementias;

"(7) although substantial progress has been made in recent years in identifying possible leads to the causes of Alzheimer's disease and related dementias, and more progress can be expected in the near future, there is little likelihood of a breakthrough in the immediate future that would eliminate or substantially reduce—

"(A) the number of individuals with the disease and dementias; or

"(B) the difficulties of caring for the individuals;

"(8) the responsibility for care of individuals with Alzheimer's desease and related dementias falls primarily on their families, and the care is financially and emotionally devastating;".

SEC. 5. COUNCIL ON ALZHEIMER'S DISEASE.

(a) ESTABLISHMENT.—Section 911 (42 U.S.C. 11211) is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking "Surgeon General of the United States" and inserting

"Surgeon General of the Public Health Service";

(B) in paragraph (6), by striking "and Communicative Diseases" and inserting "Disorders";

(C) by striking paragraphs (10), (11), and (12); and

(D) by adding at the end the following new paragraphs:

"(10) the Administrator of the Agency for Health Care Policy and Research;

"(11) the Administrator of the Health Resources and Services Administration;

"(12) the Director of the National Center for Nursing Research;

"(13) the Chief Medical Director of the Department of Veterans Affairs;

"(14) the Director of the National Center for Health Statistics; and

"(15) such additional members as the Secretary of Health and Human Services (hereinafter referred to as the 'Secretary') considers appropriate.";

(2) by striking subsection (b) and inserting the following new subsection:

"(b) The Assistant Secretary for Health shall serve as the Chairman of the Council."; and

(3) in subsection (d), by striking "twice" and inserting "once".

(b) FUNCTIONS.—Section 912 (42 U.S.C. 11212) is amended—

(1) in subsection (a)—

(A) by adding "and" at the end of paragraph (3);

(B) by striking "; and" at the end of paragraph (4) and inserting a period; and

(C) by striking paragraph (5); and

(2) by striking subsection (b) and inserting the following new subsection:

"(b)(1) The Chairman of the Council shall submit to the committees listed in paragraph (2) an annual report containing information on—

"(A) progress made by research, sponsored by the Federal Government, on Alzheimer's disease and related dementias; and

"(B) new directions that the Council considers potentially important in research on Alzheimer's disease and related dementias.

"(2) The Chairman of the Council shall submit the reported described in paragraph (1) to—

"(A) the Committee on Energy and Commerce of the House of Representatives;

"(B) the Committee on Ways and Means of the House of Representatives;

"(C) the Committee on Veterans' Affairs of the House of Representatives;

"(D) the Committee on Appropriations of the House of Representatives;

"(E) the Committee on Labor and Human Resources of the Senate;

"(F) the Committee on Finance of the Senate;

"(G) the Committee on Veterans' Affairs of the Senate; and

"(H) the Committee on Appropriations of the Senate.".

SEC. 6. ADVISORY PANEL ON ALZHEIMER'S DISEASE.

"(a) ESTABLISHMENT.—Section 921 (42 U.S.C. 11221) is amended—

(1) in subsection (a)(2), by striking "the Director of the National Center for Health Services Research and Health Care Technology Assessment" and inserting "the Administrator of the Agency for Health Care Policy and Research";

(2) in subsection (d), to read as follows:

"(d)(1)(A) Except as provided in subparagraph (B), members of the Panel appointed under subsection (a)(1) shall each serve for a term of 3 years.

"(B) Of the members appointed under subsection (a)(1) that are serving on the Panel on the day before the date of the enactment of this subsection—

"(i) five shall serve for a term that expires on such date;

"(ii) five shall serve for a term that expires 1 year after such date; and

"(iii) five shall serve for a term that expires 2 years after such date.

"(2) A vacancy on the Panel shall be filed in the same manner as the original appointment was made, and not later than 90 days after the date on which the vacancy first arises. A vacancy on the Panel shall not affect the powers of the Panel.";

(3) in subsection (f), by striking "twice" and inserting "once";

(4) in subsection (h), by striking "of $100 per day" and inserting "at the daily equivalent of the maximum rate specified for GS-15 of the General Schedule under section 5332 of title 5, United States Code,"; and

(5) by adding at the end the following new subsection:

"(i) Notwithstanding section 14 of the Federal Advisory Committee Act (5 U.S.C. App.), on September 30, 1996, the Panel shall be abolished and all programs established under this part shall terminate.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 923 (42 U.S.C. 11223) is amended to read as follows:

"SEC. 923. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this part such sums as may be necessary for each of the fiscal year 1992 through 1996.".

SEC. 7. RESEARCH RELATING TO SERVICES FOR INDIVIDUALS WITH ALZHEIMER'S DISEASE AND RELATED DEMENTIAS AND FAMILIES OF THE INDIVIDUALS.

(a) RESPONSIBILITIES OF THE NATIONAL INSTITUTE OF MENTAL HEALTH.—

(1) GRANTS.—Section 931 (42 U.S.C. 11251) is amended—

(A) by striking subsections (b)(2) and (c);

(B) in subsection (a), by inserting "and specialized care" after "services"; and

(C) in subsection (b)(1)—

(i) by striking "Within 6 months" and all that follows through "plan shall" and inserting "The Director of the National Institute of Mental Health shall";

(ii) in subparagraph (A)—

(I) by striking "provide for" and inserting "ensure that the research conducted under subsection (a) includes";

(II) by striking clause (iii) and inserting the following new clause:

"(iii) the optional range, types, and cost-effectiveness of services and specialized care for individuals with Alzheimer's disease and related dementias and for their families, in community and residential settings (including home care, day care, and respite care), and in institutional settings, particularly with respect to—

"(I) the design of the services and care;

"(II) appropriate staffing for the provision of the services and care;

"(III) the timing of the services and care during the progression of the disease or dementias; and

"(IV) the appropriate mix and coordination of the services and specialized care;"

(III) in clause (iv), by inserting "the evaluation of best practices for the development of" before "appropriate"; and

(IV) in clauses (v) and (vii), by striking "and nursing home services" and inserting "nursing home services, and other residential services and care"; and

(iii) in subparagraph (B), by striking "research carried out under the plan" and inserting "the research".

(2) CONFORMING AMENDMENTS.—Section 931(b) (42 U.S.C. 11251(b)) is amended—

(A) by striking "(1)";

(B) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively;

(C) in paragraph (1) (as redesignated by subparagraph (B) of this paragraph), by redesignating clauses (i) through (vii) as subparagraphs (A) through (G), respectively; and

(D) in paragraph (1)(C) (as so redesignated, and as amended by paragraph (1)(C)(ii)(II) of this subsection), by redesignating subclauses (I) through (IV) as clauses (i) through (iv), respectively.

(3) AUTHORIZATION OF APPROPRIATIONS.—Section 933 (42 U.S.C. 11253) is amended to read as follows:

"SEC. 933. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 1992 through 1996.".

(b) RESPONSIBILITIES OF THE AGENCY FOR HEALTH CARE POLICY AND RESEARCH.—

(1) RESEARCH PROGRAM AND PLAN.—Subpart 2 of part D (42 U.S.C. 11261 et seq.) is amended—

(A) in the heading for the subpart, by striking "National Center" and all that follows and inserting the following: "Agency for Health Care Policy and Research"; and

(B) by striking section 934 and inserting the following new section:

"SEC. 934. RESEARCH PROGRAM.

"(a) GRANTS FOR RESEARCH.—The Administrator of the Agency for Health Care Policy and Research shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and for their families.

"(b) RESEARCH SUBJECTS.—The Administrator of the Agency for Health Care Policy and Research shall ensure that research conducted under subsection (a) shall include research—

"(1) concerning improving the organization, delivery, and financing of services for individuals with Alzheimer's disease and related dementias and for their families, including research on—

"(A) the design, staffing, and operation of special care units for the individuals in institutional settings, as well as individuals in home care, day care, and respite care; and

"(B) the exploration and enhancement of services such as home care, day care, and respite care that provide alternatives to institutional care;

"(2) concerning the costs incurred by individuals with Alzheimer's disease and related dementias and by their families in obtaining services, particularly services that are essential to the individuals and that are not generally required by other patients under long-term care programs;

"(3) concerning the costs, cost-effectiveness, and effectiveness of various interventions to provide services for individuals with Alzheimer's disease and related dementias and for their families;

"(4) conducted in consultation with the Director of the National Institute on Aging and the Commissioner of the Administration on Aging, concerning the role of physicians in caring for persons with Alzheimer's disease and related dementias and for their families, including the role of a physician in connecting such persons with appropriate health care and supportive services, including those supported through State and area agencies on aging designated under section 305(a) (1) and (2)(A) of the Older Americans Act of 1965 (42 U.S.C. 3025(a)(1) and (2)(A)); and

"(5) conducted in consultation with the Director of the National Institute on Aging and the Commissioner of the Administration on Aging, concerning legal and ethical issues, including issues associated with special care units, facing individuals with Alzheimer's disease and related dementias and facing their families.".

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 936 (42 U.S.C. 11263) is amended to read as follows:

"SEC. 936. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 1992 through 1996.".

SEC. 8. TRAINING AND EDUCATIONAL ACTIVITIES.

(a) ACTIVITIES.—Section 962 (42 U.S.C. 11292) is amended to read as follows:

"SEC. 962. EDUCATION OF THE PUBLIC, INDIVIDUALS WITH ALZHEIMER'S DISEASE AND THEIR FAMILIES, AND HEALTH AND LONG-TERM CARE PROVIDERS.

"(a) TRAINING MODELS GRANTS.—

"(1) GRANTS.—The Director of the National Institute on Aging may award grants to eligible entities to assist the entities in developing and evaluating model training programs—

"(A) for—

"(i) health care professionals, including mental health professionals;

"(ii) health care paraprofessionals;

"(iii) personnel, including information and referral, case management, and in-home services personnel (including personnel receiving support under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.)), providing supportive services to the elderly and the families of the elderly;

"(iv) family caregivers providing care and treatment for individuals with Alzheimer's disease and related disorders; and

"(v) personnel of local organizations (including community groups, business and labor groups, and religious, educational, and charitable organizations) that have traditionally not been involved in planning and developing long-term care services; and "(B) with attention to such variables as—

"(i) curricula development for training and continuing education programs;

"(ii) care setting; and

"(iii) intervention technique.

"(2) ELIGIBLE ENTITY.—To be eligible to receive grants under this subsection, an entity shall be—

"(A) an educational institution providing training and education in medicine, psychology, nursing, social work, gerontology, or health care administration.

"(B) an educational institution providing preparatory training and education of personnel for nursing homes, hospitals, and home or community settings; or

"(C) an Alzheimer's Disease Research Center described in section 445(a) of the Public Health Service Act.

"(b) EDUCATIONAL GRANTS.—The Director of the National Institute on Aging is authorized to make grants to public and nonprofit private entities to assist such entities in establishing programs, for educating health care providers and the families of individuals with Alzheimer's disease or related disorders, regarding—

"(1) caring for individuals with such diseases or disorders; and

"(2) the availability in the community of public and private sources of assistance, including financial assistance, for caring for such individuals.

"(c) AWARD OF GRANTS.—In awarding grants under this section, the Director of the National Institute on Aging shall—

"(1) award the grants on the basis of merit;

"(2) award the grants in a manner that will ensure access to the programs described in subsections (a) and (b) by rural, minority, and underserved populations throughout the country; and

"(3) ensure that the grants are distributed among the principal geographic regions of the United States.

"(d) APPLICATION.—To be eligible to receive a grant under this section, an entity shall submit an application to the Director of the National Institute on Aging at such time, in such manner, and containing or accompanied by such information, as the Director may reasonably require, including, at a minimum, an assurance that the entity will coordinate programs provided under this section with the State agency designated under section 305(a)(1) of the Older Americans Act of 1965, in the State in which the entity will provide such programs.

"(e) COORDINATION.—The Director of the National Institute on Aging shall coordinate the award of grants under this section with the heads of other appropriate agencies, including the Commissioner of the Administration on Aging.".

"(b) AUTHORIZATION OF APPROPRIATIONS.—Section 964 of such Act (42 U.S.C. 11294) is amended—

(1) by inserting "(a)" after "964.";

(2) in subsection (a), as designated by paragraph (1) of this section, by striking "this part" and inserting "sections 961 and 963"; and

(3) by adding at the end the following new subsection:

"(b) There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1992 through 1996, to carry out section 962.".

SEC. 9. GRANTS FOR PROMOTING INDEPENDENCE AND PREVENTING SECONDARY DISABILITIES IN PERSONS WITH ALZHEIMER'S DISEASE.

Section 445C of the Public Health Service Act (42 U.S.C. 285e-5) is amended by adding at the end the following new subsection:

"(d) The director of the Institute may develop, or make grants to develop—

"(1) model techniques to—

"(A) promote greater independence, including enhanced independence in performing activities of daily living and instrumental activities of daily living, for persons with Alzheimer's disease and related disorders; and

"(B) prevent or reduce the severity of secondary disabilities, including confusional episodes, falls, bladder and bowel incontinence, and adverse effects of prescription and over-the-counter medications, in such persons; and

"(2) model curricula for health care professionals, health care paraprofessionals, and family caregivers, for training and application in the use of such techniques.".

Mr. COATS. Mr. President, Alzheimer's disease is something that touches the lives of many Americans—many Hoosiers in my home State of Indiana. Alzheimer's is not just an elderly disease; it strikes people in their twenties, thirties, and forties as well. It's a diseases that places a tremendous burden on both the patient and the family.

We must expand and improve services to help relieve the emotional strain and to enable families to continue giving love and support for victims of Alzheimer's disease. For this reason, I am pleased to support H.R. 3082, the Alzheimer's Disease Research, Training, and Education Amendments of 1991. H.R. 3082 makes a positive step by authorizing needed funding for fiscal year 1993 for concentrated efforts in education, training, and research for individuals, and professionals who provide services for those with Alzheimer's disease and related dementias.

Presently, there are nearly 56,000 individuals in Indiana afflicted with Alzheimers disease—nearly 4 million nationwide. By the year 2050, this number will more than triple. Statistics show us that one out of every five people will be affected nationwide by Alazheimer's by the year 2050.

I believe Federal and local governments must work together to effectively help those in need of research, training, and education about Alzheimer's. The current estimates of the cost of providing care for people inflicted with Alzheimer's disease is $80 billion annually. Our changing demographics—an ever increasing elderly population—will require increased funding for Alzheimer's patients. This problem will be particularly acute when the baby boomers become elderly. Only through cooperative efforts between the Federal Government, universities, the medical community, companies, and the patient will we be able to effectively improve the lives of the many Americans who suffer from Alzheimer's.

A disease so severe and widespread must be addressed by each and every one of us. Today, I join my colleagues in support of an effort to help those who are unable to help themselves.

Mr. FORD. Mr. President, I move the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

READY TO LEARN ACT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 3134.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 3134) entitled "An Act to expand the production and distribution of educational and instructional video programming and supporting educational materials for preschool and elementary school children as a tool to improve school readiness, to develop and distribute educational and instructional video programming and support materials for parents, child care providers, and educators of young children, to expand services provided by Head Start programs, and for other purposes," do pass with the following amendment:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Ready to Learn Act".

SEC. 2. PURPOSE.

It is the purpose of this Act to—

(1) expand the availability of educational and instructional video programming and supporting educational resources for preschool and elementary school children and their parents as a tool to improve school readiness and literacy; and

(2) to develop and distribute educational and instructional video programming and support materials for parents, child care providers, and educators of young children.

SEC. 3. READY TO LEARN PROGRAMS.

The Elementary and Secondary Education Act of 1965 is amended by adding after part F of title IV the following:

"PART G—READY TO LEARN TELEVISION

"SEC. 4701. READY TO LEARN.

"(a) IN GENERAL.—The Secretary is authorized to enter into contracts, cooperative agreements, or grants with entities described in section 4702(b) to develop, produce, and distribute educational and instructional video programming for preschool and elementary school children and their parents in order to facilitate the achievement of the national education goals.

"(b) AVAILABILITY.—In making such contracts, cooperative agreements, or grants, the Secretary shall ensure that recipients make programming widely available with support materials as appropriate to young children, their parents, child care workers, and Head Start providers to increase the effective use of such programming.

"SEC. 4702. EDUCATIONAL PROGRAMMING.

"(a) AWARDS.—The Secretary shall award contracts, cooperative agreements, or grants to eligible entities to—

"(1) facilitate the development directly or through contracts with producers of children and family educational television programming, educational programming for preschool and elementary school children, and accompanying support materials and services that promote the effective use of such programming; and

"(2) contract with entities (such as public broadcasting entities and those funded under the Star Schools Assistance Act) in order that programs developed under this section are disseminated and distributed to the widest possible audience appropriate to be served by the programming by the most appropriate distribution technologies.

"(b) ELIGIBLE ENTITIES.—To be eligible to receive a contract, cooperative agreement, or grant under subsection (a), an entity shall be—

"(1) a nonprofit, nongovernmental entity able to demonstrate a capacity for the development and distribution of educational and instructional television programming of high quality for preschool and elementary school children; and

"(2) able to demonstrate a capacity to contract with the producers of children's television programming for the purpose of developing educational television programming of high quality for preschool and elementary school children.

"(c) CULTURAL EXPERIENCES.—Programming developed under this section shall reflect the recognition of diverse cultural experiences and the needs and experiences of both boys and girls in engaging and preparing young children for schooling.

"SEC. 4703. DUTIES OF SECRETARY.

"The Secretary is authorized—

"(1) to establish and administer a Special Projects of National Significance program to award contracts, cooperative agreements, or grants to public and nonprofit private entities, or local public television stations or such public television stations that are part of a consortium with one or more State educational agencies, local educational agencies, local schools, institutions of higher education, or community-based organizations of demonstrated effectiveness, for the purpose of—

"(A) addressing the learning needs of young children in limited English proficient households, and developing appropriate educational and instructional television programming to foster the school readiness of such children;

"(B) developing programming and support materials to increase family literacy skills among parents to assist parents in teaching their children and utilizing educational television programming to promote school readiness; and

"(C) identifying, supporting, and enhancing the effective use and outreach of innovative programs that promote school readiness;

"(2) to establish within the Department a clearinghouse to compile and provide information, referrals and model program materials and programming obtained or developed under this part to parents, child care providers, and other appropriate individuals or entities to assist such individuals and entities in accessing programs and projects under this part; and

"(3) to develop and disseminate training materials, including—

"(A) interactive programs and programs adaptable to distance learning technologies that are designed to enhance knowledge of children's social and cognitive skill development and positive adult-child interactions; and

"(B) support materials to promote the effective use of materials developed under paragraph (2);

among parents, Head Start providers, in-home and center based day care providers, early childhood development personnel, and elementary school teachers, public libraries, and after school program personnel caring for preschool and elementary school children;

"(4) coordinate activities with the Secretary of Health and Human Services in order to—

"(A) maximize the utilization of quality educational programming by preschool and elementary school children, and make such programming widely available to federally funded programs serving such populations; and

"(B) provide information to grantees of Federal programs that have major training components for early childhood development, including Head Start, Even Start, and State training activities funded under the Child Care Development Block Grant Act of 1990 regarding the availability and utilization of materials developed under paragraph (3) to enhance parent and child care provider skills in early childhood development and education.

"SEC. 4704. APPLICATIONS.

"Each eligible entity desiring a contract, cooperative agreement, or grant under section 4701 or 4703 shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

"SEC. 4705. REPORTS AND EVALUATION.

"(a) ANNUAL REPORT TO SECRETARY.—An entity receiving funds under section 4701 shall prepare and submit to the Secretary an annual report which contains such information as the Secretary may require. At a minimum, the report shall describe the program activities undertaken with funds received under this section, including—

"(1) the programming that has been developed directly or indirectly by the entity, and the target population of the programs developed;

"(2) the support materials that have been developed to accompany the programming, and the method by which such materials are distributed to consumers and users of the programming;

"(3) the means by which programming developed under this section has been distributed, including the distance learning technologies that have been utilized to make programming available and the geographic distribution achieved through such technologies; and

"(4) the initiatives undertaken by the entity to develop public-private partnerships to secure non-Federal support for the development and distribution and broadcast of educational and instructional programming.

"(b) REPORT TO CONGRESS.—The Secretary shall prepare and submit to the relevant committees of Congress a biannual report which includes—

"(1) a summary of the information made available under section 4702(a);

"(2) a description of the training materials made available under section 4703(3), the manner in which outreach has been conducted to inform parents and child care providers of the availability of such materials, and the manner in which such materials have been distributed in accordance with such section.

"SEC. 4706. AUTHORIZATION OF APPROPRIATIONS

"(a) IN GENERAL.—There are authorized to be appropriated to carry out this part, $25,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994. Not less than 60 percent of the amounts appropriated under this subsection for each fiscal year shall be used to carry out section 4702.

"(b) SPECIAL PROJECTS.—Of the amount appropriated under subsection (1) for each fiscal year, at least 10 percent of such amount shall be utilized in each such fiscal year for activities under section 4703(1)(C).

"SEC. 4707. ADMINISTRATIVE COSTS.

"With respect to the implementation of section 4702, entities receiving a contract, cooperative agreement, or grant from the Secretary may use up to 5 percent of the amounts received under such section for the normal and customary expenses of administering the contract, cooperative agreement, or grant.

"SEC. 4708. DEFINITION.

"For the purposes of this part, the term 'distance learning' means the transmission of educational or instructional programming to geographically dispersed individuals and groups via telecommunications.".

Mr. FORD. Mr. President, I move that the Senate concur in the House amendment.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MINORITY BIOMEDICAL RESEARCH CONSTRUCTION ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Labor Committee be discharged from further consideration of S. 3256, a bill to authorize grants for construction of certain historically black colleges and universities for biomedical research; that the Senate proceed to its immediate consideration; that the bill be deemed read the third time and passed; that the motion to reconsider be laid upon the table; and that any statements thereon appear in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 3256) was deemed read the third time and passed as follows:

(The text of S. 3256, as passed will appear in a future edition of the RECORD.)

Mr. HATCH. Mr. President, I rise today in strong support of this legislation. There are over 200 medical, dental, and veterinary schools in this country, 50 of which are minority institutions—including historically black colleges and universities [HCBS's]. These institutions have trained a large portion of health care professionals who serve in minority communities, and I commend them for their tremendous efforts in this area. But because these schools tend to devote their resources to training health care practitioners rather than research personnel, minority researchers remain markedly under-represented.

The National Institutes of Health [NIH] has, for many years, managed research programs targeted to disadvantaged and minority students to encourage them to obtain higher degrees in the biomedical sciences and to introduce them to biomedical research—the Minority Biomedical Research Support [MBRS] and the Minority Access to Research Careers [MARC] Programs, for example. Still, in order to expand the universe of research scientists, we must first provide the facilities, the capability to conduct quality research projects. Facility construction is critical in order for institutions to conduct and keep up with state-of-the-art biomedical research.

A 1990 report by the NIH titled, "The Status of Biomedical Research Facilities," shows that only 29 percent of research facilities at HCBU's were considered "suitable for the most highly developed and scientifically sophisticated research." Less than half were considered effective for "most purposes."

This bill will give institutions the resource they need to develop a strong infrastructure, to prepare a top notch environment for attracting more researchers, and, ultimately, to help these schools become strong centers for research—particularly on diseases that disproportionately affect minority populations.

S. 3256 is a priority of Secretary Sullivan and of great importance to these institutions which rely so heavily on public support. I hope that you will realize the sound benefits of this legislation, and vote "yes."

COMPETITIVENESS POLICY COUNCIL ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of S. 2936, the Competitiveness Council reauthorization, and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2936) to amend the Competitiveness Policy Council Act to provide for reauthorization, to rename the Council, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3429

(Purpose: To amend the bill in the nature of a substitute.)

Mr. FORD. Mr. President, I send a substitute amendment on behalf of Senator BINGAMAN to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. BINGAMAN, for himself, and Mr. RIEGLE, proposes an amendment numbered 3429.

Mr. FORD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause, and insert in lieu thereof the following:

SECTION 1. REAUTHORIZATION.

Section 5209 of the Competitiveness Policy Council Act (15 U.S.C. 4808) is amended—

(1) by striking "1991 and 1992" and inserting "1993 and 1994"; and

(2) by striking "$5,000,000" and inserting "$2,500,000".

SEC. 2. RENAMING OF COUNCIL.

The "Competitiveness Policy Council Act (15 U.S.C. 4801 et seq.) is amended as follows:

(1) In the subtitle heading—

(A) insert "National" before "Competitiveness"; and

(B) strike "Council" and insert "Commission".

(2) In section 5201—

(A) insert "National" before "Competitiveness"; and

(B) strike "Council" and insert "Commission".

(3) In section 5202(b)(2)—

(A) insert "National" before "Competitiveness"; and

(B) strike "Council" and insert "Commission".

(4) In section 5203—

(A) in the section caption, strike "COUNCIL" and insert "COMMISSION";

(B) insert "National" before "Competitiveness"; and

(C) strike "Council" each place it appears and insert "Commission".

(5) In section 5204—

(A) in the section caption, strike "COUNCIL" and insert "COMMISSION";

(B) strike "Council" and insert "Commission".

(6) In sections 5205 through 5208, strike "Council" each place such term appears and insert "Commission".

(7) In section 5207, in the section caption, strike "COUNCIL" and insert "COMMISSION".

(8) In section 5210—

(A) in paragraph (1)—

(i) insert "National" before "Competitiveness"; and

(ii) strike "Council" each place it appears and insert "Commission"; and

(B) in paragraph (2)—

(i) insert "National" before "Competitiveness"; and

(ii) strike "Council" and insert "Commission".

SEC. 3. DUTIES OF THE COMMISSION.

Section 5204 of the National Competitiveness Policy Commission Act (15 U.S.C. 4803) is amended by striking paragraphs (11) and (12) and inserting the following:

"(11) prepare, publish, and distribute reports that—

"(A) contain the analysis and recommendations of the Commission; and

"(B) comment on the overall competitiveness of the American economy, including the report described in section 5208; and

"(12) submit an annual report to the President and to the Congress on the activities of the Commission.".

SEC. 4. EXECUTIVE DIRECTOR AND STAFF OF COMMISSION.

Section 5206 of the National Competitiveness Policy Commission Act (15 U.S.C. 4805) is amended—

(1) in subsection (a)(1), by striking "GS–18 of the General Schedule" and inserting "the highest level allowed under section 5376 of title 5, United States Code";

(2) in subsection (b)—

(A) by striking paragraph (1);

(B) by redesignating paragraph (2) as paragraph (4); and

(C) by inserting before paragraph (4), as redesignated, the following:

"(1) FULL-TIME STAFF.—The Executive Director may appoint such officers and employees as may be necessary to carry out the functions of the Commission in accordance with the federal civil service and classification laws, and fix compensation in accordance with the provisions of title 5, United States Code.

"(2) SENIOR EXECUTIVE SERVICE.—The Commission may establish positions in the Senior Executive Service in accordance with the provisions of subchapter II of chapter 31 of title 5, United States Code.

"(3) TEMPORARY STAFF.—The Executive Director may appoint such employees as may be necessary to carry out the functions of the Commission for a period of not more than 1 year, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, at rates not to exceed the maximum rate payable under section 5376 of title 5, United States Code."; and

(3) in subsection (c), strike "GS-16 of the General Schedule" and insert "the maximum rate payable under section 5376 of title 5, United States Code.".

SEC. 5. POWERS OF THE COMMISSION.

Section 5207 of the National Competitiveness Policy Commission Act (15 U.S.C. 4806) is amended—

(1) by inserting before the period at the end of subsection (b)(1)(B) ", except that such information may be provided to members and staff of the Council subject to existing national security laws and regulations";

(2) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(3) by inserting after subsection (f) the following:

"(g) CONTRACTING AUTHORITY.—Within the limitation of appropriations to the Commission, the Commission may enter into contracts with State agencies, private firms, institutions, and individuals for the purpose of carrying out its duties under this subtitle.".

SEC. 6. REPORTING REQUIREMENTS.

Section 5208 of the National Competitiveness Policy Commission Act (15 U.S.C. 4807) is amended—

(1) by striking the caption and inserting the following:

"SEC. 5208. ANNUAL PUBLICATION OF ANALYSIS AND RECOMMENDATIONS.";

(2) in subsection (a)—

(A) by striking the subsection heading and inserting "(a) PUBLICATION OF ANALYSIS AND RECOMMENDATIONS.—"; and

(B) by striking "on" and inserting "not later than"; and

(3) by adding at the end the following:

"(d) PERIODICAL REPORTS.—The Commission may submit to the President and the Congress such other reports containing analysis and recommendations as the Commission deems necessary.".

Mr. BINGAMAN. Mr. President, the substitute amendment I have offered with Senator RIEGLE to S. 2936 reflects the agreement reached with the Office of Management and Budget on this matter. I would like to thank Senator HOLLINGS and Senator DANFORTH for their support and assistance. The amendment is identical to language that has passed both the House and Senate attached to various other measures. It reauthorizes and renames the Competitiveness Policy Council, which was established in the 1988 Trade Act. The new name, the National Competitiveness Policy Commission, is designed to avoid confusion with either the White House Council on Competitiveness or the private-sector, nonprofit organization also called the Council on Competitiveness. This amendment also makes various technical changes including designating the Commission as an agency within the meaning of section 3132(a)(1) of title 5, United States Code.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3429) was agreed to.

Mr. CONRAD. Mr. President, it is my pleasure to present to the Senate the Agricultural Credit Improvement Act of 1992. This bill incorporates much of my bill, S. 3310, entitled the Agricultural Credit Amendment Act of 1992, which was designed to provide credit to beginning farmers and ranchers, as well as H.R. 4906, a similar bill in the House.

The bill before the Senate today establishes a downpayment loan program under the Farmers Home Administration [FmHA]. Under this proposal, a beginning farmer or rancher who wishes to purchase land may receive a 10-year, low-interest FmHA loan for 30 percent of the value of that land if the beginning farmer provides a 10-percent downpayment, and a commercial cooperative or other lender makes a loan for the remaining 60 percent. When the beginning farmer or rancher has repaid the FmHA loan at the end of 10 years, he or she will have at least 40 percent equity in the land, which should provide an adequate asset base on which to obtain future private credit and operate a successful farm operation.

This bill also establishes a beginning farmer operating loan program which ensures a borrower a reliable source of FmHA-assisted operating credit for up to 10 years if the borrower develops and meets a long-term operating plan.

Mr. President, I would like to explain the intent of a number of provisions in this bill to guide the administration, in particular, the Department of Agriculture, in their interpretation of the provisions contained in the bill.

Federal-State beginning farmer partnership: Section 5 establishes a new partnership between the Farmers Home Administration [FmHA] and beginning farmer programs in the States. It is the intent of the committee that FmHA notify States of this new partnership as soon as possible after enactment. It is further the intent of the committee that FmHA respond quickly and positively to requests from a State beginning farmer program for assistance, including but not limited to downpayment loans to be used in conjunction with State financing of the remainder of the loan and Federal guarantees of State aggie bond and other types of State beginning farm loans. The committee hopes that this change in policy will spur many additional States to revive or establish beginning Farmer programs. With respect to the Advisory Committee on Beginning Farmers and Ranchers, the committee encourages the Secretary to establish this group as quickly as possible, at no cost to the Government if necessary, so that it can assist in developing the program and program regulations.

Downpayment Loan Program: Section 7 establishes the time period for downpayment loans at 10 years, or less at the option of the borrower. It is the intent of the committee that, should the need arise, the downpayment borrowers will be subject to the same loan servicing the debt restructuring options as any other farm ownership borrower.

Special assistance to qualified beginning farmers and ranchers: Section 8 establishes a special assistance option for beginning farmer and ranchers that requires FmHA to provide assistance for a 10 year commitment period. Beginning farmers and ranchers may apply as regular operating loan borrowers, if they so choose.

This section also requires the applicant to submit a plan of farm operation. It is the intent of the committee that the Secretary in coordinating this program with borrower training, loan assessment, supervised credit, and market placement, devise a single planning instrument to eliminate unnecessary paperwork.

This section also provides that the farm plan contain specific goals that the applicant projects to meet in order to progress toward graduation as expeditiously as possible. It is the intent of the committee that such goals are to be guidelines for each individual borrower, with assistance from the Secretary, to progress toward graduation. The goal during the commitment period, is to move the borrower thoughout the continuum of assistance, ranging from reduced interest rate direct loans, regular interest rate direct loans, subsidized guaranteed loans, and unsubsidized guaranteed loans, and ultimately graduation to private credit. Depending on the applicant's particular circumstances and farm plan, one or more of these options may be used during the commitment period. It is the intent of the committee that this process take place in conjunction with the loan assessment program established by the Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101-624). Section 8 limits beginning farmers and ranchers who choose to participate in the special operating loans assistance program to not more than 8 years of direct loans within the 10 year commitment period. It is the intent of the committee that this limit does not preclude the borrower from receiving another 2 years of direct loans, if necessary, under the regular operating loan program, consistent with the overall graduation requirement in Section 9.

This section also provides that the Secretary "shall revoke any commitment for assistance made to an applicant under this section if the operation of the applicant fails, for 2 consecutive years, to meet the goals specified in the plan, unless the failure is due to circumstances beyond the control of the applicant and has not materially reduced the likelihood of the operation becoming financially viable." It is the intent of the committee that "goals specified in the plan" refers to the general financial and farm income goals identified in the plan, but does not include the details of the plan such as projections concerning crop selection, yields, production methods and practices, conservation measures, equipment, specific income and expense figures, specific credit needs, and farm sites. It is not the intent of the committee that production choices are locked in by the plan nor is it the intent of the committee that income and credit projections will be used as an absolute measure of success.

Definition of qualified beginning farmer or rancher: Section 19 changes the current majority of labor and management test to "substantial day-to-day labor and management of the State or county in which the farm or ranch is located." This change is intended to apply only to beginning farmers and ranchers. The committee does not intend this change to apply to other applicants and does not intend to signal that any application of this change beyond this specific instance would be acceptable.

This section also establishes the definition of qualified beginning farmer or rancher to be applied to all farmer loan and inventory sale and lease programs. These requirements are in addition to, and do not supersede, existing eligibility requirements for each program. The committee intends that a farmer or rancher who previously farmed or ranched and is restarting in agriculture shall be considered a beginning farmer or rancher if they otherwise satisfy the terms of the definition.

This section applies the definition of qualified beginning farmer or rancher to all farm loan and inventory sale and lease programs. These requirements are in addition to, and do not supersede, existing eligibility requirements for each program. The committee intends that a farmer or rancher who previously farmed or ranched and is restarting in agriculture shall be considered a beginning farmer or rancher if they otherwise satisfy the terms of the definition.

Equal access to FmHA assistance by gender: The intention of Section 21 is to take all feasible steps to ensure that there is no discrimination or perception of discrimination by gender in administering FmHA's farm loan programs.

It is the intention that this section will increase the number of farm ownership and operating loans made to female farmers. To meet current and future needs for credit, the managers expect that the Secretary will determine the current number of female farmers in each State and add to that number an estimated number reflecting the trend towards increased numbers of female farmers in the State, instead of setting the loan participation rates by gender at a static level.

This targeted rate of loanmaking by gender could be further adjusted as research data on the credit needs of female farmers, as well as recordkeeping on female farmer applicants by gender, becomes available.

I urge my colleagues to support passage of this bill.

Mr. GRASSLEY. Mr. President, I speak today to alert my colleagues to a growing problem not only in Iowa, but in the rest of the Nation, and I urge my colleagues to move quickly to enact legislation that would stem an alarming new threat to the family farm and and America's rural communities.

Mr. President, the House of Representatives recently passed the Beginning Farmer and Rancher Credit Act. This bill would assist young people interested in farming by creating a new downpayment loan option for farm ownership loans. This provision is designed to leverage private financing with limited Farmers Home Administration funds. As I will detail in a moment, with the average age of the farming community continuing to rise at an alarming rate, we desperately need legislation not only to aid the struggling beginning farmer and rancher, but also to encourage our young People to enter the profession. I submit that the transfer of productive agricultural assets with the resulting changing demographics of our rural communities, may be the single most important agriculture issue we will face in the coming years.

I have long been concerned about this trend and have been active in providing incentives that would encourage young people to take up farming. Most notably, I worked hard to get tax-exempt status for State-issued bonds designed to assist beginning farmers to acquire agricultural property.

This has helped thousands, but we need to do more.

And that is why I, in concert with Congressman TIM PENNY, have introduced the Beginning Farmer and Rancher Credit Act. With time running out for the American farmer, I sincerely hope that, during these waning days of the 102d Congress, this Chamber support this measure.

That quick action is needed is demonstrated by 1990 census data and a recent survey conducted by Iowa State University. In Iowa alone, the number of farms dropped by 15,000 between 1980 and 1990, and in fact 32,000 farmers either left the land or found a different primary source of income. During that same time period, the farm population of Iowa declined by 135,000. Many economists believe that steeper declines are expected in the future.

Yet these numbers don't tell the whole story. Census data suggests that the relatively rapid decline in the number of farms during the 1980's was to a large degree due to the dramatic drop in new, beginning farmers. While the numbers of farmers who leave the land have remained relatively stable year-in and year-out, those who enter farming as a career have dropped off precipitously during the past two decades. The economic research service of the Department of Agriculture confirms this, finding that there has been a 50-percent reduction in the number of farmers under the age of 25, and a 30-percent reduction in the total number of farmers between the ages of 25 and 34. Indeed, the only age group that increased was that of farmers 65 and older. And since most of these farmers are expected to retire in the near future, it is critical to move quickly to encourage young people to get into farming.

To be sure, young people interested in farming face many obstacles: the cost of equipment, seed, livestock and other inputs means that help with annual operating loans is a necessity. Furthermore, the costs of renting or purchasing farmland has escalated in recent years, and the reduced availability of credit, and cautious lenders, are making it more and more difficult to obtain much-needed credit. Much of the available credit from public and private sources is redirected to existing financially strapped farmers, leaving even less assistance for beginning farmers.

But with the average age of the farmer at 55 years, with many planning to retire in the next 4 years, it is clear that the very foundation of the family farm is being threatened by the barriers to entry that make farming too risky, or too expensive, for young people interested in the profession.

Mr. President, one in five Iowa farmers will retire in the next 5 years. I have to believe that the numbers for the Nation are comparable. Mr. President, I ask who will take their place? Unless credit is made available for the next generation of farmers, I am afraid that more and more of our agricultural production will be placed in fewer and fewer hands.

A country can ill afford to ignore its food production, and this chamber must not miss this opportunity to address the changing face of the American farm. In the past, we have all worked hard to stabilize the farm economy and raise the standard of living of our farmers and ranchers. But to a certain extent our efforts have been primarily "reactive." We need the vision to pass this pro-active piece of legislation now. We need to ensure that retiring farmers are replaced by aspiring farmers.

Mr. President, I urge my colleagues to put aside any differences that might hinder the enactment of this legislation. Our action during the 102d Congress is crucial not only the viability of America's family farmers, but also the future of all of rural America.

Mr. SIMPSON. Mr. President, I appreciate the interest shown by the Senator from North Dakota in closely investigating the issue of program participation criteria at the Rural Electrification Administration. He understands the importance of looking at participation criteria at the REA to determine whether a priority system needs to be established in order to best distribute funds to the most needy and deserving borrowers.

In my view, smaller cooperatives that need low-interest loans in order to maintain services to rural customers are often left to "stand in line" behind large cooperatives with big loan requests which drain the annual loan fund. I also believe that the lending system currently employed at the REA does little to improve the debt load of the U.S. Government, nor does it offer real assistance to those borrowers who need it most.

I am concerned that in this time of great need, a first-come-first-served loan policy may severely restrict the flow of Government funds to the truly needy. I believe the development and future implementation of eligibility criteria would go farther than any other approach to improve the integrity and efficiency of the Rural Electrification Administration.

I know that my colleague from North Dakota understands my position on this issue. I, in turn, appreciate the Senator's view that "cash on hand" should not be used as the sole criteria for participation.

I would like to inquire whether the Senator would consider working closely with me in the future—regardless of the outcome of the activities on November 3—with regard to the restructuring of the REA in order to better address rural America's needs. I would also inquire about whether the Senator from North Dakota can speak as to the senate Agriculture Committee's willingness to address this issue as soon as possible after the next Congress convenes.

Mr. CONRAD. We are willing to do that. Regardless of election year activities, I agree to work with the Senator on this important matter. I also appreciate his understanding of my position that general funds is not an appropriate sole criteria for REA Program participation. Within my abilities, I will encourage the Senate Agriculture Committee to hold hearings next year on the issue of program participation criteria for REA borrowers. In fairness, I will also encourage other Senate committees with the appropriate jurisdictions to hold hearings on the issue of program participation criteria for the Federal assistance that is given to the other electric utilities in this country. I shall look forward to arranging a public forum in order to examine further this important issue.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as amended, as follows:

(The text of S. 2936, as passed by the Senate, will be printed in a future edition of the RECORD.)

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AGRICULTURAL CREDIT IMPROVEMENT ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of H.R. 4906, the Agricultural Credit Improvement Act of 1992, and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4906) to amend the Consolidated Farm and Rural Development Act to establish a program to aid beginning farmers and ranchers and to improve the operation of the Farmers Home Administration, and to amend the Farm Credit Act of 1971 and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3430

(Purpose: To provide a complete substitute)

Mr. FORD. Mr. President, on behalf of Senators CONRAD, GRASSLEY and others, I send to the desk a substitute amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. CONRAD, for himself, Mr. GRASSLEY, Mr. BUMPERS, Mr. DURENBERGER, Mr. DASCHLE, Mr. WELLSTONE, Mr. HARKIN, Mr. BAUCUS, and Mr. LEAHY, proposes an amendment numbered 3430.

Mr. FORD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment appears in today's RECORD under "Amendments Submitted.")

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3430) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as amended.

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

JOHN F. KENNEDY CENTER ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6164, the John F. Kennedy Center reauthorization now at the desk; that the bill be deemed read the third time and passed; that the motion to reconsider be laid upon the table; and that any statements thereon appear in the RECORD at the appropriate place as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 6164) was deemed read the third time and passed.

AMENDING FOREIGN ASSISTANCE ACT OF 1961

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6187, a bill concerning international narcotics control programs now at the desk; that the bill be deemed read the third time and passed; that the motion to reconsider be laid upon the table; and that any statement thereon appear in the RECORD at the appropriate place as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 6187) was deemed read the third time and passed.

PENSION BENEFIT GUARANTY CORPORATION LEASE SETTLEMENTS ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3367, a bill introduced earlier today by Senator JEFFORDS, providing for the treatment of settlement agreements reached with the Pension Benefit Guaranty Corporation; that the bill be deemed read the third time and passed; that the motion to reconsider be laid upon the table; and that any statements thereon appear in the RECORD at the appropriate place as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 3367) was deemed read the third time and passed, as follows:

S. 3367

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Pension Benefit Guaranty Corporation Lease Settlements Act of 1992".

SEC. 2. TREATMENT OF SETTLEMENT LEASES WITH THE PENSION BENEFIT GUARANTY CORPORATION.

Section 4062 of the Employee Retirement Income Security Act of 1974 is amended by adding at the end the following new subsection:

"(f) TREATMENT OF LEASES.—In the case of any settlement for liability under title IV of this Act entered into by the corporation and one or more other parties, if—

"(1) such settlement was entered into before the date of the enactment of the Pension Benefit Guaranty Corporation Lease Settlements Act of 1992,

"(2) one party to such settlement was a debtor under title 11, United States Code, and

"(3) the corporation is a party-in-interest to an agreement being entered into as part of such settlement, which agreement provided that it is to be treated as a lease,

then, for purposes of such title 11, such agreement shall be treated as a lease for purposes of section 1110 of such title 11.".

Mr. JEFFORDS. Mr. President, I rise to offer a bill to amend the Employee Retirement Income Security Act. It will solidify a recent settlement made by the Government Agency that insures defined benefit pension plans, the Pension Benefit Guaranty Corporation [PBGC], and Eastern Airlines. Since October 1990, Eastern Airlines has owed the PBGC nearly $700 million in unpaid pension plan contributions. Recently, the PBGC and Eastern Airlines have come to a settlement of PBGC's claim on Eastern's pension liabilities. The agreement has been approved by the court and Eastern's other creditors are not opposed to it.

The settlement will bolster the retirement security of over 60,000 Eastern Airlines pensioners. It will also protect the PBGC, the agency that insures defined benefit pensions, from further financial ruin.

However, due to the novelty of the arrangement, some legal questions remain outstanding. My bill would resolve this issue by specifically permitting in law, what has already been agreed to by the parties involved. It clarifies that the PBGC, which obtained 15 planes in the settlement, can lease back these planes to Eastern Airline's parent company, Continental Airlines.

This will enable the PBGC to obtain the maximum amount it can from Continental Airlines. The more money the PBGC can obtain for Eastern's pension debt, the less money that will have to be obtained through raising the PBGC premiums paid by other plan sponsors. PBGC premiums have already risen 700 percent over the last 10 years. Therefore, I urge my colleagues to support this bill.

ESTABLISHMENT OF BROWN VERSUS BOARD OF EDUCATION HISTORIC SITE

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3368, a bill relating to the Brown versus Board of Education Historic Site, the bill be deemed read a third time, passed; that the motion to reconsider be laid upon the table; that any statements relative to the passage of this item appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 3368), which was deemed to have been read three times and passed, is as follows:

S. 3368

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—BROWN V. BOARD OF EDUCATION NATIONAL HISTORIC SITE

SEC. 101. DEFINITIONS.

As used in this title—

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "historic site" means the Brown v. Board of Education National Historic Site as established in section 103.

SEC. 102. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds as follows:

(1) The Supreme Court, in 1954, ruled that the earlier 1896 Supreme Court decision in Plessy v. Ferguson that permitted segregation of races in elementary schools violated the fourteenth amendment to the United States Constitution, which guarantees all citizens equal protection under the law.

(2) In the 1954 proceedings, Oliver Brown and twelve other plaintiffs successfully challenged an 1879 Kansas law that had been patterned after the law in question in Plessy v. Ferguson after the Topeka, Kansas, Board of Education refused to enroll Mr. Brown's daughter, Linda.

(3) Sumner Elementary, the all-white school that refused to enroll Linda Brown, and Monroe Elementary, the segregated school she was forced to attend, have subsequently been designated National Historic Landmarks in recognition of their national significance.

(4) Sumner Elementary, an active school, is administered by the Topeka Board of Education; Monroe Elementary, closed in 1975 due to declining enrollment, is privately owned and stands vacant.

(b) PURPOSES.—The purposes of this title are—

(1) to preserve, protect, and interpret for the benefit and enjoyment of present and future generations, the places that contributed materially to the landmark United States Supreme Court decision that brought an end to segregation in public education; and

(2) to interpret the integral role of the Brown v. Board of Education case in the civil rights movement.

(3) to assist in the preservation and interpretation of related resources within the city of Topeka that further the understanding of the civil rights movement.

SEC. 103. ESTABLISHMENT OF THE CIVIL RIGHTS IN EDUCATION: BROWN V. BOARD OF EDUCATION NATIONAL HISTORIC SITE.

(a) IN GENERAL.—There is hereby established as a unit of the National Park System the Brown v. Board of Education National Historic Site in the State of Kansas.

(b) DESCRIPTION.—The historic site shall consist of the Monroe Elementary School site in the city of Topeka, Shawnee County, Kansas, as generally depicted on a map entitled "Brown v. Board of Education National Historic Site," numbered Appendix A and dated June 1992. Such map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

SEC. 104. PROPERTY ACQUISITION.

The Secretary is authorized to acquire by donation, exchange, or purchase with donated or appropriated funds the real property described in section 103(b). Any property owned by the State of Kansas or any political subdivision thereof may be acquired only by donation. The Secretary may also acquire by the same methods personal property associated with, and appropriate for, the interpretation of the historic site: *Provided, however,* That the Secretary may not acquire such personal property without the consent of the owner.

SEC. 105. ADMINISTRATION OF HISTORIC SITE.

(a) IN GENERAL.—The Secretary shall administer the historic site in accordance with this title and the laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (39 Stat. 535), and the Act of August 21, 1935 (49 Stat. 666).

(b) COOPERATIVE AGREEMENTS.—The Secretary is authorized to enter into cooperative agreements with private as well as public agencies, organizations, and institutions in furtherance of the purposes of this title.

(c) GENERAL MANAGEMENT PLAN.—Within two complete fiscal years after funds are made available, the Secretary shall prepare and submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a general management plan for the historic site.

SEC. 106. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $1,250,000 to carry out the purposes of this title including land acquisition and initial development.

TITLE II—DRY TORTUGAS NATIONAL PARK

SEC. 201. ESTABLISHMENT OF DRY TORTUGAS NATIONAL PARK.

(a) IN GENERAL.—In order to preserve and protect for the education, inspiration, and enjoyment of present and future generations nationally significant natural, historic, scenic, marine, and scientific values in South Florida, there is hereby established the Dry Tortugas National Park (hereinafter in this title referred to as the "park").

(b) AREA INCLUDED.—The park shall consist of the lands, waters, and interests therein generally depicted on the map entitled "Boundary Map, Fort Jefferson National Monument", numbered 364-90,0001, and dated April 1980 (which is the map referenced by section 201 of Public Law 96-287). The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

(c) ABOLITION OF MONUMENT.—The Fort Jefferson National Monument is hereby abolished.

SEC. 202. ADMINISTRATION.

(a). IN GENERAL.—The Secretary shall administer the park in accordance with this title and with the provisions of law generally applicable to units of the national park system, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2, 3, and 4).

(b) MANAGEMENT PURPOSES.—The park shall be managed for the following purposes, among others:

(1) To protect and interpret a pristine subtropical marine ecosystem, including an intact coral reef community.

(2) To protect populations of fish and wildlife, including (but not limited to) loggerhead and green sea turtles, sooty terns, frigate birds, and numerous migratory bird species.

(3) To protect the pristine natural environment of the Dry Tortugas group of islands.

(4) To protect, stabilize, restore, and interpret Fort Jefferson, an outstanding example of nineteenth century masonry fortification.

(5) To preserve and protect submerged cultural resources.

(6) In a manner consistent with paragraphs (1) through (5), to provide opportunities for scientific research.

SEC. 203. LAND ACQUISITION AND TRANSFER OF PROPERTY.

(a) IN GENERAL.—Within the boundaries of the park the Secretary may acquire lands and interests in land by donation or exchange. For the purposes of acquiring property by exchange with the State of Florida, the Secretary may, notwithstanding any other provision of law, exchange those Federal lands which were deleted from the park by the boundary modifications enacted by section 201 of the Act of June 28, 1980 (Public Law 96-287), and which are directly adjacent to lands owned by the State of Florida outside of the park, for lands owned by the State of Florida within the park boundary.

(b) UNITED STATES COAST GUARD LANDS.—When all or any substantial portion of lands under the administration of the United States Coast Guard located within the park boundaries, including Loggerhead Key, have been determined by the United States Coast Guard to be excess to its needs, such lands shall be transferred directly to the jurisdiction of the Secretary for the purposes of this title. The United States Coast Guard may reserve the right in such transfer to maintain and utilize the existing lighthouse on Loggerhead Key in a manner consistent with the purposes of the United States Coast Guard and the purposes of this title.

(c) ADMINISTRATIVE SITE.—The Secretary is authorized to lease or to acquire, by purchase, donation, or exchange, and to operate incidental administrative and support facilities in Key West, Florida, for park administration and to further the purposes of this title.

SEC. 204. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this title. Any funds available for the purposes of the monument shall be available for the purposes of the park, and authorizations of funds for the monument shall be available for the park.

ELWHA RIVER

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4844 regarding Elwha River just received from the House; that the bill be deemed read a third time, passed; that the motion to reconsider be laid upon the table, and that any statements relative to the passage of this item appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 4844) was deemed to have been read three times and passed.

RELIEF OF FLORENCE ADEBOYEKU

Mr. FORD. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 3336, a bill for the relief of Florence Adeboyeku; that the Senate proceed to its immediate consideration, that the bill be deemed read three times, passed and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3336) was deemed to have been read three times and passed.

AUTHORIZATION TO THE STATE OF ARIZONA

Mr. FORD. Mr. President, I ask unanimous consent that the Senate turn to the immediate consideration of S. 3369, a bill to allow certain political subdivisions of the State of Arizona continued access to FBI identification records for a period of 180 days, pending restoration of statutory authorization by the legislature of the State of Arizona introduced earlier today by Senator DECONCINI, that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 3369), which is deemed to have been read three times and passed, is as follows:

S. 3369

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ACCESS TO FBI IDENTIFICATION RECORDS BY CERTAIN POLITICAL SUBDIVISIONS OF THE STATE OF ARIZONA.

Notwithstanding the repeal, on June 17, 1992, of authorization in section 41-1750 of the Arizona Revised Statutes as in effect prior to that date, a political subdivision of the State of Arizona that was authorized by that section prior to that date to exchange identification records with the Federal Bureau of Investigation under section 201 of the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (28 U.S.C. 534 note), shall be permitted to continue to exchange records until the date that is 180 days after the date of enactment of this Act, for the same purposes and under the same conditions as prior to June 17, 1992.

CLARIFICATION OF FAIR USE DOCTRINE

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4412, a bill to clarify the application of the fair use doctrine to unpublished copyrighted materials received from the House, that the bill be deemed read three times, passed and the motion to reconsider be laid upon the table; that a statement jointly signed by Senators SIMON, LEAHY, KENNEDY, GRASSLEY, METZENBAUM, and KOHL be insert in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the joint statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATORS SIMON, LEAHY, KENNEDY, GRASSLEY, METZENBAUM, AND KOHL

Last September, the Senate approved S. 1035, a bill introduced by Senator Leahy and Senator Simon, that clarified the application of the fair use doctrine to unpublished, copyrighted, materials. In August of this year, the House approved a similar bill, H.R. 4412, which is before us now for consideration.

We endorse the House bill. H.R. 4412 serves the same goals and achieves the same objectives as S. 1035. While the House version contains slightly different language, the effects of the two bills are identical. Thus, the Senate Report interpreting the objectives of S. 1035 and discussing the history of fair use can be applied in all respects to H.R. 4412, as well.

In order to remove any question about the scope of the bill, a few additional comments may be helpful. As Senators Leahy and Simon noted when they introduced the Senate version in May of 1991, the fair use bill was triggered by two Second Circuit decisions, *Salinger* v. *Random House*, 811 F.2d 90 (2d Cir.), cert. denied, 484 U.S. 890 (1987), and *New Era* v. *Henry Holt*, 873 F.2d 576 (2d Cir.), reh'g denied, 884 F.2d 659 (2d Cir. 1989), cert. denied, 110 S.Ct. 1168 (1990), that severely narrowed the scope of the fair use doctrine as applied to unpublished works. These cases threatened to establish a virtual per se rule against the fair use of any unpublished materials, such as letters or diaries. As the court said in New Era, unpublished works "normally enjoy complete protection" against copying.

Since the vast majority of publishing and magazine companies are based in the Second Circuit's jurisdiction, the effect of the Salinger and New Era decisions has been profound, resulting in chilling uncertainty and serious apprehension in the publishing community regarding fair use of unpublished works. We think it no exaggeration to say that if the trend were to continue, it could severely damage the ability of journalists and scholars to use unpublished primary materials. This would be a crippling blow to accurate scholarship and reporting.

H.R. 4412, like its Senate counterpart, is thus designed to undo the harm caused by the overly restrictive standards adopted in Salinger and New Era, and to clearly and indisputably reject the view that the unpublished nature of the work triggers a virtual per se ruling against a finding of fair use. While the fact that a work is unpublished is "an important element which tends to weigh against a finding of fair use," the unpublished nature of the copyrighted material is not necessarily determinative of whether or not a particular use is considered a fair use.

By rejecting the per se approach, this bill serves to reaffirm the general principles regarding fair use of unpublished works as set forth in the Supreme Court's landmark decision *Harper & Row* v. *Nation Enterprises*, 471 U.S. 539 (1985). That decision makes clear that, rather than considering only one factor, a finding of fair use must be made upon a full consideration of all the factors under section 107 of the copyright laws. The review of these factors must be complete and meaningful. A more detailed discussion of Harper is set forth in the Senate report.

To some observers, one Second Circuit decision handed down after the Senate's passage of S. 1035, *Wright* v. *Warner Books*, 953 F. 2d 731 (2d. Cir. 1991), seems to portend a more reasonable approach by the Second Circuit. However, since the *Wright* decision did not explicitly disavow the narrow formulation of the fair use doctrine espoused in Salinger and New Era, the pall that the latter two cases cast over the publishing world remains. Moreover, as the Senate noted in its report: "[S. 1035] is intended to overrule the overly restrictive language of Salinger and New Era with respect to the use of unpublished materials and to return to the law of fair use as it was expressed in Harper & Row." S. Rep. 102-141, 102nd Cong., 1st Sess., at 5. Consequently, the bill rejects dicta in Wright to the extent that such dicta is premised upon the disapproved language of Salinger and New Era. The bill requires the courts to make a carefully reasoned and complete consideration of each of the fair use factors set forth in Section 107 of the Copyright Act.

Finally, as the Senate Report makes clear, this legislation does nothing to broaden the fair use of unpublished computer programs. Nor does it reduce the protection afforded to secure tests. And, the legislation is effective on the date of enactment. It applies to uses of letters, diaries and other unpublished copyrighted works created before, on or after that date. It governs all lawsuits filed on or after that date, whether the conduct at issue occurred before, on or after that date.

The bill (H.R. 4412) was deemed to have been read three times and passed.

BANKRUPTCY AMENDMENTS OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1985.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1985) entitled "An Act to establish a commission to review the Bankruptcy Code, to amend the Bankruptcy Code in certain aspects of its application to cases involving commerce and credit and individual debtors and add a temporary chapter to govern reorganization of small businesses, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bankruptcy Amendments of 1992".

TITLE I—IMPROVED BANKRUPTCY ADMINISTRATION

SEC. 101. EXPEDITED HEARING ON AUTOMATIC STAY.

The last sentence of section 362(e) of title 11, United States Code, is amended—

(1) by striking "commenced" and inserting "concluded", and

(2) by inserting before the period at the end the following:

", unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances".

SEC. 102. EXPEDITED FILING OF PLANS UNDER CHAPTER 11.

Section 1121(d) of title 11, United States Code, is amended—

(1) by striking "On" and inserting "(1) Subject to paragraph (2), on", and

(2) by adding at the end the following:

"(2) Under paragraph (1)—

"(A) such 120-day period may not be increased beyond the 1-year period beginning on the date of the order for relief under this chapter; and

"(B) such 180-day period may not be increased beyond the 425-day period beginning on the date of the order for relief under this chapter;

unless the need for such an increase is attributable to circumstances for which the debtor should not justly be held accountable.".

SEC. 103. EXPEDITED FILING OF PLANS UNDER CHAPTER 12.

(a) FILING OF PLAN.—Section 1221 of title 11, United States Code, is amended by striking "an extension is substantially justified" and inserting "the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable".

(b) DELAY OF REPEAL.—Section 302(f) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554; 100 Stat. 3124; 11 U.S.C. 1201 note) is amended by striking "October 1, 1993" and inserting "October 1, 1995".

SEC. 104. EXPEDITED PROCEDURE FOR REAFFIRMATION OF DEBTS.

(a) REAFFIRMATION.—Section 524(c) of title 11, United States Code, is amended—

(1) in paragraph (2)—

(A) by inserting "(A)" after "(2)",

(B) by adding "and" at the end, and

(C) by inserting after subparagraph (A), as so designated, the following:

"(B) such agreement contains a clear and conspicuous statement which advises the debtor that such agreement is not required under this title, under nonbankruptcy law, or under any agreement not in accordance with the provisions of this subsection;", and

(2) in paragraph (3)—

(A) in the matter preceding subparagraph (A) by striking "such agreement" the last place it appears,

(B) in subparagraph (A)—

(i) by inserting "such agreement" after "(A)", and

(ii) by striking "and" at the end,

(C) in subparagraph (B) by inserting "such agreement" after "(B)", and

(3) by adding at the end the following:

"(C) the attorney fully advised the debtor of the legal effect and consequences of—

"(i) an agreement of the kind specified in this subsection; and

"(ii) any default under such an agreement;".

(b) EFFECT OF DISCHARGE.—The third sentence of section 524(d) of title 11, United States Code, is amended in the matter preceding paragraph (1) by inserting "and was not represented by an attorney during the course of negotiating such agreement" after "this section".

SEC. 105. POWERS OF BANKRUPTCY COURTS.

(a) STATUS CONFERENCES.—Section 105 of title 11, United States Code, is amended by adding at the end the following:

"(d) The court, on its own motion or on the motion of any party in interest, may—

"(1) hold a status conference regarding any case under this title after notice to the parties in interest; and

"(2) unless inconsistent with another provision of this title, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically.".

(b) ABSTENTION.—The second sentence of section 1334(c)(2) of title 28, United States Code, is amended by striking "or not to abstain".

(c) ESTABLISHMENT, OPERATION, AND TERMINATION OF BANKRUPTCY APPELLATE SERVICE.—Section 158(b) of title 28, United States Code, is amended—

(1) by striking paragraphs (3) and (4),

(2) by redesignating paragraph (2) as paragraph (4),

(3) by striking paragraph (1) and inserting the following:

"(1) The judicial council of a circuit shall establish a bankruptcy appellate service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that—

"(A) there are insufficient judicial resources available in the circuit; or

"(B) it is not likely that creation of such service would improve the administration of justice.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference a report containing the factual basis of such finding.

"(2)(A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

"(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraphs exists.

"(C) On its own motion, after the expiration of the 3-year period beginning on the date an bankruptcy appellate service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraphs exists.

"(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

"(3) Bankruptcy judges appointed under paragraph (1) shall be appointed for a term of 2 years and may be reappointed under such paragraph.", and

(4) by inserting after paragraph (4), as so redesignated, the following:

"(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.

"(6) An appeal may not be heard under this subsection by a panel of the bankruptcy appellate service unless the district judges for the district in which the appeal occurs, by majority vote, have authorized such service to hear and determine appeals originating in such district.".

(d) APPEALS TO BE HEARD BY BANKRUPTCY APPELLATE SERVICE.—Section 158 of title 28, United States Code, is amended—

(1) in subsection (c) by striking "(c)" and inserting "(2)", and

(2) by inserting after subsection (b) the following:

"(c)(1) Subject to subsection (b), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate service established under subsection (b)(1) unless—

"(A) the appellant elects at the time of filing the appeal; or

"(B) any other party elects, not later than 30 days after service of notice of the appeal;

to have such appeal heard by the district court.".

(e) Rules of Procedure and Evidence; Method of Prescribing.—Section 2073 of title 28, United States Code, is amended—

(1) in subsection (a)(2) by striking "section 2072" and inserting "sections 2072 and 2075", and

(2) in subsections (d) and (e) by inserting "or 2075" after "2072" each place it appears.

(f) Effective Date of Bankruptcy Rules.—Section 2075 of title 28, United States Code, is amended by striking "ninety days" and inserting "180 days".

SEC. 106. PARTICIPATION BY BANKRUPTCY ADMINISTRATOR AT MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

(a) Presiding Officer.—A bankruptcy administrator appointed under section 302(d)(3)(I) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99–554; 100 Stat. 3123), as amended by section 317(a) of the Federal Courts Study Committee Implementation Act of 1990 (Public Law 101–650; 104 Stat. 5115), or the bankruptcy administrator's designee may preside at the meeting of creditors convened under section 341(a) of title 11, United States Code. The bankruptcy administrator or the bankruptcy administrator's designee may preside at any meeting of equity security holders convened under section 341(b) of title 11, United States Code.

(b) Examination of the Debtor.—The bankruptcy administrator or the bankruptcy administrator's designee may examine the debtor at the meeting of creditors and may administer the oath required under section 343 of title 11, United States Code.

SEC. 107. DEFINITION RELATING TO ELIGIBILITY TO SERVE ON CHAPTER 11 COMMITTEES.

Section 101(41) of title 11, United States Code, is amended to read as follows:

"(41) 'person' includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

"(A) acquires an asset from a person—

"(i) as a result of the operation of a loan guarantee agreement; or

"(ii) as receiver or liquidating agent of a person;

"(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or

"(C) is the legal or beneficial owner of an asset of—

"(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

"(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit;".

SEC. 108. INCREASED INCENTIVE COMPENSATION FOR TRUSTEES.

Section 326(a) of title 11, United States Code, is amended by striking "fifteen" and all that follows through "$3,000" the last place it appears, and inserting the following:

"25 percent on the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, 5 percent on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000".

SEC. 109. DOLLAR ADJUSTMENTS.

(a) Who May Be a Debtor Under Chapter 13.—Section 109(e) of title 11, United States Code, is amended—

(1) by striking "unsecured debts of less than $100,000 and noncontingent, liquidated, secured debts of less than $350,000" and inserting "debts of less than $1,000,000", and

(2) by striking "unsecured debts that aggregate less than $100,000 and noncontingent, liquidated, secured debts of less than $350,000" and inserting "debts in the aggregate of less than $1,000,000".

(b) Involuntary Cases.—Section 303(b) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "$5,000" and inserting "$10,000", and

(2) in paragraph (2) by striking "$5,000" and inserting "$10,000".

(c) Priorities.—Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (3)(B) by striking "$2,000" and inserting "$4,000",

(2) in paragraph (4)(B)(i) by striking "$2,000" and inserting "$4,000",

(3) in paragraph (5) by striking "$2,000" and inserting "$4,000", and

(4) in paragraph (6) by striking "$900" and inserting "$1,800".

(d) Exemptions.—Section 522(d) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "$7,500" and inserting "$15,000",

(2) in paragraph (2) by striking "$1,200" and inserting "$2,400",

(3) in paragraph (3)—

(A) by striking "$200" and inserting "$400", and

(B) by striking "$4,000" and inserting "$8,000",

(4) in paragraph (4) by striking "$500" and inserting "$1,000",

(5) in paragraph (5)—

(A) by striking "$400" and inserting "$800", and

(B) by striking "$3,750" and inserting "$7,500",

(6) in paragraph (6) by striking "$750" and inserting "$1,500",

(7) in paragraph (8) by striking "$4,000" and inserting "$8,000", and

(8) in paragraph (11)(D) by striking "$7,500" and inserting "$15,000".

(e) Appointment of Examiner in Certain Circumstances.—Section 1104(b)(2) of title 11, United States Code, is amended by striking "$5,000,000" and inserting "$10,000,000".

SEC. 110. BANKRUPTCY FEES.

(a) Effective Date of Bankruptcy Fees Prescribed by the Judicial Conference.—Section 1930(b) of title 28, United States Code, is amended by adding at the end the following:

"Such fees shall not take effect until they have been reported to the Congress by the Judicial Conference at or after the beginning of a regular session thereof, but not later than the first day of February, and until the expiration of 180 days after they have been thus reported.".

(b) Report Regarding Enactment of In Forma Pauperis Procedure.—Not later than 1 year after the date of the enactment of this Act, the Judicial Conference shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate—

(1) estimating the loss of receipts to the United States and to trustees that would result from enacting a procedure authorizing the court to waive the payment of fees and costs in effect under section 1930 of title 28, United States Code, by an individual debtor who files a voluntary case under title 11 and makes affidavit that the debtor is unable to pay such fees and costs, and

(2) suggesting alternatives for offsetting such loss.

SEC. 111. EXTENDED PERIOD FOR TRUSTEE AVOIDANCE OF FRAUDULENT TRANSFERS.

Section 548(a) of title 11, United States Code, is amended in the matter preceding paragraph (1) by striking "one year" and inserting "2 years".

SEC. 112. PREMERGER NOTIFICATION.

Subparagraphs (A) and (B) of section 363(b)(2) of title 11, United States Code, are amended to read as follows:

"(A) notwithstanding subsection (a) of such section, the notification required to be given by the debtor shall be given by the trustee; and

"(B) notwithstanding subsection (b) of such section, the required waiting period shall end on the tenth day after the date of receipt of the notification, unless the waiting period is extended—

"(i) pursuant to subsection (e)(2) or (g)(2) of such section; or

"(ii) by the court, after notice and a hearing.".

SEC. 113. ALLOWANCE OF CREDITOR COMMITTEE EXPENSES.

Section 503(b) of title 11, United States Code, is amended—

(1) by striking "and" at the end of paragraph (5),

(2) by striking the period at the end of paragraph (6) and inserting "; and", and

(3) by adding at the end the following new paragraph:

"(7) the actual, necessary expenses incurred by a member of a committee appointed under section 1102 in the performance of the duties of such committee, other than claims for compensation for services rendered as a member of such committee.".

TITLE II—CONSUMER BANKRUPTCY ISSUES

SEC. 201. PERIOD FOR CURING DEFAULT RELATING TO PRINCIPAL RESIDENCE.

Section 1322 of title 11, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d), and

(2) by inserting after subsection (b) the following:

"(c) A default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b), notwithstanding applicable nonbankruptcy law, until such residence is sold under such lien and in accordance with applicable nonbankruptcy law.".

SEC. 202. PRESERVATION OF HOME MORTGAGE LIENS.

Section 1322(b)(2) of title 11, United States Code, is amended—

(1) by striking ", other than a claim secured only by a security interest in real property that is the debtor's principal residence,", and

(2) by inserting before the semicolon at the end the following:

", except that the rights of the holder of a claim secured only by the most senior security interest in real property that is the debtor's principal residence may not be modified to reduce the secured claim to a value that is less than the value, as of the date the security interest arose, of the creditor's interest in the estate's interest in such property".

SEC. 203. NONDISCHARGEABILITY OF FINE UNDER CHAPTER 13.

Section 1328(a)(3) of title 11, United States Code, is amended by inserting ", or a fine, " after "restitution".

SEC. 204. PROTECTION OF CHILD SUPPORT AND ALIMONY.

(a) Relief From Automatic Stay.—Section 362(b)(2) of title 11, United States Code, is amended to read as follows:

"(2) under subsection (a) of this section—

"(A) of the commencement or continuation of an action or proceeding for—

"(i) the establishment of paternity; or

"(ii) the establishment or modification of an order for alimony, maintenance, or support; or

"(B) of the collection of alimony, maintenance, or support from property that is not property of the estate;".

(b) Priority of Claims.—Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (8) by striking "(8) Eighth" and inserting "(9) Ninth",

(2) in paragraph (7) by striking "(7) Seventh" and inserting "(8) Eighth", and

(3) by inserting after paragraph (6) the following:

"(7) Seventh, allowed claims for debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

"(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

"(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.".

(c) Protection of Liens.—Section 522(f)(1) of title 11, United States Code, is amended by inserting after "lien" the following:

", other than a judicial a lien that secures a debt—

"(A) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and

"(B) to the extent that such debt—

"(i) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and

"(ii) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.".

(d) Protection Against Trustee Avoidance.—Section 547(c) of title 11, United States Code, is amended—

(1) in paragraph (6) by striking "or" at the end,

(2) by redesignating paragraph (7) as paragraph (8), and

(3) by inserting after paragraph (6) the following:

"(7) to the extent such transfer was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

"(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

"(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.".

(e) Appearance Before Court.—Child support creditors or their representatives shall be permitted to appear and intervene without charge, and without meeting any special local court rule requirement for attorney appearances, in any bankruptcy proceeding in any bankruptcy court or district court of the United States if such representatives file a form in such court that contains information detailing the child support debt, its status, and other characteristics.

(f) Conforming Amendments—Title 11 of the United States Code is amended—

(1) in section 502(i) by striking "507(a)(7)" and inserting "507(a)(8)",

(2) in section 503(b)(1)(B)(i) by striking "507(a)(7)" and inserting "507(a)(8)",

(3) in section 523(a)(1)(A) by striking "507(a)(7)" and inserting "507(a)(8)",

(4) in section 724(b)(2) by striking "or 507(a)(6)" and inserting "507(a)(6), or 507(a)(7)",

(5) in section 726(b) by striking "or (7)" and inserting ", (7), or (8)",

(6) in section 1123(a)(1) by striking "507(a)(7)" and inserting "507(a)(8)",

(7) in section 1129(a)(9)—

(i) in subparagraph (B) by striking "or 507(a)(6)" and inserting ", 507(a)(6), or 507(a)(7)", and

(ii) in subparagraph (C) by striking "507(a)(7)" and inserting "507(a)(8)".

TITLE III—COMMERCIAL BANKRUPTCY ISSUES

SEC. 301. LIMITATION ON LIABILITY OF NON-INSIDER TRANSFEREE FOR AVOIDED TRANSFER.

Section 550 of title 11, United States Code, is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and

(2) by inserting after subsection (b) the following:

"(c) If a transfer made between ninety days and one year before the filing of the petition—

"(1) is avoided under section 547(b) of this title; and

"(2) was made for the benefit of a creditor that at the time of such transfer was an insider;

the trustee may not recover under subsection (a) from a transferee that is not an insider.".

SEC. 302. PERFECTION OF PURCHASE-MONEY SECURITY INTEREST.

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking "10" and inserting "20".

SEC. 303. PROTECTION OF SECURITY INTEREST IN POST-PETITION RENTS.

Section 552(b) of title 11, United States Code, is amended—

(1) by inserting "(1)" after "(b)",

(2) by striking "rents," each place it appears, and

(2) by adding at the end the following:

"(2) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to rents of such property, then such security interest extends to such rents acquired by the estate after the commencement of the case to the extent provided in such security agreement, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.".

SEC. 304. TREATMENT OF FARMOUT AGREEMENTS.

(a) Definition.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (21) the following:

"(21A) 'farmout agreement' means written agreement in which—

"(A) the owner of a right to drill, produce, or operate liquid or gaseous hydrocarbons on property agrees or has agreed to transfer or assign all or a part of such right to another entity; and

"(B) such other entity (either directly or through its agents or its assigns), as consideration, agrees to perform drilling, reworking, recompleting, testing, or similar or related operations, to develop or produce liquid or gaseous hydrocarbons on the property;".

(b) Property of the Estate.—Section 541(b) of title 11, United States Code, is amended—

(1) in paragraph (2) by striking "or" at the end,

(2) in paragraph (3) by striking the period at the end and inserting "; or", and

(3) by adding at the end the following:

"(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that—

"(A) the debtor has transferred or has agreed to transfer such interest pursuant to a farmout agreement or any written agreement directly related to a farmout agreement; and

"(B) but for the operation of this paragraph, the estate could include such interest only by virtue of section 365 or 544(a)(3) of this title.

Paragraph (4) shall not be construed to exclude from the estate any consideration the debtor retains, receives, or is entitled to receive for transferring an interest in liquid or gaseous hydrocarbons pursuant to a farmout agreement.".

SEC. 305. SELLER'S RIGHT TO RECLAIM GOODS.

Section 546(c)(1) of title 11, United States Code, is amended by striking "ten" and inserting "30".

SEC. 306. EXCEPTION TO DISCHARGE.

Section 523(a)(2) of title 11, United States Code, is amended by striking "forty" and inserting "60".

SEC. 307. AIRCRAFT EQUIPMENT AND VESSELS.

Section 1110(a) of title 11, United States Code, is amended by striking "an air carrier operating under a certificate of convenience and necessity issued by the Civil Aeronautics Board" and inserting the following:

"a citizen of the United States, as defined in section 101 of the Federal Aviation Act of 1958, holding an operating certificate issued by the Secretary of Transportation pursuant to section 604 the Federal Aviation Act for aircraft capable of carrying 10 or more individuals".

TITLE IV—GOVERNMENTAL BANKRUPTCY ISSUES

SEC. 401. EXCEPTION FROM AUTOMATIC STAY FOR POST-PETITION PROPERTY TAXES.

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (16) the following:

"(18) under subsection (a) of this section, of the creation, perfection, or enforcement of a statutory lien for an ad valorem property tax imposed by the District of Columbia, or a political subdivision of a State, if such tax comes due after the filing of the petition.".

SEC. 402. MUNICIPAL BANKRUPTCY.

Section 109(c)(2) of title 11, United States Code, is amended by striking "generally authorized" and inserting "specifically authorized, in its capacity as a municipality or by name,".

TITLE V—TECHNICAL CORRECTIONS

SEC. 501. AMENDMENTS TO BANKRUPTCY DEFINITIONS, NECESSITATED BY ENACTMENT OF PUBLIC LAW 101-647.

(a) Alphabetizing and Redesignating Definitions.—Section 101 of title 11 of the United States Code, as amended by section 304(a), is amended—

(1) by redesignating paragraph (3) as paragraph (21),

(2) by redesignating paragraph (4) and subsequent paragraphs through paragraph (21A) as such paragraph (21A) is added by section 304(a) of this Act, as paragraphs (3) through (20A), respectively,

(3) by transferring paragraph (21), as so redesignated by paragraph (1), so as to insert such paragraph after paragraph (20A),

(4) by redesignating paragraphs (54) through (57), as in effect immediately before the enactment of Public Law 101-647, as paragraphs (60), (61), (36), and (40), respectively,

(5) in paragraph (60), as so redesignated by paragraph (4), by inserting "and" after the semicolon at the end,

(6) in paragraph (61), as so redesignated by paragraph (4), by striking the semicolon at the end and inserting a period,

(7) in paragraph (36), as so redesignated by paragraph (4), by striking "and" at the end,

(8) in paragraph (40), as so redesignated by paragraph (4), by striking the period at the end and inserting a semicolon,

(9) by redesignating paragraphs (52) through (57), as so redesignated by section 2522(e) of Public Law 101–647, as paragraphs (54) through (59), respectively,

(10) by transferring paragraph (39) so as to insert such paragraph before paragraph (54), as so redesignated by paragraph (9) of this subsection,

(11) by redesignating paragraph (39) as paragraph (53),

(12) by redesignating successively numbered paragraphs (40) through (51) as paragraphs (41) through (52), respectively,

(13) by transferring paragraph (40), as so redesignated by paragraph (4) of this subsection, so as to insert such paragraph before paragraph (41), as so redesignated by paragraph (12) this subsection,

(14) by redesignating paragraph (36) and subsequent paragraphs through paragraph (38) as paragraphs (37) through (39), respectively, and

(15) by transferring paragraph (36), as so redesignated by paragraph (4) of this subsection, so as to insert such paragraph after paragraph (35).

(b) CONFORMING AND RELATED AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE, BASED ON REDESIGNATED DEFINITIONS.—(1) Section 101 of title 11 of the United States Code is amended—

(A) in paragraph (5), as so redesignated by subsection (a), by striking "section 761(9)" and inserting "section 761",

(B) in paragraph (22) by striking "section 741(7)" and inserting "section 741",

(C) in paragraph (35)(B) by striking "paragraphs (3)" and inserting "paragraphs (21)",

(D) in paragraph (50)(B)(ii), as so redesignated by subsection (a), by striking "section 761(13)" and inserting "section 761", and

(E) in paragraph (56)(A), as so redesignated by subsection (a), by striking "section 741(2)" and inserting "section 741".

(2) Section 362(b) of title 11, United States Code, is amended—

(A) in paragraph (6)—

(i) by striking "section 761(4)" and inserting "section 761",

(ii) by striking "section 741(7)" and inserting "section 741",

(iii) by striking "section 101(34), 741(5), or 761(15)" and inserting "section 101, 741, or 761", and

(iv) by striking "section 101(35) or 741(8)" and inserting "section 101 or 741", and

(B) in paragraph (7)—

(i) by striking "section 741(5) or 761(15)" and inserting "section 741 or 761", and

(ii) by striking "section 741(8)" and inserting "section 741".

(3) Section 507(a)(5) of title 11, United States Code, is amended—

(A) by striking "section 557(b)(1)" and inserting "section 557(b)", and

(B) by striking "section 557(b)(2)" and inserting "section 557(b)".

(4) Section 546 of title 11, United States Code, is amended—

(A) in subsection (e)—

(i) by striking "section 101(34), 741(5), or 761(15)" and inserting "section 101, 741, or 761", and

(ii) by striking "section 101(35) or 741(8)" and inserting "section 101 or 741", and

(B) in subsection (f)—

(i) by striking "section 741(5) or 761(15)" and inserting "section 741 or 761", and

(ii) by striking "section 741(8)" and inserting "section 741".

(5) Section 548(d)(2) of title 11, United States Code, is amended—

(A) in subparagraph (B)—

(i) by striking "section 101(34), 741(5) or 761(15)" and inserting "section 101, 741, or 761", and

(ii) by striking "section 101(35) or 741(8)" and inserting "section 101 or 741", and

(B) in subparagraph (C)—

(i) by striking "section 741(5) or 761(15)" and inserting "section 741 or 761", and

(ii) by striking "section 741(8)" and inserting "section 741".

(6) Section 555 of title 11, United States Code, is amended by striking "section 741(7)" and inserting "section 741 of this title".

(7) Section 556 of title 11, United States Code, is amended by striking "section 761(4)" and inserting "section 761 of this title".

(c) CONFORMING AMENDMENTS TO OTHER LAWS BASED ON REDESIGNATED DEFINITIONS.—(1) Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended—

(A) in clause (ii)(I) by striking "section 741(7)" and inserting "section 741",

(B) in clause (iii) by striking "section 101(24)" and inserting "section 101",

(C) in clause (iv)(I) by striking "section 101(41)" and inserting "section 101", and

(D) in clause (v) by striking "section 101(50)" and inserting "section 101".

(2) Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

(A) in clause (ii)(I) by striking "section 741(7)" and inserting "section 741",

(B) in clause (iii) by striking "section 761(4)" and inserting "section 761",

(C) in clause (iv) by striking "section 101(24)" and inserting "section 101",

(D) in clause (v)(I) by striking "section 101(41)" and inserting "section 101", and

(E) in clause (viii) by striking "section 101(50)" and inserting "section 101".

(d) OTHER TECHNICAL AMENDMENTS.—Title 11 of the United States Code is amended—

(1) in section 101—

(A) in paragraph (33)—

(i) in subparagraph (A) by striking "(12 U.S.C. 1813(u))", and

(ii) in subparagraph (B) by striking "(12 U.S.C. 1786(r))",

(B) in paragraph (34) by striking "(12 U.S.C. 1752(7))",

(C) in paragraph (35)(A) by striking "(12 U.S.C. 1813(c)(2))",

(D) in paragraph (49), as so redesignated by subsection (a)—

(i) by striking "(15 U.S.C. 78q–1)", and

(ii) by striking "(15 U.S.C. 78c(12))",

(E) in paragraph (50), as so redesignated by subsection (a)—

(i) in subparagraph (A)(xii)—

(I) by striking "(15 U.S.C. 77a et seq.)", and

(II) by striking "(15 U.S.C. 77c(b))", and

(ii) in subparagraph (B)(vi) by striking "(15 U.S.C. 77c(b))", and

(F) in paragraph (59), as so redesignated by subsection (a), by striking the period at the end and inserting a semicolon,

(2) in section 109(b)(2) by striking "(12 U.S.C. 1813(h))",

(3) in section 322(a) by striking "1302, or 1202" and inserting "1202, or 1302",

(4) in section 346—

(A) in subsection (a) by striking "Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.)" and inserting "Internal Revenue Code of 1986", and

(B) in subsection (g)(1)(C) by striking "Internal Revenue Code of 1954 (26 U.S.C. 371)" and inserting "Internal Revenue Code of 1986",

(5) in section 348—

(A) in subsection (b) by striking "1301(a), 1305(a), 1201(a), 1221, and 1228(a)" and inserting "1201(a), 1221, 1228(a), 1301(a), and 1305(a)", and

(B) in subsections (b), (c), (d), and (e) by striking "1307, or 1208" each place it appears and inserting "1208, or 1307",

(6) in section 349(a) by striking "109(f)" and inserting "109(g)",

(7) in section 362—

(A) in subsection (a) by striking "(15 U.S.C. 78eee(a)(3))", and

(B) in subsection (b)—

(i) by striking "(15 U.S.C. 78eee(a)(3))",

(ii) in paragraph (10) by striking "or" at the end,

(iii) in paragraph (12)—

(I) by striking "(46 App. U.S.C. 911 et seq.)", and

(II) by striking "(46 App. U.S.C. 1117 and 1271 et seq., respectively)",

(iv) in paragraph (13)—

(I) by striking "(46 App. U.S.C. 911 et seq.)",

(II) by striking "(46 App. U.S.C. 1117 and 1271 et seq., respectively)",

(III) by striking "or" at the end,

(v) in paragraph (15), as added by Public Law 101–508, by striking "or" at the end,

(vi) in paragraph (16), as added by Public Law 101–508, by striking the period at the end and inserting a semicolon, and

(vii) in paragraph (14), as added by Public Law 101–311—

(I) by striking the period at the end and inserting "; or",

(II) by redesignating such paragraph as paragraph (17), and

(III) by transferring such paragraph so as to insert such paragraph after paragraph (16),

(8) in section 363—

(A) in subsection (b)(2) by striking "(15 U.S.C. 18a)", and

(B) in subsection (c)(1) by striking "1304, 1203, or 1204" and inserting "1203, 1204, or 1304",

(9) in section 364—

(A) in subsection (a) by striking "1304, 1203, or 1204" and inserting "1203, 1204, or 1304", and

(B) in subsection (f)—

(i) by striking "(15 U.S.C. 77e)", and

(ii) by striking "(15 U.S.C. 77aaa et seq.)",

(10) in section 365—

(A) in subsection (d)(6)(C) by striking "(49 App. U.S.C. 1301)",

(B) in subparagraphs (A) and (B) of subsection (g)(2) by striking "1307, or 1208" each place it appears and inserting "1208, or 1307",

(C) in subsection (n)(1)(B) by striking "to to" and inserting "to", and

(D) in subsection (o) by striking "the Federal" the first place it appears and all that follows through "successors,", and inserting "a Federal depository institutions regulatory agency (or predecessor to such agency)",

(11) in section 507—

(A) in subsection (a)(8) by striking "the Federal" the first place it appears and all that follows through "successors,", and inserting "a Federal depository institutions regulatory agency (or predecessor to such agency)", and

(B) in subsection (d) by striking "or (a)(6)" and inserting "(a)(6), (a)(7), (a)(8), or (a)(9)",

(12) in section 522(d)(10)(E)(iii)—

(A) by striking "408, or 409" the first place it appears and inserting "or 408", and

(B) by striking "Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409)" and inserting "Internal Revenue Code of 1986",

(13) in section 523—

(A) in subsection (a)—

(i) by striking "1141,," and inserting "1141,",

(ii) in paragraph (2)(C) by striking "(15 U.S.C. 1601 et seq.)", and

(iii) in paragraph (12) by striking the semicolon at the end and inserting a period,

(B) in subsection (b)—

(i) by striking "(20 U.S.C. 1087-3)", and

(ii) by striking "(42 U.S.C. 294f)", and

(C) in subsection (e) by striking "depository institution or insured credit union" and inserting "insured depository institution",

(14) in section 524—

(A) in subsection (a)(3) by striking "or 1328(c)(1)" and inserting ", 1228(a)(1), or 1328(a)(1)",

(B) in subsection (c)(4) by striking "recission" and inserting "rescission", and

(C) in subsection (d)(1)(B)(ii) by adding "and" at the end,

(15) in section 525(a)—

(A) by striking "(7 U.S.C. 499a–499s)",

(B) by striking "(7 U.S.C. 181–229)", and

(C) by striking "(57 Stat. 422; 7 U.S.C. 204)",

(16) in section 542(e) by striking "to to" and inserting "to",

(17) in section 546(a)(1) by striking "1302, or 1202" and inserting "1202, or 1302",

(18) in section 549(b) inserting "the trustee may not avoid under subsection (a) of this section" after "involuntary case,",

(19) in section 553—

(A) in subsection (a)(1) by striking "other than under section 502(b)(3) of this title", and

(B) in subsection (b)(1) by striking "362(b)(14),," and inserting "362(b)(14),",

(20) in section 555 by striking "(15 U.S.C. 78aaa et seq.)",

(21) in section 559 by striking "(15 U.S.C. 78aaa et seq.)",

(22) in section 706(a) by striking "1307, or 1208" and inserting "1208, or 1307",

(23) in section 724(d) by striking "Internal Revenue Code of 1954 (26 U.S.C. 6323)" and inserting "Internal Revenue Code of 1986",

(24) in section 726(b) inserting a comma after "section 1112",

(25) in section 741(4)(A)(iii) by striking "(15 U.S.C. 78a et seq.)",

(26) in section 742 by striking "(15 U.S.C. 78aaa et seq.)",

(27) in section 743 by striking "342(a)" and inserting "342",

(28) in section 745(c) by striking "Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.)" and inserting "Internal Revenue Code of 1986",

(29) in section 761—

(A) in paragraph (1) by striking "(7 U.S.C. 1 et seq.)",

(B) in paragraph (5) by striking "(7 U.S.C. 6c(b))", and

(C) in paragraph (13) by striking "(7 U.S.C. 23)",

(30) in section 1104(c) inserting a comma after "interest",

(31) in section 1110(a)—

(A) by striking "(49 U.S.C. 1301)", and

(B) by striking "(46 U.S.C. 911(4))",

(32) in section 1123(a)(1) inserting a comma after "title" the last place it appears,

(33) in section 1129—

(A) in subsection (a)—

(i) in paragraph (4) by striking the semicolon at the end and inserting a period, and

(ii) in paragraph (12) inserting "of title 28" after "section 1930", and

(B) in subsection (d) by striking "(15 U.S.C. 77e)",

(34) in section 1145—

(A) in subsection (a)—

(i) by striking "does" and inserting "do",

(ii) by striking "(15 U.S.C. 77e)", and

(iii) in paragraph (3)(B)(i) by striking "(15 U.S.C. 78m or 78o(d))",

(B) in subsection (b)(1) by striking "(15 U.S.C. 77b(11))", and

(C) in subsection (d) by striking "(15 U.S.C. 77aaa et seq.)",

(35) in section 1166(2) by striking "(45 U.S.C. 791(b))",

(36) in section 1167—

(A) by striking "(45 U.S.C. 151 et seq.)", and

(B) by striking "(45 U.S.C. 156)",

(37) in section 1226(b)(2)—

(A) by striking "1202(d)" and inserting "1202(c)", and

(B) by striking "1202(e)" and inserting "1202(d)",

(38) in section 1302(b)(3) by striking "and" at the end, and

(39) in section 1328(a)—

(A) in paragraph (2) by striking "(5) or (8)" and inserting "(5), (8), or (9)", and

(B) by striking the last paragraph (3).

TITLE VI—EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

SEC. 601. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.

AMENDMENT NO. 3431

Mr. FORD. Mr. President, on behalf of Senator HEFLIN I move that the Senate concur in the amendment of the House with a substitute amendment that I now send to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. HEFLIN, proposes an amendment numbered 3431.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. DECONCINI. Mr. President, I am pleased that the Senate and House have resolved their differences on bankruptcy reform legislation. This bill accomplishes a number of significant changes to the Bankruptcy Code that should improve the administration of bankruptcy cases as well as make the Code fairer for all parties.

There are two provisions in this bill that I would especially like to address. The first is reimbursement of the expenses of members of creditors' and equity security holders' committees and the second concerns money orders.

Creditors' and equity security holders' committees were created to play significant roles in chapter 11 bankruptcies. Congress created these committees to protect the interest of small unsecured creditors who are often underrepresented in a bankruptcy action.

Section 113 of S. 1985 clarifies that the members of official creditors' and equity security holders' committees can be reimbursed for their actual and necessary expenses incurred during a chapter 11 proceeding. However, they cannot recover compensation for services rendered as members of these committees. I believe this provision will encourage the active participation of creditors' and equity security holders' committees and will provide for a more efficient and cost effective system.

Section 309 of the bill seeks to clarify that money order proceeds are not the property of the bankruptcy estate. This change ensures the continued widespread availability and low cost of money orders to consumers. Currently, when a business that sells money orders on behalf of a money order issuer files bankruptcy, the money order proceeds may not be released to the money order issuer. The money order issuer, however, must still pay the outstanding money orders.

Most money order issuers have agreements with the selling locations requiring that the proceeds collected from money order purchasers be held in trust and not commingled. However, problems have arisen when courts have failed to recognize this agreement if it was violated by the debtor, even if the issuer was not aware of the violation.

Given the large number of locations selling money orders, detecting violations is difficult. This section provides protection in those circumstances as long as the issuer has taken action to make it clear that compliance is required. Under this section, the proceeds of money orders sold during the 14 days prior to a bankruptcy filing are not considered part of the estate and are available to the money order issuers.

I would like to thank Senator HEFLIN and his staff for their untiring efforts to secure passage of this bill. This is a good bill which makes many needed changes to the Code.

Mr. KOHL. Mr. President, I rise to congratulate my colleague and friend Senator HEFLIN—chairman of the Courts Subcommittee—for his leadership on the Bankruptcy Amendments of 1992. Without his personal attention to moving this legislation we would not have passed a bill. Additionally, I congratulate Senators GRASSLEY and METZENBAUM for their contributions during this long process.

This is compromise legislation worked out between the House and the Senate. And as with most compromises, additions to, and deletions from the original bill were necessary to move forward. In the end I believe we have a good bankruptcy bill—one with provisions which will assist both debtors and creditors, and which will expedite the overall bankruptcy process. Of particular note are three sections that I helped craft and I will speak to them in more detail.

The first of the these provisions aids the Nation's air and rail industries in accessing affordable financing for essential equipment. This amendment would resolve ambiguities in the current law and is supported by all sectors of the air and rail equipment financing industries—including airlines, railroads, manufacturers, and financing parties.

Congress enacted sections 1110 and 1168 of the Bankruptcy Code to ensure affordable capital for the transportation industry by protecting those who finance air, shipping and rail equipment. Recent airline bankruptcies have produced continuing uncertainty as to the availability of sections 1110 and 1168. Lenders and lessors seek assurance that the protection of these sections will apply to their transactions. Because this assurance does not exist, financing costs have increased to compensate for additional risk. These increased costs adversely affect not only the airlines and railroads, but also the manufacturers of air and rail equipment, and ultimately the passengers and businesses that rely on our Nation's airlines and railroads.

The uncertainty surrounding sections 1110 and 1168 has had an immediate and ongoing impact on the air and rail industries at a time when they are in severe need of affordable capital. The modifications to sections 1110 and 1168 reflect the realities of modern financing and, without the clarifications in this amendment, the problem will continue to drive up capital costs for the transportation industry.

It should be emphasized again that all parties involved in these industries agree that clarification of sections 1110 and 1168 is urgently needed. Furthermore, all agree that this amendment would resolve many of the ambiguities in the law, while upsetting the delicate balance of fairness and equity between the air and rail industries, the equipment manufacturers and the parties financing the equipment.

The second provision, section 307, addresses a problem threatening the value of real estate lease agreements. After a recent third circuit court opinion, it is unclear whether the sale of a real estate lease by a chapter 11 tenant is permanent or not. This amendment would clarify that a valid, good faith sale of a lease by a tenant in bankruptcy would not be affected by a later court order, unless a party challenging the sale obtains a court order halting the sale during the appeal. This clarification will go a long way in eliminating lease purchasers' fears that their purchase might be revoked long after a bankruptcy court approval, and after they have invested their time and money in reliance on that approval.

In the 1990 third circuit opinion of *In re Joshua Slocum, Ltd.*, 922 F.2d. 1081, the court considered the finality of orders in section 365 lease assignments. Slocum held that a landlord's appeal of a bankruptcy court's order authorizing a chapter 11 tenant's assignment of a real estate lease to a good faith assignee for value was not subject to mootness and could be reversed on appeal. This ruling came in spite of the parties having consummated the assignment and the good faith assignee having taken possession of the premises almost 2 years prior to the third circuit's opinion. The third circuit refused to interpret mootness principles currently embodied in sections 363(m) and 364(e) to reach a similar result in connection with the appeal of consummated lease assignments under section 365.

In order to prevent what could be significant finality problems if other courts adopt the Slocum ruling, this amendment modifies section 365 to include a provision similar to those contained in sections 363(m) and 364(e).

Mr. President, I would like to take this opportunity to thank Alan Gordon, an attorney in Philadelphia, and a member of the American Bankruptcy Institute's Task Force on Asset Sales. Mr. Gordon first brought this issue to the attention of my staff and, without his help and that of the ABI, this provision would not have been included in the bill.

Finally Mr. President, there is one other section I will mention, section 107, which would allow State pension funds and the Pension Benefit Guaranty Corporation [PBGC] to sit on creditor committees in chapter 11 reorganizations. Under present law the U.S. Trustee appoints committees of unsecured claim holders. Ordinarily, the creditor and equity holders committee are composed of persons or institutions holding the seven largest claims of the kind represented by that committee. So, for example, an equity security holders' committee would be composed of those persons holding the seven largest amounts of equity securities. These committees have a broad range of powers to ensure their interests are protected during a bankruptcy reorganization.

Currently, State pension funds and the PBGC are precluded from participating as voting members of these committees. The unique interests of retirement funds, as long-term investors, are not represented by other creditor and equity holder committee members, who may have different goals or shorter investment horizons. These interests are thus put at an unintended fiscal disadvantage. Section 107 would allow State pension funds and the PBGC to serve on these committees, as long as they meet all the other appropriate criteria. It would not give them any special treatment; rather it would simply lift an unintended burden from their shoulders.

In my home State, the State of Wisconsin Investment Board acts as the investment manager for the $22 billion Wisconsin Retirement System. That $22 billion represents the retirement funds for 360,000 participants—school teachers, policemen, firefighters, and other state employees. These are the people that keep Wisconsin running. Simply put, it seems unfair that when decisions regarding their retirement funds are being made during a chapter 11 bankruptcy reorganization, their interests are not represented. Section 107 will eliminate that unfairness and allow them a place at the table and a voice in the decision.

Mr. President, this is not a panacea for all the problems existing in the Bankruptcy Code. However, it does address many of the concerns that have been raised by both creditors and debtors. It is a good bill, and I hope the House acts on this as soon as it is sent to that body.

Mr. GRASSLEY. Mr. President, I am pleased to support S. 1985. This bill represents the collective wisdom of the Senate and the House concerning needed bankruptcy reforms. As an original cosponsor of the Senate-passed bill, I would have preferred that the Senate bill could have been enacted in its entirety. Nonetheless, compromise is the key to enact just about anything, and I can support this compromise bill as a good effort to improve our Nation's bankruptcy laws. Indeed, several of the provisions of the House bill were an improvement on the Senate language, and the bill before us adopts some of those House provisions.

At this time, I would like to address a number of the issues covered by this legislation. First, I am pleased that chapter 12, which governs family farmer bankruptcies, will be extended for 2 years. Chapter 12 was enacted in 1986 because other provisions of the code did not adequately reflect the unique circumstances of family farmers. In the ensuing period, chapter 12 has worked well, permitting thousands of family farmers to continue to work the land who would have otherwise been devastated. Now facing an October 1993 sunset, chapter 12 will be extended 2 years by S. 1985.

I am also very pleased that the House has agreed to create a bankruptcy review commission. Since the enactment of the present code in 1978, the code has not changed nearly as much as the economy and other laws. Although the code largely has functioned well, no one in 1978 could have foreseen the changed circumstances that now confront our bankruptcy system. This year, more than 1 million new bankruptcy petitions will be filed. Since 1978, the world economy has become more international in scope, and a boom in part financed through debt has led to a multitude of bankruptcies in the 1990's. Additionally, new laws have been enacted whcse relation to bankruptcy has not been carefully evaluated. And despite the 1984 legislation in response to the Northern Pipeline decision, the constitutionality of the current bankruptcy system is now certain. The blue-ribbon commission established by this bill will evaluate the code's deficiencies, substantively and operationally, and make recommendations to the Congress for legislative change. Thus, while S. 1985 will improve the bankruptcy system, its greatest contribution will be as a result of the commission it creates.

The bill will also address the treatment of mortgages in chapter 13. Under the bill, first mortgages in chapter 13 will not be able to be crammed down to the fair market value of the loan, nor will other terms of those mortgages be able to be modified. Junior liens will be entitled to a lesser degree of protection.

Finally, the bill amends section 550 of the code relating to the recovery of preferences to insiders. Section 547 of the Bankruptcy Code authorizes trustees to require preferential payments made to creditors within 90 days prior to a bankruptcy filing. Because of the concern that corporate insiders, such as officers and directors, who are creditors of their own corporation have an unfair advantage over outside creditors, section 547 of the Bankruptcy Code further authorizes trustees to recapture preferential payments made to such insiders in their creditors a full year prior to a bankruptcy filing. Several recent court decisions have allowed trustees to recapture payments made to noninsider creditors a full year prior to the bankruptcy filing, if an insider benefits from the transfer in some way. See *Levit* v. *Ingersoll Rand Financial Corp. (in re V.N. Deprizio Construction Co.)*, 874 F. 2d 1186 (7th Cir. 1989); *Ray* v. *City Bank & Trust Co. (in re C-L Cartage Co.)*, 899 F. 2d 1490 (6th Cir. 1990); *Manufacturers Hanover Leasing Corp.* v. *Lowrey (in re Robinson Brothers Drilling)*, 892 F. 2d 850 (10th Cir. 1989). Although the creditor is not an insider in these cases, the courts have reasoned that because the repayment benefited a corporate insider, namely the officer who signed the guarantee, the noninsider transferee should be liable for returning the transfer to the bankrupt estate as if it were an insider as well. This section overrules the Deprizio line of cases and clarifies congressional intent that non-insider transferees should not be subject to the preference provisions of the Bankruptcy Code beyond the 90-day statutory period. The anticipated result of this clarification would be to encourage commercial lenders and landlords to extend credit to smaller business entities.

I wish to commend Senator HEFLIN for his persistent efforts to see to it that we enact these necessary reforms. I look forward to studying the report of the Bankruptcy Review Commission to determine what further efforts should be made to strengthen the operation of the Bankruptcy Code.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. I now move to reconsider the vote by which the bill passed.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VETERANS BENEFITS ACT OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5008.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendments of the Senate to the bill (H.R. 5008) entitled "An Act to amend title 38, United States Code, to reform the formula for payment of dependency and indemnity compensation to survivors of veterans dying from service-connected causes, to increase the rate of payments for benefits under the Montgomery GI bill, and for other purposes", with the following amendments:

(1) In lieu of the matter proposed to be inserted by the amendment of the Senate numbered 1, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Veterans' Benefits Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—REFORM OF THE DEPENDENCY AND INDEMNITY COMPENSATION PROGRAM

Sec. 101. Short title.
Sec. 102. Reform in payment formula.
Sec. 103. Exception to operation of OBRA provision.
Sec. 104. GAO report relating to the provision of benefits to survivors of veterans and members of the Armed Forces.

TITLE II—LIFE INSURANCE PROGRAMS

Sec. 201. Servicemen's Group Life Insurance.
Sec. 202. Veterans' Group Life Insurance.
Sec. 203. Supplemental Service Disabled Veterans' insurance for totally disabled veterans.
Sec. 204. Increase in amount of veterans' mortgage life insurance.
Sec. 205. Effective date.

TITLE III—EDUCATIONAL ASSISTANCE PROGRAMS

Sec. 301. Increase in amount of Montgomery GI Bill basic educational assistance.
Sec. 302. Montgomery GI Bill entitlement dates.
Sec. 303. Extension of period for completing requirements for secondary school diploma.
Sec. 304. Treatment of certain active-duty service toward eligibility for educational assistance.
Sec. 305. Treatment of certain assignments of individuals for purposes of eligibility under Montgomery GI Bill program.
Sec. 306. Treatment of pursuit of education at service academies and certain educational institutions for purposes of eligibility under Montgomery GI Bill program.
Sec. 307. Educational assistance for certain persons whose initial period of obligated service was less than three years.
Sec. 308. Death benefit.
Sec. 309. Clarification of opportunity to withdraw election not to enroll in Montgomery GI Bill program.
Sec. 310. Use of educational assistance for solo flight training.
Sec. 311. Limitation on amount of advance payment of work-study allowance.
Sec. 312. Revision of requirements relating to approval of accredited courses.
Sec. 313. Disapproval of nonaccredited independent study.
Sec. 314. Treatment of advance payments of certain assistance to veterans who die.
Sec. 315. Bar of assistance for persons whose education is paid for as Federal employee training.
Sec. 316. Revision in measurement of courses.
Sec. 317. Clarification of permitted changes in programs of education.
Sec. 318. Authority of members of Selected Reserve to receive tutorial assistance.
Sec. 319. Requirement of attendance certification in apprenticeship program under the Montgomery GI Bill Selected Reserve program.
Sec. 320. Technical amendments.

TITLE IV—VOCATIONAL REHABILITATION AND PENSION PROGRAMS

Sec. 401. Permanent authority for program of vocational rehabilitation for certain service-disabled veterans.
Sec. 402. Extension of program of vocational training for certain pension recipients.
Sec. 403. Permanent authority for protection of health-care eligibility for certain pension recipients.
Sec. 404. Vocational rehabilitation for certain service-disabled veterans with serious employment handicaps.
Sec. 405. Increase in subsistence allowance for veterans participating in a rehabilitation program.

TITLE V—JOB COUNSELING, TRAINING, AND PLACEMENT SERVICES FOR VETERANS

Sec. 501. Improvement of disabled veterans' outreach program.
Sec. 502. Repeal of delimiting date relating to treatment of veterans of the Vietnam Era for disabled veterans' outreach program purposes.
Sec. 503. Disabled veterans' outreach program priorities.
Sec. 504. Repeal of requirement that to be represented on advisory committee on veterans employment and training a veterans organization must have a Federal charter.
Sec. 505. Expansion and extension of veterans readjustment appointments with the Federal Government.
Sec. 506. Redesignation of sections of chapter 43.

TITLE VI—OTHER VETERANS' PROGRAMS

Sec. 601. Extension of limitation on pension for veterans receiving medicaid-covered nursing home care; applicability to surviving spouses; and facility expenses.
Sec. 602. Extension of authority to carry out income verification.

Sec. 603. Access to information necessary for the administration of certain veterans benefits laws.
Sec. 604. Extension of expiring cost-recovery authority.
Sec. 605. Exclusion for low-income veterans from medication copayment requirement.
Sec. 606. Extension of copayment programs.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—REFORM OF THE DEPENDENCY AND INDEMNITY COMPENSATION PROGRAM

SEC. 101. SHORT TITLE.

This title may be cited as the "Dependency and Indemnity Compensation Reform Act of 1992".

SEC. 102. REFORM IN PAYMENT FORMULA.

(a) SURVIVING SPOUSE BASIC RATE.—Subsection (a) of section 1311 is amended by striking out the matter preceding the table and inserting in lieu thereof the following:

"(a)(1) Dependency and indemnity compensation shall be paid to a surviving spouse at the monthly rate of $750.

"(2) The rate under paragraph (1) shall be increased by $165 in the case of the death of a veteran who at the time of death was in receipt of or was entitled to receive (or but for the receipt of retired pay or retirement pay was entitled to receive) compensation for a service-connected disability that was rated totally disabling for a continuous period of at least eight years immediately preceding death. In determining the period of a veteran's disability for purposes of the preceding sentence, only periods in which the veteran was married to the surviving spouse shall be considered.

"(3) In the case of dependency and indemnity compensation paid to a surviving spouse that is predicated on the death of a veteran before January 1, 1993, the monthly rate of such compensation shall be the amount based on the pay grade of such veteran, as set forth in the following table, if the amount is greater than the total amount determined with respect to that veteran under paragraphs (1) and (2):".

(b) ADDITIONAL RATE FOR SURVIVING SPOUSE WITH MINOR CHILDREN.—Subsection (b) of such section is amended by striking out "$71 for each such child" and inserting in lieu thereof "$100 for each such child during fiscal year 1993, $150 for each such child during fiscal year 1994, and $200 for each such child thereafter".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1993.

(d) PAYMENT FOR IMPLEMENTATION OF REVISIONS.—The costs of implementing, during fiscal years 1993 and 1994, any revisions in the payment of dependency and indemnity compensation to surviving spouses under section 1311 of title 38, United States Code, that result from the amendments made by subsections (a) and (b) shall be paid from amounts available to the Department of Veterans Affairs for the payment of compensation and pension.

SEC. 103. EXCEPTION TO OPERATION OF OBRA PROVISION.

(a) EXCEPTION.—The amendments made by section 8004 of the Omnibus Budget Reconciliation Act of 1990 (105 Stat. 424) shall not apply to any case in which a legal proceeding to terminate an existing marital relationship was commenced before November 1, 1990, by an individual described in subsection (b) if that proceeding directly resulted in the termination of such marriage.

(b) COVERED INDIVIDUALS.—An individual referred to in subsection (a) is an individual who, but for the marital relationship referred to in subsection (a), would be considered to be the surviving spouse of a veteran.

SEC. 104. GAO REPORT RELATING TO THE PROVISION OF BENEFITS TO SURVIVORS OF VETERANS AND MEMBERS OF THE ARMED FORCES.

(a) IN GENERAL.—The Comptroller General of the United States shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report with respect to the most appropriate combination of financial, health-care, educational, and other survivor benefits to meet the needs of survivors of veterans.

(b) CONTENTS OF REPORT.—The report shall include the following:

(1) A review and compilation of data on current and proposed survivor benefits programs that will permit an assessment of the adequacy of such benefits programs, including information on—

(A) in the case of each current and proposed alternative survivor benefits program—

(i) each benefit provided;

(ii) the survivors entitled to the benefit;

(iii) the extent to which survivors are entitled to similar benefits under the program; and

(iv) the costs of providing such benefits under the program;

(B) the extent to which current and anticipated benefits under current survivor benefits programs meet the current and anticipated financial, health-care, educational, and other needs of survivors; and

(C) the differences, if any, in the survivor benefits provided under current and proposed survivor benefits programs to survivors of various categories of veterans and members of the Armed Forces (including survivors of veterans having service-connected disabilities, veterans without such disabilities, members of the Armed Forces who die during service in the Armed Forces, members of the Armed Forces retired under any provision of law other than chapter 61 of title 10, United States Code, and members of the Armed Forces retired under chapter 61 of title 10, United States Code (relating to retirement or separation for physical disability)).

(2) A review and compilation of existing studies on the adequacy of survivor benefits provided under current and proposed survivor benefits programs to meet the financial, health-care, educational, and other needs of survivors.

(3) A comprehensive assessment and evaluation of the adequacy of current and proposed survivor benefits programs, including data and methods for an assessment and evaluation of—

(A) the feasibility and desirability of limiting the period of entitlement of survivors to survivor benefits;

(B) the feasibility and desirability of modifying the provision of monetary benefits to survivors by—

(i) revising the term of payment of any such benefits;

(ii) replacing the periodic payment of such benefits with a lump sum payment;

(iii) providing such benefits through insurance or other premium-based payment mechanisms; or

(iv) carrying out any other revision or modification proposed before the date of the enactment of this Act by the Secretary of Veterans Affairs, the Secretary of Defense, the Secretary of Health and Human Services, or organizations recognized by the Secretary of Veterans Affairs under section 5902(a)(1) of title 38, United States Code;

(C) the feasibility and desirability of modifying the provision of health-care benefits to survivors;

(D) the feasibility and desirability of modifying the provision of benefits to children survivors; and

(E) the feasibility and desirability of consolidating, expanding, or otherwise modifying any program relating to the provision of survivor benefits.

(4) The recommendations of the Comptroller General (including a proposal for legislation) on the most appropriate combination of survivor benefits to meet the current and anticipated financial, health-care, educational, and other needs of survivors.

(c) SUBMISSION OF REPORT.—The Comptroller General shall submit the report not later than April 1, 1994.

(d) DEFINITIONS.—In this section:

(1) The term "survivor", in the case of a veteran or member of the Armed Forces who dies, means the surviving spouse or surviving dependent child of the veteran or member.

(2) The term "survivor benefit" means any monetary, health-care, educational, or other benefit paid, payable, or otherwise provided to survivors of veterans and survivors of members of the Armed Forces under the following:

(A) Laws administered by the Secretary of Veterans Affairs.

(B) Laws administered by the Secretary of Defense.

(C) The Social Security Act (42 U.S.C. 301 et seq.).

(3) The term "veteran" has the meaning given such term in section 101(2) of title 38, United States Code.

TITLE II—LIFE INSURANCE PROGRAMS

SEC. 201. SERVICEMEN'S GROUP LIFE INSURANCE.

Section 1967 is amended by adding at the end thereof the following:

"(e) In addition to the amounts of insurance otherwise provided under this section, an eligible member may, upon application, obtain increased coverage beyond that provided under this section in the amount of $100,000, or any lesser amount evenly divisible by $10,000.".

SEC. 202. VETERANS' GROUP LIFE INSURANCE.

Section 1977 is amended—

(1) in subsection (a)—

(A) by inserting "and (e)" after "1967(a) and after "1967(b)";

(B) by striking out "$100,000" each place it appears and inserting in lieu thereof "$200,000";

(C) by striking out "sixty days" and inserting in lieu thereof "60 days";

(D) by striking out "sixty-day period" and inserting in lieu thereof "60-day period"; and

(E) by striking out "of this section" after "subsection (e)";

(2) in subsection (b)(2), by striking out "nonrenewable" and inserting in lieu thereof "renewable"; and

(3) in subsection (h)(2), by striking out "Notwithstanding subsection (b)(2) of this section" and inserting in lieu thereof "In accordance with subsection (b)".

SEC. 203. SUPPLEMENTAL SERVICE DISABLED VETERANS' INSURANCE FOR TOTALLY DISABLED VETERANS.

(a) IN GENERAL.—Subchapter I of chapter 19 is amended by inserting after section 1922 the following new section:

"§ 1922A. Supplemental service disabled veterans' insurance for totally disabled veterans

"(a) Any person insured under section 1922(a) of this title who qualifies for a waiver of premiums under section 1912 of this title is eligible, as provided in this section, for supplemental insurance in an amount not to exceed $20,000.

"(b) To qualify for supplemental insurance under this section a person must file with the Secretary an application for such insurance not later than the end of (1) the one-year period beginning on the first day of the first month following the month in which this section is enacted, or (2) the one-year period beginning on the date that the Department notifies the person that the person is entitled to a waiver of premiums under section 1912 of this title, whichever is later.

"(c) Supplemental insurance granted under this section shall be granted upon the same terms and conditions as insurance granted under section 1922(a) of this title, except that such insurance may not be granted to a person under this section unless the application is made for such insurance before the person attains 65 years of age.

"(d) No waiver of premiums shall be made in the case of any person for supplemental insurance granted under this section.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 19 is amended by inserting after the item relating to section 1922 the following new item:

"1922A. Supplemental service disabled veterans' insurance for totally disabled veterans.".

SEC. 204. INCREASE IN AMOUNT OF VETERANS' MORTGAGE LIFE INSURANCE.

(a) INCREASE.—Section 2106(b) is amended in the first sentence—

(1) by striking out "initial"; and

(2) by striking out "$40,000" and inserting in lieu thereof "$90,000".

(b) TECHNICAL AMENDMENT.—The item relating to section 2106 in the table of sections at the beginning of chapter 21 is amended to read as follows:

"2106. Veterans' mortgage life insurance.".

SEC. 205. EFFECTIVE DATE.

The amendments made by this title shall take effect on December 1, 1992.

TITLE III—EDUCATIONAL ASSISTANCE PROGRAMS

SEC. 301. INCREASE IN AMOUNT OF MONTGOMERY GI BILL BASIC EDUCATIONAL ASSISTANCE.

(a) AMOUNT OF BENEFIT PAYMENTS UNDER CHAPTER 30.—Section 3015 is amended—

(1) in subsection (a)(1), by striking out "$300" and inserting in lieu thereof "$400"; and

(2) in subsection (b)(1), by striking out "$250" and inserting in lieu thereof "$325".

(b) AMOUNT OF BENEFIT PAYMENTS UNDER SELECTED RESERVE PROGRAM.—Section 2131(b)(1) of title 10, United States Code, is amended—

(1) in subparagraph (A), by striking out "$140" and inserting in lieu thereof "$190";

(2) in subparagraph (B), by striking out "$105" and inserting in lieu thereof "$143"; and

(3) in subparagraph (C), by striking out "$70" and inserting in lieu thereof "$95".

(c) CONFORMING AMENDMENTS TO CHAPTER 30.—Section 3015(f) is amended—

(1) by striking out paragraph (1);

(2) by redesignating paragraph (2) as paragraph (1) and in that paragraph striking out "may continue to pay" and all that follows through "such rates" and inserting in lieu thereof "shall provide a percentage increase in the monthly rates payable under subsections (a)(1) and (b)(1) of this section"; and

(3) by redesignating paragraph (3) as paragraph (2) and in that paragraph striking out "may" both places it appears and inserting in lieu thereof "shall".

(d) CONFORMING AMENDMENTS TO SELECTED RESERVE PROGRAM.—Section 2131(b)(2) of title 10, United States Code, is amended—

(1) by striking out subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (A) and in that subparagraph striking out "may continue to pay" and all that follows through "such rates" and inserting in lieu thereof "shall provide a percentage increase in the monthly rates payable under subparagraphs (A), (B), and (C) of paragraph (1)"; and

(3) by redesignating subparagraph (C) as subparagraph (B) and in that subparagraph striking out "may" both places it appears and inserting in lieu thereof "shall".

(e) EFFECTIVE DATE AND RULE OF CONSTRUCTION.—(1) The amendments made by this section shall take effect on April 1, 1993.

(2) The amendments made by this section shall not be construed to change the account from which payment is made for that portion of a payment under chapter 30 of title 38, United States Code, or chapter 106 of title 10, United States Code, which is a Montgomery GI bill rate increase and a title III benefit is paid. For the purposes of this subsection, the terms "Montgomery GI bill rate increase" and "title III benefit" have the meanings provided in section 393 of the Persian Gulf Conflict Supplemental Authorization and Personnel Benefits Act of 1991 (105 Stat. 99).

SEC. 302. MONTGOMERY GI BILL ENTITLEMENT DATES.

(a) CHANGE IN DATES.—Chapter 30 is amended—

(1) in section 3011(a)(1)(B), by striking out "on October 19, 1984," and all that follows through "and—" and inserting in lieu thereof "at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, continued on active duty without a break in service and—";

(2) in section 3012(a)(1)(B), by striking out "on October 19, 1984," and all that follows through "and—" and inserting in lieu thereof "at any time during the period beginning on October 19, 1984, and ending on July 1, 1985, continued on active duty without a break in service and—"; and

(3) in section 3031(e), by striking out "October 18, 1984" and inserting in lieu thereof "June 30, 1985".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as of October 28, 1986.

SEC. 303. EXTENSION OF PERIOD FOR COMPLETING REQUIREMENTS FOR SECONDARY SCHOOL DIPLOMA.

(a) IN GENERAL.—(1) Section 3011 is amended—

(A) in subsection (a)(2), by inserting ", except as provided in subsection (e) of this section," after "who"; and

(B) by adding at the end thereof the following new subsection:

"(e) For the purposes of subsection (a)(2) of this section, an individual who was on active duty on August 2, 1990, and who completes the requirements of a secondary school diploma (or equivalency certificate) before the end of the 24-month period beginning on the date of the enactment of this subsection shall be considered to have completed such requirements within the individual's initial obligated period of active duty.".

(2) Section 3012 is amended—

(A) in subsection (a)(2), by inserting "except as provided in subsection (f) of this section," after "who,"; and

(B) by adding at the end thereof the following new subsection:

"(f) For the purposes of subsection (a)(2) of this section, an individual who was on active duty on August 2, 1990, and who completes the requirements of a secondary school diploma (or equivalency certificate) before the end of the 24-month period beginning on the date of the enactment of this subsection shall be considered to have completed such requirements within the individual's initial obligated period of active duty.".

(b) NOTIFICATION REQUIREMENT.—Not later than 60 days after the date of enactment of this Act, the Secretary of each of the military departments shall notify each individual who was on active duty in the Armed Forces on August 2, 1990, and who has not met the requirements of a secondary school diploma (or equivalency certificate), of the extension of the period for the completion of such requirements afforded by the amendments made by this section.

SEC. 304. TREATMENT OF CERTAIN ACTIVE-DUTY SERVICE TOWARD ELIGIBILITY FOR EDUCATIONAL ASSISTANCE.

(a) TREATMENT OF SERVICE.—Section 3011 (as amended by section 303) is further amended by adding at the end the following new subsection:

"(f)(1) For the purposes of this chapter, a member referred to in paragraph (2) of this subsection who serves the periods of active duty referred to in that paragraph shall be deemed to have served a continuous period of active duty whose length is the aggregate length of the periods of active duty referred to in that paragraph.

"(2) This subsection applies to a member who—

"(A) after a period of continuous active duty of not more than 12 months, is discharged or released from active duty under subclause (I) or (III) of subsection (a)(1)(A)(ii) of this section; and

"(B) after such discharge or release, reenlists or re-enters on a period of active duty.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if enacted on June 30, 1985, and apply to the payment of educational assistance for education or training pursued on or after October 1, 1993.

SEC. 305. TREATMENT OF CERTAIN ASSIGNMENTS OF INDIVIDUALS FOR PURPOSES OF ELIGIBILITY UNDER MONTGOMERY GI BILL PROGRAM.

(a) TREATMENT.—Section 3011 (as amended by sections 303 and 304) is further amended by adding at the end the following new subsection:

"(g) Notwithstanding section 3002(6)(A) of this title, a period during which an individual is assigned full time by the Armed Forces to a civilian institution for a course of education as described in such section 3002(6)(A) shall not be considered a break in service or a break in a continuous period of active duty of the individual for the purposes of this chapter.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if enacted on October 19, 1984.

SEC. 306. TREATMENT OF PURSUIT OF EDUCATION AT SERVICE ACADEMIES AND CERTAIN EDUCATIONAL INSTITUTIONS FOR PURPOSES OF ELIGIBILITY UNDER MONTGOMERY GI BILL PROGRAM.

(a) ACTIVE DUTY.—Section 3011 (as amended by sections 303, 304, and 305) is further amended by adding at the end the following new subsection:

"(h)(1) Notwithstanding section 3002(6)(B) of this title, a member referred to in paragraph (2) of this subsection who serves the periods of active duty referred to in subparagraphs (A) and (C) of that paragraph shall be deemed to have served a continuous period of active duty whose length is the aggregate length of the periods of active duty referred to in such subparagraphs.

"(2) This subsection applies to a member who—

"(A) during an initial period of active duty, commences pursuit of a course of education—

"(i) at a service academy; or

"(ii) at a post-secondary school for the purpose of preparation for enrollment at a service academy;

"(B) fails to complete the course of education; and

"(C) re-enters on a period of active duty.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if enacted on June 30, 1985, and apply to the payment of educational assistance for education or training pursued on or after October 1, 1993.

SEC. 307. EDUCATIONAL ASSISTANCE FOR CERTAIN PERSONS WHOSE INITIAL PERIOD OF OBLIGATED SERVICE WAS LESS THAN THREE YEARS.

(a) EDUCATIONAL ASSISTANCE.—Section 3015 (as amended by section 301) is amended—

(1) by redesignating subsections (c), (d), (e), and (f) as subsections (d), (e), (f), and (g), respectively;

(2) in subsection (d) (as so redesignated), by striking out "(a) and (b)" and inserting in lieu thereof "(a), (b), and (c)"; and

(3) by inserting after subsection (b) the following new subsection (c):

"(c)(1) The amount of basic educational allowance payable under this chapter to an individual referred to in paragraph (2) of this subsection is the amount determined under subsection (a) of this section.

"(2) Paragraph (1) of this subsection applies to an individual entitled to an educational assistance allowance under section 3011 of this title—

"(A) whose initial obligated period of active duty is less than three years;

"(B) who, beginning on the date of the commencement of the person's initial obligated period of such duty, serves a continuous period of active duty of not less than three years; and

"(C) who, after the completion of that continuous period of active duty, meets one of the conditions set forth in subsection (a)(3) of such section 3011.".

(b) CONFORMING AMENDMENTS.—Such section 3015 (as so amended) is further amended—

(1) in subsection (a), by striking out "and (f)" and inserting in lieu thereof "(f), and (g)"; and

(2) in subsection (b), by striking out "and (f)" and inserting in lieu thereof "(f), and (g)".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect as if enacted on June 30, 1985, and apply to the payment of educational assistance for education or training pursued on or after September 1, 1993.

SEC. 308. DEATH BENEFIT.

Section 3017(a)(1)(B) is amended by inserting before the comma "or within one year after discharge or release from active duty".

SEC. 309. CLARIFICATION OF OPPORTUNITY TO WITHDRAW ELECTION NOT TO ENROLL IN MONTGOMERY GI BILL PROGRAM.

(a) CLARIFICATION.—Section 3018(b)(3)(B) is amended—

(1) by striking out "or (iii)" and inserting in lieu thereof "(iii)"; and

(2) by adding before the semicolon at the end the following: ", or (iv) a physical or mental condition that was not characterized as a disability and did not result from the individual's own willful misconduct but did interfere with the individual's performance of duty, as determined by the Secretary of each military department in accordance with regulations prescribed by the Secretary of Defense (or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service of the Navy)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if enacted on December 1, 1988.

SEC. 310. USE OF EDUCATIONAL ASSISTANCE FOR SOLO FLIGHT TRAINING.

(a) ACTIVE-DUTY PROGRAM.—Section 3032(f) is amended—

(1) in paragraph (1), by striking out "(other than tuition and fees charged for or attributable to solo flying hours)"; and

(2) by adding at the end the following new paragraph (4):

"(4) The number of solo flying hours for which an individual may be paid an educational assistance allowance under this subsection may not exceed the minimum number of solo flying hours required by the Federal Aviation Administration for the flight rating or certification which is the goal of the individual's flight training.".

(b) SELECTED RESERVE PROGRAM.—Section 2131(g) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking out "(other than tuition and fees charged for or attributable to solo flying hours)"; and

(2) by adding at the end the following new paragraph (4):

"(4) The number of solo flying hours for which an individual may be paid an educational assistance allowance under this subsection may not exceed the minimum number of solo flying hours required by the Federal Aviation Administration for the flight rating or certification which is the goal of the individual's flight training.".

(c) POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE PROGRAM.—Section 3231(f) is amended—

(1) in paragraph (1), by striking out "(other than tuition and fees charged for or attributable to solo flying hours)"; and

(2) by adding at the end the following new paragraph (4):

"(4) The number of solo flying hours for which an individual may be paid an educational assistance allowance under this subsection may not exceed the minimum number of solo flying hours required by the Federal Aviation Administration for the flight rating or certification which is the goal of the individual's flight training.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to flight training received under chapters 30 and 32 of title 38, United States Code, and chapter 106 of title 10, United States Code, after September 30, 1992.

SEC. 311. LIMITATION ON AMOUNT OF ADVANCE PAYMENT OF WORK-STUDY ALLOWANCE.

Section 3485(a)(1) is amended in the third sentence—

(1) by striking out "40 per centum" and inserting in lieu thereof "40 percent"; and

(2) by inserting "(but not more than an amount equal to 50 times the applicable hourly minimum wage)" before the period at the end.

SEC. 312. REVISION OF REQUIREMENTS RELATING TO APPROVAL OF ACCREDITED COURSES.

(a) REVISION OF REQUIREMENTS.—Subsection (a) of section 3675 is amended—

(1) by striking out "(a)" and inserting in lieu thereof "(a)(1)";

(2) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively; and

(3) by striking out the matter below subparagraph (C) (as so redesignated) and inserting in lieu thereof the following new paragraphs:

"(2)(A) For the purposes of this chapter, the Secretary of Education shall publish a list of nationally recognized accrediting agencies and associations which that Secretary determines to be reliable authority as to the quality of training offered by an educational institution.

"(B) A State approving agency may utilize the accreditation of any accrediting association or agency listed pursuant to subparagraph (A) of this paragraph for approval of courses specifically accredited and approved by such accrediting association or agency.

"(3)(A) An educational institution shall submit an application for approval of courses to the appropriate State approving agency. In making application for approval, the institution (other than an elementary school or secondary school) shall transmit to the State approving agency copies of its catalog or bulletin which must be certified as true and correct in content and policy by an authorized representative of the institution.

"(B) Each catalog or bulletin transmitted by an institution under subparagraph (A) of this paragraph shall—

"(i) state with specificity the requirements of the institution with respect to graduation;

"(ii) include the information required under paragraphs (6) and (7) of section 3676(b) of this title; and

"(iii) include any attendance standards of the institution, if the institution has and enforces such standards.".

(b) APPROVAL OF NURSES AIDE COURSES.—Subsection (a)(1) of such section (as amended by subsection (a)) is further amended—

(1) in subparagraph (B), by striking out "sections 11-28 of title 20; or" and inserting in lieu thereof "the Act of February 23, 1917 (20 U.S.C. 11 et seq);";

(2) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof "; or"; and

(3) by adding at the end the following new subparagraph (D):

"(D) such courses are approved by the State as meeting the requirement of regulations prescribed by the Secretary of Health and Human Services under sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Social Security Act (42 U.S.C. 1395i-3(f)(2)(A)(i) and 1396r(f)(2)(A)(i)).".

SEC. 313. DISAPPROVAL OF NONACCREDITED INDEPENDENT STUDY.

(a) DISAPPROVAL.—(1) Section 3676 is amended by adding at the end the following new subsection:

"(e) Notwithstanding any other provision of this title, a course of education shall not be approved under this section if it is to be pursued in whole or in part by independent study.".

(2) Subchapter I of chapter 36 is amended by inserting after section 3680 the following new section:

"§3680A. Disapproval of enrollment in certain courses

"(a) The Secretary shall not approve the enrollment of an eligible veteran in—

"(1) any bartending course or personality development course;

"(2) any sales or sales management course which does not provide specialized training within a specific vocational field;

"(3) any type of course which the Secretary finds to be avocational or recreational in character (or the advertising for which the Secretary finds contains significant avocational or recreational themes) unless the veteran submits justification showing that the course will be of bona fide use in the pursuit of the veteran's present or contemplated business or occupation; or

"(4) any independent study program except an accredited independent study program leading to a standard college degree.

"(b) Except to the extent otherwise specifically provided in this title or chapter 106 of title 10, the Secretary shall not approve the enrollment of an eligible veteran in any course of flight training other than one given by an educational institution of higher learning for credit toward a standard college degree the eligible veteran is seeking.

"(c) The Secretary shall not approve the enrollment of an eligible veteran in any course to be pursued by radio or by open circuit television, except that the Secretary may approve the enrollment of an eligible veteran in a course, to be pursued in residence, leading to a standard college degree which includes, as an integral part thereof, subjects offered through open circuit television.

"(d)(1) Except as provided in paragraph (2) of this subsection, the Secretary shall not approve the enrollment of any eligible veteran, not already enrolled, in any course for any period during which the Secretary finds that more than 85 percent of the students enrolled in the course are having all or part of their tuition, fees, or other charges paid to or for them by the educational institution or by the Department of Veterans Affairs under this title or under chapter 106 of title 10. The Secretary may waive the requirements of this subsection, in whole or in part, if the Secretary determines, pursuant to regulations which the Secretary shall prescribe, it to be in the interest of the eligible veteran and the Federal Government. The provisions of this subsection shall not apply to any course offered by an educational institution if the total number of veterans and persons receiving assistance under this chapter or chapter 30, 31, 32, or 35 of this title or under chapter 106 of title 10 who are enrolled in such institution equals 35 percent or less, or such other percent as the Secretary prescribes in regulations, of the total student enrollment at such institution (computed separately for the main campus and any branch or extension of such institution), except that the Secretary may apply the provisions of this subsection with respect to any course in which the Secretary has reason to believe that the enrollment of such veterans and persons may be in excess of 85 percent of the total student enrollment in such course.

"(2) Paragraph (1) of this subsection does not apply with respect to the enrollment of a veteran—

"(A) in a course offered pursuant to section 3019, 3034(a)(3), 3234, or 3241(a)(2) of this title;

"(B) in a farm cooperative training course; or

"(C) in a course described in section 3689(b)(6) of this title.".

(3)(A) Chapter 34 is amended by repealing section 3473.

(B) The table of sections at the beginning of chapter 34 is amended by striking out the item relating to section 3473.

(4) Section 3034 is amended—

(A) in subsection (a)(1), by striking out "3473,"; and

(B) in subsection (d)(1), by striking out "3473(b)" and inserting in lieu thereof "3680A(b)".

(5) Section 3241 is amended—

(A) by striking out "3473," both places it appears; and

(B) in subsection (b)(1), by striking out "3473(b)" and inserting in lieu thereof "3680A(b)".

(6) Section 2136(c)(1) of title 10, United States Code, is amended by striking out "1673(b)" and inserting in lieu thereof "3680A(b)".

(7) Section 3523(a)(4) is amended by striking out "one" and all that follows and inserting in lieu thereof "an accredited independent study program leading to a standard college degree.".

(8) The table of sections at the beginning of chapter 36 is amended by inserting after the item relating to section 3680 the following new item:

"3680A. Disapproval of enrollment in certain courses.".

(b) Savings Provision.—The amendments made by paragraphs (2) through (6) of subsection (a) of this section shall not apply to any person receiving educational assistance for pursuit of an independent study program in which the person was enrolled on the date of enactment of this section for as long as such person is continuously thereafter so enrolled and meets the requirements of eligibility for such assistance for the pursuit of such program under title 38, United States Code, or title 10, United States Code, in effect on that date.

SEC. 314. TREATMENT OF ADVANCE PAYMENTS OF CERTAIN ASSISTANCE TO VETERANS WHO DIE.

(a) Treatment.—Section 3680(e) is amended—

(1) by striking out "(e) If" and inserting in lieu thereof "(e)(1) Subject to paragraph (2), if"; and

(2) by adding at the end the following new paragraph:

"(2) Paragraph (1) shall not apply to the recovery of an overpayment of an educational allowance or subsistence allowance advance payment to an eligible veteran or eligible person who fails to enroll in or pursue a course of education for which the payment is made if such failure is due to the death of the veteran or person.".

(b) Technical Amendment.—Section 3680(e)(1) (as amended by subsection (a)) is further amended by striking out "eligible person," and inserting in lieu thereof "eligible person".

SEC. 315. BAR OF ASSISTANCE FOR PERSONS WHOSE EDUCATION IS PAID FOR AS FEDERAL EMPLOYEE TRAINING.

Section 3681(a) is amended by striking out "and whose full salary is being paid to such person while so training".

SEC. 316. REVISION IN MEASUREMENT OF COURSES.

(a) In General.—Section 3688 is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking out "thirty hours" and all that follows through "full time" and inserting in lieu thereof "22 hours per week of attendance (excluding supervised study) is required, with no more than 2½ hours of rest periods per week allowed";

(B) in paragraph (2), by striking out "twenty-five hours" and all that follows through "full time" and inserting in lieu thereof "18 hours per week net of instruction (excluding supervised study but which may include customary intervals not to exceed 10 minutes between hours of instruction) is required";

(C) in paragraph (4)—

(i) by striking out "in residence"; and

(ii) by inserting ", other than a course pursued as part of a program of education beyond the baccalaureate level," after "semester-hour basis";

(D) in paragraph (6), by striking out "3491(a)(2)" and inserting in lieu thereof "3034(a)(3), 3241(a)(2) or 3533(a)"; and

(E) by striking out paragraph (7) and all that follows to the end of the subsection and inserting in lieu thereof the following:

"(7) an institutional course not leading to a standard college degree offered by an educational institution on a standard quarter- or semester-hour basis shall be measured as full time on the same basis as provided in paragraph (4) of this subsection, but if the educational institution offering the course is not an institution of higher learning, then in no event shall such course be considered full time when it requires less than the minimum weekly hours of attendance required for full time by paragraph (1) or (2) of this subsection, as appropriate.";

(2) in subsection (b), by striking out "34" and inserting in lieu thereof "30, 32,"; and

(3) by striking out subsections (c), (d), and (e).

(b) Independent Study.—Section 3532(c) is amended by striking out paragraphs (3) and (4).

(c) Effective Date.—The amendments made by this section apply to enrollments in courses beginning on or after July 1, 1993.

SEC. 317. CLARIFICATION OF PERMITTED CHANGES IN PROGRAMS OF EDUCATION.

Subsection (d) of section 3691 is amended to read as follows:

"(d) For the purposes of this section, the term 'change of program of education' shall not be deemed to include a change by a veteran or eligible person from the pursuit of one program to the pursuit of another program if—

"(1) the veteran or eligible person has successfully completed the former program;

"(2) the program leads to a vocational, educational, or professional objective in the same general field as the former program;

"(3) the former program is a prerequisite to, or generally required for, pursuit of the subsequent program; or

"(4) in the case of a change from the pursuit of a subsequent program to the pursuit of a former program, the veteran or eligible person resumes pursuit of the former program without loss of credit or standing in the former program.".

SEC. 318. AUTHORITY OF MEMBERS OF SELECTED RESERVE TO RECEIVE TUTORIAL ASSISTANCE.

Section 2131 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(h)(1)(A) Subject to subparagraph (B), the Secretary of Veterans Affairs shall approve individualized tutorial assistance for any person entitled to educational assistance under this chapter who—

"(i) is enrolled in and pursuing a postsecondary course of education on a half-time or more basis at an educational institution; and

"(ii) has a deficiency in a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, the program of education.

"(B) The Secretary of Veterans Affairs shall not approve individualized tutorial assistance for a person pursuing a program of education under this paragraph unless such assistance is necessary for the person to successfully complete the program of education.

"(2)(A) Subject to subparagraph (B), the Secretary concerned, through the Secretary of Veterans Affairs, shall pay to a person receiving individualized tutorial assistance pursuant to paragraph (1) a tutorial assistance allowance. The amount of the allowance payable under this paragraph may not exceed $100 for any month, nor aggregate more than $1,200. The amount of the allowance paid under this paragraph shall be in addition to the amount of educational assistance allowance payable to a person under this chapter.

"(B) A tutorial assistance allowance may not be paid to a person under this paragraph until the educational institution at which the person is enrolled certifies that—

"(i) the individualized tutorial assistance is essential to correct a deficiency of the person in a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, an approved program of education;

"(ii) the tutor chosen to perform such assistance is qualified to provide such assistance and is not the person's parent, spouse, child (whether or not married or over eighteen years of age), brother, or sister; and

"(iii) the charges for such assistance do not exceed the customary charges for such tutorial assistance.

"(3)(A) A person's period of entitlement to educational assistance under this chapter shall be charged only with respect to the amount of tutorial assistance paid to the person under this subsection in excess of $600.

"(B) A person's period of entitlement to educational assistance under this chapter shall be charged at the rate of one month for each amount of assistance paid to the individual under this section in excess of $600 that is equal to the amount of the monthly educational assistance allowance which the person is otherwise eligible to receive for full-time pursuit of an institutional course under this chapter.".

SEC. 319. REQUIREMENT OF ATTENDANCE CERTIFICATION IN APPRENTICESHIP PROGRAM UNDER THE MONTGOMERY GI BILL SELECTED RESERVE PROGRAM.

Section 2136(b) of title 10, United States Code, is amended by striking out "1780(c),".

SEC. 320. TECHNICAL AMENDMENTS.

(a) TITLE 10.—Chapter 106 of title 10, United States Code, is amended—

(1) in section 2131(c)—

(A) by striking out "section 1795 of title 38" in paragraph (2) and inserting in lieu thereof "section 3695 of title 38";

(B) by striking out "of this subparagraph, his or her" in paragraph (3)(B)(ii) and inserting in lieu thereof ", the individual's"; and

(C) by striking out "of this paragraph." in paragraph (3)(C) and inserting in lieu thereof a period;

(2) in section 2133(b)—

(A) by striking out "section 1431(f) of title 38" in paragraph (2) and inserting in lieu thereof "section 3031(f) of title 38"; and

(B) by striking out "section 1431(d) of title 38" in paragraph (3) and inserting in lieu thereof "section 3031(d) of title 38"; and

(3) in section 2136 (as amended by section 319 of this Act), by striking out "sections 1670" in subsection (b) and all that follows through "1792)" and inserting in lieu thereof "sections 3470, 3471, 3474, 3476, 3482(g), 3483, and 3485 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 3686(a), 3687, and 3692)".

TITLE IV—VOCATIONAL REHABILITATION AND PENSION PROGRAMS

SEC. 401. PERMANENT AUTHORITY FOR PROGRAM OF VOCATIONAL REHABILITATION FOR CERTAIN SERVICE-DISABLED VETERANS.

(a) PROGRAM MADE PERMANENT.—(1) Subsection (a)(1) of section 1163 is amended by striking out "during the program period" and inserting in lieu thereof "after January 31, 1985,".

(2) Subsection (a)(2) of such section is amended to read as follows:

"(2) For purposes of this section, the term 'qualified veteran' means a veteran who has a service-connected disability, or service-connected disabilities, not rated as total but who has been awarded a rating of total disability by reason of inability to secure or follow a substantially gainful occupation as a result of such disability or disabilities.".

(b) COUNSELING SERVICES.—Subsection (b) of such section is amended by striking out "During the program period, the Secretary" and inserting in lieu thereof "The Secretary".

(c) NOTICE.—Subsection (c)(1) of such section is amended by striking out "during the program period" and all that follows through "(a)(2)(A)" and inserting in lieu thereof "after January 31, 1985, of a rating of total disability described in subsection (a)(2)".

(d) CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

"§ 1163. Trial work periods and vocational rehabilitation for certain veterans with total disability ratings".

(2) The item relating to such section in the table of sections at the beginning of chapter 11 is amended to read as follows:

"1163. Trial work periods and vocational rehabilitation for certain veterans with total disability ratings.".

SEC. 402. EXTENSION OF PROGRAM OF VOCATIONAL TRAINING FOR CERTAIN PENSION RECIPIENTS.

(a) EXTENSION OF PROGRAM.—Subsection (a)(1) of section 1524 is amended to read as follows:

"(a)(1) In the case of a veteran under age 45 who is awarded a pension during the program period, the Secretary shall, based on information on file with the Department of Veterans Affairs, make a preliminary finding whether such veteran, with the assistance of a vocational training program under this section, has a good potential for achieving employment. If such potential is found to exist, the Secretary shall solicit from the veteran an application for vocational training under this section. If the veteran thereafter applies for such training, the Secretary shall provide the veteran with an evaluation, which may include a personal interview, to determine whether the achievement of a vocational goal is reasonably feasible.".

(b) PROGRAM EXTENSION.—Section 1524(a) is further amended—

(1) by striking out paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3) and in that paragraph striking out "December 31, 1992" and inserting in lieu thereof "December 31, 1995".

(c) CONFORMING AMENDMENTS.—(1) Section 1524(b)(4) is amended by striking out "January 31, 1992" and inserting in lieu thereof "December 31, 1995".

(2)(A) The heading of such section is amended to read as follows:

"§ 1524. Vocational training for certain pension recipients".

(B) The item relating to such section in the table of sections at the beginning of chapter 15 is amended to read as follows:

"1524. Vocational training for certain pension recipients.".

SEC. 403. PERMANENT AUTHORITY FOR PROTECTION OF HEALTH-CARE ELIGIBILITY FOR CERTAIN PENSION RECIPIENTS.

(a) PERMANENT PROTECTION.—Section 1525 is amended—

(1) in subsection (a), by striking out "during the program period" and inserting in lieu thereof "after January 31, 1985,"; and

(2) by striking out subsection (b) and inserting in lieu thereof the following:

"(b) For purposes of this section, the term 'terminated by reason of income from work or training' means terminated as a result of the veteran's receipt of earnings from activity performed for renumeration or with gain, but only if the veteran's annual income from sources other than such earnings would, taken alone, not result in the termination of the veteran's pension.".

(b) CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

"§ 1525. Protection of health-care eligibility".

(2) The item relating to such section in the table of sections at the beginning of chapter 15 is amended to read as follows:

"1525. Protection of health-care eligibility.".

SEC. 404. VOCATIONAL REHABILITATION FOR CERTAIN SERVICE-DISABLED VETERANS WITH SERIOUS EMPLOYMENT HANDICAPS.

(a) VOCATIONAL REHABILITATION.—Section 3102 is amended to read as follows:

"§ 3102. Basic entitlement

"A person shall be entitled to a rehabilitation program under the terms and conditions of this chapter if—

"(1) the person—

"(A) is—

"(i) a veteran who has a service-connected disability which is, or but for the receipt of retired pay would be, compensable at a rate of 20 percent or more under chapter 11 of this title and which was incurred or aggravated in service on or after September 16, 1940; or

"(ii) hospitalized or receiving outpatient medical care, services, or treatment for a service-connected disability pending discharge from the active military, naval, or air service, and the Secretary determines that—

"(I) the hospital (or other medical facility) providing the hospitalization, care, services, or treatment is doing so under contract or agreement with the Secretary concerned, or is under the jurisdiction of the Secretary of Veterans Affairs or the Secretary concerned; and

"(II) the person is suffering from a disability which will likely be compensable at a rate of 20 percent or more under chapter 11 of this title; and

"(B) is determined by the Secretary to be in need of rehabilitation because of an employment handicap; or

"(2) the person is a veteran who—

"(A) has a service-connected disability which is, or but for the receipt of retired pay would be, compensable at a rate of 10 percent under chapter 11 of this title and which was incurred or aggravated in service on or after September 16, 1940; and

"(B) has a serious employment handicap.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1993.

SEC. 405. INCREASE IN SUBSISTENCE ALLOWANCE FOR VETERANS PARTICIPATING IN A REHABILITATION PROGRAM.

(a) INCREASE.—Section 3108(b) is amended by striking out the table at the end and inserting in lieu thereof the following new table:

"Column I	Column II	Column III	Column IV	Column V
Type of program	No dependents	One dependent	Two dependents	More than two dependents
				The amount in column IV, plus the following for each dependent in excess of two:
Institutional training:				
Full-time	$366	$454	$535	$39
Three-quarter-time	275	341	400	30
Half-time	184	228	268	20
Farm cooperative, apprentice, or other on-job training:				
Full-time	320	387	446	29
Extended evaluation:				
Full-time	366	454	535	39
Independent living training:				
Full-time	366	454	535	39
Three-quarter-time	275	341	400	30
Half-time	184	228	268	20".

(b) COST-OF-LIVING INCREASE.—Such section is further amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end the following new paragraphs:

"(2) With respect to the fiscal year beginning on October 1, 1994, the Secretary shall provide a percentage increase in the monthly rates payable under paragraph (1) of this subsection equal to the percentage by which the Consumer Price Index (all items, United States city average published by the Bureau of Labor Statistics) for the 12-month period ending June 30, 1994, exceeds such Consumer Price Index for the 12-month period ending June 30, 1993.

"(3) With respect to any fiscal year beginning on or after October 1, 1995, the Secretary shall continue to pay, in lieu of the rates payable under paragraph (1) of this subsection, the monthly rates payable under this subsection for the previous fiscal year and shall provide, for any such fiscal year, a percentage increase in such rates equal to the percentage by which—

"(A) the Consumer Price Index (all items, United States city average) for the 12-month period ending on June 30 preceding the beginning of the fiscal year for which the increase is made, exceeds

"(B) such Consumer Price Index for the 12-month period preceding the 12-month period described in subparagraph (A).".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on October 1, 1993.

TITLE V—JOB COUNSELING, TRAINING, AND PLACEMENT SERVICES FOR VETERANS

SEC. 501. IMPROVEMENT OF DISABLED VETERANS' OUTREACH PROGRAM.

Section 4103A(a)(1) is amended in the first sentence by striking out "specialist for each 5,300 veterans" and all that follows through the end of the sentence and inserting in lieu thereof "specialist for each 6,900 veterans residing in such State who are either veterans of the Vietnam era, veterans who first entered on active duty as a member of the Armed Forces after May 7, 1975, or disabled veterans.".

SEC. 502. REPEAL OF DELIMITING DATE RELATING TO TREATMENT OF VETERANS OF THE VIETNAM ERA FOR DISABLED VETERANS' OUTREACH PROGRAM PURPOSES.

Section 4211(2) is amended—

(1) in subparagraph (A), by striking out "(A) Subject to subparagraph (B) of this paragraph, the term" and inserting in lieu thereof "The term"; and

(2) by striking out subparagraph (B).

SEC. 503. DISABLED VETERANS' OUTREACH PROGRAM PRIORITIES.

Subparagraph (A) of section 4103A(b)(1) is amended to read as follows:

"(A) Services to special disabled veterans.".

SEC. 504. REPEAL OF REQUIREMENT THAT TO BE REPRESENTED ON ADVISORY COMMITTEE ON VETERANS EMPLOYMENT AND TRAINING A VETERANS ORGANIZATION MUST HAVE A FEDERAL CHARTER.

Section 4110(c)(1)(A) is amended by striking out "are chartered by Federal law and".

SEC. 505. EXPANSION AND EXTENSION OF VETERANS READJUSTMENT APPOINTMENTS WITH THE FEDERAL GOVERNMENT.

(a) EXPANSION TO INCLUDE ALL VIETNAM ERA VETERANS.—Section 4214(b)(2)(A) is amended to read as follows:

"(A) a veteran of the Vietnam era; and".

(b) EXTENSION WITH FEDERAL GOVERNMENT.—Section 4214(b)(3) of title 38, United States Code, is amended—

(1) in subparagraph (A)(ii), by striking out "December 31, 1993" and inserting in lieu thereof "December 31, 1995"; and

(2) in subparagraph (B)(ii), by striking out "December 18" and inserting in lieu thereof "December 31".

SEC. 506. REDESIGNATION OF SECTIONS OF CHAPTER 43.

(a) REDESIGNATION OF SECTIONS TO CONFORM TO CHAPTER NUMBER.—Sections 2021, 2022, 2023, 2024, 2025, 2026, and 2027 are redesignated as sections 4301, 4302, 4303, 4304, 4305, 4306, and 4307, respectively.

(b) TABLES OF SECTIONS.—The table of sections at the beginning of chapter 43 is revised so as to conform the section reference in the table to the redesignations made by subsection (a).

(c) CROSS REFERENCES.—(1) Section 4322 (as redesignated by subsection (a)) is amended—

(A) by striking out "2021(a)" and inserting in lieu thereof "4321(a)"; and

(B) by striking out "2024" and inserting in lieu thereof "4324".

(2) Section 4323 (as redesignated by subsection (a)) is amended by striking out "2021(a)" each place it appears and inserting in lieu thereof "4321(a)".

(3) Section 4324 (as redesignated by subsection (a)) is amended by striking out "2021(a)" each place it appears and inserting in lieu thereof "4321(a)".

(4) Section 1204(a)(1) of title 5, United States Code, is amended by striking out "2023" and inserting in lieu thereof "4323".

(5) Section 706(c) of title 10, United States Code, is amended by striking out "2021" and inserting in lieu thereof "4321".

(6) Any reference in a provision of law to a section redesignated by subsection (a), other than a provision specified in paragraphs (1) through (5) of this subsection, shall be deemed to refer to the section as so redesignated.

(d) COORDINATION WITH OTHER ACT.—If the Uniformed Services Employment and Reemployment Rights Act of 1992 is enacted before this Act, this section, including the amendments made by this section, shall not take effect. If the Uniformed Services Employment and Reemployment Rights Act of 1992 is enacted after this Act, this section, and the amendments made by this section, shall be treated for all purposes as not having been enacted, and the provisions of title 38, United States Code, shall read as if those amendments had not been made.

TITLE VI—OTHER VETERANS' PROGRAMS

SEC. 601. EXTENSION OF LIMITATION ON PENSION FOR VETERANS RECEIVING MEDICAID-COVERED NURSING HOME CARE; APPLICABILITY TO SURVIVING SPOUSES; AND FACILITY EXPENSES.

(a) REDUCTION IN PENSION.—Section 5503(f) is amended—

(1) by redesignating paragraphs (5) and (6) as paragraph (6) and (7), respectively; and

(2) by inserting after paragraph (4) the following new paragraph (5):

"(5) The provisions of this subsection shall apply with respect to a surviving spouse having no child in the same manner as they apply to a veteran having neither spouse nor child.".

(b) EXTENSION.—Such section is further amended by striking out "September 30, 1992" in paragraph (7) (as redesignated by subsection (a)(1)) and inserting in lieu thereof "September 30, 1997".

(c) FACILITY EXPENSES.—Section 5503(a)(1)(B) is amended by adding at the end thereof the following: "Effective through September 30, 1997, any amount in excess of $90 per month to which the veteran would be entitled but for the application of the preceding sentence shall be deposited in a revolving fund at the Department medical facility which furnished the veteran nursing care, and such amount shall be available for obligation without fiscal year limitation to help defray operating expenses of that facility.".

(d) EFFECTIVE DATES.—The amendments made by subsection (a) shall take effect on October 1, 1992, and shall apply with respect to months after September 1992. The amendment made by subsection (c) shall take effect on November 1, 1992, and shall apply with respect to months after October 1992.

SEC. 602. EXTENSION OF AUTHORITY TO CARRY OUT INCOME VERIFICATION.

(a) TITLE 38.—Section 5317(g) is amended by striking out "September 30, 1992" and inserting in lieu thereof "September 30, 1997".

(b) INTERNAL REVENUE CODE OF 1986.—(1) Subparagraph (D) of section 6103(l)(7) of the Internal Revenue Code of 1986 is amended by striking out "September 30, 1992" in the last sentence and inserting in lieu thereof "September 30, 1997".

(2) Clause (viii) of such subparagraph is amended—

(A) in subclause (II), by striking out "section 415" and inserting in lieu thereof "section 1315"; and

(B) in subclause (III), by striking out "section 610(a)(1)(I), 610(a)(2), 610(b), and 612(a)(2)(B)" and inserting in lieu thereof "sections 1710(a)(1)(I), 1710(a)(2), 1710(b), and 1712(a)(2)(B)".

SEC. 603. ACCESS TO INFORMATION NECESSARY FOR THE ADMINISTRATION OF CERTAIN VETERAN BENEFITS LAWS.

(a) ACCESS.—Section 1113 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413) is amended by adding at the end the following new subsection:

"(p)(1) Nothing in this title shall apply to the disclosure by the financial institution of the name and address of any customer to the Department of Veterans Affairs where the disclosure of such information is necessary to, and such information is used solely for the purposes of, the proper administration of benefits programs under laws administered by the Secretary.

"(2) Notwithstanding any other provision of law, any request authorized by paragraph (1) (and the information contained therein) may be used by the financial institution or its agents solely for the purpose of providing the customer's name and address to the Department of Veterans Affairs and shall be barred from redisclosure by the financial institution or its agents.".

(b) PRIVACY SAFEGUARDS.—(1) Chapter 53 is amended by adding at the end the following new section:

"§ 5319. Limitations on access to financial records

"(a) The Secretary may make a request referred to in section 1113(p) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(p)) only if the Secretary determines that the requested information—

"(1) is necessary in order for the Secretary to administer the provisions of law referred to in that section; and

"(2) cannot be secured by a reasonable search of records and information of the Department.

"(b) The Secretary shall include a certification of the determinations referred to in subsection (a) in each request presented to a financial institution.

"(c) Information disclosed pursuant to a request referred to in subsection (a) may be used solely for the purpose of the administration of benefits programs under laws administered by the Secretary if, except for the exemption in subsection (a), the disclosure of that information would otherwise be prohibited by any provision of the Right to Financial Privacy Act of 1978.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"5319. Limitations on access to financial records.".

SEC. 604. EXTENSION OF EXPIRING COST-RECOVERY AUTHORITY.

Section 1729(a)(2)(E) is amended by striking out "October 1, 1993" and inserting in lieu thereof "August 1, 1994".

SEC. 605. EXCLUSION FOR LOW-INCOME VETERANS FROM MEDICATION COPAYMENT REQUIREMENT.

(a) EXCLUSION.—Section 1722A(a) is amended—

(1) by striking out "(other than" and all that follows through "or more"; and

(2) by adding at the the end the following:

"(3) Paragraph (1) does not apply—

"(A) to a veteran with a service-connected disability rated 50 percent or more; or

"(B) to a veteran whose annual income (as determined under section 1503 of this title) does not exceed the maximum annual rate of pension which would be payable to such veteran if such veteran were eligible for pension under section 1521 of this title.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to medication furnished after the date of the enactment of this Act.

SEC. 606. EXTENSION OF COPAYMENT PROGRAMS.

(a) MEDICATION COPAYMENT REQUIREMENT.—Section 1722A(c) is amended by adding at the end the following new sentence: "Notwithstanding the preceding sentence, the provisions of subsection (a) shall be in effect through September 30, 1997.".

(b) HEALTH-CARE CATEGORIES AND COPAYMENTS.—Section 8013(e) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) is amended by adding at the end the following new sentence: "Notwithstanding the preceding sentence, the amendments made by this section shall be in effect through September 30, 1997.".

In lieu of the matter in the amendment of the Senate numbered 2, insert: "Page 12, strike out line 19 and all that follows over to and including line 5 on page 13.".

In lieu of the amendment of the Senate to the title of the bill, amend the title so as to read: "An Act to amend title 38, United States Code, to reform the formula for payment of dependency and indemnity compensation to survivors of veterans dying from service-connected causes, to increase the rate of payments for benefits under the Montgomery GI Bill and make other improvements in veterans education programs, and to make other improvements in veterans life insurance, job training, and vocational rehabilitation programs, and for other purposes.".

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs I am very pleased that the Senate is about to take final action on landmark legislation—the proposed Veterans' Benefits Act of 1992—to bring greater fairness to the Department of Veterans Affairs' system of survivors' compensation and to improve VA's program of educational assistance and vocational rehabilitation and training.

The pending measure, H.R. 5008 as amended by a House amendment to the Senate amendment to the bill, represents a compromise agreement that the Veterans' Affairs Committees of the House of Representatives and the Senate have reached on bills relating to survivors' benefits and veterans' educational assistance, rehabilitation, and employment programs.

This compromise agreement would, as would the original House and Senate versions in somewhat different ways, revise VA's system of dependency and indemnity compensation [DIC] benefits for the survivors of those who die from service-connected conditions, require VA to conduct a study to determine the adequacy of veterans' survivors' benefits, and increase certain VA insurance benefits.

The compromise agreement also would provide much-needed cost-of-living adjustments in Montgomery GI bill [MGIB] benefits and in the subsistence allowance paid to service-disabled veterans participating in vocational rehabilitation, provide for automatically indexed COLA's in both MGIB benefits and the vocational rehabilitation subsistence allowance in the future, make other improvements in VA educational and vocational assistance programs, and extend or expand three cost-saving provisions from the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, to offset completely the costs of the benefits improvements contained in this bill.

Mr. President, the House passed this compromise bill on October 3, 1992, and I urge the Senate to approve this measure and thus send it to the White House for signature.

Because I will submit for the RECORD an explanatory statement prepared by the two Veterans' Affairs Committees that describes in detail the provisions in this measure, at this point, I will only briefly summarize the provisions of the compromise agreement and then discuss certain provisions in the bill.

SUMMARY OF PROVISIONS

TITLE I—REFORM OF DEPENDENCY AND INDEMNITY COMPENSATION PROGRAM

Title I of the compromise agreement contains provisions that would:

First, provide surviving spouses with a basic monthly rate of dependency and indemnity compensation [DIC] of $750.

Second, provide additional monthly DIC of $165 to survivors of veterans who were rated 100-percent disabled while married to the surviving spouse for a continuous period of at least 8 years immediately preceding the veteran's death. A 100-percent rating based on "individual unemployability" would qualify the same as a rating based on physical disability.

Third, exempt from section 8004 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508 [OBRA], which eliminated reinstated entitlement for survivors' benefits for formerly remarried surviving spouses whose disqualifying marriage terminated after November 1, 1990, those formerly remarried surviving spouses who had initiated legal proceedings to terminate the remarriage prior to the effective date of section 8004.

Fourth, require the Comptroller General of the United States, as head of the General Accounting Office, to submit to Committees on Veterans' Affairs by April 1, 1994, a report on the most appropriate combination of survivors' benefits. GAO would be required to determine the adequacy of current and anticipated benefits to meet the financial, healthcare, educational, and other needs of survivors of those who die on active duty or as a result of a service-connected disability.

TITLE II—LIFE INSURANCE PROGRAMS

Title II of the compromise agreement contains provisions that would:

First, increase from $100,000 to $200,000 the maximum amount of Servicemen's Group Life Insurance [SGLI], which service members and certain members of the Reserves can purchase at low monthly premiums.

Second, increase from $100,000 to $200,000 the maximum amount of Veterans' Group Life Insurance [VGLI] available to eligible veterans and allow VA to offer VGLI on a renewable, 5-year term basis, rather than the single 5-year term allowed under current law, convertible to a commercial insurance policy upon termination of a VGLI term.

Third, provide eligibility for up to $20,000 in additional Service Disabled Veterans' Insurance [SDVI] for totally disabled veterans who qualify for a waiver of premium. The veteran must apply for the additional coverage within the 1-year period beginning on the month after the committee bill is enacted or within 1 year after VA notified or notifies the veteran that he or she is eligible for a waiver of premiums, whichever is later. The veteran would have to pay the regular premium for the additional amount of SDVI.

Fourth, increase the maximum Veterans' Mortgage Life Insurance from $40,000 to $90,000.

TITLE III—EDUCATIONAL ASSISTANCE PROGRAMS

Title III of the compromise agressment contains provisions that would:

First, increase the MGIB monthly full-time-study educational benefits to: One, $400 for those serving on active duty for 3 years or more; two, $325 for those serving 2 years on active duty, and three, $190 for reservists, with rates for part-time study increased proportionally, and provide for indexing to the Consumer Price Index [CPI] future MGIB increases.

Second, restore, effective October 28, 1986, MGIB eligibility for an individual who, due to interrupted service, was not on active duty on October 19, 1984, but who had active duty service sometime during the period beginning on October 19, 1984, and ending on July 1, 1985, and continued on active duty without a break for the period required to establish entitlement under the MGIB.

Third, restore MGIB eligibility to an individual who was on active duty on August 2, 1990, and did not complete the requirements of a secondary school diploma—or equivalency certificate—before leaving active duty, but who completes those requirements within 24 months after the date of enactment.

Fourth, provide that individuals who are discharged by reason of disability, hardship, or reduction-in-force after less than 12 months of active duty and later re-enter on active duty would be deemed to have served a continuous period of active duty equal to the total of the two periods of active duty.

Fifth, provide that a period during which an MGIB participant is assigned full-time by the Armed Forces to a civilian institution for a course of education would not be considered a break in the continuity of the individual's active-duty service for purposes of MGIB eligibility.

Sixth, provide, in the case of MGIB participants who leave their initial period of active-duty service to enroll in a service academy or service-academy preparatory school, drop out of the academy or preparatory school, and reenter active duty, that they would be able to merge their second active-duty period with the initial period so that the aggregate length of the two periods will be considered a continuous period of service for purposes of MGIB eligibility.

Seventh, provide that an individual who was initially obligated to serve only 2 years of active duty but actually serves a continuous period of 3 years on active duty is eligible for the same level of MGIB benefits as one who performs an initial obligated period of active-duty service of 3 years.

Eighth, extend eligibility for the death benefit—an amount equal to the amount by which a participant's pay is reduced for purposes of MGIB participation minus the total of the amount of educational assistance that was paid to the individual—to the survivors of an MGIB participant who dies of a service-connected cause within one year of discharge from active duty.

Ninth, provide MGIB entitlement to individuals who enrolled in the program during the "open period" between December 1, 1988, and June 30, 1989, and who separated from the service early due to certain physical or mental conditions.

Tenth, permit active-duty participants in the MGIB to receive educational allowances and advance payments of allowances at the same rate as veterans.

Eleventh, authorize, for the last two years of the current 4-year program under which veterans may use VA educational benefits for flight training, the use of those benefits for solo flying hours up to the minimum required for the rating or certification being pursued.

Twelfth, limit advance payments to work-study participants to the amount they would be paid for the first 50 hours of each work-study contract.

Thirteenth, for VA purposes: repeal to requirement that an elementary or secondary school furnish a copy of a catalog in applying for approval of an accredited course; add a requirement that schools that have and enforce standards of attendance submit those standards for approval, and allow nurses' aide courses to be approved for VA educational assistance when such courses have been approved by a State under regulations established by the Secretary of Health and Human Services.

Fourteenth, prohibit the use of VA educational benefits for nonaccredited independent study.

Fifteenth, provide that the termination of an educational assistance allowance by reason of the death of the payee of an advance payment is effective as of the end of the period for which the advance payment was made.

Sixteenth, bar payment of VA educational assistance for a course paid for under the Government Employees Training Act.

Seventeenth, replace the statutory measurement system used in evaluating courses at an educational institution for the payment of VA education benefits with the institution's measurement system.

Eighteenth, provide that the limitations on changes of programs by students using VA educational assistance do not apply to a student beginning a new program of education after successfully completing another program; a student not changing his or her vocational objective, and a student transferring back to a former program without loss of credit for that program.

Nineteenth, permit reservists to receive tutorial assistance under the MGIB.

Twentieth, provide VA with administrative authority to withhold the training assistance allowance of a participant in the MGIB Selected Reserve program pursuing a program of apprenticeship or other on-job training until VA has received a certification of attendance from the person and the training establishment.

TITLE IV—VOCATIONAL REHABILITATION AND PENSION PROGRAMS

Title IV of the compromise agreement contains provisions that would:

First, make permanent the programs of 12-month trial-work periods and vocational rehabilitation outreach for service-disabled veterans who have total disability ratings based on individual unemployability.

Second, amend section 1524 of title 38 to extend the temporary vocational training program for VA pension recipients through December 31, 1995; eliminate the limitation on the number of program participants who may be evaluated annually, and amend the program for veterans under age 45 who are awarded pension during the program period so as to first, require the Secretary, based on information on file with VA, to make a preliminary finding whether the veteran, with the assistance of a VA vocational training program, has a good potential for achieving employment, second, if that potential is found to exist, require the Secretary to solicit from the veteran an application for VA vocational training, and third, if the veteran applies for training, require the Secretary to provide and evaluation to determine whether the achievement of a vocational goal is reasonably feasible.

Third, maintain the 3-year protection of VA health-care eligibility for veteran pension recipients participating in a program of vocational training who lose their pension due to employment income.

Fourth, provide VA rehabilitation program entitlement to a veteran who has a 10-percent service-connected disability and a serious employment handicap.

Fifth, increase by 10 percent the subsistence allowance for veterans with service-connected disabilities who participate in a VA vocational rehabilitation program, and provide for indexing to the CPI future increases in the subsistence allowance.

TITLE V—JOB COUNSELING, TRAINING, AND PLACEMENT SERVICES FOR VETERANS

Title V of the compromise agreement contains provisions that would:

First, expand the formula for the appointment of disabled veterans outreach program specialists to include, in addition to Vietnam-era veterans and disabled veterans, veterans who first entered on active duty after the end of the Vietnam era, May 7, 1975.

Second, repeal the limitation on veterans employment and job-training programs under chapters 41 and 42 of title 38 that provides that, after December 31, 1994, no veteran would be eligible for those programs on the grounds that his or her service occurred during the Vietnam era.

Third, establish as the first priority for disabled veteran outreach program specialists' services to "special disabled veterans" as defined in section 4211(1) of title 38 to include those who have service-connected disabilities that are rated at either 30 percent or more, or in the case of those who have been determined to have a service-employment handicap for purposes of chapter 31, at 10 or 20 percent, or were discharged or released from active duty because of a service-connected disability.

Fourth, strike the requirement that veterans organizations represented on the Advisory Committee on Veterans Employment and Training be chartered.

Fifth, reinstate the Veterans' Readjustment Appointments [VRA] authority for all veterans of the Vietnam era until December 31, 1995, or 10 years after the veterans' date of last discharge or release from active duty, whichever is later.

Sixth, renumber the sections of chapter 43 of title 38, United States Code, to conform with the renumbering scheme required in Public Laws 102-40 and 102-83.

TITLE VI—OTHER VETERANS' PROGRAMS

Title VI of the compromise agreement contains provisions that would:

First, extend from September 30, 1992, to September 30, 1997, the $90-a-month limit on pension payments for Medicaid-eligible veterans receiving VA needs-based pension who have no dependents and who are in nursing homes participating in Medicaid.

Second, effective October 1, 1992, through September 30, 1997, expand the nursing-home pension-reduction provision to cover similarly situated veterans' survivors who receive VA pensions.

Third, effective through September 30, 1997, require that the amount of the reduction, under current section 5503(a)(1)(B) of title 38, to $90 a month of pension paid to a veteran or veteran's survivor in a VA nursing home be deposited in a revolving fund at the VA medical facility that furnished nursing care to the veteran, to help defray the operating expenses of that facility.

Fourth, extend through September 30, 1997, the requirement that VA verify eligibility for VA needs-based benefits using income data from the Social Security Administration and the Internal Revenue Service.

Fifth, amend the Right to Financial Privacy Act to authorize VA to obtain from financial institutions the current mailing addresses of certain VA beneficiaries whose benefits are deposited by direct deposit, provided that the information is necessary to administer veterans' benefits programs and cannot be obtained by a reasonable search of VA records. Information disclosed by the financial institution under this provision could be used solely for the purpose of administering veterans' benefits programs.

Sixth, amend title 38 to require the Secretary to determine and certify that the information is necessary to administer veterans' benefits programs and cannot be obtained from VA records.

Seventh, extend from September 30, 1993, to July 31, 1994, VA's authority to recover from third parties, under a veteran's health-plan contract, the cost of medical care provided by VA for the treatment of a non-service-connected disability of a service-disabled veteran.

Eighth, extend from September 30, 1992, to September 30, 1997, the requirement that VA collect a copayment of $2 for each 30-day supply of medication for outpatient treatment of non-service-connected conditions.

Ninth, exempt from the $2 medication copayment requirement veterans whose income, if taken alone, would qualify them for VA needs-based pension.

Tenth, extend from September 30, 1992, to September 30, 1997, amendments to chapter 17 of title 38 made by the Omnibus Budget Reconciliation Act of 1990 that established the current "mandatory" and "discretionary" categories of veterans eligible for VA care and services and the copayments and deductibles certain veterans are required to pay for certain types of care.

DEPENDENCY AND INDEMNITY COMPENSATION REFORM

Mr. President, as I discussed in my statement when the Senate passed S. 2323 on September 22, 1992, which appears in the RECORD beginning on page S14662, VA pays dependency and indemnity compensation [DIC] to the survivors of servicemembers or veterans who died from a disease or injury incurred or aggravated during military service. Survivors eligible for DIC include surviving spouses, unmarried children under the age of 18, certain helpless children age 18 or older, and children between the ages of 18 and 23 who are enrolled in school. As of May 1992, VA was paying DIC benefits to, or on behalf of, 275,857 surviving spouses, and 37,628 children.

The basic purpose of the compromise agreement is to reform the DIC Program for surviving spouses and dependent children. The bill we are considering today represents the product of over a year of hard work on the very difficult issues involved in DIC reform. I have listened and responded to the concerns of all those involved with the DIC Program, including the veterans organizations, VA, other members of the Veterans' Affairs Committees, organizations representing survivors of those who died on active duty, and military organizations. I particularly note the contributions of the veterans organizations, who presented to our committee a historic compromise proposal for DIC reform that challenged us to address the problems with the current system and guided us in crafting this bill.

I am convinced that the compromise represents a reasonable, fair, and long-overdue reform of the DIC system and I am especially pleased that this compromise achieves my fundamental goal for DIC reform: that compensation provided to a surviving spouse of a veteran who was severely disabled for an extended period recognize the lasting financial impact of the deceased veteran's disability. The disability add-on of $165 per month provided under the compromise agreement is close to the maximum level that I proposed in the Senate bill, $200 per month, as compared to the much smaller disability add-on that the House bill would have provided, $50 per month. With the higher basic monthly rate we have been able to provide in the compromise agreement, $750, the maximum total DIC rate for the surviving spouse of a long-term, totally disabled veteran under the compromise agreement—$915—is very close to the $925 maximum rate that the Senate bill would have provided.

Mr. President, the compromise agreement would protect current DIC beneficiaries by prohibiting any reduction in benefits as a result of DIC reform. Moreover, current DIC beneficiaries who would receive higher payments under the new DIC system automatically will receive the increased benefits.

Mr. President, I want to make it clear that I and others on the two Committees intend that Congress, consistent with past practice, will provide annual cost-of-living adjustments [COLAs] in the base and add-on rates and, after the phased in increases are completed in fiscal year 1995, in the additional compensation for dependent children. We also intend that Congress will continue to provide COLA's for current DIC beneficiaries who continue to receive DIC under the existing program. I note that the Congressional Budget Office assumed these COLA's in its cost estimate of this legislation.

Mr. President, I am very disappointed that the compromise agreement does not contain a provision that was in the Senate bill that would have provided an additional amount of DIC based on the length of the deceased veteran's service. The House was adamantly opposed to this provision and, in order to reach an agreement with the House on DIC reform, we in the Senate had no choice but to yield on this point and I did so most reluctantly.

INSURANCE PROVISIONS

Mr. President, I am pleased that the compromise agreement contains four provisions that would improve VA insurance benefits. I have been working on two of these provisions, which increase the amounts of Service Disabled Veterans Life Insurance [SDVI] and Veterans' Mortgage Life Insurance [VMLI], for over 2 years. I first proposed increasing SDVI and VMLI in S. 2100 of the 101st Congress, which was reported by our Committee on July 19, 1990, but not considered by the full Senate.

Adequate life insurance allows an individual to provide for his or her survivors and is a vitally important part of any person's estate. Disabled veterans often are unable to obtain commercial insurance. As a result, life insurance provided through the VA administered programs is often the only reasonably priced coverage available to these individuals.

The provisions in the compromise agreement relating to life insurance programs would increase insurance coverage available to servicemembers and disabled veterans, and are an important component in the overall effort of this legislation to improve the entire package of financial benefits for veterans' survivors so as to help them to maintain an adequate standard of living.

EDUCATIONAL ASSISTANCE PROGRAMS

Mr. President, I am very pleased that title III of the compromise agreement contains a number of provisions that would revise and improve educational assistance for veterans and members of the Armed Forces, including increases in veterans' educational and vocational rehabilitation allowances.

Mr. President, the compromise agreement would increase the monthly full-time-study benefits under the MGIB to $400 for those serving on active duty for 3 years or more, $325 for those serving 2 years on active duty, and $190 for reservists, with rates for part-time study increased proportionally. The compromise agreement would also provide automatic annual MGIB COLA's liked to the Consumer Price Index in fiscal year 1994 and later years.

Mr. President, as temporarily increased by title III-C of Public Law 102-25, the Persian Gulf War Veterans' Benefits Act of 1991, the levels of MGIB educational assistance for full-time study currently are $350 per month for active-duty participants who serve an initial obligated period of active duty of 3 years or more, $275 per month for those who serve an initial obligated period of 2 years, and $170 per month for participants in the selected Reserve program. In all cases, proportionally reduced amounts are provided for part-time study. Under current law, for fiscal year 1994, the Secretary of Veterans Affairs must choose one of three options with respect to MGIB rates: First, continue the current rates; second, provide for a COLA in those rates; or third, allow the rates to revert to their original levels—before the enactment of Public Law 102-25—of $300 per month for participants obligated for 3 years or more, $250 per month for those who are obligated for 2 years, and $140 per month for participants in the selected Reserve program. For each following fiscal year, the Secretary is authorized to continue to pay the monthly rates that were paid during the previous fiscal year or provide a COLA.

Mr. President, it is difficult to quantify the importance of an education, especially for those members of our Armed Forces and selected Reserves who have foregone completing their formal education in order to serve their country and will be returning to civilian life in the near future. However, we are better able to quantify the costs of education and how the rising cost of education has chipped away at the value of MGIB educational assistance.

Since the original MGIB payment rates were established in 1984, inflation as measured by the CPI has been 31 percent and the cost of education at a 4-year public college has increased by 42.5 percent. Last year's 16.7-percent increase in MGIB benefits, enacted in the Persian Gulf War Veterans' Benefits Act of 1991, marked the only rate increase in the program's history. It fell far short of the increase in the cost of education since 1984 mainly because of the limits that were inherent in the special nature of the funding of that legislation.

Mr. President, the Committees on Veterans' Affairs desire to bring the MGIB benefits more closely abreast of the rising costs of higher education by raising the basic monthly educational allowance for active duty and Reserve participants. Thus, effective April 1, 1993, section 301 of the compromise agreement would provide an increase of approximately 15 percent in the MGIB rates. Also, as I proposed in the Senate and the House had earlier proposed, effective October 1, 1993, section 301 of the compromise agreement would provide automatic COLA's in MGIB rates based on the increase in the CPI.

Veterans and active-duty participants have watched the value of their educational benefits slowly dwindle as prices rose and their MGIB rates stayed the same. The compromise agreement would ensure that the MGIB rates keep pace with the times and that our veterans and active-duty participants receive the educational benefits they deserve.

VOCATIONAL REHABILITATION AND PENSION PROGRAMS

Mr. President, title IV of the compromise agreement includes several provisions to improve the VA program of vocational rehabilitation for service-disabled veterans. These provisions are designed to make it possible for more service-disabled veterans to use their existing talents and develop new ones to support themselves and their families. These improvements are a sound investment in enabling service-disabled veterans to return to work. We should encourage and support their efforts to do so. Productive work gives disabled veterans a renewed sense of self-worth and purpose as well as helping the government reduce expenditures over the long-term.

Current law provides vocational-rehabilitation entitlement to a veteran who has a service-connected disability that is compensable at a rate of 20 percent or more and is determined by the Secretary to be in need of rehabilitation because of an employment handicap. The Omnibus Budget Reconciliation Act of 1990 increased the requisite disability rating from 10 percent to 20 percent.

Mr. President, many veterans with service-connected disabilities rated at 10 percent have a serious employment handicap resulting either from their service-connected disabilities alone or from those disabilities in conjunction with non-service-connected disabilities.

Thus, I am pleased that the compromise agreement includes my proposal to reopen the vocational rehabilitation program for these veterans who, by reason of having a serious employment handicap, are clearly in need of vocational rehabilitation services to improve their ability to return to the work force.

Mr. President, the subsistence allowance provided to veterans pursuing a rehabilitation program was last increased in January, 1990, under Public Law 101-237. That increase, of 7.5 percent, did not adequately cover the nearly 20-percent increase in the CPI that had occurred since the previous adjustment 6 years earlier in October 1984. The CPI has increased another 9.8 percent in fiscal years 1990 and 1991.

A recent General Accounting Office study of the effectiveness of the VA vocational rehabilitation and counseling program [GAO/HRD-92-100, September 1992] revealed that 71 percent of all applicants for vocational rehabilitation drop out of the program before obtaining suitable employment. The study indicated that one reason for attrition is that the subsistence allowance is too low to provide a decent living for program participants. At its current levels, the subsistence allowance has lost approximately 22 percent of its value due to the increase in the CPI since 1984.

Mr. President, the compromise agreement would, effective October 1, 1993, increase the subsistence-allowance rates by 10 percent in order to bring its value more in line with the rising cost of living. While a 10-percent increase falls short of the full measure of the inflationary rise, this increase would be useful in helping service-disabled veterans maintain a reasonable standard of living while pursuing programs of rehabilitation.

In order to prevent further slippage of the value of this allowance in future years, the compromise agreement contains my proposal to index future increases to changes in the CPI. Service-disabled veterans should be encouraged to participate in vocational rehabilitation and training to find suitable employment, not discouraged by having their subsistence allowance fall farther and farther behind the cost of living.

JOB COUNSELING, TRAINING, AND PLACEMENT SERVICES FOR VETERANS

Mr. President, the compromise agreement also includes, in title V, several provisions to improve job counseling, training, and placement services for veterans, and I will highlight two of these provisions.

The compromise agreement includes my proposal to update and strengthen the Disabled Veterans' Outreach Program [DVOP] administered by the Department of Labor to provide job counseling, training, and placement services for veterans. Most importantly, it would stabilize the staffing of this program, which in recent years has existed in the shadow of a sunset provision that threatened to reduce its employment base to an unworkable level.

Currently, section 4103A of title 38 provides for the appointment of one DVOP specialist for each 5,500 veterans of the Vietnam era and disabled veterans residing in each State. This formula now requires 1,885 DVOP specialists. However, section 4211 of title 38, provides, that for the purpose of the DVOP formula, no veterans may be considered to be veterans of the Vietnam era after December 31, 1994, which would cause the number of DVOPs in the statutory formula to drop to 433 after that date. Last year, when I proposed to extend the sunset provision regarding the definition of veterans of the Vietnam era from 1991 to 1994, in what became Public Law 102-16, I promised to review the concept of the formula. The proposed changes in the compromise agreement reflect this review.

Thus, Mr. President, the compromise agreement would delete the sunset provision, thereby allowing Vietnam-era veterans to be a permanent part of the DVOP formula. This measure would also recognize that veterans who entered active duty after the Vietnam era also need and are eligible for the employment assistance provided by DVOP's and should be considered in calculating available DVOP staffing. As a beginning point, I was interested in approximating the size of the current DVOP force, with a number of DVOP specialists added in recognition of their increased involvement in the Transition Assistance Program, administered under section 1144 of title 10, United States Code. I also wanted to use a formula rather than a fixed figure in order to allow for program growth to meet the projected new workload expected to result from the military downsizing. Additionally, I believe the formula should continue to distribute DVOP specialists to States in proportion to the States' veteran employment workloads. The result is a revised formula that would provide for the appointment of one DVOP specialist for each 6,900 veterans residing in a State who are either veterans of the Vietnam era, veterans who first entered on active duty as a member of the Armed Forces after May 7, 1975, or who are disabled veterans. This formula would provide for approximately 1906 DVOP specialists as compared to the 1885 under the current formula for fiscal year 1993.

Mr. President, I have long valued very highly the services being provided for veterans by the State Employment Security Agencies. This legislation is designed to eliminate the uncertainty that has too long plagued the DVOP program and to provide a stronger, more realistically sized work force.

Mr. President, I am pleased that the compromise agreement includes a provision that would reinstate Veterans' Readjustment Appointment [VRA] eligibility for certain Vietnam-era veterans who did not have a full 10-year opportunity to use this program. Under section 505, all Vietnam-era veterans qualifying for the VRA program would be eligible for appointments through December 31, 1995, or 10 years after the veteran's date of last discharge or release from active duty, whichever is later.

All veterans of the Vietnam era were eligible for VRA's—limited noncompetitive appointments that can lead to full civil service status—in the Federal Government through December 31, 1989, at which time the statutory authority for these appointments expired. Public Law 101-237, the Veterans' Benefits Amendments of 1989, extended the VRA authority to December 31, 1993, but appointment was limited to Vietnam-era veterans who were service-disabled or had received a campaign badge, which means they served in the Southeast Asia theater of operations, and to post-Vietnam-era veterans. Post-Vietnam-era veterans included only those who first entered on active duty after May 7, 1975.

Public Law 102-16 made the VRA authority permanent but limited eligibility for Vietnam-era veterans to those covered by Public Law 101-237. For Vietnam-era veterans who received a campaign badge, Public Law 102-16 also extended their VRA eligibility to 10 years after the date of their last discharge or release from active duty, or December 31, 1993, whichever is later.

Thus, since January 1, 1990, Vietnam-era veterans who are not service disabled nor authorized a campaign badge have not been eligible for a VRA appointment, even those who are leaving the service at the same time as post-Vietnam-era veterans who have such eligibility.

Mr. President, we all know that the Vietnam era has been over for many years and recognize that most of those who served their country during that period and who were discharged shortly thereafter have long ago successfully made the transition into the civilian workplace. For them, readjustment is not an issue. However, for some Vietnam-era veterans, including those who remained on active duty after the Vietnam era or who joined the Selected Reserves and were activated during Desert Storm, employment may very well be a major concern in today's economy. This population of Vietnam-era veterans—those who recently have been released or who are scheduled to soon be released under the Department of Defense's down-sizing plans, but who are not eligible for a VRA appointment—would be assisted by this provision.

The compromise agreement would provide VRA eligibility to all Vietnam-era veterans through December 31, 1995, or 10 years after the veteran's date of last discharge or release from active duty, whichever is later.

CONCLUSION

Mr. President, I express my appreciation to the distinguished ranking Republican member of the Senate Committee, Mr. SPECTER, and all other members of the committee, as well as the chairman and ranking minority member of the House Committee on Veterans' Affairs, Mr. MONTGOMERY and Mr. STUMP, for their cooperation on this measure.

Mr. President, I also want to express my deep gratitude to the committee staff members who worked on this legislation—on the minority staff, Quentin Kinderman, Charlie Battaglia, and Tom Roberts, and on the majority staff, Neil Koren, Michael Cogan, Tom Hart, Chuck Lee, Bill Brew, and Ed Scott—and the House Committee on Veterans' Affairs staff—John Brizzi, Jill Cochran, Pat Ryan, and Mack Fleming for the majority and for the minority, Sue Forrest, Kingston Smith, and Carl Commenator.

Mr. President, I also note the fine work of the staff of the two Offices of Legislative Counsel, Charlie Armstrong in the Senate, and Bob Cover in the House. They provided their usual excellent assistance as we prepared this legislation.

Mr. President, I urge the Senate to give its unanimous approval to this measure.

Mr. President, I ask unanimous consent that the explanatory statement to which I referred earlier, and which takes the place of a joint explanatory statement in a conference report, be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JOINT EXPLANATORY STATEMENT ON H.R. 5008, THE PROPOSED "VETERANS' BENEFITS ACT OF 1992"

H.R. 5008, the proposed "Veterans Benefits' Act of 1992" reflects a compromise agreement that the Senate and House of Representatives Committees on Veterans' Affairs have reached on certain bills considered in the Senate and the House during the 102nd Congress. These are H.R. 5008 as passed by the House on August 10, 1992 (hereinafter referred to in connection with titles I, II, and VI referred to as the "House bill", and in connection with title III as "H.R. 5008"); H.R. 4342 as passed by the House on June 9, 1992 (hereinafter referred to as "H.R. 4342"); H.R. 5087 as passed by the House on August 10, 1992 (hereinafter referred to as "H.R. 5087"); S. 775 as passed by the Senate on November 20, 1991 (hereinafter referred to as "S. 775"); S. 2323 as passed on September 22, 1992, by the Senate as a substitute amendment for all of the text of H.R. 5008 except section 304, which was included in the Senate-passed bill (hereinafter referred to in connection with titles I, II, and VI as the "Senate amendment"); and S. 2647 as passed by the Senate as a substitute amendment to H.R. 5087 on September 25, 1992 (hereinafter referred to in connection with titles III, IV, and V as the "Senate amendment").

The Committees on Veterans' Affairs have prepared the following explanation of H.R. 5008 (hereinafter referred to as "compromise agreement"). Differences between the provisions contained in the compromise agreement and the related provisions in the bills noted above are noted in this document, except for clerical corrections and conforming changes made necessary by the compromise agreement and minor drafting, technical, and clarifying changes.

TITLE I—REFORM OF DEPENDENCY AND INDEMNITY COMPENSATION PROGRAM

REFORM IN PAYMENT FORMULA

Current law: Under section 1310 of title 38, United States Code, VA pays dependency and indemnity compensation (DIC) to surviving spouses of servicemembers or veterans who died from a disease or injury incurred or aggravated during military service.

Under section 1311(a) of title 38, the surviving spouse's basic compensation rate is determined by the deceased veteran's military pay grade (service rank). Under section 1311(b), compensation for surviving spouses with dependent children under 18 year of age is increased by $71 a month for each child.

House bill: Section 101(a) would, effective January 1, 1993, provide surviving spouses eligible for DIC with basic monthly compensation of $750. The basic rate would be increased by $50 for survivors of servicemembers who die on active duty and for survivors of a veteran who had a disability rated totally disabling for a continuous period of at least five years or continuously from the date of the veteran's discharge until the veteran's death.

Surviving spouses of veterans who died before January 1, 1993, would receive compensation under the current system or the new formula, whichever would provide the greater benefits.

Section 101(b) would increase the additional amount payable to a surviving spouse with dependent children of the deceased veteran from the current level of $71 a month for each child to $100 a month, beginning on December 1, 1993; to $150 a month, during FY 1994; and to $200 a month after FY 1994.

Senate amendment: Section 2(a) and (b) would, effective December 1, 1992, establish a basic monthly DIC rate of $725. Surviving spouses would be eligible for additional amounts of compensation based on either the length and severity of the veteran's disability or the length of the veteran's service, whichever factor would provide greater benefits.

Survivors of veterans rated 100-percent for at least one, but less than 5, years while married to the veteran would qualify for an additional $50 a month. The add-on would increase to $150 a month for a period of at least 5, but less than 10, years and to $200 for a period of 10 years or more. A rating of total disability based on "individual unemployability" under section 4.16 of title 38, Code of Federal Regulations, would qualify the survivor for benefits on the same basis as a 100-percent schedular rating.

The additional monthly DIC based on the length of the deceased veteran's military service would be $100 a month for 30 or more years of service; $70 for at least 20, but less than 30, years of service; $40 for at least 10, but less than 20, years; and $20 for at least 5, but less than 10, years.

Surviving spouses of veterans who died before December 1, 1993, would receive compensation under the current system or the new formula, whichever would provide greater benefits.

Section 2(b) also would, effective December 1, 1992, provide a special transitional rate of DIC for the month after the veteran's death equal to either 50 percent of the disability compensation paid to the deceased veteran for the last full month before the veteran's death or the amount of DIC calculated under the new DIC provisions, whichever is greater.

Section 2(c) would increase the additional amount payable to a surviving spouse with dependent children of the deceased veteran from the current level of $71 a month for each child to $100 a month, beginning on October 1, 1993; to $150 a month, during FY 1994; and to $200 a month after FY 1994.

Section 2(d) would provide for up to $5 million of the costs of implementing the DIC reform provisions of the Senate bill during FY 1993 to be paid from VA's Compensation and Pension account.

Compromise agreement: Section 102(a) would provide, effective January 1, 1993, a basic monthly DIC rate of $750, plus an additional amount of compensation for survivors of veterans rated totally disabled while married to the surviving spouse, including a rating based on individual unemployability. The add-on would be $165 a month for veterans so rated for a continuous period of at least 8 years immediately preceding the veteran's death.

Surviving spouses of veterans who die before January 1, 1993, would receive compensation under the current system or the new formula, whichever would provide greater benefits.

Section 102(b) would increase the additional amount payable to a surviving spouse with dependent children of the deceased veteran from the current level of $71 a month for each child to $100 a month, beginning on January 1, 1993; to $150 a month, during FY 199; and to $200 a month thereafter.

Section 102(d) would provide for the costs of implementing the DIC reforms in FYs 1993 and 1994 to be paid from VA's Compensation and Pension account.

The Committees intend and expect that Congress will continue to provide annual cost-of-living adjustments, through separate annual legislation, in the DIC rates under the current system, and the basic-rate and the disability-based add-on contained in the compromise agreement. The Committees also intend and expect that Congress will provide annual COLAs in the additional compensation for surviving spouses with dependent children after the phased-in increases take full effect in FY 1995.

EXCEPTION TO OPERATION OF OBRA PROVISION

Current law: Under section 101(3) of title 38, the term "surviving spouse" is defined in such a way that an individual is no longer considered a surviving spouse upon remarriage and thus looses eligibility for veteran's survivors' benefits when he or she remarries. Prior to the enactment of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) (OBRA), remarried surviving spouses' VA benefits eligibility could be restored when the disqualifying remarriage ended, through divorce or the death of the subsequent spouse. Section 8004 of OBRA, the application of which was modified by section 502 of the Veteran' Benefits Programs Improvements Act of 1991 (Public Law 102-86), eliminated the restored eligibility for a survivor whose disqualifying remarriage terminated after October 31, 1990.

House bill: Section 102(a) would provide that amendments made by section 8004 of OBRA shall not apply to survivors' benefits to formerly remarried surviving spouses who, before November 1, 1990, had initiated legal proceedings to terminate their remarriage.

Senate amendment: No provision.

Compromise agreement: Section 103 follows the House provision.

GAO REPORT RELATING TO THE PROVISION OF BENEFITS TO SURVIVORS OF VETERANS AND MEMBERS OF THE ARMED FORCES

House bill: Section 102(b) would require VA to conduct a study, beginning within 90 days of enactment, in consultation with the Secretaries of Defense and Health and Human Services, to evaluate the effect of section 8004 of OBRA (described above) on formerly remarried surviving spouses denied survivors' benefits because of that provision. The Secretary would be required to survey a representative sample of those affected by the OBRA provision and report the results of the study to Committees on Veterans' Affairs by September 1, 1993.

Senate amendment: Section 3 would require the Secretary of Veterans Affairs to establish a "Commission on the Study of Survivor Benefits," comprised of three independent experts, and representatives of VA, the Department of Defense, a veterans service organization, and an organization representing surviving spouses. The Commission would be required to determine the most appropriate combination of survivors' benefits and report to the Secretary on its recommendations. The Commission would be required to base its findings on data to be provided by the National Academy of Sciences (or another entity) in a study conducted under contract with VA. NAS (or another entity) would be required to submit its report to the Commission by October 1, 1993. The Commission would be required to report to the Secretary by December 1, 1993, and the Secretary would be required to report to the Committees by March 1, 1994.

Compromise agreement: Section 104 follows the Senate provision, except that the Comptroller General of the United States (as head of the General Accounting Office) would perform the functions of the National Academy of Sciences and the independent commission. The Comptroller General would be required to conduct the study and make the recommendations for legislation, if appropriate, that would have been required by the Senate amendment. The Comptroller General would be required to submit a report on the study to the Committees by April 1, 1994.

TITLE II—LIFE INSURANCE PROGRAMS

SERVICEMEN'S GROUP LIFE INSURANCE

Current law: Subchapter III of chapter 19 of title 38, United States Code, provides for the Servicemen's Group Life Insurance (SGLI) program. Under subchapter III, the Secretary of Veterans Affairs is authorized to purchase from commercial life insurance companies a policy or policies of group life insurance to insure against death any active duty servicemember and certain members of the Ready Reserve and Retired Reserve. Eligible servicemembers and reservists who do not decline coverage automatically are provided $100,000 of SGLI coverage and the monthly premiums are deducted from their basic pay. Servicemembers may elect coverage of less than $100,000 or not to participate in the program.

SGLI coverage is provided free of charge for 120 days following separation from active duty.

House bill: Section 202 would permit servicemembers and Reservists to purchase additional amounts of SGLI up to an additional $100,000, thereby increasing from $100,000 to $200,000 the maximum amount of SGLI, which eligible servicemembers and Reservists could purchase in $10,000 increments.

Senate amendment: No provision.

Compromise agreement: Section 201 follows the House provision, except that, under section 205, it would be effective December 1, 1992.

VETERANS' GROUP LIFE INSURANCE

Current law: Subchapter III of chapter 19 of title provides for the Veterans' Group Life Insurance (VGLI) program. Under subchapter III, veterans who participated in the SGLI program (described above) may participate in the VGLI program after separation from active duty.

VGLI provides five-year term group life insurance of up to $100,000. A veteran may not obtain more insurance under VGLI than the veteran had under the SGLI program. At the end of the five-year term, the veteran has the right to obtain an individual life insurance policy at a standard rate from any company participating in the VGLI program.

House bill: Section 202 would (a) increase from $100,000 to $200,000 the maximum amount of VGLI available to eligible veterans, and (b) provide that coverage under VGLI shall be on a renewable, five-year term basis.

Senate amendment: No provision.

Compromise agreement: Section 202 follows the House provision, except that, under section 205, it would be effective December 1, 1992.

SUPPLEMENTAL SERVICE DISABLED VETERANS' INSURANCE FOR TOTALLY DISABLED VETERANS

Current law: Section 1922(a) of title 38 requires VA to provide $10,000 in life insurance at standard rates to any veteran released from active duty after April 24, 1951, who is suffering from a service-connected disability rated at least 10-percent disabling that renders the veteran uninsurable according to the standards of good health established by the Secretary. The veterans must apply for the policy within two years after VA determines the service-connection of such disability.

Section 1912(a) of title 38 provides that, upon application by the veteran, and under regulations promulgated by the Secretary, the Secretary may waive premiums payments on the insurance if the insured continuously is rated totally disabled for six or more consecutive months and that disability began (1) after the date of the insured's application for insurance, (2) while the insurance was in force under premium-paying conditions, and (3) before the insured's sixty-fifth birthday.

House bill: Section 201 would provide supplemental SDVI coverage, at standard premiums, of up to $10,000, to veterans eligible for a waiver of premiums due to total disability.

Senate amendment: Section 4 is substantively identical to the House provision, except it would provide supplemental coverage of $20,000 and would specify that a veteran not currently eligible for waiver of premiums of SDVI must apply for the additional coverage within one year after either the end of the first full month following enactment or the date VA notifies the veteran that the veteran is eligible for a waiver of premiums, whichever is later.

Compromise agreement: Section 203 follows the Senate provision, except that, under section 205, it would be effective December 1, 1992.

INCREASE IN AMOUNT OF VETERANS' MORTGAGE LIFE INSURANCE

Current law: Under section 2106 of title 38, VA automatically provides $40,000 of Veterans' Mortgage Life Insurance (VMLI) to veterans who qualify for a specially adapted housing grant under chapter 21 of title 38.

House bill: Section 202 would increase the maximum amount of VMLI available under section 2106 of title 38 from $40,000 to $90,000.

Senate amendment: Section 5 is substantively identical to the House provision, except that it includes a technical correction to the table of sections at the beginning of chapter 21.

Compromise agreement: Section 204 follows the Senate provision, except that, under section 205, it would be effective December 1, 1992.

TITLE III—EDUCATIONAL ASSISTANCE PROGRAMS

INCREASE IN AMOUNT OF MONTGOMERY GI BILL BASIC EDUCATIONAL ASSISTANCE

Current law: Section 3015(f) of title 38, United States Code, temporarily establishes the current amounts of educational assistance under the Montgomery GI Bill (MGIB) program for full-time study at $350 per month for active-duty participants whose initial obligated period is three years or more and at $275 per month for those whose initial obligated period of active duty is two years. Section 2131(b)(2) of title 10 establishes the full-time-study benefit at $170 per month for participants in the Selected Reserve program. In all cases, proportionally reduced amounts are provided for part-time study. For FY 1994, the Secretary of Veterans Affairs is authorized to (a) continue these rates, (b) continue these rates and provide for a cost-of-living adjustment (COLA) increase, or (c) allow the monthly rates to revert to the original payment rates of $300 per month for full-time active-duty participants, $250 per month for those who are obligated for two years, and $140 per month for full-time participants in the Selected Reserve program. With respect to any fiscal year after FY 1994, the Secretary is authorized to (a) continue to pay the monthly rates that are paid during the previous fiscal year, (b) provide a COLA in those rates, or (c) allow the monthly rates to revert to the original payment rates.

House bill: Section 301 of H.R. 5008 would, effective April 1, 1993, increase the monthly full-time-study benefits to (1) $400 for those serving on active duty for three years or more, and (2) $325 for those serving two years on active duty, and (3) to $190 for reservists. Part-time-study rates would be increased proportionately. Beginning in fiscal year 1994, future increases would be indexed to changes in the Consumer Price Index. This section would repeal the Secretary of Veterans Affairs' authority, under section 3015(f), to modify the educational assistance rates and index future increases to changes in the Consumer Price Index.

Senate amendment: Section 101 is substantively identical to the House bill, but effective September 1, 1993.

Compromise agreement: Section 301 follows the House bill.

MONTGOMERY GI BILL ENTITLEMENT DATES

Current law: Sections 3011 and 3012 of title 38 provide that an individual who on December 31, 1989, was eligible for benefits under the Vietnam-era GI Bill is eligible to convert to the MGIB if the individual was on active duty October 19, 1984, had no break in service after that date, and served three years of continuous active duty after June 30, 1985.

House bill: Section 8 of H.R. 5087 would, effective October 28, 1986, restore MGIB eligibility for an individual who, due to interrupted service, was not on active duty on October 19, 1984, but who had active-duty service sometime during the period beginning on October 19, 1984, and ending on July 1, 1985, and continued on active duty without a break for the period required to establish entitlement under MGIB.

Senate amendment: No provision.

Compromise agreement: Section 302 follows the House bill.

EXTENSION OF PERIOD FOR COMPLETING REQUIREMENTS FOR SECONDARY SCHOOL DIPLOMA

Current law: Sections 3011(a)(2) and 3012(a)(2) of title 38 require, as a condition of eligibility under the MGIB active-duty program, that the individual complete the requirements of a secondary school diploma (or equivalency certificate) before leaving active duty.

House bill: Section 1 of H.R. 5087 would allow an individual who was on active duty on August 2, 1990, and who does not complete the requirements of a secondary school diploma (or equivalency certificate) before leaving active duty to do so within 12 months after the date of enactment of this measure.

Senate amendment: No provision.

Compromise agreement: Section 303 follows the House bill with an amendment extending to 24 months after leaving active duty the time within which the individual must complete the requirements of a secondary school diploma (or equivalent certificate).

TREATMENT OF CERTAIN ACTIVE-DUTY SERVICE TOWARD ELIGIBILITY FOR EDUCATIONAL ASSISTANCE

Current law: Under chapter 30 of title 38, eligible servicemembers generally can earn 36 months of MGIB benefits if they undergo prescribed basic pay reductions of $100 per month for 12 months at the outset of their initial obligated period of active duty. Servicemembers who are discharged or released due to hardship, disability, or reduction-in-force prior to the completion of 12 months of payroll deductions are eligible to receive only one month of educational assistance for each month of continuous service following their initial entry into active duty. If such an individual re-enters active duty, he or she is not eligible to re-enter the MGIB program in order to obtain full benefits by resuming his or her payroll deductions.

House bill: Section 2 of H.R. 5087 would provide that any initial period of active duty beginning after June 30, 1985, would not be considered as an individual's obligated period of active duty for purposes of the MGIB if (a) that period is one year or less in length, (b) the individual is discharged or released by reason of disability, hardship, or reduction-in-force, and (c) the individual subsequently completes a period of active duty that is at least one month longer in duration than the previous active-duty period and would have established MGIB entitlement if he or she had not served the earlier period. Upon reentry on active duty, the individual would establish entitlement to the MGIB by undergoing the 12 months of basic pay reductions, but would be credited with basic-pay reductions made during the previous period of active duty.

Senate amendment: Section 103 would provide that, for MGIB purposes, a servicemember who, after a period of continuous active duty of not more than 12 months, is discharged or released from active duty by reason of disability, hardship, or reduction-in-force, and then reenlists or re-enters on active duty, would be deemed to have served a continuous period of active duty equal in length to the total of those two periods of active duty. The provision would take effect as if enacted on June 30, 1985, and apply to payment of assistance for education and training pursued on or after October 1, 1993.

Compromise agreement: Section 304 follows the Senate amendment.

TREATMENT OF CERTAIN ASSIGNMENTS OF INDIVIDUALS FOR PURPOSES OF ELIGIBILITY UNDER MONTGOMERY GI BILL PROGRAM

Current law: Section 3011 of title 38 requires as a condition of MGIB eligibility that a servicemember serve an initial obligated period of active duty of at least three years of continuous active duty or, in the case of an individual whose initial period of obligated active duty is less than three years, at least two years of continuous active duty. A break in the initial period of service disqualifies a participant from receiving the full amount of educational assistance. The term "active duty," as defined in section 3002(6)(A) of title 38, excludes any period during which a servicemember was assigned full time by the Armed Forces to a civilian institution for a course of education. Therefore, if a servicemember, whose pay has been reduced for MGIB purposes but who has served less than the required period of initial active-duty service accepts full-time civilian-study assignment as part of his or her active-duty service, he or she incurs a break in active-duty service for MGIB purposes and thus becomes ineligible for MGIB benefits.

House bill: No provision.

Senate amendment: Section 104 would repeal the provision that requires an assignment to a civilian educational institution to be considered a break in active-duty service.

Compromise agreement: Section 305 follows the Senate amendment.

TREATMENT OF PURSUIT OF EDUCATION AT SERVICE ACADEMIES AND CERTAIN EDUCATIONAL INSTITUTIONS FOR PURPOSES OF ELIGIBILITY UNDER MONTGOMERY GI BILL PROGRAM

Current law: Under section 3011(a)(1)(A) of title 38, MGIB eligibility criteria include a requirement that (a) the individual serve as his or her initial obligated period of active duty at least three years of continuous active duty—or, in the case of an individual whose initial period of active duty is less than three years, that the period of continuous active duty be at least two years—or (b) the individual be discharged or released for a disability, hardship, or reduction-in-force. Section 3002(6)(B) of title 38 defines "active duty" as not including any period during which an individual served as a cadet or midshipman at one of the service academies.

Currently, a servicemember participating in the MGIB can lose MGIB eligibility if he or she leaves active duty during his or her initial period of service to pursue a course of education at a service academy or a service-academy preparatory school before completing the period of continuous service mandated for MGIB eligibility, fails to complete the course of education at the academy or preparatory school, and is required to re-enter active duty. Such an individual would be (1) not entitled to MGIB educational assistance because the statutory period of continuous service was interrupted before being satisfactorily completed, and (2) not eligible to re-enter the MGIB program because the period of active duty marked by the re-entry was not the individual's initial period.

House bill: No provision.

Senate amendment: Section 105 would amend section 3011 to provide that MGIB participants who enroll in a service academy or a service-academy preparatory school during their initial period of active-duty service, drop out of the academy or school, and re-enter active duty would be able to merge their second active-duty period with their initial period so that the aggregate length of the two periods would be considered one continuous period of service. This provision would take effect as if enacted on June 30, 1985, and would apply to the payment of educational assistance for education or training pursued on or after October 1, 1993.

Compromise agreement: Section 306 follows the Senate amendment.

EDUCATIONAL ASSISTANCE FOR CERTAIN PERSONS WHOSE INITIAL PERIOD OF OBLIGATED SERVICE WAS LESS THAN THREE YEARS

Current law: Section 3015 of title 38 provides that MGIB participants who serve at least three years of continuous active duty as their initial obligated period of active duty are entitled to educational assistance at a rate higher than is paid to those whose initial obligated period of active duty is two years. If a servicemember whose initial obligated period of active duty is two years reenlists without a break in service for an additional year or more, he or she is currently denied the full educational benefits offered to servicemembers whose initial obligated period of active duty is for three or more continuous years.

House bill: No provision.

Senate amendment: Section 105 would amend section 3015 to grant full MGIB benefits to participants who serve their initial obligated period of two years and continue on active duty for an additional year or more without a break in service. The amendment to section 3015 would take effect as if enacted on June 30, 1985, and apply to the payment of educational assistance for education or training pursued on or after September 1, 1993.

Compromise agreement: Section 307 follows the Senate amendment.

DEATH BENEFIT

Current law: Section 3017 of title 38 provides for the payment of a death benefit to the survivors of an MGIB participant who dies of a service-connected cause on active duty. The death benefit is equal to the amount by which the participant's pay was reduced for purposes of MGIB participation minus the total of the amount of educational assistance that was paid to the individual.

House bill: Section 7 of H.R. 5087 would extend eligibility for the death benefit to the survivors of those who die of service-connected causes within one year of discharge from active duty.

Senate amendment: No provision.

Compromise agreement: Section 308 follows the House bill.

CLARIFICATION OF OPPORTUNITY TO WITHDRAW ELECTION NOT TO ENROLL IN MONTGOMERY GI BILL PROGRAM

Current law: Section 3011(c)(1) of title 38 provides that a servicemember who, at the time he or she initially enters on active duty, makes an election not to receive educational assistance under the MGIB is not entitled to MGIB benefits. As an exception to that rule, section 3018 of title 38 established the period between December 1, 1988, and June 30, 1989, as an "open period" during which certain servicemembers had the opportunity to withdraw an election not to receive educational assistance under the MGIB program and thereby become participants in the program. However, the general exception to MGIB length-of-service requirements for those who are separated early from service due to a physical or mental condition that is not characterized as a disability and did not result from the person's own willful misconduct but did interfere with the person's performance of duty does not currently apply to section 3018.

House bill: No provision.

Senate amendment: Section 107 would apply to individuals who enrolled in the MGIB during the "open period" the exception of length-of-service requirements for those who are separated early from the service for physical or mental conditions not characterized as disabilities.

Compromise agreement: Section 309 follows the Senate amendment.

USE OF EDUCATIONAL ASSISTANCE FOR SOLO FLIGHT TRAINING

Current law: Sections 3034(d) and 3241(b) of title 38 and section 2136(c) of title 10 provide that veterans participating in the MGIB or Post-Vietnam Era Veterans Educational Assistance programs may use VA benefits for flight training during fiscal year 1991 through 1994 if (1) the training is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation; (2) the individual possesses a valid private pilot's license and meets the medical requirements necessary for a commercial license; and (3) the flight school courses meet Federal Aviation Administration (FAA) standards and are approved by the State approving agency.

Sections 3032(f) and 3231(f) of title 38 and section 2131(g) of title 10 provide that the educational assistance allowance is to be paid in an amount equal to 60 percent of the established charges for tuition and fees. Tuition and fees for solo flying hours are specifically excluded.

House bill: No provision.

Senate amendment: Section 109 would, for the remainder of the current temporary program under which veterans may use VA educational assistance for flight training, authorize the use of benefits for solo flying hours. The number of solo hours for which benefits could be used would be limited to the minimum required by the Federal Aviation Administration for the rating or certification being sought.

Compromise agreement: Section 310 follows the Senate amendment, but with an effective date of October 1, 1992.

LIMITATION ON AMOUNT OF ADVANCE PAYMENT OF WORK-STUDY ALLOWANCE

Current law: Section 3485(a)(1) of title 38 requires that 40 percent of the total amount agreed to be paid to a work-study participant under a work-study contract must be paid in advance of the performance of any service. The remaining allowance is paid after services are performed.

House bill: No provision.

Senate amendment: Section 110 would limit advance payments by VA to work-study participants to payments for the first 50 hours of each work-study contract.

Compromise agreement: Section 311 follows the Senate amendment.

REVISION OF REQUIREMENTS RELATING TO APPROVAL OF ACCREDITED COURSES

Current law: Section 3675 of title 38 requires an educational institution that desires its courses to be approved for VA benefits purposes to submit an application for approval of the courses to the appropriate State approving agency (SAA). In making application for approval, the institution must transmit to the SAA copies of its catalog or bulletin. Elementary and secondary schools frequently do not publish catalogs and, as a result, their courses are denied SAA approval. Additionally, sections 3474 and 3524 of title 38 require that educational benefits be terminated for any recipient who fails to comply with any attendance standards that his or her school applies. However, section 3675 of title 38 does not require schools that have and enforce standards of attendance to include these standards in their applications for course approval.

No provisions of current law deal specifically with the use of MGIB benefits for nurses' aide training. VA Regulations for Vocational Rehabilitation and Education state, "[E]nrollment in an institutional course for the objective of nurse's aide . . . . will not be authorized" (38 CFR 21.4265(b)(3)).

House bill: No provision.

Senate amendment: Section 111(a) would modify the requirements for the approval of an accredited school by an SAA by (a) repealing the requirement that an elementary or secondary school furnish a copy of a catalog in applying for approval of an accredited course, and (b) adding a requirement that other institutions that have and enforce standards of attendance include these standards in each catalog or bulletin that they submit to the SAA.

Section 111(b) would amend section 3675(a)(1) of title 38 to allow a State approving agency to approve a nurses' aide course for MGIB purposes when it is approved by the State as meeting the requirements of regulations prescribed by the Secretary of Health and Human Services under sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Social Security Act (title 42, United States Code, sections 1395i-3(f)(2)(A)(i) and 1396r(f)(2)(A)(i)).

Compromise agreement: Section 312 follows the Senate amendment.

DISAPPROVAL OF NONACCREDITED INDEPENDENT STUDY

Current law: Section 3676 of title 38 provides that educational assistance may be granted to a veteran for enrollment in nonaccredited courses, including independent study, if certain conditions specified in that section are met.

House bill: Section 5 of H.R. 5087 would limit approval of independent study to courses that are part of an accredited degree program.

Senate amendment: Section 112 is substantively identical to the House bill.

Compromise agreement: Section 313 contains this provision.

TREATMENT OF ADVANCE PAYMENTS OF CERTAIN ASSISTANCE TO VETERANS WHO DIE

Current law: Section 3680(e) of title 38 provides that, when a veteran or eligible person entitled to educational benefits dies, benefits are discontinued effective the last day of attendance. Thus, any advance payment made toward a student's education covering a time period after the death of the student is considered an overpayment by VA and constitutes a liability to the student's estate.

House bill: No provision.

Senate amendment: Section 113 would make inapplicable the requirement in section 3680(e) for the recovery of advance payments for a course of education where the failure to enroll in or pursue a course is due to the individual's death.

Compromise agreement: Section 314 follows the Senate amendment.

BAR OF ASSISTANCE FOR PERSONS WHOSE EDUCATION IS PAID FOR AS FEDERAL EMPLOYEE TRAINING

Current law: Section 3681(a)(2) of title 38 generally prohibits payment of VA educational benefits to an individual for a course of education or training paid for under the Government Employees Training Act (GETA) and whose full salary is being paid while so training. A November 26, 1991, VA General Counsel opinion (O.G.C. Precedent 72-91) construed section 3681(a)(2) as permitting payment of VA educational assistance to a veteran or other eligible person training under the GETA if the training were received during periods of the day other than those for which the person's salary is paid.

House bill: Section 4 of H.R. 5087 would clarify that payment of VA education benefits may not be made to an individual for pursuit of a course of education that is paid for by the Government under the GETA.

Senate amendment: Section 114 is substantively identical to the House bill.

Compromise agreement: Section 315 contains this provision.

REVISION IN MEASUREMENT OF COURSES

Current law: Section 3688 of title 38 establishes a complex system of measuring and valuing courses of education for the purpose of benefit payments. Some programs provide for five different payment levels. For nondegree training at a vocational school, there is a distinction between accredited and nonaccredited facilities and between shop practice and classroom training. Maximum rest periods and supervised study periods are defined. Nondegree training at colleges is measured in three different ways—credit-hour measurement, clock-hour measurement, and a combination of credit hours and clock hours, known as "mixed" measurement. There is a distinction between courses taken in residence and courses taken by independent study or open circuit television. Some courses are considered to be a combination of resident training and independent study. Payment for independent study and open circuit television courses are reduced in some instances. For some participants, the rate of payment can change each week because of changes in the student's scheduled classroom training.

House bill: Section 6 of H.R. 5087 would (a) eliminate the benefit differential for accredited and non-accredited noncollege-degree courses; (b) base benefit payments for concurrent pursuit of graduate and undergraduate training on the training time certified by the school rather than on the conversion computations in current law; (c) make uniform the measurement of refresher courses and part-time training under the MGIB, Post-Vietnam Era Educational Assistance program, and the survivors' and dependents' educational assistance program; and (d) delete statutory measurement requirements in section 3688 of title 38 so as to (1) eliminate the benefit differential for independent study and other nontraditional types of training in accredited undergraduate degree programs that have been approved by SAAs, and (2) eliminate the standard class-session criterion.

Senate amendment: Section 114 is substantively identical to the House bill, but contains an effective date of September 1, 1993.

Compromise agreement: Section 316 follows the House bill, but with an effective date of July 1, 1993.

CLARIFICATION OF PERMITTED CHANGES IN PROGRAMS OF EDUCATION

Current law: Section 3691 of title 38 generally allows a veteran or other eligible person receiving VA-administered educational assistance one change of program of education without seeking the Secretary's approval. The Secretary generally may approve additional changes if the Secretary finds that the proposed program is suitable to the person's aptitudes, interests, and abilities. However, if the student's interruption or failure to make progress in an education program was due to the person's own misconduct or neglect, or lack of application, a change is not permitted unless the Secretary finds that a reasonable likelihood exists that there will not be a recurrence of such an interruption or failure of progress. The Secretary may also approve additional changes if the Secretary finds that they are necessitated by circumstances beyond the person's control.

House bill: No provision.

Senate amendment: Section 116 would provide that the limitations on changes of program by students using VA educational assistance do not apply to (a) a student beginning a new program of education after successfully completing another program, (b) a student not changing his or her vocational objective, and (c) a student transferring back to a former program without loss of credit for that program.

Compromise agreement: Section 317 follows the Senate amendment.

AUTHORITY OF MEMBERS OF SELECTED RESERVE TO RECEIVE TUTORIAL ASSISTANCE

Current law: Currently, members of the Selected Reserve who are eligible for MGIB educational assistance under chapter 106 of title 10 are not entitled to receive individualized tutorial assistance as are participants in the MGIB who serve on active duty (under chapter 30 of title 38) and survivors and dependents who receive educational assistance under chapter 35 of title 38.

House bill: No provision.

Senate amendment: Section 117 would provide that members of the Selected Reserve participating in the MGIB could receive—as do other MGIB participants and eligible survivors and dependents—a tutorial assistance allowance of up to $100 per month for a maximum of 12 months, or until a maximum of $1,200 is utilized. The criteria and restrictions relating to this benefit would be the same as those applied to the tutorial benefits now available to other MGIB participants and to survivors and dependents.

Compromise agreement: Section 318 follows the Senate amendment.

REQUIREMENT OF ATTENDANCE CERTIFICATION IN APPRENTICESHIP PROGRAM UNDER THE MONTGOMERY GI BILL SELECTED RESERVE PROGRAM

Current law: Section 2131(d)(2) of title 10, United States Code, requires a reduction in a reservist's payments under the MGIB Selected Reserve program in any month in which he or she, while pursuing a program of apprenticeship or other on-the-job training, fails to complete 120 hours of training. Section 2136(b) of title 10, in listing title 38 provisions that do not apply to the administration of the MGIB Selected Reserve program, specifically precludes VA from exercising its authority under section 3680(c) of title 38 to require a certification of attendance of a program of apprenticeship or other on-job training from either the student or training establishment.

House bill: Section 4 of H.R. 5087 would amend section 2136(b) to delete the exception of section 3680(c) and thereby provide VA with administrative authority to withhold the training assistance allowance of an individual pursuing a program of apprenticeship or other on-job training until VA has received a certification of attendance from the person and the training establishment.

Senate amendment: No provision.

Compromise agreement: Section 319 follows the House bill.

TECHNICAL AMENDMENTS

Current law: Chapter 106 of title 10, United States Code, authorizes the use of the MGIB program by members of the Selected Reserve and makes numerous references to the program as set forth in title 38. Public Law 102–40, enacted May 7, 1991, and Public Law 102–83, enacted August 6, 1991, changed section numbers in title 38, and thus made the title 38 references in title 10 inaccurate.

House bill: No provision.

Senate amendment: Section 118 would update title 10 references to title 38 to match the current section numbers.

Compromise agreement: Section 320 follows the Senate amendment.

TITLE IV—VOCATIONAL REHABILITATION AND PENSION PROGRAMS

PERMANENT AUTHORITY FOR PROGRAM OF VOCATIONAL REHABILITATION FOR CERTAIN SERVICE-DISABLED VETERANS

Current law: Section 1163 of title 38, United States Code, provides a temporary program for trial-work periods and vocational rehabilitation services to service-disabled veterans. Under section 1163, a veteran who has a service-connected disability not rated as total but who has been awarded a rating of total disability by reason of an individual determination that he or she is unable to secure or follow a substantially gainful occupation as a result of that disability—an individual unemployability (IU) rating—and who starts a substantially gainful occupation before December 31, 1992, may not have his or her disability rating reduced on the basis of having obtained and continued the employment unless he or she maintains that employment for 12 consecutive months.

House bill: No provision.

Senate amendment: Section 201 would make permanent the program of 12-month trial-work periods and vocational rehabilitation services for veterans who have total service-connected disability ratings based on an IU rating.

Compromise agreement: Section 401 follows the Senate amendment.

EXTENSION OF PROGRAM OF VOCATIONAL TRAINING FOR CERTAIN PENSION RECIPIENTS

Current law: Section 1524 provides for a temporary vocational training program—until December 31, 1992—for not more than 3,500 veterans during any 12-month period who are pension recipients.

A veteran under the age of 45 who is awarded a pension during the program period must be evaluated with respect to his or her potential for rehabilitation. The evaluation must include a personal interview by a VA employee trained in vocational counseling. If the veteran refuses to participate in the evaluation, the veteran's pension is suspended until the veteran participates in an evaluation. Participation in the vocational training itself is voluntary.

For a veteran pension recipient who is 45 years of age or older, the program of vocational training is totally voluntary. If such a veteran-pensioner applies to participate and VA makes a preliminary finding on the basis of information in the application that, with the assistance of a vocational training program, the veteran has a good potential for achieving employment, VA may, upon the veteran's request, evaluate the veteran to further determine whether the achievement of a vocational goal is reasonably feasible.

House bill: No provision.

Senate amendment: Section 202 would amend section 1524(a) to (1) make the program permanent; (2) make the program totally voluntary for all pension recipients, regardless of age; (3) eliminate the limitation on the number of program participants who may be evaluated annually; (4) expressly provide that the Secretary may determine what training is necessary for a VA employee to be able to conduct personal interviews of veterans under this program; and (5) authorize VA not to conduct an evaluation if the Secretary determines that it is not feasible or is not necessary in order to determine whether the achievement of a vocational goal is reasonably feasible.

Compromise agreement: Section 402 would (1) extend the temporary vocational training program through December 31, 1995; (2) eliminate the limitation on the number of program participants who may be evaluated annually; and (3) amend the program for veterans under age 45 who are awarded pension during the program period so as to (A) require the Secretary, based on information on file with VA, to make a preliminary finding whether the veteran, with the assistance of a VA vocational training program, has a good potential for achieving employment, (B) if that potential is found to exist, require the Secretary to solicit from the veteran an application for VA vocational training, and (C) if the veteran applies for training, require the Secretary to provide an evaluation to determine whether the achievement of a vocational goal is reasonably feasible.

PERMANENT AUTHORITY FOR PROTECTION OF HEALTH-CARE ELIGIBILITY FOR CERTAIN PENSION RECIPIENTS

Current law: Section 1525 of title 38 provides a veteran with protection of his or her VA health-care eligibility for a period of three years following the termination of pension benefits due to "income from work or training"—that is, as a result of the veteran's receipt of earnings from activity performed for renumeration or with gain, but only if the veteran's annual income from sources other than such earnings would, taken alone, not result in the termination of the veteran's pension. Under current law, these provisions are scheduled to expire on December 31, 1992.

House bill: No provision.

Senate amendment: Section 203 would make this health-care eligibility protection permanent.

Compromise agreement: Section 403 follows the Senate amendment.

VOCATIONAL REHABILITATION FOR CERTAIN SERVICE-DISABLED VETERANS WITH SERIOUS EMPLOYMENT HANDICAPS

Current law: Section 3102 of title 38 provides vocational-rehabilitation entitlement under chapter 31 of title 38 to a veteran who has a service-connected disability that is compensable at a rate of 20 percent or more and is determined by the Secretary to be in need of rehabilitation because of an employment handicap. The current eligibility requirement of a rating of 20 percent or more was established by the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), enacted November 1, 1990. Prior to OBRA 90, the requirement was for at least a 10-percent rating.

House bill: No provision.

Senate amendment: Section 204 would restore entitlement to vocational rehabilitation, effective October 1, 1993, to a veteran who has a service-connected disability that is compensable at a rate of 10 percent if he or she also has a serious employment handicap.

Compromise agreement: Section 404 follows the Senate amendment.

INCREASE IN SUBSISTENCE ALLOWANCE FOR VETERANS PARTICIPATING IN A REHABILITATION PROGRAM

Current law: Section 3108 of title 38 provides for a subsistence allowance for veterans pursuing rehabilitation under the chapter 31 program of rehabilitation for veterans with service-connected disabilities.

House bill: No provision.

Senate amendment: Section 205 would, effective October 1, 1993, increase the subsistence-allowance rates by 10 percent and index future increases to changes in the Consumer Price Index.

Compromise agreement: Section 405 follows the Senate amendment.

TITLE V—JOB COUNSELING, TRAINING, AND PLACEMENT SERVICES FOR VETERANS

IMPROVEMENT OF DISABLED VETERANS' OUTREACH PROGRAM

Current law: Section 4103A(a)(1) of title 38, United States Code, provides for the appointment in each State of one disabled veterans' outreach program (DVOP) specialist for each 5,300 veterans of the Vietnam era and disabled veterans residing in the State. According to the Department of Labor (DoL), application of the current formula results in 1,885 DVOP-specialist positions. Although Vietnam-era and disabled veterans are the population cohorts for the present DVOP staffing formula, DVOP employment assistance is available to all eligible veterans.

House bill: No provision.

Senate amendment: Section 301 would expand the statutory formula for the appointment of DVOP specialists to provide for one specialist for each 6,900 veterans residing in a State who are either Vietnam-era veterans, veterans with service-connected disabilities, or veterans who first entered on active duty after the end of the Vietnam ear (May 7, 1975).

Compromise agreement: Section 501 follows the Senate amendment.

The Committees note that in FY 1993 the change in the formula would add 21 additional DVOP-specialist positions to the 1,885 positions now determined by DoL to be derived from the current statutory formula. The Committees believe the additional staffing is necessary for implementation of the transition assistance program under section 1144 of title 10.

REPEAL OF DELIMITING DATE RELATING TO TREATMENT OF VETERANS OF THE VIETNAM ERA FOR DISABLED VETERANS' OUTREACH PROGRAM PURPOSES

Current law: Section 4211(2)(B) of title 38 provides that, after December 31, 1994, no veteran may be considered to be a "veteran of the Vietnam era" for purposes of various employment and training programs in chapter 41 and 42 of title 38 except for the veterans readjustment appointment authority in section 4214. Veterans of the Vietnam era are the major population cohort used in the calculation of disabled veterans' outreach program (DVOP) positions under section 4103A(a)(1). Under the current formula, the elimination of this cohort after December 31, 1994, would cause the number of mandatory DVOP positions to drop from 1,885 to 433.

House bill: Section 5 of H.R. 4342 would extend the definition of Vietnam-era veterans for one year to December 31, 1995, for purposes of various veterans' employment and training programs under chapters 41 and 42 of title 38.

Senate amendment: Section 302 would make permanent the consideration of a veteran of the Vietnam era under chapters 41 and 42 of title 38 by repealing the expiration date of December 31, 1994, for that consideration.

Compromise agreement: Section 502 follows the Senate amendment.

DISABLED VETERANS' OUTREACH PROGRAM PRIORITIES

Current law: Section 4103A(b)(1) of title 38 specifies that DVOP specialists shall be assigned only those duties directly related to meeting the employment needs of eligible veterans, with first priority being the provision of services to disabled veterans of the Vietnam era who are participating in or have completed a program of vocational rehabilitation under chapter 31, followed by services to other disabled veterans and then services to other eligible veterans.

House bill: Section 2 of H.R. 4342 would amend section 4103A(b)(1)(A) by expanding the first item in the priority listing of DVOP responsibilities to include veterans who served during the Persian Gulf War.

Senate amendment: No provision.

Compromise agreement: Section 503 amends section 4103A(b)(1)(A) to establish as the first priority for DVOP specialists services to "special disabled veterans" as defined in section 4211(1) of title 38 to include those who (a) have service-connected disabilities that are rated at either 30 percent or more or, in the case of those who have been determined to have a service-employment handicap for purposes of chapter 31, at 10 or 20 percent, or (b) were discharged or released from activity duty because of a service-connected disability.

The Committees recognize the importance of a close relationship between DVOP specialists and local VA staff administering the training and rehabilitation program for veterans with service-connected disabilities under chapter 31 of title 38. By this amendment, the Committees do not in any way intend to dilute this relationship so important to the furnishing of effective employment services to those service-disabled veterans who have participated in a VA vocational rehabilitation program.

REPEAL OF REQUIREMENT THAT TO BE REPRESENTED ON ADVISORY COMMITTEE ON VETERANS EMPLOYMENT AND TRAINING

A veterans organization must have a federal charter

Current law: Section 4110(c)(a)(A) of title 38 requires that to be represented on the Advisory Committee on Veterans Employment and Training a veterans organization must have a Federal charter. However, the House of Representatives Judiciary Committee has adopted a policy of not reporting legislation granting such charters.

House bill: Section 6 of H.R. 4342 would modify section 4110(c)(a)(A) of title 38 by striking the requirement that veterans organizations represented on the Advisory Committee on Veterans Employment and Training be chartered.

Senate amendment: No provision.

Compromise agreement: Section 504 follows the House bill.

EXPANSION AND EXTENSION OF VETERANS' READJUSTMENT APPOINTMENTS WITH THE FEDERAL GOVERNMENT

Current law: Section 4214 of title 38 establishes a program of veterans' readjustment appointment (VRA) under which certain veterans are eligible for limited non-competitive appointments that can lead to career civil service status in the Federal government.

Section 4214(b)(2) provides VRA eligibility to (a) Vietnam-era veterans who (1) are entitled to VA disability compensation or who were discharged or released from active duty for a disability incurred or aggravated in line of duty, or (2) received a campaign badge for service in a combat theater of operations; and (b) post-Vietnam-era veterans, that is, those who entered active duty after May 7, 1975. A Vietnam-era veteran with eligibility based on a service-connected disability rated at less than 30 percent or receipt of a campaign badge has VRA eligibility for 10 years after the date of his or her last discharge or release from active duty, or December 31, 1993, whichever is later. A post-Vietnam-era veteran generally has VRA eligibility within the 10-year period following the later of the date of his or her last discharge or release from active duty, or December 18, 1989 (the effective date of Public Law 101-237, the law that initially gave post-Vietnam-era veterans VRA eligibility). There is no time limitation on the VRA eligibility for a veteran who has a service-connected disability rated at 30 percent or more.

Under Public Law 101-237, since January 1, 1990, Vietnam-era veterans who are not service disabled nor authorized a campaign badge have not been eligible for a VRA appointment.

House bill: Section 1 of H.R. 4342 would amend section 4214(b)(2)(A) to restore VRA eligibility for all veterans of the Vietnam era.

Section 3 of H.R. 4342 would provide that all Vietnam-era veterans qualifying for the VRA program would be eligible for appointments through December 31, 1999, or 10 years after the veteran's date of last discharge or release from active duty, whichever is later.

Senate amendment: Section 303 would restore VRA eligibility for veterans of the Vietnam era who are not otherwise eligible and who were discharged or released from active duty after December 31, 1979 (the date being 10 years prior to the December 31, 1989, expiration of previous eligibility), under conditions other than dishonorable. Such veterans would be eligible to receive such a VRA appointment during the period ending 10 years after the date of their last discharge or release from active duty, or December 31, 1993, whichever is later.

Compromise agreement: Section 505 follows the House bill, except that Vietnam-era veterans would be eligible for appointments through December 31, 1995 (rather than 1990), or 10 years after the veteran's date of discharge, whichever is later.

REDESIGNATION OF SECTIONS OF CHAPTER 43

Current law: Public Law 102-40, enacted May 7, 1991, and Public Law 102-83 enacted August 6, 1991, renumbered the sections of title 38, United States Code, in order to reflect the chapters in which the sections appear. Prior to the enactment of these laws, Congress was in the process of rewriting chapter 43 of title 38 which provides veterans' reemployment rights; consequently, the sections of chapter 43 were not renumbered in Public Laws 102-40 and 102-83.

House bill: No provision.

Senate amendment: S. 1095 as reported by the Senate Committee on Veterans' Affairs would revise chapter 43 of title 38, including changing the section numbers to conform with the change made by Public Laws 102-40 and 102-83.

Compromise agreement: Section 506 would renumber the sections of chapter 43 to conform with the renumbering scheme required in Public Laws 102-40 and 102-83.

AUTHORIZATION OF APPROPRIATIONS FOR CERTAIN EMPLOYMENT, JOB TRAINING, AND OTHER ASSISTANCE

Current law: Section 1144 of title 10 requires the Department of Labor, in conjunction with VA and the Department of Defense, to establish and maintain a transition assistance program (TAP) to furnish counseling, assistance in identifying employment and training opportunities, help in obtaining employment and training, and other related information and services to members of the Armed Forces who are being separated from active duty and their spouses. The services are to be provided to a member during the 180-day period before separating from active duty. Subsection (e) of section 1144 authorizes DoL appropriations of $9 million for each of fiscal years 1992 and 1993, and VA appropriations of $4 million for each of those years.

House bill: No provision.

Senate amendment: Section 303 would authorize an increase in the FY 1993 appropriation for TAP and would extend the authorization for the TAP appropriation by two years—through FY 1995—at the following levels: $11 million for FY 1993 and $8 million for each of FYs 1994 and 1995 for the DoL, and $6.5 million for each of FYs 1993-1995 for VA.

Compromise agreement: No provision.

The Committee note that similar provisions are included in section 4470 of the conference report (H. Rept. No. 102-966) on H.R. 5006, the National Defense Authorization Act for FY 1993.

TITLE VI—OTHER VETERANS' PROGRAMS

EXTENSION OF LIMITATION ON PENSION FOR VETERANS RECEIVING MEDICAID-COVERED NURSING HOME CARE; APPLICABILITY TO SURVIVING SPOUSES; AND FACILITY EXPENSES

Current law: Section 5503(f) of title 38, United States Code, which expires on September 30, 1992, limits to $90 a month the maximum amount of VA needs-based pension payable to Medicaid-eligible veterans who are in nursing homes that participate in Medicaid and who have no dependents. Section 5502(f)(3) of title 38 protects this $90 monthly VA pension payment from State Medicaid rules limiting the medicaid-nursing-home beneficiary's personal allowance to less than $90 per month.

Section 5503(a)(1)(B) of title 38 reduces to $90 the maximum monthly pension payable to certain veterans being furnished nursing home care by VA. The reduction takes effect after the end of the third full calendar month following the month of admission.

House bill: Section 302 would extend the expiration date of section 5503(f) by five years, from September 30, 1992, to September 30, 1997, and, effective October 1, 1992, would expand that provision to cover veterans' Medicaid-eligible survivors receiving VA pension who are in nursing homes that participate in Medicaid and who have no dependents.

Senate amendment: Section 6 is substantively identical to the House provision, except it would take effect on July 1, 1992, and would repeal the expiration date of section 5503(f).

Compromise agreement: Section 601 follows the House provision and would require, during the period from November 1, 1992, through September 30, 1997, that the amount of the reduction, under section 5503(a)(1)(B) of title 38, in pension paid to a veteran receiving nursing home care from VA be deposited in a revolving fund at the VA medical facility that furnished nursing care to the veteran. The fund would be available, without fiscal-year limitation, to help defray the operating expenses of that facility.

EXTENSION OF AUTHORITY TO CARRY OUT INCOME VERIFICATION

Current law: Section 5317 of title 38 requires the Secretary to verify the eligibility of recipients of, or applicants for, VA needs-based benefits using income data from the Internal Revenue Service and Social Security Administration, and section 6103(10(7) of the Internal Revenue Code of 1986 provides the Secretary with access to that information.

These provisions expire on September 30, 1992.

House bill: Section 303 would extend the provisions to September 30, 1997.

Senate amendment: Section 7 would make the provisions permanent.

Compromise agreement: Section 602 follows the House provision.

ACCESS TO INFORMATION NECESSARY FOR THE ADMINISTRATION OF CERTAIN VETERANS BENEFITS LAWS

Current law: The Right to Financial Privacy Act of 1978 (RFPA) (Public Law 98-21) generally prohibits federal agencies from gaining access to or obtaining copies of information contained in the financial records of a financial institution's customer unless the records are reasonably described and the customer has authorized disclosure or the records are sought pursuant to an administrative subpoena or summons, a search warrant, a judicial subpoena, or, in certain circumstances, a formal written request by a government authority. There are 11 types of disclosures to federal agencies that are excluded from the general prohibition, including disclosure authorized under the Internal Revenue Code and disclosure necessary for the proper administration of programs of withholding taxes on nonresident aliens, Federal Old-Age, survivors and Disability Insurance Benefits, and Railroad Retirement Benefits.

Senate bill: Section 4 of S. 775 would amend the RFPA to authorize VA to obtain from financial institutions the current mailing addresses of certain VA beneficiaries whose benefits are deposited by direct deposit. The Secretary would be authorized to request and obtain this information only if the Secretary determines and certifies that the information is necessary to administer veterans' benefits programs and that the information cannot be obtained by a reasonable search of VAS records. Information disclosed by the financial institution under this provision could be used solely for the purpose of administering veterans' benefits programs.

House bill: Section 403 of H.R. 2280 is substantively identical to the Senate provision, except it would amend title 38, United States code, to require the Secretary to make the required determinations and certifications.

Compromise agreement: Section 603 contains the House provision.

EXTENSION OF EXPIRING COST-RECOVERY AUTHORITY

Current law: Section 1729(a)(2)(E) authorizes VA to recover from third parties, under a veteran's health-plan contract, the cost of medical care provided by VA for the treatment of a non-service-connected disability of a service-disabled veteran. This authority expires on October 1, 1993.

Senate bill: Section 401 of S. 2647 as passed by the Senate in H.R. 5087 on September 25, 1992, would make this authority permanent.

House bill: No provision.

Compromise agreement: Section 604 would extend this authority through July 31, 1994.

EXCLUSION FOR LOW-INCOME VETERANS FROM MEDICATION COPAYMENT REQUIREMENT

Current law: Section 1722A of title 38 requires the Secretary to charge veterans (other than those with a service-connected disability rate 50 percent or more) $2 (or the actual cost, if less) for each 30-day supply of a medication furnished by VA on an outpatient basis for the treatment of a non-service-connected disability or condition. This provisions expires on September 30, 1992.

Compromise agreement: Section 605 would exclude from the copayment requirement veterans whose income is at a level which, if taken alone, would qualify them for VA nonservice-connected disability pension.

EXTENSION OF COPAYMENT PROGRAMS

Current law: Under sections 1710 and 1712 of title 38, VA health-care eligibility consists of two categories of veterans for purposes of copayments—those whom VA is required to charge and those who do not have to pay.

Those who are not required to pay are those to whom VA is required to provide needed hospital care, known as the "mandatory" category, which includes, among others, veterans with a service-connected disability and veterans without a service-connected disability whose annual income does not exceed certain levels (currently $18,844 for a single veteran without dependents).

Those whom VA is required to charge are those to whom VA may furnish hospital care, known as the "discretionary" category, which includes non-service-disabled veterans whose income exceeds those levels. The charges are (1) for hospital care, an amount equal to the Medicare deductible (currently $652) for the first 90 days of care during any 365-day period, and half the Medicare deductible for each 90-day period of care thereafter; (2) for nursing-home care, the same deductible for any 90-day period as under the Medicare program; (3) an additional $10 a day for hospital care and $5 a day for nursing-home care; and (4) for outpatient care, 20 percent of the estimated cost of a VA outpatient visit for each visit.

The current health-care categories and copayments and deductibles reflect amendments made by section 8013 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508. Section 518 of the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act for FY 1992, Public Law 102-139, extended these provisions through September 30, 1992.

Section 1722A of title 38 requires the Secretary to charge veterans (other than those with a service-connected disability rated 50 percent or more) $2 (or the actual cost, if less) for each 30-day supply of a medication furnished by VA on an outpatient basis for the treatment of a non-service-connected disability or condition. This provision expires on September 30, 1992.

House bill: Section 304 would extend the expiration date of these provisions from September 30, 1992, to September 30, 1996.

Senate amendment: Section 8 is identical to the House provisions.

Compromise agreement: Section 606 follows these provisions, except that it would extend the provisions through September 30, 1997. (The medication copayment requirement would be modified by section 605 of the compromise agreement.)

Mr. FORD. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VETERANS HOME LOAN PROGRAM AMENDMENTS OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 939.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the text of the bill (H.R. 939) entitled "An Act to amend title 38, United States Code, with respect to housing loans for veterans, and for other purposes," with the following amendment:

In lieu of the matter inserted by said amendment, insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans Home Loan Program Amendments of 1992".

SEC. 2. ELIGIBILITY OF SELECTED RESERVE.

(a) SELECTED RESERVE.—Chapter 37 of title 38, United States Code, is amended—

(1) in section 3701(b), by adding at the end the following:

"(5)(A) The term 'veteran' also includes an individual who is not otherwise eligible for the benefits of this chapter and who has completed a total service of at least 6 years in the Selected Reserve and, following the completion of such service, was discharged from service with an honorable discharge, was placed on the retired list, was transferred to the Standby Reserve or an element of the Ready Reserve other than the Selected Reserve after service in the Selected Reserve characterized by the Secretary concerned as honorable service, or continues serving in the Selected Reserve.

"(B) The term 'Selected Reserve' means the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces, as required to be maintained under section 268(b) of title 10."; and

(2) in section 3702(a)(2), by adding at the end the following:

"(E) For the 7-year period beginning on the date of enactment of this subparagraph, each veteran described in section 3701(b)(5) of this title.".

(b) FEES.—(1) Section 3729(a)(2) of such title is amended—

(A) by striking out "and" at the end of subparagraph (B);

(B) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof a semicolon; and

(C) by adding after subparagraph (C) the following new subparagraph:

"(D) in the case of a loan made to, or guaranteed or insured on behalf of, a veteran described in section 3701(b)(5) of this title under this chapter, the amount of such fee shall be—

"(i) two percent of the total loan amount;

"(ii) in the case of a loan for any purpose specified in section 3712 of this title, one percent of such amount; or

"(iii) in the case of a loan for a purchase (other than a purchase referred to in section 3712 of this title) or for construction with respect to which the veteran has made a downpayment of 5 percent or more of the total purchase price or construction cost—

"(I) 1.50 percent of the total loan amount if such downpayment is less than 10 percent of such price or cost; or

"(II) 1.25 percent of the total loan amount if such downpayment is 10 percent or more of such price or cost; and".

(2) Subparagraphs (A) and (B) of section 3725(c)(2) of such title are amended by inserting "(other than loans described in section 3729(a)(2)(D) of this title)" after "for each loan".

(c) REPORT.—The Secretary of Veterans Affairs shall transmit a report to the Committees on Veterans' Affairs of the Senate and House of Representatives no later than December 31, 1994, and annually thereafter. The report shall contain—

(1) a declaration of the number of veterans (as defined by section 3701(b)(5) of title 38, United States Code) who receive mortgage loans guaranteed by the Secretary as a result of the amendments made by subsection (a);

(2) a comparison of the default rate of veterans described in paragraph (1) with the default rate for all other veterans who have received loans guaranteed or insured by the Secretary; and

(3) a comparison of the proportion of veterans who receive mortgage loans guaranteed by the Secretary as a result of the amendments made by subsection (a) who are first time homebuyers with the proportion of all other veterans who receive mortgage loans guaranteed or insured by the Secretary and who are first time homebuyers.

SEC. 3. ADJUSTABLE RATE MORTGAGE DEMONSTRATION PROGRAM.

(a) IN GENERAL.—(1) Chapter 37 of title 38, United States Code, is amended by adding after section 3706 the following new section:

"§ 3707. Adjustable rate mortgages

"(a) The Secretary shall carry out a demonstration project under this section during fiscal years 1993, 1994, and 1995 for the purpose of guaranteeing loans in a manner similar to the manner in which the Secretary of Housing and Urban Development insures adjustable rate mortgages under section 251 of the National Housing Act.

"(b) Interest rate adjustment provisions of a mortgage guaranteed under this section shall—

"(1) correspond to a specified national interest rate index approved by the Secretary, information on which is readily accessible to mortgagors from generally available published sources;

"(2) be made by adjusting the monthly payment on an annual basis on the anniversary of the date on which the loan was closed;

"(3) be limited, with respect to any single annual interest rate adjustment, to a maximum increase or decrease of 1 percentage point; and

"(4) be limited, over the term of the mortgage, to a maximum increase of 5 percentage points above the initial contract interest rate.

"(c) The Secretary shall promulgate underwriting standards for loans guaranteed under this section, taking into account—

"(1) the status of the interest rate index referred to in subsection (b)(1) and available at the time an underwriting decision is made, regardless of the actual initial rate offered by the lender;

"(2) the maximum and likely amounts of increases in mortgage payments that the loans would require;

"(3) the underwriting standards applicable to adjustable rate mortgages insured under title II of the National Housing Act; and

"(4) such other factors as the Secretary finds appropriate.

"(d) The Secretary shall require that the mortgagee make available to the mortgagor, at the time of loan application, a written explanation of the features of the adjustable rate mortgage, including a hypothetical payment schedule that displays the maximum potential increases in monthly payments to the mortgagor over the first five years of the mortgage term.".

(2) The table of sections for chapter 37, of title 38, United States Code, is amended by inserting after the item relating to section 3706 the following new item:

"3707. Adjustable rate mortgages.".

(b) REPORT.—The Secretary shall transmit a report to the Committees on Veterans' Affairs of the Senate and House of Representatives no later than December 31, 1993, containing a description of the project carried out under section 3707 of title 38, United States Code (as added by subsection (a)), and shall continue to make annual reports to the Committees with respect to the default rate and other information concerning the loans guaranteed under such section. Such reports shall—

(1) compare the number of adjustable rate mortgages guaranteed under such section with the number of fixed rate loans guaranteed or insured under chapter 37 of such title and contrast this ratio with a corresponding ratio for loans for single family housing insured by the Secretary of Housing and Urban Development pursuant to the National Housing Act;

(2) compare the initial interest rate of the adjustable rate mortgages guaranteed under such section with the fixed interest rate on loans guaranteed or insured under chapter 37 of such title;

(3) describe the monthly mortgage payment savings to the veteran, if any, under an adjustable rate mortgage guaranteed under such section compared with the payments that would have been required if the loan bore interest at a maximum fixed rate established by the Secretary;

(4) discuss whether the market share for housing loans guaranteed under chapter 37 of such title has increased or decreased since the implementation of such section;

(5) compare the default rate on mortgages guaranteed under such section with the default rate of fixed-rate mortgages guaranteed or insured under chapter 37 of such title; and

(6) compare the number of first time homebuyers using adjustable rate mortgage loans under such section with the number of first time homebuyers using any other loan guaranteed under chapter 37 of such title.

SEC. 4. ENHANCED LOAN ASSET SALE AUTHORITY.

Section 3720(h)(2) of title 38, United States Code, is amended by striking out "December 31, 1992" and inserting in lieu thereof "December 31, 1995".

SEC. 5. FEES FOR REFINANCING LOANS.

Section 3729(a)(2) of title 38, United States Code (as amended by section 2(b) of this Act), is amended—

(1) in subparagraph (A), by inserting "(other than section 3712(a)(1)(F))" after "section 3712"; and

(2) by inserting after subparagraph (D) the following new subparagraph:

"(E) in the case of a loan guaranteed under section 3710(a)(8), 3710(a)(9)(B)(i), or 3712(a)(1)(F) of this title, the amount of such fee shall be 0.5 percent of the total loan amount.".

SEC. 6. GUARANTY AMOUNT RELATIVE TO LOAN REFINANCINGS.

Chapter 37 of title 38, United States Code, is amended—

(1) in section 3710(e), by amending paragraph (1)(D) to read as follows:

"(D) notwithstanding section 3703(a)(1) of this title, the amount of the guaranty of the loan may not exceed the greater of (i) the original guaranty amount of the loan being refinanced, or (ii) 25 percent of the loan;"; and

(2) in section 3712(a)(4), by amending subparagraph (A)(iv) to read as follows:

"(iv) notwithstanding section 3703(a)(1) of this title, the amount of the guaranty of the loan may not exceed the greater of (I) the original guaranty amount of the loan being refinanced, or (II) 25 percent of the loan;".

SEC. 7. EXTENSION OF LENDER APPRAISAL PROGRAM.

Section 3731(f)(3) of title 38, United States Code, is amended by striking out "1992" and inserting in lieu thereof "1995".

SEC. 8. NATIVE AMERICAN VETERANS DIRECT HOUSING LOAN PILOT PROGRAM.

(a) PROGRAM.—Chapter 37 of title 38, United States Code, is amended by adding at the end the following new subchapter:

"SUBCHAPTER V—NATIVE AMERICAN VETERAN HOUSING LOAN PILOT PROGRAM

"§ 3761. Pilot program

"(a) The Secretary shall establish and implement a pilot program under which the Secretary may make direct housing loans to Native American veterans. The purpose of such loans is to permit such veterans to purchase, construct, or improve dwellings on trust land. The Secretary shall establish and implement the pilot program in accordance with the provisions of this subchapter.

"(b) In carrying out the pilot program under this subchapter, the Secretary shall, to the extent practicable, make direct housing loans to Native American veterans who are located in a variety of geographic areas and in areas experiencing a variety of economic circumstances.

"(c) No loans may be made under this subchapter after September 30, 1997.

"§ 3762. Direct housing loans to Native American veterans

"(a) The Secretary may make a direct housing loan to a Native American veteran if—

"(1) the Secretary has entered into a memorandum of understanding with respect to such loans with the tribal organization that has jurisdiction over the veteran; and

"(2) the memorandum is in effect when the loan is made.

"(b)(1) Subject to paragraph (2), the Secretary shall ensure that each memorandum of understanding that the Secretary enters into with a tribal organization shall provide for the following:

"(A) That each Native American veteran who is under the jurisdiction of the tribal organization and to whom the Secretary makes a direct loan under this subchapter—

"(i) holds, possesses, or purchases using the proceeds of the loan a meaningful interest in a lot or dwelling (or both) that is located on trust land; and

"(ii) will purchase, construct, or improve (as the case may be) a dwelling on the lot using the proceeds of the loan.

"(B) That each such Native American veteran will convey to the Secretary by an appropriate instrument the interest referred to in subparagraph (A) as security for a direct housing loan under this subchapter.

"(C) That the tribal organization and each such Native American veteran will permit the Secretary to enter upon the trust land of that organization or veteran for the purposes of carrying out such actions as the Secretary determines are necessary—

"(i) to evaluate the advisability of the loan; and "(ii) to monitor any purchase, construction, or improvements carried out using the proceeds of the loan.

"(D) That the tribal organization has established standards and procedures that apply to the foreclosure of the interest conveyed by a Native American veteran pursuant to subparagraph (B), including—

"(i) procedures for foreclosing the interest; and

"(ii) procedures for the resale of the lot or the dwelling (or both) purchased, constructed, or improved using the proceeds of the loan.

"(E) That the tribal organization agrees to such other terms and conditions with respect to the making of direct loans to Native American veterans under the jurisdiction of the tribal organization as the Secretary may require in order to ensure that the pilot program established under this subchapter is implemented in a responsible and prudent manner.

"(2) The Secretary may not enter into a memorandum of understanding with a tribal organization under this subsection unless the Secretary determines that the memorandum provides for such standards and procedures as are necessary for the reasonable protection of the financial interests of the United States.

"(c)(1)(A) Except as provided in subparagraph (B), the principal amount of any direct housing loan made to a Native American under this section may not exceed $80,000.

"(B) The Secretary may make loans exceeding the amount specified in subparagraph (A) in a geographic area if the Secretary determines that housing costs in the area are significantly higher than average housing costs nationwide. The amount of such increase shall be the amount that the Secretary determines is necessary in order to carry out the pilot program under this subchapter in a manner that demonstrates the advisability of making direct housing loans to Native American veterans who are located in a variety of geographic areas and in geographic areas experiencing a variety of economic conditions.

"(2) Loans made under this section shall bear interest at a rate determined by the Secretary, which rate may not exceed the appropriate rate authorized for guaranteed loans under section 3703(c)(1) or section 3712(f) of this title, and shall be subject to such requirements or limitations prescribed for loans guaranteed under this title as the Secretary may prescribe.

"(3) Notwithstanding section 3704(a) of this title, the Secretary shall establish minimum requirements for planning, construction, improvement, and general acceptability relating to any direct loan made under this section.

"(d)(1) The Secretary shall establish credit underwriting standards to be used in evaluating loans made under this subchapter. In establishing such standards, the Secretary shall take into account the purpose of this program to make available housing to Native American veterans living on trust lands.

"(2) The Secretary shall determine the reasonable value of the interest in property that will serve as security for a loan made under this section and shall establish procedures for appraisals upon which the Secretary may base such determinations. The procedures shall incorporate generally the relevant requirements of section 3731 of this title, unless the Secretary determines that such requirements are impracticable to implement in a geographic area, on particular trust lands, or under circumstances specified by the Secretary.

"(e) Loans made under this section shall be repaid in monthly installments.

"(f) In connection with any loan under this section, the Secretary may make advances in cash to provide for repairs, alterations, and improvements and to meet incidental expenses of the loan transaction. The Secretary shall determine the amount of any expenses incident to the origination of loans made under this section, which expenses, or a reasonable flat allowance in lieu thereof, shall be paid by the veteran in addition to the loan closing costs.

"(g) Without regard to any provision of this chapter (other than a provision of this section), the Secretary may—

"(1) take any action that the Secretary determines to be necessary with respect to the custody, management, protection, and realization or sale of investments under this section;

"(2) determine any necessary expenses and expenditures and the manner in which such expenses and expenditures shall be incurred, allowed, and paid;

"(3) make such rules, regulations, and orders as the Secretary considers necessary for carrying out the Secretary's functions under this section; and

"(4) in a manner consistent with the provisions of this chapter and with the Secretary's functions under this subchapter, employ, utilize, and compensate any persons, organizations, or departments or agencies (including departments and agencies of the United States) designated by the Secretary to carry out such functions.

"(h) The Secretary shall carry out an outreach program to inform and educate tribal organizations and Native American veterans of the pilot program provided for under this subchapter and the availability of direct housing loans for Native American veterans who live on trust lands.

"§3763. Housing loan program account

"(a) There is hereby established in the Treasury of the United States an account known as the 'Native American Veteran Housing Loan Program Account' (hereafter in this subchapter referred to as the 'Account').

"(b) The Account shall be available to the Secretary to carry out all operations relating to the making of direct housing loans to Native American veterans under this subchapter, including any administrative expenses relating to the making of such loans. Amounts in the Account shall be available without fiscal year limitation.

"§3764. Definitions

"For the purposes of this subchapter—

"(1) The term 'trust land' means any land that—

"(A) is held in trust by the United States for Native Americans;

"(B) is subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands);

"(C) is owned by a Regional Corporation or a Village Corporation, as such terms are defined in section 3(g) and 3(j) of the Alaska Native Claims Settlement Act, respectively (43 U.S.C. 1602(g), (j)); or

"(D) is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land, as determined by the Secretary.

"(2) The term 'Native American veteran' means any veteran who is a Native American.

"(3) The term 'Native American' means—

"(A) an Indian, as defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d));

"(B) a native Hawaiian, as that term is defined in section 201(a)(7) of the Hawaiian Homes Commission Act, 1920 (Public Law 67-34; 42 Stat. 108);

"(C) an Alaska Native, within the meaning provided for the term 'Native' in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)); and

"(D) a Pacific Islander, within the meaning of the Native American Programs Act of 1974 (42 U.S.C. 2991 et seq.).

"(4) The term 'tribal organization' shall have the meaning given such term in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)) and shall include the Department of Hawaiian Homelands, in the case of native Hawaiians, and such other organizations as the Secretary may prescribe.".

(b) CONSULTATION.—In carrying out the direct housing loan pilot program authorized under subchapter V of chapter 37 of title 38, United States Code (as added by subsection (a)), the Secretary of Veterans Affairs shall consider the views and recommendations, if any, of the Advisory Committee on Native-American Veterans established under section 19032 of the Veterans' Health-Care Amendments of 1986 (title XIX of Public Law 99-272; 100 Stat. 388).

(c) CONFORMING AMENDMENT.—The table of sections of such chapter is amended by adding at the end the following new matter:

"SUBCHAPTER V—NATIVE AMERICAN VETERAN HOUSING LOAN PILOT PROGRAM

"3761. Pilot program.
"3762. Direct housing loans to Native American veterans.
"3763. Housing loan program account.
"3764. Definitions.".

(d) ANNUAL REPORTS.—Not later than February 1 of each of 1994 through 1998, the Secretary of Veterans Affairs shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report relating to—

(1) the implementation of the Native American veterans direct housing loan pilot program established under subchapter V of chapter 37 of title 38, United States Code (as added by subsection (a)), during the period ending on September 30 of the year preceding the date of the report;

(2) the Secretary's exercise of the authority provided under section 3762(c)(1)(B) of such title (as so added) to make loans exceeding the maximum loan amount;

(3) the appraisals performed for the Secretary during that period under the authority of section 3732(d)(2) of such title (as so added), including a description of—

(A) the manner in which such appraisals were performed;

(B) the qualifications of the appraisers who performed such appraisals; and

(C) the actions taken by the Secretary with respect to such appraisals to protect the interests of veterans and the United States; and

(4) the Secretary's recommendations, if any, for legislation regarding the pilot program.

(e) AUTHORIZATION OF APPROPRIATIONS.—New direct loan obligations for Native American veteran housing loans under subchapter V of chapter 37 of title 38, United States Code (as added by subsection (a)), may be incurred only to the extent that appropriations of budget authority to cover the anticipated cost, as defined in section 502 of the Congressional Budget Act of 1974, for such loans are made in advance. There is authorized to be appropriated for such purpose

$5,000,000 for fiscal year 1993, which amount shall remain available without fiscal year limitation.

(f) Conforming Funding Amendment.—Title I of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 is amended by striking out "direct loans authorized by" and all that follows through "Veterans' Affairs)" under the heading "NATIVE AMERICAN VETERAN HOUSING LOAN PROGRAM ACCOUNT" and inserting in lieu thereof "direct loans authorized by subchapter V of chapter 37 of title 38, United States Code".

SEC. 9. ENERGY EFFICIENT MORTGAGES.

(a) In General.—Subsection (d) of section 3710 of title 38, United States Code, is amended to read as follows:

"(d)(1) The Secretary shall carry out a program to demonstrate the feasibility of guaranteeing loans for the acquisition of an existing dwelling and the cost of making energy efficiency improvements to the dwelling or for energy efficiency improvements to a dwelling owned and occupied by a veteran. A loan may be guaranteed under this subsection only if it meets the requirements of this chapter, except as those requirements are modified by this subsection.

"(2) The cost of energy efficiency measures that may be financed by a loan guaranteed under this section may not exceed the greater of—

"(A) the cost of the energy efficiency improvements, up to $3,000; or

"(B) $6,000, if the increase in the monthly payment for principal and interest does not exceed the likely reduction in monthly utility costs resulting from the energy efficiency improvements.

"(3) Notwithstanding the provisions of section 3703(a)(1)(A) of this title, any loan guaranteed under this subsection shall be guaranteed in an amount equal to the sum of—

"(A) the guaranty that would be provided under those provisions for the dwelling without the energy efficiency improvements; and

"(B) an amount that bears the same relation to the cost of the energy efficiency improvements as the guaranty referred to in subparagraph (A) bears to the amount of the loan minus the cost of such improvements.

"(4) The amount of the veteran's entitlement, calculated in accordance with section 3703(a)(1)(B) of this title, shall not be affected by the amount of the guaranty referred to in paragraph (3)(B).

"(5) The Secretary shall take appropriate actions to notify eligible veterans, participating lenders, and interested realtors of the availability of loan guarantees under this subsection and the procedures and requirements that apply to the obtaining of such guarantees.

"(6) For the purposes of this subsection:

"(A) The term 'energy efficiency improvement' includes a solar heating system, a solar heating and cooling system, or a combined solar heating and cooling system, and the application of a residential energy conservation measure.

"(B) The term 'solar heating' has the meaning given such term in section 3(1) of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5502(1)) and, in addition, includes a passive system based on conductive, convective, or radiant energy transfer.

"(C) The terms 'solar heating and cooling' and 'combined solar heating and cooling' have the meaning given such terms in section 3(2) of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5502(2)) and, in addition, include a passive system based on conductive, convective, or radiant energy transfer.

"(D) The term 'passive system' includes window and skylight glazing, thermal floors, walls, and roofs, movable insulation panels (when in conjunction with glazing), portions of a residential structure that serve as solar furnaces so as to add heat to the structure, double-pane window insulation, and such other energy-related components as are determined by the Secretary to enhance the natural transfer of energy for the purpose of heating or heating and cooling a residence.

"(E) The term 'residential energy conservation measure' means—

"(i) caulking and weatherstripping of all exterior doors and windows;

"(ii) furnace efficiency modifications limited to—

"(I) replacement burners, boilers, or furnaces designed to reduce the firing rate or to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency,

"(II) devices for modifying flue openings which will increase the efficiency of the heating system, and

"(III) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

"(iii) clock thermostats;

"(iv) ceiling, attic, wall, and floor insulation;

"(v) water heater insulation;

"(vi) storm windows and doors;

"(vii) heat pumps; and

"(viii) such other energy conservation measures as the Secretary may identify for the purposes of this subparagraph.

"(7) A loan may not be guaranteed under this subsection after December 31, 1995.".

(b) Purchase or Construction With Energy Efficiency Improvements.—(1) Section 3710(a)(7) of such title is amended to read as follows:

"(7) To improve a dwelling or farm residence owned by the veteran and occupied by the veteran as the veteran's home through energy efficiency improvements, as provided in subsection (d).".

(2) Section 3710(a) of such title is further amended by adding after paragraph (9) the following:

"(10) To purchase a dwelling to be owned and occupied by the veteran as a home and make energy efficiency improvements, as provided in subsection (d).".

(c) Reports.—Not later than 1 year after the date on which the Secretary of Veterans Affairs first exercises the authority to guarantee loans under section 3710(d) of title 38, United States Code (as added by subsection (a) of this section), and for each of the 3 years thereafter, the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the program under such section. Each such report shall contain information pertaining to—

(1) the number of mortgages guaranteed under such section;

(2) the average amount of money added to the mortgage to finance energy efficiency features;

(3) the types of energy efficiency features obtained with mortgages under such section; and

(4) the default rates on the mortgages guaranteed under such section compared with the default rates on all other types of mortgages guaranteed by the Secretary.

SEC. 10. NEGOTIATED INTEREST RATES.

(a) In General.—Section 3703(c) of title 38, United States Code, is amended—

(1) in the first sentence of paragraph (1)—

(A) by striking "the Secretary of Housing and Urban Development considers necessary to meet the mortgage market for" and inserting "applicable to"; and

(B) by striking all that follows "(12 U.S.C. 1709(b))" and inserting a period; and

(2) by adding at the end the following:

"(4)(A) In guaranteeing or insuring loans under this chapter, the Secretary may elect whether to require that such loans bear interest at a rate that is—

"(i) agreed upon by the veteran and the mortgagee; or

"(ii) established under paragraph (1).

The Secretary may, from time to time, change the election under this subparagraph.

"(B) Any veteran, under a loan described in subparagraph (A)(i), may pay reasonable discount points in connection with the loan. Discount points may not be financed as part of the principal amount of a loan guaranteed or insured under this chapter.

"(C) Not later than 10 days after an election under subparagraph (A), the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a notification of the election, together with an explanation of the reasons therefor.

"(D) This paragraph shall expire on December 31, 1995.".

(b) Report.—Not later than December 31, 1993, and annually thereafter, the Secretary of Veterans Affairs shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on whether the Secretary has implemented the authority to guarantee and insure loans that bear negotiated interest rates and points under section 3703(c)(4) of title 38, United States Code (as added by subsection (a)). If the Secretary has implemented that authority, the Secretary shall include in the report—

(1) a comparison of the interest rates paid by veterans for loans that bear interest rates negotiated under section 3703(c)(4) of such title with interest rates allowable under mortgages for single family housing insured by the Secretary of Housing and Urban Development pursuant to the National Housing Act and interest rates charged under conventional mortgage loan programs for single family housing;

(2) a comparison of the negotiated interest rates being charged under paragraph 4 of section 3703(c) of such title with the interest rate that the Secretary would have established under paragraph (1) of such section during the same time period;

(3) a comparison of the number of discount points charged by the lender for mortgage loans that bear interest rates negotiated under section 3703(c)(4) of such title with the number of discount points charged for mortgages for single family housing insured by the Secretary of Housing and Urban Development pursuant to the National Housing Act and the number of discount points charged under conventional mortgage loan programs for single family housing;

(4) a discussion of the extent to which borrowers or sellers are paying the discount points on negotiated interest rate loans under section 3703(c)(4) of such title;

(5) a discussion of whether the market share for housing loans guaranteed under such title has increased or decreased since the implementation of the authority to guarantee and insure loans that bear negotiated interest rates under section 3703(c)(4) of such title, and a discussion of the extent to which any change in market share was the result of that authority;

(6) in claims paid following foreclosure, a discussion of the difference in the interest portion paid on loans guaranteed under section 3703(c)(4) of such title to what the interest portion would have been under the interest rate established under section 3703(c)(1) of such title; and

(7) the number of first time homebuyers using loans that bear negotiated interest rates under section 3703(c)(4) of such title.

SEC. 11. ELIGIBILITY FOR FLAGS AND GRAVE MARKERS.

(a) FLAGS.—Section 2301(a) of title 38, United States Code, is amended to read as follows:

"(a) The Secretary shall furnish a flag to drape the casket of each—

"(1) deceased veteran who—

"(A) was a veteran of any war, or of service after January 31, 1955;

"(B) had served at least one enlistment; or

"(C) had been discharged or released from the active military, naval, or air service for a disability incurred or aggravated in line of duty; and

"(2) deceased individual who at the time of death was entitled to retired pay under chapter 67 of title 10 or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.".

(b) HEADSTONES OR MARKERS.—Section 2306(a) of title 38, United States Code, is amended by adding at the end thereof the following:

"(5) Any individual who at the time of death was entitled to retired pay under chapter 67 of title 10 or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.".

SEC. 12. TECHNICAL AMENDMENT.

Section 5 of Public Law 102-54 (105 Stat. 268) is amended by striking out "3102" and inserting in lieu thereof "5302".

Resolved, That the House agree to the amendment of the Senate to the title of the bill.

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I urge final Senate action on legislation to improve VA's Home-Loan Guaranty Program. This legislation as it comes before the Senate today is derived from H.R. 939 as passed by the House on March 3, 1992; S. 3108 as passed by the Senate in H.R. 939 on October 1, 1992; H.R. 4368 as passed by the House on June 9, 1992; and S. 2528 as passed by the Senate on September 18, 1992.

This measure, which I will refer to as the compromise agreement, would breathe new life into the VA Home-Loan Program—a program that, for nearly half a century has made it possible for millions of veterans to realize the American dream of home ownership.

Specifically, the measure would, among other things, establish VA pilot programs providing VA-guaranteed loans with adjustable interest rates, allowing veterans to negotiate the interest rates and discount points on VA-guaranteed loans, providing direct home loans to Native American veterans living on trust lands, and making certain reservists eligible for VA-guaranteed home loans.

Mr. President, the House passed this compromise bill without opposition on a voice vote on October 5, 1992, and I hope the Senate shortly will do the same. The provisions in the compromise agreement will make significant improvements in veterans' programs.

At the conclusion of my remarks, I will submit for the RECORD a detailed explanatory statement prepared by the two Veterans' Affairs Committees that describes in detail the provisions in this measure. Thus, at this point, I will summarize briefly the provisions of the compromise agreement and then discuss certain provisions in the bill.

SUMMARY OF PROVISIONS

The provisions of the compromise agreement would:

ADJUSTABLE RATE MORTGAGES

First, establish a demonstration program, during FYs 1993 through 1995, of VA-guaranteed adjustable rate mortgages (ARMs).

Second, require annual adjustments in the interest rate on ARMs on the anniversary date of the loan closing based on a national interest rate index approved by the Secretary.

Third, limit the annual interest-rate adjustment on VA-guaranteed ARMs to no more than 1 percentage point higher or lower than the interest rate of the loan at the time of the adjustment.

Fourth, limit the maximum interest rate at any time during the term of the loan to no more than 5 percentage points above the initial rate.

Fifth, require the Secretary to promulgate underwriting standards specifically for VA-guaranteed ARMs.

Sixth, provide that VA must require the lender to provide to an applicant for a VA-guaranteed ARM a written explanation of the features of the ARM, including a hypothetical payment schedule that displays the maximum potential increases in monthly payments to the borrower over the first five years of the loan.

Seventh, require the Secretary to report to the Committees on Veterans' Affairs by December 31, 1993, and annually thereafter, on the default rate and other information concerning VA-guaranteed ARMs.

NEGOTIATED INTEREST RATES

Eighth, require the Secretary, through December 31, 1995, to establish either (a) a uniform maximum interest rate and general prohibition on a borrower paying discount points, or (b) procedures for allowing interest on VA-guaranteed loans at rates negotiated between borrowers and lenders.

Ninth, authorize the Secretary to change between uniform maximum rates and negotiated rates at any time.

Tenth, provide that, if the Secretary allows negotiated interest rates, the Secretary shall allow a borrower to pay reasonable discount points on VA-guaranteed loans, as negotiated between the borrower, the seller, and the lender, but prohibit the discount points from being financed as part of the loan.

Eleventh, require the Secretary (a) to notify the Committees on Veterans' Affairs within 10 days after exercising the authority to provide for negotiated rates or after returning to a uniform maximum rate, and (b) to provide with the notification an explanation of the reasons for the change in policy.

Twelfth, require the Secretary to report to the Committees by March 1, 1994, on whether the Secretary has implemented negotiated interest rates under the authority of this legislation and, if so, various information and analyses regarding VA-guaranteed loans that bear a negotiated interest rate.

ENERGY EFFICIENT MORTGAGES

Thirteenth, establish a demonstration program of energy efficient mortgages (EEMs) during FYs 1993 through 1996.

Fourteenth, provide VA-guaranteed EEMs for eligible veterans to purchase an existing home and make energy efficiency improvements to it or to make energy efficiency improvements to it or to make energy efficiency improvements to a home owned and occupied by the veteran, provided that the financed cost of the energy efficiency improvements does not exceed the greater of (1) $3,000, or (2) $6,000 if the increase in monthly principal and interest payments does not exceed the likely reduction in monthly utility costs as a result of the improvements.

Fifteenth, provide that the portion of the guaranty attributable to energy efficiency measures may be in addition to the current applicable maximum guaranty and shall not affect the loan-guaranty entitlement to which the borrower otherwise is entitled.

Sixteenth, require VA to encourage participation in the program by notifying eligible veterans, participating lenders, and interested realtors about the availability of EEMs and the procedures and requirements to obtain the loans.

Seventeenth, require the Secretary to report to the Senate and House Committees on Veterans' Affairs on the program one year after VA guarantees the first EEM under the program and annually thereafter and to include information on the default rates for EEMs and the effects, if any, of the energy efficiency measures on resale values and home utility consumption and costs.

DIRECT HOME LOANS TO NATIVE AMERICAN VETERANS ON TRUST LANDS

Eighteenth, establish a five-year pilot program of direct loans to Native American veterans to purchase, construct, or improve dwellings on trust lands.

FEES FOR CERTAIN REFINANCING LOANS

Nineteenth, reduce the VA fee for VA-guaranteed interest rate reduction refinancing loans from as much as 1.25 percent of the loan to 0.5 percent.

MINIMUM GUARANTY RATIO FOR CERTAIN REFINANCING LOANS

Twentieth, provide that the guaranty for VA-guaranteed interest rate reduction refinancing loans always will be at least 25 percent of the new loan.

RESERVISTS' ELIGIBILITY FOR LOAN GUARANTIES

Twenty-first, establish a seven-year pilot program extending eligibility for VA-guaranteed home loans to individuals who have served in the Reserve or National Guard for a total of at least six years.

Twenty-second, require these individuals to pay VA a loan fee 0.75 of a percentage point above the fee that veterans pay.

Twenty-third, require the Secretary to report to the Senate and House Committees on Veterans' Affairs, by December 31, 1994, and annually thereafter, on reservists' participation in the program.

LENDER APPRAISAL PROCESSING PROGRAM

Twenty-fourth, extend, from December 31, 1992, to December 31, 1995, the lender appraisal processing program, under which the

Secretary may authorize qualified lenders to determine the reasonable value of the property based on an appraisal submitted by the appraiser directly to the lender, rather than to VA.

ENHANCED LOAN ASSET SALE AUTHORITY

Twenty-fifth, extend from December 31, 1992, to December 31, 1995, VA's authority under section 3720(h) of title 38 to provide a full-faith-and-credit government guaranty on the payment of securities backed by pools of VA vendee loans (direct loans to purchasers of properties acquired by VA upon foreclosure of a VA-guaranteed loan).

ELIGIBILITY OF RESERVISTS FOR FLAGS AND BURIAL MARKERS

Twenty-sixth, extend eligibility for flags to deceased individuals who at the time of death qualified for Reserved retired pay under chapter 67 of title 10 (or would have qualified if the individual was 60 years old).

Twenty-seventh, extend to these same individuals eligibility for VA-provided headstones or grave markers.

BACKGROUND

Mr. President, the declining share of the mortgage market occupied by VA-guaranteed loans reflects the declining value of this veterans benefit. Congress must act to reverse this trend and restore the value of this vital program—and the measure we are considering today would take several significant steps toward that goal.

Mr. President, I refer my colleagues and others interested in more background on the program and this legislation to the Veterans' Affairs Committee's report accompanying S. 3108 (S. Rept. No. 102-405) and to my statement in the RECORD of October 1, 1992, on the passage of the Senate bill, S. 3108, which I authored.

NEGOTIATED INTEREST RATES

Mr. President, I'm very pleased that the compromise agreement contains a provision from the Senate bill that will allow veterans to negotiate with lenders interest rates on VA-guaranteed loans. This step is long overdue.

The VA administered rate under current law is supposed to be a maximum interest rate, but in practice, it sets a single, nationwide interest rate for VA-guaranteed loans. Veterans are prohibited from paying discount points on a VA loan to obtain a lower interest rate. The prohibition against veterans paying points means that, when a veteran wants to use a VA-guaranteed loan, the seller must pay all of the points. That makes many sellers reluctant to sell their homes to veterans who plan to use VA-guaranteed loans.

Mr. President, for the next 3 years, this bill could put veterans on a level playing field with potential purchasers who plan to use conventional, FHA-insured, or other types of mortgage loans. Veterans would not start at a disadvantage when they bid for a house against other potential purchasers.

Mr. President, in the highly competitive mortgage lending industry, I believe that the interest-rate competition that this bill would allow ultimately will reduce veterans' costs for housing.

ADJUSTABLE RATE MORTGAGES

Mr. President, I also am pleased that the compromise includes Senate improvements to important House provisions providing—for the first time—authority for VA-guaranteed adjustable rate mortgages. VA-guaranteed loans are the only segment of the single-family mortgage market at does not offer adjustable rate mortgages.

I have been very cautious about pushing VA into guaranteeing this type of loan because ARM's inherently are more risky for the borrower. In the first years that adjustable rate mortgages were offered, abuses were rampant and default rates were high.

The market for ARM's has matured, however, and limitations placed on interest-rate adjustments have brought defaults down to reasonable levels, although ARM's still have default rates somewhat higher than fixed-rate mortgages. The safeguards added by the Senate amendments to the ARM's demonstration program represent a very conservative approach to expanding veterans' options for VA-guaranteed home loans.

During the committee's July 22, 1992, hearing on a draft measure of what became the Senate bill, I was pleased to hear the administration reverse its longstanding opposition to VA-guaranteed ARM's and support the demonstration program in our bill.

ENERGY EFFICIENT MORTGAGES

Mr. President, I am very pleased that the compromise includes an improved and expanded version of my proposal for VA-guaranteed energy efficient mortgages to encourage veterans who buy existing homes to incorporate energy-saving improvements into the home. I have been active for many years in efforts to encourage energy efficiency in housing, while maintaining housing affordability.

Under the compromise agreement, veterans could use a VA-guaranteed loan to finance energy efficiency improvements to a home they already own and occupy or to an existing home they plan to purchase with a VA-guaranteed loan. In these cases, VA would guarantee loans to finance up to $6,000 worth of energy improvements without the need for an appraisal of the improvements. VA would guarantee loans covering energy efficiency improvements that cost $3,000 to $6,000 only if the energy savings from the improvements are likely at least to offset the resulting increase in monthly principal and interest payments on the loan.

Mr. President, I note that neither VA's current EEM Program nor the improved program established by the compromise bill apply to newly constructed homes. Most modern homes already incorporate energy efficiency measures.

Mr. President, veterans should note that the additional amount of the guaranty would not count against the veteran's entitlement or against the regular guaranty limits.

For example, the VA guaranty on a $148,000 loan that does not include the cost of energy efficiency measures would be $46,000 under current law, or 25 percent of the loan amount. Under the EEM Program in the compromise bill, a qualified borrower could borrow an additional $6,000 for cost-effective energy efficiency improvements to the existing home that the veteran is purchasing. The $6,000 additional loan amount would be guaranteed in the same ratio as the underlying loan—25 percent in this example. Thus, the total loan would be $190,000 and the guaranty would be $46,000 plus $1,500 or a total of $47,500. Only $46,000 of the guaranty would apply against the veteran's entitlement.

In short, this legislation would create a streamlined process for obtaining an EEM in connection with the purchase or improvement of an existing home. If the energy savings are cost effective, in terms of the veteran's monthly out-of-pocket housing costs, there would be no need for an appraisal of the market value of the energy efficiency improvements. In short, these new EEMs would substitute an energy efficient standard for an appraised value standard for the portion of the loan that would finance the energy efficiency improvements.

CONCLUSION

Mr. President, I express my deep appreciation to the distinguished Ranking Republican Member of the Senate Committee, Mr. SPECTER, and all other members of the committee, as well as the chairman and ranking minority member of the House Committee on Veterans' Affairs, [Mr. MONTGOMERY] and [Mr. STUMP] and the House Subcommittee on Housing and Memorial Affairs, [Mr. STAGGERS] and [Mr. BURTON] for their cooperation on this measure.

Mr. President, I also express my deep gratitude to the staff members who worked on this legislation—on the minority staff in the Senate, Quentin Kinderman and Tom Roberts, and on the majority staff in the Senate, Neil Koren, Michael Cogan, Bill Brew, and Ed Scott—and on the House Committee on Veterans' Affairs staff, Cynthia Jones, Gloria Royce, Pay Ryan, and Mack Fleming for the majority and Stacy Coggin and Carl Commenator for the minority.

Mr. President, I also note the fine work of the staff of the two Offices of Legislative Counsel, Charlie Armstrong in the Senate and Wade Ballou in the House. They provided their usual excellent assistance as we prepared this legislation.

Mr. President, I urge the Senate to give its unanimous approval to this measure and I ask unanimous consent that the explanatory statement to which I referred earlier, and which was prepared in lieu of a joint explanatory statement accompanying a conference report, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXPLANATORY STATEMENT FOR H.R. 939, THE PROPOSED "VETERANS HOME LOAN AMENDMENTS OF 1992"

H.R. 939, the proposed, "Veterans Home Loan Amendments of 1992" reflects a compromise agreement that the Senate and House of Representatives Committees on Veterans' Affairs have reached on four bills passed by the Senate and the House during the 102nd Congress. These are: H.R. 939 as passed by the House on March 3, 1992 (hereinafter referred to as "House bill"), H.R. 4368 as passed by the House on June 9, 1992 (hereinafter referred to as "H.R. 4368"), S. 3108 as passed by the Senate as a substitute amendment to H.R. 939 on October 1, 1992 (hereinafter referred to as "Senate amendment"), and S. 2528 as passed by the Senate on September 18, 1992, (hereinafter referred to as "S. 2528").

The Committees on Veterans' Affairs have prepared the following explanation of H.R. 939 as amended (hereinafter referred to as "compromise agreement"). Differences between the provisions contained in the compromise agreement and the related provisions in the bills listed above are noted in this document, except for clerical corrections and conforming changes made necessary by the compromise agreement, and minor drafting, technical, and clarifying changes.

ELIGIBILITY OF SELECTED RESERVE

Current law: Section 3702(a)(2) of title 38, United States Code, requires, as a condition of eligibility for VA-guaranteed loans, active-duty service of at least 180 consecutive days, or a total of 90 days if at least one day was during a designated wartime period. Section 5303A imposes an additional minimum-service requirement for VA benefits eligibility. Under section 5303A, a person who originally enlists after September 7, 1980 (or enters active duty as an officer after October 16, 1981) generally must have served either two years of active-duty service or the length of the period for which he or she was called to active duty.

Section 3729 requires veterans to pay a loan fee of 1.25 percent of the loan for loans with no downpayment, 0.75 percent for loans with a downpayment of at least 5 percent, or 0.5 percent for loans with a downpayment of at least 10 percent. Veterans with compensable service-connected disabilities are exempt from paying the VA loan fee. Loans for manufactured housing require a VA fee of 1 percent.

House bill: Section 1(a) would amend section 3701(b) of title 38 to make eligible for VA-guaranteed loans individuals who have completed a total of six years of service in the Selected Reserve (as defined by section 286(b) of title 10) and continue serving in the Selected Reserve or, following the completion of service, are honorably discharged or transferred to the Standby Reserve or another element of the Selected Reserve after honorable service during the six-year period.

Section 1(b) would amend section 3729 of title 38 to require these individuals to pay a VA loan fee 0.75 percent higher than the equivalent fees for veterans.

Senate amendment: Section 6 is similar to the House provision, except that it would take effect October 1, 1992, and expire December 31, 1998. Section 6(d) would require the Secretary to report to the Senate and House Committees on Veterans' Affairs by September 30, 1997, on reservists' participation in the VA guaranteed home loan program.

Compromise agreement: Section 2 follows the House bill, except that the provisions would expire seven years after the date of enactment. Section 2(c) would require the Secretary to report annually to the Committees on Veterans' Affairs on reservists' participation in the home-loan program. The first report would be due by December 31, 1994.

ADJUSTABLE RATE MORTGAGES

Current law: Section 3703(c)(1) prohibits VA-guaranteed loans from bearing interest at a rate exceeding the rate that the Secretary finds the loan market demands. In setting this rate, the Secretary must consult with the Secretary of Housing and Urban Development to coordinate interest-rate policy on FHA-insured and VA-guaranteed loans.

House bill: Section 3 would require the Secretary of Veterans Affairs to establish a demonstration program, during FYs 1993 and 1994, of VA-guaranteed adjustable rate mortgages (ARMs) in a manner similar to the Federal Housing Administration (FHA) insured ARMs program under section 251 of the National Housing Act. The Secretary would be required to conduct the pilot program at not fewer than two nor more than 10 regional offices.

Senate amendment: Section 2(a) would establish a pilot program, during FY 1993 through FY 1997, of VA-guaranteed ARMs. Section 2(b) would require annual adjustments in the interest rate on the ARMs, on the anniversary date of the loan closing, based on an index specified in regulations promulgated by the Secretary. Information on the index would have to be readily accessible to mortgagors at any time from generally available, published sources. The annual interest-rate adjustment would be limited to no more than 1 percentage point higher or lower than the interest rate of the loan at the time of the adjustment, and the maximum interest rate at any time during the term of the loan would be limited to no more than 5 percentage points above the initial rate.

Section 2(c) would require the Secretary to promulgate underwriting requirements for these loans that take into account (a) the interest rate derived from the most recent VA-specified index available at the time the underwriting decision is made, regardless of the actual initial rate offered by the lender; (b) the maximum and likely increases in mortgage payments that the loans would require; (c) the underwriting standards that apply to FHA ARMs; and (d) any other factors specified by the Secretary.

Section 2(e) would limit the number of ARMs VA could guarantee each fiscal year to no more than 10 percent of the total number of all loans VA guaranteed during the previous fiscal year.

Section 2(f) would require the Secretary to submit to the Veterans' Affairs Committees five annual reports on the program, beginning one year after the date on which VA guarantees the first loan under this program. The reports would have to contain information about defaults, including comparisons with the default rates for fixed-rate VA-guaranteed home loans and both fixed- and adjustable-rate loans either insured by FHA or made under conventional terms for single-family homes.

Compromise agreement: Section 3 follows the House bill, except that it would incorporate the interest-rate limitations and underwriting guidelines in the Senate amendment. There would be no limitation on the number of ARMs VA could guarantee during a fiscal year.

Section 3(b) would require the Secretary to submit to the Senate and House Committees on Veterans' Affairs annual reports on the pilot program, with the first report due by December 31, 1993.

ENHANCED LOAN ASSET SALE AUTHORITY

Current law: Under section 3720(h) of title 38, VA is authorized to guarantee timely payment of principle and interest on securities backed by VA "vendee" loans. These are direct loans VA makes to those who purchase houses that VA acquired through the foreclosure of a VA-guaranteed loan. VA pools these loans and sells them to a trust that issues pass-through securities backed by the vendee-loan pool. VA's authority to guarantee such payment for certificates or other securities expires December 31, 1992.

House bill: Section 4 would make the authority permanent.

Senate amendment: Section 5 would extend the expiration date of section 3720(h) of title 38 from December 31, 1992, to December 31, 1995.

Compromise agreement: Section 4 follows the Senate amendment.

LOAN FEES FOR REFINANCING

Current law: Section 3710(a)(8) of title 38 requires VA to guaranty, under certain circumstances, loans to refinance an existing loan guaranteed, insured, or made by VA. Section 3710(e) requires that the interest rate on the refinancing loan be lower than the interest rate on the original loan and establishes several other requirements for such "interest-rate-reduction" refinancing loans.

Section 3710(a)(9) of title 38 requires VA to guarantee certain interest-rate-reduction refinancing loans for manufactured housing under generally the same conditions that apply to other interest-rate-reduction refinancing loans.

Section 3729 of title 38 requires those eligible for a VA-guaranteed home loan to pay a fee to VA, unless the borrower is a veteran with a compensable, service-connected disability or the surviving spouse of a veteran who died on active duty or as a result of a service-connected disability. The fee generally is 1.25 percent of the loan, but is reduced to 0.75 percent if the borrower makes a downpayment of at least 5 percent but not more than 10 percent of the purchase price, and reduced to 0.5 percent if the borrower makes a downpayment of at least 10 percent. VA-guaranteed loans for manufactured housing require a 1-percent VA loan fee.

House bill: Section 2 of H.R. 4368 would reduce the VA loan fee for VA-guarantee interest-rate-reduction refinancing loan to 0.5 percent of the loan. The reduced fee also would apply to all VA-guaranteed refinancing loans for manufactured housing, regardless of whether the interest rate is reduced by the new loan.

Senate amendment: No provision.

Compromise agreement: Section 5 follows the House bill, except that the reduced fee would not apply to refinancing loans for manufactured housing unless the interest rate is lower on the new loan.

GUARANTY AMOUNT RELATIVE TO LOAN REFINANCING

Current law: Under sections 3710(e) and 3712(a)(4) of title 38, interest-rate-reduction refinancing loans secured by a home or manufactured housing may include certain closing costs, fees, and discount points. These sections, however, limit the guaranty on the new home to no more than the amount of the guaranty on the loan being refinanced.

Section 3703(a) sets forth specific limits on the amount of the VA guaranty for loans of various amounts. The lowest guaranty-to-loan ratio specified in that section is 25 percent.

The maximum principal amount of an interest-rate-reduction refinancing loan is the sum of the principal balance of the original loan, plus closing costs, fees, and discount points. Since the guaranty cannot exceed the amount of the guaranty on the original loan, however, the guaranty-to-loan ratio can drop below the 25-percent level. This can require the borrower to make a downpayment on a portion of the new loan in order to meet the lender security requirements.

House bill: Section 3 of H.R. 4368 would ensure that the VA guaranty on interest-rate-reduction refinancing loans is at least 25 percent of the new loan, regardless of the amount of the guaranty on the original loan.

Senate amendment: No provision.

Compromise agreement: Section 6 follows the House bill.

EXTENSION OF LENDER APPRAISAL PROGRAM

Current law: Section 3710(b) of title 38 establishes limits on the amount of a VA-guaranteed home loan, based on the reasonable value of the property or construction being financed or refinanced. Section 3731 of title 38 sets forth the requirements for reasonable-value determinations and the appraisals upon which they are based.

Generally, under section 3731(c) of title 38, the appraiser forwards an appraisal directly to VA, which makes the determination of reasonable value and notifies the veteran and, upon request, to the lender proposing to make the VA-guaranteed loan.

Under section 3731(f), the Secretary may authorize qualified lenders to determine the reasonable value of the property based on an appraisal submitted by the appraiser directly to the lender, rather than to VA. The Secretary is required to monitor this lender appraisal processing program (LAPP) by reviewing lenders' determinations of reasonable value and the appraisals upon which the determinations are based.

The LAPP expires on December 31, 1992.

House bill: Section 4 of H.R. 4368 would extend LAPP through December 31, 1995.

Senate amendment: No provision.

Compromise agreement: Section 7 follows the House provision.

NATIVE AMERICAN VETERANS DIRECT HOUSING LOAN PILOT PROGRAM

Current law: Section 312 of the Veterans Home Loan Indemnity and Restructuring Act of 1989, title III of Public Law 101–237, required the Secretaries of Veterans Affairs and of the Interior jointly to conduct a study to determine the extent of participation in the VA-guaranteed home loan program by Native American veterans who live on trust lands; the reasons for any lower participation by these veterans, compared to other veterans; and the legislative, regulatory, and administrative actions necessary to improve the access of these Native American veterans to VA housing benefits. The Secretaries were required to report to the Senate and House Committees on Veterans' Affairs on the results of the study by June 1, 1990, and the Secretaries submitted the report to the Committees on August 8, 1991.

VA-guaranteed loans, which are made by private lenders and guaranteed by VA under chapter 37 of title 38, generally require clear title to the property in order to provide adequate security for the loan. Land on Indian reservations and other land held in trust for Native Americans are not freely alienable and generally cannot serve as security for a VA-guaranteed loan.

VA currently is authorized to make direct loans to veterans under two programs. Section 3711 of title 38 authorizes VA to make direct loans to veterans in "housing credit shortage areas," rural areas or small cities or towns in which the Secretary finds that private capital for housing loans is not generally available. Public Law 91–506 expanded the direct-loan program to allow loans for specially adapted housing for veterans with certain service-connected disabilities. Appropriations acts since 1981 have restricted VA direct loans to severely disabled veterans who require specially adapted housing.

House bill: No provision.

Senate bill: Section 2(a) of S. 2528 would amend chapter 37 of title 38 by adding a new subchapter V under which VA would conduct a five-year pilot program of direct loans to Native American veterans to purchase, construct, or improve dwellings on trust lands. The Secretary would be required, to the extent practicable, to make the loans to eligible veterans who are located in a variety of geographic areas and in areas experiencing a variety of economic circumstances.

Under proposed new section 3762 of title 38, before VA would be authorized to make a loan to a veteran, VA and the tribal organization having jurisdiction over the veteran would be required to enter into a memorandum of understanding providing that (a) the veteran would have a meaningful interest in the trust-land property on which the home is or will be located; (b) the veteran would convey to the Secretary by an appropriate instrument a security interest in the veteran's interest in the property as collateral for the loan; (c) VA would have access to trust lands in connection with the loan; (d) the tribal organization would be required to have established procedures for foreclosure and resale of the veteran's interest in the property in the event of default by the veteran; and (e) the tribal organization would agree to other terms and conditions the Secretary may require to carry out the loan program. The Secretary would be required to determine that the memorandum of understanding reasonably protects the financial interests of the United States.

Under proposed new section 3762(c) of title 38, VA would be authorized to make loans of up to $80,000, at an interest rate determined by the secretary (not to exceed the rate for VA-guaranteed loans), and the veteran would be required to pay closing costs and loan-origination expenses or a fee representing these expenses. The Secretary would be authorized to exceed the $80,000 loan limit in areas with high housing costs.

Under proposed new section 3762(d) of title 38, the Secretary would be required to establish special credit underwriting standards that take into account the purpose of the pilot program, which is to make housing available to Native American veterans living on trust lands. VA would be allowed to accept the appraisal of qualified, but not necessarily VA-approved, appraisers.

Under proposed new subsection (f) of section 3762 of title 38, the Secretary would be authorized to make cash advances in connection with construction or home-improvement loans.

Under proposed new subsection (h) of section 3762 of title 38, the Secretary would be required to conduct outreach and education to increase the awareness of tribal governments and Native American veterans of the availability of direct housing loans for veterans living on tribal trust lands.

Proposed new section 3763 of title 38 would establish a Native American Veterans Housing Loan program account in the Treasury to provide the funding mechanism necessary to carry out the pilot program.

Proposed new section 3764 of title 38 would define "trust land" as any land that is (a) held in trust by the United States for Native Americans; (b) subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands); (c) owned by a Regional Corporation or a Village Corporation, as those terms are defined in the Alaska Native Claims Settlement Act; or (d) on any island in the Pacific Ocean if the land is, by cultural tradition (as determined by the Secretary), communally owned land.

The term "Native American" would be defined as (a) an Indian, as defined in the Indian Self-Determination and Education Assistance Act; (b) a native Hawaiian, as defined in the Hawaiian Homes Commission Act; (c) an Alaska Native, within the meaning provided for the term "Native" in the Alaska Native Claims Settlement Act; and (d) a Pacific Islander, within the meaning of the Native American Programs Act of 1974.

The term "tribal organization" would be defined as having the meaning given to that term in the Indian Self-Determination and Education Assistance Act, and would include the Department of Hawaiian Homelands, in the case of Native Hawaiians, and such other organizations as the Secretary may prescribe.

Under proposed section 3764(b) of title 38, the Secretary would be required, in carrying out the pilot program, to consider the views and recommendations of the Advisory Committee on Native American Veterans.

Section 3 of S. 2528 would require the Secretary to submit to the Senate and House Committees on Veterans' Affairs on February 1 of 1994 through 1998, reports on implementation of the pilot program, including any recommendations by the Secretary for legislation regarding the pilot program.

Section 4 of S. 2528 would authorize appropriations during FY 1993 of $5 million for loans made under the pilot program.

Compromise agreement: Section 8 contains the Senate provision. The conference report on H.R. 5679, the VA, HUD, and Independent Agencies Appropriations Act for FY 1993, appropriates $5 million for the pilot program.

ENERGY EFFICIENT MORTGAGES

Current law: Section 3710(a)(7) provides a VA guaranty on loans to improve a dwelling or farm residence owned and occupied by the veteran through installation of a solar heating system, or a combined solar heating and cooling system or through the application of a residential energy conservation measure. Subsection (d) of that section defines these terms and includes in the definition of "residential energy conservation measure" a subparagraph authorizing the Secretary to identify additional energy conservation measures that would qualify for energy efficient mortgages under subsection (a)(7).

House bill: No provision.

Senate amendment: Sections 3(a) and (e) would establish a pilot program of energy efficient mortgages (EEMs) under which the Secretary would be authorized to guarantee not more than a total of 1,250 EEMs during FYs 1993 and 1994 in at least five, but not more than 10, States.

Section 3(b) would allow the new EEMs only for existing homes for which the energy efficiency measures being financed are likely to reduce monthly energy costs by at least as much as they would increase the borrower's monthly payments of principal and interest on the EEM.

Section 3(b) and (c) would require VA to guarantee the loan for the energy efficiency improvements in the same proportion as the guaranty that VA would provide for the underlying loan without the energy efficiency improvements, provided that the cost of the energy efficiency measures is no more than the greater of (a) $4,000, or (b) 5 percent of the value of the home without the energy efficiency improvements, not to exceed $8,000.

Section 3(c) would provide that the portion of the guaranty attributable to energy efficiency measures may be in addition to the current applicable maximum guaranty and shall not affect the loan-guaranty benefit to which the borrower otherwise is entitled.

Section 3(f) would require VA to encourage participation in the program by notifying eligible veterans, participating lenders, and interested realtors in the States in which the pilot program would be carried out about the availability of loan guaranties under the pilot program and the procedures and requirements to obtain these loans.

Section 3(g) would provide the Secretary with authority to halt the demonstration project if the Secretary estimates that the total incremental costs (government subsidy) attributable to the two-year pilot program will exceed $2 million.

Section 3(h) would require the Secretary to report to the Committees on Veterans' Affairs on the program one year after VA guarantees the first EEM under the program and annually thereafter for five more years. The reports would be required to include information on the default rates for EEMs and the effects, if any, of the energy efficiency measures on resale values and home utility consumption and costs.

Section 3(i) would provide that the pilot program would not affect the VA EEM program currently operated under the authority of section 3710(a)(7) of title 38.

Compromise agreement: Section 9 would amend chapter 37 of title 38 to modify the current EEM program by (a) allowing EEMs for improvements to a veteran's current home or to finance the combined cost of acquiring an existing dwelling and making energy efficiency improvements to the dwelling; (b) allowing veterans to finance the cost of energy efficiency measures that do not exceed the greater of (1) $3,000 or (2) $6,000, if the increase in the monthly payment for principal and interest does not exceed the likely reduction in monthly utility costs resulting from the improvements; (c) requiring VA to guarantee the EEM in the same proportion as the guaranty VA would have provided for the underlying loan without the energy efficiency improvements; (d) providing that the portion of the guaranty attributable to energy efficiency measures may be in addition to the guaranty limits set forth in section 3703(a)(1)(A) and would not affect the veteran's maximum loan-guaranty entitlement; and (e) requiring the Secretary to take appropriate actions to notify eligible veterans, participating lenders, and interested realtors of the availability of VA-guaranteed EEMs and the procedures and requirements to obtain these loans. The Secretary would be required to report to the Senate and House Committees on Veterans' Affairs on the EEM program no later than one year after guaranteeing the first EEM under the amendments made by section 8 and for each of the three years thereafter.

NEGOTIATED INTEREST RATES

Current law: Section 3703(c)(1) of title 38 requires VA-guaranteed loans to bear interest at a rate that does not exceed such rate as the Secretary may from time to time find the loan market demands. In setting this rate, the Secretary must consult with the Secretary of Housing and Urban Development to coordinate interest-rate policy on loans insured by the Federal Housing Administration and VA-guaranteed loans.

Section 3703(c)(3) allows a veteran to pay discount points on loans guaranteed under chapter 37 of title 38 if the loan is for a purpose specified in that section. The specified loans do not include loans to purchase or construct a dwelling or purchase a farm residence or condominium.

House bill: No provision.

Senate amendment: Section 4(a) would, during FY 1993 and FY 1994, require the Secretary to establish either (a) a uniform maximum interest rate and general prohibition on a borrower paying discount points, as required under current section 3703(c) of title 38, or (b) procedures for allowing interest on VA-guaranteed loans at rates negotiated between borrowers and lenders. The Secretary would be authorized to change between uniform maximum rates and negotiated rates at any time.

If the Secretary allows negotiated interest rates, the Secretary would be required to allow a borrower to pay reasonable discount points on the loan, as negotiated between the borrower, the seller, and the lender. Veterans would be prohibited from financing the discount points as part of the VA-guaranteed loan.

The Secretary would be required to notify the Committees on Veterans' Affairs within 10 days after exercising the authority to provide for negotiated rates and discount points or returning to a uniform maximum rate and to provide with the notification an explanation of the reasons for the change in policy.

Section 4(b) would require the Secretary to report to the Committees on Veterans' Affairs no later than March 1, 1994, on whether the Secretary has implemented negotiated interest rates and discount points under the authority of this legislation and, if so, the effects of this policy on borrowers' ability to obtain VA-guaranteed loans and on the interest rates at which borrowers were able to obtain the loans.

Compromise agreement: Section 10 follows the Senate provisions, except that the pilot program would expire on December 31, 1995, and reports would be by December 31, 1993, and annually thereafter.

The Committees expect the Secretary to exercise the authority to allow negotiated interest rates and discount points, but has provided a mechanism for returning to an administered rate at any time if experience with negotiated rates indicates that the policy is harming veterans.

ELIGIBILITY FOR FLAGS AND GRAVE MARKERS

Current law: Under section 2402(2) of title 38, members of any Reserve component of the Armed Forces, the Army National Guard, or the Air National Guard are eligible for burial in any open national cemetery in the National Cemetery System only if the member's death occurs under honorable conditions while the member is hospitalized or undergoing treatment, at the expense of the United States, for an injury or disease contracted or incurred under honorable conditions while the member is performing active duty for training, inactive duty training, or undergoing hospitalization or treatment at the expense of the United States. Section 2402(6) of title 38 authorizes the Secretary to designate other persons or classes of persons eligible for burial in any open national cemetery.

Section 2301 of title 38 requires the Secretary to furnish a flag to drape over the casket of certain deceased veterans and deceased persons buried in a national cemetery by virtue of eligibility under section 2402(6) of title 38 for such burial.

Under section 2306 of title 38, deceased members of the Reserves are eligible for headstones or grave markers only if they are eligible for burial in a national cemetery.

House bill. Section 1 of H.R. 4368 would extend eligibility for burial in a national cemetery and burial flags to individuals who have 20 years of service that counts toward retired pay as members of a Reserve component of the Armed Forces.

Senate amendment: No provision.

Compromise agreement: Section 11 would make eligible for a headstone or grave marker, and a flag to drape the casket of, a person who, at the time of death, was entitled to retired pay under chapter 67 of title 10, United States Code, or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

Mr. FORD. Mr. President, I move that the Senate concur in the amendments of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

VETERANS' RADIATION EXPOSURE AMENDMENTS

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 775.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 775) entitled "An Act to improve the compensation of certain veterans for exposure to ionizing radiation, to improve the administration of veterans benefits programs, and for other purposes," do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans' Radiation Exposure Amendments of 1992".

SEC. 2. EXPANSION OF LIST OF DISEASES PRESUMED TO BE SERVICE-CONNECTED FOR CERTAIN RADIATION-EXPOSED VETERANS AND ELIMINATION OF LATENCY-PERIOD LIMITATIONS.

(a) IN GENERAL.—Section 1112(c) of title 38, United States Code, is amended—

(1) in paragraph (1), by striking out "to a degree" and all that follows through "subsection)";

(2) in paragraph (2), by adding at the end the following new subparagraphs:

"(N) Cancer of the salivary gland.

"(O) Cancer of the urinary tract.";

(3) by striking out paragraph (3); and

(4) by redesignating paragraph (4) as paragraph (3).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1992.

SEC. 3. IDENTIFICATION OF CERTAIN ACTIVITIES RELATING TO EXPOSURE TO IONIZING RADIATION.

The Veterans' Dioxin and Radiation Exposure Compensation Standards Act (38 U.S.C. 1154 note) is amended by adding at the end the following new section:

"IDENTIFICATION OF ACTIVITIES INVOLVING EXPOSURE BEFORE JANUARY 1, 1970

"SEC. 10. (a) IN GENERAL.—(1) In order to determine whether activities (other than the tests or occupation activities referred to in section 5(a)(1)(B)) resulted in the exposure of veterans to ionizing radiation during the service of such veterans that occurred before January 1, 1970, and whether adverse health effects have been observed or may have resulted from such exposure in a significant number of such veterans, the Advisory Committee established under section 6 shall—

"(A) review all available scientific studies and other relevant information relating to the exposure of such veterans to ionizing radiation during such service;

"(B) identify any activity during which significant numbers of veterans received exposure; and

"(C) on the basis of such review, submit to the Secretary of Veterans Affairs a report containing the recommendation of the Advisory Committee on the feasibility and appropriateness for the purpose of the determination under this paragraph of any additional investigation with respect to any activity of such veterans during such service.

"(2) Upon the request of the Advisory Committee, the Secretary of Veterans Affairs (after seeking such assistance from the Secretary of Defense as is necessary and appropriate) shall make available to the Advisory Committee records and other information relating to the service referred to in paragraph (1) that may assist the Advisory Committee in carrying out the review and recommendation referred to in that paragraph.

"(3) The Advisory Committee shall submit to the Secretary of Veterans Affairs the report referred to in paragraph (1)(C) not later than August 1, 1993.

"(b) INVESTIGATION PLAN AND REPORT.—(1) Upon receipt of the report referred to in subparagraph (C) of subsection (a)(1), the Secretary of Veterans Affairs shall—

"(A) identify which of the activities referred to in that subparagraph, if any, that the Sec-

retary intends to investigate more fully for the purpose of making the determination referred to in that subsection; and

"(B) prepare a plan (including a deadline for the plan) to carry out that investigation and make that determination.

"(2) Not later than December 1, 1993, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing—

"(A) a list of the activities identified by the Secretary pursuant to paragraph (1)(A) and the basis of such identification;

"(B) a copy of the report of the Advisory Committee referred to in subsection (a)(1)(C); and

"(C) the plan referred to in paragraph (1)(B).".

SEC. 4. REVIEW OF BRONCHIO-ALVEOLAR CARCINOMA.

(a) ADVISORY COMMITTEE REVIEW.—The Secretary of Veterans Affairs shall direct the Advisory Committee on Environmental Hazards to review pertinent scientific data relating to bronchio-alveolar carcinoma to determine whether such disease entity should be considered to be radiogenic. Based on its review, the Advisory Committee shall report its findings to the Secretary.

(b) DECISION BY SECRETARY.—The Secretary, based on the Advisory Committee's findings, shall, not later than April 1, 1993, submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report setting forth the Secretary's decision as to whether such disease entity should be presumed to be service connected if suffered by a radiation-exposed veteran (as defined by section 1112(c)(4)(A) of title 38, United States Code).

Amend the title so as to read: "An Act to improve the program of compensation for veterans exposed to ionizing radiation while in military service.".

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I am very pleased that the Senate is about to take final action on S. 775, the proposed Veterans' Radiation Exposure Amendments of 1992. This measure makes several improvements in compensation for veterans who develop illnesses as a result of their exposure to ionizing radiation during military service. It will update landmark 1988 legislation which provided compensation for certain cancers in veterans who were exposed to radiation during atmospheric nuclear tests or during the wartime occupation of Japan. It also will begin a process of examining other types of military service that might have exposed veterans to harmful radiation.

Mr. President, I have been working on the issues addressed in this bill for over 2 years, beginning in the 101st Congress when I introduced S. 2556. The provisions of S. 2556 eventually were included, with some modifications, in S. 775, the fiscal year 1992 VA compensation-COLA bill, which was reported by our committee on August 2, 1991, and passed by the Senate, with further modifications, by unanimous voice vote on November 20, 1991. I refer my colleagues to our committee report, (S. Rept. No. 102-39) and my floor statement on Senate passage of S. 775, which appears in the November 20, 1991, RECORD beginning on page S17148.

The measure as it comes before us today reflects a compromise agreement that the House and Senate Committees on Veterans' Affairs have reached with regard to the radiation provisions in S. 775 and the provisions of H.R. 3236, a companion measure that the House passed on August 4, 1992. The House passed the compromise agreement as an amendment to S. 775 by a unanimous voice vote on September 23, 1992, and I urge the Senate to do the same.

Mr. President, because the details of this measure are described in an explanatory statement developed with our colleagues on the House Veterans' Affairs Committee, which I will place in the RECORD at the conclusion of my remarks, I will just summarize the provisions of the bill and comment on a few of the provisions.

SUMMARY OF PROVISIONS

Mr. President, the provisions of the compromise agreement would:

First, effective October 1, 1992, repeal the requirement that, to be presumed service connected, diseases listed in section 1112(c) of title 38, United States Code, of veterans who participated in certain radiation-risk activities must become at least 10-percent disabling within 40 years after the veteran's last military exposure to radiation.

Second, effective October 1, 1992, add to the list of diseases in section 1112(c) cancer of the salivary gland and cancer of the urinary tract.

Third, amend the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Public Law 98-542, to establish a mechanism to determine whether military activities that occurred before 1970 that are not listed as radiation-risk activities under current law may have exposed veterans to ionizing radiation and whether adverse health effects have been observed or may have resulted from that exposure in a significant number of veterans. Specifically, the VA Advisory Committee on Environmental Hazards would be required to review all available scientific and other relevant information concerning exposure to radiation during these activities and to identify those activities during which a significant number of veterans were exposed to radiation. The Advisory Committee would report to the Secretary by August 1, 1993, on the feasibility and appropriateness of additional investigation to determine whether a significant number of veterans suffer from radiation-related disabilities from exposure to radiation from these activities.

Fourth, require the Secretary, upon request of the Advisory Committee and after seeking any necessary assistance from the Secretary of Defense, to submit to the Advisory Committee information the Advisory Committee needs to carry out its review and make its recommendations.

Fifth, require the Secretary first, upon receiving the Advisory Committee's report, to identify which of the activities the Secretary intends to investigate more fully to determine whether these veterans suffer from radiation-related disabilities, and second, to prepare a plan for carrying out any additional investigation and making a determination, including a deadline for completing the plan.

Sixth, require the Secretary to submit to the Senate and House Committees on Veterans' Affairs by December 1, 1993, a report listing the activities the Secretary intends to investigate further and containing the plan for investigation and required determination.

Seventh, require the Secretary first, to direct the Advisory Committee to review pertinent scientific evidence to determine, and report to the Secretary, whether bronchio-alveolar carcinoma should be considered radiogenic, second, to decide, based on the Advisory Committee's report, whether bronchio-alveolar carcinoma should be presumed to be service connected for radiation-exposed veterans, and third report to Congress on this decision by April 1, 1993.

BACKGROUND

Mr. President, I am extremely pleased that I am able to bring a compromise agreement on this important measure before the Senate today.

The compromise agreement is similar to the bill I introduced in the 101st Congress. During Senate consideration of S. 775, I agreed to modify the provision requiring investigation of pre-1970 military activities that might have exposed veterans to radiation but which are not considered radiation-risk activities under current law. The House now has agreed to the Senate-passed provisions with only minor technical changes. I am extremely pleased that the final version of this legislation includes this provision. In particular, I expect VA's examination would include, but not be limited to, service aboard nuclear-powered ships or ships carrying nuclear waste, flight crews, and radiation technicians. The House also added a new provision—requiring close examination of whether bronchio-alveolar carcinoma in radiation-exposed veterans should be presumed to be service connected—which I think is an improvement of the bill.

VALIDITY OF PRIOR STUDY ON EFFECTS OF RADIATION EXPOSURE

Mr. President, this is an appropriate time to discuss a separate, radiation-related matter. I was very disturbed by the findings of recent reports I requested from the General Accounting Office and the Office of Technology Assessment that confirmed that the Defense Nuclear Agency continued to distribute the results of a 1985 National Academy of Sciences study, entitled "Mortality of Nuclear Weapons Test Participants," after DNA itself acknowledged that data underlying the report's conclusion were seriously flawed.

The 1985 report concluded generally that veterans' participation in five atmospheric nuclear tests in the 1950's did not increase their risk of developing cancer. The errors contained in the date—which were provided by NAS by DNA—cast significant doubt on the validity of this conclusion.

Mr. President, I congratulate the National Academy of Sciences' Military Follow-Up Agency for its scientific integrity in raising appropriate concerns about the validity of the study's findings after MFUA learned of the flaws in data provided by DNA and the military services.

DNA, VA, and others have cited the 1985 report to bolster claims that service members, participation in atmospheric nuclear tests do not increase those individuals' risk of cancer or other illnesses. Unfortunately, DNA's continuing reliance on the 1985 report after it knew about the errors indicated a continuing attitude of denial and misinformation on the part of the Department of Defense which is the agency assigned lead responsibility for dealing with questions affecting radiation-exposed veterans.

Mr. President, I have written to the Secretary of Defense asking him to notify those who received the flawed report about the new doubts concerning its conclusions.

Mr. President, I ask unanimous consent that a copy of that letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U. S. SENATE,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC, September 9, 1992.

Hon. DICK CHENEY,
Secretary of Defense, The Pentagon, Washington, DC.

DEAR DICK: As Chairman of the Committee on Veterans' Affairs, I am writing to you about the 1985 National Academy of Sciences report, entitled Mortality of Nuclear Weapons Test Participants, of a study performed by the NAS Medical Follow-Up Agency under contract to the Defense Nuclear Agency and the Department of Energy. The report concluded that the mortality rate from cancer (including leukemia, which was of particular concern) among the combined military participants at five nuclear-weapons test sites was less than the rate expected for the general population.

DNA, VA, and other government agencies have cited the 1985 report to bolster claims that servicemembers' participation in atmospheric nuclear tests did not increase those individuals' risk of cancer or other illnesses. However, over three years ago, DNA identified major errors in the data that the various military services and DNA itself had supplied to MFUA, which formed the basis of the study. The errors cast significant doubt on the validity of the reported results.

Last year, I asked two congressional agencies—the Office of Technology Assessment and the General Accounting Office—to investigate the inaccuracies in the data upon which the 1985 NAS report was based. I asked OTA to examine the accuracy of the data, the effect of any errors on the validity of the 1985 study and report, and the effect of the study's failure to include a control population. I asked GAO to review when and how any inaccuracies occurred and were discovered and what actions had been taken to inform those who might have relied upon the study of the potential flaws in it, to correct the data, and to update the study.

OTA and GAO have completed their reviews, copies of which are enclosed. As you can see, both GAO, in its report entitled "NUCLEAR HEALTH AND SAFETY: Mortality Study of Atmospheric Nuclear Test Participants Is Flawed" GAO/RCED-92-182 (1992), and OTA, in its review entitled "A Discussion of Questions About the 1985 NAS Report Mortality of Nuclear Weapons Test Participants" (Aug. 1992), concluded that errors in the data provided to MFUA for the 1985 study invalidate the conclusions of the study.

GAO reported that DNA continued to distribute the NAS report after DNA had identified the errors in 1989—without providing any indication that the report contained flawed data or that its conclusions were in doubt—and only stopped distributing the report in August 1991, apparently as a result of the GAO inquiry I had initiated.

OTA stated that, although DNA's initial estimates of the number of errors in data used for the 1985 report were overstated, "[e]ven the lower numbers [of errors] are substantial and the inaccuracies may have affected the results of the study." OTA also noted, "The dose information on the current roster [of participants] also has been updated and differs substantially from that used for the 1985 study, and these dose changes could affect analyses looking at cancer risks by exposure levels (dose-response analyses), which formed part of the original report."

Hearings, investigations, and other oversight and legislative efforts by our Committee since the late 1970s demonstrated an apparently pervasive attitude of denial by DOD, especially through DNA, and other government agencies of the dangers to which our nation's veterans were exposed, sometimes with government knowledge of the risks, in connection with the nuclear-weapons test program. I had hoped that the government had moved beyond such a counterproductive attitude and faced up to its responsibilities to these veterans, in light of the evidence provided by reports such as GAO's 1985 report of its investigation of Operation CROSSROADS, entitled "OPERATION CROSSROADS: Personnel Radiation Exposure Estimates Should Be Improved" (GAO/RCED-86-15), and its 1987 report entitled "NUCLEAR HEALTH AND SAFETY: Radiation Exposures for Some Cloud-Sampling Personnel Need to Be Reexamined" (GAO/RCED-87-134).

Unfortunately, the actions DNA took or failed to take in connection with the discovery of flawed data in the 1985 report indicate a continuing attitude of denial and misinformation on the part of the DOD agency assigned lead responsibility for dealing with questions affecting radiation-exposed veterans.

I was pleased to see that DOD comments on GAO's draft report indicate that DNA has agreed to "notify the approximately 700 institutions and the Department of Veterans' Affairs Regional Offices, which previously received copies of the study, and the Veterans' Service Organizations (and through them their constituent veterans) of the limitations in the 1985 Mortality Study and the update to that report. * * * The Defense Nuclear Agency expects to complete these actions by September 30, 1992."

However, the GAO report also indicated that DNA provided the 1985 study to "all state libraries and libraries located in large cities" and sent information concerning the study, including the press release [summarizing the study], to about 45,000 veterans of the atmospheric nuclear weapons testing program." In addition, GAO and OTA identified six scientific papers that cited the 1985 report. I believe that DOD should make every effort to inform these other recipients of the original report, and the authors of the scientific papers, about the questionable validity of the 1985 report, and I would like to know whether you plan to take steps to provide the information to these other recipients of the reports.

GAO also reported that DNA expected to sign a contract, by the end of July 1992, with NAS for MFUA to update the 1985 study. What is the status of this contract and what is the status of the notices DNA expected to send out by the end of September?

I would appreciate receiving your reply to these questions by September 17, 1992. I also would appreciate receiving copies of all notices, letters, or similar materials you have sent or intend to use to inform interested individuals or institutions about the problems with the 1985 report.

With warm regards,

Cordially,

ALAN CRANSTON,
Chairman.

Mr. CRANSTON. Mr. President, I express my appreciation to the distinguished ranking Republican member of our committee, Mr. SPECTER, and all other members of the committee, as well as the chairman and ranking Republican member of the House Committee on Veterans' Affairs, Mr. MONTGOMERY and Mr. STUMP, for their cooperation on this measure.

Mr. President, I also express my deep gratitude to the committee staff members who worked on this legislation—on the minority staff, Quent Kinderman and Tom Roberts, and on the majority staff, Neil Koren, Susan Thaul, Michael Cogan, Bill Brew, and Ed Scott—and the House Committee on Veterans' Affairs staff—John Brizzi, Pat Ryan, and Mack Fleming for the majority and Sue Forrest and Carl Commentator for the minority.

Mr. President, I urge the Senate to give its unanimous approval to this measure.

Mr. President, I ask unanimous consent that the explanatory statement to which I referred earlier, and which the Veterans' Affairs Committees have prepared in lieu of a joint explanatory statement accompanying a conference report, be printed in the RECORD at this point.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

EXPLANATORY STATEMENT ON S. 775

S. 775 reflects a compromise agreement that the Senate and House of Representatives Committees on Veterans' Affairs have reached on certain bills considered in the Senate and the House of Representatives during the 102d Congress. These are S. 775, which the Senate passed on November 20, 1991 (hereinafter referred to as "Senate bill") and H.R. 3236, which the House passed on August 4, 1992 (hereinafter referred to as "House bill").

The Committees on Veterans' Affairs of the Senate and House of Representatives have prepared the following explanation of S. 775 as amended (hereinafter referred to as the "compromise agreement"). Differences between the provisions contained in the compromise agreement and the related provisions in the above-mentioned bills are noted in this document, except for clerical corrections, conforming changes made necessary by the compromise agreement, and minor drafting, technical, and clarifying changes.

EXPANSION OF LIST OF DISEASES PRESUMED TO BE SERVICE CONNECTED FOR CERTAIN RADIATION-EXPOSED VETERANS AND ELIMINATION OF LATENCY-PERIOD LIMITATIONS

Current law: Section 1112(c) of title 38, United States Code, provides a presumption of service connection for 13 diseases in veterans who participated in a radiation-risk activity. These disease are: Leukemia (other than chronic lymphocytic leukemia), multiple myeloma, lymphomas (except Hodgkin's disease), primary liver cancer (except if cirrhosis or hepatitis B is indicated), and cancers of the thyroid, breast, pharynx, esophagus, stomach, small intestine, pancreas, bile ducts, and gall bladder. Section 1112(c)(4) defines "radiation-risk activity" as participation onsite at an atmospheric nuclear weapons test; participation in the occupation of Hiroshima or Nagasaki, Japan, during World War II from August 6, 1945, to July 1, 1946; or internment as a prisoner of war in Japan during World War II, or service on active duty in Japan following such internment, resulting in an opportunity for exposure to radiation.

Senate bill: Section 5, effective May 1, 1992, would, (a) repeal the requirement that, to be presumed service connected, diseases listed in section 1112(c) of veterans who participated in radiation-risk activities become at least 10-percent disabling within a specified time after the veterans' last exposure to radiation, and (b) add to the list of diseases cancer of the salivary gland and cancer of the urinary tract.

House bill: Section 2 is substantively identical to the Senate provision, except it would take effect October 1, 1992.

Compromise agreement: Section 2 contains this provision with the October 1, 1992, effective date.

IDENTIFICATION OF CERTAIN ACTIVITIES RELATING TO EXPOSURE TO IONIZING RADIATION

Current law: Section 6 of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act of 1984, Public Law 98-542, established the Veteran's Advisory Committee on Environmental Hazards. The Agent Orange Act of 1991, Public Law 102-4, modified the Advisory Committee's responsibilities to include only the review and evaluation of scientific studies on the health effects of exposure to ionizing radiation. The Advisory Committee submits to the Secretary recommendations concerning administrative and legislative actions the Advisory Committee considers appropriate to recognize disabilities possibly related to exposure to radiation during veterans' participation in an atmospheric nuclear weapons test or the occupation of Hiroshima or Nagasaki during World War II.

As noted above, section 1112(c) of title 38 provides a presumption of service connection for 13 radiogenic diseases that applies to veterans who participated in "radiation-risk" activities, which include atmospheric nuclear weapons tests, the occupation of Hiroshima or Nagasaki during World War II, or internment in Japan during the war, or service in Japan following such internment, that resulted in an opportunity for exposure to radiation.

Senate bill: Section 6 would amend Public Law 98-542 to establish a mechanism to determine whether veterans who participated in activities not considered "radiation-risk" activities under current law suffer from disabilities as a result of exposure to radiation during active duty prior to January 1, 1970. It would require the Advisory Committee to review all available scientific and other relevant information concerning these veterans' exposure to radiation during their service and, by September 30, 1992, report to the Secretary on its recommendations on the feasibility and appropriateness of additional investigation to determine whether the veterans suffer from radiogenic disabilities.

The Secretary would be required, upon request of the Advisory Committee and after seeking the assistance of the Secretary of Defense, to submit to the Advisory Committee information that would assist the Advisory Committee in carrying out its review and making its recommendations.

The Secretary, after receiving the Advisory Committee's report, would be required to identify which activities, if any, the Secretary intends to investigate more fully to determine whether these veterans suffer from radiogenic disabilities. The Secretary also would be required to prepare a plan for carrying out the additional investigation and making the required determination, including a deadline for completing the plan. The Secretary would be required to submit a report to the Veterans' Affairs Committees by April 1, 1993, listing the activities the Secretary intends to investigate further and containing the plan for the investigation and required determination.

House bill: Section 3 is similar to the Senate provision, except that the Secretary would be required to determine whether there are activities that could have resulted in radiation exposure without the benefit of monitoring systems during pre-1970 military service, rather than determining whether there are veterans who suffer from disabilities from such exposure. The Advisory Committee would be required to identify activities during which significant numbers of veterans received unmonitored exposure to radiation.

The Advisory Committee would report to the Secretary by April 1, 1993, and the Secretary would report to the Committees on Veterans' Affairs by August 1, 1993. The Secretary's report would be required to include a copy of the Advisory Committee's report to the Secretary.

Compromise agreement: Section 3 contains a provision derived from these provisions which would amend the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542). The Advisory Committee would be required to identify any activity during which significant numbers of veterans were exposed to radiation. The Secretary would be required to identify which, if any, of those activities the Secretary intends to investigate more fully in order to determine whether the identified activities (other than those currently considered radiation-risk activities) resulted in the exposure of veterans to ionizing radiation during pre-1970 military service and whether adverse health effects have been observed or may have resulted from the exposure in a significant number of these veterans.

The Advisory Committee would report to the Secretary by August 1, 1993, and the Secretary would report to the Committees on Veterans' Affairs by December 1, 1993. The report also would be required to include a copy of the Advisory Committee's report to the Secretary.

REVIEW OF BRONCHIO-ALVEOLAR CARCINOMA

Current law: There is no presumption of service connection for bronchio-alveolar cancer in current law.

Senate bill: No provision.

House bill: Section 4 would require the Secretary to direct the Advisory Committee on Environmental Hazards to review pertinent scientific evidence to determine whether bronchio-alveolar carcinoma should be considered radiogenic and to report its findings to the Secretary. The Secretary would be required, by April 1, 1993, to report to the Committees on Veterans' Affairs on the Secretary's decision whether, based on the Advisory Committee's report, bronchio-alveolar carcinoma should be presumed to be service connected for radiation-exposed veterans.

Compromise agreement: Section 4 contains the House provision.

Mr. FORD. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

INTERMODAL SAFE CONTAINER TRANSPORTATION ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3598, the Intermodal Safe Container Transportation Act just received from the House; that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table. Further, that a statement by Senator EXON appear in the RECORD at the appropriate place as if read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill was deemed read the third time and passed.

Mr. EXON. Mr. President, as chairman of the Surface Transportation Subcommittee, I am pleased that the Senate is considering the Intermodal Safe Container Transportation Act of 1992 as passed by the House of Representatives on October 4, 1992. I introduced this legislation in the Senate to address the problem of overweight shipping containers which has become acute for the Nation's trucking industry. The bill represents a consensus among the shipping community and the trucking, rail, and maritime industries, and I am pleased that Senators GORTON, PRESSLER, and INOUYE are cosponsors.

For several years, the trucking, rail, maritime, and shipping industries have sought compromise legislation to address the problem of transporting containerized cargo safely when the hauling capacity of many containers exceeds the weights that can be legally transported over U.S. highways. Overweight containers raise key safety concerns for truckers and the motoring public through increased truck-stopping distances, decreased vehicle control, and increased mechanical stress on critical truck parts.

Although overweight intermodal shipments are illegal, trucking companies in particular have had no control over the weight and loading of containers and trailers and have faced fines and penalties when their loads are determined to be overweight. This problem has become more acute as intermodal transportation has grown through steady increases in international trade and containerization of both overseas and domestic freight.

The legislation being considered today is an amendment in the nature of a substitute to H.R. 3598, the Intermodal Safe Container Transportation Act, introduced on October 22, 1991, by Congresswoman HELEN BENTLEY. I would like to thank my colleagues in the House for their important contribution on this issue, as well as the various parties to the negotiations, including the motor-carrier, railroad, steamship, public port industries, and the shipping community. In summary, this legislation seeks to distribute equitably the responsibilities and liabilities of overweight intermodal shipments among all parties to an intermodal movement—shippers and carriers—and ensures that cargo weights and descriptions are provided by the tenderer of the load prior to highway transportation of the freight.

I urge my colleagues to pass this important legislative initiative.

THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AUTHORIZATION AND THE LAND REMOTE SENSING POLICY ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration en bloc to the following bills just received from the House. H.R. 6135, the National Aeronautics and Space Administration authorization, and H.R. 6133, the Land Remote Sensing Policy Act; that the bills be deemed read three times, passed, and the motion to reconsider laid upon the table en bloc, that any statements relative to this measure be placed in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bills (H.R. 6135, and H.R. 6133) were deemed read the third time and passed.

Mr. HOLLINGS. Mr. President, I am pleased to bring to the Senate the fiscal year 1933 authorization bill for the National Aeronautics and Space Administration [NASA]. I urge my colleagues to join me in passing this bill.

The legislation before us today, which is a 1-year authorization, provides a total of $14.892 billion for NASA for fiscal year 1993. This is above the amount provided in the Veterans Affairs, HUD, and independent agencies appropriations bill, which because of constrained allocations was forced to freeze NASA at fiscal year 1992 levels. However, in developing this authorization bill, every effort has been made to establish priorities for NASA that will strengthen the Nation's civil space program and, correspondingly, the American aerospace community. In this regard, for example, the bill makes over $600 million in reductions to the President's request in a number of nonessential programs, while preserving funding for higher priority programs such as the advanced solid rocket motor.

H.R. 6135 also authorizes funds for our other civil space agencies, including the National Space Council, the Department of Transportation's Office of Commercial Space Transportation, and the Office of Space Commerce in the Department of Commerce. It also includes a series of policy initiatives that will help NASA and the Nation's civil space and aeronautics research and technology development program.

The bill is the culmination of work done by the Committee on Commerce, Science, and Transportation, and in particular the distinguished chairman of the Science, Technology, and Space Subcommittee, Senator GORE. Also, this bill represents a compromise with our colleagues in the House of Representatives.

I urge passage of H.R. 6135. I ask unanimous consent that, following my statement, there be printed in the CONGRESSIONAL RECORD a spread sheet outlining the changes made to the President's fiscal year 1993 budget request for NASA, as well as a brief summary of the bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

H.R. 6135 NASA AUTHORIZATION ACT, FISCAL YEAR 1993

TITLE I—NASA AUTHORIZATION

Authorizes $14.892 billion in FY 1993 for the National Aeronautics and Space Administration (NASA). This represents a $539.3 million over FY 1992 funding levels (3.8 percent increase).

Summary Table 1993

[Dollars in billions]

	1992 appropriation	Present request	Proposed authorization
R&D	$6.851	$7.731	$7.224
Space flight	5.385	5.267	5.519
Const/facil.	.525	.319	.479
R&PM	1.578	1.660	1.654
IG	.015	.016	.016
NASA total	14.353	14.993	14.892

TITLE II—GENERAL PROVISIONS

Authorizations. Authorizes $1.598 million in FY 1993 for the activities of the National Space Council; 4.9 million for the Office of Commercial Space Transportation in the Department of Transportation; and $515,000 for the Department of Commerce's Office of Space Commerce.

Budget Estimates. Directs the NASA Administrator to submit annually a five-year budget on the development costs of major NASA programs, including the Space Station, as well as an estimate of the life-cycle costs associated with each program.

International Space Year. Expresses the sense of the Congress that the Space Agency Forum on International Space Year (SAFISY) should maintain its role in the coordinating Earth and space science research findings, and that NASA and the National Oceanic and Atmospheric Administration (NOAA) should implement the proposals for long-term multilateral cooperation that were developed during the International Space Year. Directs NASA to submit to Congress its plan for continuing SAFISY.

Russian Space Cooperation. Directs the President to report to the Congress on 1) opportunities for increased space related trade with the independent states of the former Soviet Union; 2) a technology procurement plan for evaluating unique space hardware, technology, and services available to the U.S., and 3) any barriers or anticompetitive issues that might inhibit space-related trade between the two countries. Requires any Federal agency which denies a license or other approval that may be needed to conduct discussions on space-related matters with the former Soviet Union to notify the Congress of such denial, along with justification.

Launch Technology Studies. Directs the NASA Administrator to submit to the Congress an independent analysis of the Single Stage Rocket Technology program and the potential application of this launch technology to the civil space program. Also directs the National Space Council to submit to the Congress a national aerospace transportation technology plan.

National Aerospace Plane Reprogramming. Authorizes the NASA Administrator to reprogram up to $45 million of the funds authorized for the Research and Development appropriation account for continued development of the National Aerospace Plane.

TITLE III—EPSCOR PROGRAM

Establish NASA EPSCoR Program. Directs the NASA Administrator to establish an Experimental Program to Simulate Research (EPSCoR) in Space and Aeronautics.

Merit Grant Competition. Directs NASA to conduct a merit grant competition among the 18 eligible EPSCoR States and Puerto Rico in areas of research important to NASA, including space science and applications, aeronautical research and technology, and space research and technology programs.

Funding. Encourages the NASA Administrator to ensure that $10 million from the appropriations authorized for Research and Development is used for the NASA, EPSCoR program.

TITLE IV—HIGH RISK R&D CONTRACT ADMINISTRATION

Acquisition Policy Assessment. Directs the NASA Administrator to carry out an assessment of the allocation of risk between NASA and its contractors in future R&D contracts for the correction of defects in materials and workmanship or other failures.

Promulgation of Regulations. Requires NASA, within 180 days after completion of the acquisition policy assessment, to initiate a rulemaking proceeding on the administration of R&D contracts which propose changes to NASA procurement regulations.

TITLE V—COMMERCIAL SPACE COMPETITIVENESS

Space Transportation Infrastructure Grant Program. Authorizes the Secretary of Transportation to establish a program to make grants for the development of commercial space transportation infrastructure. Authorizes $10 million in FY 1993 for this program. Limits the Federal share to 50 percent of the total project costs, while requiring that there be at least 10 percent private sector contribution before any grant is awarded.

Launch Voucher Demonstration Program. Establishes within NASA's Office of Commercial Programs a demonstration program enabling the award of vouchers for the payment of commercial launch services, both orbital and suborbital, and payload integration services.

Commercial Launch Indemnification. Extends until the year 2000 the requirement in current law which makes the Federal government responsible for public liability claims, above private insurance and not to exceed $1.5 billion, that may result from an accident related to a commercial launch.

Technology Transfer. Authorizes the NASA Administrator to protect against the dissemination of certain information resulting from R&D activities conducted under an agreement entered into by NASA. The protection would be for a period of up to 5 years after the development of that information and would apply to any trade secret or commercial or financial information that is privileged or confidential, if obtained from a non-Federal party participating in such agreements.

Anchor Tenancy/Termination Liability. Authorizes the Administrators of NASA and NOAA, subject to appropriations, to enter into multi-year anchor tenancy contracts to purchase a good or service, provided that it meets the agency mission requirements; commercial procurement is cost-effective; it is procured through a competitive process; there are other existing or potential customers other than the Federal government; and private capital is at risk. These contracts may provide for termination liability payments in the event that the government terminates such contracts.

Use of Government Facilities. Authorizes the use of Federal space-related facilities by non-Federal parties on a reimbursable basis.

Commercial Space Achievement Award. Creates a Commercial Space Achievement Award which the Secretary of Commerce is to award to individuals or businesses substantially engaged in commercial space activities.

TITLE VI—BIOMEDICAL RESEARCH IN SPACE

Biomedical Research Joint Working Group. Directs the NASA Administrator and the Director of the National Institutes of Health (NIH) to establish a joint working group to coordinate biomedical research activities in areas where a microgravity environment may contribute to significant progress in the understanding and treatment of diseases and other medical conditions.

Research Grants/Fellowships. Directs NASA and NIH to establish a joint program of biomedical research grants where research requires access to a microgravity environment, as well as a joint program of graduate research fellowships.

Former Soviet Union. Directs the NASA Administrator, in consultation with the Director of NIH, to submit to the Congress a Plan for the conduct of joint biomedical research activities by the republics of the former Soviet Union and the U.S., including the use of the Space Shuttle and former Soviet orbiting facilities, such as the Mir space station.

Electronic Data Archive. Directs NASA to create and maintain a national electronic data archive for biomedical research data obtained from space-based experiments.

Funding. Encourages the NASA Administrator to ensure that $3.75 million from the appropriations authorized for Research and Development is used for funding programs established under this Title.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION BUDGET SUMMARY

[In millions of dollars]

	Fiscal year—			
	1992 appropriations	1993 President's request	1993 Authoritative compromise	
Research and development	6,850.8	7,731.4	7,224.0	
Space station	2,028.9	2,225.0	2,100.0	(−150)
Space transportation capability development	719.5	863.7	733.7	
Upper stages	61.7			
Spacelab	99.2	122.6	122.6	
Engineering and Technical base	215.8	224.2	221.7	(−2.5)
Payload operations and supp. equip	119.1	153.6	143.6	(−10)
Tethered satellite system	16.4	3.4	3.4	
Advanced programs	34.7	57.7	41.2	(−16.5)
New launch system	28.0	125.0	30.0	(−95)
Research operations support	144.6	177.2	171.2	(−6)
Space science and applications	2,728.8	2,985.0	2,852.0	
Physics and astronomy	1,047.3	1,113.5	1,095.0	
General Reduction			(22.0)	(−22)
Advanced x-ray astrophysics facility	151.0	174.0	169.0	(−5)
Global geospace science	75.3	60.1	60.1	
Shuttle/spacelab payload mission mgmt	88.0	101.1	101.1	
Payload and instrument development	116.5	78.2	100.2	(+22)
Explorer development	105.0	112.5	112.5	
Mission operation and data analysis	380.8	440.9	428.4	(−12.5)
Research and analysis	70.5	81.4	81.4	
Suborbital program	60.2	65.3	65.3	
Life sciences	148.9	177.2	153.7	
Research and analysis	64.2	69.1	53.1	(−16)
Flight Experiments	84.7	108.1	100.6	(−7.5)
Planetary exploration	534.5	487.2	472.2	
Mars observer	76.9	0.0	0.0	
Mars balloon relay experiment	1.2	0.0	0.0	
Cassini	210.7	210.0	195.0	(−15)
Massion operations and data analysis	155.0	170.3	180.3	(+10)
Research and analysis	90.7	106.9	96.9	(−10)
Space applications	998.1	1,207.1	1,130.1	
Earth science and applications	747.5	868.5	838.5	
General reduction			(10.)	(−10)
Earth observing system (EOS)	188.4	308.4	288.4	(−20)
EOS data and information system	82.6	82.6	82.6	
Earth probes	92.8	88.9	88.9	
Airborn science and applications	20.3	22.9	22.9	
Ocean topography experiment	59.9	0.0	0.0	
Payload and instrument development	39.6	49.4	49.4	
Missions operations and data analysis	88.8	142.1	142.1	
Research and analysis	175.1	174.2	174.2	
Materials processing	120.8	195.3	155.3	(−40)
Communications	12.5	4.6	4.6	
Information systems	35.0	40.7	40.7	
Space science research operations support	82.3	89.0	91.0	(−7)
Commercial programs	147.6	171.6	156.6	
General reduction			(15.0)	(−15)
Technology utilization	32.5	31.7	31.7	
Commercial use of space	115.1	139.9	139.9	
Aeronautical research and technology	784.3	890.2	885.2	(−5)
Transatmospheric res. and tech. (NASP)	5.0	80.0	45.0	(−35)

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION BUDGET SUMMARY—Continued

[In millions of dollars]

	Fiscal year—			
	1992 appropriations	1993 President's request	1993 Authoritative compromise	
Space research and technology	314.3	332.0	308.5	
General reduction			(5.0)	(−5)
Research and technology base	157.9	173.8	173.8	
Civil space technology initiative	151.4	158.2	139.7	(−18.5)
Exploration mission studies	5.0			
Space exploration activities	(5.0)	31.8	15.9	(−15.9)
Safety reliability and qual. assurance	33.6	32.5	32.5	
Academic programs	66.8	71.4	71.4	
Tracking and data advanced systems	22.0	23.2	23.2	
Space Flight, Control and Data Com.	5,384.8	5,266.5	5,519.0	
Shuttle production and ops. cap.	1,327.8	1,012.8	1,315.8	
Orbiter operational capability	246.1	305.5	325.5	(+20)
Propulsion systems	715.4	357.7	664.7	(+307)
Launch and mission support	261.7	210.7	210.7	
Assured shuttle availability	104.6	138.9	114.9	(−24)
Space transportation enhancement			7.0	(+7)
Space shuttle operations	2,943.4	3,115.2	3,085.2	
General reduction			(25.0)	(−25)
Flight operations	790.3	740.4	740.4	
Flight hardware	1,297.1	1,455.3	1,455.3	
Launch and landing operations	628.3	639.9	739.9	
Research operations support	227.7	279.6	274.6	(−5)
Launch services	195.3	217.5	207.5	(−10)
Space and ground networks com.	918.3	921.0	903.5	
General reduction			(17.5)	(−17.5)
Space network	353.9	298.2	298.2	
Ground network	283.0	314.6	314.6	
Comunications and data systems	281.4	308.2	308.2	
Construction of facilities	525.0	319.2	479.2	
Construction projects			484.2	(+165)
General reduction			(5.0)	(−5)
Research and program management	1,577.6	1,660.0	1,654.0	(−6)
Inspection genral	14.6	15.9	15.9	
Total	14,352.8	14,993.0	14,892.1	(−100.9)

SETI FUNDING/NASA AUTHORIZATION BILL

Mr. BRYAN. Mr. President, in most respects, I am pleased to support the pending legislation the NASA authorization bill for fiscal year 1993.

There is one issue related to this legislation, however, that concerns me. During the Commerce Committee's markup of H.R. 4364, I offered an amendment to delete $13.5 million in funding for a program called the Search for Extraterrestrial Intelligence [SETI]. In my view, and in the view of the majority of Commerce Committee members, the limited potential benefits of the SETI program do not justify funding under today's tight budget constraints.

The House of Representatives agrees with this assessment, and has also deleted funding for the SETI program as part of the NASA authorization. The House also deleted funding for SETI in its VA/HUD appropriations bill.

Unfortunately, the Senate Appropriations Committee disagreed, and restored funding for SETI. The Senate position prevailed in the Conference Committee, and, in spite of language to the contrary that will be included in the authorization bill, SETI will be funded for fiscal year 1993. During consideration of the appropriations bill, I withheld from offering an amendment to delete funding for SETI, assuming that the language in the authorizing legislation would be sufficient to terminate the program. Unfortunately, this is not the case.

With great media hype, the SETI program, renamed in order to avoid the restrictions included in this bill, will begin surveying the skies for signs of extraterrestrials next Monday.

Mr. President, I am not opposed to scientific research. I simply believe that we must establish some system of priorities for Federal spending. While the amount of funding in question is small by Federal standards, $13.5 million during fiscal year 1993 could have a large impact if directed to other, more important programs. For example, $13.5 million could purchase 115 new homes in Las Vegas, pay the tuition of more that 10,000 students at UNLV, or provide day care for 1 year for 3,700 toddlers.

I am pleased that the $13.5 million reduction in authorization for NASA programs remains in this legislation, but am distressed that a program with so little support in Congress will be allowed to continue.

FY 1993 NASA AUTHORIZATION BILL

Mr. DANFORTH. Mr. President, as the ranking Republican member of the Commerce Committee, I urge my colleagues to join me in support of H.R. 4364, the NASA authorization bill for fiscal year 1993. At a time of heightened concern about U.S. competitiveness, the United States stands as the undisputed leader in civil space. In 1990, the United States experienced a $101 billion deficit, but the aerospace industry showed a $27.3 billion surplus. The bill seeks to maintain our leadership in space by funding a robust and balanced mix of activities in such areas as space exploration, space science, and aeronautics.

The bill authorizes $14.89 billion for NASA in fiscal year 93. This authorization is a two percent increase over fiscal year 92 funding levels, and only a two percent decrease from the President's budget request of $14.99 billion. This funding level will enable NASA to continue its current core programs, including its most ambitious initiatives: space station *Freedom* and "Mission to Planet Earth."

Mr. President, the bill supports most space programs at the levels recommended in the President's budget request. For instance, the substitute authorizes $2.1 billion of the $2.2 billion requested for space station. Space station is a joint project involving the United States and its international partners: Canada, Western Europe, and Japan. As research and development projects become increasingly complex and expensive, cooperative efforts like space station will be more important. For our Nation's part, tens of thousands of Americans in over 35 States, including my State of Missouri, are working hard to make space station *Freedom* a reality. If past NASA missions are any indication, in its quest to expand our understanding of the universe, space station may also generate important breakthroughs in such areas as biomedicine and materials research that will boost our economy and improve the quality of lives.

Mr. President, the bill continues full support for "Mission to Planet Earth" and related Earth science programs. This year, the Commerce Committee heard alarming testimony about the climate threats such as global warming and ozone depletion. It is vital for us and for future generations that we apply our satellite and computer technology to understand the scope and impact of these global climate changes. Mission to Planet Earth will provide scientists with the information to analyze these environmental threats so that policy makers can fashion appropriate remedies.

The bill authorizes $45 million for the National Aerospace Plane [NASP], $40 million more than the $5.0 million appropriated for fiscal year 1992. If successful, this program may eventually produce a plane that is capable of taking off from a runway, vaulting into orbit at Mach 25, and landing conventionally. Regrettably, however, the fiscal year 1993 appropriations legislation for NASA did not fund this program. This decision is shortsighted. Even its critics concede that NASP holds the promise of revolutionizing not just access to space, but commercial and military aviation as well. The bill seeks to provide NASA with flexibility in handling the program by authorizing NASA to reprogram up to $45 million from its research and development account to fund NASP.

The bill also provides full funding for NASA's other space transportation, space science and core activities. This past year NASA's programs were distinguished by several notable successes. For example, this May, the importance of manned space flight was dramatically demonstrated by the shuttle rescue of a wayward communications satellite by the crew of the Space Shuttle *Endeavour* in its maiden mission. The crews courage, resourcefulness, and grace under pressure were an inspiration to us all. Similarly, in September, NASA successfully launched its Mars observer spacecraft on its 11-month, 450-million-mile voyage to the Red Planet. The spacecraft will map the surface of the planet and analyze its atmosphere to lay the groundwork for any future manned missions to Mars.

Mr. President, with the end of the cold war, it is incumbent upon the United States and the former Soviet Union to seize this opportunity to share knowledge and resources to enhance our space programs. To this end, the bill directs the National Space Council, in consultation with NASA, to evaluate and prepare a plan for increased cooperation with the former Soviet Union. To their credit, the two nations are already developing joint projects. I understand that NASA and the former Soviet Union are already considering flying a cosmonaut on the Shuttle; flying an astronaut to the Russian space station *Mir*; and docking the shuttle at Mir. NASA is also looking at using the Soyuz vehicle as a possible rescue vehicle for space station *Freedom* rather than developing a new billion dollar vehicle. These kinds of cooperative efforts with our former space rival can only strengthen the space programs, as well as the economies, of both nations.

Mr. President, one of the ways to enhance U.S. competitiveness is to stimulate and create new markets. Commercial space may be the next high-tech global marketplace. The market for developing, building, and launching commercial and government spacecraft already generates billions of dollars for firms in the United States, Western Europe, China, the former Soviet Union and other countries. To help U.S. firms compete in this arena, the bill authorizes the Secretary of Transportation to provide up to $10 billion in matching funds to construct and improve the Nation's launch pads and other infrastructure needed for commercial space launches.

Mr. President, the bill contains a provision that I sponsored which would establish an Institute for Aviation Weather Prediction in Kansas City, MO. This institute would build on the existing aviation weather unit located within the National Severe Storms Forecast Center in the city. The institute is aimed at providing up-to-date weather watches, warnings and forecasts that are vital to the safety of the aviation community. The provision merely codifies existing National Weather Services plans in connection with its comprehensive modernization initiative. I would like to thank the National Weather Service for its work with the committee on this provision.

Mr. President, investment in our space program is an investment in our future. I strongly urge my colleagues to continue our leadership in civil space by voting for H.R. 4364.

BENJAMIN FRANKLIN COMMEMORATIVE MEDAL

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2448, a bill to provide for the minting of medals in commemoration of Benjamin Franklin and to enact a fair service bill of rights just received from the House, that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table, that any statement on passage of this bill appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. Mr. President, I am pleased to rise today in support of H.R. 2448, the Benjamin Franklin commemorative medal bill. Volunteer and career firefighters are the beneficiaries of the legislation before us. The bill will be a tremendous help to the one million men and women in the fire service community, 80 percent of whom risk life and limb as volunteers. It is clear there is far more that we should do to assist our Nation's firefighters, but passage of this bill will help in many important ways.

As this country enters into its third century, we need the kind of sacrifice and commitment represented by firefighters more than ever. America's firefighters keep this commitment alive in the face of incredible odds—fighting not only fires, but also finances and fatigue to keep their companies well-equipped and ready to respond.

The basic outline of the bill is quite simple. The bill authorizes the minting of commemorative medals honoring Ben Franklin, who founded our Nation's first fire company. Proceeds from the sale of the medals will support programs in the following areas: firefighter health, education, and training; burn research; scholarships for fire science and for survivors of fallen firefighters; arson prevention; and education programs for low-income areas that are especially hard hit by fires.

This bill is similar to S. 1451, legislation which Senator ROTH and I introduced and has 46 bipartisan cosponsors. H.R. 2448 has been amended in the House to authorize a commemorative medal instead of a commemorative coin. This alternative is a unique and less costly option, while still providing an important source of revenue to these crucial firefighter initiatives.

No cost to the taxpayer is involved with this bill. Financial assurances in the bill assure the Federal Government's recovery of design, minting, and marketing expenses. Additionally, funds granted through the program cannot be used to pay administrative costs. The proceeds from the sale of the medals will go to the men and women working in the dangerous—and sometimes deadly—battle against fire.

The battle against fire claims more than 6,000 victims and causes over $10 billion in property damage each year. More than one hundred of those victims were men and women who were at the site fighting the fire, trying to prevent further damage and destruction. Another 100,000 are injured saving children trapped in burning bedrooms, preventing a hazardous chemical from destroying a small town, or averting an explosion that could wipe out a city block. That is why the training is important and why I have supported efforts to improve the equipment rural and urban companies have to put out the flames.

My home State of Delaware, with approximately 4,000 firefighters, is not atypical in its need for increased resources. Of the 60 fire companies in Delaware, 58 are volunteer, depending heavily on contributions from local supporters to meet their financial requirements. For while they often contribute their time and effort, Delaware's firefighters face skyrocketing costs and rising demands.

Each call response costs a fire company at least $1,500, with or without a fire. Protective gear worn by the firefighters can cost in excess of $2000 per person. Replacing trucks and other heavy equipment easily clears $250,000 on some vehicles.

Those costs are compounded by the increase in emergency calls. In Delaware in 1980, 15,000 emergency calls were made. Ten years later, that figure had nearly tripled to 40,000. My State's population has grown only 13 percent during that period. The demands on firefighters are outstripping their resources.

I would like to make clear the special benefit of volunteer fire services to communities both large and small. A recent report from the Delaware State Auditor's office assessed the value of their efforts. The report found that in the absence of volunteer fire and ambulance services in Delaware, taxpayers would have to pay nearly $70 million for comparable services.

Those who serve in career fire departments face a somewhat different but equally difficult challenge. With smaller and fewer companies spread further and further apart, with inner cities posing dangers that seemed unimaginable jut a few years ago, and with crumbling city finances, it has become much more demanding for career fire departments to keep their equipment up-to-date and well-maintained and to keep response times down.

All firefighters—volunteer and career alike—day after day, night after night, in narrow, crowded city streets or far out along lonely country roads, meet fire and disaster head on with great skill and courage. Appropriately, the bill we are about to send to the President recognizes the vital role of all firefighters to our Nation. The foundations funded by this bill support programs to give firefighters better training and equipment, to educate the public about the threat of fire, and to help develop better ways to treat the victims of fire.

Almost 20 years ago, the landmark report entitled "America Burning" opened the Nation's eyes to the extent of destruction caused by fire. Since then, tremendous progress has been made—but there is much more to be done. I know from personal experience how important fire service companies are to individuals and communities facing emergencies. This legislation is an important step toward regaining the initiative on reducing deaths, injuries, and damage from fire, and it has the strong support of the fire service community. Therefore, Mr. President, I'm pleased the Senate and Congress today has taken this step by passing the Benjamin Franklin Fire Service Bill of Rights Act.

Finally, as my colleagues know, this legislation's success in the Senate was built on the fine work of our late colleague, John Heinz, who introduced the firefighter bill in the 101st Congress. With the persistence of the originator of this proposal, Congressman CURT WELDON, we have not lost this opportunity to support America's firefighters.

I would also like to thank the chairman and ranking member of the Senate Banking Committee, Senators RIEGLE and GARN, for the attention they have given this legislation and for expediting its consideration and passage.

The bill (H.R. 2448) was deemed read the third time and passed.

JUVENILE ARTHRITIS RESEARCH EXCELLENCE ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3371, a bill introduced earlier today by Senator SHELBY providing for research with respect to juvenile arthritis; that the bill be read a third time, passed, the motion to reconsider be laid upon the table, and any statements thereon appear in the RECORD at the appropriate place as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 3371) was deemed read the third time, and passed, as follows:

S. 3371

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Juvenile Arthritis Research Excellence Act".

SEC. 2. JUVENILE ARTHRITIS.

(a) PURPOSE.—Section 435 of the Public Health Service Act (42 U.S.C. 285d) is amended by inserting before "sports-related disorders" the following: "the effect of these diseases on children and".

(b) PROGRAMS.—Section 436 (42 U.S.C. 285d-1) is amended—

(1) in subsection (a), by inserting after the second sentence, the following: "The plan shall place particular emphasis upon expanding research into better understanding the causes and the development of effective treatments for arthritis affecting children."; and

(2) in subsection (b)—

(A) by striking "and" at the end of paragraph (3);

(B) by striking the period at the end of paragraph (4) and inserting "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(5) research into the causes of arthritis affecting children and the development, trial, and evaluation of techniques, drugs and devices used in the diagnosis, treatment (including medical rehabilitation), and prevention of arthritis in children.".

(c) CENTERS.—Section 441 of the Public Health Service Act (42 U.S.C. 286d-6) is amended by adding at the end thereof the following new subsection:

"(f) The Director shall, subject to appropriations, establish a multipurpose arthritis and musculoskeletal disease center for the purpose of expanding the level of research into the cause, diagnosis, early detection, prevention, control, and treatment of, and rehabilitation of children with arthritis and musculoskeletal diseases.".

(d) ADVISORY BOARD.—Section 442 of the Public Health Service Act (42 U.S.C. 285d-7) is amended—

(1) in subsection (b)—

(A) by striking "eighteen" in the matter immediately preceding paragraph (1) and inserting "twenty"; and

(B) in paragraph (1)(B)—

(i) by striking "six" and inserting "eight"; and

(ii) by inserting before the period the following: ", and two members who are parents of children with arthritis."; and

(2) in subsection (j)—

(A) by striking "and" at the end of paragraph (3);

(B) by striking the period at the end of paragraph (4) and inserting "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(5) contains recommendations for expanding the Institute's funding of research directly applicable to the cause, diagnosis, early detection, prevention, control, and treatment of, and rehabilitation of children with arthritis and musculoskeletal diseases.".

PROVIDING FOR THE CONVENING OF THE 1ST SESSION OF THE 103D CONGRESS

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of House Joint Resolution 563, a joint resolution relating to the convening of the 103d Congress, now at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 563) providing for the convening of the First Session of the One Hundred Third Congress.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. Without objection, the joint resolution is considered read three times and passed.

The joint resolution (H.J. Res. 563) was deemed read the third time and passed.

Mr. FORD. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. FORD. I might announce that that sets the first day of the 103d Congress, on Tuesday, January 5, 1993, at noon.

CONGRESSIONAL AWARD ACT AMENDMENTS OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6049, the Congressional Award Act amendments of 1992, just received from the House, that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 6049) was deemed read the third time and passed.

RELEASE OF RESTRICTIONS ON CERTAIN LANDS

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1183.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1183) entitled "An Act to reduce the restrictions on the lands conveyed by deed to the city of Kaysville, Utah, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause, and insert:

S. 1183

TITLE I—UTAH LANDS

SEC. 101. AMENDMENT.

Section 2 of the Act of June 8, 1926 (ch. 498; 44 Stat. 708), is amended by striking "States." at the end of the first sentence and inserting in lieu thereof the following: "States, except that these restrictions on conveyances and uses shall not apply to those lands upon which communications facilities were located as of November 1, 1991, or prevent reasonable ingress and egress for the repair, maintenance, or improvement of such facilities, nor shall these restrictions on conveyances and uses prohibit the use of the lands described in the first section of this Act for recreational purposes so long as such recreational use is consistent both with the protection of the watershed and water supply system of the city and with the management objectives for adjacent National Forest System lands. Any improvements of the lands described in the first section of this Act for recreational purposes shall be undertaken only in consultation with and the approval of the Secretary of Agriculture.".

SEC. 102. BEAR RIVER EXCHANGE.

(a) In General.—If, within 5 years after the date of enactment of this Act, the State of Utah transfers to the Secretary of the Interior all right, title, and interest of the State of Utah in and to the State lands in exchange for Federal lands, the Secretary of the Interior, within 18 months after such transfer, shall transfer to the State of Utah all right, title, and interest in and to so much of the Federal lands as the Secretary determines to be equal in fair market value to the State lands.

(b) State Lands.—As used in this section, the term "State lands" means approximately 700.70 acres of land located in the State of Utah, as generally depicted as State lands on the map entitled "Bear River Migratory Bird Refuge", map numbered 1, and more particularly described as:

The South half of the Northwest Quarter and Lots 5, 6, 7, and 8, all in Section 4, and also, Lots 7 and 8, Section 5, township 8 North, Range 2 West, Salt Lake Base and Meridian.

All property below the surveyed meander line and North of the Bear River Bird Refuge North Boundary in Sections 4 and 9 and in the East one-half of Sections 5 and 8, Township 8 North, Range 2 West, Salt Lake Base and Meridian.

(c) Federal Lands.—As used in this section, the term "Federal lands" means approximately 1,365.14 acres of land located in the State of Utah, as generally depicted as Federal lands on the map entitled "Fingerpoint ", map numbered 2, and the map entitled "Rozel Point", map numbered 3, and more particularly described as:

Township 7 North, Range 10 West, Salt Lake Base & Meridian

Section 5: Lots 1–6, W½SW¼
Section 6: Lots 1–7, W½SE¼
Section 7: Lots 1–6
Section 8: Lots 1–4, W½
Section 17: Lots 1–5
Section 18: Lots 1–3

Township 8 North, Range 7 West, Salt Lake Base & Meridian

Section 8: Lots 1–12, E½NE¼

(d) Administration.—The lands transferred to the United States under this section shall be added to and administered as part of the Bear River Migratory Bird Refuge.

TITLE II—COLORADO MILITARY LANDS

SEC. 201. SHORT TITLE.

This title may be cited as the "Fort Carson-Pinon Canyon Military Lands Withdrawal Act".

SEC. 202. WITHDRAWAL AND RESERVATION OF LANDS AT FORT CARSON MILITARY RESERVATION.

(a) Withdrawal.—Subject to valid existing rights and except as otherwise provided in this title, the lands at the Fort Carson Military Reservation that are described in subsection (c) are hereby withdrawn from all forms of appropriation under the public land laws including the mining laws and the mineral and geothermal leasing laws.

(b) Reservation.—The lands withdrawn under subsection (a) are reserved for use by the Secretary of the Army—

(1) for military maneuvering, training and weapons firing; and

(2) for other defense related purposes consistent with the uses specified in paragraph (1).

(c) Land Description.—The lands referred to in subsection (a) comprise 3,133.02 acres of public land and 11,415.16 acres of federally-owned minerals in El Paso, Pueblo and Fremont Counties, Colorado, as generally depicted on the map entitled "Fort Carson Proposed Withdrawal—Fort Carson Base", dated February 1992, and filed in accordance with section 204.

SEC. 203. WITHDRAWAL AND RESERVATION OF LANDS AT PINON CANYON MANEUVER SITE.

(a) Withdrawal.—Subject to valid existing rights and except as otherwise provided in this title, the lands at the Pinon Canyon Maneuver Site that are described in subsection (c) are hereby withdrawn from all forms of appropriation under the public land laws including the mining laws and the mineral and geothermal leasing laws.

(b) Reservation.—The lands withdrawn under subsection (a) are reserved for use by the Secretary of the Army—

(1) for military maneuvering and training; and

(2) for other defense related purposes consistent with the uses specified in paragraph (1).

(c) Land Description.—The lands referred to in subsection (a) comprise 2,517.12 acres of public lands and 130,139 acres of federally-owned minerals in Las Animas County, Colorado, as generally depicted on the map entitled "Fort Carson Proposed Withdrawal—Fort Carson Maneuver Area—Pinon Canyon site", dated February 1992, and filed in accordance with section 204.

SEC. 204. MAPS AND LEGAL DESCRIPTIONS.

(a) Preparation.—As soon as practicable after the date of enactment of this Act, the Secretary of the Interior shall—

(1) publish in the Federal Register a notice containing the legal description of the lands withdrawn and reserved by this title; and

(2) file maps and a legal description of the lands withdrawn and reserved by this title with the Committee on Energy and Natural Resources of the United States Senate and with the Committee on Interior and Insular Affairs of the United States House of Representatives.

(b) Legal Effect.—Such maps and legal descriptions shall have the same force and effect as if they were included in this title, except that the Secretary of the Interior may correct clerical and typographical errors in such maps and legal descriptions.

(c) Location of Copies.—Copies of such maps and legal descriptions shall be available for public inspection in the offices of the Colorado State Director and the Canon City District Manager of the Bureau of Land Management, and the Commander, Fort Carson, Colorado.

(d) Costs.—The Secretary of the Army shall reimburse the Secretary of the Interior for the costs of implementing this section.

SEC. 205. MANAGEMENT OF WITHDRAWN LANDS.

(a) Management Guidelines.—(1) Except as provided in section 206, during the period of withdrawal, the Secretary of the Army shall manage for military purposes the lands covered by this title and may authorize use of the lands by the other military departments and agencies of the Department of Defense, and the National Guard, as appropriate.

(2) When military operations, public safety, or national security, as determined by the Secretary of the Army, require the closure of roads and trails on the lands withdrawn by this title commonly in public use, the Secretary of the Army is authorized to take such action, except that such closures shall be limited to the minimum areas and periods required for the purposes specified in this subsection. Appropriate warning notices shall be kept posted during closures.

(3) The Secretary of the Army shall take necessary precautions to prevent and suppress brush and range fires occurring within and outside the lands as a result of military activities and may seek assistance from the Bureau of Land Management in suppressing such fires. The memorandum of understanding required by this section shall provide for Bureau of Land Management assistance in the suppression of such fires, and for a transfer of funds from the Department of the Army to the Bureau of Land Management as compensation for such assistance.

(b) Management Plan.—The Secretary of the Army, with the concurrence of the Secretary of the Interior, shall develop a plan for the management of acquired lands and lands withdrawn under sections 202 and 203 for the period of withdrawal. The plan shall—

(1) be consistent with applicable law;

(2) include such provisions as may be necessary for proper resource management and protection of the natural, cultural, and other resources and values of such lands;

(3) identify those withdrawn and acquired lands, if any, which are to be open to mining or mineral and geothermal leasing, including mineral materials disposal; and

(4) be developed not later than 5 years after the date of enactment of this Act.

(c) Listing of Lands Suitable for Mining.—On completion of the management plan prepared pursuant to subsection (b), the Secretary of the Interior shall publish a notice in the Federal Register listing the lands determined under such subsection to be suitable for opening to mining, and mineral and geothermal leasing, including mineral materials disposal, and specifying the opening date.

(d) Implementation of Management Plan.—(1) The Secretary of the Army and the Secretary of the Interior shall enter into a memorandum of understanding to implement the management plan described in subsection (b).

(2) The duration of any such memorandum of understanding shall be the same as the period of withdrawal under section 208.

(3) The memorandum of understanding may be amended by agreement of both Secretaries.

(e) REEXAMINATION OF LANDS FOR SUITABILITY FOR MINING.—At least every five years after the initial identification of lands suitable for opening to mining required by subsection (b)(3), the Secretary of the Army and the Secretary of the Interior shall determine those withdrawn lands, if any, which the Secretaries consider suitable for opening to mining, mineral and geothermal leasing, or mineral material disposal, and those acquired lands, if any, which the Secretaries consider suitable for opening to mineral and geothermal leasing or mineral material disposal. The Secretary of the Interior shall publish a notice in the Federal Register listing the lands determined suitable for opening and specifying the opening date.

(f) USE OF CERTAIN RESOURCES.—The Secretary of the Army is authorized to utilize sand, gravel, or similar mineral or mineral material resources when the use of such resources is required for construction needs of the Fort Carson Reservation or Pinon Canyon Maneuver Site.

SEC. 206. MANAGEMENT OF WITHDRAWN AND ACQUIRED MINERAL RESOURCES.

(a) AUTHORITY OF SECRETARY OF THE INTERIOR.—Notwithstanding any other provision of law, and except as provided in section 205 of this title, the Secretary of the Interior shall manage all withdrawn and acquired mineral resources contained within the boundaries of the Fort Carson Reservation and Pinon Canyon Maneuver Site.

(b) EFFECT OF IDENTIFICATION OF LANDS AS SUITABLE FOR MINING.—On the day specified by the Secretary of the Interior in the notice published in the Federal Register pursuant to subsections (c) and (e) of section 205, the land identified as suitable for opening to the operation of the mining, mineral, and geothermal leasing and the mineral material disposal laws shall automatically be open to the operation of such laws without the necessity for further action by either the Secretary of the Interior or the Congress.

(c) EXCEPTION FROM CERTAIN LAWS.—No deposit of minerals or materials of the types identified by section 3 of the Act of July 23, 1955 (30 U.S.C. 611; 69 Stat. 368), whether or not included in the term "common varieties" in that Act, shall be subject to location under the Act of May 10, 1872 (commonly known as the Mining Law of 1872) (30 U.S.C. 22 et seq.), on lands described in sections 202 and 203.

(d) REGULATIONS.—On lands identified for opening to mining, mineral, and geothermal leasing or mineral material disposal by section 205(b)(3), or by subsequent amendments to the management plan described in section 205, all minerals contained in those lands shall be subject to mining, mineral, and geothermal leasing or mineral material disposal under such rules and regulations as the Secretary of the Interior may promulgate pursuant to the terms and conditions of section 12 of the Military Lands Withdrawal Act of 1986 (Public Law 99-606; 100 Stat. 3466).

(e) CLOSURE OF LANDS UNDER CERTAIN CIRCUMSTANCES.—In the event of a national emergency or for purposes of national defense or security, the Secretary of the Interior, at the request of the Secretary of the Army, shall close any lands that have been opened to mining, mineral, and geothermal leasing or mineral material disposal pursuant to this section.

(f) MINING CLAIMS.—(1) Except as otherwise provided in this title, mining claims located pursuant to this title shall be subject to the provisions of the Act of May 10, 1872 (commonly known as the Mining Law of 1872) (30 U.S.C. 22 et seq.). In the event of a conflict between that law and this title, this title shall prevail.

(2) All mining claims located under the terms of this title shall be subject to the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(g) PATENTS FOR LOCATABLE MINERALS.—(1) Patents issued pursuant to this title for locatable minerals shall convey title to the locatable minerals only, and shall be issued together with an appropriate authorization for use of so much of the surface as may be necessary for purposes incident to mining under the guidelines for such use established by the Secretary of the Interior by regulation.

(2) All such patents shall contain a reservation to the United States of the surface of all lands patented and of all nonlocatable minerals on those lands.

(3) For the purposes of this section, all minerals subject to location under the Act of May 10, 1872 (commonly known as the Mining Law of 1872) (30 U.S.C. 22 et seq.), are referred to as "locatable minerals".

SEC. 207. HUNTING, FISHING, AND TRAPPING.

All hunting, fishing, and trapping on the lands withdrawn and reserved by this title shall be conducted in accordance with section 2671 of title 10, United States Code.

SEC. 208. TERMINATION OF WITHDRAWAL AND RESERVATION AND EFFECT OF CONTAMINATION.

(a) TERMINATION DATE.—The withdrawal and reservation established by this title shall terminate 15 years after the date of enactment of this Act.

(b) DETERMINATION OF CONTINUING MILITARY NEED.—(1) At least three years prior to the termination under subsection (a) of the withdrawal and reservation established by this title, the Secretary of the Army shall advise the Secretary of the Interior as to whether or not the Department of the Army will have a continuing military need for any of the lands after the termination date.

(2) If the Secretary of the Army concludes under paragraph (1) that there will be a continuing military need for any of the lands after the termination date established by subsection (a), the Secretary of the Army, in accordance with applicable law, shall evaluate the environmental effects of renewal of such withdrawal and reservation, shall hold at least one public hearing in Colorado concerning such evaluation, and shall thereafter file an application for extension of the withdrawal and reservation of such lands in accordance with the regulations and procedures of the Department of the Interior applicable to the extension of withdrawals for military uses. The Secretary of the Interior shall notify the Congress concerning such filing and thereafter may take necessary steps, in accordance with applicable law, to prevent uses inconsistent with such extension for a period not in excess of 2 years after the termination of the withdrawal and reservation made by this title.

(3) If the Secretary of the Army concludes under paragraph (1) that prior to the termination date established by subsection (a), there will be no military need for all or any of the lands withdrawn and reserved by this title, or if, during the period of withdrawal, the Secretary of the Army decides to relinquish any or all of the lands withdrawn and reserved under this title, the Secretary of the Army shall file a notice of intention to relinquish with the Secretary of the Interior.

(c) DETERMINATION OF CONTAMINATION.—Prior to the filing of a notice of intention to relinquish pursuant to subsection (b)(3), the Secretary of the Army shall prepare a written determination as to whether and to what extent the lands are contaminated with explosive, toxic, or other hazardous materials. A copy of the determination made by the Secretary of the Army shall be supplied with the notice of intention to relinquish. Copies of both the notice of intention to relinquish and the determination concerning the contaminated state of the lands shall be published in the Federal Register by the Secretary of the Interior.

(d) EFFECT OF CONTAMINATION.—(1) If any land which is the subject of a notice of intention to relinquish under subsection (b)(3) is contaminated, and the Secretary of the Interior, in consultation with the Secretary of the Army, determines that decontamination is practicable and economically feasible, taking into consideration the potential future use and value of the land, and that upon decontamination, the land could be opened to the operation of some or all of the public land laws, including the mining laws, the Secretary of the Army shall decontaminate the land to the extent that funds are appropriated for such purpose.

(2) If the Secretaries of the Army and the Interior conclude either that decontamination of any or all of the lands proposed for relinquishment is not practicable or economically feasible, or that the lands cannot be decontaminated sufficiently to allow them to be opened to the operation of the public land laws, or if Congress declines to appropriate funds for decontamination of the lands, the Secretary of the Interior shall not be required to accept the lands proposed for relinquishment.

(3) If, because of their contaminated state, the Secretary of the Interior declines under paragraph (2) to accept jurisdiction of the lands proposed for relinquishment, or if at the expiration of the withdrawal made by this title the Secretary of the Interior determines that some of the lands withdrawn by this title are contaminated to an extent which prevents opening such contaminated lands to operation of the public land laws—

(A) the Secretary of the Army shall take appropriate steps to warn the public of the contaminated state of such lands and any risks associated with entry onto such lands;

(B) after the expiration of the withdrawal, the Secretary of the Army shall undertake no activities on such lands except in connection with decontamination of such lands; and

(C) the Secretary of the Army shall report to the Secretary of the Interior and to the Congress concerning the status of such lands and all actions taken in furtherance of the subsection.

(4) If the lands are subsequently decontaminated, upon certification by the Secretary of the Army that the lands are safe for all nonmilitary uses, the Secretary of the Interior shall reconsider accepting jurisdiction over the lands.

(e) PROGRAM OF DECONTAMINATION.—Throughout the duration of the withdrawal and reservation made by this title, the Secretary of the Army, to the extent funds are made available, shall maintain a program of decontamination of the lands withdrawn by this title at least at the level of effort carried out during fiscal year 1992.

(f) ACCEPTANCE OF LANDS PROPOSED FOR RELINQUISHMENT.—Notwithstanding any other provision of law, the Secretary of the Interior, upon deciding that it is in the public interest to accept jurisdiction over the lands proposed for relinquishment, is authorized to revoke the withdrawal and reservation established by this title as it applies to the lands proposed for relinquishment. Should the decision be made to revoke the withdrawal and reservation, the Secretary shall publish in the Federal Register an appropriate order which shall—

(1) terminate the withdrawal and reservation;

(2) constitute official acceptance of full jurisdiction over the lands by the Secretary of the Interior; and

(3) state the date upon which the lands will be opened to the operation of the public land laws, including the mining laws if appropriate.

SEC. 209. DELEGATION.

The functions of the Secretary of the Army under this title may be delegated. The functions *of the Secretary of the Interior under this title may be delegated, except that the order referred to in section 208(f) may be approved and signed only by the Secretary of the Interior, the Deputy Secretary of the Interior, or an Assistant Secretary of the Department of the Interior.*

SEC. 210. HOLD HARMLESS.

The United States and all departments or agencies thereof shall be held harmless and shall not be liable for any injuries or damages to persons or property suffered in the course of any mining, mineral, or geothermal leasing activity conducted on lands comprising the Fort Carson Reservation or Pinon Canyon Maneuver Site.

SEC. 211. AMENDMENT TO MILITARY LANDS WITHDRAWAL ACT OF 1986.

Section 3(f) of the Military Lands Withdrawal Act of 1986 (Public Law 99–606, 100 Stat. 3461) is amended by adding at the end a new paragraph (2) as follows:

"(2) The Secretary of the military department concerned may utilize sand, gravel, or similar mineral or material resources when the use of such resources is required for construction needs on the respective lands withdrawn by this Act.".

SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

TITLE III—TARGHEE AND KANIKSU NATIONAL FORESTS

SEC. 301. SHORT TITLE.

This title may be cited as the "Targhee and Kaniksu Land Exchange Act of 1992".

SEC. 302. TARGHEE NATIONAL FOREST BOUNDARY ADJUSTMENT.

(a) In General.—The boundaries of the Targhee National Forest are adjusted as generally depicted on the map entitled "Targhee National Forest Proposed Boundary Changes" and dated March 1, 1991.

(b) Map and Legal Description.—

(1) Public access.—The map described in subsection (a) and a legal description of the lands depicted on the map shall be on file and available for public inspection in the Regional Office of the Intermountain Region of the Forest Service.

(2) Technical corrections.—The map and legal description shall have the same force and effect as if included in this Act, except that the Secretary of Agriculture (referred to in this title as the "Secretary") may correct clerical and typographical errors.

(c) Rule of Construction.—For the purpose of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–9), the boundaries of the Targhee National Forest, as adjusted by this Act, shall be considered to be the boundaries of the Forest as of January 1, 1965.

SEC. 303. CLARK FORK LAND EXCHANGE.

(a) Findings.—Congress finds that, over the past 10 years—

(1) the University of Idaho has utilized the Clark Fork Ranger Station within the Kaniksu National Forest as the Clark Fork Field Campus, under a Granger-Thye permit; and

(2) the University of Idaho has made substantial improvements in order to maintain and utilize the buildings as a campus facility.

(b) Land Exchange.—

(1) Conveyance by the Secretary.—

(A) In general.—In exchange for the conveyance described in paragraph (2) and subject to easements that are considered necessary by the Secretary for public and administrative access and to valid existing rights, the Secretary shall convey to the Regents of the University of Idaho all right, title, and interest of the United States to Parcel A.

(B) Parcel A.—As used in this section, the term "Parcel A" means the approximately 35.27 acres comprising the Clark Fork Ranger Station within the Kaniksu National Forest, as depicted on the map entitled "Clark Fork Land Exchange—Parcel A" and dated July 1, 1991.

(2) Conveyance by the Regents of the University of Idaho.—

(A) In general.—In exchange for the conveyance described in paragraph (1) and subject to valid existing rights of record acceptable to the Secretary, the Regents of the University of Idaho shall convey to the Secretary, by general warranty deed in accordance with Department of Justice title standards, all right, title, and interest to Parcel B.

(B) Parcel B.—As used in this section, the term "Parcel B" means the approximately 40 acres depicted on the map entitled "Clark Fork Land Exchange—Parcel B" and dated July 1, 1991.

(3) Maps and legal descriptions.—

(A) Public access.—The maps described in paragraphs (1)(B) and (2)(B) and the legal descriptions of the lands depicted on the maps shall be on file and available for public inspection in the Regional Office of the Northern Region of the Forest Service.

(B) Technical corrections.—The maps and legal descriptions shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors.

(c) Land Valuation.—

(1) In general.—Subject to paragraph (2), if the lands exchanged between the United States and the Regents of the University of Idaho, as authorized by subsection (b), are not of equal value, the values shall be equalized in accordance with section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)).

(2) Exception.—The value of the improvements made by the University of Idaho on Parcel A under the Granger-Thye permit shall be excluded from consideration in a valuation conducted pursuant to paragraph (1).

(d) National Forest Boundary Adjustment.—

(1) In general.—Upon acquisition of Parcel B by the United States, the boundaries of the Kaniksu National Forest shall be adjusted to include Parcel B.

(2) Rule of construction.—For the purpose of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–9), the boundaries of the Kaniksu National Forest, as adjusted by this title, shall be considered to be the boundaries of the Forest as of January 1, 1965.

TITLE IV—RIGHTS-OF-WAY

SEC. 401. SUNRISE MOUNTAIN UTILITY CORRIDOR.

(a) Establishment.—

(1) There is established a right-of-way corridor of approximately one mile in width within the lands known as Sunrise Mountain (Natural Area) Inventory Unit NV–050–0420 (referred to in this Act as the "corridor").

(2) The corridor shall be located and administered by the Secretary of the Interior (referred to in this Act as the "Secretary") pursuant to sections 202 and 503 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712 and 1763). Effective on the filing of the legal description of the corridor by the Secretary, lands so described shall not be subject to section 603 of such Act.

(3)(A) Subject to subparagraph (B), the exact location and width of the corridor shall be as established in the map and legal description filed by the Secretary pursuant to subsection (b).

(B) The center line of the corridor shall be approximately the center line of the Navajo-McCullough 500 kilovolt transmission line in the lands described in paragraph (1) as in existence on the date of enactment of this Act.

(b) Map and Legal Description.—

(1) As soon as practicable after the date of enactment of this Act, a map and legal description of the corridor shall be filed by the Secretary with the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives.

(2) The map shall have the same force and effect as if included in this Act.

(3) Copies of the map shall be on file and available for public inspection in the office of the Director of the Bureau of Land Management of the Department of the Interior, and in each appropriate office of the Bureau of Land Management in Nevada.

(c) Rights-of-Way.—

(1) The Secretary may grant not more than six rights-of-way over, upon, under, or through the corridor for systems and facilities compatible with each other and consistent with title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.) (including rights-of-way to be used or useful for the construction, operation, and maintenance of single- or double-circulated electric transmission lines), of which—

(A) one right-of-way shall be used for the Intermountain Power Project transmission line;

(B) one right-of-way shall be used for the Navajo-McCullough transmission line referred to in subsection (a)(3)(B); and

(C) the remaining four rights-of-way may be granted only for the construction, operation, and maintenance of open-access transmission lines.

(2) Each right-of-way within the corridor shall be located so that the right-of-way causes the least practicable visual and physical impact on the environment, the corridor, Rainbow Gardens, and Desert Wetlands Park, that is consistent with good engineering practices.

(d) Construction.—Nothing in this section shall be construed as authorizing the issuance of any rights-of-way for electrical transmission lines or other purposes that would be inconsistent with applicable zoning or other requirements of State or local governments.

SEC. 402. CLAIMED RIGHTS-OF-WAY.

The Federal Land Policy and Management Act of 1976 is hereby amended by adding at the end of title III the following new sections 319 and 320:

"SEC. 319. RECORDATION OF CLAIMED RIGHTS-OF-WAY.

"(a) Filing Requirements.—(1) Any party claiming to be a holder of a right-of-way across public or other Federal lands for the construction of a highway pursuant to a grant made by Revised Statutes section 2477 (43 U.S.C. 932) that became operative before repeal of such section on October 21, 1976, shall, on or before January 1, 1994, file for record in the office or offices of the Bureau of Land Management responsible for management of public lands within the State or States wherein such claimed right-of-way is located either a notice of intent to hold and maintain the right-of-way or a notice of abandonment of such party's claim to be the holder of such right-of-way. A notice of intent to hold and maintain such a right-of-way shall be accompanied by information concerning the actual construction, maintenance, and public use on which such party bases its claim to have established such a right-of-way, and by such other information regarding the uses, location, and extent of such claimed right-of-way as the Secretary of the Interior may require. The Secretary may allow information already in the possession of the Bureau of Land Management to be included by reference to the documents in which such information is recorded.

"(2) A party filing a notice pursuant to paragraph (1) shall also simultaneously file a copy

thereof in the appropriate office of any other agency responsible for management of any Federal lands traversed by the claimed right-of-way, and shall give public notice of the party's intention to hold and maintain or to abandon the claimed right-of-way by publication of information concerning such intention in one or more newspapers of general circulation in the areas where the affected lands are located.

"(b) EFFECT.—(1) The failure of any party subject to the requirements of subsection (a) to file the notices or to publish the information required to be filed and published by such subsection within the time specified by such subsection shall be conclusively deemed to constitute an abandonment and relinquishment of a right-of-way with respect to which such filing and publication is required by such subsection.

"(2) Recordation pursuant to this section shall not, of itself, render valid any claim which would not otherwise be valid under applicable law or provide a basis for changing the scope, alignment, or character or extent of use of any claimed right-of-way; and nothing in this section shall be construed as waiving, altering, or otherwise affecting any terms or conditions applicable to any right-of-way under this Act or any other applicable law.

"(c) INVESTIGATIONS.—(1) Upon receipt of a notice filed pursuant to subsection (a) that a party intends to hold and maintain a claimed right-of-way involving any lands specified in paragraph (2) of this subsection, the Secretary of the Interior, acting through an appropriate officer of the Bureau of Land Management or (if any portion of a claimed right-of-way covered by this subsection is located within a unit of the National Park System) of the National Park Service, shall conduct an investigation to determine the validity of each such claimed right-of-way. The Secretary shall provide an opportunity for the public to contest or request an investigation of the validity of any other claimed right-of-way.

"(2)(A) The Secretary shall investigate the validity of each claimed right-of-way any portion of which involves—

"(i) any lands within the National Park System, the National Wild and Scenic River System, or the National Wilderness Preservation System; or

"(ii) any lands being managed so as to preserve their suitability for designation as wilderness, pursuant to section 603 of this Act or any other provision of law or regulation; or

"(iii) any area of critical environmental concern; or

"(iv) any other lands whose use for highway purposes would be inconsistent with the land-use plans for those lands.

"(B) The Secretary shall also investigate any claimed right-of-way not involving lands specified in subparagraph (A) but with respect to which a challenge is filed that states grounds which, if proved or confirmed, would constitute reason to doubt the validity of such claimed right-or-way or any portion thereof.

"(3) If any portion of such claimed right-of-way is on Federal lands managed by an agency other than the Bureau of Land Management or the National Park Service, the investigating officer shall request the comments of such agency with respect to the validity of such right-of-way.

"(4) Appropriate notice to the public, including the owners of any non-Federal lands affected by the claimed right-of-way, shall be provided with respect to initiation of each investigation carried out pursuant to this paragraph, and the investigating officer shall provide an opportunity for the public to submit comments concerning the subject of the investigation.

"(5) If information or comments submitted to the investigating officer demonstrate that there is a dispute as to any relevant facts with respect to the validity of a right-of-way subject to an investigation under this paragraph, the parties to such dispute shall be afforded an adjudicatory hearing on the record with respect to such disputed issues of fact. Any such adjudicatory hearing shall be before a qualified administrative law judge whose findings shall govern disposition of such issues of fact in any determination concerning the validity of a claimed right-of-way, subject to administrative and judicial review under applicable provisions of law.

"(6) If after an investigation pursuant to this paragraph, the investigating officer finds either that a claimed right-of-way or portion thereof is valid or that there is reason to doubt the validity of such claimed right-of-way or portion thereof, notice of such finding and the reasons therefor shall be provided to the party claiming the right-of-way and to all other affected parties, including the public.

"(7) For purposes of this section, if any portion of a claimed right-of-way includes lands managed pursuant to section 603 of this Act, that fact shall constitute a reason to doubt the validity of such portion of such right-of-way.

"(d) APPEALS.—(1) Any claimed right-of-way or portion thereof with respect to which it is found, pursuant to subsection (c), that there is reason to doubt the validity, shall be deemed to be invalid unless, within 30 days after such finding the party claiming the right-of-way has filed with the Secretary of the Interior an appeal of such finding, and the Secretary thereafter determines the right-of-way to be valid. Any party other than the party claiming the right-of-way, may intervene in any appeal filed under this paragraph in support of the finding of invalidity by filing with the Secretary a notice of such intervention within the period allowed for filing of the appeal.

"(2) Any finding by the investigating officer with regard to the validity or invalidity of a claimed right-of-way or portion thereof valid shall become final unless within 30 days after such finding a notice of appeal of such finding is filed with the Secretary of the Interior.

"(3) Any decision by the Secretary with regard to an appeal under this subsection shall be made after the party claiming or contesting a right-of-way has been provided with the evidence upon which the investigating officer's finding regarding its validity or invalidity was based and has been given an opportunity to respond, including an adjudicatory hearing on the record with respect to any disputed issues of fact.

"(4)(A) Pending a final determination of validity with respect to a claimed right-of-way that is subject to an appeal under this subsection, the Federal land covered by such claimed right-of-way shall be managed in accordance with applicable law (including this Act) and management plans as if such right-of-way did not exist, except that such lands may continue to be used for lawful transportation, access, and related purposes of the same nature and to the same extent as was properly permitted by the Secretary on the date of enactment of this section. Any such continued uses shall be subject to appropriate regulations to protect the resources and values of the affected lands.

"(B) Upon a final determination of invalidity with respect to a claimed right-of-way subject to an appeal under paragraph (3), Federal lands covered by such claimed right-of-way shall be managed in accordance with applicable law and management plans.

"(C) A determination by an investigating officer as to the validity or invalidity of a claimed right-of-way may be appealed to the Secretary by any person, provided such appeal is made no later than 30 days after the determination of the investigating officer. Any person filing such an appeal shall be afforded an adjudicatory hearing on the record with regard to any disputed issue of fact. Any decision of the Secretary regarding such an appeal shall be subject to judicial review.

"(5) Any decision by the Secretary pursuant to this subsection shall be subject to judicial review under applicable provisions of law, but nothing in this subsection shall be construed as affording any right to seek or participate in any judicial proceeding by any party not otherwise entitled to seek or participate in such proceeding.

"(e) CHANGE IN USE.—Any change in the scope, alignment, or character of use of a valid right-of-way established pursuant to Revised Statutes section 2477 shall be subject to terms and conditions required by section 505 of this Act or other applicable law.

"(f) SAVINGS CLAUSE.—Nothing in this section shall be construed as increasing or diminishing the requirements of any applicable law with respect to establishment, construction, or maintenance of a highway for purposes of obtaining a valid right-of-way pursuant to Revised Statutes section 2477 prior to its repeal.

"SEC. 320. RIGHT-OF-WAY IN ALASKA CONSERVATION SYSTEM UNITS.

"Nothing in this Act shall be construed as exempting any proposal for any construction on or change in the scope, alignment, or character or extent of use of any portion of any right-of-way claimed to have been established pursuant to Revised Statutes section 2477 on any lands within any conservation system unit in Alaska from the requirements of title XI of the Alaska National Interest Lands Conservation Act.".

TITLE V—"IN LIEU" LAND CLAIMS

SEC. 501. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Pursuant to the invitation and requirements contained in the 15th paragraph under the heading "Surveying the Public Lands" in the Act of June 4, 1897 (30 Stat. 11, 36), as amended or supplemented by the Acts of June 6, 1900 (31 Stat. 588, 614), March 4, 1901 (31 Stat. 1010, 1037), and September 22, 1922 (42 Stat. 1067), certain landowners or entrymen within forest reserves acted to transfer their lands to the United States as the basis for an in lieu selection of other Federal lands (hereafter in this Act referred to as "lieu lands") in exchange for such lands within such reserves (hereafter in this Act referred to as "base lands").

(2) By the Act of March 3, 1905 (33 Stat. 1264), Congress repealed the in lieu selection provisions of the Act of June 4, 1897, as amended, and terminated the right to select lieu lands, but expressly preserved the rights of land owners who had valid pending applications for in lieu selections, most of which have subsequently been granted.

(3) Other persons affected by the Acts cited in paragraphs (1) and (2) who acted to transfer base lands, or their successors in interest, have never obtained either (A) a patent to the lieu lands or any other consideration for their relinquishment, or (B) a quitclaim of their base lands, notwithstanding relief legislation enacted in 1922 and 1930.

(4) By the Act of July 6, 1960 (74 Stat. 334), Congress established a procedure to compensate persons affected by the Acts cited in paragraphs (1) and (2) who had not received appropriate relief under prior legislation. However, no payments of such compensation were made under that Act.

(5) Section 4 of the Act of July 6, 1960, further provided that lands with respect to which compensation under that Act were or could have been made, and not previously disposed of by the United States, shall be a part of any national forest, national park, or other area with-

drawn from the public domain wherein they are located.

(6) Absent further legislation, lengthy and expensive litigation will be required to resolve existing questions about the title to lands covered by section 4 of the 1960 Act.

(b) Purpose.—The purpose of this title is to resolve the status of the title to base lands affected by the past legislation cited in subsection (a).

SEC. 502. IDENTIFICATION AND QUITCLAIM OF FEDERAL INTEREST IN BASE LANDS.

(a) Quitclaim.—Except as otherwise provided by this Act, and subject to valid existing rights, but notwithstanding any other provision of law, the United States hereby quitclaims to the listed owner or entryman, his heirs, devisees, successors, and assigns, all right, title, and interest of the United States in and to the base lands described on a final list published pursuant to subsection (d)(1), effective on the date of publication of such list.

(b) Preparation of Initial Lists.—(1) Not later than 6 months after the date of enactment of this Act, the Secretary of the Interior, with respect to lands under such Secretary's jurisdiction, and the Secretary of Agriculture with respect to National Forest System lands, shall each prepare an initial list of all parcels of base lands that were relinquished to the United States pursuant to the Act of June 4, 1897 (as amended), and for which selection or other rights under that Act or supplemental legislation were not realized or exercised.

(2) The initial lists prepared under paragraph (1) shall be based on information in the actual possession of the Secretaries of the Interior and Agriculture on the date of enactment of this Act, including information submitted to Congress pursuant to the directive contained in Senate Report No. 98–578, issued for the Fiscal Year 1985 Interior and Related Agencies Appropriation, as revised and updated. The initial lists shall be published and distributed for public review in accordance with procedures adopted by the Secretary concerned.

(3) For a period of 180 days after publication of a list pursuant to paragraph (2), persons asserting that particular parcels omitted from such a list should have been included may request the Secretary concerned to add such parcels to the appropriate list. The Secretary concerned shall add to the list any such parcels which the Secretary determines meet the conditions specified in paragraph (1).

(c) Nationally Significant Lands.—(1) During preparation or revision of an initial list under subsection (b), the Secretary concerned shall identify those listed lands which are located wholly or partially within any conservation system unit and all other listed lands which Congress has designated for specific management or which the Secretary concerned decides, in the concerned Secretary's discretion, should be retained in order to meet public, resource protection, or administrative needs. For purposes of this paragraph, the term "conservation system unit" means any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, or National Wilderness Preservation System, a national forest monument, or a national conservation area, a national recreation area, or any lands being studied for possible designation as part of such a system or unit.

(2) The provisions of subsection (a) shall not apply to any lands identified by the Secretary concerned pursuant to paragraph (1). The Secretary concerned shall not include any such lands on any list prepared pursuant to subsection (d). Subject to valid existing rights arising from factors other than those described in subsection (b)(1), any right, title, and interest in and to lands identified pursuant to paragraph (1) and not previously vested in the United States is hereby vested and confirmed in the United States.

(3) In the same manner as the initial list was published and distributed pursuant to subsection (b)(2), the Secretary concerned shall publish and distribute an identification of all lands in which right, title, and interest is vested and confirmed in the United States by paragraph (2).

(d) Final Lists.—(1) As soon as possible after considering any requests made pursuant to subsection (b)(3) and the identification of lands pursuant to subsection (c), the Secretary of the Interior and the Secretary of Agriculture shall each publish a final list, consisting of lands included on each Secretary's initial list not identified pursuant to subsection (c)(1). Unless a Secretary has published a final list on or before the date 18 months after the date of publication, pursuant to subsection (b)(2), of such Secretary's initial list, the initial list prepared by such Secretary shall be deemed on such date to be the final list required to be published by such Secretary, and thereafter no lands included on such initial list shall be excluded from operation of subsection (a).

(2) If a court makes a final decision that a parcel of land was arbitrarily and capriciously excluded from operation of subsection (a), such parcel shall be deemed to have been included on a final list published pursuant to paragraph (1), unless such parcel is located wholly or partially inside a conservation system unit or any other area which Congress has designated for specific management, in which case such parcel shall be subject to the provisions of subsection (c)(2).

(e) Issuance of Instruments.—(1) Except as otherwise provided in this title, no later than 6 months after the date on which the Secretary concerned publishes a final list of lands pursuant to subsection (d), the Secretary concerned shall issue deeds confirming the quitclaim made by subsection (a) of this section of all right, title, and interest of the United States in and to the lands included on such final list, subject to valid existing rights arising from factors other than a relinquishment to the United States of the type described in subsection (b). Each such confirmatory deed shall operate to estop the United States from making any claim of right, title, or interest of the United States in and to the base lands described in the deed, shall be made in the name of the listed owner or entryman, his heirs, devisees, successors, and assigns, and shall be in a form suitable for recordation and shall be filed and recorded by the United States with the recorder of deeds or other like official of the county or counties within which the lands covered by such confirmatory deed are located so that the title to such lands may be determined in accordance with applicable State law.

(2) The United States shall not adjudicate and, notwithstanding any provision of law to the contrary, does not consent to be sued in any suit instituted to adjudicate the ownership of, or to quiet title to, any base land included in a final list and described in a confirmatory deed.

(3) Neither the Secretary of the Interior nor the Secretary of Agriculture shall be required to inspect any lands included on a final list nor to inform any member of the public regarding the condition of such lands prior to the issuance of the confirmatory deeds required by this subsection, and nothing in this Act shall be construed as affecting any valid rights with respect to lands covered by a confirmatory deed issued pursuant to this subsection that were in existence on the date of issuance of such confirmatory deed.

(f) Waiver of Certain Claims Against the United States.—Any person or entity accepting the benefits of this Act or failing to act to seek such benefits within the time allotted by this Act with respect to any base or other lands shall be deemed to have waived any claims against the United States, its agents or contractors, with respect to such lands, or with respect to any revenues received by the United States from such lands prior to the date of enactment of this Act. All non-Federal, third party rights granted by the United States with respect to base lands shall remain effective subject to the terms and conditions of the authorizing document. The United States may reserve any rights-of-way currently occupied or used for Government purposes.

SEC. 503. OTHER CLAIMS.

(a) Jurisdiction and Deadline.—(1) Subject to the requirements and limitations of this section, a party claiming right, title, or interest in or to land vested in the United States by section 502(c)(2) of this title may file in the United States Claims Court a claim against the United States seeking compensation based on such vesting. Notwithstanding any other provision of law, the Claims Court shall have exclusive jurisdiction over such claim.

(2) A claim described in paragraph (1) shall be barred unless the petition thereon is filed within 1 year after the date of publication of a final list pursuant to section 502(d) of this title.

(3) Nothing in this title shall be construed as authorizing any claim to be brought in any court other than a claim brought in the United States Claims Court based upon the vesting of right, title, and interest in and to the United States made by section 502(c)(2) of this title.

(b) Limitations, Defenses, and Awards.—(1) Nothing in this Act shall be construed as diminishing any existing right, title, or interest of the United States in any lands covered by section 502(c), including but not limited to any such right, title, or interest established by the Act of July 6, 1960 (74 Stat. 334).

(2) Nothing in this title shall be construed as precluding or limiting any defenses or claims (including but not limited to defenses based on applicable statutes of limitations, affirmative defenses relating to fraud or speculative practices, or claims by the United States based on adverse possession) otherwise available to the United States.

(3) Nothing in this title shall be construed as entitling any party to compensation from the United States. However, in the event of a final judgment of the United States Claims Court in favor of a party seeking such compensation, or in the event of a negotiated settlement agreement made between such a party and the Attorney General of the United States, the United States shall pay such compensation from the permanent judgment appropriation established pursuant to section 1304 of title 31, United States Code.

(c) Savings Clause.—This title does not include within its scope selection rights required to be recorded under the Act of August 5, 1955 (69 Stat. 534), regardless of whether compensation authorized by the Act of August 31, 1964 (78 Stat. 751) was or was not received.

SEC. 504. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title.

SEC. 505. TIME EXTENSION.

Section 103(c) of the Wildfire Disaster Recovery Act of 1989 (16 U.S.C. 551 note) is amended in the first sentence by striking out "1991" and inserting in lieu thereof "1992".

TITLE VI—SNAKE RIVER BIRDS OF PREY NATIONAL CONSERVATION AREA

SEC. 601. FINDINGS.

The Congress finds the following:

(1) The public lands managed by the Bureau of Land Management in the State of Idaho within the Snake River Birds of Prey Area con-

tain one of the densest known nesting populations of eagles, falcons, owls, hawks, and other birds of prey (raptors) in North America.

(2) These public lands constitute a valuable national biological and educational resource since birds of prey are important components of the ecosystem.

(3) These public lands also contain important historic and cultural resources as well as other resources and values, all of which should be protected and appropriately managed.

(4) A military training area within the Snake River Birds of Prey Area, known as the Orchard Training Area, has been used since 1953 by reserve components of the Armed Forces. Military use of this area is currently governed by a Memorandum of Understanding between the Bureau of Land Management and the State of Idaho Military Division, dated May 1985. Operating under this Memorandum of Understanding, the Idaho National Guard has provided valuable assistance to the Bureau of Land Management with respect to fire control and other aspects of management of the Orchard Training Area and the other lands in the Snake River Birds of Prey Area. Military use of the lands within the Orchard Training Area should continue in accordance with such Memorandum of Understanding (or extension or renewal thereof), to the extent consistent with section 604(e) of this title, because this would be in the best interest of training of the reserve components (an important aspect of national security) and of the local economy.

(5) Protection of the conservation area as a home for raptors can best and should be accomplished by the Secretary of the Interior, acting through the Bureau of Land Management, under a management plan that—

(A) emphasizes management, protection, and rehabilitation of habitat for these raptors and of other resources and values of the area;

(B) provides for continued military use, consistent with the requirements of section 604(e) of this title, of the Orchard Training Area by reserve components of the Armed Forces;

(C) addresses the need for public educational and interpretive opportunities;

(D) allows for diverse appropriate uses of lands in the area to the extent consistent with the maintenance and enhancement of raptor populations and habitats and protection and sound management of other resources and values of the area; and

(E) demonstrates management practices and techniques that may be useful to other areas of the public lands and elsewhere.

(6) There is established near the conservation area a facility, the World Center for Birds of Prey operated by The Peregrine Fund, Inc., where research, public education, recovery, and reestablishment operations exist for endangered raptor species. There is also established at Boise State University a raptor study program which attracts national and international graduate and undergraduate students.

(7) The Bureau of Land Management and Boise State University, together with other State, Federal, and private entities, have formed the Raptor Research and Technical Assistance Center to be housed at Boise State University, which provides a unique adjunct to the conservation area for raptor management, recovery, research, and public visitation, interpretation, and education.

(8) Consistent with requirements of sections 202 and 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712 and 1732), the Secretary has developed a comprehensive management plan and, based on such plan, has implemented a management program for the public lands included in the conservation area established by this title.

(9) Additional authority and guidance must be provided to assure that essential raptor habitat remains in public ownership, to facilitate sound and effective planning and management, to provide for effective public interpretation and education, to ensure continued study of the relationship of humans and these raptors, to preserve the unique and irreplaceable habitat of the conservation area, and to conserve and properly manage the other natural resources of the area in concert with maintenance of this habitat.

(10) An ongoing research program funded by the Bureau of Land Management and the National Guard is intended to provide information to be used in connection with future decisionmaking concerning management of all uses, including continued military use, of public lands within the Snake River Birds of Prey Area.

(11) The public lands in the Snake River Birds of Prey Conservation area have been used for domestic livestock grazing for more than a century. Appropriate protection and sound management of raptor habitat and the other resource values of this land would not preclude continuation of this use which has provided major economic contributions and stability to the local and State economies.

(12) Hydroelectric facilities for the generation and transmission of electricity exist within the Snake River Birds of Prey Area pursuant to a license(s) issued by the Federal Energy Regulatory Commission, or its predecessor, the Federal Power Commission.

SEC. 602. DEFINITIONS.

As used in this title:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "conservation area" means the Snake River Birds of Prey National Conservation Area established by section 603.

(3) The term "raptor" or "raptors" means individuals or populations of eagles, falcons, owls, hawks, and other birds of prey.

(4) The term "raptor habitat" includes the habitat of the raptor prey base as well as the nesting and hunting habitat of raptors within the conservation area.

(5) The term "Memorandum of Understanding" means the Memorandum of Understanding #ID-237, dated May 1985, between the State of Idaho Military Division and the Bureau of Land Management.

(6) The term "Orchard Training Area" means that area generally so depicted on the map referred to in section 603(b), and as described in the Memorandum of Understanding as well as the air space over the same.

(7) The term "Impact Area" means that area which was used for the firing of live artillery projectiles and is used for live fire ranges of all types and, therefore, poses a danger to public safety and which is generally so depicted on the map referred to in section 603(b).

(8) The term "Artillery Impact Area" means that area within the Impact Area into which live projectiles are fired, which is generally described as that area labeled as such on the map referred to in section 603(b).

(9) The term "the plan" means the comprehensive management plan developed for the conservation area, dated August 30, 1985, together with such revisions thereto as may be required in order to implement this title.

(10) The term "hydroelectric facilities" means all facilities related to the generation, transmission, and distribution of hydroelectric power and which are subject to, and authorized by, a license(s), and any and all amendments thereto, issued by the Federal Energy Regulatory Commission.

SEC. 603. ESTABLISHMENT OF NATIONAL CONSERVATION AREA.

(a) PURPOSES AND ESTABLISHMENT.—In order to provide for the conservation, protection, and enhancement of raptor populations and habitats, and the natural and environmental resources and values associated therewith, and of the scientific, cultural, and educational resources and values of the public lands in the conservation area, there is hereby established the Snake River Birds of Prey National Conservation Area.

(b) AREA INCLUDED.—The conservation area shall consist of approximately 482,457 acres of federally owned lands and interests therein managed by the Bureau of Land Management as generally depicted on the map entitled "Snake River Birds of Prey National Conservation Area", dated November 1991.

(c) MAP AND LEGAL DESCRIPTION.—As soon as is practicable after enactment of this Act, the map referred to in subsection (b) and a legal description of the conservation area shall be filed by the Secretary with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. Each such map shall have the same force and effect as if included in this title; except that the Secretary may correct clerical and typographical errors in such map and legal description. Each such map shall have the same force and effect as if included in this title; except that the Secretary may correct clerical and typographical errors in such map and legal description. Each such map shall be on file and available for public inspection in the office of the Director and the Idaho State Director of the Bureau of Land Management of the Department of the Interior.

(d) WITHDRAWALS.—Subject to valid existing rights, the Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal (except as provided in paragraph (3)) under the public land laws; and from entry, application, and selection under the Act of March 3, 1877 (Ch. 107, 19 Stat. 377, 43 U.S.C. 321 et seq.; commonly referred to as the "Desert Lands Act"), section 4 of the Act of August 18, 1894 (Ch. 301, 28 Stat. 422; 43 U.S.C. 641; commonly referred to as the "Carey Act"), the Act of July 3, 1890 (Ch. 656, 26 Stat. 215; commonly referred to as the "State of Idaho Admissions Act"), section 2275 of the Revised Statutes, as amended (43 U.S.C. 851), and section 2276 of the Revised Statutes, as amended (43 U.S.C. 852). The Secretary shall return to the applicants any such applications pending on the date of enactment of this Act, without further action. Subject to valid existing rights, as of the date of enactment of this Act, lands within the Birds of Prey Conservation Area are withdrawn from location under the general mining laws, the operation of the mineral and geothermal leasing laws, and the mineral material disposal laws.

SEC. 604. MANAGEMENT AND USE.

(a) IN GENERAL.—(1)(A) Within 1 year after the date of enactment of this Act, the Secretary shall finalize a management plan that is in conformance with the requirements of this title.

(B) Thereafter, the Secretary shall review the plan at least once every 4 years and shall make such revisions as may be necessary or appropriate.

(C) In reviewing and revising the plan, the Secretary shall provide for appropriate public participation.

(2) Except as otherwise specifically provided in subsections (d), (e), and (f) of this section, the Secretary shall allow only such uses of lands in the conservation area as the Secretary determines will further the purposes for which the Conservation Area is established.

(b) MANAGEMENT GUIDANCE.—After each review pursuant to subsection (a), the Secretary shall make such revisions as may be needed so that the plan and management program to implement the plan include, in addition to any other necessary or appropriate provisions, provisions for—

(1) protection for the raptor populations and habitats and the scientific, cultural, and educational resources and values of the public lands in the conservation area;

(2) identifying levels of continued military use of the Orchard Training Area compatible with paragraph (1) of this subsection;

(3) public use of the conservation area consistent with the purposes of this title;

(4) interpretive and educational opportunities for the public;

(5) a program for continued scientific investigation and study to provide information to support sound management in accordance with this title, to advance knowledge of raptor species and the resources and values of the conservation area, and to provide a process for transferring to other areas of the public lands and elsewhere this knowledge and management experience;

(6) such vegetative enhancement and other measures as may be necessary to restore or enhance prey habitat;

(7) the identification of levels, types, timing, and terms and conditions for the allowable nonmilitary uses of lands within the conservation area that will be compatible with the protection, maintenance, and enhancement of raptor populations and habitats and the other purposes for which the conservation area is established; and

(8) assessing the desirability of imposing appropriate fees for public uses (including, but not limited to, recreational use) of lands in the conservation area, which are not now subject to fees, to be used to further the purposes for which the conservation area is established.

(c) VISITORS CENTER.—The Secretary, acting through the Director of the Bureau of Land Management, is authorized to establish, in cooperation with other public or private entities as the Secretary may deem appropriate, a visitors center designed to interpret the history and the geological, ecological, natural, cultural, and other resources of the conservation area and the biology of the raptors and their relationships to man.

(d) VISITORS USE OF AREA.—In addition to the Visitors Center, the Secretary may provide for visitor use of the public lands in the conservation area to such extent and in such manner as the Secretary considers consistent with the protection of raptors and raptor habitat, public safety, and the purposes for which the conservation area is established. To the extent practicable, the Secretary shall make available to visitors and other members of the public a map of the conservation area and such other educational and interpretive materials as may be appropriate.

(e) NATIONAL GUARD USE OF THE AREA.—(1) Pending completion of the ongoing research concerning military use of lands in the conservation area, or until the date 5 years after the date of enactment of this Act, whichever is the shorter period, the Secretary shall permit continued military use of those portions of the conservation area known as the Orchard Training Area in accordance with the Memorandum of Understanding, to the extent consistent with the use levels identified pursuant to subsection (b)(2) of this section.

(2) Upon completion of the ongoing research concerning military use of lands in the conservation area, the Secretary shall review the management plan and make such additional revisions therein as may be required to assure that it meets the requirements of this title.

(3) Upon completion of the ongoing research concerning military use of lands in the conservation area, the Secretary shall submit to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report of the results of such research.

(4) Nothing in this title shall preclude minor adjustment of the boundaries of the Orchard Training Area in accordance with provisions of the Memorandum of Understanding.

(5) After completion of the ongoing research concerning military use of lands in the Orchard Training Area or after the date 5 years after the date of enactment of this Act, whichever first occurs, the Secretary may continue to permit military use of such lands, but only to the extent the Secretary, on the basis of such research, determines such use is compatible with the purposes set forth in section 603(a). Any such use thereafter shall be permitted in accordance with the Memorandum of Understanding, which may be extended or renewed by the Secretary so long as such use continues to meet the requirements of subsection (b)(2) of this section.

(6) In accordance with the Memorandum of Understanding, the Secretary shall require the State of Idaho Military Division to insure that military units involved maintain a program of decontamination.

(7) Nothing in this title shall be construed as by itself precluding the extension or renewal of the Memorandum of Understanding, or the construction of any improvements or buildings in the Orchard Training Area so long as the requirements of this subsection are met.

(f) LIVESTOCK GRAZING.—Notwithstanding section 604(a)(2) of this title, domestic livestock grazing can occur on public lands within the conservation area, to the extent the Secretary determines such use of such lands is compatible with the purposes for which the conservation area is established. Any such grazing, and activities the Secretary determines necessary to carry out proper and practical grazing management programs (such as animal damage control activities) shall be managed in accordance with the Act of June 28, 1934 (43 U.S.C. 315 et seq.; commonly referred to as the "Taylor Grazing Act"), section 402 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752), other laws applicable to such use and programs on the public lands, and the management plan for the conservation area.

(g) COOPERATIVE AGREEMENTS.—The Secretary is authorized to provide technical assistance to, and to enter into such cooperative agreements and contracts with, the State of Idaho and with local governments and private entities as the Secretary deems necessary or desirable to carry out the purposes and policies of this title.

(h) AGRICULTURAL PRACTICES.—Nothing in this title shall be construed as constituting a grant of authority to the Secretary to restrict recognized agricultural practices or other activities on private land adjacent to or within the conservation area boundary.

(i) HYDROELECTRIC FACILITIES.—Notwithstanding any provision of this title, or regulations and management plans undertaken pursuant to its provisions, the Federal Energy Regulatory Commission shall retain its current jurisdiction concerning all aspects of the continued and future operation of hydroelectric facilities, licensed or relicensed under the Federal Power Act (16 U.S.C. 791a et seq.), located within the boundaries of the conservation area.

SEC. 605. ADDITIONS.

(a) ACQUISITIONS.—(1) The Secretary is authorized to acquire lands and interests therein within the boundaries of the conservation area by donation, purchase with donated or appropriated funds, exchange, or transfer from another Federal agency, except that such lands or interests owned by the State of Idaho or a political subdivision thereof may be acquired only by donation or exchange.

(2) Any lands located within the boundaries of the conservation area that are acquired by the United States on or after the date of enactment of this Act shall become a part of the conservation area and shall be subject to this title.

(b) PURCHASE OF LANDS.—In addition to the authority in section 318(d) of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1748) and notwithstanding section 7(a) of the Land and Water Conservation Fund Act of 1964 (16 U.S.C. 4601–9(a)), monies appropriated from the Land and Water Conservation Fund may be used as authorized in section 5(b) of the Endangered Species Act of 1973 (16 U.S.C. 1534(b)), for the purposes of acquiring lands or interests therein within the conservation area for administration as public lands as a part of the conservation area.

(c) LAND EXCHANGES.—The Secretary shall within 4 years of enactment, study, identify, and initiate voluntary land exchanges which would resolve ownership related land use conflicts within the conservation area.

SEC. 606. OTHER LAWS AND ADMINISTRATIVE PROVISIONS.

(a) OTHER LAWS.—(1) Nothing in this title shall be construed to supersede, limit, or otherwise affect administration and enforcement of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or to limit the applicability of the National Trails System Act to any lands within the conservation area.

(2) Except as otherwise specifically provided in this title, nothing in this title shall be construed as limiting the applicability to lands in the conservation area of laws applicable to public lands generally, including but not limited to the National Historic Preservation Act, the Archaeological Resources Protection Act of 1979, or the Native American Graves Protection and Repatriation Act.

(3) Nothing in this title shall be construed as by itself altering the status of any lands that on the date of enactment of this Act were not managed by the Bureau of Land Management.

(4) Nothing in this title shall be construed as prohibiting the Secretary from engaging qualified persons to use public lands within the conservation area for the propagation of plants (including seeds) to be used for vegetative enhancement of the conservation area in accordance with the plan and in furtherance of the purposes for which the conservation area is established.

(b) RELEASE.—The Congress finds and directs that the public lands within the Snake River Birds of Prey Natural Area established as a natural area in October 1971 by Public Land Order 5133 have been adequately studied and found unsuitable for wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act of 1976. Such lands are hereby released from further management pursuant to section 603(c) of such an Act and shall be managed in accordance with other applicable provisions of law, including this title.

(c) EXISTING ADMINISTRATIVE WITHDRAWAL TERMINATED.—Public Land Orders 5133 dated October 12, 1971, and 5777 dated November 21, 1980, issued by the Secretary are hereby terminated.

(d) WATER RIGHTS.—(1) Nothing in this title or any action taken pursuant thereto shall constitute either an expressed or implied reservation of water or water rights for any purpose.

(2) Nothing in this title shall be construed as effecting a relinquishment or reduction of any of the water rights held or claimed by the United States within the State of Idaho or elsewhere on or before the date of enactment of this Act.

(3)(A) The Congress finds that the United States is currently a party in an adjudication of rights to waters of the Snake River, including water rights claimed by the United States on the basis of the reservation of lands for purposes of conservation of fish and wildlife.

(B) The Secretary and all other officers of the United States shall take all steps necessary to

protect all water rights claimed by the United States in the Snake River adjudication now pending in the district court of the State of Idaho in which the United States is joined under section 208 of the Act of July 10, 1952 (66 Stat. 560; 43 U.S.C. 666; commonly referred to as the "McCarran Amendment").

(e) ENFORCEMENT.—Any person who violates any regulation promulgated by the Secretary to implement the provisions of this title shall be subject to a fine in accordance with applicable provisions of title 18, United States Code, imprisonment of not more than 1 year, or both.

SEC. 607. MOSCOW MOUNTAIN LANDS.

(a) ACQUISITION.—If the State of Idaho offers to transfer to the United States the lands described in subsection (c), the Secretary of the Interior, on behalf of the United States, shall accept such lands.

(b) MANAGEMENT.—(1) If transferred to the United States, the lands described in subsection (c) shall be managed by the Secretary of the Interior, through the Director of the Bureau of Land Management, in the same manner as lands which on the date of enactment of this Act were subject to section 603(c) of the Federal Land Policy and Management Act of 1976.

(2) Effective upon their transfer to the United States, the lands described in subsection (c) are withdrawn from entry and patent under the mining laws of the United States and from the operation of the geothermal and mineral leasing laws of the United States.

(3) If the lands described in subsection (c) are transferred to the United States, the Secretary of the Interior, pursuant to section 206 of the Federal Land Policy and Management Act of 1976, shall convey to the State of Idaho public lands identified, pursuant to such Act, as suitable for disposal by exchange or otherwise that are equal to value to the value of the lands described in subsection (c).

(c) LANDS AFFECTED.—The lands referred to in subsections (a) and (b) are:

Township 40 North, Range 4 West, B.M. (East Moscow Mountain)

Section 16: Lots 1–4, S½S½NW¼, N½SW¼, that portion of the NW¼SE¼ lying south and west of the mid-line running from the parcel's NW¼ corner to its SE¼ corner, containing 295.6 acres, more or less.

(d) ADDITIONAL AUTHORITY.—Notwithstanding subsection (a), the Secretary of the Interior may transfer the lands described in subsection (c) to the County of Latah, Idaho, in return for lands of equal value in Idaho acceptable to the Secretary for management pursuant to the Federal Land Policy and Management Act of 1976 if such county enters into a binding agreement with the Secretary under which the county agrees to manage such lands in the same manner as provided in subsection (b)(1).

SEC. 608. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title.

AMENDMENT NO. 3432

Mr. FORD. Mr. President, I move that the Senate concur in the House amendment with an amendment that I now send to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. BUMPERS, proposes an amendment numbered 3432.

Strike all after the enacting clause and insert the following:

TITLE I—KAYSVILLE, UTAH COMMUNICATION FACILITIES.

SEC. 101. AMENDMENT.

Section 2 of the Act of June 8, 1926 (ch. 498; 44 Stat. 708), is amended by striking 'States.' at the end of the first sentence and inserting in lieu thereof the following: 'States, except that these restrictions on conveyances and uses shall not apply to those lands upon which communications facilities were located as of November 1, 1991, or prevent reasonable ingress and egress for the repair, maintenance, or improvement of such facilities, nor shall these restrictions on conveyances and uses prohibit the use of the lands described in the first section of this Act for recreational purposes so long as such recreational use is consistent both with the protection of the watershed and water supply system of the city and with the management objectives for adjacent National Forest System lands. Any improvements of the lands described in the first section of this Act for recreational purposes shall be undertaken only in consultation with and the approval of the Secretary of Agriculture.'.

TITLE II—AUTHORIZATION OF BUREAU OF LAND MANAGEMENT.

SEC. 201. AUTHORIZATION.

There are hereby authorized to be appropriated such sums as may be necessary for programs, functions, and activities of the Bureau of Land Management, Department of the Interior (including amounts necessary for increases in salary, pay, retirements, and other employee benefits authorized by law, and for other nondiscretionary costs), during fiscal years beginning on October 1, 1992, and ending September 30, 1996.

TITLE III—TARGHEE AND KANIKSU NATIONAL FORESTS.

SEC. 301. SHORT TITLE.

This title may be cited as the 'Targhee and Kaniksu Land Exchange Act of 1992'.

SEC. 302. TARGHEE NATIONAL FOREST BOUNDARY ADJUSTMENT.

(a) IN GENERAL.—The boundaries of the Targhee National Forest are adjusted as generally depicted on the map entitled 'Targhee National Forest Proposed Boundary Changes' and dated March 1, 1991.

(b) MAP AND LEGAL DESCRIPTION.—

(1) PUBLIC ACCESS.—The map described in subsection (a) and a legal description of the lands depicted on the map shall be on file and available for public inspection in the Regional Office of the Intermountain Region of the Forest Service.

(2) TECHNICAL CORRECTIONS.—The map and legal description shall have the same force and effect as if included in this title, except that the Secretary of Agriculture (referred to in this title as the 'Secretary') may correct clerical and typographical errors.

(c) RULE OF CONSTRUCTION.—For the purpose of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9), the boundaries of the Targhee National Forest, as adjusted by this title, shall be considered to be the boundaries of the Forest as of January 1, 1965.

SEC. 303. CLARK FORK LAND EXCHANGE.

(a) FINDINGS.—Congress finds that, over the past 10 years—

(1) the University of Idaho has utilized the Clark Fork Ranger Station within the Kaniksu National Forest as the Clark Fork Field Campus, under a Granger-Thye permit; and

(2) the University of Idaho has made substantial improvements in order to maintain and utilize the buildings as a campus facility.

(b) LAND EXCHANGE.—

(1) CONVEYANCE BY THE SECRETARY.—

(A) IN GENERAL.—In exchange for the conveyance described in paragraph (2) and subject to easements that are considered necessary by the Secretary for public and administrative access and to valid existing rights, the Secretary shall convey to the Regents of the University of Idaho all right, title, and interest of the United States to Parcel A.

(B) PARCEL A.—As used in this section, the term 'Parcel A' means the approximately 35.27 acres comprising the Clark Fork Ranger Station within the Kaniksu National Forest, as depicted on the map entitled 'Clark Fork Land Exchange—Parcel A' and dated July 1, 1991.

(2) CONVEYANCE BY THE REGENTS OF THE UNIVERSITY OF IDAHO.—

(A) IN GENERAL.—In exchange for the conveyance described in paragraph (1) and subject to valid existing rights of record acceptable to the Secretary, the Regents of the University of Idaho shall convey to the Secretary, by general warranty deed in accordance with Department of Justice title standards, all right, title, and interest to Parcel B.

(B) PARCEL B.—As used in this section, the term 'Parcel B' means the approximately 40 acres depicted on the map entitled 'Clark Fork Land Exchange—Parcel B' and dated July 1, 1991.

(3) MAPS AND LEGAL DESCRIPTIONS.—

(A) PUBLIC ACCESS.—The maps described in paragraphs (1)(B) and (2)(B) and the legal descriptions of the lands depicted on the maps shall be on file and available for public inspection in the Regional Office of the Northern Region of the Forest Service.

(B) TECHNICAL CORRECTIONS.—The maps and legal descriptions shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors.

(c) LAND VALUATION.—

(1) IN GENERAL.—Subject to paragraph (2), if the lands exchanged between the United States and the Regents of the University of Idaho, as authorized by subsection (b), are not of equal value, the values shall be equalized in accordance with section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)).

(4) By the Act of July 6, 1960 (74 Stat. 334), Congress established a procedure to compensate persons affected by the Acts cited in paragraphs (1) and (2) who had not received appropriate relief under prior legislation. However, no payments of such compensation were made under that Act.

(5) Section 4 of the Act of July 6, 1960, further provided that lands with respect to which compensation under that Act were or could have been made, and not previously disposed of by the United States, shall be a part of any national forest, national park, or other area withdrawn from the public domain wherein they are located.

(6) Absent further legislation, lengthy and expensive litigation will be required to resolve existing questions about the title to lands covered by section 4 of the 1960 Act.

(b) PURPOSE.—The purpose of this title is to resolve the status of the title to base lands affected by the past legislation cited in subsection (a).

SEC. 502. IDENTIFICATION AND QUITCLAIM OF FEDERAL INTEREST IN BASE LANDS.

(a) QUITCLAIM.—Except as otherwise provided by this Act, and subject to valid existing rights, but notwithstanding any other provision of law, the United States hereby quitclaims to the listed owner or entryman, his heirs, devisees, successors, and assigns, all right, title, and interest of the United States in and to the base lands described on a final list published pursuant to subsection (d)(1), effective on the date of publication of such list.

(b) PREPARATION OF INITIAL LISTS.—(1) Not later than 6 months after the date of enactment of this Act, the Secretary of the Interior, with respect to lands under Secretary's jurisdiction, and the Secretary of Agriculture with respect to National Forest System lands, shall each prepare an initial list of all parcels of base lands that were relinquished to the United States pursuant to the Act of June 4, 1897 (as amended), and for which selection or other rights under that act or supplemental legislation were not realized or exercised.

(2) The initial lists prepared under paragraph (1) shall be based on information in the actual possession of the Secretaries of the Interior and Agriculture on the date of enactment of this Act, including information submitted to Congress pursuant to the directive contained in Senate Report No. 98-578, issued for the Fiscal Year 1985 Interior and Related Agencies Appropriation, as revised and updated. The initial lists shall be published and distributed for public review in accordance with procedures adopted by the Secretary concerned.

(3) For a period of 180 days after publication of a list pursuant to paragraph (2), persons asserting that particular parcels omitted from such a list should have been included may request the Secretary concerned to add such parcels to the appropriate list. The Secretary concerned shall add to the list any such parcels which the Secretary determines meet the conditions specified in paragraph (1).

(c) NATIONALLY SIGNIFICANT LANDS.—(1) During preparation or revision of an initial list under subsection (b), the Secretary concerned shall identify those listed lands which are located wholly or partially within any consideration system unit and all other listed lands which Congress has designated for specific management or which the Secretary concerned decides, in the concerned Secretary's discretion, should be retained in order to meet public, resource protection, or administrative needs. For purposes of this paragraph, the term 'conservation system unit' means any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, or National Wilderness Preservation System, a national forest monument, or a national conservation area, a national recreation area, or any lands being studied for possible designation as part of such a system or unit.

(2) The provisions of subsection (a) shall not apply to any land identified by the Secretary concerned pursuant to paragraph (1). The Secretary concerned shall not include any such lands on any list prepared pursuant to subsection (d). Subject to valid existing rights arising from factors other than those described in subsection (b)(1), any right, title, and interest in and to lands identified pursuant to paragraph (1) and not previously vested in the United States is hereby vested and confirmed in the United States.

(3) In the same manner as the initial list was published and distributed pursuant to subsection (b)(2), the Secretary concerned shall publish and distribute an identification of all lands in which right, title, and interest is vested and confirmed in the United States by paragraph (2).

(d) FINAL LISTS.—(1) As soon as possible after considering any requests made pursuant to subsection (b)(3) and the identification of lands pursuant to subsection (c), the Secretary of the Interior and the Secretary of Agriculture shall each publish a final list, consisting of lands included on each Secretary's initial list not identified pursuant to subsection (c)(1). Unless a Secretary has published a final list on or before the date 18 months after the date of publication, pursuant to subsection (b)(2), of such Secretary's initial list, the initial list prepared by such Secretary shall be deemed on such date to be the final list required to be published by such Secretary, and thereafter no lands included on such initial list shall be excluded from operation of subsection (a).

(2) If a court makes a final decision that a parcel of land was arbitrarily and capriciously excluded from operation of subsection (a), such parcel shall be deemed to have been included on a final list published pursuant to paragraph (1), unless such parcel is located wholly or partially inside a conservation system unit or any other area which Congress has designated for specific management, in which case such parcel shall be subject to the provisions of subsection (c)(2).

(e) ISSUANCE OF INSTRUMENTS.—(1) Except as otherwise provided in this title, no later than 6 months after the date on which the Secretary concerned publishes a final list of lands pursuant to subsection (d), the Secretary concerned shall issue deeds confirming the quitclaim made by subsection (a) of this section of all right, title, and interest of the United States in and to the lands included on such final list, subject to valid existing rights arising from factors other than a relinquishment to the United States of the type described in subsection (b). Each such confirmatory deed shall operate to estop the United States from making any claim of right, title, or interest of the United States in and to the base lands described in the deed, shall be made in the name of the listed owner or entryman, his heirs, devisees, successors, and assigns, and shall be in a form suitable for recordation and shall be filed and recorded by the United States with the recorder of deeds or other like official of the county or counties within which the lands covered by such confirmatory deed are located so that the title to such lands may be determined in accordance with applicable State law.

(2) The United States shall not adjudicate and, notwithstanding any provision of law to the contrary, does not consent to be sued in any suit instituted to adjudicate the ownership of, or to quiet title to, any base land included in a final list and described in a confirmatory deed.

(3) Neither the Secretary of the Interior nor the Secretary of Agriculture shall be required to inspect any lands included on a final list nor to inform any member of the public regarding the condition of such lands prior to the issuance of the confirmatory deeds required by this subsection, and nothing in this Act shall be construed as affecting any valid rights with respect to lands covered by a confirmatory deed issued pursuant to this subsection that were in existence on the date of issuance of such confirmatory deed.

(f) Waiver of Certain Claims Against the United States.—Any person or entity accepting the benefits of this title or failing to act to seek such benefits within the time allotted by this title with respect to any base or other lands shall be deemed to

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Section 103(c) of the Wildfire Disaster Recovery Act of 1989 (16 U.S.C. 551 note) is amended in the first sentence by striking out '1991' and inserting in lieu thereof '1992'.

SEC. . BEAR RIVER EXCHANGE.

(a) IN GENERAL.—If, within 5 years after the date of enactment of this Act, the State of Utah transfers to the Secretary of the Interior all right, title, and interest of the State of Utah in and to the State lands in exchange for Federal lands, the Secretary of the Interior, within 18 months after such transfer, shall transfer to the State of Utah all right, title, and interest in and to so much of the Federal lands as the Secretary determines to be equal in fair market value to the State lands.

(b) STATE LANDS.—As used in this section, the term "State lands" means approximately 700.70 acres of land located in the State of Utah, as generally depicted as State lands on the map entitled "Bear River Migratory Bird Refuge", map numbered 1, and more particularly described as:

The South half of the Northwest Quarter and Lots 5, 6, 7, and 8, all in Section 4, and also, Lots 7 and 8, Section 5, township 8 North, Range 2 West, Salt Lake Base and Meridian.

All property below the surveyed meander line and North of the Bear River Bird Refuge North Boundary in Sections 4 and 9 and in the East one-half of Sections 5 and 8, Township 8 North, Range 2 West, Salt Lake Base and Meridian.

(c) FEDERAL LANDS.—As used in this section, the term "Federal lands" means approximately 1,365.14 acres of land located in the State of Utah, as generally depicted as Federal lands on the map entitled "Fingerpoint", map numbered 2, and the map entitled "Rozel Point", map numbered 3, and more particularly described as:

Township 7 North, Range 10 West, Salt Lake Base & Meridian
Section 5: Lots 1-6, W½SW¼
Section 6: Lots 1-7, W½SE¼
Section 7: Lots 1-6
Section 8: Lots 1-4, W½
Section 17: Lots 1-5
Section 18: Lots 1-3
Township 8 North, Range 7 West, Salt Lake Base & Meridan
Section 8: Lots 1-12, E½NE¼

(d) ADMINISTRATION.—The lands transferred to the United States under this section shall be added to and administrated as part of the Bear River Migratory Bird Refuge.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SNAKE RIVER BIRDS OF PREY NATIONAL CONSERVATION AREA

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 725, H.R. 2141, regarding birds of prey.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2141) to establish the Snake River Birds of Prey National Conservation Area in the State of Idaho, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. FINDINGS.

The Congress finds the following:

(1) The public lands managed by the Bureau of Land Management in the State of Idaho within the Snake River Birds of Prey Area contain one of the densest known nesting populations of eagles, falcons, owls, hawks, and other birds of prey (raptors) in North America.

(2) These public lands constitute a valuable national biological and education resource since birds of prey are important components of the ecosysten.

(3) These public lands also contain important historic and cultural resources as well as other resources and values, which should be protected and appropriately managed.

(4) A military training area within the Snake River Birds of Prey Area, known as the Orchard Training Area, has been used since 1953 by reserve components of the Armed Forces. Military use of this area is currently governed by a Memorandum of Understanding between the Bureau of Land Management and the State of Idaho Military Division, dated May 1985. Operating under this Memorandum of Understanding, the Idaho National Guard has provided valuable assistance to the Bureau of Land Management with respect to fire control and other aspects of management of the Orchard Training Area and the other lands in the Snake River Birds of Prey Area. Military use of the lands within the Orchard Training Area should continue in accordance with such Memorandum of Understanding (or extension of renewal thereof), to the extent consistent with section 4(e) of this Act, because this would be in the best interest of training of the reserve components (an important aspect of national security) and of the local economy.

(5) Protection of the conservation area as a home for raptors can best and should be accomplished by the Secretary of the Interior, acting through the Bureau of Land Management, under a management plan that—

(A) emphasizes management, protection, and rehabilitation of habitat for these raptors and of other resources and values of the area;

(B) provides for continued military use, consistent with the requirements of section 4(e) of this Act, of the Orchard Training Area by reserve components of the Armed Forces;

(C) addresses the need for public educational and interpretive opportunities;

(D) provides for the conservation, development and use of other resources in the area to the extent compatible with either the maintenance or enhancement of raptor habitat; and

(E) demonstrates management practices and techniques that may be useful to other areas of the public lands and elsewhere.

(6) There exists near the conservation area, the World Center for Birds of Prey operated by The Peregrine Fund, Inc., where research, public education, recovery, and re-establishment operations exist for endangered raptor species. There also exists at Boise State University, a raptor study program which attracts national and international graduate and undergraduate students.

(7) The Bureau of Land Management and Boise State University, together with other State, Federal, and private entities, have formed the Raptor Research and Technical Assistance Center to be housed at Boise State University, which provides a unique adjunct to the conservation area for raptor management, recovery, research, and public visitation, interpretation, and education.

(8) Consistent with requirements of section 202 and 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712 and 1732), the Secretary has developed a comprehensive management plan and, based on such plan, has implemented a management program for the public lands included in the conservation area established by this Act.

(9) Additional authority and guidance must be provided to assure that essential raptor habitat remains in public ownership, to facilitate sound and effective planning and management, to provide for effective public interpretation and education, to ensure continued study of the relationship of humans to raptors, to preserve the unique and irreplaceable habitat of the conservation area, and to conserve and properly manage the other natural resources of the area in concert with maintenance of this habitat.

(10) An ongoing research program funded by the Bureau of Land Management and the National Guard and conducted by the Raptor Research Technical Assistance Center is providing information to be used in connection with future decision making concerning management of all uses, including continued military use, of public lands within the Snake River Birds of Prey Area.

(11) The public lands in the Snake River Birds of Prey Conservation area have been used for domestic livestock grazing for more than a century. Appropriate protection and sound management of raptor habitat and the other resource values of this land would not preclude continuation of this use which has provided major economic contributions and stability to the local and state economies.

(12) Hydroelectric facilities for the generation and transmission of electricity exist within the Snake River Birds of Prey Area pursuant to a license(s) issued by the Federal Energy Regulatory Commission, or its predecessor, the Federal Power Commission. Nothing in this Act shall affect the relicensing of hydropower facilities on the Snake River.

SEC. 2. DEFINITIONS.

As used in this Act:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "conservation area" means the Snake River Birds of Prey National Conservation Area established by section 3.

(3) The term "raptor" or "raptors" means individuals or populations of eagles, falcons, owls, hawks, and other birds of prey.

(4) The term "raptor habitat" includes the habitat of the raptor prey base as well as the nesting and hunting habitat of raptors within the conservation area.

(5) The term "Memorandum of Understanding" means the Memorandum of Understanding No. ID–237, dated May 1985, between the State of Idaho Military Division and the Bureau of Land Management.

(6) The term "Orchard Training Area" means that area generally so depicted on the map referred to in section 3(b), and as described in the Memorandum of Understanding as well as the air space over the same.

(7) The term "Impact Area" means that area which was used for the firing of live artillery projectiles and is used for live fire ranges of all types and, therefore, poses a danger to public safety and which is generally so depicted on the map referred to in section 3(b).

(8) The term "Artillery Impact Area" means that area within the Impact Area into which live projectiles are fired, which is generally described as that area labeled as such on the map referred to in section 3(b).

(9) The term "the plan" means the comprehensive management plan developed for the conservation area, dated August 30, 1985, together with such revisions thereto as may be required in order to implement this Act.

(10) The term "hydroelectric facilities" means all facilities related to the generation, transmission and distribution of hydroelectric power and which are subject to, and authorized by, a license(s), and any and all amendments thereto, issued by the Federal Energy Regulatory Commission.

SEC. 3. ESTABLISHMENT OF NATIONAL CONSERVATION AREA.

(a) PURPOSES AND ESTABLISHMENT.—In order to provide for the conservation and protection of raptor populations and habitats and, to the extent it is consistent with these purposes, to provide for the continued multiple-use resource management of the conservation area (including but not limited to such uses as grazing), and in recognition of the scientific, cultural and educational resources of these public lands, there is hereby established the Snake River Birds of Prey National Conservation Area ("conservation area").

(b) AREA INCLUDED.—The conservation area shall consist of approximately 482,457 acres of federally owned lands and interests therein managed by the Bureau of Land Management as generally depicted on the map entitled "Snake River Birds of Prey National Conservation Area", dated November 1991.

"(c) MAP AND LEGAL DESCRIPTION.—As soon as is practicable after enactment of this Act, the map referred to in subsection (b) and a legal description of the conservation area shall be filed by the Secretary with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. Each such map shall have the same force and effect as if included in this Act; except that the Secretary may correct clerical and typographical errors in such map and legal description. Each such map shall be on file and available for public inspection in the office of the Director and the Idaho State Director of the Bureau of Land Management of the Department of the Interior.

(d) WITHDRAWALS.—Subject to valid existing rights, the Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; and from entry, application, and selection under the Act of March 3, 1877 (Ch. 107, 19 Stat. 377, 43 U.S.C. 321 et seq.; commonly referred to as the "Desert Lands Act"), section 4 of the Act of August 18, 1894 (Ch. 301, 28 Stat. 422; 43 U.S.C. 641; commonly referred to as the "Carey Act"), the Act of July 3, 1890 (Ch. 656, 26 Stat. 215; commonly referred to as the "State of Idaho Admissions Act"), section 2275 of the Revised Statutes, as amended (43 U.S.C. 851), and section 2276 of the Revised Statutes, as amended (43 U.S.C. 852). The Secretary shall return to the applicants any such applications pending on the date of enactment of this Act, without further action.

Subject to valid existing rights, upon the date of enactment of this Act, lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the general mining laws, and from disposition under all laws pertaining to mineral and geothermal leasing laws, and any amendments thereto, and the mineral material disposal laws.

SEC. 4. MANAGEMENT AND USE.

(a) In General.—(1)(A) Within one year after the date of enactment of this Act, the Secretary shall finalize a management plan that is in conformance with the requirements of this Act.

(B) Thereafter, the Secretary shall review the plan at least once every four years and shall make such revisions as may be necessary or appropriate.

(C) In reviewing and revising the plan, the Secretary shall provide for appropriate public participation.

(2) Except as otherwise specifically provided in subsections (d), (e), and (f) of this section, the Secretary shall allow only such use of lands in the conservation area as the Secretary determines are consistent with the purposes for which the conservation area is established.

(b) Management Guidance.—After each review pursuant to subsection (a), the Secretary shall make such revisions as may be needed so that the plan and management program to implement the plan include, in addition to any other necessary or appropriate provisions, provide for—

(1) protection for the raptor populations and habitats and the scientific, cultural and educational resources and values on the public lands in the conservation area;

(2) identification of levels of continued military use of the Orchard Training Area compatible with paragraph (1) of this subsection;

(3) public use of the conservation area consistent with the purposes of this Act.

(4) interpretive and education opportunities for the public;

(5) a program for continued scientific investigation and study to provide information to support sound management in accordance with this Act, to advance knowledge of raptor species and the resources and values of the conservation area, and to provide a process for transferring to other areas of the public lands and elsewhere this knowledge and management experience;

(6) such vegetative enhancement and other measures as may be necessary to restore or enhance prey habitat;

(7) the identification of levels, types, timing and terms and conditions for the allowable nonmilitary uses of lands within the conservation area that will be compatible with the protection, maintenance, or enhancement of raptor populations and habitats and the other purposes for which the conservation area is established; and

(8) an assessment of the desirability of imposing appropriate fees for public uses (including, but not limited to, recreational use) of lands in the conservation area, which are not now subject to fees, to be used to further the purposes for which the conservation area is established.

(c) Visitor Center.—The Secretary, acting through the Director of the Bureau of Land Management, is authorized to establish, in cooperation with other public or private entities as the Secretary may deem appropriate, a visitor center designed to interpret the history and the geological, ecological, natural, cultural, and other resources of the conservation area and the biology of the raptors and their relationships to man.

(d) Visitor Use of Area.—The Secretary may provide for visitor use of the public lands in the conservation area to such extent and in such manner as the Secretary considers consistent with the protection of raptors and raptor habitat, public safety, and the purposes for which the conservation area is established. To the extent practicable, the Secretary shall make available to visitors and other members of the public a map of the conservation area and such other educational and interpretive materials as may be appropriate.

(e) National Guard Use of the Area.—(1) Pending completion of the above mentioned ongoing research concerning military use of lands in the conservation area, or until the date five years after the date of enactment of this Act, whichever is sooner, the Secretary shall permit continued military use of those portions of the conservation area known as the Orchard Training Area in accordance with the Memorandum of Understanding, to the extent consistent with the use levels identified pursuant to subsection (b)(2) of this section.

(2) Upon completion of the ongoing research concerning military use of lands in the conservation area, the Secretary shall review the management plan and make such additional revisions therein as may be required to assure that it meets the requirements of this Act.

(3) The Secretary shall submit to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report of the results of the ongoing research concerning military use of lands in the conservation area.

(4) Nothing in this Act shall preclude minor adjustment of the boundaries of the Orchard Training Area in accordance with provisions of the Memorandum of Understanding.

(5) After completion of the ongoing research concerning military use of lands in the Orchard Training Area or after the date five years after the date of enactment of this Act, whichever first occurs, the Secretary shall continue to permit military use of such lands, but only to the extent the Secretary, on the basis of such research, determines such use is compatible with the purposes set forth in section 3(a). Such use thereafter shall be permitted in accordance with the Memorandum of Understanding, which may be extended or renewed by the Secretary so long as such use continues to meet the requirements of subsection (b)(2) of this section.

(6) In accordance with the Memorandum of Understanding, the Secretary shall require the State of Idaho Military Division to insure that appropriate military units maintain a program of decontamination.

(7) Nothing in this Act shall be construed as precluding the extension or renewal of the Memorandum of Understanding, or the construction of any improvements or buildings in the Orchard Training Area so long as the requirements of this subsection are met.

(f) Livestock Grazing.—The Secretary shall, consistent with the purposes for which the conservation area is established, permit continued use of lands in the conservation area for domestic livestock, including activities the Secretary determines necessary to carry out proper and practical grazing management programs such as Animal Damage Control activities, in accordance with the Act of June 28, 1934 (43 U.S.C. 315 et seq.; commonly referred to as the "Taylor Grazing Act"), section 402 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752), and other laws applicable to such use of the public lands, and the plan requirements of subsection (a) of this section.

(g) Cooperative Agreements.—The Secretary is authorized to provide technical assistance to, and to enter into such cooperative agreements and contracts with, the State of Idaho and with local governments and private entities as the Secretary deems necessary or desirable to carry out the purposes of this Act.

(h) Agricultural Practices.—Nothing in this Act shall be construed as affecting recognized agricultural practices or other activities on private land adjacent to or within the conservation area boundary.

(i) Hydroelectric Facilities.—Nothing in this Act shall affect the jurisdiction of the Federal Energy Regulatory Commission concerning the continued and future operation of hydroelectric facilities, licensed or relicensed under the Federal Power Act (16 U.S.C. §§791a et seq.). located within the boundaries of the conservation area.

SEC. 5. LAND ACQUISITIONS.

(a) Acquisitions.—(1) The Secretary is authorized to acquire lands and interests therein within the boundaries of the conservation area by donation, purchase with donated or appropriated funds, exchange, or transfer from another Federal agency, except that such lands or interests owned by the State of Idaho or a political subdivision thereof may be acquired only by donation or exchange provided that, no lands or interests therein shall be acquired without the consent of the owner.

(2) Any lands located within the boundaries of the conservation area that are acquired by the United States on or after the date of enactment of this Act shall become a part of the conservation area and shall be subject to this Act.

(b) Purchase of Lands.—In addition to the authority in section 318(d) of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1748) and notwithstanding section 7(a) of the Land and Water Conservation Fund Act of 1964 (16 U.S.C. 4601–9(a)), monies appropriated from the Land and Water Conservation Fund may be used as authorized in section 5(b) of the Endangered Species Act of 1973 (16 U.S.C. 1534(b)), for the purposes of acquiring lands or interests therein within the conservation area for administration as public lands as a part of the conservation area.

(c) Land Exchanges.—The Secretary shall, no later than 4 years after the date of enactment of this Act, study, identify and, where appropriate, initiate land exchanges to resolve ownership conflicts within the conservation area.

SEC. 6. OTHER LAWS AND ADMINISTRATIVE PROVISIONS.

(a) Other Laws.—(1) Nothing in this Act shall be construed to supersede, limit or otherwise affect administration and enforcement of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or to limit the applicability of the National Trails System Act to any lands within the conservation area.

(2) Except as otherwise specifically provided in this Act, nothing in this Act shall be construed as limiting the applicability to lands in the conservation area of laws applicable to public lands generally, including but not limited to the National Historic Preservation Act, the Archaeological Resources Protection Act of 1979, or the Native American Graves Protection and Repatriation Act.

(3) Nothing in his Act shall be construed as altering the status of any lands that on the date of enactment of this Act were not managed by the Bureau of Land Management.

(4) Nothing in this Act shall be construed as prohibiting the Secretary from engaging qualified persons to use public lands within the conservation area for the propagation of plants (including seeds) to be used for vegetative enhancement of the conservation area in accordance with the plan and in furtherance of the purposes for which the conservation area is established.

(b) Release.—The Congress finds and directs that the public lands within the conservation area established as a natural area in October 1971 by Public Land Order 5133 have been adequately studied for wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act of 1976 and are no longer subject to section 603(c) of such Act pertaining to the management of wilderness study areas in a manner that does not impair the suitability of such area for preservation as wilderness.

(c) Existing Administrative Withdrawal Revoked.—Public Land Orders 5133 dated October 12, 1971, and 5777 dated November 21, 1980, issued by the Secretary are hereby revoked.

(d) WATER RIGHTS.—Nothing in this act, nor any action taken pursuant thereto, shall constitute either an expressed or implied federal reservation of water or water right for any purpose.

(e) ENFORCEMENT.—Any person who violates any regulation promulgated by the Secretary to implement the provisions of this Act shall be subject to a fine in accordance with applicable provisions of title 18, United States Code, imprisonment of not more than 1 year or both.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

AMENDMENT NO. 3433

Mr. CRAIG. Mr. President, I send a substitute amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. CRAIG] proposes an amendment numbered 3433.

Strike all after the enacting clause and insert in lieu thereof the following:

SEC. 1. FINDINGS.

The Congress finds the following:

(1) The public lands managed by the Bureau of Land Management in the State of Idaho within the Snake River Birds of Prey Area contain one of the densest known nesting populations of eagles, falcons, owls, hawks, and other birds of prey (raptors) in North America.

(2) These public lands constitute a valuable national biological and educational resource since birds of prey are important components of the ecosystem.

(3) These public lands also contain important historic and cultural resources as well as other resources and values, all of which should be protected and appropriately managed.

(4) A military training area within the Snake River Birds of Prey Area, known as the Orchard Training Area, has been used since 1953 by reserve components of the Armed Forces. Military use of this area is currently governed by a Memorandum of Understanding between the Bureau of Land Management and the State of Idaho Military Division, dated May 1985. Operating under this Memorandum of Understanding, the Idaho National Guard has provided valuable assistance to the Bureau of Land Management with respect to fire control and other aspects of management of the Orchard Training Area and the other lands in the Snake River Birds of Prey Area. Military use of the lands within the Orchard Training Area should continue in accordance with such Memorandum of Understanding (or extension or renewal thereof), to the extent consistent with section 4(e) of this Act, because this would be in the best interest of training of the reserve components (an important aspect of national security) and of the local economy.

(5) Protection of the conservation area as a home for raptors can best and should be accomplished by the Secretary of the Interior, acting through the Bureau of Land Management, under a management plan that—

(A) emphasizes management, protection, and rehabilitation of habitat for these raptors and of other resources and values of the area;

(B) provides for continued military use, consistent with the requirements of section 4(e) of this Act, of the Orchard Training Area by reserve components of the Armed Forces;

(C) addresses the need for public educational and interpretive opportunities;

(D) allows for diverse appropriate uses of lands in the area to the extent consistent with the maintenance and enhancement of raptor populations and habitats and protection and sound management of other resources and values of the area; and

(E) demonstrates management practices and techniques that may be useful to other areas of the public lands and elsewhere.

(6) There exists near the conservation area a facility, the World Center for Birds of Prey operated by The Peregrine Fund, Inc., where research, public education, recovery, and reestablishment operations exist for endangered raptor species. There also exists at Boise State University a raptor study program which attracts national and international graduate and undergraduate students.

(7) The Bureau of Land Management and Boise State University, together with other State, Federal, and private entities, have formed the Raptor Research and Technical Assistance Center to be housed at Boise State University, which provides a unique adjunct to the conservation area for raptor management, recovery, research, and public visitation, interpretation, and education.

(8) Consistent with requirements of sections 202 and 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712 and 1732), the Secretary has developed a comprehensive management plan and, based on such plan, has implemented a management program for the public lands included in the conservation area established by this Act.

(9) Additional authority and guidance must be provided to assure that essential raptor habitat remains in public ownership, to facilitate sound and effective planning and management, to provide for effective public interpretation and education, to ensure continued study of the relationship of humans and these raptors, to preserve the unique and irreplaceable habitat of the conservation area, and to conserve and properly manage the other natural resources of the area in concert with maintenance of this habitat.

(10) An ongoing research program funded by the Bureau of Land Management and the National Guard is intended to provide information to be used in connection with future descisionmaking concerning management of all uses, including continued military use, of public lands within the Snake River Birds of Prey Area.

(11) The public lands in the Snake River Birds of Prey Conservation area have been used for domestic livestock grazing for more than a century. Appropriate protection and sound management of raptor habitat and the other resource values of this land would not preclude continuation of this use which has provided major economic contributions and stability to the local and State economies.

(12) Hydroelectric facilities for the generation and transmission of electricity exist within the Snake River Birds of Prey Area pursuant to a license(s) issued by the Federal Energy Regulatory Commission, or its predecessor, the Federal Power Commission.

SEC. 2. DEFINITIONS.

As used in this Act:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "conservation area" means the Snake River Birds of Prey National Conservation Area established by section 3.

(3) The term "raptors" or "raptor" means individuals or populations of eagles, falcons, owls, hawks, and other birds of prey.

(4) The term "raptor habitat" includes the habitat of the raptor prey base as well as the nesting and hunting habitat of raptors within the conservation area.

(5) The term "Memorandum of Understanding" means the Memorandum of Understanding #ID-237, dated May 1985, between the State of Idaho Military Division and the Bureau of Land Management.

(6) The term "Orchard Training Area" means that area generally so depicted on the map referred to in section 3(b), and as described in the Memorandum of Understanding as well as the air space over the same.

(7) The term "Impact Area" means that area which was used for the firing of live artillery projectiles and is used for live fire ranges of all types and, therefore, poses a danger to public safety and which is generally so depicted on the map referred to in section 3(b).

(8) The term "Artillery Impact Area" means that area within the Impact Area into which live projectiles are fired, which is generally described as that area labeled as such on the map referred to in section 3(b).

(9) The term "the plan" means the comprehensive management plan developed for the conservation area, dated August 30, 1985, together with such revisions thereto as may be required in order to implement this Act.

(10) The term "hydroelectric facilities" means all facilities related to the generation, transmission, and distribution of hydroelectric power and which are subject to, and authorized by, a license(s), and any and all amendments thereto, issued by the Federal Energy Regulatory Commission.

SEC. 3. ESTABLISHMENT OF NATIONAL CONSERVATION AREA.

(a) ESTABLISHMENT AND PURPOSES.—(1) There is hereby established the Snake River Birds of Prey National Conservation Area, hereafter referred to as the "conservation area".

(2) The purposes for which the conservation area is established are: to provide for the conservation, protection, and enhancement of raptor populations and habitats, and the natural and environmental resources and values associated therewith, and of the scientific, cultural, and educational resources and values of the public lands in the conservation area; and, to the extent compatible with the foregoing purposes, to allow continuation of existing uses of the public lands in the conservation area, subject to the provisions of this Act.

(b) AREA INCLUDED.—The conservation area shall consist of approximately 482,457 acres of federally owned lands and interests therein managed by the Bureau of Land Management as generally depicted on the map entitled "Snake River Birds of Prey National Conservation Area", dated November 1991.

(c) MAP AND LEGAL DESCRIPTION.—As soon as is practicable after enactment of this Act, the map referred to in subsection (b) and a legal description of the conservation area shall be filed by the Secretary with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. Each such map shall have the same force and effect as if included in this title; except that the Secretary may correct clerical and typographical errors in such map and legal description. Each such map shall be on file and available for public inspection in the office of the Director and the Idaho State Director of the Bureau of Land Management of the Department of the Interior.

(d) WITHDRAWALS.—Subject to valid existing rights, the Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal (except as provided in paragraph (3)) under the public land laws; and from entry, application, and selection under the Act of March 3, 1877 (Ch. 107, 19 Stat. 377, 43 U.S.C. 321 et seq.; commonly referred to as the "Desert Lands Act"), section 4 of the Act of August 18, 1894 (Ch. 301, 28 Stat. 422; 43 U.S.C. 641; commonly referred to as the "Carey Act"), the Act of July 3, 1890 (Ch. 656, 26 Stat. 215; commonly referred to as the "State of Idaho Admissions Act"), section 2275 of the Revised Statutes, as amended (43 U.S.C. 851), and section 2276 of the Revised Statutes, as amended (43 U.S.C. 852). The Secretary shall return to the applicants any such applications pending on the date of enactment of this Act, without further action. Subject to valid existing rights, as of the date of enactment of this Act, lands within the conservation area are withdrawn from location under the general mining laws, the operation of the mineral and geothermal leasing laws, and the mineral material disposal laws.

SEC. 4. MANAGEMENT AND USE.

(a) In General.—(1)(A) Within 1 year after the date of enactment of this Act, the Secretary shall finalize a management plan that is in conformance with the requirements of this Act.

(B) Thereafter, the Secretary shall review the plan at least once every 4 years and shall make such revisions as may be necessary or appropriate.

(C) In reviewing and revising the plan, the Secretary shall provide for appropriate public participation.

(2) Except as otherwise specifically provided in subsections (d), (e), and (f) of this section, the Secretary shall allow only such uses of lands in the conservation area as the Secretary determines will further the purposes for which the conservation area is established.

(b) Management Guidance.—After each review pursuant to subsection (a), the Secretary shall make such revisions as may be needed so that the plan and management program to implement the plan include, in addition to any other necessary or appropriate provisions, provisions for—

(1) protection for the raptor populations and habitats and the scientific, cultural, and educational resources and values of the public lands in the conservation area;

(2) identifying levels of continued military use of the Orchard Training Area compatible with paragraph (1) of this subsection;

(3) public use of the conservation area consistent with the purposes of this Act;

(4) interpretive and educational opportunities for the public;

(5) a program for continued scientific investigation and study to provide information to support sound management in accordance with this Act, to advance knowledge of raptor species and the resources and values of the conservation area, and to provide a process for transferring to other areas of the public lands and elsewhere this knowledge and management experience;

(6) such vegetative enhancement and other measures as may be necessary to restore or enhance prey habitat;

(7) the identification of levels, types, timing, and terms and conditions for the allowable non-military uses of lands within the conservation area that will be compatible with the protection, maintenance, and enhancement of raptor populations and habitats and the other purposes for which the conservation area is established; and

(8) assessing the desirability of imposing appropriates fees for public uses (including, but not limited to, recreational use) of lands in the conservation area, which are not now subject to fees, to be used to further the purposes for which the conservation area is established.

(c) Visitors Center.—The Secretary, acting through the Director of the Bureau of Land Management, is authorized to establish, in cooperation with other public or private entities as the Secretary may deem appropriate, a visitors center designed to interpret the history and the geological, ecological, natural, cultural, and other resources of the conservation area and the biology of the raptors and their relationships to man.

(d) Visitors Use of Area.—In addition to the Visitors Center, the Secretary may provide for visitor use of the public lands in the conservation area to such extent and in such manner as the Secretary considers consistent with the protection of raptors and raptor habitat, public safety, and the purposes for which the conservation area is established. To the extent practicable, the Secretary shall make available to visitors and other members of the public a map of the conservation area and such other educational and interpretive materials as may be appropriate.

(e) National Guard Use of the Area.—(1) Pending completion of the ongoing research concerning military use of lands in the conservation area, or until the date 5 years after the date of enactment of this Act, whichever is the shorter period, the Secretary shall permit continued military use of those portions of the conservation area known as the Orchard Training Area in accordance with the Memorandum of Understanding, to the extent consistent with the use levels identified pursuant to subsection (b)(2) of this section.

(2) Upon completion of the ongoing research concerning military use of lands in the conservation area, the Secretary shall review the management plan and make such additional revisions therein as may be required to assure that it meets the requirements of this Act.

(3) Upon completion of the ongoing research concerning military use of lands in the conservation area, the Secretary shall submit to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report of the results of such research.

(4) Nothing in this Act shall preclude minor adjustment of the boundaries of the Orchard Training Area in accordance with provisions of the Memorandum of Understanding.

(5) After completion of the ongoing research concerning military use of lands in the Orchard Training Area or after the date 5 years after the date of enactment of this Act, whichever first occurs, the Secretary shall continue to permit military use of such lands, unless the Secretary, on the basis of such research, determines such use is not compatible with the purposes set forth in section 3(a)(2). Any such use thereafter shall be permitted in accordance with the Memorandum of Understanding, which may be extended or renewed by the Secretary so long as such use continues to meet the requirements of subsection (b)(2) of this section.

(6) In accordance with the Memorandum of Understanding, the Secretary shall require the State of Idaho Military Division to insure that military units involved maintain a program of decontamination.

(7) Nothing in this Act shall be construed as by itself precluding the extension or renewal of the Memorandum of Understanding, or the construction of any improvements or buildings in the Orchard Training Area so long as the requirements of this subsection are met.

(f) Livestock Grazing.—Notwithstanding section 4(a)(2) of this Act, if the Secretary determines domestic livestock grazing is compatible with the purposes for which the conservation area is established, such grazing will occur on public lands within the conservation area to the extent the Secretary determines such use of such lands is compatible with the purposes for which the conservation area is established. Any such grazing, and activities the Secretary determines necessary to carry out proper and practical grazing management programs (such as animal damage control activities) shall be managed in accordance with the Act of June 28, 1934 (43 U.S.C. 315 et seq.; commonly referred to as the "Taylor Grazing Act"), section 402 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752), other laws applicable to such use and programs on the public lands, and the management plan for the conservation area.

(g) Cooperative Agreements.—The Secretary is authorized to provide technical assistance to, and to enter into such cooperative agreements and contracts with, the State of Idaho and with local governments and private entities as the Secretary deems necessary or desirable to carry out the purposes and policies of this Act.

(h) Agricultural Practices.—Nothing in this Act shall be construed as constituting a grant of authority to the Secretary to restrict recognized agricultural practices or other activities on private land adjacent to or within the conservation area boundary.

(i) Hydroelectric Facilities.—Notwithstanding any provision of this Act, or regulations and management plans undertaken pursuant to its provisions, the Federal Energy Regulatory Commission shall retain its current jurisdiction concerning all aspects of the continued and future operation of hydroelectric facilities, licensed or relicensed under the Federal Power Act (16 U.S.C. 791a et seq.), located within the boundaries of the conservation area.

SEC. 5. ADDITIONS.

(a) Acquisitions.—(1) The Secretary is authorized to acquire lands and interests therein within the boundaries of the conservation area by donation, purchase with donated or appropriated funds, exchange, or transfer from another Federal agency, except that such lands or interests owned by the State of Idaho or a political subdivision thereof may be acquired only by donation or exchange.

(2) Any lands located within the boundaries of the conservation area that are acquired by the United States on or after the date of enactment of this Act shall become a part of the conservation area and shall be subject to this Act.

(b) Purchase of Lands.—In addition to the authority in section 318(d) of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1748) and notwithstanding section 7(a) of the Land and Water Conservation Fund Act of 1964 (16 U.S.C. 4601-9(a)) monies appropriated from the Land and Water Conservation Fund may be used as authorized in section 5(b) of the Endangered Species Act of 1973 (16 U.S.C. 1534(b)), for the purposes of acquiring lands or interests therein within the conservation area for administration as public lands as a part of the conservation area.

(c) Land Exchanges.—The Secretary shall within 4 years of enactment, study, identify, and initiate voluntary land exchanges which would resolve ownership related land use conflicts within the conservation area.

SEC. 6. OTHER LAWS AND ADMINISTRATIVE PROVISIONS.

(a) OTHER LAWS.—(1) Nothing in the Act shall be construed to supersede, limit, or otherwise affect administration and enforcement of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or to limit the applicability of the National Trails System Act to any lands within the conservation area.

(2) Except as otherwise specifically provided in this title, nothing in this title shall be construed as limiting the applicability to lands in the conservation area of laws applicable to public lands generally, including but not limited to the National Historic Preservation Act, the Archaeological Resources Protection Act of 1979, or the Native American Graves Protection and Repatriation Act.

(3) Nothing in this Act shall be construed as by itself altering the status of any lands that on the date of enactment of this Act were not managed by the Bureau of Land Management.

(4) Nothing in this Act shall be construed as prohibiting the Secretary from engaging qualified persons to use public lands within the conservation area for the propagation of plants (including seeds) to be used for vegetative enhancement of the conservation area in accordance with the plan and in furtherance of the purposes for which the conservation area is established.

(b) RELEASE.—The Congress finds and directs that the public lands within the Snake River Birds of Prey Natural Area established as a natural area in October 1971 by Public Land Order 5133 have been adequately studied and found unsuitable for wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act of 1976. Such lands are hereby released from further management pursuant to section 603(c) of such an Act and shall be managed in accordance with other applicable provisions of law, including this Act.

(c) EXISTING ADMINISTRATIVE WITHDRAWAL TERMINATED.—Public Land Orders 5133 dated October 12, 1971, and 5777 dated November 21, 1980, issued by the Secretary are hereby terminated.

(d) WATER.—(1) The Congress finds that the United States is currently a party in an adjudication of rights to waters of the Snake River, including water rights claimed by the United States on the basis of the reservation of lands for purposes of conservation of fish and wildlife and that consequently there is no need for this Act to effect a reservation by the United States of rights with respect to such waters in order to fulfill the purposes for which the conservation area is established.

(2) Nothing in this Act or any action taken pursuant thereto shall constitute either an expressed or implied reservation of water or water rights for any purpose.

(3) Nothing in this Act shall be construed as effecting a relinquishment or reduction of any of the water rights held or claimed by the United States within the State of Idaho or elsewhere on or before the date of enactment of this Act.

(4) The Secretary and all other officers of the United States shall take steps necessary to protect all water rights claimed by the United States in the Snake River adjudication now pending in the district court of the State of Idaho in which the United States is joined under the McCarran Amendment (section 208 of the Act of July 10, 1952; 66 Stat. 560; 43 U.S.C. 666).

(e) ENFORCEMENT.—Any person who violates any regulation promulgated by the Secretary to implement the provisions of this Act shall be subject to a fine in accordance with applicable provisions of title 18, United States Code, imprisonment of not more than 1 year, or both.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

The PRESIDING OFFICER. Without objection, the Senator's amendment is agreed to.

The amendment (No. 3433) was agreed to.

If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The amendment1, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 2141), as amended, was passed.

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

APPOINTMENTS BY THE REPUBLICAN LEADER

The PRESIDING OFFICER. The Chair announces, on behalf of the Republican leader, pursuant to Public Law 96–114, as amended, the appointment of the following individuals to the Congressional Award Board: The Senator from Missouri [Mr. DANFORTH], Mr. Charles Smithers, Jr., of Connecticut, Mr. Rod DeArment, of Virginia, and Ms. Mary McAuliffe, of Virginia.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION AUTHORIZATION ACT OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2130.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the text of the bill (H.R. 2130) entitled "An Act to authorize appropriations for the National Oceanic and Atmospheric Administration for fiscal year 1992," with the following amendment:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Oceanic and Atmospheric Administration Authorization Act of 1992".

SEC. 2. DEFINITIONS.

For the purposes of this Act, the term—

(1) "Act of 1890" means the Act entitled "An Act to increase the efficiency and reduce the expenses of the Signal Corps of the Army, and to transfer the Weather Bureau to the Department of Agriculture", approved October 1, 1890 (26 Stat. 653); and

(2) "Act of 1947" means the Act entitled "An Act to define the functions and duties of the Coast and Geodetic Survey, and for other purposes", approved August 6, 1947 (33 U.S.C. 883a et seq.).

TITLE I—NOAA ATMOSPHERIC AND SATELLITE PROGRAMS

SEC. 101. NATIONAL WEATHER SERVICE OPERATIONS AND RESEARCH.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out the operations and research activities of the National Weather Service under law, $311,532,000 for fiscal year 1992 and $395,822,000 for fiscal year 1993. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to National Weather Service operations and research specified by the Act of 1890, the Act of 1947, and any other law involving such activities. Such activities include meteorological, hydrological, aviation, and oceanographic public warnings and forecasts, as well as applied research in support of such warnings and forecasts.

(b) PACIFIC WEATHER BUOYS.—Of the sums authorized under subsection (a), $840,000 for fiscal year 1992 and $1,135,000 for fiscal year 1993 are authorized to be appropriated for the purpose of operating and maintaining weather buoys off the coast of California, Oregon, Washington, and Hawaii.

(c) COOPERATIVE WEATHER OBSERVER PROGRAM.—The Secretary of Commerce may use funds otherwise available for conducting weather observations to strengthen the Cooperative Weather Observer Program and encourage public participation in the program. The Secretary may—

(1) provide distinctive insignia or paraphernalia to Cooperative Weather Observers; and

(2) make awards of nominal value to recognize continued participation in the program by observers or to recognize outstanding achievements by such observers or groups of observers without regard to any law restricting expenditures for such purposes to Federal employees.

SEC. 102. PUBLIC WARNING AND FORECAST SYSTEMS.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to improve its public warning and forecast systems under law, $132,034,000 for each of the fiscal years 1992 and 1993. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to public warning and forecast systems specified by the Act of 1890, the Act of 1947, and any other law involving such activities. Such activities include the development, acquisition, and implementation of major public warning and forecast systems.

(b) WEATHER RADAR COMPLETE PROGRAM AUTHORIZATION.—(1) Except as provided in paragraph (2), there are authorized to be appropriated to the Secretary of Commerce for all fiscal years beginning with fiscal year 1993, not to exceed $26,971,000, to remain available until expended, to complete the acquisition and deployment of the Next Generation Weather Radar system, and to cover all associated activities (including program management and operations and maintenance through September 30, 1996).

(2) None of the funds are authorized to be appropriated for any fiscal year under paragraph (1), unless, within 60 days after the submission of the President's budget request for such fiscal year, the Secretary of Commerce—

(A) certifies to the Congress that—

(i) the radars, including system software, meet the technical performance specifications included in the radar procurement contract as in effect on October 1, 1992;

(ii) the system contract is viable, and the Secretary does not foresee circumstances which would prevent fulfillment of the contract;

(iii) the system can be fully sited, commissioned, and operational without requiring further authorization of appropriations beyond amounts authorized under paragraph (1); and

(iv) the Secretary does not foresee further delays in the system deployment and operation schedule; or

(B) submits to the Congress a report which describes—

(i) the circumstances which prevent a certification under subparagraph (A);

(ii) remedial actions undertaken or to be undertaken with respect to such circumstances;

(iii) the effects of such circumstances on the deployment and operation schedule and radar coverage; and

(iv) a justification for proceeding with the program, if appropriate.

SEC. 103. CLIMATE AND AIR QUALITY RESEARCH.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out its climate and air quality research activities under law, $100,718,000 for fiscal year 1992 and $103,877,000 for fiscal year 1993. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to climate and air quality research specified by the Act of 1890, the Act of 1947, and any other law involving such activities. Such activities include interannual and seasonal climate research, long-term climate and air quality research, and the National Climate Program.

(b) CLIMATE AND GLOBAL CHANGE.—Of the sums authorized under subsection (a), $67,000,000 for each of the fiscal years 1992 and 1993 are authorized to be appropriated for the purposes of studying climate and global change. Such program shall augment and integrate existing programs of the National Oceanic and Atmospheric Administration and shall include global observations, monitoring, and data and information management relating to the study of changes in the Earth's climatic system, fundamental research on critical oceanic and atmospheric processes, and climate prediction and diagnostics.

SEC. 104. ATMOSPHERIC RESEARCH.

There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out its atmospheric research activities under law, $43,935,000 for fiscal year 1992 and $44,781,000 for fiscal year 1993. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to atmospheric research specified by the Act of 1890 and by any other law involving such activities. Such activities include research for developing improved observation and prediction capabilities for atmospheric processes, as well as solar-terrestrial services and research.

SEC. 105. SATELLITE OBSERVING SYSTEMS.

(a) IN GENERAL.—(1) There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out its satellite observing systems activities under law, $305,744,000 for fiscal year 1992 and $336,000,000 for fiscal year 1993. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to data and information services specified by the Act of 1890 and by any other law involving such activities. Such activities include spacecraft procurement, launch, and associated ground station modifications for polar orbiting and geostationary environmental satellite systems, as well as the operation of such satellites and land remote-sensing satellites.

(2) Of the sums authorized under paragraph (1), $2,300,000 in fiscal year 1993 are authorized for the administration by the National Oceanic and Atmospheric Administration of the ground stations for the Search and Rescue Satellite Aided Tracking System. Such administration shall be carried out in consultation with the Department of Transportation and the Department of Defense.

(b) EMERGENCY CONTINGENCY FUND.—There are authorized to be appropriated to the Secretary of Commerce, $110,000,000 for fiscal year 1992, to be deposited in an Emergency Weather Satellite Contingency Fund. Such Fund shall be available subject to the restrictions of appropriations Acts, without fiscal year limitation, to the Secretary only for the purpose of enabling the National Oceanic and Atmospheric Administration to maintain geostationary environmental satellite coverage for monitoring and prediction of hurricanes and severe storms, including but not limited to the procurement of gap filler satellites, launch vehicles, and payments to foreign governments.

(c) STRATEGIC PLAN—(1) The Secretary of Commerce and the Administrator of the National Aeronautics and Space Administration shall jointly develop and, not more than 120 days after the date enactment of this Act, submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a strategic plan for development procurement, and operation of the environmental satellite program of the Department of Commerce.

(2) The objectives of the strategic plan shall be—

(A) to ensure continuous and adequate operational environmental satellite coverage; and

(B) to require direct Federal fiscal and administrative accountability in all aspects of such environmental satellite program.

(3) The strategic plan shall—

(A) delineate the management duties and functions of each Federal department or agency involved in such satellite program;

(B) establish funding responsibilities for each Federal department or agency in a manner which reflects their respective management duties and functions;

(C) set forth procedures to be followed in the development, procurement, and operations of environmental satellites in such program;

(D) minimize the potential for developmental and procurement problems, and for cost overruns;

(E) provide for effective interagency and international coordination;

(F) provide for research and development activities to ensure that the procurement of operational environmental satellites relies on proven technologies, and to investigate potential improvements in data applications and operations for such satellites in order to improve the national weather warning and forecast system; and

(G) specify legislative and administrative actions necessary to implement the plan and to accomplish the objectives described in paragraph (2).

(d) GEOSTATIONARY SATELLITE COMPLETE PROGRAM AUTHORIZATION.—(1) Except as provided in paragraph (2), there are authorized to be appropriated to the Secretary of Commerce for all fiscal years beginning with fiscal year 1993, not to exceed $1,005,255,000, to remain available until expended, to complete the procurement of Geostationary Operational Environmental Satellites I, J, K, L, and M, and the procurement of the launching and supporting ground systems of such satellites.

(2) None of the funds are authorized to be appropriated for any fiscal year under paragraph (1), unless, within 60 days after the submission of the President's budget request for such fiscal year, the Secretary of Commerce—

(A) certifies to the Congress that—

(i) the results of testing indicate that the satellite instruments are likely to meet the technical performance specifications included in the satellite contract as in effect on October 1, 1992;

(ii) the procurements can be completed without requiring further authorization of appropriations beyond amounts authorized under paragraph (1); and

(iii) the Secretary foresees no gap in two-satellite service operations resulting from non-performance of the satellite contract; or

(B) submits to the Congress a report which describes—

(i) the circumstances which prevent a certification under subparagraph (A);

(ii) remedial actions undertaken or to be undertaken with respect to such circumstances;

(iii) the effects of such circumstances on the launch schedule and satellite coverage; and

(iv) a justification for proceeding with the program, if appropriate.

SEC. 106. DATA AND INFORMATION SYSTEMS.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out its data and information services activities under law, $32,628,000 for fiscal year 1992 and $39,596,000 for fiscal year 1993. Moneys appropriated pursuant to this authorization shall be used to fund those activities relating to data and information services specified by the Act of 1890 and by any other law involving such activities. Such activities include climate data services, ocean data services, geophysical data services, and environmental assessment and information services.

(b) MODERNIZATION INITIATIVE.—Of the sums authorized under subsection (a), $10,000,000 in fiscal year 1992 and $15,000,000 in fiscal year 1993 are authorized to be appropriated for the purpose of modernizing the data and information systems of the National Oceanic and Atmospheric Administration to meet increasing requirements for managing, archiving, and distributing environmental data and information.

(c) NEEDS ASSESSMENT FOR DATA MANAGEMENT, ARCHIVAL, AND DISTRIBUTION.—(1) Not later than 12 months after the date of enactment of this Act and at least biennially thereafter, the Secretary of Commerce shall complete an assessment of the adequacy of the environmental data and information systems of the National Oceanic and Atmospheric Administration. In conducting such an assessment, the Secretary shall take into consideration the need to—

(A) provide adequate capacity to manage, archive, and disseminate environmental data and information collected and processed, or expected to be collected and processed, by the National Oceanic and Atmospheric Administration and other appropriate departments and agencies;

(B) establish, develop and maintain information bases, including necessary management systems, which will promote consistent, efficient, and compatible transfer and use of data;

(C) develop effective interfaces among the environmental data and information systems of the National Oceanic and Atmospheric Administration and other appropriate departments and agencies;

(D) develop and use nationally accepted formats and standards for data collected by various national and international sources; and

(E) integrate and interpret data from different sources to produce information that can be used by decisionmakers in developing policies that effectively respond to national and global environmental concerns.

(2) Not later than 12 months after the date of enactment of this Act and biennially thereafter, the Secretary of Commerce shall develop and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a comprehensive plan, based on the assessment under paragraph (1), to modernize and improve the environmental data and information systems of the National Oceanic and Atmospheric Administration. The report shall—

(A) set forth modernization and improvement objectives for the 10-year period beginning with the year in which the plan is submitted, including facility requirements and critical new technological components that would be necessary to meet the objectives set forth;

(B) propose specific agency programs and activities for implementing the plan;

(C) identify the data and information management, archival, and distribution responsibilities of the National Oceanic and Atmospheric Administration with respect to other Federal departments and agencies and international organizations, including the role of the National Oceanic and Atmospheric Administration with respect to large data systems like the Earth Observing System Data and Information System; and

(D) provide an implementation schedule and estimate funding levels necessary to achieve modernization and improvement objectives.

SEC. 107. HURRICANE RECONNAISSANCE PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—(1) The Secretary of Defense and the Secretary of Commerce shall establish a 5-year joint program for collecting operational and reconnaissance data, conducting research, and analyzing data on tropical cyclones to assist the forecast and warning program and increase the understanding of the causes and behavior of tropical cyclones.

(2) The Secretary of Commerce shall establish the Tropical Cyclone Research Advisory Committee, an advisory committee of tropical cyclone research scientists, to make recommendations for tropical cyclone research activities and reconnaissance procedures.

(b) RESPONSIBILITIES.—(1) The Secretary of Defense shall have the responsibility for maintaining, flying, and funding tropical cyclone reconnaissance aircraft to accomplish the program established under this section and to transfer the data to the Secretary of Commerce. Program responsibility may not be transferred to any other Federal department or agency, including the Coast Guard, without the agreement and approval of the Secretary of Defense, the Secretary of Commerce, and the head of any other Federal agency or department to which the responsibility is transferred.

(2) The Secretary of Commerce shall have the responsibility to provide funding for data gathering and research by remote sensing, ground sensing, research aircraft, and other technologies necessary to accomplish the program established under this section.

(c) MANAGEMENT PLANS.—(1) The Secretary of Defense and the Secretary of Commerce shall jointly develop and, within 120 days after the date of enactment of this Act, submit to the Congress a management plan for the program established under this section, which shall include organizational structure, goals, major tasks, and funding profiles for the 5-year duration of the program.

(2) The Secretary of Defense and the Secretary of Commerce, in consultation with the Tropical Cyclone Research Advisory Committee established by section 107(a)(2), shall jointly develop and, within 4 years after the date of enactment of this Act, submit to the Congress a management plan providing for continued tropical cyclone surveillance and reconnaissance which will adequately protect the citizens of the coastal areas of the United States.

(3) The management plans and programs required by this section shall in every sense provide for at least the same degree and quality of protection (such as early warning capability and accuracy of fixing a storm's location) as currently exists with a combination of satellite technology and manned reconnaissance flights. Additionally, such plans and programs shall in no way allow any reduction in the level, quality, timeliness, sustainability, or area served (including the State of Hawaii) of both the existing principal and back-up tropical cyclone reconnaissance and tracking systems.

SEC. 108. UNITED STATES WEATHER RESEARCH PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Commerce, in cooperation with the Federal Coordinating Council for Science, Engineering, and Technology through the Committee on Earth and Environmental Sciences, shall establish a United States Weather Research Program to—

(1) increase benefits to the Nation from the substantial investment in modernizing the public weather warning and forecast system in the United States;

(2) improve local and regional weather forecasts and warnings;

(3) address critical weather-related scientific issues; and

(4) coordinate governmental, university, and private-sector efforts.

(b) IMPLEMENTATION PLAN.—Not later than 90 days after the date of enactment of this Act, the Secretary of Commerce, in cooperation with the Committee on Earth and Environmental Sciences, shall prepare and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a plan for implementation of the United States Weather Research Program which shall—

(1) establish, the 10-year period beginning in the year the plan is submitted, the goals and priorities for Federal weather research which most effectively advance the scientific understanding of weather processes and provide information to improve weather warning and forecast systems in the United States;

(2) describe specific activities, including research activities, data collection and data analysis requirements, predictive modeling, participation in international research efforts, demonstration of potential operational forecast applications, and education and training required to achieve and goals and priorities; and

(3) set forth the role of each Federal agency and department to be involved in the United States Weather Research Program, identifying and addressing, as appropriate, relevant programs and activities of the Federal agencies and departments that would contribute to such Program.

SEC. 109. WEATHER SERVICE OFFICE IN RENO, NEVADA.

(a) FACILITY ACQUISITION.—The Administrator of the National Oceanic and Atmospheric Administration is authorized—

(1) to construct, on approximately 10 acres of land to be leased from the University of Nevada System, Desert Research Institute, or

(2) in the alternative, to acquire by lease construction on such land, with a lease term of up to 30 years.

a Weather Forecast Office, upper air facility, regional climate center, and associated instruments and site improvements as part of the implementation of the Next Generation Weather Radar and National Weather Service Modernization Program for the Reno, Nevada area. This authorization is subject to the availability of appropriations provided in advance for the purpose stated in paragraph (1) or (2).

(b) REIMBURSEMENT AUTHORITY.—The Administrator is authorized to reimburse the Desert Research Institute for the cost of providing utilities and access to the site.

(c) OPERATIONS.—The Administrator is authorized to carry out the operations of the National Oceanic and Atmospheric Administration in such facility.

SEC. 110. WEATHER SERVICE FACILITIES IN SOUTH FLORIDA.

(A) CONSTRUCTION OF FACILITY.—The Administrator of the National Oceanic and Atmospheric Administration is authorized to construct, on land to be leased from Florida International University at the University's Tamiami campus, a facility for the National Hurricane Center, a Weather Forecast Office, an upper air facility, and associated site improvements as part of the implementation of the Next Generation Weather Radar and National Weather Service Modernization Program for the South Florida area. This authorization is subject to the availability of appropriations provided in advance for the purpose stated in this subsection.

(b) OPERATIONS.—The Administrator is authorized to carry out the operations of the National Oceanic and Atmospheric Adminstration in such facility.

SEC. 111. WEATHER FORECAST OFFICE, HONOLULU.

(a) FACILITY ACQUISITION.—(1) The Administrator of the National Oceanic and Atmospheric Administration is authorized to lease building and associated space from the University of Hawaii, Honolulu, for the operation of a Weather Forecast Office, as part of the implementation of the Next Generation Weather Radar and National Weather Service Modernization Program for the State of Hawaii, for a term of up to 20 years. This authorization is subject to the availability of appropriations provided in advance for the purpose stated in this paragraph.

(2) Rental costs for the space leased under paragraph (1) shall not exceed fair annual rental value as established by governmental appraisal.

(b) ALTERATIONS.—The Administrator is authorized to expend funds to make all necessary alterations to the space to allow for operation of a Weather Forecast Office.

(c) OPERATIONS.—The Administrator is authorized to carry out the operations of the National Oceanic and Atmospheric Administration in such facility.

SEC. 112. INSTITUTE FOR AVIATION WEATHER PREDICTION.

The Administrator of the National Oceanic and Atmospheric Administration shall establish an Institute for Aviation Weather Prediction. The Institute shall provide forecasts, weather warnings, and other weather services to the United States aviation community. The Institute shall expand upon the activities of the aviation unit currently at the National Severe Storms Forecast Center in Kansas City, Missouri, and shall be established in the Kansas City, Missouri area. The Administrator shall provide a full and fair opportunity for employees at the National Severe Storms Forecast Center to assume comparable duties and responsibilities within the Institute.

SEC. 113. WEATHER SERVICE OFFICE IN OKLAHOMA.

(a) FACILITY ACQUISITION.—(1) The Administrator of the National Oceanic and Atmospheric Administration is authorized to lease building and associated space to be constructed by the University of Oklahoma, Norman, for the operation of the National Severe Storms Laboratory, Weather Forecast Office, NEXRAD Operational Support Facility, and National Institute for Storm Prediction as part of the implementation of the Next Generation Weather radar and National Weather Service Modernization Program, for a term of up to 20 years. This authorization is subject to the availability of appropriations provided in advance for the purposes stated in this paragraph.

(2) Rental costs for the space leased under paragraph (1) shall not exceed fair annual rental value as established by governmental appraisal.

(b) ALTERATIONS.—The Administrator is authorized to expend funds to make all necessary alterations to the space to allow for operations listed in subsection (a)(1).

(c) OPERATIONS.—The Administrator is authorized to carry out the operations of the National Oceanic and Atmospheric Administration in such facility.

SEC. 114. TRANSFER OF DATA ARCHIVING RESPONSIBILITY.

(A) FINDINGS.—The Congress finds that—

(1) section 602 of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4272) directs the Secretary of Commerce to provide for the archiving of land remote-sensing data for historical, scientific, and technical purposes, including long-term global environmental monitoring;

(2) the Secretary of Commerce, currently provides for the archiving of Landsat data at the Department of the Interior's EROS Data Center, which is consistent with the requirement of section 602(g) of such Act (15 U.S.C. 4272(g)) to use existing Federal Government facilities to the extent practicable in carrying out this archiving responsibility;

(3) the Landsat data collected since 1972 are an important global data set for monitoring and assessing land resources and global change;

(4) the Secretary of the Interior maintains archives of aerial photography, digital cartographic data, and other Earth science data at the EROS Data Center that also are important data sets for monitoring and assessing land resources and global change;

(5) it is appropriate to transfer authority to the Secretary of the Interior for the archiving of land remote-sensing data; and

(6) the Secretary of the Interior should explore ways to facilitate the use of archived data for research purposes consistent with other provisions of the Land Remote-Sensing Commercialization Act of 1984.

(b) PROVISION OF UNENHANCED DATA.—Section 402(b)(4) of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4242(b)(4)) is amended by inserting "of the Interior" immediately after "Secretary".

(c) ARCHIVING OF DATA.—Section 602 of the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4272) is amended—

(1) in subsections (b), (c), (d), (f), and (g), by inserting "of the Interior" immediately after "Secretary" each place it appears; and

(2) by adding at the end the following new subsection:

"(h) In carrying out the functions of this section, the Secretary of the Interior shall consult with the Secretary to ensure that archiving activities are consistent with the terms and conditions of any contract or agreement entered into under title II, III, or V of this Act and with any license issued under title IV of this Act.".

SEC. 115. WEATHER OFFICE IN EUREKA, CALIFORNIA.

Notwithstanding any other law, any property and improvements to that property located on Woodley Island in the city of Eureka, California, that are—

(1) acquired by the Secretary of Commerce from Humbolt Bay Harbor Recreation and Conservation District, California, for use as a weather forecasting office; and

(2) determined by the Secretary to be excess property,

shall revert to that district.

SEC. 116. REPORT ON SATELLITE OCEANOGRAPHY.

SEC. 116.(a) IN GENERAL.—The Federal Coordinating Council for Science, Engineering, and Technology through the Committee on Earth and Environmental Sciences, in consultation with Federal, academic, and commercial users of remotely sensed data, shall consider and develop findings and recommendations regarding—

(1) the most urgent current needs of oceanographic researchers within the Federal Government, the academic community, and the private sector, for remote sensing capabilities and remotely sensed data, including findings regarding the present inadequacies in these capabilities and data; and

(2) the major goals of satellite oceanography for the next 10 years.

(b) REPORT.—Not later than one year after the date of enactment of this Act, the Federal Coordinating Council for Science, Engineering, and Technology shall submit to the Congress a report which describes the findings and recommendations of the Committee on Earth and Environmental Sciences, including recommendations for, or a description of actions to be taken toward—

(1) correcting the inadequacies in remote sensing capabilities;

(2) improving the availability of remotely sensed data; and

(3) achieving the major goals of satellite oceanography developed pursuant to subsection (a)(2).

TITLE II—NOAA OCEAN AND COASTAL PROGRAMS

SEC. 201. NATIONAL OCEAN SERVICE.

(a) MAPPING, CHARTING, AND GEODESY.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out mapping, charting, and geodesy activities (including geodetic data collection and analysis) under the Act of 1947 and any other law involving those activities, $50,917,000 for fiscal year 1992 and $51,087,000 for fiscal year 1993.

(b) OBSERVATION AND ASSESSMENT.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out observation and assessment activities—

(1) under the Act of 1947 and any other law involving those activities, $57,273,000 for fiscal year 1992 and $57,273,0000 for fiscal year 1993; and

(2) under title II of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1441 et seq.), $11,000,000 for fiscal year 1992 and $11,000,000 for fiscal year 1993.

(c) COASTAL OCEAN PROGRAM.—Of the sums authorized under subsection (b)(1), $17,352,0000 for each of the fiscal years 1992 and 1993 are authorized to be appropriated for the purposes of conducting a Coastal Ocean Program. Such program shall augment and integrate existing programs of the National Oceanic and Atmospheric Administration and shall include efforts to improve predictions of fish stocks, to better conserve and manage living marine resources, to improve predictions of coastal ocean pollution to help correct and prevent degradation of the ocean environment, to promote development of ocean technology to support the effort of science to understand and characterize the role oceans play in global climate and environmental analysis, and to improve predictions of coastal hazards to protect human life and personal property.

(d) LONG ISLAND SOUND CIRCULATION MODEL.—No moneys appropriated pursuant to the authorizations in this Act shall be used to conduct analyses of samples collected under the National Status and Trends Program until the Policy Committee of the Long Island Sound Study certifies that the National Oceanic and Atmospheric Administration has completed the water circulation model for Long Island Sound.

(e) CIRCULATION MODEL FUNDING.—Of the sums authorized under subsection (b) for fiscal year 1992, $600,000 is available for completion of the water circulation model for Long Island Sound and $400,000 is available for National Status and Trends Program stations in Long Island Sound.

(f) OCEAN MANAGEMENT.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out ocean management activities, $1,678,000 for fiscal year 1992 and $1,823,000 for fiscal year 1993.

SEC. 202. OCEAN AND GREAT LAKES RESEARCH.

(a) OCEAN AND GREAT LAKES RESEARCH AUTHORIZATION.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out ocean and Great Lakes research activities under the Act of 1947, the Act of 1890, and any other law involving those activities, $32,171,000 for fiscal year 1992 and $39,800,000 for fiscal year 1993.

(b) COOPERATIVE INSTITUTE FOR LIMNOLOGY AND ECOSYSTEMS RESEARCH.—In addition to amounts authorized under subsection (a), there are authorized to be appropriated to the Office of Oceanic and Atmospheric Research of the National Oceanic and Atmospheric Administration $250,000 for fiscal year 1992 and $260,000 for fiscal year 1993, for use by the Cooperative Institute for Limnology and Ecosystems Research (established in partnership with the State of Michigan and the Great Lakes Environmental Research Laboratory) for—

(1) research conducted by the Institute;

(2) development of the Institute; and

(3) for preparation of a five-year plan for research and development.

(c) Large Lakes Research.—(1) In addition to amounts authorized under subsections (a) and (b), there are authorized to be appropriated to the Secretary of Comerce for use by the Office of Oceanic and Atmospheric Research $2,000,000 for fiscal year 1992 and $2,080,000 for fiscal year 1993 for use for preparing a plan for large lakes research.

(2) Amounts appropriated under this subsection may be used for—

(A) preparation of a 5-year plan designating large lake study sites, research activities, and anticipated research products; and

(B) collection of physical, chemical, and biological data required for preparing that plan.

(3) Activities conducted with amounts appropriated under this subsection shall be coordinated through the Great Lakes Environmental Research Laboratory, working in association with the Cooperative Institute for Limnology and Ecosystems Research and the National Undersea Research Program.

SEC. 203. AQUATIC NUISANCE PREVENTION AND CONTROL PROGRAM.

(a) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary of Commerce $11,000,000 for fiscal year 1992 and $11,440,000 for fiscal year 1993 for use in implementing the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Public Law 101-646).

(b) Report.—Not later than one year after the date of the enactment of this Act, the Secretary of Commerce shall submit a report to the Congress on progress toward establishing a nonindigenous aquatic nuisance prevention and control program within the National Oceanic and Atmospheric Administration and projected funding for such a program for the following five fiscal years.

SEC. 204. REPEAL OF NATIONAL OCEAN POLLUTION PLANNING ACT OF 1978.

The National Ocean Pollution Planning Act of 1978 (33 U.S.C. 1701-1709) is repealed.

SEC. 205. NOAA OIL AND HAZARDOUS SUBSTANCE SPILL COST REIMBURSEMENT.

(a) Treatment of Amounts Received as Reimbursement of Expenses.—Notwithstanding any other provision of law, amounts received by the United States as reimbursement of expenses related to oil or hazardous substance spill response activities, or natural resource damage assessment, restoration, rehabilitation, replacement, or acquisition activities, conducted (or to be conducted) by the National Oceanic and Atmospheric Administration—

(1) shall be deposited into the Fund;

(2) shall be available, without fiscal year limitation and without apportionment, for use in accordance with the law under which the activities are conducted; and

(3) shall not be considered to be an augmentation of appropriations.

(b) Application.—Subsection (a) shall apply to amounts described in subsection (a) that are received—

(1) after the date of the enactment of this Act; or

(2) with respect to the oil spill associated with the grounding of the EXXON VALDEZ.

(c) Definitions.—For purposes of this section—

(1) the term "Fund" means the Damage Assessment and Restoration Revolving Fund of the National Oceanic and Atmospheric Administration referred to in title I of Public Law 101-515 under the heading "National Oceanic and Atmospheric Administration" (104 Stat. 2105); and

(2) the term "expenses" includes incremental and base salaries, ships, aircraft, and associated indirect costs, except the term does not include base salaries and benefits of National Oceanic and Atmospheric Administration Support Coordinators.

TITLE III—NOAA MARINE FISHERY PROGRAMS

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

The National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409) is amended—

(1) in section 2(a) by striking "$26,500,000" and all that follows through "fiscal year 1989" and inserting in lieu thereof "$47,933,000 for fiscal year 1992 and $59,162,000 for fiscal year 1993";

(2) in section 3(a) by striking "$35,000,000" the first time it appears and all that follows through "fiscal year 1989" and inserting in lieu thereof "$27,290,000 for fiscal year 1992 and $35,594,000 for fiscal year 1993"; and

(3) in section 4(a) by striking "$10,000,000" and all that follows through "fiscal year 1989" and inserting in lieu thereof "$12,182,000 for fiscal year 1992 and $18,838,000 for fiscal year 1993".

SEC. 302. DEVELOPMENT OF DOLPHIN-SAFE METHODS OF TUNA FISHING.

Section 2 of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409) is amended by adding at the end the following new subsection:

"(d) Of the sums authorized under subsection (a) of this section, $1,000,000 for each of the fiscal years 1992 and 1993 are authorized to be appropriated for the purpose of developing dolphin-safe method of locating and catching yellowfin tuna. Such authorization shall be in addition to moneys authorized under section 7 of the Act entitled 'An Act to improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes, approved October 9, 1981 (16 U.S.C. 1384). Within six months after the date of enactment of this subsection, the Secretary, in cooperation with the Inter-American Tropical Tuna Commission and after consultation with interested persons, shall publish a program plan for public comment that shall provide for—

"(1) cooperative research to improve understanding of the behavioral association of dolphins and yellowfin tuna in the eastern tropical Pacific Ocean;

"(2) development, testing, and implementation of new methods of locating and catching yellowfin tuna without the incidental taking of dolphins; and

"(3) appropriate measures to ensure program participation and sharing of associated costs by each foreign government that conducts, or authorizes its nationals to conduct, yellowfin tuna fishing in the eastern tropical Pacific Ocean.".

SEC. 303. FISHERIES RESEARCH.

Section 304(e) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(e)) is amended by redesignating paragraphs (1), (2), and (3), and any reference thereto, as paragraphs (2), (3), and (4), respectively, and by inserting immediately after "Fisheries Research.—" the following: "(1) The Secretary shall initiate and maintain, in cooperation with the Councils, a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management and on the economics of the fisheries.".

SEC. 304. FISHERY FACILITIES.

Section 1101(k) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271(k)), is amended—

(1) by striking "or" at the end of paragraph (1);

(2) by adding "or" at the end of paragraph (2); and

(3) by inserting immediately after paragraph (2) the following new paragraph:

"(3) for aquaculture, including operations on land or elsewhere—

"(A) any structure or appurtenance thereto designed for aquaculture;

"(B) the land necessary for any such structure or appurtenance described in subparagraph (A);

"(C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A); and

"(D) any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for aquaculture;".

SEC. 305. STUDY OF JOINT ENFORCEMENT OF FISHERIES REGULATIONS.

Not later than 4 months after the date of enactment of this Act, the Secretary of Transportation and the Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a joint report describing methods by which Coast Guard enforcement efforts in the western Pacific Ocean under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) may be enhanced and coordinated with those of the National Oceanic and Atmospheric and Atmospheric Administration. The report shall—

(1) evaluate the ability of the Coast Guard to address key enforcement problems, which the Secretary of Commerce shall identify, for the western Pacific Ocean, particularly in the exclusive economic zone adjacent to the Hawaiian Islands, the Northern Mariana Islands, and the territories and possessions of the United States;

(2) propose procedures by which the Coast Guard and the National Oceanic and Atmospheric Administration may coordinate their efforts to improve and maximize effective enforcement of fisheries regulations, including but not limited to the chartering of light aircraft for fisheries surveillance and enforcement; and

"(3) recommend appropriate levels of Coast Guard participation in such efforts.

SEC. 306. STUDY ON EFFECTS OF DOLPHIN FEEDING.

(a) Study.—The Secretary of Commerce shall conduct a study in the eastern Gulf of Mexico on the effects of feeding of noncaptive dophins by human beings. The study conducted pursuant to this section shall be designed to detect any behavior or diet modification resulting from this feeding and to identify the effects, if any, of these modifications on the health and well-being of the dolphins.

(b) EXTERNAL REVIEW.—In design and conduct of the study required under subsection (a), the Secretary shall consult with the National Academy of Sciences and the Marine Mammal Commission.

(c) REPORT.—Within 18 months after the date of the enactment of this Act, the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study conducted pursuant to subsection (a).

SEC. 307. CHESAPEAKE BAY ESTUARINE RESOURCES OFFICE.

"(a) ESTABLISHMENT.—(1) The Secretary of Commerce shall establish, within the National Oceanic and Atmospheric Administration, an office to be known as the Chesapeake Bay Estuarine Resources Office (hereinafter referred to as the "Office").

(2) The Office shall be headed by a Director who shall be appointed by the Secretary of Commerce, in consultation with the Chesapeake Bay Executive Council. Any individual appointed as Director shall have knowledge and experience in research or resource management efforts in the Chesapeake Bay.

(3) The Director may appoint such additional personnel for the Office as the Director determines necessary to carry out this section.

(b) FUNCTIONS.—The Office, in consultation with the Chesapeake Bay Executive Council, shall—

(1) provide technical assistance to the Administrator, to other Federal departments and agencies, and to State and local governments agencies in—

(A) assessing the processes that shape the Chesapeake Bay system and affect its living resources;

(B) identifying technical and management alternatives for the restoration and protection of living resources and the habitats they depend upon; and

(C) monitoring the implementation and effectiveness of management plans;

(2) develop and implement a strategy for the National Oceanic and Atmospheric Administration that integrates the science, research, monitoring, data collection, regulatory, and management responsibilities of the Secretary of Commerce in such a manner as to assist the cooperative, intergovernmental Chesapeake Bay Program to meet the commitments of the Chesapeake Bay Agreement;

(3) coordinate the programs and activities of the various organizations within the National Oceanic and Atmospheric Administration and the Chesapeake Bay Regional Sea Grant Programs (including programs and activities in coastal and estuarine research, monitoring, and assessment; fisheries research and stock assessments; data management; remote sensing; coastal management; and habitat conservation);

(4) coordinate the activities of the National Oceanic and Atmospheric Administration with the activities of the Environmental Protection Agency and other Federal, State, and local agencies;

(5) establish an effective mechanism which shall ensure that projects have undergone appropriate peer review and provide other appropriate means to determine that projects have acceptable scientific and technical merit for the purpose of achieving maximum utilization of available funds and resources to benefit the Chesapeake Bay area;

(6) remain cognizant of ongoing research, monitoring, and management projects and assist in the dissemination of the result and findings of those projects; and

(7) submit a biennial report to the Congress and the Secretary of Commerce with respect to the activities of the Office and on the progress made in protecting and restoring the living resources and habitat of the Chesapeake Bay.

(c) BUDGET LINE ITEM.—The Secretary of Commerce shall identify, in the President's annual budget to the Congress, the funding request for the Office.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 2 of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409), as amended by section 302 of this Act, is further amended by adding at the end the following new subsection:

"(e) Of the sums authorized under subsection (a) of this section, no more than $2,500,000 is authorized to be appropriated for each of the fiscal years 1992 and 1993 to enable the National Oceanic and Atmospheric Administration to establish the Chesapeake Bay Estuarine Resources Office under section 306 of the National Oceanic and Atmospheric Administration Authorization Act of 1991. No more than 20 percent of the amount appropriated under the authorization in this subsection shall be used for administrative purposes.".

(e) CHESAPEAKE EXECUTIVE COUNCIL.—For purposes of this section, "Chesapeake Executive Council" means the representatives from the Commonwealth of Virginia, the State of Maryland, the Commonwealth of Pennsylvania, the Environmental Protection Agency, the District of Columbia, and the Chesapeake Bay Commission, who are signatories to the Chesapeake Bay Agreement, and any future signatories to that Agreement.

SEC. 308. NATIONAL SHELLFISH INDICATOR PROGRAM.

(a) ESTABLISHMENT OF A RESEARCH PROGRAM.—The Secretary of Commerce, in cooperation with the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, shall establish and administer a 5-year national shellfish research program (hereafter in this section referred to as the "Program") for the purpose of improving existing classification systems for shellfish growing waters using the latest technological advancements in microbiology and epidemiological methods. Within 12 months after the date of enactment of this Act, the Secretary of Commerce, in cooperation with the advisory committee established under subsection (b) and the Consortium, shall develop a comprehensive 5-year plan for the Program which shall at a minimum provide for—

(1) an environmental assessment of commercial shellfish growing areas in the United States, including an evaluation of the relationships between indicators of fecal contamination and human enteric pathogens;

(2) the evaluation of such relationships with respect to potential health hazards associated with human consumption of shellfish;

(3) a comparison of the current microbiological methods used for evaluating indicator bacteria and human enteric pathogens in shellfish and shellfish growing waters with new technological methods designed for this purpose;

(4) the evaluation of current and projected systems for human sewage treatment in eliminating viruses and other human enteric pathogens which accumulate in shellfish;

(5) the design of epidemiological studies to relate microbiological data, sanitary survey data, and human shellfish consumption data to actual hazards to health associated with such consumption; and

(6) recommendations for revising Federal shellfish standards and improving the capabilities of Federal and State agencies to effectively manage shellfish and ensure the safety of shellfish intended for human consumption.

(b) ADVISORY COMMITTEE.—(1) For the purpose of providing oversight of the Program on a continuing basis, an advisory committee (hereafter in this section referred to as the "Committee") shall be established under a memorandum of understanding between the Interstate Shellfish Sanitation Conference and the National Marine Fisheries Service.

(2) The Committee shall—

(A) identify priorities for achieving the purpose of the Program;

(B) review and recommend approval or disapproval of Program work plans and plans of operation;

(C) review and comment on all subcontracts and grants to be awarded under the Program;

(D) receive and review progress reports from the Consortium and Program subcontractors and grantees; and

(E) provide such other advice on the Program as is appropriate.

(3) The Committee shall consist of at least 10 members and shall include—

(A) three members representing agencies having authority under State law to regulate the shellfish industry, of whom one shall represent each of the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions;

(B) three members representing persons engaged in the shellfish industry in the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions (who shall be appointed from among at least six recommendations by the industry members of the Interstate Shellfish Sanitation Conference Executive Board), of whom one shall represent the shellfish industry in each region;

(C) three members, of whom one shall represent each of the following Federal agencies: the National Oceanic and Atmospheric Administration, the Environmental Protection Agency, and the Food and Drug Administration; and

(D) one member representing the Shellfish Institute of North America.

(4) The Chairman of the Committee shall be selected from among the Committee members described in paragraph (3)(A).

(5) The Committee shall establish and maintain a subcommittee of scientific experts to provide advice, assistance, and information relevant to research funded under the Program, except that no individual who is awarded, or whose application is being considered for, a grant or subcontract under the Program may serve on such subcommittee. The membership of the subcommittee shall, to the extent practicable, be regionally balanced with experts who have scientific knowledge concerning each of the Atlantic, Pacific, and Gulf of Mexico shellfish growing regions. Scientists from the National Academy of Sciences and appropriate Federal agencies (including the National Oceanic and Atmospheric Administration, Food and Drug Administration, Centers for Disease Control, National Institutes of Health, Environmental Protection Agency, and National Science Foundation) shall be considered for membership on the subcommittee.

(6) Members of the Committee and its scientific subcommittee establish under this subsection shall not be paid for serving on

the Committee or subcommittee, but shall receive travel expenses as authorized by section 5703 of title 5, United States Code.

(c) CONTRACT WITH CONSORTIUM.—Within 30 days after the date of enactment of this Act, the Secretary of Commerce shall seek to enter into a cooperative agreement or contract with the Consortium under which the Consortium will—

(1) be the academic administrative organization and fiscal agent for the Program;

(2) award and administer such grants and subcontracts as are approved by the Committee under subsection(b);

(3) develop and implement a scientific peer review process for evaluating grant and subcontractor applications prior to review by the Committee;

(4) in cooperation with the Secretary of Commerce and the Committee, procure the services of a scientific project director;

(5) develop and submit budgets, progress reports, work plans, and plans of operation for the Program to the Secretary of Commerce and the Committee; and

(6) make available to the Committee such staff, information, and assistance as the Committee may reasonably require to carry out its activities.

(d) REPORTING REQUIREMENTS.—Within 3 months after the date of enactment of this Act and within each of the next three consecutive 3-month intervals, the Secretary of Commerce shall provide Congress with written assessments of Federal efforts to implement this section. In addition, the Secretary of Commerce shall submit an annual report to Congress on the Program, including a description of the research funded under the Program and the results of such research.

(e) AUTHORIZATION OF APPROPRIATIONS.—(1) Of the sums authorized under section 4(a) of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98-210; 97 Stat. 1409), there are authorized to be appropriated to the Secretary of Commerce $5,200,000 for each of the fiscal years 1993 through 1997 for carrying out the Program. Of the amounts appropriated pursuant to this authorization, not more than 5 percent of such appropriation may be used for administrative purposes by the National Oceanic and Atmospheric Administration. The remaining 95 percent of such appropriation shall be used to meet the administrative and scientific objectives of the Program.

(2) The Interstate Shellfish Sanitation Conference shall not administer appropriations authorized under this section, but may be reimbursed from such appropriations for its expenses in arranging for travel, meetings, workshops, or conferences necessary to carry out the Program.

(f) DEFINITIONS.—As used in this section, the term—

(1) "Consortium" means the Louisiana Universities Marine Consortium; and

(2) "shellfish" means any species of oyster, clam, or mussel that is harvested for human consumption.

SEC. 309. COOPERATIVE INSTITUTE OF FISHERIES OCEANOGRAPHY.

The Secretary of Commerce shall acquire on a long-term basis from the Administrator of General Services space on Pivers Island in Beaufort, North Carolina, that is needed to implement the memorandum of understanding of March 2, 1989, between the National Oceanic and Atmospheric Administration, Duke University, and the University of North Carolina establishing the Cooperative Institute of Fisheries Oceanography. This section shall not apply if the annual cost of leasing the required space exceeds $2,000,000.

SEC. 310. UNITED STATES GULF OF MEXICO AND SOUTH ATLANTIC SHRIMP FISHERY STUDY.

(a) STUDY.—(1) The Secretary of Commerce shall conduct a comprehensive economic study to provide baseline information to guide policy decisions on the future of the United States Gulf of Mexico and South Atlantic shrimp fishery. Funds shall only be expended under the terms of paragraph (2) of this section.

(2) The study shall—

(A) gather information as to the extent to which governmental and economic factors have affected or may affect the United States Gulf of Mexico and South Atlantic shrimp fishery;

(B) attempt to expand available historical data through survey contacts and cooperation with the industry; and

(C) incorporate the results of the studies on the United States Gulf of Mexico and South Atlantic shrimp fishery that are underway or completed on the date this section is effective.

(b) REPORT.—The Secretary of Commerce shall submit a report to Congress detailing the results of this study no later than October 1, 1993.

(c) AUTHORIZATION.—There is authorized to be appropriated to carry out the provisions of this section $1,000,000 for fiscal year 1993. None of the funds authorized under section 304(g) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(g)) may be used to carry out the provisions of this section.

SEC. 311. REPORT ON SATELLITE CAPABILITIES FOR FISHERIES ENFORCEMENT.

(a) IN GENERAL.—Not later than six months after the date of the enactment of this Act, the Secretary of Commerce, in consultation with the heads of other Federal agencies, shall prepare and submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a report describing how current and planned satellite capabilities of the Federal Government can aid in the enforcement of Federal fisheries laws and international fisheries conservation programs.

(b) REPORT CONTENTS.—The report under subsection (a) shall include consideration of—

(1) active, transponder-based systems and passive, vessel signature-based technologies capable of localizing or identifying individual vessels without the use of vessel-carried transmitters;

(2) the resolution, coverage periods, and all-weather effectiveness of each technology and the real-time data delivery capacity of the various systems;

(3) a description of the technological requirements (including data processing and transfer procedures) and institutional requirements necessary to transfer satellite data to end users for management and enforcement purposes; and

(4) the status of foreign civil satellites and the feasibility of their application to international vessel location and monitoring.

SEC. 312. DEMONSTRATION PROJECT FOR SEAFOOD HANDLING TRAINING AND EDUCATION.

(a) GRANTS.—The Secretary of Commerce may make annual grants to the City of San Francisco and the Port of San Francisco for each of the fiscal years 1992 and 1993 for a joint project at the San Francisco Wharf to demonstrate safe seafood handling and to conduct seafood education programs.

(b) AUTHORIZATION OF APPROPRIATIONS.—For grants under this section, there are authorized to be appropriated to the Secretary of Commerce—

(1) $250,000 for fiscal year 1992; and

(2) $350,000 for fiscal year 1993.

Such funds shall remain available until expended.

SEC. 313. BOWHEAD WHALE STUDY.

Notwithstanding any other provision of law, the Department of Commerce and the Department of the Interior are authorized to pay as appropriate, $48,464, plus interest since June 6, 1988, to reimburse any unpaid costs incurred in the research and preparation of a paper entitled "Quantification of Subsistence and Cultural Need for Bowhead Whales by Alaska Eskimos", which was presented by the United States to the 40th Annual Meeting of the International Whaling Commission.

SEC. 314. FISHERIES RESEARCH CENTER.

The Secretary of Commerce, through the Under Secretary of Commerce for Oceans and Atmosphere, is authorized to construct a building, on approximately 15 acres of land to be leased from the University of Southwest Louisiana for a 99-year term. This section shall not apply if the annual cost of leasing the required land exceeds one dollar. This authorization is subject to the availability of appropriations provided in advance for the purpose stated in this section.

SEC. 315. PASCAGOULA LABORATORY WAREHOUSE FACILITIES.

Due to the logistical crisis at the National Marine Fisheries Service Laboratory at Pascagoula, Mississippi, the Administrator of the National Oceanic and Atmospheric Administration should give immediate consideration to upgrading dock and warehouse support facilities at such Laboratory in fiscal year 1993.

TITLE IV—ADMINISTRATION AND OTHER ACCOUNTS

SEC. 401. PROGRAM SUPPORT.

(a) EXECUTIVE DIRECTION AND ADMINISTRATIVE ACTIVITIES.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out executive direction and administrative activities (including management, administrative support, provision of retired pay of National Oceanic and Atmospheric Administration commissioned officers, and policy development) under the Act entitled "An Act to clarify the status and benefits of commissioned officers of the National Oceanic and Atmospheric Administration, and for other purposes", approved December 31, 1970 (33 U.S.C. 857-1 et seq.), and any other law involving those activities, $68,460,000 for fiscal year 1992 and $75,750,000 for fiscal year 1993.

(b) MARINE SERVICES.—(1) There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out marine services activities (including ship operations, maintenance, and support) under the Act of 1947 and any other law involving those activities, $63,407,000 for fiscal year 1992 and $68,518,000 for fiscal year 1993.

(2) There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to acquire a multibeam sonar mapper, $1,500,000 for fiscal year 1993.

(3) In addition to sums authorized in paragraphs (1) and (2), there are authorized to be appropriated to the Secretary of Commerce $1,040,000 for fiscal year 1993 for the reactivation and operation of the research vessel ALBATROSS IV.

(4)(A) Unless necessary for safety reasons, the Secretary of Commerce shall not deactivate the ALBATROSS IV (if active), until an equivalent replacement vessel is operational.

(B) The Secretary of Commerce shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives 60 days prior to the proposed deactivation of any other research vessel of that National Oceanic and Atmospheric Administration, if an equivalent replacement vessel will not become operational at the time of deactivation.

(5) The Secretary of Commerce shall consult with the Oceanographer of the Navy regarding appropriate cost effective and practical measures to allow vessels of the National Oceanic and Atmospheric Administration to be interoperable with vessels of the Department of the Navy, including with respect to operation, maintenance, and repair of those vessels.

(c) AIRCRAFT SERVICES.—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out aircraft services activities (including aircraft operations, maintenance, and support) under the Act of 1890 and any other law involving those activities, $8,865,000 for fiscal year 1992 and $10,336,000 for fiscal year 1993.

SEC. 402. CONSTRUCTION.

There are authorized to be appropriated to the Secretary of Commerce, for acquisition, construction, maintenance, and operation of facilities of the National Oceanic and Atmospheric Administration under any law involving those activities, $34,917,000 for fiscal year 1992 and $94,500,000 for fiscal year 1993.

SEC. 403. NOTICE OF REPROGRAMMING.

(a) IN GENERAL.—The Secretary of Commerce shall provide notice to the Committee on Commerce, Science, and Transportation and Committee on Appropriations of the Senate and to the Committee on Merchant Marine and Fisheries, Committee on Science, Space, and Technology, and Committee on Appropriations of the House of Representatives, not less than 15 days before reprogramming funds available for a program, project, or activity of the National Oceanic and Atmospheric Administration in an amount greater than the lesser of $250,000 or 5 percent of the total funding of such program, project, or activity if the reprogramming—

(1) augments an existing program, project, or activity;

(2) reduces by 5 percent or more (A) the funding for an existing program, project, or activity or (B) the numbers of personnel therefor as approved by Congress; or

(3) results from any general savings from a reduction in personnel which would result in a change in an existing program, project, or activity.

(b) NOTICE OF REORGANIZATION.—The Secretary of Commerce shall provide notice to the Committees on Merchant Marine and Fisheries, Science, Space, and Technology, and Appropriations of the House of Representatives, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate not later than 15 days before any major reorganization of any program, project, or activity of the National Oceanic and Atmospheric Administration.

SEC. 404. FINANCIAL ASSISTANCE.

(a) PROCESSING OF APPLICATIONS.—Within 12 months after the date of enactment of this Act, the Secretary of Commerce shall develop and, after notice and opportunity for public comment, promulgate regulations or guidelines to ensure that a complete application for a grant, contract, or other financial assistance under a nondiscretionary assistance program shall be processed and approved or disapproved within 75 days after submission of the application to the responsible program office of the National Oceanic and Atmospheric Administration.

(b) NOTIFICATION OF APPLICANT.—Not later than 14 days after the date on which the Secretary of Commerce receives an application for a contract, grant, or other financial assistance provided under a nondiscretionary assistance program administered by the National Oceanic and Atmospheric Administration, the Secretary shall indicate in writing to the applicant whether or not the application is complete and, if not complete, shall specify the additional material that the applicant must provide to complete the application.

(c) EXEMPTION.—In the case of a program for which the recipient of a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, a State or an interstate fishery commission, such financial assistance may be provided by the Secretary to that recipient on a sole-source basis, notwithstanding any other provision of law.

(d) DEFINITION.—In this section, the term "nondiscretionary assistance program" means any program for providing financial assistance—

(1) under which the amount of funding for, and the intended recipient of, the financial assistance is specified by Congress; or

(2) the recipients of which have customarily been a State or an interstate fishery commission.

SEC. 405. PRICE FREEZE ON CHARTS AND OTHER PRODUCTS OF NOAA.

Notwithstanding section 1307 of title 44, United States Code, the price of nautical charts or other nautical products produced or published by the National Oceanic and Atmospheric Administration and sold after the date of the enactment of this Act shall not exceed the price of that type of chart or product on the date of enactment of this Act adjusted for inflation. This section shall not apply after September 30, 1994.

SEC. 406. COOPERATIVE AGREEMENTS.

The Secretary of Commerce, acting through the Under Secretary of Commerce for Oceans and Atmosphere, may enter into cooperative agreements and other financial agreements with any nonprofit organizations to—

(1) aid and promote scientific and educational activities to foster public understanding of the National Oceanic and Atmospheric Administration or its programs; and

(2) solicit private donations for the support of such activities.

SEC. 407. RECRUITMENT OF MINORITIES AND WOMEN FOR NOAA SCIENCE EDUCATION ACTIVITIES.

(a) FINDINGS.—The Congress finds the following:

(1) In this decade, more than two-thirds of the new entrants to the United States labor force will be minorities and women—groups which for the most part have been historically underrepresented in the sciences.

(2) The National Science Foundation estimates that by the year 2000, the United States will face a shortfall of more than 400,000 science and engineering personnel.

(3) Given the demographics of the United States workforce, the problem of underrepresented minorities and women in the sciences and engineering could seriously compromise the industrial and technological capability of the United States, as well as its ability to compete in international marketplaces.

(4) The National Oceanic and Atmospheric Administration has made important efforts to promote education programs in the sciences for students, teachers, and other citizens.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that the National Oceanic and Atmospheric Administration should continue to expand its educational programs in the sciences, and in this effort, that the National Oceanic and Atmospheric Administration should develop and promote programs that reach out to and recruit minorities and women for education in the sciences.

TITLE V—NATIONAL MARINE MONITORING PROGRAM

SEC. 501. AMENDMENT.

The Marine Protection, Research, and Sanctuaries Act of 1972 is amended by adding at the end the following new title:

"TITLE V—NATIONAL COASTAL MONITORING ACT

"SEC. 501. PURPOSES.

"The purposes of this title are to—

"(1) establish a comprehensive national program for consistent monitoring of the Nation's coastal ecosystems;

"(2) establish long-term water quality assessment and monitoring programs for high priority coastal waters that will enhance the ability of Federal, State, and local authorities to develop and implement effective remedial programs for those waters;

"(3) establish a system for reviewing and evaluating the scientific, analytical, and technological means that are available for monitoring the environmental quality of coastal ecosystems;

"(4) establish methods for identifying uniform indicators of coastal ecosystem quality;

"(5) provide for periodic, comprehensive reports to Congress concerning the quality of the Nation's coastal ecosystems;

"(6) establish a coastal environment information program to distribute coastal monitoring information;

"(7) provide state programs authorized under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*) with information necessary to design land use plans and coastal zone regulations that will contribute to the protection of coastal ecosystems; and

"(8) provide certain water pollution control programs authorized under the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) with information necessary to design and implement effective coastal water pollution controls.

"SEC. 502. DEFINITIONS.

"For the purposes of this title, the term—

"(1) 'Administrator' means the Administrator of the Environmental Protection Agency;

"(2) 'coastal ecosystem' means a system of interacting biological, chemical, and physical components throughout the water column, water surface, and benthic environment of coastal waters;

"(3) 'coastal water quality' means the physical, chemical and biological parameters that relate to the health and integrity of coastal ecosystems;

"(4) 'coastal water quality monitoring' means a continuing program of measurement, analysis, and synthesis to identify and quantify coastal water quality conditions and trends to provide a technical basis for decision making;

"(5) 'coastal waters' mean waters of the Great Lakes, including their connecting waters and those portions of rivers, streams, and other bodies of water having unimpaired connection with the open sea up to the head of tidal influence, including wetlands, intertidal areas, bays, harbors, and lagoons, including waters of the territorial sea of the United States and the contiguous zone"; and

"(6) 'Under Secretary' means Under Secretary of Commerce for Oceans and Atmosphere.

"SEC. 503. COMPREHENSIVE COASTAL WATER QUALITY MONITORING PROGRAM.

"(a) Authority; Joint Implementation.—(1) The Administrator and the Under Secretary, in conjunction with other Federal, State, and local authorities, shall jointly develop and implement a program for the long-term collection, assimilation, and analysis of scientific data designed to measure the environmental quality of the Nation's coastal ecosystems pursuant to this section. Monitoring conducted pursuant to this section shall be coordinated with relevant monitoring programs conducted by the Administrator, Undersecretary, and other Federal, State, and local authorities.

"(2) Primary leadership for the monitoring program activities conducted by the Environmental Protection Agency pursuant to this section shall be located at the Environmental Research Laboratory in Narragansett, Rhodes Island.

"(b) Program Elements.—The Comprehensive Coastal Water Quality Monitoring Program shall include, but not be limited to—

"(1) identification and analysis of the status of environmental quality in the Nation's coastal ecosystems, including but not limited to, assessment of—

"(A) ambient water quality, including contaminant levels in relation to criteria and standards issued pursuant to title III or the Federal Water Pollution Control Act (33 U.S.C. 1311 *et seq.*);

"(B) benthic environmental quality, including analysis or contaminant levels in sediments in relation to criteria and standards issued pursuant to title III of the Federal Water Pollution Control Act (33 U.S.C. 1311 *et seq.*); and

"(C) health and quality of living resources.

"(2) identification of sources of environmental degradation affecting the Nation's coastal ecosystems;

"(3) assessment of the impact of governmental programs and management strategies and measures designed to abate or prevent the environmental degradation of the Nation's coastal ecosystems;

"(4) assessment of the accumulation of floatables along coastal shorelines;

"(5) analysis of expected short-term and long-term trends in the environmental quality of the Nation's coastal ecosystems; and

"(6) the development and implementation of intensive coastal water quality monitoring programs in accordance with subsection (d).

"(c) Monitoring Guidelines and Protocols.

"(1) Guidelines.—Not later than 18 months after the date of the enactment of this title, the Administrator and the Under Secretary shall jointly issue coastal water quality monitoring guidelines to assist in the development and implementation of coastal water quality monitoring programs. The guidelines shall—

"(A) provide an appropriate degree of uniformity among the coastal water quality monitoring methods and data while preserving the flexibility of monitoring programs to address specific needs;

"(B) establish scientifically valid monitoring methods that will—

"(i) provide simplified methods to survey and assess the water quality and ecological health of coastal waters;

"(ii) identify and quantify through more intensive efforts the severity of existing or anticipated problems in selected coastal waters;

"(iii) identify and quantify sources of pollution that cause or contribute to those problems, including point and nonpoint sources;

"(iv) evaluate over time the effectiveness of efforts to reduce or eliminate pollution from those sources;

"(C) provide for data compatibility to enable data to be efficiently stored and shared by various users; and

"(D) identify appropriate physical, chemical, and biological indicators of the health and quality of coastal ecosystems.

"(2) Technical protocols.—Guidelines issued under paragraph (1) shall include protocols for—

"(A) designing statistically valid coastal water quality monitoring networks and monitoring surveys, including assessment of the accumulation of floatables.

"(B) sampling and analysis, including appropriate physical and chemical parameters, living resource parameters, and sediment analysis techniques; and

"(C) quality control, quality assessment, and data consistency and management.

"(3) Periodic review.—The Administrator and the Under Secretary shall periodically review the guidelines and protocols issued under this subsection to evaluate their effectiveness, the degree to which they continue to answer program objectives and provide an appropriate degree of uniformity while taking local conditions into account, and any need to modify or supplement them with new guidelines and protocols, as needed.

"(4) Discharge permit data.—The Administrator or a State permitting authority shall ensure that compliance monitoring conducted pursuant to section 402(a)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1342(a)(2)) for permits for discharges to coastal waters is consistent with the guidelines issued under this subsection. Any modifications of discharge permits necessary to implement this subsection shall be deemed to be minor modifications of such permit. Nothing in this subsection requires dischargers to conduct monitoring other than compliance monitoring pursuant to permits under section 402(a)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1342(a)(2)).

"(d) Intense Coastal Water Quality Monitoring Programs.—

"(1) In general.—The Comprehensive Coastal Water Quality Monitoring Program established pursuant to this section shall include intensive coastal water quality monitoring programs developed under this subsection.

"(2) Designation of intensive monitoring areas.—Not later than 24 months after the date of enactment of this title and periodically thereafter, the Administrator and the Under Secretary shall, based on recommendations by the National Research Council, jointly designate coastal areas to be intensively monitored.

"(3) Identification of suitable coastal areas.—(A) The Administrator and the Under Secretary shall contract with the National Research Council to conduct a study to identify coastal areas suitable for the establishment of intensive coastal monitoring programs. In identifying these coastal areas, the National Research Council shall consider areas that—

"(i) are representative of coastal ecosystems throughout the United States;

"(ii) will provide information to assess the status and trends of coastal water quality nation-wide; and

"(iii) would benefit from intensive water quality monitoring because of local management needs.

"(B) In making recommendations under this paragraph, the National Research Council shall consult with Regional Research Boards established pursuant to title IV of this Act.

"(C) The National Research Council shall, within 18 months of the date of enactment of this title, submit a report to the Administrator and the Under Secretary listing areas suitable for intensive monitoring.

"(D) The Administrator and the Under Secretary, in conjunction with other Federal, State, and local authorities, shall develop and implement multi-year programs of intensive monitoring for Massachusetts and Cape Cod Bays, the Gulf of Maine, the Chesapeake Bay, the Hudson-Raritan Estuary, and each area jointly designated by the Administrator and the Under Secretary pursuant to paragraph (2).

"(4) Intensive coastal water quality monitoring programs.—Each intensive coastal water quality monitoring program developed pursuant to this subsection shall—

"(A) identify water quality conditions and problems and provide information to assist in improving coastal water quality;

"(B) clearly state the goals and objectives of the monitoring program and their relationship to the water quality objectives for coastal waters covered by the program;

"(C) identify the water quality and biological parameters of the monitoring program and their relationship to these goals and objectives;

"(D) describe the types of monitoring networks, surveys and other activities to be used to achieve these goals and objectives, using where appropriate the guidelines issued under subsection (c);

"(E) survey existing Federal, State, and local coastal monitoring activities and private compliance monitoring activities in or on the coastal waters covered by the program, describe the relationship of the program to those other monitoring activities, and integrate them, as appropriate, into the intensive monitoring program;

"(F) describe the data management and quality control components of the program;

"(G) specify the implementation requirements for the program, including—

"(i) the lead Federal, State, or regional authority that will administer the program;

"(ii) the public and private parties that will implement the program;

"(iii) a detailed schedule for program implementation;

"(iv) all Federal and State responsibilities for implementing the program; and

"(v) the changes in Federal, State, and local monitoring program necessary to implement the program;

"(H) estimate the costs to Federal and State governments, and other participants, of implementing the monitoring program; and

"(I) describe the methods to assess periodically the success of the monitoring program in meeting its goals and objectives, and the manner in which the program may be modified from time-to-time.

"(5) Criteria for monitoring Massachusetts and Cape Cod bays.—In addition to the criteria listed in paragraph (4), the intensive monitoring program for Massachusetts and Cape Cod Bays shall establish baseline data on environmental phenomena (such as quantity of bacteria and quality of indigenous species, and swimmability) and determine the ecological impacts resulting from major point source discharges.

"(6) MEMORANDUM OF UNDERSTANDING.—Prior to implementing any intensive coastal water quality monitoring program under this subsection, the Administrator and the Under Secretary shall enter into a Memorandum of Understanding to implement the intensive coastal water quality monitoring programs and may extend the Memorandum of Understanding to include other appropriate Federal agencies. The Memorandum of Understanding shall identify the monitoring and reporting responsibilities of each agency and shall encourage the coordination of monitoring activities.

"(7) IMPLEMENTATION.—(A) The Administrator, the Under Secretary, the Governor of each State having waters subject to an intensive coastal water quality monitoring program developed pursuant to this subsection shall ensure compliance with that program.

"(B) The Administrator and the Under Secretary are authorized to enter into cooperative agreements to provide financial assistance to non-Federal agencies and institutions to support implementation of intensive monitoring programs under this subsection. Federal financial assistance may only be provided on the condition that not less than fifty percent of the costs of the monitoring to be conducted by a non-Federal agency or institution is provided from non-Federal funds.

"(e) COMPREHENSIVE IMPLEMENTATION STRATEGY.—

"(1) IN GENERAL.—Within 1 year after the date of enactment of this title, the Administrator and the Under Secretary shall jointly submit to Congress a Comprehensive Implementation Strategy identifying the current and planned activities to implement the Comprehensive Coastal Monitoring Program pursuant to this section.

"(2) CONSULTATION.—The Administrator and the Under Secretary shall consult with the National Academy of Sciences, the Director of the U.S. Fish and Wildlife Service, the Director of the Minerals Management Service, the Commandant of the Coast Guard, the Secretary of the Navy, the Secretary of Agriculture, the heads of any other relevant Federal or regional agencies, and the Governors of coastal States in developing the Strategy.

"(3) PUBLIC COMMENT.—Not less than 3 months before submitting the Strategy to Congress, the Administrator and the Under Secretary shall jointly publish a draft version of the Strategy in the Federal Register and shall solicit public comments regarding the Strategy.

"(4) MEMORANDUM OF UNDERSTANDING.—Within 1 year after submission of the Strategy under paragraph (1), the Administrator and the Under Secretary shall enter into a Memorandum of Understanding with appropriate Federal agencies necessary to effect the coordination of Federal coastal monitoring programs. The Memorandum of Understanding shall identify the monitoring and reporting responsibilities of each agency and shall encourage the coordination of monitoring activities where possible.

"SEC. 504. REPORT TO CONGRESS.

"On September 20 of every other year beginning in 1993, the Administrator and the Under Secretary shall jointly submit to the Committee on Commerce, Science, and Transportation and the Committee on Environment and Public Works of the Senate and the Committee on Merchant Marine and Fisheries and the Committee on Public Works and Transportation of the House of Representatives a report describing the condition of the nation's coastal ecosystems, including the following:

"(1) an assessment of the status and health of the Nation's coastal ecosystems;

"(2) an evaluation of environmental trends in coastal ecosystems;

"(3) identification of sources of environmental degradation affecting coastal ecosystems;

"(4) an assessment of the extent to which floatables degrade coastal ecosystems, including trends in the accumulation of floatables and the threat posed by floatables to aquatic life;

"(5) an assessment of the impact of government programs designed to abate the degradation of coastal ecosystems;

"(6) an evaluation of the adequacy of monitoring programs and identification of any additional program elements which may be needed; and

"(7) a summary of monitoring results in areas monitored under subsection 503(d).

"Sec. 505. AUTHORIZATION OF APPROPRIATIONS.

"(a) NOAA AUTHORIZATION.—For development and implementation of programs under this title, including financial assistance to non-Federal agencies and institutions to support implementation of intensive monitoring programs under section 503(d), there is authorized to be appropriated to the Under Secretary amounts not to exceed $5,000,000 for fiscal year 1993, $8,000,000 for fiscal year 1994, $10,000,000 for fiscal year 1995, and $12,000,000 for fiscal year 1996.

"(b) EPA AUTHORIZATION.—For development and implementation of programs under this title, including financial assistance to non-Federal agencies and institutions to support implementation of intensive monitoring programs under section 503(d), there is authorized to be appropriated to the Administrator amounts not to exceed $5,000,000 for fiscal year 1993, $8,000,000 for fiscal year 1994, and $10,000,000 for fiscal year 1995, and $12,000,000 for fiscal year 1996.".

TITLE VI—FLEET MODERNIZATION

SEC. 601. SHORT TITLE.

This title may be cited as the "NOAA Fleet Modernization Act".

SEC. 602. DEFINTIONS.

In this title, the term—

(1) "NOAA" means the National Oceanic and Atmospheric Administration within the Department of Commerce.

(2) "NOAA fleet" means the fleet of research vessels owned or operated by NOAA.

(3) "Plan" means the NOAA Fleet Replacement and Modernization Plan described in section 604.

(4) "Secretary" means the Secretary of Commerce.

(5) "UNOLS" means University-National Oceanographic Laboratory System.

SEC. 603. FLEET REPLACEMENT AND MODERNIZATION PROGRAM.

The Secretary is authorized to implement, subject to the requirements of this Act, a 15-year program to replace and modernize the NOAA fleet.

SEC. 604. FLEET REPLACEMENT AND MODERNIZATION PLAN.

(a) IN GENERAL.—To carry out the program authorized in section 603, the Secretary shall develop and submit to Congress a replacement and modernization Plan for the NOAA fleet covering the years authorized under section 610.

(b) TIMING.—The Plan required in subsection (a) shall be submitted to Congress within 30 days of the date of enactment of this Act, and updated on an annual basis.

(c) PLAN ELEMENTS.—The Plan required in subsection (a) shall include the following—

(1) the number of vessels proposed to be modernized or replaced, the schedule for their modernization or replacement, and anticipated funding requirements;

(2) the number of vessels proposed to be constructed, leased, or chartered;

(3) the number of vessels, or days at sea, that can be obtained by using the vessels of the UNOLS;

(4) the number of vessels that will be made available to NOAA by the Secretary of the Navy, or any other federal official, and the terms and conditions for their availability;

(5) the proposed acquisition of modern scientific instrumentation for the NOAA fleet, including acoustic systems data transmission positioning and communication systems, physical, chemical, and meteorological oceanographic systems, and data acquisition and processing systems: and

(6) the appropriate role of the NOAA Corps in operating and maintaining the NOAA fleet.

(d) CONTRACTING LIMITATION.—The Secretary may not enter into any contract for the construction, lease, or service life extension of a vessel of the NOAA fleet before the date of the submission to Congress of the Plan required in subsection (a).

SEC. 605. DESIGN OF NOAA VESSELS.

(a) DESIGN REQUIREMENT.—Except for the vessel designs identified under subsection (b), the Secretary, working through the Office of the NOAA Corps Operations and the Systems Procurement Office, shall—

(1) prepare requirements for each class of vessel to be constructed or converted under the Plan; and

(2) contract competitively from non-governmental entities with expertise in shipbuilding for vessel design and construction based on the requirements for each class of vessel to be acquired.

(b) EXCEPTION.—The Secretary shall—

(1) report to Congress identifying any existing vessel design or design proposal that meets the requirements of the Plan within 30 days after the date of enactment of this Act and shall promptly advise the Congress of any modification of these designs; and

(2) submit to Congress as part of the annual update of the Plan required in section 604 any subsequent existing vessel design or design proposals that meet the requirements of the Plan.

SEC. 606. CONTRACT AUTHORITY.

(a) MULTIYEAR CONTRACTS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), and notwithstanding section 1341 of title 31, United States Code and section 3732 of the Revised Statutes of the United States (41 U.S.C. 11), the Secretary may acquire vessels for the NOAA fleet by purchase, lease, lease-purchase, or otherwise, under one or more multiyear contracts.

(2) REQUIRED FINDINGS.—The Secretary may not enter into a contract pursuant to this subsection unless the Secretary finds with respect to that contract that—

(A) there is a reasonable expectation that throughout the contemplated contract period the Secretary will request from Congress funding for the contract at the level required to avoid contract termination; and

(B) the use of the contract will promote the best interests of the United States by encouraging competition and promoting economic efficiency in the operation of the NOAA fleet.

(3) REQUIRED CONTRACT PROVISIONS.—Secretary may not enter into a contract pursuant to this subsection unless the contract includes—

(A) a provision under which the obligation of the United States to make payments under the contract for any fiscal year is subject to the availability of appropriations provided in advance for those payments;

(B) a provision that specifies the term of effectiveness of the contract; and

(C) appropriate provisions under which, in case of any termination of the contract before the end of the term specified pursuant to subparagraph (B), the United States shall only be liable for the lesser of—

(i) an amount specified in the contract for such a termination; or

(ii) amounts that—

(I) were appropriated before the date of the termination for the performance of the contract or for procurement of the type of acquisition covered by the contract; and

(II) are unobligated on the date of the termination.

(b) SERVICE CONTRACTS.—Notwithstanding any other provision of law, the Secretary may enter into multiyear contracts for oceanographic research, fisheries research, and mapping and charting services to assist the Secretary in fulfilling NOAA missions. The Secretary may only enter into these contracts if—

(1) the Secretary finds that it is in the public interest to do so;

(2) the contract is for not more than 7 years; and

(3)(A) the cost of the contract is less than the cost (including the cost of operation, maintenance, and personnel) to the NOAA of obtaining those services on NOAA vessels; or

(B) NOAA vessels are not available or cannot provide those services.

(c) BONDING AUTHORITY.—Notwithstanding any other law, the Secretary may not require a contractor for the construction, alteration, repair, or maintenance of a NOAA vessel to provide a bid bond, payment bond, performance bond, completion bond, or other surety instrument in an amount greater than 20 percent of the value of the base contract quantity (excluding options) unless the Secretary determines that requiring an instrument in that amount will not prevent a responsible bidder or offeror from competing for the award of the contract.

SEC. 607. RESTRICTION WITH RESPECT TO CERTAIN SHIPYARD SUBSIDIES.

(a) IN GENERAL.—The Secretary of Commerce may not award a contract for the construction, repair (except emergency repairs), or alteration of any vessel of the National Oceanic and Atmospheric Administration in a shipyard, if that vessel benefits or would benefit from significant subsidies for the construction, repair, or alteration of vessels in that shipyard.

(b) DEFINITION.—In this section, the term "significant subsidy" includes, but is not limited to, any of the following:

(1) Officially supported export credits.

(2) Direct official operating support to the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including but not limited to—

(A) grants;

(B) loans and loan guarantees other than those available on the commercial market;

(C) forgiveness of debt;

(D) equity infusions on terms inconsistent with commercially reasonable investment practices; and

(E) preferential provision of goods and services.

(3) Direct official support for investment in the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including but not limited to the kinds of support listed in paragraph (2)(A) through (E), and any restructuring support, except public support for social purposes directly and effectively linked to shipyard closures.

(4) Assistance in the form of grants, preferential loans, preferential tax treatment, or otherwise, that benefits or is directly related to shipbuilding and repair for purposes of research and development that is not equally open to domestic and foreign enterprises.

(5) Tax policies and practices that favor the shipbuilding and repair industry, directly or indirectly, such as tax credits deductions, exemptions, and preferences, including accelerated depreciation, if such benefits are not generally available to persons or firms not engaged in shipbuilding or repair.

(6) Any official regulation or practice that authorizes or encourages persons or firms engaged in shipbuilding or repair to enter into anticompetitive arrangements.

(7) Any indirect support directly related, in law or in fact, to shipbuilding and repair at national yards, including any public assistance favoring shipowners with an indirect effect on shipbuilding or repair activities, and any assistance provided to suppliers or significant inputs to shipbuilding, which results in benefits to domestic shipbuilders.

(8) Any export subsidy identified in the Illustrative List of Export Subsidies in the Annex to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade or any other export subsidy that may be prohibited as a result of the Urguary Round of trade negotiations.

SEC. 608. USE OF VESSELS.

(a) VESSEL AGREEMENTS.—In implementing the NOAA fleet replacement and modernization program, the Secretary shall use excess capacity of UNOLS vessels where appropriate and may enter into memoranda of agreement with the operators of these vessels to carry out this requirement.

(b) REPORT TO CONGRESS.—Within one year after the date of enactment of this Act, the Comptroller General of the United States shall provide a report to Congress, in consultation with the Secretary, comparing the cost-efficiency, accounting, and operating practices of the vessels of NOAA, UNOLS, other Federal agencies, and the United States private sector in meeting the missions of NOAA.

SEC. 609. INTEROPERABILITY.

The Secretary shall consult with the Oceanographer of the Navy regarding appropriate measures that should be taken, on a reimbursable basis, to ensure that NOAA vessels are interoperable with vessels of the Department of the Navy, including with respect to operation, maintenance, and repair of those vessels.

SEC. 610. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary for carrying out this title—

(1) $50,000,000 for fiscal year 1993;

(2) $100,000,000 for fiscal year 1994; and

(3) such sums as are necessary for each of the fiscal years 1995, 1996, and 1997.

(b) LIMITATION ON FLEET MODERNIZATION ACTIVITIES.—All National Oceanic and Atmospheric Administration fleet modernization, shipbuilding, and conversion shall be conducted in accordance with this title.

TITLE VII—WEATHER SERVICE MODERNIZATION

SEC. 701. SHORT TITLE.

This title may be cited as the "Weather Service Modernization Act".

SEC. 702. DEFINITIONS.

For the purposes of this title, the term—

(1) "automate" means to replace employees with automated weather service equipment;

(2) "change operations at a field office" means transfer service responsibility, commission weather observation systems, decommission a National Weather Service radar, change staffing levels significantly, or move a field office to a new location inside the local commuting and service area;

(3) "Committee" means the Modernization Transition Committee established by section 707;

(4) "degradation of service" means any decrease in or failure to maintain the quality and type of weather services provided by the National Weather Service to the public in a service area, including but not limited to a reduction in existing weather radar coverage at an elevation of 10,000 feet;

(5) "field office" means any National Weather Service Office or National Weather Service Forecast Office;

(6) "Plan" means the National Implementation Plan required under section 703;

(7) "relocate" means to transfer from one location to another location that is outside the local commuting or service area;

(8) "Secretary" means the Secretary of Commerce;

(9) "service area" means the geographical area for which a field office provides services or conducts observations, including but not limited to local forecasts, severe weather warnings, aviation support, radar coverage, and ground weather observations; and

(10) "Strategic Plan" means the 10-year strategic plan for the comprehensive modernization of the National Weather Service, required under section 407 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (15 U.S.C. 313 note).

SEC. 703. NATIONAL IMPLEMENTATION PLAN.

(a) NATIONAL IMPLEMENTATION PLAN.—As part of the budget justification documents submitted to Congress in support of the annual budget request for the Department of Commerce, the Secretary shall include a National Implementation Plan for modernization of the National Weather Service for each fiscal year following fiscal year 1993 until such modernization is complete. The Plan shall set forth the actions, during the 2-year period beginning with the fiscal year for which the budget request is made, that will be necessary to accomplish the objectives described in the Strategic Plan, and shall include—

(1) detailed requirements for new technologies, facilities, staffing levels and positions, and funding, in accordance with the overall schedule for modernization;

(2) notification of any proposed action to change operations at a field office and the intended date of such operational change;

(3) identification of any field office that the Secretary intends to certify under section 706, including the intended date of such certification;

(4) special measures to test, evaluate, and demonstrate key elements of the modernized National Weather Service operations prior to national implementation, including a multi-station operational demonstration which tests the performance of the modernization in an integrated manner for a sustained period;

(5) detailed plans and funding requirements for meteorological research to be accomplished under this title to assure that new techniques in forecasting will be developed to utilize the new technologies being implemented in the modernization; and

(6) training and education programs to ensure that employees gain the necessary expertise to utilize the new technologies and to minimize employee displacement as a consequence of modernization.

(b) Transmittal to Committee.—The Secretary shall transmit a copy of each annual Plan to the Committee.

(c) Consultation.—In developing the Plan, the Secretary shall consult, as appropriate, with the Committee and public entities responsible for providing or utilizing weather services.

SEC. 704. MODERNIZATION CRITERIA.

(a) National Research Council Review.—The Secretary shall contract with the National Research Council for a review of the scientific and technical modernization criteria by which the Secretary proposes to certify action to close, consolidate, automate, or relocate a field office under section 706. In conducting such review, the National Research Council shall prepare and submit to the Secretary, no later than 9 months after the date of enactment of this Act, a report which—

(1) assess requirements and procedures for commissioning new weather observation systems, decommissioning an outdated National Weather Service radar, and evaluating staffing needs for field offices in an affected service area;

(2) assesses the statistical and analytical measures that should be made for a service area to form an adequate basis for determining that there will be no degradation of service; and

(3) includes such other recommendations as the National Research Council determines are appropriate to ensure public safety.

(b) Criteria.—No later than 12 months after the date of enactment of this Act, the Secretary, in consultation with the National Research Council and the Committee and after notice and opportunity for public comment, shall publish in the Federal Register modernization criteria (including all requirements and procedures), based on the report required under this section, for—

(1) commissioning new weather observation systems, decommissioning an outdated National Weather Service radar, and evaluating staffing needs for field offices in an affected service area; and

(2) certifying action to close, consolidate, automate, or relocate a field office under section 706.

SEC. 705. CHANGES IN FIELD OFFICE OPERATIONS.

(a) Notification.—The Secretary shall not change operations at a field office pursuant to implementation of the Strategic Plan unless the Secretary has provided the notification required by section 703.

(b) Weather Radar Decommissioning.—The Secretary shall not remove or permanently decommission any National Weather Service radar until the Secretary has prepared radar commissioning and decommissioning reports documenting that such action would be consistent with the modernization criteria established under section 704(b)(1). The commissioning report shall document that the radar system performs reliably, satisfactory maintenance support is in place, sufficient staff with adequate training are present to operate the system, technical coordination with weather service users has been completed, and the radar being commissioned satisfactorily supports field office operations. The decommissioning report shall document that the replacement radar has been commissioned, technical coordination with service users has been completed, and the radar being decommissioned is no longer needed to support field office operations.

(c) Surface Observing System Commissioning.—The Secretary may not commission an automated surface observing system located at an airport unless it is determined, in consultation with the Secretary of Transportation, that the weather service provided after commissioning will continue to be in full compliance with applicable flight aviation rules promulgated by the Federal Aviation Administration.

SEC. 706. RESTRUCTURING FIELD OFFICES.

Sec. 706. (a) Prohibition.—The Secretary shall not close, before January 1, 1996, any field office pursuant to implementation of the Strategic Plan.

(b) Certification.—The Secretary shall not close, consolidate, automate, or relocate any field office, unless the Secretary has certified that such action will not result in any degradation of service. Such certification shall include—

(1) a description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(2) a detailed comparison of the services provided within the service area and the services to be provided after such action;

(3) a description of any recent or expected modernization of National Weather Service operations which will enhance services in the service area;

(4) an identification of any area within any State which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(5) evidence, based upon operational demonstration of modernized National Weather Service operations, which was considered in reaching the conclusion that no degradation in service will result from such action; and

(6) any report of the Committee submitted under section 707(c) that evaluates the proposed certification.

(c) Public Review.—Each certification decision shall be preceded by—

(1) publication in the Federal Register of a proposed certification; and

(2) a 60-day period after such publication during which the public may provide comments to the Secretary on the proposed certification.

(d) Final Decision.—If after consideration of the public comment received under subsection (c) the Secretary, in consultation with the Committee, decides to close, consolidate, automate, or relocate any such field office, the Secretary shall publish a final certification in the Federal Register and submit the certification to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.

(e) Special Circumstances.—The Secretary may not close or relocate any field office—

(1) which is located at an airport, unless the Secretary, in consultation with the Secretary of Transportation and the Committee, first conducts an air safety appraisal, determines that such action will not result in degradation of service that affects aircraft safety, and includes such determination in the certification required under subsection (b); or

(2) which is the only office in a State, unless the Secretary first evaluates the effect on weather services provided to in-State users, such as State agencies, civil defense officials, and local public safety offices, and includes in the certification required under subsection (b) the Secretary's determination that a comparable level of weather services provided to such in-State users will remain.

(f) Liaison Officer.—The Secretary may not close, consolidate, automate, or relocate a field office until arrangements have been made to maintain for a period of at least 2 years at least one person in the service area to act as a liaison officer who—

(1) provides timely information regarding the activities of the National Weather Service which may affect service to the community, including modernization and restructuring; and

(2) works with area weather service users, including persons associated with general aviation, civil defense, emergency preparedness, and the news media, with respect to the provision of timely weather warnings and forecasts.

SEC. 707. MODERNIZATION TRANSITION COMMITTEE.

(a) Establishment.—There is established a committee of 12 members to be known as the Modernization Transition Committee.

(b) Membership and Terms.—(1) The Committee shall consist of—

(A) five members representing agencies and departments of the United States which are responsible for providing or using weather services, including but not limited to the National Weather Service, the Department of Defense, the Federal Aviation Administration, and the Federal Emergency Management Agency; and

(B) seven members to be appointed by the Secretary from civil defense and public safety organizations, news media, any labor organization certified by the Federal Labor Relations Authority as an exclusive representative of weather service employees, meteorological experts, and private sector users of weather information such as pilots and farmers.

(2) The term of office of a member of the Committee shall be 3 years; except that, of the original membership, four shall serve a 5-year term, four shall serve a 4-year term, and four shall serve a 3-year term. No individual may serve for more than one additional 3-year term.

(3) The Secretary shall designate a chairman of the Committee from among its members.

(c) Duties.—(1) The Committee may review any proposed certification under section 706 for which the Secretary has provided a notice of intent to certify in the Plan, and should review such a proposed certification if there is a significant possibility of degradation of service within the affected service area. Upon the request of the Committee, the Secretary shall make available to the Committee the supporting documents developed by the Secretary in connection with the proposed certification. The Committee may prepare and submit to the Secretary, prior to publication of the proposed certification, a report which evaluates the proposed certification on the basis of the modernization criteria and with respect to the requirement that there be no degradation of service.

(2) The Committee shall advise the Congress and the Secretary on—

(A) the implementation of the Strategic Plan, annual development of the Plan, and establishment and implementation of modernization criteria; and

(B) matters of public safety and the provision of weather services which relate to the comprehensive modernization of the National Weather Service.

(d) PAY AND TRAVEL EXPENSES.—Members of the Committee who are not employees of the United States shall each be paid at a rate equal to the daily equivalent of the rate for GS-18 of the General Schedule under section 5332 of title 5, United ± States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Committee. Members shall receive travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

(e) STAFF.—The Secretary shall make available to the Committee such staff, information, and assistance as it may reasonably require to carry out its activities.

(f) TERMINATION.—The Committee shall terminate on December 31, 1999.

SEC. 708. WEATHER SERVICE REPORT.

(a) REPORT.—The Secretary shall prepare a report on the proposed modernization of the National Weather Service and transmit the report, not later than 6 months after the date of enactment of this Act, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.

(b) CONTENTS.—(1) The report required by subsection (a) shall identify the size of the geographic area of responsibility of each proposed Weather Forecast Office and shall include an explanation of the number and type of personnel required at each Weather Forecast Office. For each proposed Weather Forecast Office covering a geographic area greater than two times the average geographic area of responsibility of Weather Forecast Offices nationwide, the report shall detail the reasons for assigning those Weather Forecast Offices a geographic area which differs significantly from the national average.

(2) The report shall list the number of next generation weather radars that will be associated with each Weather Forecast Office nationwide under the proposed modernization plan. If some Weather Forecast Offices will be associated with more than one such radar, the report shall explain the deviation from the National Weather Service's stated policy of associating one such radar with one Weather Forecast Office, and shall analyze and compare any differences in the expected efficiency of those Weather Forecast Offices with Weather Forecast Offices that will be associated with only one such radar.

(c) CONSULTATION.—In preparing portions of the report that address Weather Forecast Offices located in areas of the Nation that are uniquely dependent on general aviation as a means of transportation, the Secretary shall consult with local aviation groups. In the case of Alaska, such local groups shall include the Alaska Aviation Safety Foundation, the Alaska Airmen's Association, and the regional representatives of the Aircraft Owners and Pilots Association.

SEC. 709. REPEALS.

The National Aeronautics and Space Administration Authorization Act, Fiscal Year 1989 (15 U.S.C. 313 note), is amended by repealing—

(1) subsections (b), (c), and (d) of section 407; and

(2) section 408.

TITLE VIII—NORTH PACIFIC ANADROMOUS STOCKS CONVENTION

SEC. 801. SHORT TITLE.

This title may be cited as the "North Pacific Anadromous Stocks Act of 1992".

SEC. 802. PURPOSE.

It is the purpose of this title to implement the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, signed in Moscow, February 11, 1992.

SEC. 803. DEFINITIONS.

As used in this title, the term—

(1) "Anadromous stocks" means stocks of species listed in the Annex to the Convention that migrate into the Convention area.

(2) "Anadromous fish" means fish of the species listed in the Annex to the Convention that migrate into the Convention area.

(3) "Authorized officer" means a law enforcement official authorized to enforce this title under section 809(a).

(4) "Commission" means the North Pacific Anadromous Fish Commission provided for by article VIII of the Convention.

(5) "Convention" means the Convention for the Conservation of Anadromous Stocks of the North Pacific Ocean, signed in Moscow, February 11, 1992.

(6) "Convention area" means the waters of the North Pacific Ocean and its adjacent seas, north of 33 degrees North Latitude, beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

(7) "Directed fishing" means fishing targeted at a particular species or stock of fish.

(8) "Ecologically related species" means living marine species which are associated with anadromous stocks found in the Convention area, including, but not restricted to, both predators and prey of anadromous fish.

(9) "Enforcement officer" means a law enforcement official authorized by any Party to enforce this title.

(10) "Exclusive economic zone" means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this title, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.

(11) "Fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.

(12) "Fishing" means—

(A) the catching, taking, or harvesting of fish, or any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(B) any operation at sea in preparation for or in direct support of any activity described in subparagraph (A).

(13) "Fishing vessel" means—

(A) any vessel engaged in catching fish within the Convention area or in processing or transporting fish loaded in the Convention area;

(B) any vessel outfitted to engage in any activity described in subparagraph (A);

(C) any vessel described in subparagraph (A) or (B).

(14) "Incidental taking" means catching, taking, or harvesting a species or stock of fish while conducting directed fishing for another species or stock of fish.

(15) "Party" means Canada, Japan, the Russian Federation, the United States, and any other nation that may accede to the Convention.

(16) "Secretary" means the Secretary of State.

(17) "United States Section" means the United States Commissioners of the Commission.

SEC. 804. UNITED STATES COMMISSIONERS.

(a) COMMISSIONERS.—The United States shall be represented on the Commission by not more than three United States Commissioners and be appointed by and serve at the pleasure of the President. Each United States Commissioner shall be appointed for a term of office not to exceed 4 years, but is eligible to reappointment. Of the Commissioners—

(1) one shall be an official of the United States Government;

(2) one shall be a resident of the State of Alaska; and

(3) one shall be a resident of the State of Washington.

An individual is not eligible for appointment under paragraph (2) or (3) as a Commissioner unless the individual is knowledgeable or experienced concerning the anadromous stocks and ecologically related species of the North Pacific Ocean.

(b) ALTERNATE COMMISSIONERS.—The Secretary, in consultation with the Secretary of Commerce, may designate from time to time Alternative United States Commissioners to the Commission. An Alternate United States Commissioner may exercise all designated powers and duties of a United States Commissioner in the absence of a duly designated Commissioner for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of authorized United States Commissioners that will not be present.

(c) UNITED STATES SECTION.—The United States Section, in consultation with the Advisory Panel established in section 805, shall identify and recommend to the Commission research needs and priorities for anadromous stocks, and ecologically related species subject to the Convention, and oversee the United States research programs involving such fisheries, stocks, and species.

(d) COMPENSATION.—United States Commissioners and Alternate United States Commissioners shall receive no compensation for their services as Commissioners and Alternate Commissioners.

SEC. 805. ADVISORY PANEL.

(a) ESTABLISHMENT OF PANEL.—An Advisory Panel to the United States Section is established. The Advisory Panel shall be composed of the following:

(1) The Commissioner of the Alaska Department of Fish and Game.

(2) The Director of the Washington Department of Fisheries.

(3) One representative of the Pacific States Marine Fisheries Commission, designated by the Executive Director of that commission.

(4) Eleven members (six of whom shall be residents of the State of Alaska and five of whom shall be residents of the State of Washington), appointed by the Secretary, in consultation with the Secretary of Commerce, from among a slate of 12 persons nominated by the Governor of Alaska and a slate of 10 persons nominated by the Governor of Washington.

(b) QUALIFICATIONS.—Persons appointed to the Advisory Panel shall be individuals who are knowledgeable or experienced concerning anadromous stocks and ecologically related species. In submitting a slate of nominees pursuant to subsection (a)(4), the Governors of Alaska and Washington shall seek to represent the broad range of parties interested in anadromous stocks and ecologically related species, and at a minimum shall include on each slate at least one representative of commercial salmon fishing interests and of environmental interests concerned with protection of living marine resources.

(c) LIMITATION ON SERVICE.—Any person appointed to the Advisory Panel pursuant to subsection (a)(4) shall serve for a term not to exceed 4 years, and may not serve more than two consecutive terms.

(d) FUNCTIONS.—The Advisory Panel shall be invited to all nonexecutive meetings of the United States Section and at such meetings shall be granted the opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section.

(e) COMPENSATION AND EXPENSES.—The members of the Advisory Panel shall receive no compensation or travel expenses for their services as such members.

SEC. 806. COMMISSION RECOMMENDATIONS.

The Secretary, with the concurrence of the Secretary of Commerce, may accept or reject, on behalf of the United States, recommendations made by the Commission in accordance with article IX of the Convention.

SEC. 807. ADMINISTRATION AND ENFORCEMENT OF CONVENTION.

(a) RESPONSIBILITIES.—The Secretary of Commerce shall be responsible for administering provisions of the Convention, this title, and regulations issued under this title. The Secretary, in consultation with the Secretary of Commerce and the Secretary of Transportation, shall be responsible for coordinating the participation of the United States in the Commission.

(b) CONSULTATION AND COOPERATION.—In carrying out such functions, the Secretary of Commerce—

(1) shall, in consultation with the Secretary of Transportation and the United States Section, issue such regulations as may be necessary to carry out the purposes and objectives of the Convention and this title; and

(2) may, with the concurrence of the Secretary, cooperate with the authorized officials of the government of any Party.

SEC. 808. COOPERATION WITH OTHER AGENCIES.

(a) IN GENERAL.—Any agency of the Federal Government is authorized, upon request of the Commission, to cooperate in the conduct of scientific and other programs, and to furnish, on a reimbursable basis, facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the Convention. Such agency may accept reimbursement from the Commission.

(b) FUNCTIONS OF SECRETARY OF COMMERCE.—In carrying out the provisions of the Convention and this title, the Secretary of Commerce may arrange for cooperation with agencies of the United States, the States, private institutions and organizations, and agencies of the government of any Party, to conduct scientific and other programs, and may execute such memoranda as may be necessary to reflect such agreements.

SEC. 809. ENFORCEMENT PROVISIONS.

(a) DUTIES OF SECRETARIES OF COMMERCE AND TRANSPORTATION.—This title shall be enforced by the Secretary of Commerce and the Secretary of Transportation. Such Secretaries may by agreement utilize, on a reimbursable basis or otherwise, the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties. Such Secretaries shall, and the head of any Federal or State agency that has entered into an agreement with either such Secretary under the preceding sentence may (if the agreement so provides), authorize officers to enforce the provisions of the Convention, this title, and regulations issued under this title. Any such agreement or contract entered into pursuant to this section shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) DISTRICT COURT JURISDICTION.—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this title.

(c) POWERS OF ENFORCEMENT OFFICERS.—Authorized officers may, shoreward of the outer boundary of the exclusive economic zone, or during hot pursuit from the zone—

(1) with or without a warrant or other process—

(A) arrest any person, if the officer has reasonable cause to believe that such person has committed an act prohibited by section 810;

(B) board, and search or inspect, any fishing vessel subject to the provisions of the Convention and this title;

(C) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of the Convention, this title, or regulations issued under this title;

(D) seize any fish (wherever found) taken or retained in violation of any provision referred to in subparagraph (C);

(E) seize any other evidence related to any violation of any provision referred to in subparagraph (C);

(2) execute any warrant or other process issued by any court of competent jurisdiction; and

(3) Exercise any other lawful authority.

(d) ADDITIONAL POWERS.—(1) An authorized officer may in the Convention area—

(A) board a vessel of any Party that reasonably can be believed to be engaged in directed fishing for, incidental taking of, or processing of anadromous fish, and, without warrant or process, inspect equipment, logs, documents, catch, and other articles, and question persons, on board the vessel, for the purpose of carrying out the provisions of the Convention, this title, or any regulation issued under this title; and

(B) if any such vessel or person on board is actually engaged in operations in violation of any such provision, or there is reasonable ground to believe any person or vessel was obviously so engaged before the boarding of such vessel by the authorized officer, arrest or seize such person or vessel and further investigate the circumstance if necessary.

If an authorized officer, after boarding and investigation, has reasonable cause to believe that any such fishing vessel or person engaged in operations in violation of any provision referred to in subparagraph (A), the officer shall deliver the vessel or person as promptly as practicable to the enforcement officers of the appropriate Party, in accordance with the provisions of the Convention.

(2) When requested by the appropriate authorities of a Party, an authorized officer may be directed to attend as a witness, and to produce such available records and files or duly certified copies thereof as may be necessary, for the prosecution by that Party of any violation of the provisions of the Convention or any law of that Party relating to the enforcement thereof.

SEC. 810. UNLAWFUL ACTIVITIES.

It is unlawful for any person or fishing vessel subject to the jurisdiction of the United States—

(1) to fish for any anadromous fish in the Convention area;

(2) to retain on board any anadromous fish taken incidentally in a fishery directed at nonanadromous fish in the Convention area;

(3) to fail to return immediately to the sea any anadromous fish taken incidentally in a fishery directed at nonanadromous fish in the Convention area;

(4) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any anadromous fish taken or retained in violation of the Convention, this title, or any regulation issued under this title;

(5) to refuse to permit any enforcement officer to board a fishing vessel subject to such person's control for purposes of conducting any research or inspection in connection with the enforcement of the Convention, this title, or any regulation issued under this title;

(6) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any enforcement officer in the conduct of any search or inspection described in paragraph (5);

(7) to resist a lawful arrest or detection for any act prohibited by this section;

(8) to interfere with, delay, or prevent, by any means, the apprehension, arrest, or detection of another person, knowing that such person has committed any act prohibited by this section; or

(9) to violate any provision of the Convention, this title, or any regulation issued under this title.

SEC. 811. PENALTIES.

(a) CIVIL PENALTIES.—(1) Any person who is found by the Secretary of Commerce, after notice and opportunity for the hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 810 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary of Commerce, or the Secretary's designee, by written notice. In determining the amount of such penalty, the Secretary of Commerce shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violation, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(2) Any person against whom a civil penalty is assessed under paragraph (1) may obtain review thereof in the appropriate court of the United States by filing a complaint in such court within 30 days from the date of such order and by simultaneously serving a copy of such complaint by certified mail on the Secretary of Commerce, the Attorney General, and the appropriate United States Attorney. The Secretary of Commerce shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary of Commerce shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary of Commerce, the matter shall be referred to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order im-

posing the civil penalty shall not be subject to review.

(4) A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission mission of an act prohibited by section 810 shall be liable in rem for any civil penalty assessed for such violation under paragraph (1) and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel that may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(5) The Secretary of Commerce may compromise, modify, or remit, with or without conditions, any civil penalty that is subject to imposition or that has been imposed under this section.

(6) For the purposes of conducting any hearing under this section, the Secretary of Commerce may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary of Commerce or to appear and produce documents before the Secretary of Commerce, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) OFFENSES.—(1) A person is guilty of an offense if the person commits any act prohibited by section 810 (5), (6), (7), or (8).

(2) Any offense described in paragraph (1) is a class A misdemeanor punishable by a fine under title 18, United States Code, or imprisonment for not more than 6 months, or both; except that if in the commission of any offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any enforcement officer, or places any such officer in fear of imminent bodily injury, the offense is a felony punishable by a fine under title 18, United States Code, or imprisonment for not more than 10 years, or both.

(c) FORFEITURE.—(1) Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish (or a fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 810 shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(2) Any district court of the United States shall have jurisdiction, upon application of the Attorney General on behalf of the United States, to order any forfeiture authorized under paragraph (1) and any action provided for under paragraph (4).

(3) If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this title or for which security has not previously been obtained. The provisions of the customs laws relating to—

(A) the seizure, forfeiture, and condemnation of property for violation of the customs law;

(B) the disposition of such property or the proceeds from the sale thereof; and

(C) the remission or mitigation of any such forfeiture;

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this title, unless such provisions are inconsistent with the purposes, policy, and provisions of this title.

(4)(A) Any officer authorized to serve any process in rem that is issued by a court having jurisdiction under section 809(b) shall—

(i) stay the execution of such process; or

(ii) discharge any fish seized pursuant to such process;

upon receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

(B) Any fish seized pursuant to this title may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(5) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel and which is seized in connection with an act prohibited by section 810 were taken or retained in violation of the Convention and this title.

SEC. 812. FUNDING REQUIREMENTS.

(a) AUTHORIZATION.—There are authorized to be appropriated from time to time such sums as may be necessary for carrying out the purposes and provisions of the Convention and this title, including—

(1) necessary travel expenses of the United States Commissioners or Alternate Commissioners; and

(2) the United States' share of the joint expenses of the Commission.

(b) RESEARCH.—Such funds as shall be made available to the Secretary of Commerce for research and related activities shall be expended to carry out the program of the Commission in accordance with the recommendations of the United States Section and to carry out other research and observer programs pursuant to the Convention.

SEC. 813. DISPOSITION OF PROPERTY.

The Secretary shall dispose of any United States property held by the International North Pacific Fisheries Commission on the date of its termination in a manner that would further the purposes of this title.

SEC. 814. REPEAL OF THE NORTH PACIFIC FISHERIES ACT OF 1954.

The Act of August 12, 1954 (16 U.S.C. 1021–1035) is repealed.

TITLE IX—NEW ENGLAND GROUNDFISH

SEC. 901. FISHERY ENFORCEMENT.

Section 311 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1861) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting immediately after subsection (e) the following new subsection:

"(f) ENFORCEMENT OF NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN.—

"(1) ENFORCEMENT AGREEMENTS.—Beginning not later than October 1, 1993, the Secretary shall, if requested by the Governor of a State represented on the New England Fishery Management Council, enter into an agreement under subsection (a), with each of the States represented on such Council, that authorizes the marine law enforcement agency of such State to perform duties of the Secretary relating to enforcement of the Northeast Multispecies Fishery Management Plan.

"(2) REIMBURSEMENT.—An agreement with a State under this subsection shall provide, subject to the availability of appropriations, for reimbursement of the State for expenses incurred in detection and prosecution of violations of any fishery management plan approved by the Secretary.

"(3) COAST GUARD ENFORCEMENT WORKING GROUP.—

"(A) ESTABLISHMENT.—The Commander of the First Coast Guard District shall establish an informal fisheries enforcement working group to improve the overall compliance with and effectiveness of the regulations issued under the Northeast Multispecies Fishery Management Plan.

"(B) MEMBERSHIP.—The working group shall consist of members selected by the Commander, and shall include—

"(i) individuals who are representatives of various fishing ports located in the States represented on the New England Fishery Management Council;

"(ii) captains of fishing vessels that operate in waters under the jurisdiction of that Council; and

"(iii) other individuals the Commander considers appropriate.

"(C) NON-FEDERAL STATUS OF WORKING GROUP MEMBERS.—An individual shall not receive any compensation for, and shall not be considered to be a Federal employee based on, membership in the working group.

"(D) MEETINGS.—The working group shall meet, at the call of the Commander, at least 4 times each year. The meetings shall be held at various major fishing ports in States represented on the New England Fishery Management Council, as specified by the Commander.

"(4) USE OF FINES AND PENALTIES.—Amounts available to the Secretary under this Act which are attributable to fines and penalties imposed for violations of the Northeast Multispecies Fishery Management Plan shall be used by the Secretary pursuant to this section to enforce that Plan.".

SEC. 902. FISHERIES REINVESTMENT PROGRAM.

(a) PROGRAM.—Title III of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) is amended by adding at the end the following:

"SEC. 314. NORTHWEST ATLANTIC OCEAN FISHERIES REINVESTMENT PROGRAM.

"(a) PROGRAM.—(1) Not later than October 1, 1993, the Secretary shall establish a Northwest Atlantic Ocean Fisheries Reinvestment Program for the purposes of—

"(A) promoting development of commercial fisheries and markets for underutilized species of the northwest Atlantic Ocean;

"(B) developing alternative fishing opportunities for participants in the New England groundfish fishery;

"(C) providing technical support and assistance to United States fishermen and fish processors to improve the value-added processing of underutilized species and to make participation in fisheries for underutilized species of the northwest Atlantic Ocean economically viable;

"(D) creating new economic opportunities through the improved processing and expanded use of fish waste; and

"(E) helping to restore overfished New England groundfish stocks through aquaculture or hatchery programs.

"(2) CONSULTATION.—In establishing and implementing the Northwest Fisheries Reinvestment Program, the Secretary shall consult with representatives of the commercial fishing industry, the seafood processing industry, and the academic community (including the National Sea Grant program).

"(3) ACTIVITIES UNDER PROGRAM.—Subject to the availability of appropriations, the Secretary shall award contracts, grants and other financial assistance to United States citizens to carry out the purposes of subsection (1), under the terms and conditions provided in section 2(c) of the Act of August 11, 1939 (15 U.S.C. 713-3(c); commonly referred to as the "Saltonstall-Kennedy Act"), except that, in making awards under this section for projects involving participation in fisheries for underutilized species, the Secretary shall give the highest priority to a person who owns or operates a fishing vessel permitted under this Act to participate in the New England groundfish who agrees to surrender that permit to the Secretary during the duration of the contract, grant or other assistance.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $5,000,000 for each of fiscal years 1993 through 1997 to carry out the purposes of this section. For fiscal year 1993 no more than $1,000,000, and for fiscal year 1994 no more than $2,000,000, of such funds may be provided from monies made available under section 2(b) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)).

"(b) ASSISTANCE OF OTHER AGENCIES.—The Secretary shall actively seek the assistance of other Federal agencies in the development of fisheries for underutilized species of the northwest Atlantic Ocean, including, to the extent permitted by other applicable laws, assistance from the Secretary of Agriculture in including such underutilized species as agricultural commodities in the programs of the Foreign Agricultural Service for which amounts are authorized under the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 3359).

"(c) MANAGEMENT PLANS FOR UNDERUTILIZED SPECIES.—The New England Fishery Management Council, in consultation with other appropriate Councils, shall develop fishery management plans as soon as possible for any underutilized species of the northwest Atlantic Ocean is not covered under such a plan, in order to prevent overfishing of that species.

"(d) UNDERUTILIZED SPECIES DEFINED.—For purposes of this section, the term 'underutilized species of the northwest Atlantic Ocean' means any fish species of the northwest Atlantic Ocean that is identified, by the Director of the Northeast Fisheries Center of the National Marine Fisheries Service, as an underutilized species.".

(b) CONFORMING AMENDMENT.—The table of contents in the first section of the Magnuson Fishery Conservation and Management Act is amended by inserting immediately after the item relating to section 313 the following new item:

"Sec. 314. Northwest Atlantic Oceans Fisheries Reinvestment Program.".

(c) AMENDMENTS TO THE SALTONSTALL-KENNEDY ACT.—Section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)(1)(A)); commonly referred to as the "Saltonstall-Kennedy Act"), is amended—

(1) by striking "and" at the end of clause (i); and

(2) by adding at the end the following new clause:

"(iii) to implement the Northwest Atlantic Ocean First Reinvestment Program established under section 314 of the Magnuson Fishery Conservation and Management Act.".

Resolved, That the House agree to the amendment of the Senate to the title of the bill.

OCTOBER 8, 1992

Mr. CHAFEE. Mr. President, I want to commend the authors of H.R. 2130, a bill authorizing appropriations for the National Oceanic and Atmospheric Administration. I am particularly pleased with title V of this bill, which establishes a comprehensive program for consistent monitoring of the Nation's marine ecosystems.

This title was jointly developed by the Committee on Commerce, Science, and Transportation, and the Committee on Environment and Public Works. It will be jointly administered by the Environmental Protection Agency and the National Oceanic and Atmospheric Administration. Title V amends the Marine Protection, Research and Sanctuaries Act, and will be the joint jurisdiction of both committees.

The need for a National Marine Monitoring Program, as provided for in this act, is becoming increasingly more apparent. In hearings before the Environment and Public Works Committee, I and other Senators have been frustrated by the lack of definitive answers to seemingly basic questions. Is the shell disease seen in many New England lobsters caused by the ocean disposal of sludge? No one seems to know for sure. Why have oyster harvests in Chesapeake Bay declined by almost two-thirds? What is causing the disorder that results in the beaching of hundreds of dolphins? What is the relationship between the introduction of pollutants to the marine environment and the contamination of marine organisms? What is the impact of extensive new sewage treatment plant capacity on the water quality of Narragansett Bay?

In 1988, Robert Duce, then dean of the University of Rhode Island's Graduate School of Oceanography, lamented in congressional testimony that in many coastal areas we simply do not know with any scientific accuracy whether there has been improvement or degradation. He also noted that the necessary measurements and long-term monitoring programs that can give us a standard against which we can gauge water quality, and by which we can measure water quality changes, simply have not been available for most coastal regions.

Before government can act intelligently, it is essential that we develop a thorough scientific understanding of our marine resource and identify threats to its quality. This knowledge is vital if we are to protect the marine environment and act to prevent problems before they become unmanageable. A report by the congressional Office of Technology Assessment concluded that—monitoring, research, and enforcement are currently inadequate. Information gaps still constrain analyses of marine waste disposal, partly because of lack of information gathering in some areas of the country, lack of systematic analyses of gathered data, and ineffective dissemination of results.

Title V of the bill we are approving today is in direct response to this critical lack of information. It is a major step toward collecting the information we need to accurately determine the health of our Nation's marine ecosystems.

I would like to note that the language in subsection (c)(4) of section 503 could allow NPDES permits to be modified, but only to assure that technical data compiled in connection with compliance monitoring are compatible with the way in which monitoring data are collected. Nothing in the bill would require dischargers to carry out ambient water quality monitoring or sediment quality monitoring requirements.

I am also pleased, Mr. President, that primary leadership for the monitoring program activities conducted by the Environmental Protection Agency will be at the EPA Environmental Research Laboratory in Narragansett, RI. A letter written by the Administrator of the Environmental Protection Agency, together with a colloquy among Senators HOLLINGS, MOYNIHAN, and myself, make it clear that such primary leadership will include locating the headquarters for the EPA monitoring program activities at the EPA Narragansett laboratory. This laboratory is already conducting the near-coastal activities under EPA's Environmental Monitoring and Assessment Program, and is working closely with NOAA in implementing its Status and Trends Program. Also the Narragansett lab is directly involved with the Marine Ecosystem Research Laboratory at the University of Rhode Island, a facility that is uniquely capable of simulating pollution impacts on the marine environment.

The EPA Environmental Research Laboratory at Narragansett is ideally suited to conducting the monitoring activities authorized in this legislation.

I would urge all my colleagues to support this legislation.

Mr. President, I would like to enter into a short colloquy with Senators MOYNIHAN and HOLLINGS regarding H.R. 2130, a bill authorizing appropriations for the National Oceanic and Atmospheric Administration. In particular I would like to focus on title V of this bill, which establishes a comprehensive program for consistent monitoring of the Nation's marine ecosystems.

This title was jointly developed by the Committee on Commerce, Science, and Transportation, and the Committee on Environment and Public Works. It will be jointly administered by the Environmental Protection Agency and the National Oceanic and Atmospheric Administration.

Section 503 of the bill specifies that "primary leadership for the monitoring program activities conducted by the Environmental Protection Agency pursuant to this section shall be located at the Environmental Research Laboratory in Narragansett, RI."

It is my understanding that this language will ensure that headquarters for the monitoring program which will be established pursuant to this legislation will be located at the EPA laboratory currently located in Narragansett. The personnel primarily responsible for implementing the program will be located at the laboratory.

Such implementation will include:

Developing and implementing intensive coastal water quality monitoring programs in accordance with the legislation.

Identifying and analyzing the status of environmental quality in the Nation's coastal ecosystems.

Assessing ambient water quality, benthic environmental quality, and the health and quality of living organisms.

Identifying sources of environmental degradation affecting the Nation's coastal ecosystems.

In addition, personnel located at the program headquarters in Narragansett will be responsible for providing the scientific basis for the development of coastal water quality monitoring guidelines. Such guidelines will provide for uniformity, establish scientifically valid monitoring methods, and identify appropriate indicators of the health and quality of coastal ecosystems.

Is this consistent with the understanding of the chairmen of the Committee on Commerce, Science, and Transportation, and the Committee on Environment and Public Works?

Mr. HOLLINGS. I would say to the distinguished Senator from Rhode Island that his interpretation of section 503 of H.R. 2130 is entirely consistent with my own. I thank the Senator for his interest, and his assistance in forging this legislation.

Mr. MOYNIHAN. I would also agree that the language in section 503 of H.R. 2130 should be interpreted to mean that headquarters for the monitoring program activities conducted by EPA pursuant to title V of H.R. 2130 will be located at the Environmental Research Laboratory in Narragansett, RI. I commend Senators CHAFEE, HOLLINGS, and DANFORTH for their work on this legislation.

Mr. CHAFEE. I thank my colleagues for their assistance, and commend them for developing legislation which will significantly improve our understanding of the health of the coastal marine environment. I would also like to add that the EPA Environmental Research Laboratory in Narragansett, RI is already conducting the near-coastal activities under EPA's Environmental Monitoring and Assessment Program, and is working closely with NOAA in implementing its Status and Trends Program. This facility is ideally suited to serving as a headquarters for the monitoring activities authorized in this legislation. Again, I thank my colleagues.

Mr. KERRY. Mr. President, it is with great pleasure that I am able to report to my colleagues that an accord has been reached which will allow the Senate to pass H.R. 2130, the National Oceanic and Atmospheric Administration Authorization Act of 1991. This bill contains important provisions that will advance vital national efforts in the areas of weather forecasting, storm warning, protection of marine resources, and our ability to conduct meteorologic and climatologic research into global change and ozone depletion. Never have the needs of the National Oceanic and Atmospheric Administration [NOAA] addressed in this bill been more evident or deserving of action, and I commend my distinguished colleagues for recognizing these needs and responding accordingly.

The bill before us is the product of many months of effort on the parts of many Members and staffs in both the House of Representatives and the Senate. I particularly want to thank Representative DENNIS HERTEL for introducing the original House companion, H.R. 2130, and Representatives STUDDS, GEORGE BROWN, DAVIS, YOUNG, WALKER and their staffs for their diligent efforts in forging this compromise. My Senate colleagues, full Commerce Committee and National Ocean Policy Study [NOPS] chairman Senator HOLLINGS, and NOPS ranking minority member, Senator STEVENS, and their fine staffs, also contributed greatly to this bipartisan agreement.

I am particularly pleased that this bill finally will initiate the long-overdue effort to modernize the NOAA fleet. The 23 vessels of the NOAA fleet comprise approximately one-third of the total Federal oceanographic research capability. The fleet is indispensable; it is used to collect scientific data for studying ocean circulation and global climate change, for charting the Nation's exclusive economic zone [EEZ], for monitoring water quality, and for assessing the status of the Nation's fishery resources.

Yet these vessels have been allowed to slip into a serious state of disrepair, with most nearing the end of their 25-year service life. In addition, these ships require upgraded scientific equipment to address today's complex missions such as bathymetric mapping of the ocean floor. Money authorized in this legislation will begin the process of refurbishing the fleet and revitalizing our Nation's global leadership in basic and applied oceanographic research.

Weather forecasting and storm warning are among NOAA's most important functions. The crucial role of the National Weather Service [NWS] was clearly illustrated this past August and September when Hurricanes Andrew and Iniki and Typhoon Omar came ashore in Florida, Louisiana, Hawaii and Guam. We have all witnessed the tragic images of destruction, of whole communities reduced to rubble, and of families and lives torn apart. While the devastation wrought by these storms is almost too staggering to comprehend, undoubtedly, had it not been for the forecasting and storm warning capabilities of the weather service—especially the National Hurricane Center—loss of human life and property damage would have increased significantly.

An effort is currently underway to modernize the National Weather Service by upgrading equipment and consolidating facilities. Such upgrading will improve climate and air quality research, public warning and forecast systems, climate and global change research, satellite observing systems, atmospheric research, and data and information systems. I have worked with my distinguished colleagues in the House and Senate to develop a bipartisan compromise that ensures there will be no reduction of coverage during the modernization process.

Under this compromise, a yearly national implementation plan that lays out the modernization activities for 2 years will be submitted to Congress. The National Research Council of the National Academy of Sciences will be called upon to define the criteria for certification, and a modernization transition committee will be designated to review proposed certifications. When commissioning new radar systems, thorough documentation must show that the new system is performing to standards before the old system can be decommissioned. At least one liaison officer will remain in an area for at least 2 years after the weather service office in that area is closed. In this way, community preparedness and public access to weather services—services vital to agriculture, emergency evacuation, and air travel—will not be disrupted during the modernization process. Let me thank my esteemed colleagues, committee Chairman FRITZ HOLLINGS, and the distinguished Senator from South Dakota, TOM DASCHLE, who were particularly helpful in resolving this issue.

In 1990, the National Academy of Sciences issued a report on the marine monitoring needs of the Nation, including recommendations for establishing a comprehensive monitoring program. The academy's recommendations were incorporated into a NOAA-EPA monitoring program for ocean and coastal waters that is authorized in this bill. Under this bill, a comprehensive national program for consistent monitoring of the Nation's marine ecosystems will be established. Included within this program will be a system for reviewing and evaluating scientific, analytical, and technical methods appropriate for monitoring the environmental quality of marine ecosystems, and methods established for identifying uniform indicators of marine ecosystem quality. Importantly, an information program also will be created to distribute information pertaining to marine degradation analyses, assessments, and techniques and practices to State, regional, and local agencies and the public.

In recognition that some areas require special attention, there is within the context of this comprehensive monitoring program a proposed monitoring effort in my own region of the country. In Massachusetts, a $6 billion effort is underway to improve water quality in Boston Harbor through improved wastewater treatment. This is one of the largest cleanups undertaken in the Nation and provides a unique opportunity for scientists and managers to evaluate resulting change in the coastal and marine environments.

Montioring will be needed to show the ratepayers of Massachusetts that the large cost of the cleanup will indeed bring Boston Harbor into compliance with the Clean Water Act and provide fishable and swimmable waters. Careful monitoring also will be needed to assure that the harbor cleanup does not degrade adjacent waters. In particular, the new offshore outfall must not pollute Cape Cod Bay or waters of Massachusetts Bay, especially the future marine sanctuary soon to be designated at Stellwagen Bank. NOAA's monitoring program in this region should not duplicate the work of the Massachusetts Water Resources Authority and the U.S. Geological Survey. Close coordination with these agencies, as well as with the Massachusetts Coastal Zone Management office, is essential to determine the most effective and complementary use of NOAA resources.

NOAA's National Ocean Service [NOS] and National Marine Fisheries Service [NMFS] provide invaluable services such as the assessment and management of the Nation's fisheries resources and mapping and charting of the oceans for marine transportation. Other important programs provided by these services include responding to, and forecasting and monitoring of, the effects of accidental marine oilspills, monitoring of water quality in highly productive coastal areas, and protection of fisheries habitats. These activities are of vital importance to my State, where many coastal communities depend on the ocean for tourism, fishing, marine transportation, and recreation to support their local economies.

Importantly, this legislation encourages NOAA to move forward and conduct research about alternative fishery technologies that are economically viable and environmentally benign. For example, as a result of this legislation, NOAA will undertake the research that is needed to develop alternative techniques for fishing for tuna that do not involve entanglement of dolphins in fishing gear. The American public has made it clear that it will no longer tolerate the senseless killing of dolphins by the world's tuna fleets. Strong efforts by the United States in the international fishing community have reduced dolphin mortality but have not eliminated it. As a matter of course, these efforts to obtain international cooperation must continue. But it is also time to develop alternatives that will allow valuable tuna resources to be harvested without harming dolphins. Other nations, as well as the tuna industry, are willing to contribute funds to this effort. This bill provides for the U.S. contribution.

There are other provisions in this bill that are of particular importance to my State. I would like to discuss briefly three of the more important ones. This year NOAA will reactivate the *Albatross*, the NOAA, vessel moored in Woods Hole. This research vessel conducts stock assessments for fisheries throughout New England. At a time when many of the North Atlantic stocks—species including cod, haddock and yellow tail flounder which are the foundation of the Northeast commercial fisheries—are in decline, it is absolutely essential that we have accurate, up-to-date information on the state of the stocks so that informed management decisions can be made. This bill specifically authorizes the funds that are needed to keep the *Albatross* in operation.

This bill also will help the aquaculture industry by making guaranteed loans from the Fisheries Vessels Obligation Guarantee Program [FVOG] available to this growing activity. This program initially provided money for fishing vessels and later was expanded to include fishery facilities. This will provide needed capital for the fishing industry. But when a Massachusetts aquaculture company applied for a loan under the program, it was told that its operation was not considered a fishery facility. With many of our fisheries now overcapitalized, with the aquaculture industry in an expansion stage, and with the growing realization that the fishing industry must diversify in order to grow and prosper, it only make sense to allow these funds to be used for aquaculture as well as other fishing operations.

Title IX of the bill consists of two modest initiatives aimed at helping the hard-pressed New England fishing industry in its effort to rebuild depleted groundfish stocks.

Section 901 amends section 311 of the Magnuson Fishery Conservation and Management Act to require the Secretary of Commerce, if requested by a New England Governor, to enter into a cooperative Federal-State agreement to enforce the northeast multispecies fishery management plan, the groundfish plan. A State participating in such an agreement would be eligible for reimbursement of costs incurred in the detection and prosecution of violations. The section also requires the First U.S. Coast Guard District to establish an informal fisheries enforcement working group, consisting of commercial fishing industry representatives from various ports within the region, in order to improve overall compliance with fisheries regulations. The section would require that fines collected for violations of the groundfish plan are to be used by the Secretary of the department which acted to enforce it.

Section 902(a) adds a new section 314 to the Magnuson Act requiring the Secretary to establish a Northwest Atlantic ocean fisheries reinvestment program to assist in the development of economically viable fisheries for underutilized species, to explore new opportunities for the processing and use of fish waste, and to help restore depleted New England groundfish stocks through aquaculture or hatchery programs.

Under the program, the Secretary would be authorized to provide financial assistance to U.S. citizens to carry out the purpose of the section, while giving the highest priority to the owner or operator of a fishing vessel who agrees, in return for the assistance, to surrender temporarily the right to fish for New England groundfish. The purpose of giving preference to such an owner or operator is to use the availability of assistance as a means of reducing, albeit marginally, the fishing effort now concentrated on depleted groundfish stocks.

In establishing and implementing the program, the Secretary shall consult with representatives of the commercial fishing and seafood processing industries and with qualified members of the academic community.

Funding for the fisheries reinvestment program could be made available under the Saltonstall-Kennedy fund, under the separate authority granted by this Act or under a combination thereof. Up to $5 million is authorized annually for fiscal years 1993 through 1997.

Section 902(b) requires the Secretary to work with other Federal agencies to make underutilized species eligible for programs such as the Department of Agriculture's Food for Peace and Section 902(c) directs the New England Regional Fisheries Management Council to develop a management plan for any significant underutilized species that is not already covered by such a plan.

I note that these two fisheries-related provisions are derived from S. 2849, the proposed New England Groundfish Restoration Act which was approved by the Senate Committee on Commerce, Science and Transportation on June 16. A similar bill, H.R. 5557, was introduced by Representatives GERRY STUDDS and approved by the House of Representatives on September 22.

My own preference would have been to approve S. 2849 in its entirety, or something very close to it. Unfortunately, opposition from within the New England Senate delegation to some aspects of the bill has made that impossible. I am pleased, nevertheless, that we were able to get agreement to move these two provisions, which I believe will take us two significant steps forward in responding to the very serious problems faced by the New England groundfish fishery.

I believe it is important that all Senators, and especially, those from New England, agree that a comprehensive, long-term strategy to restore depleted northwest Atlantic fisheries stocks is essential. The problems are well-documented, severe, urgent and unavoidable. Obviously, we all hope that the New England Council, working with the industry, will be able to develop and implement an effective plan. We note that the industry has made great progress in working with the council, Federal authorities and the Conservation Law Foundation to resolve issues raised by the consent decree under which the council is now forced to operate. If further progress is to be made, it is essential that differences of approach and interest among the various States and gear-types be minimized and the common interest in rebuilding the stocks prevail.

For my part, I intend to begin work as soon as the 103d Congress convenes next year to try to develop a set of regionally accepted proposals for assisting the council and the industry in reducing fishing effort and providing time for the rebuilding of groundfish stocks. The enactment of Title IX of this Act will give us a head start in that direction.

Mr. President, the oceans and atmosphere are critical components of the Earth's ecosystem, and our understanding and management of them is intrinsic to our national well-being. These complex systems moderate global temperatures, protect us from the sun's ultraviolet radiation, and provide us with precious natural resources. The programs of the National Oceanic and Atmospheric Administration are essential for the study, conservation and management of these systems.

I am pleased that we have reached this agreement and are considering this important legislation today, and would like to thank my colleagues and their staffs who have worked with me in a wholly cooperative, diligent, and exemplary bipartisan fashion to achieve this agreement.

Mr. HOLLINGS. Mr. President, I rise today in support of H.R. 2130, the National Oceanic and Atmospheric Administration Authorization [NOAA] Act of 1992, as amended. This legislation reauthorizes many important NOAA atmospheric and satellite, ocean and coastal, and fisheries programs. It also contains provisions to improve coastal monitoring and initiate modernization of the NOAA oceanographic research fleet. As I have done in the past, I remind my colleagues of NOAA's important contributions to our understanding and management of natural systems. The legislation before us today would support and improve NOAA programs which, particularly in these days of growing concern over the global environment, are clearly of importance to us all.

Of particular relevance to those of us from the Southeastern States are the provisions in this legislation dealing with NOAA weather service and satellite operations. As everyone knows, Hurricane Hugo caused a great deal of damage to my home State of South Carolina in 1989. Without the forecasts and monitoring provided by the National Weather Service, however, I can assure you that the damage in South Carolina would have been greater and many more lives would have been lost. Similarly, the National Weather Service's information was crucial in the more recent efforts to respond to Hurricanes Andrew and Iniki. This legislation would authorize necessary funding for satellite and weather service programs, and also would initiate innovative new programs such as a joint program between NOAA and the Department of Defense to research hurricane reconnaissance. Further, the legislation includes a much-needed provision to prohibit the closure of weather service offices, and to ensure that National Weather Service coverage is maintained during the modernization process.

The NOAA authorization bill before us today has been carefully crafted as a joint effort among the committees of jurisdiction in the Senate and the House of Representatives. It is comprehensive legislation addressing many of the major policy issues confronting the agency today. I thank my colleagues in both the Senate and the House who have worked long and hard to put together this important legislation. I urge my colleagues to support H.R. 2130.

COASTAL MONITORING

Mr. MITCHELL. Mr. President, I rise to give my full support to the coastal monitoring provisions in the legislation to authorize the activities of the National Oceanic and Atmospheric Administration.

The monitoring program for coastal waters included in the bill was originally proposed in legislation I introduced to expand the protection of coastal waters. Senators CHAFEE and HOLLINGS worked closely with me in reviewing and revising this proposal and I very much appreciate their constructive efforts to advance this important legislation.

There is growing public awareness and concern about environmental problems in coastal waters. News reports have highlighted beach closings in New Jersey, a dead zone in the Gulf of Mexico, and toxic pollutants in sediments in harbors.

The Congressional Office of Technology Assessment [OTA], in a major report titled "Wastes in the Marine Environment", concluded that the overall health of our estuaries and coastal waters is declining or threatened.

The OTA report provides a summary and assessment of the various laws relating to protection of marine and estuarine waters, including the Clean Water Act and the Marine Protection, Research and Sanctuaries Act. The report states:

> Even if total compliance with today's regulations is achieved, existing programs will not be sufficient to * * * maintain or improve the health of all estuaries and coastal waters. In the absence of additional measures to protect our marine waters, the next few decades will witness new or continued degradation in many estuaries and coastal waters around the country.

The Environment and Public Works Committee has held hearings over the past several years to review the environmental conditions of marine waters and to consider legislation to expand and strengthen marine monitoring and research.

The OTA report, which was presented at the first of those hearings, suggests a range of actions to reverse the decline in coastal and marine water quality, including expanding and strengthening research of the marine environment. The report states:

> Monitoring, research, and enforcement are currently inadequate, and funding levels for those activities are being reduced in some instances.

Dr. Donald Boesch of the Louisiana Marine Consortium, testified:

> Reversing the trend of deteriorating coastal environmental quality well require a much improved understanding of environmental processes and the efforts of changing conditions on ecosystem productivity and integrity.

Mr. Charles Fox, representing the Environmental Policy Institute and a number of environmental groups, stated:

> We believe that the proposed legislation would complement and substantially strengthen existing coastal research and monitoring programs.

An important first step in protecting our coastal waters is to assure that we have useful and reliable data on current environmental conditions and trends in these waters. The coastal monitoring program in this legislation now before us will assure that we have this much needed information.

The new coastal monitoring program is to be jointly administered by the Environmental Protection Agency [EPA] and the National Oceanic and Atmospheric Administration [NOAA]. Both agencies have vital roles to play in developing and implementing a coastal monitoring program and the legislation is designed to draw on the strengths of both agencies.

While we want the EPA and NOAA to work together to implement the best possible program for monitoring coastal water and sediment quality, we have not specified specific responsibilities for each agency. Instead, we have asked the agencies to work together to develop a comprehensive monitoring strategy which will define respective roles and responsibilities and indicate where other Federal agencies or governments can contribute this effort.

Another critical provision of the program is the requirement for a joint EPA/NOAA report to Congress on environmental conditions in coastal waters. This report will provide a much needed point of reference for assessing the effectiveness of coastal environmental protection programs.

The coastal monitoring program is to include a comprehensive effort to identify environmental conditions and trends throughout coastal waters. This assessment is to be based on the expansion of existing monitoring networks and programs of EPA and NOAA as well as the integration and consolidation of data generated by other Federal agencies, State and local government and other parties.

A key element of the comprehensive monitoring effort is the development of intensive monitoring programs for specific coastal areas. These intensive monitoring programs will supplement data generated by other monitoring programs and will help answer questions about specific trends or conditions identified as part of the national program. The National Research Council will work with the EPA and NOAA to identify specific areas for intensive monitoring.

I am pleased to note that the Gulf of Maine is one of several areas identified in the bill to be intensively monitored as part of this program. This monitoring effort will provide much needed data on the environmental conditions in the Gulf of Maine. While the Gulf of Maine is still very clean, there is evidence of pollution threats in some areas and this new effort will help assure that we recognize potential problems and take response actions before problems become costly and unmanageable.

The bill also provides for the EPA and NOAA to work with other Federal agencies and other parties to develop technical protocols and guidelines to assure that data collected as a result of coastal monitoring programs is consistent and compatible. This effort is essential if we are to make the best use of limited monitoring resources.

The bill provides that data collected by dischargers under requirements of permits issued under section 402 of the Clean Water Act is to be consistent with the national data guidelines and provides authority to modify permits to accomplish this objective.

Nothing in the bill requires dischargers to conduct monitoring not now required under a 402 permit or to add to a permit a new requirement for ambient monitoring of coastal waters. In addition, the reference in subsection (d)(4)(G)(ii) to private parties refers to those agencies or organizations that will implement the intensive monitoring program and does not require any new requirements, conditions, or modifications to permits issued under section 402 of the Clean Water Act.

The bill provides for authorizations to EPA and NOAA to support the coastal monitoring program. These funds are divided evenly among the two agencies and the specific uses of funds are to be determined as part of the development of the national coastal monitoring strategy. Both agencies are authorized to use a portion of these funds for cooperative or contractual agreements with appropriate non-Federal agencies and institutions to assist in implementing intensive monitoring programs. Any such agreements are to provide that Federal funds be matched on a 50–50 basis.

Mr. President, this legislation will give us much needed insight into the changing conditions of one of our most vital natural resources—our coastal waters. I urge my colleagues to support this legislation.

Mr. LAUTENBERG. Mr. President, I rise in support of title V of H.R. 2130, the NOAA Authorization Act of 1991. Title V establishes a comprehensive monitoring program for our oceans and coastal waters.

Mr. President, we have made a great deal of progress in restoring the health of our marine waters. We no longer discharge raw sewage sludge and industrial waste into our coastal waters and ocean. We have begun to address nonpoint pollution, runoff, which threatens our waters. And fish and returning to our nation's estuaries.

But more remains to be done. According to EPA's latest National Water Quality Inventory, in 1988 30 percent of those estuaries which have been assessed either are failing to achieve water quality standards or threaten to fail to achieve those standards. And 224 beach closures were reported in 18 States. These are remarkable figures nearly two decades after passage of the Clean Water Act.

I have joined Senator MITCHELL in introducing S. 1070, the Coastal Protection Act, to provide the programs we need to address the remaining coastal problems. This act is based on hearings held jointly in 1989 by the Subcommittee on Superfund, Ocean and Water Protection which I chair and the Subcommittee on Environmental Protection. We'll address most of the provisions of the Coastal Protection Act during the Senate's consideration of the Clean Water Act.

One essential element to restoring the health of our waters and one component of the Coastal Protection Act is to establish a comprehensive marine monitoring program. Title V establishes such a program based on the monitoring program included in the Coastal Protection Act. This would include a program to monitor garbage and other floatables along our shorelines and report the results of the monitoring to the public. This floatables monitoring program was first included in the Comprehensive Ocean Assessment and Strategy Act which I introduced in 1989.

Title V also includes a program to intensively monitor certain important coastal areas. I'm pleased that title V includes the Hudson-Raritan estuary as one of the areas to be monitored.

Title V will be an important part of our efforts to protect our coastal waters. I urge my colleagues to support title V.

COASTAL MONITORING

Mr. MOYNIHAN. Mr. President, I am very pleased that the pending legislation includes a new program for monitoring environmental conditions and trends in the Nation's coastal waters, including the Great Lakes. This new authority will provide improved information about coastal waters and provide a sound, scientific basis for future decisions concerning protection of this vital resource.

I also want to note that the program is to be a joint effort of the Environmental Protection Agency and the National Oceanic and Atmospheric Administration. The bill builds on the strengths of each agency and will assure that we have a unified and coordinated understanding of environmental conditions in coastal waters.

This joint monitoring program is the result of a cooperative effort between the Environment and Public Works Committee and the Commerce, Science, and Transportation Committee. It is our intention that this program, which will become a new title of the Marine Protection, Research and Sanctuaries Act, be the joint jurisdiction of our two committees.

Mr. HOLLINGS. I agree with my colleague from New York that the proposed coastal monitoring program before us will substantially improve and increase the information we have about coastal water and the Great Lakes. It will assist us for years to come in understanding conditions in these waters and responding to possible problems.

The Senator is correct that this program is the product of a joint effort by our two committees and that the new title of the Marine Protection, Research, and Sanctuaries Act is intended to be the joint jurisdiction of our two committees. I look forward to working with the Senator from New York in his new role as chairman of the Environment and Public Works Committee on coastal monitoring and many other issues of mutual interest.

Mr. CHAFEE. I want to thank Senator HOLLINGS for his constructive effort to develop a balanced and workable coastal monitoring program. I agree that the monitoring program is an important step toward assuring the quality of our coastal resources and I agree that the program is most appropriately the joint jurisdiction of the Commerce Committee and the Environment and Public Works Committee, on which I serve as ranking minority member.

Mr. President, I would like to engage the distinguished chairman of the Commerce Committee, Senator HOLLINGS, in a short colloquy regarding H.R. 2130, the National Oceanic and Atmospheric Administration Authorization Act of 1992.

Subsection (c)(4) of section 503 of this bill is intended to assure that compliance monitoring conducted pursuant to section 402(a)(2) of the Clean Water Act is consistent with the guidelines issued under subsection (c). It is my understanding that discharge permits may be modified only to assure that technical data compiled in connection with compliance monitoring is compatible with the way in which monitoring data is collected under the protocols. Furthermore, nothing in the bill would require dischargers to carry out ambient water quality monitoring or other additional monitoring requirements beyond what is currently required under the Clean Water Act.

Subsection (d) of section 503 creates an intensive water quality monitoring program. The provision contained in subsection (d)(4)(G)(ii) of that subsection specifies the implementation requirements for the monitoring program including the public and private parties that will implement the program. It is my understanding that this provision covers only those institutions that will carry out monitoring programs pursuant to subsection (d) and does not require any new requirements, conditions or modifications to NPDES permits issued under section 402 of the Clean Water Act.

Is this consistent with the views of the distinguished Senator from South Carolina?

Mr. HOLLINGS. I would say to the distinguished Senator from Rhode Island that this is entirely consistent with my understanding of subsection (c)(4) of section 503, and subsection (d) of section 503 of S. 1405. I thank the Senator for his interest.

Mr. SARBANES. Mr. President, I rise in strong support of this conference agreement on the National Oceanic and Atmospheric Administration's Authorization Act of 1992. This legislation provides the authority and funding necessary for NOAA to carry out its important missions of marine research, mapping, weather observation, and ocean and coastal management. It also contains two provisions important to meeting the long-term goal of the Chesapeake Bay Program—restoring the Bay's living resources to healthy and balanced levels—a provision which I authored, establishing within NOAA a Chesapeake Bay Estuarine Resources Office, and a program for monitoring the Nation's marine ecosystems, including the Chesapeake Bay.

As the lead Federal agency responsible for marine and estuarine science, NOAA is a vital part in the Chesapeake Bay restoration program. Since 1985, NOAA has conducted studies which include: fisheries stock assessment and statistics improvement, researching processes controlling low dissolve oxygen and toxic contamination, monitoring algal blooms using aircraft remote sensing, and tracking changes in tidal wetlands using Landsat imagery. This research has been essential to improving our understanding of the interrelationships among climate, harvest, and pollution in the decline of anadromous fish and other marine species in the Bay. In addition, NOAA Sea Grant, Coastal Zone Management, Striped Bass and Oyster Disease research programs, among others, have contributed directly to living resource restoration and pollution prevention efforts in the Bay.

With the signing of the Chesapeake Bay Agreement of 1987 and its recent amendments, and a new Memorandum of Understanding with EPA outlining NOAA's responsibilities in the Bay restoration effort, NOAA's role has expanded and become even more important. NOAA and other Bay area organizations have committed to specific measures to reach the goals of restoring and protecting the Bay's living resources, their habitats and ecological relationships. The new goals and objectives underscore the need not only to continue NOAA's present Chesapeake Bay efforts, but also call for greater science, research, monitoring and data collection support activities.

Unfortunately, each year the administration zeroes out funding for NOAA's Chesapeake Bay programs from its budget request on the basis of an erroneous claim that the programs have met their original goals. Each year the Congress restores this funding. In addition, the program office which coordinated the agency's Chesapeake Bay studies was reorganized in 1990 and since then the responsibilities for administering and coordinating the Agency's Chesapeake Bay activities have been diffuse. Absent a specific authorization, as provided for the Great Lakes Program, it was apparent that NOAA's Chesapeake Bay programs would not receive the important priority they deserve.

The Chesapeake Bay Estuarine Resources Office established in this legislation will help ensure that NOAA's commitments to our nation's estuary are met. The legislation codifies the agency's responsibilities to the Bay effort, specifies the functions of the office, and directs the Secretary of Commerce to submit a funding request for this office in the President's annual budget to the Congress.

The new office will provide a focal point for managing and coordinating NOAA's Chesapeake Bay activities, strengthen the agency's interaction with the Bay Program, and ensure NOAA-wide involvement in the Bay area. I am pleased to report that NOAA is currently in the process of leasing space in Annapolis, in the same building as EPA's Chesapeake Bay Program office, and hiring staff for this new office.

In addition, the legislation authorizes a program of biological monitoring in Chesapeake Bay. Biological monitoring is an essential tool for evaluating the success of the Bay's restoration and protection program. Several recent reports on the Chesapeake Bay have identified the need for a Bay-wide monitoring program of the biological resources of the Chesapeake and its tributaries as a top priority to improve our knowledge of Chesapeake Bay species, their natural cycles, their habitat needs and how they respond to human activities. While NOAA has conducted fisheries stock assessments, research on toxics processes and effects, and remote sensing activities as part of its Chesapeake Bay studies program, there is no continuous monitoring effort to track living resource trends and evaluate the responses of the estuary's biota to changes in their environment. Without such a program, plans for improving water quality, habitats and management of resources may be based on inaccurate information and result in costly mistakes. This biological monitoring provision will enhance NOAA's program and assist in establishing clear management goals and progress indicators for productivity, diversity and abundance of species.

I want to commend the chairman of the committee, Senator HOLLINGS, and Senator ROBB who, as a member of the Committee, played a key role in ensuring that these provisions were included in the bill, for their support and assistance. I urge my colleagues to join me in supporting this conference agreement.

Mr. FORD. Mr. President, I move the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT 900 SERVICES

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6191, the Telephone Disclosure and Dispute Resolution Act 900 Services, just received from the House; that the bill be deemed read the third time, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 6191) was deemed read the third time, and passed.

THE OMNIBUS OCEANS ACT OF 1992

Mr. BRADLEY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5617, the Omnibus Oceans Act of 1992, just received from the House, that the bill be deemed read three times, passed and the motion to reconsider laid upon the table; and that any statements appear in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERRY. Mr. President, today I am pleased to report that an agreement has been reached permitting the Senate to pass a bill that includes amendments to title III of the Marine Protection, Research, and Sanctuaries Act [MPRSA] of 1972 and to authorize appropriations for operations and management of the marine sanctuaries program for fiscal years 1993 through 1995. Our national marine sanctuaries protect and preserve marine environments of special ecological, historical, educational, recreational, and aesthetic importance. This marine sanctuary system, like our system of national parks, includes a startling diversity of aquatic habitats and animals such as migrating whales, giant kelp forests, and coral reefs. Importantly, marine sanctuaries provide protected waters and secure habitats for endangered or threatened species of fish, marine mammals, and birds. It is a system in which we can all take pride, and a system that we should continue to support.

Since enactment of the MPRSA in 1972, eight sanctuaries have been designated including sites such as the Channel Islands of California and the Florida Keys. This list is soon to grow, with three more sites to be designated this year.

In the bill now before us, Stellwagen Bank, located in Massachusetts Bay—a site I first nominated for sanctuary designation in 1988—would be designated a National Marine Sanctuary along with the Hawaiian Islands Humpback Whale Sanctuary and Monterey Bay National Marine Sanctuary.

Since it is the sanctuary of which I am most familiar, I would like to focus briefly on the Stellwagen Bank designation. Most of the National Oceanic and Atmospheric Administration's [NOAA] evaluation process intended to culminate in sanctuary designation for Stellwagen Bank has taken place. Public hearings have been held and public comments have been received. However, over the past 5 months NOAA has delayed the final recommendation for designation. On numerous occasions we have been promised that the designation is imminent, and yet the designation has not been made. I now have concluded that it is important to move forward with the designation of Stellwagen Bank in order to proceed with the long-term management and protection of this environmentally sensitive area.

This bill today also would place a ban on mineral and gravel mining at Stellwagen Bank in order to ensure that this valuable area is never subjected to the devastation which would surely accompany those activates. Factors such as pollution in Massachusetts Bay and dumping of dredged materials also threaten this unique marine resource. With the designation of Stellwagen, we would be better able to manage this resource in such a way to minimize the effects of these harmful activities.

As the number of sanctuaries grows larger, we should ensure that adequate resources are provided for management; not only for sites presently operating, but also for newly designated sites. Historically, funding for marine sanctuaries has been insufficient to allow for comprehensive management of marine areas. The bill would authorize additional funding for program management. According to NOAA's Marine Sanctuary Review Team, none of the sanctuaries now in place is adequately staffed or provided with the facilities, equipment, or supplies required to successfully perform the assigned responsibilities. This funding authorization recognizes the complex reality of managing marine sanctuaries, and ensures that new sites like Stellwagen Bank will receive the necessary support they deserve.

However, Federal funding alone will not be enough to protect a sanctuary. This bill would increase the amount of civil penalties imposed for violations of sanctuary regulations. The increased penalties should serve to deter violations, which will benefit the suers of these sanctuaries and reduce enforcement costs. Where the deterrence is ineffective, the proceeds from these penalties would be applied to the costs of sanctuary management and augment Federal spending. In additioin, this bill would authorize the Secretary of Commerce to enter into cooperative agreements and to solicit and receive donations from nonprofit organizations. This authority would provide additional resources for marine sanctuaries and their management.

This bill also addresses specific needs of the marine sanctuary program that either delay sanctuary designations or hinder sanctuary planning and management.

Specifically, the bill addresses interagency cooperation, especially NOAA's authority to review activities—both inside and outside sanctuary boundaries—that affect sanctuary resources. The bill would require all Federal agencies, and all private activities authorized within sanctuaries by licenses, leases, or permits, to submit written statements to the Secretary of Commerce describing activities potentially detrimental to sanctuary resources. It also would allow the Secretary to recommend reasonable and prudent alternatives in order to protect sanctuary resources and quality. Required notifications and responses should promote more timely evaluations of potentially harmful activities and appropriate responses.

Hazardous materials located close to sanctuaries have emerged as a substantive obstacle to sanctuary designation and management. For example, this has been a major obstacle in the Stellwagen Bank designation. Hazardous materials may threaten living marine resources. Knowing the location of hazardous materials and the extent of contamination is essential to comprehensive management and resource protection. The bill would enhance NOAA's ability to obtain from other Federal agencies information regarding the past, present, or proposed future disposal of hazardous materials in or near marine sanctuaries in order to evaluate environmental risks of such waste disposal.

In addition, the bill would direct NOAA to promote and coordinate research, monitoring and education in marine sanctuaries so that the public might better understand the complexities of the marine environment. Greater emphasis on marine research and education should benefit several marine institutions in my own State such as the Woods Hole Oceanographic Institute, the Massachusetts Institute of Technology, and the New England Aquarium. Undoubtedly, sanctuaries in other regions will provide similar benefits.

Finally, there is a need to focus the marine sanctuaries program on the future. This bill would require NOAA to review sanctuary management plans every 5 years in order to evaluate progress in reaching long-term goals. Also, the bill would allow for the establishment of one or more advisory councils for marine sanctuaries. These councils should provide direct assistance, guidance, and vision for sanctuary designations and management.

Before closing, I would also like to express my gratitude and appreciation to the distinguished committee chairman and cosponsor, Senator HOLLINGS, and to the estimable ranking minority member, Senator DANFORTH, as well as to fellow cosponsor, the esteemed Senator from Alaska, Senator STEVENS, for their continued leadership and support for the marine sanctuaries program. I would also like to commend our colleagues in the House, especially Mr. HERTEL, Mr. STUDDS, Mr. PANETTA, and our departed colleague Mr. Jones, for their cooperation and truly superb work in reaching this agreement.

Finally, we cannot ignore, as we are often prone to do, the invaluable assistance of their staffs, assistance that was essential in guiding this bill through the legislative process. I want to extend my sincere appreciation to them for their perseverance and dedication.

The National Marine Sanctuary Program preserves, protects, and manages for future generations invaluable marine environments that are part of our common natural heritage. I am pleased that we are considering this bill to reauthorize this program.

Mr. HOLLINGS. Mr. President, I rise in strong support of H.R. 5617, which includes several important provisions.

First, it authorizes appropriations and manning levels for Coast Guard activities in fiscal year 1993. The bill also includes other important provisions which provide for a sound investment in the future of the Coast Guard.

The bill before us today provides the core authorization for the Coast Guard for fiscal year 1993. The authorization totals $3.817 billion for 1993, which reflects a modest increase of 6 percent from the fiscal year 1992 appropriated level. This small increase clearly is an inaccurate reflection of the expanding duties of this branch of the Nation's armed services. From its 1790 mandate of prevention of smuggling and collection of tax revenues, the duties of the Coast Guard have expanded, in recent years to include search and rescue, fisheries law enforcement, drug interdiction, aids to navigation, marine safety, and marine environmental protection. In addition, during the past few years, the Coast Guard has been on the front line of highly publicized events such as the clean up of the *Exxon Valdez*, the blockade of Iraq, and the Haitian interdiction. The bill provides the bare-bones authorization needed for the Coast Guard to perform these many important functions.

It also provides authorizations for general Coast Guard operations, as well as for some important specific initiatives. Among the general Coast Guard expenses authorized under the bill are funding for Coast Guard operating expenses and capital funding projects. The first of these accounts allows the Coast Guard to pay for operation and maintenance of its vessels and aircraft. The second provides money for acquisition, construction, rebuilding, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft. General authorizations are also included to provide affordable housing, medical care, training, family services, and recreational facilities for the men and women of the Coast Guard. Coast Guard retirement pay for fiscal year 1993, which provides money to retired military personnel of the Coast Guard, the Coast Guard Reserve, and the former Lighthouse Service is authorized in this section of the bill. Finally, general authorizations are provided to fund research and development, bridge alteration, and for a 42-percent increase in funding for environmental compliance and restoration activities.

Under the category of specific authorizations, the bill provides an authorization for a number of important Coast Guard projects. To assist the Coast Guard in its efforts to improve oilspill response, specific authorizations are provided for prepositioned oilspill cleanup equipment in Houston, TX, and Portland, OR, and for acquisition of oilspill training simulators for Texas and Massachusetts. The bill also authorizes funding to improve Coast Guard shore facilities at Cape Hatteras in North Carolina.

In addition, it contains provisions which amend existing law applicable to the Coast Guard. These provisions address specific problems related to payment of civil penalties, eligibility for special pay in the Coast Guard, Coast Guard inspection and enforcement authority with respect to foreign passenger vessels, and reimbursement for overseas inspections and examinations of foreign vessels. H.R. 5055 also contains provisions to improve Coast Guard recycling programs, phone access, medical benefits, and inshore vessel traffic regulation.

Furthermore, this legislation authorizes funding for the National Marine Sanctuaries Program for fiscal years 1993 through 1996 and makes certain improvements to the overall program.

This year marks the 20th anniversary of title III of the Marine Protection, Research, and Sanctuaries Act of 1972 [MPRSA]. As we consider the reauthorization legislation before us today, I remind my colleagues of some of the important successes of this program. During recent years, the National Marine Sanctuaries Program has grown in size and stature. Three new sanctuaries have been added to the program in the past 3 years, and at least six additional sites are under consideration for designation. The National Marine Sanctuarites Program is being called upon to meet greater challenges, such as the development of a management plan for the 2,600-square mile Florida Keys National Marine Sanctuary. Clearly, from its relative obscurity in the early 1980's, the National Marine Sanctuaries Program has become a well-recognized and critical key to protecting Marine ecosystems.

This reauthorization package has been tailored to encourage the current momentum of the National Marine Sanctuaries Program, particularly in the designation or study of new sites required by the 1998 amendments to the MPRSA. While providing some fine-tuning, the legislation essentially would provide the Marine Sanctuaries Program with 4 years to take the next important step of developing and implementing management plans in its new and existing sanctuaries. The legislation before us today also provides an increase in authorized funding commensurate with the increased responsibilities of the program.

The legislation also addresses certain needs in existing sanctuaries, and also finalizes designation of several new marine sanctuaries. Under this bill, three new sanctuaries would be added to the National Marine Sanctuaries Program. The Stellwagen Bank National Marine Sanctuary, which is an area of unusual biological productivity and diversity, would be designated off the coast of Massachusetts. The Monterey Bay National Marine Sanctuary, which has been under consideration for some time now, would be designated off the central coast of California. And, finally, the Hawaiian Islands Humpback National Marine Sanctuary, established for the purposes of protecting the Hawaiian stock of the endangered humpback whale, also would be designated.

I am pleased to support inclusion of these important and unique areas in our National Marine Sanctuaries Program. I urge my Senate colleagues to support these new designations, and to approve this overall reauthorization legislation which will help to ensure our Nation's continued efforts to preserve our precious marine environment.

In addition, this bill would amend the Marine Mammal Protection Act of 1972 to improve and provide a statutory basis for the existing marine mammal health and stranding response activities of the National Oceanic and Atmospheric Administration [NOAA].

Each year, NOAA volunteers respond to an average of 2,000 marine mammal strandings along the coast of the United States. Although these volunteer networks have performed a vital service for some 20 years, recent events, such as the 1987–88 bottlenose dolphin die-off and the 1989 *Exxon Valdez* oil spill, have highlighted inadequacies in the current Federal system for responding to large-scale mortality events. The bill would mandate contingency planning to improve immediate response to large-scale marine mammal stranding events. The legislation would also require standardization of tissue collection and archiving procedures, which would clearly improve our ability to discern the causes of such events. Further, under this legislation, NOAA would be required to set guidelines for the release of rehabilitated marine mammals to the wild.

Mr. President, I urge my colleagues to support this important legislation.

Mr. BREAUX. Mr. President, I rise in support of H.R. 5617, the Oceans Act of 1992. The bill has a provision that is intended to protect the waterways of the United States from serious environmental problems resulting from abandoned barges.

Abandoned barges have been used by so-called midnight dumpers for the disposal of hazardous wastes and waste oils. The General Accounting Office [GAO] has found that there are over 1,300 known abandoned vessels along U.S. waterways. They have been the cause of numerous water pollution incidents, including many incidents in my home State of Louisiana, that have cost the Federal Government millions of dollars in cleanup expenses. This amendment is designed to give the Coast Guard the authority to deal with these potential sources of pollution.

The provision prohibits owners or operators of barges over 100 gross tons from abandoning them on the navigable waters of the United States. In addition, it directs the Secretary of Transportation to fine barge owners or operators up to $1,000 for each day that the vessel is deemed to be abandoned. The Secretary is also directed to require the owner or operator to remove the abandoned barges for which they are responsible. If the owner or operator does not remove the barge as specified, the Secretary is authorized to have it removed by a third party at the expense of the violating party.

This provision regarding abandoned barges is essential to the protection of the waterways of Louisiana. I urge its quick passage.

THE BREAUX-MOYNIHAN AMENDMENT, THE CLEAN VESSEL ACT OF 1992

Mr. BREAUX. Mr. President, I rise to support the Clean Vessel Act of 1992 amendment, which is subtitle "F" of title V in H.R. 5617, the Oceans Act of 1992.

In 1984, I joined with Senator MALCOLM WALLOP to lead the legislative effort to establish the WALLOP-BREAUX trust fund. We developed a team approach, Mr. President, for protecting and expanding opportunities for recreational boaters to enjoy boating and fishing in America's many waterways.

That program is truly one of America's great success stories. Under the authorizing jurisdiction of the Senate Commerce Committee, the management of the National Oceanic and Atmospheric Administration and the U.S. Coast Guard, Wallop-Breaux's fisheries research and fish habitat improvement, and boating safety and aquatic resource education programs have flourished. The fund collects taxes from boaters and fishermen, more than $240 million a year, to be used at the Federal, State and local level to benefit millions of users of our waterways.

I attribute much of Wallop-Breaux's success to this team approach to enhancing safe and healthy recreational uses of our waterways. The Federal Government, State governments, and the boaters are partners in this effort to protect and develop America's waters.

The time has come, Mr. President, to prepare for realigning the responsibilities of Wallop-Breaux team members. Due to budgetary pressures we see that the Coast Guard is forced into becoming a decreasing presence in State coastal waters. This is occurring at the same time that our recreational boater population is growing.

To deflect this threat to boating safety, the amendment offers an increased share of Wallop-Breaux funding that will flow to the States for boating safety programs. As a result, the States will be in position to upgrade in-State efforts to encourage safe boating.

Today, I am also calling on this successful collaboration to join in solving the increasingly vexatious problem of recreational boaters having to discharge raw sewage in navigable waters of the United States. We know that such practices are in violation of U.S. law.

It is occurring, however, because there are not enough pumpout stations; there are few accessible disposals for dumping such wastes at public and private marinas around the country.

The amendment offers Wallop-Breaux merit grants to States that agree to study the extent of the problem in their jurisdictional waters. States are then encouraged to develop plans for any construction or renovation of pumpout stations and waste reception facilities that are necessary to meet the needs of an increasing boating population.

Mr. President, in accepting this amendment the Senate Commerce Committee is accepting what has proven to be an effective approach to protecting our waterways for safe boating; Once again Chairman HOLLINGS has demonstrated his high level of support for Wallop-Breaux fund programs: in passing this amendment we are eradicating a potentially serious threat to safe boating in the waterways of the United States.

I thank the committee and my colleagues in the Senate for their acceptance of this amendment.

So the bill (H.R. 5617) was deemed read the third time and passed.

THE JUSTICE IMPROVEMENTS BILL

Mr. BRADLEY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3349, the justice improvements bill, introduced earlier today by Senators BIDEN and THURMOND; that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table; and that statements with respect to passage of this legislation appear at an appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 3349) was deemed read the third time and passed, as follows:

S. 3349

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—CHILD PROTECTION

SEC. 101. SHORT TITLE.

This title may be cited as the "National Child Protection Act of 1992".

SEC. 102. PURPOSES.

The purposes of this title are—

(1) to establish a national system through which child care organizations may obtain the benefit of a nationwide criminal background check to determine if persons who are current or prospective child care providers have committed child abuse crimes or other serious crimes;

(2) to establish minimum criteria for State laws and procedures that permit child care organizations to obtain the benefit of nationwide criminal background checks to determine if persons who are current or prospective child care providers have committed child abuse crimes or other serious crimes;

(3) to provide procedural rights for persons who are subject to nationwide criminal background checks, including procedures to challenge and correct inaccurate background check information;

(4) to establish a national system for the reporting by the States of child abuse crime information; and

(5) to document and study the problem of child abuse by providing statistical and informational data on child abuse and related crimes to the Department of Justice and other interested parties.

SEC. 103. DEFINITIONS.

For the purposes of this title—

(1) the term "authorized agency" means a division or office of a State designated by a State to report, receive, or disseminate information under this title;

(2) the term "background check crime" means a child abuse crime, murder, manslaughter, aggravated assault, kidnapping, arson, sexual assault, domestic violence, incest, indecent exposure, prostitution, promotion of prostitution, and a felony offense

involving the use or distribution of a controlled substance;

(3) the term "child" means a person who is a child for purposes of the criminal child abuse law of a State;

(4) the term "child abuse" means the physical or mental injury, sexual abuse or exploitation, neglectful treatment, negligent treatment, or maltreatment of a child by any person in violation of the criminal child abuse laws of a State, but does not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty;

(5) the term "child abuse crime" means a crime committed under any law of a State that establishes criminal penalties for the commission of child abuse by a parent or other family member of a child or by any other person;

(6) the term "child abuse crime information" means the following facts concerning a person who is under indictment for, or has been convicted of, a child abuse crime: full name, race, sex, date of birth, height, weight, a brief description of the child abuse crime or offenses for which the person has been arrested or is under indictment or has been convicted, the disposition of the charge, and any other information that the Attorney General determines may be useful in identifying persons arrested for, under indictment for, or convicted of, a child abuse crime;

(7) the term "child care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children;

(8) the term "domestic violence" means a felony or misdemeanor involving the use or threatened use of force by—

(A) a present or former spouse of the victim;

(B) a person with whom the victim shares a child in common;

(C) a person who is cohabiting with or has cohabited with the victim as a spouse; or

(D) any person defined as a spouse of the victim under the domestic or family violence laws of a State;

(9) the term "exploitation" means child pornography and child prostitution;

(10) the term "mental injury" means harm to a child's psychological or intellectual functioning, which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors or by a change in behavior, emotional response, or cognition;

(11) the term "national criminal background check system" means the system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification;

(12) the term "negligent treatment" means the failure to provide, for a reason other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of a child;

(13) the term "physical injury" includes lacerations, fractured bones, burns, internal injuries, severe bruising, and serious bodily harm;

(14) the term "provider" means—

(A) a person who—

(i) is employed by or volunteers with a qualified entity;

(ii) who owns or operates a qualified entity; or

(iii) who has or may have unsupervised access to a child to whom the qualified entity provides child care; and

(B) a person who—

(i) seeks to be employed by or volunteer with a qualified entity;

(ii) seeks to own or operate a qualified entity; or

(iii) seeks to have or may have unsupervised access to a child to whom the qualified entity provides child care;

(15) the term "qualified entity" means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides child care or child care placement services, including a business or organization that licenses or certifies others to provide child care or child care placement services;

(16) the term "sex crime" means an act of sexual abuse that is a criminal act;

(17) the term "sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children or incest with children; and

(18) the term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific.

SEC. 104. REPORTING BY THE STATES.

(a) In General.—An authorized criminal justice agency of a State shall report child abuse crime information to, or index child abuse crime information in, the national criminal background check system.

(b) Provision of State Child Abuse Crime Records through the National Criminal Background Check System.—(1) Not later than 180 days after the date of enactment of this Act, the Attorney General shall—

(A) investigate the criminal records of each State and determine for each State a timetable by which the State should be able to provide child abuse crime records on an on-line capacity basis through the national criminal background check system;

(B) establish guidelines for the reporting or indexing of child abuse crime information, including guidelines relating to the format, content, and accuracy of child abuse crime information and other procedures for carrying out this Act; and

(C) notify each State of the determinations made pursuant to subparagraphs (A) and (B).

(2) The Attorney General shall require as a part of the State timetable that the State—

(A) achieve, by not later than the date that is 3 years after the date of enactment of this Act, at least 80 percent currency of final case dispositions in computerized criminal history files for all identifiable child abuse crime cases in which there has been an event of activity within the last 5 years;

(B) continue to maintain at least 80 percent currency of final case dispositions in all identifiable child abuse crime cases in which there has been an event of activity within the preceding 5 years; and

(C) take steps to achieve full disposition reporting, including data quality audits and periodic notices to criminal justice agencies identifying records that lack final dispositions and requesting those dispositions.

(c) Liaison.—An authorized agency of a State shall maintain close liaison with the National Center on Child Abuse and Neglect, the National Center for Missing and Exploited Children, and the National Center for the Prosecution of Child Abuse for the exchange of technical assistance in cases of child abuse.

(d) Annual Summary.—(1) The Attorney General shall publish an annual statistical summary of the child abuse crime information reported under this title.

(2) The annual statistical summary described in paragraph (1) shall not contain any information that may reveal the identity of any particular victim or alleged violator.

(e) Annual Report.—The Attorney General shall publish an annual summary of each State's progress in reporting child abuse crime information to the national criminal background check system.

(f) Study of Child Abuse Offenders.—(1) Not later than 180 days after the date of enactment of this Act, the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall begin a study based on a statistically significant sample of convicted child abuse offenders and other relevant information to determine—

(A) the percentage of convicted child abuse offenders who have more than 1 conviction for an offense involving child abuse;

(B) the percentage of convicted child abuse offenders who have been convicted of an offense involving child abuse in more than 1 State;

(C) whether there are crimes or classes of crimes, in addition to those defined as background check crimes in section 3, that are indicative of a potential to abuse children; and

(D) the extent to which and the manner in which instances of child abuse form a basis for convictions for crimes other than child abuse crimes.

(2) Not later than 1 year after the date of enactment of this Act, the Administrator shall submit a report to the Chairman of the Committee on the Judiciary of the Senate and the Chairman of the Committee on the Judiciary of the House of Representatives containing a description of and a summary of the results of the study conducted pursuant to paragraph (1).

SEC. 105. BACKGROUND CHECKS.

(a) In General.—(1) A State may have in effect procedures (established by or under State statute or regulation) to permit a qualified entity to contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether there is a report that a provider is under indictment for, or has been convicted of, a background check crime.

(2) The authorized agency shall access and review State and Federal records of background check crimes through the national criminal background check system and shall respond promptly to the inquiry.

(b) Guidelines.—(1) The Attorney General shall establish guidelines for State background check procedures established under subsection (a), which guidelines shall include the requirements and protections of this title.

(2) The guidelines established under paragraph (1) shall require—

(A) that no qualified entity may request a background check of a provider under subsection (a) unless the provider first completes and signs a statement that—

(i) contains the name, address, and date of birth appearing on a valid identification document (as defined by section 1028(d)(1) of title 18, United States Code) of the provider;

(ii) the provider is not under indictment for, and has not been convicted of, a background check crime and, if the provider is under indictment for or has been convicted of a background check crime, contains a description of the crime and the particulars of the indictment or conviction;

(iii) notifies the provider that the entity may request a background check under subsection (a);

(iv) notifies the provider of the provider's rights under subparagraph (B); and

(v) notifies the provider that prior to the receipt of the background check the qualified entity may choose to deny the provider unsupervised access to a child to whom the qualified entity provides child care;

(B) that each State establish procedures under which a provider who is the subject of a background check under subsection (a) is entitled—

(i) to obtain a copy of any background check report and any record that forms the basis for any such report; and

(ii) to challenge the accuracy and completeness of any information contained in any such report or record and obtain a prompt determination from an authorized agency as to the validity of such challenge;

(C) that an authorized agency to which a qualified entity has provided notice pursuant to subsection (a) make reasonable efforts to complete research in whatever State and local recordkeeping systems are available and in the national criminal background check system and respond to the qualified entity within 15 business days;

(D) that the response of an authorized agency to an inquiry pursuant to subsection (a) inform the qualified entity that the background check pursuant to this section—

(i) may not reflect all indictments or convictions for a background check crime; and

(ii) may not be the sole basis for determining the fitness of a provider;

(E) that the response of an authorized agency to an inquiry pursuant to subsection (a) be limited to the conviction or pending indictment information reasonably required to accomplish the purposes of this title;

(F) that the qualified entity may choose to deny the provider unsupervised access to a child to whom the qualified entity provides child care on the basis of a background check under subsection (a) until the provider has obtained a determination as to the validity of any challenge under subparagraph (B) or waived the right to make such challenge; and

(G) that each State establish procedures to ensure that any background check under subsection (a) and the results thereof shall be requested by and provided only to—

(i) qualified entities identified by States;

(ii) authorized representatives of a qualified entity who have a need to know such information;

(iii) the provider who is the subject of a background check;

(iv) law enforcement authorities; or

(v) pursuant to the direction of a court of law;

(H) that background check information conveyed to a qualified entity pursuant to subsection (a) shall not be conveyed to any person except as provided under subparagraph (G);

(I) that an authorized agency shall not be liable in an action at law for damages for failure to prevent a qualified entity from taking action adverse to a provider on the basis of a background check;

(J) that a State employee or a political subdivision of a State or employee thereof responsible for providing information to the national criminal background check system shall not be liable in an action at law for damages for failure to prevent a qualified entity from taking action adverse to a provider on the basis a background check; and

(K) that a State or Federal provider of criminal history records, and any employee thereof, shall not be liable in an action at law for damages for failure to prevent a qualified entity from taking action adverse to a provider on the basis of a criminal background check, or due to a criminal history record's being incomplete.

(c) EQUIVALENT PROCEDURES.—(1) Notwithstanding anything to the contrary in this section, the Attorney General may certify that a State licensing or certification procedure that differs from the procedures described in subsections (a) and (b) shall be deemed to be the equivalent of such procedures for purposes of this Act, but the procedures described in subsections (a) and (b) shall continue to apply to those qualified entities, providers, and background check crimes that are not governed by or included within the State licensing or certification procedure.

(2) The Attorney General shall by regulation establish criteria for certifications under this subsection. Such criteria shall include a finding by the Attorney General that the State licensing or certification procedure accomplishes the purposes of this Act and incorporates a nationwide review of State and Federal records of background check offenses through the national criminal background check system.

(d) REGULATIONS.—(1) The Attorney General may by regulation prescribe such other measures as may be required to carry out the purposes of this title, including measures relating to the security, confidentiality, accuracy, use, misuse, and dissemination of information, and audits and recordkeeping.

(2) The Attorney General shall, to the maximum extent possible, encourage the use of the best technology available in conducting background checks.

SEC. 106. FUNDING FOR IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.

(a) USE OF FORMULA GRANTS FOR IMPROVEMENTS IN STATE RECORDS AND SYSTEMS.—Section 509(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

(A) in paragraph (2) by striking "and" after the semicolon;

(B) in paragraph (3) by striking the period and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(4) the improvement of State record systems and the sharing of all of the records described in paragraphs (1), (2), and (3) and the records required by the Attorney General under section 914 of the National Child Protection Act of 1991 with the Attorney General for the purpose of implementing the National Child Protection Act of 1991.".

(b) ADDITIONAL FUNDING GRANTS FOR THE IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.—(1) The Attorney General shall, subject to appropriations and with preference to States that as of the date of enactment of this Act have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used—

(A) for the computerization of criminal history files for the purposes of this title;

(B) for the improvement of existing computerized criminal history files for the purposes of this title;

(C) to improve accessibility to the national criminal background check system for the purposes of this title; and

(D) to assist the State in the transmittal of criminal records to, or the indexing of criminal history record in, the national criminal background check system for the purposes of this title.

(2) There are authorized to be appropriated for grants under paragraph (1) a total of $20,000,000 for fiscal years 1992, 1993, and 1994.

(c) WITHHOLDING STATE FUNDS.—Effective 1 year after the date of enactment of this Act, for a fiscal year the Attorney General may reduce by up to 25 percent the amount allocated that exceeds the allocation to a State for fiscal year 1993 under title I of the Omnibus Crime Control and Safe Streets Act of 1968 of a State that is not in compliance with the timetable established for that State under section 104 of this Act.

TITLE II—NOTIFICATION OF RELEASE OF PRISONERS

SEC. 201. NOTIFICATION OF RELEASE OF PRISONERS.

Section 4042 of title 18, United States Code, is amended—

(1) by striking "The Bureau" and inserting "(a) IN GENERAL.—The Bureau";

(2) by striking "This section" and inserting "(c) Application of Section.—This section";

(3) in paragraph (4) of subsection (a), as designated by paragraph (1) of this subsection—

(A) by striking "Provide" and inserting "provide"; and

(B) by striking the period at the end and inserting "; and";

(4) by inserting after paragraph (4) of subsection (a), as designated by paragraph (1) of this subsection, the following new paragraph:

"(5) provide notice of release of prisoners in accordance with subsection (b)."; and

(5) by inserting after subsection (a), as designated by paragraph (1) of this subsection, the following new subsection:

"(b) NOTICE OF RELEASE OF PRISONERS.—(1) Except in the case of a prisoner being protected under chapter 224, the Bureau of Prisons shall, at least 5 days prior to the date on which a prisoner described in paragraph (3) is to be released on supervised release, or, in the case of a prisoner on supervised release, at least 5 days prior to the date on which the prisoner changes residence to a new jurisdiction, cause written notice of the release or change of residence to be made to the chief law enforcement officer of the State and of the local jurisdiction in which the prisoner will reside.

"(2) A notice under paragraph (1) shall disclose—

"(A) the prisoner's name;

"(B) the prisoner's criminal history, including a description of the offense of which the prisoner was convicted; and

"(C) any restrictions on conduct or other conditions to the release of the prisoner that are imposed by law, the sentencing court, or the Bureau of Prisons or any other Federal agency.

"(3) A prisoner is described in this paragraph if the prisoner was convicted of—

"(A) a drug trafficking crime, as that term is defined in section 924(c)(2); or

"(B) a crime of violence, as that term is defined in section 924(c)(3).

"(4) The notice provided under this section shall be used solely for law enforcement purposes.".

SEC. 202. APPLICATION TO PRISONERS TO WHICH PRIOR LAW APPLIES.

In the case of a prisoner convicted of an offense committed prior to November 1, 1987, the reference to supervised release in section 4042(b) of title 18, United States Code, shall be deemed to be a reference to probation or parole.

TITLE III—BAIL POSTING REPORTING

SEC. 301. SHORT TITLE.

This title may be cited as the "Illegal Drug Profits Act of 1991".

SEC. 302. REQUIRED REPORTING BY CRIMINAL COURT CLERKS.

(a) IN GENERAL.—Each clerk of a Federal or State criminal court shall report to the Internal Revenue Service, in a form and manner as prescribed by the Secretary of the Treasury, the name and taxpayer identification number of—

(1) any individual charged with any criminal offense who posts cash bail, or on whose behalf cash bail is posted, in an amount exceeding $10,000, and

(2) any individual or entity (other than a licensed bail bonding individual or entity) posting such cash bail for or on behalf of such individual.

(b) CRIMINAL OFFENSES.—For purposes of subsection (a), the term "criminal offense" means—

(1) any Federal criminal offense involving a controlled substance,

(2) racketeering (as defined in section 1951, 1952, or 1955 of title 18, United States Code),

(3) money laundering (as defined in section 1956 or 1957 of title 18, United States Code), or

(4) any violation of State criminal law involving offenses substantially similar to the offenses described in the preceding paragraphs.

(c) COPY TO PROSECUTORS.—Each clerk shall submit a copy of each report of cash bail described in subsection (a) to—

(1) the office of the United States Attorney, and

(2) the office of the local prosecuting attorney, for the jurisdiction in which the defendant resides (and the jurisdiction in which the criminal offense occurred, if different).

(d) REGULATIONS.—The Secretary of the Treasury shall promulgate such regulations as are necessary within 90 days of the enactment of this title.

(e) EFFECTIVE DATE.—This section shall become effective 60 days after the date of the promulgation of regulations under subsection (c).

TITLE IV—INSURANCE FRAUD

SEC. 401. CRIMES BY OR AFFECTING PERSONS ENGAGED IN THE BUSINESS OF INSURANCE WHOSE ACTIVITIES AFFECT INTERSTATE COMMERCE.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end thereof the following new sections:

"§ 1033. Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce

"(a)(1) Whoever is engaged in the business of insurance whose activities affect interstate commerce and, with the intent to deceive, knowingly makes any false material statement or report or willfully and materially overvalues any land, property or security—

"(A) in connection with any financial reports or documents presented to any insurance regulatory official or agency or an agent or examiner appointed by such official or agency to examine the affairs of such person, and

"(B) for the purpose of influencing the actions of such official or agency or such an appointed agent or examiner,

shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under paragraph (1) is a fine as established under this title or imprisonment for not more than 10 years, or both, except that the term of imprisonment shall be not more than 15 years if the statement or report or overvaluing of land, property, or security jeopardizes the safety and soundness of an insurer.

"(b)(1) Whoever—

"(A) acting as, or being an officer, director, agent, or employee of, any person engaged in the business of insurance whose activities affect interstate commerce, or

"(B) is engaged in the business of insurance whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business,

willfully embezzles, abstracts, purloins, or misappropriates any of the moneys, funds, premiums, credits, or other property of such person so engaged shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if such embezzlement, abstraction, purloining, or misappropriation described in paragraph (1) jeopardizes the safety and soundness of an insurer, such imprisonment shall be not more than 15 years. If the amount or value so embezzled, abstracted, purloined, or misappropriated does not exceed $5,000, whoever violates paragraph (1) shall be fined as provided in this title or imprisoned not more than one year, or both.

"(c)(1) Whoever is engaged in the business of insurance and whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business, knowingly makes any false entry of material fact in any book, report, or statement of such person engaged in the business of insurance with intent to—

"(A) deceive any person about the financial condition or solvency of such business, or

"(B) deceive any officer, employee, or agent of such person engaged in the business of insurance, any insurance regulatory official or agency, or any agent or examiner appointed by such official or agency to examine the affairs of such person about the financial condition or solvency of such business,

shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under paragraph (1) is a fine as provided under this title or imprisonment for not more than 10 years, or both, except that if the false entry in any book, report, or statement of such person jeopardizes the safety and soundness of an insurer, such imprisonment shall be not more than 15 years.

"(d) Whoever, by threats or force or by any threatening letter or communication, corruptly influences, obstructs, or impedes or endeavors corruptly to influence, obstruct, or impede the due and proper administration of the law under which any proceeding involving the business of insurance whose activities affect interstate commerce is pending before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of a person engaged in the business of insurance whose activities affect interstate commerce, shall be fined as provided in this title or imprisoned not more than 10 years, or both.

"(e)(1)(A) Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.

"(B) Any individual who is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation described in subparagraph (A) shall be fined as provided in this title or imprisoned not more than 5 years, or both.

"(2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection.

"(f) As used in this section—

"(1) the term 'business of insurance' means—

"(A) the writing of insurance, or

"(B) the reinsuring of risks,

by an insurer, including all acts necessary or incidental to such writing or reinsuring and the activities of persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons;

"(2) the term 'insurer' means any entity the business activity of which is the writing of insurance or the reinsuring of risks or any receiver or similar official or any liquidating agent for such an entity, in his or her capacity as such, and includes any person who acts as, or is, an officer, director, agent, or employee of that business;

"(3) the term 'interstate commerce' means—

"(A) commerce within the District of Columbia, or any territory or possession of the United States;

"(B) all commerce between any point in the State, territory, possession, or the District of Columbia and any point outside thereof;

"(C) all commerce between points within the same State through any place outside such State; or

"(D) all other commerce over which the United States has jurisdiction; and

"(4) the term 'State' includes any State, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"§ 1034. Civil penalties and injunctions for violations of section 1033

"(a) The Attorney General may bring a civil action in the appropriate United States district court against any person who engages in conduct constituting an offense under section 1033 and, upon proof of such conduct by a preponderance of the evidence, such person shall be subject to a civil penalty of not more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. If the offense has contributed to the decision of a court of appropriate jurisdiction to issue an order directing the conservation, rehabilitation, or liquidation of an insurer, such penalty shall be remitted to the regulatory official for the benefit of the policyholders, claimants, and creditors of such insurer. The imposition of a civil penalty under this subsection does not preclude any other criminal or civil statutory, common law, or administrative remedy, which is available by law to the United States or any other person.

"(b) If the Attorney General has reason to believe that a person is engaged in conduct constituting an offense under section 1033, the Attorney General may petition an appropriate United States district court for an order prohibiting that person from engaging in such conduct. The court may issue an order prohibiting that person from engaging in such conduct if the court finds that the conduct constitutes such an offense. The filing of a petition under this section does not preclude any other remedy which is available by law to the United States or any other person.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 47 of such title is amended by adding at the end the following new item:

"1033. Crimes by or affecting persons engaged in the business of insurance whose activities affect interstate commerce.
"1034. Civil penalties and injunctions for violations of section 1033.".

(c) MISCELLANEOUS AMENDMENTS TO TITLE 18, UNITED STATES CODE.—(1) TAMPERING WITH INSURANCE REGULATORY PROCEEDINGS.—Section 1515(a)(1) of title 18, United States Code, is amended—

(A) by striking "or" at the end of subparagraph (B);

(B) by inserting "or" at the end of subparagraph (C); and

(C) by adding at the end the following new subparagraph:

"(D) a proceeding involving the business of insurance whose activities affect interstate commerce before any insurance regulatory official or agency or any agent or examiner appointed by such official or agency to examine the affairs of any person engaged in the business of insurance whose activities affect interstate commerce;".

(2) LIMITATIONS.—Section 3293 of such title is amended by inserting "1033," after "1014,".

(3) OBSTRUCTION OF CRIMINAL INVESTIGATIONS.—Section 1510 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(d)(1) Whoever—

"(A) acting as, or being, an officer, director, agent or employee of a person engaged in the business of insurance whose activities affect interstate commerce, or

"(B) is engaged in the business of insurance whose activities affect interstate commerce or is involved (other than as an insured or beneficiary under a policy of insurance) in a transaction relating to the conduct of affairs of such a business,

with intent to obstruct a judicial proceeding, directly or indirectly notifies any other person about the existence or contents of a subpoena for records of that person engaged in such business or information that has been furnished to a Federal grand jury in response to that subpoena, shall be fined as provided by this title or imprisoned not more than 5 years, or both.

"(2) As used in paragraph (1), the term 'subpoena for records' means a Federal grand jury subpoena for records that has been served relating to a violation of, or a conspiracy to violate, section 1033 of this title.".

TITLE V—ART THEFT

SEC. 501. THEFTS OF MAJOR ART WORKS.

(a) OFFENSE.—Chapter 31 of title 18, United States Code, is amended by adding at the end thereof the following:

"§668. Theft of a major art work

"(a) Whoever steals or obtains by fraud any object of cultural heritage held in a museum, or knowing the same to have been stolen, converted, or taken by fraud receives, conceals, stores, sells, exhibits, or disposes of such goods, shall be fined under this title, imprisoned for not more than the maximum term of imprisonment for a class C felony, or both.

"(b) Notwithstanding section 3282 of this title, the statute of limitations for an offense under this section shall be 20 years.

"(c) The property of a person convicted of an offense under this section shall be subject to criminal forfeiture under section 982 of this title.

"(d) For purposes of this section—

"(1) The term 'museum' means an organized and permanent institution, situated in the United States, essentially educational or aesthetic in purpose with professional staff, which owns and utilizes tangible objects, cares for them, and exhibits them to the public on some regularly scheduled period.

"(2) The term 'stolen object of cultural heritage' means an object stolen from a museum after the effective date of this title reported to law enforcement authorities as stolen and registered with the International Foundation for Art Research, or any equivalent registry.".

(b) CHAPTER ANALYSIS.—The chapter analysis for chapter 31 of title 18, United States Code, is amended by adding at the end thereof the following:

"668. Theft of a major art work.".

TITLE VI—TRAFFICKING IN COUNTERFEIT GOODS

SEC. 601. INCREASED PENALTIES FOR TRAFFICKING IN COUNTERFEIT GOODS AND SERVICES.

(a) IN GENERAL.—Section 2320(a) of title 18, United States Code, is amended—

(1) in the first sentence by striking "imprisoned not more than five years" and inserting "imprisoned not more than 10 years"; and

(2) in the second sentence by striking "imprisoned not more than fifteen years" and inserting "imprisoned not more than 20 years".

(b) LAUNDERING MONETARY INSTRUMENTS.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking "or section 2319 (relating to copyright infringement)," and inserting "section 2319 (relating to copyright infringement), or section 2320 (relating to trafficking in counterfeit goods and services),".

TITLE VII—CRIME VICTIMS

SEC. 701. SHORT TITLE.

This title may be cited as the "Victims' Rights and Restitution Act of 1992".

SEC. 702. AVAILABILITY OF FUNDS.

Section 1402 of the Victims of Crime Act of 1984, as amended, is amended—

(a) by striking subsection (c) and redesignating (d), (e), (f) and (g) as subsections (c), (d), (e), and (f), respective; and

(b) by adding a new subsection (c) to read as follows:

"(c) Availability of funds for expenditure; grant program percentages

"(1) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this subsection for grants under this chapter without fiscal year limitation.

"(2) The Fund shall be available as follows:

"(A) The first $6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first $3,000,000 in each fiscal year thereafter shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18, United States Code.

"(B) Of the first $100,000,000 deposited in the Fund in a particular fiscal year—

"(i) 49.5 percent shall be available for grants under section 10602 of this title;

"(ii) 45 percent shall be available for grants under section 10603(a) of this title;

"(iii) 1 percent shall be available for grants under section 10603(c) of this title; and

"(iv) 4.5 percent shall be available for grants as provided in section 10603a of this title.

"(C) The next $5,500,000 deposited in the Fund in a particular fiscal year shall be available for grants as provided in section 10603a of this title.

"(D) The next $4,500,000 deposited in the Fund in a particular fiscal year shall be available for grants under section 10603(a) of this title.

"(E) Any deposits in the Fund in a particular fiscal year that remain after the funds are distributed under subparagraphs (A) through (D) shall be available as follows:

"(i) 47.5 percent shall be available for grants under section 10602 of this title;

"(ii) 47.5 percent shall be available for grants under section 10603(a) of this title; and

"(iii) 5 percent shall be available for grants under section 10603(c)(1)(B) of this title.".

TITLE VIII—SENTENCING PROVISIONS

SEC. 801. IMPOSITION OF SENTENCE.

Section 3553(a)(4) of title 18, United States Code, is amended to read as follows:

"(4) the kinds of sentence and the sentencing range established for—

"(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that are in effect on the date the defendant is sentenced; or

"(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code;".

SEC. 802. TECHNICAL AMENDMENT TO MANDATORY CONDITIONS OF PROBATION.

Section 3563(a)(3) of title 18, United States Code, is amended by striking "possess illegal controlled substances" and inserting "unlawfully possess a controlled substance".

SEC. 803. REVOCATION OF PROBATION.

(a) IN GENERAL.—Section 3565(a) of title 18, United States Code, is amended—

(1) in paragraph (2) by striking "impose any other sentence that was available under subchapter A at the time of the initial sentencing" and inserting "resentence the defendant under subchapter A"; and

(2) by striking the last sentence.

(b) MANDATORY REVOCATION.—Section 3565(b) of title 18, United States Code, is amended to read as follows:

"(b) MANDATORY REVOCATION FOR POSSESSION OF CONTROLLED SUBSTANCE OR FIREARM OR REFUSAL TO COOPERATE IN DRUG TESTING.—If the defendant—

"(1) possesses a controlled substance in violation of the condition set forth in section 3563(a)(3);

"(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of probation prohibiting the defendant from possessing a firearm; or

"(3) refuses to cooperate in drug testing, thereby violating the condition imposed by section 3563(a)(4),

the court shall revoke the sentence of probation and resentence the defendant under subchapter A to a sentence that includes a term of imprisonment.".

SEC. 804. SUPERVISED RELEASE AFTER IMPRISONMENT.

Section 3583 of title 18, United States Code, is amended—

(1) in subsection (d), by striking "possess illegal controlled substances" and inserting "unlawfully possess a controlled substance";

(2) in subsection (e)—

(A) by striking "person" each place such term appears in such subsection and inserting "defendant"; and

(B) by amending paragraph (3) to read as follows:

"(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or"; and

(3) by striking subsection (g) and inserting the following:

"(g) MANDATORY REVOCATION FOR POSSESSION OF CONTROLLED SUBSTANCE OR FIREARM OR FOR REFUSAL TO COOPERATE WITH DRUG TESTING.—If the defendant—

"(1) possesses a controlled substance in violation of the condition set forth in subsection (d);

"(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm; or

"(3) refuses to cooperate in drug testing imposed as a condition of supervised release;

the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

"(h) SUPERVISED RELEASE FOLLOWING REVOCATION.—When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized under subsection (e)(3), the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

"(i) DELAYED REVOCATION.—The power of the court to revoke a term of supervised release for violation of a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.".

TITLE IX—SENTENCING AND MAGISTRATES AMENDMENTS

SEC. 901. AUTHORIZATION OF PROBATION FOR PETTY OFFENSES IN CERTAIN CASES.

Section 3561(a)(3) of title 18, United States Code, is amended by adding at the end: "However, this paragraph does not preclude the imposition of a sentence to a term of probation for a petty offense if the defendant has been sentenced to a term of imprisonment at the same time for another such offense.".

SEC. 902. TRIAL BY A MAGISTRATE IN PETTY OFFENSE CASES.

Section 3401 of title 18, United States Code, is amended—

(1) in subsection (b) by adding "other than a petty offense" after "misdemeanor"; and

(2) in subsection (g) by amending the first sentence to read as follows: "The magistrate judge may, in a petty offense case involving a juvenile, exercise all powers granted to the district court under chapter 403 of this title.".

SEC. 903. CONFORMING AUTHORITY FOR MAGISTRATES TO REVOKE SUPERVISED RELEASE IN ADDITION TO PROBATION IN MISDEMEANOR CASES IN WHICH THE MAGISTRATE IMPOSED SENTENCE.

Section 3401(d) of title 18, United States Code, is amended by adding at the end the following: "A magistrate judge who has sentenced a person to a term of supervised release shall also have power to revoke or modify the term or conditions of such supervised release.".

TITLE X—ATTORNEYS' FEES REIMBURSEMENT ACT

SEC. 1001. AWARDS OF ATTORNEY'S FEES.

Section 526 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(c)(1)(A) A current or former Department of Justice attorney, agent, or employee who supervises an agent who is the subject of a criminal or disciplinary investigation, instituted on or after the date of enactment of this subsection, arising out of acts performed in the discharge of his or her duties in prosecuting or investigating a criminal matter, who is not provided representation under Department of Justice regulations, shall be entitled to reimbursement of reasonable attorney's fees incurred during and as a result of the investigation if the investigation does not result in adverse action against the attorney, agent, or employee.

"(B) A current or former attorney, agent, or employee who supervises an agent employed as or by a Federal public defender who is the subject of a criminal or disciplinary investigation instituted on or after the date of enactment of this subsection, arising out of acts performed in the discharge of his or her duties in defending or investigating a criminal matter in connection with the public defender program, who is not provided representation by a Federal public defender or the Administrative Office of the United States Courts is entitled to reimbursement of reasonable attorney's fees incurred during and as a result of the investigation if the investigation does not result in adverse action against the attorney, agent, or employee.

"(2) For purposes of paragraph (1), an investigation shall be considered not to result in adverse action against an attorney, agent, or employee if—

"(A) in the case of a criminal investigation, the investigation does not result in indictment of, the filing of a criminal complaint against, or the entry of a plea of guilty by the attorney, agent, or supervising employee; and

"(B) in the case of a disciplinary investigation, the investigation does not result in discipline or results in only discipline less serious than a formal letter of reprimand finding actual and specific wrongdoing.

"(3) The Attorney General shall provide notice in writing of the conclusion and result of an investigation described in paragraph (1).

"(4) An attorney, agent, or supervising employee who was the subject of an investigation described in paragraph (1) may waive his or her entitlement to reimbursement of attorney's fees under paragraph (1) as part of a resolution of a criminal or disciplinary investigation.

"(5) An application for attorney fee reimbursement under this subsection shall be made not later than 180 days after the attorney, agent, or employee is notified in writing of the conclusion and result of the investigation.

"(6) Upon receipt of a proper application under this subsection for reimbursement of attorney's fees, the Attorney General and the Director of the Administrative Office of the United States Courts shall award reimbursement for the amount of attorney's fees that are found to have been reasonably incurred by the applicant as a result of an investigation.

"(7) The official making an award under this subsection shall make inquiry into the reasonableness of the amount requested, and shall consider—

"(A) the sufficiency of the documentation accompanying the request;

"(B) the need or justification for the underlying item;

"(C) the reasonableness of the sum requested in light of the nature of the investigation; and

"(D) current rates for equal services in the community in which the investigation took place.

"(8)(A) Reimbursements of attorney's fees ordered under this subsection by the Attorney General shall be paid from the appropriation made by section 1304 of title 31, United States Code.

"(B) Reimbursements of attorney's fees ordered under this Act by the Director of the Administrative Office of the United States Courts shall be paid from appropriations authorized by section 3006A(i) of title 18, United States Code.

"(9) The Attorney General and the Director of the Administrative Office of the United States Courts may delegate their powers and duties under this subsection to an appropriate subordinate.".

TITLE XI—PRECURSOR CHEMICALS ACT

SEC. 1101. SHORT TITLE.

This title may be cited as the "Chemical Control Amendments Act of 1992".

SEC. 1102. DEFINITION AMENDMENTS.

(a) DEFINITIONS.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) in paragraph (33) by striking "any listed precursor chemical or listed essential chemical" and inserting "any list I chemical or any list II chemical";

(2) in paragraph (34)—

(A) by striking "listed precursor chemical" and inserting "list I chemical"; and

(B) by striking "critical to the creation" and inserting "important to the manufacturer";

(3) in paragraph (34) (A), (F), and (H), by inserting ", its esters" before "and";

(4) in paragraph (35)—

(A) by striking "listed essential chemical" and inserting "list II chemical";

(B) by inserting "(other than a list I chemical)" before "specified";

(C) by striking "as a solvent, reagent, or catalyst"; and

(5) in paragraph (38) by inserting "or who acts as a broker or trader for an international transaction involving a listed chemical, a tableting machine, or an encapsulating machine" before the period;

(6) in paragraph (39)(A)—

(A) by striking "importation or exportation of" and inserting "importation, or exportation of, or an international transaction involving shipment of,";

(B) in clause (iii) by inserting "or any category of transaction for a specific listed chemical or chemicals" after "transaction";

(C) by amending clause (iv) to read as follows:

"(iv) any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) unless—

"(I)(aa) the drug contains ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contains ephedrine and therapeutically insignificant quantities of another active medicinal ingredient; or

"(bb) the Attorney General has determined under section 204 that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

"(II) the quantity of ephedrine or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General."; and

(D) in clause (v) by striking the semicolon and inserting "which the Attorney General has by regulation designated as exempt from the application of this title and title II based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered;";

(7) in paragraph (40) by striking "listed precursor chemical or a listed essential chemical" each place it appears and inserting "list I chemical or a list II chemical"; and

(8) by adding at the end the following new paragraphs:

"(43) The term 'international transaction' means a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates.

"(44) The terms 'broker' and 'trader' mean a person that assists in arranging an international transaction in a listed chemical by—

"(A) negotiating contracts;

"(B) serving as an agent or intermediary; or

"(C) bringing together a buyer and seller, buyer, and transporter, or a seller and transporter.".

(b) REMOVAL OF EXEMPTION OF CERTAIN DRUGS.—

(1) PROCEDURE.—Part B of the Controlled Substances Act (21 U.S.C. 811 et seq.) is amended by adding at the end the following new section:

"REMOVAL OF EXEMPTION OF CERTAIN DRUGS

"SEC. 204. (a) REMOVAL OF EXEMPTION.—The Attorney General shall by regulation remove from exemption under section 102(39)(A)(iv)(II) a drug or group of drugs that the Attorney General finds is being diverted to obtain a listed chemical for use in the illicit production of a controlled substance.

"(b) FACTORS TO BE CONSIDERED.—In removing a drug or group of drugs from exemption under subsection (a), the Attorney General shall consider, with respect to a drug or group of drugs that is proposed to be removed from exemption—

"(1) the scope, duration, and significance of the diversion;

"(2) whether the drug or group of drugs is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance; and

"(3) whether the listed chemical can be readily recovered from the drug or group of drugs.

"(c) SPECIFICITY OF DESIGNATION.—The Attorney General shall limit the designation of a drug or a group of drugs removed from exemption under subsection (a) to the most particularly identifiable type of drug or group of drugs for which evidence of diversion exists unless there is evidence, based on the pattern of diversion and other relevant factors, that the diversion will not be limited to that particular drug or group of drugs.

"(d) REINSTATEMENT OF EXEMPTION WITH RESPECT TO PARTICULAR DRUG PRODUCTS.—

"(1) REINSTATEMENT.—On application by a manufacturer of a particular drug product that has been removed from exemption under subsection (a), the Attorney General shall by regulation reinstate the exemption with respect to that particular drug product if the Attorney General determines that the particular drug product is manufactured and distributed in a manner that prevents diversion.

"(2) FACTORS TO BE CONSIDERED.—In deciding whether to reinstate the exemption with respect to a particular drug product under paragraph (1), the Attorney General shall consider—

"(A) the package sizes and manner of packaging of the drug product;

"(B) the manner of distribution and advertising of the drug product;

"(C) evidence of diversion of the drug product;

"(D) any actions taken by the manufacturer to prevent diversion of the drug product; and

"(E) such other factors as are relevant to and consistent with the public health and safety, including the factors described in subsection (b) as applied to the drug product.

"(3) STATUS PENDING APPLICATION FOR REINSTATEMENT.—A transaction involving a particular drug product that is the subject of a bona fide pending application for reinstatement of exemption filed with the Attorney General not later than 60 days after a regulation removing the exemption is issued pursuant to subsection (a) shall not be considered to be a regulated transaction if the transaction occurs during the pendency of the application and, if the Attorney General denies the application, during the period of 60 days following the date on which the Attorney General denies the application, unless—

"(A) the Attorney General has evidence that, applying the factors described in subsection (b) to the drug product, the drug product is being diverted; and

"(B) the Attorney General so notifies the applicant.

"(4) AMENDMENT AND MODIFICATION.—A regulation reinstating an exemption under paragraph (1) may be modified or revoked with respect to a particular drug product upon a finding that—

"(A) applying the factors described in subsection (b) to the drug product, the drug product is being diverted; or

"(B) there is a significant change in the data that led to the issuance of the regulation.".

(2) TECHNICAL AMENDMENT.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1236) is amended by adding at the end of the section relating to part B of title II the following new item:

"Sec. 204. Removal of exemption of certain drugs.".

(c) REGULATION OF LISTED CHEMICALS.—Section 310 of the Controlled Substances Act (21 U.S.C. 830) is amended—

(1) in subsection (a)(1)—

(A) by striking "precursor chemical" and inserting "list I chemical"; and

(B) in subparagraph (B) by striking "an essential chemical" and inserting "a list II chemical"; and

(2) in subsection (c)(2)(D) by striking "precursor chemical" and inserting "chemical control".

SEC. 1103. REGISTRATION REQUIREMENTS.

(a) RULES AND REGULATIONS.—Section 301 of the Controlled Substances Act (21 U.S.C. 821) is amended by striking the period and inserting "and to the registration and control of regulated persons and of regulated transactions.".

(b) PERSONS REQUIRED TO REGISTER UNDER SECTION 302.—Section 302 of the Controlled Substances Act (21 U.S.C. 822) is amended—

(1) in subsection (a)(1) by inserting "or list I chemical" after "controlled substance" each place it appears;

(2) in subsection (b)—

(A) by inserting "or list I chemicals" after "controlled substances"; and

(B) by inserting "or chemicals" after "such substances";

(3) in subsection (c) by inserting "or list I chemical" after "controlled substance" each place it appears; and

(4) in subsection (e) by inserting "or list I chemicals" after "controlled substances".

(c) REGISTRATION REQUIREMENTS UNDER SECTION 303.—Section 303 of the Controlled Substances Act (21 U.S.C. 823) is amended by adding at the end the following new subsection:

"(h) The Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest. Registration under this subsection shall not be required for the distribution of a drug product that is exempted under section 102(39)(A)(iv). In determining the public interest for the purposes of this subsection, the Attorney General shall consider—

"(1) maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

"(2) compliance by the applicant with applicable Federal, State and local law;

"(3) any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

"(4) any past experience of the applicant in the manufacture and distribution of chemicals; and

"(5) such other factors as are relevant to and consistent with the public health and safety.".

(d) Denial, Revocation, or Suspension of Registration.—Section 304 of the Controlled Substances Act (21 U.S.C. 824) is amended—

(1) in subsection (a)—

(A) by inserting "or a list I chemical" after "controlled substance" each place it appears; and

(B) by inserting "or list I chemicals" after "controlled substances";

(2) in subsection (b) by inserting "or list I chemical" after "controlled substance";

(3) in subsection (f) by inserting "or list I chemicals" after "controlled substances" each place it appears; and

(4) in subsection (g)—

(A) by inserting "or list I chemicals" after "controlled substances" each place it appears; and

(B) by inserting "or list I chemical" after "controlled substance" each place it appears.

(e) Persons Required To Register Under Section 1007.—Section 1007 of the Controlled Substances Import and Export Act (21 U.S.C. 957) is amended—

(1) in subsection (a)—

(A) in paragraph (1) by inserting "or list I chemical" after "controlled substance"; and

(B) in paragraph (2) by striking "in schedule I, II, III, IV, or V," and inserting "or list I chemical,"; and

(2) in subsection (b)—

(A) in paragraph (1) by inserting "or list I chemical" after "controlled substance" each place it appears; and

(B) in paragraph (2) by inserting "or list I chemicals" after "controlled substances".

(f) Registration Requirements Under Section 1008.—Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958) is amended—

(1) in subsection (c)—

(A) by inserting "(1)" after "(c)"; and

(B) by adding at the end the following new paragraph:

"(2)(A) The Attorney General shall register an applicant to import or export a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest. Registration under this subsection shall not be required for the import or export of a drug product that is exempted under section 102(39)(A)(iv).

"(B) In determining the public interest for the purposes of subparagraph (A), the Attorney General shall consider the factors specified in section 303(h).";

(2) in subsection (d)—

(A) in paragraph (3) by inserting "or list I chemical or chemicals," after "substances,"; and

(B) in paragraph (6) by inserting "or list I chemicals" after "controlled substances" each place it appears;

(3) in subsection (e) by striking "and 307" and inserting "307, and 310"; and

(4) in subsections (f), (g), and (h) by inserting "or list I chemicals" after "controlled substances" each place it appears.

(g) Prohibited Acts C.—Section 403(a) of the Controlled Substances Act (21 U.S.C. 843(a)) is amended—

(1) by striking "or" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(9) if the person is a regulated person, to distribute, import, or export a list I chemical without the registration required by this Act.".

SEC. 1104. REPORTING OF LISTED CHEMICAL MANUFACTURING.

Section 310(b) of the Controlled Substances Act (21 U.S.C. 830(b)) is amended—

(1) by inserting "(1)" after "(b)";

(2) by redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively;

(3) by striking "paragraph (1)" each place it appears and inserting "subparagraph (A)";

(4) by striking "paragraph (2)" and inserting "subparagraph (B)";

(5) by striking "paragraph (3)" and inserting "subparagraph (C)"; and

(6) by adding at the end the following new paragraph:

"(2) A regulated person that manufactures a listed chemical shall report annually to the Attorney General, in such form and manner and containing such specific data as the Attorney General shall prescribe by regulation, information concerning listed chemicals manufactured by the person. The requirement of the preceding sentence shall not apply to the manufacture of a drug product that is exempted under section 102(39)(A)(iv).".

SEC. 1105. REPORTS BY BROKERS AND TRADERS; CRIMINAL PENALTIES.

(a) Notification, Suspension of Shipment, and Penalties With Respect to Importation and Exportation of Listed Chemicals.—Section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971) is amended by adding at the end the following new subsection:

"(d) A person located in the United States who is a broker or trader for an international transaction in a listed chemical that is a regulated transaction solely because of that person's involvement as a broker or trader shall, with respect to that transaction, be subject to all of the notification, reporting, recordkeeping, and other requirements placed upon exporters of listed chemicals by this title and title II.".

(b) Prohibited Acts A.—Section 1010(d) of the Controlled Substances Import and Export Act (21 U.S.C. 960(d)) is amended to read as follows:

"(d) A person who knowingly or intentionally—

"(1) imports or exports a listed chemical with intent to manufacture a controlled substance in violation of this title or title II;

"(2) exports a listed chemical in violation of the laws of the country to which the chemical is exported or serves as a broker or trader for an international transaction involving a listed chemical, if the transaction is in violation of the laws of the country to which the chemical is exported;

"(3) imports or exports a listed chemical knowing, or having reasonable cause to believe, that the chemical will be used to manufacture a controlled substance in violation of this title or title II; or

"(4) exports a listed chemical, or serves as a broker or trader for an international transaction involving a listed chemical, knowing, or having reasonable cause to believe, that the chemical will be used to manufacture a controlled substance in violation of the laws of the country to which the chemical is exported,

shall be fined in accordance with title 18, imprisoned not more than 10 years, or both.".

SEC. 1106. EXEMPTION AUTHORITY; ADDITIONAL PENALTIES.

(a) Notification Requirement.—Section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971), as amended by section 5(a), is amended by adding at the end the following new subsection:

"(e)(1) The Attorney General may by regulation require that the 15-day notification requirement of subsection (a) apply to all exports of a listed chemical to a specified country, regardless of the status of certain customers in such country as regular customers, if the Attorney General finds that such notification is necessary to support effective chemical diversion control programs or is required by treaty or other international agreement to which the United States is a party.

"(2) The Attorney General may by regulation waive the 15-day notification requirement for exports of a listed chemical to a specified country if the Attorney General determines that such notification is not required for effective chemical diversion control. If the notification requirement is waived, exporters of the listed chemical shall be required to submit to the Attorney General reports of individual exportations or periodic reports of such exportation of the listed chemical, at such time or times and containing such information as the Attorney General shall establish by regulation.

"(3) The Attorney General may by regulation waive the 15-day notification requirement for the importation of a listed chemical if the Attorney General determines that such notification is not necessary for effective chemical diversion control. If the notification requirement is waived, importers of the listed chemical shall be required to submit to the Attorney General reports of individual importations or periodic reports of the importation of the listed chemical, at such time or times and containing such information as the Attorney General shall establish by regulation.".

(b) Prohibited Acts A.—Section 1010(d) of the Controlled Substances Import and Export Act (21 U.S.C. 960(d)), as amended by section 5(b),. is amended—

(1) by striking "or" at the end of paragraph (3);

(2) by striking the comma at the end of paragraph (4) and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

"(5) imports or exports a listed chemical, with the intent to evade the reporting or recordkeeping requirements of section 1018 applicable to such importation or exportation by falsely representing to the Attorney General that the importation or exportation qualifies for a waiver of the 15-day notification requirement granted pursuant to section 1018(e) (2) or (3) by misrepresenting the actual country of final destination of the listed chemical or the actual listed chemical being imported or exported; or

"(6) imports or exports a listed chemical in violation of section 1007 or 1018,".

SEC. 1107. AMENDMENTS TO LIST I.

Section 102(34) of the Controlled Substances Act (21 U.S.C. 802(34)) is amended—

(1) by striking subparagraphs (O), (U), and (W);

(2) by redesignating subparagraphs (P) through (T) as (O) through (S), subparagraph (V) as (T), and subparagraphs (X) and (Y) as (U) and (X), respectively;

(3) in subparagraph (X), as redesignated by paragraph (2), by striking "(X)" and inserting "(U)"; and

(4) by inserting after subparagraph (U), as redesignated by paragraph (2), the following new subparagraphs:

"(V) benzaldehyde.

"(W) nitroethane.".

SEC. 1108. ELIMINATION OF REGULAR SUPPLIER STATUS AND CREATION OF REGULAR IMPORTER STATUS.

(a) DEFINITION.—Section 102(37) of the Controlled Substances Act (21 U.S.C. 802(37)) is amended to read as follows:

"(37) The term 'regular importer' means, with respect to a listed chemical, a person that has an established record as an importer of that listed chemical that is reported to the Attorney General.".

(b) NOTIFICATION.—Section 1018 of the Controlled Substances Act (21 U.S.C. 971) is amended—

(1) in subsection (b)—

(A) in paragraph (1) by striking "regular supplier of the regulated person" and inserting "to an importation by a regular importer"; and

(B) in paragraph (2)—

(i) by striking "a customer or supplier of a regulated person" and inserting "a customer of a regulated person or to an importer"; and

(ii) by striking "regular supplier" and inserting "the importer as a regular importer"; and

(2) in subsection (c)(1) by striking "regular supplier" and inserting "regular importer".

SEC. 1109. ADMINISTRATIVE INSPECTIONS AND AUTHORITY.

Section 510 of the Controlled Substances Act (21 U.S.C. 880) is amended—

(1) by amending subsection (a)(2) to read as follows:

"(2) places, including factories, warehouses, and other establishments, and conveyances, where persons registered under section 303 (or exempt from registration under section 302(d) or by regulation of the Attorney General) or regulated persons may lawfully hold, manufacture, distribute, dispense, administer, or otherwise dispose of controlled substances or listed chemicals or where records relating to those activities are maintained."; and

(2) in subsection (b)(3)—

(A) in subparagraph (B) by inserting ", listed chemicals," after "unfinished drugs"; and

(B) in subparagraph (C) by inserting "or listed chemical" after "controlled substance" and inserting "or chemical" after "such substance".

SEC. 1110. THRESHOLD AMOUNTS.

Section 102(39)(A) of the Controlled Substances Act (21 U.S.C. 802(39)(A)), as amended by section 2, is amended by inserting "of a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical," before "a threshold amount, including a cumulative threshold amount for multiple transactions".

SEC. 1111. MANAGEMENT OF LISTED CHEMICALS.

(a) IN GENERAL.—Part C of the Controlled Substances Act (21 U.S.C. 821 et seq.) is amended by adding at the end the following new section:

"MANAGEMENT OF LISTED CHEMICALS

"SEC. 311. (a) OFFENSE.—It is unlawful for a person who possesses a listed chemical with the intent that it be used in the illegal manufacture of a controlled substance to manage the listed chemical or waste from the manufacture of a controlled substance otherwise than as required by regulations issued under sections 3001, 3002, 3003, 3004, and 3005 of the Solid Waste Disposal Act (42 U.S.C. 6921, 6922, 6923, 6924, and 6925).

"(b) ENHANCED PENALTY.—(1) In addition to a penalty that may be imposed for the illegal manufacture, possession, or distribution of a listed chemical or toxic residue of a clandestine laboratory, a person who violates subsection (a) shall be assessed the costs described in paragraph (2) and shall be imprisoned as described in paragraph (3).

"(2) Pursuant to paragraph (1) a defendant shall be assessed the following costs to the United States, a State, or another authority or person that undertakes to correct the results of the improper management of a listed chemical:

"(A) The cost of initial cleanup and disposal of the listed chemical and contaminated property.

"(B) The cost of restoring property that is damaged by exposure to a listed chemical for rehabilitation under Federal, State, and local standards.

"(3)(A) A violation of subsection (a) shall be punished as a class D felony, or in the case of a willful violation, as a class C felony.

"(B) It is the sense of the Congress that guidelines issued by the Sentencing Commission regarding sentencing under this paragraph should recommend that the term of imprisonment for a violation of subsection (a) should not be less than 5 years, nor less than 10 years in the case of a willful violation.

"(4) A court may order that all or a portion of the earnings from work performed by a defendant in prison be withheld for payment of costs assessed under paragraph (2).

"(c) USE OF FORFEITED ASSETS.—The Attorney General may direct that assets forfeited under section 511 in connection with a prosecution under this section be shared with State agencies that participated in the seizure or cleaning up of a contaminated site.".

(b) EXCEPTION TO DISCHARGE IN BANKRUPTCY.—Section 523(a) of title 11, United States Code, is amended—

(1) by striking "or" at the end of paragraph (11);

(2) by striking the period at the end of paragraph (12) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(13) for costs assessed under section 311(b) of the Controlled Substances Act.".

SEC. 1112. FORFEITURE EXPANSION.

Section 511(a) of the Controlled Substances Act (21 U.S.C. 881(a)) is amended—

(1) in paragraph (6) by inserting "or listed chemical" after "controlled substance"; and

(2) in paragraph (9) by striking "a felony provision of".

SEC. 1113. REGULATIONS AND EFFECTIVE DATE.

(a) REGULATIONS.—The Attorney General shall, not later than 90 days after the date of enactment of this Act, issue regulations necessary to carry out this title.

(b) EFFECTIVE DATE.—This title and the amendments made by this title shall become effective on the date that is 120 days after the date of enactment of this Act.

TITLE XII—RESTITUTION IMPROVEMENTS ACT

SEC. 1201. RESITUTION AMENDMENTS.

Section 3663(b) of title 18, United States Code, is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (4) the following new paragraph:

"(4) in any case, reimburse the victim for necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and".

TITLE XIII—PARENTAL KIDNAPPING

SEC. 1301. SHORT TITLE.

This title may be cited as the "International Parental Kidnapping Crime Act of 1992".

SEC. 1302. TITLE 18 AMENDMENT.

(a) IN GENERAL.—Chapter 55 (relating to kidnapping) of title 18, United States Code, is amended by adding at the end the following:

"§ 1204. International parental kidnapping

"(a) Whoever removes a child from the United States or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.

"(b) As used in this section—

"(1) the term 'child' means a person who has not attained the age of 16 years; and

"(2) the term 'parental rights', with respect to a child, means the right to physical custody of the child—

"(A) whether joint or sole (and includes visiting rights); and

"(B) whether arising by operation of law, court order, or legally binding agreement of the parties.

"(c) It shall be an affirmative defense under this section that—

"(1) the defendant acted within the provisions of a valid court order granting the defendant legal custody or visitation rights and that order was obtained pursuant to the Uniform Child Custody Jurisdiction Act and was in effect at the time of the offense;

"(2) the defendant was fleeing an incidence or pattern of domestic violence;

"(3) the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child as a result of circumstances beyond the defendant's control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian of the child of such circumstances within 24 hours after the visitation period had expired and returned the child as soon as possible.

"(d) This section does not detract from The Hague Convention on the Civil Aspects of International Parental Child Abduction, done at The Hague on October 25, 1980.".

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that, inasmuch as use of the procedures under the Hague Convention on the Civil Aspects of International Parental Child Abduction has resulted in the return of many children, those procedures, in circumstances in which they are applicable, should be the option of first choice for a parent who seeks the return of a child who has been removed from the parent.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of title 18, United States Code, is amended by adding at the end the following:

"1204. International parental kidnapping.".

SEC. 1303. STATE COURT PROGRAMS REGARDING INTERSTATE AND INTERNATIONAL PARENTAL CHILD ABDUCTION.

There is authorized to be appropriated $250,000 to carry out under the State Justice Institute Act of 1984 (42 U.S.C. 10701–10713) national, regional, and in-State training and educational programs dealing with criminal and civil aspects of interstate and international parental child abduction.

TITLE XIV—MAIL FRAUD EXTENSION

SEC. 1401. MAIL FRAUD.

Section 1341 of title 18, United States Code, is amended—

(1) by inserting "or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier," after "Postal Service,"; and

(2) by inserting "or such carrier" after "causes to be delivered by mail".

TITLE XV—FORFEITURE AUDIT REQUIREMENT

SEC. 1501. AUDIT REQUIREMENT FOR STATE AND LOCAL LAW ENFORCEMENT AGENCIES RECEIVING FEDERAL ASSET FORFEITURE FUNDS.

(a) STATE REQUIREMENT.—Section 524(c)(7) of title 28, United States Code, is amended to read as follows:

"(7)(A) The Fund shall be subject to annual audit by the Comptroller General.

"(B) The Attorney General shall require that any State or local law enforcement agency receiving funds conduct an annual audit detailing the uses and expenses to which the funds were dedicated and the amount used for each use or expense and report the results of the audit to the Attorney General.".

(b) INCLUSION IN ATTORNEY GENERAL'S REPORT.—Section 524(c)(6)(C) of title 28, United States Code, is amended by adding at the end the following flush sentence: "The report should also contain all annual audit reports from State and local law enforcement agencies required to be reported to the Attorney General under subparagraph (B) of paragraph (7).".

SEC. 1502. REPORT TO CONGRESS ON ADMINISTRATIVE AND CONTRACTING EXPENSES.

Section 524(c)(6) of title 28, United States Code, is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(D) a report for such fiscal year containing a description of the administrative and contracting expenses paid from the Fund under paragraph (1)(A).".

TITLE XVI—RECEIPT OF STOLEN PROPERTY AMENDMENTS

SEC. 1601. UNDERCOVER OPERATIONS.

(a) IN GENERAL.—Chapter 1 of title 18, United States Code, is amended by adding at the end the following new section:

"§21. Stolen or counterfeit nature of property for certain crimes defined

"(a) Wherever in this title it is an element of an offense that—

"(1) any property was embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated; and

"(2) the defendant knew that the property was of such character;

such element may be established by proof that the defendant, after or as a result of an official representation as to the nature of the property, believed the property to be embezzled, robbed, stolen, converted, taken, altered, counterfeited, falsely made, forged, or obliterated.

"(b) For purposes of this section, the term 'official representation' means any representation made by a Federal law enforcement officer (as defined in section 115) or by another person at the direction or with the approval of such an officer.".

(b) TECHNICAL AMENDMENT.—The table of sections of chapter 1 of title 18, United States Code, is amended by adding at the end the following new item:

"21. Stolen or counterfeit nature of property for certain crimes defined.".

TITLE XVII—TELEMARKETING FRAUD

SEC. 1701. CONSUMER PROTECTION AGAINST CREDIT CARD FRAUD ACT OF 1992.

(a) SHORT TITLE.—This section may be cited as the "Consumer Protection Against Credit Card Fraud Act of 1992".

(b) FRAUD AND RELATED ACTIVITY IN CONNECTION WITH ACCESS DEVICES.—Section 1029 of title 18, United States Code, is amended—

(1) in subsection (a) by inserting after paragraph (4) the following new paragraphs:

"(5) knowingly and with intent to defraud effects transactions, with one or more access devices issued to another person or persons, to receive payment or any other thing of value during any one-year period the aggregate value of which is equal to or greater than $1,000;

"(6) without the authorization of the issuer of the access device, knowingly and with intent to defraud solicits a person for the purpose of—

"(A) offering an access device; or

"(B) selling information regarding or an application to obtain an access device; or

"(7) without the authorization of the credit card system member or its agent, knowingly and with intent to defraud causes or arranges for another person to present to the member or its agent, for payment, one or more evidences or records of transactions made by an access device;".

(c) TECHNICAL AMENDMENTS.—Section 1029 of title 18, United States Code, as amended by subsection (b), is amended—

(1) in subsection (a) by striking "or" at the end of paragraph (3);

(2) in subsection (c)(1) by striking "(a)(2) or (a)(3)" and inserting "(a) (2), (3), (5), (6), or (7)"; and

(3) in subsection (e) by—

(A) striking "and" at the end of paragraph (5);

(B) adding "and" at the end of paragraph (6); and

(C) adding at the end thereof the following new paragraph:

"(7) the term 'credit card system member' means a financial institution or other entity that is a member of a credit card system, including an entity, whether it is affiliated with or identical to the credit card issuer, that is the sole member of a credit card system.".

TITLE XVIII—DNA TESTING

SEC. 1801. SHORT TITLE.

This title may be cited as the "DNA Identification Act of 1992".

SEC. 1802. FUNDING TO IMPROVE THE QUALITY AND AVAILABILITY OF DNA ANALYSES FOR LAW ENFORCEMENT IDENTIFICATION PURPOSES.

(a) DRUG CONTROL AND SYSTEM IMPROVEMENT GRANT PROGRAM.—Section 501(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751(b)) is amended—

(1) in paragraph (20) by striking "and" at the end,

(2) in paragraph (21) by striking the period at the end and inserting "; and", and

(3) by adding at the end the following:

"(22) developing or improving in a forensic laboratory a capability to analyze deoxyribonucleic acid (hereinafter in this title referred to as 'DNA') for identification purposes.".

(b) STATE APPLICATIONS.—Section 503(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)) is amended by adding at the end thereof the following new paragraph:

"(12) If any part of a grant made under this part is to be used to develop or improve a DNA analysis capability in a forensic laboratory, a certification that—

"(A) DNA analyses performed at such laboratory will satisfy or exceed then current standards for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 3 of the DNA Identification Act of 1992;

"(B) DNA samples obtained by, and DNA analyses performed at, such laboratory will be accessible only—

"(i) to criminal justice agencies for law enforcement identification purposes;

"(ii) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or

"(iii) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes; and

"(C) such laboratory, and each analyst performing DNA analyses at such laboratory, will undergo, at regular intervals of not to exceed 180 days, external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 3 of the DNA Identification Act of 1992.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended—

(1) by redesignating the last 3 paragraphs sequentially as paragraphs (7), (8), and (9); and

(2) by adding at the end the following:

"(10) There are authorized to be appropriated for each of the fiscal years 1993 through 1997 $10,000,000 for grants to the States for DNA analysis.".

SEC. 1803. QUALITY ASSURANCE AND PROFICIENCY TESTING STANDARDS.

(a) PUBLICATION OF QUALITY ASSURANCE AND PROFICIENCY TESTING STANDARDS.—(1) Not later than 180 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation shall appoint an advisory board on DNA quality assurance methods. The Director shall appoint members of the board from among nominations proposed by the head of the National Academy of Sciences and professional societies of crime laboratory officials. The advisory board shall include as members scientists from state and local forensic laboratories, molecular geneticists and population geneticists not affiliated with a forensic laboratory, and a representative from the National Institute of Standards and Technology. The advisory board shall develop, and if appropriate, periodically revise, recommended standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

(2) The Director of the Federal Bureau of Investigation, after taking into consideration such recommended standards, shall issue (and revise from time to time) standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

(3) The standards described in paragraphs (1) and (2) shall specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analyses used by forensic laboratories. The standards shall also include a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

(4) Until such time as the advisory board has made recommendations to the Director of the Federal Bureau of Investigation and the Director has acted upon those recommendations, the quality assurance guidelines adopted by the technical working group on DNA analysis methods shall be deemed the Director's standards for purposes of this section.

(b) ADMINISTRATION OF THE ADVISORY BOARD.—For administrative purposes, the advisory board appointed under subsection (a) shall be considered an advisory board to the Director of the Federal Bureau of Investigation. Section 14 of the Federal Advisory Committee Act (5. U.S.C. App.) shall not apply with respect to the advisory board appointed under subsection (a). The board shall cease to exist on the date 5 years after the initial appointments are made to the board, unless the existence of the board is extended by the Director of the Federal Bureau of Investigation.

SEC. 1804. INDEX TO FACILITATE LAW ENFORCEMENT EXCHANGE OF DNA IDENTIFICATION INFORMATION

(a) IN GENERAL.—The Director of the Federal Bureau of Investigation may establish an index of—

(1) DNA identification records of persons convicted of crimes;

(2) analyses of DNA samples recovered from crime scenes; and

(3) analyses of DNA samples recovered from unidentified human remains.

(b) CONTENT OF INDEX.—Such index may include only information on DNA identification records and DNA analyses that are—

(1) based on analyses performed in accordance with publicly available standards that satisfy or exceed the guidelines for a quality assurance program for DNA analysis, issued by the Director of the Federal Bureau of Investigation under section 3 of the DNA Identification Act of 1992;

(2) prepared by laboratories, and DNA analysts, that undergo, at regular intervals of not to exceed 180 days, external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 3 of the DNA Identification Act of 1992; and

(3) maintained by Federal, State, and local criminal justice agencies pursuant to rules that allow disclosure of stored DNA samples and DNA analyses only—

(A) to criminal justice agencies for law enforcement identification purposes;

(B) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged; or

(C) if personally identifiable information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

(c) The exchange of records authorized by this section is subject to cancellation if the quality control and privacy requirements described in subsection (b) of this section are not met.

SEC. 1805. FEDERAL BUREAU OF INVESTIGATION

(a) PROFICIENCY TESTING REQUIREMENTS.—

(1) GENERALLY.—Personnel at the Federal Bureau of Investigation who perform DNA analyses shall undergo, at regular intervals of not to exceed 180 days, external proficiency testing by a DNA proficiency testing program meeting the standards issued under section 3(b). Within one year of the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall arrange for periodic blind external tests to determine the proficiency of DNA analysis performed at the Federal Bureau of Investigation laboratory. As used in this paragraph, the term "blind external test" means a test that is presented to the laboratory through a second agency and appears to the analysts to involve routine evidence.

(2) REPORT.—For five years after the date of enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to the Committees on the Judiciary of the House and Senate an annual report on the results of each of the tests referred to in paragraph (1).

(b) PRIVACY PROTECTION STANDARDS.—

(1) GENERALLY.—Except as provided in paragraph (2), the results of DNA tests performed for a Federal law enforcement agency for law enforcement purposes may be disclosed only—

(A) to criminal justice agencies for law enforcement identification purposes; or

(B) for criminal defense purposes, to a defendant, who shall have access to samples and analyses performed in connection with the case in which such defendant is charged.

(2) EXCEPTION.—If personally identifiable information is removed, test results may be disclosed for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

(c) CRIMINAL PENALTY.—(1) Whoever—

(A) by virtue of employment or official position, has possession of, or access to, individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency; and

(B) willfully discloses such information in any manner to any person or agency not entitled to receive it;

shall be fined not more than $100,000.

(2) Whoever, without authorization, willfully obtains DNA samples or individually identifiable DNA information indexed in a database created or maintained by any Federal law enforcement agency shall be fined not more than $100,000.

SEC. 1806. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Federal Bureau of Investigation $2,000,000 for each of fiscal years 1993 through 1997 to carry out sections 1803, 1804, and 1805 of this Act.

TITLE XIX—TORTURE CONVENTION

SEC. 1901. TORTURE.

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by inserting after chapter 113A the following new chapter:

"CHAPTER 113B—TORTURE

"Sec.
2340. Definitions.
2340A. Torture.
2340B. Exclusive remedies.

"§ 2340. Definitions

"As used in this chapter—

"(1) 'torture' means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.

"(2) 'severe mental pain or suffering' means the prolonged mental harm caused by or resulting from: (a) the intentional infliction or threatened infliction of severe physical pain or suffering; (b) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (c) the threat of imminent death; or (d) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

"(3) 'United States' includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1301(38)).

"§ 2340A. Torture

"(a) Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than twenty years, or both; and if death results to any person from conduct prohibited by this subsection, shall be imprisoned for any term of years or for life.

"(b) There is jurisdiction over the prohibited activity in subsection (a) if: (1) the alleged offender is a national of the United States; or (2) the alleged offender is present in the United States, irrespective of the nationality of the victim or the alleged offender.

"§ 2340B. Exclusive remedies

"Nothing in this chapter shall be construed as precluding the application of State or local laws on the same subject, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any civil proceeding.".

(b) CLERICAL AMENDMENT.—The table of chapters for part I of title 18, United States Code, is amended by inserting after the item for chapter 113A the following new item:

"113B. Torture .... 2340.".

(c) EFFECTIVE DATE.—This section shall take effect on the later of—

(1) the date of enactment of this section; or

(2) the date the United States has become a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

TITLE XX—TECHNICAL PROVISIONS

SEC. 2001. TERRITORIAL SEA EXTENDING TO TWELVE MILES INCLUDED IN SPECIAL MARITIME AND TERRITORIAL JURISDICTION.

The Congress hereby declares that all the territorial sea of the United States, as defined by Presidential Proclamation 5928 of December 27, 1988, is part of the United States, subject to its sovereignty, and, for purposes of Federal criminal jurisdiction, is within the special maritime and territorial jurisdiction of the United States wherever that term is used in title 18, United States Code.

SEC. 2002. JURISDICTION OVER CRIMES AGAINST UNITED STATES NATIONALS ON CERTAIN FOREIGN SHIPS.

Section 7 of title 18, United States Code (relating to the special maritime and territorial jurisdiction of the United States), is amended by inserting at the end thereof the following new paragraph:

"(8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.".

SEC. 2003. RECEIVING THE PROCEEDS OF EXTORTION OR KIDNAPPING.

(a) PROCEEDS OF EXTORTION.—Chapter 41 of title 18, United States Code, is amended—

(1) by adding at the end the following new section:

"§ 880. Receiving the proceeds of extortion

"Whoever receives, possesses, conceals, or disposes of any money or other property which was obtained from the commission of any offense under this chapter that is punishable by imprisonment for more than one year, knowing the same to have been unlawfully obtained, shall be imprisoned not more than three years, fined under this title, or both."; and

(2) in the table of sections, by adding at the end the following new item:

"880. Receiving the proceeds of extortion.".

(b) RANSOM MONEY.—Section 1202 of title 18, United States Code, is amended—

(1) by designating the existing matter as subsection "(a)"; and

(2) by adding the following new subsections:

"(b) Whoever transports, transmits, or transfers in interstate or foreign commerce any proceeds of a kidnapping punishable under State law by imprisonment for more than one year, or receives, possesses, conceals, or disposes of any such proceeds after they have crossed a State or United States boundary, knowing the proceeds to have been unlawfully obtained, shall be imprisoned not more than ten years, fined under this title, or both.

"(c) For purposes of this section, the term 'State' has the meaning set forth in section 245(d) of this title.".

SEC. 2004. RECEIVING THE PROCEEDS OF A POSTAL ROBBERY.

Section 2114 of title 18, United States Code, is amended—

(1) by designating the existing matter as subsection (a); and

(2) by adding at the end the following new subsection:

"(b) Whoever receives, possesses, conceals, or disposes of any money or other property which has been obtained in violation of this section, knowing the same to have been unlawfully obtained, shall be imprisoned not more than ten years, fined under this title, or both.".

SEC. 2005. ADDITION OF ATTEMPTED ROBBERY, KIDNAPPING, SMUGGLING, AND PROPERTY DAMAGE OFFENSES TO ELIMINATE INCONSISTENCIES AND GAPS IN COVERAGE.

(a) ROBBERY AND BURGLARY.—(1) Section 2111 of title 18, United States Code, is amended by inserting "or attempts to take" after "takes".

(2) Section 2112 of title 18, United States Code, is amended by inserting "or attempts to rob" after "robs".

(3) Section 2114 of title 18, United States Code, is amended by inserting "or attempts to rob" after "robs".

(b) KIDNAPPING.—Section 1201(d) of title 18, United States Code, is amended by striking "Whoever attempts to violate subsection (a)(4) or (a)(5)" and inserting "Whoever attempts to violate subsection (a)".

(c) SMUGGLING.—Section 545 of title 18, United States Code, is amended by inserting "or attempts to smuggle or clandestinely introduce" after "smuggles, or clandestinely introduces".

(d) MALICIOUS MISCHIEF.—(1) Section 1361 of title 18, United States Code, is amended—

(A) by inserting "or attempts to commit any of the foregoing offenses" before "shall be punished", and

(B) by inserting "or attempted damage" after "damage" each place it appears.

(2) Section 1362 of title 18, United States Code, is amended by inserting "or attempts willfully or maliciously to injure or destroy" after "willfully or maliciously injures or destroys".

(3) Section 1366 of title 18, United States Code, is amended—

(A) by inserting "or attempts to damage" after "damages" each place it appears;

(B) by inserting "or attempts to cause" after "causes"; and

(C) by inserting "or would if the attempted offense had been completed have exceeded" after "exceeds" each place it appears.

TITLE XXI—COMPUTER ABUSE

SEC. 2101. COMPUTER ABUSE AMENDMENTS ACT OF 1992.

(a) SHORT TITLE.—This title may be cited as the "Computer Abuse Amendments Act of 1992".

(b) PROHIBITION.—Section 1030(a)(5) of title 18, United States Code, is amended to read as follows:

"(5)(A) through means of a computer used in interstate commerce or communications, knowingly causes the transmission of a program, information, code, or command to a computer or computer system if—

"(i) the person causing the transmission intends that such transmission will—

"(I) damage, or cause damage to, a computer, computer system, network, information, data, or program; or

"(II) withhold or deny, or cause the withholding or denial, of the use of a computer, computer services, system or network, information, data or program; and

"(ii) the transmission of the harmful component of the program, information, code, or command—

"(I) occurred without the knowledge and authorization of the persons or entities who own or are responsible for the computer system receiving the program, information, code, or command; and

"(II)(aa) causes loss or damage to one or more other persons of value aggregating $1,000 or more during any 1-year period; or

"(bb) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals; or

"(B) through means of a computer used in interstate commerce or communication, knowingly causes the transmission of a program, information, code, or command to a computer or computer system—

"(i) with reckless disregard of a substantial and unjustifiable risk that the transmission will—

"(I) damage, or cause damage to, a computer, computer system, network, information, data or program; or

"(II) withhold or deny or cause the withholding or denial of the use of a computer, computer services, system, network, information, data or program; and

"(ii) if the transmission of the harmful component of the program, information, code, or command—

"(I) occurred without the knowledge and authorization of the persons or entities who own or are responsible for the computer system receiving the program, information, code, or command; and

"(II)(aa) causes loss or damage to one or more other persons of a value aggregating $1,000 or more during any 1-year period; or

"(bb) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals;".

(c) PENALTY.—Section 1030(c) of title 18, United States Code is amended—

(1) in paragraph (2)(B) by striking "and" after the semicolon;

(2) in paragraph (3)(A) by inserting "(A)" after "(a)(5)"; and

(3) in paragraph (3)(B) by striking the period at the end thereof and inserting "; and"; and

(4) by adding at the end thereof the following:

"(4) a fine under this title or imprisonment for not more than 1 year, or both, in the case of an offense under subsection (a)(5)(B).".

(d) CIVIL ACTION.—Section 1030 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) Any person who suffers damage or loss by reason of a violation of the section, other than a violation of subsection (a)(5)(B), may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief. Damages for violations of any subsection other than subsection (a)(5)(A)(ii)(II)(bb) or (a)(5)(B)(ii)(II)(bb) are limited to economic damages. No action may be brought under this subsection unless such action is begun within 2 years of the date of the act complained of or the date of the discovery of the damage.".

(e) REPORTING REQUIREMENTS.—Section 1030 of title 18 United States Code, is amended by adding at the end thereof the following new subsection:

"(h) The Attorney General and the Secretary of the Treasury shall report to the Congress annually, during the first 3 years following the date of the enactment of this subsection, concerning investigations and prosecutions under section 1030(a)(5) of title 18, United States Code.".

(f) PROHIBITION.—Section 1030(a)(3) of title 18 United States Code, is amended by inserting "adversely" before "affects the use of the Government's operation of such computer".

TITLE XXII—FBI SUBSCRIBER

SEC. 2201. F.B.I. ACCESS TO TELEPHONE SUBSCRIBER INFORMATION.

(a) REQUIRED CERTIFICATION.—Section 2709(b) of title 18, United States Code, is amended to read as follows:

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director, may—

"(1) request the name, address, length of service, and toll billing records of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

"(2) request the name, address, and length of service of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with—

"(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

"(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.".

(b) REPORT TO JUDICIARY COMMITTEES.—Section 2709(e) of title 18, United States Code, is amended by adding after "Senate" the following: ", and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,".

ARMORED CAR INDUSTRY RECIPROCITY ACT

Mr. BRADLEY. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of S. 3229, the armored car industry bill, and that the Senate then proceed to its immediate consideration, that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table, and that any statements relating to this bill appear in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EXON. Mr. President, this summer I was contacted by Joe Shea, the president of Rochester Armored Car Co. in Omaha, NE, about a serious problem facing America's armored car industry. I was pleased to introduce the Armored Car Industry Reciprocity Act to address this problem and help protect the security of goods, currency, and securities moving in interstate commerce. I am delighted that the U.S. Senate will soon pass this important legislation and am hopeful that the House of Representatives can send this bill to the President for his signature. Identical legislation has been introduced by Congresswoman CARDISS COLLINS in the House of Representatives.

America transports billions of dollars of cash, securities, food stamps, bullion, and other valuables by armored car. Without armored car transportation, interstate commerce would come to a grinding halt. This mode of transportation which is used extensively by Federal and State governments is absolutely vital to our Nation's economy.

The legislation the Senate adopts today addresses a problem which threatens to impedes the efficient movement of valuables. That problem occurs when States and localities have various rules relating to the licensing of weapons which are used by crews working on armored cars.

In recent years, there have been several instances where interstate armored cars have been stopped and armed guards have been arrested or had their weapons confiscated by local authorities. These individuals were licensed to carry their weapons in their home States. Unfortunately, those permits were not honored in the arresting States.

This legislation would grant reciprocity to qualified weapons licenses for armed guards working on armored cars. The legislation establishes minimum State standards for armored car crew weapons licenses. These standards will require criminal background checks, and annual classroom and range training. The legislation will not require States to adopt these minimum standards but will provide reciprocity for the licenses of those States which do so. Most States already meet these standards.

As chairman of the Senate Surface Transportation Subcommittee, I am pleased to support this legislation which will facilitate the safe and efficient transport of currency and valuables, improve law enforcement and gun safety. It is a commonsense proposal which has the support of Federal agencies and has not sparked any known opposition. I encourage my colleagues to support The Armored Car Industry Reciprocity Act.

So, the bill (S. 3229) was deemed read the third time and passed, as follows:

S. 3229

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Armored Car Industry Reciprocity Act of 1992".

SEC. 2. FINDINGS.

Congress finds that—

(1) the distribution of goods and services to consumers in the United States require the free flow of currency, bullion, securities food stamps in which such member is primarily employed by such company) to carry a weapon while acting in the service of such company in that State, and such State agency meets the minimum State requirements under subsection (b), then such crew member shall be entitled to lawfully carry any weapon to which such license relates in any State while such crew member is acting in the service of such company.

(b) MINIMUM STATE REQUIREMENTS.—A State agency meets the minimum State requirements of this subsection if in issuing a weapon's license to an armored car crew member described in subsection (a), the agency requires the crew member to provide information on an annual basis to the satisfaction of the agency that the crew member—

(1) has received classroom and range training in weapon's safety and marksmanship during the current year by a qualified instructor for each weapon that the crew member is licensed to carry; and

(2) has not been convicted of a felony under any Federal or State law, determined on the basis of a criminal record background check conducted during the current year.

SEC. 4. RELATION TO OTHER LAWS.

This Act shall supersede any provision of State law (or any subdivision thereof) that is inconsistent with this Act.

SEC. 5. DEFINITIONS.

As used in this Act:

(1) The term "armored car crew member" means an individual who provides protection for goods transported by an armored car company.

(2) The term "armored car company" means a company—

(A) subject to regulation under subchapter II of chapter 105 of title 49, United States Code; and

(B) holding the appropriate certificate, permit, or license issued under subchapter II of chapter 109 of such title, in order to engage in the business of transporting and protecting currency, bullion, securities, precious metals, food stamps, and other articles of unusual value in interstate commerce.

(3) The term "State" includes the several States and the District of Columbia.

PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT

Mr. BRADLEY. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 474.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 474) entitled "An Act to prohibit sports gambling under State law", do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Professional and Amateur Sports Protection Act".

SEC. 2. PROFESSIONAL AND AMATEUR SPORTS PROTECTION.

(a) IN GENERAL.—Part VI of title 28 of the United States Code is amended by adding at the end the following:

"CHAPTER 178—PROFESSIONAL AND AMATEUR SPORTS PROTECTION

"Sec.
"3701. Definitions.
"3702. Unlawful sports gambling.
"3703. Injunctions.
"3704. Applicability.

"§3701. Definitions

"For purposes of this chapter—

"(1) the term 'amateur sports organization' means—

"(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more amateur athletes participate, or

"(B) a league or association of persons or governmental entities described in subparagraph (A),

"(2) the term 'governmental entity' means a State, a political subdivision of a State, or an entity or organization, including an entity or organization described in section 4(5) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(5)), that has governmental authority within the territorial boundaries of the United States, including on lands described in section 4(4) of such Act (25 U.S.C. 2703(4)),

"(3) the term 'professional sports organization' means—

"(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more professional athletes participate, or

"(B) a league or association of persons or governmental entities described in subparagraph (A),

"(4) the term 'person' has the meaning given such term in section 1 of title 1, and

"(5) the term 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Palau, or any territory or possession of the United States.

"§ 3702. Unlawful sports gambling

"It shall be unlawful for—

"(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or

"(2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity,

a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

"§ 3703. Injunctions

"A civil action to enjoin a violation of section 3702 may be commenced in an appropriate district court of the United States by the Attorney General of the United States, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.

"§ 3704. Applicability

"(a) Section 3702 shall not apply to—

"(1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the scheme was conducted by that State or other governmental entity at any time during the period beginning January 1, 1976, and ending August 31, 1990;

"(2) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both—

"(A) such scheme was authorized by a statute as in effect on October 2, 1991; and

"(B) a scheme described in section 3702 (other than one based on parimutuel animal racing or jai-alai games) actually was conducted in that State or other governmental entity at any time during the period beginning September 1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity;

"(3) a betting, gambling, or wagering scheme, other than a lottery described in paragraph (1), conducted exclusively in casinos located in a municipality, but only to the extent that—

"(A) such scheme or a similar scheme was authorized, not later than one year after the effective date of this chapter, to be operated in that municipality; and

"(B) any commercial casino gaming scheme was in operation in such municipality throughout the 10-year period ending on such effective date pursuant to a comprehensive system of State regulation authorized by that State's constitution and applicable solely to such municipality; or

"(4) parimutuel animal racing or jai-alai games.

"(b) Except as provided in subsection (a), section 3702 shall apply on lands described in section 4(4) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(4)).".

(b) CLERICAL AMENDMENTS.—The table of chapters for part VI of title 28, United States Code, is amended—

(1) by amending the item relating to chapter 176 to read as follows:

"176. Federal Debt Collection Procedure .... 3001",

and

(2) by adding at the end the following:

"178. Professional and Amateur Sports Protection .... 3701".

SEC. 3. EFFECTIVE DATE.

This Act shall take effect on January 1, 1993.

Amend the title so as to read: "*An Act to prohibit sports gambling under State law, and for other purposes.*".

Mr. BRADLEY. Mr. President, I rise today to thank my colleagues for approving the Professional and Amateur Sports Protection Act.

Mr. President, initiatives to sanction wagering on sporting events have become increasingly attractive to States in recent years. We all recognize the fiscal constraints under which States operate in these tough economic times. But we must not forget the consequences of sports betting. Based on what I know about the dangers of sports betting, I am not prepared to risk the values that sports instill in youth just to add a few more dollars to state coffers.

Mr. President, State-sanctioned sports betting conveys the message that sports are more about money than personal achievement and sportsmanship. In these days of scandal and disillusionment, it is important that our youngsters not receive this message. As a former professional basketball player, I have witnessed firsthand some of the negative effects of sports gambling. If the dangers of State-sponsored sports betting are not confronted, the character of sports and youngsters' view of them could be seriously threatened.

Sports betting threatens the integrity of and public confidence in professional and amateur team sports, converting sports from wholesome athletic entertainment into a vehicle for gambling. Sports gambling raises people's suspicions about point-shaving and game-fixing. Where sports gambling occurs, fans cannot help but wonder if a missed free throw, dropped fly ball, or a missed extra point was part of a player's scheme to fix the game. If sports betting spreads, more and more fans will question every coaching decision and official's call. All of this puts undue pressure on players, coaches and officials. State-sponsored sports betting could change forever the relationship between the players and the game and between the game and the fans. Sports would become the gamblers' game and not the fans' game.

Mr. President, the bill the Senate has passed today contains a provision which effectively allows the State of New Jersey 1 year to establish casino-based sports betting by referendum. While I wish this bill did not contain such a provision, I am convinced that it would not have been possible to pass a ban on sports betting without it. My hope is that New Jersey will decide not to exercise this right.

The good news, Mr. President, is that this bill bans sports betting outright in 44 States and given one state, New Jersey, only 1 year to act before it too would be prohibited from allowing sports betting.

Again, I congratulate my colleagues for acting in the best interest of youngsters and athletes by passing this bill.

Mr. DOMENICI. Mr. President, I am extremely pleased that the House has passed the Professional and Amateur Sports Protection Act, S. 474. As a cosponsor of this legislation I believe that we must eliminate State-sanctioned betting on the outcomes of organized sports contests in our Nation. Sadly, some of our nations greatest scandals have been the result of our sports heroes betting on sporting events. With the passage of this legislation, we clearly eliminate any State-sanctions that would encourage athletes to participate in changing the outcome of any organized sporting event.

Shortly after the Senate-passage of S. 474, I was made aware of a situation that could be interpreted to fall under the provisions of this bill. The New Mexico State Legislature passed a law that would allow our State to be the first in the Nation to venture into what is a $13 billion industry in Japan—parimutuel bicycle racing, or as its known in Japan, Keirin. This sport is structured in a fashion that is similar to parimutuel horse racing, except that horses and riders are replaced with bicyclists.

In S. 474, the Senate included provisions that exempted both parimutuel animal racing and jai alai. Since Keirin is still in its developmental stages and is still relatively obscure, it was obviously not included on the exempted list.

I discussed this situation with my good friend from Arizona, Senator DECONCINI. Upon reviewing a description of Keirin, the Senator from Arizona also noted the similarities between this sport and those exempted in the bill. I then suggested the possibility of including Keirin in this language. My good friend saw no initial reasons why that would be problem.

Mr. DECONCINI. That is correct. When the Senator first brought this to my attention in late June, the bill had already passed the Senate. At that time I indicated that if there was an opportunity to resolve this issue in conference, it would be done. Unfortunately, that opportunity did not occur.

Mr. DOMENICI. Clearly, my intent is not to undermine the effectiveness of S. 474. So, it is my understanding that my good friend from Arizona cleared the possibility of exempting Keirin from the provisions of this bill with our Nation's major sports organizations, the national Football League, the National Basketball Association, Major League Baseball, the National Hockey League, and the National Collegiate Athletic Association, to ensure that they had no concerns.

Mr. DECONCINI. It is my understanding that the leagues and the NCAA do not object to this type of parimutuel bike racing and did not intend for the bill to cover such a sport. Clearly, this type of bicycle racing does not possess the same threat as other forms of State-sponsored sports betting.

Mr. DOMENICI. I would like to note that this legislation is designed to protect the pure competitiveness of sports in our Nation. Athletes in both amateur and professional sports contend with a great deal of pressure to excel in each contest just by the very nature of sport. State-sanctioned betting only increases the likelihood that some athletes will be compelled to participate in changing the outcomes of contests. There is no reason for our States to add pressure and tension to this setting. Sports enthusiasts cheer their teams to clean, fair outcomes—we should continue to encourage this attitude and practice. Could I ask my friend from Arizona to explain why jai-alai and horse racing were exempted from this legislation?

Mr. DECONCINI. The reason jai alai and horse racing were exempted from this bill was because jai-alai, like horse racing, is played primarily for the purpose of gambling. The purpose of this act is to protect the integrity of professional and amateur sports, not parimutuel betting schemes. Therefore, Keirin racing should not be covered by this bill and was not intended to be covered.

Mr. DOMENICI. As the Senator has stated, it is clear in S. 474 that parimutuel betting contests are not considered to be sports in the same way as those events contested in our major professional and amateur sports organizations. Obviously, Keirin's obscurity as a parimutuel betting scheme was the factor for its exclusion from those exempted in the legislation. Would the Senator from Arizona agree that the Professional and Amateur Sports Protection Act was not designed to prohibit the State of New Mexico from sanctioning Keirin?

Mr. DECONCINI. Yes, I agree. This bill prohibits State-sponsored betting "on one or more competitive games in which amateur or professional athletes participate, or are intended to participate * * *" It is my interpretation of this prohibition that it would not apply to parimutuel bicycle racing because it does not constitute a "game." At the time this bill was introduced, I argued against the need to specifically exclude horse racing for the same reason. However, because of the importance of horse racing to the economies of a number of States and our intention for this bill not to apply to horse racing, language was included to clarify that the bill did not apply to such racing.

This bill is meant to prohibit States from changing the nature of baseball, football, hockey, and basketball from wholesome entertainment for the entire family to a game played for the purpose of gambling. Clearly, this is not meant to apply to a sport such as Keirin racing.

Mr. DOMENICI. I thank my good friend, the distinguished Senator from Arizona, for his thoughtful clarification and remarks.

Mr. WALLOP. Mr. President, I would like to ask my colleague from Arizona, the sponsor of the Professional and Amateur Sports Protection Act a question regarding his intent as to the effect of the bill on certain actions in my home State of Wyoming. They are legal now under State law and I want to assure that they will continue.

My concern centers in particular on the practice of calcutta wagering. For those unfamiliar with this tradition, Wyoming law defines it as follows. Calcutta wagering means wagering on the outcome of amateur contests, cutter horse racing, professional rodeo events, or professional golf tournaments in which those who wager bid at auction for the exclusive right to purchase or wager upon a particular contestant or entrant in the event and when the outcome of the event has been decided the total wagers comprising the pool, less a percentage take-out by the event's sponsor, is distributed to those who "purchased" or wagered upon the winning contestants or entrants.

Not only are the calcuttas extremely popular, they are also beneficial as a minimum of 10 percent of the total wagers must be donated to a charitable or benevolent purpose.

In addition, I would like to know whether this bill is intended to affect the other gambling devices, practices or all other bona fide contests currently allowed under Wyoming State law such as raffles, bingo, tickets for raffle, or pull tabs.

Mr. DECONCINI. I appreciate the Senator's point of view and I can assure him that the practices which are now authorized and conducted under Wyoming State law, including calcutta wagering and the other provisions which he mentioned will not be affected by enactment of this legislation.

Mr. WALLOP. I thank the Senator. I would like to ask the ranking member of the Judiciary Committee, Senator THURMOND, if that is his understanding also.

Mr. THURMOND. I assure the Senator from Wyoming that is my understanding.

Mr. WALLOP. I thank my colleagues for their help in clarifying that this will not affect what the people of Wyoming have currently put in place with regard to their State gambling laws.

Mr. BRADLEY. I move the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. BRADLEY. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BROWN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 3:56 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following joint resolutions, each without amendment:

S.J. Res. 166. Joint resolution designating the week of October 4 through 10, 1992, as "National Customer Service Week";

S.J. Res. 304. Joint resolution designating January 3, 1993, through January 9, 1993, as "National Law Enforcement Training Week";

S.J. Res. 309. Joint resolution designating the week beginning November 8, 1992, as "National Women Veterans Recognition Week"; and

S.J. Res. 318. Joint resolution designating November 13, 1992, as "Vietnam Veterans Memorial 10th Anniversary Day".

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4016) to amend the Comprehensive Environmental Response, Compensation, and Liability Act to 1980 to require the Federal Government, before termination of Federal activities on any real property owned by the Government, to identify real property where no hazardous substance was stored, released, or disposed of.

The message further announced that the House agrees to the amendment of the Senate to the amendments of the House to the bill—S. 1583—to amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979 to authorize appropriations and to improve pipeline safety, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2532) entitled the "Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act."

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 1216) to modify the boundaries of the Indiana Dunes Lakeshore, and for other purposes; with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House agrees to the amendment of the Senate to the text of the bill (H.R. 2130) to authorize appropriations for the National Oceanic and Atmospheric Administration for fiscal year 1992; with an amendment in which it requests the concurrence of the Senate, and that the House agrees to the amendment of the Senate to the title of the bill.

The message further announced that the House agrees to the amendment of the Senate to the text of the bill (H.R. 939) to amend title 38, United States Code, with respect to housing loans for veterans, and for other purposes; with an amendment, in which it requests the concurrence of the Senate, and that the House agrees to the amendment of the Senate to the title of the bill.

The message also announced that the House agrees to the amendment of the Senate to the text of the bill (H.R. 1578) to amend title 38, United States Code, with respect to employment and reemployment rights of veterans and other members of the uniformed services; with an amendment, in which it requests the concurrence of the Senate, and that the House agrees to the amendment of the Senate to the title of the bill.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1671) to withdraw certain public lands and to otherwise provide for the operation of the Waste Isolation Pilot Plant in Eddy County, NM, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to each of the following bills:

H.R. 2114. An act to restore the Federal trust relationship of the United Auburn Indian Community to establish the Advisory Council on California Indian Policy, and for other purposes;

H.R. 3665. An act to establish the Little River Canyon National Preserve in the State of Alabama; and

H.R. 5686. An act to make technical amendments to certain Federal Indian statutes.

The message further announced that the House agrees to the amendments of the Senate to each of the following bills:

H.R. 2324. An act to amend title 28, United States Code, with respect to witness fees; and

H.R. 5954. An act to amend the Rural Electrification Act of 1936 to clarify the status of the Rural Electrification Act of 1936 to clarify the status of the Rural Telephone Bank, and for other purposes.

The message also announced that the House has passed the following bills, each with an amendment, in which it requests the concurrence of the Senate:

S. 1577. An act to amend the Alzheimer's Disease and Related Dementias Services Research Act of 1986 to reauthorize the Act, and for other purposes;

S. 1704. An act to improve the administration and management of public lands, National Forests, units of the National Park System, and related areas by improving the availability of adequate, appropriate, affordable, and cost effective housing for employees needed to effectively manage the public lands; and

S. 2880. An act to authorize appropriations for fiscal years 1993 and 1994 for the Office of the United States Trade Representative, the United States International Trade Commission, and the United States Custom Service, and for other purposes.

The message further announced that the House has passed the following bills, each with amendments, in which it requests the concurrence of the Senate:

S. 474. An act to prohibit sports gambling under State law; and

S. 3312. An act entitled the "Cancer Registries Amendment Act".

The message also announced that the House has passed the following bills and joint resolutions, in which it requests the concurrence of the Senate:

H.R. 3316. An act to amend title 18, United States Code, to authorize the Federal Bureau of Investigation to obtain certain telephone subscriber information;

H.R. 6162. An act to designate an area for which environmental and other streambank restoration measures are authorized as the "Joseph G. Minish Passaic River Waterfront Park and Historic Area";

H.R. 6164. An act to amend the John F. Kennedy Center Act to authorize appropriations for maintenance, repair, alteration, and other services necessary for the John F. Kennedy Center for the Performing Arts;

H.R. 6179. An act to amend the Wild and Scenic Rivers Act;

H.R. 6187. An act to amend the Foreign Assistance Act of 1961 with respect to international narcotics control programs and activities, and for other purposes;

H.R. 6191. An act to protect the public interest and the future development of pay-per-call technology by providing for the regulation and oversight of the applications and growth of the pay-per-call industry, and for other purposes;

H.J. Res. 399. Joint resolution designating the week beginning November 1, 1992, as "National Medical Staff Services Awareness Week";

H.J. Res. 458. Joint resolution designating the week beginning October 25, 1992, as "World Population Awareness Week";

H.J. Res. 471. Joint resolution designating October 14, 1992, as "National Occupational Therapy Day";

H.J. Res. 489. Joint resolution designating February 21, 1993, through February 27, 1993, as "American Wine Appreciation Week", and for other purposes;

H.J. Res. 538. Joint resolution designating December 1, 1992, as "World AIDS Day";

H.J. Res. 543. Joint resolution designating November 30, 1992, through December 6, 1992, as "National Education First Week";

H.J. Res. 547. Joint resolution designating May 2, 1993, through May 8, 1993, as "National Walking Week"; and

H.J. Res. 563. Joint resolution providing for the convening of the First Session of the One Hundred Third Congress.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The message also announced that the Speaker has signed the following enrolled bills and joint resolution:

S. 1880. An act to amend the District of Columbia Spouse Equity Act;

S. 3007. An act to authorize financial assistance for the construction and maintenance of the Mary McLeod Bethune Memorial Arts Center;

S. 3095. An act to restore and clarify the Federal relationship with the Jena Band of Choctaws of Louisiana; and

S.J. Res. 287. Joint resolution to designate the week of October 4, 1992, through October 10, 1992, as "Mental Illness Awareness Week".

The enrolled bills and joint resolution were subsequently signed by the President pro tempore [Mr. BYRD].

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3987. A communication from the Secretary of Agriculture, transmitting, pursuant to law, a report entitled "New York-New Jersey Highlands Regional Study"; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3988. A communication from the President of the United States, transmitting, pursuant to law, a report on a schedule for resumption of nuclear testing talks; to the Committee on Armed Services.

EC-3989. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, a plan for strategic forces consistent with the START Treaty; to the Committee on Armed Services.

EC-3990. A communication from the Comptroller of the Department of Defense, transmitting, pursuant to law, a report on the transfer of certain funds; to the Committee on Armed Services.

EC-3991. A communication from the Chairman of the Federal Housing Finance Board, transmitting, pursuant to law, the annual report of the Board covering the years 1989 through 1991; to the Committee on Banking, Housing, and Urban Affairs.

EC-3992. A communication from the Acting Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report on the Presidential determination under the Trade Act with respect to Romania; to the Committee on Banking, Housing, and Urban Affairs.

EC-3993. A communication from the President of the United States, transmitting, pursuant to law, a report on developments since the last report concerning the continued blocking of Panamanian government assets; to the Committee on Banking, Housing, and Urban Affairs.

EC-3994. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, a report on the Section 221(g)(4) Project Mortgage Auction; to the Committee on Banking, Housing, and Urban Affairs.

EC-3995. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on direct spending or receipts legislation; to the Committee on the Budget.

EC-3996. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, a report on the determination to use less than full and open competition; to the Committee on Commerce, Science, and Transportation.

EC-3997. A communication from the Secretary of the Interior, transmitting, pursuant to law, a report entitled "Federal Coal Management Report, Fiscal Year 1991"; to the Committee on Energy and Natural Resources.

EC-3998. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3999. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on physician participation, assign, and extra billing in the Medicare program; to the Committee on Finance.

EC-4000. A communication from the Acting Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report stating that it is in the national interest to authorize a defense drawdown to provide counter-narcotics assistance to Colombia; to the Committee on Foreign Relations.

EC-4001. A communication from the Acting Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, a report stating that it is in the national interest to authorize a defense drawdown to provide disaster relief assistance to Pakistan; to the Committee on Foreign Relations.

EC-4002. A communication from the Secretary of Commerce, transmitting, pursuant to law, the second progress report regarding contracting for the rebuilding of Kuwait; to the Committee on Governmental Affairs.

EC-4003. A communication from the Director of Human Resources, U.S. Army Community and Family Support Center, transmitting, pursuant to law, the annual report on the United States Army Nonappropriated Fund Employee Retirement plan for the plan year ended September 30, 1991; to the Committee on Governmental Affairs.

EC-4004. A communication from the Director of Human Resources, U.S. Army COmmunity and Family Support Center, transmitting, pursuant to law, the annual report on the United States Army Nonappropriated Fund Employee Retirement plan for the plan year ended September 30, 1990; to the Committee on Governmental Affairs.

EC-4005. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on the activities of Federal agencies in implementing the Computer Matching and Privacy Protection Act covering calendar year 1990; to the Committee on Governmental Affairs.

EC-4006. A communication from the Administrator of the Panama Canal Commission, transmitting, pursuant to law, the annual report of the Commission under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC-4007. A communication from the Secretary of Commerce, transmitting a draft of proposed legislation to implement the Protocol relating to the Madrid Agreement concerning the International Registration of Marks; to the Committee on the Judiciary.

EC-4008. A communication from the Director of the National Science Foundation, transmitting, pursuant to law, a report entitled "Scientific and Engineering Research Facilities at Universities and Colleges, 1992"; to the Committee on Labor and Human Resources.

EC-4009. A communication from the Secretary of Education, transmitting, pursuant to law, notice of final priority—Business and Education Standards Program; to the Committee on Labor and Human Resources.

EC-4010. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on the fiscal year 1991 Low Income Home Energy Assistance Program; to the Committee on Labor and Human Resources.

EC-4011. A communication from the Secretary of Veterans Affairs, transmitting a draft of proposed legislation to amend title 38, sections 8101(2) and 8109(h), United States Code, to delete the reference therein to "working drawings" and substitute therefor the words "construction documents", and to further delete the references therein to "preliminary plans" and to substitute therefor the words "design development"; to the Committee on Veterans Affairs.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BIDEN, from the Committee on Judiciary:

Timothy K. Lewis, of Pennsylvania, to be United States Circuit Judge for the Third Circuit;

Ursula Mancusi Ungaro, of Florida, to be United States District Judge for the Southern District of Florida;

John W. Sedwick, of Alaska, to be United States District Judge for the District of Alaska;

John S. Unpingco, of Guam, to be Judge for the District Court of Guam for the term of ten years;

Kathryn H. Vratil, of Kansas, to be United States District Judge for the District of Kansas;

Paul J. Barbadora, of New Hampshire, to be United States District Judge for the District of New Hampshire;

Steven J. McAuliffe, of New Hampshire, to be United States District Judge for the District of New Hampshire;

Annette L. Kent, of Hawaii, to be United States Marshal for the District of Hawaii for the term of four years;

Edward Ernest Kubasiewicz, of Virginia, to be an Assistant Commissioner of Patents and Trademarks.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. FOWLER:

S. 3362. A bill to provide that the Georgia Baptist Hospital College of Nursing shall be deemed as satisfying, for academic year 1992-1993, the accreditation requirements described in section 1201(a)(5) of the Higher Education Act of 1965; considered and passed.

By Mr. MITCHELL:

S. 3363. A bill to amend the John F. Kennedy Center Act (20 U.S.C. 76h et seq.) to provide authorization of appropriations for fiscal years 1993 through 1997 for the John F. Kennedy Center for the Performing Arts, and for other purposes; considered and passed.

By Mr. SYMMS:

S. 3364. A bill to amend certain provisions of law relating to establishment, in the District of Columbia or its environs, of a memorial to honor Thomas Paine; considered and passed.

By Mr. SEYMOUR:

S. 3365. A bill entitled the "Central Valley Project Fish and Wildlife Act of 1992"; considered and passed.

By Mr. KENNEDY (for himself and Mr. HATCH):

S. 3366. A bill cited as the "ADAMHA" Reorganization Technical Amendments Act of 1992; considered and passed.

By Mr. JEFFORDS:

S. 3367. A bill to amend the Employee Retirement Income Security Act of 1974 to provide for the treatment of settlement agreements reached with the Pension Benefit Guaranty Corporation; considered and passed.

By Mr. DOLE:

S. 3368. A bill to provide for the establishment of the Brown versus Board of Education National Historic Site in the State of Kansas, and for other purposes; considered and passed.

By Mr. DECONCINI:

S. 3369. A bill to allow certain political subdivisions of the State of Arizona continued access to FBI identification records for a period of 180 days pending restoration of statutory authorization by the legislature of the State of Arizona; considered and passed.

By Mr. HELMS (for himself and Mr. SANFORD):

S. 3370. A bill to provide for the full settlement of all claims of Swain County, North Carolina, against the United States under the agreement dated July 30, 1943, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SHELBY:

S. 3371. A bill to amend the Public Health Service Act to provide for excellence in research with respect to juvenile arthritis, and for other purposes; considered and passed.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. WOFFORD (for himself, Mr. SPECTER, and Mr. WIRTH):

S. Res. 356. A resolution to establish a John Heinz Senate Fellowship Program; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HELMS (for himself and Mr. SANFORD):

S. 3370. A bill to provide for the full settlement of all claims of Swain County, NC, against the United States under the agreement dated July 30, 1943, and for other purposes; to the Committee on Energy and Natural Resources.

SWAIN COUNTY SETTLEMENT ACT OF 1992

Mr. HELMS. Mr. President, today I meet a promise I made to the people of tiny Swain County, NC, many years ago. I told them that I would do everything in my power to force the Federal Government to keep a commitment it made to them back in 1943, almost a half-century ago. Unfortunately, my absence from the Senate prevented me from carrying through with my pledge earlier this year.

On October 22, 1991, I introduced, the Swain County Settlement Act of 1991. The amendment at the desk contains the provision of that bill. It directs the Secretary of the Interior and the Secretary of the Treasury to fully honor the 1943 contract between the people of western North Carolina and the Federal Government.

Mr. President, at the outset I make this point: At issue here is whether the U.S. Government will keep its word, and live up to a very clear commitment made 49 years ago in exchange for the Federal Government being given the right to flood thousands of acres of Swain County land to create the Fontana Lake. The integrity of the Federal Government, and those of us who serve in Congress today, will be decided by what we do, or fail to do, in the minds of people who have been waiting for 48 years.

The Helms amendment proposes three things: First, it orders the Secretary of the Interior to begin construction of the road promised by the Federal Government in 1943; second, it directs the Secretary of the Treasury to pay Swain County, NC, the sum of $16 million to compensate the county for the destruction of North Carolina Highway 288; and third, it orders the Park Service to erect a historical marker at Soco Gap to honor the contributions of the Cherokee Nation to the people of North Carolina and to the United States.

This amendment requires the Secretary of the Treasury and the Secretary of the Interior to meet their obligations to Swain County by paying the $16 million and building the road from their unobligated funds in fiscal year 1993. If the funds available are not sufficient to meet the needs of Swain County then the amendment authorizes the appropriation of such sums as are necessary for the Government to honor its obligation.

Senators should be aware of what happened 48 years ago to understand why I so vigorously support full settlement of this matter. In 1943 the Federal Government and the Tennessee Valley Authority decided they needed to flood land from the farmers in Swain County, in order to generate hydroelectric power. Literally thousands of Swain County residents packed up and left their homes because the Federal Government needed their land. The Government did not relocate them, nor did Government give North Carolina families additional land. The Government merely offered a few dollars for the land, but Swain County citizens have told me that they never received even a dime for their land.

I don't have to remind Senators, Mr. President, that in 1943, World War II war was raging in Europe and the Pacific. Many of the men from the Swain County area were overseas fighting for their country's freedom—at the very time their land back home was being taken by the Federal Government.

When the Government took the 44,400 acres of land north of Fontana Lake, it agreed: First, to reimburse Swain County for an existing highway that would be flooded in order to create Fontana Lake and second, to build an around-the-park road to, among other things, provide access to gravesites left behind when the people were forced off the land. In case anyone cares to see it, I have a copy of the North Shore Road contract signed by FDR's Interior Secretary Harold Ickes and North Carolina's Governor J. Melville Broughton.

In July 1943, shortly after the agreement was signed, a Tennessee Valley Authority supervisor wrote the families about gravesite removal. The letter stated:

> The construction of Fontana Dam necessitates the flooding of the road leading to the Proctor Cemetery located in Swain County, NC, and to reach this cemetery in the future will be necessary to walk a considerable distance until a road is constructed in the vicinity of the cemetery, which is proposed to be completed after the war has ended. We are informed that you are the nearest surviving relative of a deceased who is buried in this cemetery.

Because of the understanding mentioned in this letter—that the road would be completed shortly after the war—families agreed to leave their deceased relatives on the land taken by the Federal Government.

Mr. President, documents dating back to 1943 show that the Government did fulfill its promise to pay for Highway 288. In 1943 the Government paid to the State of North Carolina approximately $400,000, an amount which represents the principal which Swain County owed on outstanding bonds.

According to my information, the Federal Government paid that amount to the State of North Carolina as trustee. A letter dated November 22, 1943 from the Treasurer of the Tennessee Valley Authority to the Treasurer of the State of North Carolina confirms that payment was made.

The full payment never reached Swain County and the Federal Government never fulfilled its obligation to build the road. There were a few false starts, though. In 1963, the Federal Government built 2.5 miles of the road; in 1965 it built 2.1 miles; and in 1969 it built one additional mile and a 1,200-foot-long tunnel. Then the environmentalists got into the act and the project was shut down. Now you can visit one of western North Carolina's best-known sites, the "Road to Nowhere". It is a travesty—a monument to a broken promise by the U.S. Government.

Senator SANFORD suggested last year that Swain County has not been able to grow because it has not received the payment of $16 million—which the Federal Government owes the county for destroying NC Hwy 288 in 1943. I disagree. Swain County and most of western North Carolina have suffered economic distress because—I repeat: because—as each year goes by, more and more land in North Carolina is taken off the tax rolls and placed off limits. Over the years, people in western North Carolina have watched the Federal Government seize their land for one purpose or another. They have very little industry. They have no tax base. The unemployment rate is high.

No one can fully appreciate how the government has crippled the economy in western North Carolina until he looks at how much land the Federal Government has already seized. In Swain County alone, out of 345,715 acres, the Federal Government has taken 276,577 acres. Nearby Graham County has the same problem. Of the 193,216 acres in that county, the Federal Government has taken 138,813 acres. Of the 353,452 acres in the Haywood County, the Federal Government has taken 131,111 acres.

I mention all this to emphasize the frustration in western North Carolina. Meanwhile, in the four Tennessee counties bordering the Great Smoky Mountains National Park for instance, the Federal Government owns less than two fifths of the land. I have no quarrel with our friends in Tennessee but facts are facts.

Although the Great Smoky Mountains National Park is the most visited national park in the country, few tourists who travel through the Smokies have a place to pause on the North Carolina side of the park. The road in Swain County, promised over 49 years ago, would change that. It would attract industry and tourists, not to the detriment of the scenic beauty of the Smokies but for the betterment of the citizens of western North Carolina. Senator SANFORD himself stated that he would like the road to become a part of the Blue Ridge Parkway system.

Senator SANFORD stated prior to his December meeting in Swain County, that Department of the Interior regulations and so-called environmental guidelines prevent the construction of the road and, for that reason, he would not support full compliance with the 1943 agreement. The Helms legislation should ease Senator SANFORD's concerns because it orders, notwithstanding any other provision of law, the Secretary of the Interior to build the road.

As Paul Harvey would say, "now you know the rest of the story".

Make no mistake about it, the radical environmentalists will not be satisfied until all of western North Carolina is locked up and the key is thrown away. They have opposed my efforts to achieve fairness for western North Carolina.

I tried to compromise with the environmentalists and with senator SANFORD. I introduced legislation in the 98th, the 99th, and the 100th Congresses. I agreed to place approximately 200,000 acres of North Carolina land into wilderness in exchange for three things: First, reimbursement for Highway 288 and a Farmers Home loan; second, exclusion of 44,000 acres of North Carolina land from wilderness; and third, the authorization of money for a primitive road to be built to the cemeteries north of Fontana Lake.

Mr. President, nothing happened.

I made a commitment to the people of western North Carolina years ago. I promised to fight for their interest. If I lose, the Federal Government will lose the respect and confidence of thousands of North Carolinians.

Finally, Mr. President, I thank my able colleague for joining me, Governor Martin, the people of Swain County, the Eastern Band of Cherokee Indians, and all of the other citizens of western North Carolina in supporting my effort to get Swain County moving toward a more prosperous future.

Mr. President, I ask unanimous consent that a letter from the Governor of North Carolina, a history of the North Carolina Shore Road-Wilderness controversy, a letter I wrote to the Fontana Agreement Bi-Partisan Committee on July 12, 1991, a copy of the 1943 agreement, an article from the Winston-Salem Journal, a statement by the principal chief of the Cherokee Nation Jonathan Taylor, be printed in the RECORD at the conclusion of my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATE OF NORTH CAROLINA,
OFFICE OF THE GOVERNOR,
Raleigh, NC, September 18, 1991.

Hon. JESSE HELMS,
Dirksen Senate Office Building,
Washington, DC.

DEAR JESSE. I understand that an amendment to the Interior Appropriations regarding payment to Swain County, North Carolina in lieu of a road on the north shore of Fontana Lake is expected to be offered by Senator Terry Sanford. I would like to voice my opposition to that amendment.

The North Shore Road was promised to the people of Swain County in 1943, when the Tennessee Valley Authority flooded their lands and an existing road to create what is now Fontana Lake. The 1943 agreement required that a new road be built so that the people of Swain County would have access to ancestral lands and cemeteries that are now part of the Great Smoky Mountains National Park. In the ensuing years, the lack of federal action in carrying out the agreement has engendered a deep distrust of the federal government on the part of the people of Swain County. Only construction of the road would show that the federal government is true to its word and help alleviate that mistrust.

There are some who believe that the federal government should discharge its 1943 obligation via a $16 million cash payment to the Swain County government in lieu of building the promised road. That would, in effect, compensate a third party instead of keeping the promise to the first party. I oppose this travesty, but urge that no such resolution be authorized without a referendum to show the will of the people of Swain County.

Thank you for your attention to this matter.

Sincerely,

JAMES G. MARTIN.

U.S. SENATE,
Washington, DC, July 12, 1991.

THE FONTANA AGREEMENT BI-PARTISAN COMMITTEE,
Bryson City, NC.

DEAR FRIENDS: Many thanks for your letter of July 3, requesting my opinion of the legislation by Senator Sanford, authorizing the payment of $16 million as a final settlement for the federal government's failure to keep its 1943 promise to the people of Swain County.

While I sincerely appreciate Senator Sanford's efforts to settle this matter, I must be frank with you: I cannot support any proposal which does not require the United States Government to honor its full and complete pledge—and that means the construction of the road.

Literally thousands of people who have written to me during the last five years feel the same way, and it is not my intent to turn my back on them. To me a commitment is a commitment, whether it is made by one person or the United States Government.

You also asked if I think that a two lane paved road will be built in the future. My answer to that must also be frank. The only way this road will be constructed is for the entire North Carolina congressional delegation to stand together and demand that the 1943 agreement be upheld.

For too long this issue has been dominated by special interest groups outside our state. These groups have promoted divisions among us—and you see the result. Our elected leadership can no longer permit these outside forces to dictate the economic future of a splendid section of Western North Carolina.

I will soon offer an alternative to Senator Sanford's legislation designed to bring the United States Government in full compliance with its 1943 commitment. This is not time to back down and compromise what was clearly promised to us.

I stand ready to work with you, Senator Sanford, and the Department of the Interior, to help Swain County and all of Western North Carolina move toward a prosperous future as we approach the 21st century.

Kindest regards.

Sincerely,

JESSE HELMS.

THE GREAT SMOKY MOUNTAINS WILDERNESS CONTROVERSY: THE REAL STORY

(By Charlene Hogue Triplett)

Hardy pioneers, mostly Scotch-Irish, English and German, settled the mountains of Western North Carolina (WNC) in the 1800s. By the late 1800s, the area was very prosperous; unemployment was an unknown thing. The area was rich in natural resources, there were lumber companies, copper mines, farms, orchards, and prosperous towns with their own theatres, churches, and businesses. This was a time when a man's word was his bond and a handshake was sufficient for a contractual agreement.

The Great Smoky Mountains National Park (GSMNP) was authorized in 1927. The first land was purchased for the Park in 1928, and the original GSMNP was dedicated in 1934 by President Roosevelt. The mountain people in the region were proud that their beautiful homeland had been chosen to be a National Park "for the enjoyment of all people"; even the school children raised money to help pay for the land, which was largely owned by huge lumber companies. Park land was paid for not only by donations from private citizens, but also towns, the States of North Carolina and Tennessee; and a large grant from J.D. Rockefeller.

The GSMNP lies between North Carolina and Tennessee; the majority in North Carolina. One mountain county of North Carolina, Swain, sacrificed more of its land than any other county to be included in the GSMNP. The total acreage held by the Park today within Swain County is 217,565 acres, or 65 percent of the county. More than 40 percent of the Park is in Swain County.[1]

Prior to the early 1940s, there was one area of Swain County which was originally intended for inclusion in the Park, an area lying south of the original Park boundary and north of the Little Tennessee River. Originally, this strip of land was not purchased, partly because of lack of funds but also because the people who lived in that area vigorously refused to sell their land. But this area was later taken in the early 40s in another federal project.

As early as 1920, Alcoa, (Aluminum Corporation of America), a large corporation in neighboring Tennessee, began buying water rights and power plants in WNC. Later, when the Tennessee Valley Authority (TVA) was created, it became partners with Alcoa in many projects. With the onset of World War II, the United States' industrial sector began operating at full production, and TVA was called upon to produce more electric power to expedite the production of war materials. The eastern Tennessee region was a leader in the production of aluminum and war munitions, and more electricity was needed in this area for those existing industries. Alcoa already had plans to construct a dam on the Tennessee River in the region to provide more hydroelectric power. Therefore a deal was made between TVA and Alcoa, in which Alcoa transferred to TVA the land which it had already purchased, as well as other rights and interests in the Fontana Project and other Little Tennessee River projects; and TVA would pay Alcoa with electric power.[2]

Congress authorized construction of Fontana Dam on December 17, 1941, as part of TVA's third wartime emergency program. The Fontana project was the biggest ever to be undertaken by TVA. Hydroelectricity from the dam was to be used primarily to produce aluminum for airplanes in the big factories in eastern Tennessee. On completion, the dam was to be 480 feet high, the highest dam East of the Rockies and the fourth highest in the world at the time. Construction on the dam began January 1, 1942, and was completed by round the clock construction in record time. The closure of the

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Footnotes at end of article.

dam occurred on November 7, 1944, and it began generating power January 20, 1945. "* * * in time to be of considerable value in the closing phases of the war."[3]

The creation of Fontana Reservoir necessitated the acquisition of 11,800 acres of prime land in WNC, for the dam site and reservoir. The reservoir would also flood a State Highway, 288, leaving approximately 44,400 acres on the north shore of the planned reservoir isolated. (This area has been termed the "North Shore".) The land area acquired for the Project, which could have been about 12,000 acres, finally totaled 68.291 acres.[4]

The official TVA document which recorded the project, The Fontana Project, gives us an account by which the land was acquired:

"Prices to be paid for the land were fixed by TVA's appraisal staff. No price-trading was permitted to enter into the negotiations and the property was either purchased at the appraised price or condemned * * * TVA's governing price policy is to purchase land and rights required at prices which will enable owners to relocate or re-establish themselves on properties at least equal in value to those they previously owned."[5]

TVA has its account of how the land was taken; the natives of the North Shore area also have their account.

"I might say a few things that I really do not like to say about the U.S. Government, but I believe I lost part of my heritage when it was taken over by the U.S. Government. My grandfather, Andrew J. Posey, owned 300-plus acres of land on Pilkey's Creek. [Which is on the North Shore.] He was not asked if he could sell it. He wasn't asked what he would take for it. He was told that he would get $2,000 for it. Then when he refused to sign a deed, he was forced to watch a judge sign a deed for him," thus states Joyce Posey Breedlove at a Senate Subcommittee Hearing.[6]

Obviously "TVA's governing price policy" was not used or taken into account in buying land for this project. Taylor Kirkland, a native of the North Shore, also testified at this March 14, 1984 field hearing held in Bryson City, NC, by the Senate Subcommittee on Public Lands and Reserved Waters, stating: "We had 99.9 acres of property. We were given $1,435 . . . We came up here and relocated about 2½ miles north of Bryson City, and we got 12 acres for $1,300."[7]

Reverend Buford Woodard of the Deep Creek Baptist Church in Bryson City, NC, also testified at the hearing. He remembers how the TVA came and took his family's land:

"My mother was a widow. My father passed away in 1935 . . . and she was left with six children. At the time that the TVA came, of course, to take over the property, she had four children left. . . . She would never sign the deed because she felt that 600 acres was the inheritance of her family that she had worked hard to rear. But it was carried to the court . . . and there in the court of this country the deed was made to the TVA and $5,000 put in the Bryson City Bank, . . . $5,000 for 600 acres, 3 houses, 350 fruit-bearing trees."[8]

Countless testimonies at this 1984 Senate Hearing clearly show that these people were not given fair market value for their land and homes. Some people's land was taken for county back taxes they owed. Others claim that they were never given a cent for their land. These testimonies question the constitutionality of how the TVA took the people's land.

Most private citizens were usually only given about six dollars an acre for their land. Mining property and developed industrial property brought the average price up to $37.76 an acre, still the second lowest price in TVA history. (The lowest price paid by TVA was for a reservoir which did not affect any towns or communities, nor did it contain rich copper mines or a prosperous industrial sector, as the Fontana Project did.) TVA tried to justify these low averages by stating that they ". . . reflect the mountainous character and remoteness of the reservoir settings."[9]

But to the people who had chosen to live there, the land was invaluable. A price could not be placed on land which had been in one's family for generations. The mountain people recognized the land then, for what the "preservationists" (so called environmentalists) are proclaiming it today: as "crown jewels."

It is no wonder these people, who had been taken advantage of, are bitter and mistrustful of the United States Government. Reverend Buford Woodard's story tells of how he was drafted into the armed service a year after his family's land was taken: "* * * I received greetings from the President of the United States, saying that 'You have been selected to honor your country.' I had a hard time dealing with that, because I had just gone through the trauma and the experience of seeing the Nation that called upon me to bear arms and defend its freedom take my own mother's home and take my inheritance * * *"[10]

Not only were these mountain people cheated out of their land; they were misled by TVA officials. The Fontana Project reports that, of the land "* * * secured for the project, 88.4 percent [was acquired] by voluntary sell * * * [the rest] by condemnation."[11] These figures probably would have been reversed if the people affected had realized how they were being taken advantage of.

The TVA officials told the people almost anything which would appeal and get them to agree to give up their land.

This was a time when feelings of patriotism were high and everyone was trying to help in the war effort. Many of the husbands and sons were overseas fighting the war. TVA officials played on the feelings of these patriotic people, telling them that, if they did not move off the land, thousands more American boys would lose their lives in the war; or that the war would be over much more quickly if they would sell their land and make way for the project.

Everyone was assured, by TVA officials personally, and by official TVA letters, that as soon as the war was over and more resources were available, a road would be built back into the area. Some people were told that they could return to their land if it was not flooded. Millie Vickery once lived in Possum Hollow on the North Shore. "When the TVA came to take the land they told me and my husband that a road would be built which would allow us to come back and move our house, if we wanted to," she stated at the March, 1984 Senate Hearing.[12] But when the people moved out, practically all the homes and buildings which were left were torched. In preparing land to be flooded for a dam reservoir, the proper method is to clear way everything which would be underwater. However, the land on the North Shore was above the high water mark; it was not necessary to burn existing buildings, especially since the people were promised they could return. Natives and descendants of the North Shore believe this was done to ensure they would never try to come back home to live.

Another major aspect of the TVA deception concerns the ancestral cemeteries in the area. Several cemeteries and graves in the planned reservoir area were moved either above the high water mark on the North Shore or to other areas in WNC, most in Swain County. Over 1,000 graves were left in the 28-plus cemeteries on the North Shore which was to be isolated. The people there were strongly encouraged by the TVA, which was trying to minimize grave relocation costs, not to move these cemeteries, as the new road would provide access back into the area.

As a July, 1943 official TVA letter to Mr. L.B. Cook of Marion, NC, reads:

"The construction of Fontana Dam necessitates the flooding of the road leading to the Proctor Cemetery located in Swain County, NC, and to reach this cemetery in the future will be necessary to walk a considerable distance until a road is constructed in the vicinity of the cemetery, which is proposed to be completed after the war has ended."[13]

In 1943 a four-party agreement was signed among Swain County, the State of North Carolina, the TVA, and the Department of the Interior, in which TVA transferred the land on the north shore of Fontana Lake to the Department of the Interior to be added to the GSMNP. In turn, the Park Service agreed to build a road "* * * when constructed shall as a minimum standard the finished throughout its length with a dustless surface not less than twenty (20) feet in width * * *" from Bryson City to Fontana Dam to link up with Deal's Gap, Tennessee.[14] Swain County assumed the bond debt of State Highway 288, and the interest of this debt, a total sum of $694,000. The State of North Carolina would contribute $100,000 to assist in TVA's acquisition of the North Shore. TVA would contribute $400,000 to the State of North Carolina to be held in trust for Swain County to help pay off the bond debt for Highway 288. North Carolina would construct a road from Bryson City to the Park Boundary line to connect with the new Park highway.[15]

The Bryson City Times, a local paper, reports of the contract, termed the 1943 Agreement, on August 5, 1943:

"* * * it would appear that Swain County came out on the losing end of the deal. But happily, this isn't the case. * * * The National Park Service says that as soon as money is made available after the war it will build a modern highway along the shores of Fontana Lake connecting Bryson City with the TVA access highway at Fontana Dam. * * * Anyone with the smallest amount of imagination can visualize what a road of this kind will mean to Bryson City * * * there is nothing that can keep Bryson City from becoming the tourist center of Eastern America."[16]

The 1943 Agreement reflects the schemes of high United States Government officials to take the North Shore and make it a part of the GSMNP. According to The Fontana Project: "In the Fontana Reservoir vicinity * * * there was a strip of mountainous land [the North Shore] * * * which had not been acquired by the Department of the Interior because of lack of funds."[17] The reason that Swain County agreed to accept the bond debt "* * * was influenced by the fact that the National Park Service desired to acquire this land lying between existing park boundary and the river and to build a park highway paralleling the river from Fontana Dam to near Bryson City as soon as the necessary funds were available."[18]

The land on the North Shore was taken under false pretense by TVA officials who told the people the land was needed for the dam project when actually it was being taken for inclusion in the Park. Due to the speed of removal of the people and the lack of communication in the early 1940s, the vast majority of people did not know that their vacated land was going to be transferred to the Park Service. Many actually thought they were going to be allowed to return and live on the land.

To add insult to injury, the Department of the Interior has failed to live up to its end of the agreement; the promised Park Highway which was supposed to compensate so much, has not been constructed to this date. The Department of the Interior has tried to get out of building the road because the terminology in the 1943 Agreement reads, "If and when funds are made available by the Congress * * *" the road will be built.[19]

However, the Department's own actions have clearly proven that they have a legal responsibility to construct the road. The State of North Carolina fulfilled its part of the contract; the road from Bryson City to the Park boundary was completed in 1959. The National Park Service then started construction on this "New Fontana Highway," completed almost nine miles of road into the Park, at which point construction was stopped due to outcry from "environmental" or preservationist groups.[20] Swain County also fulfilled its end of the bargain; the flooded Highway 288 was finally paid off in 1974. Not only did Swain County pay a huge amount of money for this flooded road, it also sacrificed financially when the excessive amount of land was taken from its tax rolls.

In return for these sacrifices, Swain County has received nothing but so-far broken promises.

The people who were living on what is now the North Shore of Fontana Lake would never have peacefully agreed to leave their homes and cemeteries had they envisioned a future of broken promises and no access back. Over the years few trips were made back across the lake to the North Shore; these trips were made by individuals in private boats. After several trips over a period of years, it became obvious that the National Park Service was neglecting the upkeep of the cemeteries. After people bagan protesting, this care was started. Finally, in 1977, the North Shore Cemetery Assocaiation was organized by former residents. They organized homecomings and scheduled annual visits to the cemeteries by pooling resources and renting boats. A couple of years later, the Park Service started helping with access and later, providing yearly access. Today this access consists of a boat ride across Fontana Lake, then a bumpy ride on the back of a truck, on hay bales, in jeeps, or in Suburbans. The transportation is insufficient and slow. This bittersweet journey is an arduous ordeal for the elderly and many are physically unable to continue to make the trip. But the religious tradition of cemetery visitation as well as the bitterness toward the Federal Government is passed on to children and grand-children who still insist that the Park Service build the promised road.

Road construction was stopped by cries of "environmental damage" by "environmental groups" which had gained public recogniztion and political power in the 60s. Costly studies were then conducted by the Park Service, heavily influenced by preservationist sentiments, which found tht further road construction "* * * would result in extreme cuts and fills and unstable conditions would cause environmental damage.* * *[21] Another argument used by the preservationists is that further damage would be done by Anakeesta rock which would be uncovered by road construction. This is a type of rock in which the surface emits acid when exposed to air and water. Senator Al Gore, debating on the Senate Floor, stated on Anakeesta rock: "* * * when uncovered by road builders this acidic material washes into nearby streams and kills them."[22] Other environmentalists; using this argument, have said that all the fish in Fontana Lake would be killed when the acid "leaches" down into the lake. Users of such arguments either have not done their research or are deliberately misleading the public.

Anakeesta rock is commonly found by WNC road builders and methods have been developed to deal with it. A Federal geological survey states that the banks of Fontana Lake are lined with this acidic rock. Also, a recent Federal study has found that acid rain is more acidic than Anakeesta rock. If the Anakeesta rock argument was true, the fish in Fontana would have all died long ago; instead, the fish population is thriving.

Tales of environmental damage road construction would cause are greatly exaggerated and often false. Joseph E. Beck, a professor of Environmental Health Sciences at Western Carolina University, has written: "Arguments that this * * * road could not be constructed without serious environmental damage makes a mockery of our technological abilities."[23]

In the late 1960s, the road construction issue became complicated by talk of Federal Wilderness by environmental groups. These preservationists worked to pass the Wilderness Act of 1964, which placed repressive restrictions on National Forests and Parks. The highest level of preservation given land by law is Wilderness designation.

Ron Arnold is the Executive Director of the Center for the Defense of Free Enterprise, in Bellevue, Washington; he is also a writer and a Wilderness expert. In his book, Ecology Wars: Environmentalism as if People Mattered, Arnold discusses Wilderness:

"Wilderness, at first blush, has a wholesome ring in modern America * * * A 1978 survey by Opinion Research, Inc., found that more than 75 percent of all Americans still didn't realize the difference between just any woodsy recreation spot and officially designated wilderness. The difference is monumental. The Wilderness Act of 1964, which created the National Wilderness Preservation System, mandated that wilderness is an area of at least 5,000 federally-owned acres and defined it thus:

'A Wilderness, in contrast to those areas where man and his works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain.' In practical terms, that means no roads, no buildings, no watershed management, severely restricted fire, insect, disease, and wildlife management, and in most places, not even toilets. It's the law. But the average American never even heard of it."[24]

When land is designated as a wilderness area, it is made inaccessible to a large majority of American Citizens. Because of the "no roads" language in the Wildness Act, the only people who can enjoy the land are those who have access to it, and who have the time, money, and physical capability to explore a "wilderness." The Wilderness Act is clearly discriminatory in this way.

According to expert Grant Gerber, founder of the Wilderness Impact Research Foundation in Elko, Nevada, when land is designated Wilderness, restrictions are placed on any kind of activity within. This activity can include such things as hunting, livestock grazing, and access to water. In many cases landowners adjacent to the Wilderness Area are affected with the establishment of "buffer zones.", or restricted zones outside the Wilderness boundary.[25]

The Wilderness Act of 1964 contained a directive for all federal land agencies to study all units under their jurisdiction and recommend which units were suitable for Wilderness designation. Units so recommended were/are then managed as Wilderness until Congress passed legislation officially designating those units Federal Wilderness or releasing them from Wilderness management.

In 1975 the GSMNP was recommended for inclusion in the Wilderness Preservation System, therefore, any road construction would have been in direct conflict with the Wilderness management plan of the Park.[26]

In 1980, after several proposals on how to resolve the North Shore road issue, the Secretary of the Interior supported a cash settlement being paid to Swain County in lieu of completing the road. Under this plan, the Park Service, would provide cemetery access to the North Shore Cemetery Association.[27] This proposal was exactly what the environmental groups wanted; once the road issue was settled, the Department of the Interior would be relieved of their legal obligation which would expedite the passage of a Great Smoky Mountain Bill. But the North Shore Association and Swain County people, who had been fighting for the road for years, were not satisfied with this proposal.

The North Shore of Fontana Lake contains a few old cabins, which were missed by the TVA, several building foundations, other historical structures, many old relics, old roads and trails, not to mention some 28-plus cemeteries. The area does not even meet the criteria for Wilderness designation; according to the Wilderness Act, a Wilderness is an area "untrammeled by man." The people from the area are very concerned that the Park Service will slowly remove all "signs of man" from the area, wiping out the remains of their heritage. Reportedly, the Park Service has been seen destroying non-native plants such as rose bushes; and rainbow trout, which is also not native to the Smokies. In effect, the Park Service may be trying to "create" an area suitable for Federal Wilderness designation where none exists.

Concerned people have asked that at minimum the North Shore be exempt from Wilderness designation. However, top preservationist groups such as the Sierra Club have said, in effect, that all the Park be designated Wilderness, or the county will not receive the monetary settlement for the road. In effect, this amounts to blackmail, considering the power such groups have in Congress. Swain County is legally and morally owed a road and was promised other tourism-related developments by the Park Service prior to the signing of the 1943 agreement. Environmental groups, which were not party to this agreement, should have no place in negotiating proposals.

Various Wilderness bills have been sponsored since 1975, usually by Tennessee Senators, but none have passed. Senator Jesse Helms has led the fight against these bills. Helms promised that as long as he was in the United States Senate, he would do his best to see that the Government kept its word to Swain County people.

The most recent battle over Wilderness for the Smokies started in 1987 with the introduction of more Wilderness Bills. At this point a group of concerned property owners adjacent to the GSMNP organized to form "Non-Partisan Citizens Against Wilderness in Western North Carolina". Their primary goal was to block a Wilderness Bill which would affect the entire Park, including the North Shore.

On a current membership form, the Citizens group clearly lists their guiding philosophies:

We are for multiple use of Public Land. We are for private ownership of land. We are for the fulfillment of the 1943 Agreement. We actively oppose any Wilderness legislation. We seek to elect officials who represent us, regardless of party affiliation. We work to educate the public concerning these issues."[28]

In 1987 and 1988, this group sent a total of over 11,000 petitions and letters to Washington, DC. In July of 1988, when a Great Smoky Mountains Wilderness Bill was being debated on the Senate floor, the group distributed hundreds of "Action Alerts" which asked people to telephone targeted Senators and listed their phone numbers. The group has also secured several resolutions against Wilderness designations and for the fulfillment of the 1943 agreement. Resolutions were secured from: the Swain County Board of Commissioners, the Graham County Commissioners, the Bryson City Board of Aldermen, The Swain County Chamber of Commerce. The Swain County Board of Education, the Swain County Coonhunters Club, The Republican Party of Swain County, the Democrat Men's Club (of Swain County), and several Democratic Precincts in Swain County. Swain, a county in which the Democrat to Republican ratio is 3 to 1, strongly supports the efforts of Senator Jesse Helms, a conservative Republican leader.

Additionally, the local Veterans of Foreign Wars Post voted to support the National VFW Resolution against any further Wilderness designation nationally. The Eastern and Western Cherokee Indian Nations also passed resolutions against Wilderness. Also, approximately 95 percent of the businesses in Bryson City signed a petition calling for the completion of the road as called for in the 1943 Agreement. All these efforts would have been in vain had it not been for Senator Jesse Helms, who courageously stood up for the people of WNC and blocked passage of the Wilderness Bill in the summer of 1988. In the following January, (1989), a Jesse Helms Appreciation Day was named, and Citizens Against Wilderness sponsored a dinner at which the Senator was the honored guest speaker.

The North Shore Road was intended to be much more than a cemetery access road. It was intended to secure Swain County's future. The proposed cash settlement for the road, (which totaled 15 million in 1988), is nothing compared to what Swain County could have been making through tourism, had the road been completed, along with promised National Park Service developments constructed on the North Carolina side of the Park.

According to The Fontana Project, the North Shore road was planned to diffuse heavy tourist traffic in the Park to Swain County and provide a better Eastern entrance to the Park. When the 1943 agreement was in the negotiating stages, much talk was about developing tourism opportunities in Swain County and along Fontana lake. This tourism industry was supposed to compensate Swain for all the land which had been removed from its tax rolls.

It is easy to understand why Tennessee members of Congress always sponsor Great Smoky Mountain Wilderness Bills. They want to make it impossible for the North Shore Road to be built; this would divert tourists from Tennessee. Tennessee does not want to share their rich tourist industry with North Carolina. In 1983 $150 million was reaped from tourists in Gatlinburg, Tennessee while Swain County generally averages less than one-fifth that amount.[29]

As a direct result of the Government failing to fulfill its agreements, and because of excessive Federal ownership of land, Swain is one of the poorest counties in North Carolina, and consistently has the highest unemployment rate in (non-tourist) winter months. Excessive concern by preservationist groups for a near-pristine environment on private land has caused developers and industry to go elsewhere with their jobs and opportunities.

Swain County is currently 86 percent Federal land, containing parts of land from the GSMNP, TVA, the Cherokee Indian Reservation, Nantahala National Forest, and the Blue Ridge Parkway.

Despite this fact, Swain is still targeted for even more federal "protection" by preservationist groups, which, according to several members of Congress, "undoubtedly are the most powerful lobby in Washington, DC."[30]

Because of these factors, Citizens Against Wilderness plan to become a permanent "watchdog" for private property in Western North Carolina. The group has gained support nationwide, and has become politically effective. At the 1988 National Wilderness Conference in Reno, Nevada, Linda G. Hogue, co-founder and chairman of the Citizens group, was a guest speaker, and was honored with the "Most Effective Grassroots Organization Leader of the Year Award."

Hogue has vowed to continue pushing for the Federal Government to fulfill its agreement to the people of Swain County. "They should either build the road or give the land back," she has stated.[31]

The story of the people displaced by the Fontana Project is among the saddest in American history. What is even more tragic is that perhaps one day this story might be forgotten; these people's "Trail of Tears" is not recorded in history books. These patriotic people made huge sacrifices during a time when their country was at war and should not be overlooked. Many North Shore descendants and Swain County people would like to see this history included among the educational features at Fontana Dam. They also feel that the Park Service should build a museum dedicated to the lost communities and their way of life. The Park Service should construct this museum in Swain County along the completed North Shore Road. These WNC people deserve special recognition as well as the fulfillment of a so-far broken promise; not to have the old relics and cultural heritage permanently destroyed by the Park Service. The people do not deserve the atrocious treatment aimed at them by environmental groups, some who go as far as to call the North Shore people selfish for even wanting a primitive jeep road back to their homelands and cemeteries.

In addition, comprehensive plans to construct once-planned tourism related developments on the North Carolina side of the Park should be completed. Currently, the Tennessee side of the Park has more than twice the development as does North Carolina, even though most of the Park is in North Carolina.

Perhaps if these things were done, some of the harsh feelings Swain County and North Shore people have for the Federal Government might be changed, and a continuing controversy put to rest.

FOOTNOTES

[1] Gibson, Jennifer; Donald Guge, and Chad Killebrew. Testimonies before the Senate Subcommittee on Public Lands and Reserved Waters, concerning Senate Bills S. 1947 and S. 2183. Bryson City, NC. March 16, 1984. (Hereafter the March 16, 1984 Senate Subcommittee Hearing.)

[2] United States. Tennessee Valley Authority. The Fontana Project: A Comprehensive Report on the Planning, Design, Construction, and Initial Operation of the Fontana Project: Technical Report No. 12. Washington: GPO, 1950. pp. 1–13. (Hereafter The Fontana Project.)

[3] The Fontana Project. pp. 1–13.

[4] The Fontana Project. p. 478.

[5] The Fontana Project. p. 478.

[6] Breedlove, Joyce Posey. Testimony at the March 16, 1984 Senate Subcommittee Hearing.

[7] Kirkland, Taylor. Testimony at the March 16, 1984 Senate Subcommittee Hearing.

[8] Woodard, Rev. Buford. Testimony at the March 16, 1984 Senate Subcommittee Hearing.

[9] The Fontana Project. p. 479.

[10] Woodard, Rev. Buford. Testimony at the March 16, 1984 Senate Subcommittee Hearing.

[11] The Fontana Project. p. 478.

[12] Vickery, Millie. Testimony at the March 16, 1984 Senate Subcommittee Hearing.

[13] Turner, H. H., Supervisor, Grave Removal Section, Tennessee Valley Authority. Letter to Mr. L. B. Cook of Marion, NC. 31 July 1943.

[14] United States Department of Interior, Tennessee Valley Authority, State of North Carolina, and Swain County. Contractual agreement. October 8, 1943. (Hereafter the 1943 Agreement.)

[15] The 1943 Agreement.

[16] The Bryson City Times, Bryson City, NC. August 3, 1943.

[17] The Fontana Project. p. 475.

[18] The Fontana Project. p. 43.

[19] The 1943 Agreement.

[20] Hodel, Donald Paul, Secretary of Interior. Letter and Briefing Statement to Senator Jesse Helms. 3 June 1986.

[21] Hodel, Donald Paul. Briefing Statement to Senator Jesse Helms. 3 June 1986.

[22] Gore, Sen. Albert. Congressional Record: Proceedings and Debates of the 100th Congress. Second Session: Vol. 134, No. 92. Washington: GPO, June 21, 1986.

[23] Beck, Joseph E., Professor of Environmental Health Science, Western Carolina University. Letter to Senator Jesse Helms. 13 June 1988.

[24] Arnold, Ron. Ecology Wars: Environmentalism as if People Mattered. Bellevue, Washington: Free Enterprise Press, 1987.

[25] Gerber, Grant, Executive Director, Wilderness Impact Research Foundation. Personal interviews, 1986–1989.

[26] Stewart, Jim, National Park Service. Telephone interview. Summer, 1989.

[27] Hodel, Donald Paul. Letter and Briefing Statement to Senator Jesse Helms. 3 June 1986.

[28] Non-Partisan Citizens Against Wilderness in Western North Carolina. Membership form. 1989.

[29] Carpenter, William L., Executive Director, Chamber of Commerce, Gatlinburg, Tennessee. Testimony at the March 16, 1984 Senate Subcommittee Hearing.

[30] Craig, Larry, Alan Simpson, Richard Stallings, Bob Stump, and Don Young, members of the United States Congress. Personal interviews. Summer, 1989.

[31] Houge, Linda G., Chairman, Non-Partisan Citizens Against Wilderness in Western North Carolina. Public statements and personal interviews. 1986–1989.

BIBLIOGRAPHY

Arnold, Ron. Ecology Wars: Environmentalism as if People Mattered. Bellevue, Washington: Free Enterprise Press, 1987.

Beck, Joseph E., Professor of Environmental Health Sciences, Western Carolina University. Letter to Senator Jesse Helms. 13 June 1983.

Breedlove, Joyce Posey. Testimony before the Senate Subcommittee on Public Lands and Reserved Waters. Bryson City, NC. March 16, 1984.

The Bryson City Times. Bryson City, NC, August 5, 1943.

Carpenter, William L., Executive Director, Chamber of Commerce of Gatlinburg, TN. Testimony before the Senate Subcommittee on Public Lands and Reserved Waters. Bryson City, NC. March 16, 1984.

Craig, Larry, Alan Simpson, Richard Stallings, Bob Stump, and Don Young, members of the United States Congress. Personal Interviews. Summer, 1989.

Gerber, Grant, Executive Director, Wilderness Impact Research Foundation. Personal and telephone interviews. 1966–1989.

Gibson Jennifer. Testimony before the Senate Subcommittee on Public Lands and Reserved Waters. Bryson City, NC. March 16, 1984.

Gore, Albert, United States Senate. Congressional Record: Proceedings and Debates of the 100th Congress, Second Session: Vol. 134, No. 92. Washington, GPO, June 21, 1986.

Guge, Donald. Testimony before the Senate Subcommittee on Public Lands and Reserved Waters. Bryson City, NC. March 16, 1984.

Hodel, Donald Paul, Secretary of Interior. Letter and Briefing Statement to Senator Jesse Helms. 3 June 1986.

Hogue, Linda G., Chairman, Non-Partisan Citizens Against Wilderness in Western North Carolina. Public statements and personal interviews. 1986–1989.

Killebrew, Chad. Testimony before the Senate Subcommittee on Public Lands and Reserved Waters. Bryson City, NC. March 16, 1984.

Kirkland, Taylor. Testimony before the Senate Subcommittee on Public Lands and Reserved Waters. Bryson City, NC. March 16, 1984.

Non-Partisan Citizens Against Wilderness in Western North Carolina. Membership form. 1989.

Stewart, Jim, National Park Service. Telephone interviews. Summer, 1939.

Turner, H. H., Supervisor, Grave Removal Section, Tennessee Valley Authority. Letter to Mr. L. B. Cook. 31 July 1943.

United States Department of Interior, Tennessee Valley Authority, State of North Carolina, and Swain County, NC. Contractual agreement. October 8, 1943.

United States. Tennessee Valley Authority The Fontana Project: A Comprehensive Report on the Planning, Design, Construction, and Initial Operation of the Fontana Project: Technical Report No. 12. Washington, GPO, 1950.

Vickery, Millie. Testimony before the Senate Subcommittee on Public Lands, and Reserved Waters. Bryson City, NC. March 16, 1984.

Woodard Rev. Buford, Testimony before the Senate Subcommittee on Public Lands and Reserved Waters. Bryson City, NC. March 16, 1984.

Other source: Personal knowledge.

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All the many North Shore natives and descendants who have provided me with their countless stories over the years.

APPENDIX A

THE 1943 AGREEMENT

(Memorandum of agreement of October 8, 1943 between the Department of the Interior and the Tennessee Valley Authority relating to the acquisition and transfer of certain lands in Fontana Dam area for use as part of Great Smoky Mountains National Park)

This agreement, made and entered into as of the 30th day of July 1943, by and between Tennessee Valley Authority (hereinafter called the "Authority"), a corporation created by an Act of Congress known as the Tennessee Valley Authority Act of 1933; the State of North Carolina (hereinafter called the "State"), acting by and through its Governor, its Council of State, and its State Highway and Public Works Commission; Swain County (hereinafter called the "County"), a political subdivision of the State of North Carolina, acting by and through the Board of Commissioners for the County of Swain; and United States Department of the Interior (hereinafter called the "Department"), acting herein for the use and benefit of the National Park Service of said Department.

Witnesseth:

Whereas, the Authority pursuant to the powers vested in it by the Tennessee Valley Authority Act of 1933, is engaged in the construction of a hydroelectric development, known as the Fontana Project, consisting of a dam and reservoir on the Little Tennessee River in North Carolina, said dam being located approximately ten (10) miles upstream from the Tennessee-North Carolina State line; and

Whereas, the Forney Creek Road District has heretofore issued bonds for and constructed on road or highway extending from Deals Gap on the west to Bryson City on the east, said road following a course north of the Little Tennessee and Tuckasegee Rivers and south of the present southern boundary of the Great Smoky Mountains National Park (hereinafter referred to as the "Park"; and

Whereas, the County has heretofore assumed full liability for all principal of and interest on the bonds issued for the construction of said road as aforesaid, and in 1940 issued its own refunding bonds (and interest funding bonds) in the place of all such bonds then outstanding and unpaid; and

Whereas, the State has heretofore assumed jurisdiction and control of said Deals Gap-Bryson City road, which is now known North Carolina State Highway No. 288, and of all other public road connecting therewith; and

Whereas, the reservoir to be constructed and operated by the Authority as a part of said Fontana Project will submerge, flood, or otherwise adversely affect a substantial portion of said Highway 288 east of the site of the Fontana Dam, together with other public roads connecting with said Highway 288; and

Whereas, the War Production Board has indicated that it would not approve or permit the reconstruction or relocation of said Highway 288 so long as the present war emergency and the shortage of labor, materials, and equipment resulting therefrom continue to exist; and

Whereas, said Highway 288 as now constructed, does not furnish or afford a high standard of service, and it is recognized by the parties hereto that the reconstruction or relocation of said road on an equivalent basis after the war emergency or at any other future time would not constitute a wise or efficient expenditure of public funds; and

Whereas, there are now held in private ownership certain lands (hereinafter described in section 1 of this agreement) aggregating approximately forty-four thousand four hundred (44,400) acres in area located within the limits of the County south of the present southern boundary of the Park and north of the Little Tennessee and Tuckasegee rivers, all of which acreage (along with certain other acreage now in private ownership) was originally proposed for inclusion with the boundaries of the Park; and

Whereas, the acquisition of said land described in section 1 hereof by the United States of America and in the inclusion thereof within the boundaries of the Park would serve to extend said boundaries substantially as originally contemplated; and would also establish a basis for the construction by the Department of a park standard road over and across said land; and

Whereas, the Department regards a park standard road connection between Deals Gap and Bryson City as an important link in a planned "around the Park" road, has included the same as a part of a Master Plan for the development of the park (extended as aforesaid), and subject to inclusion of the aforesaid additional acreage within the Park area, is agreeable to initiating construction of the Park portion of such a road as soon after the present war as funds are made available therefor by Congress; and

Whereas, the parties hereto desire to provide for and agree upon the extension of the Park boundaries as aforesaid, the closing and ultimate replacement of Highway 288, and the immediate and final settlement and disposition of all claims which the State and the County may at any time have against the Authority or the United States of America by reason of the flooding, taking, or closing of said Highway 288 and the other roads hereinafter described or referred to, all in the manner and upon the terms and conditions hereinafter specified, and all to the end and purpose of avoiding unwise and inefficient expenditures of public funds and of capturing certain benefits for the region affected and the public generally;

Now, therefore, in consideration of the premises and of the mutual covenants and promises hereinafter contained, it is hereby mutually agreed by and between the parties hereto as follows:

1. Promptly upon the execution of this agreement, the Authority shall, to the extent it has not already done so, in the name of the United States of America, commence and thereafter prosecute in a systematic, orderly, and diligent manner the acquisition by purchase, the exercise of eminent domain, or otherwise, of the land identified on the map attached to and hereby made a part of this agreement as Exhibit A[1] as "Land Proposed for Transfer to U.S. Department of the Interior," the land to be so acquired being more particularly described as follows:

All that land, except that part hereinafter excluded, lying in Swain County, North Carolina, on the north side of the Little Tennessee and Tuckasegee rivers, and south of the Great Smoky Mountains National Park, extending from Twenty Mile Ridge on the West to the divide between Lands Creek and Peachtree Creek on the East, the east boundary of the area being approximately 2 miles west of Bryson City, North Carolina, the said area being bounded as follows:

1. On the west and north by the present boundary line of the Great Smoky Mountains National Park;

On the east by the divide between Lands Creek and Peachtree Creek (the nearest property line being the true boundary) but including the two tracts along the Tuckasegee River formerly owned by A. E. Lowe and A.L. and W.C. Nichols and acquired by the Authority from Nantahala Power and Light Company under tract designations FR-262 and FR-264;

3. On the south by proposed Fontana Lake (1710 contour) from the east boundary to a point on the edge of the lake approximately 3600 feet as measured along the shore (1710 contour) in a northerly direction from the axis of Fontana Dam; thence first with the north boundaries thence the west boundary of two tracts of land acquired by the Authority from Nantahala Power and Light Company and Carolina Aluminum Company, respectively, under tract designations FR-438 and FR-16 to a point 150 feet north of the center line of the principal access road to Fontana Dam and approximately 100 feet west of Lewellyn Branch; thence along a line parallel to and 150 feet north of said center line in a general westerly direction to an intersection with the boundary line of the Great Smoky Mountains National Park on the south end of Twenty Mile Ridge and east of Twenty Mile Creek.

Excepting and excluding from the area above defined (1) all those lands owned by the North Carolina Exploration Company, consisting of some three or four tracts of land situated in the Eagle Creek and Myers Branch watersheds and containing approximately 1,920 acres, more or less, and (2) all land upstream from Fontana Dam having the elevation of its present ground surface below the plane of the 1710-foot (m.s.l.) contour.

The above described land contains a net total of approximately 44,400 acres, more or less.

Provided, however, that the Authority may at its election postpone the acquisition of the taking of any steps in connection with the acquisition of all or any part of or interest in the following property:

The tract of land owned by the North Carolina Mining Corporation situated on the north side of the Sugar Fork tributary of Hazel Creek approximately 2 miles north of Proctor and being the tract of land conveyed by Walter S. Adams and Wife, Melinda, to the North Carolina Mining Corporation by deed dated March 29, 1901, and recorded in the Office of the Register of Deeds of Swain County, North Carolina, in Deed Book 29, page 238, the said tract containing 196 acres, more or less.

until a date six months after the cessation of the hostilities in which the United States is now engaged, it being recognized by the parties hereto that the mining of said tract of land and the removal of such minerals as may be contained therein may be of importance to the prosecution of the war.

It is recognized and agreed that any or all of the lands acquired by the Authority under this section may be subject to outstanding rights of way, easements, and/or mineral rights; that any of said lands acquired from the Aluminum Company of America or any of its subsidiaries may be subject to rights of way one hundred fifty (150) feet in width for any transmission line or lines of any of said companies which may be constructed to interconnect any of the plants of said companies with the power system of the Authority, the location of such rights of way to be agreed upon from time to time by said companies or any of them and the Authority; and that any of said lands acquired from Carolina Aluminum Company may be subject to any or all of the following perpetual rights, easements, and privileges in favor of Carolina Aluminum Company, its successors and assigns, as the owner or owners of the dam site of the Cheoah Development and as appurtenant thereto:

a. The right at all times without limitation or restriction to flood by the waters of the reservoir impounded by the Cheoah Dam or any other dam erected on or near the site thereof, the said properties to an elevation of 1276.63 feet above mean sea level and to flood said properties to such additional elevations as may result from wave action, floods, and other high water conditions.

b. The right is the discretion of Carolina Aluminum Company, its successors or assigns, to remove from the shore of Cheoah Reservoir and the land under said reservoir and to destroy or otherwise dispose of silt, drift, timber, vegetation, and other matter, and to use said shore and land for such purposes and any other purpose reasonably connected with the maintenance and operation of the Cheoah Development together with the right of ingress, egress, and regress for such purposes * * * tools, vehicles, and equipment egress said properties.

It is further understood and agreed that in the purchase or other acquisition of the aforesaid land as herein provided, the Authority shall be privileged to follow and abide by its standard policies and procedures, as the same may be varied or amended from time to time pertaining to the acquisition of lands or interests therein. The Authority shall not be responsible and shall incur no liability under this section for any delay or delays in the acquisition of title to any of said land caused or attributable to title searches or other studies, condemnation proceedings or other litigation, or caused by or attributable to any act or circumstance which is incident to or reasonably related to such acquisition or which is beyond the Authority's control, it being the intention of the parties that Authority shall incur no liability for any delays in the acquisition of any land under this section resulting from any cause whatsoever other than the willful failure or refusal of the Authority to take any step necessary to effect such acquisition.

2. Immediately following its acquisition in accordance with Section 1 hereof of all of the land described in said section, the Authority shall assign and transfer to the Department, for the use and benefit of the National Park Service and for inclusion as a part of the Park, the right of possession and all other right, title, and interest which the Authority may have in and to said land, and shall also grant to the Department, its agents, servants and invitees the right of access to any use of all lands of the United States in the Authority's custody lying upstream from Fontana Dam between the land to be transferred to the Department hereunder and low watermark on Fontana Lake, together with the right to access to and the use of the waters of said lake, for the purpose of constructing and maintaining thereon boating and recreational facilities, piers, docks, and related xxxx and of performing all other acts which may be reasonable necessary to the administration and use, as a part of the Park, of the lands to be transferred to the Department under this section 2; provided, however, that said assignment, transfer, and grant shall be effected by an agreement of transfer between the Authority and the Department substantially in the form attached to and made a part hereof as Exhibit B[2] and shall be subject to all of the terms, conditions, provisions, exceptions, exclusions, and reservations contained in said Exhibit B, and shall also be subject to all those rights, easements and interests (whether or not now listed or specified in said Exhibit B) which have been or may be reserved or left outstanding at the time of Authority's acquisition of the lands described in Section 1, as permitted or contemplated by said Section 1; provided further that, prior to the execution of said transfer agreement, a metes and bounds description of the lands to be transferred to the Department thereunder shall be incorporated therein in substitution for the description of said lands not contained in Exhibit B; and provide further that if the Authority shall at any time have acquired all of the land described in Section 1, with the exception of all or any part of or interest in the North Carolina Mining Corporation tract separately described in said Section 1, the Authority and the Department shall then enter into an agreement of transfer, as aforesaid, with respect to so much of the land described in Section 1 as the Authority shall then have acquired, and in such case said North Carolina Mining Corporation Tract, or the part thereof or interest therein not initially transferred by the Authority to the Department, shall be the subject of a separate and subsequent agreement of transfer between the Authority and the Department, such subsequent agreement of transfer to be consistent with the provisions of this agreement and substantially in the form attached hereto as Exhibit B, and to be executed immediately following the Authority's acquisition of the part of or interest in said tract not covered by the initial agreement of transfer.

The parties recognize and agree that, as an incident to the construction, maintenance, and operation of the Fontana Project, the Authority will acquire certain lands and rights and interests in land in addition to those specified to be acquired under Section 1 hereof and to be transferred under this Section 2. The acquisition of such additional lands and rights and interests in land shall not give rise to any obligation on the part of the Authority to transfer the same, or any part thereof or interest therein, to the Department, and the Authority's sole obligation under Sections 1 and 2 of this agreement shall be to effect the acquisition of the lands specified in Section 1 and to transfer the possession and control of said lands to the Department along with the additional rights of access and use specified in the preceding paragraphs, all as herein specifically provided.

3. The Department agrees to enter into an agreement or agreements of transfer with the Authority as provided by Section 2 hereof, and pursuant to and subject to the provisions of such agreement or agreements, to accept an assignment and transfer of the lands described in Section 1 hereof, together with the additional rights of access and use specified in Section 2. The Department further agrees that, forthwith upon the execution and delivery of such an agreement of transfer, it will extend the present boundaries of the park to embrace and include the land transferred thereby.

4. The Department represents and states that it has evolved a Master Plan for the development of the Park as extended by the addition of the lands described in Section 1 hereof, and that said Master Plan includes an "around the park" road, of which the Park section of a project road between Deals Gap and Bryson City constitutes an important link. Subject to the transfer by the Authority to the Department of the land described in Section 1 as herein provided, the Department agrees that, as soon as funds are made available for that purpose by Congress after the cessation of the hostilities in which the United States is now engaged, the Department will construct or cause to be constructed the following described sections of road, all of said sections being hereinafter collectively referred to as the "Park Road":

a. A section of road beginning at a point on the Fontana Dam access Road near the crossing of Fax Branch, and extending to a point on the western boundary of the land identified on Exhibit A as the property of North Carolina Exploration Company.

b. A section of road beginning at the eastern boundary of said North Carolina Exploration Company land and extending to the eastern boundary of the Park as extended hereunder.

c. A section of road across said North Carolina Exploration Company land connecting the ends of the sections of road described in paragraphs a. and b. above.

d. A section of road beginning at a point in the road described in paragraph a. above. and extending in a generally southerly direction to the west abutment of Fontana Dam.

Provided, however,that in lieu of the sections of road described in paragraphs a., b., and c above, the Department may at its election construct or cause to be constructed, as a part of the Park Road, a continuous section or road beginning at a point on the Fontana Dam Access Road near the crossing of Fax Branch and extending around the aforesaid property of the North Carolina Exploration Company (through existing Park lands) to the eastern boundary of the Park as extended hereunder. In the event of such election on the park of the Department, the Department shall nevertheless construct or cause to be constructed, as a part of the Park Road, the section of road described in paragraph d. above, which section shall in such case commence on said alternative section of Park Road at a point west of the lands identified on Exhibit A as the property of North Carolina Exploration Company. Upon commencement of construction of the Park Road, the Authority shall transfer and assign to the Department its right of possession, and all its other right, title, and interest in and to the land required for the right of way of that portion of the road described in paragraph d. above which lies within the boundaries of Fontana Dam Reservation. The Department shall secure and provide for itself all such easements and rights of way as may be necessary for the construction and maintenance of any portion of the Park Road which may be located upon or across any of said North Carolina Exploration Company property.

If and when funds are made available by the Congress for said Park Road as aforesaid, the location and type of said road, the method and manner of construction the same, and all standards and specifications therefor shall be determined by the Department in its sole discretion; provided, however, the said Park Road when constructed shall as a minimum standard be finished throughout its length with a dustless surface not less than twenty (20) feet in width; and provided, further that said Park Road shall connect at the eastern boundary of the Park, as extended hereunder, at a point to be selected by the Department, with the road which is to be constructed by the State in accordance with and subject to the provisions of Section 6 hereof.

The obligation of the Department, to construct or provide for the construction of a Park Road as defined in this Section 4 shall be XXX and contingent in all respects under the appropriation by Congress of all funds necessary for such construction, and failure on the part of Congress for any reason to make such appropriations shall not constitute a breach or violation of this agreement by the Department or any other party hereto.

5. Following completion of the Park Road to be constructed by the Department subject to the provisions of Section 4, the Department may in its discretion bar said road to commercial use, and restrict the same solely to pleasure and tourist traffic.

6. At such time as the Department shall commence the construction of the Park Road pursuant to Section 4 hereof, the State shall forthwith proceed to acquire good and sufficient easements and rights of way for and shall construct, a road commencing at a point on U.S. Highway 19 in Bryson City, North Carolina, and extending to a point on the eastern boundary of the Park (as extending hereunder) to be selected and designated by the Department, the point so designated by the Department to be such as to provide for the connection of the State road provided for in this section with the Park Road described in Section 4. The easements and rights of way to be acquired by the State for said Bryson City-Park Boundary Road shall be not less than two hundred (200) feet in width outside the corporate limits of Bryson City. In all other respects, except for the termini thereof as above provided, the location and type of said road, the method and manner of constructing the same, and all standards and specifications therefore shall be determined by the State in its sole discretion; provided, however, that said road when constructed by the State shall as a minimum standard be finished throughout its length with a dustless surface not less than twenty (20) feet in width.

7. Following completion of the construction of the Fontana Project by the Authority, the Authority, on its own behalf and as agent of the United States of America, shall quitclaim to the State all of the right, title, and interest which it or the United States of America may have in and to the so-called Fontana Access Road heretofore constructed by the Authority from U.S. Highway 129 near Deals Gap to the left (east) abutment of the Fontana Dam, including all bridges, culvert, and other facilities constituting a part of the transfer of said access road to the State as aforesaid, the Authority shall also:

a. Transfer and quitclaim or cause to be transferred and quitclaimed to the State all easements and rights of way acquired by the Authority as agent of the United States appurtenant to those portions or sections of said access road which may be located outside the limits of land of the United States in the custody of the Authority, together with such land as the Authority, as agent of the United States, may hold or acquire in fee west of a point on the north right of way line of said access road approximately one hundred (100) feet west of Lewellyn Branch, and between said north right of way line and the Cheoah Reservoir of Carolina Aluminum Company. For the purposes hereof, the north right of way line of said access road west of said point approximately one hundred (100) feet west of Lewellyn Branch shall be deemed to a line parallel to and one hundred fifty (150) feet north of the center line of said access road.

b. Grant and quitclaim or cause to be granted and quitclaimed to the State suitable easements and rights of way for the maintenance of all of the portions of said access road which are located on land of the United States in the custody of the Authority, where such land is not included in the land to be transferred and quitclaimed to the States under paragraph a. immediately preceding.

c. Transfer and assign or cause to be transferred and assigned to the State an agreement between the Authority and Carolina Aluminum Company dated May 5, 1943, relating to an easement for the construction and maintenance of the bridge located on said Fontana Access Road across the Little Tennessee River, together with all rights, privileges, and interests of the Authority and the United States in, to, and under said agreement.

The State agrees that it will, by formal agreement with the Authority and Carolina Aluminum Company, accept an assignment of the aforesaid agreement of May 5, 1943, and assume all of the duties and obligations of the Authority and the United States of America thereunder, so as to effect the substitution of the State for the Authority and the United States of America for all of the purposes of said agreement as contemplated by Section 3 thereof. The State further agrees that, forthwith upon the transfer of said access road as aforesaid, it will open and thereafter maintain said access road for public travel, take over at the expense of the State the maintenance, repair, and upkeep thereof, and thereafter hold the Authority and the United States of America harmless on account of any loss, damage, or injury sustained by any person or persons using the same; provided, however, that in transferring said access road to the State as aforesaid, the Authority may reserve the right, but shall have no obligation to maintain, flatten, plant grass or shrubbery upon, or otherwise modify the slopes of cuts and embankments adjacent to any portion or portions of said access road between the south end of the Little Tennessee River Bridge and the left (east) abutment of Fontana Dam.

8. Forthwith upon the execution of this agreement, the State, as a means of cooperating with and assisting the Authority in the purchase of the land described in Section 1 hereof, and in the settlement of the problems incident or related thereto, shall pay to the Authority the sum of One Hundred Thousand Dollars ($100,000), such payment to be made for the purposes of and pursuant to the authority contained in S.B. 198 enacted at the 1943 Session of the North Carolina Legislature and approved March 5, 1943.

9. Promptly upon the execution of this agreement, the Authority shall pay to the State Treasurer of North Carolina, Treasurer ex officio of the North Carolina Local Government Commission, in trust for the County, the sum of Four Hundred Thousand Dollars ($400,000), said State Treasurer of North Carolina being hereby designated by the County to receive and receipt for said sum on the County's behalf.

Prior to or simultaneously with the payment of said sum to said State Treasurer of North Carolina, the County shall enter into a trust agreement governing the management and disbursement of said trust fund. Said trust agreement shall be subject to the approval of the North Carolina Local Government Commission, and shall provide that said sum shall be applied by the trustee exclusively to the payment of the principal of road bonds of the County which are now outstanding and unpaid. The County agrees that said trust agreements, once entered into with the approval of the North Carolina Local Government Commission, shall not be amended, revoked, or supplemented except with the written consent and approval of said Local Government Commission.

Delivery to said State Treasurer, as Treasurer ex officio of the North Carolina Local Government Commission, of the Authority's check in the amount of Four Hundred Thousand Dollars ($400,000), payable to his order as trustee for the County, shall operate as a compete fulfillment and discharge of all obligations of the Authority under this Section 9.

10. The State and County hereby agree that they will, forthwith upon receipt of a request from the Authority so to do, by instrument or instruments in form suitable for recording, transfer, assign, convey, and quit claim unto the Authority and the United States of America all right, title, and interest which they and the public may have in and to that portion or section of existing North Carolina State Highway 288 between Fax Branch and Watkins Branch, in and to all other roads or portions for sections of road (irrespective of elevation) located upon or across any of the land described in Section 1 hereof and/or any of the land identified on Exhibit A hereto as the property of North Carolina Exploration Company, and in and to all other roads or portions or sections of road in the County lying north of the Little Tennessee and Tuckasegee rivers each of Fontana Dam below elevation 1716 (m.s.1). including all bridges, culverts, and other facilities constituting a part of any of said roads or portions or sections of road, together with all easements and rights-of-way appurtenant thereto. The State and the County further agree that they will, forthwith upon receipt of a request from the Authority to so, take or procure the taking of any and all action which may be necessary and appropriate to vacate and abandon all of the roads and portions or sections of road to be conveyed and quitclaimed as provided in this paragraph, and to close the same to the use of the public. Until such time as the Authority shall request the conveyance and the vacation, abandonment, and closing of the roads or portions or sections of road referred to in this paragraph, all such roads or portions or sections of road shall retain their present status and continue to be used and maintained as public roads or highways.

In consideration of the premises and of the covenants and promises of the Authority and the Department in and under this agreement, the State and the County, for themselves, their respective successors, representatives, and assigns, shall and do hereby, jointly and severally, release, acquit and discharge the Authority, its successors and assigns, and its agents and employees, and the United States of America, of an from all obligations, liability, claims and demands of every nature, character, or description, whether now or hereafter existing, arising out of or in any way connected with the inundation, closing, or taking, under or as the result of this agreement or as the result of the construction, maintenance, or operation of Fontana Dam or Fontana Reservoir, of North Carolina State Highway 288, or any portion or section thereof, wheresoever located, or of any other road or roads or section or sections of road (irrespective of elevation) located wholly or partially upon or across any of the land described in Section 1 hereof or any of the land identified on Exhibit A hereto as the property of North Carolina Exploration Company, or of any road or roads or section or sections of road lying north of the Little Tennessee and Tuckasegee Rivers below elevation 1715 (m.s.1.), together with all obligations, liability, claims, and demands arising out of or in any way connected with any impairment of the efficiency, value, usability, or convenience of any portion (irrespective of elevation or location) of said Highway 288 or of any of said other roads or sections of road, not so inundated, closed, or taken; and the State and the County expressly agree that they will not, jointly or severally, maintain or attempt to maintain any suit or cause of action against the Authority, its agents or employees, or the United States of America based upon or arising out of any such inundation, closing, taking, or impairment, it being in the intention hereof that the covenants and promises of the Authority and the Department herein contained shall constitute and effect and be accepted as an immediate, complete, and final payment and discharge of all such obligations, liability, claims and demands; provided, however, that nothing herein contained shall apply to or preclude any action by the State or the County to enforce compliance or to recover damages for noncompliance by the Authority or the Department with their respective covenants and promises herein made.

11. Anything in Section 10 to the contrary notwithstanding the State does not release or waive or agree not to enforce any claim, demand, or "action over" which it may now or hereafter have against the Authority or the United States, and which is based upon an obligation or liability which the State may have or incur to any landowner by reason of his being deprived of access to land owned by him in Swain County, North Carolina, where such obligation or liability on the part of the State arises out of the inundation, flooding, closing, or other impairment, under or as the result of this agreement or as the result of the construction, maintenance, or operation of Fontana Dam or Fontana Reservoir, of existing North Carolina State Highway 288 between Fax Branch and Watkins Branch; and the Authority hereby expressly agrees to indemnify the State against and save it harmless from any such obligation or liability; provided, however, that whichever such obligation or liability exists or is alleged or claimed to exist on the part of the State in favor of any landowner, the State shall not, except pursuant to a judicial judgment or decree, pay, compromise, settle, or otherwise dispose of such obligation or liability or any claim, demand, suit, or action based thereon without the written consent of the authority; provided further that the Authority shall at times have and exercise full control over the defense, settlement, and disposition of all claims, demands, suits, and action filed with or against the State in respect of any such obligation or liability, and may compromise, settle, or dispose of the same in any manner or by any method or procedure which it may see fit to adopt in its sole discretion.

Whenever any claim, demand, suit, or action is made or filed with or against the State in respect of an actual or alleged obligation or liability on the part of the State of the kind referred to in the preceding paragraph of this section, the State shall promptly, and in any event within ten (10) days after receipt of formal written notice thereof by the State or summons issued by any court and served on the State, give the Authority written notice of the making or filing of such claim, demand, action, or suit, so as to permit the Authority to defend, compromise, settle, or otherwise dispose of the same as herein contemplated. In the event of failure by the State to give the Authority written notice of any such claim, demand, action, or suit as herein provided, or if the State shall, otherwise than pursuant to judicial judgment or decree, pay, compromise, settle, or otherwise dispose of any such claim, demand, action, or suit without the written consent of the Authority, then and in either or any of such events, the Authority shall be relieved and discharged of any obligation to indemnify the State against or save it harmless from any obligation or liability in respect of such claim, demand, suit, action, or any renewal thereof.

12. This agreement may be simultaneously executed and delivered in any number of counterparts, and each such counterpart shall be deemed an original.

In witness whereof, the parties hereto have caused this agreement to be executed by their proper representatives thereunto duly authorized as of the day and year first above written.

Swain County, North Carolina Tennessee Valley Authority

By the Board of Commissioners for the County of Swain

(SGD) R.D. ESTES,
Chairman.

Date: October 8, 1943.

United States Department of the Interior:

(SGD) HAROLD L. ICKES,
Secretary.

(SGD) ARTHUR S. JANDREY,
Acting General Manager

State of North Carolina:

(SGD) J. MELVILLE BROUGHTON,
Governor.

And by Council of State:

(SGD) J. MELVILLE BROUGHTON,
Chairman.

And by State Highway & Public Works Commission:

(SGD) D.B. MCCRARY,
Acting Chairman.

SWAIN COUNTY STILL WAITS FOR PROMISED ROAD TO SOMEWHERE

(By Jon Healey)

Ruth Chandler, 71, of Waynesville is a mountain girl who doesn't mind climbing up a slope. She's not too crazy about travel by water, though, and that's why she wants the federal government to build a new road on the north shore of Fontana Lake in Swain County. Like several hundred others who have relatives buried in Swain County, Chandler must cross Fontana Lake by motor launch (a glorified barge) to reach the cemeteries on the north side of the lake.

It's bad enough that the boats only run on Sundays; what's worse is that they ride low in the water, giving Chandler the impression that she'll be looking for Davy Jones' locker someday. Still, she's braver than some of her friends.

The boats deliver visitors to 28 different cemeteries, 25 of which can be reached on foot after a hilly trek. Flatbed trucks take visitors to the other three via narrow mountain roads. Those trips have a pulse pounding quality to them, too. Chandler has visions of the road's shoulder giving way under the weight of a fully loaded truck, sending the truck rolling down the mountain and its passengers to their deaths.

Chandler said that she doesn't care much for the trucks creature comforts—the seats are made of hay—but what really bugs her is getting on and off. This summer, the park service condemned all three bridges on the route driven by the trucks, she said, forcing the trucks to unload their passengers before driving over each one. That meant getting on and off the truck 10 times in the course of one visit, a challenge for anyone over 70, she said. These indignities were forced on folks such as Chandler by the federal government, more particularly by the Tennessee Valley Authority.

To generate more power for its customers in Tennessee, the TVA decided during World War II to build a dam on the Little Tennessee River about 8 miles inside of North Carolina, near the border of Swain and Graham counties. The resulting 20-mile-long lake, called Fontana Lake, flooded a road that the county had just built, cutting off access to the cemeteries.

The government signed an agreement in 1943 to pay for the road that was wiped out and to replace it with a two-lane paved road on the north shore. The new road was delayed for more than a decade, then abandoned after less then one-third of the route was built. The state's maps mark the road with a blue line leading from Bryson City to one edge of the lake, signifying that it literally is a road to nowhere.

Everyone agrees that the federal government has done wrong by Swain County, breaking the promise it made when it flooded the original road. There is sharp, even bitter, division over how to make things right, however.

The side represented by Chandler, which includes the North Shore Cemetery Association and the Fontana Agreement Committee, argues that the government has a moral obligation to build a new road from Bryson to Deals Gap, Tenn. The road is much more to them than just an easier way to reach the cemeteries; it is a chance to tap into tourist dollars that flow into the Great Smoky Mountains National Park, dollars now spent in Tennessee.

Linda Hogue, a spokesman for the Fontana Agreement Committee, said, "Tennessee is getting rich off of the park. * * * Our side is virtually undeveloped." The proroad forces envision the new road being as breathtaking as the Blue Ridge Parkway, and as lucrative.

On the other side are the National Park Service, the county commissioners and environmental groups, all of whom want the county to accept a $16 million settlement from the government in lieu of a new road. In a letter written last week, the three commissioners said, "We as elected officials are convinced there will never be a road built in Swain County as agreed to in the 1943 agreement. * * * A $16 million settlement would provide payment of school bond debts, allow us to address our economic problems, (and) provide the much-needed services to our citizens. Thirty-five percent of our citizens are living at or below the federal poverty level."

Sen. Jesse A. Helms, R-N.C., sides with the pro-road forces. Sen. Terry Sanford, D-N.C., sides with the pro-settlement forces. Because they both are supported by their colleagues from their own political parties, they have been able to block each other. That happened again on Thursday, with Helms stopping Sanford. For Swain County, that means no money and no road.

The odd thing is, Helms and Sanford aren't far apart on the issue. Sanford has given up the idea of designating wilderness in Swain County, which Helms opposed. Sanford's bill also would allow the county to use the $16 million to build a road on the north shore, if the county's residents voted to do so. The language about voting comes from the bill that Helms introduced four years ago. The county couldn't build much of a road for $16 million, though—the estimated cost of a paved road on the rocky north shore is $91 million, according to one of Sanford's aides.

Helms plans to introduce a bill soon calling for the government to pay Swain County for the road it flooded and to build a "primitive" road on the north shore of the lake. The only real difference between the two senators' approaches is the underlying assumption: Helms believes that the county's residents want a road, and Sanford believes that they'd rather have more money. You'd think that the two politicians could have solved that dispute already with a poll.

The Swain County commissioners could also have tried to settle the dispute by holding a referendum to gauge the will of the people. Instead, each side is left with its assumption—Sanford's assumption based on the commissioners' position, and Helms' assumption based on the letters, form letters and petitions he has received, many from people who live outside of Swain County. Meanwhile, the people who live inside Swain County are left with a written agreement from 1943 that's not worth the paper it's printed on.

TESTIMONY OF THE EASTERN BAND OF CHEROKEE INDIANS PRESENTED TO THE CITIZENS OF SWAIN COUNTY, NC ON THE SWAIN COUNTY SETTLEMENT ACT OF 1991, DECEMBER 12, 1991

TESTIMONY OF CHIEF JONATHAN L. TAYLOR CONCERNING S-1849

Mr. Chairman, my name is Jonathan L. Taylor. I am the Principal Chief of the Eastern Band of Cherokee Indians.

I am pleased to have this opportunity to present our views concerning the proposed Swain County Settlement Act of 1991.

For background information, the Cherokee Indian Reservation consists of over 56,000 acres in Western North Carolina. The Reservation is located in five counties: Swain, Jackson, Graham, Haywood and Cherokee counties. The Great Smoky Mountains National Park forms the northern border of most of the Reservation. More than 8,000 of our enrolled Tribal members live on or near the Reservation.

Over the years, the Cherokees and the United States have negotiated and signed many treaties. Indian history states that the United States broke every one of these treaties with the Cherokee, and the Cherokee lost more and more land with each Treaty. For this reason alone, the Eastern Band of Cherokee Indians is sympathetic with our Swain County neighbors dilemma and the United States Government's reluctance to fulfill an agreement over forty-five years old.

The economy of the Cherokee Indian Reservation, and Southwestern North Carolina revolves around tourism. More than thirteen million people pass through Cherokee via U.S. Highway 441 on their visits to the Great Smoky Mountains National Park.

From this perspective one may imagine the deep concern the Eastern Band of Cherokee Indians, indeed all people of Southwestern North Carolina, have for the possible effects of any federal legislation impacting our neighbor communities.

We support the suggested 16 million dollar settlement of Senate Bill 1849 introduced by Senator Helms of North Carolina. This indebtness is over forty five years old and should be settled now without further delay. We see no need for additional concessions from Swain County or vacillation by the Federal Government to assure the fulfillment of its original agreement. Additionally, we strongly feel that the road should be built by the federal government as promised.

Historically, we as Indian people, are keenly aware that decisions made in Washington will have a continuing effect upon our lives, our livelihoods and the lives of our unborn children. We sincerely hope that our concerns and observations will be given full and positive consideration in this light.

We support an action which will provide access to gravesites left behind when the people were forced off the land. We believe that any people should be able to visit the graves of their ancestors without undue hardship caused by no fault of their own.

We support Senator Helmes' suggestion that the Park Service erect an historical marker at Soco Gap to honor the contributions of the Cherokee Nation to the people of North Carolina and to the United States.

After considerable review and discussion we are opposed to Senator Sanford's solution to this problem in the same way we are opposed to his suggestion that Indian Tribes should be legislatively created as in the case of the Lumbee question. In the first case, his answer to the Swain County concern is not a solution, but rather a partial attempt to placate without understanding the economic loss caused by this unfulfilled commitment. In the second case, the Lumbee legislation if enacted, will cost tax payers of the country some one hundred fifty six million dollars annually and cloud the established definition of Native Americans.

We suggest that a more equitable way to solve the federal commitment to Swain County would be for Senator Sanford to join with Senator Helms in asking that the promised road be built as outlined in S-1849 and that the County be compensated for lost revenues through the years.

Mr. Chairman, I thank you on behalf of the Tribe for this opportunity to make our views known. We believe these ideas, specifically included in the legislation, will assure equitable treatment of North Carolina citizens throughout the area as well as other citizens of our country.

Thank you.

Mr. SANFORD. I would like to clarify the terms of our understanding with regard to the Swain County Settlement Act.

Mr. HELMS. I understand my distinguished friend from North Carolina would like to address several concerns he has about the provisions of the Swain County Settlement Act as it relates to our understanding of the 1943 agreement and I appreciate his cooperation. I would be happy to answer the Senator's inquiries. As the Senator knows, settlement of this issue has been a priority of mine since coming to the Senate 20 years ago. I have traveled the roads, visited the cemeteries, brought delegations of Senators to Swain County and fought everyday to hold the Government to its promise to build the road on the north shore of Fontana Lake and compensate the county for the road it destroyed, not one in lieu of the other.

The "Road to Nowhere" must be turned into the road to a brighter future. There is nothing more important to me than forcing the Government to keep its complete word, that means the road and the payment. I will not allow the narrow special interests to dictate the future of one of the most beautiful parts of North Carolina. The road changes what is a bleak future into one of promise. The $16 million can come and go but the road brings jobs and people and hope.

Mr. SANFORD. I thank the distinguished senior Senator. My friend and I have been intimately familiar with an agreement that was entered into in 1943 between the Secretary of the Interior, the State of North Carolina, the Tennessee Valley Authority, and Swain County, NC. I believe that we both share the desire of the citizens of Swain County to see this problem settled.

I want to make it clear that my first priority since my days as Governor, and throughout my Senate term, has been to compensate the people of Swain County for the road that was flooded to construct Fontana Reservoir as part of this Nation's war effort in 1943. The county is made up of about 82 percent Federal land and the unemployment in the county remains in double digits. The schools and the infrastructure of the county have suffered due to a lack of economic development—the children and the working families deserve the boost that this legislation will bring.

Mr. HELMS. I agree with the Senator. That is why every version of this legislation I have introduced over the years calls for the complete settlement of all obligations owed to the people of Swain County, including the North Shore Road.

In that light, this Senator and the supporters of the North Shore Road intend this legislation to be the full settlement of all of Swain County's claims. However, we do expect the environmentalists to go to court. Despite that, it does not appear that respecting that intent requires invalidating the directive to pay Swain County if there is a legal or regulatory delay in the construction of the North Shore Road.

Mr. SANFORD. I must make one point clear, and I think the Senator has answered my concern about statutory interpretation. It is my reading that the provision of the bill directing the payment of $16 million to Swain County is independent of and severable from the provision directing the completion of the road. Knowing of the obstacles which the Senator has mentioned, this legislation will be understood to ensure that any such delays will not effect the payment of funds to Swain County.

Mr. HELMS. The Senator is correct. As I noted, after consultation with concerned citizens in Swain County I divided the provisions of the legislation. Section 2(a)(3) directs the Secretary of the Interior to build the road. Section 2(a)(4) directs the Secretary of the Treasury to pay Swain County the money owed it as a result of the 1943 agreement. These are not dependent clauses. If the road is challenged for failure to comply with an environmental statute such a challenge would not affect the directive to pay Swain County. The fact that no language makes one directive depend on the other indicates that the order to the Secretary of the Treasury and the order to the Secretary of the Interior operate independently.

Mr. SANFORD. I thank the senior Senator for his cooperation over the years and know that this issue has been a priority for him since he arrived in the Senate.

I must say that I am also very pleased that we have successfully brought this issue before the Senate and will work to ensure its swift passage in the House. Last December, I had the opportunity to spend a couple of days in Swain County and take the rough boat rides, the truck rides, and hikes that are required to visit the sites of the abandoned townships and old graves that lie across Fontana Lake. It is good that we are able to address the 1943 agreement on behalf of the citizens who remember these areas before the creation of the lake, and on behalf of their grandchildren.

Mr. HELMS. I thank my colleague and I trust that he will work with me to ensure that there are no delays in the House. Its time for real progress to begin in Swain County and this is the important first step.

ADDITIONAL COSPONSORS

S. 1330

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 1330, a bill to enhance the productivity, quality, and competitiveness of United States industry through the accelerated development and deployment of advanced manufacturing technologies, and for other purposes.

S. 1569

At the request of Mr. THURMOND, his name was added as a cosponsor of S. 1569, a bill to implement the recommendations of the Federal Courts Study Committee, and for other purposes.

S. 1931

At the request of Mr. STEVENS, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 1931, a bill to authorize the Air Force Association to establish a memorial in the District of Columbia or its environs.

S. 2160

At the request of Mr. GRASSLEY, the name of the Senator from South Dakota [Mr. DASCHLE] was added as a cosponsor of S. 2160, a bill to amend the Internal Revenue Code of 1986 to allow taxpayers to elect a deduction or credit for interest on certain educational loans.

S. 2336

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 2336, a bill to establish a loan program at the Department of Commerce to promote the development and commercialization of advanced technologies and products.

S. 2696

At the request of Mr. DOMENICI, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of S. 2696, a bill to establish a comprehensive policy with respect to the provision of health care coverage and services to individuals with severe mental illnesses, and for other purposes.

S. 2810

At the request of Mr. GORE, the names of the Senator from Pennsylvania [Mr. WOFFORD], the Senator from New Mexico [Mr. BINGAMAN], and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of S. 2810, a bill to recognize the unique status of local exchange carriers in providing the public switched network infrastructure and to ensure the broad availability of advanced public switched network infrastructure.

S. 2835

At the request of Mr. HATCH, the names of the Senator from New York [Mr. D'AMATO], and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of S. 2835, a bill to amend the Federal Food, Drug, and Cosmetic Act to establish provisions regarding the composition and labeling of dietary supplements.

S. 2941

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 2941, a bill to provide the Administrator of the Small Business Administration continued authority to administer the Small Business Innovation Research Program, and for other purposes.

S. 3177

At the request of Mr. KOHL, the names of the Senator from Ohio [Mr. GLENN], and the Senator from Nebraska [Mr. KERREY] were added as cosponsors of S. 3177, a bill to amend title 13, United States Code, to require the Secretary of Commerce to notify the Senate and House of Representatives about changes in the methodology for producing numbers used in any Federal funding formula.

S. 3291

At the request of Mr. BRADLEY, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 3291, a bill to improve the interstate enforcement of child support and parentage court orders, and for other purposes.

S. 3297

At the request of Mr. KOHL, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 3297, a bill to strengthen the security of Federal computer systems, and for other purposes.

S. 3304

At the request of Mr. LUGAR, the name of the Senator from Alabama [Mr. HEFLIN] was added as a cosponsor of S. 3304, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to clarify application of the Act with respect to nitrogen stabilizers.

SENATE JOINT RESOLUTION 293

At the request of Mr. SASSER, the names of the Senator from North Dakota [Mr. CONRAD], and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of Senate Joint Resolution 293, a joint resolution designating the week beginning November 1, 1992, as "National Medical Staff Services Awareness Week."

SENATE JOINT RESOLUTION 333

At the request of Mr. DECONCINI, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of Senate Joint Resolution 333, a joint resolution designating the week beginning February 7, 1993, as "Lincoln Legacy Week."

SENATE JOINT RESOLUTION 340

At the request of Mr. BRADLEY, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Missouri [Mr. BOND], the Senator from Washington [Mr. ADAMS], the Senator from New York [Mr. D'AMATO], the Senator from Wisconsin [Mr. KASTEN], the Senator from Virginia [Mr. WARNER], the Senator from Indiana [Mr. LUGAR], the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Illinois [Mr. SIMON], the Senator from Alabama [Mr. SHELBY], the Senator from Michigan [Mr. LEVIN], the Senator from Ohio [Mr. GLENN], the Senator from Hawaii [Mr. INOUYE], the Senator from Maine [Mr. MITCHELL], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Illinois [Mr. DIXON], the Senator from California [Mr. SEYMOUR], the Senator from Montana [Mr. BURNS], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Ohio [Mr. METZENBAUM], the Senator from Michigan [Mr. RIEGLE], the Senator from Arkansas [Mr. BUMPERS], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Connecticut [Mr. DODD], the Senator from Nebraska [Mr. EXON], the Senator from North Carolina [Mr. SANFORD], the Senator from Rhode Island [Mr. PELL], the Senator from Minnesota [Mr. DURENBERGER], the Senator from California [Mr. CRANSTON], the Senator from Indiana [Mr. COATS], the Senator from Texas [Mr. BENTSEN], the Senator from Kansas [Mr. DOLE], the Senator from New York [Mr. MOYNIHAN], the Senator from Tennessee [Mr. SASSER], the Senator from Oklahoma [Mr. BOREN], the Senator from Rhode Island [Mr. CHAFEE], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Wyoming [Mr. SIMPSON], the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Florida [Mr. GRAHAM], the Senator from Oregon [Mr. PACKWOOD], the Senator from Arkansas [Mr. PRYOR], the Senator from Missouri [Mr. DANFORTH], the Senator from Maine [Mr. COHEN], the Senator from Georgia [Mr. NUNN], the Senator from Iowa [Mr. GRASSLEY], the Senator from Delaware [Mr. BIDEN], the Senator from Utah [Mr. GARN], and the Senator from North Dakota [Mrs. BURDICK] were added as cosponsors of Senate Joint Resolution 340, a joint resolution designating the week of February 14 through February 20, 1993, as "National Visiting Nurse Associations Week."

SENATE JOINT RESOLUTION 343

At the request of Mr. MURKOWSKI, the name of the Senator from North Carolina [Mr. HELMS] was added as a cosponsor of Senate Joint Resolution 343, a joint resolution to designate the period commencing on October 24, 1992, and ending on November 1, 1992, as "National Red Ribbon Week for a Drug-Free America."

SENATE CONCURRENT RESOLUTION 110

At the request of Mr. SYMMS, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of Senate Concurrent Resolution 110, a concurrent resolution to authorize the construction of a monument on the U.S. Capitol Grounds to honor Thomas Paine.

SENATE RESOLUTION 356—JOHN HEINZ SENATE FELLOWSHIP PROGRAM RESOLUTION

Mr. FORD (for Mr. WOFFORD for himself, Mr. SPECTER and Mr. WIRTH) submitted the following resolution; which was considered and agreed to.

S. RES. 356

Resolved,

SECTION 1. SHORT TITLE.

This resolution may be cited as the "John Heinz Senate Fellowship Program Resolution".

SEC. 2. FINDINGS.

The Senate finds that—

(1) Senator John Heinz believed that Congress has a special responsibility to serve as the guardian for those who cannot protect themselves;

(2) Senator Heinz dedicated much of his congressional career to improving the lives of children; and

(3) it is especially appropriate to honor the memory of Senator Heinz through the creation of a Senate fellowship program to encourage the identification and training of new leadership in child protection, health, welfare and education policy and to bring experts with firsthand experience of children's issues to the assistance of the Congress in order to advance the development of public policy in issues that affect children.

SEC. 3. FELLOWSHIP PROGRAM.

(a) IN GENERAL.—In order to encourage the identification and training of new leadership in issues affecting children and to advance the development of public policy with respect thereto, there is established a John Heinz Senate Fellowship Program.

(b) SENATE FELLOWSHIPS.—The Heinz Family Foundation, in consultation with the Secretary of the Senate, is authorized to select Senate fellowship participants.

(c) SELECTION PROCESS.—The Heinz Family Foundation shall—

(1) publicize the availability of the fellowship program;

(2) develop and administer an application process for Senate fellowships; and

(3) conduct a screening of applicants for the fellowship program.

SEC. 4. COMPENSATION; NUMBER OF FELLOWSHIPS; PLACEMENT.

(a) COMPENSATION.—The Secretary of the Senate is authorized, from funds made available under section 5, to appoint and fix the compensation of each eligible participant selected under this resolution for a period determined by the Secretary.

(b) NUMBER OF FELLOWSHIPS.—No more than 2 fellowship participants shall be so employed. Any individual appointed pursuant to this resolution shall be subject to all laws, regulations and rules in the same manner and to the same extent as any other employee of the Senate.

(c) PLACEMENT.—The Secretary of the Senate, after consultation with the Majority Leader and Minority Leader of the Senate, shall place eligible participants in positions in the Senate that are, within practical considerations, supportive of the fellowship participants' areas of expertise.

SEC. 5. FUNDS.

The funds necessary to compensate eligible participants under this resolution for fiscal year 1993 shall be paid from the contingent fund of the Senate. Such funds shall not exceed, for fiscal year 1993, $71,000. There are authorized to be appropriated $71,000 for each of the fiscal years 1994 through 1997 to carry out the provisions of this resolution.

AMENDMENTS SUBMITTED

FEDERAL PROGRAM IMPROVEMENT ACT

D'AMATO (AND MOYNIHAN) AMENDMENT NO. 3408

Mr. BRADLEY (for Mr. D'AMATO, for himself and Mr. MOYNIHAN) proposed an amendment to the bill (H.R. 3837) to make certain changes to improve the administration of the Medicare Program, to reform customs overtime pay practices, to prevent the payment of Federal benefits to deceased individuals, and to require reports on employers with underfunded pension plans, as follows:

Strike all after the enacting clause and insert:

The following text is added as subsection 781(c) of the Tariff Act of 1930 (19 U.S.C. 1677j(a)) and subsections (c)–(e) are renumbered subsections (d)–(f) respectively.

"(c) SPECIAL MERCHANDISE COMPLETED OR ASSEMBLED IN THE UNITED STATES OR IN OTHER FOREIGN COUNTRIES—

(1) SPECIAL PROVISION.—If—

"(A) merchandise sold in the United States is the same class or kind as any merchandise that is the subject of an antidumping duty order issued under section 736 on May 9, 1980 or August 28, 1991,

"(B)(i) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which the relevant order applies or supplied directly or indirectly by an exporter or producer covered by the order, or from parts or components from suppliers that have historically supplied the parts or components to that exporter or producer or to any other exporter or producer covered by the order, or from any party related to the exporter, producer, or historical supplier, whether such parts or components are supplied from the foreign country or any third country(ies), or

(ii) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which—

(I) is subject to the relevant order.

(II) is produced in the foreign country with respect to which such order applies, or

(III) is supplied by an exporter or producer covered by the order, or by suppliers, that have historically supplied that merchandise to that explorer or producer or to any other exporter or producer covered by the order, or by any party related to the exporter, producer, or historical supplier, whether such merchandise is supplied from the foreign country or any third country(ies), and

"(C) with respect to merchandise under paragraph (B)(ii), the administering authority determines that action is appropriate under such paragraph to prevent evasion of such order, and

"(D) the difference between the value of such merchandise sold in the United States and the value of the imported parts or components referred to in subparagraph (B)(i), or the merchandise referred to in subparagraph (B)(ii), is small, the administering authority, after taking into account any advice provided by the Commission under subsection (f), may include within the scope of the relevant order the imported parts or components referred to in subparagraph (B)(i) that are used in the completion or assembly of the merchandise in the United States, or such imported merchandise referred to in subparagraph (B)(ii), at any time such order is in effect. Parts or components not identified in subsection (c)(1)(B)(i) and merchandise not identified in subsection (c)(1)(B)(ii) shall not be included within the scope of the outstanding order if a finding of circumvention is made under this section.

"(2) Factors to Consider.—In determining whether to include parts or components, or merchandise assembled or completed in a foreign country, in the relevant antidumping duty order under paragraph (1), the administering authority shall take into account such factors as—

"(A) the pattern of trade,

"(B)(i) whether the manufacturer or exporter of the parts or components described in (1)(B)(i) is related to the person who assembles or completes the merchandise sold in the United States from the parts or components produced in the foreign country with respect to which the order described in subparagraph (1)(A) applies, or

"(ii) whether the manufacturer or exporter of the merchandise described in paragraph (1)(B)(ii) is related to the person who uses the merchandise described in paragraph (1)(B)(ii) is related to the persons who uses the merchandise described in paragraph (1)(B)(ii) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and

"(iii) whether imports into the United States of the parts or components described in subparagraph (1)(B)(i), or imports into the foreign country of the merchandise described in paragraph (1)(B)(ii) (I), (II), and (III), have increased after the filing of the petition, issuance of such order or, if the allegation of circumvention has been raised more than one year after the issuance of such order, have increased since the time circumvention is alleged to have commenced.

"(C) Force and effect.—This section shall have no force or effect if the petitioner in the investigations referenced in paragraph (a)(1) cease production or final assembly of such products in the U.S. or shifts the sourcing of major components to a foreign country.

COMPREHENSIVE HEALTH CARE ACT

CHAFEE (AND OTHERS) AMENDMENT NO. 3409

Mr. FORD (for Mr. Chafee, for himself, Mr. Moynihan, and Mr. Grassley) proposed an amendment to the bill (S. 814) as follows:

On page 1, line 5, strike "1991" and insert "1992".

Beginning on page 2, strike line 1 and all that follows through the end of the bill, and insert the following:

SEC. 2. AMENDMENTS TO THE ENVIRONMENTAL PROGRAMS ASSISTANCE ACT.

(a) In General.—Section 2 of the Environmental Program Assistance Act of 1984 (42 U.S.C. 4368a) is amended by adding at the end the following new subsection:

"(d) Notwithstanding any other provision of law, any individual whose talents are authorized by subsection (a) to be used in connection with the programs administered by the Administrator of the Environmental Protection Agency shall have the same access as Federal employees have and shall be subject to the same penalties as Federal employees are subject to for unauthorized disclosure of, trade secrets and confidential business information—

"(1) submitted in connection with—

"(A) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

"(B) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

"(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

"(D) the Clean Air Act (42 U.S.C. 7401 et seq.);

"(E) the Public Health Service Act (42 U.S.C. 201 et seq.), including section 1445(d) of such Act (42 U.S.C. 300j-4(d));

"(F) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

"(G) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

"(H) the Noise Control Act of 1972 (42 U.S.C. 4901 et seq.), including section 13(b) of such Act (42 U.S.C. 4912(b));

"(I) section 408(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(f)); or

"(J) the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.);

"(2) submitted pursuant to any contract or other agreement with the United States; or

"(3) otherwise obtained by an officer or employee of the Environmental Protection Agency under any authority.

(b) Applicability of Ethics and Conflict of Interest Provisions Under Title 18, United States Code.—Section 2 of such Act (42 U.S.C. 4368a), as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(e) Any individual whose talents are authorized by subsection (a) to be used in connection with the programs administered by the Administrator of the Environmental Protection Agency shall be subject to the requirements of sections 201 through 209 of title 18, United States Code (relating to ethics and conflict of interest).".

(c) Trade Secrets and Confidential Business Information Defined.—Section 2 of such Act (42 U.S.C. 4368a), as amended by subsection (b), is further amended by adding at the end the following new subsection:

"(f) For purposes of this section, the term 'trade secrets and confidential business information' includes all information prohibited from disclosure by section 1905 of title 18, United States Code (relating to trade secrets), or by any other law referred to in this section.".

SEC. 3. SUNSET PROVISION.

The amendment made by section 2(a) shall be effective during the 2-year period beginning on the date of enactment of this Act.

CASCADIA CORRIDOR COMMISSION

ADAMS AMENDMENT NO. 3410

Mr. FORD (for Mr. Adams) proposed an amendment to the bill (H.R. 6077) concerning United States participation in a Cascadia Corridor commission, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

Section 1. It is sense of the Congress that—

(a) Cascadia Corridor Commission.—The United States should continue negotiations with the Government of Canada and State, provincial, and local governments in the urbanized Cascadia corridor along Interstate 5/Highway 99 from Vancouver, British Columbia (including Vancouver Island), to Eugene, Oregon, in order to establish a commission to—

(1) act as a forum to coordinate consideration of regional issues in the Cascadia area by representatives from the private sector, nonprofit organizations, and local, State, provincial, regional, and national governments;

(2) develop a strategy for environmentally sound economic development in the Cascadia region which includes consideration of environmental issues, urban development, transportation, communications, and education; and

(3) submit a plan, developed by the commission and incorporating such strategy, to the Congress, the Canadian Parliament, the legislature of British Columbia, and the State legislatures of Oregon and Washington.

(b) Advisory Commission.—The commission should be authorized to function only in an advisory capacity and should have no authority concerning any local, State, or Federal agency or government.

(c) Composition of United States Delegation.—If the United States and Canada conclude an agreement to establish such a commission concerning the Cascadia region, the United States delegation to the commission should include—

(1) 1 member appointed by the President, who should be a nonvoting member;

(2) a Washington State delegation; and

(3) an Oregon delegation.

(d) Cost-Sharing Among U.S. Delegation.—Upon appointment of a United States delegation to such a commission, the United States delegation should decide the cost-sharing arrangements among the Federal, State, and local participants of the delegation. Federal Government contributions of the United States should not exceed one-fourth of the total budget of the commission for any fiscal year.

If a Cascadia corridor commission is established, it is the sense of the Congress that of funds appropriated for "International Commissions" for the Department of State $200,000 for fiscal year 1993 and $200,000 for fiscal year 1994 should be available for the commission.

TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT

INOUYE (AND OTHERS) AMENDMENT NO. 3411

Mr. FORD (for Mr. INOUYE, for himself, Mr. MCCAIN, ands Mr. HOLLINGS) proposed an amendment to the amendments of the House to the bill (S. 1579) to provide for regulation and oversight of the development and application of the telephone technology known as pay-per-call, and for other purposes, as follows:

In lieu of the matter proposed to be inserted by the House amendment to the bill, insert the following:

SECTION 1. SHORT TITLE, FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the "Telephone Disclosure and Dispute Resolution Act".

(b) FINDINGS.—The Congress finds the following:

(1) The use of pay-per-call services, most commonly through the use of 900 telephone numbers, has grown exponentially in the past few years into a national, billion-dollar industry as a result of recent technological innovations. Such services are convenient to consumers, cost-effective to vendors, and profitable to communications common carriers.

(2) Many pay-per-call businesses provide valuable information, increase consumer choices, and stimulate innovative and responsive services that benefit the public.

(3) The interstate nature of the pay-per-call industry means that its activities are beyond the reach of individual States and therefore requires Federal regulatory treatment to protect the public interest.

(4) The lack of nationally uniform regulatory guidelines has led to confusion for callers, subscribers, industry participants, and regulatory agencies as to the rights of callers and the oversight responsibilities of regulatory authorities, and has allowed some pay-per-call businesses to engage in practices that abuse the rights of consumers.

(5) Some interstate pay-per-call businesses have engaged in practices which are misleading to the consumer, harmful to the public interest, or contrary to accepted standards of business practices and thus cause harm to the many reputable businesses that are serving the public.

(6) Because the consumer most often incurs a financial obligation as soon as a pay-per-call transaction is completed, the accuracy and descriptiveness of vendor advertisements become crucial in avoiding consumer abuse. The obligation for accuracy should include price-per-call and duration-of-call information, odds disclosure for lotteries, games, and sweepstakes, and obligations for obtaining parental consent from callers under 18.

(7) The continued growth of the legitimate pay-per-call industry is dependent upon consumer confidence that unfair and deceptive behavior will be effectively curtailed and that consumers will have adequate rights of redress.

(8) Vendors of telephone-billed goods and services must also feel confident in their rights and obligations for resolving billing disputes if they are to use this new marketplace for the sale of products of more than nominal value.

TITLE I—CARRIER OBLIGATIONS AND CONSUMER RIGHTS CONCERNING PAY-PER-CALL TRANSACTIONS

SEC. 101. AMENDMENT TO COMMUNICATIONS ACT OF 1934.

Title II of the Communications Act of 1934 is amended by adding at the end thereof the following new section:

"SEC. 228. REGULATION OF CARRIER OFFERING OF PAY-PER-CALL SERVICES.

"(a) PURPOSE.—It is the purpose of this section—

"(1) to put into effect a system of national regulation and review that will oversee interstate pay-per-call services;

"(2) to recognize the Commission's authority to prescribe regulations and enforcement procedures and conduct oversight to afford reasonable protection to consumers of pay-per-call services and to assure that violations of Federal law do not occur.

"(b) GENERAL AUTHORITY FOR REGULATIONS.—The Commission by regulation shall, within 270 days after the date of enactment of this section, establish a system for oversight and regulation of pay-per-call services in order to provide for the protection of consumers in accordance with this Act and other applicable Federal statutes and regulations. The Commission's final rules shall—

"(1) include measures that provide a consumer of pay-per-call services with adequate and clear descriptions of the rights of the caller;

"(2) define the obligations of common carriers with respect to the provision of pay-per-call services;

"(3) include requirements on such carriers to protect against abusive practices by providers of pay-per-call services;

"(4) identify procedures by which common carriers and providers of pay-per-call services may take affirmative steps to protect against nonpayment of legitimate charges; and

"(5) require that any service described in subparagraphs (A) and (B) of subsection (i)(1) be offered only through the use of certain telephone number prefixes and area codes.

"(c) COMMON CARRIER OBLIGATIONS.—Within 270 days after the date of enactment of this section, the Commission shall, by regulation, establish the following requirements for common carriers:

"(1) CONTRACTUAL OBLIGATIONS TO COMPLY.—Any common carrier assigning to a provider of pay-per-call services a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) shall require by contract or tariff that such provider comply with the provisions of titles II and III of the Telephone Disclosure and Dispute Resolution Act and the regulations prescribed by the Federal Trade Commission pursuant to those titles.

"(2) INFORMATION AVAILABILITY.—A common carrier that by tariff or contract assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) to a provider of a pay-per-call service shall make readily available on request to Federal and State agencies and other interested persons—

"(A) a list of the telephone numbers for each of the pay-per-call services it carries;

"(B) a short description of each such service;

"(C) a statement of the total cost or the cost per minute and any other fees for each such service;

"(D) a statement of the pay-per-call service's name, business address, and business telephone; and

"(E) such other information as the Commission considers necessary for the enforcement of this section and other applicable Federal statutes and regulations.

"(2) COMPLIANCE PROCEDURES.—A common carrier that by contract or tariff assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) to a provider of pay-per-call services shall terminate, in accordance with procedures specified in such regulations, the offering of a pay-per-call service of a provider if the carrier knows or reasonably should know that such service is not provided in compliance with title II or III of the Telephone Disclosure and Dispute Resolution Act or the regulations prescribed by the Federal Trade Commission pursuant to such titles.

"(3) SUBSCRIBER DISCONNECTION PROHIBITED.—A common carrier shall not disconnect or interrupt a subscriber's local exchange telephone service or long distance telephone service because of nonpayment of charges for any pay-per-call service.

"(4) BLOCKING AND PRESUBSCRIPTION.—A common carrier that provides local exchange service shall—

"(A) offer telephone subscribers (where technically feasible) the option of blocking access from their telephone number to all, or to certain specific, prefixes or area codes used by pay-per-call services, which option—

"(i) shall be offered at no charge (I) to all subscribers for a period of 60 days after the issuance of the regulations under subsection (b), and (II) to any subscriber who subscribes to a new telephone number until 60 days after the time the new telephone number is effective; and

"(ii) shall otherwise be offered at a reasonable fee; and

"(B) offer telephone subscribers (where the Commission determines it is technically and economically feasible), in combination with the blocking option described under subparagraph (A), the option of presubscribing to or blocking only specific pay-per-call services for a reasonable one-time charge.

The regulations prescribed under subparagraph (A)(i) of this paragraph may permit the costs of such blocking to be recovered by contract or tariff, but such costs may not be recovered from local or long-distance ratepayers. Nothing in this subsection precludes a common carrier from filing its rates and regulations regarding blocking and presubscription in its interstate tariffs.

"(5) VERIFICATION OF CHARITABLE STATUS.—A common carrier that assigns by contract or tariff a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) to a provider of pay-per-call services that the carrier knows or reasonably should know is engaged in soliciting charitable contributions shall obtain from such provider proof of the tax exempt status of any person or organization for which contributions are solicited.

"(6) BILLING FOR 800 CALLS.—A common carrier shall prohibit by tariff or contract the use of any 800 telephone number, or other telephone numbers advertised or widely understood to be toll free, in a manner that would result in—

"(A) the calling party being assessed, by virtue of completing the call, a charge for the call;

"(B) the calling party being connected to a pay-per-call service;

"(C) the calling party being charged for information conveyed during the call unless the calling party has a preexisting agreement to be charged for the information or discloses a credit or charge card number during the call; or

"(D) the calling party being called back collect for the provision of audio information services or simultaneous voice conservation services.

"(d) BILLING AND COLLECTION PRACTICES.—The regulations required by this section shall require that any common carrier that by tariff or contract assigns a telephone number with a prefix or area code designated by the Commission in accordance with subsection (b)(5) to a provider of a pay-per-call service and that offers billing and collection services to such provider—

"(1) ensure that a subscriber is not billed—

"(A) for pay-per-call services that such carrier knows or reasonably should know was provided in violation of the regulations issued pursuant to title II of the Telephone Disclosure and Dispute Resolution Act; or

"(B) under such other circumstances as the Commission determines necessary in order to protect subscribers from abusive practices;

"(2) establish a local or a toll-free telephone number to answer questions and provide information on subscribers' rights and obligations with regard to their use of pay-per-call services and to provide to callers the name and mailing address of any provider of pay-per-call services offered by the common carrier;

"(3) within 60 days after the issuance of final regulations pursuant to subsection (b), provide, either directly or through contract with any local exchange carrier that provides billing or collection services to the common carrier, to all of such common carrier's telephone subscribers, to all new subscribers, and to all subscribers requesting service at a new location, a disclosure statement that sets forth all rights and obligations of the subscriber and the carrier with respect to the use and payment for pay-per-call services, including the right of a subscriber not to be billed and the applicable blocking option; and

"(4) in any billing to telephone subscribers that includes charges for any pay-per-call service—

"(A) display any charges for pay-per-call services in a part of the subscriber's bill that is identified as not being related to local and long distance telephone charges;

"(B) for each charge so displayed, specify, at a minimum, the type of service, the amount of the charge, and the date, time, and duration of the call; and

"(C) identify the toll-free number established pursuant to paragraph (2).

"(e) LIABILITY.—

"(1) COMMON CARRIERS NOT LIABLE FOR TRANSMISSION OR BILLING.—No common carrier shall be liable for a criminal or civil sanction or penalty solely because the carrier provided transmission or billing and collection for a pay-per-call service unless the carrier knew or reasonably should have known that such service was provided in violation of a provision of, or regulation prescribed pursuant to, title II or III of the Telephone Disclosure and Dispute Resolution Act or any other Federal law. This paragraph shall not prevent the Commission from imposing a sanction or penalty on a common carrier for a violation by that carrier of a regulation prescribed under this section.

"(2) CIVIL LIABILITY.—No cause of action may be brought in any court or administrative agency against any common carrier or any of its affiliates on account of any act of the carrier or affiliate to terminate any pay-per-call service in order to comply with the regulations prescribed under this section, title II or III of the Telephone Disclosure and Dispute Resolution Act, or any other Federal law unless the complainant demonstrates that the carrier or affiliate did not act in good faith.

"(f) SPECIAL PROVISIONS.—

"(1) CONSUMER REFUND REQUIREMENTS.—The regulations required by subsection (d) shall establish procedures, consistent with the provisions of titles II and III of the Telephone Disclosure and Dispute Resolution Act, to ensure that carriers and other parties providing billing and collection services with respect to pay-per-call services provide appropriate refunds to subscribers who have been billed for pay-per-call services pursuant to programs that have been found to have violated this section or such regulations, any provision of, or regulations prescribed pursuant to, title II or III of the Telephone Disclosure and Dispute Resolution Act, or any other Federal law.

"(2) RECOVERY OF COSTS.—The regulations prescribed by the Commission under this section shall permit a common carrier to recover its cost of complying with such regulations from providers of pay-per-call services, but shall not permit such costs to be recovered from local or long distance ratepayers.

"(3) RECOMMENDATIONS ON DATA PAY-PER-CALL.—The Commission, within one year after the date of enactment of this section, shall submit to the Congress the Commission's recommendations with respect to the extension of regulations under this section to persons that provide, for a per-call charge, data services that are not pay-per-call services.

"(g) EFFECT ON OTHER LAW.—

"(1) NO PREEMPTION OF ELECTION LAW.—Nothing in this section shall relieve any provider of pay-per-call services, common carrier, local exchange carrier, or any other person from the obligation to comply with Federal, State, and local election statutes and regulations.

"(2) CONSUMER PROTECTION LAWS.—Nothing in this section shall relieve any provider of pay-per-call services, common carrier, local exchange carrier, or any other person from the obligation to comply with any Federal, State, or local statute or regulation relating to consumer protection or unfair trade.

"(3) GAMBLING LAWS.—Nothing in this section shall preclude any State from enforcing its statutes and regulations with regard to lotteries, wagering, betting, and other gambling activities.

"(4) STATE AUTHORITY.—Nothing in this section shall preclude any State from enacting and enforcing additional and complementary oversight and regulatory systems or procedures, or both, so long as such systems and procedures govern intrastate services and do not significantly impede the enforcement of this section or other Federal statutes.

"(5) ENFORCEMENT OF EXISTING REGULATIONS.—Nothing in this section shall be construed to prohibit the Commission from enforcing regulations prescribed prior to the date of enactment of this section in fulfilling the requirements of this section to the extent that such regulations are consistent with the provisions of this section.

"(h) EFFECT ON DIAL-A-PORN PROHIBITIONS.—Nothing in this section shall affect the provisions of section 223 of this Act.

"(i) DEFINITION OF PAY-PER-CALL SERVICES.—For purposes of this section—

"(1) The term 'pay-per-call services' means any service—

"(A) in which any person provides or purports to provide—

"(i) audio information or audio entertainment produced or packaged by such person;

"(ii) access to simultaneous voice conversation services; or

"(iii) any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

"(B) for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

"(C) which is accessed through use of a 900 telephone number or other prefix or area code designated by the Commission in accordance with subsection (b)(5).

"(2) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubscription or comparable arrangement with the provider of such service.".

SEC. 102. TECHNICAL AMENDMENT.

Section 3(c) of the Telephone Consumer Protection Act of 1991 is amended by striking "section 228" and inserting "section 227".

TITLE II—REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH PAY-PER-CALL SERVICES

SEC. 201. FEDERAL TRADE COMMISSION REGULATIONS.

(a) IN GENERAL.—

(1) ADVERTISING REGULATIONS.—The Commission shall prescribe rules in accordance with this subsection to prohibit unfair and deceptive acts and practices in any advertisement for pay-per-call services. Such rules shall require that the person offering such pay-per-call services—

(A) clearly and conspicuously disclose in any advertising the cost of the use of such telephone number, including the total cost or the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred;

(B) in the case of an advertisement which offers a prize or award or a service or product at no cost or for a reduced cost, clearly and conspicuously disclose the odds of being able to receive such prize, award, service, or product at no cost or reduced cost, or, if such odds are not calculable in advance, disclose the factors determining such odds;

(C) in the case of an advertisement that promotes a service that is not operated or expressly authorized by a Federal agency but that provides information on a Federal program, include at the beginning of such advertisement a clear disclosure that the service is not authorized, endorsed, or approved by any Federal agency;

(D) shall not direct such advertisement at children under the age of 12, unless such service is a bona fide educational service;

(E) in the case of advertising directed primarily to individuals under the age of 18, clearly and conspicuously state in such advertising that such individual must have the consent of such individual's parent or legal guardian for the use of such services;

(F) be prohibited from using advertisements that emit electronic tones which can automatically dial a pay-per-call telephone number;

(G) ensure that, whenever the number to be called is shown in television and print media advertisements, the charges for the call are clear and conspicuous and (when shown in television advertisements) displayed for the same duration as that number is displayed;

(H) in delivering any telephone message soliciting calls to a pay-per-call service, specify clearly, and at no less than the audible volume of the solicitation, the total cost and the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred; and

(I) not advertise an 800 telephone number, or any other telephone number advertised or widely understood to be toll free, from which callers are connected to an access number for a pay-per-call service.

(2) PAY-PER-CALL SERVICE STANDARDS.—The Commission shall prescribe rules to require that each provider of pay-per-call services—

(A) include in each pay-per-call message an introductory disclosure message that—

(i) describes the service being provided;

(ii) specifies clearly and at a reasonably understandable volume the total cost or the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred;

(iii) informs the caller that charges for the call begin at the end of the introductory message;

(iv) informs the caller that parental consent is required for calls made by children; and

(v) in the case of a pay-per-call service that is not operated or expressly authorized by a Federal agency but that provides information on any Federal program, a statement that clearly states that the service is not authorized, endorsed, or approved by any Federal agency;

(B) enable the caller to hang up at or before the end of the introductory message without incurring any charge whatsoever;

(C) not direct such services at children under the age of 12, unless such service is a bona fide educational service;

(D) stop the assessment of time-based charges immediately upon disconnection by the caller;

(E) disable any bypass mechanism which allows frequent callers to avoid listening to the disclosure message described in subparagraph (A) after the institution of any price increase and for a period of time sufficient to give such frequent callers adequate and sufficient notice of the price change;

(F) be prohibited from providing pay-per-call services through an 800 number or other telephone numbers advertised or widely understood to be toll free;

(G) be prohibited from billing consumers in excess of the amounts described in the introductory message and from billing for services provided in violation of the rules prescribed by the Commission pursuant to this section;

(H) ensure that any billing statement for such provider's charges shall—

(i) display any charges for pay-per-call services in a part of the consumer's bill that is identified as not being related to local and long distance telephone charges; and

(ii) for each charge so displayed, specify, at a minimum, the type of service, the amount of the charge, and the date, time, and duration of the call;

(I) be liable for refunds to consumers who have been billed for pay-per-call services pursuant to programs that have been found to have violated the regulations prescribed pursuant to this section or title III of this Act or any other Federal law; and

(J) comply with such additional standards as the Commission may prescribe to prevent abusive practices.

(3) ACCESS TO INFORMATION.—The Commission shall by rule require a common carrier that provides telephone services to a provider of pay-per-call services to make available to the Commission any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any provider of pay-per-call services.

(4) EVASIONS.—The rules issued by the Commission under this section shall include provisions to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under this title, including through the use of alternative billing or other procedures.

(5) EXEMPTIONS.—The regulations prescribed by the Commission pursuant to paragraph (2)(A) may exempt from the requirements of such paragraph—

(A) calls from frequent callers or regular subscribers using a bypass mechanism to avoid listening to the disclosure message required by such regulations, subject to the requirements of paragraph (2)(E); or

(B) pay-per-call services provided at nominal charges, as defined by the Commission in such regulations.

(6) CONSIDERATION OF OTHER RULES REQUIRED.—In conducting a proceeding under this section, the Commission shall consider requiring, by rule or regulation, that providers of pay-per-call services—

(A) automatically disconnect a call after one full cycle of the program; and

(B) include a beep tone or other appropriate and clear signal during a live interactive group program so that callers will be alerted to the passage of time.

(7) SPECIAL RULE FOR INFREQUENT PUBLICATIONS.—The rules prescribed by the Commission under subparagraphs (A) and (G) of paragraph (1) may permit, in the case of publications that are widely distributed, that are printed annually or less frequently, and that have an established policy of not publishing specific prices, advertising that in lieu of the cost disclosures required by such subparagraphs, clearly and conspicuously disclose that use of the telephone number may result in a substantial charge.

(8) TREATMENT OF RULES.—A rule issued under this subsection shall be treated as a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) RULEMAKING.—The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, United States Code.

(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule respecting unfair or deceptive acts or practices under section 5 of the Federal Trade Commission Act (15 U.S.C. 45). Notwithstanding section 5(a)(2) of such Act (15 U.S.C. 45(a)(2)), communications common carriers shall be subject to the jurisdiction of the Commission for purposes of this title.

SEC. 202. ACTIONS BY STATES.

(a) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice which violates any rule of the Commission under section 201(a), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such pattern or practice, to enforce compliance with such rule of the Commission, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

(b) NOTICE.—The State shall serve prior written notice of any civil action under subsection (a) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(c) VENUE.—Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(d) INVESTIGATORY POWERS.—For purposes of bringing any civil action under this section, nothing in this Act shall prevent the attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) EFFECT ON STATE COURT PROCEEDINGS.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal antifraud statute of such State.

(f) LIMITATION.—Whenever the Commission has instituted a civil action for violation of any rule or regulation under this Act, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

(g) ACTIONS BY OTHER STATE OFFICIALS.—

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection (a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers and who are designated by the Commission to bring an action under subsection (a) against persons that the Commission has determined have or are engaged in a pattern or practice which violates a rule of the Commission under section 201(a).

SEC. 203. ADMINISTRATION AND APPLICABILITY OF TITLE.

(a) IN GENERAL.—Except as otherwise provided in section 202, this title shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this Act, except for purposes of this title.

(b) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating a rule of the Commission under section 201 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this title. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this title.

SEC. 204. DEFINITIONS.

For purposes of this title:

(1) The term "pay-per-call services" has the meaning provided in section 228 of the Communications Act of 1934.

(2) The term "attorney general" means the chief legal officer of a State.

(3) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(4) The term "Commission" means the Federal Trade Commission.

TITLE III—BILLING AND COLLECTION

SEC. 301. REGULATIONS.

(a) IN GENERAL.—

(1) RULES REQUIRED.—The Commission shall, in accordance with the requirements of this section, prescribe rules establishing procedures for the correction of billing errors with respect to telephone-billed purchases. The rules prescribed by the Commission shall also include provisions to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under this title.

(2) SUBSTANTIAL SIMILARITY TO CREDIT BILLING.—The Commission shall promulgate rules under this section that impose requirements that are substantially similar to the requirements imposed, with respect to the resolution of credit disputes, under the Truth in Lending and Fair Credit Billing Acts (15 U.S.C. 1601 et seq.).

(3) TREATMENT OF RULE.—A rule issued under paragraph (1) shall be treated as a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57(a)(1)(B)).

(b) RULEMAKING SCHEDULE AND PROCEDURE.—The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, United States Code.

(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) regarding unfair or deceptive acts or practices. Notwithstanding section 5(a)(2) of such Act (15 U.S.C. 45(a)(2)), communications common carriers shall be subject to the jurisdiction of the Commission for purposes of this title.

(d) CORRECTION OF BILLING ERRORS AND CORRECTION OF CREDIT REPORTS.—In prescribing rules under this section, the Commission shall consider, with respect to telephone-billed purchases, the following:

(1) The initiation of a billing review by a customer.

(2) Responses by billing entities and providing carriers to the initiation of a billing review.

(3) Investigations concerning delivery of telephone-billed purchases.

(4) Limitations upon providing carrier responsibilities, including limitations on a carrier's responsibility to verify delivery of audio information or entertainment.

(5) Requirements on actions by billing entities to set aside charges from a customer's billing statement.

(6) Limitations on collection actions by billing entities and vendors.

(7) The regulation of credit reports on billing disputes.

(8) The prompt notification of credit to an account.

(9) Rights of customers and telephone common carriers regarding claims and defenses.

(10) The extent to which the regulations should diverge from requirements under the Truth in Lending and Fair Credit Billing Acts in order to protect customers, and in order to be cost effective to billing entities.

SEC. 302. RELATION TO STATE LAWS.

(a) STATE LAW APPLICABLE UNLESS INCONSISTENT.—This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with, the laws of any State with respect to telephone billing practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The Commission is authorized to determine whether such inconsistencies exist. The Commission may not determine that any State law is inconsistent with any provision of this chapter if the Commission determines that such law gives greater protection to the consumer.

(b) REGULATORY EXEMPTIONS.—The Commission shall by regulation exempt from the requirements of this title any class of telephone-billed purchase transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

SEC. 303. ENFORCEMENT.

The Commission shall enforce the requirements of this title. For the purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All the functions and powers of the Commission under that Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in that Act. The Commission may prescribe such regulations as are necessary or appropriate to implement the provisions of this title.

SEC. 304. DEFINITIONS.

As used in this title—

(1) The term "telephone-billed purchase" means any purchase that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include—

"(A) a purchase by a caller pursuant to a preexisting agreement with the vendor;

(B) local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines, by rule—

(i) is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(ii) is subject to billing dispute resolution procedures required by Federal or State statute or regulation; or

(C) the purchase of goods or services which is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

(2) A "billing error" consists of any of the following:

(A) A reflection on a billing statement for a telephone-billed purchase which was not made by the customer or, if made, was not in the amount reflected on such statement.

(B) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.

(C) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or not provided to the customer in accordance with the stated terms of the transaction.

(D) A reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll free telephone number.

(E) The failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.

(F) A computation error or similar error of an accounting nature on a statement.

(G) Failure to transmit the billing statement to the last known address of the customer, unless that address was furnished less than twenty days before the end of the billing cycle for which the statement is required.

(H) Any other error described in regulations prescribed by the Commission pursuant to section 553 of title 5, United States Code.

(3) The term "Commission" means the Federal Trade Commission.

(4) The term "providing carrier" means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error complaint.

(5) The term "vendor" means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.

(6) The term "customer" means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase.

BRYAN AMENDMENT NO. 3412

Mr. FORD (for Mr. BRYAN) proposed an amendment to amendment No. 3411 proposed by Mr. INOUYE (and others) to the amendment of the House to the bill S. 1579, supra, as follows:

At the end of the proposed amendment in the nature of a substitute, add the following new title:

TITLE IV—MISCELLANEOUS

SEC. 401. EXEMPTION FROM CHAPTER 61 OF TITLE 18, UNITED STATES CODE.

Section 1307(a)(2) of title 18, United States Code, is amended by striking "that is authorized" and all that follows and inserting "that is conducted in a State in which it is authorized by statute to be conducted throughout the State.".

PRESSLER AMENDMENT NO. 3413

Mr. FORD (for Mr. PRESSLER) proposed an amendment to amendment No. 3411 proposed by Mr. INOUYE (and others) to the amendment of the House to the bill S. 1579, supra, as follows:

SEC. . INTERCEPTION OF CELLULAR TELECOMMUNICATIONS.

(a) AMENDMENT.—Section 302 of the Communication Act of 1934 (47 U.S.C. 302) is amended by adding the following new subsection:

"(d)(1) INTERCEPTION OF CELLULAR TELECOMMUNICATIONS.—Within 180 days after the date of enactment of the Telephone Disclosure and Dispute Resolution Act, the Commission shall prescribe and make effective regulations denying equipment authorization (under part 15 of title 47, Code of Federal Regulations, or any other part of that title) for any scanning receiver that is capable of—

"(A) receiving transmissions in the frequencies allocated to the domestic cellular radio telecommunications service,

"(B) readily being altered by the user to receive transmissions in such frequencies, or

"(C) being equipped with decoders that convert digital cellular transmissions to analog voice audio.

"(2) MANUFACTURE OR IMPORT OF NONCOMPLYING EQUIPMENT.—Beginning one year after the effective date of the regulations adopted pursuant to subsection (a), no receiver having the capabilities described in subparagraph (A), (B), or (C) of paragraph (1), as such capabilities are defined in such regulations, shall be manufactured in the United States or imported for use in the United States."

(b) REPORT TO CONGRESS—The Commission shall report to Congress no later than June 1, 1993, on available security features for both analog and digital radio signals. This report shall include a study of security technologies currently available as well as those in development. The study shall assess the capabilities of such technologies, level of security afforded, and cost, with widespread deployment of such technologies.

(c) AFFECT ON OTHER LAWS.—This section shall not affect Section 2512 (2) of Title 18, United States Code."

(d) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of the Telephone Disclosure and Dispute Resolution Act.

LEAHY AMENDMENT NO. 3414

Mr. FORD (for Mr. LEAHY) proposed an amendment to amendment No. 3411 proposed by Mr. INOUYE (and others) to the amendment of the House to the bill S. 1579, supra; as follows:

At the appropriate place, insert the following:

SEC. . FCC STUDY OF SECURITY FEATURES FOR ANALOG AND DIGITAL RADIO SIGNALS.

"(c) The Commission shall report to Congress, no later than June 1, 1993, on available security features for both analog and digital radio signals. This report shall include a study of security technologies currently available as well as those in development. The study shall assess the technological capabilities, level of security afforded, and cost, with widespread deployment, of any given system."

SEC. . FBI ACCESS TO TELEPHONE SUBSCRIBER INFORMATION.

(a) REQUIRED CERTIFICATION.—Section 2709(b) of title 18, United States Code, is amended to read as follows:

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation, or his designee in a position not lower than Deputy Assistant Director, may—

"(1) request the name, address, length of service, and toll billing records of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801); and

"(2) request the name, address, and length of service of a person or entity if the Director (or his designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with—

"(i) an individual who is engaging or has engaged in international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

"(ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism as defined in section 101(c) of the Foreign Intelligence Surveillance Act or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.".

(b) REPORT TO JUDICIARY COMMITTEES.—Section 2709(e) of title 18, United States Code, is amended by inserting after "Senate" the following: "and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,".

SEC. . COMPUTER ABUSE AMENDMENTS ACT OF 1992.

(a) SHORT TITLE.—This section may be cited as the "Computer Abuse Amendments Act of 1992".

(b) AMENDMENTS TO THE COMPUTER FRAUD AND ABUSE ACT.—

(1) PROHIBITION.—Section 1030(a)(5) of title 18, United States Code, is amended to read as follows:

"(5)(A) through means of a computer used in interstate commerce or communications, knowingly causes the transmission of a program, information, code, or command to a computer or computer system if—

"(i) the person causing the transmission intends that such transmission will—

"(I) damage, or cause damage to, a computer, computer system, network, information, data, or program; or

"(II) withhold or deny, or cause the withholding or denial, of the use of a computer, computer services, system or network, information, data or program; and

"(ii) the transmission of the harmful component of the program, information, code, or command—

"(I) occurred without the knowledge and authorization of the persons or entities who own or are responsible for the computer system receiving the program, information, code, or command; and

"(II)(aa) causes loss or damage to one or more other persons of value aggregating $1,000 or more during any 1-year period; or

"(bb) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals; or

"(B) through means of a computer used in interstate commerce or communication, knowingly causes the transmission of a program, information, code, or command to a computer or computer system—

"(i) with reckless disregard of a substantial and unjustifiable risk that the transmission will—

"(I) damage, or cause damage to, a computer, computer system, network, information, data or program; or

"(II) withhold or deny or cause the withholding or denial of the use of a computer, computer services, system, network, information, data or program; and

"(ii) if the transmission of the harmful component of the program, information, code, or command—

"(I) occurred without the knowledge and authorization of the persons or entities who own or are responsible for the computer system receiving the program, information, code, or command; and

"(II)(aa) causes loss or damage to one or more other persons of a value aggregating $1,000 or more during any 1-year period; or

"(bb) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals;".

(2) PENALTY.—Section 1030(c) of title 18, United States Code, is amended—

(A) in paragraph (2)(B) by striking "and" after the semicolon;

(B) in paragraph (3)(A) by inserting "(A)" after "(a)(5)";

(C) in paragraph (3)(B) by striking the period at the end thereof and inserting ", and"; and

(D) by adding at the end thereof the following:

"(4) a fine under this title or imprisonment for not more than 1 year, or both, in the case of an offense under subsection (a)(5)(B).".

(3) CIVIL ACTION.—Section 1030 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) Any person who suffers damage or loss by reason of a violation of the section, other than a violation of subsection (a)(5)(B), may maintain a civil action against the violator to obtain compensatory damages and injunctive relief or other equitable relief. Damages for violations of any subsection other than subsection (a)(5)(A)(ii)(II)(bb) or (a)(5)(B)(ii)(II)(bb) are limited to economic damages. No action may be brought under this subsection unless such action is begun within 2 years of the date of the act complained of or the date of the discovery of the damage.".

(4) REPORTING REQUIREMENTS.—Section 1030 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(h) The Attorney General and the Secretary of the Treasury shall report to the Congress annually, during the first 3 years following the date of the enactment of this subsection, concerning investigations and prosecutions under section 1030(a)(5) of title 18, United States Code.".

(5) Prohibition.—Section 1030(a)(3) of title 18, United States Code, is amended by inserting "adversely" before "affects the use of the Government's operation of such computer".

GORTON AMENDMENT NO. 3415

Mr. FORD (for Mr. Gorton) proposed an amendment to amendment No. 3411 proposed by Mr. Inouye (and others) to the amendment of the House to the bill S. 1579, supra, as follows:

SEC. . PROPOSAL FOR DEMONSTRATING THE POTENTIAL OF INNOVATIVE COMMUNICATIONS EQUIPMENT AND SERVICES.

(a) Demonstration Proposal.—Within 180 days after the date of enactment of this Act, the Assistant Secretary of Energy for Conservation and Renewable Energy, in consultation with the Assistant Secretary of Commerce for Communications and Information, shall submit to Congress a proposal for demonstrating the ability of new and innovative communications equipment and services to further the national goals of conserving energy and protecting public health and safety.

(b) Factors to be Addressed.—The demonstration proposal required by subsection (a) shall address—

(1) the feasibility of using communications technologies to read meters from remote locations;

(2) the feasibility of managing the consumption of electrical power and natural gas by residences and businesses, thereby reducing the demand for new and additional sources of energy, and controlling the cost of providing improved utility services; and

(3) the public safety implications of monitoring utility services outages during earthquakes, hurricanes, typhoons, tornados, volcanos, and other natural disasters.

(c) Project to Demonstrate Energy Conservation Potential.—Upon submission of the demonstration proposal to the Congress, the Secretary of Energy shall consider requesting from the Assistant Secretary of Commerce for Communications and Information the authority to use radio frequencies, pursuant to section 305 of the Communications Act of 1934 (47 U.S.C. 305), to carry out demonstration projects consistent with the proposal that are designed to demonstrate the energy conservation potential of communications technologies and which are administered by the Secretary of Energy.

SEC. . TECHNICAL AMENDMENTS.

Section 227(b)(2) of the Communications Act of 1934 (47 U.S.C. 227(b)(2)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) may, by rule or order, exempt from the requirements of paragraph (1)(A)(iii) of this subsection calls to a telephone number assigned to a cellular telephone service that are not charged to the called party, subject to such conditions as the Commission may prescribe as necessary in the interest of the privacy rights this section is intended to protect.".

NATIONAL LAND REMOTE SENSING POLICY

PRESSLER AMENDMENT NO. 3416

Mr. SIMPSON (for Mr. Pressler) proposed an amendment to the bill (S. 2297) to enable the United States to maintain its leadership in land remote sensing by providing data continuity for the Landsat program by establishing a new national land remote sensing policy, and for other purposes; as follows:

In lieu of the matter proposed to be inserted by the Committee amendment in the nature of a substitute, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Land Remote Sensing Act of 1992".

SEC. 2. FINDINGS.

The Congress finds and declares the following:

(1) The continuous collection and utilization of land remote sensing data from space are of major benefit in studying and understanding human impacts on the global environment, in managing the Earth's natural resources, in carrying out national security functions, and in planning and conducting many other activities of scientific, economic, and social importance.

(2) The Federal Government's Landsat system established the United States as the world leader in land remote sensing technology.

(3) The national interest of the United States lies in maintaining international leadership in satellite land remote sensing and in broadly promoting the beneficial use of remote sensing data.

(4) The cost of Landsat data has impeded the use of such data for scientific purposes, such as for global environmental change research, as well as for other public sector applications.

(5) Given the importance of the Landsat program to the United States, urgent actions, including expedited procurement procedures, are required to ensure data continuity.

(6) Full commercialization of the Landsat program cannot be achieved within the foreseeable future, and thus should not serve as the near-term goal of national policy on land remote sensing; however, commercialization of land remote sensing should remain a long-term goal of United States policy.

(7) Despite the success and importance of the Landsat system, funding and organizational uncertainties over the past several years have placed its future in doubt and have jeopardized United States leadership in land remote sensing.

(8) Recognizing the importance of the Landsat program in helping to meet national and commercial objectives, the President approved, on February 11, 1992, a National Space Policy Directive which was developed by the National Space Council and commits the United States to ensuring the continuity of Landsat coverage into the 21st century.

(9) Because Landsat data are particularly important for national security purposes and global environmental change research, management responsibilities for the program should be transferred from the Department of Commerce to an integrated program management involving the Department of Defense and the National Aeronautics and Space Administration.

(10) Regardless of management responsibilities for the Landsat program, the Nation broad civilian, national security, commercial, and foreign policy interests in remote sensing will best be served by ensuring that Landsat remains an unclassified program that operates according to the principles of open skies and nondiscriminatory access.

(11) Technological advances aimed at reducing the size and weight of satellite systems hold the potential for dramatic reductions in the cost, and substantial improvements in the capabilities, of future land remote sensing systems, but such technological advances have not been demonstrated for land remote sensing and therefore cannot be relied upon as the sole means of achieving data continuity for the Landsat program.

(12) A technology demonstration program involving advanced remote sensing technologies could serve a vital role in determining the design of a follow-on spacecraft to Landsat 7, while also helping to determine whether such a spacecraft should be funded by the United States Government, by the private sector, or by an international consortium.

(13) To maximize the value of the Landsat program to the American public, unenhanced Landsat 4 through 6 data should be made available, at a minimum, to United States Government agencies, to global environmental change researchers, and to other researchers who are financially supported by the United States Government, at the cost of fulfilling user requests, and unenhanced Landsat 7 data should be made available to all users at the cost of fulfilling user requests.

(14) To stimulate development of the commercial market for unenhanced data and value-added services, the United States Government should adopt a data policy for Landsat 7 which allows "competition within the private sector for distribution of unenhanced data and value-added services.

(15) Development of the remote sensing market and the provision of commercial value-added services based on remote sensing data should remain exclusively the function of the private sector.

(16) It is the best interest of the United States to maintain a permanent, comprehensive Government archive of global Landsat and other land remote sensing data for long-term monitoring and study of the changing global environment.

SEC. 3. DEFINITIONS.

In this Act, the following definitions apply:

(1) The Term "Administrator" means the Administrator of the National Aeronautics and Space Administration.

(2) The term "cost of fulfilling user requests" means the incremental costs associated with providing product generation, reproduction, and distribution of unenhanced data in response to user requests and shall not include any acquisition, amortization, or depreciation of capital assets originally paid for by the United States Government or other costs not specifically attributable to fulfilling user requests.

(3) The term "data continuity" means the continued acquisition and availability of unenhanced data which are, from the point of view of the user—

(A) sufficiently consistent (in terms of acquisition geometry, coverage characteristics, and spectral characteristics) with previous Landsat data to allow comparisons for global and regional change detection and characterization; and

(B) compatible with such data and with methods used to receive and process such data.

(4) The term "data preprocessing" may include—

(A) rectification of system and sensor distortions in land remote sensing data as it is received directly from the satellite in preparation for delivery to a user;

(B) registration of such data with respect to features of the Earth; and

(C) calibration of spectral response with respect to such data, but does not include conclusions, manipulations, or calculations derived from such data, or a combination of such data with other data.

(5) The term "land remote sensing" means the collection of data which can be processed into imagery of surface features of the Earth from an unclassified satellite or satellites, other than an operational United States Government weather satellite.

(6) The term "Landsat Program Management" means the integrated program management structure—

(A) established by, and responsible to, the Administrator and the Secretary of Defense pursuant to section 101(a); and

(B) consisting of appropriate officers and employees of the National Aeronautics and Space Administration, the Department of Defense, and any other United States Government agencies the President designates as responsible for the Landsat program.

(7) The term "Landsat system" means Landsats 1, 2, 3, 4, 5, and 6, and any follow-on land remote sensing system operated and owned by the United States Government, along with any related ground equipment, systems, and facilities owned by the United States Government.

(8) The term "Landsat 6 contractor" means the private sector entity which was awarded the contract for spacecraft construction, operations, and data marketing rights for the Landsat 6 spacecraft.

(9) The term "Landsat 7" means the follow-on satellite to Landsat 6.

(10) The term "National Satellite Land Remote Sensing Data Archive" means the archive established by the Secretary of the Interior pursuant to the archival responsibilities defined in section 502.

(11) The term "noncommercial purposes" refers to those activities undertaken by individuals or entities on the condition, upon receipt of unenhanced data, that—

(A) such data shall not be used in connection with any bid for a commercial contract, development of a commercial product, or any other non-United States Government activity that is expected, or has the potential, to be profitmaking;

(B) the results of such activities are disclosed in a timely and complete fashion in the open technical literature or other method of public release, except when such disclosure by the United States Government or its contractors would adversely affect the national security or foreign policy of the United States or violate a provision of law or regulation; and

(C) such data shall not be distributed in competition with unenhanced data provided by the Landsat 6 contractor.

(12) The term "Secretary" means the Secretary of Commerce.

(13) The term "unenhanced data" means land remote sensing signals or imagery products that are unprocessed or subject only to data preprocessing.

(14) The term "United States Government and its affiliated users" means—

(A) United States Government agencies;

(B) researchers involved with the United States Global Change Research Program and its international counterpart programs; and

(C) other researchers and international entities that have signed with the United States Government a cooperative agreement involving the use of Landsat data for noncommercial purposes.

SEC. 4. REPEAL OF LAND REMOTE-SENSING COMMERCIALIZATION ACT OF 1984.

The Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4201 et seq.) is repealed.

TITLE I—LANDSAT

SEC. 101. LANDSAT PROGRAM MANAGEMENT.

(a) ESTABLISHMENT.—The Administrator and the Secretary of Defense shall be responsible for management of the Landsat program. Such responsibility shall be carried out by establishing an integrated program management structure for the Landsat system.

(b) MANAGEMENT PLAN.—The Administrator, the Secretary of Defense, and any other United States Government official the President designates as responsible for part of the Landsat program, shall establish, through a management plan, the roles, responsibilities, and funding expectations for the Landsat Program of the appropriate United States Government agencies. The management plan shall—

(1) specify that the fundamental goal of the Landsat Program Management is the continuity of unenhanced Landsat data through the acquisition and operation of a Landsat 7 satellite as quickly as practicable which is, at a minimum, functionally equivalent to the Landsat 6 satellite, with the addition of a tracking and data relay satellite communications capability;

(2) include a baseline funding profile that—

(A) is mutually acceptable to the National Aeronautics and Space Administration and the Department of Defense for the period covering the development and operation of Landsat 7; and

(B) provides for total funding responsibility of the National Aeronautics and Space Administration and the Department of Defense, respectively, to be approximately equal to the funding responsibility of the other as spread across the development and operational life of Landsat 7;

(3) specify that any improvements over the Landsat 6 functional equivalent capability for Landsat 7 will be funded by a specific sponsoring agency or agencies, in a manner agreed to by the Landsat Program Management, if the required funding exceeds the baseline funding profile required by paragraph (2), and that additional improvements will be sought only if the improvements will not jeopardize data continuity; and

(4) provide for a technology demonstration program whose objective shall be the demonstration of advanced land remote sensing technologies that may potentially yield a system which is less expensive to build and operate, and more responsive to data users, than is the current Landsat system.

(c) RESPONSIBILITIES.—The Landsat Program Management shall be responsible for—

(1) Landsat 7 procurement, launch, and operations;

(2) ensuring that the operation of the Landsat system is responsive to the broad interests of the civilian, national security, commercial, and foreign users of the Landsat system;

(3) ensuring that all unenhanced Landsat data remain unclassified and that, except as provided in section 506 (a) and (b), no restrictions are placed on the availability of unenhanced data;

(4) ensuring that land remote sensing data of high priority locations will be acquired by the Landsat 7 system as required to meet the needs of the United States Global Change Research Program, as established in the Global Change Research Act of 1990, and to meet the needs of national security users;

(5) Landsat data responsibilities pursuant to this Act;

(6) oversight of Landsat contracts entered into under section 102 and 103;

(7) coordination of a technology demonstration program, pursuant to section 303; and

(8) ensuring that copies of data acquired by the Landsat system are provided to the National Satellite Land Remote Sensing Data Archive.

(d) AUTHORITY TO CONTRACT.—The Landsat Program management may, subject to appropriations and only under the existing contract authority of the United States Government agencies that compose the Landsat Program Management, enter into contracts with the private sector for services such as, but not limited to, satellite operations and data preprocessing.

(e) LANDSAT ADVISORY PROCESS.—

(1) ESTABLISHMENT.—The Landsat Program Management shall seek impartial advice and comments regarding the status, effectiveness, and operation of the Landsat system, using existing advisory committees and other appropriate mechanisms. Such advice shall be sought from individuals who represent—

(A) a broad range of perspectives on basic and applied science and operational needs with respect to land remote sensing data;

(B) the full spectrum of users of Landsat data, including representatives from United States Government agencies, State and local government agencies, academic institutions, nonprofit organizations, value-added companies, the agricultural, mineral extraction, and other user industries, and the public; and

(C) a broad diversity of age groups, sexes, and races.

(2) REPORTS.—Within 1 year after the date of the enactment of this Act and biennially thereafter, the Landsat Program Management shall prepare and submit a report to the Congress which—

(A) reports the public comments received pursuant to paragraph (1); and

(B) includes—

(i) a response to the public comments received pursuant to paragraph (1);

(ii) information on the volume of use, by category, of data from the Landsat system; and

(iii) any recommendations for policy or programmatic changes to improve the utility and operation of the Landsat system.

SEC. 102. PROCUREMENT OF LANDSAT 7.

(a) CONTRACT NEGOTIATIONS.—The Landsat Program Management shall, subject to appropriations and only under the existing contract authority of the United States Government agencies that compose the Landsat Program Management, expeditiously contract with a United States private sector entity for the development and delivery of Landsat 7.

(b) DEVELOPMENT AND DELIVERY CONSIDERATIONS.—In negotiating a contract under this section for the development and delivery of Landsat 7, the Landsat Program Management shall—

(1) seek, as a fundamental objective, to have Landsat 7 operational by the expected end of the design life of Landsat 63

(2) seek to ensure data continuity by the development and delivery of a satellite which is, at a minimum, functionally equivalent to the Landsat 6 satellite; and

(3) seek to incorporate in Landsat 7 any performance improvements required to meet

United States Government needs that would not jeopardize data continuity.

(c) NOTIFICATION OF COST AND SCHEDULE CHANGES.—The Landsat Program Management shall promptly notify the Congress of any significant deviations from the expected cost, delivery date, and launch date of Landsat 7, that are specified by the Landsat Program Management upon award of the contract under this section.

(d) UNITED STATES PRIVATE SECTOR ENTITIES.—The Landsat Program Management shall, for purposes of this Act, define the term "United States private sector entities", taking into account the location of operations, assets, personnel, and other such factors.

SEC. 103. DATA POLICY FOR LANDSAT 4 THROUGH 6.

(A) CONTRACT NEGOTIATIONS.—Within 30 days after the date of enactment of this Act, the Landsat Program Management shall enter into negotiations with the Landsat 6 contractor to formalize an arrangement with respect to pricing, distribution, acquisition, archiving, and availability of unenhanced data for which the Landsat 6 contractor has responsibility under its contract. Such arrangement shall provide for a phased transition to a data policy consistent with the Landsat 7 data policy (developed pursuant to section 105) by the date of initial operation of Landsat 7. Conditions of the phased arrangement should require that the Landsat 6 contractor adopt provisions so that by the final phase of the transition period—

(1) such unenhanced data shall be provided, at a minimum, to the United States Government and its affiliated users at the cost of fulfilling user requests, on the condition that such unenhanced data are used solely for noncommercial purposes;

(2) instructional data sets, selected from the Landsat data archives, will be made available to educational institutions exclusively for noncommercial, educational purposes at the cost of fulfilling user requests;

(3) Landsat data users are able to acquire unenhanced data contained in the collective archives of foreign ground stations as easily and affordable as practicable;

(4) adequate data necessary to meet the needs of global environmental change researchers and national security users are acquired;

(5) the United States Government and its affiliated users shall not be prohibited from reproduction, or dissemination of unenhanced data to other agencies of the United States Government and other affiliated users, on the condition that such unenhanced data are used solely for noncommercial purposes;

(6) non-profit, public interest entities receive vouchers, data grants, or other such means of providing them with unenhanced data at the cost of fulfilling user requests, on the condition that such unenhanced data are used solely for noncommercial purposes.

(7) a viable role for the private sector in the promotion and development of the commercial market for value added and other services using unenhanced data from the Landsat system is preserved; and

(8) unenhanced data from the Landsat system are provided to the National Satellite Land Remote Sensing Data Archive at no more than the cost of fulfilling user requests.

(b) FAILURE TO REACH AGREEMENT.—If negotiations under subsection (a) have not, by September 30, 1993, resulted in an agreement that the Landsat Program Management determines generally achieves the goals stated in subsection (b)(1) through (8), the Administrator and the Secretary of Defense shall, within 30 days after the date of such determination, jointly certify and report such determination to the Congress. The report shall include a review of options and projected costs for achieving such goals, and shall include recommendations for achieving such goals. The options reviewed shall include—

(1) retaining the existing or modified contract with the Landsat 6 contractor;

(2) the termination of existing contracts for the exclusive right to market unenhanced Landsat data; and

(3) the establishment of an alternative private sector mechanism for the marketing and commercial distribution of such data.

SEC. 104. TRANSFER OF LANDSAT 6 PROGRAM RESPONSIBILITIES.

The responsibility of the Secretary with respect to Landsat 6 shall be transferred to the Landsat Program Management, as agreed to between the Secretary and the Landsat Program Management, pursuant to section 101.

SEC. 105. DATA POLICY FOR LANDSAT 7.

(a) LANDSAT 7 DATA POLICY.—The Landsat Program Management, in consultation with other appropriate United States Government agencies, shall develop a data policy for Landsat 7 which should—

(1) ensure that unenhanced data are available to all users at the cost of fulfilling user requests;

(2) ensure timely and dependable delivery of unenhanced data to the full spectrum of civilian, national security, commercial, and foreign users and the National Satellite Land Remote Sensing Data Archive;

(3) ensure that the United States retains ownership of all unenhanced data generated by Landsat 7;

(4) support the development of the commercial market for remote sensing data;

(5) ensure that the provision of commercial value-added services based on remote sensing data remains exclusively the function of the private sector; and

(6) to the extent possible, ensure that the data distribution system for Landsat 7 is compatible with the Earth Observing System Data and Information System.

(b) In addition, the data policy for Landsat 7 may provide for—

(1) United States private sector entities to operate ground receiving stations in the United States for Landsat 7 data;

(2) other means for direct access by private sector entities to unenhanced data from Landsat 7; and

(3) the United States Government to charge a per image fee, license fee, or other such fee to entities operating ground receiving stations or distributing Landsat 7 data.

(c) LANDSAT 7 DATA POLICY PLAN.—Not later than July 15, 1994, the Landsat Program Management shall develop and submit to Congress a report that contains a Landsat 7 Data Policy Plan. This plan shall define the roles and responsibilities of the various public and private sector entities that would be involved in the acquisition, processing, distribution, and archiving of Landsat 7 data and in operations of the Landsat 7 spacecraft.

(d) REPORTS.—Not later than 12 months after submission of the Landsat 7 Data Policy Plan, required by subsection (c), and annually thereafter until the launch of Landsat 7, the Landsat Program Management, in consultation with representatives of appropriate United States Government agencies, shall prepare and submit a report to the Congress which—

(1) provides justification for the Landsat 7 data policy in terms of the civilian, national security, commercial, and foreign policy needs of the United States; and

(2) provides justification for any elements of the Landsat 7 data policy which are not consistent with the provisions of subsection (a).

TITLE II—LICENSING OF PRIVATE REMOTE SENSING SPACE SYSTEMS

SEC. 201. GENERAL LICENSING AUTHORITY.

(a) LICENSING AUTHORITY OF SECRETARY.—(1) In consultation with other appropriate United States Government agencies, the Secretary is authorized to license private sector parties to operate private remote sensing space systems for such period as the Secretary may specify and in accordance with the provisions of this title.

(2) In the case of a private space system that is used for remote sensing and other purposes, the authority of the Secretary under this title shall be limited only to the remote sensing operations of such space system.

(b) COMPLIANCE WITH THE LAW, REGULATIONS, INTERNATIONAL OBLIGATIONS, AND NATIONAL SECURITY.—No license shall be granted by the Secretary unless the Secretary determines in writing that the applicant will comply with the requirements of this Act, any regulations issued pursuant to this Act, and any applicable international obligations and national security concerns of the United States.

(c) DEADLINE FOR ACTION ON APPLICATION.—The Secretary shall review any application and make a determination thereon within 120 days of the receipt of such application. If final action has not occurred within such time, the Secretary shall inform the applicant of any pending issues and of actions required to resolve them.

(d) IMPROPER BASIS FOR DENIAL.—The Secretary shall not deny such license in order to protect any existing licensee from competition.

(e) REQUIREMENT TO PROVIDE UNENHANCED DATA.—(1) The Secretary, in consultation with other appropriate United States Government agencies and pursuant to paragraph (2), shall designate in a licensee issued pursuant to this title any unenhanced data required to be provided by the license under section 202(b)(3).

(2) The Secretary shall make a designation under paragraph (1) after determining that—

(A) such data are generated by a system for which all or a substantial part of the development, fabrication, launch, or operations costs have been or will be directly funded by the United States Government; or

(B) it is in the interest of the United States to require such data to be provided by the licensee consistent with section 202(b)(3), after considering the impact on the licensee and the importance of promoting widespread access to remote sensing data from United States and foreign systems.

(3) A designation made by the Secretary under paragraph (1) shall not be inconsistent with any contract or other arrangement entered into between a United States Government agency and the licensee.

SEC. 202. CONDITIONS FOR OPERATION.

(a) LICENSE REQUIRED FOR OPERATION.—No person who is subject to the jurisdiction or control of the United States may, directly or through any subsidiary or affiliate, operate any private remote sensing space system without a license pursuant to section 201.

(b) LICENSING REQUIREMENTS.—Any license issued pursuant to this title shall specify that the licensee shall comply with all of the requirements of this Act and shall—

(1) operate the system in such manner as to preserve the national security of the United States and to observe the international obligations of the United States in accordance with section 506;

(2) make available to the government of any country (including the United States) unenhanced data collected by the system concerning the territory under the jurisdiction of such government as soon as such data are available and on reasonable terms and conditions;

(3) make unenhanced data designated by the Secretary in the license pursuant to section 201(e) available in accordance with section 501;

(4) upon termination of operations under the license, make disposition of any satellites in space in a manner satisfactory to the President;

(5) furnish the Secretary with complete orbit and data collection characteristics of the system, and inform the Secretary immediately of any deviation; and

(6) notify the Secretary of any agreement the licensee intends to enter with a foreign nation, entity, or consortium involving foreign nations or entities.

(c) Additional Licensing Requirements for Landsat 6 Contractor.—In addition to the requirements of paragraph (b), any license issued pursuant to this title to the Landsat 6 contractor shall specify that the Landsat 6 contractor shall—

(1) notify the Secretary of any value added activities (as defined by the Secretary by regulation) that will be conducted by the Landsat 6 contractor or by a subsidiary or affiliate; and

(2) if such activities are to be conducted, provide the Secretary with a plan for compliance with section 501 of this Act.

SEC. 203. ADMINISTRATIVE AUTHORITY OF THE SECRETARY.

(a) Functions.—In order to carry out the responsibilities specified in this title, the Secretary may—

(1) grant, condition, or transfer licenses under this Act;

(2) seek an order of injunction or similar judicial determination from a United States District Court with personal jurisdiction over the licensee to terminate, modify, or suspend licenses under this title and to terminate licensed operations on an immediate basis, if the Secretary determines that the licensee has substantially failed to comply with any provisions of this Act, with any terms, conditions, or restrictions of such license, or with any international obligations or national security concerns of the United States;

(3) provide penalties for noncompliance with the requirements of licenses or regulations issued under this title, including civil penalties not to exceed $10,000 (each day of operation in violation of such licenses or regulations constituting a separate violation);

(4) compromise, modify, or remit any such civil penalty;

(5) issue subpoenas for any materials, documents, or records, or for the attendance and testimony of witnesses for the purpose of conducting a hearing under this section;

(6) seize any object, record, or report pursuant to a warrant from a magistrate based on a showing of probable cause to believe that such object, record, or report was used, is being used, or is likely to be used in violation of this Act or the requirements of a license or regulation issued thereunder; and

(7) make investigations and inquiries and administer to or take from any person an oath, affirmation, or affidavit concerning any matter relating to the enforcement of this Act.

(b) Review of Agency Action.—Any applicant or licensee who makes a timely request for review of an adverse action pursuant to subsection (a)(1), (a)(3), (a)(5), or (a)(6) shall be entitled to adjudication by the Secretary on the record after an opportunity for an agency hearing with respect to such adverse action. Any final action by the Secretary under this subsection shall be subject to judicial review under chapter 7 of title 5, United States Code.

SEC. 204. REGULATORY AUTHORITY OF THE SECRETARY.

The Secretary may issue regulations to carry out this title. Such regulations shall be promulgated only after public notice and comment in accordance with the provisions of section 553 of title 5, United States Code.

SEC. 205. AGENCY ACTIVITIES.

(a) License Application and Issuance.—A private sector party may apply for a license to operate a private remote sensing space system which utilizes, on a space-available basis, a civilian United States Government satellite or vehicle as a platform for such system. The Secretary, pursuant to this title, may license such system if it meets all conditions of this title and—

(1) the system operator agrees to reimburse the Government in a timely manner for all related costs incurred with respect to such utilization, including a reasonable and proportionate share of fixed, platform, data transmission, and launch costs; and

(2) such utilization would not interfere with or otherwise compromise intended civilian Government missions, as determined by the agency responsible for such civilian platform.

(b) Assistance.—The Secretary may offer assistance to private sector parties in finding appropriate opportunities for such utilization.

(c) Agreements.—To the extent provided in advance by appropriation Acts, any United States Government agency may enter into agreements for such utilization if such agreements are consistent with such agency's mission and statutory authority, and if such remote sensing space system is licensed by the Secretary before commencing operation.

(d) Applicability.—This section does not apply to activities carried out under title III.

(e) Effect on FCC Authority.—Nothing in this title shall affect the authority of the Federal Communications Commission pursuant to the Communications Act of 1934 (47 U.S.C. 151 et seq.).

TITLE III—RESEARCH, DEVELOPMENT, AND DEMONSTRATION

SEC. 301. CONTINUED FEDERAL RESEARCH AND DEVELOPMENT.

(a) Roles of NASA and Department of Defense.—(1) The Administrator and the Secretary of Defense are directed to continue and to enhance programs of remote sensing research and development.

(2) The Administrator is authorized and encouraged to—

(A) conduct experimental space remote sensing programs (including applications demonstration programs and basic research at universities);

(B) develop remote sensing technologies and techniques, including those needed for monitoring the Earth and its environment; and

(C) conduct such research and development in cooperation with other Untied States Government agencies and with public and private research entities (including private industry, universities, non-profit organizations, State and local governments, foreign governments, and international organizations) and to enter into arrangements (including joint ventures) which will foster such cooperation.

"(b) Roles of Department of Agriculture and Department of Interior.—

(1) In order to enhance the ability of the United States to manage and utilize its renewable and nonrenewable resources, the Secretary of Agriculture and the Secretary of the Interior are authorized and encouraged to conduct programs of research and development in the applications of remote sensing using funds appropriated for such purposes.

(2) Such programs may include basic research at universities, demonstrations of applications, and cooperative activities involving other Government agencies, private sector parties, and foreign and international organizations.

(c) Role of Other Federal Agencies.—Other United States Government agencies are authorized and encouraged to conduct research and development on the use of remote sensing in the fulfillment of their authorized missions, using funds appropriated for such purposes.

SEC. 302. AVAILABILITY OF FEDERALLY GATHERED UNENHANCED DATA.

(a) General Rule.—All unenhanced land remote sensing data gathered and owned by the United States Government, including unenhanced data gathered under the technology demonstration program carried out pursuant to section 303, shall be made available to users in a timely fashion.

(b) Protection for Commercial Data Distributor.—The President shall seek to ensure that unenhanced data gathered under the technology demonstration program carried out pursuant to section 303 shall, to the extent practicable, be made available on terms that would not adversely affect the commercial market for unenhanced data gathered by the Landsat 6 spacecraft.

SEC. 303. TECHNOLOGY DEMONSTRATION PROGRAM.

(a) Establishment.—As a fundamental component of a national land remote sensing strategy, the President shall establish, through appropriate United States Government agencies, a technology demonstration program. The goals of such program shall be to—

(1) seek to launch advanced land remote sensing system components within 5 years after the date of the enactment of this Act.

(2) demonstrate within such 5-year period advanced sensor capabilities suitable for use in the "anticipated land remote sensing program; and

(3) demonstrate within such 5-year period an advanced land remote sensing system design that could be less expensive to procure and operate than the Landsat system projected to be in operation through the year 2000, and that therefore holds greater potential for private sector investment and control.

(b) Execution of Program.—In executing the technology demonstration program, the President shall seek to apply technologies associated with United States National Technical Means of intelligence gathering, to the extent that such technologies are appropriate for the technology demonstration and can be declassified for such purposes without causing adverse harm to United States national security interests.

(c) Broad Application.—To the greatest extent practicable, the technology demonstration program established under subsection (a) shall be designed to be responsive to the broad civilian, national security, commercial, and foreign policy needs of the United States.

(d) PRIVATE SECTOR FUNDING.—The technology demonstration program under this section may be carried out in part with private sector funding.

(e) LANDSAT PROGRAM MANAGEMENT COORDINATION.—The Landsat Program Management shall have a coordinating role in the technology demonstration program carried out under this section.

(f) REPORT TO CONGRESS.—The President shall assess the progress of the technology demonstration program under this section and, within 2 years after the date of enactment of this Act, submit a report to the Congress on such progress.

TITLE IV—ASSESSING OPTIONS FOR SUCCESSOR LAND REMOTE SENSING SYSTEM

SEC. 401. ASSESSING OPTIONS FOR SUCCESSOR LAND REMOTE SENSING SYSTEM.

(a) ASSESSMENT.—Within 5 years after the date of the enactment of this Act, the Landsat Program Management, in consultation with representatives of appropriate United States Government agencies, shall assess and report to the Congress on the options for a successor land remote sensing system to Landsat 7. The report shall include a full assessment of the advantages and disadvantages of—

(1) private sector funding and management of a successor land remote sensing system;

(2) establishing an international consortium for the funding and management of a successor land remote sensing system;

(3) funding and management of a successor land remote sensing system by the United States Government; and

(4) a cooperative effort between the United States Government and the private sector for the funding and management of a successor land remote sensing system.

(b) GOALS.—In carrying out subsection (a), the Landsat Program Management shall consider the ability of each of the options to—

(1) encourage the development, launch, and operation of a land remote sensing system that adequately serves the civilian, national security, commercial, and foreign policy interests of the United States;

(2) encourage the development, launch, and operation of a land remote sensing system that maintains data continuity with the Landsat system; and

(3) incorporate system enhancements, including any such enhancements developed under the technology demonstration program under section 303, which may potentially yield a system that is less expensive to build and operate, and more responsive to data users, than is the Landsat system projected to be in operation through the year 2000.

(c) PREFERENCE FOR PRIVATE SECTOR SYSTEM.—If a successor land remote sensing system to Landsat 7 can be funded and managed by the private sector while still achieving the goals stated in subsection (b) without jeopardizing the domestic, national security, and foreign policy interests of the United States, preference should be given to the development of such a system by the private sector without competition from the United States Government.

TITLE V—GENERAL PROVISIONS

SEC. 501. NONDISCRIMINATORY DATA AVAILABILITY.

(a) GENERAL RULE.—Except as provided in subsection (b) of this section, any unenhanced data generated by the Landsat system or any other land remote sensing system funded and owned by the United States Government shall be made available to all users without preference, bias, or any other special arrangement (except on the basis of national security concerns pursuant to section 506) regarding delivery, format, pricing, or technical considerations which would favor one customer or class of customers over another.

(b) EXCEPTIONS.—Unenhanced data generated by the Landsat system or any other land remote sensing system funded and owned by the United States Government may be made available to the United States Government and its affiliated users at reduced prices, in accordance with this Act, on the condition that such unenhanced data are used solely for noncommercial purposes.

SEC. 502. ARCHIVING OF DATA.

(a) PUBLIC INTEREST.—It is in the public interest for the United States Government to—

(1) maintain an archive of land remote sensing data for historical, scientific, and technical purposes, including long-term global environmental monitoring;

(2) control the content and scope of the archive; and

(3) assure the quality, integrity, and continuity of the archive.

(b) ARCHIVING PRACTICES.—The Secretary of Interior, in consultation with the Landsat Program Management, shall provide for long-term storage, maintenance, and upgrading of a basic, global, land remote sensing data set (hereinafter referred to as the "basic data set") and shall follow reasonable archival practices to assure proper storage and preservation of the basic data set and timely access for parties requesting data.

(c) DETERMINATION OF CONTENT OF BASIC DATA SET.—In determining the initial content of, or in upgrading, the basic data set, the Secretary of Interior shall—

(1) use as a baseline the data archived on the date of enactment of this Act;

(2) take into account future technical and scientific developments and needs, paying particular attention to the anticipated data requirements of global environmental change research;

(3) consult with and seek the advice of users and producers of remote sensing data and data products;

(4) consider the need for data which may be duplicative in terms of geographical coverage but which differ in terms of season, spectral bands, resolution, or other relevant factors;

(5) include, as the Secretary of Interior considers appropriate, unenhanced data generated either by the Landsat system, pursuant to title I, or by licensees under title II;

(6) include, as the Secretary of Interior considers appropriate, data collected by foreign ground stations or by foreign remote sensing space systems; and

(7) ensure that the content of the archive is developed in accordance with section 506.

(d) PUBLIC DOMAIN.—After the expiration of any exclusive right to sell, or after relinquishment of such right, the data provided to the National Satellite Land Remote Sensing Data Archive shall be in the public domain and shall be made available to requesting parties by the Secretary of the Interior at the cost of fulfilling user requests.

SEC. 502. NONREPRODUCTION.

Unenhanced data distributed by any licensee under Title II of this Act may be sold on the condition that such data will not be reproduced or disseminated by the purchaser for commercial purposes.

SEC. 503. REIMBURSEMENT FOR ASSISTANCE.

The Administrator, the Secretary of Defense, and the heads of other United States Government agencies may provide assistance to land remote sensing system operators under the provisions of this Act. Substantial assistance shall be reimbursed by the operator, except as otherwise provided by law.

SEC. 504. ACQUISITION OF EQUIPMENT.

The Landsat Program Management may, by means of a competitive process, allow a licensee under title II or any other private party to buy, lease, or otherwise acquire the use of equipment from the Landsat system, when such equipment is no longer needed for the operation of such system or for the sale of data from such system. Officials of other United States Government civilian agencies are authorized and encouraged to cooperate with the Secretary in carrying out this section.

SEC. 505. RADIO FREQUENCY ALLOCATION.

(a) APPLICATION TO FEDERAL COMMUNICATIONS COMMISSION.—To the extent required by the Communications Act of 1934 (47 U.S.C. 151 et seq.), an application shall be filed with the Federal Communications Commission for any radio facilities involved with commercial remote sensing space systems licensed under title II.

(b) DEADLINE FOR FCC ACTION.—It is the intent of Congress that the Federal Communications Commission complete the radio licensing process under the Communications Act of 1934 (47 U.S.C. 151 et seq.), upon the application of any private sector party or consortium operator of any commercial land remote sensing space system subject to this Act, within 120 days of the receipt of an application for such licensing. If final action has not occurred within 120 days of the receipt of such an application, the Federal Communications Commission shall inform the applicant of any pending issues and of actions required to resolve them.

(c) DEVELOPMENT AND CONSTRUCTION OF UNITED STATES SYSTEMS.—Authority shall not be required from the Federal Communications Commission for the development and construction of any United States land remote sensing space system (or component thereof), other than radio transmitting facilities or components, while any licensing determination is being made.

(d) CONSISTENCY WITH INTERNATIONAL OBLIGATIONS AND PUBLIC INTEREST.—Frequency allocations made pursuant to this section by the Federal Communications Commission shall be consistent with international obligations and with the public interest.

SEC. 506. CONSULTATION.

(a) CONSULTATION WITH SECRETARY OF DEFENSE.—The Secretary and the Landsat Program Management shall consult with the Secretary of Defense on all matters under this Act affecting national security. The Secretary of Defense shall be responsible for determining those conditions, consistent with this Act, necessary to meet national security concerns of the United States and for notifying the Secretary and the Landsat Program Management promptly of such conditions.

(b) CONSULTATION WITH SECRETARY OF STATE.—(1) The Secretary and the Landsat Program Management shall consult with the Secretary of State on all matters under this Act affecting international obligations. The Secretary of State shall be responsible for determining those conditions, consistent with this Act, necessary to meet international obligations and policies of the United States and for notifying promptly the Secretary and the Landsat Program Management of such conditions.

(2) Appropriate United States Government agencies are authorized and encouraged to provide remote sensing data, technology, and training to developing nations as a component of programs of international aid.

(3) The Secretary of State shall promptly report to the Secretary and Landsat Program Management any instances outside the United States of discriminatory distribution of Landsat data.

(c) STATUS REPORT.—The Landsat Program Management shall, as often as necessary, provide to the Congress complete and updated information about the status of ongoing operations of the Landsat system, including timely notification of decisions made with respect to the Landsat system in order to meet national security concerns and international obligations and policies of the United States Government.

(d) REIMBURSEMENTS.—If, as a result of technical modifications imposed on a licensee under title II on the basis of national security concerns, the Secretary, in consultation with the Secretary of Defense or with other Federal agencies, determines that additional costs will be incurred by the licensee, or that past development costs (including the cost of capital) will not be recovered by the licensee, the Secretary may require the agency or agencies requesting such technical modifications to reimburse the licensee for such additional or development costs, but not for anticipated profits. Reimbursements may cover costs associated with required changes in system performance, but not costs ordinarily associated with doing business abroad.

SEC. 507. ENFORCEMENT.

(a) IN GENERAL.—In order to ensure that unenhanced data from the Landsat system received solely for noncommercial purposes are not used for any commercial purpose, the Secretary (in collaboration with private sector entities responsible for the marketing and distribution of unenhanced data generated by the Landsat system) shall develop and implement a system for enforcing this prohibition, in the event that unenhanced data from the Landsat system are made available for noncommercial purposes at a different price than such data are made available for other purposes.

(b) AUTHORITY OF SECRETARY.—Subject to subsection (d), the Secretary may impose any of the enforcement mechanisms described in subsection (c) against a person who—

(1) receives unenhanced data from the Landsat system under this Act solely for noncommercial purposes (and at a different price than the price at which such data are made available for other purposes); and

(2) uses such data for other than noncommercial purposes.

(c) ENFORCEMENT MECHANISMS.—Enforcement mechanisms referred to in subsection (b) may include civil penalties of not more than $10,000 (per day per violation), denial of further unenhanced data purchasing privileges, and any other penalties or restrictions the Secretary considers necessary to ensure, to the greatest extent practicable, that unenhanced data provided for noncommercial purposes are not used to unfairly compete in the commercial market against private sector entities not eligible for data at the cost of fulfilling user requests.

(d) PROCEDURES AND REGULATIONS.—The Secretary shall issue any regulations necessary to carry out this section and shall establish standards and procedures governing the imposition of enforcement mechanisms under subsection (b). The standards and procedures shall include a procedure for potentially aggrieved parties to file formal protests with the Secretary alleging instances where such unenhanced data has been, or is being, used for commercial purposes in violation of the terms of receipt of such data. The Secretary shall promptly act to investigate any such protest, and shall report annually to the Congress on instances of such violations.

TITLE VI—PROHIBITION OF COMMERCIALIZATION OF WEATHER SATELLITES

SEC. 601. PROHIBITION.

Neither the President nor any other official of the Government shall make any effort to lease, sell, or transfer to the private sector, or commercialize, any portion of the weather satellite systems operated by the Department of Commerce or any successor agency.

SEC. 602. FUTURE CONSIDERATIONS.

Regardless of any change in circumstances subsequent to the enactment of this Act, even if such change makes it appear to be in the national interest to commercialize weather satellites, neither the President nor any official shall take any action prohibited by section 601 unless this title has first been repealed.

AGRICULTURAL CREDIT RURAL DEVELOPMENT AND COMMODITY MARKETING IMPROVEMENTS ACT

LEAHY (AND LUGAR) AMENDMENT NO. 3417

Mr. FORD (for Mr. LEAHY, for himself and Mr. LUGAR) proposed an amendment to the amendments of the House to the bill (S. 1709) to amend the Farm Credit Act of 1971 to enhance the financial safety and soundness of the Farm Credit System, and for other purposes, as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Farm Credit Banks and Associations Safety and Soundness Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to the Farm Credit Act of 1971.

TITLE I—IMPROVEMENTS TO FARM CREDIT SYSTEM SAFETY AND SOUNDNESS

Sec. 101. Definition of permanent capital.
Sec. 102. Qualifications of Farm Credit Administration Board members.

TITLE II—FARM CREDIT SYSTEM INSURANCE CORPORATION

Sec. 201. Farm Credit System Insurance Corporation.
Sec. 202. Statutory successor to Assistance Board agreements.
Sec. 203. Use of Farm Credit Administration personnel.
Sec. 204. GAO reports on risk-based insurance premiums, access to association capital, supplemental premiums, and consolidation.

TITLE III—REPAYMENT OF FARM CREDIT SYSTEM DEBT OBLIGATIONS

Sec. 301. Capital preservation.
Sec. 302. Preferred stock.
Sec. 303. Systemwide repayment obligation.
Sec. 304. Repayment of Treasury-paid interest
Sec. 305. Transfer of obligations from associations to banks; other matters.
Sec. 306. Defaults.
Sec. 307. Authority of Financial Assistance Corporation.
Sec. 308. Technical amendments.

TITLE IV—CLARIFICATION OF CERTAIN AUTHORITIES

Sec. 401. Clarification of the status and powers of certain institutions of the Farm Credit System.

TITLE V—MISCELLANEOUS

Sec. 501. Valuation reserves of production credit associations.
Sec. 502. Risk management participation authority.
Sec. 503. Equity voting for one director of each bank for cooperatives.
Sec. 504. Technical amendment.
Sec. 505. Expansion of water and sewer lending authority of banks for cooperatives.
Sec. 506. Eligibility to borrow from a bank for cooperatives.
Sec. 507. Non-voting representative on board of Funding Corporation.
Sec. 508. Repeal of prohibition against guarantee of certain instruments of indebtedness.
Sec. 509. Compensation of bank directors.
Sec. 510. Clarification of treatment of Farm Credit Administration operating expenses.
Sec. 511. Approval of competitive charters.
Sec. 512. Examinations.
Sec. 513. Authority to examine System institutions.
Sec. 514. Financial disclosure and conflict of interest reporting by directors, officers, and employees of Farm Credit System institutions.
Sec. 515. One-time EFAP assistance.
Sec. 516. Technical corrections.

SEC. 2. REFERENCES TO THE FARM CREDIT ACT OF 1971.

Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), except to the extent otherwise provided.

TITLE I—IMPROVEMENTS TO FARM CREDIT SYSTEM SAFETY AND SOUNDNESS

SEC. 101. DEFINITION OF PERMANENT CAPITAL.

Paragraph (1) of section 4.3A(a) (12 U.S.C. 2154a(a)(1)) is amended to read as follows:

"(1) PERMANENT CAPITAL.—The term 'permanent capital' means—

"(A) current year retained earnings;

"(B) allocated and unallocated earnings (which, in the case of earnings allocated in any form by a System bank to any association or other recipient and retained by the bank, shall be considered, in whole or in part, permanent capital of the bank or of any such association or other recipient as provided under an agreement between the bank and each such association or other recipient);

"(C) all surplus (less allowances for losses);

"(D) stock issued by a System institution, except—

"(i) stock that may be retired by the holder of the stock on repayment of the holder's loan, or otherwise at the option or request of the holder; or

"(ii) stock that is protected under section 4.9A or is otherwise not at risk; and

"(E) any other debt or equity instruments or other accounts that the Farm Credit Administration determines appropriate to be considered permanent capital.".

SEC. 102. QUALIFICATIONS OF FARM CREDIT ADMINISTRATION BOARD MEMBERS.

Section 5.8 (12 U.S.C. 2242) is amended by adding at the end the following new subsection:

"(e) The President shall appoint members of the Board who—

"(1) are experienced or knowledgeable in agricultural economics and financial reporting and disclosure;

"(2) are experienced or knowledgeable in the regulation of financial entities; or

"(3) have a strong financial, legal, or regulatory background.".

TITLE II—FARM CREDIT SYSTEM INSURANCE CORPORATION

SEC. 201. FARM CREDIT SYSTEM INSURANCE CORPORATION.

(a) IN GENERAL.—Section 5.53 (12 U.S.C. 2277a–2) is amended to read as follows:

"SEC. 5.53. BOARD OF DIRECTORS.

"(a) IN GENERAL.—

"(1) ESTABLISHMENT.—The management of the Corporation shall be vested in a Board of Directors (referred to in this section as the 'Board'). The Board shall establish policies for the Corporation. The Board shall provide for the performance of all the powers and duties vested in the Corporation.

"(2) APPOINTMENT.—The Board shall consist of three members, who shall be citizens of the United States and broadly representative of the public interest. Members of the Board shall be appointed by the President, by and with the advice and consent of the Senate. Not more than two members of the Board shall be members of the same political party.

"(3) CHAIRPERSON.—Of the persons appointed to the Board, one shall be designated by the President to serve as Chairperson of the Board for the duration of the term of the member.

"(4) POSTEMPLOYMENT PROHIBITION.—A member of the Board shall be ineligible during the time the member is in office and for 2 years thereafter to hold any office, position, or employment in any institution of the Farm Credit System.

"(b) TERM OF OFFICE.—

"(1) IN GENERAL.—The term of office of each member of the Board shall be 6 years, except that the terms of the two members, other than the Chairperson, first appointed under subsection (a) shall expire, one on the expiration of 2 years after the date of appointment, and one on the expiration of 4 years after the date of appointment.

"(2) SUCCESSION.—Members of the Board shall not be appointed to succeed themselves, except that the members first appointed under subsection (a) for a term of less than 6 years may be reappointed for a full 6-year term and members appointed to fill unexpired terms of 3 years or less may be reappointed for a full 6-year term.

"(3) VACANCIES.—Any vacancy shall be filled for the unexpired term on like appointment. Any member of the Board shall continue to serve as a member after the expiration of the term of the member until a successor has been appointed and qualified.

"(c) ORGANIZATION.—

"(1) OATH.—Each member of the Board, within 15 days after notice of appointment, shall subscribe to the oath of office.

"(2) QUORUM.—The Board may transact business if a vacancy exists, if a quorum is present. A quorum shall consist of two members of the Board.

"(3) MEETING.—The Board shall hold meetings at such times and places as the Board may fix and determine. The meetings shall be held on the call of the Chairperson or any two Board members.

"(4) RULES; RECORDS.—The Board shall adopt such rules as the Board considers appropriate for the transaction of business by the Board, and shall keep permanent and accurate records and minutes of the actions and proceedings of the Board.

"(d) COMPENSATION.—

"(1) IN GENERAL.—The members of the Board shall devote their full time and attention to the business of the Board.

"(2) CHAIRPERSON.—The Chairperson of the Board shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5, United States Code.

"(3) OTHER MEMBERS.—Each of the other members of the Board shall receive compensation at the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(4) EXPENSES.—Each member of the Board shall be reimbursed for necessary travel, subsistence, and other expenses in the discharge of the official duties of the member without regard to other laws with respect to allowance for travel and subsistence of officers and employees of the United States.".

(b) CONFORMING AMENDMENTS.—

(1) CHAIRPERSON.—Section 5314 of title 5, United States Code, is amended by adding at the end the following new item:

"Chairperson, Board of Directors of the Farm Credit System Insurance Corporation.".

(2) MEMBERS.—Section 5315 of such title is amended by adding at the end the following new item:

"Members, Board of Directors of the Farm Credit System Insurance Corporation.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall become effective on January 1, 1996.

(2) TRANSITIONAL PROVISION.—The Board of Directors of the Farm Credit System Insurance Corporation as established by section 5.53 of the Farm Credit Act of 1971 (12 U.S.C. 2277a–2) (as it existed before the amendments made by subsection (a) of this section) shall continue in existence and continue to manage the Farm Credit System Insurance Corporation until at least two members are appointed by the President, by and with the advice and consent of the Senate, to the new Board established by section 5.53 of such Act (as amended by subsection (a) of this section).

SEC. 202. STATUTORY SUCCESSOR TO ASSISTANCE BOARD AGREEMENTS.

(a) IN GENERAL.—Section 5.58(2) (12 U.S.C. 2277a–7(2)) is amended by adding at the end the following new sentence: "The Corporation shall succeed to the rights of the Farm Credit System Assistance Board under agreements between the Farm Credit System Assistance Board and System institutions certifying the institutions as eligible to issue preferred stock pursuant to title VI on the termination of the Assistance Board on the date provided in section 6.12.".

(b) CONFORMING AMENDMENTS.—Section 5.35(4) (12 U.S.C. 2271(4)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(C) after December 31, 1992, mean any significant noncompliance by a System institution (as determined by the Farm Credit Administration, in consultation with the Farm Credit System Insurance Corporation) with any term or condition imposed on the institution by the Farm Credit System Assistance Board under section 6.6 or by the Farm Credit System Insurance Corporation under section 5.61.".

SEC. 203. USE OF FARM CREDIT ADMINISTRATION PERSONNEL.

Section 5.59(a) (12 U.S.C. 2277a–8(a)) is amended by adding at the end the following new paragraph:

"(5) USE OF FARM CREDIT ADMINISTRATION PERSONNEL.—To the extent practicable, the Corporation shall use the personnel and resources of the Farm Credit Administration to minimize duplication of effort and to reduce costs.".

SEC. 204. GAO REPORTS ON RISK-BASED INSURANCE PREMIUMS, ACCESS TO ASSOCIATION CAPITAL, SUPPLEMENTAL PREMIUMS, AND CONSOLIDATION.

(a) IN GENERAL.—The Comptroller General of the United States shall investigate, review, and evaluate the feasibility and appropriateness, and report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, on the advantages and disadvantages of providing the Farm Credit System Insurance Corporation with—

(1) the authority to directly or indirectly assess associations to ensure that all System capital is available to prevent losses to investors, including a study of—

(A) the effects of direct assessments by the Insurance Corporation on associations, including interest rate charges to borrowers;

(B) the effects of requiring that banks pass along the cost of insurance premiums to owner associations and other financing institutions having a discount relationship with the bank;

(C) the effects of requiring owner associations to purchase stock in the district bank, if needed, to prevent a bank from having to return to the Insurance Corporation for financial assistance once the assistance has been given;

(D) the effects of the purchase of stock from funds of the association (through funds obtained from other than the district bank) or allowing the bank to increase the direct line of credit to the association in order to fund the purchase; and

(E) the effect that authorizing the Insurance Corporation to assess the association could have on the association's incentives for building capital;

(2) the authority to collect supplemental insurance premiums under certain circumstances, including a study of—

(A) the possibility of the Insurance Fund being depleted more rapidly than it could be replenished under the current premium structure;

(B) the effects of the depletion under alternate economic scenarios and the probability of the occurrence of each of those scenarios;

(C) the effects on capital accumulation and interest rates of levying a supplemental premium; and

(D) limitations on any authority to levy supplemental premiums and the underlying basis for the limitations; and

(3) the authority to establish an insurance premium rate structure that would take into account, on an institution-by-institution basis, asset quality risk, interest rate risk, earnings, and capital.

(b) REPORT ON CONSOLIDATION.—

(1) IN GENERAL.—The Comptroller General of the United States shall evaluate and re-

port to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on whether there are likely to be benefits to farmer and rancher borrowers of the Farm Credit System institutions of merging the 10 district Farm Credit Banks (and the Federal Intermediate Credit Bank of Jackson) into fewer regional Farm Credit Banks.

(2) FACTORS.—In preparing the report, the Comptroller General shall consider—

(A) the potential reduction in services to farmers and ranchers;

(B) the potential benefits of jointly providing services to farmers and ranchers among these proposed regional districts;

(C) any economy of scale effects on a district-by-district basis;

(D) the potential impact on the cooperative nature of the Farm Credit System;

(E) the potential impact on bank and association relationships; and

(F) the potential impact on System-wide bond issuances.

(c) POTENTIAL SAVINGS.—The Comptroller General of the United States shall evaluate and report to the appropriate committees of Congress on the potential savings to the Farm Credit System and its shareholders that might occur if System institutions and the Farm Credit Administration were required to comply with General Services Administration standards for office space, furniture, and equipment.

(d) DEADLINE.—The reports required under this section shall be provided to Congress not later than 12 months after the date of enactment of this Act.

TITLE III—REPAYMENT OF FARM CREDIT SYSTEM DEBT OBLIGATIONS

SEC. 301. CAPITAL PRESERVATION.

Section 6.9(e)(3) (12 U.S.C. 2278a-9(e)(3)) is amended—

(1) by striking subparagraph (C) and inserting the following new subparagraph:

"(C) PAYMENT OF PRINCIPAL.—

"(i) IN GENERAL.—After the end of the 15-year period beginning on the date of the issuance of any obligation issued to carry out this subsection, the banks operating under this Act shall pay to the Financial Assistance Corporation, on demand, an amount equal to the outstanding principal of the obligation. Each bank shall pay a proportion of the principal equal to—

"(I) the average accruing loan volume of the bank for the preceding 15 years; divided by

"(II) the average accruing loan volume of all banks of the System for the same period.

"(ii) BANKS LEAVING SYSTEM.—Any bank leaving the Farm Credit System pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of the payment required under this subparagraph had the bank remained in the System.

"(iii) BANKS UNDERGOING LIQUIDATION.—With respect to any bank undergoing liquidation under this Act, a liability to the Financial Assistance Corporation in the amount of the payment required under this subparagraph (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of the bank.

"(iv) OBLIGATIONS OF OTHER BANKS.—The obligations of other banks shall not be reduced in anticipation of any recoveries under this subparagraph from banks leaving the System or in liquidation, but the Financial Assistance Corporation shall apply the recoveries, when received, and all earnings on the recoveries, to reduce the other banks' payment obligations, or, to the extent the recoveries are received after the other banks have met their entire payment obligation, shall refund the recoveries, when received, to the other banks in proportion to the other banks' payments.";

(2) by redesignating subparagraph (D) as subparagraph (E);

(3) by inserting after subparagraph (C) the following new subparagraph:

"(D) ANNUAL PAYMENTS.—

"(i) IN GENERAL.—In order to provide for the orderly funding and discharge over time of the obligation of each System bank to the Financial Assistance Corporation under subparagraph (C), each System bank shall enter into or continue in effect an agreement with the Financial Assistance Corporation under which the bank will make annual annuity-type payments to the Financial Assistance Corporation, beginning no later than December 31, 1992 (except for any bank that did not meet its interim capital requirement on December 31, 1990, in which case the bank shall begin making the payments no later than December 31, 1993) in amounts designed to accumulate, in total, including earnings on the amounts, to 90 percent of the bank's ultimate obligation. The Financial Assistance Corporation shall partially discharge the bank from its obligation under subparagraph (C) to the extent of each such payment and the earnings on the payment as earned.

"(ii) CAPITAL REQUIREMENTS.—The agreement shall not require payments to be made to the extent that making a particular payment or part of a payment would cause the bank to fail to satisfy applicable regulatory permanent capital requirements, but shall provide for recalculation of subsequent payments accordingly.

"(iii) INVESTMENT; AVAILABILITY.—The funds received by the Financial Assistance Corporation pursuant to the agreements shall be invested in eligible investments as defined in section 6.25(a)(1). The funds and the earnings on the funds shall be available only for the payment of the principal of the bonds issued by the Financial Assistance Corporation under this subsection."; and

(4) in subparagraph (E) (as redesignated by paragraph (2)), by inserting before the period at the end the following: ", nor shall the obligation to make future annuity payments to the Financial Assistance Corporation under subparagraph (D) be considered a liability of any System bank".

SEC. 302. PREFERRED STOCK.

Subparagraph (B) of section 6.26(d)(1) (12 U.S.C. 2278b-6(d)(1)(B)) is amended to read as follows:

"(B) PAYMENTS BY INSTITUTIONS.—

"(i) IN GENERAL.—Except as provided in subparagraph (C), in order to enable the Financial Assistance Corporation to repay the obligation referred to in subparagraph (A), each institution that issued preferred stock under section 6.27(a) with respect to the obligation (or the successor to the institution) shall pay to the Financial Assistance Corporation, before the maturity date of the obligation, an amount equal to the par value of the stock outstanding for the institution.

"(ii) ANNUAL APPROPRIATION.—Except as provided in clause (iii), each year beginning in 1992, as soon as practicable following the end of the prior year, each such institution (except institutions in receivership and institutions that have previously redeemed their preferred stock) shall appropriate from its earnings in the prior year to an appropriated unallocated surplus account with respect to preferred stock, the sum of—

"(I) the greater of—

"(aa) such amount as the institution may be required to appropriate under any assistance agreement the institution has with the Farm Credit System Assistance Board or the Farm Credit System Insurance Corporation; or

"(bb) the amount that, if appropriated to the account in equal amounts in each year thereafter until the maturity of the obligation referred to in subparagraph (A), would cause the amount in the account to equal the par value of the preferred stock issued by the institution with respect to the obligation; plus

"(II) any amount that had been appropriated to the account in a previous year but had thereafter been offset by losses.

"(iii) LIMITATION.—An annual appropriation shall not be made to the extent that the appropriation would exceed the institution's net income (as determined pursuant to generally accepted accounting principles) in that year or to the extent that the appropriation would cause the institution's preferred stock to be impaired.

"(iv) USE.—The amount in the appropriated unallocated surplus account shall be unavailable to pay dividends or other allocations or distributions to shareholders or holders of participation certificates. The account shall be senior to all other unallocated surplus accounts but junior to all preferred and common stock for purposes of the application of operating losses.

"(v) PREFERRED STOCK.—The appropriations of surplus by an institution shall not affect the treatment of its preferred stock (and of the appropriated unallocated surplus) as equity for purposes of regulatory permanent capital requirements.".

SEC. 303. SYSTEMWIDE REPAYMENT OBLIGATION.

Subparagraph (C) of section 6.26(d)(1) (12 U.S.C. 2278b-6(d)(1)(C)) is amended to read as follows:

"(C) SYSTEMWIDE REPAYMENT.—

"(i) IN GENERAL.—In order to enable the Financial Assistance Corporation to repay the obligations issued to provide assistance under subsections (c) and (e) of section 410 of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note) and section 4.9A(c) of this Act, or issued to provide funds to cover the expenses of the Assistance Board or the Financial Assistance Corporation under sections 6.7(a) and 6.24, respectively, of this Act, each System bank shall pay to the Financial Assistance Corporation a proportion, as calculated by the Financial Assistance Corporation, of the obligation equal to—

"(I) the average accruing retail loan volume of the bank and its affiliated associations for the preceding 15 years; divided by

"(II) the average accruing retail loan volume of all such banks and their affiliated associations for the same period.

"(ii) EXPENSE ITEM.—The annual increase in the present value of the estimated obligation of each bank to the Financial Assistance Corporation under this subparagraph shall be recorded each year as an expense item, in accordance with generally accepted accounting principles, on the books of the bank.

"(iii) PASS THROUGH.—A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either directly, or indirectly through loan pricing or otherwise) all or part of the amount necessary to satisfy the payment requirement to its affiliated direct lender associations based on proportionate average accruing retail loan volumes for the preceding 15 years, except that the bank shall remain primarily liable for the amount.

"(iv) BANKS LEAVING SYSTEM.—Any bank leaving the Farm Credit System pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of the payment required under this subparagraph had the bank remained in the System. A liability to the Financial Assistance Corporation in this amount (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of any bank undergoing liquidation. The obligations of other banks shall not be reduced in anticipation of any such recoveries from banks leaving the System or in liquidation, but the Financial Assistance Corporation shall apply the recoveries, when received, and all earnings on the recoveries, to reduce the other banks' payment obligations, or, to the extent the recoveries are received after the other banks have met their entire payment obligation, shall refund the recoveries, when received, to the other banks in proportion to the other banks' payments.

"(v) ASSOCIATIONS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any association leaving the Farm Credit System pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the present value of the future payment obligation of its supervising bank. A liability to the bank in this amount (calculated as if the association had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the bank against the estate of any association undergoing liquidation.".

SEC. 304. REPAYMENT OF TREASURY-PAID INTEREST

(a) IN GENERAL.—Paragraph (5) of section 6.26(c) (12 U.S.C. 2278b–6(c)(5)) is amended to read as follows:

"(5) REPAYMENT OF TREASURY-PAID INTEREST.—

"(A) IN GENERAL.—On the maturity date of the last-maturing debt obligation issued under subsection (a), the Financial Assistance Corporation shall repay to the Secretary of the Treasury the total amount of any annual interest charges on the debt obligations that Farm Credit System institutions (other than the Financial Assistance Corporation) have not previously paid, and the Financial Assistance Corporation shall not be required to pay any additional interest charges on the payments.

"(B) ASSESSMENT.—In order to provide for the orderly funding by the banks of the System of the repayment by the Financial Assistance Corporation to the Secretary of the Treasury, the Financial Assistance Corporation shall assess each System bank, on or about December 31 of each year beginning in 1992, and each System bank shall promptly pay to the Financial Assistance Corporation, an annual annuity type payment in an amount designed to accumulate, in total, including earnings thereon, the amount of the bank's ultimate obligation (as determined by the Corporation on a fair and equitable basis), and no greater than .0006 nor less than .0004 times the bank's and its affiliated associations' average accruing retail loan volume for the preceding year, subject to—

"(i) upward or downward adjustment, as appropriate, by the Financial Assistance Corporation during each of the last 5 years prior to the date the Financial Assistance Corporation is obligated to make the repayment, in order to ensure that the Financial Assistance Corporation will have the amount of funds needed to make the repayment on the due date; and

"(ii) reduction or termination in any year when the funds paid to the Financial Assistance Corporation, including any anticipated future earnings on the funds, are sufficient to make the repayment on the due date.

"(C) INVESTMENT OF FUNDS.—The Financial Assistance Corporation shall invest funds derived from the investment in eligible investments as defined in section 6.25(a)(1). The funds and the earnings on the funds shall be available only for the repayment to the Secretary of the Treasury provided for in subparagraph (A).

"(D) PASS THROUGH.—A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either directly, or indirectly through loan pricing or otherwise) all or part of the assessments to its affiliated direct lender associations based on proportionate average accruing retail loan volumes for the preceding year, but the bank shall remain primarily liable for the amounts.

"(E) LIABILITY.—

"(i) BANKS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any bank terminating System status pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of all future such assessments against the bank had the bank remained in the System. A liability to the Financial Assistance Corporation in this amount (calculated as if the bank had left the System on the date the bank was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of any bank undergoing liquidation.

"(ii) NO ANTICIPATORY REDUCTIONS IN OTHER OBLIGATIONS.—The obligations of other banks shall not be reduced in anticipation of any recoveries under this subparagraph from banks leaving the System or in liquidation.

"(iii) REFUND OF RECOVERIES.—The Financial Assistance Corporation shall apply the recoveries, when received, and all earnings on the recoveries, to reduce the other banks' payment obligations, or, to the extent the recoveries are received after the other banks have met their entire payment obligation, shall refund the recoveries, when received, to the other banks in proportion to the other banks' payments.

"(F) ASSOCIATIONS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any association terminating System status pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the estimated present value of all future such assessments against the bank. A liability to the bank in this amount (calculated as if the association had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the bank against the estate of any association undergoing liquidation.

"(G) CAPITAL REQUIREMENTS.—

"(i) IN GENERAL.—Until the date that is 5 years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), all assessments paid by banks to the Financial Assistance Corporation pursuant to subparagraph (B), and any part of the obligation to pay future assessments to the Financial Assistance Corporation under subparagraph (B) that is recognized as an expense on the books of any System bank or association, shall nonetheless be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements.

"(ii) DURING THE FINAL 5 YEARS PRIOR TO REPAYMENT.—During the—

"(I) period beginning 5 years, and ending 4 years, prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), 60 percent;

"(II) period beginning 4 years, and ending 3 years, prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), 30 percent; and

"(III) period beginning 3 years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), 0 percent,

of all assessments paid by banks to the Financial Assistance Corporation pursuant to subparagraph (B), and of any part of the obligation to pay future assessments to the Financial Assistance Corporation under subparagraph (B) that is recognized as an expense on the books of any System bank or association, shall nonetheless be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements.".

(b) CONFORMING AMENDMENT.—Section 6.28 (12 U.S.C. 2278b–8) is amended by striking subsection (b) and redesignating subsection (c) as subsection (b).

SEC. 305. TRANSFER OF OBLIGATIONS FROM ASSOCIATIONS TO BANKS; OTHER MATTERS.

Section 6.26 (12 U.S.C. 2278b–6) is amended—

(1) in subsection (c)—

(A) in the subparagraph heading of paragraph (2)(B), by striking "INSTITUTIONS" and inserting "BANKS";

(B) by striking "institutions" each place it appears in paragraphs (2)(B), (3), and (4) and inserting "banks"; and

(C) in paragraph (2), by striking subparagraphs (C) and (D) and inserting the following new subparagraph:

"(C) ALLOCATION.—During each year of the second 5-year period, each System bank shall pay to the Financial Assistance Corporation a proportion, as calculated by the Financial Assistance Corporation, of the interest due from System banks under this paragraph equal to—

"(i) the amount of the average accruing retail loan volume of the bank and its affiliated associations for the preceding year; divided by

"(ii) the total average accruing retail loan volume of all such banks and their affiliated associations for the preceding year.";

(2) in subsection (d)(1)—

(A) by striking subparagraph (D); and

(B) by redesignating subparagraph (E) as subparagraph (D); and

(3) by adding at the end the following new subsection:

"(e) ADMINISTRATION.—

"(1) DEFINITION OF RETAIL LOAN VOLUME.—As used in this section, the term 'retail loan volume' means all loans (as defined in accordance with generally accepted accounting principles) by a System bank or association, excluding loans by such a bank or association to another System institution.

"(2) CALCULATION OF AVERAGE ANNUAL LOAN VOLUMES.—For purposes of this section and section 6.9, average annual loan volumes shall be calculated using month-end balances.

"(3) EXCLUSION OF BANKS UNDERGOING LIQUIDATION.—For purposes of this section and section 6.9, the term 'bank' shall not include a bank that had entered liquidation prior to the date of enactment of this subsection.".

SEC. 306. DEFAULTS.

Section 6.26(d) (12 U.S.C. 2278b–6(d)) is amended—

(1) in paragraph (3)—

(A) in subparagraph (A)—

(i) by striking the heading and inserting the following: "CERTAIN PRINCIPAL AND INTEREST OBLIGATIONS.—";

(ii) in clause (i)—

(I) by inserting after "subsection (a)," the following: "on the payment of principal or interest due under subparagraphs (B) and (C) of section 6.9(e)(3), on the payment of principal due under paragraph (1)(C), or on the payment of an assessment due under subsection (c)(5)(B),";

(II) by striking "of the interest" both places it appears; and

(III) by striking "institution" each place it appears and inserting "bank";

(iii) in clause (ii)—

(I) by striking "of interest";

(II) by striking "institution" and inserting "bank"; and

(III) by striking "such uncollected interest" and inserting "any uncollected amount";

(iv) in clause (iii), by striking "added" and all that follows through the period at the end and inserting "allocated to other System banks in accordance with the allocation mechanism applicable under this Act to the particular defaulted obligation.";

(B) in subparagraph (B), by striking the subparagraph heading and inserting the following new heading: "PRINCIPAL OF BONDS ISSUED TO FUND PURCHASE OF PREFERRED STOCK.—"; and

(C) in subparagraph (C)—

(i) in the heading, by striking "INSTITUTIONS" and inserting "BANKS";

(ii) by striking "institution" and inserting "bank";

(iii) by striking "institutions" both places it appears and inserting "banks"; and

(iv) by striking "the amount of any interest" and inserting "any amounts"; and

(2) in paragraph (4)—

(A) in subparagraph (A), by inserting "or section 6.9(e)(3)(A)" after "subsection (a)";

(B) in subparagraph (B)—

(i) in clause (i)—

(I) by striking the clause heading and inserting the following new heading: "CERTAIN PRINCIPAL AND INTEREST OBLIGATIONS.—";

(II) by inserting after "subsection (c)," the following: "on the payment of principal or interest due under subparagraphs (B) and (C) of section 6.9(e)(3), on the payment of principal due under paragraph (1)(C), or on the payment of an assessment due under subsection (c)(5)(B),"; and

(III) by striking "institution" each place it appears and inserting "bank"; and

(ii) in clause (ii), by striking the clause heading and inserting the following new heading: "PRINCIPAL OF BONDS ISSUED TO FUND PURCHASE OF PREFERRED STOCK.—".

SEC. 307. AUTHORITY OF FINANCIAL ASSISTANCE CORPORATION.

(a) PURPOSE.—Section 6.21 (12 U.S.C. 2278b–1) is amended by inserting before the period at the end the following: "and to assist, pursuant to section 6.9(e) and subsections (c) through (g) of section 6.26, in the repayment by System institutions to those persons who provided funds in connection with the program".

(b) TERMINATION.—Section 6.31(a) (12 U.S.C. 2278b–11(a)) is amended by striking "terminate on" and inserting the following: "terminate on the complete discharge by the Financial Assistance Corporation of its responsibilities under section 6.9(e) and subsections (c) through (g) of section 6.26 with regard to repayments by System institutions, but in no event later than 2 years following".

SEC. 308. TECHNICAL AMENDMENTS.

(a) TECHNICAL AMENDMENT TO THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT AMENDMENTS OF 1991.—Section 204(3) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (P.L. 102–237; 105 Stat. 1991) is amended by striking "in section 1221(1)(D) (16 U.S.C. 3821(1)(D))" and inserting "in section 1221(a)(1)(D) (16 U.S.C. 3821(a)(1)(D))".

(b) TECHNICAL AMENDMENTS TO THE FARM CREDIT ACT OF 1971.—

(1) Section 8.3(c)(13) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa–3(c)(13)) is amended by striking "8.11(g)" and inserting "8.11(e)".

(2) Section 8.11(a)(1)(B)(ii) of such Act (12 U.S.C. 2279aa–11(a)(1)(B)(ii)) is amended by striking "the date of enactment of this section" and inserting "December 13, 1991".

(3) Section 8.32 of such Act (12 U.S.C. 2279bb–1) is amended—

(A) in each of subsections (a), (b)(1)(D), and (b)(2), by striking "the date of the enactment of this section" each place the term appears and inserting "December 13, 1991"; and

(B) in subsection (b)(1)(E), by striking "the date of the enactment of such Act" and inserting "December 13, 1991".

TITLE IV—CLARIFICATION OF CERTAIN AUTHORITIES

SEC. 401. CLARIFICATION OF THE STATUS AND POWERS OF CERTAIN INSTITUTIONS OF THE FARM CREDIT SYSTEM.

(a) CLARIFICATION OF AUTHORITY REGARDING REMAINING FEDERAL INTERMEDIATE CREDIT BANK.—Section 410 of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note) is amended by adding at the end the following new subsection:

"(e) CLARIFICATION OF AUTHORITY REGARDING REMAINING FEDERAL INTERMEDIATE CREDIT BANK.—

"(1) NEGOTIATED MERGER.—

"(A) REQUIREMENT.—

"(i) IN GENERAL.—Not later than June 30, 1993, except as provided in subparagraph (C), the Federal Intermediate Credit Bank of Jackson (as chartered on the date of enactment of this subsection) shall merge with a Farm Credit Bank pursuant to the procedures prescribed by section 7.12 of the Farm Credit Act of 1971 (12 U.S.C. 2279f).

"(ii) MERGER OF ENTIRE BANK.—Notwithstanding subparagraph (B), or any other provision of law, the Farm Credit Administration shall approve a merger of the Federal Intermediate Credit Bank of Jackson only if the Bank (as chartered on the date of enactment of this subsection, except as provided in subparagraph (B)(ii)(II)(bb)) merges in its entirety with a Farm Credit Bank.

"(iii) LIMITED LENDING AUTHORITY.—Notwithstanding any provision of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), the Farm Credit Bank resulting from a merger under this subsection shall have only the lending authorities in the States of Alabama, Louisiana, and Mississippi that the constituent banks exercised in such States immediately prior to the merger, except as may be provided in section 5.17(a)(2) of such Act (12 U.S.C. 2252(a)(2)).

"(B) OPERATING AND MERGER AUTHORITY.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Federal Intermediate Credit Bank of Jackson may operate subject to such provisions of part A of title II of the Farm Credit Act of 1971 (as in effect immediately before the amendment made by section 401 took effect) and such provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) (as in effect after the amendment), as the Farm Credit Administration deems appropriate to carry out the purposes of this subsection and such Act. This subparagraph shall take effect as if it had become law at the same time as the amendment made by section 401 and shall remain in effect until the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

"(ii) LIMITATION ON OPERATING AUTHORITY.—

"(I) IN GENERAL.—Notwithstanding clause (i) and subparagraph (A)(ii), the authority of the Federal Intermediate Credit Bank of Jackson to operate as provided under clause (i) shall expire, and the Farm Credit Administration shall revoke the Bank's charter, immediately on the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

"(II) DISTRICT BOUNDARY MODIFICATION.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson shall not include the authority for the Bank to modify, nor shall the Farm Credit Administration approve such a modification to, the boundaries of the Fifth Farm Credit District to reaffiliate any portion of the District with another Farm Credit Bank, except—

"(aa) in the case of the merger of the entire Bank as an entity with a Farm Credit Bank such that the entire chartered territory of the Federal Intermediate Credit Bank of Jackson (except as provided in item (bb)) is merged with the Farm Credit Bank; and

"(bb) in the case of the reaffiliation of the Northwest Louisiana Production Credit Association with another farm credit district pursuant to the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations under such Act.

"(iii) LIMITATION ON AUTHORITY TO MERGE.—

"(I) IN GENERAL.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank as provided under clause (i) shall expire, and the Farm Credit Administration shall revoke the Bank's charter, immediately on the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

"(II) BANK INTEGRITY.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank shall be limited to a merger of the Federal Intermediate Credit Bank of Jackson (as chartered on the date of enactment of this subsection to include the territory in the States of Alabama, Louisiana, and Mississippi, except as provided in clause (ii)(II)(bb)) as a whole entity such that the entire chartered territory of the Federal Intermediate Credit Bank of Jackson is merged with the Farm Credit Bank.

"(III) LIMITATION.—Beginning on the date of an order issued by the Farm Credit Administration under subparagraph (D), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank shall be limited to the arbitrated merger provided for in paragraph (2).

"(C) EXTENSION.—

"(i) LETTER OF INTENT.—If no later than June 30, 1993, the Federal Intermediate Credit Bank of Jackson delivers to the Farm Credit Administration a letter of intent to merge with a Farm Credit Bank, summarizing the terms and conditions of the merger (including, but not limited to, board composition, capital structure, exchange, or transfer of equities, and termination) signed by the chief executive officer and the members of the boards of directors of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank, the Farm Credit Administration shall, on its determination that the letter of intent represents a bona fide good faith agreement in principle between the two banks to merge, and that there is at least a reasonable prospect that the merger will be completed in an expeditious manner, grant a one-time extension, until a date certain not later than October 31, 1993, of the requirement under subparagraph (A). Any extension provided under this subparagraph may be conditioned on such terms and conditions as the Farm Credit Administration determines necessary to ensure that the merger described in the letter of intent is completed by the closing date of the extension.

"(ii) COMPLIANCE.—If the Farm Credit Administration grants an extension under clause (i), it shall issue an order under subparagraph (D) immediately if—

"(I) the Federal Intermediate Credit Bank of Jackson, or the Farm Credit Bank that is a signatory to the letter of intent under clause (i), provides written notification to the Farm Credit Administration that the bank does not intend to complete the merger described in the letter of intent;

"(II) the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is not complying with any term or condition on which an extension under clause (i) was conditioned; or

"(III) the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is not pursuing in good faith the merger provided for in the letter of intent.

If the Farm Credit Administration issues an order under subparagraph (D) pursuant to this clause, the Federal Intermediate Credit Bank of Jackson shall be deemed to have failed to comply with the requirements of subparagraph (A).

"(D) FAILURE TO MERGE; ISSUANCE OF ORDER.—If the Federal Intermediate Credit Bank of Jackson fails to comply, or notifies the Farm Credit Administration in writing that it does not intend to comply, with the requirements of subparagraph (A), the Farm Credit Administration shall, within 5 days after the date specified in subparagraph (A), or such other date specified by the Farm Credit Administration under subparagraph (C), issue, notwithstanding any other provision of law, an order requiring the Federal Intermediate Credit Bank of Jackson to merge with the Farm Credit Bank of Texas in accordance with paragraph (2).

"(2) ARBITRATED MERGER.—

"(A) IN GENERAL.—Not later than 30 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), an arbitrator (or panel of arbitrators) shall be named by the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association to serve as the arbitrator referred to in this paragraph.

"(B) DUTIES.—The arbitrator shall determine the terms and conditions of the merger required under an order issued under paragraph (1)(D), such that the terms and conditions are fair and equitable to the two banks, their affiliated associations, the stockholders and borrowers of the associations, and the other institutions of the Farm Credit System, and are designed to protect or enhance the safety and soundness of the Farm Credit System. The arbitrator shall have the authority to hire staff and secure the services of consultants as necessary to discharge the duties of the arbitrator under this paragraph.

"(C) EXPENSES.—Notwithstanding any other provision of law, the compensation and expenses of the arbitrator, the fees and expenses of the American Arbitration Association, and any expenses associated with the referendum required under subparagraph (F) shall be paid from the Farm Credit Assistance Fund established under section 6.25 of the Farm Credit Act of 1971 (12 U.S.C. 2278b–5).

"(D) DEVELOPMENT OF MERGER PLANS.—

"(i) IN GENERAL.—Not later than 100 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the arbitrator shall develop and submit for certification to the Farm Credit Administration a plan specifying the terms and conditions of the merger of the two banks required under this paragraph, such that the terms and conditions are fair and equitable to the two banks, their affiliated associations, the stockholders or farmer-borrowers of the associations, and the other institutions of the Farm Credit System, and are designed to protect or enhance the safety and soundness of the Farm Credit System. In devising the plan, the arbitrator shall, to the extent practicable, achieve the following objectives:

"(I) Implementation of the preferences expressed by the affected and interested parties in submissions under clause (ii).

"(II) Valuation of assets fairly, equitably, and consistently for all parties involved.

"(III) Establishment of capitalization and funding terms in a manner that treats farmer-borrowers and stockholders in the two involved farm credit districts equitably and takes account of risk.

"(IV) Ensure the viability of the resulting Farm Credit Bank and associations of the bank and the ability of the resulting bank and associations of the bank to lend to eligible borrowers at reasonable and competitive rates of interest.

"(ii) SUBMISSION OF VIEWS AND INFORMATION.—The arbitrator shall receive from affected and interested parties written submissions, in accordance with fair and reasonable procedures established by the arbitrator, regarding the terms and conditions of an appropriate plan for the merger of the two banks required under this paragraph. The Federal Intermediate Credit Bank of Jackson, the Farm Credit Bank of Texas, and their affiliated associations shall make available all books, records, financial information, and other material that the arbitrator determines is necessary to the development of the plan or the fulfillment of any other requirement under this paragraph. A copy of any submission or information provided to the arbitrator by any party under this paragraph shall be furnished to the Federal Intermediate Credit Bank of Jackson or the Farm Credit Bank of Texas on the written request of the bank and at the bank's expense. The arbitrator shall provide both banks with a reasonable opportunity to review and respond to any submission or information provided by any party.

"(iii) CONTENT OF PLAN; FARM CREDIT BANK.—The plan developed and submitted under clause (i) shall include provisions regarding the following matters:

"(I) The initial composition, following the merger, of the board of directors of the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(II) The valuation, for purposes of the merger, of the assets and liabilities of the merging banks.

"(III) The terms and conditions on which the shares of capital stock of the Federal Intermediate Credit Bank of Jackson and, if necessary, the Farm Credit Bank of Texas, will be converted into shares of the resulting Farm Credit Bank.

"(IV) The capital structure and capitalization levels of the resulting Farm Credit Bank and the affiliated associations of the Farm Credit Bank in the States of Alabama, Louisiana, and Mississippi as the arbitrator determines necessary to carry out the purposes of this paragraph (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(V) The terms of financing agreements between any production credit associations or agricultural credit associations described in clause (iv), and the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(VI) Any other terms and conditions or other matters that the arbitrator considers necessary.

"(iv) CONTENT OF PLAN; AGRICULTURAL CREDIT ASSOCIATIONS.—If the arbitrator determines that the chartering of agricultural credit associations in the States of Alabama, Louisiana, and Mississippi will be in the best interests of the farmers, ranchers, and aquatic producers eligible to borrow from Farm Credit System associations, the plan required under this subparagraph shall also include, based on submissions from the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas, provisions for the establishment of agricultural credit associations to operate in the States, subject to approval in the referendum under subparagraph (F). Such provisions shall include provisions regarding the following matters:

"(I) A proposal for the establishment of an agricultural credit association in each of the geographic areas specified in subparagraph (F)(iii) (the charters of which, if validly issued under subparagraph (G)(i) pursuant to approval in the referendum under subparagraph (F), shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(II) The initial composition, if the proposal for the establishment of agricultural credit associations is approved, of the board of directors of each such agricultural credit association (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(III) The valuation, for purposes of the proposed merger of the production credit association and the Federal land bank association in each of the geographic areas specified in subparagraph (F)(iii), of the assets and liabilities of the associations.

"(IV) The terms and conditions on which the shares of capital stock of any associations that may merge under the plan to form agricultural credit associations will be converted into shares of the resulting agricultural credit associations.

"(V) The capital structure and capitalization levels of the resulting Farm Credit Bank and such affiliated associations of the Farm Credit Bank in the States of Alabama, Louisiana, and Mississippi as the arbitrator determines necessary to carry out the purposes of this paragraph (which capital structure and capitalization levels shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(VI) The terms of financing agreements between any agricultural credit associations and the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(VII) Any other terms and conditions or other matters that the arbitrator considers necessary.

"(v) CONSULTATION WITH INSURANCE CORPORATION.—The arbitrator shall consult with the Farm Credit System Insurance Corporation regarding the valuation of the assets and liabilities under the plan of merger, the capitalization of the Farm Credit System institutions resulting under the plan, and any other matters relevant to the assistance to be provided by the Insurance Corporation to facilitate the merger under subparagraph (H).

"(E) CERTIFICATION OF PLAN.—Not later than 30 days after the receipt of the plan developed by the arbitrator, the Farm Credit Administration shall—

"(i) certify; or

"(ii) recommend to the arbitrator revisions to the plan that, if incorporated into the plan, will allow the Farm Credit Administration to certify,

that the resulting bank and any resulting associations are proposed to be organized in such a fashion that they will, on implementation of the plan, operate in compliance with applicable laws and regulations. The arbitrator and the Farm Credit Administration shall work cooperatively to ensure the expeditious issuance of the certification. If the Farm Credit Administration recommends to the arbitrator revisions to the plan that, if incorporated into the plan, will allow the Farm Credit Administration to certify the plan, the arbitrator shall, not later than 15 days after receipt of the recommended revisions, incorporate the revisions into the plan as the arbitrator deems appropriate to secure the certification.

"(F) REFERENDUM ON ASSOCIATION STRUCTURE.—

"(i) IN GENERAL.—Not later than 170 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the American Arbitration Association shall conduct, and compile and forward to the Farm Credit Administration the results of, a vote of current farmer-borrowers of the production credit associations and the Federal land bank associations in the States of Alabama, Louisiana, and Mississippi, in accordance with the Election Rules of the American Arbitration Association, to determine whether the farmer-borrowers of each association in the geographic areas described in clause (iii) prefer to have credit delivered—

"(I) in the case of production credit association farmer-borrowers, through a production credit association or through an agricultural credit association as proposed in the plan; and

"(II) in the case of Federal land bank association farmer-borrowers, through a Federal land bank association or through an agricultural credit association as proposed in the plan.

Each farmer-borrower shall be entitled to one vote. The arbitrator shall establish record dates and other procedures for conducting the referendum. The Federal Intermediate Credit Bank of Jackson, the Farm Credit Bank of Texas, and their affiliated associations shall cooperate in the conduct of the referendum, as determined necessary by the Arbitrator.

"(ii) DISCLOSURE.—The arbitrator shall send to farmer-borrowers eligible to vote under this subparagraph, with their ballot, a statement describing the potential consequences to the farmer-borrowers, and to the associations from which they borrow, of voting to charter an agricultural credit association and setting forth factors that farmer-borrowers should consider relevant to the choice between credit delivery through the current association structure and the chartering of an agricultural credit association. The arbitrator shall develop the disclosure materials in cooperation with the Farm Credit Administration and ensure that the materials are not inconsistent with applicable laws and regulations.

"(iii) TABULATION OF RESULTS.—The results of the vote under this subparagraph shall be compiled separately for production credit association farmer-borrowers and Federal land bank association farmer-borrowers in each of the following seven geographic areas:

"(I) The area served by the Federal Land Bank Association of South Mississippi.

"(II) The area served by the Federal Land Bank Association of North Mississippi.

"(III) The area served by the Federal Land Bank Association of South Alabama.

"(IV) The area served by the Federal Land Bank Association of North Alabama.

"(V) The area served by the Federal Land Bank Association of South Louisiana.

"(VI) The area served by both the Federal Land Bank Association of North Louisiana and the First South Production Credit Association.

"(VII) The area served by both the Federal Land Bank Association of North Louisiana and the Northwest Louisiana Production Credit Association.

"(iv) PUBLICATION OF RESULTS.—The results of the vote under this subparagraph, as tabulated by the American Arbitration Association, shall be made promptly available to the public in a manner determined appropriate by the Farm Credit Administration.

"(G) IMPLEMENTATION.—Not later than 10 days after the date of the receipt of the results of the referendum conducted under subparagraph (F), the Farm Credit Administration shall issue such charters or charter amendments and take such other regulatory actions as may be necessary to implement the merger or mergers as provided for under the certified plan. In this regard, the Farm Credit Administration shall—

"(i) issue a charter or charter amendment and take any such other regulatory actions as may be necessary to provide for the establishment of an agricultural credit association in each of the geographic areas described in subparagraph (F)(iii) where a majority of the farmer-borrowers of both the production credit association and the Federal land bank association voted under subparagraph (F)(i) that they preferred to have credit delivered through an agricultural credit association (which charter shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations); and

"(ii) not issue a charter or charter amendment or take any such other regulatory action to provide for the establishment of an agricultural credit association in any of the geographic areas described in subparagraph (F)(iii) where less than a majority of the farmer-borrowers of the production credit association or the Federal land bank association voted in the referendum under subparagraph (F)(i) that they preferred to have credit delivered through an agricultural credit association (provided that the charter of any remaining association in such geographic area shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(H) FACILITATION.—

"(i) IN GENERAL.—Beginning on the date of the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the Farm Credit System Insurance Corporation shall expend amounts from the Farm Credit Insurance Fund to the extent necessary to facilitate the merger prescribed in the plan.

"(ii) MAINTENANCE OF BOOK VALUE.—Assistance provided by the Corporation under this subparagraph shall be in amounts not to exceed that required to maintain book value per share of stockholders' equity at the same value reflected on the most recent audited financial statements of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas prior to or effective with the date of the merger.

"(iii) OTHER ASSISTANCE.—Until the expiration of 5 years from the effective date of a merger authorized by this subsection, or the final resolution of any litigation against the Federal Intermediate Credit Bank of Jackson or any of its stockholders pending on the date of the enactment of this subsection, whichever is later, the Corporation shall guarantee prompt payment of any loss experienced by the merged bank, which loss is caused by the failure of any association-stockholder of the merged bank that was a stockholder of the Federal Intermediate Credit Bank of Jackson immediately prior to the merger, or any successor to the association, to pay when due any obligation of principal or interest owed by the association or its successor to the resulting bank.

"(iv) TERMS AND CONDITIONS.—Assistance provided by the Corporation under this subparagraph shall be on such terms and conditions as the Corporation deems appropriate to facilitate the merger.

"(I) SAFETY AND SOUNDNESS.—

"(i) IN GENERAL.—Except as provided in clause (ii), if at any time prior to the completion of the merger required under this subsection the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is being operated in an unsafe or unsound manner (as determined in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)), the Farm Credit Administration, after consultation with the respective boards of directors of the affected banks and taking into consideration the purposes of this subsection, may require the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank, subject to such terms and conditions as the Farm Credit Administration may prescribe.

The Farm Credit System Insurance Corporation shall expend amounts in the Farm Credit Insurance Fund to the extent necessary to facilitate the merger prescribed under this subparagraph, including the provision of assistance as provided in section 5.61(a)(2)(A)(iii) of the Farm Credit Act of 1971 (12 U.S.C. 2277a–10(a)(2)(A)(iii)), on such terms and conditions as the Corporation deems appropriate.

"(ii) ARBITRATED MERGER.—If at any time after the Farm Credit Administration issues an order under paragraph (1)(D), but prior to the completion of the merger required under this subsection, the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is being operated in an unsafe or unsound manner (as determined in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)), the Farm Credit Administration shall, after consultation with the boards of directors of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas, take such action as it deems necessary pursuant to the authorities provided under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) to return the operation of the Federal Intermediate Credit Bank of Jackson to a safe and sound condition, pending the completion of the merger under paragraph (2).

"(J) MERGER PLAN FOR AGRICULTURAL CREDIT ASSOCIATIONS.—In any of the States of Alabama, Louisiana, or Mississippi where all of the associations are chartered as agricultural credit associations, the boards of directors of each such association in each State are encouraged to submit to the farmer-borrowers of each such association for their approval a plan for merging the associations into one statewide agricultural credit association, in accordance with the applicable provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

"(K) DEFINITIONS.—As used in this paragraph:

"(i) AGRICULTURAL CREDIT ASSOCIATION.—The term 'agricultural credit association' means an association having the same authorities, attributes, and obligations as, and for all purposes an agricultural credit association resulting from the implementation of the plan under this paragraph shall be deemed to be, an association resulting from the merger of a production credit association and a Federal land bank association under section 7.8 of the Farm Credit Act of 1971 (12 U.S.C. 2279c–1).

"(ii) FARMER-BORROWER.—The term 'farmer-borrower' means a borrower from a Farm Credit System association in the State of Alabama, Louisiana, or Mississippi who holds voting stock, or is eligible to hold voting stock, in the association or a stockholder in any such association.

"(3) REVIEW.—

"(A) IN GENERAL.—Actions and determinations of the arbitrator, the Farm Credit Administration, or the Farm Credit System Insurance Corporation pursuant to this subsection shall not be subject to judicial review except as provided in this paragraph, nor shall they be subject to the requirements of subchapter II of chapter 5 or chapter 7 of title 5, United States Code.

"(B) AGENCY DETERMINATIONS.—

"(i) IN GENERAL.—Any petition for review of a determination or other action of the Farm Credit Administration or the Farm Credit System Insurance Corporation under this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit not later than 10 days after the determination, or the petition shall be barred. The court shall have exclusive jurisdiction to determine the proceeding in accordance with standard procedures as supplemented by procedures hereinafter provided and no other district court or court of appeals of the United States shall have jurisdiction over any such challenge in any proceeding instituted prior to, on, or after the date of enactment of this subsection. The review of any determination or action of the Farm Credit Administration or the Farm Credit System Insurance Corporation under this subsection shall be based on the examination of all of the information before the Farm Credit Administration or the Farm Credit System Insurance Corporation, as the case may be, at the time the determination was made. The court reviewing the determination or action shall not enter a stay or order of mandamus unless the court has determined, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(ii) PROCEDURES.—Notwithstanding any other provision of law, the court may set rules governing the procedures of any such proceeding that set page limits on briefs and time limits for filing briefs and motions and other actions that are shorter than the limits specified in the Federal Rules of Civil or Appellate Procedure.

"(iii) EXPEDITED REVIEW.—Any such proceeding before the court shall be assigned for hearing and completed at the earliest possible date, and shall be expedited in every way. The court shall render its final decision relative to any challenge not later than 50 days from the date the challenge is brought unless the court determines that a longer period of time is required to satisfy the requirements of the Constitution.

"(C) ARBITRATOR DETERMINATIONS.—

"(i) IN GENERAL.—Except as otherwise provided in this paragraph, any petition for review of a determination or other action of the arbitrator named under paragraph (2) shall be filed in accordance with the United States Arbitration Act (9 U.S.C. 1 et seq.). Such Act shall apply to the arbitration conducted pursuant to paragraph (2) to the same extent as if the arbitration were established in a contract evidencing a transaction in commerce between the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas.

"(ii) PROCEDURES.—Notwithstanding the United States Arbitration Act (9 U.S.C. 1 et seq.), any petition for review of a determination or other action of the arbitrator under this subsection shall be filed not later than 10 days after the determination, or the petition shall be barred. The court specified under such Act shall have exclusive jurisdiction to determine the proceeding in accordance with the applicable procedures under such Act, as supplemented by procedures hereinafter provided, and no other district court shall have jurisdiction over any such challenge in any such proceeding. Notwithstanding any other provision of law, the court may set rules governing the procedures of any such proceeding that set page limits on briefs and time limits for filing briefs and motions and other actions that are shorter than the limits specified in the United States Arbitration Act or the Federal Rules of Civil or Appellate Procedure.

"(iii) EXPEDITED REVIEW.—Any such proceeding before the court shall be assigned for hearing and completed at the earliest possible date, and shall be expedited in every way. The court shall render its final decision relative to any challenge as soon as possible in accordance with the United States Arbitration Act (9 U.S.C. 1 et seq.), or not later than 30 days from the date the challenge is brought, whichever is sooner, unless the court determines that a longer period of time is required to satisfy the requirements of the Constitution.".

(b) LONG-TERM LENDING AUTHORITY OF THE FARM CREDIT BANK OF TEXAS WITH RESPECT TO THE STATES OF ALABAMA, LOUISIANA, AND MISSISSIPPI.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Farm Credit Bank of Texas may act in accordance with the exclusive charter of the bank, as amended by the Farm Credit Administration on February 7, 1989, and effective February 9, 1989 (except to the extent that the charter may be further amended by the Farm Credit Administration in accordance with its general authorities under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), subject to such limitations on the issuance of competitive charters as may be provided in section 5.17 of such Act (12 U.S.C. 2252)).

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect as if such paragraph had become law on February 7, 1989.

(c) DENIAL OF COMPETITIVE CHARTERS.—Section 5.17(a)(2) (12 U.S.C. 2252(a)(2)) is amended—

(1) by inserting "(A)" after "(2)"; and

(2) by adding at the end the following new subparagraphs:

"(B) The Farm Credit Administration shall not issue a charter to, or approve an amendment to the charter of, any institution of the Farm Credit System to operate under title I or II that would authorize the institution to exercise lending authority, whether directly or indirectly as an agent of a Farm Credit Bank, in a territory in which the charter of another such institution authorizes the other institution to exercise like authority, whether directly or indirectly as an agent of a Farm Credit Bank, except with the approval of—

"(i) in a case affecting only the charter of one or more associations—

"(I) a majority of the shareholders (present and voting or voting by proxy) of each of the associations that would have like lending authority (whether directly or indirectly as an agent of a Farm Credit Bank) in any of that territory if the charter action were taken; and

"(II) a majority of the board of directors of the Farm Credit Bank with which the affected associations are affiliated; or

"(ii) in a case affecting the charter of one or more banks—

"(I) a majority of the shareholders (present and voting or voting by proxy) of the affiliated associations of each of the banks that would have like lending authority in any of that territory if the charter action were taken;

"(II) a majority of the shareholders (present and voting or voting by proxy) of each of the banks that would have like lending authority in any of that territory if the charter action were taken; and

"(III) a majority vote of the boards of directors of each of the banks that would have like lending authority in any of that territory if the charter action were taken.

"(C) Subparagraph (B) shall apply only in those geographic areas where, due to the failure of a Federal intermediate credit bank to merge in accordance with section 410(a) of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note), the Federal intermediate credit bank or its successor is chartered to provide short- and intermediate-term credit, and a neighboring Farm Credit Bank that is not the successor to the Federal intermediate credit bank is chartered to provide long-term credit, in the same geographic territory.".

TITLE V—MISCELLANEOUS

SEC. 501. VALUATION RESERVES OF PRODUCTION CREDIT ASSOCIATIONS.

Subsection (b) of section 2.3 (12 U.S.C. 2074(b)) is amended to read as follows:

"(b) APPLICATION OF EARNINGS.—At the end of each fiscal year, each production credit association shall apply the amount of the earnings of the association for the fiscal year in excess of the operating expenses of the association (including provision for valuation reserves against loan assets in accordance with generally accepted accounting principles)—

"(1) first, to the restoration of the impairment (if any) of capital; and

"(2) second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Farm Credit Bank.".

SEC. 502. RISK MANAGEMENT PARTICIPATION AUTHORITY.

Section 3.1(11) (12 U.S.C. 2122(11)) is amended—

(1) by inserting "(A)" after "(11)"; and

(2) by adding at the end the following new subparagraph:

"(B)(i) Participate in any loan of a type otherwise authorized under this title that is made to a similar entity by any institution in the business of extending credit, including purchases of participations in loans to finance international trade transactions involving the sale of agricultural commodities or the products thereof, except that—

"(I) a bank for cooperatives may not participate in a loan—

"(aa) if the participation would cause the total amount of all loan participations by the bank under this subparagraph involving a single credit risk to exceed 10 percent of the bank's total capital; or

"(bb) if the participation by the bank will itself equal or exceed 50 percent of the principal of the loan or, when taken together with participations in the loan by the other banks for cooperatives under this subparagraph, will cause the cumulative amount of the participations by all banks for cooperatives in the loan to equal or exceed 50 percent of the principal of the loan;

"(II) a bank for cooperatives may not participate in a loan to a similar entity under this subparagraph if the similar entity has a loan or loan commitment outstanding with a Farm Credit Bank or an association chartered under this Act, unless agreed to by the Bank or association; and

"(III) the cumulative amount of participations that a bank for cooperatives may have outstanding under this subparagraph at any time may not exceed 15 percent of the bank's total assets.

"(ii) As used in this subparagraph, the term 'similar entity' means an entity that, while not eligible for a loan under section 3.8, is functionally similar to an entity eligible for a loan under section 3.8 in that it derives a majority of its income from, or has a majority of its assets invested in, the conduct of activities functionally similar to those conducted by the entity.

"(iii) With respect to similar entities that are eligible to borrow from a Farm Credit Bank or association under title I or II, the authority of a bank for cooperatives to participate in loans to the entities under this subparagraph shall be subject to the prior approval of the Farm Credit Bank or Banks in whose chartered territory the entity is eligible to borrow. The approval may be granted on an annual basis and under such terms and conditions as may be agreed on between the bank for cooperatives and the Farm Credit Bank or Banks that serve the territory.".

SEC. 503. EQUITY VOTING FOR ONE DIRECTOR OF EACH BANK FOR COOPERATIVES.

Section 3.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2123(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following new paragraph:

"(2)(A) If approved by the stockholders through a bylaw amendment, the nomination and election of one member from a bank for cooperatives (other than the National Bank for Cooperatives) shall be carried out with each voting stockholder of a bank for cooperatives having one vote, plus a number of votes (or fractional part thereof) equal to—

"(i) the number of stockholders eligible to vote; multiplied by

"(ii) the percentage (or fractional part thereof) of the total equity interest (including allocated, but not unallocated, surplus and reserves) in the bank of all stockholders held by the individual voting stockholder at the close of the immediately preceding fiscal year of the bank.

"(B) The total number of votes under this paragraph shall be the number of voting stockholders of a bank for cooperatives multiplied by two.".

SEC. 504. TECHNICAL AMENDMENT.

The first sentence of section 3.7(a) (12 U.S.C. 2128(a)) is amended by inserting "at any time (whether or not they have a loan from the bank outstanding)" after "technical and financial assistance".

SEC. 505. EXPANSION OF WATER AND SEWER LENDING AUTHORITY OF BANKS FOR COOPERATIVES.

Section 3.7(f) (12 U.S.C. 2128(f)) is amended—

(1) by striking "the installation, expansion, or improvement of" and inserting "installing, maintaining, expanding, improving, or operating"; and

(2) by striking "to extend" and inserting "extending".

SEC. 506. ELIGIBILITY TO BORROW FROM A BANK FOR COOPERATIVES.

Section 3.8(b)(1) (12 U.S.C. 2129(b)(1)) is amended by adding at the end the following new subparagraph:

"(E) Any creditworthy private entity that satisfies the requirements for a service cooperative under paragraphs (1), (2), and (4) of subsection (a) and subsidiaries of the entity, if the entity is organized to benefit agriculture in furtherance of the welfare of its farmer-members and is operated on a not-for-profit basis.".

SEC. 507. NON-VOTING REPRESENTATIVE ON BOARD OF FUNDING CORPORATION.

Paragraph (2) of section 4.9(d) (12 U.S.C. 2160(d)(2)) is amended to read as follows:

"(2) NON-VOTING REPRESENTATIVES.—

"(A) ASSISTANCE BOARD.—During the period in which the Assistance Board is in existence, the board of directors of the Assistance Board shall designate one of its directors to serve as a non-voting representative to the board of directors of the Corporation.

"(B) MEETINGS.—The person designated by the Assistance Board under subparagraph (A) may attend and participate in all deliberations of the board of directors of the Corporation.

"(C) TERMINATION OF ASSISTANCE BOARD.—After termination of the Assistance Board, neither the Assistance Board nor its successor, the Farm Credit System Insurance Corporation, shall have any representation on the board of directors of the Corporation.".

SEC. 508. REPEAL OF PROHIBITION AGAINST GUARANTEE OF CERTAIN INSTRUMENTS OF INDEBTEDNESS.

Section 4.16 (12 U.S.C. 2204) is repealed.

SEC. 509. COMPENSATION OF BANK DIRECTORS.

Section 4.21 (12 U.S.C. 2209) is amended to read as follows:

"SEC. 4.21. COMPENSATION OF BANK DIRECTORS.

"(a) IN GENERAL.—The Farm Credit Administration shall monitor the compensation of members of the board of directors of a System bank received as compensation for serving as a director of the bank to ensure that the amount of the compensation does not exceed a level of $20,000 per year, as adjusted to reflect changes in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics, unless the Farm Credit Administration determines that such level adversely affects the safety and soundness of the bank.

"(b) WAIVER.—The Farm Credit Administration may waive the limitation prescribed in subsection (a) under exceptional circumstances, as determined in accordance with regulations promulgated by the Farm Credit Administration.".

SEC. 510. CLARIFICATION OF TREATMENT OF FARM CREDIT ADMINISTRATION OPERATING EXPENSES.

Section 5.15(b)(1) (12 U.S.C. 2250(b)(1)) is amended—

(1) by inserting ", for purposes of sequestration," after "regard"; and

(2) by striking "or any other law".

SEC. 511. APPROVAL OF COMPETITIVE CHARTERS.

Section 5.17(a) (12 U.S.C. 2252(a)) is amended by adding at the end the following new paragraphs:

"(13)(A) Subject to subparagraph (B), the Farm Credit Administration may approve an amendment to the charter of any institution of the Farm Credit System operating under title I or II, which would authorize the institution to exercise lending authority in any territory—

"(i) in the geographic area served by an association that was reassigned pursuant to section 433 of the Agricultural Credit Act of 1987 (12 U.S.C. 2071 note) (where the geographic area was a part of the association's territory as of the date of the reassignment); and

"(ii) in which the charter of an institution that is not seeking the charter amendment authorizes the institution to exercise the type of lending authority that is the subject of the charter request.

"(B) The Farm Credit Administration may approve a charter amendment under subparagraph (A) only on the approval of—

"(i) the respective boards of directors of the associations that, if the charter request is approved, would exercise like lending authority in any of the territory that is the subject of the charter request;

"(ii) a majority of the stockholders of each association described in clause (i) voting, in person or by proxy, at a duly authorized stockholders' meeting; and

"(iii) the respective boards of directors of the Farm Credit Banks that, if the charter request is approved, would exercise, either directly or through associations, like lending authority in any of the territory described in subparagraph (A)(i).

"(14)(A) Subject to subparagraph (B), the Farm Credit Administration may approve a request to charter an association of the

Farm Credit System to operate under title II where the proposed charter—

"(i) will include any of the geographic area included in the territory served by an association that was reassigned pursuant to section 433 of the Agricultural Credit Act of 1987 (12 U.S.C. 2071 note) (where the geographic area was a part of the association's territory as of the date of the reassignment); and

"(ii) will authorize the association to exercise lending authority in any territory in the geographic area in which the charter of an association that is not requesting the charter authorizes the association to exercise the type of lending authority that is the subject of the charter request.

"(B) The Farm Credit Administration may approve a charter request under subparagraph (A) only on the approval of—

"(i) the respective boards of directors of the associations that, if the charter request is approved, would exercise like lending authority in any of the territory that is the subject of the charter request;

"(ii) a majority vote of the stockholders (if any) of each association described in clause (i) voting, in person or by proxy, at a duly authorized stockholder's meeting; and

"(iii) the respective boards of directors of the Farm Credit Banks that, if the charter request is approved, would exercise, either directly or through associations, like lending authority in any of the territory described in subparagraph (A)(i).".

SEC. 512. EXAMINATIONS.

The third sentence of section 5.19(a) (12 U.S.C. 2254(a)) is amended by striking "shall include" and inserting "may include, if appropriate".

SEC. 513. AUTHORITY TO EXAMINE SYSTEM INSTITUTIONS.

(a) AUTHORITY OF FARM CREDIT SYSTEM INSURANCE CORPORATION.—Section 5.59 (12 U.S.C. 2277a–8) is amended—

(1) in the section heading, by striking "INSURED SYSTEM BANKS" and inserting "SYSTEM INSTITUTIONS"; and

(2) by striking subsection (b) and inserting the following new subsection:

"(b) EXAMINATION OF SYSTEM INSTITUTIONS.—

"(1) EXAMINATION AUTHORITY.—

"(A) IN GENERAL.—If the Board of Directors considers it necessary to examine an insured System bank, a production credit association, an association making direct loans under the authority provided under section 7.6, or any System institution in receivership, the Board may, using Farm Credit Administration examiners, conduct the examination using reports and other information on the System institution prepared or held by the Farm Credit Administration.

"(B) REQUEST FOR ADDITIONAL EXAMINATION OR OTHER INFORMATION.—If the Board determines that such reports or information are not adequate to enable the Corporation to carry out the duties of the Corporation under this subsection, the Board shall request the Farm Credit Administration to examine or to obtain other information from or about the System institution and provide to the Corporation the resulting examination report or such other information.

"(2) APPOINTMENT OF EXAMINERS.—If the Farm Credit Administration informs the Corporation that the Farm Credit Administration is unable to comply with a request made under paragraph (1)(B) with respect to a System institution, the Board may appoint examiners to examine the institution.

"(3) POWERS AND REPORT.—Each examiner appointed under paragraph (2) shall make such examination of the affairs of the System institution as the Board may direct, and shall make a full and detailed report of the examination to the Corporation.

"(4) APPOINTMENT OF CLAIM AGENTS.—The Board of Directors of the Corporation shall appoint claim agents who may investigate and examine all claims for insured obligations.".

(b) DUTIES OF THE FARM CREDIT ADMINISTRATION.—Section 5.19 (12 U.S.C. 2254) is amended by adding at the end the following new subsection:

"(d) On receipt of a request made under section 5.59(b)(1)(B) with respect to a System institution, the Farm Credit Administration shall—

"(1) furnish for the confidential use of the Farm Credit System Insurance Corporation reports of examination of the institution and other reports or information on the institution; and

"(2)(A) examine, or obtain other information on, the institution and furnish for the confidential use of the Farm Credit System Insurance Corporation the report of the examination and such other information; or

"(B) if the Farm Credit Administration Board determines that compliance with the request would substantially impair the ability of the Farm Credit Administration to carry out the other duties and responsibilities of the Farm Credit Administration under this Act, notify the Board of Directors of the Farm Credit System Insurance Corporation that the Farm Credit Administration will be unable to comply with the request.".

SEC. 514. FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST REPORTING BY DIRECTORS, OFFICERS, AND EMPLOYEES OF FARM CREDIT SYSTEM INSTITUTIONS.

(a) FINDINGS.—Congress finds that—

(1) the disclosure of the compensation paid to, loans made to, and transactions made with a Farm Credit System institution by, directors and senior officers of the institution provides the stockholders of the institutions with information necessary to better manage the institutions, provides the Farm Credit Administration with information necessary to efficiently and effectively regulate the institutions, and enhances the financial integrity of the Farm Credit System by making the information available to potential investors;

(2) the reporting of potential conflicts of interest by directors, officers, and employees of institutions of the Farm Credit System benefits the stockholders of the institutions, helps to ensure the financial viability of the institutions, provides information valuable to the Farm Credit Administration in periodic examinations of the institutions, and therefore enhances the safety and soundness of the Farm Credit System; and

(3) the directors, officers, or employees of some Farm Credit System institutions may not be subject to the regulations of the Farm Credit Administration requiring the disclosure of the financial information and the reporting of the potential conflicts of interest.

(b) PURPOSE.—It is the purpose of this section to ensure that the information reported by the directors, officers, and employees of Farm Credit System institutions under regulations of the Farm Credit Administration requiring the disclosure of financial information and the reporting of potential conflicts of interest—

(1) provides the stockholders of all Farm Credit System institutions with information to assist the stockholders in making informed decisions regarding the operation of the institutions;

(2) provides investors and potential investors with information necessary to assist them in making investment decisions regarding Farm Credit System obligations or institutions; and

(3) provides the Farm Credit Administration with information necessary to allow the Farm Credit Administration to effectively and efficiently examine and regulate all Farm Credit System institutions and thus enhance the safety and soundness of the Farm Credit System.

(c) REVIEW.—Not later than 120 days after the date of enactment of this Act, the Farm Credit Administration shall complete a review of the current regulations of the Farm Credit Administration regarding the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of Farm Credit System institutions. Consistent with the purpose of this section as provided in subsection (b), the review shall address whether the regulations—

(1) are adequate to fulfill the purpose of this section and such other purposes as the Farm Credit Administration determines to be consistent with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and other applicable law, and to be otherwise necessary or appropriate;

(2) currently require the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of all Farm Credit System institutions; and

(3) currently require the disclosure or reporting of the information by all of the appropriate directors, officers, or employees of Farm Credit System institutions.

(d) IMPLEMENTATION.—Not later than 360 days after the date of enactment of this Act, the Farm Credit Administration shall amend its current financial disclosure and conflict of interest regulations as the Administration determines necessary to carry out the purpose of this section and to address any deficiencies in the regulations that the Farm Credit Administration determines necessary pursuant to the review conducted under subsection (c).

SEC. 515. ONE-TIME EFAP ASSISTANCE.

(a) USE OF ACCOUNT.—The Secretary of Agriculture shall use the account in which funds appropriated under section 214 of the Emergency Food Assistance Act of 1983 (Public Law 98–8; 7 U.S.C. 612c note) are credited or deposited, or another account established for the use of the Secretary of Agriculture, for the purpose of purchasing, processing and distributing additional commodities for the emergency food assistance program established under such Act (7 U.S.C. 612c note) as required by this section.

(b) USE OF RECEIPTS.—

(1) IN GENERAL.—Not later than 10 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall—

(A) calculate the estimated present value of the future receipts available to the Federal Government, under procedures or definitions established in the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), as a result of enactment of this Act and the amendments made by this Act; and

(B) advise the Secretary of Agriculture, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate of the dollar amount of that value.

(2) CREDIT.—Not later than 20 days after the date of enactment of this Act, an amount equal to the dollar amount of that value

shall be credited to, or deposited in, the account referred to in subsection (a) by the Secretary of the Treasury.

(c) Required Purchase of Commodities by the Secretary of Agriculture.—

(1) In general.—The Secretary of Agriculture shall—

(A) use all of the funds provided to the Secretary under subsection (a) to purchase, process, and distribute additional commodities for the emergency food assistance program; and

(B) allot the additional commodities to States in accordance with the application of the allocation formula established in section 214(f) of the Emergency Food Assistance Act of 1983 (Public Law 98–8; 7 U.S.C. 612c note) to the total value of the additional commodities.

(2) Types and varieties.—The additional commodities shall be of the types and varieties required under section 214(d) of such Act.

(3) Reallocation.—The additional commodities may be reallocated under procedures established by the Secretary of Agriculture in accordance with section 214(g) of such Act.

(d) Entitlement to Receive Commodities.—Each State shall be entitled to receive during fiscal year 1993 its allotment of the additional commodities purchased by the Secretary of Agriculture under this section.

(e) Termination of Authority.—The authority provided to carry out this section shall terminate on September 30, 1993.

SEC. 516. TECHNICAL CORRECTIONS.

(a) Correction of Reference to Section 1236 of the Food Security Act of 1985.—The matter under the heading "construction and anadromous fish" of title I of the Department of the Interior and Related Agencies Appropriations Act, 1991 (Public Law 101–512; 104 Stat. 1918) is amended by striking "title 16 U.S.C. section 3832(a)(6)" and inserting "section 1232(a)(6) of the Food Security Act of 1985 (16 U.S.C. 3832(a)(6))".

(b) Section 1245(b) of the Food Security Act of 1985.—

(1) Correction.—Section 1245(b) of the Food Security Act of 1985 (16 U.S.C. 3845(b)) is amended by striking "(A) through (G)" and inserting "A through G".

(2) Effective date.—The amendment made by paragraph (1) shall take effect immediately after section 1443 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624; 104 Stat. 3602) took effect.

(c) Section 307(a)(6)(B) of the Consolidated Farm and Rural Development Act.—

(1) Correction.—Section 307(a)(6)(B) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1927(a)(6)(B)) is amended by striking clause (ii), and by redesignating clauses (iii) through (viii) as clauses (ii) through (vii), respectively.

(2) Effective date.—The amendments made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by section 501(a) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102–237; 105 Stat. 1865) took effect.

(d) Section 310B(c) of the Consolidated Farm and Rural Development Act.—Section 310B(c) (7 U.S.C. 1932(c)) is amended by striking "business enterprises," and inserting "business enterprises or the creation, expansion, and operation of rural distance learning networks or rural learning programs that provide educational instruction or job training instruction related to potential employment or job advancement to adult students,".

(e) Section 310D(a) of the Consolidated Farm and Rural Development Act.—

(1) Correction.—Section 310D(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1934(a)) is amended by striking "304(d)(1)" and inserting "304(a)(1)".

(2) Effective date.—The amendment made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by section 501(a) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102–237; 105 Stat. 1865) took effect.

(f) Section 312(a) of the Consolidated Farm and Rural Development Act.—

(1) Replacement of unexecutable amendment made by the food, agriculture, conservation, and trade act of 1990.—

(A) Correction.—Subsection (b) of section 1818 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101–624; 104 Stat. 3830) is amended to read as follows:

"(b) Operating Loan Purposes.—The first sentence of section 312(a) (7 U.S.C. 1942(a)) is amended—

"(1) by striking 'and' at the end of clause (11); and

"(2) by inserting ', and (13) borrower training under section 359' before the period at the end.".

(B) Effective date.—The amendment made by subparagraph (A) shall take effect as if included in the Food, Agriculture, Conservation, and Trade Act of 1990 at the time such Act became law.

(2) Repeal of unexecutable amendment made by the food, agriculture, conservation, and trade act amendments of 1991.—Subsection (b) of section 501 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102–237; 105 Stat. 1866) is repealed. The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) shall be applied and administered as if such subsection had never become law.

(g) Amendments to Section 331E of the Consolidated Farm and Rural Development Act.—

(1) Correction.—Section 331E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981e) is amended—

(A) in subsection (a), by striking "Disaster Relief Act of 1974" and inserting "Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)"; and

(B) in subsection (b), by inserting "Robert T. Stafford" before "Disaster Relief".

(2) Effective date.—The amendments made by paragraph (1) of this subsection shall take effect immediately after section 501(d) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102–237; 105 Stat. 1866) took effect.

(h) Section 335(e)(1)(A)(i) of the Consolidated Farm and Rural Development Act.—

(1) Corrections to amendment made by the food, agriculture, conservation, and trade act amendments of 1991.—Section 501(f)(1) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102–237; 105 Stat. 1867) is amended—

(A) by inserting "the first place such term appears" before "and all that follows"; and

(B) by striking "borrower-owner (as defined in subparagraph (F)" and inserting "the borrower-owner (as defined in subparagraph (F))".

(2) Effective date.—The amendments made by paragraph (1) of this subsection shall take effect immediately after section 501(f) of the Food, Agriculture, Conservation, and Trade Act of 1990 took effect.

(i) Section 352(a) of the Consolidated Farm and Rural Development Act.—Section 352(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2000(a)) is amended by redesignating the second paragraph (4) as paragraph (5).

(j) Section 352(b)(2) of the Consolidated Farm and Rural Development Act.—

(1) Correction.—Section 352(b)(2) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2000(b)(2)) is amended by striking "borrower's" and inserting "borrower-owner's".

(2) Effective date.—The amendment made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by section 501(f) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102–237; 105 Stat. 1867) took effect.

(k) Section 702(h)(2) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991.—Section 702(h)(2) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102–237; 105 Stat. 1991) is amended by inserting "section" before "2388(h)(3)".

(l) Section 306C(b)(1) of the Consolidated Farm and Rural Development Act.—Section 306C(b)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c(b)(1)) is amended by striking "or connecting such systems to the residences of such individuals" and inserting ", connecting the systems to the residences of the individuals, or installing plumbing and fixtures within the residences of the individuals to facilitate the use of the water supply and waste disposal systems".

(m) Section 306C of the Consolidated Farm and Rural Development Act.—Section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c) is amended by adding at the end the following new subsection:

"(f) Regulations.—Not later than 30 days after the date of enactment of this subsection, the Secretary shall issue interim final regulations, with a request for public comments, implementing this section.".

(n) Targeting of Water and Waste Facility Loans and Grants to Certain Areas.—Paragraph (2) of section 306C(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c(a)(2)) is amended to read as follows:

"(2) Certain Areas Targeted.—Loans and grants under paragraph (1) shall be made only if the loan or grant funds will be used primarily to provide water or waste services, or both, to residents of—

"(A) a county—

"(i) the per capita income of the residents of which is not more than 70 percent of the national average per capita income, as determined by the Department of Commerce; and

"(ii) the unemployment rate of the residents of which is not less than 125 percent of the national average unemployment rate, as determined by the Bureau of Labor Statistics; or

"(B) a rural area that was recognized as a Colonias as of October 1, 1989.".

Amend the title so as to read: "An Act to enhance the financial safety and soundness of the banks and associations of the Farm Credit System, and for other purposes.".

RELIEF OF ELHAM GHANDOUR CICIPPIO

SPECTER AMENDMENT NO. 3418

Mr. SIMPSON (for Mr. SPECTER) proposed an amendment to the bill (S.

2499) for the relief of Elham Ghandour Cicippio, as follows:

On page 1, line 9, strike "310(d)" insert "316(a)(1)".

On page 1, line 6, strike "316" insert "319(a)".

MEDICAL COST CONTAINMENT ACT

LEAHY (AND LUGAR) AMENDMENT NO. 3419

Mr. FORD (for Mr. LEAHY, for himself and Mr. LUGAR) proposed an amendment to the bill (S. 2893) to amend the Internal Revenue Code of 1986 to establish medical care savings benefits, as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Agricultural Credit, Rural Development, and Commodity Marketing Improvements Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FARM CREDIT BANKS AND ASSOCIATIONS SAFETY AND SOUNDNESS

Sec. 101. Short title.
Sec. 102. References to the Farm Credit Act of 1971.

Subtitle A—Improvements to Farm Credit System Safety and Soundness

Sec. 111. Definition of permanent capital.
Sec. 112. Qualifications of Farm Credit Administration Board members.

Subtitle B—Farm Credit System Insurance Corporation

Sec. 121. Farm Credit System Insurance Corporation.
Sec. 122. Statutory successor to Assistance Board agreements.
Sec. 123. Use of Farm Credit Administration personnel.
Sec. 124. GAO reports on risk-based insurance premiums, access to association capital, supplemental premiums, and consolidation.

Subtitle C—Repayment of Farm Credit System Debt Obligations

Sec. 131. Capital preservation.
Sec. 132. Preferred stock.
Sec. 133. Systemwide repayment obligation.
Sec. 134. Repayment of Treasury-paid interest
Sec. 135. Transfer of obligations from associations to banks; other matters.
Sec. 136. Defaults.
Sec. 137. Authority of Financial Assistance Corporation.
Sec. 138. Technical amendments.

Subtitle D—Clarification of Certain Authorities

Sec. 141. Clarification of the status and powers of certain institutions of the Farm Credit System.

Subtitle E—Miscellaneous

Sec. 151. Valuation reserves of production credit associations.
Sec. 152. Risk management participation authority.
Sec. 153. Equity voting for one director of each bank for cooperatives.
Sec. 154. Technical amendment.
Sec. 155. Expansion of water and sewer lending authority of banks for cooperatives.
Sec. 156. Eligibility to borrow from a bank for cooperatives.
Sec. 157. Non-voting representative on board of Funding Corporation.
Sec. 158. Repeal of prohibition against guarantee of certain instruments of indebtedness.
Sec. 159. Compensation of bank directors.
Sec. 160. Clarification of treatment of Farm Credit Administration operating expenses.
Sec. 161. Approval of competitive charters.
Sec. 162. Examinations.
Sec. 163. Authority to examine System institutions.
Sec. 164. Financial disclosure and conflict of interest reporting by directors, officers, and employees of Farm Credit System institutions.

TITLE II—AGRICULTURAL CREDIT IMPROVEMENTS

Sec. 201. References to the Consolidated Farm and Rural Development Act.
Sec. 202. Limitation on aggregate indebtedness.
Sec. 203. Interest rate for loans sold into secondary market; guaranteed loan fees.
Sec. 204. Federal-State beginning farmer partnership.
Sec. 205. Grants for private business enterprises.
Sec. 206. Down payment loan program.
Sec. 207. Special assistance to certain qualified beginning farmers and ranchers.
Sec. 208. Graduation of borrowers with operating loans or guarantees to private commercial credit.
Sec. 209. Consideration of borrowers for loan service programs.
Sec. 210. Time period within which county committee is required to meet to consider applications for farm ownership and operating loans and guarantees and beginning farmer plans.
Sec. 211. Increase in period during which county committee loan eligibility certification continues in effect.
Sec. 212. Processing of applications for farm operating loans.
Sec. 213. Graduation of seasoned direct loan borrowers to the loan guarantee program.
Sec. 214. Simplified application for guaranteed loans of $50,000 or less.
Sec. 215. Inventory lease or lease with option to purchase.
Sec. 216. Transfer of Indian lands pledged as collateral for FmHA loans.
Sec. 217. Debt service margin requirements; certified lenders program.
Sec. 218. Definition of qualified beginning farmer or rancher.
Sec. 219. Targeting of funds.
Sec. 220. Equal access to FmHA assistance by gender.
Sec. 221. State mediation programs.
Sec. 222. Regulations.

TITLE III—RURAL ELECTRIFICATION ADMINISTRATION IMPROVEMENTS

Sec. 301. Short title.
Sec. 302. Discounted loan prepayment.
Sec. 303. Improvement of health care services and educational services through telecommunications.

TITLE IV—MISCELLANEOUS

Sec. 401. Use of electronic cotton warehouse receipts.
Sec. 402. One-time EFAP assistance.
Sec. 403. Expedited action on marketing orders.
Sec. 404. Technical corrections.

TITLE I—FARM CREDIT BANKS AND ASSOCIATIONS SAFETY AND SOUNDNESS

SEC. 101. SHORT TITLE.

(a) SHORT TITLE.—This title may be cited as the "Farm Credit Banks and Associations Safety and Soundness Act of 1992".

SEC. 102. REFERENCES TO THE FARM CREDIT ACT OF 1971.

Whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), except to the extent otherwise provided.

Subtitle A—Improvements to Farm Credit System Safety and Soundness

SEC. 111. DEFINITION OF PERMANENT CAPITAL.

Paragraph (1) of section 4.3A(a) (12 U.S.C. 2154a(a)(1)) is amended to read as follows:

"(1) PERMANENT CAPITAL.—The term 'permanent capital' means—

"(A) current year retained earnings;

"(B) allocated and unallocated earnings (which, in the case of earnings allocated in any form by a System bank to any association or other recipient and retained by the bank, shall be considered, in whole or in part, permanent capital of the bank or of any such association or other recipient as provided under an agreement between the bank and each such association or other recipient);

"(C) all surplus (less allowances for losses);

"(D) stock issued by a System institution, except—

"(i) stock that may be retired by the holder of the stock on repayment of the holder's loan, or otherwise at the option or request of the holder; or

"(ii) stock that is protected under section 4.9A or is otherwise not at risk; and

"(E) any other debt or equity instruments or other accounts that the Farm Credit Administration determines appropriate to be considered permanent capital.".

SEC. 112. QUALIFICATIONS OF FARM CREDIT ADMINISTRATION BOARD MEMBERS.

Section 5.8 (12 U.S.C. 2242) is amended by adding at the end the following new subsection:

"(e) The President shall appoint members of the Board who—

"(1) are experienced or knowledgeable in agricultural economics and financial reporting and disclosure;

"(2) are experienced or knowledgeable in the regulation of financial entities; or

"(3) have a strong financial, legal, or regulatory background.".

Subtitle B—Farm Credit System Insurance Corporation

SEC. 121. FARM CREDIT SYSTEM INSURANCE CORPORATION.

(a) IN GENERAL.—Section 5.53 (12 U.S.C. 2277a–2) is amended to read as follows:

"SEC. 5.53. BOARD OF DIRECTORS.

"(a) IN GENERAL.—

"(1) ESTABLISHMENT.—The management of the Corporation shall be vested in a Board of Directors (referred to in this section as the 'Board'). The Board shall establish policies for the Corporation. The Board shall provide for the performance of all the powers and duties vested in the Corporation.

"(2) APPOINTMENT.—The Board shall consist of three members, who shall be citizens of the United States and broadly representative of the public interest. Members of the

Board shall be appointed by the President, by and with the advice and consent of the Senate. Not more than two members of the Board shall be members of the same political party.

"(3) CHAIRPERSON.—Of the persons appointed to the Board, one shall be designated by the President to serve as Chairperson of the Board for the duration of the term of the member.

"(4) POSTEMPLOYMENT PROHIBITION.—A member of the Board shall be ineligible during the time the member is in office and for 2 years thereafter to hold any office, position, or employment in any institution of the Farm Credit System.

"(b) TERM OF OFFICE.—

"(1) IN GENERAL.—The term of office of each member of the Board shall be 6 years, except that the terms of the two members, other than the Chairperson, first appointed under subsection (a) shall expire, one on the expiration of 2 years after the date of appointment, and one on the expiration of 4 years after the date of appointment.

"(2) SUCCESSION.—Members of the Board shall not be appointed to succeed themselves, except that the members first appointed under subsection (a) for a term of less than 6 years may be reappointed for a full 6-year term and members appointed to fill unexpired terms of 3 years or less may be reappointed for a full 6-year term.

"(3) VACANCIES.—Any vacancy shall be filled for the unexpired term on like appointment. Any member of the Board shall continue to serve as a member after the expiration of the term of the member until a successor has been appointed and qualified.

"(c) ORGANIZATION.—

"(1) OATH.—Each member of the Board, within 15 days after notice of appointment, shall subscribe to the oath of office.

"(2) QUORUM.—The Board may transact business if a vacancy exists, if a quorum is present. A quorum shall consist of two members of the Board.

"(3) MEETING.—The Board shall hold meetings at such times and places as the Board may fix and determine. The meetings shall be held on the call of the Chairperson or any two Board members.

"(4) RULES; RECORDS.—The Board shall adopt such rules as the Board considers appropriate for the transaction of business by the Board, and shall keep permanent and accurate records and minutes of the actions and proceedings of the Board.

"(d) COMPENSATION.—

"(1) IN GENERAL.—The members of the Board shall devote their full time and attention to the business of the Board.

"(2) CHAIRPERSON.—The Chairperson of the Board shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5, United States Code.

"(3) OTHER MEMBERS.—Each of the other members of the Board shall receive compensation at the rate prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(4) EXPENSES.—Each member of the Board shall be reimbursed for necessary travel, subsistence, and other expenses in the discharge of the official duties of the member without regard to other laws with respect to allowance for travel and subsistence of officers and employees of the United States.".

(b) CONFORMING AMENDMENTS.—

(1) CHAIRPERSON.—Section 5314 of title 5, United States Code, is amended by adding at the end the following new item:

"Chairperson, Board of Directors of the Farm Credit System Insurance Corporation.".

(2) MEMBERS.—Section 5315 of such title is amended by adding at the end the following new item:

"Members, Board of Directors of the Farm Credit System Insurance Corporation.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall become effective on January 1, 1996.

(2) TRANSITIONAL PROVISION.—The Board of Directors of the Farm Credit System Insurance Corporation as established by section 5.53 of the Farm Credit Act of 1971 (12 U.S.C. 2277a–2) (as it existed before the amendments made by subsection (a) of this section) shall continue in existence and continue to manage the Farm Credit System Insurance Corporation until at least two members are appointed by the President, by and with the advice and consent of the Senate, to the new Board established by section 5.53 of such Act (as amended by subsection (a) of this section).

SEC. 122. STATUTORY SUCCESSOR TO ASSISTANCE BOARD AGREEMENTS.

(a) IN GENERAL.—Section 5.58(2) (12 U.S.C. 2277a–7(2)) is amended by adding at the end the following new sentence: "The Corporation shall succeed to the rights of the Farm Credit System Assistance Board under agreements between the Farm Credit System Assistance Board and System institutions certifying the institutions as eligible to issue preferred stock pursuant to title VI on the termination of the Assistance Board on the date provided in section 6.12.".

(b) CONFORMING AMENDMENTS.—Section 5.35(4) (12 U.S.C. 2271(4)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(C) after December 31, 1992, mean any significant noncompliance by a System institution (as determined by the Farm Credit Administration, in consultation with the Farm Credit System Insurance Corporation) with any term or condition imposed on the institution by the Farm Credit System Assistance Board under section 6.6 or by the Farm Credit System Insurance Corporation under section 5.61.".

SEC. 123. USE OF FARM CREDIT ADMINISTRATION PERSONNEL.

Section 5.59(a) (12 U.S.C. 2277a–8(a)) is amended by adding at the end the following new paragraph:

"(5) USE OF FARM CREDIT ADMINISTRATION PERSONNEL.—To the extent practicable, the Corporation shall use the personnel and resources of the Farm Credit Administration to minimize duplication of effort and to reduce costs.".

SEC. 124. GAO REPORTS ON RISK-BASED INSURANCE PREMIUMS, ACCESS TO ASSOCIATION CAPITAL, SUPPLEMENTAL PREMIUMS, AND CONSOLIDATION.

(a) IN GENERAL.—The Comptroller General of the United States shall investigate, review, and evaluate the feasibility and appropriateness, and report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, on the advantages and disadvantages of providing the Farm Credit System Insurance Corporation with—

(1) the authority to directly or indirectly assess associations to ensure that all System capital is available to prevent losses to investors, including a study of—

(A) the effects of direct assessments by the Insurance Corporation on associations, including interest rate charges to borrowers;

(B) the effects of requiring that banks pass along the cost of insurance premiums to owner associations and other financing institutions having a discount relationship with the bank;

(C) the effects of requiring owner associations to purchase stock in the district bank, if needed, to prevent a bank from having to return to the Insurance Corporation for financial assistance once the assistance has been given;

(D) the effects of the purchase of stock from funds of the association (through funds obtained from other than the district bank) or allowing the bank to increase the direct line of credit to the association in order to fund the purchase; and

(E) the effect that authorizing the Insurance Corporation to assess the association could have on the association's incentives for building capital;

(2) the authority to collect supplemental insurance premiums under certain circumstances, including a study of—

(A) the possibility of the Insurance Fund being depleted more rapidly than it could be replenished under the current premium structure;

(B) the effects of the depletion under alternate economic scenarios and the probability of the occurrence of each of those scenarios;

(C) the effects on capital accumulation and interest rates of levying a supplemental premium; and

(D) limitations on any authority to levy supplemental premiums and the underlying basis for the limitations; and

(3) the authority to establish an insurance premium rate structure that would take into account, on an institution-by-institution basis, asset quality risk, interest rate risk, earnings, and capital.

(b) REPORT ON CONSOLIDATION.—

(1) IN GENERAL.—The Comptroller General of the United States shall evaluate and report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on whether there are likely to be benefits to farmer and rancher borrowers of the Farm Credit System institutions of merging the 10 district Farm Credit Banks (and the Federal Intermediate Credit Bank of Jackson) into fewer regional Farm Credit Banks.

(2) FACTORS.—In preparing the report, the Comptroller General shall consider—

(A) the potential reduction in services to farmers and ranchers;

(B) the potential benefits of jointly providing services to farmers and ranchers among these proposed regional districts;

(C) any economy of scale effects on a district-by-district basis;

(D) the potential impact on the cooperative nature of the Farm Credit System;

(E) the potential impact on bank and association relationships; and

(F) the potential impact on System-wide bond issuances.

(c) POTENTIAL SAVINGS.—The Comptroller General of the United States shall evaluate and report to the appropriate committees of Congress on the potential savings to the Farm Credit System and its shareholders that might occur if System institutions and the Farm Credit Administration were required to comply with General Services Administration standards for office space, furniture, and equipment.

(d) DEADLINE.—The reports required under this section shall be provided to Congress not later than 12 months after the date of enactment of this Act.

Subtitle C—Repayment of Farm Credit System Debt Obligations

SEC. 131. CAPITAL PRESERVATION.

Section 6.9(e)(3) (12 U.S.C. 2278a–9(e)(3)) is amended—

(1) by striking subparagraph (C) and inserting the following new subparagraph:

"(C) PAYMENT OF PRINCIPAL.—

"(i) IN GENERAL.—After the end of the 15-year period beginning on the date of the issuance of any obligation issued to carry out this subsection, the banks operating under this Act shall pay to the Financial Assistance Corporation, on demand, an amount equal to the outstanding principal of the obligation. Each bank shall pay a proportion of the principal equal to—

"(I) the average accruing loan volume of the bank for the preceding 15 years; divided by

"(II) the average accruing loan volume of all banks of the System for the same period.

"(ii) BANKS LEAVING SYSTEM.—Any bank leaving the Farm Credit System pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of the payment required under this subparagraph had the bank remained in the System.

"(iii) BANKS UNDERGOING LIQUIDATION.—With respect to any bank undergoing liquidation under this Act, a liability to the Financial Assistance Corporation in the amount of the payment required under this subparagraph (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of the bank.

"(iv) OBLIGATIONS OF OTHER BANKS.—The obligations of other banks shall not be reduced in anticipation of any recoveries under this subparagraph from banks leaving the System or in liquidation, but the Financial Assistance Corporation shall apply the recoveries, when received, and all earnings on the recoveries, to reduce the other banks' payment obligations, or, to the extent the recoveries are received after the other banks have met their entire payment obligation, shall refund the recoveries, when received, to the other banks in proportion to the other banks' payments.";

(2) by redesignating subparagraph (D) as subparagraph (E);

(3) by inserting after subparagraph (C) the following new subparagraph:

"(D) ANNUAL PAYMENTS.—

"(i) IN GENERAL.—In order to provide for the orderly funding and discharge over time of the obligation of each System bank to the Financial Assistance Corporation under subparagraph (C), each System bank shall enter into or continue in effect an agreement with the Financial Assistance Corporation under which the bank will make annual annuity-type payments to the Financial Assistance Corporation, beginning no later than December 31, 1992 (except for any bank that did not meet its interim capital requirement on December 31, 1990, in which case the bank shall begin making the payments no later than December 31, 1993) in amounts designed to accumulate, in total, including earnings on the amounts, to 90 percent of the bank's ultimate obligation. The Financial Assistance Corporation shall partially discharge the bank from its obligation under subparagraph (C) to the extent of each such payment and the earnings on the payment as earned.

"(ii) CAPITAL REQUIREMENTS.—The agreement shall not require payments to be made to the extent that making a particular payment or part of a payment would cause the bank to fail to satisfy applicable regulatory permanent capital requirements, but shall provide for recalculation of subsequent payments accordingly.

"(iii) INVESTMENT; AVAILABILITY.—The funds received by the Financial Assistance Corporation pursuant to the agreements shall be invested in eligible investments as defined in section 6.25(a)(1). The funds and the earnings on the funds shall be available only for the payment of the principal of the bonds issued by the Financial Assistance Corporation under this subsection."; and

(4) in subparagraph (E) (as redesignated by paragraph (2)), by inserting before the period at the end the following: ", nor shall the obligation to make future annuity payments to the Financial Assistance Corporation under subparagraph (D) be considered a liability of any System bank".

SEC. 132. PREFERRED STOCK.

Subparagraph (B) of section 6.26(d)(1) (12 U.S.C. 2278b–6(d)(1)(B)) is amended to read as follows:

"(B) PAYMENTS BY INSTITUTIONS.—

"(i) IN GENERAL.—Except as provided in subparagraph (C), in order to enable the Financial Assistance Corporation to repay the obligation referred to in subparagraph (A), each institution that issued preferred stock under section 6.27(a) with respect to the obligation (or the successor to the institution) shall pay to the Financial Assistance Corporation, before the maturity date of the obligation, an amount equal to the par value of the stock outstanding for the institution.

"(ii) ANNUAL APPROPRIATION.—Except as provided in clause (iii), each year beginning in 1992, as soon as practicable following the end of the prior year, each such institution (except institutions in receivership and institutions that have previously redeemed their preferred stock) shall appropriate from its earnings in the prior year to an appropriated unallocated surplus account with respect to preferred stock, the sum of—

"(I) the greater of—

"(aa) such amount as the institution may be required to appropriate under any assistance agreement the institution has with the Farm Credit System Assistance Board or the Farm Credit System Insurance Corporation; or

"(bb) the amount that, if appropriated to the account in equal amounts in each year thereafter until the maturity of the obligation referred to in subparagraph (A), would cause the amount in the account to equal the par value of the preferred stock issued by the institution with respect to the obligation; plus

"(II) any amount that had been appropriated to the account in a previous year but had thereafter been offset by losses.

"(iii) LIMITATION.—An annual appropriation shall not be made to the extent that the appropriation would exceed the institution's net income (as determined pursuant to generally accepted accounting principles) in that year or to the extent that the appropriation would cause the institution's preferred stock to be impaired.

"(iv) USE.—The amount in the appropriated unallocated surplus account shall be unavailable to pay dividends or other allocations or distributions to shareholders or holders of participation certificates. The account shall be senior to all other unallocated surplus accounts but junior to all preferred and common stock for purposes of the application of operating losses.

"(v) PREFERRED STOCK.—The appropriations of surplus by an institution shall not affect the treatment of its preferred stock (and of the appropriated unallocated surplus) as equity for purposes of regulatory permanent capital requirements.".

SEC. 133. SYSTEMWIDE REPAYMENT OBLIGATION.

Subparagraph (C) of section 6.26(d)(1) (12 U.S.C. 2278b–6(d)(1)(C)) is amended to read as follows:

"(C) SYSTEMWIDE REPAYMENT.—

"(i) IN GENERAL.—In order to enable the Financial Assistance Corporation to repay the obligations issued to provide assistance under subsections (c) and (e) of section 410 of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note) and section 4.9A(c) of this Act, or issued to provide funds to cover the expenses of the Assistance Board or the Financial Assistance Corporation under sections 6.7(a) and 6.24, respectively, of this Act, each System bank shall pay to the Financial Assistance Corporation a proportion, as calculated by the Financial Assistance Corporation, of the obligation equal to—

"(I) the average accruing retail loan volume of the bank and its affiliated associations for the preceding 15 years; divided by

"(II) the average accruing retail loan volume of all such banks and their affiliated associations for the same period.

"(ii) EXPENSE ITEM.—The annual increase in the present value of the estimated obligation of each bank to the Financial Assistance Corporation under this subparagraph shall be recorded each year as an expense item, in accordance with generally accepted accounting principles, on the books of the bank.

"(iii) PASS THROUGH.—A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either directly, or indirectly through loan pricing or otherwise) all or part of the amount necessary to satisfy the payment requirement to its affiliated direct lender associations based on proportionate average accruing retail loan volumes for the preceding 15 years, except that the bank shall remain primarily liable for the amount.

"(iv) BANKS LEAVING SYSTEM.—Any bank leaving the Farm Credit System pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of the payment required under this subparagraph had the bank remained in the System. A liability to the Financial Assistance Corporation in this amount (calculated as if the bank had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of any bank undergoing liquidation. The obligations of other banks shall not be reduced in anticipation of any such recoveries from banks leaving the System or in liquidation, but the Financial Assistance Corporation shall apply the recoveries, when received, and all earnings on the recoveries, to reduce the other banks' payment obligations, or, to the extent the recoveries are received after the other banks have met their entire payment obligation, shall refund the recoveries, when received, to the other banks in proportion to the other banks' payments.

"(v) ASSOCIATIONS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any association leaving the Farm Credit System pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the present value of the future payment obligation of its supervising bank. A liability to the bank in this amount (calculated as if the association had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the bank against the estate of any association undergoing liquidation.".

SEC. 134. REPAYMENT OF TREASURY-PAID INTEREST

(a) IN GENERAL.—Paragraph (5) of section 6.26(c) (12 U.S.C. 2278b–6(c)(5)) is amended to read as follows:

"(5) REPAYMENT OF TREASURY-PAID INTEREST.—

"(A) IN GENERAL.—On the maturity date of the last-maturing debt obligation issued under subsection (a), the Financial Assistance Corporation shall repay to the Secretary of the Treasury the total amount of any annual interest charges on the debt obligations that Farm Credit System institutions (other than the Financial Assistance Corporation) have not previously paid, and the Financial Assistance Corporation shall not be required to pay any additional interest charges on the payments.

"(B) ASSESSMENT.—In order to provide for the orderly funding by the banks of the System of the repayment by the Financial Assistance Corporation to the Secretary of the Treasury, the Financial Assistance Corporation shall assess each System bank, on or about December 31 of each year beginning in 1992, and each System bank shall promptly pay to the Financial Assistance Corporation, an annual annuity type payment in an amount designed to accumulate, in total, including earnings thereon, the amount of the bank's ultimate obligation (as determined by the Corporation on a fair and equitable basis), and no greater than .0006 nor less than .0004 times the bank's and its affiliated associations' average accruing retail loan volume for the preceding year', subject to—

"(i) upward or downward adjustment, as appropriate, by the Financial Assistance Corporation during each of the last 5 years prior to the date the Financial Assistance Corporation is obligated to make the repayment, in order to ensure that the Financial Assistance Corporation will have the amount of funds needed to make the repayment on the due date; and

"(ii) reduction or termination in any year when the funds paid to the Financial Assistance Corporation, including any anticipated future earnings on the funds, are sufficient to make the repayment on the due date.

"(C) INVESTMENT OF FUNDS.—The Financial Assistance Corporation shall invest funds derived from the investment in eligible investments as defined in section 6.25(a)(1). The funds and the earnings on the funds shall be available only for the repayment to the Secretary of the Treasury provided for in subparagraph (A).

"(D) PASS THROUGH.—A bank may (and, to the extent necessary to satisfy its obligations, shall) pass on (either directly, or indirectly through loan pricing or otherwise) all or part of the assessments to its affiliated direct lender associations based on proportionate average accruing retail loan volumes for the preceding year, but the bank shall remain primarily liable for the amounts.

"(E) LIABILITY.—

"(i) BANKS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any bank terminating System status pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to the Financial Assistance Corporation the estimated present value of all future such assessments against the bank had the bank remained in the System. A liability to the Financial Assistance Corporation in this amount (calculated as if the bank had left the System on the date the bank was placed in liquidation) shall be recognized as a claim in favor of the Financial Assistance Corporation against the estate of any bank undergoing liquidation.

"(ii) NO ANTICIPATORY REDUCTIONS IN OTHER OBLIGATIONS.—The obligations of other banks shall not be reduced in anticipation of any recoveries under this subparagraph from banks leaving the System or in liquidation.

"(iii) REFUND OF RECOVERIES.—The Financial Assistance Corporation shall apply the recoveries, when received, and all earnings on the recoveries, to reduce the other banks' payment obligations, or, to the extent the recoveries are received after the other banks have met their entire payment obligation, shall refund the recoveries, when received, to the other banks in proportion to the other banks' payments.

"(F) ASSOCIATIONS TERMINATING SYSTEM STATUS OR IN LIQUIDATION.—Any association terminating System status pursuant to section 7.10 shall be required, under regulations of the Farm Credit Administration, to pay to its supervising bank a share, based on the association's retail loan volume relative to the retail loan volume of the bank and its affiliated associations had the association remained in the System, of the estimated present value of all future such assessments against the bank. A liability to the bank in this amount (calculated as if the association had left the System on the date it was placed in liquidation) shall be recognized as a claim in favor of the bank against the estate of any association undergoing liquidation.

"(G) CAPITAL REQUIREMENTS.—

"(i) IN GENERAL.—Until the date that is 5 years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), all assessments paid by banks to the Financial Assistance Corporation pursuant to subparagraph (B), and any part of the obligation to pay future assessments to the Financial Assistance Corporation under subparagraph (B) that is recognized as an expense on the books of any System bank or association, shall nonetheless be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements.

"(ii) DURING THE FINAL 5 YEARS PRIOR TO REPAYMENT.—During the—

"(I) period beginning 5 years, and ending 4 years, prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), 60 percent;

"(II) period beginning 4 years, and ending 3 years, prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), 30 percent; and

"(III) period beginning 3 years prior to the date on which the Financial Assistance Corporation is required to repay the Secretary of the Treasury pursuant to subparagraph (A), 0 percent,

of all assessments paid by banks to the Financial Assistance Corporation pursuant to subparagraph (B), and of any part of the obligation to pay future assessments to the Financial Assistance Corporation under subparagraph (B) that is recognized as an expense on the books of any System bank or association, shall nonetheless be included in the capital of the bank or association for purposes of determining its compliance with regulatory capital requirements.".

(b) CONFORMING AMENDMENT.—Section 6.28 (12 U.S.C. 2278b–8) is amended by striking subsection (b) and redesignating subsection (c) as subsection (b).

SEC. 135. TRANSFER OF OBLIGATIONS FROM ASSOCIATIONS TO BANKS; OTHER MATTERS.

Section 6.26 (12 U.S.C. 2278b–6) is amended—

(1) in subsection (c)—

(A) in the subparagraph heading of paragraph (2)(B), by striking "INSTITUTIONS" and inserting "BANKS";

(B) by striking "institutions" each place it appears in paragraphs (2)(B), (3), and (4) and inserting "banks"; and

(C) in paragraph (2), by striking subparagraphs (C) and (D) and inserting the following new subparagraph:

"(C) ALLOCATION.—During each year of the second 5-year period, each System bank shall pay to the Financial Assistance Corporation a proportion, as calculated by the Financial Assistance Corporation, of the interest due from System banks under this paragraph equal to—

"(i) the amount of the average accruing retail loan volume of the bank and its affiliated associations for the preceding year; divided by

"(ii) the total average accruing retail loan volume of all such banks and their affiliated associations for the preceding year.";

(2) in subsection (d)(1)—

(A) by striking subparagraph (D); and

(B) by redesignating subparagraph (E) as subparagraph (D); and

(3) by adding at the end the following new subsection:

"(e) ADMINISTRATION.—

"(1) DEFINITION OF RETAIL LOAN VOLUME.—As used in this section, the term 'retail loan volume' means all loans (as defined in accordance with generally accepted accounting principles) by a System bank or association, excluding loans by such a bank or association to another System institution.

"(2) CALCULATION OF AVERAGE ANNUAL LOAN VOLUMES.—For purposes of this section and section 6.9, average annual loan volumes shall be calculated using month-end balances.

"(3) EXCLUSION OF BANKS UNDERGOING LIQUIDATION.—For purposes of this section and section 6.9, the term 'bank' shall not include a bank that had entered liquidation prior to the date of enactment of this subsection.".

SEC. 136. DEFAULTS.

Section 6.26(d) (12 U.S.C. 2278b–6(d)) is amended—

(1) in paragraph (3)—

(A) in subparagraph (A)—

(i) by striking the heading and inserting the following: "CERTAIN PRINCIPAL AND INTEREST OBLIGATIONS.—";

(ii) in clause (i)—

(I) by inserting after "subsection (a)," the following: "on the payment of principal or interest due under subparagraphs (B) and (C) of section 6.9(e)(3), on the payment of principal due under paragraph (1)(C), or on the payment of an assessment due under subsection (c)(5)(B),";

(II) by striking "of the interest" both places it appears; and

(III) by striking "institution" each place it appears and inserting "bank";

(iii) in clause (ii)—

(I) by striking "of interest";

(II) by striking "institution" and inserting "bank"; and

(III) by striking "such uncollected interest" and inserting "any uncollected amount";

(iv) in clause (iii), by striking "added" and all that follows through the period at the end and inserting "allocated to other System banks in accordance with the allocation mechanism applicable under this Act to the particular defaulted obligation.";

(B) in subparagraph (B), by striking the subparagraph heading and inserting the following new heading: "PRINCIPAL OF BONDS ISSUED TO FUND PURCHASE OF PREFERRED STOCK.—"; and

(C) in subparagraph (C)—

(i) in the heading, by striking "INSTITUTIONS" and inserting "BANKS";

(ii) by striking "institution" and inserting "bank";

(iii) by striking "institutions" both places it appears and inserting "banks"; and

(iv) by striking "the amount of any interest" and inserting "any amounts"; and

(2) in paragraph (4)—

(A) in subparagraph (A), by inserting "or section 6.9(e)(3)(A)" after "subsection (a)";

(B) in subparagraph (B)—

(i) in clause (i)—

(I) by striking the clause heading and inserting the following new heading: "CERTAIN PRINCIPAL AND INTEREST OBLIGATIONS.—";

(II) by inserting after "subsection (c)," the following: "on the payment of principal or interest due under subparagraphs (B) and (C) of section 6.9(e)(3), on the payment of principal due under paragraph (1)(C), or on the payment of an assessment due under subsection (c)(5)(B),"; and

(III) by striking "institution" each place it appears and inserting "bank"; and

(ii) in clause (ii), by striking the clause heading and inserting the following new heading: "PRINCIPAL OF BONDS ISSUED TO FUND PURCHASE OF PREFERRED STOCK.—".

SEC. 137. AUTHORITY OF FINANCIAL ASSISTANCE CORPORATION.

(a) PURPOSE.—Section 6.21 (12 U.S.C. 2278b-1) is amended by inserting before the period at the end the following: "and to assist, pursuant to section 6.9(e) and subsections (c) through (g) of section 6.26, in the repayment by System institutions to those persons who provided funds in connection with the program".

(b) TERMINATION.—Section 6.31(a) (12 U.S.C. 2278b-11(a)) is amended by striking "terminate on" and inserting the following: "terminate on the complete discharge by the Financial Assistance Corporation of its responsibilities under section 6.9(e) and subsections (c) through (g) of section 6.26 with regard to repayments by System institutions, but in no event later than 2 years following".

SEC. 138. TECHNICAL AMENDMENTS.

(a) TECHNICAL AMENDMENT TO THE FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT AMENDMENTS OF 1991.—Section 204(3) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (P.L. 102-237; 105 Stat. 1855) is amended by striking "in section 1221(1)(D) (16 U.S.C. 3821(1)(D))" and inserting "in section 1221(a)(1)(D) (16 U.S.C. 3821(a)(1)(D))".

(b) TECHNICAL AMENDMENTS TO THE FARM CREDIT ACT OF 1971.—

(1) Section 8.3(c)(13) of the Farm Credit Act of 1971 (12 U.S.C. 2279aa-3(c)(13)) is amended by striking "8.11(g)" and inserting "8.11(e)".

(2) Section 8.11(a)(1)(B)(ii) of such Act (12 U.S.C. 2279aa-11(a)(1)(B)(ii)) is amended by striking "the date of enactment of this section" and inserting "December 13, 1991".

(3) Section 8.32 of such Act (12 U.S.C. 2279bb-1) is amended—

(A) in each of subsections (a), (b)(1)(D), and (b)(2), by striking "the date of the enactment of this section" each place the term appears and inserting "December 13, 1991"; and

(B) in subsection (b)(1)(E), by striking "the date of the enactment of such Act" and inserting "December 13, 1991".

Subtitle D—Clarification of Certain Authorities

SEC. 141. CLARIFICATION OF THE STATUS AND POWERS OF CERTAIN INSTITUTIONS OF THE FARM CREDIT SYSTEM.

(a) CLARIFICATION OF AUTHORITY REGARDING REMAINING FEDERAL INTERMEDIATE CREDIT BANK.—Section 410 of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note) is amended by adding at the end the following new subsection:

"(e) CLARIFICATION OF AUTHORITY REGARDING REMAINING FEDERAL INTERMEDIATE CREDIT BANK.—

"(1) NEGOTIATED MERGER.—

"(A) REQUIREMENT.—

"(i) IN GENERAL.—Not later than June 30, 1993, except as provided in subparagraph (C), the Federal Intermediate Credit Bank of Jackson (as chartered on the date of enactment of this subsection) shall merge with a Farm Credit Bank pursuant to the procedures prescribed by section 7.12 of the Farm Credit Act of 1971 (12 U.S.C. 2279f).

"(ii) MERGER OF ENTIRE BANK.—Notwithstanding subparagraph (B), or any other provision of law, the Farm Credit Administration shall approve a merger of the Federal Intermediate Credit Bank of Jackson only if the Bank (as chartered on the date of enactment of this subsection, except as provided in subparagraph (B)(ii)(II)(bb)) merges in its entirety with a Farm Credit Bank.

"(iii) LIMITED LENDING AUTHORITY.—Notwithstanding any provision of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), the Farm Credit Bank resulting from a merger under this subsection shall have only the lending authorities in the States of Alabama, Louisiana, and Mississippi that the constituent banks exercised in such States immediately prior to the merger, except as may be provided in section 5.17(a)(2) of such Act (12 U.S.C. 2252(a)(2)).

"(B) OPERATING AND MERGER AUTHORITY.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Federal Intermediate Credit Bank of Jackson may operate subject to such provisions of part A of title II of the Farm Credit Act of 1971 (as in effect immediately before the amendment made by section 401 took effect) and such provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) (as in effect after the amendment), as the Farm Credit Administration deems appropriate to carry out the purposes of this subsection and such Act. This subparagraph shall take effect as if it had become law at the same time as the amendment made by section 401 and shall remain in effect until the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

"(ii) LIMITATION ON OPERATING AUTHORITY.—

"(I) IN GENERAL.—Notwithstanding clause (i) and subparagraph (A)(ii), the authority of the Federal Intermediate Credit Bank of Jackson to operate as provided under clause (i) shall expire, and the Farm Credit Administration shall revoke the Bank's charter, immediately on the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

"(II) DISTRICT BOUNDARY MODIFICATION.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson shall not include the authority for the Bank to modify, nor shall the Farm Credit Administration approve such a modification to, the boundaries of the Fifth Farm Credit District to reaffiliate any portion of the District with another Farm Credit Bank, except—

"(aa) in the case of the merger of the entire Bank as an entity with a Farm Credit Bank such that the entire chartered territory of the Federal Intermediate Credit Bank of Jackson (except as provided in item (bb)) is merged with the Farm Credit Bank; and

"(bb) in the case of the reaffiliation of the Northwest Louisiana Production Credit Association with another farm credit district pursuant to the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations under such Act.

"(iii) LIMITATION ON AUTHORITY TO MERGE.—

"(I) IN GENERAL.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank as provided under clause (i) shall expire, and the Farm Credit Administration shall revoke the Bank's charter, immediately on the Bank's merger with a Farm Credit Bank under this subsection, or July 1, 1994, whichever is sooner.

"(II) BANK INTEGRITY.—Notwithstanding clause (i), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank shall be limited to a merger of the Federal Intermediate Credit Bank of Jackson (as chartered on the date of enactment of this subsection to include the territory in the States of Alabama, Louisiana, and Mississippi, except as provided in clause (ii)(II)(bb)) as a whole entity such that the entire chartered territory of the Federal Intermediate Credit Bank of Jackson is merged with the Farm Credit Bank.

"(III) LIMITATION.—Beginning on the date of an order issued by the Farm Credit Administration under subparagraph (D), the authority of the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank shall be limited to the arbitrated merger provided for in paragraph (2).

"(C) EXTENSION.—

"(i) LETTER OF INTENT.—If no later than June 30, 1993, the Federal Intermediate Credit Bank of Jackson delivers to the Farm Credit Administration a letter of intent to merge with a Farm Credit Bank, summarizing the terms and conditions of the merger (including, but not limited to, board composition, capital structure, exchange, or transfer of equities, and termination) signed by the chief executive officer and the members of the boards of directors of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank, the Farm Credit Administration shall, on its determination that the letter of intent represents a bona fide good faith agreement in principle between the two banks to merge, and that there is at least a reasonable prospect that the merger will be completed in an expeditious manner, grant a one-time extension, until a date certain not later than October 31, 1993, of the requirement under subparagraph (A). Any extension provided under this subparagraph may be conditioned on such terms and conditions as the Farm Credit Administration determines necessary to ensure that the merger described in the letter of intent is completed by the closing date of the extension.

"(ii) COMPLIANCE.—If the Farm Credit Administration grants an extension under clause (i), it shall issue an order under subparagraph (D) immediately if—

"(I) the Federal Intermediate Credit Bank of Jackson, or the Farm Credit Bank that is a signatory to the letter of intent under clause (i), provides written notification to the Farm Credit Administration that the bank does not intend to complete the merger described in the letter of intent;

"(II) the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is not complying with any term or condition on which an extension under clause (i) was conditioned; or

"(III) the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is not pursuing in good faith the merger provided for in the letter of intent.

If the Farm Credit Administration issues an order under subparagraph (D) pursuant to this clause, the Federal Intermediate Credit Bank of Jackson shall be deemed to have failed to comply with the requirements of subparagraph (A).

"(D) FAILURE TO MERGE; ISSUANCE OF ORDER.—If the Federal Intermediate Credit Bank of Jackson fails to comply, or notifies the Farm Credit Administration in writing that it does not intend to comply with the requirements of subparagraph (A), the Farm Credit Administration shall, within 5 days after the date specified in subparagraph (A), or such other date specified by the Farm Credit Administration under subparagraph (C), issue, notwithstanding any other provision of law, an order requiring the Federal Intermediate Credit Bank of Jackson to merge with the Farm Credit Bank of Texas in accordance with paragraph (2).

"(2) ARBITRATED MERGER.—

"(A) IN GENERAL.—Not later than 30 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), an arbitrator (or panel of arbitrators) shall be named by the American Arbitration Association in accordance with the Commercial Arbitration Rules of the American Arbitration Association to serve as the arbitrator referred to in this paragraph.

"(B) DUTIES.—The arbitrator shall determine the terms and conditions of the merger required under an order issued under paragraph (1)(D), such that the terms and conditions are fair and equitable to the two banks, their affiliated associations, the stockholders and borrowers of the associations, and the other institutions of the Farm Credit System, and are designed to protect or enhance the safety and soundness of the Farm Credit System. The arbitrator shall have the authority to hire staff and secure the services of consultants as necessary to discharge the duties of the arbitrator under this paragraph.

"(C) EXPENSES.—Notwithstanding any other provision of law, the compensation and expenses of the arbitrator, the fees and expenses of the American Arbitration Association, and any expenses associated with the referendum required under subparagraph (F) shall be paid from the Farm Credit Assistance Fund established under section 6.25 of the Farm Credit Act of 1971 (12 U.S.C. 2278b-5).

"(D) DEVELOPMENT OF MERGER PLANS.—

"(i) IN GENERAL.—Not later than 100 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the arbitrator shall develop and submit for certification to the Farm Credit Administration a plan specifying the terms and conditions of the merger of the two banks required under this paragraph, such that the terms and conditions are fair and equitable to the two banks, their affiliated associations, the stockholders or farmer-borrowers of the associations, and the other institutions of the Farm Credit System, and are designed to protect or enhance the safety and soundness of the Farm Credit System. In devising the plan, the arbitrator shall, to the extent practicable, achieve the following objectives:

"(I) Implementation of the preferences expressed by the affected and interested parties in submissions under clause (ii).

"(II) Valuation of assets fairly, equitably, and consistently for all parties involved.

"(III) Establishment of capitalization and funding terms in a manner that treats farmer-borrowers and stockholders in the two involved farm credit districts equitably and takes account of risk.

"(IV) Ensure the viability of the resulting Farm Credit Bank and associations of the bank and the ability of the resulting bank and associations of the bank to lend to eligible borrowers at reasonable and competitive rates of interest.

"(ii) SUBMISSION OF VIEWS AND INFORMATION.—The arbitrator shall receive from affected and interested parties written submissions, in accordance with fair and reasonable procedures established by the arbitrator, regarding the terms and conditions of an appropriate plan for the merger of the two banks required under this paragraph. The Federal Intermediate Credit Bank of Jackson, the Farm Credit Bank of Texas, and their affiliated associations shall make available all books, records, financial information, and other material that the arbitrator determines is necessary to the development of the plan or the fulfillment of any other requirement under this paragraph. A copy of any submission or information provided to the arbitrator by any party under this paragraph shall be furnished to the Federal Intermediate Credit Bank of Jackson or the Farm Credit Bank of Texas on the written request of the bank and at the bank's expense. The arbitrator shall provide both banks with a reasonable opportunity to review and respond to any submission or information provided by any party.

"(iii) CONTENT OF PLAN; FARM CREDIT BANK.—The plan developed and submitted under clause (i) shall include provisions regarding the following matters:

"(I) The initial composition, following the merger, of the board of directors of the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(II) The valuation, for purposes of the merger, of the assets and liabilities of the merging banks.

"(III) The terms and conditions on which the shares of capital stock of the Federal Intermediate Credit Bank of Jackson and, if necessary, the Farm Credit Bank of Texas, will be converted into shares of the resulting Farm Credit Bank.

"(IV) The capital structure and capitalization levels of the resulting Farm Credit Bank and the affiliated associations of the Farm Credit Bank in the States of Alabama, Louisiana, and Mississippi as the arbitrator determines necessary to carry out the purposes of this paragraph (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(V) The terms of financing agreements between any production credit associations or agricultural credit associations described in clause (iv), and the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(VI) Any other terms and conditions or other matters that the arbitrator considers necessary.

"(iv) CONTENT OF PLAN; AGRICULTURAL CREDIT ASSOCIATIONS.—If the arbitrator determines that the chartering of agricultural credit associations in the States of Alabama, Louisiana, and Mississippi will be in the best interests of the farmers, ranchers, and aquatic producers eligible to borrow from Farm Credit System associations, the plan required under this subparagraph shall also include, based on submissions from the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas, provisions for the establishment of agricultural credit associations to operate in the States, subject to approval in the referendum under subparagraph (F). Such provisions shall include provisions regarding the following matters:

"(I) A proposal for the establishment of an agricultural credit association in each of the geographic areas specified in subparagraph (F)(iii) (the charters of which, if validly issued under subparagraph (G)(i) pursuant to approval in the referendum under subparagraph (F), shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(II) The initial composition, if the proposal for the establishment of agricultural credit associations is approved, of the board of directors of each such agricultural credit association (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(III) The valuation, for purposes of the proposed merger of the production credit association and the Federal land bank association in each of the geographic areas specified in subparagraph (F)(iii), of the assets and liabilities of the associations.

"(IV) The terms and conditions on which the shares of capital stock of any associations that may merge under the plan to form agricultural credit associations will be converted into shares of the resulting agricultural credit associations.

"(V) The capital structure and capitalization levels of the resulting Farm Credit Bank and such affiliated associations of the Farm Credit Bank in the States of Alabama, Louisiana, and Mississippi as the arbitrator determines necessary to carry out the purposes of this paragraph (which capital structure and capitalization levels shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(VI) The terms of financing agreements between any agricultural credit associations and the resulting Farm Credit Bank (which shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(VII) Any other terms and conditions or other matters that the arbitrator considers necessary.

"(v) CONSULTATION WITH INSURANCE CORPORATION.—The arbitrator shall consult with the Farm Credit System Insurance Corporation regarding the valuation of the assets and liabilities under the plan of merger, the capitalization of the Farm Credit System institutions resulting under the plan, and any other matters relevant to the assistance to be provided by the Insurance Corporation to facilitate the merger under subparagraph (H).

"(E) CERTIFICATION OF PLAN.—Not later than 30 days after the receipt of the plan developed by the arbitrator, the Farm Credit Administration shall—

"(i) certify; or

"(ii) recommend to the arbitrator revisions to the plan that, if incorporated into the plan, will allow the Farm Credit Administration to certify,

that the resulting bank and any resulting associations are proposed to be organized in such a fashion that they will, on implementation of the plan, operate in compliance with applicable laws and regulations. The arbitrator and the Farm Credit Administration shall work cooperatively to ensure the expeditious issuance of the certification. If the Farm Credit Administration recommends to the arbitrator revisions to the plan that, if incorporated into the plan, will allow the Farm Credit Administration to certify the plan, the arbitrator shall, not later than 15 days after receipt of the recommended revisions, incorporate the revisions into the plan as the arbitrator deems appropriate to secure the certification.

"(F) REFERENDUM ON ASSOCIATION STRUCTURE.—

"(i) IN GENERAL.—Not later than 170 days after the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the American Arbitration Association shall conduct, and compile and forward to the Farm Credit Administration the results of, a vote of current farmer-borrowers of the production credit associations and the Federal land bank associations in the States of Alabama, Louisiana, and Mississippi, in accordance with the Election Rules of the American Arbitration Association, to determine whether the farmer-borrowers of each association in the geographic areas described in clause (iii) prefer to have credit delivered—

"(I) in the case of production credit association farmer-borrowers, through a production credit association or through an agricultural credit association as proposed in the plan; and

"(II) in the case of Federal land bank association farmer-borrowers, through a Federal land bank association or through an agricultural credit association as proposed in the plan.

Each farmer-borrower shall be entitled to one vote. The arbitrator shall establish record dates and other procedures for conducting the referendum. The Federal Intermediate Credit Bank of Jackson, the Farm Credit Bank of Texas, and their affiliated associations shall cooperate in the conduct of the referendum, as determined necessary by the Arbitrator.

"(ii) DISCLOSURE.—The arbitrator shall send to farmer-borrowers eligible to vote under this subparagraph, with their ballot, a statement describing the potential consequences to the farmer-borrowers, and to the associations from which they borrow, of voting to charter an agricultural credit association and setting forth factors that farmer-borrowers should consider relevant to the choice between credit delivery through the current association structure and the chartering of an agricultural credit association. The arbitrator shall develop the disclosure materials in cooperation with the Farm Credit Administration and ensure that the materials are not inconsistent with applicable laws and regulations.

"(iii) TABULATION OF RESULTS.—The results of the vote under this subparagraph shall be compiled separately for production credit association farmer-borrowers and Federal land bank association farmer-borrowers in each of the following seven geographic areas:

"(I) The area served by the Federal Land Bank Association of South Mississippi.

"(II) The area served by the Federal Land Bank Association of North Mississippi.

"(III) The area served by the Federal Land Bank Association of South Alabama.

"(IV) The area served by the Federal Land Bank Association of North Alabama.

"(V) The area served by the Federal Land Bank Association of South Louisiana.

"(VI) The area served by both the Federal Land Bank Association of North Louisiana and the First South Production Credit Association.

"(VII) The area served by both the Federal Land Bank Association of North Louisiana and the Northwest Louisiana Production Credit Association.

"(iv) PUBLICATION OF RESULTS.—The results of the vote under this subparagraph, as tabulated by the American Arbitration Association, shall be made promptly available to the public in a manner determined appropriate by the Farm Credit Administration.

"(G) IMPLEMENTATION.—Not later than 10 days after the date of the receipt of the results of the referendum conducted under subparagraph (F), the Farm Credit Administration shall issue such charters or charter amendments and take such other regulatory actions as may be necessary to implement the merger or mergers as provided for under the certified plan. In this regard, the Farm Credit Administration shall—

"(i) issue a charter or charter amendment and take any such other regulatory actions as may be necessary to provide for the establishment of an agricultural credit association in each of the geographic areas described in subparagraph (F)(iii) where a majority of the farmer-borrowers of both the production credit association and the Federal land bank association voted under subparagraph (F)(i) that they preferred to have credit delivered through an agricultural credit association (which charter shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations); and

"(ii) not issue a charter or charter amendment or take any such other regulatory action to provide for the establishment of an agricultural credit association in any of the geographic areas described in subparagraph (F)(iii) where less than a majority of the farmer-borrowers of the production credit association or the Federal land bank association voted in the referendum under subparagraph (F)(i) that they preferred to have credit delivered through an agricultural credit association (provided that the charter of any remaining association in such geographic area shall be subject to change thereafter in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) and any applicable regulations).

"(H) FACILITATION.—

"(i) IN GENERAL.—Beginning on the date of the issuance of an order by the Farm Credit Administration under paragraph (1)(D), the Farm Credit System Insurance Corporation shall expend amounts from the Farm Credit Insurance Fund to the extent necessary to facilitate the merger prescribed in the plan.

"(ii) MAINTENANCE OF BOOK VALUE.—Assistance provided by the Corporation under this subparagraph shall be in amounts not to exceed that required to maintain book value per share of stockholders' equity at the same value reflected on the most recent audited financial statements of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas prior to or effective with the date of the merger.

"(iii) OTHER ASSISTANCE.—Until the expiration of 5 years from the effective date of a merger authorized by this subsection, or the final resolution of any litigation against the Federal Intermediate Credit Bank of Jackson or any of its stockholders pending on the date of the enactment of this subsection, whichever is later, the Corporation shall guarantee prompt payment of any loss experienced by the merged bank, which loss is caused by the failure of any association-stockholder of the merged bank that was a stockholder of the Federal Intermediate Credit Bank of Jackson immediately prior to the merger, or any successor to the association, to pay when due any obligation of principal or interest owed by the association or its successor to the resulting bank.

"(iv) TERMS AND CONDITIONS.—Assistance provided by the Corporation under this subparagraph shall be on such terms and conditions as the Corporation deems appropriate to facilitate the merger.

"(I) SAFETY AND SOUNDNESS.—

"(i) IN GENERAL.—Except as provided in clause (ii), if at any time prior to the completion of the merger required under this subsection the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is being operated in an unsafe or unsound manner (as determined in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)), the Farm Credit Administration, after consultation with the respective boards of directors of the affected banks and taking into consideration the purposes of this subsection, may require the Federal Intermediate Credit Bank of Jackson to merge with a Farm Credit Bank, subject to such terms and conditions as the Farm Credit Administration may prescribe. The Farm Credit System Insurance Corporation shall expend amounts in the Farm Credit Insurance Fund to the extent necessary to facilitate the merger prescribed under this subparagraph, including the provision of assistance as provided in section 5.61(a)(2)(A)(iii) of the Farm Credit Act of 1971 (12 U.S.C. 2277a-10(a)(2)(A)(iii)), on such terms and conditions as the Corporation deems appropriate.

"(ii) ARBITRATED MERGER.—If at any time after the Farm Credit Administration issues an order under paragraph (1)(D), but prior to the completion of the merger required under this subsection, the Farm Credit Administration determines that the Federal Intermediate Credit Bank of Jackson is being operated in an unsafe or unsound manner (as determined in accordance with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.)), the Farm Credit Administration shall, after consultation with the boards of directors of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas, take such action as it deems necessary pursuant to the authorities provided under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) to return the operation of the Federal Intermediate Credit Bank of Jackson to a safe and sound condition, pending the completion of the merger under paragraph (2).

"(J) MERGER PLAN FOR AGRICULTURAL CREDIT ASSOCIATIONS.—In any of the States of Alabama, Louisiana, or Mississippi where all of the associations are chartered as agricultural credit associations, the boards of directors of each such association in each State are encouraged to submit to the farmer-borrowers of each such association for their approval a plan for merging the associations into one statewide agricultural credit association, in accordance with the applicable provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

"(K) DEFINITIONS.—As used in this paragraph:

"(i) AGRICULTURAL CREDIT ASSOCIATION.—The term 'agricultural credit association' means an association having the same authorities, attributes, and obligations as, and for all purposes an agricultural credit association resulting from the implementation of the plan under this paragraph shall be deemed to be, an association resulting from the merger of a production credit association and a Federal land bank association under section 7.8 of the Farm Credit Act of 1971 (12 U.S.C. 2279c-1).

"(ii) FARMER-BORROWER.—The term 'farmer-borrower' means a borrower from a Farm Credit System association in the State of Alabama, Louisiana, or Mississippi who holds voting stock, or is eligible to hold voting stock, in the association or a stockholder in any such association.

"(3) REVIEW.—

"(A) IN GENERAL.—Actions and determinations of the arbitrator, the Farm Credit Administration, or the Farm Credit System Insurance Corporation pursuant to this subsection shall not be subject to judicial review except as provided in this paragraph, nor shall they be subject to the requirements of subchapter II of chapter 5 or chapter 7 of title 5, United States Code.

"(B) AGENCY DETERMINATIONS.—

"(i) IN GENERAL.—Any petition for review of a determination or other action of the Farm Credit Administration or the Farm Credit System Insurance Corporation under this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit not later than 10 days after the determination, or the petition shall be barred. The court shall have exclusive jurisdiction to determine the proceeding in accordance with standard procedures as supplemented by procedures hereinafter provided and no other district court or court of appeals of the United States shall have jurisdiction over any such challenge in any proceeding instituted prior to, on, or after the date of enactment of this subsection. The review of any determination or action of the Farm Credit Administration or the Farm Credit System Insurance Corporation under this subsection shall be based on the examination of all of the information before the Farm Credit Administration or the Farm Credit System Insurance Corporation, as the case may be, at the time the determination was made. The court reviewing the determination or action shall not enter a stay or order of mandamus unless the court has determined, after notice and a hearing before a panel of the court, that the agency action complained of was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(ii) PROCEDURES.—Notwithstanding any other provision of law, the court may set rules governing the procedures of any such proceeding that set page limits on briefs and time limits for filing briefs and motions and other actions that are shorter than the limits specified in the Federal Rules of Civil or Appellate Procedure.

"(iii) EXPEDITED REVIEW.—Any such proceeding before the court shall be assigned for hearing and completed at the earliest possible date, and shall be expedited in every way. The court shall render its final decision relative to any challenge not later than 50 days from the date the challenge is brought unless the court determines that a longer period of time is required to satisfy the requirements of the Constitution.

"(C) ARBITRATOR DETERMINATIONS.—

"(i) IN GENERAL.—Except as otherwise provided in this paragraph, any petition for review of a determination or other action of the arbitrator named under paragraph (2) shall be filed in accordance with the United States Arbitration Act (9 U.S.C. 1 et seq.). Such Act shall apply to the arbitration conducted pursuant to paragraph (2) to the same extent as if the arbitration were established in a contract evidencing a transaction in commerce between the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas.

"(ii) PROCEDURES.—Notwithstanding the United States Arbitration Act (9 U.S.C. 1 et seq.), any petition for review of a determination or other action of the arbitrator under this subsection shall be filed not later than 10 days after the determination, or the petition shall be barred. The court specified under such Act shall have exclusive jurisdiction to determine the proceeding in accordance with the applicable procedures under such Act, as supplemented by procedures hereinafter provided, and no other district court shall have jurisdiction over any such challenge in any such proceeding. Notwithstanding any other provision of law, the court may set rules governing the procedures of any such proceeding that set page limits on briefs and time limits for filing briefs and motions and other actions that are shorter than the limits specified in the United States Arbitration Act or the Federal Rules of Civil or Appellate Procedure.

"(iii) EXPEDITED REVIEW.—Any such proceeding before the court shall be assigned for hearing and completed at the earliest possible date, and shall be expedited in every way. The court shall render its final decision relative to any challenge as soon as possible in accordance with the United States Arbitration Act (9 U.S.C. 1 et seq.), or not later than 30 days from the date the challenge is brought, whichever is sooner, unless the court determines that a longer period of time is required to satisfy the requirements of the Constitution.".

(b) LONG-TERM LENDING AUTHORITY OF THE FARM CREDIT BANK OF TEXAS WITH RESPECT TO THE STATES OF ALABAMA, LOUISIANA, AND MISSISSIPPI.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Farm Credit Bank of Texas may act in accordance with the exclusive charter of the bank, as amended by the Farm Credit Administration on February 7, 1989, and effective February 9, 1989 (except to the extent that the charter may be further amended by the Farm Credit Administration in accordance with its general authorities under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), subject to such limitations on the issuance of competitive charters as may be provided in section 5.17 of such Act (12 U.S.C. 2252)).

(2) EFFECTIVE DATE.—Paragraph (1) shall take effect as if such paragraph had become law on February 7, 1989.

(c) DENIAL OF COMPETITIVE CHARTERS.—Section 5.17(a)(2) (12 U.S.C. 2252(a)(2)) is amended—

(1) by inserting "(A)" after "(2)"; and

(2) by adding at the end the following new subparagraphs:

"(B) The Farm Credit Administration shall not issue a charter to, or approve an amendment to the charter of, any institution of the Farm Credit System to operate under title I or II that would authorize the institution to exercise lending authority, whether directly or indirectly as an agent of a Farm Credit Bank, in a territory in which the charter of another such institution authorizes the other institution to exercise like authority, whether directly or indirectly as an agent of a Farm Credit Bank, except with the approval of—

"(i) in a case affecting only the charter of one or more associations—

"(I) a majority of the shareholders (present and voting or voting by proxy) of each of the associations that would have like lending authority (whether directly or indirectly as an agent of a Farm Credit Bank) in any of that territory if the charter action were taken; and

"(II) a majority of the board of directors of the Farm Credit Bank with which the affected associations are affiliated; or

"(ii) in a case affecting the charter of one or more banks—

"(I) a majority of the shareholders (present and voting or voting by proxy) of the affiliated associations of each of the banks that would have like lending authority in any of that territory if the charter action were taken;

"(II) a majority of the shareholders (present and voting or voting by proxy) of each of the banks that would have like lending authority in any of that territory if the charter action were taken; and

"(III) a majority vote of the boards of directors of each of the banks that would have like lending authority in any of that territory if the charter action were taken.

"(C) Subparagraph (B) shall apply only in those geographic areas where, due to the failure of a Federal intermediate credit bank to merge in accordance with section 410(a) of the Agricultural Credit Act of 1987 (12 U.S.C. 2011 note), the Federal intermediate credit bank or its successor is chartered to provide short- and intermediate-term credit, and a neighboring Farm Credit Bank that is not the successor to the Federal intermediate credit bank is chartered to provide long-term credit, in the same geographic territory.".

Subtitle E—Miscellaneous

SEC. 151. VALUATION RESERVES OF PRODUCTION CREDIT ASSOCIATIONS.

Subsection (b) of section 2.3 (12 U.S.C. 2074(b)) is amended to read as follows:

"(b) APPLICATION OF EARNINGS.—At the end of each fiscal year, each production credit association shall apply the amount of the earnings of the association for the fiscal year in excess of the operating expenses of the association (including provision for valuation reserves against loan assets in accordance with generally accepted accounting principles)—

"(1) first, to the restoration of the impairment (if any) of capital; and

"(2) second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Farm Credit Bank.".

SEC. 152. RISK MANAGEMENT PARTICIPATION AUTHORITY.

Section 3.1(11) (12 U.S.C. 2122(11)) is amended—

(1) by inserting "(A)" after "(11)"; and

(2) by adding at the end the following new subparagraph:

"(B)(i) Participate in any loan of a type otherwise authorized under this title that is made to a similar entity by any institution in the business of extending credit, including purchases of participations in loans to finance international trade transactions involving the sale of agricultural commodities or the products thereof, except that—

"(I) a bank for cooperatives may not participate in a loan—

"(aa) if the participation would cause the total amount of all loan participations by the bank under this subparagraph involving a single credit risk to exceed 10 percent of the bank's total capital; or

"(bb) if the participation by the bank will itself equal or exceed 50 percent of the principal of the loan or, when taken together with participations in the loan by the other banks for cooperatives under this subparagraph, will cause the cumulative amount of the participations by all banks for cooperatives in the loan to equal or exceed 50 percent of the principal of the loan;

"(II) a bank for cooperatives may not participate in a loan to a similar entity under this subparagraph if the similar entity has a loan or loan commitment outstanding with a Farm Credit Bank or an association chartered under this Act, unless agreed to by the Bank or association; and

"(III) the cumulative amount of participations that a bank for cooperatives may have outstanding under this subparagraph at any time may not exceed 15 percent of the bank's total assets.

"(ii) As used in this subparagraph, the term 'similar entity' means an entity that, while not eligible for a loan under section 3.8, is functionally similar to an entity eligible for a loan under section 3.8 in that it derives a majority of its income from, or has a majority of its assets invested in, the conduct of activities functionally similar to those conducted by the entity.

"(iii) With respect to similar entities that are eligible to borrow from a Farm Credit Bank or association under title I or II, the authority of a bank for cooperatives to participate in loans to the entities under this subparagraph shall be subject to the prior approval of the Farm Credit Bank or Banks in whose chartered territory the entity is eligible to borrow. The approval may be granted on an annual basis and under such terms and conditions as may be agreed on between the bank for cooperatives and the Farm Credit Bank or Banks that serve the territory.".

SEC. 153. EQUITY VOTING FOR ONE DIRECTOR OF EACH BANK FOR COOPERATIVES.

Section 3.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2123(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following new paragraph:

"(2)(A) If approved by the stockholders through a bylaw amendment, the nomination and election of one member from a bank for cooperatives (other than the National Bank for Cooperatives) shall be carried out with each voting stockholder of a bank for cooperatives having one vote, plus a number of votes (or fractional part thereof) equal to—

"(i) the number of stockholders eligible to vote; multiplied by

"(ii) the percentage (or fractional part thereof) of the total equity interest (including allocated, but not unallocated, surplus and reserves) in the bank of all stockholders held by the individual voting stockholder at the close of the immediately preceding fiscal year of the bank.

"(B) The total number of votes under this paragraph shall be the number of voting stockholders of a bank for cooperatives multiplied by two.".

SEC. 154. TECHNICAL AMENDMENT.

The first sentence of section 3.7(a) (12 U.S.C. 2128(a)) is amended by inserting "at any time (whether or not they have a loan from the bank outstanding)" after "technical and financial assistance".

SEC. 155. EXPANSION OF WATER AND SEWER LENDING AUTHORITY OF BANKS FOR COOPERATIVES.

Section 3.7(f) (12 U.S.C. 2128(f)) is amended—

(1) by striking "the installation, expansion, or improvement of" and inserting "installing, maintaining, expanding, improving, or operating"; and

(2) by striking "to extend" and inserting "extending".

SEC. 156. ELIGIBILITY TO BORROW FROM A BANK FOR COOPERATIVES.

Section 3.8(b)(1) (12 U.S.C. 2129(b)(1)) is amended by adding at the end the following new subparagraph:

"(E) Any creditworthy private entity that satisfies the requirements for a service cooperative under paragraphs (1), (2), and (4) of subsection (a) and subsidiaries of the entity, if the entity is organized to benefit agriculture in furtherance of the welfare of its farmer-members and is operated on a not-for-profit basis.".

SEC. 157. NON-VOTING REPRESENTATIVE ON BOARD OF FUNDING CORPORATION.

Paragraph (2) of section 4.9(d) (12 U.S.C. 2160(d)(2)) is amended to read as follows:

"(2) NON-VOTING REPRESENTATIVES.—

"(A) ASSISTANCE BOARD.—During the period in which the Assistance Board is in existence, the board of directors of the Assistance Board shall designate one of its directors to serve as a non-voting representative to the board of directors of the Corporation.

"(B) MEETINGS.—The person designated by the Assistance Board under subparagraph (A) may attend and participate in all deliberations of the board of directors of the Corporation.

"(C) TERMINATION OF ASSISTANCE BOARD.—After termination of the Assistance Board, neither the Assistance Board nor its successor, the Farm Credit System Insurance Corporation, shall have any representation on the board of directors of the Corporation.".

SEC. 158. REPEAL OF PROHIBITION AGAINST GUARANTEE OF CERTAIN INSTRUMENTS OF INDEBTEDNESS.

Section 4.16 (12 U.S.C. 2204) is repealed.

SEC. 159. COMPENSATION OF BANK DIRECTORS.

Section 4.21 (12 U.S.C. 2209) is amended to read as follows:

"SEC. 4.21. COMPENSATION OF BANK DIRECTORS.

"(a) IN GENERAL.—The Farm Credit Administration shall monitor the compensation of members of the board of directors of a System bank received as compensation for serving as a director of the bank to ensure that the amount of the compensation does not exceed a level of $20,000 per year, as adjusted to reflect changes in the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics, unless the Farm Credit Administration determines that such level adversely affects the safety and soundness of the bank.

"(b) WAIVER.—The Farm Credit Administration may waive the limitation prescribed in subsection (a) under exceptional circumstances, as determined in accordance with regulations promulgated by the Farm Credit Administration.".

SEC. 160. CLARIFICATION OF TREATMENT OF FARM CREDIT ADMINISTRATION OPERATING EXPENSES.

Section 5.15(b)(1) (12 U.S.C. 2250(b)(1)) is amended—

(1) by inserting ", for purposes of sequestration," after "regard"; and

(2) by striking "or any other law".

SEC. 161. APPROVAL OF COMPETITIVE CHARTERS.

Section 5.17(a) (12 U.S.C. 2252(a)) is amended by adding at the end the following new paragraphs:

"(13)(A) Subject to subparagraph (B), the Farm Credit Administration may approve an amendment to the charter of any institution of the Farm Credit System operating under title I or II, which would authorize the institution to exercise lending authority in any territory—

"(i) in the geographic area served by an association that was reassigned pursuant to section 433 of the Agricultural Credit Act of 1987 (12 U.S.C. 2071 note) (where the geographic area was a part of the association's territory as of the date of the reassignment); and

"(ii) in which the charter of an institution that is not seeking the charter amendment authorizes the institution to exercise the type of lending authority that is the subject of the charter request.

"(B) The Farm Credit Administration may approve a charter amendment under subparagraph (A) only on the approval of—

"(i) the respective boards of directors of the associations that, if the charter request is approved, would exercise like lending authority in any of the territory that is the subject of the charter request;

"(ii) a majority of the stockholders of each association described in clause (i) voting, in person or by proxy, at a duly authorized stockholders' meeting; and

"(iii) the respective boards of directors of the Farm Credit Banks that, if the charter request is approved, would exercise, either directly or through associations, like lending authority in any of the territory described in subparagraph (A)(i).

"(14)(A) Subject to subparagraph (B), the Farm Credit Administration may approve a request to charter an association of the Farm Credit System to operate under title II where the proposed charter—

"(i) will include any of the geographic area included in the territory served by an association that was reassigned pursuant to section 433 of the Agricultural Credit Act of 1987 (12 U.S.C. 2071 note) (where the geographic area was a part of the association's territory as of the date of the reassignment); and

"(ii) will authorize the association to exercise lending authority in any territory in the geographic area in which the charter of an association that is not requesting the charter authorizes the association to exercise the type of lending authority that is the subject of the charter request.

"(B) The Farm Credit Administration may approve a charter request under subparagraph (A) only on the approval of—

"(i) the respective boards of directors of the associations that, if the charter request is approved, would exercise like lending authority in any of the territory that is the subject of the charter request;

"(ii) a majority vote of the stockholders (if any) of each association described in clause (i) voting, in person or by proxy, at a duly authorized stockholder's meeting; and

"(iii) the respective boards of directors of the Farm Credit Banks that, if the charter request is approved, would exercise, either directly or through associations, like lending authority in any of the territory described in subparagraph (A)(i).".

SEC. 162. EXAMINATIONS.

The third sentence of section 5.19(a) (12 U.S.C. 2254(a)) is amended by striking "shall include" and inserting "may include, if appropriate".

SEC. 163. AUTHORITY TO EXAMINE SYSTEM INSTITUTIONS.

(a) AUTHORITY OF FARM CREDIT SYSTEM INSURANCE CORPORATION.—Section 5.59 (12 U.S.C. 2277a–8) is amended—

(1) in the section heading, by striking "**INSURED SYSTEM BANKS**" and inserting "**SYSTEM INSTITUTIONS**"; and

(2) by striking subsection (b) and inserting the following new subsection:

"(b) EXAMINATION OF SYSTEM INSTITUTIONS.—

"(1) EXAMINATION AUTHORITY.—

"(A) IN GENERAL.—If the Board of Directors considers it necessary to examine an insured System bank, a production credit association, an association making direct loans under the authority provided under section 7.6, or any System institution in receivership, the Board may, using Farm Credit Administration examiners, conduct the examination using reports and other information on the System institution prepared or held by the Farm Credit Administration.

"(B) REQUEST FOR ADDITIONAL EXAMINATION OR OTHER INFORMATION.—If the Board determines that such reports or information are not adequate to enable the Corporation to carry out the duties of the Corporation under this subsection, the Board shall request the Farm Credit Administration to examine or to obtain other information from or about the System institution and provide to the Corporation the resulting examination report or such other information.

"(2) APPOINTMENT OF EXAMINERS.—If the Farm Credit Administration informs the Corporation that the Farm Credit Administration is unable to comply with a request made under paragraph (1)(B) with respect to a System institution, the Board may appoint examiners to examine the institution.

"(3) POWERS AND REPORT.—Each examiner appointed under paragraph (2) shall make such examination of the affairs of the System institution as the Board may direct, and shall make a full and detailed report of the examination to the Corporation.

"(4) APPOINTMENT OF CLAIM AGENTS.—The Board of Directors of the Corporation shall appoint claim agents who may investigate and examine all claims for insured obligations.".

(b) DUTIES OF THE FARM CREDIT ADMINISTRATION.—Section 5.19 (12 U.S.C. 2254) is amended by adding at the end the following new subsection:

"(d) On receipt of a request made under section 5.59(b)(1)(B) with respect to a System institution, the Farm Credit Administration shall—

"(1) furnish for the confidential use of the Farm Credit System Insurance Corporation reports of examination of the institution and other reports or information on the institution; and

"(2)(A) examine, or obtain other information on, the institution and furnish for the confidential use of the Farm Credit System Insurance Corporation the report of the examination and such other information; or

"(B) if the Farm Credit Administration Board determines that compliance with the request would substantially impair the ability of the Farm Credit Administration to carry out the other duties and responsibilities of the Farm Credit Administration under this Act, notify the Board of Directors of the Farm Credit System Insurance Corporation that the Farm Credit Administration will be unable to comply with the request.".

SEC. 164. FINANCIAL DISCLOSURE AND CONFLICT OF INTEREST REPORTING BY DIRECTORS, OFFICERS, AND EMPLOYEES OF FARM CREDIT SYSTEM INSTITUTIONS.

(a) FINDINGS.—Congress finds that—

(1) the disclosure of the compensation paid to, loans made to, and transactions made with a Farm Credit System institution by, directors and senior officers of the institution provides the stockholders of the institutions with information necessary to better manage the institutions, provides the Farm Credit Administration with information necessary to efficiently and effectively regulate the institutions, and enhances the financial integrity of the Farm Credit System by making the information available to potential investors;

(2) the reporting of potential conflicts of interest by directors, officers, and employees of institutions of the Farm Credit System benefits the stockholders of the institutions, helps to ensure the financial viability of the institutions, provides information valuable to the Farm Credit Administration in periodic examinations of the institutions, and therefore enhances the safety and soundness of the Farm Credit System; and

(3) the directors, officers, or employees of some Farm Credit System institutions may not be subject to the regulations of the Farm Credit Administration requiring the disclosure of the financial information and the reporting of the potential conflicts of interest.

(b) PURPOSE.—It is the purpose of this section to ensure that the information reported by the directors, officers, and employees of Farm Credit System institutions under regulations of the Farm Credit Administration requiring the disclosure of financial information and the reporting of potential conflicts of interest—

(1) provides the stockholders of all Farm Credit System institutions with information to assist the stockholders in making informed decisions regarding the operation of the institutions;

(2) provides investors and potential investors with information necessary to assist them in making investment decisions regarding Farm Credit System obligations or institutions; and

(3) provides the Farm Credit Administration with information necessary to allow the Farm Credit Administration to effectively and efficiently examine and regulate all Farm Credit System institutions and thus enhance the safety and soundness of the Farm Credit System.

(c) REVIEW.—Not later than 120 days after the date of enactment of this Act, the Farm Credit Administration shall complete a review of the current regulations of the Farm Credit Administration regarding the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of Farm Credit System institutions. Consistent with the purpose of this section as provided in subsection (b), the review shall address whether the regulations—

(1) are adequate to fulfill the purpose of this section and such other purposes as the Farm Credit Administration determines to be consistent with the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and other applicable law, and to be otherwise necessary or appropriate;

(2) currently require the disclosure of financial information and the reporting of potential conflicts of interest by the directors, officers, and employees of all Farm Credit System institutions; and

(3) currently require the disclosure or reporting of the information by all of the appropriate directors, officers, or employees of Farm Credit System institutions.

(d) IMPLEMENTATION.—Not later than 360 days after the date of enactment of this Act, the Farm Credit Administration shall amend its current financial disclosure and conflict of interest regulations as the Administration determines necessary to carry out the purpose of this section and to address any deficiencies in the regulations that the Farm Credit Administration determines necessary pursuant to the review conducted under subsection (c).

TITLE II—AGRICULTURAL CREDIT IMPROVEMENTS

SEC. 201. REFERENCES TO THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.

Wherever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), except to the extent otherwise specifically provided.

SEC. 202. LIMITATION ON AGGREGATE INDEBTEDNESS.

Section 305 (7 U.S.C. 1925) is amended by striking "and 310D of this title" and inserting "310D, and 310E".

SEC. 203. INTEREST RATE FOR LOANS SOLD INTO SECONDARY MARKET; GUARANTEED LOAN FEES.

Section 309(h) (7 U.S.C. 1929(h)) is amended—

(1) in inserting "(1)" after "(h)"; and

(2) by adding at the end the following new paragraphs:

"(2) The interest rate payable by a borrower on the portion of a guaranteed loan that is sold by a lender to the secondary market under this title may be lower than the interest rate charged on the portion retained by the lender, but shall not exceed the average interest rate charged by the lender on loans made to farm and ranch borrowers.

"(3) With regard to any loan guarantee on a loan made by a commercial or cooperative lender related to a loan made by the Secretary under section 310E—

"(A) the Secretary shall not charge a fee to any person (including a lender); and

"(B) a lender may charge a loan origination and servicing fee in an amount not to exceed 1 percent of the amount of the loan.".

SEC. 204. FEDERAL-STATE BEGINNING FARMER PARTNERSHIP.

(a) COORDINATION OF ASSISTANCE FOR QUALIFIED BEGINNING FARMERS AND RANCHERS.—Section 309 (7 U.S.C. 1929) is amended by adding at the end the following new subsection:

"(i)(1) Not later than 60 days after any State expresses to the Secretary, in writing, a desire to coordinate the provision of financial assistance to qualified beginning farmers and ranchers in the State, the Secretary and the State shall conclude a joint memorandum of understanding that shall govern the coordination of the provision of the financial assistance by the State and the Secretary.

"(2) The memorandum of understanding shall provide that if a State beginning farmer program makes a commitment to provide a qualified beginning farmer or rancher with financing to establish or maintain a viable farming or ranching operation, the Secretary shall, subject to applicable law, normal loan approval criteria, and the availability of funds provide the farmer or rancher with a down payment loan under section 310E or a guarantee of the financing provided by the State program, or both.

"(3) The Secretary shall not charge any person (including a lender) any fee with respect to the provision of any guarantee under this subsection.

"(4) The Secretary shall notify each State of the provisions of this subsection.

"(5) As used in paragraph (1), the term 'State beginning farmer program' means any program that is—

"(A) carried out by, or under contract with, a State; and

"(B) designed to assist persons in obtaining the financial assistance necessary to enter agriculture and establish viable farming or ranching operations.".

(b) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT; PURPOSE.—Not later than 18 months after the date of enactment of this Act, the Secretary of Agriculture shall establish an advisory committee, to be known as the "Advisory Committee on Beginning Farmers and Ranchers", which shall provide advice to the Secretary on—

(A) the development of the program of coordinated assistance to qualified beginning farmers and ranchers under section 309(i) of the Consolidated Farm and Rural Development Act (as added by subsection (a) of this section);

(B) methods of maximizing the number of new farming and ranching opportunities created through the program;

(C) methods of encouraging States to participate in the program;

(D) the administration of the program; and

(E) other methods of creating new farming or ranching opportunities.

(2) MEMBERSHIP.—The Secretary shall appoint the members of the Advisory Committee. The Advisory Committee shall include representatives from the following:

(A) The Farmers Home Administration.

(B) State beginning farmer programs (as defined in section 309(i)(5) of the Consolidated Farm and Rural Development Act (as added by subsection (a) of this section)).

(C) Commercial lenders.

(D) Private nonprofit organizations with active beginning farmer or rancher programs.

(E) The Cooperative Extension Service.

(F) Community colleges or other educational institutions with demonstrated experience in training beginning farmers or ranchers.

(G) Other entities or persons providing lending or technical assistance for qualified beginning farmers or ranchers.

SEC. 205. GRANTS FOR PRIVATE BUSINESS ENTERPRISES.

Section 310B(c) (7 U.S.C. 1932(c)) is amended—

(1) by inserting "(1)" after "(c)";

(2) by striking "business enterprises," and inserting "business enterprises or the creation, expansion, and operation of rural distance learning networks or rural learning programs that provide educational instruction or job training instruction related to potential employment or job advancement to adult students,"; and

(3) by adding at the end the following new paragraph:

"(2) The Secretary may make grants to qualified nonprofit organizations for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities. Assistance provided under this paragraph may include on-site technical assistance to local and regional governments, public transit agencies, and related nonprofit and for-profit organizations in rural areas, the development of training materials, and the provision of necessary training assistance to local officials and agencies in rural areas.".

SEC. 206. DOWN PAYMENT LOAN PROGRAM.

(a) IN GENERAL.—Subtitle A (7 U.S.C. 1922 et seq.) is amended by adding at the end the following new section:

"SEC. 310E. DOWN PAYMENT LOAN PROGRAM.

"(a) IN GENERAL.—

"(1) ESTABLISHMENT.—Notwithstanding any other section of this subtitle, the Secretary shall establish, within the farm ownership loan program established under this subtitle, a program under which loans shall be made under this section to qualified beginning farmers and ranchers for down payments on farm ownership loans.

"(2) ADMINISTRATION.—The Secretary shall be the primary coordinator of credit supervision for the down payment loan program established under this section, in consultation with the commercial or cooperative lender and, if applicable, the contracting credit counseling service selected under section 360(c).

"(b) LOAN TERMS.—

"(1) PRINCIPAL.—Each loan made under this section shall be in an amount equal to 30 percent of the purchase price or appraisal value, whichever is lower, of the farm or ranch to be acquired, unless the borrower requests a lesser amount.

"(2) INTEREST RATE.—The interest rate on any loan made by the Secretary under this section shall be 4 percent.

"(3) DURATION.—Each loan under this section shall be made for a period of 10 years or less, at the option of the borrower.

"(4) REPAYMENT.—Each borrower of a loan under this section shall repay the loan to the Secretary in equal annual installments.

"(5) NATURE OF RETAINED SECURITY INTEREST.—The Secretary shall retain an interest in each farm or ranch acquired with a loan made under this section that shall—

"(A) be secured by the farm or ranch;

"(B) be junior only to such interests in the farm or ranch as may be conveyed at the time of acquisition to the person (including a lender) from whom the borrower obtained a loan used to acquire the farm or ranch; and

"(C) require the borrower to obtain the permission of the Secretary before the borrower may grant an additional security interest in the farm or ranch.

"(c) LIMITATIONS.—

"(1) BORROWERS REQUIRED TO MAKE MINIMUM DOWN PAYMENT.—The Secretary shall not make a loan under this section to any borrower with respect to a farm or ranch if the contribution of the borrower to the down payment on the farm or ranch will be less than 10 percent of the purchase price of the farm or ranch.

"(2) MAXIMUM PRICE OF PROPERTY TO BE ACQUIRED.—The Secretary shall not make a loan under this section with respect to a farm or ranch for which the purchase price or appraisal value, whichever is lower, exceeds $250,000.

"(3) PROHIBITED TYPES OF FINANCING.—The Secretary shall not make a loan under this section with respect to a farm or ranch if the farm or ranch is to be acquired with other financing that contains any of the following conditions:

"(A) The financing is to be amortized over a period of less than 30 years.

"(B) A balloon payment will be due on the financing during the 10-year period beginning on the date the loan is to be made by the Secretary.

"(d) ADMINISTRATION.—In carrying out this section, the Secretary shall, to the maximum extent practicable—

"(1) facilitate the transfer of farms and ranches from retiring farmers and ranchers to persons eligible for insured loans under this subtitle;

"(2) make efforts to widely publicize the availability of loans under this section among—

"(A) potentially eligible recipients of the loans;

"(B) retiring farmers and ranchers; and

"(C) applicants for farm ownership loans under this subtitle;

"(3) encourage retiring farmers and ranchers to assist in the sale of their farms and ranches to qualified beginning farmers and ranchers by providing seller financing; and

"(4) coordinate the loan program established by this section with State programs that provide farm ownership or operating loans for beginning farmers and ranchers.".

(b) AVAILABILITY OF FARM OWNERSHIP LOANS AND LOAN GUARANTEES FOR CERTAIN BEGINNING FARMERS AND RANCHERS.—Subtitle A (7 U.S.C. 1922 et seq.) (as amended by subsection (a) of this section) is further amended by adding at the end the following new section:

"SEC. 310F. AVAILABILITY OF FARM OWNERSHIP LOANS AND LOAN GUARANTEES FOR CERTAIN QUALIFIED BEGINNING FARMERS AND RANCHERS.

"(a) ASSISTANCE PROHIBITED FOR A LIMITED PERIOD.—Except as otherwise provided in this section, if the Secretary approves the application of a qualified beginning farmer or rancher (referred to in this section as the 'applicant') for assistance under section 318, the Secretary shall not make a loan under this subtitle to the applicant or provide a guarantee under section 309(h) with respect to any farm real estate loan made to the applicant.

"(b) AVAILABILITY OF DOWN PAYMENT LOANS.—After the applicable period, the Secretary may make an insured loan under this subtitle, or a down payment loan under section 310E, to an applicant if—

"(1) throughout the applicable period, the applicant conducted an operation for which assistance is provided under section 318 in accordance with the plan for special assistance; and

"(2) the applicant is otherwise eligible for the loan.

"(c) AVAILABILITY OF LOAN GUARANTEES.—After the applicable period, the Secretary may guarantee under section 309(h) the repayment of a commercial or cooperative loan made to an applicant referred to in subsection (a) if—

"(1) throughout the applicable period, the applicant conducted the operation for which assistance is provided under section 318 in accordance with the plan for special assistance; and

"(2) the applicant is otherwise eligible for the loan guarantee.

"(d) APPLICABLE PERIOD DEFINED.—As used in this section, the term 'applicable period' means the first 5 years for which an applicant has operated a farm or ranch, including the period of time the applicant is provided assistance under section 318.".

SEC. 207. SPECIAL ASSISTANCE TO CERTAIN QUALIFIED BEGINNING FARMERS AND RANCHERS.

Subtitle B (7 U.S.C. 1941 et seq.) is amended by adding at the end the following new section:

"SEC. 318. SPECIAL ASSISTANCE TO CERTAIN QUALIFIED BEGINNING FARMERS AND RANCHERS.

"(a) IN GENERAL.—The Secretary shall provide special assistance in accordance with this section to enable a qualified beginning farmer or rancher who has not operated a farm or ranch, or who has operated a farm or ranch for not more than 5 years (referred to in this section as the 'applicant'), to conduct viable farming or ranching operations.

"(b) Submission of Plan of Farm Operation.—An applicant who desires to apply for special assistance under this section shall submit a plan, in coordination with activities conducted under sections 359, 360, 361, and 362, that—

"(1) describes, for each of the first 5 years for which assistance under this section is sought for the operation—

"(A) how the operation is to be conducted;

"(B) the types and quantities of commodities to be produced by the operation;

"(C) the production methods and practices to be employed by the operation;

"(D) the conservation measures to be taken in the operation;

"(E) the equipment needed to conduct the operation (including any expected replacements for the equipment) and, with respect to each item of needed equipment, whether the applicant owns, leases, or otherwise has access to the item, or proposes to purchase, lease, or otherwise gain access to the item;

"(F) the expected income and expenses of the operation;

"(G) the expected credit needs of the operation, including the types and amounts of assistance to be sought under this section; and

"(H) the site or sites at which the operation is (or is to be) located; and

"(2) projects the financial status of the operation after assistance under this section has been provided for a period of not more than 10 years, consistent with section 319, as is necessary for the operation to become financially viable without further assistance from the Secretary, including specific goals that the applicant projects to meet in order to progress toward graduation as expeditiously as possible.

"(c) Determinations by the County Committee; Approval of Plan.—The county committee shall approve a plan submitted by an applicant in accordance with subsection (b) if the county committee determines that—

"(1) the applicant has not operated a farm or ranch, or has operated a farm or ranch for not more than 5 years;

"(2) during the 5-year period ending with the submission of the plan, the applicant has had sufficient education and experience to indicate that the applicant is able to conduct a successful farming or ranching operation, as the case may be;

"(3) the applicant owns, leases, or has a commitment to have leased to the applicant the site or sites of the operation;

"(4) there is, or will be, available to the applicant equipment sufficient to conduct the operation in accordance with the plan;

"(5) the applicant agrees to participate in such loan assessment, borrower training, and financial management programs as the Secretary may require; and

"(6) the applicant is otherwise eligible for assistance under this title.

"(d) Determination by the Secretary; Approval of Application for Assistance.—The Secretary shall approve an application for assistance under this section for an operation described in a plan approved by a county committee under this section if the Secretary determines that—

"(1) the operation would generate income sufficient to cover the expenses of the operation, debt service, and adequate living expenses of the applicant, to the extent that other income would not cover the living expenses, if the operation received assistance under this section as provided for in the plan; and

"(2) during the commitment period established in accordance with subsection (e)(1), the operation will be financially viable without further assistance from the Secretary and the identified goals are reasonable and practicable.

"(e) Provision of Assistance.—

"(1) Determination of commitment period.—

"(A) Initial determination.—In approving an application under subsection (d), the Secretary shall, subject to subparagraph (C), determine the period during which assistance under this section is to be provided for the operation described in the application (referred to in this subsection as the 'commitment period').

"(B) Authority to extend period; no authority to reduce period.—At any time, the Secretary may, subject to subparagraph (C) and subsections (f) and (g), extend the duration of the commitment period. The Secretary shall not reduce the duration of the commitment period.

"(C) Limitations.—

"(i) In general.—The duration of any commitment period (including any extensions of the period) shall not exceed 10 years and shall be consistent with section 319.

"(ii) Eligibility for insured operating loans.—During the commitment period, an applicant shall not be eligible to receive an insured operating loan under this section after the date that is 8 years after the date on which the applicant first receives assistance under this section.

"(2) Operating loans; loan guarantees.—

"(A) In general.—To the extent that an applicant whose application is approved under subsection (d) is unable to obtain sufficient credit from commercial or cooperative lenders to finance the operation described in the application at reasonable rates and terms (taking into consideration prevailing private and cooperative rates, and terms in the community in which the operation is (or is to be) located, for loans for similar purposes and periods of time), the Secretary shall, subject to the availability of funds and to subsections (f) and (g) and consistent with sections 360 and 362, make a conditional commitment to the applicant for each of the years of the commitment period—

"(i) to provide to any commercial or cooperative lender who makes a loan to the applicant that is within the credit needs of the operation (as specified in the plan contained in the application) a guarantee under section 309(h) for the repayment of 90 percent of the loan principal and interest;

"(ii)(I) to provide to any commercial or cooperative lender who makes a loan to the applicant that is within the credit needs of the operation (as specified in the plan contained in the application) a guarantee under section 309(h) for the repayment of 90 percent of the loan principal and interest and an interest subsidy payment in the amount necessary to ensure that the applicant qualifies for such a loan but not more than the amount of interest assistance allowed by section 351; or

"(II) if during any of the first 4 years for which assistance is provided under this section the Secretary determines that the applicant will not qualify for a loan described in subclause (I), an interest subsidy payment sufficient to ensure that the effective rate of interest payable by the applicant on the loan equals the rate of interest charged to low income, limited resource borrowers on insured operating loans made under this subtitle that are of comparable size and maturity; or

"(iii) to make an insured loan under this subtitle to the applicant, in the amount specified in the plan contained in the application, at an interest rate that is no higher than the interest rate charged to regular borrowers and no lower than the interest rate charged to low income, limited resource borrowers under this subtitle.

"(3) Loans or guarantees for new or improved equipment.—The Secretary shall make a commitment to any applicant whose application is approved under subsection (d) to provide the applicant with loans under this subtitle or loan guarantees under section 309(h) to finance the acquisition, improvement, or repair of equipment needed in the operation described in the application if the plan contained in the application provides for the commitment, to the extent that the applicant is unable to obtain sufficient credit from commercial or cooperative lenders for such purposes at reasonable rates and terms (taking into consideration prevailing private and cooperative rates and terms in the community in which the operation is, or is to be, located, for loans for similar purposes and periods of time).

"(4) Priority in purchase of inventory equipment; loans or guarantees for the purchases in certain cases.—During the commitment period, the Secretary shall—

"(A) accord the applicant whose application is approved under subsection (d) priority for the purchase of equipment in the inventory of the Farmers Home Administration necessary for the success of the operation described in the application; and

"(B) provide the applicant with loans under this subtitle or loan guarantees under section 309(h) to finance the purchases if the plan contained in the application provides for the assistance, to the extent that the applicant is unable to obtain sufficient credit from commercial or cooperative lenders for such purpose at reasonable rates and terms (taking into consideration prevailing private and cooperative rates, and terms in the community in which the operation is, or is to be, located, for loans for similar purposes and periods of time).

"(5) Other kinds of assistance.—During the commitment period, the Farmers Home Administration, the Extension Service, the Soil Conservation Service, and the other entities of the Department of Agriculture shall provide the applicant with such other assistance and information as may be needed in developing and implementing the operation described in the application.

"(6) Fees.—

"(A) Secretary.—The Secretary shall not charge a fee to any person (including a lender) in connection with any loan guarantee provided in accordance with this section.

"(B) Lender.—A lender may charge a loan origination and servicing fee in connection with a loan or loan guarantee provided in accordance with this section in an amount not to exceed 1 percent of the amount of the loan.

"(f) Annual Plan Revisions Required as Condition of Continued Assistance.—The Secretary shall not provide assistance under this section for an operation for any particular year after the first year for which the assistance is provided, unless—

"(1) not later than 60 days before the assistance is to be first provided for the particular year, the plan describing the operation has been revised, pursuant to section 360, based on the experience of the year preceding the particular year, to provide the information required by subsection (b) for the 5-year period beginning with the particular year (or, if shorter, the period beginning with the particular year and ending with the year in which the plan projects the operation as becoming financially viable); and

"(2) the Secretary has approved the revised plan.

"(g) EFFECTS OF AVOIDABLE FAILURE TO ACHIEVE GOALS.—

"(1) TERMINATION OF COMMITMENTS.—The Secretary shall revoke commitment for assistance made to an applicant under this section if the operation of the applicant fails, for 2 consecutive years, to meet the goals specified in the plan, unless the failure has not materially reduced the likelihood of the operation becoming financially viable and is due to circumstances beyond the control of the applicant.

"(2) SUSPENSION OF ELIGIBILITY FOR ASSISTANCE.—During the 3-year period that begins with the date a commitment made to an applicant is revoked under paragraph (1), the applicant shall not be eligible for assistance under this section.".

SEC. 208. GRADUATION OF BORROWERS WITH OPERATING LOANS OR GUARANTEES TO PRIVATE COMMERCIAL CREDIT.

Subtitle B (7 U.S.C. 1941 et seq.) (as amended by section 207 of this Act) is further amended by adding at the end the following new section:

"SEC. 319. GRADUATION OF BORROWERS WITH OPERATING LOANS OR GUARANTEES TO PRIVATE COMMERCIAL CREDIT.

"(a) GRADUATION PLAN.—The Secretary shall establish a plan, in coordination with activities under sections 359, 360, 361, and 362, to encourage each borrower with an outstanding loan under this subtitle or with respect to whom there is an outstanding guarantee under this subtitle to graduate to private commercial or other sources of credit.

"(b) LIMITATION ON PERIOD FOR WHICH BORROWERS ARE ELIGIBLE FOR ASSISTANCE UNDER THIS SUBTITLE.—Notwithstanding any other provision of this subtitle:

"(1) GENERAL RULE.—Except as provided in paragraph (2), the Secretary shall not—

"(A) make a loan to a borrower under this subtitle for any year after the 10th year for which such a loan is made to the borrower; or

"(B) guarantee for any year a loan made to a borrower for a purpose specified in this subtitle, after the 15th year for which loans under this subtitle are made to, or such a guarantee is provided with respect to, the borrower.

"(2) TRANSITION RULE.—If, as of the date of enactment of this section, the Secretary has made a loan to a borrower under this subtitle for 5 or more years, or has provided a guarantee for 10 or more years with respect to one or more loans made to the borrower for a purpose specified in this subtitle, the Secretary shall not make a loan to the borrower under this subtitle, or provide such a guarantee with respect to a loan made to the borrower for a purpose specified in this subtitle, after the 5th year occurring after the date of enactment for which a loan is made under this subtitle to, or such a guarantee is provided with respect to, the borrower.".

SEC. 209. CONSIDERATION OF BORROWERS FOR LOAN SERVICE PROGRAMS.

The first sentence of section 331D(e) (7 U.S.C. 1981d(e)) is amended by inserting after "not later than 60 days after receipt of the notice required in this section" the following: "or, in extraordinary circumstances as determined by the applicable State director, after the 60-day period".

SEC. 210. TIME PERIOD WITHIN WHICH COUNTY COMMITTEE IS REQUIRED TO MEET TO CONSIDER APPLICATIONS FOR FARM OWNERSHIP AND OPERATING LOANS AND GUARANTEES AND BEGINNING FARMER PLANS.

Section 332 (7 U.S.C. 1982) is amended—

(1) in subsection (c), by striking "The committee" and inserting "Subject to subsection (e), the committee"; and

(2) by adding at the end the following new subsection:

"(e) The county committee shall meet to consider approval of an application received by the committee for a loan under this title, a guarantee under section 309(h), or a plan of farm operation under section 318, not later than—

"(1) 5 days after receipt of the application if at the time of the receipt there is at least one other such application or plan pending; or

"(2) 15 days after receipt of the application if at the time of the receipt there are no other such applications or plans pending.".

SEC. 211. INCREASE IN PERIOD DURING WHICH COUNTY COMMITTEE LOAN ELIGIBILITY CERTIFICATION CONTINUES IN EFFECT.

Section 333(2)(A)(iii) (7 U.S.C. 1983(2)(A)(iii)) is amended by striking "2 years" and inserting "5 years".

SEC. 212. PROCESSING OF APPLICATIONS FOR FARM OPERATING LOANS.

Section 333A(a)(2) (7 U.S.C. 1983a(a)(2)) is amended—

(1) by inserting "(A)" after "(2)";

(2) by inserting "(other than under subtitle B)" after "under this title"; and

(3) by adding at the end the following new subparagraph:

"(B)(i) Not later than 10 calendar days after the Secretary receives an application for an operating loan or loan guarantee under subtitle B, the Secretary shall notify the applicant of any information required before a decision may be made on the application. On receipt of an application, the Secretary shall request from other parties such information as may be needed in connection with the application.

"(ii) Not later than 15 calendar days after the date an agency of the Department of Agriculture receives a request for information made pursuant to clause (i), the agency shall provide the Secretary with the requested information.

"(iii) If, not later than 20 calendar days after the date a request is made pursuant to clause (i) with respect to an application, the Secretary has not received the information requested, the Secretary shall notify the applicant and the district office of the Farmers Home Administration, in writing, of the outstanding information.

"(iv) A county office shall notify the district office of the Farmers Home Administration of each application for an operating loan or loan guarantee under subtitle B that is pending more than 45 days after receipt, and the reasons the application is pending.

"(v) A district office that receives a notice provided under clause (iv) with respect to an application shall immediately take steps to ensure that final action is taken on the application not later than 15 days after the date of the receipt of the notice.

"(vi) The district office shall report to the State office of the Farmers Home Administration on each application for an operating loan or loan guarantee under subtitle B that is pending more than 45 days after receipt by the county committee, and the reasons the application is pending.

"(vii) Each month, the Secretary shall notify the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, on a State-by-State basis, as to each application for an operating loan or loan guarantee under subtitle B on which final action had not been taken within 60 calendar days after receipt by the Secretary, and the reasons final action had not been taken.".

SEC. 213. GRADUATION OF SEASONED DIRECT LOAN BORROWERS TO THE LOAN GUARANTEE PROGRAM.

Section 333A (7 U.S.C. 1983a) is amended by adding at the end the following new subsection:

"(f)(1) As used in this subsection:

"(A) The term 'approved lender' means a lender approved prior to the date of enactment of this subsection by the Secretary under the approved lender program established by exhibit A to subpart B of part 1980 of title 7, Code of Federal Regulations (as in effect on January 1, 1991), or a lender certified under section 114.

"(B) The term 'seasoned direct loan borrower' means a borrower receiving a direct loan under this title who has been classified as 'commercial' or 'standard' under subpart W of part 2006 of the Instruction Manual (as in effect on January 1, 1991).

"(2) The Secretary, or a contracting third party, shall annually review under section 360 the loans of each seasoned loan borrower. If, based on the review, it is determined that a borrower would be able to obtain a loan, guaranteed by the Secretary, from a commercial or cooperative lender at reasonable rates and terms for loans for similar purposes and periods of time, the Secretary shall assist the borrower in applying for the commercial or cooperative loan.

"(3) In accordance with section 362, the Secretary shall prepare a prospectus on each seasoned direct loan borrower determined eligible to obtain a guaranteed loan. The prospectus shall contain a description of the amounts of loan guarantee and interest assistance that the Secretary will provide to the seasoned direct loan borrower to enable the seasoned direct loan borrower to carry out a financially viable farming plan if a guaranteed loan is made.

"(4) With the approval of the borrower, the Secretary shall provide the prospectus of the seasoned direct loan borrower to each approved lender whose lending area includes the location of the seasoned direct loan borrower. If the Secretary receives an offer from an approved lender to extend credit to the seasoned direct loan borrower under terms and conditions contained in the prospectus, the seasoned direct loan borrower shall not be eligible for an insured loan from the Secretary under subtitle A or B, except as otherwise provided in this subsection.

"(5) If the Secretary is unable to provide loan guarantees and, if necessary, interest assistance to the seasoned direct loan borrower under this subsection in amounts sufficient to enable the seasoned direct loan borrower to borrow from commercial sources the amount required to carry out a financially viable farming plan, or if the Secretary does not receive an offer from an approved lender to extend credit to a seasoned direct loan borrower under the terms and conditions contained in the prospectus, the Secretary shall make an insured loan to the seasoned direct loan borrower under subtitle A or B, whichever is applicable.

"(6) To the extent necessary for the borrower to obtain a loan, guaranteed by the Secretary, from a commercial or cooperative lender, the Secretary shall provide interest rate reductions as provided for under section 351.".

SEC. 214. SIMPLIFIED APPLICATION FOR GUARANTEED LOANS OF $50,000 OR LESS.

Section 333A (7 U.S.C. 1983a) (as amended by section 213 of this Act) is further amended by adding at the end the following new subsection:

"(g)(1) The Secretary shall provide to lenders a short, simplified application form for guarantees under this title of loans the principal amount of which is $50,000 or less.

"(2) In developing the application, the Secretary shall—

"(A) consult with commercial and cooperative lenders; and

"(B) ensure that—

"(i) the form can be completed manually or electronically, at the option of the lender;

"(ii) the form minimizes the documentation required to accompany the form;

"(iii) the cost of completing and processing the form is minimal; and

"(iv) the form can be completed and processed in an expeditious manner.".

SEC. 215. INVENTORY LEASE OR LEASE WITH OPTION TO PURCHASE.

The fourth sentence of section 335(c)(1) (7 U.S.C. 1985(c)(1)) is amended—

(1) by inserting "(A)" after "shall be"; and

(2) by inserting before the period at the end the following: "or (B) leased to persons eligible for assistance under the provisions of any law administered by the Farmers Home Administration or the Rural Development Administration under an annual lease or a lease with an option to purchase, with a preference for sale".

SEC. 216. TRANSFER OF INDIAN LANDS PLEDGED AS COLLATERAL FOR FmHA LOANS.

Section 335(e)(1) (7 U.S.C. 1985(e)(1)) is amended—

(1) in subparagraph (D)(i), by striking "If" and inserting "Except as provided in subparagraph (G), if"; and

(2) by adding at the end the following new subparagraph:

"(G)(i) If—

"(I) the real property described in subparagraph (A)(i) is located within an Indian reservation;

"(II) the borrower-owner is an Indian tribe that has jurisdiction over the reservation in which the real property is located or the borrower-owner is a member of an Indian tribe;

"(III) the borrower-owner has obtained a loan made, insured, or guaranteed under this title; and

"(IV) the borrower-owner and the Secretary have exhausted all of the procedures provided for in this title to permit a borrower-owner to retain title to the real property, such that it is necessary for the borrower-owner to relinquish title,

the Secretary shall dispose of or administer the property only as provided in subparagraph (D), as modified by this subparagraph.

"(ii) The Secretary shall provide the borrower-owner of real property that is described in clause (i) with written notice of—

"(I) the right of the borrower-owner to voluntarily convey the real property to the Secretary; and

"(II) the fact that real property so conveyed will be placed in the inventory of the Secretary.

"(iii) The Secretary shall provide the borrower-owner of the real property with written notice of the rights and protections provided under this title to the borrower-owner, and the Indian tribe that has jurisdiction over the reservation in which the real property is located, from foreclosure or liquidation of the real property, including written notice of—

"(I) the provisions of subparagraphs (C)(i), (C)(ii), and (D), this subparagraph, and subsection (g)(6);

"(II) if the borrower-owner does not voluntarily convey the real property to the Secretary, that—

"(aa) the Secretary may foreclose on the property;

"(bb) in the event of foreclosure, the property will be offered for sale;

"(cc) the Secretary must offer a bid for the property that is equal to the fair market value of the property or the outstanding principal and interest of the loan, whichever is higher;

"(dd) the property may be purchased by another party; and

"(ee) if the property is purchased by another party, the property will not be placed in the inventory of the Secretary and the borrower-owner will forfeit the rights and protections provided under this title; and

"(III) the opportunity of the borrower-owner to consult with the Indian tribe that has jurisdiction over the reservation in which the real property is located or counsel to determine if State or tribal law provides rights and protections that are more beneficial than those provided the borrower-owner under this title.

"(iv)(I) Except as provided in subclause (II), the Secretary shall accept the voluntary conveyance of real property described in clause (i).

"(II) If a hazardous substance (as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)) is located on the property and the Secretary takes remedial action to protect human health or the environment if the property is taken into inventory, the Secretary shall accept the voluntary conveyance of the property only if the Secretary determines that it is in the best interests of the Federal Government.

"(v) If a borrower-owner does not voluntarily convey to the Secretary real property described in clause (i), at least 30 days before a foreclosure sale of the property, the Secretary shall provide written notice to the Indian tribe that has jurisdiction over the reservation in which the real property is located of—

"(I) the sale;

"(II) the fair market value of the property; and

"(III) the requirements of this subparagraph.

"(vi)(I) Except as provided in subclause (II), at a foreclosure sale of real property described in clause (i), the Secretary shall offer a bid for the property that is equal to the higher of—

"(aa) the fair market value of the property; or

"(bb) the outstanding principal and interest of the loan.

"(II) If a hazardous substance (as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)) is located on the property and the Secretary takes remedial action to protect human health or the environment if the property is taken into inventory, subclause (I) shall apply only if the Secretary determines that it is in the best interests of the Federal Government.".

SEC. 217. DEBT SERVICE MARGIN REQUIREMENTS; CERTIFIED LENDERS PROGRAM.

Section 339 (7 U.S.C. 1989) is amended—

(1) by striking "SEC. 339. The" and inserting the following:

"**SEC. 339. RULES AND REGULATIONS.**

"(a) IN GENERAL.—The"; and

(2) by adding at the end the following new subsections:

"(b) DEBT SERVICE MARGIN REQUIREMENTS.—Notwithstanding subsection (a), in providing farmer program loan guarantees under this title, the Secretary shall consider the income of the borrower adequate if the income is equal to or greater than the income necessary—

"(1) to make principal and interest payments on all debt obligations of the borrower, in a timely manner;

"(2) to cover the necessary living expenses of the family of the borrower; and

"(3) to pay all other obligations and expenses of the borrower not financed through debt obligations referred to in paragraph (1), including expenses of replacing capital items (determined after taking into account depreciation of the items).

"(c) CERTIFIED LENDERS PROGRAM.—

"(1) IN GENERAL.—The Secretary shall establish a program under which the Secretary shall guarantee loans for any purpose specified in subtitle B that are made by lending institutions certified by the Secretary.

"(2) CERTIFICATION REQUIREMENTS.—The Secretary shall certify a lending institution that meets such criteria as the Secretary may prescribe in regulations, including the ability of the institution to properly make, service, and liquidate the loans of the institution.

"(3) CONDITION OF CERTIFICATION.—As a condition of the certification, the Secretary shall require the institution to undertake to service the loans guaranteed by the Secretary under this subsection, using standards that are not less stringent than generally accepted banking standards concerning loan servicing employed by prudent commercial or cooperative lenders. The Secretary shall, at least annually, monitor the performance of each certified lender to ensure that the conditions of the certification are being met.

"(4) EFFECT OF CERTIFICATION.—Notwithstanding any other provision of law:

"(A) The Secretary shall guarantee 80 percent of a loan made under this subsection by a certified lending institution as described in paragraph (1), subject to county committee certification that the borrower of the loan meets the eligibility requirements and such other criteria as may be applicable to loans guaranteed by the Secretary under other provisions of this title.

"(B) With respect to loans to be guaranteed by the Secretary under this subsection, the Secretary shall permit certified lending institutions to make appropriate certifications (as provided by regulations issued by the Secretary)—

"(i) relating to issues such as creditworthiness, repayment ability, adequacy of collateral, and feasibility of farm operation; and

"(ii) that the borrower is in compliance with all requirements of law, including regulations issued by the Secretary.

"(C) The Secretary shall approve or disapprove a guarantee not later than 14 calendar days after the date that the lending institution applied to the Secretary for the guarantee. If the Secretary rejects the loan application within the 14-day period, the Secretary shall state, in writing, all of the reasons the application was rejected.

"(5) RELATIONSHIP TO OTHER REQUIREMENTS.—This subsection shall not affect the responsibility of the Secretary to certify eligibility, review financial information, and otherwise assess an application.".

SEC. 218. DEFINITION OF QUALIFIED BEGINNING FARMER OR RANCHER.

Section 343(a) (7 U.S.C. 1991(a)) is amended—

(1) by striking "this title (1) the term" and all that follows through "fish farming," at the end of paragraph (1) and inserting "this title:

"(1) The term 'farmer' includes a person who is engaged in, or who, with assistance afforded under this title, intends to engage in, fish farming.";

(2) by indenting, and aligning the margins of, paragraphs (2) through (10) so as to align with paragraph (1) (as amended by paragraph (1));

(3) by striking "the" the first place it appears in each of such paragraphs and inserting "The";

(4) by striking the comma at the end of each of paragraphs (2) through (8) and inserting a period;

(5) by striking ", and" at the end of paragraph (9) and inserting a period; and

(6) by adding at the end the following new paragraph:

"(11) The term 'qualified beginning farmer or rancher' means an applicant—

"(A) who is eligible for assistance under this title;

"(B) who has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years;

"(C) in the case of a cooperative, corporation, partnership, or joint operation, who has members, stockholders, partners, or joint operators who are all related to one another by blood or marriage;

"(D)(i) in the case of an owner and operator of a farm or ranch, who—

"(I) in the case of a loan made to an individual, individually or with the immediate family of the applicant—

"(aa) materially and substantially participates in the operation of the farm or ranch; and

"(bb) provides substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the State or county in which the farm or ranch is located; or

"(II)(aa) in the case of a loan made to a cooperative, corporation, partnership, or joint operation, has members, stockholders, partners, or joint operators, materially and substantially participate in the operation of the farm or ranch; and

"(bb) in the case of a loan made to a corporation, has stockholders, all of whom are qualified beginning farmers or ranchers; and

"(ii) in the case of an applicant seeking to own and operate a farm or ranch, who—

"(I) in the case of a loan made to an individual, individually or with the immediate family of the applicant, will—

"(aa) materially and substantially participate in the operation of the farm or ranch; and

"(bb) provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the State or county in which the farm or ranch is located; or

"(II)(aa) in the case of a loan made to a cooperative, corporation, partnership, or joint operation, will have members, stockholders, partners, or joint operators, materially and substantially participate in the operation of the farm or ranch; and

"(bb) in the case of a loan made to a corporation, has stockholders, all of whom are qualified beginning farmers or ranchers;

"(E) who agrees to participate in such loan assessment, borrower training, and financial management programs as the Secretary may require;

"(F) who does not own land or who, directly or through interests in family farm corporations, owns land, the aggregate acreage of which does not exceed 15 percent of the median acreage of the farms or ranches, as the case may be, in the county in which the farm or ranch operations of the applicant are located, as reported in the most recent census of agriculture taken under section 142 of title 13, United States Code; and

"(G) who demonstrates that the available resources of the applicant and spouse (if any) of the applicant are not sufficient to enable the applicant to continue farming or ranching on a viable scale.".

SEC. 219. TARGETING OF FUNDS.

(a) FARM OPERATING LOANS FOR BEGINNING FARMERS AND RANCHERS.—Section 346(b) (7 U.S.C. 1994(b)) is amended by adding at the end the following new paragraph:

"(5)(A) In expending funds available for insured operating loans under subtitle B, including loans made under section 318—

"(i) during the first 6 months of fiscal year 1994, the Secretary shall reserve not less than 30 percent of the funds available for the fiscal year to make insured operating loans to qualified beginning farmers or ranchers;

"(ii) during the first 6 months of each of fiscal years 1995 and 1996, the Secretary shall reserve not less than 40 percent of the funds available for the fiscal year to make insured operating loans to qualified beginning farmers or ranchers; and

"(iii) during the first 6 months of each of fiscal years 1997 and thereafter, the Secretary may reserve not more than 50 percent of the funds available for the fiscal year to make insured operating loans to qualified beginning farmers or ranchers.

"(B) In each fiscal year described in subparagraph (A), with regard to the funds not reserved under subparagraph (A), a qualified beginning farmer or rancher may apply for insured operating loans, but shall not receive any preference as a result of status as a qualified beginning farmer or rancher.".

(b) PORTIONS OF FARM OWNERSHIP LOAN GUARANTEE FUNDS TARGETED TO BEGINNING FARMERS OR RANCHERS.—Section 346(b)(2) (7 U.S.C. 1994(b)(2)) is amended by adding at the end the following new sentence:

"Not less than 25 percent of the amounts appropriated for guarantees of farm ownership loans for each of the fiscal years 1994, 1995, 1996, and 1997 shall be reserved by the Secretary during the first 6 months of the respective fiscal year for guarantees of farm ownership loans to beginning farmers or ranchers.".

(c) FARM OWNERSHIP LOANS.—

(1) PERCENTAGE OF INSURED FARM OWNERSHIP LOAN FUNDS RESERVED FOR BEGINNING FARMERS OR RANCHERS.—Section 346(b)(3) is amended by adding at the end the following new subparagraph:

"(D) To the extent that it is not inconsistent with an exercise of authority under section 355, in expending funds available for insured farm ownership loans—

"(i) during fiscal year 1994, the Secretary shall reserve not less than 55 percent of the funds available for the fiscal year to make insured farm ownership loans to qualified beginning farmers or ranchers;

"(ii) during fiscal year 1995, the Secretary shall reserve not more than 65 percent of the funds available for the fiscal year to make insured farm ownership loans to qualified beginning farmers or ranchers; and

"(iii) during each of fiscal years 1996 and thereafter, the Secretary may reserve not less than 65 percent and not more than 70 percent of the funds available for the fiscal year to make insured farm ownership loans to qualified beginning farmers or ranchers.".

(2) FUNDS RESERVED FOR DOWN PAYMENT LOAN PROGRAM.—Section 346(b)(3) (as amended by paragraph (1) of this subsection) is further amended by adding at the end the following new subparagraph:

"(E) To the extent that it is not inconsistent with an exercise of authority under section 355, the Secretary shall reserve not less than 60 percent of the amounts reserved for qualified beginning farmers or ranchers under subparagraph (D) for any fiscal year for down payment loans under section 310E.".

(3) CERTAIN UNOBLIGATED DOWN PAYMENT LOAN PROGRAM FUNDS AVAILABLE FOR ANY TYPE OF INSURED FARM OWNERSHIP LOANS FOR BEGINNING FARMERS AND RANCHERS.—Section 346(b)(3) (as amended by paragraph (2) of this subsection) is further amended by adding at the end the following new subparagraph:

"(F) To the extent that it is not inconsistent with an exercise of authority under section 355, to the maximum extent practicable, any funds reserved for down payment loans under section 310E for a fiscal year by reason of subparagraph (E) that are not obligated by the end of the second quarter of the fiscal year shall be available during the third quarter of the fiscal year for any type of insured farm ownership loans to beginning farmers and ranchers.".

(d) INTEREST RATE ASSISTANCE PROGRAM.—Section 346(b)(3) (as amended by subsection (c)(3) of this section) is further amended by adding at the end the following new subparagraph:

"(G) Not less than 40 percent of the amounts available for the interest rate reduction program under section 351 shall be reserved for the first 6 months of each fiscal year for assistance to beginning farmers or ranchers.".

(e) DOWN PAYMENT LOAN PROGRAM.—Section 346(b) (as amended by subsection (a) of this section) is further amended by adding at the end the following new paragraph:

"(6) Notwithstanding any other provision of this title, at the end of the third quarter of each fiscal year, the Secretary shall transfer, and use to carry out section 310E, 75 percent of the amount that would otherwise be available for guaranteed operating loans.".

SEC. 220. EQUAL ACCESS TO FmHA ASSISTANCE BY GENDER.

(a) TARGET PARTICIPATION RATES.—Section 355(a) (7 U.S.C. 2003(a)) is amended—

(1) in paragraph (2), by striking "In establishing" and inserting "Except as provided in paragraph (3), in establishing"; and

(2) by adding at the end the following new paragraph:

"(3) GENDER.—With respect to gender, target participation rates shall take into consideration the number of current and potential socially disadvantaged farmers and ranchers in a State in proportion to the total number of farmers and ranchers in the State.".

(b) TARGETING OF LOANS TO MEMBERS OF GROUPS WHOSE MEMBERS HAVE BEEN SUBJECTED TO GENDER PREJUDICE.—Section 355(e)(1) (7 U.S.C. 2003(e)(1)) is amended by striking "or ethnic" and inserting ", ethnic, or gender".

(c) RECORDKEEPING OF LOANS BY BORROWER'S GENDER.—Subtitle D (7 U.S.C. 1981 et seq.) is amended by adding at the end the following new section:

"SEC. 369. RECORDKEEPING OF LOANS BY BORROWER'S GENDER.

"The Secretary shall classify, by gender, records of applicants for loans and loan guarantees under this title.".

SEC. 221. STATE MEDIATION PROGRAMS.

Section 502 of the Agricultural Credit Act of 1987 (7 U.S.C. 5102) is amended—

(1) in subsection (b)(1), by striking "50" and inserting "70"; and

(2) in subsection (c), by inserting "with respect to which the amount was paid" before the period.

SEC. 222. REGULATIONS.

(a) INTERIM REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall issue such interim regulations as are necessary to implement this title and the amendments made by this title.

(b) FINAL REGULATIONS.—Not later than October 1, 1993, the Secretary of Agriculture shall issue such final regulations as are necessary to implement this title and the amendments made by this title.

TITLE III—RURAL ELECTRIFICATION ADMINISTRATION IMPROVEMENTS

SEC. 301. SHORT TITLE.

This title may be cited as the "Rural Electrification Administration Improvement Act of 1992".

SEC. 302. DISCOUNTED LOAN PREPAYMENT.

(a) IN GENERAL.—Subsection (a) of section 306B of the Rural Electrification Act of 1936 (7 U.S.C. 936b(a)) is amended to read as follows:

"(a) DISCOUNTED PREPAYMENT BY BORROWERS OF ELECTRIC LOANS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a direct or insured loan made under this Act shall not be sold or prepaid at a value that is less than the outstanding principal balance on the loan.

"(2) EXCEPTION.—On request of the borrower, an electric loan made under this Act, or a portion of such a loan, that was advanced before May 1, 1992, or has been advanced for not less than 2 years, shall be sold to or prepaid by the borrower at the lesser of—

"(A) the outstanding principal balance on the loan; or

"(B) the present value of the loan discounted from the face value at maturity at the rate established by the Administrator.

"(3) DISCOUNT RATE.—The discount rate applicable to the prepayment under this subsection of a loan or loan advance shall be the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the remaining term of the loan.

"(4) TAX EXEMPT FINANCING.—If a borrower prepays a loan under this subsection using tax exempt financing, the discount shall be adjusted to ensure that the borrower receives a benefit that is equal to the benefit the borrower would receive if the borrower used fully taxable financing. The borrower shall certify in writing whether the financing will be tax exempt and shall comply with such other terms and conditions as the Administrator may establish that are reasonable and necessary to carry out this subsection.

"(5) ELIGIBILITY.—

"(A) IN GENERAL.—A borrower that has prepaid an insured or direct loan shall remain eligible for assistance under this Act in the same manner as other borrowers, except that—

"(i) a borrower that has prepaid a loan, either before or after the date of enactment of this subsection, at a discount rate as provided by paragraph (3), shall not be eligible, except at the discretion of the Administrator, to apply for or receive direct or insured loans under this Act during the 120-month period beginning on the date of the prepayment; and

"(ii) a borrower that prepaid a loan before the date of enactment of this subsection at a discount rate greater than that provided by paragraph (3), shall not be eligible—

"(I) except at the discretion of the Administrator, to apply for or receive direct or insured loans described in clause (i) during the 180-month period beginning on the date of the prepayment; or

"(II) to apply for or receive direct or insured loans described in clause (i) until the borrower has repaid to the Federal Government the sum of—

"(aa) the amount (if any) by which the discount the borrower received by reason of the prepayment exceeds the discount the borrower would have received had the discount been based on the cost of funds to the Department of the Treasury at the time of the prepayment; and

"(bb) interest on the amount described in item (aa), for the period beginning on the date of the prepayment and ending on the date of the repayment, at a rate equal to the average annual cost of borrowing by the Department of the Treasury.

"(B) EFFECT ON EXISTING AGREEMENTS.—If a borrower and the Administrator have entered into an agreement with respect to a prepayment occurring before the date of enactment of this subsection, this paragraph shall supersede any provision in the agreement relating to the restoration of eligibility for loans under this Act.

"(C) DISTRIBUTION BORROWERS.—A distribution borrower not in default on the repayment of loans made or insured under this Act shall be eligible for discounted prepayment as provided in this subsection. For the purpose of determining eligibility for discounted prepayment under this subsection or eligibility for assistance under this Act, a default by a borrower from which a distribution borrower purchases wholesale power shall not be considered a default by the distribution borrower.

"(6) DEFINITIONS.—As used in this subsection:

"(A) DIRECT LOAN.—The term 'direct loan' means a loan made under section 4.

"(B) INSURED LOAN.—The term 'insured loan' means a loan made under section 305.".

(b) CONFORMING AMENDMENT.—Section 306B(b) of such Act (7 U.S.C. 936b(b)) is amended by striking "(b) Notwithstanding" and inserting the following:

"(b) MERGERS OF ELECTRIC BORROWERS.—Notwithstanding".

SEC. 303. IMPROVEMENT OF HEALTH CARE SERVICES AND EDUCATIONAL SERVICES THROUGH TELECOMMUNICATIONS.

(a) PROGRAMS FOR CONSORTIA IN QUALIFIED LOCAL EXCHANGE SERVICE AREAS.—Chapter 1 of subtitle D of title XXIII of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 950aaa et seq.) is amended by adding at the end the following new section:

"SEC. 2335A. SPECIAL HEALTH CARE AND DISTANCE LEARNING PROGRAM FOR QUALIFIED SERVICE AREAS.

"(a) DEVELOPMENT OF CONSORTIA.—The Administrator shall encourage the development of consortia to provide health care services or educational services through telecommunications in rural areas of a qualified local exchange carrier service area. Each consortium shall be composed of—

"(1) a tertiary care facility, rural referral center, medical teaching institution, or educational institution accredited by the State;

"(2) any number of institutions that provide health care services or educational services; and

"(3) not less that three rural hospitals, clinics, community health centers, migrant health centers, local health departments, or similar facilities, or not less than three educational institutions accredited by the State.

"(b) SPECIAL PROGRAM FOR QUALIFIED LOCAL EXCHANGE CARRIER SERVICE AREAS.—

"(1) REGULATIONS AND SPECIAL PROGRAM.—Through regulations issued not later than 190 days after the date of enactment of this section, the Administrator shall establish a program under which qualified consortia described in subsection (a) located within qualified local exchange carrier service areas may apply to the Administrator for grants to support the costs of activities involved in the sending and receiving of information that will improve the delivery of health care services or educational services through telecommunications in rural areas.

"(2) SELECTION OF GRANTEES.—The Administrator shall—

"(A) establish application procedures;

"(B) review the applications submitted under this subsection in a timely manner; and

"(C) make grants in accordance with this subsection and with regulations issued by the Administrator.

"(3) PRIORITIES.—

"(A) IN GENERAL.—Priority for grants under this subsection shall be accorded applicants whose applications and plans demonstrate—

"(i) the greatest likelihood of successfully and efficiently carrying out the activities described in the application and the plan of the applicant;

"(ii) the greatest likelihood of improving health care services or educational services in the rural areas;

"(iii) coordination between local exchange carriers to carry out activities as described in the application; and

"(iv) unconditional financial support from each affected local community.

"(B) GEOGRAPHIC DIVERSITY.—In awarding grants, the Administrator shall seek to achieve geographic diversity among the grantees.

"(4) MAXIMUM AMOUNT OF GRANT.—The amount of each grant awarded under this subsection shall not exceed $1,500,000.

"(5) DISTRIBUTION OF GRANTS.—Grants to a qualified consortium under this subsection shall be disbursed over a period of not more than 3 years.

"(6) USE OF FUNDS.—

"(A) IN GENERAL.—Grants under this subsection may be used to support the costs of activities involving the sending and receiving of information to improve health care services or educational services in rural areas, including—

"(i) in the case of grants to improve health care services—

"(I) consultations between health care providers;

"(II) transmitting and analyzing x-rays, lab slides, and other images;

"(III) developing and evaluating automated claims processing, and transmitting automated patient records; and

"(IV) developing innovative health professions education programs;

"(ii) in the case of grants to improve educational services—

"(I) developing innovative education programs and expanding curriculum offerings;

"(II) providing continuing education to all members of the community;

"(III) providing means for libraries of educational institutions or public libraries to share resources;

"(IV) providing the public with access to State and national data bases;

"(V) conducting town meetings; and

"(VI) covering meetings of agencies of State government; and

"(iii) in all cases—

"(I) transmitting financial information; and

"(II) such other related activities as the Administrator considers to be consistent with the purposes of this section.

"(7) Limitation on Acquisition of Interactive Telecommunications Equipment.—Not more than 40 percent of the amount of any grant made under this subsection may be used to acquire interactive telecommunications end user equipment.

"(8) Limitation on Use of Consultants.—Not more than 5 percent of the amount of any grant made under this subsection may be used to employ or contract with any consultant or similar person.

"(9) Prohibitions.—Grants made under this subsection may not be used, in whole or in part, to establish or operate a telecommunications network or to provide any telecommunications services for hire.

"(c) Expedited Telephone Loans.—Local exchange carriers located in a qualified local exchange carrier service area shall be eligible to apply for expedited loans under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.). The Administrator shall respond to a completed application for such a loan no later than 45 days after receipt. The Administrator shall notify the applicant in writing of its decision regarding each such application.

"(d) Definition.—As used in this section, the term 'qualified local exchange carrier service area' means the service area of a local telephone exchange carrier in which the local exchange carrier has a plan approved by the Administrator for upgrading and modernizing the rural telecommunications infrastructure of the service area. The plan shall—

"(1) provide for eliminating party line service within the local exchange carrier service area and for other improvements and modernization in rural telephone service;

"(2) provide for the enhancement of the availability of educational opportunities or the availability of improved medical care through telecommunications;

"(3) encourage and improve the use of telecommunications, computer networks, and related advanced technologies to provide educational and medical benefits to people in rural areas; and

"(4) provide for the achievement of the goals described in subparagraphs (A) through (C) not later than 10 years after the approval of the plan.".

(b) Extension of Chapter 1.—Notwithstanding any other provision of law, chapter 1 of subtitle D of title XXIII of the Food, Agriculture, Conservation and Trade Act of 1990 (7 U.S.C. 950aaa et seq.), including the amendments made by this section, shall be effective until September 30, 1997.

(c) Allocation of Funds.—Section 2335(b) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 950aaa-4) is amended by adding at the end the following new paragraph:

"(8) Use of Appropriated Funds.—

"(A) In General.—Subject to subparagraph (B), the Administrator shall make available—

"(i) 50 percent of the funds made available pursuant to paragraph (3) for grants for end users that are consortia participating in the special program established under section 2335A; and

"(ii) 50 percent of the funds made available pursuant to paragraph (3) to provide funds for the programs, and end users participating in the programs, authorized by sections 2331 through 2335.

"(B) Release of Funds.—Not earlier than April 1 and not later than May 1 of each year, the Administrator shall make such funds described in subparagraph (A) as remain unobligated, available for any purpose described in subparagraph (A).".

(d) Effect of Amendments.—The amendments made by this section shall not apply to funds appropriated for fiscal year 1993 to carry out subtitle D of title XXIII of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 950aaa et seq.) or require the revision of any regulation proposed to carry out such subtitle during fiscal year 1993.

TITLE IV—MISCELLANEOUS

SEC. 401. USE OF ELECTRONIC COTTON WAREHOUSE RECEIPTS.

Section 17(c) of the United States Warehouse Act (7 U.S.C. 259(c)) is amended—

(1) in paragraph (1)(A)—

(A) by striking "The Secretary" and inserting "Notwithstanding any other provision of Federal or State law, the Secretary";

(B) by inserting after "licensed under this Act" the following: "or in any other warehouse"; and

(C) by striking "under section 18" and inserting "(i) under section 18 in the case of a warehouse licensed under this Act or (ii) under any applicable State law in the case of a warehouse not licensed under this Act";

(2) in paragraph (2)—

(A) by striking "provision of law—" and inserting "provision of Federal or State law:";

(B) in subparagraph (A)—

(i) by striking "the record" and inserting "The record";

(ii) by striking "ownership" both places it appears and inserting "possessory";

(iii) by striking "of this Act" and inserting "of this Act or State law"; and

(iv) by striking "; and" and inserting a period; and

(C) by striking subparagraph (B) and inserting the following new subparagraph:

"(B) Any person designated as a holder of an electronic warehouse receipt authorized under this subsection and subsection (d) shall, for the purpose of perfecting the security interest of the person under Federal or State law with respect to the cotton covered by the warehouse receipt, be considered to be in possession of the warehouse receipt. If more than one security interest exists in the cotton reflected on the electronic warehouse receipt, the priority of the security interests shall be determined by the applicable Federal or State law. This subsection is applicable to electronic cotton warehouse receipts and any other security interests covering cotton stored in a cotton warehouse, regardless of whether the warehouse is licensed under this Act."; and

(3) in paragraph (3)—

(A) by striking "licensed under this Act" and inserting "covered under this subsection"; and

(B) by striking "owner" and inserting "holder".

SEC. 402. ONE-TIME EFAP ASSISTANCE.

(a) Use of Account.—The Secretary of Agriculture shall use the account in which funds appropriated under section 214 of the Emergency Food Assistance Act of 1983 (Public Law 98-8; 7 U.S.C. 612c note) are credited or deposited, or another account established for the use of the Secretary of Agriculture, for the purpose of purchasing, processing and distributing additional commodities for the emergency food assistance program established under such Act (7 U.S.C. 612c note) as required by this section.

(b) Use of Receipts.—

(1) In General.—Not later than 10 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall—

(A) calculate the estimated present value of the future receipts available to the Federal Government, under procedures or definitions established in the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), as a result of enactment of this Act and the amendments made by this Act; and

(B) advise the Secretary of Agriculture, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate of the dollar amount of that value.

(2) Credit.—Not later than 20 days after the date of enactment of this Act, an amount equal to the dollar amount of that value shall be credited to, or deposited in, the account referred to in subsection (a) by the Secretary of the Treasury.

(c) Required Purchase of Commodities by the Secretary of Agriculture.—

(1) In General.—The Secretary of Agriculture shall—

(A) use all of the funds provided to the Secretary under subsection (a) to purchase, process, and distribute additional commodities for the emergency food assistance program; and

(B) allot the additional commodities to States in accordance with the application of the allocation formula established in section 214(f) of the Emergency Food Assistance Act of 1983 (Public Law 98-8; 7 U.S.C. 612c note) to the total value of the additional commodities.

(2) Types and Varieties.—The additional commodities shall be of the types and varieties required under section 214(d) of such Act.

(3) Reallocation.—The additional commodities may be reallocated under procedures established by the Secretary of Agriculture in accordance with section 214(g) of such Act.

(d) Entitlement to Receive Commodities.—Each State shall be entitled to receive during fiscal year 1993 its allotment of the additional commodities purchased by the Secretary of Agriculture under this section.

(e) Termination of Authority.—The authority provided to carry out this section shall terminate on September 30, 1993.

SEC. 403. EXPEDITED ACTION ON MARKETING ORDERS.

Section 8c(1) of the Agricultural Adjustment Act (7 U.S.C. 608c(1)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended by adding at the end the following new sentences: "In carrying out this section, the Secretary shall complete all informal rulemaking actions necessary to respond to recommendations submitted by administrative committees for such orders as expeditiously as possible, but not more than 45 days (to the extent practicable) after submission of the committee recommendations. The Secretary shall establish time frames for each office and agency within the Department of Agriculture to consider the committee recommendations.".

SEC. 404. TECHNICAL CORRECTIONS.

(a) Correction of Reference to Section 1236 of the Food Security Act of 1985.—The matter under the heading "construction and anadromous fish" of title I of the Department of the Interior and Related Agencies Appropriations Act, 1991 (Public Law 101-512; 104 Stat. 1918) is amended by striking "title 16 U.S.C. section 3832(a)(6)" and inserting "section 1232(a)(6) of the Food Security Act of 1985 (16 U.S.C. 3832(a)(6))".

(b) Section 1245(b) of the Food Security Act of 1985.—

(1) Correction.—Section 1245(b) of the Food Security Act of 1985 (16 U.S.C. 3845(b)) is amended by striking "(A) through (G)" and inserting "A through G".

(2) Effective date.—The amendment made by paragraph (1) shall take effect immediately after section 1443 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 3602) took effect.

(c) Section 318 of Act of February 16, 1938.—Section 318 of the Act of February 16, 1938 (7 U.S.C. 1314d) is amended by striking subsection (e) and inserting the following new subsection:

"(e) The transfer of an allotment or quota under this section shall be approved acre for acre.".

(d) Section 307(a)(6)(B) of the Consolidated Farm and Rural Development Act.—

(1) Correction.—Section 307(a)(6)(B) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1927(a)(6)(B)) is amended by striking clause (ii), and by redesignating clauses (iii) through (viii) as clauses (ii) through (vii), respectively.

(2) Effective date.—The amendments made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by section 501(a) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1865) took effect.

(e) Section 310D(a) of the Consolidated Farm and Rural Development Act.—

(1) Correction.—Section 310D(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1934(a)) is amended by striking "304(d)(1)" and inserting "304(a)(1)".

(2) Effective date.—The amendment made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by section 501(a) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1865) took effect.

(f) Section 312(a) of the Consolidated Farm and Rural Development Act.—

(1) Replacement of unexecutable amendment made by the food, agriculture, conservation, and trade act of 1990.—

(A) Correction.—Subsection (b) of section 1818 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 3830) is amended to read as follows:

"(b) Operating Loan Purposes.—The first sentence of section 312(a) (7 U.S.C. 1942(a)) is amended—

"(1) by striking 'and' at the end of clause (11); and

"(2) by inserting ', and (13) borrower training under section 359' before the period at the end.".

(B) Effective date.—The amendment made by subparagraph (A) shall take effect as if included in the Food, Agriculture, Conservation, and Trade Act of 1990 at the time such Act became law.

(2) Repeal of unexecutable amendment made by the food, agriculture, conservation, and trade act amendments of 1991.—Subsection (b) of section 501 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1866) is repealed. The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) shall be applied and administered as if such subsection had never become law.

(g) Amendments to Section 331E of the Consolidated Farm and Rural Development Act.—

(1) Correction.—Section 331E of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981e) is amended—

(A) in subsection (a), by striking "Disaster Relief Act of 1974" and inserting "Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.)"; and

(B) in subsection (b), by inserting "Robert T. Stafford" before "Disaster Relief".

(2) Effective date.—The amendments made by paragraph (1) of this subsection shall take effect immediately after section 501(d) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1866) took effect.

(h) Section 335(e)(1)(A)(i) of the Consolidated Farm and Rural Development Act.—

(1) Corrections to amendment made by the food, agriculture, conservation, and trade act amendments of 1991.—Section 501(f)(1) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1867) is amended—

(A) by inserting "the first place such term appears" before "and all that follows"; and

(B) by striking "borrower-owner (as defined in subparagraph (F)" and inserting "the borrower-owner (as defined in subparagraph (F))".

(2) Effective date.—The amendments made by paragraph (1) of this subsection shall take effect immediately after section 501(f) of the Food, Agriculture, Conservation, and Trade Act of 1990 took effect.

(i) Section 352(a) of the Consolidated Farm and Rural Development Act.—Section 352(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2000(a)) is amended by redesignating the second paragraph (4) as paragraph (5).

(j) Section 352(b)(2) of the Consolidated Farm and Rural Development Act.—

(1) Correction.—Section 352(b)(2) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2000(b)(2)) is amended by striking "borrower's" and inserting "borrower-owner's".

(2) Effective date.—The amendment made by paragraph (1) of this subsection shall take effect at the same time as the amendments made by section 501(f) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1867) took effect.

(k) Section 702(h)(2) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991.—Section 702(h)(2) of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Public Law 102-237; 105 Stat. 1881) is amended by inserting "section" before "2388(h)(3)".

(l) Section 306C(b)(1) of the Consolidated Farm and Rural Development Act.—Section 306C(b)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c(b)(1)) is amended by striking "or connecting such systems to the residences of such individuals" and inserting ", connecting the systems to the residences of the individuals, or installing plumbing and fixtures within the residences of the individuals to facilitate the use of the water supply and waste disposal systems".

(m) Section 306C of the Consolidated Farm and Rural Development Act.—Section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c) is amended by adding at the end the following new subsection:

"(f) Regulations.—Not later than 30 days after the date of enactment of this subsection, the Secretary shall issue interim final regulations, with a request for public comments, implementing this section.".

Amend the title so as to read: "An Act to enhance the financial safety and soundness of the banks and associations of the Farm Credit System, and for other purposes.".

CONSUMER PROTECTION ACT

BRYAN AMENDMENT NO. 3420

Mr. FORD (for Mr. Bryan) proposed an amendment to the amendments of the House to the bill (S. 1392) to strengthen the authority of the Federal Trade Commission regarding fraud committed in connection with sales made with a telephone, and for other purposes; as follows:

In lieu of the matter proposed to be inserted by the House amendment to the bill, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Telemarketing and Consumer Fraud and Abuse Prevention Act".

SEC. 2. FINDINGS.

The Congress makes the following findings:

(1) Telemarketing differs from other sales activities in that it can be carried out by sellers across State lines without direct contact with the consumer. Telemarketers can also be very mobile, easily moving from State to State.

(2) Interstate telemarketing fraud has become a problem of such magnitude that the resources of the Federal Trade Commission are not sufficient to ensure adequate consumer protection from such fraud.

(3) Consumers and others are estimated to lose $40 billion a year in telemarketing fraud.

(4) Consumers are victimized by other forms of telemarketing deception and abuse.

(5) Consequently, Congress should enact legislation that will offer consumers necessary protection from telemarketing deception (including fraud) and abuse.

SEC. 3. TELEMARKETING RULES.

(a) In General.—

(1) The Commission shall prescribe rules prohibiting deceptive (including fraudulent) telemarketing activities and other abusive telemarketing activities.

(2) The Commission shall include in such rules respecting deceptive telemarketing activities—

(A) a definition of deceptive telemarketing activities, and

(B) criteria that are symptomatic of deceptive telemarketing as distinguished from ordinary telemarketing business practices.

(3) The Commission shall include in such rules respecting other abusive telemarketing activities (A) a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reason-

able consumer would consider coercive or abusive of such consumer's right to privacy, and (B) restrictions on the hours of the day and night when unsolicited telephone calls can be made to consumers. In prescribing the rules described in this paragraph, the Commission shall also consider—

(A) including a requirement that goods or services offered by telemarketing be shipped or provided within a specified period and that if the goods or services are not shipped or provided within such period, a refund be required;

(B) including, where practicable, authority for a person who orders a good or service through telemarketing to cancel the order within a specified period; and

(C) recordkeeping requirements.

(b) RULEMAKING.—

(1) The Commission shall prescribe the rules under subsection (a) within 270 days after the date of enactment of this Act. Such rules shall be prescribed in accordance with section 553 of title 5, United States Code.

(2) A rule issued under subsection (a) shall be considered a rule issued under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

(d) SECURITIES AND EXCHANGE COMMISSION RULES.—

(1) PROMULGATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under subsection (a), the Securities and Exchange Commission shall promulgate, or require any national securities exchange or registered securities association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing activities by persons described in paragraph (2).

(B) EXCEPTION.—The Securities and Exchange Commission is not required to promulgate a rule under subparagraph (A) if it determines that—

(i) Federal securities laws or rules adopted by the Securities and Exchange Commission thereunder provide protection from deceptive and other abusive telemarketing by persons described in paragraph (2) substantially similar to that provided by rules promulgated by the Federal Trade Commission under subsection (a); or

(ii) such a rule promulgated by the Securities and Exchange Commission is not necessary or appropriate in the public interest, or for the protection of investors, or would be inconsistent with the maintenance of fair and orderly markets.

If the Securities and Exchange Commission determines that an exception described in clause (i) or (ii) applies, the Securities and Exchange Commission shall publish in the Federal Register its determination with the reasons for it.

(2) APPLICATION.—

(A) IN GENERAL.—The rules promulgated by the Securities and Exchange Commission under paragraph (1)(A) shall apply to a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company, or any individual associated with a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company. The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in the preceding sentence.

(B) DEFINITIONS.—For purposes of subparagraph (A)—

(i) the terms "broker", "dealer", "transfer agent", "municipal securities dealer", "municipal securities broker", "government securities broker", and "government securities dealer" have the meanings given such terms by paragraphs (4), (5), (25), (30), (31), (43), and (44) of section 3(a) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a) (4), (5), (25), (30), (31), (43), and (44));

(ii) the term "investment adviser" has the meaning given such term by section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)); and

(iii) the term "investment company" has the meaning given such term by section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)).

(e) COMMODITY FUTURES TRADING COMMISSION RULES.—

(1) APPLICATION.—The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in subsection (f)(1) of section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 15, 13b, 9a).

(2) PROMULGATION.—Section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 15, 13b, 9a) is amended by adding at the end the following new subsection:

"(f)(1) Except as provided in paragraph (2), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under section 3(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Commission shall promulgate, or require each registered futures association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing activities by any person registered or exempt from registration under this Act in connection with such person's business as a futures commission merchant, introducing broker, commodity trading advisory, commodity pool operator, leverage transaction merchant, floor broker, or floor trader, or a person associated with any such person.

"(2) The Commission is not required to promulgate rules under paragraph (1) if it determines that—

"(A) rules adopted by the Commission under this Act provide protection from deceptive and abusive telemarketing by persons described under paragraph (1) substantially similar to that provided by rules promulgated by the Federal Trade Commission under section 3(a) of the Telemarketing and Consumer Fraud and Abuse Prevention Act; or

"(B) such a rule promulgated by the Commission is not necessary or appropriate in the public interest, or for the protection of customers in the futures and options markets, or would be inconsistent with the maintenance of fair and orderly markets.

If the Commission determines that an exception described in subparagraph (A) or (B) applies, the Commission shall publish in the Federal Register its determination with the reasons for it.".

SEC. 4. ACTIONS BY STATES.

(a) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule of the Commission under section 3, the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such telemarketing, to enforce compliance with such rule of the Commission, to obtain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such further and other relief as the court may deem appropriate.

(b) NOTICE.—The State shall serve prior written notice of any civil action under subsection (a) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(c) VENUE; SERVICE OF PROCESS.—Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the telemarketing occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(d) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall prevent an attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) ACTIONS BY THE COMMISSION.—Whenever the Commission has instituted a civil action for violation of any rule prescribed under section 3, no State may, during the pendency of such action instituted by the Commission, institute a civil action under subsection (a) against any defendant named in the Commission's complaint for acts or omissions alleged in the complaint for violation of any rule as alleged in the Commission's complaint.

(f) ACTIONS BY OTHER STATE OFFICIALS.—

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection (a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers and who are designated by the Commission to bring an action under subsection (a) against persons that the Commission has determined have or are engaged in a pattern or practice of telemarketing which violates a rule of the Commission under section 3.

SEC. 5. ACTIONS BY PRIVATE PERSONS.

(a) IN GENERAL.—Any person adversely affected by any pattern or practice of telemarketing which violates any rule of the Commission under section 3, or an authorized person acting on such person's behalf, may, within 3 years after discovery of the violation, bring a civil action in an appropriate district court of the United States against a person who has engaged or is engaging in such pattern or practice of telemarketing if the amount in controversy exceeds the sum or value of $50,000 in actual damages for each person adversely affected by such telemarketing. Such an action may be brought to enjoin such telemarketing, to enforce compliance with any rule of the Commission under section 3, to obtain damages, or to obtain such further and other relief as the court may deem appropriate.

(b) NOTICE.—The plaintiff shall serve prior written notice of the action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the person shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(c) ACTIONS BY THE COMMISSION.—Whenever the Commission has instituted a civil action for violation of any rule prescribed under section 3, no person may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

(d) COSTS AND FEES.—The court, in issuing any final order in any action brought under subsection (a), may award costs of suit and reasonable fees for attorneys and expert witnesses to the prevailing party.

(e) CONSTRUCTION.—Nothing in this section shall restrict any right which any person may have under any statute or common law.

SEC. 6. PROCESS.

(a) CIVIL SUITS.—In any suit brought against a person, partnership, or corporation under section 13(b) of the Federal Trade Commission Act (15 U.S.C. 53(b)) to enjoin—

(1) deceptive telemarketing activities or other abusive telemarketing activities in violation of the rules prescribed under this Act, or

(2) unfair or deceptive telemarketing acts or practices in or affecting commerce (within the meaning of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1)),

the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be summoned without regard to whether they reside or transact business in the district in which the suit is brought, and to that end process may be served wherever such other person, partnership, or corporation may be found.

(b) CRIMINAL CONTEMPT ACTIONS.—In any case described in subsection (a) (1) or (2), the Commission may bring a criminal contempt action for violations of orders obtained in such case in the same manner as civil penalty and other Federal court actions apply under section 16(a)(1) of the Federal Trade Commission Act (15 U.S.C. 56(a)(1)). Such criminal cases may be initiated by the Commission pursuant to the appointment as a Special Assistant United States Attorney by the Attorney General of an attorney employed full-time by the Commission to assist the Attorney General in the prosecution of such cases. Such appointment may be instituted at the request of the court which has entered the order for which contempt is sought. The Attorney General shall decide on the appointment within 45 days after receipt of such request for appointment of a Commission lawyer as a Special Assistant United States Attorney. The authority to bring criminal contempt actions under this subsection expires 3 years after the date of enactment of this Act.

SEC. 7. INVESTIGATION.

(a) CIVIL INVESTIGATIVE DEMAND FOR PHYSICAL EVIDENCE.—In any investigation by the Commission with respect to—

(1) deceptive telemarketing activities or other abusive telemarketing activities in violation of the rules prescribed under this Act, or

(2) unfair or deceptive telemarketing acts or practices in or affecting commerce (within the meaning of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1)),

the Commission's powers with respect to a civil investigative demand shall include a demand for the production of physical evidence.

(b) ISSUANCE OF DEMAND.—A civil investigative demand in an investigation described in subsection (a)(1) or (2) may require the person upon whom the demand is served to produce physical evidence for inspection, to give oral testimony concerning physical evidence, or to furnish such physical evidence and testimony in combination with documentary material, answers, or testimony described in section 20(c)(1) of the Federal Trade Commission Act (15 U.S.C. 57b-1(c)(1)).

(c) CONTENTS.—Each such civil investigative demand for the production of physical evidence shall—

(1) describe each class of physical evidence to be produced under the demand with such definiteness and certainty as to permit such evidence to be fairly identified;

(2) prescribe a return date or dates which will provide a reasonable period of time within which the physical evidence so demanded may be assembled and made available for inspection and copying or reproduction; and

(3) identify the custodian to whom such physical evidence shall be made available.

(d) PRODUCTION OF EVIDENCE IN RESPONSE TO DEMAND.—The production of physical evidence in response to such civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the physical evidence required by demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(e) OTHER REQUIREMENTS.—Except as provided in this section, the requirements of section 20 of the Federal Trade Commission Act (15 U.S.C. 57b-1) apply to a civil investigative demand in an investigation described in subsection (a) (1) or (2).

(f) DEFINITION.—In this subsection, the term "physical evidence" means any object or device.

SEC. 8. ADMINISTRATION AND APPLICABILITY OF ACT.

(a) IN GENERAL.—Except as otherwise provided in sections 4 and 5, this Act shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this Act.

(b) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating a rule of the Commission under section 3 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.

SEC. 9. DEFINITIONS.

For purposes of this Act:

(1) The term "attorney general" means the chief legal officer of a State.

(2) The term "Commission" means the Federal Trade Commission.

(3) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(4) The term "telemarketing" means a plan, program, or campaign which is conducted to induce purchases of goods or services by significant use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which—

(A) contains a written description or illustration of the goods or services offered for sale,

(B) includes the business address of the seller,

(C) includes multiple pages of written material or illustrations, and

(D) has been issued not less frequently than once a year,

where the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation.

SEC. 10. REVIEW.

Upon the expiration of 5 years following the date of the enactment of this Act, the Commission shall review the implementation of this Act and its effect on deceptive telemarketing activities and report the results of the review to the Congress.

INTER-AMERICAN SCIENTIFIC COOPERATION ACT

BINGAMAN (AND LIEBERMAN) AMENDMENT NO. 3421

Mr. FORD (for Mr. BINGAMAN, for himself and Mr. LIEBERMAN) proposed an amendment to the bill (H.R. 3215) to reinvigorate cooperation between the United States and Latin America in science and technology, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Inter-American Scientific Cooperation Act of 1992".

SEC. 2. FINDINGS AND DEFINITION.

(a) FINDINGS.—The Congress finds the following:

(1) Latin America shares a wide range of scientific and technological concerns with the United States.

(2) The need for science and technology cooperation with Latin America has increased

significantly since the 1970s, but mechanisms for cooperation have decreased significantly since many countries in Latin America graduated from programs sponsored by the Agency for International Development.

(3) Latin American scientists and engineers have increasingly looked to Europe and Japan for advanced training and research. This trend may result in a loss of mutually beneficial commerce and scientific cooperation between Latin America and the United States.

(4) Investment by the United States in the Latin American science and technology infrastructure and participation of United States scientists and engineers in short-term and long-term assignments in Latin America can further improve relations between the United States and Latin America, and bring many benefits to the United States, including scientific access, enhanced trade and investment relations, and the opportunity to contribute to economic growth and democratization in the hemisphere.

(5) Science and technology cooperation with the United States, and advanced training and research in the United States, can bring many benefits to Latin America. In developing countries, cooperation can contribute to the strengthening of basic science and technology infrastructure. In industrially advanced Latin American countries, cooperation can increase opportunities in many scientific disciplines and in the frontier scientific fields.

(6) Considerable progress in science and technology cooperation can be made with relatively modest investments.

(7) The return to democracy in a number of Latin American countries provides renewed vigor for freedom of scientific inquiry, cooperation, and progress, as well as a focus for the reversal of the decline in science and technology cooperation between the United States and Latin America.

(b) Definitions.—As used in this Act—

(1) the term "debt-for-science exchange" means an agreement, between a grantee under section 4 and a Latin American country, that provides that the grantee shall cancel its right to collect payment on a portion of the commercial external debt of that Latin American country, in exchange for the country's contribution to the grantee of local currencies or other assets to support scientific and technological research in the country;

(2) the term "Director" means the Director of the National Science Foundation; and

(3) the term "Latin America" means Mexico, the Caribbean basin, Central America, and South America.

SEC. 3. ESTABLISHMENT OF THE PROGRAM.

The National Science Foundation shall establish an Inter-American Scientific Cooperation Program (hereafter in this Act referred to as the "Program") aimed at increasing the level of science and technology cooperation between the United States and Latin America. The National Science Foundation, in establishing the Program, shall identify and cooperate with private and governmental funding bodies, both in Latin America and in the United States. The Program shall include the following elements:

(1) Encouragement and funding of project development interchanges and joint research projects between United States and Latin American scientists and engineers. Joint projects and interchanges funded by the National Science Foundation shall, whenever possible, include cost sharing from sources within the Latin American countries whose citizens participate. The Director shall determine the amount of cost sharing which is required.

(2) Establishment in accordance with section 13 of the National Science Foundation Act of 1950 (42 U.S.C. 1872) of an Inter-American Scientific Exchange. The Exchange's activities shall include collection and dissemination of information to Latin Americans on avenues for advanced study in science and engineering in the United States; United States assistance to Latin American institutions, at the institutions' request, for development of courses, seminars, and curricula in science and engineering; and other forms of scientific and technological cooperation as may be mutually agreeable, such as research projects in furtherance of professional development. In carrying out this paragraph the Director shall coordinate with other Federal agencies offering programs for foreign nationals for advanced study and research in the sciences and in engineering.

(3) Exchange of information and technical assistance between United States and Latin American scientists and engineers interested in establishing data bases and connecting to computer networks such as the National Research and Education Network.

(4) Exchange of information to facilitate the routing of scientific equipment between the United States and Latin America, including information with respect to matching equipment with need, identifying technical maintenance requirements, and meeting customs regulations.

(5) Promotion of research programs which utilize unique natural environments or existing or potential centers of scientific research excellence in Latin America.

SEC. 4. DEBT-FOR-SCIENCE EXCHANGES

(a) Grants.—The Director is authorized to make grants to nongovernmental organizations within the United States, including colleges and universities, for the purpose of acquiring the commercial external debt of Latin American Countries and undertaking such other activities as are necessary to carry out debt-for-science exchanges. Before making any grant under this section, the Director shall ascertain that—

(1) funds received from a Latin American country in connection with the debt-for-science exchange to which the grant applies will be expended only for cooperative research and development projects, including those described in section 3; or to fund endowments for the long-term support of cooperative research and development projects;

(2) the debt-for-science exchange will result in making funds available for such cooperative projects which otherwise would not be available;

(3) the amount of local currency provided by the Latin American country as a result of the debt-for-science exchange will be substantially greater than the cost of acquiring the country's commercial external debt;

(4) the grantee certifies that the Latin American country has accepted the terms of the exchange and that an agreement has been reached to cancel the commercial debt in an agreed upon fashion; and

(5) Federal grants made under this section will be equally matched by non-Federal contributions to acquire the commercial external debt of the Latin American country.

(b) Retention of Interest.—Grantees or subgrantees of funds provided under this section may retain, without deposit in the Treasury of the United States and without further appropriation, interest earned on the proceeds of any resulting debt-for-science exchange pending disbursements of such proceeds and interest for approved program purposes, which may include the establishment of an endowment, the income of which is used for such purposes.

(c) Coordination with Other Federal Agencies.—In carrying out subsection (a) the Director shall coordinate with Federal agencies, such as the Agency for International Development, that have expertise in debt exchanges.

SEC. 5. REPORT ON BINATIONAL SCIENCE FOUNDATIONS.

(a) Report to Congress.—Within 180 days after the date of enactment of this Act, the Director shall submit to Congress a report which—

(1) describes existing Binational Science Foundations in Latin America and elsewhere and the research funded by them;

(2) identifies successful binational foundations in Latin America in areas other than science and technology;

(3) evaluates the advantages and disadvantages of Binational Science Foundations in comparison to direct funding of joint research projects;

(4) identifies countries in Latin America that might benefit by establishment of a Binational Science Foundation between that country and the United States;

(5) identifies types of cooperative scientific research and educational projects that might most effectively be funded through Binational Science Foundations;

(6) assesses, by country, the availability of private-sector funding and in-country funding to match United States funding of Binational Science Foundations in Latin America; and

(7) identifies legislative or administrative changes needed if the National Science Foundation is to fund establishment of Binational Science Foundations.

(b) Consultation.—In carrying out subsection (a), the Director shall consult with Federal agencies, such as the Department of State and the Agency for International Development, that have participate in binational foundations in Latin America and elsewhere.

SEC. 6. REPORT ON PROGRAM.

Within 180 days after the date of enactment of this Act, the Director shall submit to Congress a report which—

(1) details activities funded by the National Science Foundation and carried out by or in cooperation with Latin American countries during the preceding fiscal year;

(2) includes a description of how activities of the Program relate to other ongoing and prospective National Science Foundation activities in Latin America;

(3) describes plans for the current and upcoming fiscal years' activities of the Program;

(4) recommends priorities for the Program for cooperation in terms of scientific disciplines and geographic regions; and

(5) recommends necessary legislative or administrative changes in the Program.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Director for carrying out this Act—

(1) $10,000,000 for fiscal year 1993; and

(2) $10,000,000 for fiscal year 1994.

HOLLINGS (AND THURMOND) AMENDMENT NO. 3422

Mr. FORD (for Mr. Hollings, for himself and Mr. Thurmond) proposed an amendment to amendment No. 3421 proposed by Mr. Bingaman (and Mr. Lieberman) to the bill H.R. 3215, supra; as follows:

At the end, add the following:

SEC. 8. SHORT TITLE.—This section may be cited as the "Wind Engineering Program Act of 1992".

(b) FINDINGS AND PURPOSES.—The Congress finds the following:

(1) Hurricanes and tornadoes kill more Americans and destroy more property than any other natural disaster.

(2) Each year, in the United States, extreme winds cause billions of dollars of damage to homes, schools, and other buildings, roads and bridges, electrical power distribution networks, and communications networks.

(3) Research on wind and wind engineering has resulted in improved methods for making buildings and other structures less vulnerable to extreme winds, but additional research funding is needed to develop new, improved, and more cost-effective methods of wind-resistant construction.

(4) Federal funding for wind engineering research has decreased over the last twenty years.

(5) Wind research has been hampered by a lack of data on near-surface wind speed and distribution during hurricanes, tornadoes, and other severe storms.

(6) Many existing methods for wind-resistant construction are inexpensive and easy to implement but often they are not applied because the construction industry and the general public are unaware of such methods.

(7) Various Federal agencies have important roles to play in wind engineering research, but at present there is little interagency cooperation or coordination in this area.

(8) Establishment of a Federal Wind Engineering Program would result in new technologies for wind-resistant construction, broader application of such technologies in construction, and ultimately decreased loss of life and property due to extreme winds.

(c) PURPOSE.—The purpose of this section is to create a Wind Engineering Program within the National Institute of Standards and Technology, which would—

(1) provide for wind engineering research;

(2) serve as a clearinghouse for information on wind engineering; and

(3) improve interagency coordination on wind engineering research between the National Institute of Standards and Technology, the National Oceanic and Atmospheric Administration, the National Science Foundation, the Federal Aviation Administration, and other appropriate agencies.

(d) ESTABLISHMENT.—Within the National Institute of Standards and Technology, there shall be established a Wind Engineering Program which shall—

(1) conduct research and development, in cooperation with the private sector and academia, on new methods for mitigating wind damage due to tornadoes, hurricanes, and other severe storms;

(2) fund construction and maintenance of wind tunnels and other research facilities needed for wind engineering research;

(3) promote the application of existing methods for, and research results on, reducing wind damage to buildings that are usually incompletely- or non-engineered, such as single family dwellings, mobile homes, light industrial buildings, and small commercial structures;

(4) transfer technology developed in wind engineering research to the private sector so that it may be applied in building codes, design practice, and construction;

(5) conduct, in conjunction with the National Oceanic and Atmospheric Administration, post-disaster research following hurricanes, tornadoes, and other severe storms to evaluate the vulnerability of different types of buildings to extreme winds;

(6) serve as a point of contact for dissemination of research information on wind engineering and work with the private sector to develop education and training programs on construction techniques, developed from research results, for reducing wind damage;

(7) work with the National Oceanic and Atmospheric Administration, the Federal Aviation Administration, and other agencies as is appropriate, on meteorology programs to collect and disseminate more data on extreme wind events; and

(8) work with the National Science Foundation to support and expand basic research on wind engineering.

(e) AUTHORIZATIONS.—(1) There are authorized to be appropriated to the National Institute of Standards and Technology for the purposes of this section, $1,000,000 for fiscal year 1993 and $3,000,000 for fiscal year 1994.

(2) Of the amounts authorized under paragraph (1), no less than 50 percent shall be used for cooperative agreements with the National Oceanic and Atmospheric Administration, the National Science Foundation, the Federal Aviation Administration, or other agencies, for wind engineering research, development of improved practices for structures, and the collection and dissemination of meteorological data needed for wind engineering.

UTAH LAND EXCHANGE ACT

GARN AMENDMENT NO. 3423

Mr. FORD (for Mr. GARN) proposed an amendment to the bill (H.R. 5118) to exchange lands with the State of Utah, between the United States and the State of Utah, as follows:

(1) On page 3, lines 9 and 10, strike "Nevada, amounting to about" and insert "Nevada, comprising approximately".

(2) On page 5, line 2, strike "Act, credit to" and insert "Act, compensate".

(3) On page 5, line 3, strike "Utah the" and insert "Utah for".

(4) On page 5, line 11, strike "shall send" and insert "shall transmit to".

(5) On page 6, line 6, strike "coal in" and insert "coal located in".

(6) On page 6, line 8, strike "coal in" and insert "coal located in".

(7) On page 6, starting on line 11, strike "Secretary may" and insert "Secretary shall".

(8) On page 6, line 12, strike "the right to receive".

(9) On page 7, strike lines 1 through 3 and insert "royalties under this section exceeding $12,500,000 annually."

(10) On page 7, line 22, strike "shall arrange" and insert "shall provide".

(11) On page 8, strike lines 3 through 14 and insert:

(b) DEADLINE AND DISPUTE RESOLUTION.—(1) If after two years from the date of enactment of this Act, the parties have not agreed upon the final terms of some or all of the exchanges authorized by this Act, including the value of the lands involved in some or all of such exchanges, notwithstanding any other provisions of law, the United States District Court for the District of Utah, Central Division, shall have jurisdiction to hear, determine, and render judgment on the value of any and all lands, or interests therein, involved in the exchange.

(12) On page 8, strike lines 15 through 24.

(13) On page 9, after line 5 insert:

(c) ADJUSTMENT.—If the State shares revenue from the selected Federal properties the value of such properties shall be the value otherwise established under this section, less the percentage which represents the Federal revenue sharing obligation, but such adjustment shall not be considered as reflecting a property right of the State of Utah.

(d) INTEREST.—Any royalty offer by the Secretary pursuant to subsection 7(b) shall be adjusted to reflect net present value as of the effective date of the exchange. The State shall be entitled to receive a reasonable rate of interest at a rate equivalent to a five year treasury note on the balance of the value owed by the United States from the effective date of the exchange until full value is received by the State and mineral rights revert to the United States as prescribed by subsection 9(a)(3).

(14) On page 12, line 24, strike "establish funding," and insert "establish a funding mechanism,".

JEMEZ NATIONAL RECREATION AREA

BINGAMAN (AND DOMENICI) AMENDMENT NO. 3424

Mr. FORD (for Mr. BINGAMAN, for himself and Mr. DOMENICI) proposed an amendment to the bill (H.R. 2502) to establish the Jemez National Recreation Area in the State of New Mexico, and for other purposes, as follows:

At the end of the bill, add the following new section:

SEC. 8. COMPLETION OF PREHISTORIC TRACKWAYS STUDY.

The Secretary of the Interior is authorized to contract with the Smithsonian Institution for the completion of the prehistoric trackways study required under section 303 of the Act entitled "An Act to conduct certain studies in the State of New Mexico", approved November 15, 1990 (Public Law 101-578).

On page 9, lines 1 through 19, strike section 3 in its entirety and insert in lieu thereof the following:

"SEC. 3. ACQUISITION OF LAND.

"(a) IN GENERAL.—The Secretary is authorized to acquire lands and interests therein within the boundaries of the recreation area by donation, purchase with donated or appropriated funds, or exchange: *Provided*, That no lands or interests therein may be acquired except with the consent of the owner thereof.

"(b) STATE LANDS.—Lands or interests therein owned by the State of New Mexico or a political subdivision thereof may be acquired only by donation or exchange.

"(c) OFFERS TO SELL.—The Secretary shall give prompt and careful consideration to any offer made by any person owning property within the boundaries of the recreation area to sell such property.

"(d) NO ADDITIONAL LANDS.—No lands or interests therein outside of the boundaries of the recreation area may be added to the recreation area without specific authorization by Congress.".

DELAWARE RIVER WILD AND SCENIC RIVERS ACT

BUMPERS AMENDMENT NO. 3425

Mr. FORD (for Mr. BUMPERS) proposed an amendment to the bill (H.R. 3457) to amend the Wild and Scenic Rivers Act to designate certain segments of the Delaware River in Pennsylvania and New Jersey as components of the national wild and scenic rivers system, as follows:

On page 7, line 6, strike "Pennsylvania." and insert in lieu thereof, "Pennsylvania, excluding river mile 196.0 to 193.8.".

On page 8, line 4, strike "3(a)" and insert in lieu thereof, "5(a)".

On page 9, line 14, strike "or" and insert in lieu thereof, "the Martins Creek Steam Electric Station and associated facilities,

On page 10, line 14, strike "the administration of".

STOCK RAISING HOMESTEAD ACT AMENDMENTS

BINGAMAN AMENDMENT NO. 3426

Mr. FORD (for Mr. BINGAMAN) proposed an amendment to the amendments of the House to the bill (S. 1187) to amend the Stock Raising Homestead Act to provide certain procedures for entry onto Stock Raising Homestead Act lands, and for other purposes; as follows:

Strike all after the enacting clause and insert:

SECTION 1. MINING CLAIMS ON STOCK RAISING HOMESTEAD ACT LANDS.

(a) MINERAL ENTRY UNDER THE STOCK RAISING HOMESTEAD ACT.—Section 9 of the Act of December 29, 1916, entitled "An Act to provide for stock-raising homesteads, and for other purposes" (43 U.S.C. 299), is amended by adding the following at the end thereof:

"(b) EXPLORATION; LOCATION OF MINING CLAIMS; NOTICES.—

"(1) IN GENERAL.—(A) Notwithstanding subsection (a) and any other provision of law to the contrary, after the effective date of this subsection no person other than the surface owner may enter lands subject to this Act to explore for, or to locate, a mining claim on such lands without—

"(i) filing a notice of intention to locate a mining claim pursuant to paragraph (2); and

"(ii) providing notice to the surface owner pursuant to paragraph (3).

"(B) Any person who has complied with the requirements referred to in subparagraph (A) may, during the authorized exploration period, in order to locate a mining claim, enter lands subject to this Act to undertake mineral activities related to exploration that cause no more than minimal disturbance of surface resources and do not involve the use of mechanized earthmoving equipment, explosives, the construction of roads, drill pads, or the use of toxic or hazardous materials.

"(C) The authorized exploration period referred to in subparagraph (B) shall begin 30 days after notice is provided under paragraph (3) with respect to lands subject to such notice and shall end with the expiration of the 90-day period referred to in paragraph (2)(A), or any extension provided under paragraph (2).

"(2) NOTICE OF INTENTION TO LOCATE A MINING CLAIM.—Any person seeking to locate a mining claim on lands subject to this Act in order to engage in the mineral activities relating to exploration referred to under paragraph (1)(B) shall file with the Secretary of the Interior a notice of intention to locate a claim on the lands concerned. The notice shall be in such form as the Secretary shall prescribe. The notice shall contain the name and mailing address of the person filing the notice and a legal description of the lands to which the notice applies. The legal description shall be based on the public land survey or on such other description as is sufficient to permit the Secretary to record the notice on the land status records of the Secretary. Whenever any person has filed a notice under this paragraph with respect to any lands, during the 90-day period following the date of such filing, or any extension thereof pursuant to this paragraph, no other person (including the surface owner) may—

"(A) file such a notice with respect to any portions of such lands;

"(B) explore for minerals or locate a mining claim on any portion of such lands; or

"(C) file an application to acquire any interest in any portion of such lands pursuant to section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719).

If, within such 90-day period, the person who filed a notice under this paragraph files a plan of operations with the Secretary pursuant to subsection (f), such 90-day period shall be extended until the approval or disapproval of the plan by the Secretary pursuant to subsection (f).

"(3) NOTICE TO SURFACE OWNER.—Any person who has filed a notice of intention to locate a mining claim under paragraph (2) for any lands subject to this Act shall provide written notice of such filing, by registered or certified mail with return receipt, to the surface owner (as evidenced by local tax records) of the lands covered by the notice under paragraph (2). The notice shall be provided at least 30 days before entering such lands and shall contain each of the following:

"(A) A brief description of the proposed mineral activities.

"(B) A map and legal description of the lands to be sublet to mineral exploration.

"(C) The name, address and phone number of the person managing such activities.

"(D) A statement of the dates on which such activities will take place.

"(4) ACREAGE LIMITATIONS.—The total acreage covered at any time by notices of intention to locate a mining claim under paragraph (2) filed by any person and by affiliates of such person may not exceed 6,400 acres of lands subject to this Act in any one State and 1,280 acres of such lands for a single surface owner. for purposes of this paragraph, the term 'affiliate' means, with respect to any person, any other person which controls, is controlled by, or is under common control with, such person.

"(c) CONSENT.—Notwithstanding subsection (a) and any other provision of law, after the effective date of this subsection no person may engage in the conduct of mineral activities (other than those relating to exploration referred to in subsection (b)(1)(B)) on a mining claim located on lands subject to this Act without the written consent of the surface owner thereof unless the Secretary has authorized the conduct of such activities under subsection (d).

"(d) AUTHORIZED MINERAL ACTIVITIES.—The Secretary shall authorize a person to conduct mineral activities (other than those relating to exploration referred to in subsection (b)(1) (B)) on lands subject to this Act without the consent of the surface owner thereof if such person complies with the requirements of subsections (e) and (f).

"(e) BOND.—(1) Before the Secretary may authorize any person to conduct mineral activities the Secretary shall require such person to post a bond or other financial guarantee in an amount to insure the completion of reclamation pursuant to this Act. Such bond or other financial guarantee shall insure—

"(A) payment to the surface owner, after the completion of such mineral activities and reclamation, compensation for any permanent damages to crops and tangible improvements of the surface owner that resulted from mineral activities; and

"(B) payment to the surface owner of compensation for any permanent loss of income of the surface owner due to loss or impairment of grazing, or other uses of the land by the surface owner to the extent that reclamation required by the plan of operations would not permit such uses to continue at the level existing prior to the commencement of mineral activities.

"(2) In determining the bond amount to cover permanent loss of income under paragraph (1)(B), the Secretary shall consider, where appropriate, the potential loss of value due to the estimated permanent reduction in utilization of the land.

"(f) PLAN OF OPERATIONS.—(1) Before the Secretary may authorize any person to conduct mineral activities on lands subject to this Act, the Secretary shall require such person to submit a plan of operations. Such plan shall include procedures for—

"(A) the minimization of damages to crops and tangible improvements of the surface owner;

"(B) the minimization of disruption to grazing or other uses of the land by the surface owner; and

"(C) payment of a fee equivalent to the loss of income to the ranch operation as established pursuant to subsection (g).

"(2) The Secretary shall provide a copy of the proposed plan of operations to the surface owner at least 45 days prior to the date the Secretary makes a determination as to whether such plan complies with the requirements of this subsection. During such 45 day period the surface owner may submit comments and recommend modifications to the proposed plan of operations to the Secretary.

"(3)(A) The Secretary shall, within 60 days of receipt of the plan, approve the plan of operations if it complies with the requirements of this Act, including each of the following:

"(i) The proposed plan of operations is complete and accurate.

"(ii) The person submitting the proposed plan of operations has demonstrated that all other applicable Federal and State requirements have been met.

"(B) The Secretary shall notify the person submitting a plan of operations of any modifications to such plan required to bring it into compliance with the requirements of this Act. If the person submitting the plan agrees to modify such plan in a manner acceptable to the Secretary, the Secretary shall approve the plan as modified. In the event no agreement can be reached on the modifications to the plan which, in the opinion of the Secretary, will bring such plan into compliance with the requirements of this Act, then the Secretary shall disapprove the plan and notify both the surface owner and the person submitting the plan of the decision.

"(C) The 60-day period referred to in paragraph (A) may be extended by the Secretary where additional time is required to comply with other applicable requirements of law.

"(D) The Secretary shall suspend or revoke a plan of operation whenever the Secretary determines, on the Secretary's own motion or on a motion made by the surface owner, that the person conducting mineral activities is in substantial noncompliance with the terms and conditions of an approved plan of operations and has failed to remedy a violation after notice from the Secretary within the time required by the Secretary.

"(4) Final approval of a plan of operations under this subsection shall be conditioned upon compliance with subsections (e) and (g).

"(g) FEE.—The fee referred to in subsection (f)(1) shall be—

"(1) paid to the surface owner by the person submitting the plan of operations;

"(2) paid in advance of any mineral activities or at such other time or times as may be agreed to by the surface owner and the person conducting such activities; and

"(3) established by the Secretary taking into account the acreage involved and the degree of potential disruption to existing surface uses (including the loss of income to the surface owner and such surface owner's operations due to the loss or impairment of existing surface uses for the duration of the mineral activities), except that such fee shall not exceed the fair market value for the surface of the land.

"(h) RECLAMATION.—Lands affected by mineral activities under a plan of operations approved pursuant to subsection (f)(3) shall be reclaimed, to the maximum extent practicable, to a condition capable of supporting the uses to which such lands were capable of supporting prior to surface disturbance. Reclamation shall proceed as contemporaneously as practicable with the conduct of mineral activities.

"(i) STATE LAW.—(1) Nothing in this Act shall be construed as affecting any reclamation, bonding, inspection, enforcement, air or water quality standard or requirement of any State law or regulation which may be applicable to mineral activities on lands subject to this Act to the extent that such law or regulation is not inconsistent with this title.

"(2) Nothing in this Act shall be construed as affecting in any way the right of any person to enforce or protect, under applicable law, the interest of such person in water resources affected by mineral activities.

"(j) INSPECTIONS.—Should any surface owner of land subject to this Act have reason to believe that they are or may be adversely affected by mineral activities due to any violation of the terms and conditions of a plan of operations approved under subsection (f), such surface owner may request an inspection of such lands. The Secretary shall determine within 10 days of the receipt of the request whether the request states a reason to believe that a violation exists, except in the event the surface owner alleges and provides reason to believe that an imminent danger exists the 10 day period shall be waived and the inspection conducted immediately. When an inspection is conducted under this paragraph, the Secretary shall notify the surface owner and such surface owner shall be allowed to accompany the inspector on the inspection.

"(k) DAMAGES FOR FAILURE TO COMPLY.—(1) Whenever the surface owner of any land subject to this Act has suffered any permanent damages to crops or tangible improvements of the surface owner, or any permanent loss of income due to loss or impairment of grazing, or other uses of the land by the surface owner, if such damages or loss results from:

"(A) any mineral activity undertaken without the consent of the surface owner under subsection (c) or an authorization by the Secretary under subsection (d); or

"(B) from the failure of the person conducting mineral exploration, development, or production activities to remedy to the satisfaction of the Secretary any substantial noncompliance with the terms and conditions of a plan under subsection (f);

the surface owner may bring an action in the appropriate United States district court for, and the court may award, double damages plus costs for willful misconduct or gross negligence.

"(2) The surface owner of any land subject to this Act may also bring an action in the appropriate United States district court for double damages plus costs for willful misconduct or gross negligence against any person undertaking any mineral activities on lands subject to this Act in violation of any requirement of subsection (b).

"(3) Any double damage plus costs awarded by the court under this subsection shall be reduced by the amount of any compensation which the surface owner has received (or is eligible to receive) pursuant to the bond or financial guarantee required under subsection (e).

"(1) FULL PAYMENT OF DAMAGES.—The surface owner of any land subject to this Act may petition the Secretary for payment of all or any portion of a bond or other financial guarantee required under subsection (e) as compensation for any permanent damages to crops and tangible improvements of the surface owner, or any permanent or temporary loss of income due to loss or impairment or grazing, or other uses of the land by the surface owner. Pursuant to such a petition, the Secretary may use such bond or other guarantee to provide compensation to the surface owner for such damages and to insure the required reclamation.

"(m) BOND RELEASE.—The Secretary shall release the bond or other financial guarantee required under subsection (e) upon the successful completion of all requirements pursuant to a plan of operations approved under subsection (f).

"(n) CONVEYANCE TO SURFACE OWNER.—The Secretary shall take such actions as may be necessary to simplify the procedures which must be complied with by surface owners of lands subject to this Act who apply to the Secretary to obtain title to interests in such lands owned by the United States.

"(o) DEFINITIONS.—For the purpose of subsections (b) through (n)—

"(1) The term 'mineral activities' means any activity for, related to or incidental to mineral exploration, mining, and beneficiation activities for any locatable mineral on a mining claim. When used with respect to this term—

"(A) The term 'exploration' means those techniques employed to locate the presence of a locatable mineral deposit and to establish its nature, position, size, shape, grade and value;

"(B) The term 'mining' means the processes employed for the extraction of a locatable mineral from the earth; and

"(C) The term 'beneficiation' means the crushing and grinding of locatable mineral ore and such processes are employed to free the mineral from the other constituents, including but not necessarily limited to, physical and chemical separation techniques.

"(2) The term 'mining claim' means a claim located under the general mining laws of the United States (which generally comprise 30 U.S.C. chapters 2, 12A, and 16, and sections 161 and 162) subject to the terms and conditions of subsections (b) through (n) of this section.

"(3) The term 'tangible improvements' includes agricultural, residential and commercial improvements, including improvements made by residential subdividers.

"(p) MINERALS COVERED.—Subsections (b) through (n) of this section apply only to minerals not subject to disposition under—

"(A) the Mineral Leasing Act (30 U.S.C. 181 and following);

"(B) the Geothermal Steam Act of 1970 (30 U.S.C. 100 and following); or

"(C) the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following).".

(b) TECHNICAL CONFORMING AMENDMENT.—Section 9 of the Act of December 29, 1916, entitled "An Act to provide for stock-raising homesteads, and for other purposes" (43 U.S.C. 299) is amended by inserting "(a) GENERAL PROVISIONS.—" before the words "That all entries made".

(c) EFFECTIVE DATE.—The amendments made by this Act shall take effect 180 days after the date of enactment.

(d) REGULATIONS.—The Secretary of the Interior shall issue final regulations to implement the amendments made by this Act not later than the effective date of this Act. Failure to promulgate these regulations by reason of any appeal or judicial review shall not delay the effective date as specified in paragraph (d).

SEC. 2. REPORT TO CONGRESS ON FOREIGN MINERAL INTEREST.

(1) The Secretary of the Interior is directed to submit a report to the Congress within two years after the date of enactment of this Act on the acquisition of mineral interests made after the date of enactment of this Act by foreign firms on lands subject to the Act of December 29, 1916, entitled "Act to provide for stock-raising homesteads, and for other purposes" (43 U.S.C. 299), as amended.

(b) DEFINITION.—For purposes of this section the term "foreign firm" means a business entity that conducts business operations in the United States and is 51 percent or more owned and controlled by a foreign person or entity.

EXTENSION TO THE AIR AND SPACE MUSEUM

WARNER AMENDMENT NO. 3427

Mr. SIMPSON (for Mr. WARNER) proposed an amendment to the bill (S. 289) to authorize the Board of Regents of the Smithsonian Institution to plan and design an extension of the National Air and Space Museum at Washington Dulles International Airport, and for other purposes; as follows:

On page 2, line 4, immediately after the period, add the following: "The Board of Regents of the Smithsonian Institution shall designate and name an appropriate public area within such extension to honor Edwin Jacob Garn, currently a member of the Board of Regents, Smithsonian Institution, having served since 1981, and the first Member of Congress to fly in space while serving as a Member."

BIG THICKET NATIONAL PRESERVE EXPANSION

BUMPERS AMENDMENT NO. 3428

Mr. FORD (for Mr. BUMPERS) proposed an amendment to the bill (H.R. 1592) to increase the size of the Big Thicket National Preserve in the State of Texas by adding the Village Creek Corridor unit, the Big Sandy Corridor unit, the Canyonlands unit, the Sabine River Blue Elbow unit, and addition to the Lower Neches Corridor unit; as follows:

On page 7, lines 5 and 6, strike "dated October 19, 1990, and numbered 20031 C," and insert in lieu thereof, "dated October 1992, and numbered 80,0008,".

COMPETITIVENESS POLICY COUNCIL AUTHORIZATION

BINGAMAN (AND RIEGLE) AMENDMENT NO. 3429

Mr. FORD (for Mr. BINGAMAN, for himself and Mr. RIEGLE) proposed an amendment to the bill (S. 2936) to amend the Competitiveness Policy Council Act to provide for reauthorization, to rename the Council, and for other purposes; as follows:

Strike all after the enacting clause, and insert in lieu thereof the following:

SECTION 1. REAUTHORIZATION.

Section 5209 of the Competitiveness Policy Council Act (15 U.S.C. 4808) is amended

(1) by striking "1991 and 1992" and inserting "1993 and 1994"; and

(2) by striking "$5,000,000" and inserting "$2,500,000".

SEC. 2. RENAMING OF COUNCIL.

The Competitiveness Policy Council Act (15 U.S.C. 4810 et seq.) is amended as follows:

(1) In the subtitle heading—

(A) insert "National" before "Competitiveness"; and

(B) strike "Council" and insert "Commission".

(2) In section 5201—

(A) insert "National" before "Competitiveness"; and

(B) strike "Council" and insert "Commission".

(3) In section 5202(b)(2)—

(A) insert "National" before "Competitiveness"; and

(B) strike "Council" and insert "Commission".

(4) In section 5203—

(A) in the section caption, strike "COUNCIL" and insert "COMMISSION";

(B) insert "National" before "Competitiveness"; and

(C) strike "Council" and insert "Commission".

(5) In section 5204—

(A) in the section caption, strike "COUNCIL" and insert "COMMISSION";

(B) strike "Council" and insert "Commission".

(6) In sections 5205 through 5208, strike "Council" each place such term appears and insert "Commission".

(7) In section 5207, in the section caption, strike "COUNCIL" and insert "COMMISSION".

(8) In section 5210—

(A) in paragraph (1)—

(i) insert "National" before "Competitiveness"; and

(ii) strike "Council" each place it appears and insert "Commission"; and

(B) in paragraph (2)—

(i) insert "National" before "Competitiveness"; and

(ii) strike "Council" and insert "Commission".

SEC. 3. DUTIES OF THE COMMISSION.

Section 5204 of the National Competitiveness Policy Commission Act (15 U.S.C. 4803) is amended by striking paragraphs (11) and (12) and inserting the following:

"(11) prepare, publish, and distribute reports that—

"(A) contain the analysis and recommendations of the Commission; and

"(B) comment on the overall competitiveness of the American economy, including the report described in section 5208; and

"(12) submit an annual report to the President and to the Congress on the activities of the Commission.".

SEC. 4. EXECUTIVE DIRECTOR AND STAFF OF COMMISSION.

Section 5206 of the National Competitiveness Policy Commission Act (15 U.S.C. 4805) is amended—

(1) in subsection (a)(1), by striking "GS-18 of the General Schedule" and inserting "the highest level allowed under section 5376 of title 5, United States Code";

(2) in subsection (b)—

(A) by striking paragraph (1);

(B) by redesignating paragraph (2) as paragraph (4); and

(C) by inserting before paragraph (4), as redesignated, the following:

"(1) FULL-TIME STAFF.—The Executive Director may appoint such officers and employees as may be necessary to carry out the functions of the Commission in accordance with the Federal civil service and classification laws, and fix compensation in accordance with the provisions of title 5, United States Code.

"(2) SENIOR EXECUTIVE SERVICE.—The Commission may establish positions in the Senior Executive Service in accordance with the provisions of subchapter II of chapter 31 of title 5, United States Code.

"(3) TEMPORARY STAFF.—The Executive Director may appoint such employees as may be necessary to carry out the functions of the Commission for a period of not more than 1 year, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, at rates not to exceed the maximum rate payable under section 5376 of title 5, United States Code."; and

(3) in subsection (c), strike "GS-16 of the General Schedule" and insert "the maximum rate payable under section 5376 of title 5, United States Code.".

SEC. 5. POWERS OF THE COMMISSION.

Section 5207 of the National Competitiveness Policy Commission Act (15 U.S.C. 4806) is amended—

(1) by inserting before the period at the end of subsection (b)(1)(B) ", except that such information may be provided to members and staff of the Council subject to existing national security laws and regulations";

(2) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(3) by inserting after subsection (f) the following:

"(g) CONTRACTING AUTHORITY.—Within the limitation of appropriations to the Commission, the Commission may enter into contracts with State agencies, private firms, institutions, and individuals for the purpose of carrying out its duties under this subtitle.".

SEC. 6. REPORTING REQUIREMENTS.

Section 5208 of the National Competitiveness Policy Commission Act (15 U.S.C. 4807) is amended—

(1) by striking the caption and inserting the following:

"SEC. 5208. ANNUAL PUBLICATION OF ANALYSIS AND RECOMMENDATIONS.";

(2) in subsection (a)—

(A) by striking the subsection heading and inserting "(a) PUBLICATION OF ANALYSIS AND RECOMMENDATIONS.—"; and

(B) by striking "on" and inserting "not later than"; and

(3) by adding at the end of the following:

"(d) PERIODICAL REPORTS.—The Commission may submit to the President and the Congress such other reports containing analysis and recommendations as the Commission deems necessary.".

AGRICULTURAL CREDIT IMPROVEMENT ACT OF 1992

CONRAD (AND OTHERS) AMENDMENT NO. 3430

Mr. FORD (for Mr. CONRAD, for himself, Mr. GRASSLEY, Mr. BUMPERS, Mr. DASCHLE, Mr. WELLSTONE, Mr. HARKIN, Mr. DURENBERGER, Mr. BAUCUS, and Mr. LEAHY) proposed an amendment to the bill (H.R. 4906) to amend the Consolidated Farm and Rural Development Act to establish a program to aid beginning farmers and ranchers and to improve the operation of the Farmers Home Administration, and to amend the Farm Credit Act of 1971, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Agricultural Credit Improvement Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to the Consolidated Farm and Rural Development Act.
Sec. 3. Limitation on aggregate indebtedness.
Sec. 4. Interest rate for loans sold into secondary market; guaranteed loan fees.
Sec. 5. Federal-State beginning farmer partnership.
Sec. 6. Grants for private business enterprises.
Sec. 7. Down payment loan program.
Sec. 8. Special assistance to certain qualified beginning farmers and ranchers.
Sec. 9. Graduation of borrowers with operating loans or guarantees to private commercial credit.
Sec. 10. Consideration of borrowers for loan service programs.
Sec. 11. Time period within which county committee is required to meet to consider applications for farm ownership and operating loans and guarantees and beginning farmer plans.
Sec. 12. Increase in period during which county committee loan eligibility certification continues in effect.

Sec. 13. Processing of applications for farm operating loans.
Sec. 14. Graduation of seasoned direct loan borrowers to the loan guarantee program.
Sec. 15. Simplified application for guaranteed loans of $50,000 or less.
Sec. 16. Inventory lease or lease with option to purchase.
Sec. 17. Transfer of Indian lands pledged as collateral for FmHA loans.
Sec. 18. Debt service margin requirements; certified lenders program.
Sec. 19. Definition of qualified beginning farmer or rancher.
Sec. 20. Targeting of funds.
Sec. 21. Equal access to FmHA assistance by gender.
Sec. 22. State mediation programs.
Sec. 23. Regulations.

SEC. 2. REFERENCES TO THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.

Wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), except to the extent otherwise specifically provided.

SEC. 3. LIMITATION ON AGGREGATE INDEBTEDNESS.

Section 305 (7 U.S.C. 1925) is amended by striking "and 310D of this title" and inserting "310D, and 310E".

SEC. 4. INTEREST RATE FOR LOANS SOLD INTO SECONDARY MARKET; GUARANTEED LOAN FEES.

Section 309(h) (7 U.S.C. 1929(h)) is amended—

(1) in inserting "(1)" after "(h)"; and

(2) by adding at the end the following new paragraphs:

"(2) The interest rate payable by a borrower on the portion of a guaranteed loan that is sold by a lender to the secondary market under this title may be lower than the interest rate charged on the portion retained by the lender, but shall not exceed the average interest rate charged by the lender on loans made to farm and ranch borrowers.

"(3) With regard to any loan guarantee on a loan made by a commercial or cooperative lender related to a loan made by the Secretary under section 310E—

"(A) the Secretary shall not charge a fee to any person (including a lender); and

"(B) a lender may charge a loan origination and servicing fee in an amount not to exceed 1 percent of the amount of the loan.".

SEC. 5. FEDERAL-STATE BEGINNING FARMER PARTNERSHIP.

(a) COORDINATION OF ASSISTANCE FOR QUALIFIED BEGINNING FARMERS AND RANCHERS.—Section 309 (7 U.S.C. 1929) is amended by adding at the end the following new subsection:

"(i)(1) Not later than 60 days after any State expresses to the Secretary, in writing, a desire to coordinate the provision of financial assistance to qualified beginning farmers and ranchers in the State, the Secretary and the State shall conclude a joint memorandum of understanding that shall govern the coordination of the provision of the financial assistance by the State and the Secretary.

"(2) The memorandum of understanding shall provide that if a State beginning farmer program makes a commitment to provide a qualified beginning farmer or rancher with financing to establish or maintain a viable farming or ranching operation, the Secretary shall, subject to applicable law, normal loan approval criteria, and the availability of funds provide the farmer or rancher with a down payment loan under section 310E or a guarantee of the financing provided by the State program, or both.

"(3) The Secretary shall not charge any person (including a lender) any fee with respect to the provision of any guarantee under this subsection.

"(4) The Secretary shall notify each State of the provisions of this subsection.

"(5) As used in paragraph (1), the term 'State beginning farmer program' means any program that is—

"(A) carried out by, or under contract with, a State; and

"(B) designed to assist persons in obtaining the financial assistance necessary to enter agriculture and establish viable farming or ranching operations.".

(b) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT; PURPOSE.—Not later than 18 months after the date of enactment of this Act, the Secretary of Agriculture shall establish an advisory committee, to be known as the "Advisory Committee on Beginning Farmers and Ranchers", which shall provide advice to the Secretary on—

(A) the development of the program of coordinated assistance to qualified beginning farmers and ranchers under section 309(i) of the Consolidated Farm and Rural Development Act (as added by subsection (a) of this section);

(B) methods of maximizing the number of new farming and ranching opportunities created through the program;

(C) methods of encouraging States to participate in the program;

(D) the administration of the program; and

(E) other methods of creating new farming or ranching opportunities.

(2) MEMBERSHIP.—The Secretary shall appoint the members of the Advisory Committee. The Advisory Committee shall include representatives from the following:

(A) The Farmers Home Administration.

(B) State beginning farmer programs (as defined in section 309(i)(5) of the Consolidated Farm and Rural Development Act (as added by subsection (a) of this section)).

(C) Commercial lenders.

(D) Private nonprofit organizations with active beginning farmer or rancher programs.

(E) The Cooperative Extension Service.

(F) Community colleges or other educational institutions with demonstrated experience in training beginning farmers or ranchers.

(G) Other entities or persons providing lending or technical assistance for qualified beginning farmers or ranchers.

SEC. 6. GRANTS FOR PRIVATE BUSINESS ENTERPRISES.

Section 310B(c) (7 U.S.C. 1932(c)) is amended—

(1) by inserting "(1)" after "(c)"; and

(2) by adding at the end the following new paragraph:

"(2) The Secretary may make grants to qualified nonprofit organizations for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities. Assistance provided under this paragraph may include on-site technical assistance to local and regional governments, public transit agencies, and related nonprofit and for-profit organizations in rural areas, the development of training materials, and the provision of necessary training assistance to local officials and agencies in rural areas.".

SEC. 7. DOWN PAYMENT LOAN PROGRAM.

(a) IN GENERAL.—Subtitle A (7 U.S.C. 1922 et seq.) is amended by adding at the end the following new section:

"SEC. 310E. DOWN PAYMENT LOAN PROGRAM.

"(a) IN GENERAL.—

"(1) ESTABLISHMENT.—Notwithstanding any other section of this subtitle, the Secretary shall establish, within the farm ownership loan program established under this subtitle, a program under which loans shall be made under this section to qualified beginning farmers and ranchers for down payments on farm ownership loans.

"(2) ADMINISTRATION.—The Secretary shall be the primary coordinator of credit supervision for the down payment loan program established under this section, in consultation with the commercial or cooperative lender and, if applicable, the contracting credit counseling service selected under section 360(c).

"(b) LOAN TERMS.—

"(1) PRINCIPAL.—Each loan made under this section shall be in an amount equal to 30 percent of the purchase price or appraisal value, whichever is lower, of the farm or ranch to be acquired, unless the borrower requests a lesser amount.

"(2) INTEREST RATE.—The interest rate on any loan made by the Secretary under this section shall be 4 percent.

"(3) DURATION.—Each loan under this section shall be made for a period of 10 years or less, at the option of the borrower.

"(4) REPAYMENT.—Each borrower of a loan under this section shall repay the loan to the Secretary in equal annual installments.

"(5) NATURE OF RETAINED SECURITY INTEREST.—The Secretary shall retain an interest in each farm or ranch acquired with a loan made under this section that shall—

"(A) be secured by the farm or ranch;

"(B) be junior only to such interests in the farm or ranch as may be conveyed at the time of acquisition to the person (including a lender) from whom the borrower obtained a loan used to acquire the farm or ranch; and

"(C) require the borrower to obtain the permission of the Secretary before the borrower may grant an additional security interest in the farm or ranch.

"(c) LIMITATIONS.—

"(1) BORROWERS REQUIRED TO MAKE MINIMUM DOWN PAYMENT.—The Secretary shall not make a loan under this section to any borrower with respect to a farm or ranch if the contribution of the borrower to the down payment on the farm or ranch will be less than 10 percent of the purchase price of the farm or ranch.

"(2) MAXIMUM PRICE OF PROPERTY TO BE ACQUIRED.—The Secretary shall not make a loan under this section with respect to a farm or ranch for which the purchase price or appraisal value, whichever is lower, exceeds $250,000.

"(3) PROHIBITED TYPES OF FINANCING.—The Secretary shall not make a loan under this section with respect to a farm or ranch if the farm or ranch is to be acquired with other financing that contains any of the following conditions:

"(A) The financing is to be amortized over a period of less than 30 years.

"(B) A balloon payment will be due on the financing during the 10-year period beginning on the date the loan is to be made by the Secretary.

"(d) ADMINISTRATION.—In carrying out this section, the Secretary shall, to the maximum extent practicable—

"(1) facilitate the transfer of farms and ranches from retiring farmers and ranchers to persons eligible for insured loans under this subtitle;

"(2) make efforts to widely publicize the availability of loans under this section among—

"(A) potentially eligible recipients of the loans;

"(B) retiring farmers and ranchers; and

"(C) applicants for farm ownership loans under this subtitle;

"(3) encourage retiring farmers and ranchers to assist in the sale of their farms and ranches to qualified beginning farmers and ranchers by providing seller financing; and

"(4) coordinate the loan program established by this section with State programs that provide farm ownership or operating loans for beginning farmers and ranchers.".

(b) AVAILABILITY OF FARM OWNERSHIP LOANS AND LOAN GUARANTEES FOR CERTAIN BEGINNING FARMERS AND RANCHERS.—Subtitle A (7 U.S.C. 1922 et seq.) (as amended by subsection (a) of this section) is further amended by adding at the end the following new section:

"SEC. 310F. AVAILABILITY OF FARM OWNERSHIP LOANS AND LOAN GUARANTEES FOR CERTAIN QUALIFIED BEGINNING FARMERS AND RANCHERS.

"(a) ASSISTANCE PROHIBITED FOR A LIMITED PERIOD.—Except as otherwise provided in this section, if the Secretary approves the application of a qualified beginning farmer or rancher (referred to in this section as the 'applicant') for assistance under section 318, the Secretary shall not make a loan under this subtitle to the applicant or provide a guarantee under section 309(h) with respect to any farm real estate loan made to the applicant.

"(b) AVAILABILITY OF DOWN PAYMENT LOANS.—After the applicable period, the Secretary may make an insured loan under this subtitle, or a down payment loan under section 310E, to an applicant if—

"(1) throughout the applicable period, the applicant conducted an operation for which assistance is provided under section 318 in accordance with the plan for special assistance; and

"(2) the applicant is otherwise eligible for the loan.

"(c) AVAILABILITY OF LOAN GUARANTEES.—After the applicable period, the Secretary may guarantee under section 309(h) the repayment of a commercial or cooperative loan made to an applicant referred to in subsection (a) if—

"(1) throughout the applicable period, the applicant conducted the operation for which assistance is provided under section 318 in accordance with the plan for special assistance; and

"(2) the applicant is otherwise eligible for the loan guarantee.

"(d) APPLICABLE PERIOD DEFINED.—As used in this section, the term 'applicable period' means the first 5 years for which an applicant has operated a farm or ranch, including the period of time the applicant is provided assistance under section 318.".

SEC. 8. SPECIAL ASSISTANCE TO CERTAIN QUALIFIED BEGINNING FARMERS AND RANCHERS.

Subtitle B (7 U.S.C. 1941 et seq.) is amended by adding at the end the following new section:

"SEC. 318. SPECIAL ASSISTANCE TO CERTAIN QUALIFIED BEGINNING FARMERS AND RANCHERS.

"(a) IN GENERAL.—The Secretary shall provide special assistance in accordance with this section to enable a qualified beginning farmer or rancher who has not operated a farm or ranch, or who has operated a farm or ranch for not more than 5 years (referred to in this section as the 'applicant'), to conduct viable farming or ranching operations.

"(b) SUBMISSION OF PLAN OF FARM OPERATION.—An applicant who desires to apply for special assistance under this section shall submit a plan, in coordination with activities conducted under sections 359, 360, 361, and 362, that—

"(1) describes, for each of the first 5 years for which assistance under this section is sought for the operation—

"(A) how the operation is to be conducted;

"(B) the types and quantities of commodities to be produced by the operation;

"(C) the production methods and practices to be employed by the operation;

"(D) the conservation measures to be taken in the operation;

"(E) the equipment needed to conduct the operation (including any expected replacements for the equipment) and, with respect to each item of needed equipment, whether the applicant owns, leases, or otherwise has access to the item, or proposes to purchase, lease, or otherwise gain access to the item;

"(F) the expected income and expenses of the operation;

"(G) the expected credit needs of the operation, including the types and amounts of assistance to be sought under this section; and

"(H) the site or sites at which the operation is (or is to be) located; and

"(2) projects the financial status of the operation after assistance under this section has been provided for a period of not more than 10 years, consistent with section 319, as is necessary for the operation to become financially viable without further assistance from the Secretary, including specific goals that the applicant projects to meet in order to progress toward graduation as expeditiously as possible.

"(c) DETERMINATIONS BY THE COUNTY COMMITTEE; APPROVAL OF PLAN.—The county committee shall approve a plan submitted by an applicant in accordance with subsection (b) if the county committee determines that—

"(1) the applicant has not operated a farm or ranch, or has operated a farm or ranch for not more than 5 years;

"(2) during the 5-year period ending with the submission of the plan, the applicant has had sufficient education and experience to indicate that the applicant is able to conduct a successful farming or ranching operation, as the case may be;

"(3) the applicant owns, leases, or has a commitment to have leased to the applicant the site or sites of the operation;

"(4) there is, or will be, available to the applicant equipment sufficient to conduct the operation in accordance with the plan;

"(5) the applicant agrees to participate in such loan assessment, borrower training, and financial management programs as the Secretary may require; and

"(6) the applicant is otherwise eligible for assistance under this title.

"(d) DETERMINATION BY THE SECRETARY; APPROVAL OF APPLICATION FOR ASSISTANCE.—The Secretary shall approve an application for assistance under this section for an operation described in a plan approved by a county committee under this section if the Secretary determines that—

"(1) the operation would generate income sufficient to cover the expenses of the operation, debt service, and adequate living expenses of the applicant, to the extent that other income would not cover the living expenses, if the operation received assistance under this section as provided for in the plan; and

"(2) during the commitment period established in accordance with subsection (e)(1), the operation will be financially viable without further assistance from the Secretary and the identified goals are reasonable and practicable.

"(e) PROVISION OF ASSISTANCE.—

"(1) DETERMINATION OF COMMITMENT PERIOD.—

"(A) INITIAL DETERMINATION.—In approving an application under subsection (d), the Secretary shall, subject to subparagraph (C), determine the period during which assistance under this section is to be provided for the operation described in the application (referred to in this subsection as the 'commitment period').

"(B) AUTHORITY TO EXTEND PERIOD; NO AUTHORITY TO REDUCE PERIOD.—At any time, the Secretary may, subject to subparagraph (C) and subsections (f) and (g), extend the duration of the commitment period. The Secretary shall not reduce the duration of the commitment period.

"(C) LIMITATIONS.—

"(i) IN GENERAL.—The duration of any commitment period (including any extensions of the period) shall not exceed 10 years and shall be consistent with section 319.

"(ii) ELIGIBILITY FOR INSURED OPERATING LOANS.—During the commitment period, an applicant shall not be eligible to receive an insured operating loan under this section after the date that is 8 years after the date on which the applicant first receives assistance under this section.

"(2) OPERATING LOANS; LOAN GUARANTEES.—

"(A) IN GENERAL.—To the extent that an applicant whose application is approved under subsection (d) is unable to obtain sufficient credit from commercial or cooperative lenders to finance the operation described in the application at reasonable rates and terms (taking into consideration prevailing private and cooperative rates, and terms in the community in which the operation is (or is to be) located, for loans for similar purposes and periods of time), the Secretary shall, subject to the availability of funds and to subsections (f) and (g) and consistent with sections 360 and 362, make a conditional commitment to the applicant for each of the years of the commitment period—

"(i) to provide to any commercial or cooperative lender who makes a loan to the applicant that is within the credit needs of the operation (as specified in the plan contained in the application) a guarantee under section 309(h) for the repayment of 90 percent of the loan principal and interest;

"(ii)(I) to provide to any commercial or cooperative lender who makes a loan to the applicant that is within the credit needs of the operation (as specified in the plan contained in the application) a guarantee under section 309(h) for the repayment of 90 percent of the loan principal and interest and an interest subsidy payment in the amount necessary to ensure that the applicant qualifies for such a loan but not more than the amount of interest assistance allowed by section 351; or

"(II) if during any of the first 4 years for which assistance is provided under this section the Secretary determines that the applicant will not qualify for a loan described in subclause (I), an interest subsidy payment sufficient to ensure that the effective rate of interest payable by the applicant on the loan equals the rate of interest charged to low income, limited resource borrowers on insured operating loans made under this subtitle that are of comparable size and maturity; or

"(iii) to make an insured loan under this subtitle to the applicant, in the amount specified in the plan contained in the application, at an interest rate that is no higher than the interest rate charged to regular borrowers and no lower than the interest rate charged to low income, limited resource borrowers under this subtitle.

"(3) LOANS OR GUARANTEES FOR NEW OR IMPROVED EQUIPMENT.—The Secretary shall make a commitment to any applicant whose application is approved under subsection (d) to provide the applicant with loans under this subtitle or loan guarantees under section 309(h) to finance the acquisition, improvement, or repair of equipment needed in the operation described in the application if the plan contained in the application provides for the commitment, to the extent that the applicant is unable to obtain sufficient credit from commercial or cooperative lenders for such purposes at reasonable rates and terms (taking into consideration prevailing private and cooperative rates and terms in the community in which the operation is, or is to be, located, for loans for similar purposes and periods of time).

"(4) PRIORITY IN PURCHASE OF INVENTORY EQUIPMENT; LOANS OR GUARANTEES FOR THE PURCHASES IN CERTAIN CASES.—During the commitment period, the Secretary shall—

"(A) accord the applicant whose application is approved under subsection (d) priority for the purchase of equipment in the inventory of the Farmers Home Administration necessary for the success of the operation described in the application; and

"(B) provide the applicant with loans under this subtitle or loan guarantees under section 309(h) to finance the purchases if the plan contained in the application provides for the assistance, to the extent that the applicant is unable to obtain sufficient credit from commercial or cooperative lenders for such purpose at reasonable rates and terms (taking into consideration prevailing private and cooperative rates, and terms in the community in which the operation is, or is to be, located, for loans for similar purposes and periods of time).

"(5) OTHER KINDS OF ASSISTANCE.—During the commitment period, the Farmers Home Administration, the Extension Service, the Soil Conservation Service, and the other entities of the Department of Agriculture shall provide the applicant with such other assistance and information as may be needed in developing and implementing the operation described in the application.

"(6) FEES.—

"(A) SECRETARY.—The Secretary shall not charge a fee to any person (including a lender) in connection with any loan guarantee provided in accordance with this section.

"(B) LENDER.—A lender may charge a loan origination and servicing fee in connection with a loan or loan guarantee provided in accordance with this section in an amount not to exceed 1 percent of the amount of the loan.

"(f) ANNUAL PLAN REVISIONS REQUIRED AS CONDITION OF CONTINUED ASSISTANCE.—The Secretary shall not provide assistance under this section for an operation for any particular year after the first year for which the assistance is provided, unless—

"(1) not later than 60 days before the assistance is to be first provided for the particular year, the plan describing the operation has been revised, pursuant to section 360, based on the experience of the year preceding the particular year, to provide the information required by subsection (b) for the 5-year period beginning with the particular year (or, if shorter, the period beginning with the particular year and ending with the year in which the plan projects the operation as becoming financially viable); and

"(2) the Secretary has approved the revised plan.

"(g) EFFECTS OF AVOIDABLE FAILURE TO ACHIEVE GOALS.—

"(1) TERMINATION OF COMMITMENTS.—The Secretary shall revoke commitment for assistance made to an applicant under this section if the operation of the applicant fails, for 2 consecutive years, to meet the goals specified in the plan, unless the failure has not materially reduced the likelihood of the operation becoming financially viable and is due to circumstances beyond the control of the applicant.

"(2) SUSPENSION OF ELIGIBILITY FOR ASSISTANCE.—During the 3-year period that begins with the date a commitment made to an applicant is revoked under paragraph (1), the applicant shall not be eligible for assistance under this section.".

SEC. 9. GRADUATION OF BORROWERS WITH OPERATING LOANS OR GUARANTEES TO PRIVATE COMMERCIAL CREDIT.

Subtitle B (7 U.S.C. 1941 et seq.) (as amended by section 8 of this Act) is further amended by adding at the end the following new section:

"SEC. 319. GRADUATION OF BORROWERS WITH OPERATING LOANS OR GUARANTEES TO PRIVATE COMMERCIAL CREDIT.

"(a) GRADUATION PLAN.—The Secretary shall establish a plan, in coordination with activities under sections 359, 360, 361, and 362, to encourage each borrower with an outstanding loan under this subtitle or with respect to whom there is an outstanding guarantee under this subtitle to graduate to private commercial or other sources of credit.

"(b) LIMITATION ON PERIOD FOR WHICH BORROWERS ARE ELIGIBLE FOR ASSISTANCE UNDER THIS SUBTITLE.—Notwithstanding any other provision of this subtitle:

"(1) GENERAL RULE.—Except as provided in paragraph (2), the Secretary shall not—

"(A) make a loan to a borrower under this subtitle for any year after the 10th year for which such a loan is made to the borrower; or

"(B) guarantee for any year a loan made to a borrower for a purpose specified in this subtitle, after the 15th year for which loans under this subtitle are made to, or such a guarantee is provided with respect to, the borrower.

"(2) TRANSITION RULE.—If, as of the date of enactment of this section, the Secretary has made a loan to a borrower under this subtitle for 5 or more years, or has provided a guarantee for 10 or more years with respect to one or more loans made to the borrower for a purpose specified in this subtitle, the Secretary shall not make a loan to the borrower under this subtitle, or provide such a guarantee with respect to a loan made to the borrower for a purpose specified in this subtitle, after the 5th year occurring after the date of enactment for which a loan is made under this subtitle to, or such a guarantee is provided with respect to, the borrower.".

SEC. 10. CONSIDERATION OF BORROWERS FOR LOAN SERVICE PROGRAMS.

The first sentence of section 331D(e) (7 U.S.C. 1981d(e)) is amended by inserting after "not later than 60 days after receipt of the notice required in this section" the following: "or, in extraordinary circumstances as determined by the applicable State director, after the 60-day period".

SEC. 11. TIME PERIOD WITHIN WHICH COUNTY COMMITTEE IS REQUIRED TO MEET TO CONSIDER APPLICATIONS FOR FARM OWNERSHIP AND OPERATING LOANS AND GUARANTEES AND BEGINNING FARMER PLANS.

Section 332 (7 U.S.C. 1982) is amended—

(1) in subsection (c), by striking "The committee" and inserting "Subject to subsection (e), the committee"; and

(2) by adding at the end the following new subsection:

"(e) The county committee shall meet to consider approval of an application received by the committee for a loan under this title, a guarantee under section 309(h), or a plan of farm operation under section 318, not later than—

"(1) 5 days after receipt of the application if at the time of the receipt there is at least one other such application or plan pending; or

"(2) 15 days after receipt of the application if at the time of the receipt there are no other such applications or plans pending.".

SEC. 12. INCREASE IN PERIOD DURING WHICH COUNTY COMMITTEE LOAN ELIGIBILITY CERTIFICATION CONTINUES IN EFFECT.

Section 333(2)(A)(iii) (7 U.S.C. 1983(2)(A)(iii)) is amended by striking "2 years" and inserting "5 years".

SEC. 13. PROCESSING OF APPLICATIONS FOR FARM OPERATING LOANS.

Section 333A(a)(2) (7 U.S.C. 1983a(a)(2)) is amended—

(1) by inserting "(A)" after "(2)";

(2) by inserting "(other than under subtitle B)" after "under this title"; and

(3) by adding at the end the following new subparagraph:

"(B)(i) Not later than 10 calendar days after the Secretary receives an application for an operating loan or loan guarantee under subtitle B, the Secretary shall notify the applicant of any information required before a decision may be made on the application. On receipt of an application, the Secretary shall request from other parties such information as may be needed in connection with the application.

"(ii) Not later than 15 calendar days after the date an agency of the Department of Agriculture receives a request for information made pursuant to clause (i), the agency shall provide the Secretary with the requested information.

"(iii) If, not later than 20 calendar days after the date a request is made pursuant to clause (i) with respect to an application, the Secretary has not received the information requested, the Secretary shall notify the applicant and the district office of the Farmers Home Administration, in writing, of the outstanding information.

"(iv) A county office shall notify the district office of the Farmers Home Administration of each application for an operating loan or loan guarantee under subtitle B that is pending more than 45 days after receipt, and the reasons the application is pending.

"(v) A district office that receives a notice provided under clause (iv) with respect to an application shall immediately take steps to ensure that final action is taken on the application not later than 15 days after the date of the receipt of the notice.

"(vi) The district office shall report to the State office of the Farmers Home Administration on each application for an operating loan or loan guarantee under subtitle B that is pending more than 45 days after receipt by the county committee, and the reasons the application is pending.

"(vii) Each month, the Secretary shall notify the Committee on Agriculture of the

House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, on a State-by-State basis, as to each application for an operating loan or loan guarantee under subtitle B on which final action had not been taken within 60 calendar days after receipt by the Secretary, and the reasons final action had not been taken.".

SEC. 14. GRADUATION OF SEASONED DIRECT LOAN BORROWERS TO THE LOAN GUARANTEE PROGRAM.

Section 333A (7 U.S.C. 1983a) is amended by adding at the end the following new subsection:

"(f)(1) As used in this subsection:

"(A) The term 'approved lender' means a lender approved prior to the date of enactment of this subsection by the Secretary under the approved lender program established by exhibit A to subpart B of part 1980 of title 7, Code of Federal Regulations (as in effect on January 1, 1991), or a lender certified under section 114.

"(B) The term 'seasoned direct loan borrower' means a borrower receiving a direct loan under this title who has been classified as 'commercial' or 'standard' under subpart W of part 2006 of the Instruction Manual (as in effect on January 1, 1991).

"(2) The Secretary, or a contracting third party, shall annually review under section 360 the loans of each seasoned loan borrower. If, based on the review, it is determined that a borrower would be able to obtain a loan, guaranteed by the Secretary, from a commercial or cooperative lender at reasonable rates and terms for loans for similar purposes and periods of time, the Secretary shall assist the borrower in applying for the commercial or cooperative loan.

"(3) In accordance with section 362, the Secretary shall prepare a prospectus on each seasoned direct loan borrower determined eligible to obtain a guaranteed loan. The prospectus shall contain a description of the amounts of loan guarantee and interest assistance that the Secretary will provide to the seasoned direct loan borrower to enable the seasoned direct loan borrower to carry out a financially viable farming plan if a guaranteed loan is made.

"(4) With the approval of the borrower, the Secretary shall provide the prospectus of the seasoned direct loan borrower to each approved lender whose lending area includes the location of the seasoned direct loan borrower. If the Secretary receives an offer from an approved lender to extend credit to the seasoned direct loan borrower under terms and conditions contained in the prospectus, the seasoned direct loan borrower shall not be eligible for an insured loan from the Secretary under subtitle A or B, except as otherwise provided in this subsection.

"(5) If the Secretary is unable to provide loan guarantees and, if necessary, interest assistance to the seasoned direct loan borrower under this subsection in amounts sufficient to enable the seasoned direct loan borrower to borrow from commercial sources the amount required to carry out a financially viable farming plan, or if the Secretary does not receive an offer from an approved lender to extend credit to a seasoned direct loan borrower under the terms and conditions contained in the prospectus, the Secretary shall make an insured loan to the seasoned direct loan borrower under subtitle A or B, whichever is applicable.

"(6) To the extent necessary for the borrower to obtain a loan, guaranteed by the Secretary, from a commercial or cooperative lender, the Secretary shall provide interest rate reductions as provided for under section 351.".

SEC. 15. SIMPLIFIED APPLICATION FOR GUARANTEED LOANS OF $50,000 OR LESS.

Section 333A (7 U.S.C. 1983a) (as amended by section 14 of this Act) is further amended by adding at the end the following new subsection:

"(g)(1) The Secretary shall provide to lenders a short, simplified application form for guarantees under this title of loans the principal amount of which is $50,000 or less.

"(2) In developing the application, the Secretary shall—

"(A) consult with commercial and cooperative lenders; and

"(B) ensure that—

"(i) the form can be completed manually or electronically, at the option of the lender;

"(ii) the form minimizes the documentation required to accompany the form;

"(iii) the cost of completing and processing the form is minimal; and

"(iv) the form can be completed and processed in an expeditious manner.".

SEC. 16. INVENTORY LEASE OR LEASE WITH OPTION TO PURCHASE.

The fourth sentence of section 335(c)(1) (7 U.S.C. 1985(c)(1)) is amended—

(1) by inserting "(A)" after "shall be"; and

(2) by inserting before the period at the end the following: "or (B) leased to persons eligible for assistance under the provisions of any law administered by the Farmers Home Administration or the Rural Development Administration under an annual lease or a lease with an option to purchase, with a preference for sale".

SEC. 17. TRANSFER OF INDIAN LANDS PLEDGED AS COLLATERAL FOR FmHA LOANS.

Section 335(e)(1) (7 U.S.C. 1985(e)(1)) is amended—

(1) in subparagraph (D)(i), by striking "If" and inserting "Except as provided in subparagraph (G), if"; and

(2) by adding at the end the following new subparagraph:

"(G)(i) If—

"(I) the real property described in subparagraph (A)(i) is located within an Indian reservation;

"(II) the borrower-owner is an Indian tribe that has jurisdiction over the reservation in which the real property is located or the borrower-owner is a member of an Indian tribe;

"(III) the borrower-owner has obtained a loan made, insured, or guaranteed under this title; and

"(IV) the borrower-owner and the Secretary have exhausted all of the procedures provided for in this title to permit a borrower-owner to retain title to the real property, such that it is necessary for the borrower-owner to relinquish title,

the Secretary shall dispose of or administer the property only as provided in subparagraph (D), as modified by this subparagraph.

"(ii) The Secretary shall provide the borrower-owner of real property that is described in clause (i) with written notice of—

"(I) the right of the borrower-owner to voluntarily convey the real property to the Secretary; and

"(II) the fact that real property so conveyed will be placed in the inventory of the Secretary.

"(iii) The Secretary shall provide the borrower-owner of the real property with written notice of the rights and protections provided under this title to the borrower-owner, and the Indian tribe that has jurisdiction over the reservation in which the real property is located, from foreclosure or liquidation of the real property, including written notice of—

"(I) the provisions of subparagraphs (C)(i), (C)(ii), and (D), this subparagraph, and subsection (g)(6);

"(II) if the borrower-owner does not voluntarily convey the real property to the Secretary, that—

"(aa) the Secretary may foreclose on the property;

"(bb) in the event of foreclosure, the property will be offered for sale;

"(cc) the Secretary must offer a bid for the property that is equal to the fair market value of the property or the outstanding principal and interest of the loan, whichever is higher;

"(dd) the property may be purchased by another party; and

"(ee) if the property is purchased by another party, the property will not be placed in the inventory of the Secretary and the borrower-owner will forfeit the rights and protections provided under this title; and

"(III) the opportunity of the borrower-owner to consult with the Indian tribe that has jurisdiction over the reservation in which the real property is located or counsel to determine if State or tribal law provides rights and protections that are more beneficial than those provided the borrower-owner under this title.

"(iv)(I) Except as provided in subclause (II), the Secretary shall accept the voluntary conveyance of real property described in clause (i).

"(II) If a hazardous substance (as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)) is located on the property and the Secretary takes remedial action to protect human health or the environment if the property is taken into inventory, the Secretary shall accept the voluntary conveyance of the property only if the Secretary determines that it is in the best interests of the Federal Government.

"(v) If a borrower-owner does not voluntarily convey to the Secretary real property described in clause (i), at least 30 days before a foreclosure sale of the property, the Secretary shall provide written notice to the Indian tribe that has jurisdiction over the reservation in which the real property is located of—

"(I) the sale;

"(II) the fair market value of the property; and

"(III) the requirements of this subparagraph.

"(vi)(I) Except as provided in subclause (II), at a foreclosure sale of real property described in clause (i), the Secretary shall offer a bid for the property that is equal to the higher of—

"(aa) the fair market value of the property; or

"(bb) the outstanding principal and interest of the loan.

"(II) If a hazardous substance (as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(14)) is located on the property and the Secretary takes remedial action to protect human health or the environment if the property is taken into inventory, subclause (I) shall apply only if the Secretary determines that it is in the best interests of the Federal Government.".

SEC. 18. DEBT SERVICE MARGIN REQUIREMENTS; CERTIFIED LENDERS PROGRAM.

Section 339 (7 U.S.C. 1989) is amended—

(1) by striking "SEC. 339. The" and inserting the following:

"SEC. 339. RULES AND REGULATIONS.

"(a) IN GENERAL.—The"; and

(2) by adding at the end the following new subsections:

"(b) DEBT SERVICE MARGIN REQUIREMENTS.—Notwithstanding subsection (a), in providing farmer program loan guarantees under this title, the Secretary shall consider the income of the borrower adequate if the income is equal to or greater than the income necessary—

"(1) to make principal and interest payments on all debt obligations of the borrower, in a timely manner;

"(2) to cover the necessary living expenses of the family of the borrower; and

"(3) to pay all other obligations and expenses of the borrower not financed through debt obligations referred to in paragraph (1), including expenses of replacing capital items (determined after taking into account depreciation of the items).

"(c) CERTIFIED LENDERS PROGRAM.—

"(1) IN GENERAL.—The Secretary shall establish a program under which the Secretary shall guarantee loans for any purpose specified in subtitle B that are made by lending institutions certified by the Secretary.

"(2) CERTIFICATION REQUIREMENTS.—The Secretary shall certify a lending institution that meets such criteria as the Secretary may prescribe in regulations, including the ability of the institution to properly make, service, and liquidate the loans of the institution.

"(3) CONDITION OF CERTIFICATION.—As a condition of the certification, the Secretary shall require the institution to undertake to service the loans guaranteed by the Secretary under this subsection, using standards that are not less stringent than generally accepted banking standards concerning loan servicing employed by prudent commercial or cooperative lenders. The Secretary shall, at least annually, monitor the performance of each certified lender to ensure that the conditions of the certification are being met.

"(4) EFFECT OF CERTIFICATION.—Notwithstanding any other provision of law:

"(A) The Secretary shall guarantee 80 percent of a loan made under this subsection by a certified lending institution as described in paragraph (1), subject to county committee certification that the borrower of the loan meets the eligibility requirements and such other criteria as may be applicable to loans guaranteed by the Secretary under other provisions of this title.

"(B) With respect to loans to be guaranteed by the Secretary under this subsection, the Secretary shall permit certified lending institutions to make appropriate certifications (as provided by regulations issued by the Secretary)—

"(i) relating to issues such as creditworthiness, repayment ability, adequacy of collateral, and feasibility of farm operation; and

"(ii) that the borrower is in compliance with all requirements of law, including regulations issued by the Secretary.

"(C) The Secretary shall approve or disapprove a guarantee not later than 14 calendar days after the date that the lending institution applied to the Secretary for the guarantee. If the Secretary rejects the loan application within the 14-day period, the Secretary shall state, in writing, all of the reasons the application was rejected.

"(5) RELATIONSHIP TO OTHER REQUIREMENTS.—This subsection shall not affect the responsibility of the Secretary to certify eligibility, review financial information, and otherwise assess an application.".

SEC. 19. DEFINITION OF QUALIFIED BEGINNING FARMER OR RANCHER.

Section 343(a) (7 U.S.C. 1991(a)) is amended—

(1) by striking "this title (1) the term" and all that follows through "fish farming," at the end of paragraph (1) and inserting "this title:

"(1) The term 'farmer' includes a person who is engaged in, or who, with assistance afforded under this title, intends to engage in, fish farming.";

(2) by indenting, and aligning the margins of, paragraphs (2) through (10) so as to align with paragraph (1) (as amended by paragraph (1));

(3) by striking "the" the first place it appears in each of such paragraphs and inserting "The";

(4) by striking the comma at the end of each of paragraphs (2) through (8) and inserting a period;

(5) by striking ", and" at the end of paragraph (9) and inserting a period; and

(6) by adding at the end the following new paragraph:

"(11) The term 'qualified beginning farmer or rancher' means an applicant—

"(A) who is eligible for assistance under this title;

"(B) who has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 years;

"(C) in the case of a cooperative, corporation, partnership, or joint operation, who has members, stockholders, partners, or joint operators who are all related to one another by blood or marriage;

"(D)(i) in the case of an owner and operator of a farm or ranch, who—

"(I) in the case of a loan made to an individual, individually or with the immediate family of the applicant—

"(aa) materially and substantially participates in the operation of the farm or ranch; and

"(bb) provides substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the State or county in which the farm or ranch is located; or

"(II)(aa) in the case of a loan made to a cooperative, corporation, partnership, or joint operation, has members, stockholders, partners, or joint operators, materially and substantially participate in the operation of the farm or ranch; and

"(bb) in the case of a loan made to a corporation, has stockholders, all of whom are qualified beginning farmers or ranchers; and

"(ii) in the case of an applicant seeking to own and operate a farm or ranch, who—

"(I) in the case of a loan made to an individual, individually or with the immediate family of the applicant, will—

"(aa) materially and substantially participate in the operation of the farm or ranch; and

"(bb) provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the State or county in which the farm or ranch is located; or

"(II)(aa) in the case of a loan made to a cooperative, corporation, partnership, or joint operation, will have members, stockholders, partners, or joint operators, materially and substantially participate in the operation of the farm or ranch; and

"(bb) in the case of a loan made to a corporation, has stockholders, all of whom are qualified beginning farmers or ranchers;

"(E) who agrees to participate in such loan assessment, borrower training, and financial management programs as the Secretary may require;

"(F) who does not own land or who, directly or through interests in family farm corporations, owns land, the aggregate acreage of which does not exceed 15 percent of the median acreage of the farms or ranches, as the case may be, in the county in which the farm or ranch operations of the applicant are located, as reported in the most recent census of agriculture taken under section 142 of title 13, United States Code; and

"(G) who demonstrates that the available resources of the applicant and spouse (if any) of the applicant are not sufficient to enable the applicant to continue farming or ranching on a viable scale.".

SEC. 20. TARGETING OF FUNDS.

(a) FARM OPERATING LOANS FOR BEGINNING FARMERS AND RANCHERS.—Section 346(b) (7 U.S.C. 1994(b)) is amended by adding at the end the following new paragraph:

"(5)(A) In expending funds available for insured operating loans under subtitle B, including loans made under section 318—

"(i) during the first 6 months of fiscal year 1994, the Secretary shall reserve not less than 30 percent of the funds available for the fiscal year to make insured operating loans to qualified beginning farmers or ranchers;

"(ii) during the first 6 months of each of fiscal years 1995 and 1996, the Secretary shall reserve not less than 40 percent of the funds available for the fiscal year to make insured operating loans to qualified beginning farmers or ranchers; and

"(iii) during the first 6 months of each of fiscal years 1997 and thereafter, the Secretary may reserve not more than 50 percent of the funds available for the fiscal year to make insured operating loans to qualified beginning farmers or ranchers.

"(B) In each fiscal year described in subparagraph (A), with regard to the funds not reserved under subparagraph (A), a qualified beginning farmer or rancher may apply for insured operating loans, but shall not receive any preference as a result of status as a qualified beginning farmer or rancher.".

(b) PORTIONS OF FARM OWNERSHIP LOAN GUARANTEE FUNDS TARGETED TO BEGINNING FARMERS OR RANCHERS.—Section 346(b)(2) (7 U.S.C. 1994(b)(2)) is amended by adding at the end the following new sentence: "Not less than 25 percent of the amounts appropriated for guarantees of farm ownership loans for each of the fiscal years 1994, 1995, 1996, and 1997 shall be reserved by the Secretary during the first 6 months of the respective fiscal year for guarantees of farm ownership loans to beginning farmers or ranchers.".

(c) FARM OWNERSHIP LOANS.—

(1) PERCENTAGE OF INSURED FARM OWNERSHIP LOAN FUNDS RESERVED FOR BEGINNING FARMERS OR RANCHERS.—Section 346(b)(3) is amended by adding at the end the following new subparagraph:

"(D) To the extent that it is not inconsistent with an exercise of authority under section 355, in expending funds available for insured farm ownership loans—

"(i) during fiscal year 1994, the Secretary shall reserve not less than 55 percent of the funds available for the fiscal year to make insured farm ownership loans to qualified beginning farmers or ranchers;

"(ii) during fiscal year 1995, the Secretary shall reserve not more than 65 percent of the funds available for the fiscal year to make insured farm ownership loans to qualified beginning farmers or ranchers; and

"(iii) during each of fiscal years 1996 and thereafter, the Secretary may reserve not less than 65 percent and not more than 70 percent of the funds available for the fiscal year to make insured farm ownership loans to qualified beginning farmers or ranchers.".

(2) FUNDS RESERVED FOR DOWN PAYMENT LOAN PROGRAM.—Section 346(b)(3) (as amended by paragraph (1) of this subsection) is further amended by adding at the end the following new subparagraph:

"(E) To the extent that it is not inconsistent with an exercise of authority under section 355, the Secretary shall reserve not less than 60 percent of the amounts reserved for qualified beginning farmers or ranchers under subparagraph (D) for any fiscal year for down payment loans under section 310E.".

(3) CERTAIN UNOBLIGATED DOWN PAYMENT LOAN PROGRAM FUNDS AVAILABLE FOR ANY TYPE OF INSURED FARM OWNERSHIP LOANS FOR BEGINNING FARMERS AND RANCHERS.—Section 346(b)(3) (as amended by paragraph (2) of this subsection) is further amended by adding at the end the following new subparagraph:

"(F) To the extent that it is not inconsistent with an exercise of authority under section 355, to the maximum extent practicable, any funds reserved for down payment loans under section 310E for a fiscal year by reason of subparagraph (E) that are not obligated by the end of the second quarter of the fiscal year shall be available during the third quarter of the fiscal year for any type of insured farm ownership loans to beginning farmers and ranchers.".

(d) INTEREST RATE ASSISTANCE PROGRAM.—Section 346(b)(3) (as amended by subsection (c)(3) of this section) is further amended by adding at the end the following new subparagraph:

"(G) Not less than 40 percent of the amounts available for the interest rate reduction program under section 351 shall be reserved for the first 6 months of each fiscal year for assistance to beginning farmers or ranchers.".

(e) DOWN PAYMENT LOAN PROGRAM.—Section 346(b) (as amended by subsection (a) of this section) is further amended by adding at the end the following new paragraph:

"(6) Notwithstanding any other provision of this title, at the end of the third quarter of each fiscal year, the Secretary shall transfer, and use to carry out section 310E, 75 percent of the amount that would otherwise be available for guaranteed operating loans.".

SEC. 21. EQUAL ACCESS TO FmHA ASSISTANCE BY GENDER.

(a) TARGET PARTICIPATION RATES.—Section 355(a) (7 U.S.C. 2003(a)) is amended—

(1) in paragraph (2), by striking "In establishing" and inserting "Except as provided in paragraph (3), in establishing"; and

(2) by adding at the end the following new paragraph:

"(3) GENDER.—With respect to gender, target participation rates shall take into consideration the number of current and potential socially disadvantaged farmers and ranchers in a State in proportion to the total number of farmers and ranchers in the State.".

(b) TARGETING OF LOANS TO MEMBERS OF GROUPS WHOSE MEMBERS HAVE BEEN SUBJECTED TO GENDER PREJUDICE.—Section 355(e)(1) (7 U.S.C. 2003(e)(1)) is amended by striking "or ethnic" and inserting ", ethnic, or gender".

(c) RECORDKEEPING OF LOANS BY BORROWER'S GENDER.—Subtitle D (7 U.S.C. 1981 et seq.) is amended by adding at the end the following new section:

"SEC. 369. RECORDKEEPING OF LOANS BY BORROWER'S GENDER.

"The Secretary shall classify, by gender, records of applicants for loans and loan guarantees under this title.".

SEC. 22. STATE MEDIATION PROGRAMS.

Section 502 of the Agricultural Credit Act of 1987 (7 U.S.C. 5102) is amended—

(1) in subsection (b)(1), by striking "50" and inserting "70"; and

(2) in subsection (c), by inserting "with respect to which the amount was paid" before the period.

SEC. 23. REGULATIONS.

(a) INTERIM REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall issue such interim regulations as are necessary to implement this Act and the amendments made by this Act.

(b) FINAL REGULATIONS.—Not later than October 1, 1993, the Secretary of Agriculture shall issue such final regulations as are necessary to implement this Act and the amendments made by this Act.

BANKRUPTCY AMENDMENTS OF 1992

HEFLIN AMENDMENT NO. 3431

Mr. FORD (for Mr. HEFLIN) proposed an amendment to the amendments of the House to the bill (S. 1985) to establish a commission to review the Bankruptcy Code, to amend the Bankruptcy Code in certain aspects of its application to cases involving commerce, credit, and individual debtors and add a temporary chapter to govern reorganization of small businesses, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Bankruptcy Amendments of 1992".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title; table of contents.
TITLE I—IMPROVED BANKRUPTCY ADMINISTRATION
Sec. 101. Expedited hearing on automatic stay.
Sec. 102. Expedited filing of plans under chapter 11.
Sec. 103. Expedited filing of plans under chapter 12.
Sec. 104. Expedited procedure for reaffirmation of debts.
Sec. 105. Powers of bankruptcy courts.
Sec. 106. Participation by bankruptcy administrator at meetings of creditors and equity security holders.
Sec. 107. Definition relating to eligibility to serve on chapter 11 committees.
Sec. 108. Increased incentive compensation for trustees.
Sec. 109. Dollar adjustments.
Sec. 110. Bankruptcy fees.
Sec. 112. Premerger notification.
Sec. 113. Allowance of creditor committee expenses.
TITLE II—CONSUMER BANKRUPTCY ISSUES
Sec. 201. Period for curing default relating to principal residence.
Sec. 202. Preservation of home mortgage liens.
Sec. 203. Nondischargeability of fine under chapter 13.
Sec. 204. Protection of child support and alimony.
TITLE III—COMMERCIAL BANKRUPTCY ISSUES
Sec. 301. Limitation on liability of non-insider transferee for avoided transfer.
Sec. 302. Perfection of purchase-money security interest.
Sec. 303. Protection of security interest in post-petition rents.
Sec. 304. Return of goods.
Sec. 305. Meetings of creditors and equity security holders.
Sec. 306. Exception to discharge.
Sec. 307. Protection of assignees of executory contracts and unexpired leases approved by court order in cases reversed on appeal.
Sec. 308. Professional fees.
Sec. 309. Proceeds of money order agreements.
Sec. 310. Airport leases.
Sec. 311. Trustee duties.
Sec. 312. Aircraft equipment and vessels; rolling stock equipment.
Sec. 313. Payment under collective bargaining agreements and payment of insurance benefits to retired employees.
Sec. 314. Payments.
Sec. 315. Seller's right to reclaim goods.
TITLE IV—GOVERNMENTAL BANKRUPTCY ISSUES
Sec. 401. Municipal bankruptcy.
TITLE V—BANKRUPTCY REVIEW COMMISSION
Sec. 501. Short title.
Sec. 502. Establishment.
Sec. 503. Duties of the Commission.
Sec. 504. Membership.
Sec. 505. Compensation of the Commission.
Sec. 506. Staff of Commission; experts and consultants.
Sec. 507. Powers of the Commission.
Sec. 508. Report.
Sec. 509. Termination.
Sec. 510. Authorization of appropriations.
TITLE VI—TECHNICAL CORRECTIONS
Sec. 601. Amendments to bankruptcy definitions, necessitated by enactment of public law 101-647.
Sec. 602. Title 28, United States Code.
TITLE VII—SEVERABILITY; EFFECTIVE DATE; APPLICATION OF AMENDMENTS.
Sec. 701. Severability.
Sec. 702. Effective date; application of amendments.

TITLE I—IMPROVED BANKRUPTCY ADMINISTRATION

SEC. 101. EXPEDITED HEARING ON AUTOMATIC STAY.

The last sentence of section 362(e) of title 11, United States Code, is amended—

(1) by striking "commenced" and inserting "concluded", and

(2) by inserting before the period at the end the following:

", unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances".

SEC. 102. EXPEDITED FILING OF PLANS UNDER CHAPTER 11.

Section 1121(d) of title 11, United States Code, is amended—

(1) by striking "On" and inserting "(1) Subject to paragraph (2), on", and

(2) by adding at the end the following:

"(2) Under paragraph (1)—

"(A) such 120-day period may not be increased beyond the 1-year period beginning on the date of the order for relief under this chapter; and

"(B) such 180-day period may not be increased beyond the 425-day period beginning on the date of the order for relief under this chapter;

unless the need for such an increase is attributable to circumstances for which the debtor should not justly be held accountable.".

SEC. 103. EXPEDITED FILING OF PLANS UNDER CHAPTER 12.

(a) FILING OF PLAN.—Section 1221 of title 11, United States Code, is amended by striking "an extension is substantially justified" and inserting "the need for an extension is attributable to circumstances for which the debtor should not justly be held accountable".

(b) DELAY OF REPEAL.—Section 302(f) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554; 100 Stat. 3124; 11 U.S.C. 1201 note) is amended by striking "October 1, 1993" and inserting "October 1, 1995".

SEC. 104. EXPEDITED PROCEDURE FOR REAFFIRMATION OF DEBTS.

(a) REAFFIRMATION.—Section 524(c) of title 11, United States Code, is amended—

(1) in paragraph (2)—

(A) by inserting "(A)" after "(2)",

(B) by adding "and" at the end, and

(C) by inserting after subparagraph (A), as so designated, the following:

"(B) such agreement contains a clear and conspicuous statement which advises the debtor that such agreement is not required under this title, under nonbankruptcy law, or under any agreement not in accordance with the provisions of this subsection;", and

(2) in paragraph (3)—

(A) in the matter preceding subparagraph (A) by striking "such agreement" the last place it appears,

(B) in subparagraph (A)—

(i) by inserting "such agreement" after "(A)", and

(ii) by striking "and" at the end,

(C) in subparagraph (B)—

(i) by inserting "such agreement" after "(B)", and

(ii) by adding "and" at the end, and

(3) by adding at the end the following:

"(C) the attorney fully advised the debtor of the legal effect and consequences of—

"(i) an agreement of the kind specified in this subsection; and

"(ii) any default under such an agreement;".

(b) EFFECT OF DISCHARGE.—The third sentence of section 524(d) of title 11, United States Code, is amended in the matter preceding paragraph (1) by inserting "and was not represented by an attorney during the course of negotiating such agreement" after "this section".

SEC. 105. POWERS OF BANKRUPTCY COURTS.

(a) STATUS CONFERENCES.—Section 105 of title 11, United States Code, is amended by adding at the end the following:

"(d) The court, on its own motion or on the motion of any party in interest, may—

"(1) hold a status conference regarding any case or proceeding under this title after notice to the parties in interest; and

"(2) unless inconsistent with another provision of this title or with applicable Bankruptcy Rules, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

"(A) sets the date by which the debtor must accept or reject an executory contract or unexpired lease; or

"(B) in a case under chapter 11 of this title—

"(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

"(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

"(iii) sets the date by which a party in interest other than a debtor may file a plan;

"(iv) fixes the notice to be provided regarding the hearing on approval of the disclosure statement;

"(v) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan; or

"(vi) directs the use of standard-form disclosure statements, plans, or other forms that have been adopted by the court.".

(b) ABSTENTION.—Section 1334 of title 28, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e), and

(2) in the second sentence of subsection (c)(2)—

(A) by inserting "(other than a decision not to abstain in a proceeding described in subsection (c)(2))" after "subsection", and

(B) by striking "Any" and inserting the following:

"(d) Any".

(c) ESTABLISHMENT, OPERATION, AND TERMINATION OF BANKRUPTCY APPELLATE PANEL SERVICE.—Section 158(b) of title 28, United States Code, is amended—

(1) by striking paragraphs (3) and (4),

(2) by redesignating paragraph (2) as paragraph (4),

(3) by striking paragraph (1) and inserting the following:

"(1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that—

"(A) there are insufficient judicial resources available in the circuit; or

"(B) establishment of such service would result in undue delay or increased cost to parties in cases under title 11.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference a report containing the factual basis of such finding.

"(2)(A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

"(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraphs exists.

"(C) On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraphs exists.

"(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

"(3) Bankruptcy judges appointed under paragraph (1) shall be appointed for a term of 2 years and may be reappointed under such paragraph.", and

(4) by inserting after paragraph (4), as so redesignated, the following:

"(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.

"(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such district.".

(d) APPEALS TO BE HEARD BY BANKRUPTCY APPELLATE PANEL SERVICE.—Section 158 of title 28, United States Code, is amended—

(1) in subsection (c) by striking "(c)" and inserting "(2)", and

(2) by inserting after subsection (b) the following:

"(c)(1) Subject to subsection (b), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless—

"(A) the appellant elects at the time of filing the appeal; or

"(B) any other party elects, not later than 30 days after service of notice of the appeal;

to have such appeal heard by the district court.".

(e) RULES OF PROCEDURE AND EVIDENCE; METHOD OF PRESCRIBING.—Section 2073 of title 28, United States Code, is amended—

(1) in subsection (a)(2) by striking "section 2072" and inserting "sections 2072 and 2075", and

(2) in subsections (d) and (e) by inserting "or 2075" after "2072" each place it appears.

(f) EFFECTIVE DATE OF BANKRUPTCY RULES.—Section 2075 of title 28, United States Code, is amended by striking "ninety days" and inserting "180 days".

SEC. 106. PARTICIPATION BY BANKRUPTCY ADMINISTRATOR AT MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

(a) PRESIDING OFFICER.—A bankruptcy administrator appointed under section 302(d)(3)(I) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554; 100 Stat. 3123), as amended by section 317(a) of the Federal Courts Study Committee Implementation Act of 1990 (Public Law 101-650; 104 Stat. 5115), or the bankruptcy administrator's designee may preside at the meeting of creditors convened under section 341(a) of title 11, United States Code. The bankruptcy administrator or the bankruptcy administrator's designee may preside at any meeting of equity security holders convened under section 341(b) of title 11, United States Code.

(b) EXAMINATION OF THE DEBTOR.—The bankruptcy administrator or the bankruptcy administrator's designee may examine the debtor at the meeting of creditors and may administer the oath required under section 343 of title 11, United States Code.

SEC. 107. DEFINITION RELATING TO ELIGIBILITY TO SERVE ON CHAPTER 11 COMMITTEES.

Section 101(41) of title 11, United States Code, is amended to read as follows:

"(41) 'person' includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

"(A) acquires an asset from a person—

"(i) as a result of the operation of a loan guarantee agreement; or

"(ii) as receiver or liquidating agent of a person;

"(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or

"(C) is the legal or beneficial owner of an asset of—

"(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

"(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit;".

SEC. 108. INCREASED INCENTIVE COMPENSATION FOR TRUSTEES.

Section 326(a) of title 11, United States Code, is amended by striking "fifteen" and all that follows through "$3,000" the last place it appears, and inserting the following: "25 percent on the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, 5 percent on any amount in excess of $50,000 but not in excess of $1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of $1,000,000".

SEC. 109. DOLLAR ADJUSTMENTS.

(a) Who May Be a Debtor Under Chapter 13.—Section 109(e) of title 11, United States Code, is amended—

(1) by striking "unsecured debts of less than $100,000 and noncontingent, liquidated, secured debts of less than $350,000" and inserting "debts of less than $1,000,000", and

(2) by striking "unsecured debts that aggregate less than $100,000 and noncontingent, liquidated, secured debts of less than $350,000" and inserting "debts in the aggregate of less than $1,000,000".

(b) Involuntary Cases.—Section 303(b) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "$5,000" and inserting "$10,000", and

(2) in paragraph (2) by striking "$5,000" and inserting "$10,000".

(c) Priorities.—Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (3)(B) by striking "$2,000" and inserting "$4,000",

(2) in paragraph (4)(B)(i) by striking "$2,000" and inserting "$4,000",

(3) in paragraph (5) by striking "$2,000" and inserting "$4,000", and

(4) in paragraph (6) by striking "$900" and inserting "$1,800".

(d) Exemptions.—Section 522(d) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking "$7,500" and inserting "$15,000",

(2) in paragraph (2) by striking "$1,200" and inserting "$2,400",

(3) in paragraph (3)—

(A) by striking "$200" and inserting "$400", and

(B) by striking "$4,000" and inserting "$8,000",

(4) in paragraph (4) by striking "$500" and inserting "$1,000",

(5) in paragraph (5)—

(A) by striking "$400" and inserting "$800", and

(B) by striking "$3,750" and inserting "$7,500",

(6) in paragraph (6) by striking "$750" and inserting "$1,500",

(7) in paragraph (8) by striking "$4,000" and inserting "$8,000", and

(8) in paragraph (11)(D) by striking "$7,500" and inserting "$15,000".

(e) Appointment of Examiner in Certain Circumstances.—Section 1104(b)(2) of title 11, United States Code, is amended by striking "$5,000,000" and inserting "$10,000,000".

SEC. 110. BANKRUPTCY FEES.

(a) Effective Date of Bankruptcy Fees Prescribed by the Judicial Conference.—Section 1930(b) of title 28, United States Code, is amended by adding at the end the following:

"Such fees shall not take effect until they have been reported to the Congress by the Judicial Conference and until the expiration of 180 days after they have been thus reported.".

(b) Report Regarding Enactment of In Forma Pauperis Procedure.—Not later than 1 year after the date of the enactment of this Act, the Judicial Conference shall submit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate—

(1) estimating the loss of receipts to the United States and to trustees that would result from enacting a procedure authorizing the court to waive the payment of fees and costs in effect under section 1930 of title 28, United States Code, by an individual debtor who files a voluntary case under title 11 and makes affidavit that the debtor is unable to pay such fees and costs, and

(2) suggesting alternatives for offsetting such loss.

SEC. 112. PREMERGER NOTIFICATION.

Subparagraphs (A) and (B) of section 363(b)(2) of title 11, United States Code, are amended to read as follows:

"(A) notwithstanding subsection (a) of such section, the notification required to be given by the debtor shall be given by the trustee; and

"(B) notwithstanding subsection (b) of such section, the required waiting period shall end on the tenth day after the date of receipt of the notification, unless the waiting period is extended—

"(i) pursuant to subsection (e)(2) or (g)(2) of such section; or

"(ii) by the court, after notice and a hearing.".

SEC. 113. ALLOWANCE OF CREDITOR COMMITTEE EXPENSES.

Section 503(b) of title 11, United States Code, is amended—

(1) by striking "and" at the end of paragraph (5),

(2) by striking the period at the end of paragraph (6) and inserting "; and", and

(3) by adding at the end the following new paragraph:

"(7) the actual, necessary expenses incurred by a member of a committee appointed under section 1102 in the performance of the duties of such committee, other than claims for compensation for services rendered as a member of such committee.".

TITLE II—CONSUMER BANKRUPTCY ISSUES

SEC. 201. PERIOD FOR CURING DEFAULT RELATING TO PRINCIPAL RESIDENCE.

Section 1322 of title 11, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d), and

(2) by inserting after subsection (b) the following:

"(c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law—

"(1) a default with respect to, or that gave rise to, a lien on the debtor's principal residence may be cured under paragraph (3) or (5) of subsection (b) until such residence is sold under such lien and in accordance with applicable nonbankruptcy law; and

"(2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to 1325(a)(5).".

SEC. 202. PRESERVATION OF HOME MORTGAGE LIENS.

Section 1322(b)(2) of title 11, United States Code, is amended—

(1) by striking ", other than a claim secured only by a security interest in real property that is the debtor's principal residence,", and

(2) by striking the semicolon at the end and inserting the following:

", except that—

"(A) the rights of a holder of a claim secured only by a security interest in real property that is the debtor's principal residence may not be modified; and

"(B) notwithstanding section 506(a), the rights of the holder of the most senior security interest in real property that is the debtor's principal residence may not be modified to reduce the secured claim to a value that is less than the value of the allowed claim;".

SEC. 203. NONDISCHARGEABILITY OF FINE UNDER CHAPTER 13.

Section 1328(a)(3) of title 11, United States Code, is amended by inserting ", or a fine to the extent such fine exceeds $500, " after "restitution".

SEC. 204. PROTECTION OF CHILD SUPPORT AND ALIMONY.

(a) Relief From Automatic Stay.—Section 362(b)(2) of title 11, United States Code, is amended to read as follows:

"(2) under subsection (a) of this section—

"(A) of the commencement or continuation of an action or proceeding for—

"(i) the establishment of paternity; or

"(ii) the establishment or modification of an order for alimony, maintenance, or support; or

"(B) of the collection of alimony, maintenance, or support from property that is not property of the estate;".

(b) Priority of Claims.—Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (8) by striking "(8) Eighth" and inserting "(9) Ninth",

(2) in paragraph (7) by striking "(7) Seventh" and inserting "(8) Eighth", and

(3) by inserting after paragraph (6) the following:

"(7) Seventh, allowed claims for debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

"(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

"(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.".

(c) PROTECTION OF LIENS.—Section 522(f)(1) of title 11, United States Code, is amended by inserting after "lien" the following:

", other than a judicial a lien that secures a debt—

"(A) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and

"(B) to the extent that such debt—

"(i) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and

"(ii) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.".

(d) PROTECTION AGAINST TRUSTEE AVOIDANCE.—Section 547(c) of title 11, United States Code, is amended—

(1) in paragraph (6) by striking "or" at the end,

(2) by redesignating paragraph (7) as paragraph (8), and

(3) by inserting after paragraph (6) the following:

"(7) to the extent such transfer was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

"(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

"(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.".

(e) APPEARANCE BEFORE COURT.—Child support creditors or their representatives shall be permitted to appear and intervene without charge, and without meeting any special local court rule requirement for attorney appearances, in any bankruptcy proceeding in any bankruptcy court or district court of the United States if such representatives file a form in such court that contains information detailing the child support debt, its status, and other characteristics.

(f) CONFORMING AMENDMENTS—Title 11 of the United States Code is amended—

(1) in section 502(i) by striking "507(a)(7)" and inserting "507(a)(8)",

(2) in section 503(b)(1)(B)(i) by striking "507(a)(7)" and inserting "507(a)(8)",

(3) in section 523(a)(1)(A) by striking "507(a)(7)" and inserting "507(a)(8)",

(4) in section 724(b)(2) by striking "or 507(a)(6)" and inserting "507(a)(6), or 507(a)(7)",

(5) in section 726(b) by striking "or (7)" and inserting ", (7), or (8)",

(6) in section 1123(a)(1) by striking "507(a)(7)" and inserting "507(a)(8)",

(7) in section 1129(a)(9)—

(i) in subparagraph (B) by striking "or 507(a)(6)" and inserting ", 507(a)(6), or 507(a)(7)", and

(ii) in subparagraph (C) by striking "507(a)(7)" and inserting "507(a)(8)".

TITLE III—COMMERCIAL BANKRUPTCY ISSUES

SEC. 301. LIMITATION ON LIABILITY OF NON-INSIDER TRANSFEREE FOR AVOIDED TRANSFER.

Section 550 of title 11, United States Code, is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and

(2) by inserting after subsection (b) the following:

"(c) If a transfer made between ninety days and one year before the filing of the petition—

"(1) is avoided under section 547(b) of this title; and

"(2) was made for the benefit of a creditor that at the time of such transfer was an insider;

the trustee may not recover under subsection (a) from a transferee that is not an insider.".

SEC. 302. PERFECTION OF PURCHASE-MONEY SECURITY INTEREST.

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking "10" and inserting "20".

SEC. 303. PROTECTION OF SECURITY INTEREST IN POST-PETITION RENTS.

Section 552(b) of title 11, United States Code, is amended—

(1) by inserting "(1)" after "(b)",

(2) by striking "rents," each place it appears, and

(2) by adding at the end the following:

"(2)(A) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to rents of such property, then such security interest extends to such rents acquired by the estate after the commencement of the case to the extent provided in such security agreement, whether or not the security interest in such rents is perfected under applicable non-bankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

"(B) If such security interest extends under subparagraph (A) to rents acquired by the estate after the commencement of the case, then such security interest in such rents shall be deemed to be perfected for the purpose of section 544(a).".

SEC. 304. RETURN OF GOODS.

(a) LIMITATION ON AVOIDING POWERS.—Section 546 of title 11, United States Code, is amended by adding at the end the following new subsection:

"(h) Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553, if the court determines, after notice and a hearing, that a return is in the best interests of the estate, the debtor, with the consent of a creditor, may return goods shipped to the debtor by the creditor before the commencement of the case and the creditor may offset the value of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.".

(b) SETOFF.—Section 553(b)(1) is amended by inserting "546(h)," after "365(h)(2),".

SEC. 305. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

Section 341 of title 11, United States Code, is amended by adding at the end the following:

"(d) Prior to the conclusion of the meeting of creditors or equity security holders, the United States trustee shall orally examine the debtor to ensure that the debtor is aware of—

"(1) the potential consequences of seeking a discharge in bankruptcy, including the effects on credit history;

"(2) the debtor's ability to file a petition under a different chapter of this title;

"(3) the effect of receiving a discharge of debts under this title; and

"(4) the effect of reaffirming a debt, including the debtor's knowledge of the provisions of section 524(d).

SEC. 306. EXCEPTION TO DISCHARGE.

Section 523(a)(2) of title 11, United States Code, is amended by striking "forty" and inserting "60".

SEC. 307. PROTECTION OF ASSIGNEES OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES APPROVED BY COURT ORDER IN CASES REVERSED ON APPEAL.

Section 365 of title 11, United States Code, is amended by adding at the end the following:

"(p) If the assignment of an executory contract or unexpired lease under this section is approved by the court, the reversal or modification on appeal of such approval or of the assignment does not affect the validity of the assignment to an entity that obtained the assignment in good faith, whether or not the entity knew of the pendency of the appeal, unless the assignment was stayed pending appeal.".

SEC. 308. PROFESSIONAL FEES.

Section 330(a) of title 11, United States Code, is amended to read as follows:

"(a)(1) After notice to the parties in interest and the United States trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103, or the debtor's attorney in conformance with guidelines adopted by the Executive Office for United States Trustees pursuant to section 586(a)(3)(A) of title 28—

"(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any paraprofessional person employed by any such person; and

"(B) reimbursement for actual, necessary expenses.

"(2)(A) In determining an amount of reasonable compensation to be awarded under paragraph (1)(A), the court—

"(i) may, on its motion or on the motion of the United States trustee or any party in interest, award compensation that is less than the amount of compensation that is requested; and

"(ii) shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

"(I) the time spent on such services'

"(II) the rates charged for such services;

"(III) whether the services were necessary in the administration of or beneficial toward the completion of a case under this title; and

"(IV) the total value of the estate and the amount of funds or other property available for distribution to all creditors both secured and unsecured.

SEC. 309. PROCEEDS OF MONEY ORDER AGREEMENTS.

Section 541(b) of title 11, United States Code, is amended—

(1) by striking "or" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(4) any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made—

"(A) on or after the date that is 14 days prior to the date on which the petition is filed; and

"(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor);

unless such issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition.".

SEC. 310. AIRPORT LEASES.

(a) EXECUTORY CONTRACTS AND UNEXPIRED LEASES.—Section 365(d) of title 11, United States Code, is amended by adding at the end the following new paragraph:

"(5)(A) Notwithstanding paragraphs (1), (2), and (4), and subject to subparagraphs (B) and (C) of this paragraph, if the trustee in a case under any chapter of this title does not assume or reject an unexpired lease or executory contract with an airport operator under which the debtor has a right to the use or possession of an airport terminal, aircraft gate, or related facility within 270 days after the date of the order for relief, or within such additional time as the court sets under subparagraph (B) during such 270-day period, such lease or executory contract is deemed rejected, and the trustee shall immediately surrender the airport terminal, gate, or related facility to the airport operator.

SEC. 311. TRUSTEE DUTIES.

Section 586(a)(3)(A) of title 28, United States Code, is amended to read as follows:

"(A)(i) reviewing, in accordance with procedural and substantive guidelines adopted by the Executive Office of the United States Trustee (which guidelines shall be applied uniformly by the United States trustee except when circumstances warrant different treatment), applications filed for compensation and reimbursement under section 330 of title 11; and

"(ii) filing with the court comments with respect to each such an application and, if the United States Trustee considers it to be appropriate, objections to such application.

SEC. 312. AIRCRAFT EQUIPMENT AND VESSELS; ROLLING STOCK EQUIPMENT.

(a) AMENDMENT OF SECTION 1110.—Section 1110 of title 11, United States Code, is amended to read as follows:

"§ 1110. Aircraft equipment and vessels

"(a)(1) The right of a secured party with a security interest in equipment described in paragraph (2) or of a lessor or conditional vendor of such equipment to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract is not affected by section 362 or 363 or by any power of the court to enjoin the taking of possession unless—

"(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor that become due on or after the date of the order under such security agreement, lease, or conditional sale contract; and

"(B) any default, other than a default of a kind specified in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

"(i) that occurs before the date of the order is cured before the expiration of such 60-day period; and

"(ii) that occurs after the date of the order is cured before the later of—

"(I) the date that is 30 days after the date of the default; or

"(II) the expiration of such 60-day period.

"(2) Equipment is described in this paragraph if it is—

"(A) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 101 of the Federal Aviation Act of 1958) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a citizen of the United States (as defined in section 101 of the Federal Aviation Act of 1958) holding an operating certificate issued by the Secretary of Transportation pursuant to section 604 the Federal Aviation Act for aircraft capable of carrying 10 or more individuals; or

"(B) a documented vessel (as defined in section 30101(1) of title 46, United States Code) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that holds a certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission.

"(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

"(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

"(c) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

"(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

"(2) the term 'security interest' means a purchase-money equipment security interest.".

(b) AMENDMENT OF SECTION 1168.—Section 1168 of title 11, United States Code, is amended to read as follows:

"§ 1168. Rolling stock equipment

"(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract is not affected by section 362 or 363 or by any power of the court to enjoin the taking of possession, unless—

"(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor that become due on or after the date of commencement of the case under such security agreement, lease, or conditional sale contract; and

"(B) any default, other than a default of a kind described in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

"(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period; and

"(ii) that occurs or becomes an event of default after the date of commencement of the case is cured before the later of—

"(I) the date that is 30 days after the date of the default or event of default; or

"(II) the expiration of such 60-day period.

"(2) Equipment is described in this paragraph if it is rolling stock equipment or accessories used on such equipment, including superstructures and racks, that is subject to a security interest granted by, leased to, or conditionally sold to the debtor.

"(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

"(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

"(c) With respect to equipment first placed in service on or prior to the date of enactment of this subsection, for purposes of this section—

"(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

"(2) the term 'security interest' means a purchase-money equipment security interest.

"(d) With respect to equipment first placed in service after the date of enactment of this subsection, for purposes of this section, the term 'rolling stock equipment' includes rolling stock equipment that is substantially rebuilt and accessories used on such equipment.".

SEC. 313. PAYMENT UNDER COLLECTIVE BARGAINING AGREEMENTS AND PAYMENT OF INSURANCE BENEFITS TO RETIRED EMPLOYEES.

Chapter 11 of title 11, United States Code, is amended by adding at the end the following:

"§ 1115. Payment under collective bargaining agreements and payment of insurance benefits to retired employees

"If there are not sufficient unencumbered assets available to make a timely payment under a collective bargaining agreement to which section 1113 of this title applies (including any modification of such agreement under such section) or to make a timely payment required by section 1114(e)(1) of this title, the court shall require in any order approving the use, sale, or lease of cash collateral, the obtaining of credit, or incurring of debt that the debtor use all or part of such cash collateral, credit, or incurring of debt to make such payment.".

SEC. 314. PAYMENTS.

Section 1326(a)(2) of title 11, United States Code, is amended in the second sentence by striking the period and inserting "as soon as practicable.".

SEC. 315. SELLER'S RIGHT TO RECLAIM GOODS.

Section 546(c)(1) of title 11, United States Code, is amended by striking "ten" and inserting "30".

TITLE IV—GOVERNMENTAL BANKRUPTCY ISSUES

SEC. 401. MUNICIPAL BANKRUPTCY.

Section 109(c)(2) of title 11, United States Code, is amended by striking "generally authorized" and inserting "specifically authorized, in its capacity as a municipality or by name,".

TITLE V—BANKRUPTCY REVIEW COMMISSION

SEC. 501. SHORT TITLE.

This title may be cited as the "National Bankruptcy Review Commission Act".

SEC. 502. ESTABLISHMENT.

There is established the National Bankruptcy Review Commission (referred to as the "Commission").

SEC. 503. DUTIES OF THE COMMISSION.

The duties of the Commission are—

(1) to investigate and study issues and problems relating to title 11, United States Code (commonly known as the "Bankruptcy Code");

(2) to evaluate the advisability of proposals and current arrangements with respect to such issues and problems;

(3) to prepare and submit to the Congress, the Chief Justice, and the President a report in accordance with section 508; and

(4) to solicit divergent views of all parties concerned with the operation of the bankruptcy system.

SEC. 504. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 9 members as follows:

(1) Three members appointed by the President, 1 of whom shall be designated as chairman by the President.

(2) One member shall be appointed by the President pro tempore of the Senate.

(3) One member shall be appointed by the Minority Leader of the Senate.

(4) One member shall be appointed by the Speaker of the House of Representatives.

(5) One member shall be appointed by the Minority Leader of the House of Representatives.

(6) Two members appointed by the Chief Justice.

(b) TERM.—Members of the Commission shall be appointed for the life of the Commission.

(c) QUORUM.—Five members of the Commission shall constitute a quorum, but a lesser number may conduct meetings.

(d) APPOINTMENT DEADLINE.—The first appointments made under subsection (a) shall be made within 60 days after the date of enactment of this Act.

(e) FIRST MEETING.—The first meeting of the Commission shall be called by the chairman and shall be held within 90 days after the date of enactment of this Act.

(f) VACANCY.—A vacancy on the Commission resulting from the death or resignation of a member shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(g) CONTINUATION OF MEMBERSHIP.—If any member of the Commission who was appointed to the Commission as a member of Congress or as an officer or employee of a government leaves that office, or if any member of the Commission who was not appointed in such a capacity becomes an officer or employee of a government, the member may continue as a member of the Commission for not longer than the 90-day period beginning on the date the member leaves that office or becomes such an officer or employee, as the case may be.

(h) CONSULTATION PRIOR TO APPOINTMENT.—Prior to the appointment of members of the Commission, the President, the President pro tempore of the Senate, the Speaker of the House of Representatives, and the Chief Justice shall consult with each other to ensure fair and equitable representation of various points of view in the Commission and its staff.

SEC. 505. COMPENSATION OF THE COMMISSION.

(a) PAY.—

(1) NONGOVERNMENT EMPLOYEES.—Each member of the Commission who is not otherwise employed by the United States Government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for Level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which he or she is engaged in the actual performance of duties as a member of the Commission.

(2) GOVERNMENT EMPLOYEES.—A member of the Commission who is an officer or employee of the United States Government shall serve without additional compensation.

(b) TRAVEL.—Members of the Commission shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

SEC. 506. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) STAFF.—

(1) APPOINTMENT.—The chairman of the Commission may, without regard to the civil service laws and regulations, appoint, and terminate an executive director and such other personnel as are necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter II of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(b) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code.

SEC. 507. POWERS OF THE COMMISSION.

(a) HEARINGS AND MEETINGS.—The Commission or, on authorization of the Commission, a member of the Commission, may hold such hearings, sit and act at such time and places, take such testimony, and receive such evidence, as the Commission considers appropriate. The Commission or a member of the Commission may administer oaths or affirmations to witnesses appearing before it.

(b) OFFICIAL DATA.—The Commission may secure directly from any Federal department, agency, or court information necessary to enable it to carry out this title. Upon request of the chairman of the Commission, the head of a Federal department or agency or chief judge of a Federal court shall furnish such information, consistent with law, to the Commission.

(c) FACILITIES AND SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such facilities and support services as the Commission may request. Upon request of the Commission, the head of a Federal department or agency may make any of the facilities or services of the agency available to the Commission to assist the Commission in carrying out its duties under this title.

(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or member considers appropriate for the purposes of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in appropriation Acts.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal departments and agencies of the United States.

(f) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC. 508. REPORT.

The Commission shall submit to the Congress, the Chief Justice, and the President a report not later than 2 years after the date of its first meeting. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislative or administrative action as it considers appropriate.

SEC. 509. TERMINATION.

The Commission shall cease to exist on the date that is 30 days after the date on which it submits its report under section 508.

SEC. 510. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $1,500,000 to carry out this title.

TITLE VI—TECHNICAL CORRECTIONS

SEC. 601. AMENDMENTS TO BANKRUPTCY DEFINITIONS, NECESSITATED BY ENACTMENT OF PUBLIC LAW 101-647.

(a) ALPHABETIZING AND REDESIGNATING DEFINITIONS.—Section 101 of title 11 of the United States Code is amended—

(1) by redesignating paragraph (3) as paragraph (21),

(2) by redesignating paragraph (4) and subsequent paragraphs through paragraph (21) as paragraphs (3) through (20), respectively,

(3) by transferring paragraph (21), as so redesignated by paragraph (1), so as to insert such paragraph after paragraph (20),

(4) by redesignating paragraphs (54) through (57), as in effect immediately before the enactment of Public Law 101-647, as paragraphs (60), (61), (36), and (40), respectively,

(5) in paragraph (60), as so redesignated by paragraph (4), by inserting "and" after the semicolon at the end,

(6) in paragraph (61), as so redesignated by paragraph (4), by striking the semicolon at the end and inserting a period,

(7) in paragraph (36), as so redesignated by paragraph (4), by striking "and" at the end,

(8) in paragraph (40), as so redesignated by paragraph (4), by striking the period at the end and inserting a semicolon,

(9) by redesignating paragraphs (52) through (57), as so redesignated by section 2522(e) of Public Law 101-647, as paragraphs (54) through (59), respectively,

(10) by transferring paragraph (39) so as to insert such paragraph before paragraph (54), as so redesignated by paragraph (9) of this subsection,

(11) by redesignating paragraph (39) as paragraph (53),

(12) by redesignating successively numbered paragraphs (40) through (51) as paragraphs (41) through (52), respectively,

(13) by transferring paragraph (40), as so redesignated by paragraph (4) of this subsection, so as to insert such paragraph before paragraph (41), as so redesignated by paragraph (12) this subsection,

(14) by redesignating paragraph (36) and subsequent paragraphs through paragraph (38) as paragraphs (37) through (39), respectively, and

(15) by transferring paragraph (36), as so redesignated by paragraph (4) of this subsection, so as to insert such paragraph after paragraph (35).

(b) CONFORMING AND RELATED AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE, BASED ON REDESIGNATED DEFINITIONS.—(1)

Section 101 of title 11 of the United States Code is amended—

(A) in paragraph (5), as so redesignated by subsection (a), by striking "section 761(9)" and inserting "section 761",

(B) in paragraph (22) by striking "section 741(7)" and inserting "section 741",

(C) in paragraph (35)(B) by striking "paragraphs (3)" and inserting "paragraphs (21)",

(D) in paragraph (50)(B)(ii), as so redesignated by subsection (a), by striking "section 761(13)" and inserting "section 761", and

(E) in paragraph (56)(A), as so redesignated by subsection (a), by striking "section 741(2)" and inserting "section 741".

(2) Section 362(b) of title 11, United States Code, is amended—

(A) in paragraph (6)—

(i) by striking "section 761(4)" and inserting "section 761",

(ii) by striking "section 741(7)" and inserting "section 741",

(iii) by striking "section 101(34), 741(5), or 761(15)" and inserting "section 101, 741, or 761", and

(iv) by striking "section 101(35) or 741(8)" and inserting "section 101 or 741", and

(B) in paragraph (7)—

(i) by striking "section 741(5) or 761(15)" and inserting "section 741 or 761", and

(ii) by striking "section 741(8)" and inserting "section 741".

(3) Section 507(a)(5) of title 11, United States Code, is amended—

(A) by striking "section 557(b)(1)" and inserting "section 557(b)", and

(B) by striking "section 557(b)(2)" and inserting "section 557(b)".

(4) Section 546 of title 11, United States Code, is amended—

(A) in subsection (e)—

(i) by striking "section 101(34), 741(5), or 761(15)" and inserting "section 101, 741, or 761", and

(ii) by striking "section 101(35) or 741(8)" and inserting "section 101 or 741", and

(B) in subsection (f)—

(i) by striking "section 741(5) or 761(15)" and inserting "section 741 or 761", and

(ii) by striking "section 741(8)" and inserting "section 741".

(5) Section 548(d)(2) of title 11, United States Code, is amended—

(A) in subparagraph (B)—

(i) by striking "section 101(34), 741(5) or 761(15)" and inserting "section 101, 741, or 761", and

(ii) by striking "section 101(35) or 741(8)" and inserting "section 101 or 741", and

(B) in subparagraph (C)—

(i) by striking "section 741(5) or 761(15)" and inserting "section 741 or 761", and

(ii) by striking "section 741(8)" and inserting "section 741".

(6) Section 555 of title 11, United States Code, is amended by striking "section 741(7)" and inserting "section 741 of this title".

(7) Section 556 of title 11, United States Code, is amended by striking "section 761(4)" and inserting "section 761 of this title".

(c) CONFORMING AMENDMENTS TO OTHER LAWS BASED ON REDESIGNATED DEFINITIONS.—(1) Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended—

(A) in clause (ii)(I) by striking "section 741(7)" and inserting "section 741",

(B) in clause (iii) by striking "section 101(24)" and inserting "section 101",

(C) in clause (iv)(I) by striking "section 101(41)" and inserting "section 101", and

(D) in clause (v) by striking "section 101(50)" and inserting "section 101".

(2) Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

(A) in clause (ii)(I) by striking "section 741(7)" and inserting "section 741",

(B) in clause (iii) by striking "section 761(4)" and inserting "section 761",

(C) in clause (iv) by striking "section 101(24)" and inserting "section 101",

(D) in clause (v)(I) by striking "section 101(41)" and inserting "section 101", and

(E) in clause (viii) by striking "section 101(50)" and inserting "section 101".

(d) OTHER TECHNICAL AMENDMENTS.—Title 11 of the United States Code is amended—

(1) in section 101—

(A) in paragraph (33)—

(i) in subparagraph (A) by striking "(12 U.S.C. 1813(u))", and

(ii) in subparagraph (B) by striking "(12 U.S.C. 1786(r))",

(B) in paragraph (34) by striking "(12 U.S.C. 1752(7))",

(C) in paragraph (35)(A) by striking "(12 U.S.C. 1813(c)(2))",

(D) in paragraph (49), as so redesignated by subsection (a)—

(i) by striking "(15 U.S.C. 78q-1)", and

(ii) by striking "(15 U.S.C. 78c(12))",

(E) in paragraph (50), as so redesignated by subsection (a)—

(i) in subparagraph (A)(xii)—

(I) by striking "(15 U.S.C. 77a et seq.)", and

(II) by striking "(15 U.S.C. 77c(b))", and

(ii) in subparagraph (B)(vi) by striking "(15 U.S.C. 77c(b))", and

(F) in paragraph (59), as so redesignated by subsection (a), by striking the period at the end and inserting a semicolon,

(2) in section 109(b)(2) by striking "(12 U.S.C. 1813(h))",

(3) in section 322(a) by striking "1302, or 1202" and inserting "1202, or 1302",

(4) in section 346—

(A) in subsection (a) by striking "Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.)" and inserting "Internal Revenue Code of 1986", and

(B) in subsection (g)(1)(C) by striking "Internal Revenue Code of 1954 (26 U.S.C. 371)" and inserting "Internal Revenue Code of 1986",

(5) in section 348—

(A) in subsection (b) by striking "1301(a), 1305(a), 1201(a), 1221, and 1228(a)" and inserting "1201(a), 1221, 1228(a), 1301(a), and 1305(a)", and

(B) in subsections (b), (c), (d), and (e) by striking "1307, or 1208" each place it appears and inserting "1208, or 1307",

(6) in section 349(a) by striking "109(f)" and inserting "109(g)",

(7) in section 362—

(A) in subsection (a) by striking "(15 U.S.C. 78eee(a)(3))", and

(B) in subsection (b)—

(i) by striking "(15 U.S.C. 78eee(a)(3))",

(ii) in paragraph (10) by striking "or" at the end,

(iii) in paragraph (12)—

(I) by striking "the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.)" and inserting "section 31325 of title 46, United States Code",

(I) by striking "(46 App. U.S.C. 911 et seq.)", and

(II) by striking "(46 App. U.S.C. 1117 and 1271 et seq., respectively)",

(iv) in paragraph (13)—

(I) by striking "the Ship Mortgage Act, 1920 (46 App. U.S.C. 911 et seq.)" each place it appears and inserting "section 31325 of title 46, United States Code".

(II) by striking "(46 App. U.S.C. 1117 and 1271 et seq., respectively)",

(III) by striking "or" at the end,

(v) in paragraph (15), as added by Public Law 101-508, by striking "or" at the end,

(vi) in paragraph (16), as added by Public Law 101-508, by striking the period at the end and inserting a semicolon, and

(vii) in paragraph (14), as added by Public Law 101-311—

(I) by striking the period at the end and inserting "; or",

(II) by redesignating such paragraph as paragraph (17), and

(III) by transferring such paragraph so as to insert such paragraph after paragraph (16),

(8) in section 363—

(A) in subsection (b)(2) by striking "(15 U.S.C. 18a)", and

(B) in subsection (c)(1) by striking "1304, 1203, or 1204" and inserting "1203, 1204, or 1304",

(9) in section 364—

(A) in subsection (a) by striking "1304, 1203, or 1204" and inserting "1203, 1204, or 1304", and

(B) in subsection (f)—

(i) by striking "(15 U.S.C. 77e)", and

(ii) by striking "(15 U.S.C. 77aaa et seq.)",

(10) in section 365—

(A) in subsection (d)(6)(C) by striking "(49 App. U.S.C. 1301)",

(B) in subparagraphs (A) and (B) of subsection (g)(2) by striking "1307, or 1208" each place it appears and inserting "1208, or 1307",

(C) in subsection (n)(1)(B) by striking "to to" and inserting "to", and

(D) in subsection (o) by striking "the Federal" the first place it appears and all that follows through "successors,", and inserting "a Federal depository institutions regulatory agency (or predecessor to such agency)",

(11) in section 507—

(A) in subsection (a)(8) by striking "the Federal" the first place it appears and all that follows through "successors,", and inserting "a Federal depository institutions regulatory agency (or predecessor to such agency)", and

(B) in subsection (d) by striking "or (a)(6)" and inserting "(a)(6), (a)(7), (a)(8), or (a)(9)",

(12) in section 522(d)(10)(E)(iii)—

(A) by striking "408, or 409" the first place it appears and inserting "or 408", and

(B) by striking "Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409)" and inserting "Internal Revenue Code of 1986",

(13) in section 523—

(A) in subsection (a)—

(i) by striking "1141,," and inserting "1141,",

(ii) in paragraph (2)(C) by striking "(15 U.S.C. 1601 et seq.)", and

(iii) in paragraph (12) by striking the semicolon at the end and inserting a period,

(B) in subsection (b)—

(i) by striking "(20 U.S.C. 1087-3)", and

(ii) by striking "(42 U.S.C. 294f)", and

(C) in subsection (e) by striking "depository institution or insured credit union" and inserting "insured depository institution",

(14) in section 524—

(A) in subsection (a)(3) by striking "or 1328(c)(1)" and inserting ", 1228(a)(1), or 1328(a)(1)",

(B) in subsection (c)(4) by striking "recission" and inserting "rescission", and

(C) in subsection (d)(1)(B)(ii) by adding "and" at the end,

(15) in section 525(a)—

(A) by striking "(7 U.S.C. 499a-499s)",

(B) by striking "(7 U.S.C. 181-229)", and

(C) by striking "(57 Stat. 422; 7 U.S.C. 204)",

(16) in section 542(e) by striking "to to" and inserting "to",

(17) in section 546(a)(1) by striking "1302, or 1202" and inserting "1202, or 1302",

(18) in section 549(b) inserting "the trustee may not avoid under subsection (a) of this section" after "involuntary case,",

(19) in section 553—

(A) in subsection (a)(1) by striking "other than under section 502(b)(3) of this title", and

(B) in subsection (b)(1) by striking "362(b)(14),," and inserting "362(b)(14),",

(20) in section 555 by striking "(15 U.S.C. 78aaa et seq.)",

(21) in section 559 by striking "(15 U.S.C. 78aaa et seq.)",

(22) in section 706(a) by striking "1307, or 1208" and inserting "1208, or 1307",

(23) in section 724(d) by striking "Internal Revenue Code of 1954 (26 U.S.C. 6323)" and inserting "Internal Revenue Code of 1986",

(24) in section 726(b)—

(A) inserting a comma after "section 1112", and

(B) by inserting "1009," after "chapter under section",

(25) in section 741(4)(A)(iii) by striking "(15 U.S.C. 78a et seq.)",

(26) in section 742 by striking "(15 U.S.C. 78aaa et seq.)",

(27) in section 743 by striking "342(a)" and inserting "342",

(28) in section 745(c) by striking "Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.)" and inserting "Internal Revenue Code of 1986",

(29) in section 761—

(A) in paragraph (1) by striking "(7 U.S.C. 1 et seq.)",

(B) in paragraph (5) by striking "(7 U.S.C. 6c(b))", and

(C) in paragraph (13) by striking "(7 U.S.C. 23)",

(30) in section 1104(c) inserting a comma after "interest",

(31) in section 1110(a) by striking "(49 U.S.C. 1301)",

(32) in section 1123(a)(1) inserting a comma after "title" the last place it appears,

(33) in section 1129—

(A) in subsection (a)—

(i) in paragraph (4) by striking the semicolon at the end and inserting a period, and

(ii) in paragraph (12) inserting "of title 28" after "section 1930", and

(B) in subsection (d) by striking "(15 U.S.C. 77e)",

(34) in section 1145—

(A) in subsection (a)—

(i) by striking "does" and inserting "do",

(ii) by striking "(15 U.S.C. 77e)", and

(iii) in paragraph (3)(B)(i) by striking "(15 U.S.C. 78m or 78o(d))",

(B) in subsection (b)(1) by striking "(15 U.S.C. 77b(11))", and

(C) in subsection (d) by striking "(15 U.S.C. 77aaa et seq.)",

(35) in section 1166(2) by striking "(45 U.S.C. 791(b))",

(36) in section 1167—

(A) by striking "(45 U.S.C. 151 et seq.)", and

(B) by striking "(45 U.S.C. 156)",

(37) in section 1226(b)(2)—

(A) by striking "1202(d)" and inserting "1202(c)", and

(B) by striking "1202(e)" and inserting "1202(d)",

(38) in section 1302(b)(3) by striking "and" at the end, and

(39) in section 1328(a)—

(A) in paragraph (2) by striking "(5) or (8)" and inserting "(5), (8), or (9)", and

(B) by striking the last paragraph (3), and

(40) in section 543(d)(1) by striking "of equity" and inserting "if equity",

(41) in the table of chapters by striking the item relating to chapter 15.

SEC. 602. TITLE 28, UNITED STATES CODE.

Section 586(a)(3) of title 28, United States Code, is amended in the matter preceding subparagraph (A) by inserting "12," after "11,".

TITLE VII—SEVERABILITY; EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

SEC. 701. SEVERABILITY.

If any provision of this Act or amendment made by this Act or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remaining provisions of and amendments made by this Act and the application of such other provisions and amendments to any person or circumstance shall not be affected thereby.

SEC. 702. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) Effective Date.—Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act.

(b) Application of Amendments.—(1) Except as provided in paragraph (2), the amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the date of the enactment of this Act.

(2) Section 1110 of title 11, United States Code, as amended by section 312 of this Act, shall apply with respect to any lease, as defined in such section 1110(c) as so amended, entered into in connection with a settlement of any litigation in any case pending under title 11 of the United States Code on the date of the enactment of this Act.

RELEASE OF RESTRICTIONS ON CERTAIN LANDS

BUMPERS AMENDMENT NO. 3432

Mr. FORD (for Mr. Bumpers) proposed an amendment to the amendment of the House to the bill (S. 1183) to reduce the restrictions on the lands conveyed by deed to the city of Kaysville, UT, and for other purposes, as follows:

Strike all after the enacting clause and insert the following:

TITLE I—KAYSVILLE, UTAH COMMUNICATION FACILITIES.

SEC. 101. AMENDMENT.

Section 2 of the Act of June 8, 1926 (ch. 498; 44 Stat. 708), is amended by striking "States." at the end of the first sentence and inserting in lieu thereof the following: "States, except that these restrictions on conveyances and uses shall not apply to those lands upon which communications facilities were located as of November 1, 1991, or prevent reasonable ingress and egress for the repair, maintenance, or improvement of such facilities, nor shall these restrictions on conveyances and uses prohibit the use of the lands described in the first section of this Act for recreational purposes so long as such recreational use is consistent both with the protection of the watershed and water supply system of the city and with the management objectives for adjacent National Forest System lands. Any improvements of the lands described in the first section of this Act for recreational purposes shall be undertaken only in consultation with and the approval of the Secretary of Agriculture.".

TITLE II—AUTHORIZATION OF BUREAU OF LAND MANAGEMENT.

SEC. 201. AUTHORIZATION.

There are hereby authorized to be appropriated such sums as may be necessary for programs, functions, and activities of the Bureau of Land Management, Department of the Interior (including amounts necessary for increases in salary, pay, retirements, and other employee benefits authorized by law, and for other nondiscretionary costs), during fiscal years beginning on October 1, 1992, and ending September 30, 1996.

TITLE III—TARGHEE AND KANIKSU NATIONAL FORESTS.

SEC. 301. SHORT TITLE.

This title may be cited as the 'Targhee and Kaniksu Land Exchange Act of 1992'.

SEC. 302. TARGHEE NATIONAL FOREST BOUNDARY ADJUSTMENT.

(a) In General.—The boundaries of the Targhee National Forest are adjusted as generally depicted on the map entitled 'Targhee National Forest Proposed Boundary Changes' and dated March 1, 1991.

(b) Map and Legal Description.—

(1) Public access.—The map described in subsection (a) and a legal description of the lands depicted on the map shall be on file and available for public inspection in the Regional Office of the Intermountain Region of the Forest Service.

(2) Technical corrections.—The map and legal description shall have the same force and effect as if included in this title, except that the Secretary of Agriculture (referred to in this title as the "Secretary") may correct clerical and typographical errors.

(c) Rule of Construction.—For the purpose of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of the Targhee National Forest, as adjusted by this title, shall be considered to be the boundaries of the Forest as of January 1, 1965.

SEC. 303. CLARK FORK LAND EXCHANGE.

(a) Findings.—Congress finds that, over the past 10 years—

(1) the University of Idaho has utilized the Clark Fork Ranger Station within the Kaniksu National Forest as the Clark Fork Field Campus, under a Granger-Thye permit; and

(2) the University of Idaho has made substantial improvements in order to maintain and utilize the buildings as a campus facility.

(b) Land Exchange.—

(1) Conveyance by the secretary.—

(A) In general.—In exchange for the conveyance described in paragraph (2) and subject to easements that are considered necessary by the Secretary for public and administrative access and to valid existing rights, the Secretary shall convey to the Regents of the University of Idaho all right, title, and interest of the United States to Parcel A.

(B) Parcel A.—As used in this section, the term "Parcel A" means the approximately 35.27 acres comprising the Clark Fork Ranger Station within the Kaniksu National Forest, as depicted on the map entitled "Clark Fork Land Exchange—Parcel A" and dated July 1, 1991.

(2) Conveyance by the regents of the university of idaho.—

(A) In general.—In exchange for the conveyance described in paragraph (1) and subject to valid existing rights of record acceptable to the Secretary, the Regents of the University of Idaho shall convey to the Secretary, by general warranty deed in accordance with Department of Justice title standards, all right, title, and interest to Parcel B.

(B) Parcel B.—As used in this section, the term "Parcel B" means the approximately 40 acres depicted on the map entitled "Clark Fork Land Exchange—Parcel B" and dated July 1, 1991.

(3) Maps and legal descriptions.—

(A) Public access.—The maps described in paragraphs (1)(B) and (2)(B) and the legal descriptions of the lands depicted on the maps shall be on file and available for public inspection in the Regional Office of the Northern Region of the Forest Service.

(B) Technical corrections.—The maps and legal descriptions shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors.

(c) Land Valuation.—

(1) In general.—Subject to paragraph (2), if the lands exchanged between the United States and the Regents of the University of Idaho, as authorized by subsection (b), are not of equal value, the values shall be equalized in accordance with section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)).

(4) By the Act of July 6, 1960 (74 Stat. 334), Congress established a procedure to compensate persons affected by the Acts cited in paragraphs (1) and (2) who had not received appropriate relief under prior legislation. However, no payments of such compensation were made under that Act.

(5) Section 4 of the Act of July 6, 1960, further provided that lands with respect to which compensation under that Act were or could have been made, and not previously disposed of by the United States, shall be a part of any national forest, national park, or other area withdrawn from the public domain wherein they are located.

(6) Absent further legislation, lengthy and expensive litigation will be required to resolve existing questions about the title to lands covered by section 4 of the 1960 Act.

(b) Purpose.—The purpose of this title is to resolve the status of the title to base lands affected by the past legislation cited in subsection (a).

SEC. 502. IDENTIFICATION AND QUITCLAIM OF FEDERAL INTEREST IN BASE LANDS.

(a) Quitclaim.—Except as otherwise provided by this Act, and subject to valid existing rights, but notwithstanding any other provision of law, the United States hereby quitclaims to the listed owner or entryman, his heirs, devisees, successors, and assigns, all right, title, and interest of the United States in and to the base lands described on a final list published pursuant to subsection (d)(1), effective on the date of publication of such list.

(b) Preparation of Initial Lists.—(1) Not later than 6 months after the date of enactment of this Act, the Secretary of the Interior, with respect to lands under Secretary's jurisdiction, and the Secretary of Agriculture with respect to National Forest System lands, shall each prepare an initial list of all parcels of base lands that were relinquished to the United States pursuant to the Act of June 4, 1897 (as amended), and for which selection or other rights under that act or supplemental legislation were not realized or exercised.

(2) The initial lists prepared under paragraph (1) shall be based on information in the actual possession of the Secretaries of the Interior and Agriculture on the date of enactment of this Act, including information submitted to Congress pursuant to the directive contained in Senate Report No. 98-578, issued for the Fiscal Year 1985 Interior and Related Agencies Appropriation, as revised and updated. The initial lists shall be published and distributed for public review in accordance with procedures adopted by the Secretary concerned.

(3) For a period of 180 days after publication of a list pursuant to paragraph (2), persons asserting that particular parcels omitted from such a list should have been included may request the Secretary concerned to add such parcels to the appropriate list. The Secretary concerned shall add to the list any such parcels which the Secretary determines meet the conditions specified in paragraph (1).

(c) Nationally Significant Lands.—(1) During preparation or revision of an initial list under subsection (b), the Secretary concerned shall identify those listed lands which are located wholly or partially within any consideration system unit and all other listed lands which Congress has designated for specific management or which the Secretary concerned decides, in the concerned Secretary's discretion, should be retained in order to meet public, resource protection, or administrative needs. For purposes of this paragraph, the term 'conservation system unit' means any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, or National Wilderness Preservation System, a national forest monument, or a national conservation area, a national recreation area, or any lands being studied for possible designation as part of such a system or unit.

(2) The provisions of subsection (a) shall not apply to any land identified by the Secretary concerned pursuant to paragraph (1). The Secretary concerned shall not include any such lands on any list prepared pursuant to subsection (d). Subject to valid existing rights arising from factors other than those described in subsection (b)(1), any right, title, and interest in and to lands identified pursuant to paragraph (1) and not previously vested in the United States is hereby vested and confirmed in the United States.

(3) In the same manner as the initial list was published and distributed pursuant to subsection (b)(2), the Secretary concerned shall publish and distribute an identification of all lands in which right, title, and interest is vested and confirmed in the United States by paragraph (2).

(d) Final Lists.—(1) As soon as possible after considering any requests made pursuant to subsection (b)(3) and the identification of lands pursuant to subsection (c), the Secretary of the Interior and the Secretary of Agriculture shall each publish a final list, consisting of lands included on each Secretary's initial list not identified pursuant to subsection (c)(1). Unless a Secretary has published a final list on or before the date 18 months after the date of publication, pursuant to subsection (b)(2), of such Secretary's initial list, the initial list prepared by such Secretary shall be deemed on such date to be the final list required to be published by such Secretary, and thereafter no lands included on such initial list shall be excluded from operation of subsection (a).

(2) If a court makes a final decision that a parcel of land was arbitrarily and capriciously excluded from operation of subsection (a), such parcel shall be deemed to have been included on a final list published pursuant to paragraph (1), unless such parcel is located wholly or partially inside a conservation system unit or any other area which Congress has designated for specific management, in which case such parcel shall be subject to the provisions of subsection (c)(2).

(e) Issuance of Instruments.—(1) Except as otherwise provided in this title, no later than 6 months after the date on which the Secretary concerned publishes a final list of lands pursuant to subsection (d), the Secretary concerned shall issue deeds confirming the quitclaim made by subsection (a) of this section of all right, title, and interest of the United States in and to the lands included on such final list, subject to valid existing rights arising from factors other than a relinquishment to the United States of the type described in subsection (b). Each such confirmatory deed shall operate to estop the United States from making any claim of right, title, or interest of the United States in and to the base lands described in the deed, shall be made in the name of the listed owner or entryman, his heirs, devisees, successors, and assigns, and shall be in a form suitable for recordation and shall be filed and recorded by the United States with the recorder of deeds or other like official of the county or counties within which the lands covered by such confirmatory deed are located so that the title to such lands may be determined in accordance with applicable State law.

(2) The United States shall not adjudicate and, notwithstanding any provision of law to the contrary, does not consent to be sued in any suit instituted to adjudicate the ownership of, or to quiet title to, any base land included in a final list and described in a confirmatory deed.

(3) Neither the Secretary of the Interior nor the Secretary of Agriculture shall be required to inspect any lands included on a final list nor to inform any member of the public regarding the condition of such lands prior to the issuance of the confirmatory deeds required by this subsection, and nothing in this Act shall be construed as affecting any valid rights with respect to lands covered by a confirmatory deed issued pursuant to this subsection that were in existence on the date of issuance of such confirmatory deed.

(f) Waiver of Certain Claims Against the United States.—Any person or entity accepting the benefits of this title or failing to act to seek such benefits within the time allotted by this title with respect to any base or other lands shall be deemed to

* * * * * *

Section 103(c) of the Wildfire Disaster Recovery Act of 1989 (16 U.S.C. 551 note) is amended in the first sentence by striking out '1991' and inserting in lieu thereof '1992'.

SEC. . BEAR RIVER EXCHANGE.

(a) In General.—If, within 5 years after the date of enactment of this Act, the State of Utah transfers to the Secretary of the Interior all right, title, and interest of the State of Utah in and to the State lands in exchange for Federal lands, the Secretary of the Interior, within 18 months after such transfer, shall transfer to the State of Utah all right, title, and interest in and to so much of the Federal lands as the Secretary determines to be equal in fair market value to the State lands.

(b) State Lands.—As used in this section, the term "State lands" means approximately 700.70 acres of land located in the State of Utah, as generally depicted as State lands on the map entitled "Bear River Migratory Bird Refuge", map numbered 1, and more particularly described as:

The South half of the Northwest Quarter and Lots 5, 6, 7, and 8, all in Section 4, and also, Lots 7 and 8, Section 5, township 8 North, Range 2 West, Salt Lake Base and Meridian.

All property below the surveyed meander line and North of the Bear River Bird Refuge North Boundary in Sections 4 and 9 and in the East one-half of Sections 5 and 8, Township 8 North, Range 2 West, Salt Lake Base and Meridian.

(c) FEDERAL LANDS.—As used in this section, the term "Federal lands" means approximately 1,365.14 acres of land located in the State of Utah, as generally depicted as Federal lands on the map entitled "Fingerpoint", map numbered 2, and the map entitled "Rozel Point", map numbered 3, and more particularly described as:

Township 7 North, Range 10 West, Salt Lake Base & Meridian

Section 5: Lots 1–6, W½SW¼
Section 6: Lots 1–7, W½SE¼
Section 7: Lots 1–6
Section 8: Lots 1–4, W½
Section 17: Lots 1–5
Section 18: Lots 1–3

Township 8 North, Range 7 West, Salt Lake Base & Meridan

Section 8: Lots 1–12, E½NE¼

(d) ADMINISTRATION.—The lands transferred to the United States under this section shall be added to and administrated as part of the Bear River Migratory Bird Refuge.

SNAKE RIVER BIRDS OF PREY NATIONAL CONSERVATION AREA

CRAIG AMENDMENT NO. 3433

Mr. CRAIG proposed an amendment to the bill (H.R. 2141) to establish the Snake River Birds of Prey National Conservation Area in the State of Idaho, and for other purposes; as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SEC. 1. FINDINGS.

The Congress finds the following:

(1) The public lands managed by the Bureau of Land Management in the State of Idaho within the Snake River Birds of Prey Area contain one of the densest known nesting populations of eagles, falcons, owls, hawks, and other birds of prey (raptors) in North America.

(2) These public lands constitute a valuable national biological and educational resource since birds of prey are important components of the ecosystem.

(3) These public lands also contain important historic and cultural resources as well as other resources and values, all of which should be protected and appropriately managed.

(4) A military training area within the Snake River Birds of Prey Area, known as the Orchard Training Area, has been used since 1953 by reserve components of the Armed Forces. Military use of this area is currently governed by a Memorandum of Understanding between the Bureau of Land Management and the State of Idaho Military Division, dated May 1985. Operating under this Memorandum of Understanding, the Idaho National Guard has provided valuable assistance to the Bureau of Land Management with respect to fire control and other aspects of management of the Orchard Training Area and the other lands in the Snake River Birds of Prey Area. Military use of the lands within the Orchard Training Area should continue in accordance with such Memorandum of Understanding (or extension or renewal thereof), to the extent consistent with section 4(e) of this Act, because this would be in the best interest of training of the reserve components (an important aspect of national security) and of the local economy.

(5) Protection of the conservation area as a home for raptors can best and should be accomplished by the Secretary of the Interior, acting through the Bureau of Land Management, under a management plan that—

(A) emphasizes management, protection, and rehabilitation of habitat for these raptors and of other resources and values of the area;

(B) provides for continued military use, consistent with the requirements of section 4(e) of this Act, of the Orchard Training Area by reserve components of the Armed Forces;

(C) addresses the need for public educational and interpretive opportunities;

(D) allows for diverse appropriate uses of lands in the area to the extent consistent with the maintenance and enhancement of raptor populations and habitats and protection and sound management of other resources and values of the area; and

(E) demonstrates management practices and techniques that may be useful to other areas of the public lands and elsewhere.

(6) There exists near the conservation area a facility, the World Center for Birds of Prey operated by The Peregrine Fund, Inc., where research, public education, recovery, and reestablishment operations exist for endangered raptor species. There also exists at Boise State University a raptor study program which attracts national and international graduate and undergraduate students.

(7) The Bureau of Land Management and Boise State University, together with other State, Federal, and private entities, have formed the Raptor Research and Technical Assistance Center to be housed at Boise State University, which provides a unique adjunct to the conservation area for raptor management, recovery, research, and public visitation, interpretation, and education.

(8) Consistent with requirements of sections 202 and 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712 and 1732), the Secretary has developed a comprehensive management plan and, based on such plan, has implemented a management program for the public lands included in the conservation area established by this Act.

(9) Additional authority and guidance must be provided to assure that essential raptor habitat remains in public ownership, to facilitate sound and effective planning and management, to provide for effective public interpretation and education, to ensure continued study of the relationship of humans and these raptors, to preserve the unique and irreplaceable habitat of the conservation area, and to conserve and properly manage the other natural resources of the area in concert with maintenance of this habitat.

(10) An ongoing research program funded by the Bureau of Land Management and the National Guard is intended to provide information to be used in connection with future descisionmaking concerning management of all uses, including continued military use, of public lands within the Snake River Birds of Prey Area.

(11) The public lands in the Snake River Birds of Prey Conservation area have been used for domestic livestock grazing for more than a century. Appropriate protection and sound management of raptor habitat and the other resource values of this land would not preclude continuation of this use which has provided major economic contributions and stability to the local and State economies.

(12) Hydroelectric facilities for the generation and transmission of electricity exist within the Snake River Birds of Prey Area pursuant to a license(s) issued by the Federal Energy Regulatory Commission, or its predecessor, the Federal Power Commission.

SECTION. 2. DEFINITIONS

As used in this Act:

(1) The term "Secretary" mans the Secretary of the Interior.

(2) The term "conservation area" means the Snake River Birds of Prey National Conservation Area established by section 3.

(3) The term "raptor" or "raptors" means individuals or populations of eagles, falcons, owls, hawks, and other birds of prey.

(4) The term "raptor habitat" includes the habitat of the raptor prey base as well as the nesting and hunting habitat of raptors within the conservation area.

(5) The term "Memorandum of Understanding" means the Memorandum of Understanding #ID–237, dated May 1985, between the State of Idaho Military Division and the Bureau of Land Management.

(6) The term "Orchard Training Area" means that area generally so depicted on the map referred to in section 3(b), and as described in the Memorandum of Understanding as well as the air space over the same.

(7) The term "Impact Area" means that area which was used for the firing of live artillery projectiles and is used for live fire ranges of all types and, therefore, poses a danger to public safety and which is generally so depicted on the map referred to in section 3(b).

(8) The term "Artillery Impact Area" means that area within the Impact Area into which live projectiles are fired, which is generally described as that area labeled as such on the map referred to in section 3(b).

(9) The term "the plan" means the comprehensive management plan developed for the conservation area, dated August 30, 1985, together with such revisions thereto as may be required in order to implement this Act.

(10) The term "hydroelectric facilities" means all facilities related to the generation, transmission, and distribution of hydroelectric power and which are subject to, and authorized by, a license(s), and any and all amendments thereto, issued by the Federal Energy Regulatory Commission.

SEC. 3. ESTABLISHMENT OF NATIONAL CONSERVATION AREA.

(a) ESTABLISHMENT AND PURPOSES.—(1) There is hereby established the Snake River Birds of Prey National Conservation Area, hereafter referred to as the "conservation area".

(2) The purposes for which the conservation area is established are: to provide for the conservation, protection, and enhancement of raptor populations and habitats, and the natural and environmental resources and values associated therewith, and of the scientific, cultural, and educational resources and values of the public lands in the conservation area; and, to the extent compatible with the foregoing purposes, to allow continuation of existing uses of the public lands in the conservation area, subject to the provisions of this Act.

(b) AREA INCLUDED.—The conservation area shall consist of approximately 482,457 acres of federally owned lands and interests therein managed by the Bureau of Land Management as generally depicted on the map entitled "Snake River Birds of Prey National Conservation Area", dated November 1991.

(c) MAP AND LEGAL DESCRIPTION.—As soon as is practicable after enactment of this Act, the map referred to in subsection (b) and a legal description of the conservation area shall be filed by the Secretary with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. Each such map shall have the same force and effect as if included in this title; except that the Secretary may correct clerical and typographical errors in such map and legal description. Each such map shall be on file and available for public inspection in the office of the Director and the Idaho State Director of the Bureau of Land Management of the Department of the Interior.

(d) WITHDRAWALS.—Subject to valid existing rights, the Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal (except as provided in paragraph (3)) under the public land laws; and from entry, application, and selection under the Act of March 3, 1877 (Ch. 107, 19 Stat. 377, 43 U.S.C. 321 et seq.; commonly referred to as the "Desert Lands Act"), section 4 of the Act of August 18, 1894 (Ch. 301, 28 Stat. 422; 43 U.S.C. 641; commonly referred to as the "Carey Act"), the Act of July 3, 1890 (Ch. 656, 26 Stat. 215; commonly referred to as the "State of Idaho Admissions Act"), section 2275 of the Revised Statutes, as amended (43 U.S.C. 851), and section 2276 of the Revised Statutes, as amended (43 U.S.C. 852). The Secretary shall return to the applicants any such applications pending on the date of enactment of this Act, without further action. Subject to valid existing rights, as of the date of enactment of this Act, lands within the conservation area are withdrawn from location under the general mining laws, the operation of the mineral and geothermal leasing laws, and the mineral material disposal laws.

SEC. 4. MANAGEMENT AND USE.

(a) IN GENERAL.—(1)(A) Within 1 year after the date of enactment of this Act, the Secretary shall finalize a management plan that is in conformance with the requirements of this Act.

(B) Thereafter, the Secretary shall review the plan at least once every 4 years and shall make such revisions as may be necessary or appropriate.

(C) In reviewing and revising the plan, the Secretary shall provide for appropriate public participation.

(2) Except as otherwise specifically provided in subsections (d), (e), and (f) of this section, the Secretary shall allow only such uses of lands in the conservation area as the Secretary determines will further the purposes for which the conservation area is established.

(b) MANAGEMENT GUIDANCE.—After each review pursuant to subsection (a), the Secretary shall make such revisions as may be needed so that the plan and management program to implement the plan include, in addition to any other necessary or appropriate provisions, provisions for—

(1) protection for the raptor populations and habitats and the scientific, cultural, and educational resources and values of the public lands in the conservation area;

(2) identifying levels of continued military use of the Orchard Training Area compatible with paragraph (1) of this subsection;

(3) public use of the conservation area consistent with the purposes of this Act;

(4) interpretive and educational opportunities for the public;

(5) a program for continued scientific investigation and study to provide information to support sound management in accordance with this Act, to advance knowledge of raptor species and the resources and values of the conservation area, and to provide a process for transferring to other areas of the public lands and elsewhere this knowledge and management experience;

(6) such vegetative enhancement and other measures as may be necessary to restore or enhance prey habitat;

(7) the identification of levels, types, timing, and terms and conditions for the allowable non-military uses of lands within the conservation area that will be compatible with the protection, maintenance, and enhancement of raptor populations and habitats and the other purposes for which the conservation area is established; and

(8) assessing the desirability of imposing appropriate fees for public uses (including, but not limited to, recreational use) of lands in the conservation area, which are not now subject to fees, to be used to further the purposes for which the conservation area is established.

(c) VISITORS CENTER.—The Secretary, acting through the Director of the Bureau of Land Management, is authorized to establish, in cooperation with other public or private entities as the Secretary may deem appropriate, a visitors center designed to interpret the history and the geological, ecological, natural, cultural, and other resources of the conservation area and the biology of the raptors and their relationships to man.

(d) VISITORS USE OF AREA.—In addition to the Visitors Center, the Secretary may provide for visitor use of the public lands in the conservation area to such extent and in such manner as the Secretary considers consistent with the protection of raptors and raptor habitat, public safety, and the purposes for which the conservation area is established. To the extent practicable, the Secretary shall make available to visitors and other members of the public a map of the conservation area and such other educational and interpretive materials as may be appropriate.

(e) NATIONAL GUARD USE OF THE AREA.—(1) Pending completion of the ongoing research concerning military use of lands in the conservation area, or until the date 5 years after the date of enactment of this Act, whichever is the shorter period, the Secretary shall permit continued military use of those portions of the conservation area known as the Orchard Training Area in accordance with the Memorandum of Understanding, to the extent consistent with the use levels identified pursuant to subsection (b)(2) of this section.

(2) Upon completion of the ongoing research concerning military use of lands in the conservation area, the Secretary shall review the management plan and make such additional revisions therein as may be required to assure that it meets the requirements of this Act.

(3) Upon completion of the ongoing research concerning military use of lands in the conservation area, the Secretary shall submit to the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report of the results of such research.

(4) Nothing in this Act shall preclude minor adjustment of the boundaries of the Orchard Training Area in accordance with provisions of the Memorandum of Understanding.

(5) After completion of the ongoing research concerning military use of lands in the Orchard Training Area or after the date 5 years after the date of enactment of this Act, whichever first occurs, the Secretary shall continue to permit military use of such lands, unless the Secretary, on the basis of such research, determines such use is not compatible with the purposes set forth in section 3(a)(2). Any such use thereafter shall be permitted in accordance with the Memorandum of Understanding, which may be extended or renewed by the Secretary so long as such use continues to meet the requirements of subsection (b)(2) of this section.

(6) In accordance with the Memorandum of Understanding, the Secretary shall require the State of Idaho Military Division to ensure that military units involved maintain a program of decontamination.

(7) Nothing in this Act shall be construed as by itself precluding the extension or renewal of the Memorandum of Understanding, or the construction of any improvements or buildings in the Orchard Training Area so long as the requirements of this subsection are met.

(f) LIVESTOCK GRAZING.—Notwithstanding section 4(a)(2) of this Act, if the Secretary determines domestic livestock grazing is compatible with the purposes for which the conservation area is established, such grazing will occur on public lands within the conservation area to the extent the Secretary determines such use of such lands is compatible with the purposes for which the conservation area is established. Any such grazing, and activities the Secretary determines necessary to carry out proper and practical grazing management programs (such as animal damage control activities) shall be managed in accordance with the Act of June 28, 1934 (43 U.S.C. 315 et seq.; commonly referred to as the "Taylor Grazing Act"), section 402 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752), other laws applicable to such use and programs on the public lands, and the management plan for the conservation area.

(g) COOPERATIVE AGREEMENTS.—The Secretary is authorized to provide technical assistance to, and to enter into such cooperative agreements and contracts with, the State of Idaho and with local governments and private entities as the Secretary deems necessary or desirable to carry out the purposes and policies of this Act.

(h) AGRICULTURAL PRACTICES.—Nothing in this Act shall be construed as constituting a grant of authority to the Secretary to restrict recognized agricultural practices or other activities on private land adjacent to or with in the conservation area boundary.

(i) HYDROELECTRIC FACILITIES.—Notwithstanding any provision of this Act, or regulations and management plans undertaken pursuant to its provisions, the Federal Energy Regulatory Commission shall retain its current jurisdiction concerning all aspects of the continued and future operation of hydroelectric facilities, licensed or relicensed under the Federal Power Act (16 U.S.C. 791a et seq.), located within the boundaries of the conservation area.

SEC. 5. ADDITIONS.

(a) ACQUISITIONS.—(1) The Secretary is authorized to acquire lands and interests therein within the boundaries of the conservation area by donation, purchase with donated or appropriated funds, exchange, or transfer from another Federal agency, except that such lands or interests owned by the State of Idaho or a political subdivision thereof may be acquired only by donation or exchange.

(2) Any lands located within the boundaries of the conservation area that are acquired by the United States on or after the date of enactment of this Act shall become a part of the conservation area and shall be subject to this Act.

(b) PURCHASE OF LANDS.—In addition to the authority in section 318(d) of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1748) and notwithstanding section 7(a) of the Land and Water Conservation Fund Act of 1964 (16 U.S.C. 4601-9(a), monies appropriated from the Land and Water Conservation Fund may be used as authorized in section 5(b) of the Endangered Species Act of 1973 (16 U.S.C. 1534(b)), for the purposes of acquiring lands or interests therein within the conservation area for administration as public lands as a part of the conservation area.

(c) LAND EXCHANGES.—The Secretary shall within 4 years of enactment, study, identify, and initiate voluntary land exchanges which would resolve ownership related land use conflicts within the conservation area.

SEC. 6. OTHER LAWS AND ADMINISTRATIVE PROVISIONS.

(a) OTHER LAWS.—(1) Nothing in the Act shall be construed to supersede, limit, or otherwise affect administration and enforcement of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or to limit the applicability of the National Trails System Act to any lands within the conservation area.

(2) Except as otherwise specifically provided in this title, nothing in this title shall be construed as limiting the applicability to lands in the conservation area of laws applicable to public lands generally, including but not limited to the National Historic Preservation Act, the Archaeological Resources Protection Act of 1979, or the Native American Graves Protection and Repatriation Act.

(3) Nothing in this Act shall be construed as by itself altering the status of any lands that on the date of enactment of this Act were not managed by the Bureau of Land Management.

(4) Nothing in this Act shall be construed as prohibiting the Secretary from engaging qualified persons to use public lands within the conservation area for the propagation of plants (including seeds) to be used for vegetative enhancement of the conservation area in accordance with the plan and in furtherance of the purposes for which the conservation area is established.

(b) RELEASE.—The Congress finds and directs that the public lands within the Snake River Birds of Prey Natural Area established as a natural area in October 1971 by Public Land Order 5133 have been adequately studied and found unsuitable for wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act of 1976. Such lands are hereby released from further management pursuant to section 603(c) of such an Act and shall be managed in accordance with other applicable provisions of law, including this Act.

(c) EXISTING ADMINISTRATIVE WITHDRAWAL TERMINATED.—Public Land Orders 5133 dated October 12, 1971, and 5777 dated November 21, 1980, issued by the Secretary are hereby terminated.

(d) WATER.—(1) The Congress finds that the United States is currently a party in an adjudication of rights to waters of the Snake River, including water rights claimed by the United States on the basis of the reservation of lands for purposes of conservation of fish and wildlife and that consequently there is no need for this Act to effect a reservation by the United States of rights with respect to such waters in order to fulfill the purposes for which the conservation area is established.

(2) Nothing in this Act or any action taken pursuant thereto shall constitute either an expressed or implied reservation of water or water rights for any purpose.

(3) Nothing in this Act shall be construed as effecting a relinquishment or reduction of any of the water rights held or claimed by the United States within the State of Idaho or elsewhere on or before the date of enactment of this Act.

(4) The Secretary and all other officers of the United States shall take steps necessary to protect all water rights claimed by the United States in the Snake River adjudication now pending in the district court of the State of Idaho in which the United States is joined under the McCarran Amendment (section 208 of the Act of July 10, 1952; 66 Stat. 560; 43 U.S.C. 666).

(e) ENFORCEMENT.—Any person who violates any regulation promulgated by the Secretary to implement the provisions of this Act shall be subject to a fine in accordance with applicable provisions of title 18, United States Code, imprisonment of not more than 1 year, or both.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

ADDITIONAL STATEMENTS

HUMAN RIGHTS VIOLATIONS AGAINST KASHMIRIS IN INDIA

• Mr. BREAUX. Mr. President, I rise today on behalf of Louisiana citizens of Kashmiri descent to draw attention to continued human rights violations being committed against Kashmiris living in India.

Kashmir is an enclave spanning the northern borders of India and Pakistan. Two of three wars fought between India and Pakistan have been over a border dispute involving Kashmir. While Pakistan has held its portion of Kashmir in trust for over 40 years, India appears to have basically annexed her portion and currently has thousands of troops in the area. Despite two U.N. resolutions to the contrary, Kashmir remains in a volatile, political limbo.

The plight of the Kashmiri people is not limited to political oppression however; it also includes serious human rights abuses. In the past 2 years, the Indian Government has tried to suppress the Kashmiri movement for self-determination often by brutally forceful means. According to Amnesty International, the Indian military and paramilitary forces in Kashmir have engaged in extrajudicial killings, detention without trial, rape, arson, and torture. All this fueling an already volatile militant movement in the region.

Mr. President, I acknowledge that the Government of India now appears to be making some progress in the area of human rights. The Government's recent decision to allow Amnesty International access to Kashmir as well as the Government's apparent intent to establish a human rights commission are steps in the right direction. While these steps seem to indicate that India has at least recognized its human rights problem, it is also clear, however, that much remains to be done.

The tension and problems in this region of the subcontinent will persist until the three parties involved, India, Pakistan, and Kashmir come to some form of negotiated settlement. I urge the U.S. Government to assist these parties in the peaceful resolution of this underlying dispute.•

(At the request of Mr. MACK, the following statement was ordered to be printed in the RECORD at this point:)

TRIBUTE TO MARVA MCCANTS

• Mr. KASTEN. Mr. President, I would like to take this opportunity to honor the outstanding efforts of Marva McCants and her successful business, Marva Sew, Inc.

Marva Sew is a booming custom design manufacturer located in the Milwaukee Enterprise Center [MEC]. The MEC, a small business incubator, located in the inner city, provides opportunities for historically underutilized businesses and gives them the startup assistance needed to succeed. Since moving to the MEC, Marva Sew has doubled its employment to 13—which includes her daughter Sondra.

Ms. McCants, the company president and daughter of a seamstress, started her business in 1983, in her home. During the same period, Marva obtained her teaching certification and joined the Milwaukee Area Technical College as an industrial sewing instructor.

As her clientele and credibility grew so did the demand on her business. Due to her overwhelming success, Marva ventured from the basement of her own home into the business arena. In March 1989, she opened the doors to her new boutique—Simply Marva Fashion Design. Fortunately her accomplishments did not cease there.

In light of her achievements, and the demand for increased manufacturing space, Marva expanded Simply Marva Sew at its present location. Ms. McCants designs and makes elegant clothes for her own shop and boutiques. And she also does large order cut-and-sew jobs like Marlboro auto racing jumpsuits, T-shirts, sweatshirts and banners.

In addition to being a successful small business owner, Marva is active in the promotion of minority-owned businesses. In October 1991, Marva testified at my small business field hearing that I held at the MEC. She advocated the need for minority capital access. In her words she explained that:

> The less frustration and the less discouragement you have the better you are in trying to get your business up and going.

Marva McCants is a model for all minority business men and women to follow. Her accomplishments as an entrepreneur are just the kind of medicine our inner cities need to get our economy back on track.

I am pleased to see that Marva overcame this frustration and made her childhood dream come true.

I ask my colleagues to please join me in saluting Marva McCants and all her employees at Marva Sew for the terrific job they are doing and to congratulate them on their second anniversary as a MEC tenant.•

PUNITIVE DAMAGES REFORM ACT OF 1992

• Mr. DANFORTH, Mr. President, yesterday, I introduced the Punitive Damages Reform Act of 1992. The American Institute of Certified Public Accountants is not only concerned about the issue, but it has published a paper in which it makes certain suggestions about reform. My legislation does not contain all of the proposed reforms in the paper, but this organization's input was very helpful in helping me put my legislation together.

I recommend their essay, entitled "Punitive Damages Without Limit: Fundamentally Unfair," to all who are interested in this issue.

I ask unanimous consent that a copy of the essay and a copy of a Wall Street Journal article on the threat of tort litigation to our Nation's accounting firms be printed immediately following my remarks.

The material follows:

[From the Wall Street Journal, May 22, 1992]

BLACK DAYS FOR ACCOUNTING FIRMS

(By Philip R. Lochner, Jr.)

This week's decision by an Arizona jury to order the accounting firm Price Waterhouse to pay $338 million to Standard Chartered Bank has wide-ranging implications. Whether the jury decided correctly when it concluded that Price Waterhouse was negligent in proving auditing services is unclear. What *is* clear is that this civil judgment raises troublesome questions about what we can expect from accounting firms and whether they can continue to provide the services that our financial markets find essential. The decision forces accounting firms—and, by extension, all professional partnerships—to reconsider their roles.

The Price Waterhouse decision will certainly be appealed. But it is important to understand the degree to which accountants are already suffering from tort litigation. Almost all major accounting firms are facing vastly increased litigation claims, and last year two substantial accounting firms collapsed—Laventhol & Horwath, which press reports said faced about $2 billion in liability claims, and the smaller Spicer & Oppenheim.

WHAT HAPPENED IN ARIZONA

The profession probably faces an additional $15 billion in liability claims now, with more to come. Yet it is difficult for the accounting business to manage this risk because all national accounting firms are partnerships, and nearly all jurisdictions in this country make it difficult or impossible for them to take a corporate form. Strong firms can survive—but are increasingly at risk.

To understand such cases, it may help to review what happened in Arizona. Until 1985, Arizona law prohibited out-of-state financial institutions from buying local commercial banks. When that law changed, bankers from around the country and the world converged on cities such as Phoenix and Tucson. Prospects in the fast-growing state looked bright.

So bright, in fact, that Arizona caught the attention of Standard Chartered, a British giant whose assets in 1987 were valued at about $50 billion. Standard Chartered chose its target: United Bank of Arizona, whose auditor in 1985 and 1986 was Price Waterhouse. Through a California subsidiary, London-based Standard Chartered bought United Bank of Arizona for $335 million, or more than 15 times United's earnings when the deal was signed in 1985. At signing, United was the state's fourth largest bank, with assets of some $2.2 billion and a net worth of about $130 million.

Standard Chartered was so eager to get in on the ground floor that it moved decisively. So decisively that even though the bank had plenty of time before completing the acquisition, Standard Chartered apparently conducted a very limited survey of United's loan portfolio. That shouldn't necessarily be surprising: At the time, it appears, Standard Chartered thought it was buying a franchise, rather than a package of individually valuable assets. After the deal closed, some United real estate loans turned out to be something other than gold-plated.

And Standard had other troubles. By 1988, its Third World loan portfolio was in enough trouble that U.K. regulators were pressing Standard to improve its capital base. As a result, it sold United Bank for a whopping loss. For many, that would have been the end of the story: an unlucky, or perhaps bad, business decision resulting in a big write-off. Any number of foreign banks have made mistakes in the U.S. market in recent times—NatWest, Midland, Lloyds and Barclays, to name a few. Several out-of-state buyers of Arizona banks didn't do terribly well either.

But Standard, unlike the others, sued to make up its losses. United Bank's original shareholders were a difficult target, dispersed as they were across the country. So Standard sought recovery from the only convenient deep pocket left—the auditor, Price Waterhouse.

Standard claimed that Price Waterhouse's audits of 1985 and 1986 (the two years before the deal became final) were negligently performed by insufficiently trained and supervised personnel. It also claimed that the accounting firm should have discovered that United Bank's actual net worth was only half of what United Bank said it was, and that United Bank's internal controls were inadequate.

Standard's lawyers managed to convince the jury that Standard's damages were not just the lost value of sour loans it believes should have been discovered, nor the mere difference between United Bank's actual value and the price Standard Chartered paid. They convinced the jury that Standard deserved an amount in excess of the full purchase price. Not surprisingly, Price Waterhouse contended that this calculation of damages was an exercise in lunacy, particularly since Price Waterhouse earned less than $300,000 for the audits in question.

The jury verdict should have turned on the resolution of a number of issues, many of them numbingly tedious and obscure. Were Price Waterhouse's 1985 and 1986 audits negligently performed? What did professional accounting standards require in those audits? What is appropriate due diligence by a buyer in a bank acquisition, and did Standard Chartered do it? Does it matter that Standard didn't wait for the 1986 audit results before closing, though it arguably could have done so?

It is difficult to believe that the eight men and women who decided this case actually understood any of these matters very well. Indeed, SEC commissioners, who are at least nominally in charge of setting accounting policy in the U.S., have been known to be deeply divided over such questions as what accounting standards should require. Doubtless, the Arizona jurors were intelligent people. But this was a trial where counsel felt they had to tell the jurors what the initials "SEC" and "CEO" stood for. The result was that Price Waterhouse partners may end up paying $338 million out of their own pockets. This despite the fact that United Banks' problems had not lost United's depositors or taxpayers a single nickel.

For the accounting profession, and indeed all professional partnerships, the news of the jury award strengthens what is already a profound re-examination of their work. A century ago many auditing firms were simple, one-man shops. Since that time, the firms have grown enormously and expectations about what auditors would be responsible for have risen dramatically.

Congress, for its part, seems intent on adding to auditor responsibility. Rep. Ron Wyden (D., Ore.) has frequently proposed legislation placing greater demands on auditors. Banking and securities regulators have insisted that accountants conform to higher standards and assume heavier burdens as well.

What really happens in an audit? The larger the institution being audited, the greater the likelihood that auditors will be required to rely heavily on work performed by those being audited. Management, not auditors, prepares the financial statements. Auditors typically sample and test internally generated numbers. Even when audits are done correctly, audits cannot guarantee accuracy or the detection of fraud; they are not insurance policies. Nonetheless legal liability seems to rise.

Insurance is not much of an answer to accountants' liability problems. Insurers are already reluctant to cover high-risk propositions like big accounting firms. Premiums are prohibitive. Deductibles of up to $20 million are becoming the norm for large accounting firms, and coverage is increasingly harder to find beyond the $100 million level. One recent report claimed that auditor insurance premiums have increased tenfold in the past seven years. Without sufficient insurance, individual partners are personally at risk. In the Standard Chartered-Price Waterhouse case, that liability comes to more than $350,000 per partner.

TORT REFORM

In theory, one answer to these partnership problems could be to return the accounting profession to a world of individual practitioners. But it is pretty hard to imagine an individual practitioner performing an adequate audit of AT&T or Citibank. If we carry on as we have, more national accounting firms may collapse. The financial markets that depend on them will surely not be better off.

The best answer here may be tort reform. Another step in the right direction would be to let accounting firms incorporate. There is no reason why partners in accounting firms should be any more at risk for the negligence of their fellow partners than one broker at Merrill Lynch is for the negligence of another Merrill Lynch broker. States need to change their rules.

Permitting incorporation would hardly solve all their (or our) liability problems. But at least accountants would not have to risk their shirts when they go to work every day.

PUNITIVE DAMAGES WITHOUT LIMIT: FUNDAMENTALLY UNFAIR

"There is a point beyond which even justice becomes unjust."

Sophocles' observation may be over two thousand years old, but it is equally applicable today. This country's approach to awarding punitive damages is now clearly out of control. Nowhere is this more apparent than in recent verdicts against accounting firms in which plaintiffs have collected windfall awards far beyond their actual losses. Punitive damage awards have become so excessive that they threaten not only individual accounting firms, but the very basis on which the CPA profession can continue performing audits. Given the critical role the CPA profession plays in the country's financial reporting system, it is fair to say that anything that threatens the CPA profession's ability to conduct audits—except on the most highly selective basis to avoid risk of liability through association—threatens the smooth operation of the capital markets and the economy in general.

UNREASONABLE PUNISHMENT

At the heart of the problem is the unsettling reality that harsh punitive damage awards are being made in cases in which only compensatory damages are truly appropriate according to traditional concepts of law and justice. The purpose of punitive damages needs to be more clearly understood by juries and courts—and if necessary, specific statutes need to be enacted to ensure that the system operates to promote systematic justice rather than random and capricious attacks on professionals who happen to have attractively "deep pockets."

Punitive damages must be distinguished from compensatory damages in order to understand the basic issue. The purpose of compensatory damages is to make the injured parties whole again. Both out-of-pocket losses and economic losses may be taken into account in an attempt to put parties in the same position they were in, or would have been in, before the damage was done. Punitive damages, on the other hand, are designed to punish, not to compensate. Traditionally, punitive damages are reserved for situations in which a party's behavior was intentional or reckless, and so grossly bad that basic human sensibilities are outraged and extra punishment is truly required.

Once rare, punitive damage awards are now becoming quite common. The Institute for Civil Justice studied 24,000 punitive damage cases and found that from 1965–69 the average sum awarded was $43,000. But in 1980–84, the inflation-adjusted amounts averaged $729,000—a jump of 1,500 percent. The result of this staggering increase is a never-ending spiral. The prospect of winning the "litigation lottery" and obtaining high punitive damage awards creates an attractive incentive for parties who'd like to try their luck at bringing suit, no matter how flimsy their grounds.

The widely publicized Miniscribe case illustrates how the mechanism of punitive damages can be misused. The case stemmed from the actions of O.T. Wiles, the former chairman of Miniscribe, Inc., a manufacturer of computer disk drives. Wiles was accused of falsifying corporate records to inflate the company's net worth. Investors, who bought approximately $18 million in bonds sold by Miniscribe based on the falsified records, filed a successful lawsuit against Wiles, his investment bankers and the accounting firm of Coopers & Lybrand. Compensatory damages were found by the jury to be in the amount of $20 million, but punitive damages were set at an incredible $530 million.

Coopers & Lybrand was found by the jury to have conducted faulty audits, and to have signed off on a prospectus that contained fraudulent financial statements. The share of the damages attributed to Coopers & Lybrand was $4 million in compensatory damages and $250 million in punitive damages. Coopers & Lybrand contested the allegations against them, and claimed they did not have direct knowledge of Wiles' fraud. The trial judge later set aside the verdict as "contrary to the great weight of the evidence," and the case was eventually settled out of court for an undisclosed sum. Nevertheless, the magnitude of the jury award undoubtedly exerted great influence on the eventual size of the settlement.

THE CONSEQUENCES OF UNRESTRAINED VENGEANCE

The Miniscribe case raises serious questions. It is hard to imagine any kind of conduct in a business situation that would be sufficiently repugnant to human sensibilities as to justify a judgment for punitive damages in excess of 50 times compensatory damages. Why should accountants and other professionals be singled out for a level of punishment that would normally be reserved for the most outrageous human behavior in an ordinary non-business case—except for the fact that professionals are perceived as having the ability to pay?

When the law of punitive damages is stretched beyond its traditional limits to encompass ordinary negligence of professionals—instead of grossly reckless or intentionally bad misbehavior—three major problems arise. The first is that the liability exposure of accountants and other professionals become extremely difficult to predict and very difficult to withstand. Faced with the real possibility that an unfavorable court decision could force them to pay damages of unpredictable magnitude, far in excess of the actual injury, many firms cannot afford the risk of fighting even the most obviously capricious lawsuits. The unlimited potential for excessive punitive damages dictates that a professional firm submit quickly to a more limited settlement—however unjustified, however unfair.

The second problem is the impact large settlements will have on a firm's financial health. Insurance costs will most likely skyrocket, placing additional pressure on the firm's bottom line. Unreasonable monetary awards against some firms severely hamper all firms' ability to grow. If the current situation is left unchecked, the cost of litigation will quickly filter through to the economy in the form steeper fees and, in the professional sector, fewer jobs.

The third problem is the implications excessive punitive damage awards against professionals have for the smooth operations of the business and financial sectors. Will liability have a chilling effect on how accounting and other professional firms perform their technical functions and how they select the clients for whom they will perform certain work? If so, what will these clients do without the services they need?

WORKING FOR A SOLUTION

The accounting profession has identified excessive punitive damages as a major threat to the current and future health of the accounting profession. The profession's national representative body, the American Institute of Certified Public Accountants (AICPA), has worked with the American Tort Reform Association (ATRA) in Washington, D.C, to create model legislation for states to adopt or use as a model in controlling the application of punitive damages in civil cases.

This effort is guided by the recent U.S. Supreme Court decision in *Pacific Mutual Life Insurance Company* v. *Haslip*, in which the Court held that the due process clause of the Fourteenth Amendment requires the states to set reasonable limits on the jury's discretion in awarding punitive damages. In the Court's written opinion, it was recognized that in most states, juries are given little or no guidance by the courts in determining the basis on which punitive damages can be awarded, and the limits on the amount of such awards.

The model legislation proposed by the ATRA includes the following provisions:

Before punitive damages can be awarded, a claimant must establish by clear and convincing evidence that the claimant's harm was the result of intentional or malicious misconduct involving a conscious intent to cause injury.

There should be bifurcation of trials, such that a separate proceeding is required to determine the appropriateness of punitive damages after compensatory damages have been determined.

Punitive damages should be limited to $200,000, or an amount equal to the compensatory award, whichever is greater.

There should be a mandatory court review of punitive damages to assure that they are reasonable in light of the facts in the case. Various specific factors are given for the court to consider in making this determination.

In addition, the AICPA has created its own model legislation, which includes additional provisions designed to reduce the extreme vulnerability of accounting firms to excessive punitive damage awards. For example, in some jurisdictions, juries may impose punitive damages on an accounting firm based on the actions of an employee who may have been acting without the knowledge of the firm or any of its partners. To address this problem, the AICPA's model legislation would limit punitive damages against the firm to situations in which the firm's governing body had expressly authorized the employee's misconduct, or had subsequent knowledge and acquiesced or ratified the employee's behavior.

The AICPA's version of the model legislation also recommends dollar limits on the size of punitive awards. The standard proposal limits punitive damages to twice the amount of the firm's actual or expected gain from the situation—for example, twice the amount of the audit fee. This departure from the ATRA recommendation is due to the potential for disaster stemming from the structure of accounting firms. In a professional partnership, all the personal assets of each of the partners is at risk to satisfy judgments against the partnership—including punitive damage awards—even if all of the partners were totally unaware of acts committed by isolated individuals.

The states themselves are not oblivious to the serious problem of excessive punitive damage awards. Over the past six years, 25 states have enacted some type of punitive damage reform, ranging from outright abolition of punitive damages to stricter definitions of the kinds of conduct that will allow such awards and higher standards of proof relating to such conduct.

The explosion of litigation and outrageous judgments against professionals will immediately impact the professions, but will ultimately impose tremendous burdens on society at large. Our courts and juries are charged with the duty of dispensing justice. Adoption of the model legislation currently proposed by the ATRA, the AICPA, and other concerned organizations would be a major step towards ensuring that justice will be dispensed—not on the basis of "deep pockets," but within the limits of due process for all.●

TRIBUTE TO CUMMINS ENGINE CO.

● Mr. LUGAR. Mr. President, I rise today to recognize Cummins Engine Co.'s. 50th anniversary as a distinguished supplier of diesel power to the U.S. military.

At the outset of World War II, Cummins Engine, based in Columbus, IN, delivered 5,000 H-160 engines to power heavy logistics trucks used by the Army Quartermaster Corps.

Known as the Red Ball Express, many of these trucks were used by Gen. George Patton as Allied forces stormed across France and Germany. The reliable performance did much to establish diesel as the preferred power source for both military and commercial cargo transport.

The reputation of the engine was already well established. A year earlier, in 1943, Cummins received the Army/Navy "E" Award for excellence in the production of war materials.

Today, the spectrum of Cummins technology spans from supply of truck engines to continuous, active participation in the military market worldwide for all equipment applications where diesel power is specified. In fact, Cummins is the leading supplier of heavy-duty diesels for defense and other purposes in the Western world.

As the company prepared to celebrate its 50th anniversary as a supplier, Cummins delivered its 150,000th engine to the U.S. Department of Defense—a VTA903-T600 designated for installation in a Bradley M2 fighting vehicle.

Cummins Engine Co. is to be commended for its distinguished history as a supplier to our military—both in terms of its heritage as a technological leader and a provider of jobs for thousands of people in Indiana and worldwide.●

THE RETIREMENT OF REPRESENTATIVE JIM OLIN AND REPRESENTATIVE GEORGE ALLEN

● Mr. WARNER. Mr. President, I rise today to pay tribute to two distinguished members of the Virginia delegation—JIM OLIN of the Sixth Congressional District and GEORGE ALLEN of the Seventh Congressional District.

Congressman JIM OLIN, of Roanoke, VA, was first elected to the U.S. House of Representatives in 1982 upon the retirement of another outstanding Virginian, M. Caldwell Butler. Since that time and through four subsequent elections, Mr. OLIN has proven himself as a capable and dedicated legislator who understands the needs of the people he represents. Our strong friendship always placed the needs of our constituents above any partisan divisions.

Throughout his distinguished public service career, JIM OLIN played an integral role in shaping important legislation which affects many Americans. He served on the House Agriculture Committee and the Small Business Committee where he served as the chairman of the Subcommittee on Environment and Employment.

I was privileged to work with JIM OLIN on three legislative achievements for which he will long be remembered:

The Virginia Wilderness Act which provides permanent protection to 81,000 acres of unique Virginia forests and streams.

The Buena Vista flood control project which, when completed, will protect this small community from the devastating floods it has endured time after time. The Congress accepted the delegation's recommendation that the project bear JIM OLIN's name in recognition of his long public service.

The development of the Roanoke River Parkway to provide visitor access from the Blue Ridge Parkway to the Roanoke Valley and the explore project.

Although I may not have agreed with my friend JIM OLIN on each issue or each vote, this Senator will certainly miss his friendship, his counsel, and his participation in the Virginia congressional delegation. He worked hard for his constituents and voted his conscience to do what he felt was best for our State and our Nation.

It has indeed been a privilege to serve with JIM OLIN over the past 10 years. I wish Congressman OLIN well in his retirement and extend my best wishes to him and his lovely wife, Phyllis, and their five children and eight grandchildren. May they enjoy all the blessings of long life and find much pleasure in their time together in the years ahead.

Congressman GEORGE ALLEN, of Earlysville, VA, was elected just 11 months ago in a special election to fill the vacancy created by the retirement of my good friend and former Representative from the Seventh District, D. French Slaughter. It was indeed my great pleasure to be by GEORGE ALLEN's side as he campaigned for this office. He was faced with a changing political scene, not of his making, leaving him little opportunity to continue in the House of Representatives.

GEORGE ALLEN came to Capitol Hill, together with a lovely wife and children, with a mandate from his constituents to reform Congress and to restore fiscal responsibility to the Federal Government. He never wavered from these commitments. Congressman ALLEN has fought hard to achieve these goals of a balanced budget amendment to the Constitution that included spending limitations, taxpayer protection, and a line-item veto for the President.

Before coming to the U.S. Congress, GEORGE ALLEN served 9 years in the Virginia House of Delegates where he made a strong reputation for fiscal conservatism. In his capacity as both a State and Federal legislator, GEORGE ALLEN has served his constituents with honor and distinction, and his services will certainly be missed.

GEORGE ALLEN is well regarded in Virginia as a man of considerable talents. He represents the emerging generation of strong Virginia Republican leaders and will certainly be a valuable electable candidate for future public office.

Because of circumstances beyond his control, GEORGE ALLEN was only here in Washington for a short time, but he made the most of his stay by expressing his views and fighting for what he believed in—boots and all. I wish GEORGE, his wife Susan, and their two children nothing but the best of luck in all their future endeavors. GEORGE ALLEN has proven to be an effective leader, and on behalf of our party, our State, and our Nation, I thank him for his commitment to public service.●

HEALTH CARE ACCESS AND AFFORDABILITY ACT OF 1992

● Mr. HATCH. Mr. President, on Monday, I introduced the Health Care Access and Affordability Act. I have received numerous requests for copies of this legislation. To facilitate making the bill available to all interested parties, I ask that the text of S. 3348, the Health Care Access and Affordability Act of 1992, be included in the RECORD.

The bill text follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Health Care Access and Affordability Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title.

TITLE I—SOCIAL SECURITY ACT PROVISIONS

Subtitle A—Small Employer Insurance Reform

PART I—TAX DEDUCTIBLE HEALTH INSURANCE COSTS

Sec. 101. Permanent increase in deductible health insurance costs for self-employed individuals.

PART II—STANDARDS AND REQUIREMENTS OF SMALL EMPLOYER HEALTH INSURANCE REFORM
Sec. 111. Standards and requirements of small employer health insurance.
PART III—TAX PENALTY ON NONCOMPLYING INSURERS
Sec. 121. Excise tax on premiums received on health insurance policies which do not meet certain requirements.
Subtitle B—Medicare and Medicaid Provisions
PART I—MEDICARE
Sec. 131. Experimental program offering certain medicare beneficiaries a choice among different types of benefit options.
Sec. 132. Combined annual accounting of medicare part A and B trust funds.
Sec. 133. Establishment of advisory council on hospital reimbursement procedures.
Sec. 134. Medicare centers of excellence demonstration projects.
Sec. 135. Establishment of medical directive registry and proxy designation form.
PART II—MEDICAID
Sec. 141. Demonstration projects for improving access to medicaid services in medically underserved areas.
Sec. 142. Demonstration projects providing medical assistance to certain uninsured individuals.
Sec. 143. Demonstration projects providing outreach activities to individuals who may be eligible for certain medical assistance.
Sec. 144. Demonstration projects to reduce infant mortality.
TITLE II—PUBLIC HEALTH SERVICE ACT PROVISIONS
Sec. 201. Disease prevention educational program.
Sec. 202. Increasing access to primary care.
Sec. 203. Research to foster independent living.
Sec. 204. Medical treatment outcomes.
TITLE III—PERMANENT HEALTH CARE REFORM
Sec. 301. Short title.
Sec. 302. Purpose.
Subtitle A—Tax Treatment of Health Care Expenses
Sec. 311. Refundable health care expenses tax credit.
Sec. 312. Deduction for employer-provided health insurance premiums.
Sec. 313. Limitation on business deduction of premiums.
Sec. 314. Medical savings accounts.
Subtitle B—Health Insurance Requirements
Sec. 321. General requirements of employers.
Sec. 322. Requirements with respect to conversion of non-self-insured plans.
Sec. 323. Requirements with respect to existing self-insured plans.
Sec. 324. Enforcement.
Sec. 325. Continuation of employer-provided health coverage required for maximum of 60 months.
Subtitle C—State Plan Requirements
Sec. 331. State plan requirements.
Subtitle D—Federal Preemption
Sec. 341. Federal preemption of certain state laws.
Subtitle E—Medicaid Reform
Sec. 351. New Federal-State role under medicaid.
TITLE VI—ANTITRUST PROVISIONS
Subtitle A—Modification of the Operation of the Antitrust Laws to Hospitals
Sec. 401. Purpose.
Sec. 402. Exemptions from the operation of the antitrust laws.
Sec. 403. Reports.
Sec. 404. Definitions.
Subtitle B—Encouraging Enforcement Activities of Medical Self-Regulatory Entities
Sec. 411. Antitrust exemption for medical self-regulatory entities.
Sec. 412. Consultation with medical self-regulatory entities respecting medical professional standards.
Sec. 413. Definitions.
Subtitle C—Interagency Committee
Sec. 421. Interagency Committee on Health Care Reform and Antitrust Policy.
TITLE V—MEDICAL MALPRACTICE REFORM
Subtitle A—General Provisions
Sec. 501. Findings and purpose.
Sec. 502. Definitions.
Subtitle B—Grant Programs
PART I—IMPLEMENTATION OF ALTERNATIVE DISPUTE RESOLUTION SYSTEMS
Sec. 511. Incentive grants.
Sec. 512. Alternative dispute resolution systems described.
PART II—OTHER GRANT PROGRAMS
Sec. 521. Research grants.
Sec. 522. Disciplinary and educational grants.
PART III—ADMINISTRATIVE PROVISIONS
Sec. 531. Administrative provisions.
Sec. 532. Reports on grant programs.
Sec. 533. Authorization of appropriations.
Subtitle B—Health Care Malpractice Dispute Reform
Sec. 541. Federal reform of civil actions.
Sec. 542. State mandates for risk management and professional discipline.
Sec. 543. Community and migrant health centers risk retention group.
Sec. 544. Reports to Congress.
TITLE VI—MISCELLANEOUS PROVISIONS
Sec. 601. President's Council on Senior Fitness.
Sec. 602. Programs to encourage health lifestyles.

TITLE I—SOCIAL SECURITY ACT PROVISIONS

Subtitle A—Small Employer Insurance Reform

PART I—TAX DEDUCTIBLE HEALTH INSURANCE COSTS

SEC. 101. PERMANENT INCREASE IN DEDUCTIBLE HEALTH INSURANCE COSTS FOR SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (1) of section 162(l) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended by striking "25 percent of".

(b) PERMANENT DEDUCTION.—Section 162(l) of such Code is amended by striking paragraph (6).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1991.

PART II—STANDARDS AND REQUIREMENTS OF SMALL EMPLOYER HEALTH INSURANCE REFORM

SEC. 111. STANDARDS AND REQUIREMENTS OF SMALL EMPLOYER HEALTH INSURANCE.

The Social Security Act is amended by adding at the end the following new title:

"TITLE XXI—STANDARDS FOR SMALL EMPLOYER HEALTH INSURANCE AND CERTIFICATION OF MANAGED CARE PLANS

"PART A—GENERAL STANDARDS; DEFINITIONS

"APPLICATION OF REQUIREMENTS TO SMALL EMPLOYER HEALTH INSURANCE PLANS

"SEC. 2101. (a) PLAN UNDER STATE REGULATORY PROGRAM OR CERTIFIED BY THE SECRETARY.—An insurer offering a health insurance plan to a small employer in a State on or after the effective date applicable to the State under subsection (b) shall be treated as meeting the requirements of this title if—

"(1) the Secretary determines that the State has established a regulatory program that provides for the application and enforcement of standards meeting the requirements under section 2102 to meet the requirements of part B of this title; and

"(2) if the State has not established such a program or if the program has been decertified by the Secretary under section 2102(b), the health insurance plan has been certified by the Secretary (in accordance with such procedures as the Secretary establishes) as meeting the requirements of part B of this title.

"(b) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as specified in paragraph (2) and provided in paragraph (3), the standards established under section 2102 to meet the requirements of part B of this title shall apply to health insurance plans offered, issued, or renewed to a small employer in a State on or after January 1, 1994.

"(2) EXCEPTION FOR LEGISLATION.—In the case of a State which the Secretary identifies, in consultation with the NAIC, as—

"(A) requiring State legislation (other than legislation appropriating funds) in order for insurers and health insurance plans offered to small employers to meet the standards under the program established under subsection (a), and

"(B) having a legislature which does not meet in 1993 in a legislative session in which such legislation may be considered,

the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first regular legislative session of the State legislature that begins on or after January 1, 1994. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular legislative session of the State legislature.

"(3) REQUIREMENTS APPLIED TO EXISTING POLICIES.—In the case of a health insurance plan in effect before the applicable effective date specified in paragraph (1) or (2), the requirements referred to in subsections (a) and (b) of section 2112 shall not apply to any such plan, or any renewal of such plan, before the date which is 2 years after such effective date.

"(c) REPORTING REQUIREMENTS OF STATES.—Each State shall submit to the Secretary, at intervals established by the Secretary, a report on the implementation and enforcement of the standards under the program established under subsection (a)(1) with respect to health insurance plans offered to small employers.

"(d) MORE STRINGENT STATE STANDARDS PERMITTED.—Except as provided in subsections (b)(8) and (c)(4) of section 2113, a State may implement standards that are more stringent than the standards established to meet the requirements of part B of this title.

"ESTABLISHMENT OF STANDARDS

"SEC. 2102. (a) ESTABLISHMENT OF STANDARDS.—

"(1) ROLE OF THE NAIC.—The Secretary shall request that the NAIC—

"(A) develop specific standards, in the form of a model Act and model regulations, to implement the requirements of part B of this title; and

"(B) report to the Secretary on such standards,

by not later than September 30, 1992. If the NAIC develops such standards within such period and the Secretary finds that such standards implement the requirements of part B of this title, such standards shall be the standards applied under section 2101.

"(2) ROLE OF THE SECRETARY.—If the NAIC fails to develop and report on the standards described in paragraph (1) by the date specified in such paragraph or the Secretary finds that such standards do not implement the requirements under part B of this title, the Secretary shall develop and publish such standards, by not later than December 31, 1992. Such standards shall then be the standards applied under section 2101.

"(3) STANDARDS ON GUARANTEED AVAILABILITY.—The standards developed under paragraphs (1) and (2) shall provide alternative standards for guaranteeing availability of health insurance plans for all small employers in a State as provided in section 2111(c).

"(b) PERIODIC SECRETARIAL REVIEW OF STATE REGULATORY PROGRAM.—The Secretary periodically shall review State regulatory programs to determine if they continue to meet and enforce the standards referred to in subsection (a). If the Secretary initially determines that a State regulatory program no longer meets and enforces such standards, the Secretary shall provide the State an opportunity to adopt a plan of correction that would bring such program into compliance with such standards. If the Secretary makes a final determination that the State regulatory program fails to meet and enforce such standards and requirements after such an opportunity, the Secretary shall decertify such program and assume responsibility under section 2101(a)(2) with respect to plans in the State.

"(c) GAO AUDITS.—The Comptroller General of the United States shall conduct periodic reviews on a sample of State regulatory programs to determine their compliance with the standards and requirements of this title. The Comptroller General of the United States shall report to the Secretary and Congress on the findings of such reviews.

"DEFINITIONS

"SEC. 2103. (a) HEALTH INSURANCE PLAN.—As used in this title, the term 'health insurance plan' means any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization group contract and, in States which have distinct licensure requirements, a multiple employer welfare arrangement, but does not include—

"(1) a self-insured health insurance plan; or

"(2) any of the following offered by an insurer—

"(A) accident only, dental only, disability only insurance, or long-term care only insurance,

"(B) coverage issued as a supplement to liability insurance,

"(C) workmen's compensation or similar insurance, or

"(D) automobile medical-payment insurance.

"(b) INSURER AND HEALTH MAINTENANCE ORGANIZATION.—As used in this title:

"(1) INSURER.—The term 'insurer' means any person that offers a health insurance plan to a small employer.

"(2) HEALTH MAINTENANCE ORGANIZATION.—The term 'health maintenance organization' has the meaning given the term 'eligible organization' in section 1876(b) of this Act.

"(c) GENERAL DEFINITIONS.—As used in this title:

"(1) APPLICABLE REGULATORY AUTHORITY.—The term 'applicable regulatory authority' means—

"(A) in the case of a health insurance plan offered in a State with a program meeting the requirements of part B of this title, the State commissioner or superintendent of insurance or other State authority responsible for regulation of health insurance; or

"(B) in the case of a health insurance plan certified by the Secretary under section 2101(a)(2), the Secretary.

"(2) SMALL EMPLOYER.—The term 'small employer' means, with respect to a calendar year, an employer that normally employs more than 1 but less than 51 eligible employees on a typical business day. For the purposes of this paragraph, the term 'employee' includes a self-employed individual.

"(3) ELIGIBLE EMPLOYEE.—The term 'eligible employee' means, with respect to an employer, an employee who normally performs on a monthly basis at least 30 hours of service per week for that employer.

"(4) NAIC.—The term 'NAIC' means the National Association of Insurance Commissioners.

"PART B—SMALL EMPLOYER HEALTH INSURANCE REFORM

"GENERAL REQUIREMENTS FOR HEALTH INSURANCE PLANS ISSUED TO SMALL EMPLOYERS

"SEC. 2111. (a) REGISTRATION WITH APPLICABLE REGULATORY AUTHORITY.—Each insurer shall register with the applicable regulatory authority for each State in which it issues or offers a health insurance plan to small employers.

"(b) GUARANTEED ELIGIBILITY.—

"(1) IN GENERAL.—No insurer may exclude from coverage any eligible employee, or the spouse or any dependent child of the eligible employee, to whom coverage is made available by a small employer.

"(2) WAITING PERIODS.—Paragraph (1) shall not apply to any period an eligible employee is excluded from coverage under the health insurance plan solely by reason of a requirement applicable to all employees that a minimum period of service with the small employer is required before the employee is eligible for such coverage.

"(c) GUARANTEED AVAILABILITY.—

"(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, an insurer that offers a health insurance plan to small employers located in a State must meet the standards adopted by the State described in paragraph (2).

"(2) STANDARDS ON GUARANTEED AVAILABILITY.—

"(A) IN GENERAL.—In order to implement the requirements of this title, the standards developed under paragraphs (1) and (2) of section 2102(a) shall—

"(i) require that a State adopt a mechanism for guaranteeing the availability of health insurance plans for all small employers in the State, and

"(ii) specify alternative mechanisms, including at least the alternative mechanisms described in subparagraph (B), that a State may adopt.

"(B) ALTERNATIVE MECHANISMS.—The alternative mechanisms described in this subparagraph are:

"(i) A mechanism under which the State—

"(I) requires that any insurer offering a health insurance plan to a small employer in the State shall offer the same plan to all other small employers in the State, and

"(II) requires the participation of all such insurers in a small employer reinsurance program established by the State.

"(ii) A mechanism under which the State—

"(I) requires that any insurer offering a health insurance plan to a small employer in the State shall offer the same plan to all other small employers in the State, and

"(II) permits any such insurer to participate in a small employer reinsurance program established by the State.

"(iii) A mechanism under which the State requires that any insurer offering a health insurance plan to a small employer in the State shall participate in a program for assigning high-risk groups among all such insurers.

"(iv) A mechanism under which the State requires that any insurer that—

"(I) offers a health insurance plan to a small employer in the State, and

"(II) does not agree to offer the same plan to all other small employers in the State,

shall participate in a program for assigning high-risk groups among all such insurers.

"(C) STATE ADOPTION OF CERTAIN STANDARDS.—A regulatory program adopted by the State under section 2101 must provide—

"(i) for the adoption of one of the mechanisms described in clauses (i) through (iv) of subparagraph (B), or

"(ii) for such other program that guarantees availability of health insurance to all small employers in the State and is approved by the Secretary.

"(D) STANDARDS FOR NONCOMPLYING STATES.—The Secretary, in consultation with the Secretary of the Treasury, shall develop requirements with respect to guaranteed availability to apply with respect to insurers located in a State that has not adopted the standards under section 2102 and who wish to apply for certification under section 2101(a)(2).

"(3) GROUNDS FOR REFUSAL TO RENEW.—

"(A) IN GENERAL.—An insurer may refuse to renew, or may terminate, a health insurance plan under this part only for—

"(i) nonpayment of premiums;

"(ii) fraud or misrepresentation; or

"(iii) failure to maintain minimum participation rates (consistent with subparagraph (B)).

"(B) MINIMUM PARTICIPATION RATES.—An insurer may require, with respect to a health insurance plan issued to a small employer, that a minimum percentage of eligible employees who do not otherwise have health insurance are enrolled in such plan if such percentage is applied uniformly to all plans offered to employers of comparable size.

"(d) GUARANTEED RENEWABILITY.—

"(1) IN GENERAL.—An insurer shall ensure that a health insurance plan issued to a small employer be renewed, at the option of the small employer, unless the plan is terminated for a reason specified in paragraph (2) or in subsection (c)(3)(A).

"(2) TERMINATION OF SMALL EMPLOYER BUSINESS.—An insurer is not required to renew a health insurance plan with respect to a small employer if the insurer—

"(A) elects not to renew all of its health insurance plans issued to small employers in a State; and

"(B) provides notice to the applicable regulatory authority in the State and to each small employer covered under a plan of such termination at least 180 days before the date of expiration of the plan.

In the case of such a termination, the insurer may not provide for issuance of any health insurance plan to a small employer in the State during the 5-year period beginning on the date of termination of the last plan not so renewed.

"(e) No Discrimination Based on Health Status for Certain Services.—

"(1) In general.—Except as provided under paragraph (2), a health insurance plan offered to a small employer by an insurer may not deny, limit, or condition the coverage under (or benefits of) the plan based on the health status, claims experience, receipt of health care, medical history, or lack of evidence of insurability, of an individual.

"(2) Treatment of preexisting condition exclusions for all services.—

"(A) In general.—Subject to the succeeding provisions of this paragraph, a health insurance plan offered to a small employer by an insurer may exclude coverage with respect to services related to treatment of a preexisting condition, but the period of such exclusion may not exceed 6 months. The exclusion of coverage shall not apply to services furnished to newborns.

"(B) Crediting of previous coverage.—

"(i) In general.—A health insurance plan issued to a small employer by an insurer shall provide that if an individual under such plan is in a period of continuous coverage (as defined in clause (ii)(I)) with respect to particular services as of the date of initial coverage under such plan, any period of exclusion of coverage with respect to a preexisting condition for such services or type of services shall be reduced by 1 month for each month in the period of continuous coverage.

"(ii) Definitions.—As used in this subparagraph:

"(I) Period of continuous coverage.—The term 'period of continuous coverage' means, with respect to particular services, the period beginning on the date an individual is enrolled under a health insurance plan, title XVIII, title XIX, or other health benefit arrangement including a self-insured plan which provides benefits with respect to such services and ends on the date the individual is not so enrolled for a continuous period of more than 3 months.

"(II) Preexisting condition.—The term 'preexisting condition' means, with respect to coverage under a health insurance plan issued to a small employer by an insurer, a condition which has been diagnosed or treated during the 3-month period ending on the day before the first date of such coverage (without regard to any waiting period).

"REQUIREMENTS RELATED TO RESTRICTIONS ON RATING PRACTICES

"Sec. 2112. (a) Limit on Variation of Premiums Between Blocks of Business.—

"(1) In general.—The base premium rate for any block of business of an insurer (as defined in section 2103(b)(1)) may not exceed the base premium rate for any other block of business by more than 20 percent.

"(2) Exceptions.—Paragraph (1) shall not apply to a block of business if the applicable regulatory authority determines that—

"(A) the block is one for which the insurer does not reject, and never has rejected, small employers included within the definition of employers eligible for the block of business or otherwise eligible employees and dependents who enroll on a timely basis, based upon their claims experience, health status, industry, or occupation,

"(B) the insurer does not transfer, and never has transferred, a health insurance plan involuntarily into or out of the block of business, and

"(C) health insurance plans offered under the block of business are currently available for purchase by small employers at the time an exception to paragraph (1) is sought by the insurer.

"(b) Limit on Variation in Premium Rates Within a Block of Business.—For a block of business of an insurer, the highest premium rates charged during a rating period to small employers with similar demographic characteristics (including age, sex, and geography and not relating to claims experience, health status, industry, occupation, or duration of coverage since issue) for the same or similar coverage, or the highest rates which could be charged to such employers under the rating system for that block of business, shall not exceed an amount that is 1.5 times the base premium rate for the block of business for a rating period (or portion thereof) that occurs in the first 3 years in which this section is in effect, and 1.35 times the base premium rate thereafter.

"(c) Consistent Application of Rating Factors.—In establishing premium rates for health insurance plans offered to small employers—

"(1) an insurer making adjustments with respect to age, sex, or geography must apply such adjustments consistently across small employers, and 37

"(2) no insurer may use a geographic area that is smaller than a county or smaller than an area that includes all areas in which the first three digits of the zip code are identical, whichever is smaller.

"(d) Limit on Transfer of Employers Among Blocks of Business.—

"(1) In general.—An insurer may not transfer a small employer from one block of business to another without the consent of the employer.

"(2) Offers to transfer.—An insurer may not offer to transfer a small employer from one block of business to another unless—

"(A) the offer is made without regard to age, sex, geography, claims experience, health status, industry, occupation or the date on which the policy was issued, and

"(B) the same offer is made to all other small employers in the same block of business.

"(e) Limits on Variation in Premium Increases.—The percentage increase in the premium rate charged to a small employer for a new rating period (determined on an annual basis) may not exceed the sum of the percentage change in the base premium rate plus 5 percentage points.

"(f) Definitions.—In this section:

"(1) Base premium rate.—The term 'base premium rate' means, for each block of business for each rating period, the lowest premium rate which could have been charged under a rating system for that block of business by the insurer to small employers with similar demographic or other relevant characteristics (including age, sex, and geography and not relating to claims experience, health status, industry, occupation or duration of coverage since issue) for health insurance plans with the same or similar coverage.

"(2) Block of business.—

"(A) In general.—Except as provided in subparagraph (B), the term 'block of business' means, with respect to an insurer, all of the small employers with a health insurance plan issued by the insurer (as shown on the records of the insurer).

"(B) Distinct groups.—

"(i) In general.—Subject to clause (ii), a distinct group of small employers with health insurance plans issued by an insurer may be treated as a block of business by such insurer if all of the plans in such group—

"(I) are marketed and sold through individuals and organizations that do not participate in the marketing or sale of other distinct groups by the insurer,

"(II) have been acquired from another insurer as a distinct group, or

"(III) are provided through an association with membership of not less than 25 small employers that has been formed for purposes other than obtaining health insurance.

"(ii) Exception allowed.—Except as provided in subparagraph (C), an insurer may not establish more than one distinct group of small employers for each category specified in clause (i).

"(C) Special rule.—An insurer may establish up to 2 groups under each category in subparagraph (A) or (B) to account for differences in characteristics (other than differences in plan benefits) of health insurance plans that are expected to produce substantial variation in health care costs.

"(f) Full Disclosure of Rating Practices.—

"(1) In general.—At the time an insurer offers a health insurance plan to a small employer, the insurer shall fully disclose to the employer all of the following:

"(A) Rating practices for small employer health insurance plans, including rating practices for different populations and benefit designs.

"(B) The extent to which premium rates for the small employer are established or adjusted based upon the actual or expected variation in claims costs or health condition of the employees of such small employer and their dependents.

"(C) The provisions concerning the insurer's right to change premium rates, the extent to which premiums can be modified, and the factors which affect changes in premium rates.

"(2) Notice on expiration.—An insurer providing health insurance plans to small employers shall provide for notice, at least 60 days before the date of expiration of the health insurance plan, of the terms for renewal of the plan. Such notice shall include an explanation of the extent to which any increase in premiums is due to actual or expected claims experience of the individuals covered under the small employer's health insurance plan contract.

"(g) Actuarial Certification.—Each insurer shall file annually with the applicable regulatory authority a written statement by a member of the American Academy of Actuaries (or other individual acceptable to such authority) that, based upon an examination by the individual which includes a review of the appropriate records and of the actuarial assumptions of the insurer and methods used by the insurer in establishing premium rates for small employer health insurance plans—

"(1) the insurer is in compliance with the applicable provisions of this section, and

"(2) the rating methods are actuarially sound.

Each insurer shall retain a copy of such statement for examination at its principal place of business.

"REQUIREMENTS FOR SMALL EMPLOYER HEALTH INSURANCE BENEFIT PACKAGE OFFERINGS

"SEC. 2113. (a) BASIC AND STANDARD BENEFIT PACKAGES.—

"(1) IN GENERAL.—If an insurer offers any health insurance plan to small employers in a State, the insurer shall also offer a health insurance plan providing for the standard benefit package defined in subsection (b) and a health insurance plan providing for the basic benefit package defined in subsection (c).

"(2) MANAGED CARE OPTION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), if an insurer offers a managed care plan in a State or a geographic area within a State to employers that are not small employers, the insurer must offer such managed care plan to small employers in the State or geographic area.

"(B) SIZE LIMITS.—An insurer may cease enrolling new small employer groups in a managed care plan if it ceases to enroll any new employer groups in such plan.

"(b) STANDARD BENEFIT PACKAGE.—

"(1) IN GENERAL.—Except as otherwise provided in this section, a health insurance plan providing for a standard benefit package shall be limited to payment for—

"(A) inpatient and outpatient hospital care, except that treatment for a mental disorder is subject to the special limitations described in subparagraph (E)(i);

"(B) inpatient and outpatient physicians' services, except that psychotherapy or counseling for a mental disorder is subject to the special limitations described in subparagraph (E)(ii);

"(C) diagnostic tests;

"(D) preventive services limited to—

"(i) prenatal care and well-baby care provided to children who are 1 year of age or younger;

"(ii) well child care;

"(iii) Pap smears;

"(iv) mammograms; and

"(v) colorectal screening services; and

"(E)(i) inpatient hospital care for a mental disorder for not less than 45 days per year, except that days of partial hospitalization or residential care may be substituted for days of inpatient care; and

"(ii) outpatient psychotherapy and counseling for a mental disorder for not less than 20 visits per year provided by a provider who is acting within the scope of State law and who—

"(I) is a physician; or

"(II) is a duly licensed or certified clinical psychologist or a duly licensed or certified clinical social worker, a duly licensed or certified equivalent mental health professional, or a clinic or center providing duly licensed or certified mental health services.

"(2) AMOUNT, SCOPE, AND DURATION OF CERTAIN BENEFITS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B) and in paragraph (3), a health insurance plan providing for a standard benefit package shall place no limits on the amount, scope, or duration of benefits described in subparagraphs (A) through (C) of paragraph (1).

"(B) PREVENTIVE SERVICES.—A health insurance plan providing for a standard benefit package may limit the amount, scope, and duration of preventive services described in subparagraph (D) of paragraph (1) provided that the amount, scope, and duration of such services are reasonably consistent with recommendations and periodicity schedules developed by appropriate medical experts.

"(3) EXCEPTIONS.—Paragraph (1) shall not be construed as requiring a plan to include payment for—

"(A) items and services that are not medically necessary;

"(B) routine physical examinations or preventive care (other than care and services described in subparagraph (D) of paragraph (1)); or

"(C) experimental services and procedures.

"(4) LIMITATION ON PREMIUMS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an insurer issuing a health insurance plan providing for a standard benefit package shall not require an employee to pay a monthly premium which exceeds 20 percent of the total monthly premium.

"(B) PART-TIME EMPLOYEE EXCEPTED.—In the case of a part-time employee, an insurer issuing a health insurance plan providing for a standard benefit package may require that such an employee pay a monthly premium that does not exceed 50 percent of the total monthly premium.

"(5) LIMITATION ON DEDUCTIBLES.—

"(A) IN GENERAL.—Except as permitted under subparagraph (B), a health insurance plan providing for a standard benefit package shall not provide a deductible amount for benefits provided in any plan year that exceeds—

"(i) with respect to benefits payable for items and services furnished to any employee with no family member enrolled under the plan, for a plan year beginning in—

"(I) a calendar year prior to 1993, $400; or

"(II) for a subsequent calendar year, the limitation specified in this clause for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as published by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year; and

"(ii) with respect to benefits payable for items and services furnished to any employee with a family member enrolled under the standard benefit package plan, for a plan year beginning in—

"(I) a calendar year prior to 1993, $400 per family member and $700 per family; or

"(II) for a subsequent calendar year, the limitation specified in this clause for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as published by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year. If the limitation computed under clause (i)(II) or (ii)(II) is not a multiple of $10, it shall be rounded to the next highest multiple of $10.

"(B) WAGE-RELATED DEDUCTIBLE.—A health insurance plan may provide for any other deductible amount instead of the limitations under—

"(i) subparagraph (A)(i), if such amount does not exceed (on an annualized basis) 1 percent of the total wages paid to the employee in the plan year; or

"(ii) subparagraph (A)(ii), if such amount does not exceed (on an annualized basis) 1 percent per family member or 2 percent per family of the total wages paid to the employee in the plan year.

"(6) LIMITATION ON COPAYMENTS AND COINSURANCE.—

"(A) IN GENERAL.—Subject to subparagraphs (B) through (D), a health insurance plan providing for a standard health benefit package may not require the payment of any copayment or coinsurance for an item or service for which coverage is required under this section—

"(i) in an amount that exceeds 20 percent of the amount payable for the item or service under the plan; or

"(ii) after an employee and family covered under the plan have incurred out-of-pocket expenses under the plan that are equal to the out-of-pocket limit (as defined in subparagraph (E)(ii)) for a plan year.

"(B) EXCEPTION FOR MANAGED CARE PLANS.—A health insurance plan that is a managed care plan may require payments in excess of the amount permitted under subparagraph (A) in the case of items and services furnished by nonparticipating providers.

"(C) EXCEPTION FOR IMPROPER UTILIZATION.—A health insurance plan may provide for copayment or coinsurance in excess of the amount permitted under subparagraph (A) for any item or service that an individual obtains without complying with procedures established by a managed care plan or under a utilization program to ensure the efficient and appropriate utilization of covered services.

"(D) EXCEPTIONS FOR MENTAL HEALTH CARE.—In the case of care described in paragraph (1)(E)(ii), a health insurance plan shall not require payment of any copayment or coinsurance for an item or service for which coverage is required by this part in an amount that exceeds 50 percent of the amount payable for the item or service.

"(7) LIMIT ON OUT-OF-POCKET EXPENSES.—

"(A) OUT-OF-POCKET EXPENSES DEFINED.—As used in this section, the term 'out-of-pocket expenses' means, with respect to an employee in a plan year, amounts payable under the plan as deductibles and coinsurance with respect to items and services provided under the plan and furnished in the plan year on behalf of the employee and family covered under the plan.

"(B) OUT-OF-POCKET LIMIT DEFINED.—As used in this section and except as provided in subparagraph (C), the term 'out-of-pocket limit' means for a plan year beginning in—

"(i) a calendar year prior to 1993, $3,000; or

"(ii) for a subsequent calendar year, the limit specified in this subparagraph for the previous calendar year increased by the percentage increase in the consumer price index for all urban consumers (United States city average, as published by the Bureau of Labor Statistics) for the 12-month period ending on September 30 of the preceding calendar year. If the limit computed under clause (ii) is not a multiple of $10, it shall be rounded to the next highest multiple of $10.

"(C) ALTERNATIVE OUT-OF-POCKET LIMIT.—A health insurance plan may provide for an out-of-pocket limit other than that defined in subparagraph (B) if, for a plan year with respect to an employee and the family of the employee, the limit does not exceed (on an annualized basis) 10 percent of the total wages paid to the employee in the plan year.

"(8) LIMITED PREEMPTION OF STATE MANDATED BENEFITS.—No State law or regulation in effect in a State that requires health insurance plans offered to small employers in the State to include specified items and services other than those specified by this subsection shall apply with respect to a health insurance plan providing for a standard benefit package offered by an insurer to a small employer.

"(c) BASIC BENEFITS PACKAGE.—

"(1) IN GENERAL.—A health insurance plan providing for a basic benefit package shall be limited to payment for—

"(A) inpatient and outpatient hospital care, including emergency services;

"(B) inpatient and outpatient physicians' services;

"(C) diagnostic tests;

"(D) preventive services (which may include one or more of the following services)—

"(i) prenatal care and well-baby care provided to children who are 1 year of age or younger;

"(ii) well-child care;

"(iii) Pap smears;

"(iv) mammograms; and

"(v) colorectal screening services.

"(2) COST-SHARING.—Each health insurance plan providing for the basic benefit package issued to a small employer by an insurer may impose premiums, deductibles, copayments, or other cost-sharing on enrollees of such plan.

"(3) OUT-OF-POCKET LIMIT.—Each health insurance plan providing for a basic benefit package shall provide for a limit on out-of-pocket expenses.

"(4) LIMITED PREEMPTION OF STATE MANDATED BENEFITS.—No State law or regulation in effect in a State that requires health insurance plans offered to small employers in the State to include specified items and services other than those described in this subsection shall apply with respect to a health insurance plan providing for a basic benefit package offered by an insurer to a small employer.".

PART III—TAX PENALTY ON NONCOMPLYING INSURERS

SEC. 121. EXCISE TAX ON PREMIUMS RECEIVED ON HEALTH INSURANCE POLICIES WHICH DO NOT MEET CERTAIN REQUIREMENTS.

(a) IN GENERAL.—Chapter 47 of the Internal Revenue Code of 1986 (relating to taxes on group health plans) is amended by adding at the end thereof the following new section:

"SEC. 5000A. FAILURE TO SATISFY CERTAIN STANDARDS FOR HEALTH INSURANCE.

"(a) GENERAL RULE.—In the case of any person issuing a health insurance plan to a small employer, there is hereby imposed a tax on the failure of such person to meet at any time during any taxable year the applicable requirements of title XXI of the Social Security Act. The Secretary of Health and Human Services shall determine whether any person meets the requirements of such title.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of tax imposed by subsection (a) by reason of 1 or more failures during a taxable year shall be equal to 25 percent of the gross premiums received during such taxable year with respect to all health insurance plans issued to a small employer by the person on whom such tax is imposed.

"(2) GROSS PREMIUMS.—For purposes of paragraph (1), gross premiums shall include any consideration received with respect to any accident and health insurance contract.

"(3) CONTROLLED GROUPS.—For purposes of paragraph (1)—

"(A) CONTROLLED GROUP OF CORPORATIONS.—All corporations which are members of the same controlled group of corporations shall be treated as 1 person. For purposes of the preceding sentence, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(B) PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, all trades or business (whether or not incorporated) which are under common control shall be treated as 1 person. The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

"(c) LIMITATION ON TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed by subsection (a) with respect to any failure for which it is established to the satisfaction of the Secretary that the person on whom the tax is imposed did not know, and exercising reasonable diligence would not have known, that such failure existed.

"(2) TAX NOT TO APPLY WHERE FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) with respect to any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the 1st date any of the persons on whom the tax is imposed knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

"(d) DEFINITIONS.—For purposes of this section:

"(1) HEALTH INSURANCE PLAN.—The term 'health insurance plan' means any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization group contract, and in States which have distinct licensure requirements, a multiple employer welfare arrangement, but does not include—

"(A) a self-insured health insurance plan; or

"(B) any of the following:

"(i) accident only, dental only, disability only, or long-term care only insurance,

"(ii) coverage issued as a supplement to liability insurance,

"(iii) workmen's compensation or similar insurance, or

"(iv) automobile medical-payment insurance.

"(2) SMALL EMPLOYER.—The term 'small employer' means, with respect to a calendar year, an employer that normally employs more than 1 but less than 51 eligible employees on a typical business day. For the purposes of this paragraph, the term 'employee' includes a self-employed individual.

"(3) ELIGIBLE EMPLOYEE.—The term 'eligible employee' means, with respect to an employer, an employee who normally performs on a monthly basis at least 30 hours of service per week for that employer.

"(4) PERSON.—The term 'person' means any person that offers a health insurance plan to a small employer, including a licensed insurance company, a prepaid hospital or medical service plan, a health maintenance organization, or in States which have distinct insurance licensure requirements, a multiple employer welfare arrangement.".

(b) NONDEDUCTIBILITY OF TAX.—Paragraph (6) of section 275(a) of such Code (relating to nondeductibility of certain taxes) is amended by inserting "47," after "46,".

(c) CLERICAL AMENDMENTS.—The table of sections for such chapter 47 is amended by adding at the end thereof the following new item:

"Sec. 5000A. Failure to satisfy certain standards for health insurance.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by subsections (a) and (c) shall take effect on the date of the enactment of this Act.

(2) NONDEDUCTIBILITY OF TAX.—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1991.

Subtitle B—Medicare and Medicaid Provisions

PART I—MEDICARE

SEC. 131. EXPERIMENTAL PROGRAM OFFERING CERTAIN MEDICARE BENEFICIARIES A CHOICE AMONG DIFFERENT TYPES OF BENEFIT OPTIONS.

(a) IN GENERAL.—Part C of title XVIII of the Social Security Act (42 U.S.C. 1395x et seq.) is amended by adding at the end the following new section:

"EXPERIMENTAL PROGRAM OFFERING BENEFICIARIES A CHOICE AMONG DIFFERENT TYPES OF BENEFIT OPTIONS

"SEC. 1893. (a) IN GENERAL.—The Secretary shall establish an experimental program under which the benefit options described in subsection (b) are offered in lieu of benefits otherwise provided under this title to a group of beneficiaries of such size and character as the Secretary shall determine.

"(b) BENEFIT OPTIONS DESCRIBED.—The benefit options described in this subsection are as follows:

"(1) MODIFIED STANDARD BENEFIT OPTION.—A benefit option composed of—

"(A) the benefits provided under this title, and

"(B) for each year in which a beneficiary does not file a claim under part B of this title, a benefit consisting of—

"(i) a 10 percent rebate of any premium paid under such part, or

"(ii) a $50 voucher,

for preventative health care services not covered under such part, which shall be payable to such beneficiary at the end of such year.

"(2) LOW-TECH AND LONG-TERM CARE OPTION.—A benefit option under which any beneficiary under this title may elect to receive long-term care rather than nonconventional procedures and drugs beginning from the date of such election.

"(3) EARLY BUY-IN OPTION.—A benefit option under which any beneficiary under this title may irrevocably elect during the year in which such beneficiary attains age 55 to receive the benefits provided under this title or the benefits provided under the comprehensive coverage program described in subsection (c).

"(c) COMPREHENSIVE COVERAGE PROGRAM.—

"(1) IN GENERAL.—The comprehensive coverage program described in this subsection shall provide to a beneficiary under this title electing such coverage the following benefits:

"(A) Benefits for medical expenses incurred for acute care, otherwise provided under this title, which exceed $30,000 per year.

"(B) Dental, vision, and hearing benefits.

"(C) Long-term care benefits.

"(2) $30,000 DEDUCTIBLE FOR ACUTE CARE.—For purposes of paragraph (1)(A), a beneficiary under this title electing the comprehensive coverage program shall be responsible (through self-insurance or private insurance) for medical expenses incurred for acute care up to $30,000 per year.

"(d) DEFINITIONS.—For purposes of this section—

"(1) ACUTE CARE.—The term 'acute care' means ________.

"(2) LONG-TERM CARE.—The term 'long-term care' means ________.

"(3) NONCONVENTIONAL PROCEDURES AND DRUGS.—The term 'nonconventional procedures and drugs' means ________.

"(e) REPORTS.—The Secretary shall evaluate the experimental program established under this section and submit to the Congress on an annual basis a report concerning the effectiveness of such program.".

(b) EFFECTIVE DATE.—The amendments made by this section shall be effective ________.

SEC. 132. COMBINED ANNUAL ACCOUNTING OF MEDICARE PART A AND B TRUST FUNDS.

(a) IN GENERAL.—Section 1817(b) of the Social Security Act (42 U.S.C. 1395i(b)) is amended by adding at the end of the matter following paragraph (4) the following new sentence: "The report provided for in paragraph (2) shall also include a statement of the combined assets of, and the combined disbursements made from, the Trust Fund and the Federal Supplementary Medical Insurance Trust Fund under part B of this title during the preceding fiscal year.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to reports made beginning on or after April 1, 1993.

SEC. 133. ESTABLISHMENT OF ADVISORY COUNCIL ON HOSPITAL REIMBURSEMENT PROCEDURES.

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall provide for the establishment of an Advisory Council on Hospital Reimbursement Procedures (hereafter in this section referred to as the "Council"). The Council shall consist of 15 members appointed by the Secretary, including representatives of—

(1) the American Hospital Association;

(2) the American Medical Association;

(3) the Health Insurance Association of America;

(4) hospitals and health care insurers; and

(5) the Health Care Financing Administration.

At least 5 of the members appointed by the Secretary to the Council shall be individuals employed as hospital administrators.

(b) DUTIES OF THE COUNCIL.—The Council shall within 2 years of the appointment of a majority of its members, submit a recommendation to the Secretary providing for a uniform hospital reimbursement form (as described in subsection (c)), which if adopted by the Secretary, would be the sole form to be utilized by the Health Care Financing Administration in processing claims submitted for payment to hospitals for in-patient services under title XVIII of the Social Security Act.

(c) CONTENTS OF UNIFORM REIMBURSEMENT FORM.—The uniform reimbursement form recommended by the Council under subsection (b) shall include the following data:

(1) A diagnosis of patients based on a uniform clinical data set.

(2) A uniform coding system of medical procedures used to treat patients.

(3) The amount and types of reimbursement requested for each procedure employed with respect to a patient including hospital services, physician's services, x-rays, diagnostic tests, rehabilitative services, and such other services as may be required to ensure that the form is comprehensive.

(d) COUNCIL REPORT OF COMPUTERIZATION OF BILLING.—The Council

(1) a survey of the current state of electronic billing;

(2) an analysis of the current and future impediments to the more extensive use of electronic billing;

(3) an analysis of the probable costs of increasing the volume and standardization of electronic billing in relation to the anticipated savings under title XVIII of the Social Security Act of instituting such a system of billing; and

(4) the Council's recommendations for further action that would facilitate the further use of electronic billing.

(e) DEVELOPMENT OF FORM BY HEALTH CARE FINANCING ADMINISTRATION IN ABSENCE OF COUNCIL ACTION.—If the Council fails within 2 years of the appointment of the majority of its members to recommend a uniform hospital reimbursement form under this section, the Secretary shall no later than 6 months after the date of such failure develop and promulgate such a form to be utilized for purposes of reimbursing providers under title XVIII of the Social Security Act.

SEC. 134. MEDICARE CENTERS OF EXCELLENCE DEMONSTRATION PROJECTS.

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall provide for 5 demonstration projects meeting the requirements of this section to be conducted in States submitting applications under this section. The demonstration projects conducted under this section shall provide for the designation of certain medical procedures which will only be reimbursed in a State under the medicare program under title XVIII of the Social Security Act if performed at a medicare center of excellence (hereafter in this section referred to as a "qualified center") located within the State with an application approved under this section.

(b) PROCEDURES DESIGNATED.—In order to be designated by the Secretary as a procedure, the performance of which will be reimbursed under the medicare program under title XVIII of the Social Security Act, the procedure must first be assessed by the Office of Health Technology Assessment of the Public Health Service and found to be—

(1) safe;

(2) effective;

(3) necessary to alleviate a life-threatening or seriously disabling condition; and

(4) a relatively low-volume procedure requiring a major case management effort.

(c) SELECTION OF CENTERS.—In order to be selected as a qualified center under this section a facility must be located in a State selected to be the site of one of the demonstration projects conducted under this section and the facility must demonstrate that it meets the following criteria:

(1) It must have written patient selection criteria to be utilized in determining suitable candidates for the procedure and the criteria must be based upon a patient's critical need for the procedure and a maximum likelihood of successful clinical outcome.

(2) It must have patient management plans and protocols that include the following:

(A) Therapeutic and valuative procedures for the acute and long-term management of a patient, including commonly encountered complications.

(B) Patient management and evaluation during the waiting and immediate post-discharge period, as well as in-hospital phases of the program for performing the procedure.

(C) Long-term management and evaluation, including education of the patient, liaison with the patient's attending physician, and the maintenance of active patient records for at least 5 years.

(3) It must commit a sufficient amount of resources and planning for performing a designated procedure, including at least the following:

(A) A proven expertise in medical, surgical, and other relevant areas to the procedure, including an identifiable medical team for performing the procedure, the members of which are board certified or otherwise approved by the Secretary.

(B) Component teams integrated into a comprehensive team with clearly defined leadership and corresponding responsibility.

(C) The facility must identify an anesthesia service team which will be available at all times to assist in performing the designated procedure.

(D) An infectious disease service with both the professional skills and laboratory resources to discover, identify, and manage the complications from a whole range of organisms, many of which are uncommonly encountered.

(E) Nursing teams identified as being trained in the special problems of managing patients who undergo the designated procedure.

(F) Pathology resources must be available for studying and reporting promptly any pathological responses to the procedure.

(G) Social service resources must be available.

(H) If the procedure involves organ transplantation, adequate plans must exist for organ procurement meeting legal and ethical criteria, as well as yielding viable transplantable organs in reasonable numbers.

(4) The facility must have overall facility plans and resources for a program that will provide a concentrated level of experience adequate to perform the procedure at a minimum level as specified by the Secretary.

(5) The facility must demonstrate survival rates with respect to the procedure at levels established by the Secretary.

(6) The facility must agree to maintain, and when requested, periodically submit data to the Secretary, in standard format, about patients selected, protocols used, and short-term and long-term outcomes on all patients who undergo the procedure in the facility.

(7) The facility must make available, directly or under arrangements, laboratory services (including blood banking) to meet the needs of patients receiving the procedure.

(d) REIMBURSEMENT OF A BENEFICIARY FOR TRAVEL.—In addition to the usual specified payment under title XVIII of the Social Security Act for a designated procedure the Secretary may provide, an individual entitled to benefits under title XVIII of such Act, reimbursement for travel to and from a qualified center if the individual resides more than 50 miles from such a center.

(e) APPROVAL OF APPLICATIONS.—The Secretary shall provide for the approval of applications submitted by States under this section to carry out demonstration projects by no later than 90 days after the receipt of such applications. If an application of a State to conduct a demonstration project under this section is not approved, the Secretary shall notify the State in writing of such disapproval and how the application may be amended to meet the requirements for approval.

(f) DURATION OF PROJECTS.—The Secretary shall provide that demonstration projects conducted in a State under this section shall be conducted for a period not to exceed 3 years.

(g) REPORT.—The Secretary shall by no later than 3 months after the date of expiration of the last demonstration project to be conducted under this section submit a report to Congress analyzing the results of the demonstration projects including recommendations for any permanent changes in the medicare program under title XVIII of the Social Security Act to incorporate methods and procedures tested under such projects.

SEC. 135. ESTABLISHMENT OF MEDICAL DIRECTIVE REGISTRY AND PROXY DESIGNATION FORM.

Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by inserting after section 1889 the following new section:

"MEDICAL DIRECTIVE REGISTRY

"SEC. 1890. (a) ESTABLISHMENT OF REGISTRY.—The Secretary shall provide for the establishment within the Department of Health and Human Services of a registry for the purpose of developing and disseminating a Medical Directive and Proxy Designation form, registering an official copy of each executed form, and providing certified copies of the form to appropriate physicians and other health care providers.

"(b) DEVELOPMENT OF FORM.—The Secretary shall by no later than January 1, 1993, after consultation with interested individuals and organizations, develop a Medical Directive and Proxy Designation form to be disseminated to individuals eligible for benefits under this title requesting such form or to health care providers requesting such form.

"(c) NOTIFICATION OF PROVIDERS AND INDIVIDUALS.—The Secretary shall, after the development of the form under subsection (b), take the necessary steps—

"(1) to inform both participating and nonparticipating primary care physicians of the availability of the form, who may execute it, and the responsibility of the physicians toward a patient who elects to execute such form; and

"(2) to inform individuals eligible for benefits under this title, of the availability and nature of the form and how it may be executed.

"(d) REGISTRY FEE.—The Secretary may charge a nominal fee to file a form with the Registry in such an amount as to cover the administrative costs incurred in operating the registry.".

PART II—MEDICAID

SEC. 141. DEMONSTRATION PROJECTS FOR IMPROVING ACCESS TO MEDICAID SERVICES IN MEDICALLY UNDERSERVED AREAS.

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall make grants to not more than ____ States submitting applications approved under this section for the purpose of conducting demonstration projects to improve access to health care services for individuals receiving medical assistance under title XIX of the Social Security Act in such States.

(b) DEMONSTRATION PROJECTS DESCRIBED.—

(1) AREAS WHERE DEMONSTRATION PROJECTS WILL BE CONDUCTED.—

(A) IN GENERAL.—The demonstration projects under this section shall be conducted—

(i) in areas which do not have adequate numbers of providers who will accept patients receiving medical assistance under title XIX of the Social Security Act, as demonstrated by the State, and

(ii) in areas in which a State can demonstrate that individuals receiving medical assistance under title XIX of the Social Security Act are overutilizing emergency room and similar services.

(B) NUMBER OF DEMONSTRATION PROJECTS IN PARTICULAR AREAS..—

(i) RURAL AREAS.—At least one-half of the demonstration projects conducted in areas described in subparagraph (A)(i) shall be conducted in rural areas.

(ii) URBAN AREAS.—At least one-half of the demonstration projects conducted in areas described in subparagraph (A)(ii) shall be conducted in urban areas.

(2) DESIGN OF DEMONSTRATION PROJECTS.—

(A) AREAS WITHOUT ADEQUATE PROVIDERS.—The demonstration projects to be conducted in areas described in paragraph (1)(A)(i) shall be designed to provide data and experience on—

(i) whether increasing the reimbursement rate available to providers serving individuals receiving medical assistance under title XIX of the Social Security Act—

(I) will induce health care providers in urban areas to set up full or part-time offices or clinics in rural areas; and

(II) will induce health care providers to provide services to individuals receiving medical assistance under title XIX of the Social Security Act; and

(ii) such other matters as the Secretary may request.

(B) AREAS WITH OVERUTILIZATION OF EMERGENCY ROOMS.—The demonstration projects to be conducted in areas described in paragraph (1)(A)(ii) shall be designed to provide data and experience on—

(i) whether increasing the reimbursement rate available to providers serving individuals receiving medical assistance under title XIX of the Social Security Act—

(I) will induce health care providers to provide services to individuals receiving medical assistance under title XIX of the Social Security Act; and

(II) will result in a decrease in the use of emergency room and similar services; and

(ii) such other matters as the Secretary may request.

(c) INCREASE IN REIMBURSEMENT RATES.—

(1) IN GENERAL.—Each State conducting a demonstration project under this section may increase reimbursement rates for health care providers up to the greater of—

(A) 150 percent of the reimbursement rates provided by such State, or

(B) 125 percent of usual and customary fees charged for services provided by such health care providers,

as in effect before the demonstration project.

(2) FEDERAL MATCH.—With respect to expenditures made by a State to increase reimbursement rates under paragraph (1), the Secretary shall pay to such State 90 percent of such expenditures.

(d) APPLICATIONS.—

(1) IN GENERAL.—An application for grants under this section shall be submitted by the Governor of a State and shall—

(A) contain a description of the proposed demonstration project;

(B) contain a statement that the proposed demonstration project will satisfy the requirements of subsection (b);

(C) contain an agreement by such State to expend the amounts required to increase reimbursement rates under subsection (c)(1) that are not paid by the Secretary under subsection (c)(2);

(D) contain an agreement by such State to participate in an evaluation of any demonstration project conducted by such State by an independent contractor selected by the Secretary in accordance with subsection (e)(1);

(E) contain an agreement by such State that the health care providers participating in the demonstration project will comply with certain quality standards specified by the Secretary; and

(F) contain such other information as the Secretary may require by regulation.

(2) CONSIDERATION AND PRIORITY OF APPLICATIONS.—The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this section and shall approve not more than ____ applications which appear likely to contribute significantly to the achievement of the purpose of this section. In selecting States to conduct demonstration projects under this section, the Secretary shall consider the geographic dispersion and variation in population of the applicants.

(e) EVALUATION AND REPORTS.—

(1) BY INDEPENDENT CONTRACTOR.—The Secretary shall select an independent contractor to monitor and evaluate each demonstration project conducted by a State under this section and such independent contractor shall submit a report to the Secretary concerning the results of the evaluation within 90 days of the termination of each such demonstration project.

(2) BY THE SECRETARY.—The Secretary shall, within 180 days of the termination of the last of the last of the demonstration projects under this section, conduct an evaluation of such demonstration projects and submit a report to the Congress concerning the effectiveness of such demonstration projects. Such report shall analyze the reports received by the Secretary under paragraph (1).

(f) DURATION.—A demonstration project provided under this section shall be conducted for a period not to exceed ____ years after the date of the enactment of this Act. The Secretary may terminate a project if the Secretary determines that the State conducting the project is not in substantial compliance with the terms of the application approved by the Secretary under this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $____________ to carry out the purposes of this Act.

SEC. 142. DEMONSTRATION PROJECTS PROVIDING MEDICAL ASSISTANCE TO CERTAIN UNINSURED INDIVIDUALS.

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall make grants to not more than 2 States submitting applications approved under this section for the purpose of conducting demonstration projects providing medical assistance under title XIX of the Social Security Act to certain individuals who have no health insurance coverage.

(b) DEMONSTRATION PROJECTS DESCRIBED.—

(1) IN GENERAL.—Each State conducting a demonstration project under this section shall reduce the nonessential health care services provided to certain individuals receiving medical assistance under title XIX of the Social Security Act and apply the cost savings resulting from such reduction in services to provide essential health care services to certain uninsured individuals who are currently ineligible for medical assistance under such Act.

(2) DETERMINATIONS BY THE SECRETARY.—The Secretary, in consultation with each State conducting a demonstration project under this section, shall determine—

(A) which services currently provided to individuals under title XIX of the Social Security Act are nonessential health care services subject to reduction by a State conducting a demonstration project under this section;

(B) which services currently provided to individuals under title XIX of such Act are essential health care services which will be made available to certain uninsured individuals by States conducting a demonstration project under this section; and

(C) eligibility criteria for uninsured individuals who are currently ineligible for medical assistance under title XIX of such Act to receive the essential health care services provided by a State conducting a demonstration project under this section.

(c) FEDERAL FUNDS.—With respect to expenditures made by a State conducting a demonstration project under this section to provide medical assistance under title XIX of the Social Security Act to uninsured individuals who are currently ineligible for medical assistance under title XIX such Act for essential health care services, the Secretary shall pay to such State 75 percent of such expenditures.

(d) APPLICATIONS.—

(1) IN GENERAL.—An application for grants under this section shall be submitted by the Governor of a State and shall—

(A) contain a description of the proposed demonstration project;

(B) contain an agreement by such State to participate in an evaluation of any demonstration project conducted by such State by an independent contractor selected by the Secretary in accordance with subsection (e)(1);

(C) contain an agreement by such State that the health care providers participating in the demonstration project will comply with certain quality standards specified by the Secretary;

(D) contain an agreement that such State will accept any outlay limitations negotiated as part of the application process; and

(E) contain such other information as the Secretary may require by regulation.

(2) CONSIDERATION AND PRIORITY OF APPLICATIONS.—The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this section and shall approve not more than 2 applications which appear likely to contribute significantly to the achievement of the purpose of this section. In selecting States to conduct demonstration projects under this section, the Secretary shall consider the geographic dispersion and variation in population of the applicants.

(e) EVALUATION AND REPORTS.—

(1) BY INDEPENDENT CONTRACTOR.—

(A) IN GENERAL.—The Secretary shall select an independent contractor to monitor and evaluate each demonstration project conducted by a State under this section and such independent contractor shall submit a report to the Secretary concerning the results of the evaluation within 90 days of the termination of each such demonstration project.

(B) CONTENTS OF REPORT.—The report submitted under subparagraph (A) shall contain—

(i) an evaluation of the effects of the demonstration projects conducted under this section on individuals who experienced a decrease in the nonessential health care services provided to such individuals, and

(ii) such other information as the Secretary shall require.

(2) BY THE SECRETARY.—The Secretary shall, within 180 days of the termination of the last of the last of the demonstration projects conducted under this section, conduct an evaluation of such demonstration projects and submit a report to the Congress concerning the effectiveness of such demonstration projects. Such report shall analyze the reports received by the Secretary under paragraph (1).

(f) DURATION.—A demonstration project provided under this section shall be conducted for a period not to exceed ____ years after the date of the enactment of this Act. The Secretary may terminate a project if the Secretary determines that the State conducting the project is not in substantial compliance with the terms of the application approved by the Secretary under this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $__________ to carry out the purposes of this Act.

SEC. 143. DEMONSTRATION PROJECTS PROVIDING OUTREACH ACTIVITIES TO INDIVIDUALS WHO MAY BE ELIGIBLE FOR CERTAIN MEDICAL ASSISTANCE.

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall make grants to not more than ____ States submitting applications approved under this section for the purpose of conducting demonstration projects providing outreach activities to individuals who may be eligible for medical assistance under title XIX of the Social Security Act, for health care services provided by migrant health centers (as defined in section 329 of the Public Health Service Act), or for health care services provided by community health centers (as defined in section 330 of the Public Health Service Act).

(b) DEMONSTRATION PROJECTS DESCRIBED.—

(1) TYPES OF OUTREACH ACTIVITIES.—Each State conducting a demonstration project under this section shall employ a variety of outreach activities designed to encourage eligible persons to receive needed health care services, including the following:

(A) media based outreach programs;

(B) outreach through local nonprofit organizations; and

(C) personal canvassing activities.

(2) TARGET GROUPS.—Each State conducting a demonstration project under this section may employ outreach activities that target particular groups in need of health care services.

(c) FEDERAL MATCHING FUNDS.—With respect to expenditures made by a State to provide medical assistance under title XIX of the Social Security Act, health care services through migrant health centers, or health care services through community health centers to an individual identified as eligible for such medical assistance or health care services through outreach activities conducted by such State under a demonstration project under this section, the Secretary shall pay to such State 90 percent of such expenditures incurred during the two year period commencing on the date such individual was determined eligible for such medical assistance or health care services.

(d) APPLICATIONS.—

(1) IN GENERAL.—An application for grants under this section shall be submitted by the Governor of a State and shall—

(A) contain a description of the proposed demonstration project;

(B) contain a statement that the proposed demonstration project will satisfy the requirements of subsection (b);

(C) contain an agreement by such State to expend the amounts required to provide medical assistance and health care services that are not paid by the Secretary under subsection (c);

(D) contain an agreement by such State to participate in an evaluation of any demonstration project conducted by such State by an independent contractor selected by the Secretary in accordance with subsection (e)(1);

(E) contain an agreement by such State that the health care providers participating in the demonstration project will comply with certain quality standards specified by the Secretary;

(F) contain an agreement that such State will accept any outlay limitations negotiated as part of the application process; and

(G) contain such other information as the Secretary may require by regulation.

(2) CONSIDERATION AND PRIORITY OF APPLICATIONS.—The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this section and shall approve not more than ____ applications which appear likely to contribute significantly to the achievement of the purpose of this section. In selecting States to conduct demonstration projects under this section, the Secretary shall consider the geographic dispersion and variation in population of the applicants.

(e) EVALUATION AND REPORTS.—

(1) BY INDEPENDENT CONTRACTOR.—

(A) IN GENERAL.—The Secretary shall select an independent contractor to monitor and evaluate each demonstration project conducted by a State under this section and such independent contractor shall submit a report to the Secretary concerning the results of the evaluation within 90 days of the termination of each such demonstration project.

(B) CONTENTS OF REPORT.—The report submitted under subparagraph (A) shall contain—

(i) an estimate of the number of individuals that could be reached under a nationwide program which employed the same outreach activities employed by each State,

(ii) an estimate of the cost of such a program, and

(iii) such other information as the Secretary shall require.

(2) BY THE SECRETARY.—The Secretary shall, within 180 days of the termination of the last of the last of the demonstration projects conducted under this section, conduct an evaluation of such demonstration projects and submit a report to the Congress concerning the effectiveness of such demonstration projects. Such report shall analyze the reports received by the Secretary under paragraph (1).

(f) DURATION.—A demonstration project provided under this section shall be conducted for a period not to exceed ____ years after the date of the enactment of this Act. The Secretary may terminate a project if the Secretary determines that the State conducting the project is not in substantial compliance with the terms of the application approved by the Secretary under this section.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $__________ to carry out the purposes of this Act.

SEC. 144. DEMONSTRATION PROJECTS TO REDUCE INFANT MORTALITY.

(a) IN GENERAL.—The Secretary of Health and Human Services (hereafter in this section referred to as the "Secretary") shall out of funds appropriated for the special supplemental food program under section 17 of the

Child Nutrition Act of 1966 (hereafter in this section referred to as the "WIC program"), the Maternal and Child Health Services Block Grant under title V of the Social Security Act (hereafter in this section referred to as the "MCH program"), and the medicaid program under title XIX of the Social Security Act provide for demonstration projects to test methods of reducing infant mortality as described in subsection (b).

(b) DEMONSTRATION PROJECTS DESCRIBED.—The Secretary shall provide for demonstration projects in up to 20 States submitting applications approved under this section to allow individuals in the State to apply for benefits under the WIC program, the MCH program, and the medicaid program at one location using one standardized form for establishment of eligibility for such programs.

(c) APPROVAL OF STATE APPLICATIONS.—In order to be approved under this section the State must submit an application to the Secretary that demonstrates that the State will—

(1) provide centralized locations where an individual may establish eligibility for the WIC program, the MCH program, and the medicaid program all in one location;

(2) develop and utilize a standardized form to allow an individual to apply for benefits under all such programs;

(3) support outreach activities to publicize the program's existence to potential eligibles, and to make funds available for transportation and child care to enable eligible mothers to make health care appointments; and

(4) submit an annual report to the Secretary on the status of the project and on any significant impediments to carrying out the project in the State.

(d) DURATION OF PROJECT.—The demonstration projects provided for in this section shall be conducted for a period of 3 years. The Secretary may cancel a project in a State if the Secretary determines that such project is not being conducted consistent with or satisfactorily under this section.

(e) ANNUAL GRANTS.—The Secretary shall from the funds described in subsection (a) make annual grants to States in the amount of $______________ to carry out demonstration projects under this section.

(f) ANNUAL REPORT.—The Secretary shall within 90 days after the completion of the last demonstration project under this section submit a report to Congress detailing the findings of such projects including legislative recommendations for changes in the WIC, MCH, or medicaid programs.

TITLE II—PUBLIC HEALTH SERVICE ACT PROVISIONS

SEC. 201. DISEASE PREVENTION EDUCATIONAL PROGRAM.

Part A of title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 310A. DISEASE PREVENTION EDUCATIONAL PROGRAM.

"(a) ESTABLISHMENT.—The Surgeon General shall establish and implement a 3 year public education program concerning the prevention of disease through changes in personal behaviors and the use of preventive care and screening.

"(b) ELEMENTS.—The Surgeon General shall ensure that the program established under subsection (a) involves a coordinated effort that utilizes the broadcast and print media, including public service announcements, activities that outreach to community groups, cooperative ventures entered into with businesses, and the design of school curricula for use in health education classes as well as presentations on preventive health issues.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $10,000,000 for fiscal year 1993, $20,000,000 for fiscal year 1994, and $20,000,000 for fiscal year 1995.".

SEC. 202. INCREASING ACCESS TO PRIMARY CARE.

(a) INCREASED FUNDING FOR COMMUNITY HEALTH CENTERS.—Section 330(g)(1)(A) of the Public Health Service Act (42 U.S.C. 254c(g)(1)(A)) is amended by striking out "each of the fiscal years 1992 through 1994" and inserting in lieu thereof "fiscal year 1992, $______,000,000 for fiscal year 1993, $______,000,000 for fiscal year 1994, and $______,000,000 for fiscal year 1995".

(b) USE OF AMOUNTS.—

(1) NEW CENTERS.—Additional amounts appropriated under the amendment made by subsection (a) in excess of the amount appropriated under section 330(g)(1)(A) of the Public Health Services Act for fiscal year 1992 shall be used for the establishment and operation of 250 new community health centers to be located in underserved areas or in areas with high concentrations of underserved target populations.

(2) EMERGENCY CARE.—Of the centers established under paragraph (1), the Secretary of Health and Human Services shall ensure that 20 of such centers are targeted toward the provision of emergency care in areas without such emergency care service.

(3) DIVISION OF FUNDS.—With respect to the amounts described in paragraph (1) for each fiscal year, the Secretary of Health and Human Services shall ensure that—

(A) not less than $160,000,000 shall be used for the establishment of new centers in fiscal year 1993;

(B)(i) not less than $90,000,000 shall be used for the establishment of new centers in fiscal year 1994; and

(ii) not less than $210,000,000 shall be used for the operation of such centers in fiscal year 1994; and

(C) not less than $290,000,000 shall be used for the operation of such centers in fiscal year 1995.

(c) REFOCUSING OF NATIONAL HEALTH SERVICE CORPS ASSIGNMENTS.—Section 333 of the Public Health Service Act (42 U.S.C. 254f) is amended by adding at the end thereof the following new subsection:

"(f)(1) The Corps shall revise its priorities in assigning members under this subpart to place and increased emphasis on demonstrated unmet need.

"(2) In carrying out paragraph (1), the Corps—

"(A) shall assign Corps personnel in a manner to increase the access of populations in health professional shortage areas (particularly infants and children, high-risk pregnant women, migrant workers and their families, drug and alcohol abusers, and the homeless) to primary medical care; and

"(B) should encourage primary care physicians to serve in community and migrant health centers, or in related health programs, or in underserved rural areas, and offer such physicians incentives for efficient private practice in such areas.

"(3) To carry out this subsection, the Secretary may award grants to public and nonprofit private entities.

"(4) To facilitate the implementation of this subsection, the Corps shall prepare a written plan describing the actions that the Corps will take under this subsection. The plan shall contain a description of measures by which it's success may be measured objectively. Upon the approval of the Secretary, the plan shall be published in the Federal Register.

"(5) There are authorized to be appropriate to carry out this section, $50,000,000 for fiscal year 1993, $100,000,000 for fiscal year 1994, and $100,000,000 for fiscal year 1995.".

SEC. 203. RESEARCH TO FOSTER INDEPENDENT LIVING.

Subpart 5 of part C of the Public Health Service Act (42 U.S.C. 285e et seq.) is amended by adding at the end thereof the following new section:

"SEC. 445G. RESEARCH TO FOSTER INDEPENDENT LIVING.

"(a) ESTABLISHMENT OF A CENTER.—There shall be established within the National Institute on Aging a Center for the Fostering of Independent Living (hereafter referred to as the 'Center'). The Center shall be headed by a Director, to be appointed by the Secretary, who shall report directly to the Director of the National Institute on Aging.

"(b) MISSION.—The Center shall conduct and support applied research, both social and scientific, concerning the manner in which to foster independent living among individuals suffering from impairments in their ability to perform activities of daily living. To carry out it's duties under this section, the Center shall have access to the scientific findings of the National Institute on Aging and the other institutes of the National Institutes of Health.

"(c) DUTIES.—The Center shall perform the following duties:

"(1) FUNCTIONAL ASSESSMENT AND EVALUATION OF THERAPIES.—The Center shall—

"(A) encourage the development of improved methods of assessing the ability of impaired individuals to function in a non-institutional setting; and

"(B) undertake an evaluation of the effectiveness of existing rehabilitative therapies.

"(2) ALLEVIATION OF DISABLING CONDITIONS.—The Center, in cooperation and consultation with the Food and Drug Administration, shall support the development and availability of drugs and devices such as those to—

"(A) eliminate falls or reduce their effect;

"(B) alleviate severe hearing or vision losses;

"(C) treat or correct urinary incontinence;

"(D) aid memory so as to combat wandering behavior and other severe consequences of memory deficits; and

"(E) compensate for losses in mobility.

"(3) LIVING ARRANGEMENTS.—The Center shall—

"(A) survey various types of living arrangements that would permit an individual implementing such arrangements to live independently;

"(B) develop or support methods to optimize the living arrangements described in subparagraph (A); and

"(C) conduct, or support the conduct of, one or more demonstration program concerning various living arrangements (except that no such demonstration may subsidize the living arrangements or care of any individual).

"(4) GUIDE TO INDEPENDENT LIVING.—The Center shall compile and publish a Guide to Independent Living which shall be widely distributed to elderly individuals, and provide such individuals with information concerning medical and technological developments, home and community-based services, and improved living arrangements, pertinent to aiding such individuals, particularly elderly individuals who are impaired, to remain within the community.

"(d) Technical Assistance.—The Center may provide technical assistance to States and local communities, and nonprofit organizations, to enable the recipients of such assistance to develop or implement improved arrangements to enable elderly individuals, particularly the elderly individuals who are impaired, to live independently.

"(e) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section, $5,000,000 for fiscal year 1993, $109,000,000 for fiscal year 1994, and $110,000,000 for fiscal year 1995.".

SEC. 204. MEDICAL TREATMENT OUTCOMES.

Title IX of the Public Health Service Act (42 U.S.C. 299 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 928. REPORTS.

"(a) Development of System.—The Secretary, acting through the Agency for Health Care Policy and Research, shall develop a system to produce comprehensive reports under this title concerning the performance of local and regional health care markets.

"(b) Contents.—Reports prepared under this section shall include a description—

"(1) of the local and regional health care market areas that are the subject of the report;

"(2) of the per capital allocation of hospital beds, physician, and other manpower in each such market;

"(3) of the utilization rates with respect to such markets; and

"(4) of certain health care market outcomes.

"(c) Use of Reports.—Reports prepared under this section may be used to support practice parameters and alternative strategies for encouraging and enhancing the delivery of appropriate health care and to contain health care capacity.".

TITLE III—PERMANENT HEALTH CARE REFORM

SEC. 301. SHORT TITLE.

This title may be cited as the "Consumer Choice Health Care Reform Act of 1992".

SEC. 302. PURPOSE.

The purposes of this title are to—

(1) make the American health care system responsive to consumer needs and encourage the provision of quality medical care at reasonable prices through enhanced competition;

(2) provide Americans with portable health insurance benefits and greater choice of health insurance plans;

(3) provide more equitable tax treatment of health insurance and medical care expenses; and

(4) assist low-income and uninsured Americans in purchasing health insurance and medical care.

Subtitle A—Tax Treatment of Health Care Expenses

SEC. 311. REFUNDABLE HEALTH CARE EXPENSES TAX CREDIT.

(a) In General.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable personal credits) is amended by inserting after section 34 the following new section:

"SEC. 34A. HEALTH CARE EXPENSES.

"(a) Allowance of Credit.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of—

"(1) 80 percent of the premiums for a qualified health plan paid by such individual during the taxable year which do not exceed the allowable limit, plus

"(2) 18 percent of such premiums which do exceed such limit, plus

"(3) 18 percent of the unreimbursed expenses for medical care paid by such individual during such taxable year.

"(b) Allowable Limit.—For purposes of this section—

"(1) In general.—The allowable limit for any taxable year is equal to $275, multiplied by the number of qualified individuals.

"(2) Qualified individuals.—

"(A) In general.—The term 'qualified individual' means the taxpayer, the spouse of the taxpayer, and each dependent of the taxpayer (as defined in section 152) who is enrolled in a qualified health plan.

"(B) Federally covered individuals.—The term 'qualified individual' does not include any individual whose medical care is covered under title XVIII or XIX of the Social Security Act or is provided by the Department of Veterans Affairs.

"(C) Special rule in the case of child of divorced parents, etc.—Any child to whom section 152(e) applies shall be treated as a dependent of both parents.

"(D) Marriage rules.—The determination of whether an individual is married at any time during the taxable year shall be made in accordance with the provisions of section 6013(d) (relating to determination of status as husband and wife).

"(3) Inflation adjustment.—In the case of any taxable year beginning in a calendar year after 1995, the dollar amount contained in paragraph (1) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 1994' for 'calendar year 1989' in subparagraph (B) thereof.

"(c) Qualified Health Plan.—For purposes of this section—

"(1) In general.—The term 'qualified health plan' means—

"(A) an employer-sponsored health insurance plan effective on the date of the enactment of this section, or

"(B) a federally qualified health insurance plan.

"(2) Federally qualified health insurance plan.—

"(A) In general.—The term 'federally qualified health insurance plan' means a health insurance plan which—

"(i) provides at least the following minimum coverage levels for medical care:

"(I) 80 percent of the cost of inpatient hospital services up to a 365-day per stay maximum.

"(II) 80 percent of the cost of outpatient hospital services.

"(III) Appropriate alternatives to hospital care.

"(IV) 75 percent of the cost of physician services.

"(V) 75 percent of the cost of prenatal, well-baby, and well-child care.

"(VI) 75 percent of the cost of diagnostic tests.

"(VII) 75 percent of the cost of inpatient prescription drugs.

"(VIII) 100 percent of the cost of emergency services;

"(ii) does not impose patient cost sharing requirements greater than—

"(I) total deductibles of $1,000 per individual or $2,000 per family per calendar year, and

"(II) total patient cost sharing of $5,000 per individual or family per calendar year;

"(iii) provides the policyholder with a contractual right to renew the policy which stipulates that the insurer cannot cancel or refuse to renew the policy except for cases of—

"(I) nonpayment of premiums by the policyholder,

"(II) fraud or misrepresentation by the policyholder, or

"(III) the insurer ceasing to do business in the State governing the insurance contract; and

"(iv) provides that the policyholder is charged renewal premiums based on a carrier-wide average percentage increase or decrease, and not on the claims experience, or changes in the health status, of the individual policyholder.

"(B) Actuarial equivalents allowed.—The term 'federally qualified health insurance plan' includes a health insurance plan with benefits the actuarial value of which are at least equivalent to the actuarial value of the benefits required under clauses (i) and (ii) of subparagraph (A).

"(d) Medical Care.—For purposes of this section—

"(1) In general.—The term 'medical care' means amounts paid—

"(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body, and

"(B) for transportation primarily for and essential to medical care referred to in subparagraph (A).

"(2) Amounts paid for certain lodging away from home treated as paid for medical care.—Amounts paid for lodging (not lavish or extravagant under the circumstances) while away from home primarily for and essential to medical care referred to in paragraph (1)(A) shall be treated as amounts paid for medical care if—

"(A) the medical care referred to in paragraph (1)(A) is provided by a physician in a licensed hospital (or in a medical care facility which is related to, or the equivalent of, a licensed hospital), and

"(B) there is no significant element of personal pleasure, recreation, or vacation in the travel away from home.

The amount taken into account under the preceding sentence shall not exceed $50 for each night for each individual.

"(3) Cosmetic surgery.—

"(A) In general.—The term 'medical care' does not include cosmetic surgery or other similar procedures, unless the surgery or procedure is necessary to ameliorate a deformity arising from, or directly related to, a congenital abnormality, a personal injury resulting from an accident or trauma, or disfiguring disease.

"(B) Cosmetic surgery defined.—For purposes of this paragraph, the term 'cosmetic surgery' means any procedure which is directed at improving the patient's appearance and does not meaningfully promote the proper function of the body or prevent or treat illness or disease.

"(4) Physician.—The term 'physician' has the meaning given to such term by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

"(e) Special Rules.—For purposes of this section—

"(1) Limitation with respect to medicine and drugs.—

"(A) In general.—An amount paid during the taxable year for medicine or a drug shall be taken into account under subsection (a) only if such medicine or drug is a prescribed drug or is insulin.

"(B) Prescribed drug.—The term 'prescribed drug' means a drug or biological which requires a prescription of a physician for its use by an individual.

"(2) SPECIAL RULE FOR DECEDENTS.—

"(A) TREATMENT OF EXPENSES PAID AFTER DEATH.—Expenses for the medical care of the taxpayer which are paid out of the taxpayer's estate during the 1-year period beginning with the day after the date of the taxpayer's death shall be treated as paid by the taxpayer at the time incurred.

"(B) LIMITATION.—Subparagraph (A) shall not apply if the amount paid is allowable under section 2053 as a deduction in computing the taxable estate of the decedent, but this subparagraph shall not apply if (within the time and in the manner and form prescribed by the Secretary) there is filed—

"(i) a statement that such amount has not been allowed as a deduction under section 2053, and

"(ii) a waiver of the right to have such amount allowed at any time as a deduction under section 2053.

"(3) FORM OF INSURANCE CONTRACT.—In the case of an insurance contract under which amounts are payable for other than medical care—

"(A) no amount shall be treated as paid for insurance to which subsection (a) applies unless the charge for such insurance is either separately stated in the contract, or furnished to the policyholder by the insurance company in a separate statement,

"(B) the amount taken into account as the amount paid for such insurance shall not exceed such charge, and

"(C) no amount shall be treated as paid for such insurance if the amount specified in the contract (or furnished to the policyholder by the insurance company in a separate statement) as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

"(4) EXCLUSION OF AMOUNTS ALLOWED FOR CARE OF CERTAIN DEPENDENTS.—Any expense allowed as a credit under section 21 shall not be treated as an expense paid for medical care.

"(5) COORDINATION WITH ADVANCE PAYMENT AND MINIMUM TAX.—Rules similar to the rules of subsections (g) and (h) of section 32 shall apply to any credit to which this section applies.

"(6) SUBSIDIZED EXPENSES.—No expense shall be treated as medical care if—

"(A) such expense is paid, reimbursed, or subsidized (whether by being disregarded for purposes of another program or otherwise) by the Federal Government, a State or local government, or any agency or instrumentality thereof, and

"(B) the payment, reimbursement, or subsidy of such expense is not includable in the gross income of the recipient.

"(7) SUBSIDIZED PREMIUMS.—Subsection (a) shall not apply to any premium with respect to which a deduction is allowable under section 220.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.".

(b) ADVANCE PAYMENT OF CREDIT.—Chapter 25 of the Internal Revenue Code of 1986 (relating to general provisions relating to employment taxes) is amended by inserting after section 3507 the following new section:

"SEC. 3507A. ADVANCE PAYMENT OF HEALTH EXPENSES CREDIT.

"(a) GENERAL RULE.—Except as otherwise provided in this section, every employer making payment of wages with respect to whom a health care expenses eligibility certificate is in effect shall, at the time of paying such wages, make an additional payment equal to such employee's health care expenses advance amount.

"(b) HEALTH CARE EXPENSES ELIGIBILITY CERTIFICATE.—For purposes of this title, a health care expenses eligibility certificate is a statement furnished by an employee to the employer which—

"(1) certifies that the employee will be eligible to receive the credit provided by section 34A for the taxable year,

"(2) certifies that the employee does not have a health care expenses eligibility certificate in effect for the calendar year with respect to the payment of wages by another employer,

"(3) states whether or not the employee's spouse has a health care expenses eligibility certificate in effect, and

"(4) estimates the amount of premiums for a qualified health plan and unreimbursed expenses for medical care (as defined in section 34A) for the calendar year.

For purposes of this section, a certificate shall be treated as being in effect with respect to a spouse if such a certificate will be in effect on the first status determination date following the date on which the employee furnishes the statement in question.

"(c) HEALTH CARE EXPENSES ADVANCE AMOUNT.—

"(1) IN GENERAL.—For purposes of this title, the term 'health expenses advance amount' means, with respect to any payroll period, the amount determined—

"(A) on the basis of the employee's wages from the employer for such period,

"(B) on the basis of the employee's estimated premiums for a qualified health plan and unreimbursed expenses for medical care included in the health care expenses eligibility certificate, and

"(C) in accordance with tables provided by the Secretary.

"(2) ADVANCE AMOUNT TABLES.—The tables referred to in paragraph (1)(C) shall be similar in form to the tables prescribed under section 3402 and, to the maximum extent feasible, shall be coordinated with such tables and the tables prescribed under section 3507(c).

"(d) OTHER RULES.—For purposes of this section, rules similar to the rules of subsections (d) and (e) of section 3507 shall apply.

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.".

(c) TERMINATION OF MEDICAL EXPENSE DEDUCTION.—Section 213 of the Internal Revenue Code of 1986 (relating to medical, dental, etc., expenses) is amended by adding at the end thereof the following new subsection:

"(g) TERMINATION.—No amount paid after December 31, 1994, shall be treated as an expense paid for medical care.".

(d) TERMINATION OF HEALTH INSURANCE CREDIT.—Section 32 of the Internal Revenue Code of 1986 (relating to earned income credit) is amended by adding at the end thereof the following new subsection:

"(d) TERMINATION OF HEALTH INSURANCE CREDIT.—In the case of taxable years beginning after December 31, 1994, the health insurance credit percentage shall be equal to 0 percent.".

(e) CLERICAL AMENDMENTS.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 34 the following new item:

"Sec. 34A. Health care expenses.".

(2) The table of sections for chapter 25 of such Code is amended by adding after the item relating to section 3507 the following new item:

"Sec. 3507A. Advance payment of health care expenses credit.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1994.

SEC. 312. DEDUCTION FOR EMPLOYER-PROVIDED HEALTH INSURANCE PREMIUMS.

(a) IN GENERAL.—Part VII of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 220 as section 221 and by inserting after section 219 the following new section:

"SEC. 220. EMPLOYER-PROVIDED HEALTH INSURANCE PREMIUMS.

"(a) DEDUCTION ALLOWED.—In the case of an individual, there shall be allowed as a deduction the applicable percentage of the premiums paid by an employer for coverage under a qualified health plan (as defined in section 34A(c)(1)) for the individual, the individual's spouse, or a dependent (as defined in section 152).

"(b) APPLICABLE PERCENTAGE.—For purposes of subsection (a), the applicable percentage is 100 percent, reduced (but not below 0 percent) by 20 percentage points in each taxable year beginning after December 31, 1993.".

(b) DEDUCTION ALLOWABLE IN ARRIVING AT ADJUSTED GROSS INCOME.—Subsection (a) of section 62 of the Internal Revenue Code of 1986 (defining adjusted gross income) is amended by adding at the end thereof the following new paragraph:

"(14) EMPLOYER-PROVIDED HEALTH INSURANCE PREMIUMS.—The deduction allowed by section 220.".

(c) REPEAL OF EXCLUSION FOR EMPLOYER-PROVIDED HEALTH INSURANCE.—Section 106 of the Internal Revenue Code of 1986 (relating to contributions by employer to accident and health plans) is repealed.

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 220 and inserting after the item relating to section 219 the following new items:

"Sec. 220. Employer-provided health insurance premiums.

"Sec. 221. Cross references.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 313. LIMITATION ON BUSINESS DEDUCTION OF PREMIUMS.

(a) IN GENERAL.—Section 162 of the Internal Revenue Code of 1986 (relating to trade or business expenses) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) OVERALL DOLLAR LIMITATION ON HEALTH INSURANCE COSTS.—No deduction shall be allowed under this section, including subsection (l), for employer-provided health insurance to the extent that the amount of such deduction exceeds the number of employees covered by such insurance for the taxable year, multiplied by the national average premium determined by the Secretary for such taxable year of a federally qualified health insurance plan (as defined in section 34A(c)(2)).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1994.

SEC. 314. MEDICAL SAVINGS ACCOUNTS.

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals), as amended by section 312, is amended by redesignating section 221 as section 222 and by inserting after section 220 the following new section:

"SEC. 221. MEDICAL SAVINGS ACCOUNTS.

"(a) DEDUCTION ALLOWED.—In the case of an individual, there shall be allowed as a deduction amounts paid in cash during the taxable year by or on behalf of such individual to a medical savings account.

"(b) LIMITATION.—

"(1) IN GENERAL.—The amount allowable as a deduction under subsection (a) to an individual for the taxable year shall not exceed the lesser of—

"(A) the applicable limit, or

"(B) the compensation (as defined in section 219(f)) includible in the individual's gross income for the taxable year.

"(2) APPLICABLE LIMIT.—For purposes of paragraph (1), the applicable limit is the sum of—

"(A) $4,800, plus

"(B) $600 for each individual who is a dependent (as defined in section 152) of the individual for whose benefit the account is established.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) MEDICAL SAVINGS ACCOUNT.—The term 'medical savings account' means a trust created or organized in the United States exclusively for the purpose of paying the qualified medical expenses of the individual for whose benefit the trust is established, but only if the written governing instrument creating the trust meets the following requirements:

"(A) No contribution will be accepted unless it is in cash and contributions will not be accepted for any taxable year in excess of the applicable limit (as defined in subsection (b)(2)).

"(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section.

"(C) No part of the trust assets will be invested in life insurance contracts.

"(D) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

"(2) QUALIFIED MEDICAL EXPENSES.—The term 'qualified medical expenses' means amounts paid by the individual for whose benefit the account was established for medical care (as defined in section 34A(d)) of such individual, the spouse of such individual, and any dependent (as defined in section 152) of such individual, but only to the extent such amounts are not compensated for by insurance or otherwise.

"(3) TIME WHEN CONTRIBUTIONS DEEMED MADE.—A taxpayer shall be deemed to have made a contribution on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

"(d) TAX TREATMENT OF DISTRIBUTIONS.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, any amount paid or distributed out of a medical savings account shall be included in the gross income of the individual for whose benefit such account was established unless such amount is used exclusively to pay the qualified medical expenses of such individual.

"(2) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—Paragraph (1) shall not apply to the distribution of any contribution paid during a taxable year to a medical savings account to the extent that such contribution exceeds the amount allowable as a deduction under subsection (a) if—

"(A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,

"(B) no deduction is allowed under subsection (a) with respect to such excess contribution, and

"(C) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in subparagraph (C) shall be included in the gross income of the individual for the taxable year in which it is received.

"(e) TAX TREATMENT OF ACCOUNTS.—

"(1) ACCOUNT TAXED AS GRANTOR TRUST.—

"(A) IN GENERAL.—The individual for whose benefit a medical savings account is established shall be treated for purposes of this title as the owner thereof and shall be subject to tax thereon in accordance with subpart E of part I of subchapter J of this chapter (relating to grantors and others treated as substantial owners).

"(B) EXCLUSION FROM GROSS INCOME FOR $300 OF EARNINGS.—Notwithstanding subparagraph (A), an amount shall be includible in the gross income of an individual for a taxable year by reason of subparagraph (A) only to the extent such amount exceeds $300.

"(2) LOSS OF EXEMPTION OF ACCOUNT WHERE INDIVIDUAL ENGAGES IN PROHIBITED TRANSACTION.—

"(A) IN GENERAL.—If, during any taxable year of the individual for whose benefit the medical savings account was established, such individual engages in any transaction prohibited by section 4975 with respect to the account, the account ceases to be a medical savings account as of the first day of that taxable year.

"(B) ACCOUNT TREATED AS DISTRIBUTING ALL ITS ASSETS.—In any case in which any account ceases to be a medical savings account by reason of subparagraph (A) on the first day of any taxable year, paragraph (1) of subsection (d) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

"(3) EFFECT OF PLEDGING ACCOUNT AS SECURITY.—If, during any taxable year, the individual for whose benefit a medical savings account was established uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed to that individual.

"(f) ADDITIONAL TAX ON CERTAIN AMOUNTS INCLUDED IN GROSS INCOME.—

"(1) DISTRIBUTION NOT USED FOR QUALIFIED MEDICAL EXPENSES.—If a distribution from a medical savings account is made, and not used to pay the qualified medical expenses of the individual for whose benefit the account was established, the tax liability of such individual for the taxable year in which such distribution is received shall be increased by an amount equal to 10 percent of the amount of the distribution which is includible in gross income for such taxable year.

"(2) DISQUALIFICATION CASES.—If an amount is includible in the gross income of an individual for a taxable year under subsection (e), his tax under this chapter for such taxable year shall be increased by an amount equal to 10 percent of such amount includible in his gross income.

"(3) DISABILITY OR DEATH CASES.—Paragraphs (1) and (2) do not apply if the payment or distribution is made after the individual for whose benefit the medical savings account was established becomes disabled within the meaning of section 72(m)(7) or dies.

"(g) SPECIAL RULES.—

"(1) COMMUNITY PROPERTY LAWS.—This section shall be applied without regard to any community property laws.

"(2) CUSTODIAL ACCOUNTS.—For purposes of this section, a custodial account shall be treated as a trust if—

"(A) the assets of such account are held by a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which he will administer the account will be consistent with the requirements of this section, and

"(B) the custodial account would, except for the fact that it is not a trust, constitute a medical savings account described in subsection (c).

For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

"(h) INFLATION ADJUSTMENT.—

"(1) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 1995, each applicable dollar amount shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment for the calendar year in which the taxable year begins.

"(2) COST-OF-LIVING ADJUSTMENT.—For purposes of paragraph (1), the cost-of-living adjustment for any calendar year is the percentage (if any) by which—

"(A) the deemed average total wages (as defined in section 209(k) of the Social Security Act) for the preceding calendar year, exceeds

"(B) the deemed average total wages (as so defined) for calendar year 1994.

"(3) APPLICABLE DOLLAR AMOUNT.—For purposes of paragraph (1), the term 'applicable dollar amount' means—

"(A) the $4,800 and $600 amounts in subsection (b), and

"(B) the $300 amount in subsection (e)(1).

"(4) ROUNDING.—If any amount as adjusted under paragraph (1) is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10 (or, if such amount is a multiple of $5 and not of $10, such amount shall be rounded to the next highest multiple of $10).

"(i) REPORTS.—The trustee of a medical savings account shall make such reports regarding such account to the Secretary and to the individual for whose benefit the account is maintained with respect to contributions, distributions, and such other matters as the Secretary may require under regulations. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations.".

(b) DEDUCTION ALLOWED IN ARRIVING AT ADJUSTED GROSS INCOME.—Paragraph (7) of section 62(a) of such Code (relating to retirement savings) is amended—

(1) by inserting "OR MEDICAL EXPENSE" after "RETIREMENT" in the heading of such paragraph, and

(2) by inserting before the period at the end thereof the following: "and the deduction allowed by section 221 (relating to deduction of

certain payments to medical savings accounts)".

(c) TAX ON EXCESS CONTRIBUTIONS.—Section 4973 of such Code (relating to tax on excess contributions to individual retirement accounts, certain section 403(b) contracts, and certain individual retirement annuities) is amended—

(1) by inserting "**MEDICAL SAVINGS ACCOUNTS**," after "accounts," in the heading of such section,

(2) by redesignating paragraph (2) of subsection (a) as paragraph (3) and by inserting after paragraph (1) the following:

"(2) a medical savings account (within the meaning of section 221(c)),",

(3) by striking "or" at the end of paragraph (1) of subsection (a), and

(4) by adding at the end thereof the following new subsection:

"(d) EXCESS CONTRIBUTIONS TO MEDICAL SAVINGS ACCOUNTS.—For purposes of this section, in the case of a medical savings account, the term 'excess contributions' means the amount by which the amount contributed for the taxable year to the account exceeds the amount allowable as a deduction under section 221 for such taxable year. For purposes of this subsection, any contribution which is distributed out of the medical savings account and a distribution to which section 221(d)(2) applies shall be treated as an amount not contributed.".

(d) TAX ON PROHIBITED TRANSACTIONS.—Section 4975 of such Code (relating to prohibited transactions) is amended—

(1) by adding at the end of subsection (c) the following new paragraph:

"(4) SPECIAL RULE FOR MEDICAL SAVINGS ACCOUNTS.—An individual for whose benefit a medical savings account is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a medical savings account by reason of the application of section 221(e)(2)(A) to such account.", and

(2) by inserting "or a medical savings account described in section 221(c)" in subsection (e)(1) after "described in section 408(a)".

(e) FAILURE TO PROVIDE REPORTS ON MEDICAL SAVINGS ACCOUNTS.—Section 6693 of such Code (relating to failure to provide reports on individual retirement account or annuities) is amended—

(1) by inserting "**OR ON MEDICAL SAVINGS ACCOUNTS**" after "**ANNUITIES**" in the heading of such section, and

(2) by adding at the end of subsection (a) the following: "The person required by section 221(i) to file a report regarding a medical savings account at the time and in the manner required by such section shall pay a penalty of $50 for each failure unless it is shown that such failure is due to reasonable cause.".

(f) CLERICAL AMENDMENTS.—

(1) The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the item relating to section 221 and inserting the following:

"Sec. 221. Medical savings accounts.

"Sec. 222. Cross references.".

(2) The table of sections for chapter 43 of such Code is amended by striking the item relating to section 4973 and inserting the following:

"Sec. 4973. Tax on excess contributions to individual retirement accounts, medical savings accounts, certain 403(b) contracts, and certain individual retirement annuities.".

(3) The table of sections for subchapter B of chapter 68 of such Code is amended by inserting "or on medical savings accounts" after "annuities" in the item relating to section 6693.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1994.

Subtitle B—Health Insurance Requirements

SEC. 321. GENERAL REQUIREMENTS OF EMPLOYERS.

(a) PREMIUMS WITHHELD.—Each employer which does not provide an employer-sponsored health insurance plan for the employees of such employer shall—

(1) withhold from each employee's wages the amount of the employee's health insurance premium and remit such premium to the insurance plan of the employee's choice according to an agreed upon schedule, and

(2) within the first 30 days of any calendar year or the date of the hire of an employee, notify each employee of the employee's right to claim a tax credit for such premium under section 34A of the Internal Revenue Code of 1986.

(b) TREATMENT OF EMPLOYER'S CONTRIBUTION TO HEALTH PLAN.—

(1) IN GENERAL.—In the case of an employer contributing in whole or in part to an employer-sponsored health insurance plan, the employer shall, within the first 30 days of any calendar year or the date of the hire of an employee, notify each employee participating in the plan—

(A) of the amount spent by the employer on the employee's health insurance, and

(B) of the employee's right to elect to claim a tax deduction under section 220 of the Internal Revenue Code of 1986 and the applicable percentage of the premiums eligible for such deduction for the taxable year.

(2) AMOUNT OF CONTRIBUTION.—If an employer makes a contribution described in paragraph (1), the amount of such contribution shall equal the greater of—

(A) the average employer contribution for the applicable coverage (single or family) for the plan in which the employee is enrolled, or

(B) the largest such contribution made by the employer for any pay period beginning with the last pay period preceding such calendar year, and ending with the first pay period of such calendar year.

(3) INCLUSION IN GROSS INCOME.—Any amount described in paragraph (2) shall be added to the cash wages of the employee.

(4) HOLD HARMLESS.—Each employer shall hold employees harmless for the employer's share of any payroll taxes due on wages previously excluded from taxable income under section 106 of the Internal Revenue Code of 1986.

(c) REPORT TO STATE.—Each employer shall report to the appropriate State agency the health insurance coverage status of each employee and the employee's dependents and any changes with respect to such status or dependents.

(d) EFFECTIVE DATE.—The requirements under subsections (a), (b), and (c) shall apply with respect to calendar year 1995 and thereafter.

SEC. 322. REQUIREMENTS WITH RESPECT TO CONVERSION OF NON-SELF-INSURED PLANS.

In the case of an employer-sponsored health insurance plan in force on January 1, 1995, and which is not, or was not, a self-insured plan, the insurer from whom the plan was purchased shall—

(1) provide within the 90-day period beginning on such date all employees and their dependents participating in the plan on the last day it is, or was, in force, the option to convert their coverage to a federally qualified health insurance plan (as defined in section 34A(c)(2) of the Internal Revenue Code of 1986, and

(2) offer such coverage at rates which vary no more than 25 percent from the rates charged for individual and family coverage under the employer-sponsored plan on the last day it is, or was, in force.

SEC. 323. REQUIREMENTS WITH RESPECT TO EXISTING SELF-INSURED PLANS.

(a) IN GENERAL.—In the case of an employer-sponsored health insurance plan in force on January 1, 1995, and which is, or was, a self-insured plan, the employer sponsoring the plan may, at anytime following such date sell, transfer, or assign the plan to any existing or new, subsidiary, corporation, insurer, union, cooperative or association, willing to become the new sponsor of the plan, except that—

(1) such sale, transfer, or assignment may not take effect unless first approved by a two-thirds majority vote of all the primary-insured beneficiaries of the plan, and

(2) the terms or conditions and benefits or coverage of the plan, and the eligibility criteria for participation in the plan, may not be altered before January 1, 1995.

(b) PROVISIONS GOVERNING PLAN.—As of January 1, 1995, the sponsor of the plan described in subsection (a) becomes subject to all laws governing the operation of a corporation selling health insurance in the applicable State or States and to the provisions of section 322.

(c) PRIOR TERMINATION.—Any beneficiary of a self-insured plan who voluntarily terminates coverage under such a plan before January 31, 1995, forfeits the right to receive the value of the beneficiary's coverage in cash.

SEC. 324. ENFORCEMENT.

(a) IN GENERAL.—Chapter 47 of the Internal Revenue Code of 1986 (relating to excise taxes on qualified pension, etc. plans), as amended by section 121, is further amended by inserting after section 5000A the following new sections:

"SEC. 5000B. FAILURE OF EMPLOYERS WITH RESPECT TO HEALTH INSURANCE.

"(a) GENERAL RULE.—There is hereby imposed a tax on the failure of any person to comply with the requirements of section 322 of the Consumer Choice Health Care Reform Act of 1992 with respect to any employee of the person.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) on any failure with respect to an employee shall be $______ for each day in the noncompliance period with respect to such failure.

"(2) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure, the period—

"(A) beginning on the date such failure first occurs, and

"(B) ending on the date such failure is corrected.

"(3) CORRECTION.—A failure of a person to comply with the requirements of section 322 of the Consumer Choice Health Care Reform Act of 1992 with respect to any employee of the person shall be treated as corrected if—

"(A) such failure is retroactively undone to the extent possible, and

"(B) the employee is placed in a financial position which is as good as such employee would have been in had such failure not occurred.

"(c) LIMITATIONS ON AMOUNT OF TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that none of the persons referred to in subsection (d) knew, or exercising reasonable diligence would have known, that such failure existed.

"(2) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the first date any of the persons referred to in subsection (d) knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

"(d) LIABILITY FOR TAX.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the following shall be liable for the tax imposed by subsection (a) on a failure:

"(A) In the case of a health insurance plan other than a multiemployer plan, the employer.

"(B) In the case of a multiemployer plan, the plan.

"(C) Each person who is responsible (other than in a capacity as an employee) for administering or providing benefits under the health insurance plan and whose act or failure to act caused (in whole or in part) the failure.

"(2) SPECIAL RULES FOR PERSONS DESCRIBED IN PARAGRAPH (1)(C).—A person described in subparagraph (C) (and not in subparagraphs (A) and (B)) of paragraph (1) shall be liable for the tax imposed by subsection (a) on any failure only if such person assumed (under a legally enforceable written agreement) responsibility for the performance of the act to which the failure relates.

"SEC. 5000C. FAILURE OF CARRIERS WITH RESPECT TO HEALTH INSURANCE.

"(a) GENERAL RULE.—There is hereby imposed a tax on the failure of any person carrier offering any health insurance plan to comply with the requirements of section 323 of the Consumer Choice Health Care Reform Act of 1992.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of tax imposed by subsection (a) by reason of 1 or more failures during a taxable year shall be equal to ____ percent of the gross premiums received during such taxable year with respect to all health insurance plans issued by the carrier on whom such tax is imposed.

"(2) GROSS PREMIUMS.—For purposes of paragraph (1), gross premiums shall include any consideration received with respect to any health insurance contract.

"(3) CONTROLLED GROUPS.—For purposes of paragraph (1)—

"(A) CONTROLLED GROUP OF CORPORATIONS.—All corporations which are members of the same controlled group of corporations shall be treated as 1 carrier. For purposes of the preceding sentence, the term 'controlled group of corporations' has the meaning given to such term by section 1563(a), except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(ii) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

"(B) PARTNERSHIPS, PROPRIETORSHIPS, ETC., WHICH ARE UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, all trades or business (whether or not incorporated) which are under common control shall be treated as 1 carrier. The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

"(c) LIMITATION ON TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed by subsection (a) with respect to any failure for which it is established to the satisfaction of the Secretary that the carrier on whom the tax is imposed did not know, and exercising reasonable diligence would not have known, that such failure existed.

"(2) TAX NOT TO APPLY WHERE FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) with respect to any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the 1st date any of the carriers on whom the tax is imposed knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.".

(b) CLERICAL AMENDMENTS.—The table of sections for such chapter 47 is amended by adding at the end thereof the following new items:

"Sec. 5000B. Failure of employers with respect to health insurance.

"Sec. 5000C. Failure of carriers with respect to health insurance.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1995.

SEC. 325. CONTINUATION OF EMPLOYER-PROVIDED HEALTH COVERAGE REQUIRED FOR MAXIMUM OF 60 MONTHS.

(a) IN GENERAL.—Clause (i) of section 4980B(f)(2)(B) of the Internal Revenue Code of 1986 (relating to period of coverage) is amended to read as follows:

"(i) MAXIMUM REQUIRED PERIOD.—

"(I) IN GENERAL.—The date which is 60 months after the date of the qualifying event.

"(II) SPECIAL RULE FOR CERTAIN BANKRUPTCY PROCEEDINGS.—In the case of a qualifying event described in paragraph (3)(F) (relating to bankruptcy proceedings), the date of the death of the covered employee or qualified beneficiary (described in subsection (g)(1)(D)(iii)), or in the case of the surviving spouse or dependent children of the covered employee, 60 months after the date of the death of the covered employee.

"(III) QUALIFYING EVENT INVOLVING MEDICARE ENTITLEMENT.—In the case of an event described in paragraph (3)(D) (without regard to whether such event is a qualifying event), the period of coverage for qualified beneficiaries other than the covered employee for such event or any subsequent qualifying event shall not terminate before the close of the 60-month period beginning on the date the covered employee becomes entitled to benefits under title XVIII of the Social Security Act."

(b) CONFORMING AMENDMENTS.—

(1) Subsection (e) of section 8905a of title 5, United States Code, is amended to read as follows:

"(e) Continued coverage under this section may not extend beyond the date which is 60 months after the date the individual first meets the requirements of subsection (b)."

(2) Subsection (f) of section 8905a of such title 5 is amended—

(A) by striking "(subject to paragraph (3)) extend beyond the date which is 36 months" and inserting "extend beyond the date which is 60 months", and

(B) by striking paragraph (3).

(c) TECHNICAL AMENDMENT.—The last sentence of section 4980B(f)(2)(C) of such Code is amended by striking "described in subclause (I) or (II) of subparagraph (B)(i)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) qualifying events occurring after the date of the enactment of this Act, and

(2) qualifying events occurring on or before such date if the period of continuation coverage required under section 4980B of the Internal Revenue Code of 1986 (determined without regard to the amendments made by this section) has not expired on or before such date.

Subtitle C—State Plan Requirements

SEC. 331. STATE PLAN REQUIREMENTS.

(a) IN GENERAL.—As a condition of receiving Federal funds for health care programs after December 31, 1994, each State shall meet the requirements of the following subsections.

(b) HEALTH PLANS FOR UNINSURED.—The requirement of this subsection is to establish a program to provide health insurance coverage at least equal to that of the federally qualified health insurance plans (as defined in section 34A(c)(2) of the Internal Revenue Code of 1986) to residents who refuse to voluntarily purchase such insurance coverage privately. Such coverage may be through—

(1) the State's program under title XIX of the Social Security Act,

(2) an existing or new State health care program, or

(3) any private insurer the State contracts with for this purpose.

(c) ENROLLMENT IN PLAN.—The requirement of this subsection is to identify and automatically enroll uninsured individuals in the program, except that—

(1) the State may charge any such individual a premium for coverage under the program which the State deems appropriate given the cost of coverage and the individual's ability to pay, and

(2) any such individual may, upon submitting proof of having purchased a federally qualified private health insurance plan, terminate coverage under the State program without penalty.

(d) MONITORING.—The requirement of this subsection is to designate or create an office of the State government to monitor the health insurance coverage status of workers and their dependents residing in the State for the purposes of—

(1) determining eligibility for State health care assistance programs, and

(2) monitoring and enforcing compliance with the requirement for individuals and families to obtain minimum health insurance coverage.

Subtitle D—Federal Preemption

SEC. 341. FEDERAL PREEMPTION OF CERTAIN STATE LAWS.

All State laws in existence on January 1, 1995, in the following areas are preempted for a period of 5 years:

(1) MANDATED INSURANCE BENEFIT LAWS.—Laws requiring health insurance policies to cover specific diseases, services, or providers.

(2) ANTI-MANAGED CARE LAWS.—Laws restricting the ability of managed care plans to selectively contract with providers of their choice.

(3) MANDATED COST-SHARING LAWS.—Laws restricting the extent to which insurers may require enrollee cost sharing as part of their plans, or restricting the extent to which managed care plans may impose different levels of cost sharing on enrollee claims for treatment by providers not participating in the plan.

(4) CERTIFICATE OF NEED LAWS.—Any laws requiring State or local government approval of capital purchases or construction by health care providers, which do not also apply to businesses, industries or individuals not engaged in the delivery of health care services.

Subtitle E—Medicaid Reform

SEC. 351. NEW FEDERAL-STATE ROLE UNDER MEDICAID.

(a) IN GENERAL.—Section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended to read as follows:

"(b)(1) Except as provided in paragraph (2), the term 'Federal medical assistance percentage' for any State shall be 100 per centum for medical assistance other than long-term care assistance.

"(2) The Federal medical assistance percentage shall be 100 per centum with respect to amounts expended as medical assistance for services which are received through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 4 of the Indian Health Care Improvement Act).

"(3) For purposes of this section, the term 'long-term care assistance' means medical assistance which is remedial care recognized under State law as specified by the Secretary, including services described in paragraphs (7), (14), (15), (18), (19), (20), (23), and (24) of subsection (a).".

(b) ALL POVERTY-LEVEL INDIVIDUALS COVERED.—Subclause (I) of section 1902(a)(10)(A)(i) of the Social Security Act (42 U.S.C. 1396(a)(10)(A)(i)) is amended by inserting "whose family income does not exceed 100 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved, including all individuals" before "who are receiving".

(b) GRANTS TO STATES FOR THE PROVISION OF LONG-TERM CARE.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended by adding at the end the following new subsection:

"(t)(1) The Secretary is authorized to award an annual grant in an amount which does not exceed $__________ to each State to enable such State to provide long-term care to individuals eligible for medical assistance under this title.

"(2) Grants awarded pursuant to paragraph (1) may be used for activities such as __________.

"(3) Each State desiring a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective __________.

TITLE IV—ANTITRUST PROVISIONS

Subtitle A—Modification of the Operation of the Antitrust Laws to Hospitals

SEC. 401. PURPOSE.

The purpose of this subtitle is to encourage cooperation among hospitals in order to contain costs and achieve a more efficient health care delivery system through the elimination of unnecessary duplication and proliferation of expensive medical services or expensive high technology equipment.

SEC. 402. EXEMPTIONS FROM THE OPERATION OF THE ANTITRUST LAWS.

(a) GENERAL EXEMPTION.—It shall not be unlawful under the antitrust laws for 2 or more hospitals to engage in conduct solely for the purpose of negotiating a proposed agreement (including the sharing of data), to be submitted under subsection (b), to share expensive medical services or expensive high technology equipment.

(b) SPECIFIC EXEMPTIONS.—

(1) AUTHORITY TO GRANT WAIVER.—The Secretary of Health and Human Services shall issue waivers in accordance with paragraph (4) to exempt from the operation of the antitrust laws conduct engaged in by hospitals to carry out agreements contained in applications approved under paragraph (3).

(2) ELIGIBILITY.—To be eligible to receive a waiver under paragraph (1), 2 or more hospitals shall submit to the Secretary an application that contains (in accordance with guidelines established by the Secretary)—

(A) a proposed agreement that only—

(i) provides that such hospitals shall share the expensive medical services or expensive high technology equipment identified in such agreement,

(ii) specifies the period of time during which such agreement shall be in effect,

(iii) describes the particular medical services or high technology equipment to be shared under such agreement, and

(iv) contains such other terms and conditions as the Secretary may reasonably require, and

(B) such information and assurances as the Secretary may reasonably require.

(3) APPROVAL.—For purposes of determining whether to approve an application submitted under paragraph (2), the Secretary shall consider whether—

(A) the proposed agreement contained in such application satisfies the guidelines issued under paragraph (6), and

(B) implementation of such agreement will result in—

(i) enhancement of the quality of hospital care or hospital-related care,

(ii) the preservation of hospital services in geographical proximity to the communities traditionally served by the applicants,

(iii) improvement in the cost-effectiveness of high-technology services provided by the applicants,

(iv) improvement in the efficient utilization of hospital resources and capital equipment,

(v) the provision of services that would not otherwise be available, or

(vi) the avoidance of duplication of hospital resources.

(4) ISSUANCE AND EFFECT OF WAIVER.—If—

(A) the Secretary approves under paragraph (3) an application submitted under paragraph (2), and

(B) the applicants enter into the proposed agreement contained in such application, modified as the Secretary may require as a condition for approval,

then the Secretary shall issue a waiver with respect to the agreement entered into. Except as provided in paragraph (5), such waiver shall exempt the applicants from the operation of the antitrust laws for conduct the applicants engage in during the period specified in such waiver and solely to carry out the agreement with respect to which such waiver is issued.

(5) REVOCATION OF WAIVER.—(A) If the Secretary determines that a hospital with respect to which a waiver is in effect under paragraph (4) is not carrying out, or has not carried out, fully the terms of the agreement with respect to which a waiver is issued under paragraph (4), the Secretary may revoke such waiver.

(B) If the Secretary revokes such waiver—

(i) the Secretary shall specify the period during which such hospital did not carry out fully the terms of such agreement, and

(ii) such waiver shall have no legal effect with respect to such period.

(6) ISSUANCE OF GUIDELINES.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall establish the guidelines for applications under paragraph (2).

SEC. 403. REPORTS.

(a) REPORTS TO THE SECRETARY.—Each hospital with respect to which a waiver is issued under section 402(b)(4) shall submit to the Secretary—

(1) during the period such waiver is in effect, an annual report at such time, in such form, and containing such information as the Secretary may require, including a detailed description of the implementation of the agreement to which such waiver applies, and

(2) such other information as the Secretary may require for purposes of determining compliance with section 402.

(b) REPORT TO COMMITTEES OF THE CONGRESS.—

(1) CHAIRMEN OF COMMITTEES.—Not later than 7 years after the date of the enactment of this Act, the Secretary shall submit the report described in paragraph (2) to—

(A) the chairman of the Committee on the Judiciary of the House of Representatives,

(B) the chairman of the Committee on Ways and Means of the House of Representatives,

(C) the chairman of the Committee on Energy and Commerce of the House of Representatives,

(D) the chairman of the Committee on the Judiciary of the Senate,

(E) the chairman of the Committee on Finance of the Senate, and

(F) the chairman of the Committee on Labor and Human Resources of the Senate.

(2) CONTENTS OF REPORT.—The report required by paragraph (1) shall contain a description of the nature of the agreements with respect to which the Secretary issued waivers under section 402(b)(4) and of the results of implementing such agreements, including an assessment of whether such agreements caused—

(A) a reduction in health care costs,

(B) an increase in access to medical services, and

(C) improvement in the quality of health care.

Such report shall also contain the recommendations of the Secretary with respect to other arrangements to facilitate cooperative activities to achieve the results specified in subparagraphs (A), (B), and (C).

SEC. 404. DEFINITIONS.

For purposes of this subtitle:

(1) The term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes—

(A) section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section applies to unfair methods of competition, and

(B) any State law similar to the antitrust laws.

(2) The term "high technology equipment" includes drugs, devices, equipment, and medical and surgical procedures utilized in medical care, and the organizational and support systems within which such care is provided, that—

(A) have high capital costs or extremely high annual operating costs, and

(B) use technologies with respect to which there is a reasonable expectation that shared ownership will avoid a significant degree of the potential excess capacity of service in the geographical area to be served.

(3) The term "medical services" includes services that—

(A) either have high capital costs or extremely high annual operating costs, and

(B) with respect to which there is a reasonable expectation that shared ownership will avoid a significant degree of the potential excess capacity of such services in the geographical area to be served,

and may include mobile services.

(4) The term "hospital" means a hospital that—

(A) has entered into, and has in effect, a participation agreement under section 1866(a) of the Social Security Act, or

(B) which has in effect a participation agreement under title XIX of such Act with the State in which the hospital is located.

(5) The term "Secretary" means the Secretary of Health and Human Services.

Subtitle B—Encouraging Enforcement Activities of Medical Self-Regulatory Entities

SEC. 411. ANTITRUST EXEMPTION FOR MEDICAL SELF-REGULATORY ENTITIES.

No damages, interest on damages, costs, or attorney's fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, 15c), or under any State law similar to such section, from any medical self-regulatory entity (including its members, officers, employees, consultants, and volunteers) as a result of engaging in standard setting or enforcement activities designed to promote the quality of health care provided to patients.

SEC. 412. CONSULTATION WITH MEDICAL SELF-REGULATORY ENTITIES RESPECTING MEDICAL PROFESSIONAL STANDARDS.

Any Federal agency engaged in the establishment of medical professional standards shall consult with and use appropriate medical self-regulatory entities, if available, in carrying out standard setting and related regulatory activities.

SEC. 413. DEFINITIONS.

For purposes of this subtitle:

(1) The term "medical self-regulatory entity" means a medical society or association, a specialty board, a recognized accrediting agency, a hospital medical staff, or other entity designed to ensure the provision of high quality medical care.

(2) The term "standard setting and enforcement activities designed to promote the quality of health care provided to patients" means peer review, accreditation of medical education and hospitals, technology assessment, risk management, or the development and implementation of practice guidelines, practice parameters, or ethical codes.

Subtitle C—Interagency Committee

SEC. 421. INTERAGENCY COMMITTEE ON HEALTH CARE REFORM AND ANTITRUST POLICY.

(a) ESTABLISHMENT.—There is hereby established the Interagency Committee of Health Care Reform and Antitrust Policy (hereafter in this section referred to as the "Committee"). The Committee shall be composed of—

(1) the Secretary of Health and Human Services (or the designee of the Secretary),

(2) the Attorney General of the United States (or the designee of the Attorney General),

(3) the Director of the Office of Management and Budget (or the designee of the Director), and

(4) the Commissioners of the Federal Trade Commission (or the designees of the respective Commissioners).

(b) DUTIES.—The duties of the Committee are—

(1) with respect to the Federal entities referred to in subsection (a), to coordinate policy regarding health care reform and antitrust policy, and

(2) to make such recommendations to the Congress from time to time, as the Committee considers to be appropriate, regarding achieving both health-care cost containment and greater access to quality health care through cooperation among health care providers.

TITLE V—MEDICAL MALPRACTICE REFORM

Subtitle A—General Provisions

SEC. 501. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) in recent years, there has been increasing and widespread public and professional concern about the problems associated with health care malpractice actions, and such concern has focused primarily on the issues of—

(A) the reduction in access of patients to quality health care as a result of these problems;

(B) the increasing portion of health care costs attributable to defensive health care practices and the costs of health care liability insurance premiums;

(C) the ability of health care professionals to continue to practice in high risk areas of health care treatment;

(D) the inefficiency of the civil judicial system in providing access to the courts and fair compensation for individuals injured by health care malpractice and in deterring such malpractice; and

(E) the inefficiency of State disciplinary systems in restricting the activities of health care professionals who endanger patient safety;

(2) all health care consumers are adversely affected, directly or indirectly, by the effect that the problems associated with health care malpractice actions have on the availability and affordability of health care services;

(3) regardless of whether the solution to the problems associated with health care malpractice actions is the responsibility of public or private sectors, or a combination of these, the Federal Government has a major interest in these problems as a direct provider of health care to many Americans through the Public Health Service, and as a source of payment for the health care of a much larger number of Americans through medicare, medicaid and other programs;

(4) health care liability issues have created tensions among the professions of law and medicine, the insurance industry, and consumers of health care services, and these tensions have impeded the development and implementation of solutions;

(5) the civil judicial system is a costly and inefficient mechanism for resolving claims of health care malpractice and compensating injured patients, a disproportionately large percentage of dollars spent to compensate patients for health care malpractice is distributed to a few patients, while adequate compensation is not provided to most patients injured by health care malpractice, and far too little of the amounts paid by health care professionals and health care providers for liability insurance premiums is received by injured patients;

(6) California's reform of medical liability tort law has demonstrated that modification of existing tort law governing health care malpractice actions can bring stability and predictability with respect to the size of awards and slow the increase of health care liability insurance premiums;

(7) the Department of Health and Human Services' 1987 Task Force on Medical Liability and Malpractice was correct in recommending that the Federal Government and State governments explore, through research and demonstration projects, alternative dispute resolution mechanisms that have the potential for resolving health care malpractice claims more fairly and cost-effectively than the current civil judicial system, for promoting patient safety, and for deterring health care malpractice; and

(8) a variety of proposals to solve the problems of health care liability and health care malpractice can be implemented, studied and evaluated by using the States as laboratories in which to develop and explore various alternative dispute resolution systems.

(b) PURPOSE.—It is the purpose of this title to—

(1) improve the quality of health care through the deterrence of avoidable injuries and the detection of health care providers and health care professionals who commit health care malpractice or otherwise endanger patient safety;

(2) improve the availability of health care services in cases in which health care malpractice actions have been shown to be a major factor in the decreased availability of services;

(3) expeditiously identify patients eligible to receive compensation for injuries and deliver such compensation more quickly and more efficiently than the civil judicial system; and

(4) improve the fairness and cost-effectiveness of the State system to resolve disputes over, and provide compensation for, health care malpractice by reducing uncertainty and unpredictability in the amount of compensation provided to injured individuals.

SEC. 502. DEFINITIONS.

As used in this title:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM.—The term "alternative dispute resolution system" means a system that—

(A) is enacted or adopted by a State to resolve health care malpractice claims other than through a health care malpractice action;

(B) applies to one or more types of injuries resulting from health care malpractice;

(C) applies to one or more political subdivisions of a State or to the entire State; and

(D) meets the requirements of section 512.

(2) ARBITRATION.—The term "arbitration" means a dispute resolution process in which

the parties submit the dispute outside of a State or federal civil justice system for resolution by a person or panel of persons.

(3) ECONOMIC LOSSES.—The term "economic losses" means losses for hospital and medical expenses, lost wages, lost employment, and other pecuniary losses.

(4) HEALTH CARE MALPRACTICE ACTION.—The term "health care malpractice action" means a civil action alleging a health care malpractice claim against a health care provider or health care professional.

(5) HEALTH CARE MALPRACTICE CLAIM.—The term "health care malpractice claim" means any claim relating to the provision of (or the failure to provide) health care services based on negligence or gross negligence, breach of express or implied warranty or contract, or failure to discharge a duty to warn or instruct to obtain consent.

(6) HEALTH CARE PROFESSIONAL.—The term "health care professional" means any individual who provides health care services in a State and who is required by State law or regulation to be licensed or certified by the State to provide such services in the State, including (but not limited to) a physician, nurse, chiropractor, nurse midwife, physical therapist, social worker, or physician assistant.

(7) HEALTH CARE PROVIDER.—The term "health care provider" means any organization or institution that is engaged in the delivery of health care services in a State and that is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State.

(8) INJURY.—The term "injury" means any injury, illness, disease, or other harm that is the subject of a health care malpractice claim.

(9) NONECONOMIC LOSSES.—The term "noneconomic losses" means losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, and other nonpecuniary losses.

(10) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(11) STATE.—The term "State" means each of the several States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

Subtitle B—Grant Programs

PART I—IMPLEMENTATION OF ALTERNATIVE DISPUTE RESOLUTION SYSTEMS

SEC. 511. INCENTIVE GRANTS.

(a) IN GENERAL.—The Secretary shall make grants to States from amounts allocated under section 531(a) for the development and implementation of alternative dispute resolution systems, under such terms as the Secretary may require. A State shall use a grant made under this section to develop, implement, and evaluate the effectiveness of such a system.

(b) OPTION TO REFUSE GRANT.—Not later than 90 days after the Secretary makes a grant under this section to a State, the State may send a notice to the Secretary that it refuses the grant. At the time the State sends such notice, the State shall return any amounts paid under the grant to the Secretary.

(c) AMOUNT OF GRANT.—The amount of a grant made to a State under this section shall be equal to the amount which the Secretary finds reasonable and necessary for the implementation and evaluation of the State's alternative dispute resolution system, except that—

(1) the amount of a grant made under this section to a State other than the Commonwealth of Puerto Rico, Guam, or the Virgin Islands may not exceed $10,000,000; and

(2) the amount of a grant made under this section to the Commonwealth of Puerto Rico, Guam, or the Virgin Islands may not exceed $2,000,000.

(d) REPORTS ON COMPLIANCE.—

(1) SUBMISSION OF REPORTS.—Each State shall annually submit a report to the Secretary containing such information as the Secretary may require to determine whether the State is in compliance with the terms of the grant made under this section.

(2) DETERMINATION OF NONCOMPLIANCE.—If, after reviewing the report submitted under paragraph (1), the Secretary determines that a State receiving a grant under this section is not in compliance with the terms of the grant, the Secretary shall provide the State with written notice of such determination. Such notice shall specify—

(1) the reasons for the determination of the Secretary;

(2) that the Secretary will require the State, not later than 60 days after receipt of such notice, to return all funds provided to the State under the grant, unless the State—

(A) takes such corrective action as may be necessary to ensure that the State is in compliance with the terms of the grant; or

(B) requests a hearing under paragraph (3); and

(3) that the State may request a hearing on the record before an administrative law judge under section 554 of title 5, United States Code, concerning the allegations set forth in the notice.

SEC. 512. ALTERNATIVE DISPUTE RESOLUTION SYSTEMS DESCRIBED.

(a) IN GENERAL.—An alternative dispute resolution system meets the requirements of this section if the system—

(1) is a system described in subsection (a), (b), (c), (d), (e), or (f); and

(2) provides for the resolution of health care malpractice claims in a manner other than through health care malpractice actions for all individuals receiving health care services in the State.

(b) FAULT-BASED ADMINISTRATIVE SYSTEMS.—

(1) ESTABLISHMENT.—A State may establish an administrative process within the State government for the resolution of health care malpractice claims. Under such process, an individual alleging an injury (or the parent or guardian of such an individual) shall be required to file a claim with the State administrative process. The process shall provide for the dismissal of nonmeritorious claims and shall provide for the award of damages when an injury is found to have been caused by health care malpractice.

(2) REQUIREMENTS.—The administrative process established under paragraph (1) shall provide for—

(A) an expedited review of all claims filed;

(B) a procedure for early dismissal of claims when the expedited review process does not support a finding of possible liability;

(C) the opportunity for claim investigation and a meaningful hearing on claims with possible merit before an administrative officer or panel; and

(D) the opportunity for review of the initial decision within the administrative process.

(3) JUDICIAL REVIEW.—Any judicial review of the final administrative decision on a claim under the process established under paragraph (1) shall be limited in order to avoid duplication of the administrative process in the courts. The State shall provide that—

(A) judicial review of the final administrative decision may not extend to de novo consideration of the underlying facts of a claim resolved under the administrative process; and

(B) if a court determines that an issue of fact requires resolution, the court must remand to the State agency which conducted the administrative process for resolution of the issue.

(4) PROCEDURES FOR FILING.—The administrative process established under paragraph (1) shall include a simplified process for filing claims.

(5) COORDINATION OF PROCEDURES.—The State shall establish procedures—

(A) to ensure that the process referred to in paragraph (1) is coordinated with or monitored by the health care provider and health care professional licensing and disciplinary authorities of the State; and

(B) for the routine referral to such authorities of findings and decisions under the process that indicate that health care malpractice occurred.

(6) PAYMENTS; LEGAL ASSISTANCE.—Under the administrative process established under paragraph (1), payment may be made for economic losses and noneconomic losses. The State shall establish a formula or guidelines for the calculation of payments for noneconomic losses, and section 541(a) shall apply to claims resolved under the process. In order to ensure access to affordable legal representation for individuals filing claims under the process, the State may establish programs offering legal assistance to such individuals.

(7) EXPERTS.—The State shall empower any administrative hearing officer or panel used in the administrative process established under paragraph (1) to call independent experts not retained by a party to give evidence. The State shall provide that if called, experts are subject to cross-examination by all parties.

(c) DEFINED CATASTROPHIC INJURY COMPENSATION SYSTEMS.—

(1) ESTABLISHMENT.—A State may establish a system under which the State establishes a compensation fund to compensate all individuals who incur a certain injury (as defined by the State) in the course of receiving health care services. The State shall provide that if an individual incurs such an injury, the individual may only receive compensation for such injury by filing a claim with the State for compensation from such fund, and that such individual may not file a health care malpractice action in any State or Federal court for damages resulting from such injury.

(2) PROCEDURES FOR FILING.—The State shall establish procedures for an individual to file a compensation claim for the defined injury under paragraph (1). No payment may be made from the fund for an individual unless such individual (or the patient or guardian of such individual) complies with such procedures.

(3) REQUIREMENT OF PROCEDURES; DEADLINE FOR DETERMINATIONS.—The State shall ensure that the procedures under paragraph (2) allow an individual to file and pursue a claim without the assistance of counsel or to retain counsel if the individual chooses. The State shall make a final determination on a claim not later than 6 months after the date on which the claim is filed.

(4) PAYMENTS.—The State shall make payments from the compensation fund under

paragraph (1) for economic losses, and section 541(a)(3) shall apply to payments for economic losses from the compensation fund. The State may make payments for future economic losses as such losses are incurred, or may make such payments in a lump-sum amount. The State may elect to pay injured individuals for noneconomic losses from the compensation fund according to a schedule established by the State.

(5) FUNDING.—The State may require that funding for the compensation fund under paragraph (1) be paid by health care providers and professionals that engage in the health care treatment or procedure which results in the injury covered by the fund. The State may establish requirements for additional sources of payments into the fund, including patient contributions or contributions made by employees covered by health care insurance plans, and, if appropriate, may establish procedures for employers to pay for contributions of employees.

(6) REVIEW.—The State shall establish a quality review mechanism to review claims filed with the fund established under paragraph (1) and identify instances of health care malpractice. The State shall provide for the routine referral under the quality review mechanism to health care provider and health care professional licensing and disciplinary authorities of the State of findings that indicate that health care malpractice occurred.

(d) EARLY OFFER AND RECOVERY MECHANISMS.—

(1) ESTABLISHMENT.—The State may establish a system under which health care providers and professionals have the option to offer, within a specified time period after an injury or (in certain circumstances determined by the State) after the initiation of a health care malpractice action, to compensate an individual for economic losses in accordance with this subsection.

(2) INCLUSION OF OTHER PROVIDERS OR PROFESSIONALS.—Under the system established under paragraph (1), an offer may include other health care providers or professionals who were involved in the provision of health care services, with their consent.

(3) DETERMINATION OF LOSSES.—Section 541(a)(3) shall apply to the determination of an individual's economic losses for purposes of the system established under paragraph (1). Future economic losses shall be payable to the individual as they occur, or may be payable in a lump-sum amount.

(4) ARBITRATION.—If, after an offer is made under the system established under paragraph (1), the individual alleging an injury disputes the amount of the economic losses for which the offerors propose to provide compensation, or the participants dispute the relative contributions of the health care providers or professionals to the payments to be made to the individual, such disputes shall be resolved by binding arbitration in accordance with rules and procedures established by the State.

(5) ACTION ON RECEIPT OF OFFER.—

(A) IN GENERAL.—If an individual—

(i) receives an offer under this subsection;

(ii) rejects such offer after all issues with respect to the amount of economic losses suffered by such person have been resolved under paragraph (4) or refuses to participate in arbitration under such paragraph; and

(iii) initiates a health care malpractice action against one or more persons who made such offer,

the provisions of subparagraph (B) shall apply to such health care malpractice action.

(B) BURDEN OF PROOF AND DAMAGES.—In any health care malpractice action to which subparagraph (A) applies—

(i) the plaintiff may only prevail if the plaintiff has proven each element of his case beyond a reasonable doubt;

(ii) with respect to claims of negligence, the plaintiff must establish that a defendant was grossly negligent; and

(iii) the amount of damages for noneconomic losses which a plaintiff may recover with respect to an injury shall not exceed $150,000.

(e) BINDING ARBITRATION.—

(1) ESTABLISHMENT.—The State may establish a system under which—

(A) prior to treatment, health care providers and professionals offer their patients an opportunity to enter into an agreement to arbitrate any health care malpractice claims relating to such treatment; or

(B) each individual receiving health care services in the State and the health care providers and professionals providing such services shall be deemed to have entered into an agreement to arbitrate any health care malpractice claims relating to such services.

(2) LIMITATIONS.—An individual's consent to an agreement to arbitrate under the system established under paragraph (1)(A) may not be a prerequisite to the provision of health care services. Neither of the systems established under paragraph (1) shall apply to a contract for binding arbitration between a health care entity which agrees to provide comprehensive medical care to voluntarily enrolled patients for a predetermined annual fee and its patients or members.

(3) REVOCATION.—An arbitration agreement under the system established under paragraph (1)(A) may be revoked by the patient not later than 15 days after the date on which the patient signs the agreement, except that the patient may not revoke the agreement after the health care services were provided. The health care provider or professional may not revoke the agreement to arbitrate. The agreement shall be binding as to any cause of action that accrues prior to revocation of the agreement.

(4) PROHIBITION ON MALPRACTICE ACTIONS.—No health care malpractice action may be brought with respect to an alleged injury if an arbitration agreement under a system established under paragraph (1) with respect to such injury is in effect at the time of such injury. Section 541(a) shall apply to claims resolved through the systems established under paragraph (1).

(5) REQUIREMENTS.—Each arbitration agreement entered into under the system established under paragraph (1)(A) must include, in boldfaced print, a notice that—

(A) by signing the agreement, the patient is waiving the right to the initiation or hearing of a health care malpractice action;

(B) the patient may revoke the arbitration agreement not later than 15 days after the date on which the patient signs the agreement, except that the patient may not revoke the agreement after health care services are provided; and

(C) signature of the agreement by the patient cannot be required by the health care provider or health care professional as a prerequisite to the provision of health care services.

(6) ARBITRATION PANELS.—Each arbitration conducted under the systems established under paragraph (1) shall be conducted by an arbitration panel consisting of three arbiters. One arbiter shall be chosen by the individual alleging the health care malpractice claim. One arbiter shall be chosen jointly by all health care providers and health care professionals who are parties to the agreement to arbitrate. The third arbiter, who shall chair the panel, shall be chosen by the other two arbiters.

(7) APPEALS TO STATE COURT.—

(A) IN GENERAL.—A party participating in an arbitration under the systems established under paragraph (1) may file an appeal with the court of appropriate jurisdiction of the State (as determined under State law) to vacate the decision of the panel if the party files a motion to appeal not later than 60 days after the panel renders its decision.

(B) STANDARD OF REVIEW.—A court reviewing the decision of a panel arbitrating a claim may not vacate the panel's decision unless it determines that the decision was arbitrary or capricious.

(f) STATE-INITIATED ALTERNATIVE.—For purposes of subsection (a)(1), if a State proposes to establish or has established an alternative dispute resolution system that does not meet the requirements of subsection (b), (c), (d), or (e), the system shall be deemed to be a system described in one of those subsections if the Secretary determines that the system would accomplish the purposes of this title described in section 502(b) and meets the requirements of section 541(a).

PART II—OTHER GRANT PROGRAMS

SEC. 521. RESEARCH GRANTS.

(a) IN GENERAL.—The Secretary shall make grants to States and to private nonprofit organizations located in a State from amounts allocated to the State under section 531(a) for the conduct of basic research in the prevention of and compensation for injuries resulting from health care professional or health care provider malpractice, and research of the outcomes of health care procedures. In making such grants, the Secretary shall give particular consideration to applications for research on the behavior of health care providers and health care professionals in carrying out their professional duties and of other participants in systems for compensating individuals injured by health care malpractice, the effects of financial and other incentives on such behavior, the determinants of compensation system outcomes, and the costs and benefits of alternative compensation policy options.

(b) APPLICATION.—The Secretary may not make a grant under this section unless an applicant submits an application to the Secretary at such time, in such form, in such manner, and containing such information as the Secretary may require.

SEC. 522. DISCIPLINARY AND EDUCATIONAL GRANTS.

(a) IN GENERAL.—The Secretary shall make grants to States from amounts allocated under section 531(a) to assist States in improving the State's ability to license and discipline health care professionals. A State may use a grant awarded under this subsection to develop and implement improved mechanisms for monitoring the practices of health care professionals or for conducting disciplinary activities.

(b) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to States to assist them in evaluating their medical practice acts and procedures and to encourage the use of efficient and effective early warning systems and other mechanisms for detecting practices which endanger patient safety and for disciplining health care professionals.

(c) EDUCATION.—The Secretary shall make grants to States and to local governments and private nonprofit organizations located in a State from amounts allocated to a State under section 531(a) for—

(1) educating the general public about the appropriate use of health care and realistic expectations of medical intervention;

(2) educating the public about the resources and role of health care professional licensing and disciplinary boards in investigating claims of incompetence or health care malpractice; and

(3) developing programs of faculty training and curricula for educating health care professionals in quality assurance, risk management, and medical injury prevention.

(d) Applications.—The Secretary may not make a grant under subsection (a) or (c) unless the applicant submits an application to the Secretary at such time, in such form, in such manner, and containing such information as the Secretary shall require.

PART III—ADMINISTRATIVE PROVISIONS

SEC. 531. ADMINISTRATIVE PROVISIONS.

(a) Allotments to States; Method of Payment.—

(1) Determination of Initial Allotments.—From amounts appropriated for grants under this subtitle for a fiscal year, the Secretary shall make an allotment to each State in an amount equal to the product of—

(A) the amount appropriated for grants for such fiscal year; and

(B) a percentage equal to the quotient of—

(i) an amount equal to the number of people living in the State, divided by

(ii) an amount equal to the total number of people living in the United States.

(2) Additional Allotments.—A State shall receive an additional allotment for a fiscal year (in accordance with a formula determined by the Secretary) if funds appropriated for grants under this subtitle and alloted under paragraph (1) for the year are not paid to States under this subtitle because—

(A) a State has notified the Secretary that it refuses the grant made to the State under section 511, or has not submitted an application for a grant under subtitle B for the fiscal year;

(B) a State has notified the Secretary that it does not intend to use the full amount of its allotment for the fiscal year; or

(C) the amount paid to a State or to an entity located in a State for a grant during the fiscal year is reduced, offset, or repaid pursuant to subsection (b).

(3) Schedule of Payments.—The Secretary may make payments for grants awarded under this subtitle in advance, on the basis of estimates, or by reimbursement (with necessary adjustments because of underpayments or overpayments), and in such installments and on such terms and conditions as the Secretary determines necessary to carry out the purposes of such grants.

(b) Reductions for Expenses of Supplies, Equipment, and Employee Detail.—The Secretary, at the request of a recipient of a grant under this subtitle, may reduce the amount of such a grant by—

(A) the fair market value of any supplies or equipment furnished to the recipient by the Secretary;

(B) the amount of pay, allowances, and travel expenses incurred by any officer or employee of the Federal Government when such officer or employee has been detailed to the recipient; and

(C) the amount of any other costs incurred in connection with the detail of an officer or employee as described in subparagraph (B),

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience, and at the request, of such recipient and for the purpose of carrying out activities under the grant.

(c) Records.—Each recipient of a grant under this subtitle shall keep such records as the Secretary determines appropriate, including records that fully disclose—

(1) the amount and disposition by such recipient of the proceeds of such grant;

(2) the total cost of the activity for which such grant was made;

(3) the amount of the cost of the activity for which such grant was made that has been received from other sources; and

(4) such other records as will facilitate an effective audit.

(d) Audit and Examination of Records.—The Secretary and the Comptroller General shall have access to any books, documents, papers, and records of the recipient of a grant under this subtitle, for the purpose of conducting audits and examinations of such recipient that are pertinent to such grant.

(e) Maintenance of Effort.—Each recipient of a grant under this subtitle shall use the grant to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of grant be made available for the programs and activities for which funds are provided under this subtitle. In no event shall a recipient of a grant under this subtitle use the grant to supplant such State, local, and other non-Federal funds.

SEC. 532. REPORTS ON GRANT PROGRAMS.

Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter, each recipient of a grant under this subtitle during any such 2-year period shall prepare and submit to the Secretary a report which describes the activities conducted by the recipient with any grants received under this subtitle during the preceding 2-year period and provides the Secretary with appropriate information to enable the Secretary to report on the matters described in section 544.

SEC. 533. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—There are authorized to be appropriated for grants under this subtitle a total of $300,000,000 for fiscal years 1993 through 1995, of which—

(1) not more than $280,000,000 shall be available for incentive grants under section 511;

(2) not more than $10,000,000 shall be available for research grants under section 521; and

(3) not more than $10,000,000 shall be available for disciplinary grants under section 522.

(b) Availability of Funds.—Amounts appropriated for grants under this subtitle shall remain available until expended, except that amounts appropriated for incentive grants under section 511 shall remain available from October 1, 1992, to September 30, 1997.

Subtitle B—Health Care Malpractice Dispute Reform

SEC. 541. FEDERAL REFORM OF CIVIL ACTIONS.

(a) In General.—

(1) Applicability.—This subsection shall govern any health care malpractice action brought in any Federal or State court and any health care malpractice claim resolved through arbitration, except that paragraph (6) shall not apply to any action for damages arising from a vaccine-related injury or death for which a petition was filed under section 2111 of the Public Health Service Act.

(2) Payments.—No person may be required to pay more than $100,000 in a single payment in damages for expenses to be incurred in the future, but such person shall be permitted to make such payments on a periodic basis. The periods for such payments shall be determined by the court, based upon projections of when expenses are likely to be incurred.

(3) Damages.—

(A) Reductions.—The total amount of damages received by an individual shall be reduced, in accordance with subparagraph (B), by any other payment which has been made or which will be made to such individual to compensate such individual for an injury, including payments under—

(i) Federal or State disability or sickness programs;

(ii) Federal, State, or private health insurance programs;

(iii) private disability insurance programs;

(iv) employer wage continuation programs; and

(v) any other source of payment intended to compensate such individual for such injury.

(B) Amount of Reduction.—The amount by which an award of damages to an individual for an injury shall be reduced under subparagraph (A) shall be—

(i) the total amount of any payments (other than such award) which have been made or which will be made to such individual to compensate such individual for such injury; minus

(ii) the amount paid by such individual (or by the spouse, parent, or legal guardian of such individual) to secure the payments described in clause (i).

(4) Limitation on Noneconomic Damages.—The total amount of damages which may be awarded to an individual and the family members of such individual for noneconomic losses resulting from an injury which is the subject of a health care malpractice claim may not exceed $250,000, regardless of the number of health care professionals and health care providers against whom the claim is brought or the number of claims brought with respect to the injury.

(5) Attorneys' Fees.—Attorneys' fees may not exceed—

(A) 33 percent of the first $100,000 of any award or settlement;

(B) 15 percent of the next $100,000; and

(C) 10 percent of any additional amounts in excess of $200,000.

(6) Statute of Limitations.—

(A) In General.—Except as provided in subparagraph (B), no health care malpractice claim may be initiated after the expiration of the 2-year period that begins on the date the alleged injury should reasonably have been discovered, or the expiration of the 4-year period that begins on the date the alleged injury occurred, whichever is later.

(B) Exception for Minors.—In the case of an alleged injury suffered by a minor who has not attained 6 years of age, no health care malpractice claim may be initiated after the expiration of the 2-year period that begins on the date the alleged injury should reasonably have been discovered, or the date on which the minor attains 10 years of age, whichever is later.

(b) Preemption.—

(1) In General.—Subsection (a) supersedes any State law only to the extent that State law establishes higher payment limits, permits the recovery of a greater amount of damages or the awarding of a greater amount of attorneys' fees, or establishes a longer period during which a health care malpractice claim may be initiated.

(2) Effect on Sovereign Immunity and Choice of Law or Venue.—Nothing in subsection (a) shall be construed to—

(A) waive or affect any defense of sovereign immunity asserted by any State under any provision of law;

(B) waive or affect any defense of sovereign immunity asserted by the United States;

(C) affect the applicability of any provision of the Foreign Sovereign Immunities Act of 1976;

(D) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation; or

(E) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground in inconvenient forum.

(c) EFFECTIVE DATE.—Subsection (a) shall apply to health care malpractice claims initiated after the expiration of the 2-year period that begins on the date of the enactment of this Act.

SEC. 542. STATE MANDATES FOR RISK MANAGEMENT AND PROFESSIONAL DISCIPLINE.

(a) ADOPTION OF MANDATES REQUIRED FOR STATES TO CONDUCT SURVEYS AND CERTIFICATIONS UNDER MEDICARE.—

(1) IN GENERAL.—Part A of title XVIII of the Social Security Act is amended by adding at the end the following new section:

"STATE REQUIREMENTS FOR RISK MANAGEMENT AND PROFESSIONAL DISCIPLINE

"SEC. 1821. (a) IN GENERAL.—The requirements referred to in section 1864(f) are the requirements described in subsections (b) through (e).

"(b) DISCIPLINARY REFORMS.—Each State shall allocate the total amount of fees paid to the State in each year for the licensing or certification of each type of health care practitioner, or an amount of State funds equal to such total amount, to the State agency or agencies responsible for the conduct of disciplinary actions with respect to such type of health care practitioner.

"(c) PROVIDER RISK MANAGEMENT.—Each State shall require each provider of services located in the State to have in effect a risk management program to prevent and provide early warning of practices which may result in injuries to patients or which otherwise may endanger patient safety.

"(d) INSURER RISK MANAGEMENT.—Each State shall require each entity which provides health care practitioner liability insurance to health care practitioners in the State to—

"(1) establish risk management programs based on data available to such entity or sanction programs of risk management for health care practitioners provided by other entities; and

"(2) require each such practitioner, as a condition of maintaining insurance, to participate in one program described in paragraph (1) at least once in each 3-year period.

"(e) ROLE OF PROFESSIONAL SOCIETIES.—

"(1) REVIEW OF CLAIMS.—Each State agency responsible for the conduct of disciplinary actions for a type of health care practitioner shall enter into agreements with State or county professional societies of such type of health care practitioner to permit the review by such societies of any health care malpractice action, health care malpractice claim or allegation, or other information concerning the practice patterns of any such health care practitioner. Any such agreement shall comply with paragraph (2).

"(2) REQUIREMENTS OF AGREEMENTS.—Any agreement entered into under paragraph (1) for the review of any health care malpractice action, health care malpractice claim or allegation, or other information concerning the practice patterns of a health care practitioner shall—

"(A) provide that the health care professional society conduct such review as expeditiously as possible;

"(B) provide that after the completion of such review, such society shall report its findings to the State agency with which it entered into such agreement and shall take such other action as such society considers appropriate; and

"(C) provide that the conduct of such review and the reporting of such findings be conducted in a manner which assures the preservation of confidentiality of health care information and of the review process.

"(3) EXEMPTION FOR CERTAIN ENTITIES.—An agreement entered into under paragraph (1) may not provide for the review of the action or conduct of any employee of an entity which—

"(A) employs more than 25 health care practitioners of the same type;

"(B) has in effect a continuing program for reviewing the quality of professional care provided by its employees; and

"(C) is required by State law to report certain finding to the State agency responsible for the conduct of disciplinary actions for a type of health care practitioner.

"(4) APPLICABILITY OF ANTITRUST LAWS.—Notwithstanding any other provision of law, any activity conducted pursuant to an agreement entered into under paragraph (1) shall not be grounds for any civil or criminal action under Federal antitrust laws, as defined in the first section of the Clayton Act and in section 4 of the Federal Trade Commission Act, or under the antitrust laws of the State or for any other civil action under the laws of the State.".

(2) CONFORMING AMENDMENT.—Section 1864 of the Social Security Act (42 U.S.C. 1395aa), as amended by section 4027(g) of the Omnibus Budget Reconciliation Act of 1990, is amended by adding at the end the following new subsection:

"(f) STATE REQUIREMENTS FOR RISK MANAGEMENT AND PROFESSIONAL DISCIPLINE.—The Secretary may not enter into an agreement under this section with any State unless the State certifies that it meets the requirements specified in section 1821.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 2 years after the date of the enactment of this Act.

SEC. 543. COMMUNITY AND MIGRANT HEALTH CENTERS RISK RETENTION GROUP.

(a) IN GENERAL.—Subpart I of part D of title III of the Public Health Service Act (42 U.S.C. 254b et seq.) is amended by adding at the end thereof the following new section:

"SEC. 330A. RISK RETENTION GROUP.

"(a) GRANT.—The Secretary shall make a grant to an entity that represents recipients of assistance under section 329 and 330 to enable such entity to develop a business plan as described in subsection (b)(2) and establish a nationwide risk retention group as provided for in Liability Risk Retention Act of 1986 (15 U.S.C. 3901 et seq.), and that meets the requirements of this section.

"(b) BUSINESS PLAN AND FORMATION.—

"(1) DEVELOPMENT AND ESTABLISHMENT.—

"(A) IN GENERAL.—Not later than September 30, 1991, the grantee shall develop a business plan as described in paragraph (2) and have established a risk retention group that meets the requirements of section 2(4) of the Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901(2)(4)).

"(B) ESTABLISHMENT.—In establishing the risk retention group under subparagraph (A), the grantee shall take all steps, in accordance with this subsection, necessary to enable such group to be prepared to issue insurance policies under this section.

"(2) BUSINESS PLAN.—The grantee shall develop a plan for the operation of the risk retention group that shall include all actuarial reports and studies conducted with respect to the formation, capitalization, and operation of the group.

"(3) STRUCTURE, RIGHTS, AND DUTIES OF THE RISK RETENTION GROUP.—

"(A) BOARD OF DIRECTORS.—

"(i) APPOINTMENT.—The board of directors of the risk retention group shall consist of 12 members to be appointed by the recipient of the grant under subsection (a), and approved as provided in clause (ii).

"(ii) APPROVAL.—The initial members appointed under clause (i) shall be approved by the Secretary, and shall serve for a term as provided in clause (iii). All subsequent members shall be subject to the approval of the members of the risk retention group.

"(iii) TERMS.—The recipient of the grant under subsection (a) shall appoint the members of the board under clause (i) as follows:

"(I) Four members shall be appointed for an initial term of 1 year.

"(II) Four members shall be appointed for an initial term of 2 years.

"(III) Four members shall be appointed for an initial term of 3 years.

Members serving terms other than initial terms shall serve for 3 years. Members may serve successive terms.

"(iv) EXECUTIVE DIRECTOR.—The Executive Director of the board shall be elected by the members of the board, and shall serve at the pleasure of such members.

"(v) VACANCIES.—Vacancies on the board shall be filled through a vote of the remaining members of the board, subject to the approval of the members of the risk retention group.

"(B) BYLAWS.—The board shall develop the bylaws of the risk retention group that shall be subject to the disapproval of the Secretary. Any changes that the board desires to make in such bylaws shall also be subject to the disapproval of the Secretary. The Secretary shall provide the board with 90 days notice of the Secretary's intent to disapprove a bylaw.

"(C) ADMINISTRATION.—The risk retention group may negotiate with other entities for the purposes of managing and administering the risk retention group, and for purposes of obtaining reinsurance.

"(D) PROVISION OF INSURANCE.—The risk retention group shall provide professional liability insurance, and other types of profitable insurance approved for issuance by the Secretary, to migrant and community health centers that receive assistance under sections 329 and 330 and that meet the requirements of subparagraph (E).

"(E) PARTICIPANTS.—

"(i) IN GENERAL.—Except as provided in clause (ii), all community and migrant health centers that receive assistance under section 329 and 330 shall become members in the risk retention group established under this section and shall purchase the professional liability insurance that is offered by such group for such centers and any health care staff or personnel employed by such centers or under contract with such centers. All professional staff members of such centers shall be eligible to obtain the insurance offered by such group.

"(ii) EXCEPTIONS.—

"(I) GOOD CAUSE.—The Secretary may, on a showing of good cause by the center, exempt such center from the requirements of clause (i).

"(II) FAILURE TO MEET CONDITIONS.—If the risk retention group determines that a center is not complying with the established underwriting standards, such group may decline to provide insurance to such center. The risk retention group shall provide a center with 60 days notice of a decision by the group not to provide insurance to such center.

"(III) HEARING.—Prior to the Secretary granting an exemption or severance as requested in an application submitted under subclause (I), the Secretary shall require that the applicant provide evidence concerning its application and shall afford the risk retention group an opportunity to address the allegations contained in such application. The Secretary may grant the center temporary relief under this subparagraph without a hearing in emergency situations.

"(F) APPLICABILITY OF INSURANCE TO CLAIMS.—Insurance provided by the risk retention group under this section shall apply to all claims filed against a covered community or migrant health center after the initiation of insurance coverage by the risk retention group, including acts that occur prior to coverage under this section that are not covered by other insurance.

"(c) SUBMISSION OF BUSINESS PLAN TO OUTSIDE EXPERTS.—After the development of the business plan and the establishment of the risk retention group as required under subsection (b), the risk retention group shall enter into a contract with individuals or entities who are insurance, financing, and business experts to require such individuals or entities to analyze and audit the group. Such individuals and entities shall provide the group with an evaluation of such plan and group.

"(d) SUBMISSION OF PLAN AND EVALUATION.—

"(1) IN GENERAL.—The risk retention group shall submit to the Secretary the business plan required under subsection (b) and the evaluation completed under subsection (c) to the Secretary.

"(2) DETERMINATION BY SECRETARY.—Not later than September 30, 1991, the Secretary shall make a determination, based on the plan and evaluation submitted under paragraph (1), of whether the operation of the risk retention group result in an increase in the amount of funds available for use by community and migrant health centers and other entities that receive assistance under sections 329 and 330 in the 2-year period ending on September 30, 1993.

"(3) IMPLEMENTATION.—If the Secretary makes an affirmative determination under paragraph (1), the Secretary shall permit the implementation of the plan and the operation of the risk retention group as provided for in this section, and shall capitalize such group as provided for in subsection (e)(2).

"(e) FUNDING.—

"(1) GRANT.—There are authorized to be appropriated to make a grant under subsection (a), $1,000,000 for fiscal year 1992.

"(2) CAPITALIZATION.—There are authorized to be appropriated for fiscal years 1992 and 1993 such sums as may be necessary to provide adequate capitalization to the risk retention group. Amounts appropriated under this paragraph may only be made available if the Secretary makes an affirmative determination under subsection (d)(2).

"(3) REMAINING ASSETS.—All assets of the risk retention group that remain after the dissolution of such group shall become the property of the Secretary who shall use such assets to pay the remaining expenses of the group.".

(b) CONFORMING AMENDMENTS.—

(1) Section 329(h)(1)(A) of such Act (42 U.S.C. 254b(h)(1)(A)) is amended by striking "1991" and inserting "1993".

(2) Section 330(g)(2)(A) of such Act (42 U.S.C. 254b(h)(1)(A)) is amended by inserting ", and such sums as may be necessary for fiscal year 1992" after "1991".

SEC. 544. REPORTS TO CONGRESS.

The Secretary shall monitor the effects of the reforms required under this subtitle and report to Congress not later than 3 years after the date of the enactment of this Act on the effect of such reforms on—

(1) access to health care;

(2) the costs of health care;

(3) the number of health care malpractice actions filed in the United States;

(4) the number of health care malpractice claims or disputes resolved through alternative dispute resolution systems; and

(5) the length of time for individuals injured by health care malpractice to receive compensation for their injuries.

TITLE VI—MISCELLANEOUS PROVISIONS

SEC. 601. PRESIDENT'S COUNCIL ON SENIOR FITNESS.

(a) ESTABLISHMENT.—There is established in the Department of Health and Human Services the President's Council on Senior Fitness (referred to in this section as the "Council").

(b) MEMBERSHIP.—The Council shall be composed of 20 members appointed by the President.

(c) FUNCTIONS OF THE COUNCIL.—The Council shall—

(1) enlist the active support and assistance of individual citizens, civic groups, private enterprise, voluntary organizations, and others in efforts to promote and improve the fitness of all citizens over age 50 through regular participation in suitable programs of physical fitness;

(2) initiate programs to inform the general public of the importance of exercise and the link that exists between regular physical activity, and good health and effective performance;

(3) strengthen coordination of Federal services and programs relating to physical fitness of citizens over age 50;

(4) encourage State and local governments to emphasize the importance of regular physical fitness for such older citizens;

(5) encourage research in physical fitness for such older citizens;

(6) assist business, industry, government, and labor organizations to establish sound physical fitness programs to reduce the financial and human costs of physical inactivity;

(7) coordinate the activities of the Council with the activities of the President's Council on Physical Fitness and Sports; and

(8) advise the President and the Secretary of Health and Human Services (referred to in this section as the "Secretary") as to the activities of the Council related to devising and promoting programs to improve the fitness of such older citizens.

(d) CHAIRPERSON AND VICE CHAIRPERSON.—The President shall designate one member to serve as Chairperson of the Council and one member to serve as the Vice Chairperson of the Council.

(e) TERM OF OFFICE.—Members shall be appointed for the life of the Council.

(f) VACANCIES.—Any vacancy occurring in the membership of the Council shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Council.

(g) TRAVEL EXPENSES.—The members of the Council shall not receive compensation for their service on the Council. Each member of the Council shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(h) ADMINISTRATIVE SERVICES.—To the extent permitted by law, the Secretary shall furnish the Council with necessary staff, supplies, facilities, and other administrative services. The expenses of the Council shall be paid from funds available to the Secretary.

(i) EXECUTIVE DIRECTOR.—The Secretary shall appoint an Executive Director of the Council.

(j) INFORMATION.—The Secretary and the Council are authorized to request from any Federal agency such information or assistance as the Secretary and the Council may determine to be necessary to carry out their functions under this section. Each Federal agency is authorized, to the extent permitted by law and within available funds, to furnish such information and assistance to the Secretary and the Council.

(k) FEDERAL ADVISORY COMMITTEE ACT.—Notwithstanding any other provision of Federal law, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.), except the function of reporting annually to the Congress, shall be performed by the Secretary in accordance with guidelines and procedures established by the Administrator of General Services.

(l) TERMINATION.—The Council shall terminate on the date 4 years after the date of enactment of this Act, unless sooner extended.

SEC. 602. PROGRAMS TO ENCOURAGE HEALTH LIFESTYLES.

(a) PURPOSE.—It is the purpose of this section to provide for the development and implementation, through the President's Council on Physical Fitness and Sports, of programs to encourage healthy lifestyle choices, including programs designed to motivate individuals to—

(1) avoid illegal drugs;

(2) avoid excessive alcohol consumption;

(3) avoid the use of tobacco products;

(4) choose proper foods as components of a healthy, balanced diet;

(5) utilize effective ways to manage stress; and

(6) engage in regular exercise.

(b) PROGRAMS AND ACTIVITIES.—The Secretary of Health and Human Services, acting through the President's Council on Physical Fitness and Sports (as continued under Executive Order 12345 (February 2, 1982, 47 F.R. 5189)), shall develop and implement programs consistent with the purposes of this section. Such programs shall be designed to—

(1) enlist the active support of individuals, civic groups, business enterprises, foundations, and other entities in efforts to promote healthy lifestyle choices by all Americans;

(2) initiate activities to inform the general public of the importance of healthy lifestyle choices, and of the link between appropriate lifestyle behaviors and good health and productivity;

(3) encourage State and local governments to emphasize the importance of making healthy lifestyle choices;

(4) advance the concept of physical fitness through healthy lifestyle choices, to system-

atically encourage the development of community programs;

(5) develop cooperative programs with societies of health professionals to encourage Americans to make healthy lifestyle choices;

(6) assist educational agencies at all levels in developing high quality, innovative health and physical education programs that emphasize the importance of making the right lifestyle choices for good health; and

(7) assist business, industry, government, and labor organizations, in encouraging and entering into public/private ventures that establish programs to promote healthy lifestyle choices by their employees and to reduce the financial and human costs resulting from inappropriate lifestyle choices.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $200,000 for fiscal year 1993, $200,000 for fiscal year 1994, and $300,000 for fiscal year 1995.•

TRIBUTE TO IRVINE

• Mr. McCONNELL. Mr. President, I rise today to pay tribute to Irvine in Estill County.

Irvine is a small mountain town about 55 miles southeast of Lexington. Though the era of Estill County as a leading iron producer has passed, Irvine is making great strides to maintain a strong economic future.

The region's topography makes large industry and development difficult. Lately, Irvine has been attracting small businesses to the area. Armada Manufacturing, which builds fiberglass pleasure boats, opened its plant in 1989 with only 12 employees. Today, it has nearly 80 workers and expects to produce up to 1,500 boats this year. In addition, a new chamber of commerce has been promoting the area. Residents believe that tourism could grow because of Irvine's proximity to the Kentucky River and the scenic surrounding countryside.

The smalltown atmosphere is evident by the residents of Irvine. People greet each other as well as strangers on the streets. Families stay in Irvine for generations. The quiet setting is a welcome change from the hustle and bustle of metropolitan life.

I applaud Irvine's efforts to maintain its historic charm, but at the same time its move forward, making it one of Kentucky's finest towns.

Mr. President, I insert a tribute and a recent article from Louisville's Courier-Journal be submitted in today's CONGRESSIONAL RECORD.

The material follows:

IRVINE

(By Richard Wilson)

Like many mountain towns, Irvine's heyday has passed, and few residents who remember or have heard about the good times expect them to return anytime soon.

Gone are the days more than a century ago when Irvine's gigantic furnaces made Estill County a leading iron-producer. It has been nearly 70 years since Estill Springs, the town's spa, drew wealthy vacationers to the Cumberland Mountain foothills to take the waters. And gone are the hotels, rooming houses and restaurants that once provided room and board for the railroaders who ran and serviced the trains that hauled "black gold" from the Eastern Kentucky coalfields.

Innovations in the iron industry and depletion of ore undercut that industry shortly after the Civil War. Estill Springs was never rebuilt after the main hotel burned in 1924, and the transition from steam locomotives to diesels in the 1940s and 1950s killed much of the railroad activity at the Irvine-Ravenna yards. Even the region's oil, gas and timber industries are mere shadows of what they used to be.

Despite these setbacks, the Estill County seat is doing the best it can with what it has and is hoping for better times. Unlike some Central Kentucky towns, Irvine has no aggressive industrial recruiting primarily because its hilly topography leaves little land for development. A chamber of commerce was started only a couple of years ago. And one of the town's more stable employers—South East Coal Co.—is facing hard times.

But the town is close enough to other Central Kentucky cities to allow residents to reach urban Kentucky quickly—and then return to the quiet splendor of Irvine's setting. The crime rate is manageable, and, except for periodic drug busts, offenses are minor.

Most residents know each other and their families, and they greet strangers easily on the streets. The small-town atmosphere also draws natives home for retirement and keeps others there for a lifetime.

There's a lot of people here like myself, who once they've lived in a small town, they don't want to go to the city and put up with the hassle of trying to survive there," said Mayor W.T. "Tom" Williams, who commuted daily to the IBM plant in Lexington for 33 years before retiring three years ago.

Many locals who haven't reached retirement age seem to agree. Twice a day, a stream of Estill countians commute to jobs in Richmond, Lexington and Winchester. Williams' son, Kevin, who is also a city councilman, commutes to Lexington, where he's a firefighter.

While its relaxed way of life is emblematic of most small towns, Irvine shares one problem with its larger municipal cousins. Its downtown traffic can be mind-boggling, particularly at noon and the end of the workday when cars, schoolbuses and large trucks are sometimes backed up for blocks on River Drive, Broadway and Main Street.

"I never dreamed we'd have traffic problems in a town this size. It's atrocious," says Guy Hatfield, publisher of the Citizen Voice & Times, a local weekly newspaper.

But no one is holding his breath in anticipation of a bypass to relieve the traffic jams.

Several downtown stores are vacant, victims either of the economy or the death of their proprietors. The town has only one stylish restaurant. The home cooking at Cedar Village draws customers from throughout the region.

And while style may not be a priority, anyone can get a hearty meal at Howell's Restaurant, on the riverbank under the Kentucky River bridge, or at Shirley's on Main Street.

The town's only motel is across Ky. 52 from Cedar Village. Another one was sold recently in a bankruptcy proceeding. The Colonial and Riverview hotels, once the center of downtown activity, went out of business years ago. Hatfield's newspaper office is in the Colonial, while the first floor of the Riverview is not a doctor's office.

The downtown claims two local distinctions—the community's only elevator, at Witt's Furniture Store, and one of small-town Kentucky's few remaining movie theaters—called the "New Irvine Theater" by its owners and the "Mack," according to its marquee.

The theater, operated since 1939 by the McClanahan family, is open most weekends, Ralph McClanahan, a former county-judge/executive who operates it with his son, daughter-in-law and grandson, regales visitors with stories of earlier years. During hard times he said, his parents accepted chickens, vegetables or eggs from patrons who had no money for tickets. Even today, hard-up youngsters can sometimes talk McClanahan into putting their tickets on the cuff.

"There've been a lot of happenings there that you wouldn't believe," McClanahan said. Years ago, the crowds were so rough that ushers carried pistols. "I'll never forget one time an usher dropped his pistol and shot himself in the foot. I took him to the doctor, who asked what had happened. I told him (the usher) was climbing over a fence."

Then there was the time when a patron who feared for the safety of a cowboy hero shot a screen villain from the audience. The show went on with a hole in the screen. Even today, an armed policeman and deputy sheriff patrol the theater at times. "If we didn't do that they'd be selling drugs in there," McClanahan said.

Apparently, there won't be a last picture show anytime soon. "We just feel it's kind of an obligation for us. We've been here for so many years, so why close now as long as we can break halfway even," McClanahan said.

Irvin is also a town where you frequently need to know the nicknames to know the residents. Mention such imaginative monikers as Tobo, Doodoo, Owl-head, Oink, Chalk-eye or Pidge, and most locals will know who you are talking about.

Perhaps the most widely known local nickname belongs to Delmus "Bunt" Gross, a former Chevrolet-Oldsmobile dealer who sold cars to Eastern and Central Kentuckians for years. Gross lost his dealership after a federal court jury convicted him in 1989 of 18 counts of laundering illegal drug money through his dealership. An appellate court later reversed 16 of the 18 counts, but Gross still faces a five-year prison sentence on the other two charges.

Many local people are closely watching the impact of a more recent case that they fear may have a disastrous impact on the local economy. The Irvine-based South East Coal Co. was on the losing end of a state Supreme court decision June 4 in a long coal contract dispute with Kentucky Utilities Co. That ruling has jeopardized the future of the company, which is already operating in bankruptcy, and it's 72 jobs at a local coal-washing plant.

The company also has been a major philanthropic force in Estill County, where it has contributed heavily to such projects as the public library.

A local court action—or inaction—in another matter has upset residents more recently. State police this summer arrested several dozen local residents in a drug bust. Trial dates for most of the offenders were set for next summer. "That has upset quite a few people who think a special judge should be brought in," Police Chief James Gross said.

Gross acknowledged that both the cultivation of marijuana and sale of drugs is a problem. But he said that more residents have began cooperating with policy by notifying them of potential offenses.

And, as in most other Kentucky towns of Irvine's size, the search for job-producing industries continues. Rex Jones, a banker who heads the Chamber of Commerce, said the area's geography is both an obstacle and a blessing in attracting new industry and more jobs. A lack of flat land is the biggest obstacle, Jones says. But the Kentucky River, proximity to I-75 (20 miles away) and the scenic countryside should be an attraction.

"We won't have the boom like a Toyota moving to Estill County, but I think the good news is going to continue to filter out. Over time, more and more people are going to realize Estill County sits here at the very end of the Bluegrass and the beginning of the mountains, and you won't find a more picturesque place in the state," he said.

Jones and others believe that attracting small businesses to the area is the region's greatest hope for a rosy economic future. They note that Armada Manufacturing, which builds fiberglass pleasure boats in Ravenna, opened its plant in 1989 with just 12 employees, building about 100 boats a year. Today, it has 77 workers and expects to turn out nearly 1,500 boats this year.

Joe Anders, the plant's chief operating officer, said that one of Armada's main reasons for locating in the Ravenna was its familiarity with the local work force. The company is largely owned by a Lexington family that has employed many Estill countians in its tobacco warehouse.

"We employed people from Estill County for years. We knew what type of people they were. They're good workers," Anders said.

If Armada's business continues to grow, the company will have to expend it's operation, Andrew said. "We'd love to stay here."

Population (1990): Irvine, 2,826; Estill County, 14,614.

Per Capita Income (1989): $9,320, or $4,503 below the state average.

Jobs (1991): Total employment, 2,116; wholesale and retail trade, 592; state/local government, 552; manufacturing, 386; services, 288; mining and quarrying, 100.

Big Employers: Carhartt Inc., (men's outerwear, work clothing), 290 employees; CSX Transportation, (rail yard), 165; Armada Manufacturing Co. (fiberglass boats), 77; South East Coal Co. (coal washing plant), 72.

Media: Newspapers—Citizens Voice & Times and Estill County Tribune, both weeklies. Radio)—WIRV-AM (country and oldies) and WYCO-FM (country).

Transportation: Rail—CSX Transportation provides mainline service. Air—The nearest commercial service is at Lexington's Blue Grass Airport, 54 miles northwest. Trucking)—11 companies serve Irvine. Roads—Irvine is served by Ky. 52 and Ky. 89. The Mountain Parkway is 14 miles north and I-75 is 23 miles west.

Education: Estill County public schools, 2,789 students.

Topography: Irvine sits on the east bank of the Kentucky River. Terrain ranges from flat bottomlands to mountainous.

FAMOUS FACTS AND FIGURES

The city of Irvine was established Jan. 25, 1812, and named for Col. William Irvine. Irvine was killed by Indians in 1786. The town was built on land once owned by Gen. Green Clay, the founder of Richmond and a large landholder in the area. Clay was the father of Cassius Marcellus Clay, the prominent abolitionist.

Estill County was formed in 1808 from parts of Clark and Madison counties and is named for Capt. James Estill, who was killed in March 1782 during Estill's Defeat, a battle with Indians near what is now Mount Sterling. William Irvine was wounded in the battle.

Daniel Boone was one of the area's earliest explorers, and in 1769 reportedly spent his first winter in Kentucky in what is now Estill County. Irvine was the site of two confrontations between Union and Confederate forces during the Civil War. On July 30, 1863, a Confederate detachment led by Col. J.S. Scott, looted an arsenal before retreating. Confederate guerillas attacked the town on Oct. 13, 1864, burned the jail and ransacked the community.

The old Estill Springs resort was once one of Kentucky's most popular spas, drawing vacationers from throughout the eastern United States. Its popularity faded in the early 20th century, and the resort did not reopen after the main hotel burned on Dec. 15, 1924.

During much of the 19th century, Estill County was a leading iron producer, and traces of the once-thriving industry can still be seen in the ruins of several steam furnaces in the area.

CONDEMNING THE ABUSES OF THE MILITARY REGIME IN HAITI

• Mr. **D'AMATO**. Mr. President, I rise today to condemn the militarily installed Haitian Government and to urge the United States to take a stronger stance against their oppressive leadership. We must further our efforts at reestablishing a freely elected government in Haiti and promote the expansion of democracy throughout the Western Hemisphere.

The United States cannot tolerate the existence of repressive regimes established by generals who seize control through aggressive, nondemocratic means. The military government which deposed President Jean-Bertrand Aristide of Haiti is one such regime. Guilty of numerous abuses, the military government has not only proven an inability to provide acceptable leadership, but has also exhibited a willingness to use repressive measures to quiet opposition and pursue its goals.

We have witnessed the end of the Communist regime in the Soviet Union and eastern block nations, yet within our own hemisphere the abuses of oppressive regimes remains rampant. Since the overthrow of the democratically elected Aristide regime, the people of Haiti have been denied the rights of freedom and expression which we in the United States have always cherished. The United States must not stand idly by and allow this situation to continue. As a champion of individual rights and liberties, the United States must strengthen its position to protect the rights of the people of Haiti. It is the duty of the democratic nations of this world to extend democratic rights to the peoples of the world which continue to experience persecution from oppressive regimes.•

ORDERS FOR TOMORROW

Mr. **BRADLEY**. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 8:40 a.m., Thursday, October 8, that following the prayer, the Journal of proceedings be deemed approved to date; that the time for the two leaders be reserved for their use later in the day, that there then be a period for morning business, not to extend beyond 9 a.m., with Senators permitted to speak therein for up to 5 minutes each, with Senator GRAHAM recognized for up to 20 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 8:40 A.M. TOMORROW

Mr. **BRADLEY**. Mr. President, if there is no further business to come before the Senate today, I ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 8:37 p.m., recessed until tomorrow, Thursday, October 8, 1992, at 8:40 a.m.

NOMINATIONS

Executive nominations received by the Senate October 7, 1992:

DEPARTMENT OF JUSTICE

JOHN J. MCKENNA, OF PENNSYLVANIA, TO BE U.S. MARSHAL FOR THE EASTERN DISTRICT OF PENNSYLVANIA FOR THE TERM OF 4 YEARS VICE THOMAS C. RAPONE, RETIRED.

FEDERAL AGRICULTURAL MORTGAGE CORPORATION

DAVID M. BREWER, OF NEW JERSEY, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL AGRICULTURAL MORTGAGE CORPORATION, VICE GORDON CLYDE SOUTHERN.

EXTENSIONS OF REMARKS

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD—SENATE on Monday and Wednesday of each week.

Meetings scheduled for Thursday, October 8, 1992, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

OCTOBER 15

9:30 a.m.
Select on POW/MIA Affairs
To hold open and closed hearings on symbols and imagery found in Vietnam that may indicate the possibility of live Americans in the region.
SH-216

1:00 p.m.
Select on POW/MIA Affairs
To hold closed hearings on possible live sightings of POWS and MIAs in Nhammorat, Vietnam.
SH-219

OCTOBER 16

9:30 a.m.
Select on POW/MIA Affairs
To resume closed hearings on possible live sightings of POWs and MIAs in Nhammorat, Vietnam.
SH-219

NOVEMBER 10

1:00 p.m.
Select on POW/MIA Affairs
To hold hearings on Russian and Korean perspectives of the Cold War and World War II.
SH-216

NOVEMBER 11

10:00 a.m.
Select on POW/MIA Affairs
To continue hearings on Russian and Korean perspectives on the Cold War and World War II.
SH-216

DECEMBER 1

9:30 a.m.
Select on POW/MIA Affairs
To hold oversight hearings on issues relating to POWs/MIAs.
SH-216

DECEMBER 2

9:30 a.m.
Select on POW/MIA Affairs
To continue oversight hearings on issues relating to POWs/MIAs.
SH-216

DECEMBER 3

9:30 a.m.
Select on POW/MIA Affairs
To continue oversight hearings on issues relating to POWs/MIAs.
SH-216

DECEMBER 4

9:30 a.m.
Select on POW/MIA Affairs
To continue oversight hearings on issues relating to POWs and MIAs.
SH-216

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

HOUSE OF REPRESENTATIVES—Thursday, October 8, 1992

The House met at 12 noon and was called to order by the Speaker pro tempore [Mr. MONTGOMERY].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
October 7, 1992.

I hereby designate the Honorable G.V. (SONNY) MONTGOMERY to act as Speaker pro tempore on Thursday, October 8, 1992.

THOMAS S. FOLEY,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

With gratitude and thanksgiving, O gracious God, we welcome this day with all its blessings and with all its opportunities. From the verdant fields and from the labor of those who till the earth we receive the blessing of our nourishment; from the toil of those who use their minds and their hands to build and to create, we welcome the bounty of daily life; from the beauty of nature with the streams and forests and the colors of the season, we are nurtured and embraced; by the support and love of friends and family, we are blessed more than we deserve; for all these good gifts, we celebrate Your creation and offer our grateful praise. Teach us, O God, to accept these good gifts with reverence and with a generous spirit so they will be a source of strength and of serenity for us and for all the generations. As we meditate upon Your blessings to us, O God, may we learn to live our lives with a spirit of gratitude and thanksgiving that touches us and all we do. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from New Mexico [Mr. RICHARDSON] lead the House in the Pledge of Allegiance.

Mr. RICHARDSON led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 1592. An act to increase the size of the Big Thicket National Preserve in the State of Texas by adding the Village Creek Corridor unit, the Big Sandy Corridor unit, the Canyonlands unit, the Sabine River Blue Elbow unit, and addition to the Lower Neches Corridor unit.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 1514. An act to resolve the status of certain lands relinquished to the United States under the Act of June 4, 1987 (30 Stat. 11, 36), and for other purposes;

H.R. 1624. An act to authorize the American Battle Monuments Commission to establish a memorial, in the District of Columbia or its environs, to honor members of the Armed Forces who served in World War II and to commemorate the participation of the United States in that war;

H.R. 2141. An act to establish the Snake River Birds of Prey National Conservation Area in the State of Idaho, and for other purposes;

H.R. 2444. An act to revise the boundaries of the George Washington Birthplace National Monument;

H.R. 2502. An act to establish the Jemez National Recreation Area in the State of New Mexico, and for other purposes;

H.R. 2790. An act to withdraw certain lands located in the Coronado National Forest from the mining and mineral leasing laws of the United States, and for other purposes;

H.R. 2893. An act to extend to 1991 crops the disaster assistance provisions of the Food, Agriculture, Conservation, and Trade Act of 1990;

H.R. 3011. An act to amend the National Trails System Act to designate the American Discovery Trail for study to determine the feasibility and desirability of its designation as a national trail;

H.R. 3215. An act to reinvigorate cooperation between the United States and Latin America in science and technology;

H.R. 3457. An act to amend the Wild and Scenic Rivers Act to designate certain segments of the Delaware River in Pennsylvania and New Jersey as components of the national wild and scenic rivers system;

H.R. 3614. An act amending the Land Remote-Sensing Commercialization Act of 1984 to secure United States leadership in land remote-sensing by providing data continuity for the Landsat program and by establishing a new national Landsat policy, and for other purposes;

H.R. 3837. An act to make certain changes to improve the administration of the medicare program, to reform customs overtime pay practices, to prevent the payment of Federal benefits to deceased individuals, and to require reports on employers with underfunded pension plans;

H.R. 4906. An act to amend the Consolidated Farm and Rural Development Act to establish a program to aid beginning farmers and ranchers and to improve the operation of the Farmers Home Administration, and to amend the Farm Credit Act of 1971, and for other purposes;

H.R. 5118. An act to exchange lands within the State of Utah, between the United States and the State of Utah; and

H.R. 6077. An act concerning United States participation in a Cascadia Corridor commission.

The message also announced that the Senate had passed bills and a joint resolution of the following titles, in which the concurrence of the House is requested:

S. 289. An act to authorize the Board of Regents of the Smithsonian Institution to plan and design an extension of the National Air and Space Museum at Washington Dulles International Airport, and for other purposes;

S. 814. An act to amend the Environment Programs Assistance Act of 1984 to provide that for purposes of liability for damage, injury or death caused by the negligence or wrongful acts or omissions of individuals authorized by such Act, the United States is liable, and for purposes of access to trade secrets and confidential business information such individuals are authorized representatives of the United States Environmental Protection Agency;

S. 1925. An act to remove a restriction from a parcel of land owned by the City of North Charleston, South Carolina, in order to permit a land exchange, and for other purposes;

S. 1990. An act to authorize the transfer of certain facilities and lands in the Wenatchee National Park Forest, Washington;

S. 2006. An act to establish the Fox River National Heritage Corridor in Wisconsin, and for other purposes;

S. 2021. An act to amend the Wild and Scenic Rivers Act by designating a segment of the Rio Grande in New Mexico as a component of the National Wild and Scenic Rivers System, and for other purposes;

S. 2045. An act to authorize a study of the prehistoric Casas Grandes Culture in the State of New Mexico, and for other purposes;

S. 2105. An act to direct the Secretary of Transportation to establish a Civil Tiltrotor Development Advisory Committee in the Department of Transportation, and for other purposes;

S. 2499. An act for the relief of Elham Ghandour Cicippio;

S. 2544. An act to authorize the Secretary of the Interior to formulate a program for the research, interpretation, and preserva-

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

tion of various aspects of colonial New Mexico history, and for other purposes;

S. 2606. An act to further clarify authorities and duties of the Secretary of Agriculture in issuing ski area permits on National Forest System lands;

S. 2749. An act to grant a right of use and occupancy of a certain tract of land in Yosemite National Park to George R. Lange and Lucille F. Lange, and for other purposes;

S. 2936. An act to amend the Competitiveness Policy Council Act to provide for reauthorization, to rename the Council, and for other purposes;

S. 3229. An act to protect the security of valuable goods in interstate commerce in the service of an armored car company;

S. 3256. An act to amend the Public Health Service Act to authorize grants for construction at certain historically Black colleges and universities and similar institutions granting biomedical graduate degrees and enrolling substantial numbers of students from disadvantaged backgrounds, including racial and ethnic minorities;

S. 3345. An act to designate the Gallipolis Locks and Dam, Ohio River, Ohio and West Virginia, as the "Robert C. Byrd Locks and Dam";

S. 3346. An act to establish a health registry of veterans of the Persian Gulf War, to authorize health examinations of such veterans, to coordinate and improve research on the health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War, and for other purposes;

S. 3349. An act entitled "Biden-Thurmond Justice Improvements Act";

S. 3362. An act to provide that the Georgia Baptist Hospital College of Nursing shall be deemed as satisfying, for academic year 1992–1993, the accreditation requirements described in section 1201(a)(5) of the Higher Education Act of 1965;

S. 3363. An act to amend the John F. Kennedy Center Act (20 U.S.C. 76th et seq.) to provide authorization of appropriations for fiscal years 1993 through 1997 for the John F. Kennedy Center for the Performing Arts, and for other purposes;

S. 3364. An act to amend certain provisions of law relating to establishment, in the District of Columbia or its environs, of a memorial to honor Thomas Paine;

S. 3365. An act entitled the "Central Valley Project Fish and Wildlife Act of 1992";

S. 3366. An act entitled the "ADAMHA Reorganization Technical Amendments Act of 1992;

S. 3367. An act to amend the Employee Retirement Income Security Act of 1974 to provide for the treatment of settlement agreements reached with the Pension Benefit Guaranty Corporation;

S. 3368. An act to provide for the establishment of the Brown versus Board of Education National Historic Site in the State of Kansas, and for other purposes;

S. 3369. An act to allow certain political subdivisions of the State of Arizona continued access to FBI identification records for a period of 180 days pending restoration of statutory authorization by the legislature of the State of Arizona;

S. 3370. An act to provide for the full settlement of all claims of Swain County, North Carolina, against the United States under the agreement dated July 30, 1943, and for other purposes;

S. 3371. An act to amend the Public Health Service Act to provide for excellence in research with respect to juvenile arthritis, and for other purposes; and

S.J. Res. 335. Joint resolution to acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.

The message also announced that the Senate agrees to the amendment of the House to the bill (S. 1183) "An Act to reduce the restrictions on the lands conveyed by deed to the city of Kaysville, Utah, and for other purposes" with an amendment.

The message also announced that the Senate agrees to the amendment of the House to the bill (S. 1187) "An Act to amend the Stock Raising Homestead Act to provide certain procedures for entry onto Stock Raising Homestead Act lands, and for other purposes" with an amendment.

The message also announced that the Senate agrees to the amendments of the House to the bill (S. 1392) "An Act to strengthen the authority of the Federal Trade Commission regarding fraud committed in connection with sales made with a telephone, and for other purposes" with an amendment.

The message also announced that the Senate agrees to the amendments of the House to the bill (S. 1579) "An Act to provide for regulation and oversight of the development and application of the telephone technology known as pay-per-call, and for other purposes" with an amendment.

The message also announced that the Senate agrees to the amendments of the House to the bill (S. 1709) "An Act to amend the Farm Credit Act of 1971 to enhance the financial safety and soundness of the Farm Credit System, and for other purposes" with an amendment.

The message also announced that the Senate agrees to the amendments of the House to the bill (S. 1985) "An Act to establish a commission to review the Bankruptcy Code, to amend the Bankruptcy Code in certain aspects of its application to cases involving commerce and credit and individual debtors and add a temporary chapter to govern reorganization of small businesses, and for other purposes", with an amendment.

Mr. CLEMENT. Mr. Speaker, on Sunday, October 4, I requested and received a leave of absence for the balance of this session of the 102d Congress. My absence was due to the death of my brother, Gary, who died in the early morning hours of that day.

I share this information to explain why I have not been in Washington to cast votes on the measures considered since Sunday.

ADJOURNMENT

Mr. FASCELL. Mr. Speaker, I move that the House now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 2 minutes p.m.) the House adjourned until tomorrow, Friday, October 9, 1992, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4364. A letter from the Secretary of the Air Force, transmitting notification that a major defense acquisition program has breached the unit cost by more than 15 percent, pursuant to 10 U.S.C. 2433; to the Committee on Armed Services.

4365. A letter from the Secretary of Housing and Urban Development, transmitting a copy of a report on auction of multifamily mortgages, pursuant to Public Law 101–625, section 336 (104 Stat. 4146); to the Committee on Banking, Finance and Urban Affairs.

4366. A letter from the Director, Office of Management and Budget, transmitting OMB estimate of the amount of change in outlays or receipts, as the case may be, in each fiscal year through fiscal year 1997 resulting from passage of H.R. 2967 and S. 1607, pursuant to Public Law 101–508, section 13101(a) (104 Stat. 1388–582); to the Committee on Government Operations.

4367. A letter from the Director, Office of Management and Budget, transmitting OMB estimate of the amount of change in outlays or receipts, as the case may be, in each fiscal year through fiscal year 1997 resulting from passage of H.R. 238 and H.R. 712, pursuant to Public Law 101–508, section 13101(a) (104 Stat. 1388–582); to the Committee on Government Operations.

4368. A letter from the Director, Office of Management and Budget, transmitting OMB's estimate of the amount of discretionary new budget authority and outlays for the current year (if any) and the budget year provided by H.R. 5373, pursuant to Public Law 101–508, section 13101(a) (104 Stat. 1388–578); to the Committee on Government Operations.

4369. A letter from the Director, Office of Management and Budget, transmitting OMB's annual report on the Federal Agencies' Implementation of the Computer Matching and Privacy Protection Act of 1988 for calendar year 1990; to the Committee on Government Operations.

4370. A letter from the Administrator, Panama Canal Commission, transmitting a report on activities under the Freedom of Information Act during calendar year 1991, pursuant to 5 U.S.C. 552(d); to the Committee on Government Operations.

4371. A letter from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting notification of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

4372. A letter from the Secretary of Commerce, transmitting a draft of proposed legislation to implement the provisions of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks; to the Committee on the Judiciary.

4373. A letter from the Secretary of Health and Human Services, transmitting a report entitled "Physician Participation, Assignment, and Extra Billing in the Medicare Program"; jointly, to the Committees on Ways and Means and Energy and Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. DINGELL: Committee on Energy and Commerce. H.R. 5748. A bill to amend title XVIII of the Social Security Act to make miscellaneous amendments to the Medicare Program, and for other purposes; with an amendment (Rept. 102–1046, Pt. 1). Ordered to be printed.

Mr. CONYERS: Committee on Government Operations. A report on the Politics of AIDS Prevention: Science Takes a Time Out (Rept. 102–1047). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

Mr. HUGHES (for himself (by request) and Mr. MOORHEAD):

H.R. 6211. A bill to amend the Trademark Act of 1946, to provide for the registration and protection of trademarks used in commerce, to carry out provisions of certain international conventions, and for other purposes; which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 3764: Mr. BLAZ.

H.R. 3928: Mr. DOOLEY and Mrs. JOHNSON of Connecticut.

H.R. 4571: Mr. LEWIS of Georgia.

H.R. 5140: Mr. COX of California.

H.R. 5451: Mr. BARNARD, Mr. BURTON of Indiana, Mr. ERDREICH, Mr. HOLLOWAY, Mr. LAUGHLIN, Mr. MANTON, and Mr. MYERS of Indiana.

H.R. 5545: Mr. GINGRICH.

H.R. 5745: Mr. WELDON.

H.R. 6003: Mr. GEKAS.

H.J. Res. 463: Mrs. KENNELLY, Mr. STUDDS, Mrs. MEYERS of Kansas, and Mr. JENKINS.

H.J. Res. 550: Mr. MORAN, Mrs. PATTERSON, and Mr. POSHARD.

SENATE—*Thursday, October 8, 1992*

(Legislative day of Wednesday, September 30, 1992)

The Senate met at 8:40 a.m., on the expiration of the recess, and was called to order by the Honorable HOWELL HEFLIN, a Senator from the State of Alabama.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Eternal God, loving Father in Heaven, as the 102d Congress adjourns, may all who labor here disperse in the confidence that You will never leave them nor forsake them; that Your love and guidance can be theirs as often as they want it; and that Your presence will be constant and relentless.

The Lord bless you, and keep you: The Lord make his face to shine upon you, and be gracious unto you: The Lord lift up his countenance upon you, and give you peace.—Numbers 6:24-26.

Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 8, 1992.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HOWELL HEFLIN, a Senator from the State of Alabama, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. HEFLIN thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

PILOT PROJECT TO STRENGTHEN COMMUNICATIONS BETWEEN THE COURTS AND CONGRESS

Mr. MITCHELL. Mr. President, for the information of the Senate, I would like to describe briefly a pilot project to improve communications between the judicial and legislative branches.

The project, which the distinguished Republican leader and I have been advised is already underway in the House, is to establish and test a system for communicating to the Congress Federal appellate opinions which identify drafting problems in acts of Congress. While the Congress is naturally aware of major issues concerning the construction of its legislation, there is concern that other issues regarding the interpretation of statutes, which do not evoke public controversy, may escape the attention of the Congress. Courts, Government agencies, citizens, and businesses may be required to expend considerable public and private resources to resolve even relatively minor questions of statutory interpretation through litigation.

Under the project, which will begin with the U.S. Court of Appeals for the District of Columbia Circuit, staff counsel at the court will identify, and transmit to the Senate's legislative counsel, Frank Burk, recent opinions which address noncontroversial issues of statutory interpretation that are based on apparent errors or omissions in legislative drafting. On the Senate side, the legislative counsel, who has joined in recommending the project to us, will bring to the attention of the appropriate committees of jurisdiction the opinions he receives from the court. Our hope is that committee staff and legislative assistants to members will then join the legislative counsel in an effort to identify the issues in those opinions that suggest the possibility of corrective legislation for particular matters or, importantly, bear generally on the drafting of future legislation that effectuates the intent of Congress and provides clear guidance to the courts and affected parties.

I ask unanimous consent that there be placed in the RECORD a July 28, 1992, letter from U.S. Senior Circuit Judge Frank M. Coffin and former Representative Robert W. Kastenmeier, to the distinguished Republican leader and me, bringing the project to our attention, and a letter of September 28, 1992, to the Senate legislative counsel, in which the distinguished President pro tempore of the Senate joined the Republican leader and me in expressing our support of the project.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

JULY 28, 1992.

Hon. GEORGE MITCHELL,
Majority Leader,
U.S. Senate.
Hon. ROBERT DOLE,
Minority Leader,
U.S. Senate.

DEAR SENATOR MITCHELL AND SENATOR DOLE: From our perspectives as legislator and judge, we hope that we might interest you in a pilot project which seeks to build a bridge between the judiciary and the Congress. Our effort tries to strengthen communications between the branches by developing an institutional process whereby opinions of the federal courts of appeal, identifying discrete noncontroversial issues in statutes, will be forwarded without comment to the legislative branch. Those technical matters have to do with apparent grammatical errors, drafting glitches, litigation-brewing ambiguities, or gap-filling. Research indicates that Congress tends to be largely unaware of the judicial opinions interpreting legislation (but for major cases, or those in which an interest group seeks some legislative relief). Although there are many things that may be done to make communication between the branches more effective, this project would seem to be among the most promising. It does not impinge upon the autonomy of either branch. Congressional committees need act only on those statutory omissions, ambiguities, or internal inconsistencies that they deem worthy of correction. But to the extent that "statutory housekeeping" takes place, the Congress better fulfills its purpose and courts will benefit by having needless litigation forestalled.

The first focus of this project is the opinions of the U.S. Court of Appeals for the D.C. Circuit, but other circuits are expected to become involved. Indeed, at its recent meeting in June, the U.S. Judicial Conference Committee on the Judicial Branch (chaired by Judge Deanell R. Tacha) took steps to elicit the interest of other circuits.

This pilot project is already underway in the House of Representatives. We enclose the bipartisan letter of Speaker Foley, Majority Leader Gephardt and Republican Leader Michel, launching this good government, non-partisan effort. We quite agree with the House leadership's view that "the program would be most useful if it were applied to all circuits and both houses of Congress." As we seek to implement this pilot project in the Senate, we have been grateful for the support of Legislative Counsel Francis L. Burk, and Legal Counsel Michael Davidson. At their suggestion, we turn now to you for your guidance and, we hope, approval.

This project on judicial-legislative relations began some years ago, at the initiative of the U.S. Judicial Conference Committee on the Judicial Branch (then chaired by Judge Coffin). It was the feeling of the judges, several of whom were former legislators, that efforts should be made to improve communications between the branches, to overcome unnecessary tensions that impeded the effective functioning of each. The Governance Institute, a non-profit organization in Washington, D.C., was created to help explore the full range of relations between the branches, working with decisionmakers with an eye towards practical results. We have been very much involved in its activities (Judge Coffin as a founding director and Bob Kastenmeier as Distinguished Fellow).

With the opinion transmittal process in place, Congress will have a better sense of the judiciary's interpretation of its work. Moreover, the judiciary may have a better sense of congressional views about judicial interpretation of statutes. Over time, improvements might be seen in the drafting, interpretation and revision of statutes.

We hope we might have your support to extend this pilot effort to the Senate, and that some appropriate communication (perhaps similar to the one initiated by the House leadership), might be sent to relevant persons in the Senate. Should you or your staffs need further information about the project, we would be happy to provide it. Please feel free to contact us or Robert Katzmann, the president of the Governance Institute (and the Walsh Professor of Government and Professor of Law at Georgetown University). By way of context, apart from the letter of the bipartisan House leadership, we enclose: information about the process to be followed in the House of Representatives; a background memorandum; a law review article on the subject; some information about the Governance Institute; and a copy of "Judges and Legislators: Toward Institutional Comity."

Knowing how busy you and your staffs are, we are especially thankful for your attention.

Sincerely,

FRANK M. COFFIN,
U.S. Senior Circuit Judge Board Director, the Governance Institute.

ROBERT W. KASTENMEIER,
Chair, National Commission on Judicial Discipline and Removal, Distinguished Fellow, the Governance Institute.

U.S. SENATE,
Washington, DC, September 28, 1992.

FRANCIS L. BURK, Jr., Esq.
Legislative Counsel,
U.S. Senate, Washington, DC.

DEAR MR. BURK: We are writing to express our support for the pilot project that the Governance Institute has developed, in cooperation with the United States Court of Appeals for the District of Columbia Circuit, to improve communications between the courts and Congress about questions of statutory construction and congressional intent.

We understand that this pilot project has already begun in the House of Representatives and that the D.C. Circuit is prepared to extend the project to the Senate. As Judge Coffin and Representative Kastenmeier have described this program to us, staff counsel at the D.C. Circuit will identify recent opinions of that court which address noncontroversial issues of statutory interpretation based on apparent errors or omissions in legislative drafting. The hope is that the identification and transmittal of such opinions to the appropriate congressional committees will furnish information helpful to Congress's efforts to improve its communication of legislative intent in statutory drafting.

This project offers great promise as a thoughtful and productive step in improving communications between the judiciary and the Congress to the benefit of both branches. Its extension to both Houses of Congress should enhance the project's usefulness and permit a more accurate appraisal of its potential benefits as consideration is given to expanding the effort to other Circuits.

We are pleased that you have agreed to join our counterpart in the House, David Meade, in serving as the point of communication for this program by receiving opinions from the D.C. Circuit on behalf of the Senate and forwarding them to the appropriate committees of jurisdiction for their consideration. We encourage all Members and committees of the Senate to take advantage of the information that will become available through this mechanism.

Please let us know if there is anything we can do to assure the success of this project as it is implemented in the Senate.

Sincerely,

ROBERT C. BYRD,
President pro tempore.

ROBERT DOLE,
Republican Leader.

GEORGE J. MITCHELL,
Majority Leader.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will now be a period for the transaction of morning business for not to extend beyond the hour of 9 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

The Senator from Florida [Mr. GRAHAM] will be recognized to speak for up to 20 minutes.

There will then be 2 hours of debate prior to the vote on the motion to invoke cloture on the conference report accompanying H.R. 776.

Under the previous order, the Senate will proceed at the proper time to the consideration of the conference report accompanying H.R. 429.

Who seeks recognition?

Mr. GRAHAM addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Florida is recognized.

CONCERNS REGARDING ENERGY BILL

Mr. GRAHAM. Mr. President, the purpose of my remarks this morning is to address some concerns about the pending energy bill that we will be considering later in the morning. I am going to be talking about three issues, two of them now, and one later during the general debate on the energy bill. At this point, I would like to talk about the question of, have we properly diagnosed the problem and, second, the specific applications of that diagnosis to the use of our Outer Continental Shelf resources.

I am afraid that the history of recent congresses could include a chapter on a series of failed legislative initiatives, which had appropriate public goals, but which fell short of their realization. There are a variety of explanations for that, but I believe recurrent is the theme of failed diagnoses. That is, before legislating, the Congress did an inadequate job of understanding what the priority problem was and addressing itself to that resolution.

I would put it in the category of failed legislation because of misdiagnosis and enactments such as the 1986 tax bill. The 1986 tax bill defined the problem as being an overly complex Internal Revenue Code, and the objective was simplification.

Mr. President, that would be analogous to someone having a serious blood disease which had manifested itself by a skin rash and defining the problem as the skin rash and dealing with that. The problem, of course, was a hemorrhaging Federal deficit, up until 1986, which has now cascaded to a $4 trillion national debt. The failure to diagnose the problem and dealing with that deficit rather than simplification has contributed substantially to the recession in which we are currently mired and to our failure to deal with the deficit. In 1987, we passed a catastrophic health care bill that defined the problem as being older Americans needing the gaps in Medicare coverage. What we failed to recognize was that 60 to 70 percent of older Americans had already provided, on their own initiative or by their previous employment, for many of those gaps in coverage.

The real problem was long-term care that was not being made available to older Americans and which the catastrophic health care bill did not advance. Again, the failure to properly diagnose led to a bill which, within a matter of months, became the subject of great disappointment, scorn, and finally repeal.

And then I add, as the third example, the 1989 efforts to deal with the problems of the savings and loan industry. The diagnosis was that the problems were inadequate regulation and, therefore, the solution was a mountain of new regulation applied to both the savings and loan industry and the commercial banks. That, I submit, was not the problem. The problem was an insurance fund, deposit insurance fund, which had been systematically underfunded and which was not based on serious insurance standards, such as applying premiums based on the degree of risk which individual institutions placed against the fund.

Again, by that misdiagnosis and misprescription, we have loaded up the regulations on our financial institutions to the point that they have been virtually squeezed from their ability to serve as an appropriate intermediary; that is, the institution that takes all of our deposits and then targets them toward job-creating businesses. And, again, this has contributed significantly, in my judgment, to the current economic recession.

I cite those three examples of failures of appropriate diagnosis, which led not only to the failure to solve the basic problem, but also to an exacerbation, to unintended negative consequences.

I am concerned that we are about to make another of those errors. This energy bill starts with a definition of the problem as being the fact that we are importing too much petroleum from outside the United States. I might agree with that statement. We are importing too much petroleum from outside the United States. I do not agree, however, that that is the fundamental problem to which we should be addressing ourselves in a national strategic energy policy.

The fundamental problem is that we are using too much petroleum from whatever source. Here are the facts: The United States today is consuming a little over 6 billion barrels per year of petroleum. Approximately half of that is imported; half of it is domestic. The United States has, by the best estimates, approximately 75 to 80 billion barrels of petroleum within its domestic boundaries. It does not take much of a mathematician to calculate that, if we continue at the current rate of consumption, that is, approximately 3 billion barrels a year of domestic petroleum, within approximately 25 years we are going to have totally depleted our domestic reserves and resources.

If we do as some would suggest, to become totally energy independent now, that is, instead of using 3 billion barrels, use 6 billion plus per year from our domestic reserves, we will cut in half the number of years to 12 to 14 years as the remaining time in which there will be petroleum left in the United States.

The problem is the excessive use of petroleum in our society and the urgency of effective action to reduce that use of petroleum. I say, Mr. President, that this is not a fanciful goal. Our major industrial competitors, such as Japan and much of Europe, use half the petroleum per capita, half the petroleum per unit of production, as we do in the United States of America.

That has to be our goal, the dramatic reduction in the use of petroleum. One area in which this is being illustrated—and the legislation has to do with the use of Outer Continental Shelf resources, a part of that 75 to 80 billion barrels of remaining petroleum—the way in which this legislation deals with that issue is not to deal with it at all.

There had been legislation adopted both in the Senate and in the House that would have directed new national policies in the use of our Outer Continental Shelf. In the conference committee it was all dropped. So what we have in this national strategic energy bill is the status quo. And what is the status quo?

The status quo is an energy policy relative to our Outer Continental Shelf, which essentially says that the primary criteria for its development will be its energy potential. It encourages a rapid evaluation and extraction of our OCS potential. We now have many thousands and thousands of acres which have been leased and which are subject to drilling and recovery of the resource. It is a glaring example of what has been described as the drain-America-first policy, taking these resources as our first line rather than as our ultimate reserve of domestic petroleum resources.

The example of what is happening in my State of Florida is illustrative of what has happened elsewhere in the United States.

Beginning approximately 10 or 15 years ago, there was an escalation of the granting of leases off the coast of Florida. Many of these leases have subsequently been found to be environmentally inappropriate and create significant dangers to not only natural resources but also the economy.

Recognizing that fact, President Bush, in 1990, ordered the Department of the Interior to ban further leasing in the area off southwest Florida and the Florida Keys, and also ban drilling until the year 2000. He also ordered that there begin the process of buying back 73 existing leases which were considered to be in an inappropriate location.

To quote the President:

> Today I am announcing my support for a moratorium on oil and gas leasing and development in (the sale area) off the coast of Florida until after the year 2000. The combined effect of these decisions is that the southwest coast of Florida will be off limits to oil and gas leasing and development until the year 2000. I am asking the Secretary of the Interior to begin a process that may lead to the buyback and cancellation of (the 73) existing leases off southwest Florida.

That was the President recognizing that the current policy is not working.

Efforts were made, particularly in the House of Representatives, to place that philosophy that the current system is not working into statute. Unfortunately that codification of the President's promise was dropped, and it was dropped in large part because of the pressure from the White House where Representatives of the administration, particularly in the Department of Energy, threatened that there would be a Presidential veto if language which codified the President's statements of 1990 were adopted in this final conference report.

I think that indicates, Mr. President, that there is a desire to accelerate the pace of draining America first in spite of the statements to the contrary.

Mr. President, while the issue of Outer Continental Shelf use has been left unaddressed in this legislation, it cannot be left unaddressed from the national agenda. We must deal with the questions of the appropriate reserve of our Outer Continental Shelf resources so that they will be retained as America's ultimate reservoir of domestic petroleum. We must also change the current law which encourages the expeditious development of Outer Continental Shelf resources to a more balanced approach that takes into effect other economic interests and the protection of natural resources. We must also allow the States that are affected to have a more effective role. And, we must avoid what is happening now, that is leases being granted subject to subsequent environmental and safety studies, but which the possessor of the lease considers to be a property interest and, if it is found to be inappropriate to drill because of environmental, safety, or other considerations, he then demands huge ransom from the Federal Government for its cancellation.

Even more egregious has been a proposal from the Department of Energy that the States ought to have to repay for that cancellation, the States which got none of the money when the leases were originally granted, which in many instances fought vigorously against the grant of leases for exactly the inappropriate economic and environmental consequences that they foresaw when the original proposal was made. Those, Mr. President, are outrageous suggestions.

I believe, Mr. President, that we are going along a path of misdiagnosis of the problem which is going to lead to an acceleration of our depletion of domestic petroleum resources, and that we will, in this Chamber, live to see the day when the issue of energy independence as it relates to petroleum is no longer a relevant national goal, because we will have depleted our domestic petroleum.

There were provisions which were also deleted in this bill that, in my judgment, would have focused our attention on some things that ought to be done to reduce our dependence on petroleum.

Sixty percent of that 6 billion barrels of petroleum is used for transportation. Approximately 3½ to 4 billion are used in areas of transportation. So clearly if we are going to reduce our dependence on petroleum, that must be the point of attack.

There had been an original proposal to continue a process that has been underway for almost 20 years, led, in fact, by our distinguished colleague from Nevada, to increase efficiency of automobiles, one of the clearest ways in which we could contribute to the reduction of our dependence on petroleum. There was also, in this legislation, proposals that would have accelerated the development of high-speed rail systems as an alternative both to the automobile and short-range commercial aircraft.

A high-speed rail system such as that which is utilized in Japan and France will transport a person between Washington and New York or other equivalent distances at four to five times less use of energy than the shuttle aircraft which are providing that service today and do so with a speed, efficiency and safety which would be very appropriate to the mix of transportation for our Nation. That provision to enhance the development of high-speed rail was also dropped from this energy bill.

So, Mr. President, my basic concern is that we have a bill which misdiagnoses the problem, misprescribes against the problem, in the area of Outer Continental Shelf drilling, will do nothing about the current egregious standards that are bad energy policy, bad economic policy, bad environmental policy, and that we have not advanced in a sufficiently, aggressively, urgent way, those steps that are available to us to reduce our dependence on petroleum. And thus we have almost assured that these young pages in front of us today, and our children and grandchildren, are going to live in an America which will be totally bereft of its petroleum resources.

Those, Mr. President, are, I think, reasons sufficient for this Congress to say, let us start anew in our quest for a strategic energy policy, let us not accept what is available to us today.

As I close, I will say there will be some other items that I will discuss later on that I hope might be made available.

Mr. REID. Mr. President, will the Senator yield?

Mr. GRAHAM. Yes.

Mr. REID. Will the Senator from Florida now wish to take the 10 minutes, and I will yield to him?

Mr. GRAHAM. I say to my friend from Nevada, I would prefer if I could wait until the debate is open to use the time to discuss the final issue that I want to discuss, and that is the question of changes in our Nation's nuclear policy both as it relates to licensing, but particularly to the issue of the disposal of high-level nuclear waste, another area which I fear this bill will achieve a different and negative intention from that which its designers have in mind.

I look forward to the opportunity to discuss that issue later in the debate.

Mr. President, I ask unanimous consent to print in the RECORD items which related to this legislation, particularly its impact on Outer Continental Shelf drilling.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT BY THE PRESIDENT

Tuesday, June 26, 1990.

I have often stated my belief that development of oil and gas on the outer continental shelf (OCS) should occur in an environmentally sound manner.

I have received the report of the interagency OCS Task Force on Leasing and Development off the coasts of Florida and California, and have accepted its recommendation that further steps to protect the environment are needed.

Today, I am announcing my support for a moratorium on oil and gas leasing and development in Sale Area 116, Part II, off the coast of Florida, Sale Area 91 off the coast of northern California, Sale Area 119 off the coast of central California, and the vast majority of Sale Area 95 off the coast of southern California, until after the year 2000.

The combined effect of these decisions is that the coast of southwest Florida and more than 99 percent of the California coast will be off limits to oil and gas leasing and development until after the year 2000.

Only those areas which are in close proximity to existing oil and gas development in Federal and state waters, comprising less than 1% of the tracts off the California coast, may be available before then. These areas, concentrated in the Santa Maria Basin and the Santa Barbara Channel, will not be available for leasing in any event until 1996—and then only if the further studies for which I am calling in response to the report of the National Academy of Sciences satisfactorily address concerns related to these tracts.

I am also approving a proposal that would establish a National Marine Sanctuary in California's Monterey Bay and provide for a permanent ban on oil and gas development in the sanctuary, and I am asking the Secretary of the Interior to begin a process that may lead to the buyback and cancellation of existing leases in Sale Area 116, Part II, of southwest Florida.

In addition, I am directing the Secretary of the Interior to delay leasing and development in several other areas where questions have been raised about the resource potential and the environmental implications of development. For Sale Area 132 off the coasts of Washington and Oregon, I am accepting the recommendation of the Secretary that further leasing and development activity be deferred until a series of environmental studies are completed, and directing that no such activity take place until after the year 2000. I am also cancelling Lease Sale 96, in the Georges Bank area of the North Atlantic, and directing that no leasing and development activity take place in this area until after the year 2000. This will allow time for additional studies to determine the resource potential of the area and address the environmental and scientific concerns which have been raised.

Finally, I am today directing the Secretary to take several steps to improve the OCS program and respond to several of the concerns expressed by the Task Force. My goal is to create a much more carefully targeted OCS program—one that is responsive to local concerns, to environmental concerns, and to the need to develop prudently our nation's domestic energy resources. Although I have today taken these strong steps to protect our environment, I continue to believe that there are significant offshore areas where we can and must go forward with resource development.

While I believe that a leaner OCS program will ultimately be more effective, Americans must recognize that the OCS program is a vital source of fuel for our growing economy. My desire is to achieve a balance between the need to provide energy for the American people and the need to protect unique and sensitive coastal and marine environments.

FACTSHEET—PRESIDENTIAL DECISION CONCERNING OIL AND GAS DEVELOPMENT ON THE OUTER CONTINENTAL SHELF

June 26, 1990.

The President today announced a series of decisions related to oil and gas development on the outer continental shelf (OCS). The President believes that these decisions strike a needed balance between development of the Nation's important domestic energy resources and protection of the environment in sensitive areas.

DECISIONS BY THE PRESIDENT ON THREE PENDING SALES

Decision for California sales

Cancel all sales scheduled for 1990, 1991 and 1992 offshore California, including Sale 91 off the coast of northern California and Sale 95 off the coast of southern California.

Conduct additional oceanographic and socioeconomic studies as recommended by the National Academy of Sciences in a review conducted for the interagency Task Force on Leasing and Development of the OCS (the Task Force). These studies should take 3 to 4 years.

Exclude more than 99 percent of the tracts (including all of the Sale 91 area and all of the Sale 95 area south of the Santa Barbara Channel) off California from consideration for any lease sale until after the year 2000. The Interior Department has identified 87 tracts off the coast of southern California within the Sale 95 area that have high resource potential. These tracts are located in the Santa Maria Basin and Santa Barbara Channel, where oil and gas production is currently underway. They comprise approximately 0.7 percent of all of the tracts off California, or 0.67 percent of the 74 million total acres off California that could be leased and 1.63 percent of the 30.5 million acres in the Southern California Planning Area. These tracts will not be available for leasing consideration until after January 1, 1996 and completion of the additional studies. They will then be available only if development appears viable based on the guiding principles outlined below and the results of the studies.

Decision for Florida

Cancel Sale 116, Part II, and exclude the area from consideration for any lease sale until after the year 2000. Any development after the year 2000 would be pursued only if it appears viable based on the guiding principles outlined below and the results of additional studies.

Conduct additional oceanographic, ecological and socioeconomic studies as recommended by the National Academy of Sciences in its review. These studies should be completed within 5 to 6 years.

Begin cancellation of existing leases off Florida and initiate discussions with the State of Florida for its participation in a joint federal-state buy-back of the leases.

GUIDING PRINCIPLES

The President's decisions were based on the following principles:

(1) Adequate Information and Analysis.—Adequate scientific and technical information regarding the resource potential of each area considered for leasing and the environmental, social and economic effects of oil and gas activity must be available and subjected to rigorous scrutiny before decisions are made. No new leasing should take place without such information and analysis.

(2) Environmental Sensitivity.—Certain areas off our coasts represent unique natural resources. In those areas even the small risks posed by oil and gas development may be too great. In other areas where science and experience and new recovery technologies show development may be safe, development will be considered.

(3) Resource Potential.—Priority for development should be given to those areas with the greatest resource potential. Given the inexact nature of resource estimation, particularly offshore, priority should be given to

those areas where earlier development has proven the existence of economically recoverable reserves.

(4) Energy Requirements.—The requirements of our nation's economy for energy and the overall costs and benefits of various sources of energy must be considered in deciding whether to develop oil and gas offshore. The level of petroleum imports, which has been steadily increasing, is a critical factor in this assessment.

(5) National Security Requirements.—External events, such as supply disruptions, might require a reevaluation of the OCS program. All decisions regarding OCS development are subject to a national security exemption. If the President determines that national security requires development in the areas of these three lease sales or in other areas, he has the ability to direct the Interior Department to open the areas for development.

The need to develop adequate information, particularly needed to meet the inadequacies identified by the National Academy of Science, is an essential factor in calling for further studies and cancellation of the pending sales. The Sale 116 area off southwest Florida, which contains our nation's only mangrove-coral reef ecosystem and is a gateway for the precious Everglades, deserves special protection. The presence of successful drilling operations and known resources off certain areas of southern California merits allowing continued development, assuming scientific and environmental uncertainties can be resolved.

OTHER ACTIONS BY THE PRESIDENT

The President has also directed certain other actions affecting offshore oil and gas development.

Sale 119 and Monterey Bay sanctuary

The Task Force consideration of development off northern and southern California has been accompanied by strong concern about the prospect of development off central California and Sale 119. Sale 119, originally scheduled for March 1991, covers an area stretching from San Francisco southward to the northern tip of Monterey Bay. This area includes unique coastal and marine resources and a portion of the area of the Monterey Bay National Marine Sanctuary proposed by the National Oceanic and Atmospheric Administration (NOAA) (the proposed sanctuary would cover approximately 2,200 square miles). NOAA has also proposed regulations to prohibit all oil and gas exploration and development activities within the sanctuary. This area contains nationally significant, environmentally sensitive resources, including the largest breeding ground for marine mammals in the lower 48 states. The President has directed Interior Secretary Manual Lujan and NOAA Administrator John Knauss to take the following actions:

Cancel Sale 119 and adopt the sanctuary proposed by NOAA.

Permanently prohibit all oil and gas exploration and development within the sanctuary.

Allow no development in the Sale 119 area outside the sanctuary until after the year 2000. At that time the guiding principles outlined above will be applied to determine the viability of development in the area.

Sale 96 in North Atlantic

Sale 96 has been proposed for the Georges Bank area of the North Atlantic Planning Area, which stretches northward from Rhode Island to Canada. The President has directed Interior Secretary Lujan to:

Cancel Sale 96 and exclude it from the 1992-1997 five-year plan.

Conduct additional studies, including studies designed to determine the resource potential of the North Atlantic area and to assess the environmental, scientific and technical considerations of development in the area.

Consult with the governors of the states whose residents would be affected by future development of oil and gas in the North Atlantic.

These actions ensure that no sale will be considered in the North Atlantic Planning Area until after the year 2000, and then only if studies show that development is warranted because of resource potential and is environmentally safe.

OCS DEVELOPMENT OFF WASHINGTON AND OREGON

The President has accepted the recommendation of Interior Secretary Lujan to conduct a series of additional environmental studies of the effects of oil and gas development off Washington and Oregon, including the Sale 132 area, before any environmental impact statement would be completed. These studies are expected to take 5 to 7 years. No sale will be considered off Washington and Oregon until after the year 2000 and then only if studies show that development can be pursued in an environmentally safe manner.

GENERAL OCS DECISIONS

The President also decided that:

Air quality controls for oil and gas development offshore California should be substantially the same as those applied onshore.

Immediate steps should be taken to improve the ability of industry and the federal government to respond to oil spills offshore, regardless of their source.

Federal agencies should develop a plan to reduce the possibility of oil spills offshore from whatever source, including and especially from tanker traffic. This plan should include moving tanker routes further away from sensitive areas near the Florida Keys and the Everglades.

RESTRUCTURING THE OCS PROGRAM

The President determined that providing the necessary balance between developing domestic energy resources and protecting the environment requires certain revisions to the OCS program. The program must be:

Targeted more carefully toward areas with truly promising resource potential;

Buttressed by information adequate to ensure that oil and gas development proceeds in an environmentally sound manner; and

Sensitive to the concerns and needs of local areas affected by offshore development.

Accordingly, the President directed Interior Secretary Lujan to take three actions to improve the overall OCS program:

Improve the information needed to make decisions on OCS development by conducting the studies identified by the National Academy of Sciences and studies to explore new technologies for alleviating the risks of oil spills from OCS platforms and new oil and gas drilling technologies, such as subsea completion technology.

Target proposed sale areas in future OCS five-year plans to give highest priority to areas with high resource potential and low environmental risk. This will result in offering much smaller and more carefully selected blocks of tracts.

Prepare a legislative initiative that will provide coastal communities directly affected by OCS development with a greater share of the financial benefits of new development and with a larger voice in decision-making. Currently, states receive 100 percent of revenues from leases within three miles of shore. Revenues from leases between three and six miles of shore are divided 73 percent to the federal government and 27 percent to the states. Revenues from leases six miles or further offshore go 100 percent to the federal government. Coastal communities directly affected by development are not presently guaranteed any of these revenues.

BACKGROUND ON SALES

Sale 91

The Sale 91 area contains approximately 1.1 million acres and lies offshore Mendocino and Humboldt Counties in northern California, primarily in two areas off Eureka and from south of Cape Mendocino to south of Point Arena. It is within the Northern California Planning Area, which stretches from the California/Oregon border to the Sonoma/Mendocino County lines. There is currently no oil and gas production within this planning area. The Minerals Management Service (which is responsible for the OCS program within the Interior Department) estimates that there are between 210 million and 1.54 billion barrels of crude oil and approximately 2.5 trillion cubic feet of natural gas in the Northern California Planning Area and between 20 million and 820 million barrels of oil and approximately 1.0 trillion cubic feet of natural gas in the Sale 91 area. Congress imposed a moratorium prohibiting leasing in the Northern California Planning Area as part of the Interior Department's FY 1990 appropriations bill.

Sale 95

The Sale 95 area contains approximately 6.7 million acres and lies offshore southern California from the northern border of San Luis Obispo County to the United States/Mexico border. It is within the Southern California Planning Area, which extends from the northern border of San Luis Obispo County to the United States/Mexico border. Oil and gas production is currently taking place in the Southern California Planning Area in the Santa Maria Basin, the Santa Barbara Channel and offshore Long Beach. There are 135 active federal leases in the area, producing approximately 90,000 barrels of crude oil and 95 million cubic feet of natural gas daily from 17 producing platforms in federal waters. One platform in federal waters is used exclusively for processing and four other platforms are under construction or completed but not yet producing. In addition, there are 10 platforms and four artificial islands in the area supporting production facilities within state waters, which extend three miles from the shore. The Minerals Management Service estimates that there are between 610 million and 2.23 billion barrels of crude oil and approximately 3.01 trillion cubic feet of natural gas in the Southern California Planning Area and between 200 million and 960 million barrels of oil and approximately 1.1 trillion cubic feet of natural gas in the Sale 95 area.

Sale 116, part II

The area of Sale 116, Part II contains approximately 14 million acres, lying south of 26 degrees north latitude off the southwest Florida coast off Collier, Monroe and Dade Counties. This area is within the southeastern portion of the Eastern Gulf of Mexico Planning Area. (In 1988 the Eastern Gulf of Mexico was divided for leasing purposes into two parts along the 26 degrees north latitude line.) There is no oil and gas production within the sale area, although 73 active leases are held within the area by ten oil and gas companies. The Minerals Management Service estimates that there are between 440 million and 1.72 billion barrels of crude oil and approximately 1.68 trillion cubic feet of natural gas in the Eastern Gulf of Mexico Planning Area and between 279 million and 1.06 billion barrels of oil and approximately 110 billion cubic feet of natural gas in the Sale 116, Part II area.

BACKGROUND ON THE OCS TASK FORCE

In his February 9, 1989 budget message to Congress, the President indefinitely postponed three OCS lease sales scheduled for FY 1990—Sale 91 off the coast of northern California, Sale 95 off the coast of southern California and Sale 116, Part II off the coast of southwestern Florida—pending a study of the sales by a Cabinet-level task force charged with reviewing and resolving environmental concerns over adverse impacts of the sales. The Task Force was named on March 21, 1989. It consisted of Interior Secretary Manuel Lujan as Chairman, Energy Secretary James Watkins, Administrator John Knauss of the National Oceanic and Atmospheric Administration (NOAA), Administrator William Reilly of the Environmental Protection Agency, and Director of the Office of management and Budget Richard Darman. The Task Force conducted nine public workshops in Florida and California, heard from over 1,000 witnesses, took ten field trips to sites in the two states, received briefings from various federal agencies, met twice with members of Congress, and solicited and received over 11,000 written public comments.

The Task Force also commissioned a technical review from the National Academy of Sciences regarding the environmental and other information available on which decisions could be made. The National Academy of Sciences determined that adequate ecological, oceanographic or socioeconomic information was not available to some extent for each of the three sale areas.

The Task Force found that:

The southwest Florida shelf comprises subtidal and nearshore habitats that are unique within the U.S. continental margin and provide refuge to a number of rare and endangered species;

The incremental risks of an oil spill associated with the Sale 91 area off northern California are greater than those associated with the other two sales.

Information concerning the onshore socioeconomic effects of oil and gas development is particularly lacking for Sale 116, Part II off Florida and Sale 91.

Additional studies in response to the report of the National Academy of Sciences are needed before the Secretary of the Interior makes leasing decisions in any of the three areas.

BACKGROUND ON THE OCS PROGRAM

Management of oil and gas found in federal waters offshore (which generally begin three miles from a state's coast and can extend out 200 to 300 miles) is vested in the Department of the Interior under the Outer Continental Shelf Lands Act of 1953, as amended. The Act directs the Interior Department to:

Make OCS resources available to meet the nation's energy needs;

Protect human, marine and coastal environments;

Ensure that states and local governments have timely access to information and opportunities to participate in OCS program planning and decisionmaking; and

Obtain for the federal government a fair and equitable return on resources while preserving and maintaining free enterprise competition.

These responsibilities within the Interior Department are administered by the Minerals Management Service (MMS), created in 1982 to oversee the orderly development of offshore energy and mineral resources while safeguarding the environment. The current director of the MMS is Barry Williamson.

The MMS makes resources available by leasing federal acreage offshore to private companies, which explore for and can develop and produce commercial deposits, subject to continuing review and permitting procedures. Environmental standards are established by the MMS in regulations and lease stipulations and enforced through review of companies' exploration development and production plans (including drilling permits that must be obtained) before operations can begin on leases, and an offshore facility inspection program, under which inspectors review safety, operational and environmental activities an offshore platforms. Inspectors currently oversee 3,800 platforms in the Gulf of Mexico and 22 platforms off California.

Oil and gas lease sales are conducted in a competitive sealed bid process. Sales are scheduled in five-year planning cycles (the first of which was in 1978) developed by the Secretary of the Interior with public review and comment on the draft plan. Efforts are made to address concerns raised during this review process, which normally takes two years. After the adoption of a plan, extensive pre-lease activities are conducted before any sales occur. These activities include the preparation of an environmental impact statement for each sale, with opportunities for public review and comment, and submission of sale proposals to the governors of the affected states before final decisions are made. These steps generally take an additional two or more years.

The total OCS area covers 1.4 billion acres, and is composed of over 260,000 tracts. Since 1954 over 118,000 (or approximately 45 percent) of the tracts have been offered for lease; 10,115 (3.9 percent) have been leased; 4,111 (1.6 percent) have been drilled; and slightly more than 1,250 (approximately .05 percent) are occupied by platforms. Production from the OCS program since 1954 totals over 8.5 billion barrels of crude oil and condensate and 88 trillion cubic feet of natural gas. Since its creation, the Minerals Management Service has been responsible for overseeing the production of more than two billion barrels of crude oil and condensate and over 25.6 trillion cubic feet of natural gas and for generating over $90 billion in revenues from lease sales and lease rental payments for the United States Treasury.

The OCS accounts for a significant portion of existing United States oil and gas resources. Table 1 shows: the quantities of proven oil and gas reserves that have been discovered and are economically recoverable within the United States as a whole and the OCS separately (Column A); the quantities of undiscovered oil and gas resources estimated to be economically recoverable using existing technologies within the United States as a whole and the OCS separately (Column B).

TABLE I.—OIL AND GAS RESERVES IN THE UNITED STATES AND THE OUTER CONTINENTAL SHELF [OCS]

	Column A: Proven oil and gas reserves		Column B: Estimated oil and gas reserves	
	All United States	OCS only	All United States	OCS only
Oil (billion barrels)	26.8	2.6	34.8	8.2
Natural gas liquids (billion barrels)	8.2	.6	6.3	.8
Natural gas (trillion cubic feet)	168.0	32.3	262.7	74.0

Note.—Column A shows the quantities of proven oil and gas reserves that have been discovered and are economically recoverable within the United States as a whole and the OCS separately; column B shows the quantities of undiscovered oil and gas resources estimated to be economically recoverable using existing technologies within the United States as a whole and the OCS separately.

THE SECRETARY OF ENERGY,
Washington, DC, September 8, 1992.

Hon. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Three years ago the Bush Administration embarked upon the most comprehensive effort in over 20 years to craft a National Energy Strategy. For the last 18 months we have worked diligently with the Congress to translate key provisions of the Strategy into legislation. We are now within striking distance of reaching our common goal of sound, comprehensive energy legislation.

As the Conference Committee prepares to reconcile differences in the House and Senate energy bills, I thought it prudent to provide a comprehensive summary of our views on various provisions of the two bills.

Of particular concern, the Office of Management and Budget has advised me that the legislation, as passed by both Houses of Congress, contains provisions that will substantially increase direct spending and reduce receipts. The preliminary estimated net PAYGO cost of the House bill is $1.6 billion and the Senate bill is $2.9 billion for the period 1993–1997. In addition, the Senate bill creates new exemptions from sequestration for the Bonneville Power Administration and certain fund transfers to the Bureau of Reclamation and the Corps of Engineers. It also exempts certain spending of these agencies from the appropriations process and reclassifies discretionary spending to the mandatory category. If these provisions are included in the enacted legislation and not offset, the President's senior advisors would recommend that he veto the bill.

Assuming the Administration's problems are resolved, it strongly supports the prompt enactment of balanced and comprehensive national energy legislation to provide for economic growth and increased energy security, while protecting the environment. We believe that essential elements of a balanced and comprehensive bill include provisions that:

Encourage increased cost-effective in Federal, State, industrial, commercial, and residential uses;

Permanently provide much-needed Alternative Minimum Tax relief for independent oil and gas producers;

Proportionately extend the current tax exemption for ethanol/gasoline blends to blends of less than 10% ethanol;

Promote the development and use of domestic renewable resources and of alternative transportation fuels;

Amend the Public Utility Holding Company Act (PUHCA) to increase competition in electricity generation;

Expedite licensing procedures for construction of interstate natural gas pipelines;

Reform the nuclear powerplant licensing process and restructure the uranium enrichment enterprise;

Support the environmentally compatible use of our Nation's abundant coal resources; and

Enhance mass transit and vanpool use by increasing the tax-free limit on employer-provided benefits and limit employer exclusions of parking benefits from gross income.

We are concerned, however, that the significant progress made to date in achieving these objectives not be jeopardized by provisions contained in a final bill that the Administration will be unable to support. I would note that, as indicated in the enclosed summary, we have a considerable number of concerns. We believe that some of these can be addressed by reasonable compromise, while others are simply contrary to the national interest and should be stricken.

In addition to the PAYGO problems, if the energy legislation presented to the President contains the following provisions, the President's senior advisors would recommend that he veto the bill:

Expansion of Federal limitations on State regulatory authority over the production of natural gas (the House prorationing amendment);

Long-term moratoria and other provisions concerning oil and gas exploration and production on the Outer Continental Shelf (OCS) that go beyond the President's 1990 decision to defer leasing in environmentally sensitive areas. Particularly objectionable are OCS lease cancellation and buyback provisions that could result in Federal spending of as much as $1.5 billion in FY 1992/19993;

Onerous regulatory requirements in the House bill that severely limit development and retention of non-polluting and renewable hydroelectric resources. These provisions would circumvent the Electric Consumers Protection Act, which requires balancing of all beneficial uses of the Nation's rivers;

Counterproductive expansion of the Strategic Petroleum Reserve drawdown authority to include mitigation of petroleum price increases and a costly and unnecessary creation of a 50 million barrel refined petroleum product reserve, as proposed in the House bill;

Radioactive waste provisions in the House bill that require reinstatement of EPA standards for disposal of high-level waste and permit State low-level waste regulation that is more stringent than NRC regulation. These provisions constitute burdensome, costly, and unnecessary regulation that will hamper civilian nuclear power activities, including medical and scientific applications; and

Provisions that could be vulnerable to challenge as inconsistent with our international obligations under the General Agreement on Tariffs and Trade (GATT), or other laws or treaties agreed upon or in force.

SCORING FOR PURPOSES OF PAYGO

Several provisions of the Senate and House bills increase direct spending or decrease receipts; therefore, both bills are subject to the Pay-As-You-Go requirement of the Omnibus Budget Reconciliation Act (OBRA) of 1990. A budget point of order applies in both the House and the Senate against any bill that is not offset under CBO scoring. If, contrary to the Administration's recommendation, the Congress waives any such point of order that applies against this legislation, the effects of enactment would be included in a look back pay-as-you-go sequester report at the end of the congressional session.

OMB's preliminary scoring estimates of the bills as written are presented in the table below. OMB is still reviewing the budget impacts of the Coal Industry Retiree Health Benefit Act, which was amended to the Senate bill. Final scoring of enacted legislation may deviate from these preliminary estimates.

If legislation is enacted, final OMB scoring estimates would be published within five days of enactment, as required by OBRA.

ESTIMATES FOR PAY-AS-YOU-GO

[In millions of dollars]

	1993	1994	1995	1996	1997	1993–97
House:						
Outlays:						
Title XXIV (lease buyback)	1,500					1,500
Receipts/Revenuse:						
Title XXIV (OCS moratoria)			5	5		10
Title XXV (VER)		50	50	50	50	200
Title IX (Uranium)	−151	−151	−151	−151	−151	−755
Title XIX (tax package)	10	157	116	122	223	628
Subtotal	1,359	56	20	26	122	1,583
Senate:						
Outlays:						
Title V (BPA)	30	13	13	13	13	82
Title X (uranium)	790	178	548	676	676	2,868
Title XIV (retiree benefits)						
Receipt/revenues:						
Title XII (OCS)				5		5
Title XX (tax package)	−52	40	−14	−21	73	26
Title XIV (retiree benefits)						
Subtotal	768	231	547	673	762	2,981

As we have to date, we will work closely with the Conferees to resolve issues on which we disagree and to assure passage of a bill that the President will be able to sign into law before the end of this Congress. I look forward to working with you to complete successfully the development of a sound, comprehensive energy bill.

Sincerely,

JAMES D. WATKINS,
Admiral, U.S. Navy (Retired).

OFFICE OF MANAGEMENT
AND BUDGET,
Washington, DC, September 30, 1992.
Hon. MALCOLM WALLOP,
U.S. Senate,
Washington, DC.

DEAR SENATOR WALLOP: It is my understanding that during the course of discussions on the Senate-House Conference meeting on H.R. 776 this evening the following proposal on Outer Continental Shelf moratoria and lease buy-back was made:

1. a drilling ban would be in place from the date of enactment until October 1, 1997 on all leases in existence on the date of enactment and

2. the Secretary of Interior would be directed to enter into negotiations to establish written lease cancellation and compensation agreements to the lessees.

While we have not been provided with the text of such an offer it appears similar to a House Staff Counter-Offer dated September 25, 1992 which has been provided to us.

Our preliminary determination is that the first of these provisions could lead a court to decide that the owners of the leases involved have suffered a takings of their property interests under the Fifth Amendment of the Constitution. The second could be interpreted to provide the Secretary of Interior the budgetary resources to enter into such an agreement. Therefore, we believe these proposals still raise serious PAYGO issues pursuant to the Budget Enforcement Act of 1990 and their enactment would trigger a sequester as provided in that Act, unless these provisions are offset.

Sincerely,

PAUL GILMAN,
Associate Director, Natural Resources, Energy and Science.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC., September 28, 1992.
Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: We understand that the Conference Committee on H.R. 776, "The Comprehensive National Energy Policy Act," has been considering various alternatives to the provisions of H.R. 776 relating to the cancellation and buyback of certain Outer Continental Shelf oil and gas leases. We are pleased the conference has chosen to focus on the many problems inherent in these provisions.

We have reviewed the proposals on this issue that have been exchanged by the House and Senate staffs and continue to have serious concerns. For example, the Administration believes enactment of a five-year drilling ban, as provided in subparagraph (A) of the current House proposal, significantly raises the risk that a court would decide that the owners of the leases involved have suffered a taking of their property interests under the Fifth Amendment of the Constitution. In addition, we think that subparagraph (B) grants the Secretary of the Interior contract authority to compensate the lessees for cancellation of their leases, thus incurring mandatory spending. Therefore, we believe that these proposals still raise serious PAYGO issues pursuant to the Budget Enforcement Act of 1990 and their enactment would trigger a sequester as provided in that debt.

The Office of Management and budget has advised that it has no objection to the presentation of this letter from the standpoint of the Administration's programs.

Sincerely,

———— ————,

Assistant Secretary.

[From the Miami Herald, Oct. 7, 1992]

CLINTON IS RIGHT ON TRADE

Democratic presidential nominee Bill Clinton was under considerable pressure to take a quick, simple position on the proposed North American Free Trade Agreement. Instead, after weeks of deliberation, he gave the treaty a solid, if nuanced, endorsement.

Good for him. Now perhaps the trade debate can rise out of the partisan mire into which it has been sinking for two years.

Mr. Clinton is known to favor free trade. He's also known to favor winning elections. He might have given himself a better shot at winning this one if he had demagogued the trade issue the way House Majority Leader Richard Gephardt had done. He could have tried to argue, like Mr. Gephardt and some labor leaders, that Americans can somehow protect their *status quo* from a changing world economy simply by closing the borders to more foreign goods.

Instead, Mr. Clinton stuck to principles—not only to the principle of free trade, but to another, equally important one: that those who benefit from change should also pay for it. He argues, in brief, that Americans should not expect to receive the considerable rewards of expanded commerce while piling its cost onto a small group of displaced workers and farmers, or onto an already victimized environment.

He offers this alternative: A nation that will benefit handsomely from wider markets and cheaper consumer goods should use some of the proceeds to retrain workers whose jobs are lost in the process such retraining, he adds, should be part of an overall national training policy. He favors aid to farmers who would be forced to change crops. And he would negotiate supplemental agreements with the Canadians and Mexicans to ensure decent working conditions and safeguard to the environment.

None of those is an unreasonable impediment to the treaty. True, Mr. Clinton's call for international commissions on labor and the environment would have to be negotiated with Mexico City. But Mexican President Carlos Salinas de Gortari repeatedly has issued that his government is as committed to those issues as anyone. There's no reason to believe that an acceptable accommodation would be unreachable.

Unlike ideologues on either side, Mr. Clinton took care to weight, publicly, the costs and benefits of freer trade, and to strike a balance. If that helps to provoke a more temperate debate on the issue's subtler points, all the better.

DRILLED BETWEEN THE EYES

The energy bill just passed by Congress leaves the 10-year ban on oil-drilling off the Everglades and the Keys intact. That's the good news.

The bad news is that the White House foiled congressional attempts to begin buying back the area's 73 leases. Energy Secretary James Watkins told Congress that the president would veto efforts to expand the ban to North Florida waters and the Atlantic, or to implement a buy-back plan.

The House included these and other progressive measures on exploration in the Outer Continental Shelf in its bill anyhow. The Senate was more cautious. In the end, facing the veto threat, a conference committee dropped all the leasing provisions.

This means that the moratorium on lease exploration below the 26th parallel is still in effect—but only at the whim of the executive branch. President Bush imposed the ban in 1990, promising then to pursue "cancellation of the leases."

Florida has sought to have Congress codify the ban and proceed with buy-back or cancellation plans, knowing that a presidential ban could dissipate at will. The quest for a permanent solution was prescient, given that the president is now backing away form his commitment to deal permanently with the leases.

Meanwhile, the buy-back cost escalates every year. The leases sold for $100 million. Now their estimated worth is $500 million to $1.5 billion. This isn't an easily resolved issue. The lease-sale profits are supposed to be spent, in part, for conservation in the states most affected by leases.

Yet that $100 million, even if used to buy Everglades and Keys lands for conservation, couldn't begin to equal the damage to Florida's coast from one drilling accident. Witness the oil rig explosion off Louisiana this week, causing an uncontrollable gusher into coastal waters.

To be sure, drilling accidents are few these days. Yet exploration itself causes pollution from chemicals, and a disruption of the marine ecosystem could damage Florida's fisheries. Florida thought that Mr. Bush, who loves fishing in the Keys, got the message in 1990. Florida thought wrong.

HIGH-SPEED RAIL TAX-EXEMPT BONDS

Mr. GRAHAM. Mr. President, Senator SYMMS and I joined together to bring high-speed rail systems closer to a reality in the United States.

We came close, the Senate adopted the Graham-Symms high-speed rail tax exempt bond amendment to the energy bill July 29.

However, when the conference committee completed their work on the energy bill, the amendment was no longer a part of the package.

Mr. President, by striking the provision which would have provided an essential financing component for high-speed ground transportation systems, the conference committee weakened our country's ability to develop an energy efficient, environmentally sensitive transportation system.

Senator SYMMS and my efforts were undertaken not just for the benefit of the systems already under development in Texas and Florida, but also for incentives that will encourage a high-speed ground transportation system across America.

Other projects being discussed include a Chicago hub system linking Minneapolis, St. Louis, and Detroit; another linking Washington, New York, New Jersey, Rhode Island, and Massachusetts; and a Seattle hub system linking Portland and Vancouver.

Mr. President, the projects in Florida include a magnetic levitation system of which the first leg is a 14-mile line between the Orlando International Airport and International Drive in Orlando, and a high-speed steel wheel system connecting Miami, Tampa, and Orlando. When these projects faced difficulties in raising the capital set out in their plans, it became clear that the public partner would have to become active.

At this point, I set out to determine what was needed from the public partner by meeting with members of the High-Speed Rail Association, as well as representatives of the different systems.

During this discussion, it became clear that not only would the private sector interests continue to honor their agreements of the partnership, but that there is a clear precedent for a public role in the development of transportation systems as well.

What the projects sought were incentives similar to those provided to airports, in which the public partner would assist in building the infrastructure, and the private partner would own and operate the trains.

Since it was unanimous that the private sector did have an interest in continuing its role in the development of high-speed rail systems, the private sector representatives suggested tax exempt bond financing and loan guarantees.

Mr. President, Congress included the loan guarantee financing concept in the recently enacted Intermodal Surface Transportation Efficiency Act.

Mr. President, then on July 29, the Senate adopted a Graham/Symms amendment to the energy bill, which would have removed the 25-percent inclusion of tax exempt bonds issued to finance intercity high-speed rail facilities from State private activity bond caps.

The amendment did not create a new category of tax exempt financing, but rather expanded a provision enacted in 1988 as a result of the Technical and Miscellaneous Revenue Act.

The 1988 act allows private entities to finance intercity high-speed rail facilities with tax exempt bonds, but requires that 25 percent of each bond issued receive an allocation under the State's private activity volume cap.

The policy rational behind the 25-percent requirement is to ensure that the project is subject to public oversight. This financing tool was structured to force the projects to compete with other State priorities in order to raise the level of accountability and legitimacy.

What has happened in practice, however, is that the level of tax exempt bond financing needed to build these facilities has precluded the projects from using private activity tax exempt financing.

In drafting legislation to remove bonds issued for intercity high-speed rail facilities from the State volume caps, it was clear that the airlines preferred for these bonds to have the same oversight and restrictions that airport facility bonds had.

Senator SYMMS and I worked with the high-speed rail community to design legislation requiring that portions of the rail facilities that are to be financed with tax exempt bonds be publicly owned.

Public ownership would ensure oversight of the facility, and satisfy the airline concern that high-speed rail facilities not have a competitive advantage over them.

Mr. President, I thought in developing this legislation that we had engendered the support needed to enact it into law.

I stand corrected.

Mr. President, I hope that the next time my colleagues have an opportunity to act on legislation to make high-speed ground transportation systems a reality they will consider the history of public involvement in both the construction and maintenance of transportation facilities.

In addition, I hope that my colleagues will consider the letters of support from the High-Speed Rail Association, the Electric Transportation Coalition, and from the following environmental groups: Friends of the Earth, National Wildlife Federation, National Audubon Society, Natural Resources Defense Council, Environmental Defense Fund, Rails to Trails Conservancy, American Council for an Energy-Efficient Economy, and the Union of Concerned Scientists.

Mr. President, as Congress showed in the Intermodal Surface Transportation Efficiency Act, there is a pressing need to solidify public-private partnerships in order to meet the transportation needs of our country.

Providing tax exempt bond financing is vital to the partnerships that will build a national high-speed ground transportation system in the United States.

WATERTOWN PUBLIC OPINION

Mr. PRESSLER. Mr. President, Gordon Garnos of the Watertown Public Opinion in Watertown, SD, has written an insightful editorial about the nomination process for the U.S. attorney position in South Dakota.

I ask unanimous consent that the entire editorial be placed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

THERE IS MORE BEING DUG UP THAN DINOSAUR BONES

The U.S. attorney for South Dakota, Kevin Schieffer, in the few months he has been in office seems to have received more ink in the state's newspapers than did his predecessor, Phil Hogan, during all of his years that he held the job. The lastest was last week when Schieffer's former boss, Sen. Larry Pressler, put a hold on a number of federal judgeship appointments until he got the White House to add Pierre attorney Ron Schmidt to that list.

Apparently there was some confusion in the Senate when Pressler put a hold action on those other appointments and that he did so because he wanted Schieffer's name added to the list for confirmation of his U.S. attorney's job. Pressler clarified what he was doing and Schmidt's name was then assured of going further up the ladder for the eventual confirmation of his federal judgeship—to replace retiring Judge Don Porter.

But, alas! Poor Kevin Schieffer's name was once again back on the pages of a lot of newspapers. Even though it was a mistake.

But speaking of mistakes, did South Dakota's senior senator, Mr. Pressler, make a mistake when he nominated his chief of staff for the high position of U.S. Attorney for South Dakota? A number of people seem to think so. Schieffer never practiced law before getting Hogan's job. But perhaps that is OK. Bobby Kennedy wasn't too familiar with a law office either before his brother named him the U.S. Attorney General.

And as we said before, Schieffer, a Yankton native, hardly had his bags unpacked after he got back to his home state than he started making headlines—good headlines. They centered on the fact that he was starting to close in on a number of the state's farmers who were terribly late in making payments on some of their loans from one federal farm loan program or another. The people we heard from said this should have been done a long time ago, even before Hogan was retired from the job.

There were also some other actions taken by Schieffer, as U.S. Attorney, that got "good ink" before the sky fell in on him for kidnapping the bones of Sue T. Rex, the 65-million-year-old dinosaur that had taken up residency in the Black Hills Institute of Geological Research in Hill City. Consequently, the cost of the subsequent hearings on the case will cost the taxpayers far more than what the bones cost the Hill City residents in the first place.

Actually, Schieffer didn't kidnap the fossil. He had the S.D. National Guard do it—in its trucks. They hauled the bones to Rapid City. However, no National Guard action generally can be taken until the governor gives his OK. Gov. Mickelson didn't know about it until the caper was completed. Needless to say, as a result, he was no stoic Norwegian.

We suspect the Sue T. Rex case has also taken so much of Schieffer's time lately that he hasn't been able to do much with the farmers holding the delinquent federal loan papers. So far, there seem to be so many plots and subplots that the whole thing is looking a lot like a soap opera.

From last week's news stories, we also learned the Senate's Judiciary Committee has an "inch-thick FBI report" on Schieffer. We suspect a lot of newspapers have thicker files on him than that. However, its chairman, Sen. Joseph Biden, D-Del., said his committee has only had the report for about 12 days so hasn't had time yet to review it. However, last month a committee aide said the FBI report on Schieffer was sent to that group last March. Thus, the plot is getting thicker than corn-starch gravy.

So, what's the score? Did Pressler step out of line making the original nomination? No. That's the way jobs like this get filled. Was Schieffer right in closing in on the delinquent farm loans? A lot of people said he was. Most definitely! Others can't get away with it. Why should they, they said. But did Schieffer overstep his bounds when it came to the Sue T. Rex caper? Perhaps not, according to the law books he recently completed. But has this entire escapade slowed down other, more meaningful duties of a potentially permanent U.S. Attorney? We think so. So, what's the score? The Senate should either confirm or deny his appointment. There has been more than enough time to review that "inch-thick" FBI report. Then he will either sink or swim at the job he is supposed to be doing.

TRIBUTE TO WAYNE MEHL

Mr. REID. Mr. President, Wayne Mehl has worked on Capitol Hill for two decades. He has worked for me for 6 years as my legislative director. His work for me and the people of Nevada has been impressive. He is a man of keen intellect and outstanding judgment. I am sorry to see his retirement from Government. I wish him well in his new career. I am a better person because of my association with Wayne. I am proud to call him my friend.

CONFERENCE REPORT TO H.R. 5482 THE REHABILITATION ACT AMENDMENTS OF 1992

Mr. DURENBERGER. Mr. President, I once again have the honor of standing together on the floor with my friend and colleague from Iowa in support of the major piece of legislation addressing the needs of Individuals with Disabilities of this Congress, the Rehabilitation Act Amendments of 1992.

Reauthorizing this bill has been a long and challenging process, and there are many people to thank and recognize for the conference report that we proudly put forth to our colleagues today, but first on the list is the chairman of the subcommittee and champion of the disability community, TOM HARKIN. Senator HARKIN's fine leadership and unyielding vision of an America that is free of discrimination and provides opportunity for all, has made the Subcommittee on Disability Policy a place in the Senate truly to be proud of. At a time when partisan politics and legislative gridlock are the norms in Congress, this subcommittee has been able to see through a series of momentous pieces of legislation including the Americans with Disabilities Act, all passed by unanimous consent.

One cannot talk about the strides we have made in this body over the past 10 years for individuals with disabilities in this country without recognizing the important role that numerous other Members of the Senate have made, including my predecessor, Lowell Weicker, the distinguished chairman of the Committee on Labor and Human Resources, Senator KENNEDY, the ranking minority member Senator HATCH, and the minority leader, Senator DOLE.

Mr. President, I want to express special recognition and gratitude to the talented staff of the subcommittee. I have said this before and I will say it again, without the staff director of the subcommittee, Bob Silverstein, we would not have a bill. Anybody that knows Bobby knows the special powers of consensus building he possesses. His approach is simple, nobody leaves the room until there is an agreement—but it is his extensive knowledge of the subject matter and ability to inspire trust which really makes it work. I also want to mention the extraordinary efforts of my own staff person, Anne Silberman. She has labored intensively on this legislation and I want to thank her on behalf of myself and my constituents. Beyond that, special thanks should go to Linda Hinton and Melanie Gabel, the majority legislative assistant, and staff assistant of the subcommittee.

The final version of the bill that the Senate will pass today represents real progress, and it is one we are all proud of. When we began this reauthorization, we were presented with a breadth of widely divergent views by the disability community about the direction this reauthorization should take. It was the task of our staffs, who worked long and diligently, to forge a consensus between those who wanted no changes at all and those who wanted to discard the entire bill and start over again. The conference report we will ratify today is the product of their labor; it is a compromise.

By their nature, compromises never mean that everyone is happy. Some will think that these changes are not enough. They have argued for and will continue to advocate for, even more substantive amendments. I hear them.

But the truth is that this legislation does represent some significant accomplishments and changes to this program. Over the years, the face of vocational rehabilitation in America has changed. With the technological advances of the last 20 years, almost anyone can be employed. The Vocational Rehabilitation Program has had to make adjustments as well. With the addition of the Independent Living Program, the Supported Employment Program, and the research and services in assistive technology, more people than ever are eligible and able to benefit from this program.

In this reauthorization, we have done all that was possible to continue to widen the door and expand opportunities for consumers. Some of the major accomplishments include:

A revision of the act that ensures the concepts of empowerment for individuals with disabilities will be followed, including respect for individual dignity, self-determination, inclusion, integration, and full participation of individuals with disabilities.

A presumption that individuals with disabilities, including individuals with the most severe disabilities, are capable of benefiting from vocational rehabilitation services unless the State agency can demonstrate by clear and convincing evidence that the individual cannot benefit.

An improved relationship between the State agencies and public schools through a directive to establish policies and methods, including interagency agreements, to facilitate both the long-term rehabilitation goals for students and the transition of students from schools to State rehabilitation agencies.

Increased consumer involvement and choice by requiring a joint signoff between the consumer and counselor in the Individualized Written Rehabilitation Program.

The inclusion of a definition of personal assistance services.

The establishment of a State Rehabilitation Advisory Council for the basic grant program a majority of whose members shall be persons with disabilities.

A choice demonstration project which gives States broad authority to implement consumer choice programs.

A counselor incentive demonstration to allow the commissioner to fund projects to identify appropriate incentives to vocational rehabilitation counselors, such as weighted case closures, to achieve high-quality placements for individuals with severe disabilities.

The establishment of the Rehabilitation Research Advisory Council within the Department of Education to advise the Director of the National Institute on Disability and Rehabilitation Research with respect to research priorities.

Increased accountability and quality through the consumer councils and State plans.

In addition to these provisions, I am particularly pleased that the conference report includes language regarding two additional issues important to Minnesota: Social Security reimbursements, and a formula for the Older Blind Program.

Many State vocational rehabilitation programs, including my own, see their independent living centers as a vital part of the entire vocational rehabilitation picture. Therefore State directors should have the option of giving some of their Social Security reimbursement funds to their independent living centers. To me, there is no better sign that the relationship between the State VR and the independent living center is strong and healthy.

Likewise, the numbers of older blind are growing and the need for greater availability of these services has been well demonstrated. Certainly, the older blind population in this country will benefit from the change of this program to a formula.

Mr. President, this reauthorization has blessed me with the opportunity to further get to know the disability community in my State. Starting in the spring, when I had the privilege to meet and talk with 40 members of the disability community in Minneapolis, up until the last hours before this legislation went to be printed, the input from Minnesotans on this bill has been crucial.

Some of the Minnesotans who have provided valuable assistance and advice to me and my staff that I wish to thank are: Colleen Wieck, the director of the Governor's Council on Developmental Disabilities; Mary Shorthall, the director of the State Vocational Rehabilitation Program; Paula Goldberg, and the other parent advocates in the group called PACER; Jerry Krueger, Jay Johnson, and the other independent living directors in Minnesota; Charlie Lakin; Dan Klint, who testified before the subcommittee; Mike Ehrlichmann, chair of the regional transit board; Margo Imdieke, director of the Minnesota State Council on Disability; Bruce Johnson, Office of Ombudsman for Mental Health and Mental Retardation; Mary O'Hara-Anderson; Elin Ohlsonn; David Schwartzkopf; Kurt Strom with the Minnesota State Council on Disability; Leah Welch, director of Independence Crossroads, Kathy Wingen, Advocacy Plus Action; Rachel Wobschall, Governor's Initiative on Technology for People with Disabilities, and the many, many other Minnesotans who have consulted with either me or my staff about this legislation.

I urge my colleagues to support this conference report, and I look forward to the President signing this bill into law.

TRIBUTE TO THOSE WHO HELPED WITH THE REAUTHORIZATION OF THE OLDER AMERICANS ACT

Mr. ADAMS. Mr. President, as we conclude business for the 102d Congress, I would like to take a few minutes to recognize the many individuals and organizations that contributed so much to the 1992 reauthorization of the Older Americans Act [OAA].

The OAA is the single most significant source of support for discretionary social services for the elderly. The variety of services provided under the act is quite extraordinary: congregate and home-delivered meals, employment for low-income seniors, legal assistance, ombudsman services, transportation, senior centers and many others. As I outlined when the Senate passed the final version of my reauthorization bill, the 1992 amendments will make many improvements to these programs and add several important new initiatives to the OAA.

As my colleagues know, the journey to reauthorize this legislation was a lengthy one and took nearly 1 year longer than we had originally anticipated. But I know that seniors and the people who serve them across the country are genuinely pleased and, indeed, relieved that the 1992 amendments are now Public Law 102-375. As chairman of the Subcommittee on Aging, with responsibility for the OAA reauthorization, I would like to express my great appreciation to those who helped us to complete this journey.

A major breakthrough on the gridlock that hung up the reauthorization for so long was achieved on September 9, when over 1,200 senior citizens came to Capitol Hill for a national rally to break loose the OAA legislation. Not only did these older Americans visit key Senators but phone calls came in from thousands of other seniors and their representatives from all over the country. I sincerely thank these thousands of individuals for their crucial contributions.

The OAA rally was the brainchild of the Leadership Council of Aging Organizations [LCAO]. The LCAO can feel very proud of its effort. Many were involved in this pivotal effort and I want to especially recognize: Dr. Dan Thursz and Victoria Wagman of the National Council on Aging [NCOA]; Larry Smedley and Dan Schulder of the National Council of Senior Citizens [NCSC]; Dan Quirk and Diane Justice of the National Association of State Units on Aging [NASUA]; John Linkous and Larry Rickards of the National Association of Area Agencies on Aging [N4A]; Sam Simmons and Larry Crecy of the National Caucus and Center on Black Aged [NCBA]; Toby Felcher and Connie Benton-Wolfe of the National Association of Nutrition and Aging Service Programs [NANASP]; Diana Porter of the Older Women's League [OWL]; and Rindy O'Brien of Families USA.

I must also thank my staff of the Subcommittee on Aging. I want to acknowledge Bill Benson, the subcommittee staff director, for his commitment and hard work in seeing this reauthorization through from the very beginning to its enactment into law. There are not many others in the country who know the Older Americans Act and the needs of the elderly as well as Bill does.

Many others associated with the subcommittee over the past 2 years helped with the OAA reauthorization. I want to single out three individuals who served on my staff through fellowships or internships and contributed a great deal to the OAA reauthorization. They certainly learned a great deal about the legislative process by their experience with the OAA and the subcommittee, and I am indebted to them. They are: Dr. Joanne Lee, a professor of industrial psychology at the University of North Carolina at Charlotte, fellowship from the American Psychological Association; Cynthia Massie, a doctoral candidate at the Virginia Polytechnic Institute and State University and founder of the New River Valley Hospice in Blacksburg, VA, fellowship from the Women's Research and Education Institute-WREI; and Jill Feasley, who contributed an extraordinary amount of her time and talent last fall and earlier this year to the OAA. Jill, who brought with her a great deal of hands-on experience in direct services for seniors in the District of Columbia, is now working at the University of Maryland's Aging Policy Center on a national program funded by the Robert Wood Johnson Foundation.

Other staff members who deserve recognition include: Jodi Sternoff, staff assistant; Don Kramer, legislative assistant; former staff assistant Sandy Bublick, now with the House Select Committee on Aging; Sally Garrett, now in graduate school; Adele Robinson, now at the National Association of State Boards of Education; and Susan Asbury, of my Seattle office. These staff members contributed a great deal to this reauthorization.

Several other congressional fellows and interns helped me with the reauthorization: Ann Corbett, currently serving the subcommittee under a legislative fellowship from the Social Security Administration; Judith Littlejohn, graduate student at the University of Maryland's School of Nursing, now with the Older Women's League; Carissa Janis, management intern from the Department of Housing and Urban Development; Karen Goldmeier, now in her third year of law school; Deborah Sheets, trauma nurse and doctoral intern from the University of Southern California's Andrus Gerontology Center; Mark Paskowsky, a master of public policy intern from the University of Michigan at Ann Arbor; Petra Smeltzer; Kirsten Stewart, student at the University of Puget Sound; Laurie Bernstein, student at Indiana University; Kirsten Winters, student at Frostburg State College; Lou Leonard, student at Georgetown University; Marjorie DePuy, now with Lehman Brothers; and Emily Gamble, graduate of James Madison University.

The reauthorization legislation reflects the thoughtful contributions of many Senators and Representatives and their staff from both sides of the aisle, including the members of the subcommittee and their able staffs. Jim Lofton, minority staff director of the subcommittee for Senator COCHRAN; Marsha Simon of Senator KENNEDY's staff; and Michele Varnhagen of Senator METZENBAUM's staff, each deserve particular recognition.

From the House, I want to thank Congressman MARTINEZ and Eric Jensen, Dan Adcock, and Roger McClellan of his staff. Chairman FORD of the Education and Labor Committee, and Alan Lopatin of his staff, also made major contributions to the legislation.

Also deserving recognition for their outstanding and unique contributions are Carol O'Shaughnessy and Ann Lordeman of the Congressional Research Service [CRS]; Liz Aldrich of the Senate's legislative counsel; and the staff of the General Accounting Office [GAO], particularly Eleanor Chelimsky, Assistant Comptroller General, Program Evaluation and Methodology Division [PEMD], and Dr. Sushil Sharma of PEMD. Each of these individuals contributed an extraordinary amount to this reauthorization.

I must thank collectively the many organizations and individuals who contributed to the reauthorization process. I regret that they are too numerous to mention but the diversity is extraordinary and included: the National Indian Council on Aging, the AARP, the National Association of State Ombudsman Programs, the National Association of Social Workers, the organizations I cited earlier, and many, many others.

Finally, Mr. President, I want to especially say thank you to the many individuals from Washington State—my constituents—who helped so much with the reauthorization. I wish that I could name them all but there are several that must be singled out: Charles Reed, Assistant Secretary for Aging and Adult Services at the Department of Social and Health Services; Bill Moyer, director of nutrition services for Senior Services of Seattle/King County; Ken Camper, director of Seattle's SPICE Program; Gail Hiestand, president of the Washington State Association of Area Agencies on Aging [AAA's], James DeLaCruz and Sharon Hamilton of the Washington State Indian Council on Aging, and Helen Spencer of Evergreen Legal Services.

Many others played a role in this reauthorization and I regret all cannot be individually recognized. But I am honored to have been associated throughout this process with each and every one of them.

COL. THOMAS M. REISE—A SOLDIER'S SOLDIER

Mr. NUNN. Mr. President, I would like to bring to the Senate's attention the untimely death of one of the Army's most highly respected officers, Col. Thomas M. Reise, originally of Macon, GA. Colonel Reise died May 17 in Woodbridge, VA, after suffering cardiac arrest while running to maintain his top-notch physical condition as a combat arms officer. He was buried with full military honors in a very moving ceremony at Arlington National Cemetery the day after the Nation honored all our veterans on Memorial Day. At age 45, he had distinguished himself admirably in the service of his country, decorated with the Legion of Merit with two Oak Leaf Clusters, the Meritorious Service

Medal with three Oak Leaf Clusters, and the Army Commendation Medal with Oak Leaf Cluster.

Colonel Reise was commissioned in the Arm Defense Artillery Branch through the ROTC Program in 1968. He was a graduate of North Georgia College, one of the Nation's most respected military colleges. He also graduated from the Armed Forces Staff College and the Army War College.

During his initial duty tour in Europe with the Army, he served in team and detachment commander positions in special weapons units with the German and Dutch Air Forces, moving on to command a Hawk Air Defense Artillery Battery in Korea. After tours at the Air Defense School and the Army Recruiting Command in the United States, he returned to Europe, becoming a commander of the 59th Air Defense Artillery in Neubrueke, Germany, in 1985. Colonel Reise went on to serve in the director's office of the Army's Deputy Chief of Staff of Personnel before becoming Chief of the Inspections Division of the Army Inspector General.

During this time in Washington, he worked with the Senate Armed Services Committee and earned the respect and admiration of all who knew him. He was particularly well-known to the committee's staff director, Arnold Punaro, who was a boyhood friend from the town of Macon. Arnold told me on several occasions of Colonel Reise's outstanding performance and accomplishments.

He was one of the Army's most highly respected officers, and he is missed. Mr. President, I would like to extend my deepest sympathies to Colonel Reise's family—his wife Barbara, his daughters Jodie and Kirstin, and his son Aaron—whose sadness we share at the death of a fine officer, an outstanding patriot, a loving husband, and a superb father.

EXPRESSION OF APPRECIATION TO THE SENATE FLOOR STAFF

Mr. NUNN. Mr. President, as the 102d Congress draws to a close, I want to say a special word of appreciation to our Democratic support staff for all of their help to the members and staff of the Armed Services Committee during the past 2 years. It is a tribute to Senator MITCHELL's leadership that his staff is so supportive of the committee process and helps to ensure that the work of the Senate is accomplished.

Our floor staff works under the capable direction of Abby Saffold, the secretary of the majority. Abby's thorough knowledge and attention to the details of the legislative process have made her indispensable in the U.S. Senate. Abby and assistant secretary to the majority Marty Paone have always been available to provide counsel and assistance whenever they were needed. We especially appreciate their support in ensuring prompt Senate consideration of the thousands of nominations that the Armed Services Committee reports every year.

John Hilley, Senator MITCHELL's chief of staff; Kim Wallace on Senator MITCHELL's staff; and Brett O'Brien and Sarah Sewell on the Democratic Policy Committee staff have worked very effectively with the Armed Services Committee members and staff on national security issues and legislation. They were particularly helpful this year in the difficult task of coordinating the work on Defense conversion and transition legislation with the two Senate task forces led by Senator PRYOR on the Democratic side and Senator RUDMAN on the Republican side.

Mr. President, I cannot say enough about the excellent day-to-day support we have had from the Democratic floor staff of Charles Kinney, Lula Davis, Arthur Cameron, and Nancy Iacomini. It has not been easy passing the Defense authorization bills and other legislative items in this Congress. Charles, Lula, Arthur, and Nancy have always been very helpful in assisting us in moving our committee bills through the Senate.

I also want to thank our excellent Democratic cloakroom staff of Leonard Oursler, Katherine Drummond, Gary Myrick, and Paul Cloutier for all of their assistance during the past 2 years. They must get asked "When is the next vote and when will we adjourn?" hundreds of times a day—and they never fail to respond cheerfully. Their selfless and dedicated service has made all of our jobs easier.

I should also note that while not working with them on a day-to-day basis as we do with our own floor staff, the Republican floor staff has always tracked down and helped to resolve any problem areas associated with our committee's work.

The legislative clerks—Bill Farmer, Scott Bates—make a tremendous contribution to the legislative process on the Senate floor. This year during the debate on the Defense authorization bill we had the equivalent of almost 200 pages of amendments added to the bill reported by the Armed Services Committee in just 3 days of floor debate. Somehow, the legislative clerks, along with enrolling clerk, Brian Hallen, were able to keep track of this large amount of amendment text and produce a complete text of the Senate-passed bill for us in a very short period of time.

Finally, I want to express my appreciation to the Senate Parliamentarian, Alan Frumin, and his assistants Kevin Kayes, James Weber, and Beth Smerko. Alan and his staff have consistently provided objective and timely answers to the many questions that our committee has directed to them.

Mr. President, on behalf of the members and staff of the Armed Services Committee, I want to say thanks to all of the Senate floor staff for a job well done during the 102d Congress.

TRIBUTE TO CHARLES THOMPSON

Mr. HEFLIN. Mr. President, it is with a great sense of sadness that I rise today to pay tribute to Charles Thompson, a close friend of mine for many years who died last week. Charles, a beloved member of his community, was the former chief of Tuscumbia, AL, my hometown.

Charles was more than just the chief law enforcement official in Tuscumbia. He was a true friend and protector of the people, exemplifying the very best relationship that can and should exist between a community and its police force. That relationship became an example that other local leaders and surrounding areas tried to emulate.

Charles Thompson was a native of Town Creek, AL. He served as chief of police in Tuscumbia for 12 years before retiring in 1988 and served a total of 31 years with the department. He was Tuscumbia's first motorcycle policeman and first plainclothes detective. The knowledge and experience he gained while attending the FBI Academy proved invaluable to carrying out his duties in Tuscumbia.

Charles helped found the Tuscumbia Federal Credit Union, serving as its treasurer for 31 years. He was a Mason, a member of the Fraternal Order of Police, a U.S. Air Force veteran, and a member of Calvary Baptist Church. He was an accomplished guitarist, and played country and other types of music with a number of local bands.

Charles Thompson was an outstanding officer who was totally committed to serving his community. He spent virtually his entire adult life serving the people of Tuscumbia, its police department, and the credit union he helped establish. He was one of the most dedicated public servants I have ever known, and will be sorely missed.

I extend my condolences to Charles' wife Toggie, their daughter Tracy, and the other members of his family in the wake of their tremendous loss. He was a true friend and asset to Tuscumbia who served us very well over the many years he called Tuscumbia home. We were better off for having him among our ranks.

TRIBUTE TO SENATOR JAKE GARN

Mr. KENNEDY. Mr. President, it is a privilege to take this opportunity to join my colleagues in commending the 18 years of distinguished service in the Senate by Senator JAKE GARN, and his even longer career of distinguished public service to the people of Salt Lake City and the State of Utah.

I know that President Kennedy would have especially admired Senator GARN's historic voyage on the space shuttle *Discovery*, as did all of us in the Senate and throughout the country. Our Senate work together for the past 18 years may have taken us in different directions on various issues, but I have always respected Senator GARN's ability, his commitment to dealing with the challenges America faces, and his dedication to keeping this country strong at home and around the world.

As he retires from the Senate, I extend my warmest regards to Senator GARN and his family. Knowing Senator GARN, I am sure that life will begin again at 60, that he welcomes this well-deserved time with his family, and that he may well find new endeavors to reach for the stars and serve our country in the future.

THE CAREER OF SENATOR CRANSTON

Mr. METZENBAUM. Mr. President, the conclusion of this Congress marks the end of the distinguished Senate career of ALAN CRANSTON. Since 1968, he has ably represented the people of California.

For ALAN CRANSTON, his Senate service is just one chapter in a rich and rewarding life.

As a young journalist working in Germany in the 1930's he recognized the horrors unfolding under the regime of the 20th century's worst despot—Adolf Hitler. ALAN CRANSTON knew what the world was up against. His tireless effort to have Hitler's autobiography published in this country resulted in the alarms being sounded to the rest of the world.

Later on, Hitler's German publishers won a copyright lawsuit against ALAN. But for ALAN CRANSTON the loss in the courtroom was a victory—Hitler could not longer hide his vicious anti-semitism and his hideous ambitions for the world.

Those of us who know ALAN understand his passionate commitment to world peace. Throughout his life—not only in words, but in actions—he has energized and enlightened others.

Long before he ran for the Senate, ALAN recognized the threat of the nuclear age arms buildup. In the Senate he has been a vigorous fighter for arms control. He was a leader in moving the INF Treaty through the Senate. And time after time he has fought to block arms sales to the Middle East.

His long service as Democratic whip earned him the respect of his colleagues. We respected his ability to form coalitions and help move bills through this body. Any time there was an important vote, you could count on at least one thing—ALAN CRANSTON would be working the well counting the votes.

Many Americans—some who know it and some who don't—are better off because of ALAN CRANSTON.

It was ALAN CRANSTON who recognized the chaos of Federal housing programs. In 1987, he marshaled through a new housing authorization bill; to bring some order to the chaos.

For the people of this Nation who believe in a woman's right to choose, ALAN CRANSTON has been a strong and consistent voice of support.

For America's veterans, no chairman of the Veterans' Affairs Committee has been more compassionate and understanding. ALAN moved bills that improved veterans' education, health, and housing benefits.

ALAN's retirement ends a long era of public life. I am honored to have had an opportunity to work with him through the years, and I wish him well.

OMNIBUS BANKRUPTCY LEGISLATION

Mr. HEFLIN. Mr. President, I rise to discuss S. 1985, the Omnibus Bankruptcy reform legislation that past in the Senate last evening.

The passage of this bill brings to a close almost 2 years of work on this legislation. While it is unclear whether this legislation will pass the House of Representatives, I would like to briefly outline some of the major provisions of this legislation.

The first title of this bill is a collection of provisions intended to increase the efficiency of the Bankruptcy Court; helping debtors and creditors alike.

The second title relates to consumer bankruptcy issues. Included in this section is an amendment allowing for the curing of a default on a person's principal residence, as well as a provision that will help ensure child support and alimony will continue to be paid after the filing of an individual bankruptcy.

The next title addresses the area of commercial bankruptcy, specifically the role of chapter 11 in today's economy. In this section of the bill there are various provisions intended to update the bankruptcy code in light of the tremendous number of commercial filings each year.

Title 5 of this substitute may be the most important section of the entire bill. This title establishes the National Bankruptcy Review Commission. The Commission will have the ability to review and study a wide range of problems presently facing the bankruptcy system, as well as help prepare for the future. While the agenda of the Commission is not dictated by this legislation, I would like to suggest several topics of importance that have come to my attention during consideration of this bill. This, of course, is not an exclusive list:

The establishment of a small business chapter;

The problems in cases with single asset real estate;

The conflict indentured trustees face during the pendency of a bankruptcy;

The problems faced by issuing card companies when a debtor uses their card to pay Federal taxes and subsequently files for bankruptcy;

The issue of substantial abuse under section 707 of the Bankruptcy Code;

The confusion over the hotel income/rents issue;

The modernization and possible automation of the Bankruptcy Court system;

The highly complex and controversial issues that result from mass torts, health care, environmental, and ERISA law.

Mr. President, I would like to thank all of the Members of the Senate who have worked with me on this important legislation. I am hopeful that this bill will be signed into law.

MAINTENANCE AND RETURN COLLOQUY

Mr. GRASSLEY. Mr. Chairman, I understand that the agreement before us includes most of the changes in the Bankruptcy Code related to aircraft and rail financing that were originally developed in the Senate. I believe that these were an important part of the Senate bill and I am pleased that they are included in the final agreement. A question has arisen about why the maintenance and return expense provision included in the original Senate legislation was not retained in the final bill. Could you discuss the effect of the compromise on this issue?

Mr. HEFLIN. If the Senator will yield I would be happy to. In agreeing to the overall compromise, the House insisted on not including several provisions related to rights under sections 507 and 503 of the code. They preferred to consider these issues in a more comprehensive fashion at a later date. As a result, the proposed maintenance and return expense language for sections 1110 and 1168 also was not included. While this may leave some questions about the application of section 503 in certain situations, it does not create any negative inferences about the current state of the law regarding sections 1110 and 1168. The decision to further study this matter would not change the status of such expenses in any new litigation where there are section 1110 and 1168 agreements in place. Since these agreements are, by their nature, postpetition agreements, it would seem that the costs of performing maintenance and other related obligations under them can be considered actual and necessary costs of preserving the estate.

TRIBUTE TO SENATOR WARREN RUDMAN

Mr. KENNEDY. Mr. President, I am pleased to take this opportunity to pay tribute to the extraordinary service in the Senate of our colleague WARREN RUDMAN as he retires from the Senate. Through his integrity and his intellect, his tenacity and his fearless commitment to principle, he has made an enormous contribution to New Hampshire, New England, and the entire Nation.

WARREN RUDMAN is an excellent lawyer who understands justice, too. He knows that laws are the wise restraints that make us free, and that genuine liberty in America depends on achieving justice for all. For many years, true to this ideal, Senator RUDMAN led the often lonely fight in the Senate to protect and preserve the Federal Legal Services Program. Without his indispensable leadership, millions of low income Americans would have been denied help in protecting their most basic rights. The statute authorizing the program should be called the WARREN B. RUDMAN, Legal Services Corporation Act, as a reminder of his skill, his dedication, and his outstanding contributions to its fundamental purposes and achievements.

Senator RUDMAN has been a strong voice of principle in the Senate on many other issues. I think particularly of the constitutional amendment on flag burning, our continuing debates on school prayer and the exclusionary rule, and, of course, the legendary Gramm-Rudman-Hollings deficit reduction statute. As Senator RUDMAN leaves the Senate, I know that he will continue to hold our feet to the fire to reduce the budget deficit and to act responsibly in other ways to fulfill our commitment to public service and to future generations.

In addition, Senator RUDMAN helped us to find a satisfactory bipartisan middle ground on the contentious Civil Rights Act last year, and thereby heal the unnecessary wounds caused by that divisive debate. And in 1984 and 1988, he played an important role in fashioning comprehensive, and responsible, anticrime legislation.

Senator RUDMAN also took on two of the most difficult and thankless tasks in the Senate through his service on the Ethics Committee and in the Iran-Contra investigation. He performed each of these responsibilities with great distinction.

On a more personal note, I have enjoyed our service together on the Senior Advisory Committee of the Kennedy School of Government at Harvard. That school is near and dear to the hearts of my family. Senator RUDMAN'S participation has enhanced the school's excellence and vitality in fulfilling its important mission.

Finally, I note that although Senator RUDMAN'S first love in public life is New Hampshire, he also has longstanding ties to Massachusetts and has many friends in the State. In fact, he was born in Boston and educated at Boston College Law School. JOHN KERRY and I are delighted that he moved to New Hampshire to pursue his career in law and public service.

One of President Kennedy's favorite sayings was from John Buchan's "Pilgrim's Way." As he wrote, "Public life is regarded as the crown of a career, and to young men it is the worthiest ambition. Politics is still the greatest and the most honorable adventure." When I think of those words, I think of WARREN RUDMAN, and we shall miss him dearly in this Chamber in the years ahead.

NIH REAUTHORIZATION AND WOMEN'S HEALTH AGENDA

Mr. DECONCINI. Mr. President, I rise today to express my disappointment in this Congress' inability to reach agreement on the National Institutes of Health reauthorization, S. 2899. While the demise of this bill will not jeopardize the biomedical research activities which are currently in place and ongoing at the National Institutes of Health [NIH], it does defer unnecessarily an important national commitment to redress the longstanding inattention to the medical research needs of women.

When my female constituents tell me that decades of medical research haven't resulted in a reduction of diseases which disproportionately afflict them, and that after annual investment of billions of Federal dollars in medical research for the past two, three decades, breast cancer mortality rates have not changed since 1930, I am left wondering how we could have allowed this to happen. There is no doubt that the gaps in medical knowledge within our research community are costing American women dearly. We simply cannot allow this to continue.

The women's health research provisions of S. 2899 represented a major step forward in our efforts to begin closing the gender gap in our Nation's biomedical research programs. It unequivocally committed America to eliminating discrimination against our mothers, wives and daughters by bringing equity into the application of our biomedical research resources to their health care problems. It spoke urgently to the need to reverse the 33-percent increase in the incidence of breast cancer over the past decade by more than doubling the authorization for breast and reproductive research to $400 million a year. It emphasized research on disease prevention, treatment and cures with the goal of reducing the mortality rate for women with breast and cervical cancers.

Last year we celebrated the 20th anniversary of the National Cancer Act. Yet, our 20-year war against cancer hasn't benefited American women. In fact, during this time period, our Nation has lost increasing numbers of women to the deadly diseases of breast, ovarian and cervical cancers. For example, the experts tell us that more than twice as many breast cancer cases were detected in 1992 as were diagnosed in 1973—with the number of cases rising to 180,000 from 73,000. Over a quarter of these women are expected to lose their battle with the disease. Ovarian cancer will strike 20,000 women in any given year with over half of them dying.

Our optimism over winning the war against cancer must be tempered by these startling statistics and by the recognition that we have failed to make any inroads into reducing breast cancer mortality. As recently as the end of 1991, GAO found a "still uncertain state of scientific knowledge" surrounding the disease. This is a shocking indictment of our national research program.

Mr. President, this bill's response to women's health needs is a testament to the perseverance, foresight and leadership of my distinguished colleague, the Senator from Maryland, Ms. MIKULSKI. She was the one who blew the whistle on the pattern of neglect and historical indifference to women's health needs which, unfortunately, had been shaping our national research agenda. She was the one who educated us to the sad fact that only 14 percent of every research dollar was used to study the health problems experienced by 51 percent of our population.

The practice of excluding women from research projects must end. The policy of ignoring women gave us the notorious 1988 study on heart disease and aspirin intake. It was a major study which involved 22,000 men but not a single woman, despite the fact that heart disease is the No. 1 killer for women and men alike. Institute officials reportedly told the GAO that women were not included because adding them would have increased the cost of the study. As unbelievable as it is, the Institute never gave a second thought to the serious life-threatening consequences of their actions for women.

Mr. President, diagnostic and treatment protocols based on studies done exclusively on men inevitably results in women getting inadequate treatment although they may be at equal or greater risk of serious illness. Our Federal research policy has built gender bias into the development of diagnostic and therapeutic options. It has resulted in second rate care for women.

Studies have found that common procedures like bypass surgery are more readily used to treat men while a woman must be much sicker before her doctor will recommend it for her. How can we expect our doctors to apply treatment protocols to women which are based on male-only studies giving them not a clue about how hormonal or other gender differences may alter the benefits or complicate the risks of the therapy for their female patients?

We can begin the process of eliminating gender bias now by reinforcing the efforts of Bernadine Healy, M.D., the current Director of the NIH, to expedite the Institute's enforcement of its 1983 rule requiring its studies to include women and minorities unless there was good reason for their exclusion. Inclusion of women and minorities in research studies must not be dependent upon the commitment of the NIH leadership. Gender and racial equity in research must be written into the law. S. 2899 statutorily mandated inclusion of women and minorities, except when it was scientifically inappropriate, in all future Federal research practices and policies.

Without this bill, new initiatives designed to address preventable bone diseases like osteoporosis which afflict nearly 50 percent of all postmenopausal women and to implement a women's health research data collection, analysis and distribution system will not be possible. This bill would have ensured adequate emphasis on diseases prevalent among women of all ages by establishing permanent statutory authority for the Office of Research in Women's Health in NIH.

Mr. President, while we have begun to address women's health needs through increased annual appropriations for research and prevention, we must also recognize that these and other current NIH and congressional efforts represent a modest beginning.

I voted for the fiscal year 1993 appropriations of $72 million for breast and cervical cancer screening, $209 million for breast cancer research and the original Harkin amendment transferring $200 million out of SDI funding for breast cancer research. As a Defense Appropriations Subcommittee conferee, I supported the final commitment of $210 million for breast cancer research out of general funds appropriated to the Department of Army.

I am a cosponsor of critical bills like Senator MIKULSKI's Women's Health Equity Act, S. 514, Senator LEAHY's Cancer Registries Act, S. 2205; and Senator ADAMS' Breast Cancer Screening Safety Act, S. 1777. In addition, I am cosponsoring bills which would make cancer screening and the expensive breast cancer drug, tamoxifen, more accessible by authorizing tax credits and import duty suspensions.

I am proud to have joined my colleagues in enacting some of these bills and in increasing Federal funds for women's health research and disease prevention initiatives during this Congress. However, we cannot assure an end to the history of denying American women their fair share of our national health research resources until we have enacted the NIH Reauthorization Act. The majority leader is absolutely right to make its enactment the first order of business for the 103d Congress on January 21. I intend to support the efforts of the majority leader with respect to this critical legislation when we return in January 1993.

CONSENT TO ANTARCTIC ENVIRONMENTAL PROTECTION PROTOCOL

Mr. KERRY. Mr. President, I was pleased last night by the Senate's decision to lend its consent to ratification of the 1991 Antarctic environmental protection protocol. I note, however, that the protocol is not a self-executing agreement and that Congress must also enact strong implementing legislation as soon as possible. This past August 12, I introduced a bill (S. 3189) to implement the protocol and I will reintroduce that legislation early next year.

The negotiation of the protocol was a major milestone in the international effort to protect the environment of Antarctica. It was signed in Madrid on October 4, 1991, by the United States and the 25 other consultative parties to the Antarctic Treaty System. The protocol designates Antarctica as a natural reserve, dedicated to peaceful and scientific purposes, and establishes an extensive, legally binding environmental protection regime that will be applicable to human activities on the continent.

Of particular importance, the protocol bans all mineral prospecting, exploration, and production activities for at least 50 years. It also sets forth a series of environmental principles governing activities in Antarctica, establishes an Advisory Committee on Environmental Protection and provides for a dispute settlement procedure.

Annexes to the protocol contain specific guidelines for environmental assessment, the conservation of native plants and animals, the disposal of waste, marine pollution, and specially protected areas.

Although I congratulate the State Department and other officials who participated in negotiating the protocol, I have been disappointed by the administration's slowness in developing and forwarding draft implementing legislation to Capitol Hill. The issue of implementing legislation is particularly important because of the consensus nature of the Antarctic Consultative process. The protocol will not go into effect until the 30th day following the date on which all 26 Antarctic treaty consultative parties have deposited their instruments of ratification, acceptance, approval, or accession. As one of the founders of the Antarctic Treaty System, the United States has an obligation to enact strong implementing legislation and to guarantee that its citizens adhere to and—where appropriate—go beyond the minimum standards established by the protocol.

Antarctica is the largest remaining wilderness on our planet. It provides habitat for vast quantities of wildlife including penguins, seals, whales, krill, fish, and seabirds. For obvious, climatological reasons, the ecology of the region is extremely fragile—slow to change but also slow to recover from damage. Antarctica is also home to extraordinarily important scientific research efforts conducted by more than a dozen countries and has become a growing magnet for tourist-related activities.

Negotiation of the protocol resulted from international concern about evidence of environmental damage caused to Antarctica by human activity. The problems included abandoned fuel drums, appliances and machinery, the use of open-air incinerators, dumping of raw sewage, oilspills, burning of hazardous chemicals, and a lack of environmental planning.

The international community has responded positively to these problems by agreeing to the protocol, which is truly a landmark accomplishment in the management of human activities in Antarctica. Senate consent to ratification constitutes another important step in the right direction. And the enactment of strong implementing legislation, I hope early next year, will complete the job.

Mr. President, we have both the ability and the responsibility to act as stewards for the fragile and irreplaceable resources of the Antarctic continent. I pledge personally to remain involved in this effort, and I congratulate Senators for lending their support to this protocol during yesterday's session.

TRIBUTE TO SENATOR ALAN DIXON

Mr. KENNEDY. Mr. President, I want to join my colleagues in taking this occasion to commend the outstanding service of Senator ALAN DIXON in the U.S. Senate. He has served the Senate, the people of Belleville and Illinois, and the Nation well, and it has been both an honor and a privilege to work with him for the past 12 years.

I have particularly enjoyed our work together on the Armed Services Committee. The years ahead will show that his leadership helped steer the Pentagon in a more responsible direction, consistent with the Nation's evolving needs, especially in the post-cold war era. He also brought great eloquence and passion to Senate floor debates; no debate was ever dull when ALAN DIXON held the floor.

I am grateful for his leadership and his friendship, and I extend my best wishes to the Senator and his family as he leaves the Senate. He has been both talented and tireless in his commitment to public service, and I hope that the country will have the opportunity to benefit again from his ability in the future.

TRIBUTE TO SENATOR ALAN CRANSTON

Mr. WOFFORD. Mr. President, I have known ALAN CRANSTON and seen him in action in American public life since the end of World War II. It was in 1945 that I read and talked to him about his book, "The Killing of the Peace," the story of the Senate's rejection of the League of Nations. Over the 47 years since then, he has earned my great respect, as I have enjoyed his friendship. I know no one who in his time has contributed more to the common good.

ALAN CRANSTON has served this Nation in the Senate for 24 years, crafting legislation for social policy and international relations that has made a profound impact for the better on the lives of people both in America and overseas.

In this past week alone, much of the legislation considered by the Senate shows the influence of ALAN CRANSTON. The Strategic Arms Reduction Treaty and the moratorium on nuclear testing contained in the Energy and Water appropriations bill reflect his lifelong commitment to fighting nuclear proliferation and ending the arms race.

Legislation attaching conditions to the renewal of most-favored-nation trade status for China, and other protests of human rights abuses bear the imprint of this man who in 1975 was the author of legislation barring U.S. military assistance to persistent violators of human rights.

As chair of the Foreign Relations Subcommittee on East Asian and Pacific Affairs, ALAN CRANSTON was responsible for reversing the administration's position of providing lethal assistance to Cambodian rebel groups aligned with the Khmer Rouge, prolonging the Cambodian conflict. The landmark hearings he chaired on this subject were the longest ever held since the debate over the Vietnam war. And just this week, the Senate voted funds for peacekeeping troops and refugee repatriation in Cambodia.

Domestic policy never took a back seat to these accomplishments in foreign policy. ALAN CRANSTON is one of America's preeminent fighters for improving this country's education system. He fought for those who often are left out or left behind, for children, for the elderly and for those with disabilities as the author of a "Bill of Rights" for Americans with disabilities.

Throughout his career, ALAN CRANSTON has been one of the Senate's strongest supporters of Americans' constitutional rights, of the rights of women and of minorities, and he has been a champion of immigration reform and wildlife protection.

ALAN CRANSTON'S achievements prior to seeking public office are equally diverse and exceptional. An early pioneer in the struggle for world law, his book "The Killing of the Peace" was rated one of the 10 best books of 1945 by the New York Times. And how many Senators have set a world record in track and field, and had the distinction of being sued by Adolf Hitler? As foreign correspondent, businessman, author, and artist, he has brought his vision and intelligence to each endeavor and career.

Even now, he is finding new ways to combine his personal experience as foreign correspondent and Senate proponent of improved relations with the Soviet Union. Last February, he undertook to write a free weekly column for ITAR-Tass, the Russian news agency, sharing his ideas with those struggling to develop democracy. In these articles he addresses such issues as the role of intelligence services in post-cold-war democracies, and civil-military relations in democratic regimes. His Russian audience is as fortunate to benefit from his extraordinary experience and long-tested commitment to democracy, as we are unfortunate to lose him.

So I join my other colleagues in saluting his life of public service which will now continue beyond these walls and without borders.

SOUTH DAKOTA FARM BUREAU'S 75TH ANNIVERSARY

Mr. PRESSLER. Mr. President, this year marks the 75th anniversary of the South Dakota Farm Bureau. In addition to being its 75th anniversary, 1992 also represents the first time that the South Dakota Farm Bureau has had over 10,000 South Dakotan farm families as members. The strength of the South Dakota Farm Bureau is demonstrated by its steady increase in membership over the last two decades.

The strength of the farm bureau organization is rooted in the fact that it starts on the farm. The history of the South Dakota Farm Bureau is impressive. As early as 1913, several county farm bureaus were organized and operating in South Dakota. Within a few years, more county farm bureaus were organized and in 1917, the operating county farm bureaus formed the South Dakota Farm Bureau Federation. From its humble start, the South Dakota Farm Bureau has become one of my State's leading agricultural organizations and a highly regarded voice for South Dakota agriculture.

As with the practice of farming and ranching, there have been good times as well as the bad times for the farm bureau in South Dakota. The good times are reflected by the fact that by 1921, membership in the organization rose to 5,673 families. However, it would be over 50 years and several generations of farm and ranch families before that membership level would again be reached. In fact, membership in the South Dakota Farm Bureau dropped to a low of 500 families during the 1930's.

After World War II, the South Dakota Farm Bureau began a strong rebuilding effort. The process was slow but successful. By the late 1950's several county farm bureaus reorganized and began building new programs. Throughout the 1950's and the 1960's membership averaged 3,100 farm families. During the 1970's, its programs were expanded and in 1977 membership surpassed the all time high set 56 years earlier.

Since 1977, farm family membership in the South Dakota Farm Bureau has grown each and every year. The organization reached a milestone this year when it counted over 10,000 farm and ranch families as members.

Of the many programs sponsored by the farm bureau, one that is particularly impressive is the South Dakota Farm Bureau Young Farmers and Ranchers Committee. This group provides opportunities for greater participation by young, active farmers and ranchers. It helps young farm bureau members to analyze their particular agricultural problems and collectively make decision on solutions which best meet their needs.

The South Dakota Farm Bureau also offers the Farmer Idea Exchange, which provides a forum to discuss inventions, equipment modifications, innovative crops and farming practices developed by farmers. It also encourages farmers and ranchers to share ideas and help find ways to cut costs, become more efficient, and improve net income.

The soul and strength of the South Dakota Farm Bureau is in its county units. That is where the problems and challenges facing farmers and ranchers are best identified, and that is where the best solutions are found. The farm bureau policymaking process, one that begins at the farm and ranch level, is excellent. I always look forward to receiving the South Dakota Farm Bureau policy recommendations. This type of information helps me to be better informed on the impact of my voting decisions on those who are affected by them—including the farmers and ranchers of South Dakota.

The South Dakota Farm Bureau is committed to the goal of improving net farm income and strengthening the quality of rural life. I congratulate the South Dakota Farm Bureau on its 75th anniversary.

WILL TAX TREATIES GO THE ROUTE OF GATT?

Mr. PRESSLER. Mr. President, recently I rose to discuss the significant role played by tax treaties in U.S. trade policy. During that speech I raised the idea of creating a multilateral tax treaty among, for example, the United States and all countries of the European Community instead of continuing the current practice of entering into such treaties on a bilateral basis. Today, I would like to pursue this issue a bit further.

The United States already has taken the first step in the direction of establishing multilateral tax treaties. On

November 8, 1989, President Bush submitted to the Senate, the Council of Europe-Organization for Economic Cooperation and Development [OECD] Convention on Mutual Administrative Assistance in Tax Matters. The multilateral convention was negotiated and drawn up over a period of several years. The United States played an active role in the convention's development. The Senate Foreign Relations Committee held public hearings on the multilateral convention on June 14, 1990, and favorably reported it to the full Senate on June 28, 1990.

On September 18, 1990, the Senate voted 99-0 to approve the resolution of ratification. In addition to the United States, Norway, Sweden, and Denmark have ratified the multilateral convention. The convention will enter into force once 5 of the 28 countries eligible to do so have ratified it. Finland and The Netherlands also have signed the convention and Finland may ratify it in the next few months, thus bringing the convention into force.

The purpose of the convention is to promote cooperation—through the sharing of information—among national tax authorities as they administer their respective tax laws. Thus the convention is not as broad in scope as the bilateral tax treaties the United States has entered into with numerous other countries. However, it does mark the first time the United States has entered into a multilateral treaty on tax assistance. Does it also mark a first step in creating a multilateral treaty structure for taxes similar to the multilateral GATT structure for trade?

One important information sharing provision in the multilateral convention allows for what are called simultaneous examinations of taxpayers. A simultaneous examination is really two separate tax examinations of the same taxpayer conducted by two countries at the same time. During the simultaneous examination process, information is exchanged if relevant to the other country's examination. This can be an extremely useful technique where both treaty jurisdictions are concerned that a taxpayer might be misallocating profits to a third jurisdiction—a tax haven country. Thus, simultaneous examinations are a significant tool in the fight against international tax evasion.

The multilateral convention also provide for spontaneous exchanges of information among signatory countries. Such an exchange occurs when a party to the convention determines it has information that could be useful to the administration of tax laws of one of its convention partners. Spontaneous exchanges of information have the potential to increase tax compliance at a relatively low cost as the information shared is already in the possession of one party to the convention.

While the multilateral convention has yet entered into force, although it appears that it soon, will, it seems this multilateral agreement will provide a framework by which international tax relations will be strengthened. Can we go further than a multilateral agreement governing the sharing of tax information? Can we develop a multilateral tax treaty structure akin to the General Agreement on Tariffs and Trade? Perhaps, but it likely will not be an easy process.

Joel Slemrod, associate professor of economics and business economics at the University of Michigan, has written an excellent piece entitled "Tax Principles in an International Economy" which appears as a chapter in "World Tax Reform: Case Studies of Developed and Developing Countries." Part of Professor Slemrod's chapter, subtitled "A GATT for taxes" sets forth his creative ideas on creating a multilateral GATT-like structure for taxes and some of the problems inherent in such an approach. I ask unanimous consent that the relevant portion of Professor Slemrod's article appear in the RECORD at the conclusion of my remarks.

Professor Slemrod sees national sovereignty as perhaps too great a hurdle to overcome in an effort to create a GATT for taxes. In the case of GATT and trade, the goal is clear and ostensibly shared by all parties to the agreement—low or no tariffs. However, in the case of tax policy, countries find it much more difficult to reach agreement on a common goal. The interests of each nation result in unique approaches to the determination of revenue requirements, the ability to raise taxes and, indeed, to the kinds of taxes upon which its system will depend. As a result, Professor Slemrod sees no prospect for a comprehensive international tax agreement. While I do not share the view that there is no prospect for the development of a comprehensive multilateral tax treaty, I agree it will be no easy task.

One possible way in which a comprehensive multilateral tax treaty might evolve is through the expanded use of regional multilateral tax treaties—a kind of North American Free-Trade Agreement for taxes, to continue the GATT analogy. Two regional multilateral conventions on tax assistance are now in force among various European countries, although the United States is a party of neither. In addition, the European Community has submitted to its members a multilateral convention establishing a procedure for the arbitration of transfer pricing disputes—a serious international tax policy issue I addressed in my last speech on this topic and intend to explore more fully in the future. This multilateral tax treaty would enter into force upon ratification by all 12 EC member countries. Again here, the United States is not a party to the convention. However, it does demonstrate that the multilateral approach to tax treaties is evolving beyond only the exchange of tax information.

Mr. President, I expect that we will learn much once the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters enters into force and we have had the opportunity to evaluate its effectiveness and the ability of countries to cooperate in a multilateral tax treaty framework. Hopefully our experience in that regard will allow us to more fully evaluate the advantages and disadvantages to U.S. taxpayers and the role multilateral tax treaties could play in enhancing international trade.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

[From the Book: "World Tax Reform: Case Studies of Developed and Developing Countries"]

THE PROBLEMS AND PROMISE OF TAX HARMONIZATION

A GATT FOR TAXES?

The General Agreement on Tariffs and Trade (GATT) has, by most accounts, succeeded in lowering the tariff barriers to the international flow of goods (although the success has been mitigated to some extent by the apparent growth in nontariff barriers to trade). There is no analogous multilateral agreement for taxes. Why is there no GATT for taxes?

The most important reason is almost certainly that ceding tax-policymaking authority to an international agreement would compromise national sovereignty too greatly. In the case of tariffs, there exists a clear benchmark goal of zero tariffs, a goal which does not severely compromise the revenue needs of most countries. In the case of tax policy, countries differ enormously in their revenue requirements, capacity to raise taxes, and their predisposition toward alternative tax systems, including the perceived need to use tax policy to affect economic activity. For this reason I see no prospect for a comprehensive international agreement that sets severe limits on tax policy.

Are more modest goals worth pursuing? I believe so, and therefore as food for thought I offer the following skeleton of a multilateral agreement of the future:

1. Harmonization of statutory corporate tax rates. I believe that tax authorities will always be unable to adequately monitor the ability of multinational companies to allocate income among jurisdictions via transfer pricing and other financial transactions. The differences among countries' statutory corporate tax rates provide the incentive to shift income in this way. An agreement to keep statutory rates within a small band would minimize this problem. Note that such an agreement would not compromise the ability of countries to set the marginal effective rate of tax on new investment at any level they desired through the appropriate setting of tax depreciation schedules and investment tax credits.

2. Harmonization of withholding taxes on passive income. A multilateral agreement to impose a harmonized rate of withholding tax on interests, dividends, and royalties would reduce the detrimental effects of the asymmetrical ability of countries to impose residence-based taxes. It would also reduce the incentives created by the current patchwork

of bilateral tax treaties for tax-treaty "shopping" by those searching for the minimum-tax way to arrange a financial transaction. (Bilateral tariff agreements would similarly lead to tariff shopping and tariff havens, and existing bilateral trade quotas have certainly encouraged quota shopping.) Many countries set themselves up as tax havens, and offer tax "sales" to tax-minimizing shoppers. A common rate of withholding would reduce the rewards to tax-haven transactions. This withholding tax would probably work best if it were made refundable to the payer upon notification that tax has been paid in the country of residence, if that country has signed the multilateral tax agreement.

3. Policy toward nonsigners. Countries that choose not to sign the multilateral treaty (presumably because they wish to levy rates below what the treaty designates) will be designated tax-haven countries. Income earned in these countries will be taxed as accrued at the rate of the home country. In this way, the advantages of deferral or complete exemption are sacrificed. Residents of countries that do not sign the agreement are also not eligible for refund of the withholding tax levied by the treaty countries.

I am under no illusions about the possibility that a multilateral agreement like this will ever occur. The lukewarm reception given the recent proposal for multilateral information sharing is not a good sign.[4] As a nonlawyer I am blissfully ignorant of the complications such an agreement will engender, though I naively suggest that they will be no worse than the complications that arise under current practice. My modest goal is to outline the minimal structure of a multilateral agreement that will preserve a large measure of national sovereignty over capital income taxation but at the same time deal with some of the important problems caused by the current structure of national tax systems and bilateral tax treaties. In particular, an agreement of this kind would reduce the extent of inefficient cross-border capital flows caused by the inability of some countries to tax their residents' foreign-source income, and would reduce the cost of monitoring transfer pricing and other policies designed to shift reported income to low-tax jurisdictions.

NOTES AND REFERENCES

Chapter 2. Joel Slemrod, "Tax Principles in an International Economy"

1. This point is developed in McLure (1987) and Slemrod (1988a).

2. See Slemrod (1988b) for a further discussion of the tax arbitrage possibilities opened by international capital mobility.

3. The GATT does attempt to regulate internal taxes, but only those that discriminate against imported goods in favor of domestic goods. Income taxes are excluded from the scope of GATT.

4. I refer to the Multinational Convention on Mutual Assistance in Tax Matters, developed by the Organization for Economic Cooperation and Development, which standardizes procedures for sharing of tax information among countries. Open to signature beginning in 1988, it has as of this writing been signed by few.

ANNUAL OXFORD/CAMBRIDGE CHALLENGE CUP REGATTA

Mr. PRESSLER. Mr. President, recently I had the opportunity to participate in the 1992 J&B Challenge Cup Regatta—Oxford versus Cambridge. I am pleased to note that my alma mater, Oxford, won four of the five races held during the regatta. I am not so pleased to note that Oxford lost to Cambridge in the race in which this Senator captained the losing boat.

The rainy weather did not dampen our competitive alumni spirits as we rowed our respective university boats along Washington Harbour. The centuries old Oxford/Cambridge rowing rivalry continued as alumni competed in the race.

Boat racing has been around since the early 1700's. A trophy, named the "Doggett Coat and Badge" after its originator, Englishman Thomas Doggett, was given to the winner of race held on the River Thames. This race marked the beginning of the rowing regatta. The first race between Oxford and Cambridge took place in 1829. Harvard and Yale, the oldest intercollegiate rowing rivalry in the United States, held its first regatta in 1852.

Mr. President, to recognize all those who participated in the Oxford/Cambridge alumni event, I ask unanimous consent that articles from the Washington Post plus the names of participants in the event be included in the RECORD immediately following my remarks.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 28, 1992]

RAIN AN APT BACKDROP FOR REGATTA

(By Julian Rubinstein)

The driving rain and low gray clouds were unmistakably British, making several of the competitors in the Eighth Annual Oxford/Cambridge Potomac River Row-Off yesterday at Washington Harbour feel right at home, but convincing many would-be spectators to stay away.

When the races began, though, the approximately 300 supporters of the prestigious universities left the stewards tent to line the north bank of the Potomac for a better view of one of the world's prettiest sports and oldest rivalries, dating back over 300 years.

"It's classic," said Cambridge alum Simon Webb from under a multi-colored umbrella."Without [the rain] it wouldn't be the event we know."

The featured race, the men's 1,500-meter eight-man invitational, was won by a younger, stronger Oxford team boasting four former Olympians. The team, which practiced together only once before the race, pulled to a one-length lead after 500 meters and held on to win by two in 4:14.

"We were content with a one-length lead," said Chris Huntington, a member of the U.S. Olympic rowing team in '84 and '88. "I was surprised how strong and clean our start felt, but not that we won. We are much bigger and more experienced."

The biggest cheer of the day came in the first race—a four-man event jokingly referred to as the "celebrity fours" because of its high-powered participants—as the Cambridge shell glided past the finish line far in front of a tired Oxford squad for the school's first victory at the regatta since 1988.

"We had a slow start, a slow finish, and a slow middle, but it was still fun," said Sen. LARRY PRESSLER (R-S.D.), captain of the Oxford boat.

THE 1992 J&B CHALLENGE CUP REGATTA

THE J&B PAST MASTERS' PLATE, ALUMNI FOURS, 1:45 P.M.

For Oxford University:

Senator LARRY PRESSLER, Captain, St. Edmund Hall.
James Bruxner, University.
Lawrence Huff, Stanford.
H.E. Denis B.G. McLean, University.
James Rogers, Coxswain, Balliol, O.U.B.C.

For Cambridge University:

William Marsden, CMG, Captain, Trinity.
C.M. "Sandy" Gilmour, Downing.
C. Douglas Lewis, Clare.
The Honorable John A. Shaw, Magdalene.
William Onorato, Coxswain, Jesus.

Regatta alternates for Oxford University:

James Cook Ayer, Pembroke.
Christopher Bingham, Balliol.
Christopher Marquardt, St. Anthony's.
Frederic Phillips, Pembroke.

For Cambridge University:

H.E. Denneth Modeste, Magdalene.
Daniel G. Jablonski, Pembroke.

THE J&B LADIES' PLATE, ALUMNAE FOURS, 2 P.M.

For Oxford University:

Nessa Eileen Feddis, Captain, Corpus Christi.
Heidi Avery, Somerville.
Meredith Miller, Somerville.
Shehra Tahir-Kheil, Magdalene.
Jonathan Fish, Coxswain, Mansfield.

For Cambridge University:

Janet F. Satterthwaite, Captain, Christ's.
Beth Chung, Pembroke.
Heather Hartland, Pembroke.
Dr. Sarah Whitehead, New Hall.
Amber Lennoye, Coxswain, Boston University.

THE J&B CHALLENGE CUP, ALUMNI EIGHTS, 2:15 P.M.

For Oxford University:

Martin Dunsby, Captain, Cherwell.
Liam Halligan, St. Anthony's.
Hamish Hume, Pembroke, O.U.B.C.
The Rev. William Kynes, Christ Church.
Jeffrey D. Nuechterlein, New College.
David Rosen, Keble.
Duncan Spencer, Christ Church, O.U.B.C.
Townsend Swayze, Wadham, O.U.B.C.
Pawan Patil, Coxswain, St. Catherine's.

For Cambridge University:

Christopher Dlutowski, Captain, Trinity Hall.
Lt. A. James Addison, St. John's.
Frederic Deleyannis, Trinity.
Michael Freidberg, Pembroke.
Christopher C.J. Ling, Churchill.
Roger Pardo-Maurer, IV, King's College.
Severin Sorenson, King's College.
Gero Verheyen, St. Edmund's.
Lee Weiss, Coxswain, Emmanuel, C.U.B.C.

THE J&B CAMSIS FLAGON ALUMNI EIGHTS 2:45 P.M.

For Oxford University:

John Hardin Young, Captain, Exeter.
David Frederick, University College.
Eric Fusfield, St. Anthony's.
Rev. Francis T. Gignac, SJ, St. Catherine's.
Greg Kinzelman, Trinity.
David Law, Christ Church.
Alan Murdoch, Balliol.
Christopher Redfern, Christ Church.
Susan Frederick, Coxswain, University College.

For Cambridge University:

Hugh O'Neill, Captain, Emmanuel.

Robert Borghese, King's College.
Charles Day, Sidney Sussex.
Michael Glass, Trinity Hall.
George J.C. Jacobs, St. Edmund's.
Harry Marshall, Churchill.
Jeffrey Pryce, Peterhouse.
Lawrence Sherman, Darwin.
William Onorato, Coxswain, Jesus.

THE JB INVITATIONAL QUAICH ALUMNI EIGHTS

3 P.M.

For Oxford University:

Christopher Penny, Captain, St. John's, O.U.B.C.
Christopher Blackwell, Keble, O.U.B.C.
Christopher Clark, University, O.U.B.C.
Peter Gish, Oriel.
Richard Hull, Oriel, O.U.B.C.
Hamish Hume, Pembroke, O.U.B.C.
Christopher Huntington, Mansfield, O.U.B.C.
Dan Lyons, Oriel.
Jonathan Fish, Coxswain, Mansfield.

For Cambridge University:

James Pew, Captain, Trinity, C.U.B.C.
H. Boyce Budd, St. John's C.U.B.C.
Gardner Cadwalader, Trinity, C.U.B.C.
Arthur Cook, Fitzwilliam.
Paul Griffiths, Trinity Hall.
Dan Justicz, Downing, C.U.B.C.
Somerset Waters, Trinity, C.U.B.C.
Dr. Robert Watson, St. John's, C.U.B.C.
Lee Weiss, Coxswain, Emmanuel, C.U.B.C.

OFFICIALS

Umpire—Alan Mays-Smith, Esq., C.U.B.C., London Representative of the Oxford and Cambridge Universities Boat Clubs (1967-1984). Steward of the Henley Royal Regatta.

Finish Line Judge—Douglas Burden, 1992 Olympic Silver Medalist.

To Award the Trophies—

James Bruxner, Chairman, Justerini & Brooks.

Lawrence Huff and Tony Johnson, 1968 Olympic Pairs, Silver Medalists.

Douglas Burden, 1992 Olympic Silver Medalist.

Teddy Turner, Pres./Skipper, Challenge America.

Camsis Boat Club Officers

President

George A. Carver, Jr., Balliol, Oxford, O.U.B.C.

Vice Presidents

Nessa Eileen Feddis, Corpus Christi, Oxford
Christopher Diutowski, Trinity Hall, Cambridge.

Treasurer

John Hardin Young, Exeter, Oxford.

Secretary

The Honorable John A. Shaw, Magdalene, Cambridge.

Chairman, Stewards' Committee

Roger Pardo-Maurer, IV, King's College, Cambridge.

1992 Stewards Committee

J.A.N. Wallis, Vice Chairman, St. John's, Cambridge, CUBC.
Lauren Brown, St. Peter's, Oxford.
J.J. Forster, Potomac Boat Club.
Jennifer Gale, Yale.
Jay Griffis, Purdue.
Diane Owens, University of Maryland.
Gordon Williams, King's Cambridge.
Richard Williams, Hampden-Sydney.
Steven Vermillion, Loyola.

LIVINGSTON REBUILD CENTER

Mr. BAUCUS. I appreciate this opportunity to express my concern to the senior Senator from Massachusetts, the chairman of the Senate Labor Committee, about a recent ruling by the seventh circuit court of appeals in a case involving the railroad retirement system that could have serious consequences for a group of workers in my State.

In Livingston, MT, there is an independent investor-owned business called the Livingston Rebuild Center, or [LRC]. LRC rebuilds diesel locomotives, repairs railroad cars and employs 115 workers. It began in 1988 in former facilities of the Burlington Northern Railroad which has been closed for several years and which at the time of closure caused the loss of over 1,000 jobs.

This past summer, the seventh circuit court of appeals held that LRC is retroactively liable for railroad retirement taxes based on a strict interpretation of the Railroad Retirement Act. The court's opinion noted that the structure of the railroad industry has changed dramatically since the provisions defining which entities should be covered by the act were enacted in 1937. However, the court also said, and I believe correctly, that problems involving the application of the statute to modern-day business entities are for the political branches of government, not the courts, to correct.

I am a strong supporter of the railroad retirement system and would oppose anything which would be unfair to railroad workers and retirees. However, I believe this is a situation where clarification of the law is needed so it does not produce unfair results which unexpectedly throw nonrailroad workers out of work. That is the situation we face today.

LRC has informed me that it will likely be forced to close if liability is imposed for the outstanding tax, especially since LRC's business competitors are not liable for those same taxes. This has subsequently led to an overwhelming call by the community for a legislative solution to the impending job losses.

I have introduced legislation to effect this change. My question to my colleague from Massachusetts is whether he would work with me to address this problem and achieve some acceptable solution that is fair to the workers.

Mr. KENNEDY. I can certainly understand the concerns of my friend and colleague from Montana for the workers and their families in Livingston and his desire to do everything possible to save these jobs. I too am a strong supporter of the railroad retirement system, and I am committed to maintaining the financial integrity of that system. However, as chairman of the Labor and Human Resources, I am more than willing to work with the Senator from Montana to see if we can find a way to address this problem that would be fair to all those involved.

Mr. BAUCUS. I am in agreement with the remarks expressed by my colleague from Massachusetts and I thank him for his expression of concern. I promise to work with him, at the earliest opportunity, to resolve this very important issue to Montanans.

1993 FOREIGN OPERATIONS APPROPRIATIONS BILL

Mr. SASSER. Mr. President, before the 102d Congress adjourns, I would like to make some brief comments on the 1993 Foreign Operations appropriations bill.

To begin, I would like to congratulate the managers of this conference report for completing a bill within their budgetary allocations. It is always difficult to pass a foreign aid bill in the Senate; and usually even more difficult in an election year.

Overall, the conference report contains $14.1 billion in budget authority and $13.3 billion in outlays to maintain this Nation's ongoing foreign economic and military assistance programs and provide export loans and guarantees by the Export-Import Bank. Additionally, the bill appropriates $12.3 billion in budget authority for the United States quota subscription to the International Monetary Fund.

I am pleased that this bill provides the $10 billion in loan guarantees sought by the administration and the Government of Israel. These guarantees will help support Israel's efforts to resettle new emigres from the Soviet Union.

The language contained in the bill requires Israel to pay a fee to fully offset the subsidy cost of these guarantees as scored by OMB. For this reason, OMB affirms that these loan guarantees will not cost anything to the U.S. taxpayer.

It is my hope that these loan guarantees, coupled with the economic reforms announced by Prime Minister Yitzhak Rabin, will open a new era of economic growth in Israel. Israel is taking concrete steps to scale back its own budget deficit, to promote economic competition within Israel, to deregulate its capital markets, to institute tax reform, to reduce trade barriers, to reform its pension system and, to create new incentives. These are dramatic and positive steps in the right direction.

Our loan guarantees will be part of this process. They will encourage long-term private economic investment rather than temporary government-imposed solutions to Israel's economic problems. They will help spur the kind of economic growth which Israel needs not only to absorb the recent influx of immigrants, but to pave the way toward creating a vibrant Israeli economy capable of independently meeting the challenges of the next century.

I am also pleased that the bill contains a provision prohibiting the Agency for International Development from continuing its practice of using foreign aid funds to persuade American businesses to relocate their manufacturing plants to Central America.

It is insulting to the American taxpayer that hard-earned tax dollars are going to benefit foreign countries to the immediate detriment of the American economy. It is insulting, it is wrong, and this bill will ensure that this practice does not continue.

Like many Members, I do not believe that this bill goes far enough in providing new directions for our foreign affairs community. It is, in so many ways, still a cold war bill. It shies away addressing the needs of a new world order. It maintains high levels of military assistance. Like our defense bills, it largely maintains the status quo.

Thriving in this new world order will require more imagination, more energy, and more resourcefulness than ever before. Yet, 3 years after the fall of the Berlin Wall, our foreign aid program remains unchanged. The State Department and the other foreign affairs agencies of the United States—the U.S. Information Agency, Voice of America, the Agency for International Development, CIA, and others—have made little progress on reformulating their roles, structures, and missions. We have made scant changes in our foreign affairs priorities and the agencies which implement these policies.

I hope that more can be done next year to chart a different course.

ENERGY EFFICIENCY ACT—CONFERENCE REPORT

The PRESIDING OFFICER (Mr. KOHL). There will now be 2 hours of debate prior to the vote on the motion to invoke cloture on the conference report accompanying H.R. 776, which the clerk will report

The assistant legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two House on the amendment of the Senate to the bill (H.R. 776) to provide for improved energy efficiency, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 5, 1992.)

The PRESIDING OFFICER. Who yields time?

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Nevada.

Mr. REID. Mr. President, I yield myself 20 minutes.

Mr. President, when historians finally get around to chronicling the debate that is taking place in the Senate today, they will no doubt index it under "energy, national policy." Technically, they will be correct. However, there is a much larger debate taking place today which has to do with fairness and the treatment of a small minority of American citizens, by their brothers in the majority.

In a democratic body like Congress, like the Senate it is a truism that might makes right. The majority almost always get what it wants—even when what it wants is unfair to the minority. That is the case we face here today. In the name of the needs of the majority, the citizens of Nevada are being stripped of the protection that the environmental laws of this Nation guarantee to all of its citizens. A special law is being written for the people of my State—a law that provides them with less protection from the dangers of radioactive poison than is afforded to other Americans. That is wrong. I know it is wrong. You know it is wrong. The Members of this body know it is wrong. The sponsors of this legislation know it is wrong.

If it is so patently wrong, some might ask "How can it happen?" The answer is very simple. Nuclear powerplants produce nuclear waste which must be stored somewhere until it is no longer a threat to human life. No one—I repeat, Mr. President—no one wants this poisonous waste stored near them. So a decision has been made by the majority of the other 49 States in the Union to force the people of Nevada to accept this poison against their will. Simply put, the majority prevails.

But this is not enough for the proponents of nuclear power. The people of Nevada have gone to the courts to protect our rights, in the hope that the laws which protect other people's public health will also protect us. We look for a little fairness. We are still looking for fairness. According to former Supreme Court Justice Potter Stewart, "Fairness is what justice really is."

What is the response of the Congress? Do they wish us well and support our day in court? No; they do not. Instead, the Congress embarks on a new legislative assault on the people of Nevada. They concoct the legislation pending final approval in the Senate today, legislation which purposely strips the people of Nevada from the protection afforded them under the environmental laws of this Nation. They argue that, "It is too hard to meet the requirements of these laws." They say it will "cost the nuclear power industry too much money to comply." Instead of backing our efforts to protect the people of the state of Nevada, they take the extraordinary step of proposing to direct the environmental regulators to write special laws that apply only to Nevada.

The aim of this legislation's sponsors is to weaken, by Government fiat, the legal protection afforded to the people of Nevada under Federal environmental laws. Why? For the same old tired reason. Nuclear waste is building up at nuclear powerplants all over the country. The people who live near these powerplants want it moved yesterday. They do not want it moved now, they want it moved yesterday. Once again, the majority in Congress acts to trample the rights of the minority—the citizens of the sovereign State of Nevada.

My personal battles on this issue go back a long way, a decade. In 1982, there was crafted a nuclear waste bill that had broad bipartisan support in both Houses of Congress. It had taken a long time to develop that. However, during the next 5 years, the Reagan administration did its best to ignore the mandates laid down in that legislation for objectively, scientifically choosing the most suitable site for a permanent nuclear waste dump. By 1987, fear was rampant that the dump might end up in some Member's State or district, so much so that a so-called screw Nevada bill was forced through Congress to effectively dictate that the site be located in Nevada. I personally filibustered that legislation and held it up for 5 or 6 weeks.

I offered an amendment that would have made health and safety the highest considerations in siting the geologic repository. That amendment was defeated.

Even this travesty against fairness was not enough. Back we come this year with new efforts to strip public health and safety protections that environmental laws provide the people of Nevada. My colleague, Senator BRYAN from Nevada, and I have fought these efforts for a long time—on this particular issue for months. We have had some victories, but the energy bill strips Nevada of very important protections for the public health and safety of the people of Nevada. That is why we asked you, Mr. President, and our colleagues to vote with us against cloture on this energy bill.

Some have called this legislation good energy policy. I disagree. No matter what benefits this bill provides our national energy programs, it suffers the fatal flaw of running roughshod over the rights of a minority for no better reason than that is what the majority can do when it wishes. I tell my colleagues that this is nothing for which we as a body should be proud. In fact, it threatens the very fiber of our democratic society. Because you see, Mr. President, tomorrow it could be your State.

Mr. President, I share the views of President Franklin Roosevelt when he said:

> The moment a mere numerical superiority of either States or voters in this country proceeds to ignore the needs and desires of the minority, and for their own selfish purpose or advancement, hamper or oppress that minority, or debar them in any way from equal privileges and equal rights—that mo-

ment will mark the failure of our constitutional system.

This, Mr. President, is the beginning. Democracy, you see, fails, we have been told, from within, not from without. And when democracy gets too cumbersome, it is at that time that people start coming up with short cuts, like term limitations. It is too cumbersome to have an elective process. We will set some arbitrary standard just to knock people out of office; or it is too cumbersome to go through the procedures of law that affect everyone. If one State will not comply, we will pass the majority and run over that minority. That is what Franklin Roosevelt was talking about.

With the actions of the sponsors of this legislation, the provisions about which we speak, we are taking a giant step in that direction.

I would like to discuss now some specific problems with this language in the energy bill that I am concerned about.

This bill contains dreadful provisions affecting the State of Nevada which are an offense to the people of my State. The inclusion of these provisions make it impossible for me to support this legislation. That is too bad. These provisions are wrong because they include not only bad policy decisions but also utilize bad scientific judgment.

These provisions go beyond the scope of the original legislation. Neither the House nor Senate bills contained language requiring new Nuclear Waste Policy Act regulations. I want to be very clear on this point. Requiring the Nuclear Regulatory Commission to promulgate new regulations on high-level radioactive waste was never part of either bill. Why then have the energy conferees chosen to go beyond their charge?

They are responding to the intense pressure of the nuclear lobby to move forward on the Yucca Mountain project. The conference report specifically states, "the repository at the Yucca Mountain site." Not the proposed repository at Yucca Mountain.

Mr. President, the decade-long site characterization program has just started at Yucca Mountain. In fact the Department of Energy itself has indicated more studies are needed before the DOE can actually recommend building a repository at Yucca Mountain. It is foolhardy to say that Yucca Mountain is the right place to store nuclear waste for the next 10,000 years, with the meager amount of scientific research that has been completed to date. This proposed legislation will short-circuit the site characterization work.

These provisions will apply only to the Yucca Mountain site. Why should Yucca Mountain, the proposed repository for both civilian and defense wastes, be subject to less stringent regulations than other facilities? Environmental regulations such as the Clean Water Act, Resource Conservation and Recovery Act, and the Safe Drinking Water Act apply national standards.

Why do we have one drinking regulation for Nevada residents and another for people in other States?

We do not. We have the same standard. And we should have the same standard for nuclear waste. The reason we do not is because the nuclear lobby thinks Yucca Mountain will be disqualified under the present regulations, and they cannot let that happen.

It does not take a scientist to understand the provisions which lie at the heart of this matter. Our Nation's environmental law has for decades been based on population exposure, not individual exposure. That is, what would happen to an entire population, not to a specific individual. The present EPA regulations were remanded to the Agency in 1987, and have gone through at least three revisions. All parties have been involved in this process. Why do we now abandon this process and require the EPA to follow the binding recommendations and findings of the National Academy of Sciences, as set forth in this repugnant amendment that is in this conference report?

Mr. President, the Nuclear Waste Policy Act of 1982 clearly outlined the responsibility for the siting, licensing, operation, and closure of a geological repository. Even after it was amended in 1987, the act still holds that the Department of Energy is to select the site, after careful and complete characterization. That selection is to be forwarded to the Nuclear Regulatory Commission for licensing consideration—two steps. The guidelines for licensing were to rest with the NRC and the level of protection needed for the facility were to rest with the Environmental Protection Agency.

It is both bad policy and bad science to change the rules after a process has started, especially when the health and safety of the public is at stake.

The provisions in this bill require the National Academy of Sciences to return binding findings and recommendations to the Environmental Protection Agency and the Nuclear Regulatory Commission. While the National Academy of Sciences is a learned body, it is not a regulatory body. In addition, the Academy is not politically accountable for its actions. Mr. Stephen Merrill, the executive director of the National Research Council, clearly stated that fact in his September 30, 1992, letter to the Energy and Natural Resources Committee staff, when he wrote:

> This is to advise you that the Academy is prepared to conduct the study as described although we would not assume a standard-setting role that is properly the responsibility of government officials.

That is what they are being mandated to do. He says they are going to do something they cannot do.

My point is further supported by Acting Chairman, Kenneth C. Rogers, of the Nuclear Regulatory Commission, in an October 2, 1992, letter to Senator BOB GRAHAM, when he wrote:

> As we currently understand this legislation, NRC's actions would be required ultimately to be consistent with Academy recommendations for dealing with human intrusions into the repository.

The National Academy of Sciences was nowhere given the responsibility in the Nuclear Waste Policy Act to undertake that task. Why should the National Academy of Sciences be dictating binding recommendations and findings to the EPA and NRC?

Mr. President, another change to the rules is the provision that the Department of Energy will keep control of the site forever. This concept is based on bad science. The whole idea behind geological disposal is that both natural and engineered barriers will protect the public. By changing the rules and requiring the DOE to control the site, the radioactive waste will now be isolated from the environment by engineered barriers and institutional control only. It is not logical to expect DOE watchdogs to be guarding the site in the next millennium.

Finally, Mr. President, it is bad science to subscribe to the false conclusion that we need Yucca Mountain now. The capacity to store nuclear waste at the nuclear power plants in dry-cask storage is adequate for a generation to come.

My point has been strongly supported by an August 24, 1992, letter to Gov. Bob Miller from Chairman Ivan Selin of the Nuclear Regulatory Commission. In the letter Chairman Selin wrote:

> If necessary, spent fuel can be stored safely and without significant environmental impacts for at least 30 years beyond the licensed period of life for operation (which may include the term of a revised or renewed license) of any reactor in its spent fuel storage basin or at either onsite independent spent fuel storage installations (ISFSIs).

Further, the letter states:

> NRC staff safety reviews of topical reports on dry storage designs and dry storage installations at four reactor sites, as well as the EA [Environmental Assessment] for Part 72, support the finding that storage of spent fuel in such installations for a period of up to 70 years does not significantly affect the environment.

We have had testimony before Senator GRAHAM's subcommittee that they can store on site for 100 years. Science is in agreement that in fact that is the case.

Other countries, such as Sweden, Germany, France, and Canada, are taking their time and carefully evaluating where and how best to store nuclear waste. Some of these nations will not even be selecting a site in the next 20 years. Taking the time to answer all questions concerning the safe and permanent disposal of nuclear waste is something our Nation can afford to do also. Hopefully, a new administration will look at other countries and be more fair than the ones during the last decade to Nevada.

Also this bill is loaded with new taxes, over $5 billion of taxes. The President should react as he has to other tax measures during the past few months and veto this bill.

In conclusion, both bad policy and bad science are evident in this provision, this legislation. It is sad that the Nation is stuffing this offensive and oppressive regulatory scheme down Nevadans' throats. Finally, it is bad that the nuclear body is pushing so hard to speed up this flawed process.

Bad, Mr. President: Bad, bad, bad. It is not going to get better, and I am concerned that Congress is going to lurch forward and adopt this conference report. It would be a tradegy and a travesty. I urge my colleagues to vote against cloture.

I reserve the remainder of my time for Senator BRYAN and for me.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, I yield myself 10 minutes.

Mr. President, I am uncomfortable opposing my friends from Nevada. We just made common cause on the question of nuclear testing in Nevada. Both of us. I, because I was anxious to have testing for the purpose of safety in Nevada; my friends from Nevada, I think, not only because of safety but because of jobs.

It is curious that my friends from Nevada want to continue nuclear testing in Nevada where there are 600 holes in the ground which are, in effect, many nuclear repositories containing everything from cesium-137, strontium-90—all of the long-lived nuclear isotopes, and they are not sealed off at all from the environment. So we start with that curiosity, that this argument is really not grounded on science but more on emotion.

I want to make 5 points, which I think are very important. The first is that this was absolutely necessary to be in this bill in the conference committee. There was a provision in the House bill, fixing radionuclides at a previously withdrawn EPA standard. So the House bill legislatively fixed the standard for radionuclides. The Senate had no such language. So, in conference committee, we had to deal with this issue.

It was not an issue about which my friends from Nevada had no notice. We had discussed it personally and informally, the question of radionuclides and the question of what I call the caveman test. That is, whether or not you can assume that civilization continues and people would know the location of the site so as to keep human intrusion away.

My friends were aware of that. We spread it on the CONGRESSIONAL RECORD in a colloquy among us. So they were on full notice as to the question of radionuclides. My colleagues will recall they had mounted a filibuster against this bill in its consideration on the Senate floor and, in accordance with my agreement not to press the question of preemption. The House bill had preempted the right of the State of Nevada to issue water permits, air permits, and other permits because of the record of Nevada in delaying those permits. The RECORD shows that these permits have been delayed by litigation, by delay for periods of years when those same permits, if they were for a gold mine or for other purposes, would be issued promptly in a period of up to 3 months at most.

So the House had put in language to preempt the State of Nevada. My friends from Nevada had said they were no longer going to delay. I indicated I was willing to accept that, and our compromise was that I would take that language out, or would attempt to, and eventually did, in the conference committee in response for which they would do away with the filibuster.

But I made very clear that this issue of radionuclides was not included in our agreement and had to be addressed in the conference committee and, in fact, was addressed in the conference committee.

Now, is it a matter of importance? Mr. President, this is a $3.2 billion problem. If, in fact, we had adopted the language of the House, then it would have put in place a release limit for carbon 14. Carbon 14, by the way, is ubiquitous everywhere in life. It is generated in the atmosphere. The regular carbon 12 atoms are hit by solar radiation, turned into carbon 14. It is everywhere. It is how we do carbon dating. The caveman, not too long ago, discovered up in the Alps, who was 5,000 years old, they found out how old he was by carbon 14 dating. So carbon 14 is ubiquitous.

Previously, the EPA had come up with a standard for release limits on a lot of things, including carbon 14. That was back in 1985. They set that limit at that which they considered to be achievable, not that which had anything to do with human health.

The assumption was at that time that the repository was going to be located below the level of saturated rock. Water absorbs carbon 14. So they set the release limits for carbon 14 at such minuscule amounts that it ended up being one-millionth of background radiation; one-millionth of background radiation. We are bombarded by radiation all the time from solar radiation, some from rocks, from granite, from radon, from other sources, but it was one-millionth of background radiation or 1/6400 of the radiation which occurs naturally in the body.

So, obviously, it did not have anything to do with human health because it set that limit so low as to have no relationship to human health.

Lo and behold, the Congress came along and sited the repository at Yucca Mountain, which is in dry rock so that we can no longer count on the absorption of the carbon 14 in the wet rock. So then the question came, how would you comply with the carbon 14 standard? According to the Department of Energy, it would take $3.2 billion to comply.

In a letter of October 7, 1992, from John W. Bartlett, Director of the Office of Civilian Radioactive Waste Management, he says, among other things:

> One means to comply with the existing standard——

That is the carbon 14 standard.

> even though public health would not be endangered, would be to use specially designed waste canisters to contain the carbon 14. As stated in a technical report on the subject transmitted by DOE to EPA on August 12, 1992, DOE estimates that the specially designed carbon 14 canisters would cost a total of $5.4 billion. In contrast, the estimated cost of canisters to meet all other requirements is $2.2 billion.
>
> Thus, use of canisters to comply with the existing EPA carbon 14 standard would cost the nuclear waste program an additional $3.2 billion without any health benefits.

Mr. President, I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF ENERGY,
Washington, DC, October 7, 1992.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in reply to your inquiry concerning the effect of existing Environmental Protection Agency (EPA) nuclear waste disposal standards on the cost of waste canisters for disposal in a potential repository at the Yucca Mountain site. Of specific concern is the potential additional cost of canisters in order to prevent release of carbon-14 in excess of EPA requirements.

The existing EPA standards are based on expectation that the repository would be below the water table so that any released nuclide would be transported to the environment by groundwater. At Yucca Mountain, the proposed repository would be above the water table so that nuclides such as carbon-14 would migrate to the environment as gases.

The existing EPA disposal standards for carbon-14 are technically achievable for a repository beneath the water table, but at Yucca Mountain the carbon-14 could be released to exceed the standard. Calculations have shown that release of the entire inventory of carbon-14 in a repository at Yucca Mountain would exceed the standard but would not endanger public health.

One means to comply with the existing standard, even though public health would not be endangered, would be to use specially designed waste canisters to contain the carbon-14. As stated in a technical report on this subject transmitted by DOE to EPA on August 12, 1992, DOE estimates that the specially-designed carbon-14 canisters would cost a total of $5.4 billion. In contrast, the estimated total cost of canisters to meet all other requirements is $2.2 billion.

Thus, use of canisters to comply with the existing EPA carbon-14 standard would cost the nuclear waste program an additional $3.2 billion dollars without any health benefit. The Department strongly believes that this is an unwarranted expenditure. Rather than incurring unwarranted costs to comply with an inappropriate standard, the standard should be revised.

Please let me know if you have further questions on this subject.

Sincerely,

JOHN W. BARTLETT,
Director, Office of Civilian Radioactive Waste Management.

Mr. JOHNSTON. Mr. President, this is an issue as to which my friends from Nevada were on notice, an issue that we had to deal with in the conference, and a $3.2 billion problem which has no relationship to health or safety. None. And no one I know of has ever argued that it does.

Now, how did we fix the problem? In the conference, Mr. President, we had long conversations about how to deal with this issue, and we said, look, this ought to be a matter of science, for the scientists to deal with in the first instance and for EPA to deal with in the next instance. So we came up with a very simple solution. The National Academy of Sciences, the most distinguished scientific group in the world, is to make the scientific determinations and EPA is to make the policy determinations after a study by the National Academy of Sciences.

I forget to say, Mr. President, that those standards on radionuclides were later withdrawn by the court and remanded to EPA back in 1987 where they have remained, and EPA has not come up with a new standard. So there is no standard now applicable to radionuclide release from Yucca Mountain or the Waste Isolation Pilot Plant or other nuclear waste facilities. No standard is now applicable.

The question is, how do we get a standard? What, pray tell, Mr. President, could be more reasonable than to have the National Academy of Sciences do a study and to have EPA come up with a standard based upon and consistent with that?

Mr. President, we are told the argument is that the National Academy of Sciences is going to set the standard. That is not so. That is not what is intended. That is not what the report of the managers says. That is not what the language clearly says.

In fact, Stephen A. Merrill, executive director of the National Research Council, which is the research arm of the National Academy of Sciences, says, among other things—they have seen this language and they say:

> This is to advise that the Academy is prepared to conduct the study as described, although we would not assume a standard-setting role. That is properly the responsibility of Government officials.

They do not see that as their role. They see their role as scientific research.

The EPA also says in a letter to Senator GRAHAM, dated October 5, 1992, from Henry Habicht, a deputy administrator of EPA, which says, among other things:

> * * * EPA believes that a scientific study by the NAS could result in helpful input for improvement of the standards for the storage and disposal of radioactive material.
>
> The agency—

That is EPA—

> takes note of the following language in the statement of managers of the conference report on H.R. 776:
>
> "Under the provisions of section 801, the authority and responsibility to establish the standards would remain with the Administrator, as is the case under existing law. The provisions of section 801 are not intended to limit the Administrator's discretion in the exercise of his authority related to public health and safety issues."

He goes on to say:

> I assure you that, consistent with our important statutory and regulatory responsibilities, EPA will ensure that any standards for radioactive materials that are ultimately issued will be the subject of public comment and involvement and will be fully protective of human health and environment.

Mr. President, I ask unanimous consent that that letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, October 5, 1992.

Hon. BOB GRAHAM,
Chairman, Subcommittee on Nuclear Regulation, Committee on Public Works and the Environment, U.S. Senate, Washington, DC.

DEAR SENATOR GRAHAM: This responds to your request for the Environmental Protection Agency's (EPA) views on section 801 of the Conference Report on H.R. 776 regarding the Yucca Mountain nuclear waste repository.

Section 801 directs the Administrator of EPA to contract with the National Academy of Sciences (NAS) for a study of reasonable public health and safety standards for the storage and disposal of radioactive materials at the proposed repository at Yucca Mountain. It also requires the Administrator to promulgate public health and safety standards applicable to Yucca Mountain that are "based upon and consistent with the findings and recommendations" of the NAS.

It appears that the intent of section 801 is to provide for a review of the scientific foundation of EPA's draft standards for the disposal of radioactive materials. We recognize that EPA's draft standards have been controversial and our policy generally is to support open peer involvement in important science decisions. As such, EPA believes that a scientific study by the NAS could result in helpful input for improvement of standards for the storage and disposal of radioactive material.

The Agency takes note of the following language in the Statement of Managers of the Conference Report on H.R. 776:

"Under the provisions of section 801, the authority and responsibility to establish the standards would remain with the Administrator, as is the case under existing law. The provisions of section 801 are not intended to limit the Administrator's discretion in the exercise of his authority related to public health and safety issues."

I assure you that, consistent with our important statutory and regulatory responsibilities, EPA will ensure that any standards for radioactive materials that are ultimately issued will be the subject of public comment and involvement and will be fully protective of human health and the environment.

Sincerely,

F. HENRY HABICHT II,
Deputy Administrator.

Mr. JOHNSTON. Mr. President, I also have a letter from PHIL SHARP, who is chairman of the Subcommittee on Energy and Power in the House of Representatives, who states as follows:

> As a conferee on this bill, I was unalterably opposed to legislating a new, weaker standard for waste disposal at Yucca Mountain I would not have signed the conference report and managed it on the House floor had we done so.
>
> Instead, we provided for a scientific review of all relevant questions followed by a new rulemaking by EPA before a new standard is issued. Some opponents of the bill are arguing that we do not allow the National Academy of Sciences to review the collective dose issues. This is categorically false.
>
> For a host of reasons, H.R. 776 is the most environmentally sound comprehensive energy bill we have ever considered. I hope you will see fit that it becomes law.

And he attaches to his letter excerpts from the statement of managers.

I ask unanimous consent that letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

HOUSE OF REPRESENTATIVES, COMMITTEE ON ENERGY AND COMMERCE, SUBCOMMITTEE ON ENERGY AND POWER,
Washington, DC, October 7, 1992.

As you consider your vote on the cloture petition on H.R. 776, the Energy Policy Act, I hope you will look at the actual language of the conference report, and especially the Statement of Managers, on the Yucca Mountain issue.

As a conferee on this bill, I was unalterably opposed to legislating a new, weaker standard for waste disposal at Yucca Mountain. I would not have signed the conference report and managed it on the House floor had we done so.

Instead, we provided for a scientific review of all relevant questions, followed by a new rulemaking by EPA before a new standard is issued. Some opponents of the bill are arguing that we do not allow the National Academy of Sciences to review the "collective dose" issue. This is categorically false.

I hope the attached excerpts from the Statement of Managers will be helpful to you.

For a host of reasons, H.R. 776 is the most environmentally sound comprehensive energy bill we have ever considered. I hope you will vote to see that it becomes law.

Sincerely,

PHIL SHARP,
Chairman.

EXCERPTS FROM THE STATEMENT OF MANAGERS, SECTION 801 OF H.R. 776

Standards must protect the public health:

"The provisions . . . require the Administrator to promulgate health-based standards for protection of the public from releases of radioactive materials from a repository at Yucca Mountain, based upon and consistent with the findings and recommendations of the National Academy of Sciences."

National Academy of Sciences has discretion in its study:

"In carrying out the study, the National Academy of Sciences would not be precluded from addressing additional questions or issues related to the appropriate standards for radiation protection at Yucca Mountain beyond those that are specified. For example, the study could include an estimate of the collective dose to the general population. . . ."

The NAS study provides scientific guidance:

"The Conferees do not intend for the National Academy of Sciences, in making its recommendations, to establish specific standards for protection of the public but rather to provide expert scientific guidance on the issues involved in establishing those standards."

The authority of the EPA and the NRC is preserved:

"The provisions of section 801 are not intended to limit the Administrator's discretion in the exercise of his authority related to public health and safety issues. . . . As with the Administrator, the provisions of section 801 are not intended to limit the Commission's discretion in the exercise of its authority related to public health and safety."

Mr. JOHNSTON. Mr. President, what we do ask the National Academy of Sciences and the EPA is to come up with a standard which defines health and safety to an affected individual and the effect comes up with a dose to the individual.

Now, my friends from Nevada complain that a dose to the individual is not the way to do it; it ought to be a release to the atmosphere, in general.

Mr. President, a health-based standard is one that is expressed in millirems and provides for the maximum dose that is safe for an individual. That is what we have asked them to come up with. A performance or objective release standard expressed in curies prescribes the maximum amount of radioactive material that may be released to environment.

The two types of standards are opposite sides of the same coin. They can be translated one from the other like deutsche marks into dollars. The dose levels to which the public would be exposed from a given release can be calculated from the release limit and vice versa.

Mr. President, this is the best way to set a standard, do it scientifically with the best scientific brains to make the scientific determinations and then leave it up to the policymakers to set the policy based on the science. That is the way it ought to be done in every instance. That is the way we have done it, Mr. President.

One final word which I will repeat. If this cloture vote goes down, this bill goes down, national energy policy goes down, a bill that is supported by President Bush, by President to be Clinton, by the majority leader, by the minority leader, by the Speaker of the House, by the minority leader of the House. All of them support this bill because it is badly needed. We cannot let this bill go down simply because we are asking that we set a standard based on science and leave it to the EPA to set the policy.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. BRYAN. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Chair recognizes the Senator from Nevada [Mr. BRYAN].

Mr. BRYAN. I thank the Chair.

Mr. President, no Member of this body ought to be misled by the opposition that what has been done to Nevada is a legislative travesty of the first magnitude. It changes a fundamental rule of public health. In every single enactment—the Clean Air Act, Clean Water Act—you name it—the population standard is a universally recognized way of determining the potential impact on human health of toxic agents, in this case radionuclides.

What was done to Nevada at the last minute, without the benefit of a hearing, no opportunity to be heard or expert testimony received, is to change this standard so that if a nuclear waste dump is ever located at Yucca Mountain, only those of us in Nevada will have a lower standard of health and protection from radiation than anyone else in the country.

We have been considering during the course of this Congress the Waste Isolation Pilot Plant [WIPP] in New Mexico. That is a type of radioactive material which is less dangerous and yet it will have a higher standard based upon the population standards than Yucca Mountain, if ever built, would have for the most dangerous substance known to mankind.

Mr. JOHNSTON. Will the Senator yield?

Mr. BRYAN. I will yield.

Mr. JOHNSTON. Is not the Senator presuming that the National Academy of Sciences and EPA will set a standard that is lower than that which was contained in the so-called part B?

Mr. BRYAN. I would respond to the Senator's question by saying that, indeed, the legislation that the Senator from Louisiana added by way of conference, for the first time, mandates that conclusion. All of the talk that we will have this covered by colloquy, we have this covered by report language, is a smokescreen, Mr. President.

Every constitutional lawyer, every legislative analyst knows that if the language of the statute is clear, report language and colloquies on the floor mean nothing.

Nevada is shafted in two ways by this legislation.

First, in the conference report language added by the distinguished Senator from Louisiana, it is mandated that the standard to be applicable to Yucca Mountain shall be the individual standard, not the population standard.

Second, the National Academy of Sciences is empowered to make recommendations in this conference, and the Environmental Protection Agency, which since the 1982 act has been charged by law with establishing public health and safety standards at nuclear wastesites, is effectively muzzled. They are gutted. They have no authority at all in the language of this bill to do anything other than to follow the mandatory language contained.

So when the Senator says that the EPA has no objection to it, if you read the language of the letter that the Senator has incorporated in the RECORD, October 5, 1992, the EPA does not say that they agree to it at all. In fact, the author of that letter, a gentleman by the name of Mr. Habicht, indicated in an analysis, a guidance for risk characterization for risk managers on February 26 of this year, specifically makes reference to the fact that the population risk standard ought to be included, the same man.

I ask unanimous consent that that report dated, or at least received February 26 with a date stamp be made a part of the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, February 26, 1992.

MEMORANDUM

Subject: Guidance on Risk Characterization for Risk Managers and Risk Assessors.

From: F. Henry Habicht II, Deputy Administrator.

To: Assistant Administrators, Regional Administrators.

INTRODUCTION

This memorandum provides guidance for managers and assessors on describing risk assessment results in EPA reports, presentations, and decision packages. The guidance addresses a problem that affects public perception regarding the reliability of EPA's scientific assessments and related regulatory decisions. EPA has talented scientists, and public confidence in the quality of our scientific output will be enhanced by our visible interaction with peer scientists and thorough presentation of risk assessments and underlying scientific data.

Specifically, although a great deal of careful analysis and scientific judgment goes into the development of EPA risk assessments, significant information is often omitted as the results of the assessment are passed along in the decision-making process. Often, when risk information is presented to the ultimate decision-maker and to the public, the results have been boiled down to a point estimate of risk. Such "short hand" approaches to risk assessment do not fully covey the range of information considered and used in developing the assessment. In short, informative risk characterization clarifies the scientific basis for EPA decisions, while numbers alone do not give a true picture of the assessment.

This problem is not EPA's alone. Agency contractors, industry, environmental groups, and other participants in the overall regulatory process use similar "short hand" approaches.

We must do everything we can to ensure that critical information from each stage of the risk assessment is communicated from risk assessors to their managers, from middle to upper management, from EPA to the public, and from others to EPA. The Risk Assessment Council considered this problem over many months and reached several conclusions: (1) We need to present a full and complete picture of risk, including a statement of confidence about data and methods used to develop the assessment; (2) we need to provide a basis for greater consistency and comparability in risk assessments across Agency programs; and (3) professional scientific judgment plays an important role in the overall statement of risk. The Council also concluded that Agency-wide guidance would be useful.

BACKGROUND

Principles emphasized during Risk Assessment Council discussions are summarized below and detailed in the attached Appendix.

Full characterization of risk

EPA decisions are based in part on risk assessment, a technical analysis of scientific information on existing and projected risks to human health and the environment. As practiced at EPA, the risk assessment process depends on many different kinds of scientific data (*e.g.*, exposure, toxicity, epidemiology), all of which are used to "characterize" the expected risk to human health or the environment. Informed use of reliable scientific data from many different sources is a central feature of the risk assessment process.

Highly reliable data are available for many aspects of an assessment. However, scientific uncertainty is a fact of life for the risk assessment process as a whole. As a result, agency managers make decisions using scientific assessments that are less certain than the ideal. The issues, then, become when is scientific confidence sufficient to use the assessment for decision-making, and how should the assessment be used? In order to make these decision, managers need to understand the strengths and the limitations of the assessment.

On this point, the guidance emphasizes that informed EPA risk assessors and managers need to be completely candid about confidence and uncertainties in describing risks and in explaining regulatory decisions. Specifically, the Agency's risk assessment guidelines call for full and open discussion of uncertainties in the body of each EPA risk assessment, including prominent display of critical uncertainties in the risk characterization. Numerical risk estimates should always be accompanied by descriptive information carefully selected to ensure an objective and balanced characterization of risk in risk assessment reports and regulatory documents.

Scientists call for fully characterizing risk not to question the validity of the assessment, but to fully inform others about critical information in the assessment. The emphasis on "full" and "complete" characterization does not refer to an ideal assessment in which risk is completely defined by fully satisfactory scientific data. Rather, the concept of complete risk characterization means that information that is needed for informed evaluation and use of the assessment is carefully highlighted. Thus, even though risk characterization details limitations in an assessment, a balanced discussion of reliable conclusions and related uncertainties enhances, rather than detracts, from the overall credibility of each assessment.

This guidance is not new. Rather, it restates, clarifies, and expands upon current risk assessment concepts and practices, and emphasizes aspects of the process that are often incompletely developed. It articulates principles that have long guided experienced risk assessors and well-informed risk managers, who recognize that risk is best described not as a classification or single number, but as a composite of information from many different sources, each with varying degrees of scientific certainty.

Comparability and consistency

The Council's second finding, on the need for greater comparability, arose for several reasons. One was confusion—for example, many people did not understand that a risk estimate of 10^{-6} for an "average" individual should not be compared to another 10^{-6} risk estimate for the "most exposed individual". Use of such apparently similar estimates without further explanation leads to misunderstandings about the relative significance of risks and the protectiveness of risk reduction actions. Another catalyst for change was the SAB's report, Reducing Risk: Setting Priorities and Strategies for Environmental Protection. In order to implement the SAB's recommendation that we target our efforts to achieve the greatest risk reduction, we need common measures of risk.

EPA's newly revised Exposure Assessment Guidelines provide standard descriptors of exposure and risk. Use of these terms in all Agency risk assessments will promote consistency and comparability. Use of several descriptors, rather than a single descriptor, will enable us to present a more complete picture of risk that corresponds to the range of different exposure conditions encountered by various populations exposed to most environmental chemicals.

Professional judgment

The call for more extensive characterization of risk has obvious limits. For example, the risk characterization includes only the most significant data and uncertainties from the assessment (those that define and explain the main risk conclusions) so that decision-makers and the public are not overwhelmed by valid but secondary information.

The degree to which confidence and uncertainty are addressed depends largely on the scope of the assessment and available resources. When special circumstances (*e.g.*, lack of data, extremely complex situations, resource limitations, statutory deadlines) preclude a full assessment, such circumstances should be explained. For example, an emergency telephone inquiry does not require a full written risk assessment, but the caller must be told that EPA comments are based on a "back-of-the-envelope" calculation and, like other preliminary or simple calculations, cannot be regarded as a risk assessment.

GUIDANCE PRINCIPLES

Guidance principles for developing, describing, and using EPA risk assessments are set forth in the Appendix. Some of these principles focus on differences between risk assessment and risk management, with emphasis on differences in the information content of each process. Other principles describe information expected in EPA risk assessments to the extent practicable, emphasizing that discussion of both data and confidence in the data are essential features of a complete risk assessment. Comments on each principle appear in the Appendix; more detailed guidance is available in EPA's risk assessment guidelines (*e.g.*, 51 *Federal Register* 33992–34054, 24 September 1986).

Like EPA's risk assessment guidelines, this guidance applies to the *development*, evaluation, and description of Agency risk assessment for use in regulatory decision-making. This memorandum does not give guidance on the *use* of completed risk assessments for risk management decisions, nor does it address the use of non-scientific considerations (*e.g.*, economic or societal factors) that are considered along with the risk assessment in risk management and decision-making. While some aspects of this guidance focus on cancer risk assessment, the guidance applies generally to human health effects (*e.g.*, neurotoxicity, developmental toxicity) and, with appropriate modifications, should be used in all health risk assessments. Guidance specifically for ecological risk assessment is under development.

IMPLEMENTATION

Effective immediately, it will be Agency policy for each EPA office to provide several kinds of risk assessment information in connection with new Agency reports, presentations, and decision packages. In general, such information should be presented as carefully selected highlights from the overall assessment. In this regard, common sense regarding information needed to fully inform Agency decision-makers is the best guide for determining the information to be highlighted in decision packages and briefings.

1. Regarding the interface between risk assessment and risk management, risk assessment information must be clearly presented, separate from any non-scientific risk management considerations. Discussion of risk management options should follow, based on consideration of all relevant factors, scientific and non-scientific.

2. Regarding risk characterization, key scientific information on data and methods (*e.g.*, use of animal or human data for extrapolating from high to low doses, use of pharmacokinetics data) must be highlighted. We also expect a statement of confidence in the assessment that identifies all major uncertainties along with comment on their influence on the assessment, consistent with guidance in the attached Appendix.

3. Regarding exposure and risk characterization, it is Agency policy to present information on the range of exposures derived from exposure scenarios and on the use of multiple risk-descriptors (*i.e.*, central tendency, high end of individual risk, population risk, important subgroups, if known) consistent with terminology in the attached Appendix and Agency guidelines.

This guidance applies to all Agency offices. It applies to assessments generated by EPA staff and to those generated by contractors for EPA's use. I believe adherence to this Agency-wide guidance will improve understanding of Agency risk assessments, lead to more informed decisions, and heighten the credibility of both assessments and decisions.

From this time forward, presentations, reports, and decision packages from all Agency offices should characterize risk and related uncertainties as described here. Please be prepared to identify and discuss with me any program-specific modifications that may be appropriate. However, we do not expect risk assessment documents that are close to completion to be rewritten. Although this is internal guidance that applies directly to assessments developed under EPA auspices, I also encourage Agency staff to use these principles as guidance in evaluating assessments submitted to EPA from other sources, and in discussing these submissions with me and with the Administrator.

This guidance is intended for both management and technical staff. Please distribute this document to those who develop or review assessments and to your managers who use them to implement Agency programs. Also, I encourage you to discuss the principles outlined here with your staff, particularly in briefings on particular assessments.

In addition, I expect that the Risk Assessment Council will endorse new guidance on Agency-wide approaches to risk characterization now being developed in the Risk Assessment Forum for EPA's risk assessment guidelines, and that the Agency and the Council will augment that guidance as needed.

The Administrator and I believe that this effort is very important. It furthers our goals of rigor and candor in the preparation, presentation, and use of EPA risk assessments. The tasks outlined above may require extra effort from you, your managers, and your technical staff, but they are critical to full implementation of these principles. We are most grateful for the hard work of your representatives on the RAC and other staff in pulling this document together. I appreciate your cooperation in this important area of science policy, and look forward to our discussions.

GUIDANCE FOR RISK ASSESSMENT

(Environmental Protection Agency, Risk Assessment Council, November 1991)

SECTION 1. RISK ASSESSMENT—RISK MANAGEMENT INTERFACE

Recognizing that for many people the term risk assessment has wide meaning, the National Research Council's 1983 report on risk assessment in the federal government (hereafter "NRC report") distinguished between risk assessment and risk management.

Broader uses of the term [risk assessment] than ours also embrace analysis of perceived risks, comparisons of risks associated with different regulatory strategies, and occasionally analysis of the economic and social implications of regulatory decisions—*functions that we assign to risk management* (emphasis added). (1)

In 1984, EPA endorsed these distinctions between risk assessment and risk management for Agency use (2), and later relied on them in developing risk assessment guidelines (3).

The distinction suggests that EPA participants in the process can be grouped into two main categories, each with somewhat different responsibilities, based on their roles with respect to risk assessment and risk management.

Risk Assessment

One group generates the risk assessment by collecting, analyzing, and synthesizing scientific data to produce the hazard identification, dose-response, and exposure assessment portion of the risk assessment and to characterize risk. This group relies in part on Agency risk assessment guidelines to address science policy issues and scientific uncertainties.

Generally, this group includes scientists and statisticians in the Office of Research and Development, the Office of Pesticides and Toxic Substances and other program offices, the Carcinogen Risk Assessment Verification Endeavor (CRAVE), and the RfD/RfC Workgroups.

Others use analyses produced by the first group to generate site- or media-specific exposure assessments and risk characterizations for use in regulation development. These assessors rely on existing databases (e.g., IRIS, ORD Health Assessment Documents, CRAVE and RfD/RfC Workgroup documents) to develop regulations and evaluate alternatives.

Generally, this group includes scientists and analysts in program offices, regional offices, and the Office of Research and Development.

Risk Management

A third group integrates the risk characterization with other non-scientific considerations specified in applicable statutes to make and justify regulatory decisions.

Generally, this group includes Agency managers and decision-makers.

Each group has different responsibilities for observing the distinction between risk assessment and risk management. At the same time, the risk assessment process involves regular interaction between each of the groups, with overlapping responsibilities at various stages in the overall process.

The guidance to follow outlines principles specific for those who generate, review, use, and integrate risk assessments for decision-making.

1. Risk assessors and risk managers should be sensitive to distinctions between risk assessment and risk management.

The major participants in the risk assessment process have many shared responsibilities. Where responsibilities differ, it is important that participants confine themselves to tasks in their areas of responsibility and not inadvertently obscure differences between risk assessment and risk management.

Shared responsibilities of assessors and managers include initial decisions regarding the planning and conduct of an assessment, discussions as the assessment develops, decisions regarding new data needed to complete an assessment and to address significant uncertainties. At critical junctures in the assessment, such consultations shape the nature of, and schedule for, the assessment.

For the generators of the assessment, distinguishing between risk assessment and risk management means that scientific information is selected, evaluated, and presented without considering non-scientific factors including how the scientific analysis might influence the regulatory decision. Assessors are charged with (1) generating a credible, objective, realistic, and balanced analysis; (2) presenting information on hazard, dose-response, exposure and risk; and (3) explaining confidence in each assessment by clearly delineating uncertainties and assumptions along with the impacts of these factors (e.g., confidence limits, use of conservative/non-conservative assumptions) on the overall assessment. They do not make decisions on the acceptability of any risk level for protecting public health or selecting procedures for reducing risks.

For users of the assessments into regulatory decisions, the distinction between risk assessment and risk management means refraining from influencing the risk description through consideration of non-scientific factors—e.g., the regulatory outcome—and from attempting to shape the risk assessment to avoid statutory constraints, meet regulatory objectives, or serve political purposes. Such management considerations are often legitimate considerations for the overall regulatory decisions (see next principle), but they have no role in estimating or describing risk.

However, decision-makers establish policy directions that determine the overall nature and tone of Agency risk assessments and, as appropriate, provide policy guidance on difficult and controversial risk assessment issues. Matters such as risk assessment priorities, degree of conservatism, and acceptability of particular risk levels are reserved for decision-makers who are charged with making decisions regarding protection of public health.

2. The risk assessment product, that is, the risk characterization, is only one of several kinds of information used for regulatory decision-making.

Risk characterization, the last step in risk assessment, is the starting point for risk management considerations and the foundation for regulatory decision-making, but it is only one of several important components in such decisions. Each of the environmental laws administered by EPA calls for consideration of non-scientific factors at various stages in the regulatory process. As authorized by different statutes, decision-makers evaluate technical feasibility (e.g., treatability, detection limits), economic, social, political, and legal factors as part of the analysis of whether or not to regulate and, if so, to what extent. Thus, regulatory decisions are usually based on a combination of the technical analysis used to develop the risk assessment and information from other fields.

For this reason, risk assessors and managers should understand that the regulatory decision is usually not determined solely by the outcome of the risk assessment. That is, the analysis of the overall regulatory problem may not be the same as the picture presented by the risk analysis alone. For example, a pesticide risk assessment may describe moderate risk to some populations but, if the agricultural benefits of its use are important for the nation's food supply, the product may be allowed to remain on the market with certain restrictions on use to reduce possible exposure. Similarly, assessment efforts may produce an RfD for a particular chemical, but other considerations may result in a regulatory level that is more or less protective than the RfD itself.

For decision-makers, this means that societal considerations (*e.g.*, costs, benefits) that, along with the risk assessment, shape the regulatory decision should be described as fully as the scientific information set forth in the risk characterization. Information on data sources and analyses, their strengths and limitations, confidence in the assessment, uncertainties, and alternative analyses are as important here as they are for the scientific components of the regulatory decision. Decision-makers should be able to expect, for example, the same level of rigor from the economic analysis as they receive from the risk analysis.

Decision-makers are not "captives of the numbers." On the contrary, the quantitative and qualitative risk characterization is only one of many important factors that must be considered in reaching the final decision—a difficult and distinctly different task from risk assessment per se. Risk management decisions involve numerous assumptions and uncertainties regarding technology, economics and social factors, which need to be explicitly identified for the decision-makers and the public.

SECTION 2. RISK CHARACTERIZATION

EPA risk assessment principles and practices draw on many sources. The environmental laws administered by EPA, the National Research Council's 1983 report on risk assessment (1), the Agency's Risk Assessment Guidelines (3), and various program-specific guidance (e.g., the Risk Assessment Guidance for Superfund) are obvious sources. Twenty years of EPA experience in developing, defending, and enforcing risk assessment-based regulation is another. Together these various sources stress the importance of a clear explanation of Agency processes for evaluating hazard, dose-response, exposure, and other data that provide the scientific foundation for characterizing risk.

This section focuses on two requirements for full characterization of risk. First, the characterization must address qualitative and quantitative features of the assessment. Second, it must identify any important uncertainties in the assessment as part of a discussion on confidence in the assessment.

This emphasis on a full description of all elements of the assessment draws attention to the importance of the qualitative as well as the quantitative dimensions of the assessment. The 1983 NRC report carefully distinguished qualitative risk assessment from quantitative assessments, preferring risk statements that are not strictly numerical.

The term *risk assessment* is often given narrower and broader meanings than we have adopted here. For some observers, the term is synonymous with *quantitative risk assessment* and emphasizes reliance on numerical results. Our broader definition includes quantification, but also includes qualitative expressions of risk. Quantitative estimates of risk are not always feasible, and they may be eschewed by agencies for policy reasons. (Emphasis in original) (1)

More recently, an Ad Hoc Study Group (with representatives from EPA, HHS, and the private sector) on Risk Presentation reinforced and expanded upon these principles by specifying several "attributes" for risk characterization.

1. The major components of risk (hazard identification, dose-response, and exposure assessment) are presented in summary statements, along with quantitative estimates of risk, to give a combined and integrated view of the evidence.

2. The report clearly identifies key assumptions, their rationale, and the extent of scientific consensus; the uncertainties thus accepted; and the effect of reasonable alternative assumptions on conclusions and estimates.

3. The report outlines specific ongoing or potential research projects that would probably clarify significantly the extent of uncertainty in the risk estimation. . . . (4)

Particularly critical to full characterization of risk is a frank and open discussion of the uncertainty in the overall assessment and in each of its components. The uncertainty statement is important for several reasons.

Information from different sources carries different kinds of uncertainty and knowledge of these differences is important when uncertainties are combined for characterizing risk.

Decisions must be made on expending resources to acquire additional information to reduce the uncertainties.

A clear and explicit statement of the implications and limitations of a risk assessment requires a clear and explicit statement of related uncertainties.

Uncertainty analysis gives the decisionmaker a better understanding of the implications and limitations of the assessments.

A discussion of uncertainty requires comment on such issues as the quality and quantity of available data, gaps in the data base for specific chemicals, incomplete understanding of general biological phenomena, and scientific judgments or science policy positions that were employed to bridge information gaps.

In short, broad agreement exists on the importance of a full picture of risk, particularly including a statement of confidence in the assessment and that the uncertainties are within reasons. This section discusses information content and uncertainty aspects of risk characterization, while Section 3 discusses various descriptors used in risk characterization.

1. The risk assessment process calls for characterizing risk as a combination of qualitative information, quantitative information, and information regarding uncertainties.

Risk assessment is based on a series of questions that the assessor asks about the data and the implications of the data for human risk. Each question calls for analysis and interpretation of the available studies, selection of the data that are most scientifically reliable and most relevant to the problem at hand, and scientific conclusions regarding the question presented. As suggested below, because the questions and analyses are complex, a complete characterization includes several different kinds of information, carefully selected for reliability and relevance.

a. *Hazard Identification*—What do we know about the capacity of an environmental agent for causing cancer (or other adverse effects) in laboratory animals and in humans?

Hazard identification is a qualitative description based on factors such as the kind and quality of data on humans or laboratory animals, the availability of ancillary information (e.g., structure-activity analysis, genetic toxicity, pharmacokinetics) from other studies, and the weight-of-the evidence from all of these data sources. For example, to develop this description, the issues addressed include:

1. the nature, reliability, and consistency of the particular studies in humans and in laboratory animals;

2. the available information on the mechanistic basis for activity; and

3. experimental animal responses and their relevance to human outcomes.

These issues make clear that the task of hazard identification is characterized by describing the full range of available information and the implications of that information for human health.

b. *Dose-Response Assessment*—What do we know about the biological mechanisms and dose-response relationships underlying any effects observed in the laboratory or epidemiology studies providing data for the assessment?

The dose-response assessment examines quantitative relationships between exposure (or dose) and effects in the studies used to identify and define effects of concern. This information is later used along with "real world" exposure information (see below) to develop estimates of the likelihood of adverse effects in populations potentially at risk.

Methods for establishing dose-response relationships often depend on various assumptions used in lieu of a complete data base and the method chosen can strongly influence the overall assessment. This relationship means that careful attention to the choice of a high-to-low dose extrapolation procedure is very important. As a result, an assessor who is characterizing a dose-response relationship considers several key issues:

1. relationship between extrapolation models selected and available information on biological mechanisms;

2. how appropriate data sets were selected from those that show the range of possible potencies both in laboratory animals and humans;

3. basis for selecting interspecies dose scaling factors to account for scaling doses from experimental animals to humans; and

4. correspondence between the expected route(s) of exposure and the exposure route(s) utilized in the hazard studies, as well as the interrelationships of potential effects from different exposure routes.

EPA's Integrated Risk Information System (IRIS) is a primary source of this information. IRIS includes data summaries representing Agency consensus on specific chemicals, based on a careful review of the scientific issues listed above. For specific risk assessments based on data in IRIS and on other sources, risk assessors should carefully review the information presented, emphasizing confidence in the database and uncertainties (see subsection d below). The IRIS statement of confidence should be included as part of the risk characterization for hazard and dose-response information.

c. *Exposure Assessment*—What do we know about the paths, patterns, and magnitudes of human exposure and numbers of persons likely to be exposed?

The exposure assessment examines a wide range of exposure parameters pertaining to the "real world" environmental scenarios of people who may be exposed to the agent under study. The data considered for the exposure assessment range from monitoring studies of chemical concentrations in environmental media, food, and other materials to information on activity patterns of different population subgroups. An assessor who characterizes exposure should address several issues.

1. The basis for the values and input parameters used for each exposure scenario. If based on data, information on the quality, purpose, and representativeness of the database is needed. If based on assumptions, the source and general logic used to develop the assumption (e.g., monitoring, modeling, analogy, professional judgment) should be described.

2. The major factor or factors (e.g., concentration, body uptake, duration/frequency of exposure) thought to account for the greatest uncertainty in the exposure estimate, due either to sensitivity or lack of data.

3. The link of the exposure information to the risk descriptors discussed in Section 3 of this Appendix. This issue includes the conservatism or non-conservatism of the scenarios, as indicated by the choice of descriptors.

In summary, confidence in the information used to characterize risk is variable, with the result that risk characterization requires a statement regarding the assessor's confidence in each aspect of the assessment.

d. Risk Characterization—What do other assessors, decision-makers, and the public need to know about the primary conclusions and assumptions, and about the balance between confidence and uncertainty in the assessment?

In the risk characterization, conclusions about hazard and dose response are integrated with those from the exposure assessment. In addition, confidence about these conclusions, including information about the uncertainties associated with the final risk summary, is highlighted. As summarized below, the characterization integrates all of the preceding information to communicate the overall meaning of, and confidence in, the hazard, exposure, and risk conclusions.

Generally, risk assessments carry two categories of uncertainty, and each merits consideration. Measurement uncertainty refers to the usual variance that accompanies scientific measurements (such as the range around an exposure estimate) and reflects the accumulated variances around the individual measured values used to develop the estimate. A different kind of uncertainty stems from data gaps—that is, information needed to complete the data base for the assessment. Often, the data gap is broad, such as the absence of information on the effects of exposure to a chemical on humans or on the biological mechanism of action of an agent.

The degree to which confidence and uncertainty in each of these areas is addressed depends largely on the scope of the assessment and the resources available. For example, the Agency does not expect an assessment to evaluate and assess every conceivable exposure scenario for every possible pollutant, to examine all susceptible populations potentially at risk, or to characterize every possible environmental scenario to determine the cause and effect relationships between exposure to pollutants and adverse health effects. Rather, the uncertainty analysis should reflect the type and complexity of the risk assessment, with the level of effort for analysis and discussion of uncertainty corresponding to the level of effort for the assessment. Some sources of confidence and of uncertainty are described below.

Often risk assessors and managers simplify discussion of risk issues by speaking only of the numerical components of an assessment. That is, they refer to the weight-of-evidence, unit risk, the risk-specific dose or the q^{1*} for cancer risk, and the RfD/FfC for health effects other than cancer, to the exclusion of other information bearing on the risk case. However, since every assessment carries uncertainties, a simplified numerical presentation of risks is always incomplete and often misleading. For this reason, the NRC (1) and EPA risk assessment guidelines (2) call for "characterizing" risk to include qualitative information, a related numerical risk estimate and a discussion of uncertainties, limitations, and assumptions.

Qualitative information on methodology, alternative interpretations, and working assumptions is an important component of risk characterization. For example, specifying that animal studies rather than human studies were used in an assessment tells others that the risk estimate is based on assumptions about human response to a particular chemical rather than human data. Information that human exposure estimates are based on the subjects' presence in the vicinity of a chemical accident rather than tissue measurements defines known and unknown aspects of the exposure component of the study.

Qualitative descriptions of this kind provide crucial information that augments understanding of numerical risk estimates. Uncertainties such as these are expected in scientific studies and in any risk assessment based on these studies. Such uncertainties do not reduce the validity of the assessment. Rather, they are highlighted along with other important risk assessment conclusions to inform others fully on the results of the assessment.

2. Well-balanced risk characterization presents information for other risk assessors, EPA decision-makers, and the public regarding the strengths and limitations of the assessments.

The risk assessment process calls for identifying and highlighting significant risk conclusions and related uncertainties partly to assure full communication among risk assessors and partly to assure that decision-makers are fully informed. Issues are identified by acknowledging noteworthy qualitative and quantitative factors that make a difference in the overall assessment of hazard and risk, and hence in the ultimate regulatory decision.

The key word is "noteworthy": information that significantly influences the analysis is retained—that is, noted—in all future presentations of the risk assessment and in the related decision. Uncertainties and assumptions that strongly influence confidence in the risk estimate require special attention.

As discussed earlier, two major sources of uncertainty are variability in the factors upon which estimates are based and the existence of fundamental data gaps. This distinction is relevant for some aspects of the risk characterization. For example, the central tendency and high end individual exposure estimates are intended to capture the *variability* in exposure, lifestyles, and other factors that lead to a distribution of risk across a population. Key considerations underlying these risk estimates should be fully described. In contrast, scientific *assumptions* are used to bridge knowledge gaps such as the use of scaling or extrapolation factors and the use of a particular upper confidence limit around a dose-response estimate. Such assumptions need to be discussed separately, along with the implications of using alternative assumptions.

For users of the assessment and others who rely on the assessment, numerical estimates should never be separated from the description information that is integral to risk characterization. All documents and presentations should include both; in short reports, this information is abbreviated but never omitted.

For decision-makers, a complete characterization (key descriptive elements along with numerical estimates) should be retained in all discussions and papers relating to an assessment used in decision-making. Fully visible information assures that important features of the assessment are immediately available at each level of decision-making for evaluating whether risks are acceptable or unreasonable. In short, differences in assumptions and uncertainties, coupled with non-scientific considerations called for in various environmental statutes, can clearly lead to different risk management decisions in cases with ostensibly identical quantitative risks; i.e., the "number" alone does not determine the decision.

Consideration of alternative approaches involves examining selected plausible options for addressing a given uncertainty. The key words are "selected" and "plausible;" listing all options, regardless of their merits would be superfluous. Generators of the assessment should outline the strengths and weaknesses of each alternative approach and as appropriate, estimates of central tendency and variability (e.g., mean, percentiles, range, variance.)

Describing the option chosen involves several statements.

1. A rationale for the choice.
2. Effects of option selected on the assessment.
3. Comparison with other plausible options.
4. Potential impacts of new research (ongoing, potential near-term and/or long-term studies).

For users of the assessment, giving attention to uncertainties in all decisions and discussions involving the assessment, and preserving the statement of confidence in all presentations is important. For decision-makers, understanding the effect of the uncertainties on the overall assessment and explaining the influence of the uncertainties on the regulatory decision.

SECTION 3. EXPOSURE ASSESSMENT AND RISK DESCRIPTORS

The results of risk assessment are usually communicated to the risk manager in the risk characterization portion of the assessment. This communication is often accomplished through *risk descriptors* which convey information and answer questions about risk, each descriptor providing different information and insights. Exposure assessment plays a key role in developing these risk descriptors, since each descriptor is based in part on the exposure distribution within the population of interest. The Risk Assessment Council (RAC) has been discussing the use of risk descriptors from time to time over the past two years.

The recent RAC efforts have laid the foundation for the discussion to follow. First, as a result of a discussion paper on the comparability of risk assessments across the Agency programs, the RAC discussed how the program presentations of risk led to ambiguity when risk assessments were compared across programs. Because different assessments presented different descriptors of risk without always making clear what was being described, the RAC discussed the advisability of using separate descriptors for population risk, individual risk, and identification of sensitive or high exposed population segments. The RAC also discussed the need for consistency across programs and the advisability of requiring risk assessments to provide roughly comparable information to risk managers and the public through the use of a consistent set of risk descriptors.

The following guidance outlines the different descriptors in a convenient order that should not be construed as a hierarchy of importance. These descriptors should be used to describe risk in a variety of ways for a given assessment, consistent with the assessment's purpose, the data available, and the information the risk manager needs. Use of a range of descriptors instead of a single descriptor enables Agency programs to present a picture of risk that corresponds to the range of different exposure conditions encountered for most environmental chemicals. This analysis, in turn, allows risk managers to identify populations at greater and lesser risk and to shape regulatory solutions accordingly.

EPA risk assessments will be expected to address or provide descriptions of (1) individual risk to include the central tendency and high end portions of the risk distribution, (2) important subgroups of the population such as highly exposed or highly susceptible groups or individuals, if known, and (3) population risk. Assessors may also use additional descriptors of risk as needed when these add to the clarity of the presentation. With the exception of assessments where particular descriptors clearly do not apply, some form of these three types of descriptors should be routinely developed and presented for EPA risk assessments. Furthermore, presenters of risk assessment information should be prepared to routinely answer questions by risk managers concerning these descriptors.

It is essential that presenters not only communicate the results of the assessment by addressing each of the descriptors where appropriate, but they also communicate their confidence that these results portray a reasonable picture of the actual or projected exposures. This task will usually be accomplished by highlighting the key assumptions and parameters that have the greatest impact on the results, the basis or rationale for choosing these assumptions/parameters, and the consequences of choosing other assumptions.

In order for the risk assessor to successfully develop and present the various risk descriptors, the exposure assessment must provide exposure and dose information in a form that can be combined with exposure-response or dose-response relationships to estimate risk. Although there will be differences among individuals within a population as to absorption, intake rates, susceptibility, and other variables such that a high exposure does not necessarily result in a high dose or risk, a moderate or highly positive correlation among exposure, dose, and risk is assumed in the following discussion. Since the generation of all descriptors is not appropriate in all risk assessments and the type of descriptor translates fairly directly into the type of analysis that the exposure assessor must perform, the exposure assessor needs to be aware of the ultimate goals of the assessment. The following sections discuss what type of information is necessary.

1. Information about individual exposure and risk is important to communicating the results of a risk assessment.

Individual risk descriptors are intended to address questions dealing with risks borne by individuals within a population. These questions can take the form of:

Who are the people at the highest risk?

What risk levels are they subjected to?

What are they doing, where do they live, etc., that might be putting them at this higher risk?

What is the average risk for individuals in the population of interest?

The "high end" of the risk distribution is, conceptually, above the 90th percentile of the actual (either measured or estimated) distribution. This conceptual range is not meant to precisely define the limits of this descriptor, but should be used by the assessor as a target range for characterizing "high end risk". Bounding estimates and worse case scenarios[1] should not be termed high end risk estimates.

The high end risk descriptor is a plausible estimate of the individual risk for those persons at the upper end of the risk distribution. The intent of this descriptor is to convey an estimate of risk in the upper range of the distribution, but to avoid estimates which are beyond the true distribution. Conceptually, high end risk means risks above about the 90th percentile of the population distribution, but not higher than the individual in the population who has the highest risk.

This descriptor is intended to estimate the risks that are expected to occur in small but definable "high end" segments of the subject population. The individuals with these risks may be members of a special population segment or individuals in the general population who are highly exposed because of the inherent stochastic nature of the factors which give rise to exposure. Where no particular difference in sensitivity can be identified within the population, the high end risk will be related to the high end exposure or dose.

In those few cases where the complete data on the population distributions of exposures and doses are available, high end exposure or dose estimates can be represented by reporting exposures or doses at selected percentiles of the distributions, such as the 90th, 95th, or 98th percentile. High end exposures or dose, as appropriate, can then be used to calculate high end risk estimates.

In the majority of cases where the complete distributions are not available, several methods help estimate a high end exposure or does. If sufficient information about the variability in lifestyles and other factors are available to simulate the distribution through the use of appropriate modeling, *e.g.*, Monte Carlo simulation, the estimate from the simulated distribution may be used. As in the method above, the risk manager should be told where in the high end range the estimate is being made by stating the percentile or the number of persons above this estimate. The assessor and risk manager should be aware, however, that unless a great deal is known about exposures and doses at the high end of the distribution, these estimates will involve considerable uncertainty which the exposure assessor will need to describe.

If only limited information on the distribution of the exposure or dose factors is available, the assessor should approach estimating the high end by identifying the most sensitive parameters and using maximum or near-maximum values for one or a few of these variables, leaving others at their mean values.[2] In doing this, the exposure assessor needs to avoid combinations of parameter values that are inconsistent, e.g., low body weight used in combination with high intake rates, and must keep in mind the ultimate objective of being within the distribution of actual expected exposures and doses, and not beyond it.

If almost no data are available on the ranges for the various parameters, it will be difficult to estimate exposures or doses in the high end with much confidence, and to develop the high end risk estimate. One method that has been used in these cases is to start with a bounding estimate and "back off" the limits used until the combination of parameter values is, in the judgment of the assessor, clearly within the distribution of expected exposure, and still lies within the upper 10% of persons exposed. Obviously, this method results in large uncertainty and requires explanation.

The risk descriptor addressing central tendency may be either the arithmetic mean risk (Average Estimate) or the median risk (Median Estimate), either of which should be clearly labeled. Where both the arithmetic mean and the median are available but they differ substantially, it is helpful to present both.

The Average Estimate, used to approximate the arithmetic mean, can be derived by using average values for all the exposure factors. It does not necessarily represent a particular individual on the distribution. The Average Estimate is not very meaningful when exposure across a population varies by several orders of magnitude or when the population has been truncated, e.g., at some prescribed distance from a point source.

Because of the skewness of typical exposure profiles, the arithmetic mean is not necessarily a good indicator of the midpoint (median, 50th percentile) of a distribution. A Median Estimate, e.g., geometric mean, is usually a valuable descriptor for this type of distribution, since half the population will be above and half below this value.

2. Information about population exposure leads to another important way to describe risk.

Population risk refers to an assessment of the extent of harm for the population as a whole. In theory, it can be calculated by summing the individual risks for all individuals within the subject population. This task, of course, requires a great deal more information than is normally, if ever, available.

Some questions addressed by descriptors of population risk include:

How many cases of a particular health effect might be probabilistically estimated in this population for a specific time period?

For noncarcinogens, what portion of the population are within a specified range of some benchmark level, e.g., exceedance of the RfD (a dose), the Ffc (a concentration), or other health concern level?

For carcinogens, how many persons are above a certain risk level such as 10^{-6} or a series of risk levels such as 10^{-5}, 10^{-4}, etc.?

Answering these questions require some knowledge of the exposure frequency distribution in the population. In particular, addressing the second and third questions may require graphing the risk distribution. These questions can lead to two different descriptors of population risk.

The first descriptor is the probabilistic number of health effect cases estimated in the population of interest over a specified time period.

This descriptor can be obtained either by (a) summing the individual risks over all the individuals in the population when such information is available, or (b) through the use of a risk model such as carcinogenic models or procedures which assume a linear non-threshold response to exposure. If risk varies linearly with exposure, knowing the mean risk and the population size can lead to an estimate of the extent of harm for the population as a whole, excluding sensitive subgroups for which a different dose-response curve needs to be used.

Obviously, the more information one has, the more certain the estimate of this risk descriptor, but inherent uncertainties in risk assessment methodology place limitations on the accuracy of the estimate. With the current state of the science, explicit steps should be taken to assure that this descriptor is not confused with an actuarial prediction of cases in the population (which is a statistical prediction based on a great deal of empirical data).

Although estimating population risk by calculating a mean individual risk and multiplying by the population size is sometimes appropriate for carcinogen assessments using linear, non-threshold models[3], this is not appropriate for non-carcinogenic effects or for other types of cancer models. For non-linear cancer models, an estimate of population risk must be calculated by summing individual risks. For non-cancer effects, we generally have not developed the risk assessment techniques to the point of knowing how to add risk probabilities, so a second descriptor, below, is more appropriate.

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[1] High end estimates focus on estimates of the exposure or dose in the actual populations. "Bounding estimates," on the other hand, purposely overestimate the exposure or dose in an actual population for the purpose of developing a statement that the risk is "not greater than. . . ." A "worst case scenario" refers to a combination of events and conditions such that, taken together, produces the highest conceivable risk. Although it is possible that such an exposure, dose, or sensitivity combination might occur in a given population of interest, the probability of an individual receiving this combination of events and conditions is usually small, and often so small that such a combination will not occur in a particular, actual population.

[2] Maximizing all variables will in virtually all cases result in an estimate that is above the actual values seen in the population. When the principal parameters of the dose equation (e.g., concentration, intake rate, duration) are broken out into subcomponents, it may be necessary to use maximum values for more than two of these subcomponent parameters, depending on a sensitivity analysis

Another descriptor of population risk is an estimate of the percentage of the population, or the number of persons, above a specified level of risk or within a specified range of some benchmark level, e.g., exceedance of the RfD or the RfC, LOAEL, or other specific level of interest.

This descriptor must be obtained through measuring or simulating the population distribution.

3. Information about the distribution of exposure and risk for different subgroups of the population are important components of a risk assessment.

A risk manager might also ask questions about the distribution of the risk burden among various segments of the subject population such as the following:

How do exposure and risk impact various subgroups?

What is the population risk of a particular subgroup?

Questions about the distribution of exposure and risk among such population segments require additional risk descriptors.

Highly exposed subgroups can be identified, and where possible, characterized and the magnitude of risk quantified. This descriptor is useful when there is (or is expected to be) a subgroup experiencing significantly different exposures or doses from that of the larger population.

These subpopulations may be identified by age, sex, life-style, economic factors, or other demographic variables. For example, toddlers who play in contaminated soil and certain high fish consumers represent subpopulations that may have greater exposures to certain agents.

Highly susceptible subgroups can also be identified, and if possible, characterized and the magnitude of risk quantified. This descriptor is useful when the sensitivity or susceptibility to the effect for specific subgroups is (or is expected to be) significantly different from that of the larger population. In order to calculate risk for these subgroups, it will sometimes be necessary to use a different dose-response relationship.

For example, upon exposure to a chemical, pregnant women, elderly people, children, and people with certain illnesses may each be more sensitive than the population as a whole.

Generally, selection of the population segments is a matter of either a priori interest in the subgroup, in which case the risk assessor and risk manager can jointly agree on which subgroups to highlight, or a matter of discovery of a sensitive or highly exposed subgroup during the assessment process. In either case, once identified, the subgroup can be treated as a population in itself, and characterized the same way as the larger population using the descriptors for population and individual risk.

4. Situation-specific information adds perspective on possible future events or regulatory options.

These postulated questions are normally designed to answer "what if" questions, which are either directed at low probability but possibly high consequence events or are intended to examine candidate risk management options. Such questions might take the following form:

What if a pesticide applicator applies this pesticide without using protective equipment?

What if this site becomes residential in the future?

What risk level will occur if we set the standard at 100 ppb?

The assumptions made in answering these postulated questions should not be confused with the assumptions made in developing a baseline estimate of exposure or with the adjustments in parameter values made in performing a sensitivity analysis. The answers to these postulated questions do not give information about how likely the combination of values might be in the actual population or about how many (if any) persons might be subjected to the calculated exposure or risk in the real world.

A calculation of risk based on specific hypothetical or actual combinations of factors postulated within the exposure assessment can also be useful as a risk descriptor. It is often valuable to ask and answer specific questions of the "what if" nature to add perspective to the risk assessment.

The only information the answers to these questions convey is that if conditions A, B, and C are assumed, then the resulting exposure or risk will be X, Y, or Z, respectively. The values for X, Y, and Z are usually fairly straightforward to calculate and can be expressed as point estimates or ranges. Each assessment may have none, one, or several of these types of descriptors. The answers do not directly give information about how likely that combination of values might be in the actual population, so there are some limits to the applicability of these descriptors.

Mr. BRYAN. So all of this talk that Nevada is adequately protected is absolutely pure bunk. If, as the distinguished Senator from Louisiana maintains, the same standard could be achieved because there is sufficient discretion, why—why, I ask—was it necessary to incorporate that specific, restrictive statutory language?

I thought when I came to the Congress there would certainly be disagreement on where the site ought to be located. I understand that nobody wants the nuclear waste dump in their State. I had hoped everyone would agree that wherever it may be ultimately located, if indeed it is ever built, public health and safety standards ought to be maintained.

And as this chart points out, the fundamental difference between the current law, which calculates radiation release limits based upon potential exposures to the general population, is now effectively gutted in this language and calculates radiation release limits based upon potential releases to a maximum exposed individual.

Mr. JOHNSTON. Will the Senator yield?

Mr. BRYAN. That is as fundamental in terms of public health policy as night to day. There is no way to smooth that over, and that is what is involved.

I voted for the energy bill when it came through. I would like to have the opportunity to vote and support it again. But this language was added at the last minute without one bit of testimony, one bit of opportunity to be heard, and no scientific evidence to support it.

Mr. JOHNSTON. Will the Senator yield?

Mr. BRYAN. When my colleagues say the National Academy of Sciences can make recommendations I do not have a problem with that. But the language of the conference report indicates not only do they make recommendations but their recommendations must be accepted by the Environmental Protection Agency, thereby gutting and muzzling that Agency. I have had an opportunity to speak to the Environmental Protection Agency staff, and they strongly disagree with this.

But you and I and our colleagues know the rule. They are effectively muzzled in this administration.

Mr. JOHNSTON. Would the Senator yield at that point?

Mr. BRYAN. I am happy to, on the distinguished chairman's time.

Mr. JOHNSTON. Mr. President, I yield myself 30 seconds.

Mr. President, the Senator has a chart up there that says "current and proposed". Is the Senator not aware that there is no current release limit applicable to radionuclides, that the previous 1985 standard was withdrawn by the court and remanded to EPA? So there is no current applicable release method.

Mr. BRYAN. But the current standard being developed by the EPA clearly includes the population standard, and indeed the language in the WIPP legislation which the chairman supports was based upon the population standard and that legislation reinstates the exact standards. And the Senator would deprive Nevada with potentially more dangerous radioactive waste, a standard which he endorses for New Mexico, which in my view is indefensible as a matter of policy.

Mr. JOHNSTON. When the Senator says "current" he means somebody told him they were developing.

Mr. BRYAN. Not somebody "told me." As the distinguished chairman knows, that standard was developed with the population standard and repromulgated by the WIPP legislation. As the Senator points out——

Mr. JOHNSTON. If that standard has been remanded now for 5 years, it has not been out, and I am not aware of any draft of it.

Mr. BRYAN. It was remanded not because of the population standard, but another provision irrelevant to our discussion today. And indeed it is the nuclear power industry that has put the pressure on the Environmental Protection Agency not to produce the new standard.

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[3] Certain important cautions apply. There cautions are more explicitly spelled out in the Agency's Guidelines for Exposure Assessment, tentatively scheduled to be published in late 1991.

What we are talking about, my friends, is public health versus cutting a few corners, saving a few bucks, and Nevadans are being asked that if this site is developed to accept a lower health standard so that the nuclear power utilities——

Mr. JOHNSTON. Mr. President, is this on my time?

Mr. BRYAN. To save a few dollars.

The PRESIDING OFFICER. It is on the time of the Senator from Nevada.

Mr. JOHNSTON. Mr. President, I yield myself 1 minute.

Mr. President, I do not know how clearly we can express it in the language of the statute, in the language of the report. We dictate that EPA come up with a standard. We put no limits on the discretion of the EPA other than that their standards shall be consistent with and based upon science as stated by the National Academy of Sciences. I do not know what better way to determine science than on the best advice of the National Academy of Sciences.

Mr. President, there is much to be determined by the National Academy of Sciences. What is the proper health risk per milligram? Is there a straight-line extrapolation?

Extrapolation between the studies has been done on Hiroshima victims and Nagasaki victims as it pertains to low-level radiation. It is a very big scientific question that needs to be resolved by the National Academy of Sciences. Those are the kinds of determinations that the National Academy of Sciences should make. As the assistant administrator of EPA says, they make the policy and they have full sway as to making that policy.

The National Academy of Sciences makes recommendations as to science, which is not setting of the standard. The setting of the standard, the setting of the policy is up to EPA, not to the National Academy of Sciences.

Mr. President, I yield 2 minutes to the distinguished Senator from Wyoming.

PRIVILEGES OF THE FLOOR

Mr. WALLOP. Mr. President, I ask unanimous consent that Jim Tate, and Vaughn Baker, fellows assigned to the Committee on Energy and Natural Resources, be granted privileges of the floor during consideration of H.R. 776.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, I join with my distinguished chairman in claiming that there has been much misrepresentation of what this legislation actually does.

I ask unanimous consent that letters from PHIL SHARP, chairman of the Subcommittee on Energy and Power, of the Committee on Energy and Commerce, and a letter from the U.S. Environmental Protection Agency be put in the RECORD in full.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HOUSE OF REPRESENTATIVES, COMMITTEE ON ENERGY AND COMMERCE, SUBCOMMITTEE ON ENERGY AND POWER,
Washington, DC, October 7, 1992.

As you consider your vote on the cloture petition on H.R. 776, the Energy Policy Act, I hope you will look at the actual language of the conference report, and especially the Statement of Managers, on the Yucca Mountain issue.

As a conferee on this bill, I was unalterably opposed to legislating a new, weaker standard for waste disposal at Yucca Mountain. I would not have signed the conference report and managed it on the House floor had we done so.

Instead, we provided for a scientific review of *all* relevant questions, followed by a new rulemaking by EPA before a new standard is issued. Some opponents of the bill are arguing that we do not allow the National Academy of Sciences to review the "collective dose" issue. This is categorically false.

I hope the attached excerpts from the Statement of Managers will be helpful to you.

For a host of reasons, H.R. 776 is the most environmentally sound comprehensive energy bill we have ever considered. I hope you will vote to see that it becomes law.

Sincerely,
PHIL SHARP,
Chairman.

EXCERPTS FROM THE STATEMENT OF MANAGERS

SECTION 801 OF H.R. 776

Standards must protect the public health:

The provisions . . . requiring the Administrator to promulgate health-based standards for protection of the public from releases of radioactive materials from a repository at Yucca Mountain, based upon and consistent with the findings and recommendations of the National Academy of Sciences.

National Academy of Sciences has discretion in its study:

In carrying out the study, the National Academy of Sciences would not be precluded from addressing additional questions or issues related to the appropriate standards for radiation protection at Yucca Mountain beyond those that are specified. For example, the study could include an estimate of the collective dose to the general population . . .

The NAS study provides scientific guidance:

The Conferees do not intend for the National Academy of Sciences, in making its recommendations, to establish specific standards for protection of the public but rather than provide expert scientific guidance on the issues involved in establishing those standards.

The authority of the EPA and the NRC is preserved:

The provisions of section 801 are not intended to limit the Administrator's discretion in the exercise of his authority related to public health and safety issues . . . As with the Administrator, the provisions of section 801 are not intended to limit the Commission's discretion in the exercise of its authority related to public health and safety.

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, October 5, 1992.

Hon. BOB GRAHAM,
Chairman, Subcommittee on Nuclear Regulation, Committee on Public Works and the Environment, U.S. Senate, Washington, DC.

DEAR SENATOR GRAHAM: This responds to your request for the Environmental Protection Agency's (EPA) views on section 801 of the Conference Report on H.R. 776 regarding the Yucca Mountain nuclear waste repository.

Section 801 directs the Administrator of EPA to contract with the National Academy of Sciences (NAS) for a study of reasonable public health and safety standards for the storage and disposal of radioactive materials at the proposed repository at Yucca Mountain. It also requires the Administrator to promulgate public health and safety standards applicable to Yucca Mountain that are "based upon and consistent with the findings and recommendations" of the NAS.

It appears that the intent of section 801 is to provide for a review of the scientific foundation of EPA's draft standards for the disposal of radioactive materials. We recognize that EPA's draft standards have been controversial and our policy generally is to support open peer involvement in important science decisions. As such, EPA believes that a scientific study by the NAS could result in helpful input for improvement of standards for the storage and disposal of radioactive material.

The Agency taken note of the following language in the Statement of Managers of the Conference Report on H.R. 776:

Under the provisions of section 801, the authority and responsibility to establish the standards would remain with the Administrator, as is the case under existing law. The provisions of section 801 are not intended to limit the Administrator's discretion in the exercise of his authority related to public health and safety issues.

I assure you that, consistent with our important statutory and regulatory responsibilities, EPA will ensure that any standards for radioactive materials that are ultimately issued will be the subject of public comment and involvement and will be fully protective of human health and the environment.

Sincerely,
F. HENRY HABICHT II,
Deputy Administrator.

Mr. WALLOP. Let me read the letter from PHIL SHARP to my friends from Nevada:

As you consider your vote on the cloture petition on H.R. 776, the Energy Policy Act, I hope you will look at the actual language of the conference report, and especially the Statement of Managers, on the Yucca Mountain issue.

As a conferee on this bill, I was unalterably opposed to legislating a new, weaker standard for waste disposal at Yucca Mountain. I would not have signed the conference report and managed it on the House floor had we done so.

Instead, we provided for a scientific review of all relevant questions, followed by a new rulemaking by EPA before a new standard is issued. Some opponents of the bill are arguing that we do not allow the National Academy of Sciences to review the "collective dose" issue. This is categorically false.

I hope the attached excerpts from the Statement of Managers will be helpful to you.

For a host of reasons, H.R. 776 is the most environmentally sound comprehensive energy bill we have ever considered. I hope you will vote to see that it becomes law.

Sincerely,

PHIL SHARP,
Chairman.

Congressman SHARP'S letter includes excerpts from the statement from the managers on H.R. 776, Mr. President.

The letter to Senator BOB GRAHAM, chairman of the Subcommittee on Nuclear Regulation is from the Environmental Protection Agency.

ENVIRONMENTAL PROTECTION AGENCY,
Washington, DC, October 5, 1992.

Hon. BOB GRAHAM,
Subcommittee on Nuclear Regulation, Committee on Public Works and the Environment, U.S. Senate, Washington, DC.

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The Agency takes note of the following language in the Statement of Managers of the Conference Report on H.R. 776:

"Under the provisions of section 801, the authority and responsibility to establish the standards would remain with the Administrator, as is the case under existing law. The provisions of section 801 are not intended to limit the Administrator's discretion in the exercise of his authority related to public health and safety issues."

I assure you that, consistent with our important statutory and regulatory responsibilities, EPA will ensure that any standards for radioactive materials that are ultimately issued will be the subject of public comment and involvement and will be fully protective of human health and the environment.

F. HENRY HABICHT II,
Deputy Administrator.

I would say, Mr. President, that the EPA and Chairman PHIL SHARP, who is not known for a yielding view on issues regarding nuclear power, have made a statement that is worthy of the Senate.

And for this reason, I would say to my friend from Nevada that I am confident that nobody is riding roughshod over the health or safety of Nevadans; and for the other reasons that are contained in this bill that it is the first time the Nation has of being able to look at comprehensive energy policy legislation that is both environmentally sound and great for America's energy future.

I hope that the Senate will vote for cloture, and that at long last we can send an energy policy strategy to the President's desk. All Americans deserve it.

Mr. BRYAN. Mr. President, I yield myself 2 minutes.

Mr. President, by way of response to my friend from Wyoming, all of the letters and proclamations in the world, signed by our colleagues, cannot change a single line of legislative text. Congressman SHARP is dead wrong. This is a fundamental change. And the proof of that, as a Member of this body I sat as an observer at the conference, and a House conferee said to the distinguished chairman of the Senate Energy Committee, the Senator from Louisiana, will you include a population standard in the legislative text? The answer was no.

All of the report language does not help one bit in terms of changing that language, and although it is true in a very narrow and technical sense, that EPA promulgates the standards, the ability to consider population health risk is constrained.

That is the cleverness of these words. EPA is bound by the NAS study. We do not have an objection to the NAS study. But EPA can go no further in the first instance than the NAS study and, second, may not consider the population standard. That is fundamentally wrong, Mr. President. I suggest to my colleagues that what is sauce for the goose, is sauce for the gander. The regulations that would relate to WIPP include these standards, which is the full range of protection. Why is that not good enough for Nevada?

I yield the floor.

Mr. JOHNSTON. Mr. President, did the Senator from Nevada [Mr. REID] wish to speak?

Mr. REID. No.

Mr. JOHNSTON. Mr. President, as I said earlier, under the unanimous-consent agreement, there will be one cloture vote, and if cloture fails on this bill, the bill and all it represents is dead.

Mr. President, this bill represents a legislative miracle, because we have been trying for many, many years to get a comprehensive energy policy. It has not been possible to do so, because there never seems to be a balance that could be struck. Some who say you ought to have something that produces energy would kill the energy efficiency and energy conservation provisions if they are all you have. And contrariwise, if the legislation does not contain the other balance, some who would want something in terms of energy efficiency and conservation, would prevent the bill from getting off of the ground.

I have been here now 20 years, Mr. President. We have yet to come up with a comprehensive energy policy. This is it. This is it, Mr. President. It is the most environmentally sound bill ever considered on energy. It contains broad provisions for energy efficiency, everything from standards for electric motors to showerheads, to the use of energy in Federal buildings. For example, we have provisions here that you can contract to save energy in Federal buildings and actually be paid for it. Very innovative provisions. We have least cost energy strategies so that utilities will be encouraged to conserve energy as opposed to building new electric powerplants.

Those are very far-reaching provisions, Mr. President, on energy efficiency and conservation. We have new standards for construction of public buildings and private buildings. We have renewable fuels. We have clean coal provisions. We have the solar energy lobby as part of the coalition supporting this bill.

Mr. President, we have alternative fuels, such as ethanol, natural gas, electric cars, methanol; all of these new fuels will be provided for in a broad ranging program, including mandatory Federal alternative fuels programs. Starting next year, State and local governments will be included. Fuel providers will be included and, in addition, we provide for rulemaking with respect to private fleets.

We expect, Mr. President, that by the year 2000, there will be millions of alternative fuel vehicles on the road, mandated as a result of this legislation. It will solve the chicken-and-the-egg proposition with respect to alternative fuels. In the past, we have not had the cars manufactured because there was not the demand. There was not the demand because there were not the cars. There was not fueling because there was no demand for the fuel, because there were no cars.

We solve that chicken and the egg by mandating the manufacture and the use of these—not mandating manufacturing, but the demand, by requiring that the purchases be in gradually increasing increments.

Mr. President, we provide for a revolution in the generation of electric power, what we call PUHCA reform, Public Utility Holding Company Act reform. It fundamentally changes our electric power generation to a competitive market from one which has been a monopoly sole source market.

Mr. President, the way it has been, the way it is now, unless we pass this bill, is that if you are a public utility and you want to build a new plant, then your incentive is to build the biggest, most expensive plant you can, and you can put that in your rate base and get a guaranteed rate of return—no competition. No one else is permitted to come in and compete with you in your own territory. Consequently, it is highly inefficient, and the consumer gets it in the neck. This provides for competition, Mr. President, so that public utility commissions will be able to know what the real cost of electric power is and insist that the consumer gets that low cost power.

We have uranium enrichment. We are turning over the Department of Energy's enterprise to a new quasi-public corporation which also will compete, not only to preserve the 5,000 American jobs, but hopefully to expand in international markets. In effect, that is a jobs program to preserve the jobs we have in America here today.

Mr. President, there are many other provisions of this bill. Suffice it to say that it is the most balanced, the most effective, the most comprehensive energy bill ever considered by either House of Congress. It is supported by President-elect Clinton, and it is supported by President George Bush. It is supported by the Secretary of Energy. It is supported by my dear friend Senator WALLOP on that side of the aisle, who was the cosponsor in getting this bill initially introduced. It is supported on both sides of the aisle.

Mr. President, it would be a tragedy if this legislation were not approved at this late hour, because of a miscomprehensive about a provision which was overwhelmingly supported in the conference committee. This same issue of radionuclides was dealt with on the House floor. That is, an amendment to take out this provision with respect to radionuclides, it was defeated by a margin of over 3 to 1. There were over 300 votes against taking out this provision.

Mr. President, it is sound science. It is sound policy. Cloture should be invoked by an overwhelming margin, and we ought to pass this bill and send it to the President. The American people need it.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Nevada [Mr. REID].

Mr. REID. In responding to the initial statement made by the manager of this bill, I note that scientists say that there is 1.2 million more curies of radiation in the proposed nuclear repository waste than in testing. That is very logical, because in nuclear testing versus nuclear waste, you have a situation where when there is a nuclear test, the materials are fused into glass by temperatures exceeding 1 million degrees. So that is easy to determine the difference between nuclear testing and a nuclear repository.

I also say, Mr. President, that it seems to me that the one thing—I mentioned this earlier—the President should recognize is the fact that this bill contains new taxes. That, in recent weeks, has been a detriment to getting other bills signed. I will be interested to see what the President and his advisers do on this matter.

Mr. JOHNSTON. Mr. President, how much time remains?

The PRESIDING OFFICER. There are 29 minutes for the Senator from Louisiana; 32 minutes and 20 seconds remain on the other side.

Mr. JOHNSTON. Mr. President, I yield 2 minutes to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, there are so many positive things in this bill, along with a few that are not so positive, that I can probably speak for a couple of hours. But I am going to settle for 2 minutes and just speak on one portion of the bill, and that has to do with the alternative minimum tax which was imposed on those who went out into the oil patch and natural gas patch and took risks to drill wells to try to find oil for this country.

That alternative minimum tax put on in 1986 became so punitive that the resources that were going to go to oil patch so that holes could be drilled, rigs could be put to use, work men and women in America put back to work, and, yes, find American oil, that tax got so onerous that there is no capital flowing into oil patch United States, Louisiana, New Mexico, Colorado, Kansas, Wyoming, wherever it is. It is dried up, because American investors do not want to invest, take a risk and then have the earnings taxed punitively. While others would be paying the average income tax, this tax is as high as 50, 60 and in some cases 67 percent. Absolutely, it is ludicrous, counterproductive, antijobs, anti-American oil production.

Finally, Mr. President, we have arrived at common sense and changed that so that at least those who want to produce American oil have a reasonable opportunity to get investors to invest, take a risk, and that will indeed cause more rigs to go into the field, more jobs in oil patch and, yes, what we all want, more American oil produced rather than less.

I commend the President for being for this, the House leadership, and the tax writing committee, the same here and obviously the general conferees who worked so hard to get this bill.

I thank the Senator from Louisiana for the time and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. BRYAN. Mr. President, the distinguished senior Senator from Florida is to be here in just a moment.

Let me take just 1 minute to talk about one other aspect of this. Not only will this fundamentally alter the public health and safety standards, but this will change the fundamental premise of the nuclear waste policy, all without hearing, without testimony, and without an opportunity for meaningful debate.

The original act contemplated that the site itself, wherever it was to be located within the engineered barriers and natural geological barriers in place, would be sufficiently safe for a period of 10,000 years and therefore would not require human monitoring after the site was filled with the nuclear waste.

In this conference report, with the provision that was added at the last minute, the original act is reversed by 180 degrees, and now we have a concept in which the standard is so diminished, so lowered, that indeed what is contemplated is monitoring on an ongoing basis, if you will, a DOE watch man at the site for a period of 10,000 years. This is an agency whose monitoring track record at other waste sites for only 40 years may very well cost the American taxpayer $100 billion in a host of other sites.

Mr. REID. I yield to the Senator from Florida [Mr. GRAHAM] 10 minutes.

The PRESIDING OFFICER (Mr. SIMON). The Senator from Florida is recognized for 10 minutes.

Mr. GRAHAM. Mr. President, at this time I would like to explain my particularly strong opposition to section 801 of this legislation. This section would require the National Academy of Sciences [NAS] to conduct a study on the appropriate regulatory standards for a high-level nuclear waste repository at Yucca Mountain, NV. This section would then require the Environmental Protection Agency [EPA] and the Nuclear Regulatory Commission [NRC] to rewrite the environmental and standards and licensing requirements for a repository in a manner consistent with the findings and recommendations of the NAS.

I submit that this section is built upon poor science. It is poor public policy. It is a radical departure from the current scientific and political consensus regarding the technical and procedural bases for this Nation's Nuclear Waste Program. It is fundamentally unfair to the present citizens of the State of Nevada and to future generations of Nevadans. The implementation of this approach will be fraught with technical and legal challenges.

The manner in which this legislation was considered sends the message that the procedures and standards for the protection of the public health and safety for nuclear waste disposal are just items to be horse traded in the political process. This proposal emerged from a closed meeting, with only a small group of Members of Congress involved. It was adopted as part of a compromise energy bill in which the Members of Congress and their constituents had many interests other than nuclear waste disposal. No hearings were conducted. There is no record as to why these provisions were adopted. No public comments were considered. None of the Federal agencies with expertise in these issues was consulted.

In addition to undermining confidence in the legislative process, this legislation will fuel cynicism regarding the integrity and independence of the Federal agencies responsible for establishing and enforcing the standards for the protection of the public health and safety. This legislation compromises the integrity and independence of the Environmental Protection Agency [EPA} and the Nuclear Regulatory Commission [NRC] by pressuring those agencies to alter their public health and safety standards to make sure that Yucca Mountain will be found suitable as the site of the repository. As the Queen said to Alice in Wonderland, "Sentence first—verdict afterwards."

Adoption of this legislation most likely will have an effect that is the opposite of what its proponents would like to see. Rather than expedite the process for finding a permanent disposal site for high-level nuclear waste, this hasty, ill-considered, radical, and unfair restructuring of nuclear waste policy is likely to create additional extensive and enduring turmoil in the program. I do not believe that the Nuclear Waste Program will succeed under the approach that the Congress is adopting today.

THE PREMISE OF THIS APPROACH IS FLAWED

THE PROBLEMS WITH THE PROGRAM ARE DUE TO DOE MISMANAGEMENT

The redirection of the nuclear waste program in this section has arisen because Congress is frustrated with the pace and cost of the current program. The costs of the program have escalated tremendously since the Nuclear Waste Policy Act was enacted in 1982. Over the same period, the pace of the program has slowed tremendously. The cause of the rising costs and lengthy delays is DOE's mismanagement of the Nuclear Waste Program. Instead of addressing this problem, however, this legislation seeks to alter the public health and safety standards that the program must meet. This approach will do nothing to solve the current problems with the Nuclear Waste Program. Rather than containing a cure for DOE's troubles, this approach is just another symptom.

Over the past decade the projected cost of site characterization has climbed from $60 million in 1982, to over $1 billion in 1987, when the Nuclear Waste Policy Amendments Act was enacted, to approximately $2 billion in 1991, to approximately $6 billion in 1992.

Over this same period the accomplishments of the program have remained at a minimal level. Over $1 billion has been spent on studying Yucca Mountain. There is almost nothing to show for this. Hardly any progress has been made on either surface or underground characterization of the site. DOE has been conducting surface characterization activities for just over a year and is still over a year away from starting underground characterization.

The lack of any progress in underground characterization activities is particularly dismaying. DOE supported the 1987 amendments to the Nuclear Waste Policy Act in order to expedite the start of underground characterization and to save costs. In 1987 DOE told the Congress that it would be ready to begin sinking the exploratory shaft for underground characterization activities in the fourth quarter of 1988. DOE stated that the 1987 amendments would enable it to commence underground characterization in 1988.

It is now October 1992. No shaft has been dug. Costs have risen almost sixfold. The latest projected date for sinking the exploratory shaft is November 1993.

At the time of the passage of the 1987 amendments, DOE projected that the date of operation of repository would be 2003. This was 5 years later than the 1998 date originally projected in the Nuclear Waste Policy Act of 1982. DOE now projects that the repository will not be ready for operation until 2010. Even this date is optimistic. In reality, the program could take an additional 10 to 25 years.

In sum, a lot of money has been spent, but hardly anything has been done.

DOE has been consistent in its response to questions and criticisms about the cost escalations and the delays in the program. DOE's consistent response has been to blame others. For the delays in surface characterization DOE has blamed Nevada. For the delays in underground characterization it has blamed Congress. For sloppy management and worthless technical work, it has blamed the NRC. For the cost escalations and schedule delays, it has lamed the environmental laws, the EPA, and the NRC.

The record shows, however, that DOE management, rather than any of these regulatory boogeymen, is at fault for the poor record of the program.

First, DOE has blamed the State of Nevada for the delay in the start of surface characterization. In particular, DOE has claimed that the failure of Nevada to issue environmental permits more quickly has been the cause of delay in the program. Since 1990 DOE has been advocating legislation to preempt Nevada's environmental permitting authority. Hence, in April 1991, DOE stated that "The principal obstacle to * * * progress [in the nuclear waste program] is currently the continuing inability of DOE to undertake needed activities incident to characterizing a candidate site for a potential geologic repository due to the actions of the State of Nevada." [Nuclear Waste Disposal Issues: Hearing Before the Senate Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works, 102d Cong., 1st sess. 100 (statement of Hon. John Bartlett, Director, Office of Civilian Radioactive Waste Management).]

The record shows, however, that DOE was not ready to begin all but a few surface characterization activities until March 1991. It took until March 1991 for DOE to establish an adequate quality assurance [QA] program. An adequate QA program is necessary in order to be able to use the information obtained from characterization activities in a licensing proceeding.

According to both the Nuclear Regulatory Commission and the General Accounting Office [GAO], only two specified trenching activities by DOE contractors could have been conducted prior to March 1991. Even these activities could not have been conducted until October 1990. Moreover, because DOD's QA program had not been accepted until March 1991, prior to this date these contractor activities could have been conducted only without DOE coordination. [Nuclear Waste: DOE's Repository Site Investigations, a Long and Difficult Task, U.S. General Accounting Office, GAO/RCED-92-73.]

Thus, DOE was not yet ready to conduct most of the activities for which it has blamed Nevada for delaying. It is DOE, rather than Nevada, which is responsible for most of the delay in commencing surface characterization.

Second, DOE has blamed the NRC and EPA for mistakes in its core sampling program. Upon until 1987, DOE has spent $48 million on drilling holes at Yucca Mountain to obtain core samples. These core samples were contaminated with fluids during the drilling process and so would be unusable in the licensing process for the site. Additionally, the U.S. Geological Survey, a DOE contractor responsible for managing all core samples, lost track of from where the samples had been obtained. These samples also are unusable in the licensing process.

DOE has blamed the mistakes in its core sampling program on a changing regulatory environment. In April 1991, Dr. Bartlett testified to the Subcommittee on Nuclear Regulation that the failure of the core sampling program to meet quality assurance requirements was because "the regulatory requirements for the program, including a measure of the quality assurance requirements were not in place until 3 years [after the passage of the Nuclear Waste Policy Act of 1982]. * * * So during all of that period, if you will, the program was not operating with specific requirements in terms of technical activities and requirements."

The record is to the contrary. The NRC had issued draft quality assurance guidelines in 1981. DOE knew or should have known of these requirements. DOE ignored them. According to GAO, in 1988, a DOE quality assurance audit team reviewing the cores obtained from 1981 to 1983 concluded that "there had been a projectwide failure to implement quality assurance requirements and to understand the role of the quality assurance program in licensing." Additionally, according to GAO, from 1983 to 1986 DOE contractors had identified shortcomings in the core sampling program, yet DOE chose to continue its work despite these deficiencies. DOE has now chosen not to use the samples obtained during this period to support its license application.

Thus, it is not the changing regulatory requirements of NRC, but rather DOE's failure to follow the NRC's requirements, that is responsible for the rework in the core sampling program. Again, DOE has misleadingly blamed others for its own mistakes.

Third, DOE has blamed the Congress for the delay in the start of the construction of the exploratory shaft facility [ESF]. The ESF is necessary to conduct underground characterization activities. In 1987, DOE represented to the Congress that it could start constructing the ESF in late 1988. The projected start of construction is now November 1993.

DOE says that it is the fault of the Congress that construction of this facility will not commence this year. On March 31, 1992, in testimony presented to the Senate Committee on Energy and Natural Resources, DOE stated that—

> One area in which we have not recently made progress as planned is our schedule for start of construction of the ESF. The schedule for start of ESF construction was delayed by 1 year, from November 1992 to November 1993, as a result of a fiscal year appropriation that was $30 million less than the $305 million requested.

The record reveals that DOE rather than the Congress or anyone else is solely responsible for the delay in ESF construction. According to GAO's testimony before the Senate Subcommittee on Nuclear Regulation in April 1991, inadequate design work by DOE has been responsible for the delay in the program:

> DOE spent about $49 million, or 10 percent of total project costs, on exploratory shaft facility activities during fiscal years 1988 through 1990. In fiscal years 1988 and 1989, over $36 million was spent on management and integration activities primarily related to developing preliminary and more advanced designs of its proposed facility. These design activities were stopped late in early fiscal year 1990 because of external criticism, and it is questionable whether this work will be usable for constructing the ESF. As a result, DOE has begun studying alternative facility designs. Depending on the final selection of a new facility design and construction method, according to the manager of the project, significant modifications to the original design may be required; however, the extent and cost of these modifications cannot be determined at this time.
>
> In 1990, DOE spent over $12 million on exploratory shaft facility activities, including about $4 million on the study of facility design and construction activities.

The Nuclear Waste Technical Review Board was a significant source of the criticism of DOE's original ESF design. According to DOE, the redesign activities delayed the ESF construction from November 1989 to November 1992. The redesign activities have cost at least $40 million.

All of the added costs and the delay in ESF construction from 1988 to November 1992 are due to DOE's mistakes and inadequacies. It is disingenuous for DOE to now blame Congress for any additional delay due to the absence of new funds to cover the costs of DOE's mistakes during the previous 4-year period.

Most recently, and perhaps most outrageously, DOE is now blaming NRC and EPA requirements, and all of the environmental laws, for the cost escalations and programs delays over the past several years. At the Senate Energy Committee hearing in March of this year, the chairman of the committee, Senator JOHNSTON, asked Dr. Bartlett why the projected cost of site characterization had risen astronomically over the past decade:

> Senator JOHNSTON. Now what fundamentally has changed? Has it been the NRC or the EPA or DOE or what?
>
> Dr. BARTLETT. Two things, Mr. Chairman. One is, let me call it development of understanding of what it is going to take in the way of information to comply with those regulatory requirements. We have over 2,500 of them, collectively, as well as the stringency of the safety requirements. That is one thing that we have learned, dialog in the technical community. NRC says, well here is what I think you need to do.
>
> * * * * *
>
> Senator JOHNSTON. * * * Now is it the NRC driving the program? Is the NRC unreasonable? Are they going to come up with that many more regulations? Is this just a way to perpetuate thousands upon thousands of bureaucrats and jobs? I mean what is it? We have got to have a better explanation for this thing.
>
> Dr. BARTLETT. The Nuclear Work Proliferation Act, Mr. Chairman, not the NRC. Although I will say, in my opinion and I think it is more than an opinion, the cost, the activities, the schedules are, in fact being driven by compliance with regulatory requirements, a host of them.
>
> There are two critical factors which are leading to these cost factors. One is the stringency of the EPA requirements. That is requirements. That is the master requirement, that is the one that is the difference between standing up and sitting down. And then the NRC, on top of that, says here is what you have to do to get in our comfort zone. A 1,000-year canister and prove it, and also now here is what you have to do in order to demonstrate, broadly, this compliance.
>
> Now the other cost factor is the complexity, the geologic complexity of the Yucca Mountain site. It is not a monolith. As you saw from Mr. Gertz's picture, it is a very complicated geology, it has a very complicated history. That has to be characterized well enough so you have defensible information in this licensing arena against these standards. The EPA standard is a factor of a million, roughly, more stringent than all the other standards we humans normally accept for protection of health and safety in radiological conditions.

DOE again bluntly blamed the NRC and EPA regulations for the cost escalations in its responses to written questions following this hearing:

> Question 7. In your statement, you said that site characterization is now estimated to cost $6 billion. Five years ago, the cost was estimated at close to $2 billion. Five years before that, the cost was estimated to be between $40 million and $60 million. What has caused this severe escalation of costs? * * *
>
> Answer. The increase of estimated site characterization costs can be attributed to regulatory requirements and the required interactions with external organizations.

Here again DOE misrepresents the record. In response to posthearing questions following this hearing, another witness, Mr. John T. Kauffman, chairman of the board and chief executive officer of Pennsylvania Power and Light, testifying on behalf of the American Nuclear Energy Council, the Edison Electric Institute, and the Utility Nuclear Waste and Transportation Program, disputed DOE's attribution of increased costs solely to regulatory requirements:

> According to DOE, there are 25 specific items that make up the base site characterization effort totaling $122 million in fiscal year 1992. This would seem to be a disproportionately high percentage of the overall program costs and the industry is concerned that the money could be better spent. * * * There is no one element greater than $12.5 million and most are about $5 million. Each one needs to be reviewed objectively against the goals of the program and eliminated if not needed.
>
> DOE states that many of these cost [sic] are associated with having to meet numerous regulatory requirements on an ongoing basis. However, in assigning costs to regulations from the list of 25 items, it appears that less than half of $122 million is being spent to meet regulations. At least half of the costs appear to relate to activities not associated with regulations.

Thus, the nuclear industry disagrees with DOE's attribution of its costs to regulatory compliance.

Ivan Selin, the Chairman of the Nuclear Regulatory Commission, has sharply disagreed with DOE for blaming NRC regulations for cost increases. In June, following the hearing at which DOE blamed NRC for the cost increases, Dr. Bartlett briefed the NRC on the status of the DOE program. Mr. President, I ask unanimous consent that a copy of an article that appeared in the Las Vegas Review-Journal of Thursday, June 25, 1992, be printed in the RECORD. In correspondence with the chairman of the House Committee on Energy and Commerce, Dr. Selin confirms that this article accurately reflects the substance of the briefing. I also ask that the correspondence between Chairman DINGELL and Chairman Selin be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. GRAHAM. According to the article "Selin also chided Bartlett for blaming NRC regulations for skyrocketing costs in developing the Yucca Mountain repository." It then quotes Chairman Selin, "You haven't come to NRC and said you disagree with the procedures. The Department of Energy has not come up with suggestions on how to reduce cost." Incredibly, "Bartlett denied he had blamed the NRC for escalating costs," the article reports. ("No, I'm not saying that it's causing problems.").

In his letter to Chairman DINGELL, Chairman Selin stated:

> As an independent regulatory agency, the NRC is committed to ensuring the protection of public health and safety while avoiding new and eliminating existing requirements that may be either unnecessary or unnecessarily burdensome. * * *
>
> During the June 24 briefing, the Commission encouraged Dr. Bartlett to bring to our attention proposals for cost cutting. Since the briefing, Dr. Bartlett has not brought to our attention any proposal for cutting costs at the Yucca Mountain project. NRC stands ready to meet and discuss any specific proposal that would allow DOE to run a more efficient and effective repository program consistent with ensuring the protection of the public health and safety.

The electric and nuclear utility industries dispute DOE's attribution of program costs to regulatory requirements. The NRC disputes DOE's assertion that NRC's regulations are the cause of the huge increase in the projected cost of characterization. Considering DOE's record of blaming others for its own mistakes, DOE's position on this issue does not carry credibility in the face of these assertions to the contrary.

We have seen, therefore, that DOE falsely has blamed everyone else for all of its troubles in implementing this program. As GAO reports and congressional hearings have demonstrated, the foremost cause of rising costs and lengthy delays in the nuclear waste program is the DOE's mismanagement of the nuclear waste program. Neither the State of Nevada, nor the EPA regulations, nor the NRC regulations, nor the environmental laws are to blame for the problems of the program to date. By focusing attention on other extraneous issues and away from this fundamental cause, this bill disserves the interest of the Nation in terms of providing for a safe and effective method of disposing of our high-level nuclear waste.

THE CURRENT STANDARDS ARE ACHIEVABLE

With respect to the future of the program, the nuclear industry and DOE have stated in testimony to the Congress that they believe that the repository program as currently structured can succeed. They believe that a repository at Yucca Mountain could meet the current EPA and NRC regulations. If DOE and the nuclear industry believe the present program can succeed, then it is not apparent why there is a need for this legislation to radically alter the program.

DOE and the nuclear industry have expressed confidence that the current Nuclear Waste Program, including the current regulatory environment, will succeed in response to some very specific skepticism to the contrary. In August 1990, the Board on Radioactive Waste Management of the National Academy of Sciences issued a report very critical of the current program. The report was entitled "Rethinking High-Level Radioactive Waste Disposal." The Subcommittee on Nuclear Regulation conducted a hearing on the nuclear waste program shortly after this report was issued. At this hearing, DOE and the nuclear industry stated that the major problems in the waste program as identified by the Board report had been addressed.

The NAS Board report had pessimistically concluded that "the U.S. program, as conceived and implemented over the past decade, is unlikely to succeed." The Board stated that "geologic models, and indeed scientific knowledge generally, are being inappropriately applied in the U.S. radioactive waste repository program."

The basic reason for this pessimism is that the Board believed that the program could not deliver the technical certainty that the program as currently structured will require in order to allow for the licensing of a repository. The NAS Board stated that:

> The Government's HLW Program and its regulation may be a 'scientific trap' for DOE and the U.S. public alike, encouraging the public to expect absolute certainty about the safety of the repository for 10,000 years and encouraging DOE program managers to pretend that they can provide it.

The Board recommended a more flexible approach for the repository program to accommodate the uncertainties that the Board believes inevitably will arise in the course of this first-of-a-kind technical and political undertaking. NAS stated that there is a "need to revise both technical design and regulatory criteria as more information is discovered."

The Board made a number of additional recommendations. These included reconsideration by EPA of its performance standards, the use of quantitative probablistic release criteria in the standard, and the use of only a dose requirement in the standard. The Board suggested that NRC reconsider its detailed licensing requirements, including the use of engineered features, the level of statistical or modeling evidence required, and how design changes can be accommodated during construction of the repository.

Mr. President, I ask unanimous consent that the full study by the Board and its recommendations be included in the record following my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. GRAHAM. In August 1990, the Subcommittee on Nuclear Regulation, which I chair, conducted a hearing on the Federal program for the disposal of spent nuclear fuel and high-level radioactive waste. At this hearing the subcommittee examined the Board's report. The subcommittee asked the DOE, the NRC, the EPA, the nuclear industry, the National Association of Regulatory Utility Commissioners [NARUC], and the State of Nevada to comment on the Board report.

DOE stated its confidence in the program as follows:

> The [Board's] position statement is based largely on an assessment of the high-level radioactive waste management program as it was two years ago. Significant changes in the program were initiated last fall by the Secretary, as reflected in the November 1989 "Report to Congress on Reassessment of the Civilian Radioactive Waste Management Program." These and other initiatives are being implemented by the program with the full support of the Secretary. The current approach taken by the Department is not, therefore, the approach actually assessed by the [Board]. Although the program faces many challenges, the Department does not believe that the approach currently being taken is unlikely to succeed.

The EPA also believes the program can succeed:

> There is no doubt that the country has set for itself a considerable challenge in seeking to establish a high-level radioactive waste repository. In our evaluation of the regulatory aspects of this issue we do not see the system as broken beyond repair. We believe that it is more appropriate for DOE, as program manager, to comment on the likelihood of success of the current program. We believe that our original 1985 standards would be implementable and we anticipate that any changes resulting from our revised regulation, based on comments to date, will result in regulations that support the development of a high-level waste disposal program that is technologically sound and protective of human health.
>
> We recognize that flexibility is necessary to address unforeseen circumstances, and we believe that the regulatory system allows such flexibility.

The nuclear industry agreed that "[t]he program can succeed."

Although DOE and the nuclear industry believe that the current program can succeed, they also have stated that their belief that the EPA's standards are unduly restrictive. For example, DOE believes the EPA's containment requirements may be too stringent. At the subcommittee's hearing DOE stated that it is "concerned with the implementability of the containments [sic] requirements as they are being interpreted. A literal interpretation of the requirements would preclude the use of qualitative judgment by the implementing agency as intended by EPA. Without a significant measure of qualitative judgment allowed by the rule, the combination of the quantitative, probabilistic nature of the standard and the stringency of the numerical limits for allowable releases would make it difficult to demonstrate compliance at *any* site."

The EPA containment standards criticized by DOE are designed to limit the total projected release of specific radionuclides over a 10,000-year period. Total releases within these limits, from both anticipated and unanticipated events, are projected to cause no more than 1,000 premature deaths over the entire 10,000-year period. Compliance with the containment requirements must be demonstrated in a probabilistic manner. Cumulative releases must have a probability of less than 1 chance in 10 of exceeding the limits, and must have a probability of less than 1 chance in 1,000 of exceeding 10 times the limits.

The nuclear industry also has expressed its concern over the stringency of the EPA containment standards. Additionally, the Nuclear Waste Technical Review Board questioned the conservatism of the EPA standard. It recommended that the limits in the standard "be reevaluated in light of current environmental and regulatory requirements." NRC has commented that EPA should "reexamine the stringency of the standard in light of other risks experienced by society and risk levels used as the basis for other safety standards."

However, the concern over the implementability of the EPA containment standards has not been expressed only with respect to the potential repository site at Yucca Mountain. This concern has not been expressed for the other potential site for the disposal of highly radioactive nuclear wastes, the Waste Isolation Pilot Plant [WIPP] site in New Mexico.

The WIPP facility is over 2,000 feet below ground and consists of several miles of mined drifts in a geologically stable salt formation. WIPP is intended to be used for the permanent, deep geologic burial of transuranic wastes generated by the Department of Energy's nuclear weapons complex.

Until now, the EPA's generally applicable environmental standards for the release of radiation from the disposal of high-level and transuranic nuclear wastes applied in the same manner to both the Yucca Mountain site and the WIPP site. Both sites had to comply with the same EPA standards.

According to the EPA, "Early performance assessments conducted for the Department of Energy on the Waste Isolation Piolot Plant facility in southeastern New Mexico, show "reasonable confidence that compliance with the standard is achievable. (See 'Sandia Status Report: Potential for Long-Term Isolation by the WIPP Disposal System, June 1990')."

More recently, in December 1991, Sandia National Laboratories issued a preliminary evaluation of the ability of WIPP to comply with the EPA standards. The Sandia report concluded that, "Results of the 1991 preliminary performance assessment do not indicate potential violations of subpart B of the standard and support the conclusion based on previous analyses, including the 1990 preliminary performance assessment, that reasonable confidence exists that compliance with [the EPA standard] can be achieved."

The selective concern over the stringency of the EPA standard indicates that perhaps it is the site, rather than the standard, which may be defective. If compliance with the EPA standard is achievable at a stable salt site like WIPP, but less certain at geologically complex site like Yucca Mountain, then perhaps Yucca Mountain is not an ideal site.

At the subcommittee's hearing in 1990, I asked this question:

> Senator GRAHAM. If the panelists believe that the New Mexico project, the WIPP project, can meet EPA standards, with the possible exception of the problem of human intrusion, then why do you believe that there is a problem with the standards at the Yucca Mountain site? Why is there a problem with the site rather than the standards?
>
> Mr. LOUX (Executive Director, Nuclear Waste Project Office, State of Nevada). Mr. Chairman, if I might just offer, parenthetically, at the recent symposium that the National Academy conducted earlier this month, several Department of Energy program people associated with Yucca Mountain stated their belief that the EPA standards could be met at Yucca Mountain in some cases by several orders of magnitude, in collusion with the statements by some DOE people that they could be met at WIPP as well and Nevada is sort of asking the same sort of question.
>
> Senator GRAHAM. Is there any more comment on that question?
>
> Mr. BARTLETT. Yes, Mr. Chairman, If I may. I would concur with what Mr. Loux said. It is not appropriate to characterize the concern as whether or not Yucca Mountain would meet the standard at this point because we don't have a sufficient information base. There is too high a degree of uncertainty at this stage about what the properties and characteristics of the Yucca Mountain site are and how they would be relevant to the standards as they would be applied to an evaluation for licensing purposes, and initially, as appropriate to a suitability evaluation.

Thus, in reality, despite DOE's criticisms of the containment standards, DOE does not believe that the current EPA standards are not achievable at Yucca Mountain. Additionally, DOE believes these standards are achievable at WIPP.

The Nuclear Waste Technical Review Board, despite its criticisms of the EPA containment standards, nonetheless also believes the current standards are achievable at Yucca Mountain. In response to written questions following the Senate Energy Committee's March 1992 hearing, the NWTRB stated:

> Although predicting the performance of a repository at Yucca Mountain over the next 10,000 years will be a significant challenge, the Board is optimistic that adequate and reasonable technical and scientific judgments about the geologic barriers to radionuclide migration can be made to support conclusions on repository performance for 10,000 years within the current regulatory framework.

* * * * *

> At this point, the Board is not aware of any technical problems such that the proposed repository or other elements of the storage, transport, and disposal system are "destined to fail" in obtaining regulatory approval.

In 1987, when Congress was considering the legislation which selected Nevada as the sole site to be characterized, DOE testified before the Congress that it was "not conceivable that this site would fail to meet the NRC and EPA standards." The same EPA and NRC regulations that are in place today that were in place when this statement was made in 1987. To date, DOE has never informed the Congress that the confidence it expressed in 1987 was erroneous.

Thus, the DOE, the Nuclear Waste Technical Review Board, the nuclear industry, and the EPA believe that the current program, which includes the current EPA and NRC regulatory requirements, can succeed. There are critics of certain aspects of these requirements, but none of these critics have stated any belief that these criticisms constitute fatal flaws in the program.

In sum, the NRC and EPA regulatory requirements have not been the cause of the problems in DOE's program. The DOE is the problem with the DOE program.

Hence, the solution in this legislation to the cost increases and schedule delays in the DOE program does nothing to address the cause of those costs and delays. The cause of the program's problems is the management and attitude of DOE. To fix the program, the Congress should consider removing the program from DOE, changing the management structure of the program within DOE, adopting a more flexible schedule for the operation of the repository, and other possible structural changes to the program that may be suggested. This legislation, unfortunately, does nothing to change the management or structure of this program.

Instead, this legislation will encourage a controversial rewriting of the EPA and NRC standards for the protection of the public health and safety. The existing problems in the program will persist, and will be compounded by the new contentious issues introduced by this legislation.

I would now like to address those new issues.

THE SUBSTANCE AND PROCEDURE OF THIS PROVISION IS FLAWED

The approach in section 801 of this legislation on several scientific issues represents a significant departure from the current scientific consensus on those issues. The procedures specified in section 801 to consider or encourage the adoption of these controversial scientific positions raise a host of difficult issues of constitutional and administrative law. This section will entangle the high-level waste program in a legal and scientific quagmire for years.

TECHNICAL ISSUES

One major technical problem with this legislation is that it attempts to increase the reliance of the repository program on postclosure oversight to protect the public health and safety. This attempt squarely conflicts with the current scientific consensus on how best to protect the public health and safety over the long term from highly radioactive wastes.

Section 801(b)(2) of the bill states:

> The Commission's requirements and criteria shall assume, to the extent consistent with the findings and recommendations of the National Academy of Sciences, that following repository closure, the inclusion of engineered barriers and the Secretary's postclosure oversight of the Yucca Mountain site, in accordance with subsection (c), shall be sufficient to—
>
> (A) prevent any activity at the site that poses an unreasonable risk of breaching the repository's engineered barriers; and
>
> (B) prevent any increase in the exposure of individual members of the public to radiation beyond allowable limits.

Subsection (c) then directs to Secretary of Energy to conduct postclosure oversight activities.

This emphasis on postclosure oversight is technically unsound. Both EPA and NRC have determined that postclosure oversight is not reliable for more than 100 years. Current NRC and EPA regulations do not rely on postclosure oversight to protect the public health and safety.

The current EPA high-level waste standard states that—

> Active institutional controls over disposal sites should be maintained for as long a period of time as is practicable after disposal; however, performance assessments that assess isolation of the wastes from the accessible environment shall not consider any contributions from active institutional controls for more than 100 years after disposal.

NRC's low-level radioactive waste disposal standard similarly limits reliance on institutional controls to 100 years. According to the NRC, "a clear consensus was developed which supported the 100-year limit. The Commission has not seen any compelling reason to change its view on the 100-year limit." (Supplementary Information for Part 61 Final Rule, 47 Fed. Reg. 57,446, Dec. 27, 1982).

Mr. President, I ask unanimous consent to enter into the record material that was provided to the subcommittee concerning the basis for the 100-year limit for the period of institutional controls. The NRC states in this document that, "Most observers have accepted the idea that long-term use of 'active' institutional controls is not a reliable way to achieve safe waste disposal."

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 3.)

Mr. GRAHAM. To the extent that this legislation would require reliance upon institutional controls for more than 100 years, this legislation would impose upon the repository program a methodology for waste disposal that most observers believe is not reliable to protect the public health and safety.

Another major problem with this legislation is that it appears to diminish reliance upon geologic barriers in the repository system. This also squarely conflicts with the current scientific consensus regarding how to best protect the public health and safety.

Section 801(b)(2) directs the NRC to assume, to the extent consistent with the findings and recommendations of the NAS, that following repository closure, the inclusion of engineered barriers and postclosure oversight of Yucca Mountain shall be sufficient to prevent either an unreasonable risk of a breach of the repository or any exposure of individuals to radiation in excess of the allowable limits.

To the extent that this provision would require NRC to assume that engineered barriers and postclosure oversight are sufficient, without the consideration or use of geologic barriers as an integral component of the repository system, this provision makes no technical or legal sense. What is the purpose of the geologic barriers, which are referenced in section 801(b)(2)(A), if the engineered barriers and postclosure oversight are to be assumed to be sufficient to prevent any breach of the repository?

According to the NAS Board report I discussed earlier:

> There is a strong worldwide consensus that the best, safest long-term option for dealing with HLW is geological isolation. High-level waste should be put into specially designed and engineered facilities underground, where the local geology and ground water conditions have been chosen to ensure isolation of the waste for tens of thousands of years or longer, and where waste materials will migrate very slowly if they come into contact with the rock.

The United States, after careful and deliberate consideration by both the technical community and the Congress, has adopted deep geologic disposal as the preferable approach to protect the public over the long-term from spent nuclear fuel and high-level nuclear waste.

In 1978, President Carter created an Interagency Review Group [IRG], consisting of representatives from 14 Federal agencies, to make recommendations for Federal policy for the long-term management of nuclear wastes. After examining a variety of technologies, the IRG concluded that, "Disposal in mined repositories is the nearest-term option."

The IRG final report recommended that a system of multiple barriers be structured to isolate the high-level wastes from the environment. These barriers would include the waste form itself, other engineered barriers, and the natural repository environment.

With respect to the type of barriers to be used to isolate the wastes, the IRG stated as follows:

> The IRG review identified a number of important technical findings which it believes to represent the views of a majority of informed technical experts.
>
> A systems approach should be used to select the geologic environment, repository site, and waste form. A systems approach recognizes that, over thousands of years, the fate of radionuclides in a repository will be determined by the natural geologic environment, by the physical and chemical properties of the medium chosen for waste emplacement, by the waste form itself and other engineered barriers.

In the Nuclear Waste Policy Act of 1982 [NWPA] Congress adopted the IRG's recommendations concerning deep geologic disposal and multiple barriers. The NWPA required DOE to conduct two searches for two geologic repositories. Section 121(b) of the NWPA states that the NRC's licensing requirements and criteria "shall provide for the use of a system of multiple barriers in the design of the repository. * * *" Accordingly, in conformance with the global scientific consensus and the direction in section 121(b) of the NWPA, current NRC and EPA regulations rely on engineered and geologic barriers, and not on postclosure oversight.

Hence, to the extent that this legislation is interpreted to require the NRC to issue requirements that assume that engineered barriers and postclosure oversight are sufficient, without reliance on geologic barriers, the legislation contradicts a worldwide and national scientific consensus that engineered barriers and geologic barriers should be the fundamental elements of a repository for long-term isolation of nuclear wastes from the human environment.

Standards that rely upon engineered barriers and post-closure oversight are more appropriately applicable to a storage facility for nuclear wastes rather than a disposal facility. It is clear, however, that this legislation does not reference and is not intended to apply to a storage facility for nuclear wastes. It clearly is intended to apply to a geologic repository, where wastes are intended to be disposed of permanently.

This is obvious from the use of the term "repository" in several instances. The section refers to "the repository at the Yucca Mountain site," "the repository's engineered or geologic barriers", and "radioactive materials stored or disposed of in the repository." The NWPA defines "repository" as "any system licensed by the Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not such system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in such system. Such term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted."

The term "disposal" is defined as "the emplacement in a repository of high-level radioactive waste, spent nuclear fuel, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits the recovery of such waste."

Thus, this section pertains to standards for a deep geologic repository for the emplacement of nuclear waste with no intent of recovery. It is clear, therefore, that the standards established under this section, or the repository referred to in this section, is not a storage facility, such as a monitored retrievable storage facility.

Accordingly, nothing in this section should be interpreted to authorize or direct the construction of a monitored retrievable storage facility at Yucca Mountain or elsewhere. Nothing in this section should be interpreted to authorize or direct the NRC or the EPA to establish standards or criteria or any other regulatory requirements for a monitored retrievable storage facility at Yucca Mountain or elsewhere.

A third major technical deficiency in this legislation is that this section directs the EPA only to promulgate standards for the maximum dose that any individual can be exposed to from radiation that might escape from the repository. It fails to also direct EPA to promulgate standards for the maximum cumulative releases of radioactive material over an extended period of time. This notable omission conflicts with EPA's current judgment that both a containment standard and an individual dose standard is the appropriate manner in which to protect the public health and safety.

Currently, EPA's regulations provide for containment standards and individual dose standards. As I mentioned previously, containment standards limit the total amount of radioactive material that may be released to the environment over 10,000 years. Individual dose standards limit the amount of radiation any one individual may be exposed to from the repository.

The NRC has stated that the containment standards are "the most substantive of the three [EPA standards] because it applies for a full 10,000 years and because it restricts releases following disturbances to the repository as well as releases from undisturbed performance."

It is important for a standard to include some type of limit on the total radiation that may be released from a repository, in addition to limits on the amount of radioactivity that any particular individual may receive. The inclusion of either a population standard or a cumulative release limit will ensure that a large number of persons will not be injured as a result of a large number of exposures to doses that may be permissible for individuals.

Hence, the legislative language adopted today does not explicitly direct EPA to promulgate the full range of standards that have been determined appropriate for the protection of the public health and safety from the release of radioactivity at a nuclear waste repository. If EPA only promulgated the standards explicitly specified in this legislation, EPA would be offering less protection to the public health and safety than it has determined is appropriate.

PROCEDURAL ISSUES

The language adopted today raises many difficult procedural and legal issues. These procedural and legal issues will surely delay the program.

First, the legislation requires both the EPA and the NRC to promulgate, by rule, specified regulations "based upon and consistent with the findings and recommendations of the National Academy of Sciences." The conference report on this provision ambiguously states both that the EPA's and NRC's standards promulgated under this section must be "based upon and consistent with the findings and recommendations of the National Academy of Sciences," and that, "The provisions of section 801 are not intended to limit the [Commission's or Administrator's] discretion in the exercise of [its or his] authority related to public health and safety."

The statement in the conference report that the agencies must issue rules based on and consistent with the findings and recommendations of the NAS is inconsistent with the other statement in the conference report that the agencies retain their discretion on the public health and safety issues that the Board may address. Given this confusing set of explanations of what this provision means, the issue of the binding nature of the NAS recommendations is sure to provoke lively litigation.

To the extent that this legislation is interpreted as limiting the discretion of either the EPA or the NRC in those matters addressed in findings and recommendations of the NAS, the legislation raises constitutional issues regarding the appointments clause of the U.S. Constitution and the delegation of executive powers to a private body. If the legislation is interpreted as requiring that the NAS findings and recommendations be translated into rules and regulations, either in whole or in part, by EPA or by NRC, then it would appear that the National Academy of Sciences would be exercising legislative authority. The case law on the extent to which a private body can exercise this type of legislative authority is unclear.

It also appears that the NAS would be subject to the Federal Advisory Committee Act [FACA] in carrying out its task to provide advice and recommendations to Federal agencies in the manner specified in this section. Under FACA, an advisory committee "means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof * * * which is (A) established by statute or reorganization plan, or (B) established or utilized by the President, or (C) established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government * * *." It certainly appears, from this definition, that the NAS's role under this legislation would qualify the NAS as an advisory committee under FACA.

In *Public Citizen* v. *U.S. Department of Justice*, 109 Sup. Ct. 2558 (1989), the U.S. Supreme Court interpreted the requirements of FACA. The Court stated:

> The phrase "or utilized" [in section 3] therefore appears to have been added simply to clarify that FACA applies to advisory committees established by the Federal Government in a generous sense of that term, encompassing groups formed indirectly by quasi-public organizations such as the National Academy of Sciences "for" public agencies as well as "by" such agencies themselves.
>
> Read in this way, the term "utilized" would meet the concerns of the [House] that advisory committees covered by Executive Order 11007 because they were "utilized by a department or agency in the same manner as a Government-formed advisory committee"—such as the groups organized by the National Academy of Sciences and its affiliates which the Report discussed—would be subject to FACA's requirements.

It thus appears that FACA would apply to the NAS in its role under this legislation.

There are a host of requirements that apply to advisory committees under FACA. For example, FACA requires that committee memberships be "fairly balanced in terms of the points of view represented and the functions to be performed." FACA members are subject to the Federal conflict of interest statutes. Federal advisory committees must arrange meetings for reasonably accessible and convenient locations and times, publish adequate advance notice of planned meetings in the Federal Register, open meetings to the public, make available for public inspection all papers and records, including detailed minutes of each meeting, and maintain records of expenditures, with limited exceptions, for public inspection.

Substantively, the NAS is not suited for the prominent role in Federal nuclear waste policy contemplated by the sponsors of this legislation. The NAS can provide excellent peer review of the science underlying public policy choices, including the science underlying the Federal regulations to protect the public health and safety but the NAS is not suited to go beyond that limited role.

The NAS is neither a regulatory nor a standard-setting body. It has no expertise or experience in establishing standards to protect the public health and safety. Its members are not politically accountable for their findings and recommendations. Thus, the NAS is not the proper institution to make findings or recommendations that Federal agencies must use and that will directly affect the public health and safety. It also is not the proper institution to bind Federal agencies to particular policies or scientific viewpoints. As the NAS acknowledges, the application of science to the citizens in a democratic society must be done with the consent of those governed, and not imposed upon the public by a politically unaccountable scientific organization.

The fundamental controversies underlying the nuclear waste program are as much political as they are technical. Whether the current EPA standards are too stringent or too lax is as much a question of social policy as it is of science. As the NAS Board on Radioactive Waste Management itself stated, "Safety is in part a social judgment, not just a technical one. How safe is safe? Is it safer to leave the waste where it is, mostly at reactor sites, or to put it in an underground repository? In either case safety cannot be 100 percent guaranteed. Technical analyses can provide background for answering such questions, but ultimately the answers depend on choices made by the citizens of a democratic society."

Thus, it is the Federal regulatory agencies, which are politically accountable, that are most suited to answer the questions that the legislation directs to the NAS. The NAS can provide peer review on the science underlying the decisions to be made by the political system, but it cannot make policy that is in any sense binding upon the regulatory agencies.

The use of the NAS in the manner contemplated by this legislation perpetuates some of the problems with the current program that the NAS Board report discussed. To the extent that this legislation is based upon the premise that the NAS, as a non-politically accountable scientific organization, will be able to arrive at reasonable and objective "scientific" recommendations upon which the federal regulations will be based, and therefore somehow bring credibility, objective science, and definite answers to the program, the legislation puts the NAS into the scientific trap that the NAS Board report warned about. The NAS Board report also stated that "a management plan that promises that every problem has been anticipated, or assumes that science will provide all the answers, is almost certainly doomed to fail."

Furthermore, this legislation seeks to use the NAS to further a basic approach that the NAS believes is inappropriate for the repository program. This legislation calls for the NAS to make findings and recommendations as to what constitutes reasonable protection to the public health and safety from radioactive releases at a nuclear waste repository at Yucca Mountain. The NAS Board report has concluded, however, that an approach to repository siting and licensing that attempts to answer the question of what constitutes reasonable protection prior to the development of extensive knowledge about the site is an inappropriate use of science and is unlikely to succeed. In light of the NAS's criticism of the type of task presented to it by this legislation, it will be difficult for the NAS to provide the findings and recommendations requested in this legislation without compromising its earlier position and therefore its credibility.

In its report, the NAS Board recommended a flexible regulatory approach in order to accommodate the surprises that the Board believes are inevitable in a repository program. The flexible approach advocated by the Board would be based upon the following three principles:

Start with the simplest description of what is known, so that the largest and most significant uncertainties can be identified early in the program and given priority attention.

Meet problems as they emerge, instead of trying to anticipate in advance all the complexities of a natural geological environment.

Define the goal broadly in ultimate performance terms, rather than immediate requirements, so that increased knowledge can be incorporated in the design at a specific site.

According to the Board, this approach would use science in the proper fashion. The Board added that "Implicit in this approach, however, is the need to revise the program schedule, the repository design, and the performance criteria as more information is obtained."

I am not yet persuaded that the Board's flexible approach should be adopted. It is something to consider. I am concerned that such an approach would impair public confidence in the program by giving the appearance that the standards were continually being changed in order to fit the data presented by the site.

Similarly, this legislation does not adopt the flexible approach. In this respect, the legislation is not based upon and consistent with the findings and recommendations of the NAS. Instead, it continues the current approach, which the NAS has so sharply criticized.

However, with respect to the degree of protection afforded by the EPA and NRC standards, this legislation seeks to substitute the judgment of the NAS for the current judgments of the EPA and NRC as to what constitutes reasonable protection. It thus uses the NAS findings and recommendations in a selective manner. It uses the NAS only when the NAS findings and recommendations are consistent with a particular preconceived objective.

Thus, rather than seeking to base the repository program on the views of a scientific body such as the NAS, this legislation simply has chosen the NAS to be used solely as a vehicle to force a rewrite of the current safety standards. This approach is nothing more than blatant "standard shopping" and "scientist shopping" in order to produce a desired political result. It seeks to cloak the desired political changes to the standards with the imprimatur of the NAS.

I would hope that the NAS would resist the pressures to be used in this manner. It will damage the credibility of both the repository program and the NAS for the NAS to become entangled in a contrived process to rewrite the standards as to what constitutes reasonable protection to the public health and safety.

PREJUDGMENT OF SUITABILITY OF YUCCA MOUNTAIN SITE

This legislation judges the suitability of the Yucca Mountain site for a nuclear waste repository prior to the characterization activities that are necessary to determine whether the site is, in fact, suitable for a repository. This prejudgment of the site conflicts with the requirement that the licensing of Yucca Mountain be based upon scientific information. It makes it clear that the Federal Government will do everything it can to try to put nuclear waste in Nevada regardless of what the science tells us about the suitability of the site.

Section 801 refers to "the repository at the Yucca Mountain site." The conference report also refers to "a repository at the Yucca Mountain site," and "a repository at Yucca Mountain." The legislation directs the EPA and the NRC to promulgate standards for this specific site for a repository.

It seems both logically nonsensical and scientifically unsound to establish site-specific standards for a repository at a location which has not yet been determined to be suitable for a repository. Moreover, the establishment of site-specific standards by the NRC would appear to compromise the impartiality of the NRC to make a determination in a licensing proceeding of whether a repository at Yucca Mountain will provide adequate protection to the public health and safety. The NRC essentially already would have determined that question in establishing its licensing standards. A licensing proceeding that is called upon to determine whether an application meets a standard that the judge already has determined is met will be a sham.

The DOE presently is characterizing Yucca Mountain to determine whether Yucca Mountain is suitable for a nuclear waste repository. DOE states that "The overall objective of the scientific studies is to determine if Yucca Mountain can isolate radioactive materials by using natural and engineered barriers. The studies are expected to take from seven to ten years to complete." At present, DOE does not anticipate making a determination on the suitability of Yucca Mountain for a repository until 2001.

It is difficult to understand how the NAS, the EPA, or the NRC could establish standards for the protection of the public health and safety for a repository site that has not yet been determined to be suitable for a repository. Such standards could be promulgated at this date only in ignorance of the scientific information that is necessary to establish such site-specific standards.

The concept of site-specific standards is difficult to understand logically. It is either an oxymoron or a tautology. If the site-specific standard is expected to be based upon requirements that are supposed to be achievable at the specified site, then it would not represent a standard at all, but rather a judgment about the capabilities of the site. By definition, judgments about the capabilities of the site will meet the judgments about the capabilities of the site. In this case, the concept is a meaningless tautology.

On the other hand, if the site-specific standard is expected to be based upon general principles of what constitutes reasonable protection of the public health and safety, and does not take into account or depend solely upon whether those principles can be met at the specific site, then it would not be a site-specific standard. It would be no different from a general standard. In this case, the concept is a meaningless oxymoron.

Thus, if it's site-specific, it can't be a standard, and if it's a standard, it can't be site-specific. This bizarre concept of site-specific standards will cause tremendous confusion and controversy for the repository program.

To the extent that the standards adopted by NRC represent any type of determination as to what is achievable at Yucca Mountain, it would call into question the NRC's ability to function as an impartial judge in an adjudicatory licensing proceeding as to whether the site meets the standards. If the NRC's licensing standards constitute a judgement by the NRC on site-specific issues regarding Yucca Mountain, then it would be impossible for parties appearing before the NRC to obtain an impartial and unbiased hearing on those site-specific issues.

The Nuclear Waste Policy Act and the NRC's regulations, pursuant to that act, provide for an adjudicatory hearing on an application for a license to construct and operate a repository. A host of due process issues would be raised if the Commission were to begin addressing and deciding site-specific issues, through its regulations, either promulgated by rule or by EPA or NAS judgments that may be binding on the NRC under this legislation, establishing site-specific standards, prior to the commencement of the adjudication on the suitability of the site. Moreover, due process issues are raised to the extent that the NAS and the EPA use non-adjudicatory procedures to determine adjudicatory issues—that is, site-specific issues—in a manner that affects persons who are entitled by law to an adjudicatory hearing before the NRC on the licensing of the nuclear waste repository.

Thus, there may be serious due process concerns with the promulgation of site-specific standards if such standards are to be a basis for the licensing of that same specific site.

NRC INDEPENDENCE COULD BE UNDERMINED

To the extent that this legislation reduces, in any manner, the discretion of the NRC to promulgate regulations in the manner that the NRC deems most appropriate, the integrity and independence of the NRC could legitimately be called into question. Under this provision the NAS will be a contractor of the EPA. It would be a clear infringement upon the independence of the NRC for the NRC to be required to base its views on how to protect the public health and safety on the findings and recommendations of an EPA contractor.

More generally, this legislation further confuses the relationship between the EPA and the NRC. These two agencies have had a history of duplication, confusion, and conflict in fulfilling their respective responsibilities to protect the public health and safety from radiological hazards. Recently the relationship and cooperation between the two agencies has improved. This legislation will disrupt the current positive relationship and reintroduce conflict and confusion between the agencies.

Under current law, EPA has the responsibility and authority for issuing generally applicable environmental standards to protect the public health and safety from radiation hazards. Pursuant to this authority the EPA has issued generally applicable environmental standards for the protection of the public from a variety of activities that use radioactive materials, such as the operation of nuclear powerplants and the operation of a nuclear waste repository.

Under current law NRC has the responsibility for issuing technical requirements and criteria to ensure that the generally applicable EPA standards are met by persons conducting activities within NRC's licensing authority. The NRC technical requirements must be not inconsistent with the EPA general standards.

These overlapping roles in protecting the public health and safety from radiation hazards have led to a number of conflicts between the two agencies. It has taken many years and a considerable amount of effort for the NRC and the EPA to come to agreement on how to best minimize conflicts and duplication in their overlapping roles. In March of this year the EPA and the NRC signed a memorandum of understanding [MOU] on how to cooperate in the exercise of their respective responsibilities.

This legislation will raise many new issues regarding the roles of the EPA and the NRC. Never before has the EPA been directed to issue site-specific standards for NRC-licensed activities, as section 801 directs EPA to do with respect to Yucca Mountain.

Additionally, section 801(a)(2) is confusing with respect to the role of the NRC and other environmental laws. This section states that EPA's standards for the protection of the public health and safety from releases of radiation "shall be the only such standards applicable to the Yucca Mountain site." The conference report explains that:

> The provisions of section 801 address only the standards of the Environmental Protection Agency, and comparable regulations of the Nuclear Regulatory Commission, related to protection of the public from releases of radioactive materials stored or disposed of at the Yucca Mountain site pursuant to authority under the Atomic Energy Act, Reorganization Plan No. 3 of 1970, the Nuclear Waste Policy Act of 1982, and this Act. The provisions of section 801 are not intended to affect in any way the application of any other existing laws to activities at the Yucca Mountain site.

It could be disputed, therefore, what section 801 means with respect to NRC's regulations. Although section 801(a)(2) would seem to rule out any role for the NRC once EPA issues its standards, section 801(b) directs the NRC to promulgate regulations. Clearly, therefore, section 801(a)(2) cannot be given an expansive reading, since such a reading would be inconsistent with section 801(b). To minimize confusion between the NRC and the EPA, and to protect the public health and safety and the nature environment to the full extent that federal and state laws provide, I hope that section 801(a)(2) is given as narrow a reading as possible.

Under section 801(b), however, the NRC's role is defined differently from its role under current law. Section 801(b) states that NRC's regulations shall be "consistent with" the regulations of the EPA. This is a novel standard. Under current law the NRC's requirements and criteria shall "not be inconsistent with" EPA's standards. This legislation raises a host of questions regarding the relationships between the NRC and EPA with respect to these standards. Is there a difference between "consistent with' and "not inconsistent with"? If so, what is it? If there is no difference, then why is a new standard used? If NRC's regulations differ from EPA's by one word, does this mean NRC's regulations are not "consistent with" the EPA's?

It is not sound public policy to attempt to undermine the NRC's independence by providing a needless opportunity for persons to contend that this legislation requires the NRC to conform its judgments to those of the EPA to a greater degree than under current law. I do not believe that this language should be interpreted in this manner, but, unfortunately, the language does open up this question. It will be harmful to public confidence in this program—if there is any left after this legislation is enacted—to provide an opportunity to force the NRC to conform its regulations to the findings of an agency that is a member of the same executive branch that is attempting to license this facility.

PUBLIC PARTICIPATION COULD BE SEVERELY CURTAILED

This legislation raises a host of problems regarding how the public is to participate in the contemplated studies and rulemakings. I already have mentioned there may be due process concerns with proceeding to determine site-specific issues, which may involve adjudicative facts, outside of the adjudicatory proceeding to which affected persons are entitled. I also have mentioned the applicability of FACA to the NAS.

There are other issues that come to mind. I have not had time to fully analyze them, so I shall only briefly mention a few. One issue concerns the role of the public in the EPA and NRC rulemakings. If the EPA and NRC must issue regulations based upon and consistent with the findings and recommendations of the NAS, then what is the purpose of notice and comment in these rulemakings—is notice and comment appropriate for all of the issues raised by the proposed regulations, or appropriate only for the issue of whether the proposed agency regulations are truly consistent with the NAS findings and recommendations? To the extent it is the latter, then there would be no opportunity for effective public notice and comment on the substance of the regulations, and thus may violate the Administrative Procedure Act.

Another issue concerns the record of these rulemakings for judicial review. To the extent that either the EPA or the NRC rely upon the NAS findings and recommendations, and do not develop an independent record, those NAS findings and recommendations will be subject to judicial review as part of the the rulemaking record. Hence, to the extent that the NAS seeks to have its findings and recommendations incorporated into EPA or NRC regulations—a course which I discourage—the NAS findings and recommendations may have to be able to withstand judicial review.

These are just a few of the public participation issues that stand out. I am confident that more will arise as the EPA and NRC attempt to implement this.

PUBLIC TRUST

Mr. President, this is no way to run a nuclear waste program. This is a transparent attempt to rewrite the public health and safety standards governing nuclear waste disposal at Yucca Mountain so that the Yucca Mountain site will be able to pass muster.

The standards for the WIPP site are not being rewritten in this manner. They are being rewritten like this only at the Yucca Mountain site.

There were no hearings on this proposal. Hardly anyone other than a few a conferees on the Energy bill had any knowledge or opportunity to comment on this proposal prior to its inclusion in the conference report. The Nuclear Regulatory Commission, the agency with the ultimate responsibility for protecting the public health and safety from nuclear wastes, has not had enough time to analyze the significant issues raised by this legislation. Mr. President, I ask unanimous consent that the NRC's letter on this legislation be printed in the RECORD. At the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 4).

Mr. GRAHAM. This approach will destroy any remaining public confidence in the integrity, fairness, and trust worthiness of the Federal Government in carrying out its responsibilities with respect to nuclear waste. The message from this legislation is simple: the Federal Government will do anything, it will say anything, it wil spend an unlimited amount of ratepayer dollars, and it will make up the rules as it goes along, including the standards for the protection of the public health and safety, in order to find as quickly as possible a place to dispose of or to store highly radioactive level nuclear waste. Any State, scientific viewpoint, fact, or law that becomes an obstacle to this objective will be legislated out of the process.

I do not believe that this strong-arm approach can succeed. We live in a democracy, where the consent of the governed and truth in government are part of the foundation of the rule of law. Even in a totalitarian state, however, these tactics could not succeed. In the former Soviet Union, following the Chernobyl accident the credibility of the Soviet Government on nuclear issues was so damaged that public distrust and opposition prevented the siting of any new facilities. If these tactics could not work in the former Soviet Union, I doubt they can work here.

At this time I would like to enter into the RECORD the letter that Gov. Mike Sullivan of Wyoming sent to the Fremont County Commissioners regarding his decision to veto Fremont County's request to proceed to Phase IIa of the program to consider whether to locate a monitored retrievable storage facility in Fremont County, WY. The basic reason cited by Governor Sullivan in his decision to terminate the study process was that he did not trust the DOE or the Federal Government. Here are some examples of what the Governor said about the credibility of the Federal Government:

> (c) Can we take comfort from the DOE record of nuclear facilities in the West? I think not. Can we be assured of continuing control or oversight of such a facility? Last month the House of Representatives voted to exempt Yucca Mountain from state environmental permitting because DOE contended Nevada was not cooperative. Unless the Supremacy clause of the U.S. Constitution is changed, Congress, for fiscal reasons or preemptive reasons, can mandate new terms and new controls as it deems expedient or simply not accept the terms initially negotiated.
>
> (d) Can we trust the federal government or the assurance of negotiation to protect our citizens' interests? To do so would disregard the geographical voting power in Congress and 100 years of history and experience.
>
> * * * * *
>
> I am absolutely unpersuaded that Wyoming can rely on the assurances we receive from the federal government.

I ask unanimous consent that the Governor's letter be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 5).

Mr. GRAHAM. Today's actions make Governor Sullivan's letter prophetic. Unfortunately, this only will reinforce the essential point of the letter—that the States can't trust the Federal Government when it comes to nuclear waste disposal.

CONCLUSION

Mr. President, I support nuclear power. I come from a State which has used nuclear power extensively. I come from a State which has had a good experience with nuclear power.

I want to see nuclear power moved in the direction that will allow it to play a larger role in our energy future. I believe that nuclear power is one of the ways in which we can achieve what I described in my earlier remarks as the fundamental goal of a national energy strategy, which is to reduce our current level of reliance on petroleum.

I believe, however, that fundamental to a resurrection of this industry is a resurrection of public trust in this industry.

Therefore, I believe that this legislation which goes in the opposite direction by degrading public trust will have a negative impact on the future of nuclear as an energy source in this Nation.

Unfortunately, section 801 of this legislation will undermine rather than bolster public confidence in the regulation of nuclear power. It also will make the nuclear waste disposal process less credible and more difficult to implement. It is a major mistake.

EXHIBIT 1

NUCLEAR REGULATORY COMMISSION,
Washington, DC, August 18, 1992.
Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I am responding to your July 24, 1992 letter requesting my comments on the June 25, 1992 Las Vegas Review-Journal article on the possibility of reducing costs of high-level waste repository program activities at Yucca Mountain. I believe that the article generally reflects the discussions that took place during the June 24, 1992 briefing by Dr. John Bartlett, Director of the Department of Energy's (DOE's) Office of Civilian Radioactive Waste Management. As an independent regulatory agency, the NRC is committed to ensuring the protection of public health and safety while avoiding new and eliminating existing requirements that may be either unnecessary or unnecessarily burdensome. As NRC has developed and is implementing Part 60 of Title 10 of the Code of Federal Regulations: "Disposal of Radioactive Wastes in Geologic Repositories" (10 CFR Part 60), we have continued to strive to meet these objectives and to identify ambiguities and uncertainties in these regulations that need to be clarified. DOE has not identified any regulatory requirements which have imposed an unnecessary cost burden.

During the June 24 briefing, the Commission encouraged Dr. Bartlett to bring to our attention proposals for cost cutting. Since the briefing, Dr. Bartlett has not brought to our attention any proposal for cutting costs at the Yucca Mountain project. NRC stands ready to meet and discuss any specific proposal that would allow DOE to run a more efficient and effective repository program consistent with ensuring the protection of public health and safety.

I trust that this reply responds to your concerns. If I can be of further assistance, please let me know.

Sincerely,

IVAN SELIN.

HOUSE OF REPRESENTATIVES, COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, July 24, 1992.
Hon. IVAN SELIN,
Chairman, Nuclear Regulatory Commission,
Washington, DC.

DEAR CHAIRMAN SELIN: I have enclosed a June 25, 1992 newspaper article from the Las Vegas Review-Journal.

I would appreciate your comments on the article and the suggestion in it that changes could be made to the Nuclear Regulatory Commission's regular procedures which would assist in reducing costs of the Yucca Mountain project.

I would also like to know of subsequent communications you may have had with officials at the Department of Energy on this issue.

With every good wish.

Sincerely,

JOHN D. DINGELL,
Chairman.

Enclosure.

[From the Las Vegas Review-Journal, June 25, 1992]

DOE AIMS TO CUT COSTS OF NUKE DUMP

(By Tony Batt)

WASHINGTON.—The Energy Department still is thinking out loud' about ways to reduce the estimated $6.3 billion cost of licensing a nuclear waste repository at Yucca Mountain, including the possibility of storing waste at the site before it is fully licensed, the program's director told the Nuclear Regulatory Commission on Wednesday.

While the placement of nuclear waste at Yucca Mountain before its projected opening in 2010 would require a special license from the NRC and legislation from Congress, the department also is considering cost-cutting options that would not require special permission, said John Bartlett, director of the Office of Civilian Radioactive Waste Management.

He told regulators that project official are weighing the idea of conducting fewer site tests to back its license application, or placing nuclear waste at a "test evaluation facility" near Yucca Mountain but off the study site. Bartlett said he did not know how much money these measures could save.

"What I want to emphasize is that there's nothing new here," Bartlett told commissioners. "We have for years been looking at contingencies, alternatives for dealing with cost, dealing with progress."

The department has suggested accepting some waste at Yucca Mountain and incorporating it into studies of whether the site, 100 miles northwest of Las Vegas, could safely store the highly radioactive material for 10,000 years. Department officials have not said how much waste would be needed to speed its studies.

Discussion of cost-cutting options accelerated after several senators at a March 81 hearing on Capitol Hill expressed alarm about escalating expenses, Bartlett said.

Bartlett's comments drew a puzzled reaction from NRC chairman Ivan Selin.

"I really am up in the air as to what you're thinking about and where it is that the NRC would have to change its procedures," Selin told Bartlett. "Are you going to come to us with some quite different course of action or is this just sort of thinking out loud?"

"It's really thinking out loud at this stage," Bartlett responded. "We are not coming with any proposed alternative course of action."

Asked after the hearing if the NRC would be willing to consider issuing a special license for the early storage of nuclear waste at Yucca Mountain, Selin said, "I'm not going to answer that until something is actually proposed. So far, he (Bartlett) hasn't asked us to do anything that would require us to change our procedures."

Bartlett first discussed the possible early storage of nuclear waste at Yucca Mountain during an address to a group of nuclear utility executives on May 6 in Washington.

At that time, he said the Energy Department hoped to decide within a few weeks whether to pursue that option. But he said Wednesday he did not think the department would decide before August.

Bartlett has said early storage of nuclear waste at Yucca Mountain could save money by allowing the Energy Department to more quickly collect data for licensing reviews.

But NRC Commissioner Kenneth Rogers suggested Wednesday early storage of nuclear waste away from Yucca Mountain would be preferable because it could be done at a "modest cost" without triggering "public concern issues which raise the cost very, very high."

Bartlett seemed cool to Rogers' suggestion, saying if the early storage of waste occurs at a site away from Yucca Mountain, it probably could not be located further away than Arizona.

"One of the issues in using a test evaluation facility is how representative really is the data," Bartlett said. "If you're not in the same geology, if you're not in the same formation, that's one of the issues associated with that."

On a related subject, Bartlett said the Energy Department believes it is not obligated to take possession of nuclear waste from power plants if a temporary or permanent repository is not ready by 1998.

However, Commissioner James Curtiss cited a Sept. 7, 1984, letter from then Energy Secretary Donald Hodel who said the department had interpreted federal law to require it to accept the waste in 1998 even if it had no place to store it.

Selin also chided Bartlett for blaming NRC regulations for skyrocketing costs in developing the Yucca Mountain repository.

"You haven't come to NRC and said you disagree with the procedures," Selin said. "The Department of Energy has not come up with suggestions on how to reduce cost."

Bartlett denied he had blamed the NRC for escalating costs.

Carl Gertz, the Energy Department's site supervisor at Yucca Mountain, told the commission that recent drilling at the site revealed its geology is more uniform than previously thought.

"This may be simpler than we thought," Gertz said about the site characterization studies.

Gertz said 7 inches of rain this spring gave Energy Department officials an opportunity to monitor seepage of rainfall at Yucca Mountain. He said preliminary studies showed the rain did not go further down than 100 feet, and the repository will be 1,000 feet below the mountain.

John Roberts, the Energy Department's acting director of the Office of Systems and Compliance, told the commission that erosion at Yucca Mountain "appears to be minimal."

At the beginning of Wednesday's hearings, Energy Department officials played segments of Las Vegas television news broadcasts about a June 16 news media tour of Yucca Mountain. Bartlett and Gertz said local news media are treating the Energy Department more fairly.

EXHIBIT 2

RETHINKING HIGH-LEVEL RADIOACTIVE WASTE DISPOSAL: A POSITION STATEMENT OF THE BOARD ON RADIOACTIVE WASTE MANAGEMENT

(Commission on Geosciences, Environment, and Resources, National Research Council)

Notice: The project that is the subject of this report was approved by the Governing Board of the National Research Council, whose members are drawn from the councils of the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine. The members of the committee responsible for the report were chosen for their special competences and with regard for appropriate balance.

This report has been reviewed by a group other than the authors according to procedures approved by a Report Review Committee consisting of members of the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine.

The National Academy of Sciences is a private, nonprofit, self-perpetuating society of distinguished scholars engaged in scientific engineering research, dedicated to the furtherance of science and technology and to their use for the general welfare. Upon the authority of the charter granted to it by the Congress in 1863, the Academy has a mandate that requires it to advise the federal government on scientific and technical matters. Dr. Frank Press is president of the National Academy of Sciences.

The National Academy of Engineering was established in 1964, under the charter of the National Academy of Sciences, as a parallel organization of outstanding members, sharing with the National Academy of Sciences the responsibility for advising the federal government. The National Academy of Engineering also sponsors engineering programs aimed at meeting national needs, encourages education and research, and recognizes the superior achievements of engineers. Dr. Robert M. White is president of the National Academy of Engineering.

The Institute of Medicine was established in 1970 by the National Academy of Sciences to secure the services of eminent members of the appropriate professions in the examination of policy matters pertaining to the health of the public. The Institute acts under the responsibility given to the National Academy of Sciences by its congressional charter to be an adviser to the federal government and, upon its own initiative, to identify issues of medical care, research, and education. Dr. Samuel O. Thier is president of the Institute of Medicine.

The National Research Council was organized by the National Academy of Sciences in 1916 to associate the broad community of science and technology with the Academy's purposes of furthering knowledge and advising the federal government. Functioning in accordance with general policies determined by the Academy, the Council has become the principal operating agency of both the National Academy of Sciences and the National Academy of Engineering in providing services to the government, the public, and the scientific and engineering communities. The Council is administered jointly by both Academies and the Institute of Medicine. Dr. Frank Press and Dr. Robert M. White are chairman and vice chairman, respectively, of the National Research Council.

The material summarized in this report was the product of a July 1988 retreat sponsored by the Board on Radioactive Waste Management and was supported by the U.S. Department of Energy under Contract No. DE-AC01-86DP48039.

ABSTRACT

There is a worldwide scientific consensus that deep geological disposal, the approach being followed in the United States, is the best option for disposing of high-level radioactive waste (HLV). There is no scientific or technical reason to think that a satisfactory geological repository cannot be built. Nevertheless, the U.S. program, as conceived and implemented over the past decade, is unlikely to succeed.

For reasons rooted in the public's concern over safety and in the implementing and regulatory agencies' need for political credibility, the U.S. waste disposal program is characterized by a high degree of inflexibility with respect to both schedule and technical specifications. The current approach, in which every step is mandated in detail in advance, does have several advantages:

It facilitates rigorous oversight and technical auditing;

Its goals and standards are clear;

It is designed to create a sense of confidence in the planning and operation of the repository; and

If carried out according to specifications, it is robust in the face of administrative or legal challenge.

This approach is poorly matched to the technical task at hand. It assumes that the properties and future behavior of a geologic repository can be determined and specified with a very high degree of certainty. In reality, however, the inherent variability of the geological environment will necessitate frequent changes in the specifications, with resultant delays, frustration, and loss of public confidence. The current program is not sufficiently flexible or exploratory to accommodate such changes.

The Board on Radioactive Waste Management is particularly concerned that geological models, and indeed scientific knowledge generally, have been inappropriately applied. Computer modeling techniques and geophysical analysis can and should have a key role in the assessment of long-term repository isolation. In the face of public concerns about safety, however, geophysical models are being asked to predict the detailed structure and behavior of sites over thousands of years. The Board believes that this is scientifically unsound and will lead to bad engineering practice.

The United States appears to be the only country to have taken the approach of writing detailed regulations before all of the data are in. As a result, the U.S. program is bound by requirements that may be impossible to meet. The Board believes, however, that enough has been learned to formulate an approach that can succeed. This alternative approach emphasizes flexibility: time to assess performance and a willingness to respond to problems as they are found, remediation if things do not turn out as planned, and revision of the design and regulations if they are found to impede progress toward the health goal already defined as safe disposal. To succeed, however, this alternative approach will require significant changes in laws and regulations, as well as in program management.

SUMMARY

Since 1955, the National Research Council (NRC) has been advising the U.S. government on technical matters related to the management of radioactive waste. Today, this advice is provided by the Board on Radioactive Waste Management (BRWM or "the Board"), a permanent committee of the NRC. The conclusions presented in this position statement are the result of several years of discussions within the Board, whose members possess decades of professional experience in relevant scientific and technical fields.

In July 1988, the Board convened a week-long study session in Santa Barbara, California, where experts from the United States and abroad joined BRWM in intensive discussions of current U.S. policies and programs for high-level radioactive waste management. The group divided its deliberations into four categories: (1) the limitations of analysis; (2) moral and value issues; (3) modeling and its validity; and (4) strategic planning. A summary of the findings of these discussions, from which this position statement has been developed, follows the Summary.

Current U.S. Policy and Program

In the Nuclear Waste Policy Act of 1982 (NWPA), Congress assigned responsibility to the Department of Energy (DOE) for designing and eventually operating a deep geological repository for high-level radioactive waste (HLW). The repository must be licensed by the U.S. Nuclear Regulatory Commission (USNRC) and must meet radionuclide release limits, based on a generic repository, that would result in less than 1000 deaths in 10,000 years as specified in a Standard established by the Environmental Protection Agency (EPA) (40 CFR 191).

The U.S. program is unique among those of all nations in its rigid schedule, in its insistence on defining in advance the technical requirements for every part of the multibarrier system, and in its major emphasis on the geological component of the barrier as detailed in 10 CFR 60. Because one is predicting the fate of the HLW into the distant future, the undertaking is necessarily full of uncertainties. In this sense the government's HLW program and its regulation may be a "scientific trap" for DOE and the U.S. public alike, encouraging the public to expect absolute certainty about the safety of the repository for 10,000 years and encouraging DOE program managers to pretend that they can provide it.

For historical and institutional reasons, DOE managers tend to feel compelled to do things perfectly the first time, rather than to make changes in concept and design as unexpected geological features are encountered and as scientific understanding develops. This "perfect knowledge" approach is unrealistic, given the inherent uncertainties of this unprecedented undertaking, and it runs the risk of encountering "show-stopping" problems and delays that could lead to a further deterioration of public and scientific trust. Today, because of the regulatory requirements and the way the program is being carried out, U.S. policy has not led to satisfactory progress on the problem of radioactive waste disposal.

Scientific Consensus on Geological Isolation

There is a strong worldwide consensus that the best, safest long-term option for dealing with HLW is geological isolation. High-level waste should be put into specially designed and engineered facilities underground, where the local geology and groundwater conditions have been chosen to ensure isolation of the waste for tens of thousands of years or longer, and where waste materials will migrate very slowly if they come into contact with the rock.

Although the scientific community has high confidence that the general strategy of geological isolation is the best one to pursue, the challenges are formidable. In essence, geological isolation amounts to building a mine in which "ore" will be put back into the ground rather than taken out. Mining, however, has been and remains fundamentally an exploratory activity: because our ability to predict rock conditions in advance is limited, miners often encounter surprises. Over the years, mining engineers have developed methods to deal with the vagaries of geological environments, so that mineral extraction and construction can continue safely even when the conditions encountered are different from those anticipated.

It is at this point that geological isolation of radioactive waste differs in an important sense from mining. In the United States, radioactive waste management is a tightly regulated activity, surrounded by laws and regulations, criteria and standards. Some of these rules call for detailed predictions of the behavior of the rock for the tens of thousands of years that the radioactive materials are to be isolated.

Preparing quantitative predictions so far into the future stretches the limits of our understanding of geology, groundwater chemistry and movement, and their interactions with the emplaced material (radioactive waste package, backfill, sealants, and so forth). Although the basic scientific principles are well known, quantitative estimates (no matter how they are obtained) must rely on many assumptions. As a consequence, the resulting estimates are uncertain to some degree, and they will remain uncertain no matter how much additional information is gathered.

Treatment of Uncertainty

The character and implications of these uncertainties must be clearly understood by political leaders, program managers, and the concerned public. Engineers and scientists, no matter how experienced or well trained, are unable to anticipate all of the potential problems that might arise in trying to site, build, and operate a repository. Nor can science "prove" (in any absolute sense) that a repository will be "safe" as defined by EPA standards and USNRC regulations. This is so for two reasons.

First, proof in the conventional sense cannot be available until we have experience with the behavior of an engineered repository system—precisely what we are trying to predict. The existence of uncertainties has prompted efforts to improve the technical analysis, but there will always remain some residual uncertainty. It is important to recognize, however, that uncertainty does not necessarily mean that the risks are significant. What it does mean is that a range of results are possible, and a successful management plan must accommodate residual uncertainties and still provide reasonable assurance of safety.

Second, safety is in part a social judgment, not just a technical one. How safe is safe enough? Is it safer to leave the waste where it is, mostly at reactor sites, or to put it in an underground repository? In either case safety cannot be 100 percent guaranteed. Technical analyses can provide background for answering such questions, but ultimately the answers depend on choices made by the citizens of a democratic society. The EPA has not based its standards (which must allow for these choices by the citizenry) on social judgments derived from realistic consideration of these alternatives. Both of these important limitations of the analysis have been understated.

The federal government must provide full public accountability as information about the risks changes with experience. This is not an impossible task: government and business make decisions every day under similar conditions of uncertainty. But a policy that promises to anticipate every conceivable problem, or assumes that science will shortly provide all the answers, is bound to fail.

The public has been told too often that absolute guarantees can be provided, but most citizens watching the human frailties of their governments and technologists know better. A realistic—and attainable—goal is to assure the public that the likelihood of serious unforeseen events (serious enough to cause catastrophic failure in the long term) is minimal, and that the consequences of such events will be limited. These assurances rest on the credible application of general principles, rather than a reliance on detailed predictions.

Modeling of Geological Processes

The current U.S. approach to developing a geological repository (with a mandated 10,000-year lifetime) for radioactive waste is based on a regulatory philosophy that was developed from the licensing of nuclear power plants (which have a nominal 40-year lifetime). The geological medium, however, cannot be specified in advance to the degree possible for man-made components, such as valves or electronic instruments, nor can it be tested over its projected lifetime as can many man-made components. Commercial mining and underground construction both operate on the sound principle of "design (and improve the design) as you go." The inherent variability of the geological environment necessitates changes in specifications as experience increases. If that reality is not acknowledged, there will be unforeseen delays, rising costs, frustration among field personnel, and loss of public confidence in the site and in the program.

Models of the repository system are useful, indeed indispensable. The computerized mathematical models that describe the geological structure and hydrological behavior of the rock are needed to manage the complex calculations that are necessary to evaluate a proposed site. Models are vital for two purposes: (1) to understand the history and present characteristics of the site; and (2) to predict its possible future behavior. Putting the available data into a coherent conceptual framework should focus attention on the kinds of uncertainty that persist. For example, the modeling of groundwater flow through fractured rock lies at the heart of understanding whether and how a repository in hard rock will perform its essential task of isolating radioactive materials. The studies done over the past two decades have led to the realization that the phenomena are more complicated than had been thought. Rather than decreasing our uncertainty, this line of research has increased the number of ways in which we know that we are uncertain. This does not mean that science has failed: we have learned a great deal about these phenomena. But it is a commonplace of human experience that increased knowledge can lead to greater humility about one's ability to fully understand the phenomena involved.

Uncertainty is treated inappropriately in the simulation models used to describe the characteristics of the waste repository. As the quantity of information about natural geological settings grows, so too does our appreciation of their variability and unpredictability. This distinction has often been ignored. Indeed, the very existence of large databases and sophisticated computer models suggests, erroneously, that it is appropriate to design a geological repository as if it were a nuclear power plant or jet airliner, both of which have predictable attributes over their short lifetimes. That assumption of accurate predictability will continue to produce frustration and failure. Under the present program models are being asked to provide answers to questions that they were not designed to address. One scientifically sound objective of geological modeling is to learn, over time, how to achieve reasonable assurance about the long-term isolation of radioactive waste. That objective is profoundly different from predicting quantitatively the long-term behavior of a repository. Yet, in the face of public concerns about the safety of HLW disposal, it is the latter use to which models have been put.

The Board believes that this use of geological information and analytical tools—to pretend to be able to make very accurate predictions of long-term site behavior—is scientifically unsound. Its conclusion is based on detailed reviews of the methods used by the DOE and the regulatory agencies in implementing the NWPA.

Well-known geophysical principles can be used to estimate or to set bounds on the behavior of a site, so that its likely suitability as a waste repository can be evaluated. But it is inappropriate to stretch the still-incomplete understanding of a site into a quantitative projection of whether a repository will be safe if constructed and operated there. Only after a detailed and costly examination of the site itself can an informed judgment be reached, and even then there will still be uncertainties.

Many of the uncertainties associated with a candidate repository site will be technically interesting but irrelevant to overall repository performance. Further, the issues that are analytically tractable are not necessarily the most important. The key task for performance modeling is to separate the significant uncertainties and risks from the trivial. Similarly, when there are technical disputes over characteristics and processes that affect calculations of waste transport, sensitivity analysis with alternative models and parameters can indicate where further analysis and date are required and where enough is known to move on to other concerns.

It may even turn out to be appropriate to delay permanent closure of a waste repository until adequate assurances concerning its long-term behavior can be obtained through continued in-site geological studies. Judgments of whether enough is known to proceed with placement of waste in a repository will be needed throughout the life of the project. But these judgments should be based on a comparison of available alternatives, rather than a simplistic debate over whether, given current uncertainties, a repository site is "safe." Even while the detailed, long-term behavior of an underground repository is still being studied, it may be marginally safer to go ahead and store reactor waste there (in a way that permits retrieval if necessary), rather than leaving it at reactors.

As a rule, the values determined from models should only be used for comparative purposes. Confidence in the disposal techniques must come from a combination of remoteness, engineering design, mathematical modeling, performance assessment, natural analogues (see below), and the possibility of remedial action in the event of unforeseen events. There may be political pressure on implementing agencies to provide absolute guarantees, but a more realistic—and attainable—goal is to assure the public that the likelihood of unforeseen events is minimal, and that the magnitude of the consequences of such events is limited. Such an alternative approach, now being used in Canada and Sweden, promises to be far more successful in achieving a safe and practical waste disposal system.

Moral and Ethical Questions

Radioactive waste poses hazards that raise moral and ethical concerns. First, some of the radioactivity lasts for extremely long periods of time—the EPA standard for HLW calls for isolation of the waste for 10,000 years and more, a time longer than recorded human history. Second, the risks of high-level waste will be concentrated at a very few geological repositories. The neighbors of proposed waste repositories have understandably been alarmed at the prospect of hosting large quantities of a material that needs to be handled with great care. Ethical studies in this area underscore two points: (1) the central role of fair process; and (2) the pervasive problem of promising more certainty than can be delivered.

The need for a fair process is simply stated: people feel threatened by radioactive waste; and they deserve to be taken seriously in the decision-making process. The sense of threat is often ill informed, in a narrow technical sense; but when that occurs, it is the duty of technical experts and program managers to provide information and employ analyses that will be credible to the affected populations. Only with valid information that they believe can those affected parties negotiate equitable solutions. The primary goal of the program is to provide safe disposal; a secondary goal is to provide it without any gross unfairness. As a result, the mechanisms of negotiation, persuasion, and compensation are fundamental parts of any program to manage and dispose of radioactive waste—not mere procedural hoops through which program managers must jump.

The second ethical point is also important: the demand for accountability in our political system has fostered a tendency to promise a degree of certainty that cannot be realized. Pursuing that illusory certainty drives up costs without delivering the results promised or comparable benefits. The consequence is frustration and mistrust. For example, it is politically costly to admit that one has been surprised in exploring sites being considered for HLW repositories. Yet, this situation is self-defeating: surprises are bound to occur because a principal reason for exploration is to discover what is there.

Instead of pursuing an ever-receding mirage, it is sensible to pursue an empirical exploratory approach: one that emphasizes fairness in the process while seeking outcomes that the affected populations judge to be equitable in light of their own values. This is not an easy course, but it is necessary.

An Alternative Approach

There are scientific reasons to think that a satisfactory HLW repository can be built and licensed. But for the reasons described earlier, the current U.S. program seems unlikely to achieve that desirable goal. The Board proposes an alternative approach that is build on well-defined goals and objectives, utilizes established scientific principles, and can be achieved in stages with appropriate review by regulatory and oversight bodies and with demonstrated management capabilities. The Board suggests an institutional approach that is more flexible and experimental—in other words, a strategy that acknowledges the following premises:

Surprises are inevitable in the course of investigating any proposed site, and things are bound to go wrong on a minor scale in the development of a repository.

If the repository design can be changed in response to new information, minor problems can be fixed without affecting safety and major problems, if any appear, can be remedied before damage is done to the environment or to public health.

This flexible approach can be summarized in three principles:

Start with the simplest description of what is known, so that the largest and most significant uncertainties can be identified early in the program and given priority attention.

Meet problems as they emerge, instead of trying to anticipate in advance all the complexities of a natural geological environment.

Define the goal broadly in ultimate performance terms, rather than immediate requirements, so that increased knowledge can be incorporated in the design at a specific site.

In short, this approach uses a scientific approach and employs modeling tools to identify areas where more information is needed, rather than to justify decisions that have already been made on the basis of limited knowledge.

The principal virtue of this strategy is that it would use science in the proper fashion. It would be similar to the strategies now being followed in Canada and Sweden, where the exploration and construction of an underground test laboratory and a shallow underground low-level waste repository have followed a flexible path. At each step, information and understanding developed during the prior stages are combined with experience from other underground construction projects, in order to modify designs and procedures in light of the growing stock of knowledge. During operations and after closure of the facilities, the emphasis will be on monitoring and assuring the capability to remedy unforeseen problems. In that way, the possibility is minimized that unplanned or unexpected events will compromise the integrity of the facility.

This flexible approach has more in common with research and underground exploration than with conventional engineering practice. The idea is to draw on natural analogues, integrate new data into the expert judgments of geologists and engineers, and take advantage of favorable surprises or compensate for unfavorable ones.

Natural analogues—geological settings in which naturally occurring radioactive materials have been subjected to environmental forces for millions of years—demonstrate the action of transport processes like those that will affect the release of man-made radionuclides from a repository in a similar setting. Where there is scientific agreement that the analogy applies, this approach provides a check on performance assessment methodology and may be more meaningful than sophisticated numerical predictions to the lay public.

A second element is to use professional judgment of technical experts as an input to modeling in areas where there is uncertainty as to parameters, structures, or even future events. Such judgments, which may differ from those of DOE program managers, should be incorporated early in the process; a model created in this way might redirect the DOE program substantially.

The large number of underground construction projects that have been completed successfully around the world are evidence that this approach works well. Implicit in this approach, however, is the need to revise the program schedule, the repository design, and the performance criteria as more information is obtained. Putting such an approach into effect would require major changes in the way Congress, the regulatory agencies, and DOE conduct their business.

The Risk of Failing to Act

Given the history of radioactive waste management in the United States, a likely alternative is that the program will continue as at present. That would leave the nation's inventory of high-level waste, indefinitely, where it is now: mostly at reactor sites at or near the earth's surface. By the year 2000 spent fuel is expected to contain more than 3x10^{10} curies, while High Level Waste is expected to contain another 10^9 curies.* This alternative is safe in the short term—on-site storage systems are safe for at least 100 years, according to present evidence.** The at-surface alternative may be irresponsible for the long run, however, due to the uncertainties associated with maintaining safe institutional control over HLW at or near the surface for centuries.

In judging disposal options, therefore, it is essential to bear in mind that the comparison is not so much between ideal systems and imperfect reality as it is between a geologic repository and at-surface storage. From that standpoint, both technical experts and the general public would be reassured by a conservative engineering approach toward long-term safety, combined with an institutional structure designed to permit flexibility and remediation.

INTRODUCTION

The Origins and Purpose of This Document

Since 1955, the National Research Council (NRC) has been advising the U.S. government on technical matters related to the management of radioactive waste. Today, such review and advice is rendered by the Board of Radioactive Waste Management (BRWM or "the Board"), a permanent committee of the National Research Council. Over the past quarter century, the BRWM and its predecessors have acted as observer, critic, and adviser to the federal agencies responsible for the management of radioactive waste. In 1955, the National Research Council's Committee on Earth Sciences, the forerunner of the BRWM, first examined the problem of high-level radioactive waste (HLW) and recommended the strategy of isolation in stable geological formations. That basic approach is the one still being pursued in the United States and throughout the world. In 1983, the Board published the report of its Waste Isolation Systems Panel, a technical document that supported the use of "performance assessment." This method, first employed by the Karnbranslesakerhet (KBS) in Sweden for judging the performance of high-level waste and its packaging in geological formations, makes it possible to evaluate the ability of a repository to contain waste for the very long term. Performance assessment has become the keystone of the policies and regulations guiding the planning of HLW disposal in the United States as well as other nations.

Thus far, however, the technical programs carried out by government and industry in the United States have not led to a socially satisfactory resolution of the problem of HLW management and disposal. There are two reasons for this future.

The first is the controversy over nuclear energy and radioactive waste disposal as part of nuclear energy development. The Board takes no position on the use of nuclear energy. However, it notes that even if nuclear power in this country were discontinued tomorrow—a highly unlikely event—we would still need to dispose of nuclear waste from existing power plants and defense programs, and we would therefore still require a viable HLW disposal program.

The second reason that radioactive waste management remains in trouble is the way in which the programs have been designed and carried out. That problem is the subject of this report: the Board believes that important scientific and technical issues concerning HLW have been widely misunderstood; the result is a set of programs that will not achieve their stated goals. Neither the technical nor the social problems of the waste materials already in existence are being handled effectively. The Board believes that the safe and effective isolation of radioactive waste is feasible. Improvements to what is now being done are described below.

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*Footnotes at end of article.

These conclusions are the result of several years of discussions within the Board and are based on the decades of scientific and professional experience represented among the members of the BRWM. In July 1988 the Board convened a week-long study session in Santa Barbara, California, where the Board was joined by experts from the United States and abroad. The group divided its deliberations into four categories: (1) the limitation of analysis; (2) moral and value issues; (3) modeling and its validity; and (4) strategic planning. These categories also determine the structure of this position statement, although in the analysis here, as in the real world, there is no easy separation among them.

Although this position statement is critical of present policies, it must be emphasized that the changes that need to be made are not restricted to the U.S. government. The nature of the risks and the government's responsibility to address them need to be presented and understood in terms different from those reflected in today's public policy. Doing so will not lead to less safety but to more. Yet achieving that result will require courage on the part of leaders in government and industry, as well as a willingness to rethink risks among the public at large and in the interest groups concerned with public policies for the management of risk.

These questions touch on far more than radioactive waste, and the rethinking they imply will be difficult to launch and to sustain. The Board believes, however, that this rethinking is essential and that radioactive waste management is a reasonable place to begin. This position statement is a step in that direction.

High-Level Waste in Context

At present, approximately 17 percent of the world's electricity is derived from about 400 nuclear power plants, although the percentage is as high as 70 percent in France and 50 percent in Sweden. The challenge of HLW disposal is dominated by the spent fuel from these nuclear power plants. Each 1,000-megawatt (MWE) nuclear power plant produces each year about 30 tons of spent fuel, which if reprocessed and vitrified could be reduced to between 4 and 11 cubic meters (m^3) of highly radioactive glass. Some countries, including the United States, have chosen to dispose of commercial spent fuel directly. Each power plant also produces some 400 m^3 of short-lived, low-level waste (LLW) each year. Fuel production would leave another 86,000 tons of mill tailings on the earth's surface for each reactor, per year.

Radioactive Waste Management Policy

Because HLW must be isolated from the living environment for 10,000 years or more, all nations faced with the task of radioactive waste disposal have chosen underground repositories as the basic technical approach. In the United States, the Department of Energy (DOE) has been given the task of designing and eventually operating such a repository. Before operations begin, however, DOE must demonstrate to the U.S. Nuclear Regulatory Commission (USNRC) that the repository will perform to standards established by the U.S. Environmental Protection Agency (EPA) that limit the release of radionuclides to specific levels for 10,000 years after disposal. Before the USNRC will grant a license to operate a repository, DOE must present convincing data and analysis to the USNRC showing that the proposed facility can meet specified release limits.

To develop such an assessment, it is necessary to examine all credible possibilities for the movement of radionuclides from the repository and into the accessible environment. In conducting these analyses, DOE has relied heavily on building computer models of the repository and surrounding geological environment, along with possible pathways of radionuclide transport. However, preparing quantitative predictions so far into the future pushes the boundaries of our understanding of geology, groundwater chemistry and movement, and their interactions with the emplaced material (radioactive waste package, backfill, sealants, and so on). Although the basic scientific principles are well known, quantitative estimates (no matter how they are obtained) must rely on many assumptions. The resulting estimates cover a range of outcomes.

While continued scientific investigations should reduce the uncertainty, absolute certainty cannot be achieved. Indeed, a major theme of this position statement is the need for public policy to benefit from, and change in response to, accumulating experience.

FINDINGS

The Limitations Of Analysis

Overview

Engineers are unable to anticipate all of the potential problems that might arise in trying to site, build, and operate a repository. Nor can science prove that a repository will be absolutely "safe." This is so for two reasons. First, proof in the conventional sense cannot be available until we have experience with the behavior of an engineered repository system—precisely what we are trying to predict ahead of time. And second, safety is in part a social judgment, not just a technical one. While technical analysis can greatly illuminate the judgment of whether a repository is safe, technical analysis alone cannot substitute for decisions about the degree of risk that is acceptable. These decisions belong to the citizenry of a democratic society. Both of these important limitations of technical analysis have been understated, a lapse that feeds the concern and magnifies the public's distrust of nuclear waste management when these limitations are pointed out by the program's critics.

Uncertainty and Significant Risks

A principal source of concern over the U.S. program is the uncertainty in estimating the risks from a radioactive waste repository. Technical approaches are available to reduce or at least bound these uncertainties. Yet in focusing on ways to improve the analysis, public discussion has often overlooked a more important question: whether the uncertainty matters. This is, in principle, the domain of performance assessment, which draws together the different portions of the technical analysis so that one can see which parts of the waste confinement system may pose environmental hazards during or after the time when the repository receives waste.

Performance assessment of a repository system is necessarily a task for computer modeling. The waste management system, which starts at the reactor and continues into the distant future of a sealed repository, includes many different parts and processes that are described through different kinds of data (with different levels of quality), and different kinds of analysis (with different level of accuracy). It is a practical consequence of the complexity of HLW disposal, together with the fact that no one has ever operated a repository, that performance assessment is, in the end, a matter of technical judgment.

The traditional approach in such cases, where an important social decision hinges on uncertain scientific data and projections, is to inform the political decision through a consensus of the appropriate technical community. Such consensus is difficult to reach in this case, however, given the political controversy, conflicting value systems, and overlapping technical specialties involved in assessing repository performance. Indeed, the allowable residual risk associated with a permissible repository site is a political choice; EPA has taken the position that the implementation of their guidelines constitutes the exercise of this choice. Unfortunately, the number and magnitude of the uncertainties in the probabilistic approach may be expected to reintroduce political controversy. This was recognized by the High-Level Radioactive Waste Disposal Subcommittee of EPA's Science Advisory Board in their January 1984 report reviewing EPA Draft Standard 40 CFR 191. That subcommittee concluded there was "insufficient basis for agreeing with the EPA staff that the proposed release criterion with its probabilistic corollary can be demonstrated to have been met with reasonable assurance, and that this could be argued definitively in a legal setting."

The subcommittee strongly affirmed the validity of EPA's probabilistic approach, but warned that "if EPA cannot have high confidence in the adequacy and workability of a quantitative, probabilistic standard, [it should] use qualitative criteria, such as recommended by [the US] NRC."

Specifically, with regard to the first major topic of the Science Advisory Board's findings and recommendations, "Uncertainty and the Standard," the subcommittee recommended relaxing the nuclide release limits by a factor of 10, modifying the probabilistic release criteria so that "analysis of repository performance shall demonstrate that there is less than a 50% chance of exceeding the Table 2 release limits, modified as is appropriate. Events whose median frequency is less than one in one-thousand in 10,000 years need not be considered," and, finally "that use of a quantitative probabilistic condition on the modified Table 2 release limits be made dependent on EPA's ability to provide convincing evidence that such a condition is practical to meet and will not lead to serious impediments, legal or otherwise, to the licensing of high-level-waste geologic repositories. If such evidence cannot be provided, we recommend that EPA adopt qualitative criteria, such as those suggested by the [US]NRC.[1]"

Unfortunately none of these recommendations was adopted.

The USNRC staff, in commenting on the EPA Draft Standard, strongly questioned the workability of quantitative probabilistic requirements for the defined releases stating, in part "numerical estimates of the probabilities or frequencies of some future events may not be meaningful. The [US]NRC considers that identification and evaluation of such events and processes will require considerable judgment and therefore will not be amenable to quantification by statistical analyses without the inclusion of very broad ranges of uncertainty. These uncertainty ranges will make it difficult, if not impossible, to combine the probabilities of such events with enough precision to make a meaningful contribution to a licensing proceeding.[2]"

The problem is compounded when the adequacy of the performance assessment—to determine if the allowable residual risk is achieved—is judged by its political impact (i.e., the effect of reopening the discussion on what is allowable residual risk) as well as its technical accuracy.

The difficulty of evaluating performance assessments is compounded by the fact that there is no actual experience in the disposal of HLW on which to base estimates of the risk. Some risk scenarios include low-probability/high-consequence events. Others are based on explicit or implicit assumptions that cannot be plausibly proved or disproved—for example, the consequences of climatic changes that could increase rainfall and groundwater flows at a repository site. The data and methodologies for modeling of repository isolation performance are still under development.

The actual performance of a repository is difficult to predict for many reasons. Geologists often disagree about the interpretation of data in analyzing the history of a site or geological structure. Long-term predictions are even more uncertain. Releases may occur thousands of years in the future, and they are likely to be diffuse and hard to detect. The potential for (and effects of) human exposure will be further shaped by unpredictable changes in demographics and technology.

These uncertainties do not necessarily mean that the risks are significant, nor that the public should reject efforts to site the repository. Rather, they simply mean that there are certain irreducible uncertainties about future risk. An essential part of any successful management plan is how to operate with large residual uncertainties, and how to maintain full public accountability as information about the risks changes with experience. This is not an impossible task: public policy is made every day under these conditions, and private firms undertake all sorts of activities in the face of uncertainty.

What is clear, however, is that a management plan that promises that very problem has been anticipated, or assumes that science will provide all the answers, is almost certainly doomed to fail. There have been many cases where attempts to understate uncertainly have damaged an agency's credibility and subverted its mission. For this reason, experienced regulatory agencies like EPA now pay careful attention to describing the uncertainties associated with their risk assessments.

Perceptions of Risk

Studies have linked the high public perceptions of the risk from nuclear power plants to certain qualities of that risk, in particular to perceptions that the risks are catastrophic, new, uncertain, and involuntary (i.e., beyond individual control). Radioactive waste poses risks with many of the same technical characteristics: the principal health risks (chiefly cancer and genetic defects) originate in the hazards of ionizing radiation. The risks from radioactive waste also have some of the same social characteristics as risks from nuclear reactors: a long time may pass before the hazards become apparent, dangers may be imposed involuntarily on populations, and there is a perceived possibility of catastrophe. The last perception, in particular, is qualitatively incorrect for HLW, since radioactive waste materials have far lower energy levels in comparison to those of reactors, thereby limiting the risk associated with HLW to much lower levels in virtually all accident scenarios.

Given the complexity of the potential risks from HLW, most people will transfer the judgment of the safety of geologic disposal to the experts. The key question is which experts they will listen to. The answer depends on who seems more trustworthy: citizens may have little experience with radioactive waste, but they have considerable experience in evaluating people.

The perception of integrity and competence in risk managers depends not only on their personal attributes but also on the character of the policies they implement and the institutions they represent. The current decision process is structured in a way that does not promote trust in those who are implementing the waste management program. The current situation in Nevada, for example, demonstrates the importance of local input in the acceptance of risk. The political leadership of Nevada in fighting the proposed repository and portraying their State as a victim, reinforcing the perception on the part of the broader public that the program is beyond local control.

The Department of Energy should recognize that communications about the program will be ineffective so long as Nevadans believe they have no voice in the process. To the extent that DOE can share power, however, the increased perception of local control is likely to improve acceptance of a repository. The funding of a technical review group whose members are selected by the State government would be one positive step in this direction. In order to encourage rigorous technical analysis, it should be required that the findings of this review group include a statement of the technical evidence and reasoning behind the conclusions, as is done now by the State of New Mexico's Environmental Evaluation Group for the Waste Isolation Pilot Plant.

Given the highly polarized reactions to radioactive waste disposal, it is reasonable to anticipate criticisms and challenges to the technical competence and integrity of the program and its participants. Critics of the program point to the perceived incentives to find the proposed site and technology suitable, the motivation to meet schedules and budgets, and the resulting incentive to disregard or play down troubling findings. Claims to predict accurately events like earthquakes and climatic change are guaranteed to be challenged. These concerns have been addressed through a regulatory review process that is carefully designed to reveal errors, optimistic assumptions, and omissions; but the perceived credibility of that process can be bolstered if state and local groups and individuals have an opportunity to participate, not only in the formal review process but also through informal working relationships with project staff.

Those involved in HLW management must also avoid the trap of promising to reduce uncertainties to levels that are unattainable. Uncertainties are certain to persist. Whether the uncertainties in geologic disposal are too great to allow proceeding can only be judged in comparison to the projected risks and uncertainties for the alternatives, such as delayed implementation of disposal or surface storage of spent fuel. As a rule, the values determined from models should only be used for comparative purposes. Confidence in the disposal techniques must come from a combination of remoteness, engineering design, mathematical modeling, performance assessment, natural analogues, and the possibility of remedial action in the event of unforeseen events. There may be public desire or political pressure on implementing agencies to provide absolute guarantees, but a more realistic—and attainable—goal is to assure that the likelihood of unforeseen events is minimal, and that the consequences of such events are of limited magnitude.

Technical program managers may ask whether it is better for the public to know too much or not enough. When unforeseen events occur, for example, the public can raise questions about the validity of the technical approach, as well as the competence of the risk analysis that was used to justify it. Conversely, when foreseen events occur, they lead to questions about why they were not prevented. The technical credibility of the project team suffers in either case, but it probably suffers more when the organization has understated the risk or uncertainly.

Moral And Value Issues

Overview

The foregoing discussion suggests that, in the area of radioactive waste, ethical issues are as important as management and technical decisions. Interested parties approach the issues with different views about the right way to proceed, often due to differences in moral and value perspectives. As a result, an exploration of ethical issues can illuminate the fundamental policy debates in this field by showing the technical issues in their political and social context. Such an exploration also provides scientists with an opportunity to explore their own ethical responsibilities as they provide society with technical advice on controversial subjects. During its 1988 study session the Board examined recent work on ethical questions in radioactive waste management conducted by scholars from a variety of disciplines.

These ethical concerns fall into two principal areas; (1) questions concerning the professional responsibility of scientists and engineers; and (2) questions concerning the appropriate uses of science in the decision-making process. Science and engineering are part of broader human activities, and as science enters the public arena, decisions can no longer be purely scientific; good science is not enough. Science has also become an important source of information and analysis for the public policy process, and scientists find themselves being called to account for, and to justify the results of, those decisions. Is this responsible, good, or desirable? How can the process be improved and the parties satisfied? Scientists have been sheltered from such questions in the past, but the increasing scale, sophistication, and pervasiveness of technical information require a corresponding increase in the sophistication with which these value judgments are made.

Three Issues of Equity

To see how questions of equity apply to radioactive waste management, consider first a study by Roger E. Kasperson and Samuel Ratick.[3] This project identified three sets of equity concerns, each of which raises questions of differential impact, public values, and moral accountability:

Labor: Who does the work and who pays for it? Congress has determined that DOE will be responsible for the work and that the beneficiaries of nuclear power will pay for it through a surcharge on their electric rates.

Legacy: What do we owe to future generations? Moral intuition tells us that our descendants deserve a world that we have tried to make better.[4] Posterity matters to us, independent of economic trade-offs; policy should therefore take that interest into account. The EPA regulation requiring evidence that radioactive waste releases will be limited for 10,000 years and more is an illustration of such a concern for the distant future.

Locus: Who benefits, and who is exposed to risk? A repository is the final resting place for the waste from nuclear power plants that provide benefits spread over the whole nation for a short time; but it also concentrates risks and burdens along transportation routes and, for a much longer time, at the disposal site. A radioactive waste repository poses additional complications: it will be the first facility of its kind; the risks it poses are uncertain and, to the extent they exist at all, are likely to emerge over very long time spans; public fears are unusually high; and the history of federal action has raised concerns about whether the interests of local populations will be treated equitably.

These ethical questions, when applied to radioactive waste management, demonstrate that once science enters the policymaking arena, good science is no longer enough, because technical decisions are no longer simply scientific. When the questions are no longer scientific, scientists alone cannot be expected to answer them. Sheldon Reaven suggests that the Nuclear Waste Policy Act creates a "scientific trap," in which citizens are encouraged to expect certainty from flawless science, and in which scientists and engineers are encouraged to believe or pretend that they can supply it.[5]

Sheila Jasanoff makes the same point: the political need for accountability in the United States pressures regulators to seek a "scientifically correct" answer, even when there is none.[6] The attempt is doomed to scientific and political failure. It is therefore critical to recognize the boundaries of scientific understanding as it can be applied to a societal problem.

Five Issues of Policy

These ethical considerations have been applied to the current HLW situation by an interdisciplinary team led by E. William Colglazier.[7] For each of five key policy issues, the study discusses the "fairness" and appropriateness of the procedures for making decisions, the distribution of costs and benefits, and the type of evidence that is considered sufficient and admissible. The study placed special emphasis on the role of scientific evidence because of the large scientific uncertainties and the continuing controversy, even among experts, on what is known and not known. The study's observations include the following:

The need for the repository: The core policy dispute concerns the choice between permanent disposal in a geologic repository and long-term monitored storage in an engineered facility (including at-reactor storage) at or near the surface. The controversy has been over the distribution of costs and benefits to current and future generations and to various stakeholder groups:

Pro-nuclear groups feel that the federal government promoted nuclear power and therefore has a special responsibility (spelled out in contractual obligations) to accept spent fuel in a timely manner for permanent disposal.

Many environmental groups, on the other hand, view radioactive waste as a special threat to people and the environment; they also favor permanent disposal in order to fulfill this generation's responsibility, and view interim storage as an unfair "legacy" to future generations.

Some proponents of interim storage, however, argue that this generation should not make decisions that would be costly to correct in the future; new technological developments may occur over the next century that could change our view of how to handle nuclear waste.

In short, all stakeholder groups agree that this generation should fulfill its responsibility to future generations, but they disagree on how to turn this value principle into policy.

Siting: In making politically difficult siting decisions, political leaders have two basic options: make the choice internally and impose it on a weak constituency; or set up and follow a selection process perceived as objective, scientifically credible, and procedurally fair. When NWPA was passed in 1982 the latter course appeared necessary for both technical and political reasons. However, critics soon claimed that DOE was being political rather than objective in its decisions, citing as evidence DOE's choice of first-round sites and its decision to defer the second round of site selection. This perception led to a stalemate: DOE lacked credibility, and credibility is essential to implement the siting approach set forth in the NWPA. This stalemate was broken by Congress with the 1987 NWPA amendments, which designated Yucca Mountain, Nevada (one of DOE's first-round choices), as the initial site to be characterized and, if acceptable, to be licensed.

Intergovernmental sharing of power: Procedural values were also important in NWPA, which established rules for sharing power among the affected governmental entities. However, the states feel that federal agencies, and especially DOE, have generally chosen to try to meet milestones rather than slow down the process to live up to the spirit of "consultation and cooperation." DOE, for its part, feels that it has a mandate to move forward expeditiously; it has tried to accommodate the states, which (in DOE's view) seek delays to throw obstacles in the way of efficient implementation. Nevada, in particular, interprets the 1987 NWPA amendments as unfair on procedural (as well as distributional and evidential) grounds.

Safety. The fundamental safety issue is the determination of a fair evidential process and standard of proof for showing that the repository is acceptably safe for the thousands of years over which the waste will remain dangerously radioactive. The United States has adopted a set of licensing criteria (e.g., groundwater flow time, package lifetime, waste release limits, and so on) that require considerable certainty. As is often the case with frontier science, however, knowing more may actually increase rather than decrease the uncertainties, at least in the near term. The evidential uncertainties in assessing repository safety may point to a more flexible and evolutionary approach (see below); but this conflicts with the concerns to keep to a fixed schedule, so as to limit costs, discharge obligations to future generations, and meet contractual commitments to utilities holding spent fuel.

Impacts. The debate over the distributional impacts of the repository program include such issues as who should pay for the program, how the impacts can be fairly calculated, and what is fair compensation for negative impacts. NWPA determined that the costs should be paid by the beneficiaries of nuclear-generated electricity through fees, initially, of one mill per kilowatt-hour. An evidential dispute concerns the potential "stigma effect," including lost jobs and lost tax revenues, due to nuclear waste; the social science methodologies for assessing this effect are still controversial. Another issue concerns the use of incentives and compensation: in the 1987 amendments, Congress authorized special payments for the host state, provided it forgoes its right to object. This runs the risk of being perceived by opponents as a bribe, offered in exchange for taking otherwise unacceptable risks. Congress also sought a procedural solution to these distributional impacts through creation of the Office of Special Negotiator, hoping that the negotiator might find an acceptable arrangement with the host state.

Consideration of these policy debates regarding the disposal of radioactive waste leads to three important conclusions:

No interested party has an exclusive claim to be rational or to articulate the public interest;

What is considered fair or unfair is subjective and can change over time;

And with regard to repository safety, the issue is acceptability rather than certainty—acceptability being what is acceptable to society, given the evidential uncertainties, perceptions of risk, and contentious stakeholder debates.

These conclusions highlight the advantage of an empirical approach—one that examines fairness in process, outcomes, and evidence; one that reflects an understanding of the values as well as the interests of the stakeholders. Such an approach may lead to policies that have greater chance of surviving over time because they are more widely perceived as fair.

Modeling And Its Validity

Overview

Models based on geological principles play a central role in the design and licensing of a waste repository. Because this is where science enters into the design and evaluation process, the Board discusses the appropriate use of models at some length, including the following topics: the purposes for which models are used; the relationship among modeling, treatment of uncertainties, and regulation; and supplements to the use of models in the current program.

The role of models in the design and licensing of the repository should properly be understood to be different from the use of models in designing airplanes or licensing nuclear reactors. There are major sources of uncertainty in quantitative geophysical modeling—even geohydrology, the best developed, can provide only approximate answers. Geoscientists will need more time to learn how to do more reliable predictive modeling of near-term events, and some events may prove to be chaotic—that is, impossible to predict in detail.

In particular, there is a critical need for (1) better communication between modelers and geological experts, in order to improve model prediction; and (2) a more open, quality-reinforcing process such as could be obtained through a peer-reviewed research program at universities and elsewhere. This would do more to improve technical and public confidence in models. DOE could support such an effort by allocating R&D funds, possibly through or in cooperation with the National Science Foundation, for model improvements.

In the meantime, however, models can be useful in identifying and evaluating significant contributors to risk and uncertainty. Models are not well suited to describe the risk and uncertainties to lay audiences, however. Natural analogues, if they can be found, are far more useful for this purpose (see below).

Problems of repository performance assessment, according to the scheme shown in Figure 1, belong in Region 2 or at the border between Regions 4 and 2. However, there is a general tendency to assume that we can address them using a Region 3 approach: that is, start with a deterministic model that incorporates all "relevant" contributors to overall behavior, and then attempt to collect enough data to move the problem from Region 2 into Region 3. In reality, however, this approach leads to increasingly complex models and increasingly expensive site evaluations, without a concomitant improvement in either understanding or design. Anthony M. Starfield and P.A. Cundall have suggested that we sometimes demand answers that the model is incapable of providing because of complexity or input demands. The design of the model should be driven by the questions that the model is supposed to answer, rather than by the details of the system that is being modeled. Under the present HLW program, geophysical models are being asked to provide answers to questions that they were not designed to tackle.[9]

Models and Modeling Problems

Figure 1 illustrates a general classification of the types of modeling problems taken from C.S. Holling.[8] In Region 1 there are good data but little understanding; this is where statistics is the appropriate analytic tool. In Region 3 there are both data and understanding; this is where models can be built, validated, and used with conviction. The use of finite-element models in structural design is a good example of Region 3 models. Regions 2 and 4 contain problems that are data-limited in the sense that the relevant data are unavailable or cannot be placed in a rigorous theoretical framework. In Region 2 the understanding of basic mechanisms is good; it is the detailed information that is unobtainable. In Region 4 there is not even a sound understanding of the basic mechanisms and interactions.

Appropriate Uses for Geophysical Models

In the Board's judgment, a scientifically sound objective of geophysical modeling is learning, over time, how to achieve the long-term isolation of radioactive waste. That is a profoundly different objective from predicting the detailed structure and behavior of a site before, or even after, it is probed in detail. Yet, in the face of public concerns about safety, it is the latter use to which models have been put. The Board believes that this is scientifically unsound. This conclusion is based on review of the modeling approach used by DOE and the regulatory agencies in order to implement the NWPA.

In order to support the regulatory and political argument that a site will be safe, it is necessary to make detailed, expensive, and extended extrapolations. These are informed speculations based on existing knowledge. In many instances the guesses are likely to be correct. The geotechnical models used to assure that the foundations of a building or bridge will be secure in the event of earthquakes provide an example of a well-founded predictive use of geophysical modeling. But to predict accurately the response of a complex mass of rock and groundwater as it reacts over thousands of years to the insertion of highly radioactive materials is not possible.

This point is important to the public concerns that have surrounded the U.S. radioactive waste program. Use of complex computer models is necessary to apply well-known geophysical principles in order to estimate or to set bounds on the behavior of a site, so that its likely suitability for a waste repository can be evaluated. But it is impossible to stretch the almost always incomplete understanding of a site into an accurate quantitative projection of whether a repository will be safe if constructed and operated there. Even after a detailed and costly examination of the site itself, only an informed judgment can be reached, and even then there will be uncertainties.

As modelers have become more aware of the processes they are attempting to model, they are also recognizing that the geological environment is more complex than originally thought and that quantitative prediction is correspondingly more difficult and uncertain. Many computer simulation models of geological environments are based on deterministic models that have been used successfully in branches of mechanics such as aerospace engineering, where the basic phenomena are much better defined. Such models are of limited value for the ill-defined, data-limited, long-term situations such as the repository isolation problem. It is illusory to expect accurate quantitative estimates of radionuclide releases from them.

Sources of Uncertainty in Geophysical Models

Performance assessments-estimates of the repository's ability to isolate HLW—are based on current computer simulations and parameters derived from laboratory and field measurements. As a consequence, they will have large uncertainties associated with the predicted performance. These uncertainties could pose serious obstacles in demonstrating compliance with licensing requirements. Discussions at BRWM's 1988 study session identified four principal causes of uncertainty:

1. Structural uncertainty. Do the equations adequately represent the operative physical processes? Do we in fact understand the system will enough to model it mathematically? Modeling will be most successful in solving Region 3 problems (see Figure 1), where we have a great deal of data and a good understanding of how the system works.

2. Parametric uncertainty. Have we chosen the right values for the variables (e.g., permeability) in the equations? Have we in fact chosen the right variables to represent the behavior of the system? Are our measurement techniques valid? Will they produce enough, and good enough, data?

3. Uncertainties in initial and boundary conditions. Have we interpolated adequately from a few spatially isolated point measurements to a broad three-dimensional domain (e.g., groundwater, heat, in situ stress)?

4. Uncertainties in forcing functions. How well can we characterize past and future events that might play a part in the fate of the repository (e.g., climate, tectonics, human intrusion)?

Urgent attention should be given to examining these and other causes of uncertainty, but even with continuing research along the present lines, improvement will come slowly. It may even turn out to be appropriate to delay permanent closure of a waste repository until adequate assurances concerning its long-term behavior can be obtained through geophysical studies. Judgments of whether enough is known to proceed with placement of waste in a repository are needed throughout the life of the project. But to repeat the Board's earlier point: these judgments should be based on a comparison of the available alternatives, rather than just a simplistic debate over whether, given current uncertainties, a repository site is "safe." Even when the detailed behavior of an underground repository is still under study, it may well be safer to put waste there, in a way that permits retrieval if necessary, rather than leaving it at reactors or in storage at, or near, the surface of the earth.

Modeling Limitations—An Example

The inherent difficulties of modeling are illustrated by the case of groundwater flow, which is used as an example precisely because it is the best developed in terms of modeling. Groundwater flow has been extensively modeled for a broad range of engineering problems, and it consequently has a richer base from which to draw than do many other aspects of repository isolation. Groundwater flow is also generally accepted as the primary mechanism by which radionuclides could move from the repository to the biosphere, so it has been emphasized in modeling studies of repository isolation. Several experts, however, have commented on the difficulty of applying classical hydrology models to the problem of radioactive waste isolation.

Groundwater hydrologists are becoming increasingly aware that inadequate and insufficient data limit the reliability of traditional deterministic [distributed-parameter] groundwater models. The data may be inadequate because aquifer heterogeneities occur on a scale smaller than can be defined on the basis of available data, time-dependent variables are monitored too infrequently, and measurement errors exist.[10]

To carry out these [repository flow] calculations, hydrogeologists are applying geostatistical models and stochastic simulation methods originally developed to assess piezometric response in near-surface unconsolidated aquifers over limited spatial distances and short time frames with relatively abundant data * * *. These techniques may not be as valuable when applied to the assessment of radionuclide transport in deep rock formations, over large distances and long time frames, under conditions of sparse data availability * * *. [The authors] have repeatedly drawn attention to the potential problems associated with the geostatistical methods (Bayesian and otherwise) when data networks are sparse and sample sizes small. In our opinion, this is the potential Achilles heel for the application of geostatistics at nuclear repository sites.[11]

With regard to repository isolation modeling, increased study has thus far resulted in the identification of greater complexity. Progress is being made toward including some of this complexity in the models, at least in terms of groundwater studies; but other geotechnical aspects of repository isolation (such as constitutive properties of rock joints, excavation and repository scale deformation behavior, and regional in situ stress) are far less developed. It will take years of additional research to represent them adequately in the models. As a result, the prospects are poor, especially in the short term, for models that can produce reliable quantitative measures of isolation performance.

Appropriate Objectives for Modeling

Repository performance assessments are unlikely to prove beyond doubt that risks are below established limits. Nor do the regulations require it—EPA requires only a "reasonable assurance." The problem is that in a case without clear precedents, it is unclear what is "reasonable." The Board's point is that unsound use of technical information is not a proper substitute for the political reasoning that, in a democratic society, must in the end win consent for taking reasonable steps to advance public health and safety.

In light of the limitations of technical knowledge, the Board concludes that it makes sense to conduct the assessments through an iterative process, in which the assessment provides direction to those characterizing a repository site and developing the repository engineering features. As further information is developed about the candidate site, it is also used in the performance assessment.

Many of the uncertainties associated with a candidate repository site will be technically interesting but irrelevant to overall repository performance. Conversely, the issues that are analytically tractable are not necessarily the most important. A key task for performance modeling is to separate the significant uncertainties and risks from the trivial. Similarly, when there are technical disputes over characteristics and processes that affect calculations of waste transport, sensitivity analysis with alternative models and parameters can indicate where further analysis is required and where enough is known to move on to other concerns.

Using Models To Reduce Uncertainty

Models do have an indispensable role in developing understanding of such problems, provided that the models are developed and used within the proper limitations. In other words, modeling can be used to improve models. The following quotations from those concerned with such problems illustrate this point:

"* * * much time can be saved in the early stages of hypothesis formulation by the exploration of these hypotheses through mathematical models. Similarly, mathematical models can be used to investigate phenomena from the viewpoint of existing theories, by the integration of disparate theories into a single working hypothesis, for example. Such models may quickly reveal inadequacies in the current theory and indicate gaps where new theory is required.[12]

"The updating properties of the Bayesian approach * * * are well suited to the iterative approach we espouse for the modeling/data gathering sequence at a site. We feel that the first modeling efforts should precede or accompany initial site investigations."[13]

A good example of this general approach is the "regionalized sensitivity analysis" approach, by which G. M. Hornberger and his collaborators have been able to identify the "critical uncertainties" in applying a particular model to several data-sparse ecological problems, and thereby define programs of investigations to reduce those uncertainties.[14]

In summary, models should be qualitatively sensible, robust to sensitivity analysis, and independent of minor effects or processes, and they should include acceptable levels of uncertainty. However, models cannot prove that the repository is safe, nor can they resolve public concerns about the repository.

Supplements to Modeling

Natural Analogues: Because models cannot be conclusive with regard to the safety of a repository site, it is important to think carefully about natural analogues. These are natural "test cases," geological settings in which naturally occurring radioactive materials have been subjected to environmental forces for millions of years. These natural experiments demonstrate the action of transport processes that are similar to those that will govern the release of man-made radionuclides from a repository in a similar setting.

The natural analogue approach depends, of course, on whether the natural case is in fact an analogue for a repository situation. Where there is scientific agreement that the analogy applies, however, the approach is powerful because it allows us to predict processes with confidence over many millennia. And natural analogues can serve two additional roles: (1) they can provide a check on performance assessment methodology; and (2) they may be more meaningful than sophisticated numerical predictions to the lay and (2) they may be more meaningful than sophisticated numerical predictions to the lay public. The alternative management strategy described in the following section would make substantial use of natural analogues, such as undisturbed natural deposits of radioactive elements and groundwater systems, in order to illuminate the behavior of the geologic environment.

Professional Judgment: A second approach is to use the professional judgment of technical experts as an input to modeling in areas where there is uncertainty as to parameters, structures, or even future events. Such judgments, which may differ from those of DOE program managers and their staffs, should be incorporated early in the process. A model created by this process can redirect the DOE program substantially.

It is important to bear in mind that all uses of technical information entail judgments of what is important and what is less so. If the technical community is to learn from the successes and failures of the DOE program, it is essential that these technical judgments be documented. Setting out the reasoning of DOE staff and of independent outside experts contributes to learning and builds credibility in the process even when the experts disagree with DOE staff and among themselves.

Implications for Program Management

The Board has concluded that geological models, and indeed scientific knowledge generally, are being inappropriately applied in the U.S. radioactive waste repository program. That misapplication prompts this Board to outline an alternative management strategy. The next section describes an alternative management approach that employs natural analogues and professional judgment in a program design that uses science appropriately in the search for a safe disposal system. Putting such an approach into effect, however, would require major changes in the way Congress, the regulatory agencies, and DOE conduct their business. Such changes will be difficult to achieve, but the Board has reluctantly concluded that nothing else will put to rest the problems that plague the national program today.

Strategic Planning

Overview

There is no scientific reason to think that an acceptable HLW repository cannot be built and licensed. For historic and institutional reasons, however, DOE managers often feel compelled to "get it right the first time." This management strategy runs the risk of encountering "show-stopping" problems that may delay licensing and will certainly cause further deterioration of public and scientific trust.

The alternative would be a more flexible, experimental strategy that embodies the following principles:

Respond with conservative design changes as site attributes are discovered;

Use modeling to identify areas where more information is needed; and

Allow for remediation if things do not turn out as planned.

Implicit in this approach is the need to revise both technical design and regulatory criteria as more information is discovered. This is difficult to achieve in a governmental structure that disperses authority among legislative and executive agencies and separates regulation from implementation. When presented with intense controversy, such an institutional arrangement breeds distrust among governmental units and the public. In that setting, partial remedies further entangle the procedural morass.

More practically, however, DOE can enhance the credibility of the program and reduce the likelihood of late-stage surprises by (1) encouraging effective communication within its complex management structure; and (2) providing incentives for field personnel to identify and solve problems. DOE and the USNRC can also enhance credibility by encouraging periodic external reviews of the repository design, construction, and licensing requirements and associated processes.

Policy Context

The present U.S. approach to HLW disposal is increasingly vulnerable to being derailed by minor surprises. This vulnerability does not arise from a lack of talent or effort among the federal agencies and private contractors working on the program. Nor does the design or construction of the repository represent an unusually difficult technical undertaking. Instead, the program is at risk because it is following the wrong approach to implementation. The current predetermined process, in which every step is mandated in detail as in the more than 6,000 page "Site Characterization Plan,"[15] is inappropriate.

The current policy calls for a sequential process in which EPA and the USNRC first establish the criteria for safe disposal, and then DOE describes in detail what steps will be taken to move through site characterization, licensing, and operation of the facility. The result of this approach is that any late change, by any of the participating agencies, is taken as an admission of error.

And late changes are bound to happen. One worker was killed and five injured in an HLW repository under construction in West Germany when a support ring failed unexpectedly. At the Waste Isolation Pilot Plant (WIPP) in New Mexico, the discovery of pockets of pressurized brine in formations below the repository level led to public outcries and a continual National Research Council review of the suitability of the site.

The United States seems to be the only country that has taken the approach of writing detailed regulations before all of the data are in. Almost all other countries have established limitations on the allowable levels of radiation dose to individuals or populations resulting from repository establishment—but have taken a "wait and see" approach on design, while collecting data that may be of use in setting design. The United States, on the other hand, seems to have felt that detailed regulations can be, in fact must be, written without regard to any particular geological setting or other circumstance. As a direct consequence, the U.S. HLW program is bound by requirements that may be impossible to meet, even though overall dose limits can be achieved.

Alternative Management Strategies

The preceding sections have shown that there are a number of unresolved issues in the U.S. radioative waste disposal program, as well as (and in part because of) high levels of uncertainty and public unease about the performance of the repository. The Board's consideration of these subjects indicates that the proper response to distrust is greater openness in the process, and that the proper response to uncertainty is greater knowledge and flexibility, as well as redundancy of barriers to nuclide transport. The U.S. program will continue to face controversy until it adopts a management strategy based on these principles.

The current approach to the design, construction, and licensing of the Nevada site is derived from the philosophy and procedures used for licensing nuclear power plants. The characteristics of the repository and its geological setting are carefully determined and specified as a basis for a complex set of calculations that describes the behavior of the system. This model is used to generate predictions of the migration of radioactive elements into the biosphere and analyzes the consequences of various events ("scenarios") that might affect the site over the next 10,000 years, in order to demonstrate that the repository site meets regulatory requirements (i.e., is "safe"). Based on the model and geologic studies of the site, the construction of the repository is specified in detail and then carried out under an aggressive quality assurance program, which is designed to withstand regulatory review and legal challenge. Within these requirements it is the geological setting that ensures isolation, not the engineered characteristics of the system; closure aims for complete entombment and discourages subsequent remediation. For all the reasons discussed above, a management process based on the regulation of nuclear power stations is inappropriate to the development of a waste repository.

A well-documented alternative to this approach is being followed, to various degrees, by countries such as Canada and Sweden. The exploration and construction of a geological test facility and a low-level waste repository, respectively, follow a flexible path, allowing each step in the characterization and design to draw on the information and understanding developed during the prior steps, and from prior experience with similar underground construction projects. During and subsequent to the closing of the respitory, the emphasis will be on monitoring and on the ability to repair, in order to minimize the possibility that unplanned or unexpected events will compromise the integrity of the disposal system. Engineered modifications can be incorporated (e.g., in the waste containers or in the material used to backfill the repository) if the computer models suggest unacceptable or irreducible uncertainties in the performance of the unmodified containment system.

The Canadian experience at their Underground Research Laboratory provides a good example. All of the major rock structures and groundwater conditions were defined from surface and borehole observations before shaft construction began. Detailed geological structure can never be totally determined from surface information, however, and the final details of the facility design were modified to take account of information gathered during shaft construction.

What are the risks and benefits of the two approaches? The U.S. approach facilitates rigorous oversight and technical auditing. Its goals and standards are clear, and, if carried out according to specifications, this approach is robust in the face of administrative or legal challenge. It is designed to create a sense of confidence in the planning and operation of the repository, and it facilitates precise answers to specific technical questions.

However, such an approach is not consistent with normal geologic or mining practice. It assumes that the properties of the geologic medium can be determined and specified in advance to a degree analogous to that required for man-made components, such as reinforcing rods, structural concrete, or pipes. In reality, geologic exploration and mine construction never proceed in this way. Most underground construction projects are more qualitative, using a "design (and improve the design) as you go" principle. New sections of drill core often reveal surprises that must be incorporated into the geologists' concept of the site, integrated with past experience, and used to modify the exploration plan or mine design. In a project where adherence to predetermined specifications is paramount, the inherent variability of the geologic environment will result in endless changes in the specifications, with resultant delays, frustration for field personnel, high overhead costs, and loss of public confidence in both the suitability of the site and the competence of the professionals working on the project.

The second approach has more in common with research than with conventional engineering practice. This approach continually integrates new data into the expert judgments of geologists and engineers. It makes heavy use of natural analogues, such as undisturbed natural deposits of radioactive elements and groundwater systems, in order to illuminate the behavior of the geologic environment. It can immediately take advantage of favorable surprises and compensate for unfavorable ones. That this approach works well is evidenced by the enormous number of underground construction projects in diverse geologic settings that have been completed successfully around the world. These projects were not designed to contain radioactive waste for thousands of years, but many of them faced technical problems of comparable magnitude, such as crossing active faults, sealing out massive groundwater flows, or stabilizing highly fractured and structurally weak rock masses.

The second approach, with its reliance on continuous adaptation, would be much more difficult to document, audit, and defend before a licensing authority or court of law than is the more prescriptive approach. Some aspects of quality assurance can work well, such as document and sample control, the use of standard procedures and tools, and personnel qualifications. Other quality assurance techniques are likely to be contentious and may be impossible to implement in the same way they are implemented in nuclear power plants, including design control, instructions, procedures, drawings, inspections, and control of nonconforming items. An alternative is to use an aggressive and independent peer review system to appraise the decisions made and the competence of the technical personnel and managers responsible.

The legal system is able to accept expert opinion as a basis for action or assessments of action, but one cannot predict whether a repository could ever be licensed in the face of the batteries of opposing "experts" who would inevitably be called on to assess a flexibly designed and constructed repository for HEW disposal. The debate will hinge in part on a clear understanding of the alternatives against which a proposed "solution" will be judged. By contrast, the EPA standards and USNRC regulations define requirements that, if met, form the basis for the presumption that the facility is "safe."

Given the unhappy history of radioactive waste disposal in the United States, however, one very real and likely alternative is that nothing at all will be done. In judging disposal options, therefore, one should also adopt inaction or some other likely scenario as a default option, so that comparison can be made and progress consistently assessed over time. The combination of a conservative engineering approach and designed-in maximum flexibility, to allow unanticipated problems to be corrected, should reassure both technical experts and concerned nonexperts. The barrier is not logical but institutional, and the prescriptive approach in the U.S. program is dictated by a governmental structure that separates regulation from implementation.

Within the present program, for example, "quality assurance" has become the bête noire of frustrated field personnel, who are trying to work within a system that is hostile to surprises in a world that is full of them. Because almost any geologic phenomenon has more than one possible cause, flexibility (including the recognition that uncertainty is inevitable and must be accommodated) is more likely to lead to the design and construction of a safe repository system than are rigid, predetermined protocols. In employing and evaluating such an adaptive approach to construction, emphasis focuses on those decisions that have irreversible or noncorrectable consequences on disposal, rather than on the myriad small adjustments that do not affect the basic flexibility and robustness of a repository.

The Elements of a More Flexible System

In a program governed by this alternative approach, change would not be seen as an admission of error; the system would be receptive and responsive to a continuing system of information from site characterization. The main actors would reduce their reliance on detailed preplanning during initial site characterization, making it possible to debug the preliminary design during rather than before characterization.[16] But the necessary conditions of the system are flexibility and resiliency-flexibility to respond rapidly to ongoing findings in the geology, geohydrology, and geochemistry (within broad constraints); and resiliency to continuously adjust the performance assessment to reflect new information, especially where such information indicates possible precursors of substantial increases in risk. These quantities could be developed through the following steps:

Interactive performance assessment: The basic approach outlined here would start with a simplified performance assessment, based on known data and methods of interpretation. Given the inherent uncertainties and technical difficulties of the process, the present system may well expand large efforts on small risks, and vice versa. An iterative approach, on the other hand, could allow characterization efforts to give priority to major uncertainties and risks, while there is still time and money left to do something about them. As in probabilistic risk assessment, analysis focuses on efforts to reduce the important risks and uncertainties. In this case, that means acquiring information on the design features and licensing criteria that are most likely to determine whether the site is suitable or should be abandoned.

Fixing problems vs. anticipating problems: The underlying concept of the present, anticipatory U.S. management strategy is "Get it right the first time." One result is a 6,300-

page site characterization plan for Yucca Mountain. For the reasons described above, however, a process based on getting all of the needed measurements and analysis on the first pass, with acceptably high quality, is not likely to succeed. The geological environment will always produce surprises, like the pockets of pressurized brine at WIPP. No matter what technical approach is initially adopted, the design can be improved by matching it with specific features of the site. Experiments are now being conducted at WIPP with backfill material and other engineered barriers that were not part of the original design. These are being tried as ways to make the disposal system as a whole robust in the face of newly discovered uncertainties in the geology.

Define the problem broadly: As characterization proceeds, especially if it is done without the guidance of iterative performance assessment, DOE may eventually find it difficult or impossible to meet some of the criteria set by the USNRC and/or EPA. This will not mean that Yucca Mountain is unsuitable for a repository—the problem could be with the detailed criteria. This is no reason to abritrarily abandon the release limits—it is the more detailed requirements that may need to be reconsidered, since they ultimately affect the release limits and the imputed dose. However, one should not take EPA's release standards or the USNRC's detailed licensing requirements as immutable constraints. They are roadmarkers to, and surrogates for, dose limits. Although the EPA standards and the USNRC regulations recognize and accept a certain level of uncertainty, the discussion to date of the application of these standards and regulations does not warrant confidence in the acceptance of uncertainty in licensing procedures.

Some process is needed in order to determine whether DOE's inability to meet a particular requirement is due to a disqualifying deficiency in the site or to an unreasonable regulatory demand, one that is unlikely to be met at any site and is unnecessary to protect public health. And to the extent that regulatory criteria can be corrected earlier instead of later in the process, they are more likely to be perceived as technical adjustments rather than as a diminution of public safety. Given the history of U.S. efforts to dispose of radioactive waste, current plans for the program have little chance of progressing without major modification in the 20 years or more that will be required to get a repository into operation.

RECOMMENDATIONS

The Board's conclusions are explicit or implicit throughout this document, as are many of the actions it would recommend to the various players. These recommendations are summarized below.

1. Congress should reconsider the rigid, inflexible schedule embodied in NWPA and the 1987 amendments. It may be appropriate to delay the licensing application, or even the scheduled opening of the repository, until more of the uncertainties can be resolved. The Secretary of Energy's recent announcement of a more realistic schedule, with the repository opening in 2010 rather than 2003, is a welcome step.

2. The Environmental Protection Agency, during its revision of the remanded 40 CFR Part 191, should reconsider the detailed performance standards to be met by the repository, to determine how they affect the level of health risks that will be considered acceptable. In addition, EPA should reexamine the use of quantitative probabilistic release criteria in the standard and examine what will constitute a reasonable level of assurance (i.e., by what combination of methods and strategies can DOE demonstrate that those standards will be met?). All other countries use only a dose requirement. In setting regulatory standards and licensing requirements, the EPA should consider using only dose requirements.

3. The U.S. Nuclear Regulatory Commission, likewise, should reconsider the detailed licensing requirements for the repository. For example:

What level of statistical or modeling evidence is really necessary, obtainable, or even feasible?

To what extent is it necessary to prescribe engineering design, rather than allowing alternatives that accomplish the same goal?

What can be done to accommodate design changes necessitated by surprises during construction?

What new strategies (e.g., engineered features like copper containers) might be allowed or encouraged as events dictate?

4. The Department of Energy, for its part, should continue and also expand its current efforts to become a more responsive player in these regulatory issues. The following activities should be included:

Publicly negotiated prelicensing agreements with the USNRC on how to deal with the high levels of uncertainty arising from numerical predictions of repository performance;

Publicly negotiated prelicensing agreements with the USNRC on improved strategies for performance assessment;

Active negotiations with EPA and the USNRC on the real goals and precise definitions of their standards and requirements;

An extramural grant program, in cooperation with the National Science Foundation, for the development of improved modeling methodology, in combination with training programs and public education efforts;

Expanded use of expert scientists from outside the program to review and critique detailed aspects and to provide additional professional judgment;

Greatly expanded risk communication efforts, aimed at reaching appropriate and achievable goals acceptable to the U.S. public;

Meaningful dialogue with state and local governments, Indian tribes, environmental public interest groups, and other interested organizations.

5. The Department of Energy should make greater use of conservative engineering design instead of using unproven engineering design based on scientific principles.

6. The Department of Energy should participate more actively in international studies and forums, such as those sponsored by the International Atomic Energy Agency, the Nuclear Energy Agency, and the Commission of European Communities, and should subject its plans and procedures to international scientific review, as Sweden, Switzerland, and the United Kingdom have already done.

7. Although geologic disposal has been the national policy for many years, and the Board believes it to be feasible, contingency planning for other sites and options (for example Subseabed Disposal of spent fuel and high-level radioactive waste) should be pursued. The nation, the Congress, the federal government, utilities, and the nuclear industry should recognize the importance of contingency planning in the event that some issue should make it impossible to license a geologic repository.

FOOTNOTES

*Integrated Database for 1988: Spent Fuel and Radioactive Waste Inventories, Projections, and Characteristics: DOE/RW-0006 Revision 4, Sept. 1988.

**Waste Confidence Decision Review. 54 FR 39767 (Sept. 28, 1989).

[1] Report on the Review of Proposed Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High Level and Transuranic Radioactive Wastes (40 CFR 191) by the High-Level Radioactive Waste Disposal Subcommittee of the Science Advisory Board, U.S. Environmental Protection Agency, (January 1984) pp. 10-14.

[2] May 10, 1983 letter from John G. Davis to EPA transmitting USNRC staff comments on the proposed High-Level Waste Standard (40 CFR 191).

[3] Roger E. Kasperson and Samuel Ratick, "Assessing the State/Nation Distributional Equity Issues Associated with the Proposed Yucca Mountain Repository: A Conceptual Approach," a technical report prepared for the Nevada Nuclear Waste Project Office and Mountain West Research, Inc., (June 1988) pp. 1-22.

[4] Each generation must not only preserve the gains of culture and civilization, and maintain intact those just institutions that have been established, but it must also put aside in each period of time a suitable amount of real capital accumulation." J. Rawls, "A Theory of Justice," (Harvard University Press, 1971) p. 284.

[5] Sheldon J. Reaven, "How Sure is Sure Enough," Department of Technology and Society, State University of New York at Stony Brook, draft paper prepared for the project referenced in Colglazier (note 7), (1988).

[6] Sheila Jasanoff, draft chapter "Acceptable Evidence in a Pluralistic Society," in "Acceptable Evidence; Science and Values in Hazard Management," Deborah G. Mayo and Rachelle Hollander, eds. (Oxford University Press, 1990, in press).

[7] This project, supported by the National Science Foundation, included the following researchers: E. William Colglazier, David Dungan, and Mary English of the University of Tennessee; Sheldon Reaven of the State University of New York at Stony Brook; and John Stucker of Carter Goble Associates. Some of the project papers published to date by Colglazier include: "Evidential, Ethical, and Policy Disputes: Admissible Evidence in Radioactive Waste Management," in "Acceptable Evidence: Science and Values in Hazard Management," Deborah G. Mayo and Rachelle Hollander, eds. (Oxford University Press, 1990, in press); "The Relation of Equity Issues to Risk Perceptions and Socioeconomic Impacts of a High Level Waste Repository," "Waste Management '89," proceedings of the Waste Management '89 Conference (University of Arizona, 1989); "The Policy Conflicts in the Siting of Nuclear Waste Repositories," "Annual Review of Energy," Vol. 13 (1988), pp. 317-357; and "Value Issues and Stakeholders' Views in Radioactive Waste Management," "Waste Management '87," proceedings of the Waste Management '87 Conference (University of Arizona, 1987).

[8] Anthony M. Starfield and P. A. Cundall, "Towards a Methodology for Rock Mechanics Modeling," "International Journal of Rock Mechanics and Mining Sciences and Geomechanics Abstracts," special issue, C. Fairhurst, ed., Vol. 25, No. 3 (June 1988) pp. 99-106.

[9] C. S. Holling, ed., "Adaptive Environmental Assessment and Management," (Wiley, Chichester, 1978).

[10] L. F. Konikow, "Predictive Accuracy of a Ground-Water Model: Lessons from a Post Audit," "Ground Water," Vol. 24, No. 2 (March-April 1986) pp. 173-184.

[11] R. A. Freeze, G. de Marsily, et al., "Some Uncertainties About Uncertainty," paper presented at the DOE/AECL symposium on the use of geostatistics in nuclear waste disposal, San Francisco (September 1987).

[12] George M. Hornberger and R. C. Spear, "An Approach to the Preliminary Analysis of Environmental Systems," "Journal of Environmental Management," Vol. 12 (1981), pp. 7-18; J. N. R. Jeffers, "The Challenge of Modern Mathematics to the Ecologist," in "Mathematical Models in Ecology," J.N.R. Jeffers, ed. (Blackwell Scientific, Oxford, 1972).

[13] Freeze, de Marsily, et al., op. cit.

[14] G. M. Hornberger, B. J. Cosby, and J. N. Galloway, "Modeling the Effects of Acid Deposition: Uncertainty and Spatial Variability in Estimations of Long-Term Sulfate Dynamics of a Region," "Water Resources Research," Vol. 22, No. 8 (August 1986) pp. 1293-1302.

[15] Department of Energy, Office of Civilian Radioactive Waste Management, "Site Characterization Plan: Yucca Mountain Site, Nevada Research and

Development Area, Nevada." DOE/RW-0199 (U.S. Department of Energy, Oak Ridge, TN, December 1988).

[16] C. G. Whipple, "Reinventing Radioactive Waste Management: Why 'Getting It Right the First Time' Won't Work," "Waste Management '89," proceedings of the Waste Management '89 Conference (University of Arizona, 1989).

EXHIBIT 3

[Material submitted to the Subcommittee on Nuclear Regulation by the U.S. Nuclear Regulatory Commission, October 1, 1992]

QUESTIONS CONCERNING REGULATORY REQUIREMENTS FOR HLW REPOSITORY

(1) EPA's high-level waste standard explicitly limits reliance on active institutional controls to a period not to exceed 100 years. What is the rationale for this approach? How does this approach compare to the approach taken in other regulatory programs that address risks that extend over a long period of time (e.g., low-level waste, uranium mill tailings, hazardous waste)? Is there a similar assumption contained in NRC's 10 CFR 60?

EPA's rationale for limiting reliance on active institutional controls is skepticism about the abilty (or willingness) of society to maintain active institutional controls for periods of time longer than about a century. EPA distinguishes between "active" institutional controls, which include monitoring or guarding a site, and longer-lived "passive" institutional controls such as monuments, markers, and land-use records. The NRC's HLW repository regulations similarly anticipate that "passive" controls can be effective in providing long-term protection for a repository site, but do not anticipate long-term reliance on "active" controls.

EPA admits that the specific time limit allowed for reliance on "active" controls is judgmental. However, the time limit imposed by EPA has not been especially contentious during development of EPA's HLW standards. Most observers have accepted the idea that long-term use of "active" institutional controls is not a reliable way to achieve safe waste disposal. For example, while the NRC's final decommissioning rule does not contain specific restrictions on the time period involved for delay in completion of decommissioning, the proposed rule indicates this period should be on the order of 100 years because this is considered a reasonable time period for reliance on institutional control (53 FR 24,018, dated June 27, 1988). In discussing delay in completion of decommissioning, as in the case of SAFSTOR or ENTOMB, and after noting appropriate delay will depend on the type of facility and the contaminant isotopes involved, the Commission said that delay "should be no greater than about 100 years as this is considered a reasonable time period for reliance on institutional control" (citing NUREG/CR-2241, dated January 1982).

The 100-year limit for reliance on active institutional controls emerged, in part, as a consensus position from a series of public workshops on low-level radioactive waste disposal held by NRC in the 1970s. Those workshops resulted in an NRC requirement (10 CFR Part 61.59(b)) that institutional controls may not be relied upon for more than 100 years following transfer of control of a low-level waste disposal site to the owner. In response to comments that the period of institutional control should be raised from 100 to 300 years, the Commission said "it is not a question of how long the government can survive [that determines the institutional control period], but how long should they be expected to provide custodial care." The Commission went on to note that "a clear consensus was developed which supported the 100 year limit. The Commission has not seen any compelling reason to change its view on the 100 year limit." (Supplementary Information for Part 61 Final Rule, 47 *FR* 57,446 dated December 27, 1982).

EPA appears to have consistently used a 100 year limit on active institutional controls in all standard-setting for radioactive waste disposal. EPA's approach for non-radioactive wastes, however, has differed somewhat with respect to reliance on long-term institutional controls to protect members of the public and the environment. In the hazardous waste program, for example, EPA generally requires the operator of a hazardous waste disposal facility to control and maintain the facility for 30 years following closure (i.e., the post-closure care period). At the conclusion of this period, EPA's standards allow some reliance on continuing institutional controls through permanent deed restrictions. EPA's current guidelines for land disposal of solid wastes (as compared to hazardous wastes) in 40 CFR Part 241 do not address institutional controls. EPA has not addressed the potential for inadvertent human intrusion into hazardous or solid waste after closure. However, control over the disposal facility may be reimposed at a later date under the Comprehensive Environmenal Response, Compensation, and Liability Act if the facility causes or threatens a release of hazardous constituents to the environment.

The NRC's repository regulations in 10 CFR Part 60 do not contain an explicit limit on the duration of active institutional control. However, the provision (in Section 60.52) for termination of a repository license indicates that long-term reliance on active institutional controls is not anticipated.

EXHIBIT 4

NUCLEAR REGULATORY COMMISSION,
Washington, DC, October 2, 1992.

Hon. BOB GRAHAM,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your telephone call to me this afternoon requesting the Nuclear Regulatory Commission's views on proposed provisions to be included in H.R. 776, National Energy Strategy legislation, relating to the Yucca Mountain high-level waste repository. While we have not had time to fully evaluate the implications of the legislation, we are pleased to provide you with our initial thoughts.

NRC is examining the legislation to determine the role of the National Academy of Sciences in relation to NRC's important licensing function as an independent regulatory commission. Among other things, we are examining whether the Academy's recommendations under (a)(2)(B) and/or (b)(2)(B) extend only to the role of the Secretary's post-closure oversight and engineered barriers in dealing with releases resulting from human intrusions into the repository, or also extend to the role of oversight and barriers in dealing with other potential causes of releases, including geologic and hydrologic processes.

Under existing legislation NRC would be required to publish requirements and criteria not inconsistent with any comparable standards promulgated by EPA. As we currently understand this legislation, NRC's actions would be required ultimately to be consistent with Academy recommendations of the same scope and with Academy recommendations for dealing with human intrusions into the repository. We do no read the legislation as otherwise affecting NRC's regulatory and licensing functions regarding the Yucca Mountain repository.

Sincerely,

KENNETH C. ROGERS,
Acting Chairman.

EXHIBIT 5

STATE OF WYOMING,
Cheyenne, WY, August 21, 1992.

FREMONT COUNTY COMMISSIONERS,
Office of the County Commissioners, Lander, WY.

DEAR COMMISSIONERS: The process which you requested commence relating to the siting of a Monitored Retrievable Storage (MRS) facility for storing nuclear waste in Fremont County has reached the conclusion of Phase I and you have not requested that I agree to a continuation of the process into Phase IIa. I conclude not to do so. This is not a decision I make lightly or without considerable thought for I know this issue of continuing the process has many supporters as well as detractors and there are many people whose opinions I respect on both sides, including your own. I arrive at this decision, which the federal government in its infinite wisdom has placed in the lap of the Governor, because I believe it to be in the best long term interests of Wyoming, its citizens and future generations. Before outlining the reasons for my decision, let me make some observations:

(1) While the Phase I process has been subjected to criticism from some quarters, I believe it has worked well. The participants, including the Citizens Advisory Group and the County Commissioners, have worked conscientiously to generate public debate and discussion and they have done so. While I do not accept the recommendation, I commend you and the Citizens Advisory Group for your efforts. Many on both sides of this issue have called or written my office eloquently expressing their views.

(2) This is not an issue that simply pits antis or "environmentalists" vs. "proponents". It cuts across all segments of Wyoming citizens and has caused them to assess personal values, emotions, economic realities, their personal image of Wyoming, the image they want others to have of Wyoming and ultimately their vision for this great State.

(3) This is not a political issue in the sense of a Republican-Democrat, Liberal-Conservative ideological controversy. I have received comments pro and con from citizens of both political persuasions and philosophies and it cannot be divided by politics or philosophy.

(4) Phase IIa, while billed as simply additional education and study, is clearly programmed to be more than that. The process provides that an applicant to receive the grant shall conduct the following initial activities during the grant period:

"1. Conduct of public information activities;

2. Participation in MRS meetings; and,

3. For a state or local unit of government . . . execution of a letter in which the governor of the state . . . in which an area has been identified to be considered for a potential MRS site, notifies the Office that:

(a) The state . . . is requesting to enter into credible formal discussion with the Negotiator which may lead to an agreement for presentation to the Congress;

(b) One or more areas to be considered for a potential MRS site has been identified;

(c) The area proposed is within the jurisdiction of the applicant, and the applicant has identified the means by which they have control of the area; and,

(d) Appropriate intergovernmental notification and coordination has been conducted."

Phase IIa clearly anticipates a greater involvement than simply further public education, including the obligation to identify sites and secure the Governor's agreement to negotiate.

(5) The MRS siting and operation is a project that is essentially federal government sponsored, will be controlled and overseen by the federal government.

(6) While a persuasive argument for Phase II is that a vote be allowed in Fremont County, the issue is not local but statewide and, if the MRS were proposed to be sited in Wyoming, would ultimately become a regional issue. While nothing in my decision precludes the Commissioners from conducting a vote in Fremont County, should they choose to do so, such a vote would not and could not address the statewide nature of the issue.

I am vetoing the federally adopted and programmed Phase II because by training as a lawyer and my experience as governor clearly supports the conclusion that under the current circumstances, this rural sparsely populated state cannot expect to control the terms under which such a long term decision would be implemented. I do not object to further education or debate but the discussion I would seek is only tangentially related to Phase II. The process is federally engineered to avoid several basic questions that I am not convinced can be answered to the satisfaction of the people of Wyoming. They are:

(a) Does the national policy which was initially designed to place the MRS in the East near the point of origination of the waste and now appears to target the West continue to make sense? Does a policy, which the Nuclear Regulatory Commission states is not required for public health and safety, i.e. transporting a portion of the waste from the approximately 70 points of storage half way across the country to a "temporary" site only to be moved again if and when a permanent site is established, represent appropriate national policy? If the storage of the waste is as safe and as benign as represented, does it not make better sense to leave it where it is or, if it is to be moved temporarily, to place it at or near the location of the permanent repository?

(b) After five years and even a billion dollars of investment, and more billions to be spent, the permanent repository at Yucca Mountain, Nevada, is neither sited nor assured of its permanent status. Can we be willing to trust the federal government's assurances that the MRS site will be temporary? Can we be paid enough or place enough in trust to accept a permanent repository that was intended to be temporary? It is my belief we cannot.

(c) Can we take comfort from the DOE record of nuclear facilities in the West? I think not. Can we be assured of continuing control or oversight of such a facility? Last month the House of Representatives voted to exempt Yucca Mountain from state environmental permitting because DOE contended Nevada was not cooperative. Unless the Supremacy clause of the U.S. Constitution is changed, Congress, for fiscal reasons or preemptive reasons, can mandate new terms and new controls as it deems expedient or simply not accept the terms initially negotiated.

(d) Can we trust the federal government or the assurance of negotiation to protect our citizens' interest? To do so would disregard the geographical voting power in Congress and 100 years of history and experience. We have had such assurances on issues like grazing fees, federal mineral royalty administrative costs, operations of dams and waterways, and wolves, and yet we are continually called upon to fight to retain those assurances because of a change in circumstances (fiscal or otherwise) or a change in the attitudes in Congress. Let us not deceive ourselves—we are being invited through continuing study to dance with a 900-pound gorilla. Are we willing to ignore the experience history would provide us for the siren song of promised economic benefits and a policy that is clearly a moving target. As Governor, I am not.

(e) Who can assure us what risks we would accept that new businesses may choose not to locate in Wyoming or what the alteration of our image as a state, our environment or our tourism industry may be from our willingness to embrace this nuclear waste? The technical quantification of the risk to citizens and environment has not been done by an independent body. It has been done by the federal agency promoting the facility and the economic report provided was basically prepared by the group hired to design the facility. Is this the federal fox in charge of the henhouse?

I am absolutely unpersuaded that Wyoming can rely on the assurances we receive from the federal government. Even granting the personal integrity and sincerity of the individuals currently speaking for the federal government, there can be no guarantees or even assurances that the federal government's attitudes or policies will be the same one, five, ten or 50 years from now. We have seen the roller coaster ride of federal involvement and attitudes. During the Arab Oil Embargo, this state fought against federal proposals for an energy mobilization board. That board would have had authority to override state and local laws to facilitate energy development. Even the most ardent supporters of developing Wyoming's energy resources were appalled by the federal proposals.

(f) The MRS is a federal facility. It will be run by the federal government. The Government Accounting Office Report of September 1991 concluded that an MRS would likely only reduce the amount of on-site storage capacity utilities would have to add not eliminate that need. The Nuclear Regulatory Commission concluded, as related in a letter to me dated January 16, 1992, that spent fuel generated at nuclear plants can be stored safely and without significant environmental impacts in reactor storage pools or independent spent fuel storage installations for at least 30 years beyond the licensed life for operation and that a permanent repository will likely be available thereafter. The House Interior and Insular Affairs Committee views on the FY 1993 DOE budget stated, "Conversely, the Subcommittee believes that the Monitored Retrievable Storage Program, no longer represents a useful or necessary interim step in the high level waste program." While this position on the budget request was not adopted by the House Budget Committee, all of these views reflect, at best, the tenuous nature of the MRS strategy and the difficulty of relying upon the current policy of the federal government.

Finally, since there will be a great deal of speculation about my motivation and my true intent in taking this action, let me reduce the opportunity for speculation. I am vetoing Phase II. I do so with no great sense of satisfaction because there are a substantial number of thoughtful, well intentioned people in Fremont County and throughout Wyoming who are firmly convinced that the MRS is valuable to, if not the savior of, our future. I do not fault their position. I simply do not endorse the wisdom of the policy adopted by the federal government nor do I trust the federal government or the nuclear industry to assure our interests as a state are protected. I have great respect for this great State and faith in its future and I believe it is better served with a greater independence from the federal government rather than more dependence. While further discussion and study may be illuminating and I am extremely reluctant to discourage public discussion, I am now satisfied the federal government cannot provide assurances or guarantees to the issues raised herein and originally raised in my no objection letter or that even given those assurances the voluntary acceptance of nuclear waste is in the interests of Wyoming. Given these circumstances and my own reservations listed above, it makes no sense to me as Governor to put this State or its citizens through the agonizing and divisive study and decision making process of further evaluating the risks and benefits of an MRS facility. Many have urged me to do just that but the ultimate decision would be no easier and, I am convinced, no different.

For better or for worse, the process Congress has now adopted places the decision making authority to halt this process in the Governor. In what I believe to be the interests of Wyoming I choose to make the decision at this time.

With best regards, I am

Very truly yours,

MIKE SULLIVAN,

Governor.

Mr. JOHNSTON. I yield 4 minutes to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 4 minutes.

Mr. FORD. Mr. President, this is a milestone day for the U.S. Senate. More than 2 years after the start of the gulf crisis, we have finally responded to the primary cause of the gulf war—oil. Mr. President, we put the lives of hundreds of thousands of brave American soldiers on the line during the war with Iraq. The passage of the energy bill by the U.S. Congress should remind everyone that their valor and sacrifice is not forgotten.

Mr. President, this bill has many important features in the area of energy efficiency and conservation as well as energy production. The bill is far reaching and complex. To save time, I will limit my remarks to just a few items.

The country has recoverable coal reserves for more than two centuries. The bill rightfully emphasizes the role coal can and should play in this Nation's energy production. With such a large domestic resource and the emphasis on clean coal technologies, there is no reason why coal should not play an even greater role in our goal towards energy self-sufficiency.

The Nation cannot forget the retired coal mine workers who worked long and hard so that coal can provide the Nation's energy needs. The bill assures that their health benefits will remain fully funded. I am glad that I was able to contribute to these difficult negotiations.

We need to do all we can to conserve energy and improve energy efficiency for residential and commercial buildings as well as appliances. We need to develop alternative fuels and their use in fleets. Electric vehicles hold tremendous promise. Further research in electric vehicle development and new sources of energy is necessary. The bill covers these and many other areas.

Mr. President, the bill recognizes that we need to work hard to make sure that our domestic uranium enrichment industry does not become another victim of foreign domination. This industry must not go the same way as consumer electronics and other industries that are now totally dominated by other countries.

This Nation is losing its competitive edge. Half of our trade deficit is due to oil imports. We cannot and should not let this continue any more. For the sake of this Nation's economic security and its future, we must now implement as soon as possible the national energy policy bill.

Mr. President, this is a historic bill. This Nation has never had a comprehensive energy policy. But we are finally here through the hard work and dedication of many Members of the House and the Senate and their staff. I would especially like to thank the chairman of the Senate Energy Committee, Mr. JOHNSTON, for his untiring and single-minded leadership. Without his dedication and hard work, we would not be here today. The cooperation and dedication of the ranking minority leader, Mr. WALLOP, has been equally outstanding and we thank him for his leadership.

To reiterate, there is a piece in this legislation for almost every segment of our economy. Fifty percent of our deficit in the balance of trade is energy. We need to be energy self-sufficient. We are allowing one group to hold up the entire comprehensive package.

Mr. President, for 20 years I have been working personally on clean coal technologies. Our State put up $60 million and built one of the finest labs to test new pilot programs in the country. We were moving in the right direction.

Along came the Reagan administration and did away with President Carter's moral equivalent of war, to return us to energy self-sufficiency.

In that time, Kentucky has, by struggle, three pilot projects, one major one now about to complete a demonstration program at Shawnee in far west Kentucky—fluidized combustion bed. A new pilot project will be started by the end of this month. And with Government help we would be well on our way, instead of struggling.

In this bill we have the uranium enrichment lease, where it will become a quasi-business operation that will be able to be competitive. We will save 1,800 jobs. We will put the United States back in competition with the rest of the world. We will have the AVLIS. We will be doing things that are right. And this bill gives us that opportunity.

So if we say it is not good for my State or it is not good for my State—Mr. President, I believe this bill is good for America.

Sure you struggle for a year or two. You struggle for 3 or 4—there are 6 hard years in this bill, in order to transfer the uranium enrichment to a private corporation. We have 20 years of work on clean coal technologies in this bill. And I do not want my colleagues—and I hope they will not—to turn this piece of legislation down. There is too much work, there is too much hope. The future is ours in this bill as it relates to energy.

We can work out other things. If you have problems, I have always found that sitting down together and trying to compromise, like Henry Clay did in the early days—we can make things work around here. But to stop a comprehensive energy package? We have never had a comprehensive energy policy in this country. We tried several times. This is the closest thing we have ever had.

So, Mr. President, I urge my colleagues to vote for cloture on this particular piece of legislation and give us an energy policy. Let us help the consumer. Let us help our business people. Let us help our entrepreneurs. And let us save jobs in this country, by this particular piece of legislation and increase the job opportunities for the future.

I yield the remainder of my time.

Mr. JOHNSTON. Mr. President, I yield 4 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas is recognized for 4 minutes.

Mr. BENTSEN. Let me join in strongly supporting the vote for cloture on an issue of major importance to our country. What we are talking about is a constructive, effective national energy policy. This conference report has already passed the House by a massive vote, by a vote of some 363 to 60. So the responsibility now lies with us—we have something to accomplish.

The Senate's decisive approval of this piece of legislation in July by a vote of 93 to 3 reflected this Chamber's urgent desire to enact meaningful energy policies this year.

What happened to us in the gulf war further emphasized the danger of depending on the Middle East—a politically unstable area—for the energy supplies of this country. We are talking about a situation where, by the year 2010, we will be 70-percent dependent on foreign oil. That means that we will have to have the equivalent of 36 supertankers a day arriving at our shores to deliver oil to us. We are talking about a serious threat to our economic future and an incredible increase in our deficit in foreign trade.

The stabilization of our domestic energy supply, the encouragement of energy conservation, and the promotion of renewable and alternative sources of energy that are emphasized in this bill are major steps forward for the economic and energy security of this country.

Look at the tax title of this package, which was our responsibility in the Finance Committee. It provides a balanced package of incentives to promote conservation, to encourage the use of renewable energy and alternative fuel supplies, and to foster our domestic production.

The conference agreement increases the exclusion for employer-provided mass transit benefits to $60 per month and caps the exclusion for employer-provided parking subsidies at $155 per month. By tilting employer-sponsored benefits toward the utilization of mass transit, it assists in further conservation. The conference agreement also promotes residential, commercial, and industrial energy conservation by excluding from customers' income the rebates that the utilities offer them for utilizing conservation measures.

The conference agreement bolsters development of environmentally sound renewable energies and alternative fuels. It permanently extends the 10-percent investment tax credit for solar and geothermal energy, and it provides a tax credit for electricity produced from wind or biomass. That is coming from a Senator from Texas, where oil and gas have been a major part of our economy.

The future of our country is at stake as the result of its increasing dependence on foreign oil and foreign energy. We have here in our hands the ability to turn that around.

This conference agreement gives tax incentives for vehicles that run on domestically abundant, clean-burning fuels such as methanol, natural gas, ethanol, and electricity. It also includes provisions designed to expand the use of ethanol and other alcohol fuels for blending with gasoline.

And finally, the conference agreement promotes domestic production of oil and gas by providing minimum tax relief for independent producers. The minimum tax currently undercuts exploration and development of U.S. reserves and accelerates our dependence on foreign oil.

Mr. President, I urge my colleagues to send this much needed legislation forward by invoking cloture on H.R. 776.

I do not think our country can afford a delay in the benefits that accrue to it under this legislation.

I congratulate the distinguished chairman and ranking minority member of the committee for the amount of work that they have done on this piece of legislation—and the staffs for their contribution.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. How much time remains, Mr. President?

The PRESIDING OFFICER. The Senator from Louisiana has 17 minutes and 13 seconds remaining; the Senator from Nevada has 15 minutes and 51 seconds remaining.

Mr. JOHNSTON. Mr. President, I yield 2 minutes to the distinguished Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized for 2 minutes.

Mr. SYMMS. Mr. President, conservation of electricity ought to be the cornerstone of our tax policy and the cornerstone of our energy strategy.

H.R. 776 corrects a flaw in our tax law by making utility conservation rebates tax-free. This is one of many good things in the legislation before us today. The provision in the bill does not go quite as far as my proposal, S. 83, but it represents significant progress on this issue.

There are several other good provisions in this legislation. For example, the nuclear power option benefits in many ways from H.R. 776.

First, nuclear licensing is significantly reformed under the provisions of the bill. A licensing process that takes as long as 10 to 12 years today is expected to usually last no more than 6 or 7 years because of the changes made in this bill. Utilities can expect to spend resources on engineers rather than lawyers and the licensing process will reach a conclusion, rather than lapse into periods of uncertainty.

Second, uranium enrichment will no longer be the Government's responsibility. The uranium enrichment corporation established by this legislation will bring more free-market innovation to the entire industry.

Third, the bill incorporates S. 1641, a proposal by Senator BREAUX that I've supported for years regarding nuclear decommissioning funds. The IRS Code unnecessarily restricts how these funds can be invested. This bill lifts those restrictions so that fund managers can invest in more profitable securities. This provision will help provide more resources for the decommissioning of older nuclear powerplants and it will reduce the need for future rate increases for customers who are served by nuclear plants.

Fourth, significant progress is made in this bill on spent fuel disposal. Revision of the Environmental Protection Agency rules for acceptable radiation exposure is long overdue. Current EPA standards represent unrealistic paranoia about radiation risk. The idea by Senator JOHNSTON to bring the National Academy of Science into this debate is a good one. I am confident that the NAS will come up with technologically feasible standards that will adequately protect the environment and human health.

As I have said many times on the floor of this Senate, we have the technology to safely dispose of spent fuel. This bill adds the political courage to do something about this obstacle—the nuclear option.

Not only do we keep an environmentally sound energy option by helping nuclear power in this bill, but also we will maintain a demand for better, safer, and more efficient nuclear power technology. This will undoubtedly benefit the premiere nuclear power research laboratory in the world—the Idaho National Engineering Laboratory.

The bill does many other good things, but in the interest of time, I will just mention two other things in H.R. 776 that particularly impress me, as follows:

The bill encourages U.S. businesses to use energy more efficiently without imposing excessive commands and controls on industry; and

It promotes the research, development, and exportation of clean fossil fuel, and renewable and energy-efficient technologies made in the U.S.A.

Mr. President, I compliment Senators WALLOP and JOHNSTON on the job they did on the energy side of this bill. And also I think the Finance Committee deserves commendation. However, I have one very sad disappointment that is not in the bill that the chairman is very well aware of. But I would hope in the future this would just be a temporary setback. That, of course, is the bond issue on high-speed rail. I will talk about this issue at length in just a moment.

But I think it is important and significant that in this bill we will now be moving forward with the question of nuclear waste disposal. We will be imposing sound, solid environmental protections for disposal of those products. We will be getting this country moving forward so we can have a nuclear alternative to foreign fossil fuels, I think is most important.

Then on the tax side, I also say that there is a great deal of encouragement, now, for the conservation of electricity. It will encourage people to have many, many innovative approaches to energy conservation.

Nuclear licensing is significantly reformed in the bill. Uranium enrichment will no longer be the Government's responsibility.

The proposal Senator BREAUX and I have supported for years, regarding nuclear decommissioning funds, will be corrected. The IRS code unnecessarily has restricted how these funds could be invested. This bill lifts those restrictions so that those funds managers can invest more profitably in securities.

And, as I said, significant progress has been made on the bill on spent fuel disposal. So we can move forward with Yucca Mountain and with other facilities and complete the cycle we have been working on. The President's Office of Nuclear Waste Negotiator has been continued.

I think the provisions in title VIII have great potential because I believe, once people become enlightened, they are going to recognize that some of the nuclear materials that are called waste have great value for the future for refitting, for reprocessing, and reuse.

I know Senator GRAHAM has spoken on this. I will vote for cloture even though I am extremely disappointed that the high-speed rail amendment we have worked on for several years, which is so important for transportation policy in the United States, was not included in this bill. We now have a policy in the United States that discriminates against private investment into high-speed rail. I think it is a mistake. I think it is unfortunate it was not put in this bill. We discussed it on the Senate floor. We had a thorough airing of it. We debated it, we voted for it, and then it was dropped in the conference.

I do not know what happened in that conference. I am hopeful that in the future—I will not be here—but that Senator GRAHAM and others will continue this fight and Senators from all the States affected in this country. That is, all the States along the Eastern seaboard, through the Midwest, from Chicago, Milwaukee, down to St. Louis, from Seattle, WA, to Vancouver, BC, clear back down to Portland, OR, and then to San Francisco, to Los Angeles, back over to Las Vegas, all these States and cities will benefit from high-speed rail projects.

I hope they all will weigh in on this matter with the Finance Committee next year and see that we correct an inequity in our Tax Code with respect to the sale of tax-free revenue bonds so we can get on with a more efficient means to move the American people.

SYMMS HIGH-SPEED RAIL AMENDMENT

I am very disappointed that I will leave the Senate without seeing this provision become law. I believe removing the volume cap requirement for tax-exempt bonds issued to finance high-speed rail could have had a dramatic impact on our future transportation and energy policy.

I am saddened that the energy conference did not see the importance of high-speed rail to our future national energy strategy. High-speed trains require approximately one-third of the energy consumed by automobiles and one-fourth of that used by airplanes. A trip on high-speed rail would cut hydrocarbon emissions by 90 percent, carbon monoxide by 75 percent, and nitrogen oxides by up to 75 percent compared to travel by automobile.

It is my sincere hope that some of my other colleagues will take up where I left off. This is only a setback for high-speed rail projects. Although this provision was dropped this time, I hope next year on another vehicle it will become law.

My amendment has support from both sides of the aisle. The administration has spoken out in favor of high-speed rail numerous times. Governor Clinton the Democratic Presidential nominee has stated:

> * * * new high speed rail and maglev technologies offer ways to improve competitiveness, create jobs, reduce pollution, combat gridlock, and provide access for disabled citizens and save energy. * * * Only with strong leadership in Washington can we encourage the kinds of innovative public-private partnerships necessary for success in such large infrastructure projects.

Perhaps next year the administration, no matter who occupies the White House, will make this legislation one of their top priorities.

The exemption from the volume cap to finance transportation systems is not a new concept. Currently, airports and seaports are exempted from the State activity bond cap simply because they are too expensive to fit under any State cap. For precisely the same reason, high-speed rail tax-exempt bonds must be exempted from the cap.

I am afraid that those who oppose high-speed rail just want to keep out competition. This time they were successful but I am confident they will not keep high-speed rail from becoming a reality. It is true that high-speed rail offers an alternative to flying relatively short distances, but competition leads to innovation which is vital to our domestic and international economic health. Protection will lead only to stagnation which will ultimately put us at a disadvantage.

I believe public/private partnerships for these major infrastructure projects is the wave of the future. The Federal budget can no longer fully subsidize these projects. Public/private partnerships involve a small amount of Federal participation, but this leadership inspires billions of dollars of private capital to be unleashed to finance the needed high-speed rail infrastructure. This is undoubtedly the most cost-effective method of expanding our transportation system.

High-speed rail will play a major role in our future transportation policy. It is safe and efficient. The United States is the only industrialized country in the world that has not developed a high-speed rail system. Right now, the British are working to connect themselves to the continent with high-speed rail, and to connect that to an expanding European rail system.

We are always talking about the importance of the United States' international competitiveness. Japan has its bullet train and the entire European Community is covered with high-speed rail lines and working on more. Is this yet another development that the United States wants to ignore—so that in 10 years we can say we should have pursued high-speed rail? I think not.

The U.S. transportation infrastructure needs to be greatly expanded during the next century in order to accommodate our population growth. I believe high-speed rail is the key to our future transportation infrastructure. High-speed rail offers a safe, energy efficient, and environmentally sound way to move people.

This legislation is good economic policy, good transportation policy, good energy policy, good environmental policy—and good tax policy, and I hope my colleagues will take up where I left off so that this temporary setback will not stifle the development of this important transportation mode in the United States in the near future.

Also, there are many issues, like high-speed rail, that are not in this bill. There is very little convention resource development in this bill. Future offshore oil drilling is greatly restricted, as is oil exploration on the northern coast of Alaska. Without provisions for development of U.S. oil resources, Congress is deciding that U.S. jobs are not very important when setting national energy policy.

Despite all these concerns, the good stuff in the bill outweighs the bad. Some jobs will be created by developing energy conservation technology and marketing it to the world. Alternative fuels will be used more than ever before. For these other reasons I talked about earlier, I urge my colleagues to vote for cloture.

The PRESIDING OFFICER. Who yields time?

The Senator from Nevada is recognized.

Mr. BRYAN. Mr. President, I yield myself 10 minutes.

I want to restate the case. My colleague and I, in forcing this vote on cloture, did not intend to take down the energy bill. Both of us voted for that bill when it came before this body. But what has occurred thereafter, as my colleague referred to, is a legislative travesty. It is part of a continuous modus operandi that affects Nevada, to which I take great exception.

In 1987, without having had the opportunity of a hearing or of calling witnesses, which is a chance to be heard in the traditional legislative process, a last minute deal—not motivated by science, but by politics, the muscle, if you will—stripped the Nuclear Policy Act of its original mission, which was to search for the best site, to now look only at Yucca Mountain.

Here again, at this last minute, we face a similar proposition. Two fundamental things are occurring here that go far beyond Nevada, yet we are most directly affected. One is a change in the public health policy standard. Every piece of environmental legislation this Congress has enacted, provides for a population-based standard in determining the risk of toxic agents, chemicals, and in this case radionuclei. That has been the universally accepted approach. Notwithstanding all of the phony letters that are waved around here, and all of the assertions in the report language, every one of us on this floor, every Senator, knows you cannot change the explicit language in a statute by a lot of words uttered on the floor. It is meaningless. And that is the effect of what is happening to us—by changing that standard.

That is not just an academic debate, Mr. President. In effect, what it means is that if Yucca Mountain were ever developed, we in Nevada would experience thousands and thousands of additional cancer deaths, and thousands of additional people who would be potentially affected by some kind of genetic damage.

So, Mr. President, when my colleague and I get energized, please, I implore you, think of the implications of this. We are not trying to kill this energy bill. We came to Senator JOHNSTON time and time again and said, please do not do this. Please do not do this to us. Why is it necessary?

The project manager in 1987, Mr. Vieth, said the existing proposed standards, the ones temporarily remanded, could indeed be met by the Department of Energy by a fivefold order of magnitude.

I ask unanimous consent that the testimony of Mr. Vieth offered before the Senate Energy Committee, June 29, 1987, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF DONALD L. VIETH, PROJECT MANAGER, WASTE MANAGEMENT PROJECT OFFICE, NEVADA OPERATIONS OFFICE, DEPARTMENT OF ENERGY

Thank you very much, Mr. Chairman and Members of the Committee. My name is Donald Vieth, and I am director of the office that is managing the investigation of the mountains of the Yucca Mountain site in Nevada. I am pleased to have this opportunity to discuss these activities. I will present a brief history of the site, a description of the site's specific technical issues, a current status of activities, and a summary of our interactions with the representative State and local governments.

Let me turn now for a short history. In 1976, DOE's predecessor, The Energy Research and Development Administration, initiated the National Waste Terminal Storage Program to develop geologic repositories. In April of 1977, ERDA expanded the NWTS program to focus on a wider variety of geologic formations, including those at the Nevada Test Site.

By August of 1978, DOE focused its effort on six potential sites in the southwest corner of the NTS, including Skull Mountain, Calico Hills, Jackass Flats, Little Skull Mountain, Wahmonie Mountain, and Yucca Mountain. Yucca Mountain was judged to have the best overall prospects for being considered a suitable repository site.

For the next three and one-half years, the NNWSI project performed a series of technical activities that resulted in data which provided the basis for the identification of Yucca Mountain as a potentially acceptable site for the first repository under the Nuclear Waste Policy Act of 1982.

Now let me turn to the site specific technical issues and how they are being addressed. The requirements for determining the suitability of a site are outlined in the DOE siting guidelines, 10 CFR Part 960, the NRC regulations, 10 CFR Part 60, and the EPA standard, 40 CFR Part 191.

Data developed in response to these requirements during the initial site investigations have established a fundamental understanding of the site and identified site specific technical issues.

STATEMENT OF DONALD L. VIETH, PROJECT MANAGER, WASTE MANAGEMENT PROJECT OFFICE, NEVADA OPERATIONS OFFICE, DEPARTMENT OF ENERGY, BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, U.S. SENATE, JUNE 29, 1987

The CHAIRMAN. Mr. Vieth, as I asked Mr. Anttonen earlier, with respect to your site, let us say that we suspended activity on the other sites and proceeded to characterize one site at a time. There are advantages to doing that, of course. You save a couple of billion dollars. Secondly, I think it was both the NRC and the—or at least the National Academy of Sciences' said one advantage is you can focus your scientific talent on one site.

Now the disadvantage is that in case the first site, wherever it is, turns out to be unsuitable, then you must go to the next one and there would be a time delay. It has also been criticized in that there might be some pressure because of the time delay to get it done.

Now, can you elucidate a little bit about the degree of confidence you would have that the site would be suitable? Is there any way in the world to tell? Do you think it is more likely that it would be suitable than nonsuitable? Is three sites enough to characterize it, or should we have ten sites? Can you speak to that?

Mr. VIETH. Let me try to put it in proper perspective. We have looked at the site fairly thoroughly since 1977. I think we understand the nature of the forces that are acting on the site. If one takes the information we have now, and tries to project the kinds of things that are liable to be discovered in the next five or six years of site characterization, it is not conceivable to me that we would discover something on a major nature that would cause us to change our mind about it.

I think that we are comfortable in our analysis that the site would be capable of meeting the NRC requirements and EPA requirements. The processes of doing the modeling and the calculations that estimate the radioactive releases from the repository tells us that we may be five orders of magnitude below a very conservative EPA standard.

I think that we are very confident about the potential for that piece of earth being able to isolate the waste if it is placed there.

Now with regard to your question about the philosophy about how you go about picking and choosing sites, I think there are a number of other forces that we have to deal with. This issue goes back to as early as 1978 when the NRC was initially writing its regulations. They argued that in order to satisfy NEPA appropriately, you had to consider at least three sites in at least in two different geologic media.

So that philosophy has held for almost ten years now, and if we are going to deviate from that, then we are going to have to go back and look at some other broader factors like NEPA and so on, which we are still required to fulfill under the Nuclear Waste Policy Act.

The CHAIRMAN. NEPA would not suspend, or would not override what we would do. The question is, would it be prudent to do because, as I say, you save $2 billion, which is not insignificant even in the United States. The question is is it prudent. In your view you would have a high degree of confidence with respect to your site, the Nevada site, that you could provide its ability to isolate the waste?

Mr. VIETH. I have a fairly high level of confidence about the site for which I am responsible. Whether or not it is prudent as national policy, I do not know whether or not I am the person to that question.

The CHAIRMAN. Will you tell me about the Ghost Dance Fault at Yucca Mountain? Is it a limiting fault?

Mr. VIETH. The Ghost Dance Fault is a geologic feature that runs on the eastern side of the specific block that we are looking at for the repository. It is not a limiting fault from the point of view of affecting the amount of radioactive waste to be placed in the site. It is simply a geologic feature. We know where it is. We know most of its characteristics. We do not see it as a problem from a safety or operational point of view in the repository.

There are other faults that bound the site such as Solitier Canyon Fault, or the fault under Drill Hole Wash, or the Imbricate Normal faults to the east which do represent a limit. While they represent a boundary for the block of the repository, Ghost Dance Fault does not.

The CHAIRMAN. There are other faults that would act as a limit?

Mr. VIETH. Yes, there are.

The CHAIRMAN. And the limit in the law now I think is 70,000 tons, at least in the plan. In your view, would those faults which do limit the site, would they permit 70,000 tons or more? Do you have a view on that?

Mr. VIETH. With the land that we have now in the conceptual design of the repository that has been completed, we are looking at an area of roughly 1,850 acres. The 70,000 metric tons calculated at 57 kilowatts per acre in terms of heat load would fill an area of roughly 1,520 acres. We may have about 800 acres of additional space for disposal of waste in excess of 70,000 metric tons.

If we looked at some other positive ways of doing things, we can estimate that up to 100,000 metric tons of waste could be placed in the 1,850 acres of land.

The CHAIRMAN. The 1,850 acres, is that the limit as you know it now?

Mr. VIETH. Yes, but there is potential to expanding to the area to the north, however, we will not know that until we get underground and look at the perceived fault that lays underneath of Drill Hole Wash.

Mr. BRYAN. Mr. President, let me tell you how diabolical this is. The Environmental Protection Agency has been working with the DOE, and in a letter dated September 11 to Mr. Ziemer, they indicated: We are not aware that you have any concerns that we are not reasonably addressing. Come to us and tell us if you are. What are they? These standards have not been finalized, Mr. President. There is opportunity in the administrative process for men and women of good will, who may have differences of opinion, to come forward and present them.

What we are left with is an Environmental Protection Agency that is being muzzled. Make no mistake, the effect of this legislation, the specific language, is to limit, for the first time to my knowledge in the history of the Environmental Protection Agency, to deprive the Agency from exercising its best judgment and to be mandated to adopt a standard that excludes the population risk standard and limits that Agency to whatever the recommendations are.

Think for a moment what we are talking about in terms of change to public policy. You have people who are not part of an agency at all, who are not regulators. The way this is crafted—I have to say that the drafters of this get an A for cleverness, an F for public policy, and an F for fairness. But that is the effect of what we are talking about.

Moreover, we change the fundamental premise of this by making it so that a site now, if it is ever developed, does not have to have sufficient standards so that site itself, the geological formation, and the engineering standards built into the design, would provide safety for public health for 10,000 years. Now we are lowering that. We are saying, look, we are not going to do that. We are simply going to say, look, we will have a night watchman out there hired by the Department of Energy for 10,000 years.

That is fundamentally wrong, Mr. President. That is fundamentally wrong. And I must say that, in my view, the world's greatest deliberative body, as the Senate of the United States prides itself, is about to commit a shameless, shameful act on the State of Nevada by subjecting us to a public health and safety standard that is unique to the Yucca Mountain project. Nowhere else is it found. Nowhere else do we limit the EPA. That, Mr. President, is what this debate is all about. All of the other provisions of the bill notwithstanding, to do this at the last minute is simply wrong.

The Senate Energy conferees proposed legislation during the final days of the energy bill conference that would radically revise the regulatory environment for the Yucca Mountain nuclear waste project, and turn the program from a final repository for the Nation's high-level commercial nuclear waste to an ill-conceived facility that would require monitoring the facility by the Secretary of Energy for the next 10,000 years or more.

There are existing EPA standards (40 CFR 191) for radiation releases from a repository that the Yucca Mountain site would have to meet. The original regulations were remanded to EPA in

1987 and the process of repromulgating them has been continuing since that time.

Now, in the last hours of this Congress, legislation appeared in the energy bill which dramatically changes the rules regarding Yucca Mountain, to once again put the interests of the nuclear power industry ahead of public health and safety, as well as good science.

The differences between the existing EPA standard and the proposed standard under the legislation include:

Prescribing that the new standard will be based on exposures to the individual versus the general public, and by requiring the DOE to engage in permanent site monitoring, Yucca Mountain can be found safe, simply by DOE keeping individuals far away from the site, forever—or at least for a time longer than that of recorded human history.

The effect on the general population of southern Nevada and elsewhere could be dramatic; that is, many more cancer fatalities in the public at large, but as long as DOE keeps the maximally exposed individual away from the site, the reference case, the site could meet the standard.

By prescribing how EPA is to develop a new standard based on exposures to individuals versus to the general public, the authors of the bill are dictating to scientists and health experts how to create health and safety standards; that is, legislating a standard that should, and has in the past, been based on science.

DOE has been attempting to persuade the EPA and the National Academy of Sciences over the past several months to change the EPA standard the way in which this bill does. However, both entities have rejected DOE's arguments, as without scientific or technical foundation. As a result, DOE is using the energy bill to legislate their agenda.

DOE testified before Congress, specifically the Senate Energy Committee, as long ago as 1987, that the Yucca Mountain site could meet the existing EPA standard "by better than 5 orders of magnitude," resulting in part in the original screw Nevada bill. Since 1987 they have discovered, as the Department of Energy has found since beginning to deal with the commercial nuclear waste issue in 1957, that their statements as well as their plans are optimistic and flawed. Once again, they can succeed only by changing the rules.

This proposal, if adopted, would place a greater health and safety standard at the Waste Isolation Pilot Project [WIPP] in New Mexico, than for Yucca Mountain, even though the waste at Yucca Mountain would be more lethal and longer lasting.

This new proposal continues a long and sorry history of the Nation's attempt to deal with the nuclear waste issue. From the air premise of the original 1982 Waste Policy Act, the Congress has consistently moved backward—first, to less fair in the 1987 amendments, and now, in 1992 to less safe as well.

EPA's final rule 40, part 191, Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes, was promulgated on September 19, 1985. This completed a long process, begun in the late 1970's, in which issuance of the proposed rule was preceded by 24 working papers that were distributed for comment from interested parties, and numerous meetings were held to discuss the basic concepts and particulars of the developing regulation. Following petition for review by numerous States and national environmental organizations, the First U.S. Circuit Court of Appeals issued on July 27, 1987, an order of remand of the final rule based on two substantive issues and one procedural issue. The procedural issues involved substantial change from the proposed to the final rule in the ground water protection approach. The substantive issues remanded were first, the basis for selecting a period of 1,000 years for the individual protection standard; and second, the rationale for selecting a maximum dose standard for ground water different from that which is established in EPA's Safe Drinking Water Act regulations.

Since the remand of 40 CFR, part 191, EPA staff have been reviewing the issues of the remand, as well as at least five other issues raised by DOE and nuclear power industry representatives. The EPA has issued 4 working papers for discussion in the course of this review; has asked the EPA's Science Advisory Board [SAB] to review the technical basis for the release standard for Carbon-14; and has asked the National Academy of Sciences, National Research Council Board on Radioactive Waste Management [BRWM] to review the technical basis of four additional issues of concern to DOE and nuclear industry interests. The reports from the SAB and BRWM are pending, and expected to become final near the end of calendar year 1992. Following these reports, EPA plans to proceed in a timely manner to repromulgation of 40 CFR, part 191.

Included within the five issues to be reported upon by the SAB and BRWM in the near future are the technical evaluations implicit in the directions to the National Academy of Sciences contained in the proposed language of section 801 of the energy bill regarding a risk basis for the EPA rule and postclosure protection of waste isolation at a repository.

Prior to issuance of 40 CFR, part 191, in 1985, the EPA committed significant resources to development of the regulation, as did the many interested governmental, industry, and public organizations who participated in its development. Since the 1987 court remand of the rule, EPA and the interested parties have again spent millions of dollars in attempting to resolve not only the original issues of the remand, but on issues newly introduced by DOE and nuclear industry representatives. Introduction of the new issues is largely in response to compliance concerns raised by the growing body of information regarding both the Yucca Mountain site and WIPP.

When President Reagan signed the Nuclear Waste Policy Act on January 7, 1983, less than a week after I became Nevada's Governor, our Nation embarked on a costly scheme to resolve a vexing technological problem—how to manage for hundreds of thousands of years the most toxic and harmful waste products that man has ever created.

The premise of the 1982 Nuclear Waste Policy Act was to evaluate a variety of sites and different geological formations so that the best solution to the high-level commercial radioactive waste disposal problem could be found.

That act also contemplated a regional balance so that no single area of the Nation would be unfairly burdened with the entire Nation's commercially generated radioactive waste.

In the Nuclear Waste Policy Amendments Act of 1987, signed by President Reagan on December 22, 1987, a political decision was made to abandon the premise of the 1982 act and to shift the national policy from a balanced, scientific approach to targeting only one site—Yucca Mountain, NV—for further consideration for a repository location. This ill-conceived policy—abandoning science for politics when trying to solve a great scientific problem—was tangible evidence of the undue influence the commercial nuclear utility industry has had on the repository program since its inception.

The DOE and nuclear industry policymakers, however, have consistently underestimated the resolve of Nevada's citizens to oppose this flawed proposal. Even more fundamentally, they were blind to the merits of the State's technical arguments that Yucca Mountain was a poor choice to even study for a repository.

I have said many times the national policy we are following is destined to fail. If, as Nevada's scientists and others strongly believe, Yucca Mountain is ultimately proven to be unsuitable for storing radioactive waste, more billions of dollars will have been wasted, and the Nation will face an environmental crisis of epic proportions after the turn of the century without even so much as a contingency plan.

As I have pointed out at every opportunity, all the existing program has succeeded in doing is to waste billions of dollars of utility ratepayer's money. And unfortunately, like other Federal

Government failures of recent years, the price tag on the repository grows each time the plan is revised and each time its cost is estimated.

We must remember that the original 1982 act and 1998 repository date opening were a reaction to a perceived fuel storage crisis. Now, with the 12 or more year delay in the repository, utilities are managing their waste storage needs in anticipation of the fact that no repository will be available to solve their immediate problem. A few reactors have already exceeded their spent fuel storage pool capacity, even after installing more compact storage racks—reracking. A growing number of utilities are purchasing and planning on using NRC-licensed dry cask storage units at reactor sites to meet their interim storage needs.

The Nuclear Regulatory Commission has issued a revision of its waste confidence rule which indicates that at-reactor-spent-fuel-storage can be safely and effectively implemented for a period up to 100 years. Thus, the crisis that prompted the 1982 act and its deadlines DOE was unable to meet has now vanished with better technological approaches gaining acceptance.

When this issue first was raised in 1983, I based my opposition to nuclear waste storage at Yucca Mountain on the fact that Nevada had done its share and more for our country's nuclear efforts. Since we produced no high-level waste, it seemed inequitable and unreasonable to ship the waste products of other State's commercial nuclear power generation across the entire country to be stored for thousands of years in Nevada.

Not just Nevada was threatened by that prospect, but the transportation of lethal wastes, generated mainly east of the Mississippi, across thousands of miles of our roads and highways, through hundreds of communities, threatened millions of Americans. It simply made no sense then, nor does it make sense now. The risks are too great.

The story has changed dramatically after 6 years of scientific study by the State. As our technical knowledge increases, our initial concerns about the suitability of the Yucca Mountain site are being confirmed.

The geology, hydrology, volcanism, and mineral potential at the site all indicate it is unable to isolate these lethal wastes from the environment for the tens of thousands of years it will take for them to decay to less dangerous levels of radioactivity.

The entire course of the Nation's nuclear waste effort has resulted in more than two decades of failures and false starts, and apparently 1992 sadly will not be the end of this continuing saga of waste and failure.

While DOE blindly ignores expert opinion and the facts which continue to mount against Yucca Mountain, the U.S. taxpayers and utility ratepayers are footing the bill for DOE's follies. Since the passage of the NWPA in 1982, nearly $3 billion have been wasted with no tangible progress evident for solving a very serious problem. Utility ratepayers are paying over a million dollars a day that DOE treats as its own largess.

I believe the time for a new institutional approach to this problem has arrived.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. JOHNSTON. Mr. President, I yield 3 minutes to the distinguished Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 3 minutes.

Mr. WIRTH. Mr. President, I thank the distinguished chairman for yielding. I will, in this moment of time, say what enormous admiration I have for the chairman and the ranking member of the committee. Their persistence in keeping behind this, pushing it, pushing it, pushing it has been absolutely remarkable. Not only has there been great persistence, but the product has been worth that.

I understand the concerns of my very good friends and the wonderful Senators from the State of Nevada. They get an A for eloquence, an A for effort, an A for advocacy for their State, and I wish that we had in this an A for agreement. I am just very sorry to see this kind of disagreement between the committee and the two Senators. I understand their position. They have argued it very, very well, and I have enormous and unflagging admiration for them. I only wish we were not in this position, but here we are.

I think the Senator from Louisiana has done everything that he can to take care of this concern and at the same time making sure that we are moving ahead with the problem of what we are going to do with nuclear waste. That has to be done. We all know that has to be done.

Leaving that aside, this is an extraordinary change of policy in this bill. It is wonderful shift from where we have been going ever since the dawn of the fossil fuel revolution. We have begun to move in a different direction, and that is absolutely positive. We have in here the most stringent conservation standards that the Government has ever agreed to with the private sector after extraordinary negotiations in which so many different industry groups have been involved. We owe them our thanks for really sitting down and working this out.

We are beginning to move toward alternative fuels, and that is the right thing for us to do, have a bridge particularly with natural gas, that plentiful fuel that is so much cleaner and of which we ought to be using a great deal more. We are beginning to set a strategy for backing out foreign oil, which we must do. I think much of the economic malaise in this country comes from our continuing dependence on foreign oil and our continuing export of scarce American capital. That cannot continue.

We have in this for the first time a beginning of a balance between the environment and energy policy. Beforehand, they have been all too often mutually exclusive. People say, as the President has said, unfortunately, you cannot protect jobs and the environment at the same time. That has been much of the debate in the past about energy policy: You cannot have good energy policy and care for the environment at the same time.

For the first time we have linked these two together in a meaningful fashion and we are beginning to make progress in that direction. Of course, everything is not here that we would like to have. It is not a perfect piece of legislation by any means. But it is a significant step in the right direction.

I urge my colleagues to vote for the conference report. I think it is major progress for us in this Congress.

Again, I thank the distinguished Senators from Louisiana and Wyoming, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. REID. Will the Chair inform the managers of this legislation as to the time on each side?

The PRESIDING OFFICER. Yes. The Senator from Nevada has 9 minutes and 42 seconds, the Senator from Louisiana has 8 minutes, 59 seconds.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. In the early part of the 13th century a group of barons met with King John in a place called Runnymeade. The uprose for that meeting was to have the king affix his x—he could not sign his name—to a document called the Magna Carta, which has been the foundation for the great English common law in many respects the English system of parliament.

That meeting they had in the meadows at Runnymeade has not only the basis for the British common law but it was carried over the ocean to the United States and has been the basis for things like trial by jury, but also in it was much of what we call the legislative process, the parliamentary form of government, which we have developed into the form of government that now directs us.

That document, the Magna Carta, stand for fairness, equity, and justice, as I believe this country stands, that is, for fairness, equity and justice.

What is about to take place today flies in the face of these standards of fairness, equity, and justice.

What is being done to the State of Nevada today could be done to you tomorrow.

What is happening to the State of Nevada today—and the junior Senator from Nevada and this Senator certainly can count. We know what is going to happen. Mr. President, this is not the golden rule that is in action today. It is something probably like the ungolden rule. Do not do it to us today, Mr. President, because tomorrow they may do it to you. That is what is going to happen.

Everyone should understand that in this system now in operation in the Senate today, that is, the oppression of the majority is overpowering the minority. Everyone here today in the sound of my voice should understand that it could happen to you tomorrow. It could happen. Probably not, Mr. President, to the powerful State of Illinois, with numerous Members in the House of Representatives, probably not to the State of California, Texas, Florida, but it could happen to most of the other States.

So I ask those Senators and staff directors who are listening today, those legislative directors, to understand that what is going to happen to the State of Nevada today is going to happen to you tomorrow. That is too bad. It should not happen.

I know I have learned a great lesson today, one that I have always known, that is, always do what you can to make sure that the minority is not overrun by the majority.

I hope we would all be cognizant of the fact that is about to happen. I think it is wrong.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I yield myself 3 minutes.

Mr. President, I ask unanimous consent that letters in support of this legislation be put into the RECORD at this point. Those letters of support come from the American Federation of Labor and Congress of Industrial Organizations, AFL–CIO, signed by Robert M. McGlotten; from the American Council for an Energy-Efficient Economy, signed by Howard S. Geller; by the UAW, signed by Alan Reuther; by the Business Executives for National Security, signed by Tyrus W. Cobb; from the Electric Generation Association, signed by Carlos A. Riva; from the Independent Petroleum Association of America, signed by Denise Bode; from the National Coal Association, signed by Richard L. Lawson; from the Energy Consumers and Producers Association, signed by E.L. Bud Stewart, Jr.; from the American Gas Association, AGA, signed by Mike Baly III; from the American Wind Energy Association, signed by Scott Sklar, for the Solar Energy Industries Association; Larry Burkholder, for the National Wood Energy Association; Michael Marvin, for the American Wind Energy Association; and Donald Liddell, for the Geothermal Resources Association; from the Alliance To Save Energy, signed by James L. Wolf; from the National Association of Energy Service Companies, by Terry E. Singer; from the Polyisocyanurate Insulation Manufacturers Association, signed by Jared O. Blum; from the Consolidated Natural Gas Company, signed by George Davidson; from the United Mine Workers of America, signed by Richard L. Trumka; from the Clean Coal Technology Coalition, signed by Ben Yamagata; from the Natural Gas Supply Association, signed by Nicholas Bush; from the North American Insulation Manufacturers Association, signed by Kenneth D. Mentzer; from the National Association of Home Builders, signed by Jay Buchert; from Oryx Energy Company, by Robert Hauptfuhrer; from the National Association of Manufacturers—this is a wire that is unsigned; from the National Independent Energy Producers, signed by Steven D. Burton; from the National Association of State Energy Officials, signed by Carson D. Culbreth; from the National Community Action Foundation, signed by Charles Braithwait; from Knauf Fiber Glass, signed by William Black.

Mr. President, the list goes on and on. I ask unanimous consent that the whole bunch of letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, DC, October 6, 1992.

DEAR SENATOR: We understand that the Senate is scheduled to vote on a cloture motion on H.R. 776, the National Energy Policy conference report, when it reconvenes Thursday, Oct. 8 following the Yom Kippur holiday recess. With 60 votes needed for cloture, the AFL-CIO urges your presence for the vote and your support for cloture.

An important part of this legislation is the Rockefeller amendment which shores up health benefits for retired coal miners. More then 120,000 retired miners—covered by the UMWA Health Benefit Funds—face the loss of their health coverage without passage of H.R. 776.

In addition, this legislation will create tens of thousands of jobs for the clean up of federal uranium enrichment sites as outlined in the Uranium enrichment Reorganization Title.

The purpose of that title is to create a federally-owned corporation with responsibility for operating, the two U.S. uranium enrichment facilities and another which currently is not operating. These facilities are under the jurisdiction of the Department of Energy (DOE).

AFL-CIO affiliated unions, including the OCAW, USWA, Building and Construction Trade unions and other affiliates have represented the workers at these plants for nearly 40 years. Many basic worker protections are contained in the uranium enrichment title, including transition language covering contractual matters such as the employee benefit package, hiring rights, health care and pension benefits. Also included are provisions protecting the collective bargaining agreement during transition and ensures workers coverage under OSHA, the Davis-Bacon Act and the Service Contract Act.

The AFL-CIO strongly urges your support for cloture and for passage of the H.R. 776 conference report.

Sincerely,

ROBERT M. MCGLOTTEN,
Director, Department of Legislation.

AMERICAN COUNCIL FOR AN ENERGY-EFFICIENT ECONOMY,
Washington, DC, October 6, 1992.

Senator J. BENNETT JOHNSTON,
Chairman, Senate Energy Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN JOHNSTON: We are writing to indicate our support for the energy bill recently reported out of conference. The bill contains many valuable energy efficiency provisions which will save significant amounts of energy, save consumers money, and reduce pollutant emissions. The energy efficiency and renewable energy portions of the bill will help to move our nation towards a sustainable energy future. We are urging Members of the Senate to vote for cloture and final passage of the bill.

Sincerely,

HOWARD S. GELLER,
Executive Director.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA–UAW,
Washington, DC, October 7, 1992.

DEAR SENATOR: As you know, the Senate is scheduled to vote tomorrow morning on a cloture motion on the conference report on H.R. 776, the proposed Comprehensive National Energy Policy Act. The UAW supports the conference report on the energy bill, which contains a key amendment sponsored by Senator Rockefeller that would protect the health care benefits for retired mineworkers. Without this very important provision and without enactment of H.R. 776, more than 120,000 retired mineworkers will lose their health protections.

Accordingly, the UAW strongly urges your support for both cloture and for passage of the conference report on H.R. 776.

Sincerely,

ALAN REUTHER,
Legislative Director.

BUSINESS EXECUTIVES FOR NATIONAL SECURITY, INC.,
Washington, DC, October 7, 1992.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR JOHNSTON: On behalf of Business Executives for National Security (BENS), I would like to express our continued support for the passage of H.R. 776, the National Energy Policy Act. We commend you, your colleagues, and your staff for producing a balanced conference report to H.R. 776.

BENS represents over 1500 business leaders from many industries across the nation in their common goal to bring about more efficient management of our military and economic security. Energy Security is a major component of this effort, and H.R. 776 promises to make considerable headway in reducing national dependence on foreign energy sources.

It is essential therefore, that the Senate vote to invoke cloture on Thursday and vote on final passage before recess. The alternative is business as usual, and an even more rapid increase in energy imports. We have therefore asked our membership to urge their Senators to be in attendance and vote favorably tomorrow.

Please do not hesitate to advise me if BENS can be of further assistance in this matter.

Sincerely,
TYRUS W. COBB,
President and CEO.

ELECTRIC GENERATION ASSOCIATION,
Washington, DC, October 5, 1992.
Hon. BROCK ADAMS,
U.S. Senate, Washington, DC.

DEAR SENATOR ADAMS: On behalf of the members of the Electric Generation Association, I would like to express our support for H.R. 776, the National Energy Security Act.

The Electronic Generation Association is the national trade association representing the entire spectrum of the competitive wholesale electric generation industry, including independent power producers, utility affiliates and suppliers of good and services to the industry.

We applaud the conferees' efforts to pass a balanced comprehensive energy bill. The bill represents a fair and equitable compromise of all interested parties. We urge your support of this fine legislation and ask that you be present on Thursday, October 8, to support the cloture vote on the H.R. 776 conference report and final passage. It is vitally important that H.R. 776 be enacted into law and not allowed to die due to Members of the Senate not being present to vote on Thursday. Please support passage of H.R. 776.

Sincerely,
CARLOS A. RIVA,
President, J. Makowski Associates, Inc.; President, Electric Generation Association.

INDEPENDENT PETROLEUM
ASSOCIATION OF AMERICA,
Washington, DC, October 5, 1992.
Hon. BENNETT JOHNSTON,
Hart Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: It is with great pleasure that I write today on behalf of the 8,000 independent producers in over thirty-three states to heartily endorse H.R. 776. The Comprehensive National Energy Act of 1992. With the loss of over 400,000 jobs in our industry, 45,000 in the last year alone, domestic producers are ready to be back to work.

H.R. 776 contains policy changes which will result in a cleaner and safer environment while providing for America's energy needs. The tax title contains provisions which will promote greater energy conservation, increase the use of alternative fuels, enhance production of solar, wind and geothermal energy resources, and encourage domestic production of natural gas.

Clean burning natural gas is a critical part of the energy equation as we continue to search for safe and effective alternative energy sources. The elimination of the alternative minimum tax will free up a significant amount of capital which can be reinvested in domestic natural gas production.

We estimate that passage of the AMT relief provision in H.R. 776 could mean that as many as seven thousand new wells would be drilled in each year and creating up to 45,000 new American jobs in the coming year.

We believe that domestic energy producers hold the key to America's long term security and environmental well-being. H.R. 776 provides the means to allow America to become more efficient and innovative in developing our indigenous energy resources. H.R. 776 is vital for America's energy future and we appreciate your leadership in the development of this legislation.

Sincerely,
DENISE A. BODE,
President.

NATIONAL COAL ASSOCIATION,
Washington, DC, October 2, 1992.

DEAR SENATOR: Approximately three years ago the President directed the Secretary of Energy to develop a National Energy Strategy. Later that year the United States became embroiled in a regional conflict in the Middle East, in part, to assure the continued availability of oil to the strategically dependent nations of the world. Subsequently, in furtherance of a National Energy Strategy, the Administration forwarded a comprehensive legislative proposal early in this Congress. Under the leadership of key members of the House and Senate, both bodies have developed and given overwhelming bipartisan support to H.R. 776, the Comprehensive National Energy Policy Act.

This legislation provides a comprehensive strategy to provide a broad-based foundation for further development and expansion of all domestic energy sources, including American coal. The bill is balanced and provides a framework for simultaneously meeting our nation's energy, economic and environmental objectives. It will be an important step toward reducing our strategic dependence on imported energy while creating new jobs and keeping billions of energy dollars at home rather than spending them on imported resources.

We strongly urge your active support for expeditious approval of the conference report on H.R. 776 prior to adjournment of the 102nd Congress.

Sincerely,
RICHARD L. LAWSON.

ENERGY CONSUMERS
AND PRODUCERS ASSOCIATION,
Seminole, OK, September 30, 1992.
Hon. J. BENNETT JOHNSTON,
Hart Senate Office Building, Constitution Avenue & 2nd St. NE, Washington, DC.

DEAR SENATOR JOHNSTON: The enactment of comprehensive energy legislation is long overdue. Hopefully, the ongoing Senate/House conference on H.R. 776 will successfully conclude its work and Congress will pass an acceptable energy bill this year.

At a time when jobs, gained or lost, are a large part of a great national debate, it is important to mention that the U.S. petroleum industry has experienced more job loss by far than any other employment sector—375,000 lost in oil and gas extraction alone (421,000 total) which represents over 51% decline in work-force in the 1982–1992 period. Percentagewise, this compares to only a 10% loss in textiles and even a 13% gain in vehicle manufacturing during the same ten year period. Only steel manufacturing at 38% had comparable losses with very large gains made by lumber, service, homebuilding, and government employment sectors according to the Bureau of Labor Statistics data.

Thus, both the country and the industry need passage of H.R. 776 and it is needed before the year is out. American energy consumers should welcome passage of this bill as well. It should vastly improve the reliability of natural gas supplies for many years to come.

The reform of the alternative minimum tax provided in H.R. 776 is by far the most important feature in the bill for independent producers and this reform should result in increased drilling activity. However, it will take much more than this reform to restore the industry to its former health. Our oil imports are far too high and growing each month which adversely affect our balance of payments and greatly influence both military and foreign policies.

While H.R. 776 will not cure all the U.S. energy ills, it is a very positive beginning and your help and support for it will be greatly appreciated.

Sincerely,
E.L. BUD STEWART, Jr.,
President.

AMERICAN GAS ASSOCIATION,
Arlington, VA, October 2, 1992.
Hon. J. BENNETT JOHNSTON,
Chairman, Senate Energy and Natural Resources Committee, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The American Gas Association strongly supports Senate passage of H.R. 776 the Comprehensive National Energy Policy Act of 1992. Our nation needs an energy policy, and should not wait for a crisis to develop one. We especially need to reduce our nation's dependence on imported oil.

The provisions of H.R. 776 will provide the natural gas industry with significant opportunities, in areas such as natural gas vehicles, gas research and development, integrated resource planning, development of natural gas resources in the Outer Continental Shelf and high-efficiency electric generation. Increased use of natural gas will assist the nation in achieving its energy security goals, and, as the cleanest burning fossil fuel, will assist in achieving national environmental and economic goals.

Further, we urge that the energy-related tax provisions be included in the conference report on H.R. 776.

Thank you, Mr. Chairman, for your tireless and strong leadership in working to establish a national energy policy.

Sincerely,
MICHAEL BALY III.

AMERICAN WIND ENERGY ASSOCIATION; SOLAR ENERGY INDUSTRIES ASSOCIATION,
Washington, DC, October 5, 1992.
Hon. J. BENNETT JOHNSTON,
Hart Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR JOHNSTON: On behalf of the American Wind Energy Association, Geothermal Resources Association, National Wood Energy Association and Solar Energy Industries Association, we urge your vote in support of the Johnston motion to invoke cloture on H.R. 776, the Comprehensive National Energy Policy Act, scheduled for Thursday, October 8.

H.R. 776 provides much-needed tax equity for our nation's renewable resources through a unique combination of production- and investment-based tax credits. Further, it provides crucial transmission access for renewable energy sources that could not otherwise be fully utilized without access to the nation's electricity grid. Finally, through Title XII it allows for expanded joint venture programs and enhanced research and development for biomass, geothermal, solar and wind energy.

America's emerging energy technologies are facing increased international competition in these billion-dollar markets of the future. With over $15 billion in private investment in these energy sources in the past decade, the economic and environmental consequences of ignoring renewable energy would be staggering.

H.R. 776 is vital to the sustained health of our industries. We urge your attendance on Oct. 8 and your support of the cloture motion.

Sincerely,

SCOTT SKLAR,
Solar Energy Industries Association.
LARRY BURKHOLDER,
National Wood Energy Association.
MICHAEL MARVIN,
American Wind Energy Association,
DONALD LIDDELL,
Geothermal Resources Association.

THE ALLIANCE TO SAVE ENERGY,
Washington, DC, October 5, 1992.
Hon. J. BENNETT JOHNSTON,
U.S. Senate, Chairman Energy and Natural Resources Committee, Hart Senate Office Building, Washington, DC.

DEAR SENATOR JOHNSTON: The Alliance to Save Energy strongly supports passage of H.R. 776, the Energy Policy Act of 1992. The bill contains many significant provisions that promote energy efficiency, ranging from efficiency standards on products, to improved building codes, to energy efficient mortgage programs. These provisions will improve the environment, make housing more affordable, and enhance our competitiveness. The tax section of the bill contains important provisions that will encourage the use of renewable and efficiency resources.

Many of the provisions in the bill on the energy "supply side" are also of great value. We know that some of the provisions on the energy supply side are controversial, and we do not necessarily endorse them. Nevertheless, we believe the bill is a comprehensive and balanced one that does advance the national interest. We hope that it is speedily passed by the Senate and signed by the President.

Yours truly.

JAMES L. WOLF,
Executive Director.

NATIONAL ASSOCIATION OF ENERGY SERVICE CO.,
Washington, DC, October 2, 1992.
Hon. J. BENNETT JOHNSTON,
U.S. Senate, Hart Office Building, Washington, DC.

DEAR SENATOR JOHNSTON: As Executive Director of the National Association of Energy Service Companies (NAESCO) which represents energy service companies, utilities, and manufacturers of energy efficiency equipment, I am writing to urge expeditious action on the conference agreement on national energy legislation as reported. Our members are particularly interested in ensuring that legislative language supporting the use of performance-based energy savings contracts by the Federal government be enacted into law. We urge you not to support efforts to delay passage of the legislation.

Very truly yours,

TERRY E. SINGER,
Executive Director.

POLYISOCYANURATE INSULATION MANUFACTURERS ASSOCIATION,
Washington, DC, October 2, 1992.
Hon. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, Senate Dirksen Office Building, Washington, DC.

DEAR SENATOR JOHNSTON: On behalf of PIMA, we applaud your efforts and those of the House and Senate conferees for reporting the National Energy Strategy legislation, H.R. 776. We support the provisions which enhance our nation's building energy efficiency standards and believe this country's consumers and homeowners will greatly benefit from the Conference Committee's deliberations.

Sincerely,

JARED O. BLUM,
President.

CONSOLIDATED NATURAL GAS CO.,
Pittsburgh, PA, October 5, 1992.
Hon. ARLEN SPECTER,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR SPECTER: As you know, the Senate will soon vote on the conference report on the Energy Policy Act of 1992, perhaps after a clouture vote on Thursday.

We strongly support the energy bill, particularly those titles which address alternative fuel vehicles and reform of the Public Utility Holding Company Act to facilitate the development of independent power.

We understand that the bill has strong support in the Senate, but we are concerned that there may be difficulty in assuring that 60 Senators will be available for the Thursday vote. We certainly hope that we can count on you to be there on Thursday, and to do all that you can to assure passage of this important legislation.

Sincerely,

GEORGE A. DAVIDSON, Jr.
Chairman and CEO.

UNITED MINE WORKERS OF AMERICA,
Washington, D.C. October 6, 1992.

DEAR SENATOR: As you know, the Comprehensive National Energy Policy Act, H.R. 776, contains a provision securing the retiree medical benefits of over 200,000 beneficiaries of the United Mine Workers Health Benefit Funds. The so-called Rockefeller provision, supported by the Administration and a bipartisan majority of the Senate, simply requires that all current and past signatory coal companies live up to the commitment they made to provide retiree medical coverage.

On behalf of the active and retired members of the United Mine Workers of America, I urge you to support the effort to end the filibuster on H.R. 776 and to support the conference report on final passage.

Sincerely,

RICHARD L. TRUMKA.

CLEAN COAL TECHNOLOGY COALITION,
Washington, DC, October 5, 1992.
Hon. BROCK ADAMS,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR ADAMS: On behalf of the Clean Coal Technology Coalition, I am writing in support of the coal-related provisions contained in the National Energy Policy Act and to ask for your support and leadership in assuring that this Congress acts upon the Conference Report on H.R. 776.

Among the items we are supporting are the coal R&D program with its emphasis on the development and demonstration of next generation clean coal technologies; the technology transfer/export promotion program for clean coal technologies; the PURPA "avoided cost" exemption provision for clean coal demonstration projects; and the program to promote coal exports. These important measures are an integral part of securing a national energy strategy designed to increase energy efficiency and promote the commercialization of environmentally sound energy technologies, while increasing U.S. competitiveness among international private power markets.

The Coalition firmly believes these provisions are important to the creation of a comprehensive national energy strategy, and we hope you will encourage and support the adoption of the Conference Report to H.R. 776 before the conclusion of the 102nd Congress.

Sincerely,

BEN YAMAGATA,
Executive Director.

NATURAL GAS SUPPLY ASSOCIATION,
Washington, DC, October 6, 1992.
Hon. J. BENNETT JOHNSTON,
Hart Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR JOHNSTON: The members of the Natural Gas Supply Association understand that the Senate may be required to return to Washington on Thursday, October 8 to vote on a cloture petition on H.R. 776, the Energy Policy Act, and then on final passage of the Act. These votes may be the only votes on Thursday and may be the final votes to occur in this Congress.

The Association and its members strongly support the final passage of H.R. 776. Of particular interest to our members are the provisions that introduce competition in electricity generation and introduce alternative fuels for use in vehicles. We believe that these provisions provide an opportunity for expanded use of natural gas, the nation's cleanest burning fossil fuel. These provisions also provide significant benefits to our nation's energy security, for the environment, and for American energy consumers.

We regret that disagreement over one or two provisions of the bill may inconvenience members of the Senate so shortly before the November elections. Nevertheless, we believe that this legislation is extremely important to the nation and may be one of the most important achievements of this Congress. We encourage you to be present for any votes that are necessary on Thursday, October 8 and to vote for cloture and for final passage of H.R. 776.

Sincerely.

NICHLAS J. BUSH.

CLEAN COAL TECHNOLOGY COALITION,
Washington, DC, October 5, 1992.
Hon. J. BENNETT JOHNSTON,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR JOHNSTON: On behalf of the Clean Coal Technology Coalition, I am writing in support of the coal-related provisions contained in the National Energy Policy Act and to ask for your support and leadership in assuring that this Congress acts upon the Conference Report on H.R. 776.

Among the items we are supporting are the coal R & D program with its emphasis on the development and demonstration of next generation clean coal technologies; the technology transfer/export promotion program for clean coal technologies; the PURPA "avoided cost" exemption provision for clean coal demonstration projects and the program to promote coal exports. These important measures are an integral part of securing a national energy strategy designed to increase energy efficiency and promote the commercialization of environmentally sound energy technologies, while increasing U.S. competitiveness among international private power markets.

The Coalition firmly believes these provisions are important to the creation of a comprehensive national energy strategy, and we hope you will encourage and support the adoption of the Conference Report to H.R. 776 before the conclusion of the 102nd Congress.

Sincerely,

BEN YAMAGATA,
Executive Director.

NORTH AMERICAN INSULATION
MANUFACTURERS ASSOCIATION,
October 6, 1992.

HON. J. BENNETT JOHNSTON,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR JOHNSTON: The National Energy Policy Act of 1992 is and remains the top legislative priority of the North American Insulation Manufacturers Association ("NAIMA"). The energy legislation—years of hard work by countless individuals and organizations both in the public and private sector—represents America's best hope for energy conservation, national energy independence and reduction of environmental pollution. NAIMA deeply appreciates the vision and leadership that you have brought to these issues and this legislation over the years. Now, as the 102nd Congress winds down, NAIMA urges you and your colleagues to continue efforts to bring this legislation to a successful conclusion. We recognize the obstacles and the time constraints, and are deeply grateful for your commitments and perseverance in the face of all these difficulties.

NAIMA is a trade association of North American manufacturers of fiber glass, rock wool and slag wool insulation products. NAIMA's members manufacture the vast majority of fiber glass, rock and slag wool insulations produced and used in North America. NAIMA's role is to promote energy efficiency and environmental preservation through the use of fiber glass, rock and slag wool insulation products and to encourage safe production and use of these insulation products. NAIMA member companies are: Celotex Corporation, CertainTeed Corporation, Knauf Fiber Glass, Owens-Corning, Partek Insulations Incorporated, Rock Wool Manufacturing Company, Sloss Industries Corporation, USG Interiors Incorporated, U.S. Mineral Products Company and Western Fiberglass Incorporated.

Please advise me immediately if we can be of any further assistance in this matter.

Sincerely,

KENENTH D. MENTZER,
Executive Vice President.

NATIONAL ASSOCIATION
OF HOME BUILDERS,
Washington, DC, October 6, 1992.

Hon. J. BENNETT JOHNSTON,
Chairman, Senate Committee on Energy & Natural Resources, Hart Senate Office Building, Washington, DC.

DEAR CHAIRMAN: On behalf of the National Association of Home Builders (NAHB), I am pleased to inform you of our support for the conference report to H.R. 776, the Comprehensive National Energy Policy Act.

This National Energy Strategy provides a comprehensive framework for both curbing energy demand and enhancing the supply of energy sources so as to reduce our nation's dependence on foreign sources. Recognizing the time and effort that you, your Senate colleagues and staff have dedicated to crafting this far reaching legislation, it is a monument to your dedication

NAHB realizes that energy efficiency and building standards are a key component to any national energy strategy. NAHB believes that the provisions in H.R. 776 represent a fair balance between energy efficiency and affordable housing. By mandating a private sector industry code for federally assisted new homes that is cost effective, Congress is acknowledging the inherent tension between increased energy efficiency and housing affordability. It is our hope that this legislation will go far towards resolving this issue.

While NAHB supports an energy efficient mortgage program for new homes and is disappointed that provisions were taken out in conference, we look forward to tackling this issue in the next congress.

Again, we thank you and your staff for your cooperation and good work.

Respectfully yours,

ROBERT "JAY" BUCHERT.

ORYX ENERGY CO.,
Dallas, TX, October 5, 1992.

Hon. J. BENNETT JOHNSTON,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR JOHNSTON: Perhaps the most crucial vote on whether this Congress will approve final energy legislation is expected to occur on Thursday, October 8.

We at ORYX Energy Co. believe this bill makes an important step toward a more secure energy future—and it will provide the basis for additional necessary energy policy decisions by the next Congress and beyond. It should be supported.

It is critically important that you and your colleagues be present to vote for cloture on the energy bill this Thursday.

Thank you.

Sincerely,

ROBERT P. HAUPTFUHRER,
Chairman and CEO.

NATIONAL ASSOCIATION
OF MANUFACTURERS,
Washington, DC, October 2, 1992.

Hon. J. BENNETT JOHNSTON,
U.S. Senate, Washington, DC.

The National Association of Manufacturers [NAM] supports the conference agreement to comprehensive energy bill H.R. 776. NAM urges prompt consideration of the complete conference report to H.R. 776—including the tax title. We strongly oppose any efforts to block action on the conference report before the 102d Congress adjourns.

Sincerely,

NATIONAL ASSOCIATION OF MANUFACTURERS.

NATIONAL INDEPENDENT
ENERGY PRODUCERS,
October 5, 1992.

Hon. J. BENNETT JOHNSTON,
Chairman, Senate Committee on Energy and Natural Resources, U.S. Senate, Hart Senate Office Building, DC.

DEAR MR. CHAIRMAN: The National Independent Energy Producers (NIEP) writes to urge you to support a cloture vote on HR 776 and final passage of this important energy legislation. NIEP is a leading trade organization representing the independent power industry.

The Senate will vote this week to approve the conference report on a landmark energy bill which will promote efficiency and competition in the electric power industry. The bill also contains important tax incentives for renewable energy and conservation. If the conference report is filibustered in the closing hours of this Congress, sixty votes will be needed to send this bill to the President.

This bill represents three years of strong bipartisan effort to improve this nation's energy economy. Any absentee on the day of the vote (which could come up as early as Wednesday night) may leave us one vote short of cloture. Thank you for your support of this important legislation.

Sincerely,

STEVEN D. BURTON,
Chair, National Independent Energy Producers.

NATIONAL ASSOCIATION OF
STATE ENERGY OFFICIALS,
Washington, DC, October 6, 1992.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN JOHNSTON: On behalf of the National Association of State Energy Officials [NASEO], we wanted to take this further opportunity to support the passage of H.R. 776. We strongly support your efforts to obtain passage this week.

This legislation is a balanced initiative that will increase our Nation's energy security, increase energy efficiency, increase the use of alternative fuels and renewable energy, as well as a number of innovative initiatives in the electric area and in a variety of other matters. The tax provisions will increase the use of mass transit, energy efficiency, alternative fuels, renewable energy and production from certain oil and gas properties.

It would indeed be a tragedy if the comprehensive energy bill failed to pass at this late date.

Sincerely,

CARSON D. CULBRETH,
Chairman.

NATIONAL COMMUNITY
ACTION FOUNDATION,
Washington, DC, October 6, 1992.

DEAR SENATOR: The passage of H.R. 776 will not only mean a more appropriate course has been set toward a sustainable energy future but will immediately produce expanded energy efficiency initiatives in the public and private sectors.

You may not be aware of H.R. 776's important provisions for the conservation programs which improve low-income housing and reduce the energy burdens of the poor. The Conference Report authorizes programs which are designed to expand the partnerships between local low-income weatherization providers and utility conservation programs. Over the decade, this should mean expanded levels of energy efficiency investment in the low-income residential sector.

Community Action agencies have been pioneers in public/private residential conservation programs for low-income Americans and are eager to expand these activities.

We urge you to be present on October 8, 1992 to support this important, and perhaps final, contribution of 102d Congress.

Sincerely,

CHARLES BRAITHWAIT,
President.

KNAUF FIBER GLASS.

Hon. J. BENNETT JOHNSTON,
136 Hart Senate Office Building, Washington, DC.

DEAR SENATOR JOHNSTON: The National Energy Policy Act of 1992 is and remains the top legislative priority of the North American Insulation Manufacturers Association ("NAIMA"). The energy legislation—years of hard work by countless individuals and organizations both in the public and private sector—represents America's best hope for energy conservation, national energy independence and reduction of environmental pollution. NAIMA deeply appreciates the vision and leadership that you have brought to these issues and this legislation over the years. Now, as the 102d Congress winds down, NAIMA urges you and your colleagues to continue efforts to bring this legislation to a successful conclusion. We recognize the obstacles and the time constraints, and are deeply grateful for your commitment and perseverance in the face of all these difficulties.

NAIMA is a trade association of North American manufacturers of fiber glass, rock wool and slag wool insulation products. NAIMA's members manufacture the vast majority of fiber glass, rock and slag wool insulations produced and used in North America. NAIMA's role is to promote energy efficiency and environmental preservation through the use of fiber glass, rock and slag wool insulation products and to encourage safe production and use of these insulation products. NAIMA member companies are: Celotex Corporation, CertainTeed Corporation, Knauf Fiber Glass, Owens-Corning, Partek Insulations Incorporated, Rock Wool Manufacturing Company, Roxul Inc., Schuller International, Incorporated, a subsidiary of Manville Corporation, Sloss Industries Corporation, USG Interiors Incorporated, U.S. Mineral Products Company and Western Fiberglass Incorporated.

However, I'm not writing this letter in my capacity as President of NAIMA. I'm writing on behalf of my company, Knauf Fiber Glass. We are a family-owned company recognized as a leading U.S. manufacturer of quality insulation products for industrial, commercial, HVAC, marine, and residential applications. Since our founding in 1978, we have become known as the fastest growing fiber glass manufacturer in America, with plants in several states. This growth attests to our commitment to the importance of energy conservation for America's future.

Please advise me immediately if we can be of any further assistance in this matter.

Sincerely,

WILLIAM BLACK III,
Sr. Vice President, Sales & Marketing.

SMACNA,
September 12, 1992.

Hon. BROCK ADAMS,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR ADAMS: On behalf of the Sheet Metal and Air Conditioning Contractor's National Association, Inc. (SMACNA), supported by more than 5,000 construction firms engaged in industrial, commercial, residential, architectural and specialty sheet metal and air conditioning contracting throughout the United States, I urge your support for the House passed version of the small business fair competition language contained in sections 131 and 141 of Title I, Subtitle C, Part II of H.R. 776, The National Energy Efficiency Act of 1992. If enacted, this important provision will promote demand side management (DSM) and energy efficiency programs while preventing anti-competitive and predatory practices by electric and gas utilities harmful to small business. While the Senate version (Title VI, Section 6301) applies to the anti-competitive practices of electric utilities, gas utilities are exempt from the Senate's well reasoned fair competition protections.

SMACNA contractors employ hundreds of thousands of construction workers and have maintained a tradition and record of achievement in energy conservation and energy efficient construction. As a leader in promoting energy efficiency in heating, ventilating and air conditioning (HVAC) systems, SMACNA finds numerous energy efficiency incentives and initiatives to support in both the House and Senate versions of H.R. 776. However, without the House's strong fair competition language gas utilities will be rewarded with dominance of energy efficiency markets in energy equipment sales, supply, service and installation, especially where ratepayer subsidized demand side management (DSM) is in place.

The National Energy bill, if enacted into law would offer small business vast new market opportunities created by utility DSM and efficiency programs. Without section 131 *and* 141 of Title I of the House bill the current marketplace confrontation between small business and utilities will continue to grow. California, Iowa, Wisconsin, and a number of other states passed legislation to ban or strictly limit anti-competitive utility practices. Legislation is pending before dozens of state legislatures to limit anti-competitive utility intrusions into the private sector. Further, there are major cases pending before the state courts and public service commissions in Michigan, Minnesota, New Jersey and other States. Congress supports these important State efforts by embracing energy efficiency efforts with reasonable competitive restrictions protecting small businesses. By passing a fair competition component to the energy bill the Congress would send a strong signal to private sector small businesses that unfair utility competition by electric or gas utilities will not be tolerated or sanctioned.

While demand side management and other federal incentives for energy conservation are important to increasing the energy efficiency of our homes, public buildings, factories and businesses, SMACNA believes that the private sector, not *utilities*, should continue to lead the way. *Please express your support for the House passed fair competition provisions to the Senate Conferees on H.R. 776.* Thank you for your support of private sector small business.

Sincerely,

STANLEY E. KOLBE, Jr.

OCTOBER 6, 1992.

To: All NECA Chapter Managers.

From: Bob White, Director, Government Affairs.

Re: Urgent Legislative Action Call.

Final passage of an energy bill, HR 776, is awaiting Senate action right now. The measure would promote Demand Side Management programs by utilities. Passage would mean a $50 billion market for electrical contractors. The bill also contains language, inserted at NECA's request, to prevent utilities from using unfair competitive tactics to do the work with their own forces.

The measure is being filibustered because of unrelated provisions dealing with nuclear waste disposal. The House is adjourning today—and it has already passed this measure. The Senate expects to adjourn Thursday. It is essential that the Senate cut off the filibuster, invoke cloture, and act to pass H.R. 776 before it adjourns.

Please call, telegraph or fax your Senators today, urging them to support cloture on H.R. 776 and then to support passage before adjournment!

This bill will provide for major new energy conservation initiatives which will help protect our nation's energy independence, keep utility rates at a reasonable level by preventing the need for utilities to provide additional peak generating capacity, and stimulate a new market in energy conservation-related goods and services for industries hard-hit by the economic downturn of recent years.

The timing on this is critical! Rapid response is essential. If you can get some of your members to respond as well, the effort will be even more effective.

Please let me know if you are able to make these contacts, and what response you receive.

Thanks for your help.

The Energy Bill, H.R. 776, is essential for the nation's safety and growth. Electrical contractors strongly urge you to vote for cloture on the Energy Bill filibuster and quickly pass this necessary legislation.

ROBERT L. WHITE,
Director, Government Affairs, National Electrical Contractors Association.
BETHESDA, MD.

ALLIANCE FOR FAIR COMPETITION,
Bethesda, MD, October 6, 1992.

DEAR SENATOR: The Alliance For Fair Competition (AFC) is composed of major national trade associations, State associations, local coalitions, and independent firms engaged in the sale and installation of energy efficient appliances and products, service contracting, energy fuels distribution, as well as contracting in the electrical, plumbing, heating, and air conditioning trades. Over 20,000 individual small businesses are represented under the umbrella of AFC.

AFC and its members are vitally interested in the prompt passage of The Comprehensive National Energy Policy Act, H.R. 776.

This legislation is needed now. It represents as balanced approach as is possible and, more importantly it is acceptable to an overwhelming majority of the members of Congress from both parties. The House of Representatives has voted for passage by a wide margin. The President indicates he will sign the measure when it is sent to him. Previous votes in the Senate indicate there is substantial support for it passage.

After almost two years of constant debate, at the subcommittee and committee levels, and on the floor of both chambers, and after a Senate filibuster last year, there is absolutely no reason why the substantial benefits of this vital legislation should be denied to the American people any longer.

The House of Representatives has acted responsibly in passing this measure. We hope the Senate will show as much wisdom and act swiftly to end debate and pass The Comprehensive National Energy Policy Act.

Respectfully,

A. M. PONTICELLI,
Executive Director, AFC.

MEMBERS OF THE ALLIANCE FOR FAIR COMPETITION

Air Conditioning Contractors of America; American Supply Association; Carolinas Electrical Contractors Association; Eastern Illinois Chapter, NECA; Michigan Chapter, ACCA; National Association of Plumbing, Heating & Cooling Contractors; National Association of Wholesaler-Distributors; National Electrical Contractors Association; Petroleum Marketers Association of America; Sheet Metal Contractors of Iowa, Inc.; Sheet Metal and Air Conditioning Contractors National Association; SMACNA Metropolitan Detroit Chapter; Berico Fuels, Inc.; Harry Cooper Supply Co.; and George Sumrow, Houston Chapter, NECA.

SIEMENS POWER CORP.,
Bellevue, VA, October 8, 1992.

Hon. DALE BUMPERS,
U.S. Senate, Senate Office Building, Washington, DC.

DEAR SENATOR: As the president of Siemens Power Corporation, I urge you to support passage of the Conference Committee Report on the national energy strategy bill.

I understand that the bill may be prevented by a planned filibuster from coming to a vote. Please be in Washington this Thursday to cast your vote to support the cloture motion to allow debate on the bill to proceed. It would be disgraceful if the bill were allowed to die in the closing hours of the 102nd Congress at the hands of a few disgruntled Senators.

The energy bill, like all bills of comparable national importance, is a compromise. But its shortcomings should not blind us to the fact that it would take the country a long way toward cleaner, safer energy technologies and greater energy efficiency.

America cannot continue to allow its dependence on Middle Eastern oil to grow. It needs to promote a range of alternative energy sources that are cleaner than the current generation of coal-fired plants and more acceptable to the public than the current generation of nuclear plants. We also need to develop technologies that enable U.S. industries to improve their competitiveness by using energy more efficiently. For all its flaws in the eyes of its critics, the energy bill—unlike the status quo—would accelerate progress toward these goals.

You and your colleagues have spoken from time to time of the need for action to change the nation's unsustainable ways of getting and using energy. The need for this change has not diminished since the most recent Gulf war. As the opportunity for change now hangs in the balance, we all might well ask ourselves: "If not now, when?"

Your active support of this legislation is essential.

Very truly yours,
R. B. STEPHENSON,
President, Chief Executive Officer.

COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION,
Washington, DC, October 6, 1992.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources, Hart Senate Building, Washington, DC.

DEAR SENATOR JOHNSTON: The Computer and Business Equipment Manufacturers Association, CBEMA, appreciates all of the work that you, your colleagues and your staff have accomplished in conference on H.R. 776. We want particularly to endorse the voluntary program established in Section 195, "Energy Efficiency Information for Commercial Office Equipment."

We look forward to working with you and your colleagues to ensure the effectiveness of a voluntary program for industry and the public at large.

Sincerely,
JOHN L. PICKITT,
President.

INTERNATIONAL NATURAL GAS ASSOCIATION OF AMERICA,
Washington, DC, October 5, 1992.

Hon. J. BENNETT JOHNSTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR JOHNSTON: I want to express INGAA's strong support for passage of the Comprehensive National Energy Policy Act Conference Report (H.R. 776). We are especially pleased that the conferees approved provisions to exempt independent power producers from the Public Utility Holding Company Act. Independent power is expected to account for between thirty-five and forty percent of all new capacity brought on line through 2000. Passage of PUHCA reform has always been the highest priority for INGAA as it will increase competition in the wholesale power generation market by eliminating barriers to the growth of independent power production and enhance opportunities of natural gas in this market.

This legislation also contains provisions that deregulate imports and exports of natural gas from and to countries with which we have a free trade agreement. It provides more opportunities for natural gas use as an alternative fuel. It enhances natural gas research and development. It also encourages additional drilling by eliminating the tax penalty for independent producers under the alternative minimum tax and provides tax deductions for clean-fuel vehicles. H.R. 776 is a balanced, constructive bill which has had partisan support at every stage of its consideration.

The Senate will vote on cloture on this legislation on Thursday, October 8. I urge you to be here to vote for cloture and passage of this important piece of legislation.

Sincerely,
JERALD V. HALVORSEN,
President.

AMERICAN PUBLIC TRANSIT ASSOCIATION,
Washington, DC, September 30, 1992.

Hon. J. BENNETT JOHNSTON,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR JOHNSTON: On behalf of the members of the American Public Transit Association, and the millions of transit riders nationwide, I want to thank you for your efforts to increase the transit commute benefit to $60 per month. Having already passed both chambers in the omnibus tax bill and now in H.R. 776, the energy bill, we deeply appreciate your support on this issue.

We understand the difficulties facing the energy bill conference in the waning hours of the 102nd Congress and want to offer our help in gaining final passage of this important legislation. An increase in the monthly tax exempt transit benefit is good public policy and we look forward to helping implement the new legislation when it is signed into law.

Again, thank you for your support and please call on us if we can assist you in passing H.R. 776.

Cordially,
JACK R. GILSTRAP,
Executive Vice President.

Mr. JOHNSTON. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 5 minutes 14 seconds.

Mr. JOHNSTON. I yield to the Senator from Wyoming.

ENERGY POLICY ACT OF 1992

Mr. WALLOP. Mr. President, one of the most important challenges faced by the 102d Congress was the establishment of a long-term, comprehensive, and consensus-based energy strategy for the United States. The Energy Policy Act of 1992 accomplishes that task.

After an intense, 2-year effort, success is near. Our conference agreement reforms outdated energy policies from the 1970's that were quickly formulated during a time of crises and shortages. This failed legacy, which plagued us throughout the decades, is finally corrected.

The Energy Policy Act of 1992 contains the necessary reforms to assure sustainable economic development in a manner that reflects today's sensitivity to global environmental concerns. The conference agreement before us responds to the challenge.

This agreement was forged through the bipartisan efforts of the Senate and the House of Representatives working closely with the Department of Energy and the White House. The outcome speaks well for the legislative process. Through accommodation and compromise, the bill actually improved as it proceeded through the conference.

The Energy Policy Act of 1992 prepares America for the 21st century. In response to an expanding national and global economy, America must rely on energy production as well as increased efficiency and conservation. The conference agreement redefines our national energy focus in several fundamental ways:

First, the conference agreement contains a broad portfolio of energy supply initiatives to foster an expanded use of conventional energy supplies such as natural gas, oil, coal, and uranium—all of which we have in abundance. Provisions are included to enhance oil and gas production as well as to foster greater use of solar, renewables, and alternative transportation fuels.

Second, the conference agreement contains incentives which foster a more efficient use of domestic supplies. Provisions are included to promote energy efficiency in the utility and transportation sectors of our economy. Equally important, the agreement requires the Federal Government to take important steps toward this end. Federal agencies are required to improve energy efficiency in the buildings they own or lease, and to switch to the use of alternative fuels in their fleets.

Electric and gas utilities are encouraged to consider integrated resource planning and demand side management programs. Recognition also is given to States who have already considered demand-side management options.

In addition, the conference agreement includes important reforms of the 1935 Public Utility Holding Company Act. Competition will be enhanced by creating a new class of independent power producers free from corporate and geographic restrictions imposed by current law.

American utilities and entrepreneurs will also be allowed to build, own, and operate domestic and international independent power production facilities without undue regulatory entanglements. By ensuring the freedom of U.S. companies to compete both here and abroad, the conference agreement will put American technology, American equipment, American industry, and American workers to work building state-of-the-art, clean, and efficient powerplants.

In the transportation sector—our largest consumer of imported oil—the conference agreement contains a broad range of initiatives. Section 2021 calls for a broad, 5-year program to reduce the transportation use of oil. In addition, there are provisions to accelerate alternative fuel vehicle technologies as well as support for the commercialization of electric and electric-hybrid vehicles.

Provisions also are included that require the use of alternative fuels by Federal, State, and some private fleets in metropolitan areas. According to DOE these provisions could save as much as 193,000 barrels of oil per day.

Recognition is given to the interrelationship between this requirement and the Clean Fuels Fleet programs contained in the 1990 Clean Air Act Amendments that takes effect in 1998 in 21 cities. The Clean Air Act Program was designed to accelerate the introduction of cleaner vehicles that meet phase II emission requirements through reliance on such clean fuels as reformulated gasoline. This objective is preserved by the conference agreement.

Before the fleet vehicles that are a part of the Clean Fuels Fleet Program could be brought under the coverage of the Energy Policy Act, section 507(g)(3) requires the Secretary to make certain findings that presume compliance with applicable requirements of the Clean Air Act including phase II emission standards. This requirement recognizes the extensive effort that has been launched by the auto and fuel supply industries to develop a system that can meet anticipated future Clean Air Act requirements through the use of reformulated gasoline. This may well conflict with the requirements of the fleet provisions of the conference agreement.

In all candor, I am concerned about the complexity of these private fleet provisions. The drafting is confusing, and the rulemakings are excessive. This title alone contains at least 11 separate rulemakings and 3 additional requirements to promulgate regulations. The Congress may well find it necessary to revisit this section again to address these ambiguities.

A third, and important area, is the conference agreements support for advanced nuclear power technologies. Without nuclear power as a viable energy option for the United States, our dependence on imported oil will threaten our Nation's economic health and energy security.

The conference agreement enhances the nuclear power option by enhancing the one-stop nuclear licensing process already developed by the Nuclear Regulatory Commission and provides for the development of advanced nuclear reactor technologies.

Fourth, the conference agreement provides for the transformation of the Federal Government's uranium enrichment enterprise into a federally owned corporation that can be nursed back into financial health and eventually sold to private investors. Provision is also made for the U.S. Enrichment Corporation to purchase the highly enriched uranium made available from the member States of the former Soviet Union for use in the business operations of the Corporation. The blending and conversion of this material for use in commercial reactors is going to take many years if its impact on domestic mining and other industries is to be minimized. Provision thus is made by section 1408 for the development of least-cost business plan. To be effective in minimizing the domestic effect of this program, the required major investments in conversion facilities are going to have to be recovered over an extended period.

Fifth, the conference agreement restructures Federal research and development programs to establish commercial applications as a principal objective for Federal energy research, development and demonstration programs. In the future, any demonstration program supported by the Department of Energy must determine the technical and commercial feasibility of new energy technologies.

Because of the importance of industry participation in such commercialization efforts, the conference agreement provides for a compulsory, financial commitment from non-Federal sources wishing to receive funding support from the Department of Energy. Such cost-sharing is essential to the commercialization of new energy technologies.

As a commercialization incentive, the conference agreement extends the provisions of the 1990 amendments to Stevenson-Wydler Technology Innovation Act of 1980 regarding the protection of intellectual property and other sensitive information to any research, development, demonstration and commercial application activities under the Energy Policy Act of 1992.

Sixth, significant initiatives are included to assist U.S. manufacturers in dealing with international competition. Provisions are included that support the development and export of advanced energy technologies. Such programs can serve as a critical component in the growth of the U.S. economy.

Title 25 of the conference agreement contains a number of provisions which affect the coal mining segment of our energy industry—some good, some not so good.

One provision extends the Abandoned Mine Lands Fund until 2004 to help offset the costs of the retired coal miner health benefits fund and encourage the remining and revegetation of surface coal mining operations. Also included in this title are provisions requiring repair and compensation for damages to residential dwellings resulting from subsidence and replacement of drinking water contaminated as a result of underground mining. While the subsidence provisions are not perfect, they do address concerns expressed by homeowners and the natural gas pipeline industry about the impacts of coal mining on structures and other buildings.

In place of a Federal coal royalty study that was dropped the conferees agreed to a royalty reduction for lignite coal in the Fort Union region of North Dakota and Montana. This reduction will benefit some Wyoming coal miners who produce coal in the Fort Union formation by giving them more stability and security in planning their coal mining operations.

Independent oil and gas operators will also benefit greatly from a provision included in this bill which makes both the competitive and noncompetitive lease terms 10 years. This provision is substantially different than the original House language—language which alleged collusion in the sale of oil and gas leases. The final language is more reasonable and will do much to encourage competitive new lease sales.

One of the more complex and controversial items in title 25 that the conferees agreed to is a provision intended to promote coal-bed methane development, a source of energy which is marginally economic. Economics aside, this provision embraces the reverse of federalism: where irresponsible State legislatures fail to act, the Federal Government steps in to promulgate regulations and manage State resources. Although the conferees did provide for a strong opt-out clause allowing States to avoid such a broadsweeping Federal mandate, I will make every effort to notify the appropriate Governors of the pratfalls of such extreme Federal intrusion.

Mr. President, our country is fortunate to have a broad spectrum of energy resource choices—coal, uranium, oil, gas, renewables, and energy conservation. I was pleased that the conference agreement removed all provisions dealing with Outer Continental Shelf moratoria or lease cancellation. A credible energy policy shouldn't make it a policy to frustrate the production of domestic energy.

For a national energy strategy to be effective it must provide sufficient flexibility for all supply and demand options to compete in the marketplace. The conference agreement sets forth an energy strategy that will further our national security, create American jobs, help our balance of payments, and lessen our dependence on foreign energy markets and international cartels.

The Energy Policy Act of 1992 provides a long-term comprehensive and consensus-based energy policy for the United States. I recommend adoption of the conference report.

UNITED MINE WORKERS RETIRED COAL MINERS' HEALTH BENEFIT PROGRAM

Mr. WALLOP. Mr. President, one of the most difficult issues we encountered in seeking the passage of what is now called the Energy Policy Act of 1992 was the dispute over the United Mine Workers Retired Coal Miners' Health Benefit Program. That plan, negotiated between the UMWA and the Bituminous Coal Operators of America as a labor contract benefit, was in severe financial difficulties. A proposal surfaced to create a new tax on coal producers—including western State coal companies which had no involvement in the UMWA-BCOA agreement.

This egregious solution was basically dead on arrival. After lengthy discussions, a compromise was devised which became the Rockefeller amendment to H.R. 776. This amendment was adopted by the conference without change. I did notice that the chairman of the Ways and Means Committee indicated that this issue will be revisited by his committee in the next Congress.

In the meantime, I did want to provide for the RECORD a technical explanation of the provision, and ask that it be printed at the conclusion of my remarks.

I would also ask that a recent paper from the Congressional Research Service on the use of abandoned mine reclamation funds to pay for benefits be included in the RECORD. I would like to clarify a point in this report which states that interest earnings would, absent the Rockefeller amendment, would be used for the fund's reclamation activities, reduce future AML fees, or make refunds to companies paying the fees. But, any excess funds would also be used to reimburse the States for their, to-date, underfunded share of the program. For instance, Federal payments to my State of Wyoming are millions of dollars in arrears. One of my objectives regarding the AML program is to seek full funding of the State share. The most sensible solution would be to allow States to opt out of the Federal program if they establish their own reclamation program and fee. This is another issue which will have to be revisited.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONFERENCE REPORT

SUBTITLE (C).—HEALTH CARE OF COAL MINERS

Section 1942. Findings and Declaration of Policy

The Coal Industry Retiree Health Benefit Act of 1992 has had a complex and arduous history. The Conference Agreement represents the efforts of many concerned Senators and Congressmen who worked together to conclude legislation to provide the approximately 120,000 beneficiaries in the United Mine Workers of America 1950 and 1974 Benefit Plans ("Plans") with continuing health care coverage. These multiemployer benefit plans were created in collective bargaining negotiations between the United Mine Workers of America ("UMWA") and the Bituminous Coal Operators Association ("BCOA") and perpetuated in successive bargaining agreements. Under those agreements, retirees and their dependents have been promised lifetime health care benefits. In many cases the last employer of a beneficiary is no longer in business, or no longer has a contractual responsibility to provide coverage. The need for legislative intervention arose because mounting deficits in the Plans threatened to curtail the flow of benefits absent a legislative solution. The Conference Report makes provision for the continuation of health care coverage to the existing beneficiary population.

The essence of the Conference Agreement is that those companies which employed the retirees in question, and thereby benefitted from their services, will be assigned responsibility for providing the health care benefits promised in their various collective bargaining agreements. This will be accomplished through a formulation designed to allocate the greatest number of beneficiaries in the Plans to a prior responsible operator. For this reason, definitions are intended by the drafters to be a given broad interpretation to accomplish this goal.

In addition to insuring the continuation of benefits for those individuals in the UMWA Plans, the Conference Agreement insures that signatory employers will provide coverage to all other eligible UMWA miners who are retired or who retire on or before September 30, 1994. These UMWA retirees and their eligible dependents also are assured of receiving the lifetime health benefits promised under the collective bargaining agreements, and their benefits will be paid for directly by their own employer. Current signatories, in conjunction with the UMWA, will also set up a new, limited plan to provide a safety net for benefit coverage should the last employer of any UMWA retiree in this group become unable to provide coverage.

The legislation does not affect post-September 30, 1994 retirees and their dependents. Companies which employ people in this category may bargain with the Union concerning the level and duration of their health care benefits upon retirement.

This Conference Agreement came about as a result of the arguments advanced by the Plans, the BCOA and the UMWA that absent legislation the beneficiaries could be without benefits because of deficits in those Plans. As the statement of policy makes clear, the Conference Agreement is intended to remedy those problems, to allow for sufficient operating assets and to provide for continuation of a privately financed self-sufficient benefit program. The purpose of the Conference Agreement is to facilitate a private party solution, not create a new federal entitlement program or establish a precedent for other federal action.

On November 19, 1991, S. 1989 was passed by the Finance Committee, and was appended to HR 4210, the Democratic tax package, which was vetoed on March 20, 1992. S. 1989 was highly controversial because it would have taxed the entire coal industry in order to pay for the health care of UMWA retirees. This industry tax was the subject of contentious debate because those companies with no relationship to the UMWA or BCOA were to be taxed to subsidize the BCOA's private promises. The claim that health care for UMWA retirees is an industry-wide responsibility is specifically rejected in the final Conference Agreement, which imposes the cost of this particular employee benefit program on current and former signatory companies and their related companies.

In addition, S. 1989 exempted any company, other than a producer of bituminous coal, from the payment obligation. The Conference Agreement rejects this concept in favor of a definition of responsible operator which includes every entity related to the responsible operator which continues in business, whether or not the related company is in the coal mining industry. Broadening the definition of responsible operator in this manner is the essence of the Conference Agreement. It recognizes the financial interdependence of these related entities, and is consistent with the drafters' view that it is more appropriate to assign the cost of providing these benefits to ongoing business entities which have or had a relationship with the signatory employer, than to tax totally unrelated entities to fund the contractually promised benefits.

Another important difference is the fact that S. 1989 provided for a government fund to administer the payment of benefits to an open ended beneficiary group. This concept is rejected in the Conference Agreement, which provides instead for a privately financed and administered benefit plan structure, with eligibility limited to those individuals actually receiving benefits from the UMWA Plans on July 20, 1992. This formulation solves the existing problem, but guarantees that the Congressional solution will not provide an avenue or incentive for abuse or for a continuation of the existing flawed program.

Both earlier bills and the Conference Agreement requires those companies which once were signatory to coal wage agreements with contribution obligations to resume paying for the cost of providing benefits to retirees assigned to them, even though those companies no longer have a contractual obligation to do so under their current relationship with the UMWA. The drafters in both cases took into consideration the claim of these so-called "reach back" companies that they had bargained out of their funding obligations. It was determined, however, that an equitable solution would require that such companies remain obligated to help fund the benefit program which covers retired persons who worked for those companies.

On March 6, 1992, the Senate Finance Committee reported out amendments to H.R. 4210, once again including provisions for an industry-wide tax to finance provision of health care benefits to UMWA retirees. While the specific assessment formula differed, it was essentially patterned on S. 1989. It was not passed by the full Senate. The CONGRESSIONAL RECORD of March 10, 1992 reflects the strong opposition to that measure, and any measure that extends obligations beyond the signatory companies and their related companies as those terms are defined in the Conference Agreement. The version of the legislation similar to the Conference Agreement was substituted for the version reported by the Finance Committee, and represents the solution which best accommodates the legitimate concerns of the many interested parties.

SUBTITLE J.—COAL INDUSTRY HEALTH BENEFITS

Chapter 99—Coal Industry Health Benefits

Subchapter A.—Definitions of General Applicability

Section 9701. Definitions of General Applicability

The terms "current 1950 and 1974 UMWA Benefit Plans and Pension Plans" refer to those plans created by the UMWA and BCOA in collective bargaining. The 1950 and 1974 Benefit Plans will, as of February 1, 1993, be merged into a "Combined Fund" which will begin providing benefits on February 1, 1993.

The term "coal wage agreement" means a collective bargaining agreement between the BCOA and the UMWA. This term includes every National Bituminous Coal Wage Agreement (NBCWA). It was in the 1974 NBCWA that the 1950 and 1974 Benefit Plans were instituted. These Plans are, in effect, successors to and a continuation of the employee health care program that was created in the 1950 NBCWA, and carried forward in every agreement through 1974. In their private collective bargaining, the UMWA and the BCOA agreed to provide UMWA retirees lifetime health care benefits. Companies signatory to coal wage agreements similar to the NBCWA are also obligated to contribute to the Combined Fund.

Section (c), "terms relating to operators," encumbers only those persons or entities which actually signed a collective bargaining agreement (the NBCWA or a similar contract) with the UMWA with the obligation to provide benefits. They are referenced as "signatory operator" throughout the Subtitle. However, because of complex corporate structures which are often found in the coal industry, the number of entities made jointly and severally liable for a signatory operator's obligations under the definition of related persons is intentionally very broad.

In this regard, the term "related person" is defined broadly to include companies related to the signatory operator. The Conference Agreement makes each such related person fully responsible for the signatory operator's obligation to provide benefits under the Act should the signatory no longer be in business, or otherwise fail to fulfill its obligations under the Act. Thus, the statute provides that related persons—meaning (i) those within the controlled group of corporations including the signatory operator, using a 50% common ownership test, (ii) a trade or business under common control with a signatory operator, (iii) one with a partnership interest or joint venture with the signatory operator, or (iv) in specific instances successors to the collective bargaining agreement obligations of a signatory operator—are equally obligated with the signatory operator to pay for continuing health care coverage.

The "time for determination of relationships" between signatory operators, related persons, and successors is July 20, 1992. This date was fixed to insure that parent corporations or other entities related to a signatory company could not evade responsibility for the obligations imposed under the Conference Agreement by divesting themselves of their ownership connection prior to enactment. The only exception is if, as of July 20, 1992, no signatory operator or related person remains in business. In such a case, the relationship shall be determined as of the time immediately before the signatory operator ceased to be in business. The purpose of this provision is to insure that every reasonable effort is made to locate a responsible party to provide the benefits before the cost is passed to other signatory companies which have never had any connection to the individual (other than having been signatory to a labor agreement which maintained the UMWA Plans). Allocation of beneficiaries to an entity or business which continues in business is the basic statutory intent. Thus, the Conference Agreement's overriding purpose is to find and designate a specific obligor for as many beneficiaries in the Plans as possible.

The term "1988 agreement operator" refers to operators which are signatory to the 1988 NBCWA or a collective bargaining agreement which contained health care contribution and benefit provisions similar to those in the 1988 NBCWA. This definition recognizes that many companies have signed labor agreements with the UMWA which require contributions to the UMWA Plans, but which may differ from the NBCWA in other respects.

"Last signatory operator" is a key term for determining the obligor for provision of benefits to each eligible beneficiary. The last signatory operator is the last person or entity by whom the eligible retiree was employed in the coal industry.

The term "assigned operator" is a broad term including signatory operator, related person and last signatory operator and means the obligor for the purpose of provision of benefits to a retiree and his dependents.

Because the statute is intended to provide the greatest number of beneficiaries with health care benefits paid for by a company which remains in business and was the retiree's signatory employer, or is or was a person related to such signatory, the term "business" is broadly defined. Earlier versions of UMWA retiree health care legislation had restricted "business" to the bituminous coal mining business. The Conference Agreement specifically states that "a person shall be considered to be in business if such person conducts or derives revenue from any business activity, whether or not in the coal industry." Thus, even if the signatory operator is no longer in the coal mining business, or indeed any business at all, but it or a related person continues to derive revenues from any type of business or otherwise has assets sufficient to provide benefit coverage, it will be deemed to be the assigned operator for provision of benefits required under this Subtitle.

Subchapter B.—Combined Benefit Fund

PART I—ESTABLISHMENT AND BENEFITS

Section 9702. Establishment of the United Mine Workers of America Combined Benefit Fund

Effective February 1, 1993, the Conference Agreement merges the UMWA 1950 and 1974 Benefit Plans into a newly created United Mine Workers of America Combined Benefit Fund. Although the Combined Fund will be created within 60 days of enactment, the Combined Fund will not make benefit payments until the effective date of this merger. Until the February 1, 1993 merger, all current beneficiaries in the UMWA 1950 and 1974 Plans will continue to receive their health care benefits from the existing UMWA Plans.

The Combined Fund shall be treated as tax exempt under Section 501(a) of the Internal Revenue Code and shall qualify as a Section 102(2)(5) plan under the Labor Management Relations Act, 1947, 29 U.S.C. 186(c)(5), an employee welfare benefit plan within the meaning of Section 3(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(1), and a multiemployer plan within the meaning of Section 3(37) of ERISA, 29 U.S.C. 1002(37).

The statute makes provision for the Combined Fund to be administered by a Board of Trustees. The Board has been constituted to ensure as high degree of impartiality in the administration of the Combined Fund as possible. It is specifically intended that the Combined Fund not be a government corporation. The mechanism for selecting trustees is designed to ensure that those companies with the largest financial obligation to the Combined Fund are adequately represented in the selection of trustees. Furthermore, the Trustees' sole responsibility is to administer the Combined Fund in the best interest of the beneficiaries within the confines of the Act. The Trustees are not the representatives of the BCOA, the UMWA, or any other group. Procedures, rules and decisions affecting the Fund shall be established as needed by the Trustees, and shall not be the result of or subject to, or affected by collective bargaining between the UMWA and the BCOA.

Section 9703. Plan Benefits

Health benefits under the Combined Fund will be substantially the same as those provided pursuant to the terms of the 1988 NBCWA as of January 1, 1992. In addition, the statute makes provision for death benefits at the same level as those in effect on July 20, 1992 under the 1988 NBCWA. A major difference is that, unlike the UMWA Plans, the Combined Fund is designed to require adherence to rigorous cost containment measures to control the rate of utilization. The Combined Fund will be a prepaid, managed care program. The Trustees will adopt certain cost containment strategies like negotiating with existing provider groups, soliciting the formation of new provider networks, or taking other actions as may be necessary to arrange for the most cost effective delivery of medical care to cover all beneficiaries. It is recognized that, due to geographical location, such managed care arrangements may not be feasible for all beneficiaries. Although the beneficiaries tend to be concentrated in specific geographical areas, some are located in isolated rural areas incompatible with a pre-paid, managed care program. The Trustees will address these isolated instances on a case-by-case basis. In each case the Trustees will negotiate with providers and manage the beneficiary's care utilization to assure not only that benefits under the Combined Fund are being delivered in a cost effective manner, but also that the Combined Fund maintains financial viability.

Significantly, the legislation provides that benefit coverage may be readjusted if the amount of money available to the Trustees under the financing arrangements in the statute is insufficient to continue benefits at current levels. While the statute's intention is to begin the provision of benefits from the Combined Fund at the 100 percent coverage levels specified in the 1988 NBCWA, benefits are not locked in at this level. While the contribution level may be increased on a yearly basis to match certain increases in the health care component of the CPI, the Trustees may adjust benefit levels if necessary to meet income projections.

The Trustees have full authority to develop and administer a plan of coverage and the mechanism for delivery of health care. All benefit eligibility limitations in the current Plans shall be continued under the Combined Fund. The program should result in the availability of uniform coverage levels for all beneficiaries. Since the drafters have envisioned that the primary structure of benefit delivery will be through a pre-paid managed care program, the imposition of cost sharing arrangements on the beneficiaries would be considered by the Trustees only as a last resort.

Only assigned operators are responsible for paying the Combined Fund's cost of providing benefits. The liability of each operator depends upon the number of beneficiaries allocated to that company under the statute's assignment provisions for allocating beneficiaries to assigned operators, signatory operators and related persons.

PART II—FINANCING

Section 9704. Liability of Assigned Operators

Each assigned operator will pay a premium to the Combined Fund consisting of three parts: a health premium for its assigned beneficiaries, an actuarially determined death benefit premium, and a premium to cover its pro-rata share of the health benefits allocable to unassigned beneficiaries. Beneficiaries will be assigned to current and past signatory operators, and the Conference Report makes clear that their related companies are fully liable for the retirees and dependents allocated to each assigned operator. It will be the responsibility of the Secretary of Health and Human Services to calculate a yearly per beneficiary health premium, to be paid on a monthly basis. Premiums may be increased annually to reflect certain increases in the 1992 medical component of the Consumer Price Index. Provisions are also made for certain adjustments in the event of changes in Medicare coverage so that the benefits continue as supplementary. The purpose of this is to insure that the coverage available to beneficiaries in 1992 is not lessened solely because of future changes in the scope of benefit coverage under the Medicare program.

As a practical matter, not all beneficiaries can be assigned to a specific last signatory operator, related person or assigned operator for payment purposes. This is because in some instances, none of those persons remain in business, even as defined to include non-mining related businesses. Thus, provisions are made for unassigned beneficiary premiums. In each plan year each assigned operator will pay a premium earmarked to cover the health costs of these unassigned beneficiaries.

The amount of the unassigned beneficiary premium payable by each assigned operator will be calculated on the basis of the number of beneficiaries assignable to each operator as of October 1, 1993. For example, a person who, on October 1, 1993, is the assigned operator for 10 percent of all beneficiaries in the Combined Fund who can be assigned to an operator (or related person) still in business, will pay ten percent of the total yearly premium cost allocable to unassigned beneficiaries in the Combined Fund. Likewise, this pro-rata calculation will be used for future years. Although the percentage of the unassigned beneficiary premiums allocable to each assigned operator on October 1, 1993 will remain fixed in future years, the statute makes provision for readjustment on an annual basis to take into account the fact that, in the future, assigned operators (and related persons) may go out of business and be unable to continue payments to the Combined Fund.

The first plan year is an eight-month period running from February 1, 1993 through October 1, 1993. Thereafter, each plan year will be a twelve month period from October 1 through September 30. In the first plan year the Secretary of HHS will review the work history of each beneficiary and will prepare the assigned operator allocations which are required to be made by October 1, 1993. During this period, the 1988 NBCWA signatories will pay all of the Combined Fund's costs. Amounts will be paid based on the percentage of the total of each company's contributions to the UMWA 1950 and 1974 Benefit Plans made during the term of the 1988 Agreement. The statute makes provision for adjustments during the following plan year should a company under-pay or over-pay its actual obligations during this eight month period.

In recognition of the fact that unassigned beneficiaries were not employed by the assigned operators at the time of their retirement, provisions are made to subsidize the assigned operators' payment obligations for the unassigned beneficiaries. The inclusion of such subsidies was a key component of the legislative compromise. One such subsidy involves a transfer of assets from the overfunded 1950 UMWA Pension Plan to the Combined Fund. This money was previously paid into the pension plan by the signatory companies and is actuarially determined to be in excess of what is needed to provide pension benefits. Thus, on February 1, 1993, October 1, 1994 and October 1, 1995, $70 million will be transferred from the 1950 Pension Plan to the Combined Fund. This money may be used only to reduce the amounts that assigned operators would otherwise have to pay to provide health benefits to unassigned beneficiaries, and may not be used for any other purpose.

Deficits currently exist in the UMWA Benefit Plans. The 1988 signatories are solely and exclusively responsible for paying off the amount of any deficit which may exist on February 1, 1993, when the UMWA Plans are merged into the Combined Fund. The deficit must be paid off on a pro-rata basis over a twenty-month period. Transfers from the overfunded UMWA 1950 Pension Plan and the Abandoned Mine Land fund (discussed below) may not be used to pay off the deficits.

Section 9705. Transfers

At Section (b) of he Conference Agreement, provision is made for monies to be transferred from the Abandoned Mine Land Fund (AML Fund) in an amount up to, but not more than, $70 million per year beginning on October 1, 1996 and on October 1 of each subsequent plan year. The AML Fund is funded by a cents per ton tax imposed on all coal mining companies under Title IV of the Surface Mining Control and Reclamation Act of 1977. As with the transfer of excess assets from the UMWA 1950 Pension Plan, this money may be used solely for the purpose of subsidizing the cost of providing health care to unassigned beneficiaries. The money which is available from the AML Trust Fund is interest earned on the corpus. The Conference Agreement specifically intends that no part of the corpus of the Abandoned Mine Lands Trust Fund be used for this purpose. This subsidy was critical to the compromise legislation and is not intended to impact on budgetary scoring issues or to suggest that any person which was not signatory to a coal wage agreement, or related to such a signatory, has any obligation or responsibility under the Conference Agreement. It is expected that, in future years, the amount of the yearly AML transfer will decrease as the total number of unassigned beneficiaries in the Combined Fund decreases.

Section 9706. Assignment of Eligible Beneficiaries

The method of assignment of eligible beneficiaries was the source of much debate and controversy prior to the Conference Agreement. The conferees intend that the largest possible number of beneficiaries in the Plans be assigned to a specific or designated company. Under the statute, each eligible beneficiary shall be assigned in the following order:

First, to the operator which was signatory to the 1978 or later coal wage agreement and which most recently employed the retiree in the coal industry for at least two years. This assignment shall be based on a signatory operator and related persons basis. If that signatory operator, including related person, is still engaged in any business and employed the miner for two years or more, that person becomes the assigned operator under the statute. Second, if the retiree was not assigned on the basis of a two year employment status, he will be assigned to any post-1978 coal wage agreement signatory, or related person, which remains in business and which was the retiree's majority employer, even if such majority employment was for a period less than two years. Third, if no post-1978 signatory (including related persons) remains in business, then the individual will be assigned to the pre-1978 signatory which employed the individual for the longest period of time, regardless of that length of service. Finally, if no operator remains in business under the formulations described above, that retiree becomes an unassigned beneficiary. In all categories, the retiree's dependents are to be treated in the same manner as the retiree for purposes of determining the assigned operator.

It is emphasized that employment of a coal industry retiree in the coal industry by a signatory operator shall be treated as employment by any related persons to such operator. For purposes of calculating the last employer and majority employer and two year employer, employment with persons no longer in business (including related persons) and persons during a period during which such person was not signatory to a coal wage agreement shall be disregarded.

The statute makes provision by which assigned operators may transfer the assignment of an eligible beneficiary to a successor employer pursuant to private contractual arrangements for a purchase. An assigned operator may inform the Trustees of the Combine Fund of the transfer of its responsibility to make premium payments under the Act to a third party and the Combined Fund Trustees will make appropriate accommodations. However, even in such case the assigned operator remains the guarantor of the benefits under the Conference Report. The Conference Report's purpose is to assure that any beneficiary, once assigned, remains the responsibility of a particular operator, and that the number of unassigned beneficiaries is kept to an absolute minimum.

The statute makes provision for record searches an other necessary administrative functions by the Secretary of HHS. This will enable the Department to carry out its responsibilities under this section. In addition, it is intended under the statute that the Secretary have the authority to promulgate regulations governing the method by which determinations of the assigned operator will be made and setting out the review procedures available to an assigned operator once such determinations are made. It is anticipated that this procedure will be time consuming and it is known that the corporate relationships in the coal industry are often complex. The Secretary of HHS is not intended to be overburdened by standards of proof. As long as the determination is based on accurate data and that reasonable inferences are drawn under the circumstances, the determination made by the Secretary of HHS is intended to prevail.

The section on private actions provides that if parties have commercial contracts relate to acquisition or disposition of coal bearing properties or facilities which delineate their respective responsibilities concerning the obligation for provision of retiree health care, the parties may enter into private litigation to enforce such contracts for indemnification or any other form of payment allocation as may be appropriate under their private contract. Otherwise, this language does not create new private rights of action where they would not exist in the absence of this provision.

PART III—ENFORCEMENT

Section 9707. Failure to Pay Premium

The statute makes provision for assigned operators to be penalized up to $100 per day for failure to make required payments. The Secretary may waive such penalty payments in certain situations, for example, where the failure to make payments is for reasonable cause.

PART IV—OTHER PROVISIONS

Section 9708. Effect on Pending Claims or Obligations

This section relates to pending litigation involving the UMWA Benefit Plans and certain companies. The statute provides that it shall control all liability for contributions on or after February 1, 1993. For periods prior to that date, the plan documents, collective bargaining agreements and litigation shall determine respective rights, duties and obligations. The Conference Report shall not interfere with the results of such litigation, nor be used to interpret such litigation.

Subchapter C—Health Benefits of Certain Miners

PART I—INDIVIDUAL EMPLOYER PLANS

Section 9711. Continued Obligations of Individual Employer Plans

In some instances, signatories to the 1978 or subsequent coal wage agreements provide retiree health benefits from an individual employer plan maintained pursuant to those coal wage agreements. The statute makes provision for such health benefits coverage to continue at the same levels provided the last signatory operator (and any related person) remains in business. Thus, for example, 1988 NBCWA signatories which are presently providing retiree health care through an individual employer plan will be statutorily obligated to continue such benefits for life with respect to all former employees who are already retired, or who become eligible to retire by February 1, 1993, and who in fact retire on or before September 30, 1994. Should the last signatory operator go out of business, all related companies are jointly and severally liable to continue the retiree health care benefits for pre-October 1, 1994 retirees and their dependents. It is the intent of the drafters that provision of health care benefits to pre-October 1, 1991 retirees be specifically resolved by the legislation.

Health care benefits for employees retiring after September 30, 1994 are subject to collective bargaining between their company and the UMWA. These persons are not guaranteed a specific level of benefits, guaranteed funding of any benefits or provided benefits under the Conference Report. It is the intention of the drafters to close the UMWA 1950 and 1974 Benefit Plans as of July 20, 1991, and that a new private party plan (discussed below) be created to provide future coverage for all other eligible UMWA miners who retire before October 1, 1994, but who are not eligible for the Combined Fund because they were not receiving benefits from the UMWA 1950 or 1974 Plans on July 20, 1991. Further, the issue of benefits for pre-October 1994 retirees shall not be reopened. This was a matter of considerable debate and controversy by the drafters. However, the status of all post-September 1994 retirees is to be resolved by the coal operators and the Union in collective bargaining.

The reason for this legislation was the unique nature of the coal industry and its benefit plans. This statute is not intended to be precedent setting for other industries, other benefit plans, or other coal industry workers who may retire in the future.

PART II—1992 UMWA BENEFIT PLAN

Section 9712. Establishment and Coverage of 1992 UMWA Benefit Plan

The question of the cut off date for determination of eligibility for benefits under this statute was an issue of concern to the interested parties. The drafters determined that eligibility to receive benefits from the Combined Fund would be limited to individuals actually receiving benefits from the UMWA Plans as of July 20, 1992. Questions remained as to the coverage of retirees after that date. At the urging of the UMWA and the BCOA, the drafters agreed to provide statutory authority and direction to the UMWA and the BCOA to establish a new fund called the 1992 UMWA Benefit Plan to cover those persons who retire between July 20, 1992 and October 1, 1994. To be eligible for coverage under the 1992 UMWA Benefit Plan the retiree (and his eligible dependents) must: (i) have retired prior to October 1, 1994, and (ii) not be able to qualify for receipt of benefits from the Combined Fund. This fund is expected to be a bridge to cover employees who have not yet retired but who are retiring within a very short time after the Conference Report's effective date. It is expected that this population will not be large.

The 1992 Fund will include all eligible retirees who retire prior to October 1994 (assuming they were eligible to retire by February 1, 1993) who would have been eligible to receive benefits from the UMWA 1950 or 1974 Plans but for the enactment of this legislation. Any person eligible for benefits from the 1992 Fund shall be allocated to such assigned operator or related person which remains in business and that assigned operator shall be assessed premiums sufficient to guarantee benefits to such eligible beneficiaries. These premiums, which shall be paid by all 1988 signatory operators, shall consist of (i) an annual prefunding premium for each eligible beneficiary attributable to it, and (ii) a monthly per beneficiary premium for all eligible beneficiaries whose last signatory operator (including related persons) is no longer in business, and (iii) the provision of security to insure future compliance with these payment obligations. These assessments shall be applied uniformly to each 1988 last signatory operator on the basis of the number of eligible and potentially eligible beneficiaries attributable to it. Additionally, any last signatory operator which is not a 1988 signatory but which has a retiree assignable to it under this plan shall be assessed a monthly per beneficiary premium for each such eligible retiree and his dependents.

The 1992 Fund trustees may implement managed care programs, but have less discretion and authority to deviate from the benefit structure and benefit levels in effect under the prior UMWA Plans than do the trustee of the Combined Fund.

Subchapter D.—Other Provisions

Section 9722. Sham Transactions

This provision is modeled after, and should be interpreted consistent with Section 4212(c) of The Multiemployer Pension Plan Amendments Act of 1981, 29 U.S.C. 1392(c).

Section (b). Amendments to Surface Mining Act

The Conference Report makes provision to accomplish the transfer of interest payments from the Surface Mine account to the Combined Fund. After the initial transfer of $210 million, beginning in 1996, up to $70 million per year of interest will be transferred from the Surface Mine account to the Combined Fund. If the Trustees determine that the benefits for unassigned beneficiaries will be less than $70 million in any year, only the amount needed will be transferred. The Conference Report also extends the Surface Mining Control and Reclamation Act of 1977 through September 30, 2004. The statute makes no employer other than a signatory operator or related company responsible for payment of benefits. The provisions allowing use of AML money are restricted to the use of interest from that Fund and will not affect budgetary scoring. It is intended that this money be used solely and exclusively for the benefit of unassigned beneficiaries to the Combined Fund.

[CRS Report for Congress, Sept. 10, 1992]

COAL INDUSTRY: USE OF ABANDONED MINE RECLAMATION FUND MONIES FOR UMWA "ORPHAN RETIREE" HEALTH BENEFITS

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Financing the retiree health benefits now provided by the United Mine Workers of America (UMWA) 1950 and 1974 Benefit Plans would be substantially revamped by the Coal Industry Retire Health Benefit Act of 1992. This proposal was included as subtitle C of Title XX, the revenue provisions of H.R. 776, the National Energy Security Act of 1992, as passed by the Senate on July 30, 1992. The coal industry retire health benefit proposal was not included in the version of H.R. 776 approved by the full House and consequently remains a difference for the conference committee to resolve.

One component of the proposal is to transfer interest earnings on the balance in the Abandoned Mine Reclamation Fund, popularly referred to as the AML (Abandoned Mine Land) Fund, to help finance UMWA orphan retiree health benefits. The success of this approach requires maintaining a large unspent balance in the AML Fund. This report examines the implications of the AML interest transfer proposal in terms of Federal budgeting policy, spending on reclamation activities, and the incidence of the financing burden on different parts of the coal industry.

The report begins with a brief background on the problems facing the UMWA Health Benefit Plans and the alternative proposals advanced in the 102nd Congress to provide some financial relief. The second section summarizes the main financing elements in the H.R. 776 plan for coal industry retiree health benefits, pointing out major differences from the current system. The third section provides a brief description of the AML program. The fourth section explains the budgetary implications of spending the interest credited to a special fund within the

U.S. Treasury. The fifth section shows how the AML interest transfer proposal would divert monies away from their designated purpose of land reclamation. The sixth and final section measures the relative burden of the AML tonnage fees by type of coal and geographic region, in contrast to alternative forms of taxes on the coal industry. Appendix 1 presents more detailed State-by-State statistics on the financing distribution. Appendix 2 summarizes the various legislative proposals introduced in the 102nd Congress to help finance UMWA orphan retiree health benefits.

BACKGROUND ON THE UMWA HEALTH BENEFIT FUNDS

Curently, the basic financing mechanism for the UMWA Health Benefit Funds is a per-production-hour contribution made by coal companies that are still "signatory" to the National Bituminous Coal Wage Agreement (NBCWA), the main collective bargaining agreement between the United Mine Workers and employers represented by the Bituminous Coal Operators' Association (BCOA). This hourly contribution pays for health benefits covering beneficiaries of three types: those directly associated with the signatory companies, "reachback orphans" associated with companies previously signatory and still in business, and "true orphans" associated with companies previously signatory but no longer in business.

The coal companies that are still fully signatory to the bargaining agreement have complained that for every dollar they have been paying into the UMWA 1950 and 1974 Health Benefit Funds for their own retirees and dependents, they pay an additional three dollars on behalf of "orphans" of other companies. These companies have suggested that they can no longer afford to bear the full costs of the orphans on their own. Altogether, the Funds service approximately 120,000 beneficiaries.[1]

Like most retiree health benefit plans in the United States, the UMWA 1950 and 1974 Benefit Funds were intended to operate on a current year, pay-as-you-go basis. No attention was given to prefunding. The Benefit Funds were established as multiemployer plans, again based on the common assumption that while some employers in the industry group might go out of business, other companies would emerge to take their place.

What went wrong? Output of the coal industry as a whole has been growing. Total tonnage produced in the U.S. rose from 599 million tons in 1973 to 1,029 million tons in 1990.[2] Simultaneously, however, the nature of the industry was changing dramatically, shifting from underground mining toward higher productivity surface mining operations. Much of the new growth in the coal industry has occurred outside the reach of the UMWA, BCOA, and NBCWA. Virtually no new mines have been opened under the National Bituminous Coal Wage Agreement since the mid-1970s. In 1978, the Bituminous Coal Operators of America had 130 member companies; by 1992, the number had dropped to 13 or 14. The share of domestic tonnage covered by the NBCWA fell from approximately 80 percent during the 1950s, to 66 percent in 1973, and 30 percent in 1990. UMWA-represented surface mines in the Western States signed separate agreements with employers that did not require full contributions to the UMWA Benefit Funds. The UMWA also signed separate agreements with other major coal companies, permitting them to reduce their payments to the Benefit Funds.

The coal companies that remained signatory to the NBCWA and full contributors to the UMWA Benefit Plans were thus left to bear the health care costs of retirees from many companies that had gone out of business or ceased to contribute to the Funds. In addition, as a result of separate court decisions, the UMWA Benefit Funds were held responsible for paying benefits for some retirees, but the former employers were not held responsible for continuing to contribute to the Funds. Overall, the BCOA contribution rates were not set high enough to fully cover outlays of the Funds, despite several court-ordered temporary rate increases. As a consequence, in recent years, the UMWA Benefit Funds have been operating at a deficit; the cumulative deficit of the combined funds as of June 30, 1992, was estimated to be approximately $100 million.

The basis public policy question is who should pay for the health benefits promised to "orphan" retired United Mine Workers and their related beneficiaries if specific former employers cannot be held responsible. Should it be only the current and former signatories to the bargaining agreement or should other parts of the coal industry provide some relief? Should the general public bear responsibility for orphan retirees through Federal or State health care programs?

Shaky retiree health benefits are not unique to the coal industry. Many other retiree groups have recently been orphaned or abandoned by their former employers with regard to health benefits. Pan American Airlines and Eastern Airlines are well-known examples, but thee are many others.[3] Other multiemployer benefit plans, such as those in the rail and steel industries, also face a shrinking contribution base.

It is noteworthy that many beneficiaries of the UMWA Health Benefit Plans are eligible for health benefits under two Federal programs. Many retired miners, as well as spouses and widows, are eligible for Medicare. According to statistics presented in early 1992, 88 percent of the 1950 and 56 percent of the 1974 Benefit Fund beneficiaries were Medicare-eligible.[4] In addition, about 71 percent of retired miners (but not dependents) receiving UMWA health benefits are also covered under the medical-care portion of the Black Lung Disability program. Thus, the potential issue for most orphan beneficiaries involved in the coal industry case is not being without any health insurance coverage at all. Rather, the issue—for those retired miners and dependents old enough to qualify for Medicare—is a Medigap policy with prescription drug coverage.[5] But many older Americans—in addition to coal industry retirees—are affected by the fact that Medicare does not cover 100 percent of their health care costs.

There may be good reasons for the Congress to address the issue of retiree health benefits on a comprehensive nationwide basis, rather than an industry-specific basis. But a major overhaul of the Nation's health care financing system is unlikely in 1992. Meanwhile, the coal industry faces an imminent time deadline. The current bargaining agreement between the UMWA and the BCOA, known as the 1988 Agreement, is scheduled to expire after February 1, 1993. There has been concern that the failure to resolve in advance of contract negotiations the issue of how to finance orphan retiree health benefits could lead to a strike by the miners and/or a refusal by BCOA employers to continue to support health benefits previously promised to retire miners and dependents.

Several proposals were introduced in the 102nd Congress for financing coal industry retiree health benefits. This report focuses on aspects of those proposals that involve taxing the coal industry to help pay for "true orphans."

The initial proposal by Senator Rockefeller (The Coal Industry Retiree Health Benefit Act of 1991, S. 1989) for financing orphan retiree health benefits was based on an industrywide tax of $.75 per production hour on domestic coal and an equivalent tax of $.15 per ton for imported coal. This proposal drew strong protests from coal companies never signatory to the National Bituminous Coal Wage Agreement who argued that they had no part in promising the retiree health benefits at issue and should therefore not be required to pay.

A revised financing proposal (included in H.R. 4210, the Tax Fairness and Economic Growth Act of 1992) was to tax only bituminous coal production, at $.99 per hour for coal mined East of the Mississippi River, $.15 per hour in the West, and $.25 per ton for imported bituminous coal. The version of H.R. 776, the national energy legislation, approved by the Senate Finance Committee included a similar proposal with slightly higher rates.

The bituminous coal tax proposal was an attempt to target the tax more precisely on the part of the coal industry that could be considered most responsible for the promised UMWA retiree health benefits. Historically, UMWA representation was most likely in underground coal mines, located in the East, and involving bituminous coal. The bituminous coal tax proposal exempted Western subbituminous coal and lignite production and taxed Western bituminous at a much lower rate. However, a large fraction of Eastern bituminous mining has not been affiliated with the UMWA or the NBCWA. These non-signatory companies strongly objected to the proposed tax.

Both the proposal to tax all coal production and the proposal to tax only bituminous coal production—whether or not the companies had ever been signatory to the NBCWA—had met opposition in the Senate and were threatened with a presidential veto.

Meanwhile, in the House of Representatives, there was a proposal to transfer $50 million per year from the Abandoned Mine Reclamation Fund, first introduced by Rep. Rahall as H.R. 4344, and subsequently included in H.R. 776 as approved by the House Committee on Interior and Insular Affairs, but *not* included in H.R. 776 as approved by the full House. It was a revised version of this AML transfer proposal—tied to the interest earnings of the AML fund and increased to $70 million per year—that was included in H.R. 776, the National Energy Security Act of 1992, as approved by the full Senate.[6]

THE FINANCING MECHANISM PROPOSED IN H.R. 776

Under the proposal in the full Senate version of H.R. 776, the basic financing mechanism for UMWA retiree health benefits would switch from the current per-production-hour contribution to a per-beneficiary premium. Wherever possible, responsibility for individual beneficiaries would be assigned (by the U.S. Secretary of Health and Human Services) to a previous employer still in business—whether a current signatory or a "reachback" company. The net total premiums due on behalf of the remaining unassigned beneficiaries (the true orphans) would be allocated to the signatory and reachback companies in proportion to their "applicable percentage" of all assigned beneficiaries.

Footnotes at end of article.

These aggregate premiums due on behalf of the unassigned beneficiaries would be reduced by transfers from other sources of $70 million each fiscal year starting in FY93. The first three transfers (February 1, 1993, October 1, 1993, and October 1, 1994) would come from the surplus assets of the UMWA 1950 Pension Fund. Starting October 1, 1995, the annual transfers would come from the interest earnings of the AML Fund. The AML interest transfer proposal is linked to the extension of the AML tonnage fees on coal. The legislation would extend the AML fees another nine years, from their scheduled expiration on Sept. 30, 1995, until Sept. 30, 2004.

For any single fiscal year the amount that could be transferred from the AML Fund may not exceed the amount of expenditures that the trustees of the new United Mine Workers of America Combined Benefit Fund estimate will be spent for health care on behalf of the "unassigned" beneficiaries.[7] Furthermore, the amount to be transferred at the beginning of each fiscal year is defined in the legislation as the amount of interest estimated to be paid to the AML Fund during that coming fiscal year, plus the amount by which that interest amount is less than $70 million. The cumulative amount of this supplement to interest that may be transferred for all fiscal years cannot exceed the amount equivalent to all the interest earned and paid to the AML Fund for fiscal years 1993, 1994, and 1995—years before the transfers are to begin.

The proposal addresses the problems associated with the defined group of miners who have already retired or are soon to retire. It does not offer any protection for miners who will retire after September 30, 1994.

To a large extent, the proposal would codify into Federal law the recent trend in support commitments that have been made under the private bargaining agreement between the UMWA and the BOCA, and which the courts have been trying to enforce. Originally, the UMWA multiemployer health benefit plan was intended to service, without differentiation, both nonorphan and orphan retirees. That policy changed with the 1974 bargaining agreement (NBCWA) and the establishment of the separate 1950 and 1974 Benefit Funds.

The 1950 Fund was to service all those who retired prior to December 31, 1975, both nonorphans and orphans. (Today, approximately half of the beneficiaries of the 1950 Fund are orphans, and half nonorphans.) For those retiring in 1976 or later years the 1974 Fund was to service only those considered orphans. Nonorphans were to receive their retiree health benefits directly from their last employer as long as that employer remained in business. The Senate's H.R. 776 proposal would make a very strong effort to identify former employers and hold them financially responsible for their "assigned" beneficiaries.

The UMWA multiemployer plans were initially financed by a contribution assessed per ton of coal production. This was supplemented in 1974 and totally replaced in 1988 by a contribution assessed per hour of coal production work. A company's contributions to the multiemployer plans were thus made in some proportion to its current production activity, whether measured by coal output or labor input. This was in some sense a measure of current "ability-to-pay."

The H.R. 776 proposal would allocate the payments due on behalf of "unassigned" or orphan beneficiaries on the basis of a company's "applicable percentage," defined as the number of beneficiaries assigned to that company divided by the total number of assigned beneficiaries. Thus companies with the largest number of current beneficiaries of their own would also bear the largest burden for orphans. Signatory companies which had no current assigned beneficiaries would not be required to contribute (after the first plan year of the new program).

As a source of subsidy for orphan retirees, the proposal identified two sums of money that have already been collected from the coal industry: the surplus assets in the UMWA 1950 Pension Fund and the balance in the Abandoned Mine Reclamation Fund. The ability to tap those monies would mean that orphan retiree health benefits could be subsidized without having to levy additional private (BCOA) fees or Federal taxes on the coal industry. The remainder of this report focuses on the AML transfer proposal, especially its implications for Federal budgeting and its incidence on the coal industry.

BRIEF DESCRIPTION OF THE AML PROGRAM[8]

The bulk of H.R. 776 relating to coal industry retiree health benefits (section 20143(a)) would amend the Internal Revenue Code of 1986. In contrast, the section (20143(b)) providing for transfers from the AML Fund would involve an amendment to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232) (SMCRA).

SMCRA established the abandoned mine land reclamation program, taxing current coal production to restore mined land that had been left too compromised for other productive use. Monies collected from tonnage fees on coal were to be allocated among the various coal mining States to reclaim lands mined and abandoned prior to August 3, 1977, the date the Surface Mining Control and Reclamation Act (P.L. 95-87) was enacted. Surface mining conducted after that date was expected to meet Federal reclamation standards implemented through State regulatory programs.

In recognition of funding limitations, Congress in SMCRA established priorities for the use of AML money. First priority goes to mining abandonments that could present imminent danger to public health and safety. Examples of priority one projects include open mine shafts or subsidence (underground holes from mining) under schools or other public buildings. Any remaining AML funds are designated to eliminate environmental hazards and finally, at the lowest end of the scale, mining scars considered aesthetically offensive. Abandoned mine sites around the country have been ranked according to a national priority list.

Under current spending allocation rules, AML fee collections are split in half. One half returns to the State of origin, and the other half is used for a variety of Federal programs, most under the authority of the Secretary of the Interior. The Western States have already dealt with most of their high-priority abandoned areas. Much of the Federal half of the money has come East to pay for AML projects addressing remaining high-priority public health and safety hazards. This interregional subsidy has been a contentious issue for Western mine operators.[9]

The Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508, section 6003) authorized the collection of the AML reclamation fees through September 30, 1995, thereby extending the fees past their scheduled expiration in 1992.

BUDGETARY IMPLICATIONS OF SPENDING INTEREST

The growing balance in the AML Fund attracted the attention of those searching for a "costless" revenue source to subsidize orphan retiree health benefits. This section first presents data on the balances and interest expected to be available in the AML Fund. It then explains the costs of the proposal in terms of Federal budget accounting.

As shown in table 1, in FY91, $243.8 million in revenues were collected for the AML Fund from tonnage fees on coal; appropriations for the reclamation programs were $199.0 million. The unappropriated balance available for future reclamation expenditures was expected to rise from $529.4 million at the beginning of FY91 to $795.0 million by the end of FY93.

Part of the growth in the balance after FY91 is the result of a provision included in the Omnibus Budget Reconciliation Act of 1990 (OBRA90, section 6002) which provided that the AML could henceforth earn interest on the cumulated balance in its special fund with the U.S. Treasury. During FY92, the first year of such interest earnings, the AML Fund was expected to be credited $40.4 million in interest income. Interest earnings of $46.2 million were projected for FY93.[10]

TABLE 1—ABANDONED MINE RECLAMATION (AML) FUND BUDGET, FISCAL YEARS 1991–93

[In thousands of dollars]

	1991 actual	1992 estimated	1993 estimated
Balance, start of year	529,407	574,211	664,866
Receipts:			
AML fees	243,759	238,100	240,100
Interest		40,358	46,164
Subtotal, receipts	243,759	278,458	286,264
Appropriation	−198,955	−187,803	−156,151
Balance, end of year	574,211	664,866	794,979

Source: U.S. Executive Office of the President. Budget of the United States Government, Fiscal Year 1993. Washington, U.S. Govt. Print. Off., 1992. (Released Jan. 29, 1992). p. Appendix One—586.

As long as the AML Fund could maintain such a large balance, nearly $50 million could be transferred out of the Fund annually (to orphan retiree health benefits or any other purpose) without appearing to decrease the Fund's balance and without imposing new taxes on the coal industry. This apparently "costless" way to subsidize orphan retiree health benefits provides a powerful appeal to its proponents. But would the proposed AML transfer really be "costless?"

Neither the H.R. 4344 nor the H.R. 776 AML transfer proposals would impose any additional taxes on the coal industry in order to help finance the orphan retiree health benefits. But both would extend the current AML fees intended to pay for reclamation programs. According to Congressional Budget Office cost estimates for H.R. 776, the proposed extension of the AML fees beyond FY95 would cover the mandatory authorization of outlays for UMWA retiree health benefits. Thus, in a technical sense, the proposal does not violate the deficit-control accounting established by the Budget Enforcement Act of 1990 (BEA) (Title XIII of OBRA90, P.L. 101-508).

In the economic context of the unified Federal budget, however, the interest-transfer proposal would constitute an increase in deficit spending. The interest to be credited to the AML Fund does not reflect new, additional revenue to the Federal Government, only a debt of the general fund to the AML Fund. The interest earnings of the AML fund are by no means "free money" awaiting use in the U.S. Treasury. Indeed, there is really no cash balance sitting in the AML Fund.

In this era of large annual deficits in the consolidated U.S. budget, the U.S. Government spends every dollar it collects in taxes and other receipts—and more. A particular special fund (or trust fund) may show a surplus in its budget account if the receipts credited to it (collections from the public plus interest credited by the Government) exceed the outlays from the fund for that year. In a cash accounting sense, however, any excess of collections from the public over outlays for that particular program are spent to cover other activities of the Government in that fiscal year. The surplus collections are in effect borrowed from the special fund by the general fund. If the special fund surplus were not available, the general fund would otherwise have to borrow that amount from the public by issuing Treasury debt and pay interest on that debt.

Prior to FY92 the general fund was receiving an interest-free loan represented by the balance in the AML Fund. The payment of interest to the AML Fund (as a result of the provision in OBRA90) now acknowledges the time value of the money already paid in by coal operators in the form of AML tonnage fees but not yet spent on reclamation activities. If either the Fund's annual interest earnings or cumulative balance are spent, however, that spending would have to be financed on a current-year basis by new revenues, cuts in other spending, or new debt. This budget rule applies whether the spending is for orphan retiree benefits or any other purpose, including AML activities.

The proposal to spend the interest credits of the AML Fund entails three additional problems. First, it is unduly complex in order not to violate the deficit-control provisions of the Budget Enforcement Act, which is to remain in force through fiscal year 1995. In essence, H.R. 776 authorizes the spending of all of the interest earned by the AML Fund for fiscal years FY93 and beyond, but the proposed transfers of $70 million per year to the retiree health benefits fund would not begin until FY96. The interest earned for fiscal years 1993–95 would be drawn upon to supplement the difference between the interest earned each year beginning with FY96 and $70 million.

Second, the ability of the proposal to provide revenues for UMWA orphan retiree health benefits depends on maintaining a large, unspent balance in the AML Fund. It is not standard budget policy, however, for most trust funds or special funds to intentionally "sit" on a large balance.[11] If there is no convincing reason defending a large balance, there is frequently pressure to cut or suspend additional fee collections until the balance is spent down to an acceptable level. In some cases, it has been written into the authorizing legislation that the continuation of the fee is contingent on the fund balance being below a certain level. For similar reasons, coal mining companies could object to paying further AML tonnage fees as long as the balance in the AML fund remains high.

During the late 1980s, the Reagan and Bush Administrations were criticized for holding back on expenditures from the trust funds (especially the Highway Trust Fund and the Airport and Airway Trust Fund) in order to help offset the deficit in the Government's general fund. Under continuing pressure to contain the consolidated deficit, trust fund and special fund balances have been permitted to build, and some of the caps triggering the reduction or removal of charges have been raised or eliminated by legislation. The monies, however, are left to accumulate for future use by the particular fund on its own programs.

Third, in net budgetary terms, the proposal is equivalent to removing the interest-earning capability granted to the AML Fund by OBRA90[12] (for fiscal years other than 1992) and authorizing a payment of up to $70 million per year from the general fund of the U.S. Treasury to the UMWA Combined Benefit Fund, for fiscal years beginning in 1966.

CRS is not aware of any other example in the Federal budget where the interest earnings of a special fund or trust fund are dedicated to another program. In the absence of the proposed transfer legislation, the interest earnings would otherwise accrue to the AML Fund and be available for future appropriation to the Fund's own reclamation activities, reducing future AML fees, or making refunds to companies which had paid fees in the past.

In sum, the AML interest transfer proposal offers a solution to the immediate problem of how to finance health benefits promised under past UMWA bargaining agreements to miners who have already retired (and their dependents) but whose former employers are not around to pay. The proposal represents a compromise acceptable to the Bush Administration and members of the Senate who had opposed alternative proposals to levy a new tax on the coal industry, including many companies that had never been signatory to the National Bituminous Coal Wage Agreement. This proposal does not involve a new tax or fee. Rather, it extends the current AML fees past their scheduled expiration at the end of FY95. The success of the proposal is based on the assumption that future appropriations for reclamation activities will not exceed fee collections and, consequently, that a large, interest-earning balance will remain in the AML Fund. The proposal would draw upon the interest earnings to pay for orphan retiree health benefits.

On the downside, this analysis suggests that the AML transfer proposal would have real budgetary costs for the U.S. Treasury that may not be readily apparent. The interest transfer provision is unduly complex in order to circumvent restrictions imposed by the Budget Enforcement Act. The straightforward authorization of a transfer to orphan retiree health benefits within the limits of annual AML fee collections would better honor the spirit of the pay-as-you-go provisions of the Budget Enforcement Act.

The proposal violates usual standards for trust fund or special fund management. Diverting monies specifically raised for one purpose to another program raises additional questions of incidence on both the benefits (spending) side and on the taxing side. The AML transfer proposal has implications in terms of the diversion of spending benefits from reclamation activities to orphan retiree health care and the distribution of the financing burden on the coal industry. These incidence issues are discussed further in the following two sections of the report.

DIVERSION FROM RECLAMATION EFFORTS

The fact that there is a large and growing balance in the AML Fund does not mean that the money is not needed by the AML program. Analysts of the AML program say that even if all the Fund's receipts were spent, this would not be adequate to finance all of the high priority projects that remain in the Eastern States. All AML project grants, including those covered under the 50 percent State allocation, are subject to annual congressional appropriation. In brief, the Administration has not been requesting—and the Congress has not been appropriating—monies for reclamation activities at the same pace that AML fees are being collected. For FY93 the Administration requested an appropriation of $156 million; the House Appropriations Committee recommended $188 million; and the Senate Appropriations Committee recommended $191 million. All are far less than estimated AML fee collections of $240 million (see table 1).

This proposal in effect authorizes the transfer of interest earned on monies collected on behalf of reclamation activities for the purchase of health care for UMWA orphan retirees. The beneficiaries of these two functions are quite different.

The specific structure of the AML interest transfer plan under the Senate's H.R. 776 proposal holds a potentially more adverse impact on reclamation activities than would a straightforward authorization (such as that originally proposed on the House side). Because it would be depending on the interest earnings of the AML Fund, the UMWA Combined Benefit Fund stands to receive more, the less the AML Fund spends on reclamation and consequently the larger the AML Fund balance. Under a straightforward authorization from the AML program, the orphan retiree benefit fund would receive its transfer but would not otherwise benefit from a curtailment of reclamation activities. If the AML Fund's contribution were set as a percentage of reclamation expenditures, the orphan retiree program would benefit only if reclamation activity took place.

SPECIAL AML FEE STRUCTURE

The interest earnings of the AML Fund, since they simply reflect the time value of the contribution to the fund, are attributable to coal producers in proportion to AML fees previously paid to the Federal Government but not yet spent. Tapping AML fund monies has the effect of applying the tax structure specifically designed for the abandoned mine land reclamation program to another, very different program purposes.

The AML tonnage fee is much higher on surface-mined (nonlignite) than underground-mined coal, presumably reflecting their differing responsibility for environmental damage to the land. The AML fees are levied at the lesser of 15 cents per ton for underground-mined coal and 35 cents per ton for surface-mined coal, or 10 percent of the value of the coal at the mine.[13] For lignite the rate is the lesser of 10 cents per ton, or 2 percent of the value of the coat at the mine. This distribution may not be as appropriate for financing orphan retiree health benefits which are presumably more closely related to the number of employees used in production.

Relying on the AML fee structure would place a larger share of the burden on surface-mined coal and coal mined in the Western States than would a contribution based on coal production hours. A uniform tonnage fee would also place a greater burden on Western coal than an hourly fee, though not quite to the degree that the AML fees do. The proposal to tax bituminous coal production hours would be at the other extreme, placing nearly all of the burden on Eastern coal.

As shown in table 2, surface-mined coal accounted for 71 percent of estimated AML fees (column 1) compared with 50 percent of U.S. coal tonnage (column 2) in 1990. In contrast, underground-mined coal accounted for 25 percent of estimated AML fees compared with 41 percent of tonnage. Lignite accounted for only 4 percent of AML fees but 9 percent of tonnage.

TABLE 2.—PERCENT OF ESTIMATED AML FEES COMPARED WITH PERCENT OF U.S. TONS MINED, BY TYPE OF MINING AND REGION, 1990

	Percent of estimated AML fees, 1990	Percent of U.S. tons mined, 1990
Type of mining:		
Underground	25	41
Surface	71	50
Lignite	4	9
U.S. total	100	100
Regional breakdown:		
East of Mississippi River	56	61
West of Mississippi River	44	39

Source: Calculations by CRS. See appendix table A.2.

One might expect that because nearly all Western coal is surface-mined (91 percent in 1990) Western States would pay a much larger share of AML fees than their tonnage represents. But this is largely balanced by that fact that almost as much surface (non-lignite) coal is mined East of the Mississippi River as West. As a result, Western coal contributes only a slightly larger share of estimated AML fees than its share of tonnage—44 percent of fees compared with 39 percent of tons in 1990. Conversely, Eastern mining accounted for 56 percent of the AML fees compared with 61 percent of tons.[14]

COMPARISON WITH AN HOURLY CHARGE

Because they operate at higher rates of labor productivity, surface mining in general, and Western surface mining in particular, contribute at a much higher rate relative to underground-mined coal whenever coal production is charged on a per ton rather than a per hour basis. This difference is magnified under the AML fee structure which charges a higher rate per ton for surface compared with underground-mined coal, as shown in the top part of table 3. Measured alternatively, a uniform fee per hour would place a higher burden per ton on Eastern than Western coal, simply because of differences in average productivity between the regions, as shown in the bottom part of table 3.

TABLE 3.—PER HOUR EQUIVALENT OF AML TONNAGE FEE AND PER TON EQUIVALENT OF A $1 PER HOUR FEE, BY TYPE OF MINING AND REGION

	Productivity (average tons per hour)[1]	Fee (dollars per ton)	Equivalent fee dollars per hour (col. 1 x col. 2)
AML Fees			
Underground mining:			
East of Mississippi River	2.46	0.15	0.37
West of Mississippi River	4.01	.15	.60
U.S. total	2.54	.15	.38
Surface mining:			
East of Mississippi River	3.32	.35	1.16
West of Mississippi River	12.26	.35	4.29
U.S. total	5.94	.35	2.08
UNIFORM FEE OF $1 PER HOUR			
All U.S. mining:			
East of Mississippi River	2.73	.37	1.00
West of Mississippi River	10.41	.10	1.00
U.S. total	3.83	.26	1.00

[1] Average tons produced per miner per hour in 1990 for underground and surface mining, in States East and West of the Mississippi River. U.S. Department of Energy. Energy Information Administration. "Coal Production 1990." T. 23, p. 53 and T. 28, p. 58.

The original Rockefeller financing proposal (S. 1989, H.R. 4013) was to levy a uniform charge on the entire U.S. coal industry of $0.75 per production hour. A revised proposal was to levy an hourly tax, but only on the bituminous coal portion of the industry, and at a much higher rate on Eastern bituminous coal than Western. The proposals based on hourly rates would have placed a larger share of the financing burden on Eastern coal than the AML transfer proposal.

Because each proposal would raise a different amount of total revenue, it could be misleading to compare the nominal tax rates directly.[15] Instead, table 4 compares four financing mechanisms based on the share of total revenue (or the share of each dollar raised) that would be paid on coal production from the regions East and West of the Mississippi River. Table 4 builds upon the regional breakdown estimated at the bottom of table 2 for AML fees and a uniform per ton fee.

TABLE 4.—Regional Share of the Financing Burden under Four Alternative Contribution Mechanisms

[Eastern or Western region as a percent of U.S. total]

Region	Bituminous coal hourly tax	Industry-wide hourly tax	Uniform tonnage fee	AML tonnage fee
East of Mississippi River	99	85	61	56
West of Mississippi River	1	15	39	44
U.S. total	100	100	100	100

Source: Calculate by CRS. Appendix table A.3 presents State-by-State percentages for hours, tons, and AML fees.

CRS estimates that under the bituminous coal proposal (with exemptions for subbituminous and lignite coal and a $0.15 per hour rate for Western bituminous coal compared with $1.18 for Eastern coal), Eastern coal would pay 99 percent and Western coal only about 1 percent of the revenues paid by the domestic coal industry.[16] A straightforward hourly fee would place 85 percent of the burden on Eastern coal, and 15 percent on Western. By comparison, under a uniform tonnage fee, Eastern coal's share would be 61 percent, and Western coal's 39 percent. Under the AML tonnage fees, Eastern coal's share is slightly lower, 56 percent; conversely, Western coal's share is slightly higher, 44 percent.

AML fees are collected from the entire domestic coal industry. Thus, it is relevant to compare the incidence of the AML interest transfer proposal with other proposals advanced to tax the coal industry on behalf of the orphan retirees. Given that the nature of U.S. coal production has shifted dramatically from underground to surface mining and from Eastern to Western mining, any industry wide tax will necessarily place some burden on coal companies that were never involved with today's retirees. Even if and when it is decided that the entire coal industry should bear some of the financing burden, it is not easy to say that some categories of non-signatory operators should pay a much higher charge than others.

Comparing the four financing mechanisms, the tax on bituminous coal production hours would be at one extreme in placing nearly all of the burden on Eastern coal. In contrast, AML tonnage fees place the highest share on Western coal. A uniform hourly fee—either alone or in combination with a uniform tonnage fee—would have a more balanced incidence across regions and types of coal.

APPENDIX 1. STATISTICAL TABLES

TABLE A.1.—ESTIMATED AML FEES PAID BY TYPE OF COAL, BY STATE, CALENDAR 1990

	AML tonnage fees (thousands)				Percent of total AML fees			
	Underground at $0.15/ton	Surface at $0.35/ton	Lignite at $0.10/ton	Total	Underground	Surface non-lignite	Lignite	Total
State:								
Alabama	$2,631	$4,022	0	$6,653	1.0	1.6	0	2.6
Alaska	0	597	0	597	0	.2	0	.2
Arizona	0	3,956	0	3,956	0	1.6	0	1.6
Arkansas	0	21	0	21	0	0	0	0
California	0	0	6	6	0	0	0	0
Colorado	1,594	2,898	0	4,493	.6	1.1	0	1.8
Illinois	6,251	6,553	0	12,803	2.5	2.6	0	5.1
Indiana	456	11,505	0	11,960	.2	4.5	0	4.7
Iowa	0	133	0	133	0	.1	0	.1
Kansas	0	252	0	252	0	.1	0	.1
Kentucky	15,794	23,811	0	39,605	6.2	9.4	0	15.6
Louisiana	0	0	$319	319	0	0	.1	.1
Maryland	298	526	0	823	.1	.2	0	.3
Missouri	0	926	0	926	0	.4	0	.4
Montana	0	13,085	23	13,108	0	5.2	0	5.2
New Mexico	11	8,476	0	8,487	0	3.3	0	3.4
North Dakota	0	0	2,921	2,921	0	0	1.2	1.2
Ohio	1,938	7,816	0	9,754	.8	3.1	0	3.9
Oklahoma	16	558	0	573	0	0.2	0	.2
Pennsylvania	6,080	10,494	0	16,574	2.4	4.1	0	6.5
Tennessee	697	583	0	1,262	.3	.2	0	.5
Texas	0	124	5,540	5,664	0	0	2.2	2.2
Utah	3,309	0	0	3,309	1.3	0	0	1.3
Virginia	5,873	2,718	0	8,591	2.3	1.1	0	3.4
Washington	0	1,750	0	1,750	0	.7	0	.7

TABLE A.1.—ESTIMATED AML FEES PAID BY TYPE OF COAL, BY STATE, CALENDAR 1990—Continued

	AML tonnage fees (thousands)				Percent of total AML fees			
	Underground at $0.15/ton	Surface at $0.35/ton	Lignite at $0.10/ton	Total	Underground	Surface non-lignite	Lignite	Total
West Virginia	18,496	16,064	0	34,560	7.3	6.3	0	13.6
Wyoming	258	63,884	0	64,143	.1	25.2	0	25.3
East of Miss	58,493	84,092	0	142,585	23.1	33.2	0	56.3
West of Miss	5,188	96,662	8,809	110,66y0	2.0	38.2	3.5	43.7
U.S. Total	63,682	180,754	8,809	253,245	25.1	71.4	3.5	100.9

Note.—The AML tonnage fees are low enough that the percent-of-price cap seldom applies, unlike the Black Lung tonnage taxes. Consequently, it is reasonable to estimate AML collections by multiplying tonnage by the statutory tax rates, as was done to generate these numbers.

Source: Calculated by CRS by multiplying the AML statutory tax rates times tonnage production data from: U.S. Department of Energy. Energy Information Administration. Office of Coal, Nuclear, Electric and Alternative Fuels. "Coal Production 1990." DOE/EIA–0118(90). Washington, U.S. Govt. Print Off., Sept. 12, 1991. Underground and surface: table 2, p. 19; lignite, table 5, p. 28. All lignite is surface-mined; consequently, the tonnage reported for surface-mined were reduced by the amount of lignite tonnage.

TABLE A.2.—COAL PRODUCTION HOURS, TONS MINED, AND ESTIMATED ABANDONED MINE LAND RECLAMATION [AML] FEES PAID, BY STATE, 1990

State	Coal production—		Estimated AML fees ($thousands)
	Production hours	Tons mined	
Alabama	12,630,156	29,029,665	6,653
Alaska	201,821	1,706,408	597
Arizona	1,904,828	11,303,533	3,956
Arkansas	26,794	58,871	21
California	3,449	61,000	6
Colorado	4,369,853	18,909,629	4,493
Illinois	20,120,840	60,392,764	12,803
Indiana	8,998,086	35,906,739	11,960
Iowa	271,149	380,921	133
Kansas	396,694	720,583	252
Kentucky	55,554,944	173,321,685	39,605
Louisiana	242,068	3,186,189	319
Maryland	1,095,710	3,486,850	823
Missouri	875,147	2,646,919	926
Montana	2,002,500	37,615,912	13,108
New Mexico	3,180,067	24,292,310	8,487
North Dakota	1,812,571	29,213,372	2,921
Ohio	12,129,468	35,252,018	9,754
Oklahoma	818,066	1,698,039	573
Pennsylvania	28,483,144	70,513,932	16,574
Tennessee	3,085,819	6,192,693	1,262
Texas	7,457,241	55,754,901	5,664
Utah	4,564,036	22,058,315	3,309
Virginia	18,291,298	46,917,096	8,591
Washington	1,466,764	5,001,443	1,750
West Virginia	51,349,838	169,204,558	34,560
Wyoming	8,589,606	184,249,171	64,143
East of Mississippi	211,739,303	630,218,000	142,585
West of Mississippi	38,182,654	398,857,516	110,660
Total	249,921,957	1,029,075,516	253,245

Sources: Production hours and tonnage: U.S. Department of Energy. Energy Information Administration. Special tabuluation. Washington, March 1992. Tonnage data are published in: U.S. Department of Energy. Energy Information Administraton. Office of Coal, Nuclear, Electric and Alternate Fuels. "Coal Production 1990." DOE/EIA–0118(90), Sept. 12, 1991. Washington, U.S. Govt. Print. Off., 1991. Table 1, p. 14. AML fees estimated by CRS as shown appendix table A.1.

TABLE A.3.—SHARE OF THE FINANCING BURDEN UNDER THREE DIFFERENT BASES FOR CHARGING THE COAL INDUSTRY (PRODUCTION HOURS, TONNAGE MINED, AND AML FEES), BY STATE, 1990

[State as percent of U.S. Total]

State	State as percent of U.S. total		
	Hours	Tons	AML fees
Alabama	5.1	2.8	2.6
Alaska	.1	.2	.2
Arizona	.8	1.1	1.6
Arkansas	0.	0.	0.
California	0.	0.	0.
Colorado	1.7	1.8	1.8
Illinois	8.1	5.9	5.1
Indiana	3.6	3.5	4.7
Iowa	.1	0.	.1
Kansas	.2	.1	.1
Kentucky	22.2	16.8	15.6
Louisiana	.1	.3	.1
Maryland	.4	.3	.3
Missouri	.4	.3	.4
Montana	.8	3.7	5.2
New Mexico	1.3	2.4	3.4
North Dakota	.7	2.8	1.2
Ohio	4.9	3.4	3.9
Oklahoma	.3	.2	.2
Pennsylvania	11.4	6.9	6.5
Tennessee	1.2	.6	.5
Texas	3.0	5.4	2.2
Utah	1.8	2.1	1.3
Virginia	7.3	4.6	3.4
Washington	.6	.5	.7
West Virginia	20.5	16.4	13.6

TABLE A.3.—SHARE OF THE FINANCING BURDEN UNDER THREE DIFFERENT BASES FOR CHARGING THE COAL INDUSTRY (PRODUCTION HOURS, TONNAGE MINED, AND AML FEES), BY STATE, 1990—Continued

[State as percent of U.S. Total]

State	State as percent of U.S. total		
	Hours	Tons	AML fees
Wyoming	3.4	17.9	25.3
East of Mississippi River	84.7	61.2	56.3
West of Mississippi River	15.3	38.8	43.7
Total	100.0	100.0	1000.0

Source: Percentages calculated by CRS from the numbers presented in appendix table A.2.

APPENDIX 2. LEGISLATIVE PROPOSALS

Following the release of the Coal Commission Report in November 1990, several pieces of legislation were introduced in the 102nd Congress with the intention of providing financial relief to the United Mine Workers of America (UMWA) 1950 and 1974 Health Benefit Funds. As the proposal evolved, several major alterations were made, both with regard to restructuring the current UMWA Benefit Funds and the methods of financing the new funds. This summary of the legislative proposals focuses on the financing methods for subsidizing the payments made on behalf of orphan retirees and related beneficiaries, particularly those aspects that would involve Federal taxing and budgeting authority.

The Coal Commission report

An advisory Coal Commission was appointed by then-Labor Secretary Elizabeth Dole in March 1990 as part of the settlement of the 11-month miners' strike against the Pittston Company. The Coal Commission Report outlined two basic approaches for financing orphan retiree health benefits.[17] The industry-wide funding proposal was to levy a fee (or tax) on all employers in the coal business in the United States, and on imported coal as well. The alternative funding proposal concentrated on current and former signatories. It included shifting surplus assets from the UMWA's 1950 Pension Fund to the 1950 and 1974 Health Benefit Funds, increasing the hourly contribution rate on current signatories, "reaching back" to charge former signatories, and an additional tonnage charge on signatory coal companies.[18]

S. 1989, the coal industry retiree Health Benefit Act of 1991

A leading congressional supporter of legislation to protect UMWA retiree health benefits has been Senator John D. Rockefeller, IV, of West Virginia. On November 19, 1991, Senator Rockfeller introduced the Coal Industry Retiree Health Benefit Act of 1991 (S. 1989, H.R. 4013). This initial plan would have created a Government-sponsored corporation to handle the health benefits for orphan retired miners and their related beneficiaries. The Coal Industry Retiree Benefit Corporation was to be financed by a combination of taxes on the entire coal industry to support true orphans and premiums collected from reachback companies considered responsible for specific orphans. The tax or fee to be collected from all U.S. coal producers would have been set initially at $0.75 for each hour an employee of the firm worked in coal production work (not office or management work); imported coal would be taxed at the per-ton equivalent of $0.15 per ton. These taxes were expected to raise approximately $155 million per year.

The legislation also would have created a new UMWA 1991 Benefit Fund to serve those beneficiaries of the current 1950 Benefit Fund who could be linked to former employers still contributing to the UMWA Benefit Funds. This would be financed by monthly premiums paid by employers on behalf of specific beneficiaries.

In addition, the excess assets in the UMWA 1950 Pension Fund would have been distributed, without tax penalty, in the following order: 1) $50 million as initial assets for the Government-sponsored Corporation; 2) the amount needed to pay off the existing deficits of the 1950 and 1974 Health Benefit Funds; 3) $50 million as initial assets for the 1991 UMWA fund; and, 4) the remainder to the 1991 UMWA Fund, when and as directed by the UMWA and BCOA. All subsequent versions of the Rockefeller proposal have included a transfer of the surplus pension assets to help finance orphan retiree health benefits.

H.R. 4210, the Tax Fairness and Economic Growth Act of 1992, from the Senate Finance Committee

The tax financing portion of the proposal was revised to tax only bituminous coal production, at $.15 per hour (fixed) in States west of the Mississippi River, and initially at $.99 per hour east of the Mississippi and $.25 per ton of imported bituminous coal (both to rise in subsequent years). For FY 93, the bituminous coal tax was projected to raise $186 million, and the per beneficiary premiums $89 million.[19]

The bituminous coal tax proposal was included in the version of the tax bill, H.R. 4210, approved by the Senate Finance Committee on March 3, 1992. The provision was included in Title VI (sections 6001–6003) of the Tax Fairness and Economic Growth Act of 1992, the final version of H.R. 4210 which was passed by both Houses of Congress but vetoed by President Bush on March 20, 1992.

H.R. 776, Senate Finance Committee Version

Another refinement of the Rockefeller proposal was included in the Senate Finance Committee's amendment to serve as a substitute for Title XIX, the revenue provisions of H.R. 776, the Comprehensive National Energy Act, as approved by the Committee on June 16, 1992. The tax financing mechanism was again to be a tax on bituminous coal, but the initial rates on Eastern and imported coal were higher than in H.R. 4210. The new proposed Eastern rates were $1.18 per hour for calendar years 1992 and 1993; $1.19 for 1994 and 1995; and $1.20 for 1996. The per ton premium on imported coal was set initially at $0.39 per ton. The rate on Western bituminous coal remained at $0.15 per hour. The bituminous coal fees were expected to raise approximately $205 million per year as of FY92.

This version also specified the amount of the "reachback premium" to be paid into the Coal Industry Retiree Benefit Fund by a previous employer or last signatory operator to whom an orphan miner could be "attributed." The annual amount of the premium, applicable by calendar year, would be $1,215 in 1992; $2,532 in 1993; $2,745 in 1994; $2,973 in 1995; $3,216 in 1996; and $3,479 in 1997 and thereafter. The premiums were expected to raise $89 million per year as of FY92.[20]

S. 2550, Senator Boren

The bill introduced by Senator David L. Boren of Oklahoma on April 8, 1992, proposed a transfer, without tax penalty, of excess pension assets from the 1950 Pension Plan to erase the deficits in the 1950 and 1974 Benefit Plans; establishing strong withdrawal liability provisions for companies which completely or partially withdraw from the UMWA Benefit Plans; and adopting a mandatory cost containment program for the Benefit Plans. S. 2550 emphasized the guarantee of future funding by signatory companies through an increase in contribution rates as soon as a deficit is recognized. It did not propose any new, outside funding source.

H.R. 4344, Representative Rahall

The original AML transfer proposal was introduced by Representative Nick Joe Rahall, II, of West Virginia, on Feb. 27, 1992, as H.R. 4344. It would have extended the abandoned mine reclamation fees from 1995 to the year 2007 and transferred $50 million each fiscal year to the "Coal Industry Benefit Fund."[21]

H.R. 776, the National Energy Policy Act, from the House Committee on Interior and Insular Affairs

A similar AML transfer proposal was included in the version of the National Energy Policy Act, H.R. 776, as approved by the House Committee on Interior and Insular Affairs on April 8, 1992. This version would have extended the AML fees from 1995 to the year 2010 and transferred $50 million per year from the AML Fund to a "Coal Industry Retiree Benefit Fund."

Neither H.R. 4344 nor the Interior Committee bill mentioned the interest earnings of the AML Fund, although supporters pointed out that these earnings could make the transfer proposal appear nearly costless. Also, neither bill provided for the creation of a benefit fund, which would be outside the jurisdiction of the Interior Committee. The original AML transfer proposal was intended to supplement the Rockefeller plan set forth in S. 1989 and included in H.R. 4210 which would have established a Government-sponsored Coal Industry Retiree Health Benefit Corporation.

H.R. 776, full House version

The AML transfer provision was *not* included in the version of H.R. 776 reported by the Rules Committee to the full House for floor action in May 1992, in accordance with a recommendation by the House Ways and Means Committee.[22]

H.R. 776, the National Energy Security Act of 1992, full Senate version

A variation of the Rahall proposal became part of the financing mechanism in the "compromise" version of the Rockefeller plan, approved as an amendment to H.R. 776 on the Senate floor on July 29, 1992. The Coal Industry Retiree Health Benefit Act of 1992 was included as subtitle C, sections 20141 to 20143, of Title XX, the revenue provisions of H.R. 776, the National Energy Security Act of 1992, as passed by the Senate on July 30, 1992. In section 20143(b) of the bill, the amount that could be transferred each year from the AML Fund was set at $70 million, and the amount of the transfers was specifically linked to the interest earnings of the AML Fund as described in the body of this report.

The version of the Rockefeller plan included in the Senate-passed H.R. 776 also proposed a new configuration of the health benefit funds, into two new funds, both private—the UMWA Combined Benefit Fund and the 1992 UMWA Benefit Plan. Beneficiaries would be assigned to the Combined Fund if they were already receiving benefits as of July 20, 1992. Miners (and related beneficiaries) retiring after July 20, 1992, but before September 30, 1994, who would otherwise be covered by the 1974 Fund because their employer went out of business, would be covered by the new 1992 Fund.

This proposal represented a bipartisan compromise within the Senate, principally between Senator Rockefeller of West Virginia and Senator Wallop of Wyoming, and with the Bush Administration. The prior Rockefeller proposals to tax all coal production or to tax only bituminous coal production, whether or not the companies had ever been signatory to the NBCWA, had met opposition in the Senate and were threatened with a presidential veto. This version placed a much stronger emphasis on identifying reachback employers and collecting a per beneficiary premium from them.

Conference committee

Because the Coal Industry Retiree Health Benefit proposal was included in the Senate version but was *not* included in the version of H.R. 776 approved by the House, it remains a difference for the conference committee to resolve when it meets in September 1992.

FOOTNOTES

[1] Beneficiaries include both the retired miners and their dependents. Throughout this report, the term retiree or orphan is often used as a substitute for beneficiary and is intended to encompass both the retired miners and their dependents, unless otherwise noted.

[2] U.S. Department of Energy, Energy Information Administration. Office of Coal, Nuclear, Electric and Alternate Fuels. "Coal Data: A Reference." DOE/EIA-0064(90), Nov. 1991. Washington, 1991. T. 20, p. 57.

[3] For the findings of a GAO survey of 40 bankrupt firms, see U.S. General Accounting Office. "Effect of Bankruptcy on Retiree Health Benefits." GAO/HRD-91-115, Aug. 30, 1991. Washington, 1991. Cited in "EBRI's Benefit Outlook," October 1991, p. 16-17.

[4] Testimony presented as Funds Exhibit 16. "McGlothlin v. Connors." U.S. District Court for the Western District of Virginia (Abingdon Division), April 2, 1992. Cited in the Memorandum opinion by Judge Williams accompanying the preliminary injunction order preventing the UMWA Benefit Trusts from either suspending health benefits or threatening to do so, p. 34.

[5] Pharmaceuticals account for approximately 40 percent of the expenses of the UMWA Health Benefit Trusts. Testimony presented as Funds Exhibit 17. McGlothlin v. Connors. Cited in the Memorandum opinion by Judge Glen M. Williams, p. 35.

[6] These legislative proposals are explained in more detail in Appendix 2.

[7] At some point in the future, the $70 million per year transfer is expected to cover all of the costs for orphan retirees, thereby relieving signatory and reachback companies of any additional responsibility to pay premiums on behalf of true orphans. Eligibility for the UMWA Combined Benefit Fund would be essentially closed to new beneficiaries as of July 20, 1992. Consequently, the obligations the UMWA Combined Benefit Fund are expected to decrease each year in the future as a result of elderly beneficiaries dying; younger retirees, spouses, or widows becoming Medicare-eligible; and young dependents reaching age 22.

[8] Duane A. Thompson, Analyst in Energy Policy, Environment and Natural Resources Division, Congressional Research Service, contributed to this section.

[9] The regional dichotomy in remaining high-priority hazardous sites is what lies behind the proposal made by Arch Mineral Corporation, in response to the Coal Commission report, to eliminate the Federal AML fee and program, and let States which still have AML problems set up their own program. This would eliminate the cross-State subsidies, and create "tax room" in those States (primarily Western States) that have already dealt with their high-priority abandoned areas. The inference is that Western coal producers would be more willing to support a new Federal tax to help orphan retiree health benefits if their AML taxes were reduced. It also would be more straightforward budget practice to design a separate fee for orphan retiree health benefits.

[10] The other Federal fund supported by coal tonnage taxes owes a large debt to the U.S. Treasury. The Black Lung Disability Trust Fund has been operating in deficit each year since it began in 1978. To balance its books, the trust fund has received advances from the general fund of the U.S. Treasury, to be repaid from future revenues of the trust fund. Through FY85, interest was charged to the trust fund each year on the cumulative balance it owed to the general fund. The general fund in turn made additional advances to help cover these interest obligations, thereby increasing the trust fund's future interest and repayment obligations.

Since 1986, revenues from the Black Lung tonnage taxes on coal have approximately matched the trust fund's current outlays for Black Lung benefits. But the excess tax revenues have not been adequate to make interest, let alone principal, payments on the deficit that accumulated in the trust fund from FY79 through FY85. The Comprehensive Omnibus Budget Reconciliation Act of 1986 forgave the interest payments due from the trust fund to the general Treasury for fiscal years 1986-1990. Consequently, for these years, the trust fund was able to balance its accounts with relatively small advances from the general fund.

With this grace period over, the trust fund owed $324 million in interest for FY91 and an estimated $344 million for FY92. To help cover most of this interest expense, the annual advances from the general fund to the trust fund were increased—to $217 million for FY91 and an estimated $339 million for FY92. The cumulative advances that the Black Lung Disability Trust Fund owed to the general fund was $3.266 billion at the end of FY91 and is projected to grow to an estimated $3.609 billion by the end of FY92.

[11] Some situations where accumulating a balance may be appropriate include the Social Security Trust Fund or pension funds designed on an actuarial basis; where capital expenditures are "lumpy" (to be spent infrequently, in large amounts); where there are technological or procedural problems delaying the implementation of the program (as in the case of the new air traffic control system); or where reserves are being built up to protect against potential future liabilities.

[12] Of approximately 100 special fund accounts in the U.S. Treasury, only 16 receive interest or earnings on investments. U.S. General Accounting Office. Special tabulation. Washington, Aug. 11, 1992.

[13] In contrast, the excise taxes that finance the Black Lung Disability Trust Fund excise tax rates have been set twice as high on underground-mined as surface-mined coal. The current rates are $1.10 per ton of underground-mined coal and $0.55 per ton of surface-mined coal, not to exceed 4.4 percent of the price for which the coal is sold.

[14] The Eastern coal-mining States include Alabama, Illinois, Indiana, Kentucky, Maryland, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. The Western coal-mining States include Alaska, Arizona, Arkansas, California, Colorado, Iowa, Kansas, Louisiana, Missouri, Montana, New Mexico, North Dakota, Oklahoma, Texas, Utah, Washington, and Wyoming.

[15] The $0.75 per hour industrywide tax was projected to raise approximately $155 million per year; the $0.15 and $1.18 per hour taxes on bituminous coal, $210 million per year; and the AML transfer proposal, $70 million per year.

[16] In 1990, only 9.6 percent of U.S. bituminous coal tonnage was mined West of the Mississippi River. Because its productivity is typically higher, Western mining is likely to have accounted for an even smaller share of hours involved in bituminous coal production. Furthermore, Western bituminous production hours would have been taxed at less than one-eighth the rate of Eastern hours ($0.15 compared with $1.18 per hour).

[17] The Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits. Coal Commission Report. A Report to the Secretary of Labor and the American People. Washington, November 1990. p. 60-69.

[18] Coal Commission Report, p. 65-68. The report was reprinted and its findings were discussed in: U.S. Congress. Senate. Coal Commission Report on Health Benefits of Retired Coal Miners. Hearing before the Subcommittee on Medicare and Long-Term Care of the Committee on Finance. S. Hrg. 102-524, 102d Cong., 1st Sess., Sept. 25, 1991. Washington, U.S. Govt. Print. Off., 1992.

[19] U.S. Congress. Senate. Committee on Finance. Technical Explanation of Senate Finance Committee Amendment to H.R. 4210, with Minority Views, Family Tax Fairness, Economic Growth, and Health Care Access Act of 1992. S. Prt. 102-77, 102d Cong., 2d Sess., Mar. 6, 1992. Washington, U.S. Govt. Print. Off., 1992. p. 330.

[20] Revenues estimates from: U.S. Congress. Senate. Committee on Finance. Technical Explanation of the Amendment to Title XIX of H.R. 776 (Comprehensive National Energy Act). S. Prt. 102-95, 102d Cong., 2d Sess., June 18, 1992. Washington, U.S. Govt. Print. Off., 1992. p. 39.

[21] H.R. 4344 also would have denied the 50 percent State-of-origin share in the allocation of AML monies. This change was not included in subsequent versions of the proposal.

[22] U.S. Congress. House. Committee on Ways and Means. Press release #23-A. Washington, May 1, 1992. Also, U.S. Congress. Joint Committee on Taxation. Markup of Revenue-Related Provisions of H.R. 776 ("Comprehensive National Energy Policy Act") and Additional Energy Tax Provisions. Scheduled for a Markup by the House Committee on Ways and Means on Apr. 29, 1992. JCX-16-92, 102d Cong., 2d Sess, Apr. 28, 1992. p. 13.

PRICING PROVISIONS

Mr. WALLOP. I would like to engage the chairman of the House-Senate conference committee on H.R. 776, the chairman of the Committee on Energy and Natural Resources, in a colloquy regarding the pricing provisions contained in title VII of the conference report.

It is my understanding that the conferees rejected codifying exisitng or past FERC decisions regarding the pricing of electric transmission services. Is that the Senator's understanding?

Mr. JOHNSTON. Yes; that is the case. The language in the conference report does not endorse or reject present or past FERC decisions. It sets forth a new set of pricing principles—within the just and reasonable standard of the Federal Power Act—to guide the FERC in future pricing decisions.

Mr. WALLOP. It is my understanding that these principles would require that the FERC—consistent with the other requirements under section 212(a)—allow a transmitting utility to recover all costs incurred in connection with transmission services provided pursuant to an order under section 211. Is that the Senator's understanding?

Mr. JOHNSTON. Yes; it is. The conference report requires that the costs that may be recovered include, but not be limited to, all costs involved in providing the transmission service, including those of any enlargement of transmission facilities, as well as any other economic costs of performing a wheeling transaction.

This could include the pro rata share of the cost of existing facilities used to provide the transmission service. Such costs must be verifiable, but it is not necessary that the costs be incurred at this time the transmission rate is set. FERC may allow the recovery of projections of future costs, including opportunity costs, based upon the historical experience of the transmitting utility.

However, all cost recovery under new FPA section 212(a) is still bound by the requirement that rates, charges, terms and conditions must be just and reasonable and not unduly discriminatory or preferential.

Actual benefits to the transmission system of providing the service may be taken into account, namely documented operational cost savings. However, except to the extent to which they receive benefits, native customers should not be required to pay for facilities that would not have been constructed but for a mandatory wheeling order.

Mr. WALLOP. Do the pricing provisions of new FPA section 212(a) apply only to FERC-ordered transmission pursuant to section 211, or do they also apply to the pricing of transmission pursuant to other authorities under the FPA?

Mr. JOHNSTON. The conference report does not exclude their application beyond section 211. As a matter of policy I see no reason why these new pricing principles should not be applied by the FERC to other transmission orders. It would make good policy sense to do so.

Mr. WALLOP. Would you agree that subsection 212(a) is a complete substitute for the transmission pricing provisions of the original House-passed bill, and as such will have the full force and effect of Federal law on the basis of the plain meaning of the statutory provision adopted in the conference report? And would you also not agree that the pricing provisions in the original House-passed bill, and the associated legislative history, cannot be invoked to interpret pricing provisions of the conference report?

Mr. JOHNSTON. I agree. Subsection 212(a) is a complete substitute for the House-passed transmission pricing provisions and, as a matter of law, has the full force and effect of its plain meaning. I do not believe that the Senate would have accepted any form of mandatory transmission access without the complete substitution of the conference report for the original House-passed pricing language. That view is reflected in my September 9, 1992 proposal to the Committee on Conference. Consequently, it would be wrong to assert that subsection 212(a) merely rephrases or otherwise codifies the original House-passed pricing provisions.

Mr. WALLOP. Does the distinguished floor manager agree that the provisions of subsection 212(a) do not require, nor allow any subsidization of transmission services by the native load customers of the transmitting utility?

Mr. JOHNSTON. I agree that subsection 212(a) will not allow nor require, to the extent practicable, any subsidy by the native load customers. The intent is to ensure that transmitting utilities and their customers do not subsidize the provision of transmission services for others and that transmitting utilities are fully compensated for use of their transmission system. That is precisely why the conference report adopts a complete substitute for the House-passed pricing provision to assure that there will be no subsidy of transmission services.

With respect to current law, I should express my own disagreement with FERC's apparent policy which considers all enlargement of transmission capacity, other than radial lines, to provide system benefits. The result of this policy is that in cases of enlargement, the new transmission user pays the higher of embedded costs or enlargement, but no more. My quarrel with this formulation is that there are undoubtedly instances in which a system enlargement only benefits the new transmission customer within any foreseeable planning horizon. In such instances, the new transmission customer should pay for the enlargement and make an appropriate contribution to existing fixed costs of the system in return for use of such system. I do not know how frequent these instances are; they can be determined only on a case-by-case basis. In any case current FERC policy has categorically rejected the notion that a transmission user can ever be required to pay the costs of enlargement, plus an appropriate contribution to existing fixed costs. I believe that this policy is wrong.

Mr. WALLOP. In several recent decisions, including the Northeast Utilities case and the Penelec decision, the Federal Energy Regulatory Commission applied a very narrow approach to the costs which a transmitting utility can recover from a transmission customer. I believe this approach causes native load customers to subsidize transmission services provided to others.

Does the chairman agree that this act does not endorse the Northeast Utilities decisions or other recent Commission decisions regarding pricing policies for transmission services?

Mr. JOHNSTON. I agree. The conference report neither endorses nor rejects these decisions.

Mr. WALLOP. The intent of the retail wheeling and sham transactions provisions of the conference report is to prevent directly, or indirectly, what amounts to a retail sale effectuated through a FERC order. Does the distinguished floor manager agree?

Mr. JOHNSTON. I agree. Let me explain further.

In new section 212(h) of the Federal Power Act, FERC is prohibited from requiring retail wheeling—that is, the transmission of electric energy directly to an ultimate consumer. The Commission is also prohibited from requiring what can be called sham wholesale wheeling—that is, transmission of electric energy to an entity for resale to an ultimate consumer in instances in which the substance of the transaction amounts to retail wheeling because the wholesale sale to the entity is in fact a subterfuge intended to circumvent the ban on retail wheeling. Such a subterfuge would occur, for example, if a large industrial customer of a utility—say the XYZ Steel Co.—interposed a paper purchasing corporation in front of it—say the XYZ Steel Power Procurement Corp.—and claimed that such corporation was a legitimate wholesale purchaser entitled to a transmission order under section 211, or other sections of the Federal Power Act, because the corporation would in fact resell any wheeled power to the large industrial customer. Under section 212(h)(2) such an order is prohibited.

Section 212(h)(2) prohibits both transmission to an entity for resale and transmission for the benefit of an entity for resale subject to certain additional criteria. The for the benefit of language is intended to prevent extended interposition of paper purchasing corporations in front of the initial one—i.e. the XYZ Steel Power Procurement Corp. in the above example. Without the "for the benefit of" language, the XYZ Steel Co. in the above example would simply be able to interpose the XYZ Electric Purchasing Corp. in front of the XYZ Steel Power Procurement Corp., which would stand in front of the XYZ Steel Co., and still be able to circumvent the ban on mandatory retail wheeling.

It is important to note, however, that the "for the benefit of" langauge does not reach behind the "entity" referenced in section 212(h)(2). Thus, to the extent that such an entity desires to deliver electric energy to an ultimate customer to whom the entity was providing electric service on the date of enactment, as permitted in conjunction with a wholesale wheeling order under 212(h)(2)(B), such delivery cannot be compelled by means of an order issued under section 211 or any other provisions of the act. To put it another way, a transmitting utility can only be required under the Federal Power Act to deliver transmitted electric energy to an entity described in section 212(h)(2). At that point such an entity may either deliver such electric energy to ultimate consumers over transmission lines that it owns or controls or—in the case of a retail customer that it was serving on the date of enactment—it may be able to achieve such delivery by means of retail wheeling provided by another party. Such retail wheeling, however, must be provided voluntarily by such party or perhaps under State law. In no case can such retail wheeling be compelled under any provision of the Federal Power Act.

This point is of more than abstract interest. I am aware of certain arrangements by electric utilities with paper municipal utility agencies operating in the electric utilities' service territories under which the electric utilities agree to wheel limited amounts of low-cost energy, when available, to ultimate consumers of such municipal utility agencies. Under these arrangements, the wheeling utilities retain the legal obligation to serve these ultimate consumers and therefore are the providers of electric service to such consumers. Because the wheeling of electric energy in these cases is not to any entity specified in section 212(h)(2)(A) but rather to ultimate consumers, these retail wheeling arrangements cannot be compelled under section 211 or any other provisions of the Federal Power Act.

Mr. WALLOP. I thank the chairman. I want to clarify one more point.

With regard to the application of the traditional "just and reasonable" standard in the context of section 212(a), would you agree that the proper interpretation is that—as articulated in the Jersey Central Power & Light decision of the U.S. Court of Appeals for the D.C. Circuit—these transmission rates are bounded by a zone of reasonableness. And, that zone is defined at the lower end by a prohibition against confiscatory rates as to the electric utility and at the upper end by a prohibition against exorbitant rates to consumers. Does the Senator agree?

Mr. JOHNSTON. Yes; I agree.

OIL PIPELINE REGULATORY REFORM PROVISIONS

Mr. WALLOP. Mr. President, I rise to discuss the Oil Pipeline Regulatory Reform provisions—Title XVIII—of the Energy Policy Act of 1992.

The Oil Pipeline Regulatory Reform Title of the Energy Policy Act of 1992 addresses ratemaking for the Oil pipelines regulated by the Federal Energy Regulatory Commission pursuant to the applicable provisions of the Interstate Commerce Act. This jurisdiction was transferred from the Interstate Commerce Commission in 1977, when the Department of Energy was founded by the Congress.

This legislation does not change the substantive standards of the applicable provisions of the Interstate Commerce Act. What it does, instead, is essentially three things.

First, section 1801, titled "Oil Pipeline Ratemaking Methodology", calls on the FERC to develop within 1 year a simplified methodology for setting common carrier oil pipeline rates. They are to be generally applicable in 2 years, thus giving the Congress the opportunity to examine the methodology and to consider further legislation. No particular methodology is mandated by this requirement. Nor is there a substantive change in the standards of the Interstate Commerce Act; this provision relates solely to methods for compliance with existing law.

Second, Section 1802, titled "Streamlining of Commission Procedures", provides for the present and future changes in the procedures for handling oil pipeline rate cases. It has four subparts.

First, within 18 months, the FERC must consider and adopt regulations governing: (a) what, if any, information will be required to be filed by a pipeline prior to charging increased rates; (b) what notice and information, if any, will be given to the public of an impending rate increase; (c) which members of the public, if any, will have standing to protest pipeline rate increases; (d) which grounds of protest, if any, will be considered by the Commission; (e) when, if ever, staff will be able to seek initiation of proceedings to challenge oil pipeline rates; and (f) provision of an opportunity for pipelines to respond to protests. With two exceptions, there are no specific procedural changes from the status quo mandated by this section. First, with respect to the last item mentioned above, an opportunity for the pipeline to respond to protests, is mandatory. Second, the Commission is ordered to establish alternative dispute resolution procedures as part of the process.

Second, in addition to the rulemaking, the Commission must identify and transmit to the Congress any suggestions for procedural reform that require legislative authority.

Third, effective immediately, any oil pipeline will have the ability to terminate FERC consideration of the legality of rates brought into question by either protests of rate increase filings or complaints against existing rates. The former will be accomplished by allowing the pipeline to withdraw its rate increase filing and refunding any additional rates collected, thus restoring the prior rate without risk of further reduction through Commission review. The latter will be accomplished by compelling dismissal of further consideration of an oil pipeline's rates when the complainant has been satisfied by settlement or otherwise induced to withdraw the complaint.

Fourth, under section 1803, titled "Protection of Certain Rates," the Congress declares that under certain circumstances certain rates of oil pipelines are "grandfathered" under the Interstate Commerce Act and cannot be examined by the Federal Energy

Regulatory Commission, except under certain limited circumstances. The grandfathering applies only to rates that have not been challenged by the Commission or any protestor or complainant within a year of date of enactment. Thus, all pipelines with pending rate and complaint proceedings will not have their rates grandfathered.

The grandfathered rates can only be challenged in certain enumerated changed circumstances or if there is undue discrimination in an existing rate. If a pipeline with grandfathered rates seeks a rate increase, only the increase can be addressed by the Commission, not the underlying grandfathered rate, in the absence of these limited exceptions.

Section 1804 is definitional only.

In sum, the legislation prevents FERC consideration of some existing rates, provides for the future consideration of how best to set oil pipeline rates and how best to proceed with pipeline rate cases, and presently provides for procedures for oil pipelines to terminate Commission investigation of their rates when they either withdraw rate increase filings and refund or when they induce complainants to withdraw complaints.

All of the applicable standards of the Interstate Commerce Act remain intact, and the Commission is given the opportunity to choose between a continuation of the present procedure for regulation or a different method and procedure of regulation, applicable primarily to those pipelines who wish to seek increases in rates. For those pipelines who elect to stand on present rates, the Commission is largely barred from reexamination of their rates.

ELECTRICITY PROVISIONS

Mr. WALLOP. Mr. President, I rise to discuss the electricity provisions of the Energy Policy Act of 1992.

TITLE VII—ELECTRICITY

Overview

One of the most exciting features of this legislation is that it will allow American utilities and entrepreneurs to build, own, and operate domestic and international independent power production facilities without undue regulatory entanglements.

By ensuring the freedom of U.S. companies to compete both domestically and internationally, this legislation will put Americans to work building state-of-the-art, clean, and efficient power plants.

By allowing American technology, American equipment, American industry, and American workers to build new powerplants, jobs will be created and our economy will benefit significantly.

By encouraging the construction of needed new powerplants, this legislation will materially benefit our energy future.

General discussion

The Electricity Title (Title VII) of the Energy Policy Act of 1992 (H.R. 776) is divided into two subtitles: Subtitle A addresses Public Utility Holding Company Act (PUHCA) reform; Subtitle B addresses transmission access.

Both the Senate and the House of Representatives passed legislation that was melded into the Conference Report on H.R. 776. Thus, the full legislative history of the Senate-passed bill, S. 2166, must be taken into consideration when interpreting the Congressional intent of H.R. 776, particularly with respect to the PUHCA reform provisions.

With respect to PUHCA reform, the original House bill was far narrower than the Conference Report. The House would have prohibited entirely affiliate transactions, even if the state public utility commission were to consent. The Senate position was to allow affiliate transactions if authorized by the relevant state public utility commission. The Senate position was adopted by the Conference Report.

The Senate position was to retain existing law with respect to transmission access. It was felt that the Federal Energy Regulatory Commission (FERC) had adequate authority under existing law to address these matters. Thus, S. 2166 did not include any provisions addressing transmission access.

The House of Representatives felt otherwise. The original House-passed bill included far-reaching transmission access provisions, including pricing. These were rejected by the House-Senate Conference Committee, and therefore do not appear in the Conference Report.

In comparison to the original House bill, the Conference Report adopts a much more limited and narrow modification to existing law with respect to transmission access. The key differences between the Conference Report and the original House bill are the transmission authority being discretionary rather than mandatory, and the total absence of mandated open access transmission. The Conference Committee also rejected on its merits the transmission pricing language (section 212(b)(2)) of the original House bill.

Under the Conference Report, transmission access (including enlargement of facilities) is to be ordered by the FERC only on a case-by-case basis. It is to occur only upon request by a third party, and not upon the FERC's own motion. Moreover, the FERC is to order wheeling only if it makes a determination that the specific ordered transmission is in the public interest.

The Conference Report did not give the FERC the authority, the discretion, or the mandate to bring about sweeping changes in the way the electric utility industry operates, or to restructure the electric utility industry. The vast majority of the activities of the electric utility industry are subject to state public utility commission jurisdiction, and that has not been changed by this legislation.

The FERC is expected to use their new powers carefully and wisely. These are matters far too significant to the health, welfare, safety and economy of this Nation to be dealt with lightly.

It would be a mistake to take the presence of transmission access provisions in the Conference Report as a sign of change in position on my part or that of the Senate. I would have strongly preferred PUHCA reform without any transmission access provisions, as was the Senate position. However, in order to obtain the very significant benefits of PUHCA reform contained in the Senate bill, it was necessary to accept some of the House transmission access provisions. On balance, I am satisfied with the overall outcome of the Conference Report.

Now for a more specific discussion of the important provisions contained in the Conference Report on H.R. 776.

SUBTITLE A—EXEMPT WHOLESALE GENERATORS

General Discussion

The purpose of Subtitle A is to streamline and minimize federal regulation of utilities and non-utilities who want to own and operate an "exempt wholesale generator" (EWG), which is to generate power exclusively for the purpose of making wholesale sales.

Section-By-Section Discussion

Section 711. Public Utility Holding Company Act Reform

New PUHCA section 32(a)(1) requires the FERC to make a determination that a facility is an "eligible facility." The FERC is required to make this determination within 60 days of the receipt of the application. Additionally, the FERC must promulgate general rules implementing this requirement within one year after the date of the enactment.

With respect to the implementing rules, I expect them to be simple and straightforward. I would even encourage the FERC to develop rules to provide for "self-certifying," somewhat akin to QF self-certification under PURPA.

By a plain reading of the provisions, it is clear that the role the FERC is to play in this process is ministerial in nature. The bill makes that abundantly clear in several ways.

First, the bill itself sets forth clear and unambiguous guidelines for determining which entities are eligible to be an EWG and what constitutes an eligible facility. Thus, the final rule need merely restate the statutory provisions in a similarly straightforward manner. No further elaboration by the FERC is needed, warranted, or desired.

Second, the FERC's determination that an entity is an EWG, and the communication of that fact to the Securities and Exchange Commission (SEC), are also ministerial acts that will require little, if any, exercise of discretion by the FERC. Again, the FERC needs only to apply the test which is spelled out with absolute clarity in new PUHCA section 32(a)(1).

Finally, these provisions were added to the bill largely as a means of allowing the FERC to accumulate a minimum of data about EWGs, and not as a means of granting of FERC nonratemaking jurisdiction over EWGs. For all these reasons, the FERC should exercise maximum regulatory restraint and facilitate the development of EWGs, consistent with the intent of Congress.

New PUHCA section 32(g) permits registered holding companies to acquire and hold the securities of EWGs, so registered companies may compete on an equal basis with other market participants. Registered companies will remain subject to SEC scrutiny regarding the issuance or guarantee of securities and other matters. It is the intention that a registered company may hold an EWG at the registered company level, or through another of its subsidiaries (e.g., a subsidiary which also engages in development and ownership of qualifying facilities, or other permitted businesses). The reference in new PUHCA section 32(g) to a registered company acquiring or holding the securities of an EWG is meant to include a registered company holding such securities through a subsidiary.

Similarly, new PUHCA section 32(g) permits a registered company to acquire or hold the securities of an EWG without SEC consent, but under new PUHCA subsection 32(a)(1) an entity does not become a EWG until it has filed in good faith at the FERC. It is not the intention to require a registered company (or its subsidiary) to obtain SEC approval to form a company, which would then file at the FERC, in order to permit the registered company to then hold the EWG securities without further SEC consent. That would be a significant regulatory impediment to equal participation by registered holding companies. Rather, it is the intent that the language in new PUHCA subsection 32(g) which states that a registered company may "acquire and hold" the securities of an EWG is meant to include a registered company's formation of an entity for the purpose of filing at FERC for EWG status, without SEC action or approval prior to the formation. Of course, SEC approval would still be required for the formation of entities which are not for the purpose of filing for EWG status.

New PUHCA section 32(h)(6) requires the SEC to promulgate regulations that will ensure that the financial integrity of a registered holding company is not adversely impacted by investments in EWGs. It is expected that the SEC will make *every* possible effort to promulgate final regulations prior to the six month deadline. The SEC should give this matter the highest priority. I am acutely aware of the need to provide certainty for registered holding companies and potential investors in the development of EWG projects. Thus, during the period the regulations are under consideration and after publication of such regulations, the SEC should approve actions of a registered holding company that are consistent with the guidelines and protections established in this subtitle.

Until final regulations are in place, the SEC is expected to put in place interim regulations to avoid a regulatory gap that would inadvertently prevent registered holding companies from participating in wholesale electric generation, even for the briefest of times. Interim regulations clearly can satisfy the statutory requirement for regulations within six months.

New PUHCA section 32(h) provides the standards under which a registered company may seek SEC approval of the issuance or sale of securities by a registered company to finance an EWG. New PUHCA subsection 32(h)(6) provides for the promulgation by the SEC of regulations that are to provide assurance that the registered company actions will not adversely impact a utility subsidiary or its customers. The intent of these provisions is to assure that the risk, if any, of any EWG is not borne by the operating company subsidiaries (i.e., those subsidiaries which provide retail electric service to consumers), and is not borne by those companies' ratepayers.

Of course, where the operating company enters into a contract with an EWG, there may be some possibility of an effect on the rating of debt by rating agencies, and there may be normal commercial risks regarding contractual terms. It is not the intent to preclude all risk, but rather to assure that the relationship between the registered company and the EWG does not increase the risks that otherwise are borne in the ordinary course of business, nor to transfer those risks unreasonably to ratepayers. The SEC has appropriate discretion in considering the issues and promulgating the regulations to take the steps reasonably necessary to protect operating companies and their customers.

New PUHCA section 32(k) imposes conditions on transactions between an EWG and an affiliated utility. I believe that these will assure that beneficial affiliate transactions with an EWG will occur, while providing a clear mechanism to prevent abuse. It is the intention that beneficial EWG transactions be allowed.

New PUHCA section 32(k) also requires an affiliated utility to obtain the consent of the state commission or commissions with jurisdiction over its retail rates before it may enter into a contract with an EWG. It is the intent to permit a utility to enter into a contract, with its effectiveness contingent upon state consent. It is also the intent of this provision that only the affiliate utilities which are entering into the contractual arrangement with the EWG will be required to obtain consent. Particularly in the context of the operation of integrated systems by the registered companies, or other power pools, where capacity and energy belonging to or under contract to one utility can be dispatched to serve the load of any member of the system or pool, it is not the intent of this provision to require consent from every commission of every member which might at some point be served by the output of the EWG. The intent of this provision is to require the consent of the retail commissions of those utilities which are bound by a direct contract with the EWG. Of course, where the affiliated utility sells only on a wholesale basis, and has no retail rate commission, no separate state approval will be required.

SUBTITLE B—FEDERAL POWER ACT; INTERSTATE COMMERCE IN ELECTRICITY

General discussion

The original House-passed bill contained provisions that would have given the FERC sweeping new powers to order electric utilities to transmit ("wheel") electricity for other wholesale power generators (even if not requested), and would have mandated that the FERC use these powers unless there was an overriding public interest finding not to do so.

The Senate bill intentionally contained no transmission access provisions.

The proponents of the House mandatory transmission access provisions argued that wholesale power markets are not competitive and that mandatory wheeling is therefore necessary to promote competition and to spur efficient use of capacity. That argument and line of analysis is deeply flawed.

Experience has shown that wholesale markets in electricity are today intensely competitive. Indeed, the present system of free market transmission transactions works well. A great deal of voluntary transmission is ongoing. Many electric utilities have already voluntarily become an open access transporter, and many others are now in the process of becoming a transporter. This is occurring where the utility finds that doing so will benefit ratepayers and stockholders without jeopardizing reliable service.

Overall, no record has been developed to support the need for major changes with respect to FERC-ordered transmission access. To the extent that transmission access is not willingly being provided, the FERC should review its transmission rates to determine why they are not providing adequate economic incentives for utilities to voluntarily offer transmission. If the FERC priced transmission in a way which encouraged utilities and others to wheel, there would never have been a call for the FERC-ordered transmission access contained in Subtitle B.

After careful consideration of the merits of the original House transmission access provisions, the Conferees rejected all of the more far-reaching ones. For example, the House bill would have authorized and directed the FERC to require "tariffs of general applicability," thus mandating for electric utilities the equivalent of the FERC's open access transmission program for natural gas pipelines (FERC Orders No. 436, 500, and 636). That was rejected by the Conference on its merits—there is no physical similarity between gas transmission and electric power transmission that could warrant equivalent application. The Conference Committee also rejected on its merits the transmission pricing language (section 212(b)(2)) of the original House bill, and instead adopted a wholly different set of pricing provisions.

The Conference Report provides that the FERC can order transmission services (and associated enlargement of facilities) *only* upon application, *only* on a case-by-case basis for an individual applicant, and *only* if such transmission is found by the FERC to be in the public interest. It is most important to note that this is to occur only upon request by a third party, and *not upon the FERC's own motion*. Moreover, the FERC is to order wheeling (and associated enlargement of facilities) *only* if it makes a determination that the specific ordered transmission is in the public interest.

The public interest determination by the FERC is to be based on a set of specific findings related to the particular requested transmission transaction. Consequently, the Conference Report gives the FERC no authority to require utilities to provide a tariff of general applicability in response to an order sought by an applicant, nor any mandate or direction to do so using any provision of existing law. In my opinion, neither the amendments made by this Act nor existing law give the FERC any authority to mandate open access transmission tariffs for electric utilities.

The original House bill also specified that the FERC must require as a condition precedent for any market rates for wholesale power sales, and for any approval of any merger or consolidation by an electric utility, that the utility provide "tariffs of general applicability." Open access transmission, in other words. Again, the Conferees also rejected those provisions on their merits.

While granting the FERC the discretion to order wheeling transactions upon request under certain limited circumstances, the Conference Report intends this to be a procedure of last resort for those who cannot otherwise obtain wheeling services voluntarily. To this end, the Conference Report requires a 60-day negotiation period before an application for a wheeling order may be filed, and sets forth the procedures for requests for transmission services in new FPA section 213.

The Conferees narrowed the scope of the House transmission provisions in several important respects. For example, by changing "shall" to "may" the Conferees gave the FERC maximum discretion *not* to order wheeling, and the construction or enlargement of new transmission facilities directly associated with such requested wheeling.

Under the amendments to the FPA made by this Act, the burden of proof for FERC-ordered wheeling (and any associated enlargement) remains on the applicant. To determine whether or not it would be in the public interest, the FERC must look at all relevant factors, including the potential adverse impact of the ordered wheeling and construction on the utility ordered to wheel and its customers, as well as on other interconnected utilities and their customers. Although it may be difficult for the FERC to undertake such an investigation in order to reach a decision, it still must do so before it can order wheeling. This requirement of law can not be dispensed with.

One thing that the legislative history makes perfectly clear. In no case is the FERC authorized by this new transmission authority to order transmission where the result is to displace ongoing transmission. FERC is given no authority to decide that the requested transmission has a higher value than an ongoing transaction. The FERC is given no authority to invalidate, undo or otherwise displace an existing transmission arrangement. That is why I was very concerned about the use of the word "unduly" in the section 211 provisions of the original House-passed bill and insisted that it be stricken. The Conference Report makes it perfectly clear that the FERC can not order transmission where the result is displacement.

I want to note my deep displeasure that in the past, the FERC has all too often used its review authority to delay—and in effect deny—deals that were voluntarily negotiated at arm's-length. Moreover, the FERC has rejected freely negotiated arms-length agreements between the parties, even where no other party protested, and instead substituted its judgment as to what the parties ought to agree to. This is occurring for no apparent reason other than that the FERC preferred different results than the ones the parties negotiated. This occurred recently in the *Penelec* case.

There is no policy or public interest reason why the FERC should second-guess and frustrate arms-length transactions between independent businessmen, particularly when no other potentially affected interest raised objections. FERC is not charged by law to determine the precise outcome of each and every transaction over which it has some jurisdiction. The FERC has a great deal of discretion and latitude in determining what comports with the "just and reasonable" standard of the Federal Power Act. Arms-length agreements can be given considerable deference by the FERC.

Because the Conference Report provides effective procedures for parties to obtain wheeling orders at FERC-regulated terms and conditions, the FERC should allow freely-negotiated transmission agreements to be performed without interference from the FERC. This would further the Conference Report's goal of transmission access.

I would encourage the FERC at the earliest moment to begin to employ a "market screen" test, not unlike that which the Antitrust Division of the U.S. Department of Justice spoke about in the *United Illuminating* case. Where effective competition exists, there remains no valid public policy reason for the Federal government to intervene in privately negotiated activities.

Although the Conferees were ultimately not able to include provisions in the Conference Report to govern so-called regional transmission groups, that should not be taken as any indication that the Conferees affirmatively rejected the beneficial value of such groups. I strongly supported including such provisions.

During the House-Senate Conference there were three different regional transmission association proposals made: two by the Senate, and one by a group of consumer and trade associations representing all interests and elements of the electric power industry.

One by Senator Johnston appeared in his proposed amendments dated September 9, 1992; one by me was included in a subsequent Senate offer to the House; and one was a consensus proposal as between the Edison Electric Institute, the American Public Power Association, the National Rural Electric Cooperative Association, Transmission Access Policy Study Group, Large Public Power Council, Western Association for Transmission Systems Coordination, and the Interregional Transmission Coordination Forum.

Unfortunately, due to the lack of time the Conference Committee was not able to take this matter up and decide which of the three proposals to include in the Conference Report. In addition, I was considering offering an amendment to authorize individual arms-length transactions with a minimum of FERC intervention, to address the situation in *Penelec*, but I did not do so also because of the press of business during the Conference. It is my expectation that Congress will revisit these issues next year to develop enabling legislation, particularly if FERC fails to approve regional transmission groups pursuant to existing law, and if the FERC continues its unwarranted interference in arms-length agreements.

Because of the importance of these matters, I am placing these proposals into the public record to form the basis of future debate. Accordingly, I ask unanimous consent that they be printed at the end of my statement as appendices one through three.

In summary, while the end result of the Conference Report may not be what each of us would have written if we had the sole authority, it provides for a delicate balance between providing for the needs of those seeking transmission and protecting the interests of the utilities, and their customers, that will have to provide the ordered services.

Section-By-Section Discussion

Section 721. Amendments to Section 211 of Federal Power Act

Section 721 amends FPA section 211 to provide that the FERC "may" order transmission services. The original House-passed bill used the word "shall"; the Conference Committee affirmatively substituted the word "may" so as to provide the FERC with full discretion to protect the public interest.

Subsection (2) removes the specific criteria from existing section 211(a)(2) and from the original House Bill. To order wheeling, the FERC must now make two findings: one, that the order meets the requirements of section 212 of the FPA; and two, that wheeling is "otherwise in the public interest."

The Conference Report envisions that the FERC will consider all the relevant circumstances before determining whether to require transmission services. While the FERC must make specific findings about reliability and rates, terms and conditions, it must also consider the likelihood and economic viability of the proposed transaction which underlies the requested service in order to assure the transmitting utility will have a reasonable opportunity to recover its investment. The FERC may not issue a wheeling order (including associated construction) if the result were to deny the utility a reasonable opportunity to recover its investment, either in transmission or generating facilities.

The FERC must also consider the impact of the requested wheeling on the customers of the utility, the reliable functioning of the electric system in general, the customers now receiving transmission services, and the similar consequences to interconnected utilities and their customers. Moreover, the FERC must also consider the relevant particular circumstances, such as whether the person requesting transmission is a QF or a Federal or state government-owned entity (foreign as well as domestic), and shall take into account all special advantages these entities already enjoy in determining whether a transmission order is warranted.

Section 721 amends existing section 211 of the FPA in several respects. In subsection (1) it extends the class of those authorized to apply for a wheeling order beyond electric utilities, geothermal producers and power marketing agencies to include "any other person generating electric energy for sale or resale". This manifests Congressional intent to continue to limit the FERC's authority to wholesale transactions only.

The amended subsection 211(a) specifies that a specific entity may apply for an order by the FERC requiring a transmitting utility to provide transmission services (including any enlargement of transmission capacity necessary to provide the services). The intent of this new transmission authority is solely to provide a way to effectuate the third-party requested transmission without adversely affecting a utility's existing and future firm and non-firm transactions.

This does not give the FERC the authority, on its own motion, to order transmission and the enlargement of transmission facilities; FERC-ordered transmission is to occur only in direct response to the request of a third party, and only to the extent of that request. Moreover, that such a request has been made does not give the FERC the authority to go beyond that which is necessary to satisfy the services requested by the applicant.

The transmitting utility's obligation under any such order to both transmit and to build would be relieved if the transmitting utility is unable to obtain the necessary authorizations, including any needed enlargement, pursuant to otherwise applicable Federal, state and local laws, including those related to environmental protection, siting, determinations of need, permits and approvals, as well as any necessary property rights. The necessary approvals will vary widely from state to state and locality to locality, but all relevant approvals are encompassed, regardless of whether they are in the form of environmental approvals, construction reviews, certificates of convenience and necessity, rights of eminent domain, or any other applicable Federal, state or local requirement. This arises out of a desire to let the states retain existing jurisdiction over these matters.

The requirement for a "good faith effort" does not mean that a utility must completely exhaust every conceivable administrative, legal or financial remedy before being excused from the order; but a utility must make a reasonable attempt to obtain the necessary property rights and approvals.

The FERC would not be able to enforce such an order to provide transmission services, nor impose the new monetary penalties contained in new FPA section 725, where all of the required authorizations under otherwise applicable Federal, state and local law have not been obtained for the ordered services or enlargement of transmission facilities.

It is also the intent of this provision that the FERC exercise this authority in such a way as to assure that the transmitting utility is not trapped between inconsistent local, state and Federal orders or requirements. For example, where a state will not permit expansion of the system, the FERC can not require the transmission to occur if there would be a diminution in reliability or loss of the ability to make economy or coordination transactions to the benefit of customers, or where other existing arrangements would have to be terminated.

Similarly, if the effect of the ordered transmission were to lead the utility to terminate or cut back on ongoing or contracted-for transmission, the FERC can not issue the wheeling order, or must vacate one which had been issued. Moreover, the FERC cannot use a general public interest determination to override the statutory excusal, particularly by ordering a reallocation of the existing grid, or to curtail economy purchases or off system sales.

These limitations on ordered wheeling were added, in part, to solve the so called "immutable constraint" issue that has created controversy in a number of cases at the FERC. Under the provisions of the Conference Report, the FERC cannot legally reinstitute the so-called "hammer clause" of the *Utah Power & Light-PacifiCorp* merger [45 FERC ¶61,095, *order on rehearing*, 47 FERC ¶61,209 (1989), *remanded on other grounds, Environmental Action, et al. v. FERC*, 939 F.2d 1057 (D.C. Cir. 1991)], or through a FERC proceeding reallocate existing transmission capacity as was envisioned in the order overruling the Administrative Law Judge in the *Northeast Utilities-Public Service Company of New Hampshire* case [56 FERC ¶61,269 (1991)].

In addition, in its rehearing order in *Northeast Utilities* [58 FERC ¶ 61,070 (1992) *petition for review pending, Northeast Utilities Service Company, et al. v. FERC*, No. 92–1165 (1st Cir. filed Feb. 10, 1992)] the FERC, when it instituted its new transmission pricing scheme, left unclear how it would handle an immutable constraint. The intent of this provision in the Conference Report is to resolve that problem.

Subsection 211(a) requires an applicant to have made a request for voluntary transmission services from the utility at least 60 days prior to filing an application. Obviously, any such request must be bona fide under the applicable utility tariff, and must be pursued in good faith. A *pro forma* or frivolous request, or a request that did not satisfy reasonable information requirements, would not satisfy this requirement, and under those circumstances, and the FERC should dismiss the application for an order under section 211.

New FPA section 211(b) denies the FERC authority to mandate wheeling if it fails to make a finding that a wheeling order would not "unreasonably impair the continued reliability" of affected utilities. When reliability issues are raised, this is an affirmative requirement for the FERC to make; the FERC cannot simply assume that ordered transmission would not impair reliability. The burden of proof is on the applicant, not on the utility who has been requested to wheel.

The original House bill directed the FERC to consider the impact of wheeling orders on the reliability of the utility providing the service, but it left reliability of other connected systems vulnerable. The Conference Report broadened the FERC's consideration to the systems "affected" by the order. New FPA section 211(b) states that wheeling orders may not "unreasonably impair the continued reliability of electric" service. The FERC thus must protect the reliability of all the affected interconnected utility systems and the power pool/control area. Further, the FERC must ensure that any impairment in reliability will be completely reasonable (e.g. an acceptable, de minimis reduction in the amount of excess capacity or facility redundancy).

This phrase "unreasonably impair the continued reliability" also requires the FERC to refrain from mandating wheeling if the affected or transmitting utility's excess transmission capacity margins are depleted to the point where it can no longer engage in emergency transactions, or meet daily and seasonal need, including a reasonable reserve, or contract for short-term purchases of power in response to such things as planned and unplanned plant outages, or where it would lose the ability to keep the lights on in situations such as when a natural disaster takes out a large substation.

New FPA subsection 211(g) requires the FERC to give "consideration to consistently applied regional or national realiability standards, guidelines or criteria" in its assessment of reliability prior to issuing an order. I want to emphasize that when conducting that assessment, the FERC must ensure that reliability is measured in terms of *continued conformance* with regional and national reliability standards. Reliability is of paramount importance, and is "unreasonably impaired" under the statute when these standards are not met. While a transmission order may result in enhanced competition, economic efficiency or projected price relief, those are not a trade-off for reliability of service.

Reliability has been the hallmark of the U.S. electric utility system, and the FERC must act carefully in issuing wheeling orders so as to have no adverse impact. As was noted during the Conference, consumers deserve to have electricity when they want it; reliability of our nation's electric service stands as the envy of the world and in administering this section, the FERC should do nothing to degrade the system. I can not envision any circumstance under which the actual impairment of reliability would be considered to be in the public interest pursuant to the FPA.

Stated another way, if reliability concerns are raised the FERC as a practical matter should not issue an order under section 210 or section 211 unless it affirmatively finds that such order would preserve the reliability of affected electric systems. Anything less than full reliability would constitute an unreasonable impairment, and would be inconsistent with the clear statutory mandate of the FPA as amended by this Act. While the FERC order requiring provision of a new transmission service might reduce to some limited extent the existing reserve capacity of the transmission system or the margin or redundancy in transmission facilities, the overall reliability of each of the affected systems must be preserved. It would be manifestly unreasonable and clearly not in the public interest for the FERC to issue an order that did not achieve that result.

Subsection (4) removes the phrase "preserves existing competitive relationships" from existing FPA section 211. This can not be construed as intending to give the FERC authority or a mandate to restructure the electric utility industry. Rather, this change in existing FPA section 211 is necessary solely to allow the FERC to provide, upon request, additional transmission service opportunities to utilities and non-utility generators seeking to compete for power sales in the bulk power market.

It is not the intent of the Conference Report to allow wheeling to be ordered for phantom contracts, or contracts which lack sufficient certainty or economic viability, so that the transmitting utility (and other affected utilities) are left at substantial risk of recovering the associated costs. For example, where the requested service would require enlargement or expansion of the system, the FERC must consider and receive sufficient assurance that termination of the underlying power purchase or some failure of the requesting party to complete the transaction would not leave the utility without a means to recover the costs of enlargement or expansion.

The FERC has an affirmative obligation to assure that the costs of transmission for others are not borne by either retail customers or shareholders of the transmitting utility. In making the determination as to whether or not to issue such order, the FERC has a legal obligation to ensure that the utility has a reasonable opportunity to recover its investment. Thus, the utility will not face the prospect of stranded investment in either transmission or generation facilities as a result of a FERC transmission order (which may include ordered enlargement of transmission facilities).

Section 722. Transmission services

This section provides for a wholesale transmission order under section 211 at rates, charges, terms, and conditions which permit the recovery by such utility of all the costs incurred in connection with transmission services and necessary associated services. For a more comprehensive discussion of pricing under the FPA as amended by this Act see Attachment 4.

Where the FERC orders wheeling, the rates, terms and conditions for transmission services must allow a transmitting utility to recover all costs incurred in connection with transmission services provided. The Conference Report provides that the appropriate share of such costs shall include, but not be limited to, all costs of any enlargement of transmission facilities and the economic costs of performing a wheeling transaction, including the pro rata share of the cost of existing facilities used to provide the transmission service. Such costs must be verifiable, but it is not necessary that the costs be incurred at the time the transmission rate is set.

An order shall allow the recovery of reasonably projected future costs, particularly opportunity costs, based either upon the historical experience or existing and planned arrangements of the transmitting utility, so long as an evidentiary basis exists. Actual benefits to the transmission system of providing the service may be taken into account, such as documented operational cost savings. Speculative benefits to the transmission system, such as the mere existence of facilities that would not have been constructed but for a mandatory wheeling order, are not to be credited against the costs incurred in connection with the transmission services.

These pricing provisions encompass the "just and reasonable" standard, but provide more detailed requirements for the FERC to apply in order to assure that when the FERC mandates transmission service (including enlargement of facilities), as opposed to reviewing voluntary arrangements, it does not force the transmitting utility or its customers to subsidize the provision of these services. When the government mandates use of private property it must provide adequate compensation. These provisions are flexible enough to allow incentives for transmission services, including market-based pricing in competitive bulk power markets.

The "just and reasonable" standard referenced in section 212(a) has been well articulated by the U.S. Court of Appeals for the D.C. Circuit in its *Jersey Central Power &*

Light decision (810 F. 2d 1168, 258 U.S. App. D.C. 189 (D.C. Cir. 1987) (en banc)). Here the Court noted that rates are bounded by a "zone of reasonableness", which is defined at the lower end by a prohibition against confiscatory rates as to the electric utility and at the upper end by a prohibition against exorbitant rates to consumers.

The specific pricing directions of new FPA section 212(a) will govern the establishment of the rate for the ordered transmission services, as long as the resulting rate is within the zone of reasonableness and is not otherwise unduly discriminatory or preferential. The FERC is authorized only to adjust the rate to comport with those specific pricing directions and as may be necessary to bring it into the zone of reasonableness, or to mitigate the undue discrimination or undue preference. Thus, under section 212(a) the FERC would be allowed and required to allow the transmitting utility to recover all costs incurred in connection with ordered transmission services, as is specified in the subsection.

FERC's existing precedent in reviewing arms-length transactions for energy and capacity give great weight to privately negotiated agreements, subject to third party rights to file a complaint under FPA sections 205 and 206. That well-established principle, long-known as *Sierra-Mobile* Doctrine, should also be the basis of FERC's review of voluntary transmission arrangements. The Conference Report, in putting stress on the need for voluntary transmission arrangements, gives ample opportunity for the FERC to apply properly that Doctrine to voluntary, arms-length transactions. The FERC should limit its intervention to only those circumstances where the public interest clearly compels it to do so.

In order to promote the economically efficient use of transmission and generation systems, rates, charges, terms and conditions and transmission services must include all costs associated with performing a transaction, including the costs of foregone alternative uses for the facilities.

In cases where the relevant market for delivered bulk power is competitive, the market price will best reflect the true value of the use of facilities and promote the economically efficient allocation of resources. In such cases, a market-based rate will fall into the "zone of reasonableness" and therefore can be deemed to be just and reasonable, and meet all the other requirements of new FPA section 212(a). This is true whether the FERC is approving transmission rates for a section 211 order or under any other authority under the FPA.

The Conference Report requires the FERC to fully review in each requested transaction the costs that will be incurred, to the degree they can be reasonably defined or proven in accordance with normal FERC procedures, and to assure, at a minimum, that all the costs incurred are recovered. In allocating costs, the FERC must assure that the parties which cause costs to be incurred will bear those costs, and to assure that no party will bear more costs than those from which it is receiving benefit. Just and reasonable rates, charges, terms and conditions under this section shall promote economic efficiency in the transmission and generation of electricity. Market-based rates can meet this requirement where the marketplace is workably competitive.

New FPA section 212(a) deals with transmission pricing. The overriding objective is to encourage utilities to offer transmission voluntarily. If FERC were to continue current rate making, which calls for average system (embedded) costs as the basis for pricing, it could, and in the future, will increasingly result in utilities not recovering from transmission customers the economic costs of that service. Moreover, it fails to give the transmitting utility and its customers any incentive to offer transmission services.

For example, for systems built years ago, the average system costs include facilities built in the era when sites, material and labor came relatively cheap. In contrast, new lines are much more expensive and more difficult to site. Thus, if the transmitting utility can charge only average system embedded costs, the customer is not bearing the true costs of the transaction. The utility might, if allowed by its state commission, make that loss up through its native load (e.g., residential and small consumers) paying more, because the new line raises the system average on which the utility charges them. That type of subsidy by the native load customers constitutes bad economic, social and public policy. It also inhibits state commissions from approving construction. With more transmission services possible under this Conference Report, the problem could become more acute.

Offering third party transmission services can have another harmful effect on native load if not properly addressed. Because the transmission customer ties up existing facilities, the utility cannot use its facilities to buy cheaper power than it generates, or to sell excess power to others. Both result in native load paying too much (either directly for more expensive fuel or indirectly because off-system sales lower native load rates). Either way, the utility, which owes its first duty to its native load, again will be less likely to offer transmission services. For that very reason, the FERC's recent decision in the *Penelec* case (60 FERC Paragraph 61,313 (1992)) caused the utility to withdraw its offer of service to the cogenerator. The use of the term "economic costs" in new FPA section 212(a) requires FERC to permit recovery of these costs from the party seeking transmission services without the artificial limits imposed in *Penelec*.

Finally, a customer requesting transmission service may displace service from its existing supplier. Yet that supplier spent money on facilities and expected to recover those costs from the customer now leaving the system. Unless addressed directly by the FERC in its transmission orders, this "stranded investment" problem may become more acute because under this legislation as utilities will no longer have the discretion to refuse FERC-ordered transmissions. Stranded investment costs are also "economic costs" which must be recovered if the FERC mandates transmission.

New FPA section 212(a) states the overriding principle that the FERC must "permit the recovery by [the transmitting] utility of *all* costs incurred" in providing the service (emphasis added). Moreover, the costs also include those for "necessary associated services." In this way, the transmission customer will pay for all costs the utility incurs on that customer's behalf. As a way of illustration, the section lists: (1) the appropriate share of legitimate, verifiable and economic costs of providing the service; and (2) the appropriate share of expansion costs. The transmission customer must pay its appropriate share of the existing system plus any expansion the utility undertakes on behalf of that entity. In short, the transmission customer must pay its own way and the third party transmission services will *not* be subsidized by native load customers under any circumstances.

This question, how to allocate costs between native load customers and third parties, has bedeviled the FERC ever since the rehearing order in the *Northeast Utilities* case and the companion *Northeast Utilities* opportunity cost case [58 FERC ¶ 61,069)]. The FERC had held in the *penelec* case [60 FERC ¶ 61,313 (1992), *rehearing rejected* (September 18, 1992)] that even where transmission results in higher fuel charges to native load, the utility can only recover those costs if they exceed embedded cost. In the facts of that case they never would. Therefore, the FERC, while ostensibly holding the native load harmless, has in fact made that class of customer bear higher fuel costs that the transmission customer created. Under the Conference Report, that will not be allowed.

In fact, just recently the FERC issued an order in which it reversed one of the early *Northeat Utilities* cases, to be detriment of native load. In a follow-up filing to the Northeast Utilities merger, the company chose to bill the customer so—called "out of rate" charges (the costs to the New England Power Pool of running more expensive generation because of constraints in transmission created by new third party transmission services) for every hour in which those costs exceeded embedded costs. The Commission majority refused, on the grounds that the company must compute the running costs for the 10–28 years of the transaction. In effect, because out-of-rate charges will occur on a less than regular basis, the FERC again has limited the utility's transmission rates to embedded costs even though the utility still must pay the out-of-rate charge to NEPOOL on a monthly basis and thereby subsidize third party transmission customers again.

Similarly, the FERC in *Penelec* held that with regard to expansion costs, a utility can charge only the "higher of" those costs or the embedded cost rates ("In no event may the utility simultaneously charge the wheeling customer an incremental cost rate and an embedded cost rate."). This does not allow the transmitting utility to recover all of its costs.

To eliminate this obvious unfairness, new FPA section 212(a) makes clear that the utility shall recover "all costs." In addition, it says the appropriate share of the existing "and" the expanded system. "All costs" therefore should include, at a minimum, the appropriate share of the costs of the existing system and any costs for enlargement of the existing system, costs incurred due to the curtailment, dispatch, re-dispatch, or other alteration of current generation or transmission operations to accommodate the new transmission customer, and any other reasonably ascertainable uncompensated burden imposed on the utility or its native load customers.

Finally, I wish to emphasize the "including but not limited to" language is intended to allow the utility to recover at least the costs listed in the section. If, however, the FERC finds that "all" costs include other items as well, it must allow full recovery of costs the section does not list expressly.

The stranded investment issue is also encompassed by this language. The Conference Report requires the FERC to allow a utility to recover costs "properly allocable" to the transmission customer from that customer, and not from the transmitting utility's existing customers. Therefore, if an existing customer for electricity from a utility changes suppliers and become a transmission customer, that customer must pay for the stranded investment. While not a complete protection (for situations in which the customer departs from a utility not involved in transmission), at least the Conferees have provided protection for the most common situation.

Also, if a utility has expended funds to provide new transmission service using existing facilities or to enlarge the facilities to provide the service, and the applicant for the section 211 order does not accept the services, the applicant, and not the utility or its native load customers must bear the responsibility for those costs.

The provision in the Conference Report that requires "rates shall promote the economically efficient transmission and generation of electricity . . ." needs explanation. In a recent *United Illuminating* case [60 FERC ¶61,214 (1992))], the FERC overrode the competitive process that had led a utility and a supplier to negotiate rates not based on costs. The Department of Justice joined in petitioning for rehearing, arguing that the FERC should adopt existing judicial precedents of market efficiency when dealing with market-based rates. The FERC on rehearing dodged the issue and found that in the narrow facts of the case, the utility could have its deal. Adding the modifier "economically" to the word "efficient" calls to the FERC's attention that the science of economics has developed sophisticated doctrine on market efficiency. The FERC should draw on that knowledge in its cases and needs to identify situations where FERC can reasonably withdraw from transaction-by-transaction review.

It is noteworthy that the second sentence of amended FPA subsection (e)(1) includes the phrase "Except as provided in section 210, 211, 214 or this section . . . ." That exception makes clear the intent that the provisions of those sections do, in fact, constrain the authority of the FERC to order transmission services under those and other provisions of law. Those amended sections of the FPA specify the circumstances, term, conditions, rates and procedures associated with any mandatory transmission services ordered by the FERC.

At the same time, however, if for some reason not based on this legislation the FERC concludes that it has a legitimate claim of authority to require transmission services under section 203 or section 205 (which I do not believe they do), the FERC should adopt the pricing criteria and standards included in amended FPA sections 211 and section 212 because they provide the clear intent of Congress with regard to any non-voluntary transmission services. The FERC should not, therefore, establish other criteria and standards for use in section 203 or section 205 cases where it believes it has a legitimate claim of authority. It would make no policy sense for the FERC to have two different regimes. Nothing in the FPA as amended by this Act prevents the FERC from so doing.

New FPA subsections 212(g) and (h) prohibit retail wheeling both directly, and indirectly through so-called sham transactions. In its efforts to prohibit retail wheeling, the original House bill unintentionally created a large loophole. The Conference Report instead provides a much more complete and comprehensive ban on retail wheeling. As a result, the FERC's authority is strictly limited to transmission services provided for the delivery of bulk power supplies to legitimate wholesale customers.

The Conference Report requires that the transmission service authorized by the FERC order may not lead to retail wheeling, regardless of the terminology used in the transmission request or FERC order. Thus, the FERC has no authority to order or authorize a utility to provide transmission services where the practical result of the order will be to by-pass the utility's retail service and deliver wholesale power to a retail customer. The FERC must ensure that, in a particular fact pattern in an individual case, it does not allow or approve transactions that clearly are nothing more than an indirect sale to an ultimate consumer formulated for purposes of circumventing the statutory prohibitions. These provisions give the FERC full authority to prohibit transactions that technically might arguably meet criteria for a wholesale sale or transmission transaction, but the underlying intent and effect is to provide retail service to an ultimate consumer. The FERC already has taken such action in the area of municipalization for purposes of obtaining open access transmission services for otherwise ineligible retail customers (such as industrial facilities) in the *Entergy* transmission case. I expect the FERC to proceed in a similar manner to reject all forms of transmission transactions where the substantive result is service directly or indirectly for an ultimate consumer.

The Conference Report inserts a new Section 212(h) into the FPA, prohibiting the issuance of an order conditioned upon or requiring wheeling directly to an ultimate consumer. An order may not require wheeling to any entity that would sell the power to be wheeled to an ultimate consumer unless the entity fits into a list of categories of power selling entities, *and* owns transmission or distribution facilities. The only exception to the requirement that the wheeling entity own facilities is a grandfathering provision for persons that fit into the list of categories that are providing electric service to an ultimate consumer on the date of enactment of this legislation.

The grandfathering clause is intended to allow the FERC to continue, but not expand, existing retail wheeling arrangements. If a utility is currently wheeling a small fraction of a retail customer's energy requirements from another power producer, the other power producer is not providing "electric service" under this subsection. The grandfathering provision would not allow the FERC to order the utility to wheel a greater portion of the energy requirements of the retail customer, or to order the utility to wheel capacity, or wheel to facilities of such person not now receiving such power. Consequently, the legal effect of the provision is to maintain the status quo on a transmission specific basis with regard to the amount, source, and delivery point of the existing power sale contract for its current term.

By requiring FERC to consider who "benefits" from a wheeling transaction, the Conference Report requires the FERC to prevent what is in essence retail wheeling even though the technicalities of a wholesale wheeling transaction are otherwise met. Thus, the FERC must prevent "form" from prevailing over "substance" in order to frustrate clever attempts to engage in retail wheeling through "sham transactions." The FERC should be sensitive to proposed transactions which in form meet the technical requirements of a sale for resale but which are, in economic substance, a retail sale to an end user.

New FPA section 212(g) expressly allows existing state laws concerning service territories to remain in full force and effect and nothing here can affect that. New FPA subsection (h) states that no order issued under the FPA (not just the new wheeling authority) shall require directly or indirectly wheeling for a retail customer. That includes merger orders or rate orders. This directly answers "no" to the D.C. Circuit's remand in *Environmental Action*, which held that the FERC must consider whether to allow retail wheeling in order to offset anti-competitive effects of a merger.

Sham transactions occur when the retail customer that wants the wheeling sends someone else to apply for it. Retail customers would do that to circumvent the ban on retail wheeling. Therefore, the Conference Report states that wheeling "for the benefit of" a retail customer falls under the ban. By the same token, legitimate existing co-operative or municipal wholesale sellers or Federal Power Marketing Agencies may apply for and obtain wheeling that lowers the rates of their retail customers. A very important part of new FPA section 212(h) also allows states or localities under state law to ban retail wheeling.

Section 723. Information Requirements

This section adds a new FPA section 213 which is much more fair and reasonable than the original House bill.

Subsection (a) requires that the parties must have a reasonable opportunity to negotiate. Not earlier than 60 days of the receipt of a bona fide, complete request and longer if the parties agree, the utility must explain to the customer why the transaction cannot occur, in an acceptable manner, rather than on the terms the requester wanted.

Subsection (b) establishes the information requirements the FERC must prescribe by rule, reducing substantially the requirements originally proposed by the House. The new language simply states "information . . . which is adequate to inform potential customers, State regulatory authorities, and the public of potentially available transmission capacity and known constraints." This leaves to the FERC rulemaking process the decision on what form these information requirements should take. However, the FERC cannot by rulemaking reimpose the information requirement provisions of the original House Bill, which the Conferees now have rejected with prejudice.

It is intended and expected that the information requirements would not be onerous or burdensome, but rather will require only such information as it is reasonably practicable to provide, so that the FERC, State Commissions and other interested parties have a reasonable basis upon which to act.

ATTACHMENT 1

(Proposal by Senator Malcolm Wallop (R-WY) Voluntary Regional Transmission Associations)

The Federal Power Act is amended by adding the following:

"Section 216. Voluntary Regional Transmission Association.

"(a) A voluntary regional transmission association may file with the Commission a copy of the agreement establishing such association, and may seek from the Commission certification of such agreement.

"(b) Upon application, and after notice and opportunity for comment, the Commission shall certify any agreement that includes provisions as specified in subsection (e). In considering certification, the Commission shall seek the views of all state regulatory authorities of the relevant region, and other interested and affected parties.

"(c) Upon complaint to the Commission by a member of the association alleging violation of the agreement (after an unsuccessful, good faith attempt at dispute resolution), the Commission may determine after a hearing that the agreement is not being implemented in accordance with its terms. In making this determination the Commission shall accord substantial deference to the results of any binding dispute resolution. Upon making such determination, the Commission shall provide a reasonable time for the association to change or implement its agreement in response to the Commission's order.

"(d) Any rate, charge, classification, rule, regulation, practice, or contract demanded, observed, charged, or collected for transmission service in accordance with an agreement, whether based on cost or non-cost factors, is considered just and reasonable.

"(e) An agreement for a voluntary regional transmission association shall include provisions consistent with the public interest that:

"(1) allow any wholesale seller or wholesale purchaser in the region to become a member;

"(2) permit wholesale transmission service for members of the association within and through the region on terms, including price, that are not unduly discriminatory or preferential;

"(3) provide the basis on which any rate, charge, classification, rule, regulation, practice, or contract demanded, observed, charged, or collected for transmission service shall be determined;

"(4) allow the future transmission requirements for wholesale electric energy sales and purchases by members to be included in plans, which shall be updated periodically, for enlargement, subject to applicable federal, state, and local law, of transmission capacity for any member who agrees to pay the reasonable costs of transmission services, including the costs of any enlargement of transmission facilities;

"(5) allow all wholesale sellers and wholesale purchasers who are members to plan for and reserve transmission capacity for firm and non-firm power transactions to the extent of available existing capacity, as supplemented by good faith efforts to enlarge transmission capacity to provide requested service in the future;

"(6) provide for a dispute resolution procedure, which may include binding arbitration, for members which protects the due process rights of the parties; and

"(7) allow members, at their sole discretion, to provide voluntary transmission services to a requesting non-member on a voluntary basis not subject to review by the Commission under any other provision of this act.

"(f) If an agreement of a voluntary regional transmission association is in effect, with respect to members of the association the Commission shall not: (i) accept an application for an order under section 211(a) ordering such member to provide transmission service; or (ii) condition its approval of a merger on the provision of transmission services; or (iii) condition the exercise of its rate jurisdiction on the provision of transmission services.".

Section 3 of the Federal Power Act is amended by adding the following at the end thereof:

"(26) The term "voluntary regional transmission association" means an association—

"(A) open to all transmitting utilities and wholesale buyers and sellers in a region, and

"(B) which is intended to develop a voluntary agreement concerning—

"(i) regional transmission use;

"(ii) enlargement of transmission capacity, and

"(iii) rates, terms, and conditions for transmission service.".

ATTACHMENT 2

(Proposal By Senator Malcolm Wallop (R-WY) for Authorizing Voluntary Transmission Agreements)

The Federal Power Act is amended by adding at the appropriate place the following.

"Section . An agreement or contract relating to the rates, terms, or conditions for transmission services, between unaffiliated entities shall be filed with the Commission and be effective as between the parties thereto, provided that this subsection shall not affect the right of any person or state commission under section 206 of this Act."

ATTACHMENT 3

(Regional Transmission Groups)

The consensus document reached by representatives of [EEI, APPA, NRECA, TAPS, LPPC, WATSCO, ITCF, consumer, environmental groups, EGA] to establish regional transmission groups provides for the following:

I. Authorizes FERC to approve an RTG if it finds the RTG's Governing Agreement is just and reasonable, not unduly preferential or discriminatory, and is otherwise consistent with Part II (electrical) of the Federal Power Act, and that it:

A. Provides for membership of sufficient size and scope to provide transmission services in a reliable and efficient manner.

B. Allows any entity which is subject to, or eligible to apply for, an order under §211 to join the RTG.

C. Imposes the affirmative obligation to provide transmission services to members (non-members retain all rights under §211 and §212) and to enlarge transmission capacity, as needed.

D. Requires members to coordinate transmission planning on a regional basis and to share transmission planning information to ensure that all known transmission needs of the region are met in an efficient manner.

E. Includes governance procedures to ensure due process and fair treatment of all members.

F. Provides for a fair dispute resolution process, which in certain circumstances may include voluntary binding arbitration. (Consent to engage in binding arbitration cannot be a condition of membership or the exercise of any right of membership.)

G. Requires that all rates, charges, terms, and conditions shall be consistent with §212, and subject to §§205 and 206, as appropriate.

II. Commission Authority over RTGs:

The Commission may require such information as it deems necessary, impose conditions consistent with the public interest, modify or revoke certification of the group, and remand or set aside any action (except as otherwise provided in binding arbitration) for inconsistency with the Federal Power Act and the RTG's Governing Agreement.

Members may agree, on a case-by-case basis, not to seek Commission review of an arbitration award. The Commission shall accord substantial deference to any decision rendered by an independent third party and based on an adequate record. The Commission also shall give a rebuttable presumption that any action by an RTG, or action of a member not contested by another member, is within the scope of the Agreement.

III. Federal Entities:

Federal power marketing authorities are authorized to participate in RTGs, subject to certain restrictions, and to engage in binding arbitration.

IV. Savings Provision:

FERC certification of an RTG shall not affect State siting, environmental, or utility regulatory authority which could otherwise be lawfully exercised over members of the RTG. Conforms savings clause in §212(e)(1) and (2) relating to antitrust to include this section.

REGIONAL TRANSMISSION GROUPS

Section 216. Regional Transmission Groups

(a) Commission Certification—

(1) On application, the Commission shall certify a regional transmission group ("RTG") if it determines, after notice and opportunity for hearing, that such RTG's Governing Agreement ("Governing Agreement") (and any revision thereof) is just, reasonable, is not unduly discriminatory or preferential, is otherwise consistent with this Part, and meets the following specific requirements:

(A) the Governing Agreement provides for membership of sufficient scope, and a region of sufficient size, (not inconsistent with determinations, if any, made under section 202(a)), to provide transmission services consistent with this Part and with reliable, efficient, and competitive wholesale power markets;

(B) the Governing Agreement allows any entity which is subject to, or eligible to apply for, an order under section 211, and which has an interest in transmission services in the region, to join the RTG;

(C) the Governing Agreement (i) imposes on member transmitting utilities an affirmative obligation to provide transmission services to other members on a basis that is consistent with (and no less comprehensive than) sections 211, 212, and 213, including an affirmative obligation, (except as provided in section 211(d)(1)(C)), to enlarge transmission capacity when needed to provide requested transmission service; and (ii) requires members to maintain electric system reliability, as measured by continued conformance with generally applicable and recognized guidelines;

(D) The Governing Agreement requires members:

(i) to coordinate in a timely manner transmission planning on a regional basis; and

(ii) to share transmission planning information as provided for in the Governing Agreement, and on request;

with the goals of (1) ensuring that members' forecasted loads, resources and requirements for transmission services, and as provided in the Governing Agreement the known requirements of non-members, within, into, out of, and through the region are accommodated in a reasonable and efficient manner, consistent with applicable state utility, siting, and environmental regulation; (2) ensuring efficient utilization, expansion and coordination of interconnected transmission systems; and (3) planning for transmission needs of members to enable reasonable and efficient utilization of their power supply resources.

(E) the Governing Agreement includes governance and decision-making procedures that are fair, are structured in a manner that takes into account the interests of all members, and are consistent with this Part;

(F) the Governing Agreement includes one or more dispute resolution procedures which provide fair and equitable process for all members, and which provide for the timely resolution of any dispute; provided, however, that a member shall not be required to limit Commission review as provided in subsection (b)(2) as a condition of RTG membership or of the exercise of any right of RTG membership; and

(G) the Governing Agreement includes a requirement that the rates, charges, terms and conditions applicable to transmission service provided by members that are not public utilities to other members shall be consistent with the requirements of section 212(a), shall be filed with the Commission, and if the Governing Agreement so provides, may be subject to suspension and refund as if subject to sections 205 and 206.

(2) A Governing Agreement may establish service priorities when transmission capacity is constrained and may provide for reciprocal transmission services that extend beyond the RTG's region and for other arrangements consistent with sections 211, 212, and 213.

(3) The Commission, in certifying an RTG, may impose such terms and conditions as it finds necessary to ensure the RTG's Governing Agreement conforms with paragraph (1) and is consistent with the public interest under this Part. The RTG shall have 60 days to notify the Commission whether it accepts or rejects a Commission certification order under paragraph (1) of this subsection. The Commission shall not certify an RTG under this section if each state commission that has retail rate jurisdiction over RTG members in the region files a notice of disapproval of the Governing Agreement with the Commission under the procedures established under paragraph (1) of this subsection. The Commission may not impose as a condition of certification a requirement that a member must accept a planning decision of the RTG. A member's decision, if permitted by the Governing Agreement, not to accept a planning decision shall not relieve, affect, or qualify in any way that member's obligations to provide transmission service or enlarge transmission capacity pursuant to the Governing Agreement.

(b) Commission Authority Over RTGs—

(1) On complaint or on its own motion, the Commission may at any time:

(A) require an RTG, or a member thereof, to submit such information as the Commission determines by rule or other to be necessary or appropriate to carry out this section;

(B) modify or revoke the certification of an RTG if it finds that the Governing Agreement, or actions, taken thereunder, do not meet the requirements of subsection (a); and

(C) determine whether any action taken under the Governing Agreement (including any agreement among members or the resolution of any dispute) by a member or by the RTG or action under a filed rate implementing the Governing Agreement, is inconsistent with, or beyond the scope of, such Governing Agreement or filed rate, or is otherwise inconsistent with the Commission's certification order, or is unjust, unreasonable, unduly discriminatory or preferential, and on that basis: (i) remand the action to the RTG for timely modification consistent with the Commission's determination; or (ii) as the Commission determines is necessary or appropriate, set aside the action, or issue an order to comply with the Governing Agreement or filed rate. In taking action under this subparagraph (C), the Commission shall give a rebuttable presumption that any action by an RTG, and any action by a member (or agreement among members) that is not contested by another member, is within the scope of and consistent with the Governing Agreement or filed rate. For purposes of any proceeding under paragraph (1)(C), decisions rendered on an adequate record by an independent arbitrator in accordance with the Governing Agreement and dispute resolution procedure that assures due process for members shall be accorded substantial deference by the Commission. For purposes of this subparagraph, the term "filed rate" means a rate referred to in subsection (b)(4) (B) or (C) that is filed and effective (not subject to refund) under section 205 or any rate described in subsection (a)(1)(G) that is in effect.

(2) If a member consents, on a case-by-case basis, not to seek Commission review under paragraph (1)(C) of a final resolution of a dispute, the Commission may not, on the basis of a complaint or protest filed by, or on behalf of, such member, set aside, remand, or issue a compliance order respecting such dispute, including any agreement among members (or any arbitration award) that resolves such dispute, except on the grounds available to a court exercising jurisdiction over the matter under applicable contract law (or sections 10 and 11 of Title 9, United States Code in the case of an arbitration award).

(3) A member of a certified RTG may not apply for an order under section 211 requiring another member of such RTG to provide transmission services within the RTG's region unless the RTG's dispute resolution mechanism has failed to provide a final resolution of a dispute related to such services within a reasonable time specified in the Governing Agreement. A transmitting utility that is a member of an RTG is exempt from the application of section 213(a) with respect to other members of the RTG. The Commission may not compel any entity to be a member of an RTG. Any member may withdraw from an RTG, provided, that such member's withdrawal is in accordance with the Governing Agreement. No member shall be subject to other provisions of this Act solely by reason of compliance with a Governing Agreement approved by the Commission. Nothing in this section shall prohibit an eligible applicant for transmission service that is not a member of an RTG from exercising any rights under this Part with respect to such RTG or any member thereof.

(4) Sections 205 and 206 shall apply to (A) the Governing Agreement (including, but not limited to, any rates, terms and conditions specified therein for transmission services by public utilities) and any changes in the Governing Agreement, (B) any initial rates, terms and conditions not specified in the Governing Agreement for transmission services by public utilities under the Governing Agreement, and (C) any changes in such rates, terms and conditions. The Governing Agreement may not require that any dispute resolution procedure under subsection (a)(1)(F) must be utilized with respect to such changes, unless such procedure applies to changes under both sections 205 and 206. A member seeking a change in the Governing Agreement may be required to first seek such change under the Governing Agreement.

(c) Federal Entities—

A Federal agency or instrumentality to which section 211 applies may be a member of an RTG and may subject legal and factual disputes with respect to a matter arising under an RTG's Governing Agreement to the RTG's dispute resolution mechanism, including binding arbitration which conforms to the requirements of subsection (b), except that:

(1) the establishment and review of rates and other terms of transmission service provided by the Federal Columbia River Transmission System shall be consistent with section 212(i); and

(2) notwithstanding subsection (b)(2), the Commission shall review and approve or set aside any binding arbitration decision.

(d) Other Law—(1) Certification of an RTG under this section shall not affect State siting, environmental or utility regulatory authority that could otherwise be lawfully exercised over members of such RTG.

Also make the following conforming changes to section 212(e) (1) and (2) in the Johnston/Sharp compromise, circulated on September 28, 1992 at 4:41 pm:

On page 21, line 10, add cross reference to new section 216 dealing with regional transmission groups.

On page 21, line 13, add cross reference to new section 216 dealing with regional transmission groups.

On page 21, line 16, add cross reference to new section 216 dealing with regional transmission groups.

On page 21, line 18, add insert before the period ", except that nothing herein shall foreclose any claim or defense under those laws which may be applicable."

PROPOSED REPORT LANGUAGE

By federal law, the Tennessee Valley Authority is subject to certain service territory limitations. Section 211(j) seeks to accommodate these limits in an equitable manner. The conferees intend that governing agreements among utilities affected by that section may not require their members to provide service inconsistent with that section.

ATTACHMENT 4

Section 722 of the Conference Report amends section 212 of the Federal Power Act (FPA) to include a new subsection (a) entitled, "Rates, Charges, Terms, and Conditions for Wholesale Transmission Services."

Subsection 212(a) is a complete substitute adopted by the Conference Committee in lieu of the transmission pricing provisions of H.R. 776, as passed by the House of Representatives. Thus, the legislative history of the House bill's transmission pricing provisions are no guidance when interpreting Congressional intent of this section.

Subsection 212(a) requires the FERC to permit a transmitting utility, subject to an order requiring wholesale transmission services under section 212, to recover through its associated rates, charges, terms and conditions all the costs incurred in connection with the transmission services and necessary associated services. Thus, by law, the transmitting utility must be permitted to recover all costs incurred; those costs may include, but are not limited to, an appropriate share of the legitimate, verifiable and economic costs (including taking into account any benefits to the transmission system of providing the transmission services) and of the costs of any enlargement of transmission facilities.

It is important to note that this requirement on the FERC is not otherwise constrained or limited by existing FERC precedents or by the later provisions in subsection 212(a). By clear operation of this provision, the FERC must permit such recovery by the transmitting utility of all costs incurred even if that would have the effect of reversing existing FERC precedents. Thus, the later sentences in subsection 212(a) do not frustrate in any way that clear statutory requirement. In fact, the last sentence of the subsection makes clear beyond any reasonable doubt that costs incurred in providing the transmission services will be recovered from the applicant and not from a transmitting utility's native load customers.

The statement that such rates, charges, terms and conditions also will "promote the economically efficient transmission and generation of electricity and shall be just and reasonable, and not unduly discriminatory or preferential" does not in any way legally reduce the mandatory requirements imposed on the FERC to permit such recovery of all incurred costs by the transmitting utility and to ensure that the costs are recovered from the applicant and not from the native load customers. To the contrary, the Conference Report specifically defines for the FERC and any reviewing court exactly what costs must be permitted to be recovered (i.e., all costs incurred, as described in the subsection) and expressly from whom the costs must be recovered (i.e., from the applicant for a section 211 order, as provided in the subsection, and not from the native load customers of the transmitting utility).

Consequently, the FERC's otherwise applicable discretion to set rates, charges, terms and conditions under the FPA will of necessity be much more narrow.

The FERC's promotion of economically efficient transmission and generation and the FERC's review under the traditionally otherwise free-standing "just and reasonable, and not unduly discriminatory or preferential" standard in other sections of the FPA will therefore be delimited by the express statutory direction to the FERC contained in the aforementioned portions of the subsection.

FERC cannot invoke the promotional hortatory language, nor the otherwise traditionally freestanding "just and reasonable" standard to limit in any way the recovery by the transmitting utility of costs specified in the subsection or to impose those costs on native load customers in contravention of the prohibition at the end of the subsection. Rather, the promotional language and the "just and reasonable" standard can only be considered and invoked by the FERC to the extent that they lead to a result completely consistent with such cost recovery and such cost responsibility.

With regard to the application of the traditional "just and reasonable" standard in the context of section 212(a), the proper interpretation is that—as articulated in the *Jersey Central Power & Light* decision of the U.S. Court of Appeals for the D.C. Circuit—transmission rates are bounded by a zone of reasonableness. That zone is defined at the lower end by a prohibition against confiscatory rates as to the electric utility and at the upper end by a prohibition against exorbitant rates as to consumers. Consequently, the FERC under section 212(a) would be required to allow the transmitting utility to recover all costs incurred in connection with ordered transmission services (as set forth in the subsection), while ensuring that the resulting rate will not be confiscatory as to the transmitting utility, nor exorbitant as to the wholesale transmission applicant/customer—always, of course, ensuring also that the native load customers of the transmitting utility do not subsidize these services in any event.

That formulation of the relationship between the traditional "just and reasonable" standard and the specific pricing directions or the FERC contained in section 212(a) is critical because, in the absence of the specific pricing directions, FERC would have somewhat greater discretion in setting the rates within the zone of reasonableness under otherwise applicable law. That discretion is intentionally constrained by the specific pricing directions provided by Congress, with the resulting rate being in the zone of reasonableness.

Generally, the FERC preserves competition and protects consumers against excessive rates through its traditional ratemaking authority conferred by section 205 of the FPA. Section 205 requires that all rates charged for the transmission or sale of wholesale power in interstate commerce be "just and reasonable," and that any such rate not be found just and reasonable is unlawful. Neither the FPA nor its legislative history defines what is meant by the statutory phrase "just and reasonable."

While the FERC historically has accepted rates under section 205 based upon the supplier's cost-of-services, the FPA does not, by its own terms, require electric rates to be cost-based. Instead, the courts have held that the FPA requires that the ratemaking methodology employed serve a legitimate statutory objective, and produce a rate that falls within a "zone of reasonableness," which is "bounded at one end by the investor interest against confiscation and at the other by the consumer interest against exorbitant rates," as stated in *Jersey Central Power and Light Co.* The Supreme Court in *Wisconsin* v. *FPC*, also has held that no single method need be followed by the FERC in considering the justness and reasonableness of rates.

The Supreme Court in *FPC* v. *Hope Natural Gas Co.* also has made clear that under the statutory standard of "just and reasonable" it is the result reached, and not the method employed, which is controlling. That is true, because it is not theory, but the impact of the rate order which counts, such that if the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry is at an end. Consequently, under the general statutory standard, the FERC has some discretion to rely on a mix of factors in determining whether a rate is just and reasonable, *i.e.*, in determining whether "the end result" constitutes "a reasonable balancing, based on factual findings, of the investor interest in maintaining financial integrity and access to capital markets and the consumer interest in being charged nonexplorative rates," in the words of the *Jersey Central* court.

In determining just and reasonable rates under the Natural Gas Act and the Natural Gas Policy Act, the FERC has consistently considered relevant non-cost factors, while relying on the costs of one or more sellers. Courts reviewing the FERC's decisions have generally affirmed the FERC's selection of particular cost methodologies and rate structures as being permitted by the reasonable exercise of the FERC's discretion under the general statutory standard. Notably, the courts have not mandated the use of historical cost methodologies and have affirmed the FERC's use of replacement cost as a proper basis for establishing just and reasonable rates.

Courts in a long series of cases have allowed the FERC to rely on factors other than the average embedded cost of service and have been willing to afford the FERC considerable latitude in approving rates under the "just and reasonable" standard. Indeed, the D.C. Circuit Court in *Town of Norwood* v. *FERC* recently affirmed marginal cost pricing under FPA section 205, accepting the FERC's rationale that rates based on marginal cost promote economically efficient investment and consumption decisions and noting the agreement as well of the leading authorities in the field of public utility regulation.

In addition to cost-based methods that diverge from embedded cost pricing, the courts have approved a variety of non-cost base factors in determining a just and reasonable rate, which embody other public interest considerations, such as increasing supply, managing demand, influencing industry structure and achieving price stability.

In new subsection 212(a), the Congress has determined that the transmitting utility should recover all costs incurred for the transmission services from the applicant and that the native load customers should not subsidize that service in any way. As a result, Congress by statute has provided the express Congressional directions for the FERC to adopt as a pubic interest factor in its ratemaking methodology under section 212(a). As discussed, that statutory direction is wholly consistent with the judicially established interpretation of the traditional just and reasonable standard. Consequently, the FERC does not have the legal authority to adopt a different approach to setting rates for transmission services ordered pursuant to section 211.

Furthermore, the "not unduly discriminatory or preferential" limitation would enable the FERC to respond to a specific fact pattern in an individual case where the rate was the product of action by the transmitting utility which provided an unjustified preference to a transmission customer (as in an affiliate deal) or an unjustified discrimination against an unaffiliated competitor.

Under such case-specific circumstances, the FERC would be authorized to make an appropriate adjustment to the rate otherwise required by the specific pricing directions in section 212(a) to mitigate the effect of the undue preference or undue discrimination as to that particular customer in the individual case. So, on balance, the specific pricing directions will always govern the establishment of the rate for the ordered transmission services, as long as the resulting rate is within the zone of reasonableness, and in the absence of case specific undue discrimination or undue preference. And, additionally, FERC is only authorized to adjust the rate resulting from those specific pricing directions, as necessary to bring it into the zone of reasonableness (if it would otherwise be confiscatory or exorbitant) or to mitigate the undue discrimination or undue preference with regard to that particular customer.

It also is important to note that the determination by Congress that the native load customers of the transmitting utility not subsidize the third party transmission services is not legally susceptible to attack as unduly discriminatory or unduly preferential. Under this statute, third-party transmission customers are not similarly situated, and are not entitled to identical treatment, as the native load customers. Furthermore, holding native load customers harmless from costs for which they are not responsible is fully consistent with traditional notions of cost causation and would not otherwise be subject to allegations that such a principle is unduly discriminatory.

Congress here has determined that it is reasonable to ensure that the native load customers do not subsidize the cost of providing transmission service to third parties. Such a pricing requirement in subsection 212(a) that is designed to eliminate subsidies and produce a more efficient allocation of transmission capacity surely cannot be viewed as unduly discriminatory. Similarly, an applicant cannot, in the face of that Congressional determination, argue that allowing the transmitting utility to recover all costs in providing the service (as provided in the subsection) unduly discriminates against the third-party transmission customer.

Further, the provisions of subsection 212(a) do not require, nor allow, any subsidization of transmission services by the native load customers of the transmitting utility and, to that extent, they would lead to a different result than the balancing of the three principles incorporated in the original House provision, which was drawn from the FERC transmission pricing principles in the Northeast Utility-Public Service of New Hampshire merger case. Indeed, that is precisely why the Conference Committee rejected the House passed provisions and the Conference Report adopts a complete substitute for the House passed pricing provision—to assure that there will be no subsidy of transmission services, regardless of what otherwise might be the result under the Northeast Utility principles adopted by FERC.

In that same regard, the provisions of subsection 212(a) cannot be interpreted to authorize the FERC under any existing case precedent to impose any limitation on the recovery by the transmitting utility of all costs incurred in connection with the transmission services, as specified in the subsection, or to require native load customers to bear such costs, as prohibited by the subsection. Rather, the plain meaning of these provisions of subsection 212(a) must control their interpretation and any existing FERC case precedent is irrelevant for that interpretation.

The Conference Report, by comparison to the purposed intent of the original House provision, does not attempt in any way to codify one or more FERC precedents. Quite the contrary, the Conference Report by the plain meaning of its express terms makes the Congressional determination about the recovery of costs incurred by transmitting utilities in providing wholesale transmission services pursuant to the provisions of section 211, as amended by this legislation. Consequently, under all applicable Supreme Court decisions on statutory construction, the Congressional determination in subsection 211(a) cannot be made subject to interpretation under any existing FERC order, let alone made subordinate to the determinations in any FERC order.

Additionally, the statutory provisions require that recovered costs include, among others, an appropriate share of legitimate, verifiable and economic costs which would allow for typical rate case projections of future costs that will be incurred in providing the mandated transmission services. It is well settled and judicially affirmed Federal rate making practice that the transmitting utility would use a "test year" calculation of costs to set its future rates. That practice would specifically allow for and include projections of economy sales and purchases, out-of-rate charges, and other opportunity charges based on the test year data and experience. That long standing rate making practice would not be affected by the adoption of subsection 212(a), even though the Congress in the Conference Report has specified a more precise cost recovery standard.

Therefore, the term "appropriate share" cannot be interpreted to swallow that more precise standard by means of some sweeping claim that there are generally available "system benefits" that offset in large measure the costs of the transmission service, such that native load customers bear the cost responsibility in place of the applicant. So-called "system benefits" cannot be used as a cost-avoidance tactic by the applicant or a method to shift costs to the native load customers.

Furthermore, the FERC cannot impose on the transmitting utility the burden of proof to show that there is no system benefit in order to obtain any recovery of the costs in connection with transmission services, and then only to the strictly limited extent that such proof is persuasive, as the FERC attempted to do in the recent Ohio Edison case. Rather, the transmitting utility would file a rate case including all costs determined by Congress in subsection 212(a) to be recoverable, and then the applicant would be required to provide persuasive evidence that a portion of those costs had a demonstrable system benefit that should be shared by all customers, including both the applicant and native load customers. The FERC, on the basis of substantial evidence, would then have to find that the portion of costs associated with that system benefit was appropriately allowable to all rate payers.

HYDROELECTRIC PROVISIONS

Mr. WALLOP. Mr. President, I would like to make a few observations about the conference agreement relating to the hydroelectric provisions.

While I think the statutory language dealing with the definition of a fishway under section 18 of the Federal Power Act is clear on its face, there were some comments made during House consideration which should be clarified.

Congressman DINGELL at one point stated with reference to FERC's proposed fishway definition that it deals only "with fish movement in one direction." While this statement is true as to FERC's initial definition—in Order 533, 56 FR 61154, May 20, 1991—FERC hugely broadened its definition in response to requests for rehearing by Federal and State fish agencies—in Order 533-A, 57 FR 10809, March 31, 1992. The expanded definition recognized that fishways can be for upstream and downstream passage, and broadly interpreted them as facilities necessary for the life cycle of a fish species. It is important to emphasize, however, that at all times the definition was confined to physical structures.

Congressman DINGELL later stated that FERC's definition "presumed to limit the scope of the section 18 fishway prescription by administrative action at FERC."

As the agency with responsibility for implementing the Federal Power Act, and with lead authority over the licensing of non-Federal hydroprojects under the FPA, it is entirely appropriate for FERC to be interpreting the reach of section 19 of the FPA. As manager of the licensing process, FERC has every right—indeed duty—to set reasonable conditions or bounds on the participation of other agencies in the process, especially when the FPA or other statutory authority is ambiguous as to the extent of that authority. FERC did a thorough and careful job in crafting its regulatory definition, looking at historical understanding by fishery biologists of what constitutes a fishway. FERC also carefully, and in a balanced way, responded to comments filed in reaction to its proposed definition. While Congress is vacating the definition—largely in response to reactions to the initial proposed version—Congress is doing so without prejudice to the definition.

Congressman DINGELL also stated that: "FERC has tried to impose its own will on how and what a fishway proper and other project facilities." In addition to my previous comment, I would note that FERC must be able to make the distinction between fishway facilities and other project facilities. Otherwise, a fishway agency would be able to exercise unbridled authority over projects, to the exclusion of any FERC control over the projects. But FERC is the agency responsibe for implementing the FPA and for licensing hydroprojects.

Congressman DINGELL also mentioned the view of the Department of Commerce that "DOC believes * * * the baseline from which project impacts are measured * * * is the carrying capacity of the relevant fishery habitat without the project."

To the extent fishery agencies provides fish-related recommendations for existing projects, the Senate and House conferees who worked on the Electric Consumers Protection Act of 1986 make clear that FERC is not to ignore the existence of the project in determining what conditions are appropriate to impose on the projects. To quote page 22 of the ECPA conference report, "In exercising its responsibilities in relicensing, the conferees expect FERC to take into account existing structures and facilities in providing for these nonpower and nondevelopmental values." So as to "10(j) conditions" and other fishery recommendations, the quoted DOC statement is not true—the baseline for existing projects is not "preproject."

Citing DOC correspondence, Congressman DINGELL stated that "fishway prescriptions can typically include stream flows, project shutdown periods, and other non-structural measures needed to ensure protection of migrating anadromous fish"—also Congressman STUDDS stated that "an appropriate fishway might consist of a spill over a spillway; controls on timing of project operations or project features such as gate openings; project shutdown as an alternative to the construction of a fish screen or where fish screen is not practicable; the safe passage flow over a barrier such as waterfall in a project area; * * *"

The statutory language in the conference report of H.R. 776 specifically rebuts these wildly expansive interpretations of the definition of a fishway. The report language specifically says that fishways are "limited to physical structures, facilities, or devices * * * and project operations and measures related to such structures, facilities, or devices * * *"—section 1701(b). The point was to limit fishways—those items that can be prescribed under section 18—to physical structures designed principally for the safe passage of fish, and such flows needed to ensure the effectiveness of those structures. There is no fair way to read this language to include stream flows or project shutdown or spillway flows or project operations more broadly. Furthermore, to do so would be to eviscerate FERC's authority over the licensing process under part 1 of the FPA.

The PRESIDING OFFICER. Who yields time?

If no one yields time, the time will be taken.

The Senator from Nevada is recognized.

Mr. BRYAN. Mr. President, let me take another minute.

All that we have gone through for the last 2 hours is so unnecessary. I wanted to vote for this bill. I voted for it before. But when you get sandbagged at the last minute with no opportunity for people to present a case, to make it out, to be fairly heard, you have no real alternative but to do this.

I realize that from my colleague's point of view this appears to be a Nevada specific issue. But as I said at the outset of the debate, if they can do this to us today on a very popular bill that people want to vote on, they can do it to your State tomorrow.

I think that the precedent that has been established is an extremely dangerous one. To change a public health and safety standard without one bit of testimony is absolutely incredulous and irresponsible. There is no predicate for doing that.

The last time the issue was considered, in 1987, the DOE Administrator said the existing standards that were proposed in the eighties and temporarily set aside by the court could be met by fivefold. That is in the RECORD. I made it a part of the RECORD in the testimony by Mr. Vieth.

Let everyone understand that what we are talking about here is profit, money, and greed, not public health and safety, not fairness. We are subjected to this because the nuclear power industry is unwilling to provide health and safety standards which the Environmental Protection Agency believes are necessary to protect local health and safety.

As our colleague, the senior Senator from Florida, set out, this today, we are going to lose. I understand how the votes are going.

Let me suggest to the nuclear power industry, it is a Pyrrhic victory. What community in the world, what group of people in the world who are open-minded on the question of nuclear power, would begin to enter into any kind of an understanding only to be told in midstream that the standards are going to be changed, that the rules of the game are going to be changed, simply because it may be too expensive to provide all the public health and safety standards that are necessary.

Mr. President, I yield the floor. I reserve whatever time I have left.

Mr. JOHNSTON. Mr. President, make no mistake about it, by this cloture vote by unanimous consent we have one cloture vote which will determine the fate of this legislation. If this cloture vote goes down, with it goes the support of the President, the support of Mr. Clinton, the support of the House, of the Senate, the Democrats, the Republicans, for the most comprehensive energy legislation ever proposed.

Mr. President, with respect to this radionuclide issue, I make four quick points.

First of all, this is not an issue that arose in the middle of the night that came into the conference committee. It was placed into this bill by the House of Representatives which set a standard. There exists no standard for radionuclide release, none at the present time. The previous standards were remanded to the Environmental Protection Agency, and the House set that standard.

This was in the conference. It was discussed in the CONGRESSIONAL RECORD in an open colloquy between myself and the Senators from Nevada. It was discussed privately.

Mr. President, this is not a middle-of-the-night issue. It is an issue that has hung around for a long time. It is a $3.2 billion issue because if you had to comply with the previous standards, according to the DOE, it would take $3.2 billion to design containers without any effect on human health.

Mr. President, the fix that the conference committee came up with is the right fix. What the conference committee said is there exists, recognizing that there exists no standard now—it commissioned the National Academy of Sciences, the most distinguished scientific group in the world, to come up within a period of 1 year with a study on radionuclides and on the ability to keep people out of the site.

The Environmental Protection Agency based on that study then is to come up with the standards.

Mr. President, the National Academy of Sciences will make a report on the science, not on the policy, and the EPA will make a policy judgment. The National Academy of Sciences through their president says it will not be their role to fix the standard but rather to give advice with respect to the science, and the EPA says that this will be helpful to them. The report of managers says it does not in any way restrict the discretion of the Environmental Protection Agency.

Mr. President, how in the world anyone can disagree with having a scientific standard studied by the National Academy of Sciences, their advice given to EPA, and EPA make the policy judgment, how anybody can object to that, I do not know unless the motive is as opposed to human health——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. JOHNSTON. Mr. President, I urge my colleagues to vote for cloture. It is our last chance on the energy bill.

Mr. BRYAN. Mr. President, very briefly, the Senator from Louisiana is correct. The House brought to the conference committee this issue. What the House intended to do was to republish the standards that had been temporarily set aside by the court in 1987, if memory serves me correctly.

That standard was based upon the population standard. We accept that, no problem. That represented no fundamental change in the law. What he is talking about is changing the program and also the public health standard. It is also contended here that the EPA has full authority and full discretion.

Mr. President, look at the plain language of the statute. All of the oratory, all of the words, all of the letters cannot change the plain intent of the statute. The statute says the EPA will be bound to come up with whatever the recommendations are of the National Academy of Sciences. We do not object to the National Academy of Sciences making recommendations.

But we surely ought to object, as a body, to having the National Academy of Sciences, which is not a regulatory body, it is comprised of some private citizens, some public citizens, and to have them, in effect, gag, bind, and muzzle the EPA even though the EPA may feel that a much different standard would be appropriate for Yucca Mountain.

That is what we are talking about, health and safety, fundamental policy changes that have never been considered in public but rather done very surreptitiously in the conference, with only very few people there, with no testimony, and no opportunity to be heard.

I urge my colleagues to oppose the cloture petition.

I yield the floor, and I yield back any time I may have.

CLOTURE MOTION

The PRESIDING OFFICER. All time has expired.

Under the previous order, the clerk will state the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the conference report on H.R. 776, the National Energy Policy Act:

George Mitchell, Daniel K. Akaka, Edward M. Kennedy, J. Bennett Johnston, Daniel K. Inouye, Jeff Bingaman, Timothy E. Wirth, Wendell Ford, Bill Bradley, Lloyd Bentsen, John Breaux, Claiborne Pell, Jay Rockefeller, Malcolm Wallop, Charles S. Robb, David L. Boren.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the conference report accompanying H.R. 776, the Energy bill, shall be brought to a close?

The yeas and nays are required.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Tennessee [Mr. GORE], the Senator from Vermont [Mr. LEAHY], and the Senator from North Carolina [Mr. SANFORD], are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. BOND], the Senator from North Carolina [Mr. HELMS], the Senator from Vermont [Mr. JEFFORDS], the Senator from Wisconsin [Mr. KASTEN], and the Senator from Alaska [Mr. MURKOWSKI], are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska [Mr. MURKOWSKI] would vote "Nay."

The PRESIDING OFFICER (Mr. ADAMS). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 84, nays 8, as follows:

[Rollcall Vote No. 266 Leg.]

YEAS—84

Adams
Akaka
Baucus
Bentsen
Biden
Bingaman
Boren
Bradley
Breaux
Brown
Bumpers
Burdick, Jocelyn
Burns
Byrd
Coats
Cochran
Cohen
Conrad
Craig
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Exon
Ford
Fowler
Garn
Glenn
Gorton
Gramm
Grassley
Harkin
Hatch
Hatfield
Heflin
Hollings
Inouye
Johnston
Kassebaum
Kennedy
Kerrey
Kerry
Kohl
Lautenberg
Levin
Lieberman
Lott
Lugar
Mack
McCain
McConnell
Metzenbaum
Mikulski
Mitchell
Nickles
Nunn
Packwood
Pell
Pressler
Pryor
Riegle
Robb
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Seymour
Simon
Simpson
Smith
Specter
Stevens
Symms
Thurmond
Wallop
Warner
Wirth
Wofford

NAYS—8

Bryan
Chafee
Durenberger
Graham
Moynihan
Reid
Shelby
Wellstone

NOT VOTING—8

Bond
Gore
Helms
Jeffords
Kasten
Leahy
Murkowski
Sanford

The PRESIDING OFFICER. On rollcall number 266, the cloture motion on the conference report to H.R. 776, the yeas are 84, the nays are 8. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

PELLETIZED WASTE PAPER

Mr. BUMPERS. Mr. President, I would like to engage the distinguished chairman of the Energy and Natural Resources Committee in a colloquy concerning a relatively new technology which, consistent with the energy bill's goal of promoting the development of renewable energy technologies, will have a positive impact on reducing both our Nation's reliance on fossil fuels and the problems associated with solid waste disposal and recycling. Ashley County, AR has unveiled a visionary new program that will turn discarded paper into fuel pellets for existing industrial boilers. The county is constructing a rural recovery facility capable of traditional product-to-product recycling as well as waste paper recycling into fuel pellets. Waste from area homes and businesses will be collected and separated. The glass, plastic, and marketable papers will be recycled, while the nonmarketable paper will be pelletized. A local pulp and paper mill in the county is committed to providing a market for all of the pellets produced in this facility. The pellets will be sold at a profit, benefiting the local taxpayers.

Like many local governments across the Nation, Ashley County is facing new recycling and landfilling regulations and few existing options to meet its needs. Its 25,000 residents generate nearly 40 tons of trash daily, all of it sent to a single landfill. By pelletizing low-quality paper once destined for that landfill, Ashley County will transform 25 percent of its daily waste into energy. When combined with recycling efforts, this initiative will triple the lifespan of the county's landfill. In short, they are going to turn waste paper into energy.

This kind of innovative, market-based program can transform the paper that is disposed of in landfills every year into clean, renewable fuel and can be a strong contributor to America's energy independence. Pelletized paper fuel is priced competitively with coal and other solid fuels when considering the avoided cost of landfilling the waste paper. When you stop and consider that, in spite of massive investments in new recycling mills, roughly 40 percent of what is found in landfills is paper, it is easy to see that the paper recycling market, in particular, must be expanded to include alternative uses for low-quality waste paper. Contaminated by coatings, glues and other impurities, this discarded paper includes such things as cereal boxes, magazines, colored paper and junk mail—a mix of low-grade paper few recyclers want.

In addition, Mr. President, 50 million tons of pelletized paper would provide the energy equivalent of 153 million barrels of crude oil—enough to light every home in Arkansas for approximately 68 years. Some industrialized States with critical landfill woes, now trucking their waste into other States, could find the pelletizing option especially attractive. Their existing industrial boiler capacity and their population concentration offer great potential to fuel a new market. Waste paper pellets can be sold as a supplemental fuel to virtually any industrial facility or utility powered by a solid fuel boiler. The estimated market demand for recovered waste paper fuel is more than five times the projected supply.

As one of the first joint efforts to explore new recycling options for waste paper fuels, Ashley County's project offers a practical model for communities nationwide. By reaching beyond existing disposal options, we have an opportunity to put alternative energy into paper recycling. In doing so, we will be buying time, and saving space, for America's landfills.

Mr. JOHNSTON. I agree with the Senator. The use of pelletized waste paper as an energy resource could have significant benefits, such as reducing our Nation's reliance on nonrenewable fossil fuels and reducing the demand for space in our landfills.

JOINT VENTURES

Mr. FOWLER. As the chairman knows, several years ago I authored the Renewable Energy and Energy Efficiency Technology Competitiveness Act (Public Law 101-218). This important legislation leverages Federal funds to support research, development, and demonstration of renewable energy and energy efficiency technologies. The legislation has already had an impact on the ability of the renewable energy and energy efficiency industries to commercialize their technologies and services.

One of the clear goals of the Renewable Energy and Energy Efficiency Technology Competitiveness Act was the specific allocation of funds for renewable energy and energy efficiency joint ventures. These joint venture programs had a threefold purpose: To improve the coordination of technology development between Government and the renewable energy and energy efficiency industry; to facilitate technology transfer to the private sector; and to enhance the ability of domestic renewable energy and energy efficiency firms to compete with foreign enterprises.

Mr. JOHNSTON. I was pleased to assist the Senator from Georgia in his landmark renewable energy legislation and to incorporate provisions into the Energy Policy Act that provide the Secretary with greater flexibility to implement the joint ventures program under Public Law 101-218.

Mr. FOWLER. During Senate floor debate on the fiscal year 1992 Energy and Water Appropriations bill last July, the chairman and the distinguished ranking minority member of that subcommittee, Senator HATFIELD, engaged in a colloquy as to how these joint ventures should be funded. At that time, the chairman stated that it was your belief that funds in the fiscal year 1992 energy and water appropriations bill could be used for the joint ventures established under Public Law 101-218.

Mr. JOHNSTON. That is correct.

Mr. FOWLER. As a result of that colloquy between the Senator and Mr. HATFIELD, representatives of the Solar Energy Industries Association met with Secretary Watkins and his staff at the Department of Energy. It is my understanding that during this meeting the Department committed to $4 million reprogramming of fiscal year 1992 nonrenewable energy funds.

The Department of Energy recently sent Congress a reprogramming request to fund, among other things, the joint ventures program in Public Law 101-218. But, I am deeply troubled to report, that the portion of the reprogramming package dealing with joint ventures was never implemented since the Department proposed to tap into a funding source that was not feasible. Since the Department's initial reprogramming request, industry representatives and officials of the National Association of State Energy Officials have tried, in vain, to persuade the administration to send us an acceptable reprogramming request for these joint ventures.

Mr. JOHNSTON. I understand that the Advisory Board on Renewable Energy and Energy Efficiency Joint Ventures has issued a report to the Department that laid out criteria and implementation policies for carrying out an effective program. As a result of this report, the Department formally requested authorization to use a percentage of core renewable R&D funds under the fiscal year 1993 appropriations for carrying out a limited number of renewable energy and energy efficiency joint ventures.

Mr. FOWLER. The intent of the original legislation was not to rob core Federal research programs in order to finance commercialization programs. On the contrary, the intent was to supplement world class research and development activities with commercial applications that increase U.S. exports and create jobs here in the United States.

In order to fund the important programs in Public Law 101-218 and H.R. 776, the Energy Policy Act of 1929, I urge the administration to make every effort to fund these initiatives. I ask my colleagues to join with me in urging the administration to help us bring these renewable energy and energy efficiency technologies to the marketplace and create new jobs right here at home.

Mr. JOHNSTON. The renewable energy and energy efficiency provisions in H.R. 776 are built on the foundation laid by Public Law 101-218, I join my colleague from Georgia in urging the administration to request an appropriate reprogramming to carry out the program established by Public Law 101-218.

Mr. LIEBERMAN. Mr. President, I rise today to express my overall support for the energy bill, despite some concerns I have about the legislation.

I am supporting this bill because it includes significant provisions on energy efficiency, global warming, and renewable energy. In the words of James Wolf, executive director of the Alliance to Save Energy in a letter dated October 5, 1992, to Chairman JOHNSTON: "These—the energy efficiency provisions—will improve the environment, make housing more affordable, and enhance our competitiveness." Howard Geller, the executive director of the American Council for an Energy Efficient Economy states in a letter dated October 6, 1992: "The bill contains many valuable energy efficiency provisions which will save significant amounts of energy, save consumers money, and reduce pollutant emissions. The energy efficiency and renewable energy portions of the bill will help to move our nation toward a sustainable energy future." Representatives of the renewable energy industries stated in a letter also dated October 5: "America's emerging energy technologies are facing increased international competition in these billion-dollar markets of the future. With over $15 billion in private investment in these energy sources in the past decade, the economic and environmental consequences of ignoring renewable energy would be staggering. H.R. 776 is vital to the sustained health of our industries."

I am also going to vote for cloture because of what this energy bill does not include.

Most importantly to me, this legislation does not include language which would open up the Arctic National Wildlife Refuge to oil and gas drilling. We fought a hard battle over whether the oil possibly under the Nation's premier wildlife refuge was needed to help ease our dependency on foreign energy supplies. I believe we made a sound decision that whatever oil might be there would not be enough to reverse our trend toward dependency on foreign oil. We decided that we needed to look elsewhere—and we did—toward energy efficiency and new technologies. The Congress wisely decided not to spoil the last remaining arctic and subarctic ecosystem of its kind in the world.

There are, however, several provisions of the legislation which concern me, and I want to note my reservations.

First, I share the concerns of my colleagues and friends, Senators BRYAN and REID regarding the Yucca Mountain provisions. My concerns are both procedural and substantive. These provisions were not contained in either the House or Senate bills and there have been no hearings on the provisions. We do not know the views of the scientific community or other experts on the Yucca Mountain provisions. The failure to hold hearings is particularly meaningful because the legislation takes a new approach to setting standards: The National Academy of Sciences is delegated the authority to make findings and recommendations to EPA and NRC regarding standards for the protection of public health and safety. The legislation also sets criteria for the setting of standards which are a departure from current law. If these provisions had come before the Congress in a separate bill without the Environment and Public Works Committee holding a hearing, I would not have supported them. But they are here attached to an energy bill which I have worked on, been privileged to contribute to, and feel represents, on balance, a major accomplishment of this 102d Congress.

Second, I have concerns about the ramifications of the Coal Industry Retiree Health Care Act. While the goal of this provision, ensuring that retired mine workers receive the health care benefits they deserve, is undoubtedly important, I am concerned that the provision will severely and unnecessarily harm a number of coal companies and their employees.

As I indicated when I spoke on the Senate floor on this issue in July, I remain concerned about the ramifications for those companies that previously were signatories to a BCOA-UMWA agreement and now have separate agreements with the UMWA. In the case of the Pittston Co., headquartered in the State of Connecticut, they had negotiated a separate agreement with the UMWA which included a provision covering payments for retirees. The language that has been included in the energy bill abrogates that negotiated collective bargaining agreement, the result of a painful 14-month long strike. I do not think that Congress should be in the business of abrogating collective bargaining agreements, except in the rarest of circumstances. Congressional interference in the collective bargaining process, working to retroactively alter the terms of contract, could have troubling long-term repercussions. If both sides believe there is always the option to turn to the Congress to alter a contract, what incentive is there to negotiate in good faith?

I am also concerned that this provision will pose serious economic difficulties for those companies which export most of their coal. These companies cannot pass these additional costs through on the international market and continue to compete, while those coal companies that sell to domestic utility companies have contracts which allow them to pass through Government-mandated costs to consumers. Last year, Pittston exported approximately 70 percent of the coal it mined. These exports are critically important to our country's economic strength, particularly at a time when we should be bolstering, not undermining, our companies' capacity to do business abroad.

I hoped that there would be an opportunity in conference to amend this proposal to include an export credit for those payments mandated by the provision, which would not have impeded the goal of caring for the retired mine workers. Unfortunately, the bill as reported out of conference does not contain an export credit. As noted above, it is difficult for companies to compete on the international market if they are burdened by excessive Government fees or taxes. If these companies cannot continue to export coal it is their employees who will suffer, as well as the rail and port employees who currently move this coal around the United States and overseas.

I congratulate Senators FORD, ROCKEFELLER, and BYRD for their tireless efforts to reach a compromise to ensure that innocent retirees are protected. I certainly support their goal. I do hope, however, that early next year we will make an equally strong effort to ensure that the funding mechanism devised for the program is equitable and will not result in companies being driven out of the export market and perhaps out of business.

Third, I supported on the Senate floor a different approach to nuclear licensing which involved more public participation.

Now, Mr. President, let me now turn back to some of the key provisions of the bill which I strongly support.

First, I am especially pleased about the provision in this bill which establishes a system for corporations to register current emissions of greenhouse gases and allows them to record reductions in greenhouse gases for inclusion in a national data base. This provision will allow Government to recognize the achievements of American businesses who are taking steps to reduce the emission of greenhouse gases. Major utilities, natural gas producers, appliance manufacturers, forest companies, and others have taken voluntary steps to stop the growth of greenhouse gas emissions. Under this provision, these companies can request the Federal Government to approve their reductions for inclusion in the greenhouse data base.

This provision was drawn from S. 1605 of the House bill, proposed by Congressmen COOPER and SYNAR, and it is derived from the Carbon Dioxide Offsets Efficiency Act, which Congressmen COOPER and SYNAR introduced in the House, and which I introduced with Senator CHAFEE in the Senate. I congratulate Congressmen COOPER and SYNAR and their staff for outstanding work in building a coalition of support from both the environmental and industrial community. I also extend my appreciation to Senators JOHNSTON and WIRTH and their staff, particularly Leslie Black Cordes and David Harwood, and to the Environmental Defense Fund for its help in developing and advancing this proposal. I was pleased to join them in playing a role as an advocate of this provision.

This is a relatively simple proposition. But it's an example of how environmental legislation is good for both the environment and American businesses. As as editorial in "The New Republic" states: "This measure could allow the United States to meet Rio's first-round greenhouse goals more quickly than first thought—and with scant dislocation." Let me give some examples of how the provision could benefit American industry.

Last spring, Mayor Bradley of Los Angeles announced that the Los Angeles Department of Water Power and the Southern California Edison Co. had pledged to reduce carbon dioxide emissions by 20 percent by the year 2010 with at least half of those reductions to be achieved by the year 2000. The program will actually reduce carbon dioxide emissions by more than 40 percent when compared with projected levels. The chairman of Southern California Edison stated in making this commitment:

> Taking prudent, reasonable economic steps to reduce CO_2 emissions are warranted by current scientific understanding of the potential for global warming. We believe our actions make good environmental, scientific, and business sense.

Other companies, such as the AES Corp. and New England Electric, have made corporate commitments to offset greenhouse gas emissions. Working with the World Resources Institute and other conservation groups, AES has designed carbon sequestration projects to offset its carbon released from new power plants. New England Electric has announced a plan to lower or offset its air emissions by 45 percent by the year 2000, including a net reduction of approximately 3 million tons of carbon dioxide.

Under S. 1605 of this energy bill, companies engaged in these types of activities will be able to demonstrate that the Federal Government should approve their reductions for inclusion in the data base.

I believe this provision removes a disincentive facing U.S. firms seeking to reduce voluntarily their greenhouse gas emissions. Without this provision, those firms will not have an official data base which can be used by these firms to demonstrate achieved reductions of greenhouse gases. The simple accounting mechanism removes this disincentive by recognizing positive steps to reduce greenhouse gas emissions.

The provision also preserves American competitiveness as the United States seeks to meet its international obligations under the Rio agreement and potential future agreements. Historically, the United States has struggled to demonstrate that past achievements deserve credit as international emissions levels are negotiated. With this section, our negotiators will be able to demonstrate conclusively the real reductions by U.S. firms.

The conferees streamlined some of the details of the program, giving more discretion to the administration in implementation. Proper implementation is critical. Since the United States has committed in the Rio convention to report our actions for international review, I am confident that the agencies will implement these programs appropriately.

I am also pleased that the public will be given a full opportunity to participate in this new program. Clearly, the value of this program for many firms is the recognition for making real, bona fide reductions in greenhouse gases. Public input in the development of guidelines and in the review of reduction claims lends substantial credibility to the reduction claims and consequently, adds to the value of a firm's participation. Of course, I recognize and agree with the conference committee's interest in protecting vital trade secret information from public disclosure. However, it is clear that this provision affords the public an opportunity to review emission reduction claims within these understandable trade secret constraints.

Second, this legislation takes large leaps forward in the field of energy conservation in many sectors, including the Federal Government, commercial and industrial equipment, buildings and utilities. In the letter to Senator JOHNSTON mentioned above, James Wolf, executive director of the Alliance to Save Energy, further stated:

> The Alliance to Save Energy strongly supports passage of H.R. 776, the Energy Policy Act of 1992. The bill contains many significant provisions that promote energy efficiency, ranging from efficiency standards on products, to improved building codes, to energy efficiency mortgage programs. These provisions will improve the environment, make housing more affordable, and enhance our competitiveness. The tax section of the bill contains important provisions that will

encourage the use of renewable and efficiency resources.

One important omission in the energy efficiency area is auto fuel economy standards and I hope we will pass legislation in that area next Congress.

I would like to note particularly the provisions on Federal Government energy conservation drawn in part from S. 417, legislation I introduced at the beginning of the Congress requiring the implementation of energy conservation measures with payback periods of 10 years or less.

The Congressional Office of Technology Assessment estimates that the Federal Government spent nearly $4 billion in fiscal year 1989 for energy in Federal facilities. OTA further estimates that commercially available, cost-effective measures including high efficiency lighting and carefully operating heating, ventilating, and air-conditioning systems could save 25 percent of that cost without any sacrifice in comfort or productivity.

Yet our own Federal Government has failed to implement conservation measures in its facilities that would ultimately save the taxpayers billions of dollars. There is really no excuse for that. OTA points out that inefficient and costly lighting is still common throughout the millions of square feet of office space owned or leased by the Federal Government and its contractors. The Department of Energy has admitted that just reducing Federal lighting energy needs by 25 percent would save taxpayers up to $930 million per year.

The legislation also requires the Secretary of Energy to promulgate regulations for the use of energy performance contracts with which the Federal Government can tap private sector funding for Federal Government energy efficiency improvement. I included similar provisions in S. 417. For the past 15 years, State and local governments have been retrofitting government buildings with energy conservation improvements without any capital investment. Our friends at the State and local government levels have been taking advantage of beneficial public-private partnerships. These arrangements can mean that a private energy company can come in and make a contract with a Federal agency to install and pay for energy conservation measures. The Federal agency would not be required to make any expenditure and the amount the Federal Government has to pay for electricity would be immediately reduced because of the energy conservation measures. Private companies can recoup their investment from energy savings resulting from the energy improvements.

The provisions on Federal Government energy conservation are as close to a win/win situation as I can imagine and should go a long way toward ensuring that the Federal Government is a model energy consumer. We should set an example in energy efficiency for the rest of the country to take note and follow. I want to commend Senators JOHNSTON and WIRTH and their staff, Alan Stayman and David Harwood, for their outstanding work in putting together this title. I would also like to extend my congratulations to the Alliance to Save Energy and the American Council for an Energy Efficient Economy for successfully working with industry to reach agreement in so many areas.

Third, I strongly endorse the provisions in the legislation which will improve the hydroelectric regulatory process, specifically those which recognize the importance of the State's role in balancing the protection of river and parkland resources with the need for energy. These provisions are particularly important to the State of Connecticut. I'm pleased that FERC will now be required to give extra weight during the hearing process to the decisions States have already made concerning protection of rivers and parks.

Finally, other provisions in the legislation, including those ensuring: First, States are not restricted from regulating the disposal or incineration of radioactive waste regardless of the actions of the Nuclear Regulatory Commission; second, strengthened protection for whistleblowers at federally licensed facilities; and third, tax exclusions for utility conservation rebates, are also important to my constituents.

They say that politics is the art of compromise, and the same could be said of this bill. While I have objections to certain provisions in this bill, which I have addressed here, on the whole, I think this bill is made of sound measures which will work to enhance our Nation's energy policy enormously and I congratulate all those who labored to bring it forward.±

Mr. RIEGLE. Mr. President, I rise in support of the Comprehensive National Energy Policy Act because of the provisions contained in title VII of this Act. Title VII contains significant amendments to the Public Utility Holding Company Act and amends the Federal Power Act to broaden access to the electric transmission facilities in this country. It is important to note that PUHCA is a securities statute under the jurisdiction of the Banking Committee, which I chair. I have spoken on this legislation previously and will not repeat all of my remarks today. There are a few points that I do want to make.

Title 7 is intended to accomplish a restructuring of the utility industry to promote greater competition for the benefit of energy customers. By keeping the energy market competitive, the United States can maintain and improve its place in the global economy by making low cost reliable electric power available to industry. Residential consumers also benefit by ensuring low cost reliable power—electricity is one cost families cannot avoid. We must take steps to ensure that the necessities of life are affordable for U.S. families. Title III accomplishes these goals by simultaneously easing the regulatory burden on electric generators and improving access by all utilities to the country's electric transmission grid.

There are international implications to the bill before us today. New section 33 of PUHCA will allow U.S. companies, utilities and nonutilities, to enter the utility business—that is generation, transmission, and distribution—outside the United States is without complying with the provisions of PUHCA. I believe this provision will allow the United States to complete globally in the utility area—an industry that the United States is considered preeminent. There are also indications that U.S. companies—and U.S. labor—to produce the massive materials needed for energy generation, transmission, and distribution. I support this provision as a means of improving U.S. international competitiveness and producing more jobs in the United States.

I worked hard with my friend, the chairman of the Energy Committee, to ensure that this amendment contained strict consumer protection provisions so that ratepayers of a domestic utility would not bear the risk of a foreign investment by the utility company serving that ratepayer. I think that we have achieved this goal. Section 33 contains stringent firewalls that prevent a public utility from using its assets or resources for the benefit of an affiliated foreign utility company. In some instances, a subsidiary of a public utility is also prohibited from assisting an affiliated public utility.

Both the State public service commissions and the Federal Government have a role in the regulation and oversight of investments in foreign utility companies. Section 33 contains a careful balance between State and Federal regulation, and appropriate regulatory structures for registered holding companies and exempt holding companies.

I want to say a word about State regulation. Holding companies that are exempt from PUHCA are prohibited from becoming affiliated with a foreign utility company unless that appropriate State commissions certify to the SEC that the State commission "has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise its authority." I hope and expect that State commissions will carefully analyze their statutory authority and resources before making such a certification. Domestic ratepayers are relying on these State regulators to protect the ratepayer from risks that may be associated with foreign investments. Further, if the State's jurisdiction is changed, or there is a change in circumstances such that the State commission no longer has the resources to support the certification, the certification may be withdrawn.

Having said this, however, the State should not use their certification authority for purposes outside the scope of the statutory language. A State should not refuse to submit a certification or withdraw a certification already filed to gain leverage over a utility on issues entirely unrelated to issues connected with investments in foreign utility companies. Further, such certification goes to the State's jurisdiction and intention to exercise its jurisdiction—it is not a case-by-case certification required for specific transactions but rather a certification applicable to all utilities under that State's jurisdiction.

Similarly, under section 33, the Securities and Exchange Commission is directed to promulgate rules or regulations regarding registered holding companies' acquisitions of interests in foreign utility companies. These regulations must provide for the protection of the customers of a utility company associated with a foreign utility company as well as the maintenance of the financial integrity of the registered holding company system. These are responsibilities that the SEC is well suited to perform, especially in light of its investor or protection responsibilities in the financial system. If the SEC requires additional resources to fulfill these obligations, I know they will make the appropriate requests. As chairman of the Banking Committee, I will continue to work with the SEC to ensure that the Commission effectively discharges its responsibilities.

I want to take this opportunity to clear up any ambiguity about the timing of registered holding company investments in foreign utility companies. Subsection (c)(1) makes clear that a registered holding company may invest in foreign utility companies "as of the date of enactment of this section." Clearly, the SEC will not have promulgated its rules or regulations about such investments immediately upon enactment of this section. Thus, there will be a time period during which registered holding companies may invest in foreign utility companies in the absence of SEC rules or regulations. I note, however, that even during the time period between the date of enactment and the issuance of SEC rules or regulations, registered holding company financing is fully regulated under subsection (c)(2) and the consumer protection provisions of subsections (f) and (g) fully apply.

The conferees decided to allow the existence of this regulatory gap because there are immediate, and fleeting, market opportunities for U.S. companies. Around the world, countries are privatizing and upgrading their energy networks, often seeking bids from U.S. companies to build and maintain these systems. We do not want to impose Government barriers to these historic opportunities.

Nonetheless, it is expected—and Congress will demand accountability—that the registered holding companies, which are extensively regulated on such matters as the issuance of securities, will use this leeway carefully and responsibly. Further, I anticipate that the SEC will publish temporary or proposed rules or regulation which, though not binding, would be followed by the registered holding companies. I urge the SEC to move as quickly as possible on this matter.

While section 33 is important, we must remember that international activities by utilities is permitted under current law. Specifically, under current law, the Securities and Exchange Commission has authority to permit, on a case-by-case, utility functions outside the United States. Further, new section 32 of PUHCA allows exempt wholesale generators located outside the United States to engage in both wholesale and retail generation. The provisions of section 33 supplement these foreign options for utility operations and do not in any way limit the ability to pursue the SEC approval under current law or the EWG course. We must remember that the purpose of section 33 is to facilitate foreign investment, not burden it. In order to enhance our competitive posture in the worldwide energy market, persons proposing to invest in foreign jurisdictions may rely on any lawful exemption, as subsection (d)(1) makes clear.

There has been some discussion regarding the meaning of section 32(h)(6). The chairman of the Energy Committee has indicated that under section 32(h)(6) the SEC may, prior to the promulgation of final rules, issue proposed or temporary rules, and registered holding companies may operate pursuant to those proposed or temporary rules until final rules are effective. The SEC and affected persons may continue to rely upon and proceed on the basis of such temporary or proposed rules if the promulgation of final rules is delayed beyond the 6-month deadline contained in section 32(h)(6). As chairman of the Banking Committee, which has jurisdiction over the Public Utility Holding Company Act, I concur with this interpretation.

In closing, I want to commend the senior Senator from Louisiana for his leadership on this issue. Over the last 2 years, there have been times where he and I disagreed on fundamental aspects of PUHCA reform, such as the need for transmission access and strong provisions to prevent self-dealing and cross-subsidization between a utility and an affiliated EWG. Yet, we have always worked together, found our common ground and achieved policy results that are in the broad public interest. I would be remiss if I did not single out William Conway of the Energy Committee staff for his dedication and intelligence. Without Bill's efforts, we would not be here today. Mr. Chairman, he is a credit to you and the Energy Committee. With that, I offer my congratulations and my support for this legislation.

(At the request of Mr. DOLE, the following statement was ordered to be printed in the RECORD:)

• Mr. MURKOWSKI. Mr. President, today we will vote to invoke cloture on the National Energy Policy Act of 1992. I do not believe the legislation before this body represents a balanced approach to a national energy strategy and therefore I cannot support the motion to invoke cloture.

This legislation does not offer any major incentives for the domestic oil and gas industry, an industry struggling for survival in America.

This legislation does not include language that would authorize environmentally sound exploration and development on the coastal plain of the Arctic National Wildlife Refuge.

During the conference negotiations of the so-called national energy strategy almost all of the provisions important to Alaskans were stripped from the bill.

Cancellation and buyback of North Aleutian Basin oil and gas leases was passed out of the Senate but stripped from the bill before us.

Two important ANWR/industry provisions to study the economic impact of opening the ANWR coastal plain to oil and gas exploration and development were passed out of the Senate but stripped from the bill.

Funding for Arctic research was passed out of the House but stripped from the bill.

A provision to prevent the TAPAA fund from being the exclusive remedy for claims arising out of the *Exxon Valdez* oilspill was passed out of the House but stripped from the bill.

A provision to make Alaska OCS subject to ANILCA 810 subsistence review was passed out of the House but stripped from the bill.

A provision to allow subsistence claims against the TAPAA fund was passed out of the House but stripped from the bill.

Revenue sharing for State and local governments from OCS revenue sharing was passed out of the House and Senate but stripped from the bill.

And $50 million in *Exxon Valdez* settlement funds to be directed for land acquisition in Prince William Sound was passed out of the House but stripped from the bill.

The energy bill conference was very frustrating since the Alaska delegation came so far and then could not reach agreement with the conference leadership on the many issues of importance to Alaskans.

This energy bill fails Alaskans on too many critical issues and I cannot support it.

The major provisions have been stripped. There is no Bristol Bay buyback, there is no protection for the rights of the fisherman and subsistence of Prince William Sound, and there is no subsistence review of the OCS. This so-called energy bill belongs to the special interest of the lower 48.

The facts are on the table.

I am deeply disappointed with the results of the energy bill conference. The House and Senate Democratic leadership's failure to address the rights of Alaska fishermen and subsistence users, and the failure of the conferees to accept legislation to protect the future of Bristol Bay leaves me with only one option.

I did not sign the conference report on the National Energy Policy Act and I will not support this legislation on the Senate floor.•

Mr. STEVENS. Mr. President, the Senate version of the national energy bill contained three site specific exemptions for three small hydroelectric projects from jurisdiction of the Federal Energy Regulatory Commission in Alaska.

These FERC exemptions were adopted by the Senate based on testimony from the Department and FERC that the purpose of FERC jurisdiction is to ensure that projects which have an effect on interstate commerce are regulated and integrated into interstate systems of power distributions. Furthermore, the Department of Energy and FERC testified in favor of a complete exemption from FERC jurisdiction for any project which generates power of 5 megawatts or less. Based on that testimony, the Senate adopted these three exemptions for the Alaska projects at the request of Senator MURKOWSKI.

In conference, a compromise provision, section 2407, was adopted that retained the FERC jurisdiction, but granted FERC authority to exempt these three projects. This exemption authority requires FERC to act within 6 months on an application for exemption. The application must be for a project which generates no more than 5 megawatts of installed capacity and may include terms and conditions which FERC finds necessary after consultation with specifically named fish and wildlife management agencies.

Mr. President, I want to personally thank the distinguished chairman and ranking member of the Senate and House Energy Committees. It was with their help that this compromise provision was adopted. They understood the special nature of these three projects and worked with us to come up with this solution. This provision will ensure that these three projects will receive the expedited consideration they deserve.

The project in Juneau with preliminary permit No. 10681-000 has an application for ancillary hydroelectric facilities to be constructed with a dam which will be built for another purpose, the creation of a tailings dam pond. The actual impoundment will be built with or without the hydro facilities. That impoundment will be approved as part of the ongoing NEPA EIS process which governs the opening of a mine at Juneau known as the Alaska-Juneau mine. The EIS for mine construction including the dam itself has been prepared by BLM.

The FERC law and procedure prevented the consolidation of the EIS and a FERC licensing procedure—in effect requiring a second EIS for the hydro license even where the actual facilities are very minor compared to the dam's actual construction. This exemption application process will prevent a second multiyear permitting process conducted by FERC particularly since all of the same resource and fish and wildlife agencies are consulting agencies as part of the mine and dam construction EIS.

The other two projects are less than 1 megawatt plants—one to provide electrical power to three remote Native villages of Illiamna, Newhalen, and Nondalton and the other to provide electrical power to the private nonprofit Sheldon Jackson College from an existing dam near Sitka.

The one thing all three of these hydroelectric projects have in common is that they will all replace the use of diesel fuel for electrical power generation. The only result of the failure to grant the exemptions will be the use of fossil fuels in an environment in which a dam has already been constructed or where only a small amount of water is being diverted.

Mr. HATFIELD. Mr. President, many times in the last 20 years, the U.S. Congress has been called to action by the need to reduce America's dependence on fossil fuels. Like the energy crises of the 1970's, the Persian Gulf war of 1990 and 1991 catapulted the need for energy security back to the forefront of public concern. This interest, however, has been short-lived. No visible energy crisis is at hand. No lines are forming at gas pumps across our Nation. In fact, gas prices remain at just a little over $1 per gallon—a price which is virtually unchanged since the mid-1980's.

So what's all the fuss about? Why is a national energy strategy so important? gas is cheap and abundant, and concern about energy remain buried at the bottom of public opinion polls across the Nation. Education, health care, child care, and crime are the current priorities of people's lives. And while all of these areas are imminently significant in the lives of Americans, a future crisis over our Nation's lack of a diversified energy infrastructure still looms large, even in the shadow of a war which was fought and won for access to oil.

In response to the impending threat of a new energy crisis, the Congress and the Bush administration embarked on a journey to boldly move America's energy policies forward. In 1989, Secretary of Energy Jim Watkins took the helm at the Department of Energy with the promise to shake things up and streamline the bureaucracy. Shortly after accepting his new post, Admiral Watkins and his staff held hearings all across the country with the goal of developing a National Energy Strategy. After 2 years of research and development this strategy was sent to Congress and the public.

Even before the admiral released his plan, however, my esteemed colleagues from the Senate Committee on Energy and Natural Resources, BENNETT JOHNSTON and MALCOLM WALLOP, were developing a national energy plan of their own. As the committee considered the Johnston/Wallop package in early 1991, a unique partnership formed with the administration and a highly credible energy plan was eventually developed by the Senate and the House of Representatives.

Our Nation cannot afford to allow this energy plan to slip through the cracks during the last days of the 102d Congress. Certainly, every Senator cannot support each and every title in this bill. I, too, have a number of concerns regarding the bill, including its streamlined nuclear licensing provisions and its lack of increased corporate average fuel economy standards. Nonetheless, I will support the bill because it is good for our Nation's energy security. Its implementation will help reduce our Nation's dependence on foreign sources of oil by encouraging investment in clean, efficient, renewable energy technologies, expanding energy efficiency and conservation programs, and pushing for the diversification of domestic energy use and domestic energy exploration.

The national energy strategy bill conference report also contains several provisions specifically designed to improve energy efficiency and water conservation in the Pacific Northwest. One such provision permits the Bonneville Power Administration to enter into agreements with the Secretary of the Interior and the Secretary of the Army to directly fund energy efficiency improvements and operation and maintenance costs at existing Columbia River hydrofacilities. this provision will benefit the Pacific Northwest in a number of ways. First, it will help increase the reliability of existing Corps of Engineers and Bureau of Reclamation hydroprojects. Second, it will allow BPA to produce more energy with less water, thus leaving more water in rivers and streams for fish. And finally, the provision will save the Pacific

Northwest ratepayers $400 million in energy costs over time.

America's future depends on the wise stewardship of our domestic energy resources and our unwavering commitment to a balanced energy plan. The U.S. Congress has before it the opportunity to change the course of American energy use from a history of consumption to one which balances conservation, energy efficiency, and renewable energy development with the wise use of domestic energy resources. I am confident Congress will meet this challenge today and in the future.

Again, I thank the chairman and ranking member of the Energy Committee and look forward to passage of the conference report on H.R. 776.

Mr. BUMPERS. Mr. President, it is with some reservations that I rise today in support of the Energy Policy Act. Approximately 1½ years ago when we started the process in the Senate Energy Committee of putting together an energy bill, I was hopeful that Congress would finally enact a comprehensive national energy policy that would, first, significantly reduce our Nation's reliance on foreign sources of oil, second, promote energy conservation and the development of renewable, environmentally sound, sources of energy, and third, produce real competition in our energy markets for the benefit of consumers. While the bill we have before us today is certainly a step in the right direction, I am disappointed that we were unable to do more to resolve some of our Nation's energy problems.

Mr. President, I would like to take this opportunity to comment on several provisions of the bill:

ALTERNATIVE FUELS

The transportation sector is the biggest source of oil consumption in the United States. One of the most promising titles of the bill promotes the use of alternative vehicle fuels. We have a chance to make a real dent in our reliance on foreign oil through the use of alternative fuels such as natural gas, ethanol, methanol, electricity, and propane. The use of these fuels would have the benefit of not only reducing oil consumption, but also would reduce carbon dioxide emissions and global warming. while I am disappointed that more of the Senate bill's—more comprehensive—alternative fuel vehicles title could not be retained in conference, I am hopeful that the bill's provisions will spur the production and use of alternative vehicle fuels.

ENERGY EFFICIENCY AND RENEWABLE RESOURCES

Perhaps the greatest contribution which Congress can make toward our national energy security is the promotion of energy conservation. The potential benefits, in terms of energy savings and the reduction in the emission of pollutants related to the combustion of fossil fuels, is enormous. The energy bill taps into a small, but significant, part of this potential through the establishment of certain energy efficiency standards for the Federal Government, office buildings, and homes. I hope that we can build on this in the future to meet our energy efficiency potential.

The use of renewable resources for the generation of electricity has similar benefits. Currently, less than 10 percent of the electricity produced in the United States comes from renewable resources. I believe that we can, and, if we are serious about reducing our reliance on foreign oil and fossil fuels, must substantially increase this percentage. The energy bill's production incentives and research and development provisions will certainly lead us toward that direction.

ELECTRICITY

When Congress began consideration of the energy bill, I had certain reservations about amending the Public Utility Holding Company Act [PUHCA] to permit utility holding companies to own exempt wholesale generators [EWG's]. However, as time went on, I became convinced that, if done correctly, the promotion of EWG's could increase competition in wholesale electric generation, thereby reducing rates for consumers. Additionally, I came to believe that true competition in electricity generation could not occur if those generators without transmission facilities did not have the ability to transmit their power where needed. On the whole, I believe the energy bill creates the potential for real competition which will benefit ratepayers.

However, the ability of customers of utility subsidiaries of holding companies registered under PUHCA to realize these same benefits remains very precarious. The 1988 U.S. Supreme Court ruling in the Mississippi Power & Light case made uncertain the ability of State regulatory commissions with retail authority over subsidiaries of registered holding companies to oversee certain transactions between holding company affiliates. While the so-called Pike County doctrine enables State regulators to oversee utility wholesale purchases, it is uncertain whether similar authority applies to State regulators of registered holding company subsidiaries. I had hoped that we would be able to resolve this problem by authorizing State regulators of registered holding company utilities to oversee holding company resource planning. However, the registered holding companies were able to put a stop to this effort.

In addition, Mr. President, I want to express my grave concerns about a provision in the bill permitting utility investments in foreign utility ventures. A provision included at the 11th hour in the conference committee with very little debate, would amend PUHCA to permit utilities and utility holding companies to invest in foreign utility companies. For utilities and utility holding companies which are not associated with a registered holding company, each affected State regulatory commission would have to certify that it has the authority to protect ratepayers from the adverse impacts of these foreign investments and that it intends to do so. However, customers of registered holding company utilities would not be similarly protected. Instead, these State commissions are permitted only to file comments with the Securities and Exchange Commission [SEC] which must decide whether consumers will be protected.

While allowing utility companies to engage in foreign investments, with the proper consumer protections, might not be a bad idea, the process with which this provision was included in the energy bill exemplifies why the American people are so angry with Congress. No hearings were ever held, neither the House nor the Senate ever debated, or voted, on the provision, and the proponents of the provision waited until the final day of the energy bill conference to reveal their intentions. Mr. President, this is not a minor change in the law. For 57 years, registered utility holding companies were required to focus their activities primarily on providing reliable and economic electric service to a single region of the country. This provision permits holding companies to put their ratepayers at significant risk through their participation in foreign investments. Most notably, ratepayers in the 23 States where registered holding companies operate, including my State of Arkansas, have been put in a perilous position. The SEC, an agency which has continuously proven itself unwilling to protect ratepayers has been made the sole source of consumer protection. I intend to introduce legislation next year which will ensure that ratepayers are adequately protected from utility foreign investments.

NATIONAL ENERGY STRATEGY

Mr. DOLE. Mr. President, I am pleased we have reached agreement on this important domestic initiative—the National Energy Policy Act. Many of us who were here in the Senate remember the oil embargoes of the 1970's and the catastrophic impact they had on our economy. This legislation will help move us in the right direction—toward the goal of greater emphasis on domestic energy sources. It is critical we do everything we can to protect and expand our domestic petroleum industry—particularly small stripper well producers who have found themselves facing abandonment of their producing wells at an alarming rate.

It is equally critical that we do all we can to encourage and produce domestic sources of alternative fuels like ethanol, natural gas, and propane to provide domestic substitutes for imported fuels.

Mr. President, I believe several provisions that I sponsored within this legislation will contribute to our domestic energy security.

My provision to give the President the authority to acquire oil from domestic stripper well properties for storage in the strategic petroleum reserve, if the President finds that declines in the production of oil from domestic resources pose a threat to national energy security, is an important step toward preserving this increasingly abandoned domestic production.

In Kansas, 5,000 producing stripper well properties were abandoned in the last 3 years—production that is lost forever. About three of every four producing wells nationally are stripper wells; 55 million barrels of oil each year is produced in Kansas from 45,000 stripper wells. We can no longer afford to ignore the importance of this domestic resource.

Likewise, it is well known that billions of barrels of oil are locked in the ground because they are either economically or technologically unable to be recovered.

My provision to establish a midcontinent energy research center—envisioned for the University of Kansas Energy Research Center—will aid in the development of petroleum recovery techniques and help reduce our foreign dependence on oil. Programs that the center will focus on will include reservoir management, advanced recovery methods and development of new technologies. It is the goal of the center to get this type of technology and research support directly to the driller.

I am also pleased that the conferees included my alternative fuels research initiatives. Under the act, the Secretary shall select certain commercial application projects including ethanol byproduct processes. It is important that this type of research be carried out so that the development of additional uses for ethanol and improved techniques that broaden the market for these domestically produced fuels and byproducts further our goal of energy self-sufficiency.

Mr. President, there is much we can be proud of within the energy bill. Of particular interest are the sweeping changes that were adopted affecting the electric utility industry. We are entering a brave new world of new competition that will be stimulated by the provisions of this bill. This new age of independent power producers that will now be able to build, own, and operate powerplants and sell electricity on a wholesale basis to utilities and municipalities anywhere in the United States, will certainly change the electricity generation business in the future.

I am confident that the conferees took into account the competing interests and needs of various groups such as municipal electric systems and rural electric cooperatives to see that they were adequately protected under the newly emerging electricity title. I know that in Kansas, much attention was given to this title by our Kansas electricity producers. I appreciate the good faith effort by representatives of Western Resources, Kansas City Power & Light, Sunflower Electric Cooperatives, Kansas Electric Cooperatives, Kepco, Kansas Municipal Utilities, Kansas Municipal Energy Agency, Utilicorp and other producers to produce a dialog that I believe guided the committee toward its final result.

I will continue to monitor this process closely—particularly as FERC implements the actions of Congress—to see to it that these Kansas electric producers are treated fairly in the future.

Mr. President, it has been a long process. I commend my colleagues on the Energy Committee, particularly Senator JOHNSTON and Senator WALLOP, for the outstanding job they did with this legislation.

The tax provisions of this conference agreement include employer provided transportation benefits, incentives for clean fuel vehicles, credit for electricity produced from renewable resources, the repeal of the alternate minimum tax for depletion and intangible drilling costs for independent producers and royalty owners, a permanent investment credit for solar, geothermal, and ocean property, proportionality for alcohol fuels and the tax exempt financing for environmental enhancements of hydroelectric generating facilities.

This list reflects the sound, balanced approach taken by the Senate during consideration of the energy bill, as was indicated by the 93-to-3 vote for that bill. The adoption of this conference report will mean an energy policy balanced between all fuel sources whether renewable or not, and balanced between environmental protection and national energy security.

I would like to say a few words about the alternate minimum tax provision for independent producers. The oil and gas extraction industry has the highest effective tax rate of any industry in the country—over 70 percent. This rate, coupled with the fact that oil and gas extraction is a highly capital intensive and risky venture has led to the devastation of that industry, increased imports and the resulting increased trade deficit. This provision is not only fair, it is absolutely essential for economic as well as energy policy.

Finally, the proportionality for ethanol provision is an effort to update the Tax Code to reflect the changing market mandated by Congress with the adoption of the Clean Air Act Amendments of 1990. When the exemptions and credits for ethanol were first enacted, no one thought the Congress might some day write a prescription for motor fuels. We did in 1990, and this provision is what I would call an almost technical change for ethanol due to changes mandated by the Congress.

THE COAL INDUSTRY RETIREE HEALTH ACT

Mr. ROCKFELLER. Mr. President, the agreement is now honored—44 years ago, John L. Lewis wired those words to the coalfields of West Virginia, Kentucky, Alabama, Pennsylvania, Ohio, and other States. With those five words, Lewis brought to an end the strike leading to implementation of the coal miner health benefit and pension funds. When the coal miner health benefit legislation before the Senate today is signed by the President of the United States, I will send that same five-word message to the coalfields—at long last, the agreement will be honored.

This has been a long road, and we have not reached the end of it. As long as there are people in America who are sick or injured and needing care, our efforts must continue. But we have reached a milestone.

Coal miners have been in the vanguard of the fight for decent health care because illness and injury have been so endemic to coal mining. For decades, the fight for good health care has been central to labor relations in the coal industry. The current health program derives from the one established when President Truman seized the mines in a 1946 strike in which health care was a central issue.

In the 1950's, a great compact was reached between labor and management in the coal industry. A commitment to provide health care and pension benefits was the keystone in the arch of that understanding. In return for health and pension security, labor agreed to mechanization of the mines, which led to elimination of 300,000 jobs in Appalachia alone. It is largely the retirees of that vast industrial restructuring whose health care is in jeopardy today. Those coal miners created the might of modern industrial America. They did not fail their country. I am proud to say today that their country will not fail them.

In the fall of 1989, health care was again a central issue in a coal strike. That led to my introduction of my first bill to prevent collapse of the trust funds that provide health care for retired coal miners. Over the years, the dwindling base of contributors resulting from bankruptcies and the failure of some companies to keep paying into the funds, along with exploding health care inflation, put the health trust funds in jeopardy. Then Secretary of Labor Elizabeth Dole appointed a mediator to assist in settlement of the strike. When the settlement was reached, she announced appointment of a commission to recommend a long-term solution to the crisis of the health trust funds.

Secretary Dole explained that during negotiation of the settlement of the strike, which involved a single company, "it became clear to all parties involved that the issue of health care benefits for retirees affects the entire industry." "A comprehensive, industrywide solution is desperately needed," she said.

The Dole Commission submitted its report in November 1990. The Commission observed that health benefits are an emotional subject in the coal industry, not only because coal miners have been promised and guaranteed health care benefits for life, but also because coal miners in their labor contracts have traded lower pensions over the years for better health care benefits. The Commission said it firmly believes that the retired miners are entitled to the health care benefits that were promised and guaranteed them and that such commitments must be honored.

The Dole Commission recommended a legislative solution to the crisis in the retired coal miner health trust funds and proposed various options. In a statement in the CONGRESSIONAL RECORD of March 13, 1992, I and other Senators supporting legislation explained at length why a legislative solution is necessary. Briefly, collective bargaining cannot work when companies are not around to bargain with, because they are bankrupt or have walked away from their responsibilities, sometimes through legal loopholes created by a crazy quilt of court decisions. Moreover, what many people seem not to realize is that the orphan retirees whose last employers are gone face the prospect that when the collective-bargaining agreement expires early next year, no one will be responsible for their health care. The shrinking funding base and spiraling costs make the continuation of the old program unworkable. The legislative task has been to assign responsibility for funding in the best way possible, realizing that there is no perfect solution.

In the fall of 1991, after hearings on the Dole Commission report, I introduced legislation, S. 1989, based on the Commission's recommendations. A version of that legislation was passed in March of this year as part of a larger tax package which was vetoed by the President. Although the veto was based on various aspects of the tax package, the administration did oppose the approach Congress took on the coal health problem. Subsequently, the administration joined in discussions with me and other Senators and we reached an accommodation reflected in the present approach. The funding mechanism in this approach is the one proposed by the administration and on which the administration insisted. The accommodation was embodied in legislation that passed the Senate as part of the omnibus energy bill on July 29, 1992.

While the approach taken by this measure is significantly different from S. 1989, it is within the scope of the basic alternatives recommended by the Dole Commission. Instead of including a broad industrywide tax, the basic funding mechanism of this legislation generally requires premium payments from those for whom the retirees worked. These are the responsible companies. Some interests objected to the tax; others to the so-called reach-back approach of the present legislation. Both approaches are defensible and rational. The decision ultimately rested on the best basis for consensus in the legislative process.

Under both bills, companies with retirees still in the existing health funds would pay for their own retirees. The key difference between the two bills relates to the funding of health benefits for the orphan retirees. In general, under the current program, these are the people whose last employer is out of business. Under the earlier bill, the tax would have funded those benefits. Here, in general, the responsible coal operators and related companies will fund the benefits. The two existing health trust funds will be folded into a new, combined fund, in general for current orphans and nonorphans of the existing funds. Additionally, a new 1992 fund will be required to provide for certain other retirees, including those who might be orphaned by future bankruptcies or liquidations.

Even this brief narrative shows the long history of the promise of decent health care for retired coal miners that we address today. But no short narrative can do justice to a bargain in which coal miners gave their lives in return for decency. The bargain goes beyond any labor contract. The bargain goes even beyond the deal in which the companies mechanized the mines in return for benefits.

The real significance of the bargain has to do with the kind of commitment that our country makes to those who have sacrificed for the good of everyone. In 1947, John L. Lewis explained it this way to a congressional committee.

> If we must grind up human flesh and bone in the industrial machine we call modern America, then before God I assert that those who consume the coal and you and I who benefit from that service because we live in comfort, we owe protection to those men first, and we owe security to their families if they die.

Many of the retirees whose health care is at stake today were born in the early decades of this century. Their active days in the mines were in the 1930's and 1940's and 1950's. They remember the days of the pick and shovel and dynamite, when cave-ins were not uncommon and methane explosions often brought sudden disaster. No wonder that health care became the ultimate labor issue in the coal industry.

The commitment to good health care for retired coal miners has been threatened. But in its time, the old system represented a great achievement. We need to understand that because today we need again the spirit that gave rise to that achievement.

When they were created, the health trust funds transformed health care in the coalfields. The 1946 agreement establishing the funds required a survey of medical conditions in the coalfields and the retiree health program set to work responding to conditions the report found deplorable. Among other things, the program established hospitals and a rehabilitation program that combed the coalfields to identify the thousands of miners who had been crippled, with broken backs and severed limbs. At rehabilitation centers, they received the best treatment that modern medicine could offer.

The program under the health fund also made great strides for improvement of overall medical care in coal mining communities. For example, the average age of a coal miner at death in 1947 was 10 years less than the national average for males. In a few years, that difference was erased. The longevity of miners had increased by a remarkable 30 percent.

Three years ago, almost to the day, I took the floor of the Senate to introduce the first legislation on this issue. Referring to the transformation of health care in the coalfields, I said that we had come too far, and the road has been too long, for us to turn our backs on past achievements. The success for health care in the coalfields was an achievement of which all Americans can be proud. It provides a record of decency and of support for human dignity that is a model for the industrial world.

And I can now say, with gratitude, the Congress did not turn its back. It has been a long and sometimes contentious road to this moment. There were strong differences among many parties regarding the best solution to this problem. No one, however, challenged the right of these retirees to good health care. The issue was always the difficult one of how to pay for it. This could be expected to produce a classic legislative battle. But in the ultimate accommodation that saves health care for retired coal miners and their widows and dependents, we have not only a victory for the coal miners, but also for the country.

The national significance of this legislation can be seen in its impact on health care delivery in many States. The retired coal miners and their widows live in virtually every State of the Union. The trust funds contribute millions of dollars to the economies of many States. If allowed to continue unchecked, the financial difficulties of the trust funds could seriously erode health care delivery in West Virginia and the coal counties of States like Alabama, Colorado, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, and Virginia, and many others. And the well-being of health care providers—doctors, hospitals, and pharmacies, dependent on payments from the funds—could be badly damaged.

Also of national significance is the impact of this legislation on the stability of the coal industry and our entire economy. We cannot go backward on decency in our industrial life. An effort to turn the clock back on our progress in industrial conditions would be sadly misguided. Industrial strength can only rest on a foundation of mutual respect and mutual support. Continuous industrial chaos and recriminations are a recipe for industrial decline. In the midst of the 1989 coal strike over health benefit cutoffs, I said that such a cutoff viewed as a tool of economic conflict had touched off a firestorm, with the flames threatening to engulf employers and employees alike, threatening to destroy the well-being of thousands and the position of the U.S. coal industry in global markets.

It was, in part, to avoid this kind of industrial chaos that coal industry labor relations were established 40 years ago on the rock of the UMWA pension and health trust funds. If that rock had been allowed to crumble, the consequences would have been felt far beyond the retired miners whose health benefits were in jeopardy. That thought has been ever present in my efforts to bring this matter to an amicable conclusion. I have remained ever mindful of the expiration of the industrywide collective bargaining agreement early next year.

The grounds for this bill are solid. After years of study and debate and exploration of various alternatives to resolution of a contentious issue, Congress and the administration have concluded that action is necessary. It is necessary in the name of decency for the retirees and to avert disruption in the coalfields and the consequent threat to commerce and the national interest. Congress has concluded that the health funds' ability to continue to meet commitments to retired miners is in serious jeopardy and that a statutory funding obligation should be imposed.

Congress has long recognized the importance of domestic coal production to the national economy. Indeed, the action taken in this bill to restructure the financing of coal retiree health benefits follows years of unparalleled governmental involvement with the industry, including involvement in the industry's retirement benefit programs. The health program was created originally in an agreement between the Secretary of the Interior and the UMWA during a period when President Truman had seized the mines. An early trustee of the funds was the late distinguished Republican leader, Senator Styles Bridges of New Hampshire.

Over the years since the original agreement, the Federal Government continued to play a significant role in regulating the coal industry and in the provision of benefits to its retirees. In fact, the trust funds that are the subject of this bill have long been governed by provisions in both the Internal Revenue Code and the Employee Retirement Income Security Act designed specifically for and generally applicable only to them. It is important to emphasize, however, that the relief crafted in the bill is tailored narrowly to address the problem, imposing obligations on a specified group of businesses that were connected ultimately to the commitment to provide health care. And the bill offers protection to a specified class of beneficiaries.

I have often observed that this health care program arose out of a period of conflict decades ago and that we have passed through a contentious legislative battle to reach the present accommodation. But it is also important to commend the labor and industry statesmanship both then and now that produced accommodation. The press notices have often gone to those who complained about the burdens of providing benefits in an era of raging health care inflation. But commendation should go to the many companies that have met their commitments and that have said they would willingly meet their obligations under this legislation.

Beyond the legal arguments about past contracts and arcane points of legislative drafting, as everyone who has had anything to do with this problem ultimately comes to understand, this is a moral issue. In its editorial on the 1989 strike over health benefits for coal miners, Business Week said the company "should stand by its promises" and called that a matter of moral obligation.

Through government and private cooperation, four and a half decades ago, America achieved a victory in health care, in industrial statesmanship, in decency for hard-working people, and in the mutual pledges that form the foundation of our country. Today we renew those mutual pledges. We do not build without a foundation. We build on the efforts of those who have come before. As we survey the landscape of America today, we see a desperate need for renewal and revival of private and public statesmanship. We see a need for the revival of commitment to the strength of the Nation and to decency for those who have met their commitments and brought abundance and comfort for the rest of us.

Today, as the Senate approves this legislation, we do so knowing that we build on the struggle and efforts of others. With this legislation, we also renew and restore a commitment from the past. Time and change threatened that commitment, but the U.S. Senate and the American people can be proud that the threat did not prevail. Today we can say of those on whose efforts we build, what the words of an old hymn say: "What they dreamed be ours to do, hope their hopes and seal them true."

In concluding, I wish to express my gratitude to my distinguished senior colleague from West Virginia, Senator BYRD, whose assistance in this legislative effort was indispensable. I am deeply grateful for his support and his wise counsel. I also want to thank Senator FORD for the tremendous assistance he provided, without which our success would have been impossible. And I thank Senator WALLOP for his cooperation, which was so important in reaching a final accommodation, and I thank the many other Members of Congress who helped us. And finally, I wish to thank the staff of all of these Members and the technical and drafting staff who worked tirelessly to help pass this legislation which will be so important to the retirees, to the coal industry, and to the Nation.

At this point, I would like to comment for the record on a few technical points. All references hereafter are to the new sections added to the Internal Revenue Code by the bill. The term "signatory operator," as defined in new section 9701(c)(1), includes a successor in interest of such operator. Under section 9703(b), the combined fund shall enroll each beneficiary in a health care services plan—whether or not maintained by the combined fund—which undertakes to provide benefits on a prepaid risk basis. Under this provision, the Fund will arrange for services through means such as contracts with health maintenance organizations, preferred provider arrangements, and individual practitioners in an effort to minimize the cost and eliminate the risk to the fund, while providing the coverage referred to in the bill. The bill does not preclude the fund from providing benefits through contracts of insurance or by direct payments for services, or through its own entities, such as health maintenance organizations or preferred provider arrangements, where the trustees determine that such contracts or other arrangements are either more advantageous or in instances where it is not feasible to provide benefits through other means. For example, the fund is permitted to continue providing benefits directly, after the bill becomes effective, while it is considering what is the best manner to deliver services in the future.

The provisions requiring increased premiums to cover shortfalls do not require such increases if a shortfall was caused by excessive expenditures for health care services plans maintained by the combined fund. Instead, the overall maximum limitation for the following year will be reduced by the amount such excessive expenditures cause the combined fund's total expenditures to exceed the maximum limitation for the prior year. In the new section 9703(b)(2)(A)(ii), the reference to aggregate payments is to payments from premiums or from amounts treated as increases under subparagraph (C). In subparagraph (C)(i), amounts described under section 9704(i)(1)(D)(ii), would be treated the same way as transfers described in section 9705.

In addition, no increase would be made under subparagraph (C)(i) for transfers or payments used for death benefits. In section 9704(b)(2)(A)(i), the aggregate amount of payments is the aggregate amount of payments made and to be made from the 1950 UMWA Benefit Plan and the 1974 UMWA benefit plan for health benefits—less payments by the plans for Federal program benefits but including administrative costs—for the plan year beginning July 1, 1991, for all individuals covered under such plans for such plan year. In section 9704(i)(1)(D)(ii), in the case of a 1988 agreement operator which made or is making contributions under subparagraph (B), any remaining unpaid contributions under subparagraph (B) and the premium of such operator under subsection (a) are what are reduced. At various places in the bill, such as in section 9711(b)(1) and section 9712(b)(2), individuals must be receiving benefits by certain dates or must have retired by certain dates in order to be entitled to benefits under the bill. For purposes of these provisions, an individual is considered to be receiving benefits or to be retired if he is fully eligible for and has applied for benefits. An individual will not be considered ineligible for benefits merely because he has yet been determined to be eligible.

Additionally, an individual will be considered to be receiving benefits or to be retired as of a specified date if he is receiving benefits prior to such date, and such benefits are subsequently temporarily suspended. The 1992 plan and last signatory operators subject to the bill's requirement relating to individual employer plans may utilize certain managed care systems and cost containment rules, but they must be approved—and upon request of an operator or a settlor of the 1992 plan, an existing or future system or rule will be reconsidered—by a medical peer review panel. The requirement for initial approval does not preclude the 1991 plan or a last signatory operator from implementing—or from continuing to maintain—rules and programs that are permitted and implemented under the 1988 NBCWA, but any new managed care system that would limit beneficiaries' access or potentially affect quality of care would require review by a panel.

In addition, any new cost containment rule not agreed to by the UMWA would be subject to review by a panel. In section 9712(b)(2)(B), the determination is made without regard to whether the last signatory operator or any related person remains in business. In section 9712(d), the reference to "eligible and potentially eligible beneficiaries" means, with respect to any 1988 last signatory operator, the individuals receiving benefits from the UMWA 1992 benefit plan who are attributable to such operator, and the individuals receiving benefits from an individual employer plan maintained by such operator who are entitled to receive such benefits under section 9711 (a) or (b). In section 9712(d)(3), the payments continue to be made for as long as the signatory operator—or any related person—remains in business. Benefits required to be provided under the chapter are to be provided without regard to the continued existence of any coal wage agreement.

The bill provides that both the combined fund and the 1992 plan will be fully exempt from all tax under the Internal Revenue Code. In addition, because the bill requires various premiums and other payments to both the combined fund and the 1992 plan, all such premiums and payments are deductible without limitation. As has historically been the case, retiree health benefits provided by the program would be secondary to benefits paid under other governmental programs, except as otherwise provided by law. It is anticipated that the combined fund and the 1992 plan will have at least the same rights to coordinate benefits with other benefit plans and programs as the UMWA benefit plans have exercised in the past.

COAL MINERS RETIREE HEALTH BENEFITS TITLE

Mr. BENTSEN. Mr. President, as manager of the tax title of the energy bill, I rise to explain an issue that has come to my attention with regard to the coal miners retiree health benefits title of the bill.

The bill requires all coal companies that have ever been signatories to a coal wage agreement to pay premiums to fund retiree health benefits for the miners and their dependents. The bill also declares that affiliates of any such coal company are jointly and severally liable for the premiums owed by the company. Under the bill, the time for determining affiliate status is as follows: If the coal company was in business on July 20, 1992—whether or not as a coal company—affiliate status is to be determined on that date. On the other hand, if the company was not in business on that date, then affiliate status is to be determined as of the day immediately before the company ceased to be in business.

The idea behind these rules is that, if a holding company has a subsidiary that was once a signatory to a coal wage agreement, and if, through that subsidiary, the holding company is conducting a business—whether or not a coal business—on July 20, 1992, it is appropriate to ask the holding company to be jointly liable for the premiums due from the subsidiary. The question arises, however, whether a different result would obtain where the holding company conducts the same business, with the same assets of the subsidiary, but through a different affiliate, such as a sister corporation to the subsidiary. In other words, in that case, the subsidiary would have transferred some of its assets to the sister corporation before the test date of July 20, 1992.

Mr. President, it is clear that the result should be the same in both cases. To treat the two cases differently would elevate form over substance and reward asset shifting within an affiliated corporate group. When HHS implements this legislation and begins the task of determining which former signatories to coal wage agreements are in business, we expect the agency to take the commonsense approach of determining how the assets of such companies are deployed in an affiliated group of companies. If some of the assets of the signatory company are used in the group in a business activity, then the signatory should be considered to be in business for purposes of section 9701(c)(7) of the legislation.

Mr. ROCKEFELLER. Mr. President, as the original author of this legislation, I agree entirely with the chairman of the Finance Committee. We do not intend for the legislation to be interpreted in a wooden manner. Clearly, where assets of a signatory company are used by an affiliate in a business activity, that signatory company should be considered to be in business.

Mr. BENTSEN. Mr. President, a related question arises with respect to the specific definition of "in business" included in the legislation. Under the bill, a company is considered to be in business if it "conducts or derives revenue from any business activity, whether or not in the coal industry." That definition has alternative tests: A company is considered to be in business if it either conducts a business activity or "derives revenue from" a business activity. As is apparent from the existence of the two tests, the intention of the legislation is to define the term "in business" broadly.

In general, the intention of the legislation is that where a company retains a valid charter, owns valuable properties, and has even a minimal level of activity, the company normally would be considered to be in business. Activity as a lessor of property would constitute a sufficient level of activity to meet that test.

Even in cases where a company is not considered to conduct a business of its own, if the company has leased any of its property in return for the right to receive royalties based on the use of the property in a business operated by the lessee, the company would be considered to "derive revenue from" the business activity conducted by the lessee.

Mr. ROCKEFELLER. Mr. President, again I agree with the chairman of the Finance Committee. The language of the statute is purposely broad. Certainly, a company would be considered to be in business if it continued to own significant properties and has leased some of those properties so that it may derive revenue from the business operation of the leased properties by the lessee.

Mr. FORD. Mr. President, I have worked closely with the Senator from West Virginia in the drafting of the provisions of the bill relating to health benefits for retired coal miners and I have worked closely with the chairman of the Finance Committee as he and his committee considered these provisions. I agree that their interpretations of the bill are correct for purposes of determining when a company shall be considered to be in business notwithstanding transfers by sale or lease of business assets prior to the test date of July 20, 1992.

Mr. AKAKA. Mr. President, I rise in support of the conference report on the energy bill.

The bill before us is a comprehensive package of energy initiatives designed to ensure that commercial and residential energy consumers have access to a reliable supply of energy at reasonable prices. It is a good bill, and it deserves the support of the entire Senate.

My colleagues, this is an historic moment. Not since the days of the OPEC oil embargo has Congress considered legislation as comprehensive as the bill before us today. Enactment of this bill will ease our dependence on foreign supplies of energy and promote an energy future for America that is more secure.

This may be an energy bill, but it is also a good bill for the environment. A major emphasis of this legislation is conservation and increased energy efficiency. Among other things, the bill would establish energy efficiency standards for electric motors, lights and shower heads, establish efficiency standards for commercial heating and cooling equipment, encourage utilities to take steps to reduce demand for energy; improve energy efficiency of buildings, and; require the single largest user of energy—the Federal Government—to set an example for the rest of the Nation by using energy more efficiently.

We would never have succeeded in producing this landmark bill had it not been for the wisdom, leadership, and determination of the chairman of our committee, Senator BENNETT JOHNSTON, and ranking Republican, Senator MALCOLM WALLOP. The process of assembling this bill began nearly 2 years ago, and without the unyielding commitment of our committee leadership, we would never be presenting a conference report on the Senate floor today.

There were times when many doubted we would complete an energy bill during the 102d Congress. Despite a fast start and early markup by our committee, there were fears that our inability to reach agreement on issues such as CAFE standards might sink the bill. I also remember the disappointment many of us felt last November when the bill appeared dead after the Senate failed by a wide margin to invoke cloture and cut off a filibuster.

There were the long, hot days this past summer when we waited for the House to pass its bill. We waited for the tax component of the bill to be assembled, then we waited and waited for House conferees to be appointed. But our bill could never be derailed, thanks to the leadership of our able chairman and ranking Republican.

Gentlemen, I salute you.

I also want to pay tribute to the fine staff of the Energy and Natural Resources Committee. Mr. President, we have a staff on our energy committee that knows no equal. They were the glue that held this 1,300 page bill together, and I know I speak for the entire committee when I say how grateful I am for their dedication and fine work.

I note with regret that the bill does not contain a number of provisions I had proposed that are important to Hawaii. Hawaii faces some severe energy problems. We are one of the most import dependent States in the Nation. I had hoped that the conference agreement would address this problem with a solution I had crafted to provide emergency SPR access for Hawaii. The bill does not solve Hawaii's problem, but we will address that issue another day. I look forward to working with the committee to resolve this issue during the 103d Congress.

In closing, this is a good energy bill and deserves the support of the full Senate.

UNITED MINE WORKERS OF AMERICA (UMWA) HEALTH BENEFIT TAX RELIEF

Mr. WARNER. Mr. President, I rise today to address H.R. 776, the National Energy Strategy Act. Implementation of the comprehensive energy policy embodied in this legislation is significant to our efforts in reversing this Nation's growing dependence on imported oil.

It is for this reason that I support many of the legislation's worthwhile provisions including: Reform of the Public Utility Holding Company Act [PUHCA]; initiatives to improve the efficiency of homes, offices and utilities; provisions to foster the development and production of renewable sources of energy; and provisions which promote the use of alternative fuels.

However, as with the passage of the original Senate version on August 12, I continue to have the gravest concerns regarding the need to strengthen the financing provisions of the new United Mine Workers of America [UMWA] retiree health benefit plan.

With the passage of H.R. 776, the community of 120,000 UMWA retirees and their families truly have reason to rejoice. I am proud that Virginia is home to 10,000 members of this community, and I wish to assure them that the security of their hard-earned health benefits has been my first priority.

In an unprecedented effort, the Congress and the White House have joined together to craft and include mandatory financing provisions to restore the solvency of the ailing union retiree health plan. The present supporters of the health plan, the Bituminous Coal Operators Association [BCOA], are greatly burdened with its costs and, in fact, have been contributing on a deficit basis for sometime.

The BCOA and the UMWA signed a collective bargaining agreement nearly 4 years ago which spelled out their retiree health insurance obligations. Due to a combination of reasons, it has proven to be woefully inadequate. Recognizing the shortfall in funding, and faced with their inability to honor their obligations to the retired union membership, the BCOA and the UMWA have turned to the Federal Government.

As early as 1989, Federal relief legislation was initiated in the Senate suggesting an industrywide coal production excise tax. Up to and until this summer, different versions of the tax were still proposed, but on an unequal and inequitable basis. Eastern and Western States were taxed at different rates and, indeed, some States were exempted altogether.

The Federal election summer of 1992 arrived with turmoil in the coalfields. Only a Federal court order stood between the retirees and a cut off of their health insurance. Anxious to avoid labor unrest, the White House sent its domestic policy team up to Capitol Hill to craft a new and improved funding scheme for the retired union miners.

A period of arduous negotiations commenced. A comprehensive plan emerged, mandating contributions by not only present but former BCOA members as well. In general, dating back to 1950, the former employer of the longest duration will be assigned the health costs of the retiree. For the many thousand retirees whose former employers have ceased to exist, these orphans will be assigned to present and former BCOA members on a prorated basis.

The costs of the mandatory premiums alone will approach $100 million per year. This refers only to that portion of the plan to be paid for by present and former employers. Another third will be transferred from the

UMWA pension fund, and yet another third eventually come from interest earned by the industry supported Federal abandoned mine lands [AML] fund.

A great deal of time and effort has been expended thus far on behalf of the retired union membership. It is their welfare which has been the deciding factor. The Congress and the White House have truly joined hands in assuring that the promised benefits will be continued. We have reached a point, however, in which I believe the promise falls short.

The companies which must comply with the mandate have not been provided with an appropriate, corresponding measure of tax relief. Many of the companies are marginally profitable at best, and the costs of the mandate will throw them into bankruptcy.

Imagine an American coal company, struggling to contain the growth of its health and labor costs. Imagine that this company is in the highly competitive coal export business where it is impossible to pass on extraordinary business costs. Then imagine that this company has a contract with the United Mine Workers of America and employs 2,000 miners—the largest individual coal operation in my State.

Mr. President, I have described the Pittston Coal Co. of Lebanon, VA; an operation whose health costs could increase tenfold under this bill. There is no question that the livelihood of 2,000 UMWA members and their families is at stake. It is ironic, is it not, that 2,000 union mining jobs may be sacrificed for the benefit of union retirees.

If this company and all the companies which will be newly burdened are not provided with offsetting tax credits, the retiree health funding problem will only be exacerbated. What possible benefit could there be for UMWA retirees in the demise of many of the companies which have been mandated to pay for their benefits. In the end, the premiums will be thrown back on those presently paying them, albeit with the aforementioned Federal support.

Mr. President, I implore my colleagues on the Finance Committee to fully complete this funding package. A number of States and valued corporate constituents will otherwise suffer as a result. The message is clear—Federal mandates which go beyond any real market basis must be accompanied with Federal relief.

I am encouraged that in the conference on H.R. 776, House Ways and Means Chairman DAN ROSTENKOWSKI stated his intention to review the Senate provisions at the earliest opportunity next year. Similar sentiments were expressed as well by Congressman JAKE PICKLE. It seems clear that there must be a package of perfecting amendments if the UMWA retirees are to have a workable funding scheme.

I have been advised that one area which must be examined, if only to avoid future litigation, is the question of constitutionality.

Mr. President, in order to lend to the process, I ask unanimous consent that an analysis on the constitutionality of the provisions be inserted in the RECORD at this point. This constructive study was provided by the Hon. Charles J. Cooper, former Assistant Attorney General of the United States for the Office of General Counsel, and now a partner in the firm of Shaw, Pittman, Potts & Trowbridge.

SHAW, PITTMAN, POTTS & TROWBRIDGE,
Washington, DC, September 25, 1992.

Pursuant to your request, we have done a preliminary review of potential constitutional challenges to the Coal Industry Retiree Health Care Act of 1992. As we understand it, the bill essentially requires any current or past signatories to the National Bituminous Coal Wage Agreement, and any related entities, to provide lifetime health benefits to UMWA retirees. Most notably, these signatory companies must finance the health care costs for all beneficiaries assigned to them, even though a substantial percentage of these beneficiaries were never employed by the responsible company.

Our preliminary analysis indicates that the portion of the proposed legislation mandating the provision of health benefits to persons not previously employed by the responsible coal company would be quite vulnerable to a challenge under the Taking and Due Process Clauses of the Fifth Amendment. While our brief review has not uncovered any Supreme Court decision directly on point, we believe that the proposed legislation is inconsistent with the basic purposes of the Taking Clause, as articulated by the current majority of the Court. Support for this view can be found in cases striking down analogous government confiscation schemes, as well as in the reasoning of cases upholding other government-mandated income redistribution programs.

The Supreme Court has repeatedly emphasized that the basic purpose of the Taking Clause is "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong* v. *United States*, 364 U.S. 40 (1960). See also *First English Evangelical Luthern Church of Glendale* v. *Los Angeles County*, 107 S.Ct. 2370 (1987); *Penn Central Transportation Company* v. *New York City*, 438 U.S. 104, 123 (1978). Unlike other legislation which has been found to satisfy the Fifth Amendment, the proposed bill does not "regulate" any industry by establishing price ceilings or imposing requirements concerning workers' health, safety or minimum compensation. Rather, it simply transfers private property from a few selected coal companies (and their related entities) to individuals who were never employed by the companies. Since the coal companies are not in any way responsible for any non-employees' health problems and did not benefit from their labors, there is simply no reason for those companies to now assume financial responsibility for those individuals in their retirement. If Congress believes the public welfare demands that these individuals receive health benefits, the burden of providing those benefits should be distributed equally among the public through a uniform tax scheme, not by imposing a specific financial burden on a few. This is the basic command of the Fifth Amendment.

The Supreme Court in the past has invalidated markedly less radical income redistribution schemes under the Due Process and Taking Clauses. Most notably, in *Railroad Retirement Board* v. *Alton R. Co.*, 395 U.S. 330 (1935), the Court struck down as violative of the Due Process Clause a congressional statute that "arbitrarily" required employer-financed pensions for former employees who were not in the employ of the railroads at the time of enactment, but had been so employed within the year. Under this precedent, the proposed legislation would seem to be invalid in its entirety, even as it applies to past or current employees of the responsible coal companies. However, although Alton has never been overruled, it is shaky precedent that is generally viewed as a holdover from the Lochner substantive due process era and has been strictly limited to its particular facts by more recent cases, such as *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, (1976), and *Connolly* v. *Pension Benefit Guaranty Corp.*, 475 U.S. 211 (1986). In those cases, the Court upheld, against Taking and Due Process challenges, the retroactive imposition of pension and retirement benefits on, respectively, operators of coal mines and companies that had voluntarily opted into a government-guaranteed, multi-employer pension plan. These cases, then, would seem to foreclose an argument that forced payment of retirement benefits to prior employees of the coal companies is unconstitutional. Nothing in these cases, however, would prevent a Taking and/or Due Process challenge to a statute requiring coal companies to assume financial obligations for beneficiaries that were and are complete strangers to these companies.

The Supreme Court in both Connolly and Turner Elkhorn reasoned that the Fifth Amendment does not preclude "legislation readjusting rights and burdens" unless it is wholly "arbitrary and irrational." Connolly, 475 U.S. at 223; Turner Elkhorn, 428 U.S. at 18–20. This finding of a permissible constitutional purpose, however, was premised on the view that requiring these companies to pay health benefits was reasonable because "the purpose of the Act is to satisfy a specific need created by the dangerous conditions under which the former employee labored—to allocate to the mine operator an actual, measurable cost of his business." Turner Elkhorn, 428 U.S. at 19. See also Connolly 475 U.S. at 226–228.

This does not suggest any legitimate basis for requiring a company to pay benefits to an individual whose work it has never benefitted from and on whom it has never imposed a burden. This point is made explicit in Justice O'Connor's concurrence in Connolly: "[I]mposition of this type of retroactive liability on employers, to be constitutional, must rest on some basis in the employer's conduct that would make it rational to treat the employees' expectations of benefits under the plan as the employer's responsibility." 475 U.S. at 229. See id. (legislation is irrational" in the absence of any connection between the employer's conduct and some detriment to the employee").

The Court's Taking Clause cases in analogous circumstances have established this principle more firmly. For example, in Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980), a unanimous Supreme Court struck down as violative of the Taking Clause a Florida statute providing that counties could claim as their property the interest generated on funds deposited in the state courts through interpleader. The Court struck down the appropriation of this interest because "it is not reasonably related to the cost of using the courts." Id.

at 163. See also *United States* v. *Sperry Corp.*, 493 U.S. 52 (1989); *Hodel* v. *Irving*, 481 U.S. 704 (1987); *FCC* v. *Florida Power Corp.*, 480 U.S. 245 (1987). Thus, the petitioner in Webb's Fabulous Pharmacies could not be deprived of his interest because he had no specific responsibility or obligation to the court system different from the average citizen. By the same token, it would appear that the government cannot mandate a transfer of monies from the coal companies to beneficiaries they have never employed because the companies bear no responsibility for these employees that is in any way distinguishable from that of another taxpayer.[1] Accordingly, all such taxpayers must bear the cost of any public welfare benefits provided to those employees.

This point was made even more explicitly in an opinion by Justice Scalia, in a case involving rent control for "hardship" tenants:

> The fact that Government acts through the landlord-tenant relationship does not magically transform general pubic welfare, which must be supported by all the public, in to mere "economic regulation," which can disproportionately burden particular individuals. Here the City is not "regulating" rents in the relevant sense of preventing rents that are excessive; rather, it is using the occasion of rent regulation . . . to establish a welfare program privately funded by those landlords who happen to have "hardship" tenants.

Pennell v. *City of San Jose*, 108 S. Ct. 849, 863 (1988) (Scalia, J., concurring and dissenting). The majority of the Court did not reach this issue because it viewed the taking question as "premature."

Notably, a recent decision of the D.C. Circuit upheld a similar wealth transfer statute by Congress, but expressly did so only because the same congressional enactment provided "just compensation" for the company's burden. See *Colorado Springs Production Credit Association*, v. *Farm Credit Administration*, 967 F.2d 648 (D.C. Cir. 1992). No such compensation provision is contained in the proposed bill.

In short, the absence of any employment nexus between the beneficiaries of the proposed health benefit program and the limited class of companies forced to bear this public burden establishes a firm basis for challenging the proposed legislation under the Fifth Amendment—regardless of whether the statute is analyzed as a "per se" or regulatory taking, or as arbitrary and irrational retroactive legislation. That there is no Supreme Court decision directly on point is primarily due to the fact that Congress has previously not gone this far. As noted, any challenge to mandated compensation for prior employees of the coal companies would be substantially weaker.[2]

If you have any questions or comments about the foregoing, please give me a call.

Sincerely,

CHARLES J. COOPER.

Mr. President, let us look once more at the players in this debate. The retired community of the United Mine Workers of America have no interest in depriving their younger working membership of their jobs. Nor do working miners wish, in any way, to diminish the benefits of hard-fought, hard-earned retirement from the coal mines. Let us remember them, first and foremost, and we should come readily to our goals.

HYDRO-FEDERAL POWER SECTION

Mr. BUMPERS. Mr. President, I would like to ask the distinguished chairman of the Energy Committee for a clarification of the language from title XVII of H.R. 776, the Hydro-Federal Power Act section. Am I correct in interpreting the provision regarding fishways to say that even if FERC and the Departments of Commerce and Interior do not agree on a fishways definition, that FERC will still be able to issue hydrolicenses by order?

Mr. JOHNSTON. Yes, that is my understanding.

Mr. BUMPERS. Once again even if FERC and the National Marine Fisheries Service and the Fish and Wildlife Service cannot agree on a definition of fishways through the rulemaking process, can hydro projects in Arkansas and elsewhere across the country which are up for licensing be assured that the licensing process will continue and not be brought to a dead stop if this language is agreed to?

Mr. JOHNSTON. Yes, that is my understanding.

Mr. HATFIELD. Mr. President, I want to take an even stronger position than my colleague from Arkansas that it must be clearly understood that the language regarding fishways is intended to allow FERC to continue without limitation its role in issuing licenses with conditions. The Senate never dealt with this issue in its bill. The Pacific Northwest has spent more money on fish protection than almost anywhere in the country, and is expected to spend in excess of $1.5 billion over the next 10 years for the preservation of fish. We also have more litigation than anywhere in the country on fish and wildlife issues. The conference report makes perfectly clear that FERC can continue to issue hydrolicense orders and delineate the proper scope of fishway prescriptions included in those orders.

Also, we need to clarify that when we say "physical structures" in this language we mean those structures—ladders, screens and so on—that are principally designed for the up and downstream passage of fish and that help fish around the project works of a hydropower project. Is it the chairman's understanding that the language must not be interpreted to go beyond that into generally regulating flows or assuming control over the operation project works?

Mr. JOHNSTON. Yes, that is my understanding.

Mr. BUMPERS. I agree with the views of my colleague from Oregon. Furthermore, fishways are only those structures for the passage of fish which need such passage to maintain their life stages.

Mr. WALLOP. Mr. President, I concur with the remarks emphasizing that this language allows FERC to proceed on a case-by-case basis, and is limited to physical structures principally designed for passage, and not flows.

Mr. HATFIELD. I agree.

Mr. COCHRAN. Mr. President, at the beginning of the 102d Congress, almost 2 years ago, President Bush submitted to Congress his proposals for a comprehensive energy policy. Since that time, the Senate has twice passed energy policy bills, both of which survived filibusters, the conference between the House and the Senate was deadlocked on several occasions, and the energy bill was declared dead on more than one occasion over the past 2 weeks. Yet, today we are considering a conference report that deals with the many controversial issues of energy policy in what I believe to be a well-balanced manner.

The resilience of this bill can be attributed to the dedication of the distinguished chairman and ranking member of the Senate Energy Committee, the Senator from Louisiana [Mr. JOHNSTON] and the distinguished Senator from Wyoming [Mr. WALLOP], and to the tireless efforts of the Secretary of Energy, James Watkins, and Deputy Secretary of Energy, Linda Stuntz. I applaud the diligence and perseverance of those involved to bring the bill to life once again.

This conference report represents a clear and workable strategy for reducing the U.S. dependence on foreign sources of energy.

The bill sets in place a long-term approach to conserving energy by encouraging the use of more energy-efficient technologies and products that will reduce the amount of energy consumed in our country. Research and development of these technologies is encouraged by incentives in the bill.

There are also provisions which encourage the development and use of alternative fuels, such as clean-burning natural gas and non-fossil fuels, both in energy production and in vehicles.

These changes are necessary not only to reduce our need for imported oil but also to make more efficient use of our resources.

Until we reach the point where these alternative technologies, products, and fuel sources are widely available, we must encourage the domestic production of oil and gas. This important element of our economy will be promoted through a provision in the bill to change the alternative minimum tax treatment of expenses associated with production by independent oil and gas producers.

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[1] The fact that the monies here will be transferred from the companies into a private fund, rather than going directly to Treasury or some other government entity for redistribution, should be of no constitutional significance. See *Hawaii Housing Authority* v. *Midkiff*, 467 U.S. 229, 243 (1984) (Taking Clause analysis does not change because property "is transferred in the first instance to private beneficiaries.").

[2] Additional constitutional concerns may be raised by the provisions of the proposed bill that require a "related entity" to pay the benefits and that directly interfere with a prior collective bargaining agreement. In light of the time constraints under which this review has been performed, we have not examined these secondary issues.

Perhaps the most dramatic changes in this bill are in the area of Federal regulation of electricity production. Newer, safer designs for nuclear powerplants are currently being developed to provide for electricity production that is safe, economical and nonpolluting. But unless the process for granting permits to operate those plants is made more efficient and more predictable, no nuclear plant will be built in the future. The bill before us provides for such a process, whereby a license for construction and operation of a nuclear plant will be granted simultaneously, after extensive opportunities for public comment and participation.

Even more dramatic changes are made through amendments to the Public Utility Holding Company Act [PUHCA]. Under the conference agreement, consumers will benefit from the competition in the electric utility industry that will result from the deregulation of powerplant construction and power distribution. The conferees are to be commended for resolving some very contentious issues in PUHCA reform—especially with regard to wheeling—in a fair and equitable manner.

Mr. President, this bill is one of the most important pieces of legislation to be considered in this Congress. It was crafted in a bipartisan manner and provides much-needed direction for meeting the future energy needs of our Nation. I urge the Senate to approve this conference report.

Mr. NICKLES. Mr. President, I rise today to urge my colleagues to support passage of the National Energy Policy Act of 1992. When this bill is passed it will be the first comprehensive energy legislation enacted in over a decade. Although the provisions of this bill do not go as far as I would like, especially in the area of encouraging domestic production of oil and gas, it does contain many provisions that will help decrease our dependence on foreign energy sources and encourages increased use of clean-burning natural gas.

Just last week the Senate and House conferees completed action on the nontax provisions of the comprehensive energy bill. This bill will benefit producers in that it will stimulate new markets for natural gas through its alternative fuel provisions, its encouragement of competition in power production and increased research and development programs. However, these provisions in and of themselves are not enough. It is critical that AMT relief be provided now to independent producers before we no longer have any domestic producers left.

Over the weekend, the Senate and House conferees completed action on the revenue provisions of this bill. In these provisions we were successful in preserving the Senate passed AMT provision that allows independent producers to take greater deductions against AMT for percentage depletion and intangible drilling costs. Under the bill, percentage depletion is fully deductible against AMT income. IDC's may be fully deducted against AMT income to the extent that the increased IDC deductions do not reduce AMT income by more than 40 percent, 30 percent in 1993. This AMT relief for independents would be permanent.

Our domestic oil and gas industry is bleeding to death, increasing our Nation's continued dependence on foreign oil. Mr. President, we are trying to enact a national energy bill that is intended to help reverse this trend of increasing dependence. AMT relief is one of the most necessary provisions in this bill that will have direct impacts on increasing domestic exploration and help decrease the need for foreign imports.

Independents drill 85 percent of the oil and gas wells in the United States. Over two-thirds of these independents are small, often family run, businesses with less than 20 employees. The AMT in its current form has an especially punitive impact on these small producers, denying them the deduction of their most fundamental ordinary and necessary business expenses. Because the amount of IDC allowed under the AMT is tied to the producer's net income from oil and gas, the lower the amount of production, the lower the deduction for drilling costs. In addition, the percentage depletion deduction, which allows smaller producers to replace increasingly costly reserves and prevents the premature abandonment of many properties, is disallowed under the AMT.

If the AMT provisions in the energy bill are passed, drilling would increase between 17 and 24 percent and should result in almost 7,000 new wells drilled each year. This should increase the rig count by at least 200. On average, each rig operating full time directly creates 150 to 200 new jobs. Therefore, between 30,000 and 45,000 additional jobs could be created in the United States in the first year alone as a direct result of eliminating the nondeductibility of drilling costs and percentage depletion under the AMT.

A rig count of 720 indicates that the industry has entered a period of accelerated decline. The Nation's domestic oil production is falling at annual rate of 300,000 barrels a day, and foreign imports are rapidly approaching 50 percent of our domestic needs. We have lost nearly 400,000 jobs, almost half of the oilfield worker jobs since the peak in 1982 when the rig count was 3,105.

Independent producers have been devastated by a combination of low oil and gas prices and high taxes. Every rig that shuts down means jobs that are lost and increased dependency upon foreign oil for our energy needs. I strongly believe that tax relief is needed to save the domestic industry from collapse.

I am convinced that the alternative minimum tax relief is the single most important agenda item for the oil and gas industry. It does little good to talk about extending incentives unless we remove alternative minimum tax impediments.

When a recession coincides with sustained low oil and gas prices, the alternative minimum tax works like a severe penalty that gets progressively worse the longer the taxpayer falls under it. The longer prices are low and profits thin, the harsher is the alternative minimum tax's impact.

Under current law, when percentage depletion and intangible drilling costs are added back to income in calculating alternative minimum tax liability, it can result in a 70 to 80 percent effective tax rate for some producers. The result is indisputedly punitive, if not confiscatory.

Including intangible drilling costs and percentage depletion as preference items in 1986 was a mistake. It has been referred to by some Americans trying to increase oil production here in the United States as a drilling penalty tax for independents. We need to eliminate IDC's entirely from the alternative minimum tax.

IDC's are the only out-of-pocket business expense in any industry or profession that are treated as a preference item in the alternative minimum tax. Inclusion of IDC's was unfair, and another example of treating the domestic industry as a cash cow to be milked every time revenue is needed.

Taking IDC's and percentage depletion out of the alternative minimum tax is appropriate not simply because they are a unique penalty on oil and gas producers, but because in practice these provisions have been both anticompetitive and regressive, and have had the effect of significantly reducing drilling activity in the United States.

It is imperative that AMT relief be enacted this year. The independent oil and gas producers are being unfairly penalized by the 1986 tax amendments. If the AMT tax provisions contained in the energy bill are not adopted the results will be a continued decapitalization of a strategic sector of our industrial economic base, a continued loss of jobs and a continued risk to our Nation's ability to respond to requirements for domestic oil and gas production. The AMT tax provisions must be enacted now if this industry is to survive and the national security of this Nation be preserved from further reliance on foreign energy sources.

PERFORMANCE CONTRACTING FOR FEDERAL ENERGY MANAGEMENT

Mr. WIRTH. Mr. President, one of the most promising initiatives in this energy legislation are provisions that would encourage greater energy efficiency in Federal buildings. The Federal Government is the Nation's single largest energy consumer and should be leading the effort to use energy more efficiently. Federal energy efficiency is good economic policy and good environmental policy.

Unhappily, the Federal Government has been slow to take advantage of creative financial arrangements that promote energy efficiency without requiring enormous investment outlays. This is most unfortunate for two reasons. First, as we are all too aware, current budgetary constraints make it difficult if not impossible to make many cost-effective, long-term investments in efficiency. Second, the Federal Government is failing to utilize performance contracts widely taken advantage of by the private sector.

In order to harness the opportunity to promote energy efficiency at little or no upfront cost to the Government, this legislation includes provisions that will ease the bureaucratic roadblocks to performance contracting. In this way, performance contracting can be utilized to stop the annual wasting of 1 billion dollars' worth of energy in Federal buildings.

The performance contracting industry is capable of assessing Federal buildings and identifying energy efficiency opportunities. More importantly, this industry is capable of financing and maintaining new equipment and guaranteeing that energy savings will exceed the payments necessary to compensate the contractor. What this legislation clearly suggests is that the Federal Government should take maximum advantage of the opportunities presented by performance contracts.

Current procurement laws and regulations—no doubt useful, necessary and applicable in many cases—are ill-designed to allow the Federal Government to take advantage of performance contracting. The regulations are painfully complex and not applicable to performance contracting in many respects:

Most performance contracts provide for paybacks to the contractor over multiple years, conflicting with our annual budgetary procedures and requirements for advance appropriations;

Traditional cost, pricing and cost accounting standards are inappropriate for these contracts;

Considerations must be given to specifying the appropriate costs that should be paid by the Government in the event of contract termination for the convenience of the Government—these costs would include those related to designing, financing, installing and engineering energy efficiency improvements, as well as penalties by utilities.

In an attempt to address these concerns, the energy legislation includes a number of provisions to enhance the Federal Government's ability to make use of performance contracts. Specifically, the bill: Authorizes multi-year contract authority without advance appropriation. Directs the Secretary of Energy, working with the FAR Council, to issue regulations that will facilitate performance contracting with the Federal Government.

The bill is a clear direction to the Secretary to issue regulations that will address the impediments to performance contracting I previously discussed, as well as any others identified by the Secretary.

Any regulations developed by DOE should be formulated to apply to all contracts—as opposed to rules that would require a case-by-case application—which is a prescription for bureaucratic inertia. These regulations should relieve contracting officers of any hesitancy to enter into performance contracts.

Finally, we recognize in this legislation that new procedures will be required to get this job done. Therefore, the legislation directs the General Accounting Office to monitor these efforts and report to Congress on problems and progress. And in order to ensure a thorough evaluation of the success of these new initiatives, the bill sunsets these provisions after 5 years.

Unfortunately, Mr. President, we were unable to gain agreement in conference on remedying some of the obstacles that prevent performance contractors from doing business with the Federal Government. Instead, we have left that task to the implementing agencies. We expect that they will address all of the impediments to performance contracting and ensure that the Federal Government can take advantage of these creative financing mechanisms for energy efficiency.

DAMS IN THE PARKS

Mr. WALLOP. The conferees agreed to a version of a provision in the House-passed bill which would have prohibited any dams or improvements within any unit of the National Park System. The conference agreement would prohibit FERC from issuing an original license for a hydroelectric dam located within the exterior boundaries of a unit of the National Park System and which would have a direct adverse impact on federally owned lands within the exterior boundaries of such unit.

That section will not apply to existing unlicensed or licensed projects, or future additions or modifications to such projects, nor projects for which applications are pending upon the date of enactment of this act.

The provisions also do not apply to subsequent applications for an original license which are located entirely on non Federal land and do not repeal any provision of law which would exempt or authorize such projects within existing units, such as the authority for High Ross Dam in North Cascades.

Unfortunately, passage of these provisions will extend what is already law in national parks and monuments to all other areas of the system. Lake Mead and Glen Canyon National Recreation Areas would not be units of the system were it not for the dams which created the reservoir. Using a shotgun approach to problem solving, the House placed these provisions in the bill because nationwide there are only two cases which seem to pose a problem; both of which only became an issue of concern after the Federal Government made minor boundary adjustments which incorporated existing projects within the new boundaries without making any provision for the projects.

The House action only complicates our lives and forces us to complete a lengthy exhaustive analysis of the hydro potential in any new legislative proposal for a new park area. The foolishness of this provision can be seen if you look at only a few units of the National Park System. Lowell National Historical Park has 21 projects operating under a FERC license and was specifically made a unit of the system due to the importance of hydropower in industrial development.

SITE SELECTION FOR A MONITORED RETRIEVABLE STORAGE FACILITY

Mr. BINGAMAN. Mr. President, I have been very concerned that the nuclear waste negotiator be held accountable for demonstrating the value of all expenditures in connection with the site selection process for a monitored retrievable storage facility for spent commercial nuclear waste. In the Nuclear Waste Policy Act of 1982, Congress directed the Department of Energy to take possession of high level nuclear waste, to be emplaced in a temporary storage facility for about 40 years, and in a permanent facility thereafter.

The selection process for an MRS consists of a series of steps of research and analysis, each with a greater price tag than the previous one. Phase II-B of the grant process allows up to $3 million to be provided for a variety of activities, including continued feasibility studies and formal discussions and negotiations with the Office of the Nuclear Waste Negotiator.

Three million dollars seems like a lot of money when the prospect of achieving the final goal, siting of monitored retrievable storage facility, may be quite uncertain. I believe that it was Congress' intent that a unit of Government should enter into phase II-B with the negotiator only if there is a reasonable likelihood that a given site will be chosen.

Mr. JOHNSTON. I agree. It is Congress' intent that efforts to evaluate a given site for a temporary storage facility take into account the likelihood of achieving that ultimate goal.

Mr. SIMPSON. Mr. President, would the distinguished Senator from Louisiana yield for purposes of a colloquy?

Mr. JOHNSTON. I would be happy to yield to my friend from Wyoming.

Mr. SIMPSON. I thank the Senator.

As the Senator knows, the President initialled an agreement on highly enriched uranium with the Russian Federation on August 31. While the details have yet to be worked out, the agreement calls for the United States to purchase 500 metric tons of highly enriched uranium recovered by dismantling Soviet warheads. This material would then be converted into low-enriched uranium for use in civilian nuclear powerplants.

This is an extraordinary development. The agreement will help beat nuclear "swords into plowshares." From an environmental view point, I can think of no greater benefit than ridding the world of the highly enriched uranium from 20,000 nuclear weapons.

I am interested to hear from the Senator from Louisiana how the uranium provisions in the conference report would affect this proposed agreement.

Mr. JOHNSTON. I am familiar with the agreement and share the Senator from Wyoming's views on its importance. The uranium provisions of the conference report are consistent with the agreement.

The conference report completely overhauls the uranium enrichment program in this country. As the Senator knows, the Department of Energy has for years operated a $1.5 billion uranium enrichment business. If the enrichment program were a private corporation it would rank about 240th on the Fortune 500. DOE operates two aging enrichment plants that were built for military purposes in the early days of the cold war. These plants now supply most of the enriched uranium used to generate about 20 percent of the Nation's electricity. They also supply nuclear powerplants around the world and generate about half a billion dollars of foreign payments each year.

But times have changed and DOE has not been able to keep up. Accordingly, the conference report sets up a new Government corporation to run the enrichment program like a business. It sets up a fund to pay the cost us of cleaning up and ultimately retiring the old plants. It provides a mechanism for developing a new, promising, and more efficient, enrichment technology.

The new Government corporation will be responsible for implementing the United States' side of the agreement with Russia. The conference report expressly directs the corporation to purchase the Russian highly enriched uranium and to assume the obligations of DOE under the agreement.

Mr. SIMPSON. How will the corporation pay for the Russian material? In his announcement, the President said that the costs of the transaction would be budget neutral. Is that still the case?

Mr. JOHNSTON. Yes. It is less expensive to blend down highly enriched bomb-grade uranium to low-enriched reactor fuel than to enrich natural uranium to the point that it can be used for reactor fuel. Enriching natural uranium in DOE's existing plants requires enormous amounts of electricity. Using the Russian material will reduce the amount of electricity the corporation uses, thus saving money. The corporation will be able to buy the Russian material with the money saved. As a result, the transaction will be budget neutral. It is our intent that the corporation would recover all of its costs under the Russian agreement on a year-to-year basis.

Mr. SIMPSON. It is my understanding that the actual arrangements for blending down the Russian material have not yet been worked out. The conversion from the highly enriched to low-enriched form may take place in existing, NRC-licensed, privately owned facilities in this country. If so, I am advised that it would be flown into this country aboard military aircraft and that the Defense Department already has authority to do so if requested by the President.

DOE would then be responsible for ground transportation to the conversion facility. Existing NRC licenses may have to be amended in minor respects to possess and process the highly enriched material here, but no additional legislation will be required. Is that the Senator from Louisiana's understanding?

Mr. JOHNSTON. The Senator is correct. I share the Senator's judgment that additional authorizing legislation, beyond the pending conference report, is not necessary.

Mr. SIMPSON. Will the private sector continue to have a role in this program? Private firms have taken a lead role in encouraging this program and they should continue to play a part as the program unfolds.

Mr. JOHNSTON. I fully agree with the Senator. The conference report addresses this. It provides that if the Russian material is to be converted in this country, the corporation is to develop a least-cost approach for doing so consistent with environmental, safety, security, and nuclear nonproliferation requirements. The corporation may select private-sector firms to perform these services through a competitive bidding process.

Mr. SIMPSON. How will the Russian agreement affect the domestic uranium industry and jobs in uranium mining and enrichment in this country?

Mr. JOHNSTON. The Senator from Wyoming raises a very serious concern. Once again, though, we have addressed it in the conference report. The new corporation is expressly directed to manage the release of the Russian material into the market in a manner that minimizes its impact on the domestic uranium industry.

The Russian material will not be released into the market all at once. Dismantling the warheads will take years. The uranium they yield will be converted and marketed over time in a controlled and economically responsible fashion. Utilities will continue to deliver natural feed uranium, which, through overfeeding, will help to reduce electricity costs at the enrichment plants.

I have been assured that the amount of Russian material covered by the proposed agreement and the rate at which it would become available will not result in any loss of jobs at the Paducah, KY, and Portsmouth, OH, enrichment plants. Moreover, additional amounts of natural uranium will be required to blend down the Russian material from bomb grade to reactor grade. So there will still be demand for natural uranium from domestic mines.

Mr. SIMPSON. As the Senator from Louisiana knows, the domestic uranium industry is on the ropes. During the 1980's, hundreds of mines were closed and thousands of jobs were lost.

Last year, the domestic producers filed an antidumping suit against the Soviet Union regarding below-market-price uranium and enriched uranium imports. In December, the International Trade Commission found that the United States uranium industry was being harmed by the Soviet imports and, in May, the United States Commerce Department found that six Republics of the former Soviet Union were selling uranium at below market cost. Last month, the Commerce Department announced a proposed settlement of the antidumping action that would impose quotas on these imports of low enriched and natural uranium, which are relaxed and lifted based on an increase in market price.

Does the conference report have any affect on the proposed settlement agreements with the Republics?

Mr. JOHNSTON. No, the conference report does not affect the antidumping case or the proposed settlements.

This is a very difficult issue. The domestic uranium enrichment industry has been harmed and it is entitled, under our law, to relief. But this is a critical moment in our relations with Russia. As we forge new commercial ties, we must find ways to encourage commerce in one of the few commodities they can sell for hard currency.

The conference report does not solve this dilemma. It is my hope, though, that an appropriate solution can be found to balance, in a fair and responsible manner, the interests of both the domestic industry and the Republics. The new Government corporation may provide an appropriate means for doing so.

Ultimately, though, I think we need a Government-to-Government agreement with the Russians that covers not just uranium derived from dismantled warheads but also low-enriched uranium produced from Russia's enrichment plants. I have urged both the administration and the Russians themselves to negotiate such an agreement. I think that, in the long run, an arrangement that balances the interests of United States uranium miners, the enrichment corporation, and the Russians offers a better solution than resorting to antidumping actions.

Mr. SIMPSON. I thank the distinguished chairman of the Committee on Energy and Natural Resources and commend him for his attention to these important matters.

WHOLESALE TRANSMISSION SERVICES

Mr. RIEGLE. I would like to ask the chairman of the Energy Committee a question regarding the conference report's language on rates, charges, terms and conditions for wholesale transmission services. Does the clause "including, but not limited to, an appropriate share, if any," modify the clause "the costs of any enlargement of transmission facilities" as well as the clause "legitimate, verifiable and economic costs"?

Mr. JOHNSTON. Yes it does.

Mr. RIEGLE. I thank the Senator.

FERC STUDY OF HYDROPOWER LICENSING IN HAWAII

Mr. AKAKA. Mr. President, I would like to engage the chairman of the Energy Committee in a colloquy concerning a provision of the bill which directs the FERC to perform a study on the merits of removing the jurisdiction of the Federal Energy Regulatory Commission [FERC] to license hydropower projects on the fresh waters of the State of Hawaii. The bill provides that the study shall be conducted in conjunction with the State of Hawaii.

As the chairman knows, there are considerable differences between the State of Hawaii and FERC on this issue, and it is quite possible that these differences will remain unresolved at the time that the final report is issued.

Should this turn out to be the case, it seems only reasonable that the State of Hawaii should be permitted to have its contrary views represented in the final report.

I would like to ask the chairman of the Energy Committee if the conferees intend that the views of the State of Hawaii be fully and fairly reflected in the FERC report.

Mr. JOHNSTON. Yes, I agree with my colleague from Hawaii. The conferees specifically addressed this issue when the phrase "in coordination with the State of Hawaii" was included in this provision. We adopted this phrase so that the views of the State of Hawaii would be fully and fairly reflected in the final report. If FERC and the State of Hawaii do not agree on some or all of the conclusions of the final report, then the additional or dissenting views of the State of Hawaii should be printed as part of the FERC report.

Mr. AKAKA. I thank the chairman of the Energy Committee for that clarification.

PUBLIC UTILITY COMPANY ACT AMENDMENTS

Mr. METZENBAUM. Mr. President, I would like to engage the chairman of the Energy and Natural Resources Committee and the senior Senator from Arkansas in a colloquy about a provision in the energy bill which amends the Public Utility Holding Company Act [PUHCA] to permit utility and utility holding companies to invest in foreign utility companies. As I understand this provision, for all utilities and holding companies, except those associated with the nine multi-State utility holding companies which are registered under PUHCA, every State regulatory commission with retail rate authority over an affected utility must certify to the Securities and Exchange Commission [SEC] that, first, it has the authority to protect ratepayers from the impact of foreign utility investments, and second, it intends to exercise that authority. However, the only regulatory body with authority to directly review foreign utility investments engaged in by registered holding companies is the SEC.

Mr. JOHNSTON. That is correct. The provision requires the SEC to promulgate rules or regulations which provide for the protection of the customers of registered holding company utilities. In addition, when a registered holding company issues securities to acquire a foreign utility company, those State commissions with retail authority over the holding company's utility subsidiaries would be permitted to make a recommendation to the SEC regarding the holding company's relationship to a foreign utility company. The SEC will be required to "reasonably and fully consider such State recommendation."

Mr. BUMPERS. Mr. President, during conference committee consideration of the energy bill, where the foreign investment provision was included, I argued that due to the risky nature of foreign investments and other related concerns about utility holding company diversification, registered holding company consumers needed protection in addition to that provided by the SEC. The Commission's PUHCA office is underfunded, understaffed and, in the recent past, has not played an active role in the protection of consumers.

Mr. METZENBAUM. I share the concerns of the Senator from Arkansas. Like ratepayers in Arkansas, many consumers in my State of Ohio are served by a multi-State registered utility holding company. During the last 5 years, several court cases have raised questions regarding whether the laws governing utilities and utility holding companies provide any forum for the protection of consumers. I fear that the foreign utility amendment will further leave consumers in my State and the other 22 States served by registered holding companies further unprotected.

Mr. BUMPERS. As I noted before, while I am dissatisfied that State regulators of registered holding company subsidiaries were not given the same authority over foreign utility investments that all other State regulators were given, and contested the provision in the conference committee, I do note that the SEC will have to take several steps toward the protection of consumers. I intend to follow the SEC's process of reviewing registered holding company applications to make foreign investments and the issuance of rules and regulations to protect consumers extremely closely. If I see that the SEC is not doing the job that the chairman of the conference committee has assured me that it would do, I will take action to amend the law so that consumers will be adequately protected.

Mr. METZENBAUM. I thank the Senator from Arkansas for his diligence on this issue. I also intend to closely scrutinize the SEC's actions under the foreign investment provisions to ensure that consumers are adequately protected and will join with you in taking all necessary actions to change the law if it is insufficient.

GEOTHERMAL HEAT PUMP PROVISION

Mr. MOYNIHAN. I wonder if I can engage in a colloquy with the manager of the bill, my good friend the senior Senator from Louisiana.

Mr. JOHNSTON. I would be pleased to engage in a colloquy with the senior Senator from New York.

Mr. MOYNIHAN. As the Senator knows, section 303 of the bill authorizes the Secretary of Energy to encourage the installation of geothermal heat pumps which utilize the flow of water from and back into the public water system. I think the Senate should know that States, counties, municipalities, private water authorities, public service commissions and others have raised serious concerns regarding the potential for these devices to have a negative impact on local public health and safety because of the potential contamination, of the public water supply.

Mr. JOHNSTON. I am aware of those concerns and that is why section 303 states that this must be done consistent with public health and safety.

Mr. MOYNIHAN. Since the legislation is silent on specific actions the Secretary is required to take, am I correct that the legislation does not authorize or require the Secretary to undertake any specific action such as a rulemaking, a national program or a proactive effort of any form?

Mr. JOHNSTON. That is correct. The legislation does not authorize any specific action on the part of the Secretary to encourage these devices, other than in the most general way consistent with public health and safety concerns.

Mr. MOYNIHAN. May I also assume correctly that when issues of public health and safety are to be determined that the determination is to be made by the appropriate level of State or local government and not the Secretary?

Mr. JOHNSTON. That is correct.

Mr. MOYNIHAN. I thank my friend.

ENERGY EFFICIENCY

Mr. JOHNSTON. Mr. President, there are several sections of this bill regarding energy efficiency, title I, on which I would like to specifically comment.

First, under section 125 of the bill, there will be established a new energy efficiency information program for commercial office equipment. This language was based upon joint recommendations made by the American Council for an Energy Efficient Economy, the Alliance to Save Energy, and the Computer and Business Equipment Manufacturers Association. These groups recommended that Congress follow two principles: First, encourage voluntary cooperative efforts and impose Government regulation only if such voluntary efforts fail; and second, provide sufficient flexibility so that the goal of providing consumers with energy efficiency information can be achieved in a manner that makes sense in this market.

Flexibility is needed to determine what type of energy efficiency information is most usefully provided, and how it can best be conveyed to consumers in a timely manner. Household appliances such as refrigerators are quite different than commercial office equipment such as personal computers. The energy consumption labels found on refrigerators simply may not be appropriate for commercial office equipment. It is contemplated that the full range of methods for providing consumers with useful information, including labels, concerning the energy efficiency of commercial office equipment products will be considered. For example, it may be most useful to make energy efficiency information available in catalogs, promotional materials, or in trade magazines, rather than affixing labels to the products themselves.

The effort to develop an effective energy efficiency testing and information program may involve a number of difficult technical tasks, such as establishing testing protocols and appropriately categorizing different types of commercial office equipment. On such technical questions, it is expected that those with technical expertise on commercial office equipment, such as equipment manufacturers, standard-setting organizations, or technical societies, should be relied upon.

Second, subsection 124(c) of the bill would direct the Secretary of Energy to conduct a study on the practicability, cost effectiveness, and potential energy savings of replacing, or upgrading components of, existing utility distribution transformers during routine maintenance.

In conducting this study, I believe that it is important to recognize that, unlike the other consumer products addressed in this legislation, distribution transformers are not commodity products but a key part of an electricity distribution system that requires a balance of all its component parts in order to maximize efficiencies while providing reliable service to customers.

Finally, section 155 of title I would amend title VIII of the National Energy Conservation Policy Act to further promote the use of energy performance contracts.

It is estimated that the Federal Government could reduce its energy costs by approximately $1 billion annually through the installation of energy efficiency measures. However, the budget deficit has prevented the necessary investments from being made by the Government.

Energy savings performance contracts are a mechanism through which private sector funds can be obtained to finance Federal energy assistance improvements. The conferees recognize that these contracts differ significantly from traditional Federal procurement contracts. Under these contracts, the contractor bears the risk of performance, makes a significant initial capital investment, guarantees significant energy savings to the Government agency, and from these savings the agency, in effect, makes payments to the contractor. The contractor makes a guarantee that the energy and maintenance cost savings will exceed the contractor payments.

Because these contracts differ significantly from traditional Federal contracts, existing contracting regulations are often inconsistent. For example, current regulations regarding the submission of cost and pricing data and compliance with cost accounting standards where not contemplated for application to energy performance contracts. Accordingly, this provision authorizes and directs the Secretary, with the concurrence of the Federal Acquisition Regulation Council, to develop substitute regulations in these and other areas where existing regulations are inconsistent with the goal of promoting energy performance contracts. The Secretary is given wide latitude to develop substitute regulations within procurement law, in order to facilitate the use of energy performance contracts.

It is the expectation of the conferees that uniform regulations will be developed for energy performance contracts to relieve contracting offices of the need to make develop modifications, waivers, or determinations on a case-by-case basis. The intent is to encourage energy service companies to contract with Federal agencies on a uniform basis.

It is further the intent of the conferees that if any agency terminates an energy performance contract for the convenience of the Government, it is appropriate for the Government to pay the contractor's fair and reasonable termination costs, which may include the costs related to designing, financing, installing, and engineering the energy efficient improvements provided for in the contract, plus any reasonable penalties resulting from such termination imposed by utilities or other entities providing funding.

Finally, this section would clarify, in clause (a)(2)(D)(Iii), that performance contracts do not require the advanced appropriation of the payments to be made under the contract.

Many of the provisions in this bill convey additional responsibilities to the State energy offices through the State Energy Conservation Program [SECP]. A comprehensive update of this program, as well as the Institutional Conservation Program and the Weatherization Assistance Program was implemented through the State Energy Efficiency Programs Improvement Act, Public Law 101-440, signed into law on October 18, 1990. This act was intended to streamline the aforementioned programs and increase their flexibility while increasing non-Federal financing of State energy projects. Unfortunately, the Department of Energy has failed to issue the implementing regulations for the statute that provides a basis for so many of the important energy efficiency and renewable energy provisions in the Energy Policy Act of 1992. The conferees therefore urge the Department to take all measures necessary to issue these implementing regulations immediately.

NATURAL GAS

The conferees agreed not to include most of title II, regarding natural gas regulatory issues, in the conference report. Three divisive issues proved to be the undoing of the natural gas title.

First among these was the FERC restructuring rule known as Order No. 636. The House conferees contended that a provision included as part of the natural gas import section made the FERC order a conference issue. The Senate conferees disagreed.

Second was the natural gas prorationing and the so-called Markey-Scheuer amendment in the House bill. The Senate bill included no comparable provision. The conferees agreed to include as part of title II a nonbinding sense of the Congress that natural gas consumers and producers, and the national economy, are best served by competitive wellhead natural gas markets. The conferees also agreed to statement-of-managers language expressing the view that the prorationing section was unnecessary because existing law provides adequate protection against States using their prorationing authority to restrict production for the purpose of increasing the price of natural gas.

Third was natural gas imports. The House bill included a section providing for fewer restrictions on imports of natural gas. Most of this section had been adopted in response to the so-called Wirth-Domenici amendment to the Senate bill. The Wirth-Domenici amendment addressed cncerns of domestic natural gas producers that Canadian natural gas enjoyed a competitive advantage due to disparity between the way that United States and Canadian regulators set rates for natural gas pipeline transportation. Subsequent to the adoption of this provision in the Energy Committee, the Federal Energy Regulatory Commission took action to address the pipeline rate design issue that was at the heart of the controversy. The Wirth-Domenici amendment was stricken from the Senate bill on the floor. Still, the House retained its provision that had been adopted in response to the Wirth-Domenici amendment.

The conferees agreed to an amended version of the House natural gas import section. As amended, the provision has been expanded to include fewer restrictions on exports of natural gas to countries with which the United States has a Free Trade Agreement. Other language in the import section also was modified to the satisfaction of the Senate conferees.

Unfortunately, due to the contentiousness of these three issues, most of the natural gas title was not included in the conference report. The provisions that were dropped included many where the Senate and House bills were in basic agreement. These included provisions to expedite the authorization to construct new natural gas pipelines and to streamline procedures at the Federal Energy Regulatory Commission. I believe that the intent underlying these provisions remains valid and urge the Commission, through the administrative process, to take steps to implement this intent.

FLEETS AND ALTERNATIVE FUELS

The legislation contains ambitious provisions on alternative-fueled fleets. This is an important component of a comprehensive energy policy bill given the fact that two-thirds of all the oil used in the United States is used in transportation. During the last month alone, American cars and trucks have burned about 9 billion gallons of gasoline.

The fleets provisions of the conference report in title V contain elements of both the House and Senate bill. Clearly, I have a preference for the approach adopted by the Senate. I believe the clear and even-handed approach of the Senate bill would have afforded greater certainty to the automobile manufacturers and fleet operators and would have assured to the American public the benefit of decreased reliance on oil in the transportation sector.

Further, it is with some reluctance that I agreed to the provisions of the legislation relating to the imposition of special mandates on alternative-fuel providers. However, the final compromise on this section contains sufficient safeguards so that I am satisfied that a sound and reasonable program can be implemented.

Section 501(a)(1) of the bill requires that of the new light-duty motor vehicles acquired by an alternative-fuel provider, starting in model year 1996, a designated percentage must be alternative-fueled vehicles. However, paragraph (a)(5) of section 501 requires the Secretary to promulgate regulations providing for a prompt exemption, through a simple and reasonable process, from the acquisition requirements if the alternative fuel provider demonstrates that alternative-fueled vehicles meeting its needs are not reasonably available or that the needed fuels are not available in the area where the vehicles are to be operated.

In addition, section 507(g)(3) of the legislation provides general authority that nothing in the title is to be construed to require any alternative fuel provider, or other fleet operator subject to requirements imposed by the title, to acquire alternative-fueled vehicles or alternative fuels that do not meet the normal business requirements and practices and needs of the fleet.

The alternative fuel provider program set forth in section 501 is, through the definition of covered person contained in title III, subject to criteria as set forth in the Senate bill making the program applicable only to fleets of 20 or more vehicles capable of being centrally fueled and used primarily in cities of 250,000 or more population where the alternative fuel provider owns 50 or more vehicles nationwide. Thus, the program is intended to apply only to relatively large business concerns.

Paragraph (a)(2) of section 501 describes the alternative fuel providers to whom the program requirements apply. Subparagraph (a)(3)(A) clarifies that the program is intended to apply only to those affiliates, divisions, or other business units of the alternative fuel provider which are substantially engaged in the alternative fuels business, as determined by the Secretary. Subparagraph (a)(3)(B) provides that alternative fuel providers who are engaged in a principal business transforming alternative fuels into a product that is not an alternative fuel or consuming alternative fuels as a feedstock are not covered.

Finally, the Secretary is granted under subsection 501(b) broad authority after model year 1997 to revise the percentage requirements under the program downward and to extend the time under the acquisition schedule for up to 2 model years.

The legislation also contains provisions relating to a municipal and private fleets program found in section 507. Pursuant to subsection (b) of that section, the Secretary is required to undertake a mandatory rulemaking to determine if a municipal and private fleet requirement program is necessary, based on certain findings as set forth in the legislation. The rulemaking is to be started no sooner than 1 year after the date of enactment of the legislation and to be concluded no later than December 15, 1996.

Any determination under this early rulemaking regarding whether a vehicle operating on reformulated gasoline qualifies as meeting the requirements of the program must be made at the time of this rulemaking, pursuant to paragraph (g)(4) of section 507. In the event that the Secretary determines that a municipal and private fleets requirement program is necessary, the program will commence in calendar year 1998, when model year 1999 begins or some later date established by the Secretary.

If the Secretary declines to initiate a program, the Secretary, pursuant to subsections (c), (d), and (e) of section 507, must undertake a second rulemaking starting in 1998 and ending with a determination no later than January 1, 2000, as to whether a municipal and private fleet requirement program is necessary. If the program was initiated under the first rulemaking, this later rulemaking shall not be undertaken.

Once again, any determination about whether reformulated gasoline use qualifies under the program must be made as part of this rulemaking, as required by paragraph (g)(4) of section 507. If the Secretary determines under this later rulemaking that the program is necessary, the program will commence in model year 2002, or at some later date determined by the Secretary.

The legislation provides for exemptions from the municipal and private fleets requirement program under section 507. Paragraph (g)(3) of section 507 applies to the program. In addition, subsection 507(i) sets forth specific exemptions. Paragraph (2) of that subsection provides that private fleets garaged at personal residences under normal operations are exempt from the private fleets requirement program. Paragraph (g)(2) of section 507 grants the Secretary authority to establish lesser acquisition requirements and to extend the dates under the acquisition schedule. Section 507(n) provides the Secretary with suspension authority as specified.

Section 507(o) establishes a fleet requirement program for the States. A Federal fleets program is provided for in title III of the legislation. Definitions applicable to titles III, IV, and V, are also contained in title III.

COALBED METHANE

The bill provides mechanisms to allow coalbed methane development to proceed while questions of ownership of the methane resource are decided. The provisions make no attempt to address or resolve the ownership question, and no inference should be drawn regarding such question.

The section provides that in cases where the coalbed methane operator does not have the consent of the coal operator to stimulate a coal seam, a neutral entity, the Secretary of the Interior, is to determine whether such coal seam may be stimulated. Such a determination is subject to appeal.

The Senate bill did not have a coalbed methane development provision. As passed by the House, this section gave the coal operator a veto over the stimulation of coal seam in the proximity of his coal mine or in the proximity of a coal seam in which he has the right to operate a mine. The Senate was concerned that this coal operator veto would frustrate the goal of the section, which is to promote the development of coalbed methane resources. In response to this concern, the conference report establishes a procedure whereby a coalbed methane operator who has been refused consent, or who has not received a reply to his request for consent, may petition the Secretary for a determination.

ELECTRICITY

I would like to make the following observations concerning title VII of the conference report dealing with electricity.

The definition of an exempt wholesale generator contained in new section 32(a)(1) of the Public Utility Holding Company Act of 1935 permits an exempt wholesale generator to own facilities and goods, such as fuel and related transportation, storage, and handling facilities, reasonably necessary for the operation of its business. The definition also permits an exempt wholesale generator to sell byproducts of electric generation such as steam and fly ash. Such ownership and sales are incidental to an EWG's involvement in wholesale electric generation.

The definition of an EWG has been drafted so as to permit an EWG to sell wholesale power that it has not necessarily generated itself. It appears that buyers of wholesale power may frequently desire to purchase capacity in increments that exceed what the most economical unit would produce. Consequently, the legislation would permit EWG, for example, to generate 350 MW and purchase an additional 50 MW in order to fill a purchaser's 400 MW capacity need.

Under section 32(h)(6) the SEC may, prior to the promulgation of final rules, issue proposed or temporary rules, and registered holding companies may operate pursuant to those proposed or temporary rules until final rules are effective. The SEC and affected persons may continue to rely upon and proceed on the basis of such temporary or proposed rules if the promulgation of final rules is delayed, by reason of judicial review or otherwise, beyond the 6-month deadline contained in section 32(h)(6).

The State approval requirements for affiliate transactions under new section 32(k) of PUHCA do not apply to situations in which a retail operating subsidiary of a registered holding company does not enter into a contractual relationship with an affiliated EWG but indirectly receives energy from such EWG—as opposed to capacity—from another retail operating subsidiary of such holding company pursuant to the normal integrated operation of such holding company system.

Mr. President, I want to give some recognition to the staffs of other Members of Congress who were critical to the successful conclusion of the electricity title of this bill. On the House side, I give my thanks to Jessica Laverty, minority counsel to Congressman MOORHEAD, and to David Nemtzow, legislative director to Congressman MARKEY, for their diligent efforts on behalf of PUHCA reform and especially transmission access. On the Senate side I am grateful to Howard Useem for his cooperation and tireless work.

In particular, I express my respect and deep appreciation to Sue Sheridan, counsel to Congressman SHARP's Energy and Power Subcommittee. But for her fairness, courage, and intelligence in the face of difficult and uncertain negotiations, I question whether there would have ever been an electricity title agreed to by the conferees.

Finally, I am greatly indebted to Sharon Heaton, senior policy adviser to Senator RIEGLE. She shared the vision of PUHCA reform at a time when it was not the popular measure that it has since become. With an acute understanding of substance and an unfailing ability to generate creative solutions to political problems, Sharon has been a faithful ally in the pursuit of good public policy.

HYDROELECTRIC POWER

In title XVII the conference committee included provisions that define the scope of the term "fishways" under section 18 of the Federal Power Act. Section 1701 of the bill provides that fishways are:

> Limited to physical structures, facilities, or devices * * * and project operations and measures related to such structures, facilities, or devices which are necessary to ensure the effectiveness of such structures, facilities, or devices.

Therefore, for example, a fishway does not include general project flows but only those, such as attraction flows, necessary to the proper operation of a structure, facility, or device. To state it more generally, any flows or project operations that are purported to be a legitimate part of a fishway must be functionally necessary for a structure, facility, or device to work. Flows and project operations have no independent validity as fishways.

STRATEGIC PETROLEUM RESERVE

In title XIV, the conferees agreed to a modification of the existing law that defines the circumstances under which the President can draw down the SPR, the SPR trigger. This modification does not represent a major policy change. The law, as modified in the conference report, allows the President to draw down the SPR only if there is a severe energy supply interruption. Previously, the Energy Policy and Conservation Act [EPCA] defined an interruption in terms of a shortage. This definition reflected the fact that when EPCA was first enacted, oil markets were regulated with price and allocation controls. Under those circumstances, a supply interruption would likely result in shortages. Supplies would not flow to the highest bidders, and markets would not clear. Fortunately, for both consumers and producers, price and allocation controls were abolished over a decade ago. Markets now operate much more efficiently.

The conferees agreed that the SPR trigger language needed modification to reflect the current reality of free, deregulated oil markets. One would now expect a severe energy supply interruption to result in sharp price increases. These sharp price increases can inflict the major economic damage in the same way as supply shortages. Therefore, the modified trigger language allows the President to draw down the SPR if: First, an emergency situation exists; second, a significant reduction in supply has occurred which is of significant scope and duration; third, a severe increase in the price of oil has occurred; and fourth, the price increase is likely to cause a major adverse impact on the national economy.

Let me emphasize that all four conditions must be met. Taken together, they define the kind of crisis in which the President should have the power to draw down the SPR. This modified trigger does not allow the President to use the SPR to control oil prices, smooth out price fluctuations, or otherwise manipulate the oil market. A drawdown in response to a price increase is allowed but only in the context of all four conditions. Price spikes or supply imbalances of a regional nature would not qualify. Nor would a demand-driven price spike qualify. In essence, the SPR title of the energy bill maintains the policy that the SPR is to be used solely for severe energy supply interruptions, while recognizing that such an interruption might result in either shortages or severe price increases that could cause major harm to the economy.

Mr. President, I want to join with the vast majority of my colleagues in expressing support for this legislation.

This has been one long time coming. There has been a great deal of work done on this bill in order to reach such a carefully crafted, strong, bipartisan piece of legislation. This is, indeed, the culmination of years of hard work at all levels.

Mr. SIMPSON. Mr. President, I would like to first take the time to offer my great appreciation to the very able committee chairman, Senator JOHNSTON, and the ranking member, my esteemed and dedicated senior colleague and long-time friend from Wyoming, Senator MALCOLM WALLOP.

I have known the senior Senator from Wyoming for over 40 years. He is a special man and a special friend. I know that Senator WALLOP has devoted so much time these past years to crafting a national energy strategy bill that truly charts the course for energy use and conservation in the United States well into the 21st century. MALCOLM WALLOP is truly a credit to Wyoming and to the Senate. We are all so very proud of him and his herculean efforts. He brings great pride to our State.

Mr. President, I am troubled by the resistance this legislation seems to be faced with in these closing hours of the session. It is somewhat ironic that the resistance is coming from those who are normally strongly aligned with proenvironmental legislation. Because I believe this bill is, in fact, very good for the environment.

This energy legislation charts our country's energy course for the next generation; well into the 21st century. The bill before us encourages the consumption of cleaner fuels using increasingly efficient methods. This legislation responsibly addresses the environmental impacts of fuel use in densely population areas.

Our colleagues serving on the Finance Committee deserve commendation, as well, Mr. President. This legislation corrects a great unfairness imposed on independent oil and gas producers by eliminating the alternative minimum tax for intangible drilling costs. That single provision will do much to stimulate domestic production of oil and gas and take us one further step from reliance on imported oil.

This is truly a national energy strategy, Mr. President. This legislation deals with electric power generation and includes provisions to economically expand electrical power generation facilities by amending the Public Utility Holding Company Act. But that is not all, Mr. President, there are incentives in this legislation which will lead to use of cleaner fuels in existing power generation facilities.

Efficient use of existing forms of energy is a priority in this strategy. Everything is covered: from alternative fuels for fleet operators to more efficient light bulbs, air-conditioners, and hearing systems.

The Federal Government plays a significant role in increasing efficiency and reducing waste and cutting back on pollution. In many respects, Mr. President, we could fairly call this legislation the environmentally conscious national energy strategy.

This national energy strategy not only looks to the future in providing for cleaner and more efficient energy sources, but the legislation also takes on a global perspective. The provisions to improve clean fuel technology and then aggressively share those cleaner technologies with the rest of the world reflect true vision, Mr. President. These provisions, together with the farsighted research and development sections of this legislation, will result in less dependence on foreign oil, a cleaner environment for all Americans, and the potential to sell these technologies throughout the world.

With respect to nuclear power, Mr. President, it is my view that history will record this legislation as truly a landmark of the 102d Congress of the United States.

I am particularly pleased to see that the conferees have retained the uranium mining and enrichment provisions as well as the nuclear plant licensing reform provisions.

This legislation takes a step toward privatizing the Federal program of uranium enrichment—it creates a Government uranium enrichment corporation. Restructuring the Department of Energy's uranium enrichment office into an independent Government corporation will improve the corporation's competitive edge and will promote enrichment sales.

I am pleased that this legislation contains provisions which allow the partial reimbursement of the costs of reclamation and remediation at uranium mill tailings sites which produced uranium for the U.S. defense program.

For many years, I have sought to preserve the infrastructure needed to maintain a modicum of domestic capability to fuel the domestic nuclear reactors which produce more than 20 percent of this Nation's electricity.

Uranium is a fuel which is abundant in the United States and which is extremely efficient. For example, the energy of a finished uranium fuel pellet the size of a pencil eraser is equivalent to the energy contained in 1,780 pounds of coal, 149 gallons of oil, or 157 gallons of regular gasoline.

The United States was the major producer of uranium in the world, and Wyoming still produces uranium to fuel electricity generating reactors. At its height of production in 1980, Wyoming produced 12 million pounds of uranium—the energy equivalent of 15 billion gallons of oil. In 1980, the U.S. uranium mining industry employed 20,000 people. Now only about 1,300 people are employed—300 in Wyoming; 26 uranium mills and 350 uranium mines have closed around the country since the peak in production of the early 1980's. Today, only several uranium mines and two uranium mills are operating.

Market conditions during the 1980's, oversupply and low-cost uranium producers outside the United States, have plagued the U.S. uranium industry. This has resulted in the deterioration of the U.S. uranium mining infrastructure. By 1995, estimates show that U.S. uranium production will only be 10 percent or less of U.S. demand to fuel reactors.

This country's utilities have become dependent on imports of uranium. This legislation will increase the demand for U.S.-produced uranium. It will preserve the uranium mining and enrichment infrastructure of this country so that we can reduce our dependence on imported uranium.

Another important uranium provision in this bill seeks to ensure that an agreement, announced by the President, between the United States and Russia will succeed. According to the agreement, the United States will purchase Russian nuclear weapons-grade uranium. That high-enriched uranium will be used by the Department of Energy in its production of low-enriched uranium fuel for commercial nuclear reactors and will be used in a way that will minimize disruptions to the commercial market. This swords-to-plowshares agreement is a watershed development for the peace and security of all nations. It will make the world a safer place from nuclear proliferation and ushers in a new era of international cooperation.

The nuclear plant licensing reform provision expands, so very favorably in my belief, upon the Nuclear Regulatory Commission's [NRC] part 52 rule for a combined construction and operating license. This provision clarifies that public concerns should be addressed before a spade of soil is turned—not after completion of a plant. Once the construction of a plant is approved by the Nuclear Regulatory Commission [NRC], a utility may proceed with construction without the specter of indefinite delays. The NRC may halt construction at any time if new information arises which the Commission decides is significant with respect to safety. In any event, any NRC licensing decision may be appealed in Federal court. This is significant improvement over current practice.

I wish to thank Senator BREAUX for diligently working to preserve a provision, which he introduced and I cosponsored, which allows for the removal of restrictions on utility decommissioning fund investments. This provision will open up a wider range of investment options for utilities to consider in managing these funds and will thereby greatly benefit utility ratepayers and the American taxpayers.

Certainly, Mr. President, some tough compromises had to be made to get to the point we have now reached on this legislation. As in all truly bipartisan efforts, this legislation does not do all that some among us would prefer. Some of our colleagues here feel very strongly that there should have been a moratorium declared on Outer Continental Shelf leasing. I happen to disagree with them—just as strongly. Others of our colleagues—I among them—strongly feel that there should have been a provision in this legislation to permit the limited exploration of the Arctic National Wildlife Refuge. There are other conscientious issues.

The truth is, Mr. President, that this is a national energy strategy, not a parochial one. There are no special provisions directed to benefit any single State. All States benefit.

My home State of Wyoming will benefit in ways far different than the populated coastal States. For example, Wyoming will directly benefit from this energy strategy. It encourages increased production of natural gas. While Wyoming is a leader in the production of natural gas, the rig count in recent years has been well below average. I have reason to believe this legislation will cause a real improvement in exploration and development activities in the West.

But, Mr. President, as Wyoming benefits from increased demand and production of natural gas, more densely populated States will benefit from the increased supply of that resource. Prices will tend to remain stable so consumers will benefit. The population centers will also benefit because natural gas is cleaner and more efficient—the air quality and the quality of life in the major cities will be improved.

This legislation encourages the use of clean coal and the development of new technologies for using and for marketing that coal. Wyoming will benefit from these provisions because Wyoming has some of the cleanest and largest coal reserves in the world. My State's economy will benefit and consumers will benefit. Use of clean coal will result in a direct improvement of air quality. Again, Mr. President, everyone will enjoy an improvement in the quality of life because of this legislation and the planning and the thoughtful efforts of our fine colleagues on the Energy and Natural Resources Committee.

But that is legislating, Mr. President. That is what we are all about. We make the tough compromises and the tough choices—sometimes we take our lumps making those choices and compromises—but we do that with the country's very best interest in mind.

This legislation is historic, just as the Clean Air Act was, and I, for one, am very pleased to support it. In my view, Congress will have done well, indeed, when we send this legislation to the President for his signature.

MONITORED RETRIEVABLE STORAGE PROVISIONS

Mr. DURENBERGER. Mr. President, one of the provisions in this bill changes our policy with respect to the temporary storage of nuclear waste from electric powerplants.

In the Nuclear Waste Policy Act, Congress authorized construction of temporary, above-ground storage facilities for the spent fuel rods from powerplants. These facilities would serve as a midway point between the storage pools located at nuclear reactors and the permanent repository that will isolate the waste from the biosphere so long as it remains radioactive.

The temporary holding facilities are called MRS the acronym for monitored retrievable storage. MRS facilities will take the wastes, store it safely for a time, perhaps process the waste for ultimate disposal and then send it on to the permanent repository.

There has been opposition to the MRS concept. Many are opposed to processing spent fuel because it can be used to make nuclear explosives. The Carter administration banned fuel reprocessing as an option in the United States because of this fear of proliferation.

The other concern about MRS is that it will weaken our resolve to develop a permanent repository. If we have these temporary storage facilities, the pressure to find a permanent solution to the nuclear waste problem will be off. The powerplants will be relieved of their wastes, the material will be in the hands of the Government and who cares if the Government takes the next step and places it in a permanent facility.

We all should care, Mr. President. We ought not pass this nuclear waste problem on to our children unresolved. For these two reasons, current law prevents the construction of an MRS until the permanent waste repository is in operation. That is a policy that we should continue.

Northern States Power, a Minnesota utility that operates two reactors, is beginning to run short of storage capacity at its powerplants. Their petition to expand that storage capacity has recently been rejected by the State of Minnesota. Allowing construction of an MRS even before a permanent facility is open would give them relief. Nevertheless, I think this is a change in policy that is not well advised. We need to keep our focus on the permanent repository that will separate nuclear waste from life on this planet.

ELECTRICITY TRANSMISSION

Mr. LOTT. Mr. President, amending section 212 of the Federal Power Act, the conference agreement says the rates, charges, terms and conditions of wholesale transmission services pursuant to a section 211 order shall permit the recovery of costs "including taking into account any benefits to the transmission system of providing the transmission service." What are such "benefits to the transmission system?"

Mr. WALLOP. The purpose of this language is to recognize that the electrical system of a transmitting utility is a dynamic system which must handle numerous transfers of electricity simultaneously. This phrase requires that where an order under section 211 causes benefits from reduced line losses on parts of the transmission system, the reduced losses must be taken into account in the recovery of other costs, including the costs of any increased losses in other portions of the transmission system.

Mr. LOTT. Amending the same section, the conference agreement states, among other things, that transmission "rates, charges, terms, and conditions shall promote the economically efficient transmission and generation of electricity." What is the meaning of "economically efficient transmission and generation of electricity" in this context?

Mr. WALLOP. The purpose of this language is to encourage negotiated rates, where appropriate. In cases where the relevant market—the market for delivered power—is competitive, the negotiated or market price will reflect the true value of the use of facilities and promote the economically efficient allocation of resources. In such cases, a market-based rate shall be deemed to meet all the requirements of section 212 (a).

Mr. NICKLES. Mr. President I ask unanimous consent to put in the RECORD a summary and section-by-section analysis of the oil pipeline regulatory reform title of the Energy Policy Act of 1992.

This was prepared jointly by the Association of Oil Pipelines and the National Council of Farmer Cooperatives.

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

OIL PIPELINE REGULATORY REFORM TITLE XVIII OF H.R. 776

BACKGROUND AND NEED FOR LEGISLATION

The Interstate Commerce Act (ICA) was enacted in 1887 and has been amended many times over the years. In 1906, oil pipelines were made subject to the ICA by the Hepburn Act.

In 1977, in conjunction with the formation of the Department of Energy, regulatory authority over oil pipeline under the ICA was transferred from the Interstate Commerce Commission (ICC) to the newly created Federal Energy Regulatory Commission (FERC). See Section 402(b) of the Department of Energy Organization Act, 42 U.S.C. 7172(b). That transfer was intended to facilitate a coordination of energy policy by bringing regulation of oil pipelines under the same agency responsible for regulation of other forms of energy transportation. Importantly, the traditional standards governing rate regulation under the ICA were not modified.

The FERC's first substantive ruling under its ICA authority concerned a rate proceeding involving Williams Pipeline. The case has been initiated at the ICC before regulatory authority over oil pipelines was transferred to the FERC. The ICC's decision had been appealed to a federal appeals court for review. The FERC requested the court to remand the case to enable the FERC to develop its own oil pipeline rate making methodology. The court remanded the matter to the FERC. *Farmers Union Central Exhange* v. *FERC*, 584 F.2d 408 (D.C. Cir. 1978) ("Farmers Union I").

On remand, the FERC issued Order No. 154. 21 FERC ¶61,260 (1982). Order No. 154 was struck down by the D.C. Circuit in *Farmers Union Central Exchange, Inc*, v *FERC*, 734 F.2d 1486 (D.C. Cir. 1984) ("Farmers Union II"). In response to the D.C. Circuit's rejection of Order No. 154, the FERC issued Order No. 154-B, 31 FERC ¶61,337 (1985), adopting "net depreciated trended original cost" as the basis for oil pipeline rate regulation, but leaving aspects to be developed on a case-by-case basis. See ARCO Pipe Line Co., 53 FERC ¶61,398 (1990).

Despite years of administrative proceedings and judicial litigation, to date the process has not yielded a generally applicable oil pipeline ratemaking methodology that meets the needs of the oil pipeline industry and its shippers. Moverover, both oil pipelines and shippers have generally been dissatisfied with the FERC's case-by-case approach to developing an oil pipeline ratemaking methodology.

HISTORY OF TITLE VIII

The House Energy and Commerce Committee adopted an oil pipeline regulatory reform proposal as Title XVIII of the House energy bill, H.R. 776. H.R. 776 was sequentially referred to the House Public Works and Transportation Committee. The House Public Works and Transportation Committee reported its own version of Title XVIII which was more general in many respects than the Title reported by the Energy and Commerce Committee.

A compromise version of Title XVIII was adopted as part of the original text of H.R. 776 considered by the full House. Title XVIII as passed by the House enjoys the support of both the oil pipeline industry and many oil pipeline shipper interests.

Oil pipeline legislation was not included in S. 1220 reported by the Senate. The Senate receded to the House after minor amendments offered by the Senate were agreed to by the House.

SECTION-BY-SECTION ANALYSIS

Title XVIII is comprised of three major elements. First, Title XVIII calls upon the FERC to develop a "simplified" ratemaking methodology applicable to regulation of oil pipelines under the Interstate Commerce Act. Second, Title XVIII directs the FERC to streamline its ratemaking procedural rules. Third, for purposes of future ratemaking, Title XVIII establishes a baseline of historically-effective rates that, to a limited extent, are deemed to be just and reasonable under the ICA. This mechanism is intended to provide a one-time basis for implementation of new rates developed pursuant to the rate reform methodology to be developed by the FERC in response to the legislation, the starting point for which are those existing rates that meet the specified criteria in section 1803(a). The mechanism for establishing base rates as just and reasonable does not apply to rates approved by the FERC after the date of enactment.

It is important to note that Title XVIII does *not* affect regulation of the rates of the Trans-Alaska Pipeline.

SECTION 1801—OIL PIPELINE RATEMAKING METHODOLOGY

Section 1801(a) requires the FERC to conduct a rulemaking to develop a "simplified ratemaking methodology" for oil pipelines in accordance with section 1(5) of Part I of the Interstate Commerce Act. In this regard, the methodology must be consistent with the substantive requirements of the ICA. This ratemaking methodology must be "generally applicable" to oil pipelines. The FERC must issue a final rule within one year after enactment. Section 1801(b) provides a 365-day delay in the effective date of the final rule required by subsection (a).

SECTION 1802—STREAMLINING OF FERC PROCEDURES

Section 1802(a) requires the FERC to conduct a rulemaking to streamline its oil pipeline ratemaking procedures. The procedural reforms are intended to eliminate unnecessary regulatory costs and delays. The FERC must enact the final rule within 18 months after enactment of the legislation.

Section 1802(b) identifies issues the FERC is to consider in conducting the rulemaking mandated by subsection (a). Subsection (b) does not, however, require the FERC to adopt any particular procedural reforms.

Subsection (c) directs the FERC to identify procedural changes which the FERC believes would be useful but which require legislative authorization before they may be adopted by the FERC. The FERC is to advise Congress of procedural changes that require such legislative authorization.

Subsection (d) is a response to dissatisfaction by oil pipelines and shippers respecting their inability to terminate costly proceedings before the FERC when the pipeline and the shipper have reached an accord on their differences and the pipeline has withdrawn the tariff increase that gave rise to the tariff proceeding. Oil pipelines and shippers have expressed concern regarding the inability of the pipeline to withdraw its proposed tariff increase and reinstate its prior rate in order to resolve a shipper's protest.

Under paragraph (1) of subsection (d), if an oil pipeline withdraws a proposed rate increase, the tariff proceeding related to the withdrawn rate increase is to be terminated and the pipeline's previously-effective rate is to be reinstated. The oil pipeline must refund any amounts collected under the withdrawn tariff that were in excess of the revenues the pipeline could have collected under the previously effective tariff rate. However, the Conference Committee expects that the FERC will give due consideration to the adverse consequences to shippers that could result from the untimely termination of cases challenging rate increases. For example, if a case, that has been litigated for a considerable period of time, is nearing a decision, the Committee would not expect the FERC to permit the case to be abruptly terminated over the objection of the complaining shipper.

Under paragraph (2) of subsection (d), when a complaint is withdrawn, the proceeding before the FERC is to be terminated. Paragraph (2) is intended to ensure that the FERC does not continue a proceeding where the basis for the complaint which initiated the proceeding no longer exists. Nothing in paragraph (2) prejudices the FERC's authority to institute its own investigation under the ICA if the FERC determines that such an investigation is warranted.

Subsection (e) requires the FERC to adopt rules which promote the use of alternative dispute resolution procedures as the preferred method of resolving rate disputes between oil pipelines and shippers. Subsection (a) provides an opportunity for alternative dispute resolution after an oil pipeline tariff change has been filed, and thus offers significant potential rewards in reduced costs and time for both shippers and oil pipelines. While the FERC has taken steps to implement the Administrative Dispute Resolution Act, this subsection is a continuing expression by Congress that alternative dispute resolution should be encouraged in this context.

SUBSECTION 1803—PROTECTION OF CERTAIN EXISTING RATES

Section 1803 provides increased rate certainty, limits the opportunity for future challenges to rates which have been in effect without challenge for an extended period of time, and limits refund exposure with respect to those rates.

Subsection (a) of section 1803 identifies oil pipeline rates that will be deemed just and reasonable by operation of law. Paragraph (1) of subsection (a) provides that rates in effect for a 365-day period before enactment of this legislation are deemed to be just and reasonable for purposes of the ICA if the rates were not subject to protest, investigation or complaint within that 365-day period. Paragraph (2) of subsection (a) provides that rates that were in effect on the 365th day preceding the date of the enactment of this legislation are deemed to be just and reasonable for purposes of the ICA even if the rates were not in effect throughout the 365-day period preceding enactment if an intervening rate filing was made during the 365-day period, so long as the rates in effect 365 days before enactment were not subject to protest, investigation or complaint during the period in which those rates were in effect. Consistent with the foregoing, the conferees intend that a person may file a complaint up to, and including, the day preceding the date of the enactment of this legislation and that the complaint need only comply with FERC's existing regulations in order to satisfy the statutory requirement. So long as a complaint filed during the periods described above meets this standard, the complaint will be sufficient to preclude a rate from being deemed just and reasonable under section 1803(a). In view of the fact that, but for the exceptions provided in subsections (b) and (c) of section 1803, this will be complainants' last chance to challenge such rates as well as FERC's last chance to review such rates before they are deemed just and reasonable, the conferees expect that FERC will review such complaints carefully.

Deeming rates just and reasonable under subsection (a) does not insulate those rates from all subsequent challenge, however. Paragraph (1) of subsection (b) establishes two alternative threshold showings, either of which will permit a substantive challenge to the justness and reasonableness of a rate (otherwise deemed just and reasonable under subsection (a)). Under paragraph (1) of subsection (b), the person seeking to challenge a rate deemed just and reasonable under subsection (a) must demonstrate the existence of a substantial change after the enactment of the legislation either (A) in the "economic circumstances of the oil pipeline" which were the basis for the rate; or (B) in "the nature of services provided" which were the basis for the challenged rate. Under paragraph (2) of subsection (b), a person may challenge a rate deemed just and reasonable if the person had been prohibited from filing a complaint by a contract provision in effect prior to January 1, 1991 and on the date of the enactment of this legislation. The complaint must, however, be brought within 30 days of the expiration of the contractual prohibition.

Except as provided in subsection (c) described below, the FERC may not investigate the lawfulness under the ICA of a rate deemed just and reasonable under subsection (a) unless one of these threshold showings is made. In the event that one of the required threshold showings has been made, the FERC may proceed to review the justness and reasonableness of the challenged rate without regard to subsection (a). However, if as a consequence of such review, a tariff reduction is ordered, refunds may be ordered to be paid only for transportation services rendered from the date the complaint was filed.

Subsection (c) provides that even though a rate is deemed just and reasonable under subsection (a), an aggrieved person may file a claim against any rate as unduly discriminatory or unduly preferential. Subsection (c) also permits complaints to be filed against non-rate tariff provisions on grounds of undue discrimination or undue preference. The distinction between complaints under subsection (b) and complaints under subsection (c) is that complaints under subsection (b), as to which the threshold showings described above apply, are complaints directed at the level of the rate itself. By contrast, complaints under subsection (c) are premised on some element of undue discrimination, rather than the level of the rate alone.

SECTION 1804—DEFINITIONS

Section 1804(1) defines the term "Commission" as the Federal Energy Regulatory Commission. The term includes the Oil Pipeline Board and any other office of the FERC unless the context requires otherwise.

Paragraph (2) defines "oil pipeline" as any common carrier which transports oil by pipeline and is subject to the FERC's ratemaking authority under the ICA. The definition excludes the Trans-Alaska Pipeline (TAPS).

Paragraph (3) incorporates the meaning of "oil" used for purposes of transferring the oil pipeline regulatory functions of the ICC under the ICA to the FERC pursuant to the Department of Energy Organization Act. When authority over oil pipelines (including both crude oil and refined petroleum product lines) was transferred to the FERC, initially the ICC also transferred, and the FERC accepted, authority over anhydrous ammonia pipelines which had been regulated by the ICC under the ICA on the same basis as oil pipelines. Subsequently, the FERC and the ICC determined, and the Court of Appeals agreed, that anhydrous ammonia did not qualify as "oil" and regulation of these pipelines was returned to the ICC where it is vested today. This definition assures that regulatory reform under this legislation will apply only to those oil pipelines over which the FERC exercises regulatory authority under the ICA and does not extend to anhydrous ammonia pipelines which remain subject to regulation by the ICC under the ICA.

Paragraph (4) defines the term "rate" to mean "all charges that an oil pipeline requires shippers to pay for transportation service." This definition is intended to encompass any type of fee, tariff, fare, or other charge, however denominated by the pipeline, for transportation or transportation services, and is included to address imposition of separate charges by some pipelines for certain transportation services. However, the definition is not intended to change the scope of FERC jurisdiction under the ICA or extend the jurisdiction of the FERC beyond that provided under the ICA.

(At the request of Mr. MITCHELL, the following statement was ordered to be printed in the RECORD:)

CHANGES TO THE PUBLIC UTILITY HOLDING COMPANY

● Mr. SANFORD. Mr. President, I rise to discuss provisions in this conference report amending the Public Utility Holding Company Act [PUHCA]. I am pleased that the conference report changing PUHCA includes concepts from the Senate bill that assures that the States will be required to consider promptly a series of issues arising in connection with so-called exempt wholesale generators [EWG's]. As the Senate is aware, this was an issue in which I took a special interest, with emphasis on assuring full State consideration of the effects of disproportionately greater amounts of debt that EWG's use compared to public utilities. Chairman JOHNSTON and his staff have done a commendable job with this issue, and I appreciate the vigor with which they advocated the Senate position. I want to thank Senator JOHNSTON for his work to retain many of the safeguards of PUHCA reform which were added to the Senate bill.

As I understand the conference agreement, States must within 1 year conduct a general evaluation of a series of enumerated issues—including the issue of how much debt is appropriate—and then determine whether to apply general standards—such as minimum equity requirements—to all exempt wholesale generators. I think this is a workable approach. It assures full consideration of these critically important issues while leaving each State regulatory commission free to tailor the standards they believe necessary to meet their individual needs. I hope very much that the States take this responsibility seriously. I believe we will rue the day if we permit this well-capitalized industry to become excessively leveraged. Such excessive leveraging need not take place, and indeed I don't believe it will take place. This bill puts in place some important safeguards that if used properly will make sure that we do not end up eroding the strong equity base that exists in this industry.

There are several points that I would like to emphasize with respect to these mandated State proceedings. First, while the conference agreement speaks in terms of conducting a general evaluation of these issues, it in no way restricts a State commission from holding a formal public hearing or proceeding and allowing all interested parties to present their views on these important issues. I must say, Mr. President, that in my view that is precisely how all State commissions should proceed to conduct the required general evaluations of these issues. Opportunities for full public comment and participation offer the best—and perhaps the only—assurance that all facets of these key issues will be considered and appropriate general standards adopted. Given the requirement that these evaluations should be completed within 1 year, I am confident that fully participatory proceedings can readily be accomplished. For these reasons, I hope all States will use full and open proceedings to discharge their responsibility under these provisions.

A second point I wish to make, Mr. President, is that there is nothing in the legislation that forecloses a State commission from adding additional issues to these proceedings and evaluations. For example, the conference agreement does not contain the Senate's provision which mandates considering the effects on consumers of retaining the so-called residual value of a powerplant by the EWG for the shareholder benefit. My concern has been that to the extent that utility companies purchase power from EWG's rather than building their own plants, at the end of the day, these utility companies will no longer own operating facilities as part of their equity base. States are perfectly free to consider this issue and I think they should do so. Similarly, States are free to consider—and I hope they will—the effects of EWG contracts that would displace utility-owned facilities that are still fully capable of producing power. Such stranded investment situations could well have adverse effects on all concerned.

In general, States should be considered fully free to operate in a discretionary manner to fully and effectively implement the full scope of this regulation authority in this area in order to protect consumers.

Mr. President, I think that as we move toward a broad restructuring of the utility industry, our mandate that States take an active role in considering the risks as well as the promised rewards of purchased power will prove as the most important consumer protection tool in this legislation.

If I might, Mr. President, let me conclude by noting that this is just the first chapter in a restructuring effort that Congress will have to revisit, at least in an oversight capacity. In that connection, we may need additional legislation. For example, changes may be in order to the Public Utility Regulatory Policies Act. I understand that our chairman has agreed to look at this issue early in the next Congress, and I commend him for that as I suspect that, in the new climate created by this bill, some limits on the PURPA mandatory purchase right may prove to be appropriate.

Mr. President, I thank the Chair and I yield the floor.●

Mr. CONRAD. Mr. President, I want to express my strong support for the conference report on H.R. 776, the Energy Policy Act of 1992. This is the most comprehensive energy legislation that we have considered in over a decade, touching virtually every sector of the U.S. energy industry. It will reduce our dependence on imported energy, make our economy more efficient and competitive, and spur research and development of innovative new energy technologies. H.R. 776 is a "Made in America" bill that will improve the utilization of our domestic resources and lead to domestic economic growth.

Our need for a comprehensive energy policy is acute. We cannot afford to forget so quickly the wrenching experience of the Persian Gulf war. Just 2 years ago, we sent over 500,000 of our men and women halfway around the world to defend the oil reserves in the Middle East. We risked the lives of our fighting forces to ensure that we would not lose our oil supply. In fact, the war was in part the result of our failure to implement a comprehensive energy strategy.

Mr. President, I strongly believe our country needs and deserves an energy policy that will reduce our dependence upon imported oil. Our economy is still highly vulnerable to increased oil prices. Can we allow our economic future to be determined by the whims of Middle Eastern leaders? The oil embargo price spikes of the 1970's still haunt us today, and they could be waiting just around the corner in the near future if we do not take aggressive action today.

H.R. 776 will address the problem of our oil dependency from many different directions. One of the most important titles in the bill is the one on energy efficiency. Increased efficiency must be a cornerstone of any serious policy—it is the key to reducing demand and making our economy more competitive. I would note that improvements that we have made in energy efficiency since the 1970's have yielded significant increases in productivity. H.R. 776 will set new energy efficiency measures for homes, buildings, appliances, motors, lamps, and factories. It also sets new standards for showerheads, faucets, and toilets. Mr. President, these may seem like small steps, but they will yield enormous benefits in energy savings. Make no mistake about it, in the long run it will be cheaper to implement small measures such as this rather than build expensive new powerplants.

I would also like to note that I am pleased that H.R. 776 has retained an amendment that I cosponsored with Senators HATFIELD and WIRTH that will beef up the Department of Energy low-income weatherization program. This will benefit those who often do not have the resources to weatherize their homes, and it will be particularly helpful in a State like North Dakota.

H.R. 776 will also increase the efficiency of our power-generating industry by increasing competition. The amendments to the Public Utility Holding Company Act [PUHCA] will open up the utility industry to allow independent power producers to compete for power contracts. The increased competition that will result from these changes will lead to reduced utility costs, and the Department of Energy estimates that it will save $1.8 billion per year.

There were many who were concerned about the wisdom of altering the Holding Company Act. I shared many of these concerns and believe that H.R. 776 goes a long way in assuring that the PUHCA amendments will not have a negative effect. It will allow wholesale sales by IPP's, but not retail sales or so-called sham transactions. This will prevent an IPP from cherry-picking large customers away from a utility and leaving the small customers with higher rates. H.R. 776 also has a strong provision to ensure system reliability. Finally, I continue to be concerned about the potential negative effects of highly leveraged IPP projects. IPP projects generally have a much higher debt-equity ratio than utility projects. Therefore, I am pleased that H.R. 776 contains my amendment requiring States to conduct a review of the potential negative effects of debt-leveraging. Such a review will hopefully serve to protect consumers from the adverse consequences of highly leveraged projects.

I also feel very strongly that we need to take steps to promote alternative fuels as a way of reducing our dependence on foreign oil. Transportation accounts for 60 percent of U.S. oil consumption, and it is time to start promoting fuels other than oil. H.R. 776 contains an aggressive alternative fuels program that will utilize natural gas, alcohol fuels, hydrogen, and electricity. The bill also solves the problem of creating both a supply and demand for these vehicles by requiring Government fleets to begin purchasing alternative fuel vehicles. It will also require the Secretary of Energy to perform a rulemaking to set standards and a timetable for private fleet requirements. The fleet requirements will apply to 50-car fleets in cities of 250,000 or more.

One of the biggest energy policy failures of the past 12 years has been the administration's gutting of renewable energy programs. Environmentally safe and domestically available, renewable energy holds the promise for our energy future. H.R. 776 takes strong steps to promote development of solar, wind, biomass, and geothermal power. It includes a Federal production incentive for new renewable facilities, joint ventures for technology development, and a tax credit for renewable energy production. Mr. President, my State of North Dakota has more potential for wind energy than any other State. I can assure you from personal experience that the wind blows almost all the time there. Does it not make sense to harness and develop this nonpolluting resource? H.R. 776 will help to achieve this goal.

I'd also like to point out that the bill also contains a provision of mine which will help promote renewable energy projects in rural areas. It will authorize States to make DOE grants to farmers and rural electric cooperatives for renewable energy development.

Another key to reducing our oil dependence is to find new ways to utilize our coal resources in clean and efficient ways. We have enough coal in the United States to supply us for hundreds of years. H.R. 776 will promote clean coal technology and efficiency by authorizing new innovative coal projects. Of particular note are provisions which I authored to promote the research of low-rank lignite coal, which is found in abundance in North Dakota. North Dakota has an estimated 30 billion tons of recoverable coal reserves which can power our country for centuries to come.

Finally, Mr. President, although this bill properly ensures that retired coal miners will continue to receive their health benefits, it does so on the backs of the wrong people. The reachback provision in the bill is unfair, and imposes extreme hardship on certain former BCOA signatories. It creates a windfall for large BCOA signatory companies, who since 1988 have willfully underfunded the 1950 and 1974 health benefit trusts, at the expense of former signatories. I urge the Finance Committee to revisit the reachback issue early next year, to ensure that the bill places these financial obligations where they belong.

Mr. President, H.R. 776 contains a great many other provisions which I won't list here, but which will have a profound effect on our energy consumption. This bill has been 2 years in the making. It was forged in the crucible of the Persian Gulf war, and, though we have stable oil prices now, we cannot afford to take the chance that they will stay that way in the future. H.R. 776 is by no means perfect. I personally would have liked for it to contain a provision requiring increased fuel efficiency in new automobiles. There were other similarly worthy ideas that were not included in this bill. Nevertheless, this is a vitally important step toward a comprehensive energy policy that our country desperately needs. It is time to act now—we will be better for it in the future.

Mr. BRADLEY. Mr. President, the national energy policy now before the Senate is lengthy, complex, and, as is generally the case with such legislation, a mixed bag. On the one hand, the bill promotes the use of natural gas in industry and in the transportation sector. It promotes energy conservation.

It promotes competition in the electric utility industry. On the other hand, it gives billions in tax relief to the oil and gas industry. It attempts to restructure the uranium enrichment business in the United States in a manner that could cost consumers billions. It could have gone much further in the pursuit of energy conservation. There could have been greater consumer safeguards included, as I urged, in the reform of the Public Utility Holding Company Act.

However, I am pleased that the legislation includes a number of items that I have fought for. The tax provisions do make clear that energy conservation rebates by utilities will not be taxed, as was the case until 1989. In recent years, these rebates have emerged as one of the most effective tools in the battle to promote energy efficiency and avoid the need for siting and building new powerplants. One New Jersey utility has estimated that these rebates have already saved us enough power to forego two medium-sized powerplants that would have otherwise been required. Few Federal programs have had such an impact. These rebates mean less energy demand, less energy produced, and cleaner air and water.

The bill also includes provisions to ensure independent electric power producers will not be shut off the electric transmission grid. The bill takes a giant step, with the PUHCA reform title, toward deregulating the electric utility industry. However, as we have seen in other industries, deregulation is not without risks for consumers. These electric utilities have been regulated because they are natural monopolies. Even with PUHCA reform, the monopoly on the transmission grid will persist. Only through a policy which includes wider access to the grid can the full benefits of a competitive electric utility industry be felt by consumers.

Mr. President, as I said at the outset, this bill has as its centerpiece increased natural gas use. The natural gas title, title II, is short but it also has very important provisions in it for both natural gas consumers and producers. Both sections of the title concern matters on which I have been active for some time—imports and prorationing.

Title II continues and broadens our Federal natural gas policy. It completes the drive for an open North American gas market. It also will ensure vigorous competition at the point of production—the wellhead markets. These new provisions are critical, particularly as to the prorationing issue, because of what has happened recently. As Federal regulation of wellhead markets has eased, and the accompanying Federal preemption of State pricing regulation by a comprehensive scheme of Federal price controls has started to phase out, new concerns have arisen. Some producing States have considered reoccupying this important field of interstate commerce with a new type of regulation—wellhead production regulation that could be used to cut back output in order to raise the price of natural gas.

The replacement of Federal regulation and market intervention with State price-raising regulation and intervention, would, of course, be directly contrary to a national energy strategy aimed at free, market-based growth of natural gas use. It would hurt gas use both in new areas promoted in the other titles of the bill and in the traditional gas markets. Moreover, State intervention in place of Federal control would undermine fundamentally our attempts to have a competitive gas market.

Many supporters of new producing state prorationing proposals have asserted that there is no evidence of their intent to set up State administered price fixing cartels. On the one hand, it would be preferable to defer to the States on this matter. However, there is a long history here. During the 1950's the Texas Railroad Commission used economic waste and reasonable market demand prorationing to affect price. Also the public statements of numerous producing State officials regarding these new State initiatives raise serious questions that cannot be ignored. When the Senate Energy Committee held hearings on this issue, I referred to a letter sent by Oklahoma Energy Secretary Charles Nesbitt. I ask unanimous consent that the text of that letter, which lobbied on behalf of an Oklahoma prorationing proposal, be included in the record following my remarks.

There is a long history of legitimate State regulation to further the goals of physical conservation, to prevent unfair drainage among producers in a common reservoir, to enforce wellspacing rules, and so on. The Congress has not intended to preempt these legitimate State authorities. It is, however, now necessary for us to speak definitely on these new prorationing initiatives, and I am very pleased that title II has done so.

The prorationing provision in title II does not decide the lawfulness of these new State initiatives. This is entirely a question for the Federal courts, in the context of a preemption challenge to those State laws or regulations that substantially and unreasonably interfere with the broad Federal policy of wellhead competition. The intent of Congress, however, will be a central question in any possible future disputes. Accordingly, new section 202 of title II restates and extends our support for free national gas production markets, and I am pleased to have had a hand in its evolution and adoption by us in this legislation.

This short natural gas title also makes very clear that Canadian natural gas will be considered like any other gas in this country. Unfettered access to Canadian energy supplies was one of the great accomplishments of the Canadian Free-Trade Agreement. Unfortunately, time and time again domestic producers have sought to use U.S. regulatory authority to block access by consumers to these alternative supplies. With the passage of this legislation, we make clear that these tactics will not succeed.

I am also pleased that this legislation includes provisions I've promoted which gives tax equity to commuters who use mass transit. The existing Tax Code allows employers to deduct the cost of onsite employee parking as part of the cost of doing business. The tax proposal would allow an employee to receive each month up to $150 from his or her employer if they park at commuter stops and an additional $60 when they commute by public transportation. This benefit, which would not have to be reported as income, could amount to nearly $2,500 annually for a commuter. For the millions of New Jerseyites who commute every day, this proposal makes public transportation a good option. It could make the difference in choosing whether to drive all the way to work or go to Newark, Metropark, or Princeton Junction or any one of the SEPTA stations and catch a train or bus.

Mr. President, this national energy policy is not without problems. It is not the proverbial home run. But it represents progress, nonetheless, and I will support it. The managers of this bill have tried to balance many competing interests and they have largely succeeded. They are to be complimented for their persistance, their endurance, and their simple hard work.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

STATE OF OKLAHOMA,
OFFICE OF THE SECRETARY OF ENERGY,
Oklahoma City, OK, October 22, 1991.
Representative GROVER CAMPBELL,
State Capitol Building, Oklahoma City, OK.

DEAR REPRESENTATIVE CAMPBELL: I enclose a draft of a bill which is being prepared for introduction in the 1992 legislative session. As a member of the Energy, Environment, and Natural Resources Committee, I feel you should be kept informed about proposed legislation in the field of Energy.

The subject of this legislation is seasonal market demand proration of natural gas. As you are no doubt aware, Oklahoma enacted the nation's first market demand laws relating to both oil and gas in 1913, when a condition of severe oversupply had resulted in low field prices and widespread waste.

These laws were enforced and worked very well until the mid-1970's, when the first Arab embargo and punitive federal price controls on natural gas resulted in a severe shortage of supply. Later, when the shortage of gas had turned to surplus, the Oklahoma Supreme Court held that the Corporation Commission could not impose more stringent production controls except after personal notice which is a practical impossibility.

Recent events have clearly demonstrated the cost to Oklahoma and its citizens resulting from an excess of natural gas supply. During the summer of 1991, gas field prices sank to the lowest level in many years, below the cost of replacement, simply because of oversupply in the field.

Those who profit from the oversupply and resulting depressed price are the gas traders, the interstate pipe-lines, and the Eastern consumers. Those who lose are the developers, the State, and above all, the Oklahoma mineral owners. We should never forget that natural gas, unlike annual crops, is a nonrenewable resource. When gas is sold at a distress price, the landowner suffers a financial loss which can never be recouped.

This proposal would simply impose a seasonal limitation on production from natural gas wells. It is well known that the market for gas is seasonal: high in the winter months; low in the summer months. Pipe lines are rapidly developing storage facilities, specifically designed to further extend the period of low field prices.

When there is an excess of supply over demand, the simple solution is to reduce the oversupply by storing gas in the ground. If every producer were willing to cut production proportionately during the summer period, no legislation would be necessary. However, we all know that as a practical matter, such joint action, even if it would mean higher prices immediately, simply will not occur.

This proposal would impose a daily gas production limitation of 50% of well deliverability during the winter 6 months' period and 25% of deliverability during the summer 6 months' period. Wells producing casinghead gas and wells of low capacity (under one million cu/ft/day) would be exempt, because the impact of these wells on the market is small. Production from super-wells would be further limited to 25% of deliverability over 10 million cu/ft/day year round. Overage or underage could be made up only during a similar seasonal period, to minimize manipulation. Finally, the present draft includes an automatic sunset provision, under which the allowable restrictions would expire automatically at the end of two years unless renewed by legislative act. If for any reason the plan is not working, it can simply be allowed to die.

No one state can unilaterally overcome the distress prices resulting from seasonal oversupply. No state would want to impose production restrictions, and then see the market move to another state with no improvement in field prices. For this reason, the gas producing states of the Southwest are in close cooperation in these efforts to address the problem of oversupply and low field prices. The Texas Railroad Commission already has conducted hearings preparatory to issuing an Order imposing seasonal market demand proration on gas wells in that state. Similar initiatives are under way in Kansas, Arkansas, Louisiana and Colorado.

Oklahoma is fortunate in that all states recognize the necessity for legislation here. This means that Oklahoma no doubt will be the last to actually impose binding production restrictions. We will know whether other states will act before final passage of the bill by the Oklahoma legislature. However, it is essential that Oklahoma move forward in concert with the other states.

I would appreciate your careful attention to this proposal. I would be glad to meet with you to discuss the matter further if you desire. If you share my conviction that this legislation would be of significant benefit to Oklahoma, its economy, and especially its citizen-landowners, your joinder as a legislative sponsor would be extremely valuable.

Very truly yours,

CHARLES NESBITT,
Secretary of Energy.

Mr. GLENN. Mr. President, I voted for passage of the Comprehensive National Energy Policy Act when it was before the Senate earlier this year, and I plan to vote for final passage of the conference report. However, I have strong reservations about several major provisions in this final version of the bill.

The conference committee deleted provisions dealing with natural gas prorationing that were passed overwhelmingly by the House. I strongly opposed efforts by certain States to control natural gas production solely to artificially increase prices. I do not challenge the traditional authority of States to proration gas production to protect property owners' rights, to protect State interest in resource conservation or for other reasons. I sympathize with producer concerns about low natural gas prices, but these concerns would be better answered by expanding gas markets than by artifically increasing prices. In fact, the bill before us takes significant steps to encourage and stimulate the use of natural gas in transportation, electric generation, and appliances.

Ohio is ranked fifth in the Nation for natural gas expenditures. Continued increases in natural gas prices will have a severe impact in Ohio and the Midwest. I oppose the deletion of prorationing provisions from this legislation.

In addition, I wish to question the provision in the energy bill conference report which addresses nuclear waste disposal standards. This provision sets an unfortunate precedent. It excludes the Environmental Protection Agency from establishing a public health standard for long-term high-level nuclear waste disposal and instead delegates this authority to the National Academy of Sciences—an entity which is neither a regulatory nor a standard setting body.

Not only does this provision require the NAS to promulgate standards, it also tells the NAS exactly what kind of standard should be issued. It orders the NAS to promulgate standards that only take into account the maximum dose that any individual can be exposed to from radiation leaking from a high-level nuclear waste repository. It would not address the issue of how many people would be subjected to a given dose.

This provision has the effect of setting the stage for the DOE to pick the Yucca Mountain site, when the purpose of site characterization is to determine whether or not this site is actually suitable. The Department of Energy is opposed to the approach being taken by EPA in setting a repository standard because it may put into doubt the suitability of the Yucca Mountain site. This is, in my view, an insufficient reason to change our normal regulatory procedures.

Mr. President, in the areas of energy efficiency and conservation, I am pleased that conference accepted provisions on Federal energy management which I had offered in a series of amendments during the Senate's consideration of this bill. This language paralleled legislation I had introduced last year—S. 1040, the Government Energy Efficiency Act—which was favorably reported by the Committee on Governmental Affairs.

I've been preaching the virtues of energy efficiency and conservation long before it became popular. And so I am pleased that the conference has accepted language which I had offered during the Senate's consideration regarding energy conservation and efficiency in federally owned buildings.

Mr. President, when consumers in my home State of Ohio are faced with rising utility bills, they respond with energy conservation efforts, like installing clock thermostats, weatherstripping doors and windows, and insulating the attic and pipe systems. While these steps sound small, they can add up to significant—10 to 30 percent—savings.

Unfortunately, the Federal Government does not seem to exhibit a similar response. In short, I'm not sure who exactly is watching the meter in the Federal Government. Answers to such questions as—who turns out the building lights at night; what incentives do agencies and their employees have for installing energy efficient products or conserving energy; how do building managers know which heating systems and water pumps are most energy efficient—are vague at best.

Further, it has been estimated that even though the average Federal building uses more than $7,000 per year in energy, we spend less than $90 per building on efficiency improvements. OTA, DOE lab experts, independent analysts, and even Federal building managers say that a 25-percent improvement in Federal energy use is easily attainable with the goods and services on the market today. That would shave $900 million from our annual Federal energy costs. It does not take a rocket scientist to see that cost-effective energy investments abound throughout the Federal Government—if only proper commitment and resources are applied.

Energy conservation and efficiency has an added benefit. In fact, I look upon the promotion of American industries in this field as recession busting: We'll create more jobs for Americans and save money in the long run through the use of these products. You just can't go wrong with a program like that.

I strongly believe that the Federal Government must be a leader in the acquisition and use of new and innovative energy efficiency technologies and conservation measures. To this end, I am pleased that the conferees have established an energy efficiency fund, authorized at $60 million, to install proven energy efficiency technologies and products in Federal buildings. Further, the bill includes a provision I originally proposed for demonstrating the commercial viability of state-of-the-art technologies in Government facilities. Let's get these technologies out of the lab and into the public use. Finally, this legislation requires the Federal Government, through GSA, to identify energy efficient products and services and start to buy them.

This bill requires Federal agencies to develop procedures to reliably account for utility bill costs as well as account for spending on efficiency and conservation upgrades. Additionally, the bill authorizes the placement of qualified, trained energy engineers in the Government's most energy-wasteful buildings as well as setting up an incentives program to reward Federal agencies and employees who implement conservation and efficiency improvements in buildings which result in substantial savings in taxpayer dollars.

In an effort to build on innovative energy management programs already in existence, the bill requires GSA to hold regional workshops for Federal, State, and local energy management officials. If an energy conservation program is working successfully on a local or State level, perhaps it could work at the regional or national level. My legislation attempts to address these and other problems concerning the Federal Government's use of energy.

I am committed to making the Federal Government a model of efficient energy use and conservation. And I can assure you that I will continue these efforts in the 103d Congress.

I am also pleased that the conferees accepted language to help promote and better coordinate Federal Government purchase and use of clean burning, alternatively fueled vehicles.

In addition, I also support a provision of the bill that will preserve health benefits that were promised to retired coal miners and their families. It will also protect additional miners in the future if their companies go bankrupt. The program will be funded by tracing retired miners back to their previous employer or a related company, by shifting excess money from a pension fund, and from interest on the abandoned mine lands fund.

Mr. President, in general I support the objectives of this legislation and will vote for its passage.

Mr. SIMON. Mr. President, I wanted to briefly discuss the Comprehensive National Energy Policy Act.

I want to commend the Members of the Senate Energy Committee for all the important work that went into this piece of legislation. There are some important provisions included in this conference report. In particular, the policies adopted on energy efficiency and renewable energy will be an important step in decreasing our dependence on foreign oil.

There are also a number of provisions that will be very important to the State of Illinois. The coal title of the energy bill contains several programs that encourage new ways to use coal more cleanly and efficiently. This will help enhance the use of coal as an energy source in the future. In addition, the uranium title of the energy bill contains provisions that will authorize funding for the off-site disposal of low-level radioactive waste from certain active uranium and thorium processing sites. One of these sites is located in West Chicago. I am pleased that much of the language from the House bill was retained in conference. Finally, the tax title of the bill contains a compromise that will provide health benefits for coal industry employees and retirees. The inclusion of this compromise is very important to me and my constituents in Illinois.

I want to take this opportunity to thank my good friend and colleague, Senator ROCKEFELLER, for his hard work in forging a compromise on provisions providing health care benefits to retirees of the coal industry. Without Senator ROCKEFELLER, this compromise would not have been reached. A number of other Senators also worked hard to come to agreement on this issue.

The energy bill provides a vehicle for funding the health benefits of all coal industry employees and retirees, particularly those retirees who have been orphaned by bankrupt companies and coal companies which no longer are in business. Coal industry workers have contributed significantly to providing energy consumed in the United States and abroad. It is vital to every worker as well as the American economy that we maintain a stable and strong coal industry. The provision of lifelong health benefits is crucial to ensuring the continued well-being and security of coal industry employees, retirees, and their dependents, many of whom work and reside in Illinois.

While there are a number of provisions in this bill that I support, I believe we could have done better. I am concerned by the provisions regarding Yucca Mountain, and the process by which they were inserted in the bill.

I also supported language that was passed by the House, but dropped in conference, that would have restricted the ability of States to pass prorationing natural gas legislation. Since several major natural gas-producing States passed these laws, natural gas prices have increased by 56 percent. Illinois natural gas users will pay $631 million more, according to the Northeast Midwest Senate Coalition. I am very disappointed that the House provisions were not accepted by the conference committee.

Finaly, the Senate bill contained provisions requiring certain private fleets to begin phasing in alternatively fueled vehicles. I supported even stricter provisions on alternative fuels when I voted twice for amendments offered by Senator JEFFORDS that would have set production goals for domestically produced alternative fuels. Ultimately, these amendments were defeated in the Senate. Unfortunately, the alternative fuels provisions accepted by the conference committee are weaker even than those originally passed by the Senate.

Mr. INOUYE. Would the manager of the conference report H.R. 776, the distinguished senior Senator from Louisiana and chairman of the conference committee on H.R. 776, clarify subtitle B, of title VII of the agreement concerning transmission?

Is this Senator's understanding correct that the Federal Energy Regulatory Commission's authority to order wholesale transmission service under the conference agreement does not apply if the power is to be transmitted to other than a wholesale customer.

Mr. JOHNSTON. The Senator is correct in his understanding.

Mr. INOUYE. Is this Senator's understanding also correct that implementation of a FERC order to provide wholesale transmission service on an island or between islands would require approval by the local public utility commission? In other words, if the local public utility commission does not grant approval, the transmitting utility is excused from the wheeling order?

Mr. JOHNSTON. Yes, to the extent such approval is required under State law, the Senator is also correct in this understanding.

Mr. INOUYE. Is this Senator's understanding also correct that FERC would require the applicant seeking wholesale transmission service to provide evidence of its ability to pay for the transmission service including the transmitting utility's cost of expanding the transmission facilities to accommodate the petitioner?

Mr. JOHNSTON. The Senator is again correct in his understanding. My expectation is that in any situation involving major expansion of transmission facilities FERC would not order transmission services unless it was clear that the applicant could pay for its allocated share of the costs.

Mr. INOUYE. I thank the Senator for his clarification.

(At the request of Mr. MITCHELL, the following statement was ordered to be printed in the RECORD:)

• Mr. SANFORD. Mr. President, I rise today to speak on the conference report to the National Energy Security

Act, H.R. 776. And it was with very mixed feelings that I reviewed this conference report. I support many of the provisions in this bill because I want to see progress in our national energy policy; we must reduce our dependence on foreign oil and begin to make efficiency and conservation part of the American lifestyle. I am concerned, however, that the energy bill does not go far enough to reduce our need for polluting fossil fuels. And, sadly for North Carolinians, the bill does not address the desires of those in my State who have maintained hope that Congress would address the issue of offshore drilling.

I am thankful for the hard work of the Energy Committee, as they steered this legislation along a very difficult course through the Senate. I did not support the original Energy Bill, S. 1220, offered by the Energy Committee, and I voted last November with a number of my colleagues to keep S. 1220 from coming to the floor of the Senate. At that time, I felt that several Senators had not had the opportunity to give their input on the bill. Since the energy bill first came to the floor, progress has been made on a number of important provisions.

I am particularly pleased with the language to increase the use of renewable and alternative fuels. Such provisions are critical to improving our long-term energy policy. As fossil fuel supplies dwindle, these new energy sources will become ever more important in meeting our country's energy needs. Also, as we all know, the emissions from the use of fossil fuels have an adverse affect on our environment, and it is in our best interest to move away from these polluting fuels. We must increase our use of such fuels as ethanol, natural gas, hydrogen, solar, wind, geothermal, and biomass; H.R. 776 will lead us in that direction.

I am also pleased with the language in the conference report on energy efficiency. The language expresses the intention of the conferees to make the Federal Government a leader in the use of energy efficiency technology. The report also includes numerous efficiency standards for light bulbs, electric motors, heating and cooling equipment, and shower heads and faucets. These energy efficiency provisions are a critical part of reducing energy consumption, and, therefore, reducing our imports of foreign oil.

My support for this bill is tempered, however, by my great concern about the omission of any language on the matter of Outer Continental Shelf [OCS] oil and gas drilling. This is a subject of great concern to many people around the country, and certainly to my constituents, the citizens of North Carolina. I would like to take this opportunity to share with my colleagues the recent history of this issue in North Carolina.

Several years ago, Mobil Oil Co. led a group that purchased leases for oil and gas drilling off the coast of North Carolina. However, the efforts of Mobil Oil and its partners to begin exploratory drilling have been held up for 4 years due to local opposition and a lack of scientific information regarding the possible environmental impacts.

In 1990, at the direction of Congress, a top-flight collection of professionals, the Environmental Sciences Review Panel, was assembled to analyze the drilling option. This North Carolina/Minerals Management Service cooperative study found that available information was inadequate to assess potential environmental effects. Significant risks to marine and coastal environments may result from drilling in this area of uniquely strong converging currents and severe weather.

I supported the language in the House version of the National Energy Security Act which called for the cancellation and buy-back of existing Mobil leases and a 10-year moratorium on new leases in the mid-Atlantic and south Atlantic planning areas. I also supported several fair compromise positions that I felt should have been acceptable to both the House and Senate conferees.

In the end, the White House stood in the way. The same administration that 2 years ago called for moratoria on drilling in several coastal areas of our Nation and pledged to cancel and begin the buy back of off-shore leases in south Florida has now had a change of heart and decries even limited drilling moratoria in other sensitive areas and says that buy backs are unacceptable.

Due to the objections of President Bush's Office of Management and Budget, there is no lease buy-back provision and no moratoria on either leasing or drilling off the coast of North Carolina. The chance to address this critical matter this session was thus eliminated.

I am very disappointed and concerned about this result. It was my sincere hope that this matter could be resolved in a manner that is fair to both Mobil and the people of North Carolina. Mobil has never been able to take action on the leases they paid good money for, and the people of North Carolina are concerned about the still-unknown impact that drilling would have on our outer banks. Coastal residents, the environmental community, and Mobil Oil want to put this frustrating saga behind them. North Carolina has much work to do before we are ready to bring offshore drilling back to the table in an area of the State which is largely dependant on recreation and tourism for economic survival.

Since we have not dealt with this matter now, I hope my colleagues will work with me to resolve this issue early in the 103d Congress. I am hopeful that the chairman of the Energy Committee will give this matter his careful attention and lend me his assistance and support in crafting a workable solution to this matter as soon as possible.

Congress must not leave this matter hanging. This is not fair to Mobil and its partners, and it is not fair to the people of North Carolina.●

Mr. KERREY. Mr. President, in adopting the National Energy Security Act, H.R. 776, the Senate has taken a long overdue step addressing the lack of a coordinated national energy strategy. The United States stands out among the industrialized countries for our lack of a comprehensive energy plan. In a period of increasing emphasis on economic competitiveness, energy costs are a critical variable. The United States currently spends about 10 percent of its GNP on energy, almost twice the amount spent by Japan and Germany. We need to lower our energy costs.

Although I have some specific concerns about a number of provisions in this legislation, on balance it is a step in the right direction.

This bill's energy efficiency and conservation provisions are critical to our country's effort to reduce our reliance on imported oil, reduce environmentally destructive emissions and help our country make a transition to new cleaner energy sources. The legislation improves energy efficiency standards for appliances, lighting, motors, commercial air-conditioning, and heating equipment. Further, it sets efficiency standards for Federally insured housing.

The legislation will require State regulators to consider ratemaking changes and other reforms that would make electric utilities' investments in energy efficiency as profitable as investments in new generating plants. This approach to energy efficiency, known as least cost planning or demand-size management, involves managing a utility's various power supplies and the demands of its retail customers to make the most of existing generating capacity.

Improved efficiency is a critical component to our country's economic competitiveness, and I applaud Senator WIRTH and others who have played a critical part in seeing that efficiency and conservation become central to our energy policy. Not only will our firms be in a better position to compete, but these fields will provide important job opportunities in the coming decade.

I am also pleased that this legislation expands research and development programs for alternative and renewable energy sources. The alternative fuels fleet provisions build on the measures that were included in the Clean Air Act last year. We could, and should, go further and I look forward to working with others who have supported alternative fuels to see that we continue our transition to domestically produced alternative fuels.

The conferees included language to create a Federal production incentive for public utilities that build or purchase facilities that generate electricity from renewable energy sources. The bill would also authorize joint ventures between the Federal Government and private enterprises to develop renewable technologies and applications. Renewable energy sources will also benefit from the transmission access provisions that were included in the conference. Traditionally, renewable energy producers have faced substantial obstacles in selling their clean energy to the Nation's electricity grid. The United States has traditionally been a leader in the field of renewable energy. Unfortunately, we have lost some of our competitive edge. This legislation will strengthen our position by encouraging U.S. producers to export renewable energy technology.

Finally, we have built a framework for an energy strategy without opening the Arctic National Wildlife Refuge's coastal plain oil and gas drilling. This important ecological area does not need to be opened in order to satisfy our oil habitat. This legislation paves the way to saving millions of barrels of oil through efficiency and energy conservation. This savings offsets the need to open up ANWR.

Even though I did support the conference agreement, I am strongly opposed to the provision that addresses the Yucca Mountain high-level radioactive waste site. The Congress should not be directing a non-governmental entity to study radiation exposure and develop standards that the Environmental Protection Agency will promulgate. This short-circuits the public process that helps guarantee accountability and openness on this divisive issue.

I am opposed to the inclusion of nuclear licensing provisions, one-step licensing, that streamline the process for license applicants, but create new obstacles for the public. Citizens with just cause should have the opportunity to have a hearing before a nuclear plant goes online. The provisions in this bill will only add to the current climate of distrust about nuclear power and the Nuclear Regulatory Commission. I am also concerned about the uranium enrichment provisions in the legislation because it involves a poor expenditure of taxpayer dollars.

Despite these drawbacks, the legislation does move us closer to reducing our dependence on oil, protecting the environment and helping make our country more competitive. Finally, we should not allow this to be the last word on energy policy. We need to support the development of innovative solutions to encourage the conservation of existing energy resources and promote the development of renewable energy resources.

Mr. DURENBERGER. Mr. President, if you ask Americans what should be the fundamental objective of U.S. energy policy most would say, "Our policy should strive to reduce oil imports." As one listens to the debate on the energy bill here on the floor of the Senate that is the objective most often mentioned. In light of Desert Storm, Members of this body have been moved to make very impassioned statements on the evils of oil imports and our dependence on Persian Gulf energy supplies.

There are three ways that we could reduce imports. We could increase the supply of domestic oil to meet our needs. We could shift to domestic sources of energy other than oil. Or, we could reduce our consumption of oil by improving our efficiency or changing our lifestyles.

There are examples of each of these strategies in the energy bill now pending before the Senate. The tax provisions of this bill would exempt investments in oil and gas exploration from the alternative minimum tax. That should increase the domestic supply of oil.

There are mandates for the use of alternative fuels in fleets owned by the Federal and State governments in this bill. Those mandates may lead to increased use of natural gas, ethanol and methanol fuels. That will increase the use of alternative domestic energy supplies.

And the Department of Energy and the States are required to consider and adopt various fuel efficiency standards for new construction and new appliances and motors. That will reduce our consumption of oil.

There were many other proposals that would have reduced oil imports that were proposed for inclusion in this bill that were rejected.

This bill does not include an increase in the corporate average fuel economy standards that now require new cars to average 27.5 miles per gallon.

The bill does not authorize leasing of the Arctic National Wildlife Refuge for oil exploration.

The bill does not include any real solution to the Nation's nuclear waste disposal problems. It does not ease permitting of new natural gas pipelines. And it does not include the tough mandate for alternative transportation fuels that Senator JEFFORDS proposed here in the Senate.

There are some modest provisions in this bill that may serve the objective of reducing oil imports. There are other measures that were considered and rejected that would have reduced oil imports by much greater amounts, much greater amounts.

Mr. President, if you compare the rhetoric of war and defiance used to justify this bill with its modest, business-as-usual provisions, you could become confused about the objectives of U.S. energy policy. Should we really be prepared to reduce oil imports at any cost as is sometimes suggested by the advocates of this bill? If so, then this bill leaves us well short of our objective. In fact, imports as a percentage of our oil use will continue to increase under this legislation.

On the other hand, if this bill is an appropriate response to our energy situation then, what are we to make of the rhetoric of war and independence that makes up so much of our energy debate?

I want to try to tackle the import question directly today. Do we import too much oil? Forty percent of our oil demand is met with imports. Is that too much? If so, what kind of effort would be appropriate to reduce our imports?

To answer these questions let us look first to some energy realities. The first reality is the enormous reserves of cheap oil in the Middle East. Proven reserves in the Persian Gulf region are 589 billion barrels. At current production rates that is enough oil for another 100 years. The actual reserves are likely much larger than even this amount. And it can be produced for $2 to $3 per barrel. We are not running out of cheap oil.

The second reality is the dependence of the whole world on this oil supply. Cheap, abundant oil fuels economic growth all around the world. Even if the United States were still an exporter of oil, we would not be economically independent from the Middle East reserves. Our economy is tied to the world economy. Our prospects for growth and higher standards of living depend on growing economies all around the globe. Even complete energy independence, zero imports, would not free us of the economic problems which occur when the flow of oil is interrupted.

The third reality is the dominant role that oil plays in our transportation system. Americans drive. Today's Americans drive more than those of yesterday. Higher oil prices do not keep us home. Today we drive twice as many miles as we did before the first embargo of 1973. Our cars and trucks are more efficient, but we have many more of them and we use them more extensively than we ever have before. That's not going to change.

The fourth reality is declining American oil production. We started the petroleum century. We've looked practically everywhere within our borders for crude oil. We've found and produced great quantities. But there will be less and less oil from domestic sources in the future. More and more of what we use will need to be imported.

In that respect we will be more like the rest of the developed world. Because of our reserves of coal and natural gas, only 15 percent of our total energy needs are met by imports. We are much better situated than Japan, Germany, the Scandinavian nations, most of Western Europe, all of these nations are much more dependent on imported energy than we are. Nobody in Japan would say, as some Americans do, that Japan does not have an energy policy because its oil imports are high as a percentage of total use. Japan imports virtually all of its oil and a policy to reduce imports to zero would not be thinkable.

Another reality in the American energy picture is a long string of failures by Government. I spoke on this subject at length when this bill was before the Senate last spring. Today, let me just repeat the list of the big energy policies that have been repealed, President Nixon's price controls, President Carter's windfall profits tax, the Powerplant and Industrial Fuel Use Act that rationed natural gas, the Synfuels Corporation, the natural gas price controls imposed by the Supreme Court, the billions of dollars in conservation and wind and solar energy tax credits. The list of Government blunders is sobering, especially to Senators who served in this body when many of those policies were adopted.

On the other hand, the U.S. energy picture has changed in some dramatic ways since the first oil embargo. Our fleet of cars and trucks is almost twice as fuel efficient today. Large improvements in energy efficiency have been made throughout the economy.

We use one-third less energy per dollar of real GNP today as compared to the early 1970's. We are by no means the most energy efficient economy in the world, but progress has been made. These improvements are the result of the higher oil prices that came with the energy disruptions of the 1970's and 1980's. When we finally decontrolled prices, the energy market pointed us in the right direction.

One final reality needs to be mentioned. Oil is relatively cheap today. After the rapid price increases that came with the 1973 embargo and the 1979 Iranian revolution, prices have now subsided again. In fact, oil prices collapsed in the mid-1980's and gasoline is today as cheap as it was in the 1950's when compared to the prices we pay for other goods and services. And it appears that the policy of the international cartel that controls world oil production is to keep the price in the present range.

OPEC is in business to sell oil. They don't want the world to convert to exotic synfuels or to cut consumption dramatically. They want our dollars and they plan to sell oil at prices that will keep the world dependent on their resource. Absent some very dramatic change in the governments of many OPEC nations, we are not likely to see oil prices that will make alternative transportation fuels like ethanol or methanol or electricity competitive in the marketplace.

Lower oil prices have been good for our economy. The current worldwide recession would likely have begun sooner and been much steeper, if energy prices had been maintained at the levels reached in the early 1980's.

So those are some realities in the energy picture. Let me return now directly to the question of oil imports and whether we import too much. Notwithstanding the fact that 95 percent of all Americans would say that our imports are too high, I find this a very difficult question to answer. My own view of the correct answer to the question has changed during the time that I have served in the Senate and watched events in the oil economy.

To sort out the factors that need to be considered in answering the import question, I am going to describe four different oil scenarios. Let us see what each can teach about our import problem.

My first scenario is the simplest. Let us suppose for a moment that all of those Middle East oil reserves were here in the United States, in east Texas, 600 billion barrels of oil, produced at very low prices by a private, competitive oil industry. Oil imports would, of course, not be a problem. Recycling our export revenue would be our principal concern.

But even with that incredible natural resource blessing, 100 years supply of cheap oil within our borders, we still might decide that our current level of oil consumption was too high. There are environmental costs of oil use, including air pollution in our cities, spills and accidents in the oil production system, and the buildup of carbon dioxide in the atmosphere, a possible threat to our climate as a consequence. We might, based on the evidence of global warming, decide to consume less oil than we presently do even if we had no oil imports.

The fuels, ethanol, methanol, natural gas, and electricity, that might be used as alternatives to oil in the transportation sector are quite expensive because of the huge capital investments that would be needed to make any substantial conversion from oil.

For instance, DOE estimates that it would require an investment of $240 billion to replace 1 million barrels per day of oil with electric energy used in cars.

Some of these fuels, especially natural gas and ethanol, can play a role in solving our urban air pollution problem. But we should not expect that they are an immediate option to abate our concerns about global warming.

But there are many conservation options that are available at today's prices that could reduce our use of oil in the transportation sector. The Senate was correct to reject a 40 miles per gallon CAFE standard for this bill, at this time, but there are many smaller steps that could be taken to push the fuel efficiency of our new car fleet to a higher miles per gallon. A modest, long-term benefit in lower oil imports would result.

So, even if all the oil were ours, we might use somewhat less, to protect toe environment. That's our first possible scenario.

Now, a second scenario. Let's suppose that all that Middle East oil were in Canada. Again, we assume that it is produced by a private, competitive oil industry and as a result we can expect stable oil prices over the long term. There is no security issue in this scenario. We don't have to fight any wars to gain access to this vast reserve of Canadian oil.

But there is the economic problem of imports. As the oil comes in across the border our dollars flow out. Our balance of trade suffers. Our standard of living is less. If this were the energy reality we faced, should we reduce oil imports and if so by how much?

I don't know if any Member who wrote this bill or any staff person who worked on it has considered this question. But there are some economists who have. Their studies do not claim absolute economic certainty. But they have measured the economic penalty of a barrel of imported oil without the security risk associated with the Persian Gulf. And these economists would tell us that the economic penalty for imported oil is about $2 to $3 per barrel.

In addition to the $18 we actually pay for any barrel of oil today, whether domestic or imported, the imported barrel also carries a penalty of $2 to $3, because the basic payment of $18 leaves our country.

If that is a correct estimate, then we should be willing to pay somewhat more for domestic energy sources that can be substituted for oil, not a lot more, but somewhat more. Domestic energy options including conservation and renewable energy, and even enhanced oil recovery technologies, that cost up to $2 to $3 per barrel more than the basic price of oil should be preferred because they are domestic.

That doesn't mean $60 per barrel synfuels. The economic penalty we pay for imports is not large. And the drain on our economy typically measured as a negative balance of trade does not justify huge investments in liquid fuels from coal or oil shale or exotic conservation or renewable technologies.

Our national energy policy should take this economic reality into account. In addition to the conservation policies we employ to address pollution including global warming, small subsidies for domestic options that are only slightly more expensive than oil would be appropriate. And research and development to bring other technologies into this range should also be pursued.

Now let me turn to a third scenario. This is the scenario that I see as the reality today. All that oil is in the Persian Gulf region. The region is politically unstable. Many of the oil nations are our friends and allies. But some are not. The price and production rates for the oil are controlled by a cartel. It is likely that periodic interruptions in supply will occur.

There is a new cost in this scenario that isn't present if we imagine the oil in Canada. It is the cost of economic uncertainty. Although over the long run, we might expect a stable real price for oil in the $18 per barrel range, there will be short term events that cause much higher spot market prices. What is the economic cost of these disruptions?

If we remain unprepared as we were in the early 1970's and 1980's for these disruptions, the costs are quite high. Oil disruptions have triggered recessions that cost us billions of dollars in lost GNP. But if we prepare ourselves for the realities of this scenario, the cost can be much less. The cost is an adequate strategic petroleum reserve. It is the most important piece of our energy policy under this third scenario. A reserve with 750 million to 1 billion barrels of oil used aggressively to manage disruptions can protect us from the large economic losses that would otherwise occur in this energy scenario.

Those who use oil ought to pay for the SPR. Today, the SPR is not as big as it should be. It is about 570 million barrels. Because the taxpayer currently finances the SPR and because of our budget deficits, we have been slower than we should have been in reaching full capacity. The cost of filling and maintaining the reserve should more appropriately fall on the energy consumer and ought to be carried on the price of oil as an additional fee. That fee would also stimulate a modest amount of additional domestic production to reduce imports.

Some would also include our military expenditures in the Persian Gulf as a cost of energy under this third scenario. I personally do not think we fought for access to oil in Desert Storm. Perhaps our enemy did, but our interest was in containing his power, not in having his oil. After all, the world has access to the oil that is inside Iraq for the very same price that we buy the oil produced by Kuwait.

Even if you include the cost of Desert Storm in the price of energy under this third scenario, the numbers are not large. The nations who participated in Desert Storm spent $60 billion on the war. For 600 billion barrels of oil, that's 10 cents a barrel.

The principal point I am making here is that huge expenditures on conservation or renewables or domestic fossil resources are a means to reduce oil imports are not justified by the actual economic penalties we pay either because we import oil or because we import oil from an unstable region. The economic penalties measured in a negative balance of trade or in the cost of the strategic petroleum reserve are small. Even the material price of desert Storm, which I do not believe was a war for the oil resource, is small when compared to the economic value to us and to the world of the Middle East oil reserve.

My final scenario is the one that I think most Americans carry around in their heads. It is the scenario born of gas lines, hostages in Iran, economic decline at home, and American men and women fighting in the deserts of the Middle East.

Those who hold this view, and it is a plausible interpretation of our current energy reality, see the Persian Gulf oil reserves in the hands of nations hostile to our interests who will use the oil weapon to bring us to our knees. Under this scenario our dependence is a threat to our security and to the security of our allies, most especially Israel. No price is too small to regain our independence.

I must say that there was a period after the 1979 Iranian revolution when I found this scenario the most realistic. I voted for the windfall profits tax and the Synfuels Corporation and the tax subsidies for every kind of energy that wasn't foreign energy. At the time the U.S. Department of Energy was predicting oil prices of $90 per barrel by 1990 and it seemed that huge investments in domestic alternatives were our best policy.

It doesn't seem so today. In fact, I believe that OPEC prices and production rates have been managed to help our economy and our consumers for a number of years now. Eliminating the oil we have imported for most of the last decade, by paying billions and billions of dollars more for domestic energy would have been an economic folly of catastrophic proportion.

In outlining these four scenarios, I have also tried to outline the elements of a national energy policy I could support.

We must focus on the threat of global warming and should be employing all the measures that are available at today's prices to reduce carbon buildup in the atmosphere.

Second, we should provide small subsidies to domestic alternatives that are somewhat more expensive than oil to offset the economic costs associated with a negative balance of trade.

Third, we should conduct research and development efforts across the broad range of near-term energy technologies that may be brought within the range of these small subsidies.

Fourth, we need to fill the strategic petroleum reserve and pay for it with a fee on energy consumers.

Finally, we should do everything within our means to facilitate peace and stability among the nations of the Middle East. We must prevent scenario number four from becoming our energy reality.

I am voting against cloture on this bill. I have voted against the bill each time it has come before the Senate. There is no part of the conference report which is especially troublesome to me. There is no special outrage in this bill, nothing to compare with leasing the Arctic National Wildlife refuge, for instance. The bill is now mostly a collection of adjustments for various sectors of the energy industry, some justified by the reality of our energy situation and some not.

I have voted against this bill not because of what it contains, but what it lacks. It lacks a theory, a purpose, a clear statement of reality and policy around which it is focused. There is no evidence that the bill was put together based on a coherent view of our economic and energy reality and a determination to take advantage of every opportunity to improve our condition, and an equal determination to reject the options that are beyond a reasonable cost.

Do we import too much oil? Probably. A little bit too much. How much should imports be reduced? You won't find the answer in this bill. After 2 years of debate and consideration, this collection of adjustments in our national energy policy is still justified by the old rhetoric of war and independence.

The American people deserve an energy policy based on a hard-headed analysis of our energy realities. We need to clearly define our energy objective and justify the cost of each of the steps we take to reach it. I haven't seen that kind of justification for this bill. So, I shall vote against cloture.

KUDOS

Mr. WALLOP. Mr. President, I want to pay tribute to our colleagues in the House who were such tough and honorable negotiators. Congressmen JOHN DINGELL, PHIL SHARP, GEORGE MILLER, NORM LENT, DON YOUNG, and the others all brought ideas, ideals, and a common purpose to the conference.

Our spirited debates helped articulate the goals and define the solutions to these complicated and diverse issues. I think most of us would agree that our two bills got better in conference.

Let me also commend my friend, and colleague, the chairman of the Energy and Natural Resources Committee, BENNETT JOHNSTON. It's been a long journey, but throughout this 2-year odyssey the senior Senator from Louisiana never gave up. This bill is a testimony to the persistence and the vision of a very good legislator.

There is another group of individuals whose contribution to this bill was enormous. Secretary of Energy, Jim Watkins, Deputy Secretary of Energy, Linda Stuntz, and their staffs were of incalculable help to us throughout. The Energy Policy Act of 1992 was truly a partnership between the executive and legislative branches, thanks, to a great extent, to them.

The best I've saved till last. Any acknowledgements would be incomplete without a word about the carpenters who put it all together—the staffs of 10 House committees and 7 Senate committees.

We've heard a lot about the faults of our institution. Clearly, those critics haven't been to an energy conference with these men and women.

These dedicated individuals put in, literally, tens of thousands of hours to get us here, today. And believe me, it wasn't just a 9 to 5 undertaking. Those hours were logged during weekdays, weeknights, weekends, and even during a few sunrises.

Congratulations, too, to Ben Cooper and the majority staff for the professional and cooperative manner they worked with everyone. Ben once remarked that organizing this conference was like herding cats. He was a good cat wrangler.

And, of course, a very special thanks to Rob Wallace, Gary Ellsworth, Richard Grundy, Jim Beirne, Judy Pensabene, Howard Useem, Jim O'Toole, Marian Marshal, Carol Craft, Gerry Hardy, Gigi Beall, Kelly Fisher, Vaughn Baker, and Jim Tate of the Minority staff. It was a job well done.

ACKNOWLEDGEMENTS: H.R. 776

Mr. JOHNSTON. Mr. President, many, many people worked to make this bill into a law. I can only acknowledge a few of them in the space here. I must necessarily omit mention of many who should be mentioned. For that I apologize in advance.

I would particularly like to thank my colleagues:

MALCOLM WALLOP, ranking minority member, who has been my partner throughout this effort;

KENT CONRAD, who stuck with me through everything;

TIM WIRTH, the inspiration for the energy efficiency, renewable energy and global warming provisions;

JOHN D. DINGELL, chairman of the Committee on Energy and Commerce, who made it happen in the House; and

PHIL SHARP, chairman of the Subcommittee on Energy and Power, who produced the bill.

This was an effort that included the administration from the beginning, an example of how Congress and the executive branch can work together to produce legislation that is in the national interest. I particularly want to thank:

Adm. James D. Watkins, Secretary of Energy, who guided the National Energy Strategy through an administration that was not always united in its support;

Henson Moore, as Deputy Secretary of Energy and on the White House staff, was a tireless advocate for the legislation;

Gregg Ward, DOE Assistant Secretary for Congressional Affairs, who always kept the line of communication open; and

Linda Stuntz, Deputy Secretary of Energy, and the guiding force in the design of the national energy strategy.

I also recognize the professionalism and great energy of the House staff, and particularly want to thank:

Mike Woo, of Chairman DINGELL's staff with whom we worked throughout the year to develop the strategy for the legislation; we sorely missed Mike's counsel while he was ill during the conference; and

Dave Finnegan, Chairman DINGELL's right hand man, who kept us all focused on the goal.

I would also like to acknowledge my own committee staff, who worked for 2 years without losing hope.

Paul Barnett, who worked on the R&D sections.

Patty Beneke, senior counsel, who organized everyone else and still found time to handle OCS and alternative fuel fleets issues.

Bill Conway, the architect of PUHCA reform, who believed before anyone else did, including me.

Ben Cooper, staff director.

Leslie Black Cordes, who handled an extraordinarily broad range of issues, including renewables, energy efficiency, alternative fuels, and global warming.

Sam Fowler, all purpose counsel, handled several very difficult policy and drafting assignments, including uranium enrichment, alternative fuels and fleets, nuclear licensing reform, and whistleblower protection.

Mike Harvey, chief counsel, our most valuable and most experienced hand.

Karl Hausker, chief economist, chartmeister, number cruncher and ruler of the strategic petroleum reserve.

Tom Jensen, our water and hydroelectric power expert, who was also the guiding force behind the omnibus water policy legislation.

Don Santa, who handled natural gas issues, oil pipeline regulatory reform and counted the votes.

Allen Stayman, who handled the huge energy efficiency section of the bill and got his work done first.

Lisa Vehmas, our newest counsel, who more than ably handled the Interior Department and native America issues in the conference.

Mary Louise Wagner, who covered coal, R&D, and nuclear waste, and still managed to get a conference report drafted on the WIPP bill and arrange a wedding.

Tom Williams, steady hand, master of the Public Lands Subcommittee and expert on Alaskan issues and all matters relating to the National Park System.

This was a bipartisan effort from the beginning, and it stayed that way. We could not have succeeded without the cooperation of the minority and, in this case, without the uniformly high quality of Senator WALLOP's committee staff. I want to acknowledge the help of:

Jim Beirne, hydropower expert, who, like Tom Jensen, also juggled the energy bill and the water bill.

Gary Ellsworth, chief counsel to the minority, whose value to the process cannot be overstated.

Richard Grundy, who seemed to be involved in almost every title of the bill.

Marian Marshall, expert on the Interior Department issues.

Jim O'Toole, who covered national parks and Alaska issues for the minority.

Judy Pensabene, the minority's expert on all nuclear issues.

Howard Useem, who covered electricity and hydropower issues and coped with Bill Conway.

Rob Wallace, minority staff director, who led the minority with distinction, humor and keen insight into the ways of the Senate.

And finally, Mr. President, I want to express my deepest gratitude to the administrative staff of the committee. These people are the backbone of the committee. We absolutely could not have completed the work without their tireless efforts and dedication. They worked into the wee hours of the night and sacrificed weekends, typed and reproduced innumerable materials, delivered and retrieved documents, responded to an infinite number of written and oral inquiries, coordinated a myriad of complicated schedules, monitored legislative activities, and contributed in countless other ways to this legislative effort. And above all, they managed to carry out these demands while continuing to perform their many other responsibilities admirably.

At this point I would like to thank these people individually: Vicki Thorne, the committee's chief clerk, for coordinating the activities of the entire administrative staff and organizing all of the many administrative details of the conference meetings; Raymond Paul, who operated at the center of the hurricane with confidence and great good humor; Diane Balamoti for her work in putting together provisions in the bill relating to Alaska while at the same time assisting in the voluminous workload of the Public Lands Subcommitee; Jason Dilg and Craig Ward for their extraordinary patience and fortitude in staffing the reception office and assisting in the distribution of materials; Wanda Freeman, for her excellent work in carrying out the enormous task of coordinating and compiling the materials for the more than 1,000-page conference report; Marjorie Gordner for her unrelenting dedication and assistance in compiling the titles relating to the strategic petroleum reserve, alternative fuels, and uranium enrichment; Anne Goshorn for the ease in which she was able to juggle the demands generated by this bill and the reclamation bill which were being conferenced simultaneously; Heather Hart for all her hard work on the provisions relating to natural gas, oil pipelines, coal bed methane, and for her proficiency in compiling the statement of managers; Chris Kimball and Mia Miranda for making the whole job of document distribution and seating arrangements for more than 100 Members look effortless; Celeste Miller for her fine work on the sections relating to alternative fuels, nuclear reactors, and coal technology while also managing the tasks surrounding the WIPP legislation; Paul Mann for his high level of computer expertise and his quick response to the inevitable computer crises; Becky Murphy for her willingness to help field phone calls and for coming to the rescue more than once when an emergency arose; Pat Temple for her tireless work on the energy efficiency and renewable energy provisions; Raymond Paul for his capacity to endure late hours and countless phone calls and for his persistence in promptly transmitting information to staff; and Hartmann Young for his support in the reception office and his efficient disbursement of documents.

I am very proud of all of them. I thank them for their individual efforts and for their contribution to an outstanding team effort.

The PRESIDING OFFICER. Is there any further debate? If not, the question is on agreeing to the conference report to H.R. 776, the energy bill.

The conference report was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. WALLOP. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RECLAMATION PROJECTS AUTHORIZATION AND ADJUSTMENT ACT OF 1992—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of conference report accompanying H.R. 429, which the clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the amendment of the House to the amendment of the Senate to the bill (H.R. 429) to amend certain Federal reclamation laws to improve enforcement of acreage limitations, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The Senate proceeded to consider the conference report.

(The text of the conference report is printed in the House proceedings of the RECORD of October 5, 1992.)

The PRESIDING OFFICER. There will now be 1 hour for debate on the conference report to be equally divided between the two leaders or their designees.

Who seeks recognition?

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, this bill marks the culmination of one of the most controversial, one of the most difficult, one of the most acrimonious and one of the most important disputes ever to come before the Committee on Energy and Natural Resources. It involves water in the Central Valley of California.

At issue, Mr. President, is the competition between farmers and agriculture, who are now consuming the largest part of the water that goes through the Central Valley, and fish and wildlife, environmental species, and other uses which we can call environmental uses.

Mr. President, it has been stalled for years and years as endangered species have been further endangered, their numbers depleting.

It looked like an insoluble problem, but the distinguished Senator from New Jersey, BILL BRADLEY, chairman of the Subcommittee on Water Resources, took this on as a driven cause, as the central organizing principle of his life for the last 2 years. He has had hearings in California, he has had hearings here. He has spent literally hundreds of hours on it. He enlisted my support early on, and I have tried to do what I could to help him.

He was joined, Mr. President, by Chairman GEORGE MILLER of the Interior Committee in the House, who also took this on as a central issue of his political being.

Mr. President, along the way in the Energy Committee, we saw a vision that we could serve both interests, that we could balance off the interests of agriculture with the interest of the environment.

The distinguished Senator from Wyoming and his very talented staff worked with us to put together this compromise.

And this is, in fact, a compromise. As the purposes of the bill say, it balances water with agriculture, and when fully implemented we expect this to be—we would hope that this would mark an end to lawsuits about water in the central valley and about the balances of interests of the environment and of agriculture.

Mr. President, this bill also has a huge number of authorizing projects which have been held up for years because this problem could not be solved.

Mr. President, I am very pleased to say that after long and difficult negotiations, including the distinguished Senator from Wyoming who very vociferously and very strongly protected the interests of that huge agricultural interest in California—and make no mistake about it, agriculture in California means products, farm products for America. It is vital, not just to the people who are employed in California but for people all across America. And I think we very successfully balanced those interests in this bill.

So, I cannot be too strong in my kudos for the distinguished Senator from New Jersey [Mr. BRADLEY]; for the distinguished Senator from Wyoming [Mr. WALLOP]; for the chairman of the House Interior Committee, Mr. GEORGE MILLER; and for all the members of the committee and of the Senate who have worked so hard and so long on this bill.

It appears now that it will pass and pass overwhelmingly, I hope, therefore, we can have a short debate, and I yield the control of the time on this side to the distinguished Senator from new Jersey, along with my thanks and congratulations for a truly historic accomplishment.

The PRESIDING OFFICER. The Senator from New Jersey is designated.

Mr. BRADLEY. I yield 2 minutes to the distinguished Senator from Wyoming.

Mr. WALLOP. Mr. President, I ask unanimous consent to have printed in the RECORD a letter to the Governor of California, the Honorable Pete Wilson, from me, detailing the specific achievements in this bill for California agriculture, and in response to the very able and heroic fight that Senator SEYMOUR has waged on this.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE, COMMITTEE ON
ENERGY AND NATURAL RESOURCES,
Washington, DC, October 5, 1992.

Hon. PETE WILSON,
State of California, Governor's Office, Sacramento, CA.

DEAR GOVERNOR WILSON: I am writing in response to your letter of October 4, 1992 regarding the Central Valley Project provisions of H.R. 429, the omnibus water package. I understand your pain, but I regretfully disagree with your conclusion.

You have been absolutely correct in your insistence that the only real solution to California's long term water situation is for the federal government to turn over at least operational control of the CVP to the State so that it can be integrated into the State Project. While that option would leave California in control of its future, that option is not available given the political climate in Congress.

I also agree with you that the issues surrounding the CVP have absolutely nothing to do with the other measures involved in the omnibus water package. You and I both fought to prevent the hostage taking last Congress when projects we both supported were linked to amendments to Reclamation Reform. We lost that effort to unlink the measures, and I regret that we lost that effort again this Congress. There comes a point when we both must accept the unpleasant reality that those interested in their own social agenda are in control and are willing to inflict as much pain as necessary to achieve their objectives, regardless of the consequences.

I made an effort to convince the Majority to counter Congressman Miller's proposal with a modified version of the proposal made by Congressmen Dooley and Lehman. Had there been some goodwill and a willingness to be responsible, I think that we could have produced legislation which would be workable and which would preserve your options as Governor to chart a course for California. I directed my staff to work with Senator Seymour and the California delegation to identify what was possible and then to submit, on my behalf, a draft based on the proposal by Congressmen Dooley and Lehman. They did so, but the offer was rejected and I was informed that the Majority would only consider changes to Congressman Miller's proposal.

My judgment was, and remains, that this situation is only going to get worse. I directed the staff to obtain as many amendments as possible, focusing primarily on the specific issues which you, Senator Seymour, and the attorneys for the various contractors had raised. We were successful in the following areas:

elimination of the auctioning of 100,000 af of California's water to the highest bidder;

permanent protection for the Friant water users against releases from Friant without a specific Act of Congress;

requirement that the study of the San Joaquin/Stanislaus be "prudent, reasonable, and feasible", which in my view precludes trying to reestablish flows below Friant;

removal of the term "enhancement" from the primary project purposes, which is a significant change;

grandfathering existing contracts from renewal (delay in the penalty provisions) until the EIS is completed;

limitations on the additional charges imposed on the Friant contractors to $4—$5—$7 from the House's $4—$8—$12;

tying the 800,000 af directly to the purposes of this title and providing that if the water is not needed for those purposes, it will be available for beneficial uses, which eliminates the permanent dedication of the water which had been in Senator Bradley and Congressman Miller's proposals;

changing the dry year formula for the 800,000 af and the Wildlife Refuge supplies from the House proposal that there be no reductions unless the prior right and exchange right holders were reduced to a formula tied to the service contracts with an overriding requirement that the Secretary can exceed the limitations for health and safety, including both Agriculture and M&I uses;

bringing the iteration of specific fixes into conformity with the language used by the State agencies and incorporated into Senator Seymour's legislation;

extension of the renewal period to 25 years from the 20 in the House proposal;

protection of all court decrees, including the *Barcellos* decree involving Westlands;

modification of the inverse block tiered pricing from the House proposal of 60–20–20 to 80–10–10;

elimination of the 15% capital gains tax on farmers, which both Senator Bradley and Congressman Miller had insisted on for all water transfers, although we did agree to imposing an additional $25 charge on the M&I user of the transferred water.

Even with these changes, I do not view this as a good measure nor do I take any pleasure in the process. I honestly believe that this is the best proposal which California is likely to receive in the current political climate which I anticipate will last a good long while. Perhaps that too is a dream for one realistically has to suppose it will deteriorate markedly. Were I the Chairman of this Committee, I can assure you that this would not happen, but I am not.

Senator Seymour has fought courageously for California, but unless he gets help in the Senate next year, I think matters will only get worse, not just for California, but for all the Western States. There is an unpleasantness and a meanness which both of us find distasteful, but it is no use to pretend that it does not exist. I am not asking you to endorse this measure as good for California, but I would earnestly request that you consider the future. I see no hope that reason will prevail or that those not affected would refrain from imposing their social agenda on the farmers and others who labor for this Nation. The spiral has been downward and all we can do is try our best to mitigate the impact until the voters in California and elsewhere impose some sense of sanity on the Congress.

I deeply appreciate all your efforts during this Congress and I hope that on reflection you will reluctantly agree that we have done the best we can and that this measure should be enacted to forestall a far grimmer and more desperate future for California.

Sincerely,

MALCOLM WALLOP,
Ranking Republican Member.

Mr. WALLOP. Mr. President, there are several people whose contributions to the passage of this water package should be recognized.

First and foremost, I want to express my appreciation to the ranking member of the Water and Power Subcommittee, Senator CONRAD BURNS. As the Senate may recall, a similar water package was hung up last Congress over amendments to reclamation reform. As this Congress began, Senator BURNS took up the burden of crafting legislation which would address the issues raised last Congress, but in a fashion which would not cause havoc throughout the reclamation West. He was so successful in developing a bipartisan measure, S. 1501, that he obtained a majority of the Energy Committee as cosponsors. He was responsible for forcing the drought legislation to the full committee and also for many amendments to this measure during committee consideration.

While most of the debate recently has focused on the Central Valley project title, there are 39 other titles, each of which was improved through his hard work.

While the minority staff did its usual work on this measure, I do want to single out Jim Tate for his diligent work on the Historic Preservation Act title. The personal staff for other Members also were very helpful, even if some may not be overjoyed with the outcome. I want to thank Tom Fulton, with Senator BURNS, and Rich Golb, with Senator SEYMOUR. I also want to thank Joe Raeder, with Congressman DOOLEY; Grey Staples, with Congressman LEHMAN; and Roger Gwinn, with Congressman FAZIO. All of them provided invaluable assistance to the minority staff in working on this legislation, and I appreciate their help.

Mr. President, there are a variety of things I would like to say about this water package, most of them having to do with the foolishness of the hostage-taking. I am happy that Senator GARN can take home his central Utah project several years after it should have been enacted. I am delighted that other provisions will finally head to the President years after they should have entered the statute books and, in some cases, long after they should have been implemented.

I am particularly pleased that Buffalo Bill Dam will finally be completed. It seems that every time we try to do something on Buffalo Bill, it turns into a vehicle for everything under the sun. At times it seems that half of the reclamation law consists of titles added onto a bill authorizing funds for Buffalo Bill Dam and for other purposes.

For the benefit of my colleagues, I want to assure you that I have no intention of ever offering another Buffalo Bill measure.

I am concerned with the flurry of comments about that portion of the legislation dealing with the Central Valley project. I hope people will actually look at what is actually being passed rather than the original proposal offered by Congressman MILLER in conference. That proposal was a leaner version of the chairman's mark proposed by Senator JOHNSTON. That is not what we are enacting. Most of the concerns which have been raised are based on the House proposal.

Certainly the legislation could have been better had the basic test been that proposed by Senator SEYMOUR or that proposed by Congressmen DOOLEY, LEHMAN, and FAZIO. But many of their concerns were specifically addressed in the amendments which I added to the original offer.

I also appreciate the support of Senator BURNS in making it clear that unless those legitimate concerns were dealt with, there would be no legislation.

I think that anyone who compares the text of the final language with the original offer will find that we have come a long way in making this legislation something which will work and which will bring some measure of relief to the Central Valley. This is a far cry from the earlier versions which floated through the Senate and the House. Those concoctions had amorphous standards backed by citizen suits, unworkable requirements overlaid with an expansive Federal regulatory scheme under which the Secretary of the Interior would auction off the State's water to feed its own appetite, and a series of contract and transfer requirements which would have kept the legal community fat and prosperous while the farms and cities of California dried up. That is somewhat overstated, but not so far from the mark.

Perhaps we are still too close to the debate for a calmer read of the changes which the Senate insisted on and obtained through Senator SEYMOUR's persistence and help from some of his colleagues in the House. While I may have made the offers as the ranking minority member of the Energy Committee, the specific amendments were a result of my conversations with Senators SEYMOUR and BURNS and an enormous amount of staff work with representatives of the Governor, urban and agricultural water users, and various representatives from the environmental organizations.

While there were interests on all sides who simply would not budge, there were others, such as Tom Graff from EDF, Hal Candee from NRDC, Barry Nelson with Share the Water, as well as representatives of the CVP water users and from their various components, including Diane Rathmann, Mark Atlas, Gary Sawyers, and Stuart Somach, who were very helpful in exploring alternatives and helping to define the issues. Neither side managed to be the architect of the final product, but both were helpful to me in preparing my amendments.

It would have been nice had the negotiations between the environmental and water users been given time to bear fruit, but their labors were not wasted. The urban water interests outside the CVP service area were easier to deal with since apparently certain municipal interests would endorse anything which allowed them to go after water. But rather than dwelling on how the process whould have worked, I think it is better to focus on what the amendments which we obtained will in fact do.

It is unfortunate that we are dealing with this legislation at all. The Central Valley project is in Federal hands only because California was unable to finance the project during the Depression. Despite the press releases, the CVP is not the sole cause of the problems in the Central Valley, and it is incapable of resolving them. Most of the Central Valley wetlands were lost long before the first shovel of dirt was turned for the project.

The project is not integrated with the State project, although there is an effort to coordinate operations under the COA. The CVP effectively controls 40 percent of the developed yield of the valley, while the State project controls another 20 percent.

The CVP is not large enough to solve the water problems of California, but it is large enough to prevent California from doing anything. There are two things which must happen if California is to be able to deal with all the competing needs for scarce water resources. The first thing is that the Federal project must be turned over to the State and be fully integrated into the State project. That seems to be totally unacceptable to those walking the Halls of Congress who prefer to play with California the same way a cat toys with a mouse. The second thing which needs to happen is beyond any of our capabilities, and that is rain. Without rain, this legislation will amount to nothing. With adequate rain, the legislation is unnecessary.

What the Senate achieved is elimination of the citizen suit provisions which kept recurring. Also missing, at long last, is the auctioning off to the highest bidder by the Federal Government of 100,000 acre-feet of the State of California's water. While the CVP will be required to mitigate the fish and wildlife impacts of the project, those mitigation requirements are defined and contained within the four corners of this legislation. The 1.5 million acre-feet of permanently dedicated water, which is where we started this Congress, is now 800,000 acre-feet of temporary, up-front water designed to deal with the requirements of the Endangered Species Act and delta requirements while the various mitigation actions are undertaken.

I want to emphasize that this is not a dedicated permanent supply, but a temporary commitment which will be released to other beneficial uses as soon as it is no longer needed.

With some judgment, the Secretary should be able to use portions of that water in a fashion which permits its use for agriculture or urban use at the same time it is used for fish and wildlife. Water used for pulse flows for fish can be taken up downstream for M&I. Water used for over-wintering water fowl could have had a previous life for rice fields. This is not single use water.

The project purposes have also been amended to more accurately reflect the objectives of this legislation. While fish and wildlife mitigation and restoration is now explicitly stated as a project purpose, enhancement is also clearly included as a secondary purpose. Since the 1954 act, the CVP has been operated to provide water for fish and wildlife directly together with the other primary purposes. If that were not true, then the deliveries to the refuges and grasslands would be illegal. During the current drought, prior right and exchange right contractors agreed to forgo their priority to enable the Secretary to make some deliveries to the refuges as well as for M&I purposes.

The polarized description of agriculture versus the environment simply did not occur in practice. Recognizing fish and wildlife formally does nothing to alter the situation in fact or to imperil any contract requirements. To the extent that all contractual requirements are met and all primary purposes are fulfilled, any excess water available can now be provided for enhancement activities.

The amendments also accomplished other important changes. The total mitigation requirement of the CVP is now contained within the four corners of this document. Implementation of the provisions of this title will fully and finally meet all mitigation requirements for the CVP. Efforts to create a cabal of California Fish and Game and the Fish and Wildlife Service to set flow requirements has been dispatched.

The Secretary will decide how to run the project based on the recommendations of the Fish and Wildlife Service after consultation with California Fish and Game, the Bureau, and others, but the important thing to remember is that the Secretary will make the decision, not the Fish and Wildlife Service, and he is free to completely ignore their recommendations. The Secretary will have to evaluate the recommendations of the Fish and Wildlife Service, but will also have to take into account "contractual obligations to provide Central Valley project water to other authorized purposes" as this title requires in section 3406(b)(1)(B). That analysis will be provided by the Bureau of Reclamation.

There was concern that Congressman MILLER sought to overturn various court decrees, including the Barcellos case involving Westlands. That too is taken care of by the addition of language which specifically guards against any overturning by implication of any judgment.

There is no, and I repeat no, explicit reversal of any court decree, and we have inserted language which makes it clear that there is no intent to overturn or reverse any such decree by implication. This language specifically protects any water entitlements under a judicial decree, and any such entitlements shall be considered a long-term contract.

There was also concern from the Friant unit that this measure was designed to require a breach of Friant. That concern also has been dealt with. The study and plan for the San Joaquin and Stanislaus must now be "prudent, reasonable, and feasible" which in and of itself should preclude any releases from Friant. Just to nail that down, however, I insisted that additional protections be inserted that even after the plan is approved, the Secretary may not make any releases from Friant without a specific act of Congress.

There are certainly opportunities to do offsite work, and those should be considered, but it would be patently unreasonable to consider using releases from Friant, and since such releases are now statutorily barred, any proposal which depends on such releases is clearly not feasible.

There had been concern over contract renewals, and I think those concerns have also been addressed. The length of renewal has been extended to 25 years and the suggestion that they might not be renewed has been eliminated. Although the renewal is discretionary in the title, it is already discretionary in fact, since various terms must be negotiated at present.

I want to make it clear that the clear meaning of the language is that such contracts are to be renewed for 25 years unless the Secretary and the contractor agree on other terms. Had Congress intended that the contracts not be renewed, then we would have said so. We did not, and I reject any gloss which suggests that there is any jeopardy in contract renewals.

A very significant change is how dry year shortages are dealt with. The House had suggested that the 800,000 acre-feet and the wildlife refuge water be subject to reduction only when shortages are imposed on prior right and exchange right water holders. Aside from the implicit taking, since those rights are secured under State law and are superior to any CVP right, that provision would never have worked in practice.

During the current drought, prior right and exchange right holders agreed to forgo certain deliveries in order to permit the Secretary to make deliveries to the wildlife refuges and to urban users. No reductions were imposed on them since no reductions could be imposed so long as there was any water. The House agreed to any amendment I insisted on that reductions trigger based on any cutbacks on service contracts. In addition, although there is a nominal floor of a 25-percent cutback, the Secretary is directed to use common sense and can exceed that limit if he decides that the water is needed for health and safety.

I want to emphasize that the phrase "health and safety" is not limited to just agricultural hardship water, but also includes M&I needs.

Mr. President, in summary, let me just say my own ideal in this world would have been to stay with the status quo. The great American engine of economic growth was also the great California engine of prosperity and growth. That was agriculture. Water was the key to the success of agriculture in California. And the courts have seen fit to respond to interests without regard to the economic consequences. So the days in which we viewed those projects as primarily projects in reclamation and economic growth have been taken from us.

The Senator from California [Mr. SEYMOUR] had very, very legitimate concerns of his constituency. I believe we have taken nearly 90 percent, maybe more, of those concerns and put them into this. I resent, as have others, the fact that we here held hostage to this process called the Central Valley project while we tried to attend to other legitimate projects. But we were unable to break that.

Having not been able to break it, I say to the Senator from New Jersey, who was not versed before he started this subcommittee chairmanship in the ways of western water, and is rather now more versed than perhaps he ever wished to be, that he has been fair to me and fair to us in our attempts to try to see to it there was balance left; that we tried to respond to court decisions while protecting, to the maximum extent we could, California agriculture.

It is my view that California will never again see as much generosity from the two Houses of Congress as they do in this bill. That is not to say I think we have arrived at perfection for California agriculture. I do not. But I believe we have come as close as we possibly could to getting this in play in a fair way. It puts in play great other projects like the central Utah project, on which Senator GARN has worked.

Could I have 30 more seconds?

Mr. BRADLEY. How much more time remains on the side of the proponent?

The PRESIDING OFFICER. Twenty-two minutes and 31 seconds.

Mr. BRADLEY. I yield the Senator 30 more seconds.

Mr. WALLOP. It puts in place a great many more important projects, Senator MCCAIN's project, the Grand Canyon Protection Act; Senator GARN's central Utah project; Senator WALLOP's Buffalo Bill Dam, and a lot of other very, very worthy projects.

They were all part of what I think has become a very, very good bill.

I thank the Senator from New Jersey.

Mr. WALLOP. In order to ensure budget neutrality on the nonreimbursability provisions of title XVII of H.R. 429, those provisions are made effective only to the extent that there are net off-setting receipts. The ranking member of the Budget Committee was very helpful in working out the language and I would hope that he would clarify the report requirements.

Mr. DOMENICI. I would be happy to respond.

Mr. WALLOP. Section 1807 of H.R. 429 provides that all costs of the Glen Canyon Dam EIS, including supporting studies and long-term monitoring activities authorized in the bill shall be nonreimbursable. In order to meet Budget Act requirements, section 1807 provides that in fiscal years 1993 through 1997 those costs shall be nonreimbursable only to the extent that the Secretary of the Interior finds that the effect of all provisions of this entire act, not just the Grand Canyon title, is to increase net off-setting receipts. It is my understanding that this proviso requires the Secretary to make a simple finding: The Secretary must in those years add up the budget impact of all the titles of this comprehensive bill and determine whether those receipts exceed the annual costs of the EIS, studies and monitoring. To make this finding the Secretary estimates only the receipts and direct spending that result from this act. He does not determine or subtract funds appropriated and resulting expenditures to perform activities authorized by the act. Is that the intent of section 1807?

Mr. DOMENICI. The Senator is correct. The Secretary must simply determine whether net offsetting receipts generated by the act in those years exceed the cost of the EIS and related activities in the same years. It is the intent of the conferees that all costs of these activities be nonreimbursable. The Secretary's finding is only for Budget Enforcement Act compliance purposes to assure that net spending is not increased.

SACRAMENTO-SAN JOAQUIN DELTA PROBLEMS

Mr. WALLOP. Mr. President, I rise to obtain a clarification from the chairman of the committee.

The State of California, through the implementation of its long-range water policy framework, has begun significant actions in the past year which are designed, through consensus, to improve the availability of water for all major sectors of California—urban, agriculture and the environment. These develop solutions to Sacramento—San Joaquin Delta problems, and the transfer of the CVP to the State. How does the CVP Improvement Act affect these efforts?

Mr. JOHNSTON. There is nothing in the CVP Improvement Act that would hinder these actions. The obligations of the act are designed to complement—not to interfere with—California's efforts to further develop and coordinate its water policy.

Mr. WALLOP. Is there anything in the CVP Improvement Act that alters Congress' long standing deference to the States in determining reasonable and beneficial uses of water?

Mr. JOHNSTON. Nothing in this bill is intended to diminish or expand any authority that California presently has. The State's authority remains unchanged consistent with the law as interpreted in *California* v. *United States*, 483 U.S.C. 645 (1978).

Mr. WALLOP. Some of the CVP Improvement Act's provisions put limits on what the Secretary of the Interior can do with regard to meeting his obligations under the act. Is there anything in the act that would similarly limit the State of California?

Mr. JOHNSTON. The limitations in the act with regard to CVP obligations are limitations on the specific requirements of the Secretary's responsibilities under the act. The State's authority remains unchanged consistent with the law as interpreted in *California* v. *United States*, 483 U.S.C. 645 (1978).

Mr. WALLOP. Section 3406(h) provides for a cost-sharing agreement with the State for a number of the measures listed in the act. Public and private entities in California have already spent a great deal of money for some of these measures in spite of the fact that the Federal Government was not able to come up with its funding share. Will California be able to count these past expenditures as part of its share of the costs of these measures?

Mr. JOHNSTON. The Secretary is given considerable discretion under the cost-sharing section to work with California in developing an equitable cost-sharing agreement. Past expenditures by California, local agencies, and private contributions—including contributions of land and water—are certainly a major factor he must take into consideration in working out equitable cost-sharing provisions with the State of California. The Secretary also has discretion to spend Federal funds before the State agrees to cost-sharing arrangements so that measures urgently needed to mitigate effects of Central Valley project operations are not delayed by the State's current fiscal process.

Mr. WALLOP. I thank the Chairman for his clarification.

SECTION 3406(B)(1)(B)

Mr. WALLOP. Mr. President, I rise to seek clarification from the senior Senator from Louisiana, chairman of the committee, on an important point.

In a colloquy between Congressman MILLER and Congressman STUDDS regarding the conference report on H.R. 429, discussions occurred regarding the interpretation of section 3406(b)(1)(B). Do you agree with that interpretation of section 3406(b)(1)(B)?

Mr. JOHNSTON. I believe that the plain language of the statue speaks for itself.

Congress could have required the Secretary to implement the Service's recommendations without alteration had we wanted to, but we did not. The Secretary, not the Director of the Fish and Wildlife Service, makes the final decision. That decision will be based on the recommendation of the Fish and Wildlife Service, but will reflect other recommendations and considerations associated with operation of the CUP for its authorized purposes.

The discussion of the other body regarding section 3406(b)(1)(B) ignored the fact that section 3406(b)(1)(B) is part of a much larger legislative effort. The bill as a whole directs the Secretary to carry out the listed measures in consultation with other State and Federal agencies—including Bureau of Reclamation, California Water Resources Control Board, and California Department of Water Resources. Indeed it is only after the Secretary follows that broader process and consultation that it can truly be said that the Secretary has adhered to the true intent of section 3406(b)(1)(B) and of the bill taken as a whole.

Finally, there is no "clear and convincing evidence" test, in this section nor a preponderance test or a beyond a reasonable doubt test or any specified test at all.

Mr. WALLOP. I thank the chairman for his clarification.

PRIVILEGE OF THE FLOOR—H.R. 429

Mr. WALLOP. Mr. President, I ask unanimous consent that Jim Tate, a fellow on assignment to the Energy Committee, be granted the privilege of the floor during consideration of H.R. 429.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Jersey.

Mr. BRADLEY. I yield to the Senator from California, 3 minutes.

The PRESIDING OFFICER. The Senator from California [Mr. CRANSTON] is recognized for 3 minutes.

Mr. CRANSTON. Mr. President, I rise in support of the conference report on H.R. 429, the reclamation projects authorization bill.

This bill is a major benefit to the State of California.

For the record, I would like to review the many beneficial provisions for California contained in this measure.

The Salton Sea research project will help develop an enhanced evaporation system for saline water treatment and improve the water quality of the Salton Sea where salinity buildup is adversely affecting the sea's fishery resources and recreation.

The Los Angeles area wastewater reclamation project will reclaim scarce water supplies while reducing effluent discharges into Santa Monica Bay and protect Mono Lake's public trust and scenic values.

The San Gabriel Basin ground water demonstration project will assist in the cleanup of the San Gabriel Basin, one of the largest Superfund sites in the United States and allow it to be used as an underground storage reservoir, more than doubling southern California's existing drought reserves.

The wastewater reclamation studies for San Diego, San Jose, and other urban areas will advance efforts to increase urban water supplies through reclamation and reuse.

The Redwood Valley Water District and United Water Conservation Water District loan repayment provisions will assist two small water districts in California and improve their financial condition.

The San Juan Suburban Water District will benefit by receiving credit for costs incurred from the purchase of pumps and motors for the Bureau of Reclamation.

The Sonoma baylands wetland demonstration project will help restore valuable wetlands in the San Francisco Bay area and facilitate needed dredging at the Port of Oakland.

The San Francisco wastewater reclamation and reuse project will demonstrate the feasibility and effectiveness of solar aquatics technology for wastewater reclamation.

Finally, of major importance is comprehensive reform of Central Valley project operations. This is landmark legislation which will help restore the Central Valley's fish and wildlife and the environment which have been adversely impacted by Federal water development.

The Central Valley project is the largest western water project, providing water to about 3 million acres, nearly one-third of the lands served by the Bureau of Reclamation. Over the years, the CVP has significantly benefited the development of California, providing water supplies, hydroelectric power, flood control, recreation, and billions of dollars of economic activity.

However, the CVP has also caused serious environmental damage to fish and wildlife. In fostering agricultural production, the project has contributed to the reduction of waterfowl habitat in the Central Valley. Riparian wetlands which provide critical habitat for a variety of species have declined significantly, to less than 5 percent of the original acreage. Water releases from dams are often insufficient to meet minimum fishery requirements. And CVP pumps have contributed to the decline of striped bass, steelhead, and salmon populations.

It is time for change. The 6 years of drought have highlighted the fact that fundamental, long-term reforms must be made. We need to anticipate the State's future water needs and put sensible policies in place. When the CVP was first conceived in the early 1930's, the population of California was 6 million people. Today there are almost 30 million Californians. Incredibly 2,000 people move into the State each day. That means California's population is growing by over a half a million people each year. It is time that the Central Valley project recognize these broader urban needs as well.

I appreciate the fact that mitigation of the adverse impacts wrought by the CVP and reallocation of our scarce water resources is going to involve shifts in water use. However, fish and wildlife and recreation have taken a back seat too long while the Central Valley project has served a limited clientele. With growing water shortages in California, we need to expand the project's benefits.

The conference report on H.R. 429 achieves these ends.

It provides that fish and wildlife are equal partners in the operations of the Central Valley project. This is essential to ensure that environmental degradation is halted and fish and wildlife resources are restored. It is critically important not only for California, but also for many other Western States where the salmon of the Pacific coast and the waterfowl of the Pacific Flyway have been severely impacted.

It provides up-front water, 800,000 acre feet, to meet the project's new environmental purposes and ensure the continued health of commercial salmon fisheries, sport fisheries, national wildlife refuges, and the grasslands. The water may be used to meet the requirements of the Endangered Species Act and bay-delta standards. However, additional water may be required for these purposes.

It also established a $50 million annual fund to pay for fish and wildlife restoration efforts.

And it enables voluntary water transfers from agriculture to urban water agencies.

Mr. President, one of the criticisms of serious CVP reform concerns States rights. I disagree with those who may argue that the CVP provisions of H.R. 429 represent inappropriate Federal intervention in State water matters. The Central Valley project is after all a Federal project. Moreover, the legislation will help reduce Federal intervention in California's water matters, not increase it.

California law permits voluntary water transfers, in most cases subject to approval by the State water resources control board. California law permits water banking without losing the right to that water. California law recognizes water for fish and wildlife as a beneficial use. California law also calls for a doubling of anadromous fishery populations. I certainly don't consider it unwarranted Federal intrusion into state affairs to allow CVP water to be transferred to areas where the State deems it is needed, to suggest that the CVP be operated for purposes recognized as beneficial under California law, to suggest that the CVP be held to the same standards of environmental accountability as the State water project, or to establish a Federal policy on doubling fish populations, a policy already included in State law.

A second major criticism of CVP reform has centered on water allocations. I certainly understand the desire of current CVP contractors to retain 100 percent of their existing Federal water supplies. I also understand their interest in continuing 40 contracts. But I am convinced that we need to dedicate some water for environmental purposes.

I'm also convinced that this can be accomplished without major disruptions to agriculture. I recognize that many growers and water districts have already undertaken water conservation measures. But I firmly believe that there are additional opportunities for conservation in agricultural use.

For example, it is generally accepted that the higher the organic content in the soil, the more moisture is retained, and consequently the less water is used. I'm told that California farmers who are using organic farming methods have dramatically decreased their on-farm water use by using drip irrigation and heavy composting. Reductions in agricultural water use can also be achieved through shifts in cropping patterns to commodities which require less irrigation.

The impact of CVP reform on jobs is simply overstated. According to testimony presented at Senate hearings, water use in the urban sector supports far more jobs than in agriculture. Agriculture provides about eight jobs for every 1,000 acre-feet of water use. The same amount of water supports 3,000 jobs in urban industries and as many as 17,000 jobs for every 1,000 acre-feet in some high technology industries.

The legislation in fact has economic benefits to agriculture. It allows growers to profit through water marketing. It also mandates 25 year renewals for contracts, an important factor in the ability of growers to obtain financing for farm operations.

Finally, some opponents of CVP reform have argued for delay in order for the State of California to purchase the project. Whether the CVP ultimately is transferred to the State, CVP reform is needed now to address the serious water problems facing California's environment and urban communities. Failure to provide a balance among agriculture, urban and environmental interests will result in continued job loss in the fishing industry and irrevocable resource destruction as the Department of the Interior renews contracts to agricultural water users under the same old terms.

Mr. President, the conference report is strongly supported by environmentalists, commercial fishermen, the California business community, and metropolitan water districts who serve millions of urban water users in California.

I commend Senator BRADLEY for his leadership, hard work, and perseverance in bringing this measure before us. It is a major achievement.

I urge my colleagues to vote for the conference report.

Mr. BRADLEY. I yield 3 minutes to the distinguished Senator from South Dakota.

Mr. DASCHLE. I thank the Senator from New Jersey for yielding me this time. Let me commend him for his tremendous effort in the work he has put in this legislation for many years now.

Mr. President, I want to discuss H.R. 429, the Reclamation Projects Authorization and Adjustment Act of 1992, and to urge adoption of this important bill.

The prime sponsor of the legislation, Senator BRADLEY, is to be commended for putting together this package and for holding together a fragile alliance of those with very different views on many subjects. The road to this point has not been easy, and we have a better bill for Senator BRADLEY's diligence, industry, and strength of purpose.

There are a variety of aspects of this bill that are extremely important for moving Federal water policy in a direction I think we all want to see it go, and there are several titles in this bill that also address extremely important regional and local needs. The provisions of the bill pertaining to my State of South Dakota are perfect examples.

THE LAKE ANDES-WAGNER/MARTY II PROJECT

Title XX of H.R. 429 authorizes the Lake Andes-Wagner/Marty II project in Charles Mix County in South Dakota. This is a small-scale irrigation project—48,000 acres—with excellent economics and unprecedented environmental safeguards. Before the project can be build, a multiyear irrigation drainage demonstration program must be completed. The goal of this demonstration is to make sure that there will be no adverse environmental consequences of building the full project.

The Lake Andes-Wagner project, when built, will realize the first tangible benefits of the long and elusive search for irrigation development that has been a source of controversy in South Dakota since 1944, when Congress authorized the Pick-Sloan Missouri River Basin Program.

The Pick-Sloan Program was designed to provide storage for flood control and navigational benefits to the downstream Missouri River Basin States through construction of mainstream dams in the upper Missouri River Basin States. To help compensate the upper basin States for the loss of bottomlands resulting from construction of the dams, water was to be made available for irrigation development of substantial acreage in the upper basin States, including South Dakota. For decades now, the downstream States have reaped the flood control, energy, and navigational benefits of the program, while the upper basin States have received virtually none of the promised irrigation development.

Several upper basin States have been negatively impacted to some degree by mainstream dam construction under the Pick-Sloan program. The State of South Dakota lost 508,000 acres of Missouri River bottomland as a result of Pick-Sloan dam construction. More than 58,000 acres of these lost bottomlands were sacrificed by Charles Mix County, host to the Lake Andes-Wagner project. While we have been successful in authorizing the WEB and Mni Wiconi drinking water projects, there has been no irrigation development from the 1944 act.

We in South Dakota know that much of what was envisioned in Pick-Sloan is no longer feasible nor even desirable. Priorities change, both locally and nationally. But at the heart of Pick-Sloan, and at the heart of the reclamation system, is a simple goal of bringing help to the small farmers of the arid regions of rural America. This goal has not changed.

Since Pick-Sloan, the people of Charles Mix County, SD, have watched their economic base wither. The population of the project area has declined by 60 percent since 1950. Most of this exodus has been the young people.

Where there were 100 school districts, there are now 4. Unemployment in the Yankton Sioux Tribe may be as high as 90 percent. Despite fertile soils, farmers in the region find themselves tied to a cycle of livestock production and growing programmed crops. All too frequently droughts and crop failures are a painful reality.

Under these circumstances, it would have been easy to give up and leave the area. But many did not. Instead, they decided to figure out how to improve their lot. The Lake Andes-Wagner/Marty II project is a testament to those dedicated and resourceful individuals who have now worked for more than 20 years to turn their dream into reality.

The Lake Andes-Wagner/Marty II project is a riverside irrigation project located in southeastern South Dakota. The project does not need large and expensive lifts to get the water to the fields. The reservoir, Lake Francis Case, already exists.

Lake Andes-Wagner/Marty II is a small, manageable project that would irrigate up to 45,000 acres. The Marty II component would irrigate approximately 3,000 acres belonging to the Yankton Sioux Tribe, whose members are very much in need of economic development. The local sponsors and the State of South Dakota have presented a generous cost-share agreement amounting to 30 percent of the $200 million project.

I would like to say more about the economics of the project, as some have made unfair representations about its economic feasibility.

Allegations that this project provides $1 million for every farmer in the region are comparable to saying that the cost of a new school should be divided by its number of students on the first day of class. Everyone from an agricultural State knows that there are far more people involved in a farming operation than the owner of the farm, from dependents to hired workers to service industries that support the agricultural economy. Cost attributed to the project are primarily fixed, one time costs, that will subsequently be repaid by the project beneficiaries.

According to the Bureau of Reclamation, the repayment capability for the project is $137.40 per acre. Therefore, the project will pay for itself in 34 years, which means that it will need no assistance from Federal hydropower revenues. There are few projects, either existing or planned, that have numbers this good.

Some question the wisdom of authorizing a water project when agricultural production is not a problem in most parts of the Nation. The question of surplus crops and the so-called double subsidy is a legitimate concern that is addressed in the legislation.

The bill contains an innovative section limiting farm subsidy payments to the dry land value of the crops. I agree that the goal of the project is to provide opportunities outside traditional agricultural practices in the region. But without reliable water, only surplus crops will be grown in the region. With reliable water, farmers can diversify into high-value crops, which local farmers are already successfully growing in small quantities. There has already been significant economic interest in the area by agricultural processors, and a variety of incentives are in place to promote infrastructure investment.

Finally, the proposed legislation before us today provides not only environmental protection, but also an opportunity for environmental enhancement in South Dakota. All of the parties involved with this proposed project have gone to great lengths to ensure that its development does not significantly disrupt the delicate environmental balance that currently exists within the area. Not only is mitigation for fish and wildlife losses resulting from construction and operation of the project required on an ecologically equivalent acre-for-acre basis, but this legislation goes one step further.

Under H.R. 429, a South Dakota biological diversity trust would be established. It would set up a program so that up to $12 million could eventually be available for the trust. The purpose of this trust is to select and provide funding for projects that protect or restore the best examples of South Dakota's biological diversity. The trust would have no condemnation authority, and would work with the State and Federal officials to identify and help protect unique wild places in the State. The concept of the biodiversity trust is a recognition of the importance of conserving our natural resources while we strive for economic development.

Four years ago, it looked as if the Lake Andes-Wagner/Marty II project would never be built. No sooner had high selenium levels been verified in the Marty II portion of the project than a reanalysis of the Lake Andes-Wagner portion of the project also turned up areas of unacceptably high selenium. No one in South Dakota wants another situation like that in California's Kesterson National Wildlife Refuge in our State.

Through examination of the problem by the Bureau of Reclamation, the U.S. Geological Survey, the Environmental Protection Agency, the U.S. Fish and Wildlife Service, and the State of South Dakota, it quickly became evident that no consensus exists about the management of irrigation drainage in varying soil conditions where selenium is present. Because there has been irrigation—from ground water—in the region for more than 30 years with no apparent adverse environmental impacts, the sponsors asked for more research into the issue. The Bureau and others proposed making Lake Andes-Wagner/Marty II a guinea pig. For the first time, a full-scale research program could monitor drainage patterns and manage return flows in a controlled environment.

In addition to the knowledge gained from the research, there will be very tangible benefits for the local environment. Fresh water—not return flows—will be pumped directly into the Lake Andes National Wildlife Refuge, which will greatly enhance the viability of the refuge. Water will also be provided to several areas that were once wildlife havens, but, too often, are now waterless depression in the prairie, including Owens Bay and Red Lake. These enhanced wetland areas will significantly improve wildlife populations throughout the region.

There can be little question that the proposed research is needed. Drainage and return flow management is a problem not only in South Dakota and California, but also in North Dakota, Wyoming, Colorado, and most other Western States with existing irrigation systems or proposed ones, especially those occurring in glacial till or loess soils. The answers that are provided from the Lake Andes/Wagner demonstration program will be extremely important for protecting the environment in our western agricultural regions.

Some have expressed concern that the findings of the study will show environmental problems that should prevent the project from being built, but that the momentum of the moment leads us to fund a project that should never be built. Such things can happen in Washington, and I appreciate this concern. But it cannot happen with Lake Andes-Wagner/Marty II. I will explain.

One of the reasons that the project will take several years and more than $20 million to complete is that this is a complicated subject. By definition, it will take time to collect and interpret the data. Because the Bureau of Reclamation, the EPA, the USGS, the Fish and Wildlife Service, and the State of South Dakota must all participate in, and sign off on, the report, it is a near certainty that the final product will be of the highest possible caliber.

After reviewing the demonstration report, the Bureau of Reclamation must prepare a new feasibility report for the project, and the project must pass review by the Secretary of Agriculture, the Director of the Fish and Wildlife Service, the Administrator of the EPA, and both Houses of the Congress of the United States—where it must sit for 180 days—before it can move forward.

These are real tests that guarantee that the environment in the region will be protected, and that the costs associated with protecting the environment will not make the project economically infeasible. The role of the EPA was inserted to make sure that all applicable water quality standards will be met. As the Agency plays a key role in the design and implementation of the demonstration program, EPA officials will be very familiar with the technical aspects of the study and their review of the water quality portions of the project is appropriate and important.

To the project sponsors, the research project comes at a cost. Under the revised bill, effectively the soonest that the full project can start to be built is in 10 years. By the time Leo Holzbauer and other farmers of the region actually start putting Missouri River water on their crops, they will have waited at least 35 years for their dream to come true.

Obviously, this effort goes beyond merely providing South Dakota with a specific water project. As we have been saying all along, the issue at stake is the long-term viability of large portions of rural America.

Agriculture will remain the backbone of the South Dakota economy, and the economy of most of the Great Plains States, for generations to come. According to a recent study by South Dakota State University, for every 1-percent growth in agriculture in South Dakota, 1,200 new jobs are created.

The development of economic infrastructure in rural America often requires certainties beyond increasingly fluctuating weather cycles. Without appreciable irrigation development, South Dakota, and in particular Charles Mix County, has seen its young people leave their homes on the farm in search of some sort of certainty for the future.

This project is not a handout. It is an investment in the future.

Congressional consideration of the Lake Andes-Wagner project includes an examination of our national commitment to rural America. If the Congress favors making the Great Plains a buffalo preserve, as some suggest it should do, then we should forget Lake Andes-Wagner/Marty II, and have everyone move into the cities.

However, if there is to be a future in rural America, as I believe there is, then we must find ways to promote economic development in a cost-effective and environmentally sustainable fashion. That is what Lake Andes-Wagner is all about. This project is what irrigation should be—real need, good economics, small farmers, and innovative solutions to questions like the selenium and double subsidy issues.

MID-DAKOTA RURAL WATER PROJECT

The Mid-Dakota Rural Water Supply System is the third Bureau of Reclamation water project designed to address the drinking water needs of South Dakota, the other two being the WEB pipeline and the Mni Wiconi project. Mid-Dakota would also become a component of Pick-Sloan.

All three projects come from an identical imperative—that Americans deserve safe drinking water, and, in some areas, it is simply too expensive to meet this basic human need through conventional means.

The pipelines are a last resort. They replace mediocre and unreliable ground water supplies, and they are often the only alternative to trucking water. Many South Dakota communities have used funding from the FmHA to build their rural water supply systems, and this has been extremely successful. But there are areas of the State that require a system that is simply too large for FmHA financing.

In scope, Mid-Dakota is very similar to WEB and Mni Wiconi. It would service 12 counties in a service area of about 7,000 square miles and require 2,700 miles of pipeline. In all, the pipeline would provide water to about 30 communities with a population of more than 35,000. As agriculture is the main industry in the area, the project would also provide water to at least 647,000 head of livestock. Under the terms of the bill, the use of the water for irrigation is prohibited.

The reason we need the pipeline is because the ground water is simply not decent. It exceeds EPA standards throughout the region for a host of elements, including nitrates, sulphates, iron, sodium, dissolved solids, and more.

These are not simply the concerns of the environmental elite. These are real life concerns for every man, woman, and child in the region.

As with the Mni Wiconi project, the Mid-Dakota legislation has strong water conservation provisions and requires acre-for-acre wildlife mitigation, concurrent with project construction. In a very important aspect of the bill, the project is granted seasonal Pick-Sloan pumping power, which will go a long way in making the water from the pipeline affordable and the overall project feasible. The arrangement in the Mid-Dakota bill represents an important agreement between public power interests and the project sponsors.

Once part of the Mid-Dakota project, H.R. 429 also authorizes the creation of a special wetland trust for South Dakota. This was the brainchild of the project sponsors and the State who sought to create multiple benefits from what may appear to be a single purpose project. The wetland enhancement provisions of the bill could go a long way to preserving and protecting South Dakota's ecological riches.

I note that the administration opposes the Mid-Dakota project, claiming that their policy requires 100 percent cost sharing for this type of project. But this myopic approach fails to recognize the limits of what people can afford.

The bill has ambitious cost-share requirements, and the sponsors have already collected good-intention fees from probable users. The people will pay for their water. In fact, the rate the people will pay for their water will be far greater than what we pay here in Washington for our water.

More fundamentally, I question if it really makes sense for Federal policy to simply declare a Federal role in irrigation development, but not in providing decent drinking water.

Just this summer we voted on whether to put a moratorium on the requirements of the Safe Drinking Water Act. To be certain, rural communities face difficult times, and they need and deserve Federal assistance to comply with national mandates. But I did not support this moratorium. I don't believe that the standards are the problem. The problem is finding the resources to help the people meet the standards.

As we have shown in South Dakota, the Federal Government has a role in rural water, even if they refuse to acknowledge this publicly. By passing Mid-Dakota today, we take another step to making sure that the people will have the most basic staple of life—safe and reliable drinking water.

MNI WICONI PROJECT AMENDMENTS

H.R. 429 also makes important allowances under Public Law 100-516, the Mni Wiconi Project Act. The Mni Wiconi project is designed to provide reliable drinking water to western South Dakota, including the Pine Ridge Indian Reservation.

For fiscal year 1993, we were able to secure an appropriation of $5 million for the project. More than $3.5 million of this will be used to finish all engineering and NEPA work so that full construction can begin in fiscal year 1994. However, the remaining $1.466 million of the fiscal year 1993 appropriation was earmarked for emergency water works construction on two districts of Pine Ridge that have no running water.

This is an absolutely critical need. But because Public Law 100-516 requires that all planning and NEPA work by completed before construction begins, we need to amend the law so that the emergency work can move forward as long as the planning and NEPA work is completed on these two districts.

A second provision concerning Mni Wiconi is the provision in the bill that permits the Secretary of the Interior to perform a needs assessment on the Rosebud Indian Reservation. Rosebud is not a part of the Mni Wiconi project, but it faces many of the same problems faced by those on Pine Ridge. Mni Wiconi may be an appropriate vehicle to meet their needs.

If Rosebud is to become a part of the project, and the Lower Brule Reservation as well, although Lower Brule is already within the project territory, we will need to amend the law. But before we take these steps, we need to assess the need and the feasibility of servicing these areas with the Mni Wiconi project. That is the goal of this provision. As the report language states, it is not the intent of Congress to use funds appropriated for other purposes under Mni Wiconi for this assessment work. The funds should come from existing funds in the Bureau of Reclamation's budget.

In closing, H.R. 429 is an important bill for South Dakota and the Nation. Many other States will benefit from projects just as South Dakota will benefit. The bill's goals in California are also laudable.

To be honest, the stigma surrounding the Central Valley project has been killing States like South Dakota, which want modest projects to benefit family farmers and protect the environment. Unfortunately, every time that people think about Federal water today, they think Central Valley, and we pay the price.

I remind my colleagues that Congress has not passed a straight irrigation project in about 20 years. We need a change; a recommitment to rural America.

I commend the chairman of the Water and Power Subcommittee, Senator BRADLEY, for tackling the Central Valley issue, and for injecting some sense to the project. Contrary to what some have said, the chairman is not antiagriculture. There were many times when it would have been very easy for him to kill the Lake Andes project. But time and again, he proved to me and hundreds of farmers in South Dakota that he does care, and that he wants to return the reclamation system to what it was always supposed to be: a partnership between the citizens, the State, and the Federal Government to promote real economic development in areas that have few options.

I would be remiss if I did not also commend the superior staff work of Dana Cooper and Tom Jensen of Senator BRADLEY's subcommittee staff. They have been extremely helpful to me, my staff, and my constituents, and I cannot say enough about them.

Tom Jensen will soon be leaving to join his wife and two children in Arizona and begin a new career. Tom has been the glue that has held this bill together, and his willingness to find solutions to seemingly impossible problems has been invaluable. One day it may have been trying to play peacemaker within the Mni Wiconi project, the next helping the Mid-Dakota sponsors negotiate a cost-share agreement, and then the next explaining Senate procedures to a farmer in Charles Mix County. Tom will be missed, and I wish him and Jane well in Arizona.

Finally, several people in South Dakota deserve special recognition. From the State government to the East River Rural Electric Cooperative, many have rallied to show their support for the Lake Andes-Wagner project and Mid-Dakota.

In Charles Mix County, the legions who traveled year after year to Washington in support of the project kept the fire burning when many were trying to blow it out. Among these foot soldiers were Marc Goldhammer, Gerrit Juffer, Chuck Eitemiller, Dan Svatos, John Uecker, Pat Cerny, Louie Archambeau, Ray Cournoyer, and many others.

Steve Cournoyer, chairman of the Yankton Sioux Tribe, has been instrumental in developing the Marty II portion of the project and in finding new ways to help the people of his tribe. He and the non-Indian sponsors have worked well together, and I hope that this spirit of cooperation can continue as the project moves along.

Finally, I must commend Leo Holzbauer, chairman of the Lake Andes-Wagner Irrigation District. A turning point in the legislative history of this project occurred when Leo made a poignant appeal to Senator BRADLEY before the Senate Energy Committee. Leo succeeded in putting a human face on an obscure irrigation project. He was able to demonstrate the need for the project, and the sponsors' commitment to bettering their way of life. Finally, Leo was able to convince people that this project is about people, not just water and crops.

The Mid-Dakota project has amazed even me. Four years ago, this project was a vague dream. Today, it will be authorized and sent to the President.

This project has in part sold itself. The sponsors were able to demonstrate need, a solid plan, and a strong State and local financial commitment to the project. But this underestimates the abilities and hard work of the sponsors. Susan Hargens, the chairwoman of the project, has been an able and effective spokesperson, and Julie Apgar, the manager of the project, has shown remarkable agility in moving the project from an idea to a near reality. I could not ask for easier people to work with, and I look forward continuing this relationship for many years to come.

In closing, my final words of thanks go to the distinguished chairman of the Energy Committee, Senator JOHNSTON, who once again has worked so diligently for the people of South Dakota and the Nation. None of the recent water projects in South Dakota would have come to pass had it not been for Chairman JOHNSTON, both in his role as authorizer and appropriator. We thank you.

Mr. BRADLEY. I yield 3 minutes to the distinguished Senator from Arizona, Senator McCAIN.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. McCAIN. Mr. President, the Senate will soon consider the Reclamation Projects Authorization and Adjustment Act.

This package includes a number of measures of vital importance to the State of Arizona. Later, I will be submitting a full statement on the various measures—including a critical and long-awaited Indian water rights settlement.

At this time, however, I want to call the Senate's attention to a title of this bill which has national and international significance. I'm referring to the Grand Canyon Protection Act.

As my colleagues are aware, I opposed the linking of the Grand Canyon Protection Act to controversial reclamation measures. The bill is park protection legislation, not a water project. Unfortunately, my point of view did not prevail. Time will determine the outcome.

My colleagues know how strongly I feel about the Grand Canyon, and the importance of protecting this world treasure.

Ten years ago, the Department of the Interior reported that operations at Glen Canyon Dam were damaging resources within the Grand Canyon.

The erratic release of water from the dam to meet peak electric power demands had destroyed Colorado River beaches, and harmed other natural, cultural, and recreational resources. Somewhere along the line we forgot our obligation to the canyon and to the future generations for whom we hold it in trust.

In response, I introduced the Grand Canyon Protection Act to reorder those priorities—to stop the damage and legally require the dam to be operated in a manner which will protect park resources. That was 2½ years ago. It's been a long haul. The fight has not always been easy. But, the stakes are high and the cause is right.

While we have not always agreed on how the Grand Canyon Protection Act should be handled or on the terms of the legislation, I appreciate the diligent efforts of the Senate Energy Committee in presenting this conference report.

I urge the Senate to pass the reclamation bill and the President to sign it. Enactment of this legislation will be a great victory and a historic step in the effort to protect one of the great wonders of the natural world.

We are accustomed to celebrating man's control of the natural world. Today, we can celebrate quite a different achievement—the recognition that the progress of man is not always measured in how much we master our environment, but in how well we preserve and protect the most precious gifts of God and nature. No one can disagree that the Grand Canyon is one of the most magnificent gifts with which we have been entrusted.

This bill will result in greater protection for the resources of the Grand

Canyon in keeping with our stewardship responsibilities. That's what is most important. But, I must say that I'm very disappointed in how the conferees have decided to handle the costs of the environmental support studies necessary to implement the legislation.

The bill includes a provision that will require that the costs of preparing the environmental impact statement and of long-term monitoring will be paid by the Treasury instead of the project beneficiaries.

The Secretary of the Energy, the Secretary of the Interior and the Office of Management and Budget have objected vehemently to this provision. They object because it violates longstanding Federal policy which holds that environmental study costs should be paid by project beneficiaries.

I had hoped and anticipated that the financing provisions would be removed or a reasonable compromise could be achieved during the conference. Such a compromise might have required project beneficiaries to pay for studies directly associated with harmful dam impacts, while making studies dealing with resources enhancement or the general condition of canyon resources a nonreimbursable cost. Unfortunately this did not happen. I regret the issue was not resolved in a more satisfactory manner. It is a matter we should revisit when Congress reconvenes next year.

Notwithstanding those concerns, the important thing is that we have acted to protect the Grand Canyon for the benefit of this and future generations. That's what it's all about. Former Secretary of the Interior Stewart Udall said it best:

> Because the hand of man now controls the flow of water through the * * * Grand Canyon, Congress, acting for the American people, has a responsibility to ensure that our hand is guided firmly by the ethics of stewardship * * * we must conserve and protect those resources and values that caused Congress to designate the Grand Canyon as a national park and to make its special qualities available to the American people for all time.

We have an opportunity to answer that call with our votes.

I would like to conclude by expressing my deep appreciation and gratitude to all of the very special people who helped make this legislation possible.

Time precludes me from mentioning all the individuals who made contributions. However, I'm compelled to acknowledge one very special person without whose leadership the Grand Canyon Protection Act would not have been possible. I'm speaking of Ed Norton of the Grand Canyon trust. Words cannot express how important Ed and his organization have been to the responsible stewardship of Grand Canyon National Park and the Colorado Plateau. He was indispensable in the conception, development and passage of this bill. We owe him a great debt of gratitude.

I would also like to acknowledge others in the conservation community who made vital contributions to this legislation, including the Grand Canyon River guides who have educated us about the canyon and the need to care for all its resources. Thanks go to Rob Elliot of America Outdoors, Beth Norcross and Gail Peters of American Rivers, Rob Smith of the Sierra Club, and Dave Conrad of the National Wildlife Federation.

A number of people in the water and power community deserve our acknowledgment and gratitude for their contribution and for helping to make this legislation possible. I would like to thank Bill Plummer, Bill McDonald, and Jim Lochhead who represented the Colorado River Basin water users, as well as Cliff Barrett, Bob Lynch, Michael Curtis, and Deborah Sliz who represented regional power users.

I regret that time precludes me from naming all of the special people who contributed to this landmark legislation. We know who you are. Your efforts will be memorialized in the timeless gift we know as the Grand Canyon.

I want to thank Senator DECONCINI for joining with me on this initiative and for his efforts, and those of his staff, to pass this measure.

Mr. BRADLEY. I yield 30 seconds to the distinguished Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I want to join my colleagues in commending the Senator from New Jersey for the heroic work he has done in bringing this bill to the floor. It is historic legislation. It takes on the most contentious issue historically in the West; that is water. We have many more killings over water in our State than we do of marital infidelity. The Senator from New Jersey deserves a tremendous credit, and I am glad to support the legislation.

Mr. BRADLEY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 10 minutes and 31 seconds.

Mr. HATFIELD. Mr. President, I will be happy to take my time from this side.

The PRESIDING OFFICER. Does the Senator from Oregon seek recognition?

Mr. HATFIELD. If the Senator from New Jersey has yielded the floor, I will seek recognition on my own time.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, there are so many reasons to support this bill because it is a comprehensive water bill. I would like to point out one provision that is especially of interest, I think, to everyone in this Chamber.

The Senator from New Jersey [Mr. BRADLEY] and I cosponsored a proposal to establish a national water commission to take up the many problems of water studies, water policy and jurisdictions and conflicts. I might just remind the Chamber that there are 13 congressional committees and subcommittees that claim some jurisdiction over water policy, hardly a clear definition really of congressional role. There are six the same time in the executive branch of Government eight Cabinet offices that claim some jurisdiction over water policy. There are two White House offices that have jurisdiction of some type. There are six independent agencies of our Government that have some role to play. No wonder we have no comprehensive water strategy in this country. It does not make sense.

And now, Mr. President, because of the fact that the national scope was, indeed, a very large order, we found it more feasible to begin with a regional approach to this same problem of developing a comprehensive water policy. And so the West was chosen, the arid part of the country.

In this bill, we do have the provision for comprehensive, well represented through pluralism of interests a comprehensive program undertaking the Western States' problem of water.

Mr. President, once we get that cornerstone, that will then easily be expanded to the rest of the country. But we must start at least at some point, and that is what this bill provides.

We are also concerned about the growing need of recognizing water in its multiple uses.

The Chair recognizes that the Columbia River, which was initially a river of fishery and navigation, has become a river of fishery, navigation, irrigation, recreation, and power production. Sixty-five percent of our energy in the Northwest is produced in the so-called Bonneville power network.

But also we understand some salmon are listed as endangered or threatened. We now begin to understand that a larger part of that river allocation must be put to preserving the fisheries, and that is going to be true throughout this country.

We have to recognize the multiple uses, the multiple purposes, and achieve a balance between all of them, not to the exclusion of any but to try to find the reasonable balance. This bill is a major step in that direction, to achieve that objective.

So I urge my colleagues to support this cloture motion and to voice vote or to rollcall the first step of developing a national water strategy.

The PRESIDING OFFICER. The Senator has yielded the floor.

The Senator from New Jersey.

Mr. BRADLEY. I yield 4 minutes to the distinguished Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized for 4 minutes.

Mr. HATCH. Mr. President, I thank my colleague from New Jersey. First, I thank him for the work he has done in assisting us and helping us with this bill. He has given tremendous service. We appreciate it. Certainly the two Senators from Utah appreciate it.

I want to thank Senator GARN, in particular. This is his last day in the Senate, and he has had an awful lot to do with helping to get this bill to this point.

The Utah congressional delegation, in cooperation with congressional leaders, the administration, environmentalists, farmers, native Americans, power interests, sportsmen, and State and local leaders, has spent much of the last 4 years in vigorous, detailed, and sometimes very contentious negotiations trying to reach an agreement on legislation that would lead to the completion of the central Utah project and meet longstanding obligations to the people of Utah.

While it was difficult, an agreement was finally reached by our very diverse coalition. I doubt that anyone involved in the negotiations is completely satisfied with the final product. Compromises were required of everyone, but as a result of those compromises, we now have a bill that has the support of every affected group.

From our compromises, we have created a balanced and innovative bill that will finally address the many difficult issues associated with the construction of the central Utah project. This is a landmark piece of western water legislation and I would like briefly to discuss some of the highlights.

Our legislation will provide sufficient funds to complete both Wasatch Front municipal and southern Utah irrigation components of the project. We have included provisions to reform almost every adverse environmental impact that has resulted from construction of the central Utah project. It guarantees minimum stream flow protection to 240 miles of Utah streams and rivers. We have provided a major funding source to restore or improve wetlands, big game rangelands, and fisheries. We have required water users to develop conservation plans in an effort to better protect and manage Utah's water resources. In addition, we have eliminated several features that were considered too costly or unnecessary.

A key to the agreement is the consensus concerning the establishment of an ongoing mitigation and conservation fund in Utah to assist in the repair and enhancement of projects called for in the bill. Under the plan we have developed, project beneficiaries and State and Federal Governments would all contribute to establish the fund.

We have also included a title to resolve the longstanding claims of the Ute Indian Tribe against the U.S. Government. It provides a fair and complete settlement of the water rights claims of the Ute Tribe of eastern Utah by creating financial investment opportunities in lieu of costly and infeasible water development projects. I believe that this component is an essential part of the bill and that it is time for the Government finally to make good on the promises made over 25 years ago.

Mr. President, the central Utah project is extremely important to the future of the State of Utah, and its completion has been of paramount importance to Senator GARN and myself for all the years we have spent representing Utah.

For Utahns, the wise management of water is a necessity. It is a natural resource without which there can be no growth of any kind in our State. It was the recognition of the fact that Utah was one of the driest States in the country which led to the development of the central Utah project—a project designed to allow the State of Utah to utilize water from our many mountain streams in a manner that would enable the State to control its growth and destiny.

There is no question that we are asking for a substantial increase in our spending ceiling, but I believe our request is justified. We are asking that the Federal Government fulfill a promise that was made to the people of Utah over 25 years ago. We are attempting to provide the people of Utah with a reliable source of water that will guarantee economic growth and stability well into the next century while addressing the severe environmental impacts associated with construction of the project.

In addition, I want to make it very clear that this bill is not a gift to the State of Utah. Utahns have agreed to pay 35 percent of the cost of the features that are authorized in this bill. This is a substantial contribution by the citizens of Utah; in fact, it is higher than has ever before been required for a Federal reclamation project, but it is a sacrifice that we are willing to make to assure a reliable water system.

I believe it is important to also point out that completion of the project triggers very substantial repayment obligations. The costs allocated to irrigation will be fully repaid over a period not to exceed 40 years. Irrigators pay on the construction costs up to their ability to pay and power revenues provide the balance. The municipal and industrial water users will pay back their obligations over 50 years with interest. It has been estimated that repayment will eventually bring over $2 billion into the Federal Treasury.

Mr. President, this legislation will reclaim water for municipal, industrial, and agricultural uses; help prevent flooding and accompanying property damage; provide facilities for recreation and fish and wildlife; and increase farm and industrial income. What began as a vision is now nearing completion and total fulfillment. We have developed a balanced proposal that takes into consideration the needs of all of the people of Utah as well as our responsibilities to the American taxpayer.

Mr. President, this is an important day for us. This is an important bill.

I wish to compliment Senator GARN again, and other members of our delegation, for the many years of service and work that we have all put in to try to get this through. But I know that for Senator GARN, in this last day, this has to be one of the hallmarks of his career. I wish to personally express my love and affection for him, and congratulate him for the work he has done.

I also yield back the remainder of my time to Senator BRADLEY.

The PRESIDING OFFICER. The Senator yields the floor.

Mr. HATFIELD. Mr. President, I would like to yield 2 minutes to the Senator from New York [Mr. MOYNIHAN]. I would like to yield 5 minutes to the Senator from Utah [Mr. GARN]; with 1 minute remaining to be retained for Senator WALLOP to close, and the remainder of the time to the Senator from California [Mr. SEYMOUR].

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I will not require the whole of 2 minutes. My purpose is simply to congratulate the managers of this legislation and those who have worked on it; to say that here we are, working on a western reclamation era, an enterprise begun by Theodore Roosevelt.

The Senator from Oregon has made the point, and I am sure the Senator from New Jersey agrees, that if you can establish a water policy for that large an area of the country, you can do it for the country as a whole. And that seems to be an important concept, one which would involve the Committee on Environment and Public Works in the next Congress.

I look forward to learning from the Senator, and working together with him in this matter. It is a large national interest.

I congratulate and thank the Senator.

The PRESIDING OFFICER. The Senator has yielded the floor.

The Senator from Utah is recognized for 5 minutes.

Mr. GARN. Mr. President, as the 102d Congress comes to a close, I want to sincerely thank my colleagues on both sides of the aisle for their cooperation in approving titles II through VI of the bill now in front of the Senate. I particularly want to express appreciation to Senators BILL BRADLEY, MALCOLM WALLOP, and my Utah colleague ORRIN HATCH for their support. Senator BRADLEY was not always a believer in the merits of the CUP, now he has become one of its greatest advocates and has dealt with me honestly and in a straightforward way. Senator WALLOP has been an outstanding influence for good and has always been a constructive force in moving this water bill forward. Senator HATCH has been at my side during this entire protracted effort on behalf of our State.

I believe everyone knows the central Utah project [CUP] has been held hostage to an intramural water battle taking place within the State of California for the past 3 years. This conflict has delayed the long-promised benefits of the CUP to the people of Utah for too long and the wait has been painful.

Nevertheless, I am very grateful that before my Senate career comes to a close, I can tell the people of Utah, the bill has finally passed and on its way to the President for his signature. Since the President's signature is not assured, proponents of this 57-title package from 16 States will now have to make their case to him. I can assure my colleagues and the people of Utah, I have already begun doing this.

Passage of this bill represents the culmination of 25 years of work. I first heard of the CUP when I became Salt Lake City's water commissioner in 1967. After becoming mayor in 1971, I retained my position as a water commissioner and continued to work on the project. But, my real dive into this project came when I was elected to the Senate in 1974. After coming to Washington, I became responsible to obtain the yearly appropriation for the project. With that objective in mind I jumped from the Armed Services Committee in 1978 to the Appropriations Committee where I have been ever since.

The CUP was originally scheduled to be completed by 1972. But, like the Federal Interstate Highway System and for myriad reasons, 1972 came and went and expensive construction delays occurred. By the mid 1980's, I made a disappointing but, inevitable discovery. Successive years of slow construction meant the day would come when construction on the project would stop unless my colleagues and I from Utah could persuade the Congress to raise the authorization ceiling one more time. So, my focus necessarily had to shift to a duel one, obtaining the annual CUP appropriation and negotiating a new authorization ceiling in order to be able to complete the project.

Mr. President, the Utah delegation has successfully negotiated the reauthorization bill for the CUP which is now before the Senate. This negotiation involved a protracted and tedious effort to address the concerns of both environmentalists and water users in Utah which we finished in early August of 1990. We have been waiting for this day ever since.

By way of explanation, this bill raises the authorization ceiling for the Colorado river storage project from approximately $2.1 billion to nearly $3 billion. The bill will provide for the delivery of municipal and industrial water for the nearly 1 million people who reside in Salt Lake and Utah counties and it creates a water supply for an additional 400,000 people. It also provides for the construction of a reliable supplemental irrigation system for which the people of rural central Utah have waited since 1956. It provides several innovative conservation and environmental mitigation programs. Finally, the bill makes good on a commitment the State of Utah made in 1965 to the Ute Indians to compensate the tribe for contributing its waters to the central Utah project.

Mr. President, this bill solves many, many problems, creates many new opportunities, and helps prepare Utah's people so they can face the future confidently.

The adoption of this conference report today represents the culmination of my dreams and of many, many Utah citizens. The father of the CUP was the late Edward W. Clyde, a man who had the foresight and vision to bring Utah's share of the Colorado River to the populated areas of the Wasatch Front and the farms and ranches of central Utah. I would also like to give well deserved credit to a bi-partisan group of Utah Governors and Members of Congress, who beginning with passage of the 1956 Colorado River Storage Project Act have fought hard for their State's water interests here in Washington: Governors J. Bracken Lee, George Dewey Clyde, Calvin L. Rampton, Scott M. Matheson, Norman H. Bangerter, Senators Arthur V. Watkins, Wallace F. Bennett, Frank M. Moss, ORRIN G. HATCH, Representatives Henry Aldous Dixon, William A. Dawson, David S. King, M. Blaine Peterson, Laurence J. Burton, Sherman P. Lloyd, K. Gunn McKay, WAYNE OWENS, Allen T. Howe, Dan Marriott, JAMES V. HANSEN, Howard C. Nielson, David S. Monson, and BILL ORTON.

Mr. President, water is the lifeblood of my State. Utah is the second most arid State in the union. The measure we are about to pass is absolutely vital to the Utah's long-term future.

Mr. President, I would feel remiss if I did not mention a few of the great staffers who have devoted hundreds of hours to putting this bill together: My legislative director Joanne Newmann, my legislative assistant Bob Weidner, Millard Wyatt of Senator HATCH's staff, Rob Wallace, Gary Ellsworth and Jim Beirne of the Senate Energy Committee minority staff, Ben Cooper, Mike Harvey, Tom Jensen, and Dana Cooper, Senate majority, Jim Barker of the House minority staff, and Dan Beard of the House majority.

To those who also helped that I have omitted, forgive me.

Mr. President, I ask unanimous consent that a letter from Gov. Norman Bangerter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

STATE OF UTAH,
OFFICE OF THE GOVERNOR,
Salt Lake City, October 5, 1992.

Hon. JAKE GARN,
*U.S. Senate, Dirksen Office Building,
Washington, DC.*

DEAR JAKE: I understand that your years of effort and hard work to secure funding for the completion of the Central Utah Project are about to come to fruition as the House today begins final deliberations on H.R. 429, the "Omnibus Reclamation Project Act." I was pleased to learn that Senate has made significant progress on the California measures of the bill and that it will soon come to the Senate floor for final consideration.

The Central Utah Project is a critical component in meeting the water needs of our state's growing population. It strikes an important balance between the need for water and the importance of conserving and protecting that vital natural resource. In the last few years we have come to learn just how important that balance can be as our state has suffered from a long and often difficult drought.

Jake, your personal commitment to the reauthorization of the Central Utah Project will be an important part of the legacy that will mark your valuable service to Utah in the U.S. Senate. I realize the pressures that are placed on you and your staff as Congress rushes in these last two days to complete its business. You have my appreciation and support as you work not only to seek final passage of this important legislation, but also the Utah land exchange legislation.

Please contact my office if we can be of any assistance to you or your staff in these final hours. Our best wishes and hopes for your success in these efforts.

Sincerely,

NORMAN H. BANGERTER,
Governor.

Mr. GARN. Mr. President, I regret that we have been held hostage for 3 years, along with projects from 15 other States. I recognize the seriousness of the problems in California, and I certainly have never felt it was my position to in any way dictate what went on within that State.

But forces in the House of Representatives have continued to say that all the rest of us cannot have our way unless they get theirs. And I think that is unfortunate; it is not the way Congress should do business, to hold innocent hostages. That is the position in which the Senator from California [Mr. SEYMOUR] has been put. He has not been able to wage a battle solely on the merits or demerits of his own project; he has had the pressure of all the rest of us trying to get our projects through.

I commend the Senator—with the difficult processes that he has been put through, and the position he has been put in—for all the constructive changes he has made. I recognize he is still not satisfied with the California portion of the bill, but I think everybody should recognize it is far better because of his efforts than it would have been otherwise.

Mr. President, on a personal note, this is a significant day. We will pass this bill today. But it is not assured that the President will sign this bill. I hope he will. I hope he will, because overall it is so much better than the negatives within it. Plus, there are so many States involved that I hope he will not veto it over the California portions and abandon all the rest of us.

In my own case—and this is a very personal reference—in 1974 I was elected, at the age of 34, as a Salt Lake City commissioner, and I was assigned full-time management of the water department. All I know about water was that you turned on a tap and water came out of it. So literally, after my swearing in 25 years ago, I went to my new office, and the water superintendent of 17 years said, Commissioner Garn, I need to start briefings on the water systems and water issues in Utah. When can we do it? I said why not start now. And he said, OK, Commissioner. Your first lesson is on the central Utah project.

So literally, I have spent a quarter of a century working on this project, more than any other single thing in my political career, and have been held up by forces that have nothing to do or no disagreements with Utah.

So it is rather interesting that this is the last day of my public career. The first day started with CVP, and it is very ironic that on the last day we are finally going to pass the final bill so that it can be completed.

I apologize to some of my colleagues for when I have been angry over the years. But I hope they understand that when you spend a quarter of a century of your life trying to do one thing for your State and you are continually blocked, it becomes very important, particularly when, as my colleague has pointed out, water is the lifeblood of our State. We are very dry.

So I appreciate the cooperation of all those who have worked on this. I do hope the President might recognize, beyond the substance of the issues, that one of his Republican colleagues has spent a quarter of a century working on this. I would not like to see it go down at this point. My first day with CVP, my last day with CVP, going to pass it big here on the Senate floor.

Please, Mr. President, do not veto it.

I yield the floor.

Mr. HATFIELD. How much time do we have left?

The PRESIDING OFFICER. You have 19 minutes, 35 seconds.

Mr. HATFIELD. I reserve 1 minute for the Senator from Wyoming [Mr. WALLOP], and yield the remaining time to the Senator from California.

Mr. SEYMOUR. Mr. President, I feel as though I may be the lone voice on this floor defending what I think is in the best interest of my State, the great State of California. I heard Senator after Senator, most recently Senator GARN, rightfully speak in support of this bill because the water projects—that are important to their States—have been held hostage.

I think it is sad, in a way, that Senator GARN has had to spend 25 years trying to get through a well-deserved project. And in most recent years the only thing that blocked his project, as well as projects of other western Senators, was the fact that those in the majority around here said, if you do not like the way we are going the rest of this reform—today it is the Central Valley project—then you do not get your water project.

So, these important western water projects have been held hostage year in and year out.

Two years ago, the proponents of this bill, Senator BRADLEY and Congressman MILLER, held desperately needed water projects for other States hostage to reclamation reform. After the bill died in the closing days of the 101st Congress, Congressman MILLER and Senator BRADLEY again held the projects hostage. This time, reclamation reform was not the price for the other water projects, it was reform of the Central Valley project.

I daresay, if we were voting on the portion of the legislation, title XXXIV, that deals with the Central Valley water project in California, if we were voting on that separately from these western water projects important to western Senators like Senator GARN, that those water projects would go through. They would go through on an overwhelming vote. But as to the Central Valley project, if it were permitted to be standing alone as it impacts the largest State in this country, it would go down to defeat.

The managers of this bill well realize that. They have realized it, and they have learned that the way they can flex their political will, impose their political will on a State in which they do not even reside, which they do not even represent, is to hold others hostage.

From the outset, I have said the hostage taking was deplorable. Unfortunately, as some have said, there has been an unpleasantness and meanness in this process and I am afraid it will not soon go away. As long as there are those who will continue to impose their social agenda upon less fortunate people, I am afraid other projects for other States will again be held hostage, and the process will begin anew.

I am hopeful that the President will veto this bill, not that I want to see Senator GARN's water project or any other western Senator's water projects defeated. I think there just comes a time when you have to stand up to hostagetaking and say it is wrong, I am not going to put up with this, and veto that bill.

Earlier, one of the Senators suggested that there have been many water wars. In my State of California, there have been probably more water wars than any other State, Mr. President. In fact, our Mark Twain once said, "Whisky is for drinkin' and water is for fightin'."

This bill, the water conference committee report, H.R. 429, will do nothing more than ignite another water war in California as it pertains to the reform of the CVP. This bill will do nothing more than to, no. 1, provide for some badly needed water resources for fish and wildlife, although, I argue, too much. They need some certainly, but too much in this bill.

Beyond that, will cities get water that badly need it? Will people and jobs get water that badly need it? I do not think so. I think this bill will lead to a decade of litigation tying up water rights in the courts in California and in the Federal courts, and that will prohibit water from being transferred, which is what we all want. I want it. I think everybody else wants it who has an interest in this. We want water transfer to occur from agriculture to urban areas, people and jobs as I have called it, as well as whatever we can allocate for fish and wildlife purposes.

As I have said repeatedly, I support water transfer of Central Valley agricultural water to urban an industrial use. There are many sector of California's economy in need of more water to continue to grow and prosper. I have vowed to do everything possible to ensure this happens, but not at the expense of any one industry, that will only result in another water war which benefits no one. I am also concerned that when other California industries need water most, during dry years, the bill dedicates so much to fish and wildlife that there will be little if any to transfer outside the project.

This bill will have severe economic consequences on my State of California. The California Department of Food and Agriculture has estimated that this bill cost the State of California approximately $4.5 billion of economic loss every year and tens of thousands of jobs. No wonder it is opposed by the California Chamber of Commerce. No wonder the Governor of the State of California, Pete Wilson, strongly opposes it.

I also want to remind my colleagues that the majority of California's representatives also oppose this bill. Earlier this week, 25 members of California's delegation in the House of Representatives voted against H.R. 429. Governor Wilson wrote all Members of Congress strongly urging them to either separate this title from H.R. 429 or to vote against it. Additionally, the Secretaries of both the Department of Agriculture and the Interior have written several letters to Congress stating they will recommend the President veto H.R. 429 based on the onerous provisions of title XXXIV.

It is sad. Here we have a Federal project located in California, built and paid for by the Nation's taxpayers, who should be repaid. Because there are some that feel they know better than Californians what to do about their water, the wisdom of the Potomac will dictate water policy in California and determine who the haves will be and who the have nots will be.

There are three parties to this water war that is about to break out. One is urban areas, people and jobs as I call it; two, are farmers, also people and jobs; and, three, our environmental interests representing a desire to take 1 million acre-feet of water and dedicate it and commit it for fish and wildlife purposes.

I wish there were that much water in the pail that we could give to fish and wildlife and not cause an economic disaster in our State. And there would be that much water if we would have worked to build a bigger pail of water rather than the very limited pail we are providing.

One would think that California is a desert. It is not. One of our problems is that the water that runs off the mountains as the snow melts or when it does rain, the water that runs down the streets, too much of it runs to the ocean. So is there any provision in this legislation to create a bigger pail of water so we do not have to fight over this very limited resource? The answer is no. Was there any consideration given to building new water reservoirs to catch that water as it runs off? The answer is very little.

I think it is rather selfish on the part of those who want 1 million acre-feet of water dedicated for fish and wildlife purposes, or, as I have called it, animals and plants, yet are unwilling to lift a finger to create more resources, to create more water. Therefore, there is nothing in this bill that says expand the existing Trinity Shasta Dam, build the reservoir at Los Banos Grande or Los Viqueros and thereby, in just three efforts, come up with approximately 1 million acre-feet of water and take it all, all of that new water and dedicate it to fish and wildlife.

There is no talk about that in this bill because it was blocked. It was prevented. And so we have a war. We have war over a very limited resource.

What this legislation will do is say: Let us take 1 million acre-feet right off of the top of the bucket, scoop it out and set it aside for fish and wildlife purposes. That is well-meaning, because I would like to see fish and wildlife get that quantity of water off of the top. But with what little water there is in the bucket, what is left for people and jobs and farmers is not enough to go around.

The Department of the Interior said if this bill we are voting on were to have been law in 1990, 1991, the farmers in the Central Valley project would have received no water in those 2 years, and the cities also that are served by the Central Valley project would have gotten zero. So you see the priorities are wrong.

The priorities set forth in H.R. 429 say that animals and plants are equal. They have an equal right to water along with people and jobs. I think that is wrong. I think people and jobs come first, Mr. President. Without a job, nothing else is possible. We cannot enjoy the beauty of our environment if we do not have a job.

So I think this bill is badly flawed. It is badly flawed.

Another reason why it will create a decade of litigation is over water contracts. I have not disagreed for a moment that the 40-year water contracts given to agriculture are too long. They need to be reduced. In fact, a bill I debated yesterday that I introduced would have reduced them to 25 years.

This bill also reduces them to 25 years, but it goes a step further. It says that before you can get a 25-year contract, you must have a complete environmental impact statement. We have heard enough war stories about legal delays and how sharp trial lawyers can use the law of environmental impact statements to delay, to kill, to stop totally any kinds of projects.

So what this bill offers on contract renewal is if you can get a completed environmental impact statement—and that is questionable with the litigation that will be created—then you can get a 25-year contract. But if you cannot get one completed, you will get 2- or 3-year contracts.

How would we like, Mr. President, to be going out and buying a home and go to a bank to try to borrow money to buy that home and be told, all you can get is a 2- or 3-year mortgage and then come back after 2 or 3 years and we will see about it?

That is why it is going to destroy so many businesses in the State of California. That is why it is going to cost $4.5 billion a year taken out of an already reeling economy in California. And that is why this bill will cause tens of thousands of people to join the unemployment lines.

And they are not all big guys. I have heard the other side argue this is just the big farmers. We are just going to take this water from big farmers. That is not so. There are many farm workers, tens of thousands, mostly minorities, and they are not big people. They will be placed on the unemployment lines. What provisions does this bill provide to help them out? None.

So, Mr. President, I think it is a sad day when the Federal Government and this body, the U.S. Senate, say to California, we do not care what you say. We know what is good for you. We have the corner on the wisdom market back here and we will tell you how to do it.

I am hopeful that if this bill passes, the President will veto it. I am also hopeful that the Governor's efforts to try to gain control of California's destiny on water are successful in negotiating agreement for the transfer of the Central Valley project from the Federal Government to the State of California.

It has been a long, hard-fought battle. It is hard for me to admit defeat, but the time has come. This bill will be passed, and because of the water project tied to this onerous legislation, it will pass easily. I say that the process that took place in the making of this law was not very pretty. We had a conference committee that met once solely for the purpose of preliminary motions and actions, but not once did the conference committee meet to discuss any substantive discussions, negotiations, or compromise. This was literally jammed down the throat of not only this Senator, but the Representatives in the House of Representatives, representing the State of California.

This is a bill written by Washington, DC, by bureaucrats and by the Federal Government, for California, dictating how they will deal with this precious resource.

California needs assistance from the Federal Government—but this is not the type of help we need. California needs the Federal Government to work with us, to assist the State to resolve our pressing water problems. We do not need or want the Federal Government to preempt our rights by dictating the use or allocation of our water. Unfortunately, title XXXIV does just that. I am afraid we have had the right to determine our own destiny stolen from us, and will probably be at the mercy of another generation of bureaucrats and Washington special interests fighting to reclaim it.

So it is indeed a sad day.

Mr. President, I urge those Senators who do not have a western water project in this bill that they want so badly and have had it held hostage for so long, I hope they take a close look at the Central Valley project portion of this bill and see it for what it is. It is bad policy. It is bad economics. And it is going to be bad for the future of the State of California.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SEYMOUR. Mr. President, I ask unanimous consent to have printed in the RECORD these letters in strong opposition to this bill.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

Association of
California Water Agencies,
Sacramento, CA, October 5, 1992.

Hon. John Seymour,
U.S. Senate,
Washington, DC.

Dear Senator Seymour: I am writing to urge you to oppose the conference report to accompany H.R. 429 should it be considered in the Senate. The Association of California Water Agencies (ACWA) represents over 400 public water agencies in California who are responsible for 90% of the state's municipal & industrial and agricultural water supplies. The Association is made up, nearly equally, of ag and urban agencies throughout the state.

We join Governor Wilson and some members of Congress in calling for the Congress to reject any effort to force changes in a policy that affects the state so significantly without a clear and comprehensive review of the proposal. Although this issue has been before the Congress for sometime there has been no objective investigation into the issue by either body of Congress despite claims to the contrary. When evidence and testimony has been presented that challenged the assertions of the proponents of CVP reform measures, it has been simply ignored or dismissed.

Proponents of CVP reform have rushed to prescribe certain actions to resolve environmental damages within the CVP without fully understanding, or apparently caring about the impacts of their action. Much of the debate has been over so called "up front water." Yet there has been no identification of how much water is needed to solve the problems that have been identified. Simply saying one has too much and should share it with others does not justify the action.

In May, the Board of Directors of ACWA took the extraordinary step of providing the Association's official position on legislation in the form of five principles, which are included. Fundamental to these principles is the tenet that water transferred from current uses to fish and wildlife uses would be determined to have an identifiable positive affect on mitigating fisheries losses. We have not seen any documentary evidence supporting the numbers used in any of the proposals surfaced. This is clearly contrary to the Association's position.

While the Association supports water transfers as a way to meet short and some long-term supply problems, there are real questions still to be answered about the transfer provisions. There seems to be a disturbing propensity to ignore the impact on California's agricultural economy. At $18 billion, the industry is extremely important both to the Central Valley and the state's overall economy, as is any sector of California's economy. That shift has been casually justified by comparing the urban and agricultural contributions to the economy. Yet according to Bureau of Reclamation analysis, there would be no ag or M&I water in the last two years, and little water for water marketing. In an ironic twist, in those dry years some CVP urban contractors would be forced to pay for the water that they are under contract for, but would not get, and then compete with every other urban agency in a bidding war for CVP water that they must have.

We appreciate all of your efforts to resolve these issues amicably to the benefit of both urban and agricultural users and the environment. It is unfortunate that so many disparate titles have been bundled to gain the support needed to move the legislation. And while we have no reason to oppose projects within the states of your colleagues, we are compelled to ask you to oppose the package because of the devastation it promises for California. We agree with Senator Wallop's sentiment that other states' projects should not be held hostage to this kind of tactics; and we hope that there will be an effort to approve those measures separately, de-coupled from a conversial CVP reform proposal. Thank you for your consideration of this request.

Sincerely,

Brad Shinn,
Manager of Federal Affairs.

Hollister, CA.

I am a single woman owning a small farm in San Benito County. I will lose this farm, and many other small farm owners will also lose theirs if the Miller Bradley Act restricting use of Central Valley Water is passed.

We in San Benito County have no subsidized crops! Our fertile farmland puts produce on America's dinner table all over the U.S. Please help!

Charlote O'Bannon.

County of Kings,
Board of Supervisors,
Hanford, CA, September 28, 1992.

Re: Central Valley Project; Miller-Bradley Proposals.

Hon. John Seymour
U.S. Senate, Washington, DC.

Hon. John Seymour:

For nearly half a century, the Central Valley Project (CVP) has been the major work providing water that turned Central California into the world's most productive and efficient agricultural area. The Project provides many other benefits as well; it supplies urban water, provides flood control and recreational opportunities, generates electrical power, and helps repel salinity, all while also enhancing fish and wildlife habitats. For its entire history, the CVP has been the economic and environmental stabilizer for the Central Valley of California.

The Miller-Bradley proposals for the CVP even as "compromised" will emasculate the great economic and environmental force of the CVP. It would devastate California agricultural production, the economics of farm communities and thousands of farm families, which are already reeling from six years of drought and the present malaise of the state and national economies. The only real "benefit" from the proposals is a marginal enhancement of fish and wildlife habitat. Perpetual economic and social drought are the by-products of these harmful proposals.

The Kings County Board of Supervisors respectfully requests that you consider the real costs and benefits of the Miller-Bradley proposals, and vote against them.

Very truly yours,

James M. Edwards,
Chairman, Kings County Board of Supervisors.

City of Lindsay,
Lindsay, CA, September 29, 1992.

Sen. John Seymour
U.S. Senate, Washington, DC.

Dear Senator Seymour: It is my understanding that HR429 is about to emerge from a congressional conference committee. It is also my understanding that this legislation, if enacted two years ago, would have mandated that NO WATER would have been delivered through the Friant-Kern or Madera Canals during this past or the previous year!

HR429 would kill Lindsay and the farming community surrounding it.

The City of Lindsay relies on the Friant-Kern Canal for its water supply as the ground water on our area is not potable, primarily because of naturally occurring salts.

In a recent report, the California Department of Food and Agriculture determined that the potential agricultural water reduction resulting from HR429 could be 1.5-million acre-feet. If that amount were reallocated to the Delta, the agricultural crop loss would be $2-billion and cause a state income loss of $8-billion per year. As much 800,000 acres of irrigated farm land would be lost and result in the demise of 4,050 farms. In addition, I can personally assure you that the passage of HR429—with its proposed reallocation of water—would cause the City of Lindsay to go bankrupt.

Please study this legislation carefully and vote against it as its impacts would be very devastating to California agricultural industries and its supporting communities.

Sincerely,

John R. Maynard,
Mayor.

DiBuduo Land Management Co., Inc.,
Pinedale, CA, September 29, 1992.

Senator John Seymour,
Dirksen Office Building, Washington, DC.

Dear Senator Seymour: The intention of this letter is to remind you of the impact of the bill currently trying to be passed, which would literally devastate agriculture in the San Joaquin Valley, and more specifically, would likely put me out of business. The bill is a proposal by Congressman George Miller which has been termed a "compromise" between the House and Senate versions of CVP Fish and Wildlife legislation.

This so-called compromise would leave little to no water for farmers, by making irrigation water needs second in priority to fish and wildlife needs, which would mean no food, no farms, and no jobs.

The Bureau of Reclamation has calculated that if this latest proposal would have been law during the current 1992 water year, there would have been zero water available to the Friant Division. That means *zero* water to my ranch which is serviced by the Delano-Earlimart Irrigation District. The same would have also been true for the 1991 year.

I believe that sacrificing farmers for fish makes no sense practically, economically, morally, or politically, and most of all it is unnecessary. In the past, proposals that would have fixed the problems without inflicting punitive damages on farmers have been rejected without basis or good cause.

I see no options left but to kill this bill and hope for a more reasoned and sensible approach next year.

Thank you for your attention to this most urgent and serious matter.

Sincerely,

Jerry DiBuduo.

September 28, 1992.

Senator John Seymour,
902 Hart Office Building,
Washington, DC.

Dear Senator Seymour: I am the owner of a moderate size farm near the Town of Hollister in California's San Benito County. I lease the farm to tenant farmers who use water from the San Felipe portion of the California Central Valley project.

I am writing to ask you to take every possible action to stop the Central Valley Project reform legislation which is currently being considered by Congress. Taking unreasonable amounts of water from agriculture for the benefit of fish and wildlife will cause disastrous water shortages in the area of my farm. Coupled with the past seven years of drought, this will have a devastating impact on me, my farming tenants, and the already crumbling California economy.

Over the past three years, only 50%, 25%, and 25%, respectively, of the water allocation to my farm has actually been available. If the proposed legislation had been in effect during this period, no water would have been available, leaving my tenants in an impossible situation.

If enacted, the proposed legislation will allow me only 37% of past allocations for normal years, and its cost will more than double from $45 per acre foot to $50 per acre foot. Having this limited amount of water would be unreasonable for farmers, but having to pay $95 per acre foot for water would be unthinkable. My tenants simply could not pay it. My farm would become dormant, and my tenants would be out of work and soon on California's welfare roles.

I support efforts to support fish and wildlife, and I recognize that necessary steps will cost some water, but the proposed legislation is clearly unbalanced and unreasonable. If all the paying users of water from the Central Valley Project are replaced by nonpaying fish and wild animals, there will be no one left to pay for the Project. The Project can't afford this. California can't afford it. And the farmers certainly can't afford it!

I know that political battles are difficult in election years and that some politicians don't care what happens to California farms, but this proposed legislation is really ill-conceived and lacking in foresight. It will be ruinous for California and for me and my farm tenants. Please make an effort to oppose it in any way you can.

Thank you for your consideration.

Sincerely,

FRANK L. CHRISTENSEN.

ANDERSON CLAYTON,
WESTERN COTTON SERVICES CORP.,
Fresno, CA, September 30, 1992.

Hon. JOHN SEYMOUR,
Hart Office Building, Washington, DC.

DEAR SENATOR SEYMOUR: I am writing to express my opposition to the Reclamation Projects Authorization and Adjustment Act (H.R. 429). In particular, I am very much opposed to the Central Valley Project Improvement Act (Title 34), which is proposed by Congressman George Miller and Senator Bill Bradley.

I am in charge of California operations for Anderson Clayton, a large cotton processing company. Anderson Clayton and its many customers stand to be severely damaged if the Miller/Bradey becomes law. We employ 600 people at the height of our season here in California. Our 300+ ginning customers employ another 2,000 or so full-time workers and many more than that on a seasonal basis. Anderson Clayton has a commitment to those employees and customers and to the cotton industry. We lent over $60 million in California alone for production crop financing in 1992.

If the Miller/Bradley bill becomes law, agriculture in California will be devastated. We in agriculture agree that environmental concerns need to be dealt with. This extreme proposal, however, is going much too far. As you know, the State of California is near financial ruin, unemployment is incredibly high, and businesses and people are leaving the State in droves. If Miller and Bradley get their way those problems will get much worse.

I know that you have been an ally of California agriculture for a long time and we appreciate your help in providing alternative legislative proposals. We recognize and appreciate that very much. I do not know the status of the legislation at this moment, but I know that time is critical. Please continue to support us in our attempt to ward off the economic devastation that will surely befall us if this legislation is enacted.

Sincerely,

GEORGE R. HARDBERGER,
Vice President, California Operations.

INLAND EMPIRE ECONOMIC COUNCIL,
Ontario, CA, September 23, 1992.

Hon. JOHN SEYMOUR,
Dirksen Building,
Washington, DC.

DEAR SENATOR SEYMOUR, the $750 billion California economy is reeling from multiple blows. The general recession, restructuring of the aerospace/defense industry, and the continuation of a statewide drought into its seventh year are prime aggravators. Given the severity and length of the drought, in particular, it is clear that obtaining additional supplies of high quality water must be a priority if we are to protect our State's economy and quality of life.

Your exemplary leadership in the development of federal legislation to allow and encourage voluntary transfers of water from agriculture to urban centers has brought needed attention to the fact that water marketing must be an integral part of California's water planning agenda.

As concerned and involved business people, we at the IEEC support your work to reform the federal Central Valley Project (CVP) water system and to promote water marketing. We believe it is essential for this effort to continue this session. We encourage you, therefore, to work in concert with Interior Committee Chairman Miller in the House-Senate Conference Committee, to reach a viable agreement on CVP reform soon.

Sincerely,

LUKMAN CLARK,
Director of Public Affairs.

HOLLISTER, CA.

Subject: Stop CVP reform legislation Title XXXIV of H.R. 429.

DEAR SENATOR SEYMOUR: I am writing to urge you to take every possible step to stop the Central Valley Project Reform Legislation now being considered by Congress. Ripping water away from agriculture and giving it to fish and wildlife purposes is going to cause permanent drought for my farm and will have devastating impacts on me, my family and my employees.

I am a farmer in the San Benito County Water District. Over the last three years, I received only 50%, 25%, and 25% of my Central Valley project water allocation, and getting by has been extremely difficult. If this legislation had been in effect for the last two years, I would have received no water from the Project.

This legislation, as written, will only allow me a 37% supply of water in a normal year and its cost will increase by $50 per acre foot.

I cannot afford to pay $95 per acre foot for water. My farm cannot survive without water. My farm employees have no jobs without water.

I have been willing to support your approach of trying to implement steps to improve conditions for fish and wildlife. I know that those steps will cost some water. But when you take away so much water and change contracts so that in more and more years, I will have no water, I won't get financing. My District's bond debts won't get paid. I won't have water to transfer to urban areas. Who will pay for the Project when the primary "users" are fish and wildlife? What will be left of the CVP for transfer to the state?

I know the political battle will be fierce, and that there are some in California who don't care what happens to farms, but this is terrible legislation for California. Please stop it any way you can!

Sincerely,

ROBERT J. WILLIAMS.

COOPERATING CITRUS GROWERS,
OF CALIFORNIA AND ARIZONA,
Van Nuys, CA, September 29, 1992.

Re: Opposition to HR 429 Authorized by Congressman George Miller and Senator Bill Bradley.

Hon. JOHN SEYMOUR,
Dirksen Senate Office Bldg.,
Washington, DC.

DEAR JOHN: We understand that HR 429 will be brought up at the Congressional Conference Committee on September 29th or 30th.

If this bill were to become law it would devastate the agricultural industry in the state of California. If the law was passed two years ago no water would have been delivered out of the Friant-Kern or Madera Canals.

The majority of the California citrus industry is located in the southern end of the central valley and most of it is dependent on these canals for their primary water supply.

We commend your efforts in opposition and urge you to continue the good work.

Respectfully yours,

WILLIAM K. QUARLES,
Vice President, Government Affairs.

September 24, 1992.

Hon. JOHN SEYMOUR,
U.S. Senate, Washington, DC.

DEAR SENATOR SEYMOUR: As the representative body for the majority of California's processing tomato growers, the California Tomato Growers Association would like to express its support of the Senate-passed version of H.R. 429 and opposition to the House-passed version of the same bill in regard to Title XXXIV.

Last year, tomatoes for processing were California's ninth largest crop, contributing in excess of $500 million in raw product value and $3.7 billion in value added tomato products to our state's suffering economy. California contributes over 90 percent of the U.S. supply of processing tomatoes, providing America with an affordable, nutritional mainstay. In addition to the 20,000 jobs tied directly to growing, harvesting, and processing the crop, millions of U.S. citizens are employed throughout the country in the marketing and distribution of tomato products. Raising this important crop demands four things: Grower ingenuity, ideal climate conditions, excellent soils, and a reliable source of water.

The House-passed version of H.R. 429 would seriously jeopardize the availability of water to California's tomato growers. Already burdened by a 20 percent drop in raw product prices and skyrocketing input costs, our growers cannot afford to be further disadvantaged by legislation that could cut their water supply by as much as 40 percent while dramatically increasing the cost of that limited water. Under the House version of H.R. 429, the reliability of water supplies would be non-existent, destroying the ability of farmers to plan for the coming year and seriously impacting their chances of securing long-term financing to continue their operations. To its credit, the bill calls for further water conservation technology to be employed on the farm. Realistically, however, those conservation methods require capital investment. Few growers paying increased water costs and receiving a smaller water allocation will be able to invest that capital.

We appreciate the need to protect our wildlife and fish resources, but urge you to consider the need to protect our food supply and economy as well. The Senate-passed version of H.R. 429 takes a realistic approach to both of these needs. It is comprehensive and is the better approach to improve fish and wildlife without destroying agriculture. The House version, on the other hand, ignores the real needs of agriculture, and its ambiguous programs divert valuable resources to fish and wildlife without presenting a realistic plan for safeguarding these resources.

The utilization and administration of our nation's water resources is a critical issue that ultimately impacts every citizen. We strongly urge you to review both the Senate and House plans. If passed, we believe the Senate version will strike a reasonable balance between the environment and economy. If the House-supported version of H.R. 429 is passed, however, it will most definitely lead to farm bankruptcies, lost jobs, and higher prices for foods on the market shelves while doing little to protect wildlife and fish resources in California.

Sincerely,

JOHN C. WELTY,
Executive Assistant.

KERN FARMING CO.
McFarland, CA, September 30, 1992.

Senator JOHN SEYMOUR,
U.S. Senate, Washington, DC.

DEAR JOHN: It is my understanding that H.R. 429 may emerge. This will be devastating to my family, myself personally and Agriculture as an industry.

Under this proposed bill we would not have gotten any water from the Friant-Kern Canal to provide water to our farm this year or last. We are dependent upon this water to farm here in the San Joaquin Valley. To have our water taken from us would:

1. Cause financial ruin for my wife Lenore, my son Doug and his wife Dena and their new baby, which is expected next week. We all depend upon farming for a living.

2. Eliminate all jobs for our employees, which range from six to twenty-five.

3. Cause financial damage and ruin to most businesses here in our local rural community, as well as the larger valley cities.

4. Reduce the amount of food and fiber available to our world, that includes those who are starving now.

Please defeat this unfair bill, that if it emerges, will cause so much damage to us, our employees, the businesses who serve us and California Agriculture.

Please contact us for any questions or information.

Thank you for your help.

Sincerely,

WARREN CARTER.

DEAR SENATOR SEYMOUR: I am a farmer in San Benito County, a part of the best fruit and vegetable growing area in the United States where most of the fruit and vegetables for this nation are grown.

Some of the water wells here are drying now. If legislation is passed to take CVP water away from us, the farmed acreage will go down considerably and the price of farm products will certainly go up and stay up. This will cause inflation and more unemployment in the State.

I believe the Miller/Bradley or any other such Bill would be bad for the economy.

Sincerely,

——— ———.

RICHARD SILVA FARMS,
Hollister, CA, September 28, 1992.

Hon. JOHN SEYMOUR,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR SEYMOUR: As a third generation farmer, I feel deeply for the preservation of the family farm and farmer. H.R. 429 greatly threatens not only the small farmer but California agriculture on a statewide basis. This legislation does not represent a balanced or equitable solution to the States' water concerns or to the concerns of California's delicate ecology.

I believe that a slew of propaganda has been levied against farmers. Columnists routinely report that farmers are huge water wasters. This is not correct. Every precious drop of this God given resource is used to produce food and fiber as expeditiously as possible.

I urge you to cast a no vote on H.R. 429. Keep America fed and clothed and keep the California farmer the most productive and efficient farmer in the world.

Thank you for allowing my concerns to be communicated.

RICHARD SILVA.

POND-SHAFTER-WASCO
RESOURCE CONSERVATION DISTRICT,
Wasco, CA, September 28, 1992.

Re H.R. 429.
Senator JOHN SEYMOUR,
U.S. Senate, Washington, DC.

DEAR SENATOR SEYMOUR: The legislation that is coming out of the congressional conference committee sponsored by Senator Bill Bradley and Congressman George Miller apparently could be very devastating to California's Central Valley agriculture.

Do they realize the ramifications of this bill if it were to go into effect? Agriculture in Central California would essentially dry up. Not only would the ground water supply be in an extreme overdraft, due to the continuing drought and no water from the project, but many agriculturally related industries would also be affected.

The trickle down effect could be tremendous, affecting everybody from the farmer himself to the consumer, and everybody in between.

On behalf of the directors of the Pond-Shafter-Wasco Resource Conservation District, I am expressing my opposition to this legislation, and look to you for support in this matter.

Thank you for taking this into consideration.

Sincerely,

BRIAN W. HOCKETT,
Manager.

PANOCHE WATER DISTRICT,
Firebaugh, CA, September 29, 1992.

Senator JOHN SEYMOUR,
Hart Office Building,
Washington, DC.

DEAR SENATOR SEYMOUR: I am writing to urge you to stop the California Central Valley Project Reform Legislation now being considered by Congress.

The San Joaquin Valley is Mother Nature's greatest creation. The valley is a virtual bread basket. Nowhere in the world does the same climate and rich soil exist to produce food and fiber, our greatest resource for world security.

The lifeblood of this great valley is water from the Central Valley Project. Please do not let an agriculture hating Congressman and an eastern Senator decide our future. We need to be as responsible to agriculture as we are to fish and wildlife.

This proposed legislation is a potential disaster for the entire valley. Please stop it any way you can.

Sincerely,

DENNIS FALASCHI,
General Manager.

CITY OF ORANGE COVE,
Orange Cove, CA, September 29, 1992.

Re City of Orange Cove, contract No. 14-06-200-J230.
Senator JOHN SEYMOUR,
U.S. Senate,
Washington, DC.

DEAR SENATOR SEYMOUR: The City of Orange Cove is very concerned regarding HR 429 and its potential impact on the city's water needs for its residents.

As a municipality with an allocation of 1400 acre feet, and needing considerably more in the next few years, the cost increase to $30 per acre foot is substantially unrealistic for this community to absorb. This amount would be three times the current rate, and for a community that is considered among the poorest in the state, virtually impossible to consider.

Central Valley agriculture is vital to the residents of the City of Orange Cove. Over 70% of the residents rely on agriculturally related employment and are directly affected by water cutbacks as well being additionally affected by the increased cost for water deliveries. With very few and limited resources available regarding additional water supplies, this city as well as the surrounding farming community would be devastatingly affected by the increased water delivery costs.

On behalf of the Central Valley community of Orange Cove, I urge your no or veto vote on this legislation.

Sincerely,

VICTOR LOPEZ,
Mayor, City of Orange Cove.

COUNTY OF SAN BENITO,
BOARD OF SUPERVISORS,
Hollister, CA, September 28, 1992.

Re CVP reform legislation title 34 of H.R. 429.
Hon. JOHN SEYMOUR,
Hart Office Building,
Washington, DC.

DEAR SENATOR SEYMOUR: The San Benito County Board of Supervisors has asked me to write to you urging you to stop the Central Valley Project Reform legislation currently scheduled for hearing by a conference committee on Tuesday, September 29.

Farming in San Benito County, as well as other parts of California would be devastated by this legislation. Because of the continuing drought, Central Valley allocations to local farmers have been 25% of entitlements for the last two years. Had this legislation been in effect during that period, these farmers would have received no water.

In normal years this legislation would limit farmers to a maximum of 37% of current entitlements and would increase the cost by $50 per acre foot.

These limitations and price increases would put many local farms out of business.

We understand the concerns for fish and wildlife, which prompted this legislation but we believe there has to be a balance between these concerns and the basic needs of the farming industry.

Yours sincerely,

RICHARD SCAGLIOTTI,
Board of Supervisors.

EL DORADO COUNTY WATER AGENCY,
Placerville, CA, September 29, 1992.
Hon. JOHN SEYMOUR,
U.S. Senate, Washington, DC.

DEAR SENATOR SEYMOUR: I am writing on behalf of the El Dorado County Water Agency following the House defeat of Auburn Dam flood control authorization to address a concern regarding Central Valley Project reform measure H.R. 429.

The Agency opposed the authorization of a single-purpose facility at Auburn believing that a regional solution providing flood control, water supply, hydroelectric power generation, recreation, and instream flows would ensure greater benefits for more people. The Agency is one of several local cost-sharing partners, including Sacramento, participating in a 5-year federal study assessing unmet water-related resource needs in a 5-county area. Hopefully, a range of alternatives will be identified which will satisfy all unmet resource needs in the region.

Representative Vic Fazio recognized the need for regional solutions when he succeeded in 1990 in securing Congressional direction to the Secretary of Interior to enter into a long-term water service contract with the Agency (15,000 acre-feet from Folsom Reservoir for municipal and industrial purposes). HR 5014, a Department of Interior Appropriations measure, was passed by the Congress and signed into law by President Bush.

Unfortunately, the House offer on Title XXXIV (September 15, 1992) proposes to bar the Secretary from entering into new contracts for CVP water.

The Agency has embarked on a program with three objectives: (1) to secure sufficient water supplies to meet projected demands on the West Slope of El Dorado County through 2020, (2) to provide an affordable water supply to residents, and (3) to protect the environment to the extent feasible given the other objectives of the program. Both structural and nonstructural projects have been identified as alternatives; conservation and best management practices are included in the program.

The identification of nonstructural projects, i.e., those that do not include the construction of a dam and appurtenant facilities, has been a top priority given the lower capital costs and fewer significant environmental impacts involved in such projects.

The Agency has identified two nonstructural alternatives which it is pursuing today. The first is an application to the State Water Resources Control Board for consumptive water rights from Pacific Gas & Electric Company's (PG&E) El Dorado Project (FERC No. 184). The needed dams and reservoirs are in place; they exist for the purpose of generating power. The Agency seeks to utilize the available stored water and compensate PG&E whenever power generation is foregone. The second is the CVP contract.

The Agency does not seek to judge the necessity of barring new contracts; obviously, the CVP and California are struggling with serious environmental challenges including the Bay-Delta and endangered species. Rather, the Agency seeks to point out the previous commitment of the Congress in the content of the 1990 legislation. If the commitment is not honored, then the Agency will fall short of its goal in meeting projected water supply demands through 2020. The remaining alternatives involve the construction of dams and reservoirs on natural watercourses within El Dorado County. Such an endeavor would involve more significant environmental impacts as opposed to securing an entitlement to use water already developed.

Any assistance you can provide to the Agency to ensure that the 1990 Congressional direction is excepted from a general provision barring new CVP contracts would be greatly appreciated.

Thank you for your time and consideration.

Sincerely,

ROBERT J. REEB,
General Manager.

CHOWCHILLA WATER DISTRICT,
Chowchilla, CA, October 1, 1992.
Re H.R. 429.
Senator JOHN SEYMOUR,
U.S. Senate, Washington, DC.

DEAR SENATOR SEYMOUR: I am writing to you to ask for your support to defeat the H.R. 429 proposal by Congressman Miller and Senator Bradley.

H.R. 429 will destroy the backbone of the United States economy, the family farm. Most communities in California's San Joaquin Valley, which is the most productive farming region in the world, depend heavily on farming for their existence. If H.R. 429 becomes law this will be an unbearable burden on an already struggling farm community. Hundreds of farmers will be out of business. Still yet, thousands of workers will be out of a job causing millions of dollars of widespread loss. This also means an increasing burden on our already overtaxed welfare system.

H.R. 429 requires the Federal Reclamation Project to give up a large amount of water and to charge its users for damages by establishing a restoration fund that can be used for any problem, no matter what the cause. This bill punishes the family farmer in two ways. First, it requires him to give up much of his precious water supply. Secondly, it will inevitably require him to pay for the water that he will not even receive. This in itself will push many farmers out of business.

Why of all the Reclamation Projects, is the Central Valley Project of California being singled out by Congressman Miller and Senator Bradley? Is it because of their deep concern for the environment? I feel it is because Congressman Miller represents the metropolitan area of San Francisco and has nothing but arrogant contempt for California agriculture.

This is not the time to allow Congressman Miller's dream to come true.

Senator Seymour, you need to act now to stop H.R. 429 and permit the citizens of California to solve their own problems in a sensible manner and to allow the San Joaquin Valley farmers a chance to continue building a strong America.

Sincerely,

BARRY J. BEAL,
Secretary-Manager.

ANTON CARATAN & SON,
Delano, CA, October 3, 1992.
Senator JOHN SEYMOUR,
U.S. Senate,
Washington, DC.

DEAR SENATOR SEYMOUR: I'm a third generation family farmer. My father and sister are also active in the operation on a full time basis. I employ approximately 700 people in the process of growing table grapes in the Delano area. With the passage of H.R. 5099 these people along with myself will be unemployed. I cannot exist without the certainty of the C.V.P. supplying water to the water districts that I farm in.

Forty years ago the C.V.P. was built to stimulate development in the San Joaquin Valley and we were told to form districts and pay for the water. The town of Delano had a population of 400 people where dryland wheat was farmed. Today as a result of the certain water supply the town has grown to 25,000 and those residents produce a myriad of crops that help feed the world. This same type of development and productivity occurred in all of the towns in the San Joaquin Valley.

I realize that times change and therefore we have to. When the Reclamation Reform Act was enacted the Federal Government i.e. the people of the United States said that the C.V.P. had stimulated the economy. However, in this age of budget deficits they wanted the water users to not only pay for the water but also pay for the C.V.P. so pricing structures were set up so that in the next 40 years the project costs would be recovered and from what I understand it is being paid for.

Now just 5 short years later, we are being told that the basis for operation is for fish and wildlife mitigation. I find it very astonishing to believe that mother nature is going to repay the Federal Government for the project when those that have contracts for the water are unable to use and pay for it if H.R. 5099 is enacted.

I'm not doing anything illegal all I'm trying to do is make an honest living, provide jobs for others keep them off of welfare line and pay back the Government for a service that is so vitally needed and depended upon.

Congressman Miller you make no mention of how these items will be accomplished in H.R. 5099 and we all know how badly our Government can use these revenues not only from water sales but from the multiplier effect that those water sales has on creating tax revenues.

I urge you to please fight against the passage of this bill. If you have any questions or requests please call or write.

Yours truly,

ANTON G. CARATAN.

KERN COUNTY WATER AGENCY,
Bakersfield, CA, October 5, 1992.
Re opposition to H.R. 429.
Members of the U.S. CONGRESS,
Capitol Building, Washington, DC.

DEAR MEMBERS OF CONGRESS: We are writing to express the Kern County Water Agency's strong opposition to HR 429 dealing with reform of California's Central Valley Project (CVP). The CVP reform provisions proposed by Congressman Miller will take more than one million acre-feet from California's central valley cities and farms creating untold economic damage to California's already depressed economy. Districts within our service area receive water from the CVP's Friant Division and the CVP reform contained in HR 429 will devastate these districts as well as our local economy where current unemployment is almost 15%.

The Kern County Water Agency is the largest agricultural contractor and second largest municipal and industrial contractor of California's State Water Project. Please be advised that the State Water Contractors, an organization comprised of those entities contracting for water from the State Water Project, has assumed a neutral position with regard to HR 429. Be assured that this position is not indicative of complacency, but rather is the result of division among the contractors. The Metropolitan Water District of Southern California may support certain provision of HR 429; the Kern Country Water Agency is vigorously opposed.

The proponents of CVP reform are driven by the ill-advised notion that agriculture has abundant water and fish and wildlife not enough. You should be aware that 150,000 acres of prime agricltural land in Kern County is out of production due to water shortages from the State Water Project and Central Valley Project. This is some of the most productive land in the world. In 1991, more water was dedicated to fish and wildlife purposes than was diverted from the Sacramento-San Joaquin Delta for urban and agricultural uses. Furthermore, large shortages were incurred this year, and even larger shortages next year, due to restriction on water use to protect the Sacramento winter run chinook salmon, a threatened species under the Endangered Species Act.

Under these circumstances, it makes absolutely no sense to dedicate additional water to fish and wildlife purposes as contained in the CVP reform provisions of HR 429. we therefore strongly urge that the CVP reform provisions be served from HR 429. Lacking such severage, we urge you to oppose HR 429. Thank you for your consideration of this important matter.

Sincerely,

THOMAS N. CLARK,
General Manager.

Senator JOHN SEYMOUR,
U.S. Senate, Washington, DC.

DEAR SENATOR SEYMOUR: I oppose H.R. 429 as it passed the House, because of what Congressman George Millers' "Central Valley Project Reform Act" title would do to our water contracts. My family and I own and operate about 300 acres in Tulare County. We utilize both the Porterville Irrigation District and the Saucelito Irrigation District. We grow vegetable and cut crops.

My family is dependent on the Central Valley Project water from the Friant Division. Our farms future with cropping contracts and financing institutions are very critical around the water issue. This bill would certainly have a detrimental effect towards our farm. I realize that the Central Valley has environmental needs. It bothers me that the farmers are continuously being blamed when in fact farm families are very environmental conscious nowadays. I want a law which is fair, balanced and reasonable, but I want to preserve our economy and the way our families and workers are able to earn a living.

Please oppose George Millers approach as contained in the House version of H.R. 429. It's bad legislation. It would ruin good agriculture, jobs and related industries. At this point in time. California does not need to lose any of these.

I ask you to support the common-sense Seymour-Lehman-Dooley approach. It is well defined environmentally. Our San Joaquin Valley problems can be better resolved through this bill by Senator John Seymour, the "Central Valley Fish and Wildlife Act." It is understandable and more importantly it is reasonable, fair and balanced.

Please give us a solution we can live with here in the valley, support the Seymour approach. Thank you for your consideration.

Mr. Seymour, thank you for your hard work concerning this matter. We need your support constantly.

Sincerely,

DAVID E. GISLER.

HOLLISTER, CA,
October 1, 1992.

Re Stop CVP Reform Legislation Title XXIV of H.R. 429.

Senator JOHN SEYMOUR,
Hart Office Building,
Washington, DC.

DEAR SENATOR JOHN SEYMOUR: I am writing to urge you to stop the Central Valley Project Reform Legislation now being considered by Congress. Taking water from agriculture will cause permanent damage to my agricultural property in San Benito County, and have great impact on my own personal and financial condition.

I own an apricot orchard in the San Benito County Water District. My water allocation has been progressively decreased over the past three years and had this legislation been in effect for the last two years, I would have received no water.

My property cannot survive without water, and I am not able to pay an increase of $50 an acre foot that this legislation would require.

I know that fish and game preservation require attention but certainty not at the extinction of the farming industry in San Benito County.

I know of your political responsibility to make fair and equitable decisions that benefit, as well as limit, all Californians equally. I am confident that you will make every effort to vote against this legislation in its present unequal, unbalanced, and unfair form. Please notify me of the action that you take in stopping CVP Reform Legislation.

JOHN H. ERKMAN.

CAN-AM PRODUCE, INC.,
Kingsburg, September 28, 1992.

Senator JOHN SEYMOUR,
U.S. Senate,
Washington, DC.

HONORABLE JOHN SEYMOUR: Thirteen years ago, we invested 1.1 million dollars to buy a 160 acre piece of land and to develop it into a table grape vineyard. Except for the past few years of dwindling water supply, we have been fairly successful raising a good quality table grape—very popular and exceptionally good testing.

However, its future may be ominous as our only source of irrigation water for this vineyard is the CVP water. Without it, there would be no point in farming it and hoping that we could possibly raise some kind of a crop. We would be reduced to selling the property at only its bare land value which would result in a million dollar loss in assets.

Passage of Congressman George Miller's CVP Fish and Wildlife Legislation would mean job losses, loss of a good product, and a certain death sentence to our property. Please, don't let this happen. Lets move forward and create—not shift backwards and destroy.

Respectfully yours,

SUS KOMOTO,
Plant Manager.

TULARE FAMILY DENTISTRY,
Tulare, CA, September 28, 1992.

Senator JOHN SEYMOUR,
Dirksen Office Building,
Washington, DC.

DEAR SIR: It is a very heavy heart that I write this letter. The actions of Congressman George Miller regarding the Central Valley Project and his so called Compromised Bill will totally devastate and destroy agriculture in the San Joaquin Valley in Central California.

The Bill leaves no water for farmers which translates in to no food, no farms, and no jobs.

It is plain stupid to sacrifice farmers for saving fish. It is morally, politically, practically, and economically suicidal.

Many other proposals which fix the problem without inflicting devastating damages on farmers and their livelihood have been rejected without basis or good cause.

This leaves no option but for sanity to prevail and to kill this Bill and hope for a more reasonable and sensible approach next year.

Sincerely,

S.S. MALLI D.D.S.

MADERA, CA,
September 30, 1992.

Senator JOHN SEYMOUR,
U.S. Senator, Washington, DC.

DEAR SENATOR SEYMOUR: Please consider the devastating economic impact that passage of H.R. 429 (Miller and Bradley) will have. This bill encompasses 80,000 acres of farm land in the San Joaquin Valley of California. Passage of the act does not apply to farmers only, but to every industry in the Valley. The impact will be felt immediately on passage. Thousands of people will be unemployed.

I respectfully urge you to oppose this bill with every avenue available to you and your staff.

Sincere appreciation for your efforts.

Sincerely,

NELL BRIGGS.

Chowchilla, CA, October 1, 1992.

Senator JOHN SEYMOUR,
U.S. Senate, Washington, DC.

RE: H.R. 429.

DEAR SENATOR SEYMOUR: My name is Russell Harris. I'm a young farmer in the Friant Central Valley Project. It is vital that farms get water from the Friant Central Valley Project cause without it, I will be out of business. And countless other jobs will be lost. I realize that some people would like the water down river to save the fish. But, without the dams we have, in the past 6 years of drought, the rivers would have dried up and the fish would have died anyway. Farmers have been forced to cut back crops because of not enough water. I don't see Los Angeles cutting back water at all.

The farm economic is the best thing California has. It is over 18 billion dollars strong. If we allow the Bradley bill through, we are through.

I say vote NO!

Sincerely yours,

RUSSELL HARRIS.

OCTOBER 2, 1992.

Senator JOHN SEYMOUR,
U.S. Senate, Washington, DC.

DEAR SENATOR SEYMOUR: I am a citrus and olive farmer located in the San Joaquin Valley of California. Please do everything in your power to kill Miller-Bradley bill H.R. 429. This bill would effectively destroy agriculture for the three most productive counties in the U.S., break California's back as agriculture is our state's number one industry, and ruin the lives of many farmers and their families, farm workers, and employees and owners of ag related businesses. The average size of a citrus orchard in the Valley is about 40 acres, and many of these citrus growers can't survive without district water nor can they afford to pay the potential high price bill would require. How Miller and Bradley can even consider sacrificing countless people, businesses, and California's economy and welfare system for the sake of their agenda is incomprehensible.

Your effort to immediately stop this devastating bill is desperately needed.

Very truly yours.

Al Williams.

E.L. Mead, D.D.S.,
Lindsay, CA.

Hon. John Seymour,
U.S. Senate, Washington, DC.

Sir: H.R. 429 must not become law! I am a small farmer in the San Joaquin Valley and receive water through the Central Valley Project via the Friant Kern Canal. We now supplement this limited water with pumping from wells. If H.R. 429 becomes law, practically all water will be from wells which will soon be depleted. Times are tough here in the Valley, but we are willing to share the water to a point. Beyond this will spell ruin to the most productive agricultural area in the nation. I can't believe you want this to happen.

Sincerely yours,

E.L. Mead.

Hon. John Seymour,
U.S. Senator, Washington, DC.

Dear Senator: I am a farmer concerned about the Central Valley Project (CVP) legislation which will soon be going before a conference committee. My family's farm uses water from one of Reclamation's great successes, the Central Valley Project's Friant Division. We farm 135 acres in Tulare and Kern Counties.

I realize that the Central Valley has environmental needs and it bothers me to hear farmers being blamed for delaying CVP legislative action. The fact is that farm families are very environmentally conscious. For more than a year, our representatives have been working in good faith toward a solution. We want a law which is fair, balanced and reasonable. All of us want to protect the environment, but we have to preserve our economy and the way families like mine and the farm workers we employ earn a living.

Our future is in your hands. It will be protected by people supporting your consensus bill which passed the Senate in its Reclamation legislation (H.R. 429) as the "Central Valley Project Fish and Wildlife Act." Your bill offers specific solutions, providing both money and water, for identified environmental, fish and wildlife needs. It would help the environment. It would give us the water supply certainty we must have. It would keep us in business.

I oppose the House-passed version of H.R. 429, proposed by Congressman George Miller. His bill is unreasonable. By requiring that the CVP be operated to benefit fish and wildlife co-equally with cities and farms, George Miller's "Central Valley Project Reform Act" would unfairly allow unspecified amounts of water to be taken from our contracts. We'd lose all certainty in our water supply but would still pay millions of dollars more each year to try and meet poorly-defined environmental objectives. We'd face an unjust tiered pricing system. We'd see the CVP become further bogged down in endless environmental reviews, political disputes and court battles. For our valley, the Miller bill would be a waste, and a disaster.

We all want a solution to fish and wildlife needs. Please give us one which is fair, and one that we can live with.

——— ———.

Yurosek Realty,
Porterville, CA, October 2, 1992.

Re Proposed bill H.R. 429.

Senator John Seymour,
U.S. Senate, Washington, DC.

Dear Senator: Propose Bill HR 429 is a detrimental measure giving no regard whatsoever to central valley farmers. How do Congressman George Miller and Senator Bill Bradley expect us to raise crops to help feed this nation without available water? Where available, ground water is already overtaxed and some areas have no underground water making farmers dependent upon Central Valley Project water.

The summation is obvious. Farmers cannot grow crops without water. It doesn't matter whether that water is taken away altogether or priced so highly that we cannot afford to pay for it. Many people depend on the farm economy for employment and they stand to lose their jobs and homes if this Bill HR429 is passed. There must be alternatives which can satisfy everyone and keep this state's farm production alive and profitable for everyone.

Sincerely,

Jeff Yurosek.

Sierra Forest Products,
September 30, 1992.

Hon. John Seymour,
U.S. Senate, Washington, DC.

Dear Senator Seymour: Please stop the Congress of the United States from putting us out of business!

HR 429 the (Miller-Senator Bradley) bill will take all of the available water for the east side of the southern San Joaquin Valley. No water. No town. No business. People are more important than fish. We urge you to defeat HR 429.

We are a sawmill. First Congress passed the Endangered Species Act, which places a greater value on birds than people's jobs. Now Congress is going to renege on water policy that is forty years old.

We are beginning to understand how the Indians felt about making a treaty with Washington, DC.

Sincerely,

Robert Styles.

D.M. Camp & Sons,
Bakersfield, CA, October 1, 1992.

Senator John Seymour
U.S. Senate, Washington, DC.

Dear Senator Seymour: If HR 429 is put into law, much of the Central Valley of California will be devastated. Thousands of jobs will lost and many small businesses will be closed. This is a bad law for our country and especially local communities such as Arvin, California.

Sincerely,

D.M. Camp & Sons,
D.M. Camp.

Wasco, CA,
September 29, 1992.

Senator John Seymour,
U.S. Senate, Washington, DC.

Dear Senator Seymour: HR 429 is due to emerge from a congressional conference committee any day now. As I understand this bill, it will be especially detrimental to the Central Valley here in California. Under the provisions of this bill, the Central Valley would have received no water from the Friant-Kern or Madera Canals for the past two years.

Agriculture is the life blood of this end of the Central Valley. Without sufficient water many jobs will be lost and farming operations will come to a standstill. HR 429 will devastate this area! I recognize that Southern California and other western states strongly support this legislation. Central Valley agriculture must not be sacrificed to meet the needs of other areas. A compromise must be effected. Anything you could do to help would be greatly appreciated.

Sincerely,

James A. Forrest, Ed.D.,
District Superintendent.

Strathmore, CA,
September 29, 1992.

Senator John Seymour,
U.S. Senate, Washington, DC.

Dear Senator: The CVP compromises have gotten completely out of hand in the House and I honestly hope you can kill it in the Senate. Modern environmentalists have lost all recognition of why the CVP was formed in the first place. Flooding was no laughing matter before the dams were built and the economy was the pits.

Thirty years ago I started growing orange trees from seed when our children were little. My husband rented cotton and row crop land to make ends meet and encouraged me to raise the trees so that we could realize our dream to be orange growers. Our one hundred acres of groves were earned in that manner; it wasn't easy to finance land, plant trees and wait five years to break even, but we did it and we were proud of our accomplishment and contribution to the economy of the Lindsay-Strathmore areas. My husband died ten years ago and I am still farming oranges and growing more nurseries. He would not believe that our contracts with the Government could ever face the threats we are facing now.

With our water, and that's what HR 429 would have done to us the past two years if it had been in place, our investments would be a harsher disaster than the freeze.

Please do what you can to save the water we desperately need to raise our crops. The majority of California's oranges come from lands within a few miles on each side of the Friant-Kern canal.

Thank you again for your kind, caring attitude to the people in our area. it has been easy and an honor to sell tickets for some of your fund raisers because you are so highly regarded.

Sincerely,

Ophelia Barnes.

B.E. Biovannetti & Sons,
Huron, CA, September 30, 1992.

Senator John Seymour,
U.S. Senate, Washington, DC.

Dear Senator Seymour: It is my understanding that Congressman George Miller is again attempting to ramrod legislation through Congress that would reallocate Central Valley Project water to fish and wildlife and thus cut previous commitments to California agriculture. The ramifications of such action are not in the best interests of California and the nation. Based on today's uncertain economic climate, America does not need a shutdown of some of the country's most productive citizens. Furthermore, such legislation would obviously embroil the federal government in additional litigation. This is counterproductive. At a time when this country needs to pull together, legislation that pulls it apart should be stopped. Anything you can do to stop this waste of time and money on the part of Congressman Miller would be greatly appreciated. Thank you in advance for your efforts.

Sincerely,

JOHN GIOVANNETTI.

TERRA BELLA, CA,
September 29, 1992.

Hon. JOHN SEYMOUR,
U.S. Senator,
Washington, DC.

DEAR SENATOR: I am opposed to H.R. 429, the Western Reclamation bill, because of what Congressman George Miller's "Central Valley Project Reform Act" title of that bill would do to our water contracts.

My family and I own a small farm, about 130 acres, in the Terra Bella Irrigation District in Tulare County. We grow Citrus, Olives and Pistachios. Our farm receives Central Valley Project water from the Friant Division. Like a lot of the San Joaquin Valley's east side, my family relies on Friant water. We have been able to build our farm and get the financing we must have because we have a certain water supply provided through our district's federal water contract.

This bill would take that certainty away. Congressman Miller and others want to limit contract renewals to 20 years. They want to force districts which have already renewed to new 40-year contracts in good faith to immediately negotiate to shorter contracts. They want to let the government take an unspecified amount of water from our contracts to be used for fish and wildlife and other purposes. Our contracts, instead of letting us farm into the future, would be just about worthless. That's not fair.

Please oppose the George Miller approach as contained in the House version of H.R. 429. It's bad legislation. It would harm family farmers like me.

There is a bill you should support. Well-defined environmental problems that our valley faces can be better resolved if you back the consensus bill by Senator John Seymour, the "Central Valley Fish and Wildlife Act," which the Senate passed as part of its H.R. 429. It's reasonable. It is fair and balanced. It will help the valley and the environment.

Respectfully,

ED DOYEL.

DELANO FARMS CO.,
Delano, CA, September 29, 1992.

Senator JOHN SEYMOUR,
Washington, DC.

MR. SEYMOUR: This letter is to urge you to kill bill H.R. 429 because it threatens everyone in the Southern San Joaquin Valley.

Irrigation for farmers is the single most important issue we face in California due to the continuing drought and to take our water during these times would bankrupt even more farmers than the unusually high rate we have now.

Saving water for fish and wildlife has its merits but not to the point of taking away more jobs in this already floundering economy. The fertile San Joaquin Valley would revert back to desert in the time and food prices would skyrocket.

Please vote to kill this bill until another bill is proposed that is good for everyone.

Thank You,

JOE CAMPBELL,
Delano Farms Co.

HAURY & RENFRO RANCH,
Ivanhoe, CA, September 29, 1992.

Senator JOHN SEYMOUR,
U.S. Senate, Washington, DC.

DEAR SENATOR SEYMOUR: Regarding H.R. 429 sponsored by Cong. George Miller and Sen. Bill Bradley, we would like to protest the passing of the bill for the following reasons:

(1) We are farmers in the San Joaquin Valley and rely on this water for our livelihood.

(2) This water project was built for farming purposes and as users we have paid for this project.

(3) If the water is diverted for the fishing industry our crops will dry up and therefor all of our employees will be out of a job.

We as farmers feel this is an unfair bill as it does not protect the farming industry, the farm employees jobs, and all other jobs in this area that are related to agriculture. Why do the sportsmen feel they should have access to this water when they have not had it for the last 40 years??? Also why do the big cities feel they are more important than the farmers—because there are more of them—do they not need food to survive???

Please do all you can to defeat this bill.

Yours truly,

HAURY & RENFRO RANCH.

Lindsay, CA, September 30, 1992.

Senator JOHN SEYMOUR,
U.S. Senate, Washington, DC.

DEAR JOHN: Referring to bill H.R. 429:

This bill refers to the turning back of some million acre feet of water per year to take care of the fish.

If this bill passes, it will lead to the devastation of this valley. Life, as we know it today, won't be possible. My family is totally dependent on Central Valley Water. I'm only one of thousands that are dependent on this project.

Thousands of jobs and families will be forced to move from this area.

We are looking to our leaders to do everything in their power to see that H.R. 429 is defeated.

Sincerely yours,

JOHN BURR.

PRO-AG, INC.,
Visalia, CA, October 2, 1992.

Hon. JOHN SEYMOUR,
Hart Senate Building, Washington, DC.

DEAR SENATOR SEYMOUR: Please be advised that if HR 429 is enacted into Law it will put our company out of business. We are only one of many thousands of Agricultural operations that will be effected in central California.

We employ approximately 550 people for 10 months of each year, 125 of them are 12 month employees. We believe the welfare of these people plus all the supporting entities, ie. grocery stores, gas stations, auto repair shops, clothing stores, restaurants, etc. are worth protecting.

If you think California's economy is bad now, HR 429 will completely decimate it. It's too bad that Congressman Miller and Senator Bradley don't know what feeds and clothes this country.

Sincerely,

KENNETH P. CRANDALL,
President.

BAKERSFIELD, CA.

Hon. JOHN SEYMOUR.

I am an 80-year-old retiree with an 80-year-old wife who is confined to a wheel chair. We have avoided welfare by living frugally and in 1964 beginning an investment in farming. The government backed water supply seemed secure. We invested as much as $19,000 an acre in one of our perennial crops.

Thru our efforts new jobs were created, the economy benefited and taxes were paid at the county, state and federal levels. Our produce expanded the food supply here and abroad.

Now there is a threat of possible betrayal in the Miller Bradley Bill HR 429. This bill would limit and in dry years eliminate our water supply. That would relegate our land and that of thousands of other farmers to worthless desert.

Somehow eternal values have become obscured and distorted to the point that environmental desires have superseded human necessities.

Please use your honored influence to reject Bill HR 429.

Gratefully,

JAMES T. DRESSER.

SANTA CLARA VALLEY WATER DISTRICT,
San Jose, CA, January 14, 1992.

Hon. JOHN SEYMOUR,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR SEYMOUR: First, let me take this opportunity to thank you again for your continued very active role in the resolution of long-term water supply issues facing the urban, agricultural, and environmental interests of this state. Your desire to meet with us and other water and business leaders today to further discuss these issues is most appreciated. Let me also indicate this District's conceptual support of your Central Valley Project Fish and Wildlife Act of 1991 (S. 2016).

As you know, we are a Central Valley Project (CVP) contractor with an entitlement of 152,000 acre-feet of water from the San Felipe Division of the CVP. We also import water from the State Water Project (SWP) and have extensively developed local surface and groundwater supplies to conjunctive service 15 cities including the City of San Jose. Our responsibilities covers a total population of 1.5 million and thousands of business and industries, including a major focus on the electronics industry, commonly referred to as Silicon Valley. As an urban water supplier, one of the Districts' primary concerns in M&I water supply reliability. This concern has been especially magnified over the past two years in the shortage provision of our federal M&I contract in that we must take the same shortages as agriculture while having major urban supply responsibilities. This resulted in a 50% CVP supply in 1990 and only a 25% supply last year. Title II of your bill on water transfers will provide much more flexibility to move CVP water within the CVP service area on a short-term as well as on a long-term basis. These provisions will in turn provide the mechanism needed for urban districts such as Santa Clara to pursue water transfers toward enhancement of our current water supply reliability. This District, and the other CVP M&I contractors, have also been meeting with the Bureau of Reclamation in attempts to establish an equitable M&I water shortage provision policy as it relates to CVP M&I water service contracts. We are optimistic that this effort will also provide improved M&I water supply reliability from the CVP. Should this effort not produce such assurances, we will be proposing amendments to you on this issue for inclusion in your bill.

The programs outlined under Titles I and III of your bill to protect, restore, and enhance the Central Valley fish and wildlife habitat and to encourage financially feasible water conservation are critically important issues to us and the other contractors. The approach taken in your bill is pragmatic and achievable based on appropriate technical study and analysis.

As you know, there are a variety of clean-up amendments to the bill that are currently being formulated by the Central Valley Project Water Association (CVPWA) of which we are a member agency. Issues of specific concern to us are embodied in Section 201d, (3) and (4) of Title II. These subsections of the bill would limit transfers resulting from permanent land fallowing to 20% of the available supply within the service area of the transferor or 3,000 acre-feet, whichever is greater and would require 20% of the transferrable supply to be retained for fish and wildlife purposes within the CVP and within the transferor's service area to assist in groundwater protection. These requirements will preclude the sale in total of some small water districts which may no longer wish to operate and which currently provide water to very marginal lands. Some of these same small districts have no usable groundwater basins and therefore would not benefit from a requirement to leave a portion of its water supply within its service area for such a purpose. It is our goal to develop amendment language through the CVPWA that will under appropriate circumstances remove these constraints, thus freeing up more federal water for transfer.

We are optimistic that the amendments being developed by the CVPWA and/or by this District will be acceptable to you and that the bill can move forward very soon. Thank you again for your time spent with us today and your ongoing efforts to address these critical federal water resource issues in California.

Sincerely,

RONALD R. ESAU,
General Manager.

SOUTHERN CALIFORNIA
BUSINESS ASSOCIATION,
Los Angeles, CA, May 4, 1992.

Hon. JOHN SEYMOUR,
U.S. Senate,
Washington, DC.

DEAR SENATOR SEYMOUR: As you are aware, the Southern California Business Association has actively followed the water debate in California. We have been particularly interested in Federal legislation regarding California's Central Valley Project.

It is our belief that your bill, S. 2016 is a balanced and reasonable bill. In fact, your bill will accomplish what we consider to be the primary goals of legislation affecting the Central Valley Project; restoration of fish and wildlife habitat in the Central Valley, and to allow for the historic transfer of water from agricultural use in the Central Valley to municipal and industrial use throughout the State.

We appreciate your strong efforts to develop legislation that balances the water needs of all interests in California, including urban, business, environmental and agricultural. The Southern California Business Association supports S. 2016 and remains hopeful that Congress will adopt this legislation.

Sincerely,

LES BENSON,
President.

COUNTY OF LOS ANGELES WATER ADVISORY COMMISSION, DEPARTMENT OF PUBLIC WORKS,
Alhambra, CA, April 22, 1992.

Hon. JOHN SEYMOUR,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR SEYMOUR: On behalf of the Los Angeles County Water Advisory Commission, I would like to express my appreciation to Mr. Craig Schmidt of your staff for his presentation before the Commission regarding Senate Bill 2016 (Central Valley Project Fish and Wildlife Act of 1991).

As you are well aware, California is facing an uncertain future over the quality and quantity of its water supplies. Tough decisions lay ahead as to the uses of the State's limited water supplies and how they can be stretched to provide for the State's anticipated population of 35 million by the turn of the century. As urban, agricultural, and environmental interests continue to compete for this limited resource, it is important that efforts be made to develop a mutually acceptable agreement on the management of this resource. It is therefore gratifying to see that you, Senator Bradley, and Chairman Johnson are working towards that goal.

One of the responsibilities of this Commission is to monitor legislation that is of interest and benefit to the citizens of Los Angeles County. A key provision of your bill that would remove the legal obstacles and allow the voluntary transfers of Central Valley Project (CVP) water to urban areas is of special interest to our local water agencies in their attempt to provide a dependable supply of water for the community.

The Commission feels that this is an important piece of legislation and will recommend to the Los Angeles County Board of Supervisors that it support, in principle, Senate Bill 2016 and your effort in developing compromise CVP legislation.

Very truly yours,

EUGENE F. MOSES,
Chairman.

ENDOCRINE-METABOLIC ASSOCIATES,
Redwood City, CA, January 3, 1992.

Hon. JOHN SEYMOUR,
Senate Office Building, Washington, DC.

DEAR SENATOR SEYMOUR: Thank you very much for your legislation on the Central Valley Project Fish and Wildlife Act of 1991. I am a long term bird watcher since childhood and duck hunter since I was old enough. The Central Valley Water Project must be managed to protect fish and wildlife for the people of California and the Nation.

I would make the following suggestions to the language of your legislation asking that water supplies for wetlands are available immediately upon enactment of the bill. This is drought time and extremely important. Central Valley Project water is made available to fish and wildlife on an equal basis with current agricultural and municipal users is a second major important part of this legislation. There should also be made a special point with reference to water being provided on a equitable basis with "Water Rights Contractors". The costs of providing water to public and private wetlands should be implemented on a equal basis since there is equal benefit to be gained.

These changes are critical to the preservation to migratory birds in the Pacific flyway that belong to everyone. My bird watching and duck hunting are personal points of view but I know that all Californians share in this. I thank you for your concern and inserting these necessary changes to the bill.

Sincerely yours,

J. JOSEPH PRENDERGAST, M.D.

OCTOBER 7, 1992.

Hon. JOHN SEYMOUR.

This letter is to let you know that we are very much opposed to the "HR429 Miller Bradley proposal".

My husband and I are residents of San Benito County and are small orchard owners. We count on this water to help in the irrigation of our orchard.

Please make note of our opposition in your decision.

Thank you,

KARON AND KENT COSSEY.

MEYERS FARMING I,
Firebaugh, CA, October 6, 1992.

Senator JOHN SEYMOUR,
U.S. Senate, Washington, DC.

DEAR JOHN: Please don't give up—keep fighting for our water and agriculture. I'm sure it feels like you are alone in this fight, and it must be disheartening at times. I want to assure you that all of California agriculture is behind you, supports you and is grateful for all your efforts.

We can't let HR429 become law. It will destroy agriculture and its related industries in the Central Valley and eventually the entire economy of California. You seem to be the only voice of reason in Congress who understands the bill would mean a zero water allocation to agriculture which would destroy us.

We have urged President Bush to veto HR429 if it passes Congress and have enclosed a copy of our letter to him. Please know we are behind you all the way; don't give up the good fight.

Sincerely,

MARVIN A. MEYERS,
Family farmer.

MEYERS FARMING I,
Firebaugh, CA, October 6, 1992.

President GEORGE BUSH,
Washington, DC.

DEAR PRESIDENT BUSH: George Miller's Bill H.R. 429 is a disasterous bill for the Central Valley of California. It will destroy the agricultural economy of California and all related industries.

In years such as 1990, 1991, 1992, when drastic water allocation reductions were made, we farmers would have received absolutely no water from the Central Valley Project if this bill were law. As it is, with the reduced water situation, farms and business are folding by the multitude yearly which, with the trickle down effect, has impacted the economy of the entire State. Although farmers are taking the direct hits from every direction NOW, passage of H.R. 429 will quickly destroy the Central Valley and eventually ruin the entire State economy. I implore you to veto H.R. 429 if it is passed—it is a bad bill for the people of California.

Also, in our opinion you are not "out of it" in California. You can carry the State and the agricultural vote in the Central Valley can put you over the top in a tight race. We're behind you; don't falter. Please veto H.R. 429.

Sincerely,

MARVIN MEYERS.

KERN-TULARE WATER DISTRICT,
Bakersfield, CA, January 22, 1992.

Hon. JOHN SEYMOUR,
U.S. Senator, Washington, DC.

DEAR SENATOR SEYMOUR: At the January 14, 1992 meeting of the Board of Directors of the Kern-Tulare Water District, the Board affirmed its support for S. 2016 and H.R. 3876, subject to incorporation of technical amendments which will be submitted by the CVP Water Association.

While we fully support your bill, we believe that it more than completely corrects any legitimate criticisms of the Central Valley Project and that any efforts to significantly broaden the impact of your bill should be opposed.

We thank you for your continued interest and leadership in addressing CVP fish and wildlife issues and water transfers.

Sincerely,

MATT PANDOL,
President, Board of Directors, Kern-Tulare Water District.

RAG GULCH WATER DISTRICT
Bakersfield, CA, January 22, 1992.

Hon. JOHN SEYMOUR,
U.S. Senator, Washington, DC.

DEAR SENATOR SEYMOUR: At the January 14, 1992 meeting of the Board of Directors of the Rag Gulch Water District, the Board affirmed its support for S. 2016 and H.R. 3876, subject to incorporation of technical amendments which will be submitted by the CVP Water Association.

While we fully support your bill, we believe that it more than completely corrects any legitimate criticisms of the Central Valley Project and that any efforts to significantly broaden the impact of your bill should be opposed.

We thank you for your continued interest and leadership in addressing CVP fish and wildlife issues and water transfers.

Sincerely,

VINCENT J. ZANINOVICH,
President, Board of Directors, Rag Gulch Water District.

WESTERN COTTON SERVICES CORP.,
Fresno, CA, October 8, 1992.

Hon. JOHN SEYMOUR,
Hart Office Building, Washington, DC.

DEAR SENATOR SEYMOUR: I applaud your efforts to defeat the disastrous water reform legislation that most of our Congress seems bent on inflicting upon us. We need more people in Washington with the political courage you have displayed. We in the San Joaquin Valley know it would have served you better at election time to have joined the pack and voted with the majority.

Whether you will win or not in November, I cannot predict. There is one thing that I can tell you, though, and that is that you will have my vote.

Thank you for fighting for us.

Sincerely,

GEORGE HARDBERGER,
Vice President, California Operations.

Mr. BRADLEY. Mr. President, how much time remains?

The PRESIDING OFFICER (Mr. KERREY). The Senator from New Jersey has 7 minutes, 27 seconds; and the Senator from California has 4 minutes, 15 seconds.

Mr. BRADLEY. Mr. President, I will not take the full 7 minutes, but I would like to make a few closing comments.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. BRADLEY. Mr. President, this is a bill about America's West and its most precious natural resource: water. H.R. 429 is a 40-title bill spanning 21 States and covering topics as diverse as comprehensive fish and wildlife restoration for the Central Valley in California, settlement of Indian water rights claims in four States, and management of recreation at Bureau of Reclamation facilities westwide. This bill will benefit virtually every Western State. I commend my colleagues both here in the Senate and in the House of Representatives who have worked tirelessly and diligently for close to 2 full years in an effort to strike a balance among the many competing needs for our scarce water resources in the West.

This bill will bring clean water to rural residents, who have no choice but to drink water of such poor quality that their health is threatened by it. This bill will stimulate research into new ways of recycling drainage and waste water so limited supplies can be stretched as far as possible.

There is a clear recognition both in Congress and among most western water users that the key to meeting the West's growing water needs is greater efficiency. The bottom line of this bill is not about water or even money. It is about jobs. Over 30,000 direct jobs will be created by this bill, and almost 60,000 indirect jobs will be created by this bill. Millions of jobs will be saved, and countless millions will accrue in economic benefits to local economies hard hit by recessionary times.

With 5-year high national unemployment at nearly 6.7 percent, we simply cannot afford not to pass this legislation.

Mr. President, I am particularly pleased that this bill in virtually every title marks real progress toward bringing the Bureau of Reclamation's program into conformance with modern notions of environmental and water use policy.

In this regard, there is simply no western water issue more pressing of local and national importance than the future of the Bureau of Reclamation's Central Valley project in California and the central Utah project.

Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from New Jersey has 5 minutes, 12 seconds.

Mr. BRADLEY. I yield myself 3 more minutes.

Mr. President, the central Utah project is an historic accomplishment. Much of the credit goes to Senator JAKE GARN. He has spent a big part of his life achieving the balance between urban, rural and environmental interests.

The Central Valley project bill achieves that same balance between urban, agriculture and environmental interests. That is why the distinguished Senator from California, Senator CRANSTON, supports this bill. That is why 18 Members of the House of Representatives from California voted for the bill. That is why the California business roundtable representing 100 of the largest corporations and banks in California support the bill. That is why the economic bay area council supports the bill.

It is a bill that will provide the proper balance between environmental, urban and agricultural interests and greater flexibility for the State of California to manage its own water.

California is in every sense a State different from virtually every other State. It has 28 million people and every year another 800,000 people moving into the State of California. Every year another San Francisco comes into the State of California. And yet 80 to 85 percent of the water in California still goes to agricultural interests.

This bill is an attempt to open up California's water resources and create greater flexibility. The Central Valley portion of H.R. 429 has 5 major reforms. One, recognizes that if we move to a tiered pricing approval, a farmer can save money simply by saving water. We protect fish and wildlife by establishing a $50 million fund and allocation of 800,000 acre-feet of water for fish, for mitigation and for restoration.

We provide for contract renewals of 25 years with 25 years guaranteed after that initial 25 years. For the first time ever, we provide conservation standards and access to the 8 million acre-feet of water in the Central Valley Project that is now totally separate and removed from the rest of the State of California. We now allow water to be sold out of that valley so that urban interests might benefit from farmers using water more efficiently.

Mr. President, that is why the metropolitan water district which represents 15 million consumers in southern California strongly supports this legislation.

Mr. President, let me say that as a Senator not from the West, I began this journey with a lot to learn. I think I have benefited greatly from my opportunity to understand the importance of water in the West. In just one title we have heard from 75 witnesses, held five or six hearings, and heard from countless thousands of other people through meetings here and in California. Water is the life-blood of the West a concept in many senses not well understood by other Senators. It has been my privilege to come to understand its importance and guard its use.

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

The Senator from California is recognized.

Mr. SEYMOUR. Mr. President, I understand I have 3 minutes remaining.

The PRESIDING OFFICER. The Senator is correct.

Mr. SEYMOUR. Mr. President, the distinguished Senator from New Jersey suggested that this is a jobs bill. I suspect he is absolutely correct. It is a jobs bill for those western water projects that are included in the bill and the construction that will take place, I am sure, will create many jobs important to those Western States.

But, Mr. President, let us not in any way conclude that this is a jobs bill for California. This is a jobs destroyer bill for California and that has been borne out in studies by the California Department of Food and Agriculture, by the Department of the Interior, and the Department of Agriculture. This is not a jobs bill for California. Anyone who can come to that conclusion I just do not know where any factual evidence can be found that the bill would create jobs for California.

Senator BRADLEY of New Jersey also indicated that agriculture today in California uses 80 to 85 percent of the water. He is right. They do. And they do need to have some of that water transferred.

But let us not forget the amount of water that is consumed to grow our food, to grow our crops, to raise our cattle and chickens for market.

To give a bottom line to that, Mr. President, how much water it takes to feed a human being each day is over 4,300 gallons of water. So obviously there should be a great disproportionate share of water that is used by agriculture. An industry that provides the food and fiber for tens of millions of Americans.

Relative to the tiered pricing, suggesting that this is an incentive for water users to use less water, what it is is a stick to drive them away from water.

I offered an alternative that created a carrot incentive, a true incentive that would cause people to use less water.

Finally, Mr. President, relative to water contracts, the distinguished Senator from New Jersey said they get a 25-year contract and then they get 25 years, maybe. That is a big "maybe" and that is what I have been talking about, Mr. President. I do not think a banker is going to have any faith that these people are going to have water contracts longer than 25 years, because of the litigious process put in place by this bill.

In closing, let me thank the distinguished floor manager for allowing me this time. I do thank my colleagues for trying to work with me, knowing full well that at the end of the line their own water projects and their own States would come before my State of California.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from New Jersey has 2 minutes remaining.

Mr. BRADLEY. Mr. President, let me just reiterate that the Ports of San Francisco and Oakland do not have the options that are available to agriculture. The ports, representing $5.4 billion in annual revenues, need to dredge to maintain and deepen their channels. Without this dredging, the ports face the potential loss of 100,000 jobs.

The fishing industry will generate another 8,000 jobs, and 5,000 more will be generated in the recreational area.

The fact of the matter is that in a economy of $760 billion in California, agriculture is only $18.5 billion. The rest of the economy needs water. It seems to me industrial growth needs water. This bill would provide the flexibility to get the water. The fact of the matter is this bill does strike a balance between agriculture urban and industrial users. It is also sensitive to the environment.

Mr. President, this bill deserves to be passed. Let me express my appreciation to those who worked so hard to make this possible: the staff of the Water and Power Subcommittee, Dana Cooper, and to the Republican staff, Gary Ellsworth and Jim Beirne.

Rob Wallace, the distinguished staff on the Republican side. I would like to thank as well. I cannot forget the invaluable work by Tom Graff and David Vardas of the Environmental Defense Fund. And lastly, I would like to say a special word of thanks to Tom Jensen, who has lived with this issue for 4 years, and whose wife Jane has lived with it as well. Both of them deserve thanks from all of us for the Yoeman work that had been done to make this bill a reality.

I hope the President will sign this bill. It is enormously important to 16 Western States, it is enormously important to millions of consumers and to the entire country that views this vote as essentially a jobs vote.

Mr. President, I would hope we would adopt the conference report and the President would sign it.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Wyoming is recognized.

Mr. WALLOP. Mr. President, I will be brief. Let me begin by saying that my cap is off to the Senator from California. His vision and my dream would be that the status quo remain, but I think both of us know that the courts have interfered with the status quo.

I grew up with irrigation water and fights with neighbors in courts. I know this bill is a disappointment to the Senator from California, and I agree with him about that, but it is also a tribute to his vision and his persistence, and I say to him that it represents his victories as well.

In the letter that he wrote to me saying what would constitute ideal bill, I believe that we have gotten more than 90 percent of what he asked and it is his triumph. Those are the things that would not have been in this legislation but for him.

While he is disappointed in the total structure, he has to feel a sense of satisfaction and pride in the work he did in making this.

I, too, hope that the President will sign this bill, notwithstanding my reservations, because I believe this is the best deal that California is going to get from a Congress that now believes, like the Senator says, it knows better than the State itself how best to handle its water. I would say one other thing. I hope that the Congress finds it in its heart some day to transfer the control of these projects to the State of California where it properly belongs.

Mr. JOHNSTON. Mr. President, title 40 of H.R. 429 contains the Historic Preservation Act Amendments of 1992, legislation which has been actively considered by the Committee on Energy and Natural Resources for the past several years. Our committee has held five hearings on this measure since it was first introduced in 1989.

This important measure has been sponsored and championed in the Senate by Senator FOWLER who deserves much of the credit for bringing this measure before us today. The committee reported Senator FOWLER's bill, S. 684, on June 23 by a vote of 19 to 1. Subsequently, in response to concerns raised by Senator WALLOP and others at the committee's business meeting, the measure was further modified before being added as an amendment to this bill. The version included as title XL in the measure before us today, is very similar to the one which passed the Senate as part of H.R. 429 last summer.

As amended by the conference agreement, the major provisions of title XL: Would simplify the historic preservation process by allowing State historic preservation officers to assist the Secretary of the Interior in carrying out certain limited activities; for the first time, would include Indian tribes within the national historic preservation program, by allowing them to assume the functions of a State historic preservation officer on tribal lands; would establish procedures to ensure that native Hawaiian organizations are consulted with respect to historic preservation activities in Hawaii; direct the Secretary to establish a comprehensive historic preservation education and training program, including technical and financial assistance to establish preservation training and degree programs at historically black colleges, tribal colleges, and colleges with a high enrollment of native Americans and native Hawaiians; streamline the process for the awarding of Federal historic preservation grants to States, and caps the amount of allowable administrative costs to ensure higher funding for historic preservation activities; add provisions to strengthen the Federal agency protection process for historic properties; prohibit Federal assistance to parties who engage in anticipatory demolition, where a historic property is intentionally destroyed or significantly damaged in order to avoid the consultation requirements with the Advisory Council on Historic Preservation; reauthorize the historic preservation fund and authorizes appropriations for the Advisory Council on Historic Preservation through 1996; and establish the National Center for Preservation Technology and Training at Northwestern State University in Natchitoches, LA.

The purpose of the Center is to: Develop and distribute preservation and conservation skills and technologies for the identification and conservation of historic resources; develop and facilitate training for Federal, State, and local resources preservation professionals; facilitate the transfer of preservation technology among Federal, State, and local governments, universities, international organizations, and the private sector; and cooperate with related international organizations.

Mr. President, I am aware that the administration opposes some of the provisions included in title XL. I want the record to reflect that over the last 4 years, the committee has made a concerted effort to address the concerns of the Department of the Interior and other agencies. The bill, as originally introduced by Senator FOWLER in 1989, has undergone extensive changes to meet those and other concerns. Many of the provisions that the Department found most objectionable have been deleted entirely from the measure before us today or significantly modified to try and reach an accommodation.

Despite these best efforts, Secretary Lujan, in an October 5 letter to me, insists that the Department will oppose title XL unless more changes are made. Mr. President, I respectfully suggest that the Secretary look again at the provisions contained in title XL before declaring it unacceptable.

The Secretary's October 5 letter identified seven provisions in title XL that are still of concern to the administration. I would like to list those concerns, along with a brief explanation of why I believe these provisions are adequate.

First:

> Section 4003 could be read to require the Secretary to review significant threats to each individual property included in or determined eligible for inclusion in the National Register. This provision must be amended to allow review for threats in general, rather than individual review of threats to each property.

The administration's letter assumes words that are not in the legislation. The section simply states that at least once every 4 years, the Secretary of the Interior shall review "significant threats to properties" included in or eligible for inclusion in the National Register.

The section does not specify the words "individual" or "each property."

Furthermore, the section states that the purpose of the review is to "determine the kinds of properties that may be threatened," clearly indicating the general nature of the review.

Second:

> Section 4012 must be amended to allow a Federal agency to substitute its compliance procedures for NEPA [in lieu of historic preservation compliance procedures] if the advisory council finds it appropriate. We supported this provision in earlier drafts and we urge its reinclusion.

This provision was included in the Senate-passed bill. It was dropped in conference at the insistence of the House.

Even in the Senate version, the advisory council had to make a finding that the NEPA review would adequately address the historic preservation review needs. The conference report does not add any new review burden—it merely retains existing law.

Third:

> Section 4013, which would require Federal agencies to establish adaptive use alternatives for historic properties not needed for current or projected agency purposes, must be deleted. We object to changing this discretionary authority into a requirement.

The section directs an agency, to the extent practicable, to establish and implement alternatives for historic properties.

While the agency is directed to establish adaptive use procedures, the discretion is left to each agency to determine to what extent is practicable.

Fourth:

> Section 4018 would authorize the Advisory Council on Historic Preservation to enforce section 106 of the Historic Preservation Act "in its entirety." This provision would overturn a 1983 Department of Justice legal opinion, that under current law, the council has no authority to regulate how other Federal agencies take council actions into account. Therefore, this section must be deleted.

This section authorizes the advisory council to promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 in its entirety.

Although the Secretary's letter argues that this provision will permit the council to regulate how other agencies take advisory council regulations into account, it simply ensures that agencies may not completely ignore council regulations.

Furthermore, section 4012(2)(E) makes clear that each agency's procedures for compliance with section 106 only must be consistent with the council's regulations.

Fifth:

> The definition of undertaking must be deleted from section 4019. The definition would throw a settled body of case law into disarray, causing years of "redefinition" to take place, would make private actions subject to State regulations promulgated under laws that delegate Federal authority to the States, and render moot pending legislation where the Federal Government is a party.

Contrary to the Secretary's assertion, the definition of undertaking is consistent with the settled body of case law and the regulatory interpretation by the advisory council.

The section 106 consultation and review provisions does not affect private actions. Rather the definition makes clear that Federal responsibility under section 106 is not waived where a State assists a Federal agency in implementing Federal authorities.

Sixth:

> The definition of "tribal land" would include all lands within the boundaries of an Indian reservation, and ignore whether the land is held "in trust," thus making privately owned lands within the boundaries of a reservation Indian land. This definition is inconsistent with definitions found elsewhere in the law, and would throw historic preservation matters into the same legal morass of jurisdictional problems that private landowners within the the boundaries of Indian reservations now face in criminal, civil, and taxation matters.

This definition of tribal land is actually slightly more restrictive than the definition used in the Native American Grave Protection and Repatriation Act.

This bill only permits tribes to assume the functions of a State historic preservation officer on tribal lands. These functions are not regulatory.

The conference report also retains the agreement reached following the reporting of the bill from the Energy Committee.

With respect to individuals who own property within "tribal land" as defined, those individuals may elect to have the State historic preservation officer, in addition to the tribal preservation officials, undertake the historic preservation review responsibilities.

Seventh:

> Section 4022, which would establish a new National Center for Preservation Technology and Training, would add a new section 405 to the Historic Preservation Act which would provide for preservation technology and training grants to eligible applicants. In these times of severe budget constraints, we cannot justify another grant program especially when the current matching grant program is working well. Therefore, this section must be deleted.

The section authorizes the Secretary to provide preservation technology and training grants. Actual funding for this program will occur in the normal appropriation process.

Eighth:

> In addition, new section 407 would require the Secretary to: fully utilize and further develop the National Park Service preservation centers and regional offices; improve cooperation of these centers and offices within the service; and coordinate their activities with the center created by section 4022. This section is micromanaging the activities of the Secretary, and assumes that the Department has not been fully implementing current law, and will not properly implement title XL should it pass. This section must be deleted.

This provision was included so that existing park service preservation programs would not be discontinued or diminished. The section does not place any micromanagement restrictions on the operation of these facilities.

Ninth:

> Section 4023 would amend the so-called Historic Sites, Buildings, and Antiquities Act to require specific congressional authorization before moneys appropriated to the Secretary under sections 2(e) or 2(f) are spent. The assumed purpose of this section is to prevent congressional appropriation of monies to projects under the general authorities found in sections 2(e) and 2(f), but not specifically authorized by the Congress. Because of rules of construction of congressional acts, future Congresses would not be bound by this section, but instead the Secretary's discretion to expend funds under sections 2(e) and 2(f) for programs such as the American Battlefield Protection program would be eliminated. Therefore, we urge deletion of this section.

Section 4023 merely ensures that projects funded through section 2 of this Historic Sites Act must be authorized. This provision is consistent with the administration's views that Congress not fund programs which have not been appropriately authorized.

Mr. President, I think that a fair reading of these and other provisions in the conference agreement relative to historic preservation will demonstrate that the issues raised by the Department are not as serious as some are alleging. I think title XL is a good compromise and I urge my colleagues to join with me in supporting it.

Finally, Mr. President, I want to express my deepest appreciation to David Brooks, counsel for the Subcommittee on Public Lands, National Parks and Forests for his efforts on title XL. I also want to recognize the contributions of Laura Hudson of my personal staff on this issue. I am grateful for their hard work and the professionalism they have demonstrated in helping bring this legislation before us today.

Mr. DASCHLE. I wish to enter into a colloquy with the distinguished chairman of the Water and Power Subcommittee, Mr. BRADLEY, for purposes of clarification relating to title XX or H.R. 429, which authorizes the construction of the Lake Andes-Wagner/Marty II project.

The Senate version of H.R. 429 included language in the planning reports/environmental impact statements section which referred to the use of feasibility methodologies consistent with those employed in the Lake Andes-Wagner Unit planning report-final environmental impact statement, filed September 17, 1985.

This planning report was the effort of many years of hard work between the State of South Dakota, local project sponsors, the Secretary and the Bureau of Reclamation, and it was completed with an understanding of the needs for this particular area and the proposed project. The feasibility methodologies used reflect this understanding of the project area.

I would like to clarify with the chairman that in deleting this language from the conference report it was not the intent of the committee to rule out the use of these methodologies during preparation of the final reports, but rather that the committee expects the final reports to be consistent with the feasibility methodologies in the 1985 report and did not want to rule out the future consideration of other methodologies which may be better suited to the Lake Andes-Wagner/Marty II project.

Mr. BRADLEY. That is correct. It is not the intention of the committee to preclude the use of the feasibility methodologies consistent with the Lake Andes-Wagner 1985 planning report. Rather, the committee expects the final reports to be consistent with the feasibility methodologies in the 1985 report, but we did not want to prevent the Secretary from considering in the future other methodologies in the final report which may be better suited to the Lake Andes-Wagner/Marty II project.

Mr. DASCHLE. I thank the chairman. If I may continue with further discussion of the Lake Andes-Wagner title of the conference report, language referring to the proposal dated September 29, 1987, supplemented October 30, 1987—and on file with the Energy Committee—which provides for the funding and responsibilities of the State of South Dakota and the Lake Andes/Wagner Irrigation District, was also deleted from the original authorizing legislation.

As the chairman is fully aware, the 1987 agreement was carefully crafted to ensure a fair non-Federal cost share and to allow the district to administer the project at a substantial savings to the Federal Government, a savings future cost-share agreements should reflect.

I would like to clarify with the chairman that in deleting the reference to the 1987 proposal it was not the intent of the committee to prevent a similar or identical agreement between the Secretary of the Interior and State and local interests.

Mr. BRADLEY. I agree with the Senator from South Dakota that it was not the intent of the committee to prevent a cost-share agreement between the Secretary and the State and local interest that is similar or identical to the 1987 proposal. The committee understands and appreciates the willingness of the State and local interests to engage in an equitable sharing of the costs, and the committee agrees that those savings generated by the district's administration of the design and construction of the project should be reflected in future cost-share agreements. Deletion of this language in the conference report of H.R. 429 is intended simply to reflect the difficulty the committee had in stating with certainly what the costs associated with a project will be, since it is a project that is a few years away from construction.

Mr. DASCHLE. I thank the distinguished chairman of the subcommittee.

Mr. HATFIELD. Mr. President, I am pleased today to cast my vote in favor of the conference report on H.R. 429, the Reclamation Projects Authorization and Adjustment Act of 1992. While I still have some strong concerns about this legislation, I am pleased it is well on its way to becoming public law.

I commend Senator JOHNSTON, chairman of the Senate Committee on Energy and Natural Resources, Senator WALLOP, ranking member of the committee, Senator BRADLEY, chairman of the Subcommittee on Water and Power of the Energy Committee, and Senator BURNS, ranking member of the Subcommittee on Water and Power, for their diligent work over the past several years to sew together this patchwork bill dealing with a number of important aspects of our Nation's most precious natural resource—water. Their efforts deserve high praise.

The need to conserve and coordinate our finite water supplies has been a strong interest of mine for the last 40 years, in both the State and Federal arenas. The sheer lack of coordination of our Nation's Federal water policies has led me to conclude that America's state of readiness to deal with a water crisis of considerable magnitude is weak at best.

In an effort to better understand the deficiencies in our current water policy framework, I introduced a bill in June of 1991 called the Western Water Policy Review Act, S. 1228. The Senate Committee on Energy and Natural Resources held hearings on this legislation and adopted it, with several changes, as an amendment to H.R. 429.

The current and final version of the Western Water Policy Review Act, establishes a 10-member, 3-year commission designed to study and evaluate western water policies in the 17 reclamation States, Alaska and Hawaii. Upon completion of this evaluation, the Commission will recommend necessary changes in existing water policies to the President of the United States. Twelve congressional Members will serve as ex-officio members of the Commission to provide congressional oversight on the enactment of necessary legislative water policy changes.

I hope the Congress can learn from the model we are implementing today in the West and enact legislation assisting other areas of the Nation in evaluating and correcting their own water policy implementation and formulation problems. I pledge my full support and effort toward this endeavor.

While I am extremely pleased the Congress will be implementing the Western Water Policy Review Act today as an amendment to H.R. 429, I am particularly troubled by the conference committee's decision to forego amendments to the Reclamation Reform Act. Oregon's small reclamation farmers have been suffering under several Reclamation Act requirements for a number of years, namely over burdensome reporting requirements and oppressive fines for unintentional errors on reporting forms. I look forward to revisiting these issues during the 103d Congress.

Mr. President, barring these reservations, the United States simply cannot delay a fair and balanced assessment of its water policies in the West, and I am happy to cast my vote in favor of the conference report on H.R. 429 at this time.

Mr. CONRAD. Mr. President, I wish to highlight a provision in H.R. 429 that is extremely important to the State of North Dakota and its Indian tribes. H.R. 429 includes, as one of its many titles, the Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act. The Compensation Act attempts to make right an injustice perpetrated upon the people of the Standing Rock and Fort Berthold Indian reservations, when the Federal Government shattered their lives to make way for two main-stem dams on the upper Missouri River.

Mr. President, when the Garrison and Oahe Dams were constructed, more than 300,000 acres of tribal land were lost, and the lives of members of the Standing Rock Sioux Tribe and the Three Affiliated Tribes were changed forever. The dams destroyed infrastructure, such as bridges, homes, hospitals, and roads, but they also destroyed a way of life.

When Fort Berthold's land was taken in 1949, the Three Affiliated Tribes lost one quarter of their reservation's land base; 325 families—80 percent of the tribal membership—were forcibly relocated. And the remainder of the reservation was segmented into five water-bound areas. Ninety-four percent of the agricultural lands of these farmers and ranchers were destroyed. The tribal headquarters at Elbowoods was completed flooded. The tribe's agrarian way of life was literally wiped out.

At Standing Rock, the tribe lost 56,000 acres of land. Ninety percent of the timbered area on the reservation was demolished. And thousands of acres of exceptional grazing land and rangeland were eliminated. Sixty percent of the ranchers at Standing Rock saw their land disappear. One quarter of the Tribe's membership was forcibly relocated. The tribal headquarters at Fort Yates became surrounded by water, and separated from the remainder of the reservation. And the reservation, itself, became much more isolated. A bridge that had formerly crossed the Missouri River, which completely bounds the reservation to the east, was destroyed.

When Standing Rock was flooded, the tribe was not even provided an opportunity to cut and remove the timber from the area to be flooded. Today, tree stumps still jut out of the reservoir, making it almost completely unsuitable for recreation.

The result of the Federal Government's brutal treatment of these tribes is difficult to put into words. Their unemployment rates exceed 50 percent. In fact, at Standing Rock, the unemployment rate is 80 percent. Both reservations struggle to combat alcoholism, diabetes, suicide, and a multitude of other difficult problems.

This legislation allows these tribes the opportunity to rebuild. It provides them with the resources to develop their economies, educate their children, improve their health and restore their hope. And by doing so, it also adds important resources to the North Dakota economy as a whole.

As Senator BURDICK and I originally proposed, the bill authorizes the build-up of two Federal trust funds—one for Fort Berthold and the other for Standing Rock—from which the tribes may draw the interest. The trust fund for Standing Rock will amount to $90.6 million, and the Fort Berthold trust fund will amount to $149.2 million. But unlike the bill as introduced, this version has been amended to make the interest monies available to the tribes in much the same way as a permanent appropriation.

Mr. President, this proposal did not come out of thin air. Rather, it is the function of two reports. The first was entitled the "Final Report of the Garrison Unit Joint Tribal Advisory Committee," a special committee created by former Interior Secretary Hodel. The JTAC report acknowledged the Federal Government's obligation to compensate the tribes. It provided ranges of compensation to which each of the reservations is entitled—between $181.2 and $349.9 million for Standing Rock and between $178.4 and $411.8 million for Fort Berthold. The second report, which was conducted by the General Accounting Office, analyzed the JTAC report. The levels of compensation proposed in the bill, which are below those recommended in JTAC, fall within the range recommended by GAO. They are the result of years of work and much compromise.

In addition to the monetary compensation I have just described, the bill also provides for the return of certain lands to the tribes, Indian and non-Indian individuals, from whom they were originally taken.

Mr. President, at this point I feel compelled to address statements that the administration has made about this proposal. The administration continues to argue that the United States has no legal obligation to compensate the tribes, and that Congress, through the Garrison Diversion Reformulation Act of 1986 and legislation enacted during the 1950s, has already compensated the tribes.

The administration's position on JTAC has been, and continues to be, one of distortion and subterfuge. Any fair reading of the record will demonstrate the falsity of the administration's position. First, Secretary Lujan argues that the tribes were compensated for the lands to the tune of $25 million in the 1950s. But he refuses to acknowledge that almost none of this money actually reached the tribes in the form of compensation. Rather, the funds appropriated were used for subsistence payments and to condemn the land on the reservation. For the Bush administration to argue that this money actually compensated the tribes for the devastation of their reservations is absurd.

And it's even more outlandish for the administration to claim that this legislation duplicates irrigation for the tribes that was authorized as part of the Garrison Reformulation Act. We have explained to the Interior Department more than once that this bill takes the $60 million the act authorized for irrigation at Fort Berthold, and converts it into compensation for the tribes. It eliminates Fort Berthold's irrigation authorization, and uses it as a portion of the compensation to be provided by the bill.

Mr. President, none are so blind as those who will not see. And it is apparent that the Department of the Interior has closed its eyes to the Federal Government's obligation to these tribal people. While Interior might try and hide behind past, unsatisfactory efforts to compensate these tribes, the fact remains that the Federal Government has both a legal and moral obligation to provide just compensation.

The case for compensation is clear. I thank my colleagues for their support of this provision, and urge the President to sign this important legislation.

Mr. DECONCINI. Mr. President, the conference report before the Senate contains the Grand Canyon Protection Act. This legislation, in my opinion, represents a fair and equitable balance between the power generation requirements of the Glen Canyon Dam and the need to protect the natural and recreation resources of the Grand Canyon.

My colleague from Arizona, Senator McCAIN, deserves recognition for this happening. He and his staff have worked tirelessly to craft this legislation and I was pleased to join with him in this endeavor.

The relationship between Glen Canyon Dam and the Grand Canyon is truly unique. In the 27 years since this dam was built, it has provided water and energy to much of the Southwest. The Colorado River Storage Project Act [CRSP], passed in 1956, authorized the construction of Glen Canyon Dam.

CRSP also provided for the establishment of the upper basin fund into which revenues from power generation—mostly from Glen Canyon Dam—would finance the construction of the other upper basin projects authorized by the act. Further, the large reservoir behind the dam provides storage space in order that the upper basin could use its entitlement to Colorado River water.

The construction of the Glen Canyon Dam has forever changed the Colorado River through the Grand Canyon. The water released at the bottom of Glen Canyon Dam is clear and cold. This has resulted in the creation of one the best trout fisheries in the country. Fishing enthusiasts from around the world travel to Lee' Ferry in anticipation of catching 4- and 5-pound rainbow trout. Also, the dam has controlled seasonal floods which has allowed vegetation to grow along the banks of the Colorado River. This situation has contributed to this area becoming home to one of the most diverse bird populations in the Southwest.

Notwithstanding these beneficial aspects, a number of studies have concluded that the operations of Glen Canyon Dam are having an adverse impact on the natural and recreational resources of the Grand Canyon. Among these consequences is the erosion of the beaches along the river. As I mentioned previously, the water discharged by the dam is clear and cold, thus giving it tremendous carrying capacity for sediment. As the saying goes, "a clear river is a hungry river," Some may argue that the erosion of beaches impacts only a select number of rafters and campers. However, it is the beaches that provide the habitat for wildlife and create backwaters for certain aquatic species.

Also there are a number of impacts on certain endangered species, particularly the humpback chub. It was determined that the lower river temperatures are having a negative impact on this and a number of other native species. Also, the blue ribbon trout fishery created by the dam is being impacted by the way it is being operated. The fluctuating flows strand fish, interfere with fish reproduction, and impact fishing activities.

As I said earlier, I believe that the approach we have adopted in this bill balances the need to provide power and water against the need to protect the Grand Canyon.

Because of this, I ask my colleagues to join me in supporting the conference report.

Mr. SEYMOUR. Mr. President, I would like to thank the distinguished junior senator from Wyoming, Senator WALLOP, for his efforts on my behalf during negotiations on H.R. 429, the Reclamation Projects Authorization and Adjustment Act of 1992. Specifically, Senator WALLOP was able to delete several unacceptable provisions including: Elimination of the auctioning of 100,000 acre-feet of California's water to the highest bidder; removal of the term "enhancement" from the primary project purposes; permanent protection for the Friant water users against releases from Friant without a specific act of Congress; and elimination of the 15 percent capital gains tax on farmers.

Mr. President, I see the distinguished ranking Republican of the Senate Energy and Natural Resources Committee, Senator WALLOP, on the floor, and I would like to pose several questions to him with regard to H.R. 429.

I understand section 3406(b)(15) of title XXXIV of H.R. 429 provides for construction of a fish barrier at the head of Old River in the South delta.

Model studies have shown that these barriers, by eliminating dry spots in the channels and improving water circulation and quality, could also benefit fishery and recreational uses in those channels. They would also result in major improvements in the quality of water exported from the delta by the Central Valley project and thereby begin improving the salt load and salt balance problems in the San Joaquin Valley.

According to the State of California and local interests, an improperly designed barrier may actual dewater several South Delta channels. Does this section require the Secretary to consider recommendations made by the State and local interests such as the South Delta Water Agency?

Mr. WALLOP. I first would like to thank the distinguished Senator from California for bringing this to our attention. I understand the intent of this title is to make sure that when the Secretary does implement this section, his actions will be based on discussion and consensus with State and local officials.

Mr. SEYMOUR. Additionally, Mr. President, the legislation contemplates a study by the Secretary to investigate the possibility of rotation reservoirs and reservoir habitat to further mitigate the impact of 6 years of drought on fish and wildlife in reservoirs in the Central Valley? Does this study require input from local agencies such as the Valley Bass Council to ensure local interest are met?

Mr. WALLOP. Again, the Senator from California raises an important point. I would like to assure him that the intent of this section is to require consultation with local agencies.

Mr. BRADLEY. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have been ordered.

The question is on agreeing to the conference report on H.R. 429, the reclamation projects authorization bill.

On this question, the yeas and nays have been ordered, the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. EXON (when his name was called). Present.

Mr. FORD. I announce that the Senator from Tennessee [Mr. GORE], the Senator from Vermont [Mr. LEAHY], and the Senator from North Carolina [Mr. SANFORD] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. BOND], the Senator from North Carolina [Mr. HELMS], the Senator from Vermont [Mr. JEFFORDS], the Senator from Wisconsin [Mr. KASTEN], and the Senator from Alaska [Mr. MURKOWSKI] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 83, nays 8, as follows:

[Rollcall Vote No. 267 Leg.]

YEAS—83

Adams
Akaka
Baucus
Bentsen
Biden
Bingaman
Boren
Bradley
Breaux
Bryan
Bumpers
Burdick, Jocelyn
Burns
Byrd
Chafee
Coats
Cochran
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Durenberger
Ford
Fowler
Garn
Glenn
Gorton
Graham
Gramm
Grassley
Harkin
Hatch
Hatfield
Heflin
Hollings
Inouye
Johnston
Kennedy
Kerrey
Kerry
Kohl
Lautenberg
Levin
Lieberman
Lott
Lugar
Mack
McCain
McConnell
Metzenbaum
Mikulski
Mitchell
Moynihan
Nickles
Nunn
Packwood
Pell
Pressler
Pryor
Reid
Riegle
Robb
Rockefeller
Roth
Sarbanes
Sasser
Shelby
Simon
Simpson
Specter
Stevens
Symms
Wallop
Warner
Wellstone
Wirth
Wofford

NAYS—8

Brown
Cohen
Craig
Kassebaum
Rudman
Seymour
Smith
Thurmond

ANSWERED "PRESENT"—1

Exon

NOT VOTING—8

Bond
Gore
Helms
Jeffords
Kasten
Leahy
Murkowski
Sanford

So the conference report was agreed to.

Mr. BRADLEY. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TAX ENTERPRISE ZONES ACT—CONFERENCE REPORT

CLOTURE MOTION

The Senate resumed consideration of the cloture motion.

The PRESIDING OFFICER. Under the previous order, there will now be 1 hour of debate equally divided and controlled between the two leaders, or their designees, prior to the vote on the motion to invoke cloture on the conference report accompanying H.R. 11.

The Senator from Texas is recognized.

Mr. BENTSEN. Mr. President, after months of debate, we finally have H.R. 11 before the Chamber for approval and transmittal to the White House.

I have heard a lot of talk about the possibility of voting against this bill because it has some tax increases in it. It does, but it also has tax cuts in it and it remains deficit neutral. It does not add to the deficit. Let me make the point that we have just voted for the energy bill by a massive majority, a bill that the President has said in writing that he is going to sign. And yet that bill also had tax increases and tax cuts. It, like this bill, is revenue neutral; it will not add to the deficit.

It is my understanding that a point of order might be made. I tell you once again that this bill is fully paid for for 1993 and over the 5-year budget window, and that any points of order that might be against this bill are purely technical.

Mr. President, both Chambers of the Congress, our respective committees and our joint conferees have stepped up to the critical issues this bill addresses. We are in this Congress' final legislative moments, and we must act. We must act to assure a better tomorrow for rural and urban areas.

We chose the House version of the enterprise proposal because that is what the administration had approved. We must act in order to have 50 enterprise zones, urban and rural. We must act to promote savings and capital formation and to fund foster care. We must act to continue lapsing Medicare provisions, to train for jobs, to build low-income housing to extend other long relied on tax provisions and if we do not, those taxpayers will face tax increases for investments in low-income housing, for research and development real estate. We must pass H.R. 11 for millions of Americans who, if they were here, would vote aye with us.

The Secretary of Housing and Urban Development has again flagged enterprise zones of this measure as "too little and too late." His comment is another of the hostile and hasty contradictions that he will again retreat from when he faces the hard facts. The fact is this bill duplicates other zone provisions agreed on between the administration and the House. Secretary Kemp endorsed those exact same provisions barely 2 months ago. That is why they are here; that is why the Senate version is not. This $27 billion measure devotes $11.5 billion in assistance of many types for economically troubled areas and families. If $11.5 billion is too little, I remind the Secretary that the administration had asked for $2.5 billion and never, ever say it is too late to act for our Nation and her people.

I again remind my colleagues that months of cooperation and determination brought us to this threshold. This is a bipartisan bill that was reported out of the Finance Committee without one vote against it. This bill was born with and sustained by the Congress' intention that it would become law. It passed the Senate by an overwhelming vote of 70 votes to 29. Throughout this process, we have worked to oblige what we believe to be the President's position. We would have redoubled our efforts had he indicated what his position was going to be. But lacking a reliable hand, we have done what we could to produce a bill that we believe he can and should sign. Present in this version are elements of the Senate and House bills, including capital gains provisions for enterprise zones, and that is what the administration insisted on and endorsed last summer.

As this process has advanced, we have included four of seven growth measures that the White House had favored.

One thing that the President said twice in a row was that he did not want Pease and PEP in, and we have left them out. We have kept this bill revenue neutral.

Mr. President, at this point, anybody's guess is as good as mine what the President is going to do. I strongly hope and recommend that he signs it, but the time for guessing is over. The conference committee delivers this good bill, this honest, good faith effort with high hopes. H.R. 11 serves the purpose and the intent of the Congress and it addresses economic and social needs on many fronts. It takes an important step toward making life better for millions of American families, businesses and futures. It deserves to be passed and signed.

Mr. PACKWOOD addressed the chair.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. PACKWOOD. Mr. President, in a few moments, I hope we will be voting on final passage. I hope we indeed do invoke cloture on this. There is not much more to be said on this bill. We spent a week on it in August and September. Over 80 amendments were considered.

The bill contains a good many important provisions that have widespread support in this body: A new enterprise zone program to provide needed relief to economically distressed urban and rural areas; extension of expiring tax programs such as the research and development credit, the low-income housing credit, target jobs credits, educational assistance. As the chairman said, four of the President's short-term economic proposals are in the bill, a new child welfare program, and time-sensitive Medicare provisions.

The bill also contains some important provisions for my home State of Oregon, including expansion of the reforestation trust fund, a fix to the Treasury regulations for small woodlot owners that will allow them to prove they are active for purposes of passive loss rules, Medicare provisions increasing access to rural health care, and an extension of several important demonstration projects including the Alzheimer's disease project in Portland.

I am well aware there are critics of this bill. I have some misgivings about some parts of it. Compromises were made; they had to be made, and bitter medicine comes with the sweet. There is just more good medicine than bad in this bill.

I am particularly concerned about the impact of the provision putting a cap on deductible employee moving expenses and increasing the moving expense mileage, and I hope we have a chance to revisit that next year. I do not think this is going to affect higher paid employees. I think what is going to happen is the employers are going to increase their salaries to take care of the moving costs. But those who are making $10,000 or $20,000 or $35,000 a year, who are promoted from salesperson to branch manager, and they are moving 100 miles away and face expensive moving costs, I think that is the group it is going to hit.

Like the chairman, I do not know if the President will sign this bill or not. I do not know if he will sign any tax bill. All I can say is that I hope he will, and for these reasons I ask my colleagues to join in voting for cloture and then for adoption of the conference report.

I should like to compliment the chairman of the committee on the work he has done. There are some times at night when I have seen him harried and haggard and I thought to myself I know what he is going through. But he has done an extraordinary job.

Mr. BENTSEN. Mr. President, I thank my distinguished colleague. He has been a true compadre, partner in this effort, and he deserves full credit.

I yield to the distinguished senior Senator from the State of Arizona.

Mr. DECONCINI. Mr. President, I rise today with mixed emotions on final passage of the pending conference report on the tax bill. While I know that it took many, many hours, and a lot of sweat and blood to get the conference report this far, I cannot let this bill pass without bringing to the attention of this body a provision that was added during conference which I find to be particularly troubling. That provision, Mr. President, changes the way in which inspectors and canine officers of the U.S. Customs Service are compensated. It incorporates section II of the House Ways and Means Committee's reported bill, H.R. 3837, on Customs inspectors pay.

I stand here today as I did back on August 7, 1992, commending the House Ways and Means Oversight Subcommittee and its staff for what I consider to be a yeoman effort to overhaul the antiquated compensation system for Customs personnel. The current pay system is based on one which was established in 1911. However, I believe the Ways and Means approach is not totally fair to those individuals who are the front lines of this war on drugs. I will bet you that few people in this Chamber and virtually no one in the gallery know that Customs inspectors—the men and women we find proudly protecting and serving their country as the first line of defense in the war on drugs, the individuals which you encounter 24 hours a day, 365 days a year arriving from foreign trips, the professionals with the guns, badge, handcuffs, and drug detector dogs. All these people are not considered by current law to be Federal law enforcement officers for compensation and retirement purposes. Mr. President, I do not know of anything more absurd than this, yet there appears to be a concerted effort by the administration to maintain the status quo.

Two very basic and modest changes should have been made to the House bill before it was adopted as part of this conference report. First, as a result of the Customs inspector not having Federal law enforcement status they are ineligible for Federal law enforcement locality pay adjustments which are currently in effect throughout the country. This is the premium pay which is granted for all Federal law enforcement officers who live and work in regions of the country with a high cost of living. I believe locality pay for Customs inspectors should have been authorized as part of the larger pay compensation package. Currently, if you wear a suit and tie and carry a gun, you are considered eligible for a locality pay differential. But, if you wear a customs uniform and are in some cases exposed to greater dangers you are not considered eligible for a locality pay differential. The distinction is unfair and the compensation difference is unjustified. Mr. President, I am sure these facts are not proudly displayed on any Government recruitment brochure or poster.

Mr. President, the second revision to the inspector pay bill should have been to ensure that the customs officer is paid double time for all work performed on Sunday. This suggested pay change is in line with every other Federal border representative agency, including the Immigration and Naturalization Service and the U.S. Border Patrol. As I have stated on more than one occasion, I cannot think of a more demoralizing position for the Customs inspector to be in than to be paid considerably less for working Sundays than other border enforcement agencies, particularly when in some instances they have greater responsibility and are working under more arduous conditions.

Mr. President, I think this is wrong. By including this legislation in the conference report when no hearings have been held in the Senate and when there was no chance for the Customs inspector to make his case to the Senate, we are about to take action that will adversely affect them and I think it is wrong and unjust. But, since the conference report is unamendable, there is not a thing that can be done at this time.

I began this statement as I will end it. There was solid responsible support from inside and outside Government to reform pay schedules which were established back in 1911. Mr. President, there was no reason for the House Ways and Means Oversight Subcommittee to establish a take-no-prisoners approach to this legislation. Mr. President, you can be absolutely certain that I intend to take another intensive look at the entire issue of inspector pay in the next Congress. This Senator is sending a message to a segment of the thin blue line, the Customs inspector and canine officer, that you have not been completely abandoned and that there are Members of Congress willing to fight for what is reasonable and just to see that you are properly compensated for the excellent and thankless job that you do.

Mr. BENTSEN. Mr. President, I compliment the Senator from Arizona. I share his concern for the problem. I have that Mexican border share and understand the motivation.

I yield a minute to my distinguished colleague, the Senator from New York.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, may I congratulate both the chairman and ranking member for bringing this extraordinary collection of proposals to the floor.

I would just like to use a moment to note that H.R. 11 may be one of the most important measures in the history of higher education in our country. It restores to our private colleges and universities their status as exempt persons under the law, with full access to tax-exempt financing, which we stripped from them in the 1986 Tax Act. Moreover, it restores the full deduction for gifts of appreciated property for purposes of calculating the alternative minimum tax, which is essential to the fundraising efforts of our museums, our orchestras, our colleges and universities, and our nonprofit medical institutions. They know it and they are deeply grateful, as they ought to be. I simply wish to express my gratitude as well.

Mr. BENTSEN. I thank the distinguished Senator. He made major contributions to this legislation. He has had great interest in the universities in our country and has assisted as we brought this legislation forward.

Mr. PACKWOOD. Mr. President, I yield a couple minutes to the minority leader.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. DOLE. Mr. President, first I would like to make a parliamentary inquiry. In the event cloture is not invoked, will there be time for debate on the conference report, and will the time be limited?

The PRESIDING OFFICER. The conference report remains fully debatable and there is no unanimous consent that governs time. It is unlimited debate.

Mr. DOLE. And if cloture is invoked, is there any time limit?

The PRESIDING OFFICER (Mr. WOFFORD). There is a 30-hour time limit, if cloture is invoked.

Mr. DOLE. Mr. President, I would just say a word or two now, because I think we are going to have ample time after this first vote to discuss the bill and the merits of the bill.

I would like to reiterate what I have been saying right along. I think there are a lot of good provisions, as the chairman and the ranking Republican, Senator PACKWOOD, pointed out. It probably has provisions that help every Member of this body in one way or another, as well as a lot of general provisions that many people support.

We could start with the luxury tax, and we ought to repeal that before we sink any more boat builders or others in that business, and before we clip the wings of the aircraft industry. The jewelry and fur industries are not in much better shape. It does not repeal the tax on autos, but that may be revisited and can be revisited.

There are a number of issues that I had, I suppose, special interest in. They were not special-interest amendments, but we have had some problems in the areas of family farmers, cooperatives, and things of that kind.

Of course, you have all these expiring provisions, the so-called extenders. People always get nervous about the time they are ready to expire. Since they have already expired, they are really nervous. And many are waiting on so-called economic growth provisions in this package, and there are some, even though the first-time homebuyers' credit was eliminated, as was the investment tax allowance.

So I guess what I am saying is there are a number of provisions that I think every Member would strongly support, and we did. As I argued here earlier, we had to drop PEP and Pease, or it would certainly be vetoed by the President. Those have been dropped, but the bill still contains about $27 billion of revenue measures. I guess it is fair to say that because of the rush of time and the fact that we could not have a normal conference, there may be other provisions some people are not totally aware of.

So we are going to wrap up action on this sometime today, and I assume the bill will pass. There will also be a point of order made after the cloture vote by the distinguished Senator from Colorado, Senator BROWN.

But the bottom line is, the President will not sign this bill. And some will say that is fine, let us just send it on to him and let him take the heat. And if there is any embarrassment, let us get it down to the President; it is right before the election, so he will either have to sign it or not sign it, whatever, pocket veto it.

And so it seems to me that if the point of order is sustained or somehow we can reach some agreement there are a number of things we could put together very quickly; something the President would sign. We can repeal the luxury tax. We can extend the expiring provisions in 12 months. So we can help people who are relying on those areas. We can go ahead and provide passive loss relief as the real estate industry, I think with justification, says should be done.

We could use pay-fors that will be acceptable to the administration. There are several compliance provisions in the conference report that we can use for these purposes.

In addition to the revenue items, there are a number of expiring Medicare provisions which were included in H.R. 11 and these items are truly time sensitive. I think they affect some 500 hospitals across America. They should not be held hostage.

There is a way to pay for those that I think will satisfy the administration's concerns. I know the distinguished chairman has said he is not interested in that. Certainly, that is a proper stance at this moment.

But in the event the point of order should be sustained, then it would seem to me that there might be an opportunity to repeal the luxury tax, provide for passive loss relief, accelerate and increase the depreciation, IRA withdrawals, extenders for 12 months, including section 29 for 6 months, and Medicare amendments.

We pay for those with the diesel fuel exemption repeal, depreciation extension on real estate, because that is an agreement the industry worked out among themselves; corporation estimated taxes and individual estimated taxes speed-ups.

So they are not tax increases, and they would not violate the President's promise he made in Houston, TX, here in August about not signing any more bills that call for tax increases.

We also provide a way to pay for the Medicare amendments. We have cost items; we have pay-fors. In fact, the cost items are about $217 million, the pay-fors add up to about $227 million.

Mr. President, I will address this later after the cloture vote. But I thought just to indicate that I think it is fair to say, unless I misread what I hear from 1600 Pennsylvania Avenue, that this bill will not be signed.

That does not mean the Congress should not act. That is up to the President, who is going to make that choice.

I guess Congress will act. The House has acted, but not by a very wide margin, 208 to 202. So there is absolutely no doubt about whether or not a veto will be sustained. A veto would be sustained. It just barely passed. In fact, when the first round of voting expired in the House, I think it was a one- or two-vote margin. It got up to a six-vote margin.

Now we are down to 91 or 92 Members in the Senate. I am not certain which side they are from, or how they may fall on this particular legislation.

But the point of order will require 60 votes, and it seems to me that may be an appropriate way to determine whether or not the votes are there. If they are not, my view is the bill ought to be passed, it ought to be sent to the President, and he will have to make the appropriate judgment based on the information he has at the time.

Mr. President, I thank my colleague for yielding. I yield the floor.

Mr. PACKWOOD. I yield 2 minutes to the Senator from Rhode Island.

Mr. CHAFEE. Mr. President, in this bill that is before us, there are several measures that are extremely important to my State, and I am just in favor of the thrust of the legislation. These measures are not solely important to my State. They are important to the Nation as a whole, but, incidentally, have greater effect in my State than perhaps in other States.

These measures are two especially. One is the luxury tax repeal.

That luxury tax was imposed about 2 years ago, and has been an unqualified disaster. The theory was that it would hit the rich by saying that anybody who bought a yacht or a boat that cost over $100,000 would have to pay a 10-percent tax on the excess amount over $100,000.

What has been the effect? The effect has not been to hurt the rich in any fashion at all. The effect has been to devastate the boat building industry, and especially in my State where we build more sailboats or boat hulls than any State in the Nation, even more than California. Our little State with 1 million people has built more sailboat hulls than any State in the Nation.

This legislation does not raise money, does not hurt the rich—if you are out to hurt the rich. All it does is hurt a series of low-income and middle-income boat builders who are trying to make a living.

So, thank goodness this legislation repeals that luxury tax. It also repeals the luxury tax on jewelry, which indirectly affects my State where we are large jewelry producers, but mostly in the so-called costume jewelry end of the line, which is usually considered $50 or less.

The second major step that this legislation does is to extend the mortgage revenue bonds. The mortgage revenue bonds are extremely important for low-income and middle-income individuals to make their first-time purchase of a home. So also I mention in closing, it also extends the low-income housing credit.

So there are some good points in this bill. I commend it to my colleagues.

I thank the Chair. I thank the distinguished ranking member for permitting me this time.

The PRESIDING OFFICER. Who yields time?

Mr. PACKWOOD. I yield 4 minutes to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, first I hope no one seriously contends that this is the tax measure that the President asked for. I was going to bring the bill that contained the President's economic recovery requests and hold it up beside this. Suffice it to say that the President's bill was 95 pages long. We all know how big this one is that is being put here before us—about 1,400 pages. It is voluminous. It just shows that there is no real resemblance between this bill and what the President asked for months ago.

But I want to make two points about the bill that has many good provisions in it, but there are sufficient things in it that are not so good that lead me to say we ought not pass it. It raises taxes by $24.4 billion.

Senators in this body know that this Senator has voted for tax increases when they were accompanied by spending cuts. But I just cannot go along with this one.

What do these tax increases pay for? The bill raises some taxes by $24.4 billion and cuts other taxes by $21.1 billion, and it raises spending by $3.2 billion.

We may need to raise spending on certain programs by $3.2 billion. But I believe we ought to make an effort to cut spending rather than paying for new spending with new taxes.

I would remind my colleagues that we promised in the congressional budget resolution to cut, not increase, mandatory spending. We promised to cut it by $10 billion over the next 10 years. In this bill we are increasing mandatory expenditures by $3.2 billion. Some will say it's just a little bit. Yes, just a little $3.2 billion increase instead of a $10 billion reduction.

The other item has to do with where we raise the money. There is a lot said about raising taxes on the middle class. So let me just remind the Senators where a large portion of this tax increase comes from.

We cap moving expenses at $10,000, when the average cost to move in the United States is $15,000. I submit that most of that tax increase will affect the middle class of the United States who in these changing times may be compelled to move. There is no doubt about it.

We just, in a very casual manner, say let us pay for all of these other goodies by taxing the middle class under the guise of changing what is the deductible part of moving costs. I do not believe moving costs are luxuries. I believe they are part of today's marketplace of work, marketplace of employment.

In addition, let me remind everyone that tax increase is $3.2 billion. So no one will think it is trivial, I'll tell you it is 13 percent of the revenue raised in this bill.

In addition, there is a new threshold that is required by small business in terms of their estimated tax payments. This is another big revenue raiser. The 120-percent safe harbor is just $3.9 billion, and it is going to be on small business America who have to estimate their taxes in a different manner and lend the Government money.

Mr. President, if that was not enough, let me close by suggesting that IRA's were included in putting this bill together. I know many like the IRA provisions, but while we are wondering how we are going to take care of future deficits, we will also have to decide how to pay for the $10 billion in lost taxes that occur outside the budget window due to the IRA provisions.

We are just saying do not worry about $10 billion more in lost taxes in future years. It is all to the good of the country. For all of these reasons, I do not think we ought to pass this conference report. Frankly, there are a lot of good provisions, and I think we will get those good provisions sooner or later. I do not think we ought to get them today under this approach.

Frankly, even though the President will not sign it, I am very hopeful that the Senate will not, by sufficient numbers, lend their approval to it.

I yield the floor.

Mr. BENTSEN. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 22 minutes.

Mr. BENTSEN. Mr. President, I yield myself an additional 3 minutes.

I would like to make a point that the bill we just voted on, the energy bill, had a net increase in taxes in it, and it passed by an overwhelming majority and had a letter of commitment from the President that he was going to sign it.

On this question of 120 percent that was referred to, it is not mandated. It is an option. For corporations, they can still go on the 100 percent in their estimate. So it is not mandated, it is merely an option for them.

Where did that recommendation come from? That came from the administration. That was a revenue raiser that the administration was talking about. That is what we put in.

I listened to the distinguished minority leader, for whom I have very high regard, and I understand some of his concerns there. But the idea that we can now go to a stripped-down bill at this late stage is just not going to happen. I will, obviously, oppose that, because Member after Member came to me and said, "I want a stripped-down bill, but be sure my provision is in it." Stripped-down is in the eyes of the beholder, so long as his provision is in it.

Time and time again, that is what they have asked for. We have had months of arduous negotiation. We spent 4 days and nights with the House conferees, trying to work out these problems. They are locked in, and they have gone and they do not even have a quorum left.

The idea that we now go back and pick and choose on this side and decide what a stripped-down bill was that would satisfy all these members with all of the things they have in it that they think are important for their constituents just does not add up.

It cannot be. The House to have passed it by 208 to 202, by 6 votes, do you think they want to vote again? Certainly not, but over there, without a quorum, you have to have a unanimous consent. It is totally impossible to talk about going to a stripped-down bill at this point. I will strongly resist it. It is time we wrap this up and get the job done for our country.

I retain the remainder of my time.

Mr. PACKWOOD. Mr. President, I yield 5 minutes to the Senator from Delaware.

Mr. ROTH. Mr. President, I rise today in support of H.R. 11, the Revenue Act of 1992.

Overall, this package is an improvement in the tax law for taxpayers. These are important tax changes that should be passed this year. The bill includes the creation of enterprise zones in a form that is substantially the same as the package negotiated between the House and the Secretary of Housing Jack Kemp. The creation of these zones could address an important social policy, the rehabilitation of depressed economic areas, by harnessing private enterprise with as little government involvement as possible. I believe this is an important transformation in public policy after years of passing social programs that cause government reliance and dependence, many of which have not worked.

The bill also includes the extension of the expiring tax provisions, like the R&D tax credit, health insurance deductibility for farmers and small businesspeople, mortgage revenue bonds, employer provided education expenses and others, which are an essential part of this package. Failure to pass these provisions will only create more dissatisfaction and anger from the public that has lost much of its confidence in the Congress, and the Federal Government.

Repeal of the luxury excise taxes, a misconceived brainchild of those filled with anger and envy rather than common sense, is long overdue since their passage in 1990. I might add, I was a strong opponent of the 1990 Budget law, and these provisions in particular. Expansion of education savings bonds and withdrawals from IRA's without penalty for college expenses are structural changes that will allow Americans to save for their future and their children's future and education. And important changes to simplify and improve the tax law for charitable organizations will help these organizations carry out their lofty goals at a time when they are as essential as they have ever been to our society.

The bill also contains four of the President's seven growth incentives that he proposed as part of his budget in January of this year. I have to say, the Congress is long overdue with this, since the President reasonably asked that we pass these initiatives by March 20, when he gave his State of the Union Address. Simplification provisions in this bill are also important to taxpayers that are overtaxed not only on their dollars, but on their tempers when it comes to preparing their tax forms.

Most importantly, after working for 6 long years to revive the individual retirement account after its cut-back in 1986, I believe this bill substantially improves the IRA for almost all Americans, and provides exciting new opportunities to attract new savings for this country that is so poor in capital creation. One study, by the respected Lewin/ICF economic group, modeled the Bentsen-Roth IRA and projects new capital of at least $31 billion in 1995 and $838 billion by the year 2030. This is money that our country vitally needs in order to address infrastructure needs, to build new plants, to purchase new machinery and equipment to create new jobs and simply to save for our future retirement and family needs.

But more importantly, I want to stress the importance of the Bentsen-Roth IRA to families. This proposal allows families to save up to $2,000 per year, $4,000 for a two-earner family, in either a tax deductible IRA or in backloaded IRA that provides for tax-free savings after 5 years. This IRA expands the number of eligible two-earner families that can contribute to an IRA from less than 50 percent to about 90 percent or more. It includes a proposal virtually identical to the administration's family savings account that was part of the budget since 1990. And it includes important penalty-free early withdrawals that allow families to provide for themselves and their loved ones. These withdrawals allow parents or grandparents to withdraw funds penalty-free for their children's education, or their first home. It allows families to save for their own first home down-payment, or education expenses, for example for retraining or college. And it even allows children and grandchildren to save so that they can help pay the medical costs of their families.

Finally, it allows families to again count on their own savings to provide for themselves when periods of long unemployment occur, rather than be tied to the limited hand of government. I am talking about an opportunity for self-reliance and stronger family interdependence that is essential for a strong country. For years, Americans have been envious of the Japanese for a strong economy, but part of that strong economy is the interdependence between family members in that country. I think the Bentsen-Roth IRA helps encourage Americans in that same direction.

I have said it many times, but I will say it again, let us pass the Bentsen-Roth Super IRA; it is good for the family, and it is good for America.

OVERTURNING THE SUTER VERSUS ARTIST M. DECISION

Mr. RIEGLE. Mr. President, I rise to address a little provision in the conference report to H.R. 11 that is small in terms of the number of words it contains, but enormous in its impact. This provision overturned the Supreme Court's decision in the case of Suter versus Artist M. In this case the Supreme Court ruled that individuals—mainly low-income children—do not have recourse through the Federal courts when States fail to implement State plan requirements under the Foster Care Program of the Social Security Act.

This case dealt a devastating blow to thousands of low-income children who could potentially be denied benefits and services that Congress intended them to receive. States began attempts to extend the Suter ruling to other Social Security Act programs.

The House included a provision to overturn the Supreme Court's ruling in its version of H.R. 11; the Senate did not do so in its version of the bill. The distinguished chairman of the Finance Committee, at my request, asked the Social Security Subcommittee to hold a hearing on the issue. That hearing resulted in compromise language that restores the right of individuals to turn to Federal courts when States fail to implement Federal standards under the Social Security Act.

I want to thank the chairman of the Finance Committee, Mr. BENTSEN and the distinguished chairman of the Social Security Subcommittee, Mr. MOYNIHAN, for giving the Senate the opportunity to hear testimony about this issue. Thanks to my distinguished colleagues this little provision will protect the rights of millions of beneficiaries of Social Security Act programs.

Mr. LOTT. Mr. President, on behalf of Senator KASTEN, I ask unanimous consent to insert in the RECORD a letter from the American Institute of Certified Public Accountants [AICPA] outlining their position on the estimated tax revisions included in H.R. 11, the urban aid tax bill.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

AMERICAN INSTITUTE OF
CERTIFIED PUBLIC ACCOUNTANTS,
Washington, DC, October 1, 1992.

Hon. ROBERT W. KASTEN, Jr.,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR KASTEN: During the debate on H.R. 11, The Revenue Act of 1992, the Senate considered changes to the estimated tax rules for individuals. In the discussion on the Senate floor, the AICPA's position on estimated taxes may have been misunderstood. We would like to restate our position, for clarity, and let you know how it developed.

Last November, Congress enacted changes of great complexity to the estimated tax laws. The 1991 changes were targeted at higher income individuals, and would have denied them the right to estimate their current year's tax based on the amount they had actually incurred in the prior year. Instead, they could avoid a penalty only by paying in 90 percent of the current year's actual tax, in appropriate installments. If a taxpayer was a partner in a partnership, or a significant S corporation shareholder, the quarterly estimates would have to take into account what that owner's share of income for the partnership or S corporation would be for the year (or proportionate part)—even though, for example, the estimated tax payment was due June 15 and the partnership year would not end until December 31.

The AICPA immediately recognized last November's changes as unworkable, making it impossible for many taxpayers to comply. More recently, taxpayers themselves have discovered their inability to know if they have properly met their estimated tax obligations. We have tried to take the lead in finding alternatives to this impracticable statute. Among the options we suggested to members and staff—recognizing Congressional desire to accelerate estimated tax payments of higher income individuals but also trying to retain some measure of simplicity—were several that would apply only to taxpayers with adjusted gross incomes exceeding $75,000. We recommended, for example, that this group might appropriately continue to use last year's tax as a base for computing the current year's estimate, but at a level above 100 percent. If this group were required to use 110 percent or 115 percent of last year's tax as a safe harbor, acceleration of payment would be achieved but a fairly simple calculation would be retained.

The bill you approved this week included our concept of using a more-than-100 percent safe harbor based on last year's tax (it adopted a 120 percent threshold), but applied that to all individual taxpayers starting in 1993, not just higher-income individuals. (The House version of the same provision had a 115 percent safe harbor, also applicable to all individuals.) Further, what started as a proposal for simplification has now become a significant revenue raiser for each chamber's tax package. To illustrate, the House (115 percent) approach is scored as a $3.0 billion revenue raiser; the Senate (120 percent) approach would raise $3.9 billion during the 5-year window used for budget purposes.

At the time the House was considering its version of H.R. 11, we were asked if we could support a 115 percent safe harbor if it included all individual taxpayers. While not a preferred approach, we agreed it was supportable. However, when your Finance Committee proposed a 120 percent safe harbor, we called for caution. A safe harbor as high as 120 percent of the prior year's tax is inappropriate, especially for lower income individuals and for lower income unincorporated businesses that report their earnings on Schedule C or Schedule E of a Form 1040. The higher that threshold gets above 100 percent, the fewer taxpayers will use the safe harbor. Instead, these individuals and unincorporated businesses may well decide to go through the complexity of computing actual quarterly income to take advantage of the other primary exception to underpayment penalties—paying in 90 percent of current year's tax. Not only will this create additional complexity for taxpayers, but it will also reduce the acceleration of current year revenues being sought by this provision.

Thus, we continue to prefer a safe harbor of 115 percent that is limited to those individuals with adjusted gross incomes over $75,000. We have felt it may be possible to accomplish this without a dramatic fall-off in estimated revenue. We would expect that a substantial number of lower and middle income individual taxpayers derive the bulk of their reported income from wages subject to withholding, and may not otherwise be required to pay estimated taxes.

Again, we encourage efforts to correct the unworkable 1991 rules to protect the interests of the many small business owners and millions of individual taxpayers who may be affected by the various proposals presently being considered. While you have already cast your vote on this issue, we wanted to be sure our position was properly understood. Thanks for your time reading this letter.

Sincerely,

GERALD W. PADWE,
Vice President—Taxation.

Mr. SPECTER. With much reluctance, Mr. President, I am voting for cloture and I am supporting the urban aid tax bill, H.R. 11, because it is imperative that Congress fulfill its obligation to assist our Nation's troubled cities. This bill takes important strides toward assisting our cities with enterprise zones and the permanence of certain extenders namely, the low-income housing tax credit, the targeted jobs tax credit, and the mortgage revenue bond programs. These are important provisions that I support and, when coupled with the additional funding we provided to the cities a few months ago in H.R. 5132, the dire emergency supplemental, and important provisions in the housing reauthorization bill, which I anticipate we will soon adopt, relative to economic and community development and the HOME Program, I believe we are taking responsible steps to address the needs of our cities. For this reason, I also encourage President Bush to sign this legislation.

There are other provisions in H.R. 11 that I support, such as the repeal of the luxury tax, penalty-free withdrawals from IRA's for certain purposes—although I am very disappointed that my cars amendment, which promised to infuse the economy with $29 billion was dropped in conference—passive loss reform, and extension of the other extenders.

However, Mr. President, we are foregoing an opportunity to provide important initiatives to spur this economy—provisions that each of the House, Senate and the President agree are important to cause a sustained economic recovery. Hence, my reluctant support of this bill. I am referring, of course, to the four common points: The first time home buyers tax credit, the investment tax allowance, passive loss reform, and pension funds investment in real estate. I know that H.R. 11 includes the latter two points. But, it should also include the former two because they will create jobs and encourage spending.

We recognized this back in March when they were included in H.R. 4210; the President has recognized this in his budget proposals. Senator DOMENICI and I recognized this when we introduced S. 2612, the High Value Economic Growth Act, in April of this year. In fact, the Finance Committee continued to recognize this when it reported its version of H.R. 11. The need for these initiatives have not diminished. Unfortunately, that need will not be completely addressed by this legislation.

In addition, Mr. President, Congress is missing an important opportunity to address the health care issue—albeit modestly—which, next to the economy, Americans want to see Washington address. As you know, the Senate version contained a modest, yet significant, step toward making health care more affordable by permitting full deductibility by self-employed persons of their health care costs, reforming the small group insurance market, and authorizing small purchasing groups organizations, among other things. Unfortunately, all of these provisions were dropped in conference.

In the end, however, Mr. President, H.R. 11 is better than no bill at all. We must promote the revitalization of our cities. We will do that with this legislation. And I believe that if the economy continues to limp along, the 103d Congress will take the necessary steps to redress it. I also believe that the 103d Congress will be forced to resolve the health care access and affordability issue because that issue will not go away with inaction.

I thank my colleagues and yield the floor.

MEDICARE AND MEDICAID REFORMS

Mr. RIEGLE. Mr. President, I rise today to speak about the important Medicare and Medicaid reforms included in S. 3274 that were added to H.R. 11, the urban aid package, as an amendment. I supported the urban aid bill, and the Medicare and Medicaid provisions it contained. I am pleased that the conferees chose to retain some important provisions from S. 3274 in the bill's final version—modifications and technical corrections to Medicare which will improve services for beneficiaries.

I am disappointed, however, that the conferees have failed to include meaningful changes to Medicaid as well. As chairman of the Senate Finance Subcommittee on Health for Families and the Uninsured, I am particularly concerned about programs that provide health services to low-income families. For several years, I and many of my colleagues have met with constituents, held hearings, and developed legislation to correct problems in the Medicaid Program and make improvements. S. 3274 was the first real opportunity we have had in 2 years to enact the most pressing of those changes.

QUALIFIED MEDICARE BENEFICIARIES

This year, the Senate has failed to capitalize on one of the most obvious opportunities to assist low-income Medicare beneficiaries. Since 1989, certain low-income older people—so-called qualified medicare beneficiaries, or QMBs—have been eligible to have the Medicaid Program pay their out-of-pocket Medicare costs. Since that time, I have written several letters asking the administration to fully implement this important program. However, many eligible seniors are still not receiving benefits, either because they do not know they are eligible or they do not know where to apply. A recent stud by the Families U.S.A. Foundation found that close to 2 million Medicare beneficiaries are still paying for benefits out of their pocket that the Government should be paying for, including premium costs, deductibles, and other cost-sharing.

That is why I introduced S. 2814, the Medicare Enrollment Improvement and Protection Act. The bill has 24 cosponsors, including seven of my colleagues on the Finance Committee. It requires the administration to ensure that low-income Medicare senior citizens and disabled persons receive benefits entitled to them, primarily through more effective notification, grants for outreach, a simplified application process, and the use of Social Security offices for enrollment.

An important provision from S. 2814 was included in the urban aid amendment. It creates a demonstration program to evaluate the effectiveness of programs outlined in the bill in improving QMB enrollment. With low-income seniors facing skyrocketing health care costs, it is essential to ensure that all QMB's receive the benefits to which they are entitled.

CHILDHOOD IMMUNIZATIONS

The Senate missed another opportunity during this Congress in failing to enact meaningful improvements to childhood immunizations under Medicaid. Currently, children enrolled in Medicaid are eligible for basic health screenings and services, including immunizations, through the EPSDT program. Although children enrolled in EPSDT are required to receive vaccinations, evidence presented at a June 1, 1992, hearing before the subcommittee I chair indicated that Medicaid-eligible children are not receiving their full set of immunizations on schedule.

In November 1991, I introduced S. 2116, the Comprehensive Child Health Immunization Act to address the nationwide problem of inadequate immunizations of children by coordinating and strengthening efforts within existing public health and social service programs to increase immunizations and prevent outbreaks of childhood diseases. S. 3274 included a provision from this legislation which would have created a demonstration program to evaluate the effectiveness of innovative immunization outreach techniques in improving immunization rates among Medicaid-eligible children. The amendment also contained other provisions which would have improved immunizations under Medicaid.

RESTORE MEDICAID DEMONSTRATION FUNDING

Two demonstration projects were created under the Omnibus Budget Reconciliation Acts [OBRA] of 1989 and 1990 to enable States to expand Medicaid coverage for pregnant women, children, and low-income families. Several States, including the State of Michigan, have already been awarded funding for these programs, but since the projects were not fully implemented until fiscal year 1992, legislative action is needed to restore lost funding. Without this funding, the projects will be unable to continue beyond early next year.

Included in S. 3274 was a provision to restore $43 million through 1995 for these demonstration programs. This provision would have enabled States to continue to implement and evaluate model programs to provide health services for our most vulnerable populations.

Mr. President, I am very disappointed that the Medicaid provisions from the urban aid package were not included in the conference report, and that we have once again missed an opportunity to enact these and other provisions to strengthen Medicaid and improve access to quality health care for low-income families. I intend to reintroduce these bills during the 103d Congress, and I will continue to make every effort to improve the Medicaid Program and ensure beneficiaries the quality care to which they are entitled.

INDIAN EMPLOYMENT INVESTMENT

Mr. INOUYE. Mr. President, I rise in support of the conference report on H.R. 11. In particular, I want to commend the chairman of the Finance Committee, Mr. BENTSEN, and the ranking member, Mr. PACKWOOD, whose support has insured the inclusion in this legislation of provisions of historic importance to hundreds of thousands of American Indians on reservations throughout the United States. I refer to the Indian employment and investment provisions of the bill, which I sponsored along with the select committee's vice-chairman, Senator MCCAIN, and Senator DOMENICI, a member of the Select Committee on Indian Affairs. Those provisions—which authorize investment and employment tax credits to help attract urgently needed new investment and jobs to Indian reservations—were accepted by the chairman and the ranking member, and adopted by the Senate. Now, I thank the chairman for working to keep those Senate-passed provisions in conference.

While the Congress has rightfully focused substantial attention on the plight of our inner cities, and responded with enterprise zones and other tax-related urban aid measures, many of us on the Select Committee on Indian Affairs have long advocated the use of the tax code to bring relief to perhaps the most poverty-stricken areas of our Nation—Indian reservations. Although the needs, such as a nationwide Indian reservation average unemployment rate of 56 percent, have long been apparent to many in this Chamber, it has been a difficult, and I must admit, an often lonely battle to attempt to compete with numerous other interests seeking changes to the tax code before the Finance Committee.

This year, Senators MCCAIN, DOMENICI, and I, along with other Members from both sides of the aisle, redoubled our efforts. Drawing from provisions of earlier legislation sponsored by Senate select committee members, the Indian employment and investment provisions in H.R. 11 are based on legislative language developed almost 1 year ago by the country's largest Indian tribe, the Navajo Nation, under the wise and able leadership of its president, Peterson Zah. The Navajo Nation has since worked closely with us in strong support of these measures, which have also gained the support of the National Congress of American Indians and its member tribes throughout the country.

Mr. President, Chairman BENTSEN listened carefully to our arguments, and he responded: at first by making provision for ten Indian enterprise zones in the Finance Committee bill, and later by striking those zones in favor of these investment and employment tax credits that—at virtually the same cost to the Federal Government—have the potential to help, not just 10, but all Indian tribes.

These tax credits represent a new approach—relying on the private sector—to helping attract economic development and opportunities to Indian country. It is appropriate that the Congress has tried this innovative new approach during 1992, a year that the President has joined the Congress in designating the "Year of the American Indian."

Mr. President, I want to thank those members from both parties who have joined us in this bipartisan effort. And again, Mr. President, I thank and commend the chairman of the Finance Committee for his leadership in helping us—both before this Chamber and in the conference committee—to assure that these important tax incentives have the potential to address some of the most serious problems in Indian country.

POST CONFERENCE COLLOQUY

Mr. DOLE. Mr. President, one very important provision in the bill before us relates to sales and other dispositions of assets by farmer cooperatives. This provision will enable cooperatives to determine with far greater certainty whether gain or loss from such dispositions should be treated as patronage-sourced under the special rules of subchapter T of the Internal Revenue Code. In contrast to nonpatronage-sourced items, patronage sourced items are not taxable at the cooperative level if distributed to the cooperative's member-patrons.

The provision originated with legislation introduced by the distinguished senior Senator from Oklahoma. The Senator from Kansas is pleased to be able to say that he is an original cosponsor of that bill, as are a majority of the members of the Committee on Finance. In fact, a majority of the Members of the entire Senate are cosponsors of this legislation.

Since there was no formal report from the Finance Committee on H.R. 11, it may be helpful to discuss the purpose of the provision. Under the provision as adopted by the Senate, cooperatives can assure that gain or loss from these asset dispositions will be treated as patronage sourced by demonstrating that the asset in question had, in fact, been used by the cooperative to facilitate the conduct of patronage operations. This so-called facilitative test derives from a longstanding IRS revenue ruling and applies regardless of the character or type of asset involved, so long as the requisite factual nexus to patronage operations can be demonstrated.

This test had been endorsed both by the IRS and by the courts in various fact situations as an appropriate legal standard for determining whether an income or loss item is patronage sourced. However, there are other cases in which the facilitative test had not applied, and this situation has caused great uncertainty for cooperatives. For both the cooperative community and the Government, the cost of pursuing tax disputes administratively and in the courts has been very high.

Mr. President, in view of this background and given particularly the absence of a Senate report with respect to this provision, I would like to request confirmation from my colleague, Senator BOREN, the principal sponsor of this legislation, that it is our hope that this legislation will help end the unnecessary and costly disputes in this area.

Mr. BOREN. I would like to thank the distinguished Republican leader for stating so cogently why this legislation is so important to the cooperative community. I too wish to reiterate the clarifying purpose of the provision with respect to the application and scope of the facilitative test.

The legislation before us carries a prospective effective date. No inference should be drawn from its enactment as to the validity of a party's position in pending cases. Instead, this legislation merely clarifies an area of the law which is subject to differing interpretations, as my colleague from Kansas has noted.

The frustration level of cooperatives because of this legal uncertainty is understandably very high. Despite the endorsement of the facilitative test by courts in a variety of contexts, the IRS has challenged cooperatives which seek to use the test in situations where the factual linkage to patronage operations appears clear. This uncertainty and the resulting legal disputes seriously impede cooperatives and their member-patrons in their efforts to meet the enormous agricultural demands of this country.

This legislation is designed to remove that impediment by permitting electing cooperatives to assure application of the facilitative test to dispositions of any type of asset. Consistent with the clarifying nature of the legislation, it is my hope that the IRS will make every effort to resolve current law disputes with cooperatives which have treated gain or loss from the sale of their assets as patronage sourced as quickly as possible. The principles of this legislation could serve as a guide for the parties in reaching these settlements.

PUBLIC INVESTMENT PROVISIONS OF TAX BILL

Mr. RIEGLE. Mr. President, I rise in support of the conference agreement on the tax bill. That agreement contains provisions providing $2.65 billion over 5 years in public investment for enterprise zones and other distressed areas. These provisions are the result of an amendment I offered to the bill on the Senate floor on behalf of myself, Senator KENNEDY, chairman of the Labor Committee, Senator SASSER, chairman of the Budget Committee, Senator BIDEN, chairman of the Judiciary Committee, the majority leader, and Senators WOFFORD, KERRY, and SARBANES. These provisions provide the other half of the strategy needed to give the Federal enterprise zone experiment the chance to make a difference in some of our most distressed communities.

This spring, I visited Benton Harbor, an inner city community in Michigan that is home to the State's only enterprise zone. The lesson that Benton Harbor has learned from its experience is one that Washington must listen to as we craft Federal enterprise zone legislation: Tax incentives alone do not generate sufficient new investment to turn around our inner cities.

Benton Harbor's experience has been shared by enterprise zones in 35 other States and the District of Columbia. Studies of State zones have shown that infrastructure quality, labor force skills, and community characteristics like public safety are at least as important in business location decisions as taxes.

In July, I introduced S. 2998 to create enhanced enterprise zones by pairing tax incentives with targeted investments in housing, infrastructure, public safety, job training, economic development, and other needed services. The provisions of the conference agreement incorporate elements of that bill and integrate them with the House enterprise zone bill's investment provisions as well as with programmatic initiatives of the Senate Labor, Judiciary, and Agriculture Committees.

The conference agreement provides $500 million in increased authorizations for 1993 for Federal resources targeted to enterprise zones and nationwide urban aid programs and over the next 10 years an amount equal to the estimated cost of the tax breaks provided for enterprise zones. These provisions appropriate no money, but the $500 million in appropriations for 1993 were included in last week's supplemental appropriations bill, contingent on passage of this authorizing legislation.

Of the $500 million for 1993, $320 million would be allocated to a block grant program for enterprise zones. Seventy percent would go to urban zones and 30 percent to rural zones. Within the two categories, the money would be evenly divided. Zones would be able to choose from a menu of Federal programs in five areas on which to spend the money: First, crime and community policing; second, job training; third, child care and education; fourth, health, nutrition, and family assistance; and fifth, housing and community development.

Zones would be required to spend one-fifth of their grant in each category but could receive special permission to spend up to two-fifths in any one category. They could not spend less than 5 percent on any one of the categories, however.

The remaining $180 million would be reserved for programs that empower local communities through public-private partnerships between government and community-based organizations. Almost all of this money would be spent to benefit enterprise zone residents:

The Head Start preschool education program would receive $40 million.

Community health centers which provide primary care in low-income areas would receive $20 million.

Job Corps, which trains disadvantaged youth in a bootcamp-like environment, would receive $40 million.

The Neighborhood Reinvestment Corporation which makes grants to community-based groups that develop affordable housing would also receive $10 million.

Youthbuild—a new program developed by Senator KERRY and included in the housing reauthorization bill in which community groups educate and train low-income youth while they rehab and construct affordable housing—would receive $10 million.

Two new programs to increase the availability of capital for business development would also be funded: The Enterprise Capital Access Program, which was included in my enhanced enterprise zone bill, would be funded with $20 million to make grants to nonprofit, community-based lenders to provide loans for business and other community development in distressed communities. And a National Community Economic Partnership Program would be funded with $40 million to provide grants to community development corporations to capitalize revolving loan funds for business development lending. Fifty percent of the funds for these two programs could be spent to benefit the residents of distressed communities that do not obtain enterprise zone status.

With this investment program, the enterprise zone tax breaks present a promising experiment to address the challenges confronting some of our most distressed inner city and other communities. But Federal enterprise zones are only an experiment and will reach, at least initially, only a few communities.

We need to do more. We need to make an investment in all our distressed communities at least comparable to what we make here in enterprise zones. Unfortunately, the administration has opposed such an investment program for our cities.

As chairman of the Senate Democratic Task Force on Community and Urban Revitalization, I have heard from our Nation's mayors and other local leaders about hopelessness and frustration in our inner cities that are reaching the breaking point. We saw in Los Angeles what happens when that point is passed, and I am afraid that if we do not act quickly with more resolve and more forcefulness we will see more Los Angeles in communities across the Nation.

In July, I outlined on the floor of this Chamber a $6.7 billion program of investment in our cities and other distressed communities. I have not abandoned that program today. Although I believe we are better off if we accept what little urban aid the administration will allow us to provide in this bill rather than prompt a veto, I will continue working as chairman of the Banking Committee and chairman of the Task Force on Community and Urban Revitalization for a full scale effort to provide the investment in our infrastructure and our people that we need to make our cities and our Nation healthy and competitive.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. BENTSEN. Mr. President, I yield 4 minutes to the distinguished Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I will be brief, but I rise to join the chairman of the Finance Committee, and others, in urging all of our colleagues to support the pending tax bill.

If this legislation fails, either through this cloture vote or through a Presidential veto, once again pure politics will have won over public policy. And I should note that I personally have problems with some aspects of this legislation. But it is impossible to craft a bill designed to achieve the goals in question—assistance for economically distressed parts of the country, and economic growth for the whole country—without making some compromises.

After the Los Angeles riots, the President himself promised the people of that city and all of our urban areas that he would come through for them. He centered his promise on his favorite idea—enterprise zones—and this package would deliver on that promise. Did he ever think that the millions of dollars required to finance this effort would just magically appear from nowhere? This package properly finances the enterprise zones and the other growth provisions we included.

While this tax bill does have many worthy initiatives, I am upset that the conferees did not see fit to include an extension of the section 29 credit for nonconventional fuels in the final bill. This body heard a balanced and informative debate on section 29, and supported it with its vote. Unfortunately, because the President boxed himself in with his latest no new taxes pledge, we did not have the revenue to pay for worthy initiatives like section 29. But I worry that the impact will be thousands of jobs lost. Come the next Congress, I plan to be back again, because this credit is worth it, we need it, and our Nation's energy and environmental security is compromised without Section 29 dependent oil and gas production.

There are many reasons to support this tax package. One of the most important is that it includes desperately needed provisions to invest over $2 billion in family preservation and child welfare improvements.

As Chairman of the National Commission on Children, I have had the unique opportunity to focus on child welfare issues. With members of the Commission, I spent an intense day in LA juvenile court. I met with teens in the foster care independent living program. Their personal stories and cases touch your heart. One young man gave his name—and his case number. Children aren't numbers and should not feel that they are.

We need to act now, to provide new funds and innovative approaches to shore up our child welfare system that is woefully struggling to keep pace with escalating caseloads of child abuse and neglect.

We need to invest in prevention and new family preservation initiatives to try and solve these problems before the crisis strikes.

Thanks to the leadership of Chairman BENTSON, this package has key provisions that will strengthen the child welfare system, including new funding and reforms so that States can focus their efforts on preventing family crises, breakups, and the need for so many foster placements.

These provisions were drawn from Chairman BENTSEN's bill. S. 4—a major initiative announced in January 1991. Since then, child advocates and concerned leaders have been pushing for action. Vulnerable children and families have been waiting for support.

We even included my own amendment to strengthen child support enforcement and push absent parents to pay the child support.

A vote for the tax package is also a vote for children, and a vote for preserving families.

And I want to note that it's also a vote for responding to some urgent health care needs of very deserving Americans. This package includes one of my own provisions to allow Medicare to pay for oral drugs for cancer patients. This package extends vital provisions that rural hospitals are depending on us to enact.

Some extremely important Medicare provisions are also included in this bill. In particular, I am pleased that a portion of a bill I introduced last November, S. 1996, is included in this package of Medicare amendments. In fact, this provision is practically the only amendment which would actually expand drug coverage for Medicare beneficiaries, and at the same time, is cost effective. If enacted into law, Medicare beneficiaries diagnosed with cancer would be able to take oral versions of chemotherapy drugs rather than having to travel to their doctor's office to receive their chemotherapy intravenously. This provision was given a zero cost estimate because it would actually decrease Medicare charges for physician office visits. More importantly, it would greatly enhance the quality of life for Medicare cancer patients.

There is evidence that when oral versions of chemotherapeutic agents are available, patients experience fewer side effects, such as nausea and vomiting. Additionally, senior citizens won't have to travel, sometimes long distances, to get needed medical care. This is especially important in rural areas, like West Virginia. It is a real hardship, both physically and financially, for families to travel to their oncologists' office to get chemotherapy several days in a row. Frequently, family members have to take off time from work, and then there is the expense of having to stay overnight in a motel when a patient is scheduled to receive IV chemotherapy several days in a row, which is often the case.

Mr. President, this package is full of time-sensitive provisions. While some may not view my cancer provision as particularly time-sensitive, it absolutely is for cancer patients and their families. They, and I, will be very disappointed if this measure is not enacted this year.

This bill also includes a number of provisions to extend special payments to rural referral centers, Medicare-dependent hospitals, and provides guidelines and funding for "Essential Access Community Hospital" rural demonstration projects. And, this bill includes provisions to restore separate payments for EKGs and new physicians under Medicare. An Alzheimer disease demonstration project operating in West Virginia and several other States will end next year even though it is critical to continue this project one more additional year. An additional year of funding will make sure that these demonstration projects have an adequate sample size so that the results of this project are valid. The Alzheimer's demonstration projects will provide important information to the administration and to Congress on services which prove beneficial to families and beneficiaries with Alzheimer's disease.

For the sake of our cities, our children and families, our rural communities, I urge my colleagues to vote for cloture, and for the tax package.

I yield the floor.

Mr. PACKWOOD. Mr. President, I yield 5 minutes to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri is yielded 5 minutes.

Mr. DANFORTH. Mr. President, I hope the Senate will vote cloture on this conference report and adopt the conference report. This hope is based on several reasons. The first is that this was intended to be a bill, an act of Congress, that responded to the urban crisis in America.

It can be criticized that it did not do enough. Any legislation can be criticized that it did not do enough. But this legislation does provide for enterprise zones, urban enterprise zones and rural enterprise zones.

I would simply say to those who are critics of the legislation, saying that it does not do enough, what is the alternative? Is the alternative to do nothing at all? Is the alternative to not enact the enterprise zone legislation, not address the problem that we told ourselves last summer we would address.

This legislation also provides help for the struggling real estate industry through proposals to provide passive loss relief and pension plan investment in real estate. It would eliminate the age depreciation adjustment and provide penalty free withdrawals from IRA's for various purposes.

The legislation also extends various expiring provisions of the Internal Revenue Code, including the research and development tax credit, the low income housing tax credit, and the targeted jobs tax credit. It really would not be responsible to let those provisions expire, and that is one of the issues that is now before the Senate.

Are we to allow them to expire or are we to extend them in this legislation?

In addition to provisions in the Internal Revenue Code that would expire, there are health provisions that would expire, most importantly aid to small rural hospitals that depend on this legislation for their very survival.

In addition to that, Mr. President, this legislation is a major breakthrough for higher education and for nonprofit organizations in our country. The Bond cap on research universities is removed, the treatment of gifts of appreciated property under the alternative minimum tax is eliminated, all to the benefit of higher education and nonprofit organizations.

The legislation is revenue neutral, and I would simply like to make one concluding point relating to revenue neutrality in the allegation that a tax bill is a tax increase bill. It seems to me that the basic issue on whether legislation is a tax increase bill is there a net increase in the tax burden of the American people.

To say, for example, that to help the real estate industry which is beleaguered in our country by dealing with their problem relating to the 1986 Tax Act and pay for it by extending the depreciation schedule, to call that extension of the depreciation schedule a tax increase to me is really stretching matters in our definition of what is a tax increase. A revenue neutral bill is not a tax increase. Any change in the Internal Revenue Code could be attacked as a tax increase, because any change necessarily relieves the pressure somewhere and increases the burden somewhere else if it is going to be revenue neutral.

This is not tax increase legislation. This is an improvement in the Internal Revenue Code. It is an important step forward and I would hope that we would vote for cloture and vote for the bill.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Does the Senator from Colorado wish time.

Mr. BROWN. No.

Mr. PACKWOOD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that it be charged equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENTSEN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 14 minutes and 40 seconds remaining.

Mr. BENTSEN. Mr. President, I yield 5 minutes to the loyal opposition.

Mr. BROWN. Mr. President, I want extend my thanks to the distinguished chairman of the Finance Committee for the allocation of time and for his exceptional courtesy.

I also want to extend my thanks to both the chairman and the ranking member of the Finance Committee for what I believe is an outstanding job in trying to craft a bill.

This bill is deficit neutral, at least that is my understanding. It includes many provisions that I think are needed, changes in the tax law. It reflects a thoughtful, thorough approach to examining the problems and trying to address them.

I reluctantly rise to voice my opposition to the measure because it is my understanding, while the bill is deficit neutral, it is not revenue neutral; that, far from simply being an offset, as I believe many Members understand it—that is, raising taxes and cutting taxes in equal amounts—it does something significantly different. What it does is raise more revenue than it releases in tax cuts.

The bottom line is, over 5 years, it is my understanding, the bill has a $3.2 billion increase in spending. That is what this bill does. It raises $3.2 billion more money than it cuts in taxes and it, in effect, raises $3.2 billion to finance additional spending programs.

Now, the sponsors of the bill think that is good policy, that the revenue raises are appropriate, and that the spending is appropriate. I do not question their motives at all, but I do question the contention that this is revenue neutral.

I believe a reasonable review of the facts will indicate very clearly this bill is a tax increase. It is a $3.2 billion tax increase spent on new spending, appropriated or used in new mandatory spending programs.

Mr. President, you could still be in favor of this program. It has some very good things in the tax bill, but there is no question that this is a tax increase.

Some believe that is the right prescription for our economy in these difficult times. I personally do not. I think it is a mistake to deal with our economic problems with more tax increases and more spending increases. Far from it. I think we need to look at what the rest of the world is doing to address economic problems, and that is bite the bullet on spending.

So I rise in opposition to this measure because it is a tax increase, very clearly.

Second, I have concern about the measure because it violates the Budget Act, not once, but at least eight times that we have been able to indicate and there may be more.

This bill guts the protections put in our Budget Act. It waives the Budget Act in a number of areas, including specifically authorizing new spending for administration of Medicare. $1.147 billion of new spending is authorized in this.

It specifically violates the Budget Act agreement. And, Mr. President, what it does is it provides a loophole in the Budget Act. Once this loophole is exploited, once it is developed, once it is authorized, once it is pushed through, this new loophole will be available to every good program we have, and we have hundreds of good programs.

If you want to gut the Budget Act, if you want to gut our controls, meager as they are, in trying to control this deficit, then you will be comfortable in voting for this bill.

But if you are concerned about it, as I know the Members of this Chamber are, I hope we will say there is a better alternative.

As good as the bill is—and there are many good provisions in it—as good as the bill is, I think we can do better. I think we can go back and design a measure that will not break the budget, will not violate the Budget Act, and will take care of the essential bills before this Congress.

I yield back my time, Mr. President.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, I yield myself 2 minutes.

I think my friend from Colorado has made an interesting argument, but the point is he has made his argument from OMB numbers, and we are dictated, insofar as what we have to do, by CBO numbers. And they are quite different. The OMB numbers are not applicable to this bill at this point.

And if we are looking at net tax increases, we have the same situation, apart from OMB, that we had in the energy bill that the vast majority of the Members of this body have overwhelmingly voted for.

I retain the remainder of my time.

H.R. 11, THE REVENUE ACT OF 1992

Mr. McCAIN. Mr. President, as I said when this legislation left the Senate on September 29, 1992, this is just another tax increase. Although Congress included many good tax incentive provisions like enterprise zones, Indian enterprise zones, expanded individual retirement accounts, modification of the passive loss rules, the extension of the low-income housing tax credit, extension of the targeted jobs tax credit, extension of the mortgage revenue bonds and mortgage credit certificate provisions, extension of the R&D tax credit, and an extension of qualified small-issue bonds, it also includes a $28 billion tax increase.

The last thing our struggling economy needs is a $28 billion tax increase. While the tax incentives included would provide some economic stimulus, those incentives would be stifled under the tremendous burden of a $28 billion tax increase. We cannot, and never will, tax our way to prosperity.

Mr. President, here is a small sampling of the tax increases included in H.R. 11. The safe harbor, which is the amount a taxpayer must pay to avoid interest and penalties, for individuals who pay estimated taxes is made permanent at 120 percent raising $3.9 billion over 5 years. This tax increase will prove to be particularly destructive to small business and the self-employed.

For those who pay estimated corporate taxes, the percentage is permanently increased to 100 percent safe harbor. This tax increase will raise $5.7 billion over 5 years. This will not create jobs, opportunity, or economic growth.

Securities dealers will be forced to mark-to-market their inventories of securities regardless of the price of the security at purchase. This tax increase raises $3.7 billion over 5 years. This tax on phantom gains will do nothing but damage to the efficient workings of our equity markets and our economy which they finance. This is simply bad for the economy.

Finally, a $10,000 cap is placed on moving expense deductions. The bill also eliminates meals and qualified sales expenses, and increases the threshold to 60 miles. This tax increase raises $3.2 billion on working men and women and their families who must move to keep their jobs or move to find a new job. This provision is particularly ill-conceived in this time of great economic change.

Mr. President, as I have said before, we cannot tax our way to prosperity. The tax increases in H.R. 11 are not the answer to our economic problems. That is why I oppose H.R. 11.

REGARDING S. 3004

Mr. SANFORD. Mr. President, I would like to engage the chairman of the Finance Committee, Senator BENTSEN, in a colloquy on legislation I introduced that would reliquidate the entry into the United States of four warp knitting machines.

Mr. BENTSEN. I would be happy to discuss this matter with the Senator from North Carolina.

Mr. SANFORD. I introduced S. 3004 to provide for the liquidation or reliquidation of a certain entry of warp knitting machines as free of certain duties. This bill would correct an error made against a small business in North Carolina.

This business imported four warp knitting textile machines made in Germany. The machines were properly classified under the Harmonized Tariff Schedule and admitted under the correct duty-free heading. The company then exported the machines through a third party in Miami to a Venezuelan company, with the understanding that the machines would be returned if the company could not operate them as they wanted to. This, in fact, is what occurred and the machines were returned to my constituent in North Carolina. However when the machines reentered into the United States, they were improperly classified upon reentry causing the machines to carry a 4.4-percent duty. Not well versed in the bureaucratic procedures, the small company protested the assessment of the new duty, but did so, according to Customs, in an insufficient and untimely manner. Now, the company owes approximately $25,000 in duty with interest accruing daily, and will be placed on a sanctions list if these improperly assessed duties are not paid, effectively inhibiting its ability to do business. Litigating this manner would do more harm than good and the company cannot afford to absorb this loss.

Customs admits that when all of the facts were sorted out, that a duty should not have been imposed on the warp knitting machines. They admit that they have made an error and that no duties are owed, but state that because the protest was not filed in a sufficient manner, they cannot do anything other than to insist that these duties be paid. Therefore, there is no appropriate relief other than this type of legislation.

I had urged my colleagues to support inclusion of this relief in any miscellaneous tariff legislation the Congress may adopt because I think it is the only fair and just thing to do for my constituent.

However, I now understand that there will not be a miscellaneous tariff package this year. It is my desire, as a matter of fairness, that Customs hold off on collecting the duties assessed on the warp knitting machines since they should not have been assessed in the first place. It is possible that tariff legislation may be possible next year, and I hope to pursue this matter then.

Mr. BENTSEN. I certainly understand the concerns of the Senator from North Carolina and regret that we could not address this trade issue this year. I hope there will be some means for the Customs Service to address the concerns Senator SANFORD has raised, and I thank Senator SANFORD for taking the time to speak on the importance of this legislation.

Mr. SANFORD. I thank the Chair of the Finance Committee for his attention to this important matter.

(At the request of Mr. BENTSEN, the following statement was ordered to be printed in the RECORD.)

REGARDING A STUDY OF ALLEGED INTELLECTUAL PROPERTY RIGHTS VIOLATIONS BY TEXTILE MANUFACTURERS IN PAKISTAN.

• Mr. SANFORD. Mr. President, I would like to engage the Chairman of the Finance Committee, Senator BENTSEN, in a colloquy on intellectual property rights violation by textile manufacturers in Pakistan.

Mr. BENTSEN. I would be happy to discuss this matter with the Senator from North Carolina.

Mr. SANFORD. U.S. textile manufacturers invest substantial amounts of money, effort, and resources in creating and copyrighting textile designs. The designs are copyrighted in the United States, and are produced and exported throughout the world. Although these products are theoretically protected by international copyright law, I have been informed of actions by foreign companies which amount to stealing these copyrighted designs, illegally reproducing them, and selling cheaper reproductions in world markets.

I have been informed that this problem is particularly acute in Pakistan. Textiles copyrighted and produced in America are being illegally reproduced by Pakistani textile corporations and sold at a lower price, to the determent on United States and North Carolina business.

I had hoped to mandate a study on this issue, but given that we will not be able to take up broad-based trade legislation this year, I am deferring this action until a more suitable time.

I do hope that the U.S. Trade Representatives, the Commerce Department, and U.S. Customs Service will thoroughly look into this matter and will take all steps available to them to ensure that this practice does not continue. In looking into this matter, I encourage USTR to consult will all appropriate Government agencies as well as representatives of the private sector.

Mr. BENTSEN. I certainly understand the concerns of the Senator from North Carolina and thank Senator SANFORD of taking this time to speak on the important of this issue.

Mr. HELMS. Mr. President, I too, would like to express my support for examination of this problems by USTR and other agencies and agree with my colleague from North Carolina.

Mr. SANFORD. I thank the chair of the Finance Committee for his attention to this important matter and the Senior Senator from North Carolina for his support.•

Mr. RIEGLE. Mr. President, as chairman of the Finance Subcommittee that has jurisdiction over the Medicaid Program, I am disappointed that the conference report to H.R. 11 does not include important Medicaid provisions that were a part of the Senate version of the bill. I am more immediately concerned that a provision to restore funding, a total of $43 million, for two demonstration projects from the Omnibus Budget Reconciliation Acts [OBRA] of 1989 and 1990 was not included in the final conference report. These demonstrations would expand Medicaid for pregnant women, children, and low-income families. Several States, including Maine and Michigan, have already been awarded funding. Though they have funds to enable them to continue until early next year, we need to act legislatively to restore funding as soon as possible next year and the majority leader, Senator MITCHELL, and I have been working to accomplish this. Michigan's Caring for Children Program provides needed health care services to tens of thousands of children. These demonstration programs will serve as a model for our efforts to improve access to health care nationwide.

Mr. MITCHELL. I, too, am extremely concerned about restoring funds for these Medicaid demonstration projects. Maine participates in both programs, one for low-income pregnant women and children, and the second for low-income families without regard to categorical eligibility. As the Senator from Texas knows, I have been working to reform the Nation's health care system. These demonstrations can provide important information about how best to expand access to health care for low-income Americans as part of a larger reform package.

Mr. BENTSEN. I appreciate the concerns of the Senators from Maine and Michigan, who serve with me on the Finance Committee. Senators MITCHELL and RIEGLE have been working hard to resolve the problem described. We worked together to develop a provision both to restore funding for these projects and add $10 million new sub-State projects, which Texas among other States is very interested in applying for. It was included as part of S. 3274, the Medicare and Medicaid Amendments of 1992, which was then added to H.R. 11 and passed by the Senate. I share the Senators' disappointment that the House refused to deal with the Senate on the Medicaid provisions in H.R. 11, and therefore, this provision—along with a number of other worthwhile Medicaid amendments—were excluded from the conference report on H.R. 11.

I would like to assure the Senators from Maine and Michigan that I understand the urgency of the need to restore funding for the demonstration projects they have described and will cooperate fully in attempting to get the needed legislation enacted in a timely fashion. Restoring the funding for these important demonstration programs will be a high priority for me next year.

Mr. RIEGLE. I greatly appreciate the efforts of the distinguished chairman of the Finance Committee who has been a leader in expanding health care services for children and pregnant women under the Medicaid Program.

Mr. WELLSTONE. Mr. President, we are nearing the end of what has been a very frustrating legislative session for everyone involved. It has been frustrating for many reasons. We are in an election season, which has limited any willingness to put partisanship aside and, thus, has limited our ability to really address this country's problems. And there is no doubt that we have some pretty enormous problems that need to be addressed, especially in our cities. We have been in a deep recession for far too long. Our cities are falling to pieces. Much of our transportation infrastructure is crumbling. Children go to schools with inadequate resources to prepare them for the future. Higher education has become increasingly difficult for many Americans to afford. Health care costs are high and getting higher—a single illness can financially wipe out a family. In short, Mr. President, fewer and fewer Americans can conceive of the American Dream as anything more than a dream. This is especially true for low and moderate income families.

These are just a few of the serious problems confronting our Nation in this election year. It has been many months since the riots in Los Angeles. Those events were supposed to have spurred us to take significant action here in Washington. But instead of facing squarely these urban problems and developing effective solutions to address them, we have converted an urban aid bill into an ill-conceived and irresponsible package of tax breaks for wealthy individuals and corporations.

The goal of this conference report—our promise to the American people—was to address some of the fundamental social problems that provoked the riots in Los Angeles. This was to be our response to the desperation born of no opportunities, poor housing, bad schools and, in brief, no hope for many, many Americans. But that is not what we have done here, Mr. President. We have not found the will to actually spend money on our cities, on those programs that we know work and that we know can address the dire problems that face us. Instead, the conference report we have before us is full of special provisions for wealthy Americans and corporations.

Let me be perfectly clear about my intentions here, Mr. President. I have just voted to limit debate on this conference report, but I intend to vote against the bill itself. I believe that there are things in this report worth supporting. And I believe this conference report merits a straight up and down vote here in the Senate. It should not die simply because a minority in the Senate wants to prolong debate indefinitely. That is why I supported cloture. However, Mr. President, I did not support H.R. 11 and I do not support this conference report. This report does very little to address the most urgent needs of our Nation. It does nothing to help us bring the deficit under control, in fact, it will probably contribute to its increase in the long run. It does very little to get our economy going again. It does little to bring hope to the millions of Americans who are wondering when they might work again, or to help restore confidence in the ability of this Government to do something positive to alleviate the problems in our cities and in the workplace.

It does send a message to the American people about our intentions here in Congress. It tells them that we are not serious about helping the cities. It tells them that we are not serious about helping the poor. It tells them that we are still willing to follow the failed trickle-down economic policies of the last 12 years—the very policies that have gotten us into this mess. If we agree to this report, we will continue our policies of taxing Americans in order to subsidize the wealthy, in the hope that they will invest wisely and create new jobs. But that policy has clearly failed.

I would have preferred to see the revenues raised in this conference report—close to $28 billion, as I understand it—used to address some of the problems I have described. I am, Mr. President, very happy to see that we can raise this kind of money in these tough budgetary times. I would like to call my colleagues' attention to the fact that this is only 7 billion less than the $35 billion in urban aid requested many months ago by the U.S. Conference of Mayors. This means that we could have used this additional money for infrastructure, housing, public works, education and social services. We are nearing the end of the fiscal year 1993 appropriations process now and we all know how difficult it has been, under the constraints of the 1990 budget agreement, to find the funds necessary for many seriously underfunded programs. Just a week ago, in the VA/HUD appropriations conference, the conferees were forced to cut a third of the funding for emergency shelter grants for the homeless. That means they cut $25 million out of a $74 million program. Here, in this conference report, we have raised over $28 billion to pay for expanded tax breaks. We could easily have made up for the shortfall in funding for programs for the homeless with this money. That is but one, relatively small example. I am sure we can all think of many, many other programs that we have been forced to freeze or cut, even when we know they are effective,in order to remain within the budget agreement.

I oppose this conference report and I urge my colleagues to oppose it, for one simple reason. The main thrust of the conference report before us is based on a dubious idea, at best. Provision after provision writes off our ability to manage the economy, by giving away billions in tax breaks. This sort of policy limits our future ability to formulate effective policy. But it is also very difficult for us to predict how much this might cost. It is well known how hard it is to estimate the real cost of tax expenditures. They could easily be double or triple the estimates that have been provided. Why, the capital gains provisions of the enterprise zone parts of the report will only take effect outside of the budgetary window. Can anyone tell me with any degree of certainty how much this will cost? Is anyone ready to predict, with any certainty, how much we stand to lose on the IRA provisions in this report outside of the 5 year budget window? Do we know, honestly, the long-term effects of the passive loss rules this report changes? Can anyone tell me where we can get the revenue, 5 years from now, to replace this money? How can we take this risk when we are faced with a huge deficit? How can we take this risk when we are faced with a dire urban crisis?

To be sure, there are a few token provisions in the report that can be described as urban aid. The conference report provides over $2.5 billion in tax credits for the creation of enterprise zones in 50 areas, 25 urban and 25 rural, around the country. That might sound, at first glance, pretty generous—50 places around this country would receive something like $50 million in tax incentives to encourage business investment in each zone. But lets put this in perspective. The original House version of the bill provided that areas where census tracts have an unemployment rate 1.5 times the national average and a poverty rate of 20 percent in 90 percent of the census tracts would qualify to be enterprise zones. I am sure we all agree that any area that meets these criteria is in dire straights. With a national average unemployment rate of 7.7 percent right now, areas that would qualify as enterprise zones would have an unemployment rate of 11.7 percent. It has been a very long time since we have seen numbers like that. Some analysts argue that under these criteria, 150 American cities would qualify as enterprise zones. Let me be very clear here. That's 150 entire cities. Do we really expect the tax credits for our 50 small zones to make a difference in all of these areas? Is this honestly the best we can do?

Many of us have expressed our doubts about the effectiveness of enterprise zones. They have worked in some places, not in others. Community development officials in Minnesota have suggested to me that enterprise zones can work, but only if linked to comprehensive community development efforts on a local level. Even then, and even with investment in infrastructure, education, training, housing and community policing, we simply do not know how effective these zones will be. We are experimenting with a way to help business people who, in turn, might help people who live in distressed parts of the country. This looks, at least on the face of it, like the same old, tired trickle down ideas of the last 12 years. So little has trickled down that we are now faced with a dire urban crisis in this country. Is it wise to pursue the same sort of policies that got us into this mess in the first place?

Certainly, there are a few provisions tossed into this package that might help relieve some social problems. Foster care reform is good, changing the way savings are counted in eligibility for AFDC is good, providing additional money for the JOBS Program is to be commended. Mr. President, I have, in other circumstances, supported and even cosponsored legislation that would further each of these goals. I would like to support them again. I am disappointed that we will not have separate votes on these issues, separate debates during which we can discuss their merits. But these measures are relatively modest. Aside from the enterprise zone section of this report, we are going to provide less than $10 billion in programs that might benefit low-income Americans. That is less than a third of this entire package.

Mr. President, we have labored mightily for an urban aid bill that would put our cities back on track. Instead we have given birth to a tax bill that pretty much ignores the cities. This is not an urban aid package. It will do very little to help rebuild our cities. It will do little to revive the economy in the short term and, in the long term, it could do great harm. It will not help us to control the deficit and, in fact, it will probably make it even more difficult for us to control it. It is, on the other hand, a huge gift to wealthy individuals and corporations, many of whom are already failing to pay their fair share of the tax burden. Mr. President, I cannot support this conference report. This is precisely the kind of legislation that has frustrated many Americans, that has given this Congress the reputation of being a do-nothing Congress. I urge my colleagues to oppose it.

MEDICARE PROTECTION ACT

Mr. HARKIN. Mr. President, the Medicare Protection Act of 1992 introduced earlier this year is now included in the Revenue and Urban Aid Act of 1992. This provision, if enacted, would protect the Medicare Program from billions of dollars now lost to overpayment, fraud, and abuse. This provision, if adopted, would save several billion in fiscal year 1993.

Mr. President, this is an issue that I have been following for some time in my capacity as chairman of the Labor, Health and Human Services and Education Subcommittee. The very first hearing I held as chairman of the subcommittee in February 1989 was on this issue. As the members know, the Medicare Program is managed by 54 different contracts awarded by the Health Care Financing Administration. These contracts are funded by a Medicare contractors appropriation which in 1993 totaled $1,609,000,000. Buried within this line item for medicare contractors is an amount made available for audit activities. Even though these audit activities save $13 for every dollar spent, the administration has never funded this audit activity at an appropriate level. The need to process claims and make payments on time has always taken priority and this fact of life has held down funding for the audit activity.

In the spring of 1989 I had a discussion with Senator SASSER, chairman of the Senate Budget Committee and with Richard Darman, Director of the Office of Management and Budget in an effort to reach agreement on excluding funds spent on audit activities in the Medicare Program from budget ceilings. The precedent for doing that was included in previous omnibus budget reconciliation bills when the Finance Committee was given credit for directing increased appropriations for this activity. Chairman SASSER and OMB Director Dick Darman, while sympathetic to my concerns were unable to provide the subcommittee with any relief. That has been the case until just recently when this legislation was included in the Revenue and Urban Aid Act of 1992.

Mr. President, the Budget Enforcement Act of 1990, another precedent for what is proposed here was adopted into law. Included in the Budget Enforcement Act of 1990 was authority for the IRS to spend up to specified amounts in each of 5 years on audit activities without these additional appropriations being scored against budget ceilings. The logic of this provision is that these additional expenditures will produce revenue to the Government well in excess of the actual amount spent. The logic of this provision is that to unnecessarily restrict spending on these audit activities is counter productive to our efforts to reduce the deficit.

Mr. President, the provision at issue here is based on exactly the same logic. For each year through fiscal year 1995, audit activities of the Medicare contractors appropriation could be set at a level up to an 11.6-percent increase over the previous year's level. This increased amount would not count against the budget ceilings and would therefore permit substantial savings each year. The 11.6 percent figures is selected as it represents the 10-year historical average of growth in Medicare claims workload. These audit activities should at least keep up with the increased growth rate in claims if we are to have adequate protection for taxpayer dollars. This will also better insure proper enforcement of Federal laws and regulations.

Mr. President, the fiscal year 1993 act is already adopted and signed into law. This provision could not be adopted and enacted unless we have a supplemental later in the year. Triggering this provision later in the year could mean adding up to $187 million to the already approved level. This, however, would save $2.4 billion based on the success based on GAO audits that Medicare audit activity has had in eliminating fraud, waste, and abuse.

Mr. President, this provision of the tax bill, if enacted, would save over $2 billion in the first full year of implementation and additional billions for each year through fiscal year 1995.

Mr. WARNER. Mr. President, I once again stand before my colleagues in regard to my tax-exempt disclosure legislation. This legislation, which was accepted by the Senate as part of H.R. 11, was subsequently dropped in Senate-House conference. Yes, there was one small aspect of it which was retained, but by and large, the legislation was dropped in an effort to pare down the omnibus tax bill.

Mr. President, this greatly concerns the Senator from Virginia. Not only because it is legislation I worked very hard to get passed, not only because I met with numerous persons in an effort to make the legislation bipartisan, but because I firmly believe the American public will be the losers if this legislation—or some better formula for disclosure—is not eventually enacted into law.

I have been around this body for many years, and have attended my share of conferences. I know that not every part of a bill can be retained and enacted into law. A revenue estimate by the Joint Tax Committee determined that the cost of enacting this legislation would be minuscule. Since the administration's primary problem with H.R. 11 is the excessive cost of the bill, I would think that amendments which would soar the cost of the bill would be deleted. My legislation, on the other hand, appears to have been dropped for reasons, at present I do not know. But I will soon determine why, for I am determined to press on in the next Congress for greater disclosure and for an easing of the means to get copies of that disclosure.

Mr. President, as I have previously expressed to this body and to the American public, the United Way tragedy was the original impetus for this legislation. I strongly believed the average donor who makes $40,000 a year must be made to feel confident that his contributions are going to help the cause the charity was organized for, and not toward first-class airfare, limousine service, exorbitant salaries, and so forth.

And, Mr. President, the worst part of the United Way ordeal is that it was not an isolated incident. Since the time when Mr. Aramony's excessive lifestyle was made public, stories have continuously come to light illuminating similar practices occurring within other tax-exempt charitable organizations.

My legislation was nothing short of a consumer protection amendment, and I must say one that was greatly needed. It was not a pork amendment which would focus on my State, it was not an amendment which would make huge headlines, it was simply necessary legislation which took the first step toward lifting the veil on the expenditures of tax-exempt organizations.

Mr. President, my legislation would have taken current law as it pertains to reporting requirements for tax-exempt organizations and extended them a few steps further. Currently, tax-exempt organizations are required to file a Federal 990 form with the IRS detailing, among other items, their income, expenditures, fundraising costs, and salaries of their five highest paid employees.

The problem with current law, however, is that the IRS and the tax-exempt organization both have a copy of the 990 form, but the organization is not required to notify donors that this form is available, or to send it out to the donor. Thus, any individual interested in viewing the statement must go to the organization's headquarters or contact the IRS and request the information. Moreover, the reality is that most persons are not even aware such a form exists, or that they are entitled to view or obtain copies of it.

My legislation would have put the burden upon the charity to inform the public that such a disclosure form does exist, and at the public's request, the charity will send the individual a copy.

Further, my legislation would have expanded the substance of the current 990 form in the following ways. First, after an individual has indicated that they desire a copy of the statement, the statement must be sent to that person within 30 days of the charity receiving the request. Second, noncompliance with the request would result in a $50 per violation per day fine. Third, the form would be expanded to include not only the top five highest paid employees, but all employees making over $100,000.

My legislation would have exempted hospitals, religious organizations, and churches.

There were two pieces of legislation pertaining to tax-exempt organizations, which were introduced in the House by my good friend, and a very experienced legislator, Representative PICKLE, of Texas. One of his bills addressed many of the same issues as my legislation, and his legislation was retained in conference. I commend Congressman PICKLE on his efforts, which in many ways mirror my efforts on this side.

Congressman PICKLE's legislation says that when an individual walks into a tax-exempt organization, he must be told that a 990 disclosure form exists and it is available for the individual if he desires. His legislation, like ours, would put the burden on the organization to notify the individual that this information is available.

Congressman PICKLE's legislation does not go as far as mine because it does not include a requirement for additional information be made a part of the 990 form that my amendment would require. But, Mr. President, one aspect of my legislation which was retained in conference was the penalty provision, increasing noncompliance penalties to $50 a day per violation. A small step forward in a campaign I will continue to wage. However, this, in combination with Congressman PICKLE's legislation, provides a foundation, and I look forward to working with him in the next Congress to formulate new legislation. I am always open to suggestions as to how this legislation can be improved and become law.

Mr. President, I cannot stress enough my interest in this legislation and my determination to see it pass in the next Congress. I strongly believe the American people are the losers if we don't enact legislation to this effect, and I will not give up in my next 4 years until I achieve my goal.

In conclusion Mr. President, I want to thank the many people, in and out of Government, on the Senate Finance Committee, and on my staff, particularly Lori Nirenberg and Gerri Engelhart for their valuable assistance.

Mr. COHEN. Mr. President, the conference report on H.R. 11 includes two provisions based upon legislation I introduced with my colleague, Senator PRYOR, to protect Medicare beneficiaries from excessive physician charges and to protect the Medicare Program from abuse by unscrupulous medical equipment suppliers. These two proposals were the result of extensive investigations and hearings conducted by the Senate Special Committee on Aging, and I am pleased that the conferees agreed to include them in their report.

The conference agreement consolidates two separate bills that Senator SASSER and I introduced to combat fraud and abuse in the Medicare durable medical equipment program (S. 1988 and S. 1736). These provisions are anticipated to save well over $100 million over the next 5 years and were the result of over a year's worth of investigations and hearings conducted by both the Senate Special Committee on Aging and the Senate Budget Committee into the practices of unethical durable medical equipment dealers who have taken advantage of weaknesses in the system to bleed millions of dollars from the Medicare Program.

The provisions included in the conference agreement will not only help to combat fraud and abuse, but they will also establish more rational payment and administrative policies for durable medical equipment.

Among other provisions, the conference report revises and strengthens the national standards with which suppliers must comply in order to receive a supplier number. HCFA recently issued regulations requiring suppliers to disclose certain ownership information and to certify that they meet certain basic operational standards, such as repairing and maintaining rental items, answering questions and complaints, and accepting returns. This legislation would strengthen those standards by requiring the suppliers also to comply with all applicable State and Federal licensure and regulatory requirements, maintain a physical facility on an appropriate site, and have proof of appropriate liability insurance.

The legislation also prohibits the Secretary of Health and Human Services from issuing more than one billing number to a supplier, unless more than one is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.

The conference agreement also provides for more uniform national coverage and utilization review requirements. HCFA is currently in the process of developing uniform coverage and utilization criteria for 100 items of its own choosing. This legislation would require the Secretary, in consultation with representatives of DME suppliers, beneficiaries, and medical specialty organizations, to expand that list to 200 items which are either frequently purchased or rented, or which are frequently subject to a determination that the item is not medically necessary. An item may also be included if the coverage or utilization criteria applied to that item is not consistent among carriers.

The Omnibus Budget Reconciliation Act of 1990 prohibited suppliers of DME from distributing completed or partially completed certificates of medical necessity [CMN's] to physicians or Medicare beneficiaries. Both suppliers and physicians have complained that physicians do not always have the product information necessary to complete the form, and that the forms are too long and time-consuming for physicians to complete, which may decrease beneficiary access to needed equipment and supplies.

This legislation modifies the current prohibition by permitting suppliers to complete the administrative section of the form; that is, information identifying the beneficiary, supplier or provider; the description of the item to be provided; and a product code identifying the item. If supplier does choose to complete this information, he or she must also include price information to ensure that the physician is aware of the cost of the item. The physician would still be required to complete all information related to medical necessity. Additionally, because there are no standardized forms to document medical necessity, the bill requires the Secretary to develop standardized certificates of medical necessity for DME, prosthetics and orthotics.

The legislation would also modify current antikickback law. Currently some financial arrangements between nursing homes and providers appear to circumvent Medicare antikickback statutes. For example, suppliers and other third-party billers pay nursing homes for employment costs of paperwork and warehousing of equipment as an inducement for business. This bill strengthens the antikickback statute by clarifying the definition of inducement as kickbacks.

In addition, there currently are no balance billing limits applied to DME, and there are no circumstances specified in current law under which beneficiaries are not liable for charges for DME furnished by suppliers on an unassigned basis. This legislation stipulates circumstances—such as when the supplier has been excluded from the Medicare program or when Medicare has denied payment for the item in advance—under which Medicare beneficiaries are not financially liable for DME or prosthetics and orthotics furnished by a supplier on an unassigned basis.

Finally, under present law, ostomy supplies, tracheostomy supplies, urologicals, surgical and other medical supplies are included in the prosthetics and orthotics fee schedule, which is subject to regional payment limits. An inquiry by the Budget Committee found wide variation in the prices of these items and also found that these items were subject to abusive billing practices. This legislation requires that these items be reimbursed under a national fee schedule similar to the DME fee schedule.

Mr. President, these reforms are critical if we are to ensure that scarce Medicare dollars are not wasted on overpriced or useless medical equipment.

The conference report on H.R. 11 also includes the provisions of the Medicare Beneficiary Payment Protection Act, which Senator PRYOR and I introduced earlier this year to ensure that Medicare beneficiaries receive the protection they have been promised by law against excessive physician charges.

In 1989, Congress enacted legislation to limit the amount doctors could charge their Medicare patients over and above the Medicare-approved amount. Generally referred to as the limiting charge, this cap was intended to protect Medicare beneficiaries from excessive, out-of-pocket medical expenses.

However, the limiting charge is like a seat belt: it offers protection, but only if it is used.

Earlier this year, the Special Committee on Aging held a hearing which revealed that many doctors are still charging their Medicare beneficiaries more—at times even thousands of dollars more—than the billing limits allow. Many of these overcharges are the result of honest billing errors. Others may be intentional. In either case, however, the Medicare patient is far too often stuck with a very big bill that Congress did not intend him or her to pay.

Among other provisions, the conference agreement on H.R. 11 clarifies that beneficiaries should not be held liable for charges in excess of the billing limits. It also requires physicians to make refunds to beneficiaries for charges that exceed the billing limits.

In addition, the legislation requires Medicare to examine each unassigned claim for limiting charge compliance prior to payment and to notify physicians when the limiting charge has been exceeded. Finally, the legislation requires that information about the limiting charge be included in the Explanation of Medicare Benefits form sent to the beneficiary.

Enactment of these provisions will ensure that the promise of protection against excessive medical bills that Medicare beneficiaries were given with the enactment of the limiting charge in 1989 is fullfilled.

Mr. President, once again, I am pleased that both of these provisions have been included in the agreement, and I thank the distinguished chairman of the Finance Committee for his support.

Mr. SEYMOUR. Mr. President, I rise to explain my vote in support of the conference report to H.R. 11, the Revenue Act of 1992. It is not without some difficulty and reservation that I make this difficult decision.

The reason why I support this legislation is because I believe, in some small ways, this bill will create jobs and promote economic growth.

In my statement of support for the Senate version of H.R. 11, I stated that I had reservations concerning the tax provisions in the bill. My main concern, as it has always been, is whether there are increases in the marginal tax rates. The Senate version contained permanent extensions of two provisions which are hidden marginal tax increases—itemized deductions and a phaseout of the personal exemption for higher taxpayers. I opposed these provisions because I believe higher marginal rates on individuals will mean less money in the hands of individuals. Less money in the hands of individuals means less money saved to build our capital base for investments—investments in new or expanding enterprises that are necessary to create new jobs.

While I'm not completely enthralled with the final version of this bill, I do believe that there are several elements which will have a positive impact on our economy. They include tax breaks for investors who open businesses in economically depressed areas. These measures, known as enterprise zones, have the potential of turning around areas that have been plagued by high unemployment and negative business growth. While they will not create economically vital areas overnight, they will begin the process of rebuilding, which is the necessary first step.

In addition, I'm pleased by the provisions which expand the use of individual retirement accounts [IRA's]. IRA's are important to rebuilding our depleted savings rate and capital pool. This measure will also allow penalty free withdrawals for the purpose of purchasing a first-time home, or to pay for catastrophic health care or to pay for a college education, or to allow the longterm unemployed to pay for expenses.

The bill also repeals the luxury tax on jewelry, boats, furs, aircraft and indexes for inflation the luxury tax on automobiles. Two years ago, misguided members of the majority, who thought imposing a luxury tax would soak the rich, have instead cost thousands of American workers their jobs and income. A repeal of the luxury tax will help these industries rebound from this recession.

Also, there are a number of important tax credits in this bill that are temporarily extended or made permanent. These provisions include: permanent extension of the low income housing credit which provides incentives for the building of housing for the poor; permanent extension of the targeted jobs tax credit; temporary extension of the R&D tax credit and mortgage revenue bonds, among others.

Lastly, the conference report contains a provision I worked hard to include in the Senate version of H.R. 11. This provision will make it easier for victims of Presidentially declared disasters to rebuild there lives. With a few simple modifications to the Tax Code, we will give disaster victims the additional time they need to rebuild or purchase a new home, allow them to use personal property proceeds to make up for real property proceed shortfalls, and make it easier for them to deal with personal property losses. Because this measure will help victims of the Oakland firestorm, as well as the many other natural disasters that have struck this year in California and across the Nation, the impact of this legislation will be far reaching.

For the reasons I have outlined, I support final passage of the bill.

Ms. MIKULSKI. Mr. President, I support H.R. 11, the Revenue Act of 1992, but with some serious reservations.

This bill is far from perfect. It does not do enough to help out the middle class, and it does not do enough to stimulate our economy, but it is an important step. The tax bill also does not make sure that the very wealthiest Americans, making about $200,000 per year and more, pay their fair share of the tax burden. Nevertheless, I am going to support this bill.

I will support it because I believe this bill is primarily about tax cuts: Tax cuts for businesses and individuals to help make our Tax Code fairer and to help create jobs. And it pays for those tax cuts, dollar for dollar, with revenue increases—mainly on businesses like securities firms, who will have to reflect the real value of their assets for tax purposes. It also makes sure that companies can deduct only certain expenses for business meals. And the bill denies tax deductions for private club dues, and denies special tax treatment for certain stock transactions in bankruptcies. These are the types of tax increases in H.R. 11, and they are in the bill only to make sure that other tax cuts are possible.

If I thought H.R. 11 would put a bigger tax burden on most Americans, I would work to kill it.

One of the important tax cuts in this bill is the repeal of the so-called luxury taxes. Most important to Maryland is eliminating the luxury tax on boats. This tax has crippled America's boating industry, and has already cost many jobs in Maryland. That is why I have strongly opposed the tax, and why I am glad we finally have a chance to repeal it by passing this bill.

I know that many middle-class Marylanders are struggling trying to make ends meet. They are telling me how tough things are in the economy, and many are not sure how long they or their family members will have their jobs. And in these tough circumstances, they are still trying to save a little money for their families' future.

That is why I am glad to see this bill expand individual retirement accounts, and make it easier for Americans to save. And the tax bill also makes these IRA's more flexible, so that families can withdraw these funds penalty-free for important needs. If a child is ready to go to college or a husband gets suddenly ill, IRA funds would be available without any 10 percent penalty. And if a family finds the home they have wanted to buy, or if someone is laid off for a period of time, IRA's would be accessible without any penalty. I have cosponsored legislation to provide all of these provisions, and I am glad to see it included in this bill.

There are other important provisions in this bill. It helps businesses with an extension of the research and experimentation tax credit. H.R. 11 also reforms certain technical tax laws that have hurt innovation and caused unnecessary legal battles between many small and large firms and the IRS. There is help for our cities and distressed rural years, and there are greater incentives for savings and an improvement of the individual retirement accounts.

However, there are also many omissions in this bill and provisions I dislike. I want to take some time now to discuss my reservations about the section of the bill having to do with overtime pay to customs inspectors, many of whom live in Maryland.

I support some change in the overtime pay for customs inspectors. But the tax bill is not the place for these changes and the changes in it are not fair.

Customs inspectors are the front line of our war against drugs, illegal smuggling that robs American workers of jobs, and even international terrorism. Yet this bill cuts their pay 13 to 17 percent and no hearings or review was ever even done in the Senate.

Although these employees may make up some of the income loss once they retire, that is small comfort to an average 43-year-old customs inspector at the Port of Baltimore who has a mortgage to pay and children to send to college. So I think that trying to solve this problem at the last minute in a tax bill is the wrong way for the Senate to act. We should not make such an important decision without hearing what this really means to hard-working Marylanders who have dedicated their careers to public service.

In addition to this tax bill, there is a lot more that needs to be done to stimulate our economy. We need to help reward investors who help create new jobs, and we need to help ease the squeeze on America's middle class. And we need to make sure that businesses have the chance to grow, and that everyone pays their fair share of taxes. But despite the fact that this bill does not do all of that, it does take some steps in that direction. That is why I am voting today to pass H.R. 11.

Mr. CONRAD. Mr. President, I rise today to highlight an important provision in the pending tax bill, H.R. 11, which will ensure that the Medicare trust fund is properly administered and protected from waste, fraud, and abuse. This provision is similar to the approach adopted in the Budget Enforcement Act regarding funding for enforcement of the Internal Revenue Service, which I have repeatedly supported. As a strong advocate of the IRS funding mechanism adopted in 1990, I believe that extending the same treatment to the administration of Medicare is sound fiscal policy.

Since 1989, Medicare's administrative costs have not kept pace with the rapid growth of the program. Currently, the program serves 34 million beneficiaries and their health care providers and generates more than 660 million Medicare claims annually. However, the existing budget scorekeeping rules discourage the administration and Congress from increasing funding for the administrative activities to meet the program's needs. Savings to the Medicare Program by preventing fraudulent payments do not count in the budget process to offset the additional funding needed to properly administer the program.

H.R. 11 contains a provision which fixes this problem by allowing limited adjustments to the overall spending caps to accommodate additional spending for the administration of Medicare. This increased spending will be more than offset by reductions in wrongful benefit expenditures. Both the General Accounting Office and the inspector general of the Department of Health and Human Services estimate that this provision will save more than it costs. GAO estimates that for every $1 spent on improving Medicare's payment safeguard activities, the Medicare Program saves $14.

A similar provision has been in place for IRS revenue collection since 1990. Although the IRS remains underfunded, this innovative provision has improved the agency's administration and saved taxpayers money. It is time that we place the same emphasis on ensuring that Medicare is properly administrated, and I am pleased to see the inclusion of this provision in H.R. 11.

Mr. DURENBERGER. Mr. President, last week I voted for the Senate version of H.R. 11. As I said on the 29th of September: "The title of this bill refers to urban aid, but its most substantial lasting contribution will be in the area of health."

What has emerged from the conference committee little resembles the bill that passed the Senate. There is no small group health insurance market reform. The chairman of the Finance Committee, Senator BENTSEN, and I have worked for the past 2 years to reform the small group health insurance market. We included small group reform in H.R. 11, but the conference committee dropped it.

For more than 5 years, I have introduced legislation that would have provided a measure of fairness to self-employed individuals and farmers in the purchase of health insurance. The version of H.R. 11 that passed last week included my legislation that provides 100-percent deductibility of the cost of health insurance for the self-employed. The conference committee dropped that provision and returned to the 25 percent deduction that exists in current law.

In addition, Mr. President, the conference committee dropped a provision cosponsored by Senator BUMPERS and myself that would have put more pressure on fathers who do not provide child support.

The bill contains a modified version of the President's enterprise zone legislation. In my view, the $2.6 billion proposed to be spent on creating 25 urban and 25 rural enterprise zones would be better spent on job retraining, infrastructure enhancement, and a host of other programs aimed at skill development for the unskilled and undereducated in every city and every depressed rural area of America.

I also have very serious concerns about opening the individual retirement account [IRA] door again. And I am especially concerned about the new type of IRA, the so-called back door IRA, which will allow individuals to contribute up to $2,000 to an IRA, receive no tax deduction, and then be allowed to withdraw the money—plus the earnings that built up—tax-free if the money is held in the account for 5 years. In addition, individuals could transfer their current IRA assets, penalty-free, into the back door IRA. I believe the $2.5 billion estimated revenue loss associated with this proposal is far understated and will seriously endanger the Federal budget in the late 1990's.

Mr. President, there are many provisions in this conference report I have sponsored and have fought for several years, especially in the health section of the report. I would identify just a few of these provisions.

With regard to Medicare Part A, this conference report expands the Essential Access Community Hospital [EACH] Program to now cover nine States. In addition, it reauthorizes the Rural Transition Health Grant Program and extends the grandfather for the classification of regional referral centers.

Under part B of Medicare, we have made significant improvements in the RBRVS method of reimbursing physicians. My legislation concerning payment for EKG's (S. 2914), and a modified version of legislation I cosponsored concerning payments for anesthesia and new physicians is also included in this report.

The legislation also continues the Medicare Alzheimer's disease demonstration project operated in Minnesota by the Wilder Foundation.

On the tax side of this conference report, there are also many provisions I have cosponsored. The report repeals the luxury tax on boats, airplanes, jewelry, and fur, and repeals the 1986 provision that subjected gifts of appreciated property to the alternative minimum tax.

However, Mr. President, this bill does nothing to solve the health crisis in America and this bill violates the Budget Act of 1990. This bill adds more than $2 billion to the Federal debt and as I have stated on many occasions, I will not cast votes that add to the debt we are piling onto our children and grandchildren.

In May, I voted against aid to Los Angeles because the aid bill added to the deficit. Last month, I voted against emergency to the victims of Hurricane Andrew because the aid bill was not paid for.

Mr. President, when we will summon the courage to face the reality that we are $4 trillion in debt and that we are adding to the debt at the rate of more than $1 billion a day. Every day for as far as I can see.

I will not add to the Federal debt to pay for enterprise zones and IRA's. I will vote against this bill because it will not help our inner cities; it will not increase savings; and it will only serve to increase the debt our children will be saddled with.

Mr. BRADLEY. Mr. President, like many other Senators, I had hoped that this bill would rediscover its original purpose in conference. I had hoped that, in the process of paring this bill down to a size that the President would sign, the conferees would transform H.R. 11 into a legitimate urban aid bill. But the old saying remains true, "You can't make a silk purse out of a sow's ear." While IRA's were cut back and a few of the extenders were made permanent, the bill remains primarily a special interest bill. While the bill now costs $28 billion instead of $34 billion, it still is not paid for honestly and fully. And while the overall amount of money targeted to urban aid increased slightly, it still does too little for the poor in our inner cities. For these reasons, I cannot vote for it.

Let me not be misunderstood. There are provisions in the bill that I strongly support. I was glad that the luxury tax repeal was included in the bill. The income security, substance abuse, and child welfare provisions of the bill are also to be commended. And while I feel that it is but a drop in the bucket, I also support the increased authorizations for the Weed and Seed programs.

But the biggest winners in this bill are not those living in urban blight. The biggest winners are narrow pockets of taxpayers who benefit from the special interest tax breaks included in the bill. Instead of spending more money on jobs programs or on urban infrastructure, this bill gives wealthy real estate developers passive loss and section 108 relief. Instead of spending more on community policing, it allows corporations to retain more of their tax breaks in the alternative minimum tax. Instead of spending more on education or Head Start, it spreads tax largesse out among a variety of member items. Even the enterprise zone proposal has been transformed into a tax break for the wealthy. Where the Senate's package rewarded employers who hired zone residents, the bill now rewards taxpayers with capital gains relief when they decide to sell out and leave the zone.

But I might be able to overlook the shortcomings of this bill if it at least paid for the tax relief it provides honestly. Unfortunately, much of the cost of this bill is hidden outside the budget window. The IRA proposal has been sliced down to $2.6 billion only through budget gimmicks like rollovers, backloaded accounts, and effective date manipulations. The intangibles bill is listed as a revenue raiser, but has a high price tag down the road when the full cost of allowing the amortization of goodwill kicks in. And while the enterprise zone provisions are not permanent, they are extended for 15 years, adding another $1 billion a year to the ultimate cost of H.R. 11.

To make matters even worse, the bill relies upon an odd assortment of illusory revenue speedups and compliance measures to pay for the loopholes it creates. The biggest offsets in the bill are the changes to the estimated tax provisions. I would like someone to explain to me how we can claim to raise over $9 billion simply by asking taxpayers to send in their tax checks a little bit earlier—this is an illusory one-time gain that will harm small business and reduce the funds available for investment. The $4 billion mark-to-market rule for security dealers just phases in a one-time increase due to change in their inventory accounting. Another $1.4 billion comes from a temporary estate tax extension that expires.

The conferees also tightened the rules on moving expense deduction beyond what was included in the Senate bill. At a time when tens of thousands of Americans are being laid off and labor mobility will be critical for international competitiveness, we are making it even tougher for Americans to find a new job. Finally the conferees decided to drop the limitations on itemized deductions and personal exemptions—the so-called Pease and PEP provisions—that were included in the Senate bill. These were never legitimate revenue offsets, but rather scheduled reductions in our current tax liability. But by taking them out of the bill, the wealthiest taxpayers in America can have their cake and eat it too. Even if they don't benefit directly from the loopholes in the package, they still can count on a lower tax bill due to the expiration of these provisions.

Mr. President, I look forward to moving beyond the current partisan season and getting to work on a tax bill that will promote real long-term growth. We are facing a fiscal crisis in this country. The deficits we continue to run are weighing down our economy and jeopardizing our children's way of life. And every Senator knows that a critical part of a deficit reduction package will be to get control over Federal spending. But looking at this bill, I feel it is important to remember that we can spend money just as easily through the Tax Code as we can through the appropriations process. And the tax breaks we provide today won't be subject to the annual appropriations process tomorrow. They will go on and on until we muster the courage to take on the special interests—something we do far too rarely around here. And to the extent that we pay for permanent tax relief with illusory or temporary tax increases, we mortgage our future even further.

Mr. President, I hope we will be working with a new administration next year. I also hope that we can move beyond our current approach of tinkering at the edges of the Tax Code and get to work on a real package for deficit reduction. Instead of debating whether this provision or that one is a tax increase—instead of trying to jumpstart a $6 trillion economy with $10 billion worth of tax breaks—we should be deciding just what our national priorities are in the post-cold-war world. But because this bill spends more on loopholes for wealthy individuals and corporations than it does on urban aid, because it relies on budget gimmicks to hide its true costs, and because I feel that it will harm and not help our economy by further increasing our deficit, I feel compelled to vote against it.

Mr. GORTON. Mr. President, I support the conference report to H.R. 11, the Urban Aid Act of 1992. Although I had serious reservations with the original Senate version, the conference report before us today has been altered to a such a degree as to make this bill acceptable.

Notwithstanding the sound provisions in the original version, my objection was based upon several onerous tax increases contained within. Quite simply, I was concerned about retaining the tax increases scheduled to be phased out or increasing taxes when the economy is just beginning to recover from the recession. Among these taxes are: First, an extension of the 55-percent top estate and gift tax rate for 5 years; second, extension of the personal exemption phaseout for upper income taxpayers for 1 year; and third, extension of the itemized deduction limitation for upper income taxpayers for 2 years. I voted against those taxes when they were part of the 1990 budget deal and was concerned about making them permanent now because they would have been unproductive and detrimental to the economy.

That is why I was pleased to learn that most of the tax increases were dropped in conference. The bill now is nearly a tax revenue neutral bill, with approximately $24 billion in tax increases coupled with about $21 billion in tax cuts. Does this mean I think that what's left in the bill is all good? No. For example, it still contains an estimated tax provision to which I strongly object.

Under the provisions of the conference report, the so-called safe harbor rule for those paying estimated taxes will be changed. The new law will require that 120 percent of the previous year's tax liabilities must be paid to avoid potentially large penalties, rather than the 90 percent allowed under current law. For small businesses, for whom adequate cash-flow is a critical problem, this provision will be damaging. If this bill is signed into law, I promise to do everything I can to modify or repeal this change during the next Congress. I feel that strongly about it.

But I must evaluate a bill in its entirety. And the conference report includes enough notable provisions, and has dropped enough egregious ones, that I can vote in favor of it.

I am particularly pleased that the bill contains a repeal of the luxury tax, which directly affects a very important industry in Washington. After visiting Bayliner, one of the boat builders in my State, I was so swayed by the plight of the company and its employees that I signed on as a cosponsor of the legislation to repeal this tax. We all know that this luxury tax did nothing to help our fiscal situation. Instead, it crippled whole companies and threw hard-working employees into the unemployment line.

Mr. President, I am pleased that the conference report has been significantly altered to remove many objectionable parts and will vote for it today.

Mr. CHAFEE. Mr. President, the urban aid bill that we are voting on today is a massive bill, incorporating hundreds of provisions each important to particular groups. It represents the culmination of a national debate on how the Tax Code might be utilized to address such pressing problems as the riots in Los Angeles, the sluggishness of U.S. economy, and the need to improve how the tax system itself works.

As far as the enterprise zone piece of this legislation goes, there will always be the question of whether this is the right mix of incentives and whether it is large enough to make an impact. Only time will provide us with the answer to those questions. But as a supporter of enterprise zones from as far back as 1980, I am happy that this legislation will now provide the opportunity to test the effectiveness of these ideas.

The bill also includes four of the seven economic growth incentives that the President requested Congress to adopt in his State of the Union address in February. Again, the impact that these proposals will have on the economy is a matter of great debate.

I am very pleased that this bill will, once and for all, repeal the luxury tax. When enacted, this tax was aimed at the rich. But it has had a much different effect. Instead of paying the tax, the rich simply stopped buying those items that were determined to be luxuries.

The boatbuilding industry in Rhode Island, and across the country, has been devastated by the combination of the recession and this tax. I will be the first to admit that the boatbuilding industry was already losing sales as a result of the recession. However, the industry has survived recessions that were much worse than the current one. The luxury tax has been a blow that has devastated one of the few American industries that enjoyed a favorable balance of trade.

It is imperative that we act now to repeal this tax in order to save what remains of this once thriving industry. Many small, independent boatyards in Rhode Island have seen their business decline to virtually nothing. In the process, they have been forced to lay off hundreds of workers.

As you know, Mr. President, the Senate has expressed its desire to eliminate this tax on three separate occasions. In November of last year, 92 Senators voted in favor of a sense-of-the-Senate resolution supporting repeal of the luxury tax. Again early this year, the Senate included the repeal of the luxury tax as part of the tax bill passed by the Senate. Finally, the Senate again passed a resolution supporting the repeal of this tax on September 10. Given the overwhelming level of support for repealing this tax, I hope that we can finally do just that. This will be good news for boatbuilders as they get ready for their boat show in Annapolis next week.

This bill also permanently extends the mortgage revenue bond program, which I have been working toward for several years now. Last year, I joined with the distinguished Senator from Michigan [Mr. RIEGLE] to introduce a bill to permanently extend the Mortgage Revenue Bond Program. This program has helped thousands of first-time home buyers acquire a home of their own in Rhode Island.

For many Americans, the dream of home ownership continues to become more and more difficult to achieve. The Nation's home ownership rate is at its lowest level in almost two decades. Most of these families will never be able to afford a home if the Mortgage Revenue Bond Program is permitted to expire. I am pleased that this bill extends this program permanently. The Mortgage Revenue Bond Program's value has been demonstrated time and time again, and I am happy that we finally recognize this fact and have made the program a permanent part of the Tax Code.

The bill also permanently extends the low-income housing tax credit. This credit encourages the construction and rehabilitation of housing for low-income Americans. Like the Mortgage Revenue Bond Program, the effectiveness of this credit in providing low-income housing has been proven during the 5 years since its enactment and we should not let it expire.

The credit provides a valuable tax incentive to both nonprofit and for-profit developers to fund the production and preservation of low-income rental housing. It is absolutely necessary to encourage the development and renovation of housing for the poor.

In my State, the Rhode Island Housing and Mortgage Finance Corporation [RIHFMC], the State housing agency, has used the tax credit to successfully address the needs of our citizens for safe and affordable housing. The loss of these credits would be devastating to their efforts. By combining the credit with bond financing and zero interest second mortgages, RIHFMC has been able to produce and preserve low-income housing in one of this country's most expensive housing markets.

The measure also contains several important provisions relating to the Medicare Program. First, it repeals a provision enacted in the 1990 budget reconciliation law which eliminated a separate payment for interpretation of EKG's. I opposed enactment of that provision in 1990, and am glad to see it repealed. In addition, the bill provides that new physicians and practitioners should be reimbursed at the same level as other professionals under Medicare. In my home State of Rhode Island, we have had trouble attracting health care providers due to historically low reimbursement rates under Medicare. A further reduction in payments for new physicians made it especially difficult to attract recent medical graduates, as well as other new practitioners.

The bill also requires the Secretary to review and update the Medicare geographic practice cost index. I am hopeful that this update will take into consideration the current cost of medical practice and will result in increased reimbursement in Rhode Island and other States which have been reimbursed at lower levels than other comparable practice areas. I am hopeful that these and other reforms will improve the delivery of health care under Medicare.

I would like to express concern about one provision which reduces reimbursement for payment to kidney dialysis centers for erythropoietin or EPO. This drug is provided to persons suffering from end stage renal disease [ESRD]. Currently, Medicare reimburses at a maximum payment of $11 for 1,000 units. This bill reduces that payment to a maximum of $10 per 1,000 units. It is my understanding that these centers pay the manufacturer approximately $10 per 1,000 units. According to the centers, the difference is used to administer the drug. Clearly, this payment reduction will have no impact on the company that manufactures the drug, but instead will impact the center. I am concerned that the cut will adversely impact patient care.

I would also like to express my frustration that we were unable to include in the conference agreement, any of the Senate amendments to the Medicaid Program. There were a number of improvements in the home and community-based waiver program for those with disabilities. I regret that they were dropped.

With so many provisions, there is bound to be those that any individual Senator supports and opposes. That is certainly true for this Senator. Yet, on the whole it is a bill that does more good than harm, and I urge my colleagues to support it.

The PRESIDING OFFICER. Who yields time?

Mr. BENTSEN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Texas has 5 minutes remaining.

Mr. BENTSEN. I have no more speakers. I anticipated others, but they have not arrived. I am prepared to yield back the remainder of my time.

Mr. PACKWOOD. I am prepared to yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to being to a close the debate on the conference report on H.R. 11, the urban aid bill:

George Mitchell, Daniel K. Akaka, Bob Kerrey, Edward M. Kennedy, Brock Adams, J. Bennett Johnston, Joseph Lieberman, Daniel K. Inouye, Jeff Bingaman, Timothy E. Wirth, David Pryor, Dennis DeConcini, Lloyd Bentsen, John Breaux, Claiborne Pell, Jay Rockefeller.

CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the conference report accompanying H.R. 11, the urban aid bill, shall be brought to a close? The yeas and nays are required. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Tennessee [Mr. GORE], the Senator from Vermont [Mr. LEAHY], the Senator from Nevada [Mr. REID], and the Senator from North Carolina [Mr. SANFORD] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. BOND], the Senator from North Carolina [Mr. HELMS], the Senator from Vermont [Mr. JEFFORDS], the Senator from Wisconsin [Mr. KASTEN], the Senator from Kentucky [Mr. MCCONNELL], and the Senator from Alaska [Mr. MURKOWSKI] are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina [Mr. HELMS] would vote "nay."

The PRESIDING OFFICER (Mr. DODD). Are there any other Senators in the Chamber who desire to vote?

The yeas and nays resulted—yeas 80, nays, 10, as follows:

[Rollcall Vote No. 268 Leg.]

YEAS—80

Adams
Akaka
Baucus
Bentsen
Biden
Bingaman
Boren
Bradley
Breaux
Bryan
Bumpers
Burdick, Jocelyn
Burns
Byrd
Chafee
Cochran
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Dole
Domenici
Durenberger
Exon
Ford
Fowler
Glenn
Gorton
Graham
Gramm
Grassley
Harkin
Hatch
Hatfield
Heflin
Hollings
Inouye
Johnston
Kassebaum
Kennedy
Kerrey
Kerry
Kohl
Lautenberg
Levin
Lieberman
Lott
Mack
McCain
Mikulski
Mitchell
Moynihan
Nickles
Nunn
Packwood
Pell
Pressler
Pryor
Riegle
Robb
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Seymour
Simpson
Specter
Stevens
Symms
Thurmond
Warner
Wellstone
Wirth
Wofford

NAYS—10

Brown
Coats
Craig
Garn
Lugar
Metzenbaum
Shelby
Simon
Smith
Wallop

NOT VOTING—10

Bond
Gore
Helms
Jeffords
Kasten
Leahy
McConnell
Murkowski
Reid
Sanford

The PRESIDING OFFICER. On this vote, the yeas are 80 and the nays are 10. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. BENTSEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HEFLIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue calling the roll.

The clerk continued with the call of the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, I am sure that one way or the other, very soon, or at least some time this afternoon, either one or more points of order will be made against this bill. I am equally certain that when that occurs, a request will be made of the Senate that it waive the point of order; or there will be a motion made to waive points of order.

Frankly, one can make that appear if you take just one point of order and waive it, but in the language say we are waiving all points of order, it can be made to appear that a point of order on this bill is a rather insignificant trivial sort of thing.

I thought that I might explain to the Senate with reference to the points of order that lie against this bill and the Budget Act and the 5-year agreement, just how many points of order lie and how serious they are. So I chose to take just a few moments to share that with the Senate.

The first point of order is a very significant one. Everyone in this body understands that the one rule that exists, because of the 5-year agreement that is now part of the Budget Act of the United States, is a binding limitation on how much we can appropriate in domestic spending. There is a cap on how much. What this bill does is, directly by language in a tax bill, change that and it now says, and I am merely paraphrasing in my own way. It says as to the enforcement provisions and administration costs of Medicare, that appropriated amount is not subject to a cap. What is really happening is that the appropriators are not putting enough money in this part of the appropriated accounts, at least as seen by those who write those laws.

So this says do not worry about that appropriators, you are not going to be bound by the appropriations cap when it comes to this account. It will be outside the cap.

Some will get up and tell the Senate, if they chose to make an issue on substance that is, this is imperative, that we must do it, that clearly if we do not do this and the appropriators do not give enough money for this activity, we are hurting ourselves.

Mr. President, every authorizing committee around that has important legislation that the appropriators do not fund at a high enough level, can come to the floor in a bill that is very large and has many things in it and say, "look, we do not want what we think is needed to be subject to the appropriating cap. So please break it." And we put language in here, saying appropriators, you are no longer bound by it. There will be no sequester if you exceed the cap for this kind of expenditure, because we deem the cap to be not applicable.

That is the best I can do, and he can say they may find examples in past agreements. I can think of one where we did this but actually this was encapsulated in the agreement itself, the Budget Act or the 5- or 3-year agreement.

Not so for the expenditures that this bill says take out of the cap.

Again, I merely make the point to the Senate, that if you are going to be bound by caps to control expenditures, then where do you start breaking it and when do you stop breaking it? In this case this bill chooses to say ignore the cap, you are not bound by limitations on spending taxpayers' money for something that this bill thinks is very important, but all the rest of the things that are important, you are still bound by the cap.

Second, I am told that as far as the very important issue, the so-called Social Security firewall point of order, which I am very proud to have played a little role in getting into the law—the distinguished chairman of the committee, Senator BENTSEN deserves enormous credit for the so-called firewall with reference to Social Security.

This conference report includes provisions which decrease revenues of the Social Security trust fund by $53 million. Earlier this year there was an amendment offered that assured a permanent 60-vote point of order against all legislation that would reduce Social Security surpluses. In fact, again I give great praise to the chairman of the committee, Senator BENTSEN, who offered that amendment, to make sure that the law was made permanent with reference to the 60-vote requirement if you were going to reduce the surpluses in the Social Security trust fund.

Then many took the floor and spoke powerfully about the need to protect Social Security for today's workers and future generations of beneficiaries, and the lead spokesman again, and I compliment him, was the chairman of the Finance Committee.

The Senate, because that argument was so persuasive, voted 94 to 3 to adopt that amendment, to make permanent and to assure that we would not break this firewall which is an assurance that Social Security will not be rendered any less solvent by actions we take to spend money or tax.

So, after that 94-to-3 vote, and before today, there was an invocation of the firewall point of order to defeat two amendments that would have drained the trust fund. Unfinanced spending would have occurred and increased that trust fund's expenditures.

That occurred here. It was overwhelmingly supported even in the most difficult of cases. We know which the two were.

So here today, after all that history of making sure that we do not break that Social Security trust fund firewall, in this bill is a provision to violate it to the tune of $53 million.

Now, Mr. President, regardless of what point of order is waived, regardless of which point of order is brought to the attention of the Senate when there is the motion to waive all the points of order, I want the Senators to know that if one of the others that I am going to enumerate is chosen as the lead violator, you are going to be waiving all these because that is the language. You can rest assured nobody is going to want to waive one at a time. So those who want to waive, they are going to put up a trivial and say we are hearing one, we are waiving it, and along with it any others that may be found in this bill. I have cited two of them. So let me move on to a couple more.

I have more detailed remarks on both of these, the firewall and breaking the budget agreement with reference to the appropriations caps.

Now, let me just cite for the RECORD: Section 302(f) budget authority exceeds the Finance Committee allocations for fiscal year 1993. A point of order lies for that.

Section 303(f) budget authority exceeds the Finance Committee's allocation for 1993 through 1997.

One might wonder why I state two that sound very much the same. We made two distinct requirements in the law. The year itself during which you are acting has a certain allocation. That is 1993. This exceeds that allocation to the Finance Committee. But in order to not let us move from one year to another as we had frequently done, I say to Senator DOLE, we would make it budget neutral in 1993 and then in 1994, 1995, and 1996 we would break it. There is an allocation for all of those years combined, each of the years. That is 302(f) also. This bill violates 1993 through 1997 in terms of the allocations to the committee.

Now 302(f) is another one. The outlays, not just the authorities, exceed the Finance Committee's allocation for 1993. And I think all of these are understandable, because we are spending money; $3.2 billion is in the bill to be spent, which was not within the allocation.

Section 311, the budget authority exceeds the total budget resolution levels for 1993. That is a different section, and in a very real sense a serious one.

The budget resolution which we agreed to in this body set overall budget authority levels for 1993. This legislation causes us to exceed that budget authority level, creating a very precise section 311 point of order for exceeding the overall budget authority. And with reference to that same section, the budget resolution also sets an overall outlay and this bill causes us to exceed the outlay level.

Now I am not speaking here of what we allocated to the Finance Committee. I am now speaking of what we allocated to the Congress for all spending. The 311 point of order in both budget authority and outlays addresses the overall expenditures and this bill causes those to be breached, so there is a point of order there also.

Now, other tax bills that we have debated in this Senate since we have had these caps and this 5-year agreement have also caused an increase in budget authority and outlays.

But I must remind the Senate that we provided reserve funds in the budget resolution to allow increases for certain purposes in budget authority and outlays. Frankly, not something I agreed with. I thought it was just a big window to allow us to spend money for these certain purposes and thus break the budget. But we did it.

The reserve fund can only be used if the legislation is deficit neutral; meaning revenues and expenditures can be taken into account and it comes out neutral.

I must say on that score, this bill is not deficit neutral in that regard. So reserve funds cannot be used and section 311 points of order lie.

Now, Mr. President, frankly, it is growing more and more difficult to draw legislation of this type, and I understand that. Obviously, you pick out things that you can increase—change times and the like—so you pick up revenue so you can spend revenue under the guise of making it all balance out.

Mr. President, as I said in some previous remarks, this bill has a tremendous number of good points. But, frankly, I close by saying the budget resolution made a commitment with reference to mandatory or entitlement expenditures of our Government. It said we are going to reduce them by $10 billion over 5 years. Frankly, this single bill adds $3.2 billion increase to those expenditures. And I think what we are really saying is instead of living up to the $10 billion mandatory cut, we have now increased it by $3 billion and not cut the $10 billion. And I think much of that leads to points of order because that is how you get to that point. Some, but not all of these, relate to that series of numbers and that breach.

So overall I say to the Senate, when you are asked, if you are asked to waive the Budget Act and all points of order, you are being asked to waive all of these that I have just enumerated.

And, frankly, I am not so good at looking through a bill like this and finding them all. I would surmise that there are some more. But at least I have cited for you a series. Eight points of order that lie against the bill.

OPPOSING BREAKING THE BUDGET AGREEMENT IN TAX BILL

Mr. President, I was very disappointed to learn that the conferees on the tax bill decided to include a provision that would violate the 1990 Budget Agreement.

This provision would allow $1.147 billion in new spending to be exempt from the discretionary caps that were central to the 1990 agreement.

This provision is not in the jurisdiction of the tax committees.

Moreover, it was never considered by the committees with jurisdiction in either the House or Senate. But, somehow, it appeared in this conference report.

Specifically, this provision would exempt some spending for the contractors that administer the Medicare Program from the spending limits agreed to with the President as well as exempt it from points of order in the congressional budget process.

This end run of the normal process is not the way we should go about changing the 1990 budget agreement, which is why there is a point of order against the conference report.

But even beyond the end run of the Budget Committee's jurisdiction, there is no reason for this provision to be in this bill.

IN THE FINAL HOUR—ANOTHER EFFORT TO BREAK THE WALLS

We began the budget process this year with an effort to break down the walls that were part of the 1990 budget agreement.

We defeated that effort resoundingly, and the walls have stood throughout this year's budget and appropriations process.

But now that we have completed action on the 1993 budget, here is another, last minute attempt to break down the walls.

INCREASE THE BUDGET DEFICIT BY $1.147 BILLION

The effect of this provision is to add $1.147 billion to the deficit over the next 3 years.

A TERRIBLE PRECEDENT

If we do this for Medicare contractors, who is next in line? There are hundreds of Federal agencies and programs that claim they are investments, not spending.

Like WIC, Head Start, the Social Security Administration, highway projects, and law enforcement—the list of investments can go on and on.

We should not provide piecemeal exemptions from the budget process because it will only encourage advocates of other programs to pursue the same course.

FUNDING MUST WAIT TIL NEXT YEAR ANYWAY

This provision would not provide any additional funding now—it would simply allow us to provide more funding in a separate bill and have that funding exempt from the budget caps.

But we have already completed action on the 1993 appropriations bills, so we are not going to provide any additional funding before we adjourn.

Congress can consider this and other process changes in the normal course next year and still have plenty of time to pass additional funding if it is thought to be important.

LABOR-HHS CONFERENCE REPORT PROVIDES A 5.4-PERCENT INCREASE

The appropriations bill provides a 5.4-percent increase in funding for Medicare contractors. Compared to many other programs, that is a substantial increase.

NO ACCOUNTABILITY

Proponents of this exemption argue that there is solid evidence that a small investment here will save millions in erroneous Medicare payments.

Unfortunately, to my knowledge, we have no plan as to how the Medicare contractors would spend this money or the expected returns from such spending.

There is no accountability and no assurance of better administration of the Medicare Program.

SOCIAL SECURITY FIREWALL POINT OF ORDER ON THE TAX BILL

The conference report includes provisions which decrease revenues of the Social Security trust funds by $53 million over 5 years.

Earlier this year, I offered an amendment that assured a permanent 60-vote point of order against all legislation that would reduce the Social Security surpluses.

At that time, he spoke very powerfully about the need to protect Social Security for today's workers and future generations of beneficiaries.

The Senate overwhelmingly agreed with his arguments, voting 94 to 3 to adopt his amendment to protect Social Security.

More recently, I invoked this Social Security firewall point of order to defeat two amendments that would have drained the trust funds with unfinanced Social Security spending increases.

Again, he prevailed in protecting Social Security despite the popularity of the two provisions at issue—the earnings test and higher benefits for the Social Security notch.

The violation of the Social Security firewall in this conference report is not egregious—it is due to a provision which exempts student camp counselors from paying payroll taxes.

Nonetheless, if we allow this provision to tap the Social Security surpluses, we are clearly encouraging other such amendments in the future.

Just as it is unwise to add even $50 million to a budget deficit of $330 billion, we should not take even $53 million out of the Social Security reserves that are needed to pay benefits in the next century.

Social Security is our most important domestic program—too important to the American people to allow such a dangerous precedent to go through the Congress.

Mr. BENTSEN. Mr. President, I would like to make a comment.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. Mr. President, once again this bill is fully paid for in 1993. Over a 5-year budget window, the bill would not add to the deficit. The technical changes were made to take care of strong positions by the House.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, this is an important measure and we are attempting to accommodate the interests of thorough consideration of it with the schedules of all of the Senators.

I have discussed the matter with the manager of the bill, the chairman of the Finance Committee, the distinguished Republican leader, and the Senator from Colorado.

I believe the best way to proceed—and this is with their prior concurrence—is that Senator BROWN be recognized to address the matter for up to 10 minutes, at which time he has indicated he will make a point of order, following which Senator BENTSEN will be recognized to make a motion to waive the point of order.

I notice the distinguished Republican leader present. Before I put that request, I would be pleased to yield to him.

Mr. DOLE. If the majority leader will yield, it is my understanding that if that is not the case, then the majority leader will offer a point of order; is that correct?

Mr. MITCHELL. That is correct.

Mr. DOLE. So if Senator BROWN is willing, after 10 minutes of debate, to make a point of order, then you will yield for that purpose, and then the Senator from Texas, the chairman of the committee, would move to waive, what? All budget points of order?

Mr. BENTSEN. Yes.

Mr. DOLE. At that point, I might ask the Parliamentarian would the waiver be amendable to make it specific?

The PRESIDING OFFICER. Motions to waive the Budget Act are amendable.

Mr. DOLE. I thank the Chair.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, pursuant to my previous discussions with the distinguished Republican leader, Senator BENTSEN and Senator BROWN, I now ask unanimous consent that Senator BROWN be recognized to address the Senate for up to 10 minutes, at the conclusion of his remarks he be recognized to make a point of order, and following his making the point of order, Senator BENTSEN be recognized to make a motion to waive the Budget Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Colorado is recognized for 10 minutes.

Mr. BROWN. Mr. President, I rise to echo the concerns of the Senator from New Mexico with regard to waiving the budget point of order which lies against this bill.

I suppose if there is one solution to the dilemma we find ourselves in with regard to the budget, it is to find some discipline that this body will follow. Obviously, the Members of this body are split over the very contentious discussion of a balanced budget amendment that would level some outside restrictions on the discretion of Congress to spend.

We all, I think, appreciate and understand the difficulties that could be involved with that. Some have decided it is bad policy for this country. Others like I have thought that outside discipline was the only way we would really find the necessary ability to bring the budget deficit into line.

Until we have a constitutional amendment that balances the budget, we have to use existing tools and the existing tools are simply the Budget Act. The Budget Act sets forth clearly limitations on spending. It is broken down by category. All the Members are acutely aware of it.

The Appropriations Committee is charged with maintaining an allocation and keeping appropriations within those allocations. Everyone, even the critics of congressional spending, should have some appreciation for what a difficult and challenging job that is.

The problem is that when we come up against tough decisions, there has to be some discipline. Someone has to be willing to say no. Someone has to be willing to say this is not as high a priority as something else.

The particular portion of the Budget Act I am concerned with in making this point of order is section 306 of the Budget Act. It relates specifically to the provision to have $1.147 billion in new spending authorized that circumvents the Budget Act, gets around the Budget Act, creates a loophole in the Budget Act.

It is not done in the still of the night or the dark of the night. This is done in the daylight. It is a straightforward measure. It is not one that is beyond the contemplation of our rules. The rules provide a way for Congress to waive that Budget Act.

I simply rise in hopes that this body will be very cautious and careful about considering that power. It is the ability to undercut the slender discipline this body still has. If we consistently waive the Budget Act on a regular basis, what we do is simply establish a precedent that says it does not mean anything; that we do not intend to stand by it. All the rhetoric that we do not need a constitutional amendment simply goes out the window because it is clear this body cannot stand by the budget it produced.

This budget, the budget we are waiving, is not one that I thought was a good one. It is not one that I voted for. It was one that was passed by the majority of this body. It was not as tough as I would hope we would have.

It allowed for a big increase in spending. In the area we are concerned about, in this $1.147 billion increase in authorization in spending over 3 years, we are talking about payments to Medicare contractors over and above what is allowed in the budget. They have not been treated overly harshly in the budget, as it stands now. The Labor-HHS conference report provides a 5.4-percent increase in funding for Medicare contractors.

Let us put it this way. Social Security recipients did not come off as well as Medicare contractors. Medicare contractors were not underfunded. They got more than Social Security recipients, they got more than the cost of living. This is not too tight. This is generous by any means. I believe there is not a basis to say that they have been underfunded.

Some could say, I believe, that they have been overfunded. But this measure will waive the Budget Act with regard to Medicare contractors and payment to them; allow $1.147 billion in new spending, and make it exempt from the discretionary caps.

How can anyone sit down and make a budget deal if you are going to waive it? That is what the 1990 budget deal was all about. It was debated by both of our political parties. It was the subject of hot contested debate. There were a lot of compromises in that. But one thing that was not in it was the contemplation that we would simply throw it aside when it was inconvenient, when there was a binding discipline in that document.

What this bill literally does is create a loophole. Some would say, well, this is important. This is important and we ought to be flexible enough to recognize it when it comes along.

That argument has not necessarily been made or focused on today but it is a good argument and it is a reasonable argument. These funds you can make a basis for.

The problem is, every single solitary area of spending, every program, can come to this floor and make a case for more spending, too. Our problem is not that there is a shortage of things to spend money on. There is a whole world of things to spend money on.

If you make this loophole, others will be along to get their own loopholes. What we do is not solve a problem giving this loophole. What we do is destroy a system, undercut the Budget Act, and invite every interest group that wants funds from the Federal Treasury to come and get their own loophole.

The precedent is one that I cannot believe the Members of this body want to follow; whether you think the Medicare contractors get enough or not. I cannot believe it is in the interest of this body or this Nation to shoot holes in the budget agreement.

No, it is not a sacred document. No, there is nothing holy about it. But I do know one thing. There is not a single Member of this body who goes home and brags about how the deficit has run. There is not one of us who is comfortable or satisfied with the awesome deficit that faces this country, and our children and our grandchildren.

Whether it is a Senator who has the best voting record on controlling spending, or the worst—all speak out against the deficit. Here is where it counts. Here is where we go to the very core of our attitude with regard to the budget deficit. And that is waving the one protection we have against runaway spending. That protection is a slender budget agreement that we have.

Is it easy? No. Is it popular? Perhaps not. But it is the one protection we have in this Congress to keep spending within guidelines. If we ignore it, if we throw it away, if we create loopholes in it, if we undercut it, we do away with the very discipline that can provide a future for this country.

One of the documents that was produced through the General Accounting Office this last year showed that if we would bring this country to a balanced budget and a slight surplus that in 20-some years, we would have—really by the year 2020, literally 28 years—we could have a 50-percent higher per capita GNP than if we continued on our current rate.

Put a different way: If we continue to ignore the budget, if we continue to shoot loopholes in it, we guarantee this country a much lower GNP. We guarantee this country a dimmer future. We guarantee this country lower savings, lower capital formation.

This is not just a vote about Medicare contractors. If it were just a vote about $1.147 billion, my guess is it would be resolved very quickly. It is a vote about much more than that. It is a vote about the integrity of the process. It is a vote about sticking to a deal. It is a vote about whether or not we have the gumption as legislators for this Nation to follow guidelines.

No, the budget deficit will not get out of control just on this one vote. But what it will do is send one more signal to the American people that this Congress is incapable of facing up to the financial problems in front of us.

I hope the Members of this body, regardless of how they feel on the tax bill, regardless how they feel about the very wise legislators who worked on it, regardless of how they feel about many of the very fine provisions of the bill—and there are many good provisions in the bill—I hope they will insist that the Budget Act be followed. Because without that commitment, we do not stand a chance in a world competitive market.

Some of my friends who are advocates of the IRA will be thinking about whether or not they will be voting to waive the budget. They believe in the IRA's. I believe in the IRA's. It is so important they may feel it overrules their need to stay within the budget. I hope not.

Some in the real estate industry look at this bill and see enormous benefits that could come. Are they there? Yes; I think they are. There are some real pluses in this bill.

But I say to my friends who are tempted with those provisions to ask themselves what happens in the real estate industry or other industries in this country if we simply throw out the window a willingness to abide by the rules? If we throw out of the window, even our thin, meager efforts to stay within the budget act? My guess is, on reflection, they will believe that sticking with a deal, sticking with the budget, sticking with the rules, outweighs a short-term benefit that comes with this tax bill.

Mr. President, it is with that concern that I now point your attention to the conference report accompanying H.R. 11, the Revenue Act of 1992, and point out that it contains provisions dealing with matters within the jurisdiction of the Senate Budget Committee. In pursuant to section 306 of the Congressional Budget Act, I raise a point of order against the conference report.

The PRESIDING OFFICER (Mr. LIEBERMAN). Under the previous order, the Senator from Texas is recognized.

Mr. BENTSEN. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive all provisions of the Congressional Budget Act for consideration of the conference report of H.R. 11.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. DOLE. I suggest the absence of a quorum.

The PRESIDING OFFICER. There is not a sufficient second.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENTSEN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to waive the Congressional Budget Act. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Tennessee [Mr. GORE], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Vermont [Mr. LEAHY], the Senator from Nebraska [Mr. REID], and the Senator from North Carolina [Mr. STANFORD] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Montana [Mr. BOND], the Senator from North Carolina [Mr. HELMS], the Senator from Vermont [Mr. JEFFORDS], the Senator from Wisconsin [Mr. KASTEN], the Senator from Kentucky [Mr. MCCONNELL] and the Senator from Alaska [Mr. MURKOWSKI] are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina [Mr. HELMS] would vote "nay."

The yeas and nays resulted—yeas 60, nays 29, as follows:

[Rollcall Vote No. 269 Leg.]

YEAS—60

Adams
Akaka
Baucus
Bentsen
Biden
Bingaman
Boren
Bradley
Breaux
Bryan
Bumpers
Burdick, Jocelyn
Byrd
Chafee
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dixon
Dodd
Exon
Ford
Fowler
Glenn
Graham
Grassley
Harkin
Hollings
Inouye
Johnston
Kerrey
Kerry
Kohl
Lautenberg
Levin
Lieberman
Mack
Mikulski
Mitchell
Moynihan
Nunn
Packwood

Pell
Pressler
Pryor
Riegle
Robb
Rockefeller
Roth
Sarbanes
Sasser
Specter
Stevens
Thurmond
Warner
Wirth
Wofford

NAYS—29

Brown
Burns
Coats
Cochran
Craig
Dole
Domenici
Durenberger
Garn
Gorton
Gramm
Hatch
Hatfield
Heflin
Kassebaum
Lott
Lugar
McCain
Metzenbaum
Nickles
Rudman
Seymour
Shelby
Simon
Simpson
Smith
Symms
Wallop
Wellstone

NOT VOTING—11

Bond
Gore
Helms
Jeffords
Kasten
Kennedy
Leahy
McConnell
Murkowski
Reid
Sanford

The PRESIDING OFFICER. On this vote, the yeas are 60, the nays are 29. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The point of order falls.

If there is no further debate, the question is on agreeing to the conference report.

Mr. MITCHELL. Mr. President, I request the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mrs. BURDICK. Mr. President, on this vote, I have a live pair with the Senator from Vermont [Mr. LEAHY]. If he were present, he would vote "nay." If I were permitted to vote, I would vote "yea." Therefore, I withhold my vote.

Mr. FORD. I announce that the Senator from Tennessee [Mr. GORE], the Senator from Nebraska [Mr. REID], and the Senator from North Carolina [Mr. SANFORD] are necessarily absent.

On this vote, the Senator from North Dakota [Mrs. BURDICK] is paired with the Senator from Vermont [Mr. LEAHY]. If present and voting, the Senator from Vermont would vote "nay" and the Senator from North Dakota would vote "yea."

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. BOND], the Senator from North Carolina [Mr. HELMS], the Senator from Vermont [Mr. JEFFORDS], the Senator from Wisconsin [Mr. KASTEN], the Senator from Kentucky [Mr. MCCONNELL], and the Senator from Alaska [Mr. MURKOWSKI] are necessarily absent.

I further announce that, if present and voting, the Senator from North Carolina [Mr. HELMS] would vote "nay."

The PRESIDING OFFICER (Mr. AKAKA). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 67, nays 22, as follows:

[Rollcall Vote No. 270 Leg.]

YEAS—67

Adams
Akaka
Baucus
Bentsen
Bingaman
Boren
Breaux
Bryan
Bumpers
Byrd
Chafee
Cochran
Cohen
Conrad
Cranston
D'Amato
Danforth
Daschle
DeConcini
Dodd
Domenici
Exon
Ford
Fowler
Garn
Glenn
Gorton
Graham
Gramm
Grassley
Harkin
Hatch
Hatfield
Hollings
Inouye
Johnston
Kennedy
Kerrey
Kerry
Kohl
Lautenberg
Levin
Lieberman
Mack
Mikulski
Mitchell
Moynihan
Nickles
Nunn
Packwood
Pell
Pressler
Pryor
Riegle
Robb
Rockefeller
Roth
Sarbanes
Sasser
Seymour
Simpson
Specter
Stevens
Thurmond
Warner
Wirth
Wofford

NAYS—22

Biden
Bradley
Brown
Burns
Coats
Craig
Dixon
Dole
Durenberger
Heflin
Kassebaum
Lott
Lugar
McCain
Metzenbaum
Rudman
Shelby
Simon
Smith
Symms
Wallop
Wellstone

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Burdick,
Jocelyn, for

NOT VOTING—10

Bond
Gore
Helms
Jeffords
Kasten
Leahy
McConnell
Murkowski
Reid
Sanford

So the conference report was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. BIDEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader.

PROVIDING FOR THE SINE DIE ADJOURNMENT OF THE SECOND SESSION, 102D CONGRESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of House Concurrent Resolution 384, the adjournment resolution now at the desk.

The PRESIDING OFFICER. The clerk will state the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res 384) providing for the sine die adjournment of the 2d Session, 102d Congress.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 384) was agreed to, as follows:

H. CON. RES. 384

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Thursday, October 8, 1992, or Friday, October 9, 1992, pursuant to a motion by the Majority Leader, or his designee, it stand adjourned sine die, and that when the Senate adjourns on the calendar day of Thursday, October 8, 1992, or any day thereafter, pursuant to a motion made by the Majority Leader, or his designee, in accordance with this resolution, it stand adjourned sine die or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this resolution.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. SYMMS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL addressed the Chair.

MORNING BUSINESS

The PRESIDING OFFICER. I now ask unanimous consent that there be a period for morning business, with Senators permitted to speak therein for up to 10 minutes each.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Senator BRADLEY of New Jersey is recognized.

WHATEVER IT TAKES

Mr. BRADLEY. Mr. President, perhaps we had hoped for too much, when we hoped for a Presidential campaign free of character assassination and smears. Whatever—any such hope we did have has been destroyed. Last night the President himself struck the telling blow on a live television call-in show, darkly hinting that there was something oh so sinister in Bill Clinton's travels abroad as a student. His kinder, gentler Presidency has given way in the campaign home stretch to a bitter reminder of the means he used to win it, 4 years ago—innuendo and smear.

This is a President who last December said he would do "whatever it takes" to win reelection. Now, less than 1 month before the election, with the President trailing badly in the polls, impugning the patriotism of the Democratic nominee for the Presidency falls into the whatever-it-takes category.

Bill Clinton traveled as a student to what was then the Soviet Union, in the late 1960's. He did this while he was studying at Oxford as a Rhodes scholar. Not exactly the stuff that tabloid coverage is made of, even by today's lower standards.

Mr. President, I went to Russia when I was a Rhodes scholar. It was a great trip. I saw totalitarianism up close, was revolted by it, met hundreds of Russians, Ukrainians, found them to be warm and friendly people whom I hope ultimately would triumph in throwing off the yoke of communism. That summer I drove and camped about 1,100 miles through Byelorussia, Russia, and Ukraine. I went with three fellow students from Oxford, one Englishman, two Americans, one of who became an assistant to Henry Kissinger and worked in the Reagan State Department.

Mr. President, what does the President imply? That we were unpatriotic to go? That anybody who as a student traveled to Russia is unpatriotic? What hogwash. I thought education was learning about the world firsthand, as well as from books.

No, Mr. President, this is a smear. Should President Bush be held accountable for every trip he has made abroad as a private citizen? Has he been to the former Soviet Union as a private citizen? How many times? What did he do? Where did he go? Who did he talk to?

Also, how about any trips he might have taken as a private citizen to Iraq, to China, to Libya, to Iran, to Panama? How many? When? What did he do? What did he see? To whom did he talk?

Mr. President, this would be ridiculous if it were not so sad. The President himself said on TV last night, "I don't have the facts. I don't have the facts."

He may not have the facts, but that did not stop him from going on national television to make unsubstantiated allegations, raise innuendoes, and try some awkward guilt by association. Those tactics should be recognized by those in this body who are familiar with the history of the Senate in the 1950's and the activities of the junior Senator from Appleton, WI, at the time. It is called McCarthyism.

This country rejected then the divisive discourse which now carries that Senator's name. But that victory, like all great victories in matters of high principle, is maintained only at the price of continuous hard-fought vigilance. So, when we hear what we heard last night, when we hear it no less from a President of the United States, we must reply with a passion and commitment which still echo through the years, since that last great struggle. "Have you no sense of decency, sir, at long last? Have you no sense of decency?"

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, it is clear, following up on the comments of my colleague from New Jersey, and I think it is most regretful that the President has decided to again travel down division road.

Last night on "Larry King" the President of the United States said some things that both surprised me and, I must say, saddened me. The man who began his term saying in his inaugural address that he would heal this Nation is seeking now, in apparent frustration and desperation, to divide it.

When asked last night about Bill Clinton's trip to the Soviet Union in 1969, 23 years ago, Mr. Bush said, "Larry, I don't want to tell you what I really think because I don't have the facts."

But then, having properly said that he does not have the facts, having properly deferred, the President proceeded to say exactly what he thinks and to show us how he thinks. He proceeded to conjure up images, to create murky impressions, to raise without facts what he knows to be the purest speculation. He proceeded to draw on his own murkiness, saying, "I really think the answer is, level with the American people. You can remember who you saw in an airport in Oslo, but you cannot remember who you saw in Moscow."

Enter, the "Moscow" word, and all the connotations of 1969 that might conceivably go with it.

Mr. President, the operative sentence was the President of the United States' own statement, "I don't have the facts." But, without the facts it obviously could not be clear what he really was saying. But make no mistake, it is very clear what he meant to imply. He demanded that Bill Clinton level with the American people, and proceeded to lambaste him for demonstrations led against his own country.

Mr. President, I am having a lot of trouble understanding why the President of the United States is unwilling to draw a distinction between demonstration against a policy and a demonstration against your country. I know of very few demonstrations that were against country. I know of many that were against a policy in favor of country.

It seems to me that for a President of the United States to impugn people's right to dissent is in fact to impugn the very thing that so many have laid their lives down for, that is so much at the heart of what we are as a nation.

What saddens me, also, Mr. President, is here we are, a nation saddled with the worst economic situation in 50 years, a $3.9 trillion debt, millions of our fellow citizens losing jobs—literally losing homes; losing faith in the political process itself; a record epidemic of violence in our streets; environmental and economic challenges as great as our country has ever known; a multitude of crises around the globe. Yet all the President of the United States, the leader of the free world, wants to talk about is what Bill Clinton did 23 years ago as a student.

Well, incredible as it may seem, that is precisely the kind of demonstration of being out of touch with the real concerns of the American people that makes Americans increasingly anxious about their future and, equally as important, makes them cynical about the governmental process.

I ask my colleagues to think for a moment about that cynicism. Remember back to last winter when we all sat out here in front of the Capitol on a cold January day at the ritual of the inauguration of the President of the United States, and President Bush said at that time, as I recall, in a very eloquent and healing inaugural address:

> Our great political parties have too often been far apart and untrusting of each other. It's been this way since Vietnam. That war cleaves us still. But, friends, that war began in earnest a quarter of a century ago and surely the statute of limitations has been reached.

The President went on to say:

> This is a fact: The final lesson of Vietnam is that no great Nation can long afford to be sundered by a memory.

Those were his words and those are words that ought to be spoken by a President of the United States.

So what has happened to the George Bush who made that statement? Why, President Bush, now do you choose to break another promise? Why do you choose to break your own statute of limitations? Why do you choose yourself to bring back the memory that only 4 years ago you said sundered this Nation? Is your desire to hold office really so great that you would betray your own sense of decency and fairness? Is your desperation now really so great that you would adopt a conscious strategy of reopening and pouring salt on some of the most painful wounds that our Nation has ever experienced?

How sad to say in one breath to Larry King, "I don't have all the facts," and in the very next breath to conjure up a litany of make-believe associations which try vainly to question patriotism.

Every single one of us knows the issue in this campaign is not Bill Clinton's patriotism. I think he has proven that in a dozen different ways, Mr. President. And as one who served in Vietnam and one who is proud of my service in Vietnam, I can still personally say that even by agonizing over his responsibilities as a young American and by ultimately putting his name into the draft lottery, despite the deepest reservations about the war, I can say that that was a form of service to country. I can say that he has proven his patriotism by living out his life as a public servant, not enriching himself, but rather working to enrich the lives of others. So we can say these things, Mr. President. They are true.

The issue in this campaign is not Bill Clinton's patriotism, not the patriotism of anyone running for office. That is not the issue in this campaign. The issue in this campaign ought to more properly be the question of promises made of those who run for elected office and the question of the failure of those promises where that failure is evident or a failure even of leadership.

Mr. President, we are left asking today if the only promise that you are now prepared to keep is the promise you made to do anything to get reelected?

Mr. President, you and I know that if support or opposition to the war were to become a litmus test for leadership, America would never have leaders or recover from the divisions created by that war. You and I know that if service or nonservice in the war is to become a test of qualification for high office, you would not have a Vice President, nor would you have a Secretary of Defense and our Nation would never recover from the divisions created by that war.

And you know, Mr. President, and I know that if a person's patriotism or love of country is to be judged by a single set of standards based on just one of the many perspectives that our Nation's collective emotions and memories bring to us from that tortured era, then our Nation will never recover from the divisions recreated by that war.

Mr. President, we believe that you know better. You have more decency than that and you should have more pride than that. We have come over time to learn that a President of the United States has many roles. He has many responsibilities. One of those obviously is to govern. Another is to lead. But surely another is to teach, and we are left asking: What are you teaching America in this campaign? Are you saying that those who dissent from national policy must be branded as traitors? Bill Clinton is not the first future President of the United States of America whose ideals or principles or beliefs came into conflict with those who were in power. Washington, Adams, Jefferson came into conflict with those in power. Lincoln protested the war in Mexico and our Nation's shameful embrace of slavery. Franklin Roosevelt led a virtual revolution of dissent against Republican economic policies of his time.

And, Mr. President, we ask that you do not try to tell us or teach us that dissent is wrong. Please do not try to convince us that Bill Clinton loves this country less because he opposed a war in which so many of our young people died and which so many viewed as a terrible mistake. Please do not try to persuade us in 1992 that Bill Clinton's past is more important than America's future in this election.

Mr. President, one last thing I say about the Rhodes scholarship. In these statements, regrettably, the man who wanted to be the education President seems to be tarnishing and even denigrating one of the highest honors that a young American scholar can achieve. The President has suggested that it is somehow suspicious or wrong that a Rhodes scholar would seek to enlarge his or her education by further travel to foreign countries.

Mr. President, to take the honor that was bestowed upon Bill Clinton and so many others who serve in this Chamber and other distinguished Americans and to try to cheapen it and make it seem like a badge of dishonor is just plain wrong. And for the so-called education President to disparage educational excellence diminishes us all.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I regret the comments my two fellow Senators have made. I watched the "Larry King Show" last night and I found it very appropriate for the President to say he did not have the facts but he had some questions. When does asking a question become undignified or unfair? And I have some questions. I share those questions with the President.

We hear about this college student from Arkansas. He was a college graduate from Arkansas, a college graduate who wrote to the University of Arkansas ROTC and said.

> I have written and spoken and marched against a war. After I left Arkansas last summer I went to Washington to work in the national headquarters of the moratorium, then to England to organize the Americans there for demonstrations.

Now I think it is entirely appropriate to ask the question, was it just protest? I have no argument with people who protested the war. As a matter of fact, we all knew many people who protested the war. The question is, should a man who organized an effort in a foreign country against the policy of the United States become President of the United States?

And what is more, what is wrong with asking? What was he doing there? He went over to be a Rhodes scholar and it is true, as the Senator from New Jersey says, many Rhodes scholars take trips throughout Europe, but this is 1969. Most people could not get into Russia at the time. He went in through Helsinki. Everyone knew what that was. That was a special entrant for those who were organizing protests against the United States involvement in Vietnam. Many of us were here trying to support those of our Americans who were in Vietnam still fighting an enemy.

We have, instead, a man who goes to London, a Rhodes scholar and what does he do? He stays there a year or so, then he ends up in Finland. He does, as the President said, remember the man he met there and spent 2 days. We have no explanation what he did in Czechoslovakia. What did he do in Moscow? What did he do in Russia? I think those are questions that ought to be answered by anyone who wants the trust of the American people to become President of the United States.

We are not, I think, looking at a question of what did some young boy do in his infancy as he was a student. He was a college graduate. He was older than I was after I came back from World War II and I was drafted during World War II. What I see is a man who wanted to avoid service in the military, the military of the United States, not just not be involved in Vietnam, he did not want to serve in the military of the United States. And yet he wants to be the Commander in Chief of that military.

I think these are questions that have to be asked, but as the father of three sons, and I wish one of them might have been a Rhodes scholar, I ask another question: Why did he not sit for the examinations? He was over there 2 years. He did not take the examinations. He did not bring back a degree from those British colleges.

He did not sit for the examinations. Instead, he decided to tour Europe, go to Czechoslovakia and go to Russia. And I would like answers to the questions the President's asked. What was he doing? Who was he with?

The Senator from New Jersey readily says who he was with. He remembers just like that who he was with. Why cannot Governor Clinton remember who he was with? Why can he not remember what he did and why he went there? And why did he not go back and take those examinations?

He was a Rhodes scholar, representing this country abroad, trying to make an impression over there, I would assume. But more than that, I just think that the fathers of the sons who wanted to be Rhodes scholars were denied the opportunity because this man from Arkansas, a college graduate, not just some young college student, went over there and did not fulfill his job. He did not sit for his examinations. Why should he become President of the United States if he accepts the responsibility of being an American abroad, a student abroad as a college graduate and does not finish?

Now, I think those are questions that have to be answered. I see no reason for the opposition here to suddenly say it is unfair that the President raised this. Many of us have been raising those questions.

And I am part of the President's generation. I believe my generation wants some answers. We want answers to what this man did as a man, not as a boy. He was not a young student. He was a college graduate. He was over there organizing demonstrations against the policy of the United States.

If you want to protest here at home, fine. I do not believe an American should go abroad and protest abroad the policies of the United States, policies still supported, I might say, by a bipartisan group in the U.S. Senate at the time. And yet he wants to be Commander in Chief of the U.S. Armed Forces? No, no, not until he answers those questions, as far as I am concerned. He ought to come forward and say what he did. Who he was with. Why he went there. Who paid for it. Why did he go over there. And what did he do there. Why did he not go back and finish his job as a Rhodes scholar?

Mr. KERRY. Will the Senator yield?

Mr. STEVENS. No, I will not yield. The Senator took his time, and I will take mine. If the Senator wants a dialog after I am through, I will be happy to do it.

I think it is very unfair to come in and say the President did something unfair. Some have talked about character assassination. I heard it twice on the floor tonight. I hope I do not hear it too much more. I think we will be here a long time if you want to have a debate on Bill Clinton's service in the military. We will start going over it right now in terms of why did he not accept the draft.

Many of us were drafted. Why did he not accept service in the United States military after the time came when he could not have been sent to Vietnam? I can understand a protest against Vietnam, but I cannot understand not answering the call of your Government to serve in the military under a policy approved by the Congress, followed by every other young man that I know at the time. Many protested the war, but I did not hear many of them protesting going into the service. As a matter of fact, many of them completed their college education and then went in and served as he would have done if he had kept his commitment to ROTC.

There are a lot of things about this man that have to be explained, and I think in the next month we deserve some real explanation of what did the college graduate Bill Clinton do, not the student. He was not a college student. He was past being a college student. He had his degree. He had something many people in that day wished they had, and he went overseas; he went into London. He had an opportunity really, a marvelous opportunity for his educational activity, and he did not finish it. He did not finish it. Why did he not sit for his examinations?

I do not think the President went far enough. He should not be criticized for asking the questions. He should be criticized for not asking all of the questions.

Mr. BIDEN addressed the Chair.

Mr. KERRY. Will the Senator yield?

Mr. STEVENS. I am not sure I have the time. It is under morning business. I will be happy to yield if I have the right to yield.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator has 2 minutes.

Mr. KERRY. I would simply ask the Senator, with respect to the issue of protesting or demonstrating abroad, I know the Senator would agree with me that a protest, if you enter into it on a policy, is not a protest against your country; it is a protest on policy. And there are Democrats abroad. There are Republicans abroad. They are organized as such. They are allowed to vote. We appeal to them to vote. And indeed even on occasion Senators address them abroad. They do not lose their rights, as the Senator knows. And we have embassies in each of those countries to protect their rights.

So I would ask him, would he now strip the right of Bill Clinton to speak as a citizen abroad, which is a right we protect under our Constitution?

Mr. STEVENS. No, I would not strip the right of anyone under the Constitution but I am talking about an explanation. He wrote this letter. I did not write this letter. He wrote the letter to the ROTC, and he said he then went to England to organize Americans there for demonstrations. I thought he want there as a Rhodes scholar. I find out he was there organizing a protest in front of the American Embassy.

I can understand foreign students, college students going before the Embassy of the United States. We have seen it all around the world.

I do not know one American who has done that abroad, gone and organized foreign students to come in front of the American Embassy and protest in front of our American Embassy, protest and try to attract the attention of Americans there against the Government of the United States there.

Those Americans knew what was going on here. You did not have to have someone from Arkansas go to London and organize a protest. There were many people over there who disagreed with the war, and there were many who supported it.

As a matter of fact, at that time in 1969 the American people still supported the war. So did this Senate support it in 1969. And I say to my friend from Massachusetts, the problem is Governor Clinton ought to tell us what he was doing.

Read the Washington Times this morning, as a matter of fact, if you want to look at his war record and see the inconsistencies in what he said so far. He has a lot of questions to answer. And I think the President ought to continue to ask that he tell the American people the truth. What was he doing there? Why did he go? Why did he not go back and finish his studies after he had been there? Now, I want to know that.

If the man is going to be Commander in Chief of the military and part of the defense surveillance group here in the Senate, I think we ought to know. Should we not have confidence in this man as Commander in Chief? He ought to tell us what he was doing over there.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Delaware.

ANSWERING QUESTIONS WITH QUESTIONS

Mr. BIDEN. Mr. President, I sought recognition because I want to speak to the situation in Bosnia, but I am dumbfounded by what I am hearing on the Senate floor. This is absolutely bizarre.

Let me answer, although I did not intend on doing this, the question of my friend from Alaska. I have great respect for him. But, I am dumbfounded that he has posed the question he posed. He said, if I am not mistaken: "When does asking a question become wrong?" The answer: When you know by asking the question you are going to create an impression you know not to be true. That is when it is wrong.

It is like my standing before a candidate when I am running for office and saying I want everyone to know I know my friend here does not beat his wife. I believe he is not a wife beater. I know that. Or my asking—it would be absolutely preposterous, since I am opposed to President Bush's reelection, for me to stand and say, I have a question: Why, when President Bush's plane went down, did he survive and the man behind him die? Did he leave him there to die?

That would be outrageous for me to do. But it is equally preposterous to suggest, unless the President really believes Bill Clinton, at 22 years of age, went over to Moscow to confer with the KGB. Does he really believe that? For gosh sakes. What are we talking about? Does the President of the United States want to know what happened? It reminds me of that movie: I know who you are, and I can see you, and I am watching what you are doing.

My God. It is wrong to ask the question when you know by raising it, it creates an impression that you do not believe to be the case. Let us assume Bill Clinton can go back 25 years and figure out everybody he spoke to.

Let us assume that for a moment. It is irrelevant unless he believes that somebody he spoke to was recruiting him to undermine the United States. This is ridiculous. I am ashamed the Senate is even discussing this. Let me get on to something substantive, if I may, in the little time I have left in an unrelated matter to this malarkey that is being spread around here.

BIPARTISAN SUPPORT FOR A MORE DETERMINED POLICY TO ASSIST BOSNIA AND HERCEGOVINA

Mr. BIDEN. Mr. President, this week saw two important developments in American policy toward the conflict in Bosnia.

The first was a measure incorporated in the conference report on the Foreign Operations Appropriations Act. That measure, which I introduced last week, calls on the President to seek the lifting of the U.N. arms embargo against Bosnia—and, contingent on that action, authorizes the transfer of $50 million in United States military weapons and equipment to the Sarajevo government, provided that our allies participate in such a program of military assistance.

This new law will, I believe, send a strong message to the President and to America's allies.

It signals, unmistakably, that Congress is prepared to back a strong policy of opposition to the savage and unabated slaughter being perpetrated by Serbs in Bosnia. It embodies our conviction that the United States should lead the United Nations in lifting the embargo against Bosnia and in helping to provide to the people of that country the means to defend themselves.

The second new development in the past week was a Presidential announcement on October 2, which signaled that the administration, too, is moving toward a more robust American policy. In effect, the President declared that the agreements reached at the recent London Conference have failed.

In the President's words:

> Bosnian cities remain under siege, the movement of humanitarian relief convoys is still hazardous, and innocent civilians continue to be slaughtered.

At London, the President continued,

> The parties agreed to a ban on all military flights over Bosnia. Yet the bombing of defenseless population centers has actually increased. This flagrant disregard for human life and for a clear agreement requires a response from the international community, and we will take steps to see that the ban is respected.

President Bush went on to express his recognition that the combination of continuing war and oncoming winter could result in the death of tens of thousands of innocent people in Bosnia. In response, he announced several steps the United States would take immediately. Among these, the two most significant, in my judgment, were these:

First, the United States will seek a new Security Council resolution that establishes a no-fly zone over Bosnia—a ban on unauthorized flights that the President pledged the United States to participate in enforcing, if requested.

Second, the President announced that the United States will take steps in concert with other nations to increase the impact of sanctions of Serbia.

As to sanctions, the President did not describe his specific intentions. But I must hope the administration will seek an immediate cessation of the arms embargo against Bosnia. Surely the greatest single step the United Nations could take to increase the impact of sanctions on Serbia is strengthen the arms embargo against Serbia while lifting the arms embargo against Bosnia.

However well intentioned, the arms embargo against Bosnia has had the undeniable effect—the unfair, unconscionable, and thoroughly perverse effect—of freezing the people of that country in a state of utter defenselessness.

As to a no-fly zone over Bosnia, the need for United Nations action is both obvious and urgent. At present—indeed, probably at this very moment—Serbian planes are engaged in a merciless, relentless bombing of Bosnian civilians, using some 20 aircraft currently operating from a Serb-controlled airbase within the territory of Bosnia itself. For their part, the Bosnians have not a single aircraft with which to defend themselves.

It cannot be too much to ask of the international community to ban this savagery—and, if necessary, intervene to suppress it.

As originally envisaged by the administration, the Security Council would not only impose a ban on all flights over Bosnia, but would also—at the same time—authorize measures of enforcement if the ban is violated. Our British and French allies, however, have argued that in view of two factors—the politics of the Security Council and the safety of existing British and French humanitarian relief forces—it would be wiser to seek enforcement authority later; only if a no-fly resolution is passed, then violated.

I have no comment to offer on this procedural question—except this: The Security Council, whatever its methodology, should entertain no delay at all in imposing a ban and then enforcing it. If that can best be done through two consecutive measures, so be it.

What we are speaking of here—let us state it plainly—is the use of force. But it is a use of force that would occur only if the U.N. Security Council acts and then Serb forces continue to bomb Bosnian civilians. Consider this: Serbian attack planes are now using humanitarian airlift flights as cover to protect themselves on their bombing missions. They are creating carnage and then using the relief effort as protective cover while they inflict more carnage.

Mr. President, this moment in history will not be soon forgotten. It may indeed rank with the Spanish Civil War as an historic test of what the international community is—or is not—willing to stomach. In the year 1992, as we stand poised on the threshold of a new world order, the plight of Bosnia poses a test of our moral mettle—a test that cannot be passed with empty rhetoric.

Because it would be nothing less than a conscious act of negligence if we and our allies do not oppose such barbarism, I must certainly hope that a majority of my colleagues in both Houses would support American participation in a United Nations use of force as may be needed to prevent a continuation of this particularly flagrant horror.

Yet even with that sentiment, what is lacking is a formal measure that transfers congressional support into clear-cut Presidential authority—the kind of clear-cut authority needed for both constitutional and political reasons when force is used.

Because circumstances now present us with the possibility that such an authorization might well be needed while Congress is in adjournment, I believe Congress should—as a matter of policy and as a matter of constitutional principle—act to provide such authority before adjournment.

If our constitutional system were functioning with greater fealty to the intent of the Framers, the President would even now be requesting such authority. That, however, is a debate we need not resume today. The point is that he needs such authority—I repeat, for policy and for constitutional reasons—and in the current circumstances I believe there is a congressional will to see him so authorized.

Such a measure can take the form of the simple joint resolution I now send to the desk. I ask unanimous consent that I read the text, rather than the clerk. The resolution states as follows:

> Whereas the President on October 2 declared his intention to seek United Nations Security Council approval of a ban on all flights in Bosnian airspace except those authorized by the United Nations;
>
> Whereas the President stated his further intention that United States armed forces would participate in enforcement measures, if requested by the United Nations; and
>
> Whereas Congress finds that such a ban on unauthorized flights in Bosnian airspace could alleviate the tragic plight of Bosnia and Hercegovina and help to avert the death of tens of thousands of its citizens in the winter ahead; Congress hereby:
>
> (1) commends the President on his October 2 announcement; and
>
> (2) authorizes the President to employ the armed forces of the United States to participate in enforcing a Security Council decision to ban unauthorized flights in the airspace of Bosnia and Hercegovina.

Mr. President, we have entered the final month of a heated political season. But as we do, I hope that the terrible tragedy of Bosnia is one subject we can keep out of partisan debate.

Ideally, in my view, Congress would now act promptly—whether requested by the President or not—to approve the necessary authority by which the

President can carry out the U.N. decision he has pledged himself to seek. In so doing, I believe, we would express strong and valuable support for the President in acting under the United Nations in helping to alleviate the horrible suffering in Bosnia—suffering that assuredly awaits the beleaguered people of that desperate country unless the United Nations does act.

I fully recognize the obstacles to achieving congressional, or even Senate, action in so short a time. But as to the Senate's role, I would simply say: Let us do what we deem necessary, and let the House respond as its leaders and Members determine.

In this connection, I would point out that the current situation underscores, quite vividly, the need for the rewrite of the War Powers Resolution I have long proposed. I believe we must uphold the constitutional principle that significant uses of force require congressional authorization. But I believe we can accomplish that through a new and more soundly crafted law that gives due deference to the principles of the Founders and the need, in some cases, for rapid Presidential decision.

Mr. President, I believe that squaring the circle can be accomplished—as I described in a law review article some time ago—by providing, in permanent law, a generous but still circumscribed range of Presidential authorities, along with a delineation of effective procedures by which Congress can, in specific circumstances, extend the limited preauthorization.

I ask unanimous consent that the article I referred to be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Georgetown Law Journal, December 1988]

THE WAR POWER AT A CONSTITUTIONAL IMPASSE: A JOINT DECISION SOLUTION

(By Senator Joseph R. Biden, Jr.,* and John B. Ritch III**)

I. INTRODUCTION

During a period of relative tranquility at home and abroad, the question of how America goes to war begins to seem academic if not anachronistic. But the war power occupies a solemn place in our constitutional system, and if history is any guide, the issue—not just of war, but the process by which we decide on it—will once again acquire prominence and passion. This abiding question warrants dispassionate analysis in the calm before those fevers arise.

With the American Constitution now 200 years old, one might expect so fundamental a question to have been resolved—by two centuries of constitutional experience, if not by the Constitution itself. But in fact the reverse has occurred. Today the war power question is debated not in its nuances, but in its essence by two sharply conflicting factions whose arguments are charged with all the energy and ideology of two decades of dispute over policy and principle.

Ironically, the focus for this contention—the lightning rod—is a sixteen-year-old law intended by its framers to *resolve* the issue and facilitate harmony by establishing a constitutionally sound and functioning mechanism for decision. At least thus far, this admirable aim has met defeat.

Enacted over the veto of President Nixon, who attacked it as an unconstitutional infringement on the Executive's powers as Commander in Chief, the War Powers Resolution of 1973[1] was heeded by President Ford and affirmatively accepted by President Carter.[2] But the 1980s saw the dispute resurrected, as the Reagan Administration, abetted by former President Ford speaking in a newly critical voice and by an Executive-oriented element in Congress, grew steadily bolder in denouncing both the Resolution and its underlying rationale. Meanwhile others in Congress continue to regard the War Powers Resolution as sound in its constitutional premises, even if imperfect in its details, and to insist upon presidential compliance.

With the conflict having degenerated into trench warfare, we have reached what amounts to a constitutional impasse that will debilitate American foreign policy for so long as it goes unresolved. While the prospects for a solution appear unpromising, that goal should be the object of a genuine search. For the achievement of broad agreement on the constitutional parameters surrounding the war power, and the codification of this consensus in accepted procedures, would serve the nation not only in time of crisis, but by fostering greater comity and clearer focus—on the part of both the Executive and the Congress—in the constant interaction form which American foreign policy emerges.

Symptom of the impasse: A chronic debate over procedure

The most recent case in point arose in 1987, when the Reagan Administration placed Kuwaiti oil tankers under the American flag and committed the United States Navy to protect those vessels in the Persian Gulf. As this policy rather haphazardly emerged, the Administration presented it as a simple matter of principle—an assertion of the right of innocent passage on the high seas. In fact, Administration policy represented nothing less than a major commitment of American forces on the Iraqi side in the Iran-Iraq War.[3]

Whatever its ultimate wisdom or folly, this action was a complex, high-risk undertaking not at all self-evident in its justification. With American forces about to begin a mission entailing a considerable possibility that the United States would be drawn into one of this century's bloodiest wars, surely a significant debate was in order—whether in public or behind closed doors—to establish the requisite congressional support. Yet that debate hardly occurred. Instead, Congress quickly descended, as it has several times in recent years, into a debate not on the policy at issue but on the procedure—specifically, how the requirements of the War Powers Resolution might apply, and indeed whether that law is even constitutional.[4]

Such a focus on procedure was no doubt inevitable since the Administration had, by defying the requirements of the War Powers Resolution, denied Congress any role in a decision portending United States involvement in a major war. Nonetheless, intellectual energies needed for analysis of the national interest in the situation were diverted, as on prior occasions, into frenzied argument over legalisms. Did these circumstances fulfill the criterion of "hostilities or . . . imminent involvement in hostilities," as specified in the War Powers Resolution? If so, when had the sixty-day time clock for congressional authorization begun to run? Since the President had not sent Congress the required report, which would clearly trigger the clock, how could anyone know for sure that the clock was running? Could Congress make it run? Et cetera.

Essence of the problem: Two sharply divergent views

In late 1987, recognizing such digressive and divisive debate as a chronic phenomenon rather than an exceptional incident, the Senate Foreign Relations Committee established the Special Subcommittee on War Powers to review and reassess the entire problem.[5] During 1988, the Subcommittee held extensive hearings involving some thirty witnesses—including a former President, key legislators involved in originating the War Powers Resolution, current and former Secretaries of Defense and State, current and former Chairmen of the Joint Chiefs of Staff, the State Department Legal Adviser, and numerous historians and constitutional scholars.[6]

Several witnesses articulated what has become a commonplace: that enactment of the War Powers Resolution in 1973 was little more than a misguided symptom of congressional disillusion with the Vietnam War and that matters could be straightened out if Congress simply would repeal the law.[7] But in fact, as the hearings underscored, what is at stake is a profound constitutional issue, defined by a fundamental divergence of view which, in historic perspective, has appeared only recently, and which will not be resolved by the expedient of erasing an existing law. This divergence concerns the nature and extent of the inherent constitutional authority of the President to commit the United States to hostilities. It is conflict over *this authority*, not the existing law, that is the essence of our current problem.

One view can fairly be labeled "monarchist." This model sees the President as having virtually unlimited authority to deploy and use the armed forces in pursuit of what he regards as the national interest. Monarchists concede that Congress can act to constrain the President, but they argue that the only congressional power relevant to warmaking is the power of the purse.[8] In short, if the President starts a war to which Congress objects, Congress can always cut off the money to wage it. Certainly this is a clean division of labor. But what merits debate is whether it is a constitutionally mandated division of labor or even a desirable one considering its ultimate effect on American foreign policy.

The practical implications of the monarchist are sobering. Congress will never fail to provide overall funding for the armed forces, and the President can veto military appropriations bills containing restrictions he finds unacceptable. Thus, under the monarchist model, in order to stop a President from using American forces in a particular way, Congress faces the task of passing a specifically restrictive law over his veto. Monarchists would thus grant a determined President a free hand so long as he sustains the support of one-third-plus-one in either house. Under this model, even if Congress eventually asserts its will by insisting that the President sign an appropriations bill with restrictive amendments, the role envisaged for Congress is purely reactive and negative—a role played only after a presidential policy has been unilaterally implemented and has gone awry.

The alternative view advanced herein is a "joint decision" model.[9] Its premise is that there are indeed limits on the President's independent power to commit forces to combat—limits that, while not precisely defined in the Constitution, exist nonetheless and may be delineated in codified, constitutionally sound procedure. In this view, the President draws his independent authority not from some robust concept of the President as an all-knowing and nearly omnipotent Commander in Chief, but from a more limited Executive responsibility to protect the nation and its citizens from immediate threats. Under the joint decision model, presidential power to use force in the absence of statutory authorization derives from the concept of emergency: the need to repel an attack on the United States or its forces, to forestall an imminent attack, or to rescue United States citizens whose lives are imperiled. Conversely, any policy involving a sustained use of force must derive from an affirmative decision of the entire government, including Congress.

Evaluating these two models is complex not only because the Constitution itself is vague but also because custom and practice—the deeds of two centuries of American history—offer a wealth of examples that are cited to support both sides of the argument. Such confusion tends to work in favor of the monarchist model by inducing a kind of collective constitutional shoulder shrug—an attitude that, since the Constitution appears unclear, perhaps we would do best to let the President get on with the business of defending American interests as he sees fit. On the other hand, the constitutional situation is, upon examination, not as murky as the monarchists would have it.

Intent of the Framers

The intent of the Framers of the Constitution cannot resolve this debate,[10] but is the logically necessary point from which to begin when the text itself seems unclear.[11] The Constitution they drafted is, in its allocation of powers affecting foreign policy, "cryptic and ambiguous"[12]—and, one must conclude, purposefully so. The greatness of the Framers lay not only in what they knew but in their wise recognition of what they could not know. In foreign policy they recognized the need for flexibility. As Alexander Hamilton wrote in the Federalist, "[I]t is impossible to foresee or to define the extent and variety of national exigencies * * *. The circumstances that endanger the safety of nations are infinite; and for this reason, no constitutional shackles can wisely be imposed on the power to which the care of it is committed."[13]

But rejecting "shackles" did not mean rejecting processes by allocating foreign policy to one unconstrained authority. Clearly, the Framers wished to repose strong executive power in the President—to overcome the chaos that had characterized government under the Articles of Confederation. But on the question of warmaking, the Framers' thoughts were dominated by their experience with the British King, whose power, as analyzed by Blackstone, included "the sole prerogative of making war and peace."[14] Such powers the Framers were determined to deny to the President. Accordingly, even so staunch an advocate of presidential power as Hamilton emphasized that the President's power as Commander in Chief would be "much inferior" to that of the King, amounting to "nothing more than the supreme command and direction of the military and naval forces."[15] This power was not to include the decision on war itself.

Indeed, an early draft of the Constitution reserved exclusively for Congress the power to "make war."[16] Later this was changed to "declare war." But the reason for the change is instructive. In the convention, James Madison and Elbridge Gerry argued for the amendment solely in order to allow the President "the power to repel sudden attacks."[17]

The Framers had no interest in the ceremonial aspects of declaring war. Even then, as Hamilton noted, "[T]he ceremoney of a formal denunciation of war" had "of late fallen into disuse."[18] The real issue was congressional authorization of war. And on that issue there appears little doubt that the Framers' aim was to empower the President to respond when war was imposed on the nation, but not to empower him to undertake war on his own.

II. THE WAR POWER THROUGH TWO CENTURIES

Constitutional practice: 1789 to the Civil War

In the early years of the new Republic, James Madison summarized the Framer's intent in a letter to Thomas Jefferson: "The Constitution supposes, what the History of all Govts demonstrates, that the Ex. is the branch of power most interested in war, & most prone to it. It has accordingly with studied care vested the question of war in the Legisl."[19]

Since a fair reading of the Framers' intent makes it difficult to draw any conclusion at odds with Madison's authoritative summation, modern-day monarchists must rest their constitutional arguments less on original intent than on constitutional practice, in which they claim to discern a long history of support.[20] Let us therefore scan the two centuries for evidence and themes. Does American history confer legitimacy on presidential warmaking?

The first potential example for the monarchist case arose when President John Adams deployed naval forces in an undeclared war with France from 1798 to 1801. But on examination this episode can offer the monarchists little solace, for Adams actually sought and obtained congressional support. Indeed, Congress ultimately became more belligerent than Adams, passing a number of measures aimed at encouraging successful prosecution of the conflict.[21]

The young Republic's war with France also produced significant Supreme Court decisions bearing on the question of limited war, a phenomenon that modern monarchists often suggest lies outside the provisions of the Constitution. The Constitution itself had touched on this subject by reserving for Congress the authority to grant "Letters of Marque and reprisal,"[22] licenses issued to private citizens empowering them to seize enemy ships in an 18th century version of limited war. But the Court's rulings made the matter of limited war still clearer. Wars, the Court said, even if "imperfect," are nonetheless wars.[23] Moreover, Chief Justice John Marshall ruled that "Congress may authorize general hostilities . . . or partial hostilities."[24] In short, all war—not just full-scale "perfect" war, but also limited war—falls within the constitutional concept of war.

In still another case arising from this conflict, Little v. Baremme,[25] Chief Justice Marshall rendered a decision of enormous importance in defining the scope of the President's inherent powers. Congress had barred all commerce with France and authorized the seizure of American vessels bound for France.[26] Marshall ruled that Congress had thereby clearly implied a limit on the President's power in enforcing the ban. This, the seizure of an American vessel sailing from France conflicted with the congressional will and was therefore illegal. By acting, Congress had preempted presidential discretion.[27]

Modern monarchists also refer habitually to the actions of Adams' successor, Thomas Jefferson, in coping with Barbary pirates, whose attacks on shipping caused Jefferson to dispatch the Navy and brought the United States into a limited and undeclared war with Tripoli from 1801 to 1804.[28] But note President Jefferson's concept of the constraints on his inherent power: United States naval forces, he told Congress, were "unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense."[29] He thereupon requested "authorizing measures of offense," which Congress quickly granted.[30]

Jefferson spoke similarly a few years later. Having made history's sharpest real estate deal by purchasing Louisiana, he addressed himself to the question of whether American forces should be used against the Spanish, whose incursions from Florida posed a threat to the newly acquired territory. Jefferson told Congress that "Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force * * *. The course to be pursued will require the command of means which it belongs to Congress exclusively to yield or dent".[31]

The War of 1812, during the presidency of James Madison, does not bear on either side of our modern-day argument over the war power. It was the first of our five declared wars,[32] the only in which the declaration was not simply a formality acknowledging the prior existence of war, and holds historical interest primarily as a reminder that Congress is not always more peace-loving than the President. In spoiling for a fight, the War Hawks in Congress were way ahead of Madison.[33]

But our second declared war, with Mexico in 1846, does hold relevance to the current constitutional predicament. Hostilities began when President Polk sent American troops into disputed border territory, where they were attacked by Mexican forces defending Mexico's claim. Congress responded by declaring war.[34] But two years later, with the war still on, the House of Representatives, convinced by now that it had been hoodwinked by a presidential fait accompli, resolved that the war had been "unnecessarily and (unconstitutionally begun by the) President of the United States."[35]

An elderly Congressman, former President John Quincy Adams, who had served a quarter century earlier as James Monroe's Secretary of State and had devised the famous doctrine that bore Monroe's name, gave his last hours in public life to denouncing Polk's effort to justify the war as an application of the Monroe Doctrine.[36] Meanwhile, a younger colleague, Congressman Abraham Lincoln, offered a classic articulation of the dilemma of presidential warmaking we face today:

"Allow the President to invade a neighboring nation, whenever he shall deem it necessary to repel an invasion * * * and you allow him to make war at pleasure. Study to see if you can fix any limit to his power in this respect * * *. If today, he should choose to say he thinks it necessary to invade Canada, to prevent the British from invading us, how could you stop him?" You may say to him, "I see no probability of the British invading us," but he will say to you, "Be silent; I see it, if you don't."[37]

The President's ability to deploy forces with major effect was displayed again just a few years later, in 1854, when Franklin Pierce sent Commodore Perry and a naval squadron to "open up" Japan through a persuasive show of power. But there also were many other, less conspicuous deployments. In the thirty years before the Civil War, U.S. naval forces were used without specific congressional authorization in more than a dozen instances to deal with pirates or unobliging natives in locations ranging from Africa to the South Pacific.[38]

Significantly, however, Presidents continued to pay heed to the distinction between deploying forces and the authority to initiate hostilities. Polk, after all, did obtain a declaration of war before proceeding to wage the Mexican conflict his deployment of forces had precipitated. On the eve of the Civil War, President James Buchanan summed up the state of the war power after some seventy years of constitutional practice: "[W]ithout the authority of Congress the President cannot fire a hostile gun in any case except to repeal the attacks of an enemy."[39]

Constitutional practice: The Civil War to 1950

In the Civil War itself, President Lincoln undertook such sweeping measures in the absence of congressional authorization that one Supreme Court Justice labeled Lincoln's presidency a "military despotism."[40]

In the last third of the 19th century, the country looked westward; and American history begins to offer modern monarchists some vague precedent for their case only after a rising imperialist instinct had produced our third declared war: the Spanish-American War of 1898.[42] Victory over Spain made the United States a world power, and brought with it the territorial gains of conquest. In the newly acquired Philippines, U.S. forces quickly became mired in an undeclared, unauthorized, and far bloodier war with our new subjects. This savage counterinsurgency, involving some 130,000 American troops, presaged in many respects the much later tragedy in Vietnam.[43]

The Philippines, of course, was at least technically a United States possession; China was not. There President McKinley opened the new century—and set the tone for a more presidentially assertive phase in our constitutional history—by dispatching five thousand American troops to join an international force that quickly put down the Boxer Rebellion. McKinley did so without congressional authorization, using as his pretext the protection of American lives and property.[44] His action aroused no congressional objection, paving the way for similar exercises of unilateral power by Presidents Roosevelt, Taft, and Wilson in the Caribbean and Latin America in the years before World War I.[45] President Wilson did obtain our fourth official declaration of war before sending troops to Europe in 1917,[46] but did not seek congressional authorization when he dispatched troops to Siberia after the First World War had ended.[47]

From a historical perspective, the century's first two decades had served to raise the war power issue. But the monarchist model had by no means established itself, as President Wilson soon discovered. In one of several formal reservations he attached to the Versailles Treaty, the Republican Chairman of the Senate Foreign Relations Committee, Henry Cabot Lodge, stipulated that Congress had the "sole power" to "authorize the employment of the military or naval forces."[48] (Such views, it is interesting to recall, were once the essence of Republicanism.)[49] Lodge's reservations, which killed the treaty's ratification, expressed sentiments—against presidential discretion and for isolationism—that were to govern American policy for the next two decades.[50] By 1939, the outbreak of war in Europe found President Franklin Roosevelt heavily constrained both by strict neutrality laws and by the balance of power in Congress.[51]

For two years, before Pearl Harbor produced our fifth and last declaration of war[52] and ended American isolationism forever, Roosevelt pressed against such limits to the utmost. He exchanged American destroyers for British bases by executive agreement, sent American troops to Greenland and Iceland, and instituted a convoy system in the North Atlantic, issuing "shoot on sight" orders to the United States Navy.[53] Yet when Senator Robert Taft challenged the constitutionality of the move into Iceland, Roosevelt responded not with sweeping claims of inherent presidential authority but by continuing to maneuver as best he could to prepare the United States for the war he expected to come.[54] In perhaps his most significant prewar policy, Lend-Lease, Roosevelt sought and obtained congressional authorization.[55]

When World War II ended, leaving the United States a superpower supreme on the world stage, the constitutional status of the war power still appeared reasonably clear. Through a century and a half, Presidents had on numerous occasions used troops for police actions and, in the free-wheeling period before World War I, had even installed provisional governments in Latin America. It also was generally recognized, as Lincoln had discerned, that a presidential deployment of forces could in itself create the circumstances that might lead to hostilities. Yet our history to that point offers little true support for the monarchist model. Presidents had on numerous occasions acted unilaterally under the justification of defending American citizens or forces. But no President had ever asserted an inherent right to take the nation to war.

All this was about to change, although not immediately. In the five years following the Second World War, the Truman Administration courted Congress assiduously to ensure support for America's new world role.[56] The establishment of the United Nations,[57] the beginning of the international exchange program,[58] aid to Greece and Turkey under the Truman Doctrine,[59] the launching of the Marshall Plan,[60] and the creation of NATO[61] pursuant to the Vandenburg Resolution[62]—all had the full participation and imprimatur of Congress. Neither Truman nor his representatives suggested any challenge to "the constitutional premise that U.S. commitments abroad required an Executive-Legislative partnership and were impossible by Executive fiat."[63]

Thus, and this bears emphasis, the era now fondly regarded as "the golden age of bipartisanship" in American foreign policy was a product not only of international statesmanship at both ends of Pennsylvania Avenue, but also of a Truman presidency that did not, during its first five years, seek to test the limits of Executive prerogative.[64]

The postwar period: "Monarchism" in bloom

With the outbreak of the Korean War, this pattern of constitutional partnership was skewered by an unprecedented presidential assertion. In June 1950, in dispatching American naval and ground forces to the defense of South Korea, the Truman Administration declined to seek congressional authorization and instead asserted, with elaborate legal argument, an inherent presidential authority to act unilaterally to protect the "broad interests of American foreign policy."[65]

The full constitutional significance of this "fateful moment"[66] was obscured at the time.[67] But in fact an extraordinary transformation had occurred in Executive-Legislative relations. As former Senator J. William Fulbright recently reflected:

> "With the famous bipartisanship of the late 1940s, the Senate and the House of Representatives had cooperated in a series of steps by which the United States assumed a role of world leadership. But having done so, Congress found itself facing an Executive that would point to these global responsibilities as justification for bypassing traditional requirements for congressional approval."[68]

For many who would later condemn it—such as Fulbright[69] and historian Arthur Schlesinger, Jr.[70]—the emergence of a monarchist approach to foreign policy did not originally appear unwarranted or dangerous. Indeed, it seemed the unavoidable and rational response to compelling circumstances. America's pre-World War II isolationism was now regarded as symptomatic of congressional myopia, while the President as Commander in Chief had acquired tremendous stature during the war and in the formation of postwar alliances. Meanwhile, the emerging Cold War posed ominous uncertainties to which the nuclear age added an overarching danger. In such an environment, Truman, Eisenhower, and Kennedy seemed far safer custodians of the national security than a Congress which in the 1950s "allowed itself to become a forum for the shameful anti-communist witchhunt of McCarthyism"[71] and which remained, even thereafter, a hothouse of parochialism. To many reasonable observers, proponents of congressional prerogative were seen as agents not of constitutional balance but of unenlightened reaction.

By 1960, Dean Rusk, in an article that presaged his service as Secretary of State for Presidents Kennedy and Johnson, was able to write in *Foreign Affairs:* "As Commander in Chief the President can deploy the Armed Forces and order them into active operation. In an age of missiles and hydrogen warheads, his powers are as large as the situation requires . . . ."[72] A year later, as the United States crossed into the New Frontier, Senator Fulbright, by now chairman of the Senate Foreign Relations Committee, reflected the tenor of the times and of prevailing congressional sentiment with these extraordinary words:

> "The price of democratic survival in a world of aggressive totalitarianism is to give up some of the democratic luxuries of the past. We should do so with no illusions as to the reasons for its necessity. It is distasteful and dangerous to vest the Executive with powers unchecked and unbalanced. My question is whether we have any choice but to do so."[73]

Within four years, Fulbright himself took the lead in saying yes, there was a choice. The turning point, in early 1965, was President Johnson's dispatch of 22,000 U.S. troops to the Dominican Republic. While rationalized as a rescue of endangered Americans, this action came as a sudden throwback to the gunboat diplomacy of a half century before.

But the compelling and defining issue was, of course, Vietnam. In 1964, prior to the presidential election, Johnson had engineered the Gulf of Tonkin Resolution, arguing privately that a demonstration of American unity would help him avoid any deeper involvement in Southeast Asia.[74] By the summer of 1965, however, the Administration had begun its escalation, citing the Resolution in the process.[75] Fulbright's break with Johnson ended a longtime friendship and set the stage for the televised Senate Foreign Relations Committee hearings that were to become, in the late 1960s, the principal public forum for the nation's growing disenchantment with the Vietnam war.

By eliciting the Tonkin Gulf Resolution, albeit under dubious pretenses, Johnson at least had paid some deference to the concept of congressional authorization for the use of force. But with the election of Richard Nixon, monarchism reached full bloom. At the time of the Korean intervention, Secretary of State Acheson had pleaded expediency.[76] Two decades later, the argument of expediency had become doctrine. In 1970, when President Nixon sent U.S. forces into Cambodia with neither congressional authorization nor even consultation, his accompanying assertions of autonomous presidential power[77] were so sweeping and so extreme that the Foreign Relations Committee began a search, led by Senator Jacob Javits, for some means of rectifying what was now perceived as dangerous constitutional imbalance. The result, three years and scores of hearings later, was the War Powers Resolution—a somewhat flawed compromise between differing Senate and House versions.[78]

III. THE WAR POWERS RESOLUTION: A FLAWED EFFORT TO RIGHT THE BALANCE

The mechanism envisaged by the War Powers Resolution is simple. If the President introduces U.S. forces into "hostilities or situations where imminent involvement in hostilities is clearly indicated by the circumstances," he is required under §4(a)(1) to report within forty-eight hours to Congress. Under §5(b), this report triggers a sixty/ninety-day period[79] within which the President must obtain congressional authorization if hostilities are to be sustained.[80] Before expiration of that period, Congress may also, under §5(c), require by concurrent resolution that the action be terminated.[81]

Unfortunately, the Resolution contains readily identifiable flaws. The Resolution begins with an attempt to enumerate comprehensively the President's authorities to use force but—primarily as a result of a flawed bargaining process between competing House and Senate versions—presents them inadequately. Section 2(c) lists only three authorities: (1) pursuant to a declaration of war; (2) pursuant to specific statutory authorization; and (3) in order to repel an attack on U.S. territory or forces. It thus omits two circumstances—rescuing Americans and forestalling an imminent attack—that had been in the original Senate version and that most constitutional scholars would place under the heading of the President's established constitutional authority and responsibility.

The Resolution then raises puzzling questions about the relationship between those authorities it cites and the sixty-day clock. According to §5(b), the clock does not apply if Congress has declared war or enacted a statutory authorization for a specific use of force. Nor does it apply if Congress is physically unable to meet as a result of an attack on the United States. Thus, the Resolution exempts from the workings of its central mechanism virtually every action it affirms as residing within the President's authority.

The Resolution, by its own logic, does not exempt from the sixty-day clock the circumstances in which the President has acted within his acknowledged constitutional authority to repel an attack and Congress, though able to meet, has not provided a declaration of war or a statutory authorization. The Resolution thereby appears to apply a sixty-day limit to an inherent presidential power that, quite arguably, cannot be so limited. This logical flaw, and the rather glaring omissions of §2(c), have made the Resolution an easy target for its critics.

No critic was more biting than Senator Sam Ervin, who focused on the repelling-invasion scenario during the 1973 Senate debate:

"This measure is an absurdity. It says that when the United States is invaded, Armed Forces of the United States must get out of the fight against an invader at the end of [sixty] days if Congress does not take affirmative action within that time to authorize the President to continue to employ the Armed Forces to resist the invasion . . . . [This means] the President must convert Old Glory into a white flag . . . if Congress does not expressly authorize him to perform the duty the Constitution imposes on him to protect the Nation against invasion."[82]

A fuller statement of presidential powers in §2(c) would not only have been sounder constitutionally, but would also have provided a reasonable application of the sixty-day clock to the presidential powers acknowledged by the Resolution. Specifically, had §2(c) affirmed the President's constitutional authority to rescue Americans and to forestall attacks on the United States and its armed forces, it would be arguable that such presidential authorities to act abroad, though constitutionally derived, depend on the rationale of emergency and therefore are limited in time and scope. Under these circumstances, the sixty-day clock could be defended as a mechanism to implement the principle that the President may respond to certain emergencies but may not transform them into a policy of protracted warfare without congressional approval.

Since the War Powers Resolution did not recognize these additional powers, however, and since the authorities on the actual list are not limited by the sixty-day clock (or, in the case of repelling attack, not properly limited), the Resolution carries the unavoidable implication that its clock mechanism is intended to apply to presidential initiatives undertaken without proper authority. This implied expectation—that the President regularly will overstep his constitutional authority—weakens the Resolution substantially. As Professor Louis Henkin testified, "Declarations of constitutional limitation on the President are undermined if Congress proceeds to assume that he will violate them and prescribes procedures for such violations."[83]

Indeed, the implied assumption of routine presidential excess raises a practical question: If Congress expects the President to violate constitutional limits in committing forces, why expect his dutiful adherence to a legislated time limit on keeping forces deployed?

There is, it should be noted, one way to avoid construing the Resolution as implying an expectation that the President will exceed his proper authority. But to do so, one must construe the Resolution as constituting, in and of itself, an authorization under which the President may wage war for sixty/ninety days. While this certainly was not the congressional intent,[84] one of the War Powers Resolution's original champions, Senator Thomas Eagleton, recognized the danger that such an inference would be drawn and denounced the Resolution in its final form for that reason.[85]

Still another flaw—many would argue—lies in §5(c), which permits Congress to require a cessation of military action by concurrent resolution. In the aftermath of the Supreme Court's 1983 decision in *INS* v. *Chadha*,[86] which found that legislative vetoes violate the Constitution's presentment clause,[87] most scholars who otherwise support the Resolution's constitutionality accept the unconstitutionality of §5(c).[88] Although this view is by no means universal,[89] defenders of the Resolution are generally disposed to see this subsection repealed because it is not crucial to the Resolution's purposes and serves "only to provide an excuse for denunciation and defiance of the entire Resolution."[90]

While these flaws did not escape notice at the time of enactment, an even more fundamental flaw in the War Powers Resolution was not anticipated—the impotence of the Resolution's basic mechanism if a President capitalizes on ambiguities available in the §4 reporting requirement. Section 4(a) of the Resolution provides that:

"In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—

"(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

"(2) into the territory, airspace or water of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or

"(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation; the President shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth—

"(A) the circumstances necessitating the introduction of United States Armed Forces;

"(B) the constitutional and legislative authority under which such introduction took place;

"(C) the estimated scope and duration of the hostilities or involvement."[91]

Section 5(b) stipulates that the clock begins when "a report is submitted or required to be submitted pursuant to section 4(a)(1)." But since a decision by the President not to submit a report leaves unresolved whether a report was "required to be submitted," the clock is unambiguously triggered only when a report is actually transmitted *and* when it explicitly identifies the situation as one described in §4(a)(1).[92] Conversely, if the report provides some or all of the information required by subparagraphs (A), (B), and (C), but fails to affirm the existence of a §4(a)(1) situation, the applicability of the clock is again left in doubt. Since the Resolution's enactment, Presidents have used this ambiguity to their advantage by doing precisely that, nodding in the direction of the War Power Resolution while avoiding formal acceptance of its fundamental mechanism.[93]

In the past sixteen years, Congress has received nearly a score of presidential reports described as "consistent with" the War Powers Resolution. Only one has made specific reference to §4(a)(1): President Ford's 1975 report on the Mayaguez incident, submitted after the event.[94] Thus, in the entire history of the War Powers Resolution, the sixty-day clock has never been unambiguously triggered. As in the recent United States naval deployments and hostilities in the Persian Gulf, Congress has been left to engage in periodic debates about the constitutionality of the law and the President's degree of compliance with it—examining only secondarily the substantive merits of the policy at issue.

Options today

But if the War Powers Resolution has never worked as envisaged, the question remains: Could it work? Could such a framework facilitate, rather than complicate, Executive-Legislative interaction in the decision to use American forces abroad?

Certainly the Resolution's flaws described here do not make the case for repeal; they are correctable. The "legislative veto" provision is severable and can be repealed. Any implied time limit on the President's authority to repel attacks on the United States could be excised. And the list of inherent presidential authorities could be expanded, thereby removing the two deleterious implications mentioned earlier: that the clock applies only in instances in which the President has already violated the stated limits on his authority or, alternatively, that the Resolution bestows presidential powers beyond those a President would otherwise possess. Together, these alterations deprive the Resolution's critic—right and left—of their principal constitutional complaints.

Moreover, the most common operational criticism of the Resolution—that Congress could shirk its responsibility by inaction, leaving the President high and dry and forcing a withdrawal after sixty days[95]—is simply spurious, an allegation that has achieved effect not by persuasive force but through sheer repetition. Indeed, under the logic of the Resolution, it is difficult to imagine how withdrawal-via-inaction could occur, because §6 guarantees highly expedited legislative procedures insuring time-certain voting on any authorization measure introduced pursuant to the President's submission of a §4(a)(1) report. This means that, in either house, any one of the President's supporters could introduce a measure—providing precisely the authorization sought by the President—that would automatically reach a vote within a matter of days.

Thus, the criticism of potential congressional inaction is not only groundless but ironic. The problem is not that Congress may fail to give the President an answer; the problem is that Presidents have refused to ask.

Presidents have refused to ask for such authorization—not just under the War Powers Resolution, but beginning with Truman—on the basis of the relatively modern notion that to do so would weaken the Presidency. One must wonder whether, in acting on this rationale, they have succumbed, as the Foreign Relations Committee argued in 1970, to the dubious "notion that great Presidents are those who act effectively to strengthen the office of the Presidency as distinguished from strengthening the constitutional system as a whole."[96] The Committee quote historian Thomas Bailey:

"The bare fact that a President was a strong one, or a domineering one, does not necessarily mean that he was a great one or even a good one. The crucial questions arise: Was he strong in the right direction? Was he a dignified, fair, constitutional ruler, serving the ends of democracy in a democratic and ethical manner?"[97]

One must also ask whether, in their resistance to the very idea of the War Powers Resolution, Presidents have failed to take advantage of the real benefits such a procedure offers for registering, quickly if necessary, a formal expression of national consensus behind key policies that depend on broad support for success. The truth is that any presidential policy involving a use of force enjoys an enormous presumption of support. Thus, should a President ever choose to submit a §4(a)(1) report declaring that hostilities had begun or were imminent and requesting immediate authorization for operations necessary to protect American lives and vital national interests, Congress would be profoundly reluctant to accept responsibility for thwarting his policy. Indeed, only if the President's policy were subject to severe and legitimate doubt would Congress be likely to resist his request—a valuable function for Congress to perform. But, in any case, a vote would occur: a joint decision would be reached.

Presidents nonetheless have declined to set foot on this playing field under the advice of successive counselors that to accept the constitutionality of the game would undermine the Presidency itself.[98] Unfortunately, while the device of filing reports "consistent with" the War Powers Resolution has served the purpose of avoiding a head-on confrontation, it has left us fettered to a law that purports to be fundamentally important, but which the President fundamentally flouts.

In dealing with this constitutional impasse, our options today appear three-fold.

The first is to accept the status quo. Chairman Dante Fascell of the House Foreign Affairs Committee, a veteran legislator keenly familiar with the War Powers Resolution in all its aspects, testified that this probably was the most we could hope for.[99] He recognizes the liabilities of the current law, but his pessimism about any practical prospect of enacting improvements leads him to find a silver lining: the War Powers Resolution, whether presidents accept it or not, at least stands in law as a cautionary admonition against presidential excess.

The second option is repeal, or the functional equivalent thereof—as in the current Byrd-Warner proposal,[100] which would establish a formal congressional consultative group to interact with the President in critical situations, but which would denude the law of its principal "joint decision" mechanism: the requirement of congressional authorization. Functional repeal would have the one clear benefit of removing the law itself as a chronic object of dispute each time a use of force occurs. But it would have the distinct and almost unavoidable liability of symbolizing congressional acceptance of the monarchist model now asserted by the Executive.[101] It would return us to the status quo ante, but with a strong presumption that the monarchist model not only had prevailed but had been explicitly accepted by Congress. Since many in Congress are not prepared to accept that model, it would leave Congress and the Executive still at odds on a basic constitutional issue—with the Executive's hand somewhat strengthened.

The third possibility is to legislate a new framework on which Congress and the President can agree, a framework that more successfully embodies the "joint decision" concept. This means devising a set of authorities and procedures that both branches accept as constitutional and as desirable in the conduct of American foreign policy. While this possibility requires a convergence of view and a measure of comity that now seem unlikely, one nevertheless can envisage the premises of such a framework and the elements it might comprise.

Premises of a constitutional compromise

A new joint decision framework would be built on the premise that the war power is subject to legislation.

The most elegant rationale for this premise was articulated by Professor Louis Henkin and others during the hearings of the Special Subcommittee on War Powers.[102] Under their reasoning, the war power falls into what Justice Jackson, in his famous concurring opinion in the Steel Seizure Case,[103] called "a zone of twilight" in which the President and Congress have concurrent authority.[104] In this zone, Marshall's old rule in *Little* v. *Barreme* [105] customarily governs: the President can act unless Congress acts; if Congress acts, its legislation supersedes an otherwise valid order of the President.

Other scholars move more directly to the conclusion that the war power is subject to legislative delineation, resting their argument on a straight-forward reading of the Constitution: the power of the Congress to declare war and the mandate to Congress to "make all Laws which shall be necessary and proper for the carrying into Execution the foregoing [congressional] Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."[106] They argue that, except in emergency situations affecting the security of American citizens or the country as a whole—situations which compel the President to act without prior congressional approval—the power to commit troops to combat is subject to congressional control, including any procedures Congress may choose to delineate in law.[107]

Obviously, general acceptance of a joint decision framework would entail that the Executive yield the more extravagant constitutional claims made in defense of the monarchist model. But it would require, too, some recognition that the supposed need for unconstrained presidential authority in the modern age, which gave rise to such claims, has been exaggerated, as has the assumed superiority of executive branch sources of "intelligence." In an era when it has become clear that a good journalist's published analysis of events abroad will often prove as sound as a highly classified National Intelligence Estimate, the cult of Executive expertise, which enjoyed a long run in the first decades of the postwar period, has surely had its day.

This is not to say that the President should be constrained in any way in protecting the nation during a genuine emergency or that Congress, in situations requiring longer-term judgment, will always contribute Solomonic wisdom to a joint decision. But neither can we assume that the presidency is a repository of flawless geopolitical instinct; history supports no expectation of consistent sagacity in either branch. Whatever its widely advertised foibles, Congress does, by its very nature, represent the broad diversity of America, and its members possess an enormous collective body of experience and common sense as to what works and what does not in the real world of human behavior, at home and abroad. In time of decision on war and peace, Congress' collective response will constitute a threshold test of whether the President's policies can win and sustain needed public support.

A new framework also requires the Executive to recognize that, ultimately, American foreign policy may benefit in use-of-force situations from the smooth workings of an agreed-upon system that yields a prompt congressional response. Motivated by patriotic instinct and sheer politics, Congress will, in almost any reasonable case, support a President's call to arms. And it is all the more likely to support him if the procedure for decision is no longer in dispute. Such a procedure thus can be doubly effective in fostering unanimity: it will force Congress off the sidelines while removing a chronic complaint about process.

IV. OUTLINES OF A NEW "JOINT DECISION" FRAMEWORK

A new "joint decision" framework could involve several elements.

New title

An initial element, more than cosmetically important, would be a new title to the law. After years of contention, the very name "War Powers Resolution" elicits attitudes so conflicting, entrenched, and emotion-charged as virtually to preclude rational debate and the grand compromise necessary for a new framework. Among its liabilities, the existing title invites digressive semantic debates as to what constitutes a war, whereas the real subject at issue is how the United States should decide on a policy that entails the likelihood of extended warfare. The current name also conveys an impression that legislation in this area represents a small-minded congressional effort to prosecute a parochial dispute about "powers," even at the cost of impeding military actions needed for American security.

In truth, the new law's purpose would be essentially that of its predecessor: to provide an effective mechanism, consistent with the Constitution, for joint decisionmaking on the use of American military power. But this affirmative aim, and the expectation that force will be used where necessary, would be more plainly conveyed by a title such as "The Use of Force Act."

Enumeration of Presidential authorities

The key element of a new framework would be to move beyond the now sterile dispute over precisely what the Constitution, unembellished by legislation, allows and to accommodate practical reality by enumerating and affirming in law a broad range of soundly conceived presidential authorities. Such authorities would be available to the President without incident-specific congressional action—but, except in emergencies, only for a limited period. This listing would include and subsume those emergency authorities to use force regarded as *inherent* presidential powers deriving from accepted constitutional practice. And it would include additional authorities that Congress might wish, in the national interest, to grant, such as a circumscribed authority to preempt or retaliate against clearly identified acts of terrorism.

It bears emphasis that Congress would not, through this technique, be *conceding* constitutional authority to the President, but rather *exercising* its own constitutional power to define and delegate authority. In the War Powers Resolution, enacted in an atmosphere of heated interbranch contention, Congress explicitly sought to confer *no* authority. Its intention was to rein the President in from assertions of unwarranted authority. In contrast, through a Use of Force Act, Congress would affirmatively delegate authorities that embrace and extend beyond those independently held by the President solely through the Constitution. In doing so, however, Congress would impose standards, limitations, and procedures pursuant to its own constitutional powers.

One authority, clearly not inherent but which Congress might wish to provide, would empower the President to use force pursuant to a decision of the United Nations Security Council[108]—as President Truman did in Korea, with the difference that Truman acted unilaterally, asserting an inherent authority.[109] It seems inconceivable that Congress would wish to thwart the United States' participation in any multilateral use of force on which the Security Council could unanimously agree, particularly if the President had consulted with the congressional leadership before participating in the United Nations' decision. From the President's perspective, genuine consultation would be the essence of prudence, since an *extended* use of force would eventually require congressional approval. Such a pre-authorization to the President could, in an international emergency such as the Korean intervention, prove useful and would serve, by its very existence, as a symbol of American support for multilateral, consensus-based U.N. action.

A similar authority for multilateral action would empower the President to use force in cooperation with America's democratic allies under circumstances wherein military intervention could have decisive effect in protecting existing democratic institutions in a particular foreign country against a severe and immediate threat. As with the U.N.-related authority, built-in constraints on the President would derive from the need to act multilaterally and the eventual need to obtain congressional authorization for a sustained use of force.

In legislation creating a new framework, all such authorities would be placed under the conceptual heading of "confirming and conferring," so as to avoid an endless dispute over the exact location of the line between what the President already possesses independently and what Congress was bestowing upon him by this legislation. By way of example, this aggregation of authorities could take the following form:

Authority and Limits

§1 (a) In the absence of a declaration of war or statutory authorization for a specific use of force, the President, through powers vested by the Constitution and by this law, is authorized to use force abroad—

(1) to repel an armed attack upon the United States, its territories, or its armed forces;

(2) to respond to a foreign military threat that severely and directly jeopardizes the supreme national interests of the United States under extraordinary emergency conditions that do not permit sufficient time for Congress to consider statutory authorization;

(3) to protect and extricate citizens and nationals of the United States located abroad in situations involving a direct and imminent threat to their lives, provided they are being evacuated as rapidly as possible;

(4) to forestall an imminent act of international terrorism known to be directed at citizens or nationals of the United States, or to retaliate against the perpetrators of a specific act of international terrorism directed at such citizens or nationals;

(5) to protect, through defensive measures and with maximum emphasis on multilateral action, internationally recognized rights of innocent and free passage in the air and on the seas;

(6) to participate in multilateral actions undertaken under urgent circumstances and pursuant to the approval of the United Nations Security Council; and

(7) to participate in multilateral actions undertaken in cooperation with democratic allies under urgent circumstances wherein the use of force could have decisive effect in protecting existing democratic institutions in a particular nation against a severe and immediate threat.

(b) Force may not be used for purposes of aggression, and any and every use of force shall be subject to the principles of necessity and proportionality. Accordingly, force may be used only—

(1) if every effort has been made to achieve the objective set forth in subsection (a)(1)-(7) by means other than the use of force;

(2) with levels of force, in a manner, and for a duration essential to and directly connected with the achievement of such objective; and

(3) if the diplomatic, military, economic, or humanitarian consequences of such action are in reasonable proportion to the benefits of such objective.

Some would doubtless see in the affirmation of such authorities a dangerously excessive congressional concession. Indeed, the authorities listed above would have sanctioned such actions as the initial stages of the Korean intervention (clause 6); the Cuban missile crisis blockade (clause 2); the Iranian hostage rescue attempt (clause 3); the Dominican and Grenada invasions (clause 3, to the extent that evidence of danger to American citizens could be adduced and the limitations of subsection (b) where met); the Libya bombing (clause 4, to the extent that Libyan culpability in terrorism could be adduced); and initiation of the Persian Gulf escort operation (clause 5, to the extent the action could be justified as a defense of free passage).

But while generous in scope, this affirmation of authorities would also define and limit what the President can do and what justifications he can properly use—as opposed to the current monarchist situation in which no limits are even acknowledged.[110] By outlining broad but specific authority, the law also would be constraining: in accord with Marshall's rule in Little v. Barreme, what is not authorized is prohibited.

This approach—explicit authorization entailing implicit constraints—provides a sound constitutional means by which Congress can step usefully into Justice Jackson's "zone of twilight." By granting express authorities it would illuminate, in practical situations, when the President's authority is "at its maximum." Conversely, by implying which measures would be incompatible with the will of Congress, it would clarify those circumstances in which the President's power is "at its lowest ebb."[111] Thus, a Use of Force Act would serve not only to provide standards for evaluating actions already taken, but as a guide for action—an important function of all law.

An obvious concern is that the President could abuse such authorities by presenting a distorted interpretation of events. But the Chief Executive can present his version of events now, and there are no standards against which this portrayal can be weighed. In a functioning joint decision framework, a blatant distortion of authorities or circumstances would entail a clear risk. For such a framework would—except in an emergency directly imperiling the nation—empower the President to use force only in the short-term, and his efforts to obtain congressional approval for sustaining the action would be greatly compromised by a provocative act of misrepresentation.

Clearer definition of use of force

A new law also could more clearly define what kinds of activities are to be "captured" in its mechanism. The essential aim of a joint decision procedure is to ensure that the commitment of U.S. forces to sustained hostilities—to warfare—is based on affirmative congressional action. As a corollary, however, this crucial mechanism should not be triggered by any and all hostilities, including ephemeral incidents over which the President has no control. For example, we emphatically do not want a minor episode caused by a trigger-happy corporal on either side of the Korean DMZ, or by a band of terrorists, to set into motion a mandated decisionmaking process of the entire United States Government.

Our attention belongs primarily on uses of force involving some degree of United States policy initiative, in which American forces are newly deployed, or assigned to new duties, involving extensive combat or its likelihood. Our decision mechanism should go into effect only in the event of a commitment of forces to actual or prospective warfare.

Thus, in the case of forces already on-line abroad, minor episodes, however caused, would not fall within the statute because they involve no United States policy initiative, whereas major warfare resulting from foreign attack would become a "use of force" at the point when defensive measures required a presidential decision to dispatch military reinforcements. This dividing line is appropriate. Our mutual security treaties, under which most American forces are deployed abroad, do not in themselves constitute a presidential authorization to wage war. Rather, they represent an American commitment to participate in the defense of foreign nations via the constitutional decisionmaking process of the United States Government.[112]

As a practical matter, of course, basing American forces abroad places them intentionally at risk and constitutes a *circumstantial* commitment undertaken by the entire government from which may be inferred an expectation that the United States will bring in additional defensive means as necessitated by energy attack. But when defensive action abroad is transformed into sustained warfare, an authorizing act should be performed, both as a constitutional requirement and as a necessary means of galvanizing the nation behind a policy that will entail sacrifice and demand unity.

In current law a use of force requiring eventual congressional authorization is defined simply: the introduction of United States Armed Forces into "hostilities or situations where imminent involvement in hostilities is clearly indicated by the circumstances."[113] Unfortunately, the ambiguities surrounding the concept of "hostilities" are similar to those raised by the term "war," and the meaning of "clearly indicated by the circumstances" is equally subject to debate and obfuscation. Thus, during recent operations in the Persian Gulf, even after American naval forces aboard the *USS Stark* had been killed, even after American naval vessels had hit Iranian mines, even after U.S. forces had undertaken attacks against Iranian facilities—and indeed even after then Vice-President Bush had criticized Iran for permitting its ill-fated civilian airliner to fly "over a [U.S.] warship engaged in battle"[114]—the Reagan administration was unwilling to acknowledge that the United States Navy had been involved in actions requiring a report under §4(a)(1) of the War Powers Resolution.

No definition can ever fully escape susceptibility to quibbling, but a new framework might employ a more complete definition, along the following lines:

Definition

§2. The term "use of force" means the introduction of United States Armed Forces into hostilities or potential hostilities. Such action refers to situations where United States Armed Forces—

(i) have recently been introduced into the territory of a nation, or deployed to expand significantly the United States military presence in such territory, or committed to new activities in such territory or on the high seas; and

(ii) are operating with a substantial likelihood of inflicting or occurring casualties, or have inflicted or incurred casualties.

This somewhat more refined definition could avoid some of the confusion that has surrounded the phrasing in the current law and would serve the useful purpose of making clear that the mechanism is not intended to be triggered by an isolated incident involving U.S. forces already deployed in established roles. More important, it would make clear that the mechanism would indeed be triggered by combat activities involving U.S. forces in new or expanded roles emanating from presidential decision.

Consultation

A critical question is whether and how Executive-Legislative consultation might be improved. Consultation does not, of course, guarantee agreement or even comity. But genuine consultation, meaning a timely exchange of information and advice, should be considered the norm and a functioning joint decision law should aim to foster that process.

The Byrd-Warner bill would seek to do so—indeed it implicitly places all of its antimonarchist hopes in this basket—by specifying an eighteen-member congressional consultative group and requiring the President to interact with it in use-of-force situations. This is a useful measure, if for no other reason than to deprive the Executive of the long-abused excuse that Congress is so large that it is impossible to know with whom to consult. But a designated consultative group will prove hapless if future Presidents continue to view "consultation" as a matter of informing Congress at the last minute, rather than of soliciting the counsel of congressional leaders and acting on the basis of that consultation.

Because it depends on a certain habit of mind and behavior, genuine consultation is unlikely to occur spontaneously in crisis situations. Rather, it requires cultivation through regular Executive-Legislative interaction. Unfortunately, the trend in recent years has been the opposite. While the sunshine legislation of the 1970s served to open Congress to public scrutiny, it also, in the context of the television age, helped to convert hearings into theater, in which departmental secretaries and members of Congress most often speak with the larger audience in mind. Closed "executive" sessions, which once provided a regular venue for frank talk and the cultivation of personal familiarity, are now used almost exclusively for briefings, often by middle-level bureaucrats.

A new joint decision law, in addition to designating a congressional consultative group, could seek to counter the depersonalization of Executive-Legislative relations by institutionalizing regular, closed-door consultative sessions between key administration officials and their oversight committees, as follows:

Consultation

§3. (a) Except in the event of an extreme national emergency, the President shall seek the advice and counsel of the Congress prior to the use of force.

(b)(1) To facilitate consultation between Congress and the President on foreign and national security policy, when Congress is in session the following meetings shall occur as a regular practice, in open or closed session and with exceptions as agreed by the parties:

"(A) the Secretary of State shall meet monthly with the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives;

"(B) the Secretary of Defense shall meet monthly with the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives;

"(C) the Director of Central Intelligence shall meet monthly with the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives;

"(D) the President's National Security Adviser shall meet monthly with the Speaker of the House of Representatives, the House Majority Leader, the House Minority leader, the President Pro Tempore of the Senate, the Senate Majority Leader, and the Senate Minority Leader; and

"(E) the President shall meet at least once every three months with a Congressional Leadership Group, on which the Speaker of the House of Representatives shall serve as Chairman and which shall comprise the Members referred to in paragraph (D) and the chairmen and ranking minority members of the committees named in paragraphs (A), (B), and (C),"

(2) Such consultation shall have, among its primary purposes—

(A) identifying potential situations in which the use of force might be necessary and examining thoroughly the wisdom and lawfulness of such use; and

(B) in those instances in which a use of force has already been undertaken, discussing how such use of force complies with the provisions of subsection 1(b).

(3) To facilitate consultation under unusual circumstances, the President shall meet promptly with the Congressional Leadership Group on his own initiative or upon receipt of a special request from its chairman, who shall issue such special request pursuant to a request from a majority of the members of the Group.

A time frame for joint decision

Retention of some stipulated time frame would seem an unavoidable element of any joint decision mechanism for the simple reason that without a time period—a defined point by which affirmative congressional participation in the "joint decision" is necessary—the requirement for such participation would have no meaning. To underscore the decisiveness of the clock, the law should specifically invoke Congress' most unquestioned power—the power of the purse—by providing that, in the absence of congressional action, the President's authority to expend funds expires after the time allowed.[115]

An extension of the time clock from the current 60/90 days to, say 120 days would provide more flexibility to both the President and the Congress, while mitigating any appearance that the President was on a short leash. But if the joint decision mechanism contains *no* deadline, we are back to the monarchist model in which the President essentially can do as he pleases and Congress must reach for the purse strings as its only recourse.

Clearly, retaining a time clock, the most vehemently attacked element of the current War Powers Resolution, presents the critically problematic aspect of any compromise. But the constitutionality of such a mechanism, governing nonemergency situations, seems beyond doubt.[116] And the practical case against it is hardly as substantive as many have come to believe. The basic charge, that it has proven "unworkable," is simply disingenuous; the clock mechanism will work—and produce a timely vote—if Presidents accept the procedures envisaged by the law. That vote, moreover, can come at virtually any time the President wants it; if he wants it early, his congressional supporters can produce that result. Thus, the idea that American foreign policy will be suspended in uncertainty throughout the time-clock period[117] is as groundless as the specter of withdrawal through congressional inaction.

A time-clock provision also faces the charge that it may provide leverage to an adversary of the United States: if he can make a conflict painful enough in the short run, perhaps he can induce timidity in the Congress. But this is an exaggerated concern. With or without a war powers law, United States willingness to undertake sustained hostilities will be subject to democratic pressures; a statutory mechanism is simply a means of delineating procedure. Moreover, as a practical matter, an enemy tactic designed to intimidate by inflicting casualties on American forces in large numbers would more likely backfire and solidify congressional support of the President and American troops in the field.

The truth is that, in suggesting such liabilities, opponents of the time clock are expressing not so much a practical concern as a constitutional attitude. In the words of Professor John Hart Ely, they are "not simply against establishing a clock, but against enforcing the Constitution generally: an inevitable byproduct of any sort of constitutional requirement of congressional approval is that the enemy also will know that approval is required. The only way around this is to make the President a dictator, but that wasn't, and shouldn't be, the idea."[118]

As an alternative to a numerically defined time clock—e.g., 120 days—a Use of Force Act could employ a descriptive formulation designed to embody the concept of the point at which hostilities become sustained. The numerical specification, after all, is simply an attempt to establish a reasonable dividing line between an "incident" and a conflict describable as "war." If, in the effort to negotiate a grand compromise, the time clock became an insuperable obstacle, a descriptive approach could be tried. But such a formulation must be decisively descriptive. And if the concern is to avoid rigidity—meaning the danger that a time clock could somehow hamstring the United States at a crucial moment—the direct antidote would be explicit "escapes" from the time-clock constraint.

Exceptions to the time clock

While a time clock, whether numerical or descriptive, is necessary to establish the imperative of congressional participation in a joint decision to engage U.S. forces in sustained hostilities, two types of exceptions are warranted.

The first derives from constitutional considerations and logic. Since a use of force based on an inherent presidential power—the famous example is repelling an attack on the United States—could, at least conceivably, extend beyond the limited time frame, the mechanism should provide for this possibility. It if does not, a Use of Force Act will, like the War Powers Resolution, face the charge that it aims to constrain what the Constitution permits.[119]

This charge can be preempted straightforwardly—by providing for a presidential certification to Congress, accompanied by detailed explanation, that he has determined in a particular incident that supreme national interests are so imperiled as to constitute an emergency requiring that he exceed the limit stipulated in the law. This would, almost by definition, satisfy constitutional concerns because the basis for any assertion of presidential warmaking power is emergency; to allow the President to invoke emergency is to leave unconstrained any "independent" power conferred by the Constitution.

Those suspicious of the Executive will undoubtedly view this as an irresistible invitation to presidential subterfuge a truck-sized loophole. It therefore bears reemphasis that the principal aim of this new law would be to move off the dead center of stalemate—and de facto monarchist practice—by engaging the Executive and the Congress as partners in a process wherein the President's actions are weighed, first by him and then by Congress, against agreed standards. The law would establish a powerful norm: that when the United States engages in hostilities beyond a certain duration, it must—except in dire national emergency—be based on affirmative congressional action.

Thus, any Presidential using this "loophole" would have to marshal and submit arguments, and face the political response. To help ensure the President's sobriety in drawing upon this provision, the new law could provide expedited procedures for a congressional resolution expressing disagreement with the President's rationale. While this type of resolution would have no direct legal effect unless Congress had the strength to override the President's veto, passage of such a resolution, even by only a majority vote in each house, would express the President's loss of congressional, and presumably public, confidence. It could also have judicial significance by adding ripeness to a situational dispute between the branches—a dispute of a kind that the new law would invite the courts to arbitrate, through provisions discussed below.

As a guard against prolonged presidential abuse of the "emergency escape," the new statute could provide that the certification of emergency permits the continuation of a use of force for only thirty legislative days unless Congress, by joint resolution, affirmatively *accepts* the President's rationale.[120] This limitation could subject the statute to the Ervin-style charge that it seeks unconstitutionally to limit the President's inherent authority to deal with emergencies. But it is difficult to contend that the President possesses a constitutional authority to deal with extended emergencies of a kind that he cannot persuade Congress to acknowledge.

A second means of presidential escape from the automaticity of the time clock would be a stipulation designed to reassure all those who might continue to worry over the specter of troop withdrawal by congressional inaction. Such a provision would state that the time clock would not apply if either or both of the two houses had failed to vote on a specific presidential request for authorization to undertake or sustain hostilities. In truth, expedited procedures would render this eventuality almost totally theoretical. But by providing an explicit remedy for the possibility that a timid or inept Congress could avoid its responsibilities, this stipulation would lay to rest, once and for all, the principal argument employed against the current law. Even while protecting against a virtually impossible event, it would underscore and symbolize the seriousness of congressional intent underlying the new law.

Reporting and expediting procedures

A new joint decision law would retain two other features of the War Powers Resolution: the requirement of a prompt presidential report and expedited procedures for legislation affecting a use of force. But certain adjustments are in order.

Under a new law, only one kind of report should be required—a use of force report—in order to eliminate the ambiguities that have plagued reports under the War Powers Resolution. This report would include the particular authority within §1(a) under which the President had acted and a detailed explanation of how the limitations of §1(b) had been, and were being, heeded. The new law would also underscore a feature of current law too little understood: that the clock mechanism is triggered by the *events that require the report*, not by the report itself. The latter provision would not eliminate the possibility of confusion in a particular instance in which a President refused to submit a report: is the clock running or isn't it? But it would end the current *conceptual* confusion in which most participants in the process believe that the clock does not run until the President has submitted a report or Congress has passed a specific law starting it.

Expedited procedures under a new law should be similar to those under the War Powers Resolution, with one exception relating to sponsorship. Although existing procedures have never been used, they appear to be subject to operational confusion because they give top legislative priority to *any* bill purporting to authorize or limit any use of force. This raises the possibility that many bills will be in play at one point, and also that a single Member of Congress may become a nuisance. The Byrd-Warner bill would overcome this possibility by according expedited treatment only to bills emanating from an elite leadership group. A more democratic means to the same end, however, would be a provision that facilitated action on any bill authorizing or limiting a use of force under two conditions: first, as indicated earlier, if it were introduced pursuant to a presidential request; second, if the measure had "substantial sponsorship"—a threshold percentage, say twenty-five percent, of the members of that chamber. This would guard against parliamentary pitfalls while ensuring action in response to the President and on any other measure on which there was some considerable will for action.

Expedited procedures could also be accorded any "substantially sponsored" bill designed to make a finding that the clock, in a particular circumstance, was indeed running. To satisfy the constitutional requirements of the presentment clause, this measure would have to go to the President for signature and would accordingly face a difficult test of passage since a President who had tried to avoid the clock by refusing to submit a report could be expected to veto a measure affirming its applicability. But even if Congress could not override the President's veto, such a measure would nonetheless be a valuable vehicle of congressional expression, and a presidential veto in this context would be an act of notable political, and possibly judicial, significance.

Inviting judicial review

While enactment of a new joint decision law would overcome the current constitutional impasse, the new law would provide only a high degree of protection—not a guarantee—against an Executive-Legislative impasse with regard to a specific future use of force. For even though a revised mechanism could only be enacted in a spirit of cooperation between Congress and the President, a future President could decline, whether for reasons of honest disagreement or bad faith, to submit a use-of-force report deemed by many in Congress to be required by the circumstances. We would then find ourselves facing the now-familiar situation in which the clock was running, but only in the abstract, and the President was protected in pursuing his policy through the minimal support of one-third-plus-one in either house. An interbranch dispute could also arise if the President continued to use force beyond the time allowed; for example, in an extended "emergency" that Congress refused to acknowledge. In such circumstance, the courts could play a useful role by rendering a decision that would formally determine the application of law to the situation in dispute.

Unfortunately, most recently in Lowry v. Reagan,[121] the courts have shied away from such a role, for reasons relating to the so-called "political question" and "equitable discretion" doctrines. It is not necessary here to evaluate in detail those arguments for judicial abstention, [122] except to say that they have been far too broadly applied.

What bears emphasis is that the courts, in rendering a decision in any such litigation, would not be deciding whether the United States should continue in a particular use of force, but only whether defined circumstances existed such that Congress should decide. Far from being beyond the courts' competence, a is sometimes argued, this is the way our judicial system customarily functions; the courts take testimony concerning the facts and then weigh those facts against prescribed legal standards.[123]

Judicial Review

§4. (a) Any Member of Congress may bring an action in the United States District Court for the District of Columbia for declaratory judgment and injunctive relief on the grounds that the provisions of this Act have been violated.

(b)(1) In any action in a court of the United States seeking compliance with the provisions of this Act, the court shall not decline to make a determination on the merits based upon the doctrine of political question, remedial discretion, equitable discretion, or any other finding of nonjusticiability, unless such declination is required by Article III of the Constitution.

(2) Notwithstanding the number, position, or party affiliation of any plaintiffs in an action described in subsection (a) of this section, it is the intent of Congress that the courts infer that Congress would disapprove of any use of force inconsistent with the provisions of this Act and find that an impasse exists between Congress and the Executive which requires judicial resolution.

(c) Any court in which such action is heard shall accord such action the highest priority and announce its judgment as speedily as the requirements of Article III of the Constitution permit.

(d) If a court finds that a report was required to be submitted under the Act, it shall—

(1) direct the President to submit such a report; or

(2) declare that the time period set forth in the Act has commenced on the date of the court's judgment, or on a previous date determined by the court with due regard to unavoidable military necessity respecting the safety of the United States Armed Forces, and shall accordingly expire on a specific date.

(e) A judgment described in subsection (c) of this section shall be directly appealable to the United States Supreme Court.

Should the Supreme Court ever render such a decision, there would seem little doubt, as a practical matter, that Congress and the President would act in conformity. The clock would be unambiguously in effect; Congress would authorize or not authorize within the time allowed; and the President would be required to respond—either to an authorization with or without conditions, or to a funding cutoff. While contentious litigation concerning an ongoing use of force is hardly an appealing prospect, the availability of this recourse would give completeness to the mechanism, and by so doing would encourage presidential participation in the first place.

V. BENEFITS OF A NEW FRAMEWORK

Consolidating these and other elements of a possible new framework into a piece of draft legislation has yielded a draft "Use of Force Act" now under discussion within the Senate Foreign Relations Committee. Such legislation, undoubtedly requiring further refinement, would repeal and replace the War Powers Resolution, even while retaining some of its characteristics. While one cannot be sanguine about the Bush Administration's receptivity to legislation embodying the joint decision concept, one can say what the trade-offs would be if a new framework were accepted.

For the Executive, a major gain, after long years of dispute, would be a clear affirmation in law of broad authorities to use force in a wide variety of circumstances. These explicitly acknowledged powers, buttressed by a Presidential authority to waive time limitation in emergency circumstances, would serve to eliminate any possible impression of an American Commander in Chief fettered by excessive constraints. Procedurally, the President could also enjoy the benefit of an agreed mechanism of which he could take full advantage in obtaining prompt and explicit congressional support in critical foreign policy situations. And operationally, in circumstances requiring specific authorization for sustained action, he would also gain the flexibility of an extended time clock, although this in practice would tend to be more symbol than reality, since a President would probably want a vote well before the expiration of any time-limited authority.

For Congress, a grand compromise would serve to bring the President, after a prolonged and debilitating dispute, back onto the playing field—to participate, as a matter of agreed principle, in a joint decision mechanism. Having achieved this goal, Congress would surely not always welcome the accompanying requirement: that it a stand up and be counted. Congress also would have to deal with the fact that any procedure enabling the President to obtain a quick response from Congress may enable him to maneuver Congress into supplying a rubber stamp. Against that danger, the only congressional defense is a strong dose of prudence in crafting any authorization provided.

But perhaps we can be more sanguine. For if such a framework is adopted the President's perspective will be this: "I now have a considerable amount of unchallenged short-term authority. But I had better use it wisely and well, for if it is necessary for hostilities to be sustained, I must win the support of a majority in each house within the next few months." Thus, the very existence of a joint decision mechanism would encourage prudence on the President's part as well, along with a strong inclination to consult.

Of course, even agreement on such a framework, its establishment in law, and its generalized acceptance cannot deliver us from the burden of choice. We have focused here on how the United States decides on the momentous question of war. What we decide is a matter, ultimately, of judgment. But sound procedure can contribute to wise decision. By resolving the constitutional dispute over the war power, we would liberate our government—both the Executive and Congress—to concentrate in crucial moments on the goals and means of American policy.

We will, in sum, have combined two vital aims. We want the President to have broad authority—and to be so seen by allies and adversaries—to uphold American interests. And we want a system embodying the sound constitutional principle that sustained hostilities should be based on affirmative and specific congressional approval.

With the approach of the 21st Century, Americans can embrace an aspiration that use of force as a tool of foreign policy by all nations will begin to enjoy a well-earned historical rest. But if circumstances do summon United States forces to combat, let us determine that our countrymen are dispatched not in an act of folly, but only when their risk and personal sacrifice are unavoidably necessary, and can be effective, in defending and protecting clearly perceived American interests. That, after all, is the ultimate standard against which any procedure—and any decision to use force—must be judged.

FOOTNOTES

*Joseph R. Biden, Jr., is a United States Senator representing the State of Delaware. He is Chairman of the Senate Judiciary Committee, the Senate Foreign Relations Subcommittee on European Affairs, and the NATO Assembly's Special Committee on Alliance Strategy and Arms Control. Recently, Senator Biden served as Chairman of the Senate's Special Subcommittee on War Powers.

**John B. Ritch III is deputy staff director of the Senate Foreign Relations Committee and the Committee's senior advisor on European and Soviet affairs, and served as staff director of the Senate's Special Subcommittee on War Powers.

This commentary is based on a speech delivered by Senator Biden at the Georgetown University Law Center on October 3, 1988.

The authors wish to thank Professor Michael J. Glennon of the University of California-Davis, the former Legal Counsel of the Senate Foreign Relations Committee, for reviewing drafts of this commentary and for assistance in the preparation of parts of the draft "Use of Force Act" described herein.

[1] The War Powers Resolution, Pub. L. No. 93-148, 87 Stat. 555 (1973) (codified at 50 U.S.C. §§1541-41 (1982)).

[2] President Ford's report to Congress on the Mayaguez incident reflects his Administration's policy concerning the War Powers Resolution. See infra note 94. The Carter Administration's policy on the Resolution is described infra at note 98.

[3] In assessing the Administration's decision, it bears emphasis that the Gulf nation crucially dependent on exporting oil by sea is Iran. Iraq and its key Arab allies have enormous pipeline capabilities which enable them to circumvent the Gulf. It was precisely for this reason that Iraq extended its land warfare against Iran into a sea war against Iranian shipping. Had Iraq at any point been willing to desist in the sea war, Iran surely would have done likewise.

Thus, when the United States committed major naval forces in the Gulf, the principal effect was not to assert the right of passage on the seas—nor to protect the "vital oil lifeline to the West" from an Iranian threat—but rather to deploy American power on the Iraqi side of that war. Iraq could now intensify its sea attacks on Iranian shipping with the extra incentive that Iranian retaliation might draw United States forces into active conflict with Iran. The United States Navy had thereby become an adjunct of Iraqi policy.

Obviously, one Administration motive was to regain Arab confidence following the arms-for-hostages fiasco. Another was fear that the Soviets might answer the Kuwaiti reflagging call and thereby gain naval and political access in the Gulf. Still another motivation, though one barely acknowledge, was to do what the policy actually did: place American power behind the Iraqi and Arab cause and thereby help prevent an Iranian victory, which could spread instability throughout the region.

The mosaic of motives, however, was filled with questions. How necessary was it to "reassure" the Arabs, notwithstanding the arms-for-hostages mistake? Specifically, how likely, given their deep-seated antipathy to Communism, was the Kuwaitis' threatened embrace of the Soviet Navy? How serious was the prospect of Iranian victory, and how destabilizing would have been the regional consequences? Meanwhile, and most important, what was the likelihood that the United States would be drawn into direct war with Iran, and what would have been the consequences of that?

Although these questions had not been thoroughly considered either by the Executive or the Congress, the United States had undertaken what, according to one prominent commentator, was "by its nature an open-ended commitment in the Gulf" under circumstances in which "America's justification [was] not consistent with its actions—a sure course for domestic discord when the going gets tough down the road." Kissinger, Wandering in the Gulf, Wash. Post, June 21, 1987, at B7, col. 2.

[4] See, e.g., 133 Cong. Rec. S9, 124-36 (daily ed. July 1, 1987) (debate on applicability of War Powers Resolution); 133 Cong. Rec. E2,699 (daily ed. June 30, 1987) (statement of Rep. DeFazio) (urging invocation of War Powers Resolution because decision to protect Kuwaiti tankers with naval forces was confrontation covered by "hostilities"); 133 Cong. Rec. E3,435 (daily ed. Aug. 7, 1987) (statement of Rep. Oberstar) (same); 133 Cong. Rec. E4, 196 (daily ed. Oct. 28, 1987) (statement of Rep. Broomfield) (opposing invoking War Powers Resolution because Congress seldom shows ability to act decisively).

[5] Voice vote on a motion by Chairman Claiborne Pell at a business meeting of the Senate Foreign Relations Committee (December 17, 1987).

[6] The War Power After 200 Years: Congress and the President at a Constitutional Impasse, Hearings Before the Special Subcomm. on War Powers of the Senate Comm. on Foreign Relations, 100th Congress, 2d Sess. (1989) [hereinafter Special Subcommittee Hearings].

[7] See, e.g., id. at 65 (testimony of former Senator John Tower); id. at 295, 769 (testimony of Professor Robert Turner).

Albert (Peter) Lakeland, the former Senate staff aide most directly involved in the Resolution's 1973 enactment, provided a contrasting view of the origins of the law:

The principal sponsors of the War Powers Act were Senators [Jacob] Javits and [Armed Services Committee Chairman John] Stennis, . . . hardly members of the "Woodstock generation," as some would imply today. They were, rather, unabashed patriots and lifelong proponents of American strength and world leadership. They had always in their minds the crucial importance to America of a strong and successful Presidency.

. . . They were determined to enact a statutory framework to both induce and facilitate a functioning partnership between the President and the Congress as a sine qua non of U.S. national effectiveness in a dangerous world. . . .

[The] idea that the War Powers act was some hasty and ill-conceived measure directed at the ongoing Vietnam war . . . is wrong on all counts. The dwindling Vietnam war was specifically exempted from the Act's provisions, and many of the leading supporters of the Vietnam War . . . were staunch proponents of the Act. The overwhelming votes in the Senate and in the House included a number of Members of both Houses who went down the line on the Vietnam War. Id. at 107 (testimony of Albert (Peter) Lakeland).

[8] For a particularly significant expression of the view that the President is free to do as he believes American security interests require, see id. at 117 (testimony of retired Lieutenant General Brent Scowcroft, now Assistant to the President for National Security Affairs). Other witnesses also presented testimony along these lines. See id. at 160 (testimony of former President Gerald Ford); id. at 246 (testimony of Secretary of Defense Frank Carlucci); id. at 65 (testimony of former Senator John Tower); id. at 48 (testimony of Professor Forrest McDonald); id. at 295, 769 (testimony of Professor Robert Turner); id. at 224 (testimony of Professor Ronald Rotunda); id. at 329, 1213 (testimony of Professor Charles Rice); id. at 280 (testimony of Professor James Bond).

[9] For examples of analysis in support of this view, see id. at 180 (testimony of former Secretary of State Cyrus Vance); id. at 97, 653 (testimony of Albert Lakeland); id. at 300, 491 (testimony of attorney William Taylor Reveley, III); id. at 221, 1107 (testimony of Morton Halperin, Director, Center for National Security Studies); id. at 322, 567 (testimony of attorney David Friedman); id. at 331, 634 (testimony of Peter Weiss, Center for Constitutional Rights); id. at 211, 738 (testimony of Professor Abram Chayes); id. at 281, 1296 (testimony of Professor Edwin Firmage); id. at 215, 1258 (testimony of Professor Thomas Franck); id. at 292, 1167 (testimony of Professor Michael Glennon); id. at 281, 1286 (testimony of Professor William Goldsmith); id. at 272, 758 (testimony of Professor Louis Henkin); id. at 326, 1185 (testimony of Professor James Nathan); and id. at 40, 1229 (testimony of Professor Arthur Schlesinger, Jr.).

[10] For a valuable discussion of the various approaches the Supreme Court has used in defining constitutional power—textual, intentionalist, and adaptivist—see Glennon, The Use of Custom in Resolving Separation of Powers Disputes, 64 B.U.L. Rev. 109, 111-24 (1984):

None of the three approaches is * * * capable of meeting reasonable objections leveled against its use as an exclusive methodology. The pure textualist approach proceeds from the fiction that the language of the Constitution alone is dispositive, in contentious circumstances it is not. On the other hand, the adaptavist approach prefers a Constitution that is all sail, threatening the very purpose of a written Constitution, while the intentionalist approach opts for a charter that is all anchor, presupposing a rigid constitutional order not subject to modification.

The Court has apparently recognized the shortcomings of sole reliance on any one of the three approaches, and has therefore generally employed a combination of approaches. First, it seeks to resolve the controversy by reference to the constitutional text. If the text is not found to be dispositive, the Court will look to the intent of the Framers and to custom and practice. When the Court moves beyond the text, it is seeking to find a fact that it will treat as the equivalent of a textual provision of the Constitution. * * * The occurrence of this fact-finding procedure is implicitly recognized through the frequent reliance upon historical precedent, as well as evidence of the Framers' intent * * *.

* * * The Court has shifted from one approach to another, or emphasized one while deemphasizing another, without articulating any principled basis for favoring the approach selected. Id. at 122-23 (citations omitted).

[11] Article, I, section 8 of the United States Constitution provides:

The Congress shall have Power To * * * provide for the common Defence * * *; * * *.

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make rules concerning Captures on Land and Water;

To raise and support Armies * * * ;

to provide and maintain a Navy;

To make rules for the Government and Regulation of the land and naval forces; * * *.

To make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by the Constitution in the Government of the United States, or in any Department or Officer thereof.

Article II, sections 2 and 3, provides as follows:

The President shall be Commander in Chief of the Army and Navy of the United States * * *.

* * *.

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient * * *.

[12] Schlesinger, Congress and the Making of American Foreign Policy, 51 Foreign Aff. 78, 80 (1972) [hereinafter Policy]. Several of the historical references in this article rely on Professor Schlesinger's article and his larger work, A Schlesinger, The Imperial Presidency (1973) [hereinafter Presidency].

[13] The Federalist No. 23, at 104 (A. Hamilton) (Hallowell ed. 1842).

[14] E.S. Corwin, The President: Office and Powers 154 (1940) (quoting W. Blackstone, Commentaries *257).

[15] The Federalist No. 69, at 317 (A. Hamilton) (Hallowell ed. 1842).

[16] Lofgren, War-making under the Constitution: The Original Understanding, 81 Yale L.J. 672,675 (1972) (citing 2 The Records of the Federal Convention 181 82, 318 (M. Farrand ed., rev. ed. 1957).

[17] Id. (citing motion by Madison and Gerry).

[18] The Federalist No. 25, at 114 (A. Hamilton) (Hallowell ed. 1842).

[19] Letter from James Madison to Thomas Jefferson (April 2, 1998), reprinted in 6 Writings 312 13 (G. Hunt ed. 1906).

[20] See, e.g., Special Subcommittee Hearings, supra note 6, at 372-81, 418-21 (submission for the record by Professor Ronald Rotunda).

[21] See A. DeCode, The Quasi-War: The Politics and Diplomacy of the Undeclared War With France, 1797 1801, at 90 (1966).

[22] U.S. Const. art. 1, §8, cl. 11.

[23] Bas v. Tingy, 4 U.S. (4 Dall.) 37, 40-43 (1800).

[24] Talbot v. Seeman, 5 U.S. (1 Cranch) 1, 28 (1801).

[25] 6 U.S. (2 Cranch) 170 (1804).

[26] Id. at 177.

[27] Id. at 177-78.

[28] See, e.g., Special Subcommittee Hearings, supra note 6, at 819-22 (testimony of Professor Turner).

[29] I Messages and Papers of the Presidents, 1789-1908, at 326-27 (J. Richardson ed. 1908).

[30] Id. It should be noted that Alexander Hamilton severely criticized Jefferson for constitutional timidity during this episode. But even Hamilton's own constitutional assertion was a limited one. Tripoli had attacked American naval vessels, ad Hamilton believed that the President possessed the power to respond without congressional authorization. However, "Hamilton's statements during the war with Tripoli cannot reasonably be read as urging a new war-initiating power for the President which would be out of harmony with the basic principles underlying the constitutional separation of powers. Hamilton asked only that the President interpret his right to repel attacks on American military forces as meaning that he could take all necessary action to eliminate the military threat which the enemy posed even before Congress acted." A Review of the Operation and effectiveness of the War Powers Resolution, Hearings before the Senate Committee on Foreign Relations, 95th Congress, 1st Sess. 122, 145 (1977) [hereinafter War Powers Review] (testimony of Myron P. Curzan) [hereinafter Curzan testimony].

[31] 1 Messages and Papers of the Presents, supra note 29, at 3899 90.

[32] Act of June 18, 1812, ch. 102, 2 Sat. 1260.

[33] Madison was not, however, as far behind as generally portrayed. See generally 7 Encyclopedia Britannica Madison, James 656 (15th ed. 1987).

[34] Act of May 13, 1846, ch. 16, 9 Stat. 9.

[35] A. Schlesinger, Presidency, supra note 12, at 42.

[36] Letter from John Quincy Adams to Albert Gallatin (Dec. 26, 1874), quoted in F. Bemis, John Quincy Adams and the Union 499 (1956)).

Modern day monarchists are prone to invoke the Monroe Doctrine as symbolic of the robust approach to foreign policy that they associate with untrammeled presidential power to use force. But at the time of the Monroe Doctrine's promulgation, Secretary Adams had stated clearly that even if an outright attack were launched by a European power against a South American republic, the Executive's position would be that "the power to determine our resistance is in Congress." Robertson, South American and the Monroe Doctrine, 30 Pol. Sci. Q. 89 (1915) (quoting John Quincy Adams).

[37] Letter from Abraham Lincoln to William H. Herndon (Feb. 15, 1848), reprinted in 1 The Collected Works of Abraham Lincoln 451, 451 (R.P. Basler ed. 1953) (emphasis in original).

[38] "The American Navy in these years took military action . . . in places as remote as Sumatra (1832, 1838, 1839), the Fiji Islands (1840, 1855, 1858) and Africa (1820, 1843, 1845, 1850, 1854, 1858, 1859)." A. Schlesinger, Presidency, supra note 12, at 51.

[39] Quoted in id. at 57.

[40] A Schlesinger, Presidency, supra note 12, at 59.

[41] Lincoln's action did, however, rekindle the debate first waged between Jefferson and Hamilton over the constitutional limits governing presidential power to repel attacks on American forces. See supra note 30. "To Jefferson, only defensive action was authorized by the Constitution in the absence of Congressional approval; to Hamilton, the Chief Executive could unilaterally order appropriate offensive action to eliminate any clear danger that similar attacks might recur." Curzan testimony, supra note 30, at 159.

Curzan provides a brief history of Lincoln's actions and the Supreme Court's responses:

"After the secession of various Southern states and the attack on Fort Sumter, President Lincoln took a number of steps to defend the Union. Among these was the issuance of an order blockading various Southern ports. Thereafter, Lincoln sought Congressional authorization for his orders and received it. However, during the period of time following the proclamation of a blockade but prior to Congressional ratification, several Southern ships were seized. The legality of the seizure was challenged and this challenge, of course, brought the legality of the presidentially imposed blockade into question.

"The Supreme Court in the Prize Cases, 67 U.S. (2 Black) 635 (1862), split 5 to 4 on the issue, with the majority opinion reflecting Hamilton's position and the minority opinion adopting Jefferson's reasoning. Interestingly enough, in light of the weight which many proponents of Presidential power have placed on this case, it should be recognized that the majority of the Court took precautions to place its holding in context and to assert that no major changes in constitutional theory were being proposed. Thus, the opinion noted that the President had "no power to initiate or declare a war against a foreign nation or a domestic state." But once a war had been declared on the United States, the President had to determine "the shape" of the conflict and decide upon the "degree of force the crisis demand[ed]." Certainly, this doctrine did not mean that the response could be completely out of proportion to the attack or that ex post facto Congressional ratification should not be sought. What it did mean was that when the viability of the nation's political structure was under military challenge, the President should have power to respond through ordering at least a blockade of the attacker's ports. Id. at 159-61.

[42] Act of April 25, 1898, ch. 189, 30 Stat. 364.

[43] Modern readers will find a vivid evocation of the historic parallels in Mark Twain's 1901 essay, To a Person Sitting in Darkness, a sharp-edged and premonitory denunciation of American folly in the era of high imperialism, reprinted in The Complete Essays of Mark Twain (C. Neider ed. 1963).

[44] Schlesinger, Policy, supra note 12, at 91.

[45] Id. at 91-92.

[46] Resolution of April 6, 1917, ch. 1, 40 Stat. 1.

[47] Schlesinger, Policy, supra note 12, at 92.

[48] Id.; see also D. Schaffer & D.M. Matthews, The Powers of the President as Commander-in-Chief of the Army and the Navy of the United States, H.R. Doc. No. 443, 84th Cong., 2nd Sess. 67 (1956) (discussing debate between Senators Lodge, Walsh, and Borah on reservation to Treaty of Versailles).

[49] For a more recent example, at a critical moment in the history of the war power, see infra note 67 (discussing Senate Republican leader Robert Taft's opposition to President Truman's deployment of American troops to Korea and Europe without congressional authorization).

[50] One Supreme Court decision of this period, United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936), has been frequently portrayed as a landmark case upholding very broad presidential power in foreign affairs. In Curtiss-Wright, the Court did voice certain positions tending to affirm, inherent, independent presidential authority in foreign affairs: e.g., "the power of external sovereignty did not depend upon the affirmative grants of the Constitution," id at 318, and "participation [by Congress] in the exercise of the power its significantly limited," id at 319. But while these ruminations are often cited by modern-day monarchists (most recently by Lt. Col. Oliver North during the 1987 Iran-Contra hearings), they were obiter dicta—not integral to the Court's holding. Indeed, the decision itself affirmed no more than the President's power to impose an embargo on United States shipping to a foreign country pursuant to a congressional authorization to do so, hardly a monarchist precedent.

[51] Schlesinger, Policy, supra note 12, at 92.

[52] Resolution of December 8, 1941, ch. 561, 55 Stat. 795.

[54] Id.

[55] Act of March 11, 1941, 55 Stat. 795.

[56] Fulbright, Foreword to M. Glennon, Constitutional Diplomacy, at — (forthcoming) [hereinafter Fulbright Foreword].

[57] United Nations Participation Act, Pub. L. No. 79-264, 59 Stat. 619 (1945).

[58] United States Information and Exchange Act of 1948, Pub. L. No. 80-402, 62 Stat. 6.

[59] Foreign Assistance Act of 1948, tit. III, Pub. L. No. 80-472, 62 Stat. 157.

[60] Id. tit. I, 62 Stat. 137.

[61] North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, T.I.A.S. No. 1964, 34 U.N.T.S. 243, ratified July 21, 1949, 95 CONG. REC. 9916.

[62] S. Res. 239, 80th Cong., 2d Sess., 94 CONG. REC. 7846 (1948).

[63] Fulbright Foreword, supra note 56.

[64] Id.

[65] Id.; see The Korean Situation: Its Significance to the People of the United States, 23 DEP'T ST. BULL. 163-69 (1950). As professor Schlesinger describes it: "At a new meeting with congressional leaders, Senator H. Alexander Smith of New Jersey suggested that the President request a joint resolution approving his action. Truman said he would consider this and instructed [Secretary of State] Acheson to prepare a recommendation on it. In the meantime, the debate spilled over to the Senate. Kenneth Wherry of Nebraska said that the President should not have acted without congressional authorization, adding that there was no doubt he would have obtained it.

* * *

This was a fateful moment. Truman had evidently not yet fully made up his mind about the scope of presidential authority. Nor did he pretend to legal skills, but he had a most eminent lawyer at his right hand. His Secretary of State had been law clerk for Justice Brandeis * * * On July 3 Acheson recommended that Truman not ask for resolution but instead rely on his constitutional powers as President and Commander-in-Chief. On the same day the State Department churned out a memorandum listing 87 instances * * * in which Presidents had sent American Forces into combat on their own initiative. Truman, impressed by the appearance of precedent and concerned not to squander the power of his office, accepted his Secretary of State's recommendation. A. SCHLESINGER, PRESIDENCY, *supra* note 12, at 132-33 (emphasis in original; citations omitted).

[66] Id. at 132.

[67] A nearly lone voice of concern and consistency was that of the Senate Republican leader, Robert A. Taft ("Mr. Republican"). Several months later, when Truman indicated his intent to send four divisions of U.S. forces to Europe without congressional authorization, Taft initiated what came to be known as the "great debate" over the President's authority to deploy American troops abroad. In a formal speech to the Senate, Taft argued that, while he would have supported a joint resolution providing the necessary authority for the Korean intervention, the President had instead "simply usurped authority, in violation of the laws and the Constitution, when he sent troops to Korea to carry out the resolution of the United Nations in an undeclared war." Former Senator Taft speaks on Foreign Policy, 117 CONG. REC. 15,839, 15,841 (1971) (reprinting speech by Senator Taft before the full Senate on January 5, 1951). See generally id. at 15,839-45.

[68] Fulbright Foreword, supra note 56.

[69] Elected to the Senate in 1944, J. William Fulbright became chairman of the Senate Foreign Relations Committee in 1959, and remained loyal to the monarchist concept into the mid-1960s. Monarchism, of course, was not labeled as such; rather, it was then the quintessential "liberal" approach to foreign policy—a defense of the prerogatives of the Executive, who was assumed to have a sophisticated approach to foreign affairs, as against the provincial perspective imputed to the conservatives who dominated Congress. Once Fulbright's disillusion with the Dominican intervention and the Vietnam War had undercut his faith in Executive wisdom, the final decade of his chairmanship—from 1965 to 1975—was characterized by a concerted effort to restore a balance in Executive-Legislative control over American foreign policy. *See, e.g.*, J.W. Fulbright, The Arrogance of Power (1966); Fulbright, The Decline—and Possible Fall—of Constitutional Democracy in America, 117 CONG. REC. 10,355 (1971).

[70] In 1951, Professor Schlesinger, supporting the Truman Administration, labeled as "demonstrably irresponsible" Senator Taft's criticism of unauthorized military actions by the President. Letter to the New York Times, Jan. 14, 1951. For supplying a gloss of historical and constitutional legitimacy to untrammeled Executive use of force, he and Professor Henry Steele Commager were dubbed "High-flying prerogative men" by the redoubtable historian Professor Edward Corwin. Schlesinger, Policy, supra note 12, at 96. Subsequently, the views of Schlesinger and Commager followed a path of reversal similar to that of Senator Fulbright. See e.g., Special Subcommittee Hearings, supra note 6 (testimony of Professor Arthur Schlesinger, Jr.); War Powers Legislation Hearings 1972; Hearings on the War Powers Act Before the Senate Comm. on Foreign Relations, 92d Cong., 1st Sess. 7-71 (1972) (testimony of Henry Steele Commager).

[71] Fulbright Foreword, supra note 56.

[72] Rusk, The President, 38 FOREIGN AFF., 353, 357 (1960).

[73] Fulbright, American Foreign Policy in the 20th Century Under an 18th Century Constitution, 47 CORNELL L. REV. 1, 7 (1961).

[74] Joint Resolution to Promote the Maintenance of International Peace and Security in Southeast Asia, H.R.J. Res. 1145, Pub. L. No. 88-408, 78 Stat. 384 (1964). As described by Professor Schlesinger: "After the alleged attack on American destroyers off the coast of North Vietnam, Johnson called in the congressional leaders. Reminding himself, and them, of Taft's criticism of Truman for not seeking congressional ratification of the Korea decision, he asked their judgment about getting something this time that, as he cautiously put it, 'would give us the opinion of Congress.' The leaders thought it a fine idea, and the administration pulled out a draft resolution, prepared months before and awaiting the occasion. A. Schlesinger, Presidency, supra note 12, at 179.

Later the Senate Foreign Relations Committee would conduct an extensive inquiry into the Tonkin Gulf episode. The Gulf of Tonkin, the 1964 Incidents (Parts I and II): Hearings Before the Senate Comm. on Foreign Relations, 90th Cong., 2d Sess. (1968).

By 1970, the Committee had concluded that "Congress was confronted in August 1964 with a situation that was described to it as urgent, requiring prompt acquiescence in an expedient that seemed likely to meet the needs of the moment, of which the foremost—or so we allowed ourselves to be persuaded—was a resounding expression of national unity at a moment when it was believed that the country had been attacked."

* * * It has since been established that the [two American vessels attacked] were engaged in intelligence activities in the Gulf of Tonkin, a fact that was not vouchsafed to Congress when it considered the resolution. In addition, considerable doubt has been raised as to the exact circumstances of the alleged second attack on the two vessels, most particularly as to whether this attack occurred at all, and, if it did, whether the administration had proof of it at the time that it ordered its retaliatory air strike on August 4, 1964. Senate Comm. on Foreign Relations, Termination of Middle East and Southeast Asia Resolutions, S. Rep. No. 384, 91st Cong., 2d Sess. 9-10 (1970) [hereinafter Termination Report].

[75] Johnson's Under Secretary of State, former Attorney General Nicholas Katzenbach, testified that the Resolution constituted the "functional equivalent" of a declaration of war. But Katzenbach did not mean this assertion to entail the proposition that any such declaration was required. With or without the Resolution, Katzenbach further asserted, the President possessed the constitutional authority to carry on the war. U.S. Commitments to Foreign Powers: Hearings Before the Senate Comm. on Foreign Relations, 90th Cong., 1st Sess., 82, 141 (1967).

President Johnson himself took full advantage of this straddle, extracting the political benefit of what arguably was an authorization while maintaining that any such authorization was unnecessary. "Though it amused him to taunt members of Congress by pulling the Tonkin Gulf resolution out of his pocket and flourishing it as proof that Congress had authorized the escalation of American involvement, he did not believe for a moment that the resolution provided the legal basis for his action." A. Schlesinger, Presidency, supra note 12, at 181.

For its part, stung by revelations about the events that precipitated the Gulf of Tonkin Resolution and increasingly concerned by the war's intensification, the Senate Foreign Relations Committee sought to discount the Resolution's significance as an authorization:

"Often referred to loosely as an act of congressional authorization for the President to commit the United States to full scale war in Vietnam if he saw fit, the Gulf of Tonkin resolution is in fact not an authorization at all. The resolution says nothing about authorizing or empowering anybody to do anything * * * .

* * * In this respect, the distinction between an expression of approval and a grant of authority would seem to be of critical importance. Termination Report, supra note 74, at 9 (emphasis in original).

Such fine distinctions notwithstanding, the Resolution's language was sweeping: "Congress approves and supports the determination of the President * * * to take all necessary measures to * * * prevent further aggression" and the United States is "prepared, as the President determines, to take all necessary steps, including the use of armed force" to assist South Vietnam.

The Resolution was repealed in 1971, but by then the Executive, under Richard Nixon, brooked no challenge to the Commander in Chief's authority.

[76] "We are in a position in the world today where the argument as to who has the power to do this, that, or the other thing, is not exactly what is called for from America in this very critical hour." Senate Comm. on Foreign Relations, National Commitments Report, S. Rep. No. 797, 90th Cong., 1st Sess. 17 (1967).

[77] Typical was this assertion, issued by the Nixon Administration some months prior to the Cambodian invasion in response to a pending congressional resolution: "As Commander in Chief, the President has the sole authority to command our Armed Forces, whether they are within or outside the United States. And, although reasonable men may differ as to the circumstances in which he should do so, the President has the constitutional power to send U.S. military forces abroad without specific congressional approval." Quoted in Termination Report, supra note 74, at 7.

[78] See generally 1973 U.S. Code Cong. & Admin. News 2346.

[79] Section 5(b) specifies a 60-day period but allows a 30-day extension "if the President determines and certifies to the Congress in writing that unavoidable military necessity requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces." War Powers Resolution §5(b), 50 U.S.C. §1544(b). Because the time clock commences when the report is due (i.e., within 48 hours after commencement of the action), the actual period before authorization is required is 62/92 days. The Resolution's clock is intended to tick even if no report is sent. But, as discussed below, the lack of a report creates a crucial ambiguity as to whether one was in fact due.

[80] Although the term "withdrawal" is commonly used in discussing the War Powers Resolution, section 5(b) actually requires that "the President shall terminate any use of United States Armed Forces with respect to which a report was submitted (or required to be submitted)." Id. (emphasis added).

[81] Concurrent resolutions do not require the President's signature.

[82] 119 Cong. Rec. 25,093 (1973) (statement of Sen. Ervin).

[83] Special Subcommittee Hearings, supra note 6, at 765 (testimony of Professor Henkin).

[84] Indeed, §8(d) of the Resolution states this specifically:

"Nothing in this joint resolution—(1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties; or (2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution. 50 U.S.C. §1547(d).

[85] In voting against the Resolution Senator Eagleton stated: "I wish to say . . . that I do not view this as a historic recapture [of congressional authority]; on the contrary I view it as a historic surrender." 119 Cong. Rec. 36,189 (1973).

This danger is exemplified by the construction given the War Powers Resolution by some scholars defending its constitutionality. These scholars view the Resolution as a sort of "sunset law," the functional equivalent of a statute requiring that troops may not be committed for more than 60/90 days. See Carter, The Constitutionality of the War Powers Resolution, 70 Va. L. Rev. 101, 133 (1984). But in so doing, such defenders of the Resolution may concede more than they would wish, since it seems inherent in the very concept of a "sunset law" that what is being constrained temporally is an authority, not an act of illegality.

[86] 462 U.S. 919 (1983).

[87] Every Order, Resolution, or Vote to which the Concurrence of the Senate and the House of Representatives may be necessary (except on the question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill. U.S. Const. art. I, §7, cl. 3.

[88] See, e.g., Special Subcommittee Hearings, supra note 6, at 1260 (testimony of Professor Franck); id. at 1176-79 (testimony of Professor Glennon); id. at 738 (testimony of Professor Chayes).

[89] See Ely, Suppose Congress Wanted a War Powers Act That Worked, 88 Colum. L. Rev., 1379, 1395 96 (1988):

In fact, section 5(c) does not appear to be unconstitutional. Even assuming that Chadha makes sense, it seems distinguishable. . . .Section 5(c) does not fit the profile of a standard "legislative veto" wherein Congress has delegated certain powers to the executive branch and then attempted to pull them back by reserving a right to veto executive exercises of the delegation. Instead, it should be read in the context of sections 4(a)(1) and 5(b), as part of a package attempting in concrete terms to approximate the accommodation reached by the Constitution's framers, that the President could act militarily in an emergency but was obligated to cease and desist in the event Congress did not approve as soon as it had a reasonable opportunity to do so." Id. (emphasis in original; footnote omitted); see also Vance, Striking the Balance: Congress and the President Under the War Powers Resolution, 133 U. Pa. L. Rev., 79, 86-87 (1984).

[90] Ely, supra note 89, at 1397.

[91] War Powers Resolution §4(a), 50 U.S.C. §1543(a) (1982).

[92] It is sometimes suggested that Congress could, if it simply had the will, adopt a resolution triggering the clock through a finding that a report was "required to be submitted." But a concurrent resolution would have no legal effect for presentment clause reasons, whereas a joint resolution (which has the status of law) probably would require a two-thirds vote in each house because any President, having refused to submit the report in the first place, presumably would veto it. Thus, any such attempt to "enforce" the War Powers Resolution would represent a reversion to the monarchist model in which the President is unrestrained until Congress can overwhelm him.

Indeed, to speak of "enforcing" the War Powers Resolution using two-thirds majorities to oppose the President reflects a loss of orientation. The purpose of the War Powers Resolution is to delineate procedures embodying the principle that warfare, except in limited emergency situations, should be based on affirmative congressional action taken through simple majorities in the two houses.

[93] Professor Ely has summarized this phonomenon:

"Repeatedly—as in the last stages of the war in IndoChina, the attempt to free our hostages in Iran, and in Lebanon, Central America, Grenada, and Tripoli—the President either has not reported under section 4(a) or has failed to specify that what he is filing is a section 4(a)(1) "hostilities" report, thus avoiding the 60-day clock. Congress has responded to this evasion only once, in connection with the Lebanon crisis, when after much hemming and hawing it negotiated a "compromise" recognizing the applicability of the War Power Resolution (which recognition President Reagan immediately repudiated) and extending the period the troops could remain in Lebanon for 18 months." Ely, supra note 89, at 1381.

[94] SS "Mayaguez"—Communication From the President of the United States, H.R. Doc. No. 151, 94th Cong., 1st Sess., reprinted in 121 Cong. Rec. 14,427, 14,427 (1975). President Ford's report to Congress was submitted "[i]n accordance with my desire that the Congress be informed on this matter and taking note of Section 4(a)(1) of the War Power Resolution." Id. In it, President Ford took the opportunity to assert that his use of military force to free the merchant marine vessel and crew seized by Cambodian forces in international waters "was ordered and conducted pursuant to the President's constitutional Executive power and his authority as Commander-in-Chief of the United States Armed Forces." Id.

[95] See, e.g., Special Subcommittee Hearings, supra note 6, 247 (testimony of Secretary of Defense Carlucci) ("Instead of showing the world the will of the American people, the War Powers Resolution could, according to its terms, implement itself without a single vote being cast in Congress. * * * This is why the no-fault formula in the War Powers Resolution, wherein no Member of Congress is required to stand up and be counted is unacceptable.").

[96] Termination Report, supra note 74, at 8.

[97] T. Bailey, Presidential Greatness 227 (1966), quoted in Termination Report, supra note 74, at 8. In posing such a question, the Foreign Relations Committee reflected the revolution in the views of its Chairman, J. William Fulbright, who had suggested, in the late-1950s article quoted earlier, see supra note 73, that the defense of democracy might require some compromise of its procedures, but who now had this to say:

"The values of democracy are in large part the processes of democracy. * * * When the exigencies of foreign policy are thought to necessitate the suspension of these processes, repeatedly and over a long period of time, such a foreign policy is not only inefficient but utterly irrational and self-crippling. J.W. Fulbright, the Crippled Giant 208 (1972).

[98] It bears emphasis that is the Carter Administration's position on the War Powers Resolution was never full voiced or tested. Instead, the Administration adopted the conciliatory approach of praising the Resolutions' consultation and reporting requirements while agreeing to abide by the constitutionally controversial provisions of §5 "as a matter of policy" so as to avoid a "prolonged debate over elusive constitutional issues." See War Powers Review, supra not 30, at 190 (testimony of Herbert Hansell, Legal Adviser, Department of State). Hansell went on to describe the Carter Administrations' acceptance of the War Power Resolution's basic concept of joint decisionmaking: "As section 2(a) suggests, Congress intended the Resolution as a remedial measure to insure that decisions to commit United States Armed Forces to hostilities should involve "the collective judgment of both the Congress and the President." This Administration is of the view that, as a matter of constitutional law and public policy, this country should not go to war without that collective judgment. Id. at 188.

Hansell's 1977 testimony gave rise to some optimism that the war powers issue might have been in large measure resolved. See id. at 191 (statement of Sen. Javits) ("I am delighted [that] . . . [w]e are not faced with the problem of the trees, not the forest."). But Senator Dick Clark expressed concern that a future Administration could easily adopt a different "policy" toward the Resolution, and that this would be all the easier because of the Carter Administration's unwillingness to adopt a formal position accepting the Resolution's constitutionality. Id. at 210 (statement of Sen., Clark). Hansell responded by expressing the Carter Administration's belief that "a much more important and effective restraint * * * on future administrations would be to develop a body of practice, of performances." Id. (Hansell testimony).

As it turned out, Senator Clark's concern was prescient. Because its only use of force reportable under the War Powers Resolution was the quickly aborted Iran rescue mission, the Carter Administration did not build "a body of practice" in complying with the Resolution. In 1980, however, the Carter Justice Department did issue a legal memorandum affirming the constitutionality of the time-clock, the Resolution's key provision. See infra note 116.

[99] Special Subcommittee Hearings, supra note 6, at 15 (testimony of Rep. Fascell). Chairman Fascell's testimony provides a lucid explanation of the myriad misunderstandings to which the Resolution is subject. Id. at 928-46.

[100] "War Powers Resolution Amendments of 1988," S.J. Res. 323, 100th Cong., 2d Sess. (1988). The Byrd-Warner amendments were introduced May 19, 1988, by Senator Robert Byrd (for himself and Senators Nunn, Warner, and Mitchell) and referred to the Committee on Foreign Relations. A companion bill, H.J. Res. 601, 100th Cong., 2d Sess. (1988), was introduced June 6, 1988, by Representative Lee Hamilton in the House of Representatives.

In the 101st Congress, Senator Byrd reintroduced this legislation with minor alteration. S. 2 101st Cong., 1st Sess. (1989).

[101] Indeed, although Senator Byrd's 12-year tenure as Senate Democratic Leader was characterized by a stalwart defense of constitutional balance, his explanation of S.J. Res. 323 provides a clear statement of the monarchist model: "The key to the revisions I am proposing [is that it] changes the presumption of the current War Powers Resolution, which is that U.S. Armed Forces must be withdrawn from situations of hostilities or imminent involvement in hostilities within 60 days unless Congress specifically authorizes their continued presence. . . . [T]his legislation requires passage of a specific joint resolution requiring disengagement. 134 Cong. Rec. S6174 (daily ed. May 19, 1988.)

[102] Special Subcommittee Hearings, supra note 6, at 272-79 (testimony of Professor Henkin). For an extensive discussion of this subject, see id. at 1167-84 (testimony of Professor Glennon).

[103] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952).

[104] Id. at 637 (Jackson, J., concurring). Jackson's analysis warrants extensive quotation:

Presidential powers, are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress. We may well begin by a somewhat over-simplified grouping of practical situations in which a President may doubt, or others may challenge, his powers, and by distinguishing roughly the legal consequences of this factor of relativity.

1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. In these circumstances, and in these only, may he be said (for what it may be worth) to personify the federal sovereignty. If his act is held unconstitutional under these circumstances, it usually means that the Federal Government as an undivided whole lacks power. A seizure executed by the President pursuant to an Act of Congress would be supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.

2. When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference, or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law.

3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at it lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive Presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system. Id. at 635-38 (footnotes omitted).

[105] 6 U.S. (2 Cranch) 170 (1804); see supra text accompanying notes 25-27.

[106] U.S. Const. art. I, §8.

[107] See, e.g., Ely, supra note 89, at 1392 n.40. Professor Ely writes:

"Enthusiasts of Justice Jackson's concurrence in Youngstown, 343 U.S. at 637, should have little trouble regarding the [War Powers] Resolution as a congressional exercise in mapping the "twilight zone," and therefore plainly constitutional and controlling under the logic of that opinion. (Others of us see the power to commit troops to combat, except in emergency situations, as assigned to the legislative process by the Constitution and thus not in need of rescue from any twilight zone.)" Id.

[108] Since this is an authority indisputably not derived from the Constitution, its inclusion would help to underscore the function of this law as an act of authorization—as opposed to a listing of constitutionally derived Presidential powers—accompanied by the delineation of standards and procedures.

[109] The Truman Administration did not cite the Security Council's decision as a basis for this authority; indeed, President Truman decided to commit American air and sea forces to the defense of South Korea on June 25, 1950, only one day after the North Korean invasion. That same day the UN Security Council passed a resolution denouncing the North Korean invasion. But it was not until June 27 that the Security Council passed a second resolution, calling for "urgent military measures . . . to repel the armed attack." A. Schlesinger, Presidency, supra note 12, at 131.

[110] See, for example, this exchange with Lt. Gen. Brent Scowcroft during the Special Subcommittee's hearings:

"Senator Biden: President Reagan and others have argued that the existence of the Sandinista regime in Nicaragua is a destabilizing factor in the hemisphere and may lead to broader conflict, involving U.S. interests. Do you believe that the President would have the authority, in order to prevent war, to prevent further conflict, to say I am going to invade Nicaragua with American troops. Does he have the authority to do that?

"General Scowcroft: yes. It may not be prudent if he does not have the support of the Congress, of the country, and a debacle could ensue. But, yes. Special Subcommittee Hearings, supra note 6, at 122.

[111] For valuable analysis relevant to this approach, see id. at 272-79 (testimony of Professor Henkin); id. at 1167-84 (testimony of Professor Glennon); and also letters subsequently submitted by these and other witnesses on the applicability of Justice Jackson's model. Id. at 1405-12.

[112] See Glennon, United States Mutual Security Treaties: The Commitment Myth, 24 Colum. J. Trans. L. 509 (1986).

[113] War Powers Resolution §4(a)(1), 50 U.S.C. §1543(a)(1).

[114] Statement to the United Nations Security Council, July 15, 1988.

[115] In practice, this "decisiveness" could prove to be elusive in a situation in which the running of the clock was disputed by the President and its expiration was therefore a matter of ambiguity. But Congress could, by simple majority, move to enforce the power of the purse through a parliamentary technique. As discussed later, a Use of Force Act could provide expedited procedures for congressional resolutions designed to make a finding either that the clock, in a particular situation, was running, or that the President had misused his authority to waive the clock. While any such resolution passed by simple majorities in the two houses could not have legal effect (assuming the President vetoed it), it could—in addition to any political and judicial significance—have powerful budgetary effect if Congress had stipulated in its own rules that passage of such a resolution would cause a parliamentary point of order to lie against any subsequent bill containing funds for the perpetuation of that use of force. This technique could not affect funds already appropriated, but would render future funding vulnerable to objection by any one member of Congress.

Although this sounds drastic, it should be emphasized that creating such procedures would be intended primarily to serve as a deterrent, helping to encourage cooperative Presidential participation in the established mechanism. As in the realm of nuclear deterrence, the aim of deploying such "weapons" would be to deter behavior that would cause their use ever to be contemplated.

[116] Indeed, although the Carter Administration avoided pronouncing on the constitutionality of the War Powers Resolution as a whole, the Carter Justice Department issued an important, although little noted, legal opinion affirming the constitutionality of the clock mechanism:

"We believe that Congress may, as a general constitutional matter, place a 60-day limit on the use of our armed forces as required by the provisions of [section 5(b)] of the Resolution. The Resolution gives the President the flexibility to extend that deadline for up to 30 days in cases of "unavoidable military necessity." This flexibility is, we believe, sufficient under any scenarios we can hypothesize to preserve his constitutional function as Commander-in-Chief. The practical effect of the 60-day limit is to shift the burden to the President to convince the Congress of the continuing need for the use of our armed forces abroad. We cannot say that placing this burden on the President unconstitutionally intrudes upon his executive powers.

Finally, Congress may regulate the President's exercise of his inherent power by imposing limits "*by statute*." Presidential Power to Use the Armed Forces Abroad Without Statutory Authority, 4A Op. Office of the Legal Counsel, Dep't of Justice 185, 196 (1980) (emphasis in original).

[117] See, e.g., Special Subcommittee hearings, supra note 6, at 248 (testimony of Frank Carlucci, Secretary of Defense) ("[F]or 60 or 90 days, or longer, the War Powers Resolution would leave in suspense the question of whether a military deployment was authorized.")

[118] Ely, supra note 89, at 1400

[119] Cf. Special Subcommittee Hearings, supra note 6, at 220 (testimony of Professor Thomas Franck) ("After 60 to 90 days, section 5(b) appears to require the recall of U.S. forces from combat, even when their dispatch by the President was constitutional and lawful. It is difficult to sustain the argument that Congress can terminate what it concedes the President could initiate on his own initiative.").

[120] Because a President would undoubtedly sign any such joint resolution, no Chadha legislative veto problem would arise.

[121] 676 F. Supp. 333 (D.D.C. 1987). The district court refused to consider a complaint by 110 Members of the House of Representatives that deployment of U.S. forces in the Persian Gulf triggered the reporting requirements and, by implication, the 60-day clock of the War Powers Resolution. Id. At 341.

[122] That task is comprehensively achieved, for example, by Ely, supra note 89.

[123] "The question whether to authorize a war is committed to Congress. The question whether it has done so, or whether instead the executive is acting without authorization, is of familiar judicial contour." Ely, supra note 89, at 1412 n.95.

Mr. BIDEN. Enacting such a law, Mr. President, which I call the Use of Force Act, is a task that awaits us and can, I hope, be accomplished next year. I have draft legislation waiting.

I will quote President Bush. Last Friday, in announcing the resumption of the Sarajevo airlift, the President stated as follows:

> I wish I could say that there is no risk of attack against these flights, but I cannot, although we are taking precautions. We can be proud of the Americans who, along with courageous personnel from other countries, will go in harm's way to save innocent lives.

This is a time and subject which summons Senators from both parties to join in supporting the President and in backing those valiant Americans, whom the President has rightly commended, who are now going in harm's way, not only to save innocent lives, but to sustain the principles of international decency.

These principles must be upheld if we are to have genuine hope in the months ahead of constructing a new world order.

Mr. President, I close by saying, I hope the President is successful in getting this resolution passed. But I point out that, once passed, he needs congressional authorization to use the force, which I believe we should be ready to give him the authority to use.

I thank my colleagues.

Mr. LEVIN. Mr. President, I was heartened at the end of last week to see a long-awaited sign that the President and his administration may be willing to go to the U.N. Security Council and advocate a no-fly zone over areas of conflict in the former Yugoslavia. The President said the Security Council should declare a ban on flights and arrange to enforce that ban. Enforcement is the key. Without some teeth to back up such a ban, it would just be another paper resolution. I hope the President will encourage a truly multilateral, collective enforcement effort that includes U.S. military assets along with other nations. I hope his announcement indicates a long-overdue U.S. policy change, one that is clearly justified by the continuing aggression.

But, Mr. President, until this recent announcement, United States leadership has been lacking relative to the former Yugoslavia, despite the extensive, bipartisan efforts of this body to encourage and support Presidential leadership for cooperative international action to halt aggression and possible genocide.

Instead, there have been mixed signals, slow responses, insufficient resolve—a basic failure to lead. I believe the lack of leadership on Yugoslavia is part of a larger failure by this administration to meet the primary security challenge of the post-cold war world.

The United States has not seized opportunities to lead in the creation of effective multilateral peace enforcement capabilities, that could deter and prevent future conflicts.

Mr. President, the Senate has been passing legislation for almost 2 years condemning violence in the former Yugoslavia, and urging the administration to help organize and lead an international response.

What is happening in the former Yugoslavia is criminal. Crimes are being committed against innocent civilians and against humanity. And in the face of these crimes, in the face of mounting evidence that ethnic cleansing is being methodically carried out—the response of the world, particularly Europe, but including the United States, has been feeble.

Last week the State Department asserted that it was only recently able to confirm reports of atrocities which I personally brought to their attention in August. We brought an eyewitness, a Bosnian who had survived death camps, to the Senate Armed Services Committee. He described atrocities including the killings of thousands of Moslems in the Bosnian town of Brcko last spring. State Department officials spoke to the witness before his trip to Washington—they knew what he would say. We sent a transcript of his testimony directly to State Department officials.

So I was amazed last week when State Department spokesman Richard Boucher said that the United States had only just received eyewitness reports of the Brcko killings. This was further sad evidence of the administration's passivity.

This Senate has urged the President, repeatedly and with increasing urgency, to show leadership on this issue. In June of this year, the Senate passed S. 306, encouraging Presidential leadership at the Security Council to get a plan and a budget for enforcement of U.N. resolutions in the former Yugoslavia. The President never sought such a plan or budget, leaving himself and us without important information we might need to make wise choices about costs of military action to enforce U.N. resolutions.

Then in August the Senate debated extensively and passed Senate Resolution 333, which encouraged the use of all necessary means to protect delivery of humanitarian assistance and to assure International Red Cross access to detention camps.

Just last week, the Senate approved an amendment I introduced that expressed the sense of the Senate that the U.N. Security Council should act to halt the policy and practice of ethnic cleansing in the former Yugoslavia. The amendment stated that the President of the United States should seek a meeting of the Security Council to consider methods of achieving that goal. We need such a high-visibility meeting to highlight the extent of the on-going horror of ethnic cleansing, and to authorize action to stop it.

In these efforts, the Senate has stressed action taken cooperatively and internationally—not unilateral use of force by the United States. But the administration has not taken up the leadership role we are encouraging, in fact, the United States has moved slowly, in fits and starts, sometimes even backward. There were reports last week that the State Department might actually support loosening the sanctions on Serbia and Montenegro instead of tightening enforcement. Acting Secretary of State Eagleburger just last week was quoted as saying intervention with U.S. military force would be a slippery slope that could raise expectations of similar U.S. action in other conflicts around the world. That sounds very different from the President's call for a no-fly zone. These mixed signals do not help move the community of nations to take the steps necessary to stop the horror.

And, Mr. President, that horror continues. Look at the front page of Tuesday's Washington Post: "Former Prisoners Allege Wholesale Serb Atrocities." The testimony of former prisoners at the Serb-run Omarska detention camp in northwestern Bosnia is chilling.

> The guards made us go out behind a small shed where there was a truck and a bulldozer. * * * There were 26 bodies. Some had half their heads missing; others were missing eyes. They told us to put the bodies on the bulldozer, but it was hard to walk; we were stepping on human brains. Then they took us to a field and made us pick up two more bodies. When we were done, the guard cocked his machine gun and said, "Do you want to be next?"

The article continues:

> The camps, one former prisoner said, are places where a Serb guard "will kill you for your wristwatch," and where prisoners force to gather up the dead cannot keep their balance on ground slick with human gore.

Mr. President, there are many different options for what action the United States and the world should take in the former Yugoslavia—but no action is not an acceptable option. Action is long overdue, the United States must take the lead, and it must start at the top with the President. It must be a collective action. The U.N. Security Council is the place where a highly visible debate should occur.

Because the situation in the former Yugoslavia is so urgent, and has been all year, this United States leadership vacuum is especially disappointing. But this crisis is indicative of the kind of security threats we will face in the post-cold-war era. We need to build institutions that are responsive to this kind of threat, generally. That is another area where the Senate has tried to encourage leadership from the administration this year—leadership which has not been forthcoming.

Mr. President, we have been given an historic opportunity to realize a dream: A peaceful world, where the community of nations has the capacity to enforce that peace with an international military force. The United States cannot and should not be the world's policeman. But the world desperately needs policing. The founders of the United Nations realized this, and provided a mechanism for it in the U.N. Charter.

Now the end of the cold war makes possible global security arrangements that have been impossible to implement for 45 years, by eliminating bipolar stalemate as the dominant international force. Most dramatically, the threat of an automatic Soviet veto in the U.N. Security Council is gone, creating enormous opportunities for agreement among the permanent five members.

My generation never dared dream we would have this chance. But I fear we are squandering it. The United States has a golden opportunity to lead.

In January, the U.N. Security Council held a special summit meeting to discuss the subject of U.N. enforcement of its resolutions. The Council asked the U.N. Secretary General, Boutros Ghali, to prepare recommendations on enhancing the United Nations' peacekeeping and peace enforcement capabilities. His report in July, entitled "Agenda for Peace" presented a far-reaching set of proposals to achieve the original collective security objectives of the U.N. Charter, and to further enhance the security capabilities of the United Nations in the post-cold war era.

Events in the former Yugoslavia, Somalia, and elsewhere certainly underscore the need for more substantial and more rapidly deployable international peacekeeping and humanitarian relief efforts, and the need for peace enforcement capabilities to support those efforts.

The Agenda for Peace explains clearly that the option of taking military action under Security Council auspices, when all peaceful means have failed to maintain or restore international peace and security, is essential to the credibility of the United Nations. Putting real teeth behind the United Nations' words is essential to guarantee international security in the face of a "threat to the peace, breach of the peace, or act of aggression." The Secretary General noted in his report that the "availability of armed forces is, in itself, a means of deterring breaches of the peace."

The Agenda for Peace recommends Security Council negotiations, supported by the Council's Military Staff Committee, to implement the special arrangements provided for in article 43 of the U.N. Charter, under which member states may make available to the Security Council forces, assistance and facilities for the purpose determined by the Security Council.

The Secretary General's report also recommends that the Security Council establish peace enforcement units as envisioned under article 40 of the charter, to be utilized in clearly defined circumstances to maintain cease-fires. Such units from member states would be available on call and consist of troops that have volunteered for such service and are extensively trained. Deployment and operation of such forces would be subject to authorization by the Security Council, where the United States has a veto.

Mr. President, these are serious suggestions. They raise a lot of issues of scope and implementation, but they are surely deserving of serious consideration.

The President and members of his Cabinet have stressed in testimony to Congress the need to strengthen United States national security by increasing the effectiveness of international institutions, particularly including NATO and other regional organizations to provide collective security.

The United States has in recent years played a prominent leadership role in advancing the implementation of collective security actions by the United Nations, most notably in Operation Desert Storm.

But the administration's response otherwise has been disappointing. When President Bush addressed the U.N. General Assembly last month, he offered no support for new peacekeeping funding mechanisms, and a "no comment" on the international peace enforcement suggestions Boutros Ghali had offered.

Mr. President, there is no longer any excuse for inaction. Our old excuse was the Soviet Union's certain veto in the Security Council. But the problem is no longer the Soviets saying "nyet"; it's that no nation seems willing to say "da."

Fear of congressional opposition is no excuse, because the Senate has encouraged and prodded the administration. We passed a Defense authorization bill that requires the President to prepare and deliver a report to Congress responding to the Secretary General's recommendations and their implications for U.S. policy. We also provided up to $300 million of transfer authority from the Defense budget to finance unanticipated peacekeeping expenses that arise during the coming year. We fully funded the administration's supplemental request for peacekeeping funds this year.

There is no excuse for our failure to help lead the community of nations to fulfill that dream of a world at peace with the collective military capability to achieve and police the peace. This is not an academic debate about institutional structure. Lives and nations are at risk—lives and nations that might be preserved. What is happening in the former Yugoslavia is a tragic testament to the cost of inaction.

I am proud to have been involved in many of the Senate's efforts in the areas that I have been describing. The distinguished Democratic and Republican leaders have been at the forefront as well as Senators DECONCINI, LUGAR, LIEBERMAN, HATFIELD, BIDEN, GORE, SIMON, and others have helped keep these issues before the Congress and tried to keep them before the administration. I am not sure what else this Senate could have done to encourage United States leadership to take action against the horror in the former Yugoslavia, and to build international enforcement capability.

Instead of showing creativity, this administration has emphasized caution. Instead of leading the way to a truly new world order that works, the President is resisting change and relying on outmoded approaches. We need will. We need leadership now, or historic opportunities will be missed and the United States will lose our credibility to lead the way to more peaceful world.

Mr. President, I would ask unanimous consent that a number of items be placed in the record:

U.N. Secretary General Boutros-Ghali's "Agenda for Peace" Report; my address to the Center for Naval Analyses from April 30; the Defense authorization bill and report language requiring a report from the President on the Secretary General's U.N. Peacekeeping Report; the text of the amendment to the Defense authorization bill providing that defense funds may be spent for international peacekeeping activities; and the amendment to the Foreign Operations appropriations bill on halting ethnic cleansing.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[U.N. General Assembly Security Council, June 17, 1992]

AN AGENDA FOR PEACE: PREVENTIVE DIPLOMACY, PEACEMAKING, AND PEACE-KEEPING

(Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on January 31, 1992)

INTRODUCTION

1. In its statement of 31 January 1992, adopted at the conclusion of the first meeting held by the Security Council at the level of Heads of State and Government, I was invited to prepare, for circulation to the Members of the United Nations by 1 July 1992, an "analysis and recommendations on ways of strengthening and making more efficient within the framework and provisions of the Charter the capacity of the United Nations for preventive diplomacy, for peacemaking and for peace-keeping."[1]

2. The United Nations is a gathering of sovereign States and what it can do depends on the common ground that they create between them. The adversarial decades of the cold war made the original promise of the Organization impossible to fulfill. The January 1992 Summit therefore represented an unprecedented recommitment, at the highest political level, to the Purposes and Principles of the Charter.

3. In these past months a conviction has grown, among nations large and small, that an opportunity has been regained to achieve the great objectives of the Charter—a United Nations capable of maintaining international peace and security, of securing justice and human rights and of promoting, in the words of the Charter, "social progress and better standards of life in larger freedom". This opportunity must not be squandered. The Organization must never again be crippled as it was in the era that has now passed.

4. I welcome the invitation of the security council, early in my tenure as Secretary-General, to prepare this report. It draws upon ideas and proposals transmitted to me by Governments, regional agencies, non-governmental organizations, and institutions and individuals from many countries. I am grateful for these, even as I emphasize that the responsibility for this report is my own.

5. The sources of conflict and war are pervasive and deep. To reach them will require our utmost effort to enhance respect for human rights and fundamental freedoms, to promote sustainable economic and social development for wider prosperity, to alleviate distress and to curtail the existence and use of massively destructive weapons. The United Nations Conference on Environment and Development, the largest summit ever held, has just met at Rio de Janeiro. Next year will see the second World Conference on Human Rights. In 1994 Population and Development will be addressed. In 1995 the World Conference on Women will take place, and a World Summit for Social Development has been proposed. Throughout my term as Secretary-General I shall be addressing all these great issues. I bear them all in mind as, in the present report, I turn to the problems that the Council has specifically requested I consider: preventive diplomacy, peacemaking and peace-keeping—to which I have added a closely related concept, post-conflict peace-building.

6. The manifest desire of the membership to work together is a new source of strength in our common endeavor. Success is far from certain, however. While my report deals with ways to improve the Organization's capacity to pursue and preserve peace, it is crucial for all Member States to bear in mind that the search for improved mechanisms and techniques will be of little significance unless this new spirit of commonality is propelled by the will to take the hard decisions demanded by this time of opportunity.

7. It is therefore with a sense of moment, and with gratitude, that I present this report to the Members of the United Nations.

I. THE CHANGING CONTEXT

8. In the course of the past few years the immense ideological barrier that for decades gave rise to distrust and hostility—and the terrible tools of destruction that were their inseparable companions—has collapsed. Even as the issues between States north and south grow more acute, and call for attention at the highest levels of government, the improvement in relations between States east and west affords new possibilities, some already realized, to meet successfully threats to common security.

9. Authoritarian regimes have given way to more democratic forces and responsive Governments. The form, scope and intensity of these processes differ from Latin America to Africa to Europe to Asia, but they are suffi-

ciently similar to indicate a global phenomenon. Parallel to these political changes, many States are seeking more open forms of economic policy, creating a world-wide sense of dynamism and movement.

10. To the hundreds of millions who gained their independence in the surge of decolonization following the creation of the United Nations, have been added millions more who have recently gained freedom. Once again new States are taking their seats in the General Assembly. Their arrival reconfirms the importance and indispensability of the sovereign State as the fundamental entity of the international community.

11. We have entered a time of global transition marked by uniquely contradictory trends. Regional and continental associations of States are evolving ways to deepen cooperation and ease some of the contentious characteristics of sovereign and nationalistic rivalries. National boundaries are blurred by advanced communications and global commerce, and by the decisions of States to yield some sovereign prerogatives to larger, common political associations. At the same time, however, fierce new assertions of nationalism and sovereignty spring up, and the cohesion of States is threatened by brutal ethnic, religious, social, cultural or linguistic strife. Social peace is challenged on the one hand by new assertions of discrimination and exclusion and, on the other, by acts of terrorism seeking to undermine evolution and change through democratic means.

12. The concept of peace is easy to grasp; that of international security is more complex, for a pattern of contradictions has arisen here as well. As major nuclear Powers have begun to negotiate arms reduction agreements, the proliferation of weapons of mass destruction threatens to increase and conventional arms continue to be amassed in many parts of the world. As racism becomes recognized for the destructive force it is and as apartheid is being dismantled, new racial tensions are rising and finding expression in violence. Technological advances are altering the nature and the expectation of life all over the globe. The revolution in communications has united the world in awareness, in aspiration and in greater solidarity against injustice. But progress also brings new risks for stability: ecological damage, disruption of family and community life, greater intrusion into the lives and rights of individuals.

13. This new dimension of insecurity must not be allowed to obscure the continuing and devastating problems of unchecked population growth, crushing debt burdens, barriers to trade, drugs and the growing disparity between rich and poor. Poverty, disease, famine, oppression and despair abound, joining to produce 17 million refugees, 20 million displaced persons and massive migrations of peoples within and beyond national borders. These are both sources and consequences of conflict that require the ceaseless attention and the highest priority in the efforts of the United Nations. A porous ozone shield could pose a greater threat to an exposed population than a hostile army. Drought and disease can decimate no less mercilessly than the weapons of war. So at this moment of renewed opportunity, the efforts of the Organization to build peace, stability and security must encompass matters beyond military threats in order to break the fetters of strife and warfare that have characterized the past. But armed conflicts today, as they have throughout history, continue to bring fear and horror to humanity, requiring our urgent involvement to try to prevent, contain and bring them to an end.

14. Since the creation of the United Nations in 1945, over 100 major conflicts around the world have left some 20 million dead. The United Nations was rendered powerless to deal with many of these crises because of the vetoes—279 of them—cast in the Security Council, which were a vivid expression of the divisions of that period.

15. With the end of the cold war there have been no such vetoes since 31 May 1990, and demands on the United Nations have surged. Its security arm, once disabled by circumstances it was not created or equipped to control, has emerged as a central instrument for the prevention and resolution of conflicts and for the preservation of peace. Our aims must be:

To seek to identify at the earliest possible stage situations that could produce conflict, and to try through diplomacy to remove the sources of danger before violence results;

Where conflict erupts, to engage in peacemaking aimed at resolving the issues that have led to conflict;

Through peace-keeping, to work to preserve peace, however fragile, where fighting has been halted and to assist in implementing agreements achieved by the peacemakers;

To stand ready to assist in peace-building in its differing contexts: rebuilding the institutions and infrastructures of nations torn by civil war and strife; and building bonds of peaceful mutual benefit among nations formerly at war;

And in the largest sense, to address the deepest causes of conflict: economic despair, social injustice and political oppression. It is possible to discern an increasingly common moral perception that spans the world's nations and peoples, and which is finding expression in international laws, many owing their genesis to the work of this Organization.

16. This wider mission for the world Organization will demand the concerted attention and effort of individual States, of regional and non-governmental organizations and of all of the United Nations system, with each of the principal organs functioning in the balance and harmony that the Charter requires. The Security Council has been assigned by all Member States the primary responsibility for the maintenance of international peace and security under the Charter. In its broadest sense this responsibility must be shared by the General Assembly and by all the functional elements of the world Organization. Each has a special and indispensable role to play in an integrated approach to human security. The Secretary-General's contribution rests on the pattern of trust and cooperation established between him and the deliberative organs of the United Nations.

17. The foundation-stone of this work is and must remain the State. Respect for its fundamental sovereignty and integrity are crucial to any common international progress. The time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality. It is the task of leaders of States today to understand this and to find a balance between the needs of good internal governance and the requirements of an ever more interdependent world. Commerce, communications and environmental matters transcend administrative borders; but inside those borders is where individuals carry out the first order of their economic, political and social lives. The United Nations has not closed its door. Yet if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace, security and economic well-being for all would become ever more difficult to achieve.

18. One requirement for solutions to these problems lies in commitment to human rights with a special sensitivity to those of minorities, whether ethnic, religious, social or linguistic. The League of Nations provided a machinery for the international protection of minorities. The General Assembly soon will have before it a declaration on the rights of minorities. That instrument, together with the increasingly effective machinery of the United Nations dealing with human rights, should enhance the situation of minorities as well as the stability of States.

19. Globalism and nationalism need not be viewed as opposing trends, doomed to spur each other on to extremes of reaction. The healthy globalization of contemporary life requires in the first instance solid identities and fundamental freedoms. The sovereignty, territorial integrity and independence of States within the established international system, and the principle of self-determination for peoples, both of great value and importance, must not be permitted to work against each other in the period ahead. Respect for democratic principles at all levels of social existence is crucial: in communities, within States and within the community of States. Our constant duty should be to maintain the integrity of each while finding a balanced design for all.

II. DEFINITIONS

20. The terms preventive diplomacy, peacemaking and peace-keeping are integrally related and as used in this report are defined as follows:

Preventive diplomacy is action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur.

Peacemaking is action to bring hostile parties to agreement, essentially through such peaceful means as those foreseen in Chapter VI of the Charter of the United Nations.

Peace-keeping is the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well. Peace-keeping is a technique that expands the possibilities for both the prevention of conflict and the making of peace.

21. The present report in addition will address the critically related concept of post-conflict peace-building—action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict. Preventive diplomacy seeks to resolve disputes before violence breaks out; peacemaking and peace-keeping are required to halt conflicts and preserve peace once it is attained. If successful, they strengthen the opportunity for post-conflict peace-building, which can prevent the recurrence of violence among nations and peoples.

22. These four areas for action, taken together, and carried out with the backing of all Members, offer a coherent contribution towards securing peace in the spirit of the Charter. The United Nations has extensive experience not only in these fields, but in the wider realm of work for peace in which these four fields are set. Initiatives on decolonization, on the environment and sustainable development, on population, on the

eradication of disease, on disarmament and on the growth of international law—these and many others have contributed immeasurably to the foundations for a peaceful world. The world has often been rent by conflict and plagued by massive human suffering and deprivation. Yet it would have been far more so without the continuing efforts of the United Nations. This wide experience must be taken into account in assessing the potential of the United Nations in maintaining international security not only in its traditional sense, but in the new dimensions presented by the era ahead.

III. PREVENTIVE DIPLOMACY

23. The most desirable and efficient employment of diplomacy is to ease tensions before they result in conflict—or, if conflict breaks out, to act swiftly to contain it and resolve its underlying causes. Preventive diplomacy may be performed by the Secretary-General personally or through senior staff or specialized agencies and programmes, by the Security Council or the General Assembly, and by regional organizations in cooperation with the United Nations. Preventive diplomacy requires measures to create confidence; it needs early warning based on information gathering and informal or formal fact-finding; it may also involve preventive deployment and, in some situations, demilitarized zones.

Measures to build confidence

24. Mutual confidence and good faith are essential to reducing the likelihood of conflict between States. Many such measures are available to Governments that have the will to employ them. Systematic exchange of military missions, formation of regional or subregional risk reduction centres, arrangements for the free flow of information, including the monitoring of regional arms agreements, are examples. I ask all regional organizations to consider what further confidence-building measures might be applied in their areas and to inform the United Nations of the results. I will undertake periodic consultations on confidence-building measures with parties to potential, current or past disputes and with regional organizations, offering such advisory assistance as the Secretariat can provide.

Fact-finding

25. Preventive steps must be based upon timely and accurate knowledge of the facts. Beyond this, an understanding of developments and global trends, based on sound analysis, is required. And the willingness to take appropriate preventive action is essential. Given the economic and social roots of many potential conflicts, the information needed by the United Nations now must encompass economic and social trends as well as political developments that may lead to dangerous tensions.

(a) An increased resort to fact-finding is needed, in accordance with the Charter, initiated either by the Secretary-General, to enable him to meet his responsibilities under the Charter, including Article 99, or by the Security Council or the General Assembly. Various forms may be employed selectively as the situation requires. A request by a State for the sending of a United Nations fact-finding mission to its territory should be considered without undue delay.

(b) Contacts with the Governments of Member States can provide the Secretary-General with detailed information on issues of concern. I ask that all Member States be ready to provide the information needed for effective preventive diplomacy. I will supplement my own contacts by regularly sending senior officials on missions for consultations in capitals or other locations. Such contacts are essential to gain insight into a situation and to assess its potential ramifications.

(c) Formal fact-finding can be mandated by the Security Council or by the General Assembly, either of which may elect to send a mission under its immediate authority or may invite the Secretary-General to take the necessary steps, including the designation of a special envoy. In addition to collecting information on which a decision for further action can be taken, such a mission can in some instances help to defuse a dispute by its presence, indicating to the parties that the Organization, and in particular the Security Council, is actively seized of the matter as a present or potential threat to international security.

(d) In exceptional circumstances the Council may meet away from Headquarters as the Charter provides, in order not only to inform itself directly, but also to bring the authority of the Organization to bear on a given situation.

Early warning

26. In recent years the United Nations system has been developing a valuable network of early warning systems concerning environmental threats, the risk of nuclear accident, natural disasters, mass movements of populations, the threat of famine and the spread of disease. There is a need, however, to strengthen arrangements in such a manner that information from these sources can be synthesized with political indicators to assess whether a threat to peace exists and to analyze what action might be taken by the United Nations to alleviate it. This is a process that will continue to require the close cooperation of the various specialized agencies and functional offices of the United Nations. The analyses and recommendations for preventive action that emerge will be made available by me, as appropriate, to the Security Council and other United Nations organs. I recommend in addition that the Security Council invite a reinvigorated and restructured Economic and Social Council to provide reports, in accordance with Article 65 of the Charter, on those economic and social developments that may, unless mitigated, threaten international peace and security.

27. Regional arrangements and organizations have an important role in early warning. I ask regional organizations that have not yet sought observer status at the United Nations to do so and to be linked, through appropriate arrangements, with the security mechanisms of this Organization.

Preventive deployment

28. United Nations operations in areas of crisis have generally been established after conflict has occurred. The time has come to plan for circumstances warranting preventive deployment, which could take place in a variety of instances and ways. For example, in conditions of national crisis there could be preventive deployment at the request of the Government or all parties concerned, or with their consent; in inter-State disputes such deployment could take place when two countries feel that a United Nations presence on both sides of their border can discourage hostilities; furthermore, preventive deployment could take place when a country feels threatened and requests the deployment of an appropriate United Nations presence along its side of the border alone. In each situation, the mandate and composition of the United Nations presence would need to be carefully devised and clear to all.

29. In conditions of crisis within a country, when the Government requests or all parties consent, preventive deployment could help in a number of ways to alleviate suffering and to limit or control violence. Humanitarian assistance, impartially provided, could be of critical importance; assistance in maintaining security, whether through military, police or civilian personnel, could save lives and develop conditions of safety in which negotiations can be held; the United Nations could also help in conciliation efforts if this should be the wish of the parties. In certain circumstances, the United Nations may well need to draw upon the specialized skills and resources of various parts of the United Nations system; such operations may also on occasion require the participation of non-governmental organizations.

30. In these situations of internal crisis the United Nations will need to respect the sovereignty of the State; to do otherwise would not be in accordance with the understanding of Member States in accepting the principles of the Charter. The Organization must remain mindful of the carefully negotiated balance of the guiding principles annexed to General assembly resolution 46/182 of 19 December 1991. Those guidelines stressed, *inter alia*, that humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality; that the sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations; and that, in this context, humanitarian assistance should be provided with the consent of the affected country and, in principle, on the basis of an appeal by that country. The guidelines also stressed the responsibility of States to take care of the victims of emergencies occurring on their territory and the need for access to those requiring humanitarian assistance. In the light of these guidelines, a Government's request for United Nations involvement, or consent to it, would not be an infringement of that State's sovereignty or be contrary to Article 2, paragraph 7, of the Charter which refers to matters essentially within the domestic jurisdiction of any State.

31. In inter-State disputes, when both parties agree, I recommend that if the Security Council concludes that the likelihood of hostilities between neighboring countries could be removed by the preventive deployment of a United Nations presence on the territory of each State, such action should be taken. The nature of the tasks to be performed would determine the composition of the United Nations presence.

32. In cases where one nation fears a cross-border attack, if the Security Council concludes that a United Nations presence on one side of the border, with the consent only of the requesting country, would serve to deter conflict, I recommend that preventive deployment take place. Here again, the specific nature of the situation would determine the mandate and the personnel required to fulfill it.

Demilitarized zones

33. In the past, demilitarized zones have been established by agreement of the parties at the conclusion of a conflict. In addition to the deployment of United Nations personnel in such zones as part of peace-keeping operations, consideration should now be given to the usefulness of such zones as a form of preventive deployment, on both sides of a border, with the agreement of the two parties, as a means of separating potential belligerents, or on one side of the line, at the request of one party, for the purpose of re-

moving any pretext for attack. Demilitarized zones would serve as symbols of the international community's concern that conflict be prevented.

IV. PEACEMAKING

34. Between the tasks of seeking to prevent conflict and keeping the peace lies the responsibility to try to bring hostile parties to agreement by peaceful means. Chapter VI of the Charter sets forth a comprehensive list of such means for the resolution of conflict. These have been amplified in various declarations adopted by the General Assembly, including the Manila Declaration of 1982 on the Peaceful Settlement of International Disputes[2] and the 1988 Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field.[3] They have also been the subject of various resolutions of the General Assembly, including resolution 44/21 of 15 November 1989 on enhancing international peace, security and international cooperation in all its aspects in accordance with the Charter of the United Nations. The United Nations has had wide experience in the application of these peaceful means. If conflicts have gone unresolved, it is not because techniques for peaceful settlement were unknown or inadequate. The fault lies first in the lack of political will of parties to seek a solution to their difference, through such means as are suggested in Chapter VI of the Charter, and second, in the lack of leverage at the disposal of a third party if this is the procedures chosen. The indifference of the international community to a problem, or the marginalization of it, can also thwart the possibilities of solution. We must look primarily to these areas if we hope to enhance the capacity of the Organization for achieving peaceful settlements.

35. The present determination in the Security Council to resolve international disputes in the manner foreseen in the Charter has opened the way for a more active Council role. With greater unity has come leverage and persuasive power to lead hostile parties towards negotiations. I urge the Council to take full advantage of the provisions of the Charter under which it may recommend appropriate procedures or methods for dispute settlement and, if all the parties to a dispute so request, make recommendations to the parties for a specific settlement of the dispute.

36. The General Assembly, like the Security Council and the Secretary-General, also has an important role assigned to it under the Charter for the maintenance of international peace and security. As a universal forum, its capacity to consider and recommend appropriate action must be recognized. To that end it is essential to promote its utilization by all Member States so as to bring greater influence to bear in pre-empting or containing situations which are likely to threaten international peace and security.

37. Mediation and negotiation can be undertaken by an individual designated by the Security Council, by the General Assembly or by the Secretary-General. There is a long history of the utilization by the United Nations of distinguished statesmen to facilitate the processes of peace. They can bring a personal prestige that, in addition to their experience, can encourage the parties to enter serious negotiations. There is a wide willingness to serve in this capacity, from which I shall continue to benefit as the need arises. Frequently it is the Secretary-General himself who undertakes the task. While the mediator's effectiveness is enhanced by strong and evident support from the Council, the General Assembly and the relevant Member States acting in their national capacity, the good offices of the Secretary-General may at times be employed most effectively when conducted independently of the deliberative bodies. Close and continuous consultation between the Secretary-General and the Security Council is, however, essential to ensure full awareness of how the Council's influence can best be applied and to develop a common strategy for the peaceful settlement of specific disputes.

The World Court

38. The docket of the International Court of Justice has grown fuller but it remains an under-used resource for the peaceful adjudication of disputes. Greater reliance on the Court would be an important contribution to United Nations peacemaking. In this connection, I call attention to the power of the Security Council under Articles 36 and 37 of the Charter to recommend to Member States the submission of a dispute to the International Court of Justice, arbitration or other dispute-settlement mechanisms. I recommend that the Secretary-General be authorized, pursuant to Article 96, paragraph 2, of the Charter, to take advantage of the advisory competence of the Court and that other United Nations organs that already enjoy such authorization turn to the Court more frequently for advisory opinions.

39. I recommend the following steps to reinforce the role of the International Court of Justice:

(a) All Member States should accept the general jurisdiction of the International Court under Article 36 of its Statute, without any reservation, before the end of the United Nations Decade of International Law in the year 2000. In instances where domestic structures prevent this, States should agree bilaterally or multilaterally to a comprehensive list of matters they are willing to submit to the Court and should withdraw their reservations to its jurisdiction in the dispute settlement clauses of multilateral treaties;

(b) When submission of a dispute to the full Court is not practical, the Chambers jurisdiction should be used;

(c) States should support the Trust Fund established to assist countries unable to afford the cost involved in bringing a dispute to the Court, and such countries should take full advantage of the Fund in order to resolve their disputes.

Amelioration through assistance

40. Peacemaking is at times facilitated by international action to ameliorate circumstances that have contributed to the dispute or conflict. If, for instance, assistance to displaced persons within a society is essential to a solution, then the United Nations should be able to draw upon the resources of all agencies and programmes concerned. At present, there is no adequate mechanism in the United Nations through which the Security Council, the General Assembly or the Secretary-General can mobilize the resources needed for such positive leverage and engage the collective efforts of the United Nations system for the peaceful resolution of a conflict. I have raised this concept in the Administrative Committee on Coordination, which brings together the executive heads of United Nations agencies and programmes; we are exploring methods by which the inter-agency system can improve its contribution to the peaceful resolution of disputes.

Sanctions and special economic problems

41. In circumstances when peacemaking requires the imposition of sanctions under Article 41 of the Charter, it is important that States confronted with special economic problems not only have the right to consult the Security Council regarding such problems, as Article 50 provides, but also have a realistic possibility of having their difficulties addressed. I recommend that the Security Council devise a set of measures involving the financial institutions and other components of the United Nations system that can be put in place to insulate States from such difficulties. Such measures would be a matter of equity and a means of encouraging States to cooperate with decisions of the Council.

Use of military force

42. It is the essence of the concept of collective security as contained in the Charter that if peaceful means fail, the measures provided in Chapter VII should be used, on the decision of the Security Council, to maintain or restore international peace and security in the face of a "threat to the peace, breach of the peace, or act of aggression". The Security Council has not so far made use of the most coercive of these measures—the action by military force foreseen in Article 42. In the situation between Iraq and Kuwait, the Council chose to authorize Member States to take measures on its behalf. The Charter, however, provides a detailed approach which now merits the attention of all Member States.

43. Under Article 42 of the Charter, the Security Council has the authority to take military action to maintain or restore international peace and security. While such action should only be taken when all peaceful means have failed, the option of taking it is essential to the credibility of the United Nations as a guarantor of international security. This will require bringing into being, through negotiations, the special agreements foreseen in Article 43 of the Charter, whereby Member States undertake to make armed forces, assistance and facilities available to the Security Council for the purposes stated in Article 42, not only on an ad hoc basis but on a permanent basis. Under the political circumstances that now exist for the first time since the Charter was adopted, the long-standing obstacles to the conclusion of such special agreements should no longer prevail. The ready availability of armed forces on call could serve, in itself, as a mean of deterring breaches of the peace since a potential aggressor would know that the Council had at its disposal a mean of response. Forces under Article 43 may perhaps never be sufficiently large or well enough equipped to deal with a threat from a major army equipped with sophisticated weapons. They would be useful, however, in meeting any threat posed by a military force of a lesser order. I recommend that the Security Council initiate negotiations in accordance with Article 43, supported by the Military Staff Committee, which may be augmented if necessary by others in accordance with Article 47, paragraph 2, of the Charter. It is my view that the role of the Military Staff Committee should be seen in the context of Chapter VII, and not that of the planning or conduct of peace-keeping operations.

Peace-enforcement units

44. The mission of forces under Article 43 would be to respond to outright aggression, imminent or actual. Such forces are not likely to be available for some time to come. Cease-fires have often been agreed to but not complied with, and the United Nations has sometimes been called upon to send forces to restore and maintain the cease-fire. This

task can on occasion exceed the mission of peace-keeping forces and the expectations of peace-keeping force contributors. I recommend that the Council consider the utilization of peace-enforcement units in clearly defined circumstances and with their terms of reference specified in advance. Such units from Member States would be available on call and would consist of troops that have volunteered for such service. They would have to be more heavily armed than peace-keeping forces and would need to undergo extensive preparatory training within their national forces. Deployment and operation of such forces would be under the authorization of the Security Council and would, as in the case of peace-keeping forces, be under the command of the Secretary-General. I consider such peace-enforcement units to be warranted as a provisional measure under Article 40 of the Charter. Such peace-enforcement units should not be confused with the forces that may eventually be constituted under Article 43 to deal with acts of aggression or with the military personnel which Governments may agree to keep on stand-by for possible contribution to peace-keeping operations.

45. Just as diplomacy will continue across the span of all the activities dealt with in the present report, so there may not be a dividing line between peacemaking and peace-keeping. Peacemaking is often a prelude to peace-keeping—just as the deployment of a United Nations presence in the field may expand possibilities for the prevention of conflict, facilitate the work of peacemaking and in many cases serve as a prerequisite for peace-building.

V. PEACE-KEEPING

46. Peace-keeping can rightly be called the invention of the United Nations. It has brought a degree of stability to numerous areas of tension around the world.

Increasing demands

47. Thirteen peace-keeping operations were established between the years 1945 and 1987; 13 others since then. An estimated 528,000 military, police and civilian personnel had served under the flag of the United Nations until January 1992. Over 800 of them from 43 countries have died in the service of the Organization. The costs of these operations have aggregated some $8.3 billion till 1992. The unpaid arrears towards them stand at over $800 million, which represent a debt owed by the Organization to the troop-contributing countries. Peace-keeping operations approved at present are estimated to cost close to $3 billion in the current 12-month period, while patterns of payment are unacceptably slow. Against this, global defense expenditures at the end of the last decade had approached $1 trillion a year, or $2 million per minute.

48. The contrast between the costs of United Nations peace-keeping and the costs of the alternative, war—between the demands of the Organization and the means provided to meet them—would be farcical were the consequences not so damaging to global stability and to the credibility of the Organization. At a time when nations and peoples increasingly are looking to the United Nations for assistance in keeping the peace—and holding it responsible when this cannot be so—fundamental decisions must be taken to enhance the capacity of the Organization in this innovative and productive exercise of its function. I am conscious that the present volume and unpredictability of peace-keeping assessments poses real problems for some Member States. For this reason, I strongly support proposals in some Member States for their peace-keeping contributions to be financed from defence, rather than foreign affairs, budgets and I recommend such action to others. I urge the General Assembly to encourage this approach.

49. The demands on the United Nations for peace-keeping, and peace-building, operations will in the coming years continue to challenge the capacity, the political and financial will and the creativity of the Secretariat and Member States. Like the Security Council, I welcome the increase and broadening of the tasks of peace-keeping operations.

New departures in peace-keeping

50. The nature of peace-keeping operations has evolved rapidly in recent years. The established principles and practices of peace-keeping have responded flexibly to new demands of recent years, and the basic conditions for success remain unchanged: a clear and practicable mandate; the cooperation of the parties in implementing that mandate; the continuing support of the Security Council; the readiness of Member States to contribute the military, police and civilian personnel, including specialists, required; effective United Nations command at Headquarters and in the field; and adequate financial and logistic support. As the international climate has changed and peace-keeping operations are increasingly fielded to help implement settlements that have been negotiated by peacemakers, a new array of demands and problems has emerged regarding logistics, equipment, personnel and finance, all of which could be corrected if Member States so wished and were ready to make the necessary resources available.

Personnel

51. Member States are keen to participate in peace-keeping operations. Military observers and infantry are invariably available in the required numbers, but logistic units present a greater problem, as few armies can afford to spare such units for an extended period. Member States were requested in 1990 to state what military personnel they were in principle prepared to make available; few replied. I reiterate the request to all Member States to reply frankly and promptly. Stand-by arrangements should be confirmed, as appropriate, through exchanges of letters between the Secretariat and Member States concerning the kind and number of skilled personnel they will be prepared to offer the United Nations as the needs of new operations arise.

52. Increasingly, peace-keeping requires that civilian political officers, human rights monitors, electoral officials, refugee and humanitarian aid specialists and police play as central a role as the military. Police personnel have proved increasingly difficult to obtain in the numbers required. I recommend that arrangements be reviewed and improved for training peace-keeping personnel—civilian, police, or military—using the varied capabilities of Member State Governments, of non-governmental organizations and the facilities of the Secretariat. As efforts go forward to include additional State as contributors, some States with considerable potential should focus on language training for police contingents which may serve with the Organization. As for the United Nations itself, special personnel procedures, including incentives, should be instituted to permit the rapid transfer of Secretariat staff members to service with peace-keeping operations. The strength and capability of military staff serving in the Secretariat should be augmented to meet new and heavier requirements.

Logistics

53. Not all Governments can provide their battalions with the equipment they need for service abroad. While some equipment is provided by troop-contributing countries, a great deal has to come from the United Nations, including equipment to fill gaps in under-equipped national units. The United Nations has no standing stock of such equipment. Orders must be placed with manufacturers, which creates a number of difficulties. A pre-positioned stock of basic peace-keeping equipment should be established, so that at least some vehicles, communications equipment, generators, etc., would be immediately available at the start of an operation. Alternatively, Governments should commit themselves to keeping certain equipment, specified by the Secretary-General, on stand-by for immediate sale, loan or donation to the United Nations when required.

54. Member States in a position to do so should make air- and sea-lift capacity available to the United Nations free of cost or at lower than commercial rates, as was the practice until recently.

VI. POST-CONFLICT PEACE-BUILDING

55. Peacemaking and peace-keeping operations, to be truly successful, must come to include comprehensive efforts to identify and support structures which will tend to consolidate peace and advance a sense of confidence and well-being among people. Through agreements ending civil strife, these may include disarming the previously warring parties and the restoration of order, the custody and possible destruction of weapons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening governmental institutions and promoting formal and informal processes of political participation.

56. In the aftermath of international war, post-conflict peace-building may take the form of concrete cooperative projects which link two or more countries in a mutually beneficial undertaking that can not only contribute to fundamental to peace. I have in mind, for example, projects that bring States together to develop agriculture, improve transportation or utilize resources such as water or electricity that they need to share, or joint programmes through which barriers between nations are brought down by means of freer travel, cultural exchanges and mutually beneficial youth and educational projects. Reducing hostile perceptions through educational exchanges and curriculum reform may be essential to forestall a re-emergency of cultural and national tensions which could spark renewed hostilities.

57. In surveying the range of efforts for peace, the concept of peace-building as the construction of a new environment should be viewed as the counterpart of preventive diplomacy, which seeks to avoid the breakdown of peaceful conditions. When conflict breaks out, mutually reinforcing efforts at peacemaking and peace-keeping come into play. Once these have achieved their objectives, only sustained, cooperative work to deal with underlying economic, social, cultural and humanitarian problems can place an achieved peace on a durable foundation. Preventive diplomacy is to avoid a crisis; post-conflict peace-building is to prevent a recurrence.

58. Increasingly it is evident that peace-building after civil or international strife

must address the serious problem of land mines, many tens of millions of which remain scattered in present or former combat zones. De-mining should be emphasized in the terms of reference of peace-keeping operations and is crucially important in the restoration of activity when peace-building is under way: agriculture cannot be revived without de-mining and the restoration of transport may require the laying of hard surface roads to prevent re-mining. In such instances, the link becomes evident between peace-keeping and peace-building. Just as demilitarized zones may serve the cause of preventive diplomacy and preventive deployment to avoid conflict, so may demilitarization assist in keeping the peace or in post-conflict peace-building, as a measure for heightening the sense of security and encouraging the parties to turn their energies to the work of peaceful restoration of their societies.

59. There is a new requirement for technical assistance which the United Nations has an obligation to develop and provide when requested: support for the transformation of deficient national structures and capabilities, and for the strengthening of new democratic institutions. The authority of the United Nations system to act in this field would rest on the consensus that social peace is as important as strategic or political peace. There is an obvious connection between democratic practices—such as the rule of law and transparency in decision-making—and the achievement of true peace and security in any new and stable political order. These elements of good governance need to be promoted at all levels of international and national political communities.

VII. COOPERATION WITH REGIONAL ARRANGEMENTS AND ORGANIZATIONS

60. The Covenant of the League of Nations, in its Article 21, noted the validity of regional understandings for securing the maintenance of peace. The Charter devotes Chapter VIII to regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action and consistent with the Purposes and Principles of the United Nations. The cold war impaired the proper use of Chapter VIII and indeed, in that era, regional arrangements worked on occasion against resolving disputes in the manner foreseen in the Chapter.

61. The Charter deliberately provides no precise definition of regional arrangements and agencies, thus allowing useful flexibility for undertakings by a group of States to deal with matter appropriate for regional action which also could contribute to the maintenance of international peace and security. Such associations or entities could include treaty-based organizations, whether created before or after the founding of the United Nations, regional organizations for mutual security and defence, organizations for general regional development or for cooperation on a particular economic topic or function, and groups created to deal with a specific political, economic or social issue of current concern.

62. In this regard, the United Nations has recently encouraged a rich variety of complementary efforts. Just as no two regions or situations are the same, so the design of cooperative work and its division of labour must adapt to the realities of each case with flexibility and creativity. In Africa, three different regional groups—the Organization of African Unity, the League of Arab States and the Organization of the Islamic Conference—joined efforts with the United Nations regarding Somalia. In the Asian context, the Association of South-East Asian Nations and individual States from several regions were brought together with the parties to the Cambodian conflict at an international conference in Paris, to work with the United Nations. For El Salvador, a unique arrangement—"The Friends of the Secretary-General"—contributed to agreements reached through the mediation of the Secretary-General. The end of the war in Nicaragua involved a highly complex effort which was imitated by leaders of the region and conducted by individual States, groups of States and the Organization of American States. Efforts undertaken by the European Community and its member States, with the support of States participating in the Conference on Security and Cooperation in Europe, have been of central importance in dealing with the crisis in the Balkans and neighbouring areas.

63. In the past, regional arrangements often were created because of the absence of a universal system for collective security; thus their activities could on occasion work at cross-purposes with the sense of solidarity required for the effectiveness of the world Organization. But in this new era of opportunity, regional arrangements or agencies can render great service if their activities are undertaken in a manner consistent with the Purposes and Principles of the Charter, and if their relationship with the United Nations, and particularly the Security Council, is governed by Chapter VIII.

64. It is not the purpose of the present report to set forth any formal pattern of relationship between regional organizations and the United Nations, or to call for any specific division of labour. What is clear, however, is that regional arrangements or agencies in many cases possess a potential that should be utilized in serving the functions covered in this report: preventive diplomacy, peace-keeping, peacemaking and post-conflict peace-building. Under the Charter, the Security Council has and will continue to have primary responsibility for maintaining international peace and security, but regional action as a matter of decentralization, delegation and cooperation with United Nations efforts could not only lighten the burden of the Council but also contribute to a deeper sense of participation, consensus and democratization in international affairs.

65. Regional arrangements and agencies have not in recent decades been considered in this light, even when originally designed in part for a role in maintaining or restoring peace within their regions of the world. Today a new sense exists that they have contributions to make. Consultations between the United Nations and regional arrangements or agencies could do much to build international consensus on the nature of a problem and the measures required to address it. Regional organizations participating in complementary efforts with the United Nations in joint undertakings would encourage States outside the region to act supportively. And should the Security Council choose specifically to authorize a regional arrangement or organization to take the lead in addressing a crisis within its region, it could serve to lend the weight of the United Nations to the validity of the regional effort. Carried forward in the spirit of the Charter, and as envisioned in Chapter VIII, the approach outlined here could strengthen a general sense that democratization is being encouraged at all levels in the task of maintaining international peace and security, it being essential to continue to recognize that the primary responsibility will continue to reside in the Security Council.

VIII. SAFETY OF PERSONNEL

66. When United Nations personnel are deployed in conditions of strife, whether for preventive diplomacy, peacemaking, peace-keeping, peace-building or humanitarian purposes, the need arises to ensure their safety. There has been an unconscionable increase in the number of fatalities. Following the conclusion of a cease-fire and in order to prevent further outbreaks of violence, United Nations guards were called upon to assist in volatile conditions in Iraq. Their presence afforded a measure of security to United Nations personnel and supplies and, in addition, introduced an element of reassurance and stability that helped to prevent renewed conflict. Depending upon the nature of the situation, different configurations and compositions of security deployments will need to be considered. As the variety and scale of threat widens, innovative measures will be required to deal with the dangers facing United Nations personnel.

67. Experience has demonstrated that the presence of a United Nations operation has not always been sufficient to deter hostile action. Duty in areas of danger can never be risk-free; United Nations personnel must expect to go in harm's way at times. The courage, commitment and idealism shown by United Nations personnel should be respected by the entire international community. These men and women deserve to be properly recognized and rewarded for the perilous tasks they undertake. Their interests and those of their families must he given due regard and protected.

68. Given the pressing need to afford adequate protections to United Nations personnel engaged in life-endangering circumstances, I recommend that the Security Council, unless it elects immediately to withdraw the United Nations presence in order to preserve the credibility of the Organization, gravely consider what action should be taken towards those who put United Nations personnel in danger. Before deployment takes place, the Council should keep open the option of considering in advance collective measures, possibly including those under Chapter VII when a threat to international peace and security is also involved, to come into effect should the purpose of the United Nations operation systematically be frustrated and hostilities occur.

IX. FINANCING

69. A chasm has developed between the tasks entrusted to this Organization and the financial means provided to it. The truth of the matter is that our vision cannot really extend to the prospect opening before us as long as our financing remains myopic. There are two main areas of concern: the ability of the Organization to function over the longer term; and immediate requirements to respond to a crisis.

70. To remedy the financial situation of the United Nations in all its aspects, my distinguished predecessor repeatedly drew the attention of Member States to the increasingly impossible situations that has arisen and, during the forty-sixth session of the General Assembly, made a number of proposals. Those proposals which remain before the Assembly, and with which I am in broad agreement, are the following:

Proposal one. This suggested the adoption of a set of measures to deal with the cash flow problems caused by the exceptionally high level of unpaid contributions as well as with the problem of inadequate working capital reserves:

(a) Charging interest on the amounts of assessed contributions that are not paid on time;

(b) Suspending certain financial regulations of the United Nations to permit the retention of budgetary surpluses;

(c) Increasing the Working Capital Fund to a level of $250 million and endorsing the principle that the level of the Fund should be approximately 25 per cent of the annual assessment under the regular budget;

(d) Establishment of a temporary Peace-keeping Reserve Fund, at a level of $50 million, to meet initial expenses of peace-keeping operations pending receipt of assessed contributions;

(e) Authorization to the Secretary-General to borrow commercially, should other sources of cash be inadequate.

Proposal two. This suggested the creation of a Humanitarian Revolving Fund in the order of $50 million, to be used in emergency humanitarian situations. The proposal has since been implemented.

Proposal three. This suggested the establishment of a United Nations Peace Endowment Fund, with an initial target of $1 billion. The Fund would be created by a combination of assessed and voluntary contributions, with the latter being sought from Government, the private sector as well as individuals. Once the Fund reached its target level, the proceeds from the investment of its principal would be used to finance the initial costs of authorized peace-keeping operations, other conflict resolution measures and related activities.

71. In addition to these proposals, others have been added in recent months in the course of public discussion. These ideas include: a levy on arms sales that could be related to maintaining an Arms Register by the United Nations; a levy on international air travel, which is dependent on the maintenance of peace; authorization for the United Nations to borrow from the World Bank and the International Monetary Fund—for peace and development are interdependent; general tax exemption for contributions made to the United Nations by foundations, businesses and individuals; and changes in the formula for calculating the scale of assessments for peace-keeping operations.

72. As such ideas are debated, a stark fact remains: the financial foundations of the Organization daily grow weaker, debilitating its political will and practical capacity to undertake new and essential activities. This state of affairs must not continue. Whatever decisions are taken on financing the Organization, there is one inescapable necessity: Member States must pay their assessed contributions in full and on time. Failure to do so puts them in breach of their obligations under the Charter.

73. In these circumstances and on the assumption that Member States will be ready to finance operations for peace in a manner commensurate with their present, and welcome, readiness to establish them, I recommend the following:

(a) Immediate establishment of a revolving peace-keeping reserve fund of $50 million;

(b) Agreement that one third of the estimated cost of each new peace-keeping operation be appropriated by the General Assembly as soon as the Security Council decides to establish the operation; this would give the Secretary-General the necessary commitment authority and assure an adequate cash flow; the balance of the costs would be appropriated after the General Assembly approved the operation's budget;

(c) Acknowledgement by Member States that, under exceptional circumstances, political and operational considerations may make it necessary for the Secretary-General to employ his authority to place contracts without competitive bidding.

74. Member States wish the Organization to be managed with the utmost efficiency and care. I am in full accord. I have taken important steps to streamline the Secretariat in order to avoid duplication and overlap while increasing its productivity. Additional changes and improvements will take place. As regards the United Nations system more widely, I continue to review the situation in consultation with my colleagues in the Administrative Committee on Coordination. The question of assuring financial security to the Organization over the long term is of such importance and complexity that public awareness and support must be heightened. I have therefore asked a select group of qualified persons of high international repute to examine this entire subject and to report to me. I intend to present their advice, together with my comments, for the consideration of the General Assembly, in full recognition of the special responsibility that the Assembly has, under the Charter, for financial and budgetary matters.

X. AN AGENDA FOR PEACE

75. The nations and peoples of the United Nations are fortunate in a way that those of the League of Nations were not. We have been given a second chance to create the world of our Charter that they were denied. With the cold war ended we have drawn back from the brink of a confrontation that threatened the world and, too often, paralyzed our Organization.

76. Even as we celebrate our restored possibilities, there is a need to ensure that the lessons of the past four decades are learned and that the errors, or variations of them, are not repeated. For there may not be a third opportunity for our planet which, now for different reasons, remains endangered.

77. The tasks ahead must engage the energy and attention of all components of the United Nations system—the General Assembly and other principal organs, the agencies and programmes. Each has, in a balanced scheme of things, a role and a responsibility.

78. Never again must the Security Council lose the collegiality that is essential to its proper functioning, an attribute that it has gained after such trial. A genuine sense of consensus deriving from shared interests must govern its work, not the threat of the veto or the power of any group of nations. And it follows that agreement among the permanent members must have the deeper support of the other members of the Council, and the membership more widely, if the Council's decisions are to be effective and endure.

79. The Summit Meeting of the Security Council of 31 January 1992 provided a unique forum for exchanging views and strengthening cooperation. I recommend that the Heads of State and Government of the members of the Council meet in alternate years, just before the general debate commences in the General Assembly. Such sessions would permit exchanges on the challengers and dangers of the moment and stimulate ideas on how the United Nations may best serve to steer change into peaceful courses. I propose in addition that the Security Council continue to meet at the Foreign Minister level, as it has effectively done in recent years, whenever the situation warrants such meetings.

80. Power brings special responsibilities, and temptations. The powerful must resist the dual but opposite calls of unilateralism and isolationism if the United Nations is to succeed. For just as unilateralism at the global or regional level can shake the confidence of others, so can isolationism, whether it results from political choice or constitutional circumstance, enfeeble the global undertaking. Peace at home and the urgency of rebuilding and strengthening our individual societies necessitates peace abroad and cooperation among nations. The endeavours of the United Nations will require the fullest engagement of all of its Members, large and small, if the present renewed opportunity is to be seized.

81. Democracy within nations requires respect for human rights and fundamental freedoms, as set forth in the Charter. It requires as well a deeper understanding and respect for the rights of minorities and respect for the needs of the more vulnerable groups of society, especially women and children. This is not only a political matter. The social stability needed for productive growth is nurtured by conditions in which people can readily express their will. For this, strong domestic institutions of participation are essential. Promoting such institutions means promoting the empowerment of the unorganized, the poor, the marginalized. To this end, the focus of the United Nations should be on the "field", the locations where economic, social and political decisions take effect. In furtherance of this I am taking steps to rationalize and in certain cases integrate the various programmes and agencies of the United Nations within specific countries. The senior United Nations offical in each country should be prepared to serve, when needed, and with the consent of the host authorities, as my Representative on matters of particular concern.

82. Democracy within the family of nations means the application of its principles within the world Organization itself. This requires the fullest consultation, participation and engagement of all States, large and small, in the work of the Organization. All organs of the United Nations must be accorded, and play, their full and proper rule so that the trust of all nations and peoples will be retained and deserved. The principles of the Charter must be applied consistently, not selectively, for if the perception should be of the latter, trust will wane and with it the moral authority which is the greatest and most unique quality of that instrument. Democracy at all levels is essential to attain peace for a new era of prosperity and justice.

83. Trust also requires a sense of confidence that the world Organization will react swiftly, surely and impartially and that it will not be debilitated by political opportunism or by administrative or financial inadequacy. This presupposes a strong, efficient and independent international civil service whose integrity is beyond question and an assured financial basis that lifts the Organization, once and for all, out of its present mendicancy.

84. Just as it is vital that each of the organs of the United Nations employ its capabilities in the balanced and harmonious fashion envisioned in the Charter, peace in the largest sense cannot be accomplished by the United Nations system or by Governments alone. Non-governmental organizations, academic institutions, parliamentarians, business and professional communities, the media and the public at large must all be involved. This will strengthen the world Organization's ability to reflect the concerns and

interests of its widest constituency, and those who become more involved can carry the word of United Nations initiatives and build a deeper understanding of its work.

85. Reform is a continuing process, and improvement can have no limit. Yet there is an expectation, which I wish to see fulfilled, that the present phase in the renewal of this Organization should be complete by 1995, its fiftieth anniversary. The pace set must therefore be increased if the United Nations is to keep ahead of the acceleration of history that characterizes this age. We must be guided not by precedents along, however wise these may be, but by the needs of the future and by the shape and content that we wish to give it.

86. I am committed to broad dialogue between the Member States and the Secretary-General. And I am committed to fostering a full and open interplay between all institutions and elements of the Organization so that the Charter's objectives may not only be better served, but that this Organization may emerge as greater than the sum of its parts. The United Nations was created with a great and courageous vision. Now is the time, for its nations and peoples, and the men and women who serve it, to seize the moment for the sake of the future.

NOTES

[1] See S/23500, statement by the President of the Council, section entitled "Peacemaking and peacekeeping".

[2] General Assembly resolution 37/10, annex.

[3] General Assembly resolution 43/51, annex.

NEW APPROACHES TO INTERNATIONAL SECURITY

(Address by Senator Carl Levin to the Annual Conference of the Center for Naval Analyses, April 30, 1992)

We are living in a time of breathtaking change. The task of understanding those changes and fostering a new international environment of peace and democracy is supremely challenging. The current state of domestic politics and economics in the United States adds to that challenge. But I believe we are up to it if we'll display vision and hard-headed realism—the kind that the Center for Naval Analyses has provided so much of over the years.

Many of you have already begun to apply your skills to the new realities we're facing, especially the changed military threats. In a few short months, it has already become a cliche to say "the Cold War is over." I'm happy for that, but I'm afraid too many of our policies seem frozen in the past.

Here are some new realities: We no longer face a massive, monolithic enemy force bent on world domination. The threat of nuclear war has declined significantly. The Warsaw Pact is history and the Soviet Union is history. The former Red Army is divided and shrinking. No armed force in the former Soviet Union is poised for, or capable of a sudden, massive attack through the Fulda Gap or anywhere else. Moscow isn't fomenting armed revolutions around the globe, and it isn't deploying nationwide strategic defenses or new, state-of-the-art radars. Both superpowers have reduced forward deployments of weapons and troops, eliminated hair-trigger postures and have vastly increased warning time.

Here are some other relevant facts: The overwhelming military victory of Desert Storm against what was the fourth-largest army in the world demonstrated the effectiveness and vast superiority of the weapons and forces of the western alliance. The Gulf War dramatized the power of a multi-national coalition. And it left the U.S. the undisputed military superpower on the planet.

All those facts add up to an enormous opportunity we never expected to have, one of those rare moments in history when we might be able to build an effective system of international security. This evening, I would like to make the case for U.S. leadership in developing a new approach. I believe we should be working out new collective arrangements to prevent emerging threats from developing and to eliminate threats where they do develop. This U.S. should take the lead in building the institutions that can carry out these tasks, and we should shape our own military forces to support these new goals.

If that sounds too general for you, let me offer some specific examples: the international community now may be united enough for the first time in modern history to enforce peace in places like Yugoslavia and Azerbaijan. It may be united enough for the first time in modern history to forcefully prevent states like Libya and Iran from deploying weapons of mass destruction.

Taking these kinds of actions is much more complicated than just stating that it is possible. But it is feasible, at least under a number of conditions: two of those are that democracy needs to survive in Russia, and the U.S. needs to lead now in the creation of international coalitions that can act in new ways.

THE NEW THREATS

Now that I've taken you to the brink, and perhaps taken some of you over the brink—let me step back for a moment to look at some major new threats, very different from the Cold War that has dominated threat analysis for decades. Perhaps the greatest threat lies in proliferation of ballistic missiles, and nuclear, chemical and biological weapons. Just a few nuclear weapons in the hands of a Khaddafi or a terrorist group would pose a greater danger to us than the 30,000 nuclear weapons in Gorbachev's arsenal did.

Proliferation challenges us around the globe. It is at the heart of some of our most vexing foreign policy problems, and it is taking increasingly serpentine routes. Chain has been selling missiles and nuclear technology to Iran and other countries. Brazil sold German equipment to Iraq to produce weapons grade uranium and now may be exporting the same know-how to Iran. Recently, there were new reports that the Saudi transferred U.S.-made bombs to Iraq in 1986. Many are paying lip service to the proliferation problem but not acting to prevent it.

A second set of threats lies in historic antagonists who acquire modern, offensive, conventional military power. There is growing unrest and armed conflict in newly independent regions where old disputes have emerged as central, dictatorial control disappears. Yugoslavia represents a sobering challenge to international peacekeeping efforts because of the religious and cultural factions that exist there. Bosnia—Hercegovina may sound like a exotic, faraway place, but we Americans have short memories. Sarajevo was the flashpoint in the powder keg of ethnic and nationalistic rivalries that exploded into world war in 1914 after the assassination there of Archduke Ferdinand.

It is a new world with new threats, but these threats are not intractable, proliferation is not inevitable, and security crises can be managed before they erupt into civil war. With Russia and the United States now acting together, there are dramatic new openings for international action—the possibilities are truly tremendous.

OLD THINKING

Unfortunately, the United States has not risen to the leadership challenge. We knew Yugoslavia was a trouble spot. We saw it coming. But the community of nations didn't take action to prevent hostilities. Now, while the world watches, the bloodshed continues and could spread. Who knows where the fighting will escalate next? Perhaps Armenia and Azerbaijan?

Nor have we modified our defense plans to address emerging threats.

Look at the Pentagon's proposed base Force plan for 1997. It was crafted before the breakup of the Soviet Union and the end of communism there, before many of the force reductions in the former Warsaw Pact and before large nuclear weapons cuts by Presidents Bush and Yeltsin.

This Base Force is premised on Cold War threats that are gone, maybe not forever, but for a long time. We should watch the Russian situation closely, of course, and work for the survival of democracy there. But we need to look ahead. Unfortunately, the Base Force wasn't designed for action to address new threats such as proliferation of weapons of mass destruction or the outbreak of ethnic and nationalist civil wars.

The Administration seems to accept proliferation as inevitable, undeserving of urgent attention or fresh approaches. Take the ballistic missile proliferation threat as an example. The Pentagon misses no opportunity to warn that 10 to 15 countries may gain ballistic missile capability before the end of the decade, and could threaten the continental United States and U.S. forces and interests abroad. The attack of Iraqi SCUD missiles on U.S. troops in Riyadh and on Israeli citizens last year is frequently invoked as the shape of things to come.

But the Pentagon has offered Congress no coordinated plan to prevent these countries from acquiring missiles. They do not suggest strengthening the Missile Technology Control Regime (MTCR) or give any progress report on the Enhanced Proliferation Control Initiative the Administration trumpeted just a year ago.

The Administration offers Star Wars, but their system would, at best, provide only partial coverage against ballistic missiles, and leave us just as vulnerable as we are now to cruise missiles, planes, boats or suitcases carrying weapons.

$5.3 billion is requested for SDI this year, while we spend less than one percent of that sum on actual efforts to stop the spread of missiles and their technology.

No, the Pentagon's priorities are not yet responsive to the changed world and its new threats.

It's time for some fundamental changes. We need a foreign policy that articulates a positive vision, a security strategy for making that vision reality, and the right military forces to support that strategy.

PREVENTION AND ACTION

Our vision remains the protection and expansion of political and economic freedom. Isolationism as a strategy won't support that vision—the world is too small. Neither can we enforce our will alone through massive military superiority—we alone cannot sustain, politically or economically, the world policeman role.

But the U.S. can and should lead in the creation of an international fire brigade to stop these threats at their source. Our strategy should be to mobilize collective international action to prevent proliferation and to keep the peace. To succeed, it must be multi-lateral and broad-based.

The United Nations and its Security Council could be one basic institution for much of what I advocate, but they will need to become much stronger institutions. The United States is the only nation today with the political power to lead this effort and the military strength to help enforce it.

To try to prevent proliferation we'll need strong international agreements to control sensitive technologies and to restrict the international arms trade. We'll need agreed-upon enforcement regimes with teeth: tough inspection provisions and political or economic sanctions when necessary. And, as a last resort, we'll need the multilateral military means to destroy offensive forces before they are used. This last element is crucial. Some previous efforts, like the League of Nations, failed for lack of capability and will to enforce its resolutions.

And we must apply the same approach to crisis management in regions of ethnic and nationalistic conflict, and also be prepared to act militarily with others to keep the peace. There are situations where the international community would be wise to intervene—where the security of a region is threatened or where human rights violations are massive.

Awesome responsibilities attend that duty:

* * * the responsibility to do all we can to prevent hostilities that would justify intervention;

* * * the responsibility to use political and economic means first, reserving military force as a last resort;

* * * the responsibility to intervene collectively, as needed, in the common interest.

This raises complex questions about sovereignty, but we did apply some of these principles in Iraq, where the United Nations determined that the invasion of Kuwait and the subjugation of the Kurds were not "internal affairs."

Now it is time to build an international regime which can intervene with multilateral military forces to disarm combatants and enforce peace if prevention fails.

Chapter VII of the United Nations Charter allows the Security Council to create a standing U.N. military force "for the purposes of maintaining international peace and stability." Until now, the U.N. has only authorized ad hoc coalitions to defeat international aggression in Korea and Iraq. But under the Charter, the U.N. can establish a military force, comprised of national units designated by its members, to be "on call" to the Security Council to deter aggression, stop hostilities, or carry out humanitarian missions.

There is growing support for implementing this provision of the Charter. French President Mitterand, for example, has already offered to make 1000 troops available for enforcement duties within two days after passage of a Security Council resolution, and lend more forces within a week. The Charter would give the Military Staff Committee of Permanent Five Security Council members the authority to direct a U.N. force, and that committee could invite other U.N. members, like Germany and Japan, to join it. The U.S. would have a veto, of course, on any action of the Security Council.

Additional rules for the command and deployment of U.N. forces need to be determined, but the important point remains: the U.N.'s founders built a structure for Security Council intervention to maintain peace and stability. Now we have an unprecedented international environment and the seeds of an international consensus that we utilize Chapter VII of the U.N. Charter.

In January, the U.N. Security Council asked the Secretary General to make recommendations by July for ways of strengthening the UN's capacity "for preventative diplomacy, for peacemaking and for peacekeeping." Russia, China, Britain, France and the U.S. joined the other current Council members to agree in principle that the end of the Cold War presents us with the best opportunity, since the U.N. was founded 46 years ago, to realize its goals.

This is an extraordinary development, an effort the U.S. should be leading. But in a year when the U.N. is expanding its peacekeeping operations with a major effort in Cambodia and some belated effort in Yugoslavia, the U.S. is not only failing to lead the way to fully implement Chapter VII, we are not even current on our peacekeeping dues. We owed $380 million as of December, more than any other nation, and we're not planning to pay that off until 1996. Congress appropriated only 75 percent of our share for new UN peacekeeping operations this year.

This is terribly short-sighted. The cost of all U.N. peacekeeping efforts this year will be $2.7 billion. Compare that to the $1.5 billion per day that Desert Storm cost. The U.N. staff in New York that monitors over 48,000 peacekeeping personnel around the globe numbers only 15. Marrick Golding, the head of U.N. peacekeeping, warned Congress last month that delinquent payments from the U.S. and other countries could cause a major crisis, preclude new peacekeeping operations, endanger existing ones and cause strong resentment among U.S. allies.

We must pay our peacekeeping dues, and we can legitimately pay them out of the defense budget. The defense community should welcome such a change. This isn't foreign aid. It is an investment in collective action for our own security, an expense shared with other nations. Collective action can be effective where unilateral U.S. action might be attacked as an attempt at hegemony, especially in the less-developed world. International coalitions advancing a common interest have more political credibility to apply pressure against individual nations that seek weapons of mass destruction or harbor aggressive intentions. What such coalitions have lacked up to now is teeth.

There is no inconsistency in the U.S. leading collective international action and maintaining a strong military so we can act unilaterally in our own interest where necessary. That's a false dichotomy.

In fact, we need a strong military to help provide the teeth necessary for international enforcement of anti-proliferation policies against rogue nations, and to lead or contribute to international peacekeeping and Security Council enforcement efforts. And, first and foremost, we need to maintain the forces to act on our own when necessary.

Both for our contribution to an international peacekeeping force and for our own requirements against future regional contingencies and threat to our fundamental interests, our military forces must be strong. They must be highly mobile, well-trained, ready and equipped for their roles. We will need more lift capacity, and CONUS-based forces with pre-positioned equipment near areas where conflict is expected. We must preserve the technological edge in weaponry that proved itself so well in Desert Storm, and must protect the most vulnerable sectors in our industrial base.

Our forces can be smaller than the Cold War Base Force proposed by the Pentagon. We can reduce the number of troops based permanently overseas and eliminate weapons systems that give us redundant capability. Greater warning time and reduced threat of prolonged, large wars should yield savings in inventories and materials stockpiles.

And we need to define security more broadly than we have. In addition to traditional defense expenditures, we must add legitimate security investments like U.N. peacekeeping contribution; anti-proliferation intelligence, monitoring, and enforcement; and strengthening institutions for confidence-building and conflict resolution like CSCE.

Even with those investments, the potential defense savings for us and other nations are substantial if we will construct cooperative security regimes that effectively prevent proliferation of threats, and reorient our military to meet new threats.

There are indications this year, though, that we'll end up spending too much money for military forces built to defend against the enemies we've already defeated, but inadequately prepared to prevent new threats from developing and to address them if they do.

ANTIPROLIFERATION POLICIES

There are other actions the U.S. can take to prevent another Iraq from getting the weapons of mass destruction that could threaten us and its neighbors.

We should announce an immediate halt to explosive nuclear testing as the Russians and the French have, and start negotiating agreements to ban such tests permanently. We pledged 23 years ago in the Nuclear Non-Proliferation Treaty to do so.

We should try to turn our unilateral halt in the production of fissile materials for nuclear weapons into a permanent multilateral ban.

We should be pushing other nations aggressively for more intrusive monitoring and inspections of weapons production facilities, instead of dragging our feet. It's time to share safe and secure techniques for dismantling and storing nuclear weapons, and to develop cooperative intelligence efforts with our former Cold War adversaries to track and detect proliferation.

We should beef up the International Atomic Energy Agency (IAEA), which has earned so much praise tracking down Saddam Hussein's arsenal. With a total nuclear safeguards budget of just $68 million, it is starved for resources. We have already assigned it new responsibilities and may have to add more soon in North Korea, China and France, but this budget has had no real growth since 1984.

And we need to toughen and expand the non-proliferation regimes we have, adding stronger economic and political sanctions for violators, including trade sanctions, export/import restrictions or even blockades. Our own research laboratories and private industry should be developing new verification and monitoring technologies to track weapons and their components.

SEIZING THE MOMENT

I have tried tonight to outline some new directions for change, not a precise blueprint. We don't need toothless idealism based on paper resolutions and hopes for restraint. We need an international military force that the Security Council or an expanded NATO can authorize to prevent proliferation, keep the peace or enforce peace. A force that is willing and able to act. A thick blue line that can make the difference between international peace and endless wars.

The U.S. cannot implement it alone, and we cannot implement it overnight. There are many challenges to implementation: We need to share with many nations the cost of creating and maintaining the systems, institutions and forces needed to monitor and enforce anti-proliferation and peacekeeping regimes.

We need agreements on command of forces, perhaps the most difficult issue of all, next to agreements on when claims of sovereignty will be overridden by a Security Council decision that international peace and security require collective action under Chapter VII.

Even if we secure broad international agreement on the details of such a regime, there will be a transition period that must be carefully managed.

But we don't need to take a leap of faith. We led NATO to deter Soviet aggression throughout the Cold War. Now the Russians can be partners in efforts for peace. We led an international coalition to retaliate against Saddam Hussein's invasion of Kuwait. Now the U.S. must lead a global effort to actively prevent proliferation.

The revolutionary changes taking place around us have created a moment of unimagined opportunity.

We have a domestic consensus for protecting American security more efficiently, and for investing in a revitalization of those things which can make us truly strong here at home. We have, at the same time, the seeds of an international consensus that cooperative action to maintain peace and prevent proliferation is both desirable and achievable. The world is too small for us to disengage. Our security demands involvement and vision. Mankind has long dreamed of true collective security. Now it is within our grasp. But only the United States can lead us to it. God help us if we squander this opportunity.

[From the CONGRESSIONAL RECORD, Sept. 18, 1992]

AMENDMENT NO. 3101

(Purpose: To authorize the Secretary of Defense to furnish assistance for international peacekeeping activities)

The Senator from Georgia [Mr. NUNN], for Mr. LEVIN, for himself, Mr. SIMON, Mr. WARNER, and Mr. NUNN, proposes an amendment numbered 3101.

On page 487, between lines 12 and 13, insert the following:

SEC. 1064. SUPPORT FOR PEACEKEEPING ACTIVITIES.

(a) FINDINGS.—The Congress makes the following findings:

(1) International peacekeeping activities contribute to the national interests of the United States in maintaining global stability and order.

International peacekeeping activities take many forms and include observer missions, ceasefire monitoring, human rights monitoring, refugee and humanitarian assistance, monitoring and conducting elections, monitoring of police in the demobilization of former combatants, and reforming judicial and other civil and administrative systems of government.

(3) International peacekeeping activities traditionally involve the presence of military troops, police forces, and, in recent years, civilian experts in transportation, logistics, medicine, electoral systems, human rights, land tenure, other economic and social issues, and other areas of expertise.

(4) International peacekeeping interests serve both the foreign policy interests and defense policy interests of the United States.

(5) The normal budget process of authorizing and appropriating funds a year in advance and reprogramming such funds is insufficient to satisfy the need for funds for peacekeeping efforts arising from an unanticipated crisis.

(6) Greater flexibility is needed to ensure the timely availability of funding to provide for peacekeeping activities.

(b) AUTHORIZED SUPPORT FOR FISCAL YEAR 1993.—(1) Subject to paragraph (2), the Secretary may provide assistance for international peacekeeping activities during fiscal year 1993 in an amount not to exceed $300,000,000 in accordance with section 403 of title 10, United States Code, as added by subsection (c). Notwithstanding subsection (b) of that section, the assistance so provided may be derived from funds appropriated to the Department of Defense for fiscal year 1993 for operation and maintenance or from balances in working capital accounts.

(2) No amount may be obligated pursuant to paragraph (1) unless the expenditure of such amount has been determined by the Director of the Office of Management and Budget to be counted against the defense category of the discretionary spending limits for fiscal year 1993 (as defined in section 601(a)(2) of the Congressional Budget Act of 1974) for purposes of part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

(c) AUTHORIZATION.—(1) Chapter 20 of title 10, United States Code, is amended by adding at the end the following new section:

"§403. International peacekeeping activities

"(a) AUTHORITY.—To the extent provided in defense authorization Acts and appropriations Acts, the Secretary of Defense may furnish assistance, by loan or contribution, in support of international peacekeeping activities of the United Nations or any regional organization of which the United States is a member.

"(b) FORMS OR ASSISTANCE.—Assistance provided under subsection (a) may include funds, supplies, and equipment. Any funds so provided shall be derived from amounts available to the Department of Defense for the fiscal year for which the assistance is provided.

"(c) LIMITATIONS RELATED TO AVAILABILITY OF STATE DEPARTMENT FUNDS.—Funds may be provided as assistance pursuant to subsection (a) for a fiscal year—

"(1) only if funds available to the Department of State for that fiscal year for contributions for international peacekeeping activities are insufficient or otherwise unavailable to meet the United States' fair share of assessments for international peacekeeping activities, as determined by the President; and

"(2) only to the extent that the United States' fair share of such assessments exceeds the amount that the President requests Congress to appropriate for the Department of State for such fiscal year for international peacekeeping activities.

"(d) CONSULTATION.—The Secretary of Defense shall consult with the Secretary of State before furnishing any assistance pursuant to subsection (a).

"(e) DETERMINATIONS REQUIRED.—No assistance may be furnished pursuant to subsection (a) unless the Secretary of Defense certifies to Congress that the provision of such assistance—

"(1) is in the national security interest of the United States; and

"(2) will not adversely affect the military preparedness of the United States.

"(f) ADVANCE NOTICE TO CONGRESS.—Not less than 30 days before obligating any funds for purposes of subsection (a), the Secretary of Defense shall transmit to Congress a report on the proposed obligation. The report shall—

"(1) specify the account, budget activity, and particular program or programs from which the funds proposed to be obligated are to be derived and the amount of the proposed obligation;

"(2) specify the activities and forms of assistance for which the Secretary of Defense plans to obligate such funds; and

"(3) include the certification required by subsection (e).

"(g) DEFINITION.—In this section, the term 'defense authorization Act' means an Act that authorizes appropriations for one or more fiscal years for military activities of the Department of Defense, including the activities described in paragraph (7) of section 114(a) of this title.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following:

"403. International peacekeeping activities.".

Mr. LEVIN. Mr. President the events of the last year underscore the security challenges of the post-cold war world, and the importance of our international institutions in meeting those challenges. In Yugoslavia and Somalia we are relying on the United Nations in the struggle for peace, the struggle to save lives. NATO is shifting its mission to put greater emphasis on peacekeeping, and other international collective security instiution like the CSCE are growing in importance.

As the cold war has ended, the demand for peacekeeping has grown rapidly. From 1945 to 1988, the United Nations had set up 13 peacekeeping operations. Since 1988, the United Nations has set up 13 more. United Nations soldiers and police deployed in the field quadrupled to 44,000 between January and May of this year, and since then the United Nations has authorized deployment of thousands more in Yugoslavia and Somalia.

The total costs have risen as well. In 1987 U.N. member states were asked to pay $233 million for peacekeeping. The U.N. Secretary General said in May that the total bill for the following 12 months would be $2.7 billion, and the cost estimate has certainly risen since that time.

The activities within these peacekeeping operations now include organizing elections, monitoring police, promoting human rights, and repatriating refugees, in addition to traditional military functions.

But resource shortages represent a major threat to current and future peacekeeping operations. The United States is farther in arrears for its U.N peacekeeping dues than any other nation. The Bush administration does not plan to retire the $208.7 million debt the United State has accumulated from previous assessments for another 5 years. And Congress has to this date appropriated only $270 million of the administration's request for $350 million in fiscal year 1992 supplemental appropriations for peacekeeping dues that are being assessed in the current year. So we are falling farther behind.

In June, the Committee on Governmental Affairs held a hearing on this issue, and examined a bill by Senator SIMON to reclassify the cost of international peacekeeping activities from international affairs to national defense. At that hearing, witnesses from the Department of Defense and the Department of State testified that peacekeeping activities do contribute directly to our national security. There is apparently no dispute about that fact.

But peacekeeping activities are not treated as a national security expense in the Federal budget. And there is no agreement within the administration about how to rectify this situation. We asked the State and Defense Departments at that hearing to tell Congress how—we gave them another 2 more months although the question has been on the table all year. We still have no response from the administration.

In an attempt to encourage the administration to develop a solution, the Senate Armed Services Committee has included in the authorization bill a requirement, section 1062, that the President submit a report to Congress with his budget next year. This report must address funding proposals that the U.N. Secretary General has put forward, as well as this outstanding issue of where within our Federal budget U.S. contributions to peacekeeping activities will be located, how departmental responsibilities are to be assigned within the U.S. Government, and a number of related issues.

But we need to take additional action to try to assure that crucial peacekeeping missions, those which have been deployed around the globe and others which may become necessary in the coming year, are not starved for support.

This amendment takes a step in that direction by giving authority for the Secretary of Defense to provide assistance for international peacekeeping activities during fiscal year 1993 of up to $300 million. This assistance can be in the form of funds or supplies and equipment, to be derived from Department of Defense operation and maintenance accounts or from balances in working capital accounts.

This amendment would not change the State Department's primary jurisdiction over U.N. peacekeeping activities, although that is a matter which the President must reexamine and report on to Congress under the existing reporting requirement in section 1062 of the authorization bill.

But this amendment provides an additional source of fund to the International Affairs account for peacekeeping activities, should the U.S. share of peacekeeping costs exceed the President's fiscal year 1993 request. And I am grateful that Senator SIMON has joined me as a cosponsor of this amendment. He has been a major proponent of what we seek to accomplish here.

We can expect that there will be additional funding needed next year that we do not know about now, beyond the $450 million requested in the President's budget for fiscal year 1993. This amendment demonstrates the Senate's intent that the United States should meet our share of the funding requirements for additional peacekeeping expenses that will be incurred in the coming year, because so doing is demonstrably in our national security interest. And this amendment indicates precisely where we would want those additional funds to come from within funds provided for the national defense.

Mr. President, there are many additional challenges facing us in the areas of peacekeeping and peace enforcement. The U.N. Secretary General made recommendations to the Security Council in July on how to strengthen the U.N. capacity for preventative diplomacy, for peacemaking, and for peacekeeping. These are crucial issues and the United States, which has not yet responded to those recommendations, should be leading the Security Council to address them. The Congress must engage in that debate as well.

But in this area—meeting this Nation's share of the funding requirements that the United Nations and other international institutions incur for peacekeeping—there should be no dispute. The administration is on record clearly stating that peacekeeping is in our national security interest, and this amendment provides an additional source of funding to meet those obligations.

S. 3114

SEC. 1062. UNITED NATIONS PEACEKEEPING AND ENFORCEMENT REPORT.

(a) REPORT REQUESTED.—Not later than the date on which the President submits to Congress the budget for fiscal year 1994 under section 1105 of title 31, United States Code, the President shall transmit to Congress a report on the proposals of the Secretary General of the United Nations contained in his report to the Security Council entitled "Preventive Diplomacy, Peacemaking and Peacekeeping", dated June 19, 1992.

(b) CONTENT OF PRESIDENT'S REPORT.—The President's report shall contain a comprehensive analysis and discussion of the proposals of the Secretary General, including, in particular, the following:

(1) The proposal that contributions for peacekeeping and related enforcement activities be funded out of the National Defense function of the budget rather than the "Contributions to International Peacekeeping Activities" account of the Department of State.

(2) The assignment of responsibilities within the Executive branch if such contributions are funded, in whole or in part, out of the National Defense function.

(3) The proposal that the United States and other member states of the United Nations negotiate special agreements under Article 43 of the United Nations Charter to provide for those states to make armed forces, assistance, and facilities available to the Security Council of the United Nations for the purposes stated in Article 42 of that Charter, not only on an ad hoc basis but on a permanent on-call basis for rapid deployment under Security Council authorization.

(4) The proposal that member states of the United Nations commit to keep equipment specified by the Secretary General available for immediate sale, loan, or donation to the United Nations when required.

(5) The proposal that member states of the United Nations make airlift and sealift capacity available to the United Nations free of cost or at lower than commercial rates.

(6) Such other information as may be necessary to inform Congress on matters relating to the Secretary General's proposals.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993

(Report to accompany S. 3114 on authorizing appropriations for fiscal year 1993 for military activities of the Department of Defense for military construction, and for defense activities of the Department of Energy, to prescribe personally strengths for such fiscal year for the armed forces, and for other purposes.)

UNITED NATIONS PEACEKEEPING AND ENFORCEMENT REPORT

On June 19, 1992, the Secretary-General of the United Nations submitted a report entitled "Preventive Diplomacy, Peacemaking and Peacekeeping" to the Security Council pursuant to the Council's request. The Secretary-General believes that the end of the Cold War and with it, the end of an ideological barrier, present the international community with a unique opportunity to achieve the objectives of the United Nations Charter. His report identified funding shortfalls as the most serious threat to the effectiveness and credibility of international peacekeeping efforts by the United Nations, which are expanding rapidly. The Secretary-General has, thus, made a series of proposals to facilitate implementation of the Charter and to further traditional practices of the United Nations.

The committee believes that the Secretary-General's proposals are worthy of careful examination and analysis. If agreed to and implemented, there could be profound changes affecting the Departments of State and Defense, and the manner in which the President and the Congress approach the introduction of our armed forces into potentially hostile situations.

Accordingly, the committee recommends a provision that would require the President to submit a report to Congress no later than the date the President submits the federal budget for fiscal year 1994. The report would contain a comprehensive analysis and discussion of the Secretary-General's proposals, including, in particular, proposals relating to funding for peacekeeping; departmental assignment of responsibilities; negotiation of special agreements concerning the provision of armed forces, assistance and facilities to the Security Council; maintenance of equipment for sale, loan, or donation to the United Nations; provision of air- and sea-lift to the United Nations, and; designation of forces for rapid deployment under Security Council authorization. This report would provide a focus for the careful consideration and debate that must take place in the Congress on these far-reaching proposals.

[From the CONGRESSIONAL RECORD, Sept. 30, 1992]

The amendment (No. 3348), as modified, is as follows:

SEC. . FINDINGS.

(1) Continuing hostilities and "ethnic cleansing" in the former Yugoslavia are killing thousands of noncombatants, displacing hundreds of thousands of civilians, and causing massive destruction and starvation;

(2) Independent reports of torture, atrocities and murder of civilian refugees and prisoners of war have been confirmed by officials of the United States Department of State, including the slaughter last spring of thousands of Muslims who had been captured by Serbians in the Bosnian town of Breko; and

(3) The United States Senate did, on August 11, approve Senate Resolution 330, calling on the President to urge United Nations Security council actions that would contribute to the cessation of hostilities in the former Yugoslavia, including: authorizing "all necessary force under a Security Council mandate" to facilitate provision of humanitarian relief in Bosnia-Hercegovina; and for other purposes.

Therefore, it is the Sense of the Senate that—

The United Nations Security Council should act to halt the policy and practice of "ethnic cleansing" in the former Yugoslavia and the President of the United States should seek a meeting of the Security Council to consider methods of achieving that goal.

Several Senators addressed the Chair.

Mr. HATCH. Mr. President, I wonder, does the Senator want to speak to what Senator BIDEN said?

Mr. CRANSTON. I was going to speak briefly about it.

Mr. HATCH. I ask unanimous consent to allow my colleague to follow on to what the distinguished Senator was saying, and then allow me to have the floor back.

The PRESIDING OFFICER. Without objection, it is so ordered.

WAR POWERS ACT

Mr. CRANSTON. I thank the Senator from Utah.

Mr. President, I want to first praise, once again, the Senator from Delaware, Senator BIDEN, for his leadership in foreign policy. We most certainly do need to rethink the War Powers Act—the power to declare war—given to this body, Congress, under the Constitution, which has been slipping away in recent decades.

We have to explore how to get away from what the Founding Fathers wanted to avoid, the taking of America into war by the decisions of one man, the President of the United States.

Mr. President, I wish also to applaud and to associate myself with the remarks made a bit ago by Senator BRADLEY, Senator KERRY of Massachusetts, and Senator BIDEN, regarding the unscrupulous remarks and the false innuendos made by the President of the United States yesterday in regard to Bill Clinton and his patriotism and his actions 23 years ago.

Mr. President, I first met JOHN KERRY soon after I came to the Senate in 1969, when I was a United States Senator who had declined a deferment and enlisted in World War II, but who had grave concerns about the Vietnam war. I was working in the Senate to bring it to an end.

JOHN KERRY returned from Vietnam a combat veteran, and was in Washington working in demonstrations and in other thoughtful ways to end our participation in that war. We were on the same wavelength then, and so was Bill Clinton, who was over at Oxford at that time.

What we were doing—and more importantly now, what Bill Clinton was doing—was trying to change an American policy that he and I and others patriotically thought was doing great damage to our Nation.

There is a famous American saying, Mr. President, which goes as follows:

> Our country, right or wrong.

Most people do not know that there is a second part to that statement. The whole of that famous quotation is:

> My country, right or wrong.
> When it's right, to keep it right,
> When it's wrong, to make it right.

That is what Bill Clinton was doing back in those days, and that is what he is doing now in this campaign: Working to keep this country right where it is right, but to make it right where it is wrong. And it is now wrong in terms of our economic policies, our war and peace policies, our social justice policies, and much else. That is what he is undertaking to make right, and what I believe he will make right when he becomes President of the United States.

Mr. HATCH. Mr. President, I understand the Senator from Rhode Island would also like to follow Senator CRANSTON.

I ask unanimous consent the Senator be given 2 minutes, and then, if I could make my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

END OF THE SESSION

Mr. CHAFEE. Mr. President, I came to the floor this evening to speak on a matter that we are going to subsequently address here; namely, one of the bills that has come up.

I stumbled into this tirade by the Senator from New Jersey, and other Senators, concluding with the remarks by the Senator from California. All I can say, Mr. President, is how merciful it is that this Senate session is coming to an end, finally. I think it is time.

Mr. President, I listened to the President of the United States last night, and I challenge—I did not follow every single word—I challenge whether the word patriotism was ever used. I never heard that word used.

Mr. President, I have heard all kinds of charges made against the President of the United States, that he used innuendo, and so forth; that is nonsense.

Frankly, I think it was one of the best appearances that he has made. The President was relaxed. He brushed off Bill Clinton and what he had done. He said: I do not know all of the facts. He felt he was disturbed. If Mr. Clinton was abroad as a young man and denigrated the United States abroad, the President of the United States did not think that was proper. But a good deal of the program was devoted to other things.

All I can say, again, is: Thank goodness, this session is coming to an end. It cannot come to an end too fast for us. But I suspect, for the American people, this session cannot come to an end too quickly.

FAREWELL TO RETIRING COLLEAGUES

Mr. HATCH. Mr. President, I have come to the floor to bid farewell to our colleagues who are leaving the Senate. I did not intend to get in the middle of a major maelstrom. But I would nevertheless like to take a few minutes to praise my colleagues.

Mr. President, I will sorely miss my own companion, the senior Senator from Utah, JAKE GARN. I will also miss ALAN CRANSTON from California, WARREN RUDMAN from New Hampshire, TIM WIRTH from Colorado, STEVE SYMMS from Idaho, ALAN DIXON from Illinois, BROCK ADAMS from Washington, and, of course, JOSIE BURDICK from North Dakota. All have been great Senators, although they may have differed in a wide variety of particulars. Each of them gave a great deal to this body, and I hope, each is taking a great deal home with them.

I respect them and wish them well.

Mr. President, I have admiration for each of them and look forward to seeing them after they have left the Senate.

But they have all cast their final vote today and, I am sure, they feel at least a little sad to be leaving the greatest deliberative body in the world. They have been part of it, and an integral part of it. I commend them for their contributions.

In particular, I feel compelled to tell the whole world, especially the people of Utah, how much I dearly love JAKE GARN, and how much I have appreciated him as my senior Senator, as someone who was here when I got here, who took me under his wing, taught me an awful lot about the Senate, taught me an awful lot about relationships in the Senate, and was an example to me that I do not think could be exceeded. Of course, he has become like a brother to me.

I had two brothers. One died in infancy. But the only brother I knew was my brother Jess who was killed in the Second World War. He loved airplanes just as much as JAKE GARN. His whole life was building model planes, trying to fly, taking flight lessons, trying to qualify as a pilot. And he did fly. He flew on 10 missions out of Italy. He was killed during his 10th mission.

I never thought I could even partially replace that brother. I want you to know that JAKE GARN is like my brother. He became a brother while we served here in the U.S. Senate.

I remember when JAKE's first wife was killed in an automobile accident. I remember how much it hurt him and his family and how difficult it was for him during those months before he married Kathleen. I have rarely seen a marriage that has evolved into the happy, loving, caring kind of relationship that JAKE and Kathleen Garn have. Kathleen is a wonderful person and we love her too. I am so happy for both of them. I know part of the reason JAKE has decided to leave is because of his relationship with Kathleen and the children. JAKE loves them very much and wants to be with them in Utah. It is tough to be a Senator if you must be separated from your family.

In 1982, when I was seeking reelection, I was told I was the number one target of the National Democratic Committee and a number of other very strong organizations. I have to say that, without JAKE GARN, I doubt seriously I would have been reelected. I was politically attacked—although some probably felt I was not attacked enough—and JAKE came to my aid and stood there with me at a time when he did not know me all that well. He took good care of me. I will always appreciate it.

He gave great advice and counsel to me here in the Senate. And, I have seen him fight hard for what he believes in. I have seen him for 25 years fight for the central Utah water project, and today was the culmination of a quarter century of fighting. If one single person deserves the majority of credit for the central Utah water project, although we all worked on it, I will have to say it is my colleague, JAKE GARN.

We know how JAKE GARN sacrificed to go into space. Really, however, it was not much sacrifice, because he would have given up anything to have the opportunity, being the flier that he is, to become an astronaut and go into space.

I remember standing there is Florida as that shuttle took off and feeling the ground shake beneath my feet and offering a prayer that he and his companions on that flight would be all right. Of course, his experience in space brought him closer to God. if you ever heard him talk about it, you know it meant a great deal to him—and to me, as I was there.

We all know that he donated a kidney to his daughter. I think any father would be happy to do that, but JAKE actually did it. He faced his daughter's illness like any enemy and fought it. His daughter is alive and healthy today because of the heroism of this great man. I want to express my admiration for that.

He has been an excellent influence in my life. His staff has been great. We worked hard and well together. They helped me, and I hope we helped them.

He has a wonderful family. Anybody who knows JAKE knows he is a tough guy, but when talking about his family he starts to tear up and be emotional, because he loves them so much. JAKE even put in a special sports court beside his home to be sure the older members of the family would always come and be there in his yard and in his home all the time.

JAKE GARN has written a recent book, a book that is his testimony of life. It is his testimony of his own personal beliefs. It is one of the finest books I have read. We were traveling to, I thank, 20 different counties this last August when he gave me one of those books. I read it. I have to tell you Elaine and I had tears in our eyes as we read that testimony he gave. I know he has given many Members of the Senate a copy of that book, one of the finest books I ever read. I commend everybody to read it, because it was a book about faith, about his experiences, and about how faith and experiences can really propel a person to do the things that are right in this life. And it is said in such a beautiful way, I cannot imagine anyone of any faith who would not get a tremendous lift from reading that book.

So I commend him for taking time to do that. He is that type of person. I feel close to him. He is my brother. I am going to miss him. I get a little emotional myself when I think about this being his last voting day in the Senate, and I just hate to see it come to an end.

Mr. President, I know I have taken enough time. But, I feel so deeply about this that I just want to say: JAKE, Elaine's and my heartfelt prayers are with you as you go into the private sector and as you go out of the Senate into a different life. I know you are going to be successful. I know you are going to have joy, and I know that you are going to be even closer to your family. I hope you will stay close to us. I wish you and the family the very, very best.

Mr. President, rather than read this—I have prepared a summary of some of the things that I think are so important in JAKE GARN's career. What I would like to do, rather than take more time of the Senate, is express my love for JAKE by putting this summary of his distinguished career into the RECORD at this point. I ask unanimous consent that the summary be inserted in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SENATOR JAKE GARN, A DISTINGUISHED CAREER OF SERVING UTAH

On January 8, 1980, the Deseret News ran an article entitled "Garn Puts State First." This headline summarizes the attitude and philosophy that characterize Senator "Garn's career in the United States Senate. The headline captures the senator's overall approach to his Senate duties. He is and always will be a Utahn, committed to placing the interests of Utah and its citizens first.

Garn's notoriety has stemmed from many national activities including his early national agenda to strengthen the nation's defense and improve the country's banking system to his well-publicized space shuttle trip and kidney donation. His national reputation has brought him both respect and admiration, which has resulted in enhancing his ability to meet the needs of the people of Utah.

From the billions of dollars in federal funding he has directed to the state from the Appropriations Committee, to the successful resolution of many of the state's public lands issues, Senator Garn has made a difference for the State of Utah—a positive difference that will be felt for many, many years to come.

Following are some of the highlights of Jake Garn's career in the Senate, including some of his early legislative battles which established a framework and agenda for his Senate career:

CUP

Dating back to Senator Garn's days as a water commissioner in Salt Lake City, he has been involved with the Central Utah Project, a huge federal program to divert water from the Colorado River to the state of Utah. Throughout his years in the Senate, Garn has secured adequate funding for various units of the project to remain on track. His committee assignments on the Energy and Natural Resources Committee, along with his appointment on the Senate Appropriations Committee have given him the political clout and position to enable him to steer through the many funding bills for this massive and critical project.

CLEAN AIR

In 1976 when Garn was first elected to the Senate, he became involved in the debate over the Clean Air Act Amendments. In fact, he served notice to the Senate that he would "talk for a long time, whether it is all night tonight, tomorrow night or Friday night, or next week. I intend to be here as long as necessary to kill this bill." He feared the devastating impact of the bill, particularly to the state of Utah. He believed the act would have tremendous adverse effects on public land states such as Utah. Citing the uniqueness of the state of Utah, the bill's impact on Utah's national parks, its low sulfur coal production and how the bill would affect local business like Kennecott Copper, Garn made persuasive and successful arguments about how the amendments would severely limit growth and development and increase unemployment. The filibuster was successful. The legislation was killed. After making considerable changes in the bill, which satisfied the bulk of the senator's concerns, the legislation passed the following year. Later in 1980, Garn led the Utah delegation effort in introducing legislation to require an easing of federal water and air pollution requirements that threatened to close many factories and businesses, including Geneva Steel in Orem.

PAYMENT-IN-LIEU-OF-TAXES

Garn has been a consistent supporter of the Payment-in-lieu of Taxes [PILT] program, which grants federal dollars to counties to equalize the tax burden caused by tax-exempt federal lands. In 1976, the Administration began backing away from the bill believing it was too expensive. Garn marched into Vice President Rockefeller's office at the closing hour of the Senate and demanded that the Administration finally give something to Utah in return for the federal government keeping Utah's public lands on the tax roles. The legislation passed, along with an amendment by Senator Garn to prevent a cut of about $1 million to Utah's counties. The PILT program continues to be one of the few federal programs with limited overhead and no red tape.

LONE PEAK

In 1978, Garn introduced the Endangered American Wilderness Act to designate the 29,567-acre Lone Peak as Utah's first formal wilderness area. The Senate passed the bill, which was a balanced and reasonable wilderness bill that protected the watershed for Salt Lake City. While Garn said he had reservations about the designation, he said "there was a significant minority in the state of Utah who would like to see the area protected, and if it can be done without compromising the watershed values which are critical to the large majority of Utahns, I can support the bill."

SAGEBRUSH REBELLION

In February of 1978, Garn took the bold step of introducing legislation which would have divested the federal government of its public land holdings in the West, cede ownership and control over the federal land to the state. In keeping with his general political philosophy, Garn said that land management could best be exercised by the agency of government closest to the people. Garn knew the bill would be unpopular, but felt committed to stating Utah's case to the government. He continues today to remind the Congress that two-thirds of Utah belongs to the federal government, which limits growth and development. Along these lines, Garn has consistently fought against locking up unreasonable amounts of Utah's land as wilderness, believing it would further restrict growth in the state.

EQUAL RIGHTS AMENDMENT

In Garn's early years, he became intensely involved in the national debate over the Equal Rights Amendment and the issue of extending the state ratification deadline for the amendment. Utah voted against the extension. Garn threatened to filibuster the bill in Congress, and organized a Coalition for Fair Play to help defeat the movement; and introduced an amendment to allow states to rescind their vote during the extension period.

ABORTION

Knowing of the strong anti-abortion sentiment in the state of Utah, one of the first Senate debates to raise Garn's ire and passion was the issue of abortion in 1975. He cosponsored legislation to end federal funding of abortion and introduced his own bill in 1977 to protect the unborn. Garn reintroduces the bill every Congress to serve notice of his vigorous pro-life position. Senator Garn's first vote on abortion was in April of 1975. He voted against abortion then and has voted against it since.

MX MISSILE

January 1980, Garn held a press conference to announce that unless his objections to the MX missile, which was proposed to be based in the deserts of Utah and Nevada, were not satisfied, he would mount an aggressive campaign against the missile. Among his top objections to the project was his concern over states' rights. "While the missile is important to the nation's defense, our state's rights must not be trampled." On June 25, 1981, Garn and former Senator Paul Laxalt [R-Nev.] issued a 15-page "white paper" to the Department of Defense, opposing the Air Force's proposal for a racetrack basing mode and offering an alternative basing proposal. Among Garn's points of contention with the Air Force proposal was his concern over the immense socio-economic and environmental impact the basing mode would have on the states of Utah and Nevada.

ARMS CONTROL

Garn, a member of the Senate Armed Services Committee for many years, was referred to by the Carter Administration as "Mr. National Defense" for his belief and work for a stronger national defense. In 1979, Garn was the key Senate force in opposing the SALT II agreement. He believed the treaty was not true arms control; it was not equal; it was not verifiable and it ensured Soviet superiority. As he spoke out on this critical national security issue, he never lost sight of how the citizens of the state of Utah felt about entering into the SALT II. He surveyed 5,000 residents of the state and found that the majority of Utahns supported a treaty—only if it ensured a true balance between the two super-powers, but most respondents noted that their distrust of the Soviets made that nearly impossible. Based on his personal convictions and the prevailing opinion in Utah, Garn worked tirelessly to make sure if the U.S. entered into an agreement that it would ensure a true balance of power and strength.

APPROPRIATIONS

Since Garn's appointment to the powerful Senate Appropriations Committee in 1979, he has worked tirelessly to ensure that Utah gets its share of federal funds. In the last 12 years, Garn has secured billions of federal dollars to the state of Utah.

His commitment to a strong national defense combined with the high caliber of Utah's defense contractors has motivated him to encourage Congress to approve hundreds of millions of dollars to the state for strategic programs, including the MX missile; the advanced cruise missile; the Tomahawk cruise missile, which performed with amazing accuracy during Operation Desert Storm; and the SICBM Midgetman missile. He also led Congress in authorizing funding for the new National Aerospace Plane which is supported by several Utah contractors including Hercules, Inc.

As NASA's leading advocate in the Senate, Garn worked to gain approval for the $3.4 billion space shuttle program which is supported in large part by Utah's Thiokol Corp. Through Garn's position on the military construction subcommittee of the Appropriations Committee, Utah's military bases have received billions of dollars for modernization over the past 12 years. Garn gained funding for a sophisticated facility at Tooele Army Depot to ensure chemical munitions are disposed in a safe, cost-effective manner, and a new state-of-the-art consolidated maintenance facility at TAD which will maintain and test Army vehicles.

Due to Garn's leadership, Utah's National Guard was chosen as the home of the Army's new fleet of Apache Helicopters, which helped secure immediate U.S. air superiority in the Persian Gulf war. He also sponsored legislation which secured funding for the present Utah National Guard facility in Draper.

The preliminary work on the light rail system for Salt Lake County is a result of Garn's efforts to direct over $15 million for the design work and preliminary engineering.

Utah's universities have achieved national prominence in the area of science and technology research. They continually receive million of federal dollars of federal funds for research and development of many critical scientific projects relating to the space industry, agricultural development and energy research.

Utah's unique beauty continues to draw millions of visitors annually to enjoy the scenery and grandeur of the state's national parks. Funds to construct and maintain tourist facilities in the national parks have been hard-won by Senator Garn. These improvements will serve visitors for many years to come.

EXPORT CONTROLS

Senator Garn has played a leading role in shaping U.S. export control policy during the 17 years he has served on the Senate Banking Committee. His constant focus has been to limit to the extent possible, the flow of strategic material and technology to adversaries of the United States. He participated in a major redraft of the Export Administration Act [EAA] of 1979 and, as Committee Chairman, led the fight for a substantially stronger law in 1984 and 1985.

Toshiba. During consideration of the 1988 trade bill, the illegal sale of advanced milling machines to the Soviet Union by Japanese and Norwegian companies was exposed—a sale which seriously eroded U.S. security by quieting Soviet submarines making them harder to detect. In response to this sale, Senator Garn proposed the so-called Toshiba Amendment which imposed trade sanctions on the two companies and placed trade sanctions authority for such sales into the EAA.

Proliferation. Last year, Senator Garn amended the EAA to strengthen U.S. controls on the sale of missile, chemical and biological weapons technologies and to impose trade sanctions against companies engaging in proliferation of such weapons of mass destruction. That legislation was vetoed by the President on grounds that its sanctions provisions were excessively tough. It has passed the Senate this year in essentially identical form and is now pending in the House of Representatives.

OSTT. Because of his growing concern about the failures of the system, such as shipments of critical equipment to Iraq just prior to the war, Senator Garn is proposing a major redraft of the law that would centralize management of the streamlined process for controlling the export of militarily critical technologies in an Office of Strategic Trade and Technology [OSTT]. This proposal reflects the Senator's view that the export control system will never function well as long as it is based on open competition among bureaucracies, each with inherent biases that distort their approach to export controls, rather than focusing on protecting U.S. national security. The Director of the upgraded Office would serve as principal advisor to the President on technology security issues and would be solely responsible for the consistency of policy and effective administration of the licensing process.

BANKING LEGISLATION AND UTAH

Senator Garn has been a member of the Senate Banking, Housing and Urban Affairs Committee for 17 years. He has served for six years as the Committee's chairman and how serves as its ranking Republican member. Garn's work on the Banking Committee has primarily focused on issues of national policy. Changes in the banking and securities laws do not have provincial application; rather, they generally affect the country on a national basis, and the benefits are seen through improvements in our economy and financial services industry. Nevertheless, some changes have had a particularly important impact for the people of Utah.

In 1987 Garn fought for legislation that would allow Utah industrial loan companies to be acquired by non-financial firms. As a direct result of Garn's efforts, this provision was included in the 1987 Competitive Equality Banking Act. Since then, many industrial loan companies have been acquired by nationally prominent firms in order to develop financial centers in Utah. For example, Sears acquired an industrial loan company in Sandy, Utah, in order to form the base for its Discover Card operations. This Sears "Discover Card Operations Center" employs over 1,000 Utahans. This would not have been possible without Garn's provision in the 1987 law.

Mr. HATCH. Mr. President, finally, I think all of us in the Senate will miss all of these wonderful Senators. They have all brought special gifts to the Senate. They all served this country well from their own perspectives.

Mr. President, I, for one, salute them and wish them all the very best as they go forward.

Mr. President, I have also been privileged to work with ALAN CRANSTON. He has had a distinguished career here in the Senate having served as Democratic whip and now chairman of the Veterans Affairs Committee. When I first came to the Senate, he was a member of what was then called the Human Resources Committee. He helped spark our committee's continuing interest in the needs of children.

TIM WIRTH typifies Western State friendliness. While our legislative paths have not crossed often—perhaps he considers that a plus—it has been a pleasure to serve with him here in the Senate. I wish him all the very best in the future.

I will sorely miss my friend, STEVE SYMMS. He has championed the Constitution throughout his two terms in the Senate, particularly the second amendment. And, I will always be grateful for his willingness to join the battle. When we needed a Senator to hold down the fort during a filibuster, he was there. God bless him for that dedication, and God bless him and Loretta as they undertake new challenges.

I have been proud to serve with WARREN RUDMAN. Few Senators are as thoughtful—or as thought-provoking—as Senator RUDMAN. But, I suppose even if you can take the man out of New Hampshire, you cannot take the New Hampshire out of the man. I am excited for him as he undertakes his new venture with another former colleague, PAUL TSONGAS, and will look forward to working with him in the future.

We will all miss ALAN DIXON. Surely one of the most popular Senators ever to serve in the body, it would not go unobserved that he also served his home State of Illinois with distinction and loyalty.

I have been pleased to work with BROCK ADAMS as a fellow member of the Labor and Human Resources Committee. We have accomplished some very important things, including the passage yesterday of the mammography screening bill. Senator ADAMS has handled many tough issues, such as the D.C. appropriations bill, with candor and applomb.

Last, but not least, I want to say that I enjoyed my all too brief association with JOSIE BURDICK. Committed to her husband's views and agenda, she carried on his work with dedication and energy even though it must have been a difficult time. She deserves our admiration and respect. She has served North Dakota well.

Mr. President, there is always something bittersweet about the conclusion of a Congress. On the one hand, we are all grateful that we are at an end to a long, tough, arduous session. We often fought over philosophy. We fought to gain political ground. We fought over the details of specific legislation. It will be nice to go back to Utah and spend some time with family and constituents.

On the other hand, the 102d Congress is about to become history. The names of the Senators we have admired and whose company we have enjoyed will be etched into the history books along with the Clay, Calhoun, Webster, LaFollette, and Taft. There is something gratifying about serving with individuals like these in the U.S. Senate.

It is an honor to serve here in the U.S. Senate. I will look forward to carrying on the legislative work of the country when we reconvene in January.

I yield the floor.

The PRESIDING OFFICER (Mr. LAUTENBERG). The Senator from Utah.

Mr. GARN. Mr. President, had I known my junior colleague was going to exaggerate so much I would have stayed in my office rather than come over and be embarrassed. I would suspect that my mother wrote that for him. You know how mothers exaggerate.

But Senator HATCH and I have had a very unique relationship. Oftentimes it has been my observation in the Senate that when you have two Senators from the same State and the same political party, often there is competition between them. It is sometimes easier to have one from each party. Senator HATCH and I never had that kind of relationship. We have always been close in our work, and it has been a great honor and privilege to serve with him for the last 16 years. In fact, we have even shared offices in Utah, shared staff so that we save the taxpayers' money so we did not duplicate services.

What he says is true. Besides our professional relationship, our families are very close. I have two sisters, but I never had a brother, and we do have that kid of a relationship where we consider ourselves sort of adoptive brothers. So I will truly miss him and his skills. He has represented our State with distinction and, fortunately, will continue to do so. And, if he chooses to run for reelection in 1994, I have already volunteered to be his campaign chairman, because he has been such an outstanding, dedicated Senator.

I suppose that it should not be a surprise to me a year and a half ago when I announced I was not going to run for reelection, that was a decision based entirely on family considerations, because Senator JAKE GARN the Senator would still like to stay, JAKE GARN husband and father is anxious that this day has finally come.

But I did not realize that it would be as difficult as it is.

And it is not particularly difficult to leave the Senate. It is not going to be difficult to leave all-night sessions and all of the long days that we put in here and what takes you away from your family, but it will be difficult to leave friends.

I came to the Senate when Mike Mansfield was majority leader and Hugh Scott was the minority leader. So I have had the privilege to serve in the Senate for 18 years with some very great and distinguished leaders. Mike Mansfield is still a favorite of mine; Hugh Scott was a great leader; Howard Baker, BOB DOLE and GEORGE MITCHELL and BOB BYRD, who stands here on the floor, as I have seen him so many times.

It was a great honor to serve with him. I was fortunate enough to be the Republican Secretary during many of the years that he was majority leader of U.S. Senate. And if anybody could set an example of how Senators should behave, it is Senator BYRD. Most of us have never learned the rules nearly well enough, and if we studied for our entire terms, we still would not know them as well as Senator BYRD. So I feel privileged to have served with the gentleman. He has always been a gentleman.

Certainly Senator MITCHELL and Senator DOLE, I will miss them, as well.

So I consider it a great privilege to have served with these men, and a lot of great men and women of my colleagues who have not been in the leadership.

And that is what makes it difficult today, having cast my last vote, to say goodbye to so many friends, although I have assured them, as Howard Baker said when he left, there is life after the Senate, and he has assured me that there is.

So I still intend to be very much involved in political and civic affairs, even though I will not be in the U.S. Senate.

I would also say how grateful I am to my staff. I have been very fortunate. I will not take the time to go into names, but I had an unusual situation in my 18 years that most of my professional staff have been with me the entire time. I have had very little turnover. And, boy, has that been a help.

It is a great system if you are smart enough to hire staff that are more intelligent than you are so that they make you look good, where you can have them do all the work and stand up and take the credit. So I have been blessed with a great and helpful staff who have served this country and my State well.

Finally, I guess, most of all, I am surprised—surprised and amazed that I had the opportunities that I have had. If anybody ever told me when I was a young boy—and was born in a small town in central Utah of about 3,500 people—that a small boy from a small town in rural Utah would have the opportunity to be mayor of a great city and ultimately be a U.S. Senator, I would have said, "Oh, sure," because I used to read about the Senate.

When I first came here, I looked around the floor and I saw the John

Stennises of the world, and I saw the Hubert Humphreys, and all the great men I had read about. And I was really amazed and thought: What am I doing here?

Well, I remember Harry Truman telling that story and saying: After 6 months, he wondered how they got here with him.

But I have not felt that way. After 18 years, I still wonder how I have been lucky enough to have had the opportunity to serve with a lot of great U.S. Senators in both parties. So I am very grateful for that opportunity.

And I certainly did not realize that I would have the opportunity to fly in space. Because even when I was a senior in college in 1955, it was some 4 years later before Sputnik flew. Nothing had flown in space. So if anybody said, "JAKE GARN, you will have the opportunity to orbit the Earth 109 times at 25 times the speed of sound," I certainly would not have been able to comprehend that. And yet it happened.

So the speed of change is remarkable. I cannot imagine what my children and grandchildren will be able to do, because I certainly, as I have said, have been surprised with the opportunities that have been presented to me.

Another example of these amazing charges: My father was a pilot in World War I. When Neil Armstrong walked on the Moon, he and I were watching together, and he started to cry. I said, "Dad, why are you crying? There is nothing sad about this. This is an historic event."

He said, "Oh, JAKE, I am not crying because I am sad. I am crying because I am overcome with emotion to think that here I am sitting with my son watching a man walk on the surface of the Moon, because when I was 10 years old, your grandfather Garn read me the story about the Wright brothers' first flight."

So think of that, Mr. President; that in my father's lifetime, from the time he was 10 until he was 76 years old, we went from the Wright brothers first flight to Neil Armstrong walking on the Moon, and that his own son had the opportunity to fly in space.

So I just marvel at the opportunities that I have had. I am not sure I have been worthy of them, but I do know this: how incredibly grateful I am to the people of Utah.

Sometimes in this business we start thinking that we were able to do it all by ourselves, and that is not true. There are not any of us who got here by ourselves. We are here by leave of the citizens of our State.

The fact that the people of Utah have honored me with their votes for 18 years is still remarkable to me. I am grateful to them, because none of this would have taken place without their trust and their confidence and their support.

So my final words on the floor of the Senate are not only to say thanks to my distinguished colleague, Senator HATCH, my other colleagues, and the great privileges that I have had to serve with them, but most of all to thank the people of Utah.

Mr. President, I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The President pro tempore.

SENATOR JAKE GARN

Mr. BYRD. Mr. President, when I was a lad in high school, we were required to read a book by Jules Verne, titled "Around the World in 80 Days."

It has been a great privilege to serve here in the Senate with two men, JAKE GARN and JOHN GLENN, who traveled at such a speed as would carry them around the world in 80 minutes.

Senator GARN was first elected to the Senate in 1974. I know him primarily as a member of the Appropriations Committee, to which he was appointed in 1979. For the past few years, he has served as ranking member of the VA-HUD subcommittee, where he has fought tenaciously for funding of our Nation's space program. In that role, he brought a rare perspective, first as a former Navy pilot and more recently as an astronaut. He saw the relationship between a commitment to space exploration and research and the future of our Nation's ability to compete in the world. Senator GARN should be proud of the guidance and leadership he gave in that area.

The people of Utah and, in fact, all Western States and the other States, as well, owe a debt of gratitude to Senator JAKE GARN. He has dedicated much time and effort to the issues that affect the West. As chairman of the Interior Appropriations Subcommittee, I have witnessed Senator GARN's leadership on the many controversial areas of debate that uniquely affect western States. These have been thorny issues and the committee will miss his expertise and advice.

JAKE GARN has had a remarkable career as a dedicated public servant. I wish him well in his private life and hope he will remember fondly his years on the Appropriations Committee and his years in the Senate.

A MAN OF VISION GOES HOME

Mr. BYRD. Mr. President, nearly six decades ago, a young American journalist from California published an unexpurgated version of Adolf Hitler's "Mein Kampf"—"My Struggle"—revealing, as few had previously done, the true depth of the danger and the evil that Hitler embodied.

That young journalist was the senior Senator from California, our friend and colleague and former Democratic whip, Senator ALAN CRANSTON.

Since his emergence on the public scene in the 1930's, ALAN CRANSTON has been noted for his vision and his enlightened perspective on matters that affect our country.

Unfortunately, when the 103d Congress convenes in January, we will be denied Senator CRANSTON's vision and the rich composition of experiences, talents, and wisdom that he has lent to our deliberations since his election to the Senate in 1968.

I will particularly miss Senator CRANSTON. In 1977, when I was elected Senate Democratic leader, Senator CRANSTON won election as assistant Democratic leader, or "whip." In all of the years since, working first as my proverbial "right hand" and, subsequently, as a close colleague in the Senate leadership when I became President pro tempore, Senator CRANSTON has been a conscientious adjutant and a congenial friend and partner in numerous legislative efforts. Unfortunately, words alone cannot adequately convey the respect in which I hold Senator CRANSTON, nor the solid appreciation that I feel for Senator CRANSTON for his loyalty and his contributions to the Senate's work through these many years.

To know ALAN CRANSTON is to acquaint oneself with one of the most acute intellects in Congress. Through keen curiosity and the caliber of men and women whom he knows in cutting-edge professions and careers nationwide, ALAN CRANSTON has brought to his Senate duties new ideas and practical views of futuristic possibilities.

I know that all of our colleagues join me in wishing for ALAN CRANSTON a life full of continuing challenges, as well as a position from which he will be able to share his insights with us in the years ahead. May he also be assured that he will still occupy a place of affection in all of our hearts, and that we shall not soon forget the quality that he lent to us all while he stood here with us in the United States Senate.

Mr. CRANSTON. Would the Senator yield to me to make a few remarks without yielding the floor?

Mr. BYRD. I will be glad to.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I rise to thank my friend, Senator ROBERT BYRD, President pro tempore of the Senate, for his very generous remarks. I have served with BOB BYRD over 24 years. I was whip when he was leader for a long, long time. I have profound admiration for him and the truly remarkable life that he has led.

I am proud of my friendship and collaboration with him over the years. And I thank him from the bottom of my heart for what he has just said about me and my time in the Senate.

I would like to also thank Senator HATCH for his remarks, majority leader MITCHELL for the remarks that he has made, Senator ROCKEFELLER who is on the floor, and others who have made very generous remarks about my time in the Senate.

I would like to say just a few words of farewell to the Senate. I will, perhaps, be rising again to speak about a veterans' issue and a housing issue that still remain to be dealt with this body. But I simply want to say, first, it has been my privilege to serve with and under three great majority leaders. First, Mike Mansfield, then ROBERT BYRD, then GEORGE MITCHELL. Each has been a valued friend and a great leader in this body.

I have also enjoyed the opportunity to serve with majority leaders from the Republican side of the aisle, Everett Dirksen, Hugh Scott, Howard Baker, and the present leader, BOB DOLE.

And with many, many other Senators with whom it has been a pleasure to work on a myriad of issues.

There are some great individuals in this body now. There have been many in the past. There will be many in the future.

Mr. President, a Senator from California gets involved in a myriad of issues. Just about every issue that exists has an impact, somehow, in the remarkable State of 30 million people that I represent. So I have been involved in countless issues over my time in the Senate.

Most of all, I have dedicated myself to the cause of peace, and to the environment. In many a sense I believe that my work on the environment is probably the longest-lasting work I have accomplished here.

When you deal with a social issue, or a war and peace issue, or an economic issue, or whatever the results, the consequences are fleeting. Whatever you accomplish is soon changed, and often what you have done leads to new problems that then have to be dealt with.

But when you preserve a wild river, or a wilderness, or help create a national park, that is forever. That part of your State, our Nation, is then destined to be there forever after, as God created it.

I worked with particular dedication over these years, too, on issues of justice, equal rights, human rights, civil rights, voting rights, equal opportunity. I worked for democracy and freedom in my country and in all countries. I focused particularly on housing, and transportation, and veterans.

I thank the people of California for the remarkable opportunity I have had to serve them in the Senate for almost a quarter of a century. I thank the many Senators, so many great human beings here with whom I have also had the opportunity to work. I thank my wonderful staff—the many members of my staff who have made it possible for me to do what I could not have done without their help—the staff led for so many years by my administrative assistant Roy Greenaway. And I thank my secretary, Mary Lou McNeely, for all that she has done over so many years, to help me do what I wanted to do and had to do.

I thank committee staffers for their great work. I thank the many people on the Senate staff for all that they have done. I thank people inside and outside the Senate, who in so many different ways have contributed to my capacity to work effectively in the Senate.

Finally I want to say that I am not really retiring. I am retiring from the Senate. But I expect to lead a very, very active life in days and years to come. Once again I will be focusing perhaps most of all on issues of war and peace, and the environment.

I again thank ROBERT BYRD, and I yield the floor back to him.

Mr. BAUCUS. Will the Senator yield without losing his right to the floor?

Mr. BYRD. Yes, I do.

SENATOR ALAN CRANSTON

Mr. BAUCUS. Mr. President, I join my colleagues in praising Senator CRANSTON and telling him how much we will miss him.

When I graduated from law school, I came to Washington, DC, looking for a job. And I walked into the office of Senator CRANSTON, the Senator from the State of California, seeking a job.

I was, like a lot of law school graduates, looking to see what I could find on Capitol Hill. Why did I choose Senator CRANSTON? Why did I choose his office to go into? Very simply, because as a student in the State of California—I went to college and law school in California—I kept reading about Senator CRANSTON. He was, at that time, and in earlier times, not Senator, I think he was Comptroller of the Currency at one time. But I kept seeing ALAN CRANSTON's name in the news, as a student, a college student, and later as a law student. I was very, very impressed with what he had done. It just made an impression on me.

I must say, Mr. President, unfortunately Senator CRANSTON had not offered me a job. I did not personally speak with ALAN, I spoke with somebody in his office, an administrative assistant, I presume. And they said: Nope. There are no openings here. No employment here. So I walked out of the office and I was not able to find employment on Capitol Hill. But then did find a job later with the Securities and Exchange Commission.

Since I have come to the Senate now I have found that my first impressions of ALAN CRANSTON, way back as a college student, and later as a law student, were wrong. He is far more than I expected. He is a wonderful person, a true gentleman. There is no one here more honorable, whose word is stronger, and a man for whom I have more respect than ALAN CRANSTON.

I join my colleagues, saying how much I will miss ALAN CRANSTON.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I thank my good and wonderful friend, MAX BAUCUS of Montana, for those remarks. You just told me something I never knew about one aspect of my life in the Senate. And you have just revealed the most serious error ever made by my staff in 24 years.

I thank you very much for your generous comment.

The PRESIDING OFFICER. The Senator from West Virginia.

A PATRIOT TAKES ANOTHER BOLD STEP FORWARD

Mr. BYRD. Mr. President, several of our colleagues will be absent from the 103d Congress when it convenes in January, and those of us who will continue our tenure here will miss all of our departed colleagues.

In some instances, our departing colleagues will be retiring to well-earned rests.

But, in the instance of Senator WARREN RUDMAN, the senior Senator from New Hampshire, leaving the Senate does not include a cessation of the role of a public man but an alteration of course in pursuit of some of the same goals that have animated Senator RUDMAN as a Senator and patriot throughout his Senate career.

Working with another former colleague, Senator Paul Tsongas from Massachusetts, Senator RUDMAN will be seeking to energize fellow Americans on issues vital to the life of our Republic, with the current Federal fiscal situation understandably taking immediate precedence among their concerns.

One of my primary regrets is that Senator RUDMAN has decided to leave the Senate to pursue aims that are both admirable and patriotic.

Indeed, with principles that transcend partisanship in so many cases, WARREN RUDMAN brought with him a refreshing breeze to our deliberations here in the Senate. Seemingly, the kind of politics that Senator RUDMAN represents is appealing to more and more Americans and, with his extensive talents and intrepid character, Senator RUDMAN has become a spokesman here in the Senate for a farflung constituency across our country, as well as being a spokesman for the citizens of New Hampshire.

In the years ahead, I look forward to hearing from Senator RUDMAN as a man qualified to offer advice to us and to other Americans. I was privileged to work with Senator RUDMAN on the Senate Appropriations Committee, and I learned especially in that context to appreciate his keen mind and his cooperative spirit.

Perhaps in this instance, the Senate's and New Hampshire's loss will be America's gain. Nevertheless, I wish

Senator RUDMAN every success as he assumes a wider role in our national life, and I thank him for all of his graciousness and wisdom in our years of service together here in the Senate.

RETIREMENT OF SENATOR BROCK ADAMS

Mr. BYRD. Mr. President, the senior Senator from Washington will be retiring from the Senate at the close of this session. BROCK ADAMS' life and public career have been a series of achievements. He graduated as the No. 1 scholar of his graduating class from the University of Washington with a degree in economics. He was a member of Phi Beta Kappa and student body president. He went on to earn a juris doctor degree from Harvard Law School.

His unique experience in public service began in 1961 when President John F. Kennedy asked BROCK ADAMS to serve as U.S. attorney for the western district of Washington State.

In 1964, the citizens of his native State sent him to Washington, DC, to represent them in the House of Representatives. He served in that body with distinction and became the first chairman of the House Budget Committee. In that role, he was able to set into motion the process that, for the first time, set overall congressional targets for Federal spending.

During his 14 years in the House of Representatives, he also served as a member of the House District of Columbia Committee where he was an author of the Home Rule Act which gave the citizens a democratically elected mayor and city council. His close ties to the capital city have continued to this day.

In January 1977 President Carter recognized BROCK ADAMS' leadership and asked him to join his Cabinet as Secretary of Transportation. He served in that capacity until July 1979 when he returned to the private practice of law.

However, in 1986 public service once again beckoned and he came to the Senate. He has championed the cause of those who are often unheard in this Chamber. He has been eloquent in his defense of the concerns of the elderly as chairman of the Aging Subcommittee of the Committee on Labor and Human Resources.

It has also been my good fortune to have him as a member of the Committee on Appropriations for the past 4 years. During that period, he has served as chairman of the District of Columbia Subcommittee. His experience as a member of the House District Committee served him well as preparation for that role. His understanding and caring for this city have been obvious and much admired. He has been a strong advocate for the rights of its citizens and an eloquent spokesman for the Mayor and her administration.

I shall miss the Senator's cooperative spirit and willingness to undertake responsibilities that others often avoid, and wish him well in his new endeavors.

Mr. President, for all of these fine Senators who will be leaving the Senate, I wish to say that we all have been enriched by their friendships during the years that we have served with them. I have enjoyed the spirit of cooperation with respect to those on the Appropriations Committee who are leaving, and even with those who were not on the Appropriations Committee. I have enjoyed the camaraderie and the opportunity to share their wisdom and their patriotism.

And so in closing, to all of these our friends who will be leaving, I recall a bit of verse that is appropriate for this moment:

I shot an arrow into the air,
It fell to earth, I knew not where;
For, so swiftly it flew, the sight
Could not follow it in its flight.

I breathed a song into the air,
It fell to earth, I knew not where;
For who has sight so keen and strong,
That it can follow the flight of song?

Long, long afterward, in an oak
I found the arrow, still unbroke;
And the song, from beginning to end,
I found again in the heart of a friend.

Mr. President, I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I understand that we are in some kind of a block situation currently. If that is going to become unclogged, I will be glad to give up the floor at that time.

The PRESIDING OFFICER. The Chair informs the Senator we are in morning business, with Senators permitted to speak up to 10 minutes therein.

Mr. CHAFEE. Mr. President, I see the Senator from Iowa is here. If he could outline what he would like to do, I could give way to him, if need be.

Mr. HARKIN. Will the Senator yield? I just want to speak about some of the Senators who are departing to pay my respects. I have to preside at 6 o'clock, so I cannot go any further than that.

Mr. CHAFEE. If the Senator is going to speak until 6 o'clock, I better proceed then.

Mr. HARKIN. Mr. President, it will take me about 10 minutes or so. If the Senator wants to go ahead, I can do it after I preside. I thank the Senator.

VETERANS HEALTH CARE ACT OF 1992

Mr. CHAFEE. Mr. President, what I would like to address is legislation that I anticipate coming up later on, and that would be H.R. 5193. Mr. President, this is known as the Veterans Health Care Act of 1992. In it there are a lot of very good provisions, provisions that I support.

However, I am distressed at the handling of this legislation because while it deals principally with veterans health care, it also deals with some Medicaid matters. I could argue with the handling of those particular Medicaid matters, but my real problem, Mr. President, is that the House failed to consider a series of Medicaid measures that should have been addressed and they failed to do so.

Let me just point out what some of those Medicaid matters are that were failed to be addressed. These were matters that passed the Senate and the House failed to take up. As you know, in the House of Representatives, Medicaid matters are not handled by the Ways and Means Committee, which is the counterpart of the Finance Committee, where they are handled in the Senate. They are handled by the Energy and Commerce Committee. And the Energy and Commerce Committee inserted some Medicaid provisions in the Veterans' Administration legislation but failed to deal with other Medicaid matters. They just brushed them aside.

What were some of these? I will just tick off seven of them briefly:

First, a provision to help the frail elderly.

Second, to assist those with disabilities to live in the community. That has been the thrust of the Senate's efforts continuously.

Third, to give States relief and additional flexibility in payment disputes with the Federal Government. Right now the Medicaid provisions, as far as the Federal Government goes, when you come to payment disputes, you have little recourse. This is the way it is, says the Federal Government. We think there ought to be additional flexibility.

Fourth, Medicaid coverage for foster children. Those who qualify should get Medicaid coverage, we believe.

Fifth, extended demonstration projects, particularly those in Michigan and in Maine that we felt were important.

Sixth, measures to increase the cap on Medicaid spending in Puerto Rico.

Seventh, childhood immunizations. I do not think there is anybody on this floor, indeed all of these provisions passed in the Senate, these are all important measures, Medicaid measures. But what is so annoying, Mr. President, is that the House refused to consider them. They cannot say they were not dealing with any Medicaid issues in this legislation, because indeed they were. There is a Medicaid provision in this VA legislation that is before us. But they refuse to consider all this other material that is so important, important to me and important to other Members of this Senate, important to the Senate as a whole.

So what they did was, they took a VA bill, took limited Medicaid measures that they wanted, put them on, shipped it back to us and left. So, Mr.

President, here are our options. Our options are to object to the whole bill. An objection here would be sustained and the bill would not pass. So good provisions dealing with the Veterans' Administration would fail.

The other option is to try to attach an amendment to it, an amendment dealing with these Medicaid provisions, send it back to the House, but there it would die because the House, in effect, is gone. The suggestion that they should stay around until both bodies adjourn sine die has proven false. They have gone.

And so, Mr. President, as one who believes in the provisions of the Veterans' Administration legislation that came over, I support them. I do not want to be a dog in a manger.

Now, what is a dog in a manger? Some people have asked me what that expression means. A dog in the manger comes from the old days when the groom would put out grain in the manger, and the dog would jump up and lie in the manger so the horse could not eat the grain, the oats. Yet, the dog did not want the oats; he could not eat them.

So one could be, as we say, a dog in the manger here—attach an amendment, send it back to the House, kill both measures, and nobody gets anything out of it. So that is no way to proceed. Yet, I want to publicly voice how distressed I am at the treatment of these Medicaid provisions.

I also want to say, Mr. President, that the underlying measure, while dealing principally with Veterans' Administration matters, also deals in a very piecemeal fashion with a gross error, in my judgment, that we made in 1990, on the subject of best price for prescription drugs. Now, that is an esoteric subject, Mr. President, but let me explain what was attempted to be achieved.

There are those in the Senate who believe very strongly and I am among them that something should be done to assist the States in getting discounts for those drugs that a State purchases for Medicaid recipients. And so the idea was conceived that Medicaid would be entitled to the best price or lowest price that the drug companies were willing to sell to anybody—this provision has had a detrimental effect on other purchasers.

Let me give you an example. At that time, the drug companies were giving discounts to the Veterans' Administration and other non-profit purchasers. In some instances, that price was 20 percent of what the drug companies were selling drugs to Medicaid or other entities for. And this came about because of a historic reason.

The Veterans' Administration represents a very small proportion of the total sales of the drug companies. During the war, or shortly after, as a favor in order to help the Veterans' Administration, many—not all—of the drug companies agreed on a very low price.

In effect, this is when they sold to the Veterans' Administration in bulk. And that is one of the reasons they could give the low price.

So when we went to conference in 1990, those who were supported providing that same price said this is a good way of reducing Medicaid costs to the States. But some of us said, well, if you require that your lowest price be given to Medicaid, the companies no longer will give the deep discounts to the Veterans' Administration. And it is clear they would not.

If the Veterans' Administration represents 1 percent of the sales of a drug company, and Medicaid represents 14 percent—or 12 to 14 percent—of their total sales, it is clear that the drug companies would say, well, forget it. We will not sell at that low price anymore to the Veterans' Administration, at the depot price. That was very clear.

The PRESIDING OFFICER. The Senator's 10 minutes have elapsed.

Mr. CHAFEE. I wonder if I might have 6 more minutes, Mr. President.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAFEE. So, Mr. President, what was decided in that conference in 1990 was to carve out only the depot price—not all VA discounts—and say that will not count toward the best-price requirement but everything else will.

Well, immediately, it was seen that this had a very harmful effect because the drug companies were giving a lower price to the community health centers, for example, and they were giving a lower price to the Public Health Service; they were giving a lower price to family planning centers. If they continued after enactment of this legislation to offer those same discounts, they would also have to give them to Medicaid.

So people said, well, this is unfortunate.

Anybody could have seen this in advance, but regrettably those in favor of the best price plunged on and would not agree with suggestions that, for instance, I was in favor of rejecting the whole best-price approach because of the problems involved. Instead I preferred that a flat percentage discount be provided to Medicaid.

But sure enough, the drug companies said, if we do sell at a lower price to VA and other public entities as a favor, but that same lower price must be granted to 12 percent of our total sales under Medicaid, forget it. We will not sell at this lower price to VA or the community health centers.

So legislation before us—or soon before us—provides that the VA community health centers, Public Health Service, family planning centers, the Department of Defense, certain disproportionate share hospitals will be exempt from the best price calculation. If those groups are getting a lower price, no longer will it make any difference. They do not have to sell at that price to Medicaid. So a great new group has been carved out from the best-price approach.

Now, you might say, well, in this legislation it provides that the companies must give a 25-percent discount to the VA and discounts to others that I have just described. Is it not wonderful we are providing for that?

Yes, it is. But, Mr. President, the people who are being hurt under this arrangement are the health maintenance organizations and many hospitals that will have to increase their prices because they are not carved out as an exception to the best price. Their discounts will continue to be included in the best price calculation, so they will lose the discounts.

Mr. President, frequently on this floor, when I have tried to move ahead with reforms in health care—and I will admit that these are not total structural changes, but changes that we could make—many have dismissed those changes of health care as minimal, or changes that are just incremental. They have objected.

The objection has been that we need a great big change, so therefore, do not take steps such as insurance market reform, the establishment of small business purchasing groups, or medical malpractice reform. Do not do any of those. Yet, those who objected to that approach are the very people who support this partial approach in connection with solving this mess we got ourselves into with best price.

So we started off, we carved out the veterans' Administration depot price. that does no count toward the best price. The step we are talking now is to carve out another big segment, the community health centers, the Public Health Service, the family planning centers, the Department of Defense, except for CHAMPUS, and the disproportionate share hospitals.

We are saying to them—and the VA, by the way, all the VA including the depot price, they are carved out. But what about the others? What about other purchases? They are not taken care of. What about HMO's? They are not taken care of. What about the hospitals? They are not taken care of. Inevitably, the result will be that their prices will go up higher than they otherwise would have been. These will be passed on in the form of higher charges and higher premiums.

So, Mr. President, it was extremely unfortunate that we ever got into that best price business 2 years ago. Though I believe these entities should get discounts, I think that this is marginal activity that is taking place tonight in these changes.

Mr. President, I want to register how distressed I am about what is taking place. Distressed that the Medicaid provisions that were passed by the Senate were not taken care of, distressed that we did not fully address the problems that arose under the best price for drugs, for prescription drugs.

Mr. President, I certainly hope that we can revisit this next year, make sure that we look at this whole prescription drug problem under Medicaid once again, decide what we want to do, decide, is it fair? Is it right? Are we doing the best thing for the HMO's, for example, by making their prices go up, by making the prices go up to the hospitals.

Mr. President, in conclusion, let me say I was confronted with the very difficult choice here to resist the whole passage of this legislation and then kill some good provisions dealing with the Veterans' Administration.

I chose not to go that path because I thought that it was unfair to the women's veterans health programs which are encompassed in this legislation, the nurses' pay provides for nurses outside the contiguous limits of the United States, Alaska and Hawaii. Those nurses are entitled under this legislation to better pay than would otherwise be provided if we did not have this legislation—and a whole series of other provisions that are good provisions.

I hope, Mr. President, we can address this whole matter again next year.

Mr. CRANSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, I thank the Senator from Rhode Island for his cooperation in connection with the pending bill. As the chairman of the Committee on Veterans' Affairs I am extremely pleased that it appears that we will soon pass H.R. 5193, the proposed Veterans Health Care Act of 1992.

This is a vitally important measure that will touch the lives of millions of veterans, most especially the many tens of thousands of women veterans who were raped, or sexually assaulted while in service, who will now have access to needed counseling to help them deal with their trauma.

The bill also addresses the needs of veterans of Persian Gulf service who are concerned that their health may have been affected by their service.

Operation Desert Storm veterans will have greater assurance that their Government is listening and responding to their concerns.

The bill would also make needed corrections in the VA's new locality pay system for nurses so as to enhance the VA's ability to recruit and retrain topflight nurses.

Mr. President, this is the last of countless veterans bills that I have shepherded through the Senate and on to enactment into law during my 24 years in the Senate.

I am proud of this bill as I am proud of the others, and I thank all of my colleagues for their help in these efforts, especially—on the pending bill—Senators ROCKEFELLER and PRYOR who have been very, very helpful.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I also want to thank the Senator from Rhode Island. I understand his concerns, not only about what he was expressing with respect to 2 years ago, but also I know that he has a variety of things that he would like to see done in health care legislation.

I recognize also that this bill is not yet passed, that there is still a hurdle which has to be overcome. I strongly believe that hurdle will be overcome and that we will pass this in the remaining hours that are before us. It is very good legislation. It includes a long list of health care improvements for our Nation's veterans, strengthens health care services, assistance for sexually assaulted women in the military, a registry for Persian Gulf veterans, assured discounts on prescription drugs, and a lot of other provisions that will be good for the well-being of a lot of people.

I, along with Senator CRANSTON, Senator MIKULSKI, Senator KENNEDY and others have been working on this provision that deals with the prescription drugs for quite a long time. As a result of a lot of very laborious and patient work we are, in fact, hopefully, soon going to be acting to secure reasonable discounts for prescription drugs purchased by the Federal Government; and to extend desperately needed relief to VA medical centers also in our country that are struggling with empty shelves and in some cases empty pharmacies to provide the quality care to veterans.

I was guided in this effort by what Acting Secretary Tony Principi said was the bottom line, veterans will be denied health care unless VA gets financial relief from escalating prescription drug prices. That is what Tony Principi said. He is quite right. That is why I among others have invested so much in this effort to right the wrong.

I refuse to accept such a bottom line that veterans will be denied health care, and I know that my colleagues in the U.S. Senate cannot accept such a grim bottom line item.

This legislation will set a new precedent in the Federal Government procurement of prescription drugs. That is interesting and exciting, since the Federal Government can act as an educated consumer effectively using practices that have worked in the private market to guarantee discounts and to save dollars. This protects the American taxpayer by using the limited Federal dollars wisely. It protects veterans, and other Federal purchases by giving them a lower price in the pharmaceuticals for the need of the people who rely on them.

To be quite honest, Mr. President, this is a bit of phenomenal process. I think it is important to remember how far in fact we have come to reach this agreement that I hope we are about to reach. As I have noted in the past, this issue was raised over a year ago when a Veterans Administration pharmacist in West Virginia complained to me about the difficulty in obtaining some drugs because of drastically escalating drug prices. From that point on, I and others began to work on this issue and to build a coalition for action. Time and time again there were snags in the negotiations, people were focused on terms and technicalities. But today I believe we will cast a vote for veterans and stretch the Federal health care budget farther to care for our Nation's deserving veterans.

This bill is the final result of months of negotiations. It is a final deal and it is a fair deal. I know every Senator will join me and the members of this coalition, Senator CRANSTON, Senator PRYOR, Senator KENNEDY, Senator MIKULSKI, Senator SIMPSON, Senator MURKOWSKI. It is very, very crucial to get this bill enacted into law.

The experience in its entirety, from first discovering the harmful effects of rising drug prices on the VA and other Federal health care programs, to where we are now, to finally enacting this resolution that we hope will stabilize the cost and protect health care services for veterans and other Americans. It has been revealing in many respects. It demonstrates, and even warns us, just how tough it is to achieve the comprehensive health care reform that we need in this country and which must be centered on something called cost containment. And all of this that Americans expect from the next administration in the 103d Congress. But it also shows that persistence, commitment and hard work on the part of many do pay off when the cause is right, when the allies are willing to work together constructively and in a bipartisan manner. This in my view, is a very positive lesson for all of us and for the people we are here to represent.

For my part, I want to thank a lot of people. I have already thanked some. Barbara Pryor, from my own staff, has put untold hours and sacrifice into this round-the-clock type of negotiations with care and attention, as well as Ellen Doneski, who has worked right along on what is a very, very complex medical, financial, and technical issue. I believe we are about to resolve this. There is just one hurdle yet to go, and I think we can overcome it. When we do, the Nation's veterans will be better off.

I applaud the passage of the Veterans Health Care Act of 1992, H.R. 5193. This legislation includes a long list of health care improvements for our Nation's veterans: Strengthened preventive health care services; assistance for sexually assaulted women in the military; a registry for Persian Gulf veterans; assured discounts on prescription drugs, and other key provisions that will improve their health and well being.

As many know, I have been involved personally in crafting and promoting one important section of this package, and that's the provisions to address the costs of prescription drugs that face the Department of Veterans Affairs. As a result of laborious and patient work, we are acting to secure reasonable discounts for prescription drugs purchased by the Federal Government, and extend desperately needed relief to VA medical centers across our country that are struggling to provide quality care to veterans while coping with escalating drug costs.

Specifically, this part of the bill will require drug manufacturers to enter into an agreement if they want to sell to the Federal Government. The agreement simply states the manufacturer will agree to sell to all Federal purchasers that wish to purchase a given drug on a drug by drug basis. Additionally, the manufacturer must agree to provide the VA with a 24-percent discount on the average price at which it is sold to the Federal Government.

This is a provision that I have labored on for over a year. And over the last few months, I have been engaged in intense negotiations to bring this to closure. Those of us working for this solution have made many concessions—too many concessions in my view. But I have done my utmost to improve this bill in every reasonable way and to meet the industry's legitimate concerns. I have gone many extra miles in the course of negotiations, all in order to ensure expeditious passage.

My colleagues should be aware that the prescription drug pricing agreement title of the Veterans Health Care Act is virtually identical to the drug provisions incorporated in the Senate version of that legislation, S. 2575. That legislation passed the Senate last week by unanimous consent.

First and foremost, we should not—we cannot—forget what the acting secretary, Tony Principi, said was the bottom line—veterans will be denied health care unless VA gets financial relief from escalating prescription drug prices. That is why I have invested so much in this effort.

I refuse to accept such a bottom line, and I know that my colleagues in the U.S. Senate cannot accept such a grim, chilling bottom line.

As we vote on this legislation, I urge my colleagues to remember what propels our action today—what this bill means in human terms:

A veteran being turned away from a VA hospital pharmacy because his prescription expired too late in the fiscal year, and his local VA ran out of money and they cannot fill his prescription until they get new funding.

A veteran who needs a cardiac catheterization being told to wait a few weeks because his local VA hospital is cutting back and delaying surgery because of budget shortfalls caused by increases in prescription drugs.

Those types of stories are already a reality in some VA hospitals. To guard against any more of those tragedies, we must act to resolve this desperate situation.

A little legislative history is appropriate. In 1990, Senator PRYOR, my dear friend and colleague, offered the Federal Medicaid Program a means to achieve the discounts that its market share dictates it deserves. As fashioned by Senator PRYOR, the Medicaid rebate legislation ensures that the State and Federal Medicaid partnership receives a minimum discount, now 15 percent. That discount is fair compensation to the Federal Government for its status as the single, largest purchaser of pharmaceuticals in the United States. Previously, States had not been successful in obtaining that discount in their negotiations with manufacturers, despite the clout that their purchasing power should have commanded.

OBRA 90's Medicaid rebate legislation was good, common-sense public policy. I am proud to have joined with Senator PRYOR in working on its enactment. One important benefit is that the savings that the legislation produced for the Medicaid Program allowed us to expand health care services to poor pregnant women and children. Lives were improved as a result.

Unfortunately, there were some unintended and unacceptable ramifications for other Federal health care programs. Some manufacturers responded to the Medicaid rebate law by cost-shifting their losses—and perhaps more than that—onto other Federal purchasers. VA saw its costs for drugs skyrocket. Those increases were unsustainable. They cost VA almost $100 million. VA, already operating on a shoestring budget, needs relief. Other Federal purchasers, like public health service and Indian health service clinics, needed relief too.

So I banded with my colleagues, Senators CRANSTON, KENNEDY, PRYOR, and MIKULSKI to find a solution that would work for all Federal purchasers. We settled on the outlines of the bill we vote on today. It links all Federal purchasers in at common bond. Our bill says that if a drug manufacturer wants to sell to the Federal Government, it must sell to all its agencies. It prevents manufacturers from cherry-picking with the Federal Government; that is, from only selling to the VA—and there's strong incentive for manufacturers to do that because it is the training ground for the bulk of our country's physicians—and deciding to perhaps forego selling to the public health clinics. Additionally, manufacturers will be required to provide VA with a discount that approximates the discounts VA was receiving before the enactment of OBRA 90, before the cost-shifting.

This legislation will set a new precedent in the Federal Government's procurement of prescription drugs. It says the Federal Government can act as an educated consumer-purchaser—effectively using practices that have worked in the private market to guarantee discounts and save dollars. It protects the American taxpayer by using limited Federal dollars wisely. It protects veterans and other Federal purchasers by giving them a lower price on the pharmaceuticals they need for the people who rely on their programs. It doesn't matter what the commodity—drugs, computer parts, or sponges—the Federal Government owes it to the taxpayer to do a better job of buying smart.

And as we enter a new era of health care reform with the preeminence of cost containment, this legislation also says that we'll use the combination of the Federal Government's purchasing power to stretch our limited health care dollars.

This has been a phenomenal process. I think it is important to remember how far we've come to reach this agreement. As I have noted in the past, this issue was raised over a year ago when a VA pharmacist in West Virginia complained to me about the difficulty of obtaining some drugs because of drastically escalating prices. Time and time again there were snags in negotiations. People were focused on terms and technicalities, but today we will cast a vote for veterans and for stretching the Federal health care further to care for truly deserving Americans.

This legislative initiative has a long history. In the Senate Veterans' Affairs Committee, Chairman CRANSTON and I joined with Senators SIMPSON and MURKOWSKI in a bipartisan compromise that has been incorporated in H.R. 5193.

To achieve this critical compromise within the Veterans' Affairs Committee, there were good-faith negotiations to hammer out the details. To do that, I gave up a number of important provisions included in my original proposal. I gave up a rollback of prices that the industry opposed. I gave up the Prescription Drug Payment Review Commission. I responded to the jurisdictional concerns expressed.

And once it passed committee, we had to continue intense negotiations to broaden and win over the necessary support in both bodies of Congress. To secure Senate passage, we changed the inflation protection for VA from PPI [Producers Price Index] to the Consumers Price Index [CPI] which is more generous to the pharmaceutical industry.

We removed the benchmarking provisions of the bipartisan committee-passed amendment to allow VA and the drug companies greater flexibility in negotiations.

And on UPAC's [unified pharmaceutical award contracts]—a very important concept to promote buying groups of Federal purchasers—I ultimately decided to compromise there, too. Again, this idea is based on what already works in the private sector. I believe in the concept. I believe it is fair. I have yet to hear a reasonable explanation from the pharmaceutical industry or any one else why the Federal Government should not form broad buying groups for fixed volume, prescription drug contracts.

I worked closely on developing this concept with Acting Secretary Tony Principi and we both strongly believe in it.

But the pharmaceutical industry was united in its opposition to UPAC's, and as a final point of compromise, I voluntarily agreed not to pursue UPAC's as part of our negotiations with the House. So UPAC's are not included in this package.

This bill is the final result of months of negotiations. It is a final deal and it is a fair one.

I know every Senator will join me and the members of my coalition—Senators CRANSTON, PRYOR, KENNEDY, MIKULSKI, SIMPSON, and MURKOWSKI—to get this bill enacted into law.

Millions of veterans who rely on VA for health care are depending upon our action.

Mr. President, I request unanimous consent to insert into the RECORD letters I have received from veterans' organizations about the importance of this issue.

Today, we have the power to act on behalf of 27 million veterans. We have the power to pass a fair and reasonable bill that will ensure that VA receives the discounts it deserves as a major Federal purchaser of prescription drugs. We have the power and we have the responsibility.

I am honored to have spearheaded this important legislation. And I celebrate the Senate's wisdom in passing this bill that will provide help to so many million veterans and others dependent on public health services.

This is an historic public policy advance, one that should save the American taxpayers dollars, protect veterans' health care services, and provide new clout to public health clinics. It is really an extraordinary accomplishment.

I want to take a moment to thank some very important people, the caring and dedicated staffers who have ushered this legislation through the grinding and grueling legislative process. That process, culminated in our vote today, has been long and winding, and sometimes treacherous. This bill would never have made it to the end of the road without the hard work of the Senate Veterans' Affairs Committee staff, especially Ed Scott and Janet Coffman. I want to particularly thank Barbara Pryor of my personal staff who handles veterans' issues. Barbara has worked long and hard on this issue, and I also thank another member of my staff, one of my health LA's, Ellen Doneski.

I want to acknowledge that we relied heavily on the invaluable assistance and expertise afforded by Senator PRYOR's talented staff, Chris Jennings and John Coster. They helped Ed, Janet, and Barbara learn the intricacies of the VA and Medicaid's drug pricing system and assisted them in crafting a solution that will provide real protection for the VA and other Federal purchasers. Phyllis Albritton, representing Chairperson BARBARA MIKULSKI, contributed throughout the process. The Labor and Human Resources Committee staff, particularly Marsha Simon and Ann LaBelle, took the lead on the Public Health Service provisions. The Finance Committee staff, Janis Guerney and Marina Weiss, provided technical assistance and helped bring this package together.

I would also like to recognize the critical contribution of the staff from the Republican side, especially Dave Balland of Senator SIMPSON's office and John Bradley of Senator MURKOWSKI's office. Dave's special perseverance helped us pass this both in committee and on the Senate floor. The bipartisan collegiality that was required to reach this agreement had to be operative at the staff level as well. Thanks should also be extended to others on the Veterans' Affairs Committee minority staff.

This experience, in its entirety—from first discovering the harmful effects of rising drug prices on VA and other Federal health care programs, to finally enacting this resolution that we hope will stabilize these costs and protect health care services for veterans and other Americans—has been revealing in many respects. It demonstrates just how tough it is likely to be to achieve the comprehensive health care reform, which must be centered on cost containment, that Americans expect from the next administration and the 103d Congress. But it also shows that persistence, commitment, and hard work do pay off, when the cause is right and allies are willing to work together constructively.

I am very proud of this achievement. And I make a special plea to the drug industry to do everything in their power to fulfill the goals of this legislation, as their part in serving the country and addressing the health care needs of our people.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PARALYZED VETERANS OF AMERICA,
Washington, DC, October 1, 1992.

Hon. JOHN D. (JAY) ROCKEFELLER IV,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR ROCKEFELLER: The Paralyzed Veterans of America would appreciate your support in reducing the price of prescription drugs sold to the Department of Veterans Affairs (VA). Since Congress is rapidly approaching adjournment, we strongly urge you to vote for S. 2575, "Department of Veterans Affairs Nurse Pay Amendments of 1992; Veterans Health Programs Improvement Act of 1992; Federal Health Programs Pharmaceutical Pricing Act of 1992," to ensure that the VA receives a reduction in prescription drug prices in Fiscal Year 1993. The cost savings to the VA could be as much as $93 million.

On September 15, 1992, the House Committee on Energy and Commerce, Subcommittee on Health and Environment, marked up a prescription drug bill H.R. 2890; the full Committee approved it on September 17th. The House of Representatives passed the bill on September 22, 1992. Equally quick action on S. 2575 is imperative if the VA is to receive reduced drug prices in FY 1993.

We appreciate your previous support of veterans' issues and strongly seek your cooperation on this bill.

Sincerely,

FRED COWELL,
Executive Director.

THE AMERICAN LEGION,
Washington, DC, October 1, 1992.

DEAR SENATOR: The American Legion urges you and your colleagues to approve S. 2575 as soon as possible. That measure contains a number of critically important provisions pertaining to VA medical care delivery, ranging from preventive health care to state veterans home construction.

One of the most urgent provisions of S. 2575 deals with the need to regain control over prices that VA now pays for its pharmaceuticals. Those prices during the past 18 months have risen so sharply that almost $100 million of VA's annual budget for drugs can be attributed to excessive and unreasonably increases.

Such price-gouging, in our opinion, is unacceptable. The current situation demands a quick and effective legislative response. Remedial legislation must be approved before Congress adjourns so that VA can be relieved of this additional financial burden.

Legislation addressing the same problem cleared the House last week. it is vital that the Senate act immediately to reinforce the House action by passing S. 2575.

Your attention to The American Legion's views on this important matter is deeply appreciated.

Sincerely,

PHILIP RIGGIN,
Director, National Legislative Commission.

AMVETS,
Lanham, MD,

AN OPEN LETTER TO THE UNITED STATES SENATE

DEAR SENATOR: I am writing to express AMVETS' concern over the lack of action on S. 2575. As you may know, this bipartisan Bill contains several important improvements to veterans benefits, among them provisions that will provide relief to the VA from the predatory drug price increases that have cost the VA an extra $100 million per year since OBRA 90. That is $100 million that the VA can no longer use to treat veterans.

To put that in perspective, shifting $1 million from the medical care account to the pharmaceutical account represents about 8,000 fewer outpatient visits or dropping 1,000 patients. The VA has not received supplemental funding to make up the shortfall.

Senator, even the Pharmaceutical Manufacturers Association has agreed to the pricing mechanism worked out between the Senate and House Committees staffs.

Now is the time to move this important veterans bill, and AMVETS requests your support!

In service to America's veterans,
ROBERT L. JONES,
Executive Director.

DISABLED AMERICAN VETERANS,
Washington, DC, October 1, 1992.

DEAR SENATOR: On behalf of the more than 1.4 million members of the Disabled American Veterans (DAV) and its Women's Auxiliary, I am writing concerning S. 2575, the "Veterans' Health Care Improvements Act of 1992," and am seeking your assistance in ensuring that this measure, of utmost importance to disabled veterans, receives speedy Senate consideration and passage prior to Congress' adjournment.

S. 2575 contains an array of provisions that, when enacted, will prove extremely beneficial to the Department of Veterans Affairs (VA) health care delivery system and, more importantly, the disabled veterans it is mandated to serve. In addition to the important programmatic improvements contemplated by this measure, the DAV is keenly interested in and supportive of efforts to address the significant problems VA has faced with regard to outrageously high pharmaceutical prices since the establishment of the Medicaid Outpatient Drug Rebate Program by the Omnibus Budget Reconciliation Act (OBRA) of 1990.

It is our view that the unfortunate and, we believe, unintended outcome imposed on VA by OBRA will be remedied by S. 2575 and we again urge your assistance toward expeditious Senate passage of this measure.

Sincerely,
JOHN F. HEILMAN,
National Legislative Director.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. Mr. President, I rise this evening to pay special thanks to the distinguished Senator from California, who is leaving the Senate, for his leadership in this field, for his earnest commitment to the veterans of America, to his long service in the United States Senate, and also to tell him that, along with me, others wish him well in his future life. Mr. President, I thank the Senator from California specifically for the work that he has put into this measure which, hopefully, the Senate will be passing in a very short period of time.

Mr. President, I thank also the Senator from West Virginia, Senator JAY ROCKEFELLER, who has truly committed himself to the passage of this legislation and has spent an untold number of hours in the last several weeks and months developing this legislation and bringing it to this point on the floor of the United States Senate.

Mr. President, the Senator from Rhode Island also has been very, very helpful, I think, in bringing it to the floor. And even though he is not entirely happy with some of the provisions that might relate to some of the Medicaid programs, specifically as to prescription drugs, I am very heartened to hear him say on the Senate floor—and I think I can quote—that "I will look forward to looking at the whole prescription drug situation in the next session of Congress." I think that is basically an accurate quote by the Senator from Rhode Island. I look forward to joining him in this effort as we will look to the entire prescription drug situation in our country.

Mr. President, a few nights ago I was interviewed by one of the networks, and the subject was indigent care. There are millions of Americans who no longer can pay for their prescription drugs. Five million Americans, Mr. President, today are having to choose between buying the prescription drugs that their doctor has prescribed for them and buying food for their table—5 million Americans.

The pharmaceutical industry has stated time and time again that they have a program that can serve those indigents across America who cannot buy their prescription drugs. Mr. President, as I said on that particular interview that night, this is probably the best kept secret in America, because the pharmaceutical companies do not tell the physicians, who prescribe the drugs about this program. They never held a press conference to say that these programs existed or that these drugs, under certain conditions, were, in fact, available to the public free of charge.

So, Mr. President, I ask the staff of the Special Committee on Aging of the U.S. Senate to prepare a very simple booklet to advise the elderly citizens across America that there are such programs. And we listed each company, each manufacturer, and what drugs they were willing to provide for indigents if their doctor so stated that these drugs were a necessity of life.

Mr. President, I had no idea what the response would be, but our phones started ringing in the Aging Committee, and in my office, and in perhaps the offices of the other Senators. The first day after that network carried this story about this drug program, we received some 2,000 telephone messages from all across America. Here are calls from Oakdale, CA; Wilkes-Barre, PA; Carmichael, CA—on and on. Here is Mississippi, here is South Carolina, Minnesota, Maryland, South Carolina, New Hampshire, Pennsylvania, and all across our great land. These are people who are desperate, people who are poor, people who are indigent, people who are afraid and said, "We did not know about this program." Mr. President, we have had hundreds of physicians calling our office at the Aging Committee saying, "We did not know about this program."

Mr. President, all I can say is that out there across this land, one of the great fears that we have among elderly Americans is that they will no longer be able to buy their prescription drugs. We are very fortunate that we have an increase in awareness and sensitivity to these millions of Americans who are having to make the choice of whether they buy food for their table or prescription drugs their doctors have ordered.

I hope to be able to join with the Senator from Rhode Island and other colleagues in the U.S. Senate and in the 103d Congress in looking at what we are doing to ourselves and our citizens in the prescription drug area. We have to ask about the enormous profits—unprecedented profits—of the pharmaceutical manufacturing companies, the multitude of tax breaks that we are giving away to the pharmaceutical manufacturers who in turn charge us, the American citizens, and the Medicaid program, literally the highest drug prices of all industrialized nations.

Well, Mr. President, I hope that comprehensive pharmaceutical cost containment legislation that we have looked at earlier this year in the Senate might be brought back before the Senate next year. I look forward to working with my colleague from Rhode Island. I look forward to working with the distinguished occupant of the chair, who, in my opinion, has done so much to advance the cause of more affordable health care in America, and who is today and will continue tomorrow to be one of the great leaders in America in saying to all American citizens, we in the Congress are going to do better. We are going to find that consensus. We are going to find the way to do it. And we are going to find the answer to providing all Americans a system of health care that can be afforded by all of us and that will not discriminate against the poor or the elderly.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

TRIBUTE TO DEPARTING SENATORS

Mr. HARKIN. Mr. President, I rise today to salute my friends and departing colleagues, Senators BROCK ADAMS, JOCELYN BURDICK, ALAN CRANSTON, ALAN DIXON, TIM WIRTH, JAKE GARN, STEVE SYMMS, and WARREN RUDMAN.

The departure of any one of them diminishes the stature of this body a great deal. But the departure of all eight at the same time is a milestone that I believe we should take a moment to reflect upon.

Mr. President, standing here today, I cannot help but think of that old story about President Calvin Coolidge.

Soon after he had left the White House, Calvin Coolidge had to fill out a form confirming his membership in the National Press Club. After writing his name and address, he moved on to the space marked "Occupation" in which he wrote "retired." The next space was "Remarks." Coolidge paused for a moment and then wrote, "glad of it."

Mr. President, I imagine our departing colleagues feel the same way. Many of them have been here for years and they have worked hard to represent the people of their States, and the people of America. They've left their marks. And now, for different reasons, they turn their attention elsewhere. We all know the demands placed on those of us honored to serve in this body, and I for one know that their families are glad to have them back.

But we will miss them.

SENATOR BROCK ADAMS

Mr. President, I will miss Senator BROCK ADAMS a good friend who I've had the privilege of serving with on four different committees—the Appropriations Committee, the LHHS full committee the LHHS subcommittee, and the Subcommittee on Disability Policy.

Abraham Lincoln once said that the purpose of government is to do for people what the people alone cannot do for themselves. Throughout his long and distinguished career, BROCK ADAMS has dedicated his life to making government work for people.

As a seven-term U.S. Congressman first elected by the people of Washington in 1964, BROCK was an early advocate for civil rights, voting rights, and the equal rights amendment. As Secretary of Transportation under President Carter from 1977 to 1979, BROCK ADAMS fought for landmark safety regulations to protect the consumers of America.

As a Senator, BROCK has worked hard to change this country's priorities. I will remember Senator ADAMS as a tireless advocate for the elderly and for women's health care. As much as anyone, he has made a real difference in the war on breast cancer, and millions of women live better lives today because of it.

Above all, to me, BROCK ADAMS will always be the one Senator who stood with me on this floor January 1991 to call for a vote on the gulf war. It was not a popular thing to do, and it was not an easy thing to do, but BROCK stood his ground and helped force the debate. His eloquence helped remind us all of Congress' responsibility to the American people on the most difficult decision we can make—the decision to send young men and women into battle.

BROCK ADAMS was one of a kind, and we will miss him.

SENATOR JOCELYN BURDICK

Mr. President, when the Senate convenes next January, we will do so without one of the most inspiring Members of the Senate today.

SENATOR JOCELYN BURDICK

She has taught us all a lesson in courage and perseverance. Shakespeare once wrote that we must "instruct our sorrows to be proud; for grief is proud and makes his owner stoop." Mr. President, nobody has stood through grief prouder than JOCELYN BURDICK.

At a time when America grieved the loss of Quentin Burdick, nobody had more reason to grieve than JOCELYN BURDICK. But she rose above her personal sorrow, and took over her husband's term in the 102d Congress.

It seems fitting that the last full day of Quentin Burdick's life was Labor Day—because nobody was more dedicated to the working men and women of North Dakota than he was. Mrs. BURDICK has carried on in that great tradition, and the people of North Dakota owe her a debt of gratitude.

Personally, I am proud to say that the first vote JOCELYN BURDICK cast was in favor of a transfer amendment I offered last month, to break down fire walls and transfer money from military spending to health and human services and education. Although she was not here long, JOCELYN BURDICK inspired us all. I will never forget her courage and grace, and wish her luck with whatever she decides to do.

SENATOR ALAN CRANSTON

Mr. President, the Senate is losing a man of compassion and commitment in Senator ALAN CRANSTON, who is retiring after 24 years. Never has a Member of this body been more committed to world peace, human rights, and equal rights than ALAN CRANSTON.

When ALAN celebrated his 20th anniversary in the Senate, somebody asked me if America still needed ALAN CRANSTON. And my answer then is my tribute to him today: as long as one veteran is in danger of losing his benefits, as long as one missile threatens our future, as long as one judge threatens to take away our individual rights, then so long will America need ALAN CRANSTON.

His causes were as diverse as the State he's from: A leading advocate of SALT I and SALT II, he also worked to maintain our National Park System. A staunch chairman of the Veterans Affairs Committee, he also introduced the Freedom of Choice Act to help protect a woman's right to choose.

And through it all, ALAN CRANSTON has remained a Democrat's Democrat. As Senate whip, his trademark was his tally sheet, marked with pluses, minuses, and question marks. As a Californian, nobody did more to raise money for the California Democratic Party than ALAN CRANSTON. And as a U.S. Senator, nobody did more to keep the progressive cause alive.

ALAN CRANSTON has brought energy and vision to the Senate.

In behalf of the people of Iowa that I am proud and privileged to represent, I thank him for his commitment and wish him well in his future endeavors.

I know that we will see more of him in the future. I know that ALAN CRANSTON will always carry the progressive banner as he has done all his life and the progressive cause that respects individual rights and human liberty, freedom of choice, and democracy. I know that he will continue to fight for those as long as he is with us here on this Earth, because that has been ALAN CRANSTON's life and always will.

Mr. CRANSTON. Mr. President, will the Senator yield?

Mr. HARKIN. I am delighted to yield to my great, great friend.

Mr. CRANSTON. I simply want to say many, many thanks for those very generous words to my dear friend from Iowa who is himself such a great U.S. Senator. Thank you.

Mr. HARKIN. I thank my friend.

ALAN, I will miss you dearly here. I tell you that. I will miss you a great deal.

SENATOR ALAN DIXON

Mr. HARKIN. As the 102d Congress comes to a close, another colleague we bid farewell to is my friend from the neighboring State of Illinois, Senator ALAN DIXON.

Will Rogers once said "I never met a man I didn't like." And I have a feeling that if Will Rogers had not said that, ALAN DIXON would have. Walk with him some time. He is animated and has a kind word and a "hello" and a big smile for everyone he walks by. Above all, ALAN DIXON is a Senator who speaks up for the little guy, usually with the volume at full blast.

Like Everett Dirksen before him, ALAN is also a man who not only knows how to make the process of democracy work, but loves the intricate workings of the democratic system. Let me tell you: If you need to get something done, you want ALAN DIXON on your side.

And if he wasn't on your side, you needed to work twice as hard to outmaneuver him—not always with the best of luck.

But he has been one of Illinois' most successful politicians. He's been able to represent the diverse interests of the people of Illinois, from small businesses to farmers, ironworkers to students. And his contributions to the Senate have been significant.

I have been proud to serve with ALAN DIXON on the Agriculture Committee in the Senate. He brought a unique energy and style, and he will be missed.

SENATOR TIM WIRTH

Mr. President, it makes me very sad to bid farewell to my good friend and colleague Senator TIM WIRTH, because he and I both came to Washington as part of the so-called Watergate baby class of 1974.

Our prime issue then, as now, was change. Our top priority was overhauling the seniority system. And after we had both been here a while, we figured the seniority system was not such a bad thing after all.

But we have come full circle. Now, as then, voters say it's time for a change. The irony is, one of Congress' most effective voices for change all these years has been TIM WIRTH. I can understand and respect TIM's decision not to run again, but this body will be the lesser for it.

He spoke for so many different people. The women of America are losing one of the most effective voices for choice and equality. The underprivileged are losing one of the most effective advocates for equal opportunity. And any American who cares about protecting and preserving the environment is losing a true friend.

In his one term here in the Senate, TIM WIRTH has done more than anyone to put the environment first. I hate to say that TIM will be remembered for acid rain, ozone depletion, and deforestation, but he has done more than anyone to bring attention to and solve these problems. In his fierce defense of the environment, TIM WIRTH himself has been one of our national treasures.

I don't think we've seen the last of him. TIM isn't the kind of person who goes quietly into the night. We'll hear more from him. I feel privileged to have served with TIM all these years and wish him well in whatever he decides to pursue.

SENATOR JAKE GARN

Mr. President, I have to admit: One Member of this body that I have been a little envious of the past 7 years is Senator JAKE GARN of Utah, who is also making his departure at the end of this session.

One thing I have in common with JAKE GARN is that we were both Navy pilots. Back in the 1960's, when I was flying jets, I always wanted to be an astronaut. I never made it to space, but JAKE GARN did. As we know, in 1985, Senator GARN became the first Member of Congress to travel in space, aboard the shuttle *Discovery*.

I always admired and slightly envied him for that—maybe not slightly, a great deal of envy for that. He did so with the courage and character that has marked his legislative career.

But personal courage has always been the hallmark of JAKE GARN's life and career, exceeded only by his devotion to family. Shortly after that shuttle flight, JAKE learned that his daughter was facing kidney failure due to diabetes. In September 1986 he donated one of his kidneys so that his daughter would live, one of the most courageous and selfless things I have ever seen. He has lived his beliefs and served as an example to others.

One thing that few people outside this Chamber know about Senator GARN is that every year, he hosts what he calls the Senator's Ski Cup in Park City, UT. He invites Members of Congress and the administration and their families out to Utah to ski, and the money raised from the event goes to help the Primary Children's Hospital in Salt Lake City, UT. Next January, he will host the sixth annual Senator's Ski Cup.

Every year he has always invited me but, for some reason or other, I have never been able to make it. Well, he invited me again this year and I will tell you, I plan on being there, Mr. President, because I do not think you will find a worthier cause and a more delightful and what I might say considerate person to go for than Senator JAKE GARN.

I have served with JAKE GARN on the Appropriations Committee and I have come to admire him as a man of principle who tells it like it is. He has taught us all about courage and devotion, and the idealism of this body will be diminished in his absence. I wish him well.

SENATOR WARREN RUDMAN

Mr. President, I would also like to pay tribute to Senator WARREN RUDMAN of New Hampshire.

In many ways, I feel the same way about WARREN RUDMAN that I do about Ronald Reagan. When I was running for President earlier this year, I often said that I admired Ronald Reagan. And people were surprised to hear that. After all, we were on opposite sides of nearly every issue. But what I admired about Ronald Reagan was the fact that you always knew where he stood. No matter what issue, you always knew that he had a firm set of beliefs that guided every decision.

Mr. President, the same can be said about WARREN RUDMAN. He is a man of integrity guided by a firm set of beliefs, and he has served the people of New Hampshire well. I wish him all the best in the future. And I know we will hear more from him, as in his private life he will continue to address the problems that confront our country.

SENATOR STEVE SYMMS

Finally, Mr. President, I would like to salute my good friend Senator STEVE SYMMS, who will not be with us when the 103d Congress convenes next January.

STEVE SYMMS is a former marine who has remained forever faithful to the conservative cause. He has served his Presidents well, and consistently fought to represent the interests of the State of Idaho. Nobody has fought harder to maintain the rights of gun owners, private property owners, and extend the transportation lifeline to rural areas and rural States.

STEVE and I were on the opposite sides of just about every issue when we were in the House together and later when we served in the Senate.

In fact, in one of these recent pieces of paper that came out that compared our votes, I looked at it and I saw that STEVE and I, he was next to the last in vote comparisons between me and STEVE SYMMS.

But I am going to miss him because I have served with STEVE for so long. And I have to tell you this: He was always in a good mood. I have never seen STEVE but with a smile on his face. I have always thought that STEVE represented what I considered to be the best in the conservative cause. He fought hard for individual rights—he never wavered from that—for individuals rights and individual liberties.

I always knew that if I needed someone to argue with, I could always count on STEVE SYMMS, but we always did it in a good manner.

As I said, he was just always of a good nature and friendly. I have never, in all my years that I have served with STEVE SYMMS, ever heard him say a harsh word to me or a harsh word about anyone else in my presence, and we have spent a lot of time together; a few times we drove back and forth together because he lived out by me.

I have just always liked him. He is a great human being.

So I have been proud to call him a friend for more than 15 years and I am going to miss him when we come back here next January.

SENATOR AL GORE

Lastly, Mr. President, there is one other tribute I would like to make, but I think I will wait until January—when Senator AL GORE is in the Vice President's house.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

MONTANA WILDERNESS BILL, S. 1696

Mr. BAUCUS. Mr. President, for some 12 years now, the people of Montana have been trying mightily to resolve the fate of 6 million acres of roadless Federal land in our State. Ever since the famous RARE II decision in the late 1970's, all States with such lands have struggled with the dilemma of how to best manage their land to balance wilderness and wildlife habitat, recreation opportunities, and timber and mining opportunities. All but two States have successfully charted that course.

One of those is my State of Montana. Our lack of success has not been for lack of effort. There have been numerous Montana wilderness bills introduced in the past decade. Honest differences, and more than just a little political posturing, have combined to frustrate repeated attempts.

In 1988, the members of the delegation thought that victory was finally within our grasp. The Senate and House both passed a wilderness bill. But our joy quickly turned to despair as President Reagan vetoed the bill.

But resolution of the wilderness issue was too important to the future of Montana to let that veto stop our work. Last year, Senator BURNS and I began what turned out to be lengthy negotiations to develop another Montana wilderness bill.

We shook hands on our agreement and agreed to stick with it through the Senate. But we both acknowledged then that we could not bind the House Members of the delegation to this agreement for they had not been party to our discussions.

The Senate passed S. 1696 earlier this year. As with any compromise, the bill did not contain everything that I wanted. Nor did it contain everything that Senator BURNS wanted.

But I believed then, as I do now, that S. 1696, provides a sound and responsible way to manage the remaining roadless areas in our State in a way that protects the environment and preserves jobs.

Two weeks ago, Senator BURNS, Congressman WILLIAMS and I met with the leadership of the House Interior Committee to discuss the prospects for the bill in that body. It was clear that the House would pass a different version of the bill, but that, as Congressmen VENTO and MILLER said, the final product would have to be somewhere in the middle.

Last Friday, as expected, the House of Representatives did pass its version of S. 1696. The House amendment to the bill changes many of the wilderness area designations in the original Senate bill. It also contains different language on water rights and release.

But despite the changes, the two bills are remarkably similar in approach. However, the House acted with only a few days left in this Congress. Because there is so little time left, shortly after House passage of the wilderness bill, I offered the delegation a compromise proposal that I believe fairly bridged the differences between the House and Senate bills.

It included elements of both bills and specifically responded to concerns raised by Congressman MARLENEE and Congressman WILLIAMS. I asked the other delegation members to meet and try to reach agreement on it.

We met twice on Saturday for some 5 hours. We met for another 5 hours the next day, Sunday. We have had many meetings.

At the pace the negotiations were proceeding, it was apparent to me that they could not possibly conclude until well after Congress adjourned.

Mr. President, I believe my colleagues in the Senate know how much I desire a resolution to this issue. It is a debate that has dragged on for more than a decade. It is a debate that has polarized our State and distracted us from the urgent task of meeting tomorrow's economic and environmental challenges in our State of cleaning up our air and water, conserving our natural resources, educating our children, upgrading the skills of our workers, improving our infrastructure, and attracting new business.

I would have clearly preferred that the members of Montana's delegation put politics aside and come together on a compromise that was in the best interests of our State. I have put a lot of effort into achieving that end.

But with only a few hours left before the probable adjournment, the clock is conspiring against consensus. With so little time left, I believe that the only remaining course of action for me is to bring up the House bill and amend it with my compromise proposal.

The people of our State want this issue behind them. That is clear from the numerous editorials that have appeared in our newspapers in the last few days. I ask unanimous consent that several editorials be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Daily Inter Lake, Oct. 7, 1992]

WILDERNESS SEQUEL

If you had hoped we might have a moment of silence now that the latest Montana wilderness bill is dead, forget it.

What we'll undoubtedly have is a messy, nasty post-mortem that will stretch past Nov. 3, as the people who couldn't nurse a bill through Congress now look for the cause of death. Each part of the bill will be dissected, analyzed and held up for everyone to see.

"The Senate bill failed to protect enough of Montana's precious wildlands."

"The House version of the bill locked up too much of the public's resources."

"The bills were no good because too many acres were set aside for further study."

"The bill was doomed because it failed to protect pristine wilderness in area ABC."

"The bill was unacceptable because it kept recreationists out of area XYZ."

"The bill was fatally flawed by ambiguous release language."

"The greedy timber industry killed the bill."

"Selfish wilderness interests killed the bill."

"Conrad (or Max or Pat or Ron) did it."

"It was dead on arrival."

Enough already. Such carping is tiresome even before it starts, and it doesn't do a darn thing to settle the issue.

We still have 6 million roadless acres of public land that can't be touched until Congress acts. But Congress has turned out the lights, and the bill that would have settled most of the wilderness issue is dead.

Who won?

Nobody. The fight will be refought another time. The arguments people are so sick of hearing will be replayed. The political games will be restaged.

It is a colossal waste of time and energy.

The discussion long ago stopped being productive. At this point, nothing short of divine intervention could change anyone's mind. Montana's four representatives in Congress know that. They know that for every acre they shift from one pile to another, someone will be tickled and someone else will be ticked. They know the issue won't go away until someone's wilderness proposal becomes law. They know that until a bill passes Congress and is signed by the president, the controversy will haunt them and all of us.

So what does anyone gain from a rerun next year or the year after or the year after that?

Absolutely nothing.

Still, those four men—the only Montanans with the authority to get the job done—couldn't agree to disagree and just do it.

Next year, thanks to reapportionment, there will be only three Montanans in Congress to fight over a bill.

You have to look for progress where you find it

[From the Great Falls Tribune, MT, October 5, 1992]

TIME RUNNING OUT FOR WILDERNESS COMPROMISE

Montana's congressional delegation must compromise now—or we all lose.

There's no hotter political potato than the Montana wilderness bill, but it has to be handled now. Or this legislation expires when Congress adjourns in a few days, and another year's struggle will have been lost.

The compromise agreed on by Sens. Max Baucus and Conrad Burns a year ago was an acceptable one. The House response, drafted by Reps. Pat Williams and Bruce Vento, added a bit more wilderness. An excellent compromise would have been to adopt the House acreage and the Senate water right language.

But then everything came unglued.

Baucus offered a last-minute compromise that would have split the differences, but tempers were short in the final days of the session.

The reality is that the difference between the three measures are insignificant. Any of the three would benefit the state by resolving a decades-old battle.

But it's wrong to be making these crucial decisions at this time and in this way.

The prolonged delay of a gridlocked Congress has cost us all dearly by jeopardizing legislation important to Montana—and by forcing hasty action on a bill too important to be rushed.

It has been painful to watch this awkward process. Even though it's nearly too late now, our congressional delegation should get together on one of the proposals—our preference would be the House bill—and back it for the good of the state.

We can't afford to lose this opportunity—again.

SOME LESSONS FROM YET ANOTHER FAILURE

There appear to be some certainties in life: death, taxes, and the everlasting dispute over Montana's wilderness.

That's distressing because it's becoming obvious that Montana's can't resolve this issue on our own. And that means that others will have to do it for us—if it is ever to be resolved.

Resolution of the perpetual problem got off to a promising start a year ago with agreement by Sens. Max Baucus and Conrad Burns that would have protected another 2.2 million acres of Montana, opening roughly 4 million acres to logging and to oil and gas exploration.

At the time, however, the senators warned that their compromise was shaky and should be accepted untouched.

But House environmentalists touched, pressuring Rep. Pat Williams to increase the protected acreage and change the water rights language.

Predictably, Burns balked and the bill died.

There is a natural urge to point a finger at the supposed villains in this latest soap opera, but, in reality, there are none.

Montanans are deeply split over the protection or responsible development of our wilderness. We elect politicians to represent our interests—and they did.

Predictably, they couldn't agree any more than we could.

A new factor is that Montana's wilderness has become a national issue.

After decades of squabbling among ourselves, the rest of the nation is now paying attention to the resources of our state. Like it or not, we've lost the time when we could decide the issue solely for ourselves.

There's simply nothing else like it in America—nothing left outside of Alaska that's as big and wild and pristine.

That's important to Americans increasingly locked in a metropolitan maze—whether it be a smoggy Los Angeles, a congested Chicago or the human anthill that we call the East Coast.

If Montana were a privately run business, our chief executive officer would be listening closely to that sentiment—but he or she would be calling it market demand and finding a way to give the consumers what they want and what they are presumably willing to pay for.

We need to recognize this market force as well—because it will give us the direction we can't find for ourselves.

TIME FOR STATESMANSHIP

After a spell in the national spotlight, highlighted by celebrity kibitzing and predictable partisan posturing in Congress, the fate of the 6 million acres of the state's remaining unprotected roadless land is back in the laps of Montanans: two senators and two congressmen, who must either strike a deal or fail their constituents miserably.

With Congress' adjournment looming, time is short, and now is the time for statesmanship. The temptation to bend to other forces, however, will be formidable.

Two bills lie before Congress. The Senate's more conservative bill would set aside 1.2 million acres of new wilderness, and provide other legislated protection for another 1 million acres. The other version, passed by the House Friday, would create some 1.45 million acres of new wilderness, and provides other protection for another 1.1 million acres.

The outcome of this standoff weighs heavily into the Nov. 3 face-off between Democrat Rep. Pat Williams and Republican Rep. Ron Marlenee.

Marlenee—with the help of his Republican colleague, Sen. Conrad Burns—will be tempted to solidify his constituency by clinging in bull-headed fashion to the Senate version of the bill which, he argues, will deny mining and timber workers access to less public land.

If Williams, on the other hand, stands steadfastly to the House's more liberal bill, he can claim the high ground with the special interests that have his ear.

But such unbending strategies will only scuttle the whole process, contribute to already soaring voter cynicism for both congressmen, and once again reduce the status of the state's precious natural resources and jobs to that of trivial pawns.

The most ironic aspect of this whole tale is that an examination of the impacts of any wilderness bill within the range now established by the House and Senate versions reveals a minimum of differences. The real estate that, practically speaking, invites development (read "road construction"—the one thing that will forever preclude wilderness designation), and the rate at which that land would be developed, will not vary measurably no matter which of the two bills becomes law.

So why at this 11th hour is the fate of the Montana wilderness bill so shaky?

The short answer: face-saving.

Even though the differences in final outcomes for the land in question are minimal, the process could be scuttled if a given compromise makes it appear that a particular politician caved in.

A compromise has been proposed. It offers all of the delegation something to take home to their respective constituencies. Democratic Sen. Max Baucus has crafted a middle ground that splits the difference on acreage accorded federal protection from development, and restores some state water rights protection favored by the delegation.

There is still more talking to be done, more give-and-take at the bargaining table, but—this time—let it be good faith, productive and speedy dialogue. If a pact can be struck and delivered back to Congress in the next two days, chances are good for passage and a presidential signature.

There are times to play politics. There are times to set politics aside. Never in the Montana wilderness debate has there been a more appropriate moment for the latter.

DON'T DROP THE BALL NOW

Since the Montana wilderness bill has become a political football, perhaps a gridiron analogy is fitting:

It's fourth down, goal to go, with just seconds left on the clock for Montana's congressional delegation.

The U.S. House on Friday passed its version of a bill affecting some 6 million acres of roadless national forest lands. It differs somewhat from the version of the bill passed earlier by the Senate, and the two bills must be reconciled, submitted for final approval and sent to the president before Congress adjourns this week.

It can be done, but not unless all four members of the state's congressional delegation do what Montanans have been asking them to do for years: strike a compromise. There probably isn't a soul in Montana who wouldn't like to add, subtract or change something in the wilderness bill. But after 12 years of fighting, most of us have come to the conclusion that it is far better to enact a law based on the vast areas of agreement, rather than continue to quibble over relatively minor differences.

Following Friday's House vote, Sen. Max Baucus proposed a reasonable and workable melding of the two versions. In simple terms, it uses water-right and release language found in the Senate version, while protecting as wilderness some of the areas included in the House version but not the Senate's.

It may not be perfect, but the Baucus proposal—or something close to it—offers the only possibility for getting a bill passed at this point. If the delegation can't work things out quickly, the whole battle will start anew.

Montanans have come too far for the delegation to give up now. Don't fumble it, boys.

Mr. BAUCUS. Mr. President, the point is very simple. The compromise proposal that I will later call up today is midway between the House and the Senate bills. It, therefore is the only Montana wilderness bill that can possibly be enacted in this Congress.

Democratic Members of this body have cleared this proposal. There are no objections on the Democratic side to this proposal.

Likewise, I am assured by Congressman WILLIAMS, with other conversations, particularly with Congressman VENTO and Congressman MILLER, that the prospects of passage of the compromise proposal is also very high, and it can be cleared on the Democratic side in that body.

Only this bill can pass. No other version at this late date, with only hours remaining, can pass. I have been working with my colleague, Senator BURNS, on his side of the aisle. He is working, trying to resolve issues that he yet sees remaining. I very much hope that when I call up this bill at a later time, all those problems will have been resolved.

Montana is fed up with politics. It is fed up with recriminations on this issue. It wants us, the Montana delegation, to pass an evenhanded, balanced bill—get on with it; get it over with; put some finality to this. Let us end it.

Montanans want stability; they want jobs; they want to protect the environment. And most of all, they want the passage of a Montana wilderness bill this session that is balanced and evenhanded. They want it passed now, so we in Montana can go on with other issues.

Mr. President, I very strongly urge my colleague from Montana to work with his colleagues on his side of the aisle; work out those resolutions. Democrats have cleared it. It is available to come up for passage. Let us get it passed.

I very much hope we finally can put this issue behind us and close the final chapter on a 12-year saga.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. HARKIN). The Senator from New York is recognized.

ALAN CRANSTON

Mr. MOYNIHAN. Mr. President, late this afternoon, I left the Senate floor to attend to some matters in the Russell Building. I made my way down the Senate steps, pausing every so often—for we had had the last rollcall vote of the 102d Congress—to marvel once again at the serene seemliness of the Capitol Grounds, with the white marble of the Supreme Court turning golden in the reflection of the westering Sun. The makings, you might say, of reverie. Until, from across the way, a distinctly British voice hailed me to ask if I would come over and say a few words for British—BBC—television.

Happy to do so.

The Briton was of a more urgent mood than I. He wanted to talk about the Presidential election and wanted to know whether I thought this was the foulest campaign I had ever seen.

"Not at all," I said. "Not in the least."

Whereupon, I found myself thinking, talking about ALAN CRANSTON—ALAN MCGREGORY CRANSTON, is the fact. I explained that, as I had left the floor, I had noticed Senator CRANSTON hunched over his beloved tally sheets, rollcall votes or no rollcall votes, busy with the work of the Senate in which he has served with luminous integrity and intelligence for near on to a quarter century.

I remarked on this and used that word, "century." And of a sudden, I had an answer to the question I had been asked. "Foul campaign?" I replied. "Nothing of the sort."

"Young man," I continued, "you do not know and there is no real way you could know, what our Nation has been through for a half-century. "One Presidential election after another in which the gravest issues of the survival of democracy in a looming totalitarian world seemed continuously at stake, in the context of which the most awful suspicions, fears, accusations were given voice."

I told him, in 1939, the Second World War was about to begin. The fall of France and the Battle of Britain would follow. The American people had little sense of what was coming and even less a sense of the nature and threat of fascism. In that year, the Nazi government of Germany had published as expurgated version of Adolf Hitler's "Mein Kampf," My Struggle. I myself can remember talk of it at the time. Hitler seemed a reasonable man. Certainly Germany had been ill-used by the victorious powers at Versailles in 1919. His demands seemed understandable.

He had invoked Woodrow Wilson and the American principle of "self-determination" when he seized the German-speaking areas of Czechoslovakia. America was, in any event, an isolationist nation still. "Stay out of Europe's seemingly endless quarrels," was our first concern, and was the first concern of many. And if this was a view associated with the Middle West, it had many adherents on, for example, the Ivy League campuses of the East, where "America first" committees were being formed to much acclaim and notice.

One man knew better. ALAN CRANSTON had returned to the United States after having served as a foreign correspondent for the International News Service in England, Germany, Italy, and Ethiopia. He read German. He had read "Mein Kampf." He happened on the English language version in a New York bookstore. He was appalled by the thought that the American people were reading a wholly misleading version of a propaganda tract of immense power. With the energy and swiftness he brought and still brings to the 100 yard dash, ALAN CRANSTON sat down and produced a translation of the passages Hitler had left out of the expurgated edition. Half a million copies were sold at 10 cents apiece. A banner on the cover told readers, "This is the true version of 'Mein Kampf,' and Hitler will not get a penny of the royalties."

In time, the Nazis forced the Cranston edition out of the bookstores, but not before the truth was out. A half-century of struggle with totalitarianism followed. ALAN CRANSTON was in the thick of it throughout, valiant for truth, indomitable, unafraid. And, in the end he and such as he prevailed.

"This election?" I continued with my friend from the BBC, my new friend, "Oh, there are some personality issues involved, and why not? But the long half-century struggle with totalitarianism, the totalitarian claim to own the future, the inevitability of its domination followed by goodness knows what disastrous world wars, that is over. Nazism, fascism, communism, all gone."

I said, "The most important fact about this election was not who was going to win. The most important thing to know was not who was going to win. The most important thing to know was that it was going to take place the first Tuesday after the first Monday of November. The votes would be counted, and on January 20th—a new term for President Bush, a term for Governor Clinton—one of them would begin." Democracy made it through the 20th century after all. There are not many who would have expected this when ALAN CRANSTON picked up that copy of "Mein Kampf" in a New York bookstore.

But, thanks to ALAN CRANSTON and those of his generation who joined us in that struggle, we have, in the end, prevailed.

He departs now leaving history behind. Homage, great friend.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAMM. Mr. President, I yield to the Senator from California.

A REMARKABLE MAN

Mr. CRANSTON. Mr. President, I rise to thank the esteemed Senator from New York for his wonderful remarks about some of the things that I sought to do in my life. I am particularly pleased that the man I consider the most eloquent Member of the U.S. Senate used that eloquence to recount some of the many deeds of my many decades.

I would rather talk about the Senator from New York than myself, so let me simply say about him that he is a truly remarkable man with a prodigious capacity to deal with the smallest aspects of a big issue, as witness his great work on Social Security, along with his understanding of the broad sweep of that vitally important legislation.

He is amazingly prolific and profoundly thoughtful in his writings. He understands the true significance of history in ways matched by few Americans. He has brought to this body a remarkable understanding of our world and our Nation and its great problems and vast opportunities.

I feel better about leaving the Senate because PAT MOYNIHAN will be in the Senate in the days and years to come.

Mr. MOYNIHAN. We feel better about being in the Senate because you have been here. Some people meet standards, others set them. You have been one of those.

Mr. CRANSTON. Mr. President, I thank the Senator.

Mr. GRAHAM. Mr. President, I wish to associate myself with the eloquence of both our colleagues, who are departing the floor, whose friendship obviously sustains.

SAFETY PROBLEMS WITH CUBAN NUCLEAR POWERPLANTS

Mr. GRAHAM. Mr. President, it is my purpose to make remarks on the occasion of the issuance from the General Accounting Office of a study requested by me relative to concerns about nuclear reactors in Cuba. This report was the result of hearings held by the Nuclear Regulatory Subcommittee of the Environment and Public Works Committee on the issue of international nuclear power.

During the course of those hearings particular attention was focused on two reactors which are currently under construction on the south coast of Cuba. At my request, the General Accounting Office conducted a study of these reactors and their potential impact. These two charts, one on the right reflecting the conditions in the summer and the other, on the left, reflecting the conditions in the winter, indicate the potential fall of radioactive material upon extensive areas of the United States, as well as the Caribbean and Central America in the event of an accident at either of the two plants on the southern coast of Cuba.

Mr. President, I suggest that it is time for the international community to organize itself in a way to protect against these kinds of potential accidents from nuclear plants that are inappropriately designed, constructed or operated. I suggest, for instance, the need for international standards of nuclear plant safety; a nonproliferation treaty with those countries of the world, such as the United States, France, and others which have the capacity to provide the materiels for the construction of commercial nuclear plants and will not do so unless the recipient country agrees to meet the international standards; also, the importance of supporting the International Atomic Energy Agency, which is the world's principal guardian of safety, both in military and commercial nuclear power.

Mr. President, I believe this is a very important issue. It is one in which I intend to propose legislation to the 103d Congress if the people of my State are generous enough to give me an opportunity to continue to represent them.

Mr. President, I would like to address several important issues of international nuclear safety. These issues have been presented by the construction of two nuclear powerplants in Cuba. Up until the past few months, these plants have been built with Soviet and Russian assistance.

Over the past year there have been a number of allegations, both from Cuban defectors and from Americans who have studied the designs of these plants, that there are serious defects in the construction and design of the two nuclear powerplants being built in Cuba. Additionally, a number of American and international nuclear safety experts believe that Cuba does not posses the necessary technical expertise and resources to safely operate nuclear powerplants.

The Cuban reactors could never be licensed in the United States. If completed, these nuclear powerplants could be a danger to the health and welfare of many Americans.

Unfortunately, the problems with the Cuban nuclear plants are no closer to being resolved today than they were when they were first brought to public attention a year and a half ago. If we ever are to be assured that these plants will not threaten the safety of people in the United States, the U.S. Government must do more to press for the development of international nuclear safety standards, international inspections to evaluate conformity with these standards, and an international agreement to deny nuclear technological assistance to nations that do not pledge to abide by the system of standards and inspections.

Mr. President, the problems with the Cuban nuclear powerplants have been very well documented and highlighted by a report that has just been issued by the General Accounting Office. At my request, the GAO looked into the status of the construction of these plants and the allegations regarding their safety. The GAO's findings confirm that the problems with these plants have not been resolved to anyone's satisfaction.

In brief, the GAO found that the civil construction of the first reactor is over 90 percent complete; 37 percent of the reactor equipment has been installed. The second reactor is 20 to 30 percent complete. The status of the reactor equipment for this unit is uncertain.

Due to Cuba's current lack of hard currency, Russian aid has been suspended. However, after the suspension was announced the Russians sent a delegation to Cuba to discuss whether construction assistance could be resumed. We cannot be sure that this project will not be continued at some time in the future, either with or without Russian aid.

With respect to the safety of the Cuban nuclear powerplants, a number of Cuban defectors who formerly worked at the plants have alleged that there are numerous problems with the quality of construction. Specifically, there are allegations concerning inferior valves in the emergency core cooling system. A number of former workers have alleged that there are defective welds in piping systems outside and inside the containment.

Additionally, there are allegations that the Cubans who would be operating these plants are receiving inadequate training. One former Cuban official has alleged that the Russians are providing training on a simulator for a reactor with a design that is different from the design of the plants under construction, thus making the value of this training questionable. United States experts do not believe that Soviet-designed simulators provide realistic training for accidents.

The NRC's Director of International Programs and the Acting Director of the Department of Energy's Division of International Programs have expressed concern about the design of the Cuban plants. They believe that the containment might not be able to fully withstand the pressures that might arise in an accident. In other words, they are worried that the containment might not prevent the release of radiation if there is an accident.

According to the GAO, the NRC is particularly concerned about the adequacy of Cuba's regulatory infrastructure, the adequacy and number of trained regulatory and operational personnel, and the reports of the defective welds.

Cuba's problems with developing an adequate infrastructure for operating, maintaining, and regulating nuclear powerplants are obvious. Cuba cannot even maintain an infrastructure for basic goods and services. A recent article in the New York Times says that most vehicles have disappeared from the roads in Cuba due to a lack of fuel. Consumer goods and basic foods are scarce. Electricity is being rationed. The recent sugarcane harvest had to be extended for 2 months because machines were unavailable and manual labor had to be used instead. A country that does not have enough mechanized equipment to harvest its sugarcane can hardly be expected to operate, maintain, and regulate nuclear powerplants. If these plants in Cuba were to be completed and begin operation, the biggest risk could be from the lack of an adequate technical infrastructure in Cuba to knowledgeably and competently operate and regulate these plants.

In July 1991, the Subcommittee on Nuclear Regulation, which I chair, held a hearing on the safety of nuclear powerplants designed in the former Soviet Union. At this hearing we also examined the safety of the nuclear powerplants under construction in Cuba. Many of the problems with the Cuban plants that were described by the GAO also were raised during this hearing.

For example, the Nuclear Regulatory Commission testified before the Subcommittee at this hearing, over a year ago, that "there are indications * * * that there is a need for improved quality control in the construction of these plants." Prof. Nils Diaz of the University of Florida, an expert on the safety of Soviet-designed reactors, testified before the subcommittee that:

> The operation of these plants, without the necessary Quality Assurance and operator qualifications, could create a significant health and environmental hazard to areas close to it, and a continued threat to the economy, agriculture and tourism in the regions around the Gulf of Mexico and the Caribbean regions.

It is frightening to consider the potential extent of a release of radiation from an accident at any of these plants. Such a release would not just affect the people in Cuba living near those plants. People in the United States could be affected too. In particular, persons in the south and southeastern United States could be harmed by radiation released from the Cuban plants.

At GAO's request, the National Oceanic and Atmospheric Administration [NOAA] analyzed the potential pathways for radioactivity that might be released from an accident at the Cuban reactors. The NOAA analysis showed that all of Florida and portions of the Gulf States as far west as Texas could be affected in the summer, and in the winter areas as far north as Virginia and Washington, DC, could be affected.

In addition to any health impacts from radiation releases, there may be serious economic consequences from radioactive fallout. The Chernobyl experience shows that a release of radiation from a reactor could cause serious economic losses to people in nations downwind from the accident, even where there are no health effects. After the Chernobyl accident, milk was thrown out in Germany. Sheep were slaughtered in England. Reindeer were killed in Scandinavia.

Even if the releases are small, the fear of radiation could cause devastating losses for agricultural and livestock industries downwind from the accident. Who will drink milk that is labeled as radioactively contaminated? Who will eat meat that is not labeled as safe, but only as "posing no undue risk to public health and safety?"

Thus, the issue of the safety of the Cuban reactors is not just a concern for the people in Cuba, the people in the Caribbean, or the people in just one or two States of the United States. The impacts could be much broader. The safety of these reactors should be a concern for people throughout the United States.

Mr. President, the United States has no way of verifying the accuracy of the allegations regarding the safety problems at the Cuban plants. Moreover, there are no mechanisms in place for correcting deficiencies. Neither the State Department, the Nuclear Regulatory Commission, nor the Department of Energy has any way of satisfying itself or the American people that these plants will be operated in a manner that does not pose an undue risk to persons living in the United States.

At present there are no binding international nuclear safety standards. There is no internationally agreed-upon baseline to judge the safety of these or any other plants. To date, the International Atomic Energy Agency [IAEA] has established safety fundamentals, standards, guides, and practices, but they are not binding. They are general and advisory. IAEA members are not required to adhere to them.

In November, 1991, the Subcommittee on Nuclear Regulation held a hearing on whether there should be binding international nuclear safety standards. Just prior to this hearing the members of the IAEA had agreed to develop a framework convention for the establishment of international nuclear safety standards. The IAEA members, including the United States, are now working on this framework convention.

At the subcommittee's last November's hearing I expressed my strong support for the development of binding standards. At the hearing, all the witnesses from the U.S. Government—the Nuclear Regulatory Commission, the Department of Energy, and the Department of State—supported the goal of developing the framework convention for international standards. Also at the hearing, Morris Rosen, representing the IAEA, testified in favor of the development of binding international safety standards.

Last November the GAO issued a report on international nuclear safety. The GAO recommended that the United States support the development of international safety standards.

The establishment of international safety standards will provide a common baseline for judging the safety of nuclear plants around the world. Hopefully, these standards will make it easier to determine which of the existing plants should be shut down, which modifications are needed for others, and which plants are acceptable.

Once standards are developed it will be vitally important that there be some competent and independent method of inspection to determine whether nuclear powerplants under construction and in operation are in compliance with international standards. The International Atomic Energy Agency is a credible and independent international organization with responsibility for improving international nuclear safety. There should be a mechanism for the IAEA to verify compliance with the standards that have been established.

A system of standards and inspection to determine compliance with those standards would provide much more assurance that nuclear powerplants in one country will not pose any undue risks to persons in another country.

To date, there has been no outside inspections of the nuclear powerplants under construction in Cuba. Without any such inspections, we can only speculate on the accuracy of the serious allegations that have been made regarding the safety of these plants. For some time the IAEA has been considering whether to undertake a preoperation visit to the Cuban nuclear reactors. This visit has yet to occur. Even if it were to occur, however, the purpose of such a visit would not be verify compliance with international standards, but rather to provide suggestions as to how the construction could be improved.

Clearly, therefore, the current international regime is inadequate. It must be strengthened. The United States must aggressively push for international nuclear safety standards. The United States also must support a method of inspection for determining compliance with those standards.

Voluntary standards and voluntary inspections alone, however, may not be sufficient. International peer pressure may not be enough. There should be incentives for nations to adhere to these standards and to allow inspections.

A strong incentive to comply with these standards would be to deny nuclear assistance to those that don't. Nations that do not comply with international nuclear safety standards or that do not permit international inspections of their facilities should not be able to obtain commercial nuclear assistance from nations that do.

This type of system would be similar to the system that has been established to prevent the proliferation of nuclear weapons technology. IAEA members have agreed that civilian nuclear technology or materials will not be provided to nations that do not agree to accept IAEA safeguards to prevent that technology or materials from being used for noncivilian purposes.

There are a host of restrictions under United States and international law for the transfer of technology to nations that do not adhere to the international system of safeguards and inspections to prevent the nonproliferation of nuclear weapons technology and materials. Oddly enough, there are almost no restrictions on the transfer of technology that may be used for unsafe nuclear reactors. If the international community can restrict the export of nuclear technology that will pose an unacceptable risk of contributing to nuclear weapons proliferation, then the international community also should be able to restrict the export of nuclear technology that will pose an unacceptable risk of a nuclear accident.

I want to make it clear that I do not advocate the creation of a worldwide, international equivalent of the Nuclear Regulatory Commission. Nuclear safety must remain the responsibility of the powerplant operators and the national regulatory bodies. I do believe, however, that the international enforcement mechanism that I have described can improve rather than detract from international nuclear safety.

Mr. President, a strong international safety regime will require a strong international agency to implement that regime. At present the International Atomic Energy Agency is the international organization responsible for international nuclear safety. In my opinion, to provide for more effective international oversight of nuclear powerplants, the United States must give greater support to the IAEA's safety activities than it has in the past.

The IAEA also is the international organization responsible for preventing the proliferation of nuclear weapons. On the safeguards side, the IAEA recently has undertaken a considerable and prominent role in verifying and ensuring that Iraq no longer has a nuclear weapons capability. It is reasonable to assume that ensuring nuclear nonproliferation in Iraq and other countries will remain a vital mission for the IAEA.

On the safety side, the IAEA has undertaken many new activities recently. Most of these have arisen as result of the collapse of the Iron Curtain. The IAEA has performed a number of safety assessments of Soviet-designed reactors in Eastern Europe. Some of these have been completed. Some are continuing. As I mentioned previously, the IAEA is now in the middle of negotiations to develop an international framework convention on nuclear safety.

Despite the increases in the IAEA's safeguards and safety activities, until this year the United States had opposed any increase in the IAEA's budget. It has been U.S. policy over these years not to support any increases in the budgets of any international agency. Unfortunately, this broad policy has had the unintended consequence of forcing the IAEA to curtail some of its activities. It is difficult to see how the IAEA can expand its activities without any increase in its budget.

At the subcommittee's hearing last November, Morris Rosen of the IAEA testified as follows:

> The Agency has over the past years carried out safety activities within the budgetary limits of zero growth which have been sustained only by extrabudgetary resources and an unusually committed staff. The accom-

plishments of the Agency have had an effect on the quality of some ongoing activities and have also caused delays and cancellations of others. If the IAE is to fulfill its safety role, there must be realistic support through the necessary expansion of resources. Currently nuclear safety and radiation protection activities are assigned $10 million, or 6 percent of the Agency's regular budget. Building a stronger international presence in nuclear safety will not only contribute to safety, but will also help maintain the nuclear option. If called upon, a sufficiently financed agency is unquestionably ready to do its part.

This year's Commerce-Justice-State appropriations bill for fiscal year 1993 finally includes an increase for the IAEA's budget, However, this increase is only about $4 million. The Senate version of this bill would have provided for an additional $15 million increase. Unfortunately, the administration opposed this increase. The increase was deleted in conference with the House. I am disappointed that increases provided by the Senate were not adopted.

The United States could further improve the IAEA's budgetary situation by paying our dues in a timely manner. Typically, the U.S. pays its annual assessments for the calendar year in the third or fourth quarter of that year. This is because the U.S. dues for a calendar year are paid through the appropriations bills for the next fiscal year. Thus, dues that should be paid in January are not paid until September or October of that year. This makes it very difficult for the IAEA to plan its activities or to pay for them in a timely manner. This should be corrected.

Although I am advocating a greater international role in nuclear safety, I also believe that the United States, by itself, can do much to encourage other nations to adhere to international safety standards and practices. There are a variety of tools, such as conditions on foreign aid, or economic pressures, that the United States can use to induce other nations to follow international practices.

For this reason I cosponsored an amendment offered by my colleague from the State of Florida, Senator MACK, to prohibit United States assistance to Russia or any of the other emerging European democracies if any such country is providing assistance to Cuba for the construction of its nuclear reactors unless the President certifies that the State will not provide nuclear fuel rods to Cuba unless Cuba will first, act in a manner consistent with nonproliferation treaties; second, comply with IAEA's 1991 safety standards or the current Russian safety standards; and third, accept international inspection and verification with such safety standards.

Although this provision of the Senate bill has been modified in conference, the conference report still retains the essential element that in determining the assistance to be provided to Russia or an emerging democracy the United States shall consider the extent to which that country is supporting the construction of a nuclear power plant in Cuba.

Through this Russian aid bill and other initiatives the United States will be providing either unilateral or multilateral assistance to improve the safety of Soviet-designed nuclear reactors in the former Soviet Union and elsewhere in Europe. However, it hardly makes sense for the United States to provide assistance to a country that at the same time is undermining nuclear safety in our own backyard. As we provide assistance to others, we must make sure that we do not facilitate or encourage practices which can lead to nuclear safety problems for persons in our own hemisphere. I strongly encourage the administration to use the leverage provided in this bill to the maximum extent possible.

I have outlined a variety of tools that the United States should use or develop to improve international nuclear safety. We should encourage the creation of binding international nuclear safety standards. We should insist upon a system of international inspection for nuclear reactors. We should develop a regime for the nonproliferation of unsafe nuclear technology.

There are a variety of policies that we should adopt with respect to the International Atomic Energy Agency. We should support an increase in the IAEA's budget appropriate to meet its expanded safety and safeguards responsibilities. We should pay our assessments on time.

Finally, we should more forcefully use bilateral and multilateral assistance to encourage improvements in nuclear safety.

International nuclear safety is not an obscure or remote issue only for people in far away places. It is an issue that could affect the health and welfare of many Americans. It is an important issue for us here at home. I hope that we will see progress on this issue in the near future.

I ask unanimous consent, Mr. President, to print the report of the General Accounting Office entitled "Nuclear Safety, Concerns About Nuclear Power Reactors in Cuba."

There being no objection, the report was ordered to be printed in the RECORD, as follows:

NUCLEAR SAFETY—CONCERNS ABOUT THE NUCLEAR POWER REACTORS IN CUBA

U.S. GENERAL ACCOUNTING OFFICE,
Washington, DC, September 24, 1992.

Hon. BOB GRAHAM,
Chairman, Subcommittee on Nuclear Regulation, Committee on Environment and Public Works, U.S. Senate.

DEAR MR. CHAIRMAN: This report responds to your June 1992 request that we provide information on the status of the construction of the two Soviet-designed nuclear power reactors in Cuba and summarize allegations by former Cuban nuclear power officials that poor construction practices and other problems could affect the safety of the nuclear reactors' operation. The report also presents information obtained from representatives of the Cuban and Russian governments about the nuclear reactors.

In addition, this report discusses concerns of officials from the State Department, the Nuclear Regulatory Commission (NRC), and the Department of Energy (DOE) about the safety of the Cuban nuclear power reactors. It further presents information from the U.S. Geological Survey (USGS) on the potential for earthquakes at the reactor site and from the National Oceanic and Atmospheric Administration (NOAA) on the probability that radioactive pollutants accidentally released into the atmosphere from the Cuban nuclear reactors could reach the United States.

RESULTS IN BRIEF

It is uncertain when Cuba's nuclear power reactors will become operational. On September 5, 1992, Fidel Castro announced the suspension of construction at both of Cuba's reactors because Cuba could not meet the financial terms set by the Russian government to complete the reactors. Cuban officials had initially planned to start up the first of the two nuclear reactors by the end of 1993. However, before the September 5 announcement, it was estimated that this reactor would not be operational until late 1995 or early 1996. The civil construction (such as floors and walls) of the first reactor is currently estimated to be about 90 percent to 97 percent complete, but only about 37 percent of the reactor equipment (such as pipes, pumps, and motors) has been installed. The civil construction of the second reactor is about 20 percent to 30 percent complete. No information was available about the status of equipment for the second reactor.

According to former Cuban nuclear power and electrical engineers and a technician, all of whom worked at the reactor site and have recently emigrated from Cuba, Cuba's nuclear power program suffers from poor construction practices and inadequate training for future reactor operators. One former official has alleged, for example, that the first reactor's containment structure, which is designed to prevent the accidental release of radioactive material into the atmosphere, contains defective welds. Another said that reactor operator trainees have received training on inadequate reactor simulators. In contrast, a representative of the Cuban government told us that Cuba wants to build its reactor in accordance with safety standards. Also, according to information provided to us by a representative of the Russian government, Cuba's reactor has been constructed according to safety rules that take into account, among other things, the possible impacts of an earthquake.

State Department, NRC, and DOE officials have expressed a number of concerns about the construction and operation of Cuba's nuclear power reactors. According to State Department officials, the United States maintains a comprehensive embargo on any U.S. transactions with Cuba and discourages other countries from providing assistance, except for safety purposes, to Cuba's nuclear power program. The United States would prefer that the construction of the reactors never be completed and wants Cuba to sign the Non-Proliferation Treaty or the Treaty of Tlatelolco, both of which bind signatories to blanket nonproliferation commitments for their entire nuclear program, before the United States considers reversing its policy of discouraging other countries from assisting Cuba with the construction of the reactors. The United States has asked Russia to cease providing any nuclear assistance until Cuba has signed either treaty.

NRC officials are aware of, but could not verify, the Cuban émigrés' allegations of safety deficiencies because available information was limited. They said, however, that if the allegations were true, the cited deficiencies could affect the safety of the reactors' operation. In addition, they expressed concern about the ability of Cuba's industrial infrastructure to support the nuclear power reactors, the lack of a regulatory structure, the adequacy of training for reactor operators, the quality of the civil construction, and the design of the reactors' containment structure. A DOE official expressed similar concerns about the quality of the reactors' construction and design.

USGS has not assessed the risk of an earthquake at the reactor site in Cuba, in part because USGS does not have access to the information required for this type of analysis. An analysis prepared by NOAA scientists shows that there is a possibility that radioactive materials could reach the United States by air currents in the event of an accident at Cuba's nuclear power reactor site.

BACKGROUND

In 1976, the Soviet Union and Cuba concluded an agreement to construct two 440-megawatt nuclear power reactors near Cienfuegos on the south central coast of Cuba, about 180 miles south of Key West, Florida. (See fig. 1.) The construction of these reactors, which began around 1983, was a high priority for Cuba because of its heavy dependence on imported oil. Cuba is estimated to need an electrical generation capacity of 3,000 megawatts by the end of the decade. When completed, the first reactor unit would provide a significant percentage (estimated at over 15 percent) of Cuba's need for electricity.

Most of the reactor parts, except for civil construction materials, have been supplied by the former Soviet Union under bilateral economic cooperation agreements. Cuba planned to start up the first reactor at the end of 1993, but construction lags, technical complications, and problems with deliveries of equipment have caused delays. Following the breakup of the Soviet Union, economic links to Cuba have been disrupted as the newly formed Russian republic has shifted to a market economy and begun to provide technical assistance to Cuba on a commercial basis. These changes have contributed to the delays in the operational starting date for the reactors.

DESIGN OF CUBAN REACTORS

Cuba's nuclear power reactors are the newest model (known as the VVER440 model) of the Soviet-designed 440-megawatt pressurized water reactors (PWR) and are the first Soviet-designed reactors to be built in the Western Hemisphere and in a tropical environment. The Cuban model, called the VVER440 V318, is the model that the Soviet Union planned to export to other countries. The most notable difference between the Cuban model and other Soviet-designed reactors is that the Cuban reactors will have a full containment. The containment, a steel-lined concrete domelike structure, serves as the ultimate barrier to a release of radioactive material in the event of a severe accident. As discussed below, there are differences between the design of the Cuban reactors' containment and the containment of reactors designed in the United States.

Study of Cuban reactors

Because of Cuba's proximity to the United States and the risk to which U.S. citizens may be exposed in case of an accident, NRC performed a limited study to examine the containment design and safety features of the Cuban nuclear power reactors. The study was completed in 1989 and discusses similarities and differences in safety characteristics between the Cuban reactors and comparable U.S. reactors.

The study noted that although the design of the Cuban reactors has many features in common with that of the U.S. PWR, several differences could lead to significantly different reaction in the event of a serious accident. For example, the Cuban reactor, like the U.S. PWR, uses water to cool the reactor core, but the Cuban reactor uses a different system for handling the steam pressure that would be generated by a severe accident. In the Cuban reactor, the steam is condensed to water in a bubbler-condensor system so that pressure is reduced in the containment structure.[1] If, in a worst-case scenario, the steam bypassed the bubbler-condenser system and reached the upper portion of the containment in pressures greater than the upper portion's designed pressure retention capability of 7 pounds per square inch (other portions of the containment are designed to withstand pressures of about 32 pounds per inch), the containment could be breached, and a radioactive release could occur. In contrast, the U.S. PWR is designed to accommodate pressures of about 50 pounds per square per square inch throughout the entire containment structure. The study indicated that the Cuban reactor and the comparable U.S. PWR are designed to accommodate similar types of accidents but concluded that it was difficult to compare the risk posed by the two types of reactors because the information required for such an assessment was not available.

STATUS OF CONSTRUCTION

On September 5, 1992, Fidel Castro announced that the construction of both of Cuba's reactors was suspended because Cuba could not meet the financial terms set by the Russian government to complete the reactors. Estimates of the amount of the civil construction (such as floors and walls) completed for the first nuclear power reactor range from 90 percent to 97 percent, but only about 37 percent of the reactor equipment (such as pipes, pumps, and motors) has been installed.[2] About 20 percent to 30 percent of the civil construction is estimated to be complete for the second reactor. No information was made available to us about the status of the equipment for the second reactor.

Concrete has been poured on the upper portion of the containment dome for the first unit. However, the reactor's instrumentation and control system has not been purchased because Cuba does not have the hard currency to pay for it. The reactor fuel has not been delivered, and some key or primary system components (1 reactor vessel, 6 steam generators, 5 primary coolant pumps, 12 isolation valves, 1 pressurizer and catch tank, and 4 accumulators) have been delivered but not installed. These components have been stored outside on-site since December 1990.

According to information provided to us by an official of the Embassy of the Russian Federation in Washington, D.C., the first nuclear reactor was tentatively scheduled to be operational in late 1995 or early 1996. Because Cubans constructing the reactor lack experience, all critical work was being done by Russians or under the control of Russians. As of April 1, 1992, the cost of the plant's construction totaled 1.6 billion rubles, or about $960 million.

SAFETY CONCERNS RAISED BY FORMER CUBAN NUCLEAR POWER OFFICIALS

We talked with five former Cuban nuclear power officials who were identified as having concerns about the Cuban reactors. These officials included nuclear and electrical engineers and a technician who had worked at the reactor site and emigrated from Cuba. They believed that problems exist that could affect the safe operation of the reactors, such as the lack of a system to check reactor components, defective welds in the civil construction, and questionable training of future operators. The following discussion summarizes these officials' allegations as well as information that we obtained from Cuban and Russian officials knowledgeable about the nuclear reactors. Our work served neither to confirm nor to refute the allegations.

Allegations of problems and defects in construction

According to the former Cuban nuclear power officials, the nuclear facility does not have a good system to check reactor components. For example, two of the officials alleged that advisers from the former Soviet Union working at the reactor site could not guarantee that the valves installed in the first reactor's emergency core cooling system would function under certain conditions. Although the Soviet advisers told these officials that the valves had been tested, the advisers did not provide any documentation showing test results. Emergency core cooling systems are an important part of the reactor because they help ensure that, in the event of an accident in which coolant is lost, radioactive material does not escape into the environment.

The former Cuban technician, who was responsible for checking welds in the civil construction, told us that he and a Soviet technician had examined X-rays from about 5,000 weld sites that had passed inspection. They found that about 10 percent to 15 percent of these welds were defective. Although he did not know exactly where the pipes with the defective welds were located, it was thought that they were part of the auxiliary plumbing system. According to this former technician, a group of Soviet officials also reviewed the X-rays and confirmed that the welds were defective. Another former official said that even though defective welds were found in the containment dome, concrete was still poured.

The technician said that he had reported the defective welds to his superiors, who made an effort to locate the defects. He left Cuba shortly after reporting the problem and does not know whether any corrective action was taken. He said that Cuba's state security had classified the information about the defective welds as it routinely did any reports of problems at the plant.

In June 1991, this former Cuban official testified on problems in the reactors' civil construction before the Subcommittee on Western Hemisphere Affairs of the House Committee on Foreign Affairs. State Department, DOE, and NRC officials debriefed this individual and concluded that the Cuban reactors appeared to have quality control problems but that the welding problems probably would not lead to a major accident. Two of the former Cuban officials who were still working at the nuclear power plant at the time of the hearings told us that the Cubans had paid increased attention to safety concerns after this individual testified.

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[1] A bubbler-condenser pressure system is located in the containment building and is composed of towers containing trays of water that serve as suppression pools and expansion volumes connected to each tray. Steam is convected from the region around the reactor's primary system to below the surface of the water in the trays, and as the steam bubbles upward through the water, it is condensed, and gases are released the into the expansion volumes. Noncondensed steam and other gases are then vented from the expansion volumes to the dome of the containment building.

[2] Information regarding the status of the construction of the Cuban reactors was developed from our interviews with NRC and State Department officials, Mexican nuclear power officials who had visited the nuclear power site, and the Cuban émigrés.

Former Cuban officials alleged that defective welds were also found in hermetic seals, in support structures for the primary components, and in the spent fuel cooling system. The seals and support structures are important to safety because they are part of the containment that prevents radioactive material from leaking into the environment if an accident occurs. The spent fuel cooling system is important because it prevents radioactive material from leaking if overheating occurs.

Allegations of inadequate simulator training

According to one former Cuban official, individuals trained to be reactor operators have received 5 months of instruction from the Russians on a VVER440-megawatt model V230 reactor simulator at the Novovoronezh nuclear power plant in Russia. However, he said that the value of this training is questionable because this simulator does not resemble the reactor under construction in Cuba. In addition, he said that some Cuban reactor operator trainees had asked for training on a VVER1,000-megawatt reactor simulator because it was similar to the reactor in Cuba, but he did not know why they had not been trained on it. Furthermore, according to an NRC official, Soviet-designed simulators are slow-response simulators and are considered deficient by U.S. standards because they do not simulate an accident as it would actually happen.

Assertions of adherence to safety rules

The Acting Principal Officer of the Cuban Interests Section (at the time of our review, one of the highest-ranking Cuban officials in the United States), told us that he was aware of the allegations made by the Cuban émigrés. He said, however, that Cuba was interested in building the nuclear power reactor in accordance with recognized safety standards to avoid the effects that a "Chernobyl-type" accident could have on the Cuban people and surrounding countries. He said that Cuba had provided medical treatment to children from the former Soviet Union affected by the Chernobyl accident and, as a consequence, knew firsthand the problems that could result from a nuclear accident. He said that he did not know whether the plant would ever be finished because so much money was needed to buy equipment for the reactors (between $100 million and $200 million).

We submitted a list of written questions to this official about the status and quality of the reactors' construction, design and operational safety features, and nuclear fuel. He said that he would submit the questions to the appropriate nuclear power officials in his government and try to arrange for GAO staff to meet with Cuban nuclear power officials and visit the nuclear plant site. As of September 1, 1992, we had not received a response to our questions.

According to information provided to us by the Embassy of the Russian Federation, the design of Cuba's nuclear reactors takes into account special considerations, such as the tropical environment and the impact of an earthquake (seismicity) or of an airplane's crashing into the plant.

U.S. POLICY AND CONCERNS OF U.S. OFFICIALS ABOUT THE SAFE CONSTRUCTION AND OPERATION OF CUBA'S NUCLEAR REACTORS

According to State Department officials, the United States would prefer that the nuclear reactors not be completed. NRC and DOE officials with whom we spoke also have a number of concerns about the construction and future safe operation of the reactors.

United States prefers that reactors not be completed

Currently, the United States maintains a comprehensive embargo on any U.S. transactions with Cuba and discourages other countries from providing assistance, except for safety purposes, to Cuba's nuclear program. The United States would prefer that the construction of the reactors never be completed and insists that Cuba sign either the Non-Proliferation Treaty or the Treaty of Tlatelolco—both of which bind signatories to blanket nonproliferation commitments for their entire nuclear program—before the United States considers reversing its policy of discouraging other countries from assisting Cuba with the construction of the reactors.

According to the State Department, U.S. nuclear energy officials believed, on the basis of information available about the design of the power plant, that the possibility of an off-site radiation leak was considerably lower for the Cuban reactors than for "Chernobyl-type" reactors because the design of the Cuban reactors differed from that of the Chernobyl-type reactors and the Cuban reactors had containment structures and other safety features that the other reactors did not possess. However, U.S. officials are concerned that Cuba is not equipped to deal with an accident.

In October 1989, the State Department arranged a limited visit with Cuba through which an NRC official and two U.S. nuclear power industry representatives visited the plant and met with Cuban nuclear power officials. Previously, Cuban nuclear power officials had visited a U.S. nuclear power plant. After that visit, the United States proposed further visits to look at construction, quality assurance, and operational safety. In September 1991, the then head of Cuba's Atomic Energy Commission (Fidel Castro's son) requested that a formal agreement on nuclear safety and cooperation be signed before any further exchanges took place between the United States and Cuba.

The State Department proposed instead that safety visits occur on a case-by-case basis. U.S. officials thought that a formal agreement would signal U.S. acceptance of Cuba's building a nuclear power plant without having signed the Non-Proliferation Treaty or the Treaty of Tlatelolco. Also, U.S. officials thought that the Cuban government could use a formal agreement for propaganda purposes to indicate falsely that the United States did not have concerns about the nuclear reactors. In addition, according to State Department officials, a formal agreement between the United States and Cuba would not be consistent with U.S. efforts to discourage cooperation between Russia and others in building the Cuban nuclear reactors. The State Department may seek a follow-up visit to the Cuban reactors by NRC officials if construction proceeds.

The United States continues to discuss concerns about the safety of the Cuban reactors with the Russian government. According to State Department officials, the Russian government has given assurances that the nuclear power reactors in Cuba will meet international safety norms. The United States has asked Russia to cease providing any nuclear assistance until Cuba has signed the Non-Proliferation Treaty or the Treaty of Tlatelolco, which would allow inspections of Cuba's nuclear facilities by the International Atomic Energy Agency (IAEA).[3] If Cuba signs either treaty, State Department officials believe that aid from Russia should be limited to safety matters.

We spoke with IAEA's Director, Division of Nuclear Safety, to determine whether any contacts had taken place with the Cuban government regarding possible inspections of the reactors. He said that he had discussed the possibility of IAEA's conducting a preoperational safety review team program (pre-OSART) visit with a high-ranking Cuban nuclear power official but that no date had been set for such a visit. A preoperational safety review team visits a nuclear power plant under construction to review project management; quality assurance; civil construction; mechanical, electrical, and instrumentation and control equipment; preparations for start-up and operation; training and qualification; and radiation protection and emergency response planning. Pre-OSART visits are voluntary and must be requested by the host country.

NRC officials concerned about allegations of safety deficiencies

NRC officials familiar with the allegations raised by the former Cuban nuclear power officials concluded that these officials were knowledgeable in their respective areas and that the deficiencies they alleged could affect the construction and future safe operation of Cuba's nuclear reactors. However, because detailed information available on the reactors is limited, NRC officials have no way to verifying the validity of these concerns. An NRC official told us that their concerns about the Cuban reactor include (1) the adequacy of Cuba's nuclear regulatory infrastructure, (2) the adequacy and number of trained regulatory and operational personnel, and (3) reports of defective welds.

According to NRC's Director of International Programs, before NRC could form an opinion on Cuba's nuclear reactors, a team of NRC inspectors and/or U.S. nuclear industry officials would have to conduct an extensive investigation of the plant and be given access to information about construction procedures, techniques, and test results. Such a team would also need visually to inspect construction and equipment installation as they occur. He suggested that if the plant is to be completed, he would like to see a "robust" exchange of safety experts between the United States and Cuba. The Director noted that Cuban personnel lack experience operating nuclear reactors and that Cuba lacks the industrial infrastructure to support a nuclear power plant. He also said that the Cuban government had indicated that it was planning to establish a regulatory structure similar to the NRC with inspectors who had been trained in the former Soviet Union, but he did not think that this would happen.

The Director expressed concern about the design of the plant's containment system, which he had initially thought to be similar to the design used in U.S. or Western-style reactors. Specifically, he said that the design of the pressure suppression system was based on analytical models and had not been tested. He added that NRC would not allow such a system in a U.S. nuclear power reactor unless it had undergone extensive testing. Furthermore, he was concerned that the upper portion of the containment dome was designed to withstand pressures of only 7 pounds per square inch. He also expressed concern that the reactor's pressure vessel and other primary reactor components have been stored outdoors since December 1990 and exposed to corrosive salt water vapor. He said that such equipment should have been stored in an enclosed building.

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[3] IAEA is an independent intergovernmental organization within the United Nations that helps to promote, among other things, improvements in operation and maintenance practices for nuclear power plants.

The Director said that other than meeting occasionally with Cuban nuclear officials at various international nuclear conferences, NRC had no plans for any substantive contacts with the Cuban government regarding nuclear safety matters.

DOE official concerned about quality of reactors' construction and components

DOE's Acting Director, Division of International Programs, told us that he was concerned about the quality of the reactors' construction and components because Soviet-designed components were never recognized for their quality and reliability. According to the Acting Director, there is no reason to believe that the quality of the Soviet components being used in the Cuban reactors is any better. In addition, he said that because the Soviet Union placed a higher priority on production than safety, a number one priority should be the development of a "safety culture"[4] for all Soviet-designed plants, including the plant in Cuba. Like the NRC official, he was concerned that the upper half of the containment dome might be capable of withstanding pressures of only 7 pounds of pressure per square inch. He said that since DOE's 1989 report on Soviet-designed reactors, Department of Energy's Team Analysis of Soviet Designed VVER's, which discussed the reactors being built in Cuba, DOE had not performed any additional analysis of Cuba's nuclear reactors, nor was any planned.

ASSESSMENTS OF RISKS FROM EARTHQUAKES AND RADIOACTIVE POLLUTANTS

USGS officials could not determine the potential for earthquakes at the reactor site, in part because available information was limited. NOAA scientists, at our request, prepared an analysis that shows the probability of radioactive material's reaching the United States by air currents in the event of an accident at the nuclear power reactor site.

According to the Deputy Chief, Latin American Geology, Office of International Geology, USGS, USGS has not assessed the risk of an earthquake in Cuba, in part because USGS does not have access to the information required for this type of analysis. He added that USGS had attempted to obtain this information but the Cuban government had not provided it. Therefore, the USGS official could not answer specific questions about the seismic conditions at the site of the reactors in Cuba.

According to the USGS official, the Caribbean plate, a geologic formation near the south coast of Cuba, is active and may pose seismic risks to Cuba and the reactor site. The USGS official said that the plate could produce large to moderate earthquakes. In fact, on May 25, 1992, this plate produced an earthquake measuring about 7.0 on the Richter scale.

An international insurance group in Munich, Germany, which conducted an earthquake risk assessment of Cuba as part of a 1988 assessment of natural hazards, estimated that the Cienfuegos area, where the nuclear reactor is located, could produce an earthquake with a probable maximum magnitude of 5.0 on the Richter scale.

At our request, NOAA scientists analyzed, by season, the probability of impact, the average arrival time, and the relative concentrations of radioactive pollutants that would be released into the atmosphere by an accidental release of radioactivity from the nuclear power reactors in Cienfuegos, Cuba.[5] Based on climatological data for summer 1991 and winter 1991-92, the analysis showed that the summer east-to-west trade winds could carry radioactive pollutants over all of Florida and portions of the Gulf states as far west as Texas in about 4 days. In the winter, when the trade winds are weaker and less persistent, radioactive pollutants would encounter strong westerly winds that could move the pollutants towards the east, possibly as far north as Virginia and Washington, D.C., in about 4 days.

CONCLUSIONS

Although work on the Cuban nuclear power reactors has apparently been suspended, the civil construction is estimated to be 90 percent to 97 percent complete for the first unit and about 20 percent to 30 percent complete for the second unit. The primary components have not been installed, and the nuclear fuel has not been delivered. A number of concerns exist about Cuba's reactors, including the questionable quality of the civil construction, the lack of a regulatory structure, the inadequacy of training for operators, and the absence of an industrial infrastructure in Cuba to support the reactors' operation and maintenance. If the allegations of safety problems are true, the safe operation of the reactors could be affected. In addition, there are concerns that the upper portion of the containment dome was designed to withstand pressure of only 7 pounds per square inch.

Because Russia requires hard currency as payment for—and Cuba currently lacks the financial resources to buy—equipment needed for the reactors, it is uncertain when the nuclear reactors will become operational. Continued monitoring of Cuba's progress toward completing the reactors is warranted. If Cuba obtains the assistance needed to complete its nuclear power reactors, U.S. officials will need assurances that the safety concerns expressed by the former Cuban nuclear officials and others are resolved and that the nuclear reactors are built and will be operated in a manner that does not pose a risk to the United States in the event of an accidental release of radioactive material.

AGENCY COMMENTS

We discussed the facts presented in this report with the State Department's Director and Deputy Director, Office of Cuban Affairs, and Deputy Director, Office of Nuclear Technology and Safeguards; NRC's Director of International Programs; and DOE's Acting Director, Division of International Programs. In general, these officials agreed with the facts presented and gave us additional clarifying information. We revised the text as necessary. However, as requested, we did not obtain written agency comments on a draft of this report.

SCOPE AND METHODOLOGY

To determine the status of the Cuban nuclear power reactors' construction, design, and potential safety problems, we interviewed officials and reviewed documentation from the State Department, NRC, DOE, USGS, NOAA, and the Central Intelligence Agency. We also interviewed officials from the Department of the Navy, IAEA, the World Association of Nuclear Operators, and the Institute of Nuclear Power Operations, as well as a professor of nuclear engineering at the University of Florida.

Because Mexico has a radiation safety and nuclear safety agreement with Cuba, we conducted telephone interviews on the status of the Cuban reactors' construction with several Mexican officials, including the Director General of the National Institute of Nuclear Investment and the Director of General of the National Commission of Nuclear Security and Safeguards. In addition, we interviewed, by telephone, two Mexican officials who had visited Cuba's nuclear power plant within the past year—the construction manager and the licensing manager of Mexico's Laguna Verde nuclear power plant.

We interviewed five former Cuban nuclear power officials, including nuclear and electrical engineers and a technician, all of whom had worked at the Cuban nuclear power plant and alleged that there were serious safety defects in the reactors' construction. We discussed these allegations with NRC and DOE officials. We also met with the Acting Principal Officer of the Cuban Interests Section of the Swiss Embassy and submitted a list of questions about the nuclear reactors to him to be answered by nuclear power officials in Cuba. In addition, we submitted questions about the reactors to Russian nuclear power officials through our embassy in Moscow, Russia. As of September 1, 1992, we had not received a response to our questions. We will report separately on this information after we have obtained and reviewed it.

We performed our review between June and September 1992 in accordance with generally accepted government auditing standards.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies of the report to appropriate congressional committees; the Secretaries of State and Energy; and the Chairman, Nuclear Regulatory Commission. We will make copies available to others on request.

Please contact me at (202) 275-1441 if you or your staff have any questions. Major contributors to this report are listed in appendix I.

Sincerely yours,

VICTOR S. REZENDES,
Director, Energy and Science Issues.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

A TRIBUTE TO PARTING MEMBERS OF THE SENATE

Mr. COCHRAN. Mr. President, I take this time to pay tribute to our parting Members of the Senate who will not be back when the 103d Congress reconvenes. On our side of the aisle, JAKE GARN, WARREN RUDMAN, and STEVE SYMMS are departing. On the other side of the aisle, Senators BROCK ADAMS, JOCELYN BURDICK, ALAN CRANSTON, ALAN DIXON, and TIM WIRTH will be leaving the Senate at the conclusion of the 102d Congress.

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[4] A "safety culture" is the assembly of characteristics and attitudes in organizations and individuals that establishes safety issues at a nuclear power plant as an overriding priority and ensures that they receive the attention warranted by their significance.

[5] Transport and Dispersion for a Potential Accidental Release of Radioactive Pollutants From the Nuclear Reactor at Cienfuegos, Cuba, Jerome L. Heffter and Barbara J.B. Stunder, NOAA, Air Resources Laboratory (Aug. 1992).

It has really been a privilege and an honor for me personally to sit beside JAKE GARN on the Appropriations Committee since 1980. After the elections of 1980, I became a member of that committee and began immediately to realize that JAKE GARN was one of the most dedicated and conscientious members of the Appropriations Committee. He brought to that committee's deliberations unique experiences as a member of the Armed Forces, a person who felt very deeply about the security interests of the United States.

And on the Defense Subcommittee of Appropriations, he was obviously someone whose judgment was considered very sound and to whom we looked for rational and good decisions in matters that came before that subcommittee, in particular.

He served, of course, as chairman of the VA-HUD Appropriations Subcommittee that had jurisdiction over NASA programs. He had a unique understanding of the mission of our space agency and he, of course, became an astronaut himself. He gave leadership not only in that committee, but the Banking Committee as well.

My personal opinion is that if we had listened to JAKE GARN's suggestions, that if the Congress had adopted many of the recommendations that he personally made with respect to banking matters and the savings and loan crisis in particular, our country would have saved billions of dollars and a lot of heartache and pain would have been avoided in that long, drawnout and still continuing problem.

JAKE GARN is a person not only of great physical courage, which was demonstrated by participating in the shuttle flight, orbiting the Earth, but in donating his kidney to save his daughter's life.

I can remember being out at Hains Point and seeing him go all out in the Annual 3-Mile Nike Challenge Race, putting most younger people behind him as he finished in very impressive times in the 3-mile race. But his physical courage really matched the courage of his convictions that he demonstrated time and time again in debate and deliberations and actions of the Senate.

We are going to miss JAKE GARN a lot. I am going to miss him personally. It was my honor to succeed him in the Office of the Secretary of the Senate Republican Conference in leadership on the Republican side. I have gained a great deal from his advice and counsel at that time and since then and deeply appreciate his example.

WARREN RUDMAN is a person whom we instantly looked to as a leader when he came to the Senate. I do not know of anyone who so quickly established himself, and correctly so, as a person of real ability, depth of knowledge, commitment to the job of being a Senator, being a good Senator.

He served on the Appropriations Committee with me also, but we also realized because of his personal experiences as a courtroom attorney and as attorney general of the State of New Hampshire, he was equipped with special insights and abilities that we called upon time and time again when tough decisions had to be made on questions of ethics, on legal matters, and on Senate rules. We will certainly miss WARREN RUDMAN. The Senate will have a hard time finding someone who will be able to bring the kind of talent and ability that he brought to our midst to replace him. I am not sure we can replace WARREN RUDMAN.

STEVE SYMMS is my close personal friend, who was elected to Congress the same year I was in 1972. We both came to Washington in the congressional elections that year. We immediately became personal friends. He came to Washington on a campaign to take a bite out of Government.

He never forgot that. He has not only been biting and scratching and fighting to hold down the cost of Government, to eliminate waste and ineffective and inefficient programs, he has given us a sense of awareness of how our first job is to make sure that we exhibit some common sense in the decisions that we make in Washington in the Senate and Congress.

He brought a special experience as an apple grower from Idaho. He had the personal experience of running a business, meeting a payroll, getting things done, dealing with the practical problems that most Americans face every day in their lives. He has never let us forget that it is those people back home who are doing those things that are making this country what it is today and making America great.

I appreciate his friendship, his example in caring a lot about maintaining a strong national defense, recognizing the special responsibility the United States has in this world in terms of international security matters. I truly regret that STEVE is retiring, and I will miss him very much.

BROCK ADAMS

I have had a special opportunity to work with BROCK ADAMS. He is the chairman of the Aging Subcommittee. I have been the ranking Republican on that committee. This year we successfully brought out the reauthorization bill for the Older Americans Act. Working with him, he was dedicated to seeing that that bill was improved, and it was passed. We had some challenges along the way, some tough amendments that were offered in the Senate, and it was a pleasure to work with him during the hearings trying to get at how we could best respond to the needs of older Americans by improving this legislation, and I wish him well.

QUENTIN AND JOCELYN BURDICK

JOCELYN BURDICK and her husband, Quentin, have been special friends. Quentin was chairman of the Appropriations Subcommittee on Agriculture, and I was the ranking Republican. For a while I was chairman and he was a member of the committee. We worked closely together for a good while, and I know that JOCELYN fills in here and meets a need that North Dakota has for clear thinking representation of the interests of that State. She is a fine person, and I commend her for her opportunity to demonstrate her abilities in the closing weeks of this 102d Congress. I have a special feeling of fondness and appreciation for her.

ALAN CRANSTON

ALAN CRANSTON was described so appropriately by the Senator from New York [Mr. MOYNIHAN]. ALAN CRANSTON has had a unique experience as a writer, a journalist, a person who has been very involved in many issue areas in the Senate, most notably for veterans and their interests, in housing and other issue areas. I have come to know him, and like him, and I am sorry to see him go. I hope he has many happy days of rewarding experience in the days ahead.

ALAN DIXON

ALAN DIXON and I served together on the Agriculture Committee. I came to like him immediately. He is forceful, dynamic in fighting for Illinois, for the corn growers out there. And when we crossed swords over the issue of Great Lakes ports and gulf ports, and how much tonnage was going to be shipped in those respective areas under the Public Law 480 program and others, he was a very tough adversary. Senators may remember that we were here very late one night battling over provisions of a bill that were very important to his country and mine, too. And I think we ended up compromising, I hope for the best interests of the country at large, because that was really something that he understood and appreciated. I wish ALAN DIXON well.

TIM WIRTH

TIM WIRTH has been a friend since our days in the House. We served together there. We have also worked closely together as fellow members of the Board of the Air Force Academy. I have enjoyed working with TIM WIRTH. He is a friend. He is a strong advocate for environmental interests. He is an effective advocate.

We are going to miss all of these Senators who are leaving, Mr. President, I wanted to rise on this occasion and express my fondness for each of them, my appreciation of their service to the Senate, and my very best and sincerest good wishes to them in the years ahead.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. Mr. President, I might inquire, how long is my colleague going to speak? I just need about 2 minutes.

Mr. KERREY. Two minutes is the Senator's.

Mr. SYMMS. I thank my colleague for this courtesy. I do appreciate it.

THANKS TO THE SENATE

Mr. SYMMS. Mr. President, I rise to say thank you to the constituents in my State who have made it possible for me to be in Congress for the last 20 years. It has been a wonderful experience. I have met many, many good people here, and I want to say thank you too for the privilege that the people of my State have given me.

I would like to say thank you to my colleagues. I have heard two of you speaking this evening, the Presiding Officer and my colleague from Mississippi, and I see my friend from California, Senator CRANSTON. But I would like to thank all of my colleagues for the privilege to have worked with them and served with them in the Senate.

I also want to say what a honor it has been for me to serve in Congress during the administrations of Presidents Nixon, Ford, Carter, Reagan, and Bush. I treasure that experience.

I would like to thank the Senate staff for their courtesies, and that includes all the staff from the Sergeant at Arms office, the Secretary of the Senate, and all of those in the legislative staffs who make our lives hare as good as can be in the Senate. And a special thanks to my staff, my current staff, both in Idaho and here in Washington, and also my staff over the years.

In closing, Mr. President, we have a great country. We sometimes in the political season tend to beat up on this country more than necessary. We still are the best exporter in the world. We are the best place in the world to live. We have the best opportunities for new people starting out to make a success of their lives and have an impact on their lives.

I know the problems are great which we face, but as a conservative Republican, I have great confidence that the people who will be here in this body next year, whether they be Democrats, independents, or Republicans will measure up to the task because Americans are very innovative and they will be able to come up with solutions. We are very productive people. And given just a little chance and a little freedom, we will be able to solve these problems we face. And it will make some great opportunities for new futures for millions of Americans and other people around the world.

In the last 20 years that I have been here we have witnessed a great change in the dynamics of the world, and the people of the world as a group have spoken that they want freedom and freedom works. And those people who try to always use the solutions of government to solve the problems have failed.

So I say to my colleagues that I wish you all well. I thank you for the privilege of being a part of this group. And I will surely want to continue those friendships in the future. I have great confidence that this body will do the right thing in the future to see that freedom and liberty shall prevail in this great United States.

I thank my colleagues for their indulgence. I thank my friend from Nebraska for allowing me to speak.

The PRESIDING OFFICER. The Senator from Nebraska.

THE PRESIDENTIAL DEBATE

Mr. KERREY. Mr. President, I rise to talk about what some of my colleagues were discussing, indeed arguing earlier this afternoon, some comments made by President Bush yesterday on Larry King wherein he questioned what Bill Clinton did when he was 22 or 23 years of age in 1969 or so traveling to Moscow.

I must say, Mr. President, that I was far more troubled by former President Reagan's trip to Moscow in 1988 when he picked up $2 million right after having been President than I was to hear that perhaps Bill Clinton made a trip to Moscow in this early twenties.

But there are a number of questions that were raised in that debate that I think are worth discussing, and indeed I think the history of the policy during that time does have a relationship to our policies today and do reflect to a certain extent on the Presidential debate.

My friend from Idaho is here, and I will alert him that I am going to quote from his favorite American patriot, Thomas Paine. Thomas Paine understood what patriotism was, that patriotism was an expression of individuals who were and are willing to risk something, give up something, for the community. It need not be in war. It need not be in combat. It can be quiet sacrifice of parents, or quiet sacrifice of community leaders. Nonetheless, it requires an individual say that I will give up perhaps something that might be more enjoyable, more fun.

I would observe that through my colleagues would like to see George Bush get reelected, I think one cannot dispute the fact that Bill Clinton has served his country. He served his country as Governor of Arkansas, and a fair amount of grief as he has fought for improved quality of education, as he has fought to try to increase the economic growth of that State, and a variety of other things that people do as chief executive officer. I understand the nature of the argument today. Nonetheless, I would observe that I believe that Bill Clinton without a doubt has satisfied Thomas Paine's own definition.

I would read Thomas Paine's statement that he made on December 23, 1776 because it had a relationship to what I think went wrong during the Vietnam war. Thomas Paine said:

> These are times that try men's souls, and some * * * soldiers and some * * * patriots will in this crisis shrink from the service of their country. But he that stands it now deserves the love and thanks of man and woman. Tyranny like hell is not easily conquered. Yet we have this consolation with us * * * that the harder the conflict the more glorious the triumph. * * * what we obtain too cheaply we esteem too lightly. It is dearness only that gives everything its value. Heaven knows how to put proper price upon its goods, and it would be strange indeed if so celestial an article as freedom should not be highly rated.

Mr. President, I have had the opportunity to serve on the select committee investigating the issue of POW–MIA's, chaired by the distinguished Senator from Massachusetts, Senator KERRY, and the distinguished Senator from New Hampshire, Senator SMITH. This has required us to dig, but deeper than we perhaps would like, into the events of 1969, 1970, and 1971 and those years.

It seems to me, Mr. President, that we made a number of mistakes. I, on a previous occasion, came to the floor urging the President of the United States not to reopen the wounds of Vietnam. I do not know if that was his intent on Larry King, but I, nonetheless, felt some offense.

And so I call to my colleagues, and those who are fortunate enough to be watching this right now, attention to the fact that George Bush did have significant responsibility. He was not a college student at the time. He was a Member of the House of Representatives from 1967 to 1971. He was our representative to the United Nations during the time when we negotiated the peace treaty in 1972. He was the chairman of the Republican Party in 1973. President Nixon's designee as chairman of the RNC, and he was the ambassador to the People's Republic of China in 1975 when Saigon fell in April of that year.

President Bush last night said it seemed odd—odd is not the verb I believe he used—but he said it seemed unusual to go to Moscow, referring now to Bill Clinton, after Russia had crushed the Czech rebellion.

Mr. President, let me call my colleagues' attention to the fact that the policy of the President at the time, in 1969, was to approach Russia with the hope that Russia could help resolve the conflict in Vietnam.

President Nixon, himself, began détente in 1969. President Nixon, himself, I might point out, began a number of good things in 1969. He started the SALT Treaty negotiations on November 7, 1969. He started a thing called the Export Administration Act which declared that United States policy was to favor the expansion of peaceful trade with the Soviet Union and Eastern Europe. He even made a remarkable trip himself to Romania.

And on August 2, 1969, in addressing hardly someone that Thomas Paine would regard as a defender of freedom, a man we now know to have been one of the world's great tyrants, Nicolae Ceausescu our President Richard Nixon said, speaking on behalf of all the American people,

> I wish to express my deep appreciation for the very warm welcome that you have extended to us on this occasion, and I bring with me the warm good wishes and feelings of friendship from all of the American people to all of the people of Romania.

Well, I wonder at the time, Mr. President, did Representative George Bush, a Member of the House of Representatives at the time, rise up in anger that our President would be going to Nicolae Ceausescu and saying, "I bring you the warm good wishes and feelings of friendship from the American people." I suspect that Congressman Bush did not.

Moreover, Mr. President, Richard Nixon, himself, was encouraging our people to travel. In an address that he gave on October 14, 1969 he said that is why this administration strongly supports not only people-to-people programs as it presently exists but we hope that it can be expanded more and more through an exchange between the United States and the Soviet Union, between the United States and eastern European countries, and eventually we would hope also between the United States and that great potential power of people that exists in mainland China.

Mr. President, the man who selected George Bush to be head of the Republican National Committee was encouraging through the program of détente Americans to move closer in the direction of the Soviet Union.

So for him to say he does not understand why someone would go to Moscow after the Czech rebellion would only be something that he could say if he was entirely forgetful of what his President was advocating and indeed doing at that particular time.

Mr. President, as to the war in Vietnam itself, one of the most interesting documents that I found were campaign statements that were made as a part of the Presidential campaign in 1968. I would like to read one. It says:

> We condemn the administration's breach of faith with the American people respecting our heavy involvement in Vietnam. The administration's failure to honor its own words have led millions of Americans to question its credibility. The entire Nation has been profoundly concerned by the hastily extemporized undeclared land wars which embroil massive U.S. Armed Forces thousands of miles from our shores. It is time to realize that not every international conflict is susceptible of solution by American ground forces. Militarily the administration's piecemeal commitment of men and material has wasted our massive military superiority and frittered it away, and as a result, it has been a long war of attrition. Throughout this period the administration has been slow in training and equipping South Vietnamese units both for fighting the war and for defending their country after the war is over.

Several additional paragraphs calling upon Americans to disengage from this war are then read and then the final paragraph, Mr. President: To resolve our dilemma, it requires new American leadership, one capable of thinking and acting anew, not hostage to the many mistakes of the past.

The Republican Party offered such leadership. The document that I have in my hand is the platform document of the Republican Party in 1968. And I must say that I read with some considerable embarrassment and shame, as well, the Democratic Party platform in 1968, which was hardly much better. Neither party, neither the Republican nor the Democratic Party talked about the freedom of the Vietnamese people in 1968. Neither the Democratic Party nor the Republican Party came to the American people and said that freedom is at stake and that it matters for us to engage on behalf of the freedom of the people of Vietnam.

The other day in the POW/MIA hearings I had a little confrontation with a man who was part of that policy at the time, Gen. Alexander Haig. General Haig said in response to a question I had about what our policies should be toward Vietnam today—not 20 years ago, but today—he said that we should probably engage them economically in trade and business and not worry about political freedom, that it is not up to us to impose western values upon the people of Vietnam.

Well, Mr. President, communism is a western value. Communism did not find itself being born in Saigon or Hanoi. It was born in the West and was imposed on the people of Vietnam, as it is imposed on the people of Vietnam today. We make a grievous error to forget that, Mr. President. I believe that the Nixon administration indeed did forget that. The President came to the American people, finally, on May 14, 1969, and he presented to the American people what he in fact was going to do. Mr. President, he had received at the time a secret—now unclassified—document from Daniel Elsberg and Fred Ickle, who outlined a series of choices and said, most importantly, that to be successful, we needed a coherent military, political rationale; otherwise, we would not succeed. The President selected an odd course of action.

The point I am trying to make, which I will not dwell too long on, is that President Nixon gave a speech on May 14, 1969, wherein he lays out his rationale for continuing our strategy, and he has a strategy that calls for America to "vietnamize" the war and withdraw our own troops. The draft was a big domestic political issue at the time, and the President was committed to bringing the American troops home so there would be minimal problem with the political issue of the draft. That led to our being in a very weak negotiating position in 1972.

Most important, the President of the United States, in May 1969, said:

> I have tried to present the facts about Vietnam with complete honesty, and I shall continue to do so in my reports to the American people.

Mr. President, in May 1969, we were 2 months into what became known afterward as a 12-month secret bombing campaign of Cambodia, a decision made when President Nixon was in Europe, beginning to reach out to the Soviet Union, hoping that the Soviet Union would help resolve the war in Vietnam. We dropped 100,000 tons of ordnance in Cambodia, 3,800 sorties during the year, and all of it was kept secret from the American people. The reports of bombings were filed secretly with the Department of Defense, and the public records show no such action. So secret was all of this activity that the Secretary of the Air Force was not even aware of the bombing activity. It would not have been surprising that the people of the United States would have become outraged and angered, and felt they were misled and betrayed that the people of Vietnam were forgotten.

I have campaigned against Bill Clinton, and I have engaged him on the question of the draft, and I listened to him talk about the draft as well, and I have watched with anger as history is revised by President Bush today, about what happened 20 years ago. The central question for me and for all Americans, particularly those of us who served in a war, is: Will Bill Clinton's own experience, his own experience, make him a better President of the United States of America?

Mr. President, I answer that question with a resounding yes. First of all, he understands the importance of making sure that every single American has an opportunity to go to college. He understands what a college deferment provided him in 1969. It is not accidental that he is campaigning and, unlike George Bush, saying that if you do not have an opportunity to go to college, you will be denied the privilege of economic opportunity; it is not accidental that he says it is one of the most important things we must do; it is not accidental that he is talking about voluntary national service. He understands the importance of national service. He understands what it can do to young men and women to have the opportunity to serve their country. Mr.

President, he wants to make sure that it is voluntary, and that it is not just for military service; that it is an opportunity to serve in many other needed areas as well.

Mr. President, second, he is going to be a superior President because he has said all the way through the campaign that, as President, he will make sure that this country ends the divisive arguments, except for those that will lead to good policy conclusions. Bill Clinton would never try to divide the country with some painful experience such as the Vietnam war. He has struggled to pull black and white, labor and nonlabor, Republican and Democrat, together all the way through this campaign. He has said repeatedly that the problems of this country will not yield to a merely partisan solution.

Third, he will not operate a secret government. He understands that secrecy itself causes people to lose confidence in our own capacity for self-government.

Last, Mr. President, I say with great respect for those who doubt it, I believe that Bill Clinton's own experience will allow him to say that the United States of America needs to continue to fight for freedom. He went to Russia in 1969. He may not be able to remember all of the details of what he did, but I am sure he remembers what he saw.

His speeches on foreign policy reflect a desire to have America stand for freedom in this world. George Bush went to China as our Ambassador and forgot almost everything he saw while he was there.

Mr. President, this Nation needs to stand for freedom in this world, and I believe with Bill Clinton as our commander in chief, head of our foreign and domestic policy, we will, once again, do that.

I yield the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Chair informs the Senator that the Chair intended to call upon the Senator from Rhode Island. He has been waiting for over an hour to speak.

Since he is not on the floor, the Chair recognizes the Senator from Iowa.

Mr. HARKIN. I am delighted to yield when he comes back. I know he has been seeking time, Mr. President, but as long as he is not here I appreciate the opportunity to speak on an issue that concerns me greatly, and that is the so-called North American Free-Trade Agreement.

NORTH AMERICAN FREE-TRADE AGREEMENT

Mr. HARKIN. Mr. President, an inordinate amount of effort and energy has been expended by President Bush and his administration to exploit the North American Free-Trade Agreement for political purposes in this campaign season. Now that we have had a chance to look more carefully at the kind of agreement that George Bush wants to railroad through, I can only express astonishment that he would think there is political mileage in this agreement.

Mr. President, I said early on that I did not oppose a North American Free-Trade Agreement, but that I did not trust George Bush to negotiate an agreement that is in the best interests of our Nation. And it is clear that my mistrust was well founded. Negotiations were kept secret until the last moment. Then an agreement text of some 2,000 pages was released, and—allowing no time for study and review—George Bush went on the attack claiming that anyone who does not support his agreement unconditionally is against trade, exports, and economic growth. That is not a formula for governing or for leadership. That is cynical election-year politics, pure and simple.

The fact is that George Bush is pushing an agreement that fails utterly to resolve some of the most important issues surrounding the NAFTA.

The working men and women of our Nation have good reason to be skeptical of any agreement George Bush promotes. Look at the Bush record. The worst economic growth record of any President since the Great Depression. Remember his promise to create 30 million new jobs in 8 years? Well, since he took office we have lost 38,000 private sector jobs in our country. We are going in the wrong direction. So can anyone blame the working men and women of this country—having been burned before—who say they are not buying it when George Bush now promises his NAFTA agreement will create jobs? Even his own Secretary of Labor says it will cost as many as 150,000 U.S. jobs.

Take George Bush's economic policies—or lack of them—and mix them with his NAFTA and you have a recipe for disaster for America's working men and women and production and growth.

Wages, labor standards, and working conditions in Mexico are well below those in our Nation. We know this, yet George Bush's NAFTA is virtually silent on these issues. All you can find in some 2,000 pages is nonbinding language in the preamble referring to the importance of worker rights: no enforcement mechanism; no established standards; no emphasis on raising Mexican wages, working conditions, and labor standards.

Mr. President, George Bush's NAFTA leaves in place the incentive to gain competitive advantage through the misery and suffering of workers in Mexico. The outcome can only be more and more pressure to lower the wages, working conditions, and standards for U.S. workers. Again, that is the wrong way to go, and the American people know it. They are perfectly willing to compete, but not against unfair odds.

We all know that a NAFTA will require changes and adjustments for our Nation's work force. Let us not be coy about it. That means some workers will lose jobs. And in an economy where private sector jobs have actually declined, as I pointed out, it is no wonder that U.S. workers are afraid of George Bush's NAFTA. But George Bush's NAFTA does not address that problem. And the adjustment program he has proposed lacks substance and the funding to make it work. In fact, George Bush has repeatedly called for cutting or eliminating the Trade Adjustment Assistance Program.

No wonder working men and women do not trust George Bush with their future.

President Bush's NAFTA is also deficient from the standpoint of environmental issues. Environmental enforcement in Mexico is already lax. Yet EPA Administrator William Reilly recently testified that if Mexico relaxes its environmental standards to attract American factories, the NAFTA gives the United States no direct recourse. Such an enforcement provision could have been in the agreement—the Canadians tried to do that—but our United States negotiators shot it down. So George Bush has brought us an agreement that gives no assurances on improving environmental enforcement in Mexico, and which thus leaves in place the incentives for United States firms to move to Mexico.

The agreement also fails to address adequately the massive problems of pollution and environmental degradation along the Mexico-United States border, where we already see abnormally high rates of birth defects. The agreement contains no assurances that those who pollute or those who seek out weaker environmental rules, will pay the costs of their pollution. In fact, under George Bush's NAFTA the problems along the border can only get worse as more industrial activity is encouraged.

Mr. President, these are some of the major problems with the NAFTA that George Bush is now pushing. I believe we still can achieve a good NAFTA, but not George Bush's NAFTA. There must be changes. I believe that Gov. Bill Clinton has made sound recommendations for implementing legislation and supplemental agreements that will address these problems.

Governor Clinton has recognized that for the United States to benefit from a NAFTA our Nation must have a comprehensive agenda for economic growth. We must have a national economic strategy providing for worker retraining, environmental protection, and promoting the best interests of our farmers, businesses, and workers. Bill Clinton recognizes that we must have an economic strategy that helps our Nation compete and win again—not a strategy that cuts our workers loose in a world of low wages, environmental pollution, and unfair competition.

Again, I want to point out that the North American Free Trade Agreement is done. That horse is out of the barn. I was one of those who opposed extending the fast track authority. I opposed giving President Bush the authority to work out this trade agreement without giving us any kind of an input into it or any kind of authority to change it. Right now we are faced with an up-or-down vote. That is it. So the NAFTA President Bush has negotiated is done but it is deficient.

Governor Clinton has called for implementing legislation that remedies, rather than rubber stamps, the deficiencies of George Bush's NAFTA. Instead of George Bush's weak approach, Bill Clinton believes we need a strong worker assistance program to help workers and their companies adjust to the changes brought by new trade relationships. He has called for halting the use of taxpayer money to export the jobs of American workers. Governor Clinton is committed to environmental cleanup along the United States-Mexico border. He will stand up for United States farmers and consumers by strictly applying U.S. pesticide requirements to imported food, something that George Bush will not do. I have often said if our farmers have to live by environmental rules, if we import food from another country they better abide by those same rules, too.

Governor Clinton will open up the dispute resolution process under the NAFTA to ensure that individuals and groups have a say in commencing actions and resolving disputes on environmental and other issues.

Governor Clinton has also recognized that George Bush's NAFTA leaves important issues unresolved, and that supplemental agreements are essential to cure its faults. These agreements would establish environmental and worker protection commissions and the authority and resources to address and resolve environmental and worker standards and safety issues. To address the flaws in George Bush's NAFTA on enforcement of environmental and worker standards, Bill Clinton has pledged that he will negotiate a supplemental agreement with Mexico and Canada to improve the enforcement of environmental and worker standards within each country.

Mr. President, I continue to have deep concerns about George Bush's NAFTA. But I am greatly encouraged by Bill Clinton's understanding of the problems and issues raised by the NAFTA in the areas of environmental protection and worker rights and standards. I believe that Governor Clinton's approach can result in a NAFTA that is good for our country, and that under President Clinton we will have a new form of NAFTA. It will not be just the North America Free Trade Agreement. It will be the North American Fair and Free Trade Agreement, and that is what we need.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader is recognized.

SALUTE TO JOCELYN BURDICK

Mr. DOLE. Mr. President, though JOCELYN BURDICK has only served in this Chamber for a matter of months, her retirement this December will draw to a close her three decades of association with the U.S. Senate.

Mrs. BURDICK was sworn in during a most difficult time—as the Senate mourned a colleague, and as she mourned her husband of 32 years, Senator Quentin Burdick.

I said at the time that the Governor of North Dakota could not have made a better appointment. No one knew North Dakota better, and no one knew Quentin Burdick's priorities better than JOCELYN BURDICK.

Her service here in the last busy days of the session ensured that the people of North Dakota would be very well represented.

JOCELYN BURDICK has served with grace and distinction, and the Senate is a better place for her services, just as it is a better place for having had Quentin Burdick's service.

SALUTE TO WARREN RUDMAN

Mr. DOLE. Mr. President, when one of my dearest friends, Senator WARREN RUDMAN, rose the other night to deliver his farewell address to the Senate, all of us who serve with him could not help but feel regret.

Regret over the fact that the Senate was losing one of our most thoughtful and courageous Members.

All of us watched Senator RUDMAN wrestle with the decision of whether or not he should run for a third term. And when the time came to make that call, WARREN RUDMAN—as always—pulled no punches.

He told the people of New Hampshire that the Senate was losing its ability to make the decisions that had to be made. And he said that the Federal deficit—particularly rising payments for Medicaid, Social Security, and Federal retirement, were crippling the economy.

When he was asked after his retirement announcement how he wanted to be remembered, Senator RUDMAN said, "I put the interests of my country over party."

Now there is an idea whose time has truly come.

Deficit problems, and most particularly rising entitlement costs are indeed, crippling the American economy, and every Member of the Senate knows it.

And when we begin to act on this problem they will be following the example that WARREN RUDMAN has set during his 12 years in the Senate.

Independence always has been a mark of WARREN RUDMAN's life. In 1952, when he graduated from Syracuse University, he was asked to pay $18 for a yearbook. He refused, and Syracuse withheld his diploma, even though he had completed all the requirements.

WARREN RUDMAN then volunteered for the Korean war, and before he headed into combat—where he would receive a Bronze Star as an infantry company commander—he again asked for a copy of his diploma. The school again demand payment.

Then in 1980, after he was elected to the Senate, Syracuse sent him a letter. There had been a mixup, they said. The diploma was in the mail. WARREN RUDMAN refused to accept it.

It was a characteristic Rudman stand based on principle.

When he was New Hampshire's attorney general, he stood up to the Governors who appointed him, issuing attorney general's opinions declaring several of their proposals improper or illegal.

Senator RUDMAN had many satisfying moments in the Senate, but probably one of the best was when his deputy in the New Hampshire Attorney General's Office, David Souter, was confirmed as a U.S. Supreme Court Justice.

Senator RUDMAN also fought a number of lonely battles—to preserve the Legal Services Corporation, to kill the Viper, an antitank weapon that did not kill tanks, and to preserve the Federal Trade Commission's authority to pursue consumer protection cases against doctors and professionals.

Among Senator RUDMAN's toughest jobs in the Senate was having to judge his peers as vice chairman of the Ethics Committee.

Clearly one of the hardest thing for any Senator to do, is to stand up and present the case against one of his colleagues.

WARREN RUDMAN has never shrunk from his responsibilities, whether it was his country calling him to fight in Korea, or his Senate colleagues calling him to the distasteful task of monitoring Senators' ethics.

On a personal note, I also want to add that Elizabeth and I could not have asked for a better or more loyal friend than the senior Senator from New Hampshire.

Mr. President, Senator RUDMAN ended his farewell speech with a quote from Senator DANIEL WEBSTER—whose desk he now occupies.

It was from that desk on June 3, 1834, that Webster said, "God grants liberty only to those who love it, and are always ready to guard and defend it."

Throughout his life, WARREN RUDMAN has always stood ready to guard and defend liberty. And though he is leaving the Senate, I know he will continue to do just that for many years to come.

PASSAGE OF THE ENERGY BILL

Mr. DOLE. Mr. President, today the Senate took an historic step by acting on an issue before it became a major problem. We finally used vision to craft a comprehensive strategy to bring about a rational, dependable, and balanced energy policy. This is in no small measure due to the efforts of the senior Senator from Wyoming, MALCOLM WALLOP.

In the midst of a most acrimonious Congress—one in which the partisanship we have come to expect in Presidential election years usually leads to deadlock—as the ranking Republican on the Senate Energy Committee, Senator WALLOP joined with the committee's chairman, BENNETT JOHNSTON,to bring us a voluminous bill which clearly indicates the amount of effort put forth by the committee.

Every conceivable source of energy appears to be addressed. Senator WALLOP could be expected to be concerned with oil, natural gas, coal, and nuclear energy—all resources in abundant supply in his treasured State of Wyoming. But Senator WALLOP went beyond promoting his home State resources to address renewable energy sources, the transmission of energy, the consumption, conservation, and creation of energy to drive our country.

The Senate can adjourn with pride knowing that we have taken a great step toward reducing the threat of another energy crisis.

Mr. President, on behalf of all my colleagues, I want to congratulate Senator WALLOP and his Energy Committee colleagues for bringing us a bill of which we can all be proud.

MONTANA WILDERNESS

Mr. DOLE. Mr. President, those serving in Congress are called upon to cast many difficult votes. Last year, we had a resolution of war, a decision to send our young men and women overseas and risk their lives for those at home. We vote on an array of proposals to strengthen the economy, to reduce the deficit, to assist those in need. And in almost each and every case, those in Congress have available to them a vast amount of information upon which to make a decision on which way to vote.

A most troubling area in which this is not always true concerns the designation of wilderness areas located primarily in the public land States of the American West. By law, only Congress can create wilderness areas—blocks of land closed to all but those able to walk long distances or those fortunate enough to be able to afford the expense of contracting for travel by horseback through outfitters.

Most of the time, debates about wilderness are couched in terms of a choice between leaving an area free from development or allowing the complete despoliation of our public lands. Nothing is farther from the truth. Complicating our decisions is the fact that all but a very few of the 535 voters in Congress have ever visited these areas to assess the facts or even visited with those who lives will be the most affected by our decisions.

Such is true with respect to the Montana wilderness bill. Montana is one of only two States for which Congress has yet to act on the roadless area review and evaluation studies of the 1980's. As a consequence, millions of acres of public land in Montana has been held in a state of legal limbo—being held in a status some would argue is neither fish nor fowl.

As I said earlier, however, our choice is not between arresting development and forever stripping these treasured resources bare. For the vast majority of public land acreage, I would challenge any of my colleagues to accurately determine—while actually on the ground—whether they were standing in an area designated by the Congress as wilderness or in an area classified as multiple use.

But there is one big difference. Those with disabilities, families with young children, the elderly, the poor are denied access to the land we designate as wilderness because these lands are managed in a way that only those of strong body or strong wallets are permitted access.

Mr. President, I have had the opportunity to visit with a number of Montanans—those who will be most affected—about the Montana wilderness bill. I can tell you one thing, this is a divisive issue. Strong feelings on both sides have led to the current deadlock.

Therefore, I was greatly relieved when I heard the two Senators from Montana had reached agreement on Montana wilderness. I knew a great deal of effort, a great deal of compromise, a great deal of negotiating had taken place. I was relieved because it appeared we would avoid what I feared most: The decision would be made by those most unqualified to decide—the Congress.

Unfortunately, Mr. President, that agreement seems to have broken apart. The Montana wilderness bill will not become law this year. In part, it appears the action of the House of Representatives is at fault. The House, ignoring the compromise reached by Montanans, wanted to impose its own wishes. This action was taken even though the vast majority of House Members have never visited the State of Montana, let alone the areas to be designated wilderness.

The good news is that the Senate has a tradition of adopting the approach favored by the two most informed Senators—those who represent the State. The House bill was dead on arrival in the Senate and will continue to be dead on arrival next year and the year after and the year after, unless the agreement of both Senators from Montana is agreed to by the House.

Mr. President, I had great hopes for the Montana wilderness bill this year. How tragic it is that the House of Representatives failed to adopt the agreement reached after so many years of acrimony.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

THE FOREIGN RELATIONS COMMITTEE'S RECORD IN THE 102D CONGRESS AND ITS AGENDA FOR THE 103D

Mr. PELL. Mr. President, last week the Senate gave its advice and consent to the START Treaty and approved a House-Senate conference report on aid to the countries of the former Soviet Union. These actions are the most significant achievements of the Foreign Relations Committee during the 102d Congress. Today, I would like to review that record and to discuss how the committee and the Senate as a whole can build on the record of the past 2 years in the 103d Congress.

Mr. President, this Congress has coincided with extraordinary events in the world. At the beginning of the Congress, we had great hopes for a new world order. In some ways, the results far exceeded our expectations, and in other ways, the new world order has proved bitterly disappointing. The Persian Gulf war which entailed the very first and probably most difficult decision of this Congress gave us both high hopes and keen disappointments. That war liberated Kuwait with very low coalition casualties. But it also ended with Saddam Hussein still in power bent on the destruction of his Kurdish and Shi'a populations and still determined to acquire nuclear and other weapons of mass destruction.

At the beginning of this Congress, the Foreign Relations Committee prepared for the Senate vote on going to war to liberate Kuwait. It was a tough vote for every Member in this Chamber, and I was deeply impressed by the seriousness with which all Senators made and explained their votes. I believe our committee played an important role in framing the issues for that historic debate.

After the end of the war, the committee reflected on the policy errors that preceded Saddam Hussein's invasion of Kuwait. Through the hearing process and staff investigations, the committee documented the ill-founded assumptions and mistaken policies that led to a war that might well not have occurred.

The committee was also deeply concerned with the catastrophe that threatened to overtake the Kurdish people. On the day that Desert Storm ended, the Foreign Relations Committee played host to a delegation of Kurdish leaders and learned of their plans to try to oust Saddam. We tried, without success, to persuade the administration to meet with the Kurds and, had they done so, the United States might have been better prepared to help the rebellion that followed a few days later. The committee sent its staff to collect firsthand information on the rebellion and, as a result, had some of the earliest information on the flight of the Iraqi Kurds to the mountains.

Also in the aftermath of Desert Storm, the committee sought to strengthen international law by legislation directing the administration to pursue war crimes actions against Iraq. This year the committee arranged for 14 tons of Iraqi secret police documents captured by the Kurds to be turned over and brought to the United States. This extraordinary archive of genocide is now in the custody of the committee and being held at the National Archives.

In 1991, the committee moved expeditiously to dispose of its regular legislative responsibilities. Under the leadership of Senators KERRY and BROWN, we enacted authorizations for the State Department, USIA, the Arms Control and Disarmament Agency, and the Board for International Broadcasting. This legislation contains many important innovations, and I am proud of our role in the creation of the Voice of American Kurdish service and in strengthening educational exchange programs. More recently, just last week in fact, the committee, acting on the advice of a prestigious advisory commission, approved legislation to create a Radio Free Asia to broadcast to China, Tibet, Vietnam, and Burma. The 102d Congress was not able to act on this legislation, but it will be a priority objective to enact it in 1993.

In 1991, the Senate also passed under the leadership of Senators SARBANES and MCCONNELL foreign assistance legislation originating in the Foreign Relations Committee. This legislation revised and streamlined foreign assistance authorizations and began the process of adapting the foreign assistance program to the new imperatives of the post-cold-war world. Although House and Senate conferees agreed on a conference report, which the Senate passed, the House rejected it; so the many important provisions that should have become law did not. But we will take up the cudgels again next year.

The 102d Congress was also a time of great change, even upheaval, in Europe. In Eastern Europe democracy took hold, but in Yugoslavia the promise of a new world order turned into the terror of an old world disorder. The most extraordinary event of the last 2 years, and certainly the most hopeful, was the democratic revolution that brought about the dissolution of the Soviet Union, freedom for the Baltic nations, independence for the other 12 republics, and true democracy in Russia for the first time in its 1,000-year history.

The Foreign Relations Committee met frequently and spent many hours considering and assessing the implications for the United States of developments in what was the Soviet Union—developments that literally changed the world as we had known it since 1945.

Many of us in both parties on the committee concluded that it was a matter of urgent self-interest for the United States to assist the new States of the collapsed Soviet Union to consolidate their democracies and to make the transition from communism to free market economies. Eventually, the administration agreed with us, and together we worked to formulate and enact the Freedom Support Act.

This act is the most important piece of legislation dealt with by the Committee during this Congress. This bill, now on its way to the President's desk, will be critical in determining whether democracy and free markets take root in the wreckage of the former Soviet Union. And on that question will turn the issue of whether our children and grandchildren will grow up in a peaceful and democratic world or will be threatened by a revival of Russian tyranny.

The Foreign Relations Committee also spent a great deal of time on the related matter of United States-Soviet arms control, particularly on issues relating to strategic nuclear weapons and to conventional forces in Europe. Under the very able leadership of Senator BIDEN, the chairman of the European Affairs Subcommittee, the committee reported and the Senate approved the Conventional Forces in Europe [CFE] Treaty in November 1991. This treaty reduces and limits military forces and equipment from the Atlantic to the Urals and lays the foundation for further reductions to promote stability and to greatly lower the prospects for armed conflict in Europe.

The committee then moved on to address strategic nuclear forces under the United States-Soviet START treaty. I chaired 15 hearings on this treaty, but final action had to await the negotiation of a protocol to bring Ukraine, Kazakhstan, and Belarus into the treaty regime in the wake of the dissolution of the Soviet Union. On October 1, the Senate approved the treaty and its May 23, 1992, protocol with eight conditions and five declarations recommended by the Foreign Relations Committee.

This treaty is a milestone in the decades long effort to reduce the threat of nuclear war. Under the terms of the treaty, significant reductions in nuclear weapons will take place over the next 7 years, and a solid legal framework has been created for further reductions under START II, which is still being negotiated.

The committee continued to play a leading role on international environmental issues during the 102d Congress. The committee held hearings on several issues and approved ten treaties to strengthen environmental protections throughout the world. The most recent of these treaties is the United Nations Framework Convention on Climate Change, which the Senate approved on October 7. This convention marks a significant advance in international efforts to address the threat of climate change caused by greenhouse gases. I regret, however, that because of opposition by the administration, specific targets and timetables for reducing emissions of greenhouse gases were not included in the convention.

On October 7, the Senate also approved the protocol on Environmental Protection to the Antarctic Treaty. The protocol marks a significant advance in international efforts to protect the environment within the Antarctic Treaty area. It commits parties to provide comprehensive protection of the Antarctic environment and its associated and dependent ecosystems and designates Antarctica as a natural reserve, devoted to peace and science. A keystone of this commitment is the requirement that parties prepare environmental impact assessments for activities conducted in the Antarctic pursuant to procedures established in the protocol. The protocol continues a legacy of international cooperation on the frozen continent, which has contributed positively to international peace and security for over three decades.

Looking at treaties generally, the committee gave priority attention to addressing as many treaties as possible, some of which had languished since the 1970's, and one even dated back to 1963. At the committee's urging, the administration established priorities and completed reviews, which in some cases had been going on for a decade. In all, the committee completed action on 46 treaties during the 102d Congress, which I believe to be a record. These covered a diversity of issues ranging from arms control, communications, the environment, international investment, law enforcement cooperation, human rights, and civil aviation to maritime boundaries.

In addition to arms control and environmental treaties, the committee was particularly anxious to strengthen international human rights law. Under pressure from the committee, the administration agreed to support Senate action on the 1977 Covenant on Civil and Political Rights; and the committee moved promptly to secure Senate advice and consent.

Still pending, however, from 1977 are the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; the American Convention on Human Rights; and, of more recent vintage, the Convention on the Elimination of All Forms of Discrimination Against Women. I hope the next administration will give these conventions its support so that the Senate can move quickly to give its consent.

Mr. President, earlier I talked about the high hopes for a new world order that we all had when this Congress began 2 years ago. The Soviet Union was beginning to pass into history along with the cold war, Germany was consolidating its peaceful and democratic reunification, and in Eastern Europe democracy took hold after more than four decades of Communist enslavement.

In Yugoslavia, however, the disintegration of that country produced a political and humanitarian nightmare. The war in Croatia ended in January only to be replaced by the much bloodier conflict in Bosnia-Hercegovina, and a wider Balkan war looms just over the horizon.

If the carnage in Bosnia-Hercegovina is to end and a wider war prevented, effective U.N. action spurred by U.S. leadership will be required. The Foreign Relations Committee has been seized of the Yugoslavia situation for over 1 year. In August, the Senate adopted a resolution originating in the Foreign Relations Committee calling for the use of force if necessary to relieve the suffering in Bosnia-Hercegovina. The administration has responded to that call, and the United States is now exercising the kind of leadership that is critical to the restoration of peace in the Balkans.

The situation in the Balkans and the experience of the gulf war have pointed up the need to establish an effective collective security mechanism under the aegis of the United Nations to deal quickly with threats to international peace and security. Article 43 of the U.N. Charter provides such a mechanism—and I am proud to have worked on that article as a member of the secretariat at the San Francisco conference in 1945—but cold war politics prevented it from being activated.

Now that the cold war is over and the governments of the former Soviet Union are our partners in the pursuit of peace, we must seize the opportunity to ensure that the U.N. Security Council is able to do what was intended in 1945. In furtherance of this objective, the Foreign Relations Committee on October 1 approved the Collective Security Participation Resolution by a unanimous, bipartisan vote.

This resolution (S.J. Res. 325), introduced by Senator BIDEN, urges the negotiation, under article 43 of the U.N. Charter, of a multilateral agreement under which designated forces from various countries, including the United States, would be made available to the U.N. Security Council for the maintenance of international peace and security.

The United States cannot be the world's policeman; nor can we be expected to organize and lead an international posse every time aggression of the kind that Iraq committed against Kuwait occurs. The United States should, however, exercise leadership to ensure the creation of a standing multilateral force that could be put into action quickly by the Security Council. U.S. Secretary General Boutros Ghali has recommended such action, and the United States should support him.

These are the highlights of the committee's activities and achievements over the past 2 years, but I don't want to leave the impression that it is a complete catalogue of everything we have done. The subcommittees and the full committee have conducted oversight hearings on developments throughout the world, and I do not believe that any important issue has gone unexamined in some fashion.

In addition, the chairman and ranking minority member of the Subcommittee on Terrorism, Narcotics and International Operations—Senators KERRY and BROWN—conducted an exhaustive investigation into the activities of the Bank of Credit and Commerce International. In a report issued on October 1, they set forth the sordid story of how the bank evaded congressional inquiries into its affairs, which ranged from fraud and money laundering to support for terrorism. Their findings and recommendations merit the most serious consideration by the administration.

I wish to thank all members of the committee for their cooperation and hard work, for each and every one of them played an important role in the committee's success. I wish particularly to acknowledge and thank Senator HELMS, the committee's ranking minority member, for his cooperation, friendship and counsel during the course of this Congress. And I owe a very real debt of gratitude to Senator LUGAR for the help and leadership he gave the committee when Senator HELMS was kept away by illness.

While we can look back on these past 2 years with a great deal of satisfaction, there is much unfinished work to complete in the next Congress and new challenges to address. Further work is particularly urgent in the field of arms control. I addressed those issues in some detail in a statement in the Senate on October 1; so I would simply note today that they include START II, the Chemical Weapons Convention, and the Open Skies Treaty.

We must also strengthen controls over chemical, biological, and nuclear equipment, materials and technology trade so that those seeking weapons of mass destruction will be frustrated at every turn—the ability of our Government to deal effectively and in coordination on chemical, biological, and nuclear proliferation issues will be the subject of a series of hearings, which I intend to chair next year.

As I mentioned earlier, I also hope that the committee will be able to complete work on the four pending human rights conventions. It is imperative, in my view, that the United States as the greatest champion of human rights in the world not be seen as reluctant to make commitments.

We will need to build on our modest assistance program for Russia and the new democracies of Eastern Europe and Central Asia. As I said earlier, the success of these democracies is essential to a new world order, and, therefore, the money we invest in the success of democracy in these areas is money invested in our future security.

Protecting the global environment is certain to be a major priority of the new administration and the new Congress. I hope we can strengthen international environmental law by signing and ratifying a biological diversity agreement and by building on the Global Climate Change Convention approved by our committee this Congress. We also will work to strengthen the environmental component in our assistance programs.

Finally, I hope that the committee will build on the beginning made in this Congress to adapt and, where necessary, redirect the activities and structures of the foreign affairs agencies under its jurisdiction to the changed conditions and requirements of the post-cold-war world. We will be back in our legislative cycle in 1993, and consideration of the foreign assistance and foreign relations authorization bills will provide an opportunity to address these critical issues.

What I have outlined is not a complete agenda for the 103d Congress. Inevitably, it will expand, to include the specific concerns of my colleagues on the committee and the priorities of a new administration. I hope, however, that the objectives that I have discussed will be of help to members of the committee and all Senators as they look forward to and make plans for the 103d Congress.

U.N. PEACEKEEPING FORCE: AN IDEA WHOSE TIME HAS COME

Mr. PELL. Mr. President, nearly 50 years ago I had the great privilege of participating in the conference in San Francisco that founded the United Nations. I served as an assistant secretary of the subcommittee responsible for drafting that part of the U.N. Charter, articles 42, 43 and 44, which provide for U.N. peacekeeping forces.

In the nearly half century since that heady period in San Francisco there has been little progress toward fulfilling the hopes of the U.N. founders as expressed in the charter in this important area. There have been many U.N.

military forces serving a variety of purposes in dozens of places. But the fundamental concept of establishing a U.N. peacekeeping force at the disposal of the Security Council has not been realized.

I was heartened, therefore, by President Bush's comments in his address to the United Nations September 21 in which he outlined how he believes the international community can work to meet the challenge of U.N. peacekeeping. The President said "robust peacekeeping" by the United Nations requires men and equipment from member states, facilities for multinational units to train together, and logistical as well as planning and intelligence capabilities. He offered Fort Dix in New Jersey as a potential site for such training, and said the Pentagon would be instructed to give additional emphasis to preparing American military personnel for peacekeeping and humanitarian activities.

The President stopped short of committing U.S. units to the United Nations, which I believe is the logical next step. Governor Clinton has endorsed the concept of a U.N. peacekeeping force, so I am hopeful that the coming year will bring real progress toward this goal regardless of the outcome of the election.

Committing military forces to the United Nations may offer a way to ease the financial constraints under which U.N. peacekeeping currently operates. U.N. peacekeeping will cost at least $27 billion over the next 12 months, and the difficulty of raising these funds provoked former Secretary General Perez de Cuellar to say: "It's a great irony the United Nations is on the brink of insolvency at the very time the world community has entrusted the organization with new and unprecedented responsibilities."

But if governments agree to provide forces on a full-time or stand-by basis this could provide a framework for drawing government contributions from military budgets rather than international aid contributions. For the United States this would mean paying our U.N. peacekeeping bills out of Defense Department appropriations rather than severely strained foreign affairs budgets. In return it would be understood that if needed for a country's own defense purposes, provisions would be negotiated for contingents to be withdrawn for urgent national needs.

As the United Nations faces one challenge after another, the time has come to revive the hopes we had at San Francisco and to put into practice the military arrangements set forth in the charter. It will take renewed vision to implement those ideas, the same kind of farsighted perspective that inspired the founders more than 45 years ago in San Francisco.

I ask that the text of an op-ed article that I wrote on this subject for the Providence Journal October 3 be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

REVIVING HOPE AS THE U.N. FACES GREATER CHALLENGE

Next to my service in the U.S. Senate, the most fascinating involvement of my career was my small role at the founding of the United Nations in San Francisco in 1945.

It was a heady time, filled with the optimism created by the allied victory in World War II. With the enthusiasm of youth, I was proud to assist the working group drafting the very articles, 42, 43 and 44, of the U.N. Charter providing for U.N. military action to maintain international peace and security.

Within a year, it was obvious that these arrangements could not be made to work, because of the Cold War divide between the communist countries, led by the Soviet Union, and the Western nations led by the United States. In a remarkable demonstration of diplomatic ingenuity, the United States mobilized forces under the U.N. banner to oppose North Korean forces in South Korea in 1950. This year's hero, former President Harry S. Truman, led the Free World in bringing about this major military operation under the United Nations.

But a heavy price was paid, in terms of the many killed and injured in that difficult conflict, and in terms of the U.N.'s ability to conduct future military actions. Having seen a U.N. military action get started during the Soviets' temporary absence from the Security Council, they never made that mistake again.

Although the United Nations continued to mount operations to deal with threats to peace, they were undermined by the refusal of the communist states to participate—or to pay their financial share—even in areas outside their claimed sphere of interest.

But now the Cold War is over and the former Soviet Union, far from being an obstacle, appears ready to cooperate in peacekeeping efforts. This was most dramatically illustrated by the multi-lateral coalition created under U.N. auspices to respond to Iraq's Invasion of Kuwait. The high hopes we had in 1946 were rekindled by the coalition's military victories in that desert war.

The United Nations' success has brought new challenges to its door. In the post-Desert Storm world the Security Council has authorized another half dozen peacekeeping operations, led by deployments totaling more than 30,000 in Cambodia and Yugoslavia. Smaller units are involved in Angola, El Salvador, Western Sahara and Somalia. Substantial increases are under way to protect emergency relief operations in Somalia and Yugoslavia. The United Nations is being strained to the limit to find and fund the military units for all these missions.

The time has come, in my judgment, to implement the provisions of Article 43, which authorize the United Nations to have at its disposal forces from member states to deal with threats to international peace and security. Such forces would not merely act on behalf of the United Nations, as did the U.N. forces in Korea and during Desert Storm, but would be a U.N. force under control of the Security Council. This in turn would activate the U.N. military staff committee to administer and direct the U.N.'s military operations.

What was once seen as visionary has now become practical, and should be implemented as soon as possible. Secretary General Boutros Boutros-Ghali recently said: "The Security Council has the authority to take military action to maintain or restore international peace and security. . . . The ready availability of armed forces on call could serve, in itself, as a means of deterring breaches of the peace since a potential aggressor would know that the Security Council had at its disposal a means of response."

Article 43 provides for the United Nations to draw upon military personnel from many U.N. member states to deal with any threat to international peace. The United States would play a key leadership role as member of the military staff committee. For those who worry about American troops being under a non-U.S. command, or that our troops might be used for purposes that we don't support, they should be comforted by the thought that the United States, as a permanent member of the Security Council, has the right of veto of any action.

This proposed U.N. force, perhaps called the Blue Helmet Unit, would be trained in the military tactics needed for peacekeeping and peacemaking. It could also be deployed to protect humanitarian aid workers, who have become increasingly vulnerable as armed groups ignore the protected status even of the Red Cross. The United States could offer an American base, perhaps one that is being considered for elimination, as a site for training and maneuvers. The personnel would be volunteers serving in our own military services and those of other countries. A period of service with a U.N. detachment could be seen as a challenging assignment useful for the further careers of soldiers from many countries.

I am heartened by the support for a strengthened U.N. force expressed by President Bush in his speech to the General Assembly Sept. 21. The President said "robust peacekeeping" requires men and equipment from member states, facilities for multinational units to train together, and logistical as well as planning and intelligence capabilities. He offered Fort Dix, N.J. as a potential site for such training, and said the Pentagon would be instructed to give "new emphasis" to preparing American military personnel for peacekeeping and humanitarian activities, The Presidents stooped short of earmarking U.S. units to the United Nations, but that is the logical next step, one already endorsed by Governor Clinton.

Committing military forces to the United Nations may offer a way to ease the financial constraints under which U.N. peacekeeping currently operates U.N. peacekeeping will cost at least $2.7 billion over the next 12 months, and the difficulty of raising these funds provoked former Secretary General Perez de Cuellar to say: "It's a great irony the United Nations is on the brink of insolvency at the very time the world community has entrusted the organization with new and unprecidentd responsibilies."

But if governments agree to provide forces on a full-time or stand-by basis this could provide a framework for drawing government contributions from military budget rather than international aid contributions. For the United States this would mean paying our U.N. peacekeeping bills out of Defense Department appropriations rather than severely strained foreign affairs budgets. In return it would be understood that if needed for a country's own defense purposes, provisions would be negotiated for contingents to be withdrawn for urgent national needs.

As the United Nations faces one challenge after another, the time has come to revive the hopes we had at San Francisco and to put into practices the military arrangements set forth in the Charter. It will take renewed vision to implement those ideas the same kind of far-sighted perspective that inspired the founders more than 45 years ago in San Francisco.

PASS THE TAX BILL

Mr. PELL. Mr. President, I rise today to join the chairman of the Finance Committee in supporting the conference report to H.R. 11, the Revenue Act of 1992. While it is not a perfect bill, it is a good compromise and it includes a number of very important provisions to encourage investment, stimulate our economy, and provide much needed hope and help for individuals and communities who have been struggling during this prolonged recession.

While this conference report includes a number of provisions that will help the people and the State of Rhode Island, my most immediate reason for supporting this tax bill is because it repeals the 10-percent luxury tax on boats over $100,000. This luxury tax on boats has had a devastating effect on the boat building industry. It has led to the loss of jobs and the disappearance of some of our Nation's finest boat building firms, many of which were located in my home State of Rhode Island. And this luxury tax has had a ripple effect, hurting individuals and companies that rely on the boating industry, including suppliers, engineers, sail makers, marinas, and even restaurant owners. The luxury tax did not have the intended effect of taxing the wealthy, but rather it imposed a heavy penalty on workers in the boat building industry. The boat building industry in Rhode Island is sinking and repealing the luxury tax may be our only hope of keeping it afloat.

The conference agreement also provides much needed help for a real estate industry in Rhode Island and across the Nation that is struggling to survive. The bill modifies the so-called passive loss rules to permit the deduction for losses on rental property by individuals who participate materially in their real estate activities and permanently extends the mortgage revenue credit certificate program and the low income housing tax credit. I was disappointed, however, that the tax credit for first time home purchases was dropped during conference negotiations.

The centerpiece of the tax bill provides incentives to invest in enterprise zones to encourage businesses to locate in distressed areas and employ local residents. Complementing the enterprise zone provisions, is funding targeted for family preservation services and enterprise zone social services. Many of these income security programs were included in S. 4 which I joined in cosponsoring. In addition, the tax bill extends a number of important expiring tax provisions including the R&D tax credit, the targeted jobs tax credit, the 25-percent health insurance cost deduction and the exclusion for employer-provided educational assistance. The conference agreement also provides incentives for charitable giving which are crucial to the viability of nonprofit organizations.

Finally, I was pleased that the conference agreement contains an expansion of individual retirement accounts with strong saving incentives for all Americans, and with new flexibility permitting the use of IRA funds without penalty for first-time home purchases, for certain medical or educational expenses, and for the long-term unemployed.

It is vitally important that Congress acts to lift the economy out of this recession, to stimulate economic growth, and to encourage investment. This conference report includes much of what both the President and the Congress wish to accomplish, it is a bipartisan product and a balanced bill. I urge my colleagues to support it and hope the President will sign it.

ACCOMPLISHMENTS OF THE 102D CONGRESS

Mr. PELL. Mr. President, in spite of what often appeared to be a deadlock between Congress and the White House, it seems to me that the 102d Congress did manage to achieve a number of substantial objectives.

I am particularly pleased that several of these achievements occurred in areas in which I have a special interest.

Passage of the Higher Education Act should expand educational opportunities for millions of Americans by increasing the availability of college loans and grants, including expansion of eligibility to Pell grants.

I was delighted that the Senate ratified by a 93-to-6 margin the Strategic Arms Reduction Treaty [START], which I managed. And I was pleased that Congress passed the nuclear test ban moratorium, notwithstanding the President's objections.

Congress took constructive action to help the country adjust to lower defense expenditures, providing $1.8 billion for adjustment assistance to workers and communities and for diversification of defense industries.

This is something I have been advocating for several years and I am glad that the problem finally got the attention it deserved, although I might note that here too, the White House was not supportive.

On a number of other important issues—family and medical leave, extension of unemployment benefits, election campaign reform, and regulation of cable TV—Congress passed constructive and helpful legislation, after long and often difficult deliberations—only to have the legislation vetoed by the President.

Overall, it has been a very trying and contentious period of divided government, where the priorities and philosophy of the congressional majority were on a collision course with that of the executive branch.

I look forward to the possibility of a period of greater unity of national purpose after the November election. Hopefully, the next Congress won't have to fight so many uphill battles.

THE MAJORITY LEADER

Mr. DOLE. Mr. President, I wanted to thank the majority leader for all of his courtesies in these past 2 years, and for all the cooperation that we have had from the majority leader and members of his staff. Sometimes we were not able to work out the problems. Sometimes we were. But I would indicate for the RECORD that it is not because of the majority leader's unwillingness to make the effort.

So I thank him and congratulate him on the work of this Congress. And I look forward to working with him in the next Congress. Maybe we can switch titles next time. But if not, we will be here in any event.

But I want the record to reflect my friendship and support where I could, of the majority leader's agenda. It is a very difficult job the leaders have, on both sides, because there is always the suspicion that sometimes we work too closely together, that sometimes we do not do everything we should to protect everyone.

I would just say for the RECORD that we do our best. It is sometimes very difficult, with the number of agendas in this Senate, the number of schedules that our colleagues have to meet. But I think overall we have tried to accommodate everyone that we could. Hopefully we have done it in that spirit. But we have always done it in the spirit of trying to further the business of the Senate. I just say that I appreciate working with my friend and colleague.

THE REPUBLICAN LEADER

Mr. MITCHELL. Mr. President, I thank my distinguished colleague and friend, Senator DOLE, for his kind remarks. I want him to know that they are very much appreciated. And very much reciprocated.

As Senator DOLE indicated, the task of leadership in an institution like the Senate is not easy. Primarily because the leaders have no real power.

Mr. DOLE. That is right.

Mr. MITCHELL. We are an institution of 100 equals. And we are leaders in name but have only the power of persuasion with our colleagues. But I have truly enjoyed working with Senator DOLE in the 4 years that I have served as majority leader.

We frequently—indeed regularly—disagree on issues, as is inevitable in our competitive political system. But there has never been any personal disagreement and our disagreements on issues have never stood in the way of the kind of cooperative working together that is essential if the Senate is to proceed at all to meet its public responsibilities.

So I am very grateful to Senator DOLE for his comments, for his friendship, and for the cooperative working spirit which we have had over these past 4 years.

THE 102D CONGRESS

Mr. MITCHELL. Mr. President, the legislative accomplishments of the 102d Congress are substantial. The agenda of unfinished business is even more substantial. The next Congress will face even greater challenges.

The primary goal of the 102d Congress has been to lay the foundation for sound, sustainable economic growth and job creation. Our economy is shifting from a military to a civilian basis; from manufacturing to a service- and information-based economy. American workers must learn new skills. Military personnel and defense workers must translate their learned skills to productive civilian uses.

That shift and how best to do it will be the challenge of the next several Congresses. If we do as well as President Truman did in moving from a wartime to a peacetime footing, we, too, will lay the foundation for economic growth and broadbased prosperity for all Americans.

This Congress took a first step with the defense conversion program in the Defense Authorization Act.

We enacted an intermodal transport bill to lay the foundation for a transportation system for the 21st century. We passed a higher education act to restore middle-income students' access to a college education. We approved an energy bill, after a decade with no national energy policy.

The 102d Congress responded to immediate needs as well. Despite vetoes and denials, we passed and extended unemployment insurance for workers facing economic hardship in the recession. We reformed the unemployment insurance system to restore its value to laid-off workers and the families who depend on their paychecks.

More than 9 million Americans remain unemployed, more than 6 million under employed. Another million want a job but have given up looking, so the Labor Department acknowledges there are 16 million Americans who want full-time jobs that this economy isn't providing.

The past 3 years have seen the slowest rate of job creation in more than 60 years.

The 102d Congress has sought to combat this economic stagnation. In March 1992 we passed an economic growth program. Unfortunately, President Bush vetoed that bill, although it included his priority proposals.

We have now passed another, more modest economic growth package, along with the urban aid our cities need. Differences in emphasis and scope, exaggerated in an election year, have unfortunately made it impossible to develop the creative kind of growth package our anemic economy needs. That will be a priority for the 103d Congress.

the 102d Congress sought list did not achieve consensus on health care reform. But a consensus now coming into focus. Major health care reform will be the work of the next Congress. But we took needed preliminary steps in giving women's health issues the emphasis they have been denied.

The world beyond our borders continues to change drastically. The 102d Congress opened with the Gulf War debate, a serious exercise of the constitutional power of the Congress to debate the circumstances under which our Government should commit Americans to war.

The tragic conflict in the Balkans continues unabated, but the great postwar fear of nuclear holocaust has receded. Congress approved aid to sustain the movement of the Russian Republic to democratic government and free-market economics.

The START Treaty was approved and, despite administration efforts to block it, we successfully passed a nuclear test ban treaty package which will reduce reliance on weapons of terror.

At home, in the wake of the gulf war, a veterans benefit package was enacted. We also successfully passed a civil rights bill to restore the right of women, disabled Americans and minorities to seek compensation for the deprivation of their rights in the workplace.

Closer to home, Congress approved the Boren-Hamilton initiative for congressional reform. A bipartisan commission will recommend changes by the close of next year.

And in the closing days of the session, the 102d Congress overrode the President's veto of the cable television bill. Cable rates have risen three times as fast as inflation since the industry was deregulated 5 years ago. The bill gives the FCC authority to establish rules for reasonable rates so long as a cable operator faces no direct competition for customers. Where competition exists, the bill does not reach. A veto of this bill was unwarranted by its scope and unsupported by the reality of cable service for consumers today. The override is a victory for American consumers.

A review of the session would not be complete without noting the standoff between Congress and the President in the past couple of years. With vetoes of minimum wage legislation, unemployment insurance, and civil rights legislation, the President blocked action.

As a result, a great deal of work has been lost for the present.

On the foreign policy front, President Bush first discouraged action on legislation to let the victims of Tiananmen Square seek asylum in America, claiming an Executive order would protect these people. His failure to issue that order forced us to pass a law.

Since that first response to the massacre, the President has repeatedly vetoed legislation intended to require the Chinese Government to live up to its own commitments on human rights, Tibetan freedom, arms proliferation, and fair trade. Yet Chinese behavior is unchanged.

There are disappointments on the domestic front as well. For the second Congress in a row Republican Senators filibustered an education reform bill to death. Our children will pay for that. It's been 10 years since the 1982 report, "A Nation at Risk," warned that education reform was needed. The second-graders of 1982 graduated high school this year.

The same thing happened to crime control legislation, including the Brady bill, a comprehensive effort to establish a background instant-check system to prevent the sale of handguns to felons.

The President successfully killed, as well, the expectation in all families that the illness of a child or ailing parent takes precedence over anything else. Be vetoing the family leave bill, he forces on Americans the cruel choice of their families or their jobs. No other advanced nation demands that sacrifice. So much for family values.

The President is now trying to have it both ways on the question of a woman's right to abortion. When he talks of the women in his own family, he says he is for the right.

But his actions speak louder. He vetoed, yet again, a suspension of the gag rule which bars health professionals from giving poor women the information and counseling every woman deserves. This hostility to women's rights injects politics into private lives. It's wrong.

The President, unfortunately and unwisely vetoed campaign finance reform and voter registration legislation, bills intended to reduce the money chase in election campaigns and to give working Americans an easier chance to register to vote.

So while there's a substantial list of accomplishments for this 102d Congress, there are also disappointments. Government by veto is not what Americans want. It is not what the times call for.

We end the 102d Congress at a time when the President feels beleaguered and falls back on all of the old, unworkable formulas for electoral success. That is why we have faced so many vetoes with so many unpersuasive arguments to support them. It is time for change. Government by veto and obstruction is not enough to meet the challenges that face the next Congress.

Next session, we must come to grips with the deficit in a context that provides for economic and job growth. Twelve years of trickle-down economics have to be reversed. It can not be done overnight. It is going to be difficult and it will demand shared sacrifice from those who haven't lost anything in the past 12 years along with those who have. Shared sacrifice will be accepted only if it is fairly shared.

We need comprehensive health care reform. Competition drives health insurers to seek policyholders without health problems. That is what makes a health insurer profitable. But health insurance is needed by those with health problems as well as the healthy, and the free market does not provide incentives to spread the risk, because spreading the risk lowers the profit.

So there is a serious problem at the heart of the process and until it is resolved, health care costs will rise at double and triple the rate of inflation. Cost controls are the key; with cost controls we can reinvigorate the private health insurance system. Without cost controls, we will get more of the same: The healthy and the wealthy will have insurance; those who need coverage will not.

We need to move on job creation and economic growth as well. Tax and investment policies have to be directed at American job growth.

Campaign finance reform, blocked by partisan hopes of advantage, remains unfinished business that we can complete next session if the goal of the President is reform, not advantage. It is needed and it is important. We will pursue it.

Election year politics interrupted the progress of efforts to secure the rights of women to exercise choice, their rights in the workplace and in the society. The next Congress will deal with the increase in violence against women, the issue of choice, and the health care disparities that have been documented in recent years. The next Congress will not treat women's issues as matters to be set aside for more important concerns. The next Congress will recognize women's issues as American concerns and deal with them directly.

It is a mixed outcome. We have done a lot. Without Presidential vetoes we would have done far more. Now it is up to the people to judge.

The times present issues and challenges and we are judged by how we meet them, whatever our human strengths and weaknesses may be. The 102d Congress met many of its challenges well. The next Congress must do even better.

SHARP TONGUES AND SHORT MEMORIES

Mr. DOLE. Mr. President, there is a tendency around this town toward sharp tongues and short memories. That has been particularly evident at recent hearings of the Senate's Select Committee on POW/MIA Affairs focusing on the negotiations which ended American involvement in the wars in Indochina.

It was kind of gang-up time on former President Nixon and former Secretary of State Kissinger—the latest targets of those who are more interested in pointing fingers and assigning blame than going about the really critical business of the committee: Finding out if there are any POW/MIA's still alive and imprisoned in Indochina.

It's not my job or my intention to act as counsel for the defense for anyone. But I am here to remind the Senate, and people around the country who may be watching, that the Senate itself hasn't always exactly covered itself with glory when it comes to the issue of POW/MIA's, and according it the priority it should have on our national agenda.

I had the opportunity to visit with the committee on September 24, to put on the record a few thoughts about one particular event in Senate history which I believe reflected the prevailing Senate attitude on this issue back in 1973—a period about which a lot of revisionist history is now being written.

In particular, I described a Senate debate and vote which occurred back in June 1973, when the Senate was considering a supplemental appropriations bill. That was a time, of course, when the Senate was still very much engaged in what was going on in Vietnam, and when the issue of POW/MIA's was an immediate, front burner issue—as, appropriately, it has become once again.

It was a time when the Congress had already prohibited the Nixon administration from any use of military force against North Vietnam. Whatever the reasons and rationale for that decision, it effectively stripped the President of any real leverage to push the North Vietnamese to address our concerns on POW/MIA's or anything else.

And it was also a time when it began to be crystal clear that Hanoi was not cooperating and meeting its commitments on the issue of POW/MIA's.

It seemed to me, to Senator HELMS, and to some other Senators that we ought to give back to the President at least a credible threat of the use of force to try to get Hanoi to come clean with us on POW/MIA's. So we crafted an amendment that would have allowed the President to resume military action if Hanoi continued to stonewall, as it was then stonewalling.

We felt then that the issue of our missing American servicemen was not some kind of sideshow or second tier issue—but rather that it had to be right at the very top of our priorities as we wound down our involvement in the Indochinese wars. A lot of people are making that point now, as they look for ammunition to criticize others for their alleged actions or inactions. But the time I am describing was then—not now. It was a time when the frenzy to get out of Vietnam was at its height; not now in the warm glow of the TV cameras, and with the benefit of hindsight.

Some now charge that Nixon or Kissinger or others didn't put enough priority on the issue. But the cosponsors of the amendment wanted the Senate to go on record then that the POW/MIA's were at the very top of our agenda. Without doubt, President Nixon and Secretary Kissinger would have welcomed passage of our amendment.

But it was up to the Senate. We wanted Senators to have to stand up and be counted on that issue.

So we offered the amendment, and all of us who were in the Senate then did stand up and be counted.

And when the counting was done, the Senate—by a vote 56–25—defeated the Dole-Helms amendment.

Mr. President, 18 Senators still serving in the Senate voted that day. Only 6 of us supported the amendment: myself, Senator HELMS, and Senators DOMENICI, ROTH, STEVENS, and THURMOND. The other 12 voted against the amendment.

The six of us who voted for the amendment felt it was a vote about how important the POW/MIA issue had to be for America. It was a vote on the issue of whether we ought to make sure, before we wound up our involvement in the region, that we had a full accounting for all our POW/MIA's; or whether the call to get out was so strong that heeding it took precedence over everything else.

Obviously, those who voted on the other side may have felt otherwise. Without question, they felt they were doing what was right for America. And, also without question, their vote did not reflect any lack of concern or caring about POW/MIA's.

The point I am making, though, is that things were a lot different back in those days. Things that might look black and white today did not look so simple and clear when they were actually happening. Sharp tongues and short memories may lead people to make reckless accusations or groundless allegations. But the facts are that it was an incredibly emotional, complex and at times even chaotic time. It was a time when there was an overwhelming public and congressional—I repeat, and congressional—pressure on the Nixon administration to terminate our involvement in Vietnam, and terminate it immediately and at any cost.

It was a time when reasonable people, with sincere and humane concerns about our POW/MIA's, may not have seen the POW/MIA issue in the same light that it appears today, two decades later.

It was a time when serious mistakes were made, no doubt about it, and on all sides. No one, certainly not this Senator, suggests that the Nixon administration was blameless.

But what is abundantly clear today is that, among the many human mistakes that were made, some of the biggest doozies were made right here in the Senate of the United States. And I happen to think that the vote on the Dole amendment that June day was one of the biggest of all.

Mr. President, we had a very spirited debate on the Dole-Helms amendment, and I want to give Senators the opportunity to review that debate. So I ask unanimous consent to include the full text of the debate in the RECORD.

Reading this RECORD will remind all of us of the reality of the times in which we then lived; will remind all of us that, when it comes time to hand out blame, there is plenty to go around; and will hopefully remind us that, while it is easier to pass out blame, it is a lot fairer to do your homework, put things in their proper context, and make reasonable judgments based on the facts as they were then, and not on the basis of history rewritten to serve some contemporary political interest.

In conclusion, I want to pull one brief quote from my own remarks at that time—remarks that ring out with sad irony today.

"I am under no illusion," I said as we prepared to vote on that June day in 1973.

> I do not expect this amendment * * * to prevail. But I would hope those who read the RECORD and those who sit down next year or 20 years from now to read the RECORD, in the event the North Vietnamese do not carry out the agreement, will know there were those of us in the Senate who stood and let our views be known.

I ask unanimous consent the portion of the debate reported in the CONGRESSIONAL RECORD of May 31, 1973 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Congressional Record, May 31, 1973]

SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR ENDING JUNE 30, 1973

The Senate continued with the consideration of the bill (H.R. 7447) making supplemental appropriations for the fiscal year ending June 30, 1973, and for other purposes.

The PRESIDING OFFICER. The question recurs on the last committee amendment. Who yields time?

Mr. MANSFIELD. Mr. President, I think the Senator from Kansas is seeking recognition.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. DOLE. Mr. President, I ask unanimous consent that I might offer my amendment to the committee amendment.

The PRESIDING OFFICER. Is there objection?

Mr. MANSFIELD. Mr. President, the Senator is aware of the fact that amendments to the committee amendment are considered in the first degree and that the hour limitation applies.

Mr. DOLE. I am.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered. There are 30 minutes to the side on the amendment.

The clerk will report the amendment.

The legislative clerk read as follows:

On page 58, line 14, insert the following: "*Provided, however*, That these restrictions shall be of no force or effect if the President finds and forthwith so reports to the Congress that the Government of North Vietnam is not making an accounting, to the best of its ability, of all missing in action personnel of the United States in Southeast Asia, or is otherwise not complying with the provisions of article 8 of the agreement signed in Paris on January 27, 1973, and article 10 of the protocol to the agreement 'Concerning the Return of Captured Military Personnel and Foreign Civilians and Captured and Detained Vietnamese Civilian Personnel'."

Mr. DOLE. Mr. President, I ask unanimous consent that the names of the following Senators be added as cosponsors of the amendment proposed by myself and the Senator from North Carolina (Mr. HELMS); Mr. BARTLETT, Mr. BELLMON, Mr. BROCK, Mr. BUCKLEY, Mr. CURTIS, Mr. CANNON, Mr. GRIFFIN, Mr. HANSEN, Mr. MCCLURE, Mr. SCOTT of Pennsylvania, Mr. SPARKMAN, Mr. TAFT, Mr. THURMOND, and Mr. TOWER.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, at this time, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

Mr. DOLE. Mr. President, I think the basis for the amendment I have offered, stated in its simplest terms, is whether we provide the President any leverage with which to make certain the North Vietnamese are making a responsible effort to account for the Americans missing in action in Cambodia and Laos.

There are still some 1,300 Americans carried as missing in action. Another 1,100 are listed as dead, but their remains have not been recovered.

I do not look upon this vote as simply a money vote, and any assertion that this matter is simply a money matter, going no farther than considerations of the budget, is to my mind a complete fiction.

Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

REAL QUESTION

Mr. DOLE. Mr. President, the real question before the Senate today is whether the Congress—after many years of unavailing efforts by a minority of its membership—is finally going to throw in the sponge and turn Southeast Asia over to the forces of aggression.

The question is whether—after years of combat, thousands of American and Asian deaths, and billions of dollars—the Congress is going to default on the achievements made possible by these sacrifices.

The question is whether—after years of detailed, intensive and exhaustive negotiations—the Congress is going to allow the solemn obligations which resulted from these negotiations to be openly violated without fear of punishment or sanction.

I, for one, have always been proud that in times of considerable doubt, uncertainty and pessimism throughout the history of the Vietnam conflict, the Congress stood firm and refused to enact measures which would have tied the President's hands, militarily, or would have undercut his position at the negotiating table.

I have been proud that a majority in Congress always resisted the temptation to take the expedient course—to grasp for peace at any price. And as a result of this firmness the President was able to achieve our policy objectives and successfully pursue the negotiations.

GREAT ACCOMPLISHMENTS

Now we have an agreement for peace—an imperfect and fragile agreement, perhaps—but an honorable agreement nonetheless. All American combat forces have been withdrawn from Vietnam. Our prisoners of war are home.

Everything the critics cried so loudly for and which they would have given anything to achieve has been realized—but with America's honor maintained and our credibility intact.

CANNOT TURN BACK

But with all these accomplishments, much still remains, and now is not the time to throw away these achievements by relaxing our determination or weakening our commitment to our principles. With so much accomplished, with so much behind us, we must not turn away now when ahead lies the real and realistic opportunity of securing full compliance with the Paris agreements of January 27 and the bright hope of a just and lasting peace in this troubled area.

ANOTHER END-THE-WAR AMENDMENT

The Congress has contemplated action similar to this amendment many times before. So-called "End-the-war Amendments" are not new to the Congress. Each time before, in times of peril and doubt the amendments have failed. Now, since January 27, since the signing of the agreement to end the war and restore the peace in South Vietnam, we are told that the situation in southeast Asia has changed in its essentials. The change, we are told, now justifies action by the Congress to cut off funds for military operations.

CLEAR OBLIGATIONS

The situation in Cambodia, particularly, remains essentially unchanged. And as long as it does, the full implementation of the January 27 agreement remains out of reach. Article 20 of that agreement states clearly that foreign countries shall totally withdraw from and refrain from reintroducing into Cambodia, troops, and military personnel. There is no question that North Vietnam and Cambodia are separate countries. But North Vietnamese troops are being maintained in Cambodia, and they are engaging in hostilities against the government of that country and against the governments of neighboring countries including South Vietnam.

Mr. President, let me stress the real purpose of this amendment. I think it is very simple and very clear. Aside from all the emotion, all the arguments, and all the emotional pleas we have heard yesterday and today, there is one factor, in and of itself, that provides all the argument necessary against full implementation of the Eagleton amendment.

We are all aware of the fact that the United States entered into the January 27 agreement in good faith. This agreement, in all of its terms—including article 20—was drafted jointly by the parties to the conflict. It was mutually agreed to and signed. And it was universally hailed as a just and equitable prescription for peace in an area that all agreed had been, for far too long embroiled in war.

The principle agreed to and embodied in article 20 was that there could be no peace in any part of Southeast Asia unless there was peace in all of Southeast Asia. Specifically, article 20 referred to Laos and Cambodia.

In Laos, we have a cease-fire. Like the cease-fire in Vietnam, though, it is endangered by the continuing conflict in Cambodia, and until the Cambodian conflict ends the war and the threat of war to all of Southeast Asia will not end.

ACCOUNTING FOR THE MISSING IN ACTION

But aside from these elements, another factor in and of itself provides all the argument necessary against the Eagleton amendment. The January 27 agreement clearly calls for certain positive actions by both sides with respect to the return of those held prisoner and an accounting for the missing in action.

Now, as a result in no small way of the Congress' earlier refusals to pass such legislation, we have been blessed with the return of more than 500 of our prisoners. We are all grateful for their return. As a Nation we rejoiced with the men and with their families at their homecoming.

But in the midst of our rejoicing we cannot ignore the fact that we still lack a full and satisfactory accounting of our missing in action.

Mr. President, at this point I ask unanimous consent to have printed in the RECORD at the conclusion of my remarks the latest published list of those U.S. military personnel missing in action in Southeast Asia.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

U.S. MILITARY PERSONNEL UNACCOUNTED FOR IN SOUTHEAST ASIA, AS OF 5 MAY 1973

PREFACE

This is a listing of U.S. military personnel who are unaccounted for in Southeast Asia in connection with the conflict in Vietnam and have not returned to military control.

The listing, totaling 1,321 names, was prepared from casualty reports received as of 5 May 1973.

The grade shown in many instances reflects promotions that have been made while the military members were in missing or captured status. Likewise, the originally assigned service or file number, in many cases, has been replaced in consonance with the program for using social security account numbers for military personnel.

NAME, RANK, AND SERVICE OR SOCIAL SECURITY NUMBER

Abbott, John, CAPT., [redacted]
Abrams, Lewis Herbert, LTC., [redacted]
Acalotto, Robert Joseph, SGT. [redacted]
Acosta-Rosario Humberto, SSGT., [redacted].
Adachi, Thomas Yuji, TSGT., [redacted]
Adair, Samuel Young, Jr., CAPT., [redacted].
Adam, John Quincy, TSGT., [redacted]
Adams, John Robert, SSGT., [redacted]
Adams, Samuel, SMS., [redacted]
Adams, Steven Harold, MSGT., [redacted]
Adkins, Charles L., SSGT., [redacted]
Alberton, Bobby Joe, SMS., [redacted]
Albright, John Scott, II, CAPT., [redacted]
Aldern, Donald Deane, CAPT., [redacted]
Alford, Terry Lanier, CWO., [redacted]
Alfred, Gerald Oak, Jr., CAPT., [redacted]
Allard, Richard Michael, SSGT., [redacted]
Allee, Richard Kenneth, MAJ., [redacted]
Allen, Henry Lewis, CAPT., [redacted]
Allen, Thomas Ray, CAPT., [redacted]
Allen, Wayne Clouse, SP5, [redacted]
Alley, Gerald William, MAJ, [redacted]
Allinson, David Jay, LTC, [redacted]
Altus, Robert Wayne, CAPT, [redacted]
Alwan, Harold Joseph, MAJ, [redacted]
Ammon, Glendon Lee, LTC, [redacted]
Amos, Thomas Hugh, CAPT, [redacted]
Anderson, John Steven, CWO, [redacted]
Anderson, Robert Dale, LTC, [redacted]
Anderson, Warren Leroy, LTC, [redacted]
Andrews, Stuart Merrill, COL, [redacted]
Andrews, William Richard, MAJ, [redacted]
Angstadt, Ralph Harold, LTC, [redacted]
Apodaca, Victor Joe, Jr., MAJ, [redacted]
Appelhans, Richard Duane, MAJ, [redacted]
Appleby, Ivan Dale, LTC, [redacted]
Ard, Randolph Jefferson, CWO, [redacted]
Armitstead, Steven Ray, CAPT, [redacted]
Armstrong, John William, COL, [redacted]
Arnold, William Tamm, LCDR [redacted].
Arroyo-Baez, Gerasimo, SFC, [redacted]
Ashall, Alan Frederick, LT, [redacted]
Ashlock, Carlos, SGT, [redacted].
Asire, Donald Henry, COL, [redacted]
Atterberry, Edwin Lee, MAJ, [redacted]
Austin, Charles David, CAPT, [redacted]
Austin, Ellis Ernest, CDR, [redacted]
Austin, Joseph Clair, COL, [redacted]
Avery, Robert Douglas, CAPT, [redacted]
Ayers, Richard Lee, MAJ, [redacted]
Ayres, Gerald Francis, MAJ, [redacted]
Ayres, James Henry, MAJ, [redacted]
Babula, Robert Leo, SGT, [redacted].
Bacik, Valdimir Henry, MAJ, [redacted]
Backus, Kenneth Frank, CAPT, [redacted]
Bader, Arthur Edward, Jr., SSGT, [redacted].
Bailey, John Edward, MAJ, [redacted]
Baker, Arthur Dale, MAJ, [redacted]
Balamoti, Michael Dimitri, MAJ, [redacted]
Balcom, Ralph Carol, LTC, [redacted]
Baldridge, John Robert, Jr., CAPT, [redacted].
Bannon, Paul Wedlake, MAJ, [redacted]
Bare, William Orlan, CAPT, [redacted]
Barnes, Charles Ronald, CAPT, [redacted]
Barnett, Charles Edward, CDR, [redacted]
Barras, Gregory Inman, LTC, [redacted]
Bates, Paul Jennings, Jr., CAPT, [redacted]
Batt, Michael Lero, SSGT, [redacted]
Bauder, James Reginald, CDR, [redacted]
Bauer, Richard Gene, SP5, [redacted]
Bauman, Richard Lee, CWO, [redacted]
Bebus, Charles James, SGT, [redacted]
Becerra, Rudy Morales, SP5, [redacted]
Beck, Edward Eugene, Jr., SGT, [redacted]
Bednarek, Jonathan Bruce, 1LT, [redacted]
Beecher, Quentin Rippetoe, CWO, [redacted]
Beene, James Alvin, LCDR, [redacted]
Begley, Burriss Nelson, COL, [redacted]
Behnfeldt, Roger Ernest, CAPT, [redacted]
Belcher, Glenn Arthur, CAPT, [redacted]
Bennett, Thomas Waring, Jr., CAPT, [redacted].
Bennett, William George, LTC, [redacted]
Benton, Gregory Rea, Jr., SGT, [redacted]
Bergevin, Charles Lee, CAPT, [redacted]
Bessor, Bruch Carlton, CAPT, [redacted]
Beutel, Robert Donald, CAPT, [redacted]
Beyer, Thomas John, CAPT, [redacted]
Bezold, Steven Neil, CAPT, [redacted]
Biediger, Larry William, LTC, [redacted]
Bifolchi, Charles Lawrence, CAPT, [redacted].
Biggs, Earl Roger, MSGT, [redacted]
Billipp, Norman Karl, CAPT, [redacted]
Bingham, Klaus Yurgen, SSGT, [redacted]
Bishop, Edward James, Jr., SGT, [redacted]
Bisz, Ralph Campion, LT, [redacted]
Bivens, Herndon Arrington, SGT, [redacted]
Blackburn, Harry Lee, Jr., CDR, [redacted]
Blackwood, Gordon Byron, MAJ, [redacted]
Blair, Charles Edward, COL, [redacted]
Blodgett, Douglas Randolph, SSGT, [redacted].
Bloodworth, Donald Bruce, CAPT, [redacted].
Bobe, Raymond Edward, SSGT, [redacted]
Bodahl, Jon Keith, MAJ, [redacted]
Bodden, Timothy Roy, SSGT, [redacted]
Bodenschatz, John Eugen, Jr., SGT, [redacted]
Bogard, Lonnie Pat, CAPT, [redacted]
Boggs, Paschal Glenn, MAJ [redacted].
Bogiages, Christos C., Jr., LTC, [redacted]
Bolte, Wayne Louis, LTC, [redacted]
Bond, Ronald Leslie, CAPT, [redacted]
Booth, James Ervin, CAPT, [redacted]
Booth, Lawrence Randolph, CAPT, [redacted].
Booze, Delmar George, CAPT, [redacted]
Borah, Daniel Vernon, Jr., LT, [redacted]
Borden, Murray Lyman, CAPT, [redacted]
Boronski, John Arthur, SSGT, [redacted]
Bors, Joseph Chester, LTC, [redacted]
Borton, Robert Curtis, Jr., SGT, [redacted].
Bosiljevac, Michael Joseph, CAPT, [redacted].
Bossio, Galileo Fred, COL, [redacted]
Boston, Leo Sydney, MAJ, [redacted]
Bott, Russell Peter, SFC, [redacted]
Bouchard, Michael Lora, LCDR, [redacted]
Bowers, Richard Lee, CAPT, [redacted]
Bowling, Roy Howard, CDR, [redacted].
Boyer, Alan Lee, SSGT, [redacted]
Bram, Richard Craig, FSGT, [redacted].
Brand, Joseph William, COL, [redacted]
Brashear, William James, MAJ, [redacted]
Brauner, Henry Paul, MAJ, [redacted]
Brazik, Richard, CAPT, [redacted]
Brennan, Herbert Owen, COL, [redacted]
Brett, Robert Arthur, Jr., 1LT, [redacted]
Breuer, Donald Charles, CAPT, [redacted]
Bridges, Jerry Glen, SSGT, [redacted]
Briggs, Ernest Frank, Jr., SSGT, [redacted]
Briggs, Ronald Daniel, CAPT, [redacted]
Brinckmann, Robert Edwin, COL, [redacted]
Broms, Edward James, Jr., LT, [redacted]
Brooks, John Henry Ralph, SP5, [redacted].
Brooks, Nicholas George, LT, [redacted]
Brooks, William Leslie, LTC, [redacted]
Brown, Donald Alan, MAJ, [redacted]
Brown, Earl Carlye, CAPT, [redacted]
Brown, George R., MSGT, [redacted]
Brown, Harry Willis, SSGT, [redacted]
Brown, Robert Mack, MAJ, [redacted]
Brown, Wayne Gordon, II, CAPT, [redacted]
Brown, Wilbur Ronald, MAJ, [redacted]
Brown, William Theodore, SSGT, [redacted]
Brownlee, Charles Richard, LTC, [redacted]
Brownlee, Robert Wallac, Jr., COL, [redacted].
Brucher, John Martin, MAJ, [redacted]
Buckley, Louis, Jr., SFC, [redacted]
Buell, Kenneth Richard, LCDR, [redacted]
Burdett, Edward Burke, COL, [redacted]
Burkart, Charles Willia, Jr., LTC, [redacted]
Burke, Michael John, SGT, [redacted]
Burnett, Sheldon John, LTC, [redacted]
Burnham, Donald Dawson, MAJ, [redacted]
Burnham, Mason Irwin, CAPT, [redacted]
Burns, Michael Paul, SSGT, [redacted]
Busch, Jon Thomas, CAPT, [redacted]
Bush, Elbert Wayne, SSGT, [redacted]
Bush, John Robert, CAPT, [redacted]
Bush, Robert Edward, LTC, [redacted]
Butler, James Edward, CWO, [redacted]
Butt, Richard Leigh, CAPT, [redacted]
Bynum, Neil Stanley, CAPT, [redacted]
Byrd, Hugh McNeil, Jr., CAPT, [redacted]
Calhoun, Johnny C., SSGT, [redacted]
Cameron, Kenneth Robbins, CDR, [redacted]
Cameron, Virgil King, LCDR, [redacted]
Campbell, William Edward, COL, [redacted]
Caniford, James Kenneth, TSGT, [redacted]
Capling, Elwyn Rex, LTC, [redacted]
Cappelli, Charles Edward, LTD, [redacted]
Caras, Franklin Angel, MAJ, [redacted]
Carlton, James Edmund, Jr., CAPT, [redacted]

Carpenter, Nicholas Mallor, LT, [redacted]
Carr, Donald Gene, CAPT, [redacted]
Carrier, Daniel Lewis, CAPT, [redacted]
Carroll, Patrick Henry, CAPT, [redacted]
Carter, Dennis Ray, SGT, [redacted].
Carter, James Louis, COL, [redacted]
Cartwright, Billie Jack, CAPT, [redacted]
Case, Thomas Franklin, LTC, [redacted]
Casey, Donald Francis, COL, [redacted]
Castillo, Richard, MAJ, [redacted]
Castro, Alfonso Roque, CAPT, [redacted]
Cavender, Jim Roy, CWO, [redacted]
Chambers, Jerry Lee, MAJ, [redacted]
Champion, James Albert, SGT, [redacted]
Charvet, Paul Claude, LCDR, [redacted]
Chavez, Gary Anthony, CAPT, [redacted]
Chestnut, Joseph Lyons, LTC, [redacted]
Chiarello, Vincent Augustu, CAPT, [redacted].
Chipman, Ralph Jim, CAPT, [redacted]
Christensen, Allen Duane, SP5, [redacted]
Christensen, John Michael, 1LT, [redacted]
Christensen, William Murre, LCDR, [redacted]
Christiano, Joseph, COL, [redacted]
Christiansen, Eugene F., SP5, [redacted]
Cichoh, Walter Alan, SSGT, [redacted]
Claflin, Richard Ames, MAJ, [redacted]
Clapper, Gean Preston, MSGT, [redacted]
Clark, Jerry Prosper, CWO, [redacted]
Clark, John Calvin II, CAPT, [redacted]
Clark, Lawrence, SMS, [redacted]
Clark, Philip Spratt Jr., LT [redacted]
Clark, Richard Champ, LT, [redacted]
Clark, Robert Alan, LTJG, [redacted]
Clark, Stanley Scott, COL, [redacted]
Clark, Thomas Edward, CAPT, [redacted]
Clark, Fred Lee, SMS, [redacted]
Clarke, George William, Jr., CAPT, [redacted].
Claxton, Charles Peter, LTC, [redacted]
Cleary, Peter McArthur, CAPT, [redacted]
Clem, Thomas Dean, CAPT, [redacted]
Cline, Curtis Roy, SGT, [redacted]
Clinton, Dean E., CWO, [redacted]
Coady, Robert Franklin, MAJ, [redacted]
Cobeil Earl Glenn, MAJ, [redacted]
Cochrane, Deverton C., SSGT, [redacted]
Coen, Harry Bob, SSGT, [redacted]
Cohron, James Derwin, SFC, [redacted]
Cole, Legrande Ogden, Jr., LCDR, [redacted]
Cole, Richard Milton, Jr., TSGT, [redacted]
Coleman, Jimmy Lee, SGT, [redacted]
Collamor, Allan Philip Jr., LCDR, [redacted]
Collins, Richard Frank, CDR, [redacted]
Coltman, William Clare, LTC, [redacted]
Colwell, William Kevin, SMS, [redacted]
Condit, Douglas Craig, CAPT, [redacted]
Conger, John Edward, Jr., SGT, [redacted]
Conklin, Bernard, LTC, [redacted]
Conlon, John Francis III, CAPT, [redacted]
Connell, James Joseph, LCDR, [redacted]
Conner, Lorenza, CAPT, [redacted]
Connolly, Vincent John, LTC, [redacted]
Connor, Charles Richard, MAJ, [redacted]
Consolvo, John Wadswort, Jr., CAPT, [redacted].
Cook, Donald Gilbert, MAJ, [redacted]
Cook, Glenn Richard, CAPT, [redacted]
Cook, Kelly Francis, COL, [redacted]
Cook, William Richard, COL, [redacted]
Cooley, David Leo, CDR, [redacted]
Coons, Henry Albert, CDR, [redacted]
Cooper, Richard Walter, Jr., CAPT, [redacted].
Cooper, William Earl, COL, [redacted]
Copak, Joseph Bernard, Jr., 1LT, [redacted]
Copley, William Michael, SSGT, [redacted]
Corbitt, Gilland Wales, COL, [redacted]
Cordova, Sam Gary, CAPT, [redacted]
Cornwell, Leroy Jason III, CAPT, [redacted]
Cozart, Robert Gordon, Jr., CAPT, [redacted].
Craddock, Randall James, CAPT, [redacted]
Craig, Philip Charles, LCDR, [redacted]
Crain, Carroll Owen, Jr., CDR, [redacted]
Cramer, Donald Martin, CWO, [redacted]
Craven, Andrew Johnson, SSGT, [redacted]
Creamer, James Edward, Jr., SP6, [redacted].
Creed, Barton Sheldon, LT, [redacted]
Cressey, Dennis Clarke, CAPT, [redacted]
Crew, James Alan, CAPT, [redacted]
Crews, John Hunter, III, CAPT, [redacted]
Cristman, Frederick Lewis, CWO, [redacted]
Crosby, Herbert Charles, CAPT, [redacted]
Crosby, Richard Alexander, SSGT, [redacted].
Cross, Ariel Lindley, CAPT, [redacted].
Crossman, Gregory John, CAPT, [redacted]
Crosson, Gerald Joseph, Jr., CAPT, [redacted].
Cruz, Carlos Rafael, CAPT, [redacted]
Cunningham, Kenneth Leroy, SP5, [redacted].
Curran, Patrick Robert, 1LT, [redacted].
Cushman, Clifton Emmett, MAJ, [redacted]
Cuthbert, Bradley Gene, MAJ, [redacted]
Cuthbert, Stephen Howard, CAPT. [redacted].
Czerwiec, Raymond George, SSGT, [redacted].
Daffron, Thomas Carl, CAPT, [redacted]
Dahill, Douglas Edward, SSGT, [redacted]
Dailey, Douglas Vincent, MSGT, [redacted]
Dale, Charles Alva, MAJ, [redacted]
Danielson, Benjamin Franklin, CAPT, [redacted].
Danielson, Mark Giles, CAPT, [redacted]
Darcy, Edward Joseph, MSGT, [redacted]
Dardeau, Oscar Moise, Jr., COL. [redacted]
Darr, Charles Edward, 1LT, [redacted]
Davies, Joseph Edwin, CAPT, [redacted]
Davis, Brent Eden, CAPT, [redacted]
Davis, Charlie Brown, Jr., COL, [redacted]
Davis, Daniel Richard, CAPT, [redacted]
Davis, Edgar Felton, MAJ, [redacted]
Davis, Francis John, LCDR, [redacted]
Davis, Gene Edmond, SMS, [redacted]
Davis, Ricardo Gonzalez, SFC, [redacted]
Davis, Robert Charles, MAJ, [redacted]
De Soto, Ernest Leo, LTC, [redacted]
Deane, William Lawrence, MAJ, [redacted]
Deichelmann, Samuel Mackal, MAJ, [redacted].
Deitsch, Charles Edward, CWO, [redacted]
Demmon, David Stanley, SSGT, [redacted]
Dennany, James Eugene, LTC, [redacted]
Dennis, William Roy, SSGT, [redacted]
Dennison, James Richard, CDR, [redacted]
Dennison, Terry Arden, CDR, [redacted]
Derrickson, Thomas G. II, MAJ, [redacted]
Deuter, Richard Carl, LT, [redacted]
Dewispelaere, Rexford John, TSGT, [redacted].
Dexter, Bennie Lee, TSGT, [redacted]
Di Tommaso, Robert Joseph, CAPT, [redacted].
Diamond Stephen Whitman, CAPT, [redacted].
Dickens, Delma Ernest, CAPT, [redacted]
Diehl, William Calvin Jr., LTC, [redacted]
Dingwall, John Francis, MGYS, [redacted]
Dix, Craig Mitchell, SP5, [redacted]
Doby, Herb, MAJ, [redacted]
Dodge, Edward Ray, SMAJ, [redacted]
Dodge, Ronald Wayne, LCDR, [redacted]
Dodge, Ward Kent, COL, [redacted]
Dolan, Thomas Albert, SP5, [redacted]
Donahue, Morgan Jefferson, CAPT, [redacted].
Donnelly, Verne George, CDR, [redacted]
Donovan, Michael Leo, CAPT, [redacted]
Dooley, James Edward, LT, [redacted]
Dotson, Jefferson Scott, CAPT, [redacted]
Douglas, Thomas Evan, SSGT, [redacted].
Downing, Donald William, MAJ, [redacted]
Doyle, Michael William, LCDR, [redacted]
Ducat, Bruce Chalmers, CAPT, [redacted]
Duckett, Thomas Allen, CAPT, [redacted]
Dudash, John Francis, LTC, [redacted]
Duy, John Everett, CAPT, [redacted]
Dugan, Thomas Wayne, LTC, [redacted]
Duggan, William Young, MAJ, [redacted]
Duncan, Robert Ray, LT, [redacted]
Dunlap, William Charles, CWO, [redacted]
Dunn, Joseph Patrick, LT, [redacted]
Dunn, Michael Edward, LCDR, [redacted]
Dusing, Charles Gale, SMS, [redacted]
Duvall, Dean Arnold, MSGT, [redacted]
Dyczkowski, Robert Raymond, MAJ, [redacted].
Dye, Melvin Carnills, SSGT, [redacted]
Eads, Dennis Keith, CWO, [redacted]
Earll, David John, MAJ, [redacted]
Eaton, Curtis Abbot, COL, [redacted]
Eaton, Norman Dale, COL, [redacted]
Echanis, Joseph Ygnacio, MAJ, [redacted]
Echevarria, Raymond Louis, SMAJ, [redacted].
Eckley, Wayne Alvin, MSGT, [redacted]
Ecklund, Arthur Gene, CAPT, [redacted]
Edgar, Robert John, CAPT, [redacted]
Edmondson, William Rothroc, CAPT, [redacted].
Edmunds, Robert Clifton, Jr., CAPT, [redacted].
Edwards, Harry Sanford, Jr., LCDR, [redacted]
Egan, James Thomas, Jr., CAPT, [redacted]
Eidsmoe, Norman Edward, CDR, [redacted]
Eilers, Dennis Lee, CAPT, [redacted]
Elkins, Frank Callihan, LCDR, [redacted]
Elliot, Robert Malcolm, MAJ, [redacted]
Elliott, Andrew John, CWO, [redacted]
Elliott, Jerry, W., SSGT, [redacted]
Elliott, Robert Thomas, SGT, [redacted]
Ellis, Billy Joe, SSGT, [redacted]
Ellis, Randall Shelley, SSGT, [redacted]
Ellis, William, Jr., SSGT, [redacted]
Ellison, John Cooley, CDR, [redacted]
Elzinga, Richard Gene, CAPT, [redacted]
Emrich, Roger Gene, LCDR, [redacted]
Engelhard, Erich Carl, LTC, [redacted]
Englander, Lawrence Jesse, SSGT, [redacted].
Entrican, Danny Day, CAPT, [redacted]
Erickson, David Wayne, SGT, [redacted]
Espenshied, John Lee, LTC, [redacted]
Estes, Walter O., II, LT, [redacted]
Estocin, Michael John, CDR, [redacted]
Evans, Cleveland, Jr., SSGT, [redacted]
Evans, James Joseph, CDR, [redacted]
Evert, Lawrence Gerald, MAJ, [redacted]
Fallon, Patrick Martin, COL, [redacted]
Fanning, Hugh Michael, CAPT, [redacted]
Fanning, Joseph Peter, CAPT, [redacted]
Featherston, Fieldin W., III, CAPT, [redacted].
Feldhaus, John Anthony, LCDR, [redacted]
Fellenez, Charles Richard, MSGT, [redacted].
Fellows, Allen Eugene, COL, [redacted]
Fenter, Charles Frederick, SGT, [redacted]
Ferguson, Douglas David, CAPT, [redacted]
Ferguson, Walter, Jr., SSGT, [redacted]
Fickler, Edwin James, CAPT, [redacted]
Fieszel, Clifford Wayne, MAJ, [redacted]
Finley, Dickie Waine, SSGT, [redacted]
Finn, William Robert, ILT, [redacted]
Finney, Arthur Thomas, COL, [redacted]
Finney, Charles Elbert, CAPT, [redacted]
Fischer, Richard William, SGT, [redacted]
Fisher, Donald Ellis, COL, [redacted]
Fisher, Donald Garth, LTC, [redacted]
Fitton, Crosley James, Jr., LTC, [redacted]
Fitts, Richard Allan, SSGT, [redacted]
Fitzgerald, Joseph Edward, SSGT, [redacted]
Fitzgerald, Paul L., Jr., SSGT, [redacted]
Flanigan, John Norlee, CAPT, [redacted]
Fleming, Horace Higley II, CAPT, [redacted]
Foley, Brendan Patrick, LTC, 10[redacted]
Forman, William Stannard, LCDR, [redacted]
Forrester, Ronald Wayne, 1LT, [redacted]

Fors, Gary Henry, CAPT, [redacted].
Fortner, Frederick John, LT, [redacted].
Foster, Marvin Lee, LTC, [redacted].
Foster, Paul Leonard, MSGT, [redacted].
Foulks, Ralph Eugene, Jr., LT, [redacted].
Fowler, Donald Randall, SP6, [redacted].
Fowler, James Alan, MAJ, [redacted].
Francisco, San Dewayne, CAPT, [redacted].
Franklin, Charles Edward, LTC, [redacted].
Frawley, William David, LCDR, [redacted].
Frederick, John William, Jr., CWO, [redacted].
Frederick, Peter Joseph, COL, [redacted].
Frederick, William V., MAJ, [redacted].
Frenyea, Edmund Henry, AFCM, [redacted].
Fryar, Bruce Carlton, LT, [redacted].
Fullam, Wayne Eugene, LTC, [redacted].
Fuller, James Ray, MSGT, [redacted].
Fuller, William Otis, MAJ, [redacted].
Fullerton, Frank Eugene, CDR, [redacted].
Gage, Robert Hugh, SGT, [redacted].
Galbraith, Russell Dale, CAPT, [redacted].
Gallagher, John Theodore, SSGT, [redacted].
Galvin, Ronald Edmond, ATC, [redacted].
Ganley, Richard Owen, MAJ, [redacted].
Ganoe, Berman Junior, SP5, [redacted].
Garcia, Ricardo Martinez, SP5, [redacted].
Gardner, John Garrett, CAPT, [redacted].
Garwood, Robert Russell, PFC, [redacted].
Gates, James Wayne, MAJ, [redacted].
Gatewood, Charles Hue, SGT. [redacted].
Gatwood, Robin Frederic, Jr., CAPT, [redacted].
Gauthler, Dennis Lee, SGT, [redacted].
Gee, Paul Stuart, CAPT, [redacted].
Gelst, Stephen Jonathan, SSGT, [redacted].
Gerstel, Donald Arthur, LCDR, [redacted].
Gervals, Donald Peter, SFC, [redacted].
Getchell, Paul Everett, MAJ, [redacted].
Giammarino, Vincent Frank, SSGT, [redacted].
Giannangeli, Anthony Robert, LTC, [redacted].
Gilbert, Paul Faris, CAPT, [redacted].
Gilchrist, Robert Michael, CAPT, [redacted].
Gillen, Thomas Eldon, LTC, [redacted].
Gist, Tommy Emerson, MAJ, [redacted].
Glasson, William Albert, Jr., LCDR, [redacted].
Glover, Calvin Charles, MSG, [redacted].
Glover, Douglas J., SSGT, [redacted].
Godwin, Solomon Hughey, CWO, [redacted].
Goff, Kenneth B., Jr., CAPT, [redacted].
Golberg, Lawrence Herbert, LTC, [redacted].
Gold, Edward Frank, CDR, [redacted].
Gomez, Robert Arthur, CAPT, [redacted].
Gonzalez, Jesus Armando, SSGT, [redacted].
Goodwin, Charles Bernard, LCDR, [redacted].
Goss, Bernard Joseph, COL, [redacted].
Gould, Frank Alton, MAJ, [redacted].
Gourley, Laurent Lee, CAPT, [redacted].
Govan, Robert Allen, MAJ, [redacted].
Grace, James William, CAPT, [redacted].
Graff, John George, LCFR, [redacted].
Graffe, Paul Leroy, CAPT, [redacted].
Graham, Allen Upton, CAPT, [redacted].
Graham, Dennis Lee, CAPT, [redacted].
Graham, James Scott, LCDR, [redacted].
Graustein, Robert Stewart, LCDR, [redacted].
Graziosi, Francis George, SSGT, [redacted].
Green, Frank Clifford, Jr., CDR, [redacted].
Green, Norman Morgan, COL, [redacted].
Greenwood, Robert Roy, Jr., MAJ, [redacted].
Greer, Robert Lee, SGT, [redacted].
Gregory, Robert Raymond, LTC, [redacted].
Greiling, David Scott, CDR, [redacted].
Grenzebach, Earl Wilfre, Jr., LTC, [redacted].
Grewell, Larry Irwin, MSGT, [redacted].
Griffin, James Lloyd, CDR, [redacted].
Griffin, Rodney Lynn, SGT, [redacted].
Griffith, Robert Smith, SSGT, [redacted].
Grosse, Christopher A., Jr., SSGT, [redacted].
Groth, Wade Lawrence, SSGT, [redacted].
Grubb, Peter Arthur, CAPT, [redacted].
Grubb, Wilmer Newlin, LTC, [redacted].
Guillermin, Louis Fulda, CAPT, [redacted].
Guillet, Andre Roland, MSGT, [redacted].
Guillory, Edward Joseph, SMAJ, [redacted].
Gunn, Alan Wendell, CWO, [redacted].
Hackett, Harley B., III, CAPT, [redacted].
Hagan, John Robert, 1LT, [redacted].
Hagerman, Robert Warren, COL, [redacted].
Haifley, Michael Firestone, LT, [redacted].
Hail, William Warren, MAJ, [redacted].
Hall, Donald Joe, MSGT, [redacted].
Hall, Fredrick Mervyn, CAPT, [redacted].
Hall, Harley Hubert, CDR, [redacted].
Hall, James Shreve, SMS, [redacted].
Hall, James Wayne, LCDR, [redacted].
Hallberg, Roger C., SSGT, [redacted].
Halpin, Richard Conroy, CAPT, [redacted].
Hamilton, Dennis Clark, CWO, [redacted].
Hamilton, Eugene David, LTC, [redacted].
Hamilton, John Smith, LTC [redacted].
Hamilton, Roger Dale, SGT, [redacted].
Hamm, James Edward, CAPT, [redacted].
Handrahan, Eugene Allen, SSGT, [redacted].
Hanley, Larry James, CAPT, [redacted].
Henley, Terence Higgins, LT, [redacted].
Hanna, Kenneth, MSGT, [redacted].
Hansen, Lester Alan, CWO, [redacted].
Hanson, Robert Taft, Jr., LCDR, [redacted].
Hanson, Stephen Paul, CAPT, [redacted].
Hanson, Thomas Patterson, CAPT, [redacted].
Harber, Stephen James, SGT, [redacted].
Hardy, Arthur Hans, 1LT, [redacted].
Hardy, John Kay, Jr., CAPT, [redacted].
Hargrove, Olin, Jr., SSGT, [redacted].
Harley, Lee Dufford, MAJ, [redacted].
Harned, Gary Alan, SGT, [redacted].
Harris, Bobby Glenn, SGT, [redacted].
Harris, Cleveland Scott, CAPT, [redacted].
Harris, Gregory John, SSGT, [redacted].
Harris, Jeffrey Lyndol, CAPT, [redacted].
Harris, Reuben Beaumont, ATCS, [redacted].
Harris, Stephen Warren, TSGT, [redacted].
Harrison, Donald Lee, CAPT, [redacted].
Harrison, Robert Heerman, MAJ, [redacted].
Harrold, Patrick Kendal, CAPT, [redacted].
Hart, Thomas Trammell, III, CAPT, [redacted].
Hartman, Richard Danner, CDR, [redacted].
Hartness, Gregg, MAJ, [redacted].
Hartney, James Cuthbert, COL, [redacted].
Harvey, Jack Rockwood, CAPT, [redacted].
Harwood, James Arthur, SGT, [redacted].
Harworth, Elroy Edwin, MSGT, [redacted].
Haselton, John Herbert, 1LT, [redacted].
Hasenbeck, Paul Alfred, SSGT, [redacted].
Hassenger, Arden Keith, SMS, [redacted].
Hastings, Steven Morris, SSGT, [redacted].
Hauer, Leslie John, COL, [redacted].
Hauer, Robert Douglas, CAPT, [redacted].
Hawkins, Edgar Lee, MAJ, [redacted].
Hawthorne, Richard William, MAJ, [redacted].
Heggen, Keith Russell, LTC, [redacted].
Heiskell, Lucius Lamar, CAPT, [redacted].
Heitman, Steven W., SSGT, [redacted].
Helber, Lawrence Neal, CAPT, [redacted].
Held, John Wayne, MAJ, [redacted].
Helmich, Gerald Robert, MAJ, [redacted].
Henderson, William Roy, SFC, [redacted].
Henn, John Robert, Jr., CWO, [redacted].
Henninger, Howard William, LTC, [redacted].
Hensley, Ronnie Lee, TSGT, [redacted].
Hensley, Thomas Truett, CAPT, [redacted].
Herreid, Robert Dale, SSGT, [redacted].
Herrera, Frederick Daniel, SGT, [redacted].
Herrick, James Wayne, Jr., 1LT, [redacted].
Herrin, Henry Howard, Jr., PHCS, [redacted].
Herrold, Ned Raymond, CAPT, [redacted].
Hesford, Peter Dean, CAPT, [redacted].
Hess, Frederick William, Jr., CAPT, [redacted].
Hestle, Roosevelt, Jr., COL, [redacted].
Hewitt, Samuel Eugene, SGT, [redacted].
Hicks, Prentice Wayne, SSGT, [redacted].
Hicks, Terrin Dinsmore, MAJ, [redacted].
Hilbrich, Barry Wayne, CAPT, [redacted].
Hill, Billy David, SSGT, [redacted].
Hill, Gordon Clark, 1LT, [redacted].
Hill, Robert La Verne, SMS, [redacted].
Hockridge, James Alan, CAPT, [redacted].
Hodgson, Cecil J., MSGT, [redacted].
Hoff, Michael George, CDR, [redacted].
Hoff, Sammie Don, CAPT, [redacted].
Hogan, Jerry Franks, LCDR, [redacted].
Holdeman, Robert Eugene, CAPT, [redacted].
Holguin, Luis Gallegos, CWO, [redacted].
Holley, Tilden Stewart, MAJ [redacted].
Holmes, David Hugh, MAJ, [redacted].
Holmes, Frederick Lee, LCDR, [redacted].
Holmes, Lester Evan, COL, [redacted].
Holt, James William, MSGT, [redacted].
Holton, Robert Edwin, CAPT, [redacted].
Hopper, Earl Pearson, Jr., CAPT, [redacted].
Horne, Stanley Henry, LTC, [redacted].
Hosken, John Charles, CWO, [redacted].
Hoskins, Charles Lee, CAPT, [redacted].
Hoskinson, Robert Eugene, LTC, [redacted].
Housh, Anthony Frank, SP6, [redacted].
Howard, Lewis, Jr., SGT, [redacted].
Howell, Carter Avery, CAPT, [redacted].
Howes, George Andrews, CWO, [redacted].
Hrdlicka, Davis Louis, MAJ, [redacted].
Huard, James Linton, CAPT, [redacted].
Huberth, Eric James, CAPT, [redacted].
Huddleston, Lynn Ragle, CAPT, [redacted].
Hummel, John Floyd, CWO, [redacted].
Huneycutt, Charles J., Jr., CAPT, [redacted].
Hunt, James D., LT, [redacted].
Hunt, Leon Andrew, SSGT, [redacted].
Hunt, Robert William, SFC, [redacted].
Hunt, William Balt, SFC, [redacted].
Hunter, Russell Palmer, Jr., MAJ, [redacted].
Huston, Charles Gregory, SSGT, [redacted].
Ibanez, Di Reyes, SSGT, [redacted].
Innes, Roger Burns, LT, [redacted].
Ireland, Robert Newell, SMS, [redacted].
Irsch, Wayne Charles, CAPT, [redacted].
Irwin, Robert Harry, MAJ, [redacted].
Ivan, Andrew, Jr., CAPT, [redacted].
Jackson, James Wesley, Jr., SGT, [redacted].
Jakovac, John Andrew, SSGT, [redacted].
Jamerson, Larry Carl, SP6, [redacted].
James, Samuel Larry, CAPT, [redacted].
Jarvis, Jeremy Michael, CAPT, [redacted].
Jefferson, James Milton, CAPT, [redacted].
Jefferson, Perry Henry, CAPT, [redacted].
Jeffords, Derrell Blackbur, COL, [redacted].
Jeffs, Clive Garth, CAPT, [redacted].
Jensen, George William, COL, [redacted].
Johns, Paul Frederick, LTC, [redacted].
Johns, Vernon Zigman, SSGT, [redacted].
Johnson, Allen Louis, MAJ, [redacted].
Johnson, Bruce Gardner, MAJ, [redacted].
Johnson, Edward Harvey, MAJ, [redacted].
Johnson, Frankie B., Jr., SP6, [redacted].
Johnson, Guy David, CAPT, [redacted].
Johnson, Randolph Leroy, SP5, [redacted].
Johnson, William Darrell, SSGT, [redacted].
Jones, Bobby Marvin, CAPT, [redacted].
Jones, James E., MSGT, [redacted].
Jones, Louis Farr, COL, [redacted].
Jones, Orvin Clarence, Jr., CAPT, [redacted].
Jones, William Eugene, CAPT, [redacted].
Jordan, Larry Michael, LCDR, [redacted].
Kahler, Harold, LTC, [redacted].
Kane, Richard Raymond, CAPT, [redacted].
Karins, Joseph John, Jr., MAJ, [redacted].
Karst, Carl Frederick, LTC, [redacted].
Kearns, Joseph Thomas, Jr., MAJ, [redacted].
Keiper, John Charles, SSGT, [redacted].
Keler, Jack Elmer, CAPT, [redacted].
Keller, Wendell Richard, MAJ [redacted].

Kemmerer, Donald Richard, CAPT, [redacted].
Kennedy, Allan Gordon, SP6, [redacted]
Kennedy, James Edward, SP5, [redacted]
Kennedy, John William, CAPT, [redacted]
Kent, Robert Duane, CAPT, [redacted].
Kerr, Everett Oscar, MAJ, [redacted]
Ketchie, Scott Douglas, 1LT, [redacted].
Ketterer, James Alan, CAPT, [redacted].
Kibbey, Richard Abbott, MAJ [redacted].
Kiefel, Ernst Philip, Jr., MAJ, [redacted].
Kier, Larry Gene, SGT, [redacted]
Kilcullen, Thomas Michael, CAPT, [redacted].
Killian, Melvin Joseph, COL, [redacted].
Kilpatrick, Larry Ronald, LT, [redacted].
Kimsey, William Arthur, Jr., CWO, [redacted].
King, Charles Douglas, TSGT, [redacted]
King, Donald Lewis, LTC, [redacted]
Kinkade, William Louis, CAPT, [redacted]
Kipina, Marshall Frederick, SSGT, [redacted].
Kirby, Bobby Alexander, MAJ, [redacted]
Klemm, Donald Martin, COL, [redacted]
Klenda, Dean Albert, CAPT, [redacted]
Klenert, William Blue, LT, [redacted].
Klimo, James Robert, SP6, [redacted]
Klinck, Harrison Hoyt, MAJ, [redacted]
Kline, Robert Earl, LTC, [redacted]
Kline, Donald Herman, TSGT, [redacted]
Knabb, Kenneth Keith, Jr., LCDR, [redacted].
Knapp, Herman Judwig, COL, [redacted]
Knebel, Thomas Edward, MSGT, [redacted]
Knight, Henry Clay, CWO, [redacted]
Knight, Larry Dale, CAPT, [redacted]
Knight, Roy Abner, Jr., LTC, [redacted]
Knutson Richard Arthur, WO, [redacted]
Kolstad, Thomas Carl, CDR, [redacted].
Kommendant, Aado, CAPT, [redacted]
Koonce, Terry Treloar, MAJ, [redacted]
Koons, Dale Francis, CAPT, [redacted]
Kosko, Walter, MAJ, [redacted]
Kott, Stephen Jay, CAPT, [redacted].
Krausman, Edward L., SGT, [redacted].
Kroboth, Stanley Neal, CAPT, [redacted]
Kormmenhoek, Jeffrey Marti, LCDR, [redacted]
Kroske, Harold William, Jr., CAPT, [redacted].
Krupa, Frederick, CAPT, [redacted]
Kryszak, Theodore Eugene, LTC, [redacted]
Kuhiman, Robert John, Jr., CAPT, [redacted].
Kwortnik, John Charles, LTC, [redacted]
La Bohn, Gary Russell, SSGT, [redacted]
La Porte, Michael Louis, HMC, [redacted].
Lacey, Richard Joseph, SSGT, [redacted]
Ladewig, Melvin Earl, CAPT, [redacted]
Lafayette, John Wayne, MAJ, [redacted]
Lagerwall, Harry Roy, CAPT, [redacted]
Lancaster, Kenneth Ray, SSGT, [redacted]
Lane, Charles, Jr., CAPT, [redacted]
Lane, Glen Oliver, MSGT, [redacted]
Lane, Mitchell Sim, CAPT, [redacted]
Laney, Billy Ray, MSGT, [redacted]
Lannom, Richard Olive, LT, [redacted].
Latimer, Clarence Albert, SSGT, [redacted]
Lauierio, Manuel Alonzo, SP5, [redacted]
Lawrence, Bruce Edward, CAPT, [redacted]
Lee, Charles Richard, LCDR, [redacted].
Lee, Leonard Murray, CDR, [redacted].
Leeper, Wallace Wilson, CWO, [redacted]
Leet, David Leverett, CAPT, [redacted]
Leetun, Darel Dean, LTC, [redacted]
Lefever, Douglas Paul, CAPT, [redacted]
Lehnhoff, Edward William, Jr., MAJ. [redacted].
Lehrke, Stanley Lawrence, SSGT, [redacted].
Lemmons, William E., CAPT, [redacted]
Lemon, Jeffrey Charles, CAPT, [redacted]
Leonor, Leonardo Capistran, CAPT, [redacted].
Lerner, Irwin Stuart, CAPT, [redacted]
Lester, Roderick Barnum, LT, [redacted]
Levis, Charles Allen, LTC, [redacted]
Lewandowski, Leonard J., Jr., SGT, [redacted].
Lewis, James Wimberley, LTC, [redacted]
Lewis, Merrill Raymond, Jr., MAJ, [redacted].
Liles, Robert Leonel, Jr., CAPT, [redacted]
Lillund, William Allan, CAPT, [redacted]
Lilly, Carroll Baxter, MAJ, [redacted]
Lindewald, Charles W., Jr., MSGT, [redacted].
Lindland, Donald Frederick, LCDR, [redacted].
Lindstrom, Ronnie George, CAPT, [redacted].
Lineberger, Harold Benton, MAJ, [redacted]
Link, Robert Charles, CWO, [redacted]
Lini, Donald Michael, SSGT, [redacted]
Lockhart, George Barry, CAPT, [redacted]
Lodge, Robert Alfred, MAJ, [redacted]
Loheed, Hubert Bradford, CAPT, [redacted].
Long, John Henry Sothorn, CAPT, [redacted].
Lono, Luther Albert, MAJ, [redacted].
Lord, Arthur James, MAJ, [redacted]
Lucki, Albin Earl, CAPT, [redacted]
Lull, Howard Burdette, Jr., SFC, [redacted]
Luna, Carter Purvis, COL, [redacted]
Luna, Donald Alfred, MAJ, [redacted]
Lunsford, Herbert Lamar, COL, [redacted]
Luster, Robert Lee, SGT, [redacted]
Luttrell, James Martin, SFC, [redacted]
Lynn, Robert Ray, CAPT, [redacted]
Lyon, Donavan Loren, MAJ, [redacted]
MacCann, Henry Elmer, LTC, [redacted]
MacDonald, George Duncan, 1LT, [redacted]
MacKedanz, Lyle Everett, SFC, [redacted]
Macko, Charles, LTC, [redacted]
Maddox, Notley Gwynn, COL, [redacted]
Madison, William Louis, SMS, [redacted]
Magee, Patrick Joseph, SP6, [redacted]
Mahan, Douglas Frank, CAPT, [redacted]
Mallon, Richard Joseph, CAPT, [redacted]
Malone, Jimmy McDonald, SSGT, [redacted].
Mamiya, John Michio, SMS, [redacted]
Mangino, Thomas Angelo, SSGT, [redacted]
Marik, Charles Weldon, LCDR, [redacted].
Martin, Douglas Kent, CAPT, [redacted]
Martin, John Murray, MAJ, [redacted]
Martin, Larry Eugene, CAPT, [redacted]
Martin, Richard D., SSGT, [redacted]
Martin, Russell Dean, CAPT, [redacted].
Mascari, Phillip Louis, CAPT, [redacted]
Mason, William Henderson, COL, [redacted]
Massucci, Martin John, CAPT, [redacted]
Masterson, Michael John, MAJ, [redacted]
Masuda, Robert Susumu, SSGT, [redacted]
Mateja, Alan Paul, CAPT, [redacted]
Matthes, Peter Richard, CAPT, [redacted]
Mauterer, Oscar, COL, [redacted]
Maxwell, Calvin Walter, CAPT, [redacted]
Maxwell, Samuel Chapman, LTC, [redacted]
May, David Murray, CAPT, [redacted]
Mayer, Roderick Lewis, LCDR, [redacted].
Mayercik, Ronald Michael, CAPT, [redacted].
McCain, Marvin Raymond, Jr., SSGT, [redacted]
McCleary, Georgia Carlton, COL, [redacted]
McCrary, Jack, SMS, [redacted]
McCubrin, Glenn Dewayne, CAPT, [redacted].
McDaniel, Morris L., Jr., LTC, [redacted]
McDonald, Emmett Raymond, MAJ, [redacted]
McDonald, Kurt Casey, MAJ, [redacted]
McDonnell, John Terence, MAJ, [redacted]
McElhanon, Michael Owen, LTC, [redacted]
McGar, Brian Kent, SSGT, [redacted]
McGarvey, James Maurice, MAJ, [redacted].
McGouldrick, Francis J., Jr., LTC, [redacted].
McGrath, William Darrell, CDR, [redacted].
McKenney, Kenneth Dewey, MSGT, [redacted].
McLean, James Henry, SFC, [redacted]
McMahan, Robert Charles, LT, [redacted].
McMurray, Fred Howell, Jr., CAPT, [redacted].
McPhail, William Thomas, CAPT, [redacted].
McPherson, Everett Alvin, CAPT, [redacted].
McCarty, James Lon, CAPT, [redacted]
McCormick, Michael Timothy, LT, [redacted].
McDonald, Joseph William, 1LT, [redacted]
McElvain, James Richard, MAJ, [redacted]
McKittrick, James Clifford, CAPT, [redacted].
McLaughlin, Arthur Vincent, MSGT, [redacted].
Meadows, Eugene Thomas, CAPT, [redacted].
Mearns, Arthur Stewart, COL, [redacted]
Medaris, Rick Eggburtus, SP5, [redacted]
Meder, Paul Oswald, MAJ, [redacted]
Mein, Michael Howard, SSGT, [redacted]
Meldahl, Charles Howard, SSGT, [redacted]
Mellor, Fredric Moore, LTC, [redacted]
Menges, George Bruce, CAPT, [redacted]
Mercer, Jacob Edward, MSGT, [redacted]
Meroney, Virgil Kersh, III, CAPT, [redacted].
Metz, James Hardin, LTC,, [redacted]
Meyer, William Michael, MAJ, [redacted]
Midnight, Francis Barnes, CAPT, [redacted]
Milikin, Richard, M., III, CAPT, [redacted]
Milius, Paul Lloyd, CAPT, [redacted].
Millard, Charles Worth, CWO, [redacted]
Miller, Carl Dean, LTC, [redacted]
Miller, Curtis Daniel, CAPT, [redacted]
Miller, Richard Arthur, CAPT, [redacted].
Milliner, William Patrick, CWO, [redacted]
Millner, Michael, SFC, [redacted]
Mills, James Burton, LCDR, [redacted].
Minnich, Richard Willis, Jr., LCDR, [redacted].
Mishuk, Richard Edward, SGT, [redacted].
Mitchell, Albert Cook, LTC, [redacted]
Mitchell, Gilbert Louis, LT, [redacted].
Mitchell, Thomas Barry, CAPT, [redacted]
Monroe, Vincent Duncan, CDR, [redacted].
Moore, Herbert William, Jr., CAPT, [redacted]
Moore, James Rodney, SGT, [redacted].
Moore, Jerry Lawrence, SGT, [redacted]
Moore, Maurice Henry, SSGT, [redacted]
Moore, Thomas, SMS, [redacted]
Moorman, Frank David, SSGT, [redacted]
Moreida, Manuel Jesus, SSGT, [redacted]
Moreland, James Leslie, SSGT, [redacted]
Moreland, William David, CAPT, [redacted].
Morgan, Charles Elzy, MAJ, [redacted].
Morgan, Edwin Everton, SMS, [redacted]
Morgan, James Sheppard, LTC, [redacted]
Morgan, Thomas Raymond, MAJ, [redacted]
Morin, Richard Girard, CAPT, [redacted].
Morely, Charles Frank, CAPT, [redacted]
Morrill, Merwin Lamphrey, MAJ, [redacted]
Morris, George William, Jr., CAPT, [redacted].
Morris, Robert John, Jr., CAPT, [redacted]
Morrison, Glenn Raymond, Jr., MAJ, [redacted].
Morrison, Joseph Castleman, LTC, [redacted].
Morrissey, Robert David, MAJ, [redacted]
Morrow, Larry Kane, SGT, [redacted]
Morrow, Richard David, CDR, [redacted].
Mossman, Harry Seeber, LT, [redacted]
Mullen, William Francis, MAJ, [redacted].
Mullins, Harold Eugene, SMS, [redacted]
Mundt, Henry Gerald, II, CAPT, [redacted]
Munoz, David Louie, SGT, [redacted]
Murphy, Larron David, CAPT, [redacted]
Murray, Patrick Peter, CAPT, [redacted].
Musselman, Stephen Owen, LTJG, [redacted].

Neal, Dennis Paul, CAPT, [redacted]
Neeld, Bobby Gene, LTC, [redacted]
Nellans, William Lee, MAJ, [redacted]
Nelson, James Raymond, SSGT, [redacted].
Nelson, Richard Crawford, LCDR, [redacted]
Nelson, William Humphrey, COL, [redacted]
Netherland, Roger Morton, CAPT, [redacted]
Newman, Larry Jerome, TSGT, [redacted]
Newsom, Benjamin Byrd, COL, [redacted]
Newton, Charles Vernon, SFC, [redacted]
Newton, Donald Stephen, SFC, [redacted]
Newton, Warren Emergy, SSGT, [redacted].
Nichols, Hubert Campbel, Jr., COL, [redacted]
Nidds, Daniel Russell, SSGT [redacted]
Nobert, Craig Roland, CAPT [redacted]
Nopp, Robert Graham, LTC [redacted]
Nordahl, Lee Edward, LCDR, [redacted]
Norton, Michael Robert, SGT, [redacted]
Nyhof, Richard E., TSGT, [redacted]
Nystrom, Bruce August, CAPT, [redacted]
O'Brien, Kevin, CAPT, [redacted]
O'Donnell, Michael Davis, CAPT, [redacted]
O'Donnell, Samuel, Jr., CAPT, [redacted]
O'Grady, John Francis, COL [redacted]
O'Hara, Robert Charles, SP6 [redacted]
Okerland, Thomas Richard, CWO, [redacted]
Olds, Ernest Arthur, LTC, [redacted]
Olsen, Floyd Warren, MAJ [redacted].
Olson, Barry A., SSGT, [redacted]
Olson, Gerald Everett, CAPT, [redacted]
Omelia, Dennis William, CWO, [redacted]
O'Neill, Douglas Lee, WO, [redacted]
Orell, Quinlan Roberts, CDR, [redacted]
Orr, Warren Robert, Jr., CAPT, [redacted]
Osborne, Edwin Nelms, Jr., MAJ [redacted]
Ostermeyer, William Henry, CAPT, [redacted]
Ott, William August, MAJ, [redacted]
Overlock, John Francis, MAJ [redacted]
Owen, Robert Duval, SFC, [redacted]
Owen, Timothy Samuel, SSGT [redacted]
Owens, Joy Leonard, COL, [redacted]
Pabst, Eugene Matthew, CAPT [redacted]
Packard, Ronald Lyle, CAPT [redacted]
Padgett, David Eugene, CAPT [redacted]
Page, Albert Linwood, Jr., MAJ [redacted]
Page, Gordon Lee, LTC, [redacted]
Palen, Carl Anthony, SP6, [redacted]
Palenscar, Alexander J., III, LCDR, [redacted]
Palmer, Gilbert Swain, COL, [redacted]
Palmgren, Edwin David, COL, [redacted]
Panek, Robert Joseph, Sr., MAJ [redacted]
Parker, Frank C., III, CAPT [redacted]
Parker, Woodrow Wilson, II, CAPT, [redacted]
Parra, Lionel, Jr., CAPT, [redacted]
Parsley, Edward Milton, MSGT, [redacted]
Parsons, Don Brown, Jr., LCDR, [redacted]
Parsons, Donald Eugene, LTC, [redacted]
Parsons, Michael Duane, CAPT [redacted]
Pasekoff, Robert Edward, LTC [redacted]
Pate, Gary, MSGT, [redacted]
Patterson, James Kelly, LCDR, [redacted]
Pattillo, Ralph Nathan, MAJ [redacted]
Patton, Kenneth James, SSGT [redacted]
Paul, Craig Allen, CAPT, [redacted]
Pauley, Marshall Irvin, MSGT [redacted]
Paulson, Merlyn Leroy, TSGT [redacted]
Pawlish, George Francis, LT, [redacted]
Paxton, Donald Elmer, COL, [redacted]
Payne, John Allen, SSGT, [redacted]
Payne, Norman, SFC, [redacted]
Peace, John Darlington, III, CDR, [redacted]
Peacock, John Robert, II, CAPT [redacted]
Pearce, Edwin Jack, TSGT, [redacted]
Pearson, Robert Harvey, CAPT, [redacted]
Pearson, Wayne Edward, MAJ, [redacted]
Pederson, Joe Palmer, SFC [redacted]
Pemberton, Gene Thomas, COL, [redacted]
Pender, Orland James, Jr., LT [redacted]
Perisho, Gordon Samuel, LCDR, [redacted]
Perrinf, Elton Lawrence, MAJ [redacted]
Perry, Randolph Allen, Jr., MAJ [redacted]
Perry, Ronald Dwight, CAPT, [redacted]
Perry, Thomas Hepburn, SSGT [redacted]
Peterson, Gaylord Dean, MAJ, [redacted]
Peterson, Delbert Ray, CAPT, [redacted]
Peterson, Mark Allan, 1LT, [redacted]
Phelps, William, 1LT, [redacted]
Phillips, Daniel Raymond, SSGT [redacted]
Phillips, Robert Paul, SP4, [redacted]
Phipps, James Larry, CWO, [redacted]
Pierson, William C., III, CWO, [redacted]
Pietsch, Robert Edward, MAJ, [redacted]
Piittmann, Allan Dale, MSGT, [redacted]
Pike, Dennis Stanley, LT, [redacted]
Pike, Peter Xavier, CAPT, [redacted]
Pilkington, Thomas Holt, LT, [redacted]
Pirker, Victor John, SSGT, [redacted].
Pitman, Peter Potter, MAJ [redacted]
Pitt, Albert, MAJ, [redacted]
Pitzen, John Russell, CDR, [redacted]
Plassmeyer, Bernard Herber, 1LT, [redacted]
Platt, Robert Lenwood, Jr., SSGT., [redacted]
Plowman, James Edwin, LT, [redacted]
Pogreba, Dean Andrew, COL, [redacted]
Pollin, George John, CAPT, [redacted]
Polster, Harmon, 1LT, [redacted]
Pool, Jerry Lynn, CAPT, [redacted]
Poole, Charlie Sherman, MSGT, [redacted]
Poor, Russell, Arden, MAJ, [redacted]
Potter, William Joseph, Jr., CAPT, [redacted]
Potter, William Tod, CAPT, [redacted]
Potts, Larry Fletcher, 1LT [redacted]
Powers, Lowell Stephen, CWO, [redacted]
Powers, Trent Richard, CAPT, [redacted]
Preston, James Arthur, SMS [redacted]
Prevedel, Charles Francis, SSGT, [redacted]
Price, Bunyan Durant, Jr., SP5 [redacted]
Price, William Marshall 1LT, [redacted]
Pridemore, Dallas Reese, SFC, [redacted]
Pringle, Joe Harold, MSGT, [redacted]
Puentes, Manuel Rameriz, SGT, [redacted]
Puggi, Joseph David, SSGT, [redacted]
Pugh, Dennis Gerard, CAPT, [redacted]
Pugh, Kenneth Ward, PRCS, [redacted].
Putnam, Charles Lancaster, CAPT, [redacted]
Pyles, Harley Boyd, COL, [redacted]
Quamo, George, MAJ, [redacted]
Quinn, Michael Edward, LCDR, [redacted]
Rackley, Inzar William, Jr., LTC [redacted]
Ragland, Dayton William, COL, [redacted]
Ralston, Frank Delzell, III, CAPT, [redacted]
Ramos, Rainer Sylvester, CWO, [redacted]
Ramsay, Charles James, MAJ, [redacted]
Ramsower, Irving Burns, II, MAJ, [redacted]
Ransbottom, Frederick Joel, CAPT, [redacted]
Rash, Melvin Douglas, TSGT, [redacted]
Rattin, Dennis Michael, SP5, [redacted]
Ratzel, Wesley Dallas, CAPT, [redacted]
Rausch, Robert Ernest, CAPT, [redacted]
Ravencraft, James A., SSGT, [redacted]
Ravenna, Harry M., III, MAJ, [redacted]
Ray, Ronald Earl, SSGT, [redacted]
Raymond, Paul Darwin, CAPT, [redacted]
Read, Charles Harold W., Jr., COL, [redacted]
Reaid, Rollie Keith, SGT, [redacted]
Reed, James Wilson, CAPT, [redacted]
Rehe, Richard Raymond, SSGT, [redacted]
Reid, Harold Erich, SGT, [redacted]
Reid, Jon Eric, CWO, [redacted]
Reilly, Edward Daniel, Jr., SFC [redacted]
Reilly, Lavern George, COL, [redacted]
Reitmann, Thomas Edward, MAJ, [redacted]
Reneit, Walter A., COL, [redacted]
Rex, Robert Alan, CAPT, [redacted]
Rexroad, Ronald Reuel, CAPT, [redacted]
Rhodes, Ferris Ansel, Jr., CAPT [redacted]
Rich, Richard, CDR, [redacted]
Richardson, Dale Wayne, CAPT, [redacted]
Richardson, Floyd Whitley, COL, [redacted]
Richtsteig, David John, CAPT, [redacted]
Rickel, David J., CAPT, [redacted]
Ricker, William Ernest, LCDR, [redacted]
Rickman, Dwight Gray, 1LT, [redacted]
Riggs, Thomas F., CWO, [redacted]
Roach, Marion Lee, SSGT, [redacted]
Roberts, Richard Dean, SGT, [redacted]
Robertson, John Hartley, MSGT [redacted]
Robertson, John Leighton, LTC, [redacted]
Robertson, Leonard, CAPT, [redacted]
Robinson, Floyd Henry, SSGT, [redacted]
Robinson, Kenneth Dale, MAJ, [redacted]
Roby, Charles Donald, COL, [redacted]
Rockett, Alton Craig, Jr., MAJ [redacted]
Rodriguez, Albert Eduardo, CAPT, [redacted]
Roe, Jerry Lee, CAPT, [redacted]
Romero Victor, TSGT, [redacted]
Ross, Luther Lee, SMS, [redacted]
Rosenbach, Robert Page, CAPT, [redacted]
Ross, J. Lynn, Jr., SSGT, [redacted]
Ross, Joseph Shaw, CAPT, [redacted]
Rowley, Charles Stoddard, LTC, [redacted]
Rozo, James Milan, SP5, [redacted]
Ruffin, James Thomas LCDR, [redacted]
Rusch, Stephen Arthur, CAPT, [redacted]
Russell, Donald Myrick, LTC, [redacted]
Russell, Peter John, CAPT, [redacted]
Ryder, John Leslie, CAPT, [redacted]
Saavedra, Robert, CDR, [redacted]
Sadler, Mitchell Olen, Jr., CAPT, [redacted]
Sale, Harold Reeves, Jr., CAPT, [redacted]
Sanderlin, William Dale, SSGT, [redacted]
Scharf, Charles Joseph, LTC, [redacted]
Schell, Richard John, CAPT, [redacted]
Scherdin, Robert Francis, SSGT, [redacted]
Scheurich, Thomas Edwin, CDR, [redacted]
Schiele, James Francis, SSGT [redacted]
Schmidt, Norman COL, [redacted]
Schmidt, Walter Roy, Jr., CAPT, [redacted]
Scholz, Klaus Dieter, SSGT, [redacted]
Schreckengost, Fred Thomas, SGT, [redacted].
Schuler, Robert Harry, Jr., MAJ [redacted]
Schultz, Ronald James, SP5, [redacted]
Schultz, Sheldon D., CWO, [redacted]
Scott, Dain Vanderlin, LT, [redacted]
Scott, Martin Ronald, LTC, [redacted]
Scott, Mike John, SFC, [redacted]
Scull, Gary Bernard, CAPT, [redacted]
Scungio, Vincent Anthony, MAJ, [redacted]
Scurlock, Lee D., Jr., SFC, [redacted]
Seagroves, Michael Anthony, CAPT, [redacted]
Sennett, Robert Russell, ADCS, [redacted].
Serex, Henry Muir, MAJ, [redacted]
Setterquist, Francis Lesli, CAPT [redacted]
Seuell, John Wayne, CAPT, [redacted].
Seymour, Leo Earl, SFC, [redacted]
Shafer, Philip Raymond, SP6, [redacted]
Shank, Gary Leslie, LTJG, [redacted]
Shanley, Michael Henry, Jr., SSGT, [redacted]
Shark, Earl Eric, SSGT, [redacted]
Shay, Donald Emerson, Jr., CAPT, [redacted]
Shelton, Charles Ervin, MAJ, [redacted]
Sherman, Peter Woodbury, CAPT, [redacted]
Shine, Anthony Cameron, MAJ, [redacted]
Shingledecker, Armon D., CAPT, [redacted]
Shoneck, John Reginald, MSGT, [redacted]
Shriver, Jerry Michael, SFC [redacted]
Shue, Donald Monroe, SSGT, [redacted]
Shumway, Geoffrey Raymond, LCDR, [redacted]
Sigafoos, Walter Harri, III, CAPT, [redacted]
Sijan, Lance Peter, CAPT, [redacted]
Silva, Claude Arnold, CAPT, [redacted]
Silver, Edward Dean, MAJ, [redacted]
Simmons, Robert Eugene, SGT, [redacted]
Singer, Donald Maurice, COL, [redacted]
Singleton, Daniel Everett, CAPT [redacted]

Sisson, Winfield Wade, MAJ, [redacted].
Sittner, Ronald Nicholis, CAPT, [redacted].
Skarman, Orval Harry, SGT, [redacted].
Skinner, Owen George, LTC, [redacted].
Skivington, William E., Jr., SSGT, [redacted].
Small, Burt Chauncy, Jr., SSGT, [redacted].
Smith, David Roscoe, CAPT, [redacted].
Smith, Edward Dewilton, Jr., TSGT, [redacted].
Smith, Gene Albert, CDR, [redacted].
Smith, George Craig, CAPT, [redacted].
Smith, Hallie William, CAPT, [redacted].
Smith, Harding Eugene, Sr., COL, [redacted].
Smith, Harold Victor, LTC, [redacted].
Smith, Harry Winfield, CAPT, [redacted].
Smith, Herbert Eugene, SMS, [redacted].
Smith, Homer Leroy, CAPT, [redacted].
Smith, Howard Horton, LTC, [redacted].
Smith, Lewis Philip, II, CAPT, [redacted].
Smith, Richard Dean, MAJ, [redacted].
Smith, Robert Norman, COL, [redacted].
Smith, Victor Arlon, CAPT, [redacted].
Smith, Warren Parker, Jr., LTC, [redacted].
Smith, William Arthur, Jr., CWO, [redacted].
Smith, William Mark, SGT, [redacted].
Smoot, Courtis Richard, SSGT, [redacted].
Soyland, David Pecor, CWO, [redacted].
Sparks, Donald Lee, SGT, [redacted].
Suarks, Jon Michael CWO, [redacted].
Spencer, Warren Richard, CAPT, [redacted].
Spilman, Dyke Augustus, CAPT, [redacted].
Spinelli, Domenick Anthony, LCDR, [redacted].
Sprick, Doyle Robert, MAJ, [redacted].
Springston, Theodore, Jr., LTC, [redacted].
St. Pierre, Dean Paul, CAPT, [redacted].
Stacks, Raymond Clark, CAPT, [redacted].
Staehli, Bruce Wayne, SGT, [redacted].
Stamm, Ernest Albert, CDR, [redacted].
Standerwick, Robert L., Sr., LTC, [redacted].
Stanley, Charles Irvin, CWO, [redacted].
Stanton, Ronald, SSGT, [redacted].
Stark, Willie Ernest, SMAJ, [redacted].
Steadman, James Eugene, CAPT, [redacted].
Steen, Martin William, MAJ, [redacted].
Stegman, Thomas, LCDR, [redacted].
Stephensen, Mark Lane, LTC, [redacted].
Stephenson, Howard David, MAJ, [redacted].
Stevens, Larry James, LT, [redacted].
Stewart, Jack Thomas, MAJ, [redacted].
Stewart, Peter Joseph, COL, [redacted].
Stewart, Robert Allan, LTC, [redacted].
Stickney, Philip Joseph, MSGT, [redacted].
Stine, Joseph Millard, LTC, [redacted].
Stinson, William Sherril, SP5, [redacted].
Stolz, Lawrence Gene, CAPT, [redacted].
Stonebraker, Kenneth Arnold, MAJ, [redacted].
Storz, Ronald Edward, LTC, [redacted].
Stowers, Aubrey Eugene, Jr., CAPT, [redacted].
Strait, Douglas, SP5, [redacted].
Strange, Floyd Wayne, CWO, [redacted].
Stratton, Charles Wayne, MAJ, [redacted].
Stringer, John Curtis, II, CAPT, [redacted].
Strobridge, Rodney Lynn, CAPT, [redacted].
Strohlein, Madison Alexander, SGT, [redacted].
Strong, Henry Hooker, Jr., CDR, [redacted].
Stroven, William Harry, CAPT, [redacted].
Stuart, John Franklin, MAJ, [redacted].
Stubberfield, Robert A., LTC, [redacted].
Stubbs, William W. W., SSGT, [redacted].
Suber, Randolph Bothwell, SSGT, [redacted].
Sullivan, Farrell Junior, LTC, [redacted].
Sullivan, James Edward, LCDR, [redacted].
Sullivan, John Bernard, III, CAPT, [redacted].
Sutter, Frederick John, CAPT, [redacted].
Swanson, John Willard, Jr., MAJ, [redacted].
Swanson, Roger Wesley, SGT, [redacted].
Swords, Smith, III, MAJ, [redacted].
Sykes, Derri, SSGT, [redacted].
Tapp, Marshall Landis, LTC, [redacted].
Tatum, Lawrence Byron, COL, [redacted].
Teague, James Erlan, LT, [redacted].
Templin, Erwin Bernard, Jr., LCDR, [redacted].
Teran, Refugio Thomas, SGT, [redacted].
Terry, Oral Ray, SSGT, [redacted].
Thomas, Daniel Wayne, CAPT, [redacted].
Thomas, James Calven, SGT, [redacted].
Thomas, James Richard, TSGT, [redacted].
Thomas, Kenneth Deane, Jr., CAPT, [redacted].
Thomas, Robert James, 1LT, [redacted].
Thompson, Donald Earl, LCDR, [redacted].
Thompson, George Winton, CAPT, [redacted].
Thompson, William James, LTC, [redacted].
Thornton, Larry C., SMS, [redacted].
Tiffin, Rainford, MAJ, [redacted].
Tipping, Henry Albert, COL, [redacted].
Todd, William Anthony, SSGT, [redacted].
Tolbert, Clarence Orfield, LCDR, [redacted].
Toomey, Samuel Kamu, III, MAJ, [redacted].
Towlf, John Cline, CAPT, [redacted].
Townsend, Francis Wayne, 1LT, [redacted].
Trampski, Donald Joseph, SGT, [redacted].
Treece, James Allen, MAJ, [redacted].
Trembley, J. Forrest George, LCDR, [redacted].
Trent, Alan Robert, CAPT, [redacted].
Tromp, William Leslie, LCDR, [redacted].
Trujillo, Joseph Felix, SGT, [redacted].
Trujillo, Robert Steven, SSGT, [redacted].
Tubbs, Glenn Ernest, SSGT, [redacted].
Tucci, Robert Leon, CAPT, [redacted].
Tucker, Edwin Byron, CDR, [redacted].
Tucker, James Hale, CAPT, [redacted].
Tucker, Timothy Michael, CAPT, [redacted].
Tyler, George Edward, COL, [redacted].
Uhlmansiek, Ralph Edward, SSGT, [redacted].
Underwood, Paul Gerard, COL, [redacted].
Utley, Russell Keith, LTC, [redacted].
Van Bendegom, James Lee, SSGT, [redacted].
Van Buren, Gerald Gordon, MAJ, [redacted].
Van Dyke, Richard Haven, CAPT, [redacted].
Van Renselaar, Larry Jack, LT, [redacted].
Vanden Eykel, Martin D., II, CWO, [redacted].
Vescelus, Milton James, Jr., CDR, [redacted].
Vinson, Bobby Gene, COL, [redacted].
Visconti, Francis Edward, CAPT, [redacted].
Wade, Barton Scott, LCDR, [redacted].
Wald, Gunther Herbert, SSGT, [redacted].
Walker, Bruce Charles, CAPT, [redacted].
Walker, Michael Stephen, CAPT, [redacted].
Walker, Samuel Franklin, Jr., MSGT, [redacted].
Wallace, Hobart McKinie, Jr., LTC, [redacted].
Wallace, Michael John, SFC [redacted].
Waller, Therman Morris, MSGT, [redacted].
Walling, Charles Milton, MAJ, [redacted].
Walsh, Francis Anthony, Jr., MAJ, [redacted].
Walsh, Richard Ambrose, III, COL, [redacted].
Walters, Donovan Keith, CAPT, [redacted].
Walton, Lewis Clark, SSGT, [redacted].
Wanzel, Charles Joseph, III, CAPT, [redacted].
Ward, Neal Clinton, CAPT, [redacted].
Ward, Ronald Jack, LTC, [redacted].
Ware, John Alan, SP5, [redacted].
Warren, Arthur Leonard, CAPT, [redacted].
Warren, Ervin, SMS, [redacted].
Warren, Gray Dawson, CAPT. [redacted].
Waters, Samuel Edwin, Jr., MAJ [redacted].
Watson, Jimmy Lee, CWO, [redacted].
Weisner, Franklin Lee, CAPT, [redacted].
Weissmueller, Courtney Edw., MAJ, [redacted].
Welch, Robert John, MAJ, [redacted].
Welsh, Larry Don, SSGT, [redacted].
Welshan, John Thomas, Capt, [redacted].
Wenaas, Gordon James, MAJ, [redacted].
Werdehoff, Michael Ray, SFC, [redacted].
West, John Thomas, CAPT, [redacted].
Westbrook, Donald Elliot, COL, [redacted].
Wheeler, Eugene Lacey, MAJ, [redacted].
White, Charles Edward, MSGT, [redacted].
White, James Blair, MAJ, [redacted].
Whilford, Lawrence W., Jr., COL, [redacted].
Whitmire, Warren Taylor, Jr., CWO, [redacted].
Widdis, James Wesley, Jr., MAJ. [redacted].
Widner, Danny Lee, SSGT, [redacted].
Wiggins, Wallace Luttrell, CAPT, [redacted].
Wilburn, Woodrow Hoover, COL, [redacted].
Wiles, Marvin Benjamin Chr. LT, [redacted].
Wilke, Robert Frederick, COL, [redacted].
Wilkins, George Henry, CDR, [redacted].
Wilkinson, Dennis Edward, CAPT. [redacted].
Willett, Robert Vincent, Jr., CAPT. [redacted].
Williams, Billie Joe, MAJ, [redacted].
Williams, David Beryl, CAPT, [redacted].
Williams, David Richard, COL. [redacted].
Williams, Eddie Lee, MSGT, [redacted].
Williams, Edward Wayne, SGT, [redacted].
Williams, Howard Keith, MAJ, [redacted].
Williams, James Ellis, MSGT, [redacted].
Williams, James Randall, MSGT, [redacted].
Williams, Robert John, CAPT, [redacted].
Williams, Roy Charles, SSGT, [redacted].
Wililamson, Don Ira, LTC, [redacted].
Williamson, James D., SSGT, [redacted].
Willing, Edward Arle, SGT, [redacted].
Wilson, Gordon Scott, MAJ, [redacted].
Wilson, Mickey Allen, WO, [redacted].
Wilson, Peter Joe, SFC, [redacted].
Wilson, Robert Allan, CAPT, [redacted].
Wilson, Roger Eugene, CAPT, [redacted].
Wilson, Wayne Vaster, SGT, [redacted].
Wimbrow, Nutter Jerome, III, MAJ, [redacted].
Winningham, John Quitman, TSGT, [redacted].
Winston, Charles, C, III, MAJ [redacted].
Winters, David Marshall, SSGT, [redacted].
Wistrand, Robert Carl, LTC, [redacted].
Wogan, William Michael, SSGT, [redacted].
Wolfkeil, Wayne Benjamin, LTC, [redacted].
Woloszyk, Donald Joseph, LCDR, [redacted].
Wong, Edward Puck Kow, Jr., SP5, [redacted].
Wood, Don Charles, LTC, [redacted].
Wood, Partrick Hardy, COL. [redacted].
Wood, William Commodore, Jr., CAPT, [redacted].
Worcester, John Bowers, LCDR, [redacted].
Worrell, Paul Laurance, LT, [redacted].
Worth, James Frederick, CPL, [redacted].
Wortham, Murray Lamar, CAPT, [redacted].
Wozniak, Frederick Joseph, CAPT, [redacted].
Wright, Arthur, SP4, [redacted].
Wright, Donald Lee, MSGT, [redacted].
Wright, Gary Gene, COL, [redacted].
Wright, James Joseph, LCDR, [redacted].
Wright, Jerdy Albert, Jr., LTC, [redacted].
Wright, Thomas Thawson, MAJ, [redacted].
Wrobleski, Walter Francis, CWO, [redacted].
Wrye, Blair Charlton, COL, [redacted].
Wynne, Patrick Edward, CAPT, [redacted].
Yarbrough, William P., Jr., CDR, [redacted].
Yonan, Kenneth Joseph, CAPT, [redacted].
Young, Barclay Bingham, CAPT, [redacted].
Young, Charles Luther, SSGT, [redacted].
Zich, Larry Alfred, CWO, [redacted].
Zook, David Hartzler, Jr., COL, [redacted].
Zook, Harold Jacob, CAPT, [redacted].
Zubke, Deland Dwight, SP5, [redacted].
Zukowski, Robert John, CAPT, [redacted].

Mr. DOLE. Assistance in obtaining information for an accounting was clearly and unambiguously included as a mutual commitment in the January 27 agreement. Such assistance has not been forthcoming. On January 27, the Defense Department listed 1,364 Americans in missing status. Today, 4 months later, some 1,284 or more of our men have not yet been accounted for in any manner and as I said earlier, the remains of some 1,120, who have been declared dead, have not been recovered.

INTERESTS CONTINUE

We are told, Mr. President, that the situation in Southeast Asia has changed. Now that the involvement of American ground troops has been terminated and the prisoners have been returned, some contend we no longer have any proper concern in that area of the world, not even a concern in seeing that the peace agreement is adhered to in respect to our missing men. I cannot accept this contention.

The situation has changed. It has changed immeasurably for the better. But the American stake in securing and solidifying a lasting peace in Southeast Asia has not changed.

If the rights of the South Vietnamese people to peace and self-determination and if the American concern for securing the return of our prisoners and a satisfactory accounting of the missing in action were ever legitimate interests of this country, then they are still legitimate interests.

IMPATIENCE AND WEARINESS

The country has long since grown weary of war. The country has long since tired of hearing news of American military involvement in Indochina, be it the ground combat of an earlier day or the air operations of today. And, of course, the Congress too, has grown weary of the conflict.

FIRM COMMITMENT TO GOALS

But if we allow our weariness of the war and our understandable and quite sincere desire to see an end, for all time, of the American military presence in Southeast Asia to lead us to passage of the Eagleton amendment, we would only open up to the North Vietnamese the possibility for continuing their unfettered aggression in the area. And we would quash any hope whatsoever for securing compliance with the peace agreement with respect to our missing men.

Strong action, courage, and commitment to our principles brought about the successful negotiation of the Paris agreements. The same resolve can now secure compliance with those agreements.

I am not prepared to accept the consequences of a legislated abrogation of the Paris agreements. Of course, I am weary of this fighting. I yield to no Member of this body in desiring a peaceful and just solution to the differences which have divided this region for so long.

But we have a responsibility, an obligation to see our policy successfully through to a lasting peace. And we have an obligation to the nearly 1,300 Americans who are missing throughout Southeast Asia—in North and South Vietnam, Laos, and Cambodia.

LIMITING AMENDMENT

Therefore, I am joining with my colleague from North Carolina (Mr. HELMS) in offering an amendment to limit the effect of the Eagleton amendment to the supplemental appropriations bill as long as the North Vietnamese are not complying with their obligations in regard to our missing men.

There can be no justification or rationalization for defaulting on our obligations to nearly 1,300 Americans and to their families, loved ones, and friends who wait and wonder at their fates.

It is difficult for those of us who are not directly affected to grasp the agony, the nightmare being lived by the parents, wives, and children of these missing men. They are in a terrible state of suspense. Their lives, their business affairs, their legal and financial status is plagued by uncertainty. They desperately want to know the fate of their husbands, sons, and fathers, and any action which delays or hinders North Vietnamese compliance with the Paris agreements on MIA's also prolongs the uncertainty and doubt of their families.

Mr. President, I wonder how these thousands of American wives, fathers, mothers, and children would vote on a measure which remove and weaken the President's leverage for obtaining information on these men?

Success for our policies and an end to the hostilities are near. Dr. Kissinger returns to Paris next month, and he has expressed confidence in the chances for successfully reaching an agreement with North Vietnam. The Congress cannot now—at this crucial time—place these negotiations in jeopardy by enacting a measure which would reduce our leverage to achieve compliance with the Paris agreements. Neither can it further jeopardize the fate of some 1,300 missing Americans. The amendment I offer with my colleague from North Carolina and the other distinguished Senators who have joined in sponsorship, would remove this jeopardy and would maintain this bit of leverage for the President.

We all want an end to hostilities. But, as I have said so many other times on this floor when we were talking about the American prisoners of war, we can say all we want to, but we still have an obligation to the families of those now listed as missing in action. They want to know. They want verification as to whether their son or husband or father is alive or dead.

So what would we do if the Eagleton amendment is agreed to? We would remove the last bit of leverage that the President has. Why should North Vietnam comply at all?

So I suggest, Mr. President, that we are voting today on whether we want North Vietnam to continue to make a sincere effort to account for and verify the status of some 1,300 Americans.

To me, that is an important obligation.

Mr. President, I ask unanimous consent to have printed in the Record the "Agreement Ending the War and Restoring Peace in Vietnam" of January 27, 1973, and the "Protocol to the Agreement Concerning the Return of Captured Military Personnel and Foreign Civilians and Detained Vietnamese Civilian Personnel" ending the war on the same date, and I reserve the remainder of my time.

There being no objection, the agreement and the protocol were ordered to be printed in the Record, as follows:

AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIETNAM

The Parties participating in the Paris Conference on Vietnam,

With a view to ending the war and restoring peace in Vietnam on the basis of respect for the Vietnamese people's fundamental national rights and the South Vietnamese people's right to self-determination, and to contributing to the consolidation of peace in Asia and the world,

Have agreed on the following provisions and undertake to respect and to implement them:

CHAPTER I

The Vietnamese people's fundamental national rights

Article 1

The United States and all other countries respect the independence, sovereignty, unity, and territorial integrity of Vietnam as recognized by the 1954 Geneva Agreements on Vietnam.

CHAPTER II

Cessation of hostilities—withdrawal of troops

Article 2

A cease-fire shall be observed throughout South Vietnam as of 2400 hours G.M.T., on January 27, 1973.

At the same hour, the United States will stop all its military activities against the territory of the Democratic Republic of Vietnam by ground, air and naval forces, wherever they may be based, and end the mining of the territorial waters, ports, harbors, and waterways of the Democratic Republic of Vietnam. The United States will remove, permanently deactivate or destroy all the mines in the territorial waters, ports, harbors, and waterways of North Vietnam as soon as this Agreement goes into effect.

The complete cessation of hostilities mentioned in this Article shall be durable and without limit of time.

Article 3

The parties undertake to maintain the cease-fire and to ensure a lasting and stable peace.

As soon as the cease-fire goes into effect:

(a) The United States forces and those of the other foreign countries allied with the United States and the Republic of Vietnam shall remain in-place pending the implementation of the plan of troop withdrawal. The Four-Party Joint Military Commission described in Article 16 shall determine the modalities.

(b) The armed forces of the two South Vietnamese parties shall remain in-place. The Two-Party Joint Military Commission described in Article 17 shall determine the areas controlled by each party and the modalities of stationing.

(c) The regular forces of all services and arms and the irregular forces of the parties in South Vietnam shall stop all offensive activities against each other and shall strictly abide by the following stipulations:

All acts of force on the ground, in the air, and on the sea shall be prohibited;

All hostile acts, terrorism and reprisals by both sides will be banned.

Article 4

The United States will not continue its military involvement or intervene in the internal affairs of South Vietnam.

Article 5

Within sixty days of the signing of this agreement, there will be a total withdrawal from South Vietnam of troops, military advisers, and military personnel associated with the pacification program, armaments, munitions, and war material of the United States and those of the other foreign countries mentioned in Article 3(a). Advisers from the above-mentioned countries to all paramilitary organizations and the police force will also be withdrawn within the same period of time.

Article 6

The dismantlement of all military bases in South Vietnam of the United States and of the other foreign countries mentioned in article 3(a) shall be completed within sixty days of the signing of this Agreement.

Article 7

From the enforcement of the cease-fire to the formation of the government provided for in Articles 9(b) and 14 of this Agreement, the two South Vietnamese parties shall not accept the introduction of troops, military advisers, and military personnel including technical military personnel, armaments, munitions, and war material into South Vietnam.

The two South Vietnamese parties shall be permitted to make periodic replacement of armaments, munitions and war material which have been destroyed, damaged, worn out or used up after the cease-fire, on the basis of piece-for-piece, of the same characteristics and properties, under the supervision of the Joint Military Commission of the two South Vietnamese parties and of the International Commission of Control and Supervision.

CHAPTER III

The return of captured military personnel and foreign civilians, and captured and detained Vietnamese civilian personnel

Article 8

(a) The return of captured military personnel and foreign civilians of the parties shall be carried out simultaneously with and completed not later than the same day as the troop withdrawal mentioned in Article 5. The parties shall exchange complete lists of the above-mentioned captured military personnel and foreign civilians on the day of the signing of this Agreement.

(b) The parties shall help each other to get information about those military personnel and foreign civilians of the parties missing in action, to determine the location and take care of the graves of the dead so as to facilitate the exhumation and repatriation of the remains, and to take any such other measures as may be required to get information about those still considered missing in action.

(c) The question of the return of Vietnamese civilian personnel captured and detained in South Vietnam will be resolved by the two South Vietnamese parties on the basis of the principles of Article 21(b) of the Agreement on the Cessation of Hostilities in Vietnam of July 20, 1954. The two South Vietnamese parties will do so in a spirit of national reconciliation and concord, with a view to ending hatred and enmity, in order to ease suffering and to reunite families. The two South Vietnamese parties will do their utmost to resolve this question within ninety days after the cease-fire comes into effect.

CHAPTER IV

The exercise of the South Vietnamese people's right to self-determination

Article 9

The Government of the United States of America and the Government of the Democratic Republic of Vietnam undertake to respect the following principles for the exercise of the South Vietnamese people's right to self-determination:

(a) The South Vietnamese people's right to self-determination is sacred, inalienable, and shall be respected by all countries.

(b)The South Vietnamese people shall decide themselves the political future of South Vietnamese through genuinely free and democratic general elections under international supervision.

(c) Foreign countries shall not impose any political tendency or personality on the South Vietnamese people.

Article 10

The two South Vietnamese parties undertake to respect the cease-fire and maintain peace in South Vietnam, settle all matters of contention through negotiations, and avoid all armed conflict.

Article 11

Immediately after the cease-fire, the two South Vietnamese parties will:

achieve national reconciliation and concord, end hatred and enmity, prohibit all acts of reprisal and discrimination against individuals or organizations that have collaborated with one side or the other;

ensure the democratic liberties of the people: personal freedom, freedom of speech, freedom of the press, freedom of meeting, freedom of organization, freedom of political activities, freedom of belief, freedom of movement, freedom of residence, freedom of work, right of property ownership, and right to free enterprise.

Article 12

(a) Immediately after the cease-fire, the two South Vietnamese parties shall hold consultations in a spirit of national reconciliation and concord, mutual respect, and mutual non-elimination to set up a National Council of National Reconciliation and Concord of three equal segments. The Council shall operate on the principle of unanimity. After the National Council of National Reconciliation and Concord has assumed its functions, the two South Vietnamese parties will consult about the formation of councils at lower levels. The two South Vietnamese parties shall sign an agreement on the internal matters of South Vietnamese as soon as possible and do their utmost to accomplish this within ninety days after the cease-fire comes into effect, in keeping with the South Vietnamese people's aspirations for peace, independence and democracy.

(b) The National Council of National Reconciliation and Concord shall have the task of promoting the two South Vietnamese parties' implementation of this Agreement, achievement of national reconciliation and concord and ensurance of democratic liberties. The National Council of National Reconciliation and Concord will organize the free and democratic general elections provided for in Article 9 (b) and decide the procedures and modalities of these general elections. The institutions for which the general elections are to be held will be agreed upon through consultations between the two South Vietnamese parties. The National Council of National Reconciliation and Concord will also decide the procedures and modalities of such local elections as the two South Vietnamese parties agree upon.

Article 13

The question of Vietnamese armed forces in South Vietnam shall be settled by the two South Vietnamese parties in a spirit of national reconciliation and concord, equality and mututal respect, without foreign interference, in accordance with the postwar situation. Among the questions to be discussed by the two South Vietnamese parties and steps to reduce their military effectives and to demobilize the troops being reduced. The two South Vietnamese parties will accomplish this as soon as possible.

Article 14

South Vietnam will pursue a foreign policy of peace and independence. It will be prepared to establish relations with all countries irrespective of their political and social systems on the basis of mutual respect for independence and sovereignty and accept economic and technical aid from any country with no political conditions attached. The acceptance of military aid by South Vietnam in the future shall come under the authority of the government set up after the general elections in South Vietnam provided for in Article 9(b).

CHAPTER V

The reunification of Vietnam and the relationship between North and South Vietnam

Article 15

The reunification of Vietnam shall be carried out step by step through peaceful means on the basis of discussions and agreements between North and South Vietnam, without coercion or annexation by either party, and without foreign interference. The time for reunification will be agreed upon by North and South Vietnam.

Pending reunification:

(a) The military demarcation line between the two zones at the 17th parallel is only provisional and not a political or territorial boundary, as provided for in paragraph 6 of the Final Declaration of the 1954 Geneva Conference.

(b) North and South Vietnam shall respect the Demilitarized Zone on either side of the Provisional Military Demarcation Line.

(c) North and South Vietnam shall promptly start negotiations with a view to reestablishing normal relations in various fields. Among the questions to be negotiated are the modalities of civilian movement across the Provisional Military Demarcation Line.

(d) North and South Vietnam shall not join any military alliance or military bloc and shall not allow foreign powers to maintain military bases, troops, military advisers, and military personnel on their respective territories, as stipulated in the 1954 Geneva Agreements on Vietnam.

CHAPTER VI

The Joint Military Commissions, the International Commission of Control and Supervision, the International Conference

Article 16

(a) The Parties participating in the Paris Conference on Vietnam shall immediately designate representatives to form a Four-Party Joint Military Commission with the task of ensuring joint action by the parties in implementing the following provisions of this Agreement:

The first paragraph of Article 2, regarding the enforcement of the cease-fire throughout South Vietnam;

Article 3(a), regarding the cease-fire by U.S. forces and those of the other foreign countries referred to in that Article;

Article 3(c), regarding the cease-fire between all parties in South Vietnam;

Article 5, regarding the withdrawal from South Vietnam of U.S. troops and those of the other foreign countries mentioned in Article 3(a);

Article 6, regarding the dismantlement of military bases in South Vietnam of the United States and those of the other foreign countries mentioned in Article 3(a);

Article 8(a), regarding the return of captured military personnel and foreign civilians of the parties;

Article 8(b), regarding the mutual assistance of the parties in getting information about those military personnel and foreign civilians of the parties missing in action.

(b) The Four-Party Joint Military Commission shall operate in accordance with the principle of consultations and unanimity. Disagreements shall be referred to the International Commissions of Control and Supervision.

(c) The Four-Party Joint Military Commission shall begin operating immediately after the signing of this Agreement and end its activities in sixty days, after the completion of the withdrawal of U.S. troops and those of the other foreign countries mentioned in Article 3(a) and the completion of the return of captured military personnel and foreign civilians of the parties.

(d) The four parties shall agree immediately on the organization, the working procedure, means of activity, and expenditures of the Four-Party Joint Military Commission.

Article 17

(a) The two South Vietnamese parties shall immediately designate representatives to form a Two-Party Joint Military Commission with the task of ensuring joint action by the two South Vietnamese parties in implementing the following provisions of this Agreement:

The first paragraph of Article 2, regarding the enforcement of the cease-fire throughout South Vietnam, when the Four-Party Joint Military Commission has ended its activities;

Article 3(b), regarding the cease-fire between the two South Vietnamese parties;

Article 3(c), regarding the cease-fire between all parties in South Vietnam, when the Four-Party Joint Military Commission has ended its activities;

Article 7, regarding the prohibition of the introduction of troops into South Vietnam and all other provisions of this article;

Article 8(c), regarding the question of the return of Vietnamese civilian personnel captured and detained in South Vietnam;

Article 13, regarding the reduction of the military effectives of the two South Vietnamese parties and the demobilization of the troops being reduced.

(b) Disagreements shall be referred to the International Commission of Control and Supervision.

(c) After the signing of this Agreement of the Two-Party Joint Military Commission shall agree immediately on the measures and organization aimed at enforcing the cease-fire and preserving peace in South Vietnam.

Article 18

(a) After the signing of this Agreement, an International Commission of Control and Supervision shall be established immediately.

(b) Until the International Conference provided for in Article 19 makes definite arrangements, the International Commission of Control and Supervision will report to the four parties on matters concerning the control and supervision of the implication of the following provisions of this Agreement:

The first paragraph of Article 2, regarding the enforcement of the cease-fire throughout South Vietnam;

Article 3(a), regarding the cease-fire by U.S. forces and those of the other foreign countries referred to in that Article;

Article 3(c) regarding the cease-fire between all the parties in South Vietnam;

Article 5, regarding the withdrawal from South Vietnam of U.S. troops and those of the other foreign countries mentioned in Article 3(a);

Article 19

The parties agree on the convening of an International Conference within thirty days of the signing of this Agreement to acknowledge the signed agreements; to guarantee the ending of the war, the maintenance of peace in Vietnam, the respect of the Vietnamese people's fundamental national rights, and the South Vietnamese people's right to self-determination; and to contribute to and guarantee peace in Indochina.

The United States and the Democratic Republic of Vietnam, on behalf of the parties participating in the Paris Conference on Vietnam, will propose to the following parties that they participate in this International Conference: the People's Republic of China, the Republic of France, the Union of Soviet Socialist Republics, the United Kingdom, the four countries of the International Commission of Control and Supervision, and the Secretary General of the United Nations, together with the parties participating in the Paris Conference on Vietnam.

CHAPTER VII

Regarding Cambodia and Laos

Article 20

(a) The parties participating in the Paris Conference on Vietnam shall strictly respect the 1954 Geneva Agreements on Cambodia and the 1962 Geneva Agreements on Laos, which recognized the Cambodian and the Lao peoples' fundamental national rights, i.e., the independence, sovereignty, unity, and territorial integrity of these countries. The parties shall respect the neutrality of Cambodia and Laos.

The parties participating in the Paris Conference on Vietnam undertake to refrain from using the territory of Cambodia and the territory of Laos to encroach on the sovereignty and security of one another and of other countries.

(b) Foreign countries shall put an end to all military activities in Cambodia and Laos, totally withdraw from and refrain from reintroducing into these two countries troops, military advisers and military personnel, armaments, munitions and war material.

(c) The internal affairs of Cambodia and Laos shall be settled by the people of each of these countries without foreign interference.

(d) The problems existing between the Indochinese countries shall be settled by the Indochinese parties on the basis of respect for each other's independence, sovereignty, and territorial integrity, and non-interference in each other's internal affairs.

CHAPTER VIII

The relationship between the United States and the Democratic Republic of Vietnam

Article 21

The United States anticipates that this Agreement will usher in an era of reconciliation with the Democratic Republic of Vietnam as with all the peoples of Indochina. In pursuance of its traditional policy, the United States will contribute to healing the wounds of war and to postwar reconstruction of the Democratic Republic of Vietnam and throughout Indochina.

Article 22

The ending of the war, the restoration of peace in Vietnam, and the strict implementation of this Agreement will create conditions for establishing a new, equal and mutually beneficial relationship between the United States and the Democratic Republic of Vietnam on the basis of respect for each other's independence and sovereignty, and noninterference in each other's internal affairs. At the same time this will ensure stable peace in Vietnam and contribute to the preservation of lasting peace in Indochina and Southeast Asia.

CHAPTER IX

Other provisions

Article 23

This Agreement shall enter into force upon signature by plenipotentiary representatives of the parties participating in the Paris Conference on Vietnam. All the parties concerned shall strictly implement this Agreement and its Protocols.

Done in Paris this twenty-seventh day of January, One Thousand Nine Hundred and Seventy-Three, in Vietnamese and English. The Vietnamese and English texts are official and equally authentic.

[Separate Numbered Page]

For the Government of the United States of America:

WILLIAM P. ROGERS,
Secretary of State.

For the Government of the Republic of Vietnam:

TRAN VAN LAM,
Minister for Foreign affairs.

[Separate Numbered Page]

For the Government of the Democratic Republic of Vietnam:

NGUYEN DUY TRINH,
Minister for Foreign affairs.

For the Provisional Revolutionary Government of the Republic of South Vietnam:

NGUYEN THI BINH,
Minister for Foreign Affairs.

AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIETNAM

The Government of the United States of America with the concurrence of the Government of the Republic of Vietnam,

The Government of the Democratic Republic of Vietnam, with the concurrence of the Provisional Revolutionary Government of the Republic of South Vietnam,

With a view to ending the war and restoring peace in Vietnam on the basis of respect of the Vietnamese people's fundamental national rights and the South Vietnamese people's right to self-determination, and to contributing to the consolidation of peace in Asia and the world,

Have agreed on the following provisions and undertake to respect and to implement them:

[Text of Agreement Chapters I-VIII Same As Above]

CHAPTER IX

Other provisions

Article 23

The Paris Agreement on Ending the War and Restoring Peace in Vietnam shall enter into force upon signature of this document by the Secretary of State of the Government of the United States of America and the Minister for Foreign Affairs of the Government of the Democratic Republic of Vietnam, and upon signature of a document in the same terms by the Secretary of State of the Government of the United States of America, the Minister for Foreign Affairs of the Government of the Republic of Vietnam, the Minister for Foreign Affairs of the Government of the Democratic Republic of Vietnam, and the Minister for Foreign Affairs of the Provisional Revolutionary Government of the Republic of South Vietnam. The Agreement and the protocols to it shall be strictly implemented by all the parties concerned.

Done in Paris this twenty-seventh day of January, One Thousand Nine Hundred and Seventy-Three, in Vietnamese and English. The Vietnamese and English texts are official and equally authentic.

For the Government of the United States of America:

WILLIAM P. ROGERS,
Secretary of State.

For the Government of the Democratic Republic of Vietnam:

NGUYEN DUY TRINH,
Minister for Foreign Affairs.

PROTOCOL TO THE AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIETNAM CONCERNING THE RETURN OF CAPTURED MILITARY PERSONNEL AND FOREIGN CIVILIANS AND CAPTURED AND DETAINED VIETNAMESE CIVILIAN PERSONNEL.

The parties participating in the Paris Conference on Vietnam,

In Implementation of Article 8 of the Agreement on Ending the War and Restoring Peace in Vietnam signed on this date providing for the return of captured military personnel and foreign civilians, and captured and detained Vietnamese civilian personnel,

Have agreed as follows:

THE RETURN OF CAPTURED MILITARY PERSONNEL AND FOREIGN CIVILIANS

Article 1

The parties signatory to the Agreement shall return the captured military personnel of the parties mentioned in Article 8(a) of the Agreement as follows:

All captured military personnel of the United States and those of the other foreign countries mentioned in Article 3(a) of the Agreement shall be returned to United States authorities;

All captured Vietnamese military personnel, whether belonging to regular or irregular armed forces, shall be returned to the two South Vietnamese parties; they shall be returned to that South Vietnamese party under whose command they served.

Article 2

All captured civilians who are nationals of the United States or of any other foreign countries mentioned in Article 3(a) of the Agreement shall be returned to United States authorities. All other captured foreign civilians shall be returned to the authorities of their country of nationality by any one of the parties willing and able to do so.

Article 3

The parties shall today exchange complete lists of captured persons mentioned in Articles 1 and 2 of this Protocol.

Article 4

(a) The return of all captured persons mentioned in Articles 1 and 2 of this Protocol shall be completed within sixty days of the signing of the Agreement at a rate no slower than the rate of withdrawal from South Vietnam of United States forces and those of the other foreign countries mentioned in Article 5 of the Agreement.

(b) Persons who are seriously ill, wounded of maimed, old persons and women shall be returned first. The remainder shall be returned either by returning all from one detention place after another or in order of their dates of capture, beginning with those who have been held the longest.

Article 5

The return and reception of the persons mentioned in Articles 1 and 2 of this Protocol shall be carried out at places convenient to the concerned parties. Places of return shall be agreed upon by the Four-Party Joint Military Commission. The parties shall ensure the safety of personnel engaged in the return and reception of those persons.

Article 6

Each party shall return all captured persons mentioned in Articles 1 and 2 of this Protocol without delay and shall facilitate their return and reception. The detaining parties shall not deny or delay their return for any reason, including the fact that captured persons may, on any grounds, have been prosecuted or sentenced.

THE RETURN OF CAPTURED AND DETAINED VIETNAMESE CIVILIAN PERSONNEL

Article 7

(a) The question of the return of Vietnamese civilian personnel captured and detained in South Vietnam will be resolved by the two South Vietnamese parties on the basis of the principles of Article 21(b) of the Agreement on the Cessation of Hostilities in Vietnam of July 20, 1954, which reads as follows:

"The term civilian internees' is understood to mean all persons who, having in any way contributed to the political and armed struggle between the two parties, have been arrested for that reason and have been kept in detention by either party during the period of hostilities."

(b) The two South Vietnamese parties will do so in a spirit of national reconciliation and concord with a view to end hatred and enmity in order to ease suffering and to reunite families. The two South Vietnamese parties will do their utmost to resolve this question within ninety days after the cease-fire comes into effect.

(c) Within fifteen days after the cease-fire comes into effect, the two South Vietnamese parties shall exchange lists of the Vietnamese civilian personnel captured and detained by each party and lists of the places at which they are held.

TREATMENT OF CAPTURED PERSONS DURING DETENTION

Article 8

(a) All captured military personnel of the parties and captured foreign civilians of the parties shall be treated humanely at all times, and in accordance with international practice.

They shall be protected against all violence to life and person, in particular against murder in any form, mutilation, torture and cruel treatment, and outrages upon personal dignity. These persons shall not be forced to join the armed forces of the detaining party.

They shall be given adequate food, clothing, shelter, and the medical attention required for their state of health. They shall be allowed to exchange post cards and letters with their families and receive parcels.

(b) All Vietnamese civilian personnel captured and detained in South Vietnam shall be treated humanely at all times, and in accordance with international practice.

They shall be protected against all violence to life and person, in particular against murder in any form, mutilation, torture and cruel treatment, and outrages against personal dignity. The detaining parties shall not deny or delay their return for any reason, including the fact that captured persons may, on any grounds, have been prosecuted or sentenced. These persons shall not be forced to join the armed forces of the detaining party.

They shall be given adequate food, clothing, shelter, and the medical attention required for their state of health. They shall be allowed to exchange post cards and letters with their families and receive parcels.

Article 9

(a) To contribute to improving the living conditions of the captured military personnel of the parties and foreign civilians of the parties, the parties shall, within fifteen days after the cease-fire comes into effect, agree upon the designation of two or more national Red Cross societies to visit all places where captured military personnel and foreign civilians are held.

(b) To contribute to improving the living conditions of the captured and detained Vietnamese civilian personnel, the two South Vietnamese parties shall, within fifteen days after the cease-fire comes into effect, agree upon the designation of two or more national Red Cross societies to visit all places where the captured and detained Vietnamese civilian personnel are held.

WITH REGARD TO DEAD AND MISSING PERSONS

Article 10

(a) The Four-Party Joint Military Commission shall ensure joint action by the parties in implementing Article 8(b) of the Agreement. When the Four-Party Joint Military Commission has ended its activities, a Four-Party Joint Military team shall be maintained to carry on this task.

(b) With regard to Vietnamese civilian personnel dead or missing in South Vietnam, the two South Vietnamese parties shall help each other to obtain information about missing persons, determine the location and take care of the graves of the dead, in a spirit of national reconciliation and concord, in keeping with the people's aspirations.

OTHER PROVISIONS

Article 11

(a) The Four-Party and Two-Party Joint Military Commissions will have the responsibility of determining immediately the modalities of implementing the provisions of this Protocol consistent with their respective responsibilities under Articles 16(a) and 17(a) of the Agreement. In case the Joint Military Commissions, when carrying out their tasks, cannot reach agreement on a matter pertaining to the return of captured personnel they shall refer to the International Commission for its assistance.

(b) The Four-Party Joint Military Commission shall form, in addition to the teams established by the Protocol concerning the cease-fire in South Vietnam and the Joint Military Commissions, a subcommission on captured persons and, as required, joint military teams on captured persons to assist the Commission in its tasks.

(c) From the time the cease-fire comes into force to the time when the Two-Party Joint Military Commission becomes operational, the two South Vietnamese parties' delegations to the Four-Party Joint Military Commission shall form a provisional sub-commission and provisional joint military teams to carry out its tasks concerning captured and detained Vietnamese civilian personnel.

(d) The Four-Party Joint Military Commission shall send joint military teams to observe the return of the persons mentioned in Articles 1 and 2 of this Protocol at each place in Vietnam where such persons are being returned, and at the last detention places from which these persons will be taken to the places of return. The Two-Party Joint Military Commission shall send joint military teams to observe the return of Vietnamese civilian personnel captured and detained at each place in South Vietnam where such persons are being returned, and at the last detention places from which these persons will be taken to the places of return.

Article 12

In implementation of Articles 18(b) and 18(c) of the Agreement, the international Commission of Control and Supervision shall have the responsibility to control and supervise the observance of Articles 1 through 7 of this Protocol through observation of the return of captured military personnel, foreign civilians and captured and detained Vietnamese civilian personnel at each place in Vietnam where these persons are being returned, and at the last detention places from which these persons will be taken to the places of return, the examination of lists, and the investigation of violations of the provisions of the above-mentioned Articles.

Article 13

Within five days after signature of this Protocol, each party shall publish the text of the Protocol and communicate it to all the captured persons covered by the protocol and being detained by that party.

Article 14

This protocol shall come into force upon signature by plenipotentiary representatives of all the parties participating in the Paris Conference on Vietnam. It shall be strictly implemented by all the parties concerned.

Done in Paris this twenty-seventh day of January, One Thousand Nine Hundred and Seventy-Three, in Vietnamese and English. The Vietnamese and English texts are official and equally authentic.

[Separate Numbered Page]

For the Government of the United States of America:

WILLIAM P. ROGERS,
Secretary of State.

For the Government of the Republic of Vietnam:

TRAN VAN LAM,
Minister for Foreign Affairs.

[Separate Numbered Page]

For the Government of the Democratic Republic of Vietnam:

NGUYEN DUY TRINH,
Minister for Foreign Affairs.

For the Provisional Revolutionary Government of the Republic of South Vietnam:

NGUYEN THI BINH,
Minister for Foreign Affairs.

PROTOCOL TO THE AGREEMENT ON ENDING THE WAR AND RESTORING PEACE IN VIETNAM CONCERNING THE RETURN OF CAPTURED MILITARY PERSONNEL AND FOREIGN CIVILIANS AND CAPTURED AND DETAINED VIETNAMESE CIVILIAN PERSONNEL

The Government of the United States of America, with the concurrence of the Government of the Republic of Vietnam,

The Government of the Democratic Republic of Vietnam, with the concurrence of the Provisional Revolutionary Government of the Republic of South Vietnam.

In implementation of Article 8 of the Agreement on Ending the War and Restoring Peace in Vietnam signed on this date providing for the return of captured military personnel and foreign civilians, and captured and detained Vietnamese civilian personnel.

Have agreed as follows:

[Text of Protocol Articles 1–13 same as above]

ARTICLE 14

The Protocol to the Paris Agreement on Ending the War and Restoring Peace in Vietnam concerning the Return of Captured Military Personnel and Foreign Civilians and Captured and Detained Vietnamese Civilian Personnel shall enter into force upon signature of this document by the Secretary of State of the Government of the United States of America and the Minister for Foreign Affairs of the Government of the Democratic Republic of Vietnam, and upon signature of a document in the same terms by the Secretary of State of the Government of the United States of America, the Minister for Foreign Affairs of the Government of the Republic of Vietnam, the Minister for Foreign Affairs of the Government of the Democratic Republic of Vietnam, and the Minister for Foreign Affairs of the Provisional Revolutionary Government of the Republic of South Vietnam. The Protocol shall be strictly implemented by all the parties concerned.

Done in Paris this twenty-seventh day of January, One Thousand Nine Hundred and Seventy-Three, in Vietnamese and English. The Vietnamese and English texts are official and equally authentic.

For the Government of the United States of America:

WILLIAM P. ROGERS,
Secretary of State.

For the Government of the Democratic Republic of Vietnam:

NGUYEN DUY TRINH,
Minister for Foreign Affairs.

Mr. DOLE. Mr. President, I yield to the Senator from North Carolina (Mr. Helms) such time as he may require.

Mr. HELMS. Mr. President, I thank my distinguished colleague from Kansas.

The agreement which was signed in Paris on January 27, 1973, provides in article 8 that—

(b) The parties shall help each other to get information about those military personnel and foreign civilians of the parties missing in action, to determine the location and take care of the graves of the dead so as to facilitate the exhumation and repatriation of the remains, and to take any such other measures as may be required to get information about those still considered missing in action.

In addition, the protocol to the agreement "Concerning the Return of Captured Military Personnel and Foreign Civilians and Captured and Detained Vietnamese Civilian Personnel" states in article 10, "With Regard to Dead and Missing Persons," the—

(a) The Four-Party Joint Military Commission shall ensure joint action by the parties in implementing Article 8(b) of the Agreement. When the Four-Party Joint Military Commission has ended its activities, a Four-Party Joint Military team shall be maintained to carry on this task.

Furthermore, according to article 17 of the agreement, disagreements will be referred to the International Commission on Control and Supervision.

Mr. President, so far, these provisions have been substantively inoperative. The Four-Party Joint Military Commission has met for its allotted 60 days, and has left Vietnam. The Four-Party Joint Military Team remains. Two visits have been made to Hanoi under very strictly supervised circumstances. But, for the most part, the meetings of the parties have been perfunctory. We are still in the process of negotiating with the North Vietnamese for permission to visit crash sites, and possible graveyards. They have not budged 1 inch to help us substantively to identify the missing in action.

On January 27, we had 1,929 military personnel officially listed as missing in action. As of May 26, the number is 1,284 throughout Southeast Asia. This decrease has not come about because of any help from the North Vietnamese Communists; it is because some of the MIA's have been identified as returning prisoners of war. Yet we still have the right under the agreement, to remove the remains of those identified, but we have not been granted that permission.

Mr. President, the U.S. Joint Casualty Resolution Center has been established at Nakhon Phanom, Thailand, and is assigned the mission of resolving the status of U.S. missing personnel. They are ready to locate crash sites or grave sites. Their teams are ready. Their identification laboratory is ready. All they are waiting for is permission to go out into the jungles and into the local inhabited areas to make searches and ask questions of the local inhabitants. Yet the permission to do so has not been forthcoming. The Four-Party Joint Military Team does nothing but talk. Why do not the Communists give us the permission they agreed to give us?

A further complication is that a goodly number of these MIA's may be in Cambodia and Laos, with at least 300 in Laos alone. The Khmer Rouge and the Laotian Communists are not parties to the Paris agreement. They are, however, strongly influenced by the presence of the North Vietnamese troops in that area. The only way that we can ever expect the Cambodian and Laotian Communists to give the requisite permission to visit possible sites in those areas is to continue our military operations in those areas. We must not forget that it was the decisive action of our President that brought the North Vietnamese to enter serious negotiations and forced them to agreement. Similar military activity is the only thing which will force the North Vietnamese to adhere to these agreements to withdraw from Cambodia and force the native Communists to allow us to find our MIA's, dead or alive.

Mr. President, I repeat, the only way to get a satisfactory accounting of our MIA's is to allow the President the discretion to continue air support as necessary, but to continue under the conditions which are specifically stated in our proposed amendment.

I would point out, Mr. President, and emphasize, that this amendment contains a requirement that the President report to Congress.

It is apparent from yesterday's vote that there is sentiment in this body to cut off immediately appropriations for military action in Laos and Cambodia. I disagree with this sentiment. Yet at the same time, I think that my distinguished colleagues will realize the importance of our receiving a full accounting of the MIA's. The amendment which the distinguished Senator from Kansas (Mr. DOLE) and I are offering today seeks a reasonable compromise among reasonable men. It would simply withhold the effect of the amendment offered by the junior Senator from Missouri until such time as we received a satisfactory accounting of our MIA's. I am sure that no one in this body would want to be responsible for prolonging such an accounting of our MIA's.

Under the Paris agreement, the four parties are supposed to cooperate in such an accounting. The Communists have not cooperated. At the very least, the Communists are supposed to allow the United States to take the necessary steps to arrive at an accounting. They have not given us the simple permission to make our own searches. Yet at the very moment when we are poised to begin such searches, there are some who would tie the hands of the President and remove from him the only sanctions we have to force Hanoi to comply with the agreement in respect to accounting for MIA's. If there are those who favor the Eagleton amendment, let them at least consider whether its effect should be delayed until there is a demonstration of good faith on the part of the Communists that they are willing to live up to article 8 of the agreement which they signed.

Surely we owe this to the wives and families and other loved ones of the American men who went out there to do their duty for our country—men who are now missing, men whose wives and families still live in the agony of uncertainty.

Mr. President, I reserve the remainder of my time.

Mr. EAGLETON. Mr. President, there is not a Senator in this body who does not want the North Vietnamese to provide a full accounting of our missing in action as is required by the Paris agreement. Many would support diplomatic or economic sanctions against North Vietnam, to force that nation to uphold its obligations under the agreement.

But that is not the issue before us today. The issue is whether the combat activities being conducted in Cambodia by the President of the United States are legal or wise.

As Secretary Richardson has said, a vote to defeat section 305 would be a vote to acquiesce in the air operation. But we are now confronted with an amendment which, if adopted and passed into law along with section 305 would constitute the legal authorization of Congress to continue the bombing until the President decides it should stop. This amendment is dynamite in sheep's clothing, and the Senator from Kansas knows it.

My amendment deals only with Cambodia and Laos, nations whose governments have no obligations under the Paris agreement. North Vietnam, is obliged to carry out that agreement, but to link the failure of that country to abide by the provisions of the Paris agreement to a decision to go to war in a nation only incidentally affected by that agreement would be sheer nonsense. Yet, that is what the Dole amendment is asking us to do—to give our legal sanction to the Cambodian war.

The tactic is clear, of course—obscure the central issue with a totally unrelated matter—a matter of great concern to the Members of this body. But we have come too far to be hoodwinked into authorizing a new war in Indochina through the back door. This amendment would not only undercut section 305, it would, in effect, transform it into a declaration of war.

I urge my colleagues, before we take the drastic step the Senator from Kansas is asking us to take, to look at the effort that has been undertaken to date in pursuit of a full accounting of our MIA's.

Before the dissolution of the Four-Party Joint Military Commission on May 28, a Four-Party Joint Team was established as an ongoing adjunct of the original Four Power Commission. This team meets regularly in Saigon and is specifically designated to carry out the portions of the cease-fire agreement on missing in action.

As a result of the continuing meetings between the Four-Party Team, two recent visits took place to North Vietnam for the purpose of identifying and recovering missing in action. On May 11, the team was taken by the North Vietnamese to an empty cemetery where, according to the North Vietnamese, 12 Americans had been buried. One week later, on May 18, the team was taken to a gravesite outside of Hanoi where they inspected 23 gravesites and verified that each contained the remains of Americans previously listed as MIA's.

The Four-Party Team continues to meet in Saigon 2 or 3 times a week and are now discussing methods to repatriate the remains of the American dead. In addition, the team is discussing with the North Vietnamese an inspection schedule whereby the team could travel to known or suspected crash sites in North Vietnam.

According to investigators from the Foreign Relations Committee, military personnel assigned to our Joint Casualty Resolution Center in Thailand have advised that they have no complaints of noncooperation on the part of the North Vietnamese. They indicated that the procedure may be going along slower than we would like; however, there is no indication that our Government is prepared to protest the current level of activity.

Mr. President, what we are asked to do by the Dole amendment, before we have even filed a formal protest with the ICCS, before we even communicate with the North Vietnamese with respect to the recovery of the MIA's, is to declare war in a third nation—Cambodia.

I would like to read from the testimony that is going to be delivered this afternoon by Mr. Frank A. Sieverts, special assistant to the Deputy Secretary of State for Prisoners of War and Men Missing in Action. This testimony will be delivered—perhaps it is being delivered now—before a subcommittee of the House Committee on Foreign Affairs. This is what Mr. Sieverts says about the cooperation we are receiving with respect to the MIA's. I read from page 12:

We are in direct contact with officials of the communist side. In Saigon, we are proceeding through the Four-Party Joint Military Team, established under the Viet-Nam Agreement. The Team has already made two trips to North Viet-Nam to visit cemeteries where Americans who died in captivity are buried. Communist officials have also acknowledged the existence of additional graves of Americans who died in aircraft crashes or of other causes. Our aim is to arrange the early repatriation of the remains of as many of these persons as possible.

At the same time, we have made clear our urgent interest in receiving information on the missing. Complete lists of our missing personnel have been provided to the Four-Party Team for this purpose.

In Laos, U.S. officials have been in direct contact with representatives of the Lao Patriotic Front (the Pathet Lao) to press for additional information on Americans missing or captured in Laos. We have told the communist side of our concern at the small number of Americans listed as captured in Laos, in view of past hints that a larger number were held by Pathet Lao forces, and in view of evidence that at least two others had been captured in Laos. The communist side has repeatedly told us and has recently stated publicly that there are no more Americans captured or held in Laos. They have also said that further accounting for the missing must await the formation of a coalition government, as specified in the February 21 Laos cease-fire agreement. Our efforts to convince the communist side to proceed with this accounting without waiting for a new government to be formed have thus far been in vain.

* * * * *

We are carrying out our own efforts to search for information on our missing and dead. Specific responsibility for this has been assigned to the Joint Casualty Resolution Center (JCRC), located in Thailand near the Laos and Viet-Nam borders. The JCRC is manned by American military personnel and functions with the close assistance of our embassies and consulates in the area. We have told the communist side about the JCRC, making clear its peaceful, open, and humanitarian purpose. The JCRC already has carried out a number of searches, so far in South Viet-Nam. We plan to work in harmony with local people wherever Americans may be missing or dead, and we hope to have the cooperation of the communist authorities. Our aim is to find the fullest possible information on each missing man. We recognize this is an enormous undertaking, and that we cannot succeed in every case, or even in a majority of cases. But we intend to try.

There are no more tragic victims of war than the families of MIA's. These families are destined to continue their life never fully knowing whether their loved one may still be alive in some far-off corner of the world. The Indochina war is not much different than other wars we have fought in that regard—the tragedy and the sorrow is the same. In World War II the United States had a total of 35,368 missing personnel; 29,151 are now considered dead and 1,754 are still carried in missing status. In the Korean war 5,178 Americans were either missing or captured. A larger percentage of that number were returned by the enemy where they had been held as POW's. But still over 1,000 are listed as missing in action.

So the unfortunate tragedy of the MIA is not unique to our most recent war experience. In every case, the U.S. Government puts forth a maximum effort to obtain a full accounting of its missing in action. But I submit that never in our history have we made the mistake of entering another war before we have exhausted all diplomatic efforts to obtain that full accounting.

Mr. President, I have received letters from the families of our missing in action. It is difficult to give these people even a little hope. Dr. Kissinger and the Defense Department have expressed strong doubts that any are still alive.

I read again from the testimony Mr. Sieverts is submitting this afternoon:

It should be noted that there is no indication from these debriefings of POW's that any American personnel continue to be held in Indochina. All American prisoners known to any of our returned POW's have either been released or been listed by the communist authorities as having died in captivity. Returnees with whom I have talked, including those who appeared before this Subcommittee May 23, are clear in their belief that no U.S. prisoners continue to be held.

It is a tragic irony that the Defense Department carried no MIA in Cambodia prior to the January 27 cease-fire agreement. Since that agreement, however, two Americans have been lost in bombing operations and are now listed as missing in action. Yet, the Senator from Kansas wants this body to give legal sanction to the combat activity which is adding Americans to the list of MIA's.

No one can return life to those who are dead, but what we can do here today, in our own way, is see to it that no more die and that there are no more missing in action. It is because we should now be well aware of the pain suffered by the families of MIA's that we must reject this amendment.

Mr. SYMINGTON. Mr. President, will the Senator yield?

The PRESIDING OFFICER. The Senator from Missouri has 9 minutes remaining.

Mr. EAGLETON. I yield 8 minutes to the Senator from Missouri.

BOMBING OF CAMBODIA

Mr. SYMINGTON. Mr. President, in recent days Senators advocating a continuation of the United States bombing of Cambodia have made a series of misstatements of fact in support of their positions.

I feel confident, of course, that none of those involved have made these mistaken statements deliberately. Indeed, they appear to have been based on similar misstatements persistently made by executive branch officials in recent months.

Fortunately, in this instance the Senator does not have to rely solely on information provided by the executive branch in considering the Cambodian question. Members of the staff of the Subcommittee on U.S. Security Agreements and Commitments Abroad of the Senate Foreign Relations Committee, which subcommittee I have the honor to chair, spent the month of April in Indochina and have brought back a report which, after review by the executive branch, has been made available to the Senate and the public, and which contradicts the basic premises of the administration's argument in support of the Cambodian bombing.

I wish briefly to note some of the principal errors made by the administration and its supporters in this debate.

It has been claimed, for instance, that:

> We are bombing North Vietnamese troops.

The fact is that the vast majority of our bombing is directed not at the North Vietnamese, but at the troops of the Cambodian faction opposing Lon Nol. In briefings at the Pentagon, at U.S. 7th Air Force Headquarters in Thailand and at the American Embassy in Phnom Penh, our staff was told that the heavy preponderance of forces opposing the Lon Nol forces are Cambodian insurgents.

It has also been claimed that—

> The North Vietnamese are currently maintaining some 40,000 troops in Cambodia. Of this total, some 30,000 are support troops, at least 3,500 are targeted against the Cambodian government forces, and some 30 military advisors per battalion are helping the Cambodian insurgent forces.

As is evident even from the quote itself, it is deceptive to speak of "40,000 North Vietnamese troops in Cambodia" when only a small percentage of these troops are targeted against the forces of the Phnom Penh regime. Furthermore, the number of North Vietnamese engaged against Lon Nol's forces, according to figures given the subcommittee staff as an agreed U.S. intelligence community estimate in early April, was not "at least 3,500" but probably "about 2,000 or at most 3,000." Moreover, the subcommittee staff was told that at most there were three or four advisers attached to some—but not all—insurgent battalions. Cambodian insurgent ralliers with whom our staff was asked to meet by the Cambodian Government said there were no North Vietnamese attached to their former battalions.

One of the most serious misrepresentations is that which involves the alleged North Vietnamese violation of the Vietnamese cease-fire agreement as regards Cambodia. The Administration's supporters have said, for example—

> U.S. air operations were a precise response to the North Vietnamese violation of Article 20 (of the Vietnam ceasefire agreement).

The fact is that there has been no North Vietnamese violation of article 20. According to the State Department, the terms of article 20 are not yet operative and do not require withdrawal until or unless there is a cease-fire agreement in Cambodia. Secretary Rogers himself recently acknowledged in a hearing before the Foreign Relations Committee that the North Vietnamese are not in violation of article 20.

Another erroneous assertion is that which states that—

> When the (Vietnam) cease-fire was signed, the Cambodian Government declared a cease-fire.

In fact, following the Vietnam cease-fire, Lon Nol announced that his troops would suspend offensive operations so that the North Vietnamese could withdraw and Lon Nol warned that if they did not withdraw, his troops would take action against them. This was not a cease-fire offer; it was an ultimatum. Furthermore, Lon Nol's troops did not all suspend operations whereas for several days most of the Cambodian insurgents apparently did.

It has also been said that—

> U.S. air strikes are meticulously targeted and controlled to avoid civilian casualties.

Our Air Force, while it undoubtedly does its best to avoid civilian casualties, is unable to do so because our authorities do not have available to them the type of detailed information required to avoid civilian casualties and because the airplanes being used and the manner in which they are employed make it impossible to avoid civilian casualties.

Furthermore, our staff has reported that the procedural safeguards employed in Cambodia are nowhere near as tight as those previously used in Laos where thousands of civilian casualties resulted from our devastation of the Plain of Jars. In fact, local Cambodian commanders are reported to call for air strikes without regard to possible civilian presence and an assistant air attaché in the American Embassy, far from the scene of the fighting, authorizes strikes on behalf of our Ambassador.

Mr. President, these are the facts that these men went out and obtained shortly before this debate started. There are many other misstatements of fact which I could cite that have been made on the floor in an effort to justify this incredible bombing. But those which I have noted should be sufficient to indicate that once again the American people have been given a distorted view of the war in Indo-China. What these misstatements amount to is an erroneous picture of who we are fighting, where we are bombing, and a misrepresentation of the basis for our bombing.

As mentioned previously, the legal rationale for the President's authority to continue the bombing as presented by the executive branch is equally invalid.

Mr. DOLE. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Kansas has 9 minutes remaining and the Senator from Missouri has 12 minutes remaining.

Mr. DOLE. Mr. President, I wish to use this time to make as a part of the RECORD a statement delivered today by Dr. Roger E. Shields, Assistant to the Assistant Secretary of Defense—International Security Affairs—before the Subcommittee on National Security Policy and Scientific Development, of the Foreign Affairs Committee on the House. I would like to make one comment with reference to the paragraph on page 8 where Dr. Shields speaks of the efforts to verify the status of our MIA's and discusses those responsible for the verifications. He states:

> On two occasions, May 11 and 18, the team, along with representatives of the joint casualty resolution center, journeyed to North Vietnam where burial sites, allegedly of American servicemen, were seen. Identification and recovery of remains were not undertaken on these occasions because of lack of permission from the North Vietnamese.

Mr. President, I ask unanimous consent to have printed in the RECORD the entire statement made by Dr. Roger E. Shields, Assistant to the Assistant Secretary of Defense, to which I have just referred.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF DR. ROGER E. SHIELDS

Mr. Chairman, members of the committee: It is a privilege for me to represent the Department of Defense here today. I particularly welcome the opportunity to talk with you because, unlike the last time we met, part of a great effort in behalf of our missing and captured men and their families has reached a heartwarming and satisfying conclusion. I am referring specifically to the return from captivity of 566 American military personnel and 25 U.S. civilians. Nine foreign nationals were also released. I would like to insert in the record at this point a statistical summary of these 591 returned Americans.

As you know, these Americans were taken prisoner while serving in Southeast Asia. Their period of captivity ranged from only a few months to as long as ten years. During this time they faced deprivations and made sacrifices that very few men ever encounter. Here at home the families of our missing and captured endured years of frustration waiting for some word about the condition or status of their men. These families were joined by countless Americans and virtually every government agency in a great national endeavor to obtain a full and accurate accounting of all the men, and better treatment and the ultimate release of those held captive. As I have indicated, only part of our work is finished. About 1300 men still remain unaccounted for and their families continue the seemingly endless vigil in their behalf. I will discuss our current efforts to resolve the perplexing issue of those who did not return in just a moment.

During the months and years preceding the long awaited return of our men, a major part of our work involved detailed planning for their repatriation. Presentations before this and other committees usually centered around the anticipated problems of reception, processing, rehabilitation, and readjustment of the returned prisoners of war. Much of this planning was done in the face of great uncertainty. For example, we did not know how many men would be released, what condition they would be in, or even where they would be returned to us. These uncertainties necessitated planning for a wide range of possibilities with contingency plans ready at our military hospitals in Europe as well as in the Pacific Theater. I can say with considerable satisfaction that our homecoming plans were well-founded. From the moment the first 116 men were released in North Vietnam on February 12, 1973, until the last one was released by the PRG in South Vietnam on April 1, 1973, the return of our men was handled with efficiency, thoroughness, and sensitivity. The initial reception, aeromedical evacuation, enroute medical treatment, and the ultimate family reunions and processing in the United States are a tribute to the outstanding cooperation and mutual support demonstrated by the four military services. We in the Department of Defense received unparalleled cooperation and assistance from agencies in both the Federal and State Governments; especially from the Department of State, the Congress of the United States, and our President.

Our returned men have now completed the homecoming processing events. Most of them are on convalescent leave and are busy getting acquainted with their families and their country once again. Many have already received future assignments and are preparing to resume active military careers. Some are undergoing scheduled treatment to correct physical deficiencies noted during the detailed medical evaluation received overseas and here at home. All of the men have been brought up to date in personnel and financial matters and have been debriefed on their experiences in captivity. The 31 military installations that accomplished the processing in the U.S. remain as headquarters for the men while they are free on convalescent leave and until they actively resume military or civilian professions. All agencies in the Department of Defense stand ready to help the men and their families during this transition period.

In the future, we are prepared to provide whatever assistance is required for as long as may be necessary. For example, the Department of Defense has implemented a program through which returned men who leave the military prior to obtaining retirement eligibility will, along with their families, be authorized to obtain health care in any military medical facility for a period of five years from the date of separation. Near the end of the five year period, each situation will be reevaluated. This program will help guarantee that each returned prisoner of war will receive immediate and long-term medical attention from military medical specialists who are familiar with the Southeast Asia captivity environment, and who have access to complete records and documentation in the military medical archives. For those who elect to leave the military, we are also prepared to provide a full range of job counseling and assistance in cooperation with private industry. For those who remain on active duty, the Services have developed special retraining and familiarization programs. One program, for example, involves two weeks of academic updating on military, national, and international matters.

Much of the credit for the success of homecoming must be given to the men themselves and to their families. They handled the repatriation events and the reunion with families and countrymen with great dignity and patriotism. They have been an inspiration to this country. Based on the accounts of their captivity experiences, I would say that their ability to endure so long under such harsh conditions can be largely attributed to their courage and determination and to their faith in God and country.

While we are grateful for the return of these men, our joy and sense of accomplishment are tempered by the fact that others, listed by our government as missing and captured, did not return. A full accounting for these men is not yet available to us. Some fear that in the wake of homecoming, we will forget those who are unaccounted for and ignore the plight of their families. I want to assure you that this will not happen. The Department of Defense will continue to seek the fullest possible accounting for these men and to provide their families with every possible assistance just as we have in the past. In addition, we will seek to recover the remains of the missing who have died and those who are already listed as killed in action but whose remains have not been recovered.

Before discussing the preparations that we have made and the actions we are now taking to achieve our objectives, I would like to place the problem in perspective by inserting in the RECORD a statistical breakdown of some 1300 men who remain unaccounted for in Southeast Asia. In addition to this number, there are about 1100 others who have been declared dead by the Services but whose remains have not been recovered.

As the members of the committee know, every possible avenue was explored prior to the release of our men to gain accurate information about those listed as missing or captured. Even while we planned our repatriation activities, we simultaneously prepared for the time when direct action to account for our missing would be possible through negotiation or systematic search. To date, extensive data has been fathered and stored in automated data handling systems for ease in correlation and analysis. This data includes extensive descriptive information on the individuals concerned, such as carefully plotted locations where they were last seen, and eyewitness accounts from our own forces as well as all accessible indigenous residents who were known to possess information about our prisoners or missing. One computerized program that is particularly unique contains information taken from medical records concerning all individual physical characteristics which would, with the aid of advanced technology, help facilitate the prompt and accurate identification of any remains that are recovered.

In order to update members of Congress on efforts being made to resolve the serious problem of accounting for the missing, the Department of Defense submitted a paper to them on February 2, 1973. Before proceeding further, I would like to submit for the record this paper and its memorandum of transmittal.

There are now two primary agencies upon which we are relying heavily to help resolve the status of our missing: The Four-Party Joint Military Team (FPJMT) and the Joint Casualty Resolution Center (JCRC). In accordance with the agreements signed in Paris, the Four-Party Joint Military Team was established after termination of the Four-Party Joint Military Commission expressly for the purpose of arranging for the recovery of remains and exchange information to help clarify the status of the missing. The Joint Casualty Resolution Center was activated in January of this year in South Vietnam. In February, with approval of the Royal Thai Government, the Joint Nakhon Phanom Royal Thai Air Force Base in northeasternn Thailand. Within the limits imposed upon it, the Joint Casualty Resolution Center supervises and conducts search operations designed to resolve the fate of the missing and recover remains wherever possible. the entire operation is peaceful, open, and humanitarian in nature. In its current location, the Joint Casualty Resolution Center is centrally located with regard to all the areas in which American personnel were lost.

The mission of our delegation to the Four-Party Joint Military Team has three primary aspects: (1) To obtain information from the other side about U.S. military and civilian persons who are missing in action; (2) to obtain information about the location of the graves of those persons who died in captivity or were killed in action; and (3) to negotiate entry rights for U.S. search and inspection operations into areas where there are believed to be unrecovered remains or where those still unaccounted for were last believed to be located.

The chief of our delegation, an Army colonel, is responsible through the defense attache office in Saigon and the U.S. support activity group in Thailand to the U.S. commander in chief, Pacific, Admiral Noel Gayler. Our delegation is also responsive to the policy guidance and instructions of the ambassador in Saigon. Since the first meeting of the team on April 4, over twenty sessions have been held. On two occasions, May 11 and 18, the team, along with representatives of the joint casualty resolution center, journeyed to North Vietnam where burial sites, allegedly of American servicemen, were seen. Identification and recover of remains were not undertaken on these occasions because of lack of permission from the North Vietnamese. We are currently trying to arrange for the exhumation and repatriation of these remains and of any other American dead known to the other side.

Another issue that is of major concern to us is the acquisition of entry rights for our search teams to areas throughout Southeast Asia where our men are missing. The success of the joint casualty resolution center's mission depends heavily on the operating authorities and the cooperation of the countries involved. We believe that our search teams should be given access to all locations where our men are believed to be missing. This is especially true for Laos where only nine Americans were listed for repatriation while over 300 of our men still remain unaccounted for. Our teams possess the great expertise required for this complex and dangerous mission, as well as the motivation to do a complete and thorough job. Nevertheless, we invite and welcome host country participation in the activities of our field teams. Indeed, we feel that host country participation is essential to the safety of our own teams and to the success of the mission.

To give you a better idea of the task facing the joint casualty resolution center and our negotiators, let me turn back to some statistics that I mentioned earlier. As you recall, I said that there are some 1,300 who are unaccounted for in Southeast Asia and some 1,100 others who have been declared officially dead by the services but whose remains have not been recovered. More than 1,900 of the composite 2,400 in these two categories are the result of air crashes. There are more than 1,000 such crash sites involving over 50 different types and models of aircraft. The number varies from nearly 400 in North Vietnam to less than 20 in Cambodia. These crash sites are scattered throughout the rugged terrain in Southeast Asia—on mountains and in dense uninhabited jungles. Approximately 150 of the crashes were at sea. Some 90 percent of the sites are in militarily contested areas or in areas controlled by the other side.

So far, some five crash sites in non-contested areas of South Vietnam have been inspected. The inspection of these sites has allowed refinement of procedures and techniques in preparation for the more complex and hazardous operations to come. Pieces of aircraft wreckage and other materials have been located and are being analyzed for identification purposes. On one of the first search operations, a South Vietnamese soldier was killed by an unexploded booby trap while participating with an advance element that had been sent to clear the area for the main search party. This is a clear indication that the overall effort will be both difficult and dangerous. For the record, I would like to submit a fact sheet on the joint casualty resolution center that explains in greater detail the unit's organizational structure and methods of operation.

I would like to address now the question of the degree of success that we might ultimately achieve and how long this might take. Prior to the repatriation of our prisoners there were high expectations that large numbers of missing in action cases could be resolved from debriefing of the returned men. Unfortunately, this has not been the case. The debriefings have been performed in a professional manner with sensitivity, and the data carefully analyzed and stored for future reference. Nevertheless, it appears that less than 100 status changes will be made on the basis of this information. We are hopeful that a significant number of additional status changes will result from negotiated arrangements for the exchange of information and the return of remains from locations throughout Indochina. How quickly we will achieve results from these efforts I cannot say. The four-party joint military team has made some progress in this area, and I am hopeful that our patience and persistence will be rewarded by ultimate success.

Even after all information has bee exchanged and all known remains exhumed and repatriated, there will undoubtedly be cases which yet remain to be resolved. Take as an example the case of a missing aircraft which crashed in the sea or uninhabited jungle. It is likely neither side in the recent conflict would know the whereabouts of the wreckage or the fate of the crew. In other cases, even though the locations were once known, it is possible that both wreckage and grave sites may have succumbed to the ravages of time and the havoc of war. It is abundantly clear that the tasks of determining how some of our missing died and the recovery of remains could be prolonged if not impossible.

As for those who are thought to have been captured alive but who have not been returned, let me say that this is perhaps the most agonizing and frustrating issue of all. These are the cases of men who were seen on the ground of whose pictures were released subsequent to capture but who, for one reason or another, have not returned and for who the other side has yet to provide a satisfactory explanation. We do not consider the lists received so far to be complete and accurate accounting for our men. We do have, though, an agreement which provides for all actions necessary to account as completely as possible for all who have not returned or are otherwise unaccounted for. We believe that implementation of this agreement will provide the speediest and most satisfactory answers to our questions.

In summary, we are working now to finalize arrangement which will provide for the speedy return of remains for our known dead from locations throughout Southeast Asia, and for the acquistion of clarify information on any others. On the other hand, the task of inspecting crash sites of locations where the missing were last seen and of finding, exhuming, and identifying remains may be difficult and prolonged, at least over several years, especially if operating limitations remain an obstacle. Some crash sites and graves may never be found.

As for status changes, I want to emphasize that they are not unalterably tied to the inspection of combat sites or to the recovery or remains. We have made changes in status from missing in action or prisoner of war to killed in action throughout the recent conflict. Since March, the services have made about 80 more status changes to killed in action, and we can expect that more will be made on a contining basis in the future.

The recording and changing of status of the missing are governed by sections 551–558, title 37, United States Code. Under public law, the service secretaries are given responsibility for status changes. To assist him, each secretary calls upon professionals within his organization who conduct and exhaustive study, based on all available information of each individual case. Their task is a painful one requiring countless hours of diliberation and calling ultimately for difficult decisions. The subject of status determinations is not a new one for the services. Those involved in this often unhappy part of the prisoner of war/missing in action issue are experienced and skilled and expert in upholding the public law and at the same time protecting, to the best of their ability, the ultimate interests of the missing men and their families.

In making status determinations, two possibilities exist besides the option of remaining the individual in a missing status. In those cases where information is received which conclusively establishes that the member is dead, then a report of death will be issued. A finding of death, commonly known as a "presumptive finding" is made when circumstances are such that the missing individual cannot reasonably be presumed to be living. An individual who was lost over water and who was not among those released or acknowledged by the other side in any way is a good example of a potential "presumptive finding."

The problems surrounding the question of those not yet accounted for are difficult in every respect. We are prepared to do the job through the machinery that we now have in motion, but we are convinced that the issue will not be resolved quickly or easily. I want to assure you again that we will uphold our responsibilities and our obligations in this matter. We will provide the families of our missing men every possible assistance. And for those who must face a final negative determination, we are prepared to offer complete counseling and guidance to help ease the resulting burdens, as well as heartfelt sympathy.

Mr. Chairman, members of this subcommittee, may I again express the appreciation of the Department of Defense for your kind invitation to appear here today and for your steadfast work in behalf of our men and their families. The opportunity to discuss the current status of our returned men and the issue of our missing is truly welcomed.

REPORTED FOR RELEASE AND RETURNED TO U.S. CONTROL—FEB. 12,–APR. 1, 1973

Country	USA	USN	USAF	USMC	Civilian	Total
North Vietnam	0	135	312	9	1	457
South Vietnam	77	1	6	17	21	122
Laos	0	1	6	0	2	9
China	0	1	1	0	1	[1] 3
Total	77	138	325	26	25	[2] 591

[1] Detainees in PRC who were released during the referenced time period and processed through the homecoming system.

[2] Total does not include third country nationals.

RELEASE INCREMENTS AND DATES

Place	Date—1973	Military	Civilian
North Vietnam (DRV)	Feb. 12	116	0
South Vietnam (PRG)	do	19	8
North Vietnam (DRV)	Feb. 18	20	0
North Vietnam (DRV)	Mar. 4	106	0
North Vietnam (PRG)	Mar. 5	27	3
China (PRC)	Mar. 12	0	1
North Vietnam (DRV)	Mar. 14	107	1
China (PRC)	Mar. 15	2	0
North Vietnam (PRG)	Mar. 16	27	5
North Vietnam (PRG)	Mar. 27	27	5
Narth Vietnam (Pathet Lao)	Mar. 28	7	2
North Vietnam (DRV)	do	40	0
North Vietnam (DRV)	Mar. 29	67	0
South Vietnam (PRG)	Apr. 1	1	0
Total		566	25

PERSONNEL UNACCOUNTED FOR IN SOUTHEAST ASIA (AS OF MAY 26, 1973)

Country	Army	Navy	USMC	USAF	Total
North Vietnam [1]	3	133	25	322	483
South Vietnam [2]	329	5	70	89	493
Laos	16	13	14	265	308
Total	348	151	109	676	1,284

[1] Includes five missing as a result of two aircraft losses in the vicinity of Hainan Island while in transit to the Tonkin Gulf.

[2] Includes 20 missing in Cambodia as a result of U.S. air losses and operations in enemy sanctuary area along SVN/Cambodian border.

OFFICE OF THE SECRETARY
OF DEFENSE,
Washington, DC, February 2, 1973.

MEMORANDUM FOR SENATORS AND MEMBERS OF THE HOUSE OF REPRESENTATIVES

I have prepared the attached information to insure that you are informed concerning the very important and serious problem of accounting for our servicemen who are missing in action in Southeast Asia.

I want to assure you personally that we in the Department of Defense will meticulously explore all avenues and exhaust all clues in our quest to account for each individual lost in Southeast Asia. Also, I want to reaffirm that we consider each of our missing equally as important as our prisoners who are returning.

Your interest and support in our endeavor is appreciated.

Sincerely,

ROGER E. SHIELDS,
Assistant for PW/MIA Matters.

OFFICE OF THE SECRETARY OF DEFENSE
Washington, D.C., February 2, 1973.

ACCOUNTING FOR MILITARY PERSONNEL WHO ARE LISTED AS MISSING IN ACTION

The purpose of this memorandum is to provide a description of the efforts being made to acquire as full an accounting of our missing in action personnel as possible.

The United States Government will make every possible effort to acquire an accounting for our servicemen missing in action in Southeast Asia.

In this regard, the Agreement which was signed in Paris on January 27, 1973, provides in Article 8 that:

"* * * (b) the parties shall help each other to get information about those military personnel and foreign civilians of the parties missing in action, to determine the location and take care of the graves of the dead so as to facilitate the exhumation and repatriation of the remains, and to take any such other measures as may be required to get information about those still considered missing in action."

In addition, the Protocol to the Agreement "Concerning the Return of Captured Military Personnel and Foreign Civilians and Captured and Detained Vietnamese Civilian Personnel" states in Article 10, "With Regard to Dead and Missing Persons" that:

"(a) the Four-Party Joint Military Commission shall ensure joint action by the parties in implementing Article 8(b) of the Agreement. When the Four-Party Joint Military Commission has ended its activities, a Four-Party Joint Military team shall be maintained to carry on the task." Disagreements will be referred to the International Commission on Control and Supervision (Article 17 of the Agreement).

It is reemphasized that the U.S. Government will do everything in its power to insure that all parties adhere to the true sense of the Agreement. To this end, Major General Gilbert H. Woodward, United States

Army, has been appointed as the United States Representative on the Four-Party Military Commission which will have representation from the United States, South Vietnam, North Vietnam and the Viet Cong. General Woodward has had extensive experience in negotiations of this type as the Senior Member United Nations Command, Military Armistice Commission, United Nations Command/United States Forces Korea during the period leading up to and at the time of the USS PUEBLO crewmembers' release. The task of the Four-Party Military Commission will be to implement appropriate provisions of the Agreement, including Article 8 quoted above. As the U.S. Representative, General Woodward is responsible for obtaining from other members of the Commission all MIA information held by them, and will coordinate with them the investigations by U.S. teams of incidents surrounding the loss of each of our MIA personnel.

The United States Joint Casualty Resolution Center (JCRC) has been established at Nakhon Phanom (NKP), Thailand and is assigned the mission of resolving the status of U.S. missing personnel. Personnel from the JCRC will locate and investigate crash sites or grave sites throughout Southeast Asia as arranged through the Four-Party Joint Military Commission. The organization of the JCRC will provide the expertise for these investigations, utilizing air search and ground search teams and a central identification laboratory with a pool of specialist to inspect located crash and grave sites and recover remains.

It is expected that endeavors in *remote areas* will normally include air and ground searches for crash sites. U.S.-led teams in conjunction with an air search will thoroughly investigate assigned areas of operation for suspected crash and grave sites. If a crash or grave site is located, personnel from the Central Identification Laboratory (graves registration specialists) and crash site investigators will be utilized for a detailed on-scene investigation.

In the more *inhabited areas*, personal contact with the local people following extensive information programs and coordination will be a primary technique. Grave registration specialists with interpreters, exploiting information gained from all sources and with authority to grant suitable rewards for useful information will conduct the major efforts in those areas where the location of crash or grave sites is more likely to be known and reasonably accessible.

Certain areas require that highly qualified U.S. personnel lead the ground searches because many are in highly remote areas or in the vicinity of roads or trails which are heavily booby trapped and endangered by unexploded ordnance. It is anticipated that recovery detachment teams will include indigenous personnel recruited, trained, and utilized in each country of interest with the cooperation of the host government.

While the Department of Defense will strive to accomplish this massive task of accounting for the missing military personnel in the shortest possible time, it must be realized that it will not be done quickly or easily. For example, in the case of a missing aircraft which crashed in the sea or uninhabited jungle, it is likely neither side in the recent conflict would know the whereabouts of the crash.

The Secretary of Defense and all Defense Department personnel realize and accept the obligation to *do their best* in performing this important task. This we owe to the families of the missing in action personnel. We intend to fulfill that obligation.

FACT SHEET: UNITED STATES JOINT CASUALTY RESOLUTION CENTER

The Joint Casualty Resolution Center (JCRC), commanded by Army Brigadier General Robert Kingston, is a joint task force established by and under the command of the Commander in Chief Pacific. The unit is under the operational control of the Commander, United States Support Activities Group (USSAG). The Joint Casualty Resolution Center operates under Joint Chiefs of Staff approved mission and joint table of distribution.

The Joint Casualty Resolution Center is an outgrowth of United States Government efforts to identify, document, and maintain records of known and suspected missing in action and prisoners of war. These records were initially maintained by the Joint Personnel Recovery Center (JPRC), Saigon beginning in 1966. When the JCRC was established in Saigon on 23 January 19773, the records of the JCRC were turned over to the new organization.

The mission of the JCRC is to assist in resolving the status of those U.S. personnel missing in action (MIA) and those personnel declared dead whose bodies were not recovered (BNR), through the provision of information/coordination and/or conduct of operations to locate and investigate crash and grave sites and recover and identify remains throughout Southeast Asia.

In planning for our field operations, we use the following assumption:

a. All parties concerned will meet their obligations with respect to MIA's and dead assumed under the Vietnam and Lao agreements and will mutually assist in the resolution of such cases.

b. Conditions for coordination with personnel in countries concerned will be provided in accordance with terms of the cease-fire agreements.

c. Coordination of in-country activities in Laos and Cambodia will be accomplished through CINCPAC senior military representatives or designated American Embassy officers.

d. Coordination of in-country activities within North and South Vietnam will be accomplished through negotiations within the Four-Party Joint Military Team.

e. Access to all pertinent areas of Southeast Asia will be sought to allow JCRC teams to conduct casualty resolution operations.

In Saigon, an officer assigned to the Office of the Defense Attache, American Embassy has been designated to act as a channel for direct communications between JCRC Headquarters and the U.S. Delegation to the FPJMT.

The JCRC is organized under a dual deputy system: The Deputy Commander for Staff Operations is responsible for the staff planning and coordination; the Deputy Commander for the Field Operations supervises the field units.

Organizationally, the JCRC staff accomplishes the normal staff functions. Additional comments need to be made on three of the staff elements.

The Public Affairs Officer on the staff provides all available information on JCRC activities to the MACTHAI PAO in Bangkok. A JCRC officer is assigned to that office, where he serves as a casualty resolution point of contact and is in constant contact with the JCRC on all casualty resolution matters.

The Casualty Data Division assembles, correlates, and analyzes information on personnel who are missing in the vicinity of crash and burial sites. The function of this division includes data analysis, automated data processing, photo interpretation of aerial photos of crash sites, crash/grave site identification of areas in which JCRC teams will operate, and the maintaining of casualty records or dossiers on those personnel who have been in a missing in action status at one time or another during the conflict.

The Operations Division directs activities in the areas of operations, plans and communications. It also has a Public Communications Branch which provides staff assistance in the development of public information programs in an effort to obtain additional information concerning crash and burial sites.

The major subordinate elements involved in the field operations are two control teams, one oriented toward operations in Vietnam and one toward Laos and Cambodia. These control teams provide command and control of casualty resolution field teams, each comprise of five men, and will have operational command of all special augmentation personnel needed to accomplish the mission. Each control team has the capability of launching, supporting, and extracting the field teams and provides for requisite air, communications, and logistics support.

The field teams which will search for crash or grave sites consist of an officer, a radio operator, a medic, an interviewer, and a general duty assistant to the officer in charge, who are all Special Forces Troops.

Special Forces personnel will be used because they are trained to operate harmoniously with indigenous peoples, familiar with jungle terrain and survival techniques, and are available for this humanitarian effort with minimum additional training. The field teams will be augmented, as required, by Air Force air crash investigators, ordnance demolition technicians provided to disarm unexpended ordnance and booby traps near crash sites, and by indigenous personnel who will assist in the search and on-site operations. The JCRC has 11 organic field teams, with an augmentation capability of 10 more teams from the 1st Special Forces Group on Okinawa and 16 teams from U.S. Special Forces assets in Thailand.

The Central Identification Laboratory, Thailand (CIL), located at Samae San, between U-tapao and Sattahip in Southeastern Thailand, about 80 miles from Bangkok, is under the operational command of the Joint Casualty Resolution Center. The CIL is organized into an identification laboratory and eight five-man recovery teams which will accompany the casualty resolution field teams.

The field teams will be deployed in various ways. They can be utilized as separate entities in the search operations for selected locations, or they can be deployed in a cluster arrangement. This concept visualizes a number of concurrent and consecutive crash/grave site operations located in one general area. This area would be in the vicinity of a forward operating base which ideally would be adjacent to an air strip that could accommodate arrival, resupply, and departure aircraft. The cluster concept provides a single area to concentrate on, allows for maximum advantage to be taken of predicted climatic and weather cycles, maximizes the use of helicopters by short but frequent missions to support several teams in one area, enhances the command, control, and communications support of a number of field teams from the central operating base, facilitates logistics and reduces the insertion problem of the special augmentation personnel (Explosive Ordnance Disposal [EOD], crash investigators, documentary photographers, and CIL recovery teams).

A review of the steps that would be involved in the recovery process follows. First, the Casualty Resolution Staff develops selected areas for search and investigation based on known crash and grave sites. The detailed planning and coordination effort using all available information culminates in an aerial search of the area, if authorized. This combined research will be followed by insertion of the forward operating base and later the field teams and special augmentation personnel. A detailed search and inspection will follow. The results of these missions will be carefully documented. Upon completion of the search and investigation process, the teams and forward operating base will be extracted. Remains that have been located will be flown to the CIL for identification.

After analysis and recording has been completed, a detailed report will be forwarded to the services to assist in final determination on status of the personnel. Identified remains will be returned to the United States for burial as desired by next of kin.

Mr. DOLE. Mr. President, I would hope that the North Vietnamese would carry out the agreement signed on January 27 with respect to the MIA's, even though they are not carrying out the agreement with reference to military operations in Cambodia.

But I would suggest, as I said before, that I am not attempting to restrict, in effect, the Eagleton amendment in regard to strictly military considerations. The amendment offered by me and by the Senator from North Carolina states:

"*Provided, however*, That these restrictions shall be of no force or effect if the President finds and forthwith so reports to the Congress that the Government of North Vietnam is not making an accounting, to the best of its ability, of all missing in action personnel of the United States in Southeast Asia, or is otherwise not complying with the provisions of article 8 of the agreement signed in Paris on January 27, 1973, and article 10 of the protocol to the agreement 'Concerning the Return of Captured Military Personnel and Foreign Civilians and Captured and Detained Vietnamese Civilian Personnel'."

That is all we suggest by this amendment. That is all we suggest, I might add, in the past 2, 3, or 4 years, with reference to POW's. We had about the same arguments for the same arguments against. No one questions that motives or patriotism of those who had a different view, but I stand here as one who has worked with families of MIA's and POW's. This is the least we can do.

Yes, we can say the North Vietnamese are going to permit us to do this and that, but what assurance do we have? What are the diplomatic sanctions referred to by the Senator from Missouri that we would impose?

I do not want the bombing of Cambodia to continue, either, but I do not want to take away from the President of the United States whether it is the present President or some other President—that leverage if the North Vietnamese turn their backs and say, "There will be no further investigation with reference to MIA's."

Having talked with some of the wives and some of the families of MIA's since January 27 of this year, I think it is fair to say that the great majority of these people, those directly involved, want to know the status of their sons or husbands. Are they dead or alive?

There was once a great hope that once the POW's came back and were debriefed, the status of many MIA's could be determined or changed, but, as I understand it, only 100 changes were made from "missing in action" to "killed in action."

I happen to believe that we owe the families of these Americans—of course they are not many; there are only 1,000—a quick accounting and a quick verification, so their status will be known.

I really cannot see that it does any great damage to the so-called Eagleton amendment to provide the President this leverage. First, the President must make a finding. Then he must make a report. And then, and only then, could he avoid the restrictions of the Eagleton amendment.

The POW's are home now, and the POW's, as I said, have been welcomed, and we all rejoice in their homecoming. We all are concerned about those who were killed in Southeast Asia, those who remain, and those who are hospitalized. And, yes, we are concerned about the MIA's, who have no voice at all, unless it comes from the Congress.

I am under no illusion. I do not expect this amendment to the Eagleton amendment to prevail. But I would hope those who read the RECORD and those who sit down next year or 20 years from now to read the RECORD, in the event the North Vietnamese do not carry out the agreement, will know there were those of us in the Senate who stood and let our views be known. Foreign Relations, entitled "U.S. Air Operations in Cambodia: April 1973."

On page 1, subparagraph (b) reads:

During the last two weeks in March, the U.S. Air Force had flown a daily average of 58 B-52 sorties, 30 F-111 sorties, 11 gunship sorties and 140 other tactical air sorties, more than two times the sortie rate before January 29.

In subparagraph (e), it states:

(*e*) Only 20 percent of the U.S. air strikes being flown were in support of Cambodian forces while 80 percent were directed at the interdiction of North Vietnamese lines of communication into South Vietnam.

Mr. President, I wish to reserve time for my colleague from North Carolina, but I want to conclude my statement by reading from a letter we sent to every Member of this body.

First, I ask unanimous consent that the entire letter be inserted in the RECORD, at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C., May 31, 1973.

DEAR COLLEAGUE: Today, more than four months since the Paris Peace Agreement on Vietnam was signed, some 1,300 Americans are still missing in Southeast Asia. In spite of specific provisions in Article 8 of the Agreement and its protocols for verification and information on missing men, the North Vietnamese have failed to allow inspection operations to be undertaken or to provide any information concerning the status or fate of these men.

We believe that the Senate must go on record for a clear accounting of all MIA's. We must have a full, complete, and detailed resolution of the status of each man insofar as possible. Every means of securing compliance in this respect must be available to the President. Yet the Eagleton Amendment to H.R. 7447, the Supplemental Appropriations bill, would severely limit the President's efforts to secure compliance.

Therefore, today, we intend to offer an amendment to suspend the restrictions of the Eagleton Amendment if the President finds and so reports to Congress that North Vietnam is not making an accounting as required under the Paris Agreement. Congress needs to know if North Vietnam is not living up to the Paris Agreement: our amendment would encourage the President to keep Congress informed in this respect. At the same time, it would give the President the means to continue whatever pressure is necessary to resolve the status of the MIA's.

If you would care to join us as a co-sponsor, please contact us on the Floor, or call John Smith (ext. 6521) or Jim Lucier (ext. 6342).

Sincerely,
BOB DOLE,
U.S. Senate.
JESSE HELMS,
U.S. Senate.

Mr. DOLE. Mr. President, let me read a part of that letter:

We believe that the Senate must go on record for a clear accounting of all MIA's. We must have a full complete, and detailed resolution of the status of each man insofar as possible. Every means of securing compliance in this respect must be available to the President. Yet the Eagleton Amendment to H.R. 7447, the Supplemental Appropriations bill, would severely limit the President's efforts to secure compliance.

Mr. President, that is all we wish to do by offering this amendment. We wish to make certain that we preserve the President's right, the Commander in Chief's right, to make certain that those who are missing in action are properly accounted for.

The PRESIDING OFFICER. All of the Senator's time has expired.

Mr. EAGLETON. Mr. President, how much time remains to me?

The PRESIDING OFFICER. The Senator has 12 minutes remaining.

Mr. EAGLETON. I yield 6 minutes to the Senator from Montana.

Mr. MANSFIELD. Mr. President, if the amendment offered by the distinguished Senator from Kansas (Mr. DOLE) and the distinguished Senator from North Carolina (Mr. HELMS) is adopted, we can kiss the Eagleton-Brooke-McClellan amendment good-bye. The effect will be to nullify what the Senate Committee on Appropriations did without opposition and what the Senate itself, in effect, did by a vote of 55 to 21 on Tuesday last.

Under the amendment now being considered, the bombing in Cambodia could go on indefinitely, because I note from the news ticker this morning that "the United States is still identifying missing in action from World War II, a quarter-century ago, and it could take months—if not years—for the status of remaining Vietnam MIA's to be settled."

There is no person in this Chamber who is not interested—if not more interested—in the missing in action, just as we were interested in the release of the POW's, the return of the POW's, and the return of U.S. personnel in South Vietnam.

I think we ought to face up to the realities and recognize that our Government has created a joint committee which is now stationed, I believe, in Bangkok for the purpose of finding and identifying some 1,400 or 1,500 personnel still listed as missing in action.

As the distinguished senior Senator from Missouri said, it is a tragic irony that the Department of Defense carried no MIA's in Cambodia prior to the January 27 ceasefire agreement. Since that agreement, however, two Americans have been lost in bombing operations and are now listed as missing in action.

If Senators want to create more missing in action, let them vote to continue the bombing. If they want to acquiesce in the present policy of the administration to continue the bombing, let them vote for this amendment. If they want to get out of Laos and Cambodia, and all of Southeast Asia, on a lock, stock, and barrel basis, they will see to it that the Eagleton-Brooke-McClellan amendment remains intact.

I have received 13 or 14 letters from men stationed at Utapao and Anderson Field in Guam.

Here is the last one:

DEAR MR. MANSFIELD: At long last, Congress is asserting itself in its opposition to American military involvement in Indochina. It is with deep interest that I have been watching the recent developments in the House and now in the Senate. I have a personal interest in such developments because I am a B-52 copilot currently stationed temporarily on Guam.

Of the several significant reasons which would justify an immediate halt to the bombing of Cambodia, the most significant is the questionable legality of the bombing. The reasoning behind the legality has thus far, at least, been flimsy.

In addition, the tremendous amount of fuel consumed by all of the B-52s in their daily missions contributes dramatically to the severe energy crisis being experienced in the United States. Utilization of B-52s alone, operating out of Guam and Thailand on bombing missions, use up approximately 2½ million gallons of fuel every day.

Also, a most serious concern is the possible loss of planes and men over Cambodia, thus resulting in additional prisoners being taken by the enemy.

The flight crews engaged in these operations are truly being utilized as mercenaries. Apparently all that is required for B-52s and the various other aircraft involved in these operations to conduct their missions is a request by a besieged government for such assistance. It is a frightening thought.

Mr. President, the only way to deal with this situation is to face up to our responsibility. The only way to do it effectively is to cut the purse strings. And that is what the Eagleton amendment does, because it locks off funds from any and all directions and any and all acts so that if the Congress speaks on this basis, it will mean that we will at long last—13 years too late—get out of Southeast Asia all the way. And, as far as the MIA's are concerned, this Government is making every effort, and will continue to do so, to attempt to identify them. But if we want more MIA's, we should vote for the pending amendment and we will get them, just as we are getting them now in Cambodia.

If we want quicker action as far as the MIA's are concerned, we should keep the Eagleton amendment intact.

The PRESIDING OFFICER. Who yields time?

Mr. EAGLETON. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator from Missouri has 4 minutes remaining.

Mr. EAGLETON. Mr. President, I will be very brief because I could not add to the excellent remarks which the distinguished majority leader has just made on this subject matter.

The Senator from Kansas (Mr. DOLE) said: "This is the least we can do," meaning the Dole-Helms amendment.

Mr. President, I say that this is the worst we could do insofar as this country is concerned. This gives the President the right to continue bombing as long as he sees fit, on and on and on, endlessly in a new area of warfare.

As the Senator from Montana said, this will not recover the MIA's, and, unquestionably, this will add to the MIA list.

I repeat, in summarizing the testimony being given today by the Assistance Secretary, the administration is in contact with the North Vietnamese, and the effort is going forward insofar as recovering and identifying the MIA's.

Insofar as the Dole amendment enhancing the possibility of peace, I point out that all it would do would be to involve us in another war, but this time it would be called the Cambodian War.

Mr. CHILES. Mr. President, will the Senator yield?

Mr. EAGLETON. I yield.

Mr CHILES. Mr. President, I wonder if the Senator from Missouri or perhaps the Senator from Kansas could explain the meaning of the amendment to me. I am trying to understand the amendment.

The amendment says:

These restrictions shall be of no force or effect if the President finds and forthwith so reports to the Congress that the government of North Vietnam is not making an accounting, to the best of its ability, of all missing in action personnel of the United States in Southeast Asia.

That is the language as I read it. What I am trying to understand is, if this amendment is agreed to, would it not be to the advantage of North Vietnam to not make an effort, because if they did not make an effort, the restrictions would not be in effect.

Mr. DOLE. Mr. President, first there must be a finding by the President. Second, there must be a report to the Congress, and after the report is made, we could cut off the action just like that. If we did not cut it off, there would then be the bombing.

Mr. CHILES. Mr. President, would not the North Vietnamese want the restrictions not to be in effect?

Mr. DOLE. They want the Eagleton restrictions to be in effect, because then they could do anything.

All I am saying is that in this one rare instance, in this one small instance, we are talking about American MIA's. Some are from Florida, some from Kansas, and some from Missouri. In that one instance, where there is no effort made for an accounting, if the President so finds and reports to the Congress, we resume the bombing.

Mr. CHILES. Mr. President, it looks to me as this would in no way help the effort. It could confuse the effort, and I would not want to do that.

Mr. DOLE. Mr. President, I want to keep the pressure on.

The PRESIDING OFFICER. Who yields time?

Mr. EAGLETON. Mr. President, I yield back the remainder of my time.

Mr. PERCY. Mr. President, I think it is fair to say that my concern for the fate of Americans unaccounted for in Indochina is as great as any man's. I have supported every responsible effort to achieve the release of prisoners of war and a full accounting of those missing in action. I have conferred at length with the Department of Defense officials whose task is to find the missing Americans in Indochina, and I have told them that we will not be satisfied until the job is done.

However, at this time I cannot justify continued American air combat over Cambodia and Laos in an effort to put greater pressure on North Vietnam to release information about the missing in action. Passage of this amendment, I believe, would bring more American deaths, the taking of more American prisoners, and an increase in the number of Americans missing in action, for this would inevitably be the result of continued American participation in combat.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the amendment of the Senator from Kansas to the committee amendment. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. STEVENS (after having voted in the affirmative). Mr. President, on this vote I have a pair with the Senator from Connecticut (Mr. Weicker). If he were present and voting, he would vote "nay"; if I were at liberty to vote. I would vote "yea." Therefore, I withdraw my vote.

Mr. ROBERT C. BYRD. I announce that the Senator from Nevada (Mr. Bible), the Senator from Nevada (Mr. Cannon), the Senator from Idaho (Mr. Church), the Senator from North Carolina (Mr. Ervin), the Senator from Connecticut (Mr. Ribicoff), the Senator from Georgia (Mr. Talmadge), and the Senator from Wyoming (Mr. McGee) are necessarily absent.

I further announce that Senator from Alabama (Mr. Allen), and the Senator from Colorado (Mr. Haskell) are absent on official business.

I also announce that the Senator from Mississippi (Mr. Stennis) is absent because of illness.

I further announce that the Senator from Maine (Mr. Muskie) is absent because of a death in the family.

I further announce that if present and voting, the Senator from Colorado (Mr. Haskell), the Senator from Idaho (Mr. Church), the Senator from Connecticut (Mr. Ribicoff), and the Senator from Nevada (Mr. Bible) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Tennessee (Mr. Baker), the Senator from Utah (Mr. Bennett), the Senator from Colorado (Mr. Dominick), the Senator from Hawaii (Mr. Fong), and the Senator from Connecticut (Mr. Weicker) are necessarily absent.

The Senator from Arizona (Mr. Goldwater) is absent by leave of the Senate on official business.

The Senator from New Hampshire (Mr. Cotton) is absent because of illness in his family.

The pair of the Senator from Connecticut (Mr. Weicker) has been previously announced.

The result was announced—yeas 25, nays 56, as follows:

[No. 161 Leg.]

YEAS—25

Bartlett, Beall, Bellmon, Brock, Buckley, Curtis, Dole, Domenici, Eastland, Fannin, Griffin, Gurney.

Hansen, Helms, Hruska, Jackson, Long, McClure, Roth, Scott, Pa., Scott, Va., Sparkman, Taft, Thurmond, Tower.

NAYS—56

Abourezk, Aiken, Bayh, Bentsen, Biden, Brooke, Burdick, Byrd, Harry F., Jr., Byrd, Robert C., Case, Chiles, Clark, Cook, Cranston, Eagleton, Fulbright, Gravel, Hart.

Hartke, Hatfield, Hathaway, Hollings, Huddleston, Hughes, Humphrey, Inouye, Javits, Johnston, Kennedy, Magnuson, Mansfield, Mathias, McClellan, McGovern, McIntyre, Metcalf, Mondale.

Montoya, Moss, Nelson, Nunn, Packwood, Pastore, Pearson, Pell, Percy, Proxmire, Randolph, Saxbe, Schweiker, Stafford, Stevenson, Symington, Tunney, Williams, Young.

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Stevens, for.

NOT VOTING—18

Allen, Baker, Bennett, Bible, Cannon, Church, Cotton, Dominick, Ervin.

Fong, Goldwater, Haskell, McGee, Muskie, Ribicoff, Stennis, Talmadge, Weicker.

So Mr. Dole's amendment was rejected.

PROTECTING WOMEN IS NOT A PARTISAN ISSUE

Mr. DOLE. Mr. President, the distinguished chairman of the Senate Judiciary Committee held a news conference last Friday to discuss the tragedy of violence against women.

I commend Senator BIDEN for his interest in this matter. No doubt about it, the statistics are very disturbing. A staggering 2.5 million national violent crimes are committed against women each year. In fact, according to the Senate Judiciary Committee, violent attacks by men are the No. 1 health risk to adult women in America today.

While I do not doubt Senator BIDEN's interest in this matter—or the concern of the media which ran a flurry of stories following the press conference—I would like to ask where have the media been for the past 2 years?

Mr. President, I ask unanimous consent to enter into the RECORD a detailed summary of how the Democrat leadership in Congress has consistently blocked sexual assault and victims rights provisions from becoming law.

I would urge the media to read this important document, and let me briefly summarize a few of the facts it contains.

No. 1. Congresswoman SUSAN MOLINARI and I introduced the Women's Equal Opportunity Act on February 21, 1991. This legislation is more pro-women and more anticriminal than any bill introduced by the democrat leadership. Unfortunately, the Dole-Molinari bill has never received a hearing.

No. 2. The anticrime legislation President Bush proposed in March of 1991 contained many of the same sexual assault and victims rights provisions contained in the Dole-Molinari bill. and many of its provisions are tougher than those in Senator BIDEN'S bill.

Unfortunately, the Senate Democrats would not allow the President's proposal to be used as the vehicle for the crime bill.

Not once in the past 2 years have the media come to me asking about my legislation combatting sexual assault, and not once did I see a story detailing the provisions in the President's legislation.

No. 3. Despite the lack of interest from Democrats or the media, Republicans in the House succeeded in attaching many of the sexual assault and victim's rights provisions to the crime bill which was eventually passed in the House.

They only did so, however, after the Democrats forced them to remove an amendment creating a general rule of admissibility in sexual assault and child molestation cases, of evidence that the defendant has committed offenses of the same sort on other occasions.

No. 4. When the Democrat-controlled conference committee got hold of the House and Senate crime bills, they removed nearly every provision which got tough with those who assault women.

Some of the provisions which were removed—at the insistence of the Democrat-controlled committee—included:

A doubling of maximum penalties for recidivist sex offenders;

Authorization of restitution in sex offense cases, whether or not physical injury results; and HIV testing of defendants in sex offense cases with disclosure of test results to victims.

The incomprehensible removal of these provisions is one of the reasons I have opposed the conference report on the crime bill.

No. 5. Congresswoman MOLINARI and I are trying again, and last month, we introduced the Sexual Assault Prevention Act of 1992.

But again, the liberal Democrats in charge tell us they have problems with the bill. They have problems with authorizing the death penalty for murders committed by sex offenders. They still have problems with testing sex offenders for AIDS, and they have problems with letting evidence come in at trials that accused sex offenders or child molesters had committed offenses of the same type before.

In conclusion, Mr. President, let me just say that press releases and news conferences are nice—but they should not obscure the fact that if President Bush and Senate Republicans had their way, many of the proposals advanced by Senator BIDEN and trumpeted by the media—and some much tougher ones—would already have become law.

The summary follows:

OBSTRUCTION OF SEXUAL VIOLENCE AND VICTIMS RIGHTS LEGISLATION BY THE DEMOCRATIC LEADERSHIP IN CONGRESS

The Dole-Molinari "Women's Equal Opportunity" bill (H.R. 1149 and S. 472) and the President's violent crime bill (H.R. 1400 and S. 635) contain a variety of important provisions to combat sexual violence and strengthen the rights of victims. These proposals have created a dilemma for the Democratic leadership in Congress: Supporting these measures would run counter to their usual identification with criminal defense interests. However, opposing them would mean being on the wrong side of anti-rape, pro-women measures.

The leadership's response has been to obstruct these provisions through procedural maneuvering, while avoiding the embarrassment of openly opposing them. The obstruction has taken place in the following stages:

I. OBSTRUCTION IN THE HOUSE OF REPRESENTATIVES

The version of the House crime bill drafted by the Democratic leadership of the Judiciary Committee (the earliest version of H.R. 3371) contained *none* of the sexual violence and victims rights provisions from the Dole-Molinari bill and the President's bill. Representative Sensenbrenner accordingly proposed an amendment to add these measures to the bill. The amendment included:

(1) A general rule of admissibility in sexual assault and child molestation cases for evidence that the defendant has committed offenses of the same sort on other occasions.

(2) Doubling of the maximum penalties for recidivist sex offenders.

(3) Broadened definition of "sexual act" for victims below the age of 16.

(4) Authorization of restitution for victims in all sexual assault and child molestation cases, whether or not physical injury results.

(5) HIV testing of defendants in sex offense cases with disclosure of test results to victims.

(6) Penalty enhancement for HIV positive sex offenders who risk infection of their victims.

(7) Government payment of the cost of HIV testing for victims of sexual assaults.

(8) Extension of restitution to include child care, transportation, and other expenses resulting to the victim from participation in the investigation or prosecution or attendance at proceedings.

(9) Authority for court to enforce restitution orders by suspending eligibility for federal grants, contracts, loans, and licenses.

(10) Giving victims of sexual assaults and other violent crimes the right to address the court concerning the sentence to be imposed.

(11) Protecting the victim's right to an impartial jury by equalizing at 6 the number of peremptory challenges accorded to the defense and the prosecution in jury selection.

Confronted with the Sensenbrenner amendment, the Democratic leadership of the Judiciary Committee made the following offer to Rep. Sensenbrenner: The amendment would be accepted, but only if he dropped the most important part of it—the prior-crimes evidence rule for sex offense cases (item (1) *supra*). Faced with the alternative of having the Democratic majority vote down the whole amendment, Rep. Sensenbrenner accepted this offer, and the amendment minus the prior-crimes evidence rule was adopted by the Judiciary Committee.

Following the Judiciary Committee leadership's successful move against the prior-crimes evidence rule in the context of the Committee's consideration of the general crime bill (original H.R. 3371), Rep. Sensenbrenner re-introduced the prior crimes evidence rule as a separate bill (H.R. 3463). The Judiciary Committee leadership has never subsequently held hearings or taken any other action on this proposal.

When the general crime bill (original H.R. 3371) moved to the floor following the Committee action, Rep. Molinari proposed an amendment to restore the prior-crimes evidence rule provision. The Rules Committee allowed a large number of amendments to be proposed to the bill on the floor, including many dealing with relatively minor issues. However, it rejected Rep. Molinari's proposed amendment.

The outcome of the initial round in the House was that H.R. 3371 as originally passed included all of the measures in the Sensenbrenner amendment other than the prior-crimes evidence rule for sex offense cases. As a result of the cooperative obstruction by the Democratic leadership of the Judiciary Committee and the Rules Committee, the House of Representatives never had the opportunity to vote on the prior-crimes evidence rule, and the Democratic leaders who succeeded in burying it in the House never had to state their opposition openly.

II. OBSTRUCTION IN THE SENATE

In March of 1991, the President transmitted his violent crime bill to Congress (S. 635 and

H.R. 1400), and challenged Congress to enact it within 100 days. Senator Biden hastened to offer his own "crime bill" in response (S. 618). Following the receipt of a letter from the Justice Department which pointed out gross deficiencies of content and formulation in S. 618—including the lack of anything comparable to the sexual violence and victims rights provisions of the President's bill—Senator Biden introduced a new bill (the original version of S. 1241).

The new Biden bill incorporated major portions of the President's bill, including virtually all of the firearms provisions and large parts of the terrorism title. However, *none* of the sexual violence and victims rights provisions of the President's bill were included.

The initial choice presented to the Senate was whether to use the President's bill (S. 635) or Biden's bill (S. 1241) as the basic vehicle for comprehensive anti-crime legislation. While many moderate and conservative Democrats preferred the provisions of the President's bill to the inadequate and regressive provisions of the Biden proposal, they were unwilling to cross their own leadership by voting for the President's bill as the basic vehicle. Following the Senate's vote to use S. 1241 as the vehicle, a number of important parts of the President's proposal were added or substituted for the corresponding Biden provisions through floor amendments. However, debate in the Senate closed off before amendments containing the sexual violence and victims rights provisions of the President's bill could be offered.

The outcome of the initial round in the Senate was that the Senate-passed bill (S. 1241) contained none of the President's provisions addressing sexual violence and victims rights. Like his counterparts in the House, Senator Biden was able to kill these provisions (at least for the time being) without having to oppose them openly.

III. OBSTRUCTION AT THE CONFERENCE STAGE

Following passage of S. 1241 and H.R. 3371, a conference committee was convened on a Sunday afternoon near the end of the 1991 session. The committee was chaired by Rep. Brooks and Senator Biden.

The Democrats on the committee had unilaterally worked out their own "compromise" bill before the meeting which consistently incorporated measures from either bill that weakened existing law, and largely discarded the important pro-law enforcement measures of the House and Senate bills. This revised "crime bill" (the current version of H.R. 3371) was adopted by the conference through party-line votes. The Republican members of the committee were shut out of any role in the formulation of the bill.

The casualties of the Brooks—Biden conference's attack on the law enforcement provisions of the House and Senate bills included most of the sexual violence and victims rights provisions that the House had passed. Only two provisions were included in the conference bill: the broadened definition of "sexual act" for offenses against victims below the age of 16, and the victim's right to address the court concerning the sentence.

All of the other provisions originating in the Sensenbrenner amendment that the House had passed were excluded from the conference bill by the Brooks-Biden conference. The House-passed provisions in this area that were excluded from the conference bill included specifically: (1) doubled maximum penalties for recidivist sex offenders, (2) authorization of restitution in sex offense cases, whether or not physical injury results, (3) HIV testing of defendants in sex offense cases with disclosure of test results to victims, (4) penalty enhancement for HIV positive sex offenders who risk infection of their victims, (5) government payment of the cost of HIV testing for victims of sexual assaults, (6) extension of restitution to include child care and other expenses of the victim resulting from participation in the case, (7) enforcement of restitution orders by suspension of certain benefits, and (8) protection of the victim's right to an impartial jury by equalizing defense and prosecution peremptory challenges.

The pseudo-crime bill adopted by the conference committee was rammed through the House of Representatives at the close of the 1991 session by the Democratic leadership (by a two vote margin), but failed to attract sufficient votes for cloture in the Senate. In the floor debate on the bill, several Members strongly objected to the deletion of the sexual violence and victims rights provisions of the House bill. *See* Cong. Rec. H11683 (remarks of Rep. Allen), H11683–84 (remarks of Rep. Molinari), H11684 (remarks of Rep. Sensenbrenner), H11746 (remarks of Rep. Hyde), H11750 (remarks of Rep. Harris). The sponsors of the conference bill failed to provide any explanation or justification for their decision to discard these provisions.

IV. THE CURRENT STATE OF OBSTRUCTION

In March of 1992, Senator Thurmond introduced S. 2305 (the Thurmond-Gramm bill). Like the conference bill, S. 2305 is generally constructed from provisions that were passed in the separate House and Senate crime bills. However, the philosophy underlying the formulation of S. 2305 is directly opposite to that of the conference bill: S. 2305 excludes all provisions that weaken existing law, and includes the important pro-law enforcement provisions passed by either House.

In particular, S. 2305 includes (in title VII) *all* of the House-passed provisions of the Sensenbrenner amendment.

There have been several efforts by the sponsors of S. 2305 to secure votes on the bill in the Senate. In each case, the Democratic leadership has blocked a vote on S. 2305 and rejoined by holding a cloture vote on the conference bill.

The outcome of this final state of obstruction is that all avenues for advancing the sexual violence and victims rights proposals of the Dole-Molinari bill and the President's bill have been closed off. The Democratic leaderships of both Judiciary Committees have not held any hearings or taken any other action in relation to the original Dole-Molinari proposal, and they have blocked the President's bill by substituting their own pseudo-crime bills. The conference bill cannot be enacted because it is, in plain terms, pro-criminal, and in any event it was drafted to exclude almost all of the Bush-Dole-Molinari proposals. The Thurmond bill does contain most of these proposals, but it too has been blocked.

V. CONCLUDING REMARKS ON THE DEMOCRATIC VIOLENCE AGAINST WOMEN BILL

The Members who have been responsible for obstructing the sexual violence and victims rights provisions of the Dole-Molinari bill and the President's bill may seek to excuse or justify their actions by claiming that they have their own proposal in this area: the proposed "Violence Against Women Act of 1991" (S. 15 and H.R. 1502), which is sponsored by Senator Biden and Rep. Boxer.

However, this explanation is untenable. The House Judiciary Committee has not reported H.R. 1502, and there has been no action on S. 15 in the Senate since it was reported by the Senate Judiciary Committee in October 1991. More importantly, these bills contain nothing comparable to most aspects of the Bush-Dole-Molinari proposals.

The current Biden-Boxer proposals were formulated well after the introduction of the Bush-Dole-Molinari provisions: The Dole-Molinari bill was introduced as S. 472 on Feb. 21, 1991, and as H.R. 1149 on Feb. 27, 1991. The President's bill was initially introduced as S. 635 on March 13, 1991. In comparison, H.R. 1502 was introduced on March 20, 1991, and the current version of S. 15 was reported by the Senate Judiciary Committee on October 29, 1991.

The House and Senate versions of the Biden-Boxer bill contain provisions which are intended to strengthen certain aspects of restitution for victims of sexual assaults. S. 15 as reported (but not H.R. 1502) also includes the doubling of maximum penalties for recidivist sex offenders (§111) and the victim's right of allocution in sentencing (§164). However, there is nothing in the Biden-Boxer bills corresponding to any other part of the Dole-Molinari and President's provisions.

In particular, the Biden-Boxer proposal does not contain the following provisions: (1) the rule of admissibility in sex offense cases for evidence that the defendant has committed offenses of the same type on other occasions, (2) broadened definition of "sexual act" for victims below the age of 16, (3) HIV testing of sex offenders with disclosure of test result to victim, (4) penalty enhancement for HIV infected sex offenders who risk infection of the victim, (5) government payment of the cost of HIV testing for victims of sexual assaults, (6) explicit extension of restitution to include child care and other expenses to the victim resulting from participation in the case, (7) enforcement of restitution orders by suspension of benefits, and (8) protection of victims's right to impartial jury by equalizing peremptories.

NUCLEAR TESTING

Mr. DURENBERGER. Mr. President, I rise to comment briefly on recent legislative actions regarding nuclear testing. In early August, I joined with all but 26 of my colleagues in supporting a version of the nuclear testing moratorium sponsored by my friend from Oregon, Senator HATFIELD.

Many of us had reservations about some specific aspects of the amendment, which we hoped would be worked out between Senators COHEN, HATFIELD, and MITCHELL before the DOD authorization bill came to the floor.

When the Senate returned to consideration of these issues during the debate on the DOD bill last month, Senator COHEN offered an amendment that, in my view, substantially improved upon the language that passed the Senate 1 month earlier.

Among other things, the Cohen language was more realistic regarding tests for safety and reliability purposes. These are the most compelling reasons for the United States to continue any testing at all—safety and reliability. We clearly don't need to develop new weapons, but safety and reliability are enduring concerns that don't go away just because the Berlin Wall came down.

Mr. President, I also believe that Senator COHEN's proposals more effectively linked a U.S. moratorium to other arms control and nuclear nonproliferation concerns. That's an area of particular concern and interest for this Senator.

I would note for the record, Mr. President, that my support for the Hatfield amendment in August did not stem from my opposition to nuclear testing just because it's nuclear testing. I do not believe that testing is bad per se. I do believe, however, that a testing moratorium can be effective if it's linked to broader objectives. That's exactly where Senator COHEN's version surpassed Senator HATFIELD's.

When the Senate voted in September, the parliamentary situation did not permit a vote explicity on the Cohen proposal. It was clear, however, that the vote on the Hatfield second degree amendment was in essence a referendum on the Cohen version.

It is important to note for the record that Senator COHEN worked diligently to accommodate the concerns of Senators HATFIELD and MITCHELL, but that the differences could not be worked out and still remain within the parameters of nuclear safety that the experts believe to be imperative.

I voted against the Hatfield language not because I oppose a nuclear testing moratorium, but because I believed the Cohen proposal was stronger and more realistic, particularly regarding the need for limited continued testing for safety and reliability. The administration and other experts were particularly persuasive on these matters.

Now, according to recent press reports, we learn that in signing the energy and water appropriations bill, the administration traded off its concerns about nuclear testing in order to secure funding for the superconducting super collider. Having voted against the super collider and been persuaded by the considered judgment of nuclear experts on the safety and reliability arguments, I must admit to a certain disappointment that the administration took this position.

In any event, Mr. President, the Hatfield language is an important step forward, although I continue to believe that Senator COHEN's proposal would be much more effective.

Thank you, I yield the floor.

CARJACKING CRIMES ESCALATE

Mr. PRESSLER. Mr. President, over the past several weeks, I have made statements about the brutality of carjacking. It is a heinous and violent crime that risks the lives of motorists across the country. In efforts to combat this crime, I sponsored S. 2613 last April. This legislation was designed to increase the penalties for carjacking offenses and to offer other provisions aimed at deterring auto theft.

On September 26, I offered, as an amendment to the tax bill, H.R. 11, one provision from S. 2613 that would subject armed carjackers to severe criminal penalties. Unfortunately, during the conference report process, the conferees struck my amendment from the tax bill.

Since carjacking has emerged as a serious and escalating crime, it has generated significant media coverage. I ask unanimous consent to place an article that appeared on the front page of the Sunday, September 27, 1992, Washington Times and several other articles about carjacking in the RECORD immediately following my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Times]

SENATE VOTES LIFE FOR KILLER CARJACKERS

The Senate approved a measure yesterday that would make carjacking a federal crime punishable by up to life in prison if a death occurs.

The measure, approved without objection as an amendment to a pending $34 billion tax bill, would subject carjackers who use firearms to at least 15 years in prison.

Sen. Larry Pressler, South Dakota Republican, who introduced the amendment, cited the recent case of a suburban Maryland woman who died after she became entangled in a seatbelt as her car was being highjacked.

Pam Basu was taking her 22-month-old adopted daughter, Sarina, to preschool Sept. 8 when she was attacked. The child was thrown, unharmed, to the pavement in her car seat. Mrs. Basu was dragged along the street for more than a mile.

Mr. Pressler called the carjacking in Savage, Md., "an act of unparalleled brutality." He said there had been four carjackings at gunpoint in Washington alone in May. The House has not taken up the measure.

His measure would subject carjackers to up to 25 years in prison if "serious bodily injury" occurs and to life in prison if someone is killed.

The measure also would double the sentence, to 10 years, for importing or exporting stolen cars and for trafficking in stolen vehicles.

Senate aides said they expected work on the overall tax bill to be finished yesterday, with a final vote on Tuesday.

The carjacking that led to the death of Pam Basu was the third attack against a female motorist that day by the two men accused in the killing, according to the grand jury indictment.

U.S. Attorney Jay Stevens and law enforcement officials from nine agencies on Sept. 16 pledged a regional effort against car thieves, and elected officials from four area jurisdictions agreed Friday to adopt uniform legislation and penalties to combat the growing number of carjackings.

The District has reported more than 200 carjackings this year, and Montgomery County more than 30.

Maryland Gov. William Donald Schaefer is preparing legislation to establish a minimum sentence of 15 years and make carjacking one of the aggravating factors in a homicide for which the death penalty could be sought.

D.C. Council member Harold Brazil has introduced emergency legislation that would make carjacking punishable by a $10,000 fine and up to 15 years in prison. Attempted carjacking would carry a $1,000 fine and three years' imprisonment.

[From the Washington Post, Sept. 28, 1992]

SENATE APPROVES STIFF PENALTIES FOR CARJACKING

Responding to an apparent increase in carjackings and to the death of a Maryland woman during one earlier this month, the Senate has approved a measure making carjacking a federal crime punishable by up to life in prison if a death occurs.

The measure, approved Saturday without objection as an amendment to a pending $34 billion tax bill, subjects carjackers who use firearms to at least 15 years in prison.

Sen. Larry Pressler (R-S.D.), who introduced the amendment, cited the Sept. 8 death of Pamela Basu, 34, who was dragged along Howard County streets after she became entangled in a seat belt as her car was being stolen. Her toddler daughter was thrown from the car but was uninjured.

Pressler called the killing "an act of unparalleled brutality." He said there had been four carjackings at gunpoint in Washington alone in May. A computer analysis by The Washington Post found in August that at least 245 carjackings occurred in the region in the first seven months of this year—an average of slightly more than one a day.

Pressler's amendment subjects carjackers to up to 25 years in prison if "serious bodily injury" occurs.

[From the Rapid City (SD) Journal, Sept. 29, 1992]

PRESSLER INTRODUCES CARJACKING MEASURE

(By Michelle Bisson)

WASHINGTON.—The federal government would join the hunt for carjackers under legislation introduced by Sen. Larry Pressler, R-S.D. and approved by the Senate Saturday.

The proposal, which was attached to a pending $34 billion tax bill, would subject carjackers who use weapons to at least 15, and as many as 25 years in prison if "serious bodily injury" occurs.

Attention has focused on carjacking since a Maryland woman was dragged to her death earlier this month while her car was being stolen by an assailant who jumped into her car at a filling station. Her infant daughter was thrown from the car but was uninjured.

"Without stricter laws and tougher law enforcement innocent citizens will continue to be harassed by violent auto thieves," Pressler said.

Although there have been no reported carjackings in South Dakota, car theft is a problem everywhere, said Kristi Sommers, Pressler's press secretary. Pressler introduced the amendment, she said, because he is committed to getting violent crime under control. Sommers noted that as the rate of stolen cars goes up, car insurance rates rise nationwide.

The most recent national statistics indicate that a car is stolen somewhere in this country every 19 seconds, or 4,500 cars on a given day, said Nestor Michnyak, spokesman for the Federal Bureau of Investigation.

The FBI announced a national "Safe Streets Initiative" Sept. 15. Sixty-six task forces throughout the country will focus on what can be done to stop violent crime. No task force is slated for South Dakota, Michnyak said.

Car theft rates are relatively small in South Dakota compared to the rest of the United States, said Lt. Jeff Talbot of the South Dakota Highway Patrol.

"Tops, perhaps 120 cars are stolen each year and not recovered," he said.

But, while most of the attention surrounding carjacking has focused on the Washington area, South Dakota has its share of violent crime, said a spokesman for the Bureau of Alcohol, Tobacco, and Firearms.

Car theft and carjacking fall under federal jurisdiction, he said, when a car thief crosses state lines, or when kidnaping is involved, but there are always some gaps that new federal legislation seeks to fill, the spokesman said. Pressler's proposal would address the "most vicious segment" of this crime, he said, adding that the role of the bureau is to support state and local officers in fighting crime.

The tax bill which includes Pressler's amendment is expected to pass in the Senate and go to a joint Senate-House Conference committee later this week, but is likely to be vetoed by President Bush, according to a House press secretary.

[From the Fairfax Journal, Sept. 21, 1992]

COMMITTEE AMENDS CAR THEFT MEASURE

(By Matt Yancey)

WASHINGTON.—Armed carjackings would become a federal crime under a bill that cleared a key congressional hurdle Thursday. But it was bruised in the process, its author said.

At the behest of the auto industry, the House Energy and Commerce Committee amended an anti-car theft bill to exempt most American models from a requirement to carry the vehicle's identification number on all major parts.

Even thieves' most popular models would not have to carry vehicle identification numbers on major parts if they come off the assembly line equipped with anti-theft devices that, ironically, some law enforcement officials blame for the increase in carjackings.

The bill's author, Rep. Charles Schumer, D-N.Y., accused the panel's chairman, Rep. John Dingell, D-Mich., of gutting the major provision to stop trafficking in stolen auto parts because of manufacturers' objections that it would add $5 to $7 to the cost of a car.

"This amendment creates a loophole big enough to drive a stolen Mack truck through," Schumer said, vowing to fight the issue when the bill reaches the House floor later this month. "The Big Three [auto companies] are trying to strip this bill the way chop shops strip stolen cars."

Dingell and other members of the committee said there is no conclusive evidence that stamping the ID numbers on major parts of theft-prone models, called for under a 1984 law, has deterred auto thefts.

But the amended bill does extend the parts identification requirement to light trucks, vans and specialty vehicles, which have swelled in popularity among thieves,

"It does not cover all vehicles because a large number of vehicles are simply not candidates for theft," Dingell said. "There is a real danger to small business in drafting the wrong kind of legislation on this with no significant advantages in terms of law enforcement."

Currently, only about 40 American "high-theft" models are required to carry vehicle identification numbers on 14 major parts, including transmissions, doors, deck lids, front fenders, bumpers, grills and hoods.

Schumer's bill would add windows and require every new car to have the 15 parts marked. Repair shops selling or installing used parts on a car would be required to call a toll-free number and check the identification numbers on the parts against an FBI database of stolen vehicle numbers.

Dingell's committee also amended Schumer's bill to increase his proposed punishment for an armed carjacking to 25 years in prison if it results in a serious injury or death. Schumer's bill set a maximum 15-year penalty for carjacking.

Similar legislation has been introduced in the Senate by Sen. Larry Pressler, R-S.D. A wave of carjackings in the Washington area in the last two weeks resulting in two deaths has added an impetus to get a bill on President Bush's desk before Congress adjourns early next month.

[From the Washington Times, Sept. 30, 1992]

SENATE GETS TOUGH ON CARJACKING

The Senate voted yesterday to make armed hijacking of a car a federal crime punishable by a 15-year prison term. A hijacking involving a firearm and resulting in the death of an innocent person could result in a life sentence. Trafficking in stolen cars would be punishable by five to 10 years in prison.

The legislation was approved as part of a catchall tax bill passed by the Senate. Similar legislation is pending in the House but there is a dispute over details.

Police say the increasing use of sophisticated car security devices has frustrated thieves to the extent that they find it easier to take cars at gunpoint.

AUTO INDUSTRY FEARS FAST-TRACK CARJACKING BILL

(By Caren Bohan)

WASHINGTON.—A bill to crack down on car theft is speeding through Congress in the wake of rising car thefts nationwide and a recent spate of violent "carjackings," particularly in the Washington area.

But auto industry representatives are pleading with lawmakers to put the brakes on the bill, which they say would hurt their livelihood and cost consumers up to $225 million.

The proposed Anti-Car Theft Act of 1992 would toughen penalties for car theft, establish carjacking as a federal crime and set up a national clearinghouse to track used car parts.

After laying dormant for nearly a year, the bill is gaining momentum following a series of Washington-area carjackings last week.

The most notorious of these resulted in the death of a woman who was dragged on the pavement for a mile-and-a-half with her arm stuck in her car door. The thieves allegedly sped off with her infant daughter in the front seat.

Many proponents of the legislation expect Congress to pass the bill before it adjourns in October, and opponents in the auto industry fear it may be too late to make changes they want.

What irks them are provisions to establish the stolen parts clearinghouse.

"These provisions contain record-keeping and reporting requirements which could force the closing of hundreds of small automotive recycling businesses," James Watson, vice president of the Automotive Dismantlers and Recyclers Association, told a congressional committee last week.

The association represents shops that dismantle used cars and sell the parts.

The bill would require carmakers to inscribe an identification number on all major parts. That requirement expands a 1984 law that requires the identification of certain parts only for high-theft cars.

Before selling a used part, dealers would have to register the part via telephone with an FBI service. The service would then check to see if the part belonged to a stolen car and would issue a certificate if it were legitimate.

The automotive dismantlers were joined in their opposition by the Motor Vehicle Manufacturers Association, which object to the parts labeling requirements.

Mike Stanton, a manufacturers lobbyist, estimated the provision would add up to $10 to the cost of a new car. Other estimates have placed the cost at $6 per car.

Stanton said money was not the only issue.

"One question goes more to the issue of whether the money would be wisely spent," said Stanton, who questioned whether the parts provision would deter car thefts. He cited a federal Department of Transportation report that found no conclusive evidence that the 1984 car-labeling provision deterred theft.

Ann Waltner, an aide to South Dakota Sen. Larry Pressler, who introduced the Senate version of the bill, said the labeling requirements, combined with other provisions, should deter theft.

"The chances of being caught would be greater, and once you are caught, you'll face a higher penalty. It should serve as a deterrent," she said.

Waltner said there were still some issues to be ironed out in a Senate Judiciary Committee hearing expected to be held in the next few weeks.

The National Automobile Dealers Association is concerned about a provision that would require used car dealers to check each car part to make sure it is correctly labeled.

"It's ridiculous. It's going to raise the price of used cars," said association lobbyist Tom Green. "But it's on such a fast track because of the carjackings, people will be very hesitant to make any changes in the bill"

SENATE MAKES ARMED AUTO THEFT FEDERAL CRIME

WASHINGTON.—The armed hijacking of a car would be a federal crime punishable by a 15-year prison term under a bill approved by the Senate.

A hijacking involving a firearm and resulting in the death of an innocent person could result in a life sentence. Trafficking in stolen cars would be punishable by 5 to 10 years in prison.

The legislation was approved Tuesday as part of a catchall tax bill passed by the Senate. Similar legislation is pending in the House but there is a dispute over details.

Sen. Larry Pressler, R–S.D., offered the amendment as a result of a car hijacking that resulted in the death of a woman in a Washington suburb this month. She was dragged to death when an arm became entangled in a seat belt after thieves forced her out of the car carrying her baby.

Police say the increasing use of sophisticated car security devices has frustrated thieves to the extent that they find it easier to take cars at gunpoint.

"Today's criminal can just point a weapon and take a car, without the hassle of breaking the windows or popping the ignition," Pressler said. "Auto theft is a lucrative professional business. The public is sick and tired of paying the high price of criminal activities."

[From the Los Angeles (CA) Times, Oct. 4, 1992]

CARJACKERS FOUND TO BE YOUNG, VIOLENT HAVE-NOTS SEEKING STATUS

(By Sonya Ross)

WASHINGTON.—Anyone willing to steal a car at gunpoint is probably young, urban, violent and hungry for status.

These carjackers also are likely to have been victims themselves of great personal violence, the experts add.

"They kind of treat the victim the way they feel about themselves," said Jerome Miller, president of the National Center on Institutions and Alternatives in Alexandria, VA., which conducts research for groups advocating reform in the criminal justice system.

Amid calls for FBI crackdowns and longer jail terms for carjacking—taking a vehicle by force, while the driver is still in it—sociologists and criminal justice officials are seeking causes for this trend toward deadly car theft.

They say carjacking is a crime of have-nots spawned by a broken-down criminal justice system that can neither contain nor help them.

Most youths who steal cars are seeking status in the criminal subculture, said Andrew Ruotolo, a New Jersey prosecutor who works with the state's anti-car theft task force.

Ruotolo said carjackings are a very small percentage of all auto theft cases the task force handles. Carjackers, he said, are the most extreme car thieves, often repeat offenders who don't want to be spotted driving in a car that appears to have been broken into.

"Carjacking is a crime of violence, certainly no different than armed robbery. By its nature you get the car intact and you get the keys. You get to keep it a little longer before it's obvious it's stolen," he said. "Our experience is cars are stolen by young adults and juveniles to commit other crimes in. So, more often than not, you're dealing with a violent offender when dealing with a car thief."

In the eight months that the task force has operated in two New Jersey counties, officers have arrested more than 250 people for stealing cars, the bulk of them juveniles on joy rides. The task force recovered an estimated $2 million in cars, about 70% of which had little or no damage. Officials could not estimate how many of these cases were carjackings.

About 80% of those arrested had prior criminal records, often involving car theft, Ruotolo said. Sometimes, they boldly crashed stolen cars into police vehicles to taunt officers.

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According to FBI statistics, more than 1.7 million vehicles were stolen in 1991. That's an average of one theft every 19 seconds.

The FBI also cited a 97% increase in the number of youth under 18 arrested for car theft during the last 10 years, from 32,195 in 1982 to 63,389 last year.

There are no breakdowns on the number of carjackings nationally, although the crime has been a problem in Newark, N.J., New York City, Los Angeles, Miami and Detroit. A computer study by The Washington Post showed at least 245 carjackings in the Washington area between Jan. 1 and Aug. 16.

At least seven people have been killed in carjackings in the Washington area. In the case cited by Pressler, Pamela Basu was dragged to her death when she became entangled in a seat belt after two men took over her car at a stop sign and sped away. Her 2-year-old daughter was deposited unharmed by the roadside.

Police arrested two suspects, Rodney Eugene Solomon, 27, and Bernard Eric Miller, 16, and charged them both with murder, kidnapping and robbery. Miller's mother said her son told her he and Solomon smoked PCP in the hours before their arrest.

Other carjackings in and around the District of Columbia involved two girls, 14 and 15, armed with a semiautomatic pistol, who stole a car from a man and went on a joy ride; and an 18-year-old high school football star was killed while trying to hijack an off-duty FBI agent's car.

The Basu case prompted calls for widespread police crackdowns, longer prison terms and tough new laws against carjackings.

THE ROLE OF THE COOPERATIVE EXTENSION SERVICE

Mr. PRESSLER. Mr. President, the Cooperative Extension Service is one of the Federal Government's most productive programs. Established in 1914 by the Smith-Lever Act, the CES has been serving the needs of Americans for over 75 years. The U.S. Department of Agriculture works closely with each State's land-grant university to provide a variety of educational services to millions of Americans. CES funding comes from Federal, State and local resources.

One of the greatest strengths of the Cooperative Extension Service is its one-on-one assistance. An individual, with almost any problem, can contact a CES office and receive factual information to help resolve the matter. These offices, located in most county seats, provide the latest research information in three general categories: agriculture, home economies, and youth. This information, often in pamphlet form or on video tape, is usually free of charge.

As we all know, Mr. President, not all communities have the same needs. The Cooperative Extension Service recognizes this reality. Therefore, it tailors educational programming to the specific needs of a community. This tailoring, along with the individualized service, has had a significant impact on the lives of many citizens and will continue to do so in the future.

Let me give you an example of this type of targeted programming from my home State of South Dakota. The Cooperative Extensive Service, in conjunction with the Soil Conservation Service, Bureau of Indian Affairs, and South Dakota Adult Farm Management has an educational program known as Bootstraps. This is a management program designed for farmers and ranchers. Twenty-six families in Todd and Mellette Counties participate in Bootstraps.

One couple, Bill and Chris Hutchison, are ranchers from White River, SD. Chris said, "We get something out of every meeting. It lets us clearly see what we need to do and where we need to go. It's better than college for hands-on information."

The South Dakota Cooperative Extension Service has been serving South Dakotans in programs like this for over 76 years. All 66 counties in South Dakota are served under the administrative supervision of South Dakota State University [SDSU].

Many other programs are related to agricultural operations in South Dakota. Professionals, known as Extension Agents, are available in each county to assist individuals with everything from weed control to proper animal nutrition. In addition, seminars on specialized topics are offered throughout the State. Guest speakers include Extension Specialists from SDSU, as well as industry experts.

The beef production seminar is a typical example of this type of programming. Through this program, many cattlemen in my State have an opportunity to learn the latest developments in their industry. Without these seminars, many cattlemen would go without the new cost-cutting or labor-savings procedures that are very essential in operating a profitable business.

In the home economics programming areas, the Cooperative Extension Service concentrates its efforts on improving the lives of American families. CES provides factual information and training in every area affecting the family—from diet and nutrition to clothing purchase and care.

The Expanded Food and Nutrition Education Program [EFNEP] is a program designed to help low-income families. EFNEP teaches family members proper food budgeting, nutritional information, and meal planning in individualized sessions. This program is especially helpful to single parent families living on a fixed income.

Here is a typical EFNEP success story. A few years ago, Cindy, a single parent with three small children, began taking EFNEP classes to improve the nutrition of her family. As a result of this program, Cindy improved her meal planning skills. She learned to divide her monthly food stamp allotment, budgeting her resources more wisely. Throughout the EFNEP program, Cindy gained skills and self-confidence to take control of her life. Just recently, with encouragement from the EFNEP staff, Cindy completed her licensed practical nurse [LPN] degree and is no longer dependent on food stamps to feed her family. Many other South Dakota low-income families have been assisted through this valuable program.

Another major part of the Cooperative Extension Service is the 4-H program. The 4-H program is an educational program for all youth between the ages of 8-19, and it teaches young people a variety of life skills, often under volunteer leadership. Skills and attitudes learned while participating in the 4-H program help individuals become productive members of society. As a result of international cooperation among many countries, 4-H also is contributing to world understanding.

As a past 4-H member, I know the value of the 4-H program and how much influence it has. Our children need positive role models. These are available in the 4-H program. Eighteen thousand South Dakota youth are enrolled in the 4-H program.

Mr. President, one misconception that people have about 4-H is that it is only for farm youth. Although 50 percent of all farm youth participate in 4-H, farm youth membership only accounts for 12 percent of total 4-H membership nationwide. Every year more programs are being implemented for urban youth.

For instance, Latch Key is an afterschool program intended to fill the time gap between school and home. Participants have a safe, interesting place to go. Latch Key educates children about health after school snacks and provides safety tips to children who go home to an empty house.

Although the professional extension agents are vital to the success of the Cooperative Extension Service programs, volunteers also deserve much of the credit. Across the Nation, 2.9 million volunteers offer their time to 48 million adults and youth every year. Mr. President, the value of services provided by volunteers is 5 times greater than the combined Federal, State, and local contribution.

As more citizens throughout the United States utilize the services of the Cooperative Extension Service, Congress needs to keep funding at adequate levels. In my home State, CES has expanded from serving only one Indian reservation—Cheyenne River Sioux—to serving the Rosebud Sioux and Oglala Sioux as well. Drug abuse, alcoholism, and teenage pregnancy are very serious problems on Indian reservations. The Cooperative Extension Service, through the 4-H program, is working to solve some of these social problems.

In conclusion, Mr. President, I wish to thank the many professionals and volunteers who have had a positive impact on the lives of so many thousands of Americans. This program continues to set an exemplary example of the value of education.

HEALTH CARE REFORM

Mr. COHEN. Mr. President, as we count down the final hours of the 102d Congress, I rise to express my disappointment that presidential politics and partisan gridlock have precluded us from moving forward on comprehensive health care reform in this country.

We knew at the start of the Congress that the task of finding a solution to the Nation's health care problems would be quite difficult. The events of the past 2 years have shown just how difficult. We have taken some small steps toward our goal, but much more remains to be done.

By now, we have all grasped the nature and magnitude of the problems plaguing our Nation's health care system. Hundreds of expert witnesses have given testimony before dozens of congressional committees. We have read the reports of the Pepper Commission and the Steelman Commission, not to mention the countless studies done by the Congressional Budget Office, the General Accounting Office, the Office of Technology Assessment, and any number of private think tanks and special interest groups. We all agree that we are spending too much, that we are not spending wisely, and that too many people do not have access to the health care they need.

The mind-numbing statistics on rising health care costs are all too familiar and have been cited so often in recent months that we are at risk of seeming immune to their impact. Health care spending is expected to top $800 billion this year—a record 14 percent of our Gross National Product. If health care spending continues unchecked, it will climb to $1.6 trillion by the year 2000, or 16 percent of GNP.

Clearly this growth in costs cannot be sustained. As health care spending consumes a larger and larger share of our economy, fewer and fewer dollars will be left for crucial services such as education, transportation, and housing, and for reduction of the national debt.

The problem is not simply that we are spending too much. It is that we are not getting a sufficient return on our investment. Too many dollars are going for procedures of arguable or negligible value. Too few are bring spent on primary and preventive services, such as prenatal care childhood immunizations.

Rising health care costs have also created a dual system of care. The American health care system is the best in the world—but only for those who can afford it. The very factors that make it the best—the scientific, medical and technological advances; the highly trained specialists; the up-to-the-minute facilities and equipment—make it the most expensive. And, as expenditures climb, access declines.

Paradoxically, at a time when health care spending is soaring, more and more Americans are being priced out of the market. As many as 37 million Americans—alarmingly, almost a third of them children—have no health insurance at all. Many more Americans are underinsured. And still more live in constant fear that they will lose their coverage should they become ill or change jobs.

I first introduced comprehensive health care reform legislation over 2 years ago. The legislation built upon our existing public-private health care partnership to make affordable basic health care services available for all Americans. The legislation was comprised of five major components designed to:

First, institute insurance market reforms to eliminate existing barriers to coverage and special tax incentives to make health insurance more accessible, affordable, and predictable for both individuals and small businesses;

Second, make health care services more available for rural Americans;

Third, reduce health care costs;

Fourth, provide for medical liability reform and expanded outcomes research to develop treatment practice guidelines and national standards of care;

And fifth, increase access to coverage for long-term care.

Many elements of my original proposal were later incorporated into S. 1936, the Health Equity and Access Improvement Act, which I introduced with my colleagues on the Republican Health Care Task Force, and into the administration's health care reform proposal.

In fact, more than 20 different health care plans have been introduced in the Senate alone, and there is no shortage of options from which to choose. Some plans call for the adoption of a single-payer health care system, like Canada's. Others mandate that employers either provide coverage directly or pay into a public insurance fund—the so-called play or pay proposals. Some would set national spending limits—or global budgets—for health care. And still others, like my health care bill, the Republican Health Care Task Force bill, and the chairman of the Senate Finance Committee's bill, would build upon our current employer-based system by offering financial incentives to broaden access to care.

While there are obvious differences in opinion on the direction comprehensive health care reform should take, there is much more agreement than is generally acknowledges on the steps we must take to get there.

For instance, of the Nation's 37 million uninsured, 20 million work or are dependents of people who work for companies with fewer than 100 employees. Both Republicans and Democrats agree that the creation of health insurance networks would make it easier for these small businesses to purchase insurance, and insurance market reform would make insurance more available, affordable, and predictable for small businesses and their employees.

Ironically, the very people who need care most are the ones who cannot get insurance and are therefore exclude from the system. Insurance companies must stop competing with each other about whom to exclude and start concentrating on how to make affordable coverage available for all Americans.

Further, it is estimated that as many as one-quarter of the uninsured lack coverage because they have been priced out of the market by increases in state-mandated benefit laws. Most of us agree that it is time to preempt the more than 800 specific State-mandated benefits in order to make an affordable, basic benefit package emphasizing primary and preventive care, available to small businesses and individuals.

Most of us also agree that it is time to make insurance more affordable for self-employed individuals and their families by granting them the same tax benefits currently granted to big business.

We all know that insurance coverage alone will not guarantee access to care. Expanding the National Health Service Corps will help to increase the number of providers in medically underserved areas. Increasing funding for community health centers, which provide comprehensive health services to millions of Americans who need care regardless of their ability to pay, will also help to increase access to care in rural and inner-city areas.

We all agree that we could reduce administrative costs by as much as $100 billion a year by replacing the more than 1,100 insurance forms that clog the system, with a simplified, standardized electronic claims processing system.

We also agree that increased funding should be provided for outcomes research to establish which drugs and procedures are most effective under which circumstances to improve quality of care and eliminate the costly practice of defensive medicine.

Most of us also agree that it is time to reform a medical liability system which spends more on legal overhead than on compensating victims and which adds an estimated $21 billion a year to our Nation's health care bill.

Most of us are also concerned about the proliferation of expensive medical gadgetry and high-tech machinery that has contributed to an equally dazzling explosion in health care expenditures. These services can be delivered more efficiently and cost-effectively by encouraging hospitals and other providers to share expensive medical equipment or services.

Finally, we all know that health insurance alone will not insure good health. The best health care system in the world will not protect a smoker from the ravages of lung cancer and emphysema. it will not protect the driver who refuses to wear a seat belt and it can do nothing to improve infant mortality if women persist in smoking, drinking, or abusing drugs during pregnancy. Americans must be encouraged to engage in healthy behavior and to accept more responsibility for their physical well-being.

These are all significant reforms that will take us closer to our goal of ensuring access to affordable health care for all Americans. Furthermore, they should have been achievable this year. They were part of my health care bill, the Republican Task Force bill, the Mitchell-Rockefeller proposal, and the Bentsen bill. They were included in a number of House proposals and have also been endorsed by the administration.

In fact, most have passed the Senate, not once, but twice—most recently, as an amendment to the urban aid/tax bill. Unfortunately, they were dropped in conference.

Opponents argued that they were not comprehensive enough, and that anything short of truly comprehensive reform simply would not do. I would argue that these reforms not only would have taken increased access to affordable health care for millions of Americans, but that their enactment also would have laid a foundation upon which we could build more comprehensive reform in the future.

While I concede that more should be done, particularly in the area of cost control, the problem is that even the proponents of so-called comprehensive reform can't agree on what form that plan should take, whether it should be single-payer, play or pay, employer mandates, global budgets, or managed competition. None of these plans has, as yet, generated sufficient support to pass.

Further, most of these plans have focused only on the problem of access to acute care services. Despite the fact that the long-term care is the major cause of catastrophic expense for our Nation's elderly, we still do not have, either in the public or private sector, satisfactory ways to help people anticipate and pay for long-term care. Any truly comprehensive proposal for health care reform must address our nation's critical need for long-term care.

I also believe that any comprehensive health care reform proposal must address the problem of skyrocketing prescription drug costs. Prescription drug price inflation for the first half of 1991 more than tripled the general inflation rate, and drug prices have risen a full 152 percent in the last decade.

High drug prices are especially devastating for senior citizens, since Medicare does not cover outpatient prescription drugs. In fact, the Congressional Budget Office recently concluded that a full 60 percent of Medicare beneficiaries face potentially devastating out-of-pocket medical expenses, either because they have no Medigap coverage, or because their policies do not cover prescription drugs.

These tremendous price increases and profits of the drug companies are unacceptable in light of the fact that the Federal Government is lining the pockets of the drug companies with $2 billion annually in tax subsidies at the same time the companies are charging these inflated prices. The $2 billion tax subsidy is in addition to the hundreds of millions of dollars in tax credits that the drug companies receive for researching and developing new pharmaceutical products.

Legislation I introduced earlier this year with my colleague, Senator PRYOR, would take a bite out of drug companies' profits by reducing a portion of the companies' nonresearch tax subsidies if they increase their prices beyond the general inflation rate. Some of the savings from the reduced tax credits would be funneled into a new prescription drug trust fund which would finance 15 demonstration projects providing outpatient prescription drugs to Medicare beneficiaries.

Mr. President, the American people say that they want universal coverage for the full range of acute and long-term care services, but they do not necessarily want to pay for it. Similarly, while many Americans say that they want a national health plan, they don't want the Federal Government to run it or to make their health care decision for them. And, while the public wants us to bring down costs, it does not want to sacrifice access to expensive new technology on demand.

While the various interest groups want change, they can't agree on the kind of change they want, even among themselves. The AFL-CIO is split—some unions would prefer national health insurance, while others would prefer some kind of employer mandate. The business community is split, with many large corporations preferring play or pay, while small businesses contend that such a mandate would force them to lay off workers, reduce wages, or close their doors. The medical community is split on the issue of national spending limits, and even the Democratic presidential ticket is split, with the Vice-Presidential candidate speaking out in favor of a single-payer plan and the candidate for President adopting the mantle of employer mandates and managed competition.

Total restructuring of our health care system is doomed to failure without a consensus. That is the one great political lesson that we all should have learned from our experience with the catastrophic health care bill a few years ago. But we still do not have a consensus on comprehensive health care reform. Not in the House, not in the Senate, not among the Presidential candidates, and not among the American people.

That is the challenge facing whoever is elected President in November. That is the challenge that will face the new Congress. And that is the challenge facing the American people.

DELUGE OF TEXTILE IMPORTS

Mr. HELMS. Mr. President, on May 6, I paid my sincere respects to the Honorable Carol Hallet, U.S. Commissioner of Customs, a remarkable lady who had earlier promised to me that she would investigate the deluge of textile imports flowing into the United States from Communist China.

We had discussed in detail the widely held suspicion that the Chinese were willfully violating the tariff and quota laws that forbid such trade practices.

Commissioner Hallett came to my office last year to discuss my serious concern about the unlawful flood of textiles coming into the United States from Communist China. I recall her concluding remark: "Senator, I give you my word. We are going to get to the bottom of this."

Mr. President, on May 6 she called to report that indictments for fraud were being filed against Chinese companies and their American subsidiaries. At the time, I speculated that the Chinese Government was an apparently willing and knowing accomplice to substantial fraudulent activity, to which various lobbyist and others said, "Oh that couldn't be true; the Chinese Government couldn't be involved in such fraud."

Well, Mr. President, Monday I received another call, informing me that charges were being filed in Federal court in New York against the Chinese Government agency.

The United States attorney explained that a major Chinese governmental entity was indicted for fraud. The Chinese entity in question is called China National Textile Import and Export Corp., which is a quasi-governmental agency that is in charge of all imports and exports of textile and apparel goods.

These latest indictments strongly indicate that the Chinese Government is in fact involved in a scheme to evade United States laws and to avoid paying millions of dollars in duties on textiles and clothing imported into the United States.

Mr. President, this reinforces my long-held conclusion that the Communist Chinese will lie and cheat and use every underhanded trick in the book to defraud the United States. But this time, they got caught.

Mr. President, the Red Chinese activity exposed today defrauded the U.S. Government of tens of millions of dollars. More importantly, it destroyed thousands of American jobs. Industry experts estimate that as many as 500,000 U.S. jobs may have been lost.

The Red Chinese doubling-dealing operated in two parts: One part of the operation involved the misclassification of textile imports so as to evade United States quota laws, thereby allowing more Chinese textile and apparel imports to flood our market.

The second part of the scheme involves a deliberate understating of the value of the textiles, again defrauding the United States of tens of millions of dollars. This is no doubt just the tip of the iceberg.

Mr. President, again I commend the Customs Service and Commissioner Hallet. As I stated at the outset, I have been working with her for quite awhile. It is certainly encouraging that the Customs Service has pursued Chinese perpetrators so relentlessly.

SENATOR TIM WIRTH

Mr. METZENBAUM. Mr. President, our distinguished colleague from Colorado, TIM WIRTH, will be leaving the Senate at the end of this Congress.

We will miss him here in the Senate, and the people of Colorado will certainly miss him.

During his Senate term, TIM has been unafraid of the rough and tumble necessary to make things work here.

At times, we have stood shoulder to shoulder in the fight. And other times we have found ourselves on opposite sides.

Either way, the Senator from Colorado has been fair and willing to work out solutions.

We have worked together extensively to help clean up one of the worst messes in the history of this country—the S&L crisis.

TIM came to the Senate after a long career in the House, and one of his hallmarks has been a passionate commitment to the environmental issues that affect his great State and our Nation.

He is a leader on issues of conservation, global warming, and fuel efficiency.

As many of us committed to preserving the environment know, it is never easy to keep the drills and bulldozers away.

For generations to come, residents and visitors to Colorado will be able to enjoy the State's remarkable wilderness areas. TIM WIRTH was a leader in the fight to preserve them.

When he was a schoolteacher TIM educated his students. And he learned some valuable lessons. He knows what it takes to run a good school. He understands the tools teachers need to do their jobs. The experience and commitment to education is something he has carried with him to the Senate.

I don't think you can say TIM is actually retiring. I suspect that he and his wife Wren will be as active and busy working on the important issues facing this country as they always have been.

SOME PEOPLE JUST DON'T UNDERSTAND

Mr. ROCKEFELLER. Mr. President, on Wednesday, September 30, with several of my Senate colleagues, I cosponsored an amendment to the foreign operations appropriations bill that prohibits any Government funding of programs which try to induce U.S. Companies to relocate production and employment outside the United States, or which tolerate interference with internationally recognized workers' rights.

Never, in my years of supporting U.S. programs to promote the economic development of countries much poorer than ours, did I think that the Congress would need to be so specific in its direction to any U.S. administration when it came to such a simple, obvious, straightforward concept. It was never my intention and, I feel very safe in saying, never the intention of any of my Senate colleagues that our country's foreign assistance programs should be used to send U.S. jobs overseas or to blacklist union members.

My colleagues and I offered that amendment, Mr. President, because this concept—U.S. foreign assistance programs should not be used to send U.S. jobs overseas or to blacklist union members—unfortunately had to be explained to President Bush and members of his administration. Some people just don't get it.

Like other Americans, I was appalled last week when I heard about the charges aired on "60 Minutes" and on "Nightline" that some U.S. Government funds have been used by the Agency for International Development to export U.S. jobs to countries in Latin America and the Caribbean and to support firms in these countries that blacklist union workers. These allegations are particularly disturbing to me because the "Nightline" report indicated that AID's actions have contributed to the decision I fought in 1990 by Maidenform, Inc., to close its plants in Huntington and Princeton, WV.

In September 1990, when I heard reports that these two plants in Huntington and Princeton might be closed, I wrote to the chairperson of Maidenform, Inc., to express my concern and to indicate to her that I stood ready to assist in any way I could to keep these plants viable. I reminded Maidenform that for years these plants had been among the best and steadiest employers in these two cities and said that any closing would have a devastating impact upon these communities—and above all, on the 200 employees and their families.

Despite my efforts and those of other concerned West Virginians, the two plants were closed. At the time, we were not able to determine what factors led to that decision. Last week we found out, when "Nightline" aired its report about how AID effectively encouraged Maidenform to invest in a foreign country. The jobs that had for so many years been performed proudly in Huntington and Princeton, WV, were moved out of this country to Honduras.

These actions were never authorized by Congress and, frankly, we naively assumed that no American President needed to be told that he should be working to create jobs in the United States, that no American President needed to be explicitly prohibited from sending U.S. jobs overseas.

This would not have happened if the Bush administration had managed the projects as Congress intended. The amendment we proposed last week will ensure that what happened never takes place again.

When properly managed, programs to stimulate economic growth in neighboring countries can lead to dramatic U.S. export growth and the creation of new U.S. jobs. The Bush administration's efforts to export American jobs are particularly outrageous when one also takes into account their 12-year effort to eliminate the trade adjustment assistance program, which is the program designed to help Americans who lose their jobs due to imports.

I was pleased last week when the Senate approved this amendment. I was pleased when the House of Representatives also gave its strong support to the action we took and joined the Senate in sending the legislation to President Bush. It is my hope that the President can be convinced to sign into law this prohibition on exporting U.S. jobs and restricting labor union activity. I only regret that such a simple, obvious, straightforward concept needed to be explained to an American President.

TRIBUTE FOR SENATOR ALAN DIXON OF ILLINOIS

Mr. DURENBERGER. Mr. President, I will greatly miss my colleague from Illinois, ALAN DIXON, when we return to this Chamber next year.

One of the many things we suffer from around here is a lack of a broader perspective on what we do. ALAN DIXON was an obvious and forceful antidote to that problem. He knew more about people and how they are governed than most of us will ever know.

He earned his place in the Senate. For 40 years he served the people of Illinois as a police magistrate, a secretary of state, and a U.S. Senator. The Federal Government could do a much better job of managing the intergovernmental partnership if more of us had State and local experience before we arrived here.

ALAN DIXON represented the whole State of Illinois and that's a tall order. Just to illustrate, Illinois' upper boundary is north of Boston and its lower border is south of Richmond. In between is some of America's greatest cultural diversity. ALAN DIXON, because of the unique person he is, and the extraordinary experience he has gained, had the capacity to be a Senator for each of those citizens.

ALAN DIXON was good for the Senate. He was knowledgeable and nonpartisan on most issues. And even though he was as forceful as any of the 535 Members of the Congress, he never presented his views in a way that diminished this institution or any of the people in it.

I can remember several times when he gave me both barrels during a floor debate, and could walk over and put an arm around me and share a joke.

I'll miss what he did for the Midwestern States and the national defense of this country. But more than what he did, I'll miss the character of person he was among us here.

TRIBUTE TO SENATOR JAKE GARN

Mr. DURENBERGER. Mr. President, the Senate will suffer a great loss when JAKE GARN walks out of this Chamber for the last time as a Senator from Utah.

Very few of us here in the Senate, despite our responsibility to make policy, would dare to call ourselves experts on anything. JAKE GARN is an expert on two crucial issues of this country: Financial systems reform and the space program. He has filled a void in those two areas which will be painfully obvious when we reconvene next year.

He has been a serious student of issues and a forceful debater. He has been immune to some of the sillier excesses with which Washington infects many of us. He knew what he taught and believed when he arrived here, and he leaves with most of those same thoughts and beliefs.

To me, and many Senators, he has acted as a kind of moral rudder for the Senate. When he announced his retirement from the Senate, he taught us all a valuable lesson. He said the Senator wanted to keep going, but the husband and father knew it was time to go. When we try to leave the person inside behind, we cannot serve our people to the best of our ability.

I thank JAKE for his example, and for the many ways he helped me, substantively and personally, to serve the people of Minnesota.

TRIBUTE TO SENATOR STEVE SYMMS

Mr. DURENBERGER. Mr. President, the Senate was designed to draw strength from the individuality of its members and the diversity of our States. STEVE SYMMS came here a straight-up, honest conservative, and that's the way he leaves.

He has been in the Congress since 1972, and I can guarantee you that he has changed Washington more than Washington has changed him.

Like the President he admires so much, Ronald Reagan, STEVE SYMMS has had an absolutely consistent public philosophy that while the Government may have its heart in the right place, it usually has it's hand in the wrong pockets.

It was on the Environment and Public Works Committee that I observed STEVE SYMMS doing the day to day work of the Government, and there I learned to admire his political skill. The relationship of STEVE SYMMS and Senator PAT MOYNIHAN—two people from very different backgrounds—were responsible for major steps forward in U.S. infrastructure policy.

In an age which seems to value flexibility over other political virtues, STEVE SYMMS was a model of consistency. He made Idaho a better State for his service, and he taught the House and Senate lessons we should remember long after he's gone.

TRIBUTE TO SENATOR WARREN RUDMAN

Mr. DURENBERGER. Mr. President, the license plate for the State of New Hampshire has the following message: "Live free or die."

Our colleague from New Hampshire, WARREN RUDMAN, has brought a measure of that same blunt, tough resolve to this chamber.

In all my 14 years in the Senate, WARREN RUDMAN has been the most thoroughly prepared Senator I have known. He has spent countless hours reading, studying, and mastering the facts of the crucial issues before us.

As the number and complexity of issues have grown exponentially, I admire WARREN RUDMAN's commitment of time to stay ahead of the knowledge curve. He has chosen to specialize in issues of crucial importance to the Nation—the budget and national security—and his contribution to both have been historic.

One of the instances where I was able to see this personally was his work on the Select Committee on Iran-Contra. Immediately after he was selected as vice chair, he came to me as chair of the Intelligence Committee and asked to see all the documents in the committee's possession. He devoted many days and nights to those documents so that by the time the formal part of the inquiry began, he had already mastered the documents involved.

As much as he loved the work of the Senate, WARREN RUDMAN disliked the trappings of Washington. Perhaps that is why he was so effective.

WARREN RUDMAN, like his New Hampshire predecessors who said "Live free or die," determined he wanted to work in an effective Senate or none at all. I greatly hope his advocacy for fiscal sanity outside this Chamber will help change public attitudes toward the dangers of debt. Perhaps his greatest contribution to our work here, lies ahead.

TRIBUTE TO SENATOR TIM WIRTH

Mr. DURENBERGER. Mr. President, today I want to say a few words of appreciation to a fellow soldier in the effort to protect this planet's environment, Senator TIM WIRTH.

TIM WIRTH's unique contribution was that not only did he have an overriding vision for conservation, but he had a very practical sense of how we can get from here to there. Not content to simply articulate his view to sympathetic audiences, he was a bridge builder, who won people over to his views. That was a very valuable asset in the efforts to pass the Clean Air Act and other major environmental bills of last few years.

He was a strong member of his party, but he always knew when the interests of his State outweighed partisan considerations. He had an excellent relationship with the two conservative Senators he served with, Bill Armstrong and HANK BROWN. Colorado benefited often from their ability to work both sides of the street.

Those of us in the Senate who loved the late John Heinz and his family, owe a great debt of gratitude to TIM WIRTH for the way he has cared for the Heinz family in the aftermath of John's death.

I thank him for his many years of public service, his practical stewardship of the planet and for being the sensible, loving person he was among us here.

TRIBUTE TO SENATOR BROCK ADAMS

Mr. DURENBERGER. Mr. President, I want to express my gratitude and appreciation for the work that Senator BROCK ADAMS has done here in the Senate, and throughout the decades of his service to the National Government.

As a public servant, BROCK ADAMS is like a lot of people we have in Minnesota. He has an unconquerable sense of optimism that we can solve problems if we can just care enough, think clearly enough, and work hard enough to bring everyone together in the solution.

As a new member in the Senate, I respected his work in the Carter Cabinet and knew of his work on the House Budget Committee.

BROCK ADAMS, despite all that government service, came to the Senate as a freshman. He has done a remarkable job making the most of the positions available to him in this body. Over the last year, I have particularly enjoyed working with him on the Labor Committee on an issue which concerns us both deeply: medical research on women's health problems.

As you know Mr. President, when we conduct our rollcall votes, Mr. ADAMS is the first name called. Unlike most of us, who stroll in here during the 15 minutes allotted and discuss and calculate before we vote, he was almost always there to start us off with his clear, loud vote.

I thank him on behalf of the people of Minnesota for his lifetime of public service and spirit of urgency he brought to our work here.

THE RIGHTS OF INDIGENOUS PEOPLES

Mr. CRANSTON. Mr. President, this week we passed the foreign operations appropriations conference bill, which included an amendment proposed by me that will greatly increase the scope of the reporting in the State Department annual human rights report on the status and conditions of indigenous peoples around the world.

The amendment, No. 3345, to the original Senate bill was an expanded version of that which came out of last year's conference report of the foreign aid authorization bill. At that time, the report requirement focused on the plight of the indigenous people of Latin America.

Mr. President, I believe that it is time that we give special attention to the human rights issues confronting the millions of tribal and otherwise underrepresented people around the world.

The amendment which became part of the conference bill is designed to do that. The annual State Department report will now have to describe the extent to which indigenous people are able to participate in decisions affecting their lands, cultures, traditions and the allocation of natural resources, and assess the extent of protection of their civil and political rights.

Later this month, attention will be focused on the plight of the more than 35 million indigenous people of Latin America, as we mark the 500th anniversary of the arrival of Europeans to the American hemisphere.

And next year has been proclaimed by the United Nations the "Year of the Indigenous People."

In some countries, such as Guatemala, Peru, Bolivia, and Ecuador—where huge populations of indigenous people are left virtually outside the realm and reach of government—the issue of their rights remains perhaps the most important roadblock to the consolidation of democracy and civilian rule.

The issue of the rights and roles of indigenous people, in some respects a traditional human rights concern, in others a cornerstone of democratic development in the Third World, are not going to go away. I believe that the amendment we have included in the foreign operations appropriation bill will help to set the future agenda in a positive and proactive way.

Mr. President, there are several people whose advice and counsel has been very valuable to me as we have sought to provide additional protection for indigenous people. Mac Chapin of Cultural Survival; Alfredo Nakatsuma-Vaca of the United States Agency for International Development in Guatemala; Katy Moran of the Smithsonian Office of External Affairs; John Walsh of the Washington Office of Latin America; Steve Schwartzman of the Environmental Defense Fund, and Jack Healy and Carlos Salinas of Amnesty International USA have all been extremely generous with their insights and knowledge about indigenous people.

I also want to express my gratitude to my good friends and colleagues, the distinguished chairman of the Foreign Operations Subcommittee, the Senator from Vermont Mr. LEAHY, for graciously accepting the amendment to their bill.

Finally, I want to single out the efforts of Representative JOHN PORTER, cochairman of the congressional human rights caucus, for his help and support in the House-Senate conference. He too has been a leader in the area of indigenous rights, and I thank him for his bipartisan cooperation in getting this bill accepted.

Mr. President, within a few days the Congressional Research Service will be publishing a report, "Biotechnology, Indigenous Peoples, and Intellectual Property Rights," which will also be an important contribution to the literature on indigenous rights. I urge my colleagues to study it carefully as they consider future development assistance efforts around the world.

Mr. President, I ask unanimous consent that a statement on indigenous people recently released by Amnesty International USA, be included in the RECORD, as well as a letter sent by myself and nearly a score of my colleagues to Colombian President Cesar Gaviria expressing concern about the plight of indigenous people in his country.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[News release from Amnesty International USA, Oct. 6, 1992]

THE AMERICAS: AMNESTY INTERNATIONAL CALLS FOR END TO CENTURIES OF ABUSE OF INDIGENOUS HUMAN RIGHTS

The time has come for governments throughout the Americas to stop turning their backs on the human rights of indigenous peoples—and end the hundreds of years of violations they have suffered. For centuries, governments have often treated the rights of indigenous people with contempt, torturing, "disappearing", and killing them in the tens of thousands and doing virtually nothing when others murder them.

Discrimination against indigenous people means they are more likely to have their rights trampled on in the first place and then let down by the justice system. And those most vulnerable have sometimes been hit hardest—young children have been extrajudicially executed; women have been raped by soldiers during armed conflict; and isolated indian groups that have only recently come into contact with the surrounding society have been killed with impunity by miners and settlers.

In one striking case a one-month old baby "disappeared" with her mother in 1990 when they were among 85 Indian peasants seized by Guatemalan soldiers. Most of the others were returned to their village; Maria Josefa Tiu Tojin and her daughter have not been seen since.

As Governments must urgently tackle some of the key issues on indigenous human rights by carrying out effective investigations into abuses against indigenous peoples, bringing to justice those responsible and justly resolving land disputes that all too often lead to abuses.

For the 1993 International Year for the World's Indigenous People, Amnesty International is pushing for all governments to establish commissions to review their country's record in implementing all international human rights standards for indigenous people. Disputes over land and resources are often at the root of many of the human rights abuses against indigenous people: Thousands have also died, 'disappeared' or been tortured when they've been caught in the middle of the 'war on drugs' or civil conflicts.

Some of the most horrific human rights violations inflicted on indigenous peoples have taken place during the armed conflicts that have racked countries such as Colombia, El Salvador, Guatemala, and Peru. Entire villages were destroyed and thousands of indigenous peasants massacred during the height of the armed conflict in Guatemala in the early 1980s and in Peru thousands of Indians have been tortured and killed by both sides when the loyalties of whole communities have been questioned. In Colombia, three Arhuaco indigenous leaders were abducted, tortured and killed in 1990 on suspicion that they sympathized with an armed opposition group that operated in their territories despite the Indians' protests; the army officers implicated in the killings are still in active service.

Attacks on Indians in many countries including Brazil, Chile, Honduras, and Venezuela have often been stepped up during disputes over land—which is frequently wanted by the state or others for mining, logging, energy or tourism projects. In Brazil alone, scores of Indians have been murdered in land disputes with the apparent acquiescence of the authorities and in Honduras 10 members of the Xicaque tribes have been killed in recent years. In Canada, inquiries into the allegations that several Mohawk Indians were ill-treated by police in 1990 during a prolonged confrontation over plans to develop a golf course near a sacred burial site have still not been completed.

The "war on drugs" has also taken its toll on indigenous lives, especially because many indigenous peoples live in drug growing areas. A Quechua leader in Bolivia, for example, was picked up and tortured by the security police in 1989 because they believed he had protected a drug trafficker, a charge he denied.

Prosecutions for such human rights abuses virtually never happen—whether those responsible are state agents, death squads or hired guns. In Chile, the agents who arrested, "disappeared" and tortured Mapuche Indian leaders following the coup in the early 1970s were never brought to justice and in Brazil most killings of indigenous peoples are never prosecuted.

Indigenous people have at times been confronted by a different side of the law, however, being subjected to arbitrary detention and unfair trials. Last year in Mexico, members of the Ch'ol and Tzeltal indigenous communities peacefully protested against police abuse and discrimination in the courts, with more than 100 of them arrested, kicked, beaten and most of those threatened with death before being released without charge. And in the USA, Amnesty International has expressed concern about the fairness of trials of American Indian Movement leaders, including Leonard Peltier who was convicted of the murder of two Federal Bureau of Investigation (FBI) agents. In his case there is concern that fabricated evidence was used to extradite him from Canada and that FBI misconduct prejudiced the fairness of his trial.

The leaders of indigenous movements have often been singled out for attack when they speak out on environmental issues, land claims or discrimination and are seen as a threat to Government policies. In Ecuador, for example, indigenous leaders involved in land disputes have been particularly singled out as targets of abuse including harassment, torture and killing. Despite that risk, groups defending indigenous rights have been formed in increasing numbers in recent years. A number of major protest marches have been held in countries like Bolivia and Ecuador, relatives of victims have joined together in Guatemala and indigenous peoples are increasingly forming regional or international organizations to press for their rights to be respected.

From the local to the international level, the message is that the centuries of violating the rights of the region's original inhabitants must end once and for all. That's a message to governments not only in the Americas, but also in other regions of the world.

It is time for Americans to recognize and acknowledge that the abuses against indigenous peoples in this hemisphere didn't end in the last century, said John G. Healey, Executive Director, Amnesty International USA. The shocking truth is that for millions of indigenous people the nightmare is not over. If we don't join these communities in fighting to end gross human rights violations, the cruelty of the past will continue to be perpetuated.

U.S. SENATE,
Washington, DC, October 6, 1992.

His Excellency Cesar Gaviria Trujillo,
President, Republic of Colombia, Santa Fe de Bogota, Colombia.

DEAR PRESIDENT GAVIRIA: We are deeply concerned about the recent wave of attacks against human rights workers in Colombia. While we welcome your public commitment to human rights as well as the Colombian government's condemnation of attacks against human rights workers, we ask further that you do everything in your power to protect human rights workers and bring those responsible for threats and attacks against them to justice.

Dr. Jorge Gomez Lizarazo, president of the Regional Human Rights Committee, CREDHOS, which is based in Barrancabermeja, has faced repeated death threats. On June 11, 1992, Dr. Gomez, two other CREDHOS members, and three others escaped injury when their cars came under fire from a number of heavily armed men. However other members of CREDHOS have not been as fortunate: On January 29, 1992, Blanca Valero de Duran, secretary of CREDHOS and Dr. Jorge Gomez Lizarazo's assistant, was killed as she was leaving the office by shots fired at point blank range by armed men in civilian clothes. On June 28, 1992 another member of CREDHOS, Julio Cesar Berrio, was shot dead by two unidentified gunmen. He worked there as a security guard and had also been involved in an investigation undertaken by CREDHOS. And on July 30, 1992, Ligia Patricia Cortez, a philosophy graduate working with CREDHOS, and Parmenio Ruiz Suarez and Rene Tavera were murdered by unknown gunmen.

We are deeply disturbed by these attacks against members of CREDHOS and other human rights defenders. We are concerned about reports that among those harassing Dr. Gomez are persons on motorcycles allegedly owned by state security agencies. We are also concerned about a report that, on July 2, 1992, Dr. Gomez received information warning him that personnel from the intelligence unit of the National Police had arrived in Barrancabermeja with the intent of killing him. We are very disturbed by reports that three policemen witnessed the lethal attack on Blanca Valero yet reportedly did not respond to her cries for help or make any attempt to pursue the assailants. It is simply unacceptable that these murderous acts continue and that those responsible remain at large. We especially urge you to investigate the possible involvement, or as in the case of Ms. Valero, the selective lack of involvement of the local police and security forces in these cases.

Other human rights workers have also been targeted for violence. On May 29, 1992 Oscar Elias Lopez, a lawyer who worked as a legal advisor for the Indigenous Regional Council of the Cauca, CRIC, was killed in Santander de Quilchao by heavily armed men. He had acted as advisor to the indigenous communities of Cauca which suffered a massacre on December 16, 1992, in which at least twenty Paez Indians were killed. Three other men involved in a independent investigation also met equally distressing fates: on the night of January 8, 1992, in the city of Cali, lawyers Carlos Edgar Torres and Rodolfo Alvarez were shot dead in their homes while anthropologist Etnio Vidardo was "disappeared."

Official condemnation of violence against human rights workers is an important first step in ending these abuses but as you well know, it is not enough. We urge you to conduct impartial investigations to find those responsible for these murders, attempted murders, and threats. Once identified, these individuals must be brought to justice. In the meantime, those courageous persons working for human rights in Colombia should be protected in a manner they find appropriate.

Sincerely,
Brock Adams,
Albert Gore, Jr.,
Daniel Patrick Moynihan,
Bill Bradley,
Alan Cranston,
Edward M. Kennedy,
Patrick J. Leahy,
Kent Conrad,
Paul Wellstone,
Jeff Bingaman,
Paul Simon,
Mark O. Hatfield,
Jim Sasser,

Tom Harkin,
Paul S. Sarbanes,
Charles E. Grassley,
Donald W. Riegle, Jr.,
James M. Jeffords,
Tim Wirth,
Herbert Kohl.

REGARDING SECTION 907 OF S. 1569

Mr. HEFLIN. Mr. President, on October 7, 1992, the U.S. Senate cleared for the President S. 1569, the Federal Courts Administration Act.

Contained in this measure are various provisions aimed at improving the Federal claims litigation process before the U.S. claims court (hereinafter referred to as the Court of Federal Claims, as provided for in section 902 of S. 1569) and assisting the court in providing better and more efficient service to its litigants. Specifically, section 907 of S. 1569 relates to jurisdiction of the court.

Subsection (a) of section 907 will eliminate the confusion and waste of resources that has resulted from the Contract Disputes Act certification being deemed jurisdictional, while both addressing the Justice Department's concern that contractors have sufficient incentive to properly certify their claims, and ensuring that all claims are properly certified before they are paid.

Paragraph (1)(A) will amend the Contract Disputes Act certification to require that the person certifying the claim also certify that he or she is duly authorized by the contractor to execute the certification on the contractor's behalf. In addition, paragraph (B) will add a new section 6(c)(7), which will clarify that the certification must be signed by a person duly authorized to bind the contractor with respect to the claim. Together, these provisions will ensure that the certification binds the contractor and cannot later be disavowed by management. The individual will be required to have authorization, based either on the company's existing delegations of authority or a special delegation, to act on the contractor's behalf with respect to the claim, and must also have authority to execute the certification on behalf of the contractor. In most instances it is anticipated that the certification will be signed by the same person who signs the claim itself.

Paragraph (1)(B) will add a new section 6(c)(6), which will permit the contracting officer to notify a contractor within 60 days of receiving a claim that the certification is defective. If a timely notification is provided, the 60-day period for issuing a final decision will not begin to run until the defect is cured and a proper certification submitted, and the claim will not be deemed denied. This will create a strong incentive for contractors to carefully certify their claims because until a proper certification is filed, the contractor will not be able to appeal to the Court of Federal Claims or agency board. If the contracting officer issues a final decision on a claim that is not properly certified, the contractor may appeal that decision and the Court of Federal Claims or agency board will have jurisdiction but must require that the contractor provide a valid certification before a decision is rendered or the contractor is paid.

Paragraph (a)(3) will decouple interest and certification. Interest will be paid only prospectively from the date of enactment on pending claims for which the current certification is hereafter found to be defective. In all other respects, payment of interest on existing claims will not be affected by paragraph (a)(3). In the future, any interest will always be paid from the date the contracting officer initially received the claim, regardless of any defect in certification of the claim. In order to eliminate continued litigation over certification technicalities, paragraph (a)(2) provides that new paragraph 6(c)(6) would become effective immediately with respect to all claims except those which prior to the effective date of this act are the subject of a suit filed in the claims court or an appeal filed in an agency board. If such a pending suit is dismissed for lack of jurisdiction because of a defect in certification and a new claim is thereafter filed, the new claim and certification would be governed by the Contract Disputes Act as amended by this act. Paragraph (a)(4) provides that the changes to the proposed certification would become effective 60 days after the Federal Acquisition Regulation is amended to reflect the new required phrase in the certification. The required certification is currently defined at section 33.207 of the FAR, and it would be unfair to implement the new certification until that regulation is amended to reflect the new requirement.

Subsection (b)(1) of section 907 will amend the Tucker Act to clarify the power of the Court of Federal Claims to hear appeals of all contracting officers' final decisions, regardless of whether the dispute involves a claim for money currently due. The amendment will restore the option of appealing any final decisions to either the Court of Federal Claims or agency board of contract appeals at was intended in the Contract Disputes Act. The amendment does not authorize contractors to seek declaratory judgments from the Court of Federal Claims in advance of a dispute and final decision, and will not permit contractors to seek injunctions or declaratory judgments that would interfere with the contracting officer's right to direct the manner of performance under the changes clause. A contracting officer's final decision under the Contract Disputes Act will remain a jurisdictional prerequisite to review by the Court of Federal Claims. This amendment would be effective immediately with respect to all pending and future cases.

As amended, the final sentence of 28 U.S.C. §1491(a)(2) will read as follows (new provision in italic):

> The *Court of Federal Claims* shall have jurisdiction to render judgment upon any claim by or against, or dispute with, a contractor arising under section 10(a)(1) of the Contract Disputes Act of 1978, *including a dispute concerning termination of a contract, rights in tangible or intangible property, compliance with cost accounting standards, or other non-monetary dispute on which a decision of the contracting officer has been issued under section 6 of that Act.*

TAX ENTERPRISE ZONES ACT

Mr. WELLSTONE. Mr. President, I would like the RECORD to reflect that had there been a rollcall vote on final passage of the conference report accompanying H.R. 776 I would have voted in favor of final passage.

While I supported my colleagues from Nevada in voting against invoking cloture, the bill as reported from the committee on conference has been greatly improved. Despite the onerous provisions of the bill regarding nuclear power, there are many provisions which merit the Senate's support—the proposed programs for energy efficiency, renewable energy, and restoring health benefits for retired coal miners are particularly notable.

Most of the criticisms which I have raised about this bill have been addressed during the course of congressional action on it. Notably, the conferees greatly improved the provisions regarding the Public Utility Holding Company Act and addressed some of the taxpayer issues surrounding the bills provisions on uranium enrichment. The conferees also removed natural gas provisions which threatened farmers and ranchers with eminent domain abuses by energy companies.

In conclusion, I wish to express my support for the work of the distinguished chairman of the Senate Energy Committee and all of the conferees. While the bill we have sent to the President today is not perfect, it is on the whole a good bill which begins to respond to our Nation's need for a sound energy policy.

COMMENDING DR. LOUIS SULLIVAN

Mr. HATCH. Mr. President, as the 102d Congress comes to an end, I feel it appropriate to take this opportunity to recognize that our distinguished Secretary of Health and Human Services, Dr. Louis Sullivan, now exceeds all previous longevity records for stewardship of HHS. Dr. Sullivan's record of service—3 years, 6 months, 8 days, and counting—surpasses even that of his eminent predecessor, the only other physician-Secretary of HHS, Dr. Otis Bowen.

I hope my colleagues will join with me in commending Dr. Sullivan on his outstanding record of service, and in wishing him well as he continues in what I hope will be at least another 4 years at HHS.

THE SITUATION IN BOSNIA

Mr. WARNER. Mr. President, over the past several months, the Senate has struggled with the tragedy in the states of the former Yugoslavia and the appropriate United States response to this civil war and humanitarian nightmare. Americans grieve as they witness the suffering, and are moved by a desire to help. But the question is, how can we help? In the closing hours of the 102d Congress, I believe it necessary to outline my concerns with the possible use of United States military force in Bosnia. I am absolutely opposed to any unilateral U.S. military involvement; but U.S. action as part of an international coalition, particularly pursuant to U.N. resolutions, should be objectively considered.

As my colleagues know, I have been in the forefront of a minority in the United States Senate urging extreme caution regarding military commitments in Bosnia. I opposed the resolution which the Senate adopted on August 11, regarding the use of force in Bosnia because the Senate resolution went well beyond what the United Nations was then considering and eventually passed.

Following that debate and vote, I felt strongly an obligation to learn more about the tragic suffering and potential use of military forces, so I traveled to Zagreb and Sarajevo at the beginning of September. I witnessed firsthand the wanton destruction and unimaginable suffering in Sarajevo. Unfortunately, this trip confirmed my belief that there is a measure of guilt on all sides in this conflict.

People throughout the territory of Bosnia, irrespective of why they are there, including those members of the international community—foreign military and civilian—who are involved in humanitarian relief operations, are subjected to great risks because of the mindless attacks from all directions. On September 3, an Italian transport plane was shot out of the sky by one of the warring factions—it remains an open case who bears responsibility. That plane was carrying blankets—an item that will be desperately needed in the winter months ahead. The plane that took me to Sarajevo was just an hour ahead and following the same fixed flight plan into the Sarajevo airport as that Italian plane. And just days thereafter, two French soldiers assigned to the U.N. peacekeeping forces at the airport were shot and killed—ambushed—while traveling in a U.N. convoy, bringing to eight the number of members of the international community who have given their lives while trying to bring some humanitarian relief to the suffering people throughout Bosnia.

Mr. President, what we are witnessing in Sarajevo and elsewhere in Bosnia is a nation helplessly entrapped in a bloody civil war, with the roots of hatred and ethnic and religious strife dating back centuries. This tragic situation is an example of the rise of nationalism and ethnic conflict which we are experiencing—worldwide—in the post-cold-war world. One of the most difficult and complicated challenges the United States and its friends and allies will face in the years ahead is the multiplication of nationalist, ethnic and tribal conflicts around the globe—with grave consequences for regional stability and human suffering. The horrifying events in the former Yugoslavia are perhaps the most vivid demonstration of the intractability of such conflicts, as well as international pressures for American and other international involvement. And, worst of all, because so many of these conflicts are rooted in history, they are unusually resistant to diplomatic mediation or compromise, as we have seen in the former Yugoslavia. Further, given that the United States is composed of many cultures, religious and ethnic backgrounds, there is likely to be a division of opinion among our people as to whether we should become involved in helping to resolve such conflicts, and which side to back. There are strong such divisions within the United States between our citizens with ties to the former Yugoslavia.

While I share the concern of my colleagues with the daily news reports of the killings in Bosnia and the atrocities in the detention camps, both under Serb control and Bosnian Moslem control, I am concerned that U.S. military intervention—other than on a clear peacekeeping mission—will not bring peace to Bosnia but rather compound the chances for more death and destruction. The simple fact is that the United States and the international community cannot, in my opinion, impose a peace, through the use of nonpeacekeeping military force, on a warring and divided people. Even if such actions brought a reduced level of civil war, that conflict would continue to boil beneath the surface and erupt anew as the foreign intervention was lifted.

We must continue efforts, therefore, with other nations, to provide humanitarian relief, utilizing foreign military forces in limited peacekeeping roles. But military forces, of any foreign nation, should not transition from a peacekeeping role to a status of peacemaking—that is, be perceived as an aggressor force. Once the foreign military transitions, the efforts flowing from the London conference, under Secretary Vance and Lord Owen, will be undermined.

How can a situation be sustained where some foreign troops are performing peacekeeping missions, and some, perhaps U.S. air forces, are performing peacemaking activities. There is a high risk that the distinction between the two types of forces, which are exceedingly difficult to maintain, will be lost and peacekeeping forces will be unable to continue, because of increased risk to themselves, their mission of protecting the flow of humanitarian relief supplies just as winter is approaching. Winter without assistance will result in as many or more casualties than the fighting to date.

Over the course of the past week, I have had the opportunity to consult with Chairman of the Joint Chiefs Powell and Ambassador Zimmerman, our Ambassador to Yugoslavia, and to receive a Senate intelligence briefing on the situation in Bosnia. I spoke with Chairman Powell during last week's Senate consideration of a Biden amendment to the foreign operations appropriations bill which, calls for the United States to supply weapons to Bosnia, following the passage of certain additional United States resolutions. During the course of our conversation, General Powell elaborated on a September 28 New York Times article which expressed his concerns with using limited military force in Bosnia. Here is the straightforward, nonpolitical opinion of one of the most respected military professionals in the world. Unfortunately, I am restricted from inserting the entire text of his interview with the New York Times in the RECORD. However, I ask unanimous consent to have the article which was drawn from this interview as well as a follow-on op-ed by General Powell—appear in the RECORD following these remarks.

I have asked time and again during Senate debate on this issue, What is the mission for the U.S. troops that many in this Chamber would like to send to Bosnia? I have yet to receive a satisfactory answer to that question. I ask, would they be used for the limited peacekeeping objective of protecting the delivery of relief supplies? Based on events in Bosnia over the past few months, is there anyone who really believes that our military personnel would not become targets of the fighting factions and be drawn into the Bosnian civil war? Some have advocated that the international community should intervene to impose peach on the warring factions. We have a World War II history of Germany's failure to impose its will as our guide to just how successful such a suppression mission would be among the former Yugoslav people.

Mr. President, while I remain opposed to a nonpeacekeeping U.S. military involvement in Bosnia to enforce a no-fly-zone at this time, I believe that there are things the United States and the international community should do first, before resorting to the use of force. During a luncheon meeting last week on Capitol Hill, Ambassador Zimmerman spoke of tightening the U.N. trade embargo on Serbia and Montenegro. I wonder if my colleagues are aware of the fact that while there is a U.N. Security Council resolution imposing a trade embargo on Serbia and Montenegro, there is no U.N. enforcement resolution for this embargo. Although United States ships are involved in a NATO/WEU monitoring regime in the Adriatic, which has proven helpful in curtailing trade with Serbia and Montenegro, the military forces involved in this effort are not empowered to take action to enforce the embargo—merely to monitor it.

In a step in the right direction, the international community if now in the process of stationing sanctions monitors in neighboring nations. According to the briefings that I have received, the main problem with violating the embargo comes from a proliferation of private entrepreneurs, not from governments. A way must be found to block the illegal trade and allow sanctions a chance to have an impact. The United Nations should move to specifically authorize steps to further tighten or enforce the U.N. sanctions. Such actions may encourage the parties to be more willing to come to the negotiating table to find a peaceful solution to the conflict.

I would hope that such options are fully explored and exhausted before we decide on aggressive peacemaking military involvement. Last week, President Bush called for a no-fly-zone over Bosnia. It is unclear at this point how such a restriction would be enforced, if at all. It is my understanding that discussions on the establishment of a no-fly-zone are now under way at the United Nations. I am fearful that such a step, if it included enforcement provisions, risks greater casualties among members of the international community, both in the skies over Bosnia and in reprisal attacks against U.N. peacekeeping forces on the ground struggling to keep up the flow of humanitarian supplies. In addition, such a step would risk destroying the fragile U.N. coalition regarding the former Yugoslavia and may cause Secretary Vance and Lord Owen to lose their status as honest brokers.

[From the New York Times, Sept. 28, 1992]

POWELL DELIVERS A RESOUNDING NO ON USING LIMITED FORCE IN BOSNIA

(By Michael R. Gordon)

Reflecting a debate about the use of United States forces in regional conflicts, the Chairman of the Joint Chiefs of Staff is questioning even the most limited forms of military intervention to protect the Muslims in Bosnia and Herzegovina or to try to stop the fighting.

In a lengthy and sometimes emotional interview with The New York Times, the Chairman, Gen. Colin L. Powell, offered a strong defense of his philosophy that military force is best used to achieve a decisive victory and for the first time publicly explained his reluctance to intervene in Bosnia.

The remarks are the most recent and vivid example of a behind-the-scenes debate in the Bush Administration over the use of force. The debate is being joined by lawmakers and former Bush Administration officials who contend that the Pentagon has an "all or nothing" doctrine for using force that is increasingly irrelevant to a world in which violent nationalism and ethnic conflict have supplanted superpower hostilities.

BALKANS THE THORNIEST CASE

Explaining how his doctrine applies to the Balkans, which have become the most pressing and thorniest test case because of the mounting evidence of atrocities, General Powell assailed the proponents of limited military intervention to protect the Bosnians.

The general questioned the need to establish an air-exclusion zone over Bosnia like those the United States has imposed over parts of Iraq, where the Pentagon sees less risk. The United States and its allies are discussing setting up such a zone.

General Powell also angrily rejected suggestions by former Prime Minister Margaret Thatcher of Britain and others that the West undertake limited air strikes to deter the Serbs from shelling Sarajevo and continuing their attacks.

General Powell said: "As soon as they tell me it is limited, it means they do not care whether you achieve a result or not. As soon as they tell me 'surgical,' I head for the bunker."

Though it has largely been fought out of public view, the debate over the use of force has affected American diplomacy toward the Balkans. When Administration officials prepared a diplomatic protest to the Serbs asking them to stop shadowing relief flights with their combat planes, military and civilian officials at the Pentagon softened the language to remove any implicit threat to take military action to stop the practice.

Pentagon officials say that General Powell was the first to suggest that a protest be made and that the episode shows that the State Department was too quick to threaten force because of frustrations with the diplomatic process. But some Administration officials say that the Pentagon is too reluctant to develop military options that would add teeth to the West's diplomacy.

Though General Powell's philosophy on using force is widely shared by senior officers, who recall the Vietnam quagmire, he is the most prominent and articulate proponent. Defining the conditions when the use of force is appropriate, the general said: "It is not so much a doctrine as an approach to any crisis or situation that comes along. It does not say you have to apply overwhelming force in every situation. What it says is that you must begin with a clear understanding of what political objective is being achieved."

Once the political objective is clear, General Powell said, the next step is to determine the proper military means, whether the objective "is to win or do something else."

"Preferably, it is to win because it shows you have made a commitment to decisive results," he said. "The key is to get decisive results to accomplish the mission."

TWO ACTIONS ARE CITED

Most military analysts say that General Powell's approach served the United States well in the invasion of Panama and the Persian Gulf war, where overwhelming military force was used to achieve a quick victory with minimal American casualties. But critics say that the Pentagon's doctrine seems designed to fight the last war, a no-holds-barred air and land war, rather than the next war, where force might be used selectively, not to vanquish an enemy, but to slow aggression stemming from ethnic conflicts and bolster diplomacy to end the fighting.

Les Aspin, the Wisconsin Democrat who heads the House Armed Services Committee, said "If we say it is all or nothing and then walk away from the use of force in the Balkans, we are sending a signal to other places that there is no downside to ethnic cleansing. We are not deterring anybody." Serbian forces in Bosnia have been accused of widespread "ethnic cleansing"—killing or expelling members of other groups to create "ethnically pure" areas.

And Richard Schifter, the senior State Department official for human rights in the Reagan Administration and the early part of the Bush Administration, asserted that the American military was haunted by a "Vietnam syndrome" that had paralyzed its response to the killing in Bosnia.

"It is the Vietnam syndrome—the idea that you don't get involved in any application of military force unless it is overwhelming and the purpose is to win a 'victory,'" Mr. Schifter said. "In order to get the Serbs to negotiate seriously, we and our allies have to be prepared to use force, such as establishing a no-fly zone or engaging in air strikes against military targets."

Normally calm and collected, the general spoke angrily as he complained about the impetuousness of civilians, who he said had been too quick to place American forces in jeopardy unwisely for ill-defined missions.

"These are the same folks who have stuck us into problems before that we * * * sion was. They did not know really what they were doing there. It was * * * have lived to regret." General Powell said. "I have some memories of us being put into situations like that which did not turn out quite the way that the people who put us in thought—i.e., Lebanon, if you want a more recent real experience, where a bunch of marines were put in there as a symbol, as a sign. Except those poor young folks did not know exactly what their mis * * * very confusing. Two hundred and forty-one of them died as a result."

In the debate over using military force in the Balkans, the most pressing issue is an air-exclusion zone in Bosnia. The United States and its allies have already said that they are prepared to use force to insure the delivery of relief supplies. But threatening force to clear the skies of Serbian planes would cross a new threshold.

Proponents of an air-exclusion zone say it would insure that Serbian planes do not resume shadowing relief flights and would also be the first commitment of Western combat power to protect the Bosnians from Serbian air attack. Only the Serbian side has combat aircraft, and it is using them to attack Muslim and Croatian areas beyond the reach of artillery.

White House and State Department officials have been supportive of the concept, but the Pentagon has been wary, Administration officials say, fearing that it could be the first step toward deeper involvement and could lead to Serbian retaliation against the United Nations relief effort.

'SERIOUS THREAT' TO FLIGHTS

In the interview, General Powell questioned the immediate need to threaten force to impose a ban on the flight of Serbian aircraft. He said that the Serbian practice of shadowing relief flights with their planes rarely put the relief flights in danger. In contrast, the State Department spokesman, Richard A. Boucher, has said that the Serbian shadowing has been a "serious threat to the safety of United Nations flights."

General Powell also noted that he pressed for the diplomatic protest, or démarche, which was delivered this month, asking the Serbs to stop the shadowing. "Before we start shooting up everybody just so everybody can have something to write about, let's see if the démarche works," he said.

He played down the significance of stopping Serbian combat attacks from the air. "With respect to dropping cluster bombs, that is reprehensible," he said. "But so is killing French soldiers with an AK–47. The question is: Are you intervening for the purpose of achieving a result or are you intervening because you do not like a particular weapon system that is being used? I think that is a legitimate question to ask before you apply the armed forces of the United States to the situation."

General Powell also rejected suggestions for limited bombing attacks against Serbian artillery and other military targets. "I do not know how limited bombing will stop the Serbs from doing what they are doing," he said.

THREE ARGUMENTS AGAINST

The general argued that it would be difficult to locate and destroy all of the Serbian artillery, that intervention would mean that Washington was taking sides in the conflict, and that the warring parties might respond by retaliating against the United Nations relief effort.

[From the New York Times, October 8, 1992]

WHY GENERALS GET NERVOUS

(By Colin L. Powell)

There has been a spate of commentary recently over the use of American Military force to deal with the vexing problems of an untidy post-cold war world. The military has been criticized for being too reluctant to use force. In a recent editorial, for example, the New York Times suggested that the military has a "no can do" attitude and asked whether America is getting a fair return on its defense investment.

The editorial even reached back to the famous exchange between President Lincoln and General McClellan during the Civil War. Lincoln, frustrated with McClellan's slowness in engaging the enemy, told him, "If you don't want to use the Army, I should like to borrow it for a while."

Let me respond by reviewing a little more recent history. During the last three years U.S. armed forces have been used repeatedly to defend our interests and achieve our political objectives. In December 1989, a dictator was removed from power in Panama. In that same month, when a coup threatened to topple democracy in the Philippines, a limited use of force helped prevent it.

In January 1991, a daring night raid rescued our embassy in Somalia. That same month, we rescued stranded foreigners and protected our embassy in Liberia. We waged a major war in the Persian Gulf to liberate Kuwait. Moreover, we have used our forces for humanitarian relief operations in Iraq, Somalia, Bangladesh, Russia and Bosnia. American C–130 aircraft are part of the relief effort in Sarajevo.

All of these operations had one thing in common: they were successful. There have been no Bay of Pigs, failed desert raids, Beirut bombings and no Vietnam. Today, American troops around the world are protecting the peace in Europe, the Persian Gulf, Korea, Cambodia, the Sinai and the western Sahara.

Unwilling to use the armed forces? Tell that to our troops who are constantly being deployed to accomplish these missions. Americans know they are getting a hell of a return on their defense investment, even as the critics shout for imprudent reductions that would gut the armed forces.

The reason for our success is that in every instance we have carefully matched the use of military force to our political objectives. President Bush, more than any other recent President, understands the proper use of military force. In every instance, he has made sure that the objective was clear and that we knew what we were getting into. We owe it to the men and women who go in harm's way to make sure that their lives are not squandered for unclear purposes.

Military men and women recognize more than most people that not every situation will be crystal clear. We can and do operate in murky, unpredictable circumstances. We offer a range of options. But we also recognize that military force is not always the right answer. If force is used imprecisely or out of frustration rather than clear analysis, the situation can be made worse.

Decisive means and results are always to be preferred, even if they are not always possible. So you bet I get nervous when so-called experts suggest that all we need is a little surgical bombing or a limited attack. When the desired result isn't obtained, a new set of experts then comes forward with talk of a little escalation. History has not been kind to this approach.

The crisis in Bosnia is especially complex. Our policy and the policy of the international community have been to assist in providing humanitarian relief to the victims of that terrible conflict, one with deep ethnic and religious roots that go back a thousand years. The solution must ultimately be a political one. Deeper military involvement beyond humanitarian purposes requires great care and a full examination of possible outcomes. That is what we have been doing.

Whatever is decided on this or the other challenges that will come along, Americans can be sure that their armed forces will be ready, willing and able to accomplish the mission.

Finally, allow me to set the record straight on President Lincoln's frustration with General McClellan. Lincoln's problem with McClellan was that McClellan would not use the overwhelming force available to him to achieve a decisive result. Lincoln had set out clear political objectives. McClellan acted in a limited, inconclusive way.

I THANK YOU ALL

Mr. SYMMS. Mr. President, I wish to thank my constituents in Idaho for allowing me to represent them for the past 20 years. It has truly been an honor and a privilege.

I also wish to thank all of my staff, both here in Washington, DC, and in Idaho. The people of Idaho can be proud of their hard work and dedicated service.

I would be remiss, Mr. President, if I did not take a moment to thank all of my colleagues for their friendship throughout the years. I will not soon forget the friends I have made, the people I have met, or the memories I take with me.

Lastly, let me thank the people who actually keep the Senate running on a daily basis—the floor staff, the Cloakroom, the pages, all of the clerks and reporters, the Sergeant at Arm's office, the Doorkeepers, the U.S. Capitol Police, the Housekeeping staff and dining services staff, and all the rest who keep the trains running on time.

Mr. President, I ask unanimous consent that the following material be printed in the RECORD.

There being no objection, the ordered material to be printed in the RECORD, follows:

[News Release, Feb. 10, 1972]

STEVEN D. SYMMS, IDAHO FRUIT GROWER, ANNOUNCES FOR CONGRESS

Steven D. Symms, prominent Idaho fruit grower, Caldwell, (Sunny Stope), Republican, announces that he will be a candidate for United States Congress from the First District.

Mr. Symms has issued the following statement entitled, "For Those Who Care," which explain in no uncertain terms his attitude about government in general. His statement follows:

Many of you have heard the old saying "In times of moral crisis the hottest places in hell are reserved for those who remain silent." Many of my friends have urged me to seek the First Congressional seal of Idaho. The other side of the story, which you seldom hear, is that other friends of mine have urged me not to run. I have appreciated counsel from all of them.

The purpose of my making this statement of positions is simply to clear the air for all of those who wish to participate in what could be the most unusual political campaign we have had in Idaho. This will probably bring together a very unusual cadre, who, I'm sure, will leave behind some ideas for political writers to kick around for quite some time. One of my friends told me that my appeal would be either to the very young who are striving for liberty, or to the very old, who remember what it used to be like when we were relatively free.

Now a word about how an apple grower who could consider thinking of running for Congress. Well, a couple of gentlemen I know have asked me to support their Congressional races. I have known both men for a long time, and I want everyone to understand that I respect them. But, it seems to me that they are both locked in a system of popularity politics and all they are doing is playing the game the way it has always been played. They have both asked me for support, so they can serve me. I'm like a lot of you—I don't want to be served. The bull serves the cow. Washington, D.C. is full of able politicians "serving us." It's also full of people who know their way around both Washington and politics. As I see it, the issue is WHO is going to run our lives anyway—we or the government?

All I ever hear from political candidates seeking office nowadays is some appeal to popularity which is leading us down the path of the government, by the government, for the government, and more government. It seems to me that our politicians, both Democratic and Republican, are losing their common sense. A common sense, limited approach to government has always appealed to me. In the last ten years in Idaho under Republican leadership our state budget has gone up five times. Where does it stop? Private growth in Idaho doesn't begin to match this. I was one of those who through changing governors a few years ago was going to cut down the role of government in my life. What a surprise that was. Another group later thought we should change again. Our former governor's replacement is doing fine—with regard to keeping state meddling on the increase at our expense. (Incidently, the Governor does promote apple juice in the Governor's office as a refreshment, so he's not all bad!) It's just another example of an extremely able politician playing the political game of "service" under the present set of rules. Remember, these are not bad fellows, but also remember that we are not cows, either!

It does seem hopeless out here on the producing end of the economy. We elect good men to public office. Sooner or later their nostrils get infected with marble or they get a dose of Potomac Fever and this somehow turns them into madmen with the public coffers. The battle ends up being between the ins and the outs—no one caring about right or wrong—just carefully worded statements so the "good guys" can replace the "bad guys"—hogwash!

I hope when any politician comes to town to tell you of his capabilities to "serve" you that you will (1) tell him about the things you hope he won't do for you, (2) grab your wallet, and (3) run for cover. Now I think it's true beyond the question of a doubt that most any politician will "serve" you better in Washington than I if you want any favors from the government. My sole aim is to reduce government—not streamline it—not make it efficient—just reduce it.

I hold that we Americans are a rational, reasonable people—otherwise how could we even get home driving in eight lanes of 5 o'clock traffic, or fly airplanes, or grow apples? Did you ever try to do that well voting? Just like a friend of mine who works at Symms Fruit Ranch—he didn't want a war so he voted for LBJ—sure enough he got a war. After four years he thought the federal budget was looking too fat and unhealthy, so he voted Republican. If he thought the budget was unhealthy then, look now.

How can we cut through all this? How about free enterprise solutions? Haven't we had enough government solutions? All the politicians get to meddling and they tend to confuse and make worse most problems we could solve ourselves. What is needed is to release creative personal initiative and human effort from government shackles at every level. Why don't we adhere to Jefferson's principle, "Throw the government in chains and free the people." Remember, government means politicians. There is work to do, houses to build, people to feed, children to educate. Bureaucracy and regulation at every level is in the way. If the politicians would work as hard to make free enterprise work as they do socialism, maybe we could get some things going.

Ask your political candidates to answer this question: "Why is it that both state and federal office holders got their pay raises prior to wage and price controls?" Just once wouldn't it be fun to freeze every level of government and give us the chance to catch up out here on the producing end of the economy?

I want to emphasize producing. I'll tell you this—I like being a producer. So it won't break my heart if I don't get elected because I am unable to get this message through a biased anti-profit, anti-capitalistic mentality so prevalent in our opinion-making community. All I ever hear is, "Can he win?" or "Will it pass?" How refreshing it would be to have one political party in this country that just wanted to know if it was right or wrong.

What really brings this thing home to me is when our own Idaho apple industry out of desperation due to clogged apple markets is favoring a marketing order for apples which is based strictly on the premise of compulsory apple production controls. In the days when we had the little grocery stores the apple price at the retail level had a close relationship to the price received by the farmer. In other words when there were too many apples, they were sold cheaper in the stores, therefore increasing consumption and unclogging the market. Today, as apples are sold through the chain store produce counters, the price fluctuates very little with regard to supplies. My point is this—big government, big business, and big labor evolve together—all power oriented. It is just simply impossible for the small businessman to fill out all the forms and abide by all the regulations so he sells out, goes broke, or gives up. Isn't it strange that the U.S. Navy can train a carrier-qualified, high-performance, instrument-rated fighter pilot in 18 months while it takes organized labor four years to train a journeyman plumber? Trade unions and marketing orders are not aimed at increasing production, but limiting it. Common sense tells us that to increase our living standard we should increase production—not limit it.

I own an Elaine Powers Figure Salon franchise. If I didn't have the expertise of the parent company taking care of all the government regulations and all the FTC requirements, it would be impossible to operate. If you doubt me, just go to Boise, Nampa, or Lewiston and open a ladies' health club. Your education in business red tape, regulations, and free markets will really get a lesson. Believe me, the tuition is not free, and be sure you have lots of pencils to fill out all the idiotic forms.

How about your income tax form? Isn't it ridiculous that a man working for wages can't fill out his own form? Income tax forms should be simple. The only reason for taxes should be to support limited government—not some complex scheme of a social planner to level wealth or play favorites or to give special privileges to certain groups. We were promised reform by every administration since Eisenhower. Maybe I'm blind, but I don't see much change except that they are a bigger pain in the neck to complete, they still play favorites, and for the most part, they are an exploitation of individual human effort.

Some vote-buying politicians cry about rich capitalist exploiting the poor. I think all of us, both rich and poor alike have one thing in common—our lives. Moneys and privacy are being exploited by a cancerous growth like bureaucracy. Isn't enough, enough? Or do we have to let the professional politicians sell us down the river before we wake up?

Back to apples. We stick to principles to grow and sell good apples and we value our reputation with our customers, employees and people we do business with. Just how is the politician's reputation today? Is there really a dime's worth of difference?

What happened to the principles of the Republican party? How come it's more important to win an election that it is to stick to principles? We Republicans have helped in running up our nation's debt to a point that we should be ashamed of ourselves. I want to raise my children to respect honesty as most of you do. What happened in Washington? It looks to me as though the Republicans have gone Democrat and the Democrats have gone Socialist in a mad rush for power to "serve" our good old cow. Between the bull serving us and the tax collector milking us, when are we going to produce?

It looks to me like Billy Sol Estes did the same thing with fertilizer and salad oil that the U.S. Treasury has done to gold. No wonder some of our young people get disillusioned with us. No wonder the foreign countries don't trust us. How could we be shocked by the results of the United Nations vote to dump Free China? How many of you have friends still in Viet Nam? War is "Hell", and when involved we should view it like Vince Lombardi did football, "Winning is everything." Wasn't Korea enough of a lesson in playing touch football with the tenacious, vicious enemy that plays for keeps and knows the ideals they stand for?

What this country needs is to respect property and human rights (which common sense tells us are one and the same), and to strive for maintaining free entry into the market for everyone. No favorites, no free lunches, and no exceptions.

It seems as though it is an inescapable conclusion that the people in Washington are doing their best to serve their districts. You know what that really means—there is absolutely nothing that the government ever gets that it doesn't first take away. Why don't we just once all get together and tell the tax collector to either stop interfering or we stop paying?

Still, on the plus side, some of the people in Washington do know what they are for—God bless John Ashbrook—thanks to him we still hear that Adam Smith is alive and kicking and that capitalism is a moral philosophy. Why won't the Republicans give them a hearing?

Usually all we do is holler about welfare abuses, but never ask how it is that all these people are out of work. What about minimum wage laws? What about union labor monopolies? What about politicians who dangle the welfare carrot in front of the voter and help to lock him in his present situation? What is moral about this? Give the vote-buying politician and the welfare recipients an equal opportunity to work and I'll put my bets on the character of most of the welfare recipients.

If there are enough of you that share these same ideals that I have, let me hear from you. But before you do any urging, ask yourself these questions:—

(1) Do I care about principle enough to back a candidate who is not going to participate in a popularity contest?

(2) Would I care if my candidate refused to kiss babies and would only wage a campaign on ideas?

(3) Could I afford to have a representative from Idaho who would be breaking his neck to throw rocks in the way of the bureaucracy in Washington instead of in the way of free enterprise?

(4) Would I want someone in office who isn't hungry for the job, power and prestige that goes with it and would really rather be an apple grower that the government would just leave alone?

If your answer is "no" to any of the above, please throw this in the trash.

If your answer is "yes" and you are ready for dynamic diversion from "Rah Rah" schoolboy politics into a battle of ideas which in the long run could have consequences by limiting government and expanding individual freedom:

(1) This isn't a one man show—I can't do it alone—Your support will be appreciated.

(2) Show this to your friends and have it reprinted if you wish, or write me for additional copies—Stevens D. Symms, Route 6, Caldwell Idaho 83605.

(3) When the next politician tells you how he's going to "serve" you, run for cover.

Consider this my formal announcement of my candidacy for Congress from the First Congressional District, on the Republican ticket.

God save the Republic—Steven D. Symms.

[Press release from Steve Symms, Aug. 7, 1991].

Recent speculation by the media and others regarding my intentions toward another campaign for the United States Senate are symptomatic of the predicament in America and Idaho today. You're focused on the wrong thing: "Will Symms run or won't he?" This has taken center stage since the moment my prospective opponent formed an exploratory committee in Washington D.C.

There are hundreds if not thousands of other issues more significant.

In a global sense, whether or not Steve Symms runs is not important. What is important are the ideas, philosophy and principles of the candidate. Eighteen years ago an apple knocker from Sunny Slope ran for Congress, not knowing whether or not I would win, but determined to add the word freedom to the campaign rhetoric. I didn't promise to make government efficient. I didn't promise to streamline government. I said I'd try to reduce government. Those who would listen heard me say government was the problem, not the solution. Enough people agreed that the unexpected happened. I went to Congress.

For the last two decades, its been exciting—first as a candidate, then a Member of the House, and now a Senator, I have been able to press my belief that freedom works, that individuals should be able to work and enjoy the fruits of their labor unencumbered by the octopus of government. I've kept my promise. I have tried to reduce government and maintain my sense of humor and perspective in the process.

And I'm not finished! As long as there's a heartbeat in this chest, I'll continue the quest for freedom. I don't intend to give Ted Kennedy, Jesse Jackson, or Dick Stallings a free rein.

My two Senate campaigns against Frank Church and John Evans were as much fun as anything I can remember. Not because I doubted either of these men's sincerity, but because these races presented Idahoans with a clear choice between more government or more freedom. Freedom won both times. Given that choice, Idahoans will choose freedom again.

Stallings now says Idaho has changed, Steve Symms hasn't. He says I'm out of step. He cites a poll—a survey of a few hundred people—as proof. Well, he's half right. Steve Symms hasn't changed. I hope I've grown. After 18½ years my perspective is much broader—but my beliefs are even more confirmed.

The last eighteen years have given me plenty of opportunity to joust with the news media too. Freedom is one dimensional to most folks in the media. They understand freedom of the press, but they take on a blank look when you start talking about individual liberty or the responsibility that goes along with it. What really galls the brethren of the press is that the people of Idaho still have such good common sense in spite of the barrage of propaganda. The Idaho voter is somehow able to see through the bias. And, when given a clear choice, they consistently vote for freedom, and ignore the messianic insight of the holier-than-thou editorial writers. Fortunately, I've always tried to give them that choice.

As I said in 1972, I went to Washington to reduce government. But there are some things government should do. National defense comes to mind. I'm proud to say I've been a constant supporter of a strong national defense. I've also supported using our military to keep the peace and promote freedom. Angola and Central and Latin America are moving to democratic capitalism. The Persian Gulf experience is proof positive that my position was and is the correct one. Yet, even with the stunning victory in Kuwait, as a percent of gross national product, America is spending the least amount on national defense since just before the Korean War. History tells us this is risky at best.

I was privileged to support President Reagan when he proclaimed America was back. It's no accident the Berlin Wall came down. Who would have thought that a Soviet dictator would attend, hat in hand, an economic summit of free, capitalistic nations. Gorbachev is begging for dollars to keep his bankrupt economy afloat while he continues to spend billions on missiles, tanks, ships and bombers. The Communist/Socialist command-control societies can't compete. Gorbachev and his cronies can no longer repress their people's right to the freedom we take for granted.

Peace is breaking out in the Third World too. No doubt you didn't hear or read about it in Idaho, but I'm proud to have played a role in that process: Angola by passage of my amendment to repeal the Clark Amendment and the work of the Central America Task Force.

Transportation is another area where the federal government has been able to coordinate our resources to improve our transportation. Thanks to President Eisenhower who recognized the need to move armies rapidly, we've built the best transportation system in the world and I'm proud to have played a role in this.

Private property is the foundation of all freedom. The harshest policy is that which takes private property during one's life and the cruelest tax is that which confiscates private property upon the death of the owner.

But, all that is in the past. What is Steve Symms going to do in the future? Am I going to run or not?

I am looking forward to the 1992 Senate race. It's going to be a lot of fun. I believe Idaho voters will again have a clear choice. Stallings is on the left, sometimes the far left, of the political spectrum (left of the United Nations resolution on the gulf). Idahoans, at least the vast majority of Idahoans, are from the center to the right. Most Idahoans are common sense conservatives who believe in hard work, the family, and individual liberty.

Stallings decided to run for the U.S. Senate because he took a poll. If you ask me, a poll is a pretty shallow reason for wanting to be a Senator. What's he going to do if he's elected, take a poll every time there's a tough vote? Being a Senator means taking a stand, believing in something, voting your conscience and taking the heat.

Stallings says his poll tells him he can defeat me. That's what the polls told Frank Church and John Evans. Well, they aren't the only ones who can take polls. I took a poll and it shows that in a contest between Steve Symms and Richard Stallings, Symms wins! When the Stallings' record is exposed, the people of Idaho reject the wet-finger policies of the left-leaning Democrat who says one thing but votes the other way.

What's more, my poll says that when you pit Stallings against either Boise Mayor Dick Kempthorne, Lieutenant Governor Butch Otter, or former Attorney General Jim Jones, he loses. And there may be others who could win if they choose to run. The candidate who reflects the center-right will win. The candidate who believes in and votes for freedom, for individual liberty, for a strong national defense and for limited government will win when they run against Stallings, a left-leaning Democrat who worships at the altar of big government and cowtows to the union bosses.

When I went to Washington, I said I wanted you to be as free when I left as when I came. At the end of my current term, I will have worked to preserve your liberty for twenty years. I think it is now my turn to seek my own.

I will not be a candidate in 1992—and I look forward to starting another career in the private sector in 1993.

I thank all Idahoans for the opportunity to have represented Idaho in the House and Senate during this time. For the next year and a half, I intend to keep up the fight. My work is not finished. There is a highway bill to complete. The Private Property Rights Act and the National Recreational Trails Fund Act are still pending and there's still plenty of battles to be fought over the budget hemorrhage. As Idaho's Senior Senator, I fully intend to lead this fight.

If there are words which best describe my feelings as I begin the final months the Senate it is undaunted and rededicated! I'm not going away. I'll be here doing my job. And I will be part of the 1992 Senate campaign.

It has been said that I am a tireless campaigner. I enjoy selling free market ideas, ideals and principles.

As you know, I've never lost a campaign and I don't intend to lose this seat to the Democrats.

I will not sit idly by while a left-leaning Democrat sells the Idaho electorate a bill of goods. Freedom is the mainspring of human progress. I believe it in 1972. I believe it even more in 1991, and it will be an issue in 1992.

I predict here and now that 1992 is going to rain on the Democrat's parade.

My goal is to return Idaho to the Republican column in both the House and Senate. I am convinced that with dedication, hard work and principled ideas—it will happen.

Special thanks goes to my family and Jim Mertz and Dick Buxton, the Chairman and Treasurer of the Symms campaigns, and my friend Ralph Smeed.

I thank all of my constituents for their support and look forward to continued contact in the future.

God bless you and God bless America.

SENATOR STEVE SYMMS' SENATE AND HOUSE STAFF, 1972–92, AN INCOMPLETE LIST

Megan Argiro, Marcia Bain, Mary Barton, Gaye Bennett, Penny Young Bond, Taylor Bowlden, Terry Burley, Rusty Butler.

Margaret "Ducky" Calhoun, Pat Calhoun, Anne Canfield, Gwen Butliny Caudle, Carrie Cereghino, Sue Cornick, Sandra Church, Trent Clark, Joe Cobb.

Lyn Darrington, Laurette "Mikki" Davies, Mark Davis, Tom Dayley, Paula Hawks DeLuca, Mike Duff, Chip Dutcher.

John Engel.

Susan Fagan, Bill Fay, Caroline Fiel, J.D. Foster, Lisa Foster.

Charles Grant, James Grant, Sally Greenslade.

Pete Hackworth, Paulette Hoeny, Mike Hammond, Kris Hanisch, John Hatch, Faith Haywood, Al Henderson.

Susan Irwin.

Andy Jazwick, Janet Jefferies, Bill Jerroll, Rusty Jesser, Laura Knapp Johnson.

Chad Kirkpatrick, Marjorie Kline, Jeff Kummer.

Cari Lance, Mary Lawrence, Chris Lay, Thomas LeClaire, Margaret Lundy, Georgia Lemley, Grant Loebs, Thomas Lowery, Phil Luce.

Jeff Malmen, Chris Manion, Marjorie Miner.

Kathy Nelsen, Trevor Norris.

Scootch Pankonin, Dave Pearson, Josee Pendleton, Linda Perkins, Jessica Perrin, Pamela Peterson, Angela Plott, Bill Powers.

Rene Quijano.

Ruth Rathbun, Philip Reberger, Dixie Richardson, Dwight Ripley, Alain Biebee Robinson, Lois Rogers, Max Rogers, Ray Rogers, Roberta Rollingson, Sam Routson.

Chris Sandlund, Eric Sandlund, Andrew Schirrmeister, Rita Scott, Howard Segermark, Stacey Shepard, Orietta Sinclair, Ralph Smeed, Bob Smith, Fiona Smith, Lee Smith, Margaret Smith, Kevin Spencer, Martha Spinger, Charlene Stewart, Craig Steinburg, Michael Stinson, Dave Sullivan, Loretta Fuller Symms.

Elizabeth Taylor, Teresa Taylor, Lee Teague, Sandy Tewalt, Georgia Thomas, Ken Thompson, Al Timothy.

Phil Ufholz.

Rich Valenzuela, Lisa Vold, Rita Vanover.

Thelma Welker, Jade West, David Whaley, Jerry Williams, Joyce Hemenway Williams, Sherie Williams, Marianne Winston, Barbara Wise, Jane Wittmeyer.

Lianne Yamamoto, Glen Youngblood.

(At the request of Mr. MITCHELL, the following statement was ordered to be printed in the RECORD at this point:)

• Mr. LEAHY. Mr. President, last night the Senate passed the Justice Improvements Act which included two important amendments. The purpose of the first amendment is to enable the FBI to identify the subscribers to telephones that are used to communicate with foreign powers or foreign agents who engage in clandestine intelligence activities or international terrorism. This section amends section 2709 of the Electronic Communications Privacy Act [ECPA], 18 U.S.C. 2709, to require that a wire or electronic communication service provider give the FBI access, without a court order or subpoena, to information identifying certain telephone subscribers for use in foreign counterintelligence and international terrorism investigations.

The administration initially proposed an earlier version of this amendment in September 1989 and again in successive Intelligence Authorization Acts. Indeed, I am advised that FBI Director William S. Sessions testified in favor of the amendment at a closed Intelligence Committee hearing on May 10, 1990, and that the amendment was publicly endorsed by a special counterintelligence panel established by the Intelligence Committee on May 23, 1990. The amendment, as it was originally introduced, however, was not acted upon, largely because of civil liberties concerns raised with respect to the original wording.

In 1991, however, new wording was worked out by the House and Senate Judiciary Committees, responding to these concerns, and this provision was included in the 1991 crime bill.

BACKGROUND

In adopting ECPA in 1986, Congress established certain privacy protections for subscriber records and other information held by telephone companies and other electronic communication service providers. Congress provided that the Government could obtain a subscriber's transactional records or other information from a telephone company without the subscriber's permission only pursuant to a subpoena, search warrant or court order where there is reason to believe that the information is relevant to a legitimate law enforcement inquiry. 18 U.S.C. 2703.

Congress created a limited exception to this rule for use in counterintelligence and international terrorism cases. In 18 U.S.C. 2709, Congress gave the FBI authority to compel production of identifying information and toll records with a so-called national security letter, signed by an FBI official without judicial review and without relevance to a criminal investigation, where the subscriber is believed to be a foreign power or agent of a foreign power, as defined in the Foreign Intelligence Surveillance Act. Foreign power includes international terrorist groups.

The FBI has concluded that the authority in section 2709 is, in one specific respect, too narrow. To illustrate the problem, the Bureau cites the case of a former employee of the U.S. Government who called a foreign embassy and offered to provide sensitive U.S. Government information. The conversation was monitored, but the former employee did not identify himself. The former employee subsequently met with representatives of the foreign nation and compromised highly sensitive information about U.S. intelligence capabilities. The FBI argues that if it had been able to trace the number from which the first call offering information was placed, it might have been able to identify the former employee sooner or prevent the loss of information.

However, under sections 2703 and 2709 as they were adopted in 1986, the FBI could not, without a subpoena or court order, obtain the identity of a subscriber, unless there was a reason to believe that the subscriber was a foreign power or agent of a foreign power. In the case described above, the FBI did not have reason to believe that the caller was a foreign agent. Instead, the caller appeared to be a possible volunteer to be an agent, and therefore did not meet the section 2709 standard.

In response to this limitation, the FBI asked Congress to expand the reach of section 2709, to allow the FBI certification to require phone companies to identify not only suspected agents of foreign powers but also persons who have been in contact with foreign powers or suspected agents of foreign powers. As originally proposed by the FBI, the amendment would have applied to any caller to a foreign diplomatic establishment and any caller to official foreign visitors such as scholars from government universities abroad. This was deemed by the Judiciary Committee to be too broad.

Exempt from the judicial scrutiny normally required for compulsory process, the national security letter is an extraordinary device. New applications are disfavored. However, after careful study, the committee concluded that a narrow change in section 2709 to meet the FBI's focused and demonstrated needs was justified. The provision reported by the committee is a modification of the language originally proposed by the FBI. It allows access where: First, there is a contact with a suspected intelligence officer or a suspected terrorist; or second, the circumstances of the conversation indicate, as they did in the case described above, that it may involve spying or an offer of information.

In addition to covering a future case like the one described above, this new authority would allow the FBI to identify subscribers in the following types of cases, cited by the FBI in justifying its need for this amendment:

First, persons whose phone numbers were listed in an address book seized from a suspected terrorist;

Second, all persons who call an embassy and ask to speak with a suspected intelligence officer; and

Third, all callers to the home of a suspected intelligence officer or the apartment of a suspected terrorist.

Section 2709 as enacted in 1986 used the phrase "subscriber information and toll billing records information" to describe the information that the FBI could obtain. Instead of "subscriber information," the amendment here uses more specific terms: "names, address, length of service." As used in this section, toll billing records consist of information maintained by a wire or electronic communication service provider identifying the telephone numbers called from a particular phone or attributable to a particular account for which a communication service provider might charge a service fee. The committee intends, and the FBI agrees, that the authority to obtain subscriber information and toll billing records under section 2709 does not require communications service providers to create records which they do not maintain in the ordinary course of business.

This amendment strengthens congressional oversight of the exercise of this authority by amending section 2709(e) to add a requirement that the FBI report on its use of the authority to both House and Senate Judiciary Committees as well as both Intelligence Committees. It is the committee's intent regarding this section that the FBI should, without identifying the subjects of pending investigations, inform the committees, as part of this report, of the facts and circumstances that are the basis for obtaining information concerning any domestic political organization or groups under section 2709.

Under section 2703(e), wire or electronic communication service providers who provide information in response to a "court order, warrant, subpoena or certification under this chapter" are protected from liability for such disclosure. The certification signed by the Director or the Director's designee under the section 2709(b) is a certification for purposes of section 2703(e).

SECTION-BY-SECTION ANALYSIS

This proposal amends 18 U.S.C. 2709 by striking subsection (b) and inserting in lieu thereof a new subsection containing two paragraphs.

Paragraph (1) of the new section 2709(b) re-enacts the existing authority for FBI access to the name, address, length of service and toll billing records of a person or entity when the Director or the Director's designee certifies in writing to the wire or electronic communication service provider to which the request is made that—(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and (B) there are specific and articulate facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in the Foreign Intelligence Surveillance Act.

Paragraph (2) of the new section 2709(b) authorizes the FBI Director or the Director's designee to obtain the name, address and length of service of a person or entity if the Director or the Director's designee certifies in writing to the wire or electronic communications service provider to which the request is made that—(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and (B) there is reason to believe that communications facilities registered in the name of the person or entity have been used, through the services of such provider, in communication with (i) an individual who is engaging or has engaged in international terrorism or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States or (ii) a foreign power or an agent of a foreign power under circumstances giving reason to believe that the communication concerned international terrorism or clandestine intelligence activities.

This amendment also adds the House and Senate Judiciary Committees to the oversight provision in section 2709(e).

Mr. President, I am also pleased to join with Senators BROWN and KOHL in offering the Computer Abuse Amendments Act of 1992 as an amendment to H.R. 3349.

It is important to update our laws to stay abreast of rapid changes in computer technology and computer abuse techniques. In the 101st Congress, the Senate responded to the threat posed by new forms of computer abuse—destructive viruses, worms, and Trojan horses—by unanimously passing S. 2476. That bill was not considered by the House of Repreesentatives in the last Congress, so I joined with Senators BROWN and KOHL in reintroducing the bill, S. 1322 in this Congress. S. 1322 passed the Senate as an amendment to S. 1241, the Violent Crime Control Act. The provision was altered slightly in the crime conference with the House in November 1991. It passed the House in this modified form as part of the conference report to H.R. 3371, the Violent Crime Control Act.

The Computer Abuse Amendments Act of 1992 is the product of over 2 years of work by the Subcommittee on Technology and the Law. In the 101st Congress, I chaired two hearings on computer abuse. This proposal has been drafted and revised on the basis of careful review of issues raised in the subcommittee's hearings, and with the benefit of consultation with computer experts. The bill has been broadly supported by the computer industry and by computer users. At the subcommittee's hearing on July 31, 1990, Deputy Assistant Attorney General Mark Richard testified that this bill "* * * provides a useful improvement over and clarification of, the scope of existing law.

The free flow of information is vital to our competitiveness as a nation. Innovations in computer technology create new opportunities for improving the flow of information and advancing America's economic future, but they also create new opportunities for abuse by those who seek to undermine our computer systems. The maintenance of the security and integrity of computer systems has become increasingly critical to interstate and foreign commerce, communications, education, technology, and national security.

The National Research Council [NRC] published a major study, "Computers at Risk: Safe Computing in the Information Act." The study finds that we risk computer breachers that could cause economic disaster and even threaten human life. According to the NRC study, "Tomorrow's terrorist may be able to do more damage with a keyboard than with a bomb." The NRC study underscores the need for immediate action to protect our computer systems.

This legislation deals with new technologies and newly discovered forms of computer abuse. An alarming number of new techniuque—computer viruses, worms, and Trojan horses—can be used to enter computers secretly. Their simple names belie their insidious nature. Thousands of virus attacks have been reported and hundreds of different viruses have been identified. Computer breaches can cause economic disaster and even threaten human life.

Hidden programs can destroy or alter data. For example, a Michigan hospital reported that its patient information had been scrambled or altered by a virus that came with a vendor's image display system. Hidden programs can also hopelessly clog computer networks, as we saw with the Internet work of November 1988.

Other computer incidents, using the same kinds of programs, have been inadvertent. For example, in December 1989, the Vermont State computer network froze. It was impossible to sign on to the system. Rather than a virus or sabotage, it turned out to be a security device in the form of a "time bomb," built into the system's hardware to deter outside access. The manufacturer of the software had failed to inform the State that a special code would be triggered after a given date, locking out access through normal channels. It was nuisance to be sure, but certainly not criminal.

The subcommittee held a hearing on May 15, 1989, to explore the threat to computers and the information stored in them posed by new forms of computer abuse. We heard testimony from FBI Director William Sessions, who stressed the seriousness of the threat posed by computer viruses and other techniques.

The subcommittee also heard testimony from Dr. Clifford Stoll, an astrophysicist at the Harvard-Smithsonian Center for Astrophysics. He testified that many researchers throughout the United States were prevented from using their computers for 2 days as a result of a worm that was introduced onto the Internet computer network in November 1988. While managing the computer system at the Lawrence Berkeley Laboratory, Dr. Stoll caught a West German spy using computer networks to try to gain access to military information.

As a prosecutor for more than 8 years in Vermont, I learned that the best deterrent to crime was the threat of swift apprehension, conviction, and punishment. Whether the offense is murder, drunk driving or computer crime, we need clear laws to bring offenders to justice. Trespassing, breaking and entering, vandalism, and stealing are against the law. They have always been against the law because they are contrary to the values and principles that society holds dear. That has not changed and will not change.

In crafting this legislation we have been mindful of the need to balance clear punishment for destructive conduct with the need to encourage legitimate experimentation and the free flow of information. As several witnesses testified in the subcommittee's hearings, the open exchange of information is crucial to scientific development and the growth of new industries. We cannot unduly inhibit that inquisitive 13-year-old who, if left to experiment today, may tomorrow, develop the telecommunications or computer technology to lead the United States into the 21st century. He or she represents our future and our best hope to remain a technologically competitive Nation.

Mr. President, this amendment clarifies the intent standards, the actions prohibited and the jurisdiction of the current Computer Fraud and Abuse Act [CFAA], 18 U.S.C. 1030. Under the current statute, prosecution of computer abuse crimes must be predicated upon the violator's gaining "unauthorized access" to the affected "Federal interest computers." However, computer abusers have developed an arsenal of new techniques which result in the replication and transmission of destructive programs or codes that inflict damage upon remote computers to which the violator never gained access in the commonly understood sense of that term. The new subsection of the CFAA created by this bill places the focus on harmful intent and resultant harm, rather than on the technical concept of computer access.

The amendment makes it a felony intentionally to cause harm to a computer or the information stored in it by transmitting a computer program or code—including destructive computer viruses—without the knowledge and authorization of the person responsible for the computer attacked. This is broader than existing law, which prohibits "intentionally access[ing] a Federal interest computer without authorization," if that causes damage.

This legislation recognizes that some computer incidents are not malicious—or even intentional—and they are treated differently. The amendment creates a parallel misdemeanor for knowingly transmitting a computer program with reckless disregard of a substantial and unjustifiable risk that the transmission will cause harm. The standard for recklessness is taken from the Model Penal Code. This provision will give prosecutors and juries greater flexibility to get convictions for destructive conduct.

The amendment creates a new, civil remedy for those harmed by violations of the CFAA. This would boost the deterrence of the statute by allowing aggrieved individuals to obtain relief.

The legislation expands the jurisdiction of the CFAA. It would cover all computers involved in interstate commerce, not just "Federal interest computers," as the current law does. This is appropriate because of the interstate nature of computer networks. American society is increasingly dependent on computer networks that span State and national boundaries. The potential for abuse of computer networks knows no boundaries. The act addresses this threat by expanding the jurisdiction of the CFAA to the full extent of the powers of Congress under the Commerce clause of the U.S. Constitution, article I, section 8.

I want to thank Senators BROWN and KOHL for working with me on this legislation. Enactment of this sound and balanced legislation would help ensure that our laws keep pace with new forms of computer abuse.●

THE DEMOCRATIC POLICY COMMITTEE

Mr. DASCHLE. Mr. President, as we enter the final hours of the 102d Congress, I rise to express my appreciation for the assistance the DPC staff has provided during this Congress.

The majority leader, the Democratic leadership, and the entire Democratic Caucus have been well served by the staff of the Policy Committee. Whether through coordination of legislative initiatives, publications, voting record information, channel 18, or communication assistance, this staff has consistently and diligently provided quality services to Members and staff. For the 4 years I have served as the cochairman of the Democratic Policy Committee, I have had the privilege of being associated with one of the finest staffs in the Senate. Many of these people are truly the staff behind the scenes, providing the Senate with invaluable assistance through the many services provided by the DPC, without the personal recognition of most Senators or their staffs.

First, I want to extend my appreciation to Monica Healy. Joining the staff in March 1991, Monica has served as staff director during the period of time the DPC has had as a priority the coordination and publication of Democratic initiatives and programs. The 102d Congress saw a much sharper focus on the issues of importance to Senate Democrats, such as the economy, education and health care. Monica's role in helping to provide this attention is appreciated.

I also want to thank Greg Billings, the DPC's deputy staff director and a longtime member of my staff. He has served as my liaison to the Democratic Policy Committee for the past 4 years and has overseen the transition of the DPC services. I appreciate the time and effort he has expended to ensure that all DPC services provide quality information and that the DPC's weekly luncheon meetings are informational and useful to Democratic Senators.

The staff of the Policy Committee in the Hart Building has undertaken to deliver some of the most important, yet under-appreciated, services provided by the Committee to Democratic Senators.

PUBLICATIONS

Since 1989, Senators and their staffs have come to rely on a number of publications crucial to the efficient operation of Senate offices. The Daily Report and the scheduling information it contains is on the desk of each and every Democratic Senator and their staff before the doors are unlocked in the morning. If it wasn't for the publications staff remaining until the final moments of each day's session, it would be impossible to ensure the accuracy and dependability of this important publication.

Other publications prepared by the DPC staff have reached levels of equal importance. Legislative bulletins, analyzing the important issues in major bills under floor consideration and the amendments that can be expected, are written in detail by experienced Policy Committee staff. Special Reports, with more detailed and thematic information on current issues, have been prepared regularly on topics crucial to Senate Democrats. Pocket cards highlighting the major provisions of important bills acted on by the Senate and Issue Alerts providing Senators and their staff with timely information on issues of importance to the Democratic leadership are the two other documents that round out our array of publications.

I particularly want to commend Marguerite Beck-Rex, the Policy Committee's editor. Marguerite makes certain each DPC publication is coherent, timely, and responsive to the individual needs of my colleagues and their staffs. Given the Senate's schedule and the unpredictable nature of the legislative process, ensuring that DPC's publications meet the objectives we set forth to implement over 3½ years ago is no easy task. The tenacious manner with which Marguerite has overseen this process is the main reason why DPC's publications have the best of reputations and are consistently in demand.

Meeting these objectives wouldn't be possible without the able and professional assistance of three production assistants. Lynn Terpstra was a part of the publication process from the first day, bringing a wealth of experience from her 15 years of DPC service. Victoria Thomas and Loren Burke round out a three-person production team, all of whom approach each task with enthusiasm and professionalism as if it were the first. I am aware of their commitment to work the extra hours and late evenings to see that information is provided in a timely and accurate manner to Senators and their staffs. I offer my appreciation to them for this dedication.

VOTING RECORD INFORMATION

As chief clerk, Marian Bertram is the cornerstone of much of the history at the DPC. In addition to attending to all of her duties as clerk, Marian also serves to ensure the reliability of the committee's voting record information which is provided to Democratic Senators and their staffs. Joining the DPC in 1971, Marian holds the record as the staff person with the longest employment, spanning the chairmanships of Senators Mike Mansfield, ROBERT C. BYRD, and now GEORGE MITCHELL. She makes certain the highest standard of accuracy is followed in both the voting record information and the DPC operations.

Doug Connolly has as his primary responsibility the overall distribution of voting record information. Senators and their staffs have seen a number of new voting record products, all of which were prepared and coordinated by Doug and the voting record staff. Individualized voting record reports on major legislation and personalized voting record books are two new, specialized voting record products developed by the voting record staff under Doug's direction. In addition, many offices rely on DPC Online, a product he developed to make access to the Senate's mainframe computer more user friendly.

Colleen Brady Stephenson and Celia Maloney work with Marian and Doug to make certain all of the DPC's voting record information and attendance data is accurate, timely, and useful to the Democratic Senators for whom the DPC serves. Also, Clare Amoruso has worked diligently to ensure that DPC's computer services act as an efficient and timely conduit for this information. Calls to this five person staff are guaranteed to be handled with professionalism and accuracy, providing Senators and their staff with one of the most important DPC services. For that, I express my deepest appreciation.

CHANNEL 18

In January 1990, channel 18 became an integral component of DPC services. It provides Senators and staffs with the most up-to-date information possible on the floor schedule and pending legislative information. Over the 3 years since its inception, Senate Democrats and their staffs have been served by a reliable and professional staff whose mission is to distribute quality and timely legislative and scheduling information each and every minute the Senate is in session.

Lisa Plante and Jeff Pray recently joined the DPC staff as the channel 18 operators. In the short time they have been directing this facet of DPC services, they have demonstrated the talents necessary to ensure the continuity of channel 18's quality information.

It isn't possible to mention channel 18 without offering my appreciation to the two staff people who recently preceded Lisa and Jeff. Juliana Blome and Molly Donovan provided Senators and staff with reliable and consistent legislative and scheduling information over the many hours they served as channel 18 operators. Losing Juliana to the staff of Policy Committee Senator FRANK LAUTENBERG and Molly to an outside computer service left a void I'm certain Lisa and Jeff will work diligently to fill.

DOMESTIC ISSUES

Over the past 4 years, the DPC has provided Democratic Senators and their staffs with timely, accurate, and detailed analysis of the issues considered in the Senate. Meeting this objective over the past few years would not have been possible without the commitment and dedication of many quality and professional staff.

Joining the DPC staff in his first job in the Senate, Paul Carliner primarily monitors energy and environmental issues, providing both the majority leader and the DPC with comprehensive, accurate, and timely information in these two important areas. The quality service he provided during consideration of the energy bill is appreciated.

Special reports and issue alerts on health care have been the primary responsibility of Mary Ann Hill. DPC health care publications have been consistent in quality and information. Mary Ann's steady performance in covering health care, along with a number of other issues including judiciary and campaign finance reform, has been an important asset to the DPC.

Chris Moseley originally joined the DPC staff as an intern and soon moved to a permanent policy analyst staff position, monitoring economic, appropriation, and education issues. Chris often was pressed into service to cover issues with which he wasn't familiar and did not have immediate expertise. He took them on without complaint because he wanted to see the standards of the DPC publication process maintained. Whether taking on these new responsibilities or tending to those to which he was assigned, Chris approached all of his assignments with professionalism. For that, I am appreciative.

Kris Balderston, who joined the staff earlier this year, brought to the DPC a strong background in State and local government. He has provided experienced staffing expertise to an urban affairs task force formed earlier this year by the majority leader and served as the DPC liaison to another leadership effort on defense conversion.

Health care is an issue primarily under the responsibility of Michael Werner. In order to ensure that health care remains a top priority of Senate Democrats, Michael has worked diligently to assist in coordinating the legislative efforts of Senate Democrats in the health care area, an issue that will remain a top priority in the coming Congress.

I also want to express my appreciation to David Corbin, the DPC's researcher and author of a number of Policy Committee special reports pertaining to the economy and other issues of concern to Democratic Senators and their staffs. He has demonstrated a consistent approach in his efforts to prepare useful and timely information for our colleagues and has on more than one occasion demonstrated that his background as an author has served him well in preparing DPC publications.

Two new additions to the DPC staff include Tony Morgan and Russell Dunn. As staff economist, Tony brings a wealth of business background to the committee's service to Democratic Senators. Russell joins the DPC staff from the majority leader's office, bringing with him the experience inherent in working in that office.

The review of any professional organization would be incomplete without acknowledgment and the dedication and professionalism the support staff brings to the effort. Kelly Paisley has served as the staff director's assistant and the office manager of this facet of the organization. She ensures the efficiency of the operation by coordinating the efforts of two staff assistants, Vonzell Brown and Julie Cote. Along with Jeff Hecker, the systems administrator for the computer systems at the DPC and Senator MITCHELL's office, this four person team oversees the smooth operation of the office, the computer systems, and the Job Bank Referral Service, a resume clearinghouse for Democratic offices.

I also want to express my appreciation for the services provided by Andy Phillips and his successor, Mike Morgen. They, too, provide backup assistance to ensure the DPC's efficient operation.

As we end this session of Congress, I want to acknowledge the contribution made by five staff people who left the DPC staff during this Congress.

Brenda Corbin Sargeant completed over 10 years of service to this committee in January of this year. Brenda began her career writing and analyzing voting records, and later writing legislative bulletins on issues scheduled for floor action. The last year of her experience at the DPC saw her totally emerse herself in the complexities of health care, authoring one of the most popular DPC publications ever produced, a comparison of health care programs in Canada, Germany, Japan, and the United States.

I also want to express my appreciation for the experience Ken Jarboe brought to the DPC. Joining the committee after having served on the staff of Policy Committee Vice Chairman Jeff Bingaman and the Government Affairs Committee, Ken assumed the responsibility of making certain Senators and their staffs were well-informed on trade, economic, and technology-related issues. Many of the Democratic legislative priorities in the technology area he monitored during his service at the DPC came to fruition through the Democratic Initiatives passed in the last days of this Congress.

Charlotte Hayes brought a mixture of legislative and communications experience to the issues for which she was responsible. Quality and detailed information on education, labor, and womens' issues were guaranteed to be presented in any effort Charlotte undertook. The addition of Charlotte to Senator GORE's staff truely was a loss to the DPC.

Heather Hart left the DPC staff after a year of service to become a staff assistant on the Energy Committee. Serving as an assistant to the deputy staff director, Heather demonstrated a level of professionalism and competence far beyond her level of practical experience. Her contribution to the efficient operation of this DPC office was appreciated.

Finally, I want to express my appreciation to Wanda Bailey, who served as a staff assistant for nearly 2 years. Her cheerful personality left many visitors to the DPC with a positive impression. I know she will carry these attributes throughout her career and her post graduate studies at Harvard.

FOREIGN POLICY ISSUES

Foreign policy issues at the Democratic Policy Committee have been developed under the expertise of three principle staff people, Sarah Sewall, Ed King, and Brett O'Brien. Sarah, a member of Senator MITCHELL's personal staff before joining the DPC in 1989, has assisted the committee's effort to make certain all Democratic Senators and their staffs are well informed of the latest developments in the former Soviet Union and Eastern Europe, her primary responsibilities.

Developments in China have been considered in great detail by the Senate. Ed King has filled an important role in making certain developments in both China and Central America are monitored and adequately explained in a timely fashion to our colleagues. I express my appreciation for the assistance he has provided in this area.

The newest addition to the Policy Committee's senior staff is Brett O'Brien. Originally joining the DPC to write foreign policy and defense publications, Brett has assumed the role of Armed Services Committee staff person for Senator MITCHELL and the Policy Committee and has provided quality military issue information to our colleagues.

Leah Titerence is the newest addition to the DPC's foreign policy staff. She joined the DPC to write foreign policy and defense publications and has filled this role in an exemplary manner in the short time she has been a member of this staff.

I also want to express my appreciation to Wendy Deker, an experienced staff assistant who recently retired from the DPC after nearly 10 years of service. Wendy was responsible for the organization of the foreign policy office and for the details of many of the foreign oversight trips undertaken on the part of the leadership. Over her many years of service at the DPC, many Senators and their staffs benefited from her experience and professionalism. I offer her my best as she begins her retirement.

Another longtime staff person who left during this Congress was Scott Harris, the DPC staff liaison to the Armed Services Committee. Scott's many years of legislative experience in military issues brought a wealth of experience to the DPC's informational effort. I offer my thanks to him for his many years of service to the DPC and all Democratic Senators.

FLOOR STAFF

There is not a Senator on either side of the aisle who has not been touched by the able and professional assistance of the DPC's floor staff. Under the direction of Charles Kinney, chief floor counsel to the DPC, and with the able assistance of the Assistant Secretary for the Majority, Marty Paone, and floor assistants Lula Davis and Art Cameron, the thousands of daily details are coordinated to guarantee the smooth operation of the Senate.

Nancy Iacomini and Brad Austin, staff assistants in DPC's Capitol office, are the important link between the floor staff and all other facets of the DPC staff and the offices of other Democratic Senators. Until he recently left the DPC staff for medical school, Pierre Golpira was a valued member of this office. I offer my appreciation to Nancy, Brad, and Pierre, not only for their efforts to coordinate the information flow within the DPC, but for their diligence in attending to the details of the Policy Committee's weekly luncheon meetings. These luncheons are among the most successful of our projects, and I know that wouldn't be possible without the attention they have provided to them.

COMMUNICATIONS

Finally, Mr. President, I want to recognize the role of the DPC's communications process. Notwithstanding competing demands, uncertain scheduling, and an unpredictable floor agenda, the communications staff has made certain that the Democratic Senate agenda receives the full attention of the media and the American public for our legislative accomplishments.

In addition to serving as the majority leader's press secretary, Diane Dewhirst, the DPC's Director of Communication, plays an integral role in developing this communication agenda and making certain all Democratic Senators and their staffs are cognizant of the leadership's position on timely issues. Working in highly charged environment with many conflicting demands, Diane brings a balance of communications and legislative background to this very important position. Mary Helen Fuller and Jim Manley assist her in making certain the best possible information is provided to our colleagues.

Garth Neuffer recently joined the DPC as senior media adviser. He has had as his primary responsibility the long range planning and development of issues of primary importance to Democratic Senators. Working in coordination with the legislative schedule and other leadership priorities, Garth, along with Trish Moreis and Amy Pressman, two new staff additions to the communications effort, has played a valuable role in developing our use of new and innovative communication devices for long-range planning on our key issues.

I also want to commend the excellent service provided to Democratic Senators by the DPC's broadcast services staff. Under the experienced direction of Kevin McManus, this entire staff provide Senators and their staff with professional and timely television broadcast services. Along with Christine Deckel, Clare Flood, Kevin Kelleher, and Mark Marchione, this team upholds the Policy Committee's exemplary standards of professional service to assist Senators with their communication needs. To them, I extend my appreciation.

THE 10TH ANNIVERSARY OF THE DEATH OF KORCZAK ZIOLKOWSKI

Mr. DASCHLE. Mr. President, when we speak of beauty, we often divide it into two categories, that which is created by nature, and that which is created by the hand of man. Many times, however, some of the most remarkable creations involve a synthesis of the actions of man and nature.

Two such examples of this synthesis are Mount Rushmore and Stone Mountain, which are carved out of living stone of our Nation's mountains. All who view these monuments experience a profound appreciation for the history of our country and our cultural heritage.

Today, as a result of the determination of a visionary sculptor, the face of another such monument is gradually taking shape in the Black Hills of South Dakota. Nearly 40 years ago, Korczak Ziolkowski began to act on his dream to commemorate the great Sioux leader Crazy Horse by carving a monument to him in the scared mountains of the Black Hills. When it is completed, it will stand as an awe-inspiring testament to the central role played by the Native American in United States history.

Sadly, as is often the case with projects of massive scale, the person responsible for its genesis will never see its completion. Mr. Ziolkowski died on October 20, 1982 at the age of 74, after having dedicated decades of his life to the realization of his goal. Today, nearly 10 years later, the task of completing the monument is being carried out by Mr. Ziolkowski's wonderful wife, Ruth, and their children.

As we near the 10th anniversary of this great man's death, I would like to take this opportunity to recognize his contribution to the preservation of our Nation's heritage. It takes a true visionary to look into the future and conceive of a creation that will offer future generations of Americans a clearer window into their nation's past.

FARMERS AID IRAQI CHILDREN

Mr. DASCHLE. Mr. President, I speak today to support the humanitarian effort of farmers across the country who are working to send milk powder to disadvantaged children in Iraq.

This project is supported by a nonpartisan organization known as the Committee to Save the Children in Iraq, founded in May 1991. The committee is comprised of volunteers who coordinate the entire effort, arranging transportation and overseeing the delivery of the milk powder. Although I am not very familiar with the Committee to Save the Children in Iraq and do not support all of its policy goals, I became aware of the milk lift project when dairy farmers in my State advised me of their involvement in it, and I am proud of these farmers' efforts.

I would like to relay some history about the milk lift to Iraqi children. The effort to send milk powder to Iraq on October 1, 1991, when 20 farmers from 8 States, including South Dakota, developed a plan to help children in Iraq who are being denied proper nutrition. This was conceived at a time when some dairy farmers across the country were considering dumping milk on the ground to protest low farm prices. Since then, they have sent four shipments from the United States amounting to over 9,750 pounds of nonfat dry milk, which would equal about 50,000 quarts of fluid milk for Iraqi children. Over 100 farmers in 16 states are now active in the project.

These hope to convey two key principles to the public. The first is that food should never be used as a weapon against innocent children. "The State of the World's Children 1992," a recent report by UNICEF, states that 250,000 children die every week from starvation and disease. The report also says that children in Iraq are paying the heaviest price for the gulf war. The second principle is that independent farmers in the United States, who have shown throughout history their willingness and ability to feed the world's hungry people, should not be forced out of business by an unjust U.S. farm policy.

Mr. President, I share those principles and support this effort to bring humanitarian relief to Iraqi children, who bear no responsibility for the brutal circumstances to which they have been subjected.

IN HONOR OF FALLEN FIREFIGHTERS

Mr. RIEGLE. Mr. President, this Sunday is the 11th Annual National Fallen Firefighters' Memorial Service and Americans will gather to honor firefighters who died in the line of duty. It is right and important that we recognize the sacrifice that these citizens made in protecting their communities. We all join in the sense of loss we feel in the passing of these brave public servants.

Three Michigan citizens died last year while fighting fires: Donald J. Daughenbaugh of Romulus, and Joseph Kail and Charles Love, both of South Boardman. I would like to extend my sympathy to the family and friends of these men; they, too, have had to make sacrifices for the good of their communities while they are grieving, they can also be proud of their loved ones' selfless commitment to the public good.

As we pay our respects to our lost firefighters, I believe that we should renew our commitment to the firefighters who continue to put their lives on the line. Although fire departments are governed and financed at the local level, the Federal Government plays a role in a variety of areas including setting safety standards and requirements. We have an obligation to do what it can to help minimize the risks that firefighters face.

I am a member of the congressional fire services caucus and I commend the work the caucus is doing to raise the profile of fire issues here in Congress. I look forward to continuing to work next year on issues that will improve fire safety in this country and help protect our firefighters.

TRIBUTE TO LAWRENCE WEINBERG

Mr. AKAKA. Mr. President, It is with great pleasure that I rise to recognize the exceptional achievements and community involvement of an outstanding American and friend, Lawrence Weinberg.

Lawrence Weinberg was honored this past Sunday evening at AIPAC's Los Angeles Community Dinner for his ongoing commitment to community service and political activism. I can think of no individual more deserving of this special recognition, yet I am certain that Larry, in his unassuming manner, must be slightly unsettled by the outpouring of accolades and tributes he so richly deserves.

In every endeavor undertaken, as the founder and chief executive officer of three very successful businesses; as owner of the NBA Portland Trail Blazers; as president, CEO, chairman, and chairman emeritus of the American Israel Public Affairs Committee [AIPAC]; as Democratic National Committeeman; as chairman, director and trustee of numerous charitable organizations and foundations, Larry Weinberg's dedication, diligence, and energy have yielded a distinguished and diverse record of achievement and service to nation and community.

Lawrence Weinberg can be particularly proud of the dedication and good works he has devoted toward maintaining a strong, secure and democratic Israel and preserving the special bonds of the United States-Israel relationship. As a decorated infantryman during World War II, Larry Weinberg participated in the liberation of the Nazi death camps and witnessed firsthand the horrible aftermath of the Holocaust. As a young man, confronted by the unspeakable and unimaginable specter of death, cruelty and suffering, he made a solemn promise that he, as one individual, would make it his mission to ensure that a repetition of this genocide would never happen again. His actions from that day through the present have fulfilled that promise to the benefit of all people of goodwill. Those of us fortunate to know Larry admire the courage of his convictions and the resonance of this character.

Mr. President, a great American statesman once said, "One man with courage makes a majority." Lawrence Weinberg's good works and commitment to service are a testament to the difference that one individual can make, the impact that one voice can have in bringing people together and effecting positive change. There is a Yiddish word, "mensch", which perfectly describes Larry Weinberg and conveys the esteem, affection and respect felt for him by his friends better than the lengthiest testimonials. Lawrence Weinberg is truly an extraordinary man.

THE ENERGY POLICY ACT OF 1992

Mr. DOMENICI. Mr. President, our Nation's standard of living and quality of life is in great part a function of our energy policies. Energy affects every aspect of our economy—from industrial production to ensuring a reliable energy supply to support service industries—energy is a critical factor in determining our economic prosperity.

Here in the United States, we are developing a new concept of energy—one that stresses the necessity of clean fuels, conservation, mass transportation, and an emphasis on renewable energy resources. This legislation contains strong provisions aimed at addressing our energy needs through efficiency and conservation. It calls for more efficient use of energy throughout our economy, including improvements in the industrial sectors, increasing energy efficiency in the Federal Government, and encouraging more efficient use of energy by utilities.

My colleagues know that I strongly supported both the National Energy Strategy proposed by President Bush and the original National Energy Security Act as reported from the Energy and Natural Resources Committee. Both represented a balanced and thoughtful approach to our need for a national energy policy. Unfortunately, not all the provisions included in those two early energy proposals have survived the legislative process. However, this legislation remains one of the most important pieces of legislation to come before this Congress.

It is impossible to speak in appropriate detail to the broad range of provisions included in this bill. I would, however, like to draw particular attention to two areas which have special importance to me.

As one of the original advocates for ensuring that America has a viable, domestic source of uranium and uranium enriched fuel, I am very pleased that we are about to enact legislation to facilitate the cleanup of mill tailings sites and to ensure the continued supply of uranium and competitively priced enriched uranium through an effectively restructured uranium enrichment enterprise [UEE]. I stated in April of 1986 during one of the first congressional hearings on this issue, that a restructured UEE is essential for the good of the nuclear energy industry, which supplies over 20 percent of the Nation's electricity, for our energy independence, for our environmental concerns, and for our economy. I believe this is true now more than ever.

While I am gratified that we are finally acting on this important energy legislation, I must remind my congressional colleagues that the long delay in getting to final action on the comprehensive uranium legislation has not been without some consequences. At one time, the United States led the world in uranium production, and my State of New Mexico was the world capitol in uranium mining. Today, however, there are few remaining uranium mining operations in the United States, with enormous uranium reserves, producing only a small portion of our domestic needs. Had we paid better attention to the policy considerations of all elements of the nuclear fuel cycle, which I attempted to do in legislation I introduced in April of 1985, I believe we would be more energy independent today. I am pleased the conference has also retained the overfeeding program to enourage the consumption of domestically mined uranium.

I commend the conference for adopting the mill tailings remedial action plan. At long last, the Congress is recognizing the Nation's responsibility for the cost of decomissioning and stabilizing these mill tailings sites that came into existence under Federal contracts, yet have been left with private businesses and local communities to manage.

In this post cold war era, action on this restructuring language is very timely and is very much needed. The newly created Uranium Enrichment Corp. will play a central role in turning the weapons of the cold war into plowshares of nuclear energy fuel. I also believe the corporation will play an important role in maintaining order in the world enrichment market as the transformed highly enriched uranium enters the marketplace.

The conference committee reached an equitable solution to funding the decontamination and decommissioning program for the UEE facilities. There were many during the course of debate who would have foisted the government's responsibility onto nuclear energy ratepayers, heaping additional, and artifical, costs on nuclear energy generated electricity.

This bill also finally concludes the debate on what is the acceptable accounting principle under the 161 v. provisions in the Atomic Energy Act. Again there were many who through accounting gimmickry were plotting various taxing schemes to amass funds from utilities and their ratepayers, and drive up the cost of nuclear energy. I want to add as a postmortem on this so called unrecovered cost issue that when I first introduced my comprehensive uranium bill in 1985, I calculated that their was a shortfall in revenues over expenses. Accordingly, my proposal would have required the payment of $350 million into the Treasury. However, since 1986, the UEE has returned to the Treasury more than $600 million in excess revenues over appropriations. This bill rightly dismisses the unrecovered costs issues and returns to the corporation the unexpended appropriations and accounts that have been earned through appropriations.

While I am on this topic, I wish to recognize the efforts of those who have worked so hard for so long on this restructuring legislation, particularly the staff of the Senate Energy and Natural Resources Committee. I also want to thank two AAAS congressional fellows, Paul Gilman and K.P. Lau, who first worked with me on this issue 8 years ago and are responsible for putting together the framework for this comprehensive uranium bill, which is embodied in H.R. 776. They have since left my staff, but I thank and compliment them, and I applaud AAAS and IEEE for supporting the Congressional Fellow Program that brings scientists and engineers into the legislative process.

Of equal importance are those provisions in this conference report dealing with the domestic production of oil and gas, particularly changes to the way in which oil and gas production is taxed. I represent one of the big oil and gas production States. While rigs sit idle in my State, and while wells are shut in all over the Nation, we are importing almost half the oil we consume on a gross basis. That represents an increase by almost one-half over our dependence in 1985.

The tax title contains some of the most important energy provisions for independent producers. Right now, they are being taxed out of existence by the alternative minimum tax [AMT].

Independent producers have been stuck in the AMT since it was enacted in 1986. Under the AMT there are four big penalties imposed upon investments made by U.S.-based taxpayers who explore for, and produce U.S. oil and gas reserves. These penalties hit the independent oil and gas producers who drill 85 percent of all domestic wells. There are two tax penalties on drilling investments and two penalties on asset depletion. Without the independent oil and gas producers' exploration and development activities, the options for an energy strategy would be greatly limited. The President recognized this, and fully supports AMT relief for independent oil and gas producers.

This bill also contains important reforms of the Public Utilities Holding Company Act [PUHCA] that will enable independent power producers [IPP's] to meet a significant share of our country's future power needs. I anticipate that these IPP's will, in many cases, utilize energy efficient, abundant, and clean burning, natural gas.

To the many New Mexicans involved in the production of natural gas, this bill, in conjunction with the recent rulings by the Federal Energy Regulatory Commission [FERC], sets the basis for a stable and reliable domestic natural gas market. I anticipate that the groundwork has been established for a period of growth and prosperity in the natural gas industry.

I am very pleased to have worked with my colleagues, in particular Chairman JOHNSTON and the ranking member of the Energy and Natural Resources Committee, MALCOLM WALLOP as this legislation has developed. It has been a long, and at times, frustrating process. However, today our efforts have culminated in a bill of which we can all be proud.

TRIBUTE TO BILL KNAPP

Mr. DURENBERGER. Mr. President, I rise today to pay tribute to someone who has been an inspiration to me and to many Minnesotans. Bill Knapp had been a public servant in the small town of Menagha, MN, for many years. During that time he served on the city council, but like so many of the people I admire, BILL did more than make up a quorum in the council chambers.

Anyone from Menagha can tell you that Bill had been a vital part of the community. As city administrator Char West put it, "Bill was involved in everything. If you needed him to do something he would do it." That's why he would don his Santa Claus suit each holiday season for Menagha's school children. And that's why he took the time to drive meals to house-bound seniors. He was honored for those efforts recently as Menagha's Senior Citizen of the year. Bill was also active in the VFW, the local commerce organizations and the Lions Club.

Bill had the stamina it takes to be there when you need a helping hand and a warm smile. A few months before he died of cancer at age 71, he finished a 5K race at the Menagha Midsummers, accompanied by a dozen of his children and grandchildren, running with him as a team.

Mr. President, with people like Bill Knapp in their midst, communities have the spirit to hold their own in tough times. Menagha, with its 1,076 souls is a strong community, with a new city hall, a new addition to its school, and a population stronger this year by 10 percent.

Mr. President, Bill Knapp will be fondly remembered by the people of Menagha. I too will remember him, and we will all miss him.

TRIBUTE TO ROGER KENNEDY

Mr. DURENBERGER. Mr. President, I rise today to commemorate Roger Kennedy, a Minnesotan who has made an important contribution to the appreciation of our Nation's past.

When he became director of the National Museum of American History 13 years ago, Roger sat out to transform that institution from a kind of marbleized warehouse, if you will, into a place where visitors of all ages would feel compelled to enter into a generational conversation.

By redefining the role of the museum, Roger made history accessible, not only for scholars and researchers, but for parents, grandparents and children. When asked recently by a reporter to define his legacy, Roger responded, "I would defer to any 15-year-old passing through this place as to what we've done."

That sentiment is typical of Roger, and, I believe, of many of the Minnesotans I have come to know during my years in the Senate. It is a kind of practicality inspired by the need to discover, simply, a better way of doing things. We take for granted today Roger's innovative way of bringing history alive through historical re-creations and interactive media.

Roger also brought us a new kind of history than had previously been the staple of American museums. Under his guidance, exhibits at the museum examined the internment of Japanese-Americans during World War II and explored the subjugation of African Americans. Roger Kennedy knows that the fabric of American history will be threadbare unless everyone's story is woven into it.

Roger's career before coming to the museum certainly shows his qualifications. He has been a trial attorney, a Special Assistant to the U.S. Attorney General, a foreign correspondent, a producer and public affairs broadcaster with NBC. He has served under the Secretary of Labor and the Secretary of Health, Education and Welfare. He has been a banker and a vice president at the University of Minnesota. Roger Kennedy has written seven books and is working on another. He continues to write columns and opinion pieces for a number of publications, and has appeared in 26 programs on architecture.

In short, Mr. President, Roger Kennedy has been around. Now 66, Roger will continue to write, and he plans to host a 10-hour television series for the Discovery Channel, "Roger Kennedy's Discovering America." He will remain as director emeritus of the museum.

Mr. President, Roger Kennedy is an energetic and farsighted American. Through his work at the National Museum of American History he has helped transform our view of the past, and I know he will be an important American far into the future.

TRIBUTE TO SENATOR TIM WIRTH

Mr. LAUTENBERG. Mr. President, I rise with more than a little sadness to note the departure from these Chambers of my good friend and colleague, the senior Senator from Colorado, TIM WIRTH. Senator WIRTH's retirement from Congress follows an impressive career as a member of Congress—first representing the Second District of Colorado for 12 years and, since 1987, as a Member of the Senate.

During his tenure in Washington, Senator WIRTH has gained a well-deserved reputation as a strong leader on important issues facing the Nation. He has dedicated long hours to making this country a better place for our children. He is most deservedly renowned for his exemplary efforts to heighten awareness of, and create solutions to, our country's serious environmental dilemmas.

But he has also been an effective advocate for promoting efforts to improve our Nation's fiscal picture, as well as promoting efforts to improve economic development, infrastructure and transportation projects in his State. In addition, TIM WIRTH has been a long-time advocate for improving our educational system.

As a member of the Senate Energy and Natural Resources Committee and chairman of the Subcommittee on Energy Regulation and Conservation, Senator WIRTH has gained a reputation as a leader on our environment. I was with TIM WIRTH at the Rio Summit earlier this year, and my respect for him only grew. He has sent us all a wakeup call about the greenhouse effect, stressing the need for significant policy and legislative changes.

His list of accomplishments in the environmental arena is impressive. In addition to his efforts to combat global warming, he has fought hard for funding to support research on alternative energy sources; he was successful in getting financing for high-altitude air pollution research centers for the western slope; he lead the fight to amend the Clean Air Act so that we could benefit from cleaner gas and cleaner cars; he has fought to protect critical areas of our Nation's wilderness.

Senator WIRTH also has a long record of supporting conventional arms control and nuclear weapons limits. As chair of the independent task force on defense spending, the economy, and the nation's security, he has been involved in analyzing the impact of declining defense spending on national and local economies, and developing ways to make sure that our Nation's industrial base can prosper.

Senator WIRTH does not hide behind a cloak of safety, advocating only for those changes for which there is widespread public support. He's not afraid to rock the boat when the boat needs to be rocked.

I respect TIM WIRTH. I have learned from TIM WIRTH. I count myself as privileged to have worked side by side with him. He is an effective advocate, an outstanding role model, and a person of great integrity. But most of all, he is a warm and compassionate person who will be deeply missed in the Senate. I wish him the very best.

HEALTH CARE REFORM

Mr. ROTH. Mr. President, the number one concern for millions of Americans is access to affordable quality health care. Many who have health insurance are afraid that they might lose it. Those without insurance fear major medical expenses, and delay necessary preventive care such as check ups and immunizations. Meanwhile, health care becomes more expensive, the insurance industry discriminates against those with certain medical conditions, and small businesses and the self-employed find it next to impossible to find affordable coverage. Despite the fact that we spend more on health care than any other nation, we rate below many other developed nations in terms of the health of our people.

We as a nation will spend more than $800 billion this year on health care, yet the number of uninsured individuals continues to grow. According to the Congressional Budget Office, the number of uninsured is 33.1 million individuals. The Nation is nearing a state of crisis, and reform is direly needed. As this Congress approaches the end of its legislative work, a lack of consensus on Capitol Hill has prevented the approval of any form of sweeping health care reform. Politics and partisanship of an election year have placed health care reform in an even deeper gridlock. However, this issue is too important to leave unaddressed.

The fear of not being able to afford health care coverage is widespread and impacts virtually everyone. In Delaware, insurance premiums for a small business owner are as high as $1,200 per month. The number of uninsured in Delaware which has a population of 666,000 is over 90,000—and the vast majority are working families trying to make ends meet. The number of uninsured Americans has grown to more than 33 million. A high percentage of these individuals are employed in small business, but their employer simply cannot afford to offer a health care benefit. Affordable health care is critical to the well-being of our Nation's people and the ability of our Nation to compete internationally.

In an effort to address this critical challenge, I have been developing a proposal to make health care more affordable to working Americans and their families' providing access to millions of those who currently do not have health insurance. On March 26, 1992, I addressed the Senate and introduced my ideas to reform the health care system. Today, I rise to provide some more detail of my proposal, which would hold down costs and provide greater access by introducing managed competition into the Federal Employee Health Benefits Program and permitting small businesses and self-employed individuals to buy-in to the high quality health care coverage currently available to all Federal employees.

This proposal will make available to millions of Americans the same exact health care plan that is available to Members of Congress, Supreme Court Justices, members of the President's Cabinet, and millions of Federal employees and retirees. While the Heritage Foundation points to the Federal employee plan as a model to promote market based reform. I view the Federal employee plan even further, as a practical plan to actually build upon.

While the Federal employee program currently provides a wide range of choice for enrollees with a high level of benefits, it must be recognized that the program is far from perfect. The total cost of the program will more than double between fiscal years 1992 and 1997 from $14.6 billion to more than $29 billion, according to the Office of Management and Budget. Just recently, the Office of Personnel Management announced that the average 1993 premium paid by active nonpostal employees and retirees will increase by 9 percent.

While some attempts to manage care, such as precertification before entering the hospital and preferred provider networks, have contributed to keeping the rate of increase below the 37 and 34 percent increase experienced in 1988 and 1989, the rate of increase this year is still unacceptable. In Delaware, two of the HMO's which serve Federal employees and retirees in the State increased rates by 18 and 16 percent for self coverage and 18 and 13 percent for family coverage. Clearly, we cannot be complacent at a time when health care is a major expense in American households.

In response to the announced rate increases, John Sturdivant, national president of the American Federation of Government Employees stated:

> Until the FEHBP is completely overhauled to take advantage of the combined purchasing power of over 9 million Americans enrolled in the Government's health care program, premiums will continue to increase at an unacceptable level and more and more Government workers will be forced to choose inferior plans with poor health care coverage or drop out of the program entirely.

I agree with these comments completely given that the combined purchasing power of 9 million enrollees has the potential to yield a much better deal for enrollees and the Government.

My proposal retains the positive aspects of the Federal employee plan while introducing reforms to improve upon the program's deficiencies. Through the use of market based competition, we can succeed in bringing the growth of this program under control. Federal enrollees are very price sensitive in choosing their health care coverage, which means that basic market forces are already in place. My proposal will improve upon this competition among providers to keep costs down. Until comprehensive managed competition is introduced into the Federal employee program, we will continue to be subject to premium increases three and four times the rate of inflation.

This two-part approach—reforming the Federal employee plan by infusing more competition, and providing for a small business buy-in, will improve the health care coverage for those currently enrolled in the plan, and bring affordable health care within reach of millions of uninsured. My proposal is significant because it can accomplish these goals without raising taxes, setting price controls, or establishing a new government bureaucracy to become involved in the very personal health decisions of tens-of-millions of Americans.

Using the purchasing power of the Federal employee program, the Federal Government could fundamentally reform health insurance in this country, eventually eliminating the access problems we now have. My proposal would drive down the high rate of increase for those currently enrolled in the Federal employee program through the use of managed care and injecting more competition into the program.

The ultimate goal of this proposal is to contain costs and increase access without mandates on business, price controls, or a nationalized system of medical care administered by a large Government bureaucracy. Any health care proposal advocating one of these three approaches is bound, in my opinion, to fail. As the world's most prosperous Nation, we have come to appreciate the benefits of the marketplace. And as the world's most prosperous Nation, we should be able to see to it that all Americans have basic health insurance.

Cost containment must be a key component of any health care reform. In an effort to contain cost premium increases, my proposal introduces a level of competition that does not exist in the present system. A global budget or an arbitrary cap on spending on health care to control costs will result in rationed care, long waiting periods, and remove the incentives currently within our system which promote innovation and the best health care in the world. Instead, the use of competition to contain costs will yield efficiency and quality. Global budgets yield the opposite. In other nations, global budgets have decimated a patient's ability to receive prompt, adequate care.-

My proposal also recognizes the fact that the vast majority of the uninsured are working individuals and their families. Of these individuals and families, millions are employed by small business. Unfortunately, small businesses today face the greatest difficulties in obtaining affordable health care for their employees. The insurance industry typically picks off the healthiest small groups by wooing them with low premiums, but leaves small groups assessed as a risk with no coverage or the option to enroll at a great expense. A small business can lose its insurance coverage in the middle of the year because one employee or their dependent has a heart problem or a bout of cancer. One small business in Delaware told me that not one insurance company was willing to take on their group because two women had had breast cancer.

In an effort to control costs while increasing access to affordable health care, my proposal contains three fundamental reforms: first, the proposal makes managed care the primary component of the Federal Employee Health Benefit Program; second, the proposal introduces greater competition into the Federal employee plan so that the Government can use its power as a the Federal employee plan so that the Government can use its power as a major purchaser of health care to drive down the costs of care for Federal enrollees while maintaining high quality care and service; and third, the proposal incrementally opens the managed care component of the Federal employee plan to small business and self-employed individuals at the same premium rate for Federal enrollees.

It is my hope that interested parties will consider this proposal during the next several months, comment on it, and help refine it. It is my intention to use this time to draft the proposal for introduction at the start of the 103d Congress.

As mentioned, cost and access are the two areas where reform is needed the most in health care. This proposal addresses both of these concerns. Health care premium increases will be brought under control through the use of managed competition and much greater emphasis on the use of managed care. Less than 30 percent of those currently enrolled in the Federal employee plan are enrolled in managed care. The goal of this proposal is to provide enough incentives so that more than 80 percent of all Federal participants will be enrolled in managed care plans. Since Federal enrollees are already price sensitive, market competition based on cost and quality will favor those plans that are the most efficient.

Health plans within the system need to be more uniform so that enrollees can choose their health care plans based on two factors—the quality and price of the plan. Too often, enrollees do not understand the differences in what benefit coverage is offered. Therefore, this proposal will require that benefits be standardized. This is already being done on a large scale. For example, the California public employee's retirement system, which covers 800,000 public employees, retirees and dependents, recently approved a standardized benefits package.

To assure that competition between plans is on quality of care and efficiency in the delivery of that care, premiums will be risk adjusted. The Office of Personnel Management will be responsibile for risk adjusting premiums on a prospective basis based on demographic variables. Risk adjusted premiums involve the use of subsidies and surcharges to the quoted premium offer to hold carriers harmless for enrollment risk. Price competition without risk adjustment will lead to carriers attempting to cherry pick the healthiest segments of the enrollment pool. Carriers should be rewarded based on efficient treatment and risk management, not on their ability to encourage only healthy individuals to enroll in their plan.

Federal enrollees would retain the choice to enroll in a local managed care or fee-for-service plan. To encourage greater participation in managed care, the Federal contribution for the plans offered in each locality would be a percentage of the lowest risk adjusted premium of a managed care plan in each geographical area. In the case that a fee-for-service plan offers a plan at a lower risk adjusted rate, then it would set the standard.

Managed care providers will in most cases be able to offer the most competitive rates because of their ability to manage enrollee risk more efficiently. Overall, this proposal will help to control costs by focusing its efforts on managed care. Because managed care is primarily prepaid plans, there are great incentives on the provider to manage risk. Carriers have strong financial incentives to make sure that patients are treated correctly the first time in the most cost efficient manner.

Quality of care is central to the proposal. Managed care plans will focus more on routine primary care. Many Federal enrollees are in fee-for-service which lack preventive care coverage. The 33 million uninsured individuals have it even worse, since they have virtually no access to preventive treatments that could yield long-term improvements on health and lifespan. This is why insurers must be given incentives to make a long-term investment in the health care of their enrolled population. A visit to a physician for an uninsured individual typically means a long wait in a hospital's emergency room which translates to the most expensive care. By focusing on primary care and prevention, managed care providers can keep costs down by keeping people healthier in the long run.

The Office of Personnel Management will continue to administer the program under my proposal. I believe a plan sponsor is critical to protect enrollees and capture the purchasing power of this 9 million person pool. The Federal Government must continue to act as a guide, insuring that plans meet quality standards and helping enrollees make wise decisions by providing information about the plans all in one place. Federal employees like the choice—but they must be provided with an educated basis to make their choice and standardizing benefits will help employees choose based on price and quality. Market forces work best when there is complete information and consumers can understand the choices available to them.

Increased access for the uninsured is provided through the buy-in. The Federal employee program is in every State, every city, and every small town in America. Health care is a local phenomenon, and for that reason, I am building on the largest privately insured pool of individuals who possess the strongest health care purchasing power in the Nation. This 9-million person pool provides a network for small business to buy-in. There is already a huge market across the United States where the Federal employee plan could begin to be a better purchaser of health care. It could be better in quality, better in price. Managed competition will allow each market to yield the best results.

Expanding the pool of those in this plan through the buy-in will benefit both Federal and private-sector enrollees. The purchasing power of this growing pool will continue to increase. The stronger, larger pool will maintain continued pressure for vigorous price competition between plans for the best quality care. As the pool of insured individuals grows with the private sector buy-in, the purchasing power of the plans will be greater, benefiting all.

At the same time, this proposal is good for those with health insurance because it will help to reduce their hospital bills. What many people do not realize is that the insured are now paying the cost of all the unpaid medical care for the uninsured. Hospitals will treat people who have no insurance or cannot pay, and pass the cost on to paying patients. This is called cost shifting, and it can inflate the bills of paying patients by as much as 30 percent. The plan I am outlining today is unique—it is affordable, feasible, and it is sensible. It will reduce the number of uninsured and ultimately work to eliminate cost shifting.

In this time of crisis in our health care system, the American expectation of what health care should be is being questioned. Carriers should be given long-term incentives to promote the health of those they insure, and prevention should be at the top of our health care agenda. These carriers need to be given strong incentives to seek out the best providers—physicians and hospitals—that deliver the best care for their patients, because when care is delivered well, in the long run, it saves money. And patients need to have access to this type of care and to see it as an investment for themselves. Patients will need to rely on their primary care physicians to make their health care decisions—this is managed care as I see it with each health care player holding a significant stake in keeping costs down and expanding access to all.

The managed care component of my proposal does not have a single form because it is a market based solution, and different market places have different needs. At a minimum, care must be well coordinated by primary physicians who guide patients through their treatment. Managed care helps ensure that there is minimum duplication of services and unneeded medical services and costs are greatly reduced. Perhaps the greatest example of this is the Mayo Clinic in Rochester, MN, which uses managed care principles to deliver top quality health care at 20-percent below the national average.

Mr. President, with more than 33 million Americans without health insurance, reform is needed. We can take steps to begin reforming our health care system. I believe my proposal is a workable solution. I urge my colleagues, Federal employees, small businesses, health care professionals, and other interested parties to review this proposal. I look forward to any and all comments and refining the proposal in the months ahead.

PROSTATE CANCER AWARENESS AND EDUCATION

Mr. ROTH. Mr. President, in commemoration of National Prostate Cancer Awareness Week, I would like to take a few moments to congratulate the efforts of many individuals who have worked to heighten prostate cancer awareness and education.

I rise today, Mr. President, to recognize and applaud the formation of the 100th US TOO support group establishing a worldwide link of men who had prostate cancer, their families, and the medical community. The formation of the 100th US TOO support group is a particularly momentous occasion as it will link the expertise of the medical community from two of the top cancer centers in the world. And, I am particularly pleased to see that many individuals in Delaware have contributed to realizing the formation of the support group.

Having been treated successfully for prostate cancer I can attest to the successful outcome of early treatment and intervention of the disease. In June, I was diagnosed with prostate cancer, which this year will affect an estimated 400 men in Delaware, and 120,000 nationwide. The National Cancer Institute says that, like breast cancer, because the causes of prostate cancer are unknown, prevention of the disease is not yet possible. However, when the disease is detected early, as in my case, treatment is usually successful. Efforts to increase awareness and treatment, and coping with the disease should be continued if we are to eradicate prostate cancer.

In January 1991, US TOO and the American Foundation for Urologic Disease [AFUD] formed a relationship in order to develop an international network of support groups. US TOO is a national patient support group program which serves an important role to many by assisting men who had prostate cancer and their families in dealing with all aspects of their disease.

A Delaware based pharmaceutical company has been at the forefront of these awareness efforts. Mr. President, I am pleased to inform my colleagues that ICI Pharmaceuticals will be recognized for their efforts with a special award ceremony on October 15, 1992, by the American Foundation for Urologic Disease in recognition of their initiative and commitment to prostate cancer education and awareness. The award will be presented during a ceremony being held at Memorial-Sloan-Kettering Cancer Center in New York City to commemorate the formation of the 100th US TOO group.

The event will also feature the distribution of copies of a patient education manual, "Helping Your Patient Overcome the Effects of Prostate Cancer: A Guide for Establishing Support Groups." Both a public service announcement and booklet were developed as the result of generous contributions from ICI Pharmaceuticals. In addition, ICI underwrites the administration of the support group program through an education grant to the American Foundation of Urologic Disease.

ICI Pharmaceuticals Group is a business unit of ICI Americas, Inc., the U.S. subsidiary of U.K.—based Imperial Chemicals Industries, PLC. ICI Pharmaceuticals Group, based in Wilmington, DE, has approximately 3,000 employees, including some 800 of whom are engaged in research, development and quality assurance, and a sales force of 1,000 representatives.

ICI Pharmaceuticals holds a longstanding position of leadership in the area of cancer research and support. They were one of the original sponsors of National Breast Cancer Awareness Month, and they were recognized as model employers for promoting on-site breast cancer screening during a recent visit of the Vice President's wife Marilyn Quayle.

I am pleased to join Senator DOLE and other colleagues, ICI Pharmaceuticals, and the American Foundation for Urologic Disease in doing all we can to raise public awareness in regard to prostate cancer. This disease is the leading cause of death in men over the age of 45, and like breast cancer, can successfully be cured if diagnosed and treated early.

I commend and join the efforts of my colleagues, Senators DOLE, STEVENS, HELMS, CRANSTON, THURMOND, and others, along with ICI Pharmaceuticals, the American Foundation of Urologic Disease and the US TOO organization for all their efforts on behalf of the American and world public to address this vital health issue.

TRIBUTE TO SENATOR RUDMAN

Mr. LAUTENBERG. Mr. President, I want to pay tribute to an outstanding Senator who will be leaving at the end of this term, WARREN RUDMAN.

Mr. President, I have enormous respect for WARREN RUDMAN. And there probably is not a single Member of this body who does not feel similarly.

WARREN RUDMAN is a man of unusual intelligence and integrity. He's also a man of real intellectual independence. Senator RUDMAN is someone who knows what he thinks, and isn't afraid to say it, and act on it, no matter who might disagree. He could be your friend or adversary without that entering the debate or his view. That independence and integrity is one reason why so many Senators look to him for guidance and leadership. And why he's proven to be such an influential member of this body.

Mr. President, I didn't agree with WARREN RUDMAN on everything. But I do have the utmost regard for his thoughts about issues. And I usually learn something by listening to his arguments.

Most Americans probably associate WARREN RUDMAN with his admirable and sincere commitment to reducing the deficit. And, clearly, he's made an enormous contribution to the debate in this area, both within the Congress and around the country. I know we will be hearing much more from him on this vitally important problem, and I'm hopeful he will be successful in convincing more Americans about the severity of this matter. It won't be easy. But few people are better equipped to make the case.

Mr. President, beyond budget policy, WARREN RUDMAN has made enormous contributions in several other vitally important, but less visible areas. For example, he has been a strong advocate for programs designed to provide legal services for the poor. He's resisted strong opposition from within his own party on that matter, and he deserves enormous credit for this support for the rights of the disadvantaged to legal representation. That support will be greatly missed in the years ahead.

Mr. President, when I think of WARREN RUDMAN, I also think of the debate on a particular amendment to the crime bill earlier in this Congress. The amendment would have expanded the good faith exception to the exclusionary rule to apply not only to searches where the police obtain a warrant, but to warrantless searches as well. To many senators, it was a rather esoteric issue, little understood by the public. And the easy thing to do would have been to vote for the amendment, just to appear tough on crime.

But WARREN RUDMAN stood up and made the case against the amendment. He was articulate. His reasoning was sound. He spoke with real passion. And, perhaps most importantly, he came with great credibility.

That amendment was defeated, Mr. President. And, while there's no way to know for sure, I believe that without WARREN RUDMAN the vote would have gone the other way. It took someone with his courage and credibility to stand up for what's right. And when he did, he brought the U.S. Senate along with him.

Another similar example, Mr. President, was the debate on resale price maintenance. Again, WARREN RUDMAN brought his legal skills to the floor on behalf of ordinary Americans, those who must scrimp and save, and who rely on discounters to get by. Like the exclusionary rule, it was a highly technical issue. But WARREN RUDMAN made his case with clarity and passion. And, again, the Senate listened, and was convinced. It might not have happened without him.

So I salute Senator RUDMAN, and thank him for his many contributions to our Nation during his tenure in this body. I'm sure those contributions will continue for many years to come.

REGARDING THE RESIGNATION OF SECRETARY ED DERWINSKI

Mr. SIMPSON, Mr. President, I rise today to make a few remarks prompted by Ed Derwinski's decision to leave his Cabinet post as the Secretary of Veterans Affairs.

As a lifetime member of the Veterans of Foreign Wars and a member of the American Legion and Amvets, I comment Ed for the job he did in this very difficult veterans post.

I have known Ed Derwinski as long as I have been in Washington. He is a caring person who made a very positive impact on the Department of Veterans Affairs.

In nearly 4 years as head of the VA, Ed Derwinski has tried diligently and doggedly to put deserving veterans first—by increasing their medical care benefits.

Although he has had his share of difference with some of the veterans groups, as a former chairman of the Senate Veterans Affairs Committee, it was my view that he has always been accessible, open-minded, and very fair.

Ed Derwinski clearly understood the historic mission of the Department of Veterans Affairs. When President George Bush appointed him to that post he was given a charge which Abraham Lincoln set forth as the creed for the Veterans' Administration:

"* * * To care for him who shall have borne the battle and for his widow and his orphan * * *." Still today, that is the primary purpose of the VA—and Ed Derwinski has made every possible effort in the last 4 years to be true to those goals. I admire him greatly. He is a superb man.

This has been a difficult time to be at the head of the VA. There have been a lot of really tough issues, and scarce Federal dollars.

Nevertheless, in this time of budget deficits and all sorts of spending cuts, Ed Derwinski was able to wrangle $700 million for VA Health care and do it "Right up front,"

And he successfully worked to push the VA budget up by a very significant sum of $1 billion each of the last 3 years.

Mr. President, Ed Derwinski is a man of honor, integrity, grace, and good humor who did a most honorable job in an area where the needs are infinite, and the resources are finite. It is one of the toughest jobs in Government. He did it well. God bless him.

I wish him and his able and capable wife, Bonnie, the very best in all of their future endeavors.

TRIBUTE TO SENATOR BROCK ADAMS

Mr. LAUTENBERG. Mr. President, I want to pay tribute to my colleague, BROCK ADAMS, who is retiring from the Senate after over 30 years in public service. He has served in the great tradition of Washington's independent Senators—Warren Magnuson and Henry "Scoop" Jackson.

Senator ADAMS has had a distinguished career in public service. He was a U.S. attorney from 1961 to 1964, when he successfully ran for a seat in the House of Representatives. He served in the House until President Carter selected him to the Secretary of Transportation. He returned to Congress in 1987 as the junior Senator from Washington.

BROCK's interest in transportation continued during his incumbency in the Senate. In my capacity as chairman of the Transportation Appropriations Subcommittee, BROCK and I frequently discussed transportation issues and he was aggressive in seeking to meet the transportation needs of his State. As a former Secretary of Transportation, he offered this body important insights on innovative transportation policies for our future. We also worked together to enact legislation in response to the tragic *Exxon Valdez* oil-spill.

With the retirement of Senator ADAMS, the Senate is losing one of its most strongest proponents of women's rights. He is a strong defender of a woman's right to choose, a woman's right to equal pay, and more aggressive research into health issues of concern to women.

He has also been a leader in the fight for greater funding for AIDS research and treatment programs. He and I have worked together on the Appropriations Committee to seek the highest level of funding possible for the Ryan White CARE Act and NIH's sponsored research on AIDS. He joined in this effort because of his concern about the tragedy AIDS leaves in its path all across this country. He took on this cause even though other States were more affected by this epidemic than his own.

The senior citizens of this country are also losing a great champion with the retirement of Senator ADAMS. As chairman of the Subcommittee on Aging, he's fought to expand programs for our Nation's seniors. He's worked hard during the past 2 years to ensure passage of the Older Americans Act.

Mr. President, BROCK ADAMS' legacy will live on after he leaves this Chamber. In this Congress, he has worked diligently to enact a NIH reauthorization bill to expand women's health initiatives of NIH and permit fetal tissue research to seek a cure for Parkinson's disease, diabetes and Alzheimers. Regrettably, a handful of Members prevented this bill from final consideration and passage this year. However, the majority leader has indicated that this bill will be numbered S. 1 in the next Congress, indicating the high priority most Senators place on its enactment.

When S. 1 is introduced next year, it will be a tribute to Senator ADAMS as well as a reflection of the importance of conducting this research.

I regret BROCK'S departure from the Senate but I wish him and his family the very best in the years ahead. I am sure he will continue to make a contribution.

CONTINUING CRISIS IN YUGOSLAVIA

Mr. SIMPSON. Mr. President, I rise to say a few words about the continuing crisis in Yugoslavia.

Mr. PRESIDENT, I think it is fair to say about most of us that we only began to learn about the intricacies of this tragic situation after that land exploded into military conflict. it has truly been on the job training for the Western democracies in developing appropriate responses.

I think that is important to understand because it is important to understand international events have played a role in Yugoslavia's current difficulties, and in the tensions that have emerged there over time. People in America turn on their televisions and they see horrifying images of brutality and terror. The easy—but incorrect—response is to turn away and to believe this is just part of the world that has gone crazy, and that is the international community has nothing to do with it. That is not true morally, nor historically; the tensions in Yugoslavia partially result from a history of international great-power conflicts which have focused on that region.

We need to remember that the development of appropriate responses, and appropriate solutions, requires us to do our best to understand what is happening there. It requires us to understand that this is not in any way analogous to the conflict that erupted 2 years ago between Iraq and Kuwait. I believe President Bush deserves our commendation for recognizing the particulars at work in Yugoslavia, an not attempting to shoehorn a policy that may have worked in other parts of the globe onto this unique situation.

We must, of course, continue to adhere to certain principles in our response. Recently the Senate called upon the United Nations to take the necessary measures to ensure that the relief to victimized peoples there is successful. That was an appropriate response in my view. And we must also make clear that naked military aggression will be punished by the international community, by economic sanctions at the very least.

Beyond that, the situation becomes more complex, and solutions more exclusive. Identifying aggressors is not a trivial matter in a land like Bosnia-Hercegovina, where Croats, Serbs, and Moslems have fought within the borders of one Republic—and where each of those groups is divided into factions that include various levels of nationlist extremism.

We should, of course, condemn aggressive actions by Serbian leader Milosevic—but we must not delude ourselves into believing that, inaction by Serbia, as a result of international pressure, will automatically produce peace in Bosnia. The Republics of Yugoslavia were, after all, drawn up with 30 percent of the Serbs living outside of Serbia.

We must similarly not assume that Serbia is United behind the policies of Slobodan Milosevic. Of course, the growing doubts of a number of Serbs about his policies would not mean that we should relieve the international economic pressure on Serbia. But we need to do what we can to strengthen those elements within Serbia that might be more inclined to play a productive role in framing a lasting peace.

I had the pleasure this past week of meeting with Yugoslav Prime Minister, Milan Panic. I found myself impressed with the energy and enthusiasm of this man, a naturalized American citizen, for advancing ideals which he unabashedly described as "American." Milan Panic spent a great deal of his professional life in the United States, and he has returned to his country with a great enthusiasm for all things American, and I cannot help but admire him for that.

I do believe that we may need to take a good look at who we view as the real voice of Serbia—whether it is Milan Panic, or Slobodan Milosevic. Milan Panic's government of a "rump State" of Serbia and Montenegro has not been generally recognized. This is, after all, a recognition of the forces arrayed against him—not internationally, but within Serbia. I am certain that Milosevic would love for us to become so enamored of Mr. Panic that we ease the pressure on Milosevic's own regime; certainly we need to guard against that. But I do think we will be distraught with ourselves if a voice for peace and moderation within Yugoslavia is stilled by a coup or conspiracy against him by a militarist regime. We therefore have a responsibility to strengthen our support for what Mr. Panic has been saying.

I would urge my colleagues to let the word go forth that the West is in fact receptive to possibilities for democracy and peace within the rump Yugoslavia. And, that the attitude and approach of the West will be in part determined by the extent to which real governing power passes into the hands of moderate parties within their country. Declarations of peaceful intent, of course, are not enough. But we can make clear that we do find the program of Mr. Panick—and NOT the policies of Mr. Milosevic * * * to comport with our long-held views of the real aspirations of the Serbian people. Mr. Panic represents their clear and best present hope for international respect and goodwill, and that is a hope that we cannot at this tragic time afford to ignore.

THE SERVICE OF SENATOR ALAN DIXON

Mr. LAUTENBERG. Mr. President, I rise to acknowledge the departure of a valued colleague who has served his State and the Nation with great distinction: Senator ALAN DIXON of Illinois.

Senator DIXON has ably and effectively represented the State of Illinois during his tenure in the Senate. But Senator DIXON'S interests in the Senate have not been limited to issues affecting Illinois. He has also played a leadership role, and had an impact on the major issues of our day.

A leader in banking reform, he looked into the commercial banking industry and long ago saw some of the troubling signs that led to the thrift crisis. He was a leader in introducing legislation to keep the banking industry vibrant and healthy and to head off the burden of another multibillion taxpayer bailout.

Senator DIXON has also fought to increase the supply of affordable housing for hardworking Americans. His efforts finally bore fruit when, after months of hearings, the new head of the Federal National Mortgage Association informed Senator DIXON he was announcing steps to make its home mortgage policies and procedures more amenable to working families in low- and moderate-income communities, and particularly, in minority neighborhoods.

Senator DIXON also sponsored legislation to enforce restrictions which make it illegal for banks to discriminate against mortgage applicants based on race. Senator DIXON argued for more Federal prosecutors of S&L fraud.

As chair of the Senate Armed Services Subcommittee on Readiness, he worked on procurement issues that spurred the creation of the Pentagon procurement czar, taking lucrative contracting decisions out of the hands of those who have a vested interest in their outcomes. He also saved American taxpayers $4.5 billion by leading the fight to stop production of the faulty Sergeant York gun.

Throughout his career Senator DIXON never forgot the problems or concerns of those who sent him to the Senate. I know he will take that same devotion, dedication, and commitment to his new endeavors. Mr. President, I will miss my friend from Illinois, and I would like to wish him well. I know that he will succeed in whatever arena he decides to use his considerable talents.

VETERANS' ALCOHOL TREATMENT PROGRAMS

Mr. PRESSLER. Mr. President, I rise today to discuss an important issue. It is a subject I take seriously and one that Congress should further examine.

Thousands of Americans are treated for chemical substance abuse, including alcoholism, each year. Veterans reflect a disproportionately large number of these cases. I know of many hearings held and studies conducted to determine why so many of our veterans develop drug and alcohol problems. We have learned a great deal. However, we need to move ahead and evaluate the treatment these veterans receive.

In 1992, the Department of Veterans Affairs [VA] spent nearly $418 million on substance abuse programs. VA officials inform me this care costs about $156 per day. Typically, substance abuse treatment at a VA facility lasts 25 days. This equates to approximately $4,680 for one veteran to get help in a VA rehabilitation program. Nearly 30 percent of the veterans who complete an alcohol treatment/counseling program are later readmitted to the program. This contrasts with the 21-percent relapse rate in the private sector.

The VA has roughly 172 hospitals around the Nation. Nearly 150 of these facilities have alcohol treatment programs. In fact, in my home State of South Dakota all three of our VA facilities have alcohol treatment programs.

You certainly cannot evaluate the effectiveness of an alcohol treatment program solely on its cost. However, it is one factor which must be considered. I have done research on the cost of treating individuals with alcohol problems. Costs vary depending upon the location of the treatment center, its reputation, and its facilities. You can obtain quality care in the private sector for a cost similar to that in the VA. However, the VA ends up spending more on an individual because of the higher relapse rate in its programs.

I intend to work with the VA and the Senate Veterans' Affairs Committee to determine how we can improve the quality of alcohol and drug treatment programs for veterans while reducing their cost. We have just completed action on the fiscal year 1993 VA appropriation bill. It contains nearly $15 billion in health care funding. We all know this is not enough. However, we must determine how we can help the most veterans in the most cost-effective way. I am committed to studying further the issue of VA substance abuse rehabilitation programs and to determining how—whether through in-house programs at VA facilities or through contracting out of such services—our veterans can best be served.

JACKSON FARM CREDIT DISTRICT COMPROMISE

Mr. HEFLIN. Mr. President, I rise in support of the Jackson Farm Credit District compromise legislation that we have included in the bill before us at this time. This provision is the result of the cooperation and hard work of many dedicated people, including my colleague the Senator from Mississippi, [Mr. COCHRAN], my colleagues on the Committee on Agriculture, Nutrition, and Forestry, and in the other body, Mr. ESPY, Chairman DE LA GARZA, Chairman WHITTEN, and many others. I was pleased to join these gentlemen in this important effort; and I must also salute the outstanding efforts of the staff of all the Members for their work and contributions to putting this particular legislative package together.

This compromise will put to rest the long-standing and divisive controversy surrounding the status and lending authorities of the Farm Credit System institutions in the Jackson district. The compromise here is fair. It upholds the principles of local control while streamlining loan operations in the district, in fulfillment of the district merger provisions in the 1987 Agricultural Credit Act. It also gives the Texas Farm Credit Bank statutory assurances about the validity of its long-term lending charter in the Jackson district.

BACKGROUND

The Agricultural Credit Act of 1987, in section 410, mandated the merger, within 6 months after enactment—that is, by July 6, 1988—of the Federal Intermediate Credit Bank [FICB] and the Federal Land Bank [FLB] in each of the 12 Farm Credit districts throughout the United States. The banks created by section 410 mergers are called Farm Credit Banks [FCB's] and handle both short-term and long-term lending to farmers and ranchers within the Farm Credit System.

The 1987 act did not, however, include the mandated consolidation of the 12 Farm Credit districts called for in the earlier House version of the legislation. The whole issue of local control and consolidation of districts was a contentious matter during the 1987 congressional debate; and the middle ground position reached by Congress was a finely balanced compromise.

In 11 of the 12 Farm Credit districts, the merger/creation of FCB's under section 410 of the 1987 act took place on schedule. However, the FCA failed to charter an FCB in the Jackson district because FCA had decided to place the Jackson FLB into receivership rather than allow comprehensive assistance under the 1987 act to be provided to the district.

The Jackson FICB, nonetheless, tried to remedy the situation during 1988 and 1989 by looking for a FCB to be a voluntary merger partner.

Meanwhile, early in 1989, the FCA approved a sale of a number of long-term loans of the Jackson FLB in receivership to the Texas FCB, at the same time amending the Texas bank's charter to permit it to make new long-term loans in the Jackson district. In issuing that charter extension, the FCA for the first time in history split the long-term and short-term lending authority in a Farm Credit District between banks based in different districts.

Then, in the spring of 1989, FCA interrupted the Jackson FICB's voluntary merger process by instructing it to merge with the Texas FCB under section 410—using the legal theory that the Texas bank was the functional equivalent of a FLB in the Jackson district. The FICB successfully appealed this FCA decision to the courts. In February 1991, the U.S. Court of Appeals for the Fourth Circuit ruled definitively that section 410 did not give FCA authority to force the merger and consolidation of districts.

After the court decision, things in a sense came to a stand-still as to the future of the Jackson district; and this legislation is designed to get things moving toward a final resolution of the status of the district that retains the rights the courts have given the FICB and its associations to determine their own destiny.

WHAT THE LEGISLATION DOES

The language in this legislation puts in place a carefully tuned, orderly mechanism to resolve the situation in the Jackson district by facilitating a merger of the Jackson FICB with another Farm Credit Bank after a vote of the farm-borrowers and share-holders in the three States of Alabama, Louisiana, and Mississippi. If that merger process fails, the legislation then provides for a mandated but arbitrated merger with the Texas Farm Credit Bank.

I support the compromise included in this legislation based on my understanding of how it will work to accomplish the merger of the FICB of Jackson with a Farm Credit Bank.

First, the Jackson FICB will have until June 30, 1993, to find its own merger partner from among any of the other Farm Credit Banks in the Farm Credit System.

Under the provisions of the bill, the FCA will not be able to interfere with the Jackson bank's merger efforts during this window of opportunity, lasting until June 30, 1993, except to the extent that the regulator must exercise its duties under the Farm Credit Act to bar unsafe and unsound practices. In that regard, the FCA under this bill has exactly the same—no more and no less—supervisory powers over the Jackson bank than it would otherwise have under the other provisions of the Farm Credit Act to ensure the safety and soundness of system institutions. Moreover, those powers are limited under the same administrative standard as in the rest of the Farm Credit Act.

Nor will the Farm Credit Bank of Texas have any authority under the statute to interfere with the Jackson bank's merger efforts during this time.

Another key provision of this bill is that the Jackson FICB and its intended merger partner may request a one-time extension if they need a little more time to work out the details of the merger. If Jackson and its intended merger partner submit a letter of intent to the FCA, the FCA has the responsibility to extend the deadline. The FCA cannot deny or revoke the extension except for the most clear signals that the deal has actually fallen through.

During this window of opportunity, under the authorities that the Jackson district production credit associations have under current law to affiliate with any Farm Credit Bank, if Northwest Louisiana PCA does not agree with the deal it may opt out and affiliate with a different bank. After the merger of the Jackson district, the Jackson production credit associations are free to reaffiliate with another district bank under the usual procedures already set up elsewhere in the Farm Credit Act. Again, principles of local control are upheld for the benefit of the farmers and ranchers in the district.

Only if the Jackson bank fails to find a merger partner in the time period allowed in the bill will it be mandated to merge with the Texas Farm Credit Bank. Even then, the bill protects the farmer-borrowers and shareholders of both banks. The whole matter will be put to an arbitrator to decide the best terms of merger for both banks and the System as a whole.

To ensure that the rights of both sides are fully protected and to ensure that both districts are treated with equal respect and deference, the bill is constructed to give the arbitrator—not one bank or the other, nor the FCA—broad power to initiate the development of, and refine, the merger terms.

Both banks involved in the mandated, arbitrated merger will be able to present their own plans for structuring the new bank for the combined districts, and they may present whatever information that would support their preferred plan. Their assets will be set at book value.

Whichever way the merger is reached, when the merger is completed, assistance will be available to the extent necessary to facilitate the merger and ensure that stock values will not drop as a result of unforeseen financial downturns.

Either the FICB of Jackson or the Texas bank may request the establishment of agricultural credit associations [ACA's] in the district, and the arbitrator's plan may include the establishment of ACAs. A plan for ACAs would enable farmers and ranchers in the Jackson district to have one-stop shopping for all their farm credit needs, as so many other farmers and ranchers have access to elsewhere in the system. But again, it would be up to the farmer-borrowers themselves to decide whether they wanted ACAs. So long as the arbitrator found it in the interest of district farmers and ranchers, the question would go before the farmers and ranchers for their approval.

Also, if the farmers and ranchers in one State, voting in separate territories by majority vote approve ACA's, that State's associations would then be able to set up a statewide ACA down the line by separate vote.

In regard to the voting process regarding ACAs, I would made clear that we intend that the referendum majority be a majority of those voting, not those eligible to vote; and the arbitrator is expected to include such term in the referendum procedures he is required to draw up under the legislation.

The arbitrator's plan of merger of the FICB with the Texas bank would ultimately go to the FCA for certification that the plan was in compliance with the Farm Credit Act. The FCA would be able to recommend necessary changes to the arbitrator's plan to bring the plan into compliance with the law, but the FCA would not otherwise be able the withhold certification for less than the most serious of reasons. It is my understanding that the FCA has no interest in withholding certification of a lawful merger plan.

Finally, I am pleased that the farmer-borrowers will have the additonal protection of expedited judicial review under the provisions of the U.S. Arbitration Act and to prevent arbitrary and capricious, illegal agency action, or actions otherwise unsupported by substantial evidence based on the entire record put before the arbitrator or the FCA, whichever is involved. This language provides extra needed protection for the farmer-borrowers that the merger process will be a fair one.

During the whole process, the Jackson FICB will have all the authority under the law it is otherwise entitled to as a fully authorized Farm Credit System institution until the time it is finally merged with another bank, or no later that June 30, 1994.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a summary analysis of this provision of the bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY ANALYSIS OF PROVISIONS REGARDING THE FICB OF JACKSON

This provision provides a framework for, and rules to govern, the merger of the Federal Intermediate Credit Bank of Jackson, Mississippi (FICB–J) with another Farm Credit Bank (FCB).

This provision will (1) allow for the transition of the FICB–J to FCB status in a timely and equitable manner; and (2) assure the farmer-borrowers served by the FICB–J's associations that their bank will have a fair chance, within reasonable limits, to decide its own destiny on terms that will maximize benefits to farmers. The FICB–J's merger must be completed by July 1, 1994.

GENERAL SUMMARY

Specifically, the provision consists of three subsections.

First, subsection (a) has three major components:

(A) Rules for a negotiated merger.

(B) An alternative, mandated merger with the Farm Credit Bank of Texas ("the Texas bank") if a negotiated merger is impossible, under specified arbitration procedures.

(C) Provisions for expedited judicial review if problems occur in the merger process.

Then, subsection (b) will clarify the long-term lending authority of the Texas bank in the States of Louisiana, Mississippi, and Alabama. This clarification, however, in no way provides short-term or intermediate-term lending authority under title II of the Farm Credit Act of 1971 ("the Act") in those States—that authority remains exclusively that of the FICB–J and its successor merged bank (which, of course, could be the Texas bank).

Finally, subsection (c) will add language to section 5.17(a)(2) of the Act, to prohibit the issuance of competitive Farm Credit charters in the States of Louisiana, Mississippi, and Alabama.

SUMMARY OF SUBSECTION (a)

Subsection (a) will add a new subsection (e) to section 410 of the Agricultural Credit Act of 1987. Section 410, as enacted in 1987, provided the rules for the establishment of Farm Credit Banks (by merger of the Federal land bank and the FICB) in each of the 12 Farm Credit districts.

Under section 410, as currently written, each such merger was to have taken place by July 6, 1988. The problem leading to the need to enact this legislation is that the Federal Land Bank of Jackson and the FICB–J were prevented by action of the Farm Credit Administration (FCA) and other agencies from merging into a Farm Credit Bank of Jackson under the time schedule. In fact, the Jackson land bank has been in receivership since early 1988, and is expected to be completely liquidated soon. This has left the FICB–J without a merger partner under section 410 up to now.

The new subsection (e) of section 410 will provide a blueprint for the expeditious merger of the FICB–J into an FCB. The major provisions of new subsection (e) are as follows:

Initially, the FICB–J will be given until June 30, 1993, to find an FCB to voluntarily merge with.

If the FICB–J finds an FCB to voluntarily merge with by June 30, 1993, and files a letter of intent on this merger with the FCA, the FCA must grant an extension of time—to no later than October 31, 1993—for the two banks to complete the merger, if FCA determines that—

(1) the letter of intent represents a bona fide good faith agreement; and

(2) there is at least a reasonable prospect for the timely completion of the merger.

It is expected that FCA will make a determination of "good faith" in the absence of any obvious short-coming in the letter of intent.

If the FICB–J does find a voluntary merger partner, the merger will be completed under the current merger provisions of the Act.

If the FICB–J determines to merge under this authority, the whole bank, in its entirety (except as noted in the following sentence) will have to merge; and the merged bank will only have the FICB–J short-term and intermediate-term lending authorities in the States of Louisiana, Mississippi, and Alabama. The NW Louisiana Production Credit Association could at any time invoke the current authorities of the Act to reaffiliate with another Farm Credit district.

While the FICB–J is in the process of merging (either under this provision or with the FCB–T under arbitration), it will continue to operate as a legally authorized bank, under such provisions of law that are determined by FCA to be appropriate for the bank to conduct efficient and effective operations.

Mandated, Arbitrated Merger with the FCB–T

If the FICB–J is unable to consummate a negotiated merger, the FCA, within 5 days after the initial or extended deadline for a negotiated merger expires without action, will issue an order requiring the FICB–J to merge with the Texas bank.

Within 30 days after the order for this mandated merger with the Texas bank is issued, an arbitrator will be appointed by the American Arbitration Association (AAA).

The arbitrator's job will be to determine the terms of the merger such that the terms are fair and equitable to all concerned, and protect the safety and soundness of the Farm Credit System. Subsection (e) spells out the objectives and required contents of the arbitrator's plan in more detail.

The expenses of arbitration and of the referendum of borrowers on association structure (described below) will be paid out of the Farm Credit Assistance Fund.

The arbitrator will have 100 days to develop the merger plan and submit it to the FCA for certification.

The arbitrator could include in the plan authority for the establishment of agricultural credit associations (ACAs) in Louisiana, Mississippi, and Alabama. The ACA plan would be based on proposals submitted by the FICB–J, the Texas bank, or both.

The ACA plan would call for the establishment of an ACA in each of the territories now covered by the Jackson district Federal land bank associations (FLBAs), with the territory covered by the North Louisiana FLBA further broken up into 2 ACA territories, one each for the territories covered by the NW Louisiana PCA and First South PCA. The other specific elements of the ACA plan are set out in subsection (e).

The FCA would have 30 days after it receives the arbitrator's plan of merger (including the ACA plan) to do a compliance review of the plan.

Within 170 days after the order for the mandated merger is issued, the AAA would have to complete the conduct of a referendum of all farmer-borrowers in Louisiana, Mississippi, and Alabama on the ACA plan. A majority vote in any referendum will be a majority of those voting, not a majority of those eligible to vote.

Within 10 days after the results of the referendum are submitted, FCA must issue the charters needed to implement the mandated merger of the FICB-J and the Texas bank. Similarly, FCA would have to charter an ACA in each of the seven ACA territories in which a majority of both FLBA borrowers and PCA borrowers in the territory approved ACA status.

The Farm Credit System Insurance Corporation (FCSIC) will be required to provide funds as needed to facilitate a mandated merger with the Texas bank. However, the assistance could not exceed an amount required to maintain stockholder equity in the merged bank at book value.

In addition, FCSIC will be required to guarantee—for up to 5 years after the merger of the FICB-J—prompt payment of any loss experienced by the bank merged with the FICB-J due to the failure of an association holding stock in the FICB-J to pay its obligations to the resulting bank.

If at any time prior to the completion of the FICB-J's merger, the FCA determines (as provided in the Act) that the FICB-J is being operated in an unsafe or unsound manner, it can (1) require an assisted merger of the FICB-J, using FCSIC funds, or (2) (after the issuance of an order for a mandated merger with the Texas bank), take action under the Act to return the FICB-J to a safe and sound condition.

If all the associations in the State of Alabama, Louisiana, or Mississippi are chartered as ACAs under the arbitrator's plan, the boards of each such ACA in the State will be encouraged to submit to its stockholders a plan for merging into a statewide ACA. It is expected that FCA would expeditiously charter each such statewide ACA as approved by stockholders.

Review

The actions and determinations of the FCA, the FCSIC, and the arbitrator under subsection (e) will be subject only to restricted judicial review, and not be subject to the provisions of the Administrative Procedures Act.

Judicial review of FCA and FCSIC actions and determinations will be conducted exclusively in the U.S. Court of Appeals for the District of Columbia Circuit, using expedited review procedures spelled out in the bill.

Review petitions will have to be filed within 10 days after the action or determination complained of occurs. Then, the court must rule within 50 days after the petition is filed.

As to actions and determinations of the arbitrator, petitions for review will have to be filed under the U.S. Arbitration Act, using similar expedited procedures and an overall 40-day limit for court review.

FOREIGN REPAIR OF VESSELS

Mr. BREAUX. Mr. President, in 1990 the 101st Congress enacted section 466(h) of the Tariff Act of 1930, as amended, (19 USC 1466(h)) relating to the foreign repair of vessels. This legislation, which I introduced, exempted from the 50-percent ad valorem duty rate otherwise imposed by section 466, foreign repairs to U.S.-flag LASH—lighter-aboard ship—barges as well as vessel spare parts and equipment necessarily purchased by U.S.-flag vessel operators in foreign countries.

Section 466(h) was adopted to eliminate unfair, onerous, and costly tariff and regulatory discrimination which over the years had developed under section 466 among competing U.S.-flag cargo vessel operators. LASH barges are basically cargo carrying containers which float. Both LASH barges and containers are originally transported by a mother ship; both LASH barges and containers after leaving the mother ship continue onward to a final destination. Not only does the old section 466 discriminate against LASH barges vis a vis containers with respect to the 50-percent ad valorem duty, but it also imposes separate and individual inspection and reporting requirements for each LASH barge where none exist for equivalent individual containers.

Unfortunately, because section 466(h) was enacted as part of an omnibus tariff bill which placed a 2 year time limitation on most of its tariff exemptions and suspensions, section 466(h) will automatically expire on December 31, 1992. Accordingly earlier this year, the House passed another omnibus tariff bill which would have renewed section 466(h) for another 2 years. I likewise introduced a similar bill in the Senate and to the best of my knowledge there is no opposition to this renewal.

In spite of the noncontroversial nature of this legislation, as we reach the end of the 102d Congress there has not been an acceptable revenue-raiser to cover the modest estimated cost of this extender. Accordingly, on January 1, 1993, the extremely burdensome tariff discrimination which section 466(h) eliminated will automatically be reinstated. For this reason as soon as the next Congress convenes, I intend to introduce a bill which if enacted will effectively remedy this injustice against the U.S. Merchant Marine.

Under these compelling circumstances, I urge the Department of the Treasury and the U.S. Customs Service, during this unavoidable interim period, to refrain from reimposing the onerous, costly and confusing administrative procedures which contributed to the enactment of section 466(h) in 1990. I refer of course to: First, the Customs Services' LASH barge inspection and multiple entry regulations and procedures; and second, the discriminatory administrative regulation, interpretations and requirements that resulted in the unjustified imposition of 50 percent ad valorem duty under section 466 on vessel spare repair parts and equipment purchased abroad.

IN SUPPORT OF THE CONFERENCE REPORT ON H.R. 776, THE ENERGY BILL

Mr. DODD. Mr. President, I rise today in support of the conference report on H.R. 776, the Energy Policy Act of 1992.

The Senate should act today to pass this critical legislation. The need for this legislation is clear. We need only look back to the days when the Congress first took up the energy bill—our Nation was at war in the Persian Gulf. We were at war for many reasons, but certainly one of them was our dependence on imported foreign oil. This legislation puts us, as a Nation, on the path toward a more secure, a more sound energy future.

I am not suggesting this bill is perfect—far from it. I have concerns about the inclusion of the language regarding the Yucca Mountain site, currently under consideration for a high level waste disposal site and will carefully monitor this issue as it progresses. I also am concerned that in some areas this bill does not go far enough. I firmly believe that increased corporate average fuel economy standards belong in this bill—but they are not here. Additionally, I was disappointed that the conferees dropped the provisions for a moratorium on drilling on much of our Nation's outer continental shelf.

However, on balance, I believe the policy before us here today is sound and I will vote to support this bill.

First, the bill will promote conservation and efficiency. No matter what the energy source—we must not waste what we have. The bill sets new efficiency standards for homes, for buildings, for appliances, and for the Federal Government. It also provides incentives for utilities to pursue demand-side management to further conserve energy.

The energy bill fosters the development of renewables and the commercialization of alternative fuels. A key provision establishes a Federal production incentive for public utilities that use renewable energy sources. Additionally, the bill provides for numerous joint ventures with the Federal Government to assist in the commercialization of renewable energy sources—such as fuel cells, which hold such promise in meeting our future energy needs. The bill also takes strong steps to curb the use of imported oil on our Nation's roads. Government motor vehicle fleets would be required to purchase an increasing number of alternatively fueled vehicles.

While encouraging domestic fuel production, this bill recognizes that not all areas are appropriate for development. This bill includes important protections for several unique Connecticut areas. As many in my State know, several Connecticut town parks have been threatened with hydropower development—development which would produce little power and cause great damage. This bill protects those areas—and other parks across the country. This bill also does not include provisions to open the Arctic National Wildlife Refuge to oil and gas drilling—so for now this unique ecosystem is safe from development.

The bill provides for reform of the Public Utility Holding Company Act to increase competition in the utility industry and ultimately to lower rates for consumers of electricity. I became personally involved in the PUHCA issue through the Banking Committee and held several hearings, here and in Connecticut, in an effort to craft legislation balancing the concerns of consumers, the utility industry, and independent producers. Although this was certainly a daunting task, I am pleased that the legislation before us today strikes that delicate balance.

In addition, the bill protects important State rights. This measure clarifies a State's right to regulate low level waste, which the Federal Nuclear Regulatory Commissions determines "below regulatory concern." This will ensure that States, such as my own State, can set standards for low level waste in the absence of Federal regulations.

The energy bill before us is a large bill and I have only sketched a few of its many provisions. It touches on nearly every aspect of our Nation's energy industry and it moves us forward on each of these fronts toward a more safe and sound energy future. In this regard, I urge my colleagues to join me in support of this vital legislation.

VETERANS' REEMPLOYMENT RIGHTS

Mr. CRANSTON. Mr. President, as chairman of the Committee on Veterans' Affairs, I want to express my deep disappointment in the failure of the 102d Congress to pass a much needed revision of chapter 43 of title 38, United States Code, the veterans' reemployment rights [VRR] law. I regret that, at this late hour in the session, the Committees on Veterans' Affairs of the House of Representatives and Senate were unable to reach a compromise agreement regarding VRR.

Mr. President, the VRR law, first enacted in 1940 and now codified in chapter 43 of title 38, provides job security to employees who leave their civilian jobs in order to enter military service, voluntarily or involuntarily. Within certain limits, the law generally entitles the individual who serves in the military to return to his or her former civilian job after being discharged or released from active duty under honorable conditions. For purposes of seniority, status, and pay, the employee is entitled to be treated as though he or she had never left. The effect of this law is often characterized—by the courts and others—as enabling the returning veteran to step back on the seniority escalator at the point he or she would have occupied without interruption for military service. The law applies both to active-duty service and to training periods served by reservists and members of the National Guard.

Mr. President, the VRR law is intended to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which occur as a result of such service. Unfortunately, over the last 50 years the VRR law has become a confusing and cumbersome patchwork of statutory amendments and judicial constructions that, at times, hinder the resolution of claims. Thus, the Committees on Veterans' Affairs hoped that Congress would be able to amend the VRR law to restate past amendments in a better organized, clearer manner and to incorporate important court decisions interpreting the law. The substantive rights at the heart of the VRR law would remain as valuable protection to those who provide this country with noncareer service in the uniformed services. S. 1095 and the House companion measure sought to ensure that the VRR law effectively and fairly served this purpose.

Mr. President, both Committees on Veterans' Affairs and the administration committed much time and energy to the revision and improvement of this law. For over 3 years, an executive branch task force on VRR law, including representatives of the Departments of Labor, Defense, and Justice and the Office of Personnel Management worked to develop a revision of chapter 43. H.R. 1578, the Uniformed Services Employment and Reemployment Rights Act of 1991, as passed by the House on May 14, 1991, is similar to and largely derived from the administration's March 5, 1991, draft.

Our committee was greatly assisted by the efforts of those departments, the Office of Personnel Management, and the House Committee on Veterans' Affairs, and we worked closely with representatives from each of the Federal agencies responsible for administering the VRR law in developing the Senate bill, S. 1095, entitled the Uniformed Services Employment and Reemployment Rights Act of 1991.

I introduced S. 1095 on May 16, 1991. Soon afterward, our committee held a hearing on this legislation and subsequently filed a report of S. 1095 on November 7, 1991. Unfortunately, the Senate was unable to proceed to the consideration of S. 1095 until only a few days ago, on October 1, nearly 11 months after the bill was reported out of committee.

Mr. President, this delay was the result of objections to S. 1095 by several organizations representing both large and small businesses which expressed reservations with S. 1095 as reported. These organizations raised their concerns with the committee and other members of this Chamber. In response to these concerns, various Senators opposed Senate consideration of the bill as reported and offered changes to protect the interests of businesses. The bill that the Senate finally passed on October 1, with a substantial committee modification I submitted as an amendment to the bill, reflected the only compromise I could reach with the business organizations and various Senators, while upholding the interests of veterans, to achieve unanimous Senate passage. However, that 11th-hour passage did not allow sufficient time to negotiate with the House Committee on Veterans' Affairs on the complicated and important issues of VRR.

Mr. President, I sincerely appreciate the very cooperative and patriotic manner in which the vast majority of employers have carried out their responsibilities under the VRR law. The revision of chapter 43 found in S. 1095 was designed to take into account the legitimate interests and needs of employers and to assist them by stating their obligations in a clear fashion. However, the strong efforts to delay passage of this bill prohibited the Senate from doing so until so late that negotiations with the House were rushed and unfruitful.

I regret that we were not able to complete this multiyear and multiagency project, and I sincerely hope that the next Congress will pursue the revision of chapter 43 to its completion. I hope both Committees on Veterans' Affairs will hold hearings to shed light on the complicated and important issues involved in this revision and develop legislation that treats both veterans and employers fairly under the VRR law.

Mr. President, I thank the ranking Republican member of our committee, Mr. SPECTER, for his tireless efforts to improve S. 1095 and to push for Senate passage. I thank my good friend and chairman of the House Committee on Veterans' Affairs, Mr. MONTGOMERY, and ranking Republican member, Mr. STUMP, for their work on the revision of the VRR law. I am also grateful for the contributions of the Senate Veterans' Affairs Committee staff members who have worked on this legislation—Charlie Battaglia and Tom Roberts on the minority staff; and on the majority staff, Tom Hart, Shannon Phillips, who has left the staff to attend law school, Chuck Lee, Bill Brew, and Ed Scott.

Mr. President, it is important to our men and women when they put on the uniform that we show our support and do all we can to provide them with strong and effective employment protection. For over 50 years, the VRR law has provided this protection, however, much has changed in that time. The revision of chapter 43 of title 38 is essential to ensure that our noncareer servicemembers may leave their civilian employment to serve our country with the confidence that, upon their return, they may resume their lives with as little disruption as possible.

TRIBUTE TO CONGRESSWOMAN SHIRLEY CHISHOLM FOR THE OCCASION OF HER APPEARANCE AT THE OCTOBER 31, 1992 ANNUAL FREEDOM FUND BANQUET OF THE MANSFIELD, OH, BRANCH OF THE NAACP

Mr. GLENN. Mr. President, I congratulate the Mansfield Branch of the NAACP on its annual Freedom Fund Banquet and on its years of dedicated service to Ohio and the community. I also commend the organization for its visionary selection of Congresswoman Shirley Chisholm as its guest speaker.

Shirley Chisholm, the first African-American woman elected to the U.S. Congress, is an authentic American trailblazer. In 1972, Congresswoman Chisholm blazed yet another trail as she campaigned for the Democratic Party nomination for President of the United States.

In our current election cycle, the historic ground-breaking evidenced by the record of Shirley Chisholm has truly spawned this "Year of the Woman."

Because of what she has done, other women now know what can be achieved. The record number of women running for the Congress is the legacy written by Shirley Chisholm. It is not often that a person can see the fruits of their labor while they are still alive; Ms. Chisholm has that distinction. She has accomplished so much already, it is easy to forget that she is still "out there" having an impact, making a difference, and raising our consciousness on the important issues of the day.

Shirley Chisholm has accomplished so much, it is hard to tell where the myths end and reality begins.

The story has been told that when Ms. Chisholm was elected from Brooklyn, NY, the Democratic leadership appointed her to the Agriculture Committee; but the fiery newcomer didn't "sit down and be quiet." She protested saying that the Democratic leadership must have mistaken Brooklyn, NY for an agricultural center—but everyone knows that only "A Tree Grows in Brooklyn."

She was reassigned.

But just because Shirley Chisholm retired from Congress does not mean that she has retired from the battle.

As a founder and first national chair of the National Political Congress of Black Women [NPCBW], Congresswoman Chisholm has continued to shine her special light so that others may see and follow. During the recent Congressional Black Caucus legislative weekend, She was honored by NPCBW—"in this 'Year of the Women' we honor our women of 'the years'"—in recognition of her lifetime achievements. In truth, she honors us by her steadfast devotion and leadership in the area of community relations and politics.

History will treat Shirley Chisholm justly and record her name and her deeds among those of Harriet Tubman; Mary McCloud Bethune; Fannie Lou Hamer; Sojourner Truth; Dorothy Height; and Susan B. Anthony. All of these women have made the world better and served as role models, not only for other women, but for men and children as well.

She has challenged and changed the status quo, whether the issue was equal employment opportunity, civil rights, education, Haitian refugees, or the plight of the poor. America is a better place because of Shirley Chisholm's involvement in these issues.

There is no doubt that Congresswoman Chisholm is the right messenger at the right time and if she discovered the time was wrong, she would merely change it.

"Unbought and unbossed, the Honorable Shirley Chisholm maintains her commitment to excellence and continues to fight the good fight.

THE RETIREMENT OF SENATOR JAKE GRARN

Mr. DODD. Mr. President, for over a decade I have had the pleasure of working side by side in the Senate Banking Committee with the senior Senator from Utah, JAKE GARN. First as the chairman of that committee and then as its ranking member, JAKE GARN has spent his career as a tireless advocate of financial modernization. He has been consistently ahead of the curve on reforms to strengthen the banking system and reduce the need for costly and wasteful taxpayer bailouts.

JAKE GARN also made his mark in the areas of science and space. He has been one of the strongest supporters of NASA programs in the Senate, including the space shuttle and the space station. And Mr. President, JAKE GARN lived what he believed. In 1985, just a year before the terrible tragedy of the Space Shuttle *Challenger*, Senator GARN took a 7-day voyage himself on the *Discovery*.

Mr. President, on many issues the ideological gap between JAKE GARN and I were large. JAKE and I had different approaches and different philosophies. But we shared a common commitment to the people of the States we represented and to the people of this Nation. Most of all, we shared a close and trusted friendship that outlasted any partisan differences. As a fellow legislator, and as a friend, I will miss JAKE GARN.

THE RETIREMENT OF SENATOR ALAN CRANSTON

Mr. DODD. Mr. President, for almost a quarter of a century, on every subject from human rights to the plight of the urban poor, ALAN CRANSTON has truly been the conscience of the Senate. He will truly be missed by every Member of this body.

It was perhaps arms control in which ALAN CRANSTON made his biggest mark, Mr. President. From his days as part of the nuclear freeze movement to his last decade as a member of the Foreign Relations Committee, ALAN CRANSTON has campaigned tirelessly to roll back the spread of nuclear weapons. From Pakistan to China to the former Soviet Union, ALAN CRANSTON has fostered the cause of nuclear disarmament.

ALAN CRANSTON took on domestic causes with similar devotion. He was a relentless champion for campaign finance reform. He worked tirelessly to meet the housing needs of the poor and the disenfranchised. And he was an outspoken advocate of a woman's right to choose. In this Chamber, and indeed throughout the world, ALAN CRANSTON'S absence will be deeply felt.

THE RETIREMENT OF SENATOR TIM WIRTH

Mr. DODD. Mr. President, I rise today to say goodbye to TIM WIRTH, a colleague on the Banking Committee and a good friend. TIM and I were both elected to the House of Representatives for the first time as a part of the post-Watergate class of 1974. I was saddened and disappointed to hear of his untimely resignation from this body.

On the Banking Committee, TIM WIRTH has been a major force in helping to establish fair and open securities markets. But it is perhaps the environment where TIM WIRTH left the greatest impact, starting over a decade ago with his instrumental role in the passage of the first Clean Air Act. Since then, TIM WIRTH has helped to reshape the debate over the environment and the importance of our commitment to nature.

Just a few months ago while the President was refusing to go to Rio for the Earth summit, TIM articulated with passion and clarity why U.S. leadership was needed on this vital issue. I have no doubt that in some way TIM WIRTH will continue to exercise his own leadership, Mr. President, in the years to come.

THE RETIREMENT OF SENATOR WARREN RUDMAN

Mr. DODD. Mr. President, the Senate will miss the leadership of WARREN RUDMAN. He was a principal author of the 1985 Gramm-Rudman-Hollings legislation, which was the first serious effort to contain the Federal budget deficit. Of late, he has taken up a bipartisan effort with the former Senator Paul Tsongas to take his message of fiscal responsibility to the people.

WARREN RUDMAN has also taken it upon himself to ensure that Federal policies are not only fiscally sound, but fair. He has been a strong supporter of low-income home energy assistance, or

LIHEAP. He has consistently defended the Legal Services Corporation against those from his own party who would bring about its demise. And in 1988 he helped author the omnibus drug bill, to try and slow the spread of drug abuse through our Nation's cities and rural areas.

Mr. President, WARREN RUDMAN'S principled leadership is an example for anyone who would seek a career in public service. I know his dedication and integrity will serve as a valuable lesson.

THE RETIREMENT OF SENATOR ALAN DIXON

Mr. DODD. Mr. President, this week we part ways with Senator ALAN DIXON. ALAN DIXON joined the Senate in 1981 after more than 30 years of public service in Illinois government. His last 12 years here in the Senate, like his first three decades of public life, have been marked by a relentless dedication to the people of Illinois.

Like so many of our colleagues who are leaving this year, ALAN DIXON also served with me on the Banking Committee. As my successor on the Consumer and Regulatory Affairs Subcommittee, he was a forceful and effective advocate for fair lending practices. On the Armed Services Committee, ALAN DIXON denounced wasteful defense purchases and created a "procurement czar" to oversee spending at the Pentagon.

From his first days of public service as Belleville police magistrate in 1949 to his final days here in the Senate, ALAN DIXON never backed down from a fight. His spirit will be sorely missed in this chamber.

THE RETIREMENT OF SENATOR BROCK ADAMS

Mr. DODD. Mr. President, BROCK ADAMS leaves the Senate after nearly three decades of public service for the people of Washington State. BROCK ADAMS has held several posts of distinction in this Washington as well, serving as the first chairman of the House Budget Committee in 1975 and later as Secretary of Transportation from 1975 to 1977.

BROCK ADAMS' experience as Transportation Secretary later came into play as he authored measures to improve truck safety and to require double hulls on oil tankers.

BROCK ADAMS was a vocal opponent of military action, a vocal supporter of environmental causes, and a vocal advocate for fairness in the Tax Code. In his distinguished career of public service he helped shape the debate on all these issues. His fierce commitment and dedication will be missed.

THE RETIREMENT OF SENATOR STEVE SYMMS

Mr. DODD. Mr. President, in his 30 years as a representative of the people of Idaho, Mr. President, STEVE SYMMS has been an outspoken and dedicated spokesman for conservative causes—whether it was the pace of arms control or the burden of environmental standards. During his tenure in the Senate, he worked with a feverish dedication for the people of Idaho and the causes they supported.

Mr. President, STEVE SYMMS and I rarely saw eye-to-eye on most issues that came before this body. But with STEVE SYMMS I always knew there would be a spirited debate, an enlightened discussion, a different way of looking at the issue. I might not always agree with STEVE SYMMS, but I benefited from his perspective nonetheless.

STEVE SYMMS' positions came strictly from the heart, and from a deep and abiding commitment to conservatism. When STEVE SYMMS is gone, Mr. President, I will miss the debate.

THE RETIREMENT OF SENATOR JOCELYN BURDICK

Mr. DODD. Mr. President, I want to say a few words about a woman who has shown courage and determination in the face of tragedy. When Quentin Burdick died last month at the age of 84, JOCELYN BURDICK took over for her husband to become the first woman ever to represent the State of North Dakota.

While she served in this body for only a matter of weeks, JOCELYN BURDICK'S bravery and strength under these difficult circumstances are truly inspirational. She carried on her husband's mission with utter grace and determination.

Mr. President, North Dakota is lucky to have had JOCELYN BURDICK as their representative. And every Member of this body is lucky to have shared these few weeks with her.

H.R. 776, NATIONAL ENERGY POLICY ACT

Mr. CHAFEE. Mr. President, we have heard a great many things about this bill. It has been characterized as a major rewrite of our Nation's energy policy. It has been suggested that the bill includes a bold new program to promote energy efficiency and new, renewable sources of energy—to improve our environment and to combat the threat of global climate change.

These characterizations make great press but they are not based on the facts. This bill does too little to encourage improvements in energy efficiency. It does too much to promote increased use of fossil fuels and too little to encourage the development of non-polluting, alternative renewable sources of energy. This bill is, in short, a bill that promotes the status quo in energy policy.

Mr. President, our national energy policy is shaped by three competing objectives. One objective is energy security typically measured by dependence on foreign sources of oil. Three oil disruptions over the last two decades, the attendant recession and inflation, and finally a war, Desert Storm, involving U.S. forces have educated all Americans to the importance of energy security.

A second objective is low energy prices. Mr. President, you don't often hear low energy prices praised in the national energy debate. Many have a stake in higher prices. The energy industries like higher prices because they raise profits and provide the funds for new exploration. The environmental community likes higher prices because they cut consumption. And those who worry about the security of our energy supplies like higher prices because they cut U.S. oil imports.

But low energy prices are of great advantage to our consumer and to our economy. The unprecedented period of economic growth experienced during the 1980's was sustained in part by the collapse of oil prices in the middle of the decade. Had it not been for falling oil prices, the current recession would likely have begun much sooner. Low prices help consumers and help our economy.

The third objective is environmental quality. There is no sector of our economy that has a greater impact on the environment than the energy sector, the production and consumption of energy. We control sulfur dioxide emissions from our powerplants to reduce acid rain. We put catalytic converters on our cars to reduce smog. We declare parts of the Continental Shelf off limits to drilling to protect marine life. We regulate strip mining of coal and the injection of brine produced with oil so that our lands are not despoiled. We impose strict liability on ocean tankers to prevent oil spills.

We do all of that and much more to protect our environment from the effects of energy production and consumption. These measures are also a part of our national energy policy.

As I said these are competing objectives. If we were willing to allow drilling in the Arctic National Wildlife Refuge, we might temporarily reduce oil imports and increase our energy security. If we were willing to pay higher prices for alternative transportation fuels from domestic sources, such as ethanol or electricity, we could improve our security. If we were willing to put a substantial tax on gasoline, we could reduce the carbon dioxide emissions that play a role in global warming. Managing these competing objectives in the context of a world energy market dominated by Persian Gulf oil is one of our most difficult challenges as a nation.

On Tuesday night Ross Perot bought 30 minutes of TV time to discuss our Nation's problems. During that half hour, one of the things he said is that we do not have a national energy policy. When he said that, he was holding up a chart showing oil imports as a percentage of our total consumption. We now import almost half of the oil we use. Mr. Perot apparently thinks imports are too high. He said that we do not have a national energy policy because we have not succeeded in reducing oil imports to much lower levels.

Mr. Perot then went on to compare U.S. gasoline taxes to gasoline taxes in the European nations. American taxes are relatively low. In this country, combined Federal and State gasoline taxes average about 30 cents per gallon. In Europe they are much higher; $2.57 in Britain; $3.09 in France; $3.92 in Italy. If gasoline taxes in the United States were $3 per gallon, it is certain that our imports would be much lower. However, a European-type gasoline tax would have a devastating effect on our economy. We would have much lower imports but also a much slower economy.

Mr. Perot mentioned Marie Antoinette, the French queen who said, "Let them eat cake," in his talk on Tuesday evening. Just as Marie Antoinette was wrong about the availability of cake in 18th century France, Mr. Perot is wrong about the availability of energy tax dollars in late 20th-century United States. Without a massive overhaul of our tax system, American consumers and voters would reject $3 per gallon gasoline taxes.

It is not correct to say that we have no national energy policy. We have a policy. But it is not a policy that seeks to reduce imports at any cost. We want to reduce imports but we also must consider the pocketbooks of our consumers and the quality of our environment. Current U.S. energy policy is sometimes described as market-based. It reflects the price decontrol decisions made by President Reagan in early 1981, the lack of any substantial energy taxes and little regulation of energy consumption decisions. It is a policy designed to reap the economic benefits of low prices.

The energy bill now before the Senate cannot be called a new national energy policy. H.R. 776 will not do much to reduce oil imports. This bill has no gasoline tax. It does not include a sweeping mandate for alternative fuels or conservation programs that will dramatically change the shape of U.S. energy policy. Measured by any of the three objectives, security, price or environmental protection, this bill fails to break new ground. This is a bill that continues the status quo in the big picture terms of energy policy.

There are small steps in this bill. But some of these small steps are in the wrong direction. I would prefer a policy that puts more emphasis on energy conservation and on the use of renewable sources of energy. The conservation measures in this bill simply codify a business-as-usual policy, they follow rather than lead. And to the extent that this bill encourages new domestic energy production, the sources are the synfuels that come from fossilized carbon. It is too much reliance on fossil fuels that already threatens our climate.

As science improves our understanding of the interaction between energy used and environmental quality, as we develop new technologies for energy production and consumption, it is appropriate that we adjust our national energy policy to reflect the new science and to take full advantage of new technology. One factor that must be given more weight in shaping our future energy policy is the possibility of global warming and other climate changes caused by human activity.

There is enough science available now for real concern. We are perhaps not ready to make radical changes in our energy policy, with wrenching economic effects, in an effort to head off the build up of carbon dioxide in the atmosphere. But there are many things that we can do to save energy and to use renewable resources that will protect the climate without significant economic sacrifice. Most of these measures also have the additional benefit of reducing oil imports. H.R. 776 makes too little of those opportunities.

Let me give you just one specific example. This bill contains no change in the corporate average fuel economy standards that govern automobile fuel efficiency. CAFE amendments were considered by the Energy and Natural Resources Committee and were reported by the Senate Commerce Committee. But no upward adjustment from the current standard of 27.5 mpg was made, even though we know there are available technologies that can achieve significant improvements in fuel economy without great cost.

We can understand that CAFE is controversial and could not be included here. But what is offered in its place? An alternative fuel requirement for fleets of cars and trucks. H.R. 776 mandates that all governments and some private companies operating large fleets of cars and trucks use alternative fuels. That would be fine if it wasn't for the fact that alternative fuels, as defined in this legislation, generally means methanol.

There are some specialty markets for compressed natural gas, but natural gas will never make a substantial contribution to total transportation fuel uses in the United States. And the other alternatives, principally ethanol and electricity, are so expensive that no fleet owner will turn to them, especially if methanol is an option.

Methanol can be made from natural gas or coal. Because U.S. natural gas delivered by pipeline commands premium prices for space heating and industrial needs, any substantial increase in methanol use would be supplied either from foreign sources of gas or from domestic conversion of coal. If the methanol is made from foreign gas supplies and then imported, our energy security is not improved. If produced from domestic coal, CO_2 loadings to the atmosphere will be even greater than they are with the petroleum-based fuels of today.

Also important is the fact that methanol is likely to be much more expensive than the gasoline it replaces. How is our national energy policy—a balance of security, price and environment—improved by mandating the use of methanol as a transportation fuel? How can that option be justified while modest increases in CAFE are rejected?

There are alternative energy sources that are domestic and that are better for the environment. Some of these are only appropriate for use outside the transportation sector, but they could make a significant contribution nevertheless. We should be doing more to encourage their development and use. Solar and wind energy will not get much of a boost from this bill. Natural gas and coal are big winners. And there are conservation strategies for buildings, lighting, appliances, industry and transportation that could have been pushed much more aggressively.

There are other pluses and minuses in the bill. On the plus side, H.R. 776 does encourage least cost planning by electric utilities. Many utilities, including the New England Electric System, have championed energy conservation programs to deal with load growth and they have had great success. The reforms to the Public Utility Holding Company Act that are included in this bill will help hold down electric prices by bringing new competition to the utility sector.

Among the minuses, perhaps the most troubling in the role assigned to the National Academy of Sciences to develop radiation protection standards for any waste repository that might be located at Yucca Mountain, NV. By requiring that EPA adopt any NAS recommendations, the bill limits the public scrutiny and participation that would otherwise be brought to bear on the development of these important standards.

Mr. President, I admire the members of the Energy and Natural Resources Committee for their perseverance in this very difficult field. As I have said, the struggle to manage the competing goals that define a national energy policy, and to do it in the context of cartels, embargoes, recessions, revolutions, and wars, in one of the most difficult problems we face. I do not criticize their efforts for the lack of radical change in our current policy. Unlike Mr. Perot, I am not ready for $3 per gallon gasoline taxes and crash programs for energy production to reduce our imports.

But it seems to me that this bill does not make as much as we could of the more modest opportunities that we do have for energy conservation and greater use of domestic, renewable energy resources. Rather, it tilts in the direction of more energy production and the consumption of the fossilized, carbon energy resources that pose such a threat to our environment. Without any economic penalty—in fact, with real benefits from greater economic efficiency—we could do more for your energy security and for our environment with a policy more reliant on conservation and the use of renewable energy resources.

ADOPTION OF THE CONFERENCE REPORT OF THE NATIONAL ENERGY POLICY ACT OF 1992

Mr. BIDEN. Mr. President, I support the passage of the national energy strategy because it starts the Nation on a course toward a comprehensive plan to reduce our dependency on foreign oil and provide incentives for wise use of existing energy resources.

While I believe the bill points us in the right direction, I cannot say that it will carry the country as far as we need to go. We can and should take bolder steps toward energy security in the next Congress. Three oil shocks in the last 20 years are undeniable evidence of the risks our Nation and our economy runs if we continue in our current policies.

Contrary to the administration's desire to seek only production-based solutions, the bill addresses the demand side of the energy equation. By diminishing and diversifying demand, we can develop enduring solutions to our energy problems. The next administration must provide stronger backing to the proven programs, such as alternative energy development and clean fuel car incentives and to novel approaches to our energy problems.

Regarding one of the shortfall of this bill, I will continue to press the nuclear industry to adhere to the safety standards that they espouse. As I stated during debate on my amendment to create an independent nuclear safety board, we need to re-examine the energy sources we encourage and those we hinder. In addition, I have deep reservations about the Yucca Mountain nuclear waste disposal provisions in the bill. Experience has shown that the highest levels of competence and attention are required to control the potential threats posed by nuclear energy production and nuclear waste disposal.

While further improvements in the way we produce and consume energy are necessary, the bill recognizes the threshold issue involved: the need for a comprehensive plan. We have begun to address the role of demand, as well supply, in our energy planning. That is of critical importance. As much as some would like it, a radical restructuring of our energy system is unrealistic. This bill represents an effort to turn the system in a direction that makes sense for the conditions our Nation will face in the years ahead.

Today, we have taken a step toward our future. If sincerely followed, the guideposts provided in this legislation can lead us to a more secure and efficient national energy program. I hope that we have had to learn the lesson of the Persian Gulf for the last time.

(At the request of Mr. MITCHELL, the following statement was ordered to be printed in the RECORD.)

• Mr. SANFORD. Mr. President, I support the conference report on the tax bill. Like all legislation, it required a great deal of compromise. I congratulate the managers for their hard work on this legislation.

This is important legislation. We all know that our inner cities and rural communities need help. It would be irresponsible for us to go home ignoring this problem.

We all know that approximately a dozen longstanding tax credits, such as those for low-income housing, research and development, educational assistance, mortgage revenue bonds, to name a few, are clear evidence of tax policies that have worked, so it would be irresponsible for us to go home without giving them further life.

We all know that the luxury tax has been an unmitigated disaster. This ill-advised tax, which I opposed at the outset and voted against, almost killed the boat construction industry in this country, raised virtually no revenue, and put thousands out of work. It would be irresponsible for us to go home without repealing this tax.

North Carolina used to have a significant boat building industry. Today, much of it is gone. One boat manufacturer told me that up to 8 out of every 10 boat manufacturers are either in bankruptcy or have moved their operations offshore. I have heard from hundreds of unemployed boat construction workers literally begging me to repeal this tax. I have heard from lumber, hardware, and tool suppliers, from boat retailers, and from unemployed sales representatives whose businesses rely upon the boating industry all appealing to me to repeal this tax.

There was a provision in the original draft which would have hurt the furniture industry in North Carolina. I especially want to thank the chairman for his assistance in crafting language for the temporary rental of homes for less than 15 days would still meet his goals of raising approximately $300 million. Our mutual desire was to avoid harming communities lacking commercial facilities which must rely upon local residents to open their homes for visitors to special events. This was particularly important to High Point's world renowned international furniture market, so I am pleased that we were able to achieve this goal.

I have heard from North Carolina contractors who utilize the low-income housing credit from North Carolina employers who utilize the targeted jobs tax credit, from students in North Carolina who rely upon the employer-provided educational credit and from organizations in North Carolina which rely upon charitable contributions for their survival and did not want those rules further restricted. In fact, I've heard from labor unions, from stock brokerages, from large companies, from small businessmen, from individual constituents, from nonprofit organizations, from coalitions that normally oppose each other, from around the entire country all seeking my support for this legislation.

Support that broad based is rare. But it means there must be something right about this bill. It appears to have bipartisan support. I only hope that President Bush recognizes how important and how broad the support for this legislation is. I certainly hope that it does not become a football that he must punt for what he deems his own political purposes, because it will hurt so many if he does.

By their nature, tax bills are going to have tax incentives and offsets. If President Bush now fears that all offsets are new taxes that breach his own pledge, this country is in more serious trouble than anyone could have imagined. That would be tantamount to a declaration that the Tax Code is perfect in its present form and requires no further change, because any change is going to move around some dollars on both the plus side and the minus side. Of course, President Bush has asked us for some tax legislation, all of it increasing the deficit, yet he has not specified any offsets. He has also blamed Congress for not balancing the unbalanced budgets he keeps sending us, though his tax initiatives would only expand the deficit. I suppose he expects the money to appear out of nowhere.

In this instance, Congress has acted in good faith. Last week, President Bush told us he objected to two provisions, the so-called Pease and PEP provisions, which extended current law on how itemized deductions and personal exemptions are treated for those earning above $105,000. He had never given us any evidence of his objection to those provisions until last week, but as soon as he issued that message, the Congress removed them. Since then, he has been silent, but others in this Chamber tell us that he will veto this bill. If President Bush did not like this bill, he should have told us what he didn't like so we could have fixed it. We heeded his objection on Pease and PEP, and I am confident the conferees would have made every effort. Congress should not be put in the position of having to guess what the President is thinking. To veto this bill after Congress has met his demands would not serve the interests of millions of taxpayers. It would only serve his own fear of the potential fallout created by his own promises.

Speaking for myself, I don't think the Tax Code is perfect, but on balance, this bill makes it a little better. Mr. President, we need to take a good, hard look at our tax system next year. It has clearly been a very important issue in the Presidential and congressional campaigns this year, and it is the primary fiscal tool the Government has to stimulate the economy. In the interim, this bill accomplishes many of the goals on which there has been little disagreement.

So, Mr. President. I support this bill for the progress it represents.•

THE TRADE AGREEMENTS COMPLIANCE ACT

Mr. BAUCUS. Mr. President, I am very pleased that the Trade Agreements Compliance Act, or TACA, has been included in this legislation. Frankly, it's long overdue.

The premise of this bill is simple—a deal is a deal.

Our country expends enormous resources negotiating trade agreements. Oftentimes, good agreements are concluded. Unfortunately, once negotiations are complete, the United States too often assumes that the game is over.

In reality, the game is just beginning. The real work lies in making sure that our trading partners live up to their promises. We're all familiar with the examples, past and present:

Japan has yet to come close to meeting the new semiconductor agreement's January 1993 target of 20 percent, and never met the target under the old semiconductor agreement;

Canada declined to fully enforce the Memorandum of Understanding on Softwood Lumber for months an then decided to unilaterally terminate the agreement;

Korea promised the United States it would liberalize its beef market, only to drag its heels for years;

In short, we have all seen outrageous examples in which our trading partners flout their trade agreements with the United States.

Under current law, injured U.S. parties have no recourse short of a full-blown section 301 case. Even with section 301, USTR has the option of declining to initiate cases.

Often, USTR's decision is a function of the demands of the moment—not the pursuit of good trade policy. For example, it is rumored that USTR declined to enforce the United States-Japan Construction Agreement during the gulf war for fear that Japan would reduce its contribution to Desert Storm.

TACA provides a reasonable and simple procedure for addressing this problem. It allows interested U.S. parties to request that USTR review foreign compliance with a particular agreement. USTR must complete the review within 90 days. If the trade partner is found to be in noncompliance, USTR must retaliate.

This legislation has already passed the House as part of H.R. 5100. It is endorsed by a wide range of business groups, including the U.S. Chamber of Commerce, the National Association of Manufacturers, the Semiconductor Industry of America, the National Forest Products Association, and the Telecommunications Industry of America.

I ask that a letter of support from interested business groups be included in the RECORD.

We talk a lot about getting tough on trade. Today we can actually do something. If the United States is not willing to enforce the trade agreements we have, our table policy can have no credibility. New trade agreements mean nothing if we don't stand up for the rights we have.

I urge by colleagues to support this important legislation. I urge the President to sign it into law.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

TRADE AGREEMENT
COMPLIANCE ACT STEERING GROUP,
September 29, 1992.

DEAR SENATOR: As members of a broad coalition of companies, labor organizations, and industry associations, we urge you to support the Trade Agreement Compliance Act (S. 388). It is our understanding that Senator Baucus intends to push for passage of this legislation before the 102nd Congress adjourns.

The premise of the Trade Agreement Compliance Act [TACA] is simple—"a deal is a deal." TACA is designed to ensure that our foreign trading partners honor the commitments they have made in connection with bilateral trade agreements with the United States.

If passed, TACA would allow an interested party to request a review of foreign compliance with a trade agreement, both on an annual basis and prior to the expiration of the agreement. If a foreign country is found to be in noncompliance with a trade agreement, the President would be authorized to take appropriate action under Section 301 of the 1974 Trade Act.

Passage of TACA is important for several reasons:

Foreign compliance with trade agreements remains a serious problem. In recent years, the United States has had to negotiate more than one agreement in the same sector, given the failure of the original agreement to meet its objectives.

The United States has recently entered into several bilateral trade agreements. Given the importance of increased exports to economic growth and job creation, enforcing these agreements is as important as signing them.

While the Omnibus Trade and Competitiveness Act of 1988 did include provisions requiring monitoring of foreign compliance, those provisions do not establish a mechanism for an interested party to request and obtain a review of foreign compliance with trade agreements. TACA would eliminate this oversight.

TACA would enhance the leverage of U.S. trade negotiators. Greater particiaption by companies, industry associations or labor organizations in the "oversight" of a trade agreement would increase the incentive for foreign governments to fully comply with the trade agreement in question.

The House Ways and Means Subcommittee on Trade has already approved this legislation, and it is supported by a bipartisan majority of Senate Finance Committee members. We believe that the Trade Agreement Compliance Act is a reasonable approach to a serious problem.

Sincerely,

AEG/Westinghouse, American Electronics Association, Association for Manufacturing Technology/NMTBA, Automotive Parts & Accessories Association, Communications Workers of America, INTEL, Labor-Industry Coalition for International Trade, Motorola, National Association of Manufacturers, National Forest Products Association, Semiconductor Industry Association, Telecommunications Industry Association, Texas Instruments, U.S. Chamber of Commerce, U.S. Business & Industrial Council.

DEPOSITORY INSTITUTIONS DISASTER RELIEF ACT OF 1992

Mr. RIEGLE. Mr. President, I am pleased to support H.R. 6050, the Depository Institutions Disaster Relief Act of 1992, which will help facilitate reconstruction in the wake of such recent disasters as Hurricane Andrew, Hurricane Iniki, and the Los Angeles riots. This bill is identical to S. 3285, which I introduced on September 29, 1992, together with Senators GARN, GRAHAM, MACK, BREAUX, INOUYE, and AKAKA. My statement discussing the bill appears on page S15657 of the RECORD.

DEPOSITORY INSTITUTIONS DISASTER RELIEF ACT OF 1992

Mr. MACK. Mr. President, I rise in support of the Depository Institutions Disaster Relief Act of 1992. This legislation is critical to the revitalization of the areas in Florida that were devastated by Hurricane Andrew. Financial institutions that were in the path of the most destructive storm in the history of the United States and had a concentration of loans in that area need special consideration by the regulators during this reconstruction period.

This bill gives the regulators the flexibility to take into consideration the special circumstances existing in the hurricane ravaged areas. For example, in south Florida over 90,000 homes were damaged or demolished in the wake of the hurricane. The requirement that appraisals be obtained when there has been obvious and material deterioration in market conditions or physical aspects of the property would be impossible under the current situation and would only serve to slow the rebuilding of this community. Another problem is the limits on growth imposed upon institutions. Financial institutions are growing very quickly because of the swelling of deposits due to the influx of Federal disaster relief funds and insurance settlements. This legislation permits the regulators to accommodate extraordinary asset growth by allowing the institution to exclude asset increases attributable to the deposit of insurance proceeds and governmental assistance when calculating its capital ratios.

This legislation also expresses the sense of the Congress that the regulators should encourage depository institutions in disaster areas to meet community financial service needs. Loans are going to have to be reworked, additional funds are going to have to be lent to rebuild and great deal of understanding and tolerance is going to have to be shown by the regulators and financial institutions.

South Florida has slipped from the front page of the newspapers and the lead story on the evening news, however the needs of the people in that area continue. I appreciate the concern of my colleagues in passing this legislation. Although it is my hope that we have done enough to cover all possible contingencies, I look forward to the same spirit of cooperation in the event of any unforeseen consequence of this disaster.

THE URBAN AID BILL

Mr. KERRY. Mr. President, I support the Urban Aid bill. But I do so with great ambivalence. My ambivalence is twofold. First, there are many questions about how we will pay for the tax benefits provided in the bill in the years after 1997. Second, this measure does not authorize the kind of major investments in urban America that we so urgently need. It is only a downpayment, and a small downpayment at that.

I decided to support the bill after much consideration and only after Senate acceptance of the Kennedy-Riegle amendment which I cosponsored and which targets an additional $2.5 billion to urban areas over the next 5 years. I was swayed by the fact that the current version of the bill includes important provisions for our Nation's poor as well as other provisions that will create jobs by helping our economy. H.R. 11 includes the targeted capital gains tax cut for long-term investment in small businesses in the enterprise zones and the R&D tax credit, both of which will spur the kind of job-creating investment that our economy so desperately needs. It includes, as well, a modification of the passive loss rules for real estate investors and a provision promoting pension plan investment in real estate. Both of these measures are needed to jump-start our Nation's ailing real estate industry. In addition, this legislation, if signed into law, would end finally the so-called luxury tax on boats which has compounded the devastation of the boat industry brought about by our sick economy.

However, I am concerned by the fact that the budget neutrality of this bill is unclear in the years outside the budget window. This is because it does not use permanent offsets to pay for the permanent benefits, especially the IRAs. I support this bill but I feel that it is imperative that if, as we approach 1997, we find that the IRAs will indeed add to the deficit, we find a way to pay for them with spending cuts. We cannot increase our $4 trillion debt. We cannot increase the lien on our Nation's future.

I am concerned as well by the fact that less than half of the Urban Aid bill will help urban America. The urban and social spending in the bill, including the Kennedy-Riegle amendment, accounts for approximately $11.9 billion of the bill's $27 billion total. The expansion of the JOBS program will enable States to offer additional education and job training opportunities to move welfare recipients toward self-sufficiency. The increase in the asset limits for AFDC recipients will help families break the cycle of dependence by not punishing them for exhibiting the values we talk about in the debate on welfare reform—hard work, thrift, pursuit of educational and job training opportunities and demonstration of the belief that one's life can be improved.

And responsibility is not entirely the province of individuals. Over the past 12 years, the Reagan-Bush administrations reduced the Federal share of city expenditures from 17 percent to 6 percent. Where is the responsibility in that?

Over the same period, Federal support for housing, in real terms, dropped by 82 percent; for job training by 63 percent, for community development, by 40 percent, and for social service and community service block grants by 40 percent. What kind of choices were those?

Just this past March, the President vetoed a tax bill that would have given us urban enterprise zones; vetoed the centerpiece of what he now describes as a program of economic growth for this country; vetoed a bill designed to get this country moving again, to create jobs and to bring some real opportunity into our cities.

And now, after successfully limiting the amount and type of urban aid in this bill, the President threatens to veto H.R. 11. His threat comes despite the fact that the bill contains all of the economic growth proposals from his State of the Union address except for a broad-based capital gains tax cut and it provides funding for 125 enterprise zones for which his Secretary of Housing and Urban Development campaigned so vociferously.

Why? The President vetoed the bill the Congress sent him this Spring because it would have taken away a portion—just a portion—of the tax breaks that were given to the richest one percent of Americans during the Reagan years. And he threatens to veto this bill because Congress has refused thus far to reopen tax loopholes for the most well-off. To protect the wealthiest of the wealthiest, the President is willing to turn his back on urban America and middle America and rural America and everyone else with an interest in getting our economy back on its feet, and an interest in restoring basic fairness to our tax system.

There are those who really don't care much about the problems of cities in America today. They point out that we are now predominantly a suburban Nation. They believe they are not affected by the fact that, because of Federal neglect, cities are being forced year by year to raise taxes, cut services and freeze or reduce public hiring. They look at urban residents and instead of understanding or helping, they turn away or lecture or assign blame. And the sad part of it is that many of these people are in the Executive Branch of the government of the United States.

One of the reasons the President is in such political trouble today is that he has so clearly lost touch with the day-to-day concerns of the American people. Other than Jack Kemp and Louis Sullivan, there isn't a member of this administration who has given any indication of understanding the kinds of choices the average kid or parent faces in our major cities today.

The crisis in our cities did not begin 3 months ago in Los Angeles. It is not a product of the Rodney King verdict. It exists—to a greater or lesser degree—in cities across America. It has been evolving for years. It has not one, but multiple causes. And it threatens literally to destroy America.

Deep down, we know we will not be able to compete internationally if too many of our young people are in jail or on drugs or always in the streets; we will never get out of debt if we must allocate billions more each year to prisons, prosecutions, emergency health care, expanded welfare and food stamps or rebuilding what the desperate among us have destroyed; and we will never have peace of mind as long as so many of us feel the need to seek security through locked doors, high fences, metal detectors and the purchase of guns.

Deep down, we also know that it doesn't have to be this way. We have the power to choose a different road.

That choice begins, although it does not end, with money and how we spend it. Let us be clear. There's a fundamental difference between spending billions for something like a B-2 bomber and spending the same amount for programs like child immunization and Head Start. It's like the difference between a family saving to send a child to college and that same family splurging on a trip to the Caribbean.

You buy a bomber, you get a bomber. You change the life of a young kid who needs help and you get a citizen. How do you measure the savings? How do you count the crimes that might have been committed, but now will not be? How do you put a value on the difference to society of a young person making responsible choices about school and drugs and sex and that same person making irresponsible choices because he had no access to Head Start, no chance at a job, no opportunity to grow up in a neighborhood with responsible models to emulate?

Mr. President, this bill is not the comprehensive urban investment package that I would have liked to see. It is a minimum response to a major problem. There are also legitimate questions about the deficit implications in the outyears, which I have described. But there is too much in this bill that I feel will help our economy for me to vote against it. Obviously, this is an election year and there will be efforts to characterize this bill one way or another for purposes of partisan gain. But I hope amidst all the rhetoric, we will keep sight of a building consensus in this country that I believe is potentially very hopeful.

It may have taken Los Angeles to do it, but I think there is growing agreement that the crisis in our cities affects us all, whether we live in a city, suburb or rural community; that our response must include incentives for the private sector and a greater effort by government; that individuals must be held accountable for their own choices and actions, but that this does not relieve the government of its own responsibilities; and that a sustained, broad-based, innovative strategy for responding to the problem is required.

This legislation constitutes only the very first steps of such a strategy, and this debate indicates that the consensus of opinion we need is only starting to form. So let us approve this bill, but let us do so with a minimum of pride in the accomplishment it represents, and a maximum of commitment to carrying forward the job that this measure so modestly and so belatedly begins.

TRIBUTE TO SENATOR CRANSTON

Mr. LAUTENBERG. Mr. President, I want to pay tribute to a great friend of mine, the distinguished senator from California, Senator ALAN CRANSTON, who will be leaving the Senate at the end of this Congress.

Mr. President, ALAN CRANSTON has served the people of California and the people of this Nation with great distinction, and deserves the gratitude of all for his many accomplishments in this body. He has been a true leader on some of the most important issues facing our Nation, and often has made the difference in the success of many programs.

The range of issues on which ALAN CRANSTON has been a leader is unusually broad.

He's been out front in the battle for reproductive rights. Not only when that became the fashionable position. But for many, many years. ALAN CRANSTON is absolutely committed to a woman's right to choose, and has been way out front in his work in this area. Thank goodness he has been there over many years.

As chairman of the Veterans Affairs Committee, ALAN CRANSTON also has shown himself a true friend of the men and women who have served in our Armed Forces. The veterans of this country have known that they could count on Senator CRANSTON to speak up for them, and to fight for their interests. He's treated veterans with the respect and honor they deserve, and for that he has earned the gratitude of veterans around the Nation.

As chairman of the Subcommittee on Housing and Urban Affairs, Senator CRANSTON also has been on the cutting edge of housing policy, and helped shape a broad new approach to housing in the 1990 Cranston-Gonzalez National Affordable Housing Act. I was privileged to work with him in that, and appreciated his willingness to join with me on matters such as the Public and Assisted Housing Drug Elimination Act, and the HOME Program. Clearly, without his leadership the whole restructuring of housing policy in the 1990 act would not have been possible. Senator CRANSTON has devoted his considerable energy to refining the act, and to ensuring its funding.

ALAN CRANSTON also has been a leader in international affairs. His deep concern about the proliferation of nuclear weapons has helped guide the Senate in this most important of issues. ALAN CRANTSON has committed himself to making our world safer not only for ourselves, but for our children and grandchildren. And all Americans, all human beings, owe him a debt of thanks for his leadership.

Mr. President, one could go on and on about Senator CRANSTON's role in issue after issue. But I also want to focus for a moment on ALAN CRANSTON, the person.

As I've said, I consider ALAN a good friend. Not only because we see eye to eye on so many issues, but because he's a man of real warmth, humility and sincerity. ALAN CRANSTON doesn't just care about people in the abstract. He cares about real people in the real world. It's one reason why he's not only been so well-liked within this institution, but why he's been so effective as a senator.

He was always ready to encourage people to seek office and to provide the counsel and advice necessary to run an effective campaign. He was very helpful to me as a candidate but also as a Senator. Alan's views were always listened to and I sought his perspective on process as well as substance.

ALAN CRANSTON was rare among us. He never sought the acclaim so often pursued. He instead received his primary satisfaction with a job well done, which he invariably accomplished.

Mr. President, ALAN CRANSTON is a special person. I will miss him. And I wish him all the best as he leaves the Senate.

TRIBUTE TO SENATOR STEVE SYMMS

Mr. CONRAD. Mr. President, as the 102d Congress comes to a close, I rise to wish a fond farewell to my distinguished colleague from Idaho, Senator STEVE SYMMS. After spending four terms in the House of Representatives and 12 years in the Senate fighting vigorously for his fundamental principles, STEVE SYMMS is now retiring from this body to move on to bigger and better things. Hopefully, this will include spending more time with his family enjoying the breathtaking Idaho scenery. I wish him all the best and want to say that it has been a pleasure serving with him in the U.S. Senate.

Although STEVE SYMMS and I have spent the last 6 years working on opposite sides of the Senate aisle, there have been important times when we crossed the ideological boundary to work together. From attempting to help rural hospitals achieve equity under the Medicare system to authorizing a commemorative coin for the heroes of Operation Desert Storm, I have been proud on a number of occasions to add my name to legislation introduced by STEVE SYMMS.

Perhaps most importantly, he and I have put our ideological differences aside when it comes time to help the American farmer. STEVE SYMMS knows about farmers. He received a degree in horticulture from the University of Idaho and was a fruit rancher on his family farm before entering the less pastoral world of public service. We worked together on farm debt tax reform in the 101st Congress and again during this session, trying to provide tax relief for farmers who realize capital gains or discharge of indebtedness income in the course of restructuring their debt. By cosponsoring legislation I introduced in 1989 and again in 1991, Senator SYMMS proved that he believes in giving farm families a fresh start, free from overwhelming tax liability. I thank him for his support on this legislation.

I will greatly miss the friendship of STEVE SYMMS in the Senate, and I wish him well. Mr. President, I yield the floor.

SENATOR JAKE GARN

Mr. LAUTENBERG. Mr. President, I rise to pay tribute to Senator JAKE GARN.

Senator GARN and I have served in the Senate together and on the Senate Appropriations Committee for many years. Through our appropriations subcommittee assignments, we have worked together on the budget for NASA and the Defense Department, among other programs.

Over the years, I have been impressed by Senator GARN's commitment to our Nation's space program. Senator GARN has brought tremendous enthusiasm to the debate of funding for a multitude of space programs. He has tirelessly advocated for funding for NASA and space exploration programs. His commitment to funding space exploration programs has been matched by none.

In the Defense Appropriations Subcommittee, I have observed Senator GARN's work and personal commitment to national security issues.

Mr. President, Senator GARN has been bold in the Senate. He has demonstrated tremendous courage in his personal life as well. He was a Navy pilot. He served as a general in the National Guard. In 1985, he took a courageous journey into space in the space shuttle *Discovery*. And, when his daughter was sick and in need of a kidney, Senator GARN donated one of his own.

JAKE's love and support for Utah is well known and respected. Every State would be proud to have the kind of advocate he has been for them. His affection for the beautiful mountains of Utah is legend and he and I have skied together over that splendid terrain. I'm sure that our next ski outing may leave me running a poor second because I know JAKE will be mountain high with his wife and family when ever he can. He'll still have to try hard and I look to continuing to share those moments together.

I'm sure my colleagues join me in wishing Senator GARN well in his future endeavors.

PRESIDENT BUSH'S ECONOMIC POLICIES AND A TRIBUTE TO SECRETARY BRADY

Mr. SIMPSON. Mr. President, there has been a lot of highly undeserved criticism of President Bush and his team of economic advisors over the past few months of this Congress. We have heard many misguided predictions of gloom and doom and many outlandish accusations of mishandling and bad advice.

I stand here today in strong support of President Bush and his team. They deserve a strong defense of their record in this Chamber.

Since taking over the helm in 1989, President Bush has steered this Nation through some of the most perilous waters that this country, and the world have seen in half a century. We ought to remember that our victory in the cold war under the leadership of Presidents Reagan and Bush has made it possible for our Government and our industrial community to have this long-awaited opportunity to deal with our domestic challenges. President Bush has reacted in a responsible fashion by trimming defense spending and by fortifying our worker retraining programs to meet the realities of the new world he has helped to shape.

President Bush has proposed rational remedies for the mountains of debt our country faces. And, unlike the record of the last Democrat that occupied the White House, President Bush has seen to it that the American people have not been buried by runaway inflation rates. Americans have also had the benefit of historically low interest rates.

Consider for a moment, the shaky state of our financial system just 4 years ago. Remember the Third World debt?—and how the international problem was going to be the end of the global financial system? Well, that one can be chalked up as—solved.

Does this mean that our Nation's problems are solved? Certainly not. Would we like a stronger economy? You bet. The real news is this: Things are tough all over the world. Members of this body have essentially charged our President with responsibility for economic difficulties in Europe, in Japan, and everywhere else. Right now, every major industrialized country in the world is trying to get through hard times just as we are. And the fact is, many of them are faring far worse. Last quarter, our economic growth was stronger than Japan's, Germany's and Great Britain's. Our 3.1 percent inflation rate is among the lowest in the industrialized world.

When you cut through all the baloney, the story of the U.S. economy under President George Bush is one of effective leadership and careful management. Out in the trenches is a team of tough and highly experienced advisors.

The leader of that economic team is my lovely friend and former Senate colleague Secretary Nicholas Brady—a very fine and loyal man who has tackled problems that few Treasury Secretaries have ever even had to face. Although you don't hear much about Nick Brady's tireless work—he has surely been the guiding force behind the successful strategy to clean up the savings and loan mess.

Earlier I mentioned the Third World debt crisis. If it had not been for Nick Brady, we would still have this problem today. Under the Brady plan, 11 countries have reached agreements to cut over 90 percent of their combined commercial bank debt—and major United States banks today have substantially reduced their exposure to Third World debt.

Secretary Brady has also been a steadfast ally of small business owners and entrepreneurs across this country. He has fought tooth and nail for lower capital gains taxes and other tax incentives for our business owners.

Despite a turbulent international financial market riddled with scandal and fraud, Secretary Brady's even and steady hand has made it possible for the United States to maintain a high level of confidence among investors. Today, thanks to swift and decisive action by the Bush administration, the stock market is strong.

Secretary Brady has led the fight for a long-overdue reform of our banking system—one that meets the international challenges that our competitors are better designed to face. Nick Brady was the first to take on the special interest groups with a proposal that will be the model for all bank reform legislation to come our way over th next 10 years.

And the list goes on: Fighting regulatory overkill, forming a coalition with our G-7 partners to achieve world growth, assisting economic reforms in emerging democracies. That is the mark of an economic team that is doing the job right and deserves high marks.

That is the record, ladies and gentlemen, and I am proud to stand here and state it on behalf of our very fine and honest President—George Bush—and his long time friend and loyal ally. We should no longer tolerate this unwarranted scalping and raw partisan political posturing that continues to be fueled by devious misinformation. It is not fair. It is not accurate. And frankly, it is simply not justified and the American people certainly ought to know that. It's all in the RECORD.

CONFIRMATION OF KATHRYN VRATIL

Mr. DOLE. Mr. President, the Senate has acted wisely in confirming Kathryn Vratil of Oberland Park, KS, to serve as a U.S. district judge.

When Chief Judge Earl E. O'Connor took senior status, this seat became available, and Kathy Vratil was selected from among a highly competitive group of candidates whom Senator KASSEBAUM and I recommended to the Attorney General.

It is fitting to note that Kathy was Judge O'Connors's first woman law clerk, a position which she held from 1975 to 1978.

Kathy is a native of Kansas with undergraduate and law degrees from the University of Kansas—where she graduated in the top 10 percent of her law class. As she takes the Federal bench, she leaves behind a distinguished career as a partner in the litigation department of the Kansas City area law firm of Lathrop & Norquist.

I am confident that Kathy Vratil will do a superior job on the Federal bench, and Senator KASSEBAUM joins with me in extending our congratualtions to her and her family.

WATER RESOURCES LEGISLATION

Mr. MITCHELL. Mr. President, I rise in support of the the water resources legislation now before us. This bill is an important step toward addressing water resources needs throughout the country.

I am especially pleased that the bill includes new authority to assess and protect the quality of coastal water and coastal sediment. Other key provisions would give small communities an additional 2 years to prepare for control of stormwater discharges to waterbodies and authorize a program for demonstration of stormwater control in critical watersheds including watersheds in my home State of Maine.

The sediment quality provisions of the bill before us are based on legislation I introduced to protect coastal waters (S. 1070). I want to thank Senators MOYNIHAN, CHAFEE, BREAUX, and others for their constructive efforts to revise and improve this proposal.

There is growing evidence that sediments underlying coastal waters contain contaminants at levels which pose a threat to the quality of the aquatic environment and human health.

The National Research Council issued a report in 1989 which concluded:

> Contamination of marine sediment poses a potential threat to marine resources and human health (through seafood consumption) at numerous sites around the country * * * improving the nation's capability to assess, manage, and remediate these contaminated sediments is critical to the health of the marine environment.

The National Oceanic and Atmospheric Administration has published results of a national program to monitor toxic chemicals at 50 coastal and estuarine sites from Marine to Alaska. The report states:

> A number of sites revealed relatively high levels of toxic contaminants in both bottom sediments and bottom dwelling fish. For example, sediment concentrations of toxic trace metals, aromatic hydrocarbons, DDT's PCB's, and sewage derived material from northeastern coast cities in Boston Harbor, Salem Harbor, and Raritan Bay are among the highest values measured nationally.

The coastal sediment provisions of the pending bill will substantially expand our information and knowledge about the condition of coastal sediments. The bill calls for a survey of sediment quality and a report to Congress on the extent and seriousness of sediment contamination nationally.

In addition, the bill provides for a National Contaminated Sediment Task Force to oversee the implementation of programs designed to protect sediment quality. The task force is to include key Federal agencies and representatives of ports, States, and public interest organizations.

I hope that this new task force will focus the attention of Federal agencies and other parties on the contaminated sediment problem and guide the development of policies to remediate existing problems and prevent future contamination.

The bill also amends the Ocean Dumping Act by clarifying the process for issuing permits for the dumping of dredged material in the ocean.

A central provision of the bill directs the Administrator of EPA to concur in writing on permits issued by the Secretary of the Army for the dumping of dredged material. This new process is intended to expand EPA's role in identifying potential environmental consequences of ocean dumping and in taking appropriate action to prevent environmental problems. This concurrence process applies to dumping authorizations for Federal projects pursuant to section 103(e).

The Administrator's concurrence may include permit conditions and may include denial of a permit. If the Administrator concurs with conditions, the conditions are to be included in the permit. If the Administrator denies the permit, the Secretary shall not issue the permit.

This legislation also brings the Ocean Dumping Act into conformance with our other environmental laws by removing the existing preemption of State environmental standards. In the case of dumping associated with Federal projects, a State may adopt a more stringent standard than a Federal standard based on a showing that such standard meets several criteria. Also, the President may exempt a Federal project from a State requirement if it is in the paramount interest of the United States to do so.

The amendment also addresses the important process of designating and managing dumpsites. Designation of dumpsites has been slow and many sites do not have final designation. The amendment provides that by 1997, all sites are to have final designations, including appropriate environmental assessment.

In addition, the amendment provides for the development of site management plans for dumpsites. The site management plans are intended to provide a comprehensive and long-term statement of the expected uses and activities at the dumpsite. Monitoring at sites is to include monitoring of the areas surrounding the sites. Individual permits for dumping at a site are to conform to the site management plan.

The amendment also clarifies and limits the existing policy in the act concerning the dumping at sites which are not designated. This existing authority has been used on a very limited basis to date and it should continue to be used in only a very small percent of dumping cases. The Administrator is to concur in the selection of any alternative dumpsite and dumping is to be discontinued within 5 years unless the site is given a final designation by the EPA. Use of an alternative site may be extended for one 5-year period under specified conditions.

A key provision of the amendment revises the dumping permit authorities of the act. Permits are to conform to the provisions of site management plans for the dumpsite. Monitoring data collected under the site management plan is to be considered in the review of permits. Where monitoring data from a site indicates environmental problems or unintended environmental consequences associated with dumping, the permit is to be reviewed and revised or reissued.

Current law specifies that permits are to be for a specified period but does not specify the permit term. Most permits are now issued for a 3-year period. This period is sufficient to allow for the conduct of most projects and for the dumping associated with those projects to be terminated.

This 3-year period also facilitates reissuance of permits as scientific knowledge evolves over time and does not lock in for an extended period permit conditions which may later be found to be inappropriate or inadequate to protect the environment.

In a small number of permit cases, however, it may be appropriate for permits to be for a period of up to 7 years. Permits should be issued for up to 7 years only in those few cases where dredging activity is continuous, where dumping has very limited environmental effect, and where dredged materials are not contaminated. In areas, such as urban harbors, subject to continuing or significant pollution, permit terms should be for the shortest practicable term and should not exceed 3 years.

Other important provisions of the amendment would increase penalties for violations of the act and extend authorizations for the act.

The bill also includes new authority for the Corps of Engineers to demonstrate approaches to the control of stormwater and related water pollution sources. This demonstration authority includes projects in my home State of Maine and I look forward to a successful effort to address this important problem.

I am pleased that the bill also authorizes a general investigation along the Maine and New Hampshire coastline, to determine the feasibility of water resource improvements along the coast, focusing particularly on dredging and dredged material disposal. Similar coastal studies in other States have proven beneficial for responsible long-range planning. Since the provision directs the corps to conduct the study with the understanding that all proposed dredging work would need to be evaluated based on disposing of it at a permanently designated site, it will encourage EPA to make permanent site designations for dredged material disposal, as required by title I of the Marine Protection, Research, and Sanctuaries Act. Passage of this provision will allow coastal planning to progress in Maine and New Hampshire and will prove to be a sound environmental and economic investment for New England.

I also want to express my support for the extension of the waiver of the obligation of small communities to have a stormwater discharge permit under the Clean Water Act. This provision recognizes that the EPA needs more time to address stormwater permits for large and midsized municipalities and industries and needs more time to develop an appropriate program for permits for discharges of stormwater by smaller communities.

I urge my colleagues to support this important legislation.

PROTECTION OF WORKERS AT NUCLEAR WEAPONS PRODUCTION COMPLEX

Mr. GLENN. Would the distinguished senior Senator from Massachusetts care to engage me in a colloquy concerning the protection of workers at our Nation's nuclear weapons production complex?

Mr. KENNEDY. I would. I would like to congratulate the Senator from Ohio for looking after the health and safety concerns of workers employed at Department of Energy nuclear weapons facilities throughout the country. One of the key achievements in the Defense authorization bill which passed this body late last week was the inclusion of provisions authored by the Senator from Ohio which ensure medical monitoring for DOE workers exposed to hazardous substances at our nuclear weapons facilities. This relief has long been sought by worker organizations and community groups.

Mr. GLENN. I thank the Senator. I am concerned with avoiding any unforeseen consequences with this legislation. In particular, I am concerned that test litigation brought in Federal court by the proponents of medical monitoring may now be held to be moot, in which case a question might arise concerning whether the court would still retain its customary jurisdiction to award reasonable attorneys fees to the plaintiffs in cases where the remedy sought by the litigation is achieved.

As the Senator knows, this legislation was enacted against a backdrop of steadfast refusal by the Department of Energy to grant requests for medical monitoring of nuclear workers. Faced with this intransigence, unions representing workers at DOE facilities filed test cases in different parts of the country seeking legal relief against the private contractors employed by DOE at three facilities. There were no legal avenues available to sue DOE itself, and because these facilities were all operated by different private contractors it was felt that it was not logistically feasible to file a single nationwide suit. The expectation was that if these three test cases were successful, it would cause DOE to reappraise its position and withdraw its opposition to medical monitoring. It was also hoped that these cases would serve to focus public attention on the medical monitoring issue and serve as a catalyst for legislation that would remedy the situation nationally.

Throughout the litigation the defendant private contractors have been fully indemnified and reimbursed for all legal fees and expenses by DOE, which vigorously opposed the workers' claims at every stage. The defendants have raised a mass of legal defenses and the plaintiffs have had to engage in extensive discovery to establish the need for medical monitoring.

The litigation is at various stages. In my own State of Ohio, at Fernald, a class has been certified and a trial has been set for early 1993. In Rocky Flats, discovery is well under way and legal issues are currently pending before appellate courts. The Hanford case is weighed down under a mountain of discovery.

The passage of this legislation will provide most if not all of the relief sought in these cases and to that extent should make it unnecessary to proceed with the litigation. I am concerned, however, that passage of this legislation not be construed as removing from the courts, within their informed discretion, the right to award fees and expenses to the plaintiffs.

Mr. KENNEDY. I agree that it should be made clear that the legislation was not intended to change the status quo with regard to the authority of the courts to award fees and expenses if the court deems such an award to be appropriate. The decision as to whether to award fees and costs is of course entirely within the discretion of the courts. However, I agree that it is appropriate to affirm that Congress did not intend by passage of the legislation to remove that discretion from the courts.

Mr. GLENN. It should be clear, then, that as to these three cases, it is not the intent or effect of this legislation to remove from the courts present authority to award reasonable attorneys fees to plaintiffs' counsel. They have expended years of time and effort in this struggle. Congress has recognized the merits of their position. Indeed we have enlarged upon these individual cases to extend medical monitoring to all past workers at DOE defense plants. The DOE has reversed its longstanding position opposing medical monitoring. Now that DOE accepts medical monitoring and our legislation expressly provides for it, the parties who were in part responsible for bringing this issue to the attention of Congress should not be penalized by our action. I believe that the courts by our legislative action will not be foreclosed from awarding, as they likely would have if Congress had not enacted our legislation, reasonable attorneys' fees and expenses associated with bringing the cases to the courts.

I thank the Senator from Massachusetts.

Mr. KENNEDY. I thank my friend and colleague from Ohio.

TRIBUTE TO DAVID BEN-RAFAEL

Mr. LAUTENBERG. Mr. President, as the Jewish people begin a new year in the Jewish calendar, they approach it with a degree of optimism rarely seen in Jewish history. For too many years the Jewish people looked ahead with significant trepidation as the next year, or a new decade, or a new century approached. Often, the Jewish people have been faced with questions including those of survival, or liberty, or when the Jewish people might have a homeland, or pray in Jerusalem, or when the Jewish people will find peace.

Many of those questions have been answered, but one that remains is the question of peace. The people of Israel yearn to have the assurance that one's children or other family members can live their lives to the fullness of their years without fear that they will be struck down by an enemy who employs violence as a means to achieve their objectives.

Even though the State of Israel was established to be a nation as long as mankind endures, the Jewish homeland is still not at peace. Its citizens are still subject to attack by terrorists whether on their own soil or while in other parts of the world. What the Israeli people anticipate with hope is the day, in the not too distant future, when peace will be realized for the land of Israel and her citizens.

While the path to peace may be arduous and circuitous, we are constantly reminded how necessary the pursuit of peace is when the price for instability and terror is so dear. We need only look back at the terrorist attack on the Israeli Embassy in Buenos Aires to be reminded of that dear price. Then, a moment of terrorist horror claimed more than 30 lives. On March 17, a car carrying a bomb was driven into the entrance of the Buenos Aires Israel Embassy building where it exploded. The explosion caused two-thirds of the three-story embassy to collapse onto itself. Only a corner of the three-story building remained standing. The bombing not only killed at least 30 men, women, and children, but also injured more than 200 individuals who were near the Embassy at the time of the explosion.

One of those innocent victims was a member of a family with whom I have had a close and warm relationship for more than 20 years. Helen and Ralph Goldman's son, David Ben-Rafael was one of those individuals who was tragically killed in the bombing.

David Ben-Rafael was chief deputy and second in command of the Israeli Embassy. Mr. Ben-Rafael was a vibrant, intelligent man. Born and raised in New York and graduated with a bachelor's degree in international relations at George Washington University in Washington, DC, his love for Israel led him to emigrate to Israel in 1971 and adopt a Hebrew name. Mr. Ben-Rafael pursued a law degree at Hebrew University in Jerusalem, graduating in 1975.

In 1979, Mr. Ben-Rafael joined the Foreign Ministry and then served as secretary of information at the London Embassy. Later he held the position of Israel's consul in Chicago. In October, he was named to the Buenos Aires Israeli Embassy position.

Mr. President, this shocking incident and others like it must galvanize the United States and the international community to continue our resolve to combat and eradicate terrorism. Much of the world condemned this intolerable terrorist act and all should join in seeking an end to crimes of hate which only leave despair, devastation, and death in their wake.

I extend my heartfelt condolences to Mr. Ben-Rafael's wife Alisa, their children Noa and Jonathan, and his father and mother. David Ben-Rafael was a special man who left a lasting mark on the people whom he touched throughout his life.

THE RETIREMENT OF SENATOR STEVE SYMMS

Mr. LAUTENBERG. Mr. President, I want to take this opportunity to say a few words about a departing friend and colleague, STEVE SYMMS.

To be sure, STEVE SYMMS and I came down on opposite sides of most issues. But, while I often disagree with his views, I respect his straightforward nature. You always know where STEVE SYMMS is coming from. If he opposed you, you were up against a tough, persistent opponent. But, if he was with you, you could hardly ask for a better ally.

Last year, we worked together on the legislation that eventually became the Intermodal Surface Transportation Efficiency Act of 1991, or ISTEA. We quickly learned that, in spite of the different types of States we represent—his being largely rural, with far-flung small towns, and mine being the most densely populated State in the country—we had a lot more in common than not. In looking at the five original cosponsors of that legislation, one saw a real diversity in States represented. Rural States, Idaho and North Dakota, were teamed up with the urbanized States of New York, Rhode Island, and New Jersey. Rather than tearing us apart, that diversity gave us strength, and enabled us to push through the most important transportation legislation in the last 35 years.

STEVE SYMMS was unfailing in his efforts to show Senators from other Western, rural States that our bill was a good one, and that the traditional Western versus Eastern, rural versus urban divisions didn't apply here. His role in developing and enacting ISTEA was a critical one. It was a fitting tribute to his efforts that the House and Senate conferees chose to designate part B of title I of ISTEA as the Symms National Recreational Trails Act of 1991.

Mr. President, the people of Idaho are losing an able representative. But, I'm sure that we have not heard the last of STEVE SYMMS, and I wish him well in all his endeavors.

BEING SMART AIN'T EASY

Mr. PRESSLER. Mr. President, with a Rhodes scholar running for President and several in the Senate, one might think there is intelligence in Government. As a Rhodes scholar myself, on occasion I have been asked humorously, "What's in the water over there?" It's probably not the water, but the shepherd's pie.

When people ask me about Oxford, I always point out that the worst thing about being a Rhodes scholar is that people think you are incredibly smart. Recently, Jack Anderson concluded a column by quoting me in reference to that. I would like to share that column with my colleagues. I ask unanimous consent that a portion of Jack Anderson's column, which appeared in the Washington Post on September 28, 1992, be included at this point in the RECORD.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

> It can be lonely at the top of the ivory tower—just ask Rhodes scholar and South Dakota Sen. Larry Pressler. Although a Republican and strong Bush backer, Pressler feels for fellow Rhodes scholar Bill Clinton because honorees can be victims of inordinately high expectations. Pressler told us that's one of the reasons he downplays it a little bit.
>
> You might even say it's a detriment because people think you think you're smarter than you are * * *" Pressler said. "I don't really consider myself a genius at anything. People assume that since I'm a Rhodes scholar I know more than I do know."

THE GRAND CANYON PROTECTION ACT

Mr. McCAIN. I want to thank Senator BRADLEY for his tireless efforts on behalf of the Grand Canyon Protection Act and your work to pass this measure. I want to review briefly our goals in enacting this landmark legislation.

First, we want to ensure that operations of Glen Canyon Dam will stop damaging the downstream resources in Glen Canyon National Recreation Area and Grand Canyon National Park. We want to give the Secretary of the Interior a clear and unequivocal mandate to operate Glen Canyon Dam in a manner that protects, mitigates damage to, and improves downstream resources. We require the timely completion of an environmental impact statement to provide the scientific information that the Secretary needs to achieve that goal.

Second, pending completion of the environmental impact statement and implementation of long-term operating criteria to meet the new protective standard established in the act, we want the Secretary of the Interior to halt the adverse impacts of Glen Canyon Dam operations. Last year, Secretary Lujan directed the Bureau of Reclamation to institute interim operating criteria until the agency completes an environmental impact statement on dam operations. We commend Secretary Lujan for that action. The Grand Canyon Protection Act essentially ratifies the Secretary's decision on interim flows and ensures that those operating criteria will remain in effect until the EIS, and final criteria, and operating plans are completed, unless further action by the Secretary is necessary to protect downstream resources.

Third, we want the manner in which Glen Canyon Dam is operated to be determined in an open and public process in which all of the many parties and interests that use, benefit, and enjoy the Colorado River in Glen Canyon National Recreation Area and Grand Canyon National Park will have an opportunity to participate. We think that the process provided for in the National Environmental Policy Act is ideally suited for determining how Glen Canyon Dam is operated. The Secretary should study and develop a range of alternatives for achieving the goal of protecting, mitigating damage to, and improving the condition of downstream resources. We also want this process to be informed by the best scientific and economic information on the environment of the Colorado River downstream from the dam, the impact of Glen Canyon Dam operations on that environment, and all of the economic and environmental costs and benefits of changing Glen Canyon Dam operations.

Fourth, we want the Department of the Interior to develop and implement a long-term monitoring program to provide information on the effect of Glen Canyon Dam operations on the downstream environment. We recognize the complex scientific and economic questions that the Federal and State resource management agencies must address in determining how Glen Canyon Dam is operated. We recognize that the environment downstream from the dam is a dynamic system. Only a program of adaptive management will serve the Grand Canyon, the wildlife, the endangered species, the native American tribes and their cultural heritage, and the recreational, water, and power users of the Colorado River. As more scientific information becomes available, the Department of the Interior may need to reevaluate the operating criteria and procedures for the dam to meet the goals and purposes of the Grand Canyon Protection Act.

Finally, we intend to ensure that the fundamental institutional arrangements for apportioning the waters of the Colorado River between the Upper Basin States and the Lower Basin States—as those arrangements have been set forth in interstate compacts, international treaties, court decisions, and laws implementing the compacts and treaties—are not affected by this legislation. Those fundamental arrangements remain fully intact under the Grand Canyon Protection Act.

Mr. BRADLEY. I appreciate the Senator's comments on the goals of this legislation, and thank him for his leadership and persistence in securing passage of the Grand Canyon Protection Act. He has clearly stated the purposes and intent of the Act.

Mr. McCAIN. I would like to additionally pose a question to the Senator from New Jersey about the priorities among the different uses of the Colorado River and Glen Canyon Dam. As I understand it, Secretary Lujan directed the Bureau of Reclamation in July, 1991, to prepare an environmental impact statement on Glen Canyon Dam operations. The Secretary is to be commended for that action. However, the Secretary's decision with respect to interim flows and the Glen Canyon Dam EIS does not in any way lessen the need for the Grand Canyon Protection Act. Rather, the act provides the Secretary with a clearly defined legal context to prepare the EIS. The Grand Canyon Protection Act unequivocally provides that protection of the downstream resources in the Grand Canyon occupies a position of the highest priority in determining how the dam is operated, subject to and consistent with the Colorado River compact and the laws and treaties implementing the compact. There has been a long controversy over the priority of uses and values of the Colorado River and Glen Canyon Dam. The Western Area Power Administration has asserted that power generation has complete primacy over all other uses and values. Is it the Senator's understanding that the Grand Canyon Protection Act rejects the policy that power generation has any priority or primacy over protection of downstream environmental, recreation, or cultural values?

Mr. BRADLEY. Yes. The Grand Canyon Protection Act is intended to require the Secretary of the Interior to adopt operating criteria that will address, without infringing upon or affecting the Colorado River compact, the adverse impacts caused by both fluctuating flows and uncontrolled flood releases. Under the Grand Canyon Protection Act, all aspects of Glen Canyon Dam operations should be governed by the goal of protecting the downstream resources so long as those operations do not interfere with the allocation, apportionment, and deliveries provided for in the Colorado River compact.

Mr. McCAIN. I thank the Senator for his confirmation. I would reiterate and emphasize that, while the Grand Canyon Protection Act does not change the fundamental purposes of Glen Canyon Dam, the act directs the Secretary to operate the dam to protect downstream resources.

I want to add one further comment. The Grand Canyon Protection Act requires a review by the Comptroller General of the "costs and benefits to water and power users and to the natural, recreational, and cultural resources * * *" of the implementation of this legislation. It is important that this audit or study be a full economic analysis, rather than simply a financial analysis of the cost to the users of project power. In order to make the most responsible operating decisions, we must obtain a comprehensive view of the cost of this legislation. Does the distinguished chairman of the Water and Power Subcommittee intend that such a comprehensive audit take place?

Mr. BRADLEY. Yes, We intend that the audit be conducted under the Water Resource Council's 1983 "Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies," which require a full analysis of environmental and economic costs and benefits.

APPLICABILITY OF CAPITAL REQUIREMENTS

Mr. D'AMATO. Mr. President, I rise today to note that the U.S. Court of Appeals for the Fifth Circuit recently decided a case of some importance with regard to the savings and loan industry, and the Government's efforts to restore that industry to health. In *Security Savings and Loan* v. *Director, Office of Thrift Supervision*, 960 F.2d 1318 (5th Cir. 1992), the court held that a thrift association was not required to consolidate on its balance sheet the assets and liability of a subsidiary insured institution that it acquired prior to May 1, 1989. This decision is in keeping with my understanding of the law, in particular the operation of section 301(t)(5)(E) of FIRREA, and I hope that it will be applied uniformly by the Office of Thrift Supervision.

Mr. GARN. I agree with the Senator's analysis of FIRREA. In fact, during the Senate debate on FIRREA this same issue arose, and we engaged in a colloquy on this subject at that time. I ask unanimous consent that our prior colloquy be printed in the RECORD.

The colloquy follows:

> [From the CONGRESSIONAL RECORD, Aug. 4, 1989]
>
> APPLICABILITY OF CAPITAL REQUIREMENTS
>
> Mr. D'AMATO. I would like to ask Mr. GARN a question concerning the applicability of the capital requirements of the bill to savings associations. It is my understanding that the capital requirements established under the bill apply separately and not on a consolidated basis to a savings association and each existing subsidiary savings association acquired before May 1, 1989. Is my understanding correct?
>
> Mr. GARN. The Senator is correct.
>
> Mr. D'AMATO. Am I also correct in understanding that the capital provisions of the bill do not affect the public reporting of income or the statement of condition of savings associations under generally accepted accounting principles?
>
> Mr. GARN. Yes, the Senator is correct.
>
> Mr. D'AMATO. I thank the Senator.

STORMWATER PERMITS FOR SMALL CITIES

Mr. CHAFEE. Mr. President, H.R. 6167 also contains a provision that will extend the moratorium on Clean Water Act permit requirements for the stormwater discharges of small cities for another 2 years.

In a series of decisions stretching back over several years, the courts have found that the Clean Water Act requires cities to obtain permits for the stormwater that they discharge from pipes and ditches to surface waters. EPA and the States have been slow to comply with these court decisions because issuing permits for stormwater outfalls is a big job. The cities and counties of this Nation own and operate 8 million pipes and ditches that discharge stormwater to rivers, streams, lakes and estuaries.

To bring some order to the permitting requirement, the Congress established a schedule for stormwater permits in the 1987 Water Quality Act. Cities over 250,000 population were to obtain permits by 1989. Cities between 100,000 and 250,000 were to obtain permits by 1991. And cities under 100,000 were not required to obtain permits until after October 1, 1992—a date that has just passed.

EPA and the States have fallen behind the schedule mandated by Congress. The larger cities are only now submitting applications for their permits. No permits have yet been issued to large cities. And no provision at all has been made for permits to the small cities under the October 1 deadline that was included in the 1987 Water Quality Act.

Therefore, the bill now before the Senate will extend the permitting deadline for cities with a population under 100,000 for another 2 years until October 1, 1994. In the interim, I expect that the Congress will consider legislation to reauthorize the Clean Water Act and that we will have an opportunity to reconsider stormwater permit requirements for small cities.

There is no doubt that stormwater is a serious water pollution problem. The States report that from 5 to 15 percent of the rivers, streams, lakes, and bays that fail to meet the fishable and swimmable goals of the Clean Water Act fail because of runoff from city streets, parking lots, industrial sites, and other developed lands. So, we must control these stormwater discharges. But whether the current Permit Program of the Clean Water Act is the right answer for our smallest cities is a question I hope we will examine early in the next Congress. In the meantime, this bill extends the moratorium for another 2 years.

BREAST CANCER SCREENING ACT OF 1991

Mr. COATS. Mr. President, today I rise in strong support of H.R. 6182, the Breast Cancer Screening Act of 1991. Mr. President, the facts surrounding breast cancer are numbing. The effects of breast cancer touch almost every family in America.

Recently, Tom Wyss, a State senator from Fort Wayne, IN, a personal friend of mine, informed me of his wife's bout with cancer. Tom's wife, Shirley, had a mammography screening showing no signs of irregularity in January. In July, she was diagnosed with breast cancer. Tom and several members of the Indiana breast cancer coalition have explained how this story is representative of many others. This shows why enhanced monitoring of facilities and equipment is needed and why uniform mammography rules should be put in place for all women in America.

Mr. President, these are the hard facts concerning breast cancer. It is the leading cause of cancer death among women age 15 to 54. One in nine women in the United States will develop breast cancer in their lifetime. In the State of Indiana, nearly 4,100 cases of breast cancer will be diagnosed this year—over 1,000 of these individuals will likely die from the disease.

I believe mammography screening offers a way to save lives. Today, a mammogram costs nearly $50 in the Midwest. The cost of a radical mastectomy and followup care often exceeds $50,000. Every dollar spent on early detection of breast cancer can mean substantial savings for advanced patient care and treatment. A properly interpreted mammography can mean the difference between life and death for a victim who has a mammogram at an early stage.

I am a cosponsor of S. 1777, the Breast Cancer Screening Safety Act of 1991. I believe the legislation before us, which has incorporated needed modifications, does a good job in creating new quality standards for mammography facilities.

Today we have a patchwork of confusing and overlapping quality mammography standards and regulations. As a nation, I believe we must ensure that radiologists and other health professionals who administer a mammogram meet specific education, training, and professional standards. We must also ensure that facilities have ongoing quality insurance programs and that equipment is properly maintained.

The legislation before us provides for national quality standards for mammography in the area of equipment, quality assurance, personnel standards, and training. Annual onsite inspections are provided for in this bill and penalties are provided for noncompliance. These are measures whose time has come.

I believe there needs to be a guarantee that the mammography a woman gets will be safe. There needs to be a guarantee that wherever a mammogram is given—whatever the State or type of facility—quality care will be assured. I ask my colleagues to join me in supporting this important reform measure.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONGRESSIONAL AWARD BOARD

Mr. MITCHELL. Mr. President, the Congressional Award Program recognizes personal achievement of young people from all walks of life and from every corner of this country. It bears the name of Congress because Members serve on the national board and organize programs in their individual States and districts. Through these programs, Senators involve adults in the personal development programs for kids in their own communities.

Senator ROBB served with Senator WALLOP for the past 2 years on the Congressional Award Board. Together, they have reshaped and strengthened this program and they have served well. I thank Senator ROBB for his willingness to serve the Senate in this capacity and congratulate both he and Senator WALLOP for their tireless efforts on behalf of America's youth.

Today I nominate Senator BAUCUS to serve on the Congressional Award Board. It is my hope, and I know I speak for the Republican leader, that we see young people from every State receiving gold, silver, or bronze medals at next spring's award program here in Washington. Senator BAUCUS has a longstanding interest in helping America's young people and I am both pleased and grateful for his willingness to serve on the Congressional Award Board.

APPOINTMENT BY THE MAJORITY LEADER

The PRESIDING OFFICER. The Chair announces, on behalf of the majority leader, pursuant to Public Law 96–114, as amended, the appointment of the following individuals to the Congressional Award Board:

The Senator from Montana [Mr. BAUCUS], vice the Senator from Virginia [Mr. ROBB], resigned;

Walker P. Nolan, of Maryland;
Edwin S. Jayne, of Virginia; and
Ray N. Ivey, of Pennsylvania.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar No. items 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 843, 844, 845, 846, 847, 848, 849, 850, 851.

I further ask unanimous consent that the Committee on Environment and Public Works be discharged from consideration of the following nominations for the Mississippi River Commission: Brig. Gen. Pat M. Stevens IV and Brig. Gen. Albert J. Genetti, Jr.; and the nomination reported today by the Committee on Armed Services: Maj. Gen. Steven B. Croker, to be lieutenant general.

I further ask unanimous consent that the Senate proceed to their immediate consideration; that the nominees be confirmed, en bloc; that any statements appear in the RECORD as if read; that the motions to reconsider be laid upon the table, en bloc; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed, en bloc, are as follows:

DEPARTMENT OF STATE

Edward S. Walker, Jr., of Maryland, a career member of the senior Foreign Service, class of Minister-Counselor, to be the Deputy Representative of the United States of America to the United Nations, with the rank and status of Ambassador Extraordinary and Plenipotentiary.

Paul S. Sarbanes, of Maryland, to be a representative of the United States of America to the 47th session of the General Assembly of the United Nations.

The following-named persons to be representatives and alternate representatives of the United States of America to the 47th session of the General Assembly of the United Nations:

Representatives:

Edward Joseph Perkins, of Oregon.

Alexander Fletcher Watson, of Massachusetts.

Larry Pressler, of South Dakota.

Gloria Estefan, of Florida

Alternate representatives:

Irvin Hicks, of Maryland.

Shirin R. Tahir-Kheli, of Pennsylvania.

Parker G. Montgomery, of New York.

Prezell Russell Robinson, of North Carolina.

Margaretta F. Rockefeller, of New York.

NATIONAL INSTITUTE FOR LITERACY

John Corcoran, of California, to be a member of the National Institute Board for the National Institute for Literacy for a term of 3 years. (New position)

Jim Edgar, of Illinois, to be a member of the National Institute Board for the National Institute for Literacy for a term of 3 years. (New position)

Jon Deveaux, of New York, to be a member of the National Institute Board for the National Institute for Literacy for a term of 3 years. (New position)

Ronald M. Gillum, of Michigan, to be a member of the National Institute Board for the National Institute for Literacy for a term of 3 years. (New position)

Badi G. Foster, of Illinois, to be a Member of the National Institute Board for the National Institute for Literacy for a term of 3 years. (New position)

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Brook Hedge, of the District of Columbia, to be an associate judge of the Superior Court of the District of Columbia for the term of 15 years.

Lee F. Satterfield, of the District of Columbia, to be an associate judge of the Superior Court of the District of Columbia for the term of 15 years.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Shirley Chilton-O'Dell, of California, to be a member of the Federal Retirement Thrift Investment Board for a term expiring September 25, 1994.

Stephen Norris, of Virginia, to be a member of the Federal Retirement Thrift Investment Board for a term expiring October 11, 1994.

FEDERAL LABOR RELATIONS AUTHORITY

Tony Armendariz, of Texas, to be a member of the Federal Labor Relations Authority for a term of 5 years expiring July 29, 1997. (Reappointment)

POSTAL RATE COMMISSION

Wayne Arthur Schley, of Alaska, to be a Commissioner of the Postal Rate Commission for the remainder of the term expiring October 14, 1994.

THE JUDICIARY

Timothy K. Lewis, of Pennsylvania, to be U.S. Circuit judge for the Third circuit vice a new position created by Public Law 101-650, approved December 1, 1990.

Ursula Mancusi Ungaro, of Florida, to be U.S. district judge for the Southern District of Florida vice a new position created by Public Law 101-650, approved December 1, 1990.

John W. Sedwick, of Alaska, to be U.S. district judge for the District of Alaska.

DISTRICT COURT OF GUAM

John S. Unpingco, of Guam, to be judge for the District Court of Guam for the term of 10 years.

THE JUDICIARY

Kathryn H. Vratil, of Kansas, to be U.S. district judge for the District of Kansas vice Earl E. O'Connor, retired.

Paul J. Barbadoro, of New Hampshire, to be U.S. district judge for the District of New Hampshire.

Steven J. McAuliffe, of New Hampshire, to be U.S. district judge for the District of New Hampshire.

DEPARTMENT OF JUSTICE

Annette L. Kent, of Hawaii, to be United States Marshal for the District of Hawaii for the term of 4 years.

DEPARTMENT OF COMMERCE

Edward Ernest Kubasiewicz, of Virginia, to be an Assistant Commissioner of Patents and Trademarks.

THE MISSISSIPPI RIVER COMMISSION

Brig. Gen. Pat M. Stevens IV; and

Brig. Gen. Albert J. Genetti, Jr.

THE NOMINATION REPORTED TODAY BY THE COMMITTEE ON ARMED SERVICES

Maj. Gen. Stephen B. Croker, to be lieutenant general.

STATEMENTS ON THE NOMINATION OF WAYNE SCHLEY

Mr. STEVENS. Mr. President, it is tough to say farewell to Wayne Schley who has worked closely in the Senate with me for more than two decades. But it is great to know that the new career phase that Wayne is about to launch is in an area where he is an acknowledged expert.

The selection of Wayne Schley, currently Republican staff director of the Senate Rules Committee, to be a member of the Postal Rate Commission is, indeed, a fine choice.

As a member of the Postal Rate Commission, Wayne will bring a knowledge of postal issues possessed by few congressional staffers. His is a level of expertise which will be vital to the Rate Commission.

When he first came to my personal staff in 1971, after attending graduate school at the University of Alaska Fairbanks, Wayne began working on Postal Service issues.

Through the years, as he served as majority and minority staff director of the Subcommittee on Civil Service, Post Office and General Services, Wayne has become an expert on postal issues.

He has been my trusted adviser on postal matters.

Wayne is respected for his mastery of postal issues by industry leaders, the labor community, Members of Congress and postal employees and officials across the nation.

For the past 5 years, Wayne has served as Republican staff director on the Senate Committee on Rules and Administration. In addition, he was responsible for many of the arrangements relating to the inauguration of the President and Vice President of our Nation. He worked long and hard coordinating the agencies and groups traditionally involved in inaugural activities.

And, Wayne has earned a special place in the hearts of hundreds of young Alaskans. For 20 years he has been the coordinator of my summer intern program.

Every summer, Wayne shepherds 20 or 30 graduating high school seniors who travel to Washington, DC, to work as interns in my office. He makes sure they have assignments, coordinates their housing and transportation, arranges for sightseeing trips, attendance at committee hearings and forums at other government agencies. And he's set up an intern alumni organization so that they keep in touch, even though they come from the far corners of our State.

Mr. President, when Wayne leaves the Senate, it will be a loss to me personally. It will be a loss to the Senate Rules Committee, and to his many friends and coworkers in the Senate.

But he brings to the Postal Rate Commission a great knowledge of postal issues, a capacity for hard work, and a degree of competence it would be hard to match. I look forward to our new association when we work with him on the Commission.

Mr. FORD. Mr. President, I rise to express my support for Wayne Schley to be a member of the Postal Rate Commission with both enthusiasm and regret. He has exceptional credentials to serve on the Commission. Unfortunately, this appointment means a loss to the Senate Committee on Rules and Administration where he serves as Republican staff director.

Wayne has served as TED STEVENS' key adviser on postal matters for many years. Few individuals are as well informed on the U.S. Postal Service. He is an expert on postal issues.

My association with him as Republican staff director has been excellent. He is diligent, thorough, and competent. We will miss him on the committee staff; but we look forward to working with him on the Commission.

I strongly support this appointment.

STATEMENT ON NOMINATION OF THE HONORABLE URSULA MANCUSI UNGARO

Mr. MACK. Mr. President, I would like to thank the Senate for confirming the Honorable Ursula Ungaro, nominee for the U.S. District Court in the Southern District of Florida.

Mr. President, Judge Ungaro was a product of my Judicial Advisory Commission, a commission comprised of prominent lawyers in my State tasked with the responsibility of recommending outstanding Federal judicial candidates for my consideration. Judge Ursula Ungaro is no exception.

Judge Ungaro has served the legal profession with distinction over the past 17 years. She graduated from the University of Florida Law School and served on the University of Florida Law Review Editorial Board. While a member of the Law Review Editorial Board, Judge Ungaro authored an article concerning the Florida Administrative Procedure Act.

Upon completing her studies at the University of Florida, Judge Ungaro practiced law in Miami for 11 years. Her practice consisted mainly of complex litigation cases involving securities fraud, partnership disputes, sophisticated real estate transactions and health care law.

In 1987, Judge Ungaro was appointed as circuit judge for the Eleventh Judicial Circuit and was reelected without opposition for a second term. As a circuit judge, she has been assigned to both the civil and criminal division. Judge Ungaro has also served as an appellate judge for appeals from the county court. Based upon her legal and judicial experience alone, Judge Ungaro is highly qualified to be a Federal judge.

Aside from being an accomplished legal advocate and circuit judge, Judge Ungaro has been active in the Florida bar and her community. She served a 3-year term on the Florida Supreme Court's Race and Ethnic Bias Study Commission. She has also been involved with the City of Miami Youth Task Force. In short, Judge Ungaro enjoys a fine reputation in her community and is well regarded by the local bar.

I trust each of you will examine Judge Ursula Ungaro's fine credentials. Judge Ungaro will make an outstanding addition to the Federal bench and I thank the Senate for confirming her nomination prior to sine die.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

THANKS OF THE SENATE TO THE VICE PRESIDENT

Mr. DOLE. Mr. President I send a resolution to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 359) tendering the thanks of the Senate to the Vice President for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 359) was agreed to, as follows:

S. RES. 359

Resolved, That the thanks of the Senate are hereby tendered to the Honorable Dan Quayle, Vice President of the United States and President of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the second session of the One Hundred Second Congress.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THANKS OF THE SENATE TO THE PRESIDENT PRO TEMPORE

Mr. MITCHELL. Mr. President, I send a resolution to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 360) tendering the thanks of the Senate to the President pro tempore for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 360) was agreed to, as follows:

S. RES. 360

Resolved, That the thanks of the Senate are hereby tendered to the Honorable Robert C. Byrd, President pro tempore of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the second session of the One Hundred Second Congress.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMMENDING EXEMPLARY LEADERSHIP OF THE MAJORITY LEADER

Mr. DOLE. Mr. President, I send a resolution to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 361) to commend the exemplary leadership of the majority leader.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 361) was agreed to, as follows:

S. RES. 361

Resolved That the thanks of the Senate are hereby tendered to the distinguished Majority Leader, the Senator from Maine, the Honorable George J. Mitchell, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the second session of the 102d Congress.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMMENDING EXEMPLARY LEADERSHIP OF THE REPUBLICAN LEADER

Mr. MITCHELL. Mr. President, I send a resolution to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. 362) to commend the exemplary leadership of the Republican leader.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. 362) was agreed to, as follows:

S. RES. 362

Resolved, That the thanks of the Senate are hereby tendered to the distinguished Republican Leader, the Senator from Kansas, the Honorable Robert Dole, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the second session of the 102d Congress.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the able was agreed to.

AMENDING PARAGRAPH 5 OF RULE XXIX OF THE STANDING RULES OF THE SENATE

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 363, a resolution submitted earlier today by myself and Senator Dole to amend paragraph 5 of rule XXIX of the Standing Rules of the Senate relating to confidential business and proceedings; that my floor statement relative to the conclusion of Mr. Peter Fleming's investigation of the unauthorized disclosures of Senate information, and the reasons for modifying rule XXIX, be inserted at this point in the Record; that the resolution be agreed to and the motion to reconsider laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 363) was agreed to, as follows:

S. Res. 363

Whereas, it is the fundamental policy of the Senate to favor openness and public access to information;

Whereas, notwithstanding the Senate's policy of openness, committees, subcommittees, and offices of the Senate at times properly treat their business and proceedings as confidential in order to effectively perform their functions, and to protect the privacy and other interests of individuals and organizations who provide information or are the subject of inquiry;

Whereas, when it is determined that a committee, subcommittee, or office of the Senate should treat a proceeding or matter as confidential, a breach of that confidentiality is destructive of mutual trust and respect, reflects poorly on the institution, and may seriously harm the privacy and other interests of individuals and organizations;

Whereas, the Standing Rules of the Senate should explicitly prohibit the unauthorized disclosure of the confidential business and proceedings of the committees, subcommittees, and offices of the Senate: Now therefore be it

Resolved, That paragraph 5 of rule XXIX of the Standing Rules of the Senate is amended by—

(1) striking "or officer" and inserting ", officer, or employee";

(2) inserting ", including the business and proceedings of the committees, subcommittees and offices of the Senate," after "proceedings of the Senate"; and

(3) inserting "or employee" after "if an officer".

Mr. MITCHELL. Mr. President, as Senators will recall, on May 4, Peter Fleming, Jr., the Temporary Special Independent Counsel appointed pursuant to Senate Resolution 202 of this Congress, transmitted to the distinguished Republican Leader and to me a report of his findings concerning unauthorized disclosures of Senate information. Senator Dole and I wish to reiterate our appreciation to Mr. Fleming and his associates for undertaking this difficult assignment, and for performing it with skill and dedication.

In accordance with section 7 of Senate Resolution 202, Senator Dole and I promptly made the Counsel's report available to all Senators. The report was also made available to the public and has been printed as an official document of the Senate, Senate Document 102–20.

In addition to providing that the leaders shall make the report available to all Senators, section 7 of Senate Resolution 202 places further responsibilities on the majority and minority leaders. They are to make:

> (1) a determination on referral to the appropriate law enforcement authority of any possible violations of Federal law;
>
> (2) a determination on referring to the appropriate committee any disciplinary action that should be taken against any Senator, official, employee, or person engaged by contract or otherwise to perform services for the Senate, who may have violated any rule of the Senate or of any Senate committee;
>
> (3) a determination on referring to the appropriate executive branch [official] any questions involving the conduct of any official or employee of the executive branch responsible for the unauthorized disclosure; and
>
> (4) recommendations for any changes in Federal law or in Senate rules that should be made to prevent similar unauthorized disclosures in the future.

Items 1 through 3, quoted above, raise the question whether, with respect to disclosures of information within the purview of Senate Resolution 202, the conduct of any individual should be the subject of further investigation by a law enforcement agency, or by either the Senate or any executive branch disciplinary body. After careful consideration of the report of the Special Independent Counsel, the distinguished Republican Leader and I share the view that it is unlikely that additional investigation would add appreciably to the knowledge obtained by Mr. Fleming in the course of his thorough inquiry. Accordingly, we have concluded that no further investigation for either criminal or disciplinary purposes is warranted.

However, concerning measures to prevent similar unauthorized disclosures in the future, we have concluded that action, in the form of a Senate rule amendment, would be beneficial. For that reason, at the conclusion of these remarks, I will send to the desk, on behalf of myself and Senator Dole, a resolution to amend paragraph 5 of rule XXIX of the Standing Rules of the Senate on the disclosure of the confidential business and proceedings of the Senate.

Rule XXIX(5), which was initially adopted in 1844, now provides:

> Any Senator or officer of the Senate who shall disclose the secret or confidential business or proceedings of the Senate shall be liable, if a Senator, to suffer expulsion from the body; and if an officer, to dismissal from the services of the Senate, and to punishment for contempt.

During the Special Independent Counsel's investigation the argument was made by some that no Senate rule prohibits the disclosure of confidential committee information to persons outside of the Senate. That argument was based in part on the fact that rule XXIX(5) refers to Senate proceedings, and not explicitly to committee proceedings.

We believe, as did the Special Independent Counsel, that rule XXIX(5) presently applies to disclosures of committee proceedings, which are, without question, Senate proceedings. We also concur that it would be beneficial to eliminate any ambiguity on this point. Although public access to committee proceedings is almost always favored, there are special occasions when other interests warrant the judgment of Senate committees that it is essential to maintain confidentiality. By providing that the phrase "business or proceedings of the Senate" includes the business or proceedings of committees, our amendment would leave no doubt that the standing rules prescribe severe penalties for the unauthorized disclosure of the confidential business or proceedings of committees.

The events that gave rise to the Special Independent Counsel's investigation highlight why confidentiality may be important for committees. To begin with, firm promises of confidentiality may be necessary to protect individuals who have sensitive information to provide to the Senate but who do not wish their identities to be made public. Their willingness to provide information to the Senate may depend upon the ability of the Senate to keep its promises of confidentiality.

Second, fairness to individuals who are the subject of Senate inquiries often requires that a preliminary exploration of allegations, that might reflect adversely on these individuals, occur in closed session to assess their validity.

Third, candid discussions among Members depend upon a trust that is based, in part, on a willingness of all Members to abide by the practices of the Senate. Those practices place responsibility for certain decisions, such as the decision whether to release confidential information, in the hands of the Senate as a whole, or in committees of the Senate, rather than in individual Senators. The unilateral decision by a Member or employee to release confidential committee information is inconsistent with the Senate's practice of making such decisions openly and collectively. Arrogation of this responsibility by individuals can destroy mutual trust among Members and be harmful to this institution.

In addition to amending rule XXIX(5) to explicitly apply to committees and subcommittees of the Senate, the resolution would amend the rule to specify that it applies to offices of the Senate. A number of offices of the Senate have obligations both under statutes and rules to maintain the confidentiality of certain classes of Senate information. The amendment would make clear that the rule applies to the Offices of the Secretary, Sergeant at Arms, Legislative Counsel, Legal Counsel, and Senate Fair Employment Practices, each of which has the responsibility for maintaining confidential Senate information. Finally, the resolution would amend rule XXIX(5) to make clear that it applies to employees of the Senate as well as to Members and officers of the Senate. Thus, as amended, rule XXIX(5) clearly applies to the business or proceedings of committees, subcommittees, and offices of the Senate, and to all Senate employees.

There should be no doubt that rule XXIX(5) broadly prohibits all unauthorized disclosures of the secret or confidential business or proceedings of the Senate. As used throughout rule XXIX, the words secret and confidential refer to all information the Senate treats as confidential, including information received in closed session, information obtained in the confidential phases of investigations, and classified national security information. This amendment to rule XXIX is in no way intended to modify or supersede the provisions of Senate Resolution 400 of the 94th Congress.

The Select Committee on Ethics—which has jurisdiction, under section 2(a) of the Senate Resolution 338 of the 88th Congress, as amended, over violations of Senate rules relating to the conduct of Members, officers, and employees of the Senate—would have jurisdiction to consider an allegation of a violation of rule XXIX(5). However, the jurisdiction of the Ethics Committee should be reserved for grave breaches of confidentiality that cannot be resolved by the committee or offices in which those breaches occur. Almost always, questions about leaks should be addressed first by Members or committees or offices themselves. As I stated during consideration of Senate Resolution 202, the most effective way to enforce the Senate's policy against leaks is for each Member to make clear that leaks by the Member's staff will not be tolerated. In offering this resolution, it is our intention that the Ethics Committee exercise discretion in determining the appropriate allocation of responsibility between it and the committees or other entities of the Senate in which issues of unauthorized disclosure may arise.

Senate Resolution 202 was adopted to provide for a thorough and independent investigation of alleged disclosures of Senate information so that the Senate could resolve, if possible, the particular matters that occasioned it. While individual responsibility cannot be assigned for the disclosures that were investigated, we can commit ourselves to preventing future leaks of confidential Senate information by making clear to members of our own staffs that such conduct will not be tolerated and by removing any doubt that unauthorized disclosures, including the unauthorized disclosure of the business or proceedings of committees and offices of the Senate, are prohibited by the rules of the Senate. To that end, on behalf of myself and the distinguished Republican leader, I send to the desk a resolution to amend paragraph five of rule XXIX of the Standing Rules of the Senate.

Mr. STEVENS. Mr. President, I commend the distinguished majority and minority leaders for their resolution amending rule XXIX(5) of the Standing Rules of the Senate. I believe this is a useful clarification of the scope of rule XXIX(5).

I raised the question of the extent to which the rule XXIX(5) prohibition covers classified national security information and our Rules Committee staff discussed the matter with Senate legal counsel, the Office of Senate Security, the Intelligence Committee, the Defense Appropriations Subcommittee, Ethics Committee, and the majority staff at Rules Committee. We are in agreement that the words secret and confidential in Rules XXIX(5) clearly covers classified national security information.

I would also add that although the title of rule XXIX is, for historical reasons, executive sessions it should be clear to all Members that the scope of rule XXIX is currently far broader. When the Rules Committee, at some future time, takes up a package of technical corrections to the Standing Rules of the Senate, I will offer an amendment to the title of rule XXIX to reflect its broad scope.

I thank the leaders for their attention.

NOTIFICATION TO THE PRESIDENT CONCERNING THE PROPOSED SINE DIE ADJOURNMENT OF THE SESSION

Mr. MITCHELL. Mr. President, it is customary at the time of sine die adjournment for the two leaders to place a telephone call to the President to notify the President of the sine die adjournment. We have attempted to arrange such a call in conformance with the custom and practice which I just described.

However, Senator DOLE and I have been informed that the President's schedule is such that the call cannot be arranged at this time. The President is attending an event outside the city and then will be flying back to Washington later this evening.

So Senator DOLE and I have agreed to call individually and personally tomorrow to notify the President formally of the action which will occur this evening and which we would otherwise have made had we been able to arrange the call.

Mr. DOLE. Mr. President, if the majority leader will yield, I want to confirm what the majority leader stated. The President is in Texas this evening and will not be available for a couple of hours. Therefore, I think this would be the best way to proceed. We can each call him individually tomorrow and give him the appropriate remarks on the Congress, and I will do that sometime early afternoon tomorrow.

Mr. MITCHELL. So, Mr. President, we regret that we are unable to make the connection because of the President's schedule, but that is, of course, certainly understandable. No one could have known precisely when we were going to finish, including us. Therefore, we do look forward to speaking to the President tomorrow.

U.S. SENTENCING COMMISSION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4797, a bill to direct the United States Sentencing Commission to make sensing guidelines for Federal criminal cases that provide sentencing enhancements for hate crimes, received from the House; that the bill be deemed the third time, passed and the motion to reconsider laid upon the table.

Mr. DOLE. Mr. President, I have an objection from this side.

The PRESIDING OFFICER. Objection is heard.

Mr. DOLE. It is not by objection but there is an objection.

BROWN VERSUS BOARD OF EDUCATION NATIONAL HISTORIC SITE

Mr. DOLE. Mr. President I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2890.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2890) entitled "An Act to provide for the establishment of the Brown v. Board of Education National Historic Site in the State of Kansas, and for other purposes," do pass the following amendment:

Strike out all after the enacting clause, and insert:

TITLE I—BROWN V. BOARD OF EDUCATION NATIONAL HISTORIC SITE

SEC. 101. DEFINITIONS.

As used in this title—

(1) the term "Secretary" means the Secretary of the Interior.

(2) The term "historic site" means the Brown v. Board of Education National Historic Site as established in section 103.

SEC. 102. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds as follows:

(1) The Supreme Court, in 1954, ruled that the earlier 1896 Supreme Court decision in

Plessy v. Ferguson that permitted segregation of races in elementary schools violated the fourteenth amendment to the United States Constitution, which guarantees all citizens equal protection under the law.

(2) In the 1954 proceedings, Oliver Brown and twelve other plaintiffs successfully challenged an 1879 Kansas law that had been patterned after the law in question in Plessy v. Ferguson after the Topeka, Kansas, Board of Education refused to enroll Mr. Brown's daughter, Linda.

(3) Sumner Elementary, the all-white school that refused to enroll Linda Brown, and Monroe Elementary, the segregated school she was forced to attend, have subsequently been designated National Historic Landmarks in recognition of their national significance.

(4) Sumner Elementary, an active school, is administered by the Topeka Board of Education; Monroe Elementary, closed in 1975 due to declining enrollment, is privately owned and stands vacant.

(b) Purposes.—The purposes of this title are—

(1) to preserve, protect, and interpret for the benefit and enjoyment of present and future generations, the places that contributed materially to the landmark United States Supreme Court decision that brought an end to segregation in public education; and

(2) to interpret the integral role of the Brown v. Board of Education case in the civil rights movement.

(3) to assist in the preservation and interpretation of related resources within the city of Topeka that further the understanding of the civil rights movement.

SEC. 103. ESTABLISHMENT OF THE CIVIL RIGHTS IN EDUCATION: BROWN V. BOARD OF EDUCATION NATIONAL HISTORIC SITE.

(a) In General.—There is hereby established as a unit of the National Park System the Brown v. Board of Education National Historic Site in the State of Kansas.

(b) Description.—The historic site shall consist of the Monroe Elementary School site in the city of Topeka, Shawnee County, Kansas, as generally depicted on a map entitled "Brown v. Board of Education National Historic Site," numbered Appendix A and dated June 1992. Such map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

SEC. 104. PROPERTY ACQUISITION.

The Secretary is authorized to acquire by donation, exchange, or purchase with donated or appropriated funds the real property described in section 103(b). Any property owned by the State of Kansas or any political subdivision thereof may be acquired only by donation. The Secretary may also acquire by the same methods personal property associated with, and appropriate for, the interpretation of the historic site: *Provided, however*, That the Secretary may not acquire such personal property without the consent of the owner.

SEC. 105. ADMINISTRATION OF HISTORIC SITE.

(a) In General.—The Secretary shall administer the historic site in accordance with this title and the laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (39 Stat. 535), and the Act of August 21, 1935, (49 Stat. 666).

(b) Cooperative Agreements.— The Secretary is authorized to enter into cooperative agreements with private as well as public agencies, organizations, and institutions in furtherance of the purposes of this title.

(c) General Management Plan.—Within two complete fiscal years after funds are made available, the Secretary shall prepare and submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate a general management plan for the historic site.

SEC. 106. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $1,250,000 to carry out the purposes of this title including land acquisition and initial development.

TITLE II—DRY TORTUGAS NATIONAL PARK

SEC. 201. ESTABLISHMENT OF DRY TORTUGAS NATIONAL PARK.

(a) In General.—In order to preserve and protect for the education, inspiration, and enjoyment of present and future generations nationally significant natural, historic, scenic, marine, and scientific values in South Florida, there is hereby established the Dry Tortugas National Park (hereinafter in this title referred to as the "park").

(b) Area Included.—The park shall consist of the lands, waters, and interests therein generally depicted on the map entitled "Boundary Map, Fort Jefferson National Monument", numbered 364-90,001, and dated April 1980 (which is the map referenced by section 201 of Public Law 96-287. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

(c) Abolition of Monument.—The Fort Jefferson National Monument is hereby abolished.

SEC. 202. ADMINISTRATION.

(a) In General.—The Secretary shall administer the park in accordance with this title and with the provisions of law generally applicable to units of the national park system, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; U.S.C. 1, 2, 3, and 4).

(b) Management Purposes.—The park shall be managed for the following purposes, among others:

(1) To protect and interpret a pristine subtropical marine ecosystem, including an intact coral reef community.

(2) To protect populations of fish and wildlife, including (but not limited to) loggerhead and green sea turtles, sooty terns, frigate birds, and numerous migratory bird species.

(3) To protect the pristine natural environment of the Dry Tortugas group of islands.

(4) To protect, stabilize, restore, and interpret Fort Jefferson, an outstanding example of nineteenth century masonry fortification.

(5) To preserve and protect submerged cultural resources.

(6) In a manner consistent with paragraphs (1) through (5), to provide opportunities for scientific research.

SEC. 203. LAND ACQUISITION AND TRANSFER OF PROPERTY.

(a) In General.—Within the boundaries of the park the Secretary may acquire lands and interests in land by donation or exchange. For the purposes of acquiring property by exchange with the State of Florida, the Secretary may, notwithstanding any other provision of law, exchange those Federal lands which were deleted from the park by the boundary modifications enacted by section 201 of the Act of June 28, 1980 (Public Law 96-287), and which are directly adjacent to lands owned by the State of Florida outside of the park, for lands owned by the State of Florida within the park boundary.

(b) United States Coast Guard Lands.—When all or any substantial portion of lands under the administration of the United States Coast Guard located within the park boundaries, including Loggerhead Key, have been determined by the United States Coast Guard to be excess to its needs, such lands shall be transferred directly to the jurisdiction of the Secretary for the purposes of this title. The United States Coast Guard may reserve the right in such transfer to maintain and utilize the existing lighthouse on Loggerhead Key in a manner consistent with the purposes of the United States Coast Guard and the purposes of this title.

(c) Administrative Site.—The Secretary is authorized to lease or to acquire, by purchase, donation, or exchange, and to operate incidental administrative and support facilities in Key West, Florida, for park administration and to further the purposes of this title.

SEC. 204. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this title. Any funds available for the purposes of the monument shall be available for the purposes of the park, and authorizations of funds for the monument shall be available for the park.

TITLE III—NATIONAL PARK SYSTEM ADVISORY COMMITTEES

SEC. 301. NATIONAL PARK SYSTEM ADVISORY COMMITTEES.

(a) Charter.—The provisions of section 14(b) of the Federal Advisory Committee Act (5 U.S.C. Appendix; 86 Stat. 776) are hereby waived with respect to any advisory commission or advisory committee established by law in connection with any national park system unit during the period such advisory commission or advisory committee is authorized by law.

(b) Members.—In the case of any advisory commission or advisory committee established in connection with any national park system unit, any member of such Commission or Committee may serve after the expiration of his or her term until a successor is appointed.

SEC. 302. MISSISSIPPI NATIONAL RIVER AND RECREATION AREA.

Section 703(i) of the Act of November 18, 1988 entitled "An Act to provide for the designation and conservation of certain lands in the States of Arizona and Idaho, and for other purposes" (Public Law 100-696; 102 Stat. 4602; 16 U.S.C. 460zz-2) is amended by striking "3 years after enactment of this Act" and inserting "3 years after appointment of the full membership of the Commission".

SEC. 303. EXTENSION OF GOLDEN GATE NATIONAL RECREATION AREA ADVISORY COMMITTEE.

Section 5(g) of the Act approved October 27, 1972 (16 U.S.C. 460bb-4(g)), is amended by striking out "twenty years" and inserting in lieu thereof "thirty years".

TITLE IV—NEW RIVER WILD AND SCENIC STUDY

SEC. 401. DESIGNATION OF NEW RIVER AS A STUDY RIVER.

Section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)) is amended by adding the following new paragraph at the end thereof;

"( ) New River, West Virginia and Virginia.—The segment defined by public lands commencing at the U.S. Route 460 bridge over the New River in Virginia to the maximum summer pool elevation (one thousand four hundred and ten feet above mean sea level) of Bluestone Lake in West Virginia; by the Secretary of the Interior. Nothing in this Act shall affect or impair the management of the Bluestone project or the authority of any department, agency or instrumentality of the United States to carry out the project purposes of that project as of the date of enactment of this paragraph. The study of the river segment identified in this paragraph shall be completed and reported on within one year after the date of enactment of this paragraph."

TITLE V—BOSTON HARBOR ISLANDS STUDY

SEC. 501. BOSTON HARBOR ISLANDS STUDY.

(a) IN GENERAL.—The Secretary of the Interior shall, within 1 year after the date of the enactment of this title, conduct a study of the Boston Harbor Islands to assess the opportunities for the National Park Service to contribute to State, regional, and local efforts to promote the conservation of the Boston Harbor Islands and their use and enjoyment by the public. In conducting the study, the Secretary shall—

(1) consult closely with and explore means for expanded cooperation with the Massachusetts Department of Environmental Management, the Metropolitan District Commission, and the City of Boston;

(2) evaluate the suitability of establishing the Boston Harbor Islands as a unit of the National Park System;

(3) assess the opportunities for expanded tourism, public education, and visibility by managing the Boston Harbor Islands in conjunction with units of the National Park System in the vicinity, including the Adams National Historic Site in Qunicy, Massachusetts; and

(4) evaluate the possibility for developing ferry service and other transportation links among those units to enhance their public use and enjoyment.

(b) REPORT.—The Secretary of the Interior shall submit to the Congress a report on the findings, conclusions, and recommendations of the study under subsection (a), by not later than 1 year after the date of the enactment of this title.

Mr. DOLE. Mr. President, I move that the Senate concur in the House amendment.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RETIRING SENATORS

WARREN RUDMAN

Mr. SIMPSON. Mr. President, I would like to say a few words about our colleagues who will no longer be with us. I would not want to interrupt the activities of the Senate because the Senator from Kentucky and I will likely be performing our duties in winding up, but I do want to say a few brief words, first about Senator WARREN RUDMAN.

There really is not much more to add to what has already been said. I have made my comments wishing him well publicly as well as privately. I cannot imagine him being retired at all! Someone said, "did you know WARREN RUDMAN was retiring?" I said, "I know WARREN RUDMAN. He is anything but retiring."

He made quite a name for himself, and as he leaves he can look back on a Senate career that has been truly exemplary. He brought us, along with his colleagues, the Gramm-Rudman-Hollings law. He earned the deep respect and admiration of all of us. My former law partner in Wyoming, a man named Bob Ranck, lovely friend, told me about this Senator RUDMAN. He said he was the toughest fighter pound for pound he ever knew when he was the light heavyweight NCAA champion at Syracuse. My partner was the NCAA heavyweight champion when he fought at Wisconsin.

Senator RUDMAN has always been rock solid, a breath of fresh air, a lovely friend, fair to an extraordinary degree. He has simply set his goal on fairness, on the rules of law, on the rules of evidence, and on the truth. He let nothing stand in the way of that. He refused to allow any man or woman to be condemned here or in the Ethics Committee based on gossip, rumor, or innuendo. He always held to that important creed. He has a remarkable legal background, and a rich understanding of the rules of evidence and the rules of procedure. He brought great honor to this body.

I admire him, and respect him so much, for bucking the tide of easy answers, swift emotion, and for just simply doing his homework. Now he will go on to work with our former colleague, Senator Paul Tsongas, and the two of them will be in the ring together. They will be doing important things outside of this Chamber. At the same time, important work will continue to be performed by Members within this Chamber, such as Senator NUNN, Senator DOMENICI, and others, who are a part of the Strengthening of America Commission. We all know what we have to do to right this country.

WARREN RUDMAN has helped to show us the way. He will depart here but he will never be very far from our thoughts. He is truly a wonderful, wonderful man. As I said recently, he is all "the man there is." I wish him well.

I congratulate Senator RUDMAN for his remarkable service in the U.S. Senate. In his term of service he accomplished more and worked harder than some people do in a lifetime. He will be sorely missed—by the people of the United States of America, by his constituents in his beautiful home State of New Hampshire, by his colleagues in the Senate, and especially by this Senator—who always felt a very special bond of friendship with him.

He has greatly enriched my life and I thank him for it. May God bless him—for he is a very special man. He will depart from the Senate but he will never be far from our thoughts. We send with him all of our best wishes and warm regards as he begins this new chapter in his life. I will deeply miss him.

JAKE GARN

Then let me pay tribute to JAKE GARN. I watched him in this arena for nearly 14 years. He is a tireless worker, a man of great integrity. He has never, ever been afraid to state his convictions rather richly. He is a man of substance. If we had heeded his warnings about the savings and loan situation so many years ago, we would have been so much better off. He cataloged it. He described it. He said here it comes. And we ignored it.

As he leaves here, he will be deeply missed. He has a toughness, a kindness, and a sweetness which is a part of the strength of his character that we all know and admire so much in him.

When he returns to his native State of Utah and to the bosom of his family—we will be losing a very important Member of our Senate family. We will miss him. We have come to know him and come to know his marvelous wife Kathy and their children and we wish them well.

ALAN CRANSTON

I would like to say a word about Senator CRANSTON. He is on the floor. Senator CRANSTON was the chairman of the Veterans' Affairs Committee when I came here. I went to him and I said, "I know very little of this jurisdiction. I have no staff yet. I am going to deal with you right up front. I have to respect what you tell me. I know you will not trick me. I will come and learn from you and your staff until my staff is able to bring me up to speed." He said that is fair enough. And so with Senator CRANSTON, Jonathan Steinberg, Ed Scott, and Beth Paulser—I learned the ropes. I learned that when ALAN CRANSTON told me something, that was good enough for me.

There could not be two more divergent people politically than ALAN CRANSTON and ALAN SIMPSON. We have the same first name and same hairline, but that is about it. And yet this is a man for whom I came to have great affection. I watched him go through some of his own deep personal anguish. He was always available to me at any time. He was fair. I watched him seek the Presidency based upon his deep convictions. I watched him, and I came to admire the man.

I just want to say that of all the things that happened to us in this rather remarkable arena, an interesting book could be written, called a "Chairman and Ranking." It is a unique and special relationship between a Chairman and the Ranking Member.

The first call I had when the Republicans took over the U.S. Senate in 1980 was a call from ALAN CRANSTON and he said, "Congratulations, Mr. Chairman," which took me aback somewhat because I had only been here 2 years and there were people who had been here 22 years who had never been chairman of a committee.

So from that point he again was there to assist, and to strengthen me. Oftentimes he would say, "Alan, if you keep going, you are going to get in deep trouble with the veterans organizations," but that just goaded me on. I still have a great deal of trouble with the professional fund raising veterans organizations.

I will miss his steady hand as he pulled me down in the Chair saying, "Not now, not now." And so to my friend ALAN CRANSTON, whom I will deeply miss in very unique ways—we never lost our mutual respect and regard for each other. This is a man who has given his entire life to his State and to his Nation. Way back in the days when he traveled as a journalist, he came back to warn us as to what Hitler was saying in Mein Kampf, the true intent of it, not what he was peddling in Germany versus what was being said in America. ALAN CRANSTON said, "You better watch this man." He brought that to the attention of the world.

It has been my great privilege to consider him my friend. We have shared much. There is not time to relate it all. I would be maudlin in doing so. But I shall miss him in a very unique way.

I commend him. I wish him well. I know only one thing—he will continue to be involved in the quest for peace. He has devoted whatever strengths he has, to seek peace in the world. I admire that very much.

Mr. CRANSTON. Mr. President, I thank the Senator from Wyoming very much. I consider him my closest friend on the other side of the aisle. It has been a great pleasure to work with him on many matters, on the Veterans' Committee where we have had our differences when we were both whips, he on his side of the aisle and I on mine. We confided in each other, worked out many problems that beset this body.

We have not always been at odds on the issues. To give one example, we both have been members of the Aspen Institute Group that has had seminars twice a year on American, Russian, and related issues, and I think we have grown together in our understanding of that part of the world and our relationship to it, and in our views of how to deal with that part of the world.

ALAN SIMPSON is a man that learns from experience and from exposure to ideas, and it has been a wonderful pleasure to have him as a friend and to work with him.

STEVE SYMMS

Mr. President, I will truly miss my very good friend STEVEN SYMMS when he retires from the Senate at the end of this Congress. I have come to know Senator SYMMS very well through my work with him on the Senate Environment and Public Works Committee. He is a man of remarkable energy.

I have come to know him very well through my work on the Senate Environment and Public Works Committee. He is strong, tenacious, tough, fair. Ironically enough, I have never seen him better at his legislative craft than in these last months. He and Senator MOYNIHAN brought us a remarkable transportation bill that was truly significant for the Nation.

And this tough marine—is a very special person. I think all of us who know him, and I hear a chuckle from my colleague from Kentucky, because if you know STEVE SYMMS you know an old tough marine.

Mr. FORD. No, but he is not old. That is what I was chuckling about.

Mr. SIMPSON. Yes. He is younger than I.

Mr. FORD. Or us.

Mr. SIMPSON. So he believes in the old Marine creed semper fi.

Senator SYMMS has received numerous awards from such groups as the National Federation of Independent Business, the American Security Council, the Watchdog of the Treasury and the U.S. Chamber of Commerce. He is also the founder of Idaho's Working Partners Organization whose volunteer work finds new ways to address social problems through nongovernmental solutions.

He loves the west. He has protected western agriculture, mining, oil and gas, and energy interests. Those are the things that make up the West. Those things are not understood often in the East. So he is now retiring. His lovely wife Loretta is an asset to the entire Senate. She is a very special woman and a great asset to him. She, by virtue of her work in the Sergeant at Arms office, will continue her outstanding service here.

He will be sorely missed. by all of us. He will be sorely missed by me. He was and still is a very, very wonderful gentleman to deal with, because he is always up front direct, straight. You do not have to do any guess work. I appreciate people like that in my line of work, I tell you that.

SENATOR BROCK ADAMS

Mr. President, Senator BROCK ADAMS was first elected to Congress in 1961. He served in the house until 1977. He resigned that year to serve as President Carter's Secretary of Transportation. That is when I came to know him. From 1981 until 1986, he resumed the practice of law. In 1986, he was elected to the Senate, and I came to know him better. I have greatly enjoyed his presence here. There are not too many people in Congress, or in the entire country, who have been so actively involved in making national policy over the course of four decades.

Although we have had numerous differences on matters of policy, no one would ever say that Senator ADAMS was not a diligent advocate for the causes he so ardently believed in. Whenever you found yourself on the opposite side of an issue from Senator ADAMS, you knew that you were going to have to be prepared—because he always would be.

Most Senators might agree that there is no real political benefit in serving as the Chairman of the D.C. Appropriations Subcommittee. However, that was not a motivating factor for Senator ADAMS. He has historically been a great advocate for the District, and coauthored legislation granting the District home rule. The fact that the chairmanship of that Subcommittee was a tough job did not alter his enthusiasm for his work. Taking on those kinds of tough legislative tasks with vigor has been the hallmark of Senator ADAMS' Government career.

The characteristics that made him an effective legislator will continue to serve him well as he enters into a new chapter in his life. I extend my best wishes to Senator ADAMS upon his retirement, and to his wife, Betty.

SENATOR ALAN DIXON

Then just a word about Senator ALAN DIXON. This man was a very important part of the Senate. Here is a man of style, substance, flair, grace, and honesty. He has honest-to-goodness concerns for his fellow men and his work has been remarkable to behold. As the old saying goes for you to have a friend, you have to be one. That is certainly true of ALAN DIXON.

I have been called a lot of things in my political career, but the one I never did mind being called was "Al the pal." I have heard ALAN DIXON called that many times, and it is very well earned, very well earned. He is blessed throughout with a remarkable helpmate at his side, Jady, a marvelous lady. Ann and I have come to know them and we wish them well in the next chapter in the real world. I wish him well. He will be a tough act to follow:

SENATOR TIM WIRTH

Finally, with 2 minutes left, the occupant of the chair.

I want to bid farewell to a colleague whose commitment to the issues he believe in takes a back seat to none in this Chamber—particularly with regards to the environment issues, as Senator WIRTH sees them to be and what be believes needs to de done.

I have watched him champion issues, get involved in issues, and help to bring them to the forefront of the national and international agendas. He is very diligent, sincere, and forceful advocate for environmental causes.

During his time in this body, Senator WIRTH has exercised a vigorous defense of woman's rights and reproductive freedom. I have always admired that.

Those two interests dovefail in the work he has done on global population issues. I think more than any other member of this body, the Senator from Colorado had considered the most fundamental, essential question of consequence to the global environment—one which I share totally—which is simply: How many footprints can this earth accommodate, and what can we, as a global community, do to keep an exploding population from devastating the planet?

I have been working with the Senator on this issue and I am sure that in the months and years to come we will see some of the fruition of our work.

As he pursues his new endeavors beyond Washington, I hope that he will continue to make his presence known and his knowledge available to me and to other members of this body.

I have greatly enjoyed working with him. And my wife Ann and I have come to enjoy him and Wren in an exceedingly rich manner.

TRIBUTE TO SENATOR WALLOP AND SENATOR JOHNSTON

Mr. SIMPSON. Mr. President, let me just pay special tribute to my senior colleagues, Senator WALLOP. In 40 years of friendship, we have legislated together in Cheyenne, WY, and here; in Cheyenne, in 1965; I joined him here in 1979.

In over 25 years of legislating together, I have never seen him with more prowess and skill as when he worked with Senator BENNETT JOHNSTON on the energy bill. The two of them deserve tremendous accolades from their peers, and I want to just express that, at this time, I have watched my friend legislate, work, succeed, and come up short sometimes. And I have never seen him better in any situation as he was with the energy bill where he was at the peak of his powers. I commend him, and the country will commend him, and we should commend both of them, Senator JOHNSTON and Senator WALLOP.

I thank you.

EXECUTIVE SESSION

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to executive session; that the Committee on Foreign Relations be discharged from consideration of the following nominations for the Department of State:

David J. Dunford, to be Ambassador to the Sultanate of Oman;

William A. Rugh, to be Ambassador to the United Arab Emirates;

John Cameron Monjo, to be Ambassador to the Islamic Republic of Pakistan.

I further ask unanimous consent that the Senate proceed to immediate consideration, and that the nominees be confirmed, en bloc, that any statements appear in the RECORD as if read, that the motions to reconsider be laid upon the table, en bloc, and that the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed are as follows:

DEPARTMENT OF STATE

David J. Dunford, to be Ambassador to the Sultanate of Oman;

William A. Rugh, to be Ambassador to the United Arab Emirates;

John Cameron Monjo, to be Ambassador to the Islamic Republic of Pakistan.

LEGISLATIVE SESSION

Mr. FORD. I ask unanimous consent that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE INTERNATIONAL DOLPHIN CONSERVATION ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of H.R. 5419, the International Dolphin Conservation Act of 1992, that the Senate then proceed to its immediate consideration, the bill be deemed read three times, passed, the motion to reconsider laid upon the table, and any statements appear in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 5419) was deemed read a third time and passed.

Mr. KERRY. I rise today in strong support of H.R. 5419, the International Dolphin Conservation Act of 1992.

The purpose of this bill is to encourage a global moratorium on fishing practices that cause the slaughter of dolphins in the course of commercial tuna fishing operations and, in so doing, to make good on the 20-year-old promise of the Marine Mammal Protection Act [MMPA]—to reduce the mortality of marine mammals in the course of fishing operations to "incidental levels, approaching zero."

For reasons that no one fully understands, schools of large yellowfin tuna associate with schools of dolphins in the eastern tropical Pacific Ocean [ETP] off the coasts of southern California and Central and South America. Since the late 1950's, fishermen have deployed large purse seine nets around the schools of dolphin in order to harvest the tuna swimming beneath. Despite efforts by fishermen to release the encircled dolphins, some become trapped in the nets and drown. This phenomenon was one of the major problems the MMPA was enacted to address in 1972, but it has persisted—although reduced in scope—ever since.

The International Dolphin Conservation Act recognizes that domestic action alone is not sufficient to end the killing of dolphins. Throughout the past decade, the primary responsibility for dolphin mortality has rested with the foreign flag fishing fleets of Mexico, Venezuela, Vanuatu, and elsewhere. Accordingly, H.R. 5419 provides incentives for foreign nations to agree to a moratorium of at least 5 years on the commercial harvest of tuna using methods that endanger dolphins.

This action has been made necessary by the failure of the MMPA to achieve fully its goal of ending the needless destruction of marine mammals. Over the past 20 years, more than 1 million dolphins have been killed in fishing nets intentionally deployed to encircle them. Throughout this period, serious and well-intentioned efforts have been made to reduce dolphin mortality through improved fishing methods and at times heroic measures to rescue marine mammals entangled in the nets. The American tuna industry has led this effort. As a result, the number of dolphins killed by U.S. tuna fishermen in the ETP dropped from 360,000 in 1972 to an annual quota of less than 20,000 throughout the 1980's. Foreign fleets, however, killed more than 112,000 dolphins in 1986 alone.

In 1988, Congress acknowledged the international nature of the problem by requiring tough and enforceable trade sanctions against any nation that fails to adopt dolphin-protection procedures comparable to those used in the ETP by the U.S. fleet. These changes resulted in improved efforts by the foreign fleet to protect dolphins and reduced the number killed to an estimated 25,000 in 1991.

Despite the progress, however, it is clear that the promise of reducing dolphin mortality "to incidental levels, approaching zero" is not being achieved.

The tuna industry, foreign and domestic, has expressed a continued commitment to reducing dolphin mortality further through more careful methods, better enforcement, incentives for skippers and prohibitions on setting for tuna at sundown, when the greatest number of deaths occur. This has not proven sufficient, however, to ease public concern about the issue.

In April, 1990, the three principal American tuna processing companies, Starkist, Van Camp—Chicken of the Sea—and Bumblebee announced that they would stop canning tuna caught in association with dolphin, and begin labeling their tuna products with "dolphin-safe" symbols. This voluntary action has limited the American market for canned tuna almost exclusively to that which is considered "dolphin-safe". It has also virtually ended major American participation in the tuna fishery in the ETP. The small tuna fleets of Panama and Ecuador, moreover, are now committed to a "dolphin-safe" policy and pressure is building in Europe to limit the tuna market there to "dolphin-safe" products, as well.

This was the situation earlier this year when Rep. GERRY STUDDS introduced H.R. 5419 and I put forward a sponsored companion bill, S. 3003, in the Senate.

Both bills are based on the recognition that the past strategy of trying to reduce dolphin mortality while continuing to fish for tuna in association with dolphin is no longer sufficient. They recognize, as well, the American interest in bringing foreign fishing conservation practices up to a standard comparable to that which we require of our own fishing fleet. Finally, they recognize that we have today the best opportunity we will ever have to obtain a strong and binding international agreement on this issue; an agreement that I hope and believe could end the avoidable killing of dolphins in commercial fishing operations promptly and permanently.

The timing of the bill is important because current provisions of the MMPA have resulted in an embargo of tuna and tuna products from Mexico and Venezuela, two of the most prominent foreign fleets operating in the ETP. Mexico, in particular, is interested in improving its overall trade relationship with the United States and in demonstrating a positive approach to international environmental and conservation issues. As a result, the U.S. Department of State believes it is realistic to think that Mexico will agree to a moratorium on fishing for tuna in association with dolphin, in return for a lifting of the current embargo. Obtaining such an agreement is the only practical way to be sure that further progress towards reduced dolphin mortality will occur, and that the original objectives of the MMPA are achieved.

I want to stress the compromise nature of this legislation. It is not aimed simply at "making a statement" or "sending a message". It is aimed at getting results. The bill reflects our best effort to synthesize the ideas and views of a variety of executive agencies, environmental organizations and tuna processors about how best to assure that positive results are indeed achieved.

Under the proposed bill, Mexico and other nations operating in the ETP would not be subject to trade sanctions as long as they continue to reduce dolphin mortality between now and March 1, 1994, and agree to suspend fishing on dolphin completely for a period of at least 5 years after that date. This arrangement allows time for negotiations and for fishermen in the region to adjust, while maintaining pressure of reduction in dolphin kill and requiring—in less than 2 years—a halt to the practice that has killed so many marine mammals over the past 30-35 years. Failure by a nation to live up to commitments made to the United States on this issue will result in sanctions that are stronger than those imposed by current law. These include a ban on the importation of all tuna products, a ban on at least 40 percent of all fish and fish products and potentially a total ban on fish products.

I am aware that the commercial west coast tuna fishing industry is opposed to this bill, just as it has opposed efforts in the past to enact and strengthen the provisions of the MMPA. I understand this and cannot criticize the industry for seeking to protect its own interests. But the fact is that the major American tuna processors have already made it clear that business as usual in the ETP is no longer acceptable. As I have said, since April, 1990, the three major processors for the American market have refused to purchase tuna for canning that is not "dolphin-safe". European governments and processors seemed poised to follow their lead. These actions, not any dictate of Congress, has caused the reduction in the size of the U.S. fleet operating in the ETP and created serious problems for the foreign boats that still fish tuna in association with dolphins.

During a hearing on S. 3003 by the Senate National Oceans Policy Study on July 23, concern was expressed by some representatives of the tuna industry about the allegedly "unilateral" nature of the bill. They ridiculed the State Department's contention that foreign nations would agree to the proposed moratorium and warned that U.S. fishermen would end up being denied the right to fish on dolphin.

Those concerns were at least partly accommodated by the House of Representatives when it approved H.R. 5419. Under the bill, if Mexico and Venezuela both fail to agree to the moratorium, U.S. fishermen would be allowed to continue fishing on dolphin until the end of 1999.

It is, of course, argued by some of the industry that fishing on dolphin is the only economic way to catch large yellowfin tuna, but the fact is that other methods have not seriously been tried—at least not recently. Past industry and government sponsored research efforts have focused primarily on refining current fishing methods, rather than developing new ones. Even a recent study by the National Academy of Sciences, which included some research into alternative fishing techniques, can only be considered a starting point. A moratorium on dolphin-unsafe methods, accompanied by intensive research into dolphin-safe practices should make it clear within a matter of years whether a viable, dolphin-safe fishery for large yellowfin in the ETP can be established. If that were to occur, Americans would have an opportunity to re-enter the fishery in a major way, thereby creating hundreds or thousands of new jobs for American workers in fishing, ship repair, processing and marketing.

I have heard a great deal of optimism within the tuna industry in recent days, moreover, about the possibility that a new net can be developed that would permit dolphin encirclement with virtually no risk to dolphin mortality. If that, in fact, should occur, our future policy choices on this issue would be substantially broadened.

The premise of the legislation we are approving today is that we may be able to find a way once again to harvest large yellowfin tuna in the ETP with knowingly and intentionally slaughtering dolphins. If we can, that will be good for the dolphin; it will be good for America fishermen; it will benefit our economy; it will ease diplomatic tensions; and it will end a controversy that has been a source of conflict between the Pacific tuna industry and the environmental community for more than two decades.

Given the persistent mystery of the relationship that binds dolphins and large yellowfin tuna in the ETP, there is no way that we can guarantee in advance that this approach will succeed in achieving fully each of its intended goals. But we do know that past approaches have not worked economically, diplomatically or ecologically. And we know that the approach put forward in this legislation reflects the broadest degree of consensus that has ever been achieved on this issue.

After two decades of accepting half-measures, I believe that the time has come to restore meaning to the original objectives of the MMPA; to move forward aggressively both domestically and internationally; to get a real research program underway; and to end once and for all the stale debates and controversies that have divided and discouraged in the past.

Before closing, I want the record to reflect the text of a letter that I received earlier today from Richard Wamhoff, the president and chief operating officer of the Starkist Tuna Co., which was the first major American tuna company to announce a policy of purchasing only dolphin safe tuna. Accordingly, I ask unanimous consent that the text of the letter from Mr. Wamhoff appear at this point in the RECORD:

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

STARKIST SEAFOOD COMPANY,
Long Beach, CA, October 8, 1992.
Re: International Dolphin Conservation Act of 1992
Hon. JOHN F. KERRY,
U.S. Senate, Senate Russell Office Building, Washington, DC.

DEAR SENATOR KERRY: This letter is on behalf of StarKist Seafood Company and its parent, H. J. Heinz Company. StarKist was the first major American tuna company to adopt, in April 1990, a dolphin safe policy. Shortly after StarKist adopted the policy, the other major tuna companies doing business in the United States adopted similar policies.

StarKist enthusiastically supported the enactment of the Dolphin Protection Consumer Information Act in 1990 and, despite considerable economic costs, continues its firm commitment to its dolphin safe policy.

With respect to the International Dolphin Conservation Act, we would like to make clear that StarKist generally supports the Bill and the policy set forth in the Bill, as passed by the House of Representatives on September 22, 1992. We recognize the complexities of the issues involved in legislation regarding dolphin protection. We also appreciate the lengthy and difficult negotiations required between the various interested parties that resulted in the legislation progressing to its current status.

We have one concern regarding a provision of the Bill that we would like to record in the event consideration of this or similar legislation takes place in the future.

The potential for unnecessary detriment to the tuna industry without a concomitant benefit to marine mammal safety exists in the Bill as passed by the House of Representatives. Empowering the U.S. Secretary of Commerce to determine unilaterally that there exists a regular and significant association between marine mammals and tuna in an area of an ocean outside the eastern tropical Pacific could lead to significant unwarranted disruptions in tuna fishing.

StarKist agrees that tuna caught by the intentional encirclement of marine mammals should not be considered dolphin-safe. However, the determination of those areas outside the eastern tropical Pacific in which a "—regular and significant association occurs between marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on or to encircle marine mammals—" should be made not just by the Secretary of Commerce, but by the Secretary of Commerce after consultation with competent regional organizations, as defined in the Bill, created for the purpose of conservation of a particular ocean or oceans. The Inter-American Tropical Tuna Commission is an example. We believe this suggested change would have the effect of limiting the possibility of overbroad application of this provision as well as providing for a multilateral approach to the designation of such areas outside the eastern tropical Pacific. The above concern has been raised with many of the interested parties and suggested language to address this has been shared with appropriate staff.

Again, we want to make clear that StarKist and Heinz support the aims of the International Dolphin Conservation Act and remain firmly committed to a dolphin-safe policy. By enacting the International Dolphin Conservation Act, while addressing the important issue outlined in this letter, the United States would greatly advance the cause of protection of marine mammals while responding to the legitimate concerns of the United States tuna industry.

We stand ready to assist you and members of your staff to address in detail means to provide solid legislation which meets the cause of marine mammal protection.

Very truly yours,
RICHARD H. WAMHOFF,
President and Chief Operating Officer.

Mr. KERRY. I note that, in his letter, Mr. Wamhoff discusses the authority of the Secretary of Commerce in section 307 of the bill to designate areas, outside the eastern tropical Pacific, in which a "regular and significant association occurs between marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on or to encircle marine mammals."

I would like to assure Mr. Wamhoff that it is my expectation that the Secretary of Commerce will only exercise his or her authority to make determinations under section 307 after consulting with the appropriate segments of the tuna industry, with scientific and regional fishery management organizations, and with conservation or environmental organizations that might have access to information or evidence relevant to a possible determination. I also anticipate that the Secretary will seriously consider making a determination whenever the Secretary becomes aware of scientific documentation, log records, observer data, or photographic or video evidence that an association between tunas and marine mammals is occurring and that encirclement of marine mammals forms part of the fishing strategy used by a boat or boats in the area.

Finally, I want to note that, after House passage of H.R. 5419 in late September, a series of discussions were held between my office and some who had concerns about the bill. I made it clear, during those discussions, that I was willing to discuss any issue raised, but that I would insist on the inclusion of three basic provisions: First, an international moratorium on fishing on dolphin beginning in 1994; second, a ban on the sale of dolphin-unsafe tuna and tuna products in the United States; and third, an embargo against any foreign nation that does not adhere to the moratorium.

While engaged in these discussions, I was in contact with representatives of some of the leading conservation organizations that have helped build public support for Federal action on this issue. I found a willingness on the part of these organizations to accept reasonable changes in the bill, provided the fundamental purposes of the legislation were preserved. Unfortunately, those opposed to the bill did not evidence a comparable willingness to compromise until after the House of Representatives had essentially adjourned for the year. This left us with a choice between H.R. 5419 exactly as approved by the House—and no bill, at all. For me, this was not a difficult choice because I strongly support H.R. 5419. But I found it ironic that those who feel differently about this measure could have had a number of their concerns eased if only they had been willing to compromise a few days ago.

Mr. President, I hope that the action we are taking today will finally put to rest the enduring controversy over tuna-dolphin. If that should happen, the highest place of honor will belong to Representative STUDDS, who has championed the fight so energetically in the House of Representatives this year, and to Representative BARBARA BOXER, who has assisted him in that effort.

On our side of the Capitol, I want to single out Senator ERNEST HOLLINGS, chairman of the Committee on Commerce, for his help in facilitating action on the bill, and Senator JOHN BREAUX, for his many contributions to the debate on this issue.

Thank you, Mr. President, and I want to thank all of my colleagues, as well, for their support of this very important and long overdue piece of legislation.

DEPOSITORY INSTITUTIONS DISASTER RELIEF ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6050, a bill to facilitate recovery from recent disasters by providing greater flexibility for depository institutions and their regulators, received today from the House; that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table; and that any statements with respect to passage of this bill be inserted at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIEGLE. Mr. President, I am pleased to support H.R. 6050, the Depository Institutions Disaster Relief Act of 1992, which will help facilitate reconstruction in the wake of such recent disasters as Hurricane Andrew, Hurricane Iniki, and the Los Angeles riots. This bill is identical to S. 3285, which I introduced on September 29, 1992, together with Senators GARN, GRAHAM, MACK, BREAUX, INOUYE, and AKAKA. My statement discussing the bill appears on page 28804 of the RECORD.

The bill (H.R. 6050) was deemed read the third time and passed.

FEDERAL AVIATION ADMINISTRATION REAUTHORIZATION

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6168, Federal Aviation Administration reauthorization just received from the House, that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table, and further that any statements relating to the measure be inserted in the RECORD at the appropriate place as if read.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I would like to urge my colleagues to support passage of H.R. 6168, the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992. Last Friday, the House of Representatives passed a second FAA reauthorization, H.R. 6093, which contained provisions from both the original House and Senate bills. On Tuesday, the House passed another reauthorization, H.R. 6168, which is a 1-year authorization for the Airport Improvement Program and 3-year authorization for other programs. I am pleased that H.R. 6168 contains many noncontroversial provisions that have been brought to my attention this week by a number of my colleagues.

H.R. 6168 also contains the provisions of H.R. 5465, the aviation and war risk insurance legislation. This provision extends the authority of the Secretary of Transportation to provide insurance to air carriers through September 1997.

Most of my colleagues are aware that during Desert Storm this coverage made it possible to use commercial aircraft in the Persian Gulf. During the Desert Storm operation, coverage of the War Risk Insurance Program only applied to aircraft engaged in foreign commerce. The Commerce Committee has had the opportunity to review the experiences during Desert Storm and recommends that the only change in the program is to expand coverage to include the domestic portion of a trip and the ground support.

Mr. President, H.R. 6168 is a 1-year authorization for AIP. A 1-year authorization is very important to me as there have been extraordinary efforts to come to an agreement on the Montreal protocols supplemental compensation plan which I added as an amendment to the FAA reauthorization legislation during the Commerce Committee consideration. I am pleased that so much progress has been made on the supplemental compensation plan and assure all parties interested that efforts have not been abandoned to complete this task. I hope to have a proposal for the Senate to consider early next year. I do not want to place blame on any party involved in the efforts to move the supplemental compensation plan. A lot of effort went into this proposal on the part of the entire aviation industry. I want to thank the individuals involved and let them know they will be hearing from me soon to reopen the talks on this important treaty.

In late July, the ranking minority on the Commerce Committee, Senator DANFORTH, brought to my attention the problem with the number of set-asides in the FAA. He was alarmed there would not be sufficient funds for the letters of intent for airport capacity projects. It was evident that there was a program meeting the obligations of the LOI's already signed and the future for new LOI's looked bleak. Since H.R. 6168 does not address this program, the Congress will have to make decisions next year regarding the entitlement programs to guarantee adequate discretionary funds for future airport capacity projects.

Mr. President, last week an agreement was reached between the car rental industry and AACI on the disadvantaged business enterprise provision contained in the original House FAA reauthorization bill, H.R. 4691. The original DBE Provisions required that airport concessions cover businesses providing ground transportation, baggage carts, automobile rentals, and other consumer services. As a part of the agreement between the airports and the car rental companies, section 511(h)(2) of the Airport and Airway Improvement Act of 1982 [AAIA] as amended, does not apply to car rental firms doing business at an airport for the purposes of determining compliance with any requirement imposed pursuant to section 511(a)(17) of AAIA. Administration of DBE assurance for car rental firms shall be governed by section 511(h)(3) of AAIA, as amended.

Section 511(h)(3)(C) of AAIA, as amended, provides that nothing in the law on DBE assurance "shall require a car rental firm to change its corporate structure to provide for direct ownership arrangements." For example, a car rental firm is not required, but is permitted, by the DBE assurance sections 511(a)(17) and 511(h) of the AAIA, as amended, to transfer corporate assets or engage in joint ventures, partnerships, or subleases. I would like to repeat that this language has been agreed to by both the car rental industry and the airports.

I urge my colleagues to support passage of H.R. 6168.

THE AIRPORT AND AIRWAY SAFETY, CAPACITY, NOISE IMPROVEMENT, AND INTERMODAL TRANSPORTATION ACT

Mr. HOLLINGS. Mr. President, today, the Senate will consider H.R. 6168, the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992. H.R. 6168 was recently passed by the House. The bill reflects the interests of both the Senate and the House concerning the reauthorization of the programs of the Federal Aviation Administration [FAA].

During the last few weeks, it has become clear that the ability to pass S. 2642, the Aviation Noise Improvement and Capacity Act of 1992, as reported favorably by the Commerce Committee on August 11, 1992, was very much in doubt. S. 2642 would have authorized all of the programs of the FAA for 3 years, including facilities and equipment, operations, research, engineering and development, and the Airport Improvement Program [AIP].

H.R. 6168 would authorize the Airport Improvement Program for 1 year, the facilities and equipment program and FAA operations for 3 years, and the research program for 2 years. The bill also includes several provisions of S. 2642. It clearly is important that we pass this bill and ensure that it is enacted into law.

In particular, this bill will ensure that important airport grant funds are made available. For my State of South Carolina, this program has many benefits, such as creating jobs, making the airports safer, and providing for needed expansion. The latest figures available suggests that aviation contributes $1 billion to the economy of my State. I know this program is as important in other parts of the country.

The bill also will provide money for the military airport program. AIP funds are used to provide grants under the military airport program, which has been extremely beneficial to those airports already included in the program, so much so that there is interest in its expansion, and H.R. 6168 provides for such expansion. With respect to those airports now included in the military airport program, in 1990 Congress set aside more than $55 million for 2 years to convert military airports to civilian use. Airports in the program include those seeking to become civilian facilities and one that is currently a joint-use facility in Myrtle Beach, SC. When the military ceases involvement in this facility early next year, the Myrtle Beach Airport will lose its primary source of operating support, which includes such important activities as running the air traffic control tower. This loss of critical support is a particular problem for Myrtle Beach, and I appreciate the FAA's efforts to ensure that the needs of the airport are met.

One matter that has been under discussion for a number of months relating to the AIP concerns the Disadvantaged Business Enterprise [DBE] Program. The car rental companies, airport representatives, and the Airport Minority Advisory Council have been meeting to resolve how this program should be structured. H.R. 6168 incorporates this agreement. Another issue related to the DBE Program concerns AIP eligibility of fund part of the DBE Program. The AIP sets goals for contracting with DBE's. It has been suggested that efforts to reach these goals could be facilitated by a headstart approach using outreach and technical assistance programs that help the DBE's to understand contracting opportunities at airports for AIP grant projects. Such technical assistance could aid the airports in attracting new DBE's to the procurement process and could enhance the performance of

DBE's in airport projects. Such technical assistance and monitoring of DBE activities could ensure a more effective DBE Program.

In addition, H.R. 6168 would provide the appropriate policy guidance to the agency in carrying out its safety mission, which is critical. With respect to these programs, I have continuing concerns with airport delays and the costs of those delays to passengers and the carriers. Completion of the Capital Investment Program [CIP] and other facilities and equipment projects are critical in coping with this problem. Two years ago, the General Accounting Office [GAO] reported that only 4 percent of the CIP projects had been completed and that there were significant delays in 12 major projects. The GAO now reports that the costs of the program have increased significantly and that delays in the program continue to be a problem. It also has indicated that the FAA's plan to consolidate over 200 air traffic control facilities into 23, which has not been finalized as yet, could add another $2.5 billion to the CIP plan costs. The Appropriations Committees asked for a report on such consolidation plans to be submitted by February 1992, but the report has not been forthcoming. The increased program costs and project delays remain a serious problem which must continue to be reviewed carefully. The aviation infrastructure must be upgraded in a safe, cost-efficient, and timely manner to respond to the increasing demands of air travel.

The GAO has pointed out that Congress continues to provide more than sufficient funds to pay for the CIP projects, but that the unobligated balance for facilities and equipment continues to grow. The appropriated, but unobligated, balance now stands at $1.8 billion, and has increased every year since 1987. Public Law 102–143, which I supported, decreased from 5 to 3 years the time in which congressionally appropriated funds must be spent, as a way to reduce the unobligated balance. These funds must be spent as intended.

I also join other Members in my concern about issues relating to insulin-dependent pilots. The ability of such pilots to perform their tasks is a safety issue that has been debated for a number of years, and the American Diabetes Association [ADA] petitioned the FAA to examine this issue more closely. I am aware that the FAA has initiated a review of this issue, and I anticipate that the FAA will convene a working group to study issues associated with medical certification of insulin-dependent pilots. The working group should be comprised of nationally known endocrinologists, including members of the ADA. I hope that the findings of the group could be completed by July 30, 1993, so that a resolution of this matter will be forthcoming in a timely manner.

In addition, I look forward to the report that the committee will receive from the Airline Consumer Protection and Competition Emergency Commission, established under this bill and also included in S. 2642. This Commission will have a difficult task. The airline industry is in serious financial trouble. After 12 years of a hands-off approach by the administration to the industry, a fresh look at how best to address the needs of the industry, and to ensure a viable industry, is needed. The Commission also should focus its efforts on the aviation manufacturing sector. Recent indications suggest that the manufacturing sector has been impacted negatively by the downturn in the airline travel industry. Furthermore, Airbus Industries continues to provide strong, and subsidized, competition to our U.S. aerospace manufacturers. This Commission should provide us with additional insights to assist in our continuing examination of the aviation industry.

The legislation before us also extends, through September 30, 1997, the Aviation Insurance Program, which provides insurance to air carriers under certain circumstances. At its August 11, 1992, executive session, the Commerce Committee reported favorably H.R. 5465, which has been incorporated into H.R. 6168. This program proved to be extremely valuable during Desert Storm, and I believe the program should be continued.

The Commerce Committee will continue its review of these and other issues pertaining to the many important FAA programs. I look forward to continuing to work with the industry and the airport community as well as the FAA, in particular on further reauthorization of the AIP.

Mr. MITCHELL. Mr. President, I wish to join Senator FORD in support of H.R. 6168, the Federal Aviation Act [FAA] reauthorization bill passed earlier this week by the House of Representatives, which includes a 1-year extension of the Airport Improvement Program [AIP]. The bill will allow capital improvements at airports throughout the Nation to go forward in 1993. It authorizes approximately $2 billion in AIP grants, and will mean jobs for American workers and their communities.

H.R. 6168 represents a compromise between earlier Senate and House versions of the FAA reauthorization. It contains a number of provisions which the Senate has had under consideration in recent days, as Senator FORD has worked toward passing a reauthorization bill. The House incorporated Senate provisions before completing its legislative agenda on Tuesday, and passed what, in fact, is the third House version of the reauthorization. That is the bill now before the Senate. It is very similar to the Senate bill which Senator FORD has worked to clear for Senate action in recent days.

The Senate should adopt H.R. 6168 and send it directly to the President. The 1-year AIP extension will allow both the Senate and House of Representatives to revisit FAA provisions during the 103d Congress. Earlier this year, the Senate Commerce Committee reported the Senate version of the FAA reauthorization, S. 2642, which has been pending on the Senate Calendar. However, in recent weeks it has become clear that an impasse on provisions involving the supplemental compensation plan for the Montreal protocols would prevent Senate action on S. 2642, and would leave no time to resolve major differences with the original House version.

By passing H.R. 6168, Congress will preserve options for next year. This is a course of action that has been chosen in consultation with the administration, which strongly supported including the Montreal protocols SCP in the FAA reauthorization, and had hoped for a Senate vote on consent to ratification of the protocols after action on the FAA reauthorization had been completed. It is clear now that such action will not occur this year. However, options will remain for action on those issues in the next Congress.

As reported by the Commerce Committee, S. 2642 provides a beginning reference point for the next Congress. The Federal Aviation Administration, for example, should take careful note of sections of the committee report which do not involve changes in current law, but do establish FAA priorities for 1993. One such provision directs the FAA to conduct a study in cooperation with the Maine Department of Transportation of long-term needs, including a control tower or an auxiliary flight service station, for the Augusta State Airport in Maine. The committee has directed the FAA to report by March 1993, so that the committee can authorize necessary projects in subsequent legislation. The Augusta Airport study should be completed to meet that deadline, so that appropriate action can be taken by the next Congress.

H.R. 6168 includes an $18 million authorization for a northern Maine long-range radar system. Northern Maine radar coverage is an important need which must be a priority both in fiscal year 1993 and fiscal year 1994, and the FAA should take careful note of the priority given to the project by both the Senate and House Aviation Subcommittees. The need for the project arises out of the Air Force's and 1991 Base Closure Commission's decision to close Loring AFB in 1994.

In addressing Northern Maine radar coverage concerns, the FAA has indicated that it was not formally consulted on potential impacts during the 1991 base closure review. The closure or realignment of military aviation facilities may pose unexpected costs to the Federal Government and impacts on civilian aviation. H.R. 6168 therefore also includes a provision which requires the FAA to report to Congress and the 1993 and 1995 Base Closure Commissions on such aviation impacts within 30 days after the Secretary of Defense announces a list of recommended base closures and realignments.

H.R. 6168 gives the FAA a formal role in the base closure review process. From the perspective of military operational needs relative to airspace, as well as potential costs to the Federal Government, and the impact on local communities or regional air traffic, the FAA's concerns need to be considered carefully in acting on the Department of Defense's recommendations.

I also wish to make clear concerns involving the Montreal protocols, and the SCP enabling legislation which was contained in S. 2642, but is not included in H.R. 6168.

The Senate Foreign Relations Committee favorably reported the Montreal protocols in 1989 and again in 1990 at the beginning of the 102d Congress. During much of the first session, in response to requests by the Republican leader, Senator Dole, and the administration, I conducted a thorough review of the Montreal protocols. The review was recorded through several documents published in the Congressional Record during 1991, which are referenced by date and page number in the Senate committee report on S. 2642 (S. Rept. No. 102-424).

Like many other Senators, I have had reservations about consideration of the protocols without reliance on enabling legislation for the SCP. Although the administration believes that the Secretary of Transportation has existing authority necessary for administrative implementation of the SCP under the Federal Aviation Act, I have shared the Commerce Committee's concern that statutory legislation is probably most appropriate for such a measure.

In December 1991, at the request of the Secretary of Transportation, Senator Ford and I initiated discussions with the administration and with the principal proponents and opponents of the protocols, the Air Transport Association [ATA], and the Association of Trial Lawyers of America [ATLA], respectively. The discussions sought provisions for the SCP that might be mutually acceptable for further consideration.

On July 2, 1992, Senator Ford and I introduced S. 2945, which represents the product of those discussions. The administration endorsed S. 2945 and supported its incorporation into S. 2642, the FAA reauthorization.

At a late stage in discussions with the administration, representatives of airframe and engine manufacturers raised concerns about both the Montreal protocols and the SCP which had not been previously raised during the Senate Foreign Relations Committee's consideration of the protocols over the last few years, or during my initial discussions with the administration, which again, had been noted in documents published throughout 1991 in the Congressional Record.

After S. 2945 was introduced, the administration, Senator Ford and my staff began discussions to address concerns raised by the manufacturers. Those discussions were conducted in good faith. I do not blame any party for the impasse. In fact, I appreciate the time and effort that all parties devoted to exploring issues. Unfortunately, it became clear that the manufacturer concerns cannot be addressed in any way that might have facilitated action on S. 2642, as reported by the committee. It also is clear that such concerns raise potentially broader issues that relate to the fundamental principles of the protocols themselves, and cannot be resolved if the SCP is to be kept narrowly focused.

During the discussions, it was reported that Japan Airlines is considering a voluntary waiver of the Warsaw Convention's liability limits. It was suggested that such a trend may be preferable to ratification of the Montreal protocols. However, the administration has indicated that such voluntary waivers are probably inadequate to protect the interests of Americans traveling internationally.

Mr. President, I will ask that a copy of a letter in this regard from the Assistant Secretary of Transportation for Policy and International Affairs, Mr. Jeffrey Shane, with attachments, be published in the Record immediately following the conclusion of my remarks.

As a result of the impasse reached on the SCP, because of the continuing concerns over the SCP, and because of the fact that the Senate cannot appropriately consider ratification of the protocols without resolving those concerns, the administration has indicated that it now may need to reconsider both the protocols and the entire Warsaw Convention system.

What happens next in Congress on international aviation liability issues may depend on the course of external events and any actions taken by the international airlines of foreign nations over the next year. If the Warsaw Convention system no longer seems viable, the Secretary of Transportation has indicated that there would be no alternative but to terminate U.S. participation in the system.

I will ask that a copy of a letter from the Secretary of Transportation in this regard also be printed in the Record following my remarks.

Concerns about international developments such as Japan Airlines intentions and the viability of the Warsaw Convention system are themselves reasons to avoid any precipitous action by the Senate—either to act on the protocols or to make any decisions that might affect alternatives that should be considered by the next Congress.

I regret that such concerns, and the short amount of time that remained in this Congress after the impasse was reached, prevented accommodation of the Secretary of Transportation's request for Senate action on ratification of the protocols. Without the SCP enabling legislation, however, I am not sure whether the Senate in fact would be disposed to consent to ratification.

It should be clear by now that the FAA reauthorization, as reported by the Senate Commerce Committee, has implications that go well beyond the FAA or the AIP. Although I would have liked to accommodate the administration's desire to move forward with the SCP so that a decision might be reached eventually on the protocols, Congress' immediate priority must be to make sure that FAA program and AIP grants continue.

The Senate action today on H.R. 6168 is intended to do simply that: To reauthorize FAA programs and the AIP by 1 year. It does not in any way involve the protocols or the SCP, nor should it be regarded by the international community as any determinative decision on those issues.

The 1-year AIP extension will help to preserve issues for reconsideration next year. In response to any developments involving Japan Airlines or other foreign carriers, the Senate Foreign Relations Committee may wish to review the international aviation liability situation in the next Congress, while the Commerce Committee, if necessary, may wish to consider ongoing issues associated with the SCP. All issues and developments should be considered carefully at that time. Further deliberation is only prudent under the circumstances.

There is one additional issue that I feel obligated to address. In 1990, as a response to the recommendations of the President's Commission on Aviation Security and Terrorism, following the Pan Am 103 tragedy, Congress enacted the Aviation Security Act of 1990. The Montreal protocols were included within the commission's recommendations. During discussions over the SCP with manufacturers, however, another issue arose related to the Pan Am 103 Commission recommendations, concerning compensation for victims of acts of terrorism.

As part of the 1990 Aviation Security Act, Congress directed the administration to submit recommendations to Congress as to whether or not there should be legislation to provide compensation to victims of terrorism. In January 1992, along with other Senators, I wrote the administration about submitting recommendations on the terrorism compensation issue to Congress. To the best of my knowledge, Congress is still waiting for those recommendations. Although it is a slightly distinct issue from that of the protocols and the SCP, I hope such recommendations also can be considered in the next Congress.

I ask that a copy of the January 1992 letter on the terrorism compensation issue also be printed in the RECORD following my remarks.

Finally, I wish to thank the Secretary of Transportation and Senator FORD, who have worked with me on the FAA reauthorization and the SCP issues. I ask unanimous consent that along with the other letters I have referenced, letters from ATA and ATLA with regard to the protocols and the SCP be included in the RECORD.

I trust that we all will continue to work together on these issues, as necessary, in the 103d Congress.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Re Montreal Protocols and Supplemental Compensation Plan (S. 2945)

Hon. WENDELL H. FORD,
Chairman, Subcommittee on Aviation, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing in response to a suggestion made by the Aerospace Industries Association with respect to a possible waiver of the Warsaw Convention liability limits by Japanese airlines. AIA suggests that a similar waiver by U.S. airlines might be an effective alternative to ratification of the Montreal Protocols and adoption of the Supplemental Compensation Plan established by S. 2945. We respectfully disagree that such waivers could be an effective remedy for the injustice perpetrated on U.S. international airline passengers by the current Warsaw Convention.

We have been advised by the Embassy of Japan in Washington, D.C. that Japan Airlines is considering waiving the Warsaw liability limits in their entirety through a special contract with its passengers. No decision has yet been made by JAL to do so. The action, if taken, would be solely that of JAL, and would not apply to any other airline. No Government action would be involved.

There is no reason to expect that other airlines serving Japan, whether U.S. or foreign, would adopt similar policies. Unless the participation of all carriers serving a country were made mandatory by some form of regulation or legislation—and we know of no intention to do so—there could be no assurance that such a waiver would become generally available to passengers flying on other carriers.

There is another significant reason why the waiver approach would not be effective. Even assuming a country like Japan, or even the United States, could successfully require all carriers operating to its homeland to participate in an agreement waiving the Warsaw Convention liability limits for flights to and from its territory, the principle against extraterritorial application of laws would prevent that Agreement from applying in cases where its citizens traveled between two foreign countries on a foreign airline. Moreover, there could be no guarantee that other nations would adopt similar waiver requirements. Indeed, it is likely that many nations would not do so. The result of such a system would be totally unsatisfactory: a continuation of the current situation in which a patchwork of different laws apply regarding recoveries depending on where the accident occurred, the nationality of the carrier, and the origin and destination of the passenger. Accordingly, ratification of the Protocols and adoption of the proposed Supplemental Compensation Plan (S. 2945) is clearly the sole effective means of assuring U.S. citizens of recoveries for the full amount of their damages regardless of the circumstances regarding the accident.

I am enclosing a list of countries that are parties to the Hague and Warsaw Conventions. As noted, regardless of the laws applicable for travel to and from the United States, as might be applied by U.S. courts, travel between these countries by U.S. citizens would likely result in application by the respective jurisdictions of the $10,000 or $20,000 liability limit applicable under these Conventions. I am also enclosing a list of countries that have already ratified Montreal Protocol No. 3, as well as a list of countries that are not members of the Warsaw system in any form.

I wish to extend special thanks to you for your contribution in moving along the long delayed process of ratification of the Montreal Protocols and adoption of a Supplemental Compensation Plan.

Sincerely,

JEFFREY N. SHANE,
Assistant Secretary for Policy and International Affairs.

Enclosures.

COUNTRIES WHICH HAVE NOT RATIFIED THE WARSAW CONVENTION, THE 1955, HAGUE PROTOCOL TO THE WARSAW CONVENTION OR THE 1975 MONTREAL PROTOCOL NO. 3 TO THE WARSAW CONVENTION[1]

Albania, Andorra, Angola, Antigua and Barbuda, Bahrain, Belize, Bermuda, Bhutan, Bolivia, Burma, Burundi, Cambodia (Kampuchea), Cape Verde, Central African Republic, Ceylon, Chad, French Antilles and Guiana, Ghana, Guadeloupe, Guinea-Bissau, Guyana, Haiti, Hong Kong, Honduras, Jamaica, Macau, Maldives, Mozambique, Nambia, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, San Marino, Sao Tome and Principe, Taiwan, and Thailand.

[1] Based on list of countries in *Countries of the World, Yearbook, 1992*, as compiled from Department of State Reports.

COUNTRIES[1] PARTY TO THE WARSAW CONVENTION, BUT NOT TO THE 1955 HAGUE PROTOCOL ($10,000 LIABILITY LIMIT). TOTAL—21

(Not including the United States[2])

Barbados, Botswana, Brunei Darussalam, Burkina Faso, Comoros, Equatorial Guinea, Ethiopia, Indonesia, Kenya, Liberia, Malta, Mauritania, Mongolia, Myanmar, Sierra Leone, Sri Lanka, Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay, and Zaire.

[1] Under Article 1 of the Warsaw/Hague Convention passengers holding tickets for a round trip journey from the territory of a country party to the Warsaw Convention as Amended by the Hague Protocol would be subject to the $20,000 liability limit of the Hague Protocol. Passengers holding a round trip ticket from the territory of a country party to the Warsaw Convention, but not the Hague Protocol, would be subject to the $10,000 Warsaw limit. Passengers traveling on a one way ticket between countries which are both parties to Hague or Warsaw, would be subject to the limits applicable under the treaty to which they are both parties (i.e., $20,000 for Hague, $10,000 for Warsaw). Passengers traveling on a one way ticket between one country party to Hague, and one country party only to Warsaw, would be subject to the $10,000 Warsaw limit. The nationality of the airline or passenger is not relevant to the applicability of the Convention's limits.

[2] The United States is a party to the Warsaw Convention, but not to the Hague Protocol Amendments. However, a 1966 Agreement among all carriers operating to or from the United States provides for waiver of the Warsaw limits in part, with the result that, for the United States only, passengers traveling either one way or round trip to or from, or with a stopover in, the United States would be subject to a limit of $75,000 under strict liability.

COUNTRIES[1] PARTY TO THE WARSAW CONVENTION AS AMENDED BY THE 1955 HAGUE PROTOCOL (20,000 LIABILITY LIMIT). TOTAL—110

Afghanistan, Algeria, Argentina, Australia, Austria, Bahamas, Bangladesh, Belarus, Belgium, Benin, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Congo, Costa Rica, Cote d'Ivoire, Cuba, Cyprus, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Finland, France, Gabon, Germany, Greece, Grenada, Guatemala, Guinea, Hungary, Iceland, India, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Korea, Dem. People's Rep. Kuwait, Laos, Lebanon, Lesotho, Libya, Liechtenstein, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Mauritius, Mexico, Monaco, Morocco, Nauru, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Rwanda, Saudi Arabia, Senegal, Seychelles, Singapore, Solomon Is., South Africa, Spain, Sudan, Swaziland, Sweden, Switzerland, Syrian Arab Rep., Togo, Tonga, Trinidad & Tobago, Tunisia, Turkey, Ukraine, United Kingdom, Vanuatu, Venezuela, Vietnam, Western Samoa, Yemen, Yugoslavia, Zambia, and Zimbabwe.

[1] Under Article 1 of the Warsaw/Hague Convention passengers holding tickets for a round trip journey from the territory of a country party to the Warsaw Convention as Amended by the Hague Protocol would be subject to the $20,000 liability limit of the Hague Protocol. Passengers holding a round trip ticket from the territory of a country party to the Warsaw Convention, but not the Hague Protocol, would be subject to the $10,000 Warsaw limit. Passengers traveling on a one way ticket between countries which are both parties to Hague or Warsaw, would be subject to the limits applicable under the treaty to which they are both parties (i.e., $20,000 for Hague, $10,000 for Warsaw). Passengers traveling on a one way ticket between one country party to Hague, and one country party only to Warsaw, would be subject to the $10,000 Warsaw limit. The nationality of the airline or passenger is not relevant to the applicability of the Convention's limits.

COUNTRIES WHICH HAVE RATIFIED MONTREAL PROTOCOLS NO. 3[1]

Argentina, Brazil, Colombia, Denmark, Ethiopia, Finland, Greece, Hungary, Ireland, Israel, Italy, Netherlands, Norway, Portugal, Spain, Sweden, Togo, Switzerland, United Kingdom.

[1] To date nineteen countries have ratified Montreal Protocol No. 3, governing passenger liability. The Protocol will come into force upon ratification by thirty countries. Following United States ratification, we anticipate that the remaining ten ratifications required for entry into force will follow rapidly. This is particularly true since it is the United States plan to denounce the Warsaw Convention except with respect to countries which have ratified Montreal Protocol No. 3, so that the United States will remain party only with countries which have also ratified Montreal Protocol No. 3. This will necessitate ratification by other countries which desire the protection of the Convention's limits for their air carriers on flights to and from the United States.

THE SECRETARY OF TRANSPORTATION,
Washington, DC, September 23, 1992.

Hon. GEORGE J. MITCHELL,
U.S. Senate, Washington, DC.

DEAR MR. LEADER: The purpose of this letter is to seek your help in bringing the Montreal Protocols to the Warsaw Convention to a vote on the Senate floor before the end of the 102d Congress.

Late last year, we instructed our staffs to explore the possibility of developing a statutory basis for establishing the supplemental compensation plan. Concern was expressed at that time that such legislation, if treated as a prerequisite to a Senate vote on ratification, would risk undue delay by providing a target for those who oppose modernizing the out-dated and unfair Warsaw system; or who might seek a vehicle to advance unrelated agendas. The only other alternative would be to rely on existing authority under the Federal Aviation Act to establish a supplemental compensation plan administratively.

Regrettably, these fears have now been realized. Even though a satisfactory legislative compromise has been reached that is acceptable to the Administration, to Senator FORD and to yourself, continued controversy makes it unlikely that this compromise can be acted upon.

Indeed, the situation is worse than we foresaw. Because the statutory language establishing the supplemental compensation plan is now incorporated in S. 2642, the Federal Aviation Administration's reauthorization bill, opposition by representatives of the airframe and engine manufacturer is currently impeding the prospects for further action on that important legislation.

You asked that the supplemental compensation plan be established through legislation in order to ensure that the Senate fully understood, prior to considering the Protocols, the plans' impact on the parties most directly affected—air travelers, airlines, and the trial bar. The legislation developed by staff would have fulfilled that objective. I can make the following commitment. If the Senate gives its advice and consent to ratification of the Montreal Protocols, the Department of Transportation will propose regulations establishing a supplemental compensation plan identical to that contemplated in the enabling legislation currently incorporated in S. 2642.

I must also tell you that, if the Senate does not approve ratification of the Protocols prior to the end of the present Congress, the utility of the Warsaw regime will almost certainly come to an end. Other nations, themselves unhappy with the present Warsaw liability limits, have been threatening to establish their own separate systems if the United States does not adopt the Protocols. Only those nations comfortable with the lowest liability limits will remain in the Warsaw regime, leading to the very patchwork we sought to avoid.

Once it became evident that the Warsaw System was no longer viable, of course, no further effort to obtain Senate approval of the Montreal Protocols would be justified. Under those circumstances, I would have no alternative but to recommend to the President that the United States terminate its participation in the Warsaw Convention. It would be unconscionable, in my view, to maintain the requirement that claimants and their lawyers spend years in expensive litigation trying to prove "willful misconduct" on the part of an airline simply to qualify for damages in excess of $75,000.

I urge you in the strongest possible terms to bring the Montreal Protocols to a vote on the Senate floor before the end of this Congress.

With best personal regards.

Sincerely,

ANDREW H. CARD, Jr.

U.S. SENATE,
Washington, DC, January 10, 1992.
THE PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: We are writing to express our concern about the issue of compensation for victims of terrorism.

Section 211(a) of the Aviation Security Improvement Act of 1990 (P.L. 101-604), enacted in the wake of the terrorist bombing of Pan Am Flight 103 and the May 1990 report of the Presidential Commission on Aviation Security and Terrorism, required the Administration to submit recommendations to Congress as to whether or not legislation should be enacted to authorize the United States to provide compensation to Americans who are victims of terrorism. These recommendations were required to be submitted by November 1991, one year after the Act became law. However, it is our understanding that the work of the inter-agency group responsible for preparing these recommendations is still far from being complete.

We are concerned about the delay in submitting these recommendations and the failure to meet the deadline. The tragedy of Pan Am 103 has had profound consequences for the families of the innocent victims of this terrorist atrocity and they have already waited too long for relief.

We urge you to expedite this current process and to ensure that the Administration's recommendations are submitted to Congress as soon as possible.

Respectfully,

EDWARD M. KENNEDY, GEORGE J. MITCHELL, FRANK R. LAUTENBERG, DANIEL PATRICK MOYNIHAN, BILL BRADLEY, ALFONSE M. D'AMATO, CHRISTOPHER J. DODD, HARRIS WOFFORD.

AIR TRANSPORT ASSOCIATION,
September 28, 1992.
Hon. GEORGE MITCHELL,
U.S. Senate, Washington, DC.

DEAR SENATOR MITCHELL: Last Friday I addressed the National Press Club about the state of the U.S. airline industry and at the end of my speech I took a few moments to reflect on the current legislative impasse which will prevent any further action on the Montreal Protocols and the Supplemental Compensation Plan. What saddens me most about the deadlock we have reached on this important treaty is the impact that this issue has on every American who travels abroad.

Ratification of the Montreal Protocols has been far more than a professional obligation for me—it has been a very personal goal—a goal which I know would have had a permanent and positive impact on the future of international aviation law. I want to express my personal appreciation for your active interest, commitment and leadership on the Protocols during the 102nd Congress. You and Senator Ford successfully brought together parties—the world's airlines, the U.S. Government and the trial lawyers—which had been at odds over the substance of the Supplemental Compensation Plan for decades. And while U.S. airlines are deeply disappointed that neither the Treaty nor the Supplemental Compensation Plan will come before the Senate in 1992, we are grateful for your persistence as well as the dedicated and capable staff work of Bob Carolla.

The future of the Warsaw Convention remains unclear. However, it is both my professional and personal wish that as time passes and the Administration considers its policy options, that it is the best interests of the international travelling public which will determine the ultimate outcome. Again, many thanks.

Sincerely,

JAMES E. LANDRY.

ASSOCIATION OF TRIAL LAWYERS OF AMERICA,
Washington, DC, September 25, 1992.
Hon. WENDELL H. FORD,
U.S. Senate, Washington, DC.

DEAR SENATOR FORD: I am writing to clarify any lingering misunderstanding that may exist regarding the position of the Association of Trial Lawyers of America regarding S. 2945, the Supplemental Compensation Act of 1992, and its inclusion as an amendment to S. 2462, the F.A.A. authorization bill.

ATLA welcomed the opportunity to participate—we hope constructively—in the lengthy discussions that led to the development of this bill. We will make ourselves available to you and to your staff at any time. Without question, you and Senator Mitchell have worked diligently on behalf of those who may be injured or killed in an international aviation accident.

As you know, for a host of compelling reasons that we articulated elsewhere, we urged upon the Senate the position that if it is to ratify the Montreal Protocols it should insist first, as a condition for depositing the instruments of ratification, that a satisfactory Supplemental Compensation Plan be enacted statutorily. The content and implementation of any Supplemental Plan, however, is not our sole concern regarding the Protocols. We have larger concerns relating to the principle that people and institutions in this country are individually accountable and responsible for their behavior and for the harm they cause. That is not only a bulwark principle of our jurisprudence, it is a hallmark of our free society. It concerns us, therefore, that the airlines would be relieved of responsibility and liability while the flying public would be required to fund that special relief.

We do understand and appreciate that S. 2945 is a step in the direction of the fuller protection of American travelers. While we will ask no member of the Senate to oppose it, however, it would mischaracterize our position to say that ATLA has endorsed the bill.

With best wishes,

Sincerely,

ROXANNE BARTON CONLIN,
President.

Mr. LAUTENBERG. Mr. President, I am pleased to note that the FAA reauthorization bill we are considering contains a provision similar to legislation I introduced in the Senate, to promote the development and use of a new generation of quieter airplanes.

This legislation will establish a focused, coordinated research and development program, to be carried out jointly by the FAA and NASA. The goal of this program is to develop, by the turn of the century, the technology that would result in a quieter generation of commercial aircraft.

While the establishment of this new program is a major step forward in efforts to combat aircraft noise, the House-passed provision is not as strong as that that was contained in my bill, or that approved by the Commerce Committee. The Senate provision, in keeping with my bill, set out more specific goals for the joint NASA-FAA program: to reduce noise generated by commercial airplanes by 4-6 decibels, making them as much as 30 percent quieter than the quietest planes flying today. While this specificity is lacking in the House-passed bill, I continue to believe that these goals are achievable, and urge the FAA and NASA to work toward them. And, as chairman of the Transportation Appropriations Subcommittee, I'll be monitoring the progress of this important new program.

Aircraft noise is a serious problem throughout the country, and particularly in the northern New Jersey-New York metropolitan region, where according to the FAA, one-third of all people who are noise-impacted live. I am working with affected citizens in New Jersey to address their problems, through such means as potential route changes, and an accelerated phase-out of noisy stage 2 aircraft at the region's three major airports. Another way that we can look to provide relief is to attack the problems at its source—to improve the planes that serve our communities.

Over the last 20 years, tremendous improvements have been made in commercial aircraft. The planes being produced today are quieter, more efficient, and safer than those that were the mainstays of the fleet in the past.

Today's new aircraft—planes such as Boeing's 767 or McDonnell-Douglas' MD-80—are truly generations ahead of their predecessors, like the Boeing 707 or DC-8. Stage 3 planes are as much as 25 decibels quieter than early stage 1 planes. With every 10 decibels representing about a 50-percent reduction in apparent noise, this means the newer planes are as much as 85 percent quieter than the old ones.

Additionally, stage 3 aircraft, on average, consume about 30 percent less fuel than stage 2 planes. This is important, particularly in view of our unhealthy dependence on shaky foreign oil sources.

The U.S. aircraft manufacturing industry has led the world in developing these new generations of airplanes. Our manufacturers continue to have the lion's share of the global aircraft market. Time after time, commercial aircraft are the single largest component of our export market.

The push to develop these new aircraft has come, in part, through the Federal Government. In 1969, standards were set for stage 2 aircraft, and in 1973, all new aircraft were required to meet those standards. In 1977, new planes were required to meet the tougher standards of the stage 3 classification. And, in 1985, all stage 1 commercial jets were taken out of service. In 1990, Congress enacted legislation, similar to a bill that I authorized, to phase out stage 2 aircraft by the turn of the century.

Now, it is time to keep things moving forward. It is time to develop the next generation of planes. Call it stage 3.5 or stage 4. Whatever its name, It'll be a quieter and more efficient fleet.

Some may believe that new advances just are not achievable. As someone who spent 30 years in the technology industry before coming to the Senate, I just won't accept that our top engineering and design minds can't do it. Just in the last few years, we've seen radical advances in aircraft design. The Stealth aircraft have features that were thought to be fantasy not too long ago. Development of that technology came through a combination of government and private sector resources. It's that type of dedication that's needed to develop the next generation of commercial aircraft.

This is an ambitious goal, but not an unrealistic one. It is based on the recommendations of an industry task force, including aircraft manufacturers. It's a goal that, for several reasons, we should make every effort to achieve. There are indications that the European Community is moving toward tougher standards, along the lines of goal of my bill, in the near future. Our citizens deserve no less. And, if our domestic aircraft manufacturers are to maintain their leadership role, the development of this technology is critical.

Under this provision, the FAA and NASA will be required to submit annual reports on the progress of this R&D program. The focus here is on the development half of research and development. My expectation is that the technological improvements—such as improved engines and airframes—are achievable. Under my original bill, the FAA Administrator would be required to submit by 1998 to Congress a proposal for requiring that new aircraft certified by the FAA would meet the quieter standards. The intent was not to force our carriers to abandon their stage 3 fleets. Rather, the goal was to ensure that all new aircraft entering the fleet would be quieter. In making this proposal, the Administrator was to consider such factors as the reduction in noise, the economic impacts, and the capacity of the domestic industry to produce such aircraft.

The Federal Government has pushed the development and use of quieter and more advanced aircraft. This bill would continue that pattern, and help reduce the impacts of aircraft noise for people across this country.

Mr. President, I thank the distinguished chairman of the Aviation Subcommittee, Senator FORD, for his efforts and cooperation in having this provision included as part of the reauthorization, and look forward to working with him to strengthen it in the next Congress. I urge my colleagues to support this bill.

PITKIN COUNTY AIRPORT

Mr. WIRTH. Mr. President, I want to take this opportunity to thank my good friend the senior Senator from Kentucky and the majority whip, WENDELL FORD, for all his help over the years on not only my State's airports and airways but on many issues of concern to the people of Colorado. His help has been indispensable.

Recently, he and I initiated a study by the General Accounting Office to examine certain safety issues of particular concern to mountain airports. This matter came to our attention because the Federal Aviation Administration [FAA] began proceedings to penalize an airport in Colorado—Pitkin County Airport, aka Sardy Field—for maintaining safety standards above and beyond those required by the Federal Government.

Pitkin County Airport is located in the Roaring Fork Valley in the Rocky Mountains. The facility is surrounded by high peaks, severely restricting the approach to the airfield and forcing aircraft to travel over populous sections of the valley. The region is characterized by high levels of air traffic and extremely variable weather, particularly during the winter months.

Under local rules, aircraft operations cease a half hour after sundown with the exception of commercial airlines. These carriers operate under a waiver, having met certain requirements laid out by the facility managers and the FAA.

These regulations require airline pilots to undertake special training on a recurring basis for flying into certain mountain airports, require commercial aircraft to be specially equipped for mountain airport operations and mandate the use of instrument flight rules at all times, regardless of weather conditions. In contrast, the FAA does not impose these or comparable special safety requirements on general aviation operations at the same airports, even though many such operations are commercial in nature, with paying passengers flying on air taxi aircraft.

Instead, the FAA's regulatory approach has been to impose a broad obligation on general aviation pilots to operate safely, to see and be seen, declining to establish more detailed or site-specific safety requirements on general aviation operations.

Rather than recognizing that Pitkin County's rules make the airport safer for flying passengers as well as the facility's neighbors, the FAA has ordered the county to permit visual flight rules [VFR] general aviation operations after dark—a major relaxation of regulations designed to protect the traveling public. If they do not, Sardy Field could lose all access to Federal funds as a commercial service airport.

Mr. President, the Congress needs to assure itself that all commercial passengers, as well as general aviation pilots themselves, are protected by adequate FAA safety regulations at mountain and non-mountain airports alike. As to mountain airports, a 1991 air safety study commissioned by Pitkin County concluded from National Transportation Safety Board [NTSB] accident data that the risks of a general aviation pilot crashing near that airport using visual flight rules during nighttime hours are five times as high as at non-mountain airports—an alarming finding.

Senator FORD and I requested that the GAO undertake a study to help us determine whether FAA safety standards for general aviation operations at mountain airports are adequate. This examination will consider whether the FAA regulatory requirements imposed on airline operations at mountain airports have been successful in reducing risks from those operations, whether parallel requirements on general aviation operations would or would not substantially reduce risks and to consider the costs of imposing and complying with such requirements on the pilot and general aviation business.

It seems reasonable that the FAA would not pursue enforcement actions based substantially on laws and regulations currently under the active examination of the Congress, in this case via a GAO study. Unfortunately, I have been unable to secure such assurances from FAA officials.

Mr. President, I would like to ask Senator FORD if he concurs with this position.

Mr. FORD. Mr. President, I do concur with my friend from Colorado, Senator WIRTH. The Congress has the constitutional right and obligation to review all actions by the FAA and that is what we are doing now. The GAO is the investigative arm of Congress, and we have asked them to examine Pitkin County's, and other mountain airports', flight rules and determine how and if they contribute to safer air travel, or if more is needed.

If the FAA were to interfere with Pitkin County's airport operations while a GAO study is underway, it would compromise the outcome of the examination. I would strongly recommend to the FAA that it not force the airport to allow general aviation VFR operations after dark during the pendancy of the study. These regulations have been in existence with the full knowledge of the FAA for more than twelve years—a little longer while this study is under way seems reasonable and necessary.

Mr. WIRTH. I thank the distinguished Senator for his efforts and hope that we will have the opportunity to work together again in the future.

Thank you, Mr. President. I yield the floor.

SPECIAL USE AIRSPACE

Mr. MACK. Mr. President, I would make an inquiry on behalf of the senior Senator from Florida, Mr. GRAHAM, and myself, of the floor manager as to the participation of appropriate State agencies with the FAA and DOD in any discussion pertaining to special use airspace. It is our understanding that currently such discussions may include only the FAA and DOD. It is reasonable to assume that in light of the ongoing defense drawdowns and corresponding reductions in existing airspace requirements, a review of special use airspace may occur. It would therefore seem appropriate to include State agencies in such discussions between the FAA and DOD when they do occur.

Mr. GRAHAM. Mr. President, the Florida Department of Transportation brought this matter to Senator MACK's and my attention early this year. My hope is that by encouraging the FAA Administrator to ensure full State participation we will address the concerns of all state DOT's impacted by special use airspace.

Mr. FORD. Mr. President, both Senators from Florida have outlined the impact of special use airspace on the Nation's aviation system and Florida's unique circumstances.

It would indeed be appropriate to involve the relevant State agencies in any discussions between the FAA and DOD on special use airspace. As chairman of the Senate Subcommittee on Aviation, I encourage the Administrator to accommodate States in this manner. I thank my colleagues for making mention of this matter.

HUNTSVILLE AIRPORT NORTH

Mr. HEFLIN. Mr. President, in recent weeks, I have discussed with my distinguished colleague from Kentucky an unusual situation in Alabama involving the Huntsville Airport North which handles a large volume of general aviation traffic and operates a fully accredited flight school. This airport provides an important service for north Alabama. Unfortunately, this airport has not been designated as a reliever airport for Huntsville International Airport because the primary airport does not have the requisite amount of traffic. Moreover, while Huntsville Airport North operates as a public facility, it is privately owned and therefore not able to receive the type of Federal assistance it could were it a publicly owned facility.

I would like to ask my colleague if, after learning of the circumstances surrounding the operation of this airport, he believes it is in the public's interest that the Federal Aviation Administration do all it can to work with Huntsville Airport North to ensure its continued viability and ability to provide the important services on which so many people rely.

Mr. FORD. Mr. President, I agree with my colleague that his airport merits the strong efforts of the Federal Aviation Administration to ensure its ability to continue meeting the general aviation and pilot training needs in that area.

Mr. HEFLIN. I thank the Senator from Kentucky for his interest in this matter.

REAUTHORIZATION OF FEDERAL AVIATION ADMINISTRATION

Mr. DANFORTH. Mr. President, this 1-year reauthorization of the Federal Aviation Administration's [FAA] Airport Improvement Program [AIP] will ensure that funds are available in fiscal year 1993 for airport capacity and improvement projects. Without this legislation, Federal airport funding would virtually shut down, jeopardizing ongoing projects and tens of thousands of jobs.

Of particular importance to the State of Missouri is the availability of Federal funds to begin the expansion of Lambert St. Louis International Airport. Lambert Field is the 15th largest airport in the United States, with over 10 million enplanements per year.

Lambert currently suffers average delays of 13 minutes per operation. The expansion of Lambert will allow the airport to reduce delays by operating with two independent runways, under all weather conditions, and will position the St. Louis region to continue to grow as an important transportation hub.

The 3-year reauthorization reported by the Senate Committee on Commerce, Science, and Transportation earlier this year—S. 2642, the Aviation Noise Improvement and Capacity Act of 1992—set aside sufficient AIP funds to fund major capacity enhancing projects such as the Lambert expansion. Indeed, that legislation was carefully crafted to ensure that the FAA could continue to issue letters of intent for projects like Lambert.

The 1-year extension before us today also provides sufficient funds to proceed with the Lambert expansion. While the legislation only provides AIP spending authority for 1 year, the formulas governing set-asides and discretionary funds allow sufficient resources for the FAA to fund new capacity enhancing projects. Even with commitments under previously issued letters of intent, the FAA will have at its disposal ample AIP funds to begin the Lambert expansion and issue a letter of intent for the project.

Mr. McCAIN. Mr. President, this 1-year extension is necessary to ensure the continued funding of Federal airport grants. Without further authorization of the Airport Improvement Program [AIP] under the Federal Aviation Administration [FAA], all but a tiny trickle of Federal funding for airport expansion and improvement would end.

Federal AIP funds support some 75,000 jobs, which would be in jeopardy should Congress fail to act on this critical legislation. In the State of Arizona alone, over $45 million in AIP funds was spent in 1991. Further, the Secretary of Transportation has written to Congress asking for this action to assure continued airport grant funding.

Mr. President, I ask unanimous consent that a letter from Secretary of Transportation, Andrew Card, dated October 7, 1992, appear in the record following my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1.)

Mr. MCCAIN. While this legislation reauthorizes FAA airport grants for only 1 year, it does contain many provisions important to Arizona.

This legislation contains a study requiring the FAA Administrator to report to Congress by May 1, 1993, on the current and projected need for air traffic control and related services in the airspace in the vicinity of Tucson.

As part of a nationwide consolidation of flight service stations, the FAA plans to close the Tucson station. The report to congress requires the FAA to focus on special circumstances regarding Tucson, including the handling of border traffic, flight pan filings, and notifications to law enforcement agencies that monitor international air traffic between Arizona and Mexico. To ensure that these issues are adequately resolved, the legislation prohibits any change in the current status of the Tucson flight service station until 60 days after Congress receives this report.

Another issue of concern to Arizona is the safety and environmental effect of air traffic in the vicinity of the Grand Canyon. Earlier this year, I chaired a field hearing in Flagstaff to hear testimony on these issues from representatives of Federal agencies, tour operators, and environmental interests. Testimony at that hearing indicated the need for further study of measures to improve both air safety and the noise environment.

This legislation includes a requirement that the FAA Administrator, in conjunction with the Director of the National Park Service, the State of Arizona, affected Indian tribes, the State of Nevada, and the general public, conduct a study on increased air traffic over Grand Canyon National Park. This report to Congress will include: a report on the increase in air traffic since 1987; a forecast of the increase projected through 2010; a report on the carring capacity of the airspace over the Grand Canyon to ensure aviation safety and to meet noise reduction requirements; and a plan of action to manage increased air traffic to meet the goals of aviation safety and noise reduction.

In addition to reauthorizing the airport grant program, the bill before us today makes changes in the AIP program that will benefit Arizona. Terminal development projects at medium-sized airports—such as Bullhead City, Flagstaff, Fort Hauchuca, Kingman, Page, Prescott, Sedona, and Yuma—will now be fully eligible for federal funding with an 85-percent federal match.

An increase in the minimum federal airport allocation from $3000,000 to $400,000 will benefit Flagstaff and Sierra Vista Airports. In addition, Phoenix Sky Harbor Airport will have its funding under the cargo funding program increase by 17 percent. In 1992, Phoenix received $556,000 in cargo related grant funds.

Initiatives to deal with the issue of airport and aircraft noise are included in this legislation. Within the overall airport grant program, funding available to airports for noise abatement projects, such as soundproofing, are increased by 25 percent to $225 million. In addition, the FAA is required to study the effect of noise on communities surrounding airport property and to allocate more research funds to the study of technologies to reduce aircraft noise.

This legislation includes an expansion in the military airport program within the FAA to help convert closing military airbases to civilian use. The FAA has already identified Williams Air Force Base as a prime candidate for this program and last week I announced a major planning grant from the FAA to study civilian uses for Williams. With this expansion in the FAA's military airport program, Williams will be eligible to apply for a share of the $36 million made available for conversion of military airbases. The actual application for this grant will depend on the decision of the Governor's commission and local communities.

Finally, I note that this legislation includes a 5-year extension of the war risk insurance program. This program provides air carriers with Government-sponsored insurance when commerical insurance is unavailable or available at unreasonable rates due to world events. This program was extensively utilized during the Persian Gulf conflict with commercial aircraft conducting more than 5,000 flights under this program.

EXHIBIT 1

THE SECRETARY OF TRANSPORTATION,
Washington, DC, October 7, 1992.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In the short time remaining before adjournment of the 102d Congress, I urge Congress to adopt the necessary authorization for continuation of airport planning and construction activities in the current fiscal year. Without action, the Federal Aviation Administration (FAA) will be unable to apportion badly needed safety and capacity funds to the nation's airports to totaling $1.8 billion.

Yesterday, the President signed the Transportation Appropriations bill into law. This legislation paves the way for a $1.8 billion airport improvement program to support more than 75,000 jobs in airport construction, design, and related industries, which are significant to building new economic momentum across the nation. However, Senate action on authorizations is required to make the funds available. There is dispute as to the value of these projects or the requirements of the program as a whole. Particularly for the hard-hit airline industry, these federally assisted airport improvement projects are needed now.

The Department of Transportation and the Administration stand ready to work with you and the entire Senate leadership to put the place this necessary FY 1993 authority. I know you share a commitment to continuity in airport funding. The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of these views for the consideration of Congress.

Sincerely,

ANDREW H. CARD, JR.

The bill (H.R. 6168) was deemed read the third time and passed.

OMNIBUS WATER RESOURCES DEVELOPMENT ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6167, the Omnibus Water Resources Development Act, just received from the House, that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table; further, that any statements relating to this measure be inserted in the record at the appropriate place as if read.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, I am delighted to see that the Senate will pass the next in our series of authorization bills for the domestic water resources program of the Army Corps of Engineers. The bill, H.R. 6167, has been passed by the House and we have every reason to believe that the President will sign the bill.

Mr. President, this bill continues the orderly process of authorizing water resources development projects every two years, a precedent established and honored since 1986. These project authorizations for the Army Corps of Engineers provide for necessary internal improvement for our nation. My colleagues should know that this is an historic occasion, being the fourth connective water resources bill since 1986. This is the longest continuous series of Water Resources Act in the Nation's history.

This bill provides for the conservation and development of our valuable water resources. It provides for improvements to the Nation's commercial waterways and ports and harbors. It provides for environmental protection and restoration.

It also provides jobs. From Maine to California to Alaska. From Wisconsin to Florida. The economic benefits of this bill touch nearly all 50 States. With passage of this bill into law, about $4 billion would be invested in America's future. The 22 new projects authorized for construction accounts for $3 billion in infrastructure improvements. And the resulting jobs. A little more than half the cost of these projects would be borne by non-Federal sponsors.

On that basis, the water development program cannot be seen to be a wasteful or bloated consumption of public goods. Our water resources program is a nationwide investment partnership between the Government and the State and local beneficiaries.

Mr. President, for 16 years the water resources infrastructure needs of this Nation went unattended. From 1970 to the passage of the 1986 act we paid less attention to this life giving resource than most third world nations. Many of my distinguished colleagues have joined with me since 1986 to regain our sense of national priority for these water programs. Thus, this historic bill.

Mr. President, we also build from the foundation set by the Intermodal Surface Transportation Efficiency Act of last year, or ISTEA as it has come to be known. We apply to water resources the same tests which governed the ISTEA. Efficiency, productivity and pricing. The need to develop new technologies and stimulate innovation is just as important for our water resources program. Particularly so for our water transportation system. Linkage between surface and water transportation is addressed. And, like ISTEA, we have included in this bill provisions for better management of our existing infrastructure.

Mr. President, we move our water resources development forward. We did so in the 1986 Water Resources Act. We did so in 1988 and 1990. We again do.

Mr. President, I ask unanimous consent a letter to me from the Acting Assistant Secretary of the Army for Civil Works in support of the bill be placed in the RECORD at this point. This letter was signed by Mr. Morgan Reese in the place of Dr. Edward Dickey.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE ARMY,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, DC, October 5, 1992.

Hon. DANIEL PATRICK MOYNIHAN,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC

DEAR MR. CHAIRMAN: I am pleased to inform you that if Congress passes the version of the Water Resources Development Act of 1992, completed on October 5, 1992, by Senate and House committee staffs, the Department of the Army would recommend that the legislation be approved by the President.

We appreciate the diligent efforts of all involved to produce a bill that continues the vital role of the Army Corps of Engineers in building and maintaining a strong water resources program within a consistent policy framework and realistic fiscal expectations. Equally important, the bill continues and strengthens the basic principles of partnership and cost sharing with non-Federal sponsors, and extends those principles to the environmental restoration missions of the Army civil works program.

MORGAN REESE
(ACTING FOR G. EDWARD DICKEY,
ACTING ASSISTANT SECRETARY OF
THE ARMY, CIVIL WORKS).

Mr. MITCHELL. Mr. President, I rise in support of the water resources legislation now before us. This bill is an important step toward addressing water resources needs throughout the country.

I am especially pleased that the bill includes new authority to assess and protect the quality of coastal waters and coastal sediment. The bill also gives small communities an additional 2 years to prepare for control of stormwater discharges to waterbodies and authorizes a demonstration program for the control of stormwater in critical watersheds, including watersheds in my home State of Maine.

The sediment quality provisions are based on legislation I introduced to protect coastal waters—S. 1070. I want to thank Senators MOYNIHAN, CHAFEE, BREAUX, and others for their constructive suggestions to revise and improve these provisions.

There is growing evidence that sediments underlying coastal waters contain contaminants at levels which pose a threat to the quality of the aquatic environment and human health.

The National Research Council issued a report in 1989 which concluded:

> Contamination of marine sediment poses a potential threat to marine resources and human health (through seafood consumption) at numerous sites around the country * * * improving the nation's capability to assess, manage, and remediate these contaminated sediments is critical to the health of the marine environment.

The National Oceanic and Atmospheric Administration has published results of a national program to monitor toxic chemicals at 50 coastal and estuarine sites from Maine to Alaska. The report states:

> A number of sites revealed relatively high levels of toxic contaminants in both bottom sediments and bottom dwelling fish. For example, sediment concentrations of toxic trace metals, aromatic hydrocarbons, DDT's PCBs, and sewage derived material from northeastern coast cities in Boston Harbor, Salem Harbor, and Raritan Bay are among the highest vales measured nationally.

The coastal sediment provisions of the pending bill will substantially expand our information and knowledge about the condition of coastal sediments. The bill calls for a survey of sediment quality and a report to Congress on the extent and seriousness of sediment contamination nationally.

In addition, the bill provides for a national contaminated sediment task force to oversee the implementation of programs designed to protect sediment quality. The task force is to include key Federal agencies and representatives of ports, States, and public interest organizations.

I hope that this task force will focus the attention of Federal agencies and other parties on the contaminated sediment problem and guide the development of policies to remediate existing problems and prevent future contamination.

The bill also amends the Ocean Dumping Act by clarifying the process for issuing permits for the dumping of dredged material in the ocean.

A central provision of the bill directs the Administrator of EPA to concur in writing on permits issued by the Secretary of the Army for the dumping of dredged material. this new process is intended to expand EPA's role in identifying potential environmental consequences of ocean dumping and in taking appropriate action to prevent environmental problems. This concurrence process applies to dumping authorizations for Federal projects pursuant to section 103(e).

The Administrator's concurrence may include permit conditions and may include denial of a permit. If the Administrator concurs with conditions, the conditions are to be included in the permit. If the Administrator denies the permit, the Secretary shall not issue the permit.

This legislation also brings the Ocean Dumping Act into conformance with our other environmental laws by removing the existing preemption of State environmental standards. In the case of dumping associated with Federal projects, a State may adopt a more stringent standard than a Federal standard based on a showing that such standard meets several criteria. Also, the President may exempt a Federal project from a State requirement if it is in the paramount interest of the United States to do so.

The amendment also addresses the important process of designating and managing dumpsites. Designation of dumpsites has been slow and many sites do not have final designation. The amendment provides that by 1997, all sites are to have final designations, including appropriate environmental assessment.

In addition, the amendment provides for the development of site management plans for dumpsites. The site management plans are intended to provide a comprehensive and long-term statement of the expected uses and activities at the dumpsite. Monitoring at sites is to include monitoring of the areas surrounding the sites. Individual permits for dumping at a site are to conform to the site management plan.

The amendment also clarifies and limits the existing policy in the act concerning the dumping at sites which are not designated. This existing authority has been used on a very limited basis to date and it should continue to be used in only a very small percent of dumping cases. The Administrator is to concur in the selection of any alternative dump site and dumping is to be discontinued within 5 years unless the site is given a final designation by the EPA. Use of an alternative site may be extended for one 5-year period under specified conditions.

A key provision of the amendment revises the dumping permit authorities of the act. Permits are to conform to the provisions of site management plans for the dumpsite. Monitoring data collected under the site management plan is to be considered in the review of permits. Where monitoring data from a site indicates environmental problems or unintended environmental consequences associated with dumping, the permit is to be reviewed and revised or reissued.

Current law specifies that permits are to be for a specified period but does not specify the permit term. Most permits are now issued for a 3-year period. This period is sufficient to allow for the conduct of most projects and for the dumping associated with those projects to be terminated.

This 3-year period also facilitates reissuance of permits as scientific knowledge evolves over time and does not lock in for an extended period permit conditions which may later be found to be inappropriate or inadequate to protect the environment.

In a small number of permit cases, however, it may be appropriate for permits to be for a period of up to 7 years. Permits should be issued for up to 7 years only in those few cases where dredging activity is continuous, where dumping has very limited environmental effect, and where dredged materials are not contaminated. In areas such as urban harbors, subject to continuing or significant pollution, permit terms should be for the shortest practicable term and should not exceed three years.

Other important provisions of the amendment would increase penalties for violations of the act and extend authorizations for the act.

I am pleased that the bill also authorizes a general investigation along the Maine and New Hampshire coastline, to determine the feasibility of water resource improvements along the coast, focusing particularly on dredging and dredged material disposal. Passage of this provision will allow coastal planning to progress in Maine and New Hampshire and will prove to be a sound environmental and economic investment for New England. The corps is to conduct the study with the understanding that all proposed dredging work would need to be evaluated based on disposing of it at a permanently designated site. I hope that EPA will facilitate this effort by making permanent site designations for dredged material disposal, as required by title I of the Marine Protection, Research and Sanctuaries Act.

I also want to express my support for the extension of the waiver of the obligation of small communities to have a stormwater discharge permit under the Clean Water Act. This provision recognizes that EPA has focused on stormwater permits for large- and midsized municipalities and industries and needs more time to develop an appropriate program for permits for discharge of stormwater by smaller communities.

This bill also includes new authority for the Corps of Engineers to demonstrate approaches to the control of stormwater and related water pollution sources. This demonstration authority includes projects in my home State of Maine, and I look forward to a successful effort to address this important problem.

I urge my colleagues to support this important legislation.

Mr. BAUCUS. Mr. President, I rise in support of the water resources legislation now before the Senate.

I am pleased that the bill continues for 2 years the provisions in the Clean Water Act exempting communities under 100,000 persons from the requirement to obtain permits for discharges of stormwater.

Over the past year, I have been working with Senator CHAFEE and other members of the Environment and Public Works Committee to develop legislation to reauthorize the Clean Water Act. This effort included review of section 402(p) of the act which provides for permits of stormwater discharges. The stormwater program has been a special interest of Senator CHAFEE and he has taken the lead in developing amendments to this part of the Clean Water Program.

Unfortunately, it was not possible to pass a comprehensive Clean Water Act reauthorization bill this year. I expect to reintroduce comprehensive clean water legislation next year. This legislation will include several needed changes to the stormwater permit program.

The legislation we are considering today extends for 2 years the exemption for communities under 100,000 persons from the obligation to have permits for stormwater discharges. This bill will benefit small communities by removing any uncertainty concerning whether they must seek discharge permits over the coming 2 years. The bill has the related benefit of allowing the Environmental Protection Agency to issue the best possible stormwater permits for larger communities and to develop appropriate regulations for other stormwater sources.

This extension is not intended to grant any relief to stormwater sources that are required to be permitted under sections 402(p) (2) and (3) of the act. In NRDC versus EPA, the Ninth Circuit Court of Appeals ruled correctly that EPA illegally exempted certain industrial sources and construction sites from stormwater permitting requirements. These sources remain subject to the deadlines for industrial permits included in the 1987 provision. In addition, this extension does not exempt EPA from the requirement and existing deadline to issue regulations covering remaining stormwater sources under sections 402(p) (5) and (6).

Mr. President, it is essential that this amendment to the stormwater program be passed this year and I urge my colleagues to support this important bill.

Mr. LAUTENBERG. Mr. President, I rise in support of H.R. 6167, the Water Resources Development Act of 1992. The bill contains numerous provisions of importance to the Nation and New Jersey. I commend Senator MOYNIHAN, the chairman of the Environment and Public Works Committee, for his persistence in pushing this legislation toward enactment.

Section 405, which was developed by Senator MOYNIHAN and myself, requires EPA and the Corps of Engineers to undertake a program of research on sediment decontamination in the New York-New Jersey Harbor. Contaminated sediments is a problem which plagues many of our coastal ports. Environmentalists, fisherman and members of the port community are concerned about disposal of these sediments. Section 405 authorizes $5 million to EPA and the Corps of Engineers to conduct a sediment decontamination research program to explore new ways to deal with contaminated sediments. Earlier this year I was successful in having $2.7 million appropriated to EPA to begin to conduct this research. EPA and the corps should explore decontamination technologies being developed for freshwater sediments in the Great Lakes.

Title V of H.R. 6167 establishes a sediment survey and monitoring program and contains amendments to the Ocean Dumping Act which will improve the management of ocean dumping of dredged material. As chairman of the Superfund, Ocean and Water Resources Subcommittee which has jurisdiction over the Ocean Dumping Act, I am pleased that the bill contains these improvements. Title V requires EPA to concur in permit decisions made by the Corps of Engineers, enhances the role of States in ocean dumping permit decisions in waters within the jurisdiction of the State, and establishes new provisions for disposal site management. I commend Senator MOYNIHAN for developing the language for the sediment survey and monitoring program and Senator MITCHELL for his work on the dredged material disposal amendments.

The bill contains several provisions of importance to New Jersey in the area of flood control. Authorization is included for the Corps of Engineers to assume full operating authority for the Passaic River Basin advance flood warning system. Additional funds are authorized for the Newark streambank revitalization project, which will help protect against floods in Newark and contribute to ongoing efforts in the city to enhance the river and make it more accessible and attractive to residents. The bill also directs the corps to assess means of controlling flooding in Rahway and Paterson, and provides funds for an environmental improvement program in New Jersey's meadowlands, a vast area that we have worked hard to restore to its natural state.

Mr. President, New Jersey's shoreline is among its most precious resources. It is a destination for hundreds of thousands of vacationers, and accounts for $13 billion in economic activity each year. Unfortunately, periodic storms threaten our coastline, and everything that the coastline means to New Jerseyans. I have worked to secure authorization and appropriations for a number of shore protection projects, which are critical to maintaining our coastal resources. This bill contains a provision I sponsored to direct the corps to conduct an economic impact study of New Jersey shore protection projects. In computing the economic benefits of a project, the corps would be directed to compare the cost of the project to its benefits, with the benefits, including the damage to the shoreline and local economies that will be prevented if these investments are made. This type of assessment puts the focus where it belongs, and will be important in the future when the Congress and the corps consider future shore protection projects.

I urge my colleagues to support H.R. 6167.

Mr HARKIN. Mr. President, Sioux City, IA, has a major flood control project, Perry Creek, that is nearing the construction stage. The final work on the design and environmental assessments for the project should be finished in this fiscal year. Initial construction funds have been appropriated.

Perry Creek does not flood often, but when it does, flash floods can develop that may cause loss of life and property. A large number of moderate- and low-income homes are in the flood area.

The project is estimated to cost $71,200,000 with Sioux City's share for land, easements, right of way, and relocation—traditional locally-borne costs—now estimated by the corps to total $27,200,000. That is 38 percent of the project cost. In addition, under the Water Resources Act of 1986, the city would have to pay an additional $3,512,000 given the current cost estimate if the 5-percent cash payment is required.

I understand that when the formula for the cash payment was established, the average percentage to be paid under the traditional local government costs was expected to be about 20 percent and the intent of the 5-percent cash payment was to have cities pay at least 25 percent of the cost. Sioux City has a burden almost twice the traditional size.

Sioux City is not a wealthy community. The per capita income was only $10,784 in 1987. The average home is worth only $41,000 according to the last census.

The city is already at the maximum general levy allowed under Iowa law. A special taxing district was established to provide additional funds to pay for the bonds that will be issued to pay for the city's share of the costs. Nevertheless, the city still can ill afford the cost of moving forward with this project so necessary for the safety of its citizens.

Frankly, without a waiver of the 5-percent provision, Sioux City is going to have a very difficult time acquiring the funds for this project to proceed.

Mr. MOYNIHAN. Mr. President, I appreciate the Senator's remarks. The history of the 5-percent cash payment that he presented is accurate. And, I believe that the case he has presented for Sioux City has merit. For that reason, the Environment and Public Works Committee did place a provision in the Water Resources Development Act of 1992 to provide relief. When the provision for a cash payment was developed in 1986, there was provision made for cases of hardship. It appears to me that the Perry Creek project should have been a solid candidate for relief under that provision if it were administered as the Congress intended. The Congress made an effort to correct the problem in the 1990 water Resources Reauthorization. Unfortunately, the corps' cash payment rule did not follow congressional intent.

The provision in the Senate amendment gives the corps the discretion on this issue. A fair reading of the specifics of the project and the legislative history should, in my view, result in a waiver being granted.

PROVISION REGARDING OPERATIONS AND MAINTENANCE OF THE CROSS FLORIDA BARGE CANAL, AS REVISED, IN THE WATER RESOURCES DEVELOPMENT ACT OF 1992

Mr. GRAHAM. Mr. President, after thorough consultation with all parties concerned, we have arrived at a consensus on substitute language to section 321 of S. 2734, as reported by the Senate Environment and Public Works Committee, regarding the Cross Florida Barge Canal.

The revised language, graciously added by the managers of the bill, is meant only to extend for an additional 10 months beyond that provided in the 1990 Water Resources Development Act, the Corps of Engineers' role in operating and maintaining the constructed portions of the project. It explicitly does not postpone the previously established schedule for deauthorization or the transfer of lands and structures, or otherwise slow the progress of converting the canal to a greenway.

To the contrary, we have arrived at a solution that provides for the State to contract with the corps to conduct basis operations and maintenance for a period of 10 months while the State completes the anticipated management plan. The revised language also equitably cost-shares this operations and maintenance extension among the corps, the canal authority, and the relevant water management districts.

I wish to thank all the parties involved—the corps, the Governor's Office, the St. Johns River Water Management District, the South West Florida Water Management District, the State canal authority, and Florida Defenders of the Environment—for their patience and willingness to reach a fair compromise.

THE KISSIMMEE RIVER RESTORATION PROJECT, AUTHORIZED BY THE WATER RESOURCES DEVELOPMENT ACT OF 1992

Mr. GRAHAM. Mr. President, I rise to thank the chairman of the subcommittee, the senior Senator from New York, for another robust, well-balanced and forward-thinking water resources bill. Every 2 years since 1986, just as he promised, the chairman has succeeded in whipping the subcommittee and the full Senate into shape to put together a comprehensive water projects package.

I would like to particularly acknowledge the chairman's foresight, first in seeing that environmental restoration will be a key part of the future mission of the Corps of Engineers, and second in authorizing the most ambitious riverine restoration project in North America, if not the world: the Kissimmee River project.

I would like to thank the many people in the corps who have seized the opportunity presented by this new vision and demonstrated a willingness to work with all concerned to craft an excellent plan: Nancy Dorn, Assistant Secretary for Civil Works; Lt. Gen. Henry Hatch, Chief of Engineers; Ed Dickey, Ph.D., Acting Principal Deputy Assistant Secretary; John Rushing of the South Atlantic Division; and Col. Terrence "Rock" Salt, Richard Bonner, and Louis Hornung with the Jacksonville district office.

We must also acknowledge the untiring efforts of the local sponsor, the South Florida Water Management District. First and foremost we owe a major debt of gratitude to our late friend Timer Powers. In addition, I wish to recognize the other keys to our success: Kent Loftin, the original project manager; Woody Woodraska, the previous Executive Director; Til Creel, Woody's successor; Patricia Sculley, the current project manager; and Kathy Copeland, government liaison.

Of course this project could not have gone forward without the strong support of our very active environmental community, represented in large part by the Everglades Coalition and led by Theresa Woody of the Sierra Club.

Finally, let me acknowledge the outstanding leadership of Congressman BILL LEHMAN, ably assisted by his staff person Nadine Berg.

Mr. President, the people I have personally named are among the many individuals and groups who have helped us get to this point. To all I say that I look forward to working with them to secure the annual appropriations for this precedent-setting restoration and to watching our river carefully brought back to life.

LAKE PONTCHARTRAIN CLEANUP

Mr. JOHNSTON. Mr. President, today I rise in support of the Water Resources Development Act of 1992. A portion of this legislation provides for comprehensive management of storm water runoff, a problem perplexing our Nation's urban areas. One of the Nation's most difficult storm water pollution problems is located in the State of Louisiana. Therefore it is with my particular interest that this legislation targets one of Louisiana's premier environmental treasures: Lake Pontchartrain.

Lake Pontchartrain and its adjacent lakes form one of the largest estuaries in the United States. In my generation, thousands can recall a time when the lake offered the residents of New Orleans and surrounding communities with an unparalleled urban lake experience. From the forties through the early sixties, Lake Pontchartrain was a place to enjoy the fruits of freshwater seafood, the thrills of a lakeside resort, and the benefits of swimming and other nautical activities. Commercial fishermen, seafood dealers, and restaurateurs prospered from the lakes' bounty of shell and fin fish.

However, the lake now suffers from prolonged neglect and the problems associated with its proximity to a large metropolitan area. The transformation of the surrounding communities of the lake from small waterside villages to growing metropolitan suburbs outpaced the ability of the combined storm water and sewage treatment infrastructure to properly dispose of its municipal runoff. Parish governments in the Lake Pontchartrain Basin simply lack the resources to meet these pollution challenges and comply with Federal water quality standards.

The result has been tragic. In the past three decades Lake Pontchartrain's water quality has declined to the point where water born recreation has been posted by local health officials as hazardous to human health. Last summer the Tangipahoa, a picturesque river long used for canoeing, tubing, and swimming which flows into Lake Pontchartrain was declared a public health threat by State officials, canceling activities of local Girl Scouts and other recreational users.

In the last several years, community leaders in the State organized the Lake Pontchartrain Basin Foundation to stimulate community awareness and to promote restoration activities for the lake. I intend for the Foundation to continue playing a formal consultative role in the comprehensive management process. In this way, the legislation responds to the community effort to reclaim a vital environmental and economic resource.

The Lake Pontchartrain restoration effort poses unique environmental challenges which are truly national in importance. The majority of land surrounding Lake Pontchartrain is below sea level, making any secondary treatment of storm water municipal runoff a difficult prospect. Drainage canals which lead from municipal areas into the lake simply do not have the capacity to store storm water runoff for treatment purposes before the water drains into the lake. Therefore, innovative filtration techniques, such as the construction of man-made wetlands, in some cases is the only means to provide adequate secondary treatment.

In order to address the problems associated with storm water runoff into Lake Pontchartrain, this legislation authorizes Federal funds to address water quality problems associated with storm water discharges into the Lake Pontchartrain Basin. It is fair to say that without these funds, State and local government will fall far short of the amount required to fund this enormous undertaking and come into compliance with Federal water quality standards.

Mr. President, this legislation is an enormous undertaking of great national and regional significance. It is estimated that restoration of Lake Pontchartrain will directly produce at least 1,000 jobs locally and will have economic benefits of at least $750 million. Under this criteria, the restoration project which we propose today more than pays for itself in ancillary economic, as well as social benefits.

Mr. CHAFEE. Mr. President, I rise in strong support of H.R. 6167, the Water Resources Development Act of 1992. The bill is the authorizing legislation for the Army Corps of Engineers water resources program. I would like to thank Senator MOYNIHAN, the chairman of the Environment Committee and Senator SYMMS, the ranking member of the Water Resources Subcommittee for their tireless efforts in crafting this bill. The effort has paid off, and I might add, the administration supports the bill strongly. I would also like to thank Ms. Nancy Dorn, the Assistant Secretary of the Army, Civil Works, Dr. G. Edward Dickey, Acting Secretary of the Army, Mr. Morgan Rees, Deputy Assistant Secretary, and Mr. James Rausch, chief of the legislative initiatives branch at the corps. Without their work and desire to negotiate a compromise, we would not have H.R. 6167 before the Senate.

H.R. 6167 represents a continuation of the Environment Committee's commitment to report authorizing legislation for the Army Corps of Engineers civil works program on a biennial basis. As you may know, Mr. President, the 1970's and early 1980's saw a departure from the previous practice of approving omnibus authorization bills and predictable appropriations for the construction of water projects. In 1986, however, Congress broke the logjam. After years of legislative-executive policy confrontations over the role of the Federal Government in water policy, the 99th Congress approved the Water Resources Development Act of 1986.

The 1986 act was truly landmark legislation in the area of water policy and formed the basis of the Water Resources Development Acts of 1988 and 1990 and the bill before us today. Most importantly, the 1986 act contains the framework for local cost-sharing of Army Corps of Engineer projects. I support that framework wholeheartedly, and I might add, the intent of cost-sharing is not to prevent the construction of a particular project, but rather to recognize our limited Federal resources and the financial responsibility of local project sponsors. The 1986 act has brought a sense of fiscal sanity to the authorization and appropriation process.

As the Environment Committee moved forward to enact legislation this year, we remained faithful to the provisions of the 1986 Act. The bill includes 22 major cost-shared water resources projects from across the country. These include critical construction at Locks and Dams Nos. 2, 3, and 4 on the Monongahela River in Pennsylvania, navigation improvements at Sargent Beach in Texas, and the environmental restoration of the Kissimmee River in Florida. In addition, the bill includes provisions for the beneficial use of dredge material and a corps review of the regulations dealing with local sponsors' ability to pay for flood control projects.

Mr. President, H.R. 6167 is balanced legislation incorporating the Nation's water-related infrastructure needs with a focus on environmental protection. Again, I would like to praise the efforts of Senator MOYNIHAN and Senator SYMMS and urge my colleagues to support the bill.

Mr. SMITH. Mr. President, earlier this year the Environment and Public Works Committee reported S. 2734, the Water Resources Development Act, with an amendment that caused great concern to all our Nation's ports and harbors, as well as the Environmental Protection Agency [EPA] and the Army Corps of Engineers. This controversial amendment, relating to contaminated sediments and ocean dumping activities, has been sufficiently modified to address most of the concerns voiced by port authorities and the Corps of Engineers. What we have before us is a compromise version of both Senate and House bills.

Although I will not oppose enactment of this legislation, I still have reservations with language regarding the permanent designation of disposal sites that could have a detrimental impact on Portsmouth Harbor and the New Hampshire Port Authority. EPA and the Corps of Engineers must exercise their responsibility in a timely manner to permanently designate these sites, particularly in the case of northern New England.

It is my understanding that the chairman, ranking member and other members of the Environment and Public Works Committee do not intend to hamper, impede or shut down New Hampshire's dredging activities by proposing these provisions. However, it will be important for Congress to monitor the implementation of this legislation and ensure that dredging activities are not negatively affected.

Mr. President, I will conclude by stating that I hope EPA will take its responsibility seriously and start addressing the needs of Portsmouth Harbor and other harbors around the country without congressional intervention.

Mr. WARNER. Mr. President, as a member of the Committee on Environment and Public Works, I am pleased to support the Water Resources Development Act of 1992 which authorizes many needed flood control, hurricane protection, and erosion control projects for the Corps of Engineers to undertake in Virginia.

Full credit for bringing this legislation to the Senate today goes to my distinguished chairman, Senator MOYNIHAN, my good friend and ranking member, Senator CHAFEE and their staffs. Without their dedication and perseverance in working with members of the House Committee on Public Works and Transportation to put together this responsible package, the congress would not have maintained the 2-year authorization cycle for the civilian programs the U.S. Army Corps of Engineers.

For Virginia, the 2-year cycle which Congress has kept since 1986 is important to local governments—who provide a minimum of 25 percent of the cost of these projects—as they attempt to meet their cost-sharing obligations.

Mr. President, it is no exaggeration that these projects are vital to protecting the lives and property of Virginians from the violent storms which have devastated our State. Since the treacherous Hurricane Camille in 1969, Virginia has been prone to flash flooding, hurricanes, and coastal storms which have taken the lives of 166 persons and left damages totalling $1.7 billion.

Virginia has seen much progress since the passage of the 1986 landmark water resources legislation which broke the decade-long stalemate over the financing of these projects and established responsible cost-sharing principles. A project that I was dedicated to since coming to the Senate—the deepening of the Hampton Roads Channel—has been completed. We have also completed, or have under construction, life-saving flood control projects for the cities of Virginia Beach, Richmond, and Roanoke. We have stabilized severe erosion at Tangier Island which threatened the very existence of the island and their unique way of life.

This water resources legislation is also extremely important to Virginia localities who are committed to providing significant financing to see that the projects authorized in this legislation become a reality. I am pleased that this bill provides a new authorization for hurricane protection for the Sandbridge area of Virginia Beach, project modifications for hurricane protection along the resort area of Virginia Beach, a navigation project for Tangier Island, and assistance for combined sewer overflow projects in Richmond and Lynchburg.

Mr. President, again I extend my congratulations to Chairman MOYNIHAN and Senator CHAFEE for addressing many complex water resource issues and for bringing before the Senate a good bill which provides needed protection to many Virginia communities.

THE MOREHEAD CITY CHANNEL DEEPENING PROJECT

• Mr. HELMS. Mr. President, I am pleased that H.R. 6167 contains an authorization for a project at the Morehead City Port in Morehead City, NC. This project will deepen the harbor which will allow more deep draft vessels to call on the port.

While I am grateful that this authorization has been included in this bill, there is a technical problem with the description of the project's specifications found on pages 17 and 18 of the Senate Committee report for S. 2734.

The committee report says:

> Recommended Plan-Channel improvement to 45 feet from existing 40-foot depths and extending the channel to 4,300 feet and deepening the turning basin to 45 feet.

I understand it was the intent of the managers that the authorization for this project conform to the specifications in the report issued by the Chief of Engineers dated May 21, 1991. That report called for deepening to 45 feet all portions of the inner harbor that are presently at 40 feet, deepening to 47 feet the entrance channel that is presently at 42 feet. In addition, the report calls for extending the channel approximately 4,300 feet to deep water, enlarging the turning basin to 1,350 feet from 1,200 feet, and deepening the turning basin to 45 feet from 40 feet, adding three channel wideners on the northernmost part of range A ocean bar channel, and Federal assumption of maintenance on the northwest leg and east leg extension.

So that the legislative record can be made clear, I have a question which I would pose to the managers of the bill: Is it the intent of the managers that this authorization conform to the specifications in the report issued by the Chief of Engineers?

Mr. MOYNIHAN. Mr. President, that is correct.

Mr. CHAFFEE. Mr. President, that is correct.

Mr. HELMS. Mr. President, I thank the managers of the bill and ask for unanimous consent that relevant sections of the report of the Chief of Engineers be inserted at the end of my remarks.

Mr. HELMS. Mr. President, I thank the Chair and yield the floor.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE ARMY,
Washington, DC, May 21, 1991.

CECW-PM (10-1-7a)

Subject: Morehead City Harbor, North Carolina.

THE SECRETARY OF THE ARMY: 1. I submit for transmission to Congress my report on Morehead City Harbor, North Carolina. It is accompanied by the reports of the Board of Engineers for Rivers and Harbors and the district and division engineers. These reports are in final response to a resolution adopted 8 August 1984 by the Committee on Public Works and Transportation of the United States House of Representatives. The Committee requested the Board of Engineers for Rivers and Harbors to review the report of the Chief of Engineers on Morehead City Harbor, and other pertinent reports, with a view to determining whether any modifications of the recommendations contained therein are advisable at the present time, with a particular view toward deepening and enlarging the existing navigation project. Preconstruction engineering and design activities for the Morehead City Harbor project are being continued under authority provided by the 8 August 1984 resolution.

2. The district and division engineers considered various plans to solve the navigation problems at Morehead City Harbor. The reporting officers recommend deepening the entrance channel from 42 feet to 47 feet (including a 2-foot allowance for wave action), deepening the main harbor channel from 40 feet to 45 feet, enlarging the existing turning basin to a diameter of 1,350 feet, widening a 3,400-foot-long portion of the entrance channel from 400 feet to 650 feet, and assuming Federal maintenance of the northwest leg and east leg extensions of the main harbor channel.

3. The report has been reviewed by the Washington Level Review Center (WLRC). The review indicates that the proposed project complies with applicable U.S. Army Corps of Engineers planning procedures and regulations. However, WLRC determined that benefits attributed to future shipment of coal were inadequately supported and should be deleted from the analysis. Even without coal benefits, WLRC finds that the recommended harbor modification is eco-

nomically justified and environmentally and socially acceptable and that it is the national economic development plan.

4. The Board of Engineers for Rivers and Harbors concurs in the views and recommendation of the reporting officers and the review conclusions of WLRC. At October 1990 price levels, the first cost of the improvement is estimated at $9,620,000, of which $6,096,000 would be Federal. Based on a 50-year period of analysis, an interest rate of 8-3/4 percent, and excluding coal benefits, the estimated annual benefits and costs would be $3,069,000 and $1,839,000, respectively, yielding a benefit-cost ratio of 1.7.

5. I concur in the findings and recommendation of the Board.

6. The recommendation contained herein reflects the information available at this time and current departmental policies governing formulation of individual projects. It does not reflect program and budgeting priorities inherent in the formulation of a national civil works construction program nor the perspective of higher review levels within the executive branch. Consequently, the recommendation may be modified before it is transmitted to the Congress as a proposal for authorization and implementation funding. However, prior to transmittal to the Congress, the State of North Carolina, interested Federal agencies, and other parties will be advised of any modifications and will be afforded an opportunity to comment further.

H. J. HATCH,
Lieutenant General; USA,
Chief of Engineers.•

Mr. CHAFEE. Mr. President, I am pleased that the bill before us, H.R. 6167, contains a provision I authored to provide relief to the local sponsor of the southeast light project in Block Island, RI. As you know, the southeast light is an historic structure located on the edge of an eroding bluff in Block Island. The light is in serious danger of toppling into the ocean. This provision will do much to speed up the pace of the relocation project. Section 357 of the bill states:

> The non-Federal share of the cost of relocating the lighthouse shall be $970,000. Administrative costs of the Army Corps of Engineers in carrying out this section shall not be treated, for purposes of this section, as costs of relocating the lighthouse and shall not be paid from amounts appropriated to carry out this section.

In effect, this provision will allow the Army Corps to award the relocation contract without additional Federal appropriations. Mr. President, is that in fact the understanding of the provision?

Mr. MOYNIHAN. That is correct. I am well aware of the situation at the light. The corps has balked at awarding the relocation contract due to a prohibition on spending in excess of $970,000 on the project. This provision removes that prohibition and directs the corps to disregard internal administrative expenses associated with the project. The intention of the Congress is that additional appropriated money for relocation will not be required to move the project forward. The corps now has the authority to award the contract under the current cost estimates.

Mr. CHAFEE. I thank the chairman for this clarification.

The bill (H.R. 6167) was deemed read the third time and passed.

THE TELECOMMUNICATION AUTHORIZATION ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6180, the Telecommunications Authorization Act of 1992, just received from the House, that the bill be deemed read three times, passed, the motion to reconsider laid upon the table.

THE PRESIDING OFFICER. WITHOUT OBJECTION, IT IS SO ORDERED.

THE NTIA AUTHORIZATION BILL

Mr. HOLLINGS. I rise in support of H.R. 6180, the National Telecommunications and Information Administration [NTIA] authorization bill. NTIA serves as the primary adviser to the President on telecommunications policy. NTIA plays a vital role in setting and coordinating the nation's telecommunications policy. This role is becoming more difficult. Advances in telecommunications technology raise new policy issues before the old issues have been resolved. The precedents and traditions of the past will no longer serve us in the future. Each issue requires an independent review; each problem a fresh look.

Senator INOUYE has worked hard to craft this consensus substitute amendment to reauthorize NTIA. I am pleased to join him in supporting this amendment and urge my colleagues to vote for H.R. 6180.

Mr. INOUYE. Mr. President, I rise to support H.R. 6180, the Telecommunications Authorization Act of 1992. This bill includes the authorization for the National Telecommunications and Information Administration [NTIA] within the Department of Commerce. I have worked with the chairman of the Commerce Commitee, Senator HOLLINGS, and the minority leader of the Commerce Committee, Senator DANFORTH, in crafting this bill with my House colleagues.

This bill contains a number of provisions that should aid the NTIA in the performance of its functions. The bill also contains a number of provisions relating to the functions of the Federal Communications Commission [FCC] that were initially contained in the FCC authorization bill. The substitute also contains a few additional provisions. I do not believe that these provisions are controversial. I welcome and encourage my colleagues support for final passage of this bill.

Let me summarize the major provisions of the House bill. First, the bill reauthorizes funding for the National Telecommunications and Information Administration [NTIA] for fiscal years 1992 and 1993. NTIA fulfills a valuable role as an independent, unbiased adviser to the President on communications policy. I expect NTIA to continue to maintain that independence and to consider all points of view in making its recommendations.

The bill retains the authorization figure for fiscal year 1992 of $17,500,000, the same amount appropriated for that year. The substitute increases NTIA's authorization amount for fiscal year 1993 to $17,900,000, which reflects the amount contained in the appropriated bill that has passed Congress and that is expected to be signed into law shortly. While I had hoped that NTIA could receive greater funding to provide telecommunications assistance to Eastern Europe and to promote new spectrum-based technologies, the appropriated amounts are consistent with the need to exercise fiscal responsibility.

The bill also reauthorizes the Peacesat Program, which was first authorized in the NTIA authorization bill for fiscal years 1988 and 1989. NTIA has made substantial progress in reestablishing the Peacesat Program. It has secured the agreement of the National Oceanic and Atmospheric Administration to use a GOES satellite for the Peacesat Program. It has also installed several earth terminals in the Pacific for the purpose of providing the Peacesat service. Because of these successful efforts, the Peacesat Program will once again provide the only means by which many island communities can maintain contact with the developed world. We expect NTIA to continue to monitor the administration of the Peacesat Program to ensure that additional Earth terminals are installed in the Pacific region and that the Peacesat Program continues to expand. We also expect NTIA to continue its efforts to locate and contract for additional satellite capacity necessary to replace the GOES satellite beyond the end of 1994.

This bill also amends the findings for the Peacesat Program to clarify that Peacesat may engage in negotiations to use the satellite facilities of foreign-owned satellites as long as control over the operation of the Peacesat Program remains based in the United States.

This bill also includes an additional authorization of $1 million in funding to the Secretary of Commerce to convene, along with the Secretary of Health and Human Services, a panel to consider ways of satisfying the needs of rural health care providers for enhanced telecommunications facilities and services. This provision is based upon a report released 2 years ago by the Office of Technology Assessment [OTA] that details the severe difficulties faced by rural health care providers, especially nurse practitioners, in keeping up with the latest advances in medical science.

The report makes clear that the lack of adequate telecommunications facilities makes it very difficult for rural health practitioners to provide health care using the same advanced and essential information that is available to those serving the urban areas.

This provision is supported by the National Rural Health Association and Senator BURDICK. This provision is identical to the provision passed as part of the NTIA authorization bill in the 101st Congress. NTIA did not convene the rural health panel or conduct the study required by that bill. I expect that NTIA will find a way to comply with this provision in the coming year.

This legislation also authorizes funding for the National Endowment for Children's Educational Television. The endowment was created to provide funding for educational and instructional television programs. The House bill authorizes $5 million in funding for fiscal year 1993 and $6 million in funding for fiscal year 1994. These are the same amounts contained in the Senate bill as introduced. Although the amount of funds actually appropriated for fiscal year 1993 is less than $5 million, it is my hope that we can fully fund this program in fiscal year 1994.

Also, the House bill includes provisions to encourage the Federal Government to make more efficient use of the spectrum. Many Federal Government agencies received licenses to use the spectrum several years ago, before new innovative spectrum technologies had been developed. For example, trunking and narrowband technologies were developed many years ago, but have only recently been implemented by some Federal users and others have not instituted trunking at all.

I understand that NTIA is currently considering proposals for Federal users to move to trunking technologies, and I encourage such proposals to be deployed on a wide scale. This language, which the NTIA supports, would explicitly recognize that NTIA should promote spectrum efficiency, that it has the authority to withhold or deny frequency assignments in order to further that goal, and that NTIA must develop a plan to adopt more spectrum-efficient technologies for mobile radio users.

The House bill also incorporates two provisions included in the NTIA authorization bill, H.R. 3031, that passed the House last year. The first would give statutory recognition to the NTIA. Currently, NTIA derives its operating authority from an executive order of the President. The bill simply codifies that Executive order. In addition, the bill codifies recommendations made by the NITA in its report on spectrum regarding the need for public participation and openness in the proceedings of the Intergovernmental Radio Advisory Committee.

The following provisions that are currently included in the FCC authorization bill, S. 1132, are also included, with some modifications, in the House bill:

First, the FCC's travel reimbursement program is reauthorized until 1994.

Second, the language to encourage negotiations for the Hawaii monitoring station is reauthorized for 2 additional years.

Third, the FCC's authority to issue refunds is expanded slightly to cover cases where rates decline but do not decline enough. As stated in the House report accompanying the FCC authorization bill, this authority is not intended to be used retroactively against the telephone companies.

Fourth, the FCC is given the authority to allow electronic filing of applications.

Fifth, broadcasters may employ automated technology rather than licensed operators in response to new technological developments.

Sixth, the statute of limitations for forfeiture proceedings is amended to correspond with the terms of broadcast licenses.

Seventh, aggregators of operator services traffic must comply with standards regarding emergency ("911") calls.

Eighth, the FCC is permitted to receive gifts and bequests as long as the receipt does not create conflict of interest or an appearance of a conflict of interest.

Ninth, low-Earth-orbit satellite systems are required to pay fees similar to the fees paid by other satellite systems.

Tenth, the FCC's Older Americans Program is extended for 2 additional years.

The language in the FCC authorization bill concerning the licensing of consortiums is not included in this substitute. Not including this provision is intended to cast no judgment on the question of whether the FCC already has this authority or not. The question of the FCC's authority to require consortiums under the Communications Act is currently before the courts, and this legislation does not resolve that question.

Finally, the House bill includes several new provisions. These provisions are as follows:

First, NTIA shall prepare a report on the role of telecommunications in crimes of hate and violent acts against ethnic, religious, and racial minorities. In preparing this report, I do not intend that NTIA or any other Government official should violate the privacy rights of those who use communications, or become involved in monitoring the content of communications. The provision is drafted to require NTIA to analyze and report on information concerning these activities. I encourage NTIA to draw mainly upon published and other publicly available information in conducting its study in order to avoid excessive governmental interference in the content of communications. Although NTIA may request information from communications entities, these communications entities may refuse to provide such information if releasing such information would affect the privacy interests of communications users. I have no intention that NTIA or any Government official should pressure communications entities to gather information concerning the use of their facilities that they would not otherwise gather in the normal course of their business practices.

Second, the FCC is given the authority to assess fines against tower owners as well as radio licensees in the case of towers that do not comply with the FCC's tower requirements.

Third, the FCC shall report to Congress 30 days prior to authorizing any transfer of a television broadcast license involving a corporation organized pursuant to the Alaska Native Claims Settlement Act.

Fouth, the FCC shall make efforts to reduce telephone rates for Armed Forces personnel in foreign countries.

Fifth, the FCC shall adopt a standard for AM radio.

I strongly urge my colleagues to give their support to this bill.

CELLULAR COMPETITION

Mr. BRYAN. Mr. President, I would like to engage the senior Senator from Hawaii and chairman of the Communications Subcommittee in a brief colloquy. In July, the subcommittee held a hearing on mobile communications. The testimony received in that hearing raised numerous questions about the degree of competition in the cellular industry and whether the absence of vigorous competition may result in consumers being overcharged for these services.

The General Accounting Office conducted a study on cellular competition which was released at the hearing, and it, too, seriously questioned the Federal Communications Commission's approach to the industry. The study found that FCC policies allowing only two licensees in each market leads to limited competition which could be producing artificially high service rates.

I am troubled by the FCC's decision not to collect any data on cellular market performance. Due to the FCC's unique two-carrier regulatory structure for cellular, the agency at a minimum should closely monitor how this industry operates. Without such a check, the Commission cannot gauge whether its approach is providing real price competition.

Mr. INOUYE. I appreciate the comments of my friend from Nevada. I also was struck by how little the FCC monitors this industry, particularly given its unusual regulatory approach to cellular. With the cable industry's problem fresh in our minds, we need to make certain that consumers are benefiting from competition or, in its absence, from regulation of this market.

Mr. BRYAN. I thank the chairman for those thoughts. Las Vegas, the largest city in Nevada, has the highest rate of cellular service penetration in the country. Consumers in my State and elsewhere deserve some measure of confidence that they are paying fair rates for this service. I would hope that as the FCC sets its priorities for next year it will pay particular attention to collecting and making available to the public all information relevant to the cellular policy debate.

Mr. INOUYE. I heartily agree with the Senator's view. The FCC's mere reliance upon the future deployment of so-called emerging technologies to provide the competition necessary to drive down cellular rates does little to help cellular customers in the short run. I also hope that the Commission will examine a full range of policy options for mobile services to address these concerns.

Mr. BRYAN. I thank the distinguished chairman and look forward to working together on these matters. Mr. President, I yield the floor.

Mr. DANFORTH. Mr. President, I strongly object to a provision in H.R. 6180, the Telecommunications Authorization Act of 1992, which permits the Federal Communications Commission to accept gifts and bequests. I have agreed to allow this bill to be considered by the Senate, despite my serious reservations, because the bill contains provisions which are important to my colleagues, and we have no option but to pass the House bill at this late hour.

I believe that a regulatory agency should not be permitted to accept gifts from those entities which it regulates under any circumstances. I believe this provision has a certain aroma. I have reluctantly agreed to lift my hold on this bill if certain conditions are met.

The gift and bequest provision in H.R. 6180 requires the FCC to engage in a rulemaking to promulgate regulations which would preclude acceptance by the Commission of any gift, donation, or bequest that would create even the appearance of a conflict of interest. Along with others, I am sending a letter to the Chairman of the FCC requesting that the public comment period for such rulemaking be of at least 90 days duration, and that it will occur in its entirety during a period in which the Congress is in session. The Committee on Commerce, Science, and Transportation will conduct a hearing on this matter during that period, and would like to be certain that the committee's views are included in the FCC's record.

The letter makes clear that it is our intent that the FCC be permitted to accept no gift, donation, or bequest from any person, entity, or any affiliate of an entity that is regulated by, or has any matters before, the Commission. The letter states that the acceptance of items of value, even if unconditional, from such persons or entities creates an automatic and inherent conflict of interest.

The letter also states that it is our intent that the Commission would be unable to accept any gifts, donations, or bequests until the rulemaking required by section 4(g)(3) of the Communications Act of 1934 (47 U.S.C. 154(g)(3)), as amended by the Telecommunications Authorization Act of 1992, is completed.

It is my firm belief that the Commerce Committee must maintain careful oversight of the implementation of this provision, and I intend to make every effort to ensure that the committee undertakes that task.

The bill (H.R. 6180) was deemed read the third time and passed.

CORRECTIONS IN THE ENROLLMENT OF H.R. 429.

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 382, just received from the House, that the concurrent resolution be agreed to and the motion to reconsider laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

CORRECTING THE ENROLLMENT OF H.R. 429

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Concurrent Resolution 142, a concurrent resolution to direct the Clerk of the House to make additional corrections in the enrollment of H.R. 429, submitted earlier today by Senator JOHNSTON; that the resolution be agreed to and the motion to reconsider laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution was considered and agreed to as follows:

S. CON. RES. 142

Resolved by the House of Representatives (the Senate concurring), That in the enrollment of the bill (H.R. 429) to amend certain Federal reclamation laws to improve enforcement of acreage limitations, and for other purposes, the Clerk of the House of Representatives shall make the following additional corrections:

In section 3004(b), delete "eighteen" and insert in lieu thereof "twenty-two".

Amend section 212 to read as follows:

SEC. 212. CROPS FOR WHICH AN ACREAGE REDUCTION PROGRAM IS IN EFFECT.

Notwithstanding any other provision of law relating to a charge for irrigation water supplied to crops for which an acreage reduction program is in effect, until the construction costs of the facilities authorized by this title are repaid, the Secretary is directed to charge an acreage reduction program crop production charge equal to 10 percent of full cost for all water delivered by the Central Utah Water Project, as defined in section 202 of the Reclamation Reform Act of 1982 (43 U.S.C. 390bb), for the delivery of project water used in the production of any crop of an agricultural commodity for which an acreage reduction program is in effect under the provision of the Agricultural Act of 1949, as amended, if the total supply of such commodity for the marketing years in which the bulk of the crop would normally be marketed is in excess of the normal supply as determined by the Secretary of Agriculture. The Secretary of the Interior shall announce the amount of the acreage reduction program crop production charge for the succeeding year on or before July 1 of each year.

NEZ PERCE NATIONAL HISTORICAL PARK

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 2032.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendments of the Senate numbered 1, 2, and 3 to the bill (H.R. 2032) entitled "An Act to amend the Act of May 15, 1965, authorizing the Secretary of the Interior to designate the Nez Perce National Historical Park in the State of Idaho, and for other purposes.".

Resolved, That the House agree to the amendment of the Senate numbered 4 to the aforesaid bill, with the following Amendment:

Page 1, strike out line 6 and all that follows through page 2, line 2 and insert:

(3) In section 3, strike the proviso in the first sentence and insert in lieu thereof the following: "Lands or interest therein owned by a State or political subdivision of a State may be acquired under this section only by donation or exchange. In the case of sites designated as components of the Nez Perce National Historical Park after November 1, 1991, the Secretary may not acquire privately owned land or interest in land without the consent of the owner unless the Secretary finds that—

"(1) the nature of land use has changed significantly or that the landowner has demonstrated intent to change the land use significantly from the condition which existed on the date of the enactment of the Nez Peace National Historical Park Addition Act of 1991;

"(2) the acquisition by the Secretary of such land or interest in land is essential to assure its use for purposes set forth in this Act; and

"(3) such lands or interests are located:

"(A) within an area depicted on Sheet 3, 4, or 5 of the map entitled 'Nez Perce Additions', numbered 429-20018, and dated September 1991, or

"(B) within the 8-acre parcel of Old Chief Joseph's Gravesite and Cemetery, Oregon, depicted as 'Parcel A' on Sheet 2 of such map.".

Mr. FORD. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ADAMS. Mr. President, I am pleased to join with my colleague Senator HATFIELD in urging passage of H.R. 2032, the Nez Perce Park Additions Act of 1992. This bill answers many years of prayers from the Nez Perce Tribe who have sought a means of providing additional protection for their sacred sites, graveyards, and historic battlefields located throughout the Pacific Northwest. To even begin to understand the significance of this legislation to the Nez Perce people, it is necessary to revisit events and chapters in our history that contain many painful memories for a tribe that is known for having assisted the Lewis and Clark Expedition in 1803, and for having gone to great lengths to avoid a war that was forced upon them in 1877.

In April 1879, the North American Review published a statement entitled, "An Indian's View of Indian Affairs" containing the words of Chief Joseph of the Nez Perce, one of the great figures of Northwest history. He stated:

> I want the white people to understand my people. Some of you think an Indian is like a wild animal. This is a great mistake. I will tell you about our people, and then you can judge whether an Indian is a man or not. I believe much trouble and blood would be saved if we opened our hearts more * * *.
>
> [On his deathbed my father said:] "My son, never forget my dying words. This country holds your father's body. Never sell the bones of your father and mother." I pressed my father's hand and told him I would protect his grave with my life. My father smiled and passed away to the spiritland.
>
> I buried him in that beautiful valley of winding waters. I love that land more than all the rest of the world. A man who would not love his father's grave is worse than a wild animal * * *

Several weeks ago, I had the pleasure of meeting with Joe Redthunder, the oldest surviving member of the Chief Joseph Band of Nez Perce Indians. He had come to Washington on a midnight flight to make one final appeal that we pass H.R. 2032, the Nez Perce park additional bill. This legislation will add 14 additional historically significant sites located throughout the Pacific Northwest to the existing Nez Perce National Park, which presently includes only sites located in the State of Idaho. Most prominent among those proposed additional sites are the gravesite of Old Joseph at Wallowa Lake, OR, the Young Chief Joseph campsite and grave at Nespelem, WA, and the battle sites located along the Big Hole River and in the Bear Paw Mountains of Montana.

Similar legislation, S. 2804, passed the Senate in the waning days of the 101st Congress, but was not acted upon in the House. On March 1, 1991, I was pleased to join with Senators HATFIELD, BAUCUS, CRAIG, BURNS, and SYMMS in reintroducing the legislation, S. 550, which was reported unanimously by the Senate Energy and Natural Resources Committee on July 17, 1991. H.R. 2032 passed the House last year, was amended in the Senate and returned to the House where it was further amended and sent back to the Senate. Today, the Senate of the United States honors the request of 84-year-old Joe Redthunder, Chief Joseph's great-grandnephew by passing H.R. 2032 and protecting the graves of his ancestors and the other hallowed places that earned Chief Joseph and the Nez Perce a special place in our Nation's history.

In light of the fact that our Nation is embarked upon a yearlong celebration of the 500th anniversary of the arrival of Columbus in North America, I believe this legislation has special importance and significance. In addition, under the prime sponsorship of Senator HATFIELD, the U.S. Senate passed Senate Joint Resolution 217 asking the President to declare 1992 "The Year of the American Indian". As Senator HATFIELD so eloquently stated in his floor statement introducing Senate Joint Resolution 217, "* * * the 500th anniversary of the discovery of the new world is the perfect opportunity to reflect on the countless contributions made to America by the Indian community. Reflections on history, however, must often include examinations of unpleasant events."

In passing this legislation this evening we provide the President of the United States with the historic opportunity to sign the Nez Perce Park Additions Act of 1992. That occasion will finally bring closure to a long and sad saga for the Joseph Band of Nez Perce Indians. And it will demonstrate that the U.S. Senate took the time to reflect upon those unpleasant events that gave rise to the Nez Perce war of 1877 and led to the banishment of the Joseph Band from their homeland.

The Nez Perce war of 1877 was the last major military engagement between the United States and a native American tribe. After being forcibly evicted from their ancestral lands near Wallowa Lake in present day Oregon, the Joseph Band embarked upon an epic flight for survival that began with the White Bird Battle on June 17, 1877, and ended 115 years ago today, on October 5, 1877 at the Bear Paw Battle. On that later date, only 40 miles from Canada, Chief Joseph and 86 men, 184 women, and 147 children surrendered to Col. Nelson A. Miles after being assured they would be returned home. Chief Joseph stated:

> It is cold and we have no blankets. The little children are freezing to death. My people, some of them, have run away to the hills, and have no blankets, no food. No one knows where they are, perhaps freezing to death. I want to have time to look for my children, and see how many of them I can find. Maybe I shall find them among the dead. Hear me, my chiefs! I am tired. My heart is sick and sad. From where the Sun now stands I will fight no more forever.

Joseph and his band endured 8 years of exile in Kansas and Oklahoma, where many died as a result of the harsh, unfamiliar climate. During those years, Chief Joseph never gave up his hope of returning to the Wallowa Valley, to be near the graves of his father and ancestors. Joseph visited Washington, pleading his cause to President Rutherford B. Hayes in 1879, to no avail. The Joseph Band was finally returned to the Northwest in 1885, and were confined on the Colville Reservation in eastern Washington, never to return to the Wallowa Valley.

On November 11, 1903, Chief Joseph visited Seattle with his nephew Redthunder, the grandfather of Joe Redthunder. Speaking to students at my alma mater, the University of Washington, Chief Joseph said:

> In my declining years, I long to return to my old home in Wallowa Valley, where most of my relatives and friends are sleeping their last sleep. I have repeatedly petitioned the Great Father in Washington to transfer myself and small band to our old home, that we may die in the Country, having so many tender memories. I have made frequent visits to Washington and have met many persons high in official life. They have all promised to render their assistance, but it has been wait, wait, wait.
>
> On my last visit to the Capital City, I had the honor and pleasure of meeting President Roosevelt who treated me with much kind consideration. He assured me that a committee would be sent out to investigate my conditions and surroundings. This committee was to be at my home last July but they have not yet come. This is but one instance of the duplicity shown me by the Government. I hope you will be able to help me and render me what assistance you can in securing long delayed justice. To return to Wallowa Valley, is a wish I cherish very dearly. That is all.

Chief Joseph's final wish was never realized, for he died at his camp at Nespelem on September 21, 1904, 88 years ago this past Monday. Through all those years of hardship and exile, he never forgot the promise made to Old Joseph on his deathbed. Although the graves of Young Joseph and Old Joseph are now located in two different States, the land remains sacred to their memory, and worthy of the special recognition and protection that will be provided under H.R. 2032.

Mr. President, I compliment my good friend and colleague, the senior Senator from Oregon, Mr. HATFIELD for working to break the impasse that threatened to prevent passage of H.R. 2032. I know that Joe Redthunder, together with Nez Perce Tribal Council Vice Chairman Charles "Pete" Hayes, greatly appreciated the honor of meeting with Senator HATFIELD to discuss their mutual interest in the success of this legislative effort. In addition, the Senators from Idaho, Mr. SYMMS and Mr. CRAIG and the Senators from Montana, Mr. BAUCUS and Mr. BURNS, were generous with their time in meeting with Joe Redthunder during his recent visit. Their sponsorship of this legislation demonstrated the level of bipartisan cooperation that was critical to its success.

In closing, I want to express to the many members of the Nez Perce Tribe from Lapwai and Kamiah on the tribal reservation in Idaho, to the Joseph Band of Nez Perce and the Colville Tribe at "Nespelem, and to the citizens of Wallowa County, OR, my deep admiration for the years of hard work that made this day possible. H.R. 2032 reaffirms that the heroic struggle of "Hin mah too yah lat kekt," Young Chief Joseph, to preserve the grave of his father was not fought in vain. As the senior Senator from the State of Washington I am deeply honored to have been a part of this effort.

Mr. HATFIELD. Mr. President, I wish to express my support for H.R. 2032, the Nez Perce National Park additions bill. This bill is extremely important to the heritage of the Nez Perce people and to all Americans interested in conserving areas of extraordinary historic and cultural value.

I would like to take just a moment of the Senate's time to explain recent efforts to resolve differences about this bill. These differences revolved around two distinct approaches to the condemnation of private property containing significant public and cultural value.

The basic disagreement involved the power of condemnation. In my years a as freshman Senator, I had the distinct pleasure of knowing and serving with one of the Senate's most able constitutional scholars—Senator Wayne Morse. I gained much from the wisdom of Senator Morse, including his views regarding the power of condemnation. Senator Morse felt the power of condemnation—next to the power of taxation—is one of the Government's most powerful controls over individual lives.

While occasionally necessary, condemnation authority should be exercised almost always as a last resort, when all other efforts to resolve a resource management problem have failed. As a general principle, and one about which I feel very strongly, I apply three strict criteria to any decision to include condemnation authority in any congressional legislation:

First, the property in question must have significant public value;

Second, the owner of the significant property must be unwilling to sell, or earlier negotiations to sell the property have failed; and

Third, the property must be subject to an imminent threat of destruction or irreversible harm.

When Congress passed the Columbia River Gorge Scenic Area Act in 1986, limited condemnation authority was applied to certain scenically significant areas in a land area of approximately 183,000 acres. These significant areas were called special management areas [SMA's] and contained hundreds of parcels of federally and privately owned land of particular scenic, natural, cultural and recreational value to the Columbia Gorge. On a number of these privately owned parcels of land, the threat of development was imminent. Therefore, I supported authorizing the condemnation power with respect to these lands, but only when all other efforts to protect them had failed, in order to protect the scenic and cultural integrity of the gorge.

As in the case of the Columbia Gorge, I applied the three strict criteria regarding condemnation to my decision to approve of the House of Representatives' version of the Nez Perce Park additions bill, which also contains limited condemnation authority.

The issue in the case of the Nez Perce parks legislation involved the ownership of lands on which the sacred gravesite of Chief Joseph of the Nez Perce Tribe is located. This land is now in private ownership, and the owners, at least until recently, were willing to sell those lands to the Federal Government for inclusion in the Nez Perce National Historical Park. Although no agreement on the price of the land at the gravesite had been reached, it was my view that so long as negotiations between a willing seller and the Government were underway, there was no need to authorize condemnation of the land.

This situation changed, however, when the property owner withdrew from the negotiations and informed the Government that the land would be subdivided and sold on the open market. This is a course which I cannot accept. Not only is the land owner no longer a willing seller, the cultural integrity of the gravesite is being threatened by the irreversible action of subdivision and development.

It is my duty to take whatever steps possible to preserve these lands so critical to the heritage of the Nez Perce people. I therefore offer my support to the House version of the Nez Perce Park additions bill, H.R. 2032, and will work with my colleagues in the House and the Senate to pass the bill as rapidly as possible.

COLVILLE INDIAN RESERVATION

Mr. GORTON. Concern has been raised by the Colville Confederated Tribe with respect to the impact passage of this legislation might have upon the use of trust lands located on the Colville Indian Reservation. Does this legislation, in any manner, alter the current status or use of any such land?

Mr. ADAMS. I have been made aware of those concerns as well, and I compliment my colleague for seeking this clarification. H.R. 2032 has no impact upon such land. For example, the gravesite of Chief Joseph, located in a traditional cemetery in Nespelem shall remain under the control of the Joseph Band of Nez Perce, a constituent band of the Confederated Tribes of the Colville reservation. Unless the band agrees to have the site included within the park addition, it would remain inactive. In the absence of a cooperative agreement with the Joseph Band, the gravesite of young Joseph would not be included.

Mr. GORTON. Does this legislation contain any mechanism that could be used to force an agreement upon the Joseph Band or the Colville Tribe without their consent?

Mr. ADAMS. Absolutely not. There is no mechanism in this legislation to force any agreement upon the tribe or band. In fact, no site located anywhere in the State of Washington could be acquired without the consent of the property owner.

Mr. GORTON. Does this legislation contemplate participation by the Joseph Band of Nez Perce in developing other aspects of the expanded Nez Perce National Park?

Mr. ADAMS. My colleague is correct. The additional sites located in Oregon, Montana, and Idaho will be an important addition to the present park, now located solely within the State of Idaho. I understand that the Nez Perce tribe of Idaho today committed in writing their understanding that the Joseph Band would be consulted, and would participate in the interpretation of all other sites in the park system, with the exception of the sites located on the Nez Perce Reservation.

Mr. GORTON. I ask unanimous consent that a letter from the Nez Perce tribal executive committee to the Confederated Tribes of the Colville Reservation be made a part of the RECORD at this point.

TRIBAL EXECUTIVE COMMITTEE
October 7, 1992.

Re: Nez Perce park additions bill
EDDIE PALMANTEER, JR.,
Chairman, Confederated Tribes of the Colville Reservation, Nespelem, WA.

DEAR CHAIRMAN PALMETEER: I am very concerned about the Nez Perce Park Additions Bill and its chances of passing this 102d Congress. The bill would authorize the National Park Service to designate specific sites significant to the history and culture of the Nez Perce people. The hold placed on the bill by Senator GORTON threatens to kill this bill. If this bill dies, it is highly unlikely we will be able to stop condominium development from encroaching upon the Old Joseph Monument site near Wallowa Lake. This has been our primary driving force in pushing this additions bill. I want to provide the following assurances to the Chief Joseph Band of Nez Perce and to the Confederated Tribes of the Colville Reservation:

1. Categorically and without exception, the Chief Joseph Band of Nez Perce will have complete and total purview over any sites designated under the Nez Perce National Historical Park within the boundary of the Colville Reservation. If the Chief Joseph Band of Nez Perce chooses not to establish any recognition of the sites, then the sites would remain inactive.

2. The Chief Joseph Band of Nez Perce on the Colville Reservation will be consulted and participate in the interpretation of all other sites of the park system, with the exception of those located within the boundary of the Nez Perce Reservation.

3. If the Chief Joseph Band of Nez Perce requests, the Nez Perce Tribe will support an amendment to the Nez Perce National Historical Park in the 103d Congress to remove the Washington State sites from the park system.

I hope this letter addresses your concerns.

Sincerely,

SAM PENNEY,
Chairman, Nez Perce Tribal Executive Committee.

CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT AMENDMENTS

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6129, Agricultural Credit Improvement Act of 1992, just received from the House, that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CONRAD. Mr. President, it is my pleasure to present to the Senate the Agricultural Credit Improvement Act of 1992. This bill incorporates much of my bill, S. 3310, entitled the Agricultural Credit Amendments Act of 1992, which was designed to provide credit to beginning farmers and ranchers, as well as H.R. 4906, a similar bill in the House.

The bill before the Senate today establishes a down payment loan program under the Farmers Home Administration [FmHA]. Under this proposal, a beginning farmer or rancher who wishes to purchase land may receive a 10-year, low-interest FmHA loan for 30 percent of the value of that land if the beginning farmer provides a 10 percent down payment, and a commercial, cooperative or other lender makes a loan for the remaining 60 percent. When the beginning farmer or rancher has repaid the FmHA loan at the end of 10 years, he or she will have at least 40 percent equity in the land, which should provide an adequate asset base on which to obtain future private credit and operate a successful farm operation.

This bill also establishes a beginning farmer operating loan program which ensures a borrower a reliable source of FmHA-assisted operating credit for up to 10 years if the borrower develops and meets a long-term operating plan.

Mr. President, I would like to explain the intent of a number of provisions in this bill to guide the administration, in particular, the Department of Agriculture, in their interpretation of the provisions contained in the bill.

Federal-State beginning farmer partnership: Section 5 establishes a new partnership between the Farmers Home Administration [FmHA] and beginning farmer programs in the States. It is the intent of the committee that FmHA notify States of this new partnership as soon as possible after enactment. It is further the intent of the committee that FmHA respond quickly and positively to requests from a State beginning farmer program for assistance, including but not limited to down payment loans to be used in conjunction with State financing of the remainder of the loan and Federal guarantees of State aggie bond and other types of State beginning farm loans. The committee hopes that this change in policy will spur many additional States to revive or establish beginning farmer programs. With respect to the advisory committee on beginning farmers and ranchers, the committee encourages the Secretary to establish this group as quickly as possible, at no cost to the government if necessary, so that it can assist in developing the program and program regulations.

Down payment loan program: Section 7 establishes the time period for down payment loans at 10 years, or less at the option of the borrower. It is the intent of the committee that, should the need arise, the down payment borrowers will be subject to the same loan servicing and debt restructuring options as any other farm ownership borrower.

Special assistance to qualified beginning farmers and ranchers: Section 8 establishes a special assistance option for beginning farmer and ranchers that requires FmHA to provide assistance for a 10-year commitment period. Beginning farmers and ranchers may apply as regular operating loan borrowers, if they so choose.

This section also requires the applicant to submit a plan of farm operation. It is the intent of the committee that the Secretary, in coordinating this program with borrower training, loan assessment, supervised credit, and market placement, devise a single planning instrument to eliminate unnecessary paperwork.

This section also provides that the farm plan contain "specific goals that the applicant projects to meet in order to progress toward graduation as expeditiously as possible." It is the intent of the committee that such goals are to be guidelines for each individual borrower, with assistance from the Secretary, to progress toward graduation. The goal during the commitment period, is to move the borrower through the continuum of assistance, ranging from reduced interest rate direct loans, regular interest rate direct loans, subsidized guaranteed loans, and unsubsidized guaranteed loans, and ultimately graduation to private credit. Depending on the applicant's particular circumstances and farm plan, one or more of these options may be used during the commitment period. It is the intent of the committee that this process take place in conjunction with the loan assessment program established by the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101-624. Section 8 limits beginning farmers and ranchers who choose to participate in the special operating loans assistance program to not more than 8 years of direct loans within the 10-year commitment period. It is the intent of the committee that this limit does not preclude the borrower from receiving another 2 years of direct loans, if necessary, under the regular operating loan program, consistent with the overall graduation requirement in section 9.

This section also provides that the Secretary:

> Shall revoke any commitment for assistance made to an applicant under this section if the operation of the applicant fails, for two consecutive years, to meet the goals specified in the plan, unless the failure is due to circumstances beyond the control of the applicant and has not materially reduced the likelihood of the operation becoming financially viable.

It is the intent of the committee that "goals specified in the plan" refers to the general financial and farm income goals identified in the plan, but does not include the details of the plan such as projections concerning crop selection, yields, production methods and practices, conservation measures, equipment, specific income and expense figures, specific credit needs, and farmsites. It is not the intent of the committee that production choices are locked in by the plan nor is it the intent to the committee that income and credit projections will be used as an absolute measure of success.

Definition of qualified beginning farmer or rancher: Section 19 changes the current "majority of labor and management" test to "substantial day-to-day labor and management of the farm or ranch, consistent with the practices of the State or county in which the farm or ranch is located." This change is intended to apply only to beginning farmers and ranchers. The committee does not intend this change to apply to other applicants and does not intend to signal that any application of this change beyond this specific instance would be acceptable.

This section also establishes the definition of qualified beginning farmer or rancher to be applied to all farmer loan and inventory sale and lease programs. These requirements are in addition to, and do not supersede, existing eligibility requirements for each program. The committee intends that a farmer or rancher who previously farmed or ranched and is restarting in agriculture shall be considered a beginning farmer or rancher if they otherwise satisfy the terms of the definition.

This section applies the definition of qualified beginning farmer or rancher to all farm loan and inventory sale and lease programs. These requirements are in addition to, and do not supersede, existing eligibility requirements for each program. The committee intends that a farmer or rancher who previously farmed or ranched and is restarting in agriculture shall be considered a beginning farmer or rancher if they otherwise satisfy the terms of the definition.

Equal access to FmHA assistance by gender: The intention of section 21 is to take all feasible steps to ensure that there is no discrimination or perception of discrimination by gender in administering FmHA's farm loan programs.

It is the intention that this section will increase the number of farm ownership and operating loans made to female farmers. To meet current and future needs for credit, the managers expect that the Secretary will determine the current number of female farmers in each State and add to that number an estimated number reflecting the trend toward increased numbers of female farmers in the State, instead of setting the loan participation rates by gender at a static level.

This targeted rate of loanmaking by gender could be further adjusted as research data on the credit needs of female farmers, as well as recordkeeping on female farmer applicants by gender, becomes available.

Certified lender program and preferred lender program: In general, I am very pleased with this bill. However, it contains one provision which causes me great concern. Section 18 establishes a certified lender program, under which commercial or cooperative lenders, once certified, would receive approval or disapproval of guaranteed loan applications within 14 days. This program will expedite the guaranteed loan process. I support such a program, as long as it is implemented in a way that prevents lender abuse.

However, this provision also allows the Secretary to establish in 2 years a preferred lender program. Under this program, a lender certified by FmHA as a preferred lender who submits a guaranteed loan application would receive the guarantee if FmHA did not act on the application within 14 days. Mr. President, I believe that enactment of that program at this time is simply bad policy. I strongly opposed its inclusion in this bill.

This committee is aware of serious problems with FmHA's guaranteed loan program. The General Accounting Office has repeatedly reported that FmHA does not adequately review guaranteed loan applications nor verify financial information contained in them. After making guaranteed loans, it does not adequately monitor lenders to ensure that they are properly servicing the loan. It has shown that the program can be easily abused by lenders wanting to reduce their losses. This poor management of the program results in unnecessary losses, losses which I am gravely concerned will increase under the preferred lender program if improperly implemented.

I strongly believe that we must significantly improve FmHA's management of the guaranteed loan program before we even consider allowing guaranteed loans to be made without FmHA's review. Without such improvement, this preferred lender program puts taxpayer's money at significant risk. If I am reelected, I intend to monitor implementation of the ceritifed and preferred lender program very carefully to ensure that we do not create programs that make the Government vulnerable to abuse by lenders.

The language in section 18 makes clear that any loan under these programs is "subject to county committee certification that the borrower of the loan meets the eligibility requirements and such other criteria as may be applicable to loans guaranteed by the Secretary under the provisions of this title" and that the Secretary has the responsibility "to certify eligibility review financial information, and otherwise assess an application." It is the intent of the committee that no applicant determined to be ineligible by the county committee, and no applicant yet to be considered by the county committee, be permitted to have a loan guaranteed under either of these programs under any circumstances. It is further the intent of the committee that the Secretary thoroughly review each guaranteed loan application submitted by certified and preferred certified lenders to determine if the financial information is correct, and whether the borrower shows adequate repayment ability and has adequate collateral. It is the committee's intent that the Secretary ensure that guarantees are approved only for applications that are consistent with the agency's mission, rules and regulations.

Section 18 also requires the lending institution to make appropriate certifications "that the borrower is in compliance with all requirements of law, including regulations issued by the Secretary." It is the intent of the committee that such a certification by the certified or preferred lender is strictly limited to issues directly and substantially related to creditworthiness, repayment ability, and adequacy of collateral. Broader issues of compliance with laws and regulations not related to the loan and loan terms remain the responsibility of the Secretary.

I urge my colleagues to support passage of this bill.

The bill (H.R. 6129) was deemed read the third time and passed.

FEDERALLY SUPPORTED HEALTH CENTERS ASSISTANCE ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 6183, a bill to provide protection from legal liability for certain health care professionals, now at the desk, that the bill be read three times, passed, the motion to reconsider be laid upon the table, and any statements thereupon appear in the RECORD at the appropriate place as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, in passing the Federally Supported Health Centers Assistance Act of 1992, the Senate responds to an unusual aspect of the crisis in maternal and child health care that threatens to leave large numbers of low-income women and children without critically needed services. This measures enables community health centers to obtain malpractice insurance under the Federal Tort Claims Act, freeing up at least $30 million during the first year to expand critically needed services.

Community and migrant health centers, the front-line providers of health care services for the poor, spend an incredible $60 million a year on malpractice insurance—10 percent of their entire annual appropriation. The cost of malpractice insurance for some clinics has risen 30 to 40 percent in the last 2 years, and has increased fourfold in the last decade, even though many clinics have not paid a cent in malpractice claims. Under the Federal Tort Claims Act, the cost of malpractice will drop to about $10 million a year for these clinics. In effect, this legislation is the equivalent of an additional $50 million appropriation for the clinics.

Medical insurers treat the poor, especially pregnant women, as high malpractice risks because they often delay in seeking health care they cannot afford. Unlike private physicians, community health centers cannot pass the malpractice insurance costs on to their patients. Instead, clinics struggling to meet rising insurance premiums often find it necessary to cut back obstetrical and other services when they become too expensive.

By providing community health centers with malpractice coverage under the Federal Tort Claims Act, health centers will be able to attract qualified obstetricians and other physicians, and provide quality prenatal care to more low-income women. Savings to health centers under this legislation can also be used to expand services to children and provide vital postnatal health care, immunizations, health screening, and primary care.

In related legislation approved by Congress this week, one-stop shopping programs will be created to offer maternal and child health care services within community health centers. The savings gained through FTCA coverage will be targeted for this purpose. With such coverage, 250,000 more people can be served, with no additional cost to the Government.

By enacting this legislation, Congress is giving innovative and effective support to community health centers to serve those who depend on them for access to basic health care. By delivering prenatal care and early childhood services, we will reduce infancy mortality rates among those at greatest risk for this tragedy.

The legislation extends Federal Tort Claim Act coverage to all full-time employees and contractors of community, migrant, and homeless health centers. It also authorizes the Department of Health and Human Services to establish a judgment fund sufficient to cover the cost of claims paid out under FCTA. The authorization allows up to $30 million a year to be transferred for this purpose. However, the health centers have been paying more than $60 million a year for their private sector malpractice premiums, despite the fact that their claims experience has been approximately $5 million annually. Under FTCA coverage, the Federal Government will only be responsible for actual claims, which means that the legislation is likely to save the clinics approximately $55 million a year.

These savings can make a major contribution to the all-important effort by the clinics to reduce infant mortality. Today, more than 20 percent of American children live in poverty—the highest rate in three decades. Although the United States spends more on health care than most industrialized nations, 14 million women of child-bearing age and 12 million children lack health insurance. On a typical day in America, 107 infants die, and 700 babies are born with birthweights so low that they are 40 times more likely to die in the first month of life.

The rate of infant mortality in this country is a national disgrace. The United States ranks 24th in the world in overall infant mortality, and the rate is even higher for minorities.

This tragedy is directly related to the lack of adequate prenatal health care. A woman who receives little or no prenatal care is more likely to have a low-birthweight child. Such infants are more likely to develop long-term physical and mental disabilities, to suffer delays in development and to have a range of other illnesses. For every infant who dies, 10 others are disabled for life—400,000 children a year.

As more and more women slip into poverty, access to essential prenatal health care has become increasingly difficult to obtain. The malpractice crisis, particularly in obstetrics, where the insurance premiums are astronomical, has become a major barrier to needed health care for hundreds of thousands of pregnant women, and the problem is especially serious for public health clinics. Our action today is a needed response to this unsatisfactory situation, and I commend all those who have worked with us to achieve this solution.

In particular, I commend Senator HATCH for his strong support for this legislation, and for his commitment to community health center programs. I also commend Senator HEFLIN for his assistance in shaping this worthwhile legislation.

With Federal Tort Claims Act coverage, health centers can move forward in fulfilling their essential mission, providing needed health services to large numbers of Americans whose only doctor has too often been the hospital emergency room. The timely preventive care made possible by this legislation will save lives, save dollars, and create a healthier nation.

Mr. KOHL. Mr. President, though I recognize the valuable care that community and migrant health centers provide for our Nation's rural poor, I do want to express some reservations about H.R. 6183, the Federally Supported Health Centers Assistance Act of 1992.

The medical professionals who would benefit from this legislation are among America's most dedicated public servants. And the sad truth is that today they are forced to pay out far too much money for medical malpractice insurance—money that ought to be spent on more and better health care services. That is a serious problem, Mr. President, and it is a problem that Congress ought to move aggressively to solve.

I am concerned, though, about the measure's effect on patients of persons who would be covered by it. As I understand it, this bill would require victims of medical malpractice to bring lawsuits under the Federal Tort Claims Act [FTCA] rather than under State common law. The FTCA does not allow jury trials or punitive damages. This means that low-income patients who must go to community health centers for their medical care would not be granted the same free access to a jury trial as the more well off in our society. And it means that these same low-income patients would not be entitled to punitive damages in those cases where such damages are warranted. Finally, this legislation would require Federal Government to absorb all the costs of successful malpractice claims, and that is yet another financial burden we would place on the shoulders of our deficit-ridden Federal Government.

Mr. President, by its very language, H.R. 6183 sunsets on January 1, 1996. I hope that between now and then, Congress can explore other ways to reduce sky-high malpractice premiums for community health centers and ensure that those who most desperately need access to health care—the most vulnerable members of society—still have full redress for injury.

Mr. HATCH. Mr. President, I am pleased to submit today a substitute amendment to H.R. 3591, the Federally Supported Health Centers Assistance Act of 1992. This legislation will allow the Nation's 2,000 community, migrant, homeless, and public housing health centers to obtain liability protection by placing them under the umbrella of the Federal Tort Claims Act for a limited period of time.

This legislation will reduce the malpractice insurance premium costs of these facilities and their doctors. Consequently, funds will be made more available for services to people instead of being tied up in malpractice premiums. This is real health care reform and reflects a part of President Bush's health care reform package.

The Federal Government, through the Department of Justice, becomes the malpractice insurer for clinics funded by the Public Health Service. They have requested, and we have provided, changes from the original bill to increase quality assurance programs in the clinics. The Federal obligation will not be present if the clinics fail to take appropriate steps in risk management.

This is a 3-year program which will provide the basis for risk analysis. At the end of this period, the clinics will possess quantitative information to utilize in seeking insurance in the private sector.

The funding of this legislation will be handled by a portion of the clinic appropriation going to the Department of Justice to cover administrative and settlement costs.

Again, I am pleased that we have been able to work out the details of this legislation. This is just one example of the health care reforms sought by the administration and one example of what we can accomplish working together in a bipartisan way. I am pleased to support it.

The bill (H.R. 6183) was deemed read the third time and passed.

THOMAS T. CONNALLY DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER

Mr. FORD. Mr. President, I ask unanimous consent that Veterans' Affairs Committee be discharged from further consideration of H.R. 5491, relating to a medical center in Texas, and that the Senate proceed to its immediate consideration, that the bill be deemed read three times, passed and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENTSEN. Mr. President, I rise to express my pleasure at the Senate's unanimous passage today of H.R. 5491. I requested that the Senate expeditiously pass this bill which honors the late Tom Connally who represented Texas in the U.S. Senate from 1928 to 1952. The legislation renames the Veterans' Affairs Medical Center in Senator Connally's home town of Marlin, TX to the Thomas T. Connally Department of Veterans' Affairs Medical Center.

Commemorating Senator Connally at a facility dedicated to the care of

American veterans is an especially fitting honor. Senator Connally was himself a soldier and a veteran before and during his career as a public servant. Senator Connally first served his country as a member of the Texas Volunteer Infantry during the Spanish-American War. Afterwards, he served in the Texas House of Representatives and later as a county prosecutor. The people of Texas then sent Tom Connally to the House of Representatives in 1917. But soon thereafter, he took a leave of absence to fight for his country in the First World War.

After the war, Tom Connally resumed his duties in the House. He served there until he was elected in 1928 to the Senate, where he served for 24 years. While in the Senate, Senator Connally rose to the chairmanship of the Foreign Relations Committee. As chairman, he showed the Senate and the world the intelligence, integrity, and strength of character that won him the respect and admiration of the good people of Marlin, TX, many years before.

Mr President, Senator Connally died in 1963, having dedicated his life to Marlin, TX, and the Nation. I am very pleased that the Senate has decided to pay fitting tribute to his dedication by passing this bill. We have renamed the Marlin VA Medical Center after one of that community's and Texas' greatest sons.

I thank the distinguished chairman of the Veterans' Affairs Committee, Senator CRANSTON, and the majority leader for their cooperation in moving this legislation. This legislation has now passed both the House and the Senate and will now go to the White House for final approval.

The bill (H.R. 5491) was deemed read the third time and passed.

AMERICAN DISCOVERY TRAIL STUDY

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6184, relating to the American Discovery Trail, just received from the House, that the bill be read a third time, passed, that the motion to reconsider be laid upon the table and any statements relative to the passage of this item be inserted in the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWN. Mr. President, today I would like to rise in support of legislation to authorize the study our Nation's first coast-to-coast hiking trail, the American Discovery Trail. While the Appalachian Continental Divide, and Pacific Crest Trails each provide hiking opportunities traversing the United States from North to South, we lack an East-West backbone with which to link up these trails. The ADT would serve as this backbone, totaling nearly 5,500 miles in length.

The American Discovery Trail will give the American people greater access to some of our country's most beautiful scenic vistas. People all across this country would be able to hike, bike, horseback, or simply walk along such historic trails as the Pony Express route and Santa Fe National Trail which played an important part in America's history.

The trail begins at Point Reyes National Seashore near San Francisco, and travels eastward through Nevada, Utah, Colorado, Kansas, Missouri, Illinois, Indiana, Ohio, West Virginia, and Maryland, ending at Cape Henlopen State Park in Delaware. By linking over 17 existing scenic and historic trails, the ADT will form a national network of trails encompassing 27 States and over 30,000 trail miles.

In Colorado, the American Discovery Trail is routed through some of the State's most beautiful and historic areas. On the west slope, hikers would pass through the Colorado National Monument and cross the Grand Mesa and Gunnison National Forests. Heading north, the route would scale the Collegiate Peaks and then hitch up with the Colorado Trail. Once the trail descends from the Rockies into the suburban areas of Denver, it follows along the foothills of the front range through Cripple Creek to Canon City and then heads west to hook up with the Santa Fe Trail.

Support for such a comprehensive system of trails has been spectacular. In fact, members of the Nebraska delegation contacted me to specifically request that a northern leg of the trail following the South Platte River through Nebraska and Iowa be studied for possible inclusion in the ADT. This has been included in the bill reported by the Energy and Natural Resources Committee.

Thanks to the efforts of the American Hiking Society, Backpacker magazine, as well as many other State and local trails organizations, a three-person team successfully led a scouting expedition in June of 1990 from California to Delaware in order to determine a feasible route for the ADT. Nearly 2 years later, this expedition completed much of the groundwork for the ADT utilizing exiting trails wherever possible.

In addition, committees in each State participated to make sure that local interest existed for such a trail and that potential conflicts were avoided.

Because of this groundwork, the cost of studying the proposed route for designation will be small. Within 3 years, the National Park Service must conduct the study and provide its recommendations to Congress. At that time, additional legislation will provide for the actual designation of the trail.

Because the ADT has been purposefully routed in and around major metropolitan areas to link up with urban greenways and rail-to-trail conversions, the ADT also helps achieve the goal set forth by the President's Commission on Americans Outdoors—that everyone live within 15 minutes of a trail. This same Commission found that walking for pleasure is the No. 1 activity for Americans. In addition, the presence of trails has been shown to positively impact real estate property value, small business revenues, and tourism.

Mr. President, I was happy to sponsor this legislation. In these times of physical awareness and fiscal restraint, the American Discovery Trail provides healthy inexpensive entertainment opportunities for all age groups.

It is my hope that the trail also will foster increased appreciation of and responsibility for our public lands, as well as heightened awareness of our cultural heritage.

Mr. President, I am pleased Congress has passed this legislation.

As you know, yesterday the Senate passed H.R. 3011, which is identical to H.R. 6184. However, because H.R. 6184 already has been passed by the House, it will not be necessary to return the bill to the House for further review. Thus, the passage of H.R. 6184 by the Senate immediately clears the bill for the President's signature into law.

The bill (H.R. 6184) was deemed read the third time and passed.

DRY TORTUGAS NATIONAL PARK

Mr. FORD. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further consideration of H.R. 5061, a bill relating to the Dry Tortugas National Park; that the Senate proceed to its immediate consideration; that the bill be deemed read a third time, passed; that the motion to reconsider be laid upon the table; that any statements relative to the passage of this item appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 5061) was deemed read the third time and passed.

ED JENKINS RECREATIONAL AREA

Mr. FORD. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further consideration of H.R. 6000, a bill relating to the Ed Jenkins Recreational Area; that the Senate proceed to its immediate consideration; that the bill be deemed read a third time, passed, the motion to reconsider laid upon the table, and that any statements relative to the passage of this item appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 6000) was deemed read the third time and passed.

EXCHANGE OF LAND IN COLORADO

Mr. FORD. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further consideration of H.R. 1182, relating to an exchange of land in Colorado; that the Senate proceed to its immediate consideration; that an amendment at the desk by Senator BROWN be agreed to; that the bill be deemed read a third time, passed; that the motion to reconsider be laid upon the table; that any statements relative to passage of this item be inserted in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3434

(Statement of purpose: To improve the bill)

Mr. SIMPSON. Mr. President, I send an amendment to the desk on behalf of Mr. BROWN and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. BROWN proposes an amendment numbered 3434.

Mr. SIMPSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 13, line 18, strike "of" and insert in lieu thereof, "after".

On page 14, beginning on line 2, strike, "No such provision of water to the United States shall in any way be construed to constitute an abandonment of such water by the Counties".

The PRESIDING OFFICER. The questions is on agreeing to the amendment.

The amendment (No. 3434) was agreed to.

So the bill (H.R. 1182), as amended, was deemed read the third time, and passed.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONVEYANCE OF CERTAIN LAND

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1439.

The PRESIDING OFFICER laid before the Senate the following message From the House of Representatives:

Resolved, That the bill from the Senate (S. 1439) entitled "An Act to authorize and direct the Secretary of the Interior to convey certain lands in Livingston, Parish, Louisiana", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

TITLE I—LAND CONVEYANCE

SEC. 101. FINDINGS.

The Congress finds and declares that—

(1) there is a history of adverse claims and title confusion relating to certain lands in Livingston Parish, Louisiana, arising from private land claims predating the Louisiana Purchase;

(2) numerous parties have in good faith placed valuable improvements upon such lands in the belief that they owned such lands; and

(3) the public interest will be best served by clarifying the uncertainty of title by conveying the interest of the United States in such lands to those affected parties.

SEC. 102. CONVEYANCE OF LANDS.

(a) IN GENERAL.—Notwithstanding any other provision of law, and subject to the reservation in subsection (b), the United States hereby grants all right, title, and interest of the United States in and to certain lands in Livingston Parish, Louisiana, as described in section 103, to those parties who, as of the date of enactment of this Act, would be recognized as holders of a right, title, or interest to any portion of such lands under the laws of the State of Louisiana, but for the interest of the United States in such lands.

(b) RESERVATION OF MINERAL RIGHTS.—The United States hereby excepts and reserves from the provisions of subsection (a) of this section, all minerals underlying such lands, along with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary of the Interior may prescribe.

SEC. 103. DESCRIPTION OF LANDS TO BE CONVEYED.

The lands to be conveyed pursuant to this title are those lands located in section 37, township 5 south, range 4 east, St. Helena Meridian, in Livingston Parish, Louisiana.

TITLE II—PORT CHICAGO NATIONAL MEMORIAL

SEC. 201. SHORT TITLE.

This title may be referred to as the "Port Chicago National Memorial Act of 1992".

SEC. 202. FINDINGS.

The Congress hereby finds that—

(1) the Port Chicago Naval Magazine, located in Contra Costa County, California, served as the major West Coast munitions supply facility during World War II, during which time the facility played a critical role in the success of the war effort;

(2) on July 17, 1944, an explosion at Port Chicago, the origin of which has never been determined, resulted in the deaths of 320 officers and sailors, the largest domestic loss of life during World War II, and the injury of many others; and

(3) it is fitting and appropriate that the site of the Port Chicago Naval Magazine, which is currently included in the Concord Naval Weapons Station, be designated as a National Memorial to commemorate the role of the facility during World War II, to recognize those who served at the facility, and to honor the memory of those who gave their lives and were injured in the explosion on July 17, 1944.

SEC. 203. PORT CHICAGO NATIONAL MEMORIAL.

(a) DESIGNATION.—In order to recognize the critical role Port Chicago, located at the Concord Naval Weapons Station in Contra Costa County, California, played in the Second World War by serving as the main facility for the Pacific Theater and the historic importance of the explosion which occurred at the Port Chicago Naval Magazine on July 17, 1944, such Naval Magazine is hereby designated as a National Memorial, to be known as the Port Chicago Naval Magazine National Memorial. The Secretary of the Interior shall take appropriate action to assure that the Memorial is announced in the Federal Register and that official records and lists are amended, in due course, to reflect the inclusion of this memorial along with other national memorials established by an Act of Congress.

(b) MARKER.—The Secretary of the Interior, with the concurrence of the Secretary of Defense, is authorized and directed to place at the site the Port Chicago Naval Magazine National Memorial, as designated under subsection (a), an appropriate plaque or marker commemorating the critical role Port Chicago played in the Second World War and the historic importance of the explosion which occurred at that location on July 17, 1944. The plaque or marker shall include a listing of the names of those who lost their lives during the explosion.

(c) PUBLIC ACCESS.—The Secretary of the Interior shall enter into a cooperative agreement with the Secretary of the Navy to provide for public access to the Memorial.

SEC. 204. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

Amend the title so as to read: "An Act to authorize and direct the Secretary of the Interior to convey certain lands in Livingston Parish, Louisiana, and for other purposes.".

Mr. FORD. Mr. President, I move that the Senate concur in the House amendments.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MIKE MANSFIELD FELLOWSHIP ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of calender No. 697, S. 2763, the Mike Mansfield Fellowship Act; that the bill be deemed read the third time, passed; that the motion to reconsider laid upon the table; further that any statements regarding the measure be placed in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 2763) was deemed read the third time, and passed, as follows:

S. 2763

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Mike Mansfield Fellowship Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) because Senator Mike Mansfield served his country with distinction and has had a lasting impact on America's relationship with Japan during his tenure in the Senate

and later as the United States Ambassador to Japan, it is a fitting tribute to establish the following Fellowship in his name for promising officials of the Federal Government;

(2) Japan is America's second largest trading partner, the second biggest investor in the United States, and America's most serious economic competitor;

(3) despite the challenge and importance of Japan to the United States, few Americans speak Japanese or understand how the country and its government works; and

(4) key agencies of the United States Government involved in United States-Japan relations often lack sufficient personnel versed in the functioning of the Japanese policy-making apparatus.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to enable the United States Government to respond more effectively to the Japanese challenge; and

(2) to provide officials from any branch of the United States Federal Government with intensive Japanese language training and an opportunity to be placed as a Fellow in the Government of Japan.

SEC. 4. DEFINITIONS.

For purposes of this Act—

(1) the term "agency of the United States Government" includes any agency of the legislative branch and any court of the judicial branch as well as any agency of the executive branch;

(2) the term "agency head" means—

(A) in the case of the Senate, the President pro tempore, in consultation with the Majority Leader and Minority Leader of the Senate;

(B) in the case of the House of Representatives, the Speaker of the House, in consultation with the Majority Leader and Minority Leader of the House;

(C) in the case of the judicial branch of Government, the chief judge of the respective court; and

(D) in the case of the executive branch of Government, the head of the respective agency;

(3) the term "Board" means the Mike Mansfield Fellowship Review Board; and

(4) the term "Center" means the Mansfield Center for Pacific Affairs.

SEC. 5. ESTABLISHMENT OF FELLOWSHIP PROGRAM.

(a) ESTABLISHMENT.—(1) There is hereby established the "Mike Mansfield Fellowship Program" pursuant to which the Secretary of State will make grants to the Mansfield Center for Pacific Affairs to award fellowships for periods of 2 years each to eligible United States citizens, as follows:

(A) During the first year each fellowship recipient will study the Japanese language as well as the Japanese political economy.

(B) During the second year each fellowship recipient will serve as a Fellow in a parliamentary office, ministry, or other agency of the Government of Japan or, subject to the approval of the Center, a nongovernmental Japanese institution associated with the interests of the fellowship recipient, consistent with the purposes of this Act.

(2) Fellowships under this Act may be known as "Mansfield Fellowships", and individuals awarded such fellowships may be known as "Mansfield Fellows".

(b) ELIGIBILITY OF CENTER FOR GRANTS.—Grants may be made to the Center under this section only if the Center agrees to comply with the requirements of section 7.

(c) INTERNATIONAL ARRANGEMENT.—The Secretary of State is authorized to enter into an arrangement with the Government of Japan for the purpose of placing Fellows in the Government of Japan.

(d) USE OF FEDERAL FACILITIES.—The Foreign Service Institute is authorized and encouraged to assist in carrying out Japanese language training by the Center through the provision of classroom space, teaching materials, and facilities, to the extent that such provision is not detrimental to the Institute's carrying out its other responsibilities under law.

SEC. 6. FUNDING.

(a) PRIVATE SOURCES.—The Center is authorized to accept, use, and dispose of gifts or donations of services or property in carrying out the fellowship program, subject to the review and approval of the Board described in section 9.

(b) AVAILABILITY OF FUNDS.—Of any funds appropriated or otherwise made available to the Department of State pursuant to law—

(1) for fiscal year 1993, $1,000,000,

(2) for each of the fiscal years 1994 and 1995, $1,500,000, and,

(3) for fiscal year 1996, $750,000

shall be available to the Secretary of State to make grants to the Center pursuant to section 5(a)(1).

SEC. 7. PROGRAM REQUIREMENTS.

The program established under this Act shall comply with the following requirements:

(1) United States citizens who are eligible for fellowships under this Act shall be employees of the Federal Government having at least two years experience in any branch of the Government and having a strong career interest in United States-Japan relations and a demonstrated commitment to further service in the Federal Government.

(2) Not less than 10 fellowships shall be awarded each year.

(3) Mansfield Fellows shall agree—

(A) to maintain satisfactory progress in language training and appropriate behavior in Japan, as determined by the Center, as a condition of continued receipt of Federal funds; and

(B) to return to the Federal Government for further employment for, such period as the Center may require or, if the Center makes no requirement, then for a period of at least 2 years following the end of their fellowships.

(4) During the period of the fellowship, the Center shall pay each Mansfield Fellow (including any Mansfield Fellow previously employed in the legislative branch of Government)—

(A) a stipend at a rate of pay equal to the rate of pay which would have been paid to that individual in such position but for his separation from Government service; and

(B) a cost of living adjustment or adjustments calculated at the same rate of pay, and for the same period of time, for which such adjustments were made to the salaries of individuals occupying competitive positions in the civil service during the same period as the fellowship.

(5)(A) For the first year of each fellowship, the Center shall provide fellows with intensive Japanese language training in Washington, D.C., as well as courses in the political economy of Japan.

(B) Such training shall be of the same quality as training provided to Foreign Service officers before they are assigned to Japan.

(C) The Center may waive any or all of the training required by subparagraph (A) to the extent that a Fellow has Japanese language skills or knowledge of Japan's political economy.

(6) Any Mansfield Fellow not complying with the requirements of this section shall reimburse the Federal Government for the Federal funds used in the fellowship, together with interest at a rate determined by the Center.

(7) The Center shall select Mansfield Fellows based solely on merit, but to the extent possible, reflecting the cultural, racial, and ethnic diversity of the United States.

(8) The Center shall assist any Mansfield Fellow to find employment in the Federal Government if such Fellow was employed in the legislative branch before the fellowship began and was not able, at the end of the fellowship, to be reemployed in the legislative branch.

(9) No Mansfield Fellow may engage in any intelligence or intelligence-related activity on behalf of the United States Government.

(10) The accounts of the Center shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants, certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audit shall be conducted at the place or places where the accounts of the Center are normally kept. All books, accounts, financial records, files, and other papers, things, and property belonging to or in use by the Center and necessary to facilitate the audit shall be made available to the person or persons conducting the audit, and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(11) The Center shall provide a report of the audit to the Board no later than six months following the close of the fiscal year for which the audit is made. The report shall set forth the scope of the audit and include such statements, together with the independent auditor's opinion of those statements, as are necessary to present fairly the Center's assets and liabilities, surplus or deficit, with reasonable detail, including a statement of the Center's income and expenses during the year, including a schedule of all contracts and grants requiring payments in excess of $5,000 and any payments of compensation, salaries, or fees at a rate in excess of $5,000 per year. The report shall be produced in sufficient copies for the public.

SEC. 8. SEPARATION OF GOVERNMENT PERSONNEL DURING THE FELLOWSHIPS.

(a) SEPARATION.—Under such terms and conditions as the agency head may direct, any agency of the United States Government may separate from Government service for a specified period any officer or employee of that agency who accepts a fellowship under the program established by this Act.

(b) REEMPLOYMENT OR REINSTATEMENT.—An officer or employee separated by an agency of the executive or the judicial branch of Government under subsection (a) for purposes of becoming a Fellow shall be entitled upon termination of the fellowship to reemployment or reinstatement with such agency (or a successor agency) in an appropriate position with the attendant rights, privileges, and benefits which the officer or employee would have had or acquired had he or she not been so separated, subject to such time period and other conditions as the agency head may prescribe.

(c) BENEFIT PROGRAM.—(1) An officer or employee entitled to reemployment or reinstatement rights under subsection (b) shall, while continuously serving as a Mansfield Fellow with no break in continuity of service, continue to participate in any benefit program in which such officer or employee was participating prior to the Mansfield Fellowship, including—

(A) programs for compensation for job-related death, injury, or illness;

(B) programs for health and life insurance;

(C) programs for annual, sick, and other statutory leave; and

(D) programs for retirement under any system established by the laws of the United States,

except that participation in such programs shall be credited only to the extent that employee deductions and employer contributions, as required, in payment for such participation for the period of the fellowship, are currently deposited in the program's or system's fund or depository. For purposes of the preceding sentence, employer contributions shall be paid by the Center and employee deductions shall be made from stipends paid to the Mansfield Fellows by the Center pursuant to section 7(4).

(2) Death or retirement of any such officer or employee during approved service as a Mansfield Fellow and prior to reemployment or reinstatement shall be considered a death in or retirement from Government service for purposes of any employee or survivor benefits acquired by reason of service with an agency of the United States Government.

(d) COMPLIANCE WITH BUDGET ACT.—Funds are available under this section to the extent and in the amounts provided in appropriation Acts.

SEC. 9. MANSFIELD FELLOWSHIP REVIEW BOARD.

(a) ESTABLISHMENT.—There is established the Mansfield Fellowship Review Board.

(b) COMPOSITION.—The Board shall be composed of 9 individuals, as follows:

(1) The Secretary of State, who shall serve as the chairperson of the Board, or his designee.

(2) The Secretary of Defense or his designee.

(3) The Secretary of the Treasury or his designee.

(4) The Secretary of Commerce or his designee.

(5) The United States Trade Representative or his designee.

(6) Four persons, appointed by the President, by and with the advice and consent of the Senate, who, to the extent possible, are experts in the field of United States-Japan relations.

(c) TERMS OF SERVICE.—Each member of the Board appointed under subsection (b)(6) shall serve terms of 4 years, except that the President shall designate 2 of the initial appointees to serve terms of 2 years.

(d) FUNCTIONS.—(1) The Board shall review the administration of the program assisted under this Act.

(2)(A) Each year at the time of the submission of the President's budget request to the Congress, the Board shall submit to the Congress a report completed by the Center with the approval of the Board on the conduct of the program during the preceding year.

(B) Each such report shall contain—

(i) an analysis of the assistance provided under the program for the previous fiscal year and the nature of the assistance provided;

(ii) an analysis of the performance of the individuals who received assistance under the program during the previous fiscal year, including the degree to which assistance was terminated under the program and the extent to which individual recipients failed to meet their obligations under the program; and

(iii) an analysis of the results of the program for the previous fiscal year, and cumulatively, including, at a minimum, the percentage of individuals who have received assistance under the program who subsequently became employees of the United States Government and, in the case of individuals who did not subsequently become employees of the United States Government, an analysis of the reasons why they did not become employees and an explanation as to what use, if any, was made of the assistance given to those recipients.

(e) COMPENSATION.—(1) Members of the Board—

(A) shall not be paid compensation for services performed on the Board, except as provided in paragraph (2); and

(B) shall be allowed travel expenses, including per diem in lieu of subsistence at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(2) Each Member of the Board appointed under subsection (b)(6) shall receive compensation, subject to the availability of appropriations, at a rate of not to exceed the daily equivalent of the annual rate of basic pay payable for positions above GS-15 of the General Schedule under section 5332 of title 5, United States Code, for each day such member is engaged in the actual performance of the duties of the Board.

(f) AVAILABILITY OF SUPPORT STAFF.—The Secretary of State is authorized to provide for necessary secretarial and staff assistance for the Board.

(g) RELATIONSHIP TO FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act shall not apply to the Board to the extent that the provisions of this section are inconsistent therewith.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Board such sums as may be necessary to carry out this section.

Mr. ROTH. I would like to express my appreciation to those who supported S. 2763. This bill, the Mansfield Fellowship Act, is designed to fill one of the biggest gaps in the policymaking capabilities of the Federal Government—the severe shortage of personnel who understand the inner workings of the Japanese Government.

What this bill proposes is a 2-year fellowship that will provide the next generation of public sector leaders intensive instruction in the Japanese language and political economy, and hands-on experience actually working within the ministries and agencies of the Government of Japan. I believe this program, within a small number of years, will vastly strengthen the Federal Government's ability to meet the Japanese challenge.

Although he is not interested in monuments and does not encourage those who seek to honor him, this program fittingly is named after a man who served his country with immense distinction both in this Chamber and as Ambassador to Japan. That man of course, is Mike Mansfield. I thank this body for recognizing Mike Mansfield's contributions, and the bilateral relationship in which he played such an important role, by supporting the creation of the Mike Mansfield Fellowship Program.

DESIGNATING THE ESEL D. BELL POST OFFICE BUILDING IN TEXAS

Mr. FORD. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration of H.R. 4771, designating the Esel D. Bell Post Office Building in Texas; that the Senate then proceed to its immediate consideration; that the bill be deemed read the third time passed; and the motion to reconsider be laid upon the table, and that any statements relating to this bill appear in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 4771) was deemed read the third time, and passed.

ARMENIA AND AZERBAIJAN HOSTILITIES

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of calendar 767, Senate Resolution 349, a resolution relating to the hostilities between the Republic of Armenia and Azerbaijan; that the resolution be deemed agreed to, the motion to reconsidered be laid upon the table, and that any statements thereon appear at the appropriate place in the RECORD as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the Resolution (S. Res. 349) was deemed agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

Whereas the Republic of Armenia and the Republic of Azerbaijan have been engaged in armed conflict since 1988, primarily over the disputed Armenian-majority enclave of Nagorno-Karabakh;

Whereas numerous attempts to end this conflict have failed;

Whereas the recent mediation effort by the Conference on Security and Cooperation in Europe (CSCE), which featured a proposal for a sixty-day cease-fire and the placement of military observers, was not agreed to;

Whereas President Nursultan Nazarbayev of Kazakhstan brought about through his good offices a preliminary cease-fire agreement that was signed on August 27, 1992, but was never observed;

Whereas the Russian Federation helped bring about a cease-fire agreement on September 19, 1992, scheduled to begin at midnight, September 25, 1992;

Whereas fighting has intensified both in Nagorno-Karabakh and along the Armenian-Azerbaijan border since this most recent agreement was concluded on September 19, 1992;

Whereas on August 24, 1992, the Republic of Armenia formally requested the convening of the United Nations Security Council to address the situation on Nagorno-Karabakh; and

Whereas both the Republic of Azerbaijan and the Republic of Armenia have requested the deployment of cease-fire monitors: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Republic of Armenia and the Republic of Azerbaijan should immediately cease all hostilities and abide by the cease-fire resolution of September 19, 1992; and

(2) failing an immediate cessation of hostilities, and considering the collapse of the regional mediation attempts, the United Nations Security Council should meet to address the situation in Nagorno-Karabakh and should authorize the Secretary-General of the United Nations to take appropriate steps to bring about an end to the conflict, including, if necessary, the use of United Nations peacekeepers.

GREATER SAFETY FOR FORKLIFT OPERATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Labor Committee be discharged from further consideration of Senate Concurrent Resolution 17, regarding forklift operations, I ask for its immediate consideration.

The PRESIDING OFFICER. The concurrent resolution will be stated by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 17) expressing the sense of Congress with respect to certain regulations of the Occupational Safety and Health Administration.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

AMENDMENT NO. 3435

Mr. SIMPSON. Mr. President, I send an amendment to the desk on behalf of Mr. HATCH and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. HATCH, proposes an amendment numbered 3435.

Mr. SIMPSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, beginning on line 3, strike out "before the expiration of the One Hundred Second Congress" and insert in lieu thereof "within one year of passage of this resolution".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3435) was agreed to.

Mr. KENNEDY. Mr. President, I support Senate Concurrent Resolution 17, a sense-of-the-Congress resolution urging the Occupational Safety and Health Administration to take steps to provide greater safety for forklift operators.

A study by the National Institute for Occupational Safety and Health found that in 1985, 34,000 workers were injured in forklift truck accidents and required emergency room treatment. As in other areas of worker safety and health, proper training can contribute to enhanced workplace safety. For this reason, I support this resolution asking OSHA to address this problem.

I am concerned, however, that the resolution addresses only one aspect of the problem. It ignores another very significant health risk faced by many of these workers. NIOSH has also found that diesel exhaust fumes can cause cancer and other serious illnesses, and forklift operators deserve protection here too. In a 1987 investigation of the exposure of dock workers, NIOSH

> In accordance with [its] policy considering diesel exhaust as a potential occupational carcinogen, suggested measures to reduce exposures to the lowest feasible limits.

There are many steps OSHA could take to provide protection against diesel exhaust fumes. It could require employers to avoid the use of diesel engines indoors, when there are safer alternatives; it could require adequate ventilation when diesel engines are operated indoors; it could require exhaust filters on diesel engines; and it could require other steps to reduce the fumes breathed by workers.

Unfortunately, the current resolution is being promoted by manufacturers of forklift trucks. With better training workers will have fewer accidents, thereby reducing the number of lawsuits against manufacturers.

As we all know, different constituencies often work together for different reasons to improve safety and health, and the interests of manufacturers do not always coincide with the interests of workers. I wish that we could have addressed more in this resolution. But it responds to an identified workplace hazard. It is a worthwhile step toward preventing injuries to forklift operators. I urge the Senate to approve the resolution.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (S. Con. Res. 17) was agreed to.

The preamble was agreed to.

S. CON. RES. 17

Whereas it is in the public interest to reduce the frequency of workplace accidents and the human and economic costs associated with such injuries;

Whereas workplace accidents involving powered industrial trucks are often the result of operation by poorly trained, untrained, or unauthorized operators;

Whereas Federal regulations promulgated by the Occupational Safety and Health Administration and codified at section 1910. 178, title 29, Code of Federal Regulations, require that operators of powered industrial trucks be trained and authorized;

Whereas existing regulations lack any guidelines to measure whether operators of powered industrial trucks are in fact trained and authorized;

Whereas operator training programs have been demonstrated to reduce the frequency and severity of workplace accidents involving powered industrial trucks; and

Whereas a petition to amend existing regulations to specify the proper components of a training program for operation of powered industrial trucks has been pending before the Occupational Safety and Health Administration since March 1988: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Occupational Safety and Health Administration is requested to publish, within one year of passage of this resolution, proposed regulations amending section 1910.178, title 29, Code of Federal Regulations, that specify the components of an adequate operator training program and that only trained employees be authorized to operate powered industrial trucks.

Mr FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HELEN DAY U.S. POST OFFICE BUILDING IN ALEXANDRIA, VA

Mr. FORD. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further consideration on H.R. 5479, designating the Helen Day U.S. Post Office Building in Alexandria, Va, and that the Senate then proceed to its immediate consideration; that the bill be deemed read the third time, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 5479) was deemed read the third time, and passed.

COMMODITY FUTURES IMPROVEMENTS ACT OF 1991—CONFERENCE REPORT

Mr. FORD. Mr. President, I submit a report of the committee of conference on H.R. 707 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 707) to amend the Commodity Exchange Act to improve the regulation of futures and options traded under rules and regulations of the Commodity Futures Trading Commission; to establish registration standards for all exchange floor traders; to restrict practices which may lead to the abuse of outside customers of the marketplace; to reinforce development of exchange audit trails to better enable the detection and prevention of such practices; to establish higher standards for service on governing boards and disciplinary committees of self-regulatory organizations; to enhance the international regulation of futures trading; to regularize the process of authorizing appropriations for the Commodity Futures Trading Commission; and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their repective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 2, 1992.)

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LEAHY. This bill is about fighting white-collar crime. We have before us the toughest futures reform package in decades, and probably the most significant law for the financial services industry in this session of Congress.

It is nearly 4 years since we first learned of the FBI's massive sting operation on the floor of the Chicago exchanges which resulted in the indictments of 46 traders, but the reasons for this legislation are just as real and immediate today as they were in early 1989 when we started this process.

This bill is a major accomplishment achieved under the most difficult of circumstances. Powerful interests have lined up in opposition to many provisions. We were hampered by a 2-year jurisdiction fight within the administration.

But in the end, we emerge from conference with the House having taken two very stong pro-consumer, anticrime bills and making them stronger. In doing so, we have sent a powerful message to the futures industry and beyond: We will not tolerate white-collar crime in the financial services or any other industry.

The Futures Trading Practices Act of 1992 will restore confidence and integrity to futures markets covering farm goods, financial instruments, precious metals, crude oil, foreign currencies, and a host of other items vital to consumers and to our national economy. The bill is tough, but fair. It is a code of conduct that any honest trader can live by. Very simply, under this bill, any floor trader cheating a customer will be severely punished; any exchange not policing its floor will be forced to clean up its act.

The legislation also responds to concerns raised about the role of futures in the stock price crashes of October 1987 and 1989 and about the role of expanding off-exchange markets in derivative financial instruments such as swaps and hybids.

The legislative history behind the specific provisions of this legislation is spelled out in detail in the report of the committee on conference.

Back in October 1989 when I first introduced this legislation into the Senate along with Senators LUGAR and LEAHY, I stated my intention to enact a futures trading reform package that was efficient, effective, and fair—tough medicine needed for the futures industry to regain the confidence of the trading public.

Today, I am pleased to deliver on that promise.

Mr. President, without objection, I ask that a colloquy between myself and Senator DIXON on dual trading and audit trail and a list of some of the organizations supporting adoption of this conference report be inserted in the RECORD this point.●

● Mr. DIXON. Mr. President, I want to congratulate my good friend, the distinguished chairman of the Agriculture Committee, on the successful completion of the Conference on an excellent piece of legislation entitled the Futures Trading Practices Act of 1992. I know that he has worked diligently to bring before the Senate a bill that would make needed reforms in futures regulation while preserving the current act's reliance on vigorous exchange self-regulation subject to oversight by the Commodity Futures Trading Commission to combat any abusive practices that may arise.

I particularly want to commend the chairman for crafting workable compromises in the inter-related areas of dual trading and audit trails. As I understand the final bill, dual trading would be banned on those contract markets that do not have adequate trade monitoring systems to police dual trading unless the markets would qualify for another form of exemption. The dual trading ban would take effect after the Commission issues rules within 270 days after enactment. At the same time, the bill calls for the contract markets to implement, within 3 years, an electronic audit trail that would reflect "independent, precise, and complete" trade-timing data. If a contract market is proceeding in affirmative good faith to develop its new system, but circumstances beyond its control delay completion or implementation of the system, the Commission may extend this 3 year effective date.

I have a question, concerning these different requirements. First, the bill calls for the Commission to decide whether to exempt a contract market from the dual trading ban before the new audit trail provisions become effective. If a contract market is making an affirmative good faith effort to develop its electronic audit trail at the time the Commission considers its exemptive petition, is it contemplated that the Commission would ban dual trading on that market until the new audit trail is completed?

Mr. LEAHY. No, so long as the contract market continues to satisfy its statutory and regulatory duties to police dual trading in the interim as outlined in the bill. The purpose of this bill is to encourage the exchanges to integrate as much as possible state-of-the-art technology and strict regulatory protections in applying them to current pit practices, including dual trading. I understand that, to date, the Chicago exchanges through their electronic trading card called AUDIT and other related mechanisms have made considerable progress toward achieving the objectives of the bill. Other exchanges, I understand, also are hard at work developing their own systems or planning to adapt the Chicago systems to their markets.

This does not mean, of course, that exchanges can let down their efforts on floor trading regulation in the meantime until the new electronic systems are completed, and the legislation spells out the standards that would control until that time. However, so long as these exchange efforts toward developing the new systems continue in affirmative good faith and the contract market continues to comply with its dual trading policing duties, the bill does not contemplate that the Commission would ban dual trading.

Mr. DIXON. Thank you for your response. I greatly appreciate your recognition of the substantial efforts that have been made by the Chicago exchanges to create AUDIT and other related systems. As you know, these new technological mechanisms are very costly to develop. Some concern has been expressed that, under the bill, the Commission could require exchanges to expend considerable sums to improve their existing audit trail systems even though the bill contemplates that those systems will be outdated and replaced by the new trading technology within that 3 year interim period. Does the bill contemplate that, during that three year interim period, the Commission would compel exchanges to undergo costly enhancements to their existing systems in order to obtain an exemption from the dual trading ban or for other purposes?

Mr. LEAHY. Again, although each exchange's system will have to be assessed on a case-by-case basis, the answer generally is no.

The conference report explains that "existing audit trail systems that qualify under section 5a(b)(2) of the act, if implemented effectively and diligently, would meet the initial audit trail requirements for a dual trading exemption insofar as those systems are capable of detecting, and are being used in any disciplinary actions for prosecuting, violations attributable to dual trading."

Also, the bill gives the Commission broad authority to implement and to enforce interim audit trail and floor policing standards until the new electronic systems are put in place. The exchanges are on the technological forefront in many areas, like Globex, and I am confident that they will stay abreast of technological changes during the 3 years that they are developing and installing their audit trail systems. However, in exercising this authority, we do expect the Commission to be mindful of the size of financial commitments that exchanges may be making in order to develop and implement their new audit trail systems to satisfy the bill's "independent, precise, and complete" requirement. Recognizing that commitment and the ultimate objective of an electronic audit trail, the Commission, during the interim, should avoid requiring fundamental changes to existing audit trail systems which would require disproportionate expense and might significantly delay final completion of the new electronic systems.

Again, this does not mean that exchanges can let down on their floor policing efforts in the meantime and we anticipate that some modifications in existing requirements may occur in some contract markets. Three years is a long time, and the Commission has a continuing duty to protect customers during this period. However, the Commission should be cognizant of significant expenditures that exchanges may be incurring in developing the required new electronic trade monitoring systems contemplated by the bill, so long as the regulatory requirements of the statute and applicable rules are met. Limited resources available to an exchange may simply be better spent in many cases toward expeditiously achieving the new technology standard rather than fine-tuning a system that will be obsolete over the short term.

I ask unanimous consent to have a list of supporters of the legislation printed in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

ORGANIZATION SUPPORTING H.R. 707

We, the undersigned, support the legislation unanimously adopted by the House/Senate Conference Committee on H.R. 707, The Commodity Future Trading Commission Reauthorization, and urge the Congress to move expeditiously to adopt the conference report.

AmSouth Bank.
Bankers Trust.
British Petroleum.
Cargill Investor Services.
Cenex.
Chemical Banking.
Coastal Corporation.
Continental Bank of Illinois.
Dow Chemical.
Enron Corp.
Goldman Sachs.
International Swap Dealers Association Inc.
Iowa Bankers Association.
Koch Industries.
J.P. Morgan & Co.
McDonalds Corporation.
Mobil Corp.
Morgan Stanley.
National Grain Trade Council.
Phibro Energy, Inc.
Philips Petroleum Co.
Salomon Bros.
Securities Industry Association.
Shearson Lehman Bros.
The Futures Industries Association.
The National Council on Farmer Cooperatives.

Mr. LUGAR. Mr. President, I rise today with Chairman LEAHY in support of the conference report on H.R. 707, the Futures Trading Practices Act of 1992. The bill reauthorizes and provides new powers to the Commodity Futures Trading Commission [CFTC], the agency charged with overseeing the Nation's futures markets. I urge other Senators to support this measure.

Mr. President, this bill contains important reforms to preserve market integrity, and is designed to instill greater investor confidence in the futures market. This bill puts into place mechanisms under which futures markets will be required to develop and implement new "audit trail" technology to monitor, capture and record trades occurring on their trading floors. This new audit trail will provide the data for exchanges and regulators to quickly detect unusual and potentially illegal trading practices and patterns.

The bill also vests in the Board of Governors of the Federal Reserve the responsibility for the general oversight of margins levels on stock index futures. Low margins levels on stock index futures have been criticized by some as one of the factors attributable to the stock market crashes in 1987 and 1989. This provision, by expanding the FED's authority over stock margins to also include stock index futures margins, is designed to ensure that actions on either the futures or securities markets do not pose a risk to the entire financial system of this country. The Federal Reserve, with its expertise in banking securities and other financial matters will provide the expertise necessary for this oversight responsibility.

The effort to reauthorize the CFTC began in early 1989, during an environment of investor distrust and dissatisfaction with the operation of the futures markets and their regulatory body. That distrust stemmed primarily from the results of an FBI undercover operation that was designed to detect corruption and market manipulation in the commodities markets.

Confronted with this very unsettling environment, the Agriculture Committee fashioned tough far-reaching reforms of the regulatory authority of the CFTC. The committee recognized the value of investor confidence in the markets and the necessity of re-establishing a framework from which the U.S. markets can continue their international preeminence in futures trading. And the committee acted forcefully. Some have characterized our effort as the most significant reform of the Commodity Exchange Act in the 15-year history of the Commodity Futures Trading Commission, and I agree with that characterization.

In April 1991, 18 months after the committee completed its markup of the bill, the full Senate finally debated this bill. The delay in the full Senate consideration stemmed from controversial issues pertaining to the jurisdictional provisions contained in title III of the bill. Those issues pitted the interests of the futures industry against the interests of the securities industry and proved to be the most controversial aspects of that debate and the subsequent debate in the House-Senate conference.

The conference committee began work to finalize the bill in November 1991. In addition to the House and Senate Agriculture Committees, the conference involved the participation of the House Energy and Commerce Committee and the House Banking Committee. Notwithstanding the divergent interests brought to the conference table by those House committees and the controversy that generally accompanies any measure that alters jurisdictional boundaries, the conference was able to complete its work and produce a fair and equitable piece of legislation.

The conference report before you today is similar in content and effect to the bill adopted by the Senate in 1991.

In titles I and II, the bill expands the CFTC's power to force exchanges to improve their trade practice oversight and disciplinary systems, and provides the CFTC with the regulatory and enforcement tools to foster and police integrity in the futures markets.

The bill also requires exchanges to take actions to prevent conflicts of interest and insider trading, provides for increased civil and criminal penalties, requires CFTC action to deal with trading abuses attributable to the practice of dual trading and, requires CFTC monitoring of broker associations.

In titles III, as previously mentioned, the bill provides new oversight authority over stock index margins to the Board of Governors of the Federal Reserve System. It also gives new authority to the CFTC to exempt from regulation products not suited for futures type regulation. With regard to this exemption authority, the conferees intend that this new authority is not to be used to deregulate, in a wholesale manner, a wide list of financial products. Instead the conferees plan to conduct over the next 2 years a comprehensive review of the regulatory requirements for hybrid financial instruments.

Mr. President, the issues in this bill have been thoroughly reviewed, discussed and debated over the past 4 years. Not every party is completely pleased with the outcome, but such is the nature of a democracy. It is a good compromise and one that should be adopted. Reauthorization of the CFTC is a necessary element to establishing the market reform so important to investor confidence and to the health of our markets.

I strongly urge my colleagues to join with me in support of this conference report.

CONCERNING THE HUMANITARIAN CRISIS IN SOMALIA

Mr. FORD. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of House Concurrent Resolution 370, concurrent resolution concerning the humanitarian crisis in Somalia; that the Senate proceed to its consideration; that the concurrent resolution be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution (H. Con. Res. 370) was agreed to.

The preamble was agreed to.

OVERSEAS PRIVATE INVESTMENT CORPORATION AMENDMENTS—CONFERENCE REPORT

Mr. FORD. Mr. President, I submit a report of the committee of conference on H.R. 4996, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4996) to extend the authorities of the Overseas Private Investment Corporation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 5, 1992.)

Mr. MCCONNELL. Mr. President, I rise in strong support of this legislation to reauthorize the Overseas Private Investment Corporation and the Trade Development Agency as well as provide for other trade development and promotion activities. Over the past year, Senator SARBANES and I have worked closely together in the Subcommittee on International Economic and Trade Policy of the Foreign Relations Committee in support of agencies and programs which expand American opportunities abroad as they strengthen American income, exports, and our job base here at home.

The two principal agencies we will authorize funding for today are something of a success story. In particular, the hearings we held on OPIC illustrated that the Corporation has a solid foundation of good management and business judgment which has assured it is self-sustaining financially. It's not often an agency can make that claim.

After several years of discussion, we are also finally elevating the Trade Development Program to agency status which I consider an important reflection of the priority the Congress attaches to our emphasis on international trade. In addition, we have increased the overall funding levels to assure the agency can meet the rapidly growing demand for its services in the Newly Independent States and emerging market economies around the world.

The bill includes a number of other provisions which will enhance the competitive position of American businesses as they venture abroad. I am particularly pleased that we have broken the lock on the exclusive arrangement foreign insurance companies have maintained on export transactions. Senator ROTH deserves a great deal of credit for his diligence in opening the international insurance market up to American companies by guaranteeing free and fair competition.

I urge my colleagues to take a look at both this legislation and the services offered by the agencies covered. As the global economy opens up, these programs will give American companies—large and small—the kind of support, advice, and financial assistance they need to compete successfully in the international arena.

I thank my colleague, the ever-determined and distinguished senior Senator from Maryland for his leadership in seeing this bill through to final passage. We have spent a great deal of time exploring ways to bring foreign aid and trade more in line with our national priorities. The bill before the Senate reflects a first step in what I hope will be a more comprehensive review of these programs. As we conclude our work, let me add one more word of thanks. I know the Senator will join me in expressing appreciation for the many long hours of hard work that Marcia Verville put in to bring this bill to final passage. Perhaps, we should thank her daughter and husband as well, since they, too, have had to endure these last chaotic days. After all, we are here to work for a better future for our families, they deserve a little recognition now and then.

Mr. SARBANES. Mr. President, I am pleased that the Senate is considering the conference report to accompany H.R. 4996, the Jobs Through Exports Act of 1992. This legislation contains a variety of provisions that will enhance the ability of the U.S. Government to carry out feasibility studies for capital projects overseas; will provide grants for capital projects using U.S. exports and services; will reauthorize legislation providing loans, loan guarantees, and risk insurance for U.S. investments overseas; and will build the partnership between the U.S. public and private sectors to identify and pursue aggressively strategic export markets.

There is little question that exports are significant to our economic future. Export promotion programs play an important role in increasing exports when U.S. firms lack export awareness because markets have failed to give the right information to producers who otherwise would export; when U.S. businesses are aware of export opportunities but need additional technical assistance to consummate export sales; when U.S. firms need representational assistance from the U.S. Government in opening doors overseas; and when U.S. businesses need competitive financing, loan guarantees, or insurance to close an export sale.

In addition, the conference agreement contains an important provision prohibiting any funds made available under this act or amendments made by this act from being used for any financial incentive to a business currently located in the United States to induce such business to relocate outside the United States, or from being used in a manner that is likely to reduce the number of employees in the United States because U.S. production is being taken overseas. Further, this bill prohibits any funds under this act or amendments made by this act from being used for any project or activity that contributes to the violation of internationally recognized worker rights.

Briefly, let me summarize the provisions of the conference report. Title I extends the authority of the Overseas Private Investment Corporation [OPIC] for fiscal years 1993 and 1994; amends the eligibility criteria for participating countries to include countries that are making the transition from nonmarket to market economies; instructs OPIC to include additional text in all contracts protecting the free association of labor, the enforcement of child labor laws, and protections against forced labor; amends OPIC's reporting requirements to include any loss of U.S. jobs created by a project, whether or not the project itself would create other U.S. jobs; contains a series of technical amendments to conform existing law to the provisions of the Federal Credit Reform Act of 1990 and authorizes OPIC to draw from its noncredit account revolving fund to cover the costs of its activities; sets fines for an investor who knowingly commits fraud in activities of the Corporation; and requires any OPIC investor to certify to the Corporation that any contract for the export of goods will include a requirement that U.S. insurance companies have a fair and open competitive opportunity to provide insurance.

Title II elevates the present Trade and Development Program [TDP] to the Trade and Development Agency [TDA], authorizes the Director of TDA to provide funds for feasibility studies and other activities related to developing projects which use U.S. exports, and expands the mandate of the Agency to include architectural and engineering design, an important factor in insuring U.S. exports by setting U.S. standards in overseas projects in the earliest stages. This title is virtually identical to the provisions passed by the Senate last year as a part of the International Cooperation Act of 1991.

Title III establishes by statute the existing Office of Capital Projects within the Agency for International Development. In coordination with the appropriate agencies of the Trade Policy Coordinating Committee [TPCC], AID is directed to review periodically the infrastructure needs of developing countries and countries making the transition from nonmarket to market economies. This title directs the Capital Projects Office to support developmentally sound capital projects that utilize U.S. exports and services and also focuses on capital projects to alleviate the worst manifestations of poverty or directly promote environmental safety and sustainability at the community level. The conference agreement also urges the President to use $650 million for fiscal year 1993 and $700 million for fiscal year 1994 for capital projects.

Title IV authorizes and encourages the Secretary of Commerce to establish United States Commercial Centers in one country in Asia, Latin America, and Africa, to provide additional resources for the promotion of United States exports and familiarize United States exporters with the industries, markets, and customs of the host countries. The conference committee took special note of the leadership role of U.S. producers of environmental goods and services, and urges the Department of Commerce to give particular attention to assist U.S. firms in the export of technologies, manufacturing processes, products, and services that will help protect the environment and natural resources around the globe.

Title V of the conference agreement authorizes $1 million for each of fiscal years 1993 and 1994 for the placement of additional procurement officers at the multilateral development banks.

Title VI authorizes the Enterprise for the Americas Initiative, which establishes basic criteria which Latin American or Caribbean countries must meet in order to qualify for debt-reduction benefits. This title is identical to the EAI authority approved by the Senate last year in the International Cooperation Act of 1991.

Title VII provides additional funding to the Secretary of Commerce for the purpose of placing additional Foreign Commercial Service officers in countries with which the United States has the largest trade deficit and in newly democratic countries of Central and Eastern Europe.

Title VIII, as mentioned earlier, includes language which prohibits funds authorized under this act from being expended for any financial incentive to a U.S. business for the purpose of inducing that business to relocate overseas. This title reflects the concern of the committee of conference over recent reports that foreign assistance funds may have been used to entice U.S. companies to relocate overseas and thereby displace American workers.

Mr. President, I urge adoption of the conference report.

Mr. KERRY. Mr. President, as the Senate considers legislation to reauthorize the Overseas Private Investment Corporation, I want to thank the subcommittee and full committee leadership for including a provision in the conference report to recognize an outstanding initiative in my State of Massachusetts that will have a beneficial impact on the competitiveness of American business in a vastly changing global economy. I am referring to Babson College's proposed Center for Global Competitiveness and Entrepreneurship—a center that represents a bold approach for assisting U.S. companies to improve their international capabilities and corporate development.

To help small businesses and companies compete in the international marketplace, Babson College proposes to establish the Center for Global Competitiveness and Entrepreneurship. Babson seeks to accomplish two important goals with this new center: First, increasing the international competitiveness of emerging growth companies as well as other corporations seeking to expand their international operations; and second, educating present and future managers through participation in actual business problem solving and exposure to a new curriculum. Babson College will accomplish these goals through a range of new programs and activities, which include organizing original training programs, establishing comprehensive information systems for international statistics, conducting market analyses, and developing new publications and case studies on the methods and success of emerging growth companies in achieving international competitiveness.

Mr. President, Congress has recognized the strength of Babson's proposed center and its contribution to the enhancement of our economic competitiveness in a changing global environment. The conferees have further concluded that the center at Babson College will play a critical role in enhancing support for exporters, and that its expertise in training business leaders for the global market will be invaluable to the export promotion objective contained in the report. I commend Babson College for initiating such an ambitious and forward-thinking proposal as the Center for Global Competitiveness and Entrepreneurship, and I look forward to assisting in the effort to make it a reality.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

RELATING TO THE DELAWARE RIVER

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6179, relating to the Delaware River, just received from the House; that the bill be deemed read a third time, passed; that the motion to reconsider be laid upon the table, and that any statement relative to passage of this item be included in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 6179) was deemed read the third time, and passed.

FERTILITY CLINIC SUCCESS RATE AND CERTIFICATION ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 774, H.R. 4773, the Fertility Clinic Success Rate and Certification Act; that the bill be deemed read the third time, passed; that the motion to reconsider be laid upon the table, and statements thereon be printed in the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is ordered.

So the bill (H.R. 4773) was deemed read the third time, and passed.

VETERANS HEALTH CARE ACT OF 1992

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5193.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the text of the bill (H.R. 5193) entitled "An Act to improve the delivery of health-care services to eligible veterans and to clarify the authority of the Secretary of Veterans Affairs", with the following amendment:

In lieu of the matter inserted by said amendment, insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Veterans Health Care Act of 1992".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—WOMEN VETERANS HEALTH PROGRAMS

Sec. 101. Short title.
Sec. 102. Sexual trauma counseling.
Sec. 103. Priority for outpatient care for sexual trauma counseling.
Sec. 104. Commencement of provision of information on services.
Sec. 105. Report on implementation of sexual trauma counseling program.
Sec. 106. Health care services for women.
Sec. 107. Report on health care and research.
Sec. 108. Coordination of services.
Sec. 109. Research relating to women veterans health.
Sec. 110. Population study of women veterans.

TITLE II—HEALTH-CARE SHARING AGREEMENTS BETWEEN DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF DEFENSE

Sec. 201. Temporary expansion of authority for sharing agreements.
Sec. 202. Requirement for improvement in services for veterans.
Sec. 203. Expanded sharing agreements with Department of Defense.
Sec. 204. Expiration of authority.
Sec. 205. Consultation with veterans service organizations.
Sec. 206. Annual report.

TITLE III—NURSE PAY

Sec. 301. Revision to nurse pay grade schedule.
Sec. 302. Authority to establish special rates of pay for employees of facilities located outside the contiguous United States, Alaska, and Hawaii.
Sec. 303. Salary data for nurse anesthetists.
Sec. 304. Rates of pay for transferring nurses.
Sec. 305. Nursing personnel qualification standards.
Sec. 306. Report on pay for chief nurse position.
Sec. 307. Report on pay compression.
Sec. 308. Effective date.

TITLE IV—STATE HOME AMENDMENTS

Sec. 401. Treatment of earnings of veterans under certain rehabilitative services programs.
Sec. 402. Permanent authority to make grants to States relating to State homes.
Sec. 403. Extension of period for completion of conditionally approved applications for construction.
Sec. 404. Limited prohibition on obligation of funds for rescinded projects.
Sec. 405. Commencement date for recapture period.
Sec. 406. Commencement date for payment of per diem.

TITLE V—GENERAL HEALTH CARE AND ADMINISTRATION

Subtitle A—General Health

Sec. 501. Contract hospital care for veterans with permanent and total service-connected disabilities.
Sec. 502. Permanent authority for respite care program.
Sec. 503. Extension of authority to contract with the Veterans Memorial Medical Center, Republic of the Philippines.

Subtitle B—Preventive Health

Sec. 511. National Center for Preventive Health.
Sec. 512. Annual report on preventive health services.
Sec. 513. Preventive health services.
Sec. 514. Repeal of pilot program.

Subtitle C—Health Care Administration and Personnel

Sec. 521. Geriatric research, education, and clinical centers.
Sec. 522. Extension of authority to waive certain limitations applicable to receipt of retirement pay by nurses.
Sec. 523. Health professionals education programs.
Sec. 524. Real property at Temple Junior College, Temple, Texas.
Sec. 525. Demonstration project to evaluate installation of telephones for patient use at Department health-care facilities.
Sec. 526. Use of Tobacco Products in Department Facilities.

TITLE VI—DRUG PRICING AGREEMENTS

Sec. 601. Treatment of prescription drugs procured by Department of Veterans Affairs or purchased by certain clinics and hospitals.
Sec. 602. Limitations on prices of drugs purchased by certain clinics and hospitals.
Sec. 603. Limitation on prices of drugs procured by Department of Veterans Affairs and certain other Federal agencies.

TITLE VII—PERSIAN GULF WAR VETERANS' HEALTH STATUS

Sec. 701. Short title.
Sec. 702. Persian Gulf War Veterans Health Registry.
Sec. 703. Health examinations and counseling for veterans eligible for inclusion in certain health-related registries.
Sec. 704. Expansion of coverage of Persian Gulf registry.
Sec. 705. Study by Office of Technology Assessment of Persian Gulf Registry and Persian Gulf War Veterans Health Registry.
Sec. 706. Agreement with National Academy of Sciences for review of health consequences of service during the Persian Gulf War.
Sec. 707. Coordination of government activities on health-related research on the Persian Gulf War.
Sec. 708. Definition.

TITLE VIII—COURT OF VETERANS APPEALS

Sec. 801. Disciplinary procedures for judges of Court of Veterans Appeals.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—WOMEN VETERANS HEALTH PROGRAMS

SEC. 101. SHORT TITLE.

This title may be cited as the "Women Veterans Health Programs Act of 1992".

SEC. 102. SEXUAL TRAUMA COUNSELING.

(a) IN GENERAL.—(1) Chapter 17 of title 38, United States Code, is amended by adding at the end of subchapter II the following new section:

"§ 1720D. Counseling to women veterans for sexual trauma

"(a)(1) During the period through December 31, 1995, the Secretary may provide counseling to a woman veteran who the Secretary determines requires such counseling to overcome psychological trauma, which in the judgment of a mental health professional employed by the Department, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the veteran was serving on active duty.

"(2) To be eligible to receive counseling under this subsection, a veteran must seek such counseling from the Secretary within two years after the date of the veteran's discharge or release from active military, naval, or air service.

"(3) In furnishing counseling to a veteran under this subsection, the Secretary may, during the period through December 31, 1994, provide such counseling pursuant to a contract with a qualified mental health professional if (A) in the judgment of a mental health professional employed by the Department, the receipt of counseling by that veteran in facilities of the Department would be clinically inadvisable, or (B) Department facilities are not capable of furnishing such counseling to that veteran economically because of geographical inaccessibility.

"(b) In providing services to a veteran under subsection (a), the period for which counseling is provided may not exceed one year from the date of the commencement of the furnishing of such counseling to the veteran. However, the Secretary may authorize a longer period in any case if, in the judgment of the Secretary, a longer period of counseling is required.

"(c)(1) The Secretary shall give priority to the establishment and operation of the program to provide counseling under subsection (a). In the case of a veteran eligible for such counseling who requires other care or services under this chapter for trauma described in subsection (a)(1), the Secretary shall ensure that the veteran is furnished counseling under this section in a way that is coordinated with the furnishing of such other care and services under this chapter.

"(2) In establishing a program to provide counseling under subsection (a), the Secretary shall—

"(A) provide for appropriate training of mental health professionals and such other health care personnel as the Secretary determines necessary to carry out the program effectively;

"(B) seek to ensure that such counseling is furnished in a setting that is therapeutically appropriate, taking into account the circumstances that resulted in the need for such counseling; and

"(C) provide referral services to assist women veterans who are not eligible for services under this chapter to obtain those from sources outside the Department.

"(d) The Secretary shall provide information on the counseling available to women veterans under this section. Efforts by the Secretary to provide such information—

"(1) may include establishment of an information system involving the use of a toll-free telephone number (commonly referred to as an 800 number), and

"(2) shall include coordination with the Secretary of Defense seeking to ensure that women who are being separated from active military, naval, or air service are provided appropriate information about programs, requirements, and procedures for applying for counseling under this section.

"(e) In this section, the term 'sexual harassment' means repeated, unsolicited verbal or physical contact of a sexual nature which is threatening in character.".

(2) The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 1720C the following new item:

"1720D. Counseling to women veterans for sexual trauma.".

(b) TRANSITION PROVISION.—In the case of a veteran who was discharged or released from active military, naval, or air service before December 31, 1991, the two-year period specified in section 1720D(a)(2) of title 38, United States Code, as added by subsection (a), shall be treated as ending on December 31, 1993.

SEC. 103. PRIORITY FOR OUTPATIENT CARE FOR SEXUAL TRAUMA COUNSELING.

Section 1712(i)(2) is amended—

(1) by striking out "or (B)" and inserting in lieu thereof ", (B)"; and

(2) by inserting before the period at the end thereof the following: ", or (C) who is eligible for counseling under section 1720D of this title, for the purposes of such counseling".

SEC. 104. COMMENCEMENT OF PROVISION OF INFORMATION ON SERVICES.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall commence the provision of information on the counseling relating to sexual trauma that is available to women veterans under section 1720D of title 38, United States Code (as added by section 102) in accordance with the provisions of subsection (d) of that section.

SEC. 105. REPORT ON IMPLEMENTATION OF SEXUAL TRAUMA COUNSELING PROGRAM.

Not later than March 31, 1994, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a comprehensive report on the Secretary's actions under section 1720D of title 38, United States Code (as added by section 102), and on the use made of the authority provided under that section. The report shall include the following:

(1) The numbers of veterans who have received counseling under such section, shown by reference to the facility that provided that counseling and including the use made of the contract authority under such section.

(2) The number of veterans who received care or services under chapter 17 of title 38, United States Code, under the circumstances described in subsection (c)(1) of such section and the numbers referred to sources outside the Department, shown by reference to the facility that provided those services or made those referrals.

(3) A listing and description of the specific training programs which the Secretary has instituted to ensure that the counseling program established under such section is carried out effectively.

(4) A description of the specific efforts taken by the Secretary to ensure that the counseling furnished by the Secretary under such section is furnished in settings that are therapeutically appropriate, taking into account the circumstances that resulted in the need for such counseling.

SEC. 106. HEALTH CARE SERVICES FOR WOMEN.

(a) GENERAL AUTHORITY.—In furnishing hospital care and medical services under chapter 17 of title 38, United States Code, the Secretary of Veterans Affairs may provide to women the following health care services:

(1) Papanicolaou tests (pap smears).

(2) Breast examinations and mammography.

(3) General reproductive health care, including the management of menopause, but not including under this section infertility services, abortions, or pregnancy care (including prenatal and delivery care), except for such care relating to a pregnancy that is complicated or in which the risks of complication are increased by a service-connected condition.

(b) RESPONSIBILITIES OF DIRECTORS OF FACILITIES.—The Secretary shall ensure that directors of medical facilities of the Department identify and assess opportunities under the authority provided in title II of this Act to (1) expand the availability of, and access to, health care services for women veterans under sections 1710 and 1712 of title 38, United States Code, and (2) provide counseling, care, and services authorized by this title.

SEC. 107. REPORT ON HEALTH CARE AND RESEARCH.

(a) IN GENERAL.—Not later than January 1, 1993, January 1, 1994, and January 1, 1995, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the provision of health care services and the conduct of research carried out by, or under the jurisdiction of, the Secretary relating to women veterans.

(b) CONTENTS.—The report under subsection (a) shall include the following information with respect to the most recent fiscal year before the date of the report:

(1) The number of women veterans who have received services described in section 106 of this Act in facilities under the jurisdiction of the Secretary (or the Secretary of Defense), shown by reference to the Department facility which provided (or, in the case of Department of Defense facilities, arranged) those services;

(2) A description of (A) the services provided at each such facility, and (B) the extent to which each such facility relies on contractual arrangements under section 1703 or 8153 of title 38, United States Code, to furnish care to women veterans in facilities which are not under the jurisdiction of the Secretary where the provision of such care is not furnished in a medical emergency.

(3) The steps taken by each such facility to expand the provision of services at such facility (or under arrangements with a Department of Defense facility) to women veterans.

(4) A description (as of October 1 of the year preceding the year in which the report is submitted) of the status of any research relating to women veterans being carried out by or under the jurisdiction of the Secretary, including research under section 109 of this Act.

SEC. 108. COORDINATION OF SERVICES.

The Secretary of Veterans Affairs shall ensure that an official in each regional office of the Veterans Health Administration shall serve as a coordinator of women's services. The responsibilities of such official shall include the following:

(1) Conducting periodic assessments of the needs for services of women veterans within such region.

(2) Planning to meet such needs.

(3) Assisting in carrying out the purposes of section 106(b) of this title.

(4) Coordinating the training of women veterans coordinators who are assigned to Department facilities in the region under the jurisdiction of such regional coordinator.

(5) Providing appropriate technical support and guidance to Department facilities in that region with respect to outreach activities to women veterans.

SEC. 109. RESEARCH RELATING TO WOMEN VETERANS HEALTH.

(a) INITIATION AND EXPANSION OF RESEARCH.—The Secretary of Veterans Affairs, in carrying out the Secretary's responsibilities under section 7303 of title 38, United States Code, shall foster and encourage the initiation and expansion of research relating to the health of veterans who are women.

(b) AUTHORIZATION OF APPROPRIATIONS.—(1) Funds are authorized to be appropriated to the Secretary to initiate new studies in accordance with subsection (a) as follows:

(A) For fiscal year 1993, $1,500,000.

(B) For fiscal year 1994, $2,000,000.

(C) For fiscal year 1995, $2,500,000.

(2) Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) are in addition to other funds appropriated or otherwise made available to the Department of Veterans Affairs for research.

SEC. 110. POPULATION STUDY OF WOMEN VETERANS.

(a) STUDY.—(1) The Secretary, subject to subsection (d), shall conduct a study to determine the needs of veterans who are women for health-care services. The study shall be based on an appropriate sample of veterans who are women.

(2) Before carrying out the study, the Secretary shall request the advice of the Advisory Committee on Women Veterans on the conduct of the study.

(3) In carrying out the study, the Secretary shall include in the sample veterans who are women and members of the Armed Forces serving on active duty who are women.

(b) REPORTS.—The Secretary shall submit to the Committees on Veterans Affairs of the Senate and House of Representatives reports relating to the study as follows:

(1) Not later than 9 months after the date of the enactment of this Act, an interim report describing (A) the information and advice obtained by the Secretary from the Advisory Committee on Women Veterans, and (B) the status of the study.

(2) Not later than December 31, 1995, a final report describing the results of the study.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the general operating expenses account of the Department of Veterans Affairs $2,000,000 to carry out the purposes of this section. Amounts appropriated pursuant to this authorization of appropriations shall be available for obligation until expended without fiscal year limitation.

(d) LIMITATION.—No funds may be used to conduct the study described in subsection (a) unless expressly provided for in an appropriation Act.

TITLE II—HEALTH-CARE SHARING AGREEMENTS BETWEEN DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF DEFENSE

SEC. 201. TEMPORARY EXPANSION OF AUTHORITY FOR SHARING AGREEMENTS.

The Secretary of Veterans Affairs may enter into an agreement with the Secretary of Defense under this section to expand the availability of health-care sharing arrangements with the Department of Defense under section 8111(c) of title 38, United States Code. Under such an agreement—

(1) the head of a Department of Veterans Affairs medical facility may enter into agreements under section 8111(d) of that title with (A) the head of a Department of Defense medical facility, (B) with any other official of the Department of Defense responsible for the provision of care under chapter 55 of title 10, United States Code, to persons who are covered beneficiaries under that chapter, in

the region of the Department of Veterans Affairs medical facility, or (C) with a contractor of the Department of Defense responsible for the provision of care under chapter 55 of title 10, United States Code, to persons who are covered beneficiaries under that chapter, in the region of the Department of Veterans Affairs medical facility; and

(2) the term "primary beneficiary" shall be treated as including—

(A) with respect to the Department of Veterans Affairs, any person who is described in section 1713 of title 38, United States Code; and

(B) with respect to the Department of Defense, any person who is a covered beneficiary under chapter 55 of title 10, United States Code.

SEC. 202. REQUIREMENT FOR IMPROVEMENT IN SERVICES FOR VETERANS.

A proposed agreement authorized by section 201 that is entered into by the head of a Department of Veterans Affairs medical facility may take effect only if the Chief Medical Director finds, and certifies to the Secretary of Veterans Affairs, that implementation of the agreement—

(1) will result in the improvement of services to eligible veterans at that facility; and

(2) will not result in the denial of, or a delay in providing, access to care for any veteran at that facility.

SEC. 203. EXPANDED SHARING AGREEMENTS WITH DEPARTMENT OF DEFENSE.

Under an agreement under section 201, guidelines under section 8111(b) of title 38, United States Code, may be modified to provide that, notwithstanding any other provision of law, any person who is a covered beneficiary under chapter 55 of title 10 and who is furnished care or services by a facility of the Department of Veterans Affairs under an agreement entered into under section 8111 of that title, or who is described in section 1713 of title 38, United States Code, and who is furnished care or services by a facility of the Department of Defense, may be authorized to receive such care or services—

(1) without regard to any otherwise applicable requirement for the payment of a copayment or deductible; or

(2) subject to a requirement to pay only part of any such otherwise applicable copayment or deductible, as specified in the guidelines.

SEC. 204. EXPIRATION OF AUTHORITY.

The authority to provide services pursuant to agreements entered into under section 201 expires on October 1, 1996.

SEC. 205. CONSULTATION WITH VETERANS SERVICE ORGANIZATIONS.

In carrying out this title, the Secretary of Veterans Affairs shall consult with organizations named in or approved under section 5902 of title 38, United States Code.

SEC. 206. ANNUAL REPORT.

(a) IN GENERAL.—For each of fiscal years 1993 through 1996, the Secretary of Defense and the Secretary of Veterans Affairs shall include in the annual report of the Secretaries under section 8111(f) of title 38, United States Code, a description of the Secretaries' implementation of this section.

(b) ADDITIONAL MATTERS FOR FISCAL YEAR 1996 REPORT.—In the report under subsection (a) for fiscal year 1996, the Secretaries shall include the following:

(1) An assessment of the effect of agreements entered into under section 201 on the delivery of health care to eligible veterans.

(2) An assessment of the cost savings, if any, associated with provision of services under such agreements to retired members of the Armed Forces, dependents of members or former members of a uniformed service, and beneficiaries under section 1713 of title 38, United States Code.

(3) Any plans for administrative action, and any recommendations for legislation, that the Secretaries consider appropriate to include in the report.

TITLE III—NURSE PAY

SEC. 301. REVISION TO NURSE PAY GRADE SCHEDULE.

(a) REVISION.—Section 7404(b)(1) is amended in the matter relating to "NURSE SCHEDULE" by striking out "Director grade." and all that follows through "Entry grade." and inserting in lieu thereof the following:

"Nurse V.
"Nurse IV.
"Nurse III.
"Nurse II.
"Nurse I.".

(b) CONFORMING AMENDMENT.—Section 7451(b) of such title is amended by striking out "four" and inserting in lieu thereof "five".

SEC. 302. AUTHORITY TO ESTABLISH SPECIAL RATES OF PAY FOR EMPLOYEES OF FACILITIES LOCATED OUTSIDE THE CONTIGUOUS UNITED STATES, ALASKA, AND HAWAII.

Section 7451(a)(3) is amended—

(1) by striking out "(3) The rates" and inserting in lieu thereof "(3)(A) Except as provided in subparagraph (B), the rates"; and

(2) by adding at the end the following new subparagraph:

"(B) Under such regulations as the Secretary shall prescribe, the Secretary shall establish and adjust the rates of basic pay for covered positions at the following health-care facilities in order to provide rates of basic pay that enable the Secretary to recruit and retain sufficient numbers of health-care personnel in such positions at those facilities:

"(i) The Veterans Memorial Medical Center in the Republic of the Philippines.

"(ii) Department of Veterans Affairs health-care facilities located outside the contiguous States, Alaska, and Hawaii.".

SEC. 303. SALARY DATA FOR NURSE ANESTHETISTS.

Section 7451(d)(3) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(2) by inserting after subparagraph (B) the following new subparagraph (C):

"(C)(i) A director of a Department health-care facility may use data on the beginning rates of compensation paid to certified registered nurse anesthetists who are employed on a salary basis by entities that provide anesthesia services through certified registered nurse anesthetists in the labor-market area only if the director—

"(I) has conducted a survey of beginning rates of compensation for certified registered nurse anesthetists in the local labor market area of the facility under subparagraph (B);

"(II) has used all available administrative authority with regard to collection of survey data; and

"(III) makes a determination (under regulations prescribed by the Secretary) that such survey methods are insufficient to permit the adjustments referred to in subparagraph (B) for such nurse anesthetists employed by the facility.

"(ii) For the purposes of this subparagraph, certified registered nurse anesthetists who are so employed by such entities shall be deemed to be corresponding health-care professionals to the certified registered nurse anesthetists employed by the facility.

"(iii) The authority of the director to use such additional data under this subparagraph with respect to certified registered nurse anesthetists expires on April 1, 1995.".

SEC. 304. RATES OF PAY FOR TRANSFERRING NURSES.

(a) SAVE-PAY AUTHORITY FOR NURSES TRANSFERRING TO ANOTHER FACILITY.—Section 7452(e) is amended by striking out the period at the end and inserting in lieu thereof ", except that in the case of an employee whose transfer (other than pursuant to a disciplinary action otherwise authorized by law) to another health-care facility is at the request of the Secretary, the Secretary may provide that for at least the first year following such transfer the employee shall be paid at a rate of basic pay up to the rate applicable to such employee before the transfer, if the Secretary determines that such rate of pay is necessary to fill the position. Whenever the Secretary exercises the authority under the preceding sentence relating to the rate of basic pay of a transferred employee, the Secretary shall, in the next annual report required under section 7451(g) of this title, provide justification for doing so.".

(b) CONFORMING AMENDMENT.—Section 7451(g) is amended by adding at the end the following new paragraph:

"(9) The justification required by section 7452(e) of this title.".

SEC. 305. NURSING PERSONNEL QUALIFICATION STANDARDS.

(a) REVISION.—The Secretary of Veterans Affairs shall conduct a review of the qualification standards used for nursing personnel at Department health-care facilities and the relationship between those standards and the compression of nursing personnel in the existing intermediate and senior grades. Based upon that review, the Secretary shall revise those qualification standards—

(1) to reflect the five grade levels for nursing personnel under the Nurse Schedule, as amended by section 301; and

(2) to reduce the compression of nursing personnel in the existing intermediate and senior grades.

(b) DEADLINE FOR PRESCRIBING STANDARDS.—The Secretary shall prescribe revised qualification standards for nursing personnel pursuant to subsection (a) not later than six months after the date of the enactment of this Act.

(c) REPORT.—The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the Secretary's findings and actions under this section. The report shall be submitted not later than six months after the date on which revised qualification standards for nursing personnel are prescribed pursuant to subsection (b).

SEC. 306. REPORT ON PAY FOR CHIEF NURSE POSITION.

(a) REVIEW.—The Secretary of Veterans Affairs shall conduct a review of—

(1) the process for determining the rate of basic pay applicable to the Chief Nurse position at Department of Veterans Affairs health-care facilities; and

(2) the relationship between the rate of such basic pay and the rate of basic pay applicable to nurses in positions subordinate to the Chief Nurse at the respective Department facilities.

The review shall include an assessment of the adequacy of that process in determining an equitable pay rate for the Chief Nurse position, including an assessment of the accuracy of data collected in the survey process and the difficulties in obtaining accurate data.

(b) REPORT.—The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the review and assessment conducted under subsection (a). To the extent that the review discloses difficulties in obtaining accurate data in the survey process with respect to the Chief Nurse position at Department facilities, the Secretary shall include in the report recommendations for corrective action. The Secretary shall also include in the report (1) a listing of the salary differential (expressed as a percentage) between the Chief Nurse at a facility and the highest paid nurse (excluding certified registered nurse anesthetists) serving in a position subordinate to the Chief Nurse, and (2) an analysis of such data. The report shall be submitted not later than 12 months after the date of the enactment of this Act.

SEC. 307. REPORT ON PAY COMPRESSION.

Section 7451(g) (as amended by section 304(b)) is further amended by adding at the end the following new paragraph:

"(10) The number of nurses, shown by facility and by grade, who are on pay retention or in the top step of any grade and, with respect to those employees, comprehensive information (by facility) as to whether an extension of the pay grades was sought for these positions, and with respect to each such request for extension, whether such request was granted or denied.".

SEC. 308. EFFECTIVE DATE.

The amendments made by sections 301, 302, 303, and 304 shall take effect with respect to the first pay period beginning on or after the end of the six-month period beginning on the date of the enactment of this Act.

TITLE IV—STATE HOME AMENDMENTS

SEC. 401. TREATMENT OF EARNINGS OF VETERANS UNDER CERTAIN REHABILITATIVE SERVICES PROGRAMS.

Subsection (f) of section 1718 is amended to read as follows:

"(f)(1) The Secretary may not consider any of the matters stated in paragraph (2) as a basis for the denial or discontinuance of a rating of total disability for purposes of compensation or pension based on the veteran's inability to secure or follow a substantially gainful occupation as a result of disability.

"(2) Paragraph (1) applies to the following:

"(A) A veteran's participation in an activity carried out under this section.

"(B) A veteran's receipt of a distribution as a result of participation in an activity carried out under this section.

"(C) A veteran's participation in a program of rehabilitative services that (i) is provided as part of the veteran's care furnished by a State home and (ii) is approved by the Secretary as conforming appropriately to standards for activities carried out under this section.

"(D) A veteran's receipt of payment as a result of participation in a program described in subparagraph (C).

"(3) A distribution of funds made under this section and a payment made to a veteran under a program of rehabilitative services described in paragraph (2)(C) shall be considered for the purposes of chapter 15 of this title to be a donation from a public or private relief or welfare organization.".

SEC. 402. PERMANENT AUTHORITY TO MAKE GRANTS TO STATES RELATING TO STATE HOMES.

Section 8133(a) is amended in the first sentence by striking out "through September 30, 1992".

SEC. 403. EXTENSION OF PERIOD FOR COMPLETION OF CONDITIONALLY APPROVED APPLICATIONS FOR CONSTRUCTION.

(a) EXTENSION OF PERIOD.—Section 8135(b)(6)(A) is amended by striking out "90 days" and inserting in lieu thereof "180 days".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to projects that are conditionally approved after September 30, 1992.

SEC. 404. LIMITED PROHIBITION ON OBLIGATION OF FUNDS FOR RESCINDED PROJECTS.

(a) PROHIBITION.—Section 8135(b)(6)(B) is amended by adding at the end the following: "In the event the Secretary rescinds conditional approval of a project under this subparagraph, the Secretary may not further obligate funds for the project during the fiscal year in which the Secretary rescinds such approval.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to rescissions of conditional approval of projects after the date of the enactment of this Act.

SEC. 405. COMMENCEMENT DATE FOR RECAPTURE PERIOD.

(a) COMMENCEMENT DATE.—Section 8136 is amended by striking out "If, within 20 years after completion of any project" and inserting in lieu thereof "If, within the 20-year period beginning on the date of the approval by the Secretary of the final architectural and engineering inspection of any project".

(b) TECHNICAL AMENDMENT.—Such section is further amended by striking out "such facilities cease" and inserting in lieu thereof "the facilities covered by the project cease".

SEC. 406. COMMENCEMENT DATE FOR PAYMENT OF PER DIEM.

Section 1741 is amended by adding at the end the following new subsection:

"(e) Subject to section 1743 of this title, the payment of per diem for care furnished in a State home facility shall commence on the date of the completion of the inspection for recognition of the facility under section 1742(a) of this title if the Secretary determines, as a result of that inspection, that the State home meets the standards described in such section.".

TITLE V—GENERAL HEALTH CARE AND ADMINISTRATION

Subtitle A—General Health

SEC. 501. CONTRACT HOSPITAL CARE FOR VETERANS WITH PERMANENT AND TOTAL SERVICE-CONNECTED DISABILITIES.

Section 1703(a)(1) is amended—

(1) by striking out "or" at the end of subparagraph (A);

(2) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof "; or"; and

(3) by adding at the end the following new subparagraph:

"(C) a disability of a veteran who has a total disability permanent in nature from a service-connected disability.".

SEC. 502. PERMANENT AUTHORITY FOR RESPITE CARE PROGRAM.

Section 1720B is amended by striking out subsection (c).

SEC. 503. EXTENSION OF AUTHORITY TO CONTRACT WITH THE VETERANS MEMORIAL MEDIAL CENTER, REPUBLIC OF THE PHILIPPINES.

Section 1732(a) is amended by striking out "September 30, 1992" and inserting in lieu thereof "September 30, 1994".

Subtitle B—Preventive Health

SEC. 511. NATIONAL CENTER FOR PREVENTIVE HEALTH.

(a) ESTABLISHMENT.—(1) Subchapter II of chapter 73 is amended by adding at the end the following new section:

"§ 7318. National Center for Preventive Health

"(a)(1) The Chief Medical Director shall establish and operate in the Veterans Health Administration a National Center for Preventive Health (hereinafter in this section referred to as the 'Center'). The Center shall be located at a Department health care facility.

"(2) The head of the Center is the Director of Preventive Health (hereinafter in this section referred to as the 'Director').

"(3) The Chief Medical Director shall provide the Center with such staff and other support as may be necessary for the Center to carry out effectively its functions under this section.

"(b) The purposes of the Center are the following:

"(1) To provide a central office for monitoring and encouraging the activities of the Veterans Health Administration with respect to the provision, evaluation, and improvement of preventive health services.

"(2) To promote the expansion and improvement of clinical, research, and educational activities of the Veterans Health Administration with respect to such services.

"(c) In carrying out the purposes of the Center, the Director shall do the following:

"(1) Develop and maintain current information on clinical activities of the Veterans Health Administration relating to preventive health services, including activities relating to—

"(A) the on-going provision of regularly-furnished services; and

"(B) patient education and screening programs carried out throughout the Administration.

"(2) Develop and maintain detailed current information on research activities of the Veterans Health Administration relating to preventive health services.

"(3) In order to encourage the effective provision of preventive health services by Veterans Health Administration personnel—

"(A) ensure the dissemination to such personnel of any appropriate information on such services that is derived from research carried out by the Administration; and

"(B) acquire and ensure the dissemination to such personnel of any appropriate information on research and clinical practices relating to such services that are carried out by researchers, clinicians, and educators who are not affiliated with the Administration.

"(4) Facilitate the optimal use of the unique resources of the Department for cooperative research into health outcomes by initiating recommendations, and responding to requests of the Chief Medical Director and the Director of the Medical and Prosthetic Research Service, for such research into preventive health services.

"(5) Provide advisory services to personnel of Department health-care facilities with respect to the planning or furnishing of preventive health services by such personnel.

"(d) There is authorized to be appropriated $1,500,000 to the Medical Care General and Special Fund of the Department of Veterans Affairs for each fiscal year for the purpose of permitting the National Center for Preventive Health to carry out research, clinical, educational, and administrative activities under this section. Such activities shall be considered to be part of the operation of health-care facilities of the Department without regard to the location at which such activities are carried out.

"(e) In this section, the term 'preventive health services' has the meaning given such term in section 1701(9) of this title.".

(2) The table of sections at the beginning of chapter 73 is amended by inserting after the item relating section 7317 the following new item:

"7318. National Center for Preventive Health.".

(b) DIRECTOR OF CENTER.—(1) Subsection (a) of section 7306 is amended—

(A) by redesignating paragraph (7) as paragraph (8); and

(B) by inserting after paragraph (6) the following new paragraph (7):

"(7) The Director of the National Center for Preventive Health, who shall be responsible to the Chief Medical Director for the operation of the Center.".

(2) Subsection (c) of such section is amended in the second sentence by striking out "and (4)" and inserting in lieu thereof "(4), and (7)".

(c) SELECTION OF FACILITY AT WHICH CENTER IS TO BE ESTABLISHED.—In order to establish the National Center for Preventive Health pursuant to section 7318 of title 38, United States Code, as added by subsection (a), the Chief Medical Director of the Department of Veterans Affairs shall solicit proposals from Department health care facilities to establish the center. The Chief Medical Director shall establish such center at the facility or facilities which the Chief Medical Director determines, on the basis of a review and analysis of such proposals, would most effectively carry out the purposes set forth in subsection (b) of such section.

SEC. 512. ANNUAL REPORT ON PREVENTIVE HEALTH SERVICES.

(a) ANNUAL REPORT.—Chapter 17 in amended by inserting after section 1703 the following new section:

"§ 1704. Preventive health services: annual report

"Not later than October 31 each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on preventive health services. Each such report shall include the following:

"(1) A description of the programs and activities of the Department with respect to preventive health services during the preceding fiscal year, including a description of the following:

"(A) The programs conducted by the Department—

"(i) to educate veterans with respect to health promotion and disease prevention; and

"(ii) to provide veterans with preventive health screenings and other clinical services, with such description setting forth the types of resources used by the Department to conduct such screenings and services and the number of veterans reached by such screenings and services.

"(B) The means by which the Secretary addressed the specific preventive health services needs of particular groups of veterans (including veterans with service-connected disabilities, elderly veterans, low-income veterans, women veterans, institutionalized veterans, and veterans who are at risk for mental illness).

"(C) The manner in which the provision of such services was coordinated with the activities of the Medical and Prosthetic Research Service of the Department and the National Center for Preventive Health.

"(D) The manner in which the provision of such services was integrated into training programs of the Department, including initial and continuing medical training of medical students, residents, and Department staff.

"(E) The manner in which the Department participated in cooperative preventive health efforts with other governmental and private entities (including State and local health promotion offices and not-for-profit organizations).

"(F) The specific research carried out by the Department with respect to the long-term relationships among screening activities, treatment, and morbidity and mortality outcomes.

"(G) The cost effectiveness of such programs and activities, including an explanation of the means by which the costs and benefits (including the quality of life of veterans who participate in such programs and activities) of such programs and activities are measured.

"(2) A specific description of research activities on preventive health services carried out during that period using employees, funds, equipment, office space, or other support services of the Department, with such description setting forth—

"(A) the source of funds for those activities;

"(B) the articles or publications (including the authors of the articles and publications) in which those activities are described;

"(C) the Federal, State, or local governmental entity or private entity, if any, with which such activities were carried out; and

"(D) the clinical, research, or staff education projects for which funding applications were submitted (including the source of the funds applied for) and upon which a decision is pending or was denied.

"(3) An accounting of the expenditure of funds during that period by the National Center for Preventive Health under section 7318 of this title.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1703 the following new item:

"1704. Preventive health services: annual report.".

SEC. 513. PREVENTIVE HEALTH SERVICES.

(a) IN GENERAL.—The text of section 1762 is transferred to the end of section 1701, redesignated as paragraph (9), and amended—

(1) by striking out "For the purposes of this subchapter, the term 'preventive health-care services' means" and inserting in lieu thereof "The term 'preventive health services' means"; and

(2) by redesignating paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), and (11) as subparagraphs (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), and (K), respectively.

(b) CONFORMING AMENDMENT.—Section 1701(6)(A)(i) is amended by striking out "preventive health-care services as defined in section 1762 of this title," and inserting in lieu thereof "preventive health services,".

SEC. 514. REPEAL OF PILOT PROGRAM.

(a) REPEAL.—Subchapter VII of chapter 17 is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by striking out the items relating to subchapter VII (including the items relating to the sections of that subchapter).

Subtitle C—Health Care Administration and Personnel

SEC. 521. GERIATRIC RESEARCH, EDUCATION, AND CLINICAL CENTERS.

Section 7314 is amended—

(1) in subsection (c), by inserting after "unless" in the matter preceding paragraph (1) the following: "the peer review panel established under subsection (d) has determined under that subsection that the proposal submitted by such facility as a location for a new center under subsection (a) is among those proposals which have met the highest competitive standards of scientific and clinical merit, and";

(2) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively; and

(3) by inserting after subsection (c) the following new subsection (d):

"(d)(1) In order to provide advice to assist the Chief Medical Director and the Secretary to carry out their responsibilities under this section, the Assistant Chief Medical Director described in section 7306(b)(3) of this title shall establish a panel to assess the scientific and clinical merit of proposals that are submitted to the Secretary for the establishment of new centers under this section.

"(2) The membership of the panel shall consist of experts in the fields of geriatric and gerontological research, education, and clinical care. Members of the panel shall serve as consultants to the Department for a period of no longer than six months.

"(3) The panel shall review each proposal submitted to the panel by the Assistant Chief Medical Director and shall submit its views on the relative scientific and clinical merit of each such proposal to the Assistant Chief Medical Director.

"(4) The panel shall not be subject to the Federal Advisory Committee Act.".

SEC. 522. EXTENSION OF AUTHORITY TO WAIVE CERTAIN LIMITATIONS APPLICABLE TO RECEIPT OF RETIREMENT PAY BY NURSES.

Section 7426(c) is amended by striking out "September 30, 1992" and inserting in lieu thereof "December 31, 1994".

SEC. 523. HEALTH PROFESSIONALS EDUCATION PROGRAMS.

(a) EXTENSION OF HEALTH SCHOLARSHIP PROGRAM.—Section 7618 is amended by striking out "September 30, 1992" and inserting in lieu thereof "December 31, 1995".

(b) HEALTH PROFESSIONALS.—Notwithstanding any other provision of law, the Secretary of Veterans Affairs may not provide payments to health-care professional employees of the Department of Veterans Affairs for payment of tuition loans.

SEC. 524. REAL PROPERTY AT TEMPLE JUNIOR COLLEGE, TEMPLE, TEXAS.

(a) REMOVAL OF RESTRICTIONS ON USE OF PREVIOUSLY CONVEYED LAND.— Subject to subsection (b), the Secretary of Veterans Affairs shall release all restrictions and conditions (including a right of reverter) imposed in a quitclaim deed executed by the Administrator of Veterans' Affairs on March 8, 1968, pursuant to Public Law 90-197 (81 Stat. 582; December 14, 1967), in which the United States, acting through the Administrator of Veterans Affairs, conveyed a tract of land consisting of 73 acres, more or less, to Temple Junior College, Temple, Texas.

(b) REQUIREMENT FOR PAYMENT.—Subsection (a) shall be effective upon the payment to the Secretary of Veterans Affairs of such monetary consideration as the Secretary determines to be appropriate. Any amount received by the Secretary pursuant to this subsection shall be deposited in the general fund of the Treasury.

(c) EXECUTION OF LEGAL INSTRUMENTS.— The Secretary of Veterans Affairs shall execute such legal documents as necessary to carry out subsection (a). The Secretary may include in such legal documents such terms, conditions, reservations, easements, and restrictions (other than those released pursuant to subsection (a)) as the Secretary considers necessary to protect the interest of the United States.

SEC. 525. DEMONSTRATION PROJECT TO EVALUATE INSTALLATION OF TELEPHONES FOR PATIENT USE AT DEPARTMENT HEALTH-CARE FACILITIES.

(a) Demonstration Project.—The Secretary of Veterans Affairs shall carry out a demonstration project to evaluate—

(1) the feasibility and desirability of (A) providing telephone service in patient rooms in Department of Veterans Affairs health-care facilities which do not currently provide such service, and (B) the use of telephones by the patients of such health-care facilities; and

(2) the relative feasibility and cost-effectiveness of a variety of options for providing such service.

(b) Project Activities.—(1) In carrying out the demonstration project under this section, the Secretary shall, at an appropriate number (as determined by the Secretary) of health care facilities, provide patients reasonable access to telephone service in patients' rooms to the extent feasible, and subject to paragraph (2).

(2) The Secretary shall ensure that patients who use such telephones bear financial responsibility for the cost of any long-distance telephone calls made during such use.

(c) Project Evaluation.—In carrying out the evaluation under subsection (a), the Secretary shall determine—

(1) the cost of the installation, use, and maintenance of such telephones, including—

(A) the amount of any savings which accrue to the facility by reason of such installation and use (including the amount of any savings that may result from any decrease in the amount of assistance in using telephones that the staff of the facility would otherwise provide to patients); and

(B) any costs that result from providing special telephones or other special equipment to facilitate the use of telephones by disabled veterans; and

(2) the effect of the use of such telephones on the therapeutic course of veterans who receive care at the facility; and

(3) the relative feasibility and cost effectiveness of a range of options for providing access to telephone service, including—

(A) the expenditure of appropriated funds;

(B) the receipt of donated funds, equipment, and services; and

(C) the procuring of equipment and services by the Veterans Canteen Service.

(d) Report.—Not later than September 30, 1994, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the demonstration project. The report shall contain the following:

(1) The determinations of the Secretary under subsection (c).

(2) An assessment by the Secretary of the feasibility and desirability of providing telephones for patients in other health-care facilities of the Department.

(3) The experience of the Secretary in using, and an assessment by the Secretary of the feasibility and cost effectiveness of, alternative arrangements to the expenditure of appropriated funds for securing telephone service for patients in health-care facilities of the Department.

(4) Any additional information and recommendations with respect to the provision and use of patient telephones at Department health-care facilities as the Secretary considers appropriate.

SEC. 526. USE OF TOBACCO PRODUCTS IN DEPARTMENT FACILITIES.

(a) In General.—The Secretary of Veterans Affairs shall take appropriate actions to ensure that, consistent with medical requirements and limitations, each facility of the Department described in subsection (b)—

(1) establishes and maintains—

(A) a suitable indoor area in which patients or residents may smoke and which is ventilated in a manner that, to the maximum extent feasible, prevents smoke from entering other areas of the facility; or

(B) an area in a building that—

(i) is detached from the facility;

(ii) is accessible to patients or residents of the facility; and

(iii) has appropriate heating and air conditioning; and

(2) provides access to an area established and maintained under paragraph (1), consistent with medical requirements and limitations, for patients or residents of the facility who are receiving care or services (other than acute medical or surgical care or services) and who desire to smoke tobacco products.

(b) Covered Facilities.—A Department facility referred to in subsection (a) is any Department of Veterans Affairs medical center, nursing home, or domiciliary care facility.

(c) Reports.—(1) Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the feasibility of the establishment and maintenance of areas for smoking in Department facilities under this section. The report shall include information on—

(A) the cost of, and a proposed schedule for, the establishment of such an area at each Department facility covered by this section;

(B) the extent to which the ventilating system of each facility is adequate to ensure that use of the area for smoking does not result in health problems for other patients or residents of the facility; and

(C) the effect of the establishment and maintenance of an area for smoking in each facility on the accreditation score issued for the facility by the Joint Commission on the Accreditation of Health Organizations.

(2) Not later than 120 days after the effective date of this section, the Secretary shall submit to the committees referred to in paragraph (1) a report on the implementation of this section. The report shall include a description of the actions taken at each covered facility to ensure compliance with this section.

(d) Effective Date.—The requirement to establish and maintain areas for smoking under subsection (a) shall take effect 60 days after the date on which the Comptroller General submits to the committees referred to in subsection (c)(1) that report required under that subsection.

TITLE VI—DRUG PRICING AGREEMENTS

SEC. 601. TREATMENT OF PRESCRIPTION DRUGS PROCURED BY DEPARTMENT OF VETERANS AFFAIRS OR PURCHASED BY CERTAIN CLINICS AND HOSPITALS.

(a) Exclusion of Prices From Calculation of Best Prices for Medicaid Rebate Agreements.—Section 1927(c)(1)(C) of the Social Security Act (42 U.S.C. 1396r-8(c)(1)(C)) is amended by striking "(excluding" and inserting "(excluding any prices charged on or after October 1, 1992, to the Indian Health Service, the Department of Veterans Affairs, a State home receiving funds under section 1741 of title 38, United States Code, the Department of Defense, the Public Health Service, or a covered entity described in subsection (a)(5)(B), any prices charged under the Federal Supply Schedule of the General Services Administration, or any prices used under a State pharmaceutical assistance program, and excluding".

(b) Agreements Required to Receive Payment.—

(1) In General.—The first sentence of section 1927(a)(1) of such Act (42 U.S.C. 1396r-8(a)(1)) is amended by striking "manufacturer)." and inserting "manufacturer), and must meet the requirements of paragraph (5) (with respect to drugs purchased by a covered entity on or after the first day of the first month that begins after the date of the enactment of title VI of the Veterans Health Care Act of 1992) and paragraph (6).".

(2) Agreements Described.—Section 1927(a) of such Act (42 U.S.C. 1396r-8(a)) is amended by adding at the end the following new paragraphs:

"(5) Limitation on Prices of Drugs Purchased by Covered Entities.—

"(A) Agreement with Secretary.—A manufacturer meets the requirements of this paragraph if the manufacturer has entered into an agreement with the Secretary that meets the requirements of section 340B of the Public Health Service Act with respect to covered outpatient drugs purchased by a covered entity on or after the first day of the first month that begins after the date of the enactment of this paragraph.

"(B) Covered Entity Defined.—In this subsection, the term 'covered entity' means an entity described in section 340B(a)(4) of the Public Health Service Act.

"(C) Establishment of Alternative Mechanism to Ensure Against Duplicate Discounts or Rebates.—If the Secretary does not establish a mechanism under section 340B(a)(5)(A) of the Public Health Service Act within 12 months of the date of the enactment of such section, the following requirements shall apply:

"(i) Entities.—Each covered entity shall inform the single State agency under section 1902(a)(5) when it is seeking reimbursement from the State plan for medical assistance described in section 1905(a)(12) with respect to a unit of any covered outpatient drug which is subject to an agreement under section 340B(a) of such Act.

"(ii) State Agency.—Each such single State agency shall provide a means by which a covered entity shall indicate on any drug reimbursement claims form (or format, where electronic claims management is used) that a unit of the drug that is the subject of the form is subject to an agreement under section 340B of such Act, and not submit to any manufacturer a claim for a rebate payment under subsection (b) with respect to such a drug.

"(D) Effect of Subsequent Amendments.—In determining whether an agreement under subparagraph (A) meets the requirements of section 340B of the Public Health Service Act, the Secretary shall not take into account any amendments to such section that are enacted after the enactment of title VI of the Veterans Health Care Act of 1992.

"(E) Determination of Compliance.—A manufacturer is deemed to meet the requirements of this paragraph if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of section 340B the Public Health Service Act (as in effect immediately after the enactment of this paragraph) and would have entered into an agreement under such section (as such section was in effect at such time), but for a legislative change in such section after the date of the enactment of this paragraph.

"(6) REQUIREMENTS RELATING TO MASTER AGREEMENTS FOR DRUGS PROCURED BY DEPARTMENT OF VETERANS AFFAIRS AND CERTAIN OTHER FEDERAL AGENCIES.—

"(A) IN GENERAL.—A manufacturer meets the requirements of this paragraph if the manufacturer complies with the provisions of section 8126 of title 38, United States Code, including the requirement of entering into a master agreement with the Secretary of Veterans Affairs under such section.

"(B) EFFECT OF SUBSEQUENT AMENDMENTS.—In determining whether a master agreement described in subparagraph (A) meets the requirements of section 8126 of title 38, United States Code, the Secretary shall not take into account any amendments to such section that are enacted after the enactment of title VI of the Veterans Health Care Act of 1992.

"(C) DETERMINATION OF COMPLIANCE.—A manufacturer is deemed to meet the requirements of this paragraph if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of section 8126 of title 38, United States Code (as in effect immediately after the enactment of this paragraph) and would have entered into an agreement under such section (as such section was in effect at such time), but for a legislative change in such section after the date of the enactment of this paragraph.".

(3) CONFIDENTIALITY OF INFORMATION.—Section 1927(b)(3)(D) of such Act (42 U.S.C. 1396r-8(b)(3)(D)) is amended—

(A) by striking "this paragraph" and inserting "this paragraph or under an agreement with the Secretary of Veterans Affairs described in subsection (a)(6)(A)(ii)";

(B) by striking "Secretary" each place it appears and inserting "Secretary or the Secretary of Veterans Affairs"; and

(C) by striking "except" and all that follows through the period and inserting: "except—

"(i) as the Secretary determines to be necessary to carry out this section,

"(ii) to permit the Comptroller General to review the information provided, and

"(iii) to permit the Director of the Congressional Budget Office to review the information provided.".

(4) TERMINATION OF REBATE AGREEMENTS.—Section 1927(b)(4)(B) of such Act (42 U.S.C. 1396r-8(b)(4)(B)) is amended—

(i) in clause (ii), by striking "such period" and inserting "the calendar quarter beginning at least 60 days",

(ii) in clause (ii), by striking "of the notice" and all through "the agreement)." and inserting "the manufacturer provides notice to the Secretary.", and

(iii) by adding at the end the following new clauses:

"(iv) NOTICE TO STATES.—In the case of a termination under this subparagraph, the Secretary shall provide notice of such termination to the States within not less than 30 days before the effective date of such termination.

"(v) APPLICATION TO TERMINATIONS OF OTHER AGREEMENTS.—The provisions of this subparagraph shall apply to the terminations of agreements described in section 340B(a)(1) of the Public Health Service Act and master agreements described in section 8126(a) of title 38, United States Code.".

(c) BUDGET NEUTRALITY ADJUSTMENT.—Section 1927(c)(1)(B) of the Social Security Act (42 U.S.C. 1396r-8(c)(1)(B)) is amended—

(1) by striking "January 1, 1993," and inserting "October 1, 1992,";

(2) by striking "and" at the end of clause (i); and

(3) by striking clause (ii) and inserting the following:

"(ii) for quarters (or other periods) beginning after September 30, 1992, and before January 1, 1994, the greater of—

"(I) 15.7 percent of the average manufacturer price for the drug, or

"(II) the difference between the average manufacturer price for the drug and the best price (as defined in subparagraph (C)) for such quarter (or period) for such drug;

"(iii) for quarters (or other periods) beginning after December 31, 1993, and before January 1, 1995, the greater of—

"(I) 15.4 percent of the average manufacturer price for the drug, or

"(II) the difference between the average manufacturer price for the drug and the best price (as defined in subparagraph (C)) for such quarter (or period) for such drug;

"(iv) for quarters (or other periods) beginning after December 31, 1994, and before January 1, 1996, the greater of—

"(I) 15.2 percent of the average manufacturer price for the drug, or

"(II) the difference between the average manufacturer price for the drug and the best price (as defined in subparagraph (C)) for such quarter (or period) for such drug; and

"(v) for quarters (or other periods) beginning after December 31, 1995, the greater of—

"(I) 15.1 percent of the average manufacturer price for the drug, or

"(II) the difference between the average manufacturer price for the drug and the best price (as defined in subparagraph (C)) for such quarter (or period) for such drug.".

(d) REPORTS ON BEST PRICE CHANGES AND PAYMENT OF REBATES.—

(1) IN GENERAL.—Not later than 90 days after the expiration of each calendar quarter that begins on or after October 1, 1992, and ends on or before December 31, 1995, the Secretary of Health and Human Services shall submit a report to Congress that contains the following information relating to prescription drugs dispensed in the quarter (subject to paragraph (2)):

(A) With respect to single source drugs and innovator multiple source drugs (as such terms are defined in section 1927(k)(7) of the Social Security Act)—

(i) the percentage of such drugs whose best price (as reported to the Secretary under section 1927(b) of the Social Security Act) increased compared to the best price during the previous calendar quarter, and the amount of expenditures under State plans under title XIX of such Act attributable to such drugs;

(ii) the percentage of such drugs whose best price (as so reported) decreased compared to the best price during the previous calendar quarter, and the amount of expenditures under State plans under title XIX of such Act attributable to such drugs;

(iii) the percentage of such drugs whose best price (as so reported) was the same as the best price during the previous calendar quarter, and the amount of expenditures under State plans under title XIX of such Act attributable to such drugs;

(iv) the median and mean percentage increase (or decrease) in the best price of such single source drugs (as so reported) compared to the best price during the previous calendar quarter, unweighted and weighted (in the case of the mean percentage increase or decrease) by the dollar volume of drugs dispensed;

(v) the median and mean percentage increase (or decrease) in the best price of such innovator multiple source drugs (as so reported) compared to the best price during the previous calendar quarter, unweighted and weighted (in the case of the mean percentage increase or decrease) by the dollar volume of drugs dispensed; and

(vi) the median and mean percentage increase (or decrease) in the best price of all such drugs (as so reported) compared to the best price during the previous calendar quarter, unweighted and weighted (in the case of the mean percentage increase or decrease) by the dollar volume of drugs dispensed.

(B) With respect to all drugs for which manufacturers are required to pay rebates under section 1927(c) of the Social Security Act, the Secretary's estimate, on a State-by-State and a national aggregate basis, of—

(i) the total amount of all rebates paid under such section during the quarter, broken down by the portions of such total amount attributable to rebates described in paragraphs (1), (2), and (3) of such section;

(ii) the percentages of such total amount attributable to rebates described in paragraphs (1), (2), and (3) of such section; and

(iii) the amount of the portion of such total amount attributable to the rebate described in paragraph (1) of such section that is solely attributable to the application of subclause (II) of clause (i), (ii), (iii), (iv), or (v) of such paragraph.

(2) LIMITATION ON DRUGS SUBJECT TO REPORT.—No report submitted under paragraph (1) shall include any information relating to any prescription drug unless the Secretary finds that expenditures for the drug are significant expenditures under the medicaid program. In the previous sentence, expenditures for a drug are "significant" if the drug was one of the 1,000 drugs for which the greatest amount of the Federal financial assistance attributable to prescription drugs was paid under section 1903(a) of the Social Security Act during calendar year 1991.

(3) SPECIAL RULE FOR INITIAL REPORT.—For purposes of the first report required to be submitted under paragraph (1)—

(A) the Secretary shall submit the report not later than May 1, 1993; and

(B) the information contained in the report shall include information on prescription drugs dispensed during each calendar quarter that began on or after January 1, 1991, and ended on or before December 31, 1992.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to payments to State plans under title XIX of the Social Security Act for calendar quarters (or periods) beginning on or after January 1, 1993 (without regard to whether or not regulations to carry out such amendments have been promulgated by such date).

SEC. 602. LIMITATIONS ON PRICES OF DRUGS PURCHASED BY CERTAIN CLINICS AND HOSPITALS.

(a) IN GENERAL.—Part D of title III of the Public Health Service Act is amended by adding the following subpart:

"Subpart VII—Drug Pricing Agreements

"LIMITATION ON PRICES OF DRUGS PURCHASED BY COVERED ENTITIES

"SEC. 340B. (a) REQUIREMENTS FOR AGREEMENT WITH SECRETARY.—

"(1) IN GENERAL.—The Secretary shall enter into an agreement with each manufacturer of covered drugs under which the amount required to be paid (taking into account any rebate or discount, as provided by the Secretary) to the manufacturer for covered drugs (other than drugs described in paragraph (3)) purchased by a covered entity on or after the first day of the first month that begins after the date of the enactment of this section, does not exceed an amount equal to the average manufacturer price for the drug under title XIX of the Social Security Act in the preceding calendar quarter, reduced by the rebate percentage described in paragraph (2).

"(2) REBATE PERCENTAGE DEFINED.—

"(A) IN GENERAL.—For a covered outpatient drug purchased in a calendar quarter, the 'rebate percentage' is the amount (expressed as a percentage) equal to—

"(i) the average total rebate required under section 1927(c) of the Social Security Act with respect to the drug (for a unit of the dosage form and strength involved) during the preceding calendar quarter; divided by

"(ii) the average manufacturer price for such a unit of the drug during such quarter.

"(B) OVER THE COUNTER DRUGS.—

"(i) IN GENERAL.—For purposes of subparagraph (A), in the case of over the counter drugs, the 'rebate percentage' shall be determined as if the rebate required under section 1927(c) of the Social Security Act is based on the applicable percentage provided under section 1927(c)(4) of such Act.

"(ii) DEFINITION.—The term 'over the counter drug' means a drug that may be sold without a prescription and which is prescribed by a physician (or other persons authorized to prescribe such drug under State law).

"(3) DRUGS PROVIDED UNDER STATE MEDICAID PLANS.—Drugs described in this paragraph are drugs purchased by the entity for which payment is made by the State under the State plan for medical assistance under title XIX of the Social Security Act.

"(4) COVERED ENTITY DEFINED.—In this section, the term 'covered entity' means an entity that meets the requirements described in paragraph (5) and is one of the following:

"(A) A Federally-qualified health center (as defined in section 1905(l)(2)(B) of the Social Security Act).

"(B) An entity receiving a grant under section 340A.

"(C) A family planning project receiving a grant or contract under section 1001.

"(D) An entity receiving a grant under subpart II of part C of title XXVI (relating to categorical grants for outpatient early intervention services for HIV disease).

"(E) A State-operated AIDS drug purchasing assistance program receiving financial assistance under title XXVI.

"(F) A black lung clinic receiving funds under section 427(a) of the Black Lung Benefits Act.

"(G) A comprehensive hemophilia diagnostic treatment center receiving a grant under section 501(a)(2) of the Social Security Act.

"(H) A Native Hawaiian Health Center receiving funds under the Native Hawaiian Health Care Act of 1988.

"(I) An urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act.

"(J) Any entity receiving assistance under title XXVI (other than a State or unit of local government or an entity described in subparagraph (D)), but only if the entity is certified by the Secretary pursuant to paragraph (7).

"(K) An entity receiving funds under section 318 (relating to treatment of sexually transmitted diseases) or section 317(j)(2) (relating to treatment of tuberculosis) through a State or unit of local government, but only if the entity is certified by the Secretary pursuant to paragraph (7).

"(L) A subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act) that—

"(i) is owned or operated by a unit of State or local government, is a public or private non-profit corporation which is formally granted governmental powers by a unit of State or local government, or is a private non-profit hospital which has a contract with a State or local government to provide health care services to low income individuals who are not entitled to benefits under title XVIII of the Social Security Act or eligible for assistance under the State plan under this title;

"(ii) for the most recent cost reporting period that ended before the calendar quarter involved, had a disproportionate share adjustment percentage (as determined under section 1886(d)(5)(F) of the Social Security Act) greater than 11.75 percent or was described in section 1886(d)(5)(F)(i)(II) of such Act; and

"(iii) does not obtain covered outpatient drugs through a group purchasing organization or other group purchasing arrangement.

"(5) REQUIREMENTS FOR COVERED ENTITIES.—

"(A) PROHIBITING DUPLICATE DISCOUNTS OR REBATES.—

"(i) IN GENERAL.—A covered entity shall not request payment under title XIX of the Social Security Act for medical assistance described in section 1905(a)(12) of such Act with respect to a drug that is subject to an agreement under this section if the drug is subject to the payment of a rebate to the State under section 1927 of such Act.

"(ii) ESTABLISHMENT OF MECHANISM.—The Secretary shall establish a mechanism to ensure that covered entities comply with clause (i). If the Secretary does not establish a mechanism within 12 months under the previous sentence, the requirements of section 1927(a)(5)(C) of the Social Security Act shall apply.

"(B) PROHIBITING RESALE OF DRUGS.—With respect to any covered outpatient drug that is subject to an agreement under this subsection, a covered entity shall not resell or otherwise transfer the drug to a person who is not a patient of the entity.

"(C) AUDITING.—A covered entity shall permit the Secretary and the manufacturer of a covered outpatient drug that is subject to an agreement under this subsection with the entity (acting in accordance with procedures established by the Secretary relating to the number, duration, and scope of audits) to audit at the Secretary's or the manufacturer's expense the records of the entity that directly pertain to the entity's compliance with the requirements described in subparagraphs (A) or (B) with respect to drugs of the manufacturer.

"(D) ADDITIONAL SANCTION FOR NONCOMPLIANCE.—If the Secretary finds, after notice and hearing, that a covered entity is in violation of a requirement described in subparagraphs (A) or (B), the covered entity shall be liable to the manufacturer of the covered outpatient drug that is the subject of the violation in an amount equal to the reduction in the price of the drug (as described in subparagraph (A)) provided under the agreement between the entity and the manufacturer under this paragraph.

"(6) TREATMENT OF DISTINCT UNITS OF HOSPITALS.—In the case of a covered entity that is a distinct part of a hospital, the hospital shall not be considered a covered entity under this paragraph unless the hospital is otherwise a covered entity under this subsection.

"(7) CERTIFICATION OF CERTAIN COVERED ENTITIES.—

"(A) DEVELOPMENT OF PROCESS.—Not later than 60 days after the date of enactment of this subsection, the Secretary shall develop and implement a process for the certification of entities described in subparagraphs (J) and (K) of paragraph (4).

"(B) INCLUSION OF PURCHASE INFORMATION.—The process developed under subparagraph (A) shall include a requirement that an entity applying for certification under this paragraph submit information to the Secretary concerning the amount such entity expended for covered outpatient drugs in the preceding year so as to assist the Secretary in evaluating the validity of the entity's subsequent purchases of covered outpatient drugs at discounted prices.

"(C) CRITERIA.—The Secretary shall make available to all manufacturers of covered outpatient drugs a description of the criteria for certification under this paragraph.

"(D) LIST OF PURCHASERS AND DISPENSERS.—The certification process developed by the Secretary under subparagraph (A) shall include procedures under which each State shall, not later than 30 days after the submission of the descriptions under subparagraph (C), prepare and submit a report to the Secretary that contains a list of entities described in subparagraphs (J) and (K) of paragraph (4) that are located in the State.

"(E) RECERTIFICATION.—The Secretary shall require the recertification of entities certified pursuant to this paragraph on a not more frequent than annual basis, and shall require that such entities submit information to the Secretary to permit the Secretary to evaluate the validity of subsequent purchases by such entities in the same manner as that required under subparagraph (B).

"(8) DEVELOPMENT OF PRIME VENDOR PROGRAM.—The Secretary shall establish a prime vendor program under which covered entities may enter into contracts with prime vendors for the distribution of covered outpatient drugs. If a covered entity obtains drugs directly from a manufacturer, the manufacturer shall be responsible for the costs of distribution.

"(9) NOTICE TO MANUFACTURERS.—The Secretary shall notify manufacturers of covered outpatient drugs and single State agencies under section 1902(a)(5) of the Social Security Act of the identities of covered entities under this paragraph, and of entities that no longer meet the requirements of paragraph (5) or that are no longer certified pursuant to paragraph (7).

"(10) NO PROHIBITION ON LARGER DISCOUNT.—Nothing in this subsection shall prohibit a manufacturer from charging a price for a drug that is lower than the maximum price that may be charged under paragraph (1).

"(b) OTHER DEFINITIONS.—In this section, the terms 'average manufacturer price', 'covered outpatient drug', and 'manufacturer' have the meaning given such terms in section 1927(k) of the Social Security Act.

"(c) REFERENCES TO SOCIAL SECURITY ACT.—Any reference in this section to a provision of the Social Security Act shall be deemed to be a reference to the provision as in effect on the date of the enactment of this section.

"(d) COMPLIANCE WITH REQUIREMENTS.—A manufacturer is deemed to meet the requirements of subsection (a) if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of this section (as in effect immediately after the enactment of the Veterans Health Care Act of 1992), as applied by the Secretary, and would have entered into an agreement under this section (as such section was in effect at such time), but for a legislative change in this section (or the application of this section) after the date of the enactment of such Act.".

(b) STUDY OF TREATMENT OF CERTAIN CLINICS AS COVERED ENTITIES ELIGIBLE FOR PRESCRIPTION DRUG DISCOUNTS.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study of the feasibility and desirability of including entities described in paragraph (3) as covered entities eligible for limitations on the prices of covered outpatient drugs under section 340B(a) of the Public Health Service Act (as added by subsection (a)).

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to Congress on the study conducted under paragraph (1), and shall include in the report—

(A) a description of the entities that are the subject of the study;

(B) an analysis of the extent to which such entities procure prescription drugs; and

(C) an analysis of the impact of the inclusion of such entities as covered entities under section 340B(a) of the Public Health Service Act on the quality of care provided to and the health status of the patients of such entities.

(3) ENTITIES DESCRIBED.—An entity described in this paragraph is an entity—

(A) receiving funds from a State for the provision of mental health or substance abuse treatment services under subparts I or II of part B of title XIX of the Public Health Service Act or under title V of such Act; or

(B) receiving funds from a State under title V of the Social Security Act for the provision of maternal and child health services that are furnished on an outpatient basis (other than an entity described in section 340B(a)(4)(G) of the Public Health Service Act).

SEC. 603. LIMITATION ON PRICES OF DRUGS PROCURED BY DEPARTMENT OF VETERANS AFFAIRS AND CERTAIN OTHER FEDERAL AGENCIES.

(a) AGREEMENTS WITH SECRETARY OF VETERANS AFFAIRS.—(1) Subchapter II of chapter 81 is amended by adding at the end the following new section:

"§8126. Limitation on prices of drugs procured by Department and certain other Federal agencies

"(a) Each manufacturer of covered drugs shall enter into a master agreement with the Secretary under which—

"(1) beginning January 1, 1993, the manufacturer shall make available for procurement on the Federal Supply Schedule of the General Services Administration each covered drug of the manufacturer;

"(2) with respect to each covered drug of the manufacturer procured by a Federal agency described in subsection (b) on or after January 1, 1993, that is purchased under depot contracting systems or listed on the Federal Supply Schedule, the manufacturer has entered into and has in effect a pharmaceutical pricing agreement with the Secretary (or the Federal agency involved, if the Secretary delegates to the Federal agency the authority to enter into such a pharmaceutical pricing agreement) under which the price charged during the one-year period beginning on the date on which the agreement takes effect may not exceed 76 percent of the non-Federal average manufacturer price (less the amount of any additional discount required under subsection (c)) during the one-year period ending one month before such date (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period are not available, during such period preceding such date as the Secretary considers appropriate), except that such price may nominally exceed such amount if found by the Secretary to be in the best interests of the Department or such Federal agencies;

"(3) with respect to each covered drug of the manufacturer procured by a State home receiving funds under section 1741 of this title, the price charged may not exceed the price charged under the Federal Supply Schedule at the time the drug is procured; and

"(4) unless the manufacturer meets the requirements of paragraphs (1), (2), and (3), the manufacturer may not receive payment for the purchase of drugs or biologicals from—

"(A) a State plan under title XIX of the Social Security Act, except as authorized under section 1927(a)(3) of such Act,

"(B) any Federal agency described in subsection (b), or

"(C) any entity that receives funds under the Public Health Service Act.

"(b) The Federal agencies described in this subsection are as follows:

"(1) The Department.

"(2) The Department of Defense.

"(3) The Public Health Service, including the Indian Health Service.

"(c) With respect to any covered drug the price of which is determined in accordance with a pharmaceutical pricing agreement entered into pursuant to subsection (a)(2), for calendar quarters beginning on or after January 1, 1993, the manufacturer shall provide a discount in an amount equal to the amount by which the change in non-Federal price exceeds the amount equal to—

"(1) the non-Federal average manufacturer price of the drug during the 3-month period that ends one year before the last day of the month preceding the month during which the contract for the covered drug goes into effect (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period is not available, during such period preceding the month during which the contract goes into effect as the Secretary considers appropriate); increased by

"(2) the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) between the last month of the period described in paragraph (1) and the last month preceding the month during which the contract goes into effect for which Consumer Price Index data is available.

"(d) In the case of a covered drug of a manufacturer that has entered into a multi-year contract with the Secretary under subsection (a)(2) for the procurement of the drug—

"(1) during any one-year period that follows the first year for which the contract is in effect, the price charged may not exceed the price charged during the preceding one-year period, increased by the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) between the last months of such one-year periods for which Consumer Price Index data is available; and

"(2) in applying subsection (c) to determine the amount of the discount provided with respect to the drug during a year that follows the first year for which the contract is in effect, any reference in such subsection to 'the month during which the contract goes into effect' shall be considered a reference to the first month of such following year.

"(e)(1) The manufacturer of any covered drug the price of which is determined in accordance with a pharmaceutical pricing agreement entered into pursuant to subsection (a)(2) shall—

"(A) not later than 30 days after the first day of the last quarter that begins before the agreement takes effect (or, in the case of an agreement that takes effect on January 1, 1993, not later than 30 days after the date of the enactment of this section), report to the Secretary the non-Federal average manufacturer price for the drug during the 1-year period that ends on the last day of the previous quarter; and

"(B) not later than 30 days after the last day of each quarter for which the agreement is in effect, report to the Secretary the non-Federal average manufacturer price for the drug during such quarter.

"(2) The provisions of subparagraphs (B) and (C) of section 1927(b)(3) of the Social Security Act shall apply to drugs described in paragraph (1) and the Secretary in the same manner as such provisions apply to covered outpatient drugs and the Secretary of Health and Human Services under such subparagraphs, except that references in such subparagraphs to prices or information reported or required under 'subparagraph (A)' shall be deemed to refer to information reported under paragraph (1).

"(3) In order to determine the accuracy of a drug price that is reported to the Secretary under paragraph (1), the Secretary may audit the relevant records of the manufacturer or of any wholesaler that distributes the drug, and may delegate the authority to audit such records to the appropriate Federal agency described in subsection (b).

"(4) Any information contained in a report submitted to the Secretary under paragraph (1) or obtained by the Secretary through any audit conducted under paragraph (3) shall remain confidential, except as the Secretary determines necessary to carry out this section and to permit the Comptroller General and the Director of the Congressional Budget Office to review the information provided.

"(f) The Secretary shall supply to the Secretary of Health and Human Services—

"(1) upon the execution or termination of any master agreement, the name of the manufacturer, and

"(2) on a quarterly basis, a list of manufacturers who have entered into master agreements under this section, and

"(g)(1) Any reference in this section to a provision of the Social Security Act shall be deemed to be a reference to the provision as in effect on the date of the enactment of this section.

"(2) A manufacturer is deemed to meet the requirements of subsection (a) if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of this section (as in effect immediately after the enactment of this section), and would have entered into an agreement under this section (as such section was in effect at such time), but for a legislative change in this section after the date of the enactment of this section.

"(h) In this section:

"(1) The term 'change in non-Federal price' means, with respect to a covered drug that is subject to an agreement under this section, an amount equal to—

"(A) the non-Federal average manufacturer price of the drug during the 3-month period that ends with the month preceding the month during which a contract goes into effect (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period is not available, during such period as the Secretary considers appropriate); minus

"(B) the non-Federal average manufacturer price of the drug during the 3-month period that ends one year before the end of the period described in subparagraph (A) (or, in the case of a covered drug for which sufficient data for determining the non-Federal average manufacturer price during such period is not available, during such period preceding the period described in subparagraph (A) as the Secretary considers appropriate).

"(2) The term 'covered drug' means—

"(A) a drug described in section 1927(k)(7)(A)(ii) of the Social Security Act, or that would be described in such section but for the application of the first sentence of section 1927(k)(3) of such Act;

"(B) a drug described in section 1927(k)(7)(A)(iv) of the Social Security Act, or that would be described in such section but for the application of the first sentence of section 1927(k)(3) of such Act;

"(C) any biological product identified under section 600.3 of title 21, Code of Federal Regulations; or

"(D) insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act.

"(3) The term 'depot' means a centralized commodity management system through which covered drugs procured by an agency of the Federal Government are—

"(A) received, stored, and delivered through—

"(i) a federally owned and operated warehouse system, or

"(ii) a commercial entity operating under contract with such agency; or

"(B) delivered directly from the commercial source to the entity using such covered drugs.

"(4) The term 'manufacturer' means any entity which is engaged in—

"(A) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or

"(B) in the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products.

Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

"(5) The term 'non-Federal average manufacturer price' means, with respect to a covered drug and a period of time (as determined by the Secretary), the weighted average price of a single form and dosage unit of the drug that is paid by wholesalers in the United States to the manufacturer, taking into account any cash discounts or similar price reductions during that period, but not taking into account—

"(A) any prices paid by the Federal Government; or

"(B) any prices found by the Secretary to be merely nominal in amount.

"(6) The term 'weighted average price' means, with respect to a covered drug and a period of time (as determined by the Secretary) an amount equal to—

"(A) the sum of the products of the average price per package unit of each quantity of the drug sold during the period and the number of package units of the drug sold during the period; divided by

"(B) the total number of package units of the drug sold during the period.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 8125 the following new item:

"8126. Limitation on prices of drugs procured by Department.".

TITLE VII—PERSIAN GULF WAR VETERANS' HEALTH STATUS

SEC. 701. SHORT TITLE.

This title may be cited as the "Persian Gulf War Veterans' Health Status Act".

SEC. 702. PERSIAN GULF WAR VETERANS HEALTH REGISTRY.

(a) ESTABLISHMENT OF REGISTRY.—The Secretary of Veterans Affairs shall establish and maintain a special record to be known as the "Persian Gulf War Veterans Health Registry" (in this section referred to as the "Registry").

(b) CONTENTS OF REGISTRY.—Except as provided in subsection (c), the Registry shall include the following information:

(1) A list containing the name of each individual who served as a member of the Armed Forces in the Persian Gulf theater of operations during the Persian Gulf War and who—

(A) applies for care or services from the Department of Veterans Affairs under chapter 17 of title 38, United States Code;

(B) files a claim for compensation under chapter 11 of such title on the basis of any disability which may be associated with such service;

(C) dies and is survived by a spouse, child, or parent who files a claim for dependency and indemnity compensation under chapter 13 of such title on the basis of such service;

(D) requests from the Department a health examination under section 703; or

(E) receives from the Department of Defense a health examination similar to the health examination referred to in subparagraph (D) and requests inclusion in the Registry.

(2) Relevant medical data relating to the health status of, and other information that the Secretary considers relevant and appropriate with respect to, each individual described in paragraph (1) who—

(A) grants to the Secretary permission to include such information in the Registry; or

(B) at the time the individual is listed in the Registry, is deceased.

(c) INDIVIDUALS SUBMITTING CLAIMS OR MAKING REQUESTS BEFORE DATE OF ENACTMENT.—If in the case of an individual described in subsection (b)(1) the application, claim, or request referred to in such subsection was submitted, filed, or made, before the date of the enactment of this Act, the Secretary shall, to the extent feasible, include in the Registry such individual's name and the data and information, if any, described in subsection (b)(2) relating to the individual.

(d) DEPARTMENT OF DEFENSE INFORMATION.—The Secretary of Defense shall furnish to the Secretary of Veterans Affairs such information maintained by the Department of Defense as the Secretary of Veterans Affairs considers necessary to establish and maintain the Registry.

(e) RELATION TO DEPARTMENT OF DEFENSE REGISTRY.—The Secretary of Veterans Affairs, in consultation with the Secretary of Defense, shall ensure that information is collected and maintained in the Registry in a manner that permits effective and efficient cross-reference between the Registry and the registry established under section 734 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190; 105 Stat. 1411; 10 U.S.C. 1074 note), as amended by section 704.

(f) ONGOING OUTREACH TO INDIVIDUALS LISTED IN REGISTRY.—The Secretary of Veterans Affairs shall, from time to time, notify individuals listed in the Registry of significant developments in research on the health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War.

SEC. 703. HEALTH EXAMINATIONS AND COUNSELING FOR VETERANS ELIGIBLE FOR INCLUSION IN CERTAIN HEALTH-RELATED REGISTRIES.

(a) IN GENERAL.—(1) The Secretary of Veterans Affairs—

(A) shall, upon the request of a veteran described in subsection (b)(1), provide the veteran with a health examination and consultation and counseling with respect to the results of the examination; and

(B) may, upon the request of a veteran described in subsection (b)(2), provide the veteran with such an examination and such consultation and counseling.

(2) The Secretary shall carry out appropriate outreach activities with respect to the provision of any health examinations and consultation and counseling services under paragraph (1).

(b) COVERED VETERANS.—(1) In accordance with subsection (a)(1)(A), the Secretary shall provide an examination, consultation, and counseling under that subsection to any veteran who is eligible for listing or inclusion in the Persian Gulf War Veterans Health Registry established by section 702.

(2) In accordance with subsection (a)(1)(B), the Secretary may provide an examination, consultation, and counseling under that subsection to any veteran who is eligible for listing or inclusion in any other similar health-related registry administered by the Secretary.

SEC. 704. EXPANSION OF COVERAGE OF PERSIAN GULF REGISTRY.

(a) IN GENERAL.—Subsections (a) and (b) of section 734 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190; 105 Stat. 1411; 10 U.S.C. 1074 note) are amended to read as follows:

"(a) ESTABLISHMENT OF REGISTRY.—The Secretary of Defense shall establish and maintain a special record (in this section referred to as the 'Registry') relating to the following members of the Armed Forces:

"(1) Members who, as determined by the Secretary, were exposed to the fumes of burning oil in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

"(2) Any other members who served in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

"(b) CONTENTS OF REGISTRY.—(1) The Registry shall include—

"(A) with respect to each class of members referred to in each of paragraphs (1) and (2) of subsection (a)—

"(i) a list containing each such member's name and other relevant identifying information with respect to the member; and

"(ii) to the extent that data are available and inclusion of the data is feasible, a description of the circumstances of the member's service during the Persian Gulf conflict, including the locations in the Operation Desert Storm theater of operations in which such service occurred and the atmospheric and other environmental circumstances in such locations at the time of such service; and

"(B) with respect to the members referred to in subsection (a)(1), a description of the circumstances of each exposure of each such member to the fumes of burning oil as described in such subsection (a)(1), including the length of time of the exposure.

"(2) The Secretary shall establish the Registry with the advice of an independent scientific organization.".

(b) CONFORMING AMENDMENTS.—(1) Subsection (c)(1) of such section is amended by striking out "subsection (a)" and inserting in lieu thereof "subsection (a)(1)".

(2) Subsection (d) of such section is amended by inserting "pursuant to subsection (a)(1)" after "Registry".

SEC. 705. STUDY BY OFFICE OF TECHNOLOGY ASSESSMENT OF PERSIAN GULF REGISTRY AND PERSIAN GULF WAR VETERANS HEALTH REGISTRY.

(a) STUDY.—The Director of the Office of Technology Assessment shall, in a manner consistent with the Technology Assessment Act of 1972 (2 U.S.C. 472(d)), assess—

(1) the potential utility of each of the Persian Gulf Registry and the Persian Gulf War Veterans Health Registry for scientific study and assessment of the intermediate and long-term health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War;

(2) the extent to which each registry meets the requirements of the provisions of law under which the registry is established;

(3) the extent to which data contained in each registry—

(A) are maintained in a manner that ensures permanent preservation and facilitates the effective, efficient retrieval of information that is potentially relevant to the scientific study of the intermediate and long-term health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War; and

(B) would be useful for scientific study regarding such health consequences;

(4) the adequacy of any plans to update each of the registries;

(5) the extent to which the Department of Defense or the Department of Veterans Affairs, as the case may be, is assembling and maintaining information on the Persian Gulf theater of operations (including information on troop locations and atmospheric and weather conditions) in a manner that facilitates the usefulness of, maintenance of, and retrieval of information from, the applicable registry; and

(6) the adequacy and compatibility of protocols for the health examinations and counseling provided under section 703 and health examinations provided by the Department of Defense to members of the Armed Forces for the purpose of assessing the health status of members of the Armed Forces who served in the Persian Gulf theater of operations during the Persian Gulf War.

(b) ACCESS TO INFORMATION.—The Secretary of Veterans Affairs and the Secretary of Defense shall provide the Director with access to such records and information under the jurisdiction of each such secretary as the Director determines necessary to permit the Director to carry out the study required under this section.

(c) REPORTS.—The Director shall—

(1) not later than 270 days after the date of the enactment of this Act, submit to Congress a report on the results of the assessment carried out under this section of the Persian Gulf Registry and health-examination protocols: and

(2) not later than 15 months after such date, submit to Congress a report on the results of the assessment carried out under this section of the Persian Gulf War Veterans Health Registry.

(d) DEFINITIONS.—For the purposes of this section:

(1) The term "Persian Gulf Registry" means the registry established under section 734 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190; 105 Stat. 1411; 10 U.S.C. 1074 note), as amended by section 704.

(2) The term "Persian Gulf War Veterans Health Registry" means the Persian Gulf War Veterans Health Registry established under section 702.

SEC. 706. AGREEMENT WITH NATIONAL ACADEMY OF SCIENCES FOR REVIEW OF HEALTH CONSEQUENCES OF SERVICE DURING THE PERSIAN GULF WAR.

(a) AGREEMENT.—(1) The Secretary of Veterans Affairs and Secretary of Defense jointly shall seek to enter into an agreement with the National Academy of Sciences for the Medical Follow-Up Agency (MFUA) of the Institute of Medicine of the Academy to review existing scientific, medical, and other information on the health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War.

(2) The agreement shall require MFUA to provide members of veterans organizations and members of the scientific community (including the Director of the Office of Technology Assessment) with the opportunity to comment on the method or methods MFUA proposes to use in conducting the review.

(3) The agreement shall permit MFUA, in conducting the review, to examine and evaluate medical records of individuals who are included in the registries referred to in section 705(d) for purposes that MFUA considers appropriate, including the purpose of identifying illnesses of those individuals.

(4) The Secretary of Veterans Affairs and the Secretary of Defense shall seek to enter into the agreement under this section not later than 180 days after the date of the enactment of this Act.

(b) REPORT.—(1) The agreement under this section shall require the National Academy of Sciences to submit to the committees and secretaries referred to in paragraph (2) a report on the results of the review carried out under the agreement. Such report shall contain the following:

(A) An assessment of the effectiveness of actions taken by the Secretary of Veterans Affairs and the Secretary of Defense to collect and maintain information that is potentially useful for assessing the health consequences of the military service referred to in subsection (a).

(B) Recommendations on means of improving the collection and maintenance of such information.

(C) Recommendations on whether there is sound scientific basis for an epidemiological study or studies on the health consequences of such service, and if the recommendation is that there is sound scientific basis for such a study or studies, the nature of the study or studies.

(2) The committees and secretaries referred to in paragraph (1) are the following:

(A) The Committees on Veterans' Affairs of the Senate and House of Representatives.

(B) The Committees on Armed Services of the Senate and House of Representatives.

(C) The Secretary of Veterans Affairs.

(D) The Secretary of Defense.

(c) FUNDING.—(1) The Secretary of Veterans Affairs and the Secretary of Defense shall make available up to a total of $500,000 in fiscal year 1993, from funds available to the Department of Veterans Affairs and the Department of Defense in that fiscal year, to carry out the review. Any amounts provided by the two departments shall be provided in equal amounts.

(2) If the Secretary of Veterans Affairs and the Secretary of Defense enter into an agreement under subsection (a) with the National Academy of Sciences—

(A) the Secretary of Veterans Affairs shall make available $250,000 in each of fiscal years 1994 through 2003, from amounts available to the Department of Veterans Affairs in each such fiscal year, to the National Academy of Sciences for the general purposes of conducting epidemiological research with respect to military and veterans populations; and

(B) the Secretary of Defense shall make available $250,000 in each of fiscal years 1994 through 2003, from amounts available to the Department of Defense in each such fiscal year, to the National Academy of Sciences for the purposes of carrying the research referred to in subparagraph (A).

SEC. 707. COORDINATION OF GOVERNMENT ACTIVITIES ON HEALTH-RELATED RESEARCH ON THE PERSIAN GULF WAR.

(a) DESIGNATION OF COORDINATING ORGANIZATION.—The President shall designate, and may redesignate from time to time, the head of an appropriate department or agency of the Federal Government to coordinate all research activities undertaken or funded by the Executive Branch of the Federal Government on the health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf War.

(b) REPORT.—Not later than March 1 of each year, the head of the department or agency designated under subsection (a) shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the status and results of all such research activities undertaken or by the Executive Branch of the Federal Government during the previous year.

SEC. 708. DEFINITION.

For the purposes of this title, the term "Persian Gulf War" has the meaning given such term in section 101(33) of title 38, United States Code.

TITLE VIII—COURT OF VETERANS APPEALS

SEC. 801. DISCIPLINARY PROCEDURES FOR JUDGES OF COURT OF VETERANS APPEALS.

Section 7253(g) is amended—

(1) by inserting "(1)" after "(g)"; and

(2) by adding at the end the following:

"(2) The provisions of paragraphs (7) through (15) of section 372(c) of title 28, regarding referral or certification to, and petition for review in, the Judicial Conference of the United States and action thereon, shall apply to the exercise by the Court of the powers of a judicial council under paragraph (1) of this subsection. The grounds for removal from office specified in subsection (f)(1) shall provide a basis for a determination pursuant to paragraph (7) or (8) of section 372(c) of title 28, and certification and transmittal by the Conference shall be made to the President for consideration under subsection (f).

"(3)(A) In conducting hearings pursuant to paragraph (1), the Court may exercise the authority provided under section 1821 of title 28 to pay the fees and allowances described in that section.

"(B) The Court shall have the power provided under section 372(c)(16) of title 28 to award reimbursement for the reasonable expenses described in that section. Reimbursements under this subparagraph shall be made from funds appropriated to the Court.".

In lieu of the Senate amendment to the title of the bill, amend the title so as to read: "An Act to amend title 38, United States Code, to improve health care services for women veterans, to expand authority for health care sharing agreements between the Department of Veterans Affairs and the Department of Defense to revise certain pay authorities that apply to Department of Veterans Affairs nurses, to improve preventive health services for veterans, to establish discounts on pharmaceuticals purchased by the Department of Veterans Affairs, to provide for a Persian Gulf War Veterans Health Registry, and to make other improvements in the delivery and administration of health care by the Department of Veterans Affairs.".

Resolved, That the House agree to the Senate amendment to the title of the bill.

VETERANS HEALTH CARE ACT OF 1992

Mr. CRANSTON. Mr. President, as the chairman of the Committee on Veterans' Affairs, I urge my colleagues to approve the compromise agreement on H.R. 5193, the proposed Veterans Health Care Act of 1992. This compromise agreement is the final result of efforts by the Senate and House Veterans' Affairs Committee to reach a compromise on a variety of important issues. It also contains provisions worked out between the House Committee on Energy and Commerce and the Senate Labor and Human Resources Committee and Finance Committee with regard to drug prices for various Federal and federally aided health care facilities.

Mr. President, this is a vitally important measure that will touch the lives of millions of veterans, most especially the many tens of thousands of women veterans who were raped or sexually assaulted while in service, who will now have access to needed counseling to help them deal with their trauma. The bill will also address the needs of veterans of Persian Gulf service who are concerned that their health may have been affected by their service, who will now have greater assurance that their Government is listening to and responding to their concerns.

Other very major provisions would provide VA much needed relief from the escalating drug price increases it has experienced since the enactment of the Omnibus Budget Reconciliation Act of 1990. The bill will create a National Center for Preventive Health, thereby capitalizing on VA's unique position as a nationwide health care system to learn more about the impact of preventive care. The bill would also improve VA's new, locality pay system for nurses so as to enhance VA's ability to recruit and retain topflight nurses.

Mr. President, this is the last of countless veterans' bills that I've shepherded through the Senate and to enactment into law during my 24 years in the Senate. I am proud of this bill, as I am proud of the others.

Mr. President, I will at this time summarize the compromise agreement and discuss certain key provisions. Detailed descriptions of all provisions are set forth in the explanatory statement accompanying the compromise agreement which was developed in cooperation with the House Veterans' Affairs Committee.

SUMMARY OF PROVISIONS

The compromise agreement has eight titles: Women Veterans Health Programs; Health-Care Sharing Agreements Between Department of Veterans Affairs and Department of Defense; Nurse Pay; State Home Amendments; and General Health Care and Administration, which has three subtitles, General Health, Preventive Health, and Health Care Administration and Personnel; Pharmaceutical Pricing; Persian Gulf War Veterans' Health Status; and Court of Veterans Appeals.

WOMEN VETERANS HEALTH PROGRAMS

Provisions of title I would:

First, authorize VA, through December 31, 1995, to provide needed counseling on a priority basis to any woman veteran who (a) seeks counseling from the VA within (1) two years after her discharge from service or (2) in the case of veterans who were discharged from service prior to December 31, 1991, not later than December 31, 1993, and (b) requires counseling to overcome psychological trauma which, in the judgment of a VA mental health professional, resulted from a physical assault or battery of a sexual nature or sexual harassment.

Second, authorize VA, through December 31, 1994, to provide the counseling services through contracts with non-VA providers in the case of women veterans for whom, in the judgment of a mental health professional employed by the VA, the receipt of counseling in VA facilities would be clinically inadvisable or where VA facilities are unavailable because of geographic inaccessibility.

Third, prohibit VA from providing counseling to a veteran under this measure for a period in excess of one year unless the Secretary determines that a longer period of counseling is necessary.

Fourth, require the Secretary to take action to ensure that a veteran eligible for counseling under this program who also requires medical services relating to the aftereffects of sexual violence (and is eligible for the care from VA) is furnished such care and services in a coordinated way.

Fifth, require the Secretary, is establishing this program, to (a) provide for appropriate training of mental health professionals and other health-care personnel to carry out this program effectively; (b) seek to ensure that counseling provided under the program is furnished in a therapeutically appropriate setting, taking into account the circumstances which gave rise to the need for such counseling; and (c) provide referral services to assist women veterans who are not eligible for other needed health care from VA to obtain services from non-VA sources.

Sixth, require the Secretary (a)(1) not later than 90 days after enactment, to commence the provision of information on the counseling relating to sexual trauma that is available to women veterans under this program, including the time limitations on applying for such counseling, and (2) in coordination with the Secretary of Defense, to seek to ensure that women who are being separated from active duty are provided with information about the requirements and procedures for applying for counseling under this program, and (b) authorize VA to establish an information system involving a toll-free telephone number.

Seventh, would require the Secretary, not later than March 31, 1994, to submit to the Veterans' Affairs Committees a comprehensive report on the Secretary's actions taken under this authority.

Eighth, authorize the Secretary, in furnishing hospital and medical services, to provide pap smears, breast examinations and mammography, and general reproductive health care, including the management of menopause but not including under this authority infertility services, abortions, or pregnancy care except for such care relating to a pregnancy that is complicated or in which the risks of complication are increased by a service-connected condition.

Ninth, require the Secretary to ensure that directors of VA medical facilities identify and assess opportunities under the DOD-VA health-care sharing agreement authority expanded by this measure to increase the availability of, and access to, health care services, including sexual trauma counseling, for women veterans.

Tenth, require the Secretary to report annually to the Congressional Committees on Veterans' Affairs on the provision of health-care services, and the conduct of research carried out by, or under the jurisdiction of, the Secretary relating to women veterans.

Eleventh, require the Secretary to ensure that an official in each Veterans Health Administration regional office serves as a coordinator of women's services.

Twelfth (a) require the Secretary to foster and encourage the initiation and expansion of research relating to women veterans health, and (b) authorize the appropriation of $6 million through FY 1995 to initiate such new studies.

Thirteenth, require the Secretary, subject to the appropriation of $2 million for this purpose, to (a) conduct a study to determine the needs of women veterans for health-care services, and (b) submit to the Congressional Committees on Veterans' Affairs an interim report not later than 9 months after the date of the enactment of this Act and a final report describing the results of the study not later than December 31, 1995.

HEALTH-CARE SHARING AGREEMENTS BETWEEN DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF DEFENSE

Provisions of title II would:

First, expand, through September 30, 1996, the Secretary's authority to enter into health-care resource sharing agreements with the Secretary of Defense so as to authorize the head of a VA health-care facility (a) to enter into sharing agreements with (1) the head of a DoD health-care facility, (2) any other DoD official responsible for the furnishing of health-care services to Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) beneficiaries in the region in which the VA facility is located, or (3) a contractor responsible for the furnishing of health-care services to CHAMPUS beneficiaries in the region in which the VA facility is located; and (b) to enter into sharing agreements that would provide for the furnishing of care to Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) and CHAMPUS beneficiaries.

Second, prohibit any sharing agreement proposed by the director of a VA health-care facility from taking effect, unless the CMD determines and certifies to the Secretary that implementation of the agreement (a) would result in the improvement of services to eligible veterans at the facility; and (b) would not result in the denial of, or a delay in providing access to, care for any veteran at that facility.

Third, provide authority, notwithstanding any other provision of law, under a sharing agreement, for any CHAMPUS beneficiary furnished care or services by a VA health-care facility or any CHAMPVA beneficiary furnished care or services by a DoD facility to receive such care or services (a) without regard to any otherwise applicable requirement for the payment of a copayment or deductible; or (b) subject to a requirement to pay only part of any such otherwise applicable copayment or deductible, as specified in the guidelines.

Fourth, require the Secretary to consult with veterans service organizations in carrying out this authority.

Fifth, require the Secretaries of VA and Defense, (a) for each fiscal year from 1993 through 1996, to include in the annual report on the VA-DoD sharing authority a description of the use of the expanded sharing authority; (b) in the annual report for fiscal year 1996, (1) an assessment of the effect of agreements entered into under the expanded sharing authority on the furnishing of health-care services to eligible veterans, and (2) an assessment of the cost savings, if any, associated with provision of services under such agreements to retired members of the armed forces, dependents of members or former members of a uniformed service, and CHAMPVA beneficiaries; and (c) any plans for administrative action and any recommendations for legislation that the Secretaries consider appropriate for inclusion in the report.

NURSE PAY

The provisions of title III would:

First, replace the four-grade nurse pay schedule with a schedule of five grades, designated Nurse I through Nurse V.

Second, authorize the Secretary, in order to provide rates of pay necessary to recruit and retain sufficient numbers of employees in covered positions at the VAMC in the Philippines and the VAMC in San Juan, Puerto Rico, and its satellite facilities, to establish and adjust the rates of basic pay for employees in covered positions at those facilities on a basis prescribed by the Secretary.

Third, authorize the director of a VA health-care facility, through September 30, 1995, in conducting a local wage survey, to use data on compensation received by CRNAs employed in salaried positions by firms that provide anesthesia services on a contract basis within the local labor-market area in which the VA facility is located, if the director (a) has conducted a survey of beginning rates of compensation paid to CRNAs in the local labor-market area in which the VA facility is located, (b) has used all available administrative authority with regard to the collection of data on such compensation, and (c) makes a determination, under regulations prescribed by the Secretary, that such data collection methods are insufficient to permit the establishment of locally-competitive rates of pay for CRNAs.

Fourth (a) authorize the Secretary, if the Secretary determines that a higher rate of pay is necessary to obtain the employee's agreement to the transfer, to increase the rate of basic pay of an employee in a covered position who transfers, upon the request of the Secretary, to a comparable or more responsible position at a VA health-care facility at which the rate of pay for the position is lower than the rate paid for such a position by the VA facility from which the employee is transferring; (b) provide that such increase in the transferring employee's rate of basic pay be applicable for at least the first year following the employee's transfer; (c) provide that the rate of basic pay paid to the transferring employee would not exceed the rate of basic pay applicable to the employee prior to the transfer; and (d) require the Secretary to include information on the use of this authority in the annual report to the Congressional Committees on Veterans' Affairs on the implementation of the VA Nurse Pay Act.

Fifth, require the Secretary, (a) not later than six months after enactment, to revise the qualification standards used for nursing personnel at VA health-care facilities in order to (1) reflect the addition of a fifth grade to the nurse pay schedule, and (2) reduce the compression of pay for nursing personnel in the intermediate and senior grades; and (b) not later than six months after the date on which the revised qualification standards are issued, to submit to the Congressional Committees on Veterans' Affairs a report on the implementation of the revised standards.

Sixth, require the Secretary (a) to conduct a review of the process for determining rates of basic pay applicable to RNs employed in Chief Nurse positions, including an assessment of (1) the adequacy of that process, (2) the accuracy of data collected in that process, and (3) the difficulties encountered in obtaining accurate data; and (b) not later than 12 months after enactment, submit to the Congressional Committees on Veterans' Affairs a report regarding that review, including recommendations for corrective action.

Seventh, require the Secretary to include in the annual report on the implementation of the VA Nurse Pay Act of 1990 information concerning (a) the number of nurses, by facility and by grade, who are on pay retention or in the top step of any grade, (b) comprehensive information, by facility, as to whether the facility director requested permission to extend the range of rates of basic pay for employees within such grade(s), and (c) whether each request was approved or disapproved.

Eighth, require that the provisions regarding the addition of a fifth grade to the nurse schedule, rates of pay for persons employed in covered positions at the Veterans Memorial Medical Center and VA health-care facilities outside of the contiguous United States, Alaska, and Hawaii, use of rates of pay paid to CRNAs employed on a salaried basis by anesthesia contractors, and rates of pay for RNs and CRNAs who transfer at the Secretary's request take effect with respect to the first pay period beginning on or after the date which is six months after the date of enactment.

STATE HOME AMENDMENTS

The provisions of title IV would:

First, make permanent the Secretary's authority to make grants to States for the construction, expansion, or remodeling of facilities for the furnishing of nursing home and domiciliary care to veterans eligible to receive such care in a VA facility.

Second, provide that a veteran's participation in a VA-approved work-therapy program operated by a State home facility and the veteran's receipt of compensation as a result of such participation shall be considered in the same manner as in the case of a veteran participating in a VA work therapy program.

Third, extend from 90 days to 180 days the period within which a State must complete the application for a State home program grant and meet other requirements for grant approval.

Fourth, prohibit the Secretary, in the event that the Secretary rescinds conditional approval for a State home project, from obligating further funds for that project during the fiscal year in which the Secretary rescinds such approval.

Fifth, provide that the recapture period—the 20-year period during which the United States can recover its portion of the cost of constructing a facility—for a State home project would begin on the date of the approval by the Secretary of the final architectural and engineering inspection of the facility.

Sixth, require payment of VA per diem for care furnished in a State home facility to begin as of the date of the completion of the inspection for recognition of the facility if the Secretary determines, as a result of that inspection, that the State home meets applicable standards.

GENERAL HEALTH CARE AND ADMINISTRATION

The provisions of title V would:

Subtitle A—General Health

First, extend the Secretary's authority to contract with non-VA health-care facilities in order to include the furnishing of care or services for the treatment of any disability of a veteran who has a total disability permanent in nature resulting from a service-connected disability.

Second, make permanent VA's authority to furnish respite care service.

Third, extend for four years and three months, through December 31, 1996, VA's authority to contract with the Veterans Memorial Medical Center in Manila for care for certain U.S. veterans.

Subtitle B—Preventive Health

First (a) require the Chief Medical Director to establish a National Center for Preventive Health; (b) require the Director of the Center to (1) acquire, maintain, and disseminate current information on VA and non-VA clinical practices and research concerning preventive health services, (2) facilitate cooperative research concerning health outcomes resulting from various preventive services, and (3) advise VA health-care personnel regarding the conduct of preventive health services activities and research; and (c) authorize the appropriation of $1,500,000 annually to fund the Center's research, clinical, educational, and administrative activities and specify that the cost of the Center be paid from VA's Medical Care account.

Second, require the Secretary to submit to the Congressional Committees on Veterans' Affairs an annual report that would include information regarding (a) the furnishing of preventive health services to veterans, (b) VA preventive health services research, and (c) the activities of the National Center for Preventive Health.

Subtitle C—Health Care Administration and Personnel

First (a) prohibit the Secretary from designating a VA health-care facility as a location for a GRECC unless a peer review panel established by the Assistant Chief Medical Director for Geriatrics and Extended Care to assess the scientific and clinical merit of proposals submitted to the Secretary for the establishment of new GRECCs has determined that the facility meets the highest standards of scientific and clinical merit; (b) require that the membership of the peer review panel consist of experts in the fields of geriatric and gerontological research, education, and clinical care who shall serve as consultants to VA for a period of no longer than six months; (c) require that the panel review each GRECC proposal submitted to the panel by the Assistant Chief Medical Director for Geriatrics and Extended Care and provide its views on the relative scientific and clinical merit of each proposal; and (d) provide that the panel not be subject to the provisions of the Federal Advisory Committee Act.

Second, extend for two years and three months, through December 31, 1994, the Secretary's authority to waive the restrictions in title 5 on receipt of military retirement pay by federal employees if the Secretary determines that such waiver is necessary to meet special or emergency employment needs for RNs which result from a severe shortage of well-qualified candidates for RN positions.

Third, extend VA's authority to carry out the Health Professional Scholarship program for three years and three months, through December 31, 1995.

Fourth, prohibit VA, notwithstanding any other provision of law, from providing payments to health-care professional employees for payment of tuition loans.

Fifth, remove restrictions contained in a deed which conveyed certain land from the Temple, Texas, VA Medical Center to Temple Junior College.

Sixth, require the Secretary (a) to carry out a demonstration project to evaluate the desirability and feasibility of installing telephones in VA health-care facilities for patient use; (b) to evaluate the costs of such installations (including costs associated with the provision of special equipment to facilitate the use of telephones by disabled veterans receiving medical care); (c) to evaluate the benefits of such equipment, including the therapeutic benefits to VA patients, including disabled patients, of ready telephone availability and the savings associated with hospital staff being relieved of the need to assist patients in using public telephone facilities; and (d) to report, not later than September 30, 1994, on such costs and benefits, the feasibility and desirability, of installing telephones in patient rooms in other VA health-care facilities, and the relative feasibility and cost effectiveness of a range of options for the installation and maintenance of bedside telephones for patient use. This section would also require that the Secretary ensure that costs associated with patient use of bedside telephones for long distance calls be borne by the patient.

Seventh (a) require the Secretary to ensure (consistent with medical requirements and limitations) that each facility maintains a suitable, well-ventilated indoor patient smoking area and provide access to that area for patients or residents who desire to use tobacco products; (b) provide as an alternative to the ventilated indoor patient smoking area, a smoking area in a detached, accessible building with heating and air conditioning; (c) requires GAO to do a report within 180 days after enactment on the feasibility of VA establishing smoking areas, the cost and timetable for creating such areas, the adequacy of VA's ventilating systems to support such areas without causing health problems for other patients, and the impact of this policy on VA hospitals' JCAHO accreditation scores; (d) make the provisions relating to the establishment of smoking areas effective 60 days after the Committees on Veterans' Affairs receive the GAO report; and (e) require the Secretary to report to the Congressional Committees on Veterans' Affairs, not later than 120 days after the date of enactment, on the implementation of this section.

DRUG PRICING AGREEMENTS

The provisions of title VI would:

First, in conjunction with other provisions in title VI relating to drug prices for such entities, exclude farm Medicaid best-price rebate calculations prices (a) charged to (1) VA; (2) a State Veterans Home; (3) the Indian Health Service; (4) the Department of Defense (DoD); (5) the Public Health Service (PHS); (6) certain federally assisted healthcare facilities; (b) any prices charged under the Federal Supply Schedule; and (c) any prices used under a State pharmaceutical assistance program.

Second, provide that, after January 1, 1993, use of federal matching funds under Medicaid for payment for a covered outpatient drug would be contingent on (in addition to a Medicaid rebate agreement) a manufacturer's (a) entering into an agreement with the Secretary of HHS under which the manufacturer agrees to provide rebates or discounts to certain PHS-funded entities and disproportionate-share hospitals; and (b) complying with the requirements of proposed new section 8126 of title 38, which I will discuss shortly, including the requirement to enter into a master agreement with the Secretary of VA.

Third, require a manufacturer entering into a master agreement with the Secretary of VA (a) beginning on January 1, 1993, to make available for procurement through the FSS each covered drug of the manufacturer; (b) with respect to each covered drug of the manufacturer procured by VA, the DoD, or the PHS through the FSS or a depot contracting system, to enter into a pharmaceutical pricing agreement with the Secretary of VA (or the Federal agency involved, if the Secretary delegates the authority to enter into such an agreement) under which the price charged during the one-year period beginning on the effective date of the agreement may not exceed the price determined using the 24-percent and additional price discount mechanism established in proposed new section 8126(c) of title 38; and (c) with respect to each covered drug of the manufacturer procured by a State Veterans Home, not to charge a price in excess the price charged under the FSS at the time the drug is procured.

Fourth, prohibit a manufacturer, unless the manufacturer enters into and complies with the provisions of the master agreement, from receiving payment for drugs and biologicals from (a) the Medicaid program, except as authorized in section 1927(a)(3) of the SSA; (b) any VA, DoD, a PHS (including IHS) facility; or (c) any entity that receives funds under the PHSA Act.

Fifth, require that the Secretary of Health and Human Services, in determining whether a master agreement entered into between the Secretary of VA and a manufacturer meets the requirements of proposed new section 8126 of title 38, not take into account any amendments to that section that are enacted after the enactment of the Veterans Health Care Act of 1992.

Sixth, provide that a manufacturer would be deemed to meet the requirement that a manufacturer, as a condition of participation in the Medicaid program, enter into a master agreement with the Secretary of VA or an agreement with the Secretary of HHS to provide discounts to certain PHS-funded entities, if the manufacturer establishes to the satisfaction of the Secretary of HHS that it would comply and has offered to comply with the provisions of proposed new section 8126 of title 38 as originally enacted and would have entered into a master agreement with the Secretary of VA, but for a legislative change in that section after the date of its original enactment.

Seventh, (a) require that data regarding non-Federal Average Manufacturer Prices (non-FAMPs) provided to the Secretary of VA remain confidential; and (b) authorize the Comptroller General and the Director of the Congressional Budget Office to review data provided to the Secretary of VA on non-FAMPs.

Eighth (a) provide that the termination of a Medicaid rebate agreement would not be effective until 60 days after the manufacturer notifies the Secretary of HHS; and (b) require the Secretary of HHS to notify State Medicaid programs of the termination not less than 30 days before the effective date of the termination.

Ninth, increase the Medicaid minimum rebate percentage for a single source or innovator multiple source drug to (a) 15.7 percent, from October 1, 1992, through December 31, 1993; (b) 15.4 percent, from January 1, 1994, through December 31, 1994; (c) 15.2 percent, from January 1, 1995, through December 31, 1995; and (d) 15.1 percent thereafter.

Tenth (a) require the Secretary of HHS, not later than 180 days after the expiration of each calendar quarter beginning on or after October 1, 1992, and ending on or before December 31, 1995, to submit to Congress a report containing information on (1) changes in best prices for single source and innovator multiple source drugs during the previous calendar quarter, (2) the total amount of all rebates paid under the Medicaid rebate program, broken down by the portions and percentages of the total amount attributable to the various rebate mechanisms established in section 1927(c) of the SSA, and (3) the amount of the portion of the total amount attributable to the best-price rebate mechanism; (b) provide that these reports are to cover the 1,000 drugs for which the greatest amount of Federal financial assistance was provided during calendar year 1991; and (c) require that the Secretary submit the first report not later than May 1, 1993, and that that report include information on prescription drugs dispensed during each calendar quarter that began on or after January 1, 1991, and ended on or before December 31, 1992.

LIMITATIONS ON PRICES OF DRUGS PURCHASED BY CERTAIN FEDERALLY ASSISTED CLINICS AND HOSPITALS

Eleventh, require a manufacturer to enter into an agreement with the Secretary of HHS under which the manufacturer must agree to extend to a covered entity a discount for a covered outpatient drug or biological equal to or greater than the discount provided for that drug or biological under the Medicaid outpatient drug rebate program.

Twelfth, define the term "covered entity" to include the following: (a) a Federally-qualified health center; (b) an entity receiving a grant under section 340A of the Public Health Service Act (PHSA); (c) a family planning project receiving PHS funds; (d) an entity receiving PHS funds for outpatient early intervention services for HIV disease; (e) a State-operated AIDS drug purchasing assistance program receiving PHS funds; (f) a black lung clinic receiving PHS funds; (g) a comprehensive hemophilia diagnostic treatment center receiving a grant under section 501(a)(2) of the SSA; (h) a Native Hawaiian Health Center receiving funds under the Native Hawaiian Health Care Act of 1988; (i) an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act; (j) any entity receiving funds under title XXVI of the Public Health Service Act (other than a State or unit of local government) certified by the Secretary of HHS to receive discounts under proposed new section 340B of the PHSA; (k) a sexually transmitted disease clinic or a tuberculosis clinic receiving PHS funds certified by the Secretary of HHS to receive discounts under proposed new section 340B of the PHSA; and (l) certain public, acute care disproportionate-share hospitals.

Thirteenth (a) require the Secretary of HHS to develop a mechanism to implement the prohibition on duplicate rebates and discounts; and (b) if the Secretary has not acted in 12 months to develop such a mechanism, require a covered entity to follow a specific procedure to eliminate duplicate rebates and discounts.

Fourteenth, prohibit a covered entity from reselling or otherwise transferring a covered outpatient drug subject to a rebate or discount agreement to a person who is not a patient of a covered entity.

Fifteenth, required a covered entity to permit the Secretary of HHS and the manufacturer of a drug subject to a rebate or discount agreement to audit, at the Secretary of manufacturer's expense, the records of the entity that directly pertain to the entity's compliance with the prohibitions against duplicate rebates and resale of covered drugs.

Sixteenth, require a covered entity, if the Secretary of HHS finds that it is in violation of the prohibitions against duplicate rebates and resale of covered outpatient drugs, to be liable to the manufacturer in an amount equal to the reduction in the price of the drug provided under the rebate or discount agreement with the Secretary of HHS.

Seventeenth, provide that a hospital that operates a covered entity that is a distinct unit of the hospital not be entitled to rebates or discounts under this measure unless the hospital is a disproportionate-share hospital that would otherwise be eligible for such rebates or discounts.

Eighteenth, require the Secretary of HHS to develop and implement a process for certifying that the following entities as eligible to enter into rebate or discount agreements under proposed new section 340B: (a) any entity receiving assistance under title XXVI of the PHSA (other than a State or unit of local government or an entity receiving categorical grants for outpatient early intervention services for HIV disease); and (b) an entity receiving PHS funds for treatment of sexually transmitted diseases or tuberculosis through a State or a unit of local government.

Nineteenth, require the Secretary to establish a prime vendor program under which covered entities may enter into contracts with wholesalers for the distribution of covered outpatient drugs.

Twentieth, require the Secretary of HHS to notify manufacturers of covered outpatient drugs and State agencies (as defined under section 1902(a)(5) of the SSA) of the identities of covered entities and entities that no longer meet the requirements for covered entities as specified in proposed new section 340B of the PHSA.

Twenty-first, require the Secretary of HHS (a) to conduct a study of the feasibility and desirability of including, as covered entities eligible to receive discounts or rebates under proposed new section 340B of the PHSA, entities receiving federal block grant funds from a State for funds (1) for the provision of mental health or substance abuse services, or (2) for furnishing maternal and child health services on an outpatient basis; and (b) not later than one year after enactment, to submit a report to Congress on the results of this study.

LIMITATIONS ON PRICES OF DRUGS PROCURED BY DEPARTMENT OF VETERANS AFFAIRS AND CERTAIN OTHER FEDERAL AGENCIES

Twenty-second, in proposed new section 8126 of title 38, United States Code, require a manufacturer (a) by January 1, 1993, to make available through the FSS each covered drug it manufactures; and (b) with respect to each covered drug it manufactures that is procured by VA, DoD, or PHS through the FSS or a federal depot, to enter into a pharmaceutical pricing agreement under which the manufacturer agrees to sell the covered drug through the FSS and the depot at a price determined in accordance with the price-discounting mechanisms established in other provisions in proposed new section 8126, which I will now describe.

Twenty-third, require that the price for a covered drug procured through the FSS or the VA depot contracting system during the 1-year period beginning on the effective date of the contract for that drug not exceed (a) 0.76 multiplied by the non-Federal average manufacturer price (non-FAMP) for the drug or biological during the most recent 12-month period prior to the effective date of a new FSS or VA depot agreement, respectively, for which non-FAMP data are available (unless the non-FAMP cannot be calculated for 15 months prior to the effective date, in which case the non-FAMP would be calculated during such period preceding the month during which the contract goes into effect as the Secretary considers appropriate.)

Twenty-fourth, define the term "non-Federal average manufacturer price" (non-FAMP), with respect to a covered drug and a period of time (as determined by the Secretary of VA), as the weighted average price of a single form and dosage unit of the drug that is paid by wholesalers to the manufacturer, taking into account any cash discounts or similar price reductions during that period, but not taking into account (a) any prices paid by the Federal Government, and (b) prices determined by the Secretary to be nominal in amount.

Twenty-fifth, define the additional price discount amount as the amount of the difference, if any, between (a) the non-FAMP of a covered drug for the quarter ending on the last day of the last month before the effective date of the agreement for which CPI-U data are available minus the non-FAMP for the quarter ending one year prior to that day, and (b) the non-FAMP for the quarter ending one year prior to that day multiplied by an amount equal to the increase in the CPI-U during that period. In the case of a drug or biological for which 15 months of non-FAMP data are not available, the additional price discount amount would be calculated on the basis of non-FAMP data during such period preceding the month during which the contract goes into effect as the Secretary considers appropriate.

Twenty-sixth, require that a manufacturer who enters into a master agreement with the Secretary of VA to enter into a pharmaceutical pricing agreement (PPA) with the Secretary of VA (or the Federal agency involved, if the Secretary delegates to the Federal agency the authority to enter into a PPA) with respect to each covered drug procured by a Federal agency through the FSS or a depot after January 1, 1993.

Twenty-seventh, provide, in the case of a multi-year FSS or federal depot contract, that the price of a covered drug during the 1st year of the contract would be determined using the 24-percent and additional price discount mechanisms and may be increased on an annual basis by a percentage no greater than the increase in the CPI-U during the preceding year.

Twenty-eighth, authorize the Secretary of VA to negotiate a price that is nominally higher, as determined by the Secretary, than the FSS or federal depot price that would otherwise be established for that covered drug under the 24-percent and additional price discount mechanisms established in proposed new section 8126 of title 38, if the Secretary determines that payment of the excess price is in the best interests of VA.

Twenty-ninth, define the term "covered drug" as (a) a single source drug as defined under section 1927(k)(7)(A)(iv) of the SSA; (b) a drug that would be a single source drug but for the application of section 1927(k)(3) of the SSA; (c) an innovator multiple source drug as defined under section 1927(k)(7)(A)(ii) of the SSA; (d) a drug that would be a single source drug but for the application of section 1927(k)(3) of the SSA; (e) a biological product identified under section 600.3 of title 21, C.F.R.; and (f) insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act in accordance with the pricing provisions of these proposed sections.

Thirtieth, require that the provisions of section 1927(b)(3) of the SSA regarding civil penalties for the reporting of false or inaccurate information regarding pharmaceutical prices apply to covered drugs in the same manner as those provisions apply to covered outpatient drugs under the Medicaid rebate program.

Thirty-first (a) require a manufacturer of any covered drug for which the manufacturer has entered into an FSS or VA depot price agreement (1) to report to the Secretary of VA the non-FAMP for the drug during the one-year period that ends on the last day of the previous quarter, and (2) not later than 30 days after the last day of each quarter for which the agreement is in effect, to report to the Secretary the non-FAMP for the drug during that quarter; and (b) authorize the Secretary of VA, in order to determine the accuracy of a price reported to the Secretary under proposed new section 8126(b), to audit the relevant records of the manufacturer or of any wholesaler that distributes the covered drug.

Thirty-second, require the Secretary of VA to supply the following information to the Secretary of HHS: (a) upon the execution or termination of any master agreement, the name of the manufacturer; and (b) on a quarterly basis, a list of manufacturers who have entered into master agreements with the Secretary of VA.

Thirty-third, require that a manufacturer, as a condition of compliance with a master agreement entered into with the Secretary of VA, charge a State Veterans Home prices no higher than the FSS prices for covered drugs.

PERSIAN GULF WAR VETERANS' HEALTH STATUS

Mr. President, title VII contains provisions that would:

Persian Gulf war veterans' health registry

First, require the Secretary of Veterans Affairs to establish and maintain a Persian

Gulf War Veterans Health Registry listing the name of each individual who served in the Persian Gulf War theater of operations during the war and who, (a) applies for VA care or services, (b) files a claim for VA compensation based on any disability that might be associated with this service, (c) dies and is survived by a spouse, child, or parent who files a claim for dependency and indemnity compensation (DIC) based on this service, (d) requests a health examination from VA, as authorized in this measure, or (e) receives from the Department of Defense a health examination similar to the health examination given by VA to veterans under the bill and requests inclusion in the Registry.

Second, require that the Registry include relevant medical data relating to the health status of, and other information that the Secretary considers relevant and appropriate with respect to, each individual listed in the Registry who either grants permission to include this type of information in the Registry or is deceased at the time the individual is listed in the Registry.

Third, require the Secretary to include in the Registry, to the extent feasible, similar information about such individuals who served in the Persian Gulf that is developed in connection with similar actions occurring prior to enactment of this legislation.

Fourth, require the Secretary of Defense to provide to the Secretary of Veterans Affairs any information the Secretary of Veterans Affairs considers necessary to establish and maintain the Registry.

Fifth, require the Secretary of Veterans Affairs, in consultation with the Secretary of Defense, to ensure that information in the Registry is collected and maintained in a manner that permits effective and efficient cross-reference between the Registry and DOD Persian Gulf Registry, established under section 734 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190), as modified by this measure.

Sixth, require VA, from time to time, to notify individuals listed in the Registry of significant research developments regarding the health consequences of military service in the Persian Gulf War.

Health examinations and counseling for veterans eligible for inclusion in certain health-related registries

Seventh, require VA to provide, upon the request of a veteran, a health examination and consultation and counseling concerning the results of the examination to any veteran eligible for listing or inclusion in the VA Persian Gulf War Veterans Health Registry and authorize these services for any veteran eligible for listing or inclusion in any other health-related registry established by VA who requests the services.

Eighth, require VA to carry out appropriate outreach activities to inform veterans of the availability of the health examinations.

Expansion of coverage of Persian Gulf War Registry

Ninth, expand the DOD registry—established under section 734 of Public Law 102-190 for listing members of the Armed Forces who were exposed to the fumes of burning oil in the Operation Desert Storm theater of operations during the Persian Gulf conflict—to include any other member of the Armed Forces who served in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

Tenth, expand the contents of the DOD registry to include, in addition to the name of listed members, other relevant identifying information and, to the extent that data are available and inclusion of the data is feasible, a description of the circumstances of the member's service during the war, including the locations in the theater of operations in which the member's service occurred and the atmospheric and other environmental circumstances in those locations at the time.

Eleventh, recodify the requirement in current law that the DOD registry include, with respect to the listed members exposed to the fumes of burning oil, a description of the circumstances of each exposure of each such member to the fumes, including the length of time of the exposure.

Twelfth, recodify the requirement in current law that the Secretary establish the DOD registry with the advice of an independent scientific organization.

Study of Persian Gulf Registry and Persian Gulf war veterans health registry

Thirteenth, require the Director of the Office of Technology Assessment to assess:

(a) the potential utility of each of the VA and DOD registries for scientific study of the health consequences of military service in the Persian Gulf theater of operations;

(b) the extent to which each of the registries meets the requirements of the respective laws establishing that registry;

(c) the extent to which data in each registry (i) are maintained in a manner that ensures permanent preservation and allows effective, efficient retrieval of information potentially relevant to scientific study of the health consequences of military service in the Persian Gulf and (ii) would be useful for scientific study regarding these health consequences;

(d) the adequacy of any plans to update each of the registries;

(e) the extent to which VA and DOD are assembling and maintaining information on the Persian Gulf theater of operations, including troop locations and environmental conditions, in a manner that facilitates the usefulness, maintenance, and retrieval of information from the respective registry; and

(f) the adequacy and compatibility of VA and DOD's protocols for health examinations provided for the purpose of determining the health status of any member of the Armed Forces or any reserve component thereof who served in the Persian Gulf War.

Fourteenth, require VA and DOD to give OTA access to the records and information under each department's jurisdiction that OTA determines is necessary to permit OTA to carry out the assessments.

Fifteenth, require OTA to report to Congress on the assessments regarding the DOD registry and the compatibility of health-examination protocols within 270 days after enactment of the legislation and regarding the VA registry within 15 months after enactment.

Agreement with National Academy of Sciences for review of health consequences of service during the Persian Gulf war

Sixteenth, require the Secretaries of Veterans Affairs and of Defense, within 180 days after enactment, to seek to contract with the National Academy of Sciences (NAS) to have the NAS Medical Follow-Up Agency (MFUA) review existing scientific, medical, and other information on the health consequences of in-theater service during the Persian Gulf War.

Seventeenth, provide that the agreement shall require MFUA to provide veterans organizations and the scientific community (including the Director of the Office of Technology Assessment) with an opportunity to comment on the method or methods that MFUA proposes to use to conduct the review.

Eighteenth, require that the agreement allow MFUA, in conducting the review, to examine and evaluate medical records of individuals included in the two registries for purposes MFUA considers appropriate, including the purpose of identifying illnesses of these individuals.

Nineteenth, require MFUA to report the results of its review to the Senate and House Committees on Veterans' Affairs and on Armed Services and to the Secretaries of Veterans Affairs and of Defense, including MFUA's, (a) assessment of the effectiveness of actions by the two Secretaries to collect and maintain information potentially useful for assessing the health consequences of in-theater service; (b) recommendations on how to improve collection and maintenance of this information; and (c) recommendations on whether there is a sound scientific basis for an epidemiologic study or studies of the health consequences of this service and, if so, the nature of any such study.

Twentieth, require the two Secretaries to make available up to $500,000 in FY 1993, from funds available to the two respective departments for that fiscal year, divided equally between the departments, to carry out the review.

Twenty-first, if VA and DOD contract with NAS for the MFUA study, require each department to provide $250,000 in each of FYs 1994 through 2003, from amounts available to each department in each of these fiscal years, to NAS for the general purpose of conducting epidemiologic research with respect to military and veterans populations.

Coordination of government activities on health-related research on the Persian Gulf war

Twenty-second, require the President to designate the head of an appropriate federal agency to coordinate all research activities undertaken or funded by the Executive Branch of the federal government on the health consequences of in-theater service during the Persian Gulf War. The coordinator would be required to report to the Committees on Veterans' Affairs by March 1 of each year after 1992 on the status and results of this research.

COURT OF VETERANS APPEALS

Mr. President, the provision of title VIII would:

First, authorize the Judicial Conference of the United States to review judicial conduct and disability actions taken by the court of Veterans Appeals and authorize the payment of per diem and transportation costs for witnesses in connection with such hearings.

Second, authorize the Court of Veterans Appeals to award reimbursement for the reasonable expenses, including attorneys' fees, incurred by a judge against whom a complaint is brought and dismissed.

SEXUAL TRAUMA SERVICES

Mr. President, the provisions relating to sexual trauma services are derived from S. 2973, which I introduced on July 2, 1992, with the cosponsorship of Committee members Dennis DeConcini, John D. Rockfeller, IV, Bob Graham Daniel K. Akaka, Thomas A. Daschle, and James M. Jeffords, and Senators Paul Simon and John F. Kerry. Joining later as cosponsors were Committee member George J. Mitchell, and Senators Edward M. Kennedy, Alan J. Dixon, Kent Conrad, Barbara Mikulski, and the late Senator Quentin N. Brudick. For further information on our Committee's efforts on this legislation, I refer my colleagues and others to the Committee's report accompanying S. 2973 (S. Rept. No. 102-409) and to my statement on Senate passage of these provisions on October 1, 1992, which begins on page S16113 of the Record.

The sexual trauma provisions in the compromise agreement are the result of efforts by the Senate and House Veterans' Affairs Committees to reach a compromise on the provisions of S. 2973 as passed by the Senate in H.R. 5193 and separately on October 1.

Mr. President, I am very pleased that these provisions are included in this measure and being sent to the President for signature. This legislation, though not all I believe is needed in this extremely important area, will help to usher in a new day in the furnishing of sexual-trauma services to the tens of thousands of women veterans who were the victims of sexual violence—and the many thousands more who may require counseling for trauma resulting from sexual harassment—during military service.

The Committee's experience with regard to the effects of trauma related to combat has shown us that symptoms stemming from trauma do not go away by themselves. They do not go away over time if ignored or if the veteran suffering from those symptoms is provided with inappropriate or inadequate treatment. Up to this point, the federal government has not met its very fundamental obligations to help these women veterans deal with these problems. This has to change.

Mr. President, in the negotiations with the House Committee on Veterans' Affairs regarding this matter, major concessions had to be made in order to obtain the agreement of that Committee's leaders. Although they shared a deep concern for the wellbeing of these women veterans, they were reluctant to make changes in VA eligibility rules in advance of the expected effort in the 103rd Congress to make major reforms in VA health-care entitlements and eligibilities. Thus, I appreciate their willingness to craft this particular compromise this year.

The compromise agreement will authorize VA to provide counseling to survivors of sexual violence that occurred on active duty without regard to determinations of service connection. This should be a major first step on the road toward improving and expanding VA services for veterans suffering from sexual trauma. However, I am very concerned that many women veterans may not be able to receive the full range of health-care, and other services, to which they truly should be entitled.

Mr. President, it is my view that much, much more needs to be done to improve the services VA provides to women veterans who experience sexual violence while on active duty. I am hopeful, however, that the provisions of this compromise agreement will force VA to take a hard look at existing services for the survivors of sexual violence and take steps to make needed improvements in those services. In addition, there are certain issues in and surrounding this provision that should ensure that this matter is revisited by Congress in the near future. First, under the limitations in this compromise, the vast majority of the women who may need sexual trauma counseling will lose the special eligibility that this legislation would create at the end of calendar year 1993. In my view, that limit clearly should be revisited next year.

In addition, as Congress deals with the issues of VA health-care entitlement and eligibility reform in the 103rd Congress, the special needs of women veterans who were victims of sexual assault while on active duty should be given very serious, special consideration.

Finally, since this special authority itself expires at the end of 1995, Congress will be forced to revisit this issue fully in three years if it has not done so earlier.

Thus, Mr. President, as my 24 years of service in the Senate on behalf of America's veterans comes to a close, fully meeting the needs of women veterans who have suffered sexual violence or harassment will remain unfinished business. But I leave knowing that, in the past five months since the problem came to my attention in a dramatic way, I have done all that I could on their behalf, and I leave knowing that the momentum for progress had been created.

I am confident that my colleagues on the Committee and in the Senate who will be returning—and the new members who will arrive in January—will carry this work forward. I expect that Congress eventually will do all that is necessary to assist women veterans who experienced sexual violence while serving their country in securing all the services that they need and truly deserve.

HEALTH CARE FOR WOMEN VETERANS

Mr. President, we have been able to include in the compromise agreement provisions which would improve the health care available to women veterans. As I just mentioned regarding care for sexual trauma, VA has been slow to reach out to women veterans—both regarding health problems that are unique to women and those experienced by men and women but with gender specific diagnosis or treatment implications. The provisions for women's care in this compromise agreement are not as extensive as those passed by the Senate but they do represent progress.

I am disappointed about two provisions in the Senate-passed bill that are not included in this compromise agreement, each which would have required the Secretary to provide better support for programs designed to improve health-care services to women veterans. The Senate bill would have directed the Secretary to provide sufficient funding to each VA health-care facility so that each women veterans coordinator could carry out the position's functions effectively. It also would have required the Secretary to provide sufficient funding so that the members of the Advisory Committee on Women Veterans could travel to make a reasonable number of site visits as well as attend Committee meetings. I urge VA to provide resources for these purposes under current authority.

NURSE PAY AMENDMENTS

Mr. President, the Nurse Pay Act of 1990, enacted as Public Law 101-366, of which I was the author in the Senate, paved the way for locality pay for federal employees. Overall, this act is succeeding in helping VA recruit and retain a strong nursing personnel force. There have been some problems—including problems with ascertaining valid comparison standards for nurse anesthetists and problems associated with the way in which VA is using the four grades mandated by the Nurse Pay Act. The compromise agreement addresses both of these issues. With reference to the nurse anesthetists, the measure would give VA an additional tool that could be used to determine fair compensation rates in those situations in which the other basic tools of the locality pay survey process are not sufficient. With respect to the nurse pay grades, the Committee agreement would establish a fifth pay grade in the title 38 Nurse Schedule and would direct the Secretary to review VA's qualification standards to distribute more evenly the range of nurse education, experience, and responsibility represented by VA's nursing staff across the pay grades.

PREVENTIVE HEALTH

Mr. President, I am pleased that my colleagues in the House have agreed to my proposal for a National Center for Preventive Health at the Department of Veterans Affairs. I expect that VA will make good use of this impetus to expand the work that its clinicians, scientists, and educators are doing currently in the area of preventive health. The heightened focus on preventive health, provided by the core funding and attention, should enable efficient and creative use of other funding, such as VA's own investigator-initiated research and NIH and other public and private grant sources.

Mr. President, VA is in a unique position—in terms of its structure, organization, personnel, and patient population—to further the nation's knowledge of relationships among screening for disease, educating about modifying risky behaviors, counseling regarding the management of early symptoms, treatment of early disease manifestations, measures of morbidity such as days lost from work, or days in the hospital, or kinds of medications required, and, finally, mortality rates. This National Center, I hope, will tap that strength.

PRICES FOR DRUGS AND BIOLOGICALS

Mr. President, the provisions of the compromise agreement regarding prices for drugs and biologicals purchased by VA would reverse the unintended adverse consequences that the Medicaid outpatient drug rebate program has had on VA's prices for drugs and biologicals and ensure that VA will once again be able to purchase them at reasonable prices. The strongly bipartisan VA drug price provisions in this bill are derived from provisions that Senators Rockefeller, Simpson, Murkowski, and I offered at the August 7, 1992, Committee on Veterans' Affairs' markup. Other provisions would provide similar discounts on drug prices for other federal agencies, State Veterans Homes, disproportionate-share hospitals, community and migrant health centers, and certain other PHS-funded entities.

My distinguished colleague on the Committee, Senator Rockefeller, has worked extremely long and hard with me on this issue through almost the entire 102nd Congress. During the past several weeks he has skillfully devoted an extraordinary amount of time and energy to securing Senate passage of S. 2575, which contained the original Senate drug price provisions, and negotiation of a compromise agreement with our colleagues on the Committees on Energy and Commerce and Veterans' Affairs in the House of Representatives. He has worked tirelessly with other Senators, VA officials, and pharmaceutical manufacturers to resolve their differences regarding the drug-price provisions. In addition, I have worked closely with Senator Kennedy, Senator Mikulski, and Senator Pryor in developing the legislation from which the drug-price amendment approved by our Committee was derived. Senators Murkowski and Simpson also have been very helpful in this effort.

Mr. President, unless drug price provisions such as those in the compromise agreement are enacted, VA will continue to lose about $90 million a year as a result of the dramatic escalation of the prices VA pays for prescription drugs. In light of the tight constraints on VA's budget, this simply must not continue. In an effort to cope with these price increases, some VA medical centers have refused to provide certain very effective, but high-cost drugs and biologicals. Others have diverted funds from other aspects of their operations to pay for drugs and biologicals. Those kinds of actions mean longer waiting times for scheduled appointments or loss of access to VA health-care services for individual veterans, fewer nurses on inpatient wards to respond to patient needs, and continued use of worn-out or out-dated medical equipment.

Specifically, the provisions of the compromise agreement would require manufacturers to provide VA with minimum percentage discounts for single source and innovator multiple source drugs and biologicals purchased through the Federal Supply Schedule and VA depots. In general, manufacturers would be required to provide at least a 24-percent discount off the average price charged to wholesalers in the United States for distribution to all classes of trade less an additional price discount amount.

The purpose of the additional price discount amount is to protect VA against an increase in the price of a covered drug greater than the general rate of inflation in a manner comparable to how the additional rebate mechanism protects Medicaid from such an increase in the average manufacturer price of a drug covered under the Medicaid outpatient drug rebate program. In determining the maximum FSS or VA depot price for a covered drug during the first year of a contract, the 24-percent discount would be applied after the wholesalers' average price has been reduced by the additional price discount amount.

PERSIAN GULF VETERANS' HEALTH STATUS

Mr. President, my colleagues are well aware that some veterans and current active-duty service members who served in the Persian Gulf War theater of operations are experiencing serious, unexplained health problems that some suspect are related to in-theater service before, during, or after the war. A small number also have experienced specific health problems that clearly are related to this service, such as leishmaniasis, which results from infection by a known tropical parasite.

All of us have seen the press reference to "mysterious illnesses" in Persian Gulf veterans. Some of the 540,000 American troops who served in the Persian Gulf have reported lingering health problems, such as joint pain, chronic fatigue, hair loss, bleeding gums, and skin rashes. Some concern has focused on the effects of the burning oil from wells in Kuwait that were set afire by enemy troops. Scientists have not as yet, however, been able to establish a link between the unexplained symptoms and the oil fires. In fact, environmental scientists have advised our Committee that the oil fires burned so hot that they emitted only soot and other particulate matter, with practically no detectable levels of the volatile petrochemicals that might cause health problems.

Mr. President, military health authorities have reported that some of the symptoms could be related to the stresses of combat and returning home from combat. Some have interpreted this as a denial of the observed medical problems. This is not necessarily the case. Our experience with post-traumatic stress disorder clearly shows that stress can create or aggravate real physical symptoms that require treatment. On this point, the Army physician in charge of the Office of Professional Services and Chief of Medical Corps Affairs of the Office of the Surgeon General, Brigadier General Ronald Blanck, readily acknowledges that "these people have a real disease."

Mr. President, Senators Kohl and Daschle and I co-authored an amendment to last year's defense authorization measure, Public Law 102-190, that established a Department of Defense registry of all servicemembers who were exposed to the fumes of burning oil during service in the Persian Gulf. The registry is intended to preserve information about these troops that could prove vital in assessing the health impact of the oil fires.

The Senate adopted our amendment less than 6 months after Operation Desert Storm began. I believe that quick action in the Congress demonstrated how much we have learned from our experience with Agent Orange. One of the great difficulties in trying to resolve whether certain diseases are related to exposure to Agent Orange in Vietnam has been the effort to document who was exposed, using old and inadequate information about troop locations and other circumstances of veterans' service in Vietnam. Establishing a DOD registry is an attempt to compile and analyze this type of data regarding Persian Gulf veterans before the information is lost or hopelessly dispersed.

Mr. President, with the appearance of these newly recognized, unexplained medical problems in Persian Gulf veterans, it is clear that a DOD registry limited to servicemembers exposed to fumes, by itself, is not sufficient. The DOD registry must be expanded and we must require the Department of Veterans Affairs to collect and preserve information about the health of these veterans.

Mr. President, I congratulate former Secretary of Veterans Affairs, Edward J. Derwinski, and Deputy Secretary Anthony J. Principi, now the Acting Secretary, for VA's request for legislation to establish a VA health registry and authorize medical examinations for Persian Gulf veterans. Their leadership on this issue is an encouraging sign of how far our government has come in recognizing its responsibilities to veterans exposed to environmental dangers during service. This is an especially welcome signal to those of us who have spent so many years seeking equitable compensation and medical treatment for veterans exposed to radiation or Agent Orange.

NEED FOR SCIENTIFIC APPROACH

Mr. President, while I applaud VA's proposal, I believe that it left out some important elements. Even VA was careful to point out that the registry it proposed, which would include a largely self-selected group of veterans, is not very useful scientifically. In announcing the proposed registry and health examinations, however, VA asserted that the registry and examinations would "reassure veterans that VA will keep ahead of the science and remain committed to long-term monitoring" of these veterans. The VA proposal itself, however, did not address the scientific issues involved in determining whether or not those who served in the Persian Gulf experience long-term adverse health consequences.

Mr. President, the legislation we are introducing today does address the need for valid, long-term scientific study of these reported medical problems—without reaching any conclusions at this time about specific conditions or mandating any particular studies. The best scientific advice available to us at this point indicates that such legislation would be premature.

Our legislation, in addition to creating a VA health registry and authorizing health examinations, would require VA and DOD to contract with the National Academy of Sciences' Medical Follow-Up Agency (MFUA) to review the existing scientific, medical, and other information on the health consequences of military service in the Persian Gulf theater of operations. MFUA also would assess the effectiveness of VA's and DOD's efforts to collect and maintain information potentially useful for assessing these health consequences. Finally, MFUA would evaluate and recommend whether there is a scientific basis for VA and DOD to undertake an epidemiological study or studies, and, if so, what types of studies would be appropriate.

ADEQUACY OF VA AND DOD REGISTRY DATA

Mr. President, the compromise agreement also would direct the Office of Technology Assessment, an agency of the Congress, to evaluate the potential scientific usefulness of both the new VA registry and the existing DOD registry.

Mr. President, the DOD registry currently must include only those servicemembers who were exposed to the fumes of burning oil during the war, as determined by the Secretary of Defense. The compromise agreement would expand the DOD registry to include all others who served in the Persian Gulf War theater of operations. The expanded registry would be required to include information about the circumstances of the service of all servicemembers who served in the Persian Gulf, such as troop-location data and atmospheric and environmental measurements for specific locations and times. I thank the distinguished Chairman of the Armed Services Committee and cosponsor of this legislation (Mr. NUNN) for his leadership on the provisions expanding the DOD registry.

Mr. President, the VA registry in this legislation is modeled closely on the Ionizing Radiation Registry created by the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, Public Law 99-576, which I co-authored in the Senate with the Senator from Wyoming (Mr. SIMPSON).

COORDINATION OF FEDERAL RESEARCH REGARDING HEALTH EFFECTS OF PERSIAN GULF SERVICE

A final part of the compromise agreement would require the President to designate a senior government official to coordinate all research activities undertaken or funded by the Executive Branch on the health consequences of military service in the Persian Gulf. This provision is modeled on another law I co-authored, the Veterans Health Programs Extension and Improvement Act of 1979, Public Law 96-151, which required the President to ensure that agencies coordinate all federal research on Agent Orange. The White House Domestic Policy Council currently has the responsibility for coordinating federal research on Agent Orange, and I expect that an official at a similarly high-ranking level would be appointed to coordinate federal research on Persian Gulf War health issues.

CONCLUSION

Mr. President, in closing, I thank our committee's ranking Republican member, Senator SPECTER, for his cooperation and help with this compromise agreement. I also am grateful to other members of the committee for their support of and cooperation on this measure.

I also express my gratitude for their work on this legislation to the committee's minority staff, Carrie Gavora, Bill

Tuerk, Yvonne Santa Anna, who has moved to Senator SPECTER's personal staff, and Tom Roberts, and, for all their help to me on this measure, majority staff members Janet Coffman, Virginia Rowthorn-Apel, Neil Koren, Susan Thaul, Michael Cogan, Thomas Tighe, Bill Brew, and Ed Scott.

I also thank the chairman of the House Veterans' Affairs Committee, G.V. "SONNY" MONTGOMERY, and the committee's ranking Republican member, BOB STUMP, as well as the other members of the House committee, for their great cooperative spirit in working with our committee to reach an agreement on this important legislation. For their assistance and fine work in developing this compromise agreement, I also thank House Veterans' Affairs Committee minority staff members Sarah Boyd, Tina Alvarado, Carl Commenator, and Kingston Smith and majority staff members Greg Matton, Ralph Ibson, Pay Ryan, and Mack Fleming.

In addition, with regard to the drug-pricing provisions, I thank House Committee on Energy and Commerce Chairman, JOHN DINGELL, and ranking Republican member, NORMAN LENT, as well as that committee's Health and the Environment Subcommittee Chairman, HENRY WAXMAN, and ranking Republican member, WILLIAM DANNEMEYER, for the thoughtfulness and cooperation they displayed in developing a compromise agreement on these provisions. Great thanks are also due to Senate Finance Committee's Chairman, LLOYD BENTSEN, and ranking Republican member, BOB PACKWOOD. For their tireless efforts in pursuit of this agreement, I also extend thanks to Barbara Pryor, Ellen Doneski, and Tamera Stanton of Senator ROCKEFELLER'S staff; John Coster and Chris Jennings of the Special Committee on Aging staff; Marsha Simon of the majority staff and Ann LaBelle of the minority staff of the Committee on Labor and Human Resources; Phyllis Albritton of Senator MIKULSKI'S staff; David Balland of Senator SIMPSON'S staff; John Bradley of Senator MURKOWSKI'S staff; Marina Weiss and Janis Guerney of the majority staff and Roy Ramthun of the minority staff of the Finance Committee; and Donald Shriber, Karen Nelson, and Andreas Schneider of the majority staff and Howard Cohen of the minority staff of the House Committee on Energy and Commerce.

We also owe a debt of gratitude to Charlie Armstrong and Mark Mathiesen of the Senate Legislative Counsel's Office and to Noah Wofsy and Edward Grossman of the House Legislative Counsel's Office for the painstaking care and skill they devoted to the drafting of this legislation.

Finally, I acknowledge and thank the many VA officials who were so very helpful in the development of this measure, especially Louise Rodriguez, Chief of Clinical Pharmacy/Quality Management, VA's Pharmacy Service, for her enormously valuable assistance on the countless complex issues with which we had to deal over the past year; Deputy Assistant Secretary for Legislative Affairs Jo Sherman and Congressional Relations Officer Nurit Erger for their excellent work; and the acting Secretary of Veterans Affairs Tony Principi, a great friend of veterans, who has devoted a great deal of his personal attention to this issue.

Mr. President, I ask unanimous consent that the explanatory statement on this compromise agreement prepared by the House and Senate Veterans' Affairs Committees be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JOINT EXPLANATORY STATEMENT ON H.R. 5193, THE PROPOSED VETERANS HEALTH CARE ACT OF 1992

H.R. 5193, the proposed "Veterans Health Care Act of 1992" reflects a compromise agreement that the Senate and House of Representatives Committees on Veterans' Affairs have reached on certain bills considered in the Senate and the House during the 102nd Congress. These are H.R. 5193 as passed by the House on August 4, 1992 (hereinafter referred to as "H.R. 5193"); H.R. 2890 as passed by the House on September 22, 1992 (hereinafter referred to as "H.R. 2890"); H.R. 5192 as passed by the House on October 1, 1992 (hereinafter referred to as "H.R. 5192"); S. 2575 as passed by the Senate as a substitute amendment for H.R. 5193 on October 1, 1992 (hereinafter referred to as "S. 2575"); S. 2973 as passed by the Senate on October 1, 1992, as part of the amendment for H.R. 5193 and as a separate bill (hereinafter referred to as "S. 2973"); and S. 2974 as passed by the Senate on October 1, 1992, (hereinafter referred to as "S. 2974").

The Committees on Veterans' Affairs have prepared the following explanation of the Compromise agreement on H.R. 5193 (hereinafter referred to as "compromise agreement"). Differences between the provisions contained in the compromise agreement and the related provisions in the bills noted above are noted in this document, except for clerical corrections and conforming changes made necessary by the compromise agreement and minor drafting, technical, and clarifying changes.

TITLE I—WOMEN VETERANS HEALTH PROGRAMS

Sexual trauma counseling

Current law: Access to VA health care is based on specific entitlements and eligibilities. There is no specific provision relating to counseling or treatment for sexual trauma.

House bill: No provision.

Senate amendment: Section 701 of S. 2575 would require VA, in the case of a woman veteran whom a VA health-care professional designated by the Chief Medical Director has found to be in need of counseling or treatment for sexual trauma resulting from events that occurred during service, to provide the veteran with health-care services necessary in connection with the trauma on the same basis as VA is required to provide care for service-connected disabilities. Sexual trauma would be defined as the immediate and long-term physical or psychological trauma resulting from rape, sexual assault, sexual harassment or other act of sexual violence.

Compromise agreement: Section 102 would amend chapter 17 of title 38, United States Code, to add a new section, 1720D, "Counseling to Women Veterans for Sexual Trauma". Subsection (a) of new Section 1720D would authorize the Secretary, through December 31, 1995, to provide needed counseling to any woman veteran who (a) seeks counseling from VA (1) within two years after her discharge from service or, (2) in the case of a veteran who was discharged from service prior to December 31, 1992, not later than December 31, 1993, and (b) the Secretary determines requires counseling to overcome psychological trauma which, in the judgment of a VA health-care professional, resulted from physical assault, battery of a sexual nature, or sexual harassment which occurred during active duty. Sexual harassment would be defined as repeated, unsolicited verbal or physical contact of a sexual nature which is threatening in character.

Subsection (b) of new section 1720D of title 38 would prohibit the Secretary, in providing services under this section to a veteran for a condition which has not been determined to be service connected, from providing counseling for a period in excess of one year unless the Secretary determines that a longer period of counseling is necessary.

Subsection (c)(1) of new section 1720D would require the Secretary to take action to ensure that, if a veteran eligible for counseling under this section also requires other medical services under chapter 17 relating to sexual trauma for which she is eligible, she is furnished such care and services in coordination with the counseling.

Subsection (c)(2) of new section 1720D would require the Secretary, in establishing the program authorized in his new section, to (a) provide for appropriate training of mental health professionals and other health care personnel as is necessary to carry out the program effectively; (b) seek to ensure that counseling under the program is furnished in a therapeutically appropriate setting, taking into account the circumstances which provoked the need for such counseling; and (c) provide referral services to assist women veterans who are not eligible for other needed treatment and services from VA to obtain such treatment and services from sources outside VA.

It is the view of the Committee that the counseling authorized in this section may be provided appropriately in any Department facility—including outpatient clinics, mobile or satellite clinics, and Vet Centers—that has staff with the specialized training necessary to counsel individuals who suffer from sexual trauma.

The Committees note that this provision is designed to provide access to counseling for women veterans who suffer from sexual trauma related to incidents of sexual violence or harassment that occurred during active duty and does not provide access to individuals who may be in need of counseling or other medical services for trauma arising from incidents of a non-sexual nature that occurred in the course of basic or other military training.

The Committees also urge the Secretary of Defense to take all reasonable actions necessary to protect women in the military from sexual violence and to provide the victims of such violence with the administrative, legal, and medical assistance they require. With respect to the reporting of incidents of sexual violence, the Committees urge the Secretary of Defense to establish a confidential and safe method for servicemembers to report such incidents. Although formal reporting mechanisms may exist currently, the reluctance of women to use these channels in the past indicates that they are not as effective as they should be. This underreporting of such incidents—and the resulting absence of information in military records to substantiate a woman veteran's claim that an incident of sexual violence occurred—can thwart totally a veteran's ability to produce the substantiating evidence necessary to establish service connection of disabilities related to the sexual violence and thus secure needed care at VA facilities on a priority basis. The Committees call on the Secretary of Defense to ameliorate this problem of underreporting so that women veterans seeking VA medical services will have the documentation necessary to be determined eligible for such services on the basis of service connection.

Contract care authority

House bill: No provision.

Senate amendment: Section 701 of S. 2575 would authorize VA, through December 31, 1994, to furnish sexual-trauma counseling services through contracts with non-VA providers and require VA to provide to the Senate and House Veterans' Affairs Committees by March 31, 1994, a report on the use of that authority.

Compromise agreement: Subsection (a)(2) of new section 1720D of title 38 follows the Senate amendment with an amendment to limit the contract authority to situations in which, in the judgment of a VA mental health professional, the receipt of counseling in VA facilities would be clinically inadvisable or where VA facilities are unavailable because of geographic inaccessibility.

Priority for outpatient care for sexual-trauma counseling

House bill: No provision.

Senate amendment: Section 701 of S. 2575 would require that women veterans eligible for services under that section be accorded the same priority as veterans receiving care for service-connected disabilities.

Compromise agreement: Section 103 would amend section 1712(i)(2) to provide that the furnishing of counseling for women veterans who are eligible for counseling under new section 1720D receive the same priority as is accorded veterans who have service-connected disabilities rated at less than 30 percent or who are being examined to determine if they have a service-connected disability.

Commencement of provision of information on services

Current law: Section 7722 of title 38 requires VA to conduct outreach services to ensure that all veterans are informed of the benefits for which they may be eligible or to which they may be entitled.

House bill: No provision.

Senate amendment: Section 702 of S. 2575 would require VA to provide a toll-free, 24-hour information and referral telephone line to provide information regarding the availability of care and services relating to sexual trauma. The toll-free line would be staffed by personnel trained to facilitate access to services relating to sexual trauma and operated in a way that protects the confidentiality of callers.

Section 705 of S. 2575 would require the Secretaries of VA and Defense jointly to ensure that all women being separated from active duty are given appropriate advice regarding (a) the availability of counseling, medical care, and other services and assistance from VA with respect to sexual trauma; and (b) the requirements for eligibility for, or entitlement to, and the procedures for applying for, such counseling, medical care, and other services and assistance.

Compromise agreement: Section 104 would require the Secretary, not later than 90 days after enactment, to commence the provision of information on the counseling relating to sexual trauma that is available to women veterans under this legislation, including the time limitations on applying for such counseling. In carrying out this section, the Secretary (a) would be required, in coordination with the Secretary of Defense, to ensure that women who are being separated from active duty are provided with information about the requirements and procedures for applying for counseling under this program, and (b) may establish an information system involving a toll-free telephone number.

Report on implementation of Sexual Trauma Counseling Program

House bill: No provision.

Senate amendment: Section 704 of S. 2575 would require the Secretary of VA, by March 1, 1993, and by December 31 of each of calendar years 1993 through 1997, to provide the Veterans' Affairs Committees with a comprehensive report on VA services available to veterans who experienced sexual trauma, including (a) information on the medical care, counseling, outreach and other services for veterans who have experienced sexual trauma, and the numbers of male and female counselors who have been provided with specialized training in counseling for sexual trauma; (b) an assessment of deficiencies in meeting the needs of veterans for such counseling, medical care, and other services; and (c) plans to correct such deficiencies.

Compromise agreement: Section 105 would require the Secretary, by March 31, 1994, to submit to the Veterans' Affairs Committees a comprehensive report on the Secretary's actions taken under this legislation. The report would be required to include (a) the numbers of veterans, by facility, who received counseling under this program, including the use made of the contract authority provided for under section 102; (b) the numbers of veterans, by facility, who received other care or services in connection with the aftereffects of sexual trauma and the numbers of veterans referred to non-VA sources; (c) a listing and description of the specific training programs which the Secretary instituted to ensure that the counseling program established under this legislation is carried out effectively; and (d) a description of the specific efforts taken by the Secretary to seek to ensure that the counseling under this legislation is furnished in therapeutically appropriate settings taking into account the circumstances which provoked the need for the counseling.

Health-care services for women veterans

House bill: No provision.

Senate amendment: Section 801 of S. 2575 would (a) add "well-women care services" to the definition of medical services in section 1701 of title 38 and provide that such term (1) includes counseling and services relating to Papanicolaou tests, breast examinations and mammography, general reproductive health care, the management of infertility, menopause, and physical or psychological conditions arising out of acts of sexual violence; and (2) does not include pregnancy care, except care relating to a pregnancy that is complicated, or in which the risks of complication are increased, by a service-connected condition; or abortion; and (b) authorize the Secretary, through the period ending on December 31, 1994, to contract with non-VA facilities for the furnishing of well-women care services to veterans on an outpatient basis.

Compromise agreement: Section 106 would authorize the Secretary, in furnishing hospital care and medical services under Chapter 17 of title 38, United States Code, to provide certain health care services to women veterans. These services are "pap smears," breast exams and mammography, and general reproductive health care. The measure expressly provides that the phrase "general reproductive health care" includes the management of menopause, but does not include under this section infertility services, abortions, or pregnancy care (including prenatal and delivery care). The inclusion of the phrase "under this section" underscores the intent of the Committees not to limit such authority as the Secretary may have to provide any infertility services under chapter 17. The use of that phrase does not, however, signal an intent to expand such authority. The measure also incorporates the exception to the bar on furnishing pregnancy care reflected in VA regulations (at 39 CFR sec. 17.48(h)) associated with care relating to a complicated pregnancy, as well as the instance in which the risks of complication are increased by a service-connected condition.

Section 106(b) would require that the Secretary ensure that the directors of VA health care facilities identify and assess opportunities under the expanded VA–DOD sharing authority provided under title II of this Act to (a) expand the availability of, and access to, health care services for women veterans under sections 1710 and 1712 of title 38, U.S.C., and (b) provide counseling, care, and services authorized by title I of this Act.

Report on health care and research

House bill: No provision

Senate amendment: Section 801(c) of S. 2575 would require the Secretary, during the period ending on January 1, 1997, to submit annual reports to the Committees on Veterans' Affairs, not later than January 1st of each year, which must contain descriptions of (1) the types and numbers of VA personnel who provided health-care services to women veterans, (2) any actions taken by the Secretary to ensure the retention of such personnel and any actions undertaken to replace such personnel or recruit additional personnel, (3) the type and amount of well-women care services furnished by such personnel, (4) the type and amount of well-women care services provided under contracts with non-VA facilities, (5) any difficulties experienced by the Secretary in the furnishing of well-women care services and the actions taken by the Secretary to resolve such difficulties, and (6) actions taken by the Secretary to foster and encourage the expansion of research relating to health-care issues of concern to women veterans.

Section 805 of S. 2575 would require the Secretary, not later than July 1, of 1992, 1993, 1994, and 1995 to submit to the Committees on Veterans' Affairs a report containing (a) a description of the status of any research relating to women veterans being carried out by or under the jurisdiction of the Secretary; and (b) the recommendations of the Secretary regarding future research.

Compromise agreement: Section 107 would require that, not later than January 1 of 1993, 1994 and 1995, the Secretary submit to Congress a report on the provision of health care services, and the conduct of research carried out by, or under the jurisdiction of, the Secretary relating to women veterans. This report would include the following information with respect to the most recent fiscal year before the date of the report:

(a) The number of women veterans who have received services described in section 106 of this Act in facilities under the jurisdiction of the Secretary (or the Secretary of Defense), tabulated by reference to the Department facility which provided (or, in the case of the Department of Defense, arranged) those services;

(b) A description of the services provided at each of these facilities;

(c) A description of the extent to which each these facilities rely on contractual arrangements under sections 1703 (relating to contract authority at non-Department facilities) or 8153 (relating to sharing of specialized medical resources) of title 38, U.S.C., to furnish care to women veterans in facilities which are not under the jurisdiction of the Secretary where the provision of such care is not furnished in a medical emergency;

(d) The steps taken by each such facility to expand the provision of services at such facility (or under arrangements with the Department of Defense facility) to women veterans; and

(e) A description, as of October 1 of the year preceding the year in which the report is submitted, of the status of any research relating to women veterans being carried out by or under the jurisdiction of the Secretary.

Coordination of services

House bill: No provision.

Senate amendment: Section 807 of S. 2575 would (a) require the Secretary to appoint a regional women veterans coordinator to serve in each VHA regional office on a full-time basis; and (b) require each regional women veterans coordinator to (1) coordinate the training of women veterans coordinators who are assigned to VA health-care facilities in that region, and (2) provide appropriate technical support and guidance to VA facilities in that region with respect to outreach activities to women veteran.

Compromise agreement: Section 108 would require the Secretary to ensure that an official in each regional office of the Veterans Health Administration serve as a regional women veterans coordinator. The responsibilities of these coordinators would include (a) conducting periodic assessments of the needs for services of women veterans within such region; (b) planning to meet such needs; (c) assisting in carrying out the purpose of title II of this Act relating to encouraging expansion of VA-DOD sharing to expand the availability of women's health care services; (d) coordinating the training of women veterans coordinators who are assigned to VA facilities in the region under jurisdiction of such regional coordinator; and (e) providing appropriate technical support and guidance to VA facilities in that region with respect to outreach activities to women veterans.

While the Committees do not anticipate the need to hire an additional regional office employee to fulfill these duties, it is intended that the regional women veterans coordinator have adequate time to perform the prescribed duties that this position requires.

Support for women veterans coordinators

House bill: No provision.

Senate amendment: Section 806 of S. 2575 would require the Secretary to take appropriate actions to ensure that (a) sufficient funding is provided to each VA facility to permit women veterans coordinators to carry out their duties; (b) sufficient clerical and communications support is provided to each women veterans coordinator to enable each coordinator to carry out the duties of that position; and (c) each women veterans coordinator has direct access to the Director or Chief of Staff of the VA facility at which the coordinator is employed.

Compromise agreement: No provision. The Committees understand that the job of a women veterans coordinator is, in most cases, a part-time position and the person performing this job is often responsible for many other duties in a VA facility. The Committees believe that this position is vital to ensuring women veterans receive the health care services and benefits they deserve under the law. Therefore, the Committees encourage the Secretary to provide, by whatever means available, and to whatever extent practicable, support for women veterans coordinators in the performance of their duties.

Funding for advisory committee on women veterans

House bill: No provision.

Senate amendment: Section 808 of S. 2575 would require the Secretary to provide funds for use by the members of the Advisory Committee on Women Veterans for (a) travel in connection with a reasonable number of site visits to VA health-care facilities; and (b) the conduct of Advisory Committee meetings.

Compromise agreement: No provision.

The Committees urge the Secretary to review the budget of the Advisory Committee on Women Veterans to ascertain whether there is adequate funding to fulfill the Advisory Committee's mission as stated in its charter, which includes holding at least one annual meeting and performing site visits to VA facilities.

Research relating to women veterans health

House bill: No provision.

Senate amendment: Section 802 of S. 2575 would (a) require the Secretary, in consultation with the Chief Medical Director (who would be required to consult with other specified VA officials), to foster and encourage the initiation and expansion of research into the health consequences for women veterans of (1) breast cancer, (2) gynecological and hormonal matters, (3) cancer of the reproductive organs, (4) Alzheimer's Disease, (5) osteoporosis, (6) post-traumatic stress disorder, (7) substance abuse, and (8) sexual violence; (b) require the Comptroller General to carry out a study to determine (1) the percentage of all admissions of women veterans admitted to VA facilities on the basis of a diagnosis of psychotic illness, (2) the percentage of all admissions of men veterans admitted to VA facilities on the basis of such a diagnosis, and (3) an explanation of the difference, if any, between these percentages; and (c) authorize, in addition to other funds appropriated to VA for medical research the appropriation of funds to VA for the purposes described in (a) and (b), above, as follows: (1) for FY 1993, $1,500,000, (2) for FY 1994, $2,000,000, and (3) for FY 1995, $2,500,000.

Compromise agreement: Section 109 would require the Secretary, in carrying out the Secretary's responsibilities to perform research on disease and disabilities relating to medical care and treatment of veterans, to foster and encourage the initiation and expansion of research relating to women veterans health. This provision is subject to section 7307(a)(3) of title 38.

The Committees encourage the Secretary, when initiating new research projects on women veterans health, to consult with relevant offices within VHA such as Nursing Service, the Office of Women Veterans Programs, the Advisory Committee on Women Veterans and pertinent task forces. The Secretary is also encouraged to draw on the expertise of VA health care professionals, including those who work in specialized programs such as the Geriatric Research, Education and Clinical Centers program and those conducting research with the National Center for Post-Traumatic Stress Disorder.

Section 109 would authorize, in addition to other funds appropriated or otherwise made available to VA for medical research, the appropriation of funds to VA for the purpose of carrying out new research projects relating to women veterans as follows: (1) for FY 1993, $1,500,000, (2) for FY 1994, $2,000,000, and (3) for FY 1995, $2,500,000.

Population study of women veterans

House bill: No provision.

Senate amendment: Section 804 of S. 2575 would (a) require the Secretary to conduct a study to determine the health-care needs of women veterans; (b) require the Secretary, prior to conducting the study, to request the advice of the VA Advisory Committee on Women Veterans and the Defense Advisory Committee on Women in the Services; (c) require the Secretary (with the assistance of the Secretary of Defense), in carrying out the study, to examine the medical, biopsychosocial, and demographic histories of an appropriate sample of women veterans and women serving on active duty; (d) require the Secretary to submit biannual reports not later than April 1, 1994 through 2004, to the Committees on Veterans' Affairs relating to the results of the study; and (e) authorize appropriation of $1,500,000 to carry out the purposes of this section.

Compromise agreement: Section 110 would require the Secretary to conduct a study to determine the needs of women veterans for health-care services. Prior to initiating the study, the Secretary is required to request the advice of the Advisory Committee on Women Veterans. In conducting the study, the Secretary is required to include an appropriate sampling of women veterans and women members of the Armed Forces who are serving on active duty.

For the purposes of this study, the Committees intend the term "appropriate sampling" to include, but not be limited to, the selection of a representative sampling of the ages, the ethnic, social and economic backgrounds, the enlisted and officer grades, and the branches of service of all women veterans and women members of the Armed Forces.

Section 110 also would require the Secretary to submit the following reports relating to the study to the House and Senate Committees on Veterans' Affairs: (a) an interim report nine months after the date of enactment of this Act describing the current status of the study and any information and advice obtained by the Secretary from the Advisory Committee on Women Veterans; and (b) a final report describing the results of the study to be submitted no later than December 31, 1995. Section 110 would authorize the appropriation of $2.0 million to conduct a population study of women veterans. Funding for this study is pursuant to specific appropriations to the general operating expenses account of the Department of Veterans Affairs and would be available for obligation until expended without fiscal year limitation.

TITLE II—HEALTH-CARE SHARING AGREEMENTS BETWEEN DEPARTMENT OF VETERANS AFFAIRS AND DEPARTMENT OF DEFENSE

Sharing agreements

Current law: Section 8111(c) of title 38 requires the Secretary of Veterans Affairs and the Secretary of Defense jointly to establish guidelines to promote the sharing of health-care resources between the two Departments. The guidelines must (a) provide for sharing that is consistent with the health-care responsibilities of VA and DOD and does not adversely affect the range of services, quality of care, or established priorities for care in either VA or DOD Department; and (b) authorize the heads of individual VA and DOD medical facilities to enter into health-care resource sharing agreements.

House bill: Sections 1(a) and (d) of H.R. 5193 would, through September 30, 1996, expand the authority of the Secretary of VA to enter into health-care resource sharing agreements with the Secretary of Defense so as to authorize the head of a VA health-care facility (a) to enter into sharing agreements with (1) the head of a DOD health-care facility, (2) any other DOD official responsible for the furnishing of health-care services to Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) beneficiaries in the region in which the VA facility is located, or (3) a contractor responsible for the furnishing of health-care services to CHAMPUS beneficiaries in the region in which the VA facility is located; and (b) to enter into sharing agreements that would provide for the furnishing of care to Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) and CHAMPUS beneficiaries.

Senate amendment: No provision.

Compromise agreement: Section 201 follows the House bill.

Requirement for improvement in services for veterans

House bill: Section 1(b) of H.R 5193 would prohibit any sharing agreement proposed by the director of a VA health-care facility from taking effect, unless VA's Chief Medical Director determines and certifies to the Secretary, that implementation of the agreement (a) will result in the improvement of services to eligible veterans at the facility; and (b) will not result in the denial of, or a delay in providing access to care for, any veteran at that facility.

Senate amendment: No provision.

Compromise agreement: Section 202 follows the House bill.

Expanded sharing agreements with Department of Defense

Current law: Under current law, a veteran furnished care or services by a DOD health-care facility under a sharing agreement is subject to the same copayment requirements that would be applicable to the veteran if the care or services were furnished by a VA health-care facility. Likewise, there is no provision in current law for the waiver of any CHAMPUS copayments or deductible for care furnished at VA facilities.

House bill: Section 1(c) of H.R. 5193 would provide authority for VA-DOD sharing agreements to provide for the waiver, in whole or in part, of copayments and deductibles for care provided under an agreement.

Senate amendment: No provision.

Compromise agreement: Section 203 follows the House bill.

Expiration of Authority

House bill: Section 1 of H.R. 5193 limits authority to enter into agreements under this section to a period not later than October 1, 1993.

Senate amendment: No provision.

Compromise agreement: Section 204 follows the House bill.

Consultation with veterans service organizations

Current law: Section 8111 does not require the Secretary to consult with veterans service organizations in carrying out the VA-DOD sharing authority.

House bill: Section 1(e) of H.R. 5193 would require the Secretary to consult with veterans service organizations named in or approved under section 5902 of title 38 in carrying out the expanded authority.

Senate amendment: No provision.

Compromise agreement: Section 205 follows the House bill.

Annual report

Current law: Section 8111(f) requires the Secretaries of VA and Defense to submit a joint annual report to Congress on the implementation of the VA-DOD health-care resources sharing authority during the fiscal year that ended during the previous calendar year.

House bill: Section 1(f) of H.R. 5193 would require the secretaries (a) for each fiscal year from 1993 through 1996, to include in the annual report on the VA-DOD sharing authority a description of the use of the expanded sharing authority; and (b) to include in the annual report for fiscal year 1996 (1) an assessment of the effect of agreements entered into under the expanded sharing authority on the furnishing of health-care services to eligible veterans, (2) an assessment of the cost savings, if any, associated with provision of services under such agreements to retired members of the Armed Forces, dependents of members or former members of a uniformed service, and CHAMPVA beneficiaries, and (3) any plans for administrative action and any recommendations for legislation that the Secretaries consider appropriate.

Senate amendment: No provision.

Compromise agreement: Section 206 follows the House bill.

TITLE III—NURSE PAY AMENDMENTS

Revision to nurse pay grade schedule

Current law: Section 7404(b)(1) provides for a nurse pay schedule consisting of four grades—"Director grade," "Senior grade," "Intermediate grade," and "Entry grade."

House bill: Section 6(a) of H.R. 5192 would add to the four-grade nurse pay schedule, between the "Director grade" and the "Senior grade," a fifth grade, "Assistant Director grade."

Senate amendment: Section 101 of S. 2575 would replace the four-grade nurse pay schedule with a schedule of five grades, designated Nurse I through Nurse V.

Compromise agreement: Section 301 follows the Senate amendment.

The Committees intend for VA to use the additional grade to alleviate the pay compression experienced by RNs in the upper steps of the intermediate and senior grades under the current four-grade pay schedule. The use of Roman numerals to designate the five grades is intended to encourage VA to revise VA's nurse qualification standards in a manner that will facilitate a more even distribution of nursing positions throughout the pay schedule.

Authority to establish special rates of pay for employees of facilities located outside the contiguous United States, Alaska, and Hawaii

Current law: Section 7451 requires that the rates of basic pay for registered nurses (RNs) and certified registered nurse anesthetists (CRNAs) at a VA health-care facility be (a) based on information regarding the pay of RNs and CRNAs by non-VA healthcare facilities from a Bureau of Labor Statistics (BLS) industry-wage survey for the local labor-market area in which the VA facility is located, or (b) if current information is not available from BLS for the local labor-market area, on the basis of a survey conducted by the VA facility director, using methodology comparable to that used by BLS, of compensation paid to RNs and CRNAs by non-VA health-care facilities in the local labor-market area.

House bill: No provision.

Senate amendment: Section 102 of S. 2575 would authorize the Secretary, in order to provide rates of pay necessary to recruit and retain sufficient numbers of employees in covered positions at the VMMC in the Philippines and the VAMC in San Juan, Puerto Rico, and its satellite facilities, to establish and adjust the rates of basic pay for employees in covered positions at those facilities on a basis prescribed by the Secretary.

Compromise agreement: Section 302 follows the Senate amendment.

Salary data for nurse anesthetists

Current law: Section 7451 requires the director of a VA health-care facility to establish rates of basic pay for RNs and CRNAs at a VA health-care facility be (a) based on information regarding the pay of RNs and CRNAs by non-VA health-care facilities from a BLS industry-wage survey for the local labor-market area in which the VA facility is located, or (b) if current information is not available from BLS for the local labor-market area, on the basis of a survey conducted by the VA facility director, using methodology comparable to that used by BLS, of compensation paid to RNs and CRNAs by non-VA health-care facilities in the local labor-market area.

House bill: No provision.

Senate amendment: Section 103 of S. 2575 would (a) authorize the director of a VA health-care facility, in conducting a local wage survey for a covered position, to use data on beginning rates of compensation for employees in comparable positions at non-VA facilities in a comparable labor-market area, if the director determines, in accordance with regulations prescribed by the Secretary, that sufficient data cannot be obtained within the local labor-market area to establish competitive salaries; and (b) authorize the director of a VA health-care facility, in conducting a local wage survey, to use data on compensation received by CRNAs employed in salaried positions by firms that provide anesthesia services on a contract basis within the local labor-market area in which the VA facility is located, if the director can demonstrate, in accordance with regulations prescribed by the Secretary, that data on salaries paid to CRNAs employed by health-care facilities in that area and, if appropriate, in other geographic areas, are not sufficient to establish competitive salary rates.

Compromise agreement: Section 303 follows the Senate amendment with amendments that would (a) prohibit a VA health-care facility director from using the authority to use data on compensation paid to CRNAs by anesthesia contractors unless the director (1) has conducted a survey of beginning rates of compensation paid to CRNAs in the local labor-market area in which the VA facility is located, (2) has used all available administrative authority with regard to the collection of data on such compensation, and (3) makes a determination, under regulations prescribed by the Secretary, that such data collection methods are insufficient to permit the establishment of locally-competitive rates of pay for CRNAs; and (b) provide that this authority would expire on September 30, 1995.

Revision of basis for calculation of compensation of corresponding health-care positions

Current law: Subchapter IV of chapter 74 provides for a locality-based pay system for VA personnel in covered positions—RNs and CRNAs by statute and certain other health professions that the Secretary elects to cover (but no others are covered as yet). Section 7451(d)(2) requires the director of a VA health-care facility to adjust the minimum rate of basic pay for a grade in a covered position so as to achieve consistency with the beginning rate of compensation for the corresponding health-care professionals employed by non-VA health-care facilities in the local labor-market area in which the facility is located. Section 7451(d)(6)(A) defines a beginning rate of compensation for those corresponding non-VA health-care professionals as the sum of (a) the minimum rate of pay established for those who have education, training, and experience equivalent or similar to the education, training, and experience required for health-care personnel employed in comparable positions at the VA facility, and (b) other employee benefits to the extent that those benefits are reasonably quantifiable.

House bill: No provision.

Senate amendment: Section 104 of S. 2575 would require the director of a VA health-care facility to include in the survey the minimum rates of pay actually paid to employees in covered positions by non-VA facilities in the local labor-market area rather than the rates established for such employees.

Compromise agreement: No provision.

The Committees note that VA officials have revised the implementing regulations for the Nurse Pay Act of 1990 so as to authorize directors of VA health-care facilities, in conducting local wage surveys, to use data on "above-minimum rates of pay" in cases in which the minimum rates of pay actually paid to employees in covered positions by non-VA facilities are greater than the rates listed in their salary schedules. The Committees believe that this revision in VA's regulations will facilitate the establishment of rates of pay that are competitive with those paid by non-VA facilities in the local labor-market areas in which the VA facilities are located. The Committees strongly urge that these elements of the regulations be retained when the regulations are revised to reflect the enactment of this measure.

Rates of pay for transferring nurses

Current law: Subchapter IV of chapter 74 provides for a locality-based pay system for VA personnel in covered positions—RNs and CRNAs by statute and certain other health professions that the Secretary elects to cover (but no others are covered yet). Section 7452(e) requires (a) that an employee in a covered position who transfers from a position at one VA health-care facility to a similar position at another VA facility not be reduced in grade or step (except pursuant to a disciplinary action authorized by law), and (b) that the rate of basic pay for such an employee be established at the facility to which the employee transfers in a manner consistent with practices at that facility for an employee of that grade or step.

House bill: Section 6(c) of H.R. 5192 would authorize the Secretary in certain cases, if the Secretary determines that a higher rate of pay is necessary to obtain the covered employee's agreement to a transfer, to pay the employee at a rate of basic pay up to the rate applicable to such employee before the transfer. Thus the Secretary would be authorized to maintain the amount of basic pay of an employee who transfers upon the request of the Secretary to a comparable or more responsible position at a VA health-care facility at which the rate of pay for the position is lower than the rate paid for such a position by the VA facility from which the employee is transferring. If authorized by the Secretary, the rate of basic pay for such a transferred employee would be applicable for at least the first year following the employee's transfer, and (b) the rate of basic pay could not exceed the rate of basic pay applicable to the employee prior to the transfer.

Senate amendment: Section 105 of S. 2575 is similar to the House provision except that it (a) would not specify that the increased pay must be paid for at least one year, (b) does not contain a limit on the increase, (c) would not apply to an employee transferred as a result of disciplinary actions, and (d) would require the Secretary to include information on the use of this authority in the annual report to the Congressional Committees on Veterans' Affairs on the implementation of the Department of Veterans Affairs Nurse Pay Act of 1990.

Compromise agreement: Section 304 follows the House bill with amendments to include the Senate amendment language (a) requiring a report and (b) excluding from this coverage an employee transferred as a result of disciplinary action.

Minimum pay differential for chief of nursing service at a facility

Current law: Current law does not provide a basis for the Secretary to provide a differential between the rate of basic pay for an RN serving in a Chief Nurse position at a VA health-care facility and the rate of basic pay applicable to any other RN employed by that facility, unless the differential is justified on the basis of a survey of rates of pay for RNs and CRNAs at non-VA health-care facilities in the local labor-market area in which the VA facility is located.

House bill: Section 6(b) of H.R. 5192 would authorize the Secretary to increase the rate of basic pay for an RN serving in a Chief Nurse position at a VA health-care facility to a rate no more than six percent greater than the rate of basic pay applicable to any other RN employed by that facility.

Senate amendment: No provision

Compromise agreement: The compromise agreement does not contain this provision. However the Committees agreed to include a reporting requirement in section 306 to gather data on chief nurse salaries in relation to other nursing salaries.

Nursing personnel qualification standards

Current law: Under current law, the Secretary has implicit authority to revise the qualification standards used for nursing personnel.

House bill: Section 6(d) of H.R. 5192 would require the Secretary, not later than six months after enactment, to revise the qualification standards used for nursing personnel at VA health-care facilities in order to (a) reflect the five grade levels under the Nurse Schedule (as proposed in section 6(a) of the House bill), and (b) reduce the compression of pay for nursing personnel in the intermediate and senior grades. Not later than six months after the date on which the revised qualification standards are issued, the Secretary would be required to submit to the Congressional Committees on Veterans' Affairs a report on the implementation of the revised standards.

Senate amendment: No provision.

Compromise agreement: Section 305 follows the House bill.

Although the Committees acknowledge that the reduction of the total number of grades in the nurse pay schedule from eight to four under the Nurse Pay Act of 1990 has contributed to the serious pay compression experienced by RNs and CRNAs in the intermediate and senior grades, VA officials' failure to revise the nurse qualification standards to adjust for this reduction also has contributed to the problem. Thus, the Committees consider it necessary to require VA officials to revise the qualification standards in a manner that will result in effective use of the fifth grade that will be added to the nurse pay schedule under the compromise agreement. The Committees urge VA officials, in revising the qualification standards, to provide for a more even distribution of nursing personnel throughout the nurse pay schedule.

Report on pay for chief nurse position

Current law: Current law does not require the Secretary to conduct a review of the process for determining rates of basic pay for Chief Nurses.

House bill: Section 6(e) of H.R. 5192 would require the Secretary to conduct a review of the process for determining rates of basic pay applicable to RNs employed in Chief Nurse positions, including an assessment of (a) the adequacy of that process, (b) the accuracy of data collected in that process, and (c) the difficulties encountered in obtaining accurate data. Not later than six months after enactment, the Secretary would be required to submit to the Congressional Committees on Veterans' Affairs a report regarding that review, including recommendations for corrective action.

Senate amendment: No provision.

Compromise agreement: Section 306 follows the House bill with amendments to require the Secretary (a) to review the relationship between the rate of basic pay for Chief Nurses and the basic pay applicable to subordinate nurses, and to furnish data on salary differentials, (b) to submit the report to Congress within 12 months or as part of the next submitted annual report to Congress, and (c) and to include a description of the impact of the addition of a fifth grade to the nurse pay schedule on VA facility directors' ability to establish locally-competitive rates of pay for RNs employed in Chief Nurse positions.

Report on pay compression

Current law: Section 7451(g) requires the Secretary, not later than December 1 of 1991, 1992, and 1993, to submit to the Committees on Veterans' Affairs an annual report on various aspects of the implementation of the Nurse Pay Act of 1990.

House bill: Section 6(f) of H.R. 5192 would require the Secretary to include in the annual report information concerning (a) the number of employees, by facility and by covered position, who are on pay retention or in the top step of any grade, (b) comprehensive information, by facility, as to whether the facility director requested permission to extend the range of rates of basic pay for employees within such grade(s), and (c) whether each request was approved or disapproved.

Senate amendment: No provision.

Compromise agreement: Section 307 follows the House bill.

Effective date

House bill: Section 6(g) of H.R. 5192 would require that the provisions of the House bill regarding the addition of a fifth grade to the nurse schedule, minimum pay differential for Chiefs of Nursing Service, and rates of pay for RNs who transfer at the Secretary's request take effect with respect to the first pay period beginning on or after the later of (a) April 1, 1993, or (b) six months after the date of enactment.

Senate amendment: The nurse pay provisions of the Senate bill would take effect on the date of enactment.

Compromise agreement: Section 308 follows the House bill, with the effective date being the first pay period beginning on or after the end of the six-month period beginning on the date of enactment.

TITLE IV—STATE HOME AMENDMENTS

Treatment of earnings of veterans under certain rehabilitative services programs

Current law: Section 1718(f) provides that (a) neither a veteran's participation in a VA work therapy program nor a veteran's receipt of compensation as a result of participating in such a program may be considered as a basis for denying or discontinuing a veteran's rating of total disability for VA compensation or pension on the basis of the veteran's unemployability, and (b) a distribution of funds to a veteran participating in such a work therapy program shall be considered a donation from a public or private relief or welfare organization for purposes of VA pension (which, under section 1503, is not to be counted as income for VA pension purposes).

House bill: Section 3 of H.R. 5192 would provide that a veteran's participation in a VA-approved work-therapy program operated by a State home facility and the veteran's receipt of compensation as a result of such participation shall be considered in the same manner as in the case of a veteran participating in a VA work therapy program.

Senate amendment: Section 301 of S. 2575 is substantively identical.

Compromise agreement: Section 401 contains this provision.

Permanent authority to make grants to states relating to state homes

Current law: Subchapter III of chapter 81 authorizes the Secretary to make grants to States for the construction, expansion, or remodeling of facilities for the furnishing of nursing home domiciliary care to veterans eligible to receive such care in a VA facility. Section 8133(a) authorizes appropriations for the program through September 30, 1992.

House bill: Section 2(b) of H.R. 5192 would extend the authorization of appropriations for four years, through September 30, 1996.

Senate amendment: Section 905 of S. 2575 would make the authorization of appropriations permanent.

Compromise agreement: Section 402 follows the Senate amendment.

Extension of period for completion of conditionally approved applications for construction

Current law: Section 8135(b)(6)(A) authorizes the Secretary to approve conditionally a State home construction, expansion, or remodeling project, conditionally award a grant for the project, and obligate funds for the grant if the Secretary determines that (a) the application for the grant is sufficiently complete to warrant awarding the grant and (b) that, based on assurances provided by the State submitting the application, the State will complete the application and meet all specified requirements within 90 days of the date of which the Secretary conditionally approves the project.

House bill: No provision.

Senate amendment: Section 302 of S. 2575 would extend from 90 days to 180 days the period within which a State must complete the application for a State home program grant and meet the specified requirements.

Compromise agreement: Section 403 follows the Senate amendment.

Limited prohibition on the obligation of funds for rescinded projects

Current law: Section 8135(b)(6)(B) requires the Secretary, when a State fails to complete the application for a State home construction grant and meet the specified requirements within 90 days of the date on which the Secretary conditionally approves the project, to (a) rescind the conditional approval and grant award for a State home project, and (b) deobligate the funds previously obligated in connection with the application.

House bill: No provision.

Senate amendment: Section 303 of S. 2575 would prohibit the Secretary, in the event that the Secretary rescinds conditional approval for a State home project, from obligating further funds for that project during the fiscal year in which the Secretary rescinds such approval.

Compromise agreement: Section 404 follows the Senate amendment.

Commencement date for recapture period

Current law: Under section 8136, if a State ceases to operate a VA-grant-assisted facility principally for furnishing of domiciliary, nursing home, or hospital care to veterans, within the "recapture period"—the 20-year period after completion of the facility—the United States is entitled to recover from the State, or the then-owner of the facility, 65 percent of the value of the facility.

House bill: No provision.

Senate amendment: Section 304 of S. 2575 would provide that the recapture period for a State home project would begin on the date of the approval by the Secretary of the final architectural and engineering inspection of the facility.

Compromise agreement: Section 405 follows the Senate amendment.

Commencement date for payment of per diem

Current law: Section 1741(a) requires the Secretary to pay each State a per diem payment for domiciliary, nursing home, and hospital care furnished to each veteran receiving care in a State home who would be eligible for that care in a VA facility.

House bill: No provision.

Senate amendment: Section 305 of S. 2575 would require payment of VA per diem for care furnished in a State home facility to begin as of the date of the completion of the inspection for recognition of the facility under section 1742(a) if the Secretary determines, as a result of that inspection, that the State home meets the standards described in such section.

Compromise agreement: Section 406 contains the Senate amendment.

TITLE V—GENERAL HEALTH CARE AND ADMINISTRATION

SUBTITLE A—GENERAL HEALTH

Contract hospital care for veterans with permanent and total service-connected disabilities

Current law: Section 1703(a)(1) authorizes the Secretary, when VA facilities are not capable of furnishing hospital care or medical services to a veteran because of geographical inaccessibility or lack of capacity to furnish the care or services required, to contract with non-VA health-care facilities in order to furnish hospital care or medical services for the treatment of (1) a service-connected disability, or (2) a disability for which a veteran was discharged or released from the active military, naval, or air service.

House bill: Section 101 of H.R. 2280 would extend the Secretary's authority under section 1703(a)(1) to include the furnishing of hospital care or medical services for the treatment of any disability of a veteran who has a total disability permanent in nature resulting from a service-connected disability.

Senate amendment: No provision.

Compromise agreement: Section 501 follows the House bill.

Permanent authority for respite care program

Current law: Section 1720B authorizes VA to furnish certain veterans respite care through September 30, 1992.

House bill: Section 2(a) of H.R. 5192 would make VA's authority to furnish respite care services permanent.

Senate amendment: Section 901 of S. 2575 is identical.

Compromise agreement: Section 502 contains this provision.

Extension of authority to contract with the veterans memorial medical center, Republic of the Philippines

Current law: Section 1732(a) authorizes the President, with the concurrence of the Republic of the Philippines, to authorize the Secretary, through the period ending on September 30, 1992, to enter into contracts with the Veterans Memorial Medical Center (VMMC) in the Philippines which (a) provide for VA to pay for VMMC health-care services furnished to eligible United States veterans at a per diem rate jointly determined by the United States and the Philippines, and (b) may provide that the VA payments may consist in whole or in part of available medicines, medical supplies, and equipment.

House bill: No provision.

Senate amendment: Section 902 of S. 2575 would extend for four years and three months, through December 31, 1996, VA's authority to contract with the VMMC for care for certain U.S. veterans.

Compromise agreement: Section 503 would extend this authority for two years, through fiscal year 1994.

SUBTITLE B—PREVENTIVE HEALTH

National center for preventive health

Current law: VA has no express authority to operate a National Center for Preventive Health.

House bill: No provision.

Senate amendment: Section 203 of S. 2575 would (a) require the Chief Medical Director to establish a National Center for Preventive Health (Center); (b) require the Director of the Center to (1) acquire, maintain, and disseminate current information on VA and non-VA clinical practices and research concerning preventive health services, (2) monitor implementation of the recommendations of the Preventive Health Services Advisory Committee, (3) facilitate cooperative research concerning health outcomes resulting from various preventive services, (4) advise VA health-care personnel regarding the conduct of preventive health services activities and research, and (5) issue annual reports regarding VA's preventive health services activities and research findings to health-care professionals and organizations interested in such activities and findings; and (c) authorize the appropriation of $2,500,000 annually to fund the Center's research, clinical, educational, and administrative activities and specify that the cost of the Center be paid from VA's Medical Care account.

Compromise agreement: Section 511 follows the Senate amendment with amendments requiring that the selection of a site or sites for such center be based on a merit-review process, reducing the authorization of appropriations to $1,500,000 annually, and eliminating references to an Advisory Committee.

Advisory committee on preventive health services

Current law: VA has no express authority to establish an Advisory Committee on Preventive Health Services.

House bill: No provision.

Senate amendment: Section 204 of S. 2575 would require the Secretary to establish a Preventive Health Services Advisory Committee.

Compromise agreement: No provision.

Annual report on preventive health services

Current law: Under section 1764 of title 38, the Secretary was required, through fiscal year 1988, to include in the annual report to the Congressional Committees on Veterans' Affairs required under section 529 of title 38 a comprehensive report on the administration of the preventive health-care services pilot program, including such recommendation for additional legislation as the Secretary considered necessary.

House bill: No provision.

Senate amendment: Section 205 of S. 2575 would require the Secretary to submit to the Congressional Committees on Veterans' Affairs a report containing information concerning (a) the types of preventive health services furnished by VA, the resources used to furnish those services, and the number of veterans furnished such services; (b) the means by which VA addressed the specific preventive health services needs of particular groups of veterans; (c) the coordination of the furnishing of preventive health services within VA; (d) the integration of preventive health services into VA training programs for health-care professionals; (e) VA's participation in cooperative preventive health efforts with other governmental and nongovernmental entities; (f) specific VA research concerning the long-term relationships among screening activities, treatment, and morbidity and mortality outcomes; (g) the cost effectiveness of specific preventive health services; (h) preventive health services research carried out by VA employees or using VA funds, equipment, office space, or other support services; (i) the membership, activities, and report of the Advisory Committee; and (j) an accounting of the expenditure of funds by the National Center for Preventive Health.

Compromise agreement: Section 512 follows the Senate amendment with an amendment to eliminate the references to the Advisory Committee.

Preventive health services

Current law: Section 1762 defines the term "preventive health-care services" to include expressly various screening, immunization, and patient education services.

House bill: No provision.

Senate amendment: Section 201 of S. 2575 would (a) transfer the text of section 1762 to section 1701 and (b) revise the definition of "preventive health services" to include expressly (1) as part of periodic medical and dental examinations, screening for high blood pressure, glaucoma, high cholesterol, and colorectal and gender-specific cancers, and (2) as part of patient health education, stress management, physical fitness, and smoking cessation.

Compromise agreement: Section 513 would transfer the definition of preventive health services to section 1701 of title 38 and make other conforming changes.

Repeal of pilot program

Current law: Subchapter VII of chapter 17 established, through fiscal year 1988, a pilot preventive health-care service pilot program in order to (a) furnish feasible and appropriate preventive health-care services to veterans having service-connected disabilities rated 50 percent or more and veterans being furnished care or services involving a service-connected disability; and (b) determine the cost-effectiveness and medical advantages of furnishing such preventive health-care services.

House bill: No provision.

Senate amendment: Section 202 of S. 2575 would repeal subchapter VII of chapter 17 effective on the date of enactment of this Act.

Compromise agreement: Section 514 follows the Senate amendment.

SUBTITLE C—HEALTH CARE ADMINISTRATION AND PERSONNEL

Geriatric research, education, and clinical centers

Current law: Section 7314(c) prohibits the Secretary from designating a VA health-care facility as a location for a Geriatric Research, Education, and Clinical Center (GRECC) unless the Secretary (upon the recommendation of the Chief Medical Director) determines that the facility has (a) an arrangement with an accredited medical school which provides education and training in geriatrics; (b) an arrangement under which nursing or allied health personnel receive training and education in geriatrics; (c) the ability to attract the participation of scientists who are capable of ingenuity and creativity in health-care research efforts; (d) a policy-making advisory committee composed of appropriate health-care and research representatives of the facility and of the affiliated school(s); and (e) the capability to conduct effectively evaluations of the activities of the center.

House bill: Section 5 of H.R. 5192 would (a) prohibit the Secretary from designating a VA health-care facility as a location for a GRECC unless the Secretary (upon the recommendation of the Chief Medical Director) has considered the recommendations of a peer review panel established by the Assistant Chief Medical Director for Geriatrics and Extended Care to assess the scientific and clinical merit of proposals submitted to the Secretary for the establishment of new GRECCs; (b) require that the membership of the panel consist of experts in the fields of geriatric and gerontological research, education, and clinical care who shall serve as consultants to VA for a period of no longer than six months; (c) require that the panel review each proposal submitted to the panel by the Assistant Chief Medical Director for Geriatrics and Extended Care and submit its views on the relative scientific and clinical merit of each proposal; and (d) provide that the panel not be subject to the provisions of the Federal Advisory Committee Act.

Senate amendment: No provision.

Compromise agreement: Section 521 follows the House bill with an amendment prohibiting the Secretary from designating a facility as a GRECC unless the panel, in conducting its merit review and ranking of proposals under new section 7314(d), has determined that the facility meets the highest standards of scientific and clinical merit.

Extension of authority to waive certain limitations applicable to receipt of retirement pay by nurses

Current law: Section 7426(c) authorizes the Secretary, through September 30, 1992, to waive the restrictions in section 5536 of title 5 on receipt of military retirement pay by federal employees if the Secretary determines that such waiver is necessary to meet special or emergency employment needs for RNs which result from a severe shortage of well-qualified candidates for RN positions.

House bill: No provision.

Senate amendment: Section 903 of S. 2575 would make this authority permanent.

Compromise agreement: Section 522 would extend this authority for two years and three months, through December 31, 1994.

Health professionals education programs

Current law: Section 7618 authorizes the Secretary, through September 30, 1992, to furnish scholarships to new participants in the Health Professional Scholarship program, under which scholarships may be awarded to certain VA employees for education and training in certain health professions in exchange for commitments to employment in VA health-care facilities.

House bill: Section 2(c) of H.R. 5192 would extend VA's authority to carry out this program for two years, through September 30, 1994, VA's authority to carry out the health professional scholarship program.

Senate amendment: Section 904 of S. 2575 would extend this authority for five years and three months, through December 31, 1997.

Compromise agreement: Section 523 would extend this authority for three years and three months, through December 31, 1995. Section 505(b) would provide that, notwithstanding any other provision of law, VA shall not provide payments to health-care professional employees for payment of tuition loan.

Real property at Temple Junior College, Temple, Texas

House bill: H.R. 5816 as introduced on August 11, 1992, would remove restrictions contained in a deed which conveyed certain land from the Temple, Texas, VA Medical Center to Temple Junior College.

Senate bill: S. 1268 which was introduced, by request of the Administration, on June 11, 1991, is substantively identical.

Compromise agreement: Section 524 contains this provision.

Demonstration project to evaluate telephones for patient use at department health-care facilities

Current law: Telephone may be installed in VA medical facilities for patient use, on a "bedside" basis or otherwise, under existing statutory authorities, including the authority granted to the Secretary of Veterans Affairs by section 303 of title 38, to administer, control, direct and manage VA, and the authority granted by section 513 of title 38, to contract with private or public entities for services deemed necessary in the execution of those duties. VA has, to a limited extent, installed bedside telephones in VA medical facilities under existing authorities, and it has purchased equipment and services, including telephones, switching capacity and wiring, with funds received by VA under its gift-acceptance authorities, sections 7802(8) and 8301 of title 38. However, nothing in current law requires that the Department of Veterans Affairs install telephones for patient use in VA medical facilities.

House bill: No provision.

Senate amendment: Section 501 of S. 2575 would require the Secretary (a) to carry out a demonstration project to evaluate the desirability and feasibility of installing telephones in VA health-care facilities for patient use; (b) to carry out the program by installing and maintaining telephones in patient rooms in two VA health-care facilities, the VA medical centers in Philadelphia, Pennsylvania, and Tucson, Arizona; (c) to evaluate the cost of such installations (including costs associated with the provision of special equipment to facilitate the use of telephones by disabled veterans receiving medical care); (d) to evaluate the benefits of such equipment, including the therapeutic benefits to VA patients, including disabled patients, of ready telephone availability and the savings associated with hospital staff being relieved of the need to assist patients in using public telephone facilities; and (e) to report, not later than September 30, 1994, on such costs and benefits, and on the feasibility and desirability, of installing telephones in patient rooms in other VA health-care facilities. The Senate amendment would also require that the Secretary ensure that costs associated with patient use of bedside telephones for long distance calls be borne by the patient.

Compromise agreement: Section 525 follows the Senate amendment with amendments (a) to delete explicit references to the sites where VA would carry out the demonstration project; and (b) to expand the listing of matters concerning which VA would be required to report. The compromise agreement would specify that, in addition to the matters to be evaluated and reported on in the Senate amendment, VA must also determine and report on the relative feasibility and cost effectiveness of a range of options for the installation and maintenance of bedside telephones for patient use. Among the options to be considered by VA are the procuring of the services through conventional procurement processes using appropriated funds; through donations of equipment and services; and through the procuring of equipment and services in connection with contracts for the provision of long distance telephone service by the Veterans Canteen Service or otherwise.

The Committees note their concern that by specifying that the telephone demonstration project would occur at two VA medical centers, the Senate amendment may have implied an intention that VA should proceed only at those sites. The Committees have, therefore, deleted statutory references to the two sites specified in the Senate amendment. The Committees understand that VA is examining those two sites for participation in the demonstration project and do not object to their inclusion. However, the Committees intend that the demonstration project be expanded to allow for the analysis of a range of installation options. The Committees do not intend to discourage donations from the public, industry, or labor groups. Nor do they intend to inhibit VA, through the Veterans Canteen Service or otherwise, from exploring creative, cost-effective, alternatives for the securing of telecommunications services at the bedside or elsewhere.

Use of tobacco products in Department facilities

Current law: Current statutory law contains no provisions regarding the use of tobacco products within VA facilities.

House bill: Section 7 of H.R. 5192 would (a) state that each veteran who is a patient or resident in a VA medical center, nursing home, or domiciliary has the right (consistent with medical requirements and limitations) to use tobacco products; (b) require the Secretary to ensure (consistent with medical requirements and limitations) that each facility maintains a suitable indoor patient smoking area and provides access to that are for patients or residents who desire to use tabacco products; and (c) require the Secretary to report to the Congressional Committees on Veterans' Affairs, not later than 120 days after the date of enactment, on the implementation of this section, including a description of the steps at each VA facility to achieve compliance.

Senate amendment: No provision.

Compromise agreement: Section 526 would follow generally the House bill with an amendment to (a) omit the statement regarding the right to use tobacco products; (b) in reference to the indoor patient smoking area, require that any such area be ventilated in such a manner as to, to the maximum extent feasible, prevent smoke from entering other areas of the facility; (c) provide as an alternative to the ventilated indoor patient smoking area, a smoking area in a detached, accessible building with heating and air conditioning; (d) require GAO to do a report without 180 days after enactment on the feasibility of VA establishing smoking areas, the cost and timetable for creating such areas, the adequacy of VA's ventilating systems to support such areas without causing health problems for other patients, and the impact of this policy on VA hospitals' JCAHO accreditation scores; and (f) make the provisions relating to the establishment of smoking areas effective 60 days after the Committees on Veterans' Affairs receive the GAO report.

The Committees note that, although VA's current policy is for all VA health-care facilities to be smoke-free by December 31, 1993, some long-term care programs allow some psychiatric and long-term nursing home patients to smoke inside VA medical facilities. In determining the standard to be applied in subsection (a)(1)(A) of this section, the Committees anticipate that the Secretary will be guided by the standard now being applied in facilities that allow indoor smoking and will place maximum emphasis on avoiding exposing non-smokers to secondhand smoke.

Recovery of care furnished to CHAMPVA beneficiaries

Current law: Section 1729 authorizes the Secretary to recover from a third party payor the reasonable cost of care or services furnished under section 1710 or 1712 (a) to a veteran who does not have a service-connected disability for any disability, or (b) through September 30, 1992, to a veteran who has a service-connected disability for a nonservice-connected disability, to the extent that the veteran (or provider of such care or services) would be eligible to receive payment for the care or services from such third party if they had not been furnished by a department or agency of the United States.

House bill: section 4(a) of H.R. 5192 would extend VA's authority to collect reimbursement from third-party payors to beneficiaries of the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).

Senate amendment: Section 906(a) of S. 2575 is substantively identical.

Compromise agreement: No provision.

Explicit inclusion of Medicare supplemental insurance policy as a health-plan contract

Current law: Section 1729(i)(1)(A) defines a "health-plan contract" to mean an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar arrangement under which health services for individuals are provided or the expenses of such services are paid.

House bill: Section 4(b) of H.R. 5192 would (a) specify that the definition of a "health-plan contract" under section 1729(i)(1)(A) includes a Medicare supplemental insurance policy; (b) provide that the modified definition would apply as if included in the enactment of that provision on April 7, 1986, in Public Law 99-272; (c) require the Secretary to (1) compile a list of all insurers that issue Medicare supplemental insurance policies and from which VA recovered reimbursement before June 1, 1992, and (2) submit that list to the Congressional Committees on Veterans' Affairs as soon as possible after the date of enactment; and (d) prohibit, after September 30, 1993, the collection of reimbursement for care or services furnished to a veteran covered by a Medicare supplemental insurance policy issued by an insurer not named on the list compiled by the Secretary.

Senate amendment: Section 906(b) of S. 2575 would (a) specify that the definition of a "health-plan contract" under section 1729(i)(1)(A) includes a Medicare supplemental insurance policy; and (b) provides that definition would take effect on the date of enactment.

Compromise agreement: No provision.

Liability determination of issuers of Medicare supplemental insurance

Current law: Section 1729(c)(2) requires the Secretary, after consultation with the Comptroller General of the United States, to prescribe regulations for the purpose of determining the reasonable cost of care or services furnished to a veteran, which must provide that the amount the Secretary recovers or collects from the issuer of a health-plan contract not exceed the amount that the third party demonstrates to the satisfaction of the Secretary it would pay for the care or services if provided by a non-VA health-care facility in the same geographic area.

House bill: No provision.

Senate amendment: Section 906(c) of S. 2575, effective on the date of enactment, would (a) require the Secretary, in consultation with the Secretary of Health and Human Services, to establish procedures for the treatment of claims for the recovery of the cost of care or services furnished to a veteran covered by a Medicare supplemental insurance policy for treatment of a nonservice-connected disability or condition; (b) require the Secretary, in establishing those procedures, to provide for (1) the review of the claims by entities jointly designated by the Secretary of VA and the Secretary of HHS for the purpose of determining which services would be covered under the Medicare program if provided by a Medicare-participating provider, and (2) the transmittal to third party issuers of the results of such reviews and any additional information necessary to determine the liability of the issuer of a Medicare supplemental insurance policy; (c) require that such results and information be transmitted to issuers of Medicare supplemental insurance policies not later than (1) the expiration of the period provided for under title XVII of the Social Security Act for the timely filing of claims, or (2) the expiration of the period provided for in the Medicare supplemental insurance policy for filing; and (d) require the Secretary of HHS to establish fees for the review of claims, with the fees to be based on the estimated costs of processing claims and deducted from the amount recovered by the Secretary.

Compromise agreement: No provision.

Use of funds recovered from third parties

Current law: Section 1729(g) of title 38 establishes in the U.S. Treasury the Department of Veterans Affairs Medical-Care Cost Recovery Fund (MCCR Fund) and requires that amounts recovered or collected under section 1729 be deposited in the MCCR Fund. Sums in the MCCR Fund are available to the Secretary for payment of (a) necessary expenses relating to administration of third-party recovery activities and collection of copayments for VA-furnished care, and (b) reasonable charges, as determined by the Secretary, imposed for (1) services and utilities furnished by the Secretary, (2) recovery and collection activities under section 1729, and (3) administration of the Fund. By January 1 of each year, an amount equal to the unobligated balance in the Fund at the close of business on the preceding September 30 minus the amount that the Secretary determines necessary to defray, during the year in which the deposit is made, the administrative costs of the MCCR program must be deposited into the Treasury as miscellaneous receipts.

House bill: Section 4(c) of H.R. 5192 would (a) provide that funds deposited in the MCCR Fund may be used (1) to purchase medical equipment, and (2) for other purposes as may be specifically authorized by law; (b) require the Secretary to promulgate regulations for the allocation of MCCR Fund monies to VA medical centers which would require that (1) 20 percent of the funds be made available directly to VA medical centers at which third-party collections have been at above-average levels, (2) the remaining 80 percent of such funds be allocated at the Secretary's discretion; (c) require that (1) the total amount expended for purposes described in (a), above, not exceed the amount by which the amount in the MCCR Fund attributable to collections during fiscal year 1993 (other than amounts recovered or collected under Medicare supplemental insurance policies issued by carriers other than those named on the list described in section 4(b)(2)) exceeds the Congressional Budget Office baseline for the MCCR fund in fiscal year 1993, and (2) any such amount expended during the first quarter of fiscal year 1994 be attributed to collections during fiscal year 1993; (d) prohibit the expenditure of MCCR Fund monies for purposes described in (a), above, during (1) the last three quarters of fiscal year 1994 and (2) fiscal year 1995.

Senate amendment: No provision.

Compromise agreement: No provision.

PROCUREMENT OF PHARMACEUTICALS

Section 601—Exclusion of prices from calculation of "best prices" for Medicaid rebate agreements

Current law: Section 1927(c)(1) of the Social Security Act (SSA) requires a manufacturer that enters into a Medicaid outpatient drug rebate agreement to provide a rebate for a covered single source or innovator multiple source drug in an amount equal to the lower of (a) through December 31, 1992, 12.5 percent of the average manufacturer price (AMP), as defined in section 1927(k)(1) of the SSA, and 15 percent of the AMP thereafter; or (b) the difference between the AMP and the "best price" for the drug—defined as the lowest price charged to any wholesaler, retailer, nonprofit entity, or governmental entity in the United States excluding depot prices and single award contract prices of any agency of the Federal Government; subject through December 31, 1992, to a maximum discount of 50 percent of AMP.

House bill. Section 2(a) of H.R. 2890 would exclude from "best-price" rebate calculations, in addition to depot prices and single award contract prices, any prices (a) charged to (1) the Indian Health Service; (2) the Department of Veterans Affairs; (3) a Federally-qualified health center as defined in section 1905(1)(2)(B) of the SSA; (4) an entity receiving Public Health Service (PHS) funds to provide primary health services to residents of public housing; (5) a family planning project receiving PHS funds; (6) an entity receiving PHS funds for outpatient early intervention services for HIV; (7) a State-operated AIDS drug purchasing assistance program receiving PHS funds; (8) a comprehensive hemophilia diagnostic treatment center; (9) certain disproportionate share hospitals (as defined in section 1886(d)(1)(B) of the SSA); (10) listed on the Federal Supply Schedule (FSS); or (b) used under a State pharmaceutical assistance program by reference to prices charged to the Department of Veterans Affairs.

Senate provision: Section 15281 of H.R. 11 as passed by the Senate on September 29, 1992, would exclude from "best-price" rebate calculations, in addition to depot prices and single award contract prices, prices charged to the same entities described in (a)(3)–(5) in the description of the House bill and any prices charged under the FSS and prices charged to (a) an alcohol or drug treatment entity or mental health entity receiving PHS funds; (b) an entity receiving funds under title XXVI of the Public Health Service Act; (c) a sexually-transmitted disease clinic authorized under section 318 of the Public Health Service Act; (d) a black lung clinic authorized under the Public Health Service Act; (e) a non-Federal entity authorized under the Indian Self-Determination Act; (f) a tuberculosis clinic receiving PHS funds.

Compromise agreement: Section 601(a) would, effective October 1, 1992, exclude from "best-price" rebate calculations prices charged to (a) the same entities described in (a)(3)–(8) in the description of the House bill; (b) the Indian Health Service; (c) VA; (d) a State Veterans Home receiving funds under section 1741 of title 38; (e) the Department of Defense; (f) the Public Health Service; (g) a black lung clinic authorized under the PHSA; (h) a Native Hawaiian Health Center receiving funds under the Native Hawaiian Health Care Act of 1988; (i) an urban Indian organization receiving funds under title V of the Indian Health Care Improvement act; (j) any entity receiving funds under title XXVI of the Public Health Service Act (other than a State or unit of local government or an entity described under (a)(6) in the description of the House bill); (k) a sexually transmitted disease clinic receiving PHS funds; (l) a tuberculosis clinic receiving PHS funds; (m) any prices charged under the Federal Supply Schedule; and (n) any prices used under a State pharmaceutical assistance program.

Agreements required to receive payment

Current law: Section 1927(a)(1) of the SSA prohibits a State Medicaid Program from using federal matching funds for payment for any covered outpatient drug sold by a manufacturer unless the manufacturer has entered into a Medicaid outpatient drug rebate agreement.

House bill: Section 2(b)(1) of H.R. 2890 would provide that, after October 1, 1992, use of federal matching funds for payment for a covered outpatient drug would be contingent on (in addition to a Medicaid rebate agreement) a manufacturer's entering into (a) an agreement with the Secretary of Health and Human Services (HHS) under which the manufacturer agrees to provide rebates or discounts to the entities described below under "Covered Entities"; and (b) FSS and depot price agreements with the Secretary of Veterans Affairs (VA).

Senate amendment: Section 602 would add to the Federal Property and Administrative Services Act of 1949 (FPASA) a new section 1001 that would (a) require a manufacturer of a drug or biological—as a condition of (1) selling the drug or biological to a Federal agency, (2) receiving payment for the drug or biological under the Medicaid program, and (3) receiving payment for the drug or biological directly or indirectly from any entity that receives funds under the Public Health Service Act—not later than five months after the date of enactment, to enter into a master agreement with the Administrator of the General Services Administration (GSA) under which the manufacturer must agree to enter into FSS, VA depot, DOD depot, and PHS depot pharmaceutical pricing agreements; (b) require the manufacturer to enter into FSS, FA depot, DoD depot, and PHS depot pricing agreements for a drug or biological within six months after the date of enactment, or, if the Secretary of VA or Defense does not desire to enter into such an agreement during that time period, within 30 days after the Secretary makes a request to enter into a pricing agreement; (c) require that prices charged to a Federal agency under FSS, VA depot, DoD depot, or PHS depot pharmaceutical pricing agreements be established in accordance with the provisions of proposed sections 8172 and 8174 of title 38, proposed section 1107 of title 10, and proposed section 2142 of the Public Health Service Act (PHSA); (d) require that the Administrator of GSA prescribe procedures under which the Secretary of VA, Defense, or HHS must notify a manufacturer of the Secretary's desire to enter into an FSS, VA depot, DoD depot, or PHS depot pharmaceutical pricing agreement; and (e) with respect to a drug or biological first marketed after the date of enactment, require the manufacturer (1) within two months after the date on which such marketing begins (A) if the manufacturer has previously entered into a master agreement with the Administrator of GSA, to amend that agreement to cover the new drug or biological, or (B) if the manufacturer has not previously entered into a master agreement, to enter into one, and (2) to enter into FSS, VA depot, DoD depot, and PHS depot pharmaceutical pricing agreements within three months after the drug or biological is first marketed or, if the Secretary of VA, Defense, or HHS does not desire to enter into such an agreement during that time period, within 30 days after the Secretary makes a request to enter into such a pricing agreement.

Compromise agreement: Section 601(b) would provide that, after January 1, 1993, use of federal matching funds under Medicaid for payment for a covered outpatient drug would be contingent on (in addition to a Medicaid rebate agreement) a manufacturer's (a) entering into an agreement with the Secretary of HHS under which the manufacturer agrees to provide rebates or discounts to certain PHS-funded entities and public disproportionate-share hospitals; and (b) complying with the requirements of proposed new section 8126 of title 38, including the requirement to enter into a master agreement with the Secretary of VA. Section 603(a)(1), in proposed new section 8126(a) of title 38, would specify that a manufacturer (1) entering into a master agreement with the Secretary of VA must (A) beginning on January 1, 1993, make available for procurement through the FSS each covered drug of the manufacturer, (B) with respect to each covered drug of the manufacturer procured by VA, the Department of Defense, or the PHS (including the Indian Health Service) through the FSS or a depot contracting system, enter into a pharmaceutical pricing agreement with the Secretary of VA (or the Federal agency involved, if the Secretary delegates the authority to enter into such an agreement) under which the price charged during the one-year period beginning on the effective date of the agreement may not exceed 76 percent of the non-Federal average manufacturer price less the amount of any additional discount required under proposed new section 8126(c) of title 38; and (C) with respect to each covered drug of the manufacturer procured by a State Veterans Home, not charge a price in excess the price charged under the FSS at the time the drug is procured; and (2) prohibit a manufacturer, unless the manufacturer meets the requirements of the master agreement, receive payment for drugs and biologicals from (i) a State Medicaid program, except as authorized in section 1927(a)(3) of the SSA; (ii) VA, DoD, a PHS (including IHS) facility; or (iii) any entity that receives funds under the PHSA Act.

Effect of subsequent amendments

House bill: No provision.

Senate amendment: No provision.

Compromise agreement: Section 601(b)(2) would, in proposed new section 1927(a)(6)(B) of the SSA, require that the Secretary of HHS, in determining whether a master agreement entered into between the Secretary of VA and a manufacturer meets the requirements of section 8126 of title 38, not take into account any amendments to such section that are enacted after the enactment of the Veterans Health Care Act of 1992. Section 601(b)(2) also would contain, in proposed new section 1927(a)(5)(D), a parallel provision regarding the effect of subsequent amendments to provisions of this Act that apply to PHS-funded entities.

Determination of compliance

House bill: No provision.

Senate amendment: No provision.

Compromise agreement: Section 601(b)(2) and section 603(a) would, in proposed new section 1927(a)(6)(C) of the SSA and proposed new section 8126(g) of title 38, respectively, authorize the Secretary of HHS to deem a manufacturer to meet the requirement that a manufacturer, as a condition of participation in the Medicaid program, enter into a master agreement with the Secretary of VA, if the manufacturer establishes to the satisfaction of the Secretary of HHS that the manufacturer would comply and has offered to comply with the provisions of new section 8126 of title 38 as originally enacted and would have entered into a master agreement with the Secretary of VA, but for a legislative change in that section after the date of its original enactment. Section 601(b)(2) also would contain, in proposed new section 1927(a)(5)(E) of the SSA, a parallel provision regarding the effect of subsequent amendments to provisions of this measure that apply to PHS-funded entities.

Confidentiality of information

Current law: Section 1927(b)(3)(D) of the SSA requires that information provided by a manufacturer or a wholesaler to the Secretary of HHS under the reporting requirements of section 1927(b)(3) remain confidential and not be disclosed by the Secretary, State agency, or contractor therewith in a form which discloses the identify of the manufacturer or wholesaler, except as the Secretary determines necessary to carry out this section and to permit the Comptroller General to review the information provided.

House bill: Section 2(b)(3) of H.R. 2890 would require that the data regarding non-FAMPs of covered drugs provided to the Secretary of VA under proposed new section 1927(a)(6)(A)(ii) of the SSA remain confidential. Proposed new section 8126(b)(4) of title 38, as would be added by section 3(a), would contain a substantively identical provision.

Senate amendment: Proposed new section 8173(d) of title 38, as would be added by section 603, is substantively identical.

Compromise agreement: Section 601(b)(3) follows the House bill, except that the Comptroller General and the Director of the Congressional Budget Office would be permitted to review the data provided to the Secretary of VA. Section 603(a) would add to title 38 a parallel provision in proposed new section 8126(e)(4).

Termination of rebate agreements

Current law: Section 1927(b)(4)(B)(ii) of the SSA (a) allows a manufacturer to terminate a Medicaid rebate agreement for any reason; and (b) requires that the termination not be effective until such period after the date on which the manufacturer notifies the Secretary of HHS as the Secretary may provide.

House bill: No provision.

Senate amendment: No provision.

Compromise agreement: Section 601(b)(4) would amend section 1927(b)(4)(B) of the SSA to (a) require that the termination of the rebate agreement not be effective until 60 days after the manufacturer notifies the Secretary of HHS; and (b) add a new clause (iv) that would require the Secretary of HHS to notify State Medicaid programs of the termination not less than 30 days before the effective date of the termination.

Budget neutrality adjustment

Current law: Section 1927(c)(1) of the SSA requires a manufacturer that enters into a Medicaid outpatient drug rebate agreement to provide a rebate for a covered single source or innovator multiple source drug in an amount equal to the lower of (a) through December 31, 1992, 12.5 percent of the average manufacturer price (AMP), as defined in section 1927(k)(1), and 15 percent of the AMP thereafter; or (b) the difference between the AMP and the "best price" for that drug (as defined in section 1927(c)(1)(C)), subject, through December 31, 1992, to a maximum discount of 50 percent of the AMP.

House bill: Section 2(c) of H.R. 2890 would increase the Medicaid minimum rebate percentage for a single source or innovator multiple drug to (a) 15.7 percent, from October 1, 1992, through December 31, 1993; (b) 15.4 percent, from January 1, 1994, through December 31, 1994; (c) 15.2 percent, from January 1, 1995, through December 31, 1995; and (d) 15.1 percent thereafter.

Senate amendment: Section 15281 of H.R. 11 as passed by the Senate is identical to the House provision except that the increase in the minimum rebate percentage to 15.7 percent would not take effect until January 1, 1993.

Compromise agreement: Section 601(c) follows the House bill.

Report on best price changes and payment of rebates

Current law: Section 1927(i) of the SSA requires the Secretary of HHS, not later than May 1 of each year, to transmit to the Committee on Finance of the Senate, the Committee on Energy and Commerce in the House of Representatives, and the Special Committees on Aging of the Senate and the House of Representatives a report on the operation of the Medicaid outpatient drug rebate program during the preceding fiscal year, which must include information on (a) ingredient costs paid under title XIX of the SSA for single source drugs, multiple source drugs, and nonprescription covered outpatient drugs; (b) the total value of rebates received and number of manufacturers providing the rebates; (c) how the size of the rebates compares with the size of rebates offered to other purchasers of covered outpatient drugs; (d) the effect of inflation on the value of rebates required under the Medicaid rebate program; (e) trends in prices paid under title XIX of the SSA for covered outpatient drugs; and (f) federal and State administrative costs associated with compliance with the provisions of title XIX of the SSA.

House bill: Section 2(d) of H.R. 2890 would (a) require the Secretary of Health and Human Services, not later than 180 days after the expiration of each calendar quarter beginning on or after October 1, 1992, and ending on or before December 31, 1995, to submit to Congress a report containing information on (1) changes in best prices for single source and innovator multiple source drugs during the previous calendar quarter, (2) the total amount of all rebates paid under the Medicaid rebate program, broken down by the portions and percentages of the total amount attributable to the various rebate mechanisms established in section 1927(c) of the SSA, (3) the amount of the portion of the total amount attributable to the best-price rebate mechanism; (b) require that information relating to a covered drug not be contained in the report unless the Secretary determines that the drug was one of the 1,000 drugs for which the greatest amount of Federal financial assistance attributable to prescription drugs was provided during calendar year 1991; and (c) require that the Secretary submit the first report not later than July 1, 1993, and that the report include information on prescription drugs dispensed during each calendar quarter that began on or after January 1, 1991, and ended on or before December 31, 1992.

Senate amendment: No provision.

Compromise agreement: Section 601(d) follows the House bill, with a modification that the first report would be due on May 1, 1993.

Section 602—Limitations on prices of drugs procured by covered entities discount or rebate percentage defined

House bill: Section 2(b)(2) of H.R. 2890 would, in proposed new section 1927(a)(5) of the SSA, require a manufacturer to extend the same price reduction to a covered entity for a drug or biological as is provided under the Medicaid outpatient drug rebate program.

Senate amendment: Proposed new section 2145(b) of the Public Health Service Act (PHSA) would contain substantively identical provisions.

Compromise agreement: Section 601(b)(2) would add substantively identical provisions to proposed new section 340B(a)(2) of the PHSA.

Covered entity defined

House bill: Section 2(b)(2) would amend section 1927(a) of the SSA to add a new subsection (5)(D) defining the term "covered entity" to include any of the following: (a) a Federally-qualified health center; (b) an entity receiving PHS funds to provide primary health services to residents of public housing; (c) a family planning project receiving PHS funds; (d) an entity receiving PHS funds for outpatient early intervention services for HIV; (e) a State-operated AIDS drug purchasing assistance program receiving PHS funds; (f) a comprehensive hemophilia diagnostic treatment center; (g) an acute care a disproportionate share hospital that (1) is owned or operated by (A) a unit of a State or local government, (B) a non-profit corporation formally granted governmental powers by a unit of State or local government, or (C) has a contract with a State or local government to provide health-care services to low income individuals not entitled to Medicaid benefits, (2) for the most recent cost reporting period before the calendar quarter involved, had a Medicare disproportionate share adjustment percentage greater than 12.5 percent, or is described in section 1886(d)(5)(F)(i)(II) of the Social Security Act, and (3) does not obtain covered drugs through a group purchasing organization or other group purchasing arrangement.

The House bill also would direct the Secretary of HHS to report to Congress within 1 year after enactment on the feasibility and desirability of including the following as "covered entities": (a) mental health or alcohol and drug abuse treatment providers receiving Federal Block Grant funds; (b) sexually transmitted disease and tuberculosis treatment providers receiving PHS funds through State or local government; and (3) outpatient maternal and child health providers receiving Federal Block Grant funds.

Senate amendment: Section 609 would, in proposed new section 2145(a) of the Public Health Service Act, define the term "covered entity" to include the following entities: (a) a migrant health center receiving PHS funds; (b) a community health center receiving PHS funds; (c) an entity receiving assistance under section 340 of the PHSA; (d) an alcohol or drug abuse treatment entity or mental health entity receiving PHS funds; (e) a family planning project described in section 1001 of the PHSA; (f) an entity receiving assistance under title XXVI of the PHSA; (g) a black lung clinic authorized under the PHSA; (h) an entity receiving PHS funds for the treatment of sexually transmitted diseases; (i) an entity receiving PHS funds to provide primary health services to residents of public housing; (j) non-Federal entities authorized under the Indian Self-Determination Act and receiving PHS funds; (k) a tuberculosis clinic receiving PHS funds; and (l) a disproportionate share hospital meeting the criteria specified in the House bill, except that the hospital must receive a disproportionate share adjustment percentage greater than 11.75 percent.

Compromise agreement: Section 602(a) would, in proposed new section 340B(a)(4) of the PHSA, define the term "covered entity" to include all of the entities listed in the description of the Senate bill, except an alcohol or drug treatment entity or mental health entity receiving PHS funds, and would also include (a) a comprehensive hemophilia diagnostic treatment center; (b) a Native Hawaiian Health Center; and (c) an urban Indian organization receiving funds under title V of the SSA. As in the House bill, the Secretary of HHS would be directed to report on the feasibility and desirability of including certain additional entities, described under the description of the House bill, as "covered entities."

Certification of eligible entities

House bill: No provision.

Senate amendment: Proposed new section 2145(c) of the PHSA would require the Secretary of HHS to certify all covered entities for participation in the discount program.

Compromise agreement: Section 601(b)(2) would, in proposed new section 340B(a)(7) of the PHSA, require the Secretary of HHS to certify only for non-categorical programs receiving Federal funds through Block Grants to States or localities.

Prohibition against duplicative rebates/discounts

House bill: Section 2(b)(2) would, in proposed new section 1972(a)(5) of the SSA, prohibit a covered entity from submitting a claim to the State Medicaid Agency for a drug prescribed to a Medicaid beneficiary.

Senate amendment: Proposed new section 2145(g) of the PHSA would require the Secretary of HHS to develop a mechanism to implement the prohibition on duplicate rebates and discounts.

Compromise agreement: Section 602 would, in proposed new section 340B(a)(5)(A) of the PHSA, follow the Senate amendment but also provide that, if the Secretary has not acted in 12 months to develop such a mechanism, a covered entity would follow a procedure specified in proposed section 1927(a)(5)(C) of the SSA under which the entity would notify the State Medicaid program whether a drug for which payment is sought has been subject to a discount under the agreement with the Secretary of HHS.

Drugs subject to discounts and rebates

House bill: Section 2(b)(2) would, in proposed section 1927(a)(5), require manufacturers to provide covered entities with the same net prices for single source, innovator multiple source, generic, and over-the-counter drugs as received by Medicaid under the Medicaid outpatient drug rebate program.

Senate amendment: Proposed section 2145(b)(2) of the PHSA follows the House bill except that prices for over-the-counter drugs not covered under a State's Medicaid Program, vaccines and birth control devices also would be subject to the minimum discount percentages as applied under the Medicaid rebate program.

Compromise agreements: Section 602(a) would, in new proposed section 340B(a)(2)(B) of the PHSA, include a provision substantively identical to the provision in the House bill.

Treatment of distinct units of hospitals

House bill: Section 2(b)(2) would, in proposed new section 1927(a)(5) of the SSA, provide that a hospital which operates a covered entity as a distinct part of the hospital would not be eligible for rebates or discounts unless the hospital is otherwise eligible as a covered entity.

Senate amendment: No provision.

Compromise agreement: Section 602(a) would contain, in proposed new section 340B(a)(6) of the PHSA, a provision substantively identical to the provision in the House bill.

Definition of over-the-counter drug

House bill: Section 2(b)(2) would provide, in proposed new section 1927(a)(5), that the definition of over-the-counter drug in section 1927 of the SSA would apply to covered entities.

Senate amendment: Proposed new section 2141 of the PHSA would provide that all over-the-counter drugs are subject to the generic drug rebate and discount percentage applicable to over-the-counter drugs under the Medicaid outpatient drug rebate program.

Compromise agreement: Section 601 would include, in proposed new section 340B(a)(2)(B), a provision substantively identical to the Senate provision.

Section 603—Requirements relating to drugs procured by the Department of Veterans Affairs

Minimum discount

Current law: Current law contains no requirement that manufacturers sell drugs and biologicals through the FSS or VA depots at discounted prices.

House bill: Section 2(b)(2) of H.R. 2890 would, in proposed new section 1927(A)(6)(ii) of the SSA, require that the price of a covered drug procured through the FSS or the VA depot contracting system not exceed 76 percent of the non-Federal average manufacturer price (non-FAMP) for the drug or biological (less the amount of any additional discount). The additional discount would be defined as an amount equal to the amount by which (a) the change in the non-FAMP during the 12-month period ending with the month preceding the month during which the FSS or VA depot agreement goes into effect exceeds (b) the non-FAMP for the 3-month period ending one year before the last day of the month prior to the month in which the contract goes into effect multiplied by the percentage increase in the Consumer Price Index for all urban consumers (U.S. city average) (CPI–U) during that period. In the case of a covered drug for which sufficient data is not available to calculate the change in the non-FAMP during that 12-month period, the non-FAMP would be calculated during a period preceding the effective date which the Secretary considers to be appropriate. Section 3 would add to title 38 a new section 8126(a)(2) that would contain parallel provisions.

Senate amendment: Section 603 would, in proposed new section 8172(b)-(f) of title 38, require that the price for a covered drug or biological procured through the FSS or the VA depot contracting system not exceed 76 percent multiplied by (a) an amount equal to the non-Federal average manufacturer price (non-FAMP) for the drug or biological during the most recent 12-month period prior to the effective date of a new FSS or VA depot agreement, respectively, for which non-FAMP data are available (unless the non-FAMP cannot be calculated for 15 months prior to the effective date, in which case the non-FAMP would be calculated from the first day of the first month after the month in which marketing begins and ending on the last day of the last month before the effective date), minus (b) in the case of a drug or biological for which the non-FAMP has increased during the applicable period, the additional price discount amount. Section 604 would add new sections 8174(c)–(f) that would contain parallel provisions regarding VA depot prices.

The additional price discount amount would be defined as the amount of the difference, if any, between (a) the non-FAMP for the quarter ending on the last day of the last month before the effective date of the agreement minus the non-FAMP for the quarter ending one year prior to that day, and (b) the non-FAMP for the quarter ending on one year prior to that day multiplied by an amount equal to the increase in the CPI–U during that year. In the case of a drug or biological for which 15 months of non-FAMP data are not available, the additional price discount amount would be calculated on the basis of non-FAMP data for the period beginning on the first day of the month next following the month in which marketing of the drug or biological begins and ending on the last day of the last month before the effective date of the agreement for which CPI–U data are available.

Compromise agreement: Section 602 would, in proposed new section 8126(a)(2) of title 38, require that a manufacturer who enters into a master agreement with the Secretary of VA to enter into a pharmaceutical pricing agreement (PPA) with the Secretary of VA (or the Federal agency involved, if the Secretary delegates to the Federal agency the authority to enter into a PPA) with respect to each covered drug procured by a Federal agency through the FSS or a depot after January 1, 1993. Under the PPA, the price for the covered drug involved during the 1-year period beginning on the date the agreement takes effect would be established in accordance with a pricing mechanism substantively identical to the mechanism described in the description of the House bill.

Calculation of discounts under multi-year contracts

House bill: Section 2(b)(2) of H.R. 2890 would, in proposed new section 1927(a)(6)(C) of the SSA, require that, in the case of a covered drug produced by a manufacturer that has entered into a multi-year FSS or VA depot contract, the amount of the additional discount for the drug during a year following the first year in which the contract is in effect be determined on the basis of data on the change in the non-FAMP and the CPI-U during the preceding year. Section 3 would contain a new section 8126(c) of title 38 that would contain similar provisions.

Senate amendment: Section 603 would, in proposed new section 8172(b)-(f) of title 38, provide that, in the case of a multi-year FSS contract, the price of a covered drug or biological may be increased on an annual basis by a percentage no greater than the increase in the CPI-U during the preceding year. Section 604 would add to title 38 a new section 8174(c)-(f) containing parallel provisions regarding VA depot prices.

Compromise agreement: Section 603(a) would, in proposed new section 8126(d) of title 38, provide that, in the case of a multi-year FSS or federal depot contract, during any one-year period that follows the first year for which the contract is in effect, the price charged may not exceed the price charged during the preceding one-year period, increased by the percentage increase in the CPI-U between the last months of such one-year periods for which CPI-U data are available. The price during the first year for which the contract is in effect would be determined using the mechanisms in the compromise agreement described above under "Minimum Discount."

Prices nominally in excess

House bill: No provision.

Senate amendment: Section 603 would, in proposed new section 8172(g) of title 38, authorize the Secretary of VA to negotiate a price that is nominally higher, as determined by the Secretary, than the maximum FSS price that would be established for that covered drug or biological under the mechanisms established under proposed sections 8172 and 8174, if the Secretary determines that payment of the excess price is in the best interests of VA. Section 604 would add to title 38 a new section 8174(c)(2) containing a parallel provision regarding VA depot prices.

Compromise agreement: Section 603(a) would, in proposed new section 8126(a)(2) of title 38, follow the Senate bill.

Covered drugs

House bill: Sections 2(b)(2) and 3 of H.R. 2890 would, in proposed new sections 1927(a)(6)(A)(ii) of the SSA and proposed new section 8126(a)(2) of title 38, require a manufacturer to sell any "covered drug" through the FSS or the VA depot contracting system at a price determined in accordance with the minimum and additional discount mechanisms established in these proposed sections. Sections 2(b)(2) and (3) would, in proposed new sections 1927(a)(6)(E)(ii) of the SSA and 8126(d)(2) of title 38, respectively, define the term "covered drug" as (a) a single source drug as defined under section 1927(k)(7)(A)(iv) of the SSA; (b) a drug that would be a single source drug but for the application of section 1927(k)(3) of the SSA; (c) a biological product identified under section 600.3 of title 21, Code of Federal Regulations; and (d) insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act in accordance with the pricing provisions of these proposed sections.

Senate amendment: Sections 603 and 604 would, in proposed new sections 8172(b)-(f) and 8174(c)-(f) of title 38, respectively, require a manufacturer to sell any "covered drug or biological" through the FSS or the VA depots at a price determined in accordance with the minimum and additional discount mechanisms established in these proposed sections. Section 603 would add to title 38 a new section 8171 defining the term "covered drug or biological" as (a) any biological marketed under a product licensing application approved by the Administrator of FDA; or (b) any drug marketed under a new drug application approved by FDA.

Compromise agreement: Section 603(a), in proposed new section 8126(h)(2) of title 38, follows the House bill and also would include (a) an innovator multiple source drug as defined under section 1927(k)(7)(A)(ii) of the SSA; and (b) a drug that would be a single source drug but for the application of section 1927(k)(3) of the SSA.

Reporting and Auditing of Prices Reported to the Secretary of Veterans Affairs

Current Law: Section 1927(b)(3) of the SSA requires a manufacturer of a covered outpatient drug (as defined in section 1927 of the SSA) to report to the Secretary of HHS, in a manner specified in that section, information regarding the average manufacturer price and the best price for the drug (as defined in section 1927 of the SSA).

House bill: Section 2(b)(2) of H.R. 2890 would, in proposed new section 1927(a)(6)(D) of the SSA, provide that the provisions of section 1927(b)(3) of the SSA would apply to covered drugs (as defined in proposed section 1927(a)(6)(E)(ii)), and the Secretary of VA in the same manner as those provisions apply to covered outpatient drugs under the Medicaid rebate program and the Secretary of HHS. Section 3(b) of H.R. 2890 would add to title 38 a proposed new section 8126(b) that would contain a substantively identical provision and also would (a) require a manufacturer of any covered drug for which the manufacturer has entered into an FSS or VA depot price agreement (1) not later than 30 days after the first day of the last quarter that begins before the agreement takes effect (or, in the case of the first agreement that takes effect after the date of enactment, not later than 30 days after enactment) report to the Secretary of VA the non-FAMP for the drug during the one-year period that ends on the last day of the previous quarter, and (2) not later than 30 days after the last day of each quarter for which the agreement is in effect, report to the Secretary the non-FAMP for the drug during that quarter; and (b) authorize the Secretary of VA, in order to determine the accuracy of a price reported to the Secretary under proposed section 8126(b), to audit the relevant records of the manufacturer or of any wholesaler that distributes the covered drug.

Senate amendment: Section 603, in proposed new section 8173 of title 38, would (a) require a manufacturer of a covered drug or biological to report, in a manner determined by the Secretary of VA, non-FAMP data to the Secretary, (1) before entering into an FSS (or VA depot) pricing agreement, for the 12-month period prior to the effective date of such an agreement, and (2) not more than 30 days after the end of the previous calendar quarter for each calendar quarter in which the FSS (or VA depot) agreement is in force; (b) authorize the Secretary to impose civil monetary penalties on manufacturers that fail to report data on their non-FAMPs in a timely fashion or that report false information; and (c) authorize the Secretary to audit the relevant records of (1) the manufacturer of a covered drug or biological for which the manufacturer has entered into an FSS (or VA depot) pricing agreement to determine the accuracy of non-FAMP data reported to the Secretary by the manufacturer, and (2) any wholesaler that distributes that drug or biological.

Compromise agreement: Section 603(a), in proposed new section 8126(e) of title 38, follows the House bill, except that, in the case of a covered drug subject to pharmaceutical pricing agreement that takes effect on January 1, 1993, the manufacturer would be required to report the non-FAMP for the covered drug during the 1-year period that ends on the last day of the previous quarter not later than 30 days after the date of the enactment of this section.

Reports to the Secretary of Health and Human Services regarding master agreements

House bill: No provision.

Senate bill: No provision.

Compromise agreement: Section 603(a) would, in proposed new section 8126(f) require the Secretary of VA to supply the following information to the Secretary of HHS: (a) upon the execution or termination of any master agreement, the name of the manufacturer; and (b) on a quarterly basis, a list of manufacturers who have entered into master agreements with the Secretary of VA.

Deadline for entering into agreements

House bill: Section 2(b)(2) of H.R. 2890, in proposed new section 1927(a)(6)(A) of the SSA, would (a) beginning on January 1, 1993, require a manufacturer to make available for procurement through the FSS each drug or biological it manufactures that is (1) an innovator multiple source drug, or (2) a covered drug as described above under "Covered Drugs"; and (b) beginning on October 1, 1992, require that the price charged for a covered drug procured through the FSS or a VA depot be determined in accordance with the minimum and additional discount mechanisms that would be established in these proposed sections. Section 3 would add to title 38 proposed new section 8126(a)(1) containing parallel provisions.

Senate amendment: Section 603 would, in proposed new section 8172(i) of title 38, require a manufacturer to enter into FSS pricing agreements (a) for a drug or biological on the market as of the date of enactment, within six months after the date of enactment, or, if the Secretary of VA or Defense does not desire to enter into such an agreement during that time period, within 30 days after the Secretary makes a request to enter into a pricing agreement; and (b) for a drug or biological first marketed after the date of enactment, within three months after the date of enactment, or, if the Secretary of VA or Defense does not desire to enter into such an agreement during that time period, within 30 days after the Secretary makes a request to enter into a pricing agreement. In the case of a "covered drug or biological," as described above under "Covered Drugs," the price under an FSS pricing agreement would be determined in accordance with the minimum and additional price discount mechanisms that would be established in these proposed sections. Section 604 contains, in proposed new section 8174(h), a parallel provision regarding VA depot prices.

Compromise agreement: Section 603(a) would, in proposed new section 8126(a) of title 38, require a manufacturer to (a) not later than January 1, 1993, make available through the FSS each covered drug it manufactures; and (b) with respect to each covered drug it manufactures that is procured by VA, DoD, or PHS through the FSS or a federal depot, enter into a pharmaceutical pricing agreement under which the manufacturer agrees to sell the covered drug through the FSS and depot at a price not to exceed .76 of the non-FAMP minus the additional price discount amount, if any.

Non-Federal average manufacturer price

House bill: Section 2(b)(2) of H.R. 2890 would, in proposed new section 1927(a)(6)(E)(iv) of the SSA, define the term "non-Federal average manufacturer price," with respect to a covered drug and a period of time (as determined by the Secretary of VA), as the weighted average price of a single form and dosage unit of the drug that is paid by wholesalers to the manufacturer, taking into account any cash discounts or similar price reductions during that period, but not taking into account any prices paid by the Federal Government. Section 3 would, in proposed new section 8126(d)(6) of title 38, provide an identical definition.

Senate amendment: Section 603 would, in proposed new section 8171 of title 38, define the term "non-Federal average manufacturer price," with respect to a covered drug or biological and a specified period of time, as (a) in the case of a covered drug or biological for which the majority of units were distributed to the retail class of trade during that period, the weighted average price of a single form and dose unit of the drug or biological that is paid during that period in the United States to the manufacturer by wholesalers for distribution to the retail class of trade, taking into account any prompt payment discounts, cash discounts, rebates, or similar price reductions, or (b) in the case of a covered drug or biological for which the majority of units were not distributed to the retail class of trade during that period, the weighted average price of a single form and dose unit of the drug or biological that is paid during that period in the United States to the manufacturer, taking into account any prompt payment discounts, cash discounts, rebates, or similar price reductions by wholesalers. Prices paid by the federal government would not be taken into account in the calculations under either (a) or (b).

Compromise agreement: Section 603(a), in proposed new section 8126(h)(5) of title 38, follows the House bill, except that (a) only prices paid by wholesalers in the United States would be used to calculate the non-FAMP; and (b) prices determined by the Secretary to be merely nominal in amount would be excluded from non-FAMP calculations.

The Committees note that the exclusion of nominal prices from non-FAMP calculations is consistent with section 1927(c)(1)(C) of the SSA, which excludes prices that are nominal in amount from Medicaid best-price rebate calculations. Health Care Financing Administration regulations define a "nominal price" as a price that is 10 percent or less of the average manufacturer price (AMP) for a drug or biological. However, the compromise agreement leaves such determination to the Secretary. The exclusion of nominal prices from calculation of the non-FAMP of a covered drug is intended to preclude a negative effect on industry pricing policies toward non-federal entities that rely on nominally-priced products.

Prices of drugs and biologicals procured by State homes

Current law: No provision in current law addresses the issue of the prices charged to State Veterans Homes for drugs and biologicals.

House bill: No provision.

Senate amendment: Section 605 would, in proposed new section 8175 of title 38, provide that, when a State Veterans Home purchases drugs and biologicals that are listed on the FSS, the prices paid by the Home shall be no greater than FSS prices.

Compromise agreement: Section 602 would, in proposed new section 8126(a)(3), require that a manufacturer, as a condition of compliance with a master agreement entered into with the Secretary of VA, charge a State Veterans Home receiving funds under section 1741, prices no higher than the FSS prices for covered drugs.

Unified pharmaceutical award contracts

Current law: Section 1535 of title 31, United States Code, authorizes the Secretary of VA to purchase goods and services on behalf of other federal agencies. The Secretary has no express statutory authority to enter into contracts on behalf of State Veterans Homes and entities receiving Public Health Service funds.

House bill: No provision.

Senate amendment: Section 606, in proposed new section 8176 of title 38, would establish a five-year demonstration project under which the Secretary of VA, to evaluate the cost and effectiveness of a unified contracting process for procuring pharmaceuticals, would be authorized to negotiate and enter into pharmaceutical contracts, to be known as Unified Pharmaceutical Award Contracts (UPACs), on behalf of (1) VA, (2) other federal agencies that directly furnish patient care, (3) State Veterans Homes, and (4) certain PHS-funded entities that directly furnish patient care. An entity that desires to participate in a UPAC would be required to (a) enter into an agreement with VA to participate in a UPAC, (b) make a commitment to purchase a certain quantity of the drug or biological during the UPAC contract period, (c) provide adequate proof of fiscal capability to meet the purchase volume commitment, (d) provide reasonable evidence that the drug will not be diverted to for-profit sales, and (e) pay to VA's revolving supply fund a contract user fee to offset VA's administrative costs relating to UPACs. The Secretary would determine which entities could participate in a UPAC and would be authorized to impose civil monetary penalties on any governmental entity that diverts to for-profit sales any drug or biological procured through a UPAC agreement. The Secretary would be required, not later than March 31, 1997, to submit a report to the Senate and House of Representatives Committees on Veterans' Affairs on the use of this authority.

Compromise agreement: No provision.

Procurement of drugs and biologicals under contracts relating to Department of Defense depots

House bill: No provision.

Senate amendment: Section 607 would, in proposed new section 1107 of title 10, require manufacturers to (a) provide minimum percentage and additional price discounts to the Department of Defense (DOD) for drugs and biologicals purchased through DOD depots, and (b) report non-FAMP data to the Secretary of Defense under provisions substantively identical to the provisions that would apply to the FSS and VA depots under proposed sections 8171, 8172, 8173, and 8174 of title 38.

Compromise agreement: Section 602(a) would, in proposed new section 8126(a) of title 38, require a manufacturer, as a condition of compliance with a master agreement, with respect to each covered drug procured by a Federal agency through the FSS or a federal depot on or after January 1, 1993, to have in effect a pharmaceutical pricing agreement with the Secretary of VA (or the Federal agency involved, if the Secretary delegates to the agency the authority to enter into such an agreement) under which the manufacturer agrees to sell covered through the FSS and federal depots at prices determined under the discount mechanisms described above under "Minimum Discounts."

TITLE VII—PERSIAN GULF WAR VETERANS HEALTH STATUS

Persian Gulf War Veterans Health Registry

(Section 702)

1. Require the Secretary of Veterans of Affairs to establish and maintain a Persian Gulf War Veterans Health Registry listing the name of each individual who served in the Persian Gulf War theater of operations during the war and who (a) applies for Department of Veterans Affairs (VA) care or services, (b) files a claim for VA compensation based on any disability that might be associated with this service, (c) dies and is survived by a spouse, child, or parent who files a claim for dependence and indemnity compensation (DIC) based on this service, (d) requests a health examination from VA, as authorized in section 3 of the bill, or (e) receives from the Department of Defense (DOD) a health examination similar to the health examination given by VA to veterans under section 3 of the bill and requests inclusion in the Registry.

2. Require that the Registry include relevant medical data relating to the health status of, and other information that the Secretary considers relevant and appropriate with respect to, each individual listed in the Registry who either grants permission to include this type of information in the Registry or is deceased at the time the individual is listed in the Registry.

3. Require the Secretary to include in the Registry, to the extent feasible, similar information about such individuals who served in the Persian Gulf that is developed in connection with similar actions occurring prior to enactment of this legislation.

4. Require the Secretary of Defense to provide to the Secretary of Veterans Affairs any information the Secretary of Veterans Affairs considers necessary to establish and maintain the Registry.

5. Require the Secretary of Veterans Affairs, in consultation with the Secretary of Defense, to ensure that information in the Registry is collected and maintained in a manner that permits effective and efficient cross-reference between the Registry and the Department of Defense (DOD) Persian Gulf Registry, established under section 734 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190), as modified by this measure.

6. Require VA, from time to time, to notify individuals listed in the Registry of significant research developments regarding the health consequences of military service in the Persian Gulf War.

Health examinations and counseling for veterans eligible for inclusion in certain health-related registries

(Section 703)

7. Require VA to provide, upon the request of a veteran, a health examination and consultation and counseling concerning the results of the examination to any veteran eligible for listing or inclusion in the VA Persian Gulf War Veterans Health Registry and authorize these services for any veteran eligible for listing or inclusion in any other health-related registry established by VA who requests the services.

8. Require VA to carry out appropriate outreach activities to inform veterans of the availability of the health examinations.

Expansion of coverage of Persian Gulf War Registry

(Section 704)

9. Expand the DOD registry—established under section 734 of Public Law 102-190 for listing members of the Armed Forces who were exposed to the fumes of burning oil in the Operation Desert Storm theater of operations during the Persian Gulf conflict—to include any other member of the Armed Forces who served in the Operation Desert Storm theater of operations during the Persian Gulf conflict.

10. Recodify the requirement in current law that the DOD registry include, with respect to the listed members exposed to the fumes of burning oil, a description of the circumstances of each exposure of each such member to the fumes, including the length of time of the exposure.

11. Expand the contents of the DOD registry to include, in addition to the names of listed members, other relevant identifying information and, to the extent that data are available and inclusion of the data is feasible, a description of the circumstances of the member's service during the war, including the locations in the theater of operations in which the member's service occurred and the atmospheric and other environmental circumstances in those locations at the time.

The Committees wish to caution veterans and servicemembers against unreasonable expectations about what changes the expanded coverage of the DOD registry authorized by the bill may produce in the contents of the registry. While the Committees are informed that DOD already is including in the DOD registry all members who served in the Operation Desert Storm theater of operations, and that DOD is capable of providing data described in proposed section 734(b)(1)(A)(ii) for some personnel, as agreed by both the Secretary of Defense and the Secretary of Veterans Affairs, from records DOD or other agencies have developed and which DOD plans to maintain permanently about atmospheric and environmental circumstances during the Persian Gulf War, this bill does not require such information to be inserted in individual-specific detail for all persons who served in the theater of operations. The Committees encourage DOD to complete its documentation of environmental circumstances to which servicemembers may have been exposed so that it can explore feasible means of making such information available in the future in the case of select servicemembers listed in the DOD registry.

12. Recodify the requirement in current law that the Secretary establish the DOD registry with the advice of an independent scientific organization.

Study by Office of Technology Assessment of Persian Gulf Registry and Persian Gulf War Veterans Health Registry

(Section 705)

13. Require the Director of the Office of Technology Assessment (OTA) to assess—

(a) the potential utility of each of the VA and DOD registries for scientific study of the health consequences of military service in the Persian Gulf theater of operations;

(b) the extent to which each of the registries meets the requirements of the respective laws establishing that registry;

(c) the extent to which data in each registry (i) are maintained in a manner that ensures permanent preservation and allows effective, efficient retrieval of information potentially relevant to scientific study of the health consequences of military service in the Persian Gulf and (ii) would be useful for scientific study regarding these health consequences;

(d) the adequacy of any plans to update each of the registries;

(e) the extent to which VA and DOD are assembling and maintaining information on the Persian Gulf threater of operations, including troop locations and environmental conditions, in a manner that facilitates the usefulness, maintenance, and retrieval of information from the respective registry; and

(f) the adequacy and compatibility of VA and DOD's protocols for health examination provided for the purpose of determining the health status of any member of the Armed Forces or any reserve component thereof who served in the Persian Gulf War.

14. Require VA and DOD to give OTA access to the records and information under each department's jurisdiction that OTA determines is necessary to permit OTA to carry out the assessments.

15. Require OTA to report to Congress on the assessments regarding the DOD registry and the compatibility of health-examination protocols within 270 days after enactment of the legislation and regarding the VA registry within 15 months after enactment.

Areement with National Academy of Sciences for review of health consequences of service during the Persian Gulf war

(Section 796)

16. Require the Secretaries of Veterans Affairs and of Defence, within 180 days after enactment, to seek to contract with the National Academy of Science (NAS) to have the NAS Medical Follow-up Agency (MFUA) review existing scientific, medical, and other information on the health consequences of in-theater service during the Persian Gulf War.

17 Provide that the agreement shall require MFUA to provide veterans organizations and the scientific community (including the Director of the Office of Technology Assessment) with an opportunity to comment on the method or methods that MFUA proposes to use to conduct the review.

18. Require that the agreement allow MFUA, in conducting the review, to examine and evaluate medical records of individuals included in the two registries for purposes MFUA considers appropriate, including the purpose of identifying illnesses of these individuals.

19. Require MFUA to report the results of its review to the Senate and House Committees on Veterans' Affairs and on Armed Services and to the Secretaries of Veterans Affairs and of Defense, including MFUA's (a) assessment of the effectiveness of actions by the two Secretaries to collect and maintain information potentially useful for assessing the health consequences of in-theater service; (b) recommendations on how to improve collection and maintenance of this information; and (c) recommendations on whether there is sa sound scientific basis for an epidemiological study or studies of the health consequences of this service and, if so, the nature of any such study.

20. Require the two Secretaries to make available, up to $500,000 in FY 1993, from funds available to the two respective departments for that fiscal year, divided equally between the departments, to carry out the review.

21. If VA and DOD contract with NAS for the MFUA study, require each department to provide $250,000 in each of FYs 1994 through 2003, from amounts available to each department in each of these fiscal years, to NAS for the general purpose of conducting epidemiological research with respect to military and veterans populations.

Coordination of Government activities on health-related research on the Persian Gulf War

(Section 707)

22. Require the President to designate the head of an appropriate federal agency to coordinate all research activities undertaken or funded by the Executive Branch of the federal government on the health consequences of in-theater service during the Persian Gulf War. The coordinator would be required to report to the Committees on Veterans' Affairs by March 1 of each year after 1992 on the status and results of this research.

TITLE VIII—COURT OF VETERANS APPEALS

Disciplinary procedures for judges of Court of Veterans Appeals

Current law: Section 7253(g) of title 38 requires the Court of Veterans Appeals to establish procedures, consistent with the provisions of section 372(c) of title 28, for the filing of complaints with respect to the conduct of any judge of the Court and for investigation and resolution of such complaints. There is no provision under current law for any entity to review such judicial conduct and disability actions of the Court of Veterans Appeals.

House bill: No provision.

Senate amendment: Section 3 of S. 2974 would amend section 7253(g) of title 38 so as to (a) authorize the Judicial Conference of the United States to review judicial conduct and disability actions taken by the Court of Veterans Appeals, (b) authorize the payment of per diem and transportation costs for witnesses in connection with judicial conduct or disability hearing conducted by the Court of Veterans Appeals, and (c) authorize the Court to award reimbursement for the reasonable expenses, including attorneys fees, incurred by a judge against whom a complaint is brought and dismissed.

Compromise agreement: Section 801 follows the Senate provision.

Mr. KENNEDY. Mr. President, the Senate has acted in two unusually innovative ways today that will substantially increase health services to low-income Americans.

Two bills are now being sent to the President which will substantially cut costs for public health clinics by reducing their malpractice insurance expenses and enabling them to participate in Medicaid price discounts for prescription drugs.

Taken together, according to estimates by the Congressional Budget Office, the two bills will save $522 million for these clinics over the next 5 years and enable them to use the savings to serve millions of additional low-income citizens over this period.

The services provided by these clinics are indispensable to poor and underserved Americans. Rising costs and inadequate appropriations make it urgent for us to find new ways to stretch current resources further, and these two bills are an impressive bipartisan response by Congress to this need.

The Federally supported Health Centers Assistance Act of 1992 puts claims for medical malpractice against two types of these clinics—community health centers and migrant health centers—under the Federal Tort Claims Act. Currently, these centers spend $60 million a year on private malpractice insurance premiums—10 percent of their annual appropriation.

In some cases, the centers are unable to get malpractice insurance at all, which makes it impossible to hire physicians in specialties like obstetrics.

The high cost of malpractice insurance for the centers is fueled by the perception of the insurance industry that the poor, especially pregnant women, are high legal risks because they delay seeking care they cannot afford. Unlike private physicians, the centers cannot pass the cost on to their patients; instead the center must absorb these costs and reduce other services. Clinics struggling to meet rising malpractice premiums face difficult choices in deciding which services to cut back.

By giving these health centers the protection of the Federal Tort Claims Act, they will be able to attract qualified obstetricians with full malpractice coverage, and provide quality prenatal care to more low-income women. Savings to the centers can also be redirected to expand services for children by providing vital postnatal health care, immunizations, health screening, and primary care.

Just yesterday, Congress enacted separate legislation to create and expand one-stop-shopping programs specializing in maternal and child health care services by these centers—and the savings gained through today's action can also be targeted for this purpose.

With Federal Tort Claims Act protection, suits against the centers will be treated like suits against the Federal Government. Malpractice claims will be defended by the Justice Department, and the cost to the centers will be limited to the actual claims paid out and the actual costs incurred by the Justice Department in defending the centers.

The Congressional Budget Office estimates that the annual costs of the clinics will be reduced to about $15 million, compared to $60 million being spent for their current coverage. The other $45 million a year represents the risk premium currently charged by private insurance companies to cover the clinics, but which the clinics will no longer have to pay.

The second measure, part of the Veterans' Health Care Act of 1992, will provide the same discounted drug prices to public health clinics that are now available to the Medicaid Program. The discounted prices will be available not only to community health centers and migrant health centers, but to a range of other clinics as well, including: Black lung clinics, drug treatment clinics, community mental health clinics, and other public and nonprofit agencies that receive Federal funds and serve low-income patients. It is estimated that these discounts will save the clinics an estimated $60 million a year in funds that can be used to provide better care in the future; $20 million of these savings will go to community health centers and migrant health centers, and the other $40 million will go to the other public health clinics and public hospitals.

When the Federal Government receives quantity discounts from drug companies, those discounts should apply to the entire Federal health effort, not just a part of it. Actions that benefit one agency should also help comparable Federal programs.

At a time when Federal resources are stretched to the limit and health needs are greater than ever, it is essential to obtain the kind of savings that these two measures will achieve.

Together with the FDA user fee legislation approved yesterday to defray the cost of expediting approval of new drugs, it is clear that Congress, the administration, and the private sector have begun working effectively together, to fashion innovative alternatives to stretch scarce health resources, reduce unnecessary costs, and do a better job of meeting the Nation's health care needs.

REGARDING TITLE VI OF H.R. 5193, THE VETERANS HEALTH CARE ACT OF 1992

Mr. BENTSEN. Mr. President, I would like to engage my distinguished colleague, the senior Senator from California [Mr. CRANSTON], who chairs the Committee on Veterans' Affairs, in a colloquy regarding some provisions in the pending bill, H.R. 5193, the Veterans Health Care Act of 1992.

Specifically, my concern relates to title VI. That title of the bill amends the VA title of the United States Code, title 38, to establish a discount program for the Department of Veterans Affairs [VA], Department of Defense [DOD], and the Public Health Service [PHS], amends the Public Health Service Act to establish a discount program for federally funded health clinics and certain public disproportionate share hospitals, and amends the Social Security Act so that the Medicaid Program serves as an enforcement mechanism for these new discount programs. That is, if a manufacturer does not agree to sell to VA, DOD, PHS and PHS clinics or disproportionate share hospitals at the discounted amounts, then the manufacturer's products will not be paid for under Medicaid.

My concern relates to the linkage created in this bill between the Medicaid Program and the discount programs for these other purchasers of prescription drugs. As chairman of the Finance Committee, with jurisdiction over the Medicaid Program, I would like to underscore the importance of ensuring that Medicaid beneficiaries' access to prescription drugs is protected. I believe the bill under consideration minimizes risk to beneficiaries as much as possible. But, in the future, it will be critical that the Committee on Veterans' Affairs, the Committee on Labor and Human Resources, and the Committee on Finance work closely together to coordinate legislation.

Mr. CRANSTON. Mr. President, I agree wholeheartedly with the Senator from Texas. It is in the best interest of both the Medicaid Program and the VA health program to maintain a close working relationship between our committees now that the programs have this linkage in the area of prescription drugs. I believe my colleague can be assured that the chairman of the Committee on Veterans' Affairs will continue to consult with him about any provisions under consideration in the Committee on Veterans' Affairs that might affect the Medicaid Program—either directly or indirectly—and that I view the Finance Committee as the appropriate committee to amend the Medicaid statute. Likewise, I am confident that the chairman of the Committee on Finance will consult equally closely with the chairman of the Committee on Veterans' Affairs with respect to matters before the Finance Committee that might directly or indirectly affect the VA health care programs.

Mr. KENNEDY. Likewise, I agree that cooperation among our committees is essential to ensure that the objective of this legislation is achieved. Clearly, cooperation is a two-way street, and I am sure that the chairman of the Finance Committee will consult closely with the chairman of the Labor Committee on any changes in this law affecting the programs within the Labor Committee's jurisdiction. I would like to thank you and your staff—particularly Marina Weiss and Janis Guerney—for your cooperation in reaching a compromise on this important matter.

I can assure my colleague from Texas that I, too, view the Finance Committee as the appropriate committee for amendments to the Medicaid Program and that I will consult with him whenever modifications to Medicaid law appear to be necessary for the purposes of the drug rebate program operated by the Public Health Service.

Mr. BENTSEN. Thank you. I appreciate your assurances. I would also like the chairman of the Committee on Veterans' Affairs to help me clarify the intent of H.R. 5193 with respect to its Social Security Act provisions. It is my understanding that the agreement reflected in this legislation assumes that the Secretary of Health and Human Services [HHS] makes the ultimate decision about whether the Medicaid Program may continue to pay for the products of a pharmaceutical manufacturer. I hope and expect that the Secretaries of HHS and the VA will cooperate in coordinating the administration of their two programs to the extent made necessary by this legislation. But if there are any cases where there is doubt or conflict about a manufacturer's compliance with the requirements of the Social Security Act, I think it is clear that the Secretary of HHS have the ultimate decisionmaking authority.

Mr. CRANSTON. Yes, clearly the Secretary of HHS must have the authority to determine whether a pharmaceutical manufacturer's products may be paid for under the Medicaid Program, and I share my colleague's hope and expectation that the two Secretaries will work closely together to ensure that this law is implemented properly.

Mr. BENTSEN. I would like to thank the distinguished chairman of the Committee on Veterans' Affairs for clarifying this issue, and also express my appreciation for his cooperation, and the cooperation of his staff—particularly Ed Scott and Janet Coffman—to ensure, to the extent possible, that the legislation gives each of the committees involved in these programs its full measure of control over legislation affecting the programs within its jurisdiction, and that program administration will be well coordinated between the Department of Veterans Affairs and the Department of Health and Human Services.

On that point, I would also like to thank my colleague the Senator from West Virginia [Mr. ROCKEFELLER] and his staff, particularly Ellen Doneski and Barbara Pryor, for their cooperation in pursuing an approach to this legislation designed to ensure that the Finance Committee will continue to be the venue for any amendments required to the Social Security Act. My colleague from West Virginia is a senior member of the Committee on Veterans' Affairs as well as a member of the Committee on Finance. Because of his dual interest in the health of veterans and the low-income individuals served by the Medicaid Program, I am confident that he will continue to be as cooperative as he has been in developing this legislation.

Mr. ROCKEFELLER. I appreciate the chairman's vote of confidence, and can assure him that I will continue to do all I can to ensure that the Finance Committee is closely consulted with respect to any legislation in the Committee on Veterans' Affairs that might affect the Medicaid Program. Furthermore, I can assure the chairman that I view the Finance Committee as the appropriate venue for any modifications to the Medicaid statute.

Mr. BENTSEN. Finally, I would like to thank the other Senators involved in this legislation—Senator PRYOR and Senator MIKULSKI—for their cooperation with the Finance Committee during the development of this legislation, the staff members of Senators PRYOR, MIKULSKI, and KENNEDY—particularly Chris Jennings, John Coster, Phyllis Albritton, and Marsha Simon—for their efforts to work closely with the staff of the Senate Finance Committee.

Mr. FORD. Mr. President, I move that the Senate concur in the House amendments.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CRANSTON. Mr. President, I rise briefly to thank the leaders on both sides of the aisle for their great help in clearing the barriers that might have prevented passage of the very important veterans bill that will do so much for America's veterans.

I thank also the Presiding Officer, the Senator from West Virginia [Mr. ROCKEFELLER], for his great help. I thank the marvelous staff of the veterans committee for their diligence and perseverance and dedication that led to this moment, including Bruce Katz and Ed Scott, who are seated next to me.

I thank my staff and all others on the floor who have helped bring us to this point.

MAKING CERTAIN CORRECTIONS IN THE ENROLLMENT OF THE BILL H.R. 5006

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of House Concurrent Resolution 379 now at the desk, that the concurrent resolution be agreed to, the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the concurrent resolution (H. Con. Res. 379) was agreed to.

HOUSING AND COMMUNITY DEVELOPMENT ACT—CONFERENCE REPORT

Mr. FORD. Mr. President, I submit a report of the committee of conference on H.R. 5334 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5334) to amend and extend certain laws relating to housing and community development, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 5, 1992.)

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. CRANSTON. Mr. President, I rise to say, briefly, that I am pleased that the Senate is about to take final action on the conference report on H.R. 5334, the Housing and Community Development Act of 1992.

It reauthorizes and refines key programs which were passed in 1990 as part of the landmark National Affordable Housing Act. It represents a marriage of different philosophies about the best ways to improve the housing conditions of millions of Americans, and is the result of an extraordinary amount of cooperation and effort—both bipartisan and bicameral.

During the last several weeks, House and Senate conferees took on the difficult task of merging the Senate and House bills into one coherent piece of legislation. We have incorporated administration suggestions. We have resolved a number of very tough and controversial issues. This conference report is a result of those efforts. It both builds upon existing efforts and establishes new initiatives to address the Nation's affordable housing problem. These include:

Expanding funding for the HOME program and easing the regulatory restrictions that have inhibited local flexibility;

Strengthening fair housing enforcement;

Significantly expanding Federal efforts to prevent childhood lead poisoning—the No. 1 environmental health problem facing American children today—through the assessment and reduction of lead paint hazards in private, public, and assisted housing;

Establishing the YouthBuild program to help nonprofits train, educate, and employ low-income youth in the construction and rehabilitation of affordable housing;

Expanding and preserving the supply of affordable rental housing by giving FHA the ability to tap the resources and expertise of State housing finance agencies; and

Increasing funds for the HOPE program and incorporating, in whole or in part, several key administration proposals.

Mr. President, this will be my last housing bill—not only as chairman of the Subcommittee on Housing and Urban Affairs—but also as a Member of this distinguished body. As subcommittee chairman for the last 6 years, I have attempted to further what we have long espoused as the Nation's goal: to provide decent, safe, and affordable housing for all Americans. Throughout most of the decade of the 1980's, our Nation's housing goals faltered under the weight of benign neglect at the Federal level. Despite some important and significant gains, we have a very long way to go.

I urge my colleagues to continue to pursue the goal of affordable housing. No one of us should be content to rest while so many of us remain in need.

I am encouraged by the fact that the affordable housing effort will be furthered by two of my very distinguished and dedicated colleagues on the Senate Banking Committee. Over the years, both Chairman RIEGLE and Senator SARBANES have been strong and ardent advocates of affordable housing. I am confident that under their leadership, affordable housing needs will continue to rise to the forefront of the Nation's agenda.

I believe that we have produced a very good bill. More importantly, it represents a legislative product which can provide a direct response to the dire economic and social conditions existing in many of our inner cities, our suburbs, and our rural areas.

Mr. President, our mission is clear and our options straightforward—if we are to make a difference in the urban housing crisis, we must implement solutions that go directly to the heart of the matter.

Mr. President, as I said, I am pleased that the Senate is about to take action on the conference report on H.R. 5334, the Housing and Community Development Act of 1992.

The conference report before us today reauthorizes and refines key programs which were passed in 1990 as part of the landmark National Affordable Housing Act. It represents a marriage of different philosophies about the best ways to improve the housing conditions of millions of Americans, and is the result of an extraordinary amount of cooperation and effort,—both bipartisan and bicameral.

The need for such cooperation has never been greater. Events in recent months have brought the Nation to a watershed in its response to the urban crisis. Issues that have been shunted aside for years—urban poverty, pervasive discrimination, lack of affordable housing, the future of inner city youth—have now moved to the frontburner of the domestic agenda.

Report after report demonstrates that the Nation's affordable housing crisis, despite the efforts of tens of thousands of committed individuals across the Nation, continues to worsen. Even conservative observers estimate that over 1 million persons are homeless at some point during the year.

The persistent lack of a decent and affordable rental housing supply has also placed many low-income families on the brink of homelessness. And the failure of incomes to keep pace with housing costs over the past two decades has put homeownership beyond the reach of many young, middle class families. Despite depressed home purchase prices in some markets and low interest rates, the gap between income and price remains difficult to bridge.

The Housing and Community Development Act of 1992, presents us with an opportunity to unleash enormous resources and energies across the country to bring good, affordable homes within the reach of young families, of working people, of families with low incomes, of elderly Americans, and of people with special needs.

As chairman of the Subcommittee on Housing, I began work on this bill early this year. In January, Senator D'AMATO—the ranking member of the subcommittee—and I invited a wide variety of housing organizations to submit recommendations for the reauthorization of the National Affordable Housing Act. The response was overwhelming and many of the recommendations are reflected in this conference report.

The subcommittee also held a number of hearings which focused on a range of topics relevant to the legislation including lead based paint; multifamily finance; distressed public housing; and housing needs.

In addition, the subcommittee held a series of staff symposia designed to explore and discuss specific issues in more detail. These included: the HOME Investment Partnerships Program; the Community Development Block Grant [CDBG] Program; the mixing of elderly and disabled populations; the preservation of older housing stock; rural housing, and local housing planning.

Over the course of this year, the subcommittee has built a careful record on what needs to be done in housing and what a reauthorization bill should contain. During the last several weeks, House and Senate conferees took on the difficult task of merging the Senate and House bills into one, coherent piece of legislation. We have incorporated many administration suggestions. We have resolved a number of very tough and controversial issues. The conference report on the Housing and Community Development Act of 1992 is a result of those efforts. It both builds upon existing efforts and establishes new initiatives to address the Nation's affordable housing problem.

The conference report accomplishes three key objectives: to reauthorize and revise programs authorized by the National Affordable Housing Act—programs that support local and community-based housing networks; to incorporate a series of new initiatives proposed by the administration; and to incorporate several new initiatives proposed by Members of the Senate as well as the House.

First, the bill provides additional support for community-based housing efforts—efforts that enable local communities to identify their housing needs and create programs and strategies to meet those needs. Across the Nation, tenants, advocates, nonprofits and others have begun implementing the HOME Program—the primary vehicle for community-based housing efforts.

In response to virtually hundreds of comments from the people in the trenches, the bill would expand funding for the HOME Program and ease the regulatory restrictions that have inhibited local flexibility.

Second, the bill would significantly expand federal efforts to prevent childhood lead poisoning—the number one environmental health problem facing American children today. Despite two decades of congressional mandates, the Federal Government still lacks a comprehensive, coherent, and cost-effective strategy to reduce the hazards of lead-based paint. I believe, however, that this legislation represents a watershed in the national response to childhood lead poisoning.

The lead provisions included in this bill would take significant steps in the prevention of childhood lead poisoning by expanding the Federal Government's commitment to the assessment and reduction of lead paint hazards in private, public and assisted housing. It would put an end to the indecisiveness that has characterized Federal action and get the nation moving quickly on the most dangerous lead-based paint hazards. The bill would promote sensible solutions to reduce lead hazards in housing and would inform parents and others on easy preventative steps that can be taken.

Third, the bill strengthens fair housing enforcement. Despite passage of fair housing and fair lending laws, recent reports show alarming evidence of discrimination in both the rental and mortgage markets. The reauthorization would expand and revise the Fair Housing Initiatives Program, the primary support for private fair housing enforcement efforts around the Nation. It would also increase funding for Federal efforts to weed out discriminatory behavior in the marketplace and to expand the housing options of minorities.

Fourth, the bill uses housing development to empower low-income youth, the so-called hardcore unemployed. The bill would establish the

YouthBuild Program to help nonprofits train, educate and employ low-income youth in the construction and rehabilitation of affordable housing. YouthBuild would help replicate throughout the nation exciting and innovative partnerships that, as the New York Times recently reported, are "gaining recognition as a wellspring of human reclamation."

Fifth, the bill would help expand and preserve the supply of affordable rental housing by giving FHA the ability to tap the resources and expertise of State housing finance agencies.

The shutdown of FHA multifamily activity has placed a tremendous strain on the multifamily housing finance system. Since the FHA was created, one of its primary missions has been to provide insurance for low-cost multifamily housing. But since 1982, FHA's percentage of insured multifamily mortgages dropped from 35 percent to just under 7 percent in 1990. Reports indicate that FHA's current processing capacity is minimal at best. I am continually dismayed that such a vital mission could be so callously disregarded.

The multifamily finance demonstration included in this bill was recommended by a wide coalition of experts from GAO to a private sector task force on multifamily finance. It will help test new forms of credit enhancement with minimal risk to the Federal Government. The demonstration would expand and preserve the supply of affordable rental housing—the primary source of affordable housing for low-income families—by enabling FHA to tap the resources and expertise of State housing finance agencies, Federal Government sponsored enterprises and other market participants.

Finally, the bill contains many of the initiatives proposed by HUD Secretary Jack Kemp. Most significantly, the bill would fund the HOPE Program at $885 million, $540 million over last year's appropriations. In addition, the bill would incorporate, in whole or in part, other key administration proposals that are designed to help families with children move out of areas with high concentrations of persons living in poverty; to permit recipients of vouchers to use their rental assistance toward mortgage payments; to provide small residential facilities for seriously mentally ill homeless persons; and to enhance owner accountability and increase resident involvement in the preservation of troubled multifamily housing.

I must, however, express my grave disappointment with the fact that Secretary Kemp has indicated that he will recommend that the President veto this legislation. Since the beginning of this process, I have worked very hard to ensure that this bill was fashioned in a truly bipartisan manner. I have sought to work in a cooperative manner with the administration—not only to include their initiatives—but also to resolve a significant number of the issues and concerns which they raised. Throughout the course of the conference on H.R. 5334, we made additional changes to move the bill more significantly in the direction of the administration. I feel strongly that the conference report represents a true compromise for all sides—one that I hope that Secretary Kemp will support.

Mr. President, this will be my last housing bill not only as chairman of the Subcommittee on Housing and Urban Affairs and but also as a Member of this distinguished body. As subcommittee chairman for the last 6 years, I have attempted to further what we have long espoused as the Nation's goal: To provide decent, safe, and affordable housing for all Americans. Fulfilling that goal has not been either easy or enormously successful. Throughout most of the decade of the 1980's, our Nation's housing goals faltered under the weight of benign neglect at the Federal level. Despite some important and significant gains, we have a very long way to go.

I urge my colleagues to continue to pursue the goal of affordable housing. No one of us should be content to rest while so many of us remain in need.

I am encouraged by the fact that the affordable housing effort will be furthered by two of my very distinguished and dedicated colleagues on the Senate Banking Committee. Over the years, both Chairman RIEGLE and Senator SARBANES have been strong and ardent advocates of affordable housing. I am confident that under their leadership, affordable housing needs will continue to rise to the forefront of the Nation's agenda.

I believe that we have before us a very good bill. More importantly, it represents a legislative product—which, if enacted—could provide a direct response to the dire economic and social conditions existing in many of our inner cities, our suburbs, and our rural areas.

Mr. President, our mission is clear and our options straightforward. If we are to make a difference in the urban housing crisis, we must implement solutions that go directly to the heart of the matter. That task beings today.

I urge my colleagues to support this conference report.

Mr. President, I also have a summary of the conference report. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992 HIGHLIGHTS OF HOUSING PROVISIONS OF REPORT

AUTHORIZATION LEVELS

Authorizes federal housing and community development programs at $24.3 billion in FY 1993 and $25.4 billion in FY 1994.

The following are FY 1993 authorization levels for major programs: $4 billion for the Community Development Block Grant program (CDBG); $2.1 billion for the HOME program; $3.1 billion for public housing modernization; $1.9 billion for incremental section 8 rental assistance; $855 million for the HOPE program, of which up to $40 million is available for Youthbuild; and $806 million for McKinney housing programs for the homeless.

TITLE I—PUBLIC AND ASSISTED HOUSING PROGRAMS

Reauthorizes major public and assisted housing programs including public housing operating subsidies, modernization and development, section 8 rental assistance, Public and Assisted Housing Drug Elimination Grants, HOPE, and the National Homeownership Trust.

Incorporates the following new Administration initiatives:

Choice in Management, designed to test the effectiveness of giving residents of housing administered by troubled PHAs the ability to choose alternative management;

Moving to Opportunity, designed to help families with children move out of areas with high concentrations of persons living in poverty; and

Vouchers for Homeownership, designed to permit recipients of vouchers or certificates who are first-time homebuyers to use their rental assistance towards mortgage payments; and

Incorporates two initiatives on distressed public housing to: give HUD additional resources and powers to reform and, if necessary, take over troubled public housing agencies; and authorize a separate program to revitalize the most distressed public housing developments by involving residents and community groups in comprehensive planning, major reconstruction, supportive services and economic development activities.

Makes the following major refinements to existing public and assisted housing programs: eases the requirements governing the replacement of public housing that is demolished or sold; eases the matching requirements in the HOPE program; and modifies the National Homeownership Trust to provide grants to capitalize local homeownership trusts and to allow NHT funds to be used in conjunction with the Mortgage Revenue Bond program.

Establishes a new HOPE for Youth: Youthbuild program to provide training and employment opportunities to young adults through their involvement in the rehabilitation and construction of low-income housing.

Establishes a new Indian Housing Loan Guarantee program to enable Indian families to construct, acquire, or rehabilitate dwellings located on trust land.

Establishes a new Enterprise Zone Homeownership program.

TITLE II—HOME INVESTMENT PARTNERSHIPS PROGRAM

Reauthorizes the HOME program with several program modifications:

Establishes a two tiered local match of: 25% for substantial rehabilitation, moderate rehabilitation, and tenant based assistance and 30% for new construction.

Eliminates restrictions on new construction activities.

Allows a portion of publicly issued debt to be recognized as match, for up to 25% of the total match. Up to 50% of the face value of debt issued for multifamily housing and 25% of the face value of debt issued for single family housing could be recognized.

Establishes a match reduction for fiscally distressed communities with extremely high poverty rates or low per capita income, and for those in disaster areas.

Allows up to 10 percent of HOME funds to be used for administrative costs.

TITLE III—PRESERVATION

Reauthorizes the 1990 preservation program with several modifications:

Eliminates the windfall profits test.

Establishes (generally) a 40 year loan term for section 241(f) loans.

Establishes a technical assistance and capacity building grant program for resident organizations and priority purchasers (nonprofits) of properties eligible for prepayment.

Expands notification requirements for tenants and priority purchasers.

Requires the Secretary to implement provisions delegating prepayment processing to state housing finance agencies and requiring risk sharing arrangements with state housing finance agencies.

Enhances the ability of nonprofits to purchase eligible projects through various technical refinements.

TITLE IV—MULTIFAMILY HOUSING PLANNING AND INVESTMENT STRATEGIES

Establishes a comprehensive planning and assessment process for owners of HUD assisted multifamily and elderly housing properties.

Reauthorizes the Flexible Subsidy/Capital Improvements program with several modifications.

TITLE V—MORTGAGE INSURANCE AND SECONDARY MORTGAGE MARKET

Raises the FHA single family loan limits to the lesser of 95% of area median home price or 75% of the 1992 Freddie Mac conforming loan limit ($151,725). Requires FHA to disclose annually the extent to which FHA is serving low and moderate income homebuyers, minority homebuyers and homebuyers who live in central cities and rural areas.

Increases the FHA multifamily and Title I manufactured home loan limits by 20%.

Authorizes an FHA demonstration program to test several different types of credit enhancement for multifamily housing. This demonstration would expand and preserve the supply of affordable rental housing—the primary source of affordable housing for low income families—by enabling FHA to tap the resources and expertise of state housing finance agencies, housing GSEs and other market participants.

Establishes an Interagency Task Force on Multifamily Housing to develop recommendations for establishing a national database on multifamily housing loans.

Requires first-time homebuyers to obtain prepurchase counseling, where available, prior to obtaining FHA insurance.

Establishes an Energy Efficient Mortgage Pilot Program in five states for existing residential buildings.

Requires a HUD study of home warranty protection plans and extends existing homeowner warranty protections to owners of FHA-insured condominiums.

TITLE VI—HOUSING FOR ELDERLY PERSONS AND PERSON WITH DISABILITIES

Reauthorizes supportive housing programs for the elderly, persons with disabilities and persons with AIDS, combining authorizations for the 202 elderly program and 811 disability program.

Makes various programmatic and technical changes to the AIDS Housing Opportunity program.

Authorizes PHAs to designate age or disability distinct housing, subject to HUD approval of the PHAs' allocation plan. Plans would demonstrate that the PHAs' allocations are responsive to the needs of residents and applicants. Additional authority and resources would be provided to PHAs to enable them to help persons with disabilities who are losing access to housing which is currently available to them. This includes development funding for small, professionally managed supportive housing projects for persons with disabilities and a new voucher and certificate program reserved for public housing applicants with disabilities.

Affirms the ability of owners of federally-assisted non-profit housing designed for the elderly to abide by the contracts and regulatory framework in place at the time the projects were developed. Permits owners of project-based section 8 housing designed for the elderly to give preference to elderly persons, with a minimum set-aside for persons with disabilities.

Authorizes additional funding for service coordinators in public and assisted housing. Establishes a task force and requires HUD by regulation to establish criteria for tenant selection and rules of occupancy in federally assisted housing. Requires HUD to report to Congress on the allocation of federal housing assistance for families with children, elderly persons and persons with disabilities.

TITLE VII—RURAL HOUSING

Reauthorizes the major rural housing grant and loan programs with modifications.

Reauthorizes the set-aside for underserved areas and colonias. Includes Indian Trust lands as eligible and corrects the definition of colonias.

Raises the income limit for the 502 guaranteed loan program to 115 percent of median. Extends the authority for the section 502 deferred mortgage demonstration program.

Increases the equity requirement from 3 percent to 5 percent for all section 515 projects receiving a low income housing tax credit allocation. Provides technical changes to coordinate rental assistance with loan approvals, to expand the definition of development costs, and to improve the coordination of section 515 with the low income housing tax credit. Reauthorizes the 9% non-profit set-aside, removes the prohibition on using the set-aside in conjunction with the low income housing tax credits, and establishes a national pool of all unused set-aside funds.

Permanently authorizes the mutual and self-help housing programs. Adds the repair of section 502 inventory properties as an activity.

Provides authority for nonprofits to establish site acquisition and development revolving loan funds.

Allows housing preservation grants to be used for replacement housing, when rehabilitation is not practical, at a cost not to exceed $15,000 per unit.

Extends the 1987 Act rural housing preservation provisions to section 515 projects financed between 1979 and 1989. Amends the preservation provisions to allow project owners to tap excess section 8 reserves in exchange for extending the long term use restrictions on the project. Establishes an Office of Rural Housing Preservation in FmHA.

Allows the Agriculture Secretary to accept subdivision approvals from local, state, and county agencies in lieu of FmHA subdivision approvals.

Establishes a permanent rural housing voucher program.

TITLE VIII—COMMUNITY DEVELOPMENT

Reauthorizes the Community Development Block Grant (CDBG) program with some modifications.

Revises the non-housing community development plans, required in current law, to include only priority needs eligible under CDBG and to reduce reporting requirements. Establishes a demonstration program for computerized database of priority non-housing community development needs.

Revises the CDBG program to enhance the ability of grantees and subgrantees to effectively pursue economic development activities including creation and retention of jobs. Creates a presumption of benefit for activities employing people who live in areas with high concentrations of low and moderate income households. Prohibits the Secretary from limiting economic development assistance to activities which could not be accomplished but for assistance. Provides guidelines for the evaluation, selection and review of economic development projects.

Adds as eligible activities under CDBG, community-university partnerships, assistance to microenterprises, administrative costs to establish federal enterprise zones and extends eligibility for direct homeownership assistance activities.

Provides assistance to communities impacted by defense cutbacks for planning economic adjustments and diversification.

Creates a Community Outreach Partnership demonstration program to facilitate linkages between institutions of higher education and communities to solve urban problems.

Authorizes the Neighborhood Development Program and encourages neighborhood development organizations to work with local lending institutions.

Creates a five year demonstration program to build a network of proactive financial institutions, like South Shore Bank in Chicago, whose primary mission is to rebuild distressed communities.

TITTLE IX—REGULATORY AND MISCELLANEOUS PROGRAMS

Expands and revises the Fair Housing Initiatives Program to take account of the expanded coverage of federal fair housing and fair lending laws and the increase evidence of discrimination in the housing markets.

Authorizes salaries and expenses for HUD and provides set-asides to increase the multifamily housing field office staff and to provide ongoing training and capacity building for HUD personnel.

Amends the Home Mortgage Disclosure Act to require financial institutions to disclose loan applicant register data and sets six and nine month deadlines for disclosure of aggregate data by the Federal Reserve.

Amends the Community Reinvestment Act to clarify that regulators may give credit for community lending projects undertaken by nonminority-owned or non-women-owned financial institutions in partnership with minority-owned or women-owned institutions if those projects meet the credit needs of the community.

Prohibits use of the Rule of 78s to calculate interest owed on prepayment of consumer loans with terms longer than 61 months.

Extends the Real Estate Settlement Procedures Act to include the making of a loan as a settlement service and to include refinancings and second mortgages within the provisions of the Act.

Updates and strengthens the requirements of Section 3 of the Housing and Community Development Act of 1968, which requires that jobs and contracting opportunities created by federal housing and community development assistance be directed, to the greatest extent feasible, to low-income people.

Provides for staff of the National Commission on Manufactured Housing and adds new functions for the Commission including evaluating the extent of compliance with warranties and standards governing transportation and on-site set-up. Requires the Secretary to establish a new standard on hardboard siding in manufactured homes.

Reestablishes the solar energy bank to assist in financing solar and renewable energy capital investments in residential and commercial buildings.

Permits the HUD Secretary to establish goals and performance measures for several HUD programs including FHA single and multi-family and public housing.

Real Estate Settlement Costs. Specifies that a lender need not provide an applicant with a booklet if the lender denies the application within three days after receiving it.

Adjustable Rate Mortgage Caps. Exempts commercial loans and other non-consumer loans secured by residential real-estate from a certain consumer-oriented limitation on adjustable rates.

Modifying Separate Capitalization Rule for Savings Associations' Subsidiaries. Authorizes regulators to grant savings associations case-by-case extensions of up to two years in the schedule for phasing direct real-estate investments out of their capital.

The 1989 thrift reform law generally prohibited a thrift institution from counting as capital its investments in and loans to subsidiaries engaged in activities not permissible for a national bank. It also established a schedule for thrifts to phase existing investments out of their capital. In response to recent problems in real-estate markets, this bill gives regulators case-by-case discretion to extend the schedule by up to two years.

To qualify for an extension, a thrift must have clean, competent management; and must be adequately capitalized, or in compliance with an approved capital plan and not critically undercapitalized. Regulators must specifically find that the extension would not be unsafe or unsound or otherwise increase the risk to the deposit insurance fund.

Real Estate Appraisal Amendment. Clarifies regulators' authority not to require a certified or licensed appraiser for loans below a dollar limit set by the agency (e.g., $100,000).

Insider Lending. Authorizes the Federal Reserve Board to make exceptions to the statutory restrictions on loans to executive officers, directors, and principal shareholders for transactions that pose only minimal risk.

Codifies the Federal Reserve Board's longstanding rule that a depository institution's transactions with its parent holding company are governed by section 23A of the Federal Reserve Act—and that the statute governing loans to principal shareholders does not impose duplicative restrictions.

Clarification of Compensation Standards. Clarifies that 1991 legislation requiring regulators to establish standards limiting excessive compensation to depository institutions' officers, directors, and employees generally does not authorize regulators to set specific pay scales. But the clarification does not limit regulators' other authority to limit compensation (e.g., under the prompt corrective action provisions of the 1991 legislation; through supervisory agreements or cease-and-desist orders; or as otherwise necessary to keep an institution safe and sound).

Truth in Savings. Delays effective date of Truth in Savings regulations by 90 days. Also clarifies that signs on a depository institution's own premises indicating interest rates (e.g., rate boards) need not contain the details disclosures that the Truth in Savings Act requires of other advertising.

TITLE X—RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992

Establishes a new more workable framework to reduce and eliminate lead-based paint poisoning hazards in private and assisted housing.

Provides grants to states and localities to reduce hazards in low income housing where children are at risk of lead poisoning. Phases in requirements for lead-based hazard evaluation and reduction in federally assisted housing. Requires inspection, and in some cases abatement, for residential property sold by the federal government. Requires sellers and lessors of private and assisted housing to disclose known lead-based paint hazards and distribute lead hazard pamphlets developed by EPA. Homebuyers will have the opportunity to test for lead paint prior to purchase.

Imposes training and certification requirements for lead contractors, and directs EPA to establish or approve state certification programs. Strengthens worker protections.

TITLE XI—NEW TOWNS DEMONSTRATION

Authorizes a program to provide assistance for distressed, riot-torn areas in Los Angeles to carry out a comprehensive community revitalization strategy.

TITLE XII—BARRIERS TO AFFORDABLE HOUSING

Establishes the Removal of Regulatory Barriers to Affordable Housing Act. Provides grants to states to identify barriers to providing affordable housing. Creates clearinghouse on information relating to such barriers.

TITLE XIII—GSE REFORM

In General. Provides for a complete overhaul and substantial enhancement of the regulatory structure for the two housing-related government-sponsored enterprises (GSEs), Fannie Mae and Freddie Mac.

As requested by the Administration, it reduces the public's potential exposure to financial risk related to the $1 trillion of GSE liabilities by establishing meaningful and enforceable capital standards.

But unlike the Administration's bill, it also expands and clarifies the GSEs' mandate to serve the housing finance needs of families with low and moderate incomes and families living in central cities and other credit-starved areas.

Capital Requirements. Provides a state-of-the-art set of capital requirements and enforcement tools that should ensure that taxpayers never have to bail out either of these financial giants. It looks beyond current balance sheets to the survival ability of the GSEs during a prolonged period of high default rates and larger, adverse interest rate changes. In anticipation of this legislation, both GSEs have recently made substantial additions to capital, and more will be required.

Housing Goals. Establishes three annual housing goals that will require the GSEs to increase the proportion of their mortgage purchases benefiting homebuyers and renters whose incomes and location have put them at a disadvantage in housing finance markets.

Codifies and improves long-standing but mostly ignored HUD regulations. A 30% target for the proportion of the housing units (both single family and multifamily) financed by each GSE's mortgage purchases that benefit families with below median income will be phased in over the next two years. HUD regulations currently have a similar 30 percent goal, but uses a proxy for income that greatly overstates the true shares of mortgages benefiting this half of the population. After the transition period, HUD will have the discretion to adjust the goal after a consideration of data that measures the GSEs' actual and potential ability to serve this group.

Phases in another 30 percent target for purchases of mortgages in central cities. After the first two years, HUD will expand the goal to cover rural areas and other underserved areas. While HUD regulations have included a similar goal since 1978, the Department does not even collect data to assess compliance. Recently released HMDA data indicate that it is not being met.

Introduces a third goal relating to various categories of families that fall below 80 percent of median income. The GSEs will spend $3.5 billion over the next two years to help meet the needs of these families.

Provides specific powers to enforce compliance with goals. A GSE that misses a goal that HUD judges to be feasible, after consideration of relevant market factors, must submit a plan acceptable to the regulator for meeting future goals. Failure to comply with a plan can lead to fines and a cease and desist order.

Data Collection. Provides for increased data collection and reporting to ensure that Congress receives an annual assessment and critical analysis of the performance of the housing GSEs.

Fair Housing. Strengthens and clarifies the GSEs' responsibilities under fair housing laws.

Regulatory Structure. Creates a new, independent office within HUD. This office is given freedom to set its own pay scales, write its own budgets (funded totally by the GSEs), and testify without clearance. It will have exclusive authority to issue and enforce safety and soundness regulations. Housing regulations will continue to be administered by the HUD Secretary who will now have explicit enforcement authority.

TITLE XIV—HOMELESS PROGRAMS

Reauthorizes the HUD McKinney programs, with technical and programmatic changes.

Establishes a single permanent supportive housing for the homeless program which incorporates the Supportive Housing Demonstration Program, (including transitional housing and permanent housing for homeless persons with disabilities) and Supplemental Assistance for Facilities to Assist the Homeless (SAFAH).

Consolidates the three Shelter Plus Care programs.

Permits non-profit organizations to apply directly for section 8 SRO funding.

Enacts, with modifications, the Administration's Safe Havens for Homeless Individuals Demonstration program. Provides grants to establish facilities where seriously mentally ill persons can live for an indefinite period and receive, on a voluntary basis, mental health and other supportive services including substance abuse treatment.

Establishes a new HUD-administered Rural Homelessness Grant Program to provide emergency shelter, homelessness prevention assistance and assistance in obtaining permanent housing for in rural areas.

Reauthorizes and extends the Interagency Council on the Homeless and reauthorizes and modifies the FEMA Food and Shelter Program.

TITLE XV—ANNUNZIO-WYLIE ANTI-MONEY LAUNDERING ACT

In General. Strengthens the money laundering requirements as they apply to nonbank financial institutions, and authorizes regulatory sanctions against financial institutions convicted of money laundering and related offenses. Includes certain law enforcement provisions recommended by the Justice Department that would address some of the issues raised in the BCCI forfeiture action and generally forestalls situations where the government ends up turning money or property back to drug dealers or other criminals.

Appointment of Conservator or Termination of Charters, Insurance and Offices. Provides that the appropriate Federal banking agency may appoint a conservator or receiver for any insured financial institution convicted of money laundering upon notification by the Attorney General in writing of such conviction.

Provides for the revocation of the charters of federally-chartered institutions and the termination of insurance for state-chartered financial institutions convicted of money laundering and related offenses, after a hearing and due process. Also, provides for the removal of parties involved in currency reporting violations.

Allows state financial institution supervisory agencies access to currency transaction reports maintained by the Treasury Department.

Nonbank Financial Institutions and General Provisions. Requires the Treasury to prescribe regulations by January 1, 1994 which would require depository institutions to identify certain nonbank financial institution customers.

Prohibits the operation of illegal money transmitting businesses.

Provides the Treasury with the authority to require financial institutions and their management and employees to keep the existence of targeted currency orders confidential.

Requires the Treasury and the Federal Reserve to prescribe regulations requiring all financial institutions, including businesses that cash checks or issue money orders or travelers' checks, to maintain records of payment orders that involve wire transfer transactions and will have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

Authorizes the Treasury to require nonbank financial institutions and their directors, officers and others to report, without fear of liability, suspicious transactions relevant to possible violations of law or regulation.

Requires the Treasury and the Justice Department to establish a team of experts to assist and train foreign governments in developing their expertise in money laundering investigations and prosecutions.

Money Laundering Improvements. Generally provides new procedures that would enhance the ability of the Department of Justice to use the civil forfeiture statutes in money laundering cases. The forfeiture procedures under existing law may be satisfactory for customs cases, but they are not appropriate, and were not designed to be used, in complex financial cases involving bank records, electronic funds, and the complex transactions that often are central to money laundering activity.

Also addresses problems that have arisen with the use of existing money laundering laws, as well as removes obstacles in other statutes that unnecessarily limit the Justice Department's ability to use the money laundering statutes.

Reports and Miscellaneous. Requires the Attorney General to conduct a study of the effects of reimbursing financial institutions and non-depository entities for providing financial records.

Clarifies that inter-agency sharing of information among the Federal bank regulatory agencies does not result in the loss of any applicable legal privileges, and requires U.S. agencies to share any information affecting the safety and soundness of the U.S. banking system with the proper Federal banking agencies.

Provides the Federal Reserve Board of Governors, in conjunction with the Department of Justice, the power to grant limited immunity to witnesses.

Counterfeiting Deterrence. Amends the counterfeiting statutes by increasing the sanctions that may be imposed against convicted counterfeiters, by providing the Secretary of the Treasury with the authority to designate "distinctive counterfeit deterrents" which may not be used by the general public, and by clarifying the scope of existing counterfeiting statutes to encompass electronic means of counterfeiting.

Other Provisions. Authorizes the Secretary of the Treasury to fine any financial institution for violation of currency reporting requirements.

Authorizes the Secretary of the Treasury to require financial institutions to request copies of currency transaction reports from their customers.

Extends whistleblower protection to employees of nondepository financial institutions.

Requires the Secretary of the Treasury to establish an Advisory Group on Reporting Requirements.

Requires the General Accounting Office to conduct a feasibility study of the Financial Crimes Enforcement Network.

TITLE XVI—TECHNICAL CORRECTIONS OF BANKING LAWS

Makes technical corrections to the FDIC Improvement Act of 1991 and the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991.

CLARIFICATION OF CERTAIN ISSUES IN CONFERENCE REPORT

Mr. CRANSTON. Mr. President, I would like to clarify the intent behind a series of provisions contained in the conference report.

PRESERVATION/NOTICE

A provision in the "Preservation" title improves the access of tenants, public agencies and other interested persons to information provided to HUD by project owners involved in the preservation process. It permits access to all information submitted that is relevant to the preservation process, with a narrow exception. Only proprietary information is privileged. The privilege extends only to information which is equivalent to trade secrets, confidential financial information, such as partnership audits, personal financial information about partners in the ownership entity, or project tenants. I would like to clarify at this time that in the case of documents that include both proprietary and nonprivileged information, it is the intent of the conferees that the documents be released, with the proprietary information redacted.

PRESERVATION/LOAN TERM

The "Preservation" title also sets the terms for section 241(f) loans. The Senate committee report provides instructive background:

> The Section 241(f) insurance program was the center of much discussion and debate during the legislative process. Congressional discussion always assumed that the Department's practice of underwriting 241(f) loans for 40-years—established under the emergency preservation solution enacted in 1987—would continue under the permanent preservation program. This expectation is evidenced by the conference report to the 1990 Act, which specifically used a 40-year loan term in explaining how the section 241(f) loan would work.
>
> Despite Congressional protestations, HUD's regulations would restrict the term for section 241(f) lands to the lesser of 20 years or the remaining term of the first insured mortgage. The committee strongly believes that HUD's action is contrary to the general goals of the preservation program and the specific intent expressed in the statement of managers. Shortening the loan term will, inter alia, force more projects into the mandatory sales process and potentially lead to greater displacement of tenants in tight rental markets.

The conference report attempts to bring regulatory practice into conformity with congressional intent. With respect to loans provided pursuant to the Emergency Low-Income Housing Preservation Act of 1987 [ELIPHA], HUD is directed to provide equitable treatment to owners filing a notice of intent prior to October 15, 1991. The conferees are disturbed that owners were induced to file title II notice of intent and proceed with plans of action, based on HUD's practice of providing a 40-year loan, only to have HUD change the rules in April 1992. The foreshortening of the 241(f) loan term is jeopardizing pending sales of title II projects to nonprofits and public agencies, and undermining the legitimate expectations of owners who are willing to extend affordability restrictions in exchange for incentives. The clear intent of the conferees is to require 40-year section 241(f) loans for projects proceeding under ELIPHA.

With respect to acquisition loans provided pursuant to the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [LIHPRHA], the conference report requires HUD to provide 40-year loans. This will minimize the threat of displacement discussed in the Senate report.

Finally, with respect to equity takeout loans provided pursuant to the Low-Income Housing Preservation and Resident Homeownership Act of 1990 [LIHPRHA], the conference report requires a loan term and amortization period of up to 40-years to support the loan amount authorized by section 241(f)(2)(B).

PRESERVATION/PROJECT OVERSIGHT COSTS

The "Preservation" title requires the HUD Secretary to provide an allowance for a priority purchaser's project oversight costs with respect to acquisitions under the LIHPRHA Program. This expense would be recognized and built into the project preservation rents under a plan of action. The "Preservation" title also extends this incentive to nonprofit organizations that have purchased or will purchase properties under ELIPHA. Over the life of the program, nonprofits have closed on approximately 10 projects in diverse locations including Minnesota, Illinois, Massachusetts, California, Vermont, and Rhode Island. These pioneering successes prompted Congress to adopt a full-fledged sale program in the LIHPRHA Program. The conferees expect the Secretary to adjust project rents and increase the section 8 assistance provided to these purchasers—amending the approved plan of action, if necessary—in order to cover project oversight expenses, and to adopt this practice with respect to future nonprofit purchases under the transitional rule.

PRESERVATION/TECHNICAL ASSISTANCE FUNDING

The conferees are aware that after a year of delay, HUD has finally put out a $15 million notice of funding availability to provide technical assistance grants to resident-based purchasers and community-based nonprofit purchasers of ELIPHA and LIHPRHA projects. The funding provided falls far short of the $25 million provided in the fiscal year 1992 appropriations law. The "Preservation" title addresses the training requirement of the September 3d NOFA, which the conferees believe to be an unreasonable impediment given the delay, the Department's lack of readiness to provide training and the urgent need for funding by prospective purchasers. The preservation title also authorizes a permanent $25 million resident capacity and technical assistance program. The conferees expect HUD to proceed expeditiously with the pending NOFA and receive and approve grant applications on the 30 day schedule provided, while moving forward with the implementation of the new technical assistance program. The Department may run the programs concurrently, or sequentially, but must take steps to assure that no funding gap occurs between the temporary technical assistance grant program and the permanent program authorized by this title.

MULTIFAMILY FINANCE DEMONSTRATION

Section 542(b) of the conference report establishes an FHA Risk Sharing Pilot Program. The intent of the program is to invigorate the Federal Government's effort to expand the supply of affordable housing. To this end the program is intended to encourage risk sharing arrangements between FHA and various housing entities. The provision is not intended to provide program participants with a mechanism for refinancing mortgages from their own portfolios that have an implicit or explicit Federal guarantee. Refinancing such mortgages will not in all probability expand the supply of affordable housing.

TITLE IX ISSUES

Three provisions in title IX regulatory programs also need clarification.

Section 907 requires the Secretary of HUD to establish a new standard for hardboard siding in manufactured homes. In establishing this standard, the Secretary should take into account the effect of moisture in maintaining the durability of hardboard siding.

The flood restoration zone establishes a new zone "AR" under the flood insurance program for communities in which an existing structural flood control system that provided at least 100-year frequency flood protection, no longer does so. Communities that meet the eligibility criteria as of January 1, 1992, specifically Sacramento and Los Angeles, would be subject to specific construction requirements. The delineated elevation restrictions and the continued eligibility for c zone rates would apply only to developed areas in Sacramento and Los Angeles provided the decertified flood protection system can be restored in a period not to exceed 10 years from the date of enactment of this provision. For other communities that may become eligible for the AR zone and for less developed areas of Los Angeles and Sacramento, the Director of the Federal Emergency Management Agency shall establish floodplain management criteria for new construction and the substantial improvement of existing structures. The flood restoration zone is intended to address problems experienced by existing communities that temporarily are not afforded 100-year frequency flood protection. The flood restoration zone is not intended to allow the development of undeveloped areas including the Natomas basin area in Sacramento. In addition, only structural projects that are decertified by the Corp of Engineers could be considered eligible under the AR zone. Beach nourishment and other such projects would not be eligible.

Another provision in title IX provides for equitable treatment for recipients of utility allowances in federally assisted housing and other households eligible for energy assistance. This provision would clarify that recipients of utility allowances that are liable for payments—whether or not they are reimbursed—shall be treated equally with other households eligible for energy assistance programs. Recipients could not be denied benefits, for example, under the Low-Income Home Energy Assistance Program solely because they receive utility allowances. Nor could they be denied a deduction generally available to Low-Income-Home Energy Assistance Program recipients.

I understand the need for these supplementary programs was highlighted by a recently published report that low-income children ages 6 to 18 months had the lowest body weights, often reaching dangerous low levels, in the months following the coldest parts of the year: apparently high heating bills forced these families to choose between heating and eating, with severe consequences for their young children whichever the choice. This provision seeks to protect families from that choice.

ADDITIONAL CLARIFICATION

A provision in title IX creates a Special Assistant for Indian and Alaska Native Programs under the Assistant Secretary for Public and Indian Housing. This position is not a political appointment. Given the responsibilities of the position, however, it is intended to be an Executive Service position with the according pay scale.

Mr. President, in closing I want to again thank the leadership on both sides of the aisle for their help in clearing away barriers to the final disposition and passage of this important legislation. I thank all those who have contributed so much, Members of the Senate, people outside the Senate, the heads of a task force that did so much work in preparing the way on this, Jim Rouse and David Maxwell, and I want to thank the remarkable staff of the subcommittee, the Housing Subcommittee, that has done so much to make all this possible, that staff led by Bruce Katz who is seated beside me now on the Senate floor.

I urge all Senators to support this conference report.

Mr. RIEGLE. Mr. President, I would like to make some additional comments regarding certain provisions of the Housing and Community Development Act of 1992, the conference report to which the Senate is considering today.

With regard to the amendments extending certain consumer protections regarding real estate loan settlements, I want to clarify that the amendment made to the Real Estate Settlement Procedures Act of 1974 by section 908 of the legislation, which enumerates the services encompassed within the term origination, is not intended to prohibit lenders from contracting out all or a portion of their loan origination services, including processing and underwriting services. The conferees recognized that lenders must sometimes contract out processing and underwriting services to accommodate a surge of loan applications received in peak periods.

The section is also not intended to require a lender to disclose to a borrower that the lender is using a third party to perform such back office type loan origination services provided that these third parties are not involved in the referral or marketing of the lender's services to the public. Similarly, payments by a lender to such a third party contractor are not subjected to disclosure by this amendment. It is within a lender's discretion to determine how to manage its origination services.

I also want to elaborate further on the new YouthBuild Program established in title I of the legislation. This program authorizes the Secretary to make planning and implementation grants to capable non-profit organizations to train and educate low income youth while they rehabilitate and construct affordable housing. This program, which has broad bipartisan support, builds on a model which has proven successful at the grass roots level. The New York Times recently called the YouthBuild Programs across the Nation "a wellspring of human reclamation."

The conference agreement provides a set-aside of 5 percent of funds appropriated for HOPE programs to fund this new program. It was the conferees intention that HUD quickly implement this program. In selecting a technical assistance provider for the program, pursuant to the act, we expect that HUD will ensure that such an organization has experience and a demonstrated record of achievement in working with existing YouthBuild sites. Adequate technical assistance will be crucial to the successful replication of this successful experiment in bringing disadvantaged youth into the economic and social mainstream of our society.

Mr. LIEBERMAN. Mr. President, I rise today to express my support for the Housing and Community Development Act amendments. I am particularly pleased that the bill addresses the lead paint problem which plagues this country. Title X of the bill, the Residential Lead-Based Paint Hazard Reduction Act of 1992, tackles many of the issues that a number of us in the Senate and House have been working on for several years. I want to congratulate Senator CRANSTON for drafting title X and Senator REID and Congressmen WAXMAN and SWIFT for their work to ensure that portions of S. 391, which I was pleased to work on as a chief cosponsor with Senator REID, and H.R. 5730 were included in title X.

Lead poisoning is a silent enemy attacking millions of American Children. It can lower their IQ's, cause learning and reading disabilities, reduce their attention span, and contribute to behavior problems. While the Government has known of the dangers of lead for many years, it has moved much too slowly to test our children, and our homes, and even more slowly to begin the process of cleaning up homes and other buildings which are poisoning our children. Because lead poisoning is invisible we have been able to ignore this issue for much too long, but our children cannot ignore it. Lead poisoning is hurting them every day; today we take an important step towards easing their pain.

Title X of the housing amendments is very important both because it provides critical funds to the States to begin efforts to abate lead paint in private dwellings and because it requires the Federal Government to establish guidelines for the training of abatement workers. Lead exposure can actually be worsened by improper abatement which increases the amount of lead dust, it is therefore imperative that all abatement workers be properly trained and certified. The bill also takes important steps to reduce the incidence of childhood lead poisoning in housing owned, assisted or transferred by the Federal Government and to provide public education concerning the risks posed by lead-based paint.

The grant program will make funds available to States and local governments to provide grants for inspecting and abating private housing, monitoring abatement workers, temporarily relocating families in order to perform abatements, public education, and testing interior dust, soil, and children's blood leads following abatement work. This program will provide assistance to those States that have been grappling with how to help private homeowners and landlords with the high costs of abatement and will encourage those States which have not yet formulated a State plan of action to do so. The bill also requires the Federal Government to more carefully monitor federally owned and assisted housing and increase its efforts to abate these properties.

Title X also includes language very similar to S. 391 on the disclosure of known lead paint in the sale or lease of housing built before 1978 and on the provision of information on lead to all people purchasing or renting homes. Under this provision purchasers and renters must be provided with a lead hazard information pamphlet, and told of any known lead-based paint hazards. Purchasers must be given a 10-day period to conduct an inspection for lead-based paint. Every contract for purchase and sale must contain a lead warning statement and a statement signed by the purchaser that they have read the warning, received the pamphlet, and had an opportunity to inspect the home.

In addition, this bill, like S. 391, takes important steps towards ensuring that abatements are done properly. It requires the EPA to promulgate regulations to ensure that individuals performing abatements are properly trained, that training programs are accredited, and that contractors engaged in abatement are certified. EPA will also promulgate a model State program and provide grants to States to carry out State programs for training and certification. Like S. 391, title X requires the EPA to issue regulations identifying what constitutes dangerous levels of lead in soil. The issue of lead contamination of soil and the risks it poses to children who may be exposed at home, in the park, or on a school playground have not been sufficiently addressed by Federal, State, or local governments. I hope that by providing guidance on what levels raise concerns, EPA will be taking a necessary first step toward addressing the risks of lead poisoning from contaminated soil.

S. 391 focused significant attention on providing standards for lead testing and abatement as well as continuing research on testing and abatement techniques and on the effects of sources of lead exposure. I am very pleased that a number of similar provisions were included in title X. The bill does require that EPA set standards for laboratory testing of lead in paint, soil, and dust and establish a program to certify labs as qualified to test for lead. The bill instructs HUD to conduct research on improved methods of testing for and abating lead paint hazards, and develop standards for lead detection methods and lead hazard reduction methods. The bill also initiates a study of the sources of lead exposure in children with elevated blood lead levels and a study of how to reduce hazardous occupational lead abatement exposures.

I am particularly pleased that title X included a provision also in S. 391 which establishes critical public education and outreach activities. These activities will be designed to increase public awareness of the severity and scope of childhood lead poisoning, the risks of potential exposure in schools and day care centers, the health implications of exposure for men and women of childbearing age, and other important information on abatement, prevention, and screening. The activities will be directed at the general public, health care professionals, homeowners, home renovators, and others.

Title X is a very important step forward, but there are more steps to be taken. I look forward to working with my colleagues next year to work on the provisions of S. 391 that we were not able to enact this year. I am concerned that we renew our efforts to reduce overall lead exposure by eliminating unnecessary lead in many consumer products and requiring labels on those products that continue to have lead in them. We must focus on the elimination of lead in solders used in plumbing systems and on the reduction of lead leaching from plumbing fittings and fixtures. We must also act to remove lead from the packaging materials which wrap our food and end up in our municipal waste stream. I would hope we could also mandate the recycling of all lead-acid batteries, assemble an inventory of lead-containing products, and devise a way to review those new products which could pose an exposure risk.

Mr. RIEGLE. Mr. President, I rise in support of the conference report on the Housing and Community Development Act of 1992. This legislation includes important reforms in four different areas: housing, government sponsored enterprises, money laundering and counterfeit deterrence, as well as some banking provisions, each of which in some from have previously been adopted by the Senate. I will briefly discuss each of these areas.

HOUSING

The housing reauthorization, H.R. 5334, builds upon the base that was created in 1990 with passage of the National Affordable Housing Act. It refines many of the initiatives enacted in that legislation and continues the evolution toward a new Federal partnership in urban policy. The National Affordable Housing Act of 1990 gives communities more flexibility, greater ability to set local priorities, and empowers people to work together to solve some of the most difficult problems on our domestic home front. This bill provides $24.3 billion in budget authority for fiscal 1993 and $25.4 billion in fiscal 1994. It also reauthorizes a variety of existing housing and community development programs including the HOME investment partnership block grant, the community development block grant, public housing, housing for the elderly and disabled, homeless assistance, rural housing programs, and the administration's HOPE Program. This bill contains many new initiatives that I am proud of—including several that provide economic development tools that will empower communities and residents to rebuild and create new economic opportunities.

GSE'S

Enactment of the Federal Housing Enterprise Financial Safety and Soundness Act of 1992 will provide for the first time an adequate framework for the regulation of the two federally chartered secondary mortgage market government sponsored enterprises: the Federal National Mortgage Association [Fannie Mae] and the Federal Home Loan Mortgage Corporation [Freddie Mac].

Fannie Mae and Freddie Mac were created by Federal law and have been given a number of special advantages. Among their advantages, these GSE's are exempt from State and local income taxes; they each have a $2.25 billion line of credit with the Treasury; their securities are exempt from SEC registration and are eligible for purchase by the Federal Reserve, Federal Reserve member banks, and nationally chartered thrifts; and their securities are eligible for use as collateral by depository institutions for public deposits of the Federal Government and most State and local governments. These benefits help reduce home mortgage interest rates, but the investment community also perceives that the liabilities of Fannie Mae and Freddie Mac, which amount to more than $1 trillion, are implicitly guaranteed by the Federal Government.

Given their goals and the benefits provided by the Government, as well as their implicit guarantee and potential taxpayer liability, it is essential that an adequate system of regulation be set in place to ensure that these GSE's will be adequately capitalized and operating safely and that their participation in secondary mortgage markets serves to the maximum extent possible the housing needs of poorer families and those in central cities and other areas where access to mortgage credit has been deficient.

This bill accomplishes those goals. It creates a new office, within HUD, with authority to enforce a new set of meaningful capital requirements.

The bill also requires Fannie Mae and Freddie Mac to meet a new set of housing goals, which will ensure increases in the proportions of families served with below median incomes and of families in central cities. And it provides enhanced GSE responsibility for fair housing.

This legislation is the culmination of 3 years of studies, hearings, and discussions. It has the strongest support of the administration, low-income housing groups, and the GSE's. Secretary Brady, in a letter to the majority leader, describes it as balanced, responsible, and prudent and I ask unanimous consent that his letter be inserted in the RECORD as well as a letter of support from 10 national low-income housing organizations.

MONEY LAUNDERING

This conference report also includes provisions that combat the continued efforts of drug dealers and other criminals to use the banking system to launder their ill gotten gains. This critical legislation, which among other things addresses the conduct exposed in the BCCI scandal, represents the best of the money laundering provisions that separately have been previously passed by the Senate and the House. It will give the banking regulators additional enforcement tools and methods to use against financial institutions involved with money laundering. In addition, this legislation strengthens money laundering requirements as they apply to nonbank financial institutions as well as removes obstacles in present law which inadvertently impede prosecution of institutions and individuals involved in money laundering. This legislation also strengthens the counterfeiting deterrence laws, including those that relate to electronic means of counterfeiting.

BANKING

This conference report also makes changes in seven areas of the banking laws—changes that have each in some form previously passed the Senate—which I will briefly summarize.

First, regulators may grant savings associations case-by-case extensions of up to 2 years in the schedule for phasing direct real estate investments out of their capital. This provides flexibility to deal with the current weakness of real estate markets.

Second, the Federal Reserve Board may make exceptions to restrictions on depository institutions' loans to their officers, directors, and principal shareholders for loans that pose only minimal risk. The bill also codifies the Fed's longstanding rule that those restrictions do not create duplicative rules for a depository institution's transactions with its parent holding company.

Third, executive compensation standards required under last year's banking legislation will not set specific levels or ranges of compensation.

Fourth, the bill clarifies regulators' authority not to require an appraisal by a certified or licensed appraiser for loans below a dollar threshold set by the regulators.

Fifth, if a lender denies a residential mortgage loan application within 3 days after receiving it, the lender need not give the applicant a special information booklet on real estate settlement services.

Sixth, nonconsumer loans are exempted from a consumer-oriented limitation on adjustable rate mortgages.

And seventh, depository institutions receive 3 additional months to get ready to comply with truth-in-savings regulations, and can post interest rate signs on their own premises without including the detailed disclosures required of other advertising.

This completes a brief summary of the major provisions of the conference report on the Housing and Community Development Act of 1992. I urge its immediate enactment.

I would now like to describe in more detail certain aspects of this important piece of legislation.

HOUSING REAUTHORIZATION

Two years ago, the National Affordable Housing Act of 1990 [NAHA] was passed by Congress. This conference report builds upon the base that was created in 1990, refines many of NAHA's initiatives, and continues the evolution to a new Federal partnership in urban policy. These new initiatives give communities more flexibility, greater ability to set local priorities, and empowers people to work together to solve some of the most difficult problems on the domestic home front.

The need for Federal housing assistance is growing. It is estimated that one in every seven Americans lives in poverty. Meanwhile, the supply of inexpensive rental housing continues to decrease. In 1989, there were 4.1 million more poor households looking for affordable apartments than the number of units available. Even in the area of home ownership, we are losing ground. During the 1980's, the Nation's home ownership rate dropped for the first time since the Great Depression.

In my home State of Michigan, the need for housing assistance is also growing more acute. Ninety percent of all needy renter households pay more than 30 percent of their incomes in rent. This rent burden places a tremendous strain on poor families. This strain has been made worse by the recession and State welfare cuts, which have caused the number of homeless people to rise significantly.

The violence that occurred in Los Angeles and several other major cities was another example of the growing crisis in America's cities and demonstrates why this legislation is so badly needed.

H.R. 5334 provides $24.3 billion in budget authority for fiscal 1993 and $25.4 billion in fiscal 1994. The bill reauthorizes a variety of existing housing and community development programs including the HOME investment partnership block grant, the community development block grant, public housing, housing for the elderly and disabled, homeless assistance, rural housing programs, and the administration's HOPE Program. In recent years, financing sources for multifamily housing have dried up—leaving a significant gap. The bill creates an FHA multifamily demonstration program to expand the supply of affordable rental housing—the most important source of affordable housing for low-income families.

Major public housing reforms are also incorporated into H.R. 5334 which gives HUD additional resources and powers to reform and, if necessary, take over troubled agencies. A second initiative will revitalize the most distressed public housing projects through comprehensive planning, major reconstruction, support services, and economic development.

Childhood lead poisoning, which has been identified as the most significant environmental hazard for children, has been addressed in the bill. This provision will expand the Federal Government's commitment to the assessment and reduction of lead paint hazards in private, public, and assisted housing. This initiative is critical to ensure our children's health and future well-being.

The Fair Housing Initiatives Program will be expanded and revised to take into account expanded coverage of housing and fair lending laws and to address increased evidence of discrimination.

One of the most difficult issues we have struggled with in developing this legislation has been the mixing of elderly and disabled persons in public and assisted housing.

Several key community development initiatives of which I am particularly proud have been incorporated into H.R. 5334:

A $43 million program to seed and expand community development banks and build a network of proactive institutions whose primary mission is to rebuild distressed communities;

A $40 million YouthBuild Program which provides grants to community-based groups to educate and train disadvantaged high school dropouts through construction and rehabilitation of low income housing;

A refined CDBG program that gives communities flexibility in creating and retaining jobs and pursuing other economic development strategies;

A revamped employment initiative that directs jobs and other economic opportunities created through Federal housing and community development assistance to low-income people; and

A new initiative designed to build bridges between communities and institutions of higher education to solve urban problems.

Over the last ten months, the Senate Committee on Banking, Housing, and Urban Affairs has worked to craft legislation that is responsive to the needs of communities across the nation. We have also gone the extra mile to address the concerns of the administration. To that end, we have incorporated many of Secretary Kemp's initiatives and provided sufficient authorizations for his initiatives that were created in 1990.

With respect to the housing reauthorization provisions of this conference report, I would like to recognize the efforts of several of my colleagues who provided the leadership needed to move this bill through the legislative process. In particular, I would like to thank Housing Subcommittee Chairman ALAN CRANSTON, ranking minority member ALFONSE D'AMATO, and fellow conferees PAUL SARBANES and CHRISTOPHER BOND.

This bill is a solid piece of legislation which deserves the support of the Congress, as well as the administration.

GSE'S

The conference report, with respect to the Federal Housing Enterprises provides for a complete overhaul and substantial enhancement of the regulatory structure for the two housing-related government-sponsored enterprises [GSE's], Fannie Mae and Freddie Mac. As requested by the administration, it reduces the public's potential exposure to financial risk related to the $1 trillion of GSE liabilities by establishing meaningful and enforceable capital standards. But unlike the administration's bill, it also expands and clarifies the GSE's mandate to serve the housing finance needs of families with low and moderate incomes and families living in central cities and other credit-starved areas.

Given the persistence of the Nation's affordable housing crisis and the pervasive evidence of continuing mortgage and rental discrimination, this legislation is timely and valuable. It will increase the availability and affordability of housing finance to those who need it most, while strengthening the safety and soundness of these critical entities and ensuring their right to a reasonable economic return.

CAPITAL

This legislation provides a state-of-the-art set of capital requirements and enforcement tools that should ensure that taxpayers never have to bail out either of these financial giants. It looks beyond current balance sheets to the survival ability of the GSE's during a prolonged period of high default rates and larger, adverse interest rate changes. In anticipation of this legislation, both GSE's have recently made substantial additions to capital, and more will be required.

ENFORCEABLE HOUSING GOALS

This legislation establishes three annual housing goals that will require the GSEs to increase the proportion of their mortgage purchases benefiting homebuyers and renters whose incomes and location have put them at a disadvantage in housing finance markets.

The first two goals codify and improve long-standing but mostly ignored HUD regulations. A 30-percent target for the proportion of the housing units (both single family and multifamily) financed by each GSE's mortgage purchases that benefit families with below median income will be phased in over the next 2 years. HUD regulations currently have a similar 30 percent goal, but uses a proxy for income that greatly overstates the true shares of mortgages benefiting this half of the population. After the transition period, HUD will have the discretion to adjust the goal after a consideration of data that measures the GSE's actual and potential ability to serve this group.

Another 30-percent target will be phased in for purchases of mortgages in central cities. After the first 2 years, HUD will expand the goal to cover rural areas and other underserved areas. While HUD regulations have included a similar goal since 1978, the Department does not even collect data to assess compliance. Recently released HMDA data indicate that it is not being met.

The third goal relates to various categories of families that fall below 80 percent of median income. The GSEs will spend $3.5 billion over the next two years to help meet the needs of these families.

These goals cannot be satisfied solely by good intentions. For the first time, this legislation provides specific enforcement powers. A GSE that misses a goal that HUD judges to be feasible, after consideration of relevant market factors, must submit a plan acceptable to the regulator for meeting future goals. Failure to comply with a plan can lead to fines and a cease and desist order.

OTHER HOUSING PROVISIONS

Data limitations restrict the ability of Congress and the public to assess their public purposes. This legislation provides for increased data collection and reporting to ensure that Congress receives an annual assessment and critical analysis of the performance of the housing GSEs.

The legislation also strengthens and clarifies the GSEs' responsibilities under fair housing laws.

REGULATORY STRUCTURE

HUD's regulation of GSEs has been greatly hampered by the distractions of other problems and difficulties in maintaining a strong oversight staff. This legislation creates a new, independent office within HUD. This office is given freedom to set is own pay scales, write its own budgets [funded totally by the GSEs], and testify without clearance. It will have exclusive authority to issue and enforce safety and soundness regulations. Housing regulations will continue to be administered by the HUD Secretary who will now have explicit enforcement authority, except that the requirements of section 1335 may be enforced by the Director under the supervision of the Secretary.

The conference report provides that the new office is subject to appropriations. This process must not be allowed to prevent the Director from obtaining adequate funds. It would be improper for a GSE to lobby for appropriations in amounts less than requested by the Director to try to influence the Director's safety and soundness standards or the outcome of an administration or enforcement proceeding.

MONEY LAUNDERING

The money laundering provisions of this conference report represent the best of the respective House and Senate money laundering bills which have been passed by each body several times during this Congress and the previous one. Just last week the need for this legislation was underscored once again when a worldwide money laundering scheme, operation Green Ice, was broken up and Senators KERRY and BROWN released their comprehensive report on the BCCI scandal. All of this suggests to me that this legislation is needed as much as ever.

Specifically, this legislation would strengthen the money laundering requirements as they apply to nonbank financial institutions but also would provide for limited safe harbor coverage from liability for nonbanks, and banks, when they disclose violations of law or regulations related to money laundering offenses. The legislation also would authorize regulatory sanctions against financial institutions convicted of money laundering, as well as implement certain law enforcement provisions recommended by the Justice Department. Additionally, the legislation would strengthen the counterfeiting deterrence laws of the United States, including clarifying that those laws encompass electronic means of counterfeiting. A full section by section analysis of this legislation appears at the conclusion of this statement.

Passage of this legislation is extremely important to the curtailment of money laundering activities, both domestically and internationally. Furthermore, Secretary Brady has advised me that adoption of this legislation will give the United States greater international leverage at the multinational Financial Action Task Force meetings, where other countries will be encouraged to adopt parallel money laundering laws. For the RECORD, I include that letter at the conclusion of this statement.

In summary, this legislation enjoys broad based bipartisan support.

BANKING PROVISIONS

SENATE-PASSED BANKING PROVISIONS

This conference report also contains substantive changes to seven areas of the banking laws, along with a set of technical corrections to banking legislation passed in 1991. The substantive changes have, in some form, previously passed the Senate, mostly as amendments to the Federal Housing Enterprises Regulatory Reform Act, S. 2733.

MODIFYING SEPARATE CAPITALIZATION RULE FOR SAVINGS ASSOCIATIONS' SUBSIDIARIES

The bill authorizes regulators to grant savings associations limited extensions of the schedule for phasing direct real estate investments out of their capital. This authority closely resembles a provision in the Senate-passed Resolution Trust Corporation Funding Act of 1992, S. 2482.

Under the 1989 thrift reform law, if an FDIC-insured savings associated engages through a subsidiary in activities not permissible for a national bank, the savings association generally cannot count its investments in and loans to the subsidiary as part of its own capital. Direct real estate investments and other nontraditional activities caused thrifts large losses, and Congress enacted this safeguard to help protect the deposit insurance fund and the taxpayer.

A transition rule permits the savings association to include in its capital until November 1, 1992, 75 percent of its investments in and loans to the subsidiary. That percentage will decline to 60 percent on November 1, 1992, 40 percent on July 1, 1993, and 0 percent on July 1, 1994.

Because of the nationwide decline in commercial real estate markets, the Director of the Office of Thrift Supervision has asked us to allow thrifts additional time to comply with the separate capitalization requirement.

The bill gives the Director case-by-case discretion to extend the phase-out schedule by two years. The Director could allow a particular savings association to include in its capital, until July 1, 1994, up to 75 percent of its investments in and loans to a subsidiary. The maximum percentage would decline to 60 percent on July 1, 1994, 40 percent on July 1, 1995, and 0 percent on July 1, 1996. The FDIC would retain its existing authority to specify a lower percentage than that allowed by the Director.

To be eligible for such relief, a savings association must satisfy a four-part test.

First, the separate capitalization requirement must apply only because of the subsidiary's real estate investments or other real estate activities—and not because of junk-bond investments or other non-real estate activities.

Second, the savings association must be either adequately capitalized, or in compliance with an approved capital restoration plan meeting the requirements of section 38 of the Federal Deposit Insurance Act. Among other things, such a plan must specify the steps the savings association will take to become adequately capitalized, the levels of capital to be attained during each year in which the plan will be in effect, how the association will comply with the restrictions or requirements of section 38, and the types and levels of activities in which the association will engage. In addition, the plan must be based on realistic assumptions, and be likely to succeed in restoring the savings association's capital; not appreciably increase the risk to which the association is exposed; and be guaranteed by each company controlling the association. A savings association with a plan approved under the Home Owners' Loan Act need not necessarily submit a new plan, much less wait until section 38 becomes effective, to obtain relief under this provision: if the prior plan satisfies the requirements of section 38, it suffices for purposes of this requirement.

Third, the savings association must be an eligible savings association as defined in the Home Owners' Loan Act. This means that the association's management must be competent; the association must be in substantial compliance with all applicable statutes, regulations, orders, and supervisory agreements and directives; and its management must not have engaged in insider dealing, speculative practices, or any other activities that have jeopardized the institution's safety and soundness or contributed to impairing the institution's capital.

Fourth, the Director of the OTS must determine that granting the relief in question to the particular savings association would not be unsafe or unsound or otherwise increase the risk to the deposit insurance fund.

If the savings association is under a capital restoration plan, capital directive, or prompt corrective action order, the extension is effective only while the association remains in substantial compliance.

If the savings association became critically undercapitalized after obtaining an extension, the FDIC would administer the extension in place of the OTS.

In sum, the bill strikes a responsible balance between providing flexibility to deal with a weakened real estate markets and maintaining regulatory accountability and the taxpayer protections of the basic separate capitalization requirement.

INSIDER LENDING

Last year's banking reform legislation generally limits an FDIC-insured depository institution's aggregate loans to its executive officers, directors, and principal shareholders to 100 percent of the institution's capital. An institution with less than $100 million in deposits—and that includes 74 percent of the nation's banks—can loan its insiders up to 200 percent of its capital.

This year the Senate passed a provision exempting from those limits loans fully secured by insured deposits or U.S. Government securities. Such an exemption makes sense because transactions thus secured pose only minimal risk to the depository institution.

During the conference on this bill, the House conferees sought broader changes in the insider lending restrictions than the Senate had adopted in S. 2733. The House proposal, captioned "Requirement for Collateralized Lending," would have weakened statutory safeguards on insider lending without necessarily requiring collateral. In addition, it would have categorically exempted from the 100- and 200-percent limits all loans that are exempt from the limit loans to one borrower by national banks. Although current regulations generally require readily marketable collateral for those loans, section 5200(d) of the Revised Statutes—which the House proposal would have incorporated by reference—lets the Comptroller of the Currency "establish limits or requirements other than those specified in this section for particular classes or categories of loans." Thus the Comptroller has discretion to dispense with those collateral requirements or create new exemptions. In other words, the Comptroller can do as he pleases.

Even insofar as collateral is required, the evidence now before the Congress does not substantiate the safety of the statutory exceptions to the loan to one borrower limit, especially in the context of large concentrations of loans to insiders. Perhaps they are all safe; perhaps not. The matter warrants rigorous analysis of banks' actual experience with insider loans of this sort. But the arguments made by opponents of last year's reforms come down to this: "We like to do it this way, we have always done it this way, and we don't want to even think about doing it some other way." That is a weak basis for legislation.

Now let us assume, for purposes of discussion, that the existing loan-to-one-borrower exceptions do make sense as applied to individual loans. That does not necessarily mean we should incorporate them wholesale into the statutory limits on aggregate loans to insiders. An arm's length loan to a single borrower involving 25 or 35 percent of your capital raises very different issues than insider self-dealing amounting to 500 percent of your capital. No one has shown that compliance with existing exemptions—such as those for livestock or dealers in dairy cattle—removes the inherent problems of letting insiders use a federally insured institution as a piggy-bank for their own pursuits.

This bill takes a more limited approach. It authorizes the Federal Reserve Board to make exceptions to the statutory restrictions on insider lending for loans that pose only minimal risk. It also codifies the Fed's longstanding rule exempting from those restrictions a depository institution's transactions with its parent holding company.

The Fed could use this authority to make exceptions to the aggregate limit on loans to one borrower or to bolster the existing regulatory exception for credit card debt of up to $5,000.

But the Fed need not make exceptions: the authority is discretionary. Anyone who says Congress expects the Fed to repromulgate all the old exemptions without thinking about them has not read the bill. That certainly is not my expectation. The Fed should undertake a zero-based review of existing exemptions before deciding whether to re-propose them. And before actually making any exceptions, the Fed should ensure that the loans in question really do pose only minimal risk of causing any loss to the institution—risk that is minuscule compared to that of other loans.

I ask that copies of letters from Chairman Greenspan, dated June 18 and September 30, 1992, be printed in the RECORD.

CLARIFICATION OF COMPENSATION STANDARDS

The FDIC Improvement Act of 1991 contained an amendment by Senator LEVIN requiring regulators to establish standards prohibiting FDIC-insured depository institutions from paying excessive compensation to their officers, directors, and employees. This bill contains a provision, authored by Senator GARN, clarifying that the Levin Amendment does not authorize regulators to set specific levels or ranges of compensation. But the clarification does not restrict regulators' other authority to set or limit compensation—for example, under the prompt corrective action provisions of the 1991 legislation, through supervisory agreements or cease-and-desist orders, or as otherwise necessary to keep an institution safe and sound.

REAL ESTATE APPRAISAL AMENDMENT

The bill clarifies regulators' existing authority not to require an appraisal by a certified or licensed appraiser for loans below a dollar threshold set by the regulators.

REAL ESTATE SETTLEMENT COSTS

The bill specifies that if a lender denies a residential mortgage loan application within three days after receiving it, the lender need to give the applicant a special information booklet on real estate settlement services.

ADJUSTABLE RATE MORTGAGE CAPS

Existing law generally requires adjustable rate residential mortgage loans to contain an upper limit on the interest rate that may be charged. The bill makes clear that this requirement does not apply to nonconsumer loans, such as a commercial loan secured by a mortgage on the borrower's residence.

TRUTH IN SAVINGS

The bill delays the effective date of truth-in-savings regulations by three months. It also clarifies that signs on a depository institution's own premises indicating interest rates—such as rate boards—need not contain the detailed disclosures that the Truth in Savings Act requires of other advertising.

TECHNICAL CORRECTION

Finally, the bill makes technical corrections to FDIC Improvement Act of 1991 and the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991.

Mr. President, I ask unanimous consent to have printed in the RECORD material pertaining to this measure.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ATTACHMENT: BANKING PROVISIONS

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM,
Washington, DC, June 18, 1992.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: One of the provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991 (the "FDICIA") amended section 22(h) of the Federal Reserve Act relating to lending to insiders by a member bank. In the course of implementing the new statute, the Board identified two areas that we believe need revision. First, the amended statute's coverage overlaps with that of section 23A of the Federal Reserve Act governing a member bank's transactions with its affiliates without, however, incorporating the exemptions provided for in that section. Second, its treatment of lending limits with respect to an individual incorporates exemptions provided for in the National Bank Act, while its provision regarding aggregate lending limits does not. As it appears that these discrepancies were unintended, the Board recommends that the statute be amended. I have attached draft language that would accomplish these recommendation.

1. *Inconsistency with Section 23A*

Section 22(h) of the Federal Reserve Act (12 U.S.C. §375b) restricts the amount and terms of extensions of credit from a bank to its executive officers, directors and principal shareholders (collectively, "insiders") and to any company or political campaign controlled by an insider ("related interests"). As amended by FDICIA, section 22(h) establishes a limit on the total amount a member bank may lend to its insiders and their related interests as a class. This aggregate lending limit by its terms applies to all extensions of credit by a bank to principal shareholders and their related interests, thereby covering extensions of credit to parent holding companies and the companies they control.

Section 23A of the Federal Reserve Act (12 U.S.C. §371c) also restricts extensions of credit between a member bank and its parent. Under section 23A, a member bank's transactions with any one affiliate are limited to 10 percent of the bank's capital and surplus; an aggregate 20 percent limit applies to transactions with all affiliates.[1] However, several types of transactions that present little or no risk to the bank are excluded from the quantitative limits of section 23A. These transactions include loans that are fully secured by the obligations of the United States or certain Federal agencies or by segregated, earmarked deposit accounts.

The FDICIA aggregate lending limit does not provide for any exemptions. Thus, section 22(h) imposes a quantitative limit on all extensions of credit from a bank to its parent companies regardless of whether such extensions of credit would be exempt from the quantitative limits of section 23A. The Board believes that section 23A adequately and comprehensively regulates inter-affiliate transactions. Moreover, there is no indication that Congress judged section 23A's longstanding safeguards against unsound affiliate transactions to be deficient. Indeed, section 22(h) was enacted originally in 1978 to regulate insider credit transactions that previously had not been regulated. FDICIA's coverage under section 22(h)'s aggregate lending limit of transactions already within the scope of the restrictions of section 23A seems to have been inadvertent.

Therefore, the Board recommends that the definition of "principal shareholder" in section 22(h) as amended by FDICIA be amended to exclude a company of which a member bank is a subsidiary. This revision would leave the coverage of affiliate transactions solely within the scope of sections 23A and 23B of the Federal Reserve Act without otherwise affecting the applicability of section 22(h) to other insider transactions.

2. *Inconsistent treatment of low risk loans*

Section 22(h), as amended by FDICIA, provides that a member bank may extend credit to an individual insider only if, when aggregated, all such loans to the individual fall within the single borrower limit of the National Bank Act (12 U.S.C. §84). The National Bank Act exempts from the computation of the lending limits certain transactions that pose little or no risk to the lending institution, such as loans secured by obligations of the United States. While the lending limit of section 22(h) applicable to individuals incorporates these exemptions by reference, the aggregate limit of section 22(h) does not. The anomalous result is that banks are required to include some loans for purposes of calculating aggregate lending limits that would not be included in arriving at lending limits to individuals.

The Board believes that section 22(h) should be amended so that loans posing little or no risk to the lending institution are given the same treatment under the aggregate lending limit as under the individual lending limit. This result could be attained by providing the Board explicit authority to exclude from the definition of "extension of credit" transactions that are consistent with prudent, safe and sound banking practices. On the basis of such authority, the Board could revise Regulation O to exclude from the aggregate lending limit certain transactions that present little or no risk to the bank, including transactions that are exempt under the National Bank Act or section 23A.

The Board is of the view that the amendments proposed above will ensure consistent treatment of insider lending transactions without compromising in any way the goals of safety and soundness shared by sections 22(h), section 23A and the lending limit provisions of the National Bank Act. Members of the Board's staff are prepared to assist the Committee in any way they can in its consideration of this proposal.

Sincerely,

ALAN GREENSPAN.

PROPOSED AMENDMENTS TO SECTION 22(H) OF THE FEDERAL RESERVE ACT

Section 22(h) of the Federal Reserve Act (12 U.S.C. §375b) is amended—

(1) in subsection (9)(D) by adding after the period a new sentence to read as follows: "The Board of Governors of the Federal Reserve System may prescribe by regulation exceptions from the term 'extension of credit' in the case of transactions that are consistent with safe and sound banking practices."

(2) in subsection (9)(F) by adding after the period a new sentence to read as follows: "The term 'principal shareholder' shall not include a company of which a member bank is a subsidiary."

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM,
Washington, DC, September 30, 1992.

Hon. CHALMERS P. WYLIE,
House of Representatives, Washington, DC.

DEAR CONGRESSMAN: I am writing in response to your request for my comments on the attached amendments to the lending limitations of section 22(h) of the Federal Reserve Act. Earlier this year, the Board recommended that Congress adopt changes to section 22(h) that would provide additional flexibility and eliminate unnecessary regulation without compromising in any way the goals of safety and soundness that underlie the lending limit statutes. We continue to support changes to section 22(h) that would add flexibility and remove unnecessary regulation.

In particular, Board supports the repeal of the statutory definition of extension of credit, as proposed in the legislation that you have asked me to comment on. This change would restore to the Board the authority removed by the Federal Deposit Insurance Corporation Improvement Act of 1991 to act by regulation to exclude from the limits transactions that do not pose any risk to safety and soundness.

The Board has also requested general authority to adopt exceptions to the lending limits in section 22(h), such as the Board has under other statutes. In the absence of that authority, the Board would support statutory exclusions from the aggregate lending limit that do not impact safety and soundness, such as the exclusion proposed in the attached legislation for transactions that are exempt from the national bank lending limit and that are already exempt from the individual lending limit in section 22(h) itself.

In addition, the Board continues to support the adoption, proposed in the attached legislation, of a provision excluding loans to holding companies and their affiliates from the limits of section 22(h). These loans are already adequately governed by the lending limitations of section 23A and 23B of the Federal Reserve Act.

I am enclosing a copy of my letter of June 18, 1992, that more fully discusses the Board's views of these matters.

Sincerely,

ALAN GREENSPAN.

SEC. 13. REQUIREMENT FOR COLLATERALIZED LENDING.

(a) IN GENERAL.—Section 22(h)(5) of the Federal Reserve Act (12 U.S.C. 375b(h)(5)) is amended by adding at the end the following new subparagraph:

"(D) COLLATERALIZED LENDING REQUIREMENT.—Any extension of credit by a member bank which, if section 5200 of the Revised Statutes were applicable to such bank, would qualify for an exception to the limitations of subsection (a) of such section because such extension of credit meets the collateral or other requirements of subsection (c) of such section, shall not be included, in or aggregated with, the total amount of all outstanding extensions of credit taken into account for purposes of subparagraph (A) of this section.".

(b) PRINCIPAL SHAREHOLDER DEFINED.—Section 22(h)(9)(F) of the Federal Reserve Act (12 U.S.C. 375b(h)(9)(F) is amended—

(1) by striking "shareholder' means any person" and inserting "shareholder'—

"(i) means any person"; and

(2) by striking the period at the end of clause (i) (as so redesignated by paragraph (1) of this subsection) and inserting "; and"; and

(3) by adding at the end the following new clause:

"(ii) does not include a company of which a member bank is a subsidiary.".

(c) AMENDMENTS TO DEFINITIONS.—Section 22(h)(9) of the Federal Reserve Act (12 U.S.C. 375b(9)) is amended—

(1) by striking subparagraph (D);

(2) by redesignating subparagraphs (E) and (F) as subparagraphs (D) and (E), respectively; and

(3) by moving the left margin of subparagraph (D) (as so redesignated) 2 ems to the right.

ATTACHMENTS: GSEs

THE SECRETARY OF THE TREASURY,
Washington, DC, October 1, 1992.

Hon. George J. Mitchell,
Majority Leader, U.S. Senate, Washington, DC.

DEAR MR. LEADER: The Administration strongly supports legislation that would protect the taxpayer from risks posed by Government-sponsored enterprises (GSEs) engaged in housing finance. After three years of painstaking studies, debate, and negotiation, similar versions of this legislation have passed overwhelmingly in both the House and the Senate, and now an even stronger version has been agreed to by the bipartisan leadership of the Senate and House Banking Committees. We understand that this final agreement will be considered by the Senate before adjournment. For the reasons set forth below, I strongly urge your support.

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[1] Section 23A also applies qualitative restrictions to all covered transactions, whether or not a transaction is exempt from the quantitative restrictions. For example, the transactions must be on terms and conditions that are consistent with safe and sound banking practices, and the member bank may not purchase low-quality assets from its affiliates. Section 23B of the Federal Reserve Act, which requires that transactions between banks and their affiliates be on fair market terms, also applies to these transactions.

We recognize the important benefits the housing GSEs provide to housing finance. But with over $1 *trillion* in securities issued or guaranteed by these same GSEs, they also pose tremendous risk to the taxpayer. The many federal benefits the GSEs receive—a line of credit from the Treasury, tax exemptions, and securities law exemptions, to name a few—are the very characteristics that convince the marketplace that the federal government will pick up the tab for a GSE failure.

As you know, the federal government is not legally obligated to cover GSE losses, and this Administration would oppose any such taxpayer bailout. Nevertheless, the risk of such a bailout is far more than idle speculation. Congress provided up to $4 billion in federal guarantees to assist the Farm Credit System, the farming GSE that experienced severe losses during the early 1980s. Similarly, while the housing GSEs appear to be healthy now, one of them experienced extreme financial difficulties only ten years ago because of the same interest rate mismatch that bankrupted so many savings and loans. Unless Congress acts now to establish strong capital standards and meaningful safety and soundness oversight, the taxpayer remains far too exposed to a recurrence of exactly these kinds of problems.

The legislation you will take up addresses these risks. For example, it establishes strong capital requirements to absorb future losses. Indeed, the required levels of minimum, critical, and transition capital are higher than in either of the bills passed earlier by the House and Senate. At the same time, the risk-based capital provision preserves the strong standards in the Senate-passed bill: the GSEs must hold enough capital to survive long periods of extreme financial difficulty; the capital must be held for credit risk, interest rate risk, and management and operations risk; and the definition of the elements of capital is appropriately narrow.

Similarly, the legislation establishes a strong, arms-length regulator within the Department of Housing and Urban Development whose responsibility is to ensure that the housing GSEs are adequately capitalized and operated safely. At the same time, the Secretary of HUD will remain exclusive authority over the housing responsibilities of the GSEs, which are expanded in the bill. This authority specifically includes the discretion to disapprove any proposed new program that is not in the public interest.

In short, this legislation is balanced, responsible, and prudent. It establishes a sound framework for safety and soundness oversight, yet prevents the federal government from micro-managing GSE business. It establishes meaningful goals for affordable housing for low- and moderate-income families. And it would greatly enhance the stability, affordability, and availability of housing finance well into the 21st century.

Once more, I strongly urge your support. The American taxpayers and consumers deserve no less.

Sincerely,

NICHOLAS F. BRADY.

NATIONAL COUNCIL OF STATE HOUSING AGENCIES,
April 7, 1992.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs,
Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN RIEGLE: The undersigned state, local, and nonprofit organizations strongly endorse the overall provisions of Title V of the Federal Housing Enterprises Regulatory Reform Act of 1992. Title V establishes a comprehensive framework of goal setting, data collection, reporting, monitoring and enforcement which will compel Fannie Mae and Freddie Mac to significantly expand their commitment to affordable housing. We urge you to aggressively oppose any amendments to make optional or otherwise weaken these landmark housing provisions.

Legislation to ensure the safety and soundness of Fannie Mae and Freddie Mac must not ignore their Congressionally-mandated public purpose. Congress has entrusted Fannie Mae and Freddie Mac with the responsibility to assure low and moderate income families and other undeserved sectors of the mortgage market broad access to housing credit. At a time of severe affordability problems for the very families Fannie Mae and Freddie Mac are intended to serve, these corporations must be directed to do far more than they are currently doing to increase low and moderate income housing opportunities.

The rigorous housing goals established under Title V challenge Fannie Mae and Freddie Mac to expand, diversify, and mainstream their affordable housing lending programs. Specifically, the legislation requires that in the first two years:

At least 30 percent of the corporations' mortgage purchases be secured by housing located in central cities annually;

At least 30 percent of the corporations' mortgage purchases be secured by housing serving families of low and moderate income annually; and

Not less than $3.5 billion be invested by the corporations in the purchase of mortgages securing single and multifamily housing serving families with incomes which do not exceed 80 percent of the area median income. More than half of these mortgages must be secured by housing for families with incomes of 60 percent of the area median or less.

In subsequent years, the goals would be established by the Director of the Office of Federal Housing Enterprise Oversight at HUD, and the central city goal would be expanded to include rural and other underserved areas.

Fannie Mae and Freddie Mac play a unique and vital role in the financing of our nation's housing. It is imperative that the public benefits conferred with these corporations' congressionally granted charters are made available for all income groups without regard to race or location of the residence. We believe this legislation takes reasonable and timely steps to assure that equal credit opportunities are available to all those who seek affordable ownership and rental housing.

We appreciate the opportunity to work with you in developing this crucial housing legislation. We look to you to reaffirm Fannie Mae and Freddie Mac's public mission through its adoption. Thank you for your consideration.

Sincerely,

Association of Community Organizations for Reform Now (ACORN), The Enterprise Foundation, Local Enterprise Foundation, Local Initiatives Support Corporation, National Council of La Raza, National Council of State Housing agencies, National Housing Conference, National League of Cities, National low Income Housing Coalition, National Neighborhood Coalition, United States Conference of Mayors.

ATTACHMENTS: MONEY LAUNDERING

THE SECRETARY OF THE TREASURY,
Washington, DC, February 11, 1992.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing and Urban Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Department of the Treasury urges enactment of legislation which was pending at the end of the first session of the 102d Congress that contains many provisions essential to the fight against money laundering. The House-passed version of this legislation was H.R. 26 and the Senate version was contained in Title IX of S. 543, a title deleted prior to enactment. Similar legislation was passed in the House and reported by the Senate Banking Committee during the second session of the 101st Congress, but not enacted.

While these bills contain many provisions useful to Treasury's anti-money laundering program, a few areas are of particular concern to us:

First, of the utmost importance are amendments that will allow us to fulfill our international commitment to implement the recommendations of the Financial Action Task Force on money laundering. These amendments were set forth in section 927 of S. 543. Almost two years ago, the United States endorsed the recommendations of this 27-nation multinational group for effective domestic and international anti-money laundering measures. It is becoming increasingly important to our participation that we obtain enactment of provisions that would refine the anti-money laundering laws of the United States to meet the FATF requirements.

Also in furtherance of the FATF recommendations, the Administration has been seeking inclusion of a provision to protect non-bank financial institutions which report suspicious transactions from civil liability to their customers similar to the protection available to banks.

Treasury also has been seeking an amendment to the Right to Financial Privacy Act to enable transfer of financial records from other federal agencies to Treasury enforcement agencies, including the Financial Crimes Enforcement Network (FinCEN), for analysis and use in targeting money laundering and other financial crimes. Towards the end of last session an agreement in principle was reached with Senate Banking Committee staff to include such an amendment in the money laundering legislation.

I hope that you will take immediate action in this session of Congress so that we can be fully armed in our war against money laundering and can meet our obligations to our partners in the Financial Action Task Force. It is important that we demonstrate our commitment if we are to encourage progress in the international community.

Sincerely,

NICHOLAS F. BRADY.

TITLE XV, ANNUNZIO–WYLIE ANTI–MONEY LAUNDERING ACT, SECTION–BY–SECTION ANALYSIS

Section 1500—Short Title and Table of Contents

The bill may be cited as the Financial Institutions Enforcement Improvements Act.

SUBTITLE A—TERMINATION OF CHARTERS, INSURANCE AND OFFICES

Section 1501—Appointment of Conservator

Effective December 20, 1992, the appropriate Federal banking agency may appoint a conservator for any insured depository institution convicted of money laundering upon notification by the Attorney General in writing of such conviction.

Section 1502—Charter Revocation

This section requires that the appropriate Federal regulator hold a hearing to decide whether to revoke the charter of a Federally chartered bank, branch, agency, savings association, or credit union after the conviction of such institution for money laundering under 18 U.S.C. 1956 or 1957. The appropriate agency may hold such a hearing in the case of a conviction under 31 U.S.C. 5322. In determing whether to revoke a charter, the regulator must consider the following factors: (1) the extent to which directors or senior executive officers were involved, (2) whether the institution had policies and procedures designed to prevent money laundering, (3) the degree to which the institution cooperated with law enforcement officials, (4) whether the institution has implemented new procedures to prevent the recurrence of the offense, and (5) the effect of the forfeiture of the franchise on the local community's interest in adequate credit and depository services. This section does not apply to a successor to the interests of the institution or to an acquirer of the institution if the acquisition was made in good faith and not to evade this section.

Section 1503—Termination of Deposit Insurance

This section provides that after notification by the Attorney General of the conviction of a Federally-insured State chartered bank, savings association, credit union, or uninsured branch or agency of a foreign bank for money laundering under 18 U.S.C. 1956 or 1957, the FDIC or National Credit Union Administration Board (NCUA), as appropriate, shall hold a hearing to decide whether to terminate the institution's deposit insurance. The FDIC or NCUA may hold such a hearing in the case of a Federally-insured, state chartered institution convicted of an offense under 31 U.S.C. 5322. The FDIC or NCUA shall consider the following factors: (1) the extent to which directors or senior executive officers were involved, (2) whether the institution had policies and procedures designed to prevent money laundering, (3) the degree to which the institution cooperated with law enforcement officials, (4) whether the institution has implemented new procedures to prevent the recurrence of the offense, and (5) the effect of the termination of insurance on the local community's interest in adequate credit and depository services. The FDIC or NCUA must notify the appropriate State regulator ten days before deposit insurance is revoked and publish notice of the termination of issuance in the *Federal Register*. This section does not apply to a successor to the interests of the institution or to an acquirer of the institution if the acquisition was made in good faith and not to evade this section.

Section 1504—Removal of Money Launderers Involved in Currency Reporting Violations

This section bars any person affiliated with a financial institution who is convicted for money laundering or structuring transactions to evade reporting requirements from future employment or affiliation with financial institutions. The appropriate Federal banking agencies are also empowered to bar officers and directors who had knowledge of money laundering and to suspend affiliated persons charged with money laundering.

Section 1505—Unauthorized Participation

This section prohibits the participation of a person convicted of a money laundering offense in the affairs of a depository institution.

Section 1506—State Regulator Access to Currency Transactions Reports

This section provides State financial institution regulators with access to currency transaction reports maintained by the Secretary of the Treasury.

Section 1507—Money Laundering by Foreign Agencies and Branches

This section provides that upon the conviction of a foreign bank operating in the U.S. or the branch, agency or lending subsidiary of a foreign bank, the Federal Reserve must commence proceedings to terminate the activities of the branch, agency or subsidiary.

SUBTITLE B—NONBANK FINANCIAL INSTITUTIONS AND GENERAL PROVISIONS

Section 1511—Identification of Financial Institutions

This section requires the Secretary of the Treasury to prescribe regulations by January 1, 1994 requiring depository institutions to identify and report to the Secretary of the Treasury the names of all financial institution customers (other than depository institutions) who must file currency transaction reports on their own behalf, such as auto and boat dealers, jewelry stores and others. Willful violators of this section may be subject to a civil money penalty of up to $10,000 per day for each unfiled or incomplete report.

Section 1512—Prohibition of Illegal Money Transmitting Businesses

This section makes it a criminal violation of Federal law to conduct, control, manage, supervise, direct or own a money transmitting business that is illegal under State law. The proceeds of such businesses are liable to seizure by and forfeiture to the United States.

Section 1513—Compliance Procedures

This section gives the Secretary of the Treasury authority to proscribe compliance procedure regulations for financial institutions to guard against money laundering.

Section 1514—Nondisclosure of Orders

This section requires financial institutions to keep the existence of targeted currency reporting orders confidential.

Section 1515—Wire Transfer Recordkeeping

This section requires the Secretary of the Treasury and the Federal Reserve Board to jointly adopt regulations by January 1, 1994 requiring insured depository institutions and money transmitting businesses to maintain records of international transactions involving wire transfers or transfers on the books of the institution or money transmitting business that have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The Secretary of the Treasury and the Federal Reserve Board may also prescribe such regulations for domestic fund transfers.

Section 1516—Treasury Access to Records of Other Agencies

This section permits agencies to provide financial records to the Secretary of the Treasury to investigate money laundering and other financial crimes without violating the Right to Financial Privacy Act.

Section 1517—Suspicious Transactions and Financial Institution Anti-Money Laundering

This section permits the Secretary of the Treasury to require financial institutions and directors, officers, employees and agents of financial institutions to report suspicious transactions relevant to possible violations of law or regulation to the Secretary. Such persons are prohibited from notifying the subject of the report of the filing of such information. This section also provides a civil safe harbor for such disclosures. In addition, this section gives the Secretary of the Treasury the authority to require financial institutions to carry out anti-money laundering programs.

Section 1518—Anti-Money Laundering Training Team

This section requires the Secretary of the Treasury and the Attorney General to jointly establish an anti-money laundering training team to assist and provide training to foreign governments in developing and expanding their capabilities for money laundering investigation and prosecution.

Section 1519—International Money Laundering Reports

This section requires the President to report annually to Congress on major money laundering countries. The report must identify such countries and include information as to the status of their ratification and implementation of bi-lateral and multi-lateral agreements relating to international narcotic trafficking, adoption of laws and regulations to prevent narcotic-related money laundering, and instances of refusals to cooperate with foreign governments, among other things. This report must also specify the strategies pursued by relevant U.S. agencies to ensure the cooperation of foreign governments as to narcotic-related money laundering and demonstrate that all U.S. agencies are pursuing a common strategy with respect to achieving international cooperation against money laundering and with respect to major money laundering countries.

SUBTITLE C—MONEY LAUNDERING IMPROVEMENTS

Section 1521—Jurisdiction in Civil Forfeiture Cases

This section provides Federal district courts with jurisdiction over civil forfeiture cases. In addition, this section grants such courts authority to issue warrants nationwide in order to bring property before the court for trial. It is anticipated that in implementing this provision, the Justice Department should take measures so that all potentially affected parties may have knowledge of its intended actions, such as filing a *lis pendens* in the public records of the jurisdiction where property is being seized at the commencement of the forfeiture action.

Section 1522—Civil Forfeiture of Fungible Property

This section authorizes and provides procedures for the civil forfeiture of fungible property (including cash, monetary instruments, and deposits) in connection with any money laundering offense under 18 U.S.C 1956, 1957 or 1960 or 31 U.S.C. 5322. Such forfeiture involving property not traceable directly to the offense must commence within one year of the date of the offense.

Section 1523—Procedure for Subpoenaing Bank Records

This section authorizes the use of subpoenas and establishes procedures to obtain bank records after the commencement of a civil forfieture in rem proceeding relating to a money laundering offense under 18 U.S.C. 1956, 1957 or 1960 or 31 U.S.C. 5322, or a violation of the Controlled Substances Act.

Section 1524—Technical Correction

This section removes an erroneous reference in the prohibition against money laundering in 18 U.S.C. 1956 and makes other technical corrections.

Section 1525—Structuring CMIR Transactions to Evade CMIR Requirements

This section makes it a crime to structure international monetary instrument transactions that avoid the currency import or export reporting requirements of 31 U.S.C. 5316 and provides for the forfeiture of any property involved in such a transaction.

Section 1526—Clarification of Definition of Financial Institution

This section clarifies the definition of "financial institution" in sections 1956(c)(6) and 1957(f)(1) of title 18, U.S. Code.

Section 1527—Definition of Financial Transactions

This section clarifies the definition of "financial transaction" in sections 1956(c)(6) and 1957(f)(1) of title 18, U.S. Code.

Section 1528—Obstructing a Money Laundering Investigation

This section makes the obstruction of money laundering investigations a Federal crime.

Section 1529—Awards in Money Laundering Cases

This section provides for the payment of awards by the Attorney General (from the Department of Justice Assets Forfeiture Fund) for information or assistance directly relating to violations of money laundering under 18 U.S.C. 1956 and 1957, 31 U.S.C. 5313 and 5324, and section 6050I of the Internal Revenue Code of 1986.

Section 1530—Penalties for Money Laundering Conspiracies

This section increases the penalty for the offense of conspiracy to commit money laundering under 19 U.S.C. 1956 or 1957 to the penalty for the substantive money laundering offense.

Section 1531—Technical and Confirming Amendments to Money Laundering Provision

This section makes various technical and conforming amendments to the definition of money laundering found in Section 1956(a)(2), (a)(3), and (b) of title 18, U.S. Code.

Section 1532—Preclusion of Notice

This section amends the Right to Financial Privacy Act to preclude notice to possible suspects of the existence of a grant jury subpoena for bank records in investigations relating to violations of the Controlled Substance Act, the Controlled Substances Import and Export Act, section 6050I of the Internal Revenue Code of 1986, 18 U.S.C. 1956 or 1957, or 31 U.S.C. 5313, 5316, and 5324.

Section 1533—Elimination of Restrictions on Disposal of Forfeited Property

This section eliminates restrictions on the disposal of administratively forfeited property held by the Secretary of the Treasury and the Postal Service.

Section 1534—New Money Laundering Predicate Offenses

This section adds violations of the Food Stamp Act of 1977 involving fraud and the Foreign Corrupt Practices Act as new money laundering predicate offenses under 18 U.S.C. 1956.

Section 1535—Amendments to Bank Secrecy Act

This section makes various technical amendments to the Bank Secrecy Act.

Section 1536—Expansion of Money Laundering to Cover Certain Foreign Crimes

This section expands money laundering offenses under 18 U.S.C. 1956(c)(7)(B) to include an offence against a foreign nation involving kidnaping, robbery, extortion, or fraud by or against a foreign bank.

SUBTITLE D—REPORTS AND MISCELLANEOUS

Section 1541—Study and Report on Reimbursing Financial Institutions

This section requires the Attorney General, in consultation with appropriate bank regulatory agencies, to study and report to Congress as to amending the Right to Financial Privacy Act to allow the reimbursing of financial institutions and non-depository licensed transmitters for the assembly and provision of certain financial records.

Section 1542—Reports of Information Regarding Safety and Soundness of Depository Institutions

This section requires the head of all U.S. agencies and instrumentalities, including the Secretary of the Treasury and the Attorney General, (unless prohibited by law) to provide the appropriate banking agencies with any information that such agency head believes raises significant concerns over the safety and soundness of any depository institution doing business in the U.S., and requires such banking agencies to establish procedures for the receipt of such information. This section provides specific procedures for intelligence information, information relating to a pending civil investigation or litigation or a pending criminal investigation or prosecution, information that may result in serious bodily injury or death, or information that may disclose sensitive investigative techniques. In addition, this section exempts information related to a grand jury investigation.

Section 1543—Immunity

This section amends 18 U.S.C. 6001(1) relating to the criminal immunity of witnesses to include proceedings involving the Federal Reserve Board.

Section 1544—Interagency Information Sharing

This section allows Federal banking agencies, the RTC, the Farm Credit Administration, the Farm Credit System Insurance Corporation, and the National Credit Union Administration to share information with each other and other Federal agencies without waiving any work-product, attorney-client, or other privilege.

SUBTITLE E—COUNTERFEIT DETERRENCE

Section 1551—Short Title

This title may be cited as the Counterfeit Deterrence Act of 1992.

Section 1552—Increase in Penalties

This section increases the penalty for the use of plates or stones or any other thing in the counterfeiting of U.S. obligations or securities to that of a class C felony. This section also updates the definition of "plate", "stone", or "thing" to include electronic methods of reproduction, acquisition, recording, retrieval or transmission. In addition, this section requires the Secretary of the Treasury to ensure that the legitimate use of such electronic methods and retention of such reproductions are not unduly restricted.

Section 1553—Deterrents to Counterfeiting

This section makes the unauthorized possession or control of paper similar to that adopted by the Secretary of the Treasury to print obligations and other U.S. securities or the possession or control of any counterfeit deterrent feature or device identical to that adopted by the Secretary to make such obligation or security a class C felony.

Section 1554—Reproductions of Currency

This section prohibits the unauthorized reproduction through electronic methods of illustrations of obligations or other U.S. securities and requires the Secretary of the Treasury to establish a system to ensure that legitimate reproductions by businesses, hobbyists, press and others will not be unduly restricted. This section also permits color illustrations of currency under regulations adopted by the Secretary.

SUBTITLE F—MISCELLANEOUS PROVISIONS

Section 1561—Civil Money Penalties for Negligence

This section authorizes the Secretary of the Treasury to impose on any financial institution a civil money penalty up to $500 for a negligent violation of currency reporting requirements and $50,000 for a pattern of such violations.

Section 1562—Requiring Copies of CTR's to be Filed with Financial Institutions

This section authorizes the Secretary of the Treasury to require depository institutions to request copies of currency transaction reports from their non-depository financial institution customers, and to report to the Secretary when no copies are provided.

Section 1563—Money Laundering Whistleblower Protection

This section provides whistleblower protection to employees of non-depository financial institutions who report money laundering to regulators or law enforcement officials.

Section 1564—Establishment of Advisory Group on Reporting Requirements

This section requires the Secretary of the Treasury to establish a Bank Secrecy Act Advisory Group to advise the Secretary on how to modify reporting requirements to enhance law enforcement and to inform the private sector on the uses of reported information.

Section 1565—GAO Study of FINCEN

This section requires the General Accounting Office to conduct a feasibility study of the Financial Crimes Enforcement Network (FINCEN) and to report to Congress within one year of enactment on the FINCEN's effectiveness.

COMMUNITY INVESTMENT CORPORATION DEMONSTRATION ACT

Mr. RIEGLE. Mr. President, today I would like to provide clarification on a provision that is included in H.R. 5334—the conference report on the Housing and Community Development Act of 1992. The provision I would like to discuss is section 953, which creates a community investment corporation demonstration program.

During the 102d Congress, the Senate Committee on Banking, Housing, and Urban Affairs held several hearings on the problems of urban America. Numerous witnesses testified that lack of access to credit and other forms of investment capital is a significant factor leading to disinvestment and disintegration of our urban neighborhoods. This spring's riots in Los Angeles demonstrated how dire the situation has become in our nation's cities. In section 953, the Congress found that new models for revitalization are needed. In 1988, the Rouse-Maxwell Task Force on Affordable Housing first recommended the creation of a major national demonstration program based on the model provided by South Shore Bank in Chicago.

This program is intended to plant the seeds of a network of financial institutions dedicated to the revitalization of our inner cities and distressed communities across the Nation. Community investment corporations, also known as community development banks, are organizations whose primary mission is to revitalize their communities by investing in them. They are an innovative mechanism for bringing private capital into low-income neighborhoods. Currently, there are four such institutions in the Nation—South Shore Bank, Chicago, IL, Southern Development Bankcorporation, Arkadelphia, AR, Center for Community Self Help, Durham, NC, and the Community Capital Bank, Brooklyn, NY. These institutions have impressive track records of facilitating small business development, financing and constructing affordable housing, creating and retaining jobs, and building new ladders of opportunity for low-income residents.

The success of existing community development banks has inspired others across the Nation to explore the creation of new community-oriented financial institutions. One of the greatest obstacles new institutions face is raising capital. This program is designed to aid these institutions in raising the capital they need to start and expand, and to provide assistance for the comprehensive range of development services offered by community investment corporations which contribute to their success as a revitalization tool.

Organizations eligible to apply to participate in the demonstration include: First, depository institution holding companies; second, nonprofit organizations that are affiliated with regulated financial institutions; and third, nonprofit organizations that are affiliated with nondepository lending institutions. A key element distinguishing eligible organizations from noneligible organizations is that a central part of its mission is the revitalization of a targeted geographic area. In the case of a depository institution holding company or an affiliated regulated financial institution, it is not the intention of Congress that this provision permit the waiver of any other law relating to the safe and sound operation and management of such institutions. These institutions are expected to balance the competing goals of safe and sound lending and investment practices and community impact.

All eligible organizations are required to serve a targeted geographic area that meets indicators of general economic distress. While the eligible organization may serve a larger area than the targeted geographic area, Federal assistance may only be used in the targeted geographic area identified in its application.

The Secretary of Housing and Urban Development shall select institutions to participate in the program based on criteria including institutional capacity, the range of development services to be offered, the types of development strategies to be pursued, the extent of need in the targeted geographic area or among the targeted populations to be served, and an appropriate geographic distribution of the institutions among regions of the Nation.

Eligible organizations are expected to match any assistance received on a dollar-for-dollar basis. It is intended that the Secretary exercise flexibility in his interpretation of what constitutes matching funds. In making such determinations, the Secretary shall take into consideration the limitations faced by new institutions in raising startup capital.

The Secretary shall make grants and loans for capital assistance to eligible organizations. If an eligible organization is a depository institution holding company, the Secretary shall only issue capital assistance in the form of a loan. These loans shall be repaid to the Secretary. The Secretary is given discretion to issue loans at terms and conditions that are appropriate to the ability of the institution to repay without significantly reducing its community development activities. During the initial phases, when an eligible organization is establishing or expending its activities, the Secretary may defer payments of principal and interest until such time when the institution can begin repaying the loan without significantly reducing its community development activities. This provision is not intended to limit, in any manner, a depository institution holding company's use of funds derived from sources other than assistance provided under this section.

If an eligible organization is a nonprofit organization, the Secretary shall provide capital assistance in the form of a grant. A nonprofit organization that receives capital assistance may only provide assistance to a for-profit entity in the form of a loan. The proceeds of such loans shall be repaid to the nonprofit and must be used for activities consistent with the purposes of this section. This provision is not intended to limit, in any manner, a nonprofit organization's use of funds derived from sources other than assistance provided under this section.

Capital assistance may be used by eligible organizations for a variety of purposes including increasing capital available for providing loans, subsidizing interest rates, providing credit enhancement or guarantees, making direct investments in projects, and providing a portion of loan loss reserves.

The Secretary shall provide grants or loans to eligible organizations for development services and technical assistance. Eligible organizations receiving assistance shall provide development services which complement its lending and investment activities, and which facilitate revitalization. Development services are provided by the eligible organization to borrowers and other appropriate recipients. Development services can include business planning and counseling, marketing and management assistance, administrative costs, capacity building activities, and development of real estate. Technical assistance is considered to be assistance provided by the Secretary to eligible organizations or their subsidiaries or affiliates to establish a community investment corporation. In addition to providing technical assistance, to establish such institutions, the Secretary shall provide, or contract to provide, an ongoing training program to ensure that eligible organizations possess the expertise necessary to successfully run a community investment corporation.

The Secretary is required to consult with an advisory board comprised of experts on lending and community development in devising regulations and other necessary program guidelines, and in considering applications.

To the maximum extent feasible, the Secretary and the Federal financial regulatory agencies shall coordinate the development of regulations and other program requirements. It is intended that the agencies will work together to ensure that their requirements are consistent and create the least amount of regulatory burden necessary. The Federal financial regulatory agencies shall be responsible for ensuring that eligible organizations that are depository institution holding companies or an affiliate or subsidiary of such an organization are operated in a safe and sound manner. The Secretary shall also be responsible for all regulation of nonprofit organizations that are affiliated with a nondepository lending institution. The Secretary shall be responsible for ensuring that all eligible organizations use their assistance for activities that are consistent with the purposes of this section.

It is the intention of Congress that no provision in this section be interpreted to limit the applicability of other laws relating to the safe and sound operation of a regulated financial institution or a depository institution holding company.

I believe that community investment corporations hold great potential as a new tool to address blight and disinvestment in our inner cities. I am pleased to see it incorporated as part of H.R. 5334.

COLLOQUY

Mr. CRANSTON. Before we vote on this bill, I would like to ask the chairman and ranking member of the Banking Committee to explain what the origins of the legislation contained in title XIII are and how it differs from the Senate-passed bill on this subject, S. 2733.

Mr. RIEGLE. I would be happy to.

On September 25, 1991, the House passed H.R. 2900 dealing with the regulation of government-sponsored housing enterprises. On July 1, 1992, the Senate passed S. 2733 with provisions dealing with the same subject matter, but also including a range of additional banking legislation. Procedural problems made the appointment of a House-Senate conference committee difficult. In order to proceed with the bill, an informal conference including Senator RIEGLE, Senator GARN, Congressman GONZALEZ, and Congressman WYLIE met to resolve differences between the House and Senate bills with respect to the GSE issues. Title XIII of the Housing and Community Development Act of 1992 concerns only the GSE provisions.

The capital requirements follow the Senate bill quite closely. The only material changes are the following:

First, the requirement that shapes of the yield curve be "within the range of historical experience" was changed to "reasonably related to historical experience" and specific restrictions about the shape of the yield curve over the last 6 years of the stress period were removed. During the stress period, yield curve shapes and durations should be reasonably related to historical experience. Yield curve shapes should be smooth, and should not fluctuate erratically. The Director may require a GSE to meet the requirements imposed by more than one set of projected yield curves.

Second, the requirement for a study by the Director on new business assumptions was deleted.

Third, alternatives to the Constant Quality House Price Index are required to be authoritative, publicly available, and regularly used by the Federal Government. In considering whether to use a different index, the Director should be guided primarily by index quality considerations. Whatever index is used, it should be accessible by the public and used consistently by the Director or other Federal agencies, and

Fourth, the risk-based capital regulations are required to be sufficiently specific to permit an individual other than the Director to apply the test. This means that the regulations and any accompanying orders or guidelines must be sufficiently detailed to allow a competent person with full access to detailed GSE data to be able to perform the test and obtain the same results as the Director. For example, if the Department of the Treasury, the Federal Reserve Board, the CBO, GAO, OMB, or a consultant to one of those agencies is able to apply the test, after obtaining the required information, this condition would be satisfied.

Minimum and critical capital levels are computed in the same manner as under the Senate passed bill, with one exception. Under this bill, capital must be held against 50 percent of the average amount of commitments outstanding over the 12-month period immediately preceding the date for which the capital amounts is being computed. The Senate-passed bill required capital to be held instead only on commitments with terms remaining of 6 months or more.

The definitions of capital are modified in two ways: First, for the purpose of the minimum and critical capital standards, no provision is made to permit the inclusion of capital instruments other than those specifically described; and second, for all purposes, reserves made or held against specific assets are excluded from capital.

With regard to capital enforcement, there is a difference in nomenclature that should be noted, even though it does not have a substantive effect. Under the Senate-passed bill, the undercapitalized category includes all undercapitalized institutions, institutions that are significantly undercapitalized and critically undercapitalized. Similarly, in the Senate-passed bill, the significantly undercapitalized category includes critically undercapitalized institutions. In this bill, each capital category is discrete, and a GSE cannot be in two categories simultaneously.

In the bill, as in the Senate-passed bill, the Director is given exclusive authority to issue all regulations dealing with the GSE's safety and soundness. The Secretary of Housing and Urban Development is given general regulatory authority over all other issues to ensure that the purposes of the enterprises' charter acts are accomplished. Thus, the general regulatory authority does not extend to matters relating primarily to safety and soundness, which are in the Director's exclusive authority. Further the Director retains, as in the Senate bill, full and independent authority to issue and enforce all regulations and orders necessary to carry out his or her duty to ensure that the enterprises are adequately capitalized and operating safely in accordance with the act, and to enforce the provisions of part of subtitle A, subtitle B, and subtitle C of this title of the act, and sections of the charter acts dealing with capital distribution, financial reporting, executive officer compensation, and any other provision relating primarily to safety and soundness.

The authority given the Director under this bill, including the power to issue and enforce regulations and orders necessary to carry out his or her duty is sufficiently broad to enable the Director to meet new circumstances reflecting changes in the structure of the mortgage finance markets, major technical changes in the activities of the enterprises, or other relevant developments. This bill, by including a specific statement of the Director's duty and granting him full authority to carry out portions of the act, which include that statement, follows the Senate bill rather than the House bill in regard to these authorities.

The Director also retains full and independent authority for the management of the Office. This bill differs from the Senate bill in that the Director's authority to enforce provisions of the act and the charter acts not dealing primarily with safety and soundness is subject to the review and approval of the Secretary. Furthermore, enforcement of housing goals under sections 156 and 157 of the act and report requirements under sections 309(m) and 309(n) of the FNMA Act and sections 307(e) and 307(f) of the FHLMC Act is undertaken solely by the Secretary.

This bill also differs from the Senate bill in that assessments collected from the enterprises and expenditures of the Office may not exceed amounts provided for in appropriation acts. Since GSE funds, rather than taxpayer money, would be used to meet the needs of the Office, and since the Office must be able to hire individuals with the necessary expertise to adequately evaluate the condition of the GSE's, it is extremely important that this procedure not be used to hamstring the effectiveness of the Office in the name of cost savings.

An initial assessment of $1.5 million on each of the enterprises is explicitly provided in the bill along with appropriation of those funds. A supplemental appropriation for the Office will be needed as soon as practicable after a Director is appointed.

With regard to new programs, this bill, like the Senate bill provides new standards for the approval of new conventional mortgage programs. The test of whether an activity is a new program is the same as in the Senate bill: whether the activity is significantly different from existing programs. The approval standards and procedures in this bill differ in four ways:

First, the standard for the Secretary's approval is whether the program is authorized by the relevant charter act and is in the public interest, rather than whether it is authorized and would not have a deleterious effect on housing finance. The public interest standard would ensure that the Secretary could consider a broad range of factors in making his determination. Such factors might include, but are not limited to, the following examples: The effect of the new program on the affordability or availability of housing, the degree to which the private sector is efficiently providing the product, and the likely effect of increased competition. The Secretary is not expected to micromanage the affairs of the GSE or interfere with normal business judgements under this test.

Second, the director's authority to disapprove a program of an enterprise that is not adequately capitalized is explicitly incorporated in the authority to disapprove a capital restoration plan under subtitle B.

Third, the expedited approval procedure for adequately capitalized enterprises under the Senate bill is deleted.

Fourth, an enterprise whose program is disapproved on public interest grounds, or during the period before the risk-based capital standards become effective, safety and soundness grounds, is accorded a hearing on the record concerning the Secretary's action.

With regard to housing goals and reporting requirements, this bill follows the Senate bill quite closely, although the provisions have been rearranged by placing them in different titles. Enforcement of any housing goals other than those described in sections 1332, 1333, and 1334 of this bill is not authorized for either the Director or the Secretary. The goals established under those sections are enforceable by the Secretary. If the Secretary determines, after an opportunity for the enterprise to review and supplement the record, that an enterprise failed to meet a goal, or that there is a substantial probability that an enterprise will fail to meet a goal, and that the goal was or is feasible, the Secretary must require the enterprise to submit a housing plan likely to succeed in meeting the goal for the following year or make such improvements as are reasonable in the current year that is acceptable to the Secretary. If the enterprise fails to submit an acceptable plan that is substantially in compliance with the requirements of a housing plan, fails to make a good faith effort to comply with an approved plan, or fails to submit in a timely manner reports relating to the housing goals, the Secretary may issue a cease-and-desist order requiring compliance with the law or the plan and may assess civil money penalties.

The cease-and-desist and civil money penalty authority of the Secretary differs from the corresponding authority of the Director in that the grounds for issuance and assessment are different. Procedures for issuance, hearings, judicial review, and enforcement relating to the Secretary's enforcement action are intended to parallel provisions relating to the Director's enforcement authority. No significance should be attached to minor variations in the wording or organization of these provisions.

There are also differences with regard to due process procedures and conservatorship rules. This bill resembles the Senate bill in affording the enterprises notice and an opportunity to supplement the administrative record prior to Director's classifying the capital status of an enterprise or taking a discretionary supervisory action other than appointment of a conservator. This bill differs from the Senate bill in providing for an informal hearing rather than a hearing on the record prior to the Director's reclassification of an enterprise based upon conduct that could result in a rapid depletion of core capital or a significant decrease in the value of mortgage collateral.

This bill does not provide for an administrative hearing prior to the appointment of a conservator on grounds other than capital classification. Under the Senate bill the Director could waive such a hearing, but only in certain circumstances. In the absence of hearings, due process with respect to such appointments is limited to judicial review.

This bill differs from the Senate bill regarding two grounds for appointment of a conservator for an enterprise other than capital classification. This bill adds the inability of an enterprise to pay its obligation in the normal course of business as a ground. It also provides that a conservator may be appointed if the Director finds a reasonable likelihood that the GSE may lose substantially all of its core capital and is not likely to be able to restore its capital.

This bill also differs from the Senate bill in permitting the Director to appoint another government agency as conservator and in mandating the termination of a conservatorship that is based upon the classification of an enterprise as significantly or critically undercapitalized, when the enterprise restores its capital to the minimum required capital level.

Subtitle C of this title, dealing with enforcement, closely tracks the Senate bill. However, sections 1371 and 1376 differ from the Senate bill in not making reference to violations of conditions in written approval actions. This bill does provide sanctions for violations of orders and written agreements, which adequately encompass violations of written conditions.

Finally, this bill requires that regulations to implement the bill be issued pursuant to section 553 of title V, U.S. Code. That section allows exceptions from the general requirement to provide a comment period before final regulations are issued. The ability to issue regulations under those exceptions should not be abused by overuse.

Mr. GARN. I believe the chairman has stated the differences quite well. I concur with his response to your question.

Mr. CRANSTON. Thank you both.

Mr. GARN. Mr. President, I want to compliment Senator RIEGLE on the development of important legislation on Government-sponsored enterprises. Under his guidance and leadership, the Banking Committee formulated a landmark bill that will ensure the safety and soundness of the housing Government-sponsored enterprises. Also, Mr. President, this legislation will serve as the catalyst for the financing of considerably more housing for those households with low to moderate income levels. For this the Chairman should be congratulated.

I am pleased, that this legislation requires a thorough investigative study into the role, structure, governance and stockholder interests of the Federal Home Loan Banks. I am sorry, though, that we were unable to include in this bill substantive language that would address much needed reforms to the Federal Home Loan Bank System, such as those undertaken for Fannie Mae and Freddie Mac.

One set of studies of the FHLB System called for in this legislation by the Federal Housing Finance Board, the Comptroller General of the United States, the Director of the Congressional Budget Office, and the Secretary of Housing and Urban Development will be most helpful in determining proper governance and capital standards. Also the studies will focus on products and services, the proper relationship between the system and other Government-sponsored enterprises, financial obligations, the impact of consolidation of the system would have on availability of housing credit, and the interests and investments of the system's stockholders. I am also pleased that provided in this bill is a study of the system by a study committee composed of individuals whose institutions own stock in the 12 Federal Home Loan Banks.

I would ask the Senator if I am correct in saying that it is the purpose of these studies to assist Congress in the development of legislation next year that will preserve and enhance the Federal Home Loan Bank's role as an important source of credit for housing, and to protect the financial investment of the system's member institutions?

Mr. RIEGLE. Yes, Senator GARN, if after reviewing the studies, it becomes apparent that legislation is appropriate, it would be my hope that the Congress would consider addressing these issues.

REAL ESTATE APPRAISALS

Mr. GARN. Mr. President, one provision of this bill clarifies that existing law authorizes the Federal banking agencies, the National Credit Union Administration, and the Resolution

Trust Corporation each to determine that certain real estate-related financial transactions do not require the services of a certified or licensed appraiser. In exercising their authority, the agencies may prescribe—and have prescribed—regulations establishing threshold levels below which appraisals are not required and using other criteria to specify categories of transactions that do not require appraisals by certified or licensed appraisers. Now this provision simply clarifies existing law. So I would ask the Senator from Michigan whether he would agree that the agencies need not repromulgate those regulations.

Mr. RIEGLE. The Senator from Utah is correct. Since this provision clarifies existing law, the agencies do not have to repromulgate those regulations.

THE FAIR HOUSING PROVISIONS OF THE GSE LEGISLATION

Mr. CRANSTON. Mr. President, I would commend Senator RIEGLE for his leadership in moving this important legislation to ensure the safety and soundness of Fannie Mae and Freddie Mac and to ensure that these enterprises increase their commitment to serve low and moderate income families and urban communities. I also believe the strengthened fair housing requirements for the GSE's are very important.

Mr. RIEGLE. I thank Senator CRANSTON for his work as chairman of the Housing Subcommittee in helping to craft this GSE legislation.

Mr. CRANSTON. I am concerned that one of the fair housing provisions which was contained in the Senate passed version of the GSE legislation, S. 2733, is not contained in the final version of the legislation. The provision required the enterprises to have underwriting and appraisal guidelines which prohibited the use of criteria or policies which have a discriminatory effect, including any consideration of the age or location of the housing. This provision is very important given the persistent evidence of mortgage lending discrimination suggested by the HMDA data.

Mr. RIEGLE. I share Senator CRANSTON'S concern about the continued ill of mortgage discrimination. He and I have worked closely together on fair lending legislation and oversight. Discrimination in mortgage lending is a situation that we cannot allow to persist in this Nation. The particular provision that you referred to is not included in the final version of the legislation because the final legislation contains a broad provision, which was also included in S. 2733, which prohibits the GSE's from discriminating in any manner in the purchase of mortgages which has a discriminatory effect, including the age and location of housing. This broad provision is intended to encompass any of the practices and policies of the GSE's, including their underwriting and appraisal guidelines and the underwriting and appraisal guidelines of those mortgage lenders that sell mortgages to the GSE's. Accordingly, the specific provision you are inquiring about is covered under the provision and was merely redundant in S. 2733, and as such was not included in the final bill. The deletion of that particular provision is not intended to suggest that the GSE's or the mortgage lenders who sell mortgages to them can maintain appraisal and underwriting guidelines which have a discriminatory effect based on race, color, religion, sex, handicap, familial status, age or national origin, including the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located.

LEGISLATION TO TIGHTEN CONTROLS IN HOUSING ENTERPRISES

Mr. LEVIN. Mr. President, although it is not as strong as I would have liked, I plan to vote for the legislation before us because it is an improvement over the unacceptably weak controls that now exist over the two housing enterprises, Fannie Mae and Freddie Mac.

Mr. President, as the S&L scandal continues to pull billions of taxpayer dollars from other pressing needs, this country has learned that Federal regulation is not always a bad thing. Sometimes it is all that stands between the taxpayers and another multi-billion-dollar millstone around their necks.

Fannie Mae and Freddie Mac need stronger controls. Together they have about $900 billion in assets and liabilities and enjoy an implicit Federal guarantee of their solvency. Yet these organizations currently operate virtually outside the financial oversight authority of the Federal Government, despite a checkered history of financial performance.

One indicator of the need for stronger controls erupted on the scene in January 1991, when the chief executive officer [CEO] of Fannie Mae, David Maxwell, resigned and, upon his departure, received from Fannie Mae cash benefits worth $27 million. This huge payment made Mr. Maxwell one of the highest paid executives in America that year. This payment demonstrated all too painfully that Fannie Mae was so free of fiscal constraint that it could pay an employee tens of millions of dollars in cash—as he was walking out the door.

The S&L scandal has taught us that this type of excessive executive pay is a danger signal that can't be ignored when taxpayer dollars are at risk. That is why, when this legislation came before the Senate some months ago, I proposed adding a provision to prohibit compensation abuses. I modeled it after a provision I authored last year—now law—which clarified and strengthened the authority of Federal regulators to stop compensation abuses at federally insured banks and S&L's.

The managers of the bill, my colleagues Senator RIEGIE and Senator GARN, agreed that a similar system ought to apply to Fannie Mae and Freddie Mac. We were able, on a bipartisan basis, to work out a floor amendment which made several changes in the bill's language and created a new section 118 to prohibit excessive compensation.

The legislation before us now retains the essence of section 118, but has collapsed its approximately 10 paragraphs into a new section 108 that consists of 2 short paragraphs. Section 108 retains the basic prohibition against compensation abuses at GSEs and makes it clear that the regulator has the authority, without the HUD Secretary's review or approval, to take action to stop such abuses. In so doing, the provision clearly enables the new regulator to establish a system to identify compensation abuses at Fannie Mae and Freddie Mac and take prompt action to stop them. That's important.

At the same time, the section replaces the specific provisions and definitions that were in the Senate bill in favor of more general language. For example, instead of directing the new regulator to prohibit excessive compensation, defining those terms and listing the factors the regulator should consider in evaluating compensation practices, section 108 simply directs the regulator to prohibit compensation which is "not reasonable and comparable" to the compensation paid by similar businesses including major financial services companies.

By retaining the term, "compensation," section 108 clearly intends to permit the regulator to consider a broad range of payments and benefits provided by an enterprise to an executive in exchange for services, including cash payments, fees, noncash benefits, financial counseling, insurance, perquisites, stock options, stock, stock-based compensation and post-employment benefits. That is the same as the Senate bill and is comparable to current practice by bank and S&L regulators who exercise compensation oversight at federally-insured financial institutions.

Unlike the Senate bill, section 108 does not indicate how the regulator is to determine whether particular compensation items or total compensation packages are reasonable and comparable. It is my understanding, however, that this standard is intended to parallel the standard in the Senate bill which directed the regulator to prohibit compensation which is "unreasonable or disproportionate to the services actually performed by the executive officer" and listed specific factors to be taken into consideration.

Section 108 does contain one troublesome reference. It suggests that the regulator evaluate GSE compensation by considering comparable compensation practices at major financial services companies. For the past 2 years, media story after media story has recounted the excessive compensation that American corporations often pay their executives. The average pay of CEO's today is about $2.5 million. The outcry over excessive executive pay in corporate America is one of the reasons this provision is needed—to stop our GSEs from engaging in similar outrages. We specifically don't want Fannie Mae paying its executives as much as "major financial services companies" pay their executives—not when taxpayer dollars are at risk.

That's why the Senate floor amendment struck the reference to "major financial services companies" from its bill. Since Fannie Mae and Freddie Mac have public purposes, enjoy Federal benefits, and pose taxpayer risks that don't apply to private sector companies, the Senate had determined that the more appropriate pay comparison was to "publicly held financial institutions" meaning federally-insured banks and S&Ls as well as other GSEs. I think this legislation makes a major mistake in restoring the "major financial services companies" reference, and I hope to correct that mistake in the next Congress.

If this legislation becomes law, in developing criteria and procedures to implement Section 108, it will be important for the regulator to consult with the Federal Reserve, Comptroller of the Currency and Office of Thrift Supervision to see how they exercise their compensation oversight authority and to set up a comparable system, so that S&L, bank and housing enterprise executives operate under the same prohibitions against compensation abuse. The regulator should also use the authority provided in Section 108, not only to monitor compensation practices and prohibit future abuses, but also to take a hard look at the compensation arrangements already in place for Fannie Mae and Freddie Mac executives. Those arrangements are more than generous, and taxpayers shouldn't be asked to incur the risks involved in another $27 million payout.

In conclusion, while the legislation before us is not as strong as I would have liked, it represents a needed improvement over the status quo, and I support its enactment. At the same time, I urge my colleagues to return to this subject next Congress to tighten the controls further. Fannie Mae and Freddie Mac, with their billions of dollars in assets and potential liabilities, pose risks to the Federal treasury that must not be ignored.

Mr. KENNEDY. Mr. President, I would like to commend Senator CRANSTON and the members of the Banking Committees in both Houses for their tireless efforts to bring this conference report to the floor, and to assure that this Congress enacts housing legislation this session.

The National Affordable Housing Act, passed by Congress in 1990, gave us a new comprehensive housing policy designed to increase the supply of affordability of housing in America, a policy that was long overdue. Since the passage of that act we have made important strides in our cities and rural areas in efforts to house those most in need, to repair our deteriorating low-income housing stock, to provide shelter for the homeless and to give communities the flexibility they need to develop local solutions.

But the need for affordable housing continues to outstrip our efforts. Today there are countless cities in which families must wait over a decade for subsidized housing. Housing conditions in many areas continue to deteriorate due to the virtual elimination of funding for renovation and rehabilitation. Homelessness continues to grow, affecting more and more families. These critical amendments to the National Affordable Housing Act affirm our commitment to provide decent and affordable housing to every American.

This bill reauthorizes programs for rental assistance and public housing—essential programs that are providing housing to the most needy Americans. It provides greater support to local jurisdictions through the HOME Program and CDBG to help them continue to develop appropriate local solutions to the housing shortage. It helps our country meet the challenge of homelessness by authorizing several important programs, including emergency shelter grants to service those living on the streets, transitional housing to assist people in making the transition back into society and shelter-plus care which provides homeless people who have special needs with both the housing and services they require to live with independence and dignity.

Along with maintaining these important programs, this bill includes several new initiatives that will improve housing opportunities and conditions for millions of Americans. I congratulate Senator CRANSTON on his lead-based paint abatement initiative that comprehensively addresses the growing scourge of childhood lead poisoning. The bill's expansion of the Fair Housing Program will provide greater support and resources to combat the continuing disgrace of housing discrimination. I also wish to congratulate Senator KERRY for ensuring the inclusion of the YouthBuild Program. This program will not only increase the construction and rehabilitation of affordable housing, it will also train and employ low-income youth and prepare them for future employment. I am proud to be a cosponsor of this critically important program.

I would like to thank the chairman for his agreement in making certain amendments to the Family Self-Sufficiency Program. While we support and encourage the position that those who rely on Government subsidies to seek economic independence, we must also guarantee that no one loses desperately needed housing because they are unable to participate in a Government job training program that is not appropriately targeted to their needs. Our changes to the Family Self-Sufficiency Program will make it more equitable and more meaningful in helping the residents of public housing reach economical self-sufficiency.

Finally I want to express my hope that the compromise reached on elderly and disabled housing will meet the need of elderly residents for security while assuring that people with all types of disabilities are guaranteed a range of appropriate housing options. It is critical that the provisions in the bill not be used to isolate people with disabilities in segregated housing. I urge the Department of Housing and Urban Development to be vigilant in implementing this compromise, in accordance with the Fair Housing Act, the Civil Rights Act, and the Americans With Disabilities Act, and to assure that no individual is unjustly excluded from affordable housing. In the future I hope Congress will provide the resources and incentives needed for the successful management of mixed housing.

Finally, Mr. President, I urge my colleagues to vote for the 1992 Amendments to the National Affordable Housing Act. It is vital that we pass a housing act this year so that we may continue the work begun in 1990 to deal with this country's want housing crisis and ensure decent and affordable housing and appropriate support to all our citizens.

Mr. SIMON. I wish to briefly discuss the conference report on the National Affordable Housing Act Amendments of 1992.

I commend the members of the Banking Committee and the Housing Subcommittee, particularly Senator CRANSTON, for all the important work that went into this piece of legislation. Overall, I believe this is good legislation that will improve our low-income housing crisis.

I have been particularly concerned about an issue that has been controversial: The mixed housing issue, which involves housing people with disabilities with the elderly. It is unfortunate that this issue brought into conflict two groups who must need assistance. Both seniors and persons with disabilities clearly need and deserve our support, and we have done far too little for both in the past in regard to safe, accessible, and affordable housing.

I was joined by seven of my colleagues in writing to the conferees on this issue. It was critical to us that certain principles of equity be adhered to in the conference. Although the provisions in the conference agreement have raised concerns about a reduction in availability of housing, particularly mixed housing, for persons with disabilities, it is my understanding that it is the intent of the conferees that these provisions will not be used in such a way as to have that negative impact. I am assured that the conferees desired to be fair to both seniors and individuals with disabilities, and that their agreement must be interpreted in that light.

I, therefore, join my colleagues in stating to HUD and Public Housing Authorities [PHA's] that these amendments do not authorize the use of age-distinct housing in a manner that denies opportunity for housing to persons with disabilities, and that the change adopted in these amendments, particularly through expansion of tenant-based assistance, specifically encourage the integration of persons with disabilities into mixed housing.

This carries forward the agenda adopted by the administration and Congress in the enactment of the Americans With Disabilities Act. We made a commitment in that legislation to end the exclusion of persons with disabilities and to enable their participation in all parts of society. Although some types of housing may be age-distinct under these housing amendments, it is important to note that a large percentage of persons in this housing will themselves have disabilities.

The Americans With Disabilities Act [ADA] is premised on the principle that people with disabilities want and deserve to be in the mainstream of American life. It must be clear in interpreting the provisions of this conference agreement that a person with a disability cannot be required to accept placement in segregated public housing. A public housing authority designating such housing must also make available to a person with a disability housing that is not segregated. Consistency with the ADA requires that PHA's provide disability specific housing only when the PHA offers integrated housing as well, and can demonstrate that disabled-only housing is as effective as housing provided to others.

In permitting PHA's to designate age-distinct housing for the elderly, the conference report includes specific protections that will ensure no one will be evicted from where he or she now lives. It will require diligence, however, to make certain that people with disabilities who are now on waiting lists for housing are not passed over with nowhere to turn if PHA's create age-distinct housing. The time that individuals with disabilities are on waiting lists could increase dramatically unless PHA's recognize their responsibility to prevent this from happening. HUD and Congress must keep a watchful eye on this possibility.

In order to make up for potential loss of housing opportunity for persons with disabilities, changes have been made in the authorizations for the section 202 and the section 811 programs. While the split of money for elderly and disabled used to be about 80–20 under these two programs, it will now be 70–30. This change is intended to compensate for the creation of age-distinct housing. If these resources are not sufficient, however, it is clearly not the intent of Congress that persons with disabilities be denied housing opportunities. Among other actions, it will be essential for HUD and local housing authorities to alert the appropriate committees of Congress of the need for additional funds when necessary to ensure inequities do not occur.

There are provisions included in the conference report that require PHA's to keep records so that we will know if any people are passed over on waiting lists. I intend to monitor this issue closely, and I know that my colleagues here in the Senate will be doing the same. The Department of Housing and Urban Development, as well as the Banking Committee, has an obligation to monitor implementation of the housing provisions and any impact on the housing opportunities of individuals with disabilities.

There are other instances in which HUD has important oversight responsibilities. Under this conference agreement, a PHA will submit an allocation plan to HUD. If HUD does not act within 45 days, or 90 days when there are comments, that plan will go into effect. It is critical that HUD look carefully at the process used to develop the PHA plan. HUD must ensure not only that the statutory requirements for involvement of all parts of the community in developing the plan have been fulfilled, but that the needs of all parts of the local community have been addressed in an equitable manner. Specifically, HUD must ensure that the needs of persons with disabilities have not been neglected in the development of plans to establish age-distinct housing and act promptly to require revisions of plans when necessary. In order to carry out these responsibilities, it seems reasonable for HUD to develop clear guidelines or regulations for PHAs to follow in the development of their plans.

The creation of age-distinct housing is meant to provide more flexibility to PHA's. I realize that there are places where flexibility is needed. But this flexibility must not be used to encourage attitudes of intolerance. It cannot be used to allow people who are afraid of individuals with disabilities to say, "You can't live here." Without appropriate monitoring and acceptance of responsibility, this could occur in areas where there have never been any problems at all between seniors and younger persons with disabilities.

If we start accepting policies based on misunderstanding and fears, we will have forgotten the important principles we stood for when we passed the Americans with Disabilities Act, the Civil Rights Act, and the Fair Housing Act. I trust that this has not been the case with the agreement on this conference report, and I will join my colleagues in watching carefully for its appropriate implementation.

(At the request of Mr. MITCHELL, the following statement was ordered to be printed in the RECORD:)

• Mr. SANFORD. Mr. President, I rise to express my strong support of the conference report which contains both the Housing and Community Development Act of 1992 and the Federal Housing Enterprise Financial Safety and Soundness Act of 1992.

THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992

I am particularly pleased that we were able to get this important housing legislation finished this year. Passage of this legislation allows us to improve upon the efforts which we committed ourselves to in 1990, when we passed the National Affordable Housing Act which was aimed at expanding the supply of affordable housing which we so desperately needed and continue to need in our country.

As many of my colleagues are aware, since I came to the Senate I have worked hard to bring to the attention of the Congress the inadequacies of rural housing in America. So often, housing legislation and funding measures are focused on urban housing initiatives. The bill we passed in 1990 included large portions of a bill I introduced in 1989, the Rural Housing Revitalization Act. The increased funding and new programs included in this legislation represented a great step by Congress to begin to address our country's rural housing needs.

However, now more action is needed. Huge backlogs in applications for the popular Farmers Home Administration [FmHA] housing programs persist. At the beginning of 1990, FmHA had close to four times the fiscal year 1990 appropriation for section 515 rural rental housing funds, and less than one-third of eligible applicants for section 502 direct loans received assistance in 1991. Meanwhile, our rural residents continue to live in overcrowded and substandard dwellings with leaky roofs, inadequate plumbing and faulty heating systems.

I am pleased to see that a large portion of my rural housing legislation was included in the Senate housing bill and is now a part of this conference report. I believe that the inclusion of many of my proposals will go a long way toward improving the state of rural housing in America.

First, this legislation increases authorization levels for the highly effective Farmers Home Administration housing programs. It also makes positive changes in rural housing programs to increase the ability of the Farmers Home Administration, private developers and nonprofit providers to address rural housing needs. For instance, this bill modifies the section 533 Housing Preservation Grant Program to include replacement housing. In many cases, the dilapidated rural housing owned by low-income individuals who qualify for the section 533 program is simply beyond rehabilitation, and replacement is the only viable option. Thus, this change will give the housing preservation grant program the flexibility to better address the needs of these individuals by allowing grants to be used to replace housing when rehabilitation becomes economically infeasible.

The bill also contains new incentives to certain projects financed through section 515 and section 8 programs which will extend the use restrictions and keep these projects available for low-income residents. Many projects financed through these programs have been prepaid at a disproportionate rate. In the past, FmHA has offered incentive packages to encourage owners to maintain the low income use of their property. FmHA has been criticized for their efforts to monitor cases where an owner has accepted the incentive package. This bill requires that an Office of Rural Rental Housing Preservation be established in FmHA national headquarters to consistently monitor and process all prepayment applications.

Also, this legislation creates a new FmHA program to provide grants to nonprofit housing agencies to establish revolving loan funds to cover the acquisition and preparation of building sites for low-income housing. These funds will provide tremendous resources to nonprofit providers during the early phases of housing development when few Federal resources are available.

This bill permanently authorizes the section 515 and section 523 FmHA programs. These are the only two FmHA programs which lack permanent authorization, and the efficiency of the programs have been compromised by repeated disruptions in funding availability. Permanent authorization will give the section 515 and 523 programs uniformity with other FmHA housing programs and allow them to operate most effectively.

Finally, this legislation makes needed changes in the HOME Investment Program created by the National Affordable Housing Act. While the HOME Program provides great opportunities for public/private/nonprofit partnerships to create more affordable housing, rural areas have had difficulty utilizing the program because of inadequate funds and burdensome restrictions which disregard the specific needs of rural areas.

As I traveled through North Carolina and also when I held a field hearing last spring in Greensboro, it became clear that the HOME Program was not operating as effectively as it should. I learned that local communities, particularly some of the poorer, more rural ones, were having trouble implementing the HOME Program. Prohibitions on new construction in rural areas and complex matching requirements were making the program problematic and unworkable.

I am pleased to note that the final version of this legislation addresses this issue. The basic intent of the HOME Program was to create partnerships with state and local folks and give them the flexibility they need to implement the program to ensure that specific, local housing needs are met. As it currently operates, there is a tiered system which determines the amout the community must put up to receive matching funds from the Government. The match is significantly higher for new construction proposals versus rehabilitation and rental assistance. In many rural areas, there are no structures to rehabilitate and new construction is the only alternative. I believe that the higher match requirement indicates a bias that works against rural housing needs and against the local flexibility the program seeks to enhance. While this bill still contains a tiered system, I am pleased that the match requirements have been changed to decrease the difference between the tiers.

THE FEDERAL HOUSING ENTERPRISE FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992

I am also very pleased that the Senate is prepared to move forward on the Federal Housing Enterprises Regulator Reform Act of 1992. This is a solid piece of legislation. We have worked on this bill for quite some time, and I am pleased that we were able to craft a feasible compromise that will truly overhaul the regulatory structure of Fannie Mae and Freddie Mac.

Fannie Mae and Freddie Mac have played a major role in expanding the supply of mortgage credit. Overall, I have been very pleased with the manner in which these two housing-related Government Sponsored Enterprises [GSE] have operated, however, the $900 billion these two GSE's liabilities hold does pose potential financial risk to the taxpayers. I am particularly pleased with the sound and responsible financial standards contained in this bill. By including capital requirements which require GSE's to maintain capital not only responsibly addresses the current financial condition of GSE's but also the potential financial condition of GSE's in periods of adverse economic conditions.

In addition, I am pleased that this legislation includes needed incentives to clarify and ensure that Fannie Mae and Freddie Mac meet the housing missions that are so clearly defined in their charters. It is important that they meet the housing finance needs of low and moderate income residents.

REGULATORY RELIEF FOR BANKS

Finally, Mr. President, I am pleased to note that this conference report contains some important provisions related to the paperwork burden imposed on banks. I believe that a strong economy is dependent on a strong banking system and our current banking system is in need of major reform. Laws written in the 1930's that continue to govern our banks have become obsolete in today's modern financial arena. Furthermore, when Congress last attempted to modernize our banking system through the Federal Deposit Insurance Corporation Improvement Act, well-intended efforts were thwarted and the end result was extensive safety and soundness regulations and no reform.

I voted against that measure because I believed and continue to believe that it placed too many regulatory burdens on our banks. Banks are struggling, and ultimately, with added regulations, the costs of keeping up will be passed on to consumers. While I do not oppose measures meant to increase safety and soundness, I think it is vital that we take a realistic look at the regulatory burden such measures place on banks, especially small banks. We need to ensure that banks are not placed in a dangerous, noncompetitive situation while also maintaining high standards of safety and soundness.

When it became clear that we would be unable to achieve major banking reform this legislative year, I began personally to seek relief for the banks from some of this regulatory burden created by the Federal Deposit Insurance Corporation Improvement Act [FDICIA]. I prepared an amendment to the housing bill which included some small, yet significant provisions to help banks concentrate more on promoting growth in their communities, including housing finance, rather than preparing redundant and often costly paperwork. I would like to thank my colleagues who supported my amendment, and express my deep appreciation to the conferees for accepting my proposal.

While passage of these relief provisions does not cure all of the overly intrusive regulations placed on the banking industry, I do think it symbolizes that the Congress is beginning to understand the extent of the paperwork burden on banks and the resulting negative effect on local economies. It is my hope that this small step will lead to a more comprehensive effort to reduce unnecessary burdens and implement major banking reform next year.

Again Mr. President, I strongly support this conference report and hope that it is quickly passed and signed into law.●

Mr. WELLSTONE. Mr. President, I rise today to express my support for one of the best and most important pieces of legislation we have had come before us in this Congress, the Housing and Community Development Act of 1992. This legislation is important because, in a year in which many Americans have been rudely awakened to the needs of our cities, it is the closest thing we have had to a real urban aid package. And, in a year in which we have been told that it is time for Government to pay more attention to the middle class, this is also legislation that provides real help for middle-income Americans. This conference report represents the reauthorization of some of the best programs we have developed to make our communities strong again. It also contains a number of new provisions, many of which are likely to be important steps in helping communities rebuild and recover from this recession. I would like to commend Senator CRANSTON and the other conferees on the work they have done to put this conference report together.

There is much in this conference report that shows that we are committed, as a Nation, to providing poor and low-income Americans with decent, affordable housing, and safe, healthy neighborhoods. There are many elements of this package that address these needs, all of which have been fundamental in helping States and cities meet the housing needs of poor people. This includes the HOME program, which provides grants to States and local governments for housing production, rehabilitation, and rental assistance. It includes funding for many public and assisted housing programs. And, perhaps above all, it includes authorization for the Community Development Block Grant Program [CDBG] which the National Association of Housing and Redevelopment Officials [NAHRO] has characterized as the mainstay of neighborhood and community preservation since 1974. These programs all demonstrate the best of what this Government can do for Americans. I am glad to see we can all agree on their reauthorization.

This conference report also carries with it the reauthorization of many of the programs first authorized in title XIV, the Stewart B. McKinney Homeless Assistance Act. These are the programs with which we try to address the problems of homelessness in our country. I am proud to note that one of the changes in this package of programs is the addition of a new rural homelessness grant program, which contains provisions from legislation I cosponsored with Senator BUMPERS. This is perhaps the first step we can take in addressing the fastest growing part of homelessness in this country. Title XIV will provide resources to expand the network of resources available to address the needs of homeless Americans outside of urban areas.

In following the progress of this report, I have been especially concerned about the manner in which the so-called mixed population problems would be addressed. Because of the shortage of affordable housing alternatives in this country it seemed to me that we needed to avoid, if at all possible, allowing housing authorities to designate certain types of housing as available only to the elderly or to people with disabilities. There can be no doubt that places where these groups have been mixed there have been some problems. I am concerned that public housing authorities, faced with a lack of resources and the difficulties in housing both of these groups, will, if authorized, turn to the simple solution of designating buildings "elderly only" and thereby exclude people with disabilities. I can understand the frustration of the housing authorities, faced with housing people who are difficult to house, who need specialized services, and who sometimes are said to create particular security problems. But I continue to believe that these are problems that can be addressed without segregating people. And while I believe that no housing official would willingly put people out on the street, unless there are more housing resources available, I am afraid a policy that designates some housing as "elderly only" could result in an increase in homelessness.

We need to recognize that problems do not arise wherever elderly people and people with disabilities live together, but only in some of those situations. I want to stress that we are addressing problems that have arisen due to the actions of some individuals rather than a whole category of the population of mixed housing projects. In Minnesota, as well as in other States, the elderly are certainly not alone in their feelings of insecurity in some public housing projects. I have heard from people with disabilities in my State who live in mixed highrises and who are also afraid to walk in the hallways of their buildings. Through incentives for integration, such as on-site management, enhanced security arrangements, and clarification of the eviction process, we can improve tenant satisfaction and safety in mixed housing and the quality of life of elderly and of nonelderly disabled individuals.

I want to compliment the conferees on reaching what I think is a useful compromise in this matter. The report provides more assisted housing for people with disabilities. It protects people against eviction. It requires housing authorities to examine other methods of addressing the problems that can arise where there are mixed populations when they are making their allocation plans for a variety of different types of housing. It authorizes funding for service coordinators. While I believe that this report may still make it too easy for housing authorities to choose to segregate their housing projects, this language represents a good compromise.

Mr. President, I think we need to watch carefully as the policies authorized in this report are implemented. We must be careful that by allowing segregated housing we do not end up with a de facto reinstitutionalization of people with disabilities. We need to make certain that all possible efforts are made to make it possible for people to live together, rather than taking the easy expedient of separating yet another group away from mainstream society. Above all, we must make certain that this policy helps forward the overall goals of this report: To make certain that all Americans have access to affordable housing, in decent, safe neighborhoods. I think this report represents a broad step in that direction and I would like to compliment the conferees on a job well done.

Mr. REID. Mr. President, I am pleased to support the conference report accompanying H.R. 5334, the Affordable Housing and Community Development Reauthorization Act. I served as a conferee to title X of H.R. 5334, the Residential Lead-Based Paint Hazard Reduction Act of 1991. Title X establishes a comprehensive program to reduce lead poisoning hazards in private and assisted housing and housing sold to the public by the Federal Government. Title X's provisions relating to lead abatement worker training and certification programs, public education programs, and exposure studies are modeled upon provisions contained in S. 391, the Lead Exposure Reduction Act, which I introduced in the 102d Congress. This legislation is long overdue.

Lead exposure is widely recognized by health and environmental officials as the No. 1 environmental health problem in American children. Between 3 and 4 million children are at risk. Lead paint alone poses a risk in an estimated 57 million homes across the country. The Agency for Toxic Substances and Disease Registry estimates that 16 percent of all American children, at this moment, have blood lead levels that are within the range that can cause brain damage. That means one out of every six children is at risk. In children of the poorer urban communities, the number of children with toxic lead levels in their bodies approaches 50 to 60 percent.

Lead is pervasive in our environment. There are, in fact, many sources of exposure to this toxic metal. The highest risk to children is from exposure to dust from deteriorating lead-based paint in homes built before 1980. Children swallow or inhale lead dust, which is toxic in extremely small amounts. A child can become lead poisoned by swallowing just one sugar granule size particle of lead per day during his or her childhood.

In spite of our awareness of the problem, heart wrenching stories about lead-poisoned families still make headlines on a regular basis. In 1990, a 28-month-old boy from Wisconsin died from lead poisoning after living just a few months in an abandoned office building contaminated with deteriorating lead paint. He had so much lead in his body, it had begun to replace the calcium in his bones.

Although death from lead poisoning is very rare now, this is still the typical lead poisoning story the public expects to hear. Many people are under the misconception that lead poisoning only occurs in poor urban dwellers. However, the truth of the matter is this deadly poison affects all aspects of our society, the rich, the poor, and the middle class.

A much more typical story of lead poisoning occurs when older homes with lead-based paint are being renovated. The Children's Hospital of Boston reported that fully 40 percent of the infant-poisoning cases they treated from 1987 to 1990 were due to infants swallowing lead dust during home renovations.

A case in point is the 1991 Newsweek report on the Tackling family of Connecticut. This successful middle-class family had both their 2-year-old daughter and newborn infant significantly poisoned by the lead dust, generated by scraping and sanding old lead paint surfaces while renovating their new home. Had they just known the facts about lead paint before they bought the house, their tragedy could have been avoided. Now, they will probably never know just how much damage the lead did to their children's intellectual potential.

This story hits home with me and my family, as well. I became more aware of the lead problem during the course of the early hearings on this issue in 1990. At that same time, my daughter and son-on-law, living here in Washington, DC, were expecting their first child. I learned that right here in the Nation's Capital, 51 percent of preschool-age children have high lead levels and I became very concerned about the health of my daughter and grandchild to be. Their home was tested and the presence of lead paint hazards was confirmed. Fortunately, my daughter and her husband were able to move in with us while the lead hazards were corrected and they now live in a healthy environment. But it might not have been such a happy outcome without knowing about the potential damage in time. Far too many families either don't know the hazards they face from lead paint or they cannot afford to move or have the paint safely abated.

Millions of children are literally at risk, living in every State in this country. They are the children of rich and poor alike, who represent the hope and the future of our Nation.

The biological facts about lead toxicity are well known. Lead is a basic heavy metal toxin. It enters the body by ingestion, inhalation, or absorption through the skin, and is toxic in extremely small amounts. Once poisoned the body cannot get rid of the lead. It stays and accumulates in the bones for a lifetime. A statement from the Agency for Toxic Substances and Disease Registry sums up the problem: "Lead is potentially toxic wherever it is found, and it is fund everywhere."

Lead exposure in children is particularly harmful because they are more susceptible to its damaging effects. Even at low levels, this toxic metal attacks the developing nervous system and other body organs. The problems caused by moderate lead exposure in children, measured as 25–35 micrograms per deciliter of blood, can include chronic anemia, kidney disease, stomachaches, hearing loss, obvious learning disabilities, lower IQ levels, and behavior disturbances. Researchers have linked this level of exposure with a 6-fold increase in reading disorders and a 7-fold increase in high school dropout rate.

Research has now shown that even low-level lead poisoning can also adversely affect IQ level, mental development, and behavior in children exposed in their preschool-age years. The blood-lead level considered to be safe by CDC has been revised downward several times, as dozens of new reports on low-level toxicity, add to our knowledge of the adverse effects of this toxin. CDC has recently announced that the threshold for possible adverse effects has again been lowered to 10 to 15 micrograms of lead per deciliter of blood. This means that 10 times more children are potentially at risk than was previously estimated.

When children are exposed to even low lead exposure, measured as 10 to 20 micrograms per deciliter, they are known to have subtle learning disabilities measured as slow growth, slow mental devleopment, hearing loss, and lowered IQ scores. Mild lead poisoning in children is also associated with abnormal behavior patterns, such as hyperactivity, attention deficit disorders, and antisocial or even aggressive behavior. These characteristics are known to be predictors of future criminality. From this research it is clear that these learning disabilities and behavior problems affect more than just parent and child, they potentially affect all of society.

Lead also poses significant risks to animal populations. Household pets may be the first to indicate a lead problem in the home. The danger to our pets was dramatized when Millie, President Bush's English springer spaniel, was diagnosed as having acute lead poisoning. Like many children, Millie was lead poisoned during renovations that stirred up the old lead paint at the White House.

The Residential Lead-Based Paint Hazard Reduction Act establishes a comprehensive research, training, and education program on lead testing and abatement by environmental professionals. This program answers the urgent cry for Federal help by both the public and an emerging industry, which is struggling to establish acceptable standards for safe lead paint abatement.

Informing the public on what to do about lead problems is a vital part of the formula for correcting lead problems. Title X establishes various long-term health studies and public education programs. As a part of public education, the bill requires that home buyers and renters be informed by lead disclosure statements before entering new housing where lead hazards are known to exist.

Many will argue that we cannot afford to do this. That it will cost too much money. Knowning what we know about the damage lead causes, it is clear to me that it costs us a great deal more to do nothing than it does to correct the problems. The costs to society caused by lead poisoning include increased health care costs on a massive scale. The State of Maryland alone spent $1.5 million last year through the Medicaid Program alone to treat lead poisoned children.

In addition to direct medical expenses, the costs to society also include increased disability and welfare costs, and increased crime and law enforcement costs. At the same time lead is costing us a decrease in the intellectual capacity of our children, a decrease in our ability to compete internationally in the world economy, and a general loss of the social structure in our family life.

When looking at the big picture, the cost of prevention clearly comes out to be less than the cost of the cure. Indeed, preventing lead poisoning is an investment in the future for the sake of our children and generations to come; and there is no more worthwhile investment to make.

Mr. ADAMS. Mr. President, I applaud the conferees for reaching agreement on the National Affordable Housing Act, and join in urging my colleagues to quickly adopt the conference agreement. This act tackles many difficult issues, among them the issue of the mixing of elderly and disabled populations in public and other forms of federally assisted housing. I know that this has been a exceedingly difficult matter for the Members of both the Senate and House committees with jurisdiction over housing, and that the Members have worked hard to find a fair and compassionate way to address it.

I believe the conferees have, in fact, achieved the appropriate balance in this bill. During the first session of this Congress the issue of mixing the elderly with younger persons with disabilities in assisted housing was brought to my attention in the form of a proposed amendment to my legislation reauthorizing the Older Americans Act [OAA]. It was my view that particular proposal was not appropriate in terms of both substance and the legislative vehicle. My reading was that the proposed amendment would only exacerbate tensions with advocates for people with disabilities. So I rejected that proposal and said that not only would the issue be better addressed through housing legislation, but that resolution could only be reached by a truly joint effort by advocates for the elderly and the disabled.

As a member of the Subcommittee on Disability Policy as well as the chairman of the Subcommittee on Aging, I fully recognize the very real housing needs of both low-income older Americans and people with disabilities. Both need access to decent, safe and affordable housing. Unfortunately, the extraordinary reductions in Federal support for housing assistance over the past 12 years, coupled with the tremendous housing needs of these populations has created this issue. The bottom line is that the housing resources are far too inadequate to meet the need. A recent report by the National Alliance for the Mentally Ill noted that over 30,000 persons with mental disabilities are in the Nation's jails—not because they have committed terrible crimes, but because they have nowhere else to go.

Mr. President, this terrible situation has pitted the elderly who wish to reside in age-distinct housing against younger disabled individuals who have even fewer housing options than do the elderly. Make no mistakes about it, the draconian housing policies of the Reagan-Bush administrations has brought us to the brink of a Hobson's choice: provide more housing options for younger persons with disabilities by taking resources from the elderly poor.

While this issue has been the subject of tremendous debate and even angst during the deliberations on the housing bill, it has been the source of conflict and serious tension in many cities across the country. Newspaper articles have outlined in great detail numerous tragic stories concerning the mixing of older persons, mostly very old single women, and younger persons with disabilities, mostly young men, in common housing. This mix has sometimes been violent with tragic outcomes.

Seattle, my home town, has been no exception. Last year, I directed the staff director of my Aging Subcommittee to Seattle to get a first hand look at the situation there. He toured several different kinds of housing facilities. He visited the room of a retired member of the clergy who showed him the scars of a richeting bullet that entered his bedroom and exited just above his bed in which he was lying. The bullet had been fired by a young person residing in an adjacent room.

My staff member encountered older people who wanted to preserve the opportunity to live in housing that was intended to be for the elderly only. But he also spoke with older people who enjoyed the diversity of having people of different ages residing together. In short, older people in publicly assisted housing are like other people everywhere: their needs and wants vary; they are not homogeneous group. They want options. That's what our nation's housing policy should encourage. I am convinced, as are my constituents, that local flexibility is essential to providing those options.

Mr. President, I would like to take a few more moments to describe an important effort in the city of Seattle, where the disabled currently outnumber the elderly in housing.

I am very proud of the work of my office in helping to bring together in Seattle a coalition of organizations and agencies that serve the elderly and the disabled to build a consensus on strategies and solutions to the mixed housing issue. Raising the issue through the Older Americans Act spawned a response to the tension that was clearly increasing between advocates for the elderly and the disabled over access to federally assisted housing.

Through my Seattle office, the Task Force on Elderly/Disabled Housing for Seattle/King County was convened comprised of representatives of key organizations serving persons with disabilities and the elderly, the Seattle Public Housing Authorities, law enforcement, congressional offices, and others. For over a year, this group met regularly to debate the many issues associated with mixed housing and to attempt to reach agreement on what can and should be done about these issues. As far as I know, the task force to deal with this problem in Seattle is unique in the Nation.

I am pleased to say that the majority of this group has just recently reached agreement on a position statement in which they conclude:

> The solutions to this complex problem must be locally designed, flexible, multi-faceted, and creative based upon national standards but local conditions. At a minimum, these solutions should include strong management, more services *and* [emphasis added] housing reserved for persons aged 62 years or older.

Of particular note is the fact that they have concluded, as have the conferees, that we must maintain some housing solely for older persons aged 62 and over and that we must increase the amount of housing available to people with disabilities. The task force position statement includes a number of key principles and goals in addition to preserving age-distinct housing. These include improved housing options for disabled individuals, increased staff and support services—such as case management and referral services, a commitment from local housing providers to work with client populations to improve the current housing situation, planning through local comprehensive housing affordability strategies, and allegiance to laws and principles which ensure no discrimination.

The members of the Seattle Housing Task Force that signed the position paper include: the Easter Seals Society of Washington; the Seattle-King County Area Agency on Aging; the administrators of Council House, a section 236 project; the Seattle Housing Authority; the King County Mental Health Division; the administrator of Hilltop House; and the Puget Sound Council of Senior Citizens.

Mr. President, I am confident that my constituents who have worked so hard to reach consensus on tackling this tough issue will be pleased with the agreement reached on this bill. The conferees have largely adopted the House language on this matter and have provided additional protections and resources for non-elderly persons with disabilities. No one will argue that conference agreement is perfect; certainly not from the perspectives of each of the affected parties. It is a compromise that represents a sound and compassionate approach to guide housing policy in this area.

I have had the opportunity to work closely on the mixed housing issue over the past year with both the elderly and disability communities. They each care passionately about those they are committed to representing. I not only appeal to all affected parties to support this agreement and to ensure that it is implemented as smoothly as possible, but to work together to obtain the resources that are necessary if all low-income seniors and persons with disabilities are to have the decent and affordable housing options that they seek.

There are, of course, many other important provisions in the housing bill, including others that are very important for the elderly. As with the mixed housing issue, I believe the conferees have achieved a solid agreement on the key issues and compliment them for that. Earlier today, I introduced a housing bill that builds upons several provisions that are in this bill. I hope that these additional provisions will be given full consideration when the Congress turns again to housing policy.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of the Mixed Populations Position Statement of the Task Force on Elderly/Disabled Housing For Seattle/King County, WA.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MIXED POPULATIONS POSITION STATEMENT

The issue of "mixed-populations" or two very different groups of people living in the same low-income federally assisted housing which was initially intended for and occupied by elderly households has grown dramatically in the last few years. The increasing pressure of younger, disabled households moving into these buildings has created a situation which can no longer be ignored and must be addressed with logical and reasonable methods of relief if this type of housing is to be preserved as an affordable housing resource.

The solutions to this complex problem must be locally designed, flexible, multifaceted, and creative based upon national standards but local conditions. At a minimum, these solutions should include strong management, more services and housing reserved for persons aged 62 years or older.

An opportunity to reserve some housing solely for persons 62 years of age and older.

A commitment to maintain and/or increase the amount of housing available to the large numbers of disabled households on waiting lists.

Funding to develop new federally assisted housing resources (such as public housing and Section 8) which are appropriately designed and operated and in which service and treatment needs of the elderly and disabled persons can be met.

Authorization and funding for appropriate and adequate support services for federally assisted housing residents that will include case management, assistance, and referral services.

A commitment on the part of local low-income housing providers to work cooperatively with other organizations and groups which represent client populations to insure that all needs are considered and addressed and which insures that there will be no large concentrations of disabled persons in a single facility. These local plans should be incorporated into the local Comprehensive Housing Affordability Strategy (CHAS).

Authorization and funding to provide adequate facility staffing which insures security and safety.

Allegiance to laws and principles which ensure no discrimination.

Mr. BRYAN. Mr. President, I would like to bring to Senator CRANSTON's attention a particular housing problem in Nevada. As you know, according to the 1990 census, Nevada was the fastest growing State in the Nation. The 65-year-old and over population has doubled over the past 10 years. There is an urgent need for housing the greater number of elderly residents living on fixed incomes.

The city of Henderson, a suburb of Las Vegas, is a community of about 80,000 residents. In 1982, the city's population was 26,000. The community has reacted admirably to the heavy demands of such rapid growth. The Henderson Association for Senior Citizen Housing is a voluntary, nonprofit organization which was organized to respond to the expanding need for elderly housing. They successfully built a 40-unit section 202 project 8 years ago and have procured the land, water allocation rights, and low-income tax credits to develop an additional 60 units.

For the past 6 years, the Henderson Association for Senior Citizen Housing has tried unsuccessfully to obtain section 202 funding for 60 units of elderly housing. Although the application was determined "approvable" by the Department of Housing and Urban Development Region IX office, their request was consistently denied. The application was rejected because "there is no reasonable expectation that the sponsor can meet the minimum capital investment requirement and startup expenses."

The Henderson Association for Senior Citizen Housing has the land for these 60 units debt-free, most infrastructure to support the units is available, and they have $28,000 for incidental startup expenses. The association also will work closely with the Clark County Public Housing Authority to provide the best service to the residents.

I am aware that funds for section 202 projects are limited. Nevertheless, when emphasis is placed on the amount of assets available, it becomes impossible for small, community-based nonprofits to compete with large multifunction national organizations. However, small community-based nonprofits play a significant role in providing for the needs of low-income residents in our Nation's suburbs and rural areas.

Several hundred residents are currently on the section 202 waiting list. It is clear that Nevada has a pressing demand for housing and supportive services for low-income senior citizens.

Mr. CRANSTON. The problem confronting the Henderson Association is shared by a number of small nonprofit organizations competing for section 202 funds. The involvement of community-based organizations in the development of supportive housing for the elderly should be considered a positive, not a negative, factor when HUD is selecting applicants for this assistance. For this reason H.R. 5334 includes a waiver of the owner deposit for applicants who are not affiliated with a national sponsor. This provision should ensure fair treatment for worthy organizations such as the Henderson Association for Senior Citizen Housing.

Mr. BRYAN. I thank Senator CRANSTON. I am pleased the conferees have addressed this important issue. I would also like to ask the Department of Housing and Urban Development to give the Henderson Association for Senior Citizen Housing application for section 202 funds, its highest priority for review in the new fiscal year.

Mr. GARN. Mr. President, I would like to take this opportunity to make a few comments about some of the provisions of this legislation other than the housing and Government-sponsored enterprise titles.

With respect to the money laundering title, I am pleased that the Banking Committee has been able to work with the administration in providing new enforcement authorities to deal with the most egregious cases of financial institutions involved in illicit money laundering activities. I would note, however, that one of the tools provided in this bill, section 302, could be used to seize funds belonging to innocent third parties or institutions, when those funds are located in interbank accounts which have been previously used illegally.

It is important that this seizure authority be used judiciously and with significant attention to the effect such seizures might have on the interbank payment and clearing system. In order to ensure that imprudent use of this mechanism would not provoke uncertainty in markets leading to defaults in interbank payments, I would urge the Justice Department to consult closely with the Department of the Treasury in such cases.

The legislation also includes language that I authored to clarify the authority of the appropriate Federal bank regulatory agencies to prescribe pay standards for financial institutions. This language provides that the regulatory agencies are not to prescribe compensation standards that set a specific level or range of compensation for directors, officers, or employees of insured depository institutions.

Further, if an agency determines that excessive compensation is being paid to an officer, director, or employee, it must act on a case-by-case basis by issuing an order under section 8 of the Federal Deposit Insurance Act, or by issuing an order under other statutory authority. Further, it is expected that any such enforcement actions will be directed toward serious abuses and that the regulators will not micromanage the affairs of health institutions.

Mr. D'AMATO. Mr. President, I support the conference report to H.R. 5334, the Housing and Community Development Act of 1992. This legislation includes technical improvements to current housing programs and several new initiatives.

I am pleased that the conference report authorizes two programs which I proposed this year, the Enterprise Zone Homeownership Opportunity Grants Program and the National Cities in Schools Community Development Program. The EZ Home Program, by enabling moderate income home buyers to purchase homes in enterprise zones, will help stabilize communities and bring the benefits of home ownership to distressed areas. The Cities in Schools Program, already a demonstrated success, will support valuable locally based programs that encourage students to pursue their education and development strong job skills to position them for their careers.

The bill also includes $40 million for the YouthBuild Program, which provides funds to develop low-income housing through programs that give disadvantaged youth education and employment opportunity.

Several provisions in this bill are very important to communities throughout my State because they streamline and improve existing programs, such as the Home Program and public housing. These changes will allow current programs to operate more effectively and serve persons in need of affordable housing more successfully.

This bill also includes administration initiatives to improve public housing management, promote home ownership through vouchers, improve HUD's Multifamily Housing Management Program, create safe havens for mentally ill homeless persons, and promote upward mobility through the Moving to Opportunity Program.

I'd like to salute those who have contributed to this process, especially my colleague ALAN CRANSTON, the chairman of the Subcommittee on Housing and Urban Affairs, and Department of Housing and Urban Development Secretary Jack Kemp, who have both exhibited exceptional courtesy, commitment, perseverance, and fairness as they have strived to meet their goals in housing legislation this year. I feel that both should be proud of what they have achieved in this bill.

Mr. BROWN. Mr. President, today the Senate takes up the the conference report to accompany H.R. 5334, the National Affordable Housing Act Amendments of 1992. One important section of that bill is title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992. This title includes important provisions aimed at reducing the threat of lead poisoning in children.

In addition, title X contains a provision directing the Environmental Protection Agency to promulgate regulations, within 18 months, to identify lead-contaminated soils. This provision and the definition in the bill of "lead-contaminated soils" is of concern to me and to the citizens of Aspen, Telluride, Leadville, and other Colorado communities.

EPA should interpret the language in title X as an indication of the need for regulations that reflect appropriate and varying action levels for lead in soils. EPA's rules should provide for the necessary site-by-site analysis that is implicit in the bill's definition of "lead-contaminated soil."

EPA's rules on identification of lead-contaminated soils should take into account site-specific factors and all current scientific knowledge and should not be based on a single uniform level of contamination.

Colorado communities such as Aspen and Telluride have one major historical feature in common. They were established from mine development in the late 1800's, and a portion of the towns were built on mine tailings. Many mine tailings continue to be contaminated with varying levels of lead. In some cases, these old mine tailings have been identified by the EPA as posing a risk to public health. The EPA should identify such potential health risks, and I would encourage them to consider exposure risks based on site specific characteristics.

In the case of Aspen, which was placed on the National Priorities List in 1986, area residents have lived on the Smuggler site for over 100 years. There has never been a case of elevated blood lead levels reported during this time. Current tests conducted by the Agency for Toxic Substances and Disease Registry [ATSDR] to determine blood lead levels in children indicate that Aspen area children were not at risk. Their blood lead levels were found to be 2.7 ug/dl on a scale where the Centers for Disease Control finds a level below 10 to be at no risk.

EPA's plan for the remediation of the Smuggler site calls for digging up to 1 foot of lead-contaminated soil in residential areas to be replaced by uncontaminated soil placed over a felt-like liner. Other parts of the site, roads and parking areas are to be covered with asphalt. It is EPA's belief that remediation of this nature—digging up the lead tailing, causing some of it to become airborne—would place Aspen area residents at a lesser risk than if the soil were left undisturbed—despite 100 years of evidence to the contrary.

In Aspen, many health specialists including the ASTDR, Colorado Department of Health, and the Centers for Disease Control feel that there is no direct relationship between blood lead levels and soil lead levels.

These health specialists are more concerned, in fact, that the risk of exposure would dramatically increase if EPA carried out its proposed remediation plan by causing the lead to become airborne.

In order to avoid similar situations from occurring elsewhere, we should encourage EPA to establish guidelines for lead in soil remediation that allow for site-specific information to determine the appropriate level of cleanup.

EPA, industry and numerous communities are facing major decisions as to what are appropriate cleanup levels for soils contaminated with lead at Superfund sites. Studies continue to support the premise that numerous factors must be considered when characterizing lead exposures and appropriate remediation measures for all kinds of sites. It is known that potential health impacts from lead in soils vary greatly depending on the type of site and potential exposure routes.

Therefore, it is important for Congress, in this bill, to give the EPA direction on establishing appropriate guidelines that take into account this site specific information.

This will allow for more valid assumptions at particular sites and will result in corresponding action levels that are appropriate for the site. This will help to ensure that reasonable methods will be used to protect communities from inappropriate, potentially unsafe, and costly cleanup remedies.

Mr. BOND. Mr. President, I rise in support of the conference report on the Housing and Community Development Act of 1992. This legislation reauthorizes and makes improvements in our housing and community development programs. This bill has been through a long process of negotiation and discussion both with the House of Representatives and the administration, and I think that it is a fair compromise which advances sensible housing policy. I hope that the administration will reconsider their threats to veto this bill. There are several sections of the bill which I think are particularly worthwhile.

The first is public housing management reform and the revitalization program for severely distressed public housing. The vast majority of the public housing units in the United States provides decent, safe, and sanitary housing for the 1.4 million families who live there. There are a significant number of public housing units, however, which house families in dangerous and dilapidated conditions. The National Commission on Severely Distressed Public Housing estimates that approximately 6 percent of the public housing stock—or 86,000 units—falls into this category.

It is simply inexcusable that the Federal Government spends billions of dollars on a program which houses poor families in squalor and crime. The problems associated with the inner-city poor—high rates of unemployment and teenage pregnancy, broken families, lack of education, drugs and crime—are exacerbated by packing families with children into dense, highrise buildings. The intolerable and seemingly intractable conditions at these developments have persisted for years.

The Federal Government built this housing. It continues to pay for its upkeep and modernization. There is no excuse for the Federal Government being the worst slumlord in America. It is time for a concerted attack on the problems at troubled public housing developments so that all public housing residents have a decent place to live.

Reforms need to proceed along two tracks. The first track is management reform aimed at improving the operating performance of public housing authorities which have been consistently mismanaged over the years. This legislation contains several management reforms, including Secretary Kemp's choice in management initiative, which will allow residents of severely distressed public housing to vote to choose new management for their development. This legislation will help HUD and the residents to take action to improve the management and accountability of the PHA by either finding new management for the development or by petitioning the courts to put the PHA into receivership.

The second option which also must be pursued is to allow Federal housing dollars to be spent in new and innovative ways on severely distressed public housing. The current public housing modernization program is simply not adequate to remedy conditions at severely distressed developments. In these cases, where PHA mismanagement is not the issue, the problems at distressed developments have to be solved by residents and community groups being involved in a comprehensive process to rebuild and reconfigure existing buildings and to provide social services—health care, day care, job training—to address the root causes of social and economic distress. This bill contains an important new initiative to begin the process of solving the problems at severely distressed public housing.

The Government should not be operating a program which houses families in inhumane squalor and exacerbates their problems. Both management reform and money for renovation and social services are needed so public housing can provide all of its residents with a decent place to live.

Another important section of this bill makes some changes in the Home Program so that cities and States will be able to use the program more easily. In 1990, Congress recognized that the United States needed a new national housing policy that addressed housing needs more effectively than the old developer-driven housing programs of the past. The result of Congress' deliberations was the Home Program—a flexible system of Federal funding to State and local governments to maintain the supply of affordable housing.

One of the guiding principles behind the Home Program is that Federal money should be used to leverage other resources so that we can get the most housing for our dollars spent. All of the different pieces of the housing puzzle need to fit together—the low-income housing tax credit, rental assistance, public housing, State and local programs—all need to be coordinated locally as part of an overall housing strategy for the community.

State and local governments and community based nonprofits have a fine track record in creating affordable housing—in many ways better than the Federal Government—and Home taps their expertise. The Home Program will give cities and States a chance to carry out innovative housing strategies that meet local needs.

Another provision I really like in this housing bill is the Youthbuild Program. This is a terrific program which has a chapter in St. Louis. It couples job training with the creation of affordable housing by training low-income young people to renovate or construct housing. Coupled with the authorization for Youthbuild is a provision giving low-income residents preference, where possible, for Federal construction and rehabilitation jobs in their neighborhoods. Housing programs ought to help create jobs in the inner city so that we get a double benefit for every tax dollar spent.

Housing problems can be addressed. It takes well-designed programs with decentralized decisionmaking, coordination with social services, and adequate Federal funding. Millions of Americans will be left behind unless we address this fundamental human need—fit and affordable housing. Housing will not solve all of the social problems plaguing America, but without decent housing, the problems can't be solved. This bill take us in the right direction, and I encourage my colleagues to support it.

Mr. CHAFEE. Mr. President, I would like to take this opportunity to say a few words about the lead provisions contained in title X of the housing bill.

Three of us from the Senate Environment Committee were named as conferees for purposes of title X—the lead abatement portion of the bill. The conferees from the Banking Committee worked with us for several days to develop what I believe is an excellent agreement.

Mr. President, the lead provisions break significant new ground in the effort to protect our children and others from exposure to lead. Specifically, subtitle B of title X makes amendments to the Toxic Substances Control Act that would require EPA to issue training and certification standards for those who are involved in lead abatement activities in public and private housing, public and commercial buildings, bridges, and other structures. These standards could then be implemented by States as part of an authorized State lead control program. States would be assisted in developing these programs through Federal grants from EPA and HUD.

In addition, Mr. President, I am pleased to report that the conference report contains a requirement that hazards from lead-based paint be disclosed during transactions for the purchase of residential real estate or the leasing of property. The provision incorporates a concept I have long advocated and contains language similar to an amendment I offered, and the Environment Committee accepted unanimously, last year during consideration of S. 391, the Lead Exposure Reduction Act, a bill authored by Senator REID.

In conclusion, Mr. President, I would like to thank my colleague, Senator CRANSTON, who has long been concerned with the issue of lead poisoning, for working with those of us on the Environmental Committee, and for accommodating so many of our concerns in title X. I would also like to thank my colleague on the Environmental Committee, Senator REID, who for 3 years has tirelessly fought for legislation to reduce exposure to lead.

I look forward to seeing the results from this significant new program.

Mr. FORD. Mr. President, I ask unanimous consent that the conference report be deemed agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the conference report was deemed agreed to.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

THE MONTANA WILDERNESS BILL

Mr. BAUCUS. Mr. President, earlier today, I indicated that this evening I would call up for passage the Montana wilderness bill.

I do so because we in our State of Montana congressional delegation have been working on this issue for 12 years. At one time, we in the Congress passed a bill. It was in 1988. It was put together by the Montana delegation, two Senators and two House Members; three Democrats, one Republican.

President Reagan, unfortunately, vetoed that bill and we are back here 4 years later attempting to once again pass the Montana wilderness bill.

I will not take the time of my colleagues except to say that we are here tonight faced with one solution and one solution only that can be enacted into law. The Senate passed its version of the Montana wilderness bill not too long ago. The House of Representatives passed its own separate different version of the Montana wilderness bill just a week ago, last Friday, to be exact.

I have offered a compromise, a midway position, which essentially splits the difference between the House-passed bill and the Senate-passed bill.

I am confident that is the only version that can be enacted into law in this Congress. I say that because it is a midway position.

I also say that because I have checked with my side of the aisle here in the Senate, with my Democratic colleagues, who have agreed to this version. It has been cleared on the Democratic side.

In addition, the chairman of the House Interior Committee, GEORGE MILLER, and the subcommittee chairman of the relevant jurisdiction, BRUCE VENTO, and others who are interested in this issue in the House on the Democratic side, have also all indicated their agreement to this compromised version of the bill.

I also say it is probably the only version that can be passed because Montana editorial writers have editorialized in favor of this approach. Essentially, they want us in the Montana delegation to finally pass legislation, finally resolve it. And they all are also indicating that, among the various versions, the midway provision is probably about the only solution that can be passed and enacted into law.

Now I know that this compromise version is not what I would prefer. It is not the bill that I first introduced, but I must work with my colleagues, both here in the Senate, with my colleague from Montana, Senator BURNS, as well as with my two colleagues in the House.

I also know that this compromise version is not the preferred version of my colleague from Montana. He would prefer a different version. I prefer a different version.

But we must face reality. We must realize that in politics, as if life, usually some compromise is necessary if we are going to get along with each other, if we are going to reach resolutions. We must all remember, and particularly those interest groups that have a very great stake in this bill, that when the interest groups ask for everything and they want more for themselves, they are most likely going to get nothing. It is far better usually to ask for a half loaf, or three-quarters of a loaf, rather than the whole loaf.

As I stand here and describe the Montana wilderness bill, I am reminded of the Clean Air Act. I am reminded because I see my colleague from Wyoming, Senator SIMPSON. We all will remember that when we finally enacted the Clean Air Act it was a compromise. It was a compromise between the House and the Senate, a compromise between the Congress and the President, between the Congress and the executive branch.

Many of us met in S-224, a room not too far from this Chamber, for approximately a month, where we hammered out a resolution. We hammered out a solution, we hammered out a compromise, because it was only a compromise that would be enacted into law. It was a collection and accumulation of the interests, of the views of those in the Congress who were interested in the issue.

In the same vein, the compromise I have before the Senate here tonight is also a compromise. It is the hammered out resolution among all of those who have competing points of view.

Now, I urge the other side to accept this. This is a compromise.

I understand that Senators from Colorado—one Republican, one Democrat—have just today reached their agreement, their compromise, their resolution of the Colorado wilderness bill. I further understand that it has been cleared on both sides—on the Democratic side, on the Republican side—and it will be brought up in a matter of minutes later tonight for approval by this body.

It seems to me that if the State of Colorado can agree upon its wilderness bill—an issue which must be almost as contentious in Colorado as it is in our State of Montana—that so too can we in the Montana delegation reach an agreement, reach a resolution, reach a compromise.

I also have heard that perhaps the other body tomorrow when it meets may or may not consider measures passed by the Senate. We do not know what measures, if any, the other body will receive and allow to pass tomorrow when it does meet.

I have heard various versions of what the House has said. And I have heard various versions of what the House might do tomorrow. I do not know what the House is going to do tomorrow. I do not know Mr. President, that the House knows what the House is going to do tomorrow.

But I do know this. I do know that it is impossible for the House to receive the Montana wilderness bill if we do not pass it out of this body here tonight. I also know that the version that the House will accept will be this version.

I have checked with so many House Members and I can tell this body that if this version I present tonight were amended in any significant way, it could not possibly pass that other body.

So if our goal is to pass a wilderness bill, to finally put to rest this issue which has bedeviled our State for so long, this issue which has been an albatross around the neck of our State, this issue which has been such a burden on the back of Montanans, I ask us to resolve it and pass it tonight.

I see my colleague from Montana, Senator BURNS, is on the floor. He well knows how hard we both have worked on this issue. I know how desperately much the Senator from Montana, my colleague, wants to resolve this, too. But I also know this issue has been cleared on the Democratic side. I would hope that the Senator from Montana, my colleague, Senator BURNS, would talk to other Republican colleagues to be sure, since this is a Montana resolution, that we Montanans decide this issue.

Because it is clear to me if the Senator from Montana, my colleague, would like this version, this compromise, this midway position to be enacted, that he would have significant influence on other colleagues on his side, I very much hope—I see him on the floor—that he has done that.

I very much hope he himself would agree to this compromise, because if he does agree to this compromise he would have significant influence on his colleagues.

So, Mr. President, I urge us tonight, in these few remaining minutes before the Senate adjourns, to put this issue behind us. It is a midway position. It is a resolution. And I can tell my colleagues if we do not pass this compromise tonight, we will be faced with it next year. We will be faced with this issue next year. And it will be, in my judgment, even more contentious, even more complicated then than it is now.

This is the last hope, the last best chance for our State. I urge us to resolve it this evening.

Mr. SIMPSON. I understand.

UNANIMOUS CONSENT REQUEST

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Chair lay before the Senate a message from the House on S. 1696, the Montana wilderness bill; that the Senate concur in the amendment of the House with my substitute amendment at the desk; that the motion be agreed to; that the motion to reconsider be laid upon the table, and that my proposed amendment be entered in the RECORD.

The proposed amendment is as follows:

In lieu of the matter proposed by the House of Representatives, insert the following:

SECTION 1. SHORT TITLE.

This Act may be referred to as the "Montana National Forest Management Act of 1992".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) Many areas of undeveloped National Forest System lands in the State of Montana possess outstanding natural characteristics which give them high value as wilderness and will, if properly preserved, contribute as an enduring resource of wild land for the benefit of the American people.

(2) The existing Department of Agriculture Land and Resource Management Plans for Forest System lands in the State of Montana have identified areas which, on the basis of their land form, ecosystem, associated wildlife, and location will help to fulfill the National Forest System's share of a quality National Wilderness Preservation System.

(3) The existing Department of Agriculture Land and Resource Management Plans for National Forest System lands in the State of Montana and the related congressional review of such lands have also identified areas that do not possess outstanding wilderness attributes or possess outstanding energy, mineral, timber, grazing, dispersed recreation, or other values. Such areas should not be designated as components of the National Wilderness Preservation System but should be available for multiple uses under the land management planning process and other applicable law.

(b) PURPOSES.—The purposes of this Act are to—

(1) designate certain National Forest System lands in the State of Montana as components of the National Wilderness Preservation System, in furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.), in order to preserve the wilderness character of the land and to protect watersheds and wildlife habitat, preserve scenic and historic resources, and promote scientific research, primitive recreation, solitude, and physical and mental challenge; and

(2) ensure that certain other National Forest System lands in the State of Montana will be managed under the national forest land and resource management plans.

SEC. 3. WILDERNESS DESIGNATIONS.

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act of 1964, the following lands in the State of Montana are designated as wilderness and, therefore, as components of the National Wilderness Preservation System:

(1) Certain lands in the Beaverhead, Bitterroot, and Deerlodge National Forests, which comprise approximately 31,660 acres, as generally depicted on a map entitled "Anaconda-Pintler Wilderness Additions—Proposed" (North Big Hole, Storm Lake, Upper East Fork), dated September 1992, and which are hereby incorporated in and shall be deemed to be a part of the Anaconda-Pintler Wilderness.

(2) Certain lands in the Beaverhead National Forest, which comprise approximately 25,000 acres, as generally depicted on a map entitled "Italian Peaks Wilderness—Proposed", dated September 1992, and which shall be known as the Italian Peaks Unit of the Great Divide Wilderness.

(3) Certain lands in the Beaverhead National Forest, which comprise approximately 80,500 acres, as generally depicted on a map entitled "East Pioneer Wilderness—Proposed", dated September 1992, and which shall be known as the East Pioneer Wilderness.

(4) Certain lands in the Beaverhead National Forest, Montana, comprising approximately 35,000 acres, as generally depicted on a map entitled "West Big Hole Wilderness—Proposed", dated September 1992, and which shall be known as the West Big Hole Unit of the Great Divide Wilderness.

(5) Certain lands in the Bitterroot, Deerlodge, and Lolo National Forests, which comprise approximately 64,800 acres, as generally depicted on a map entitled "Stony Mountain Wilderness—Proposed", dated September 1992, and which shall be known as the Stony Mountain Wilderness.

(6) Certain lands in the Bitterroot and Lolo National Forests, which comprise approximately 55,600 acres, as generally depicted on maps entitled "Selway-Bitterroot Wilderness Additions—Proposed", dated September 1992, and which are hereby incorporated in and shall be deemed to be a part of the Selway-Bitterroot Wilderness.

(7) Certain lands in the Custer National Forest, which comprise approximately 5,800 acres, as generally depicted on a map entitled "Lost Water Canyon Wilderness—Proposed", dated September 1991, and which shall be known as the Lost Water Canyon Wilderness.

(8) Certain lands in the Custer National Forest, which comprise approximately 6,000 acres, as generally depicted on a map entitled "Custer Absaroka Beartooth Wilderness Additions—Proposed" (Burnt Mountain, Timberline Creek, Stateline and Mystic Lake), dated November 1991, and which are hereby incorporated in and shall be deemed to be a part of the Absaroka Beartooth Wilderness.

(9) Certain lands in the Deerlodge and Helena National Forests, which comprise approximately 19,000 acres, as generally depicted on a map entitled "Blackfoot Meadow-Electric Peak Wilderness—Proposed", dated September 1992, and which shall be known as the Blackfoot Meadow Unit of the Great Divide Wilderness.

(10) Certain lands in the Flathead and Kootenai National Forests, which comprise approximately 118,000 acres, as generally depicted on a map entitled "North Fork Wilderness—Proposed (Tuchuck, Thompson-Seton, and Mount Hefty)", dated September 1992, and which shall be known as the North Fork Wilderness.

(11) Certain lands in the Flathead, Helena, Lolo, and Lewis and Clark National Forests, which comprise approximately 223,080 acres, as generally depicted on maps entitled "Arnold Bolle Additions to the Bob Marshall Wilderness—Proposed" (Silver King-Falls Creek, Renshaw, Clearwater-Monture, Deep Creek, Teton High Peak, Volcano Reef, Slippery Bill, Limestone Cave, Choteau Mountain, and Crown Mountain), dated October 1992, which shall be known as the Arnold Bolle-Bob Marshall Wilderness Additions and are incorporated in and shall be deemed to be a part of the Bob Marshall Wilderness.

(12) Certain lands in the Flathead National Forest, which comprise approximately 960 acres, as generally depicted on a map entitled "Mission Mountains Wilderness Additions—Proposed", dated September 1991, and which are hereby incorporated in and shall be deemed to be a part of the Mission Mountain Wilderness.

(13) Certain lands in the Flathead and Lolo National Forests, comprising approximately 159,500 acres, as generally depicted on maps entitled "Jewel Basin/Swan Wilderness—Proposed", dated October 1992. Those lands contiguous to the west slope of the Bob Marshall Wilderness referred to in this paragraph are hereby incorporated in and shall be deemed to be a part of the Bob Marshall Wilderness, while the remaining lands shall be known as the Swan Crest Wilderness.

(14) Certain lands in the Gallatin National Forest, which comprise approximately 14,440 acres, as generally depicted on a map entitled "Gallatin Absaroka Beartooth Wilderness Additions—Proposed" (Dexter Point Tie Creek and Mt. Rae), dated September 1992, and which are hereby incorporated in and shall be deemed to be a part of the Absaroka Beartooth Wilderness.

(15) Certain lands in the Gallatin and Beaverhead National Forests, which comprise approximately 20,100 acres, as generally depicted on a map entitled "Lee Metcalf Cowboys Heaven Addition—Proposed", dated September 1992, and which are hereby incorporated in and shall be deemed to be a part of the Lee Metcalf Wilderness.

(16) Certain lands in the Gallatin National Forest, which comprise approximately 19,000 acres, as generally depicted on a map entitled "Earthquake Wilderness—Proposed", dated October 1992, and which shall be known as the Earthquake Unit of the Great Divide Wilderness.

(17) Certain lands in the Helena National Forest, which comprise approximately 24,000 acres, as generally depicted on a map entitled "Camas Creek Wilderness—Proposed", dated September 1992, and which shall be known as the Camas Creek Wilderness.

(18) Certain lands in the Helena National Forest, which comprise approximately 15,000 acres, as generally depicted on a map entitled "Mount Baldy Wilderness—Proposed", dated September 1991, and which shall be known as the Mount Baldy Wilderness.

(19) Certain lands in the Helena National Forest, Montana, which comprise approximately 10,500 acres, as generally depicted on a map entitled "Gates of the Mountains Wilderness Additions—Proposed" (Big Log), dated September 1992, and which are hereby incorporated in and shall be deemed to be part of the Gates of the Mountain Wilderness.

(20) Certain lands in the Helena National Forest, which comprise approximately 8,500 acres, as generally depicted on a map entitled "Black Mountain Wilderness—Proposed", dated September 1992, and which shall be known as the Black Mountain Unit of the Great Divide Wilderness.

(21) Certain lands in the Kootenai National Forest, which comprise approximately 34,840 acres, as generally depicted on a map entitled "Cabinet Mountains Wilderness Additions—Proposed", dated September 1992, and which are hereby incorporated in and shall be deemed to be part of the Cabinet Mountains Wilderness.

(22) Certain lands in the Kaniksu and Kootenai National Forest, which comprise approximately 50,000 acres, as generally depicted on a map entitled "Scotchman Peaks Wilderness—Proposed", dated September 1991, which shall be known as the Scotchman Peaks Wilderness.

(23) Certain lands in the Kootenai National Forest which comprise approximately 22,000 acres, as generally depicted on a map entitled "Yaak Wilderness-Proposed" (Roderick Mountain), dated September 1992, which shall be known as the Yaak Wilderness.

(24) Certain lands in the Kootenai and Lolo National Forests, which comprise approximately 17,900 acres, as generally depicted on a map entitled "Catarack Peak Wilderness—Proposed", dated September 1991, which shall be known as the Cataract Peak Wilderness.

(25) Certain lands in the Lolo National Forest, which comprise approximately 17,900 acres, as generally depicted on a map entitled "Cube Iron/Mount Silcox Wilderness—Proposed", dated November 1991, which shall be known as the Cube Iron/Mount Silcox Wilderness.

(26) Certain lands in the Lolo National Forest, which comprise approximately 94,700 acres, as generally depicted on a map entitled "Great Burn Wilderness—Proposed", dated September 1991, which shall be known as the Great Burn Wilderness.

(27) Certain lands in the Lolo National Forest, which comprise approximately 60,100 acres, as generally depicted on a map entitled "Quigg Peak Wilderness—Proposed", dated September 1991, which shall be known as the Quigg Peak Wilderness.

(28) Certain lands in the Kootenai National Forest, which comprise approximately 25,000 acres, as generally depicted on a map entitled "Trout Creek Wilderness—Proposed", dated September 1992, and which shall be known as the Trout Creek Wilderness.

(29) Certain lands in the Helena National Forest, which comprise approximately 19,000 acres, as generally depicted on a map entitled "Nevada Mountain Wilderness—Proposed", dated September 1992, and which shall be known as the Nevada Mountain Unit of the Great Divide Wilderness.

(30) Certain lands in the Helena National Forest, which comprise approximately 60,000 acres, as generally depicted on a map entitled "Elkhorn Wilderness—Proposed", dated September 1992, and which shall be known as the Elkhorn Wilderness.

(31) Certain lands in the Gallatin National Forest, which comprise approximately 500 acres, as generally depicted on a map entitled "North Absaroka Wilderness Addition—Proposed (Republic Mountain)", dated September 1992, and which are hereby incorporated in and shall be deemed a part of the North Absaroka Wilderness.

(b) MAPS AND LEGAL DESCRIPTIONS.—(1) The Secretary of Agriculture (hereinafter referred to as the "Secretary") shall file the maps referred to in this section and legal descriptions of each wilderness area designated by this section with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives, and each such map and legal description shall have the same force and effect as if included in this Act.

(2) The Secretary may correct clerical and typographical errors in the maps and the legal descriptions submitted pursuant to this section.

(3) Each map and legal description referred to in this section shall be on file and available for public inspection in the office of the Chief of the Forest Service, Washington, D.C. and at the office of the Regional Forester of the Northern Region.

(c) ADMINISTRATION.—Subject to valid existing rights, each wilderness area designated by this section shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act of 1964, except that, with respect to any area designated in this section, any reference to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

(d) WILDERNESS AREA PERIMETERS.—Congress does not intend that the designation of wilderness areas in this section will lead to the creation of protective perimeters or buffer zones around such areas. The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness area shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

(e) GRAZING.—The grazing of livestock, where established prior to the date of enactment of this Act, in wilderness areas designated in this section shall be administered in accordance with section 4(d)(4) of the Wilderness Act of 1964 and section 108 of an Act entitled "An Act to designate certain National Forest System Lands in the States of Colorado, South Dakota, Missouri, South Carolina, and Louisiana for inclusion in the National Wilderness Preservation System, and for other purposes" (94 Stat. 3271; 16 U.S.C. 1133 note).

(f) STATE FISH AND GAME AUTHORITY.—In accordance with section 4(d)(7) of the Wilderness Act of 1964, nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State of Montana with respect to wildlife and fish in the national forests of Montana.

(g) HUNTING.—Nothing in this Act or the Wilderness Act of 1964 shall be construed to prohibit hunting within the wilderness areas designated in this section.

(h) COLLECTION DEVICES.—(1) Within the wilderness areas designated in this section, the installation and maintenance of essential hydrological, meteorological, or climatological collection devices and ancillary facilities is permitted, subject to such conditions as the Secretary deems desirable.

(2) Access to the devices and facilities described in paragraph (1) shall be by the means historically used, if that method is the least intrusive practicable means available. Access, installation, and maintenance shall be compatible with the provisions of the Wilderness Act.

SEC. 4. WATER.

(a) FINDINGS, PURPOSE, AND DEFINITIONS.—(1) Congress finds that—

(A) the lands designated as wilderness by this Act are located at the headwaters of the streams and rivers on those lands, with no actual or proposed water resource facilities located upstream from such lands and no opportunities for diversion, storage, or other uses of water occurring outside such lands that would adversely affect the wilderness values of such lands;

(B) the lands designated as wilderness by this Act are not suitable for use for development of new water resource facilities, or for the expansion of existing facilities; and

(C) therefore, it is possible to provide for proper management and protection of the water-related wilderness values of such lands in ways different from those utilized in other legislation designated as wilderness lands not sharing the attributes of the lands designated as wilderness by this Act.

(2) The purpose of this section is to protect the water-related wilderness values of the lands designated as wilderness by this Act by means other than those based on a Federal reserved water right.

(3) As used in this section—

(A) the term "water resource facility" means irrigation and pumping facilities, reservoirs, water conservation works, aqueducts, canals, ditches, pipelines, wells, hydropower projects, and transmission and other ancillary facilities, and other water diversion, storage, and carriage structures; and

(B) the term "historic", used with reference to rates of flow, quantities of use, or timing of use of water, means the pattern of actual use or operation of a facility over a representative period of time prior to the date of enactment of this Act.

(b) RESTRICTION ON RIGHTS AND DISCLAIMER OF EFFECT.—(1) Neither the Secretary nor any other officer, employee, or agent of the United States shall assert any claim, and no court or agency of the United States shall consider any claim asserted by any other person, to any right with respect to any waters in the State of Montana based on any construction of any portion of this Act or the designation of any lands as wilderness by this Act as constituting an express or implied reservation of water or water rights.

(2)(A) Nothing in this Act shall be construed as a creation, recognition, disclaimer, relinquishment, or reduction of any water rights of the United States in the State of Montana existing before the date of enactment of this Act.

(B) Nothing in this Act shall be construed as constituting an interpretation of any other Act or any designation made by or pursuant thereto.

(C) Nothing in this section shall be construed as establishing a precedent with regard to any future wilderness designations.

(c) NEW OR EXPANDED PROJECTS.—Notwithstanding any other provision of law, on and after the date of enactment of this Act neither the President nor any other officer, employee, or agent of the United States shall fund, assist, authorize, or issue a license or permit for—

(1) the development of any new water resource facility within the lands designated as wilderness by this Act; or

(2) the enlargement of a water resource facility or the expansion of the historic rate of diversion, quantity of use, or timing of use of a water resource facility within the lands designated as wilderness by this Act.

(3) except as provided in subsection (d) of this section, nothing in this Act shall be construed to affect or limit operation, maintenance, repair, modification, or replacement of water resource facilities in existence on the date of enactment of this Act within the boundaries of the lands designated as wilderness by this Act.

(d) ACCESS AND OPERATION.—(1) Subject to the provisions of this subsection, the Secretary shall allow reasonable access to water resource facilities in existence on the date of enactment of this Act within lands designated as wilderness by this Act, including motorized access where necessary and customarily employed on routes existing as of the date of enactment of this Act.

(2) Subject to the provisions of this subsection, the Secretary shall allow the present diversion, carriage, and storage capacity of water resource facilities existing on the date of enactment of this Act within wilderness areas designated by this Act, and access routes to such facilities existing and customarily employed as of such date, to be operated, maintained, repaired, and replaced as necessary to maintain the present function, design, and serviceable operation of the facilities, so long as such activities have no greater adverse impacts on wilderness values than as of the date of enactment of this Act.

(3) Water resource facilities, and access routes serving such facilities, existing on the date of enactment of this Act shall be maintained and repaired when and to the extent necessary to prevent increased adverse impacts on wilderness values.

(4) The historic rate of diversion, quantity of use, or timing of use of water resource facilities existing on the date of enactment of this Act within lands designated as wilderness by this Act shall not be increased.

(e) MONITORING AND IMPLEMENTATION.—The Secretaries of Agriculture and the Interior shall monitor the operation of and access to water resource facilities within the boundaries of the lands designated as wilderness by this Act and take all steps necessary to implement the provisions of this section.

SEC. 5. SPECIAL MANAGEMENT AREAS.

(a) DESIGNATIONS.—For the purposes of conserving, protecting and enhancing the exceptional scenic, fish and wildlife, biological, educational and recreational values of certain National Forest System lands in the State of Montana, the following designations are made:

(1) The Mount Helena National Education and Recreation Area located in the Helena National Forest, comprising approximately 5,120 acres, as generally depicted on a map entitled "Mount Helena National Education and Recreation Area—Proposed", dated September 1992.

(2) The Hyalite National Education and Recreation Area located in the Gallatin National Forest, comprising approximately 18,900 acres, as generally depicted on a map entitled "Hyalite National Education and Recreation Area—Proposed", dated September 1992.

(3) The Northwest Peak National Recreation Area located in the Kaniksu and Kootenai National Forests, comprising approximately 16,700 acres, as generally depicted on a map entitled "Northwest Peak National Recreation and Scenic Area—Proposed", dated September 1991.

(4) The Buckhorn Ridge National Recreation Area located in the Kaniksu and Kootenai National Forests, comprising approximately 20,000 acres, as generally depicted on a map entitled "Buckhorn Ridge National Recreation Area—Proposed", dated September 1991.

(5) The West Big Hole National Recreation Area located in the Beaverhead National Forest, comprising approximately 90,000 acres, as generally depicted on a map entitled "West Big Hole National Recreation Area—Proposed", dated September 1992, and which shall be known as the West Big Hole National Recreation Area.

(b) MAPS.—The Secretary shall file the maps referred to in this section with the Committee on Energy and Natural Resources, United States Senate, and the Committee on Interior and Insular Affairs, United States House of Representatives, and each such map shall have the same force and effect as if included in this Act: *Provided*, That correction of clerical and typographical errors in such maps may be made. Each such map shall be on file and available for public inspection in the office of the Chief of the Forest Service and the office of the Regional Forester of the Northern Region.

(c) MANAGEMENT.—(1) Except as otherwise may be provided in this subsection, the Secretary shall administer the areas designated in subsection (a) so as to achieve the purposes of their designation and in accordance with the laws and regulations applicable to the National Forest System.

(2) Subject to valid existing rights, all federally owned lands within the areas designated in subsection (a) are hereby withdrawn from all forms of entry, appropriation and disposal under the mining and public land laws, and disposition under the geothermal and mineral leasing laws.

(3) Commercial timber harvesting is prohibited in the areas designated by this section with the following exceptions:

(A) Nothing in this Act shall preclude such measures which the Secretary, in his discretion, deems necessary in the event of fire, or infestation of insects or disease.

(B) Fuel wood, post and pole gathering may be permitted.

(C) Commercial timber harvesting may be permitted in the Hyalite National Recreation and Education Area, but must be compatible with the purposes of its designation.

(4) Where the Secretary determines that such use is compatible with the purposes for which an area is designated, the use of motorized equipment may be permitted in the areas subject to applicable law and applicable land and resource management plans.

(5) The grazing of livestock, where established prior to the date of enactment of this Act may be permitted to continue subject to applicable law and regulations of the Secretary.

(d) NATIONAL RECREATION AREAS.—The Secretary shall manage the Mount Helena and Hyalite National Education and Recreation Areas with a focus on education. All management activities shall be conducted in a manner that provides the public with an opportunity to become better informed about natural resource protection and management.

(e) LAND AND RESOURCE MANAGEMENT PLANS.—Those areas established pursuant to subsection (a) shall be administered as components of the national forests wherein they are located. Land and resource management plans for the affected national forests prepared in accordance with the Forest and Rangeland Renewable Resources Planning Act, as amended by the National Forest Management Act, shall achieve the purposes for which the areas are designated. The provisions of the national forest land and resource management plan, relating to each area designated by this section, shall also be available to the public in a document separate from the rest of the forest plan.

SEC. 6. WILDERNESS STUDY AREAS.

(a) DESIGNATION.—The following areas are hereby designated as wilderness study areas and shall be managed in accordance with the provisions of this section:

(1) Certain lands in the Custer National Forest, comprising approximately 22,000 acres, as generally depicted on a map entitled "Line Creek Plateau Wilderness Study Area—Proposed", dated October 1992.

(2) Certain lands in the Lewis and Clark and Gallatin National Forests, which comprise approximately 115,000 acres, as generally depicted on a map entitled "Crazy Mountain Wilderness Study Area—Proposed", dated October 1992. The Forest Service shall complete a study of public and private land consolidation alternatives for this area which shall be submitted to the appropriate committees of Congress 2 years after the date of the enactment of this Act.

(3) Certain lands in the Flathead National Forest, which comprise approximately 16,000 acres, as generally depicted on a map entitled "North Swan Wilderness Study Area—Proposed", dated September 1992.

(b) REPORT.—When the forest plans are revised, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives containing recommendations as to whether the areas designated in subsection (a) should be added as components of the National Wilderness Preservation System.

(c) MANAGEMENT.—Subject to valid existing rights, the wilderness study areas designated in subsection (a) shall be managed to protect their suitability for inclusion in the National Wilderness Preservation System.

(d) MAPS.—The Secretary shall file the maps referred to in this section with the Committee on Interior and Insular Affairs, United States House of Representatives, and the Committee on Energy and Natural Resources, United States Senate, and each such map shall have the same force and effect as if included in this Act: *Provided*, That correction of clerical and typographical errors in these maps may be made. Each map shall be on file and available for public inspection in the office of the Chief of the Forest Service and the Regional Forester of the Northern Region.

(e) ADJUSTMENT.—Certain lands in the Beaverhead National Forest, which comprise approximately 700 acres, as generally depicted on a map entitled "The West Pioneers Boundary Adjustment—Proposed," dated September 1992, shall be deleted from the West Pioneers Wilderness Study Area and shall no longer be subject to the provisions of Public Law 95-150.

SEC. 7. BADGER-TWO MEDICINE AREA.

(a) WITHDRAWAL.—(1) Subject to valid existing rights including rights held by the Blackfeet nation under existing treaties and statute, all federally owned lands as depicted on a map entitled "Badger-Two Medicine Area", dated September 1991, comprising approximately 116,600 acres, are withdrawn from all forms of entry, appropriation, and disposal under the mining and public land laws and from disposition under the geothermal and mineral leasing laws. Until otherwise directed by Congress, the Secretary shall manage this area so as to protect its wilderness qualities.

(2) Nothing in this section shall preclude the gathering of timber by the Blackfeet Tribe (the "Tribe") in exercise of valid treaty rights within the Badger-Two Medicine Area.

(3)(A) With respect to oil and gas leases on Federal lands within the Badger-Two Medicine Area, no surface disturbance shall be permitted pursuant to such leases until Congress determines otherwise.

(B) Notwithstanding any other law, the term of any oil and gas lease subject to the limitations imposed by this section shall be extended for a period of time equal to the term that such limitation remains in effect.

(b) REVIEW.—The Secretary shall conduct a review of the area referred to in subsection (a) in accordance with the Wilderness Act of 1964 and the provisions of this subsection. Not later than 5 years after the date of enactment of this Act, the Secretary shall report to Congress. In conducting this review:

(1) The Secretary shall establish a committee composed of 1 representative each from the Blackfeet Tribal Business Council, the Blackfeet Tribal traditionalists, and the National Park Service, as well as at least one representative of various concerned user groups, including proportional representation for environmental groups and industry groups. The Committee shall not exceed eleven members. The Blackfeet Tribal Business Council shall choose the 2 Tribal representatives. The Blackfeet Tribal Business Council shall conduct a public meeting to receive recommendations of the community regarding the selection of these members. The committee shall regularly advise the Secretary during the preparation of the report required in this subsection and submit its findings to Congress concurrently with those of the Secretary.

(2) Special consideration shall be given to the religious, wilderness and wildlife uses of the area, taking into account any treaties the United States has entered into with the Blackfeet Nation.

(3) In consultation with the committee, the Secretary shall establish a process to provide information to the Tribe and interested public about options for future designation of the Badger-Two Medicine Area.

(c) RIGHTS.—Nothing in this section shall be construed to diminish, prejudice, add to, or otherwise affect the treaty rights of the Blackfeet Tribe or the rights of the United States.

SEC. 8. SEVERED MINERALS EXCHANGE.

(a) FINDINGS.—The Congress finds that—

(1) underlying certain areas in Montana described in subsection (b) are mineral rights owned by subsidiaries of Burlington Resources, Incorporated (hereinafter collectively referred to in this section as the "company");

(2) there are federally owned minerals underlying privately owned lands lying outside those areas;

(3) the company has agreed in principle with the Department of Agriculture to an exchange of mineral rights to consolidate Federal surface and subsurface ownerships and to avoid potential conflicts with the surface management of such areas; and

(4) it is desirable that an exchange be completed within 2 years after the date of enactment of this Act.

(b) DESCRIPTION OF MINERAL INTERESTS.—(1) Pursuant to an exchange agreement between the Secretary and the company, the Secretary may acquire mineral interests owned by the company underlying surface lands owned by the United States located in the areas depicted on the maps entitled "Severed Minerals Exchange, Clearwater-Monture Area", dated September 1988 and "Severed Minerals Exchanges, Gallatin Area", dated September 1988, or in fractional sections adjacent to those areas.

(2) In exchange for the mineral interests conveyed to the Secretary pursuant to paragraph (1), the Secretary of the Interior shall convey, subject to valid existing rights, such federally owned mineral interests as the Secretary and the company may agree upon.

(c) EQUAL VALUE.—(1) The value of mineral interests exchanged pursuant to this section shall be approximately equal based on available information.

(2) To ensure that the wilderness or other natural values of the areas are not affected, a formal appraisal based upon drilling or other surface disturbing activities shall not be required for any mineral interest proposed

for exchange, but the Secretary and the company shall fully share all available information on the quality and quantity of mineral interests proposed for exchange.

(3) In the absence of adequate information regarding values of minerals proposed for exchange, the Secretary and the company may agree to an exchange on the basis of mineral interests of similar development potential, geologic character, and similar factors.

(d) IDENTIFICATION OF FEDERALLY OWNED MINERAL INTERESTS.—(1) Subject to paragraph (2), mineral interests conveyed by the United States pursuant to this section shall underlie lands the surface of which were owned by the company or its predecessor on September 16, 1987.

(2) If there are not sufficient federally owned mineral interests of approximately equal value underlying the lands identified in paragraph (1), the Secretary and the Secretary of the Interior may identify for exchange any other federally owned mineral interest in land in the State of Montana of which the surface estate is in private ownership.

(e) CONSULTATION WITH THE DEPARTMENT OF THE INTERIOR.—(1) The Secretary shall consult with the Secretary of the Interior in the negotiation of the exchange agreement authorized by subsection (b), particularly with respect to the inclusion in such an agreement of a provision calling for the exchange of federally owned mineral interests lying outside the boundaries of units of the National Forest System.

(2) Notwithstanding any other law, the Secretary of the Interior shall convey the federally owned mineral interests identified in a final exchange agreement between the Secretary of Agriculture and the company.

(f) DEFINITION.—For purposes of this section, the term "mineral interests" includes all locatable and leasable minerals, including oil and gas, geothermal resources, and all other subsurface rights.

(g) ENVIRONMENTAL LAW.—The execution and performance of an exchange agreement and the taking of other actions pursuant to this section shall not be deemed a major Federal action significantly affecting the quality of the environment within the meaning of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), nor shall they require the preparation of an environmental assessment under this Act.

SEC. 9. LANDS ADMINISTERED BY BUREAU OF LAND MANAGEMENT.

(a) FINDING.—The Congress has reviewed the suitability of the Bitter Creek Wilderness Study Area (MT-064-356, BLM Wilderness Study Number) and approximately two thousand five hundred acres of the Axolotl Lakes Wilderness Study Area (MT-076-069, BLM Wilderness Study Number) as generally depicted on a map entitled "Axolotl Lakes WSA", dated March 1990, for wilderness designation and finds that those lands have been sufficiently studied for wilderness pursuant to section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782).

(b) DIRECTION.—The area described in subsection (a) shall no longer be subject to the requirement of section 603(c) of the Federal Land Policy and Management Act of 1976 pertaining to management in a manner that does not impair suitability for preservation as wilderness.

(c) ADMINISTRATIVE JURISDICTION.—Those lands designated as wilderness pursuant to paragraphs (3) and (27) of section 3(a) of this Act, which, as of the date of enactment of this Act, are administered by the Secretary of the Interior as public lands (as defined in the Federal Land Policy and Management Act of 1976), are hereby transferred to the jurisdiction of the Secretary of Agriculture, and shall be added to and managed as part of the National Forest System, and the boundaries of the adjacent National Forests are hereby modified to include such lands.

(d) LAND AND WATER CONSERVATION FUND.—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of affected National Forests, as modified by this section, shall be considered to be the boundaries of such National Forests as if they were the boundaries of the National Forests as of January 1, 1965. Money appropriated from the Land and Water Conservation Fund shall be available for the acquisition of lands, waters, and interests therein in furtherance of the purposes of this Act.

SEC. 10. MONTANA ECOSYSTEM AND ECONOMICS STUDY.

(a) PURPOSE.—The purpose of this section is to protect and enhance ecological values of the Northern Rockies Ecosystem within the State of Montana and to assure that disruptions to communities and local economies are minimized through the sustainable use of the natural resources in the State of Montana: *Provided*, That the scope of the study shall be limited to the State of Montana. To accomplish the purpose, the Secretary shall—

(1) assess current environmental and economic conditions in the Montana ecosystem;

(2) evaluate the recent and likely trends in those conditions under current management;

(3) determine sustainable environmental conditions and economies dependent thereon; and

(4) identify opportunities and requirements to achieve and improve sustainability of the natural resources and the economy.

(b) STUDY.—(1) The Secretary of Agriculture, acting through the Forest Service Research Branch, shall undertake a Montana Ecosystem and Economics Study ("Study"). In conducting the study, the Forest Service shall draw from expertise throughout the Research Branch and cooperate with other Federal agencies, relevant State agencies, local governments, Tribal governments, and the relevant departments (such as biology, ecology, forestry, range, wildlife and fish, recreation, business, economics, law, etc.) of public universities in the State of Montana.

(2) The Secretary of Agriculture shall establish an Advisory Panel consistent with the Federal Advisory Committee Act to meet to review and comment on: (A) the study plan; (B) contractor, background, and interim reports, if any; and (C) the final report. The Advisory Panel shall represent a balance of groups and individuals interested in or affected by natural resource management, in an equitable manner.

(3) The Study shall address the following topics:

(A) The current ecological trends and conditions, environmental sustainability within the State of Montana, including but not limited to—

(i) air and water quality;

(ii) timber quantity, quality, and growth;

(iii) rangeland quality;

(iv) riparian areas;

(v) diversity of native plant and animal species;

(vi) connectivity among isolated ecosystems;

(vii) uncommon, rare, threatened, and endangered species;

(viii) populations of animals for consumptive and nonconsumptive uses;

(ix) wilderness areas;

(x) dispersed recreation opportunities; and

(xi) developed recreation facilities.

(B) The current contribution of commodity and non-commodity uses and output of natural resources to the local and regional economies, including, but not limited to—

(i) distinguishing among the various resource uses and outputs;

(ii) examining the distribution of resource-related economic activities among local communities; and

(iii) distinguishing the contributions from each landowner class: Federal, State, Tribal, other government, forest industry, other major private corporations, and other private (non-industrial) landowners.

(C) The sustainable contribution of commodity and non-commodity uses and outputs of natural resources, using the same distinctions specified in subparagraph (B), and assuming:

(i) achievement of State air and water quality standards; and

(ii) maintenance of or increase in the quality of natural resources in the State of Montana, including: the timber available; range lands grazed by livestock; riparian areas; the diversity of plant and animal species; connectivity among isolated ecosystems; uncommon, rare, threatened, and endangered native species; populations of animals for consumptive and nonconsumptive uses; wilderness areas; dispersed recreation opportunities and developed recreation facilities.

(D) Opportunities to improve environmental conditions that could permit an expansion of the sustainable contribution of commodity and non-commodity uses and outputs of natural resources. The assessment shall identify the financial and non-financial costs for the various opportunities, and the likely or possible incidence of those costs. Opportunities shall include each of the following:

(i) Increasing desirable natural vegetative growth including: reforestation with native species, thinning and other timber stand modifications, prescribed burning, and seeding or planting native grasses, forbs, and shrubs.

(ii) Improving the quality of other biological resources (such as species diversity and animal populations), including: habitat restoration, extended timber rotations, alternative timber harvesting systems and grazing regimes, reserves to protect and improve connectivity among isolated ecosystems, and different standards and methods for road construction, maintenance, closure, and eradication.

(iii) Enhancing the quality of non-biological resources (such as recreation trails and facilities, wilderness areas, and watersheds and streams), including: site restoration and rehabilitation, demand management (user regulation and enforcement, marketing to shift timing and location of uses, etc.) and different standards and methods for road construction, maintenance, closure, and eradication.

(E) Recommendations on investments and practices for agencies responsible for natural resource management.

(c) SCHEDULE.—(1) The study plan shall be ready for review by the Advisory Panel within one year after the enactment of this Act.

(2) Contractor, background, and interim reports shall be presented to the Advisory Panel as they are completed.

(3) The draft report shall be ready for review by the Advisory Panel within 2 years after the Panel's meeting to review the study plan. With Advisory Committee input,

the Secretary shall arrange peer review of the draft report among appropriate independent experts in the relevant fields.

(4) The final report shall be presented to the Committee on Interior and Insular Affairs of the United States House of Representatives, the Committee on Energy and Natural Resources of the United States Senate, to the Chief of the Forest Service, and to the heads of other Federal and State agencies who have jurisdiction over wild land management or are responsible for regulating management practices or impacts in the State of Montana.

SEC. 11. MISCELLANEOUS PROVISIONS.

(a) Redesignation.—Those lands comprising the Rattlesnake National Recreation Area and Wilderness, as designated in Public Law 96-476 are hereby redesignated as the "Rattlesnake National Education and Recreation Area and Wilderness".

(b) Withdrawal.—Those lands comprising approximately 27,000 acres, as generally depicted on a map entitled "Gibson Reservoir Mineral Withdrawal Area—Proposed", dated October 1992, are hereby withdrawn from all forms of entry, appropriation and disposal under the mining and public land laws, and disposition under the geothermal and mineral leasing laws.

(c) Acreages.—All acreages cited in this Act are approximate and in the event of discrepancies between cited acreage and the lands depicted on referenced maps, the maps shall control.

(d) Access.—It is the policy of Congress that the Forest Service acquire and maintain reasonable public access to National Forest System lands in the State of Montana.

(e) Scapegoat and Great Bear Wilderness Names.—In order to consolidate existing contiguous wilderness areas, those lands comprising the Great Bear Wilderness Area designated by Public Law 95-946 and any amendments thereto and the Scapegoat Wilderness Area designated by Public Law 92-395 and any amendments thereto are hereby incorporated in and deemed to be a part of the Bob Marshall Wilderness. The designations of the Great Bear Wilderness and Scapegoat Wilderness shall refer to units within the Bob Marshall Wilderness.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated—

(1) such sums as are necessary for the development of a wilderness education and ranger training complex at the Ninemile Ranger Station, Lolo National Forest, Montana; and

(2) such sums as are necessary to carry out this Act.

SEC. 13. WILDERNESS REVIEW.

(a) Findings.—The Congress finds that—

(1) the Department of Agriculture has studied the suitability of roadless areas for inclusion in the National Wilderness Preservation System; and

(2) the Congress has made its own review and examination of National Forest System roadless areas in the State of Montana and the environmental impacts associated with alternative allocations of such areas.

(b) Release.—Those National Forest System lands in the State of Montana which were not designated as wilderness, special management, national recreation, or wilderness study areas by this Act or Public Law 95-150 shall be managed for multiple use in accordance with land and resource management plans developed pursuant to section 6 of the forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law, and those areas need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of the land and resource management plans.

(c) Plan Revisions.—In the event that revised land management plans in the State of Montana are implemented pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law, areas not recommended for wilderness designation, need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of such plans, and areas recommended for wilderness designation shall be managed for the purpose of protecting their suitability for wilderness designation.

(d) Further Review.—Unless expressly authorized by Congress, the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Montana for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

(e) Previous Plans.—Except as specifically provided in sections 3, 5, 6, and 7 of this Act and in Public Law 95-150, with respect to the National Forest System lands in the State of Montana which were reviewed by the Department of Agriculture under Public Law 94-557, the unit plans that were in effect prior to completion of RARE II, the 1978 Forest Plan for the Beaverhead National Forest, that such reviews shall be deemed an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System, and the Department of Agriculture shall not be required to review the wilderness option prior to the revision of the Land and Resource Management Plans.

(f) Revisions.—As used in this section, and as provided in section 6 of the Forest and Rangeland Renewable Resources Planning Act, as amended by the National Forest Management Act, the term "revision" shall not include an amendment to a land and resource management plan.

(g) Size.—The provisions of this section shall apply to those National Forest System roadless lands in the State of Montana which are less than 5,000 acres in size.

(h) Wilderness Suitability Review.—Except as provided in Public Law 95-150, the wilderness suitability review and evaluation of national forest system lands in the State of Montana completed as a part of Land and Resource Management Plans that were completed prior to the enactment of this Act, constitute an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option prior to the revision of the plans, but shall review the wilderness option when the plans are revised, which revisions will ordinarily occur on a 10-year cycle, or at least every 15 years, unless, prior to such time the Secretary finds that conditions in a unit have significantly changed.

(i) Middle Fork Judith Wilderness Study Area.—Notwithstanding the provisions of this section, the requirements of Public Law 95-150 are deemed to be satisfied with respect to the Middle Fork Judith Wilderness Study Area.

SEC. 14. LAND EXCHANGE—GALLATIN AREA.

(a) In General.—The Secretary shall, subject to the provisions of section 15(b) and section 16(b) and, notwithstanding any other law, acquire by exchange and cash equalization in the amount of $3,400,000, certain lands and interests in land of the Plum Creek Timber, L.P. (referred to in this section as the "company") in and adjacent to the Hyalite-Porcupine-Buffalo Horn Wilderness Study Area, the Scapegoat Wilderness Area, and other land in the Gallatin National Forest in accordance with this section.

(b)(1) Description of Lands.—If the company offers to the United States the fee title, including mineral interests, to approximately 37,752 and 15/100 acres of land owned by the company which is available for exchange to the United States as depicted on a map entitled "Plum Creek Timber and Forest Service Proposed Gallatin Land Exchange", dated May 20, 1988, the Secretary shall accept a warranty deed to such land and, in exchange therefor, and subject to valid existing rights, recommend that the Secretary of the Interior convey, subject to valid existing rights, by patent the fee title to approximately 12,414 and 6/100 acres of National Forest System lands available for exchange to the company as depicted on such map, subject to—

(A) the reservation of ditches and canals required by the Act entitled "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes", approved August 30, 1890 (26 Stat. 391; 43 U.S.C. 945);

(B) the reservation of rights under Federal Oil and Gas Lease numbers 49739, 55610, 40389, 53670, 40215, 33385, 53736, and 38684; and

(C) such other terms, conditions, reservations and exceptions as may be agreed upon by the Secretary of Agriculture and the company.

(2) On termination or relinquishment of the leases referred to in paragraph (1), all the rights and interests in land granted therein shall immediately vest in the company, its successors and assigns, and the Secretary shall give notice of that event by a document suitable for recording in the county wherein the leased lands are situated.

(c) Easements.—At closing on the conveyances authorized by this section—

(1) in consideration of the easements conveyed by the company as provided in paragraph 2 of this subsection, the Secretary of Agriculture shall, under authority of the National Forest Roads and Trails Act of October 13, 1964, or the Federal Land Policy and Management Act of 1976, execute and deliver to the company such easements and authorizations over federally owned lands included in this exchange as may be agreed to by the Secretary and the company in the exchange agreement.

(2) In consideration of the easements conveyed by the United States as provided in paragraph (1), the company shall execute and deliver to the United States such easements and authorizations across company-owned lands included in this exchange as may be agreed to by the Secretary and the company in the exchange agreement.

(d) Maps.—The maps referred to in subsection (b) are subject to such minor corrections as may be agreed upon by the Secretary and the company. The Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs to the United States House of Representatives of any corrections made pursuant to the subsection.

(e) Timing of Transaction.—It is the intent of Congress that the conveyances authorized by this section be completed within 90 days after the date of enactment of an Act making the appropriation authorized by subsection (g).

(f) FOREST LANDS.—All lands conveyed to the United States pursuant to this section shall become national forest system lands to be administered by the Secretary in accordance with applicable law.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section the sum $3,400,000, which amount the Secretary shall, when appropriated, pay to the company to equalize the value of the exchange of land authorized by this section.

(h) QUALITY OF TITLE.—Title to the properties referenced in this section and sections 15, 16, and 17 to be offered to the United States by Big Sky Lumber Company, its assignees or successors in interest, shall be inclusive of the entire surface and subsurface estates without reservation or exception. The owner shall be required to reacquire any outstanding interest in mineral or mineral rights, timber or timber rights, water or water rights, or any other outstanding interest in the property, except reservations by the United States or the State of Montana by patent, in order to assure that title to the property is transferred as described in this section and sections 15, 16, and 17. The agreement shall clearly evidence that the owners have the legal capacity to accomplish the foregoing requirements. Title standards for acquisition shall otherwise be in compliance with Forest Service policies and procedures.

(i) REFERENCES.—The reference and authorities of this section referring to Plum Creek Timber Company, L.P., shall also refer to its successors.

SEC. 15. LAND CONSOLIDATION; PORCUPINE AREA.

(a) IN GENERAL.—The exchange described in section 14 of this Act shall not be consummated by the Secretary until the conditions of this section are met.

(b) CONDITIONS.—The Secretary or a qualified section 501(c)(3) conservation entity, acting on its behalf for later disposition to the United States, shall have acquired, by purchase or option to acquire, or exchange, all of the Porcupine property for its fair market value, determined at the time of acquisition in accordance with appraisal standards acceptable to the Secretary by an appraiser acceptable to the Secretary and the owner. Any appraisal for exchange purposes shall be conducted by the same parties, utilizing the same standards noted above.

(c) DESCRIPTION OF LANDS.—The Secretary is authorized and directed to acquire by purchase or exchange the lands and interests therein as depicted on a map entitled "Porcupine Area", dated September, 1992.

(d) LAND ACQUISITION AUTHORITIES.—Acquisitions pursuant to this section shall be under existing authorities available to the Secretary.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section. Funds necessary for land acquisition are authorized to be appropriated from the Land and Water Conservation Fund.

(f) AUTHORIZATION OF EXCHANGE.—The Secretary is authorized to offer the lands and interests described on a map entitled "Porcupine Exchange Lands", dated September, 1992, to Big Sky Lumber Company, its assignee or successors in interest to fulfill the purposes of this section: *Provided*, That the lands shall not transfer to the company until the provisions of this section and section 16 are met.

(g) EQUAL VALUE.—Any exchange of lands between Big Sky Lumber Company and the United States shall be for equal value.

(h) REFERENCES.—The reference and authorities of this section referring to the Big Sky Lumber Company, shall also refer to its successors.

SEC. 16. LAND CONSOLIDATION—TAYLOR FORK AREA.

(a) IN GENERAL.—The exchange described in section 14 of this Act shall not be consummated by the Secretary until the conditions of this section are met.

(b) CONDITIONS.—The Secretary or a qualified section 501(c)(3) conservation entity, acting on its behalf for later disposition to the United States, shall have acquired, by purchase or option to acquire, or exchange, all of the Taylor Fork property for its fair market value, determined at the time of acquisition in accordance with appraisal standards acceptable to the Secretary by an appraiser acceptable to the Secretary and the owner. Any appraisal for exchange purposes shall be conducted by the same parties, utilizing the same standards noted above.

(c) DIRECTION.—The Secretary is directed to provide Congress, within 2 years, recommendations designed to acquire by purchase or exchange Taylor Fork Area lands owned by Big Sky Timber Company: *Provided*, That such recommendations are agreed to by Big Sky Lumber Company: *Provided further*, That nothing in this section limits the Secretary's authority to acquire or purchase said lands.

(d) DESCRIPTION OF LANDS.—The Secretary is authorized and directed to acquire by purchase or exchange the lands and interests therein as depicted on a map entitled "Taylor Fork Area", dated September, 1992.

(e) LAND ACQUISITION AUTHORITIES.—Acquisition pursuant to this section shall be under existing authorities available to the Secretary: *Provided*, That notwithstanding any other law, exchanges authorized in this section shall not be restricted within the same State.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section. Funds necessary for land acquisition are authorized to be appropriated from the Land and Water Conservation Fund.

(g) EQUAL VALUE.—Any exchange of lands between Big Sky Lumber Company and the United States shall be for equal value.

(h) REFERENCES.—The reference and authorities of this section referring to the Big Sky Lumber Company, shall also refer to its successors.

(i) REPORTS TO CONGRESS.—For a period of 2 years from the date of enactment of this Act, the Secretary shall report annually to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, on the status of the negotiations with the company or its successors in interest to effect the land consolidation authorized by this section.

SEC. 17. LAND CONSOLIDATION—GALLATIN AREA.

(a) IN GENERAL.—The Secretary shall work diligently to assure all lands within what is generally known as the Gallatin Range owned by Big Sky Lumber Company, its assignee or successors in interest, not acquired, purchased or exchanged pursuant to sections 14 and 15 of this Act are acquired by the United States through exchange or purchase.

(b) DIRECTION.—The Secretary is directed to provide Congress, within 3 years, recommendations designed to acquire by purchase or exchange Gallatin Area lands owned by Big Sky Lumber Company: *Provided*, That such recommendations are agreed to by Big Sky Lumber Company: *Provided further*, That nothing in this section limits the Secretary's authority to acquire or purchase said lands.

(c) DESCRIPTION OF LANDS.—The Secretary is authorized and directed to acquire by purchase or exchange the lands and interests therein as depicted on a map entitled "Gallatin Area", dated September, 1992.

(d) LAND ACQUISITION AUTHORITIES.—Acquisitions pursuant to this section shall be under existing authorities available to the Secretary: *Provided*, That notwithstanding any other law, exchanges authorized in this section shall not be restricted within the same State.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out the purposes of this section. Funds necessary for land acquisition are authorized to be appropriated from the Land and Water Conservation Fund.

(f) EQUAL VALUE.—Any exchange of lands between Big Sky Lumber Company and the United States shall be for equal value.

(g) REFERENCES.—The reference and authorities of this section referring to the Big Sky Lumber Company, shall also refer to its successors.

(h) REPORTS TO CONGRESS.—For a period of 3 years from the date of enactment of this Act, the Secretary shall report annually to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, on the status of the negotiations with the company or its successors in interest to effect the land consolidation authorized by this section.

The PRESIDING OFFICER. Is there objection to the request of the Senator?

Mr. SIMPSON. Mr. President, reserving the right to object, and I shall object on behalf of others and not the Senator from Montana, the Senator's colleague. But there are several on our side of the aisle who have asked me to object. I understand fully the pain and the anguish because Wyoming went through this.

The Wyoming wilderness bill took years. Finally a Democrat Governor, Ed Herschler, a marvelous man, Senator WALLOP, myself, and Representative CHENEY, finally just took all those groups and just got them in a room and just beat them around the head and shoulders.

Because they are so greedy and so obscene in what they want, that they get nothing. And you are going through that. It must be anguishing to you.

I just say, and I have worked with this Senator from Montana on the Clean Air Act, we were the last two standing at 5:30 a.m. in the morning, side by side. And we did our compromise and we did our good job and a good piece of work, and it was a great treat to go through that exercise with the Senator from Montana. We were the walking wounded, but we prevailed.

So, I just say to you, on behalf of our leader, Senator DOLE, who has left the

Chamber momentarily, he has been in contact with the Speaker's office, BOB MICHEL, the Republican leader there, repeatedly today on various issues. These contacts concerned our efforts to get urgent—urgent legislation, essential legislative measures considered tomorrow by the House. A raft of vital material.

Senator DOLE received the very same response each and every time. There will be no legislative business in the House tomorrow; none. Absolutely none. This means, Mr. President, that were the Senate to consider the Montana wilderness bill tonight under any scenario, and were we able to complete action on that subject under any scenario, it would still require further action by the House, action which both the Speaker, Congressman FOLEY, and Congressman MICHEL have said will simply not occur.

Therefore, any action the Senate takes tonight would only be in vain. The House would not act and the measure would die. It would be truly a feckless endeavor.

On behalf of several on our side of the aisle, I regretfully, but necessarily, object.

Mr. BAUCUS. Before the Senator objects, might I ask the Senator, does the Senator not know that many times views change? And many times, certainly the Senator from Wyoming knows, that when an issue seems hopeless, when it looks like legislation may not pass, for some reason sometimes miracles occur, the sky opens, there is blue sky and the measure in fact goes through?

I know that there is some concern about whether the House is going to accept measures passed by the Senate tonight. But I also know there is no hurt in trying.

It just seems to me we have two choices here. We could either try or we can do nothing. Of course to ask the question is to answer it. If we do pass the legislation tonight, it is possible—it may be a small probability—it may be a large probability—but it is possible that the House might act.

On the other hand, if the Senate tonight does not pass this bill, it is impossible—impossible for the other body to act.

So it seems to me this matter, which is extremely urgent, I might say to the Senator—extremely urgent to the people of Montana, that we should at least try. We should at least send it over there and see if we can in some way persuade the House to take, not only this bill but all the other bills that the Senate will be sending to the House, and the House will have before it.

With respect to the other concern I heard from the Senator, that is there are two other Senators who may have concerns——

Mr. SIMPSON. More than two.

Mr. BAUCUS. One other? Five? Well that has grown significantly as it sometimes does around here, for some strange reasons, nefarious strange ways. Not always nefarious but for some strange reasons in the last minutes.

That I say is very unfortunate. Because other Senators on the Democratic side have decided that because this is a Montana issue, it should be decided by the Montana delegation and a Montana compromise.

I would hope that the Senators on the other side of the aisle would see that this is a Montana bill. It affects no other States whatsoever. It is only a Montana bill. I hope that they would allow the Montana delegation to work out the solution for Montana.

Any other wilderness bill that might come along, whether it is Idaho, for example, or whatever State it might be, will be a wilderness bill that will affect that State, and release language or water rights language or whatever would only apply to that State.

In the same vein, water rights release language in this bill applies only to Montana. It applies to no other State.

We know in this body when we pass wilderness bills, the water rights language in each State wilderness bill is a little bit different. It is tailored to each State. The same is true with release language. The release language in every wilderness bill is slightly tailored to each State.

I would hope that Senators on the other side of the aisle would let this be a Montana bill, recognizing that when wilderness bills come up in their States, we will defer to those Senators so they can come up with their own solution.

Mr. SIMPSON. Mr. President, I understand the true anguish of the Senator from Montana, but I have a duty to object on the merits, not just the issue of the fact that the House will not process this.

There are many reasons that have been presented to me. A few of them, so the Senator knows that certainly this Senator is not trying to intrude on Montana's issues, because it is tough enough—as we did the Wyoming wilderness bill and had every kind of hold from people all over the United States, who had never even been to Wyoming.

So, I have been there. I know the feeling. But I regret that the objection is there. This bill does have some repercussions in regard to the ecosystem. And when you talk to the ecosystem, you are outside the wilderness area. That is a concern.

Then of course the ancient, ancient one of reserved water rights and water rights.

That is all I can share with the Senator from Montana because it is not my hold or my wish to do this. But it is my duty and I have no other course but to object to the unanimous-consent request.

Mr. BAUCUS. I understand the Senator's duties. I understand that. But before he fully objects I just might, without taking much of the Senate's time—if we are going to send a Colorado wilderness bill to the House, it seems to me we ought to send the Montana wilderness bill to the House. If the House is going to take one it might as well take the other.

Second, though, with respect to water rights, there is a wide variety of water rights language, as the Senator knows, in different wilderness bills. In the Nevada water rights language, which has a very environmental water view, there is a Federal reserve water right. Then there is a Colorado water rights language that passed this body with exactly the opposite direction.

Those were water rights language and provisions tailored to each State, essentially according to the wishes of the State's delegation.

So I hear the Senator. I know that he must object because other Senators, for whatever reasons, have asked the Senator from Wyoming to make that objection. I honor that. That is the institution of the Senate.

I must say, too, that the ecosystem which the Senator may be referring to has been modified in this compromise, so it affects no other State, the ecosystem study which only affects Montana. My compromise—I deleted the changes other States because I was sensitive to the current concerns, the potential concerns of Senators in other States, and that is why it is modified to affect only Montana.

Mr. SIMPSON. I respectfully object and yield the floor.

The PRESIDING OFFICER. Objection is heard.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, I guess a lot of us are sort of disappointed in this whole process. Senator BAUCUS and I went through this negotiating and hammering out a balanced bill for the State of Montana about a year ago and passed it through this body, to be only taken to the House of Representatives and changed considerably. It just upset the balance altogether.

I am not one of those who is objecting tonight to the consideration of this version of this act. However, I must go on record that I will reserve my right to debate the merits of this bill and also offer four amendments. We can see how futile that would be with the message coming over from the House of Representatives.

I understand the other objections, too, because of the new language that has been circulating, also new water language that has been changed two or three times. Those are tough issues. The Chair would understand that. He has been going through that kind of a wringer all day long. They are very difficult issues and they are issues that are understood in the West that cannot be taken lightly because of our water laws in the State.

So I am, too, disappointed that we did not get it done this year. We will continue to work on it and to resolve it. I agree with my senior Senator, that these groups come in and say there is gridlock in the Congress. I will say this, it is not a partisan gridlock and it is not a gridlock between the Congress and the White House. The gridlock comes within each body of Congress. It is a gridlock of interest groups that absolutely set the satchel down and will not accept compromise in most areas and, therefore, it paralyzes this body and the House, and of course, the administration.

I, too, am disappointed. I am not to the point where I feel this cannot be accomplished and done in a proper way. Again, Senator BAUCUS and I will sit down and start all over again next year and try to resolve this problem. We will try to really resolve the problem once and for all for our State.

Mr. BAUCUS. Will the Senator yield for a question?

Mr. BURNS. I sure will.

Mr. BAUCUS. Mr. President, I want to ask my colleague what the nature of those amendments might be that he would like to see changed in the compromise, which is a midway position which the Senator knows is probably about the only version that can be enacted by both bodies. But nevertheless, even if the compromise cannot be enacted, what would the amendments be? The Senator had not shared them with me. I am curious what they would be.

Mr. BURNS. The Senator asks a good question. I think in light of the evening and in light of the work of the Senate and all this, I think a couple of them have been raised in the language because it is all new. I think the merits of those amendments and also what the Senator from Montana [Mr. BAUCUS] would like would have to be debated in the light of day and on this floor or in the proper committee or in negotiations, whichever. I think that is the proper place to do that.

I want to leave it open so that we can debate the bill on the floor and on the merits of the bill and, of course, on any of the amendments.

Mr. BAUCUS. I appreciate my colleague's answer. It seems to me, in listening to my colleague, that he does object to this compromise if he has lots of ideas and amendments. It sounds like he, in fact, does object to this compromise.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

ROBERT C. BYRD LOCKS AND DAM

Mr. ROCKEFELLER. Mr. President, I had sometime ago introduced a freestanding bill in the Senate, to name the Gallipolis Locks and Dam project after ROBERT C. BYRD. It was a freestanding bill and that bill failed. That was a matter of sadness for me, but I am happy to report that the Senate has, just within the last half hour, passed H.R. 6167. And due to the work of several, that contains the language now accepted by both the House and the Senate, and it is on its way to the President which renames the Gallipolis Locks and Dams for my senior colleague, Senator BYRD.

I worked when I was Governor with Senator BYRD on this project, NICK RAYHALL, BOB WISEMAN and many others have worked with him. That lock and dam is going to be dedicated on this Saturday. I will not have the privilege of being there, but I do have a profound sense of personal satisfaction and pride because of the nature of my senior colleague, who is a quintessential mountaineer and a man I admire in so many ways I cannot say, who has worked his way up in the classic American fashion to make himself a master of the Senate. When he goes to that ceremony, he will be going to a lock and dam he, in fact, did make possible, did create and which will bear his name.

I thank the Chair, and I yield the floor.

Mr. FORD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL RESERVE BANK BRANCH MODERNIZATION ACT

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 541, H.R. 4398, a bill to remove outdated limitations on the acquisition or construction of branch buildings by Federal Reserve banks which are necessary for branch expansion if the acquisition or construction is approved by the Board of Governors of the Federal Reserve System.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4398) to remove outdated limitations on the acquisition or construction of branch buildings by the Federal Reserve banks.

There being no objection, the bill (H.R. 4398) was considered, ordered to a third reading, read the third time, and passed.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF C.T. & C.L. BOYLE AND RODGITO KELLER

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed en bloc to Calendar Nos. 777 and 780.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 287) for the relief of Clayton Timothy Boyle and Clayton Louis Boyle, son and father.

A bill (H.R. 240) for the relief of Rodgito Keller.

There being no objection, the bill (H.R. 240) was considered, ordered to a third reading and passed;

The bill (S. 287) was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 287

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding the provisions of section 2401 of title 28, United States Code, or any other legal or equitable bar or limitation, the United States District Court for the District of Hawaii shall have jurisdiction (as otherwise conferred by section 1346(b) of title 28, United States Code) to hear, determine, and render a judgment for damages upon any claims of Clayton Timothy Boyle and his father, Clayton Louis Boyle, of Honolulu, Hawaii, against the United States of America, arising out of injuries allegedly suffered by Clayton Timothy Boyle as the result of the failure of the United States Navy to provide proper diagnostic care or medical treatment on or about November, 1965.

SEC. 2. Suit upon any claims referred to in section 1 may be instituted at any time within six months after the date of the enactment of this Act.

SEC. 3. Nothing in this Act shall be construed as an admission of liability on the part of the United States.

Passed the Senate October 8 (legislative day, September 30), 1992.

Attest: Secretary.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXTENSION OF TERMS OF THE OLESTRA PATENTS

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of Calendar No. 696, a bill to extend the terms of the olestra patents, and for other purposes.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follow:

A bill (S. 1506) to extend the terms of the olestra patents, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. PATENT TERM EXTENSION.

(a) Olestra Patents.—The terms of United States patents numbers 4,005,195, 4,005,196, and 4,034,083 (relating to olestra), and any reissues of said patents, shall be extended for a period beginning on the date of its expiration through December 31, 1997.

(b) Post-Market Surveillance.—At the time that the owner of record of patent requests that the Commissioner of Patents and Trademarks certify its patent extension, it shall submit with such request a statement from the Commissioner of the Food and Drug Administration indicating that the Food and Drug Administration and the proposed marketing entity for olestra have agreed upon a postmarket surveillance program which will provide data regarding the influence of olestra-containing products upon the overall dietary intake of fats. Such data will be subject to the usual standards of professional peer review. At the end of the study period, it will be submitted to the Food and Drug Administration for review. Such study data shall be in a format which will be made available to Congress for public review. The requirements of this section shall not in any manner preempt the authority of the Food and Drug Administration to request and to receive any other information it deems necessary in the course of its ongoing regulatory activities.

SEC. 2. NOTIFICATION.

The patentee of any patent described in section 1 shall, within 90 days after the date of enactment of this Act, notify the Commissioner of Patents and Trademarks of the number of any patent extended under such section. On receipt of such notice, the Commissioner shall confirm such extension by placing a notice thereof in the official file of such patent and publishing an appropriate notice of such extension in the Official Gazette of the Patent and Trademark Office.

SEC. 3. DEFINITION.

For purposes of this Act the term "olestra" means sucrose esterified with four or more fatty acid groups.

SEC. 4. EFFECTIVE DATE.

The provisions of this Act shall take effect on the date of enactment of this Act.

AMENDMENT NO. 3436.

Mr. FORD. Mr. President, on behalf of Senator GLENN, RIEGLE, LEVIN, DECONCINI, and HATCH, I send a substitute amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for himself, Mr. GLENN, Mr. RIEGLE, Mr. LEVIN, Mr. DECONCINI, and Mr. HATCH, proposes an amendment numbered 3436:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. PATENT EXTENSION.

That the Secretary of Commerce, acting through the Commissioner of Patents shall, when United States Patent Number 3,892,824 (relating to the drugs S-2-(3-aminopropylamino) ethyl dihydrogen phosphorothioate (Ethiofos) and S-3-(3-methylaminopropylamino) propyl dihydrogen phosphorothioate, including hydrates and alkali metal salts thereof) expires, or as soon thereafter as possible, extend such patent for three years, with all the rights pertaining thereto.

SEC. 2. STATUTORY EXTENSION OF PATENT TERMS.

(a) In General.—The Congress finds that, in the future, any bill providing for the extension of the term of a patent should not be approved by the Congress unless the requirements set forth in subsection (b) or (c) are met.

(b) Requests Based on Delay in Premarket Approval.—When the basis for a bill providing for a patent extension is delayed in premarket regulatory approval of a patented invention, the following requirements should be met before the bill is approved by the Congress:

(1) Governmental Misconduct.—(A) Delay in the approval process must have been beyond the control of the patent holder and directly caused by governmental misconduct.

(B) For purposes of this paragraph, governmental misconduct is established by presentation of adequate proof of—

(i) dishonest or deceitful conduct,

(ii) vindictive or retaliatory action, or

(iii) serious failure to perform governmental duties or comply with governmental standards,

by the Federal Government.

(C) Unusual or unexpected delay alone does not constitute governmental misconduct for purposes of this paragraph.

(2) Unjustified Injury to the Patent Holder.—The governmental misconduct under paragraph (1) must have caused a substantial inequity to the patent holder who, without the extension of the patent term, will suffer material harm directly attributable to the delay in the approval process. The unjustified harm to the patent holder if relief is not granted must outweigh any harm to the public (such as through higher prices) or to competitors that will result from extension of the patent.

(3) Expired Patents.—Expired patents shall not be revived and extended, except under the most extraordinary and compelling circumstances. In no such case shall an extension be granted unless the patent holder exercised due diligence to prevent the invention from entering the public domain.

(4) Intervening Rights.—In the event extraordinary circumstances justify the revival and extension of an expired patent, intervening rights shall be extended to persons using the subject matter of the patent after its expiration. Such rights shall not be provided in the case of statutory extension of unexpired patents, except that, in a case in which extreme injustice would result from the failure to provide such rights, they may be extended to persons who have, in good faith expectation of the expiration of the patent, made substantial preparation for use of the subject matter of the patent after its expiration.

(c) Other Requests.—When the basis for a bill providing for a patent term extension is other than delay in premarket regulatory approval, the following requirements should be met before the bill is approved by the Congress:

(1)(A) Either governmental misconduct (as described in subsection (b)(1)), or action or inaction by the United States Government, contributed substantially to significant injury to the patent rights of the person requesting extension of the patent.

(B) For purposes of subparagraph (A), the action or inaction by the Government need not constitute governmental misconduct (as described in subsection (b)(1)), but must be of such a nature as to create a moral or ethical obligation on the part of the Government to provide relief to a person whose patent rights have been substantially injured by the action or inaction by the Government. Such action or inaction may include altering, by statute or rule, the regulatory approval procedures, standards, or requirements in a case in which there has been material reliance by an applicant on the prior procedures, standards, or requirements.

(2) The requirements set forth in paragraphs (2) through (4) of subsection (b) are met, except that—

(A) the reference in subsection (b)(2) to "governmental misconduct" shall be deemed to include, as applicable, the action or inaction by the Government described in paragraph (1) of this subsection; and

(B) the reference in subsection (b)(2) to "delay in the approval process" shall be deemed to refer to "governmental misconduct", which shall be deemed to include, as applicable, the action or inaction by the Government described in paragraph (1) of this subsection.

(d) Lack of Due Diligence.—Notwithstanding the preceding provisions of this section, in no case should the Congress approve a bill providing for the extension of the term of a patent in the case of delay attributable to a lack of due diligence by the patent holder.

SEC. 3. PATENT EXTENSION FOR NONSTEROIDAL ANTI-INFLAMMATORY DRUGS.

(a) In General.—The term of United States patent numbered 3,793,457 shall be extended for a period of 2 years beginning on the date of its expiration.

(b) Limitation on Rights.—The rights derived from any patent which is extended by this section shall be limited during the period of such extension to any use for which the subject matter of the patent was approved by the Food and Drug Administration before the date of the enactment of this Act.

SEC. 4. PATENT TERM EXTENSION FOR OLESTRA.

(a) In General.—The terms of United States patents numbered 4,005,195, 4,005,196, and 4,034,083 (and any reissues of such patents) shall each be extended for a period beginning on the date of its expiration through December 31, 1997.

(b) Post-Market Surveillance.—At the time that the owner of record of the patent requests that the Commissioner of Patents and Trademarks certify its patent extension, it shall submit with such request a statement from the Commissioner of the Food and Drug Administration indicating that the Food and Drug Administration and the proposed marketing entity for olestra have agreed upon a post-market surveillance program which shall provide data regarding the influence of olestra-containing products upon the overall dietary intake of fats. Such data shall be subject to the usual standards of professional peer review. At the end of the study period, such data shall be submitted to the Food and Drug Administration for review. Such study data shall be in a format which shall be made available to Congress for public review. The requirements of this section shall not in any manner preempt the authority of the Food and Drug Administration to request and to receive any other information it deems necessary in the course of its ongoing regulatory activities.

SEC. 5. EXTENSION OF PATENT FOR INSIGNIA.

A certain design patent numbered 29,611, which was issued by the United States Patent Office on November 8, 1898, which is the insignia of the United Daughters of the Confederacy, and which was renewed and extended for a period of 14 years by the Act entitled "An Act granting an extension of patent to the United Daughters of the Confederacy", approved November 11, 1977 (Public Law 95-168; 91 Stat. 1349), is renewed and extended for an additional period of 14 years beginning on the date of the enactment of this Act, with all the rights and privileges pertaining to such patent.

SEC. 6. PATENT TERM EXTENSIONS FOR AMERICAN LEGION.

(a) BADGE OF AMERICAN LEGION.—The term of a certain design patent numbered 54,296 (for the badge of the American Legion) is renewed and extended for a period of 14 years beginning on the date of the enactment of this Act, with all the rights and privileges pertaining to such patent.

(b) BADGE OF AMERICAN LEGION WOMEN'S AUXILIARY.—The term of a certain design patent numbered 55,398 (for the badge of the American Legion Women's Auxiliary) is renewed and extended for a period of 14 years beginning on the date of the enactment of this Act, with all the rights and privileges pertaining to such patent.

(c) BADGE OF SONS OF THE AMERICAN LEGION.—The term of a certain design patent numbered 92,187 (for the badge of the Sons of the American Legion) is renewed and extended for a period of 14 years beginning on the date of the enactment of this Act, with all the rights and privileges pertaining to such patent.

SEC. 7. INTERVENING RIGHTS.

The renewals and extensions of the patents under sections 5 and 6 shall not result in infringement of any such patent on account of any use of the subject matter of the patent, or substantial preparation for such use, which began after the patent expired but before the enactment of this Act.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3436) was agreed to.

Mr. GLENN. Mr. President, I rise in support of a provision to extend three key patents on olestra, an innovative, zero-calorie, zero-cholesterol fat replacement, which may help Americans reach the Surgeon General's goal of dramatically reducing the amount of fat in the American diet to no more that 30 percent.

The provision of this bill was included in H.R. 5475 which was passed by the House by an overwhelming margin on August 4, 1992, and S. 1506 which was reported by the Senate Judiciary Committee on September 22, 1992.

Olestra was invented by the Procter & Gamble Co. in 1968. Although P&G filed for regulatory approval with the FDA in 1971, more than two decades later, olestra has still not been approved. The FDA has informed P&G that the earliest that olestra could be approved is late 1993. P&G has already invested $180 million on olestra and is expected to invest several hundred million more to construct manufacturing facilities to produce this product.

The problem arises because patents are only for 17 years. The primary olestra patent expired in 1988 and the other three will expire in late 1993. Accordingly, this amendment would extend the three primary olestra patents until December 31, 1997, to enable Procter and Gamble some time to market their product and recoup the cost of its invention and investment.

American business must have the incentive to invent, innovate and to produce new products if we wish to stay competitive. This provision will send a strong signal that our economy is willing to invest in the long-term and invest hundreds of millions of dollars on important innovations.

In order to move this bill on olestra through the Senate the substitute includes several provisions which have been passed by the House. The substitute includes the extension of the patents held by the U.S. Bioscience, an extension of the patent on ansaid, the insignia of the United Daughters of the Confederacy, and badges of the American Legion, and a section regarding the standards by which patents are extended.

Mr. President, I urge the passage of this legislation.

Mr. ADAMS. Mr. President, I am pleased to be added as a cosponsor of this amended version of S. 1506, which will make the process by which Congress considers requests for patent extensions more rigorous, and extend the patents on several products and designs.

My strong support for this legislation reflects much more than my assessment of the underlying merits of the patent extensions granted herein, and the standards for future review of requests for extensions. My confidence in the public interest being served by these extensions is, in a major way, motivated by my respect for, and confidence in, the valuable expertise of the subcommittee and full committee chairmen in both the Senate and the House who have judged this legislation to be worthy of support.

There can be no doubt that these issues have had the benefit of full debate in the Senate, including a set of hearings in 1991 before the Subcommittee on Patents, Copyrights and Trademarks of the Senate Judiciary Committee as well as before the Subcommittee on Intellectual Property and Judicial Administration of the House Judiciary Committee.

When the hearing record suggested that the several requests for patent extensions involved factually complicated issues, the respective chairmen of the relevant subcommittees, the Senator from Arizona, Mr. DECONCINI and the Senator from New York, Mr. HUGHES, wisely requested that the General Accounting Office study the merits of the requests. The respective Senate and House subcommittees marked up and reported the legislation with full confidence that the underlying issues had been thoroughly studied by the GAO.

The question of the extension of these patents was then subject to further amendment in the respective full committees. It cannot be honestly argued that any group, whether commercial competitors, makers of the products, or consumer advocacy groups, was left out of the process of developing this legislation. It is a measure of the strong bipartisan support these matters enjoyed that the Senate and House Judiciary Committees passed these patent extensions by wide margins. The matter passed the House of Representatives by a margin of sufficient size to overcome a presidential veto.

In passing S. 1506 today, the Senate of the United States confirms that fundamental fairness to the holders of the patents covered by this legislation is served by granting the extensions contained in this bill. Having been directly involved in helping to develop this legislation, I urge my colleagues to vote favorably on this measure.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to engrossed for a third reading, was read the third time, and passed, as follows:

(The text of S. 1506, as passed by the Senate, will be printed in a future edition of the RECORD.)

DEFENSE PRODUCTION ACT AMENDMENTS OF 1992—CONFERENCE REPORT

Mr. FORD. Mr. President, I submit a report of the committee of conference on S. 347 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the to the bill (H.R. 347) to amend the Defense Production Act of 1950 to revitalize the defense industrial base of the United States, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 5, 1992.)

Mr. RIEGLE. Mr. President, I rise in favor of the conference report on S. 347, the Defense Production Act Amendments of 1992. This legislation, among other things, renews and amends the Defense Production Act.

The Defense Production Act, DPA, was originally passed to meet the national emergency caused by the Korean war. Only three titles of the seven titles of the original law—I, III, and VII—were kept in effect after that war. Title I of the DPA provides the President with authority to require the priority performance of contracts which have been determined to be necessary for the national defense. Title III authorizes the use of a broad range of economic incentives to assure that American industry will be able to provide the broad range of materials and services that are required for the national defense. These incentives include purchase guarantees, loan guarantees and loans. Title VII authorizes the President to encourage joint industry undertakings to improve industrial preparedness and provides protection from antitrust suits for such cooperative efforts carried out in accordance with approved arrangements.

The amendments to the DPA provided for in this legislation address several issues affecting the health of America's industrial and technology base. A healthy and vibrant industrial and technology base is needed to ensure both the national security and a rising standard of living for our people. This bill gives the President new tools to combat the steady erosion of that base. This erosion is clearly evidenced by the dramatic decline during the 1980's of many critical industries vital to our national defense. Among other things, the legislation authorizes the President to use the DPA to assist in the development or expansion of U.S. sources for critical components, critical technology items, or industrial resources essential for the execution of the U.S. national security strategy.

Another problem this bill attempts to address is the growing U.S. dependence on foreign suppliers of critical components of essential weapons systems. We know these dependencies are growing but presently there is no Government-wide or DOD-wide system for gathering data on this issue. To better identify and analyze areas of U.S. dependence on foreign suppliers of critical defense components and technology, the legislation establishes a continuous data collection system with respect to the operations of defense contractors and subcontractors. We will be in a much better position to develop policies to deal with foreign dependencies for critical items once we know how extensive they are and on whom we are dependent.

The legislation also improves current reporting requirements on offset agreements. Offset agreements frequently require major U.S. exporters to transfer production of a certain portion of the overall export product to foreign suppliers. These agreements can result in the export of technology as well as the loss of manufacturing opportunities for domestic prime contractors and subcontractors. We must better evaluate the cumulative effects of offsets on our defense industrial base and nondefense industry sectors, including the effects resulting from technology transfers. This legislation improves data gathering procedures on offset agreements so that their effects can be more fully assessed.

Section 721 of the DPA contains the so-called Exon-Florio provision, which was added to the DPA by the Omnibus Trade and Competitiveness Act of 1988. This provision gives the President the authority to suspend or prohibit the acquisition, merger or takeover of a domestic firm by a foreign firm if such action would threaten to impair the national security. The bill adds a new provision to the DPA to help Congress carry out its oversight responsibilities with regard to Exon-Florio. The provision requires the President to prepare a quadrennial report on foreign investment patterns in the United States to determine the existence of any coordinated strategy by foreign governments or foreign firms to acquire U.S. companies involved in critical technologies. In this report the President is also required to examine the extent of industrial espionage activities related to critical technologies directed at U.S. firms by foreign governments.

A major concern that prompts this provision is the potential threat to our national security preparedness posed by foreign domination of key dual use technologies. It is in this connection that foreign acquisitions of American producers of strategic goods becomes an important issue. Concerns have been expressed that the interagency committee chaired by the Treasury Department to implement Exon-Florio [CFIUS] has not been fully cognizant of the increasing need to have a broad understanding of the financial and trade strategies of our industrial competitors in order to carry out properly its responsibilities under section 721.

The General Accounting Office in a March 1990 report entitled "Foreign Investment: Analyzing National Security Concerns" noted that the CFIUS takes a reactive case-by-case approach to exercising its section 721 responsibilities. It further states that the CFIUS is not structured to examine other larger questions such as: First, which industry sectors, technologies, or types of firms to preserve for U.S. ownership; second, why foreign investors place more value than U.S. firms do on developing predominance in certain high technology sectors; and third, what parts of the U.S. defense industrial base are being hollowed out as foreign investors acquire U.S. firms which are lower-tier suppliers to the Department of Defense.

The study required in this legislation is designed to provide the Congress with a better understanding of these concerns so that it can adequately oversee executive branch administration of section 721. It will provide needed information to assess the credibility of allegations that foreign governments have directed industrial espionage against U.S. firms to obtain commercial secrets related to critical technologies. In conducting this study, the President is expected to utilize the resources of those Federal agencies, including the intelligence agencies, that have statutory authority and expertise that will contribute to a comprehensive and in-depth review of these vital concerns.

Finally, this legislation makes the fraudulent use of "Made in America" labels a ground for suspension or debarment from any Federal contract award. On Sunday, October 4, the CBS News program, "60 Minutes," reported that Mazak, a Japanese-owned manufacturing company in Cincinnati, imported machines tools made in Japan, relabeled them as "Made in the USA," and then sold them to the U.S. Government. In the process, Mazak is alleged to have repeatedly and knowingly violated the Buy America Act. Violations of the Buy America Act, such as those alleged on "60 Minutes," occur because the economic rewards are high and the panalties are low. Penalties must be increased so that violations of the Buy America Act become expensive and thus deter potential law breakers. This legislation does just that. It allows the U.S. Government to suspend those who fraudulently use "Made in the U.S.A." labels from performing any contract awarded by the Federal government or performing a subcontract under such contract. This tough penalty will, I hope, stop willful violations of the Buy America Act.

I regret that the Conference Agreement does not include Title IV of the original bill passed by the Senate. That Title contained the Fair Trade in Financial Services Act. The purpose of the Fair Trade in Financial Services Act was to encourage foreign countries to offer U.S. banks and bank holding companies, U.S. securities brokers and dealers, and U.S. investment advisers de facto national treatment; that is, the same competitive opportunities, including effective market access, as they offer their domestic counterparts, not just in legal theory but in actual practice. It established a framework of negotiations, reports, and discretionary sanctions designed to help end discrimination against U.S. banks and bank holding companies, U.S. securities brokers and dealers, and U.S. investment advisers that operate or seek to operate abroad.

One reason we failed to get the banking provisions of the fair trade title enacted into law is because the State Department opposed and lobbied against them. It did this despite the fact that the Treasury Department, our chief financial services negotiator, had no opposition to their enactment. Some officials in the State Department are so wed to a free trade ideology that they fail to see that negotiating from strength can actually help open markets now closed to our financial firms. It is my hope that a new Administration will see the wisdom of the Fair Trade provisions and help us get them enacted into law.

Mr. President, I want to thank Congressmen CARPER and SCHUMER for their cooperation in putting together this conference report. I also want to salute and thank in a special way Senator DIXON, who played a major role in fashioning this legislation.

I urge prompt passage of this conference report.

Mr. GARN. Mr. President, I rise in support of the conference report on the Defense Production Act Amendments of 1992. This is a long overdue extension of the authorities of the DPA for a period of 3 years. The conference report that is the basis for this bill failed to achieve enactment in the closing moments of the 101st Congress because of administration objections. Several executive branch agencies had concerns with that bill, especially proposed changes in Defense Department procurement policies, that were sufficient to produce a veto threat against the bill.

In this Congress, the Senate passed the same bill that failed in 1990. The House held a series of hearings and did extensive redrafting of key provisions in light of the testimony taken from administration and industry witnesses. As a result of that process, the House produced legislation that eliminated the principal objections of the administration. In conference on the bill, the Senate worked out compromise language on the problem provisions that resulted in a conference report that is now broadly acceptable to the administration. The executive branch agencies indicate that they will recommend that the President sign the bill and it has faced no objection in the Congress.

While it is gratifying to get the DPA back on the books, we were unable to reach agreement with the House on the fair trade in financial services title of the Senate bill. That title would have established a framework of negotiations, reports, and discretionary sanctions designed to help end discrimination against U.S. banks, securities firms and investment advisers operating in foreign markets. This is a provision with which I have been associated for the last 8 years.

Despite months of negotiations with the Treasury and other executive agencies and various committees of the House, we were unable to find a formulation of the fair trade title that could gain the support of majority of House conferees and the approval of the administration. The reason for that failure is a very fundamental difference of opinion among Executive Branch agencies and congressional committees about the respective roles of the Treasury and USTR in negotiating on financial market access and imposing trade sanctions where market access is denied.

The Senate position was that the Secretary of the Treasury, in his role as chief financial officer of the United States, should direct the entire process. The House proposal would have permitted Treasury to exercise its traditional leading role in negotiations but would have specified that any sanctions in the financial services area would have to be applied within the framework of title III of the Trade Act of 1974, under the authority of the Trade Representative. Aside from the question of agency prerogatives, the different formulations have important implications for the opening up of the financial sector to cross-sectoral retaliation and, in extreme circumstances, compromising safety and soundness of the financial system.

While considerable effort was expended to identify a compromise, the disagreement proved too fundamental and the issues too thorny. Both sides thought it better to enact nothing rather than prejudice the course of this debate for the future.

This issue of the respective roles of finance and trade officials in negotiating financial services agreements has also been a live issue in the international trade arena. United States-Canada, NAFTA and Uruguay round negotiations have established the precedent for the leading role of finance ministry officials and financial experts in negotiating financial services agreements and resolving disputes. Prudential considerations have been accorded priority in these agreements and, in the two agreements now completed, cross-sectoral retaliation has been prohibited. At the same time, such financial services agreements have been part of broader trade negotiations under the direction of trade ministry officials.

How these financial services agreements will actually operate is unknown territory. We have as yet seen no examples of disputes being resolved or relief granted. The exact balance of power and the dividing line of responsibilities between trade and finance officials has not been clearly established either domestically or internationally. This is a debate that is likely to continue for some time, and authorities like those in the fair trade title will be difficult to enact until that resolution takes place.

No matter how this legislative puzzle is finally solved, what is important is that the United States rededicate itself to our longstanding principles of right of establishment and national treatment as embodied in the International Banking Act and use whatever negotiating tools and trade leverage is available to demand that same treatment for U.S. financial services companies abroad. While Treasury has made progress in opening foreign markets over the last decade, we still have much to do.

For now, it is important that the authorities of the DPA be reenacted, and I urge my colleagues to support this conference report.

Mr. FORD. Mr. President, I ask unanimous consent that the conference report be agreed to, the motion to reconsider be laid upon the table, and any statements thereon appear in the RECORD at the appropriate place.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

So the conference report was agreed to.

EXPORT-IMPORT BANK REAUTHORIZATION—CONFERENCE REPORT

Mr. FORD. Mr. President, I submit a report of the committee of conference on H.R. 5739 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5739) to reauthorize the Export-Import Bank of the United States, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 6, 1992.)

Mr. SARBANES. Mr. President, I rise in support of the conference report to accompany H.R. 5739, the Export Enhancement Act of 1992. This important legislation would reauthorize the charter of the Export-Import Bank of the United States, which expires this year, as well as the export promotion programs of the Commerce Department.

This legislation was originally introduced in the Senate by myself, Senator RIEGLE, Senator GARN, and Senator MACK. I am pleased to say that the conference report reflects all of the provisions contained in the original Senate bill. I would like to thank Senator RIEGLE, Senator GARN, and Senator MACK, who were all conferees on this bill, for their vigorous efforts on its behalf. I would also like to thank the Banking

Committee staff—Martin Gruenberg, Patrick Mulloy, and John Walsh—for the excellent work that they did on this legislation.

Title I of the legislation would reauthorize the charter of the Eximbank for 5 years, through September 30, 1997. In addition, it would reauthorize the tied aid credit war chest of the Eximbank for 3 years at an authorization level of $500 million a year.

A key change made by the legislation in the operation of tied aid credit war chest is to authorize the bank to match tied aid credits offered by another country not only in cases in which a foreign country violates the OECD [Organization for Economic Cooperation and Development] agreement restricting the use of tied aid credits, but also in cases in which "the Bank determines that United States trade or economic interests justify the matching of tied aid credits extended in compliance with the Arrangement, including grandfathered cases."

Pursuant to the conclusion of the new OECD agreement on tied aid credits this year, the administration announced a policy of using its tied aid credit war chest only to enforce compliance with the agreement. In other words, if foreign governments are making extensive use of tied aid credits, but within the terms of the OECD agreement, then the Eximbank would not utilize its war chest under the administration policy. Such an approach, which was adopted by the administration in 1988 and 1989, resulted in the war chest being virtually unutilized. The provision contained in the conference report is intended to change this announced policy, particularly in regard to cases grandfathered under the new OECD agreement.

In addition, the conference report provides that the loan guarantee program of the Eximbank, which has had an important influence on keeping private commercial banks in the business of trade finance, will not be negatively affected by credit reform. The budget agreement reached in 1990 contained a new method of accounting for Federal credit programs that has resulted in a higher subsidy cost for an Eximbank loan guarantee than for an Eximbank direct loan. As a result, exporters and commercial banks have expressed concerns that the lower subsidy costs of direct loans might lead the Eximbank to reduce or eliminate its loan guarantee program. The conference report requires the Eximbank to consider the need to involve private capital in support of United States exports as well as the cost of the transaction as calculated in accordance with the requirements of the Federal Credit Reform Act of 1990, in deciding whether to provide support for a transaction under its loan, guarantee, or insurance program.

The Eximbank is currently prohibited from financing sales of defense articles and services to developing countries. The conference report would prohibit Eximbank from financing the export of any defense articles or services to developed as well as or developing countries, except under the exception in current law for Eximbank financing of defense articles or services to be used for antinarcotics purposes. The conference report would also require the Eximbank to submit a quarterly report to the Congress on all items it finances which are on the State Department's Munitions List but which the Eximbank determines will not be put to a military use. This provision of the conference report was taken from the House bill.

The conference report also contains a provision authorizing the Eximbank to compensate not more than 35 employees of the Bank independently of the Federal civil service guidelines. The provision was included in response to a problem experienced by the Eximbank in retaining key professional personnel because of the changes made by the 1988 savings and loan bill permitting the Federal bank regulatory agencies to pay their employees independently of the Federal civil service guidelines. As a result these agencies have been able to compensate their professional and management employees at rates significantly above those available to Eximbank employees. This provision is intended to give the Bank authority to provide compensation to its employees comparable to that provided by other agencies so that the Bank may retain and recruit key personnel necessary for its highly specialized operations.

Title I of the conference report would also provide a statutory basis for review of the environmental impact of projects financed by the Eximbank, require the Eximbank to seek to ensure that U.S. insurance companies are accorded a fair and open competitive opportunity to provide insurance against risk of loss in connection with any long-term loan or guarantee of at least $10 million provided by the Eximbank, and authorize the President to sell, reduce, or cancel Eximbank loans as part of the enterprise for the Americas initiative.

Title II of the legislation, which I consider to be of great importance, reauthorizes the export promotion programs of the Commerce Department and addresses the broader issue of U.S. export promotion policy. The Banking Committee's Subcommittee on International Finance and Monetary Policy, which I chair, held a hearing on May 20 to review the range of export promotion programs sponsored by the Federal Government. Invited to testify at the hearing were representatives of the Commerce Department, Eximbank, the Small Business Administration, Agriculture Department, Agency for International Development, and the Trade and Development Program.

The number of agencies represented at the hearing is an indication of a key problem confronting U.S. export promotion policy: the lack of coordination and an overall national strategy. This lack of coordination and overall strategy was commented upon by representatives of the General Accounting Office, the National Association of Manufacturers, and the National Governors Association, who also testified at the hearing.

In response to this problem, the legislation would provide a statutory base for the interagency Trade Promotion Coordinating Committee [TPCC], which until now has operated pursuant to executive order. While the TPCC has, according to a GAO report, achieved some success, it lacks permanent status and its "long-term effectiveness is yet to be demonstrated."

The TPCC would be chaired by the Secretary of Commerce. Its purpose would be to coordinate the export promotion and financing activities of the United States Government and develop a governmentwide strategic plan for carrying out Federal export promotion and financing programs. Members of the TPCC would include representatives of the Departments of Commerce, State, Treasury, Agriculture, Energy and Transportation, as well as the U.S. Trade Representative, Small Business Administration, Agency for International Development, Trade and Development Program, Overseas Private Investment Corporation, and the Eximbank. The TPCC would be required to submit an annual report to Congress describing its strategic plan, the implementation of the plan, and any revisions made to the plan.

In order to improve the accessibility of U.S. export promotion programs to small and medium-sized exporters around the country who are not able to come to Washington, the conference report directs the United States Foreign and Commercial Service to utilize its 69 domestic offices and its 130 foreign posts as "one stop shops" for U.S. exporters. The offices would be required to provide exporters with information on all export promotion activities of the Federal Government, and assist exporters in identifying which Federal programs may be of greatest assistance and making contact with the Federal programs identified.

In addition, the conference report would specifically require the US&FCS to provide U.S. exporters with information on all financing and insurance programs of the Eximbank, the Overseas Private Development Corporation, the Trade and Development Program, and the Small Business Administration, including providing assistance in completing applications for such programs, and working with exporters to address any deficiencies in such applications. The agencies, in turn, would be required to provide full and current information on all of their programs and financing practices to the US&FCS and undertake a training program for US&FCS officers in the programs and practices of the agencies. Senator ROCKEFELLER has been a leading proponent of increasing cooperation between the US&FCS and the Eximbank and other agencies of the Federal Government involved in export finance.

The conference report also addresses the important issue of promoting the export of environmentally beneficial goods and services. The conference report would provide a statutory basis for the Environmental Trade Promotion Working Group of the Trade Promotion Coordinating Committee and direct it to assess the effectiveness of U.S. Government programs to promote environmental exports, recommend improvements in such programs, and ensure coordination of programs among members of the Working Group. This provision was originally sponsored by Senators WIRTH, GORE, and BIDEN in the Senate.

The conference report would also require the Secretary of Commerce to submit to Congress an annual report on the international economic position of the United States, and appear before the Senate Banking and House Foreign Affairs Committees annually to testify on the report. Senator RIEGLE has been the leading proponent of institutionalizing such an annual reporting requirement by the Commerce Secretary on the competitive position of the United States in the international marketplace. This report and annual hearings on it will enable Congress to strengthen oversight of this increasingly important issue.

Finally, title II of the legislation would increase the number of foreign commercial service officers with the rank of Minister-Counselor from 8 to 16, and provide a 2-year authorization for the export promotion programs of the Commerce Department—$190 million for fiscal year 1993, and $200 million for fiscal year 1994.

Title III of the conference report includes a provision sponsored by Senator GARN to establish the "John Heinz Competitive Excellence Award." This provision is intended to honor the memory of Senator JOHN HEINZ for his efforts to promote the industrial competitiveness of the United States during his 14 years of service on the Senate Banking Committee. The provision would authorize two awards each year for excellence in promoting U.S. industrial competitiveness.

Mr. President, I believe this to be an excellent piece of legislation and I enthusiastically urge its adoption by my colleagues.

Mr. RIEGLE. Mr. President, I rise today to urge the passage of the conference report on H.R. 5739, the Export Enhancement Act of 1992. This legislation renews and amends the charter of the Export-Import Bank of the United States and also strengthens our country's overall export financing and promotion programs.

In this age of global economic competitiveness, exports are crucial to our Nation's economic well-being. Export financing plays a critical role in export competitiveness. Through the reauthorization of the Eximbank and the amendments it makes to Eximbank's charter, this legislation strengthens the export financing programs of the United States. It also reauthorizes the export promotion programs of the Commerce Department.

This legislation, however, goes beyond simply reauthorizing existing export financing and promotion programs. In contrast to our principal competitors, the United States does not have a comprehensive, integrated export enhancement strategy. There are 10 executive agencies involved in either export promotion or financing activities. Yet, we have no strategic plan for coordinating these activities and ensuring the efficiency of these many Federal programs. We have no overall rationale for determining whether our export promotion resources are being channeled into areas with the greatest potential return.

Mr. President, this legislation should improve the coherence of our export programs by establishing permanently in statute the Presidential interagency committee known as the Trade Promotion Coordinating Committee [TPCC]. It puts the Secretary of Commerce in charge of that committee. The legislation also directs the TPCC to develop a governmentwide strategic plan for promoting and financing exports. Proper development and implementation of such a plan will ensure our export promotion and financing activities are being coordinated and priorities are being set that will enable our Nation to get the maximum return for the money we spend on such activities.

Further, this legislation highlights the key responsibility of the Department of Commerce for strengthening our overall international trade and investment position. It requires the Secretary of Commerce to submit to the Congress an annual report on the international economic position of the United States and to appear annually before the Senate Banking Committee and the House Foreign Affairs Committee to testify on the report. Among other things, the Secretary of Commerce is required to report on the Department's efforts to promote the development of technologies and products critical to our industrial leadership and to increase exports using such technologies. The Secretary is also to report on how the TPCC's strategic export plan is being implemented.

This legislation also establishes the John Heinz Competitive Excellence Award for excellence in promoting U.S. industrial competitiveness. This award is a most fitting tribute to the strong commitment of Senator Heinz to strengthening America's industrial base and export competitiveness.

I want to thank Congresswoman OAKAR and Congressmen FASCELL and GEJDENSON for their cooperation in putting together this conference report. I also want to thank Senator GARN, the ranking member of the Senate Banking Committee, for his help on this bill and his many years of cooperative effort on the committee. Finally, let me pay a particular thank you to my good friend and colleague, Senator PAUL SARBANES, the chairman of the Banking Committee's International Finance Subcommittee, for the personal attention he has paid to formulating this legislation and getting it enacted.

Mr. President, this legislation provides vital and timely support to U.S. firms in their efforts to compete in the global economic arena. I urge passage of the conference report on the Export Enhancement Act of 1992.

Mr. GARN. Mr. President, I join my colleagues in supporting adoption of the conference report for the Export Enhancement Act of 1992. This legislation will extend the charter of the Export-Import Bank for 5 years and its tied aid credit fund for 3 years. It will clean up outdated material in the Bank charter and make a number of improvements in the Bank's operations. The Bank has been a strong ally of U.S. exporters during the Bush administration, and this charter renewal is an endorsement of its efforts.

The bill also begins to make some sense of U.S. export promotion efforts by placing the Trade Promotion Coordinating Committee in statute and giving it a mandate to develop a government-wide strategic plan and to recommend the management and budget changes necessary to make it a reality. The U.S. Government spent $2.7 billion on these programs in 1991 and financed $21 billion in exports through a confusion of programs in 10 executive branch agencies. It is incumbent upon Government to make the best possible use of these resources.

The third title of this bill creates a congressional competitive excellence medal in honor of Senator John Heinz, who died so tragically last year. John devoted tremendous energy during his 20 years, in Congress to promoting U.S. industrial competitiveness. I am pleased that we have been able to enact this memorial in the bill.

My only regret with this legislation is that we were unable to enact my proposal that would have placed a time limit on use of the authority of the International Emergency Economic Powers Act to maintain the authority of expired legislation. The Export Administration Act has been expired for 2 years. in part due to a veto but principally through inaction and delay in the House of Representatives. Just as the House has been unable to agree on export control legislation that could be enacted into law, the House was unable or unwilling to agree on rules that would force legislative action in the future. As a result, I am certain that we will see future ersatz emergencies where the Congress cannot move a bill and simply punts its legislative responsibilities to the President. This failure is especially telling in a Congress that so consistently wants to administer U.S. trade and foreign policy.

Given our inability to enact legislation in these other critical areas, I am especially pleased to report the Export Enhancement Act to the Senate and urge its adoption.

Mr. ROCKEFELLER. Mr. President, with the vote on the conference report on the Export Enhancement Act of 1992, we have an important opportunity to begin to bring order to the chaos that has infected Government export promotion programs for many years.

I compliment and thank the conferees, especially Senator RIEGLE, Senator SARBANES, Senator GARN, and Senator MACK, for their hard work and tremendous contributions to this effort. It was my pleasure throughout this year to have the opportunity to work with them, with the other members of the Banking Committee, and with the members of my Subcommittee on Foreign Commerce and Tourism, to make sure that American exporters are provided with the most efficient and effective assistance in the world. The Senate bill took a number of important steps in that direction, and I am pleased to see that the conference report contains virtually all of these important provisions. The Senate conferees are to be commended for their success in convincing the House conferees of the importance of what we did on this bill.

I would also note, Mr. President, that this bill is an important part of the national economic leadership strategy that the majority leader announced on July 1. That strategy explicitly recognized the importance of an effective export promotion policy to any long-term growth program and endorsed the provisions of the Export Enhancement Act of 1992.

Enhancing exports is a popular topic in the Congress, which is no surprise given the huge trade deficits of the past decade. Despite some improvement in the past few years, the trend in our trade deficit since February has been bad—each month but one was worse than the previous—and the most recently reported monthly trade deficit was the worst we have seen in a year and a half. With this trend, there is no doubt that the 1992 deficit will be worse than that of last year. More ominous still, the data show declining exports. As world growth slows, we will have to work much harder simply to maintain our exports, much less expand them.

Given this situation, Mr. President, I believe we need to develop an aggressive and coordinated export promotion policy for the United States. To that end, my Subcommittee on Foreign Commerce and Tourism held extensive hearings in 1990 and 1991 on our export promotion programs. We consulted widely with Government officials, with exporting businesses, and companies which are not as active exporters as they should be.

As a result of those hearings, last year I introduced legislation, S. 1721, that would have combined the two important export functions of marketing and finance and would have taken several other steps to end the patchwork of export promotion agencies that creates so much confusion. That bill would have created a Bureau of Trade Development and Trade Finance within the Department of Commerce in order to join the marketing functions of the U.S. and Foreign Commercial Service with the Commerce Department's Office of Trade Development and the export finance functions of the Eximbank.

Such an organization is, unfortunately, not incorporated in the legislation we are voting on today, but there are provisions that move us in that direction. These changes will enable USFCS offices in the United States to act effectively as branch offices for Eximbank and other export finance agencies, spreading the word about marketing and finance to new exporters, assisting in the preparation of applications for export finance programs, and keeping in touch with the customers while the applications are processed in Washington.

These are important provisions, but the unification of the Federal Government's trade promotion programs is still a concept that a new administration next year will want to consider as it reviews the functioning of the Government. A unified structure would be a powerful agency that would provide exporters with efficient "one stop shopping" for U.S. Government export promotion and finance services.

Mr. President, I am convinced that the Federal Government must establish a unified export promotion and finance organization, if we are to provide American exporters with a sophisticated and coordinated export enhancement program. The belief was again strengthened when I read the recent GAO report that compares our splintered export promotion and finance efforts with the more effective structures used by other major industrial countries.

I sincerely hope that the new administration will take a serious look at that GAO report and consider the advantages of consolidating the disparate activities and organizations now engaged in this effort. I am disappointed that we are not taking that important step today, but it is said that politics is the art of the possible. I am pleased that it was possible for several of the provisions I proposed in S. 1721, and for the amendments I proposed during the Senate's deliberations on the Export Enhancement Act of 1992, to be included in the bill reported by the Senate-House conference. They are:

Reauthorization of Eximbank war chest for 3 years;

Providing for 100 percent cover on Bank export credit guarantees;

Making the Trade Promotion Coordinating Committee [TPCC] a permanent, statutory body;

Giving the TPCC specific responsibilities for coordinating the development of trade promotion policies of the U.S. Government and eliminating duplication among them;

Introducing the "one-stop shop" concept in the Commerce Department, whereby the USFCS field offices will provide exporters with information on all export promotions programs of the U.S. Government;

Requiring the USFCS to do outreach for the Eximbank and, in turn, requiring the Bank to make the necessary information and training available to accomplish that. I am pleased that the conference added other agencies to this outreach effort;

Requiring that the members of the TPCC be at sufficiently high policy levels in their agencies to ensure that TPCC decisions and recommendations will be fully implemented within the agencies;

Requiring the TPCC to propose an annual unified export promotion budget to the President. This budget will give the TPCC a real opportunity to address both the redundancy and priority problems that have plagued our export promotion programs;

Requiring USFCS officers to provide export finance institutions, as well as exporters, with information on the Eximbank and export finance. The amendment is helpful since many inquiries and financing applications come from local banks, as well as directly from exporters.

In addition, the conference committee included a suggestion I made, along with the United States Chamber of Commerce—which was not included in my original bill—that the TPCC, in addition to its coordinating duties, would assess budget allocations for the various export promotion programs in the Government and make recommendations based on this assessment.

Let me also, Mr. President, commend the conferees of both Chambers for including in the bill the John Heinz Competitiveness Award legislation that so many Senators, including myself, cosponsored when the Senator from Alaska, Mr. STEVENS, introduced it last April. Senator HEINZ cared tremendously about our country's competitiveness and its manufacturing base. He viewed it as a bipartisan issue and worked hard with many of us on both sides of the aisle to move the country forward, often over the objections of the current administration. This award is a fitting memorial to him, and I am delighted the conference has maintained it in the bill. Making it an award of the Congress, rather than only the Senate, will further enhance its importance.

The Export Enhancement Act of 1992 will enhance our efforts to develop a comprehensive, coordinated export promotion policy. The Senate Banking Committee deserves our praise for its commitment to that goal, for its willingness to work with those of us who do not serve on the committee, but who are also interested in export promotion, and for prevailing upon their counterparts in the House to accept the provisions the Senate approved last month. With the adoption of this conference report, we are taking an important step in the implementation of the national economic leadership strategy and in the creation of a world class export policy that will once again make America an effective competitor in the global marketplace.

Mr. President, I believe this bill will make a real difference. In my experience in West Virginia, the outreach programs of the U.S. and Foreign Commercial Service, which our legislation will beef up, can be especially important to firms either not aware of Federal export promotion and finance activities, or not involved in exporting at all. These are usually small and medium-size businesses in West Virginia and in other states, exactly the type of companies that create the bulk of new jobs in the United States. Often they are new companies which do not appreciate fully their own export potential because they are working so hard to develop the U.S. market. The U.S. Government export promotion and finance programs, which this bill strengthens, will help them to learn what their export potential is and to achieve that potential.

My friend, Roger Fortner, runs the Charleston office of the U.S. and Foreign Commercial Service. He does a remarkable job putting West Virginia exporters in touch with the various Government agencies that can help them, and maintaining a network of contacts that enables West Virginians to expand their markets and increase their sales. This bill calls on Roger, his agency, and the other Federal agencies responsible for implementing the bill to do more. By requiring greater coordination among these agencies, especially through an annual unified Federal trade promotion budget, the bill also provides them with the means for doing more. Roger Fortner and his counterparts will also be able to do a lot more because of the bill's requirement that the several agencies which provide export financing supply information and training on their programs to Roger and his counterparts. With this more unified U.S. Government export promotion and finance service, American exporters will not be at as great of a competitive disadvantage in their fight to capture foreign markets as they have been.

Finally, I want to thank the Senate staff who assisted me in examining our Federal Government's export promotion efforts and in devising ways to be more effective in helping our industries sell their products and create jobs for Americans: Ivan Schlager, of the Senate Commerce Committee, who did superb work in this area; Bill Reinsch and Tom Forbord, of my staff, whose diligence and dedication in the support of American workers and American exporters I greatly appreciate; and Pat Mulloy, Marty Gruenberg, and John Walsh of the Banking Committee staff, who put all the pieces of this complicated package together and are responsible for its success.

Mr. BIDEN. Mr. President, last month, I was joined by six of my colleagues in introducing the Environmental Aid and Trade Act. The purpose of our legislation is to establish programs and make organizational changes in the Federal Government that would help the export of environmental goods and services. I am pleased that many of those provisions will be sent to the President for his signature as part of this bill.

Title II of the Exim bank bill includes many of the organizational changes we called for in our bill. Among those are provisions to create an environmental working group within the Trade Promotion Coordinating Council and the designation of individuals within Federal agencies to be in charge of developing policies to assist the export of environmental goods and services.

Title II also includes provisions that allow the Secretary of Commerce to designate environmental export assistance officers in foreign countries that are viewed as either attractive markets or major competitors for our environmental technologies. For those countries that are promising markets, the officer will assist companies trying to figure out the hows and whys of that particular country .

For those countries that are our competitors, the officer should also stay abreast of export assistance provided by those countries to their own manufacturers. This will help us respond more quickly to those cases where our companies are losing out to unfair trading practices that may be attempted.

Finally, title II calls for a study by the Trade Promotion Coordinating Council of the need for a program to insure our companies against the risk from market loss through reduced environmental standards. The study recognizes the Government standards are an important factor in the market for many products. A company's manufacturing process or product may depend on effective enforcement of those environmental standards. If a country fails to enforce those standards or outright reduces them, that company can suffer. The study will assess the extent of the risk posed by lowered environmental standards and the feasibility of a program to insure against that risk.

Other provisions of the Environmental Aid and Trade Act are included in the Freedom Act and the reauthorization of the overseas private investment corporation bill. In combination with the provisions in this bill, Congress is acting to establish broad-based support for one of our Nation's fastest-growing industries.

The changes we have called for in this bill are to help American companies in one of the fastest growing global markets. And it is a market we are particularly well positioned to sell to. Despite all the high-blown rhetoric of "jobs versus the environment" that has come from the administration in the past few months, it is undeniable that environmental protection laws of the last two decades have created a huge array of new technologies and thousands of jobs.

In fact, a study released in June by the Organization of Economic Cooperation and Development [OECD] estimated that more than 800,000 jobs in our country were directly related to the production of environmental goods and services. Exports of environmental products added $4 billion to our trade balance sheet. And the future global market for environmental goods and services is projected to exceed $300 billion in annual sales.

But the rhetoric of Rio and the campaign trail obscure the opportunities that lay before us, and risk the loss of another market we helped pioneer and in which we are technological leaders. That is why we introduced the Environmental Aid and Trade Act and why we worked to include its provisions in the bill before us.

The initiatives in this bill are not the end of efforts we should undertake in this area. The fact of the matter is that our competitors have recognized that environmental goods and services are good for their economy as well as the global environment.

An environmental consciousness has swept the globe, a change that our Nation's foreign policy must reflect. Global environmental concerns—in particular global climate change—are promoting revolutionary transformations in the foundations of relations between countries. These are not changes that the United States has to fear; we have a long record of success in addressing threats to our own environment and natural resources. Environmental concerns should not be held out as hobgoblins that we should use our global influence and leadership to quell. They should be recognized as fundamental building blocks of future global relations.

Our bill represents the progressive attitude that we must adopt, for the good of our economy and future generations. I would like to commend the efforts of Senator WIRTH, a cosponsor of the Environmental Aid and Trade Act, for his efforts to include the provisions in this bill. I would also like to thank the Senator from Maryland [Mr. SARBANES] for his assistance in this matter.

I ask unanimous consent that an "Op Ed" authored by Senator WIRTH on the issue of environmental protection and jobs that appeared in Sunday's Washington Post be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 4, 1992]

EASY BEING GREEN

(By Timothy E. Wirth)

The tactic of pitting spotted owls against timber workers in Oregon and fuel-efficiency standards against auto workers in Detroit is both a cynical retreat from past promise and a false choice for the future.

The facts show that in a stagnant economy, environmental action has actually both supported a remarkable growth industry in the United States itself and created an enormous potential market abroad. Now is the time to debate how to maintain and accelerate that growth, how to expand exports of environmental technology and how to retrain workers now employed in low-skill, economically imperiled jobs that squander energy and non-renewable natural resources. Those are the challenges that a Competitiveness Council worthy of its name should be tackling.

Among the welcome byproducts of two decades of cleaning up dirty air, unsafe water and toxic wastes is an American environmental services industry counting nearly 70,000 businesses, well over a million workers and a 1991 income of $130 billion. Using a standard multiplier effect to gauge the full impact of the sector in our economy, economists suggest that 3.5 million jobs flow from the $270 billion in sales as well as $22 billion in corporate profits and $76 billion in Federal, State and local revenues.

Less easily measured in dollars but just as significant an index of progress and promise are the new devices and processes researchers have developed and business has employed to stem pollution. Those innovations, like the breakthroughs in electronic miniaturization. metallurgy and other fields that resulted from the U.S. space program, are key elements of the hefty green dividend that environmental protection is already paying.

The global market for environmental goods and services fits that description perfectly. Estimates of its current size range from $200 to $370 billion a year, of which $50 billion is in international trade. U.S. export earnings—$6 billion in 1991 by Commerce Department reckoning, $8 billion according to OECD statistics—are impressive.

Germany, with sales worth $11 billion last year, has already pulled ahead, and, Japan is mounting a major effort to capture the field. It is a tempting and rapidly growing target. Developing nations alone are likely to purchase hundreds of billions of dollars worth of energy products in the next decade; winners in this global trade will be those who market clean, efficient energy products.

As pioneers in solar energy, for example, Americans ought to be strong competitors for that booming business. We are not. We have allowed our early lead to evaporate to the point that Japan and Germany now divide 70 percent of the solar-energy market. So too with air-pollution control equipment. The United States is now importing 70 percent of its clean-air technology—technology that Americans pioneered. Gary, Ind., is home to the first utility in the United States to meet the new Clean Air Act standards for sulfur dioxide emissions—thanks to Mitsubishi.

With the right signals from our political leaders, U.S. firms could do better, but this administration has been anything but activist in the environmental arena. No high-level officials in the Bush administration encouraged American business to attend the environmental trade fair that was held at the Earth Summit in Rio. Only 25 U.S. companies—out of 4,000 invited—bothered to show their wares in the huge hall. China sent 71 exhibitors; Japan sent 130.

More significantly, the Japanese government used the Rio meeting to announce a 10-year, $8 billion pledge, twice the level of current American commitments of environmental aid to developing nations. That investment in building future markets is just one part of a massive push—a 35-year-long strategy that Tokyo's Ministry of International Trade and Industry calls "New Earth 21"—to position Japan to dominate environmental trade in the next century.

Germany is also vying for that advantage. Having shown that its tough pollution-control and recycling laws actually enhance productivity and competitive strength, it—along with Italy and the Netherlands—is allocating about 10 percent of its research and development budget to the search for new environmental technologies. The German commitment to reduce carbon dioxide output by 25 percent by 2005 is not just a feel-good policy. It will actually spur innovation and export promotion.

For a change, American firms could be on the winning side of the coming competition. We have a tremendous record of leadership and achievement in environmental protection, the most comprehensive set of standards and practices of any nation on earth, a huge capital fund of technological innovation to draw on and an experienced domestic industry already at work. What we lack, however, is the political leadership to exploit these assets and, on the technical side, the commitment to energy efficiency that we need to implement clean technology as strenuously as our competitors are. Our economy could be saving $200 billion a year—vastly more than the president claims his proposed capital gains tax cut would generate—if it used energy as sparingly as Japan does.

Once we are done with the political hyperbole of a campaign year, Americans will be ready to hear and act on the reality that environmental action has promoted growth, can generate more and may well determine our competitive advantage (or disadvantage) in the short and long term. We have a dynamic environmental sector at home and a rapidly widening market abroad. We need to build on both—doing good for the environment and creating American jobs at the same time.

The PRESIDING OFFICER. Without objection the conference report is agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

OMNIBUS EXPORT AMENDMENTS ACT OF 1992—CONFERENCE REPORT

Mr. FORD. Mr. President, I submit a report of the committee of conference on H.R. 3489 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3489) to reauthorize the Export Administration Act of 1979, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 5, 1992.)

Mr. SARBANES. Mr. President, I rise in support of the conference report to accompany H.R. 3489, the Omnibus Export Amendments Act of 1991. This legislation would reauthorize the Export Administration Act, impose sanctions on companies and countries which facilitate the proliferation of nuclear weapons, establish a set of principles to guide the conduct of United States companies doing business in the People's Republic of China and Tibet, and reauthorize the export promotion programs of the Commerce Department.

This important legislation has had a long and difficult history. Two years ago the Congress passed a reauthorization of the Export Administration Act [EAA], the statute which provides the President authority to control exports for purposes of national security and foreign policy. Included in the legislation was a number of reforms to improve the operation of the U.S. export control system and respond to the rapidly changing circumstances in Eastern Europe. Unfortunately that legislation was pocket vetoed by the President because of a provision requiring the imposition of sanctions on foreign companies and countries which assist in the proliferation of chemical and biological weapons.

During the past 2 years, the President has imposed controls on U.S. exports pursuant to the International

Emergency Economic Powers Act [IEEPA]. IEEPA provides the President authority to take action during an economic emergency, but was never envisioned to be used as authority for the routine implementation of controls on exports. It was thus imperative for the Congress to reauthorize the Export Administration Act and reestablish a statutory framework for the enforcement of U.S. export controls.

After much determined effort, I am very pleased that agreement has been reached to reauthorize the EAA. The conference report would modify United States export controls to take into account the historic changes that have taken place in Eastern Europe and the former Soviet Union. This legislation would provide a statutory base for the agreements reached in Cocom—the Coordinating Committee for Multilateral Export Controls made up of the NATO countries, Japan and Australia—in June 1990, May 1991, and June 1992 to reduce controls on exports to Eastern Europe and the Independent Republics of the former Soviet Union. It also establishes a policy that licensing treatment for the countries of Eastern Europe and the Independent Republics of the former Soviet Union should be revised if a country implements an effective export control system, establishes adequate technology security arrangements, and terminates governmental policies and intelligence cooperation with other controlled countries relating to illegal acquisition and diversion of controlled technology.

In addition, the legislation provides for the creation of a license free zone among the member countries of Cocom. It would end controls on U.S. exports to Cocom member countries, although authority would remain for the Commerce Secretary to impose controls on exports to unreliable end users and to countries which the Secretary determines are engaging in a pattern and practice of noncompliance with Cocom.

The conference report also deals with the difficult issue of commodity jurisdiction—whether a good should be controlled under the Commodity Control List of dual use goods of the Commerce Department or the Munitions Control List of defense articles of the State Department. The conference report provides a procedure for the Secretary of each department to challenge the judgment of the other, and to refer cases to the President which cannot be resolved between the Secretaries.

In addition, the conference report would impose an embargo on the export of goods or technology subject to national security controls under EAA to countries which the Secretary of State has determined have repeatedly provided support for acts of international terrorism. The conference report would also increase criminal and civil penalties for violations of export controls imposed pursuant to the EAA.

Comparable in importance to the reauthorization of the Export Administration Act is the provision in the conference report which responds to the proliferation of nuclear weapons. Several proposals have been put forward in the Congress over the past 2 years to respond to this critically important problem. Some would wish that more could have been done on this issue in this conference report. Nevertheless, title III of the conference report, the Nuclear Proliferation Prevention Act of 1992, is an important step forward and I am pleased that we have been able to achieve its enactment in this bill.

The provision would require the President to impose sanctions on a U.S. or foreign company, or a foreign country that contributes to the efforts by any individual, group, or nonnuclear weapon state to acquire unsafeguarded special nuclear material or to use, develop, produce, stockpile, or otherwise acquire any nuclear explosive device.

The conference report also establishes a set of principles to guide conduct of United States companies doing business in the People's Republic of China and Tibet. The principles seek to establish certain standards of conduct such as nondiscrimination on the basis of sex, religion, ethnic or national background, or political belief; methods of production which do not pose an unnecessary physical danger to workers; the avoidance of convict or forced labor by a U.S. company, or goods that are produced by such labor. The State Department is required to submit an annual report to Congress on the level of adherence to the principles by United States companies, and the practices and policies of the People's Republic of China that interfere with adherence to the principles.

Finally, a provision which I consider to be of great importance would reauthorize the export promotion programs of the Commerce Department and address the broader issue of U.S. export promotion policy. The Banking Committee's Subcommittee on International Finance and Monetary Policy, which I chair, held a hearing on May 20 to review the range of export promotion programs sponsored by the Federal Government. Invited to testify at the hearing were representatives of the Commerce Department, Eximbank, the Small Business Administration, Agriculture Department, Agency for International Development, and the Trade and Development Program.

The number of agencies represented at the hearing is an indication of a key problem confronting U.S. export promotion policy: the lack of coordination and an overall national strategy. In response to this problem, the conference report would provide a statutory base for the interagency Trade Promotion Coordinating Committee [TPCC], which until now has operated pursuant to Executive order, chaired by the Secretary of Commerce. Its purpose would be to coordinate the export promotion and export financing activities of the Federal Government and develop a governmentwide strategic plan for carrying out Federal export promotion and financing programs. The TPCC would be required to submit an annual report to Congress describing its strategic plan, the implementation of the plan, and any revisions made to the plan.

I would like to thank my fellow Senate conferees—Senator RIEGLE, Senator CRANSTON, Senator GARN, and Senator MACK—for efforts in support of this important legislation. I would also like to make mention of the Banking Committee staff who made great efforts to bring this legislation to enactment—Martin Gruenberg, Patrick Mulloy, and John Walsh.

Mr. President, I strongly urge my colleagues to support this conference report.

Mr. RIEGLE. Mr. President, I rise in support of H.R. 3489, the conference agreement on the Omnibus Export Amendments Act of 1992. This legislation makes major changes to the Export Administration Act [EAA]. It updates our export control regime to take account of current international realities. It also enhances our Nation's export promotion and financing activities.

The EAA provides the statutory basis for the national security export control regime we have had in place since the beginning of the cold war in the 1940's. We used such controls to deny the Soviet Union and its allies those critical dual use machines and technologies they could have used to strengthen themselves militarily. Because the implementation of effective export controls depended on cooperation from our allies, the Coordinating Committee for Multilateral Export Controls, or Cocom, was formed in 1949 to harmonize allied export control policies.

Since we last renewed the EAA in 1988, dramatic changes have taken place in eastern Europe and the Soviet Union. During the past two Congresses, we have worked to fashion a national security export control regime that makes sense in a new era of East-West relations as well as a new era of global economic competition. This legislation does just that. It streamlines U.S. export controls governing sales of dual-use items to the newly emerging democracies in eastern Europe and the former Soviet Union. It eliminates overburdensome export controls, that harm rather than help our national security, by restricting American companies from competing for sales in this new era of global economic competition. Moreover, by incorporating in statute the decontrol agreements recently reached within Cocom, it ensures U.S. export controls are effectively coordinated with the policies and procedures of other Cocom members.

Mr. President, while this legislation relaxes controls on the export of dual use goods and technology to the countries of the former Soviet Bloc, it tightens controls on the sale of those items to terrorist countries. No export of dual use items to terrorist countries, that will help them develop chemical or biological weapons, or the means to deliver them, is permitted unless the President determines that the transaction is essential to the national security interests of the United States. He must report any such determination to Congress at least 15 days prior to the proposed transaction. The legislation recognizes that although the strategic threat of the cold war is waning, the United States must act to stop a new threat to world and regional peace and security—countries that sponsor or support international terrorism. We must work with other responsible countries to ensure we have an effective multilateral regime in place to control exports of military critical items to terrorist countries.

The conference agreement also requires the President to focus increased attention on restricting nuclear-related exports. It also provides authority to put extensive sanctions on foreign countries or companies that assist irresponsible countries develop or manufacture nuclear weapons. Senators PELL and GLENN deserve great credit for authoring these important provisions.

Mr. President, this legislation also expresses the sense of the Congress that no exports should be made to any independent state of the former Soviet Union if such state restricts emigration of Jews or does not agree to expeditiously withdraw its troops from Latvia, Lithuania, and Estonia. The Baltic nations need our continued support to ensure their complete sovereignty in this matter.

In addition to reforming our export control system, this legislation also strengthens our export promotion programs. In contrast to our principal competitors, the United States does not have a comprehensive, integrated export enhancement strategy. There are 10 executive agencies involved in either export promotion or financing activities. Yet, we have not strategic plan for coordinating these activities and ensuring the efficiency of these many Federal programs. We have no overall rationale for determining whether our export promotion resources are being channeled into areas with the greatest potential return.

Mr. President, this legislation should improve the coherence of our export programs by establishing permanently in statute the Presidential interagency committee known as the Trade Promotion Coordinating Committee [TPCC]. It puts the Secretary of Commerce in charge of that Committee. The legislation also directs the TPCC to develop a governmentwide strategic plan for promoting and financing exports. Proper development and implementation of such a plan will ensure our export promotion and financing activities are being coordinated and priorities are being set that will enable our nation to get the maximum return for the money we spend on such activities.

Further, this legislation highlights the key responsibility of the Department of Commerce for strengthening our overall international trade and investment position. It requires the Secretary of Commerce to submit to the Congress an annual report on the international economic position of the United States and to appear annually before the Senate Banking Committee and the House Foreign Affairs Committee to testify on the report. Among other things, the Secretary of Commerce is required to report on the Department's efforts to promote the development of technologies and products critical to our industrial leadership and to increase exports using such technologies. The Secretary is also to report on how the TPCC's strategic export plan is being implemented.

Mr President, I want to thank Chairman FASCELL and Congressman GEJDENSON for their cooperation in putting together this conference report. I also want to salute Senator GARN who played a major role in fashioning the legislation now before us. Let me also pay a particular thank you to my good friend and colleague, Senator PAUL SARBANES, the chairman of the Banking Committee's International Finance Subcommittee. He played a major role in drafting the Senate's bill and worked tirelessly in conference to make sure we produced a bill that reformed our present export control system.

H.R. 3489 goes far in meeting the needs of our exporters in this new age of global economic competition and does so in a way that does not jeopardize our national security. It gives us much-needed and long-overdue reform in our export control system. It also tightens controls on exports to countries that sponsor international terrorism. It ensures that our export promotion activities will be based upon a comprehensive, coordinated strategy. This legislation is important to my home State of Michigan which is a major exporter of manufactured goods. It is also good for our entire country. I urge its prompt passage.

Mr. GLENN. Mr. President, I rise to say just a few words about the nuclear sanctions provisions title III of the Omnibus Export Amendments Act of 1992. This title incorporates the amended texts of two of my bills—S. 1128 and Senate Joint Resolution 216—dealing with nuclear nonproliferation.

I am pleased that Congress has finally approved S. 1128—a bill to tighten significantly penalties against companies and countries that promote the global spread of nuclear weapons—and that the conferees also accepted the Sense of the Congress on IAEA safeguards, introduced last year by myself and Congressman PETE STARK (S.J.Res 216 and H.J.Res. 351). Furthermore, I want to express my deep appreciation to my colleague, Senator Pell, to the Foreign Relations Committee, and indeed, to the Senate as a whole, which twice this year voted unanimously in support of this sanctions legislation.

Because of the significance of the sanctions in this bill, I would like to offer a summary of the key provisions along with a statement of my intentions in introducing them.

Subtitle B—Sanctions for Nuclear Proliferation

Section 321: Imposition of Sanctions.

Purpose:

To broaden presidential authority to impose sanctions against foreign and domestic persons that the President determines have contributed to the global proliferation of nuclear weapons. Specifically, the sanctions seek to deter illicit exports from the United States or a foreign nation of goods or technology that would assist any individual, group, or non-nuclear-weapon state to acquire a nuclear explosive device or unsafeguarded special nuclear material.

The section establishes explicit presidential authority to ban US government procurements from foreign or domestic firms that have "materially and with requisite knowledge" contributed to the proliferation of nuclear explosive devices or access to unsafeguarded bomb materials. The term "with requisite knowledge" derives from the use of the term "knowing," as defined in the Foreign Corrupt Practices Act of 1977.

Rationale:

Nuclear nonproliferation has been a key goal of US national security since 1945—a goal that has been strongly reaffirmed after the recent Gulf War. All Americans recognize that the acquisition by additional nations or groups of nuclear explosives or bomb material would jeopardize vital US interests and world peace. Yet with respect to US government purchases and US imports of good produced by firms that engage in proliferation-related exports, US statutory sanctions are currently more punitive for missile and CBW proliferation than for illicit activities promoting the global spread of fission or hydrogen bombs.

P.L. 101–510, for example, authorizes the President (inter alia) to ban US government contracts with, and US imports of goods produced by, foreign firms that engage in illicit sales of sensitive missile technology; similar sanctions are now found in legislation (P.L. 102–138 and P.L. 102–182) concerning the proliferation of chemical and biological weapons. Current nuclear sanctions, by contrast, provide for penalties relating to denials of foreign aid and nuclear cooperation —but provide no equivalent statutory penalties for foreign firms that traffic in illicit nuclear weapon-related goods.

The sanctions, triggering procedures, scope of persons affected, foreign government consultations, report, exceptions, waivers, and terms for terminating sanctions used in this section were modeled after the sanctions provisions in previous legislation addressing missile, chemical and biological weapons proliferation.

Specifically, the sanctions in this section are consistent with the sanctions on missile proliferation in Title XVII of the National Defense Authorization Act for Fiscal Year 1991 (P.L. 101-510) and (for sanctions on chemical and biological weapon proliferation) in the Foreign Relations Authorization Act for Fiscal Years 1992 and 1993 (P.L. 102-138).

The case for the government procurement sanctions rests on cumulative revelations of the extent that foreign firms have been suppliers of secret nuclear weapons programs around the world. On March 22, 1989, for example, the Washington Post cited a raid by the West German government that discovered 70 German firms that had been active suppliers of Pakistan's nuclear program. In 1991, UN inspectors of Iraq's destroyed nuclear facilities discovered extensive reliance on foreign equipment and technology. Moreover, press accounts have identified a number of foreign commercial enterprises that do business with the US government.

The denial of foreign aid and nuclear cooperation—once a powerful sanction—may well (with low levels of foreign aid and the continuing stagnation of the nuclear power industry) decline in value as a disincentive for proliferation in the 1990's. The sanctions in this section therefore grants the President specific authority to deploy an additional powerful deterrent—the procurement ban—against illicit sales by firms that do extensive business with the federal government. Although import sanctions were originally intended to be included in this bill, they were withdrawn to permit the House to originate this particular sanction in accordance with House rules. The House may introduce such legislation in the next Congress.

The House added language providing for the issuance upon request by any person of an advisory opinion from the Secretary of State, in consultation with the Secretary of Defense, as to whether a specific proposed activity would subject that person to sanctions under this section. The provision states that no person relying in good faith upon such an advisory opinion shall be subject to the designated sanctions. I do not intend this provision to exclude consulation with other appropriate agencies.

Section 322. Eligibility for Assistance.

Purpose:

(a) To amend the Arms Export Control Act to ensure that foreign recipients of US arms exports are not in material breach of their nuclear nonproliferation treaty commitments; and (b) to amend the Foreign Assistance Act to authorize the President to waive for one year the prohibitions of Section 670(a)(1) concerning illicit transfers of nuclear reprocessing technology and illicit nuclear procurements in the United States, and to require Pakistan to satisfy the same nuclear standards in the Glenn/Symington amendments (sections 669 and 670 of the Foreign Assistance Act) that are required of all other non-nuclear-weapon states that receive US foreign aid.

Rationale:

(a) This section creates a strong disincentive for recipients of US arms exports to promote nuclear proliferation, and a strong incentive for such recipients to live up to their nuclear nonproliferation treaty commitments. The section is prospective: it is not intended to punish activities that occurred before enactment of this section.

(b) Current law (Section 670a-2 of the Foreign Assistance Act) authorizes the President to waive of any penalties for illicit transfers of nuclear reprocessing technology and for illicit nuclear procurement attempts in the United States. there is no time limitation in the current law constraining how long such a waiver may be issued. The new language would authorize the President to issue a waiver in any specific fiscal year, upon making the certifications that are currently required under that section.

Two of America's most important nuclear sanctions are found in sections 669 and 670 of the Foreign Assistance Act; 669 cuts off aid if a nation traffics in unsafeguarded uranium enrichment technology, while section 670 cuts off aid if a nation transfers or receives nuclear reprocessing technology or (among other activities) illicitly seeks nuclear technology in the U.S.

As originally enacted, sanctions under both sections can be waived by the President under specific circumstances identified in those sections. In 1981, however, President Reagan sought new waiver authority for Pakistan in order to facilitate US assistance to the Afghan rebels; this new authority was needed because Pakistan could not satisfy the requirements for the existing waiver authority in the Foreign Assistance Act. In short, although Pakistan was indeed engaging in illicit imports of unsafeguarded uranium enrichment technology, and given that Pakistan would not provide "reliable assurances" that it would not acquire the bomb, America nevertheless wanted to continue aid in order to achieve the goal of expelling the Soviets from Afghanistan.

In 1981, Congress agreed to extend a temporary (6 year) waiver of the uranium enrichment sanctions called for in sec. 669. After this waiver authority expired in 1987, it was renewed for shorter periods of time; this waiver authority officially expired on April 1, 1992. In early 1982, President Reagan issued P.D. 82-7, which waived the nuclear reprocessing sanctions required in sec. 670. In early 1988, President Reagan issued P.D. 88-5 to waive sanctions against a recent attempt by Pakistan to acquire material that "was to be used by Pakistan in the manufacture of a nuclear explosive device."

Thus, Congress has on 4 occasions granted special waiver authority for Pakistan under sec. 669; the President has issued 1 indefinite waiver of the reprocessing provision in sec. 670, and 1 waiver for penalties associated with an illicit effort by Pakistan to violate US nuclear export control laws. Yet despite these special waivers and large-scale US economic and military assistance throughout the 1980's, Pakistan's bomb program continues to move forward. On February 7, 1992, the Washington Post reported that the Pakistani foreign secretary, Shahryar Khan, had stated in an interview that Pakistan now possesses "elements which, if put together, would become a device."

The Soviet withdrawal from Afghanistan, coupled with alarming new developments in Pakistan's nuclear program in recent years (including continuing cooperation with China), calls for an end to Pakistan's special waivers of nuclear sanctions under the Glenn/Symington amendments. The price of continuing these waivers is greater than any conceivable gain to US nonproliferation objectives.

A new waiver of 669, for example, would permit (assuming Pakistan could meet other nonproliferation conditions under sec. 620E-e) continuation of economic or military aid to Pakistan even if Pakistan later provides Libya or Iran with the complete plans for a uranium enrichment plant. If a waiver were in force for sec. 670, Pakistan could transfer the plans for a plutonium separation plant to Syria or any other country and incur no foreign aid penalty under US law. To reduce such risks, the new section would simply return Pakistan to treatment accorded to every other non-nuclear-weapon nation under the Glenn/Symington amendments.

Section 323. Role of International Financial Institutions.

Purpose:

To require US directors in international financial institutions to oppose "any direct or indirect use" of institution funds that would assist non-nuclear-weapon nations to acquire nuclear explosive devices or safeguarded special nuclear material. The section would also require US directors "to consider" the nuclear nonproliferation credentials of the nation that would benefit from funding offered by such agencies.

Rationale:

Multilateral funding agencies (World Bank, International Development Agency, International Finance Corporation, regional development banks, etc.) each year provide billions of dollars for legitimate development projects throughout the world. The purposes of US "development" assistance do not now include—and must never be permitted to include—aid in developing the bomb. By ensuring that no US funds that have been provided to multilateral development agencies will be used either directly or indirectly to promote nuclear proliferation, this section would serve both US national security and foreign policy interests.

This section follows several non-nuclear statutory precedents with respect to the "voice and vote" of U.S. executive directors in such institutions. For example: (1) 22 USC 262d requires that U.S. directors, in connection with their voice and vote in such institutions, "shall advance the cause of human rights"; (2) in accordance with 22 USC 262g, US representatives in such institutions "shall oppose any loan or other financial assistance" to promote any foreign exports of palm oil, sugar, or citrus crops if such exports would cause injury to US producers; (3) in 22 USC 262h, the Secretary of Treasury is required to instruct the US directors "to use the voice and vote of the United States to oppose" any assistance that would promote the foreign production of any commodity or mineral whose export would cause substantial injury to US producers; and (4) as required by 22 USC 262n-2, the Secretary of Treasury shall instruct the US directors to use the "voice and vote" to oppose financing of projects that will produce exports in violation of the General Agreement on Tariffs and Trade.

Section 324. Amendments to FDIC Improvement Act.

Purpose:

To expand the President's authority to apply sanctions against banks and financial institutions that knowingly promote nuclear proliferation.

Rationale:

This section builds on evidence (e.g., testimony before the Foreign Relations Committee on October 17, 1991 by David Kay of the International Atomic Energy Agency) that banks played significant roles in assisting Iraq to acquire illicit nuclear technologies. This section amends the Federal Deposit Insurance Corporation Improvement Act of 1991 to mandate a ban on dealings by banks and other financial institutions in US government finance and other restrictions on the operation of such institutions in the United States, if the President determines that they have materially and with requisite knowledge assisted non-nuclear-weapon states to acquire unsafeguarded special nuclear material or nuclear explosive devices. The sanctions under this section contain waiver authority in the event any such sanction would "have a serious adverse effect on the safety and soundness of the domestic or international financial system or on domestic or international payments systems."

Section 325. Ex-Im Bank.

Purpose:

To require the Secretary of State to report to Congress and to the Board of Directors of the Ex-Im Bank if the Secretary determines that any country "has willfully aided or abetted" a non-nuclear-weapon state to acquire a nuclear explosive device or unsafeguarded special nuclear material. Ex-Im Bank credits would then be suspended, unless the President determines it is in the national interest to continue such credit.

Rationale:

The Export-Import Bank Act already contains a report requirement along these lines, but the existing law only addressed circumstances in which nations violate IAEA safeguards or a US agreement for nuclear cooperation. The new language expands the scope of the report to a wider range of activities relating to illicit nuclear assistance to other nations.

Section 326. Additional Amendments to the Foreign Assistance Act of 1961.

Purpose:

To expand sanctions against nations that transfer a nuclear explosive device, design information of such a device, or any important component of a nuclear explosive device to a non-nuclear-weapon state.

Rationale:

Under Section 670(b)(1) of the Foreign Assistance Act as currently worded, no foreign assistance may be given to any non-nuclear-weapon state that either receives or detonates a nuclear explosive device. The new language would extend this penalty to include receipt of bomb parts or bomb design information. Current law would only impose a penalty if a complete bomb were physically transferred to a non-nuclear-weapon state—yet if a recipient of U.S. aid gave Syria or Iraq a bomb design, for example, or fabricated components of a bomb or bombs, there would be no explicit penalty under U.S. law. This section would strengthen sanctions to address just such situations.

As a result of an amendment agreed unanimously by the Foreign Relations Committee, the bill includes additional sanctions against countries that the President has determined have violated the prohibitions of Section 670(b)(1). The new sanctions include at a minimum: termination of foreign assistance, arms sales, U.S. government credits, arms sales financing, multilateral development bank assistance, bank loans, and U.S. exports (excluding agricultural commodities and food). The amendment exempts from sanctions certain activities undertaken pursuant to title V of the National Security Act (relating to congressional oversight of intelligence activities).

The intent of this section is to strengthen sanctions against, and thereby to deter, the proliferation of nuclear explosive devices and the most critical design information and components of such devices. Transfers to a non-nuclear-weapon state of design information of nuclear explosive devices or of any components determined by the President to be both known by the transferring country to be intended by the recipient state for use in any such a device, would be treated under US law as though a device itself had been transferred.

The transfer of an entire disassembled device would clearly require the immediate imposition of sanctions under this provision. The willful transfer of any nuclear weapons design information or component that would be required to be classified under the Atomic Energy Act as "Restricted Data" would similarly require the sanctions to be applied.

The provision provides three tests for the imposition of sanctions in less clear-cut cases: (a) Did the transferring nation provide the part or design with the knowledge that it would be used in a nuclear explosive device?; (b) Did the recipient nation import the item or design with the intent of using it in a nuclear explosive device?; and (c) Was the specific part of design information of such importance that its absence would prevent the device from satisfying the definition of a "nuclear explosive device" as used in this Act?

It is my intent that the President must impose the requisite sanctions if a preponderance of evidence, from any and all credible sources, establishes that the answers to each of these three tests are in the affirmative.

Section 327. Reward.

Purpose:

To authorize the Secretary of State to pay rewards for information relating to acts substantially contributing to the risk of illicit foreign acquisition of unsafeguarded nuclear material or a nuclear explosive device.

Rationale:

Under Section 36 of the State Department Basic Authorities Act (P.L. 84-885), the Secretary of State already has authority to pay rewards for information relating to terrorist activities. On July 15, 1991, the State Department's Acting Coordinator for Counterterrorism testified before the Senate Committee on Governmental Affairs that the Department had found this reward authority to be ". . . unequivocally a successful program." As devastating as contemporary terrorism can be, a nuclear explosive can produce terror on a far greater scale—yet under current law, the Secretary of State is not statutorily authorized to pay rewards for information useful in halting nuclear proliferation. The new section would require no payments, it would only authorize the Secretary of State to issue such payments should they advance the goals of nuclear nonproliferation.

Section 328. Reports.

Purpose:

To require (a) that the ACDA annual report to Congress include a section on instances when other nations have failed to comply with their commitments to the United States with respect to nuclear nonproliferation; and (b) that Congress be kept fully and currently informed, in accordance with Executive reporting responsibilities under Section 602(c) of the Nuclear Non-Proliferation Act of 1978, about the status of diplomatic demarches issued on behalf of nuclear nonproliferation objectives.

Rationale:

(a) Over the last decade, the United States received numerous high-level official commitments from nations around the world concerning their intentions with respect to the nonproliferation of nuclear weapons. Many of these commitments have been registered in treaty form (e.g., there are now over 150 full parties to the Nuclear Non-Proliferation Treaty); but others have been provided in official but less formal arenas. Russia is already required to comply with its arms control commitments to the United States, by means of a reporting requirement created in the Defense Authorization Act of 1986 (Sec. 1002). Modeled on that reporting requirement, the new section seeks to underscore the expectation of the United States that nuclear commitments—especially those commitments deemed by the President to constitute a national obligation—must also be kept. The information required in this report concerns noncompliance—there is also no stipulated sanction for noncompliance, apart from a statement by the President in this report as to which steps are being taken to restore compliance.

(b) Diplomatic demarches (defined in the bill) are one of the principal means by which the day-to-day business of nonproliferation is conducted. Yet despite repeated public references to the frequency that the US has issued such demarches, there has never been a systematic assessment of their effectiveness in advancing US nuclear nonproliferation goals. There is some evidence that these demarches have often not proven to be terribly effective: one former US defense official once termed these demarches, "demarche-mallows," while another former German export control official has been widely quoted in the press as saying that these demarches landed in his "waste-paper basket." The bill states that it is the sense of Congress that developments relating to diplomatic demarches should be included in Executive briefings given to the Committees on Foreign Relations and Governmental Affairs in the Senate, and the Committee on Foreign Affairs in the House, in accordance with the reporting responsibilities of sec. 602(c) of the Nuclear Non-Proliferation Act of 1978.

Sec. 329. Technical Correction.

To bring current law up to date with existing US nuclear regulatory and legal standards for ensuring the physical protection of highly enriched uranium (HEU). Under international guidelines to which the US subscribes (INFCIRC/225 and the Convention on Physical Protection of Nuclear Material) the control standard for HEU is 5 kilograms. The amendment is a minor technical change.

Sec. 330. Definitions.

In this section, the term "nuclear explosive device" is defined explicitly for the first time in US law. As long as the term remains undefined, the fundamental goal of all US nuclear nonproliferation laws will remain ambiguous. Nations can design nuclear weapons by means of extremely small explosive tests using minute quantities of bomb material. Since there are no credible peaceful reasons to conduct such so-called "zero-yield" test detonations, the definition must cover such devices. The section adopts a standard that was originally created during the Eisenhower Administration to distinguish a nuclear from a non-nuclear explosion.

The phrase "unsafeguarded special nuclear material" is defined to include plutonium and special nuclear material that is held either in violation of or otherwise outside of IAEA safeguards; the definition excludes non-sensitive quantities that would qualify for export from the United States under general licensing authority.

Mr. GARN. Mr. President, I join my colleagues in support of the conference report on H.R. 3489, the Omnibus Export Amendments Act of 1992. This bill restores vital national security authority that has been lapsed for more than 2 years. Its basic elements have passed both Houses several times before; four times in the Senate over 3 years. While the Senate has had to endure a frustrating 2 year wait for the House to come to the conference table, this conference agreement is, in a number of areas, a stronger bill than the one we last approved in the Senate.

Title III of the conference report enacts S. 1128, the Senate-passed nuclear sanctions bill, that mandates sanctions against companies and countries that assist nuclear proliferation. That title also provides for expanded congressional oversight of the licensing of nuclear goods and technology and urges the President to negotiate to improve the functioning of the International Atomic Energy Agency.

The bill imposes an effective embargo on the export of goods and technology controlled under the EAA to terrorist countries including Iran and Syria. This includes an embargo on goods controlled for proliferation purposes unless the President determines an export to be essential to U.S. national security interests, and a ban on all other goods controlled for national security purposes unless the Secretary of State determines the export would make no contribution to the military potential of the country or its ability to support acts of international terrorism. This embargo replaces a requirement for interagency consultation in the case of licenses to terrorist countries that was contained in the Senate-passed bill.

Title IV of the conference report establishes a set of principles to guide the operation of United States economic projects in China. These are principles that all Americans support and the U.S. business community has indicted its intention to apply them to their economic activities in China. The conference report urges companies to make the State Department aware of their application of the principles and any interference by the Chinese Government in that effort. The title also requires an annual report by the State Department on implementation of the principles by United States companies and the extent to which the Government of China has acted to contravene them.

The conference report strengthens enforcement of the EAA by substantially increasing penalties and, in title II, updates and expands proposals for improving the export promotion activities of the U.S. Government.

What is most important, however, is that the conference report ends the state of emergency under the International Emergency Economic Powers Act which has been used to keep the expired EAA in force. Critical national security authorities of the expired EAA are being weakly sustained under IEEPA and are increasingly being challenged in the courts. It is critical to our national security that the legal underpinning of the EAA is restored.

Unfortunately, the apparent unwillingness of the House to consider any additional measures sent over from the Senate dooms this conference report. However, it has been clear since Tuesday morning when action on the conference report was blocked by procedural delays that the EAA would remain out of force. In a demonstration of all that is wrong with the legislative process, a reasonable conference report, loaded with strong national security provisions, will die because someone's preferred wording is not included.

The failure of the 102d Congress to enact a reauthorization of the Export Administration Act is amazing because it is a dispute over two alternative policy formulations that have both passed the House easily, that will both produce the same policy result, and that are both acceptable to the President. It is also amazing because the bill has overcome huge obstacles only to trip over a pebble.

The major obstacle confronting the bill was the addition of three veto items to the Senate bill in the House. All three addressed important issues: Licensing of software with encryption capabilities as munitions, liberalization of telecommunications trade with the former Soviet Union, and stricter licensing of nuclear trade. But all three involved extremely sensitive national security issues and all three are unworkable as legislation.

The first two could have compromised U.S. intelligence capabilities. The nuclear provision would have greatly complicated or prohibited peaceful nuclear cooperation including assistance on nuclear safety for the states of the former Soviet Union. Based on my long experience with these issues, I was convinced that sensitive licensing decisions requiring careful case-by-case evaluation could never be resolved through enactment of a cookbook of licensing rules.

Fortunately, I was able to help resolve the encryption issue through an agreement between the software industry and the National Security Agency. The telecom issue was resolved by an agreement in Cocom earlier this year. But until a few weeks ago, there was not even an effort made to reach an acceptable compromise on the nuclear provision. Finally a few days ago, with the possibility of no legislation in prospect, proponents of the nuclear licensing provisions finally agreed to drop them and adopt the Senate's nuclear sanctions bill, S. 1128, in its place.

With the last minute resolution of the veto problems, the road to enactment appeared clear. However, the EAA has now fallen victim to a conflict between the House Armed Services Committee and the Foreign Affairs Committee over definition of the division of responsibility between the Arms Export Control Act and EAA and between the Secretaries of Commerce and Defense. The exact wording on these points had been debated on the House floor and in conference. Despite an accommodation made in conference on the role of DOD, some members of the Armed Services Committee remained unhappy. They were not accommodated, blocked House consideration of the conference report on Tuesday, and the bill is now doomed.

If the EAA remains lapsed, the President and the agencies can exercise control authorities in any fashion they like. The sad truth is that if the conference report were adopted, or the language preferred by the bill's House opponents, the President and the agencies would do whatever they want anyway. This is the reality of the export control process.

Unfortunately, the House committees have been operating under the misconception that adding or deleting words on the role of the Cabinet agencies in the EAA will actually change the operation of the system. They are both wrong. In committee, Foreign Affairs added pages of instructions on control list review that emphasized the role of Commerce. Armed Services succeeded on the House floor in removing some of those words in an attempt to shore up the role of DOD. The language in the conference report represents the House-Senate compromise on these issues.

If I had the right to choose the words, my inclination would be to side with Armed Services and eliminate the words that trouble them. But I am frankly indifferent about the additional direction added by Foreign Affairs because I have learned, during 18 years watching Congress try to legislate their way through the bureaucratic maze, that the interagency process is immune to our efforts. Unless the law is completely rewritten and power granted to a single player, the balance of power among Commerce, Defense, and State will not change.

Furthermore, there is now a structural reason why no single agency is in control of list review or control policy. Almost all U.S. controls are multilateral so any proposals to change controls require a consensus among the three agencies on a U.S. negotiating proposal and can only occur if other governments agree. No amount of instruction by the Foreign Affairs to Commerce can alter those facts.

While I think that both sides of the House debate were wrong on this fundamental issue, I fear that the House opponents of the conference report are operating under other serious misconceptions about the report's contents. A fact sheet on the report argued that the section of the bill setting new rules for commodity jurisdiction decisions would result in total decontrol of critical technologies like satellites or jet engine technology. This is simply wrong. The issue is whether certain goods and technology that the United States has agreed in CoCOM are industrial rather than military goods should be controlled by State under munitions control rules or by Commerce under dual-use rules.

Both the conference report and the alternative House language require the same reevaluation of the munitions list controls. Both give discretion to the President to keep items on the munitions list, notwithstanding their industrial character. The difference between them is the standard for the Presidential waiver, higher in the bill, lower in the proposed alternative. The words are different, the outcome would not be.

A second complaint is that the provision calling for a total reevaluation of the dual-use control list every two years would give Commerce a free hand to decontrol technology. As I indicated earlier, lists cannot be changed without interagency consensus on a U.S. negotiating position and agreement in CoCOM and other multilateral arrangements. Furthermore, current law already mandates the sunset of the entire foreign policy and proliferation control lists every year. Even though a number of foreign policy controls are unilateral, the Administration response is a form letter reinstating all of them. There is even less reason to believe the outcome would be any different in this case.

The third concern is that a mandate to reevaluate controls on any country in Eastern Europe and the former Soviet Union that assumes a less threatening strategic posture would give Commerce total control over the process. In fact, the provision calls for evaluation of these countries on a consultative basis by Commerce, State and Defense. The determination that would trigger a U.S. decontrol proposal to CoCOM is not assigned to Commerce but, like the development of any U.S. negotiating proposal, would be a group effort. No change could come unless State were to propose it and CoCOM were to agree. Additional complaints about indexing procedures and exports to CoCOM reflect a similar misunderstanding of the process. They are equally misplaced.

Unfortunately, the two sides in this dispute have become so intent on winning the war of words that they can apparently agree on only one thing. Better no bill than a bill without their words. This is a sad end to this legislation and a sad reflection on the legislative process.

This is the last time I will take part in a debate on the Export Administration Act. I have engaged in other difficult debates on this subject over the years with the House of Representatives. I will not miss them. But I do not regret the time I have spent on these issues because I believe they have been important to U.S. national security. While I have often criticized the flaws in our export control system, I would go so far as to argue that CoCOM controls played an important role in the collapse of Communism.

The export control system needs a legal underpinning. I believe that the only responsible course is for Congress to provide it, if needs be, by getting right to work on a reauthorization in the next Congress. House Foreign Affairs has indicated its intention of doing just that but the performance of the 102d Congress in this regard is not hopeful.

Even if that effort succeeds, current law is becoming increasingly outdated. Our law and policy are out of step with the incredible changes in the former Soviet Union and the rising challenge of proliferation of weapons of mass destruction. We need a new law that reflects those realities. We need a decisionmaking process that minimizes interagency rivalry and encourages greater cooperation between the Executive and Congress. I have long favored a single Office of Strategic Trade. Perhaps its time is coming.

The new challenges of stopping the flow of technology to countries engaged in proliferation or terrorism are, in many ways, harder than controlling technology to the Soviets. Many of the technologies are less sophisticated and more widely available and the sources of diversion are many. We have to avoid the danger of creating a patchwork of poorly focused proliferation control regimes and embargoes on the enemy of the moment. This is the path of least resistance but it will make a poor framework for U.S. trade.

However, those are debates for another day and another Senator. I urge my colleagues to support adoption of the conference report on the Export Administration Act and send it to the House. If they are true to their word and kill the legislation, I urge my colleagues to return to the fray in the 103d Congress and reenact the EAA.

NUCLEAR SANCTIONS PROVISIONS

If the Chairman of the Committee on Governmental Affairs and author of S. 1128 will allow it, I would like to engage him in a colloquy.

I would like to clarify the provisions of Title III of the Omnibus Export Amendments Act of 1992 (formerly S. 1128, the Omnibus Nuclear Proliferation Control Act of 1992), that provide for sanctions on companies and individuals determined by the President to have contributed materially and with requisite knowledge to nuclear weapons proliferation.

I strongly endorse this effort to sanction companies involved in the proliferation of nuclear weapons. I rise to clarify one point concerning the presidential determinations called for in these provisions. It has come to my attention that, in very rare circumstances, the President may temporarily need to delay the full imposition of sanctions when it is necessary to protect intelligence sources and methods that are being used to acquire further information on weapons proliferation.

Is it the Senator's understanding that the protection of intelligence sources or methods for the purpose I have described may, in very rare circumstances, warrant a temporary delay in the imposition of sanctions under this provision?

Mr. GLENN. Mr. President, it is the intention of this legislation that the President must impose the requisite sanctions if a preponderance of evidence, drawn from any and all credible sources, establishes that a violation has occurred of this provision. I agree that the President may, in rare circumstances, need to delay temporarily the imposition of sanctions against a company or individual which has materially and with requisite knowledge contributed to nuclear weapons proliferation, if such delay is necessary to protect intelligence sources or methods essential to the acquisition of further intelligence about proliferation. Such a delay should be short-term in nature and must not result in a significant risk of additional transfers of sanctionable goods or technology under this legislation, or be used to further any other policy than nonproliferation.

Mr. GARN. Mr. President, I thank my colleague for this clarification.

The PRESIDING OFFICER. Without objection the conference report is agreed to.

So, the conference report was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TEMPORARY USE OF CERTAIN LANDS

Mr. FORD. Mr. President, I ask unanimous consent the Senate Energy Committee be discharged from further consideration of H.R. 5291, relating to South Gate Elementary; that the Senate proceed to its immediate consideration; the bill be deemed read a third time, passed; that the motion to reconsider be laid upon the table; and any statements relative to the passage of this item appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 5291) was deemed to have been read three times and passed.

ACCESS TO BUSINESS OPPORTUNITIES

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of S. 3388, a bill to provide graduates of Small

Business Administration's Minority Small Business and Capital Ownership Development Program with opportunities to compete for certain contracts under limited circumstances introduced earlier today by Senator SHELBY; that the bill be deemed read three times, passed, and motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 3388) was deemed to have been read three times and passed.

AUTHORIZATION FOR DOCUMENT PRODUCTION

Mr. FORD. Mr. President, on behalf of the majority leader and the distinguished Republican leader, Mr. DOLE, I call up Senate Resolution 364, authorization for document production by, and representation of, a committee, a Member, and employees of the Senate, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. Res. 364) to authorize document production by, and representation of, a committee Member, and employees of the Senate and United States v. John M. Kent, Sr., et al.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. MITCHELL. Mr. President, the defendant in a criminal case pending in the Western District of Louisiana has caused subpoenas for records of the Committee on the Judiciary to be served upon the chairman and staff. The U.S. Attorney is alleging in United States versus John M. Kent, Sr., et al., that the defendant conspired with others to give a bribe to a Federal district judge, Richard Haik, in return for his ruling favorably in a civil lawsuit in which the firm owned by the defendant was a party. Judge Haik reported the alleged bribe offer to the Government and is expected to testify at trial. The defense is seeking from the Judiciary Committee records from Judge Haik's confirmation that it believes may be relevant to the defense of these charges.

This resolution authorizes the chairman and ranking minority member, acting jointly, to produce committee records, except when a privilege is asserted. The resolution also authorizes representation by the Senate Legal Counsel in connection with these subpoenas.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution was agreed to.

The preamble was agreed to.

The resolution (S. Res. 364), with its preamble, is as follows:

S. RES. 364

Whereas, in United States v. John M. Kent, Sr., et al., Cr. No. 92-60038, pending in the United States District Court for the Western District of Louisiana, counsel for the defendant has caused subpoenas for the production of documents of the Committee on the Judiciary to be served on the Chairman of the Committee, Senator Biden, and an authorized staff representative of the Committee;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent committees, Members, and employees of the Senate with respect to any subpoena, order, or request for testimony relating to their official responsibilities;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate: Now, therefore, be it

Resolved, That the Committee on the Judiciary, acting through its Chairman or authorized staff representative, upon the joint approval of the Chairman and Ranking Minority Member, is authorized to produce documents in United States v. John M. Kent, Sr., et al., except concerning matters for which a privilege is asserted.

SEC. 2. That the Senate Legal Counsel is authorized to represent the Committee on the Judiciary, Senator Biden, and any employee of the Committee in connection with the subpoenas in United States v. John M. Kent, Sr., et al.

RESOLUTION CORRECTION

Mr. FORD. I ask unanimous consent the Senate proceed to the immediate consideration of Senate Concurrent Resolution 143, a correcting resolution submitted earlier today by Senator JOHNSTON, the resolution be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 143,) which was deemed to have been agreed to, is as follows:

S. CON. RES. 143

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill (S. 1671) to withdraw certain public lands and to otherwise provide for the operation of the Waste isolation Pilot Plant in Eddy County, New Mexico, and for other purposes, the Secretary of the Senate shall make a correction in the bill as follows:

After section 23 of the bill insert the following flush paragraph:

Nothing herein affects the authority of the Administrator of the Environmental protection Agency under applicable law to establish radiation protection standards with respect to Yucca Mountain. Those standards may be determined by the Administrator without regard to any standard referenced herein Nothing herein affects the Administrator's authority to establish standards that are more or less restrictive with respect to Yucca Mountain.

WASTE ISOLATION PILOT PLANT LAND WITHDRAWAL ACT OF 1992—CONFERENCE REPORT

Mr. FORD. Mr. President, I submit a report of the committee of conference on S. 1671 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the the bill (S. 1671) to withdraw certain public lands and to otherwise provide for the operation of the Waste Isolation Pilot Plant in Eddy County, New Mexico, and for other purposes, having net, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of October 6, 1992.)

Mr. JOHNSTON Mr. President, today the Senate is considering the conference report to accompany S. 1671, the Waste Isolation Pilot Plant Land Withdrawal Act. This legislation would permanently withdrawn the public land surrounding the WIPP facility in Carlsbad, NM, and would establish certain conditions and limitations on the operation of WIPP. This legislation is an important milestone in the Department of Energy's efforts to open the WIPP facility for initiation of the test phase.

The Waste Isolation Pilot Plant is a research and development facility of the Department of Energy that was authorized by Public Law 96-164 for the purpose of demonstrating the safe disposal of radioactive waste generated by DOE's nuclear weapons production activities. The WIPP facility, built 2,150 feet below the surface in the Delaware salt basin in New Mexico; has been under construction since 1981. The facility is now ready to open to begin the test phase. During the test phase, DOE will conduct a series of experiments to evaluate the facility's ability to comply with the environmental laws governing the safe storage and disposal of nuclear waste.

The WIPP site consists of 10,240 acres in Eddy County, NM, all of which is public land administered by the Bureau of Land Management. Under the terms of this legislation, that land will be permanently withdrawn from the pubic domain and transferred to the Secretary of Energy for his use in carrying out the test phase at WIPP and ultimately, if the facility is found suitable, for permanent disposal of transuranic waste.

The transuranic waste that will be emplaced at WIPP results primarily from plutonium reprocessing and fabrication, as well as from research and development activities at various DOE facilities. Transuranic waste exists in a variety of physical forms ranging from unprocessed laboratory trash (such as absorbent papers, tools, glassware, protective clothing, and gloves) to solidified sludges from waste water treatment. About 60 percent of this transuranic waste is mixed with hazardous waste components. The major chemical component in this mixed waste is metallic lead, which exists primarily in the form of glovebox parts and lead-lined gloves and aprons. Some mixed waste also contains traces of organic cleaning solvents such as methylene chloride and carbon tetrachloride.

During the test phase at WIPP, experiments will be conducted with this waste to reduce uncertainties associated with the prediction of natural processes that might affect the long-term performance of WIPP. Results of these experiments will be used do determine whether transuranic waste can be permanently disposed of in WIPP in compliance with the EPA disposal regulations. Under the provisions of S. 1617, if EPA certifies that WIPP can comply with the disposal regulations, DOE can then begin operation of WIPP as a permanent disposal facility.

The Committee on Energy and Natural Resources has been monitoring the progress of the WIPP facility for several years now. I am pleased that we have now reached the point that this important facility is ready to open. This is a major milestone in the Department's efforts to demonstrate that we have the technology necessary to store and dispose safely the byproducts of our nation's nuclear weapons.

The conference report before the Senate today is a compromise in the truest sense of the word. I cannot say that I am pleased with every provision of the bill. In my opinion, the final bill includes more prerequisites to the opening of the facility than are truly necessary for the safe operation of the facility. The Department of Energy is ready now to begin the test phase, and I would have preferred that the legislation allow that. Instead, it will be close to a year before the first shipments of waste will be sent to the WIPP facility.

Over $1 billion has been spent to date on construction of the Waste Isolation Pilot Plant, and the Department spends $14 million a month just to keep the facility open and ready to begin testing. This is a hefty price for the taxpayers of this country to pay simply to keep a facility up and running in a standby mode. It is of the utmost importance, therefore, that the statutory deadlines contained in this legislation are met.

The conference report contains a significant new regulatory role for the Environmental Protection Agency in the Department of Energy's test phase activities at WIPP. Under the provisions of the legislation, the EPA must approve the Department's test plan and retrieval plan by rulemaking prior to initiation of the test phase and must approve any modifications to those plans by rulemaking. While the Senate bill would have required EPA review and concurrence over test phase activities, the process set out in the Senate bill would have been an informal and iterative process rather than a formal rulemaking process. I would have preferred to retain the review and concurrence process of the Senate bill because I believe it would have been better suited to the review of a scientific program and it could have been completed in a more timely fashion.

Therefore, it was with some reluctance that the Senate conferees agreed to accept the House approach of requiring the Department's test plan to be approved by the EPA through rulemaking. The Senate conferees agreed to this approach with the understanding that it would be completed in an expedited fashion, consistent with the provisions of section 553(c) of the Administrative Procedures Act. Under these provisions, there will not be a formal adjudicatory hearing, and informal public hearings will be held only if it is possible to do so within the time schedules laid out in the bill. The provisions of the conference report require the EPA Administrator to complete the rulemaking on the test plan within 10 months of enactment of this act. Maintenance of this time schedule is extremely important.

Maintenance of the schedule is important because the facility is ready now, the test plan is ready now, and the waste is ready to move now. We simply cannot afford to delay this and keep spending $14 million a month ad infinitum.

There are a number of other rulemakings that will be required by the Environmental Protection Agency during the course of the test phase. It is the intention of the conferees that these rulemakings also be completed in an expedited fashion, consistent with the provisions of section 553(c) of the Administrative Procedures Act, with no adjudicatory hearing.

One other aspect of EPA's regulatory role at WIPP requires some explanation. Section 8 of the conference report addresses publication of final disposal standards for WIPP, compliance with those standards, and the process for certification of compliance by the Administrator of the Environmental Protection Agency.

The conference report would reinstate what are known as the Subpart B disposal standards, which were promulgated by the Environmental Protection Agency in 1985 as part of 40 C.F.R. 191. These standards were subsequently remanded to the Environmental Protection Agency in 1987 by the U.S. Court of Appeals for the First Circuit. While the court remanded the Subpart B standards in total, the basis for the remand was three points that were largely procedural in nature.

The conference report would reinstate the Subpart B standards, except for those items that were the basis for the remand, as they relate to the Waste Isolation Pilot Plant. The conference report also directs the Administrator of the Environmental Protection Agency to promulgate final disposal standards, resolving the parts of the regulations that were remanded, not later than 6 months after the date of enactment. It is important to emphasize that the conferees are making no judgment in this legislation on whether any substantive revisions to these standards are required. As the basis for the 1987 remand was procedural, it is quite likely that repromulgation of the standards will result in the same standards as those promulgated in 1985. There is nothing in this legislation that should be interpreted to require EPA to change any of the substantive provisions of the 1985 standards as they relate to the WIPP facility. Similarly, it should be clear that additional public comment will not be required if the standards are not changed. Furthermore, no public comment will be required for those parts of Subpart B that are reinstated by this legislation.

The purpose in reinstating the 1985 standards and requiring repromulgation of the remaining parts of the regulations within 6 months is to have these regulations in place in total prior to the initiation of the test phase at the WIPP facility. By reinstating the 1985 standards, the conferees are seeking to narrow the issues that must be revisited by the Environmental Protection Agency so that the agency will be able to meet the 6-month deadline for repromulgation of the remaining portions of the final standards. Reinstatement of the 1985 standards should not be interpreted, however, as the Congress putting a stamp of approval on the substantive provisions of the 1985 standards. The conferees are making no such judgment by this legislation.

It is important to emphasize also that it is the subpart A standards for management and storage—not the subpart B standards—that will govern activities at the WIPP facility during the test phase and until a decision is made to close the facility. Those standards have been in effect since 1985. In fact, the subpart B standards will not even be required for the WIPP facility until many years into the future since these standards really apply to the facility when it is finally closed up permanently with intention of removing the waste. It was important to the House, however, that these standards be in place for WIPP prior to the opening of the WIPP facility. Therefore, we agreed to reinstate the regulations within 6 months.

Again, maintenance of time schedules is important. The conference report requires that EPA publish the final disposal regulations under section 8(b) within 6 months of enactment. It was only with great reluctance that the Senate conferees agreed to require publication of the final standards as a prerequisite to the test phase, and that was only with assurances from the EPA that a 6 month schedule could be met.

I cannot emphasize enough the importance of meeting all of the schedules laid out in the conference report. The Senate conferees agreed to many more procedural prerequisites to the opening of the WIPP facility than we believe are necessary to protect the public health and safety. These provisions were agreed to one the understanding that the schedules would be met.

It is critical that the Department of Energy be allowed to open the WIPP facility for the test phase without necessary delay. Passage of this conference report today is an important first step towards that.

Mr. BINGAMAN. Mr. President, I rise today to encourage my colleagues to support the Conference Report on S. 1671, the Waste Isolation Pilot Plant Land Withdrawal Act.

The legislation we consider today calls for the permanent withdrawal of lands in Eddy County, NM, for use by the Department of Energy to operate the Waste Isolation Pilot Plant [WIPP]. WIPP was authorized under section 213 of the Nuclear Energy Authorization Act of 1980 as a defense activity of the Department of Energy for the purpose of providing a research and development facility to demonstrate the safe disposal of radioactive waste resulting from defense activities. This legislation reasserts that the primary mission of WIPP is to provide for the receipt, handling and permanent disposal of defense transuranic waste.

Mr. President, it is imperative that this conference report be passed. Failure to approve legislation that can be signed into law places our state of New Mexico in a position that may result in shipment of waste to WIPP without the statutory guarantees that we believe are necessary to protect the environment, public health and safety.

The key provisions of this legislation:

Require the Environmental Protection Agency [EPA] to promulgate final disposal standards within 6 months of enactment before any waste may be transported to WIPP;

Require the EPA to approve the test plan and retrieval plan prior to any waste going to WIPP;

Establish a 0.5 percent waste limit during the test phase;

Require Department of Energy [DOE] to remove the waste outside of New Mexico within 1 year if WIPP fails to meet disposal standards;

Terminate all permits if DOE fails to remove the waste after a determination of noncompliance is made;

Require all shipments to be made in containers certified by Nuclear Regulatory Commission [NRC] and an NRC-approved quality assurance program;

Require the Secretary of Labor to certify that the Department of Labor has reviewed DOE's emergency response training program and has concurred that the program complies with Federal requirements set forth by the Occupational Health and Safety Administration [OSHA];

Require the Secretary of Labor through the Mine Safety Health Administration to concur that the mined rooms at WIPP will remain stable and safe during the test phase;

Provide training and equipment to State public safety officials to deal with any possible WIPP related emergencies;

Reaffirm the right of New Mexico to invoke conflict resolution in matters relating to the test phase, retrieval plan and the decommissioning plan;

Ban any high-level waste;

Require all waste to be retrievable during the test phase, as documented in a retrieval plan and demonstrated annually by DOE.

Require payments to New Mexico of $20 million per year for a period of 15 years. The payments are indexed to inflation.

NEED FOR LEGISLATIVE WITHDRAWAL

A legislative withdrawal is the only way to ensure that the health and safety of New Mexicans are protected when WIPP opens. If WIPP is to open for the disposal of radioactive waste, we must ensure that WIPP is safe, and its operations present no threat to the health of our citizens. Although the conference report is a compromise which resolves differences between the House and Senate, it in no way compromises the important health and safety protections I have fought for to benefit the people of New Mexico and the Nation as a whole.

I would like to thank my colleagues, Senators BRYAN and REID, for their willingness to let this legislation move forward. The Nevada Senators are concerned that the provisions for a high level waste facility at Yucca Mountain are not adequate to protect the health and safety of Nevadans. I understand their concerns. As attorney general of New Mexico and as a U.S. Senator, I have fought for similar protections. I pledge to work with my colleagues in my capacity as a member of the Senate Energy and Natural Resources Committee to ensure that the environment and public health and safety will not be sacrificed at Yucca Mountain.

Mr. President, I urge my colleagues to support the conference report to S. 1671.

Mr. DOMENICI. I wonder if my friend, the chairman of the Energy and Natural Resources Committee, would respond to a question regarding the conference report on S. 1671, the Waste Isolation Pilot Plant Land Withdrawal Act.

Mr. JOHNSTON. I would be happy to respond.

Mr. DOMENICI. The conference report dropped some specific authorizations that were in the Senate bill for appropriations for the Carlsbad Environmental Monitoring Center, payment equivalent to taxes, and an economic impact assessment group. Some of these items have been funded in the past without authorizations. Does the lack of these authorizations prohibit funding for these programs?

Mr. JOHNSTON. Nothing in this bill would prohibit funding for the programs authorized in the Senate bill.

Mr. DOMENICI. Mr. President, few issues are as controversial as the management and disposal of nuclear waste. Today, we consider a conference report on S. 1671, the Waste Isolation Pilot Plant [WIPP] Land Withdrawal Act, a bill that I introduced, along with Senator BINGAMAN, a little over a year ago. Passage of this bill is also supported by Governor King of New Mexico and the entire New Mexico Congressional delegation.

I cannot overstate the importance of this bill to New Mexico. If Congress failed to enact a WIPP land withdrawal bill with necessary environmental and public health safeguards, it would have left my home State in limbo. On the one hand, the people who live in and around Carlsbad would fear the project would be ramped down, putting a lot of people out of work, just because of Congressional inaction. Others in the State would fear DOE would proceed unilaterally without the necessary statutory guarantees of oversight and regulation.

With enactment of this bill we address both fears. The project will be allowed to proceed, but with assurances that environmental protection and safety standards are met. The bill also significantly enhances New Mexico's role in the oversight and regulation of the project and makes a statutory commitment for financial compensation to the State.

EPA REGULATIONS

One of the most controversial issues facing the conferees was the relationship of EPA's final disposal regulations to the initiation of the WIPP test phase. While EPA's final disposal regulations do not apply to the WIPP test phase, the House insisted that these regulations be issued prior to initiation of test activities. The House also wanted EPA to develop standards and approve DOE's test plan through a full-blown rulemaking process.

EPA estimated that it would take at least 2 years to meet just the procedural requirements of the House bill for approval of the test plan. We have spent over $1 billion of taxpayer money to build WIPP and DOE is currently spending $14 million a month just to keep the facility in a state of readiness to begin the tests. If faced with a 2-year delay or more, DOE probably would significantly ramp down the WIPP Program.

The conference report attempts to address this dilemma by requiring the issuance of EPA's disposal regulations within 6 months of enactment and EPA's approval of the test and retrieval plans within 10 months of enactment. The bill establishes an expedited rulemaking process to assure that EPA meets its deadlines but still preserves the public's right to comment. In addition, both of these rulemakings would be judicially reviewable by the Tenth Circuit or D.C. Circuit Court of Appeals.

TEST PROGRAM

The bill authorizes a very limited test phase for WIPP. I have been assured by scientists that a test phase will help determine whether WIPP can safely serve as a permanent repository for low level defense nuclear waste. Many question the need for a test phase, but I do not think that the decision to put up to 6.2 million cubic feet of transuranic waste in WIPP for permanent disposal should be based on test tube experiments in laboratories and computer simulations.

No more than 0.5 percent of WIPP's total capacity can be brought to WIPP during the test phase and it cannot begin until the following stipulations are met:

EPA issuance of final disposal regulations;

EPA approval of both the test and retrieval plans;

EPA determination that hazardous waste regulatory requirements have been met;

OSHA certification of emergency response training for compliance with Federal standards;

MSHA certification of the stability of WIPP mined rooms; and,

DOE certification that the test phase activities are safe.

The bill limits the test phase to 10 years. If WIPP cannot be certified to comply with the final disposal regulations by the end of the test phase, all wastes must be removed from the State.

REGULATORY APPROVALS AND OVERSIGHT

The bill establishes oversight by 13 separate agencies and requires more than 40 separate approvals. I do not want to take the Senate's time tonight to spell out each and every one of these approvals. In some instances, we narrowed the nature of these approvals. Additional layers of regulatory processes and red tape do not necessarily make a project safer.

Increasingly on environmental issues, we stress process over substance. Frequently the result is extensive litigation over technical procedural issues rather than substantive problems.

We have structured this bill to demand a great deal of oversight and regulation. But, in designing these requirements, we have demanded environmental protection and safety without building in unnecessary and extensive delays.

FINANCIAL COMPENSATION

The House bill provided no funding for the State of New Mexico. The senate prevailed on the $20 million annual payment to the State. The conference agreement authorizes this payment for 15 years, indexed for inflation. In addition, the legislation makes a commitment that Congress will consider extending financial compensation to the State beyond the 15-year time period.

The bill also provides that a portion of the payment to New Mexico could be used for environmental monitoring and economic studies. While the conference report drops the authorization for payments equivalent to taxes [PETT] and specific additional authorizations for the Calsbad Environmental Monitoring Center and for an economic impact assessment group, nothing in this bill precludes funding for these important projects in addition to the payments to the State.

The administration has requested and Congress has appropriated funding for these items in the absence of an authorization in the past and should continue to do so in the future. Moreover, Congress has been generous in both authorization and appropriations legislation with respect to legislation affecting another proposed waste repository in Nevada.

I hope the lack of these specific authorizations in this conference report does not bring opposition to their funding. It is simply unfair to ask the State of New Mexico to absorb the costs associated with this project. It would be ironic indeed that New Mexico's reward for cooperating with the Federal government on WIPP is less financial assistance.

Mr. President, I want to thank the chairman, Senator JOHNSTON, and the ranking member of the committee, Senator WALLOP, for all their assistance in bringing this legislation to fruition. A also want to extend special thanks to Representative JOHN DINGELL. If not for him, I am not sure we would have a bill today.

I urge my colleagues to support the conference report.

Mr. FORD. Mr. President, I ask unanimous consent that the conference report be agreed to; that the motion to reconsider be laid upon the table; that any statements relative to the passage of these items appear at the appropriate place in the RECORD as though read.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the conference report was agreed to.

CACHE LA POUDRE RIVER BASIN HERITAGE STUDY ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 775, S. 1174, relating to the Cache La Poudre River; that the amendment at the desk by Senator BROWN be agreed to; that the committee substitute amendment as amended be agreed to; that the bill be deemed read a third time, passed; that the motion to reconsider be laid upon the table; that any statements relative to the passage of this item appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered. The bill (S. 1174), as amended, was deemed to have been read a third time and passed, as follows:

S. 1174

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Cache La Poudre River Basin Heritage Study Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the Cache La Poudre River Basin contains significant historical, recreational, scenic, cultural, natural, economic, and scientific resources; and

(2) sites and structures within the Cache La Poudre River Basin represent—

(A) the development and management of water resources critical to the westward expansion of the nation; and

(B) the sociocultural evolution of a working river, from aboriginal tribes through early exploration, 19th century settlement, development of a water dependent agricultural economy, through the ongoing transition to present day urban development.

(b) The purposes of this Act are—

(1) to identify and assess the management alternatives encompassing the resources and themes of western water development in the United States; and

(2) to evaluate strategies for multi-objective uses and protection of the Cache La Poudre floodplain through development of a River Greenway Plan.

SEC. 3. CACHE LA POUDRE RIVER BASIN HERITAGE STUDY.

(a) IN GENERAL.—The Secretary of the Interior (hereinafter referred to as the "Secretary") shall prepare a study of alternatives for the Cache La Poudre River Basin in the State of Colorado. The study shall include, but not be limited to—

(1) an inventory and assessment of significant cultural, natural, recreational, and scenic resources throughout the Cache La Poudre River Basin, using existing information where available;

(2) an evaluation of properties to determine potential eligibility for inclusion on the National Register of Historic Places;

(3) the suitability and feasibility of designating the Cache La Poudre River Basin as a National Heritage Area;

(4) the identification of themes, resources, and events which illustrate how settlement of the West was dependent upon and dictated by the development and management of water;

(5) the development of a Greenway Plan for the floodplain of the Cache La Poudre River that addresses—

(A) appropriate and compatible recreational opportunities;

(B) protection of fish and wildlife habitat;

(C) maintenance or improvement of water quality;

(D) protection of wetlands;

(E) maintenance of natural hydrological processes;

(F) maintenance of riparian vegetation; and

(G) flood protection through resource protection and development;

(6) an evaluation of the demonstration project undertaken by the Secretary pursuant to subsection (d), including recommendations for the disposition of any lands acquired pursuant to such project;

(7) the identification of interpretive opportunities and methods;

(8) the identification of preservation strategies for resources located with the Cache La Poudre River Basin; and

(9) management alternatives and funding options for the implementation of such preservation strategies.

(b) CONSULTATION.—The study referred to in subsection (a) shall be prepared in consultation with the Cache La Poudre River Basin Heritage Advisory Commission established pursuant to section 4, affected units of local governments, and other interested public and private entities.

(c) REPORT TO CONGRESS.—The study shall be completed no later than 2 years after the date funds are made available for the purposes of this section. Upon completion, the Secretary shall transmit such report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives.

(d) DEMONSTRATION PROJECT.—(1) In furtherance of the purposes of this Act, the Secretary, in consultation with the Cache La Poudre River Heritage Commission established by section 4, is authorized to undertake a demonstration project to evaluate the potential of using voluntary land exchanges within the Cache La Poudre River floodplain (hereinafter referred to as the "floodplain") as a means to provide for the long-term preservation and management of the lands within the floodplain.

(2) During the period of the study, the Secretary or the head of a Federal agency is authorized to acquire lands within the floodplain in Larimer and Weld Counties in the State of Colorado only through voluntary land exchanges: *Provided*, That such land exchanges shall be on an equal value basis, and shall be conducted in accordance with applicable law.

(3) Lands acquired pursuant to this subsection shall be managed in a manner that does not preclude the implementation of any management alternative identified in the study of alternatives or the Greenway Plan referred to in subsection (a).

(4) Where appropriate, the Secretary shall seek to enter into memoranda of agreement with other Federal agencies to manage land administered by such agencies within the floodplain, consistent with the purposes of this Act.

SEC. 4. CACHE LA POUDRE RIVER BASIN HERITAGE ADVISORY COMMISSION.

(a) ESTABLISHMENT.—There is established the Cache La Poudre River Basin Heritage Advisory Commission (hereinafter referred to as the "Commission"), to advise the Secretary on the preparation of the study referred to in section 3(a).

(b) MEMBERSHIP.—The Commission shall be composed of 15 members appointed by the Secretary as follows—

(1) the Director of the National Park Service, or the Director's designee, ex officio;

(2) the Secretary of Agriculture, acting through the Chief of the Forest Service, or the Chief's designee, ex officio;

(3) 9 members from recommendations submitted by the Governor of the State of Colorado, including one member each to represent—

(A) the State;

(B) Colorado State University;

(C) the Northern Colorado Water Conservancy District;

(D) the city of Fort Collins;

(E) Larimer County;

(F) the city of Greeley; and

(G) Weld County;

and 2 members to represent the general public, who reside in the study area.

(c) CHAIRPERSON.—The members of the Commission shall elect a chairperson from among its members.

(d) VACANCIES.—Vacancies on the Commission shall be filled in the same manner in which the original appointment was made.

(e) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(f) COMPENSATION.—Members of the Commission shall receive no compensation on account of their service on the Commission. While away from their homes or regular places of business in the performance of services for the Commission, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(g) WAIVER.—The provisions of section 14(b) of the Act of October 6, 1972 (86 Stat. 776) are hereby waived with respect to this Commission.

(h) ANNUAL REPORTS.—The Commission shall publish and submit to the Secretary and the Governor of the State of Colorado an annual report concerning the Commission's activities.

(h) TERMINATION.—The Commission shall terminate upon the completion of the study referred to in section 3.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Passed the Senate October 8 (legislative day, September 30), 1992.

Attest:

Secretary.

PENALTIES FOR VIOLATIONS OF SOFTWARE COPYRIGHT

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 893.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 893) entitled "An Act to amend title 18, United States Code, to impose criminal sanctions for violation of software copyright," do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. CRIMINAL PENALTIES FOR COPYRIGHT INFRINGEMENT.

Section 2319(b) of title 18, United States Code, is amended to read as follows:

"(b) Any person who commits an offense under subsection (a) of this section—

"(1) shall be imprisoned not more than 5 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution, during any 180-day period, of at least 10 copies or phonorecords, of 1 or more copyrighted works, with a retail value of more than $2,500;

"(2) shall be imprisoned not more than 10 years, or fined in the amount set forth in this title, or both, if the offense is a second or subsequent offense under paragraph (1); and

"(3) shall be imprisoned not more than 1 year, or fined in the amount set forth in this title, or both, in any other case.".

SEC. 2. CONFORMING AMENDMENTS.

Section 2319(c) of title 18, United States Code, is amended—

(1) in paragraph (1) by striking 'sound recording', 'motion picture', 'audiovisual work', "'phonorecord'," and inserting "'phonorecord'"; and

(2) in paragraph (2) by striking "118" and inserting "120".

Amend the title so as to read: "An Act to amend title 18, United States Code, with respect to the criminal penalties for copyright infringement.".

Mr. HATCH. Mr. President, I was pleased last summer when the Senate unanimously passed S. 893, as originally proposed. I introduced S. 893 earlier this year, with my good friend from Arizona, Senator DECONCINI as an original cosponsor. The bill was designed to help the computer software industry combat the growing problem of large-scale commercial piracy of its products, by making such conduct a felony under Federal law punishable by fine and imprisonment. In so doing, S. 893 simply treated software piracy in the same manner that Congress had earlier decided to treat motion picture and sound recording piracy.

For several years, Federal law has provided strong criminal penalties for persons involved in the unauthorized production or distribution of multiple copies of phono records, sound recordings, and motion pictures. In a similar manner, this legislation was intended to provide the same enhanced criminal sanctions for the violation of copyright in computer programs. S. 893 as passed by the Senate on June 4 protected only computer software. We chose this approach because computer software differs in many ways, such as design, use, and distribution methods, from those forms of intellectual property presently afforded protection in the criminal law.

The amended version of S. 893 that has now come back to us from the House contains all of the teeth of our computer software bill but it has altered and refined the way in which the criminal code addresses the entire question of criminal penalties for large-scale copyright infringement. Instead of the previous scheme of separate statutes setting different penalties for piracy of different types of copyrighted material, the new House-passed law sets a uniform standard of liability for piracy of copyrighted works, whether they be motion pictures, records, books, or computer software. This is a welcome and logical development in clarifying the point at which the copyright law intersects with the criminal code, and I would like to sincerely compliment Representative BILL HUGHES, the author of this amendment, for his foresight in seeing how my bill could be improved without losing any of its substance.

The House approach to the problem of criminal copyright infringement necessitated several amendments to current law. Because the amended bill predicates liability on the proof that the copied material exceeds a certain "retail value," questions will no doubt arise as to what constitutes "retail value." I note with approval the extended discussion of this issue in the House report, particularly the view that in the amended bill the term " retail value" means the suggested retail price of the legitimate copyrighted work at the initial time of its release, and not the market price of the pirate copy. In the case of a copyrighted work that is not sold at retail, the "retail value" for the purpose of the statute should reflect the harm to the copyright holder and not the infringer's profits; for example the unauthorized release of videocassettes or audiocassettes embodying as yet unreleased material will necessarily harm copyright owners, distributors and retailers far in excess of the retail value of the infringing material. For example, a film print or audio studio master which is not to be sold on the open market obviously has substantial asset value.

The important point to keep in mind, is that retail value should be determined by looking to the value of the copyrighted works in the legitimate retail market, not the thieves' criminal market. For the purpose of the criminal law, we should determine the harm from the point of view of the copyright holder, not by the value of the gain to the criminal. So I agree that the term "retail value" should generally mean the suggested retail price of the legitimate copyrighted work at the initial time of release and not the value of the pirate copies. In the event the copyrighted work is not sold in the form copied or distributed, the term "retail value" should mean the greater of the replacement cost or the true cost of production of the copyrighted work, including, but not limited to, the purchase cost of the components of the copyrighted work, design costs, and labor and overhead expenses required to create and manufacture the work.

Another potential question relating to the new standard of criminal liability for copyright infringement is an issue that arose during House consideration of this legislation. 17 U.S.C. 506(a) currently prohibits any person from infringing a copyright "willfully and for purposes of commercial advantage or private financial gain." The term "willfully," although used in copyright statutes since 1897 for criminal violations, has never been defined. Instead, copyright owners and prosecutors have relied on standards developed by the courts. It is my view that it is proper for the courts to continue to develop this concept in appropriate cases, and that the version of S. 893 we adopt today by specifically failing to define further the concept of "willful" conduct acknowledges that fact.

I note that the House considered defining the term "willfully" in this legislation. In fact, the House Judiciary Committee's Intellectual Property Subcommittee included a definition of "willfully" in the version of the bill it referred to the full committee, but the full committee-approved bill did not contain that language. The version of S. 893 that has passed the House and is before us now does not define "willfully." Therefore, S. 893 does not directly or by implication signal any disapproval with the manner in which the courts have previously interpreted this element of the offense.

At no point during our proceedings in the Senate Judiciary Committee or in the Subcommittee on Patents, Copyrights and Trademarks did we consider the question of defining by statute the term "willfully", but I am certain that we would be willing to do so in the future if presented with reasons to do so. It is my opinion that at this point the courts do seem to be interpreting the term "willfully" in a workable manner, that the existing statute is meeting the objectives that Congress set out when the law was enacted, and that the text of S. 893 is sufficient as adopted. As the House report indicates, and as I would like to emphatically state, this criminal statute is not designed to reach instances of permissible, private home copying, nor does it represent any infringement on traditional concepts permitting the fair use of copyrighted materials for purposes of research, criticism, scholarship, parody, and other long-recongized uses. Similarly, this bill is not designed to interfere with evolving notions of fair use, as that concept is applied with respect to new communications networks and computer technologies. Once again, I would point out that the mens rea requirement is strict with respect to this crime: unless done for the express purposes of obtaining commercial advantage or private financial gain, copying of copyrighted material is not a crime under S. 893. Simply put, the copying must be undertaken to make money, and even incidental financial benefits that might accrue as a result of the copying should not contravene the law where the achievement of those benefits were not the motivation behind the copying.

Mr. President, the willful infringement of copyright in computer software programs is a widespread practice that is threatening the United States software industry. The easy accessibility of computer programs distributed in magnetic media format, together with the distribution of popular applications programs, has led to persistent large-scale copying of these programs. Studies indicate that for every authorized copy of software programs in circulation, there is an illegal copy also in circulation. Losses to the personal computer software industry from all illegal copying were estimated to be $1.6 billion in 1989. If we do not address the piracy of these programs, we may soon see a decline in this vibrant and important sector of our economy.

Not only is the software industry seriously damaged, but the public is also victimized by these acts of piracy. The purchaser of pirated often pays full price for a product which he or she believes is legitimate. However, not only may there be imperfections in the actual reproduction, but the quality of the product is also often lower as a result of cheap duplication equipment. Furthermore, the consumer of pirated works is ineligible for the important support and backup services typically offered by the software publisher.

As was noted during the hearings on increasing the penalties for illegal copying of records, sound recordings, and motion pictures, stiffer penalties toward piracy do act as a deterrent to these types of crimes. Enhanced penalties for large-scale violation of software copyright is more in line with the seriousness of the crime.

I believe that the version of S. 893 that we consider today will provide a strong tool for prosecutors and others who are interested in deterring the growing problem of computer software piracy. As I have mentioned, it maintains as well the strict protections that the motion picture and sound recording industries have enjoyed for nearly a decade, and it nips in the bud the potential for large-scale book piracy that might otherwise be exploited through emerging technologies.

Under the language of S. 893, a person involved in software piracy—or for that matter any crime copyright infringement—would be subject to a fine and imprisonment of up to 10 years if the offense is a second or subsequent act of reproducing or distributing at least 10 copies of the copyrighted work. For a first offense, the penalty cannot exceed a term of 5 years imprisonment and/or the fine prescribed by title 18, for first offenses. In addition, the criminal liability attaches if fewer than 10 works are copied if the retail value of the copied works exceeds $2,500. In this instance, the prescribed imprisonment cannot exceed 1 year.

Mr. President, I am very pleased that both Houses of Congress have reached an agreement on this important issue. It is my belief that enactment of S. 893 will end the unacceptable current situation where this significant area of criminal activity is insufficiently proscribed and ineffectively punished.

Before concluding, I would be remiss if I did not note again the significant help we have received in drafting this legislation from Representative BILL HUGHES, the chairman of the House Subcommittee on Intellectual Property and the Administration of Justice, as well as the customary strong support we are used to receiving from Representative CARLOS MOORHEAD, the ranking Republican on that subcommittee. Nor could this successful conclusion have been achieved without the excellent staff work of Bill Patry, Hayden Gregory, Joe Wolfe, and Tom Mooney from the House Subcommittee on Intellectual Property; Karen Robb, chief counsel of the Senate Subcommittee on Patents, Copyrights, and Trademarks; and Darrell Panethiere of my Judiciary Committee staff. To all of them, I express my gratitude.

Mr. FORD. Mr. President, I move the Senate concur in the amendments of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DECONCINI. Mr. President, I rise in support of the carjacking provisions in H.R. 4542, the Anti-Car Theft Act of 1992, introduced by the chairman of the House Judiciary Committee on Crime, CHARLES SCHUMER. I introduced similar legislation in the Senate earlier this year, S. 3239. I believe it is vitally important that we take strong action to address this crime of frightening frequency that presents a vicious new breed of criminal.

My only reservation with the carjacking section in H.R. 4542 goes to the provision that makes the use of a firearm an essential element of the crime. First, this element is unnecessarily restrictive because it does not cover carjacking committed with the use of other types of weapons nor would simple brute force be covered. Second, it creates a new firearm crime outside the context of the existing gun laws. Firearm crimes have been and should be the primary responsibility of the experts in this area, the Bureau of Alcohol, Tobacco and Firearms [ATF]. The brave men and women of AFT have established an outstanding record over the past few years in enforcing the Federal firearms laws against the most violent criminals among us.

It is for that reason that we have discussed with the office of Chairman SCHUMER that we all intend for ATF to continue to play a leading role in combatting this and other firearm related crimes. We plan to discuss this issue with the Agencies involved with enforcing this provision to ensure that they work together to curb this menacing crime.

PREVENTION OF AUTO THEFT

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H.R. 4542, a bill to prevent and deter auto theft just received from the House; that the bill be deemed read three times, passed, and the motion to reconsider laid upon the table, and that any statement respective to this bill be inserted at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 4542) was deemed read a third time and passed.

Mr. PRESSLER. Mr. President, vehicle theft is a serious problem in the United States. But it would be wrong to conclude that this problem is limited only to the loss of property. Increasingly, death and serious bodily injuries are resulting from vehicle theft. This relatively new and violent form of auto theft has been dubbed "carjacking." It is defined as the taking of a motor vehicle from a person or in the presence of another by force, violence or intimidation.

Last week, I sponsored an amendment to the tax bill, H.R. 11. This amendment passed the Senate. It represented a giant step forward in slowing down auto theft by subjecting carjackers who use firearms to severe Federal criminal penalties. Law enforcement officials have theorized vehicle thieves find it easier to use force than to deal with anti-theft devices installed in newer model cars. Additionally, carjackers can obtain the keys and registration papers for the cars they steal. The amendment would have sent a signal to would-be carjackers that auto theft is no longer just a joyride.

President Bush recently endorsed stronger penalties for carjackers. The President said:

> We cannot put up with this animal behavior. These people have no place in a decent society * * * they can go to jail and they can stay in jail and they can rot in jail for crimes like that. We need tough laws that don't bend over backwards protecting the criminal.

Sadly, the conference report to the tax bill does not include my amendment. Title I of H.R. 4542, the bill before us now, includes a provision similar to my amendment to the tax bill. Title I subjects carjackers who use firearms to serve criminal penalties. I would have preferred that this bill be broadened to subject to the same penalties not only armed carjackers, but also any carjacker who uses any kind of force, violence, or intimidation. However, Title I still will send a strong signal to would-be carjackers.

H.R. 4542 also has other auto theft prevention provisions. While I will not object to these at this late date, the record should note that I have strong reservations in supporting these provisions.

I introduced the Senate version of H.R. 4542 last April. However, after discussions with several South Dakota auto dealers, as well as parts manufacturers and parts recyclers, I came to the conclusion that the original bill should be revised. In fact, provisions within that bill actually would harm legitimate, law-abiding auto dealers and parts salvagers.

The House-passed compromise version of H.R. 4542 is based on good intentions. Potentially, though, it still could impose serious economic burdens on small auto salvage businesses. The bill also includes a task force which is tasked with studying the effectiveness of auto parts certification. That provision is aimed at developing solutions to this serious problem that will not harm auto dealers, parts manufacturers, parts salvagers, and other legitimate industries. This provision is an integral aspect of this bill. If the task force discovers that the legislation is detrimental to auto dismantlers and parts recyclers, we can take further action at a later date.

Mr. President, I would like the record to indicate my understanding of section 608 of title III of H.R. 4542. In my interpretation, the original seller of a major part marked with an identification number is required by this legislation to determine, through a procedure established by the Attorney General, that such major part has not been reported as stolen. This person or business is also required to provide any subsequent purchaser or transferee with verification identifying the vehicle identification number of that part and a further verification that such part has not been reported as stolen. It is my understanding that a purchaser or transferee of such part can rely on this original verification and is not required to verify again that a part has not been reported as stolen.

Mr. President, during the upcoming recess, I plan to work closely with automotive industry groups in South Dakota to ensure that this legislation does not impose unwarranted burdens on their businesses. Additionally, I plan to develop further anti-car-theft legislation to deter auto theft.

Mr. LAUTENBERG. Mr. President, I rise in support of this legislation to address the national epidemic of motor vehicle theft.

The Anti-Car Theft Act would establish new criminal sanctions for carjacking, strengthen the existing system of vehicle parts marking, improve the ability of governmental authorities to identify fraudulent care titles, increase existing penalties for auto thieves, and tighten controls on the export of stolen vehicles.

Mr. President, the problem of auto theft has increased substantially in recent years. According to the Uniform Crime Report, between 1984 and 1991 motor vehicle theft increased by 61 percent, to almost 1.7 million offenses per year. Around the country, there is an average of one motor vehicle theft every 19 seconds. The total value of stolen vehicles now exceeds $8 billion annually.

The vehicle theft problem is particularly serious in my State of New Jersey. According to recent figures, Newark, NJ, has the highest rate of auto theft in the nation. Several New Jersey cities also share the dubious distinction of being in the top ten. In addition, a large number of stolen cars are being exported from New Jersey's ports.

There are many dimensions to the vehicle theft problem, Mr. President. Perhaps the most disturbing is the emerging problem of violent carjackings. Increasingly, thieves are using violence and intimidation to force drivers to give up their cars. Many innocent people are losing their lives in the process. For others, an evening drive with an open window is an experience now best avoided.

Random carejacking may be the most horrifying form of auto theft, Mr. President, but it is just the tip of the iceberg. Stealing cars has developed into a full-fledged industry, run by professionals. Many criminals routinely solicit orders for a particular part, and then go out and steal a car to get it. Others run chop shops, breaking down stolen cars and selling their parts on the black market.

The National Highway Traffic Safety Administration has reported estimates that between 10 and 16 percent of all thefts occur in order to sell the parts for profit. Others put that figure as high as 40 percent. In any case, it's a major problem. And one reason is that the market for stolen parts is enormous. Repair shops can save substantial sums by purchasing parts on the black market, and thieves often can deliver parts more quickly than legitimate manufacturers.

According to a report in U.S. News & World Report, for example, "undercover cops in California's San Fernando Valley offered stolen parts to some 20 body shops; 12 agreed to buy them. An honest body shop owner may be unaware he's dealing in stolen parts, because many are sold through regional networks that resemble a Turkish bazaar."

Beyond operating an extensive black market in stolen parts, professional car thieves also are in the exporting business. Again, the motivation is largely economic. Vehicles are in great demand overseas, where they may be worth three times more than in the United States.

Mr. President, another aspect of the auto theft problem is the rash of theft by juveniles. Children, some not even teenagers, are stealing cars at an appalling rate. They start young—sometimes they're barely tall enough to see over the steering wheel. Unfortunately, it doesn't take long for them to become experts, able to enter and steal a car in seconds.

These young auto thieves pose a substantial threat to public safety. In Newark, for example, juvenile thieves routinely drive wildly around the streets at night, wreaking havoc with other drivers and pedestrians. The results are often tragic, involving destruction of homes and property, serious injuries, and death.

Mr. President, this legislation would attack the auto theft problem in several ways. First, new penalties for carjacking, and enhanced penalties for importing or exporting stolen cars, should help deter thieves. I proposed very similar measures in a bill I introduced, S. 3276. They're important. Carjacking threatens to spread rapidly around the Nation, as criminals engage in copycat crimes. To prevent such a plague, we need to bring Federal resources to bear.

Second, by expanding the current system of vehicle parts marking, the bill promises to help auto theft investigators track down thieves, close down chop shops, and eliminate organized car theft rings.

Third, the bill will crack down on exporters of stolen cars, by directing the Customs Service to conduct spot checks of cars and containers leaving the country.

Mr. President, one of the reasons why the auto theft epidemic has hit New Jersey so hard is that organized rings of car thieves are stealing vehicles for export to foreign countries, through New Jersey's ports. A similar problem is occurring in many areas near port facilities.

Exporting is motivated largely by a great demand for vehicles in a wide variety of overseas locations. These include Central and South America, the Caribbean, Western Europe, the Middle East, and Africa.

The scope of the international trade in stolen vehicles is astonishing; 200,000 stolen cars a year may be shipped abroad, some experts believe. According to the FBI, one in five vehicles on the docks waiting for Customs clearance in some Caribbean countries show clear signs of having been stolen and shipped from the United States. For vehicles worth over $15,000, the rate is nearly four out of five. It is an outrageous situation and must not be tolerated. This bill should help.

The next major component of the bill would establish a new program to provide support to State and local antiauto theft efforts.

Mr. President, I commissioned a report on auto theft by the National Highway Traffic Safety Administration that was completed early this year. This report indicates that State and local authorities can adopt a variety of approaches to deal with auto theft. Teams of policy officers from several jurisdictions can work together to identify and apprehend thieves. Teams of prosecutors can be established to ensure that these thieves are brought to justice. Public awareness campaigns can educate residents about preventive measures, and encourage citizens to provide law enforcement officials with valuable tips to help in the crackdown.

These kind of initiatives can make a real difference. In New Jersey, local law enforcement officials in Essex and Union Counties have banded together to mount a coordinated assault on the problem, and preliminary results are impressive. Arrests for auto theft have increased substantially. And while auto theft remains a problem there has been real progress.

Unfortunately, State and local efforts like these can be costly. Even where auto theft is rampant, many municipalities simply are unable to devote the resources needed. In fact, many of the areas hit hardest by auto theft are those with the fewest resources to fight back.

This bill will help, by providing much needed resources for State and local anti-auto theft initiatives. I had proposed a somewhat different approach in S. 3276, but the program in this bill should be very helpful.

Mr. President, I want to commend Congressman CHARLES SCHUMER for his work on this bill, and for his leadership in this area.

Mr. President, this bill is focused largely on law enforcement approaches in the battle against auto theft. Next year I hope we will take the next step: prevention.

Included in legislation I introduced on September 25, S. 3276, are two measures that are designed to prevent auto theft from occurring in the first place. The first would establish minimum theft resistance standards, to ensure that cars are not manufactured with unreinforced steering columns or other components that physically facilitate theft, and create an unreasonable risk of such theft. That's essential to address the many vehicle models that have proven made-to-order for car thieves.

My second proposal for auto theft prevention would authorize a voluntary vehicle theft prevention program based on programs operating in various jurisdictions around the country, typically called "Combat Auto Theft [CAT]" or "Help End Auto Thief [HEAT]."

Under these programs, a vehicle owner may voluntarily sign a form stating that his or her vehicle is not normally operated during certain hours, typically between 1 a.m. and 5 a.m. Highly adhesive decals are then affixed to the vehicle. If a law enforcement officer later sees the vehicle being driven during the specified hours, the decals provide grounds for establishing the reasonable suspicion necessary under the Constitution to stop the vehicle and make appropriate inquiries.

Mr. President, I hope the Congress will enact these additional theft prevention proposals in the next Congress.

Again, Mr. President, I congratulate Congressman SCHUMER for his excellent work on the important legislation before us today. And I urge my colleagues to support the bill.

Mr. PRESSLER. Mr. President, last April, I sponsored S. 2613, the Senate version of H.R. 4542, the Anti-Car Theft Act. The original version of H.R. 4542 contained four titles—one dealing with carjacking and three dealing with the marking, labeling, and titling of auto parts. After discussions with national and South Dakota auto interest groups, I found that the three provisions regarding parts marking would be economically burdensome to small auto salvagers and parts dealers.

I came to the conclusion that the bill did not accomplish its aims. I feared that the parts-marking provisions within that bill would actually harm legitimate auto dealers and parts salvagers. On September 26, in an effort to keep the carjacking provision of the bill alive, I offered, as an amendment to the tax bill, just title I of S. 2613. Unfortunately, during the conference report process, my carjacking amendment was sticken from the tax bill.

Since then, Representatives SCHUMER and DINGELL have reached a compromise on the marking and labeling titles in H.R. 4542. The new version of H.R. 4542 is a far better piece of legislation. However, I still had reservations when the bill came to the Senate a few days ago. I discussed my concerns with the various auto industry interest groups who had opposed the bill earlier. They all assured me that this compromise is the best version of the auto theft legislation that has been drafted. They are now endorsing the bill.

Mr. President, I wonder if my good friends, the distinguished Senators HATCH and RIEGLE, would engage with me in a discussion about the Anti-Car Theft bill?

Mr. HATCH. I would be happy to discuss this legislation with the Senator from South Dakota. I appreciate his interest in the auto theft problem as well as his concern for the legitimate small business dealers affected by this legislation. Could the Senator from South Dakota specify the protections that the small auto businesses will be afforded through this compromise bill?

Mr. PRESSLER. I thank my colleague from Utah for his question. I share his concerns for the small businesses affected by the marking and titling provisions of this bill. I would not support this bill if it did not have the endorsement of the national organizations representing these small businesses. Fortunately, there are certain protections in the compromise measure designed to protect legitimate auto operations.

The car theft bill before us creates a task force to study the effectiveness of auto parts certification. This task force will be charged with determining and developing solutions to the serious auto theft problem that will not harm auto dealers, parts manufacturers, parts salvagers, and other auto industries. The inclusion of this task force is an integral aspect of the bill. Persons representing various auto interest groups, along with the Secretary of Transportation and the Attorney General of the United States, will participate as members of the task force.

Additionally, title III, section 301 (b) of the bill clearly distinguishes criminal "chop shop" operations from the operations of legitimate automotive recycling businesses. The vital role played by the legitimate automotive recycling industry in the American economy and environment should not be confused with chop shops. The bill properly defines and targets the criminals who operate illegal chop shops, not the small, primarily family-owned businesses which comprise the legitimate recycling industry.

Title II, section 204(a)(2)(A) of the bill addresses the burden double reporting of junk and salvage titles would place on automotive recycling businesses. This section is not intended to release State governments from the responsibility for reporting junk and salvage titles to the National Motor Vehicle Title Information System established in title II. Those States which elect not to participate in the system, and yet require such reporting, should not expect the small businesses which comprise the automotive recycling industry to do the States' work by contributing those States' titling information to a national clearinghouse of junk and salvage titles. This provision should not be construed to require double reporting of these businesses in order to compensate for deficient information from nonparticipating States.

Mr. RIEGLE. I would like to note that in addition to the involvement of individual States in the marking of parts, junkyards are not responsible for marking if they have received certification from an insurance company.

Mr. PRESSLER. I thank my colleague from Michigan for making that important point. I would like to make one last point with regard to the small businesses that will be affected directly by this bill. The increased likelihood that a single vehicle may contain numerous parts with different identification numbers will require that great care be taken to ensure those parts are properly identified and indicated on the transfer document upon sale of the vehicle. A lack of thorough investigation could allow a few stolen parts to enter an otherwise secure system. Selling thousands of vehicles with multiple identification numbers salvaged by insurance companies at salvage auctions without proper verification procedures could compromise the stolen part information system this legislation seeks to establish.

Mr. HATCH. This bill includes new requirements for the Attorney General. Would my colleague from South Dakota address the new role of the Attorney General in this legislation?

Mr. PRESSLER. I would be happy to address the issue raised by my distinguished colleague. Title III of the bill expands the current motor vehicle parts marking requirements to combat chop shops. In doing so, it provides new direction and authority for the Attorney General. First, the Attorney General, after public notice, must make a "finding" that additional parts marking is working before the Secretary of Transportation can initiate the second rulemaking. Second, the Attorney General, by December 31, 1999, must make a determination, after notice and public hearing, whether one or both of the rules expanding the parts marking requirements have been effective in substantially inhibiting chop shop operations.

In order to perform these tasks effectively, the Attorney General must thoroughly analyze the data collected under section 615, "Insurance Reports and Information." I am concerned that under existing law this information has been less than adequate. I would like assurances that this information will be forthcoming. I also want to make sure the Attorney General's analysis of this information is fair and the findings unbiased. There has been a great deal of controversy over this section of the bill. This controversy should be put to rest. If the parts marking works, we should continue to require it. If parts marking doesn't substantially reduce chop shop operations and motor vehicle theft, we ought to eliminate the requirement.

Mr. RIEGLE. Is the Senator from South Dakota saying that it would not be the intention of the Attorney General to mark every car and its parts?

And isn't it true that the Attorney General would consult with the Secretary of Transportation who also participates in matters pertaining to parts marking of vehicles and the use of anti-theft devices installed on vehicles?

Mr. PRESSLER. The Senator from Michigan is correct in his interpretation of my remarks. I thank my distinguished colleagues for participating in this informative discussion.

RELIEF OF WILLIAM A. PROFFITT

Mr. FORD. Mr. President, I ask unanimous consent that H.R. 2156, an act for the relief of William A. Proffitt be discharged from the Senate Armed Services Committee and be referred to the Judiciary Committee.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. Mr. President, I now ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 2156; the Senate proceed to its immediate consideration; the bill be deemed read for the third time, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

So the bill (H.R. 2156) was deemed to have been read three times and passed.

RELIEF OF CRAIG AND NITA SORENSON

RELIEF OF WILKINSON COUNTY SCHOOL DISTRICT

Mr. FORD. Mr. President, I ask unanimous consent the Judiciary Committee be discharged from further consideration of H.R. 5164, and that the Senate proceed to the immediate consideration en bloc of the following bills: H.R. 5164 and H.R. 5998; that both bills be deemed read three times, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bills (H.R. 5164 and H.R. 5998) were deemed to have been read three times and passed.

SECURITIES EXCHANGE ACT OF 1934 AMENDMENTS

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of S. 3389, a bill to amend the Securities Exchange Act of 1934, to prohibit certain transactions with respect to management accounts introduced earlier by Senator KERRY of Massachusetts; that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (S. 3389) was deemed to have been read three times and passed.

S. 3389

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROHIBITED TRANSACTIONS FOR MANAGED ACCOUNTS.

Section 11(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78k(a)(1)) is amended—

(1) in subparagraph (E), by striking "(other than an investment company)";

(2) by striking "and" at the end of subparagraph (G);

(3) by redesignating subparagraph (H) as subparagraph (I); and

(4) by inserting after subparagraph (G) the following new subparagraph:

"(H) any transaction for an account with respect to which such member or an associated person thereof exercises investment discretion if such member—

"(i) has obtained, from the person or persons authorized to transact business for the account, express authorization for such member or associated person to effect such transactions prior to engaging in the practice of effecting such transactions;

"(ii) furnishes the person or persons authorized to transact business for the account with a statement at least annually disclosing the aggregate compensation received by the exchange member in effecting such transactions; and

"(iii) complies with any rules the Commission has prescribed with respect to the requirements of clauses (i) and (ii); and".

Passed the Senate October 8 (legislative day, September 30), 1992.

Attest:

Secretary.

Mr. DODD. Mr. President, the Senate, during this Congress, passed three securities measures designed to protect investors and ensure the integrity and stability of our Capital markets. These were measures developed by the Securities Subcommittee. They were strongly supported by a broad cross section of industry and consumer groups. All were supported by State regulators, and two of the three measures received the strong support of the administration. These measures also received the overwhelming support of members of this body.

However, I come to the floor today to report that, despite all of this support and all of our good work, we will not achieve enactment of the Government Securities Acts amendments, the Investment Adviser Oversight Act, and the Limited Partnership Rollup Reform Act.

The Senate passed the Government Securities Legislation, S. 1247, on July 30th of last year. The bill, which I introduced and which was cosponsored by the ranking minority member of the subcommittee, Senator GRAMM, in large part reflected the recommendations of a comprehensive joint study by the treasury, the Federal Reserve Board and the Securities and Exchange Commission, as well as additional studies by the General Accounting Office. The bill contained new sales practice rulemaking authority to address abuses by Government securities dealers. The need for this authority, in particular, was brought to the attention of Congress by State and local officials. The bill also contained an extension of treasury's rulemaking authority for Government securities dealers, which, by law, was set to expire on October 1 of last year. However, we determined not to authorize new rulemaking to mandate the type of price and volume information to be made available for Government securities transactions. With the explosion of information providers in this market—not only "GOVPX" but a growing number of other systems as well—we made a specific decision not to intervene in the development of this market but, instead, to monitor its progress. We made it clear we would not be hesitant to intervene if the private systems did not evolve quickly or broadly enough, or if price and volume information were not made available on a nondiscriminatory basis.

So, the Senate did its work with the hope that we could meet the House in conference in September of last year, in time to work out any differences between the two Houses and send a reauthorization bill to the President before the October 1, 1991, expiration date for treasury's rulemaking authority.

However, the scandal at Salomon Brothers, Inc., came to light last August, shortly after the bill passed the Senate, and committees in both the Senate and House began additional hearings to focus on abuses in the treasury auction market. When it became clear that the House would not be able to report a bill prior to the October 1, 1991, expiration date for treasury's rulemaking authority, the Senate passed a second bill, S. 1699, which would have extended treasury's authority until October 1st of this year, and which also contained a provision making it a specific violation of the Federal securities laws to make a false bid in an offering of treasury or other Government securities.

The House did not act on that measure until just two weeks ago. Unfortunately, the bill fell victim to a jurisdictional battle involving the House Banking Committee and House Energy and Commerce Committee over the extent to which the SEC should be granted new rulemaking authority over practices in the Government securities market. A measure developed by the Energy and Commerce Committee was defeated on the House floor, and it became clear that the House would not be able to move a bill on this subject before the end of the Congress.

Nonetheless, over the past two weeks we tried to revive the measure—offering to move through the Senate portions of the Senate and House bills upon which it appeared there could be broad agreement. For example, the House Energy and Commerce Committee and House Banking Committee bills had identical provisions on sales practice rulemaking authority, and the Senate provision in this area was very similar—an easily reconcilable measure, in our view. The large position reporting provisions of the House Energy and Commerce Committee bill and the House Banking Committee bill were identical—and we suggested that the Senate might be willing to accept the House amendment in this area. There also was broad support for the antifraud measures in the Senate and House committee measures—which were very similar to the Senate-passed S. 1699.

Most important, everyone agreed that treasury's existing rulemaking authority over financial responsibility and other rules should be extended—the only differences between the House and Senate were on the length of time. Although I believe we should permanently reauthorize treasury's authority—our experience of the last year makes a very good case for why we should not have yet another sunset date—I, personally, was willing to accept an extension of treasury's authority for any reasonable length of time, in order to avoid a situation where Congress would adjourn leaving treasury with no rulemaking authority in this area. Unfortunately, the House could not agree, even on a scaled-down bill, and these important issues must wait to be resolved until next year.

On August 12th of this year, the Senate passed, without opposition, S. 2266, the Investment Adviser Oversight Act. This bill was based upon a legislative proposal by the SEC, and its primary purpose was to establish a funding mechanism to provide for increased inspections of investment advisers. The SEC and the Congress worked closely with the industry in developing a formula for annual fees to be paid by investment advisers, based upon the amount of assets under their management. These fees would be used as offsetting collections to fund increased appropriations to the SEC, specifically designated for investment adviser inspections.

It was estimated that, as a result of the increase in the SEC's inspection staff that would be made possible by this legislation, the SEC could reduce significantly its current inspection cycle so that investment advisers, who currently are inspected, on average, once every 25-30 years, would receive heightened scrutiny by the SEC under an inspection cycle of once every 3 to 5 years. This would be a five fold increase in investor protection—completely funded by the industry and not by the taxpayer.

The House passed its bill 2 weeks ago, and negotiations were begun to resolve the differences. The House bill contained many additional regulatory measures for investment advisers—measures that were well-intended but which senators on our side believed were too costly, especially given the fee increases contained in the bill. This past weekend, Senate negotiators offered the House a scaled-down bill, and, as part of the offer, asked the House to consider including additional amendments relating to those provisions in the Government securities bills upon which the House and Senate could agree. Senator GARN also requested that the negotiations include some resolution of his lender liability legislation, which the House had yet to consider. House negotiators rejected the offer.

Earlier this week, we attempted to get Senate approval of the investment adviser funding mechanism only. It was clear that there was no agreement between the House and Senate on the broader regulatory issues contained in the House bill, but I believed that we should not adjourn without taking the steps necessary to put more cops in the beat—to increase inspections of investment advisers. Passage of this measure should have been *pro forma*—after all, both houses already had passed appropriations bills containing the requisite fees and appropriations, subject to our passage of authorizing legislation. Unfortunately, our efforts were caught up in election year politics. We were advised that the subcommittee's ranking republican member, Senator GRAMM, objected to the measure on the basis that it might be considered a tax, and contrary to President Bush's political stance. We were unable to move the measure through the Senate.

Finally, S. 1423, the Limited Partnership Rollup Reform Act, was adopted by the Senate on June 24th of this year, as part of a larger measure to reform the regulation of government sponsored enterprises. The bill has 74 cosponsors, and the Senate defeated a motion to table the measure by a vote of 87-10—an overwhelming show of support for this legislation. This bill provided a number of protections for investors involved in abusive rollups—enhanced disclosure, assurances that security holders wishing to vote against a rollup could communicate with others, and protections for dissenting limited partners. The opposition to this measure by the securities subcommittee's ranking minority member, Senator GRAMM, is well known. He raised numerous procedural hurdles to the measure and made known his intention to raise them again when the Senate next considered a conference report or other measure containing the rollup amendment—despite the fact that it was approved by such an overwhelming vote on the Senate. So, we have been stymied in our efforts to see this measure enacted.

If there is any good news coming out of our efforts on rollups it is this. As a result of the threat of legislation, the SEC has adopted major changes in disclosure requirements for rollups. It has proposed and may soon adopt major changes in its rules relating to shareholder communications. And, the NASD is moving closer to adopting changes in its rules which would provide for the protection of dissenting limited partners. I will do everything I can to see that the NASD completes its work on this front, during the time Congress is adjourned.

Mr. President, I wish I had a better report. These measures, as I mentioned before, received strong public support, broad industry support, and the support of the overwhelming majority of my colleagues as well. But, especially at this late date in the Congress, any one Senator can hold up a measure supported by the vast majority of his colleagues. That happened on two of these measures; the other was lost in a turf fight on the House floor. In my view, the investing public is the loser, and we must work even harder next year to ensure that these important measures become law.

Mr. KERRY. Mr. President, this bill amends the managed account restrictions currently imposed by section 11(a) of the Securities Exchange Act of 1934. Section 11(a), which was adopted in 1975, limits the ability of affiliates of investment companies and other institutional investors to execute trades for these institutional investors on the floor of an exchange. In practice, an independent floor broker must be used to execute these trades, resulting in additional costs.

This bill amends section 11(a) of the Securities Exchange Act of 1934 by redesignating the existing subparagraph (H) as subparagraph (I) and adding a new subparagraph (H). This subparagraph exempts from the operation of section 11(a)(1) any transaction effected by an exchange member or associated person for an account managed by such member or associated person, if such member (i) has obtained express authorization from the person or persons authorized to transact business for the account prior to engaging in the practice of effecting such transactions; (ii) furnishes the persons or persons authorized to transact business for the account with a statement at least annually disclosing the aggregate compensation received by the exchange member in effecting such transactions; and (iii) complies with any rules the Commission has prescribed with respect to these requirements.

This bill permits exchange members to execute on the floor of the exchange trades for accounts that they manage, without the involvement of an independent floor broker. To do so, they must obtain prior authorization from the managed account. Members and associated persons will be considered to have obtained express authorization as required by this section if they previously have obtained the authorization from the account required by rule 11a2-2(T) under the Securities Exchange Act of 1934, or they otherwise obtain express authorization from the person or persons authorized to transact business for the account prior to effecting transactions for the managed account, subject to any rules the Commission may adopt under this section.

This section authorizes the Commission to prescribe rules governing the authorization and compensation disclosure requirements of the section. The Commission may prescribe rules specifying, for example, the form of authorization required by the section, the persons that may give the authorization, the manner and frequency of disclosure of compensation received by the exchange member, and similar matters. This rulemaking authority is in addition to, and in no way limits, the Commission's existing authority under section 11(a)(2)(A) to regulate or prohibit exchange transactions effected by members and their associated persons for managed accounts.

REVISION OF TRANSPORTATION SECTION OF THE UNITED STATES CODE

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar 683, H.R. 1537, a bill to make certain technical changes in title 49, U.S.C.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 1537) to revise, codify, and enact without substantive change certain general and permanent laws, related to transportation, as subtitles II, III, and V-X of title 49, United States Code, "Transportation", and to make other technical improvements in the Code.

The Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

SUBTITLES II, III, AND V–X OF TITLE 49, UNITED STATES CODE

SECTION 1. (a) Certain general and permanent laws of the United States, related to transportation, are revised, codified, and enacted by subsections (c)–(e) of this section without substantive change as subtitles II, III, and V–X of title 49, United States Code, "Transportation". Those laws may be cited as "49 U.S.C. ——".

(b) Title 49, United States Code, is amended by striking the table of subtitles at the beginning of the title and substituting the following new table of subtitles:

"SUBTITLE	SEC.
"I. DEPARTMENT OF TRANSPORTATION	*101*
"II. OTHER GOVERNMENT AGENCIES	*1101*
"III. GENERAL AND INTERMODAL PROGRAMS	*5101*
"IV. INTERSTATE COMMERCE	*10101*
"V. RAIL PROGRAMS	*20101*
"VI. MOTOR VEHICLE AND DRIVER PROGRAMS	*30101*
"VII. AVIATION PROGRAMS	*40101*
"VIII. PIPELINES	*60101*
"IX. COMMERCIAL SPACE TRANSPORTATION	*70101*
"X. MISCELLANEOUS	*80101".*

(c) Title 49, United States Code, is amended by striking subtitle II, except that chapter 31 (comprising sections 3101–3104) of subtitle II is redesignated and restated as chapter 315 (comprising sections 31501–31504) of subtitle VI of title 49, as enacted by subsection (e) of this section.

(d) Title 49, United States Code, is amended by adding the following immediately after subtitle I:

SUBTITLE II—OTHER GOVERNMENT AGENCIES

CHAPTER	*Sec.*
11. NATIONAL TRANSPORTATION SAFETY BOARD	*1101*

CHAPTER 11—NATIONAL TRANSPORTATION SAFETY BOARD

SUBCHAPTER I–GENERAL

Sec.
1101. Definitions.

SUBCHAPTER II—ORGANIZATION AND ADMINISTRATIVE

1111. General organization.
1112. Special boards of inquiry on air transportation safety.
1113. Administrative.
1114. Disclosure, availability, and use of information.
1115. Training.
1116. Reports and studies.
1117. Annual report.
1118. Authorization of appropriations.

SUBCHAPTER III—AUTHORITY

1131. General authority.
1132. Civil aircraft accident investigations.
1133. Review of other agency action.
1134. Inspections and autopsies.
1135. Secretary of Transportation's responses to safety recommendations.

SUBCHAPTER IV—ENFORCEMENT AND PENALTIES

1151. Aviation enforcement.
1152. Joinder and intervention in aviation proceedings.
1153. Judicial review.
1154. Discovery and use of cockpit voice and other material.
1155. Aviation penalties.

SUBCHAPTER I—GENERAL

§1101. Definitions

Section 40102(a) of this title applies to this chapter.

SUBCHAPTER II—ORGANIZATION AND ADMINISTRATIVE

§1111. General organization

(a) ORGANIZATION.—The National Transportation Safety Board is an independent establishment of the United States Government.

(b) APPOINTMENT OF MEMBERS.—The Board is composed of 5 members appointed by the President, by and with the advice and consent of the Senate. Not more than 3 members may be appointed from the same political party. At least 3 members shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in accident reconstruction, safety engineering, human factors, transportation safety, or transportation regulation.

(c) TERMS OF OFFICE AND REMOVAL.—The term of office of each member is 5 years. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, is appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

(d) CHAIRMAN AND VICE CHAIRMAN.—The President shall designate, by and with the advice and consent of the Senate, a Chairman of the Board. The President also shall designate a Vice Chairman of the Board. The terms of office of both the Chairman and Vice Chairman are 2 years. When the Chairman is absent or unable to serve or when the position of Chairman is vacant, the Vice Chairman acts as Chairman.

(e) DUTIES AND POWERS OF CHAIRMAN.—The Chairman is the chief executive and administrative officer of the Board. Subject to the general policies and decisions of the Board, the Chairman shall—

(1) appoint, supervise, and fix the pay of officers and employees necessary to carry out this chapter;

(2) distribute business among the officers, employees, and administrative units of the Board; and

(3) supervise the expenditures of the Board.

(f) QUORUM.—Three members of the Board are a quorum in carrying out duties and powers of the Board.

(g) OFFICES, BUREAUS, AND DIVISIONS.—The Board shall establish offices necessary to carry out this chapter, including an office to investigate and report on the safe transportation of hazardous material. The Board shall establish distinct and appropriately staffed bureaus, divisions, or offices to investigate and report on accidents involving each of the following modes of transportation:

(1) aviation.

(2) highway and motor vehicle.

(3) rail and tracked vehicle.

(4) pipeline.

(h) SEAL.—The Board shall have a seal that shall be judicially recognized.

§1112. Special boards of inquiry on air transportation safety

(a) ESTABLISHMENT.—If an accident involves a substantial question about public safety in air transportation, the National Transportation Safety Board may establish a special board of inquiry composed of—

(1) one member of the Board acting as chairman; and

(2) 2 members representing the public, appointed by the President on notification of the establishment of the special board of inquiry.

(b) QUALIFICATIONS AND CONFLICTS OF INTEREST.—The public members of a special board of inquiry must be qualified by training and experience to participate in the inquiry and may not have a pecuniary interest in an aviation enterprise involved in the accident to be investigated.

(c) AUTHORITY.—A special board of inquiry has the same authority that the Board has under this chapter.

§1113. Administrative

(a) GENERAL AUTHORITY.—(1) The National Transportation Safety Board, and when authorized by it, a member of the Board, an administrative law judge employed by or assigned to the Board, or an officer or employee designated by the Chairman of the Board, may conduct hearings to carry out this chapter, administer oaths, and require, by subpena or otherwise, necessary witnesses and evidence.

(2) A witness or evidence in a hearing under paragraph (1) of this subsection may be summoned or required to be produced from any place in the United States to the designated

place of the hearing. A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(3) A subpena shall be issued under the signature of the Chairman or the Chairman's delegate but may be served by any person designated by the Chairman.

(4) If a person disobeys a subpena, order, or inspection notice of the Board, the Board may bring a civil action in a district court of the United States to enforce the subpena, order, or notice. An action under this paragraph may be brought in the judicial district in which the person against whom the action is brought resides, is found, or does business. The court may punish a failure to obey an order of the court to comply with the subpena, order, or notice as a contempt of court.

(b) Additional Powers.—(1) The Board may—

(A) procure the temporary or intermittent services of experts or consultants under section 3109 of title 5;

(B) make agreements and other transactions necessary to carry out this chapter without regard to section 3709 of the Revised Statutes (41 U.S.C. 5);

(C) use, when appropriate, available services, equipment, personnel, and facilities of a department, agency, or instrumentality of the United States Government on a reimbursable or other basis;

(D) confer with employees and use services, records, and facilities of State and local governmental authorities;

(E) appoint advisory committees composed of qualified private citizens and officials of the Government and State and local governments as appropriate;

(F) accept voluntary and uncompensated services notwithstanding another law;

(G) accept gifts of money and other property;

(H) make contracts with nonprofit entities to carry out studies related to duties and powers of the Board; and

(I) require that the departments, agencies, and instrumentalities of the Government, State and local governments, and governments of foreign countries provide appropriate consideration for the reasonable costs of goods and services supplied by the Board.

(2) The Board shall deposit in the Treasury amounts received under paragraph (1)(I) of this subsection to be credited to the appropriation of the Board.

(c) Submission of Certain Copies to Congress.—When the Board submits to the President or the Director of the Office of Management and Budget a budget estimate, budget request, supplemental budget estimate, other budget information, a legislative recommendation, prepared testimony for congressional hearings, or comments on legislation, the Board must submit a copy to Congress at the same time. An officer, department, agency, or instrumentality of the Government may not require the Board to submit the estimate, request, information, recommendation, testimony, or comments to another officer, department, agency, or instrumentality of the Government for approval, comment, or review before being submitted to Congress.

(d) Liaison Committees.—The Chairman may determine the number of committees that are appropriate to maintain effective liaison with other departments, agencies, and instrumentalities of the Government, State and local governmental authorities, and independent standard-setting authorities that carry out programs and activities related to transportation safety. The Board may designate representatives to serve on or assist those committees.

(e) Inquiries.—The Board, or an officer or employee of the Board designated by the Chairman, may conduct an inquiry to obtain information related to transportation safety after publishing notice of the inquiry in the Federal Register. The Board or designated officer or employee may require by order a department, agency, or instrumentality of the Government, a State or local governmental authority, or a person transporting individuals or property in commerce to submit to the Board a written report and answers to requests and questions related to a duty or power of the Board. The Board may prescribe the time within which the report and answers must be given to the Board or to the designated officer or employee. Copies of the report and answers shall be made available for public inspection.

(f) Regulations.—The Board may prescribe regulations to carry out this chapter.

§1114. Disclosure, availability, and use of information

(a) General.—Except as provided in subsections (b) and (c) of this section, a copy of a record, information, or investigation submitted or received by the National Transportation Safety Board, or a member or employee of the Board, shall be made available to the public on identifiable request and at reasonable cost. This subsection does not require the release of information described by section 552(b) of title 5 or protected from disclosure by another law of the United States.

(b) Trade Secrets.—(1) The Board may disclose information related to a trade secret referred to in section 1905 of title 18 only—

(A) to another department, agency, or instrumentality of the United States Government when requested for official use;

(B) to a committee of Congress having jurisdiction over the subject matter to which the information is related, when requested by that committee;

(C) in a judicial proceeding under a court order that preserves the confidentiality of the information without impairing the proceeding; and

(D) to the public to protect health and safety after giving notice to any interested person to whom the information is related and an opportunity for that person to comment in writing, or orally in closed session, on the proposed disclosure, if the delay resulting from notice and opportunity for comment would not be detrimental to health and safety.

(2) Information disclosed under paragraph (1) of this subsection may be disclosed only in a way designed to preserve its confidentiality.

(c) Cockpit Voice Recordings and Transcripts.—(1) The Board may not disclose publicly any part of a cockpit voice recorder recording or transcript of oral communications by and between flight crew members and ground stations related to an accident or incident investigated by the Board. However, the Board shall make public any part of a transcript the Board decides is relevant to the accident or incident—

(A) if the Board holds a public hearing on the accident or incident, at the time of the hearing; or

(B) if the Board does not hold a public hearing, at the time a majority of the other factual reports on the accident or incident are placed in the public docket.

(2) This subsection does not prevent the Board from referring at any time to cockpit voice recorder information in making safety recommendations.

(d) Drug Tests.—(1) Notwithstanding section 503(e) of the Supplemental Appropriations Act, 1987 (Public Law 100–71, 101 Stat. 471), the Secretary of Transportation shall provide the following information to the Board when requested in writing by the Board:

(A) any report of a confirmed positive toxicological test, verified as positive by a medical review officer, conducted on an officer or employee of the Department of Transportation under post-accident, unsafe practice, or reasonable suspicion toxicological testing requirements of the Department, when the officer or employee is reasonably associated with the circumstances of an accident or incident under the investigative jurisdiction of the Board.

(B) any laboratory record documenting that the test is confirmed positive.

(2) Except as provided by paragraph (3) of this subsection, the Board shall maintain the confidentiality of, and exempt from disclosure under section 552(b)(3) of title 5—

(A) a laboratory record provided the Board under paragraph (1) of this subsection that reveals medical use of a drug allowed under applicable regulations; and

(B) medical information provided by the tested officer or employee related to the test or a review of the test.

(3) The Board may use a laboratory record made available under paragraph (1) of this subsection to develop an evidentiary record in an investigation of an accident or incident if—

(A) the fitness of the tested officer or employee is at issue in the investigation; and

(B) the use of that record is necessary to develop the evidentiary record.

§1115. Training

(a) Definition.—In this section, "Institute" means the Transportation Safety Institute of the Department of Transportation and any successor organization of the Institute.

(b) Use of Institute Services.—The National Transportation Safety Board may use, on a reimbursable basis, the services of the Institute. The Secretary of Transportation shall make the Institute available to—

(1) the Board for safety training of employees of the Board in carrying out their duties and powers; and

(2) other safety personnel of the United States Government, State and local governments, governments of foreign countries, interstate authorities, and private organizations the Board designates in consultation with the Secretary.

(c) Fees.—(1) Training at the Institute for safety personnel (except employees of the Government) shall be provided at a reasonable fee established periodically by the Board in consultation with the Secretary. The fee shall be paid directly to the Secretary, and the Secretary shall deposit the fee in the Treasury. The amount of the fee—

(A) shall be credited to the appropriate appropriation (subject to the requirements of any annual appropriation); and

(B) is an offset against any annual reimbursement agreement between the Board and the Secretary to cover all reasonable costs of providing training under this subsection that the Secretary incurs in operating the Institute.

(2) The Board shall maintain an annual record of offsets under paragraph (1)(B) of this subsection.

§1116. Reports and studies

(a) Periodic Reports.—The National Transportation Safety Board shall report periodically to Congress, departments, agencies, and instrumentalities of the United States Government and State and local governmental authorities concerned with transportation safety, and other interested persons. The report shall—

(1) advocate meaningful responses to reduce the likelihood of transportation accidents similar to those investigated by the Board; and

(2) propose corrective action to make the transportation of individuals as safe and free from risk of injury as possible, including action to minimize personal injuries that occur in transportation accidents.

(b) Studies, Investigations, and Other Reports.—The Board also shall—

(1) carry out special studies and investigations about transportation safety, including avoiding personal injury;

(2) examine techniques and methods of accident investigation and periodically publish recommended procedures for accident investigations;

(3) prescribe requirements for persons reporting accidents and aviation incidents that—

(A) may be investigated by the Board under this chapter; or

(B) involve public aircraft (except aircraft of the armed forces and the intelligence agencies);

(4) evaluate, examine the effectiveness of, and publish the findings of the Board about the transportation safety consciousness of other departments, agencies, and instrumentalities of the Government and their effectiveness in preventing accidents; and

(5) evaluate the adequacy of safeguards and procedures for the transportation of hazardous material and the performance of other departments, agencies, and instrumentalities of the Government responsible for the safe transportation of that material.

§1117. Annual report

The National Transportation Safety Board shall submit a report to Congress on July 1 of each year. The report shall include—

(1) a statistical and analytical summary of the transportation accident investigations conducted and reviewed by the Board during the prior calendar year;

(2) a survey and summary of the recommendations made by the Board to reduce the likelihood of recurrence of those accidents together with the observed response to each recommendation;

(3) a detailed appraisal of the accident investigation and accident prevention activities of other departments, agencies, and instrumentalities of the United States Government and State and local governmental authorities having responsibility for those activities under a law of the United States or a State; and

(4) an evaluation conducted every 2 years of transportation safety and recommendations for legislative and administrative action and change.

§1118. Authorization of appropriations

(a) GENERAL.—Not more than the following amounts may be appropriated to the National Transportation Safety Board to carry out this chapter:

(1) $38,600,000 for the fiscal year ending September 30, 1992.

(2) $38,800,000 for the fiscal year ending September 30, 1993.

(b) EMERGENCY FUND.—The Board has an emergency fund of $1,000,000 available for necessary expenses of the Board, not otherwise provided for, for accident investigations. The following amounts may be appropriated to the fund:

(1) $1,000,000 to establish the fund.

(2) amounts equal to amounts expended annually out of the fund.

(c) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section remain available until expended.

SUBCHAPTER III—AUTHORITY

§1131. General authority

(a) GENERAL.—(1) The National Transportation Safety Board shall investigate or have investigated (in detail the Board prescribes) and establish the facts, circumstances, and cause or probable cause of—

(A) an aircraft accident the Board has authority to investigate under section 1132 of this title;

(B) a highway accident, including a railroad grade crossing accident, the Board selects in cooperation with a State;

(C) a railroad accident in which there is a fatality or substantial property damage, or that involves a passenger train;

(D) a pipeline accident in which there is a fatality or substantial property damage;

(E) a major marine casualty (except a casualty involving only public vessels) occurring on the navigable waters or territorial sea of the United States, or involving a vessel of the United States, under regulations prescribed jointly by the Board and the head of the department in which the Coast Guard is operating; and

(F) any other accident related to the transportation of individuals or property when the Board decides—

(i) the accident is catastrophic;

(ii) the accident involves problems of a recurring character; or

(iii) the investigation of the accident would carry out this chapter.

(2) An investigation by the Board under paragraph (1)(A)-(D) or (F) of this subsection has priority over any investigation by another department, agency, or instrumentality of the United States Government. The Board shall provide for appropriate participation by other departments, agencies, or instrumentalities in the investigation. However, those departments, agencies, or instrumentalities may not participate in the decision of the Board about the probable cause of the accident.

(3) This section and sections 1113, 1116(b), 1133, and 1134(a) and (c)-(e) of this title do not affect the authority of another department, agency, or instrumentality of the Government to investigate an accident under applicable law or to obtain information directly from the parties involved in, and witnesses to, the accident. The Board and other departments, agencies, and instrumentalities shall ensure that appropriate information developed about the accident is exchanged in a timely manner.

(b) ACCIDENTS INVOLVING PUBLIC VESSELS.—(1) The Board or the head of the department in which the Coast Guard is operating shall investigate and establish the facts, circumstances, and cause or probable cause of a marine accident involving a public vessel and any other vessel. The results of the investigation shall be made available to the public.

(2) Paragraph (1) of this subsection and subsection (a)(1)(E) of this section do not affect the responsibility, under another law of the United States, of the head of the department in which the Coast Guard is operating.

(c) ACCIDENTS NOT INVOLVING GOVERNMENT MISFEASANCE OR NONFEASANCE.—(1) When asked by the Board, the Secretary of Transportation may—

(A) investigate an accident described under subsection (a) or (b) of this section in which misfeasance or nonfeasance by the Government has not been alleged; and

(B) report the facts and circumstances of the accident to the Board.

(2) The Board shall use the report in establishing cause or probable cause of an accident described under subsection (a) or (b) of this section.

(d) ACCIDENT REPORTS.—The Board shall report on the facts and circumstances of each accident investigated by it under subsection (a) or (b) of this section. The Board shall make each report available to the public at reasonable cost.

§1132. Civil aircraft accident investigations

(a) GENERAL AUTHORITY.—(1) The National Transportation Safety Board shall investigate—

(A) each accident involving civil aircraft; and

(B) with the participation of appropriate military authorities, each accident involving both military and civil aircraft.

(2) A person employed under section 1113(b)(1) of this title that is conducting an investigation or hearing about an aircraft accident has the same authority to conduct the investigation or hearing as the Board.

(b) NOTIFICATION AND REPORTING.—The Board shall prescribe regulations governing the notification and reporting of accidents involving civil aircraft.

(c) PARTICIPATION OF SECRETARY.—The Board shall provide for the participation of the Secretary of Transportation in the investigation of an aircraft accident under this chapter when participation is necessary to carry out the duties and powers of the Secretary. However, the Secretary may not participate in establishing probable cause.

(d) ACCIDENTS INVOLVING ONLY MILITARY AIRCRAFT.—If an accident involves only military aircraft and a duty of the Secretary is or may be involved, the military authorities shall provide for the participation of the Secretary. In any other accident involving only military aircraft, the military authorities shall give the Board or Secretary information the military authorities decide would contribute to the promotion of air safety.

§1133. Review of other agency action

The National Transportation Safety Board shall review on appeal—

(1) the denial, amendment, modification, suspension, or revocation of a certificate issued by the Secretary of Transportation under section 44703, 44709, or 44710 of this title;

(2) the revocation of a certificate of registration under section 44106 of this title; and

(3) a decision of the head of the department in which the Coast Guard is operating on an appeal from the decision of an administrative law judge denying, revoking, or suspending a license, certificate, document, or register in a proceeding under section 6101, 6301, or 7503, chapter 77, or section 9303 of title 46.

§1134. Inspections and autopsies

(a) ENTRY AND INSPECTION.—An officer or employee designated by the National Transportation Safety Board—

(1) on display of appropriate credentials and written notice of inspection authority, may enter property where a transportation accident has occurred or wreckage from the accident is located and do anything necessary to conduct an investigation; and

(2) during reasonable hours, may inspect any record, process, control, or facility related to an accident investigation under this chapter.

(b) INSPECTION, TESTING, PRESERVATION, AND MOVING OF AIRCRAFT AND PARTS.—(1) In investigating an aircraft accident under this chapter, the Board may inspect and test, to the extent necessary, any civil aircraft, aircraft engine, propeller, appliance, or property on an aircraft involved in an accident in air commerce.

(2) Any civil aircraft, aircraft engine, propeller, appliance, or property on an aircraft involved in an accident in air commerce shall be preserved, and may be moved, only as provided by regulations of the Board.

(c) AVOIDING UNNECESSARY INTERFERENCE AND PRESERVING EVIDENCE.—In carrying out subsection (a)(1) of this section, an officer or employee may examine or test any vehicle, vessel, rolling stock, track, or pipeline component. The examination or test shall be conducted in a way that—

(1) does not interfere unnecessarily with transportation services provided by the owner or operator of the vehicle, vessel, rolling stock, track, or pipeline component; and

(2) to the maximum extent feasible, preserves evidence related to the accident, consistent with the needs of the investigation and with the cooperation of that owner or operator.

(d) EXCLUSIVE AUTHORITY OF BOARD.—Only the Board has the authority to decide on the way in which testing under this section will be conducted, including decisions on the person that will conduct the test, the type of test that will be conducted, and any individual who will witness the test. The Board shall make any of

those decisions based on the needs of the investigation being conducted and, when applicable, this subsection and subsections (a), (c), and (e) of this section.

(e) PROMPTNESS OF TESTS AND AVAILABILITY OF RESULTS.—An inspection, examination, or test under subsection (a) or (c) of this section shall be started and completed promptly, and the results shall be made available.

(f) AUTOPSIES.—(1) The Board may order an autopsy to be performed and have other tests made when necessary to investigate an accident under this chapter. However, local law protecting religious beliefs related to autopsies shall be observed to the extent consistent with the needs of the accident investigation.

(2) With or without reimbursement, the Board may obtain a copy of an autopsy report performed by a State or local official on an individual who died because of a transportation accident investigated by the Board under this chapter.

§1135. Secretary of Transportation's responses to safety recommendations

(a) GENERAL.—When the National Transportation Safety Board submits a recommendation about transportation safety to the Secretary of Transportation, the Secretary shall give a formal written response to each recommendation not later than 90 days after receiving the recommendation. The response shall indicate whether the Secretary intends—

(1) to carry out procedures to adopt the complete recommendation;

(2) to carry out procedures to adopt a part of the recommendation; or

(3) to refuse to carry out procedures to adopt the recommendation.

(b) TIMETABLE FOR COMPLETING PROCEDURES AND REASONS FOR REFUSALS.—A response under subsection (a)(1) or (2) of this section shall include a copy of a proposed timetable for completing the procedures. A response under subsection (a)(2) of this section shall detail the reasons for the refusal to carry out procedures on the remainder of the recommendation. A response under subsection (a)(3) of this section shall detail the reasons for the refusal to carry out procedures.

(c) PUBLIC AVAILABILITY.—The Board shall make a copy of each recommendation and response available to the public at reasonable cost.

(d) REPORTS TO CONGRESS.—The Secretary shall submit to Congress on January 1 of each year a report containing each recommendation on transportation safety made by the Board to the Secretary during the prior year and a copy of the Secretary's response to each recommendation.

SUBCHAPTER IV—ENFORCEMENT AND PENALTIES

§1151. Aviation enforcement

(a) CIVIL ACTIONS BY BOARD.—The National Transportation Safety Board may bring a civil action in a district court of the United States against a person to enforce section 1132, 1134(b) or (f)(1), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections. An action under this subsection may be brought in the judicial district in which the person does business or the violation occurred.

(b) CIVIL ACTIONS BY ATTORNEY GENERAL.—On request of the Board, the Attorney General may bring a civil action—

(1) to enforce section 1132, 1134(b) or (f)(1), or 1155(a) of this title or a regulation prescribed or order issued under any of those sections; and

(2) to prosecute a person violating those sections or a regulation prescribed or order issued under any of those sections.

(c) PARTICIPATION OF BOARD.—On request of the Attorney General, the Board may participate in a civil action to enforce section 1132, 1134(b) or (f)(1), or 1155(a) of this title.

§1152. Joinder and intervention in aviation proceedings

A person interested in or affected by a matter under consideration in a proceeding or a civil action to enforce section 1132, 1134(b) or (f)(1), or 1155(a) of this title, or a regulation prescribed or order issued under any of those sections, may be joined as a party or permitted to intervene in the proceeding or civil action.

§1153. Judicial review

(a) GENERAL.—The appropriate court of appeals of the United States or the United States Court of Appeals for the District of Columbia Circuit may review a final order of the National Transportation Safety Board under this chapter. A person disclosing a substantial interest in the order may apply for review by filing a petition not later than 60 days after the order of the Board is issued.

(b) AVIATION MATTERS.—(1) A person disclosing a substantial interest in an order related to an aviation matter issued by the Board under this chapter may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued. The court may allow the petition to be filed after the 60 days only if there was a reasonable ground for not filing within that 60-day period.

(2) When a petition is filed under paragraph (1) of this subsection, the clerk of the court immediately shall send a copy of the petition to the Board. The Board shall file with the court a record of the proceeding in which the order was issued.

(3) When the petition is sent to the Board, the court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order and may order the Board to conduct further proceedings. After reasonable notice to the Board, the court may grant interim relief by staying the order or taking other appropriate action when cause for its action exists. Findings of fact by the Board, if supported by substantial evidence, are conclusive.

(4) In reviewing an order under this subsection, the court may consider an objection to an order of the Board only if the objection was made in the proceeding conducted by the Board or if there was a reasonable ground for not making the objection in the proceeding.

(5) A decision by a court under this subsection may be reviewed only by the Supreme Court under section 1254 of title 28.

§1154. Discovery and use of cockpit voice and other material

(a) TRANSCRIPTS AND RECORDINGS.—(1) Except as provided by this subsection, a party in a judicial proceeding may not use discovery to obtain—

(A) any part of a cockpit voice recorder transcript that the National Transportation Safety Board has not made available to the public under section 1114(c) of this title; and

(B) a cockpit voice recorder recording.

(2)(A) Except as provided in paragraph (4)(A) of this subsection, a court may allow discovery by a party of a cockpit voice recorder transcript if, after an in camera review of the transcript, the court decides that—

(i) the part of the transcript made available to the public under section 1114(c) of this title does not provide the party with sufficient information for the party to receive a fair trial; and

(ii) discovery of additional parts of the transcript is necessary to provide the party with sufficient information for the party to receive a fair trial.

(B) A court may allow discovery, or require production for an in camera review, of a cockpit voice recorder transcript that the Board has not made available under section 1114(c) of this title only if the cockpit voice recorder recording is not available.

(3) Except as provided in paragraph (4)(A) of this subsection, a court may allow discovery by a party of a cockpit voice recorder recording if, after an in camera review of the recording, the court decides that—

(A) the parts of the transcript made available to the public under section 1114(c) of this title and to the party through discovery under paragraph (2) of this subsection do not provide the party with sufficient information for the party to receive a fair trial; and

(B) discovery of the cockpit voice recorder recording is necessary to provide the party with sufficient information for the party to receive a fair trial.

(4)(A) When a court allows discovery in a judicial proceeding of a part of a cockpit voice recorder transcript not made available to the public under section 1114(c) of this title or a cockpit voice recorder recording, the court shall issue a protective order—

(i) to limit the use of the part of the transcript or the recording to the judicial proceeding; and

(ii) to prohibit dissemination of the part of the transcript or the recording to any person that does not need access to the part of the transcript or the recording for the proceeding.

(B) A court may allow a part of a cockpit voice recorder transcript not made available to the public under section 1114(c) of this title or a cockpit voice recorder recording to be admitted into evidence in a judicial proceeding, only if the court places the part of the transcript or the recording under seal to prevent the use of the part of the transcript or the recording for purposes other than for the proceeding.

(5) This subsection does not prevent the Board from referring at any time to cockpit voice recorder information in making safety recommendations.

(b) REPORTS.—No part of a report of the Board, related to an accident or an investigation of an accident, may be admitted into evidence or used in a civil action for damages resulting from a matter mentioned in the report.

§1155. Aviation penalties

(a) CIVIL PENALTY.—(1) A person violating section 1132 or 1134(b) or (f)(1) of this title or a regulation prescribed or order issued under either of those sections is liable to the United States Government for a civil penalty of not more than $1,000. A separate violation occurs for each day a violation continues.

(2) This subsection does not apply to a member of the armed forces of the United States or an employee of the Department of Defense subject to the Uniform Code of Military Justice when the member or employee is performing official duties. The appropriate military authorities are responsible for taking necessary disciplinary action and submitting to the National Transportation Safety Board a timely report on action taken.

(3) The Board may compromise the amount of a civil penalty imposed under this subsection.

(4) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(5) A civil penalty under this subsection may be collected by bringing a civil action against the person liable for the penalty. The action shall conform as nearly as practicable to a civil action in admiralty.

(b) CRIMINAL PENALTY.—A person that knowingly and without authority removes, conceals, or withholds a part of a civil aircraft involved in an accident, or property on the aircraft at

the time of the accident, shall be fined under title 18, imprisoned for not more than 10 years, or both.

SUBTITLE III—GENERAL AND INTERMODAL PROGRAMS

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CHAPTER 51—TRANSPORTATION OF HAZARDOUS MATERIAL

Sec.

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§5101. Purpose

The purpose of this chapter is to provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce by improving the regulatory and enforcement authority of the Secretary of Transportation.

§5102. Definitions

In this chapter—

(1) "commerce" means trade or transportation in the jurisdiction of the United States—

(A) between a place in a State and a place outside of the State; or

(B) that affects trade or transportation between a place in a State and a place outside of the State.

(2) "hazardous material" means a substance or material the Secretary of Transportation designates under section 5103(a) of this title.

(3) "hazmat employee"—

(A) means an individual—

(i) employed by a hazmat employer; and

(ii) who during the course of employment directly affects hazardous material transportation safety as the Secretary decides by regulation;

(B) includes an owner-operator of a motor vehicle transporting hazardous material in commerce; and

(C) includes an individual, employed by a hazmat employer, who during the course of employment—

(i) loads, unloads, or handles hazardous material;

(ii) reconditions or tests containers, drums, and packages represented for use in transporting hazardous material;

(iii) prepares hazardous material for transportation;

(iv) is responsible for the safety of transporting hazardous material; or

(v) operates a vehicle used to transport hazardous material.

(4) "hazmat employer"—

(A) means a person using at least one employee of that person in connection with—

(i) transporting hazardous material in commerce;

(ii) causing hazardous material to be transported in commerce; or

(iii) reconditioning or testing containers, drums, and packages represented for use in transporting hazardous material;

(B) includes an owner-operator of a motor vehicle transporting hazardous material in commerce; and

(C) includes a department, agency, or instrumentality of the United States Government, or an authority of a State, political subdivision of a State, or Indian tribe, carrying out an activity described in subclause (A)(i), (ii), or (iii) of this clause (4).

(5) "imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.

(6) "Indian tribe" has the same meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(7) "motor carrier" means a motor common carrier, motor contract carrier, motor private carrier, and freight forwarder as those terms are defined in section 10102 of this title.

(8) "national response team" means the national response team established under the national contingency plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605).

(9) "person", in addition to its meaning under section 1 of title 1—

(A) includes a government, Indian tribe, or authority of a government or tribe offering hazardous material for transportation in commerce or transporting hazardous material to further a commercial enterprise; but

(B) does not include—

(i) the United States Postal Service; and

(ii) in sections 5123 and 5124 of this title, a department, agency, or instrumentality of the Government.

(10) "public sector employee"—

(A) means an individual employed by a State, political subdivision of a State, or Indian tribe and who during the course of employment has responsibilities related to responding to an accident or incident involving the transportation of hazardous material;

(B) includes an individual employed by a State, political subdivision of a State, or Indian tribe as a firefighter or law enforcement officer; and

(C) includes an individual who volunteers to serve as a firefighter for a State, political subdivision of a State, or Indian tribe.

(11) "State" means—

(A) except in section 5119 of this title, a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, and any other territory or possession of the United States designated by the Secretary; and

(B) in section 5119 of this title, a State of the United States and the District of Columbia.

(12) "transports" or "transportation" means the movement of property and loading, unloading, or storage incidental to the movement.

(13) "United States" means all of the States.

§5103. General regulatory authority

(a) DESIGNATING MATERIAL AS HAZARDOUS.—The Secretary of Transportation shall designate material (including an explosive, radioactive material, etiologic agent, flammable or combustible liquid or solid, poison, oxidizing or corrosive material, and compressed gas) or a group or class of material as hazardous when the Secretary decides that transporting the material in commerce in a particular amount and form may pose an unreasonable risk to health and safety or property.

(b) REGULATIONS FOR SAFE TRANSPORTATION.—(1) The Secretary shall prescribe regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce. The regulations—

(A) apply to a person—

(i) transporting hazardous material in commerce;

(ii) causing hazardous material to be transported in commerce; or

(iii) manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a package or container that is represented, marked, certified, or sold by that person as qualified for use in transporting hazardous material in commerce; and

(B) shall govern safety aspects of the transportation of hazardous material the Secretary considers appropriate.

(2) A proceeding to prescribe the regulations must include an opportunity for informal oral presentations.

§5104. Representation and tampering

(a) REPRESENTATION.—A person may represent, by marking or otherwise, that—

(1) a container or package for transporting hazardous material is safe, certified, or complies with this chapter only if the container or package meets the requirements of each regulation prescribed under this chapter; or

(2) hazardous material is present in a package, container, motor vehicle, rail freight car, aircraft, or vessel only if the material is present.

(b) TAMPERING.—A person may not alter, remove, destroy, or otherwise tamper unlawfully with—

(1) a marking, label, placard, or description on a document required under this chapter or a regulation prescribed under this chapter; or

(2) a package, container, motor vehicle, rail freight car, aircraft, or vessel used to transport hazardous material.

§5105. Transporting certain highly radioactive material

(a) DEFINITION.—In this section, "high-level radioactive waste" and "spent nuclear fuel" have the same meanings given those terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(b) TRANSPORTATION SAFETY STUDY.—In consultation with the Secretary of Energy, the Nuclear Regulatory Commission, potentially affected States and Indian tribes, representatives of the rail transportation industry, and shippers of high-level radioactive waste and spent nuclear fuel, the Secretary of Transportation shall conduct a study comparing the safety of using trains operated only to transport high-level radioactive waste and spent nuclear fuel with the safety of using other methods of rail transportation for transporting that waste and fuel. The Secretary of Transportation shall submit to Congress not later than November 16, 1991, a report on the results of the study.

(c) SAFE RAIL TRANSPORTATION REGULATIONS.—Not later than November 16, 1992, after considering the results of the study conducted under subsection (b) of this section, the Secretary of Transportation shall prescribe amendments to existing regulations that the Secretary considers appropriate to provide for the safe rail

transportation of high-level radioactive waste and spent nuclear fuel, including trains operated only for transporting high-level radioactive waste and spent nuclear fuel.

(d) Routes and Modes Study.—Not later than November 16, 1991, the Secretary of Transportation shall conduct a study to decide which factors, if any, shippers and carriers should consider when selecting routes and modes that would enhance overall public safety related to the transportation of high-level radioactive waste and spent nuclear fuel. The study shall include—

(1) notice and opportunity for public comment; and

(2) an assessment of the degree to which at least the following affect the overall public safety of the transportation:

(A) population densities.

(B) types and conditions of modal infrastructures (including highways, railbeds, and waterways).

(C) quantities of high-level radioactive waste and spent nuclear fuel.

(D) emergency response capabilities.

(E) exposure and other risk factors.

(F) terrain considerations.

(G) continuity of routes.

(H) available alternative routes.

(I) environmental impact factors.

(e) Inspections of Motor Vehicles Transporting Certain Material.—(1) Not later than November 16, 1991, the Secretary of Transportation shall require by regulation that before each use of a motor vehicle to transport a highway-route-controlled quantity of radioactive material in commerce, the vehicle shall be inspected and certified as complying with this chapter and applicable United States motor carrier safety laws and regulations. The Secretary may require that the inspection be carried out by an authorized United States Government inspector or according to appropriate State procedures.

(2) The Secretary of Transportation may allow a person, transporting or causing to be transported a highway-route-controlled quantity of radioactive material, to inspect the motor vehicle used to transport the material and to certify that the vehicle complies with this chapter. The inspector qualification requirements the Secretary prescribes for an individual inspecting a motor vehicle apply to an individual conducting an inspection under this paragraph.

§5106. Handling criteria

The Secretary of Transportation may prescribe criteria for handling hazardous material, including—

(1) a minimum number of personnel;

(2) minimum levels of training and qualifications for personnel;

(3) the kind and frequency of inspections;

(4) equipment for detecting, warning of, and controlling risks posed by the hazardous material;

(5) specifications for the use of equipment and facilities used in handling and transporting the hazardous material; and

(6) a system of monitoring safety procedures for transporting the hazardous material.

§5107. Hazmat employee training requirements and grants

(a) Training Requirements.—Not later than May 16, 1992, the Secretary of Transportation shall prescribe by regulation requirements for training that a hazmat employer must give hazmat employees of the employer on the safe loading, unloading, handling, storing, and transporting of hazardous material and emergency preparedness for responding to an accident or incident involving the transportation of hazardous material. The regulations—

(1) shall establish the date, as provided by subsection (b) of this section, by which the training shall be completed; and

(2) may provide for different training for different classes or categories of hazardous material and hazmat employees.

(b) Beginning and Completing Training.—A hazmat employer shall begin the training of hazmat employees of the employer not later than 6 months after the Secretary of Transportation prescribes the regulations under subsection (a) of this section. The training shall be completed within a reasonable period of time after—

(1) 6 months after the regulations are prescribed; or

(2) the date on which an individual is to begin carrying out a duty or power of a hazmat employee if the individual is employed as a hazmat employee after the 6-month period.

(c) Certification of Training.—After completing the training, each hazmat employer shall certify, with documentation the Secretary of Transportation may require by regulation, that the hazmat employees of the employer have received training and have been tested on appropriate transportation areas of responsibility, including at least one of the following:

(1) recognizing and understanding the Department of Transportation hazardous material classification system.

(2) the use and limitations of the Department hazardous material placarding, labeling, and marking systems.

(3) general handling procedures, loading and unloading techniques, and strategies to reduce the probability of release or damage during or incidental to transporting hazardous material.

(4) health, safety, and risk factors associated with hazardous material and the transportation of hazardous material.

(5) appropriate emergency response and communication procedures for dealing with an accident or incident involving hazardous material transportation.

(6) the use of the Department Emergency Response Guidebook and recognition of its limitations or the use of equivalent documents and recognition of the limitations of those documents.

(7) applicable hazardous material transportation regulations.

(8) personal protection techniques.

(9) preparing a shipping document for transporting hazardous material.

(d) Coordination of Training Requirements.—In consultation with the Administrator of the Environmental Protection Agency and the Secretary of Labor, the Secretary of Transportation shall ensure that the training requirements prescribed under this section do not conflict with—

(1) the requirements of regulations the Secretary of Labor prescribes related to hazardous waste operations and emergency response that are contained in part 1910 of title 29, Code of Federal Regulations; and

(2) the regulations the Agency prescribes related to worker protection standards for hazardous waste operations that are contained in part 311 of title 40, Code of Federal Regulations.

(e) Training Grants.—In consultation with the Secretaries of Transportation and Labor and the Administrator, the Director of the National Institute of Environmental Health Sciences may make grants to train hazmat employees under this section. A grant under this subsection shall be made to a nonprofit organization that demonstrates—

(1) expertise in conducting a training program for hazmat employees; and

(2) the ability to reach and involve in a training program a target population of hazmat employees.

(f) Relationship to Other Laws.—(1) Chapter 35 of title 44 does not apply to an activity of the Secretary of Transportation under subsections (a)–(d) of this section.

(2) An action of the Secretary of Transportation under subsections (a)–(d) of this section and sections 5106, 5108(a)–(g)(1) and (h), and 5109 of this title is not an exercise, under section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), of statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

§5108. Registration

(a) Persons Required to File.—(1) A person shall file a registration statement with the Secretary of Transportation under this subsection if the person is transporting or causing to be transported in commerce any of the following:

(A) a highway-route-controlled quantity of radioactive material.

(B) more than 25 kilograms of a class A or B explosive in a motor vehicle, rail car, or transport container.

(C) more than one liter in each package of a hazardous material the Secretary designates as extremely toxic by inhalation.

(D) hazardous material in a bulk package, container, or tank, as defined by the Secretary, if the package, container, or tank has a capacity of at least 3,500 gallons or more than 468 cubic feet.

(E) a shipment of at least 5,000 pounds of a class of hazardous material for which placarding of a vehicle, rail car, or freight container is required under regulations prescribed under this chapter.

(2) The Secretary of Transportation may require any of the following persons to file a registration statement with the Secretary under this subsection:

(A) a person transporting or causing to be transported hazardous material in commerce and not required to file a registration statement under paragraph (1) of this subsection.

(B) a person manufacturing, fabricating, marking, maintaining, reconditioning, repairing, or testing a package or container the person represents, marks, certifies, or sells for use in transporting in commerce hazardous material the Secretary designates.

(3) A person required to file a registration statement under this subsection may transport or cause to be transported, or manufacture, fabricate, mark, maintain, recondition, repair, or test a package or container for use in transporting, hazardous material, only if the person has a statement on file as required by this subsection.

(b) Form, Contents, and Limitation on Filings.—(1) A registration statement under subsection (a) of this section shall be in the form and contain information the Secretary of Transportation requires by regulation. The Secretary may use existing forms of the Department of Transportation and the Environmental Protection Agency to carry out this subsection. The statement shall include—

(A) the name and principal place of business of the registrant;

(B) a description of each activity the registrant carries out for which filing a statement under subsection (a) of this section is required; and

(C) each State in which the person carries out the activity.

(2) A person carrying out more than one activity for which filing is required only has to file one registration statement to comply with subsection (a) of this section.

(c) Filing Deadlines and Amendments.—(1) Each person required to file a registration statement under this subsection (a) of section must file the first statement not later than March 31, 1992. The Secretary of Transportation may extend that date to September 30, 1992, for activities referred to in subsection (a)(1) of this section. A person shall renew the statement periodically consistent with regulations the Sec-

retary prescribes, but not more than once each year and not less than once every 5 years.

(2) The Secretary of Transportation shall decide by regulation when and under what circumstances a registration statement must be amended and the procedures to follow in amending the statement.

(d) Simplifying the Registration Process.—The Secretary of Transportation may take necessary action to simplify the registration process under subsections (a)-(c) of this section and to minimize the number of applications, documents, and other information a person is required to file under this chapter and other laws of the United States.

(e) Cooperation With Administrator.—The Administrator of the Environmental Protection Agency shall assist the Secretary of Transportation in carrying out subsections (a)-(g)(1) and (h) of this section by providing the Secretary with information the Secretary requests to carry out the objectives of subsections (a)-(g)(1) and (h).

(f) Availability of Statements.—The Secretary of Transportation shall make a registration statement filed under subsection (a) of this section available for inspection by any person for a fee the Secretary establishes. However, this subsection does not require the release of information described in section 552(f) of title 5 or otherwise protected by law from disclosure to the public.

(g) Fees.—(1) The Secretary of Transportation may establish, impose, and collect from a person required to file a registration statement under subsection (a) of this section a fee necessary to pay for the costs of the Secretary in processing the statement.

(2)(A) In addition to a fee established under paragraph (1) of this subsection, not later than September 30, 1992, the Secretary of Transportation shall establish and impose by regulation and collect an annual fee. Subject to subparagraph (B) of this paragraph, the fee shall be at least $250 but not more than $5,000 from each person required to file a registration statement under this section. The Secretary shall determine the amount of the fee under this paragraph on at least one of the following:

(i) gross revenue from transporting hazardous material.

(ii) the type of hazardous material transported or caused to be transported.

(iii) the amount of hazardous material transported or caused to be transported.

(iv) the number of shipments of hazardous material.

(v) the number of activities that the person carries out for which filing a registration statement is required under this section.

(vi) the threat to property, individuals, and the environment from an accident or incident involving the hazardous material transported or caused to be transported.

(vii) the percentage of gross revenue derived from transporting hazardous material.

(viii) the amount to be made available to carry out sections 5107(e), 5108(g)(2), 5115, and 5116 of this title.

(ix) other factors the Secretary considers appropriate.

(B) The Secretary of Transportation shall adjust the amount being collected under this paragraph to reflect any unexpended balance in the account established under section 5116(i) of this title. However, the Secretary is not required to refund any fee collected under this paragraph.

(C) The Secretary of Transportation shall transfer to the Secretary of the Treasury amounts the Secretary of Transportation collects under this paragraph for deposit in the account the Secretary of the Treasury establishes under section 5116(i) of this title.

(h) Maintaining Proof of Filing and Payment of Fees.—The Secretary of Transportation may prescribe regulations requiring a person required to file a registration statement under subsection (a) of this section to maintain proof of the filing and payment of fees imposed under subsection (g) of this section.

(i) Relationship to Other Laws.—(1) Chapter 35 of title 44 does not apply to an activity of the Secretary of Transportation under subsections (a)-(g)(1) and (h) of this section.

(2)(A) This section does not apply to an employee of a hazmat employer.

(B) Subsections (a)-(h) of this section do not apply to a department, agency, or instrumentality of the United States Governmen', an authority of a State or political subdivision of a State, or an employee of a department, agency, instrumentality, or authority carrying out official duties.

§5109. Motor carrier safety permits

(a) Requirement.—A motor carrier may transport or cause to be transported by motor vehicle in commerce hazardous material only if the carrier holds a safety permit the Secretary of Transportation issues under this section authorizing the transportation and keeps a copy of the permit, or other proof of its existence, in the vehicle. The Secretary shall issue a permit if the Secretary finds the carrier is fit, willing, and able—

(1) to provide the transportation to be authorized by the permit;

(2) to comply with this chapter and regulations the Secretary prescribes to carry out this chapter; and

(3) to comply with applicable United States motor carrier safety laws and regulations and applicable minimum financial responsibility laws and regulations.

(b) Applicable Transportation.—The Secretary shall prescribe by regulation the hazardous material and amounts of hazardous material to which this section applies. However, this section shall apply at least to all transportation by a motor carrier of—

(1) a class A or B explosive;

(2) liquefied natural gas;

(3) hazardous material the Secretary designates as extremely toxic by inhalation; and

(4) a highway-route-controlled quantity of radioactive material, as defined by the Secretary.

(c) Applications.—A motor carrier shall file an application with the Secretary for a safety permit to provide transportation under this section. The Secretary may approve any part of the application or deny the application. The application shall be under oath and contain information the Secretary requires by regulation.

(d) Amendments, Suspensions, and Revocations.—(1) After notice and an opportunity for a hearing, the Secretary may amend, suspend, or revoke a safety permit, as provided by procedures prescribed under subsection (e) of this section, when the Secretary decides the motor carrier is not complying with a requirement of this chapter, a regulation prescribed under this chapter, or an applicable United States motor carrier safety law or regulation or minimum financial responsibility law or regulation.

(2) If the Secretary decides an imminent hazard exists, the Secretary may amend, suspend, or revoke a permit before scheduling a hearing.

(e) Procedures.—The Secretary shall prescribe by regulation—

(1) application procedures, including form, content, and fees necessary to recover the complete cost of carrying out this section;

(2) standards for deciding the duration, terms, and limitations of a safety permit;

(3) procedures to amend, suspend, or revoke a permit; and

(4) other procedures the Secretary considers appropriate to carry out this section.

(f) Shipper Requirement.—A person offering hazardous material for motor vehicle transportation in commerce may offer the material to a motor carrier only if the carrier has a safety permit issued under this section authorizing the transportation.

(g) Conditions.—A motor carrier may provide transportation under a safety permit issued under this section only if the carrier complies with conditions the Secretary finds are required to protect public safety.

(h) Regulations.—The Secretary shall prescribe regulations necessary to carry out this section not later than November 16, 1991.

§5110. Shipping papers and disclosure

(a) Providing Shipping Papers.—Each person offering for transportation in commerce hazardous material to which the shipping paper requirements of the Secretary of Transportation apply shall provide to the carrier providing the transportation a shipping paper that makes the disclosures the Secretary prescribes under subsection (b) of this section.

(b) Considerations and Requirements.—In carrying out subsection (a) of this section, the Secretary shall consider and may require—

(1) a description of the hazardous material, including the proper shipping name;

(2) the hazard class of the hazardous material;

(3) the identification number (UN/NA) of the hazardous material;

(4) immediate first action emergency response information or a way for appropriate reference to the information (that must be available immediately); and

(5) a telephone number for obtaining more specific handling and mitigation information about the hazardous material at any time during which the material is transported.

(c) Keeping Shipping Papers on the Vehicle.—(1) A motor carrier, and the person offering the hazardous material for transportation if a private motor carrier, shall keep the shipping paper on the vehicle transporting the material.

(2) Except as provided in paragraph (1) of this subsection, the shipping paper shall be kept in a location the Secretary specifies in a motor vehicle, train, vessel, aircraft, or facility until—

(A) the hazardous material no longer is in transportation; or

(B) the documents are made available to a representative of a department, agency, or instrumentality of the United States Government or a State or local authority responding to an accident or incident involving the motor vehicle, train, vessel, aircraft, or facility.

(d) Disclosure to Emergency Response Authorities.—When an incident involving hazardous material being transported in commerce occurs, the person transporting the material, immediately on request of appropriate emergency response authorities, shall disclose to the authorities information about the material.

§5111. Rail tank cars

After July 1, 1991, a rail tank car built before January 1, 1971, may be used to transport hazardous material in commerce only if the air brake equipment support attachments of the car comply with the standards for attachments contained in parts 179.100-16 and 179.200-19 of title 49, Code of Federal Regulations, in effect on November 16, 1990.

§5112. Highway routing of hazardous material

(a) Application.—(1) This section applies to a motor vehicle only if the vehicle is transporting hazardous material in commerce for which placarding of the vehicle is required under regulations prescribed under this chapter. However, the Secretary of Transportation by regulation may extend application of this section or a standard prescribed under subsection (b) of this section to—

(A) any use of a vehicle under this paragraph to transport any hazardous material in commerce; and

(B) any motor vehicle used to transport hazardous material in commerce.

(2) Except as provided by subsection (d) of this section and section 5125(c) of this title, each State and Indian tribe may establish, maintain, and enforce—

(A) designations of specific highway routes over which hazardous material may and may not be transported by motor vehicle; and

(B) limitations and requirements related to highway routing.

(b) STANDARDS FOR STATES AND INDIAN TRIBES.—(1) Not later than May 16, 1992, the Secretary, in consultation with the States, shall prescribe by regulation standards for States and Indian tribes to use in carrying out subsection (a) of this section. The standards shall include—

(A) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe shall enhance public safety in the area subject to the jurisdiction of the State or tribe and in areas of the United States not subject to the jurisdiction of the State or tribe and directly affected by the designation, limitation, or requirement;

(B) minimum procedural requirements to ensure public participation when the State or Indian tribe is establishing a highway routing designation, limitation, or requirement;

(C) a requirement that, in establishing a highway routing designation, limitation, or requirement, a State or Indian tribe consult with appropriate State, local, and tribal officials having jurisdiction over areas of the United States not subject to the jurisdiction of that State or tribe establishing the designation, limitation, or requirement and with affected industries;

(D) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe shall ensure through highway routing for the transportation of hazardous material between adjacent areas;

(E) a requirement that a highway routing designation, limitation, or requirement of one State or Indian tribe affecting the transportation of hazardous material in another State or tribe may be established, maintained, and enforced by the State or tribe establishing the designation, limitation, or requirement only if—

(i) the designation, limitation, or requirement is agreed to by the other State or tribe within a reasonable period or is approved by the Secretary under subsection (d) of this section; and

(ii) the designation, limitation, or requirement is not an unreasonable burden on commerce;

(F) a requirement that establishing a highway routing designation, limitation, or requirement of a State or Indian tribe be completed in a timely way;

(G) a requirement that a highway routing designation, limitation, or requirement of a State or Indian tribe provide reasonable routes for motor vehicles transporting hazardous material to reach terminals, facilities for food, fuel, repairs, and rest, and places to load and unload hazardous material;

(H) a requirement that a State be responsible—

(i) for ensuring that political subdivisions of the State comply with standards prescribed under this subsection in establishing, maintaining, and enforcing a highway routing designation, limitation, or requirement; and

(ii) for resolving a dispute between political subdivisions; and

(I) a requirement that, in carrying out subsection (a) of this section, a State or Indian tribe shall consider—

(i) population densities;

(ii) the types of highways;

(iii) the types and amounts of hazardous material;

(iv) emergency response capabilities;

(v) the results of consulting with affected persons;

(vi) exposure and other risk factors;

(vii) terrain considerations;

(viii) the continuity of routes;

(ix) alternative routes;

(x) the effects on commerce;

(xi) delays in transportation; and

(xii) other factors the Secretary considers appropriate.

(2) The Secretary may not assign a specific weight that a State or Indian tribe shall use when considering the factors under paragraph (1)(I) of this subsection.

(c) LIST OF ROUTE DESIGNATIONS.—In coordination with the States, the Secretary shall update and publish periodically a list of currently effective hazardous material highway route designations.

(d) RESOLVING DISPUTES.—(1) Not later than May 16, 1992, the Secretary shall prescribe regulations for resolving a dispute related to through highway routing or to an agreement with a proposed highway route designation, limitation, or requirement between or among States, political subdivisions of different States, or Indian tribes.

(2) A State or Indian tribe involved in a dispute under this subsection may petition the Secretary to resolve the dispute. The Secretary shall resolve the dispute not later than one year after receiving the petition. The resolution shall provide the greatest level of highway safety without being an unreasonable burden on commerce and shall ensure compliance with standards prescribed under subsection (b) of this section.

(3)(A) After a petition is filed under this subsection, an action about the subject matter of the dispute may be brought in a court only after the earlier of—

(i) the day the Secretary issues a final decision; or

(ii) the last day of the one-year period beginning on the day the Secretary receives the petition.

(B) A State or Indian tribe adversely affected by a decision of the Secretary under this subsection may bring a civil action for judicial review of the decision not later than 89 days after the day the decision becomes final.

(e) RELATIONSHIP TO OTHER LAWS.—This section and regulations prescribed under this section do not affect sections 31111 and 31113 of this title or section 127 of title 23.

(f) EXISTING REGULATIONS.—The Secretary is not required to amend or again prescribe regulations related to highway routing designations over which radioactive material may and may not be transported by motor vehicles, and limitations and requirements related to the routing, that the Secretary prescribed before November 16, 1990, and that are in effect on November 16, 1990.

§5113. Unsatisfactory safety rating

(a) PROHIBITED TRANSPORTATION.—A motor carrier receiving an unsatisfactory safety rating from the Secretary of Transportation has 45 days to improve the rating to conditional or satisfactory. Beginning on the 46th day and until the motor carrier receives a conditional or satisfactory rating, a motor carrier not having received a conditional or satisfactory rating during the 45-day period may not operate a commercial motor vehicle (as defined in section 31132 of this title)—

(1) to transport hazardous material for which placarding of a motor vehicle is required under regulations prescribed under this chapter; or

(2) to transport more than 15 individuals.

(b) RATING REVIEW.—The Secretary shall review the factors that resulted in a motor carrier receiving an unsatisfactory rating not later than 30 days after the motor carrier requests a review.

(c) PROHIBITED GOVERNMENT USE.—A department, agency, or instrumentality of the United States Government may not use a motor carrier that has an unsatisfactory rating from the Secretary—

(1) to transport hazardous material for which placarding of a motor vehicle is required under regulations prescribed under this chapter; or

(2) to transport more than 15 individuals.

(d) PUBLIC AVAILABILITY AND UPDATING OF RATINGS.—Not later than November 3, 1991, the Secretary, in consultation with the Interstate Commerce Commission, shall prescribe regulations amending the motor carrier safety regulations in subchapter B of chapter III of title 49, Code of Federal Regulations, to establish a system to make readily available to the public, and update periodically, the safety ratings of motor carriers that have unsatisfactory ratings from the Secretary.

§5114. Air transportation of ionizing radiation material

(a) TRANSPORTING IN AIR COMMERCE.—Material that emits ionizing radiation spontaneously may be transported on a passenger-carrying aircraft in air commerce (as defined in section 40102(a) of this title) only if the material is intended for a use in, or incident to, research or medical diagnosis or treatment and does not present an unreasonable hazard to health and safety when being prepared for, and during, transportation.

(b) PROCEDURES.—The Secretary of Transportation shall prescribe procedures for monitoring and enforcing regulations prescribed under this section.

(c) NONAPPLICATION.—This section does not apply to material the Secretary decides does not pose a significant hazard to health or safety when transported because of its low order of radioactivity.

§5115. Training curriculum for the public sector

(a) DEVELOPMENT AND UPDATING.—Not later than November 16, 1992, in coordination with the Director of the Federal Emergency Management Agency, Chairman of the Nuclear Regulatory Commission, Administrator of the Environmental Protection Agency, Secretaries of Labor, Energy, and Health and Human Services, and Director of the National Institute of Environmental Health Sciences, and using the existing coordinating mechanisms of the national response team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee, the Secretary of Transportation shall develop and update periodically a curriculum consisting of a list of courses necessary to train public sector emergency response and preparedness teams. Only in developing the curriculum, the Secretary of Transportation shall consult with regional response teams established under the national contingency plan established under section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605), representatives of commissions established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001), persons (including governmental entities) that provide training for responding to accidents and incidents involving the transportation of hazardous material, and representatives of persons that respond to those accidents and incidents.

(b) REQUIREMENTS.—The curriculum developed under subsection (a) of this section—

(1) shall include—

(A) a recommended course of study to train public sector employees to respond to an accident or incident involving the transportation of hazardous material and to plan for those responses;

(B) recommended basic courses and minimum number of hours of instruction necessary for public sector employees to be able to respond safely and efficiently to an accident or incident involving the transportation of hazardous material and to plan those responses; and

(C) appropriate emergency response training and planning programs for public sector employees developed under other United States Government grant programs, including those developed with grants made under section 126 of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9660a); and

(2) may include recommendations on material appropriate for use in a recommended basic course described in clause (1)(B) of this subsection.

(c) TRAINING ON COMPLYING WITH LEGAL REQUIREMENTS.—A recommended basic course described in subsection (b)(1)(B) of this section shall provide the training necessary for public sector employees to comply with—

(1) regulations related to hazardous waste operations and emergency response contained in part 1910 of title 29, Code of Federal Regulations, prescribed by the Secretary of Labor;

(2) regulations related to worker protection standards for hazardous waste operations contained in part 311 of title 40, Code of Federal Regulations, prescribed by the Administrator; and

(3) standards related to emergency response training prescribed by the National Fire Protection Association.

(d) DISTRIBUTION AND PUBLICATION.—With the national response team—

(1) the Director of the Federal Emergency Management Agency shall distribute the curriculum and any updates to the curriculum to the regional response teams and all committees and commissions established under section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001); and

(2) the Secretary of Transportation may publish a list of programs that uses a course developed under this section for training public sector employees to respond to an accident or incident involving the transportation of hazardous material.

§5116. Planning and training grants, monitoring, and review

(a) PLANNING GRANTS.—(1) The Secretary of Transportation shall make grants to States—

(A) to develop, improve, and carry out emergency plans under the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.), including ascertaining flow patterns of hazardous material in a State and between States; and

(B) to decide on the need for a regional hazardous material emergency response team.

(2) The Secretary of Transportation may make a grant to a State under paragraph (1) of this subsection in a fiscal year only if the State—

(A) certifies that the total amount the State expends (except amounts of the United States Government) to develop, improve, and carry out emergency plans under the Act will at least equal the average level of expenditure for the last 2 fiscal years; and

(B) agrees to make available at least 75 percent of the amount of the grant under paragraph (1) of this subsection in the fiscal year to local emergency planning committees established under section 301(c) of the Act (42 U.S.C. 11001(c)) to develop emergency plans under the Act.

(b) TRAINING GRANTS.—(1) The Secretary of Transportation shall make grants to States and Indian tribes to train public sector employees to respond to accidents and incidents involving hazardous material.

(2) The Secretary of Transportation may make a grant under paragraph (1) of this subsection in a fiscal year—

(A) to a State or Indian tribe only if the State or tribe certifies that the total amount the State or tribe expends (except amounts of the Government) to train public sector employees to respond to an accident or incident involving hazardous material will at least equal the average level of expenditure for the last 2 fiscal years;

(B) to a State or Indian tribe only if the State or tribe makes an agreement with the Secretary that the State or tribe will use in that fiscal year, for training public sector employees to respond to an accident or incident involving hazardous material—

(i) a course developed or identified under section 5115 of this title; or

(ii) another course the Secretary decides is consistent with the objectives of this section; and

(C) to a State only if the State agrees to make available at least 75 percent of the amount of the grant under paragraph (1) of this subsection in the fiscal year for training public sector employees a political subdivision of the State employs or uses.

(3) A grant under this subsection may be used—

(A) to pay—

(i) the tuition costs of public sector employees being trained;

(ii) travel expenses of those employees to and from the training facility;

(iii) room and board of those employees when at the training facility; and

(iv) travel expenses of individuals providing the training;

(B) by the State, political subdivision, or Indian tribe to provide the training; and

(C) to make an agreement the Secretary of Transportation approves authorizing a person (including an authority of a State or political subdivision of a State or Indian tribe) to provide the training—

(i) if the agreement allows the Secretary and the State or tribe to conduct random examinations, inspections, and audits of the training without prior notice; and

(ii) if the State or tribe conducts at least one on-site observation of the training each year.

(4) The Secretary of Transportation shall allocate amounts made available for grants under this subsection for a fiscal year among eligible States and Indian tribes based on the needs of the States and tribes for emergency response training. In making a decision about those needs, the Secretary shall consider—

(A) the number of hazardous material facilities in the State or on land under the jurisdiction of the tribe;

(B) the types and amounts of hazardous material transported in the State or on that land;

(C) whether the State or tribe imposes and collects a fee on transporting hazardous material;

(D) whether the fee is used only to carry out a purpose related to transporting hazardous material; and

(E) other factors the Secretary decides are appropriate to carry out this subsection.

(c) COMPLIANCE WITH CERTAIN LAW.—The Secretary of Transportation may make a grant to a State under this section in a fiscal year only if the State certifies that the State complies with sections 301 and 303 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001, 11003).

(d) APPLICATIONS.—A State or Indian tribe interested in receiving a grant under this section shall submit an application to the Secretary of Transportation. The application must be submitted at the time, and contain information, the Secretary requires by regulation to carry out the objectives of this section.

(e) GOVERNMENT'S SHARE OF COSTS.—A grant under this section is for 80 percent of the cost the State or Indian tribe incurs in the fiscal year to carry out the activity for which the grant is made. Amounts of the State or tribe under subsections (a)(2)(A) and (b)(2)(A) of this section are not part of the non-Government share under this subsection.

(f) MONITORING AND TECHNICAL ASSISTANCE.—In coordination with the Secretaries of Transportation and Energy, Administrator of the Environmental Protection Agency, and Director of the National Institute of Environmental Health Sciences, the Director of the Federal Emergency Management Agency shall monitor public sector emergency response planning and training for an accident or incident involving hazardous material. Considering the results of the monitoring, the Secretaries, Administrator, and Directors each shall provide technical assistance to a State, political subdivision of a State, or Indian tribe for carrying out emergency response training and planning for an accident or incident involving hazardous material and shall coordinate the assistance using the existing coordinating mechanisms of the national response team and, for radioactive material, the Federal Radiological Preparedness Coordinating Committee.

(g) DELEGATION OF AUTHORITY.—To minimize administrative costs and to coordinate Government grant programs for emergency response training and planning, the Secretary of Transportation may delegate to the Directors of the Federal Emergency Management Agency and National Institute of Environmental Health Sciences, Chairman of the Nuclear Regulatory Commission, Administrator of the Environmental Protection Agency, and Secretaries of Labor and Energy any of the following:

(1) authority to receive applications for grants under this section.

(2) authority to review applications for technical compliance with this section.

(3) authority to review applications to recommend approval or disapproval.

(4) any other ministerial duty associated with grants under this section.

(h) MINIMIZING DUPLICATION OF EFFORT AND EXPENSES.—The Secretaries of Transportation, Labor, and Energy, Directors of the Federal Emergency Management Agency and National Institute of Environmental Health Sciences, Chairman of the Nuclear Regulatory Commission, and Administrator of the Environmental Protection Agency shall review periodically, with the head of each department, agency, or instrumentality of the Government, all emergency response and preparedness training programs of that department, agency, or instrumentality to minimize duplication of effort and expense of the department, agency, or instrumentality in carrying out the programs and shall take necessary action to minimize duplication.

(i) ANNUAL REGISTRATION FEE ACCOUNT AND ITS USES.—The Secretary of the Treasury shall establish an account in the Treasury into which the Secretary of the Treasury shall deposit amounts the Secretary of Transportation collects under section 5108(g)(2)(A) of this title and transfers to the Secretary of the Treasury under section 5108(g)(2)(C) of this title. Without further appropriation, amounts in the account are available—

(1) to make grants under this section and section 5107(e) of this title;

(2) to monitor and provide technical assistance under subsection (f) of this section; and

(3) to pay administrative costs of carrying out this section and sections 5107(e), 5108(g)(2), and 5115 of this title, except that not more than 10 percent of the amounts made available from the account in a fiscal year may be used to pay those costs.

§5117. Exemptions and exclusions

(a) AUTHORITY TO EXEMPT.—(1) As provided under procedures prescribed by regulation, the Secretary of Transportation may issue an ex-

emption from this chapter or a regulation prescribed under section 5103(b), 5104, 5110, or 5112 of this title to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level—

(A) at least equal to the safety level required under this chapter; or

(B) consistent with the public interest and this chapter, if a required safety level does not exist.

(2) An exemption under this subsection is effective for not more than 2 years and may be renewed on application to the Secretary.

(b) APPLICATIONS.—When applying for an exemption or renewal of an exemption under this section, the person must provide a safety analysis prescribed by the Secretary that justifies the exemption. The Secretary shall publish in the Federal Register notice that an application for an exemption has been filed and shall give the public an opportunity to inspect the safety analysis and comment on the application. This subsection does not require the release of information protected by law from public disclosure.

(c) EXCLUSIONS.—(1) The Secretary shall exclude, in any part, from this chapter and regulations prescribed under this chapter—

(A) a public vessel (as defined in section 2101 of title 46);

(B) a vessel exempted under section 3702 of title 46 from chapter 37 of title 46; and

(C) a vessel to the extent it is regulated under the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221 et seq.).

(2) This chapter and regulations prescribed under this chapter do not prohibit—

(A) or regulate transportation of a firearm (as defined in section 232 of title 18), or ammunition for a firearm, by an individual for personal use; or

(B) transportation of a firearm or ammunition in commerce.

(d) LIMITATION ON AUTHORITY.—Unless the Secretary decides that an emergency exists, an exemption or renewal granted under this section is the only way a person subject to this chapter may be exempt from this chapter.

§5118. Inspectors

(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall maintain the employment of 30 hazardous material safety inspectors more than the total number of safety inspectors authorized for the fiscal year that ended September 30, 1990, for the Federal Railroad Administration, the Federal Highway Administration, and the Research and Special Programs Administration.

(b) ALLOCATION TO PROMOTE SAFETY IN TRANSPORTING RADIOACTIVE MATERIAL.—(1) The Secretary shall ensure that 10 of the 30 additional inspectors focus on promoting safety in transporting radioactive material, as defined by the Secretary, including inspecting—

(A) at the place of origin, shipments of high-level radioactive waste or nuclear spent material (as those terms are defined in section 5105(a) of this title); and

(B) to the maximum extent practicable shipments of radioactive material that are not high-level radioactive waste or nuclear spent material.

(2) In carrying out their duties, those 10 additional inspectors shall cooperate to the greatest extent possible with safety inspectors of the Nuclear Regulatory Commission and appropriate State and local government officials.

(3) Those 10 additional inspectors shall be allocated as follows:

(A) one to the Research and Special Programs Administration.

(B) 3 to the Federal Railroad Administration.

(C) 3 to the Federal Highway Administration.

(D) the other 3 among the administrations referred to in clauses (A)-(C) of this paragraph as the Secretary decides.

(c) ALLOCATION OF OTHER INSPECTORS.—The Secretary shall allocate, as the Secretary decides, the 20 additional inspectors authorized under this section and not allocated under subsection (b) of this section among the administrations referred to in subsection (b)(3)(A)-(C) of this section.

§5119. Uniform forms and procedures

(a) WORKING GROUP.—The Secretary of Transportation shall establish a working group of State and local government officials, including representatives of the National Governors' Association, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, and the National Conference of State Legislatures. The purposes of the working group are—

(1) to establish uniform forms and procedures for States that register persons that transport or cause to be transported hazardous material by motor vehicle; and

(2) to decide whether to limit the filing of any State registration form and collection of filing fees to the State in which the person resides or has its principal place of business.

(b) CONSULTATION AND REPORTING.—The working group—

(1) shall consult with persons subject to registration requirements described in subsection (a) of this section; and

(2) not later than November 16, 1993, shall submit to the Secretary, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Public Works and Transportation of the House of Representatives a final report that contains—

(A) a detailed statement of its findings and conclusions; and

(B) its joint recommendations on the matters referred to in subsection (a) of this section.

(c) REGULATIONS ON RECOMMENDATIONS.—(1) The Secretary shall prescribe regulations to carry out the recommendations contained in the report submitted under subsection (b) of this section with which the Secretary agrees. The regulations shall be prescribed by the later of the last day of the 3-year period beginning on the date the working group submitted its report or the last day of the 90-day period beginning on the date on which at least 26 States adopt all of the recommendations of the report. A regulation prescribed under this subsection may not define or limit the amount of a fee a State may impose or collect.

(2) A regulation prescribed under this subsection takes effect one year after it is prescribed. The Secretary may extend the one-year period for an additional year for good cause. After a regulation is effective, a State may establish, maintain, or enforce a requirement related to the same subject matter only if the requirement is the same as the regulation.

(3) In consultation with the working group, the Secretary shall develop a procedure to eliminate differences in how States carry out a regulation prescribed under this subsection.

(d) RELATIONSHIP TO OTHER LAWS.—The Federal Advisory Committee Act (5 App. U.S.C.) does not apply to the working group.

§5120. International uniformity of standards and requirements

(a) PARTICIPATION IN INTERNATIONAL FORUMS.—Subject to guidance and direction from the Secretary of State, the Secretary of Transportation shall participate in international forums that establish or recommend mandatory standards and requirements for transporting hazardous material in international commerce.

(b) CONSULTATION.—The Secretary of Transportation may consult with interested authorities to ensure that, to the extent practicable, regulations the Secretary prescribes under sections 5103(b), 5104, 5110, and 5112 of this title are consistent with standards related to transporting hazardous material that international authorities adopt.

(c) DIFFERENCES WITH INTERNATIONAL STANDARDS AND REQUIREMENTS.—This section—

(1) does not require the Secretary of Transportation to prescribe a standard identical to a standard adopted by an international authority if the Secretary decides the standard is unnecessary or unsafe; and

(2) does not prohibit the Secretary from prescribing a safety requirement more stringent than a requirement included in a standard adopted by an international authority if the Secretary decides the requirement is necessary in the public interest.

§5121. Administrative

(a) GENERAL AUTHORITY.—To carry out this chapter, the Secretary of Transportation may investigate, make reports, issue subpoenas, conduct hearings, require the production of records and property, take depositions, and conduct research, development, demonstration, and training activities. After notice and an opportunity for a hearing, the Secretary may issue an order requiring compliance with this chapter or a regulation prescribed under this chapter.

(b) RECORDS, REPORTS, AND INFORMATION.—A person subject to this chapter shall—

(1) maintain records, make reports, and provide information the Secretary by regulation or order requires; and

(2) make the records, reports, and information available when the Secretary requests.

(c) INSPECTION.—(1) The Secretary may authorize an officer, employee, or agent to inspect, at a reasonable time and in a reasonable way, records and property related to—

(A) manufacturing, fabricating, marking, maintaining, reconditioning, repairing, testing, or distributing a package or container for use by a person in transporting hazardous material in commerce; or

(B) the transportation of hazardous material in commerce.

(2) An officer, employee, or agent under this subsection shall display proper credentials when requested.

(d) FACILITY, STAFF, AND REPORTING SYSTEM ON RISKS, EMERGENCIES, AND ACTIONS.—(1) The Secretary shall—

(A) maintain a facility and technical staff sufficient to provide, within the United States Government, the capability of evaluating a risk related to the transportation of hazardous material and material alleged to be hazardous;

(B) maintain a central reporting system and information center capable of providing information and advice to law enforcement and firefighting personnel, other interested individuals, and officers and employees of the Government and State and local governments on meeting an emergency related to the transportation of hazardous material; and

(C) conduct a continuous review on all aspects of transporting hazardous material to decide on and take appropriate actions to ensure safe transportation of hazardous material.

(2) Paragraph (1) of this subsection does not prevent the Secretary from making a contract with a private entity for use of a supplemental reporting system and information center operated and maintained by the contractor.

(e) ANNUAL REPORT.—The Secretary shall submit to the President, for submission to Congress, not later than June 15th of each year, a report about the transportation of hazardous material during the prior calendar year. The report shall include—

(1) a statistical compilation of accidents and casualties related to the transportation of hazardous material;

(2) a list and summary of applicable Government regulations, criteria, orders, and exemptions;

(3) a summary of the basis for each exemption;

(4) an evaluation of the effectiveness of enforcement activities and the degree of voluntary compliance with regulations;

(5) a summary of outstanding problems in carrying out this chapter in order of priority; and

(6) recommendations for appropriate legislation.

§5122. Enforcement

(a) GENERAL.—At the request of the Secretary of Transportation, the Attorney General may bring a civil action to enforce this chapter or a regulation prescribed or order issued under this chapter. The court may award appropriate relief, including punitive damages.

(b) IMMINENT HAZARDS.—(1) If the Secretary has reason to believe that an imminent hazard exists, the Secretary may bring a civil action—

(A) to suspend or restrict the transportation of the hazardous material responsible for the hazard; or

(B) to eliminate or ameliorate the hazard.

(2) On request of the Secretary, the Attorney General shall bring an action under paragraph (1) of this subsection.

§5123. Civil penalty

(a) PENALTY.—(1) A person that knowingly violates this chapter or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of at least $250 but not more than $25,000 for each violation. A person acts knowingly when—

(A) the person has actual knowledge of the facts giving rise to the violation; or

(B) a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge.

(2) A separate violation occurs for each day the violation, committed by a person that transports or causes to be transported hazardous material, continues.

(b) HEARING REQUIREMENT.—The Secretary of Transportation may find that a person has violated this chapter or a regulation prescribed under this chapter only after notice and an opportunity for a hearing. The Secretary shall impose a penalty under this section by giving the person written notice of the amount of the penalty.

(c) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under this section, the Secretary shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue to do business; and

(3) other matters that justice requires.

(d) COMPROMISE.—The Secretary may compromise the amount of a civil penalty imposed under this section before referral to the Attorney General.

(e) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(f) DEPOSITING AMOUNTS COLLECTED.—Amounts collected under this section shall be deposited in the Treasury as miscellaneous receipts.

§5124. Criminal penalty

A person knowingly violating section 5104(b) of this title or willfully violating this chapter or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both.

§5125. Preemption

(a) GENERAL.—Except as provided in subsections (b), (c), and (e) of this section, a requirement of a State, political subdivision of a State, or Indian tribe is preempted if—

(1) complying with a requirement of the State, political subdivision, or tribe and a requirement of this chapter or a regulation prescribed under this chapter is not possible; or

(2) the requirement of the State, political subdivision, or tribe, as applied or enforced, is an obstacle to accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

(b) SUBSTANTIVE DIFFERENCES.—(1) Except as provided in subsection (c) of this section, a law, regulation, order, or other requirement of a State, political subdivision of a State, or Indian tribe about any of the following subjects, that is not substantively the same as a provision of this chapter or a regulation prescribed under this chapter, is preempted:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

(2) If the Secretary of Transportation prescribes or has prescribed under section 5103(b), 5104, 5110, or 5112 of this title or prior comparable provision of law a regulation or standard related to a subject referred to in paragraph (1) of this subsection, a State, political subdivision of a State, or Indian tribe may prescribe, issue, maintain, and enforce only a law, regulation, standard, or order about the subject that is substantively the same as a provision of this chapter or a regulation prescribed or order issued under this chapter. The Secretary shall decide on and publish in the Federal Register the effective date of section 5103(b) of this title for any regulation or standard about any of those subjects that the Secretary prescribes after November 16, 1990. However, the effective date may not be earlier than 90 days after the Secretary prescribes the regulation or standard nor later than the last day of the 2-year period beginning on the date the Secretary prescribes the regulation or standard.

(3) If a State, political subdivision of a State, or Indian tribe imposes a fine or penalty the Secretary decides is appropriate for a violation related to a subject referred to in paragraph (1) of this subsection, an additional fine or penalty may not be imposed by any other authority.

(c) COMPLIANCE WITH SECTION 5112(b) REGULATIONS.—(1) Except as provided in paragraph (2) of this subsection, after the last day of the 2-year period beginning on the date a regulation is prescribed under section 5112(b) of this title, a State or Indian tribe may establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with section 5112(b).

(2)(A) A highway routing designation, limitation, or requirement established before the date a regulation is prescribed under section 5112(b) of this title does not have to comply with section 5112(b)(1)(B), (C), and (F).

(B) This subsection and section 5112 of this title do not require a State or Indian tribe to comply with section 5112(b)(1)(I) if the highway routing designation, limitation, or requirement was established before November 16, 1990.

(C) The Secretary may allow a highway routing designation, limitation, or requirement to continue in effect until a dispute related to the designation, limitation, or requirement is resolved under section 5112(d) of this title.

(d) DECISIONS ON PREEMPTION.—(1) A person (including a State, political subdivision of a State, or Indian tribe) directly affected by a requirement of a State, political subdivision, or tribe may apply to the Secretary, as provided by regulations prescribed by the Secretary, for a decision on whether the requirement is preempted by subsection (a), (b)(1), or (c) of this section. The Secretary shall publish notice of the application in the Federal Register. After notice is published, an applicant may not seek judicial relief on the same or substantially the same issue until the Secretary takes final action on the application or until 180 days after the application is filed, whichever occurs first.

(2) After consulting with States, political subdivisions of States, and Indian tribes, the Secretary shall prescribe regulations for carrying out paragraph (1) of this subsection.

(3) Subsection (a) of this section does not prevent a State, political subdivision of a State, or Indian tribe, or another person directly affected by a requirement, from seeking a decision on preemption from a court instead of applying to the Secretary under paragraph (1) of this subsection.

(e) WAIVER OF PREEMPTION.—A State, political subdivision of a State, or Indian tribe may apply to the Secretary for a waiver of preemption of a requirement the State, political subdivision, or tribe acknowledges is preempted by subsection (a), (b)(1), or (c) of this section. Under a procedure the Secretary prescribes by regulation, the Secretary may waive preemption on deciding the requirement—

(1) provides the public at least as much protection as do requirements of this chapter and regulations prescribed under this chapter; and

(2) is not an unreasonable burden on commerce.

(f) JUDICIAL REVIEW.—A party to a proceeding under subsection (d) or (e) of this section may bring a civil action for judicial review of the decision of the Secretary not later than 60 days after the decision becomes final.

(g) FEES.—A State, political subdivision of a State, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response.

§5126. Relationship to other laws

(a) CONTRACTS.—A person under contract with a department, agency, or instrumentality of the United States Government that transports or causes to be transported hazardous material, or manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container that the person represents, marks, certifies, or sells as qualified for use in transporting hazardous material must comply with this chapter, regulations prescribed and orders issued under this chapter, and all other requirements of the Government, State and local governments, and Indian tribes (except a requirement preempted by a law of the United States) in the same way and to the same extent that any person engaging in that transportation, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing that is in or affects commerce must comply with the provision, regulation, order, or requirement.

(b) NONAPPLICATION.—This chapter does not apply to—

(1) a pipeline subject to regulation under chapter 601 of this title; or

(2) any matter that is subject to the postal laws and regulations of the United States under this chapter or title 18 or 39.

§5127. Authorization of appropriations

(a) GENERAL.—Not more than the following amounts may be appropriated to the Secretary of Transportation to carry out this chapter (except sections 5108(g)(2), 5115, 5116, and 5119):

(1) $16,000,000 for the fiscal year ending September 30, 1992.

(2) $18,000,000 for the fiscal year ending September 30, 1993.

(b) HAZMAT EMPLOYEE TRAINING.—Not more than $250,000 is available to the Director of the National Institute of Environmental Health Sciences from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5107(e) of this title.

(c) TRAINING CURRICULUM.—(1) Not more than $1,000,000 may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 1992, to carry out section 5115 of this title.

(2) Not more than $1,000,000 is available to the Secretary of Transportation from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5115 of this title.

(3) The Secretary of Transportation may transfer to the Director of the Federal Emergency Management Agency from amounts available under this subsection amounts necessary to carry out section 5115(d)(1) of this title.

(d) PLANNING AND TRAINING.—(1) Not more than $5,000,000 is available to the Secretary of Transportation from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5116(a) of this title.

(2) Not more than $7,300,000 is available to the Secretary of Transportation from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5116(b) of this title.

(3) Not more than the following amounts are available from the account established under section 5116(i) of this title for each of the fiscal years ending September 30, 1993–1998, to carry out section 5116(f) of this title:

(A) $750,000 each to the Secretaries of Transportation and Energy, Administrator of the Environmental Protection Agency, and Director of the Federal Emergency Management Agency.

(B) $200,000 to the Director of the National Institute of Environmental Health Sciences.

(e) UNIFORM FORMS AND PROCEDURES.—Not more than $400,000 may be appropriated to the Secretary of Transportation for each of the fiscal years ending September 30, 1992, and 1993, to carry out section 5119 of this title.

(f) CREDITS TO APPROPRIATIONS.—The Secretary of Transportation may credit to any appropriation to carry out this chapter an amount received from a State, Indian tribe, or other public authority or private entity for expenses the Secretary incurs in providing training to the State, authority, or entity.

(g) AVAILABILITY OF AMOUNTS.—Amounts available under subsections (c)–(e) of this section remain available until expended.

CHAPTER 53—MASS TRANSPORTATION

Sec.

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§5301. Policies, findings, and purposes

(a) DEVELOPMENT OF TRANSPORTATION SYSTEMS.—It is in the interest of the United States to encourage and promote the development of transportation systems that embrace various modes of transportation and efficiently maximize mobility of individuals and goods in and through urbanized areas and minimize transportation-related fuel consumption and air pollution.

(b) GENERAL FINDINGS.—Congress finds that—

(1) more than 70 percent of the population of the United States is located in rapidly expanding urban areas that generally cross the boundary lines of local jurisdictions and often extend into at least 2 States;

(2) the welfare and vitality of urban areas, the satisfactory movement of people and goods within those areas, and the effectiveness of programs aided by the United States Government are jeopardized by deteriorating or inadequate urban transportation service and facilities, the intensification of traffic congestion, and the lack of coordinated, comprehensive, and continuing development planning;

(3) transportation is the lifeblood of an urbanized society, and the health and welfare of an urbanized society depend on providing efficient, economical, and convenient transportation in and between urban areas;

(4) for many years the mass transportation industry capably and profitably satisfied the transportation needs of the urban areas of the United States but in the early 1970's continuing even minimal mass transportation service in urban areas was threatened because maintaining that transportation service was financially burdensome;

(5) ending that transportation, or the continued increase in its cost to the user, is undesirable and may affect seriously and adversely the welfare of a substantial number of lower income individuals;

(6) some urban areas were developing preliminary plans for, or carrying out, projects in the early 1970's to revitalize their mass transportation operations;

(7) significant mass transportation improvements are necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly individuals, individuals with disabilities, and economically disadvantaged individuals in urban and rural areas of the United States;

(8) financial assistance by the Government to develop efficient and coordinated mass transportation systems is essential to solve the urban transportation problems referred to in clause (2) of this subsection; and

(9) immediate substantial assistance by the Government is needed to enable mass transportation systems to continue providing vital transportation service.

(c) RAPID URBANIZATION AND CONTINUING POPULATION DISPERSAL.—Rapid urbanization and continuing dispersal of the population and activities in urban areas have made the ability of all citizens to move quickly and at a reasonable cost an urgent problem of the Government.

(d) ELDERLY INDIVIDUALS AND INDIVIDUALS WITH DISABILITIES.—It is the policy of the Government that elderly individuals and individuals with disabilities have the same right as other individuals to use mass transportation service and facilities. Special efforts shall be made in planning and designing mass transportation service and facilities to ensure that mass transportation can be used by elderly individuals and individuals with disabilities. All programs of the Government assisting mass transportation shall carry out this policy.

(e) PRESERVING THE ENVIRONMENT.—It is the policy of the Government that special effort shall be made to preserve the natural beauty of the countryside, public park and recreation lands, wildlife and waterfowl refuges, and important historical and cultural assets when planning, designing, and carrying out an urban mass transportation capital project with assistance from the Government under sections 5309 and 5310 of this title.

(f) GENERAL PURPOSES.—The purposes of this chapter are—

(1) to assist in developing improved mass transportation equipment, facilities, techniques, and methods with the cooperation of public and private mass transportation companies;

(2) to encourage the planning and establishment of areawide urban mass transportation systems needed for economical and desirable urban development with the cooperation of public and private mass transportation companies;

(3) to assist States and local governments and their authorities in financing areawide urban mass transportation systems that are to be operated by public or private mass transportation companies as decided by local needs;

(4) to provide financial assistance to State and local governments and their authorities to help carry out national goals related to mobility for elderly individuals, individuals with disabilities, and economically disadvantaged individuals; and

(5) to establish a partnership that allows a community, with financial assistance from the Government, to satisfy its urban mass transportation requirements.

§5302. Definitions

(a) GENERAL.—In this chapter—

(1) "capital project" means a project for—

(A) acquiring, constructing, supervising, or inspecting equipment or a facility for use in mass transportation, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, and acquiring rights of way), relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;

(B) rehabilitating a bus that extends the economic life of a bus for at least 5 years;

(C) remanufacturing a bus that extends the economic life of a bus for at least 8 years; or

(D) overhauling rail rolling stock.

(2) "chief executive officer of a State" includes the designee of the chief executive officer.

(3) "emergency regulation" means a regulation—

(A) that is effective temporarily before the expiration of the otherwise specified periods of time for public notice and comment under section 5334(b) of this title; and

(B) prescribed by the Secretary of Transportation as the result of a finding that a delay in the effective date of the regulation—

(i) would injure seriously an important public interest;

(ii) would frustrate substantially legislative policy and intent; or

(iii) would damage seriously a person or class without serving an important public interest.

(4) "fixed guideway" means a mass transportation facility—

(A) using and occupying a separate right of way or rail for the exclusive use of mass transportation and other high occupancy vehicles; or

(B) using a fixed catenary system and a right of way usable by other forms of transportation.

(5) "handicapped individual" means an individual who, because of illness, injury, age, congenital malfunction, or other incapacity or temporary or permanent disability (including an individual who is a wheelchair user or has semiambulatory capability), cannot use effectively, without special facilities, planning, or design, mass transportation service or a mass transportation facility.

(6) "local governmental authority" includes—

(A) a political subdivision of a State;

(B) an authority of at least one State or political subdivision of a State;

(C) an Indian tribe; and

(D) a public corporation, board, or commission established under the laws of a State.

(7) "mass transportation" means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, or sightseeing transportation.

(8) "net property cost" means the part of a project that reasonably cannot be financed from revenues.

(9) "new bus model" means a bus model (including a model using alternative fuel)—

(A) that has not been used in mass transportation in the United States before the date of production of the model; or

(B) used in mass transportation in the United States but being produced with a major change in configuration or components.

(10) "regulation" means any part of a statement of general or particular applicability of the Secretary of Transportation designed to carry out, interpret, or prescribe law or policy in carrying out this chapter.

(11) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(12) "urban area" means an area that includes a municipality or other built-up place that the Secretary of Transportation, after considering local patterns and trends of urban growth, decides is appropriate for a local mass transportation system to serve individuals in the locality.

(13) "urbanized area" means an area—

(A) encompassing at least an urbanized area within a State that the Secretary of Commerce designates; and

(B) designated an urbanized area within boundaries fixed by State and local officials and approved by the Secretary of Transportation.

(b) AUTHORITY TO MODIFY "HANDICAPPED INDIVIDUAL".—The Secretary of Transportation by regulation may modify the definition of subsection (a)(5) of this section as it applies to section 5307(d)(1)(D) of this title.

§5303. Metropolitan planning

(a) DEVELOPMENT REQUIREMENTS.—To carry out section 5301(a) of this title, metropolitan planning organizations designated under subsection (c) of this section, in cooperation with States, shall develop transportation plans and programs for State urbanized areas. The plans and programs for each area shall provide for developing transportation facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State, metropolitan area, and United States. The development process shall provide for consideration of all modes of transportation and shall be continuing, cooperative, and comprehensive to the degree appropriate, based on the complexity of the transportation problems.

(b) PLAN AND PROGRAM FACTORS.—In developing plans and programs under this section and sections 5304–5306 of this title, each metropolitan planning organization at least shall consider the following factors:

(1) preserving existing transportation facilities and, where practical, ways to meet transportation needs by using existing transportation facilities more efficiently.

(2) the consistency of transportation planning with United States Government, State, and local energy conservation programs, goals, and objectives.

(3) the need to relieve congestion and prevent congestion from occurring.

(4) the likely effect of transportation policy decisions on land use and development and the consistency of transportation plans and programs with short- and long-term land use and development plans.

(5) programming expenditures on transportation enhancement activities, as required under section 133 of title 23.

(6) the effects of all transportation projects to be undertaken in the metropolitan area, without regard to whether the projects are publicly financed.

(7) international border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation areas, monuments and historic sites, and military installations.

(8) the need for connecting roads in the metropolitan area with roads outside the area.

(9) the transportation needs identified by using the management systems required by section 303 of title 23.

(10) preserving rights of way for constructing future transportation projects, including identifying—

(A) unused rights of way that may be needed for future transportation corridors; and

(B) corridors where action is needed most to prevent destruction or loss.

(11) ways to enhance the efficient movement of freight.

(12) using life-cycle costs in designing and engineering bridges, tunnels, and pavement.

(13) the overall social, economic, energy, and environmental effects of transportation decisions.

(14) ways to expand and enhance mass transportation services and to increase usage of those services.

(15) capital investments that will result in increased security in mass transportation systems.

(c) DESIGNATING METROPOLITAN PLANNING ORGANIZATIONS.—(1) To carry out the planning process required by this section, a metropolitan planning organization shall be designated for each urbanized area with a population of more than 50,000—

(A) by agreement of the chief executive officer of a State and units of general local government representing at least 75 percent of the affected population (including the central city as defined by the Secretary of Commerce); or

(B) under procedures established by State or local law.

(2) In a metropolitan area designated as a transportation management area, the designated metropolitan planning organization, if redesignated after December 18, 1991, shall include local elected officials, officials of authorities that administer or operate major modes of transportation in the metropolitan area (including all transportation authorities included in the organization on June 1, 1991), and appropriate State officials.

(3) More than one metropolitan planning organization may be designated in an urbanized area (as defined by the Secretary of Commerce) only if the chief executive officer decides that the size and complexity of the urbanized area make designation of more than one organization appropriate.

(4) A designation is effective until—

(A) the organization is redesignated under paragraph (3) of this subsection; or

(B) revoked—

(i) by agreement of the chief executive officer and units of general local government representing at least 75 percent of the affected population; or

(ii) as otherwise provided by State or local procedures.

(5)(A) The chief executive officer and units of general local government representing at least 75 percent of the affected population (including the central city as defined by the Secretary of Commerce) may redesignate by agreement a metropolitan planning organization when appropriate to carry out this section.

(B) A metropolitan planning organization shall be redesignated on request of one or more units of general local government representing at least 25 percent of the affected population (including the central city as defined by the Secretary of Commerce) in an urbanized area with a population of more than 5,000,000, but less than 10,000,000 or that is an extreme nonattainment area for ozone or carbon monoxide (as defined in the Clean Air Act (42 U.S.C. 7401 et seq.)).

(C) A metropolitan planning organization shall be redesignated using procedures established to carry out this paragraph.

(6) This subsection does not affect the authority, under State law in effect on December 18, 1991, of a public authority with multimodal transportation responsibilities—

(A) to develop plans and programs for a metropolitan planning organization to adopt; and

(B) to develop long-range capital plans, coordinate mass transportation services and projects, and carry out other activities under State law.

(d) METROPOLITAN AREA BOUNDARIES.—To carry out this section, the metropolitan planning organization and the chief executive officer shall decide by agreement on the boundaries of a metropolitan area. The area shall cover at least the existing urbanized area and the contiguous area expected to become urbanized within the 20-year forecast period and may include the Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area, as defined by the Secretary of Commerce. An area designated as an nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) shall include at least the boundaries of the nonattainment area, except as the chief executive officer and metropolitan planning organization otherwise agree.

(e) COORDINATION.—(1) The Secretary of Transportation shall establish requirements the Secretary considers appropriate to encourage chief executive officers and metropolitan plan-

ning organizations with responsibility for part of a multi-State metropolitan area to provide coordinated transportation planning for the entire area.

(2) Congress consents to at least 2 States making an agreement, not in conflict with a law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section related to interstate areas and localities in the States and establishing authorities the States consider desirable for making the agreement effective.

(3) If more than one metropolitan planning organization has authority in a metropolitan area or an area designated a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), each organization shall consult with the other organizations designated for the area and the State to coordinate plans and projects required by this section and sections 5304–5306 of this title.

(f) DEVELOPING LONG-RANGE PLANS.—(1) Each metropolitan planning organization shall prepare and update periodically, according to a schedule the Secretary of Transportation decides is appropriate, a long-range plan for its metropolitan area under the requirements of this section. The plan shall be in the form the Secretary considers appropriate and at least shall—

(A) identify transportation facilities (including major roadways, mass transportation, and multimodal and intermodal facilities) that should function as an integrated metropolitan transportation system, emphasizing transportation facilities that serve important United States and regional transportation functions;

(B) include a financial plan that—

(i) demonstrates how the long-range plan can be carried out;

(ii) indicates resources from public and private sources reasonably expected to be made available to carry out the plan; and

(iii) recommends innovative financing techniques, including value capture, tolls, and congestion pricing, to finance needed projects and programs;

(C) assess capital investment and other measures necessary—

(i) to ensure the preservation of the existing metropolitan transportation system, including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, and operations, maintenance, modernization, and rehabilitation of existing and future mass transportation facilities; and

(ii) to use exising transportation facilities most efficiently to relieve vehicular congestion and maximize the mobility of individuals and goods; and

(D) indicate appropriate proposed transportation enhancement activities.

(2) When formulating a long-range plan, the metropolitan planning organization shall consider the factors described in subsection (e) of this section as they are related to a 20-year forecast period.

(3) In a metropolitan area that is in a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.), the metropolitan planning organization shall coordinate the development of the long-range plan with the development of the transportation control measures of the State Implementation Plan required by the Act.

(4) Before approving a long-range plan, each metropolitan planning organization shall provide citizens, affected public agencies, representatives of mass transportation authority employees, private providers of transportation, and other interested parties with a reasonable opportunity to comment on the plan in a way the Secretary of Transportation considers appropriate.

(5) A long-range plan shall be—

(A) made readily available for public review; and

(B) submitted for information purposes to the chief executive officer of the State at the time and in the way the Secretary of Transportation establishes.

(g) GRANTS.—Under criteria the Secretary of Transportation establishes, the Secretary may make contracts for, and grants to, States, local governmental authorities, and authorities of the States and governmental authorities, or may make agreements with other departments, agencies, and instrumentalities of the Government, to plan, engineer, design, and evaluate a mass transportation project and for other technical studies, including—

(1) studies related to management, operations, capital requirements, and economic feasibility;

(2) evaluating previously financed projects; and

(3) other similar and related activities preliminary to and in preparation for constructing, acquiring, or improving the operation of facilities and equipment.

(h) BALANCED AND COMPREHENSIVE PLANNING.—(1) To the extent practicable, the Secretary of Transportation shall ensure that amounts made available under section 5338(h)(1) of this title to carry out this section and sections 5304–5306 of this title are used to support balanced and comprehensive transportation planning that considers the relationships among land use and all transportation modes, without regard to the programmatic source of the planning amounts.

(2)(A) The Secretary of Transportation shall apportion 80 percent of the amount made available under section 5338(h)(1) of this title to States in a ratio equal to the population in urbanized areas in each State divided by the total population in urbanized areas in all States, as shown by the latest available decennial census. A State may not receive less than .5 percent of the amount apportioned under this subparagraph.

(B) Amounts apportioned to a State under subparagraph (A) of this paragraph shall be allocated to metropolitan planning organizations in the State designated under this section under a formula—

(i) the State develops in cooperation with the metropolitan planning organizations;

(ii) the Secretary approves; and

(iii) that considers population in urbanized areas and provides an appropriate distribution for urbanized areas to carry out the cooperative processes described in this section.

(C) A State shall make amounts available promptly to eligible metropolitan planning organizations according to procedures the Secretary of Transportation approves.

(3)(A) The Secretary of Transportation shall apportion 20 percent of the amount made available under section 5338(h)(1) of this title to States to supplement allocations made under paragraph (2)(B) of this subsection for metropolitan planning organizations.

(B) Amounts under this paragraph shall be allocated under a formula that reflects the additional cost of carrying out planning, programming, and project selection responsibilities under this section and sections 5304–5306 of this title in those areas.

(4) To the maximum extent practicable, the Secretary of Transportation shall ensure that no metropolitan planning organization is allocated less than the amount it received by administrative formula under this section in the fiscal year that ended September 30, 1991. To carry out this subsection, the Secretary may make a proportionate reduction in other amounts made available to carry out section 5338(h)(1) of this title.

(5) Amounts available for an activity under this subsection are for 80 percent of the cost of the activity unless the Secretary of Transportation decides it is in the interests of the Government not to require a State or local match.

§5304. Transportation improvement program

(a) DEVELOPMENT AND UPDATE.—In cooperation with the State and affected mass transportation operators, a metropolitan planning organization designated for a metropolitan area shall develop a transportation improvement program for the area. In developing the program, the organization shall provide citizens, affected public agencies, representatives of transportation authority employees, other affected employee representatives, private providers of transportation, and other interested parties with a reasonable opportunity to comment on the proposed program. The program shall be updated at least once every 2 years and shall be approved by the organization and the chief executive officer of the State.

(b) CONTENTS.—A transportation improvement program for a metropolitan area shall include—

(1) a priority list of projects and parts of projects to be carried out in each 3-year period after the program is adopted; and

(2) a financial plan that—

(A) demonstrates how the progam can be carried out;

(B) indicates resources from public and private sources that reasonably are expected to be made available to carry out the plan; and

(C) recommends innovative financing techniques, including value capture, tolls, and congestion pricing, to finance needed projects.

(c) PROJECT SELECTION.—(1) Except as provided in section 5305(d)(1) of this title, the State, in cooperation with the metropolitan planning organization, shall select projects in a metropolitan area that involves United States Government participation. Selection shall comply with the transportation improvement program for the area.

(2) A transportation improvement program for a metropolitan area shall include—

(A) projects within the area that are proposed for financing under this chapter and title III of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 2087) and that are consistent with the long-range plan developed under section 5303(f) of this title; and

(B) a project or an identified phase of a project only if full financing reasonably can be anticipated to be available for the project in the period estimated for completion.

(d) NOTICE AND COMMENT.—Before approving a transportation improvement program, a metropolitan planning organization shall provide citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, and other interested parties with reasonable notice and an opportunity to comment on the proposed program.

(e) REGULATORY PROCEEDING.—Not later than June 18, 1992, the Secretary of Transportation shall begin a regulatory proceeding to conform review requirements for mass transportation projects under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to comparable requirements under that Act applicable to highway projects. This section and sections 5303, 5305, and 5306 of this title do not affect the applicability of the Act to mass transportation or highway projects.

§5305. Transportation management areas

(a) DESIGNATION.—The Secretary of Transportation shall designate as a transportation management area—

(1) each urbanized area with a population of more than 200,000; and

(2) any other area, including the Lake Tahoe Basin as defined in the Act of December 19, 1980 (Public Law 96–551, 94 Stat. 3233), when re-

quested by the chief executive officer and the metropolitan organization designated for the area or the affected local officials.

(b) TRANSPORTATION PLANS AND PROGRAMS.—Transportation plans and programs in a transportation management area shall be based on a continuing and comprehensive transportation planning process the metropolitan planning organization carries out in cooperation with the State and mass transportation operators.

(c) CONGESTION MANAGEMENT SYSTEM.—The transportation planning process under sections 5303, 5304, and 5306 of this title in a transportation management area shall include a congestion management system providing for effective management, through travel demand reduction and operational management strategies, of new and existing transportation facilities eligible for financing under this chapter and title III of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 2087). The Secretary shall establish a phase-in schedule to comply with sections 5303, 5304, and 5306.

(d) PROJECT SELECTION.—(1)(A) In consultation with the State, the metropolitan planning organization designated for a transportation management area shall select the projects to be carried out in the area with United States Government participation under this chapter or title III of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 2087), except projects of the National Highway System or under the Bridge and Interstate Maintenance programs.

(B) In cooperation with the metropolitan planning organization designated for a transportation management area, the State shall select the projects to be carried out in the area of the National Highway System or under the Bridge and Interstate Maintenance programs.

(2)(A) A selection under this subsection must comply with the transportation improvement program for the area.

(B) A selection under paragraph (1)(A) of this subsection must comply with priorities established in the program.

(e) CERTIFICATION.—(1) At least once every 3 years, the Secretary shall ensure and certify that each metropolitan planning organization in each transportation management area is carrying out its responsibilities under applicable laws of the United States. The Secretary may make the certification only if the organization is complying with section 134 of title 23 and other applicable requirements of laws of the United States and the organization and chief executive officer have approved a transportation improvement program for the area.

(2) If the Secretary does not certify before October 1, 1993, that a metropolitan planning organization is carrying out its responsibilities, the Secretary may withhold any part of the apportionment under section 104(b)(3) of title 23 attributed to the relevant metropolitan area under section 133(d)(3) of title 23 and capital amounts apportioned under section 5336 of this title. If an organization remains uncertified for more than 2 consecutive years after September 30, 1994, 20 percent of that apportionment and capital amounts shall be withheld. The withheld apportionments shall be restored when the Secretary certifies the organization.

(3) The Secretary may not withhold certification based on the policies and criteria a metropolitan planning organization or mass transportation grant recipient establishes under section 5306(a) of this title for deciding the feasibility of private enterprise participation.

(f) ADDITIONAL REQUIREMENTS FOR CERTAIN NONATTAINMENT AREAS.—Government amounts may be made available for a mass transportation project resulting in a significant increase in carrying capacity for single occupant vehicles in a transportation management area classified as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) only if the project is part of an approved congestion management system.

(g) AREAS NOT DESIGNATED TRANSPORTATION MANAGEMENT AREAS.—(1) The Secretary may provide for the development of abbreviated metropolitan transportation plans and programs the Secretary decides are appropriate to carry out this section and sections 5303, 5304, and 5306 of this title for metropolitan areas not designated transportation management areas under this section. The Secretary shall consider the complexity of transportation problems in those areas, including transportation-related air quality problems.

(2) The Secretary may not provide an abbreviated plan or program for a metropolitan area in a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.).

§5306. Private enterprise participation in metropolitan planning and transportation improvement programs and relationship to other limitations

(a) PRIVATE ENTERPRISE PARTICIPATION.—A plan or program required by section 5303, 5304, or 5305 of this title shall encourage to the maximum extent feasible the participation of private enterprise. If equipment or a facility already being used in an urban area is to be acquired under this chapter, the program shall provide that it be improved so that it will better serve the transportation needs of the area.

(b) RELATIONSHIP TO OTHER LIMITATIONS.—Sections 5303–5305 of this title do not authorize—

(1) a metropolitan planning organization to impose a legal requirement on a transportation facility, provider, or project not eligible under this chapter or title III of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 2087); and

(2) intervention in the management of a transportation authority.

§5307. Block grants

(a) DEFINITIONS.—In this section—

(1) "associated capital maintenance items" means equipment, tires, tubes, and material, each costing at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used.

(2) "designated recipient" means—

(A) a person designated, consistent with the planning process under sections 5303–5306 of this title, by the chief executive officer of a State, responsible local officials, and publicly owned operators of mass transportation to receive and apportion amounts under section 5336 of this title that are attributable to urbanized areas with a population of at least 200,000;

(B) a State or regional authority if the authority is responsible under the laws of a State for a capital project and for financing and directly providing mass transportation; or

(C) a recipient designated under section 5(b)(1) of the Federal Transit Act not later than January 5, 1983.

(b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may make grants under this section for capital projects and to finance the planning, improvement, and operating costs of equipment, facilities, and associated capital maintenance items for use in mass transportation, including the renovation and improvement of historic transportation facilities with related private investment.

(2) In a transportation management area designated under section 5305(a) of this title, amounts that cannot be used to pay operating expenses under this section also are available for a highway project if—

(A) that use is approved by the metropolitan planning organization under section 5303 of this title after appropriate notice and an opportunity for comment and appeal is provided to affected mass transportation providers; and

(B) the Secretary decides the amounts are not needed for investment required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(3) A grant for a capital project under this section also is available to finance the leasing of equipment and facilities for use in mass transportation, subject to regulations the Secretary prescribes limiting the grant to leasing arrangements that are more cost effective than acquisition or construction.

(4) A project for the reconstruction of equipment and material, each of which after reconstruction will have a fair market value of at least .5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used, is a capital project for an associated capital maintenance item under this section.

(5) Amounts under this section are available for a highway project under title 23 only if amounts used for the State or local share of the project are eligible to finance either a highway or mass transportation project.

(c) PUBLIC PARTICIPATION REQUIREMENTS.—Each recipient of a grant shall—

(1) make available to the public information on amounts available to the recipient under this section and the program of projects the recipient proposes to undertake;

(2) develop, in consultation with interested parties, including private transportation providers, a proposed program of projects for activities to be financed;

(3) publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the recipient;

(4) provide an opportunity for a public hearing in which to obtain the views of citizens on the proposed program of projects;

(5) ensure that the proposed program of projects provides for the coordination of mass transportation services assisted under section 5336 of this title with transportation services assisted from other United States Government sources;

(6) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and

(7) make the final program of projects available to the public.

(d) GRANT RECIPIENT REQUIREMENTS.—A recipient may receive a grant in a fiscal year only if—

(1) the recipient, within the time the Secretary prescribes, submits a final program of projects prepared under subsection (c) of this section and a certification for that fiscal year that the recipient (including a person receiving amounts from a chief executive officer of a State under this section)—

(A) has or will have the legal, financial, and technical capacity to carry out the program;

(B) has or will have satisfactory continuing control over the use of equipment and facilities;

(C) will maintain equipment and facilities;

(D) will ensure that elderly and handicapped individuals, or an individual presenting a medicare card issued to that individual under title II or XVIII of the Social Security Act (42 U.S.C. 401 et seq., 1395 et seq.), will be charged during non-peak hours for transportation using or involving a facility or equipment of a project financed under this chapter not more than 50 percent of the peak hour fare;

(E) in carrying out a procurement under this section—

(i) will use competitive procurement (as defined or approved by the Secretary);

(ii) will not use a procurement that uses exclusionary or discriminatory specifications; and

(iii) will comply with applicable Buy-American laws in carrying out a procurement;

(F) has complied with subsection (c) of this section;

(G) has available and will provide the required amounts as provided by subsection (e) of this section;

(H) will comply with sections 5301(a) and (d), 5303–5306, and 5310(a)–(d) of this title;

(I) has a locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation; and

(J)(i) will expend for each fiscal year for mass transportation security projects, including increased lighting in or adjacent to a mass transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, providing an emergency telephone line to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned mass transportation system, at least one percent of the amount the recipient receives for each fiscal year under section 5336 of this title; or

(ii) has decided that the expenditure for security projects is not necessary; and

(2) the Secretary accepts the certification.

(e) GOVERNMENT'S SHARE OF COSTS.—A grant of the Government for a capital project (including associated capital maintenance items) under this section is for 80 percent of the net project cost of the project. A recipient may provide additional local matching amounts. A grant for operating expenses may not be more than 50 percent of the net project cost of the project. The remainder of the net project cost shall be provided in cash from sources other than amounts of the Government or revenues from providing mass transportation (excluding revenues derived from the sale of advertising and concessions that are more than the amount of those revenues in the fiscal year that ended September 30, 1985). Transit system amounts that make up the remainder shall be from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

(f) STATEWIDE OPERATING ASSISTANCE.—(1) A State authority that is a designated recipient and providing mass transportation in at least 2 urbanized areas may apply for operating assistance in an amount not more than the amount for all urbanized areas in which it provides transportation.

(2) When approving an application under paragraph (1) of this subsection, the Secretary may not reduce the amount of operating assistance approved for another State or a local transportation authority within the affected urbanized areas.

(g) UNDERTAKING PROJECTS IN ADVANCE.—(1) When a recipient obligates all amounts apportioned to it under section 5336 of this title and then carries out a part of a project described in this section (except a project for operating expenses) without amounts of the Government and according to all applicable procedures and requirements (except to the extent the procedures and requirements limit a State to carrying out a project with amounts of the Government previously apportioned to it), the Secretary may pay to the recipient the Government's share of the cost of carrying out that part when additional amounts are apportioned to the recipient under section 5336 if—

(A) the recipient applies for the payment;

(B) the Secretary approves the payment; and

(C) before carrying out that part, the Secretary approves the plans and specifications for the part in the same way as for other projects under this section.

(2) The Secretary may approve an application under paragraph (1) of this subsection only if an authorization for this section is in effect for the fiscal year to which the application applies. The Secretary may not approve an application if the payment will be more than—

(A) the recipient's expected apportionment under section 5336 of this title if the total amount authorized to be appropriated for the fiscal year to carry out this section is appropriated; less

(B) the maximum amount of the apportionment that may be made available for projects for operating expenses under this section.

(3) The cost of carrying out that part of a project includes the amount of interest earned and payable on bonds issued by the recipient to the extent proceeds of the bonds are expended in carrying out the part. However, the amount of interest allowed under this paragraph may not be more than the amount by which the estimated cost of carrying out the part (if it would be carried out at the time the part is converted to a regularly financed project) exceeds the actual cost (except interest) of carrying out the part.

(4) The Secretary shall consider changes in capital project cost indices when determining the estimated cost under paragraph (3) of this subsection.

(h) STREAMLINED ADMINISTRATIVE PROCEDURES.—The Secretary shall prescribe streamlined administrative procedures for complying with the certification requirement under subsection (d)(1)(B) and (C) of this section for track and signal equipment used in existing operations.

(i) REVIEWS, AUDITS, AND EVALUATIONS.—(1)(A) At least annually, the Secretary shall carry out, or require a recipient to have carried out independently, reviews and audits the Secretary considers appropriate to establish whether the recipient has carried out—

(i) the activities proposed under subsection (d) of this section in a timely and effective way and can continue to do so; and

(ii) those activities and its certifications and has used amounts of the Government in the way required by law.

(B) An audit of the use of amounts of the Government shall comply with the auditing procedures of the Comptroller General.

(2) At least once every 3 years, the Secretary shall review and evaluate completely the performance of a recipient in carrying out the recipient's program, specifically referring to compliance with statutory and administrative requirements and the extent to which actual program activities are consistent with the activities proposed under subsection (d) of this section and the planning process required under sections 5303–5306 of this title.

(3) The Secretary may take appropriate action consistent with a review, audit, and evaluation under this subsection, including making an appropriate adjustment in the amount of a grant or withdrawing the grant.

(j) REPORTS.—A recipient (including a person receiving amounts from a chief executive officer of a State under this section) shall submit annually to the Secretary a report on the revenues the recipient derives from the sale of advertising and concessions.

(k) SUBMISSION OF CERTIFICATIONS.—A certification under subsection (d) of this section and any additional certification required by law to be submitted to the Secretary may be consolidated into a single document to be submitted annually as part of the grant application under this section. The Secretary shall publish annually a list of all certifications required under this chapter with the publication required under section 5336(e)(2) of this title.

(l) PROCUREMENT SYSTEM APPROVAL.—A recipient may request the Secretary to approve its procurement system. The Secretary shall approve the system for use for procurements financed under section 5336 of this title if, after consulting with the Administrator for Federal Procurement Policy, the Secretary decides the system provides for competitive procurement. Approval of a system under this subsection does not relieve a recipient of the duty to certify under subsection (d)(1)(E) of this section.

(m) OPERATING FERRIES OUTSIDE URBANIZED AREAS.—A vessel used in ferryboat operations financed under section 5336 of this title that is part of a State-operated ferry system may be operated occasionally outside the urbanized area in which service is provided to accommodate periodic maintenance if existing ferry service is not reduced significantly by operating outside the area.

(n) RELATIONSHIP TO OTHER LAWS.—(1) Section 1001 of title 18 applies to a certificate or submission under this section. The Secretary may end a grant under this section and seek reimbursement, directly or by offsetting amounts available under section 5336 of this title, when a false or fraudulent statement or related act within the meaning of section 1001 is made in connection with a certification or submission.

(2) Sections 5302, 5318, 5323(a)(1), (d), and (f), 5332, and 5333 of this title apply to this section and to a grant made under this section. Except as provided in this section, no other provision of this chapter applies to this section or to a grant made under this section.

§5308. Mass Transit Account block grants

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants under this section to be used only for capital projects (including capital maintenance items).

(b) APPLICATION OF OTHER SECTIONS.—(1) Sections 5307(a)–(d), (h)–(l), and (n) and 5336(a)–(c), (f), (g), and (j) of this title apply to amounts made available under section 5338(a) and (f)(1)(B) of this title to carry out this section.

(2) Sections 5307(e) and 5336(d) of this title apply to grants under this section.

§5309. Discretionary grants and loans

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants and loans under this section to assist State and local governmental authorities in financing—

(1) capital projects for new fixed guideway systems, and extensions to existing fixed guideway systems, including the acquisition of real property, the initial acquisition of rolling stock for the systems, alternatives analysis related to the development of the systems, and the acquisition of rights of way, and relocation, for fixed guideway corridor development for projects in the advanced stages of alternatives analysis or preliminary engineering;

(2) capital projects, including property and improvements (except public highways other than fixed guideway facilities), needed for an efficient and coordinated mass transportation system;

(3) the capital costs of coordinating mass transportation with other transportation;

(4) the introduction of new technology, through innovative and improved products, into mass transportation;

(5) transportation projects that enhance urban economic development or incorporate private investment, including commercial and residential development, because the projects—

(A) enhance the effectiveness of a mass transportation project and are related physically or functionally to that mass transportation project; or

(B) establish new or enhanced coordination between mass transportation and other transportation;

(6) mass transportation projects planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities; and

(7) the development of corridors to support fixed guideway systems, including protecting rights of way through acquisition, construction of dedicated bus and high occupancy vehicle lanes and park and ride lots, and other nonvehicular capital improvements that the Secretary may decide would result in increased mass transportation usage in the corridor.

(b) Loans for Real Property Interests.—(1) The Secretary of Transportation may make loans under this section to State and local governmental authorities to acquire interests in real property for use on urban mass transportation systems as rights of way, station sites, and related purposes, including reconstruction, renovation, the net cost of property management, and relocation payments made under section 5324(a) of this title.

(2) The Secretary of Transportation may make a loan under paragraph (1) of this subsection for an approved project only after finding that the property reasonably is expected to be required for a mass transportation system and that it will be used for that system within a reasonable time.

(3) An applicant for a loan under this subsection shall provide a copy of the application to the planning agency for the community affected by the project at the same time the application is submitted to the Secretary of Transportation. If the planning agency submits comments to the Secretary not later than 30 days after the application is submitted, or, if the agency requests more time within those 30 days, within a period the Secretary establishes, the Secretary shall consider those comments before taking final action on the application.

(4) A loan agreement under this subsection shall provide that a capital project on the property will be started not later than 10 years after the fiscal year in which the agreement is made. If an interest in property acquired under this subsection is not used for the purpose for which it was acquired, an appraisal of the current value of the property or interest shall be made when a decision is made about the use. The decision shall be made within the 10-year period. Two-thirds of the increase in value shall be paid to the Secretary of Transportation for deposit in the Treasury as miscellaneous receipts.

(5) A loan under this subsection must be repaid not later than 10 years after the date of the loan agreement or on the date a grant agreement for a capital project on the property is made, whichever is earlier. Payments made to repay the loan shall be deposited in the Treasury as miscellaneous receipts.

(c) Consideration of Decreased Commuter Rail Transportation.—The Secretary of Transportation shall consider the adverse effect of decreased commuter rail transportation when deciding whether to approve a grant or loan under this section to acquire a rail line and all related facilities—

(1) owned by a rail carrier subject to reorganization under title 11; and

(2) used to provide commuter rail transportation.

(d) Project as Part of Approved Program of Projects.—Except as provided in subsections (b)(2) and (e) of this section, the Secretary of Transportation may approve a grant or loan for a project under this section only after finding that the project is part of the approved program of projects required under sections 5303–5306 of this title and that an applicant—

(1) has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of equipment or facilities, and the capability to maintain the equipment or facilities; and

(2) will maintain the equipment or facilities.

(e) Criteria for Grants and Loans for Fixed Guideway Systems.—(1) This subsection applies to a project—

(A) for which a letter of intent or contract for the complete amount is issued under subsection (g) of this section after April 1, 1987; or

(B) not in the preliminary engineering, final design, or construction stage on January 1, 1987.

(2) The Secretary of Transportation may approve a grant or loan under this section for a capital project for a new fixed guideway system or extension of an existing fixed guideway system only if the Secretary decides that the proposed project is—

(A) based on the results of an alternatives analysis and preliminary engineering;

(B) justified based on a comprehensive review of its mobility improvements, environmental benefits, cost effectiveness, and operating efficiencies; and

(C) supported by an acceptable degree of local financial commitment, including evidence of stable and dependable financing sources to construct, maintain, and operate the system or extension.

(3) In making a decision under paragraph (2) of this subsection, the Secretary of Transportation shall—

(A) consider the direct and indirect costs of relevant alternatives;

(B) account for costs related to factors such as congestion relief, improved mobility, air pollution, noise pollution, congestion, energy consumption, and all associated ancillary and mitigation costs necessary to carry out each alternative analyzed;

(C) identify and consider mass transportation supportive existing land use policies and future patterns;

(D) consider the degree to which the project increases the mobility of the mass transportation dependent population or promotes economic development; and

(E) consider other factors the Secretary considers appropriate to carry out this chapter.

(4)(A) The Secretary of Transportation shall issue guidelines on how the Secretary will evaluate results of alternatives analysis, project justification, and the degree of local financial commitment.

(B) The project justification under paragraph (1)(B) of this subsection shall be adjusted to reflect differences in local land, construction, and operating costs.

(C) The degree of local financial commitment is acceptable only if—

(i) the proposed project plan provides for the availability of contingency amounts the Secretary of Transportation determines to be reasonable to cover unanticipated cost overruns;

(ii) each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project timetable; and

(iii) local resources are available to operate the overall proposed mass transportation system (including essential feeder bus and other services necessary to achieve the projected ridership levels) without requiring a reduction in existing mass transportation services to operate the proposed project.

(D) In assessing the stability, reliability, and availability of proposed sources of local financing, the Secretary of Transportation shall consider—

(i) existing grant commitments;

(ii) the degree to which financing sources are dedicated to the purposes proposed; and

(iii) any debt obligation that exists or is proposed by the recipient for the proposed project or other mass transportation purpose.

(5) A proposed project may advance from alternatives analysis to preliminary engineering only if the Secretary of Transportation finds that the project meets the requirements of this section and there is a reasonable chance that the project will continue to meet the requirements at the end of preliminary engineering.

(6)(A) A new fixed guideway system or extension of an existing fixed guideway system is not subject to the requirements of this subsection, and the simultaneous evaluation of similar projects in at least 2 corridors in a metropolitan area may not be limited, if—

(i) the project is located in an extreme or severe nonattainment area and is a transportation control measure (as defined by the Clean Air Act (42 U.S.C. 7401 et seq.)) required to carry out an approved State Implementation Plan; or

(ii) assistance provided under this section is less than $25,000,000 or one-third of the total cost of the project or an appropriate program of projects as decided by the Secretary of Transportation.

(B) The simultaneous evaluation of projects in at least 2 corridors in a metropolitan area may not be limited and the Secretary of Transportation shall make decisions under this subsection with expedited procedures that will promote carrying out an approved State Implementation Plan in a timely way if a project is—

(i) located in a nonattainment area that is not an extreme or severe nonattainment area;

(ii) a transportation control measure (as defined by the Clean Air Act (42 U.S.C. 7401 et seq.)); and

(iii) required to carry out the State Implementation Plan.

(C) This subsection does not apply to a part of a project (including a commuter rail transportation project on an existing right of way) financed completely with amounts for highways made available under Part A of title I of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 1915).

(7) A project financed under this subsection shall be carried out through a full financing grant agreement.

(f) Required Payments and Eligible Costs of Projects That Enhance Urban Economic Development or Incorporate Private Investment.—(1) Each grant or loan under subsection (a)(5) of this section shall require that a person making an agreement to occupy space in a facility pay a reasonable share of the costs of the facility through rental payments and other means.

(2) Eligible costs for a project under subsection (a)(5) of this section—

(A) include property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, and a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall; but

(B) do not include construction of a commercial revenue-producing facility or a part of a public facility not related to mass transportation.

(g) Letters of Intent, * _Full Financing Grant Agreements, and Early Systems Work Agreements.—(1)(A) The Secretary of Transportation may issue a letter of intent to an applicant announcing an intention to obligate, for a project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project. The amount shall be sufficient to complete at least an operable segment when a letter is issued for a fixed guideway project._

(B) At least 30 days before issuing a letter under subparagraph (A) of this paragraph, the

Secretary of Transportation shall notify in writing the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of the proposed issuance of the letter.

(C) The issuance of a letter is deemed not to be an obligation under sections 1108(c) and (d), 1501, and 1502(a) of title 31 or an administrative commitment.

(D) An obligation or administrative commitment may be made only when amounts are appropriated.

(2)(A) The Secretary of Transportation may make a full financing grant agreement with an applicant. The agreement shall—

(i) establish the terms of participation by the United States Government in a project under this section;

(ii) establish the maximum amount of Government financial assistance for the project;

(iii) cover the period of time for completing the project, including a period extending beyond the period of an authorization; and

(iv) make timely and efficient management of the project easier according to the law of the United States.

(B) An agreement under this paragraph obligates an amount of available budget authority specified in law and may include a commitment, contingent on amounts to be specified in law in advance for commitments under this paragraph, to obligate an additional amount from future available budget authority specified in law. The agreement shall state that the contingent commitment is not an obligation of the Government. Interest and other financing costs of efficiently carrying out a part of the project within a reasonable time are a cost of carrying out the project under a full financing grant agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary of Transportation, that the applicant has shown reasonable diligence in seeking the most favorable financing terms. The amount stipulated in an agreement under this paragraph for a fixed guideway project shall be sufficient to complete at least an operable segment.

(3)(A) The Secretary of Transportation may make an early systems work agreement with an applicant if a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the project and the Secretary finds there is reason to believe—

(i) a full financing grant agreement for the project will be made; and

(ii) the terms of the work agreement will promote ultimate completion of the project more rapidly and at less cost.

(B) A work agreement under this paragraph obligates an amount of available budget authority specified in law and shall provide for reimbursement of preliminary costs of carrying out the project, including land acquisition, timely procurement of system elements for which specifications are decided, and other activities the Secretary of Transportation decides are appropriate to make efficient, long-term project management easier. A work agreement shall cover the period of time the Secretary considers appropriate. The period may extend beyond the period of current authorization. Interest and other financing costs of efficiently carrying out the work agreement within a reasonable time are a cost of carrying out the agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms. If an applicant does not carry out the project for reasons within the control of the applicant, the applicant shall repay all Government payments made under the work agreement plus reasonable interest and penalty charges the Secretary establishes in the agreement.

(4) The total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all outstanding letters of intent, full financing grant agreements, and early systems work agreements may be not more than the greater of the amount authorized under section 5338(a) of this title to carry out this section or 50 percent of the uncommitted cash balance remaining in the Mass Transit Account of the Highway Trust Fund (including amounts received from taxes and interest earned that are more than amounts previously obligated), less an amount the Secretary of Transportation reasonably estimates is necessary for grants under this section not covered by a letter. The total amount covered by new letters and contingent commitments included in full financing grant agreements and early systems work agreements may be not more than a limitation specified in law.

(h) GOVERNMENT'S SHARE OF NET PROJECT COST.—Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary of Transportation shall estimate the net project cost. A grant for the project is for 80 percent of the net project cost, unless the grant recipient requests a lower grant percentage. The remainder shall be provided in cash from a source other than amounts of the Government. Transit system amounts that make up the remainder must be from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital. The remainder for a planned extension to a fixed guideway system may include the cost of rolling stock previously purchased if the applicant satisfies the Secretary that only amounts other than amounts of the Government were used and that the purchase was made for use on the extension. A refund or reduction of the remainder may be made only if a refund of a proportional amount of the grant of the Government is made at the same time.

(i) LOAN TERM REQUIREMENTS.—Except for a loan under subsection (b) of this section, a loan, including a renewal or extension of the loan, may be made, and a security or obligation may be bought, only if it has a maturity date of not more than 40 years. Interest on a loan may not be less than—

(1) a rate the Secretary of the Treasury establishes, considering the current average yield on outstanding marketable obligations of the Government that have remaining periods of maturity comparable to the average maturity of the loan, adjusted to the nearest .125 percent; plus

(2) an allowance the Secretary of Transportation considers adequate to cover administrative costs and probable losses.

(j) LOAN PAYMENT FORGIVENESS.—A grant agreement for a capital project may forgive repaying the loan and interest in place of a cash grant for the amount forgiven. The amount is part of the grant and part of the contribution of the Government to the cost of the project.

(k) LIMITATION ON MAKING LOANS AND GRANTS FOR PROJECTS.—The Secretary of Transportation may not make a loan under this section for a project for which a grant (except a relocation payment grant) is made under this section. However, the Secretary may make a project grant even though real property for the project has been or will be acquired through a loan under subsection (b) of this section.

(l) FISCAL CAPACITY CONSIDERATIONS.—If the Secretary of Transportation gives priority consideration to financing projects that include more than the non-Government share required under subsection (h) of this section, the Secretary shall give equal consideration to differences in the fiscal capacity of State and local governments.

(m) ALLOCATING AMOUNTS.—(1) Of the amounts available for grants and loans under this section for each of the fiscal years ending September 30, 1992–1997—

(A) 40 percent is available for fixed guideway modernization;

(B) 40 percent is available for capital projects for new fixed guideway systems and extensions to existing fixed guideway systems; and

(C) 20 percent is available to replace, rehabilitate, and buy buses and related equipment and to construct bus-related facilities.

(2) At least 5.5 percent of the amounts available in each fiscal year under paragraph (1)(C) of this subsection is available for areas other than urbanized areas.

(3) Not later than January 20 of each year, the Secretary of Transportation shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a proposal on the allocation of amounts to be made available to finance grants and loans for capital projects for new fixed guideway systems and extensions to existing fixed guideway systems among applicants for those amounts.

(4) A person applying for, or receiving, assistance for a project described in clause (A), (B), or (C) of paragraph (1) of this subsection may receive assistance for a project described in another of those clauses.

(n) UNDERTAKING PROJECTS IN ADVANCE.—(1) The Secretary of Transportation may pay the Government's share of the net project cost to a State or local governmental authority that carries out any part of a project described in this section or a substitute transit project described in section 103(e)(4) of title 23 without the aid of amounts of the Government and according to all applicable procedures and requirements if—

(A) the State or local governmental authority applies for the payment;

(B) the Secretary approves the payment; and

(C) before carrying out the part of the project, the Secretary approves the plans and specifications for the part in the same way as other projects under this section or section 103(e)(4) of title 23.

(2) The cost of carrying out part of a project includes the amount of interest earned and payable on bonds issued by the State or local governmental authority to the extent proceeds of the bonds are expended in carrying out the part. However, the amount of interest under this paragraph may not be more than the most favorable interest terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary of Transportation, that the applicant has shown reasonable diligence in seeking the most favorable financial terms.

(3) The Secretary of Transportation shall consider changes in capital project cost indices when determining the estimated cost under paragraph (2) of this subsection.

§5310. Grants and loans for special needs of elderly individuals and individuals with disabilities

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants and loans to—

(1) State and local governmental authorities to help them provide mass transportation service planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities; and

(2) the chief executive officer of each State for allocation to—

(A) private nonprofit corporations and associations to help them provide that transportation service when the transportation service provided under clause (1) of this subsection is unavailable, insufficient, or inappropriate; or

(B) governmental authorities—

(i) approved by the State to coordinate services for elderly individuals and individuals with disabilities; or

(ii) that certify to the chief executive officer that no nonprofit corporation or association readily is available in an area to provide service under this subsection.

(b) APPORTIONING AND TRANSFERRING AMOUNTS.—The Secretary shall apportion amounts made available under section 5338(a) and (f)(1)(D) of this title under a formula the Secretary administers that considers the number of elderly individuals and individuals with disabilities in each State. Any State's apportionment remaining available for obligation at the beginning of the 90-day period before the end of the period of availability of the apportionment is available to the chief executive officer of the State for transfer to supplement amounts apportioned to the State under section 5311(c) or 5336(a)(1) of this title.

(c) STATE PROGRAM OF PROJECTS.—Amounts made available for this section may be used for transportation projects to assist in providing transportation services for elderly individuals and individuals with disabilities that are included in a State program of projects. A program shall be submitted annually to the Secretary for approval and shall contain an assurance that the program provides for maximum feasible coordination of transportation services assisted under this section with transportation services assisted by other United States Government sources.

(d) ELIGIBLE CAPITAL EXPENSES.—A recipient of amounts under this section may include acquiring transportation services as an eligible capital expense.

(e) APPLICATION OF SECTION 5309.—(1) A grant or loan under subsection (a)(1) of this section is subject to all requirements of a grant or loan under section 5309 of this title, and is deemed to have been made under section 5309.

(2) A grant or loan under subsection (a)(2) of this section is subject to requirements similar to those under paragraph (1) of this subsection to the extent the Secretary considers appropriate.

(f) MINIMUM REQUIREMENTS AND PROCEDURES FOR RECIPIENTS.—In carrying out section 5301(d) of this title, section 165(b) of the Federal-Aid Highway Act of 1973 (Public Law 93-87, 87 Stat. 282), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (consistent with United States Government-wide standards to carry out section 504), the Secretary shall prescribe regulations establishing minimum criteria a recipient of Government financial assistance under this chapter or a law referred to in section 165(b) shall comply with in providing mass transportation service to elderly individuals and individuals with disabilities and procedures for the Secretary to monitor compliance with the criteria. The regulations shall include provisions for ensuring that organizations and groups representing elderly individuals and individuals with disabilities are given adequate notice of, and an opportunity to comment on, the proposed activity of a recipient to achieve compliance with the regulations.

(g) LEASING VEHICLES.—The Secretary shall prescribe regulations allowing vehicles bought under this section to be leased to local governmental authorities to improve transportation services designed to meet the special needs of elderly individuals and individuals with disabilities.

(h) MEAL DELIVERY SERVICE TO HOMEBOUND INDIVIDUALS.—Mass transportation service providers receiving assistance under this section or section 5311(c) of this title may coordinate and assist in regularly providing meal delivery service for homebound individuals if the delivery service does not conflict with providing mass transportation service or reduce service to mass transportation passengers.

(i) TRANSFER OF FACILITIES AND EQUIPMENT.—With the consent of the recipient currently having a facility or equipment acquired with assistance under this section, a State may transfer the facility or equipment to any recipient eligible to receive assistance under this chapter if the facility or equipment will continue to be used as required under this section.

(j) FARES NOT REQUIRED.—This chapter does not require that elderly individuals and individuals with disabilities be charged a fare.

§5311. Financial assistance for other than urbanized areas

(a) DEFINITION.—In this section, "recipient" includes a State authority, a local governmental authority, a nonprofit organization, and an operator of mass transportation service.

(b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may make grants for transportation projects that are included in a State program of mass transportation service projects (including service agreements with private providers of mass transportation service) for areas other than urbanized areas. The program shall be submitted annually to the Secretary. The Secretary may approve the program only if the Secretary finds that the program provides a fair distribution of amounts in the State, including Indian reservations, and the maximum feasible coordination of mass transportation service assisted under this section with transportation service assisted by other United States Government sources.

(2) The Secretary of Transportation shall carry out a rural transportation assistance program in nonurbanized areas. In carrying out this paragraph, the Secretary may make grants and contracts for transportation research, technical assistance, training, and related support services in nonurbanized areas.

(c) APPORTIONING AMOUNTS.—The Secretary of Transportation shall apportion amounts made available under section 5338(a) of this title so that the chief executive officer of each State receives an amount equal to the total amount apportioned multiplied by a ratio equal to the population of areas other than urbanized areas in a State divided by the population of all areas other than urbanized areas in the United States, as shown by the most recent of the following: the latest Government census, the population estimate the Secretary of Commerce prepares after the 4th year after the date the latest census is published, or the population estimate the Secretary of Commerce prepares after the 8th year after the date the latest census is published. The amount may be obligated by the chief executive officer for 2 years after the fiscal year in which the amount is apportioned. An amount that is not obligated at the end of that period shall be reapportioned among the States for the next fiscal year.

(d) USE FOR LOCAL TRANSPORTATION SERVICE.—A State may use an amount apportioned under this section for a project included in a program under subsection (b) of this section and eligible for assistance under this chapter if the project will provide local transportation service, as defined by the Secretary of Transportation, in an area other than an urbanized area.

(e) USE FOR ADMINISTRATION AND TECHNICAL ASSISTANCE.—(1) The Secretary of Transportation may allow a State to use not more than 15 percent of the amount apportioned under this section to administer this section and provide technical assistance to a recipient, including project planning, program and management development, coordination of mass transportation programs, and research the State considers appropriate to promote effective delivery of mass transportation to an area other than an urbanized area.

(2) Except as provided in this section, a State carrying out a program of operating assistance under this section may not limit the level or extent of use of the Government grant for the payment of operating expenses.

(f) INTERCITY BUS TRANSPORTATION.—(1) A State shall expend at least 5 percent of the amount apportioned under this section in the fiscal year ending September 30, 1992, 10 percent of the amount apportioned in the fiscal year ending September 30, 1993, and 15 percent of the amount apportioned in each fiscal year after September 30, 1993, to carry out a program to develop and support intercity bus transportation. Eligible activities under the program include—

(A) planning and marketing for intercity bus transportation;

(B) capital grants for intercity bus shelters;

(C) joint-use stops and depots;

(D) operating grants through purchase-of-service agreements, user-side subsidies, and demonstration projects; and

(E) coordinating rural connections between small mass transportation operations and intercity bus carriers.

(2) A State does not have to comply with paragraph (1) of this subsection in a fiscal year in which the chief executive officer of the State certifies to the Secretary of Transportation that the intercity bus service needs of the State are being met adequately.

(3) For the fiscal year ending September 30, 1992, a State may carry out this subsection by expending at least 50 percent of the amount apportioned to the State under this section in the fiscal year ending September 30, 1992, that exceeds the amount apportioned in the fiscal year that ended September 30, 1991.

(g) GOVERNMENT'S SHARE OF COSTS.—(1) In this subsection, "amounts of the Government or revenues" do not include amounts received under a service agreement with a State or local social service agency or a private social service organization.

(2) A grant of the Government for a capital project under this section may not be more than 80 percent of the net cost of the project, as determined by the Secretary of Transportation. A grant to pay a subsidy for operating expenses may not be more than 50 percent of the net cost of the operating expense project. At least 50 percent of the remainder shall be provided in cash from sources other than amounts of the Government or revenues from providing mass transportation. Transit system amounts that make up the remainder shall be from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

(h) TRANSFER OF FACILITIES AND EQUIPMENT.—With the consent of the recipient currently having a facility or equipment acquired with assistance under this section, a State may transfer the facility or equipment to any recipient eligible to receive assistance under this chapter if the facility or equipment will continue to be used as required under this section.

(i) RELATIONSHIP TO OTHER LAWS.—(1) Sections 5323(a)(1)(D) and 5333(b) of this title apply to this section but the Secretary of Labor may waive the application of section 5333(b).

(2) This subsection does not affect or discharge a responsibility of the Secretary of Transportation under a law of the United States.

§5312. Research, development, demonstration, and training projects

(a) RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROJECTS.—The Secretary of Transportation (or the Secretary of Housing and

Urban Development when required by section 5334(i) of this title) may undertake, or make grants or contracts (including agreements with departments, agencies, and instrumentalities of the United States Government) for, research, development, and demonstration projects related to urban mass transportation that the Secretary decides will help reduce urban transportation needs, improve mass transportation service, or help mass transportation service meet the total urban transportation needs at a minimum cost. The Secretary may request and receive appropriate information from any source. This subsection does not limit the authority of the Secretary under another law.

(b) RESEARCH, INVESTIGATIONS, AND TRAINING.—(1) The Secretary of Transportation (or the Secretary of Housing and Urban Development when required by section 5334(i) of this title) may make grants to nonprofit institutions of higher learning—

(A) to conduct competent research and investigations into the theoretical or practical problems of urban transportation; and

(B) to train individuals to conduct further research or obtain employment in an organization that plans, builds, operates, or manages an urban transportation system.

(2) Research and investigations under this subsection include—

(A) the design and use of urban mass transportation systems and urban roads and highways;

(B) the interrelationship between various modes of urban and interurban transportation;

(C) the role of transportation planning in overall urban planning;

(D) public preferences in transportation;

(E) the economic allocation of transportation resources; and

(F) the legal, financial, engineering, and esthestic aspects of urban transportation.

(3) When making a grant under this subsection, the appropriate Secretary shall give preference to an institution that brings together knowledge and expertise in the various social science and technical disciplines related to urban transportation problems.

(c) TRAINING FELLOWSHIPS AND INNOVATIVE TECHNIQUES AND METHODS.—(1) The Secretary of Transportation may make grants to States, local governmental authorities, and operators of mass transportation systems to provide fellowships to train personnel employed in managerial, technical, and professional positions in the mass transportation field.

(2) The Secretary of Transportation may make grants to State and local governmental authorities for projects that will use innovative techniques and methods in managing and providing mass transportation.

(3) A fellowship under this subsection may be for not more than one year of training in an institution that offers a program applicable to the mass transportation industry. The recipient of the grant shall select an individual on the basis of demonstrated ability and for the contribution the individual reasonably can be expected to make to an efficient mass transportation operation. A grant for a fellowship may not be more than the lesser of $24,000 or 75 percent of—

(A) tuition and other charges to the fellowship recipient;

(B) additional costs incurred by the training institution and billed to the grant recipient; and

(C) the regular salary of the fellowship recipient for the period of the fellowship to the extent the salary is actually paid or reimbursed by the grant recipient.

§5313. State planning and research programs

(a) COOPERATIVE RESEARCH PROGRAM.—(1) Fifty percent of the amounts made available under section 5338(h)(3) of this title are available for a mass transportation cooperative research program. The Secretary of Transportation shall establish an independent governing board for the program. The board shall recommend mass transportation research, development, and technology transfer activities the Secretary considers appropriate.

(2) The Secretary may make grants to, and cooperative agreements with, the National Academy of Sciences to carry out activities under this subsection that the Secretary decides are appropriate.

(b) STATE PLANNING AND RESEARCH.—(1) Fifty percent of the amounts made available under section 5338(h)(3) of this title shall be apportioned to States for grants and contracts consistent with the purposes of sections 5303–5306, 5312, 5315, 5317, and 5322 of this title. The amounts shall be apportioned so that each State receives an amount equal to the population in urbanized areas in the State, divided by the population in urbanized areas in all States, as shown by the latest available decennial census. However, a State must receive at least .5 percent of the amount apportioned under this subsection.

(2) A State, as the State considers appropriate, may authorize part of the amount made available under this subsection to be used to supplement amounts available under subsection (a) of this section.

(c) GOVERNMENT'S SHARE.—When there would be a clear and direct financial benefit to an entity under a grant or contract financed under subsection (a) of this section, the Secretary shall establish a United States Government share consistent with the benefit.

§5314. National planning and research programs

(a) PROGRAM.—(1) The amounts made available under section 5338(h)(4) of this title are available to the Secretary of Transportation for grants and contracts for the purposes of sections 5303–5306, 5312, 5315, 5317, and 5322 of this title, as the Secretary considers appropriate.

(2) Of the amounts made available under paragraph (1) of this subsection, the Secretary shall make available at least $2,000,000 to provide mass transportation-related technical assistance, demonstration programs, research, public education, and other activities the Secretary considers appropriate to help mass transportation providers comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). To the extent practicable, the Secretary shall carry out this paragraph through a contract with a national nonprofit organization serving individuals with disabilities that has a demonstrated capacity to carry out the activities.

(3) Not more than 25 percent of the amounts available under paragraph (1) of this subsection is available to the Secretary for special demonstration initiatives, subject to terms the Secretary considers consistent with this chapter, except that section 5323(a)(1)(D) of this title applies to an operational grant financed in carrying out section 5312(a) of this title. For a nonrenewable grant of not more than $100,000, the Secretary shall provide expedited procedures on complying with the requirements of this chapter.

(4)(A) The Secretary may undertake a program of mass transportation technology development in coordination with affected entities.

(B) The Secretary shall establish an Industry Technical Panel composed of representatives of transportation suppliers and operators and others involved in technology development. A majority of the Panel members shall represent the supply industry. The Panel shall assist the Secretary in identifying priority technology development areas and in establishing guidelines for project development, project cost sharing, and project execution.

(C) The Secretary shall develop guidelines for cost sharing in technology development projects financed under this paragraph. The guidelines shall be flexible and reflect the extent of technical risk, market risk, and anticipated supplier benefits and payback periods.

(5) From amounts authorized under section 5338(h)(4) of this title, the Secretary shall make available $1,000,000 in the fiscal year ending September 30, 1992, for the Washington Metropolitan Area Transit Authority to carry out a pilot project to evaluate, develop, and test advanced fare technology systems.

(6) From amounts made available under section 5338(h) of this title, not more than $1,000,000 may be appropriated for the fiscal year ending September 30, 1992, to the Transit Safety Research Alliance, a nonprofit public-private sector consortium based in Pittsburgh, Pennsylvania, to support an inertial navigational system demonstration project to establish the safety, economic, and environmental benefits of deploying inertial navigation tracking and control systems in urban and rural environments.

(7) The Secretary may use amounts appropriated under this subsection to supplement amounts available under section 5313(a) of this title, as the Secretary considers appropriate.

(b) GOVERNMENT'S SHARE.—When there would be a clear and direct financial benefit to an entity under a grant or contract financed under subsection (a) of this section, the Secretary shall establish a United States Government share consistent with the benefit.

§5315. National mass transportation institute

(a) ESTABLISHMENT AND DUTIES.—The Secretary of Transportation shall make grants to Rutgers University to establish a national mass transportation institute. In cooperation with the Federal Transit Administration, State transportation departments, public mass transportation authorities, and national and international entities, the institute shall develop and conduct training programs of instruction for United States Government, State, and local transportation employees, United States citizens, and foreign nationals engaged or to be engaged in Government-aid mass transportation work. The programs may include courses in recent developments, techniques, and procedures related to—

(1) mass transportation planning;

(2) management;

(3) environmental factors;

(4) acquisition and joint use of rights of way;

(5) engineering;

(6) procurement strategies for mass transportation systems;

(7) turnkey approaches to carrying out mass transportation systems;

(8) new technologies;

(9) emission reduction technologies;

(10) ways to make mass transportation accessible to individuals with disabilities;

(11) construction;

(12) maintenance;

(13) contract administration; and

(14) inspection.

(b) RELATED EDUCATIONAL AND TRAINING PROGRAMS.—The Secretary shall delegate to the institute the authority of the Secretary to develop and conduct educational and training programs related to mass transportation.

(c) PROVIDING EDUCATION AND TRAINING.—Education and training of Government, State, and local transportation employees under this section shall be provided—

(1) by the Secretary at no cost to the States and local governments for subjects that are a Government program responsibility; or

(2) when the education and training are paid under subsection (d) of this section, by the State, with the approval of the Secretary,

through grants and contracts with public and private agencies, other institutions, individuals, and the institute.

(d) AVAILABILITY OF AMOUNTS.—Not more than .5 percent of the amounts made available for a fiscal year beginning after September 30, 1991, to a State or public mass transportation authority in the State to carry out sections 5304 and 5306 of this title is available for expenditure by the State and public mass transportation authorities in the State, with the approval of the Secretary, to pay not more than 80 percent of the cost of tuition and direct educational expenses related to educating and training State and local transportation employees under this section.

§5316. University research institutes

(a) INSTITUTE FOR NATIONAL SURFACE TRANSPORTATION POLICY.—The Secretary of Transportation shall make grants to San Jose State University to establish and operate an institute for national surface transportation policy studies. The institute shall—

(1) include male and female students of diverse socioeconomic and ethnic backgrounds who are seeking careers in developing and operating surface transportation programs; and

(2) conduct research and development activities to analyze ways of improving aspects of developing and operating surface transportation programs of the United States.

(b) INFRASTRUCTURE TECHNOLOGY INSTITUTE.—The Secretary shall make grants to Northwestern University to establish and operate an institute to study techniques—

(1) to evaluate and monitor infrastructure conditions;

(2) to improve information systems for infrastructure construction and management; and

(3) to study advanced materials and automated processes for constructing and rehabilitating public works facilities.

(c) URBAN TRANSIT INSTITUTE.—The Secretary shall make grants to North Carolina A. and T. State University through the Institute for Transportation Research and Education, the University of South Florida, and a consortium of Florida A. and M., Florida State University, and Florida International University to establish and operate an interdisciplinary institute to study and disseminate techniques on the diverse transportation problems of urban areas experiencing significant and rapid growth.

(d) INSTITUTE FOR INTELLIGENT VEHICLE-HIGHWAY CONCEPTS.—The Secretary shall make grants to the University of Minnesota, Center for Transportation Studies, to establish and operate a national institute for intelligent vehicle-highway concepts. The institute shall conduct research and recommend development activities that focus on methods to increase roadway capacity, enhance safety, and reduce negative environmental effects of transportation facilities by using intelligent vehicle-highway systems technologies.

(e) INSTITUTE FOR TRANSPORTATION RESEARCH AND EDUCATION.—The Secretary shall make grants to the University of North Carolina to conduct research and development and to direct technology transfer and training for State and local transportation authorities to improve the overall surface transportation infrastructure.

(f) APPLICABILITY OF TITLE 23.—Amounts authorized by section 5338(d) of this title may be obligated in the same way as amounts are apportioned under chapter 1 of title 23.

§5317. Transportation centers

(a) GRANTS FOR REGIONAL TRANSPORTATION CENTERS.—(1) The Secretary of Transportation shall make grants to nonprofit institutions of higher learning to establish and operate regional transportation centers in each of the 10 United States Government regions that comprise the Standard Federal Regional Boundary System.

(2) A nonprofit institution of higher learning interested in receiving a grant under this subsection shall submit an application to the Secretary in the way and containing the information the Secretary prescribes. The Secretary shall select each recipient on the basis of the following:

(A) the regional transportation center is located in a State that is representative of the needs of the Government region for improved transportation and facilities.

(B) the demonstrated research and extension resources available to the recipient to carry out this subsection.

(C) the capability of the recipient to provide leadership in making national and regional contributions to the solution of immediate and long-range transportation problems.

(D) the recipient has an established transportation program encompassing several modes of transportation.

(E) the recipient has a demonstrated commitment of at least $200,000 in regularly budgeted institutional amounts each year to support ongoing transportation research programs.

(F) the recipient has a demonstrated ability to disseminate results of transportation research and educational programs through a statewide or regionwide continuing educational program.

(G) the projects the recipient proposes to carry out under the grant.

(3)(A) At each regional transportation center, the following shall be carried out:

(i) infrastructure research on transportation.

(ii) research and training on transportation safety and the transportation of passengers and property and the interpretation, publication, and dissemination of the results of the research.

(B) Each transportation center—

(i) should carry out research on more than one mode of transportation; and

(ii) should consider the proportion of amounts for this subsection from amounts available to carry out urban mass transportation projects under this chapter and from the Highway Trust Fund.

(C) At one of the transportation centers, research may be carried out on the testing of new bus models.

(4) Before making a grant under this subsection, the Secretary may require the recipient to make an agreement with the Secretary to ensure that the recipient will maintain total expenditures from all other sources to establish and operate a regional transportation center and related research activities at a level at least equal to the average level of those expenditures in its 2 fiscal years prior to April 2, 1987.

(5) A grant under this subsection is for 50 percent of the cost of establishing and operating the regional transportation center and related research activities the recipient carries out.

(b) GRANTS FOR UNIVERSITY TRANSPORTATION CENTERS.—(1) To accelerate the involvement and participation of minority individuals and women in transportation-related professions, particularly in the science, technology, and engineering disciplines, the Secretary shall make grants to Morgan State University to establish a national center for transportation management, research, and development. The center shall give special attention to designing, developing, and carrying out research, training, and technology transfer activities to increase the number of highly skilled minority individuals and women entering the transportation workforce.

(2) The Secretary shall make grants to the New Jersey Institute of Technology to establish and operate a center for transportation and industrial productivity. The center shall conduct research and development activities that focus on ways to increase surface transportation capacity, reduce congestion, and reduce costs for transportation system users and providers through the use of transportation management systems.

(3)(A) The Secretary shall make a grant to Monmouth College, West Long Branch, New Jersey, to modify and rebuild Building Number 500 at Monmouth College. Before making the grant, the Secretary shall receive assurances from Monmouth College that the building will be known and designated as the James and Marlene Howard Transportation Information Center and that transportation-related instruction and research in computer science, electronic engineering, mathematics, and software engineering conducted at the building will be coordinated with the Center for Transportation and Industrial Productivity at the New Jersey Institute of Technology.

(B) Amounts authorized by section 5338(f)(2) of this title may be obligated in the same way as amounts apportioned under chapter 1 of title 23 (except that the Government share of the cost of the activities conducted under this paragraph is 80 percent and the amounts remain available until expended) and are not subject to an obligational limitation.

(4) The Secretary shall make grants to the University of Arkansas to establish a national rural transportation center. The center shall conduct research, training, and technology transfer activities in the development, management, and operation of intermodal transportation systems in rural areas.

(5)(A) The Secretary shall make grants to the University of Idaho to establish a National Center for Advanced Transportation Technology. The Center shall be established and operated in partnership with private industry and shall conduct industry-driven research and development activities that focus on transportation-related manufacturing and engineering processes, materials, and equipment.

(B) The Secretary shall make grants to the University of Idaho to plan, design, and construct a building in which to conduct the research and development activities of the Center.

(C) Amounts authorized by section 5338(e)(2) of this title may be obligated in the same way as amounts apportioned under chapter 1 of title 23 (except that the Government share of the cost of the activities conducted under this paragraph is 80 percent and the amounts remain available until expended) and are not subject to an obligational limitation.

(D) A grant made under this paragraph is not subject to the requirements of this section (except this paragraph).

(c) PROGRAM COORDINATION.—The Secretary shall provide for coordinating research, education, training, and technology transfer activities that grant recipients carry out under this section, the dissemination of the results of the research, and the establishment and operation of a clearinghouse between the centers and the transportation industry. At least annually, the Secretary shall review and evaluate programs the grant recipients carry out. The Secretary may use not more than one percent of amounts made available from Government sources to carry out this section to carry out this subsection.

(d) OBLIGATION CEILING.—Amounts authorized to carry out this section (except subsection (b)(3)) are subject to obligational limitations established under section 1002 of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240, 105 Stat. 1916).

(e) AMOUNTS AVAILABLE FOR TECHNOLOGY TRANSFER ACTIVITIES.—At least 5 percent of the amounts made available to carry out this section in a fiscal year are available to carry out technology transfer activities.

(f) ALLOCATION AMONG GOVERNMENT REGIONS.—The Secretary shall allocate amounts

available to carry out this section equitably among the Government regions.

§5318. Bus testing facility

(a) Establishment.—The Secretary of Transportation shall establish one facility for testing a new bus model for maintainability, reliability, safety, performance (including braking performance), structural integrity, fuel economy, emissions, and noise. The facility shall be established by renovating a facility built with assistance of the United States Government to train rail personnel.

(b) Operation and Maintenance.—The Secretary shall make a contract with a qualified person to operate and maintain the facility. The contract may provide for the testing of rail cars and other vehicles at the facility.

(c) Fees.—The person operating and maintaining the facility shall establish and collect fees for the testing of vehicles at the facility. The Secretary must approve the fees.

(d) Availability of Amounts To Pay for Testing.—The Secretary shall make a contract with the operator of the facility under which the Secretary shall pay 80 percent of the cost of testing a vehicle at the facility from amounts available under section 5338(k)(5) of this title. The entity having the vehicle tested shall pay 20 percent of the cost.

(e) Revolving Loan Fund.—The Secretary has a bus testing revolving loan fund consisting of amounts authorized for the fund under section 5338(f)(1)(i) of this title. The Secretary shall make available as repayable advances from the fund to the person operating and maintaining the facility amounts to operate and maintain the facility.

§5319. Bicycle facilities

A project to provide access for bicycles to mass transportation facilities, to provide shelters and parking facilities for bicycles in or around mass transportation facilities, or to install equipment for transporting bicycles on mass transportation vehicles is a capital project eligible for assistance under sections 5307, 5309, and 5311 of this title. Notwithstanding sections 5307(e), 5309(h), and 5311(g) of this title, a grant of the United States Government under this chapter for a project under this section is for 90 percent of the cost of the project.

§5320. Suspended light rail system technology pilot project

(a) Purpose.—The purpose of this section is to provide for the construction by a public entity of a suspended light rail system technology pilot project—

(1) to assess the state of new technology for a suspended light rail system; and

(2) to establish the feasibility, costs, and benefits of using the system to transport passengers.

(b) General Requirements.—The project shall—

(1) use new rail technology with individual vehicles on a prefabricated elevated steel guideway;

(2) be stability-seeking with a center of gravity for the detachable passenger vehicles located below the point of wheel-rail contact; and

(3) use vehicles that are driven by overhead bogies with high efficiency, low maintenance electric motors for each wheel, operating in a slightly sloped plane from vertical for the wheels and the running rails, to further increase stability, acceleration, and braking performance.

(c) Competition.—(1) The Secretary of Transportation shall conduct a national competition to select a public entity with which to make a full financing grant agreement to construct the project. Not later than April 16, 1992, the Secretary shall select 3 public entities to be finalists in the competition. In conducting the competition and selecting public entities, the Secretary shall consider—

(A) the public entity's demonstrated understanding and knowledge of the project and its technical, managerial, and financial capacity to construct, manage, and operate the project; and

(B) maximizing potential contributions to the cost of the project by State, local, and private sector entities, including donation of in-kind services and materials.

(2) The Secretary shall award a grant to each finalist to be used to participate in the final phase of the competition under procedures the Secretary prescribes. A grant may not be more than 80 percent of the cost of participating. A finalist may not receive more than one-third of the amount made available under subsection (h)(1)(A) of this section.

(3) Not later than July 15, 1992, the Secretary shall select from among the 3 finalists a public entity with which to make a full financing grant agreement.

(d) Environmental Impact.—Not later than 270 days after a public entity is selected under subsection (c) of this section, the Secretary shall approve and publish in the Federal Register a notice announcing either a finding of no significant impact or a draft environmental impact statement for the project. The alternatives analysis for the project shall include a decision on whether to construct the project. If a draft statement is published, the Secretary, not later than 180 days after publication, shall approve and publish in the Federal Register a notice of completion of a final environmental impact statement.

(e) Full Financing Grant Agreement.—Not later than 60 days after carrying out the requirements of subsection (d) of this section, the Secretary shall make a full financing grant agreement under section 5309 of this title with the public entity selected under subsection (c) of this section to construct the project. The agreement shall provide that the system vendor for the project shall finance—

(1) 100 percent of any deficit incurred in operating the project in the first 2 years of revenue operations of the project; and

(2) 50 percent of any deficit incurred in operating the project in the 3d year of revenue operations of the project.

(f) Notice To Proceed.—Not later than 30 days after making the full financing grant agreement, the Secretary shall issue a notice to proceed with construction.

(g) Option Not To Construct and Reawarding the Grant.—(1) Not later than 30 days after completing preliminary engineering and design, the selected public entity shall decide whether to proceed to constructing the project. If the entity decides not to proceed—

(A) the Secretary shall not make the full financing grant agreement;

(B) remaining amounts received shall be returned to the Secretary and credited to the Mass Transit Account of the Highway Trust Fund; and

(C) the Secretary shall use the credited amount and other amounts to be provided under this section to award to another entity selected under subsection (c)(1) of this section a grant under section 5309 of this title to construct the project.

(2) Not later than 60 days after a decision is made under paragraph (1) of this subsection, a grant shall be awarded under paragraph (1)(C) of this section after completing a competitive process for selecting the grant recipient.

(h) Financing.—(1) The Secretary shall pay from amounts provided under section 5309 of this title the following:

(A) at least $1,000,000 for the fiscal year ending September 30, 1992, for grants under subsection (c)(2) of this section.

(B) at least $4,000,000 for the fiscal year ending September 30, 1993, for the United States Government share of the costs (as determined under section 5309 of this title) if the systems planning, alternatives analysis, preliminary engineering, and design and environmental impact statement are required by law for the project.

(C) at least $30,000,000 for the fiscal year ending September 30, 1994, as provided in the grant agreement under subsection (e) of this section, for the Government share of the construction costs of the project.

(2) The grant agreement under subsection (e) of this section shall provide that for the 3d year of revenue operations of the project, the Secretary shall pay from amounts provided under this section the Government share of operating costs in an amount equal to the lesser of 50 percent of the deficit incurred in operating the project in that year or $300,000.

(3) Amounts not expended under paragraph (1)(A) of this subsection are available for the Government share of costs described in paragraph (1)(B) and (C) of this subsection.

(4) Amounts under paragraph (1)(B) and (C) of this subsection remain available until expended.

(i) Government's Share of Costs.—The Government share of the cost of constructing the project is 80 percent of the net cost of the project.

(j) Project Not Subject to Major Capital Investment Policy.—The project is not subject to the major capital investment policy of the Federal Transit Administration.

(k) Report.—Not later than January 30, 1993, and each year after that date, the Secretary shall submit to Congress a report on the progress and results of the project.

§5321. Crime prevention and security

The Secretary of Transportation may make capital grants from amounts available under section 5338 of this title to mass transportation systems for crime prevention and security. This chapter does not prevent the financing of a project under this section when a local governmental authority other than the grant applicant has law enforcement responsibilities.

§5322. Human resource programs

The Secretary of Transportation may undertake, or make grants and contracts for, programs that address human resource needs as they apply to mass transportation activities. A program may include—

(1) an employment training program;

(2) an outreach program to increase minority and female employment in mass transportation activities;

(3) research on mass transportation personnel and training needs; and

(4) training and assistance for minority business opportunities.

§5323. General provisions on assistance

(a) Interests in Property.—(1) Financial assistance provided under this chapter to a State or a local governmental authority may be used to acquire an interest in, or buy property of, a private mass transportation company, for a capital project for property acquired from a private mass transportation company after July 9, 1964, or to operate mass transportation equipment or a mass transportation facility in competition with, or in addition to, transportation service provided by an existing mass transportation company, only if—

(A) the Secretary of Transportation finds the assistance is essential to a program of projects required under sections 5303–5306 of this title;

(B) the Secretary of Transportation finds that the program, to the maximum extent feasible, provides for the participation of private mass transportation companies;

(C) just compensation under State or local law will be paid to the company for its franchise or property; and

(D) the Secretary of Labor certifies that the assistance complies with section 5333(b) of this title.

(2) A governmental authority may not use financial assistance of the United States Government to acquire land, equipment, or a facility used in mass transportation from another governmental authority in the same geographic area.

(b) NOTICE AND PUBLIC HEARING.—(1) An application for a grant or loan under this chapter (except section 5307) for a capital project that will affect substantially a community, or the mass transportation service of a community, must include a certificate of the applicant that the applicant has—

(A) provided an adequate opportunity for a public hearing with adequate prior notice;

(B) held that hearing unless no one with a significant economic, social, or environmental interest requested one;

(C) considered the economic, social, and environmental effects of the project; and

(D) found that the project is consistent with official plans for developing the urban area.

(2) Notice of a hearing under this subsection shall include a concise description of the proposed project and shall be published in a newspaper of general circulation in the geographic area the project will serve. If a hearing is held, a copy of the transcript of the hearing shall be submitted with the application.

(c) ACQUIRING NEW BUS MODELS.—Amounts appropriated or made available under this chapter (except section 5307) after September 30, 1989, may be obligated or expended to acquire a new bus model only if a bus of the model has been tested at the facility established under section 5318 of this title.

(d) BUYING AND OPERATING BUSES.—(1) Financial assistance under this chapter may be used to buy or operate a bus only if the applicant, governmental authority, or publicly owned operator that receives the assistance agrees that, except as provided in the agreement, the governmental authority or an operator of mass transportation for the governmental authority will not provide charter bus transportation service outside the urban area in which it provides regularly scheduled mass transportation service. An agreement shall provide for a fair arrangement the Secretary of Transportation considers appropriate to ensure that the assistance will not enable a governmental authority or an operator for a governmental authority to foreclose a private operator from providing intercity charter bus service if the private operator can provide the service.

(2) On receiving a complaint about a violation of an agreement, the Secretary of Transportation shall investigate and decide whether a violation has occurred. If the Secretary decides that a violation has occurred, the Secretary shall correct the violation under terms of the agreement. In addition to a remedy specified in the agreement, the Secretary may bar a recipient under this subsection or an operator from receiving further assistance when the Secretary finds a continuing pattern of violations of the agreement.

(e) BUS PASSENGER SEAT FUNCTIONAL SPECIFICATIONS.—The initial advertising by a State or local governmental authority for bids to acquire buses using financial assistance under this chapter (except section 5307) may include passenger seat functional specifications that are at least equal to performance specifications the Secretary of Transportation prescribes. The specifications shall be based on a finding by the State or local governmental authority of local requirements for safety, comfort, maintenance, and life cycle costs.

(f) SCHOOLBUS TRANSPORTATION.—(1) Financial assistance under this chapter may be used for a capital project, or to operate mass transportation equipment or a mass transportation facility, only if the applicant agrees not to provide schoolbus transportation that exclusively transports students and school personnel in competition with a private schoolbus operator. This subsection does not apply—

(A) to an applicant that operates a school system in the area to be served and a separate and exclusive schoolbus program for the school system;

(B) unless a private schoolbus operator can provide adequate transportation that complies with applicable safety standards at reasonable rates; and

(C) to a State or local governmental authority if it or a direct predecessor in interest from which it acquired the duty of transporting school children and personnel, and facilities to transport them, provided schoolbus transportation at any time after November 25, 1973, but before November 26, 1974.

(2) An applicant violating an agreement under this subsection may not receive other financial assistance under this chapter.

(g) BUYING BUSES UNDER OTHER LAWS.—Subsections (d) and (f) of this section apply to financial assistance to buy a bus under sections 103(e)(4) and 142(a) or (c) of title 23. However, subsection (f)(1)(C) of this section applies to sections 103(e)(4) and 142(a) or (c) only if schoolbus transportation was provided at any time after August 12, 1972, but before August 13, 1973.

(h) GRANT AND LOAN PROHIBITIONS.—A grant or loan may not be used to—

(1) pay ordinary governmental or nonproject operating expenses; or

(2) support a procurement that uses an exclusionary or discriminatory specification.

(i) GOVERNMENT'S SHARE OF COSTS FOR CERTAIN PROJECTS.—A Government grant for a project to be assisted under this chapter that involves acquiring vehicle-related equipment required by the Clean Air Act (42 U.S.C. 7401 et seq.) or the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) is for 90 percent of the net project cost of the equipment that is attributable to complying with those Acts. The Secretary of Transportation, through practicable administrative procedures, may determine the costs attributable to that equipment.

(j) BUY AMERICAN.—(1) The Secretary of Transportation may obligate an amount that may be appropriated to carry out this chapter for a project only if the steel, iron, and manufactured goods used in the project are produced in the United States.

(2) The Secretary of Transportation may waive paragraph (1) of this subsection if the Secretary finds that—

(A) applying paragraph (1) would be inconsistent with the public interest;

(B) the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;

(C) when procuring rolling stock (including train control, communication, and traction power equipment) under this chapter—

(i) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the rolling stock; and

(ii) final assembly of the rolling stock has occurred in the United States; or

(D) including domestic material will increase the cost of the overall project by more than 25 percent.

(3) In this subsection, labor costs involved in final assembly are not included in calculating the cost of components.

(4) The Secretary of Transportation may not make a waiver under paragraph (2) of this subsection for goods produced in a foreign country if the Secretary, in consultation with the United States Trade Representative, decides that the government of that foreign country—

(A) has an agreement with the United States Government under which the Secretary has waived the requirement of this subsection; and

(B) has violated the agreement by discriminating against goods to which this subsection applies that are produced in the United States and to which the agreement applies.

(5) A person is ineligible under subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations, to receive a contract or subcontract made with amounts authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240, 105 Stat. 1914) if a court or department, agency, or instrumentality of the Government decides the person intentionally—

(A) affixed a "Made in America" label, or a label with an inscription having the same meaning, to goods sold in or shipped to the United States that are used in a project to which this subsection applies but not produced in the United States; or

(B) represented that goods described in clause (A) of this paragraph were produced in the United States.

(6) The Secretary of Transportation may not impose any limitation on assistance provided under this chapter that restricts a State from imposing more stringent requirements than this subsection on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with that assistance or restricts a recipient of that assistance from complying with those State-imposed requirements.

(7) Not later than January 1, 1995, the Secretary of Transportation shall submit to Congress a report on purchases from foreign entities waived under paragraph (2) of this subsection in the fiscal years ending September 30, 1992, and September 30, 1993. The report shall indicate the dollar value of items for which waivers were granted.

§5324. Limitations on discretionary and special needs grants and loans

(a) RELOCATION PROGRAM REQUIREMENTS.—Financial assistance may be provided under section 5309 of this title only if the Secretary of Transportation decides that—

(1) an adequate relocation program is being carried out for families displaced by a project; and

(2) an equal number of decent, safe, and sanitary dwellings are being, or will be, provided to those families in the same area or in another area generally not less desirable for public utilities and public and commercial facilities, at rents or prices within the financial means of those families, and with reasonable access to their places of employment.

(b) ECONOMIC, SOCIAL, AND ENVIRONMENTAL INTERESTS.—(1) In carrying out section 5301(e) of this title, the Secretary of Transportation shall cooperate and consult with the Secretaries of Agriculture, Health and Human Services, Housing and Urban Development, and the Interior and the Council on Environmental Quality on each project that may have a substantial impact on the environment.

(2) In carrying out section 5309 of this title, the Secretary of Transportation shall review each transcript of a hearing submitted under section 5323(b) of this title to establish that an adequate opportunity to present views was given to all parties with a significant economic, social, or environmental interest and that the project application includes a statement on—

(A) the environmental impact of the proposal;

(B) adverse environmental effects that cannot be avoided;

(C) alternatives to the proposal; and

(D) irreversible and irretrievable impacts on the environment.

(3)(A) The Secretary of Transportation may approve an application for financial assistance under section 5309 of this title only if the Secretary makes written findings, after reviewing the application and any hearings held before a State or local governmental authority under section 5323(b) of this title, that—

(i) an adequate opportunity to present views was given to all parties with a significant economic, social, or environmental interest;

(ii) the preservation and enhancement of the environment, and the interest of the community in which a project is located, were considered; and

(iii) no adverse environmental effect is likely to result from the project, or no feasible and prudent alternative to the effect exists and all reasonable steps have been taken to minimize the effect.

(B) If a hearing has not been conducted or the Secretary of Transportation decides that the record of the hearing is inadequate for making the findings required by this subsection, the Secretary shall conduct a hearing on an environmental issue raised by the application after giving adequate notice to interested persons.

(C) A finding of the Secretary of Transportation under subparagraph (A) of this paragraph shall be made a matter of public record.

(c) PROHIBITIONS AGAINST REGULATING OPERATIONS AND CHARGES.—The Secretary of Transportation may not regulate the operation of a mass transportation system for which a grant is made under section 5309 of this title and, after a grant is made, may not regulate any charge for the system. However, the Secretary may require the local governmental authority, corporation, or association to comply with any undertaking provided by it related to its grant application.

§5325. Contract requirements

(a) NONCOMPETITIVE BIDDING.—A capital project or improvement contract for which a grant or loan is made under this chapter, if the contract is not made through competitive bidding, shall provide that records related to the contract shall be made available to the Secretary of Transportation and the Comptroller General, or an officer or employee of the Secretary or Comptroller General, when conducting an audit and inspection.

(b) ACQUIRING ROLLING STOCK.—A recipient of financial assistance of the United States Government under this chapter may make a contract to expend that assistance to acquire rolling stock—

(1) based on—

(A) initial capital costs; or

(B) performance, standardization, life cycle costs, and other factors; or

(2) with a party selected through a competitive procurement process.

(c) PROCURING ASSOCIATED CAPITAL MAINTENANCE ITEMS.—A recipient of a grant under section 5307 of this title procuring an associated capital maintenance item under section 5307(b) may make a contract directly with the original manufacturer or supplier of the item to be replaced, without receiving prior approval of the Secretary, if the recipient first certifies in writing to the Secretary that—

(1) the manufacturer or supplier is the only source for the item; and

(2) the price of the item is no more than the price similar customers pay for the item.

(d) MANAGEMENT, ARCHITECTURAL, AND ENGINEERING CONTRACTS.—A contract for program management, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which a grant or loan is made under this chapter shall be awarded in the same way as a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.) or an equivalent qualifications-based requirement of a State. This subsection does not apply to the extent a State has adopted or adopts by law a formal procedure for procuring those services.

§5326. Special procurements

(a) TURNKEY SYSTEM PROJECTS.—(1) In this subsection, "turnkey system project" means a project under which a recipient makes a contract with a seller, firm, or consortium of firms to construct a mass transportation system that meets specific performance criteria and that the seller operates for a period of time.

(2) To advance new technologies and lower the cost of a capital project for a new mass transportation system, the Secretary of Transportation shall allow solicitation for a turnkey system project to be financed under this chapter to be awarded conditionally before United States Government requirements have been met on the project if the award is made without prejudice to carrying out those requirements. Government financial assistance under this chapter may be made available for the project after the recipient complies with Government requirements.

(3) To develop regulations applying generally to turnkey system projects, the Secretary may approve at least 2 projects for an initial demonstration phase. The results of the demonstration projects (and other projects using this procurement method on December 18, 1991) shall be considered in developing regulations to carry out this subsection.

(b) MULTIYEAR ROLLING STOCK.—(1) A recipient procuring rolling stock with Government financial assistance under this chapter may make a multiyear contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for not more than 5 years after the date of the original contract.

(2) The Secretary shall allow at least 2 recipients to act on a cooperative basis to procure rolling stock in compliance with this subsection and other Government procurement requirements.

(c) EFFICIENT PROCUREMENT.—A recipient may award a procurement contract under this chapter to other than the lowest bidder when the award furthers an objective consistent with the purposes of this chapter, including improved long-term operating efficiency and lower long-term costs. Not later than March 17, 1992, the Secretary shall—

(1) make appropriate changes in existing procedures to make the policy stated in this subsection readily practicable for all mass transportation authorities; and

(2) prescribe guidance that clarifies and carries out the policy.

§5327. Project management oversight

(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—To receive United States Government financial assistance for a major capital project under this chapter or the National Capital Transportation Act of 1969 (Public Law 91–143, 83 Stat. 320), a recipient must prepare and carry out a project management plan approved by the Secretary of Transportation. The plan shall provide for—

(1) adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and miscellaneous payments the recipient may be prepared to justify;

(3) a construction schedule for the project;

(4) a document control procedure and recordkeeping system;

(5) a change order procedure that includes a documented, systematic approach to the handling of construction change orders;

(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

(7) quality control and quality assurance functions, procedures, and responsibilities for construction, system installation, and integration of system components;

(8) material testing policies and procedures;

(9) internal plan implementation and reporting requirements;

(10) criteria and procedures to be used for testing the operational system or its major components;

(11) periodic updates of the plan, especially related to project budget and project schedule, financing, ridership estimates, and the status of local efforts to enhance ridership where ridership estimates partly depend on the success of those efforts; and

(12) the recipient's commitment to submit a project budget and project schedule to the Secretary each month.

(b) PLAN APPROVAL.—(1) The Secretary shall approve a plan not later than 60 days after it is submitted. If the approval cannot be completed within 60 days, the Secretary shall notify the recipient, explain the reasons for the delay, and estimate the additional time that will be required.

(2) The Secretary shall inform the recipient of the reasons when a plan is disapproved.

(c) LIMITATIONS ON USE OF AVAILABLE AMOUNTS.—(1) The Secretary may use not more than .5 percent of amounts made available for a fiscal year to carry out section 5307, 5309, or 5311 of this title, an interstate transfer mass transportation project under section 103(e)(4) of title 23 as in effect on September 30, 1991, or a project under the National Capital Transportation Act of 1969 (Public Law 91–143, 83 Stat. 320) to make a contract to oversee the construction of a major project under section 5307, 5309, 5311, or 103(e)(4) or that Act. The Secretary may use when necessary not more than an additional .25 percent of amounts made available in a fiscal year to carry out a major project under section 5307 to make a contract to oversee the construction of the project.

(2) The Secretary may use amounts available under paragraph (1) of this subsection to make contracts for safety, procurement, management, and financial compliance reviews and audits of a recipient of amounts under paragraph (1). Subsections (a), (b), and (e) of this section do not apply to contracts under this paragraph.

(3) The Government shall pay the entire cost of carrying out a contract under this subsection.

(d) ACCESS TO SITES AND RECORDS.—Each recipient of assistance under this chapter or section 14(b) of the National Capital Transportation Act of 1969 (Public Law 91–143, 83 Stat. 320), as added by section 2 of the National Capital Transportation Amendments of 1979 (Public Law 96–184, 93 Stat. 1320), shall provide the Secretary and a contractor the Secretary chooses under subsection (c) of this section with access to the construction sites and records of the recipient when reasonably necessary.

(e) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section. The regulations shall include—

(1) a definition of "major capital project" for subsection (c) of this section that excludes a project to acquire rolling stock or to maintain or rehabilitate a vehicle; and

(2) a requirement that oversight begin during the preliminary engineering stage of a project,

unless the Secretary finds it more appropriate to begin the oversight during another stage of the project, to maximize the transportation benefits and cost savings associated with project management oversight.

§5328. Project review

(a) SCHEDULE.—(1) When the Secretary of Transportation allows a new fixed guideway project to advance into the alternatives analysis stage of project review, the Secretary shall cooperate with the applicant in alternatives analysis and in preparing a draft environmental impact statement and shall approve the draft for circulation not later than 45 days after the applicant submits the draft to the Secretary.

(2) After the draft is circulated and not later than 30 days after the applicant selects a locally preferred alternative, the Secretary shall allow the project to advance to the preliminary engineering stage if the Secretary finds the project is consistent with section 5309(e)(1)–(6) of this title.

(3) The Secretary shall issue a record of decision and allow a project to advance to the final design stage of construction not later than 120 days after the final environmental impact statement for the project is completed.

(4) The Secretary shall make a full financing grant agreement for a project not later than 120 days after the project enters the final design stage of construction. The agreement shall provide for a United States Government share of the construction cost at least equal to the Government share estimated in the Secretary's most recent report required under section 5309(m)(2) of this title or an update of the report unless the applicant requests otherwise.

(b) ALLOWED DELAYS.—(1) Advancement of a project under the time requirements of subsection (a) of this section may be delayed only—

(A) for the time the applicant may request; or

(B) during the time the Secretary finds, after reasonable notice and an opportunity for comment, that the applicant, for reasons attributable only to the applicant, has not complied substantially with the provisions of this chapter applicable to the project.

(2) Not more than 10 days after imposing a delay under paragraph (1)(B) of this subsection, the Secretary shall give the applicant a written statement explaining the reasons for the delay and describing actions the applicant must take to end the delay.

(3) At least once every 6 months, the Secretary shall report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate on each situation in which the Secretary has not met a time requirement of subsection (a) of this section or delayed a time requirement under paragraph (1)(B) of this subsection. The report shall explain the reasons for the delay and include a plan for achieving timely completion of the Secretary's review.

(c) PROGRAM OF INTERRELATED PROJECTS.—(1) In this subsection, a program of interrelated projects includes the following:

(A) the New Jersey Urban Core Project (as defined in title III of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 2087)).

(B) the San Francisco Bay Area Rail Extension Program, consisting of at least an extension of the San Francisco Bay Area Rapid Transit District to the San Francisco International Airport (Phase 1a to Colma and Phase 1b to San Franscisco Airport), the Santa Clara County Transit District Tasman Corridor Project, a program element designated by a change to the Metropolitan Transportation Commission Resolution No. 1876, and a program element financed completely with non-Government amounts, including the BART Warm Springs Extension, Dublin Extension, and West Pittsburg Extension.

(C) the Los Angeles Metro Rail Minimum Operable Segment-3 Program, consisting of 7 stations and approximately 11.6 miles of heavy rail subway on the following lines:

(i) one line running west and northwest from the Hollywood/Vine station to the North Hollywood station, with 2 intermediate stations.

(ii) one line running west from the Wilshire/Western station to the Pico/San Vicente station, with one intermediate station.

(iii) the East Side Extension, consisting of an initial line of approximately 3 miles, with at least 2 stations, beginning at Union Station and running generally east.

(D) the Baltimore-Washington Transportation Improvement Program, consisting of 3 extensions of the Baltimore Light Rail to Hunt Valley, Penn Station, and Baltimore-Washington Airport, MARC extensions to Frederick and Waldorf, Maryland, and an extension of the Washington Subway system to Largo, Maryland.

(E) the Tri-County Metropolitan Transportation District of Oregon Westside Light Rail Program, consisting of the locally preferred alternative for the Westside Light Rail Project, including system related costs, contained in the Department of Transportation and Related Agencies Appropriations Act, 1991 (Public Law 101–516, 104 Stat. 2155), and defined in House Report 101–584, and the Hillsboro extension to the Westside Light Rail Project contained in that Act.

(F) the Queens Local/Express Connector Program, consisting of the locally preferred alternative for the connection of the 63d Street tunnel extension to the Queens Boulevard lines, the bell-mouth part of the connector that will allow for future access by commuter rail trains and other subway lines to the 63d Street tunnel extension, planning elements for connecting the upper and lower levels to commuter and subway lines in Long Island City, and planning elements for providing a connector for commuter rail transportation to the East side of Manhattan and subway lines to the proposed Second Avenue subway.

(G) the Dallas Area Rapid Transit Authority light rail elements of the New System Plan, consisting of the locally preferred alternative for the South Oak Cliff corridor, the South Oak Cliff corridor extension-Camp Wisdom, the West Oak Cliff corridor-Westmoreland, the North Central corridor-Park Lane, the North Central corridor-Richardson, Plano, and Garland extensions, the Pleasant Grove corridor-Buckner, and the Carrollton corridors-Farmers Branch and Las Colinas terminal.

(H) other programs designated by law or the Secretary.

(2) Consistent with the time requirements of subsection (a) of this section or as otherwise provided by law, the Secretary shall make at least one full financing grant agreement for each program described in paragraph (1) of this subsection. The agreement shall include commitments to advance each of the applicant's program elements (in the program of interrelated projects) through the appropriate program review stages as provided in subsection (a) or as otherwise provided by law and to provide Government financing for each element. The agreement may be changed to include design and construction of a particular element.

(3) When reviewing a project in a program of interrelated projects, the Secretary shall consider the local financial commitment, transportation effectiveness, and other assessment factors of all program elements to the extent consideration expedites carrying out the project.

(4) Including a program element not financed by the Government in a program of interrelated projects does not impose Government requirements that otherwise would not apply to the element.

§5329. Investigation of safety hazards

(a) GENERAL.—The Secretary of Transportation may investigate a condition in equipment, a facility, or an operation financed under this chapter that the Secretary believes causes a serious hazard of death or injury to establish the nature and extent of the condition and how to eliminate or correct it. If the Secretary establishes that a condition causes a hazard, the Secretary shall require the local governmental authority receiving amounts under this chapter to submit a plan for correcting it. The Secretary may withhold further financial assistance under this chapter until a plan is approved and carried out.

(b) REPORT.—Not later than June 15, 1992, the Secretary shall submit to Congress a report containing—

(1) a description of actions taken to identify and investigate conditions in a facility, equipment, or way of operating as part of the findings and decisions required of the Secretary in providing a grant or loan under this chapter;

(2) a description of actions of the Secretary to correct or eliminate, as a requirement for making an amount available through a grant or loan under this chapter, a condition found to create a serious hazard of death or injury;

(3) a summary of all passenger-related deaths and injuries resulting from an unsafe condition in a facility, equipment, or way of operating a facility or equipment at least partly financed under this chapter;

(4) a summary of all employee-related deaths and injuries resulting from an unsafe condition in a facility, equipment, or way of operating a facility or equipment at least partly financed under this chapter;

(5) a summary of action of the Secretary to correct or eliminate the unsafe condition to which the deaths and injuries referred to in clauses (3) and (4) of this subsection were attributed;

(6) a summary of actions of the Secretary to alert mass transportation operators of the nature of the unsafe condition found to create a serious hazard of death or injury; and

(7) recommendations of the Secretary to Congress of any legislative or administrative actions necessary to ensure that all recipients of amounts under this chapter will undertake the best way available to correct or eliminate hazards of death or injury, including—

(A) a timetable for undertaking actions;

(B) an estimate of the capital and operating cost to take the actions; and

(C) minimum standards for establishing and carrying out safety plans by recipients of amounts under this chapter.

§5330. Withholding amounts for noncompliance with safety requirements

(a) APPLICATION.—This section applies only to States that have rail fixed guideway mass transportation systems not subject to regulation by the Federal Railroad Administration.

(b) GENERAL AUTHORITY.—The Secretary of Transportation may withhold not more than 5 percent of the amount required to be appropriated for use in a State or urbanized area in the State under section 5307 of this title for a fiscal year beginning after September 30, 1994, if the State in the prior fiscal year has not met the requirements of subsection (c) of this section and the Secretary decides the State is not making an adequate effort to comply with subsection (c).

(c) STATE REQUIREMENTS.—A State meets the requirements of this section if the State—

(1) establishes and is carrying out a safety program plan for each fixed guideway mass transportation system in the State that establishes at least safety requirements, lines of authority, levels of responsibility and accountability, and methods of documentation for the system; and

(2) designates a State authority as having responsibility—

(A) to require, review, approve, and monitor the carrying out of each plan;

(B) to investigate hazardous conditions and accidents on the systems; and

(C) to require corrective action to correct or eliminate those conditions.

(d) MULTISTATE INVOLVEMENT.—When more than one State is subject to this section in connection with a single mass transportation authority, the affected States may designate an entity (except the mass transportation authority) to ensure uniform safety standards and enforcement and to meet the requirements of subsection (c) of this section.

(e) AVAILABILITY OF WITHHELD AMOUNTS.—(1) An amount withheld under subsection (b) of this section remains available for apportionment for use in the State until the end of the 2d fiscal year after the fiscal year for which the amount may be appropriated.

(2) If a State meets the requirements of subsection (c) of this section before the last day of the period for which an amount withheld under subsection (b) of this section remains available under paragraph (1) of this subsection, the Secretary, on the first day on which the State meets the requirements, shall apportion to the State the amount withheld that remains available for apportionment for use in the State. An amount apportioned under this paragraph remains available until the end of the 3d fiscal year after the fiscal year in which the amount is apportioned. An amount not obligated at the end of the 3-year period shall be apportioned for use in other States under section 5336 of this title.

(3) If a State does not meet the requirements of subsection (c) of this section at the end of the period for which an amount withheld under subsection (b) of this section remains available under paragraph (1) of this subsection, the amount shall be apportioned for use in other States under section 5336 of this title.

(f) REGULATIONS.—Not later than December 18, 1992, the Secretary shall prescribe regulations stating the requirements for complying with subsection (c) of this section.

§5331. Alcohol and controlled substances testing

(a) DEFINITIONS.—In this section—

(1) "controlled substance" means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) whose use the Secretary of Transportation decides has a risk to transportation safety.

(2) "person" includes any entity organized or existing under the laws of the United States, a State, territory, or possession of the United States, or a foreign country.

(3) "mass transportation" means any form of mass transportation, except a form the Secretary decides is covered adequately, for employee alcohol and controlled substances testing purposes, under subchapter III of chapter 201 or section 31306 of this title.

(b) TESTING PROGRAM FOR MASS TRANSPORTATION EMPLOYEES.—(1)(A) In the interest of mass transportation safety, the Secretary of Transportation shall prescribe regulations not later than October 28, 1992, that establish a program requiring mass transportation operations that receive financial assistance under section 5307, 5309, or 5311 of this title or section 103(e)(4) of title 23 to conduct preemployment, reasonable suspicion, random, and post-accident testing of mass transportation employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of alcohol or a controlled substance in violation of law or a United States Government regulation.

(B) When the Secretary of Transportation considers it appropriate in the interest of safety, the Secretary may prescribe regulations for conducting periodic recurring testing of mass transportation employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(2) In prescribing regulations under this subsection, the Secretary of Transportation—

(A) shall require that post-accident testing of such a mass transportation employee be conducted when loss of human life occurs in an accident involving mass transportation; and

(B) may require that post-accident testing of such a mass transportation employee be conducted when bodily injury or significant property damage occurs in any other serious accident involving mass transportation.

(c) DISQUALIFICATIONS FOR USE.—(1) When the Secretary of Transportation considers it appropriate, the Secretary shall require disqualification for an established period of time or dismissal of any employee referred to in subsection (b)(1) of this section who is found—

(A) to have used or been impaired by alcohol when on duty; or

(B) to have used a controlled substance, whether or not on duty, except as allowed for medical purposes by law or regulation.

(2) This section does not supersede any penalty applicable to a mass transportation employee under another law.

(d) TESTING AND LABORATORY REQUIREMENTS.—In carrying out subsection (b) of this section, the Secretary of Transportation shall develop requirements that shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimens;

(2) for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—

(A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing;

(B) the minimum list of controlled substances for which individuals may be tested; and

(C) appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that a laboratory involved in controlled substances testing under this section have the capability and facility, at the laboratory, of performing screening and confirmation tests;

(4) provide that all tests indicating the use of alcohol or a controlled substance in violation of law or a Government regulation be confirmed by a scientifically recognized method of testing capable of providing quantitative information about alcohol or a controlled substance;

(5) provide that each specimen be subdivided, secured, and labeled in the presence of the tested individual and that a part of the specimen be retained in a secure manner to prevent the possibility of tampering, so that if the individual's confirmation test results are positive the individual has an opportunity to have the retained part tested by a 2d confirmation test done independently at another certified laboratory if the individual requests the 2d confirmation test not later than 3 days after being advised of the results of the first confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations that may be necessary and in consultation with the Secretary of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (except information about alcohol or a controlled substance) of employees, except that this clause does not prevent the use of test results for the orderly imposition of appropriate sanctions under this section; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(e) REHABILITATION.—The Secretary of Transportation shall prescribe regulations establishing requirements for rehabilitation programs that provide for the identification and opportunity for treatment of any mass transportation employee referred to in subsection (b)(1) of this section who is found to have used alcohol or a controlled substance in violation of law or a Government regulation. The Secretary shall decide on the circumstances under which employees shall be required to participate in a program. This subsection does not prevent a mass transportation operation from establishing a program under this section in cooperation with another mass transportation operation.

(f) RELATIONSHIP TO OTHER LAWS, REGULATIONS, STANDARDS, AND ORDERS.—(1) A State or local government may not prescribe, issue, or continue in effect a law, regulation, standard, or order that is inconsistent with regulations prescribed under this section. However, a regulation prescribed under this section does not preempt a State criminal law that imposes sanctions for reckless conduct leading to loss of life, injury, or damage to property.

(2) In prescribing regulations under this section, the Secretary of Transportation—

(A) shall establish only requirements that are consistent with international obligations of the United States; and

(B) shall consider applicable laws and regulations of foreign countries.

(3) This section does not prevent the Secretary of Transportation from continuing in effect, amending, or further supplementing a regulation prescribed before October 28, 1991, governing the use of alcohol or a controlled substance by mass transportation employees.

(g) INELIGIBILITY FOR ASSISTANCE.—A person is not eligible for financial assistance under section 5307, 5309, or 5311 of this title or section 103(e)(4) of title 23 if the person is required, under regulations the Secretary of Transportation prescribes under this section, to establish a program of alcohol and controlled substances testing and does not establish the program.

§5332. Nondiscrimination

(a) DEFINITION.—In this section, "person" includes a governmental authority, political subdivision, authority, legal representative, trust, unincorporated organization, trustee, trustee in bankruptcy, and receiver.

(b) PROHIBITIONS.—A person may not be excluded from participating in, denied a benefit of, or discriminated against under, a project, program, or activity receiving financial assistance under this chapter because of race, color, creed, national origin, sex, or age.

(c) COMPLIANCE.—(1) The Secretary of Transportation shall take affirmative action to ensure compliance with subsection (b) of this section.

(2) When the Secretary decides that a person receiving financial assistance under this chapter is not complying with subsection (b) of this section, a civil rights law of the United States, or a regulation or order under that law, the Secretary shall notify the person of the decision and require action be taken to ensure compliance with subsection (b).

(d) Authority of Secretary for Noncompliance.—If a person does not comply with subsection (b) of this section within a reasonable time after receiving notice, the Secretary shall—

(1) direct that no further financial assistance of the United States Government under this chapter be provided to the person;

(2) refer the matter to the Attorney General with a recommendation that a civil action be brought;

(3) proceed under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.); and

(4) take any other action provided by law.

(e) Civil Actions by Attorney General.—The Attorney General may bring a civil action for appropriate relief when—

(1) a matter is referred to the Attorney General under subsection (d)(2) of this section; or

(2) the Attorney General believes a person is engaged in a pattern or practice in violation of this section.

(f) Application and Relationship to Other Laws.—This section applies to an employment or business opportunity and is in addition to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

§5333. Labor standards

(a) Prevailing Wages Requirement.—The Secretary of Transportation shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed with a grant or loan under this chapter be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a—276a-5). The Secretary of Transportation may approve a grant or loan only after being assured that required labor standards will be maintained on the construction work. For a labor standard under this subsection, the Secretary of Labor has the same duties and powers stated in Reorganization Plan No. 14 of 1950 (eff. May 24, 1950, 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

(b) Employee Protective Arrangements.—(1) As a condition of financial assistance under sections 5307-5312 of this title, the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. The agreement granting the assistance under sections 5307-5312 shall specify the arrangements.

(2) Arrangements under this subsection shall include—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

(B) the continuation of collective bargaining rights;

(C) the protection of employees against a worsening of their positions related to employment;

(D) assurances of employment to employees of acquired mass transportation systems;

(E) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

(F) paid training or retraining programs.

(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11347 of this title.

§5334. Administrative

(a) General Authority.—In carrying out this chapter, the Secretary of Transportation may—

(1) prescribe terms for a project under sections 5307 and 5309-5311 of this title (except terms the Secretary of Labor prescribes under section 5333(b) of this title);

(2) sue and be sued;

(3) foreclose on property or bring a civil action to protect or enforce a right conferred on the Secretary of Transportation by law or agreement;

(4) buy property related to a loan under this chapter;

(5) agree to pay an annual amount in place of a State or local tax on real property acquired or owned under this chapter;

(6) sell, exchange, or lease property, a security, or an obligation;

(7) obtain loss insurance for property and assets the Secretary of Transportation holds;

(8) consent to a modification in an agreement under this chapter; and

(9) include in an agreement or instrument under this chapter a covenant or term the Secretary of Transportation considers necessary to carry out this chapter.

(b) Procedures for Prescribing Regulations.—(1) The Secretary of Transportation shall prepare an agenda listing all areas in which the Secretary intends to propose regulations governing activities under this chapter within the following 12 months. The Secretary shall publish the proposed agenda in the Federal Register as part of the Secretary's semiannual regulatory agenda that lists regulatory activities of the Federal Transit Administration. The Secretary shall submit the agenda to the Committees on Public Works and Transportation and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate on the day the agenda is published.

(2) Except for emergency regulations, the Secretary of Transportation shall give interested parties at least 60 days to participate in a regulatory proceeding under this chapter by submitting written information, views, or arguments, with or without an oral presentation, except when the Secretary for good cause finds that public notice and comment are unnecessary because of the routine nature or insignificant impact of the regulation or that an emergency regulation should be issued. The Secretary may extend the 60-day period if the Secretary decides the period is insufficient to allow diligent individuals to prepare comments or that other circumstances justify an extension.

(3) An emergency regulation ends 120 days after it is issued.

(4) The Secretary of Transportation shall comply with this section (except subsections (h) and (i)) and sections 5323(a)(2), (c) and (e), 5324(c), and 5325 of this title when proposing or carrying out a regulation governing an activity under this chapter, except for a routine matter or a matter with no significant impact.

(c) Budget Program and Set of Accounts.—The Secretary of Transportation shall—

(1) submit each year a budget program as provided in section 9103 of title 31; and

(2) maintain a set of accounts the Comptroller General shall audit under chapter 35 of title 31.

(d) Depository and Availability of Amounts.—The Secretary of Transportation shall deposit amounts made available to the Secretary under this chapter in a checking account in the Treasury. Receipts, assets, and amounts obtained or held by the Secretary to carry out this chapter are available for administrative expenses to carry out this chapter.

(e) Binding Effect of Financial Transaction.—A financial transaction of the Secretary of Transportation under this chapter and a related voucher are binding on all officers and employees of the United States Government.

(f) Dealing With Acquired Property.—Notwithstanding another law related to the Government acquiring, using, or disposing of real property, the Secretary of Transportation may deal with property acquired under subsection (a)(3) or (4) of this section in any way. However, this subsection does not—

(1) deprive a State or political subdivision of a State of jurisdiction of the property; or

(2) impair the civil rights, under the laws of a State or political subdivision of a State, of an inhabitant of the property.

(g) Transfer of Assets No Longer Needed.—(1) If a recipient of assistance under this chapter decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides—

(A) the asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) there is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) the overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

(2) A decision under paragraph (1) of this section must be in writing and include the reason for the decision.

(3) This subsection is in addition to another law related to using and disposing of a facility or equipment under an assistance agreement.

(h) Transfer of Amounts.—Amounts made available for a mass transportation project under title 23 shall be transferred to and administered by the Secretary of Transportation under this chapter. Amounts made available for a highway project under this chapter shall be transferred to and administered by the Secretary under title 23.

(i) Authority of Secretary of Housing and Urban Development.—The Secretary of Housing and Urban Development shall—

(1) carry out section 5312(a) and (b)(1) of this title related to—

(A) urban transportation systems and planned development of urban areas; and

(B) the role of transportation planning in overall urban planning; and

(2) advise and assist the Secretary of Transportation in making findings under section 5323(a)(1)(A) of this title.

(j) Relationship to Other Laws.—(1) Section 9107(a) of title 31 applies to the Secretary of Transportation under this chapter.

(2) Section 3709 of the Revised Statutes (41 U.S.C. 5) applies to a contract for more than $1,000 for services or supplies related to property acquired under this chapter.

§5335. Reports and audits

(a) Reporting System and Uniform System of Accounts and Records.—(1) To help meet the needs of individual mass transportation systems, the United States Government, State and local governments, and the public for information on which to base mass transportation service planning, the Secretary of Transportation shall maintain a reporting system, by uniform categories, to accumulate mass transportation financial and operating information and a uniform system of accounts and records. The reporting and uniform systems shall contain appropriate information to help any level of government make a public sector investment deci-

sion. The Secretary may request and receive appropriate information from any source.

(2) The Secretary may make a grant under section 5307 of this title only if the applicant, and any person that will receive benefits directly from the grant, are subject to the reporting and uniform systems.

(b) QUARTERLY REPORTS.—Not later than 30 days after the last day of each calendar quarter, the Secretary shall submit to the Committees on Public Works and Transportation and Appropriations of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Appropriations of the Senate a report on—

(1) obligations by State, designated recipient, and applicant made under this chapter during the quarter;

(2) the balance of unobligated apportionments under this chapter on the last day of the quarter;

(3) the balance of unobligated amounts under this chapter on the last day of the quarter that the Secretary may expend;

(4) letters of intent issued during the quarter;

(5) letters of intent outstanding on the last day of the quarter; and

(6) grant contracts executed and reimbursement authority established for amounts obligated for each State, designated recipient, and applicant.

(c) BIENNIAL NEEDS REPORT.—In January 1993 and in January of every 2d year after 1993, the Comptroller General shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing an evaluation of the extent to which current mass transportation needs are addressed adequately and an estimate of the future mass transportation needs of the United States, including mass transportation needs in rural areas (particularly access to health care facilities). The report shall include—

(1) an assessment of needs related to rail modernization, guideway modernization, replacing, rehabilitating, and buying buses and related equipment, constructing bus related facilities, and constructing new fixed guideway systems and extensions to existing fixed guideway systems;

(2) a 5-year projection of maintenance and modernization needs resulting from aging of existing equipment and facilities, including the need to overhaul or replace existing bus fleets and rolling stock used on fixed guideway systems;

(3) a 5-year projection of the need to invest in the expansion of existing mass transportation systems to meet changing economic, commuter, and residential patterns;

(4) an estimate of the level of expenditure needed to satisfy the needs identified in clauses (1)–(3) of this paragraph;

(5) an examination of existing Government, State, local, and private resources that are or reasonably can be expected to be made available to support public mass transportation; and

(6) the gap between the level of expenditure estimated under clause (4) of this paragraph and the level of resources identified under clause (5) of this paragraph that are available to meet the needs.

(d) BIENNIAL TRANSFERABILITY REPORT.—In January 1993 and in January of every 2d year after 1993, the Comptroller General shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on carrying out section 5307(b)(5) of this title. The report shall—

(1) identify, by State, the amount of mass transportation money transferred for non-mass transportation purposes under section 5307(b)(5) of this title during the prior fiscal year;

(2) include an assessment of the impact of the transfers on the mass transportation needs of individuals and communities in the State, including the impact on—

(A) the State's ability to meet the mass transportation needs of elderly individuals and individuals with disabilities;

(B) efforts to meet the objectives of the Clean Air Act (42 U.S.C. 7401 et seq.) and the Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.); and

(C) the State's efforts to extend public mass transportation services to unserved rural areas; and

(3) examine the relative levels of Government mass transportation assistance and services in urban and rural areas in the fiscal year that ended September 30, 1991, and the extent to which the assistance and service has changed in later fiscal years because of mass transportation resources made available under this chapter and the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 1914).

§5336. Apportionment of appropriations for block grants

(a) BASED ON URBANIZED AREA POPULATION.—Of the amount made available or appropriated under section 5338(g) of this title—

(1) 9.32 percent shall be apportioned each fiscal year only in urbanized areas with a population of less than 200,000 so that each of those areas is entitled to receive an amount equal to—

(A) 50 percent of the total amount apportioned multiplied by a ratio equal to the population of the area divided by the total population of all urbanized areas with populations of less than 200,000 as shown in the latest United States Government census; and

(B) 50 percent of the total amount apportioned multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary of Transportation, of the number of inhabitants in each square mile; and

(2) 90.68 percent shall be apportioned each fiscal year only in urbanized areas with populations of at least 200,000 as provided in subsections (b) and (c) of this section.

(b) BASED ON FIXED GUIDEWAY REVENUE VEHICLE-MILES, ROUTE-MILES, AND PASSENGER-MILES.—(1) In this subsection, "fixed guideway revenue vehicle-miles" and "fixed guideway route-miles" include ferry boat operations directly or under contract by the designated recipient.

(2) Of the amount apportioned under subsection (a)(2) of this section, 33.29 percent shall be apportioned as follows:

(A) 95.61 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

(i) 60 percent of the 95.61 percent apportioned under this subparagraph multiplied by a ratio equal to the number of fixed guideway revenue vehicle-miles attributable to the area, as established by the Secretary of Transportation, divided by the total number of all fixed guideway revenue vehicle-miles attributable to all areas; and

(ii) 40 percent of the 95.61 percent apportioned under this subparagraph multiplied by a ratio equal to the number of fixed guideway route-miles attributable to the area, established by the Secretary, divided by the total number of all fixed guideway route-miles attributable to all areas.

(B) 4.39 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

(i) the number of fixed guideway vehicle passenger-miles traveled multiplied by the number of fixed guideway vehicle passenger-miles traveled for each dollar of operating cost in an area; divided by

(ii) the total number of fixed guideway vehicle passenger-miles traveled multiplied by the total number of fixed guideway vehicle passenger-miles traveled for each dollar of operating cost in all areas.

(C) An urbanized area with a population of at least 750,000 in which commuter rail transportation is provided shall receive at least .75 percent of the total amount apportioned under this subsection.

(D) Under subparagraph (A) of this paragraph, fixed guideway revenue vehicle- or route-miles, and passengers served on those miles, in an urbanized area with a population of less than 200,000, where the miles and passengers served otherwise would be attributable to an urbanized area with a population of at least 1,000,000 in an adjacent State, are attributable to the governmental authority in the State in which the urbanized area with a population of less than 200,000 is located. The authority is deemed an urbanized area with a population of at least 200,000 if the authority makes a contract for the service.

(E) A recipient's apportionment under subparagraph (A)(i) of this paragraph may not be reduced if the recipient, after satisfying the Secretary of Transportation that energy or operating efficiencies would be achieved, reduces revenue vehicle-miles but provides the same frequency of revenue service to the same number of riders.

(c) BASED ON BUS REVENUE VEHICLE-MILES AND PASSENGER-MILES.—Of the amount apportioned under subsection (a)(2) of this section, 66.71 percent shall be apportioned as follows:

(1) 90.8 percent of the total amount apportioned under this subsection shall be apportioned as follows:

(A) 73.39 percent of the 90.8 percent apportioned under this paragraph shall be apportioned so that each urbanized area with a population of at least 1,000,000 is entitled to receive an amount equal to—

(i) 50 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio equal to the total bus revenue vehicle-miles operated in or directly serving the urbanized area divided by the total bus revenue vehicle-miles attributable to all areas;

(ii) 25 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio equal to the population of the area divided by the total population of all areas, as shown by the latest Government census; and

(iii) 25 percent of the 73.39 percent apportioned under this subparagraph multiplied by a ratio for the area based on population weighted by a factor, established by the Secretary of Transportation, of the number of inhabitants in each square mile.

(B) 26.61 percent of the 90.8 percent apportioned under this paragraph shall be apportioned so that each urbanized area with a population of at least 200,000 but not more than 999,999 is entitled to receive an amount equal to—

(i) 50 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio equal to the total bus revenue vehicle-miles operated in or directly serving the urbanized area divided by the total bus revenue vehicle-miles attributable to all areas;

(ii) 25 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio equal to the population of the area divided by the total population of all areas, as shown by the latest Government census; and

(iii) 25 percent of the 26.61 percent apportioned under this subparagraph multiplied by a ratio for the area based on population weighted

by a factor, established by the Secretary of Transportation, of the number of inhabitants in each square mile.

(2) 9.2 percent of the total amount apportioned under this subsection shall be apportioned so that each urbanized area with a population of at least 200,000 is entitled to receive an amount equal to—

(A) the number of bus passenger-miles traveled multiplied by the number of bus passenger-miles traveled for each dollar of operating cost in an area; divided by

(B) the total number of bus passenger-miles traveled multiplied by the total number of bus passenger-miles traveled for each dollar of operating cost in all areas.

(d) OPERATING ASSISTANCE.—(1) The total amount apportioned under this section that may be used for operating assistance may not be more than—

(A) 80 percent of the total amount apportioned in the fiscal year ending September 30, 1982, under section 5(a)(1)(A), (2)(A), and (3)(A) of the Urban Mass Transportation Act of 1964 to urbanized areas with populations of at least 1,000,000;

(B) 90 percent of the total amount apportioned in that year under section 5(a)(1)(A), (2)(A), and (3)(A) to urbanized areas with populations of at least 200,000 but not more than 999,999;

(C) 95 percent of the total amount apportioned in that year under section 5(a)(1)(A), (2)(A), and (3)(A) to urbanized areas with populations of less than 200,000; or

(D) two-thirds of the total amount apportioned under this section during the first complete year an urbanized area received amounts under this section if the area first became an urbanized area under the 1980 Government census or later.

(2) Amounts apportioned under paragraph (1) of this subsection shall be increased on October 1 of each year by an amount equal to the amount applicable to each urbanized area under paragraph (1) (except increases under this paragraph), multiplied by the percentage increase in the Consumer Price Index for all-urban consumers published by the Secretary of Labor during the most recent calendar year. However, the increase may not be more than the percentage increase of amounts made available under section 5338(g) of this title in the current fiscal year and amounts made available under section 5338(g) in the prior fiscal year.

(e) DATE OF APPORTIONMENT.—The Secretary of Transportation shall—

(1) apportion amounts appropriated under section 5338(g) of this title to carry out section 5307 of this title not later than the 10th day after the date the amounts are appropriated or October 1 of the fiscal year for which the amounts are appropriated, whichever is later; and

(2) publish apportionments of the amounts, including amounts attributable to each urbanized area with a population of more than 50,000 and amounts attributable to each State of a multistate urbanized area, on the apportionment date.

(f) AMOUNTS NOT APPORTIONED TO DESIGNATED RECIPIENTS.—The chief executive officer of a State may expend in an urbanized area with a population of less than 200,000 an amount apportioned under this section that is not apportioned to a designated recipient as defined in section 5307(a) of this title.

(g) TRANSFERS OF APPORTIONMENTS.—(1) The chief executive officer of a State may transfer any part of the State's apportionment under subsection (a)(1) of this section to supplement amounts apportioned to the State under section 5311(c) of this title or amounts apportioned to urbanized areas under this subsection. The chief executive officer may make a transfer only after consulting with responsible local officials and publicly owned operators of mass transportation in each area for which the amount originally was apportioned under this section.

(2) The chief executive officer of a State may transfer any part of the State's apportionment under section 5311(c) of this title to supplement amounts apportioned to the State under subsection (a)(1) of this section.

(3) The chief executive officer of a State may use throughout the State amounts of a State's apportionment remaining available for obligation at the beginning of the 90-day period before the period of the availability of the amounts expires.

(4) A designated recipient for an urbanized area with a population of at least 200,000 may transfer a part of its apportionment under this section to the chief executive officer of a State. The chief executive officer shall distribute the transferred amounts to urbanized areas under this section.

(5) Capital and operating assistance limitations applicable to the original apportionment apply to amounts transferred under this subsection.

(h) CHANGES OF APPORTIONMENTS.—If sufficient amounts are available, the Secretary of Transportation shall change apportionments under this section between the Mass Transit Account of the Highway Trust Fund and the general fund to ensure that each recipient receives from the general fund at least as much operating assistance made available each fiscal year under this section as the recipient is eligible to receive.

(i) PERIOD OF AVAILABILITY TO RECIPIENTS.—An amount apportioned under this section may be obligated by the recipient for 3 years after the fiscal year in which the amount is apportioned. Not later than 30 days after the end of the 3-year period, an amount that is not obligated at the end of that period shall be added to the amount that may be apportioned under this section in the next fiscal year.

(j) APPLICATION OF OTHER SECTIONS.—Sections 5302, 5318, 5323(a)(1), (d), and (f), 5332, and 5333 of this title apply to this section and to a grant made under this section. Except as provided in this section, no other provision of this chapter applies to this section or to a grant made under this section.

(k) CERTAIN URBANIZED AREAS GRANDFATHERED.—An area designated an urbanized area under the 1980 census and not designated an urbanized area under the 1990 census—

(1) for the fiscal year ending September 30, 1992, is deemed to be an urbanized area as defined by section 5302(a)(13) of this title; and

(2) for the fiscal year ending September 30, 1993, is eligible to receive—

(A) 50 percent of the amount the area would have received if the area had been an urbanized area as defined by section 5302(a)(13) of this title; and

(B) an amount equal to 50 percent of the amount that the State in which the area is located would have received if the area had been an area other than an urbanized area.

§5337. Apportionment of appropriations for fixed guideway modernization

(a) PERCENTAGE DISTRIBUTION.—The Secretary of Transportation shall apportion amounts made available for fixed guideway modernization under section 5309 of this title for each of the fiscal years ending September 30, 1992–1997, as follows:

(1) The first $455,000,000 shall be apportioned in the following urbanized areas as follows:

(A) Baltimore, 1.84 percent.

(B) Boston, 8.56 percent.

(C) Chicago/Northwestern Indiana, 17.18 percent.

(D) Cleveland, 2.09 percent.

(E) New York, 35.57 percent.

(F) Northeastern New Jersey, 9.04 percent.

(G) Philadelphia/Southern New Jersey, 12.41 percent.

(H) San Francisco, 7.21 percent.

(I) Southwestern Connecticut, 6.10 percent.

(2) The next $42,700,000 shall be apportioned in the following urbanized areas as follows:

(A) New York, 33.2341 percent.

(B) Northeastern New Jersey, 22.1842 percent.

(C) Philadelphia/Southern New Jersey, 5.7594 percent.

(D) San Francisco, 2.7730 percent.

(E) Pittsburgh, 31.9964 percent.

(F) New Orleans, 4.0529 percent.

(3) The next $70,000,000 shall be apportioned as follows:

(A) 50 percent in the urbanized areas listed in paragraphs (1) and (2) as provided in section 5336(b)(2)(A) of this title; and

(B) 50 percent in other urbanized areas eligible for assistance under section 5336(b)(2)(A) of this title if the areas contain fixed guideway systems placed in revenue service at least 7 years before the fiscal year in which amounts are made available and in any other urbanized area if, before the first day of the fiscal year, the area satisfies the Secretary that the area has modernization needs that cannot be met adequately with amounts received as provided in section 5336(b)(2)(A).

(4) Remaining amounts shall be apportioned in each urbanized area eligible for assistance under paragraphs (1)–(3) of this subsection as provided in section 5336(B)(2)(A).

(b) TOTAL AMOUNTS NOT AVAILABLE.—In a fiscal year in which the total amounts authorized under subsection (a)(1) and (2) of this section are not available, the Secretary shall reduce on a proportionate basis the apportionments of all urbanized areas eligible under subsection (a)(1) or (2) to adjust for the amount not available.

(c) NEW JERSEY TRANSIT CORPORATION.—Rail modernization amounts allocated to the New Jersey Transit Corporation under this section may be spent in any urbanized area in which the New Jersey Transit Corporation operates rail transportation, regardless of which urbanized area generates the financing.

§5338. Authorizations

(a) FOR SECTIONS 5308, 5310, 5311, 5313, 5314, 5317, 5320, 5327, AND 5334(a) and (c) AND SECTION 103(e)(4) OF TITLE 23.—(1) Not more than the following amounts are available from the Mass Transit Account of the Highway Trust Fund for the Secretary of Transportation to carry out sections 5308, 5310, 5311, 5313, 5314, 5317, 5320, 5327, and 5334(a) and (c) of this title:

(A) $1,150,000,000 for the fiscal year ending September 30, 1993.

(B) $1,190,000,000 for the fiscal year ending September 30, 1994.

(C) $1,150,000,000 for the fiscal year ending September 30, 1995.

(D) $1,110,000,000 for the fiscal year ending September 30, 1996.

(E) $1,920,000,000 for the fiscal year ending September 30, 1997.

(2) In addition to amounts made available under paragraph (1) of this subsection, not more than the following amounts may be appropriated to the Secretary to carry out sections 5308, 5310, 5311, 5313, 5314, 5317, 5320, 5327, and 5334(a) and (c) of this title and substitute transit projects under section 103(e)(4) of title 23:

(A) $2,055,000,000 for the fiscal year ending September 30, 1993.

(B) $1,885,000,000 for the fiscal year ending September 30, 1994.

(C) $1,925,000,000 for the fiscal year ending September 30, 1995.

(D) $1,965,000,000 for the fiscal year ending September 30, 1996.

(E) $2,430,000,000 for the fiscal year ending September 30, 1997.

(b) Section 5309.—(1) Not more than the following amounts are available from the Account for the Secretary to carry out section 5309 of this title:

(A) $1,725,000,000 for the fiscal year ending September 30, 1993.

(B) $1,785,000,000 for the fiscal year ending September 30, 1994.

(C) $1,725,000,000 for the fiscal year ending September 30, 1995.

(D) $1,665,000,000 for the fiscal year ending September 30, 1996.

(E) $2,880,000,000 for the fiscal year ending September 30, 1997.

(2) In addition to amounts made available under paragraph (1) of this subsection, not more than the following amounts may be appropriated to the Secretary to carry out section 5309 of this title:

(A) $305,000,000 for the fiscal year ending September 30, 1993.

(B) $265,000,000 for the fiscal year ending September 30, 1994.

(C) $325,000,000 for the fiscal year ending September 30, 1995.

(D) $385,000,000 for the fiscal year ending September 30, 1996.

(E) $20,000,000 for the fiscal year ending September 30, 1997.

(c) Section 5315.—The Secretary shall make available in equal amounts from amounts provided under subsections (g) and (h) of this section not more than $3,000,000 for each of the fiscal years ending September 30, 1992–1997, to carry out section 5315 of this title.

(d) Section 5316.—Not more than the following amounts may be appropriated to the Secretary from the Fund (except the Account) for each of the fiscal years ending September 30, 1992–1997:

(1) $250,000 to carry out section 5316(a) of this title.

(2) $3,000,000 to carry out section 5316(b) of this title.

(3) $1,000,000 to carry out section 5316(c) of this title.

(4) $1,000,000 to carry out section 5316(d) of this title.

(5) $1,000,000 to carry out section 5316(e) of this title.

(e) Section 5317.—(1) Not more than the following amounts are available from the Fund (except the Account) for the Secretary to carry out section 5317 of this title:

(A) $5,000,000 for the fiscal year ending September 30, 1992.

(B) $6,000,000 for each of the fiscal years ending September 30, 1993–1997.

(2) Not more than the following amounts may be appropriated to the Secretary from the Fund (except the Account) for making grants under section 5317(b)(5)(B) of this title:

(A) $2,500,000 for the fiscal year ending September 30, 1992.

(B) $3,000,000 for the fiscal year ending September 30, 1993.

(C) $2,500,000 for the fiscal year ending September 30, 1994.

(f) Fiscal Year Ending September 30, 1992.—(1) Not more than the following amounts are available from the Account for the Secretary for the fiscal year ending September 30, 1992:

(A) $43,780,000 to carry out sections 5303–5306 of this title.

(B) $409,710,000 to carry out section 5308 of this title.

(C) $1,345,000,000 to carry out section 5309 of this title.

(D) $55,000,000 to carry out section 5310 of this title.

(E) $19,460,000 to carry out section 5312(a)(1) of this title.

(F) $20,050,000 to carry out section 5312(a)(2) of this title, of which $12,000,000 is available only for part C of title VI of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 2195).

(G) $7,000,000 to carry out section 5317 of this title.

(H) $1,500,000 to expand the bus testing facility established under section 5318(a) of this title.

(I) $2,500,000 to establish the revolving fund under section 5318(e) of this title.

(2) Not more than $2,242,000 may be appropriated to the Secretary from the Fund (except the Account) for the fiscal year ending September 30, 1992, to make the grant under section 5317(b)(3)(A) of this title.

(g) Section 5307.—Amounts remaining available each fiscal year under subsections (a)(1) and (f)(1)(B) of this section, after allocation under subsections (h)–(j) and (k)(4) of this section, are available under section 5307 of this title.

(h) Planning, Programming, and Research.—Before apportioning in each fiscal year amounts made available or appropriated under section 5303(h) of this title, an amount equal to 3 percent of amounts made available or appropriated under subsections (a), (b), and (f)(1)(A)–(G) of this section is available as follows:

(1) 45 percent for metropolitan planning activities under section 5303(e) of this title.

(2) 5 percent to carry out section 5308(b)(2) of this title.

(3) 20 percent to carry out State programs under section 5313 of this title.

(4) 30 percent to carry out the national program under section 5314 of this title.

(i) Other Set-Asides.—Before apportioning in each fiscal year amounts made available or appropriated under subsections (a) and (f)(1)(B) of this section, of amounts made available or appropriated under subsections (a), (b), and (f)(1)(A)–(G) of this section—

(1) not more than .96 percent is available for administrative expenses to carry out section 5334(a) and (c)–(f) of this title;

(2) not more than 1.34 percent is available for transportation services to elderly individuals and individuals with disabilities under the formula under section 5310(a) of this title; and

(3) $7,000,000 is available for section 5317 for each of the fiscal years ending September 30, 1993–1996.

(j) Completing Interstate Transfer Transit Projects.—Of the amounts remaining available each year under subsections (a), (b), and (f)(1)(A)–(G) of this section, after allocation under subsections (h) and (i) of this section, not more than the following amounts are available for substitute transit projects under section 103(e)(4) of title 23:

(1) $160,000,000 for the fiscal year ending September 30, 1992.

(2) $164,843,000 for the fiscal year ending September 30, 1993.

(k) Limitations.—Of the amounts available—

(1) under subsection (a)(2) of this section, 3.5 percent is available to finance programs and activities, including administrative costs, under section 5310 of this title;

(2) 1.5 percent of the amounts available to finance research, development, and demonstration projects under section 5312(a) of this title is available to increase the information and technology available to provide improved mass transportation service and facilities planned and designed to meet the special needs of elderly individuals and individuals with disabilities;

(3) not more than 12.5 percent is available for grants to any one State under section 5312(c)(2) of this title;

(4) 5.5 percent of the amount remaining available each year under subsections (a)(1) and (f)(1)(B) of this section, after allocation under subsections (h)–(j) of this section, is available under the formula under section 5311 of this title; and

(5) under section 5309(m)(1)(A)(iii) of this title—

(A) $1,500,000 is available for the fiscal year ending September 30, 1992;

(B) $2,000,000 is available for the fiscal year ending September 30, 1993;

(C) the lesser of $2,000,000 or an amount the Secretary determines is necessary for each fiscal year is available for each of the fiscal years ending September 30, 1994–1996; and

(D) the lesser of $3,000,000 or an amount the Secretary determines is necessary is available for the fiscal year ending September 30, 1997.

(l) Grants as Contractual Obligations.—(1) A grant or contract approved by the Secretary, that is financed with amounts made available under subsection (a)(1), (b)(1), (c), (e), or (f)(1)(A)–(G) of this section, is a contractual obligation of the Government to pay the Government's share of the cost of the project.

(2) A grant or contract, approved by the Secretary, that is financed with amounts made available under subsection (a)(2) or (b)(2) of this section, is a contractual obligation of the Government to pay the Government's share of the cost of the project only to the extent amounts are provided in advance in an appropriations law.

(m) Early Appropriations and Availability of Amounts.—(1) Amounts appropriated under subsection (a)(2) of this section to carry out section 5311 of this title may be appropriated in the fiscal year before the fiscal year in which the appropriation is available for obligation.

(2) Amounts made available or appropriated under subsections (a), (b), (f)(1)(A)–(G), (h), (i)(1) and (2), and (k)(4) of this section remain available until expended.

(3) Amounts apportioned under section 5308 of this title—

(A) remain available for 3 years after the fiscal year in which the amount is appropriated; and

(B) that are unobligated at the end of the 3-year period shall be added to the amount available for apportionment for the next fiscal year not later than 30 days after the end of the 3-year period.

CHAPTER 55—INTERMODAL TRANSPORTATION

SUBCHAPTER I—GENERAL

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SUBCHAPTER I—GENERAL

§5501. National Intermodal Transportation System policy

(a) General.—It is the policy of the United States Government to develop a National Intermodal Transportation System that is economi-

cally efficient and environmentally sound, provides the foundation for the United States to compete in the global economy, and will move individuals and property in an energy efficient way.

(b) SYSTEM CHARACTERISTICS.—(1) The National Intermodal Transportation System shall consist of all forms of transportation in a unified, interconnected manner, including the transportation systems of the future, to reduce energy consumption and air pollution while promoting economic development and supporting the United States' preeminent position in international commerce.

(2) The National Intermodal Transportation System shall include a National Highway System consisting of the Dwight D. Eisenhower System of Interstate and Defense Highways and those principal arterial roads that are essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings.

(3) The National Intermodal Transportation System shall include significant improvements in public transportation necessary to achieve national goals for improved air quality, energy conservation, international competitiveness, and mobility for elderly individuals, individuals with disabilities, and economically disadvantaged individuals in urban and rural areas of the United States.

(4) The National Intermodal Transportation System shall provide improved access to ports and airports, the Nation's link to commerce.

(5) The National Intermodal Transportation System shall give special emphasis to the contributions of the transportation sectors to increased productivity growth. Social benefits must be considered with particular attention to the external benefits of reduced air pollution, reduced traffic congestion, and other aspects of the quality of life in the United States.

(6) The National Intermodal Transportation System must be operated and maintained with insistent attention to the concepts of innovation, competition, energy efficiency, productivity, growth, and accountability. Practices that resulted in the lengthy and overly costly construction of the Dwight D. Eisenhower System of Interstate and Defense Highways must be confronted and stopped.

(7) The National Intermodal Transportation System shall be adapted to "intelligent vehicles", "magnetic levitation systems", and other new technologies, wherever feasible and economical, with benefit cost estimates given special emphasis on safety considerations and techniques for cost allocation.

(8) When appropriate, the National Intermodal Transportation System will be financed, as regards Government apportionments and reimbursements, by the Highway Trust Fund. Financial assistance will be provided to State and local governments and their instrumentalities to help carry out national goals related to mobility for elderly individuals, individuals with disabilities, and economically disadvantaged individuals.

(9) The National Intermodal Transportation System must be the centerpiece of a national investment commitment to create the new wealth of the United States for the 21st century.

(c) DISTRIBUTION AND POSTING.—The Secretary of Transportation shall distribute copies of the policy in subsections (a) and (b) of this section to each employee of the Department of Transportation and ensure that the policy is posted in all offices of the Department.

§5502. Intermodal Transportation Advisory Board

(a) ORGANIZATION.—The Intermodal Transportation Advisory Board is a board in the Office of the Secretary of Transportation.

(b) MEMBERSHIP.—The Board consists of the Secretary, who serves as chairman, and the Administrator, or the Administrator's designee, of—

(1) the Federal Highway Administration;

(2) the Federal Aviation Administration;

(3) the Maritime Administration;

(4) the Federal Railroad Administration; and

(5) the Federal Transit Administration.

(c) DUTIES AND POWERS.—The Board shall provide recommendations for carrying out the duties of the Secretary described in section 301(3) of this title.

§5503. Office of Intermodalism

(a) ESTABLISHMENT.—The Secretary of Transportation shall establish in the Office of the Secretary an Office of Intermodalism.

(b) DIRECTOR.—The head of the Office is a Director who shall be appointed by the Secretary.

(c) DUTIES AND POWERS.—The Director shall carry out the duties of the Secretary described in section 301(3) of this title.

(d) INTERMODAL TRANSPORTATION DATA BASE.—(1) The Director shall develop, maintain, and disseminate intermodal transportation data through the Bureau of Transportation Statistics. The Director shall coordinate the collection of data for the data base with the States and metropolitan planning organizations. The data base shall include information on—

(A) the volume of property and number of individuals carried in intermodal transportation by relevant classification;

(B) patterns of movement of property and individuals in intermodal transportation by relevant classification by origin and destination; and

(C) public and private investment in intermodal transportation facilities and services.

(2) The Director shall make information from the data base available to the public.

(e) RESEARCH.—The Director shall—

(1) coordinate United States Government research on intermodal transportation as provided in the plan developed under section 6009(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 2177); and

(2) carry out additional research needs identified by the Director.

(f) TECHNICAL ASSISTANCE.—The Director shall provide technical assistance to States and to metropolitan planning organizations for urban areas having a population of at least 1,000,000 in collecting data related to intermodal transportation to facilitate the collection of the data by States and metropolitan planning organizations.

(g) ADMINISTRATIVE AND CLERICAL SUPPORT.—The Director shall provide administrative and clerical support to the Intermodal Transportation Advisory Board.

§5504. Model intermodal transportation plans

(a) GRANTS.—The Secretary of Transportation shall make grants to States to develop model State intermodal transportation plans that are consistent with the policy set forth in section 302(e) of this title. The model plans shall include systems for collecting data related to intermodal transportation.

(b) DISTRIBUTION.—The Secretary shall award grants to States under this section that represent a variety of geographic regions and transportation needs, patterns, and modes.

(c) PLAN SUBMISSION.—As a condition to a State receiving a grant under this section, the Secretary shall require that the State provide assurances that the State will submit to the Secretary a State intermodal transportation plan not later than 18 months after the date of receipt of the grant.

(d) GRANT AMOUNTS.—The Secretary shall reserve, from amounts deducted under section 104(a) of title 23, $3,000,000 to make grants under this section. The total amount that a State may receive in grants under this section may not be more than $500,000.

SUBCHAPTER II—TERMINALS

§5561. Definition

In this chapter, "civic and cultural activities" includes libraries, musical and dramatic presentations, art exhibits, adult education programs, public meeting places, and other facilities for carrying on an activity any part of which is supported under a law of the United States.

§5562. Assistance projects

(a) REQUIREMENTS TO PROVIDE ASSISTANCE.—The Secretary of Transportation shall provide financial, technical, and advisory assistance under this chapter to—

(1) promote, on a feasibility demonstration basis, the conversion of at least 3 rail passenger terminals into intermodal transportation terminals;

(2) preserve rail passenger terminals that reasonably are likely to be converted or maintained pending preparation of plans for their reuse;

(3) acquire and use space in suitable buildings of historic or architectural significance but only if use of the space is feasible and prudent when compared to available alternatives; and

(4) encourage State and local governments, local and regional transportation authorities, common carriers, philanthropic organizations, and other responsible persons to develop plans to convert rail passenger terminals into intermodal transportation terminals and civic and cultural activity centers.

(b) EFFECT ON ELIGIBILITY.—This chapter does not affect the eligibility of any rail passenger terminal for preservation or reuse assistance under another program or law.

(c) ACQUIRING SPACE.—The Secretary may acquire space under subsection (a)(3) of this section only after consulting with the Advisory Council on Historic Preservation and the Chairman of the National Endowment for the Arts.

§5563. Conversion of certain rail passenger terminals

(a) AUTHORITY TO PROVIDE ASSISTANCE.—The Secretary of Transportation may provide financial assistance to convert a rail passenger terminal to an intermodal transportation terminal under section 5562(a)(1) of this title only if—

(1) the terminal can be converted to accommodate other modes of transportation the Secretary of Transportation decides are appropriate, including—

(A) motorbus transportation;

(B) mass transit (rail or rubber tire); and

(C) airline ticket offices and passenger terminals providing direct transportation to area airports;

(2) the terminal is listed on the National Register of Historic Places maintained by the Secretary of the Interior;

(3) the architectural integrity of the terminal will be preserved;

(4) to the extent practicable, the use of the terminal facilities for transportation may be combined with use of those facilities for other civic and cultural activities, especially when another activity is recommended by—

(A) the Advisory Council on Historic Preservation;

(B) the Chairman of the National Endowment for the Arts; or

(C) consultants retained under subsection (b) of this section; and

(5) the terminal and the conversion project meet other criteria prescribed by the Secretary of Transportation after consultation with the Council and Chairman.

(b) ARCHITECTURAL INTEGRITY.—The Secretary of Transportation must employ consultants on whether the architectural integrity of

the rail passenger terminal will be preserved under subsection (a)(3) of this section. The Secretary may decide that the architectural integrity will be preserved only if the consultants concur. The Council and Chairman shall recommend consultants to be employed by the Secretary. The consultants also may make recommendations referred to in subsection (a)(4) of this section.

(c) GOVERNMENT'S SHARE OF COSTS.—The Secretary of Transportation may not make a grant under this section for more than 80 percent of the total cost of converting a rail passenger terminal into an intermodal transportation terminal.

§5564. Interim preservation of certain rail passenger terminals

(a) GENERAL GRANT AUTHORITY.—Subject to subsection (b) of this section, the Secretary of Transportation may make a grant of financial assistance to a responsible person (including a governmental authority) to preserve a rail passenger terminal under section 5562(a)(2) of this title. To receive assistance under this section, the person must be qualified, prepared, committed, and authorized by law to maintain (and prevent the demolition, dismantling, or further deterioration of) the terminal until plans for its reuse are prepared.

(b) GRANT REQUIREMENTS.—The Secretary of Transportation may make a grant of financial assistance under this section only if—

(1) the Secretary decides the rail passenger terminal has a reasonable likelihood of being converted to, or conditioned for reuse as, an intermodal transportation terminal, a civic or cultural activities center, or both; and

(2) planning activity directed toward conversion or reuse has begun and is proceeding in a competent way.

(c) MAXIMIZING PRESERVATION OF TERMINALS.—(1) Amounts appropriated to carry out this section and section 5562(a)(2) of this title shall be expended in the way most likely to maximize the preservation of rail passenger terminals that are—

(A) reasonably capable of conversion to intermodal transportation terminals;

(B) listed in the National Register of Historic Places maintained by the Secretary of the Interior; or

(C) recommended (on the basis of architectural integrity and quality) by the Advisory Council on Historic Preservation or the Chairman of the National Endowment for the Arts.

(2) The Secretary of Transportation may not make a grant under this section for more than 80 percent of the total cost of maintaining the terminal for an interim period of not more than 5 years.

§5565. Encouraging the development of plans for converting rail passenger terminals

(a) GENERAL GRANT AUTHORITY.—The Secretary of Transportation may make a grant of financial assistance to a qualified person (including a governmental authority) to encourage the development of plans for converting a rail passenger terminal under section 5562(a)(4) of this title. To receive assistance under this section, the person must—

(1) be prepared to develop practicable plans that meet zoning, land use, and other requirements of the applicable State and local jurisdictions in which the terminal is located;

(2) incorporate into the designs and plans proposed for converting the terminal, features that reasonably appear likely to attract private investors willing to carry out the planned conversion and its subsequent maintenance and operation; and

(3) complete the designs and plans for the conversion within the period of time prescribed by the Secretary.

(b) PREFERENCE.—In making a grant under this section, the Secretary of Transportation shall give preferential consideration to an applicant whose completed designs and plans will be carried out within 3 years after their completion.

(c) MAXIMIZING CONVERSION AND CONTINUED PUBLIC USE.—(1) Amounts appropriated to carry out this section and section 5562(a)(4) of this title shall be expended in the way most likely to maximize the conversion and continued public use of rail passenger terminals that are—

(A) listed in the National Register of Historic Places maintained by the Secretary of the Interior; or

(B) recommended (on the basis of architectural integrity and quality) by the Advisory Council on Historic Preservation or the Chairman of the National Endowment for the Arts.

(2) The Secretary of Transportation may not make a grant under this section for more than 80 percent of the total cost of the project for which the financial assistance is provided.

§5566. Records and audits

(a) RECORD REQUIREMENTS.—Each recipient of financial assistance under this chapter shall keep records required by the Secretary of Transportation. The records shall disclose—

(1) the amount, and disposition by the recipient, of the proceeds of the assistance;

(2) the total cost of the project for which the assistance was given or used;

(3) the amount of that part of the cost of the project supplied by other sources; and

(4) any other records that will make an effective audit easier.

(b) AUDITS AND INSPECTIONS.—For 3 years after a project is completed, the Secretary and the Comptroller General may audit and inspect records of a recipient that the Secretary or Comptroller General decides may be related or pertinent to the financial assistance.

§5567. Preference for preserving buildings of historic or architectural significance

Amtrak shall give preference to the use of rail passenger terminal facilities that will preserve buildings of historic or architectural significance.

§5568. Authorization of appropriations

(a) GENERAL.—The following amounts may be appropriated to the Secretary of Transportation:

(1) not more than $15,000,000 to carry out section 5562(a)(1) and (3) of this title.

(2) not more than $2,500,000 to carry out section 5562(a)(2) of this title.

(3) not more than $2,500,000 to carry out section 5562(a)(4) of this title.

(b) AVAILABILITY OF AMOUNTS.—Amounts appropriated to carry out this chapter remain available until expended.

CHAPTER 57—SANITARY FOOD TRANSPORTATION

Sec.
5701. Findings.
5702. Definitions.
5703. General regulation.
5704. Tank trucks, rail tank cars, and cargo tanks.
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5713. Application of sections 5711 and 5712.
5714. Coordination procedures.

§5701. Findings

Congress finds that—

(1) the United States public is entitled to receive food and other consumer products that are not made unsafe because of certain transportation practices;

(2) the United States public is threatened by the transportation of products potentially harmful to consumers in motor vehicles and rail vehicles that are used to transport food and other consumer products; and

(3) the risks to consumers by those transportation practices are unnecessary and those practices must be ended.

§5702. Definitions

In this chapter—

(1) "cosmetic", "device", "drug", "food", and "food additive" have the same meanings given those terms in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(2) "nonfood product" means (individually or by class) a material, substance, or product that is not a cosmetic, device, drug, food, or food additive, or is deemed a nonfood product under section 5703(a)(2) of this title, including refuse and solid waste (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)).

(3) "refuse" means discarded material that is, or is required by law, to be transported to or disposed of in a landfill or incinerator.

(4) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, and any other territory or possession of the United States.

(5) "transports" and "transportation" mean any movement of property in commerce (including intrastate commerce) by motor vehicle or rail vehicle.

(6) "United States" means all of the States.

§5703. General regulation

(a) GENERAL REQUIREMENTS.—(1) Not later than July 31, 1991, the Secretary of Transportation, after consultation required by section 5709 of this title, shall prescribe regulations on the transportation of cosmetics, devices, drugs, food, and food additives in motor vehicles and rail vehicles that are used to transport nonfood products that would make the cosmetics, devices, drugs, food, or food additives unsafe to humans or animals.

(2) The Secretary shall deem a cosmetic, device, or drug to be a nonfood product if—

(A) the cosmetic, device, or drug is transported in a motor vehicle or rail vehicle before, or at the same time as, a food or food additive; and

(B) transportation of the cosmetic, device, or drug would make the food or food additive unsafe to humans or animals.

(b) SPECIAL REQUIREMENTS.—In prescribing regulations under subsection (a)(1) of this section, the Secretary, after consultation required by section 5709 of this title, shall establish requirements for appropriate—

(1) recordkeeping, identification, marking, certification, or other means of verification to comply with sections 5704–5706 of this title;

(2) decontamination, removal, disposal, and isolation to comply with regulations carrying out sections 5704 and 5705 of this title; and

(3) material for the construction of tank trucks, rail tank cars, cargo tanks, and accessory equipment to comply with regulations carrying out section 5704 of this title.

(c) CONSIDERATIONS AND ADDITIONAL REQUIREMENTS.—In prescribing regulations under subsection (a)(1) of this section, the Secretary, after consultation required by section 5709 of this title, shall consider, and may establish requirements related to, each of the following:

(1) the extent to which packaging or similar means of protecting and isolating commodities are adequate to eliminate or ameliorate the potential risks of transporting cosmetics, devices, drugs, food, or food additives in motor vehicles or rail vehicles used to transport nonfood products.

(2) appropriate compliance and enforcement measures to carry out this chapter.

(3) appropriate minimum insurance or other liability requirements for a person to whom this chapter applies.

(d) PACKAGES MEETING PACKAGING STANDARDS.—If the Secretary finds packaging standards to be adequate, regulations under subsection (a)(1) of this section may not apply to cosmetics, devices, drugs, food, food additives, or nonfood products packaged in packages that meet the standards.

§5704. Tank trucks, rail tank cars, and cargo tanks

(a) PROHIBITIONS.—The regulations prescribed under section 5703(a)(1) of this title shall include provisions prohibiting a person from—

(1) using, offering for use, or arranging for the use of a tank truck, rail tank car, or cargo tank used in motor vehicle or rail transportation of cosmetics, devices, drugs, food, or food additives if the tank truck, rail tank car, or cargo tank is used to transport a nonfood product, except a nonfood product included in a list published under subsection (b) of this section;

(2) using, offering for use, or arranging for the use of a tank truck or cargo tank to provide motor vehicle transportation of cosmetics, devices, drugs, food, food additives, or nonfood products included in the list published under subsection (b) of this section unless the tank truck or cargo tank is identified, by a permanent marking on the tank truck or cargo tank, as transporting only cosmetics, devices, drugs, food, food additives, or nonfood products included in the list;

(3) using, offering for use, or arranging for the use of a tank truck or cargo tank to provide motor vehicle transportation of a nonfood product that is not included in the list published under subsection (b) of this section if the tank truck or cargo tank is identified, as provided in clause (2) of this subsection, as a tank truck or cargo tank transporting only cosmetics, devices, drugs, food, food additives, or nonfood products included in the list; or

(4) receiving, except for lawful disposal purposes, any cosmetic, device, drug, food, food additive, or nonfood product that has been transported in a tank truck or cargo tank in violation of clause (2) or (3) of this subsection.

(b) LIST OF NONFOOD PRODUCTS NOT UNSAFE.—After consultation required by section 5709 of this title, the Secretary of Transportation shall publish in the Federal Register a list of nonfood products the Secretary decides do not make cosmetics, devices, drugs, food, or food additives unsafe to humans or animals because of transportation of the nonfood products in a tank truck, rail tank car, or cargo tank used to transport cosmetics, devices, drugs, food, or food additives. The Secretary may amend the list periodically by publication in the Federal Register.

(c) DISCLOSURE.—A person that arranges for the use of a tank truck or cargo tank used in motor vehicle transportation for the transportation of a cosmetic, device, drug, food, food additive, or nonfood product shall disclose to the motor carrier or other appropriate person if the cosmetic, device, drug, food, food additive, or nonfood product being transported is to be used—

(1) as, or in the preparation of, a food or food additive; or

(2) as a nonfood product included in the list published under subsection (b) of this section.

§5705. Motor and rail transportation of nonfood products

(a) PROHIBITIONS.—The regulations prescribed under section 5703(a)(1) of this title shall include provisions prohibiting a person from using, offering for use, or arranging for the use of a motor vehicle or rail vehicle (except a tank truck, rail tank car, or cargo tank described in section 5704 of this title) to transport cosmetics, devices, drugs, food, or food additives if the vehicle is used to transport nonfood products included in a list published under subsection (b) of this section.

(b) LIST OF UNSAFE NONFOOD PRODUCTS.—(1) After consultation required by section 5709 of this title, the Secretary of Transportation shall publish in the Federal Register a list of nonfood products the Secretary decides would make cosmetics, devices, drugs, food, or food additives unsafe to humans or animals because of transportation of the nonfood products in a motor vehicle or rail vehicle used to transport cosmetics, devices, drugs, food, or food additives. The Secretary may amend the list periodically by publication in the Federal Register.

(2) The list published under paragraph (1) of this subsection may not include cardboard, pallets, beverage containers, and other food packaging except to the extent the Secretary decides that the transportation of cardboard, pallets, beverage containers, or other food packaging in a motor vehicle or rail vehicle used to transport cosmetics, devices, drugs, food, or food additives would make the cosmetics, devices, drugs, food, or food additives unsafe to humans or animals.

§5706. Dedicated vehicles

(a) PROHIBITIONS.—The regulations prescribed under section 5703(a)(1) of this title shall include provisions prohibiting a person from using, offering for use, or arranging for the use of a motor vehicle or rail vehicle to transport asbestos, in forms or quantities the Secretary of Transportation decides are necessary, or products that present an extreme danger to humans or animals, despite any decontamination, removal, disposal, packaging, or other isolation procedures, unless the motor vehicle or rail vehicle is used only to transport one or more of the following: asbestos, those extremely dangerous products, or refuse.

(b) LIST OF APPLICABLE PRODUCTS.—After consultation required by section 5709 of this title, the Secretary shall publish in the Federal Register a list of the products to which this section applies. The Secretary may amend the list periodically by publication in the Federal Register.

§5707. Waiver authority

(a) GENERAL AUTHORITY.—After consultation required by section 5709 of this title, the Secretary of Transportation may waive any part of this chapter or regulations prescribed under this chapter for a class of persons, motor vehicles, rail vehicles, cosmetics, devices, drugs, food, food additives, or nonfood products, if the Secretary decides that the waiver—

(1) would not result in the transportation of cosmetics, devices, drugs, food, or food additives that would be unsafe to humans or animals; and

(2) would not be contrary to the public interest and this chapter.

(b) PUBLICATION OF WAIVERS.—The Secretary shall publish in the Federal Register any waiver and the reasons for the waiver.

§5708. Food transportation inspections

(a) GENERAL AUTHORITY.—For commercial motor vehicles, the Secretary of Transportation may carry out this chapter and assist in carrying out compatible State laws and regulations through means that include inspections conducted by State employees that are paid for with money authorized under section 31104 of this title, if the recipient State agrees to assist in the enforcement of this chapter or is enforcing compatible State laws and regulations.

(b) PROVIDING ASSISTANCE.—On the request of the Secretary of Transportation, the Secretaries of Agriculture and Health and Human Services, the Administrator of the Environmental Protection Agency, and the heads of other appropriate departments, agencies, and instrumentalities of the United States Government shall provide assistance, to the extent available, to the Secretary of Transportation to carry out this chapter, including assistance in the training of personnel under a program established under subsection (c) of this section.

(c) TRAINING PROGRAM.—After consultation required by section 5709 of this title and consultation with the heads of appropriate State transportation and food safety authorities, the Secretary of Transportation shall develop and carry out a training program for inspectors to conduct vigorous enforcement of this chapter and regulations prescribed under this chapter or compatible State laws and regulations. As part of the training program, the inspectors, including State inspectors or personnel paid with money authorized under section 31104 of this title, shall be trained in the recognition of adulteration problems associated with the transportation of cosmetics, devices, drugs, food, and food additives and in the procedures for obtaining assistance of the appropriate departments, agencies, and instrumentalities of the Government and State authorities to support the enforcement.

§5709. Consultation

As provided by sections 5703–5708 of this title, the Secretary of Transportation shall consult with the Secretaries of Agriculture and Health and Human Services and the Administrator of the Environmental Protection Agency.

§5710. Administrative

The Secretary of Transportation has the same duties and powers in regulating transportation under this chapter as the Secretary has under section 5121(a)–(c) (except subsection (c)(1)(A)) of this title in regulating transportation under chapter 51 of this title.

§5711. Enforcement and penalties

(a) ACTIONS.—The Secretary of Transportation shall request that a civil action be brought and take action to eliminate or ameliorate an imminent hazard related to a violation of a regulation prescribed or order issued under this chapter in the same way and to the same extent as authorized by section 5122 of this title.

(b) APPLICABLE PENALTIES AND PROCEDURES.—The penalties and procedures in sections 5123 and 5124 of this title apply to a violation of a regulation prescribed or order issued under this chapter.

§5712. Relationship to other laws

Section 5125 of this title applies to the relationship between this chapter and a requirement of a State, a political subdivision of a State, or an Indian tribe.

§5713. Application of sections 5711 and 5712

Sections 5711 and 5712 of this title apply only to transportation occurring on or after the date that regulations prescribed under section 5703(a)(1) of this title are effective.

§5714. Coordination procedures

Not later than November 3, 1991, the Secretary of Transportation, after consultation with appropriate State officials, shall establish procedures to promote more effective coordination between the departments, agencies, and instrumentalities of the United States Government and State authorities with regulatory authority over motor carrier safety and railroad safety in carrying out and enforcing this chapter.

(e) Title 49, United States Code, is amended by adding the following immediately after subtitle IV:

SUBTITLE V—RAIL PROGRAMS

PART A—SAFETY

CHAPTER	*Sec.*
201. GENERAL	*20101*

203. SAFETY APPLIANCES 20301
205. SIGNAL SYSTEMS 20501
207. LOCOMOTIVES 20701
209. ACCIDENTS AND INCIDENTS 20901
211. HOURS OF SERVICE 21101
213. PENALTIES 21301

PART B—ASSISTANCE

221. LOCAL RAIL FREIGHT ASSISTANCE 22101

PART C—PASSENGER TRANSPORTATION

241. GENERAL 24101
243. AMTRAK 24301
245. AMTRAK COMMUTER 24501
247. AMTRAK ROUTE SYSTEM 24701
249. NORTHEAST CORRIDOR IMPROVEMENT PROGRAM 24901

PART D—MISCELLANEOUS

261. LAW ENFORCEMENT 26101

PART A—SAFETY

CHAPTER 201—GENERAL

SUBCHAPTER I—GENERAL

Sec.
20101. Purpose.
20102. Definitions.
20103. General authority.
20104. Emergency authority.
20105. State participation.
20106. National uniformity of regulation.
20107. Inspection and investigation.
20108. Research, development, and testing.
20109. Employee protections.
20110. Effect on employee qualifications and collective bargaining.
20111. Enforcement by the Secretary of Transportation.
20112. Enforcement by the Attorney General.
20113. Enforcement by the States.
20114. Judicial procedures.
20115. User fees.
20116. Annual report.
20117. Authorization of appropriations.

SUBCHAPTER II—PARTICULAR ASPECTS OF SAFETY

20131. Restricted access to rolling equipment.
20132. Visible markers for rear cars.
20133. Passenger equipment.
20134. Grade crossings and railroad rights of way.
20135. Licensing or certification of locomotive operators.
20136. Automatic train control and related systems.
20137. Event recorders.
20138. Tampering with safety and operational monitoring devices.
20139. Maintenance-of-way operations.
20140. Alcohol and controlled substances testing.

SUBCHAPTER I—GENERAL

§20101. Purpose

The purpose of this chapter is to promote safety in every area of railroad operations and reduce railroad-related accidents and incidents.

§20102. Definitions

In this part—

(1) "railroad"—

(A) means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including—

(i) commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(ii) high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but

(B) does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(2) "railroad carrier" means a person providing railroad transportation.

§20103. General authority

(a) REGULATIONS AND ORDERS.—The Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.

(b) REGULATIONS OF PRACTICE FOR PROCEEDINGS.—The Secretary shall prescribe regulations of practice applicable to each proceeding under this chapter. The regulations shall reflect the varying nature of the proceedings and include time limits for disposition of the proceedings. The time limit for disposition of a proceeding may not be more than 12 months after the date it begins.

(c) CONSIDERATION OF INFORMATION AND STANDARDS.—In prescribing regulations and issuing orders under this section, the Secretary shall consider existing relevant safety information and standards.

(d) WAIVERS.—The Secretary may waive compliance with any part of a regulation prescribed or order issued under this chapter if the waiver is in the public interest and consistent with railroad safety. The Secretary shall make public the reasons for granting the waiver.

(e) HEARINGS.—The Secretary shall conduct a hearing as provided by section 553 of title 5 when prescribing a regulation or issuing an order under this chapter, including a regulation or order establishing, amending, or waiving compliance with a railroad safety regulation prescribed or order issued under this chapter. An opportunity for an oral presentation shall be provided.

§20104. Emergency authority

(a) ORDERING RESTRICTIONS AND PROHIBITIONS.—(1) If, through testing, inspection, investigation, or research carried out under this chapter, the Secretary of Transportation decides that an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death or personal injury, the Secretary immediately may order restrictions and prohibitions, without regard to section 20103(e) of this title, that may be necessary to abate the situation.

(2) The order shall describe the condition or practice, or a combination of conditions and practices, that causes the emergency situation and prescribe standards and procedures for obtaining relief from the order. This paragraph does not affect the Secretary's discretion under this section to maintain the order in effect for as long as the emergency situation exists.

(b) REVIEW OF ORDERS.—After issuing an order under this section, the Secretary shall provide an opportunity for review of the order under section 554 of title 5. If a petition for review is filed and the review is not completed by the end of the 30-day period beginning on the date the order was issued, the order stops being effective at the end of that period unless the Secretary decides in writing that the emergency situation still exists.

(c) CIVIL ACTIONS TO COMPEL ISSUANCE OF ORDERS.—An employee of a railroad carrier engaged in interstate or foreign commerce who may be exposed to imminent physical injury during that employment because of the Secretary's failure, without any reasonable basis, to issue an order under subsection (a) of this section, or the employee's authorized representative, may bring a civil action against the Secretary in a district court of the United States to compel the Secretary to issue an order. The action must be brought in the judicial district in which the emergency situation is alleged to exist, in which that employing carrier has its principal executive office, or for the District of Columbia. The Secretary's failure to issue an order under subsection (a) of this section may be reviewed only under section 706 of title 5.

§20105. State participation

(a) INVESTIGATIVE AND SURVEILLANCE ACTIVITIES.—The Secretary of Transportation may prescribe investigative and surveillance activities necessary to enforce the safety regulations prescribed and orders issued by the Secretary that apply to railroad equipment, facilities, rolling stock, and operations in a State. The State may participate in those activities when the safety practices for railroad equipment, facilities, rolling stock, and operations in the State are regulated by a State authority and the authority submits to the Secretary an annual certification as provided in subsection (b) of this section.

(b) ANNUAL CERTIFICATION.—(1) A State authority's annual certification must include—

(A) a certification that the authority—

(i) has regulatory jurisdiction over the safety practices for railroad equipment, facilities, rolling stock, and operations in the State;

(ii) was given a copy of each safety regulation prescribed and order issued by the Secretary, that applies to the equipment, facilities, rolling stock, or operations, as of the date of certification; and

(iii) is conducting the investigative and surveillance activities prescribed by the Secretary under subsection (a) of this section; and

(B) a report, in the form the Secretary prescribes by regulation, that includes—

(i) the name and address of each railroad carrier subject to the safety jurisdiction of the authority;

(ii) each accident or incident reported during the prior 12 months by a railroad carrier involving a fatality, personal injury requiring hospitalization, or property damage of more than $750 (or a higher amount prescribed by the Secretary), and a summary of the authority's investigation of the cause and circumstances surrounding the accident or incident;

(iii) the record maintenance, reporting, and inspection practices conducted by the authority to aid the Secretary in enforcing railroad safety regulations prescribed and orders issued by the Secretary, including the number of inspections made of railroad equipment, facilities, rolling stock, and operations by the authority during the prior 12 months; and

(iv) other information the Secretary requires.

(2) An annual certification applies to a safety regulation prescribed or order issued after the date of the certification only if the State authority submits an appropriate certification to provide the necessary investigative and surveillance activities.

(3) If, after receipt of an annual certification, the Secretary decides the State authority is not complying satisfactorily with the investigative and surveillance activities prescribed under subsection (a) of this section, the Secretary may reject any part of the certification or take other appropriate action to achieve adequate enforcement. The Secretary must give the authority notice and an opportunity for a hearing before taking action under this paragraph. When the Secretary gives notice, the burden of proof is on the authority to show that it is complying satisfactorily with the investigative and surveillance activities prescribed by the Secretary.

(c) AGREEMENT WHEN CERTIFICATION NOT RECEIVED.—(1) If the Secretary does not receive an annual certification under subsection (a) of this section related to any railroad equipment, facility, rolling stock, or operation, the Secretary may make an agreement with a State authority for the authority to provide any part of the investigative and surveillance activities prescribed by the Secretary as necessary to enforce the safety regulations and orders applicable to the equipment, facility, rolling stock, or operation.

(2) The Secretary may terminate any part of an agreement made under this subsection on finding that the authority has not provided

every part of the investigative and surveillance activities to which the agreement relates. The Secretary must give the authority notice and an opportunity for a hearing before making such a finding. The finding and termination shall be published in the Federal Register and may not become effective for at least 15 days after the date of publication.

(d) Agreement for Investigative and Surveillance Activities.—In addition to providing for State participation under this section, the Secretary may make an agreement with a State to provide investigative and surveillance activities related to the Secretary's duties under chapters 203–213 of this title.

(e) Payment.—On application by a State authority that has submitted a certification under subsections (a) and (b) of this section or made an agreement under subsection (c) or (d) of this section, the Secretary shall pay not more than 50 percent of the cost of the personnel, equipment, and activities of the authority needed, during the next fiscal year, to carry out a safety program under the certification or agreement. However, the Secretary may pay an authority only when the authority assures the Secretary that it will provide the remaining cost of the safety program and that the total State money expended for the safety program, excluding grants of the United States Government, will be at least as much as the average amount expended for the fiscal years that ended June 30, 1969, and June 30, 1970.

(f) Monitoring.—The Secretary may monitor State investigative and surveillance practices and carry out other inspections and investigations necessary to help enforce this chapter.

§20106. National uniformity of regulation

Laws, regulations, and orders related to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force a law, regulation, or order related to railroad safety until the Secretary of Transportation prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety when the law, regulation, or order—

(1) is necessary to eliminate or reduce an essentially local safety hazard;

(2) is not incompatible with a law, regulation, or order of the United States Government; and

(3) does not unreasonably burden interstate commerce.

§20107. Inspection and investigation

(a) General.—To carry out this part, the Secretary of Transportation may take actions the Secretary considers necessary, including—

(1) conduct investigations, make reports, issue subpenas, require the production of documents, take depositions, and prescribe recordkeeping and reporting requirements; and

(2) delegate to a public entity or qualified person the inspection, examination, and testing of railroad equipment, facilities, rolling stock, operations, and persons.

(b) Entry and Inspection.—In carrying out this part, an officer, employee, or agent of the Secretary, at reasonable times and in a reasonable way, may enter and inspect railroad equipment, facilities, rolling stock, operations, and relevant records. When requested, the officer, employee, or agent shall display proper credentials. During an inspection, the officer, employee, or agent is an employee of the United States Government under chapter 171 of title 28.

§20108. Research, development, and testing

(a) General.—The Secretary of Transportation shall carry out, as necessary, research, development, testing, evaluation, and training for every area of railroad safety.

(b) Contracts.—To carry out this part, the Secretary may make contracts for, and carry out, research, development, testing, evaluation, and training (particularly for those areas of railroad safety found to need prompt attention).

§20109. Employee protections

(a) Filing Complaints and Testifying.—A railroad carrier engaged in interstate or foreign commerce may not discharge or in any way discriminate against an employee because the employee, whether acting for the employee or as a representative, has—

(1) filed a complaint or brought or caused to be brought a proceeding related to the enforcement of this part or chapter 51 of this title; or

(2) testified or will testify in that proceeding.

(b) Refusing To Work Because of Hazardous Conditions.—(1) A railroad carrier engaged in interstate or foreign commerce may not discharge or in any way discriminate against an employee for refusing to work when confronted by a hazardous condition related to the performance of the employee's duties, if—

(A) the refusal is made in good faith and no reasonable alternative to the refusal is available to the employee;

(B) a reasonable individual in the circumstances then confronting the employee would conclude that—

(i) the hazardous condition presents an imminent danger of death or serious injury; and

(ii) the urgency of the situation does not allow sufficient time to eliminate the danger through regular statutory means; and

(C) the employee, where possible, has notified the carrier of the hazardous condition and the intention not to perform further work unless the condition is corrected immediately.

(2) This subsection does not apply to security personnel employed by a carrier to protect individuals and property transported by railroad.

(c) Dispute Resolution.—A dispute, grievance, or claim arising under this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153). In a proceeding by the National Railroad Adjustment Board, a division or delegate of the Board, or another board of adjustment established under section 3 to resolve the dispute, grievance, or claim, the proceeding shall be expedited and the dispute, grievance, or claim shall be resolved not later than 180 days after it is filed. If the violation is a form of discrimination that does not involve discharge, suspension, or another action affecting pay, and no other remedy is available under this subsection, the Board, division, delegate, or other board of adjustment may award the employee reasonable damages, including punitive damages, of not more than $20,000.

(d) Election of Remedies.—An employee of a railroad carrier may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the carrier.

(e) Disclosure of Identity.—(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this part, chapter 51 of this title, or a regulation prescribed or order issued under this part or chapter 51.

(2) The Secretary shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement.

§20110. Effect on employee qualifications and collective bargaining

This chapter does not—

(1) authorize the Secretary of Transportation to prescribe regulations and issue orders related to qualifications of employees, except qualifications specifically related to safety; or

(2) prohibit the bargaining representatives of railroad carriers and their employees from making collective bargaining agreements under the Railway Labor Act (45 U.S.C. 151 et seq.), including agreements related to qualifications of employees, that are not inconsistent with regulations prescribed and orders issued under this chapter.

§20111. Enforcement by the Secretary of Transportation

(a) Exclusive Authority.—The Secretary of Transportation has exclusive authority—

(1) to impose and compromise a civil penalty for a violation of a railroad safety regulation prescribed or order issued by the Secretary;

(2) except as provided in section 20113 of this title, to request an injunction for a violation of a railroad safety regulation prescribed or order issued by the Secretary; and

(3) to recommend appropriate action be taken under section 20112(a) of this title.

(b) Compliance Orders.—The Secretary may issue an order directing compliance with this part or with a railroad safety regulation prescribed or order issued under this part.

(c) Orders Prohibiting Individuals From Performing Safety-Sensitive Functions.—If an individual's violation of a regulation prescribed or order issued by the Secretary under this chapter is shown to make that individual unfit for the performance of safety-sensitive functions, the Secretary, after notice and opportunity for a hearing, may issue an order prohibiting the individual from performing safety-sensitive functions in the railroad industry for a specified period of time or until specified conditions are met. This subsection does not affect the Secretary's authority under section 20104 of this title to act on an emergency basis.

§20112. Enforcement by the Attorney General

(a) Civil Actions.—At the request of the Secretary of Transportation, the Attorney General may bring a civil action in a district court of the United States—

(1) to enjoin a violation of, or to enforce, a railroad safety regulation prescribed or order issued by the Secretary;

(2) to collect a civil penalty imposed or an amount agreed on in compromise under section 21301 of this title; or

(3) to enforce a subpena issued by the Secretary under this chapter.

(b) Venue.—(1) Except as provided in paragraph (2) of this subsection, a civil action under this section may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If an action to collect a penalty is against an individual, the action also may be brought in the judicial district in which the individual resides.

(2) A civil action to enforce a subpena issued by the Secretary or a compliance order issued under section 20111(b) of this title may be brought in the judicial district in which the defendant resides, does business, or is found.

§20113. Enforcement by the States

(a) Injunctive Relief.—If the Secretary of Transportation does not begin a civil action under section 20112 of this title to enjoin the violation of a railroad safety regulation prescribed or order issued by the Secretary not later than 15 days after the date the Secretary receives notice of the violation and a request from a State authority participating in investigative and surveillance activities under section 20105 of this title that the action be brought, the authority may bring a civil action in the district court to enjoin the violation. This subsection does not apply if the Secretary makes an affirmative written finding that the violation did not occur or that the action is not necessary because of other enforcement action taken by the Secretary related to the violation.

(b) IMPOSITION AND COLLECTION OF CIVIL PENALTIES.—If the Secretary does not impose the applicable civil penalty for a violation of a railroad safety regulation prescribed or order issued by the Secretary not later than 60 days after the date of receiving notice from a State authority participating in investigative and surveillance activities under section 20105 of this title, the authority may bring a civil action in a district court to impose and collect the penalty. This paragraph does not apply if the Secretary makes an affirmative written finding that the violation did not occur.

(c) VENUE.—A civil action under this section may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. However, a State authority may not bring an action under this section outside the State.

§20114. Judicial procedures

(a) CRIMINAL CONTEMPT.—In a trial for criminal contempt for violating an injunction or restraining order issued under this chapter, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(b) SUBPENAS FOR WITNESSES.—A subpena for a witness required to attend a district court in an action brought under this chapter may be served in any judicial district.

§20115. User fees

(a) SCHEDULE OF FEES.—The Secretary of Transportation shall prescribe by regulation a schedule of fees for railroad carriers subject to this chapter. The fees—

(1) shall cover the costs of carrying out this chapter (except section 20108(a));

(2) shall be imposed fairly on the railroad carriers, in reasonable relationship to an appropriate combination of criteria such as revenue ton-miles, track miles, passenger miles, or other relevant factors; and

(3) may not be based on that part of industry revenues attributable to a railroad carrier or class of railroad carriers.

(b) COLLECTION PROCEDURES.—The Secretary shall prescribe procedures to collect the fees. The Secretary may use the services of a department, agency, or instrumentality of the United States Government or of a State or local authority to collect the fees, and may reimburse the department, agency, or instrumentality a reasonable amount for its services.

(c) COLLECTION, DEPOSIT, AND USE.—(1) The Secretary shall impose and collect fees under this section for each fiscal year before the end of the fiscal year.

(2) Fees collected under this section shall be deposited in the general fund of the Treasury as offsetting receipts. The fees may be used, to the extent provided in advance in an appropriation law, only to carry out this chapter.

(3) Fees prescribed under this section shall be imposed in an amount sufficient to pay for the costs of activities under this chapter beginning on March 1, 1991. However, the total fees received for a fiscal year may not be more than 105 percent of the total amount of the appropriations for the fiscal year for activities to be financed by the fees.

(d) ANNUAL REPORT.—(1) Not later than 90 days after the end of each fiscal year in which fees are collected under this section, the Secretary shall report to Congress on—

(A) the amount of fees collected during that fiscal year;

(B) the impact of the fees on the financial health of the railroad industry and its competitive position relative to each competing mode of transportation; and

(C) the total cost of Government safety activities for each other competing mode of transportation, including any part of that total cost defrayed by Government user fees.

(2) Not later than 90 days after submitting a report for a fiscal year, the Secretary shall submit to Congress recommendations for corrective legislation if the report includes a finding that—

(A) there has been an impact from the fees on the financial health of the railroad industry or its competitive position relative to each competing mode of transportation; or

(B) there is a significant difference in the burden of Government user fees on the railroad industry and other competing modes of transportation.

(e) EXPIRATION.—This section expires on September 30, 1995.

§20116. Annual report

The Secretary of Transportation shall submit to the President for submission to Congress not later than July 1 of each year a report on carrying out this chapter for the prior calendar year. The report shall include the following information about the prior year:

(1) a thorough statistical compilation of railroad accidents, incidents, and casualties by cause.

(2) a list of railroad safety regulations and orders prescribed, issued, or in effect under this chapter.

(3) a summary of the reasons for each waiver granted under section 20103(d) of this title.

(4) an evaluation of the degree of compliance with railroad safety regulations prescribed and orders issued under this chapter.

(5) a summary of outstanding problems in carrying out railroad safety regulations prescribed and orders issued under this chapter, in order of priority.

(6) an analysis and evaluation of research and related activities completed, including their policy implications, and technological progress achieved.

(7) a list, with a brief statement of the issues, of completed or pending civil actions to enforce railroad safety regulations prescribed and orders issued under this chapter.

(8) the extent to which technical information was distributed to the scientific community and consumer-oriented information was made available to the public.

(9) a compilation of certifications filed under section 20105(a) of this title that were—

(A) in effect; or

(B) rejected in any part by the Secretary, and a summary of the reasons for each rejection.

(10) a compilation of agreements made under section 20105(c) of this title that were—

(A) in effect; or

(B) terminated in any part by the Secretary, and a summary of the reasons for each termination.

(11) recommendations for legislation the Secretary considers necessary to strengthen the national railroad safety program.

§20117. Authorization of appropriations

(a) GENERAL.—(1) Not more than $______ may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 19__, to carry out this chapter.

(2) Not more than $5,000,000 may be appropriated to the Secretary for each of the fiscal years ending September 30, 1992, and 1993, to carry out section 20105 of this title.

(b) GRADE CROSSING SAFETY.—Not more than $1,000,000 may be appropriated to the Secretary for improvements in grade crossing safety, except demonstration projects under section 20134(c) of this title. Amounts appropriated under this subsection remain available until expended.

(c) RESEARCH AND DEVELOPMENT, AUTOMATED TRACK INSPECTION, AND STATE PARTICIPATION GRANTS.—Amounts appropriated under this section for research and development, automated track inspection, and grants under section 20105(e) of this title remain available until expended.

(d) MINIMUM AVAILABLE FOR CERTAIN PURPOSES.—At least 50 percent of the amounts appropriated to the Secretary for a fiscal year to carry out railroad research and development programs under this chapter or another law shall be available for safety research, improved track inspection and information acquisition technology, improved railroad freight transportation, and improved railroad passenger systems.

SUBCHAPTER II—PARTICULAR ASPECTS OF SAFETY

§20131. Restricted access to rolling equipment

The Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to require that when railroad carrier employees (except train or yard crews) assigned to inspect, test, repair, or service rolling equipment have to work on, under, or between that equipment, every manually operated switch, including each crossover switch, providing access to the track on which the equipment is located is lined against movement to that track and secured by an effective locking device that can be removed only by the class or craft of employees performing the inspection, testing, repair, or service.

§20132. Visible markers for rear cars

(a) GENERAL.—The Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to require that—

(1) the rear car of each passenger and commuter train has at least one highly visible marker that is lighted during darkness and when weather conditions restrict clear visibility; and

(2) the rear car of each freight train has highly visible markers during darkness and when weather conditions restrict clear visibility.

(b) PREEMPTION.—Notwithstanding section 20106 of this title, subsection (a) of this section does not prohibit a State from continuing in force a law, regulation, or order in effect on July 8, 1976, related to lighted markers on the rear car of a freight train except to the extent it would cause the car to be in violation of this section.

§20133. Passenger equipment

(a) GENERAL.—The Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to ensure that the construction, maintenance, and operation of railroad equipment used to transport railroad passengers, whether in commuter or intercity service, maximize the safety of those passengers. The Secretary periodically shall review the regulations and orders and make amendments that may be necessary.

(b) CONSIDERATIONS AND AREAS OF CONCENTRATION.—In prescribing regulations, issuing orders, and making amendments under this section, the Secretary shall—

(1) consider comparable regulations and procedures of the United States Government that apply to other modes of transportation, especially those regulations and procedures carried out by the Administrator of the Federal Aviation Administration;

(2) consider relevant differences between commuter and intercity passenger service;

(3) concentrate on those areas that the Secretary believes present the greatest opportunity for enhancing the safety of the equipment; and

(4) give significant weight to the expenditures that would be necessary to retrofit existing equipment and to change specifications for equipment on order.

(c) CONSULTATION.—In prescribing regulations, issuing orders, and making amendments under this section, the Secretary may consult

with Amtrak, public authorities operating railroad passenger service, other railroad carriers transporting passengers, organizations of passengers, and organizations of employees. A consultation is not subject to the Federal Advisory Committee Act (5 App. U.S.C.), but minutes of the consultation shall be placed in the public docket of the regulatory proceeding.

§20134. Grade crossings and railroad rights of way

(a) GENERAL.—To the extent practicable, the Secretary of Transportation shall maintain a coordinated effort to develop and carry out solutions to the railroad grade crossing problem and measures to protect pedestrians in densely populated areas along railroad rights of way. To carry out this subsection, the Secretary may use the authority of the Secretary under this chapter and over highway, traffic, and motor vehicle safety and over highway construction.

(b) SIGNAL SYSTEMS AND OTHER DEVICES.—Not later than June 22, 1989, the Secretary shall prescribe regulations and issue orders that may be necessary to ensure the safe maintenance, inspection, and testing of signal systems and devices at railroad highway grade crossings.

(c) DEMONSTRATION PROJECTS.—(1) The Secretary shall establish demonstration projects to evaluate whether accidents and incidents involving trains would be reduced by—

(A) reflective markers installed on the road surface or on a signal post at railroad grade crossings;

(B) stop signs or yield signs installed at grade crossings; and

(C) speed bumps or rumble strips installed on the road surfaces at the approaches to grade crossings.

(2) Not later than June 22, 1990, the Secretary shall submit a report on the results of the demonstration projects to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

§20135. Licensing or certification of locomotive operators

(a) GENERAL.—Not later than June 22, 1989, the Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to establish a program requiring the licensing or certification, after one year after the program is established, of any operator of a locomotive.

(b) PROGRAM REQUIREMENTS.—The program established under subsection (a) of this section—

(1) shall be carried out through review and approval of each railroad carrier's operator qualification standards;

(2) shall provide minimum training requirements;

(3) shall require comprehensive knowledge of applicable railroad carrier operating practices and rules;

(4) except as provided in subsection (c)(1) of this section, shall require consideration, to the extent the information is available, of the motor vehicle driving record of each individual seeking licensing or certification, including—

(A) any denial, cancellation, revocation, or suspension of a motor vehicle operator's license by a State for cause within the prior 5 years; and

(B) any conviction within the prior 5 years of an offense described in section 30304(a)(3)(A) or (B) of this title;

(5) may require, based on the individual's driving record, disqualification or the granting of a license or certification conditioned on requirements the Secretary prescribes; and

(6) shall require an individual seeking a license or certification—

(A) to request the chief driver licensing official of each State in which the individual has held a motor vehicle operator's license within the prior 5 years to provide information about the individual's driving record to the individual's employer, prospective employer, or the Secretary, as the Secretary requires; and

(B) to make the request provided for in section 30305(b)(4) of this title for information to be sent to the individual's employer, prospective employer, or the Secretary, as the Secretary requires.

(c) WAIVERS.—(1) The Secretary shall prescribe standards and establish procedures for waiving subsection (b)(4) of this section for an individual or class of individuals who the Secretary decides are not currently unfit to operate a locomotive. However, the Secretary may waive subsection (b)(4) for an individual or class of individuals with a conviction, cancellation, revocation, or suspension described in paragraph (2)(A) or (B) of this subsection only if the individual or class, after the conviction, cancellation, revocation, or suspension, successfully completes a rehabilitation program established by a railroad carrier or approved by the Secretary.

(2) If an individual, after the conviction, cancellation, revocation, or suspension, successfully completes a rehabilitation program established by a railroad carrier or approved by the Secretary, the individual may not be denied a license or certification under subsection (b)(4) of this section because of—

(A) a conviction for operating a motor vehicle when under the influence of, or impaired by, alcohol or a controlled substance; or

(B) the cancellation, revocation, or suspension of the individual's motor vehicle operator's license for operating a motor vehicle when under the influence of, or impaired by, alcohol or a controlled substance.

(d) OPPORTUNITY FOR HEARING.—An individual denied a license or certification or whose license or certification is conditioned on requirements prescribed under subsection (b)(4) of this section shall be entitled to a hearing under section 20103(e) of this title to decide whether the license has been properly denied or conditioned.

(e) OPPORTUNITY TO EXAMINE AND COMMENT ON INFORMATION.—The Secretary, employer, or prospective employer, as appropriate, shall make information obtained under subsection (b)(6) of this section available to the individual. The individual shall be given an opportunity to comment in writing about the information. Any comment shall be included in any record or file maintained by the Secretary, employer, or prospective employer that contains information to which the comment is related.

§20136. Automatic train control and related systems

(a) GENERAL.—The Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to require that—

(1) an individual performing a test of an automatic train stop, train control, or cab signal apparatus required by the Secretary to be performed before entering territory where the apparatus will be used shall certify in writing that the test was performed properly; and

(2) the certification required under clause (1) of this subsection shall be maintained in the same way and place as the daily inspection report for the locomotive.

(b) STUDY AND REPORT.—(1) In consultation with Amtrak, freight carriers, commuter agencies, employee representatives, railroad passengers, and railroad equipment manufacturers, the Secretary shall study the advisability and feasibility of requiring automatic train control systems, including systems using advanced technology, such as transponder and satellite relay systems, on each railroad corridor on which passengers or hazardous material are carried. The study shall include—

(A) a specific assessment of the dangers of not requiring automatic train control systems on each corridor, based on analysis of the number of passenger trains, individuals, and freight trains traveling on the corridor daily, the frequency of train movements, mileage traveled, and the accident and incident history on the corridor;

(B) an analysis of the cost of requiring the systems to be installed on each corridor; and

(C) an investigation of alternative means of achieving the same safety objectives that would be achieved by requiring automatic train control systems to be installed.

(2) The Secretary shall submit to Congress not later than April 1, 1990, a report detailing the results of the study.

§20137. Event recorders

(a) DEFINITION.—In this section, "event recorder" means a device that—

(1) records train speed, hot box detection, throttle position, brake application, brake operations, and any other function the Secretary of Transportation considers necessary to record to assist in monitoring the safety of train operation, such as time and signal indication; and

(2) is designed to resist tampering.

(b) REGULATIONS AND ORDERS.—Not later than December 22, 1989, the Secretary shall prescribe regulations and issue orders that may be necessary to enhance safety by requiring that a train be equipped with an event recorder not later than one year after the regulations are prescribed and the orders are issued. However, if the Secretary finds it is impracticable to equip trains within that one-year period, the Secretary may extend the period to a date that is not later than 18 months after the regulations are prescribed and the orders are issued.

§20138. Tampering with safety and operational monitoring devices

(a) GENERAL.—The Secretary of Transportation shall prescribe regulations and issue orders that may be necessary to prohibit the willful tampering with, or disabling of, any specified railroad safety or operational monitoring device.

(b) PENALTIES.—(1) A railroad carrier operating a train on which a safety or operational monitoring device is tampered with or disabled in violation of a regulation prescribed or order issued under subsection (a) of this section is liable to the United States Government for a civil penalty under section 21301 of this title.

(2) An individual tampering with or disabling a safety or operational monitoring device in violation of a regulation prescribed or order issued under subsection (a) of this section, or knowingly operating or allowing to be operated a train on which such a device has been tampered with or disabled, is liable for penalties established by the Secretary. The penalties may include—

(A) a civil penalty under section 21301 of this title;

(B) suspension from work; and

(C) suspension or loss of a license or certification issued under section 20135 of this title.

§20139. Maintenance-of-way operations

(a) GENERAL.—Not later than June 22, 1989, the Secretary of Transportation shall prescribe regulations and issue orders that may be necessary for the safety of maintenance-of-way employees, including standards for bridge safety equipment, such as nets, walkways, handrails, and safety lines, and requirements related to instances when vessels shall be used.

(b) BLUE SIGNAL PROTECTION.—The Secretary shall prescribe regulations applying blue signal protection to on-track vehicles where rest is provided.

§20140. Alcohol and controlled substances testing

(a) DEFINITION.—In this section, "controlled substance" means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) specified by the Secretary of Transportation.

(b) GENERAL.—(1) In the interest of safety, the Secretary of Transportation shall prescribe regulations and issue orders, not later than October 28, 1992, related to alcohol and controlled substances use in railroad operations. The regulations shall establish a program requiring—

(A) a railroad carrier to conduct preemployment, reasonable suspicion, random, and post-accident testing of all railroad employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of alcohol or a controlled substance in violation of law or a United States Government regulation; and

(B) when the Secretary considers it appropriate, disqualification for an established period of time or dismissal of any employee found—

(i) to have used or been impaired by alcohol when on duty; or

(ii) to have used a controlled substance, whether or not on duty, except as allowed for medical purposes by law or a regulation or order under this chapter.

(2) When the Secretary of Transportation considers it appropriate in the interest of safety, the Secretary may prescribe regulations and issue orders requiring railroad carriers to conduct periodic recurring testing of railroad employees responsible for safety-sensitive functions (as decided by the Secretary) for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(c) TESTING AND LABORATORY REQUIREMENTS.—In carrying out this section, the Secretary of Transportation shall develop requirements that shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimens;

(2) for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—

(A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing;

(B) the minimum list of controlled substances for which individuals may be tested; and

(C) appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that a laboratory involved in controlled substances testing under this section have the capability and facility, at the laboratory, of performing screening and confirmation tests;

(4) provide that all tests indicating the use of alcohol or a controlled substance in violation of law or a Government regulation be confirmed by a scientifically recognized method of testing capable of providing quantitative information about alcohol or a controlled substance;

(5) provide that each specimen be subdivided, secured, and labeled in the presence of the tested individual and that a part of the specimen be retained in a secure manner to prevent the possibility of tampering, so that if the individual's confirmation test results are positive the individual has an opportunity to have the retained part tested by a 2d confirmation test done independently at another certified laboratory if the individual requests the 2d confirmation test not later than 3 days after being advised of the results of the first confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations that may be necessary and in consultation with the Secretary of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (other than information about alcohol or a controlled substance) of employees, except that this clause does not prevent the use of test results for the orderly imposition of appropriate sanctions under this section; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(d) REHABILITATION.—The Secretary of Transportation shall prescribe regulations or issue orders establishing requirements for rehabilitation programs that at least provide for the identification and opportunity for treatment of railroad employees responsible for safety-sensitive functions (as decided by the Secretary) in need of assistance in resolving problems with the use of alcohol or a controlled substance in violation of law or a Government regulation. The Secretary shall decide on the circumstances under which employees shall be required to participate in a program. Each railroad carrier is encouraged to make such a program available to all of its employees in addition to employees responsible for safety-sensitive functions. This subsection does not prevent a railroad carrier from establishing a program under this subsection in cooperation with another railroad carrier.

(e) INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS AND REGULATIONS.—In carrying out this section, the Secretary of Transportation—

(1) shall establish only requirements that are consistent with international obligations of the United States; and

(2) shall consider applicable laws and regulations of foreign countries.

(f) OTHER REGULATIONS ALLOWED.—This section does not prevent the Secretary of Transportation from continuing in effect, amending, or further supplementing a regulation prescribed or order issued before October 28, 1991, governing the use of alcohol or a controlled substance in railroad operations.

CHAPTER 203—SAFETY APPLIANCES

Sec.
20301. Definition and nonapplication.
20302. General requirements.
20303. Exemption for moving defective and insecure vehicles needing repairs.
20304. Assumption of risk by employees.
20305. Inspection of mail cars.

§20301. Definition and nonapplication

(a) DEFINITION.—In this chapter, "vehicle" means a car, locomotive, tender, or similar vehicle.

(b) NONAPPLICATION.—This chapter does not apply to the following:

(1) a train of 4-wheel coal cars.

(2) a train of 8-wheel standard logging cars if the height of each car from the top of the rail to the center of the coupling is not more than 25 inches.

(3) a locomotive used in hauling a train referred to in clause (2) of this subsection when the locomotive and cars of the train are used only to transport logs.

§20302. General requirements

(a) GENERAL.—Except as provided in subsection (c) of this section and section 20303 of this title, a railroad carrier may use or allow to be used on any of its railroad lines—

(1) a vehicle only if it is equipped with—

(A) couplers coupling automatically by impact, and capable of being uncoupled, without the necessity of individuals going between the ends of the vehicles;

(B) secure sill steps and efficient hand brakes; and

(C) secure ladders and running boards when required by the Secretary of Transportation, and, if ladders are required, secure handholds or grab irons on its roof at the top of each ladder;

(2) except as otherwise ordered by the Secretary, a vehicle only if it is equipped with secure grab irons or handholds on its ends and sides for greater security to individuals in coupling and uncoupling vehicles;

(3) a vehicle only if it complies with the standard height of drawbars required by regulations prescribed by the Secretary;

(4) a locomotive only if it is equipped with a power-driving wheel brake and appliances for operating the train-brake system; and

(5) a train only if—

(A) enough of the vehicles in the train are equipped with power or train brakes so that the engineer on the locomotive hauling the train can control the train's speed without the necessity of brake operators using the common hand brakes for that purpose; and

(B) at least 50 percent of the vehicles in the train are equipped with power or train brakes and the engineer is using the power or train brakes on those vehicles and on all other vehicles equipped with them that are associated with those vehicles in the train.

(b) REFUSAL TO RECEIVE VEHICLES NOT PROPERLY EQUIPPED.—A railroad carrier complying with subsection (a)(5)(A) of this section may refuse to receive from a railroad line of a connecting railroad carrier or a shipper a vehicle that is not equipped with power or train brakes that will work and readily interchange with the power or train brakes in use on the vehicles of the complying railroad carrier.

(c) COMBINED VEHICLES LOADING AND HAULING LONG COMMODITIES.—Notwithstanding subsection (a)(1)(B) of this section, when vehicles are combined to load and haul long commodities, only one of the vehicles must have hand brakes during the loading and hauling.

(d) AUTHORITY TO CHANGE REQUIREMENTS.—The Secretary may—

(1) change the number, dimensions, locations, and manner of application prescribed by the Secretary for safety appliances required by subsection (a)(1) (B) and (C) and (2) of this section only for good cause and after providing an opportunity for a full hearing;

(2) amend regulations for installing, inspecting, maintaining, and repairing power and train brakes only for the purpose of achieving safety; and

(3) increase, after an opportunity for a full hearing, the minimum percentage of vehicles in a train that are required by subsection (a)(5)(B) of this section to be equipped and used with power or train brakes.

(e) SERVICES OF ASSOCIATION OF AMERICAN RAILROADS.—In carrying out subsection (d)(2) and (3) of this section, the Secretary may use the services of the Association of American Railroads.

§20303. Exemption for moving defective and insecure vehicles needing repairs

(a) GENERAL.—A vehicle that is equipped in compliance with this chapter whose equipment becomes defective or insecure, nevertheless may be moved when necessary to make repairs, without a penalty being imposed under section 20306 of this title, from the place at which the defect or insecurity was first discovered to the nearest

available place at which the repairs can be made—

(1) on the railroad line on which the defect or insecurity was discovered; or

(2) at the option of a connecting railroad carrier, on the railroad line of the connecting carrier, if not farther than the place of repair described in clause (1) of this subsection.

(b) USE OF CHAINS INSTEAD OF DRAWBARS.—A vehicle in a revenue train or in association with commercially-used vehicles may be moved under this section with chains instead of drawbars only when the vehicle contains livestock or perishable freight.

(c) LIABILITY.—The movement of a vehicle under this section is at the risk only of the railroad carrier doing the moving. This section does not relieve a carrier from liability in a proceeding to recover damages for death or injury of a railroad employee arising from the movement of a vehicle with equipment that is defective, insecure, or not maintained in compliance with this chapter.

§20304. Assumption of risk by employees

An employee of a railroad carrier injured by a vehicle or train used in violation of section 20302(a)(1)(A), (2), (4), or (5)(A) of this title does not assume the risk of injury resulting from the violation, even if the employee continues to be employed by the carrier after learning of the violation.

§20305. Inspection of mail cars

The Secretary of Transportation shall inspect the construction, adaptability, design, and condition of mail cars used on railroads in the United States. The Secretary shall make a report on the inspection and submit a copy of the report to the United States Postal Service.

CHAPTER 205—SIGNAL SYSTEMS

Sec.
20501. Definition.
20502. Requirements for installation and use.
20503. Amending regulations and changing requirements.
20504. Inspection, testing, and investigation.
20505. Reports of malfunctions and accidents.

§20501. Definition

In this chapter, "signal system" means a block signal system, an interlocking, automatic train stop, train control, or cab-signal device, or a similar appliance, method, device, or system intended to promote safety in railroad operations.

§20502. Requirements for installation and use

(a) INSTALLATION.—(1) When the Secretary of Transportation decides after an investigation that it is necessary in the public interest, the Secretary may order a railroad carrier to install, on any part of its railroad line, a signal system that complies with requirements of the Secretary. The order must allow the carrier a reasonable time to complete the installation. A carrier may discontinue or materially alter a signal system required under this paragraph only with the approval of the Secretary.

(2) A railroad carrier ordered under paragraph (1) of this subsection to install a signal system on one part of its railroad line may not be held negligent for not installing the system on any part of its line that was not included in the order. If an accident or incident occurs on a part of the line on which the signal system was not required to be installed and was not installed, the use of the system on another part of the line may not be considered in a civil action brought because of the accident or incident.

(b) USE.—A railroad carrier may allow a signal system to be used on its railroad line only when the system, including its controlling and operating appurtenances—

(1) may be operated safely without unnecessary risk of personal injury; and

(2) has been inspected and can meet any test prescribed under this chapter.

§20503. Amending regulations and changing requirements

The Secretary of Transportation may amend a regulation or change a requirement applicable to a railroad carrier for installing, maintaining, inspecting, or repairing a signal system under this chapter—

(1) when the carrier files with the Secretary a request for the amendment or change and the Secretary approves the request; or

(2) on the Secretary's own initiative for good cause shown.

§20504. Inspection, testing, and investigation

(a) SYSTEMS IN USE.—(1) The Secretary of Transportation may—

(A) inspect and test a signal system used by a railroad carrier; and

(B) decide whether the system is in safe operating condition.

(2) In carrying out this subsection, the Secretary may employ only an individual who—

(A) has no interest in a patented article required to be used on or with a signal system; and

(B) has no financial interest in a railroad carrier or in a concern dealing in railroad supplies.

(b) SYSTEMS SUBMITTED FOR INVESTIGATION AND TESTING.—The Secretary may investigate, test, and report on the use of and need for a signal system, without cost to the United States Government, when the system is submitted in completed shape for investigation and testing.

§20505. Reports of malfunctions and accidents

In the way and to the extent required by the Secretary of Transportation, a railroad carrier shall report to the Secretary a failure of a signal system to function as intended. If the failure results in an accident or incident causing injury to an individual or property that is required to be reported under regulations prescribed by the Secretary, the carrier owning or maintaining the signal system shall report to the Secretary immediately in writing the fact of the accident or incident.

CHAPTER 207—LOCOMOTIVES

Sec.
20701. Requirements for use.
20702. Inspections, repairs, and inspection and repair reports.
20703. Accident reports and investigations.

§20701. Requirements for use

A railroad carrier may use or allow to be used a locomotive or tender on its railroad line only when the locomotive or tender and its parts and appurtenances—

(1) are in proper condition and safe to operate without unnecessary danger of personal injury;

(2) have been inspected as required under this chapter and regulations prescribed by the Secretary of Transportation under this chapter; and

(3) can withstand every test prescribed by the Secretary under this chapter.

§20702. Inspections, repairs, and inspection and repair reports

(a) GENERAL.—The Secretary of Transportation shall—

(1) become familiar, so far as practicable, with the condition of every locomotive and tender and its parts and appurtenances;

(2) inspect every locomotive and tender and its parts and appurtenances as necessary to carry out this chapter, but not necessarily at stated times or at regular intervals; and

(3) ensure that every railroad carrier makes inspections of locomotives and tenders and their parts and appurtenances as required by regulations prescribed by the Secretary and repairs every defect that is disclosed by an inspection before a defective locomotive, tender, part, or appurtenance is used again.

(b) NONCOMPLYING LOCOMOTIVES, TENDERS, AND PARTS.—(1) When the Secretary finds that a locomotive, tender, or locomotive or tender part or appurtenance owned or operated by a railroad carrier does not comply with this chapter or a regulation prescribed under this chapter, the Secretary shall give the carrier written notice describing any defect resulting in noncompliance. Not later than 5 days after receiving the notice of noncompliance, the carrier may submit a written request for a reinspection. On receiving the request, the Secretary shall provide for the reinspection by an officer or employee of the Department of Transportation who did not make the original inspection. The reinspection shall be made not later than 15 days after the date the Secretary gives the notice of noncompliance.

(2) Immediately after the reinspection is completed, the Secretary shall give written notice to the railroad carrier stating whether the locomotive, tender, part, or appurtenance is in compliance. If the original finding of noncompliance is sustained, the carrier has 30 days after receipt of the notice to file an appeal with the Secretary. If the carrier files an appeal, the Secretary, after providing an opportunity for a proceeding, may revise or set aside the finding of noncompliance.

(3) A locomotive, tender, part, or appurtenance found not in compliance under this subsection may be used only after it is—

(A) repaired to comply with this chapter and regulations prescribed under this chapter; or

(B) found on reinspection or appeal to be in compliance.

(c) REPORTS.—A railroad carrier shall make and keep, in the way the Secretary prescribes by regulation, a report of every—

(1) inspection made under regulations prescribed by the Secretary; and

(2) repair made of a defect disclosed by such an inspection.

(d) CHANGES IN INSPECTION PROCEDURES.—A railroad carrier may change a rule or instruction of the carrier governing the inspection by the carrier of the locomotives and tenders and locomotive and tender parts and appurtenances of the carrier when the Secretary approves a request filed by the carrier to make the change.

§20703. Accident reports and investigations

(a) ACCIDENT REPORTS AND SCENE PRESERVATION.—When the failure of a locomotive, tender, or locomotive or tender part or appurtenance results in an accident or incident causing serious personal injury or death, the railroad carrier owning or operating the locomotive or tender—

(1) immediately shall file with the Secretary of Transportation a written statement of the fact of the accident or incident; and

(2) when the locomotive is disabled to the extent it cannot be operated under its own power, shall preserve intact all parts affected by the accident or incident, if possible without interfering with traffic, until an investigation of the accident or incident is completed.

(b) INVESTIGATIONS.—The Secretary shall—

(1) investigate each accident and incident reported under subsection (a) of this section;

(2) inspect each part affected by the accident or incident; and

(3) make a complete and detailed report on the cause of the accident or incident.

(c) PUBLICATION AND USE OF INVESTIGATION REPORTS.—When the Secretary considers publication to be in the public interest, the Secretary may publish a report of an investigation made under this section, stating the cause of the accident or incident and making appropriate recommendations. No part of a report may be admitted into evidence or used in a civil action for

damages resulting from a matter mentioned in the report.

CHAPTER 209—ACCIDENTS AND INCIDENTS

Sec.

20901. Reports.

20902. Investigations.

20903. Reports not evidence in civil actions for damages.

§20901. Reports

Not later than 30 days after the end of each month, a railroad carrier shall file a report with the Secretary of Transportation on all accidents and incidents resulting in injury or death to an individual or damage to equipment or a roadbed arising from the carrier's operations during the month. The report shall be under oath and shall state the nature, cause, and circumstances of each reported accident or incident. If a railroad carrier assigns human error as a cause, the report shall include, at the option of each employee whose error is alleged, a statement by the employee explaining any factors the employee alleges contributed to the accident or incident.

§20902. Investigations

(a) GENERAL AUTHORITY.—The Secretary of Transportation, or an impartial investigator authorized by the Secretary, may investigate—

(1) an accident or incident resulting in serious injury to an individual or to railroad property, occurring on the railroad line of a railroad carrier; and

(2) an accident or incident reported under section 20505 of this title.

(b) OTHER DUTIES AND POWERS.—In carrying out an investigation, the Secretary or authorized investigator may subpena witnesses, require the production of records, exhibits, and other evidence, administer oaths, and take testimony. If the accident or incident is investigated by a commission of the State in which it occurred, the Secretary, if convenient, shall carry out the investigation at the same time as, and in coordination with, the commission's investigation. The railroad carrier on whose railroad line the accident or incident occurred shall provide reasonable facilities to the Secretary for the investigation.

(c) REPORTS.—When in the public interest, the Secretary shall make a report of the investigation, stating the cause of the accident or incident and making recommendations the Secretary considers appropriate. The Secretary shall publish the report in a way the Secretary considers appropriate.

§20903. Reports not evidence in civil actions for damages

No part of an accident or incident report filed by a railroad carrier under section 20901 of this title or made by the Secretary of Transportation under section 20902 of this title may be used in a civil action for damages resulting from a matter mentioned in the report.

CHAPTER 211—HOURS OF SERVICE

Sec.

21101. Definitions.

21102. Nonapplication and exemption.

21103. Limitations on duty hours of train employees.

21104. Limitations on duty hours of signal employees.

21105. Limitations on duty hours of dispatching service employees.

21106. Limitations on employee sleeping quarters.

21107. Maximum duty hours and subjects of collective bargaining.

§21101. Definitions

In this chapter—

(1) "designated terminal" means the home or away-from-home terminal for the assignment of a particular crew.

(2) "dispatching service employee" means an operator, train dispatcher, or other train employee who by the use of an electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements.

(3) "employee" means a dispatching service employee, a signal employee, or a train employee.

(4) "signal employee" means an individual employed by a railroad carrier who is engaged in installing, repairing, or maintaining signal systems.

(5) "train employee" means an individual engaged in or connected with the movement of a train, including a hostler.

§21102. Nonapplication and exemption

(a) GENERAL.—This chapter does not apply to a situation involving any of the following:

(1) a casualty.

(2) an unavoidable accident.

(3) an act of God.

(4) a delay resulting from a cause unknown and unforeseeable to a railroad carrier or its officer or agent in charge of the employee when the employee left a terminal.

(b) EXEMPTION.—The Secretary of Transportation may exempt a railroad carrier having not more than 15 employees covered by this chapter from the limitations imposed by this chapter. The Secretary may allow the exemption after a full hearing, for good cause shown, and on deciding that the exemption is in the public interest and will not affect safety adversely. The exemption shall be for a specific period of time and is subject to review at least annually. The exemption may not authorize a carrier to require or allow its employees to be on duty more than a total of 16 hours in a 24-hour period.

§21103. Limitations on duty hours of train employees

(a) GENERAL.—Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow a train employee to remain or go on duty—

(1) unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours; or

(2) after that employee has been on duty for 12 consecutive hours, until that employee has had at least 10 consecutive hours off duty.

(b) DETERMINING TIME ON DUTY.—In determining under subsection (a) of this section the time a train employee is on or off duty, the following rules apply:

(1) Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty.

(2) Time the employee is engaged in or connected with the movement of a train is time on duty.

(3) Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in or connected with the movement of a train is time on duty.

(4) Time spent in deadhead transportation to a duty assignment is time on duty, but time spent in deadhead transportation from a duty assignment to the place of final release is neither time on duty nor time off duty.

(5) An interim period available for rest at a place other than a designated terminal is time on duty.

(6) An interim period available for less than 4 hours rest at a designated terminal is time on duty.

(7) An interim period available for at least 4 hours rest at a place with suitable facilities for food and lodging is not time on duty when the employee is prevented from getting to the employee's designated terminal by any of the following:

(A) a casualty.

(B) a track obstruction.

(C) an act of God.

(D) a derailment or major equipment failure resulting from a cause that was unknown and unforeseeable to the railroad carrier or its officer or agent in charge of that employee when that employee left the designated terminal.

(c) EMERGENCIES.—A train employee on the crew of a wreck or relief train may be allowed to remain or go on duty for not more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of the crew is related to the emergency. In this subsection, an emergency ends when the track is cleared and the railroad line is open for traffic.

§21104. Limitations on duty hours of signal employees

(a) GENERAL.—(1) In paragraph (2)(C) of this subsection, "24-hour period" means the period beginning when a signal employee reports for duty immediately after 8 consecutive hours off duty or, when required under paragraph (2)(B) of this subsection, after 10 consecutive hours off duty.

(2) Except as provided in subsection (c) of this section, a railroad carrier and its officers and agents may not require or allow a signal employee to remain or go on duty—

(A) unless that employee has had at least 8 consecutive hours off duty during the prior 24 hours;

(B) after that employee has been on duty for 12 consecutive hours, until that employee has had at least 10 consecutive hours off duty; or

(C) after that employee has been on duty a total of 12 hours during a 24-hour period, or after the end of that 24-hour period, whichever occurs first, until that employee has had at least 8 consecutive hours off duty.

(b) DETERMINING TIME ON DUTY.—In determining under subsection (a) of this section the time a signal employee is on duty or off duty, the following rules apply:

(1) Time on duty begins when the employee reports for duty and ends when the employee is finally released from duty.

(2) Time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is engaged in installing, repairing, or maintaining signal systems is time on duty.

(3) Time spent returning from a trouble call, whether the employee goes directly to the employee's residence or by way of the employee's headquarters, is neither time on duty nor time off duty, except that up to one hour of that time spent returning from the final trouble call of a period of continuous or broken service is time off duty.

(4) If, at the end of scheduled duty hours, an employee has not completed the trip from the final outlying worksite of the duty period to the employee's headquarters or directly to the employee's residence, the time after the scheduled duty hours necessarily spent in completing the trip to the residence or headquarters is neither time on duty nor time off duty.

(5) If an employee is released from duty at an outlying worksite before the end of the employee's scheduled duty hours to comply with this section, the time necessary for the trip from the worksite to the employee's headquarters or directly to the employee's residence is neither time on duty nor time off duty.

(6) Time spent in transportation on an ontrack vehicle, including time referred to in paragraphs (3)–(5) of this subsection, is time on duty.

(7) A regularly scheduled meal period or another release period of at least 30 minutes but not more than one hour is time off duty and does not break the continuity of service of the employee under this section, but a release period

of more than one hour is time off duty and does break the continuity of service.

(c) EMERGENCIES.—A signal employee may be allowed to remain or go on duty for not more than 4 additional hours in any period of 24 consecutive hours when an emergency exists and the work of that employee is related to the emergency. In this subsection, an emergency ends when the signal system is restored to service.

§21105. Limitations on duty hours of dispatching service employees

(a) APPLICATION.—This section applies, rather than section 21103 or 21104 of this title, to a train employee or signal employee during any period of time the employee is performing duties of a dispatching service employee.

(b) GENERAL.—Except as provided in subsection (d) of this section, a dispatching service employee may not be required or allowed to remain or go on duty for more than—

(1) a total of 9 hours during a 24-hour period in a tower, office, station, or place at which at least 2 shifts are employed; or

(2) a total of 12 hours during a 24-hour period in a tower, office, station, or place at which only one shift is employed.

(c) DETERMINING TIME ON DUTY.—Under subsection (b) of this section, time spent performing any other service for the railroad carrier during a 24-hour period in which the employee is on duty in a tower, office, station, or other place is time on duty in that tower, office, station, or place.

(d) EMERGENCIES.—When an emergency exists, a dispatching service employee may be allowed to remain or go on duty for not more than 4 additional hours during a period of 24 consecutive hours for not more than 3 days during a period of 7 consecutive days.

§21106. Limitations on employee sleeping quarters

A railroad carrier and its officers and agents—

(1) may provide sleeping quarters (including crew quarters, camp or bunk cars, and trailers) for employees, and any individuals employed to maintain the right of way of a railroad carrier, only if the sleeping quarters are clean, safe, and sanitary and give those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the carrier; and

(2) may not begin, after July 7, 1976, construction or reconstruction of sleeping quarters referred to in clause (1) of this section in an area or in the immediate vicinity of an area, as determined under regulations prescribed by the Secretary of Transportation, in which railroad switching or humping operations are performed.

§21107. Maximum duty hours and subjects of collective bargaining

The number of hours established by this chapter that an employee may be required or allowed to be on duty is the maximum number of hours consistent with safety. Shorter hours of service and time on duty of an employee are proper subjects for collective bargaining between a railroad carrier and its employees.

CHAPTER 213—PENALTIES

SUBCHAPTER I—CIVIL PENALTIES

Sec.
21301. Chapter 201 general violations.
21302. Chapter 201 accident and incident violations and chapter 203–209 violations.
21303. Chapter 211 violations.
21304. Willfulness requirement for penalties against individuals.

SUBCHAPTER II—CRIMINAL PENALTIES

21311. Records and reports.

SUBCHAPTER I—CIVIL PENALTIES

§21301. Chapter 201 general violations

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating a regulation prescribed or order issued by the Secretary of Transportation under chapter 201 of this title is liable to the United States Government for a civil penalty. The Secretary shall impose the penalty applicable under paragraph (2) of this subsection. A separate violation occurs for each day the violation continues.

(2) The Secretary shall include in, or make applicable to, each regulation prescribed and order issued under chapter 201 of this title a civil penalty for a violation. The amount of the penalty shall be at least $250 but not more than $10,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than $20,000.

(3) The Secretary may compromise the amount of a civil penalty imposed under this subsection to not less than $250 before referral to the Attorney General.

(b) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(c) DEPOSIT IN TREASURY.—A civil penalty collected under this section or section 20113(b) of this title shall be deposited in the Treasury as miscellaneous receipts.

§21302. Chapter 201 accident and incident violations and chapter 203–209 violations

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating a regulation prescribed or order issued under chapter 201 of this title related to accident and incident reporting or investigation, or violating chapters 203–209 of this title or a regulation or requirement prescribed or order issued under chapters 203–209, is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation imposes a civil penalty under this subsection. The amount of the penalty shall be at least $250 but not more than $10,000. However when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than $20,000.

(3) If the Secretary does not compromise the amount of a civil penalty under section 3711 of title 31, the Secretary shall refer the matter to the Attorney General for collection.

(b) CIVIL ACTIONS TO COLLECT.—The Attorney General shall bring a civil action to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section. The action may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If the action is against an individual, the action also may be brought in the judicial district in which the individual resides.

§21303. Chapter 211 violations

(a) PENALTY.—(1) Subject to section 21304 of this title, a person violating chapter 211 of this title is liable to the United States Government for a civil penalty. An act by an individual that causes a railroad carrier to be in violation is a violation. For a violation of section 21106 of this title, a separate violation occurs for each day a facility is not in compliance.

(2) The Secretary of Transportation imposes a civil penalty under this subsection. The amount of the penalty may be not more than $1,000.

(3) If the Secretary does not compromise the amount of a civil penalty under section 3711 of title 31, the Secretary shall refer the matter to the Attorney General for collection.

(b) CIVIL ACTIONS TO COLLECT.—(1) The Attorney General shall bring a civil action to collect a civil penalty that is referred to the Attorney General for collection under subsection (a) of this section after satisfactory information is presented to the Attorney General. The action may be brought in the judicial district in which the violation occurred or the defendant has its principal executive office. If the action is against an individual, the action also may be brought in the judicial district in which the individual resides.

(2) A civil action under this subsection must be brought not later than 2 years after the date of the violation unless administrative notification under section 3711 of title 31 is given within that 2-year period to the person committing the violation. However, even if notification is given, the action must be brought within the period specified in section 2462 of title 28.

(c) IMPUTATION OF KNOWLEDGE.—In any proceeding under this section, a railroad carrier is deemed to know the acts of its officers and agents.

§21304. Willfulness requirement for penalties against individuals

A civil penalty under this subchapter may be imposed against an individual only for a willful violation. An individual is deemed not to have committed a willful violation if the individual was following the direct order of a railroad carrier official or supervisor under protest communicated to the official or supervisor. The individual is entitled to document the protest.

SUBCHAPTER II—CRIMINAL PENALTIES

§21311. Records and reports

(a) RECORDS AND REPORTS UNDER CHAPTER 201.—A person shall be fined under title 18, imprisoned for not more than 2 years, or both, if the person knowingly and willfully—

(1) makes a false entry in a record or report required to be made or preserved under chapter 201 of this title;

(2) destroys, mutilates, changes, or by another means falsifies such a record or report;

(3) does not enter required specified facts and transactions in such a record or report;

(4) makes or preserves such a record or report in violation of a regulation prescribed or order issued under chapter 201 of this title; or

(5) files a false record or report with the Secretary of Transportation.

(b) ACCIDENT AND INCIDENT REPORTS.—A railroad carrier not filing the report required by section 20901 of this title shall be fined not more than $100 for each violation and not more than $100 for each day during which the report is overdue.

PART B—ASSISTANCE

CHAPTER 221—LOCAL RAIL FREIGHT ASSISTANCE

Sec.
22101. Financial assistance for State projects.
22102. Eligibility.
22103. Applications.
22104. State rail plan financing.
22105. Sharing project costs.
22106. Limitations on financial assistance.
22107. Records, audits, and information.
22108. Authorization of appropriations.

§22101. Financial assistance for State projects

(a) GENERAL.—The Secretary of Transportation shall provide financial assistance to a State, as provided under this chapter, for a rail freight assistance project of the State when a rail carrier subject to subchapter I of chapter 105 of this title maintains a rail line in the State. The assistance is for the cost of—

(1) acquiring, in any way the State considers appropriate, an interest in a rail line or rail

property to maintain existing, or to provide future, rail freight transportation, but only if the Interstate Commerce Commission has authorized, or exempted from the requirements of that authorization, the abandonment of, or the discontinuance of rail transportation on, the rail line related to the project;

(2) improving and rehabilitating rail property on a rail line to the extent necessary to allow adequate and efficient rail freight transportation on the line, but only if the rail carrier certifies that the rail line related to the project carried not more than 5,000,000 gross ton-miles of freight a mile in the prior year; and

(3) building rail or rail-related facilities (including new connections between at least 2 existing rail lines, intermodal freight terminals, sidings, bridges, and relocation of existing lines) to improve the quality and efficiency of the rail freight transportation, but only if the rail carrier certifies that the rail line related to the project carried not more than 5,000,000 gross ton-miles of freight a mile in the prior year.

(b) Calculating Cost-Benefit Ratio.—The Secretary shall establish a methodology for calculating the ratio of benefits to costs of projects proposed under this chapter. In establishing the methodology, the Secretary shall consider the need for equitable treatment of different regions of the United States and different commodities transported by rail. The establishment of the methodology is committed to the discretion of the Secretary.

(c) Conditions.—(1) Assistance for a project shall be provided under this chapter only if—

(A) a rail carrier certifies that the rail line related to the project carried more than 20 carloads a mile during the most recent year during which transportation was provided by the carrier on the line; and

(B) the ratio of benefits to costs for the project, as calculated using the methodology established under subsection (b) of this section, is more than 1.0.

(2) If the rail carrier that provided the transportation on the rail line is no longer in existence, the applicant for the project shall provide the information required by the certification under paragraph (1)(A) of this subsection in the way the Secretary prescribes.

(3) The Secretary may waive the requirement of paragraph (1)(A) or (2) of this subsection if the Secretary—

(A) decides that the rail line has contractual guarantees of at least 40 carloads a mile for each of the first 2 years of operation of the proposed project; and

(B) finds that there is a reasonable expectation that the contractual guarantees will be fulfilled.

(d) Limitations on Amounts.—A State may not receive more than 15 percent of the amounts provided in a fiscal year under this chapter. Not more than 20 percent of the amounts available under this chapter may be provided in a fiscal year for any one project.

§22102. Eligibility

A State is eligible to receive financial assistance under this chapter only when the State complies with regulations the Secretary of Transportation prescribes under this chapter and the Secretary decides that—

(1) the State has an adequate plan for rail transportation in the State and a suitable process for updating, revising, and modifying the plan;

(2) the State plan is administered or coordinated by a designated State authority and provides for a fair distribution of resources;

(3) the State authority—

(A) is authorized to develop, promote, supervise, and support safe, adequate, and efficient rail transportation;

(B) employs or will employ sufficient qualified and trained personnel;

(C) maintains or will maintain adequate programs of investigation, research, promotion, and development with opportunity for public participation; and

(D) is designated and directed to take all practicable steps (by itself or with other State authorities) to improve rail transportation safety and reduce energy use and pollution related to transportation; and

(4) the State has ensured that it maintains or will maintain adequate procedures for financial control, accounting, and performance evaluation for the proper use of assistance provided by the United States Government.

§22103. Applications

(a) Filing.—A State must file an application with the Secretary of Transportation for financial assistance for a project described under section 22101(a) of this title not later than January 1 of the fiscal year for which amounts have been appropriated. However, for a fiscal year for which the authorization of appropriations for assistance under this chapter has not been enacted by the first day of the fiscal year, the State must file the application not later than 90 days after the date of enactment of a law authorizing the appropriations for that fiscal year. The Secretary shall prescribe the form of the application.

(b) Considerations.—In considering an application under this subsection, the Secretary shall consider the following:

(1) the percentage of rail lines that rail carriers have identified to the Interstate Commerce Commission for abandonment or potential abandonment in the State.

(2) the likelihood of future abandonments in the State.

(3) the ratio of benefits to costs for a proposed project calculated using the methodology established under section 22101(b) of this title.

(4) the likelihood that the rail line will continue operating with assistance.

(5) the impact of rail bankruptcies, rail restructuring, and rail mergers on the State.

§22104. State rail plan financing

(a) Entitlement and Uses.—On the first day of each fiscal year, each State is entitled to $36,000 of the amounts made available under section 22108 of this title during that fiscal year to be used—

(1) to establish, update, revise, and modify the State plan required by section 22102 of this title; or

(2) to carry out projects described in section 22101(a) (1), (2), or (3) of this title, as designated by the State, if those projects meet the requirements of section 22101(c)(1)(B) of this title.

(b) Applications.—Each State must apply for amounts under this section not later than the first day of the fiscal year for which the amounts are available. However, for any fiscal year for which the authorization of appropriations for financial assistance under this chapter has not been enacted by the first day of the fiscal year, the State must apply for amounts under this section not later than 60 days after the date of enactment of a law authorizing the appropriations for that fiscal year. Not later than 60 days after receiving an application, the Secretary of Transportation shall consider the application and notify the State of the approval or disapproval of the application.

(c) Availability of Amounts.—Amounts provided under this section remain available to a State for obligation for the first 3 months after the end of the fiscal year for which the amounts were made available. Amounts not applied for under this section or that remain unobligated after the first 3 months after the end of the fiscal year for which the amounts were made available are available to the Secretary for projects meeting the requirements of this chapter.

§22105. Sharing project costs

(a) General.—(1) The United States Government's share of the costs of financial assistance for a project under this chapter is 50 percent, except that for assistance provided under section 22101(a)(2) of this title, the Government's share is 70 percent. The State may pay its share of the costs in cash or through the following benefits, to the extent that the benefits otherwise would not be provided:

(A) forgiveness of taxes imposed on a rail carrier or its property.

(B) real and tangible personal property (provided by the State or a person for the State) necessary for the safe and efficient operation of rail freight transportation.

(C) track rights secured by the State for a rail carrier.

(D) the cash equivalent of State salaries for State employees working on the State project, except overhead and general administrative costs.

(2) A State may pay more than its required percentage share of the costs of a project under this chapter. When a State, or a person acting for a State, pays more than the State share of the costs of its projects during a fiscal year, the excess amount shall be applied to the State share for the costs of the State projects for later fiscal years.

(b) Agreements To Combine Amounts.—States may agree to combine any part of the amounts made available under this chapter to carry out a project that is eligible for assistance under this chapter when—

(1) the project will benefit each State making the agreement; and

(2) the agreement is not a violation of State law.

§22106. Limitations on financial assistance

(a) Grants and Loans.—A State shall use financial assistance for projects under this chapter to make a grant or lend money to the owner of rail property, or a rail carrier providing rail transportation, related to a project being assisted. The State shall decide on the financial terms of the grant or loan, except that the time for making grant advances shall comply with regulations of the Secretary of the Treasury.

(b) Holding and Use of Government's Share.—The State shall place the United States Government's share of money that is repaid in an interest-bearing account. However, the Secretary of Transportation may allow a borrower to place that money, for the benefit of the State, in a bank designated by the Secretary of the Treasury under section 10 of the Act of June 11, 1942 (12 U.S.C. 265). The State shall use the money and accumulated interest to make other grants and loans under this chapter.

(c) Payment of Unused Money and Accumulated Interest.—The State may pay the Secretary of Transportation the Government's share of unused money and accumulated interest at any time. However, the State must pay the unused money and accumulated interest to the Secretary when the State ends its participation under this chapter.

(d) Encouraging Participation.—To the maximum extent possible, the State shall encourage the participation of shippers, rail carriers, and local communities in paying the State share of assistance costs.

(e) Retention of Contingent Interest.—Each State shall retain a contingent interest (redeemable preference shares) for the Government's share of amounts in a rail line receiving assistance under this chapter. The State may collect its share of the amounts used for the rail line if—

(1) an application for abandonment of the rail line is filed under chapter 109 of this title; or

(2) the rail line is sold or disposed of after it has received assistance under this chapter.

§22107. Records, audits, and information

(a) RECORDS.—Each recipient of financial assistance through an arrangement under this chapter shall keep records required by the Secretary of Transportation. The records shall be kept for 3 years after a project is completed and shall disclose—

(1) the amount of, and disposition by the recipient, of the assistance;

(2) the total costs of the project for which the assistance was given or used;

(3) the amount of that part of the costs of the project paid by other sources; and

(4) any other records that will make an effective audit easier.

(b) AUDITS.—The Secretary and the Comptroller General shall make regular financial and performance audits, as provided under chapter 75 of title 31, of activities and transactions assisted under this chapter.

(c) INFORMATION.—The Interstate Commerce Commission shall provide the Secretary with information the Secretary requests to assist in carrying out this chapter. The Commission shall provide the information not later than 30 days after receiving a request from the Secretary.

(d) LIST OF RAIL LINES.—Not later than August 1 of each year, each rail carrier subject to subchapter I of chapter 105 of this title shall submit to the Secretary a list of the rail lines of the carrier that carried not more than 5,000,000 gross ton-miles of freight a mile in the prior year.

§22108. Authorization of appropriations

(a) GENERAL.—No amount may be appropriated to the Secretary of Transportation for any period after September 30, 1991, to carry out this chapter.

(b) DISTRIBUTION OF AMOUNTS.—The Secretary shall establish procedures necessary to ensure that amounts available to the Secretary for projects under this chapter are distributed not later than April 1 of the fiscal year for which the amounts are appropriated. If any amounts are not distributed by April 1, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the status of those amounts and the reasons for the delay in distribution.

(c) AVAILABILITY OF OTHER AMOUNTS.—Amounts appropriated to carry out section 5(i) of the Department of Transportation Act for fiscal year 1990 that are not applied for or that remain unobligated on January 1, 1991, are available to the Secretary for projects under this chapter.

PART C—PASSENGER TRANSPORTATION

CHAPTER 241—GENERAL

Sec.

24101. Findings, purpose, and goals.
24102. Definitions.
24103. Loan guarantees.
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§24101. Findings, purpose, and goals

(a) FINDINGS.—(1) Public convenience and necessity require that Amtrak, to the extent its budget allows, provide modern, cost-efficient, and energy-efficient intercity rail passenger transportation between crowded urban areas and in other areas of the United States.

(2) Rail passenger transportation can help alleviate overcrowding of airways and airports and on highways.

(3) A traveler in the United States should have the greatest possible choice of transportation most convenient to the needs of the traveler.

(4) A greater degree of cooperation is necessary among Amtrak, other rail carriers, State, regional, and local governments, the private sector, labor organizations, and suppliers of services and equipment to Amtrak to achieve a performance level sufficient to justify expending public money.

(5) Modern and efficient commuter rail passenger transportation is important to the viability and well-being of major urban areas and to the energy conservation and self-sufficiency goals of the United States.

(6) As a rail passenger transportation entity, Amtrak should be available to operate commuter rail passenger transportation through its subsidiary, Amtrak Commuter, under contract with commuter authorities that do not provide the transportation themselves as part of the governmental function of the State.

(7) The Northeast Corridor is a valuable resource of the United States used by intercity and commuter rail passenger transportation and freight transportation.

(8) Greater coordination between intercity and commuter rail passenger transportation is required.

(b) PURPOSE.—By using innovative operating and marketing concepts, Amtrak shall provide intercity and commuter rail passenger transportation that completely develops the potential of modern rail transportation to meet the intercity and commuter passenger transportation needs of the United States.

(c) GOALS.—Amtrak shall—

(1) use its best business judgment in acting to minimize United States Government subsidies, including—

(A) increasing fares;

(B) increasing revenue from the transportation of mail and express;

(C) reducing losses on food service;

(D) improving its contracts with operating rail carriers;

(E) reducing management costs; and

(F) increasing employee productivity;

(2) minimize Government subsidies by encouraging State, regional, and local governments and the private sector to share the cost of providing rail passenger transportation, including the cost of operating facilities;

(3) carry out strategies to achieve immediately maximum productivity and efficiency consistent with safe and efficient transportation;

(4) operate Amtrak trains, to the maximum extent feasible, to all station stops within 15 minutes of the time established in public timetables;

(5) develop transportation on rail corridors subsidized by States and private parties;

(6) implement schedules based on a systemwide average speed of at least 60 miles an hour that can be achieved with a degree of reliability and passenger comfort;

(7) encourage rail carriers to assist in improving intercity rail passenger transportation;

(8) improve generally the performance of Amtrak through comprehensive and systematic operational programs and employee incentives;

(9) carry out policies that ensure equitable access to the Northeast Corridor by intercity and commuter rail passenger transportation;

(10) coordinate the uses of the Northeast Corridor, particularly intercity and commuter rail passenger transportation; and

(11) maximize the use of its resources, including the most cost-effective use of employees, facilities, and real property.

(d) MINIMIZING GOVERNMENT SUBSIDIES.—To carry out subsection (c)(11) of this section, Amtrak is encouraged to make agreements with the private sector and undertake initiatives that are consistent with good business judgment and designed to maximize its revenues and minimize Government subsidies.

§24102. Definitions

In this part—

(1) "auto-ferry transportation" means intercity rail passenger transportation—

(A) of automobiles or recreational vehicles and their occupants; and

(B) when space is available, of used unoccupied vehicles.

(2) "avoidable loss" means the avoidable costs of providing rail passenger transportation, less revenue attributable to the transportation, as determined by the Interstate Commerce Commission under section 553 of title 5.

(3) "basic system" means the system of intercity rail passenger transportation designated by the Secretary of Transportation under section 4 of the Amtrak Improvement Act of 1978 and approved by Congress, and transportation required to be provided under section 24705(a) of this title and section 4(g) of the Act, including changes in the system or transportation that Amtrak makes using the route and service criteria.

(4) "commuter authority" means a State, local, or regional entity established to provide, or make a contract providing for, commuter rail passenger transportation.

(5) "commuter rail passenger transportation" means short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple-ride, and commuter tickets and morning and evening peak period operations.

(6) "intercity rail passenger transportation" means rail passenger transportation, except commuter rail passenger transportation.

(7) "rail carrier" means a person providing rail transportation for compensation.

(8) "rate" means a rate, fare, or charge for rail transportation.

(9) "regional transportation authority" means an entity established to provide passenger transportation in a region.

(10) "route and service criteria" means the criteria and procedures for making route and service decisions established under section 404(c)(1)-(3)(A) of the Rail Passenger Service Act.

§24103. Loan guarantees

(a) GENERAL AUTHORITY.—With the approval of the Secretary of the Treasury and on terms the Secretary of Transportation may prescribe, the Secretary of Transportation may guarantee a lender or lessor against loss of principal and interest or other contractual commitments on securities, obligations, leases, loans (or the refinancing of loans) issued to finance—

(1) the upgrading of roadbeds; and

(2) the purchase or lease by Amtrak or a regional transportation authority of capital equipment and facilities necessary to improve rail passenger transportation.

(b) MAXIMUM PERIOD OF GUARANTEE.—The maturity date or term of securities, obligations, leases, or loans, including extensions and renewals, guaranteed under this section may not be more than 20 years from the date of issuance.

(c) EFFECT OF GUARANTEE.—A guarantee under this section—

(1) is a general obligation of the United States Government;

(2) is backed by the full faith and credit of the Government;

(3) may not be revoked;

(4) is conclusive evidence—

(A) that the guarantee complies fully with this part; and

(B) of the approval and legality of all terms of the security, obligation, lease, or loan and of the guarantee; and

(5) is valid and incontestable in the hands of a holder of a guaranteed security, obligation, lease, or loan, except for fraud or material misrepresentation by the holder.

(d) MAXIMUM OUTSTANDING AMOUNT.—The total amount of the unpaid principal of the securities, obligations, leases, and loans outstanding at one time and guaranteed under this section may not be more than \$930,000,000. That

amount is reduced by the amount of securities, obligations, and loans paid by Amtrak under section 601(a)(3) or (b)(1)(E) of the Rail Passenger Service Act.

(e) ISSUANCE OF OBLIGATIONS.—(1) If the money available to the Secretary of Transportation is insufficient to enable the Secretary of Transportation to discharge the Secretary of Transportation's responsibilities under guarantees issued under subsection (a) of this section, the Secretary of Transportation shall issue obligations to the Secretary of the Treasury. The Secretary of the Treasury shall prescribe the terms of the obligations. When determining the interest rate for the obligations, the Secretary of the Treasury shall consider the current average market yield on outstanding marketable obligations of the Government of comparable maturities during the month before obligations are issued.

(2) The Secretary of the Treasury shall buy obligations issued under this subsection. To buy the obligations, the Secretary may use as a public debt transaction proceeds from the sale of securities issued under chapter 31 of title 31. Securities may be issued under chapter 31 to buy the obligations.

(3) The Secretary of the Treasury may sell obligations bought under this subsection. A redemption, purchase, or sale by the Secretary is a public debt transaction of the Government.

(4) The Secretary of Transportation shall redeem obligations referred to in this subsection from appropriations available under subsection (g) of this section.

(f) LIMITATION.—A security, obligation, lease, or loan may not be guaranteed if the income from the security, obligation, lease, or loan is not gross income under chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1).

(g) AUTHORIZATION OF APPROPRIATIONS.—Amounts necessary for the Secretary of Transportation to carry out this section may be appropriated to the Secretary. The amounts remain available until expended.

§24104. Enforcement

(a) GENERAL.—(1) Except as provided in paragraph (2) of this subsection, only the Attorney General may bring a civil action when Amtrak or a rail carrier—

(A) engages in or adheres to an action, practice, or policy inconsistent with this part;

(B) obstructs or interferes with an activity authorized under this part;

(C) refuses, fails, or neglects to discharge its duties and responsibilities under this part; or

(D) threatens—

(i) to engage in or adhere to an action, practice, or policy inconsistent with this part;

(ii) to obstruct or interfere with an activity authorized by this part; or

(iii) to refuse, fail, or neglect to discharge its duties and responsibilities under this part.

(2) An employee affected by any conduct or threat referred to in paragraph (1) of this subsection, or an authorized employee representative, may bring the civil action if the conduct or threat involves a labor agreement.

(b) REVIEW OF DISCONTINUANCE OR REDUCTION.—A discontinuance of a route, a train, or transportation, or a reduction in the frequency of transportation, by Amtrak is reviewable only in a civil action brought by the Attorney General.

(c) VENUE.—Except as otherwise prohibited by law, a civil action under this section may be brought in the district court of the United States for a judicial district in which Amtrak or the rail carrier resides or is found.

§24105. Authorization of appropriations

(a) GENERAL.—Not more than $712,000,000 may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 1992, for the benefit of Amtrak.

(b) PAYMENT TO AMTRAK.—Amounts appropriated under this section shall be paid to Amtrak under the budget request of the Secretary as approved or modified by Congress when the amounts are appropriated. A payment may not be made more frequently than once every 90 days, unless Amtrak, for good cause, requests more frequent payment before a 90-day period ends.

(c) AVAILABILITY OF AMOUNTS AND EARLY APPROPRIATIONS.—(1) Amounts appropriated under this section remain available until expended.

(2) Amounts for capital acquisitions and improvements may be appropriated in a fiscal year before the fiscal year in which the amounts will be obligated.

(d) LIMITATIONS ON USE.—Amounts appropriated under this section—

(1) for operating and capital expenses of intercity rail passenger transportation may not be used for commuter rail passenger transportation provided by Amtrak Commuter; and

(2) may not be used to subsidize operating losses of commuter rail passenger or rail freight transportation.

CHAPTER 243—AMTRAK

Sec.	
24301.	*Status and applicable laws.*
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24305.	*General authority.*
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§24301. Status and applicable laws

(a) STATUS.—Amtrak—

(1) is a rail carrier under section 10102 of this title;

(2) shall be operated and managed as a for-profit corporation; and

(3) is not a department, agency, or instrumentality of the United States Government.

(b) PRINCIPAL OFFICE AND PLACE OF BUSINESS.—The principal office and place of business of Amtrak are in the District of Columbia. Amtrak is qualified to do business in each State in which Amtrak carries out an activity authorized under this part. Amtrak shall accept service of process by certified mail addressed to the secretary of Amtrak at its principal office and place of business. Amtrak is a citizen only of the District of Columbia when deciding original jurisdiction of the district courts of the United States in a civil action.

(c) APPLICATION OF SUBTITLE IV.—(1) Subtitle IV of this title applies to Amtrak, except for provisions related to the—

(A) regulation of rates;

(B) abandonment or extension of rail lines used only for passenger transportation and the abandonment or extension of operations over those lines;

(C) regulation of routes and service;

(D) discontinuance or change of rail passenger transportation operations; and

(E) issuance of securities or the assumption of an obligation or liability related to the securities of others.

(2) Notwithstanding this subsection—

(A) sections 10721–10724 of this title apply to Amtrak;

(B) in markets in which transportation provided by Amtrak is competitive with other carriers on fares and total trip times, the Administrator of General Services shall include Amtrak in the contract air program of the Administrator; and

(C) on application of an adversely affected motor carrier, the Interstate Commerce Commission under any provision of subtitle IV of this title applicable to a carrier subject to subchapter I of chapter 105 of this title may hear a complaint about an unfair or predatory rate or marketing practice of Amtrak for a route or service operating at a loss.

(d) APPLICATION OF SAFETY AND EMPLOYEE RELATIONS LAWS AND REGULATIONS.—Laws and regulations governing safety, employee representation for collective bargaining purposes, the handling of disputes between carriers and employees, employee retirement, annuity, and unemployment systems, and other dealings with employees that apply to a common carrier subject to subchapter I of chapter 105 of this title apply to Amtrak.

(e) APPLICATION OF CERTAIN ADDITIONAL LAWS.—Section 552 of title 5, this part, and, to the extent consistent with this part, the District of Columbia Business Corporation Act (ch. 269, 68 Stat. 177) apply to Amtrak.

(f) LAWS GOVERNING LEASES AND CONTRACTS.—The laws of the District of Columbia govern leases and contracts of Amtrak, regardless of where they are executed.

(g) NONAPPLICATION OF RATE, ROUTE, AND SERVICE LAWS.—A State or other law related to rates, routes, or service does not apply to Amtrak in connection with rail passenger transportation.

(h) NONAPPLICATION OF PAY PERIOD LAWS.—A State or local law related to pay periods or days for payment of employees does not apply to Amtrak. Except when otherwise provided under a collective bargaining agreement, an employee of Amtrak shall be paid at least as frequently as the employee was paid on October 1, 1979.

(i) NONAPPLICATION OF LAWS ON JOINT USE OR OPERATION OF FACILITIES AND EQUIPMENT.—Prohibitions of law applicable to an agreement for the joint use or operation of facilities and equipment necessary to provide quick and efficient rail passenger transportation do not apply to a person making an agreement with Amtrak to the extent necessary to allow the person to make and carry out obligations under the agreement.

(j) EXEMPTION FROM ADDITIONAL TAXES.—(1) In this subsection, "additional tax" means a tax or fee—

(A) on the acquisition, improvement, or ownership of personal property by Amtrak; and

(B) on real property, except a tax or fee on the acquisition of real property or on the value of real property not attributable to improvements made by Amtrak.

(2) Amtrak is not required to pay an additional tax because of an expenditure to acquire or improve real property, equipment, a facility, or right-of-way material or structures used to provide rail passenger transportation.

(k) EXEMPTION FROM TAXES LEVIED AFTER SEPTEMBER 30, 1981.—(1) Amtrak or a rail carrier subsidiary of Amtrak is exempt from a tax or fee imposed by a State, a political subdivision of a State, or a local taxing authority and levied on it after September 30, 1981. However, Amtrak is not exempt from a tax or fee that it was required to pay as of September 10, 1982.

(2) The district courts of the United States have original jurisdiction over a civil action Amtrak brings to enforce this subsection and may grant equitable or declaratory relief requested by Amtrak.

(l) WASTE DISPOSAL.—(1) An intercity rail passenger car manufactured after October 14, 1990, shall be built to provide for the discharge of human waste only at a servicing facility. Am-

trak shall retrofit each of its intercity rail passenger cars that was manufactured after May 1, 1971, and before October 15, 1990, with a human waste disposal system that provides for the discharge of human waste only at a servicing facility. Subject to appropriations—

(A) the retrofit program shall be completed not later than October 15, 1996; and

(B) a car that does not provide for the discharge of human waste only at a servicing facility shall be removed from service after that date.

(2) Section 361 of the Public Health Service Act (42 U.S.C. 264) and other laws of the United States, States, and local governments do not apply to waste disposal from rail carrier vehicles operated in intercity rail passenger transportation. The district courts of the United States have original jurisdiction over a civil action Amtrak brings to enforce this paragraph and may grant equitable or declaratory relief requested by Amtrak.

§24302. Board of directors

(a) COMPOSITION AND TERMS.—(1) The board of directors of Amtrak is composed of the following 9 directors, each of whom must be a citizen of the United States:

(A) the Secretary of Transportation.

(B) the President of Amtrak.

(C) 3 individuals appointed by the President of the United States, by and with the advice and consent of the Senate, as follows:

(i) one individual selected from a list of 3 qualified individuals submitted by the Railway Labor Executives Association.

(ii) one chief executive officer of a State selected from among the chief executive officers of States with an interest in rail transportation. The chief executive officer may select an individual to act as the officer's representative at board meetings.

(iii) one individual selected as a representative of business with an interest in rail transportation.

(D) 2 individuals selected by the President of the United States from a list of names consisting of one individual nominated by each commuter authority for which Amtrak Commuter provides commuter rail passenger transportation under section 24505 of this title and one individual nominated by each commuter authority in the region (as defined in section 102 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702)) that provides its own commuter rail passenger transportation or makes a contract with an operator (except Amtrak Commuter), except that—

(i) one of the individuals selected must have been nominated by a commuter authority for which Amtrak Commuter provides commuter rail transportation; or

(ii) if Amtrak Commuter does not provide commuter rail passenger transportation for any authority, the 2 individuals shall be selected from a list of 5 individuals submitted by commuter authorities providing transportation over rail property of Amtrak.

(E) 2 individuals selected by the holders of the preferred stock of Amtrak.

(2) An individual appointed under paragraph (1)(C) of this subsection serves for 4 years or until the individual's successor is appointed and qualified. Not more than 2 individuals appointed under paragraph (1)(C) may be members of the same political party.

(3) An individual selected under paragraph (1)(D) of this subsection serves for 2 years or until the individual's successor is selected.

(4) An individual selected under paragraph (1)(E) of this subsection serves for one year or until the individual's successor is selected.

(5) The President of Amtrak serves as Chairman of the board.

(6) The Secretary may be represented at a meeting of the board only by the Deputy Secretary of Transportation, the Administrator of the Federal Railroad Administration, or the General Counsel of the Department of Transportation.

(b) CUMULATIVE VOTING.—The articles of incorporation of Amtrak shall provide for cumulative voting for all stockholders.

(c) CONFLICTS OF INTEREST.—When serving on the board, a director appointed by the President of the United States may not have—

(1) a financial or employment relationship with a rail carrier; and

(2) a significant financial relationship or an employment relationship with a person competing with Amtrak in providing passenger transportation.

(d) PAY AND EXPENSES.—Each director not employed by the United States Government is entitled to $300 a day when performing board duties and powers. Each director is entitled to reimbursement for necessary travel, reasonable secretarial and professional staff support, and subsistence expenses incurred in attending board meetings.

(e) VACANCIES.—A vacancy on the board is filled in the same way as the original selection, except that an individual appointed by the President of the United States under subsection (a)(1)(C) of this section to fill a vacancy occurring before the end of the term for which the predecessor of that individual was appointed is appointed for the remainder of that term. A vacancy required to be filled by appointment under subsection (a)(1)(C) must be filled not later than 120 days after the vacancy occurs.

(f) BYLAWS.—The board may adopt and amend bylaws governing the operation of Amtrak. The bylaws shall be consistent with this part and the articles of incorporation.

§24303. Officers

(a) APPOINTMENT AND TERMS.—Amtrak has a President and other officers that are named and appointed by the board of directors of Amtrak. An officer of Amtrak must be a citizen of the United States. Officers of Amtrak serve at the pleasure of the board.

(b) PAY.—The board may fix the pay of the officers of Amtrak. An officer may not be paid more than the general level of pay for officers of rail carriers with comparable responsibility.

(c) CONFLICTS OF INTEREST.—When employed by Amtrak, an officer may not have a financial or employment relationship with another rail carrier, except that holding securities issued by a rail carrier is not deemed to be a violation of this subsection if the officer holding the securities makes a complete public disclosure of the holdings and does not participate in any decision directly affecting the rail carrier.

§24304. Capitalization

(a) STOCK.—Amtrak may have outstanding one issue of common stock and one issue of preferred stock. Each type of stock is eligible for a dividend. The articles of incorporation of Amtrak shall provide that—

(1) each type of stock must be fully paid and nonassessable;

(2) common stock has a par value of $10 a share; and

(3) preferred stock has a par value of $100 a share.

(b) LIMITATIONS ON OWNERSHIP AND VOTING.—(1) A rail carrier or person controlling a rail carrier—

(A) may not hold preferred stock of Amtrak; and

(B) may vote not more than one-third of the total number of shares of outstanding common stock of Amtrak.

(2) Additional common stock owned by a rail carrier or person controlling a rail carrier is deemed to be not outstanding for voting and quorum purposes.

(c) PREFERRED STOCK DIVIDENDS AND LIQUIDATION PREFERENCES.—The articles of incorporation of Amtrak shall provide that—

(1) its preferred stock has a cumulative dividend of at least 6 percent a year;

(2) if a dividend on the preferred stock is not declared and paid or set aside for payment, the deficiency shall be declared and paid or set aside for payment before a dividend or other distribution is made on its common stock;

(3) the preferred stock has a liquidation preference over the common stock entitling holders of preferred stock to receive a liquidation payment of at least par value plus all accrued unpaid dividends before a liquidation payment is made to holders of common stock; and

(4) the preferred stock may be converted to common stock.

(d) ISSUANCE OF PREFERRED STOCK TO SECRETARY.—(1) Not later than 30 days after the close of each fiscal quarter, Amtrak shall issue to the Secretary of Transportation preferred stock equal, to the nearest whole share, to the amount paid to Amtrak under section 24105 of this title during the quarter.

(2) Preferred stock issued under this subsection or section 304(c)(1) of the Rail Passenger Service Act is deemed to be issued on the date Amtrak receives the amounts for which the stock is issued.

(e) TAXES AND FEES ON PREFERRED STOCK.—A tax or fee applies to preferred stock issued under this section only if specifically prescribed by Congress.

(f) NONVOTING CERTIFICATES OF INDEBTEDNESS.—Amtrak may issue nonvoting certificates of indebtedness, except that an obligation with a liquidation interest superior to preferred stock issued to the Secretary or secured by a lien on property of Amtrak may be incurred when preferred stock issued to the Secretary is outstanding only if the Secretary consents.

(g) INSPECTION RIGHTS.—Stockholders of Amtrak have the rights of inspecting and copying set forth in section 45(b) of the District of Columbia Business Corporation Act (ch. 269, 68 Stat. 197) regardless of the amount of stock they hold.

§24305. General authority

(a) ACQUISITION AND OPERATION OF EQUIPMENT AND FACILITIES.—(1) Amtrak may acquire, operate, maintain, and make contracts for the operation and maintenance of equipment and facilities necessary for intercity and commuter rail passenger transportation, the transportation of mail and express, and auto-ferry transportation.

(2) Amtrak shall operate and control directly, to the extent practicable, all aspects of the rail passenger transportation it provides.

(b) MAINTENANCE AND REHABILITATION.—Amtrak may maintain and rehabilitate rail passenger equipment and shall maintain a regional maintenance plan that includes—

(1) a review panel at the principal office of Amtrak consisting of members the President of Amtrak designates;

(2) a systemwide inventory of spare equipment parts in each operational region;

(3) enough maintenance employees for cars and locomotives in each region;

(4) a systematic preventive maintenance program;

(5) periodic evaluations of maintenance costs, time lags, and parts shortages and corrective actions; and

(6) other elements or activities Amtrak considers appropriate.

(c) MISCELLANEOUS AUTHORITY.—Amtrak may—

(1) make and carry out appropriate agreements;

(2) transport mail and express and shall use all feasible methods to obtain the bulk mail business of the United States Postal Service;

(3) improve its reservation system and advertising;

(4) provide food and beverage services on its trains only if revenues from the services each year at least equal the cost of providing the services;

(5) conduct research, development, and demonstration programs related to the mission of Amtrak; and

(6) buy or lease rail rolling stock and develop and demonstrate improved rolling stock.

(d) Through Routes and Joint Fares.—(1) Establishing through routes and joint fares between Amtrak and other intercity rail passenger carriers and motor carriers of passengers is consistent with the public interest and the transportation policy of the United States. Congress encourages establishing those routes and fares.

(2) Amtrak may establish through routes and joint fares with any domestic or international motor carrier, air carrier, or water carrier.

(e) Rail Police.—Amtrak may employ rail police to provide security for rail passengers and property of Amtrak. Rail police employed by Amtrak who have complied with a State law establishing requirements applicable to rail police or individuals employed in a similar position may be employed without regard to the law of another State containing those requirements.

(f) Domestic Buying Preferences.—(1) In this subsection, "United States" means the States, territories, and possessions of the United States and the District of Columbia.

(2) Amtrak shall buy only—

(A) unmanufactured articles, material, and supplies mined or produced in the United States; or

(B) manufactured articles, material, and supplies manufactured in the United States substantially from articles, material, and supplies mined, produced, or manufactured in the United States.

(3) Paragraph (2) of this subsection applies only when the cost of those articles, material, or supplies bought is at least $1,000,000.

(4) On application of Amtrak, the Secretary of Transportation may exempt Amtrak from this subsection if the Secretary decides that—

(A) for particular articles, material, or supplies—

(i) the requirements of paragraph (2) of this subsection are inconsistent with the public interest;

(ii) the cost of imposing those requirements is unreasonable; or

(iii) the articles, material, or supplies, or the articles, material, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; or

(B) rolling stock or power train equipment cannot be bought and delivered in the United States within a reasonable time.

§24306. Mail, express, and auto-ferry transportation

(a) Actions To Increase Revenues.—Amtrak shall take necessary action to increase its revenues from the transportation of mail and express. To increase its revenues, Amtrak may provide auto-ferry transportation as part of the basic passenger transportation authorized by this part. When requested by Amtrak, a department, agency, or instrumentality of the United States Government shall assist in carrying out this section.

(b) Authority of Others To Provide Auto-Ferry Transportation.—(1) A person primarily providing auto-ferry transportation and any other person not a rail carrier may provide auto-ferry transportation over any route under a certificate issued by the Interstate Commerce Commission if the Commission finds that the auto-ferry transportation—

(A) will not impair the ability of Amtrak to reduce its losses or increase its revenues; and

(B) is required to meet the public demand.

(2) A rail carrier that has not made a contract with Amtrak to provide rail passenger transportation may provide auto-ferry transportation over its own rail lines.

(3) State and local laws and regulations that impair the provision of auto-ferry transportation do not apply to Amtrak or a rail carrier providing auto-ferry transportation. A rail carrier may not refuse to participate with Amtrak in providing auto-ferry transportation because a State or local law or regulation makes the transportation unlawful.

§24307. Special transportation

(a) Reduced Fare Program.—Amtrak shall maintain a reduced fare program for the following:

(1) individuals at least 65 years of age.

(2) individuals (except alcoholics and drug abusers) who—

(A) have a physical or mental impairment that substantially limits a major life activity of the individual;

(B) have a record of an impairment; or

(C) are regarded as having an impairment.

(b) Actions To Ensure Access.—Amtrak may act to ensure access to intercity transportation for elderly or handicapped individuals on passenger trains operated by or for Amtrak. That action may include—

(1) acquiring special equipment;

(2) conducting special training for employees;

(3) designing and acquiring new equipment and facilities;

(4) eliminating barriers in existing equipment and facilities to comply with the highest standards of design, construction, and alteration of property to accommodate elderly and handicapped individuals; and

(5) providing special assistance to elderly and handicapped individuals when getting on and off trains and in terminal areas.

(c) Employee Transportation.—(1) In this subsection, "rail carrier employee" means—

(A) an active full-time employee of a rail carrier or terminal company and includes an employee on furlough or leave of absence;

(B) a retired employee of a rail carrier or terminal company; and

(C) a dependent of an employee referred to in clause (A) or (B) of this paragraph.

(2) Amtrak shall ensure that a rail carrier employee eligible for free or reduced-rate rail transportation on April 30, 1971, under an agreement in effect on that date is eligible, to the greatest extent practicable, for free or reduced-rate intercity rail passenger transportation provided by Amtrak under this part, if space is available, on terms similar to those available on that date under the agreement. However, Amtrak may apply to all rail carrier employees eligible to receive free or reduced-rate transportation under any agreement a single systemwide schedule of terms that Amtrak decides applied to a majority of employees on that date under all those agreements. Unless Amtrak and a rail carrier make a different agreement, the carrier shall reimburse Amtrak at the rate of 25 percent of the systemwide average monthly yield of each revenue passenger-mile. The reimbursement is in place of costs Amtrak incurs related to free or reduced-rate transportation, including liability related to travel of a rail carrier employee eligible for free or reduced-rate transportation.

(3) This subsection does not prohibit the Interstate Commerce Commission from ordering retroactive relief in a proceeding begun or reopened after October 1, 1981.

§24308. Use of facilities and providing services to Amtrak

(a) General Authority.—(1) Amtrak may make an agreement with a rail carrier or regional transportation authority to use facilities of, and have services provided by, the carrier or authority under terms on which the parties agree. The terms shall include a penalty for untimely performance.

(2)(A) If the parties cannot agree and if the Interstate Commerce Commission finds it necessary to carry out this part, the Commission shall—

(i) order that the facilities be made available and the services provided to Amtrak; and

(ii) prescribe reasonable terms and compensation for using the facilities and providing the services.

(B) When prescribing reasonable compensation under subparagraph (A) of this paragraph, the Commission shall consider quality of service as a major factor when determining whether, and the extent to which, the amount of compensation shall be greater than the incremental costs of using the facilities and providing the services.

(C) The Commission shall decide the dispute not later than 90 days after Amtrak submits the dispute to the Commission.

(3) Amtrak's right to use the facilities or have the services provided is conditioned on payment of the compensation. If the compensation is not paid promptly, the rail carrier or authority entitled to it may bring an action against Amtrak to recover the amount owed.

(4) Amtrak shall seek immediate and appropriate legal remedies to enforce its contract rights when track maintenance on a route over which Amtrak operates falls below the contractual standard.

(b) Operating During Emergencies.—To facilitate operation by Amtrak during an emergency, the Commission, on application by Amtrak, shall require a rail carrier to provide facilities immediately during the emergency. The Commission then shall promptly prescribe reasonable terms, including indemnification of the carrier by Amtrak against personal injury risk to which the carrier may be exposed. The rail carrier shall provide the facilities for the duration of the emergency.

(c) Preference Over Freight Transportation.—Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing unless the Secretary of Transportation orders otherwise under this subsection. A rail carrier affected by this subsection may apply to the Secretary for relief. If the Secretary, after an opportunity for a hearing under section 553 of title 5, decides that preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers, the Secretary shall establish the rights of the carrier and Amtrak on reasonable terms.

(d) Accelerated Speeds.—If a rail carrier refuses to allow accelerated speeds on trains operated by or for Amtrak, Amtrak may apply to the Secretary for an order requiring the carrier to allow the accelerated speeds. The Secretary shall decide whether accelerated speeds are unsafe or impracticable and which improvements would be required to make accelerated speeds safe and practicable. After an opportunity for a hearing, the Secretary shall establish the maximum allowable speeds of Amtrak trains on terms the Secretary decides are reasonable.

(e) Additional Trains.—(1) When a rail carrier does not agree to provide, or allow Amtrak to provide, for the operation of additional trains over a rail line of the carrier, Amtrak may apply to the Secretary for an order requiring the carrier to provide or allow for the operation of the requested trains. After a hearing on the record, the Secretary may order the carrier, within 60 days, to provide or allow for the operation of

the requested trains on a schedule based on legally permissible operating times. However, if the Secretary decides not to hold a hearing, the Secretary, not later than 30 days after receiving the application, shall publish in the Federal Register the reasons for the decision not to hold the hearing.

(2) The Secretary shall consider—

(A) when conducting a hearing, whether an order would impair unreasonably freight transportation of the rail carrier, with the carrier having the burden of demonstrating that the additional trains will impair the freight transportation; and

(B) when establishing scheduled running times, the statutory goal of Amtrak to implement schedules that attain a system-wide average speed of at least 60 miles an hour that can be adhered to with a high degree of reliability and passenger comfort.

(3) Unless the parties have an agreement that establishes the compensation Amtrak will pay the carrier for additional trains provided under an order under this subsection, the Commission shall decide the dispute under subsection (a) of this section.

§ 24309. Retaining and maintaining facilities

(a) DEFINITIONS.—In this section—

(1) "facility" means a rail line, right of way, fixed equipment, facility, or real property related to a rail line, right of way, fixed equipment, or facility, including a signal system, passenger station and repair tracks, a station building, a platform, and a related facility, including a water, fuel, steam, electric, and air line.

(2) downgrading a facility means reducing a track classification as specified in the Federal Railroad Administration track safety standards or altering a facility so that the time required for rail passenger transportation to be provided over the route on which a facility is located may be increased.

(b) APPROVAL REQUIRED FOR DOWNGRADING OR DISPOSAL.—A facility of a rail carrier or regional transportation authority that Amtrak used to provide rail passenger transportation on February 1, 1979, may be downgraded or disposed of only after approval by the Secretary of Transportation under this section.

(c) NOTIFICATION AND ANALYSIS.—(1) A rail carrier intending to downgrade or dispose of a facility Amtrak currently is not using to provide transportation shall notify Amtrak of its intention. If, not later than 60 days after Amtrak receives the notice, Amtrak and the carrier do not agree to retain or maintain the facility or to convey an interest in the facility to Amtrak, the carrier may apply to the Secretary for approval to downgrade or dispose of the facility.

(2) After a rail carrier notifies Amtrak of its intention to downgrade or dispose of a facility, Amtrak shall survey population centers with rail passenger transportation facilities to assist in preparing a valid and timely analysis of the need for the facility and shall update the survey as appropriate. Amtrak also shall maintain a system for collecting information gathered in the survey. The system shall collect the information based on geographic regions and on whether the facility would be part of a short haul or long haul route. The survey should facilitate an analysis of—

(A) ridership potential by ascertaining existing and changing travel patterns that would provide maximum efficient rail passenger transportation;

(B) the quality of transportation of competitors or likely competitors;

(C) the likelihood of Amtrak offering transportation at a competitive fare;

(D) opportunities to target advertising and fares to potential classes of riders;

(E) economic characteristics of rail passenger transportation related to the facility and the extent to which the characteristics are consistent with sound economic principles of short haul or long haul rail transportation; and

(F) the feasibility of applying effective internal cost controls to the facility and route served by the facility to improve the ratio of passenger revenue to transportation expenses (excluding maintenance of tracks, structures, and equipment and depreciation).

(d) APPROVAL OF APPLICATION AND PAYMENT OF AVOIDABLE COSTS.—(1) If Amtrak does not object to an application not later than 30 days after it is submitted, the Secretary shall approve the application promptly.

(2) If Amtrak objects to an application, the Secretary shall decide by not later than 180 days after the objection those costs the rail carrier may avoid if it does not have to retain or maintain a facility in the condition Amtrak requests. If Amtrak does not agree by not later than 60 days after the decision to pay the carrier these avoidable costs, the Secretary shall approve the application. When deciding whether to pay a carrier the avoidable costs of retaining or maintaining a facility, Amtrak shall consider—

(A) the potential importance of restoring rail passenger transportation on the route on which the facility is located;

(B) the market potential of the route;

(C) the availability, adequacy, and energy efficiency of an alternate rail line or alternate mode of transportation to provide passenger transportation to or near the places that would be served by the route;

(D) the extent to which major population centers would be served by the route;

(E) the extent to which providing transportation over the route would encourage the expansion of an intercity rail passenger system in the United States; and

(F) the possibility of increased ridership on a rail line that connects with the route.

(e) COMPLIANCE WITH OTHER OBLIGATIONS.—Downgrading or disposing of a facility under this section does not relieve a rail carrier from complying with its other common carrier or legal obligations related to the facility.

§24310. Assistance for upgrading facilities

(a) TO CORRECT DANGEROUS CONDITIONS.—(1) Amtrak or the owner of a facility presenting a danger to the employees, passengers, or property of Amtrak may petition the Secretary of Transportation for assistance to the owner for relocation or other measures undertaken after December 31, 1977, to minimize or eliminate the danger.

(2) The Secretary shall recommend to Congress that Congress authorize amounts for the relocation or other measures if the Secretary decides that—

(A) the facility presents a danger of death or serious injury to an employee or passenger or of serious damage to that property; and

(B) the owner should not be expected to bear the cost of that relocation or other measures.

(b) TO CORRECT STATE AND LOCAL VIOLATIONS.—(1) Amtrak, by itself or jointly with an owner or operator of a rail station Amtrak uses to provide rail passenger transportation, may apply to the Secretary for amounts that may be appropriated under paragraph (2) of this subsection to pay or reimburse expenses incurred after October 1, 1987, related to the station complying with an official notice received before October 1, 1987, from a State or local authority stating that the station violates or allegedly violates the building, construction, fire, electric, sanitation, mechanical, or plumbing code.

(2) Not more than $1,000,000, may be appropriated to the Secretary to carry out paragraph (1) of this subsection. Amounts appropriated under this paragraph remain available until expended.

§24311. Acquiring interests in property by eminent domain

(a) GENERAL AUTHORITY.—(1) To the extent financial resources are available, Amtrak may acquire by eminent domain under subsection (b) of this section interests in property—

(A) necessary for intercity rail passenger transportation, except property of a rail carrier, a State, a political subdivision of a State, or a governmental authority; or

(B) requested by the Secretary of Transportation in carrying out the Secretary's duty to design and build an intermodal transportation terminal at Union Station in the District of Columbia if the Secretary assures Amtrak that the Secretary will reimburse Amtrak.

(2) Amtrak may exercise the power of eminent domain only if it cannot—

(A) acquire the interest in the property by contract; or

(B) agree with the owner on the purchase price for the interest.

(b) CIVIL ACTIONS.—(1) A civil action to acquire an interest in property by eminent domain under subsection (a) of this section must be brought in the district court of the United States for the judicial district in which the property is located or, if a single piece of property is located in more than one judicial district, in any judicial district in which any piece of the property is located. An interest is condemned and taken by Amtrak for its use when a declaration of taking is filed under this subsection and an amount of money estimated in the declaration to be just compensation for the interest is deposited in the court. The declaration may be filed with the complaint in the action or at any time before judgment. The declaration must contain or be accompanied by—

(A) a statement of the public use for which the interest is taken;

(B) a description of the property sufficient to identify it;

(C) a statement of the interest in the property taken;

(D) a plan showing the interest taken; and

(E) a statement of the amount of money Amtrak estimates is just compensation for the interest.

(2) When the declaration is filed and the deposit is made under paragraph (1) of this subsection, title to the property vests in Amtrak in fee simple absolute or in the lesser interest shown in the declaration, and the right to the money vests in the person entitled to the money. When the declaration is filed, the court may decide—

(A) the time by which, and the terms under which, possession of the property is given to Amtrak; and

(B) the disposition of outstanding charges related to the property.

(3) After a hearing, the court shall make a finding on the amount that is just compensation for the interest in the property and enter judgment awarding that amount and interest on it. The rate of interest is 6 percent a year and is computed on the amount of the award less the amount deposited in the court from the date of taking to the date of payment.

(4) On application of a party, the court may order immediate payment of any part of the amount deposited in the court for the compensation to be awarded. If the award is more than the amount received, the court shall enter judgment against Amtrak for the deficiency.

(c) AUTHORITY TO CONDEMN RAIL CARRIER PROPERTY INTERESTS.—(1) If Amtrak and a rail carrier cannot agree on a sale to Amtrak of an interest in property of a rail carrier necessary for intercity rail passenger transportation, Amtrak may apply to the Interstate Commerce Commission for an order establishing the need of Amtrak for the interest and requiring the carrier

to convey the interest on reasonable terms, including just compensation. The need of Amtrak is deemed to be established, and the Commission, after holding an expedited proceeding and not later than 120 days after receiving the application, shall order the interest conveyed unless the Commission decides that—

(A) conveyance would impair significantly the ability of the carrier to carry out its obligations as a common carrier; and

(B) the obligations of Amtrak to provide modern, efficient, and economical rail passenger transportation can be met adequately by acquiring an interest in other property, either by sale or by exercising its right of eminent domain under subsection (a) of this section.

(2) If the amount of compensation is not determined by the date of the Commission's order, the order shall require, as part of the compensation, interest at 6 percent a year from the date prescribed for the conveyance until the compensation is paid.

(3) Amtrak subsequently may reconvey to a third party an interest conveyed to Amtrak under this subsection or prior comparable provision of law if the Commission decides that the reconveyance will carry out the purposes of this part, regardless of when the proceeding was brought (including a proceeding pending before a United States court on November 28, 1990).

§24312. Labor standards

(a) Prevailing Wages and Health and Safety Standards.—(1) Amtrak shall ensure that laborers and mechanics employed by contractors and subcontractors in construction work financed under an agreement made under section 24308(a), 24701(a), or 24704(c)(2) of this title will be paid wages not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a–276a–5). Amtrak may make such an agreement only after being assured that required labor standards will be maintained on the construction work. Health and safety standards prescribed by the Secretary under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) apply to all construction work performed under such an agreement, except for construction work performed by a rail carrier.

(2) Wage rates in a collective bargaining agreement negotiated under the Railway Labor Act (45 U.S.C. 151 et seq.) are deemed to comply with the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a–276a–5).

(b) Contracting Out.—(1) Amtrak may not contract out work normally performed by an employee in a bargaining unit covered by a contract between a labor organization and Amtrak or a rail carrier that provided intercity rail passenger transportation on October 30, 1970, if contracting out results in the layoff of an employee in the bargaining unit.

(2) This subsection does not apply to food and beverage services provided on trains of Amtrak.

§24313. Rail safety system program

In consultation with rail labor organizations, Amtrak shall maintain a rail safety system program for employees working on property owned by Amtrak. The program shall be a model for other rail carriers to use in developing safety programs. The program shall include—

(1) periodic analyses of accident information, including primary and secondary causes;

(2) periodic evaluations of the activities of the program, particularly specific steps taken in response to an accident;

(3) periodic reports on amounts spent for occupational health and safety activities of the program;

(4) periodic reports on reduced costs and personal injuries because of accident prevention activities of the program;

(5) periodic reports on direct accident costs, including claims related to accidents; and

(6) reports and evaluations of other information Amtrak considers appropriate.

§24314. Reports and audits

(a) Amtrak Annual Operations Report.—Not later than February 15 of each year, Amtrak shall submit to Congress a report that—

(1) for each route on which Amtrak provided intercity rail passenger transportation during the prior fiscal year, includes information on—

(A) ridership;

(B) passenger-miles;

(C) the short-term avoidable profit or loss for each passenger-mile;

(D) the revenue-to-cost ratio;

(E) revenues;

(F) the United States Government subsidy;

(G) the non-Government subsidy; and

(H) on-time performance;

(2) provides relevant information about a decision to pay an officer of Amtrak more than the rate for level I of the Executive Schedule under section 5312 of title 5; and

(3) specifies—

(A) significant operational problems Amtrak identifies; and

(B) proposals by Amtrak to solve those problems.

(b) Amtrak General Annual Report.—(1) Not later than February 15 of each year, Amtrak shall submit to the President and Congress a complete report of its operations, activities, and accomplishments, including a statement of revenues and expenditures for the prior fiscal year. The report—

(A) shall include a discussion and accounting of Amtrak's success in meeting the goal of section 24902(b) of this title; and

(B) may include recommendations for legislation, including the amount of financial assistance needed for operations and capital improvements, the method of computing the assistance, and the sources of the assistance.

(2) Amtrak may submit reports to the President and Congress at other times Amtrak considers desirable.

(c) Secretary's Report on Effectiveness of This Part.—The Secretary of Transportation shall prepare a report on the effectiveness of this part in meeting the requirements for a balanced transportation system in the United States. The report may include recommendations for legislation. The Secretary shall include this report as part of the annual report the Secretary submits under section 308(a) of this title.

(d) Independent Audits.—An independent certified public accountant shall audit the financial statements of Amtrak each year. The audit shall be carried out at the place at which the financial statements normally are kept and under generally accepted auditing standards. A report of the audit shall be included in the report required by subsection (a) of this section.

(e) Comptroller General Audits.—The Comptroller General may conduct performance audits of the activities and transactions of Amtrak. Each audit shall be conducted at the place at which the Comptroller General decides and under generally accepted management principles. The Comptroller General may prescribe regulations governing the audit.

(f) Availability of Records and Property of Amtrak and Rail Carriers.—Amtrak and, if required by the Comptroller General, a rail carrier with which Amtrak has made a contract for intercity rail passenger transportation shall make available for an audit under subsection (d) or (e) of this section all records and property of, or used by, Amtrak or the carrier that are necessary for the audit. Amtrak and the carrier shall provide facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. Amtrak and the carrier may keep all reports and property.

(g) Comptroller General's Report to Congress.—The Comptroller General shall submit to Congress a report on each audit, giving comments and information necessary to inform Congress on the financial operations and condition of Amtrak and recommendations related to those operations and conditions. The report also shall specify any financial transaction or undertaking the Comptroller General considers is carried out without authority of law. When the Comptroller General submits a report to Congress, the Comptroller General shall submit a copy of it to the President, the Secretary, and Amtrak at the same time.

CHAPTER 245—AMTRAK COMMUTER

Sec.

24501. Status and applicable laws.
24502. Board of directors.
24503. Officers.
24504. General authority.
24505. Commuter rail passenger transportation.
24506. Certain duties and powers unaffected.

§24501. Status and applicable laws

(a) Status.—Amtrak Commuter—

(1) is a wholly-owned subsidiary of Amtrak;

(2) provides by contract commuter rail passenger transportation for a commuter authority with which Amtrak Commuter makes a contract to provide the transportation under this chapter;

(3) has no common carrier obligations to provide rail passenger or rail freight transportation; and

(4) is not a department, agency, or instrumentality of the United States Government.

(b) Application of Chapters 105 and Safety and Employee Relations Laws and Regulations.—Chapter 105 of this title does not apply to Amtrak Commuter. However, laws and regulations governing safety, employee representation for collective bargaining purposes, the handling of disputes between carriers and employees, employee retirement, annuity, and unemployment systems, and other dealings with employees that apply to a rail carrier providing transportation subject to subchapter I of chapter 105 apply to Amtrak Commuter.

(c) Application of Certain Additional Laws.—This part and, to the extent consistent with this part, the District of Columbia Business Corporation Act (ch. 269, 68 Stat. 177) apply to Amtrak Commuter.

(d) Nonapplication of Rate, Route, and Service Laws.—A State or other law related to rates, routes, or service in connection with rail passenger transportation does not apply to Amtrak Commuter.

(e) Exemption From Additional Taxes.—(1) In this subsection, "additional tax" means a tax or fee—

(A) on the acquisition, improvement, or ownership of personal property by Amtrak Commuter; and

(B) on real property, except a tax or fee on the acquisition of real property or on the value of real property not attributable to improvements made by Amtrak Commuter.

(2) Amtrak Commuter is not required to pay an additional tax because of an expenditure to acquire or improve real property, equipment, a facility, or right-of-way material or structures used to provide rail passenger transportation.

(f) Tax Exemption for Certain Commuter Authorities.—A commuter authority with which Amtrak Commuter could have made a contract to provide commuter rail passenger transportation under this chapter but which decided to provide its own rail passenger transportation beginning on January 1, 1983, is exempt, effective October 1, 1981, from paying a tax or fee to the same extent Amtrak is exempt.

(g) NONAPPLICATION OF AGREEMENTS FOR FINANCIAL SUPPORT AND TRACKAGE RIGHTS.—An agreement under which financial support was provided on January 2, 1974, to a commuter authority to continue rail passenger transportation does not apply to Amtrak Commuter. However, Amtrak and the Consolidated Rail Corporation retain appropriate trackage rights over rail property owned or leased by the authority. Compensation for the rights shall be reasonable.

§24502. Board of directors

(a) COMPOSITION.—The board of directors of Amtrak Commuter is composed of the following directors:

(1) the President of Amtrak Commuter.

(2) one individual from the board of directors of Amtrak selected as a representative of commuter authorities that make contracts with Amtrak Commuter for the operation of commuter rail passenger transportation.

(3) 2 individuals selected by the board of directors of Amtrak.

(4) 2 individuals selected by commuter authorities for which Amtrak Commuter provides commuter rail transportation under this chapter. However, only one individual shall be selected under this clause if Amtrak Commuter provides the transportation for only one authority.

(b) TERMS.—Except as otherwise provided in this section, individuals shall serve for 2 years.

(c) CHAIRMAN.—The board shall select annually one of its members to serve as Chairman.

(d) PAY AND EXPENSES.—Each director not employed by the United States Government is entitled to $300 a day when performing board duties and powers. Each director is entitled to reimbursement for necessary travel, reasonable secretarial and professional staff support, and subsistence expenses incurred in attending board meetings.

(e) VACANCIES.—A vacancy on the board is filled in the same way as the original selection.

(f) BYLAWS.—The board may adopt and amend bylaws governing the operation of Amtrak Commuter. The bylaws shall be consistent with this part and the articles of incorporation.

§24503. Officers

(a) APPOINTMENT AND TERMS.—Amtrak Commuter has a President and other officers that are named and appointed by the board of directors of Amtrak Commuter. An officer of Amtrak Commuter must be a citizen of the United States. Officers of Amtrak Commuter serve at the pleasure of the board.

(b) PAY.—The board may fix the pay of the officers of Amtrak Commuter. An officer may be paid not more than the general level of pay for officers of rail carriers with comparable responsibility.

(c) CONFLICTS OF INTEREST.—When employed by Amtrak Commuter, an officer may not have a financial or employment relationship with a rail carrier, except that holding securities issued by a rail carrier is not deemed to be a violation of this subsection if the officer holding the securities makes a complete public disclosure of the holdings and does not participate in any decision directly affecting the rail carrier.

§24504. General authority

(a) GENERAL.—Amtrak Commuter may—

(1) acquire, operate, maintain, and make contracts for the operation of equipment and facilities necessary for commuter rail passenger transportation;

(2) conduct research and development related to the mission of Amtrak Commuter; and

(3) issue common stock to Amtrak.

(b) OPERATION AND CONTROL.—To the extent consistent with this part and with an agreement with a commuter authority, Amtrak Commuter shall operate and control all aspects of the commuter rail passenger transportation it provides.

(c) AGREEMENT TO AVOID DUPLICATING EMPLOYEE FUNCTIONS.—To the maximum extent practicable, Amtrak Commuter and Amtrak shall make an agreement that avoids duplicating employee functions and voluntarily establishes a consolidated work force.

§24505. Commuter rail passenger transportation

(a) GENERAL AUTHORITY.—Amtrak Commuter—

(1) shall provide commuter rail passenger transportation that the Consolidated Rail Corporation was obligated to provide on August 13, 1981, under section 303(b)(2) or 304(e) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743(b)(2), 744(e)); and

(2) may provide other commuter rail passenger transportation if the commuter authority for which the transportation will be provided offers to provide a commuter rail passenger transportation payment equal to the—

(A) avoidable costs of providing the transportation (including the avoidable cost of necessary capital improvements) and a reasonable return on the value; less

(B) revenue attributable to the transportation.

(b) OFFER REQUIREMENTS.—(1) A commuter authority making an offer under subsection (a)(2) of this section shall—

(A) show that it has obtained access to all rail property necessary to provide the additional commuter rail passenger transportation; and

(B) make the offer according to regulations the Rail Services Planning Office prescribes under section 10362(b)(5)(A) and (6) of this title.

(2) The Office may revise and update the regulations when necessary to carry out this section.

(c) ADDITIONAL EMPLOYEE REQUIREMENTS.—Additional employee requirements shall be met through existing seniority arrangements agreed to in the implementing agreement negotiated under section 508 of the Rail Passenger Service Act.

(d) WHEN OBLIGATION DOES NOT APPLY.—Amtrak Commuter is not obligated to provide commuter rail passenger transportation if a commuter authority provides the transportation or makes a contract under which a person, except Amtrak Commuter, will provide the transportation. When appropriate, Amtrak Commuter shall give the authority or person access to the rail property needed to provide the transportation.

(e) DISCONTINUANCE OF COMMUTER RAIL PASSENGER TRANSPORTATION.—(1) Amtrak Commuter may discontinue commuter rail passenger transportation provided under this section on 60 days' notice if—

(A) a commuter authority does not offer a commuter rail passenger transportation payment under subsection (a)(2) of this section; or

(B) a payment is not paid when due.

(2) The Office shall prescribe regulations on the necessary contents of the notice required under this subsection.

(f) COMPENSATION FOR RIGHT-OF-WAY RELATED COSTS.—Compensation by a commuter authority to Amtrak or Amtrak Commuter for right-of-way related costs for transportation over property Amtrak owns shall be determined under a method the Interstate Commerce Commission establishes under section 1163 of the Omnibus Budget Reconciliation Act of 1981 (45 U.S.C. 1111) or to which the parties agree.

(g) APPLICATION OF OTHER LAWS.—All laws related to commuter rail passenger transportation apply to a commuter authority providing commuter rail passenger transportation under this section.

§24506. Certain duties and powers unaffected

This chapter does not affect a duty or power of the Consolidated Rail Corporation or its successor and any bi-state commuter authority under an agreement, lease, or contract under which property was conveyed to the Corporation under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).

CHAPTER 247—AMTRAK ROUTE SYSTEM

Sec.

24701. Operation of basic system.
24702. Improving rail passenger transportation.
24703. Route and service criteria.
24704. Transportation requested by States, authorities, and other persons.
24705. Additional qualifying routes.
24706. Discontinuance of transportation.
24707. Cost and performance review.
24708. Special commuter transportation.
24709. International transportation.

§24701. Operation of basic system

(a) BY AMTRAK.—Amtrak shall provide intercity rail passenger transportation within the basic system unless the transportation is provided by—

(1) a rail carrier with which Amtrak did not make a contract under section 401(a) of the Rail Passenger Service Act; or

(2) a regional transportation authority under contract with Amtrak.

(b) BY OTHERS WITH CONSENT OF AMTRAK.—Except as provided in section 24306 of this title, a person may provide intercity rail passenger transportation over a route over which Amtrak provides scheduled intercity rail passenger transportation under a contract under this section or section 401(a) of the Act only with the consent of Amtrak.

§24702. Improving rail passenger transportation

(a) PLAN TO IMPROVE TRANSPORTATION.—Amtrak shall continue to carry out its plan, submitted under section 305(f) of the Rail Passenger Service Act, to improve intercity rail passenger transportation provided in the basic system. The plan shall include—

(1) a zero-based assessment of all operating practices;

(2) changes to achieve the minimum use of employees consistent with safe operations and adequate transportation;

(3) a systematic program for achieving the greatest ratio of train size to passenger demand;

(4) a systematic program to reduce trip time in the basic system;

(5) establishing training programs to achieve on-time departures;

(6) establishing priorities for passenger trains over freight trains;

(7) adjusting the buying and pricing of food and beverages so that food and beverage services ultimately will be profitable;

(8) cooperative marketing opportunities between Amtrak and governmental authorities that have intercity rail passenger transportation; and

(9) cooperative marketing campaigns sponsored by Amtrak and the Secretary of Energy, the Administrator of the Federal Highway Administration, and the Administrator of the Environmental Protection Agency.

(b) STATE AND LOCAL SPEED RESTRICTIONS.—Amtrak shall—

(1) identify any speed restriction a State or local government imposes on a train of Amtrak that Amtrak decides impedes Amtrak from achieving high-speed intercity rail passenger transportation; and

(2) consult with that State or local government—

(A) to evaluate alternatives to the speed restriction, considering the local safety hazard that is the basis for the restriction; and

(B) to consider modifying or eliminating the restriction to allow safe operation at higher speeds.

(c) ROUTES CONNECTING CORRIDORS.—Amtrak shall begin or improve appropriate rail passenger transportation on a route between corridors that Amtrak decides is justified because it will increase ridership on trains of Amtrak on the route and in the connecting corridors.

§24703. Route and service criteria

(a) ROUTE DISCONTINUANCES AND ADDITIONS.—Except as provided in this part, route discontinuances and route additions shall comply with the route and service criteria.

(b) CONGRESSIONAL REVIEW OF CRITERIA AMENDMENTS.—(1) Amtrak shall submit to Congress a draft of an amendment to the route and service criteria when Amtrak decides an amendment is appropriate. The amendment is effective at the end of the first period of 120 calendar days of continuous session of Congress after it is submitted unless there is enacted into law during the period a joint resolution stating Congress does not approve the amendment.

(2) In this subsection—

(A) a continuous session of Congress is broken only by an adjournment sine die; and

(B) the 120-day period does not include days on which either House is not in session because of adjournment of more than 3 days to a day certain.

(c) NONAPPLICATION.—The route and service criteria do not apply to—

(1) increasing or, because of construction schedules or other temporary disruptive facts or seasonal fluctuations in ridership, decreasing the number of trains on an existing route or a part of an existing route or on a route on which additional trains are being tested;

(2) carrying out the recommendations developed under section 4 of the Amtrak Improvement Act of 1978;

(3) rerouting transportation between major population centers on an existing route; or

(4)(A) modifying transportation operations under section 24707(a) of this title; and

(B) modifying the route system or discontinuing transportation under section 24707(b) of this title.

§24704. Transportation requested by States, authorities, and other persons

(a) APPLICATIONS TO BEGIN OR KEEP TRANSPORTATION.—(1) A State, a regional or local authority, or another person may apply to Amtrak and request Amtrak to provide rail passenger transportation or keep any part of a route, a train, or transportation that Amtrak intends to discontinue under section 24706(a) or (b) or 24707(a) or (b) of this title. An application shall—

(A) assure Amtrak that the State, authority, or person has sufficient resources to meet its share of the cost of the transportation for the time the transportation will be provided;

(B) contain a market analysis acceptable to Amtrak to ensure that there is adequate demand for the transportation; and

(C) commit the State, authority, or person to provide at least 45 percent of the short term avoidable loss of providing the transportation the first year the transportation is provided and at least 65 percent of the short term avoidable loss each of the following years, and at least 50 percent of associated capital costs each year the transportation is provided.

(2) An application submitted by more than one State shall be considered in the same way as an application submitted by one State, without it being necessary for each State to comply with paragraph (1) of this subsection.

(b) ACTIONS ON APPLICATIONS.—(1) Amtrak shall review each application submitted under subsection (a) of this section to decide whether—

(A) the application complies with subsection (a); and

(B) there is a reasonable probability that Amtrak can provide the transportation from available resources.

(2) Amtrak may make an agreement with an applicant under this section to begin or keep the transportation if Amtrak decides that the transportation can be provided with resources available to Amtrak. An agreement may be renewed for additional periods of not more than 2 years each.

(c) SELECTING AMONG COMPETING APPLICATIONS.—If more than one application is made for transportation consistent with the requirements of subsection (a) of this section, but all the transportation applied for cannot be provided with the available resources of Amtrak, the board of directors of Amtrak shall select the transportation that best serves the public interest and can be provided with the available resources of Amtrak.

(d) FARE INCREASES.—(1) Before increasing a fare applicable to transportation provided under subsection (b)(2) of this section by more than 5 percent during a 6-month period, Amtrak shall consult with officials of each State affected by the increase and explain why the increase is necessary.

(2) Except as provided in paragraph (3) of this subsection, a fare increase described in paragraph (1) of this subsection takes effect 90 days after Amtrak first consults with the affected States. However, not later than 30 days after the first consultation, a State may submit proposals to Amtrak for reducing costs and increasing revenues of the transportation. Amtrak shall consider the proposals in deciding how much of the proposed increase shall go into effect.

(3)(A) Amtrak may increase a fare without regard to the restrictions of this subsection during—

(i) the first month of a fiscal year if the authorization of appropriations and the appropriations for Amtrak are not enacted at least 90 days before the beginning of the fiscal year; or

(ii) the 30 days following enactment of an appropriation for Amtrak or a rescission of an appropriation.

(B) Amtrak shall notify each affected State of an increase under subparagraph (A) of this paragraph as soon as possible after Amtrak decides to increase a fare.

(e) DETERMINING LOSS, COSTS, AND REVENUES.—After consulting with officials of each State contributing to providing transportation under subsection (b)(2) of this section, the board shall establish the basis for determining short term avoidable loss and associated capital costs of, and revenues from, the transportation. Amtrak shall give State officials the basis for determining the loss, cost, and revenue for each route on which transportation is provided under subsection (b)(2).

(f) AVAILABILITY OF AMOUNTS.—Amounts provided by Amtrak under an agreement with an applicant under subsection (b)(2) of this section that are allocated for associated capital costs remain available until expended.

(g) ADVERTISING AND PROMOTION.—At least 2 percent but not more than 5 percent of the revenue generated by transportation provided under subsection (b)(2) of this section shall be used for advertising and promotion at the local level.

§24705. Additional qualifying routes

(a) ROUTES RECOMMENDED FOR DISCONTINUANCE.—(1) To maintain a national intercity rail passenger system in the United States and if a reduction in operating expenses can be achieved, Amtrak shall provide rail passenger transportation over each route the Secretary of Transportation recommended be discontinued under section 4 of the Amtrak Improvement Act of 1978 and may restructure a route to serve a major population center as an ending place or principal intermediate place. Transportation over a long distance route shall be maintained if the Amtrak estimate for the fiscal year ending September 30, 1980, was that the short term avoidable loss for each passenger-mile on the route was not more than 7 cents. Transportation over a short distance route shall be maintained if the Amtrak estimate for the fiscal year ending September 30, 1980, was that the short term avoidable loss for each passenger-mile on the route was not more than 9 cents.

(2) For all routes, Amtrak shall calculate short term avoidable loss for each passenger-mile based on consistently defined factors. Calculations shall be based on the most recent available statistics for a 90-day period, except that Amtrak may use historical information adjusted to reflect the most recent available statistics.

(b) DEFERRAL OF SECRETARY'S RECOMMENDATIONS.—(1) To provide equivalent or improved transportation consistent with the goals of section 4(a) of the Act, Amtrak may defer carrying out a recommendation of the Secretary under section 4 of the Act that requires providing transportation over a rail line not used in intercity rail passenger transportation on May 24, 1979, requires using a new facility, or requires making a new labor agreement, until any necessary capital improvements are made in the line or facility or the agreement is made.

(2) Notwithstanding another law and the route and service criteria, during the period a decision of the Secretary under section 4 of the Act is deferred, Amtrak shall provide substitute transportation over existing routes recommended for restructuring and over other existing feasible routes. Except for transportation concentrating on commuter ridership over a short haul route, transportation provided under this paragraph may be provided only if the route complies with subsection (a) of this section, adjusted to reflect constant 1979 dollars.

(c) SHORT HAUL DEMONSTRATION ROUTES.—Notwithstanding this part, Amtrak may provide short haul trains on additional routes totaling not more than 200 miles that link at least 2 major metropolitan areas—

(1) on a demonstration basis to establish the feasibility and benefits of the transportation; and

(2) to the extent available resources allow.

(d) ROUTES DISCONTINUED BY RAIL CARRIERS.—Amtrak may undertake to provide rail passenger transportation between places served by a rail carrier filing a notice of discontinuance under section 10908 or 10909 of this title.

§24706. Discontinuance of transportation

(a) NOTICE OF DISCONTINUANCE.—(1) Except as provided in subsection (b) of this section, at least 90 days before transportation is discontinued under section 24704(b) or 24707(a) or (b) of this title, Amtrak shall give notice of the discontinuance in the way Amtrak decides will give a State, a regional or local authority, or another person the opportunity to agree to share the cost of any part of the train, route, or transportation to be discontinued.

(2) Notice of the discontinuance of transportation under section 24704(b) or 24707(a) or (b) of this title shall be posted in all stations served by the train to be discontinued at least 14 days before the discontinuance.

(b) DISCONTINUANCE FOR LACK OF APPROPRIATIONS.—(1) Amtrak may discontinue transportation under section 24704(b) or 24707(a) or (b) of this title during—

(A) the first month of a fiscal year if the authorization of appropriations and the appropriations for Amtrak are not enacted at least 90 days before the beginning of the fiscal year; and

(B) the 30 days following enactment of an appropriation for Amtrak or a rescission of an appropriation.

(2) Amtrak shall notify each affected State or regional or local transportation authority of a

discontinuance under this subsection as soon as possible after Amtrak decides to discontinue the transportation.

(c) EMPLOYEE PROTECTIVE ARRANGEMENTS.—(1)(A) In this subsection, "discontinuance of intercity rail passenger transportation" includes—

(i) a discontinuance of services provided by a rail carrier under a facility or service agreement under section 24308(a) of this title because of a modification or ending of the agreement or because Amtrak begins providing those services; and

(ii) an adjustment in frequency, or seasonal suspension of intercity rail passenger trains that causes a temporary suspension of transportation, only if the adjustment or suspension reduces passenger train operations on a particular route to fewer than 3 round trips a week at any time during a calendar year.

(B) Paragraph (1)(A)(ii) of this subsection applies only to an agreement to carry out this subsection involving Amtrak and its employees.

(2) Amtrak or a rail carrier (including a terminal company) shall provide fair and equitable arrangements to protect the interests of its employees affected by a discontinuance of intercity rail passenger transportation. Arrangements shall include—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

(B) the continuation of collective bargaining rights;

(C) the protection of employees against a worsening of their positions related to employment;

(D) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

(E) paid training and retraining programs.

(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11347 of this title.

(4) A contract under this chapter shall specify the terms of protective arrangements.

(5) This subsection does not impose on Amtrak an obligation of a rail carrier related to a right, privilege, or benefit earned by an employee because of previous service performed for the carrier.

(6) This subsection does not apply to Amtrak Commuter.

§24707. Cost and performance review

(a) ROUTE REVIEWS.—Amtrak shall review annually each route in the basic system to decide if the route meets the long distance or short distance route criterion, as appropriate, under section 24705(a)(1) of this title, adjusted to reflect constant 1979 dollars. The review shall include an evaluation of the potential market demand for, and the cost of providing transportation on, a part of the route and an alternative route. Amtrak shall submit the results of the review to the House of Representatives, the Senate, and the Secretary of Transportation. If Amtrak decides that a route will not meet the criterion under section 24705(a)(1), as adjusted, Amtrak shall modify or discontinue rail passenger transportation operations on the route so that it will meet the criterion.

(b) FINANCIAL REQUIREMENTS AND PERFORMANCE STANDARDS.—Not later than 30 days after the beginning of each fiscal year, Amtrak shall evaluate the financial requirements for operating the basic system and the progress in achieving the system-wide performance standards prescribed under this part during the fiscal year. If Amtrak decides amounts available for the fiscal year are not enough to meet estimated operating costs, or if Amtrak estimates it cannot meet the performance standards, Amtrak shall act to reduce costs and improve performance. Action under this subsection shall be designed to continue the maximum level of transportation practicable, including—

(1) changing the frequency of transportation;

(2) increasing fares;

(3) reducing the cost of sleeper car and dining car service on certain routes;

(4) increasing the passenger capacity of cars used on certain routes; and

(5) modifying the route system or discontinuing transportation over routes, considering short term avoidable loss and the number of passengers served on those routes.

(c) COST LIMITATIONS AND REVENUE GOALS.—Annual costs of Amtrak may not be more than amounts, including grants made under section 24105 of this title, contributions of States, regional and local authorities, and other persons, and revenues, available to Amtrak in the fiscal year. Amtrak annually shall set a goal of recovering an amount so that its revenues, including contributions, is at least 61 percent of its costs, except capital costs.

(d) CONDUCTOR REPORTS.—To assess the operational performance of trains, the President of Amtrak may direct the conductor on any train of Amtrak to report to Amtrak any inadequacy of train operation. The report shall be signed by the conductor, contain sufficient information to locate equipment or personnel failures, and be submitted promptly to Amtrak.

§24708. Special commuter transportation

Amtrak shall continue to provide rail passenger transportation provided under section 403(d) of the Rail Passenger Service Act before October 1, 1981, if, after considering estimated fare increases and State and local contributions to the transportation, the transportation meets the short distance route criterion under section 24705(a)(1) of this title, as adjusted. Transportation continued under this section shall be financed consistent with the method of financing in effect on September 30, 1981. If the transportation is not estimated to meet the criterion, as adjusted, Amtrak may modify or discontinue the transportation so that the criterion is met.

§24709. International transportation

Amtrak may develop and operate international intercity rail passenger transportation between the United States and Canada and between the United States and Mexico. The Secretary of the Treasury and the Attorney General, in cooperation with Amtrak, shall maintain, consistent with the effective enforcement of the immigration and customs laws, en route customs inspection and immigration procedures for international intercity rail passenger transportation that will—

(1) be convenient for passengers; and

(2) result in the quickest possible international intercity rail passenger transportation.

CHAPTER 249—NORTHEAST CORRIDOR IMPROVEMENT PROGRAM

Sec.

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§24901. Definitions

In this chapter—

(1) "final system plan" means the final system plan (including additions) adopted by the United States Railway Association under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.).

(2) "Northeast Corridor" means Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island.

(3) "rail carrier" means an express carrier and a rail carrier as defined in section 10102 of this title, including Amtrak.

§24902. Goals and requirements

(a) NORTHEAST CORRIDOR IMPROVEMENT PLAN.—To the extent of amounts appropriated under section 24907 of this title, Amtrak shall carry out a Northeast Corridor improvement program to achieve the following goals:

(1) establish not later than September 30, 1985, regularly scheduled and dependable intercity rail passenger transportation between—

(A) Boston, Massachusetts, and New York, New York, in not more than 3 hours and 40 minutes, including intermediate stops; and

(B) New York, New York, and the District of Columbia, in not more than 2 hours and 40 minutes, including intermediate stops;

(2) improve facilities, under route criteria approved by Congress, on routes to Harrisburg, Pennsylvania, Albany, New York, and Atlantic City, New Jersey, from the Northeast Corridor main line, and to Boston, Massachusetts, and New Haven, Connecticut, from Springfield, Massachusetts, to make those facilities more compatible with improved high-speed transportation provided on the Northeast Corridor main line;

(3) improve nonoperational parts of stations, related facilities, and fencing used in intercity rail passenger transportation;

(4) facilitate improvements in, and usage of, commuter rail passenger, rail rapid transit, and local public transportation, to the extent compatible with clauses (1)–(3) of this subsection and subsections (f) and (h) of this section;

(5) maintain and improve rail freight transportation in or adjacent to the Northeast Corridor and through-freight transportation in the Northeast Corridor, to the extent compatible with clauses (1)–(4) of this subsection and subsections (f) and (h) of this section;

(6) continue and improve passenger radio mobile telephone service on high-speed rail passenger transportation between Boston, Massachusetts, and the District of Columbia, to the extent compatible with clauses (1)–(3) of this subsection and subsections (f) and (h) of this section; and

(7) eliminate to the maximum extent practicable congestion in rail freight and rail passenger transportation at the Baltimore and Potomac Tunnel in Baltimore, Maryland, by rehabilitating and improving the tunnel and the rail lines approaching the tunnel.

(b) MANAGING COSTS AND REVENUES.—Amtrak shall manage its operating costs, pricing policies, and other factors with the goal of having revenues derived each fiscal year from providing intercity rail passenger transportation over the Northeast Corridor route between the District of Columbia and Boston, Massachusetts, equal at least the operating costs of providing that transportation in that fiscal year.

(c) COST SHARING FOR NONOPERATIONAL FACILITIES.—(1) Fifty percent of the cost of improvements under subsection (a)(3) of this section shall be paid by a State, local or regional transportation authority or other responsible party. However, Amtrak may finance entirely a safety-related improvement.

(2) When a part of the cost of improvements under subsection (a)(3) of this section will be paid by a responsible party under paragraph (1) of this subsection, Amtrak may make an agreement with the party under which Amtrak—

(A) shall carry out the improvements with amounts appropriated under section 24907 of this title and the party shall reimburse Amtrak; and

(B) to the extent provided in an appropriation law, may incur obligations for contracts to carry out the improvements in anticipation of reimbursement.

(3) Amounts reimbursed to Amtrak under paragraph (2) of this subsection shall be cred-

ited to the appropriation originally charged for the cost of the improvements and are available for further obligation.

(d) Passenger Radio Mobile Telephone Service.—The President and departments, agencies, and instrumentalities of the United States Government shall assist Amtrak under subsection (a)(6) of this section, subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.) and radio services standards, when the Federal Communications Commission decides the assistance is in the public interest, convenience, and necessity.

(e) Priorities in Selecting and Scheduling Projects.—When selecting and scheduling specific projects, Amtrak shall apply the following considerations, in the following order of priority:

(1) Safety-related items should be completed before other items because the safety of the passengers and users of the Northeast Corridor is paramount.

(2) Activities that benefit the greatest number of passengers should be completed before activities involving fewer passengers.

(3) Reliability of intercity rail passenger transportation must be emphasized.

(4) Trip-time requirements of this section must be achieved to the extent compatible with the priorities referred to in paragraphs (1)-(3) of this subsection.

(5) Improvements that will pay for the investment by achieving lower operating or maintenance costs should be carried out before other improvements.

(6) Construction operations should be scheduled so that the fewest possible passengers are inconvenienced, transportation is maintained, and the on-time performance of Northeast Corridor commuter rail passenger and rail freight transportation is optimized.

(7) Planning should focus on completing activities that will provide immediate benefits to users of the Northeast Corridor.

(f) Compatibility With Future Improvements and Production of Maximum Labor Benefits.—Improvements under this section shall be compatible with future improvements in transportation and shall produce the maximum labor benefit from hiring individuals presently unemployed.

(g) Automatic Train Control Systems.—A train operating on the Northeast Corridor main line or between the main line and Atlantic City shall be equipped with an automatic train control system designed to slow or stop the train in response to an external signal.

(h) High-Speed Transportation.—If practicable, Amtrak shall establish intercity rail passenger transportation in the Northeast Corridor that carries out section 703(1)(E) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210, 90 Stat. 121).

(i) Equipment Development.—Amtrak shall develop economical and reliable equipment compatible with track, operating, and marketing characteristics of the Northeast Corridor, including the capability to meet reliable trip times under section 703(1)(E) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210, 90 Stat. 121) in regularly scheduled revenue transportation in the Corridor, when the Northeast Corridor improvement program is completed. Amtrak must decide that equipment complies with this subsection before buying equipment with financial assistance of the Government. Amtrak shall submit a request for an authorization of appropriations for production of the equipment.

(j) Agreements for Off-Corridor Routing of Rail Freight Transportation.—(1) Amtrak may make an agreement with a rail freight carrier or a regional transportation authority under which the carrier will carry out an alternate off-corridor routing of rail freight transportation over rail lines in the Northeast Corridor between the District of Columbia and New York metropolitan areas, including intermediate points. The agreement shall be for at least 5 years.

(2) Amtrak shall apply to the Interstate Commerce Commission for approval of the agreement and all related agreements accompanying the application as soon as the agreement is made. If the Commission finds that approval is necessary to carry out this chapter, the Commission shall approve the application and related agreements not later than 90 days after receiving the application.

(3) If an agreement is not made under paragraph (1) of this subsection, Amtrak, with the consent of the other parties, may apply to the Interstate Commerce Commission. Not later than 90 days after the application, the Commission shall decide on the terms of an agreement if it decides that doing so is necessary to carry out this chapter. The decision of the Commission is binding on the other parties.

(k) Coordination.—(1) The Secretary of Transportation shall coordinate—

(A) transportation programs related to the Northeast Corridor to ensure that the programs are integrated and consistent with the Northeast Corridor improvement program; and

(B) amounts from departments, agencies, and instrumentalities of the Government to achieve urban redevelopment and revitalization in the vicinity of urban rail stations in the Northeast Corridor served by intercity and commuter rail passenger transportation.

(2) If the Secretary finds significant noncompliance with this section, the Secretary may deny financing to a noncomplying program until the noncompliance is corrected.

(l) Completion.—Amtrak shall give the highest priority to completing the program.

§24903. General authority

(a) General.—To carry out this part and the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.), Amtrak may—

(1) acquire, maintain, and dispose of any interest in property used to provide improved high-speed rail transportation under section 24902 of this title;

(2) provide for rail freight, intercity rail passenger, and commuter rail passenger transportation over property acquired under this section;

(3) improve rail rights of way between Boston, Massachusetts, and the District of Columbia (including the route through Springfield, Massachusetts, and routes to Harrisburg, Pennsylvania, and Albany, New York, from the Northeast Corridor main line) to achieve the goals of section 24902 of this title of providing improved high-speed rail passenger transportation between Boston, Massachusetts, and the District of Columbia, and intermediate intercity markets;

(4) acquire, build, improve, and install passenger stations, communications and electric power facilities and equipment, public and private highway and pedestrian crossings, and other facilities and equipment necessary to provide improved high-speed rail passenger transportation over rights of way improved under clause (3) of this subsection;

(5) make agreements with other carriers and commuter authorities to grant, acquire, or make arrangements for rail freight or commuter rail passenger transportation over, rights of way and facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.);

(6) appoint a general manager of the Northeast Corridor improvement program; and

(7) make agreements with telecommunications common carriers, subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.), to continue existing, and establish new and improved, passenger radio mobile telephone service in the high-speed rail passenger transportation area specified in section 24902(a)(1) and (2) of this title.

(b) Compensatory Agreements.—Rail freight and commuter rail passenger transportation provided under subsection (a)(2) of this section shall be provided under compensatory agreements with the responsible carriers.

(c) Compensation for Transportation Over Certain Rights of Way and Facilities.—(1) An agreement under subsection (a)(5) of this section shall provide for reasonable reimbursement of costs but may not cross-subsidize intercity rail passenger, commuter rail passenger, and rail freight transportation.

(2) If the parties do not agree, the Interstate Commerce Commission shall order that the transportation continue over facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 et seq.) and shall determine compensation (without allowing cross-subsidization between intercity rail passenger and rail freight transportation) for the transportation not later than 120 days after the dispute is submitted. The Commission shall assign to a rail freight carrier obtaining transportation under this subsection the costs Amtrak incurs only for the benefit of the carrier, plus a proportionate share of all other costs of providing transportation under this paragraph incurred for the common benefit of Amtrak and the carrier. The proportionate share shall be based on relative measures of volume of car operations, tonnage, or other factors that reasonably reflect the relative use of rail property covered by this subsection.

(3) This subsection does not prevent the parties from making an agreement under subsection (a)(5) of this section after the Commission makes a decision under this subsection.

§24904. Northeast Corridor Coordination Board

(a) Composition.—The Northeast Corridor Coordination Board is composed of the following members:

(1) one individual from each commuter authority (as defined in section 1135(a)(3) of the Omnibus Budget Reconciliation Act of 1981 (45 U.S.C. 1104(3))) that provides or makes a contract to provide commuter rail passenger transportation over the main line of the Northeast Corridor.

(2) 2 individuals selected by Amtrak.

(3) one individual selected by the Consolidated Rail Corporation.

(b) Policy Recommendations.—The Board shall recommend to Amtrak—

(1) policies that ensure equitable access to the Northeast Corridor, considering the need for equitable access by commuter and intercity rail passenger transportation and the requirements of section 24308(c) of this title; and

(2) equitable policies for the Northeast Corridor related to—

(A) dispatching;

(B) public information;

(C) maintaining equipment and facilities;

(D) major capital facility investments; and

(E) harmonizing equipment acquisitions, rates, and schedules.

(c) Recommendations for Action.—The Board may recommend to the board of directors and President of Amtrak action necessary to resolve differences on providing transportation, except for facilities and transportation matters under section 24308(a) or 24903(a)(5) and (c) of this title.

§24905. Note and mortgage

(a) General Authority.—To secure amounts expended by the United States Government to

acquire and improve rail property designated under section 206(c)(1)(C) and (D) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(C) and (D)), the Secretary of Transportation may obtain a note of indebtedness from, and make a mortgage agreement with, Amtrak to establish a mortgage lien on the property for the Government. The note and mortgage may not supersede section 24903 of this title.

(b) EXEMPTIONS FROM LAWS AND REGULATIONS.—The note and agreement under subsection (a) of this section, and a transaction related to the note or agreement, are exempt from any United States, State, or local law or regulation that regulates securities or the issuance of securities. The note, agreement, or transaction under this section has the same immunities from other laws that section 601 of the Act (45 U.S.C. 791) gives to transactions that comply with or carry out the final system plan. The transfer of rail property because of the note, agreement, or transaction has the same exemptions, privileges, and immunities that the Act (45 U.S.C. 701 et seq.) gives to a transfer ordered or approved by the special court under section 303(b) of the Act (45 U.S.C. 743(b)).

(c) IMMUNITY FROM LIABILITY AND INDEMNIFICATION.—Amtrak, its board of directors, and its individual directors are not liable because Amtrak has given or issued the note or agreement to the Government under subsection (a) of this section. Immunity granted under this subsection also applies to a transaction related to the note or agreement. The Government shall indemnify Amtrak, its board, and individual directors against costs and expenses actually and reasonably incurred in defending a civil action testing the validity of the note, agreement, or transaction.

§24906. Transfer taxes and levies and recording charges

A transfer of an interest in rail property under this chapter is exempt from a tax or levy related to the transfer that is imposed by the United States Government, a State, or a political subdivision of a State. On payment of the appropriate and generally applicable charge for the service performed, a transferee or transferor may record an instrument and, consistent with the final system plan, the release or removal of a pre-existing lien or encumbrance of record related to the interest transferred.

§24907. Authorization of appropriations

(a) GENERAL.—(1) Not more than $2,313,000,000 may be appropriated to the Secretary of Transportation to achieve the goals of section 24902(a)(1) of this title. From this amount, the following amounts shall be expended by Amtrak:

(A) at least $27,000,000 for equipment modification and replacement that a State or a local or regional transportation authority must bear because of the electrification conversion system of the Northeast Corridor under this chapter.

(B) $30,000,000—

(i) to improve the main line track between the main line and Atlantic City to ensure that the track, consistent with a plan New Jersey developed in consultation with Amtrak to provide rail passenger transportation between the Northeast Corridor main line and Atlantic City, New Jersey, would be of sufficient quality to allow safe rail passenger transportation at a minimum of 79 miles an hour not later than September 30, 1985; and

(ii) to promote rail passenger use of the track.

(C) necessary amounts to—

(i) develop Union Station in the District of Columbia;

(ii) install 189 track-miles, and renew 133 track-miles, of concrete ties with continuously welded rail between the District of Columbia and New York, New York;

(iii) install reverse signaling between Philadelphia, Pennsylvania, and Morrisville, Pennsylvania, on numbers 2 and 3 track;

(iv) restore ditch drainage in concrete tie locations between the District of Columbia and New York, New York;

(v) undercut 83 track-miles between the District of Columbia and New York, New York;

(vi) rehabilitate bridges between the District of Columbia and New York, New York (including Hi line);

(vii) develop a maintenance of way equipment repair facility between the District of Columbia and New York, New York, and build maintenance of way bases at Philadelphia, Pennsylvania, Sunnyside, New York, and Cedar Hill, Connecticut;

(viii) stabilize the roadbed between the District of Columbia and New York, New York;

(ix) automate the Bush River Drawbridge at milepost 72.14;

(x) improve the New York Service Facility to develop rolling stock repair capability;

(xi) install a rail car washer facility at Philadelphia, Pennsylvania;

(xii) restore storage tracks and buildings at the Washington Service Facility;

(xiii) install centralized traffic control from Landlith, Delaware, to Philadelphia, Pennsylvania;

(xiv) improve track, including high speed surfacing, ballast cleaning, and associated equipment repair and material distribution;

(xv) rehabilitate interlockings between the District of Columbia and New York, New York;

(xvi) paint the Connecticut River, Groton, and Pelham Bay bridges;

(xvii) provide additional catenary renewal and power supply upgrading between the District of Columbia and New York, New York;

(xviii) rehabilitate structural, electrical, and mechanical systems at the 30th Street Station in Philadelphia, Pennsylvania;

(xix) install evacuation and fire protection facilities in tunnels in New York, New York;

(xx) improve the communication and signal systems between Wilmington, Delaware, and Boston, Massachusetts, on the Northeast Corridor main line, and between Philadelphia, Pennsylvania, and Harrisburg, Pennsylvania, on the Harrisburg Line;

(xxi) improve the electric traction systems between Wilmington, Delaware, and Newark, New Jersey;

(xxii) install baggage rack restraints, seat back guards, and seat lock devices on 348 passenger cars operating in the Northeast Corridor;

(xxiii) install 44 event recorders and 10 electronic warning devices on locomotives operating within the Northeast Corridor; and

(xxiv) acquire cab signal test boxes and install 9 wayside loop code transmitters for use within the Northeast Corridor.

(2) The following additional amounts may be appropriated to the Secretary for expenditure by Amtrak:

(A) not more than $150,000,000 to achieve the goal of section 24902(a)(3) of this title.

(B) not more than $120,000,000 to acquire interests in property in the Northeast Corridor.

(C) not more than $650,000 to develop and use mobile radio frequencies for passenger radio mobile telephone service on high-speed rail passenger transportation.

(D) not more than $20,000,000 to acquire and improve interests in rail property designated under section 206(c)(1)(D) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716(c)(1)(D)).

(E) not more than $37,000,000 to carry out section 24902(a)(7) and (j) of this title.

(b) EMERGENCY MAINTENANCE.—Not more than $25,000,000 of the amount appropriated under the Act of February 28, 1975 (Public Law 94-6, 89 Stat. 11), may be used by Amtrak for emergency maintenance on rail property designated under section 206(c)(1)(C) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 716 (c)(1)(C)).

(c) PRIORITY IN USING CERTAIN AMOUNTS.—Amounts appropriated under subsection (a)(2)(B) and (D) of this section shall be used first to repay, with interest, obligations guaranteed under section 24103 of this title, if the proceeds of those obligations were used to pay the expenses of acquiring interests in property referred to in subsection (a)(2)(B) and (D).

(d) PROHIBITION ON SUBSIDIZING COMMUTER AND FREIGHT OPERATING LOSSES.—Amounts appropriated under this section may not be used to subsidize operating losses of commuter rail or rail freight transportation.

(e) SUBSTITUTING AND DEFERRING CERTAIN IMPROVEMENTS.—(1) A project for which amounts are authorized under subsection (a)(1)(C) of this section is a part of the Northeast Corridor improvement program and is not a substitute for improvements specified in the document "Corridor Master Plan II, NECIP Restructured Program" of January, 1982. However, Amtrak may defer the project to carry out the improvement and rehabilitation for which amounts are authorized under subsection (a)(1)(B) of this section. The total cost of the project that Amtrak defers may not be substantially more than the amount Amtrak is required to expend or reserve under subsection (a)(1)(B).

(2) Section 24902 of this title is deemed not to be fulfilled until the projects under subsection (a)(1)(C) of this section are completed.

(f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection (a)(1) and (2)(A) and (C)-(E) of this section remain available until expended.

(g) AUTHORIZATIONS INCREASED BY PRIOR YEAR DEFICIENCIES.—An amount greater than that authorized for a fiscal year may be appropriated to the extent that the amount appropriated for any prior fiscal year is less than the amount authorized for that year.

PART D—MISCELLANEOUS

CHAPTER 261—LAW ENFORCEMENT

Sec.
26101. Rail police officers.
26102. Limit on certain accident or incident liability.

§26101. Rail police officers

Under regulations prescribed by the Secretary of Transportation, a rail police officer who is employed by a rail carrier and certified or commissioned as a police officer under the laws of a State may enforce the laws of any jurisdiction in which the rail carrier owns property, to the extent of the authority of a police officer certified or commissioned under the laws of that jurisdiction, to protect—

(1) employees, passengers, or patrons of the rail carrier;

(2) property, equipment, and facilities owned, leased, operated, or maintained by the rail carrier;

(3) property moving in interstate or foreign commerce in the possession of the rail carrier; and

(4) personnel, equipment, and material moving by rail that are vital to the national defense.

§26102. Limit on certain accident or incident liability

(a) GENERAL.—When a publicly financed commuter transportation authority established under Virginia law makes a contract to indemnify Amtrak for liability for operations conducted by or for the authority or to indemnify a rail carrier over whose tracks those operations are conducted, liability against Amtrak, the authority, or the carrier for all claims (including punitive damages) arising from an accident or *incident in the District of Columbia related to those operations may not be more than the limits of the liability coverage the authority maintains to indemnify Amtrak or the carrier.*

(b) MINIMUM REQUIRED LIABILITY COVERAGE.—A publicly financed commuter transportation authority referred to in subsection (a) of this section must maintain a total minimum liability coverage of at least $200,000,000.

(c) EFFECTIVENESS.—This section is effective only after Amtrak or a rail carrier seeking an indemnification contract under this section makes an operating agreement with a publicly financed commuter transportation authority established under Virginia law to provide access to its property for revenue transportation related to the operations of the authority.

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CHAPTER 301—MOTOR VEHICLE SAFETY

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SUBCHAPTER I—GENERAL

§30101. Purpose and policy

The purpose of this chapter is to reduce traffic accidents and deaths and injuries resulting from traffic accidents. Therefore it is necessary—

(1) to prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce; and

(2) to carry out needed safety research and development.

§30102. Definitions

(a) GENERAL DEFINITIONS.—In this chapter—

(1) "dealer" means a person selling and distributing new motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale.

(2) "defect" includes any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment.

(3) "distributor" means a person primarily selling and distributing motor vehicles or motor vehicle equipment for resale.

(4) "interstate commerce" means commerce between a place in a State and a place in another State or between places in the same State through another State.

(5) "manufacturer" means a person—

(A) manufacturing or assembling motor vehicles or motor vehicle equipment; or

(B) importing motor vehicles or motor vehicle equipment for resale.

(6) "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.

(7) "motor vehicle equipment" means—

(A) any system, part, or component of a motor vehicle as originally manufactured;

(B) any similar part or component manufactured or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a motor vehicle; or

(C) any device or an article or apparel (except medicine or eyeglasses prescribed by a licensed practitioner) that is not a system, part, or component of a motor vehicle and is manufactured, sold, delivered, offered, or intended to be used only to safeguard motor vehicles and highway users against risk of accident, injury, or death.

(8) "motor vehicle safety" means the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.

(9) "motor vehicle safety standard" means a minimum standard for motor vehicle or motor vehicle equipment performance.

(10) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(11) "United States district court" means a district court of the United States, a United States court for Guam, the Virgin Islands, and American Samoa, and the district court for the Northern Mariana Islands.

(b) LIMITED DEFINITIONS.—(1) In sections 30117(b), 30118–30121, and 30166(f) of this title—

(A) "adequate repair" does not include repair resulting in substantially impaired operation of a motor vehicle or motor vehicle equipment;

(B) "first purchaser" means the first purchaser of a motor vehicle or motor vehicle equipment other than for resale;

(C) "original equipment" means motor vehicle equipment (including a tire) installed in or on a motor vehicle at the time of delivery to the first purchaser;

(D) "replacement equipment" means motor vehicle equipment (including a tire) that is not original equipment;

(E) a brand name owner of a tire marketed under a brand name not owned by the manufacturer of the tire is deemed to be the manufacturer of the tire;

(F) a defect in original equipment, or noncompliance of original equipment with a motor vehicle safety standard prescribed under this chapter, is deemed to be a defect or noncompliance of the motor vehicle in or on which the equipment was installed at the time of delivery to the first purchaser;

(G) a manufacturer of a motor vehicle in or on which original equipment was installed when delivered to the first purchaser is deemed to be the manufacturer of the equipment; and

(H) a retreader of a tire is deemed to be the manufacturer of the tire.

(2) The Secretary of Transportation may prescribe regulations amending paragraph (1)(C), (D), (F), or (G) of this subsection.

§30103. Relationship to other laws

(a) UNIFORMITY OF REGULATIONS.—The Secretary of Transportation may not prescribe a safety regulation related to a motor vehicle subject to subchapter II of chapter 105 of this title that differs from a motor vehicle safety standard prescribed under this chapter. However, the Secretary may prescribe, for a motor vehicle operated by a carrier subject to subchapter II of chapter 105, a safety regulation that imposes a higher standard of performance after manufacture than that required by an applicable standard in effect at the time of manufacture.

(b) PREEMPTION.—(1) When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. However, the United States Government, a State, or a political subdivision of a State may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the otherwise applicable standard under this chapter.

(2) A State may enforce a standard that is identical to a standard prescribed under this chapter.

(c) ANTITRUST LAWS.—This chapter does not—

(1) exempt from the antitrust laws conduct that is unlawful under those laws; or

(2) prohibit under the antitrust laws conduct that is lawful under those laws.

(d) Warranty Obligations and Additional Legal Rights and Remedies.—Sections 30117(b), 30118–30121, 30166(f), and 30167(a) and (b) of this title do not establish or affect a warranty obligation under a law of the United States or a State. A remedy under those sections and sections 30161 and 30162 of this title is in addition to other rights and remedies under other laws of the United States or a State.

(e) Common Law Liability.—Compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.

§30104. Authorization of appropriations

The following amounts may be appropriated to the Secretary of Transportation for the National Highway Traffic Safety Administration to carry out this chapter:

(1) $68,722,000 for the fiscal year ending September 30, 1992.

(2) $71,333,436 for the fiscal year ending September 30, 1993.

(3) $74,044,106 for the fiscal year ending September 30, 1994.

(4) $76,857,782 for the fiscal year ending September 30, 1995.

SUBCHAPTER II—STANDARDS AND COMPLIANCE

§30111. Standards

(a) General Requirements.—The Secretary of Transportation shall prescribe motor vehicle safety standards. Each standard shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

(b) Considerations and Consultation.—When prescribing a motor vehicle safety standard under this chapter, the Secretary shall—

(1) consider relevant available motor vehicle safety information;

(2) consult with the agency established under the Act of August 20, 1958 (Public Law 85–684, 72 Stat. 635), and other appropriate State or interstate authorities (including legislative committees);

(3) consider whether a proposed standard is reasonable, practicable, and appropriate for the particular type of motor vehicle or motor vehicle equipment for which it is prescribed; and

(4) consider the extent to which the standard will carry out section 30101 of this title.

(c) Cooperation.—The Secretary may advise, assist, and cooperate with departments, agencies, and instrumentalities of the United States Government, States, and other public and private agencies in developing motor vehicle safety standards.

(d) Effective Dates of Standards.—The Secretary shall specify the effective date of a motor vehicle safety standard prescribed under this chapter in the order prescribing the standard. A standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed. However, the Secretary may prescribe a different effective date after finding, for good cause shown, that a different effective date is in the public interest and publishing the reasons for the finding.

(e) 5-Year Plan for Testing Standards.—The Secretary shall establish and periodically review and update on a continuing basis a 5-year plan for testing motor vehicle safety standards prescribed under this chapter that the Secretary considers capable of being tested. In developing the plan and establishing testing priorities, the Secretary shall consider factors the Secretary considers appropriate, consistent with section 30101 of this title and the Secretary's other duties and powers under this chapter. The Secretary may change at any time those priorities to address matters the Secretary considers of greater priority. The initial plan may be the 5-year plan for compliance testing in effect on December 18, 1991.

§30112. Prohibitions on manufacturing, selling, and importing noncomplying motor vehicles and equipment

(a) General.—Except as provided in this section, sections 30113 and 30114 of this title, and subchapter III of this chapter, a person may not manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard prescribed under this chapter takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title.

(b) Nonapplication.—This section does not apply to—

(1) the sale, offer for sale, or introduction or delivery for introduction in interstate commerce of a motor vehicle or motor vehicle equipment after the first purchase of the vehicle or equipment in good faith other than for resale;

(2) a person—

(A) establishing that the person had no reason to know, despite exercising reasonable care, that a motor vehicle or motor vehicle equipment does not comply with applicable motor vehicle safety standards prescribed under this chapter; or

(B) holding, without knowing about the noncompliance and before the vehicle or equipment is first purchased in good faith other than for resale, a certificate issued by a manufacturer or importer stating the vehicle or equipment complies with applicable standards prescribed under this chapter;

(3) a motor vehicle or motor vehicle equipment intended only for export, labeled for export on the vehicle or equipment and on the outside of any container of the vehicle or equipment, and exported;

(4) a motor vehicle the Secretary of Transportation decides under section 30141 of this title is capable of complying with applicable standards prescribed under this chapter;

(5) a motor vehicle imported for personal use by an individual who receives an exemption under section 30142 of this title;

(6) a motor vehicle under section 30143 of this title imported by an individual employed outside the United States;

(7) a motor vehicle under section 30144 of this title imported on a temporary basis;

(8) a motor vehicle or item of motor vehicle equipment under section 30145 of this title requiring further manufacturing; or

(9) a motor vehicle that is at least 25 years old.

§30113. General exemptions

(a) Definition.—In this section, "low-emission motor vehicle" means a motor vehicle meeting the standards for new motor vehicles applicable to the vehicle under section 202 of the Clean Air Act (42 U.S.C. 7521) when the vehicle is manufactured and emitting an air pollutant in an amount significantly below one of those standards.

(b) Authority To Exempt and Procedures.—(1) The Secretary of Transportation may exempt, on a temporary basis, motor vehicles from a motor vehicle safety standard prescribed under this chapter on terms the Secretary considers appropriate. An exemption may be renewed. A renewal may be granted only on reapplication and must conform to the requirements of this subsection.

(2) The Secretary may begin a proceeding under this subsection when a manufacturer applies for an exemption or a renewal of an exemption. The Secretary shall publish notice of the application and provide an opportunity to comment. An application for an exemption or for a renewal of an exemption shall be filed at a time and in the way, and contain information, this section and the Secretary require.

(3) The Secretary may act under this subsection on finding that—

(A) an exemption is consistent with the public interest and this chapter; and

(B)(i) compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith;

(ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard;

(iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or

(iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.

(c) Contents of Applications.—A manufacturer applying for an exemption under subsection (b) of this section shall include the following information in the application:

(1) if the application is made under subsection (b)(3)(B)(i) of this section, a complete financial statement describing the economic hardship and a complete description of the manufacturer's good faith effort to comply with each motor vehicle safety standard prescribed under this chapter from which the manufacturer is requesting an exemption.

(2) if the application is made under subsection (b)(3)(B)(ii) of this section, a record of the research, development, and testing establishing the innovative nature of the safety feature and a detailed analysis establishing that the safety level of the feature at least equals the safety level of the standard.

(3) if the application is made under subsection (b)(3)(B)(iii) of this section, a record of the research, development, and testing establishing that the motor vehicle is a low-emission motor vehicle and that the safety level of the vehicle is not lowered unreasonably by exemption from the standard.

(4) if the application is made under subsection (b)(3)(B)(iv) of this section, a detailed analysis showing how the vehicle provides an overall safety level at least equal to the overall safety level of nonexempt vehicles.

(d) Eligibility.—A manufacturer is eligible for an exemption under subsection (b)(3)(B)(i) of this section only if the Secretary determines that the manufacturer's total motor vehicle production in the most recent year of production is not more than 10,000. A manufacturer is eligible for an exemption under subsection (b)(3)(B)(ii), (iii), or (iv) of this section only if the Secretary determines the exemption is for not more than 2,500 vehicles to be sold in the United States in any 12-month period.

(e) Maximum Period.—An exemption or renewal under subsection (b)(3)(B)(i) of this section may be granted for not more than 3 years. An exemption or renewal under subsection (b)(3)(B)(ii), (iii), or (iv) of this section may be granted for not more than 2 years.

(f) Disclosure.—The Secretary may make public, by the 10th day after an application is filed, information contained in the application or relevant to the application unless the information concerns or is related to a trade secret or other confidential information not relevant to the application.

(g) Notice of Decision.—The Secretary shall publish in the Federal Register a notice of each decision granting an exemption under this section and the reasons for granting it.

(h) Permanent Label Requirement.—The Secretary shall require a permanent label to be fixed to a motor vehicle granted an exemption under this section. The label shall either name or describe each motor vehicle safety standard

prescribed under this chapter from which the vehicle is exempt. The Secretary may require that written notice of an exemption be delivered by appropriate means to the dealer and the first purchaser of the vehicle other than for resale.

§30114. Special exemptions

The Secretary of Transportation may exempt a motor vehicle or item of motor vehicle equipment from section 30112(a) of this title on terms the Secretary decides are necessary for research, investigations, demonstrations, training, or competitive racing events.

§30115. Certification of compliance

A manufacturer or distributor of a motor vehicle or motor vehicle equipment shall certify to the distributor or dealer at delivery that the vehicle or equipment complies with applicable motor vehicle safety standards prescribed under this chapter. A person may not issue the certificate if, in exercising reasonable care, the person has reason to know the certificate is false or misleading in a material respect. Certification of a vehicle must be shown by a label or tag permanently fixed to the vehicle. Certification of equipment may be shown by a label or tag on the equipment or on the outside of the container in which the equipment is delivered.

§30116. Defects and noncompliance found before sale to purchaser

(a) ACTIONS REQUIRED OF MANUFACTURERS AND DISTRIBUTORS.—If, after a manufacturer or distributor sells a motor vehicle or motor vehicle equipment to a distributor or dealer and before the distributor or dealer sells the vehicle or equipment, it is decided that the vehicle or equipment contains a defect related to motor vehicle safety or does not comply with applicable motor vehicle safety standards prescribed under this chapter—

(1) the manufacturer or distributor immediately shall repurchase the vehicle or equipment at the price paid by the distributor or dealer, plus transportation charges and reasonable reimbursement of at least one percent a month of the price paid prorated from the date of notice of noncompliance or defect to the date of repurchase; or

(2) if a vehicle, the manufacturer or distributor immediately shall give to the distributor or dealer at the manufacturer's or distributor's own expense, the part or equipment needed to make the vehicle comply with the standards or correct the defect.

(b) DISTRIBUTOR OR DEALER INSTALLATION.—The distributor or dealer shall install the part or equipment referred to in subsection (a)(2) of this section. If the distributor or dealer installs the part or equipment with reasonable diligence after it is received, the manufacturer shall reimburse the distributor or dealer for the reasonable value of the installation and a reasonable reimbursement of at least one percent a month of the manufacturer's or distributor's selling price prorated from the date of notice of noncompliance or defect to the date the motor vehicle complies with applicable motor vehicle safety standards prescribed under this chapter or the defect is corrected.

(c) ESTABLISHING AMOUNT DUE AND CIVIL ACTIONS.—The parties shall establish the value of installation and the amount of reimbursement under this section. If the parties do not agree, or if a manufacturer or distributor refuses to comply with subsection (a) or (b) of this section, the distributor or dealer purchasing the motor vehicle or motor vehicle equipment may bring a civil action. The action may be brought in the United States district court for the judicial district in which the manufacturer or distributor resides, is found, or has an agent, to recover damages, court costs, and a reasonable attorney's fee. An action under this section must be brought not later than 3 years after the claim accrues.

§30117. Providing information to, and maintaining records on, purchasers

(a) PROVIDING INFORMATION AND NOTICE.—The Secretary of Transportation may require that each manufacturer of a motor vehicle or motor vehicle equipment provide technical information related to performance and safety required to carry out this chapter. The Secretary may require the manufacturer to give the following notice of that information when the Secretary decides it is necessary:

(1) to each prospective purchaser of a vehicle or equipment before the first sale other than for resale at each location at which the vehicle or equipment is offered for sale by a person having a legal relationship with the manufacturer, in a way the Secretary decides is appropriate.

(2) to the first purchaser of a vehicle or equipment other than for resale when the vehicle or equipment is bought, in printed matter placed in the vehicle or attached to or accompanying the equipment.

(b) MAINTAINING PURCHASER RECORDS AND PROCEDURES.—(1) A manufacturer of a motor vehicle or tire (except a retreaded tire) shall maintain a record of the name and address of the first purchaser of each vehicle or tire it produces and, to the extent prescribed by regulations of the Secretary, shall maintain a record of the name and address of the first purchaser of replacement equipment (except a tire) that the manufacturer produces. The Secretary may prescribe by regulation the records to be maintained and reasonable procedures for maintaining the records under this subsection, including procedures to be followed by distributors and dealers to assist the manufacturer. A procedure shall be reasonable for the type of vehicle or tire involved, and shall provide reasonable assurance that a customer list of a distributor or dealer, or similar information, will be made available to a person (except the distributor or dealer) only when necessary to carry out this subsection and sections 30118–30121, 30166(f), and 30167(a) and (b) of this title. Availability of assistance from a distributor or dealer does not affect an obligation of a manufacturer under this subsection.

(2)(A) Except as provided in paragraph (3) of this subsection, the Secretary may require a distributor or dealer to maintain a record under paragraph (1) of this subsection only if the business of the distributor or dealer is owned or controlled by a manufacturer of tires.

(B) The Secretary shall require each distributor and dealer whose business is not owned or controlled by a manufacturer of tires to give a registration form (containing the tire identification number) to the first purchaser of a tire. The Secretary shall prescribe the form, which shall be standardized for all tires and designed to allow the purchaser to complete and return it directly to the manufacturer of the tire. The manufacturer shall give sufficient copies of forms to distributors and dealers.

(3)(A) The Secretary shall evaluate from time to time how successful the procedures in paragraph (2) of this subsection have been in helping to maintain records about first purchasers of tires. After each evaluation, the Secretary shall decide—

(i) the extent to which distributors and dealers have complied with the procedures;

(ii) the extent to which distributors and dealers have encouraged first purchasers of tires to register the tires; and

(iii) whether to prescribe for manufacturers, distributors, or dealers other requirements that the Secretary decides will increase significantly the percentage of first purchasers of tires about whom records are maintained.

(B) The Secretary may prescribe a requirement under subparagraph (A) of this paragraph only if the Secretary decides it is necessary to reduce the risk to motor vehicle safety, after considering—

(i) the cost of the requirement to manufacturers and the burden of the requirement on distributors and dealers, compared to the increase in the percentage of first purchasers of tires about whom records would be maintained as a result of the requirement;

(ii) the extent to which distributors and dealers have complied with the procedures in paragraph (2) of this subsection; and

(iii) the extent to which distributors and dealers have encouraged first purchasers of tires to register the tires.

(C) A manufacturer of tires shall reimburse distributors and dealers of that manufacturer's tires for all reasonable costs incurred by the distributors and dealers in complying with a requirement prescribed by the Secretary under subparagraph (A) of this paragraph.

(D) After making a decision under subparagraph (A) of this paragraph, the Secretary shall submit to each House of Congress a report containing a detailed statement of the decision and an explanation of the reasons for the decision.

§30118. Notification of defects and noncompliance

(a) NOTIFICATION BY SECRETARY.—The Secretary of Transportation shall notify the manufacturer of a motor vehicle or replacement equipment immediately after making an initial decision that the vehicle or equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter. The notification shall include the information on which the decision is based. The Secretary shall publish a notice of each decision under this subsection in the Federal Register. Subject to section 30167(a) of this title, the notification and information are available to any interested person.

(b) DEFECT AND NONCOMPLIANCE PROCEEDINGS AND ORDERS.—(1) The Secretary may make a final decision that a motor vehicle or replacement equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter only after giving the manufacturer an opportunity to present information, views, and arguments showing that there is no defect or noncompliance or that the defect does not affect motor vehicle safety. Any interested person also shall be given an opportunity to present information, views, and arguments.

(2) If the Secretary decides under paragraph (1) of this subsection the vehicle or equipment contains the defect or does not comply, the Secretary shall order the manufacturer to—

(A) give notification under section 30119 of this title to the owners, purchasers, and dealers of the vehicle or equipment of the defect or noncompliance; and

(B) remedy the defect or noncompliance under section 30120 of this title.

(c) NOTIFICATION BY MANUFACTURER.—A manufacturer of a motor vehicle or replacement equipment shall notify the Secretary by certified mail, and the owners, purchasers, and dealers of the vehicle or equipment as provided in section 30119(d) of this section, if the manufacturer—

(1) learns the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety; or

(2) decides in good faith that the vehicle or equipment does not comply with an applicable motor vehicle safety standard prescribed under this chapter.

(d) EXEMPTIONS.—On application of a manufacturer, the Secretary shall exempt the manufacturer from this section if the Secretary decides a defect or noncompliance is inconsequential to motor vehicle safety. The Secretary may

take action under this subsection only after notice in the Federal Register and an opportunity for any interested person to present information, views, and arguments.

(e) HEARINGS ABOUT MEETING NOTIFICATION REQUIREMENTS.—On the motion of the Secretary or on petition of any interested person, the Secretary may conduct a hearing to decide whether the manufacturer has reasonably met the notification requirements under this section. Any interested person may make written and oral presentations of information, views, and arguments on whether the manufacturer has reasonably met the notification requirements. If the Secretary decides that the manufacturer has not reasonably met the notification requirements, the Secretary shall order the manufacturer to take specified action to meet those requirements and may take any other action authorized under this chapter.

§30119. Notification procedures

(a) CONTENTS OF NOTIFICATION.—Notification by a manufacturer required under section 30118 of this title of a defect or noncompliance shall contain—

(1) a clear description of the defect or noncompliance;

(2) an evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance;

(3) the measures to be taken to obtain a remedy of the defect or noncompliance;

(4) a statement that the manufacturer giving notice will remedy the defect or noncompliance without charge under section 30120 of this title;

(5) the earliest date on which the defect or noncompliance will be remedied without charge, and for tires, the period during which the defect or noncompliance will be remedied without charge under section 30120 of this title;

(6) the procedure the recipient of a notice is to follow to inform the Secretary of Transportation when a manufacturer, distributor, or dealer does not remedy the defect or noncompliance without charge under section 30120 of this title; and

(7) other information the Secretary prescribes by regulation.

(b) EARLIEST REMEDY DATE.—The date specified by a manufacturer in a notification under subsection (a)(5) of this section or section 30121(c) of this title is the earliest date that parts and facilities reasonably can be expected to be available to remedy the defect or noncompliance. The Secretary may disapprove the date.

(c) TIME FOR NOTIFICATION.—Notification required under section 30118 of this title shall be given within a reasonable time—

(1) prescribed by the Secretary, after the manufacturer receives notice of a final decision under section 30118(b) of this title; or

(2) after the manufacturer first decides that a safety-related defect or noncompliance exists under section 30118(c) of this title.

(d) MEANS OF PROVIDING NOTIFICATION.—(1) Notification required under section 30118 of this title about a motor vehicle shall be sent by first class mail—

(A) to each person registered under State law as the owner and whose name and address are reasonably ascertainable by the manufacturer through State records or other available sources; or

(B) if a registered owner is not notified under clause (A) of this paragraph, to the most recent purchaser known to the manufacturer.

(2) Notification required under section 30118 of this title about replacement equipment (except a tire) shall be sent by first class mail to the most recent purchaser known to the manufacturer. In addition, if the Secretary decides that public notice is required for motor vehicle safety, public notice shall be given in the way required by the Secretary after consulting with the manufacturer.

(3) Notification required under section 30118 of this title about a tire shall be sent by first class mail (or, if the manufacturer prefers, by certified mail) to the most recent purchaser known to the manufacturer. In addition, if the Secretary decides that public notice is required for motor vehicle safety, public notice shall be given in the way required by the Secretary after consulting with the manufacturer. In deciding whether public notice is required, the Secretary shall consider—

(A) the magnitude of the risk to motor vehicle safety caused by the defect or noncompliance; and

(B) the cost of public notice compared to the additional number of owners the notice may reach.

(4) A dealer to whom a motor vehicle or replacement equipment was delivered shall be notified by certified mail or quicker means if available.

(e) SECOND NOTIFICATION.—If the Secretary decides that a notification sent by a manufacturer under this section has not resulted in an adequate number of motor vehicles or items of replacement equipment being returned for remedy, the Secretary may order the manufacturer to send a 2d notification in the way the Secretary prescribes by regulation.

(f) NOTIFICATION BY LESSOR TO LESSEE.—(1) In this subsection, "leased motor vehicle" means a motor vehicle that is leased to a person for at least 4 months by a lessor that has leased at least 5 motor vehicles in the 12 months before the date of the notification.

(2) A lessor that receives a notification required by section 30118 of this title about a leased motor vehicle shall provide a copy of the notification to the lessee in the way the Secretary prescribes by regulation.

§30120. Remedies for defects and noncompliance

(a) WAYS TO REMEDY.—(1) Subject to subsections (f) and (g) of this section, when notification of a defect or noncompliance is required under section 30118 (b) or (c) of this title, the manufacturer of the defective or noncomplying motor vehicle or replacement equipment shall remedy the defect or noncompliance without charge when the vehicle or equipment is presented for remedy. Subject to subsections (b) and (c) of this section, the manufacturer shall remedy the defect or noncompliance in any of the following ways the manufacturer chooses:

(A) if a vehicle—

(i) by repairing the vehicle;

(ii) by replacing the vehicle with an identical or reasonably equivalent vehicle; or

(iii) by refunding the purchase price, less a reasonable allowance for depreciation.

(B) if replacement equipment, by repairing the equipment or replacing the equipment with identical or reasonably equivalent equipment.

(2) The Secretary of Transportation may prescribe regulations to allow the manufacturer to impose conditions on the replacement of a motor vehicle or refund of its price.

(b) TIRE REMEDIES.—(1) A manufacturer of a tire, including an original equipment tire, shall remedy a defective or noncomplying tire if the owner or purchaser presents the tire for remedy not later than 60 days after the later of—

(A) the day the owner or purchaser receives notification under section 30119 of this title; or

(B) if the manufacturer decides to replace the tire, the day the owner or purchaser receives notification that a replacement is available.

(2) If the manufacturer decides to replace the tire and the replacement is not available during the 60-day period, the owner or purchaser must present the tire for remedy during a subsequent 60-day period only after receiving notification of availability during the subsequent period. If tires are available during the subsequent period, only a tire presented for remedy during that period must be remedied.

(c) ADEQUACY OF REPAIRS.—(1) If a manufacturer decides to repair a motor vehicle or replacement equipment and the repair is not done adequately within a reasonable time, the manufacturer shall—

(A) replace the vehicle or equipment with an identical or reasonably equivalent vehicle or equipment; or

(B) for a vehicle, refund the purchase price, less a reasonable allowance for depreciation.

(2) Failure to repair a motor vehicle or replacement equipment adequately not later than 60 days after its presentation is prima facie evidence of failure to repair within a reasonable time. However, the Secretary may extend, by order, the 60-day period if good cause for an extension is shown and the reason is published in the Federal Register before the period ends. Presentation of a vehicle or equipment for repair before the date specified by a manufacturer in a notice under section 30119(a)(5) or 30121(c) of this title is not a presentation under this subsection.

(d) FILING MANUFACTURER'S REMEDY PROGRAM.—A manufacturer shall file with the Secretary a copy of the manufacturer's program under this section for remedying a defect or noncompliance. The Secretary shall make the program available to the public and publish a notice of availability in the Federal Register.

(e) HEARINGS ABOUT MEETING REMEDY REQUIREMENTS.—On the motion of the Secretary or on application by any interested person, the Secretary may conduct a hearing to decide whether the manufacturer has reasonably met the remedy requirements under this section. Any interested person may make written and oral presentations of information, views, and arguments on whether the manufacturer has reasonably met the remedy requirements. If the Secretary decides a manufacturer has not reasonably met the remedy requirements, the Secretary shall order the manufacturer to take specified action to meet those requirements and may take any other action authorized under this chapter.

(f) FAIR REIMBURSEMENT TO DEALERS.—A manufacturer shall pay fair reimbursement to a dealer providing a remedy without charge under this section.

(g) NONAPPLICATION.—(1) The requirement that a remedy be provided without charge does not apply if the motor vehicle or replacement equipment was bought by the first purchaser more than 8 calendar years, or the tire, including an original equipment tire, was bought by the first purchaser more than 3 calendar years, before notice is given under section 30118(c) of this title or an order is issued under section 30118(b) of this title, whichever is earlier.

(2) This section does not apply during any period in which enforcement of an order under section 30118(b) of this title is restrained or the order is set aside in a civil action to which section 30121(d) of this title applies.

(h) EXEMPTIONS.—On application of a manufacturer, the Secretary shall exempt the manufacturer from this section if the Secretary decides a defect or noncompliance is inconsequential to motor vehicle safety. The Secretary may take action under this subsection only after notice in the Federal Register and an opportunity for any interested person to present information, views, and arguments.

(i) LIMITATION ON SALE OR LEASE.—(1) If notification is required by an order under section 30118(b) of this title or is required under section 30118(c) of this title and the manufacturer has provided to a dealer notification about a new motor vehicle or new item of replacement equipment in the dealer's possession at the time of no-

tification that contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard prescribed under this chapter, the dealer may sell or lease the motor vehicle or item of replacement equipment only if—

(A) the defect or noncompliance is remedied as required by this section before delivery under the sale or lease; or

(B) when the notification is required by an order under section 30118(b) of this title, enforcement of the order is restrained or the order is set aside in a civil action to which section 30121(d) of this title applies.

(2) This subsection does not prohibit a dealer from offering for sale or lease the vehicle or equipment.

§30121. Provisional notification and civil actions to enforce

(a) PROVISIONAL NOTIFICATION.—(1) The Secretary of Transportation may order a manufacturer to issue a provisional notification if a civil action about an order issued under section 30118(b) of this title has been brought under section 30163 of this title. The provisional notification shall contain—

(A) a statement that the Secretary has decided that a defect related to motor vehicle safety or noncompliance with a motor vehicle safety standard prescribed under this chapter exists and that the manufacturer is contesting the decision in a civil action in a United States district court;

(B) a clear description of the Secretary's stated basis for the decision;

(C) the Secretary's evaluation of the risk to motor vehicle safety reasonably related to the defect or noncompliance;

(D) measures the Secretary considers necessary to avoid an unreasonable risk to motor vehicle safety resulting from the defect or noncompliance;

(E) a statement that the manufacturer will remedy the defect or noncompliance without charge under section 30120 of this title, but that the requirement to remedy without charge is conditioned on the outcome of the civil action; and

(F) other information the Secretary prescribes by regulation or includes in the order requiring the notice.

(2) A notification under this subsection does not relieve a manufacturer of liability for not giving notification required by an order under section 30118(b) of this title.

(b) CIVIL ACTIONS FOR NOT NOTIFYING.—(1) A manufacturer that does not notify owners and purchasers under section 30119(c) and (d) of this title is liable to the United States Government for a civil penalty, unless the manufacturer prevails in a civil action referred to in subsection (a) of this section or the court in that action enjoins enforcement of the order. Enforcement may be enjoined only if the court decides that the failure to notify is reasonable and that the manufacturer has demonstrated the likelihood of prevailing on the merits. If enforcement is enjoined, the manufacturer is not liable during the time the order is stayed.

(2) A manufacturer that does not notify owners and purchasers as required under subsection (a) of this section is liable for a civil penalty regardless of whether the manufacturer prevails in an action on the validity of the order issued under section 30118(b) of this title.

(c) ORDERS TO MANUFACTURERS.—If the Secretary prevails in a civil action referred to in subsection (a) of this section, the Secretary shall order the manufacturer—

(1) to notify each owner, purchaser, and dealer described in section 30119(d) of this title of the outcome of the action and other information the Secretary requires, and notification under this clause may be combined with notification required under section 30118(b) of this title;

(2) to specify the earliest date under section 30119(b) of this title on which the defect or noncompliance will be remedied without charge under section 30120 of this title; and

(3) if notification was required under subsection (a) of this section, to reimburse an owner or purchaser for reasonable and necessary expenses (in an amount that is not more than the amount specified in the order of the Secretary under subsection (a)) incurred for repairing the defect or noncompliance during the period beginning on the date that notification was required to be issued and ending on the date the owner or purchaser receives the notification under this subsection.

(d) VENUE.—Notwithstanding section 30163(c) of this title, a civil action about an order issued under section 30118(b) of this title must be brought in the United States district court for a judicial district in the State in which the manufacturer is incorporated or the District of Columbia. On motion of a party, the court may transfer the action to another district court if good cause is shown. All actions related to the same order under section 30118(b) of this title shall be consolidated in an action in one judicial district under an order of the court in which the first action was brought. If the first action is transferred to another court, that court shall issue the consolidation order.

§30122. Making safety devices and elements inoperative

(a) DEFINITION.—In this section, "motor vehicle repair business" means a person holding itself out to the public to repair for compensation a motor vehicle or motor vehicle equipment.

(b) PROHIBITION.—A manufacturer, distributor, dealer, or motor vehicle repair business may not knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard prescribed under this chapter unless the manufacturer, distributor, dealer, or repair business reasonably believes the vehicle or equipment will not be used (except for testing or a similar purpose during maintenance or repair) when the device or element is inoperative.

(c) REGULATIONS.—The Secretary of Transportation may prescribe regulations—

(1) to exempt a person from this section if the Secretary decides the exemption is consistent with motor vehicle safety and section 30101 of this title; and

(2) to define "make inoperative".

(d) NONAPPLICATION.—This section does not apply to a safety belt interlock or buzzer designed to indicate a safety belt is not in use as described in section 30124 of this title.

§30123. Tires

(a) LABELING REQUIREMENT.—The Secretary of Transportation shall require that a pneumatic tire subject to a motor vehicle safety standard prescribed under this chapter be labeled permanently and conspicuously with safety information the Secretary decides is necessary to carry out section 30101 of this title.

(b) CONTENTS OF LABEL.—Labeling required on a tire under subsection (a) of this section shall include—

(1)(A) identification of the manufacturer;

(B) for a retreaded tire, identification of the retreader; or

(C) for a tire containing a brand name (except the name of the manufacturer), a code mark allowing a seller to identify the manufacturer to the purchaser;

(2) the composition of material used in the ply of the tire;

(3) the number of plies in the tire;

(4) the maximum allowable load for the tire; and

(5)(A) a statement that the tire complies with minimum safe performance standards prescribed under this chapter; or

(B) a mark or symbol the Secretary prescribes for use by a manufacturer or retreader complying with those standards.

(c) ADDITIONAL INFORMATION.—The Secretary may require that additional safety information be disclosed to a purchaser when a tire is sold.

(d) REGROOVED TIRE LIMITATIONS.—(1) In this subsection, "regrooved tire" means a tire with a new tread produced by cutting into the tread of a worn tire.

(2) The Secretary may authorize the sale, offer for sale, introduction for sale, or delivery for introduction in interstate commerce, of a regrooved tire or a motor vehicle equipped with regrooved tires if the Secretary decides the tires are designed and made in a way consistent with section 30101 of this title. A person may not sell, offer for sale, introduce for sale, or deliver for introduction in interstate commerce, a regrooved tire or a vehicle equipped with regrooved tires unless authorized by the Secretary.

(e) UNIFORM QUALITY GRADING SYSTEM, NOMENCLATURE, AND MARKETING PRACTICES.—The Secretary shall prescribe through standards a uniform quality grading system for motor vehicle tires to help consumers make an informed choice when purchasing tires. The Secretary also shall cooperate with industry and the Federal Trade Commission to the greatest extent practicable to eliminate deceptive and confusing tire nomenclature and marketing practices. A tire standard or regulation prescribed under this chapter supersedes an order or administrative interpretation of the Commission.

(f) MAXIMUM LOAD STANDARDS.—The Secretary shall require a motor vehicle to be equipped with tires that meet maximum load standards when the vehicle is loaded with a reasonable amount of luggage and the total number of passengers the vehicle is designed to carry. The vehicle shall be equipped with those tires by the manufacturer or by the first purchaser when the vehicle is first bought in good faith other than for resale.

§30124. Buzzers indicating nonuse of safety belts

A motor vehicle safety standard prescribed under this chapter may not require or allow a manufacturer to comply with the standard by using a safety belt interlock designed to prevent starting or operating a motor vehicle if an occupant is not using a safety belt or a buzzer designed to indicate a safety belt is not in use, except a buzzer that operates only during the 8-second period after the ignition is turned to the "start" or "on" position.

§30125. Schoolbuses and schoolbus equipment

(a) DEFINITIONS.—In this section—

(1) "schoolbus" means a passenger motor vehicle designed to carry a driver and more than 10 passengers, that the Secretary of Transportation decides is likely to be used significantly to transport preprimary, primary, and secondary school students to or from school or an event related to school.

(2) "schoolbus equipment" means equipment designed primarily for a schoolbus or manufactured or sold to replace or improve a system, part, or component of a schoolbus or as an accessory or addition to a schoolbus.

(b) STANDARDS.—The Secretary shall prescribe motor vehicle safety standards for schoolbuses and schoolbus equipment manufactured in, or imported into, the United States. Standards shall include minimum performance requirements for—

(1) emergency exits;

(2) interior protection for occupants;

(3) floor strength;

(4) seating systems;

(5) crashworthiness of body and frame (including protection against rollover hazards);

(6) vehicle operating systems;

(7) windows and windshields; and

(8) fuel systems.

(c) TEST DRIVING BY MANUFACTURERS.—The Secretary may require by regulation a schoolbus to be test-driven by a manufacturer before introduction in commerce.

§30126. Used motor vehicles

To ensure a continuing and effective national safety program, it is the policy of the United States Government to encourage and strengthen State inspection of used motor vehicles. Therefore, the Secretary of Transportation shall prescribe uniform motor vehicle safety standards for all used motor vehicles. The standards shall be stated in terms of motor vehicle safety performance.

§30127. Automatic occupant crash protection and seat belt use

(a) DEFINITIONS.—In this section—

(1) "bus" means a motor vehicle with motive power (except a trailer) designed to carry more than 10 individuals.

(2) "multipurpose passenger vehicle" means a motor vehicle with motive power (except a trailer), designed to carry not more than 10 individuals, that is constructed either on a truck chassis or with special features for occasional off-road operation.

(3) "passenger car" means a motor vehicle with motive power (except a multipurpose passenger vehicle, motorcycle, or trailer) designed to carry not more than 10 individuals.

(4) "truck" means a motor vehicle with motive power (except a trailer) designed primarily to transport property or special purpose equipment.

(b) INFLATABLE RESTRAINT REQUIREMENTS.—(1) Not later than September 1, 1993, the Secretary of Transportation shall prescribe under this chapter an amendment to Federal Motor Vehicle Safety Standard 208 issued under the National Traffic and Motor Vehicle Safety Act of 1966. The amendment shall require that the automatic occupant crash protection system—

(A) for both of the front outboard seating positions for each of the following vehicles be an inflatable restraint complying with the occupant protection requirements under section 4.1.2.1 of Standard 208:

(i) 95 percent of each manufacturer's production of passenger cars manufactured after August 31, 1996, and before September 1, 1997.

(ii) 80 percent of each manufacturer's production of buses, multipurpose passenger vehicles, and trucks, except walk-in van-type trucks and vehicles designed to be sold only to the United States Postal Service, for buses, vehicles, and trucks with a gross vehicle weight rating of not more than 8,500 pounds and an unloaded vehicle weight of not more than 5,500 pounds manufactured after August 31, 1997, and before September 1, 1998; and

(B) for both of the front outboard seating positions for each of the following vehicles only be an inflatable restraint (with lap and shoulder belts) complying with the occupant protection requirement under section 4.1.2.1 of Standard 208:

(i) 100 percent of each manufacturer's annual production of passenger cars manufactured after August 31, 1997.

(ii) 100 percent of each manufacturer's annual production of vehicles described in paragraph (1)(A)(ii) of this subsection manufactured after August 31, 1998.

(2) Manufacturers may not use credits and incentives available before September 1, 1998, under the provisions of Standard 208 (as amended by this section) to comply with the requirements of paragraph (1)(B)(ii) of this subsection after August 31, 1998.

(c) OWNER MANUAL REQUIREMENTS.—In amending Standard 208, the Secretary of Transportation shall require, as soon as possible, that owner manuals for passenger cars, buses, multipurpose passenger vehicles, and trucks equipped with an inflatable restraint include a statement in an easily understandable format stating that—

(1) either or both of the front outboard seating positions of the vehicle are equipped with an inflatable restraint referred to as an "airbag" and a lap and shoulder belt;

(2) the "airbag" is a supplemental restraint and is not a substitute for lap and shoulder belts;

(3) lap and shoulder belts also must be used correctly by an occupant in a front outboard seating position to provide restraint or protection from frontal crashes as well as other types of crashes or accidents; and

(4) occupants should always wear their lap and shoulder belts, if available, or other safety belts, whether or not there is an inflatable restraint.

(d) SEAT BELTS.—Congress finds that it is in the public interest for each State to adopt and enforce mandatory seat belt use laws and for the United States Government to adopt and enforce mandatory seat belt use regulations.

(e) TEMPORARY EXEMPTIONS.—(1) On application of a manufacturer, the Secretary of Transportation may exempt, on a temporary basis, motor vehicles of that manufacturer from any requirement under subsections (b) and (c) of this section on terms the Secretary considers appropriate. An exemption may be renewed.

(2) The Secretary of Transportation may grant an exemption under paragraph (1) of this subsection if the Secretary decides that there has been a disruption in the supply of any component of an inflatable restraint or in the use and installation by the manufacturer of that component because of an unavoidable event that will prevent the manufacturer from meeting its anticipated production volume of vehicles with those restraints.

(3) Only an affected manufacturer may apply for an exemption. The Secretary of Transportation shall prescribe in the amendment to Standard 208 required under this section the information an affected manufacturer must include in its application under this subsection. The manufacturer shall specify in the application the models, lines, and types of vehicles affected. The Secretary may consolidate similar applications from different manufacturers.

(4) An exemption or renewal of an exemption is conditioned on the commitment of the manufacturer to recall the exempted vehicles for installation of the omitted inflatable restraints within a reasonable time that the manufacturer proposes and the Secretary of Transportation approves after the components become available in sufficient quantities to satisfy both anticipated production and recall volume requirements.

(5) The Secretary of Transportation shall publish in the Federal Register a notice of each application under this subsection and each decision to grant or deny a temporary exemption and the reasons for the decision.

(6) The Secretary of Transportation shall require a label to be fixed to each exempted vehicle that can be removed only after recall and installation of the required inflatable restraint. The Secretary shall require that written notice of an exemption be provided to the dealer and the first purchaser of each exempted vehicle other than for resale, with the notice being provided in a way, and containing the information, the Secretary considers appropriate.

(f) APPLICATION.—(1) This section revises, but does not replace, Standard 208 as in effect on December 18, 1991. This section may not be construed as—

(A) affecting another provision of law carried out by the Secretary of Transportation applicable to passenger cars, buses, multipurpose passenger vehicles, or trucks; or

(B) establishing a precedent related to developing or prescribing a Government motor vehicle safety standard.

(2) This section and amendments to Standard 208 made under this section may not be construed as indicating an intention by Congress to affect any liability of a motor vehicle manufacturer under applicable law related to vehicles with or without inflatable restraints.

(g) REPORT.—(1) On October 1, 1992, and every 6 months after that date through October 1, 2000, the Secretary of Transportation shall submit reports on the effectiveness of occupant restraint systems as a percentage reduction in fatalities or injuries of restrained occupants compared to unrestrained occupants for—

(A) a combination of inflated restraints and lap and shoulder belts;

(B) inflated restraints only; and

(C) lap and shoulder belts only.

(2) In consultation with the Secretaries of Labor and Defense, the Secretary of Transportation also shall provide information and analysis on lap and shoulder belt use, nationally and in each State by—

(A) military personnel;

(B) Government, State, and local law enforcement officers;

(C) other Government and State employees; and

(D) the public.

(h) AIRBAGS FOR GOVERNMENT CARS.—In cooperation with the Administrator of General Services and the heads of appropriate department, agencies, and instrumentalities of the Government, the Secretary of Transportation shall establish a program, consistent with applicable procurement laws of the Government and appropriations, requiring that all passenger cars acquired—

(1) after September 30, 1994, for use by the Government be equipped, to the maximum extent practicable, with driver-side inflatable restraints; and

(2) after September 30, 1996, for use by the Government be equipped, to the maximum extent practicable, with inflatable restraints for both front outboard seating positions.

SUBCHAPTER III—IMPORTING NON-COMPLYING MOTOR VEHICLES AND EQUIPMENT

§30141. Importing motor vehicles capable of complying with standards

(a) GENERAL.—Section 30112(a) of this title does not apply to a motor vehicle if—

(1) on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under subsection (c) of this section, the Secretary decides—

(A) the vehicle is—

(i) substantially similar to a motor vehicle originally manufactured for import into and sale in the United States;

(ii) certified under section 30115 of this title;

(iii) the same model year (as defined under regulations of the Secretary of Transportation) as the model of the motor vehicle it is being compared to; and

(iv) capable of being readily altered to comply with applicable motor vehicle safety standards prescribed under this chapter; or

(B) if there is no substantially similar United States motor vehicle, the safety features of the vehicle comply with or are capable of being altered to comply with those standards based on destructive test information or other evidence the Secretary of Transportation decides is adequate;

(2) the vehicle is imported by a registered importer; and

(3) the registered importer pays the annual fee the Secretary of Transportation establishes

under subsection (e) of this section to pay for the costs of carrying out the registration program for importers under subsection (c) of this section and any other fees the Secretary of Transportation establishes to pay for the costs of—

(A) processing bonds provided to the Secretary of the Treasury under subsection (d) of this section; and

(B) making the decisions under this subchapter.

(b) PROCEDURES ON DECIDING ON MOTOR VEHICLE CAPABILITY.—(1) The Secretary of Transportation shall establish by regulation procedures for making a decision under subsection (a)(1) of this section and the information a petitioner must provide to show clearly that the motor vehicle is capable of being brought into compliance with applicable motor vehicle safety standards prescribed under this chapter. In establishing the procedures, the Secretary shall provide for a minimum period of public notice and written comment consistent with ensuring expeditious, but complete, consideration and avoiding delay by any person. In making a decision under those procedures, the Secretary shall consider test information and other information available to the Secretary, including any information provided by the manufacturer. If the Secretary makes a negative decision, the Secretary may not make another decision for the same model until at least 3 calendar months have elapsed after the negative decision.

(2) The Secretary of Transportation shall publish each year in the Federal Register a list of all decisions made under subsection (a)(1) of this section. Each published decision applies to the model of the motor vehicle for which the decision was made. A positive decision permits another importer registered under subsection (c) of this section to import a vehicle of the same model under this section if the importer complies with all the terms of the decision.

(c) REGISTRATION.—(1) The Secretary of Transportation shall establish procedures for registering a person who complies with requirements prescribed by the Secretary by regulation, including—

(A) recordkeeping requirements;

(B) inspection of records and facilities related to motor vehicles the person has imported, altered, or both; and

(C) requirements that ensure that the importer (or a successor in interest) will be able technically and financially to carry out responsibilities under sections 30117(b), 30118–30121, and 30166(f) of this title.

(2) The Secretary of Transportation shall deny registration to a person whose registration is revoked under paragraph (4) of this subsection.

(3) The Secretary of Transportation may deny registration to a person that is or was owned or controlled by, or under common ownership or control with, a person whose registration was revoked under paragraph (4) of this subsection.

(4) The Secretary of Transportation shall establish procedures for—

(A) revoking or suspending a registration issued under paragraph (1) of this subsection for not complying with a requirement of this subchapter or section 30112, 30115, 30117–30122, 30125(c), 30127, or 30166 of this title or regulations prescribed under this subchapter or those sections;

(B) automatically suspending a registration for not paying a fee under subsection (a)(3) of this section in a timely manner or for knowingly filing a false or misleading certification under section 30146 of this title; and

(C) reinstating suspended registrations.

(d) BONDS.—(1) A person importing a motor vehicle under this section shall provide a bond to the Secretary of the Treasury (acting for the Secretary of Transportation) and comply with the terms the Secretary of Transportation decides are appropriate to ensure that the vehicle—

(A) will comply with applicable motor vehicle safety standards prescribed under this chapter within a reasonable time (specified by the Secretary of Transportation) after the vehicle is imported; or

(B) will be exported (at no cost to the United States Government) by the Secretary of the Treasury or abandoned to the Government.

(2) The amount of the bond provided under this subsection shall be at least equal to the dutiable value of the motor vehicle (as determined by the Secretary of the Treasury) but not more than 150 percent of that value.

(e) FEE REVIEW, ADJUSTMENT, AND USE.—The Secretary of Transportation shall review and make appropriate adjustments at least every 2 years in the amounts of the fees required to be paid under subsection (a)(3) of this section. The Secretary of Transportation shall establish the fees for each fiscal year before the beginning of that year. All fees collected remain available until expended without fiscal year limit to the extent provided in advance by appropriation laws. The amounts are only for use by the Secretary of Transportation—

(1) in carrying out this section and sections 30146(a)–(c)(1), (d), and (e) and 30147(b) of this title; and

(2) in advancing to the Secretary of the Treasury amounts for costs incurred under this section and section 30146 of this title to reimburse the Secretary of the Treasury for those costs.

§30142. Importing motor vehicles for personal use

(a) GENERAL.—Section 30112(a) of this title does not apply to an imported motor vehicle if—

(1) the vehicle is imported for personal use, and not for resale, by an individual (except an individual described in sections 30143 and 30144 of this title);

(2) the vehicle is imported after the effective date that regulations are first prescribed under section 2(e)(1)(B) of the Imported Vehicle Safety Compliance Act of 1988; and

(3) the individual takes the actions required under subsection (b) of this section to receive an exemption.

(b) EXEMPTIONS.—(1) To receive an exemption under subsection (a) of this section, an individual must—

(A) provide the Secretary of the Treasury (acting for the Secretary of Transportation) with—

(i) an appropriate bond in an amount determined under section 30141(d) of this title;

(ii) a copy of an agreement with an importer registered under section 30141(c) of this title for bringing the motor vehicle into compliance with applicable motor vehicle safety standards prescribed under this chapter; and

(iii) a certification that the vehicle meets the requirement of section 30141(a)(1)(A) or (B) of this title; and

(B) comply with appropriate terms the Secretary of Transportation imposes to ensure that the vehicle—

(i) will be brought into compliance with those standards within a reasonable time (specified by the Secretary of Transportation) after the vehicle is imported; or

(ii) will be exported (at no cost to the United States Government) by the Secretary of the Treasury or abandoned to the Government.

(2) For good cause shown, the Secretary of Transportation may allow an individual additional time, but not more than 30 days after the day on which the motor vehicle is offered for import, to comply with paragraph (1)(A)(ii) of this subsection.

§30143. Motor vehicles imported by individuals employed outside the United States

(a) DEFINITION.—In this section, "assigned place of employment" means—

(1) the principal location at which an individual is permanently or indefinitely assigned to work; and

(2) for a member of the uniformed services, the individual's permanent duty station.

(b) GENERAL.—Section 30112(a) of this title does not apply to a motor vehicle imported for personal use, and not for resale, by an individual—

(1) whose assigned place of employment was outside the United States as of October 31, 1988, and who has not had an assigned place of employment in the United States from that date through the date the vehicle is imported into the United States;

(2) who previously had not imported a motor vehicle into the United States under this section or section 108(g)(2) of the National Traffic and Motor Vehicle Safety Act of 1966 or, before October 31, 1988, under section 108(b)(3) of the Act;

(3) who acquired, or made a binding contract to acquire, the vehicle before October 31, 1988;

(4) who imports the vehicle into the United States not later than October 31, 1992; and

(5) who satisfies section 108(b)(3) of the Act as in effect on October 30, 1988.

(c) CERTIFICATION.—Subsection (b) of this section is carried out by certification in the form the Secretary of Transportation or the Secretary of the Treasury may prescribe.

§30144. Importing motor vehicles on a temporary basis

(a) GENERAL.—Section 30112(a) of this title does not apply to a motor vehicle imported on a temporary basis for personal use by an individual who is a member of—

(1)(A) the personnel of the government of a foreign country on assignment in the United States or a member of the Secretariat of a public international organization designated under the International Organization Immunities Act (22 U.S.C. 288 et seq.); and

(B) the class of individuals for whom the Secretary of State has authorized free importation of motor vehicles; or

(2) the armed forces of a foreign country on assignment in the United States.

(b) VERIFICATION.—The Secretary of Transportation or the Secretary of the Treasury may require verification, that the Secretary of Transportation considers appropriate, that an individual is a member described under subsection (a) of this section. The Secretary of Transportation shall ensure that a motor vehicle imported under this section will be exported (at no cost to the United States Government) or abandoned to the Government when the individual no longer—

(1) resides in the United States; and

(2) is a member described under subsection (a) of this section.

(c) SALE IN THE UNITED STATES.—A motor vehicle imported under this section may not be sold when in the United States.

§30145. Importing motor vehicles or equipment requiring further manufacturing

Section 30112(a) of this title does not apply to a motor vehicle or motor vehicle equipment if the vehicle or equipment—

(1) requires further manufacturing to perform its intended function as decided under regulations prescribed by the Secretary of Transportation; and

(2) is accompanied at the time of importation by a written statement issued by the manufacturer indicating the applicable motor vehicle safety standard prescribed under this chapter with which it does not comply.

§30146. Release of motor vehicles and bonds

(a) COMPLIANCE CERTIFICATION AND BOND.—(1) Except as provided in subsections (c) and (d)

of this section, an importer registered under section 30141(c) of this title may license or register an imported motor vehicle for use on public streets, roads, or highways, or release custody of a motor vehicle imported by the registered importer or imported by an individual under section 30142 of this title and altered by the registered importer to meet applicable motor vehicle safety standards prescribed under this chapter to a person for license or registration for use on public streets, roads, or highways, only after 30 days after the registered importer certifies to the Secretary of Transportation, in the way the Secretary prescribes, that the motor vehicle complies with each standard prescribed in the year the vehicle was manufactured. A vehicle may not be released if the Secretary gives written notice before the end of the 30-day period that the Secretary will inspect the vehicle under subsection (c) of this section.

(2) The Secretaries of Transportation and the Treasury shall prescribe regulations—

(A) ensuring the release of a motor vehicle and bond required under section 30141(d) of this title at the end of the 30-day period, unless the Secretary of Transportation issues a notice of an inspection under subsection (c) of this section; and

(B) providing that the Secretary of Transportation shall release the vehicle and bond promptly after an inspection under subsection (c) of this section showing compliance with the standards applicable to the vehicle.

(3) Each registered importer shall include on each motor vehicle released under this subsection a label prescribed by the Secretary of Transportation identifying the importer and stating that the vehicle has been altered by the importer to comply with the standards applicable to the vehicle.

(b) RELIANCE ON MANUFACTURER'S CERTIFICATION.—In making a certification under subsection (a)(1) of this section, the registered importer may rely on the manufacturer's certification for the model to which the motor vehicle involved is substantially similar if the importer certifies that any alteration made by the importer did not affect the compliance of the safety features of the vehicle and the importer keeps records verifying the certification for the period the Secretary of Transportation prescribes.

(c) EVIDENCE OF COMPLIANCE.—(1) The Secretary of Transportation may require that the certification under subsection (a)(1) of this section be accompanied by evidence of compliance the Secretary considers appropriate or may inspect the certified motor vehicle, or both. If the Secretary gives notice of an inspection, an importer may release the vehicle only after an inspection showing the motor vehicle complies with applicable vehicle safety standards prescribed under this chapter for which the inspection was made and release of the vehicle by the Secretary.

(2) The Secretary of Transportation shall inspect periodically a representative number of motor vehicles for which certifications have been filed under subsection (a)(1) of this section. In carrying out a motor vehicle testing program under this chapter, the Secretary shall include a representative number of motor vehicles for which certifications have been filed under subsection (a)(1).

(d) CHALLENGING THE CERTIFICATION.—A motor vehicle or bond may not be released under subsection (a) of this section if the Secretary of Transportation, not later than 30 days after receiving a certification under subsection (a)(1) of this section, gives written notice that the Secretary believes or has reason to believe that the certification is false or contains a mispresentation. The vehicle and bond may be released only after the Secretary is satisfied with the certification and any modification of the certification.

(e) BOND RELEASE.—A release of a bond required under section 30141(d) of this title is deemed an acceptance of a certification or completion of an inspection under this section but is not a decision by the Secretary of Transportation under section 30118(a) or (b) of this title of compliance with applicable motor vehicle safety standards prescribed under this chapter.

§30147. Responsibility for defects and noncompliance

(a) DEEMING DEFECT OR NONCOMPLIANCE TO CERTAIN VEHICLES AND IMPORTER AS MANUFACTURER.—(1) In carrying out sections 30117(b), 30118–30121, and 30166(f) of this title—

(A) for a defect or noncompliance with an applicable motor vehicle safety standard prescribed under this chapter for a motor vehicle originally manufactured for import into the United States, an imported motor vehicle having a valid certification under section 30146(a)(1) of this title and decided to be substantially similar to that motor vehicle shall be deemed as having the same defect or as not complying with the same standard unless the manufacturer or importer registered under section 30141(c) of this title demonstrates otherwise to the Secretary of Transportation; and

(B) the registered importer shall be deemed to be the manufacturer of any motor vehicle that the importer imports or brings into compliance with the standards for an individual under section 30142 of this title.

(2) The Secretary shall publish in the Federal Register notice of any defect or noncompliance under paragraph (1)(A) of this subsection.

(b) FINANCIAL RESPONSIBILITY REQUIREMENT.—The Secretary shall require by regulation each registered importer (including any successor in interest) to provide and maintain evidence, satisfactory to the Secretary, of sufficient financial responsibility to meet its obligations under sections 30117(b), 30118–30121, and 30166(f) of this title.

SUBCHAPTER IV—ENFORCEMENT AND ADMINISTRATIVE

§30161. Judicial review of standards

(a) FILING AND VENUE.—A person adversely affected by an order prescribing a motor vehicle safety standard under this chapter may apply for review of the order by filing a petition for review in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 59 days after the order is issued.

(b) NOTIFYING SECRETARY.—The clerk of the court shall send immediately a copy of the petition to the Secretary of Transportation. The Secretary shall file with the court a record of the proceeding in which the order was prescribed.

(c) ADDITIONAL PROCEEDINGS.—(1) On request of the petitioner, the court may order the Secretary to receive additional evidence and evidence in rebuttal if the court is satisfied that the additional evidence is material and there were reasonable grounds for not presenting the evidence in the proceeding before the Secretary.

(2) The Secretary may modify findings of fact or make new findings because of the additional evidence presented. The Secretary shall file a modified or new finding, a recommendation to modify or set aside the order, and the additional evidence with the court.

(d) CERTIFIED COPIES OF RECORDS OF PROCEEDINGS.—The Secretary shall give any interested person a certified copy of the transcript of the record in a proceeding under this section on request and payment of costs. A certified copy of the record of the proceeding is admissible in a proceeding arising out of a matter under this chapter, regardless of whether the proceeding under this section has begun or becomes final.

(e) FINALITY OF JUDGMENT AND SUPREME COURT REVIEW.—A judgment of a court under this section is final and may be reviewed only by the Supreme Court under section 1254 of title 28.

§30162. Petitions by interested persons for standards and enforcement

(a) FILING.—Any interested person may file a petition with the Secretary of Transportation requesting the Secretary to begin a proceeding—

(1) to prescribe a motor vehicle safety standard under this chapter; or

(2) to decide whether to issue an order under section 30118(b) of this title.

(b) STATEMENT OF FACTS.—The petition must state facts that the person claims establish that a motor vehicle safety standard or order referred to in subsection (a) of this section is necessary and briefly describe the order the Secretary should issue.

(c) PROCEEDINGS.—The Secretary may hold a public hearing or conduct an investigation or proceeding to decide whether to grant the petition.

(d) ACTIONS OF SECRETARY.—The Secretary shall grant or deny a petition not later than 120 days after the petition is filed. If a petition is granted, the Secretary shall begin the proceeding promptly. If a petition is denied, the Secretary shall publish the reasons for the denial in the Federal Register.

§30163. Actions by the Attorney General

(a) CIVIL ACTIONS TO ENFORCE.—The Attorney General may bring a civil action to enjoin—

(1) a violation of this chapter or a regulation prescribed or order issued under this chapter; and

(2) the sale, offer for sale, or introduction or delivery for introduction, in interstate commerce, or the importation into the United States, of a motor vehicle or motor vehicle equipment for which it is decided, before the first purchase in good faith other than for resale, that the vehicle or equipment—

(A) contains a defect related to motor vehicle safety about which notice was given under section 30118(c) of this title or an order was issued under section 30118(b) of this title; or

(B) does not comply with an applicable motor vehicle safety standard prescribed under this chapter.

(b) PRIOR NOTICE.—When practicable, the Secretary of Transportation shall notify a person against whom a civil action under subsection (a) of this section is planned, give the person an opportunity to present that person's views, and, except for a knowing and willful violation of this chapter, give the person a reasonable opportunity to remedy the defect or comply with the applicable motor vehicle safety standard prescribed under this chapter. Failure to give notice and an opportunity to remedy the defect or comply with the applicable motor vehicle safety standard prescribed under this chapter does not prevent a court from granting appropriate relief.

(c) VENUE.—Except as provided in section 30121(d) of this title, a civil action under this section or section 30165(a) of this title may be brought in the United States district court for the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found.

(d) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating an injunction or restraining order issued under subsection (a) of this section, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(e) SUBPENAS FOR WITNESSES.—In a civil action brought under this section, a subpena for a witness may be served in any judicial district.

§30164. Service of process

(a) Designating Agents.—A manufacturer offering a motor vehicle or motor vehicle equipment for import shall designate an agent on whom service of notices and process in administrative and judicial proceedings may be made. The designation shall be in writing and filed with the Secretary of Transportation. The designation may be changed in the same way as originally made.

(b) Service.—An agent may be served at the agent's office or usual place of residence. Service on the agent is deemed to be service on the manufacturer. If a manufacturer does not designate an agent, service may be made by posting the notice or process in the office of the Secretary.

§30165. Civil penalty

(a) Penalty.—A person that violates section 30112, 30115, 30117–30122, 30123(d), 30125(c), 30127, 30141–30147, or 30166 of this title or a regulation prescribed under those sections is liable to the United States Government for a civil penalty of not more than $1,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by those sections. The maximum penalty under this subsection for a related series of violations is $800,000.

(b) Compromise and Setoff.—(1) The Secretary of Transportation may compromise the amount of a civil penalty imposed under this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(c) Considerations.—In determining the amount of a civil penalty or compromise, the appropriateness of the penalty or compromise to the size of the business of the person charged and the gravity of the violation shall be considered.

(d) Subpenas for Witnesses.—In a civil action brought under this section, a subpena for a witness may be served in any judicial district.

§30166. Inspections, investigations, and records

(a) Definition.—In this section, "motor vehicle accident" means an occurrence associated with the maintenance or operation of a motor vehicle or motor vehicle equipment resulting in personal injury, death, or property damage.

(b) Authority To Inspect and Investigate.—(1) The Secretary of Transportation may conduct an inspection or investigation—

(A) that may be necessary to enforce this chapter or a regulation prescribed or order issued under this chapter; or

(B) related to a motor vehicle accident and designed to carry out this chapter.

(2) The Secretary of Transportation shall cooperate with State and local officials to the greatest extent possible in an inspection or investigation under paragraph (1)(B) of this subsection.

(c) Matters That Can Be Inspected and Impoundment.—In carrying out this chapter, an officer or employee designated by the Secretary of Transportation—

(1) at reasonable times, may inspect and copy any record related to this chapter;

(2) on request, may inspect records of a manufacturer, distributor, or dealer to decide whether the manufacturer, distributor, or dealer has complied or is complying with this chapter or a regulation prescribed or order issued under this chapter; and

(3) at reasonable times, in a reasonable way, and on display of proper credentials and written notice to an owner, operator, or agent in charge, may—

(A) enter and inspect with reasonable promptness premises in which a motor vehicle or motor vehicle equipment is manufactured, held for introduction in interstate commerce, or held for sale after introduction in interstate commerce;

(B) enter and inspect with reasonable promptness premises at which a vehicle or equipment involved in a motor vehicle accident is located;

(C) inspect with reasonable promptness that vehicle or equipment; and

(D) impound for not more than 72 hours a vehicle or equipment involved in a motor vehicle accident.

(d) Reasonable Compensation.—When a motor vehicle (except a vehicle subject to subchapter II of chapter 105 of this title) or motor vehicle equipment is inspected or temporarily impounded under subsection (c)(3) of this section, the Secretary of Transportation shall pay reasonable compensation to the owner of the vehicle if the inspection or impoundment results in denial of use, or reduction in value, of the vehicle.

(e) Records and Making Reports.—The Secretary of Transportation reasonably may require a manufacturer of a motor vehicle or motor vehicle equipment to keep records, and a manufacturer, distributor, or dealer to make reports, to enable the Secretary to decide whether the manufacturer, distributor, or dealer has complied or is complying with this chapter or a regulation prescribed or order issued under this chapter. This subsection does not impose a recordkeeping requirement on a distributor or dealer in addition to those imposed under subsection (f) of this section and section 30117(b) of this title or a regulation prescribed or order issued under subsection (f) or section 30117(b).

(f) Providing Copies of Communications About Defects and Noncompliance.—A manufacturer shall give the Secretary of Transportation a true or representative copy of each communication to the manufacturer's dealers or to owners or purchasers of a motor vehicle or replacement equipment produced by the manufacturer about a defect or noncompliance with a motor vehicle safety standard prescribed under this chapter in a vehicle or equipment that is sold or serviced.

(g) Administrative Authority on Reports, Answers, and Hearings.—(1) In carrying out this chapter, the Secretary of Transportation may—

(A) require, by general or special order, any person to file reports or answers to specific questions, including reports or answers under oath; and

(B) conduct hearings, administer oaths, take testimony, and require (by subpena or otherwise) the appearance and testimony of witnesses and the production of records the Secretary considers advisable.

(2) A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(h) Civil Actions To Enforce and Venue.—A civil action to enforce a subpena or order under subsection (g) of this section may be brought in the United States district court for the judicial district in which the proceeding is conducted. The court may punish a failure to obey an order of the court to comply with a subpena or order as a contempt of court.

(i) Governmental Cooperation.—The Secretary of Transportation may request a department, agency, or instrumentality of the United States Government to provide records the Secretary considers necessary to carry out this chapter. The head of the department, agency, or instrumentality shall provide the record on request, may detail personnel on a reimbursable basis, and otherwise shall cooperate with the Secretary. This subsection does not affect a law limiting the authority of a department, agency, or instrumentality to provide information to another department, agency, or instrumentality.

(j) Cooperation of Secretary.—The Secretary of Transportation may advise, assist, and cooperate with departments, agencies, and instrumentalities of the Government, States, and other public and private agencies in developing a method for inspecting and testing to determine compliance with a motor vehicle safety standard.

(k) Providing Information.—The Secretary of Transportation shall provide the Attorney General and, when appropriate, the Secretary of the Treasury, information obtained that indicates a violation of this chapter or a regulation prescribed or order issued under this chapter.

§30167. Disclosure of information by the Secretary of Transportation

(a) Confidentiality of Information.—Information obtained under this chapter related to a confidential matter referred to in section 1905 of title 18 may be disclosed only in the following ways:

(1) to other officers and employees carrying out this chapter.

(2) when relevant to a proceeding under this chapter.

(3) to the public if the confidentiality of the information is preserved.

(4) to the public when the Secretary of Transportation decides that disclosure is necessary to carry out section 30101 of this title.

(b) Defect and Noncompliance Information.—Subject to subsection (a) of this section, the Secretary shall disclose information obtained under this chapter related to a defect or noncompliance that the Secretary decides will assist in carrying out sections 30117(b) and 30118–30121 of this title or that is required to be disclosed under section 30118(a) of this title. A requirement to disclose information under this subsection is in addition to the requirements of section 552 of title 5.

(c) Information About Manufacturer's Increased Costs.—A manufacturer opposing an action of the Secretary under this chapter because of increased cost shall submit to the Secretary information about the increased cost, including the manufacturer's cost and the cost to retail purchasers, that allows the public and the Secretary to evaluate the manufacturer's statement. The Secretary shall evaluate the information promptly and, subject to subsection (a) of this section, shall make the information and evaluation available to the public. The Secretary shall publish a notice in the Federal Register that the information is available.

(d) Withholding Information From Congress.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

§30168. Research, testing, development, and training

(a) General Authority.—(1) The Secretary of Transportation shall conduct research, testing, development, and training necessary to carry out this chapter. The research, development, testing, and training shall include—

(A) collecting information to determine the relationship between motor vehicle or motor vehicle equipment performance characteristics and—

(i) accidents involving motor vehicles; and

(ii) the occurrence of death or personal injury resulting from those accidents;

(B) obtaining experimental and other motor vehicles and motor vehicle equipment for research or testing; and

(C) disposing of test motor vehicles and motor vehicle equipment and crediting the proceeds to current appropriations available to carry out this chapter.

(2) The Secretary may carry out this subsection through grants to States, interstate authorities, and nonprofit institutions.

(b) USE OF PUBLIC AGENCIES.—In carrying out this chapter, the Secretary shall use the services, research, and testing facilities of public agencies to the maximum extent practicable to avoid duplication.

(c) FACILITIES.—The Secretary may plan, design, and build a new facility or modify an existing facility to conduct research, development, and testing in traffic safety, highway safety, and motor vehicle safety. An expenditure of more than $100,000 for planning, design, or construction may be made only if the planning, design, or construction is approved by substantially similar resolutions by the Committees on Energy and Commerce and Public Works and Transportation of the House of Representatives and the Committees on Commerce, Science, and Transportation and Environment and Public Works of the Senate. To obtain that approval, the Secretary shall submit to Congress a prospectus on the proposed facility. The prospectus shall include—

(1) a brief description of the facility being planned, designed, or built;

(2) the location of the facility;

(3) an estimate of the maximum cost of the facility;

(4) a statement identifying private and public agencies that will use the facility and the contribution each agency will make to the cost of the facility; and

(5) a justification of the need for the facility.

(d) INCREASING COSTS OF APPROVED FACILITIES.—The estimated maximum cost of a facility approved under subsection (c) of this section may be increased by an amount equal to the percentage increase in construction costs from the date the prospectus is submitted to Congress. However, the increase in the cost of the facility may not be more than 10 percent of the estimated maximum cost included in the prospectus. The Secretary shall decide what increase in construction costs has occurred.

(e) AVAILABILITY OF INFORMATION, PATENTS, AND DEVELOPMENTS.—When the United States Government makes more than a minimal contribution to a research or development activity under this chapter, the Secretary shall include in the arrangement for the activity a provision to ensure that all information, patents, and developments related to the activity are available to the public. However, the owner of a background patent may not be deprived of a right under the patent.

§30169. Annual reports

(a) GENERAL REPORT.—The Secretary of Transportation shall submit to the President to submit to Congress on July 1 of each year a report on the administration of this chapter for the prior calendar year. The report shall include—

(1) a thorough statistical compilation of accidents and injuries;

(2) motor vehicle safety standards in effect or prescribed under this chapter;

(3) the degree of observance of the standards;

(4) a summary of current research grants and contracts and a description of the problems to be considered under those grants and contracts;

(5) an analysis and evaluation of research activities completed and technological progress achieved;

(6) enforcement actions;

(7) the extent to which technical information was given the scientific community and consumer-oriented information was made available to the public; and

(8) recommendations for legislation needed to promote cooperation among the States in improving traffic safety and strengthening the national traffic safety program.

(b) REPORT ON IMPORTING MOTOR VEHICLES.—Not later than 18 months after regulations are first prescribed under section 2(e)(1)(B) of the Imported Vehicle Safety Compliance Act of 1988, the Secretary shall submit to Congress a report of the actions taken to carry out subchapter III of this chapter and the effectiveness of those actions, including any testing by the Secretary under section 30146(c)(2) of this title. After the first report, the Secretary shall submit a report to Congress under this subsection not later than July 31 of each year.

CHAPTER 303—NATIONAL DRIVER REGISTER

Sec.
30301. Definitions.
30302. National Driver Register.
30303. State participation.
30304. Reports by chief driver licensing officials.
30305. Access to Register information.
30306. National Driver Register Advisory Committee.
30307. Criminal penalties.
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§30301. Definitions

In this chapter—

(1) "alcohol" has the same meaning given that term in regulations prescribed by the Secretary of Transportation.

(2) "chief driver licensing official" means the official in a State who is authorized to—

(A) maintain a record about a motor vehicle operator's license issued by the State; and

(B) issue, deny, revoke, suspend, or cancel a motor vehicle operator's license issued by the State.

(3) "controlled substance" has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(4) "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on public streets, roads, or highways, but does not include a vehicle operated only on a rail line.

(5) "motor vehicle operator's license" means a license issued by a State authorizing an individual to operate a motor vehicle on public streets, roads, or highways.

(6) "participating State" means a State that has notified the Secretary under section 30303 of this title of its participation in the National Driver Register.

(7) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(8) "State of record" means a State that has given the Secretary a report under section 30304 of this title about an individual who is the subject of a request for information made under section 30305 of this title.

§30302. National Driver Register

(a) ESTABLISHMENT AND CONTENTS.—The Secretary of Transportation shall establish as soon as practicable and maintain a National Driver Register to assist chief driver licensing officials of participating States in exchanging information about the motor vehicle driving records of individuals. The Register shall contain an index of the information reported to the Secretary under section 30304 of this title. The Register shall enable the Secretary (electronically or, until all States can participate electronically, by United States mail)—

(1) to receive information submitted under section 30304 of this title by the chief driver licensing official of a State of record;

(2) to receive a request for information made by the chief driver licensing official of a participating State under section 30305 of this title;

(3) to refer the request to the chief driver licensing official of a State of record; and

(4) in response to the request, to relay information provided by a chief driver licensing official of a State of record to the chief driver licensing official of a participating State, without interception of the information.

(b) ACCURACY OF INFORMATION.—The Secretary is not responsible for the accuracy of information relayed to the chief driver licensing official of a participating State. However, the Secretary shall maintain the Register in a way that ensures against inadvertent alteration of information during a relay.

(c) TRANSITION FROM PRIOR REGISTER.—(1) The Secretary shall provide by regulation for the orderly transition from the register maintained under the Act of July 14, 1960, as restated by section 401 of the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89-563, 80 Stat. 730), to the Register maintained under this chapter.

(2)(A) The Secretary shall delete from the Register a report or information that was compiled under the Act of July 14, 1960, as restated by section 401 of the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89-563, 80 Stat. 730), and transferred to the Register, after the earlier of—

(i) the date the State of record removes it from the State's file;

(ii) 7 years after the date the report or information is entered in the Register; or

(iii) the date a fully electronic Register system is established.

(B) The report or information shall be disposed of under chapter 33 of title 44.

(3) If the chief driver licensing official of a participating State finds that information provided for inclusion in the Register is erroneous or is related to a conviction of a traffic offense that subsequently is reversed, the official immediately shall notify the Secretary. The Secretary shall provide for the immediate deletion of the information from the Register.

(d) ASSIGNMENT OF PERSONNEL.—In carrying out this chapter, the Secretary shall assign personnel necessary to ensure the effective operation of the Register.

§30303. State participation

(a) NOTIFICATION.—A State may become a participating State under this chapter by notifying the Secretary of Transportation of its intention to be bound by section 30304 of this title.

(b) WITHDRAWAL.—A participating State may end its status as a participating State by notifying the Secretary of its withdrawal from participation in the National Driver Register.

(c) FORM AND WAY OF NOTIFICATION.—Notification by a State under this section shall be made in the form and way the Secretary prescribes by regulation.

§30304. Reports by chief driver licensing officials

(a) INDIVIDUALS COVERED.—As soon as practicable, the chief driver licensing official of each participating State shall submit to the Secretary of Transportation a report containing the information specified by subsection (b) of this section for each individual—

(1) who is denied a motor vehicle operator's license by that State for cause;

(2) whose motor vehicle operator's license is revoked, suspended, or canceled by that State for cause; or

(3) who is convicted under the laws of that State of any of the following motor vehicle-related offenses or comparable offenses:

(A) operating a motor vehicle when under the influence of, or impaired by, alcohol or a controlled substance.

(B) a traffic violation arising in connection with a fatal traffic accident, reckless driving, or racing on the highways.

(C) failing to give aid or provide identification when involved in an accident resulting in death or personal injury.

(D) perjury or knowingly making a false affidavit or statement to officials about activities governed by a law or regulation on the operation of a motor vehicle.

(b) Contents.—(1) Except as provided in paragraph (2) of this subsection, a report under subsection (a) of this section shall contain—

(A) the individual's legal name, date of birth, sex, and, at the Secretary's discretion, height, weight, and eye and hair color;

(B) the name of the State providing the information; and

(C) the social security account number if used by the State for driver record or motor vehicle license purposes, and the motor vehicle operator's license number if different from the social security account number.

(2) A report under subsection (a) of this section about an event that occurs during the 2-year period before the State becomes a participating State is sufficient if the report contains all of the information that is available to the chief driver licensing official when the State becomes a participating State.

(c) Time for Filing.—If a report under subsection (a) of this section is about an event that occurs—

(1) during the 2-year period before the State becomes a participating State, the report shall be submitted not later than 6 months after the State becomes a participating State; or

(2) after the State becomes a participating State, the report shall be submitted not later than 31 days after the motor vehicle department of the State receives any information specified in subsection (b)(1) of this section that is the subject of the report.

(d) Events Occurring Before Participation.—This section does not require a State to report information about an event that occurs before the 2-year period before the State becomes a participating State.

§30305. Access to Register information

(a) Referrals of Information Requests.—(1) To carry out duties related to driver licensing, driver improvement, or transportation safety, the chief driver licensing official of a participating State may request the Secretary of Transportation to refer, electronically or by United States mail, a request for information about the motor vehicle driving record of an individual to the chief driver licensing official of a State of record.

(2) The Secretary of Transportation shall relay, electronically or by United States mail, information received from the chief driver licensing official of a State of record in response to a request under paragraph (1) of this subsection to the chief driver licensing official of the participating State requesting the information. However, the Secretary may refuse to relay information to the chief driver licensing official of a participating State that does not comply with section 30304 of this title.

(b) Requests To Obtain Information.—(1) The Chairman of the National Transportation Safety Board and the Administrator of the Federal Highway Administration may request the chief driver licensing official of a State to obtain information under subsection (a) of this section about an individual who is the subject of an accident investigation conducted by the Board or the Administrator. The Chairman and the Administrator may receive the information.

(2) An individual who is employed, or is seeking employment, as a driver of a motor vehicle may request the chief driver licensing official of the State in which the individual is employed or seeks employment to provide information under subsection (a) of this section to the individual's employer or prospective employer. An employer or prospective employer may receive the information and shall make the information available to the individual. Information may not be obtained from the National Driver Register under this paragraph if the information was entered in the Register more than 3 years before the request.

(3) An individual who has received, or is applying for, an airman's certificate may request the chief driver licensing official of a State to provide information under subsection (a) of this section about the individual to the Administrator of the Federal Aviation Administration. The Administrator may receive the information and shall make the information available to the individual for review and written comment. The Administrator may use the information to verify information required to be reported to the Administrator by an airman applying for an airman medical certificate and to evaluate whether the airman meets the minimum standards prescribed by the Administrator to be issued an airman medical certificate. The Administrator may not otherwise divulge or use the information. Information may not be obtained from the Register under this paragraph if the information was entered in the Register more than 3 years before the request, unless the information is about a revocation or suspension still in effect on the date of the request.

(4) An individual who is employed, or is seeking employment, by a rail carrier as an operator of a locomotive may request the chief driver licensing official of a State to provide information under subsection (a) of this section to the individual's employer or prospective employer or to the Secretary of Transportation. Information may not be obtained from the Register under this paragraph if the information was entered in the Register more than 3 years before the request, unless the information is about a revocation or suspension still in effect on the date of the request.

(5) An individual who holds, or is applying for, a license or certificate of registry under section 7101 of title 46, or a merchant mariner's document under section 7302 of title 46, may request the chief driver licensing official of a State to provide information under subsection (a) of this section about the individual to the Secretary of the department in which the Coast Guard is operating. The Secretary may receive the information and shall make the information available to the individual for review and written comment before denying, suspending, or revoking the license, certificate, or document of the individual based on the information and before using the information in an action taken under chapter 77 of title 46. The Secretary may not otherwise divulge or use the information, except for purposes of section 7101, 7302, or 7703 of title 46. Information may not be obtained from the Register under this paragraph if the information was entered in the Register more than 3 years before the request, unless the information is about a revocation or suspension still in effect on the date of the request.

(6) An individual may request the chief driver licensing official of a State to obtain information about the individual under subsection (a) of this section—

(A) to learn whether information about the individual is being provided;

(B) to verify the accuracy of the information; or

(C) to obtain a certified copy of the information.

(7) A request under this subsection shall be made in the form and way the Secretary of Transportation prescribes by regulation.

(c) Relationship to Other Laws.—A request for, or receipt of, information from the Register is subject to sections 552 and 552a of title 5, and other applicable laws of the United States or a State, except that—

(1) the Secretary of Transportation may not relay or otherwise provide information specified in section 30304(b)(1)(A) or (C) of this title to a person not authorized by this section to receive the information;

(2) a request for, or receipt of, information by a chief driver licensing official, or by a person authorized by subsection (b) of this section to request and receive the information, is deemed to be a routine use under section 552a(b) of title 5; and

(3) receipt of information by a person authorized by this section to receive the information is deemed to be a disclosure under section 552a(c) of title 5, except that the Secretary of Transportation is not required to retain the accounting made under section 552a(c)(1) for more than 7 years after the disclosure.

(d) Availability of Information Provided Under Prior Law.—Information provided by a State under the Act of July 14, 1960, as restated by section 401 of the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89-563, 80 Stat. 730), and under this chapter, shall be available under this section during the transition from the register maintained under that Act to the Register maintained under this chapter.

§30306. National Driver Register Advisory Committee

(a) Organization.—There is a National Driver Register Advisory Committee.

(b) Duties.—The Committee shall advise the Secretary of Transportation on—

(1) the efficiency of the maintenance and operation of the National Driver Register; and

(2) the effectiveness of the Register in assisting States in exchanging information about motor vehicle driving records.

(c) Composition and Appointment.—The Committee is composed of 15 members appointed by the Secretary as follows:

(1) 3 members appointed from among individuals who are specially qualified to serve on the Committee because of their education, training, or experience, and who are not officers or employees of the United States Government or a State.

(2) 3 members appointed from among groups outside the Government that represent the interests of bus and trucking organizations, enforcement officials, labor, or safety organizations.

(3) 9 members, geographically representative of the participating States, appointed from among individuals who are chief driver licensing officials of participating States.

(d) Terms.—(1) Except as provided in paragraph (2) of this subsection, the term of each member is 3 years.

(2) A vacancy on the Committee shall be filled in the same way as an original appointment. A member appointed to fill a vacancy serves for the remainder of the term of that member's predecessor. After a member's term ends, the member may continue to serve until the successor takes office.

(e) Compensation and Expenses.—Members of the Committee serve without compensation. However, the Secretary may reimburse a member for reasonable travel expenses incurred by the member in attending meetings of the Committee.

(f) Meetings, Chairman, Vice Chairman, and Quorum.—(1) The Committee shall meet at least once a year.

(2) The Committee shall elect a Chairman and a Vice Chairman from among its members.

(3) Eight members are a quorum.

(4) The Committee shall meet at the call of the Chairman or a majority of the members.

(g) Personnel and Services.—The Secretary may provide the Committee with personnel, penalty mail privileges, and similar services the Secretary considers necessary to assist the Committee in carrying out its duties and powers under this section.

(h) Reports.—At least once a year, the Committee shall submit to the Secretary a report on

the matters specified in subsection (b) of this section. The report shall include any recommendations of the Committee for changes in the Register.

(i) Relationship to Other Laws.—The Committee is exempt from sections 10(e) and (f) and 14 of the Federal Advisory Committee Act (5 App. U.S.C.).

§30307. Criminal penalties

(a) General Penalty.—A person (except an individual described in section 30305(b)(6) of this title) shall be fined under title 18, imprisoned for not more than one year, or both, if—

(1) the person receives under section 30305 of this title information specified in section 30304(b)(1)(A) or (C) of this title;

(2) disclosure of the information is not authorized by section 30305 of this title; and

(3) the person willfully discloses the information knowing that disclosure is not authorized.

(b) Information Penalty.—A person knowingly and willfully requesting, or under false pretenses obtaining, information specified in section 30304(b)(1)(A) or (C) of this title from a person receiving the information under section 30305 of this title shall be fined under title 18, imprisoned for not more than one year, or both.

§30308. Authorization of appropriations

(a) General.—(1) Not more than $4,000,000 may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 1992, to carry out this chapter.

(2) The Secretary shall make available from amounts made available to carry out section 402 of title 23 $4,000,000 for each of the fiscal years ending September 30, 1993, and September 30, 1994, to carry out this chapter.

(b) Availability of Amounts.—Amounts appropriated under this section remain available until expended.

PART B—COMMERCIAL

CHAPTER 311—COMMERCIAL MOTOR VEHICLE SAFETY

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SUBCHAPTER I—STATE GRANTS

§31101. Definitions

In this subchapter—

(1) "commercial motor vehicle" means (except in section 31106) a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo, if the vehicle—

(A) has a gross vehicle weight rating of at least 10,000 pounds;

(B) is designed to transport more than 10 passengers including the driver; or

(C) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title.

(2) "employee" means a driver of a commercial motor vehicle (including an independent contractor when personally operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who—

(A) directly affects commercial motor vehicle safety in the course of employment by a commercial motor carrier; and

(B) is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of employment.

(3) "employer"—

(A) means a person engaged in a business affecting commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate the vehicle in commerce; but

(B) does not include the Government, a State, or a political subdivision of a State.

(4) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

§31102. Grants to States

(a) General Authority.—Subject to this section and the availability of amounts, the Secretary of Transportation may make grants to States for the development or implementation of programs for the enforcement of regulations, standards, and orders of the United States Government on commercial motor vehicle safety and compatible State regulations, standards, and orders.

(b) State Plan Procedures and Contents.—(1) The Secretary shall prescribe procedures for a State to submit a plan under which the State agrees to adopt and assume responsibility for enforcing regulations, standards, and orders of the Government on commercial motor vehicle safety or compatible State regulations, standards, and orders. The Secretary shall approve the plan if the Secretary decides the plan is adequate to promote the objectives of this section and the plan—

(A) designates the State motor vehicle safety agency responsible for administering the plan throughout the State;

(B) contains satisfactory assurances the agency has or will have the legal authority, resources, and qualified personnel necessary to enforce the regulations, standards, and orders;

(C) contains satisfactory assurances the State will devote adequate amounts to the administration of the plan and enforcement of the regulations, standards, and orders;

(D) provides that the total expenditure of amounts of the State and its political subdivisions (not including amounts of the Government) for commercial motor vehicle safety programs for enforcement of commercial motor vehicle size and weight limitations, drug interdiction, and State traffic safety laws and regulations under subsection (c) of this section will be maintained at a level at least equal to the average level of that expenditure for its last 3 full fiscal years before December 18, 1991;

(E) provides a right of entry and inspection to carry out the plan;

(F) provides that all reports required under this section be submitted to the agency and that the agency will make the reports available to the Secretary on request;

(G) provides that the agency will adopt the reporting requirements and use the forms for recordkeeping, inspections, and investigations the Secretary prescribes;

(H) requires registrants of commercial motor vehicles to make a declaration of knowledge of applicable safety regulations, standards, and orders of the Government and the State;

(I) provides that the State will grant maximum reciprocity for inspections conducted under the North American Inspection Standard through the use of a nationally accepted system that allows ready identification of previously inspected commercial motor vehicles;

(J) ensures that activities described in subsection (c) of this section, if financed with grants under subsection (a) of this section, will not diminish the effectiveness of the development and implementation of commercial motor vehicle safety programs described in subsection (a);

(K) ensures that fines imposed and collected by the State for violations of commercial motor vehicle safety regulations will be reasonable and appropriate and that, to the maximum extent practicable, the State will attempt to implement the recommended fine schedule published by the Commercial Vehicle Safety Alliance;

(L) ensures that the State agency will coordinate the plan prepared under this section with the State highway safety plan under section 402 of title 23;

(M) ensures participation by the 48 contiguous States in SAFETYNET not later than January 1, 1994;

(N) provides satisfactory assurances that the State will undertake efforts that will emphasize and improve enforcement of State and local traffic safety laws and regulations related to commercial motor vehicle safety;

(O) provides satisfactory assurances that the State will promote activities—

(i) to remove impaired commercial motor vehicle drivers from the highways of the United States through adequate enforcement of regulations on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment;

(ii) to provide an appropriate level of training to State motor carrier safety assistance program officers and employees on recognizing drivers impaired by alcohol or controlled substances;

(iii) to promote enforcement of the requirements related to the licensing of commercial motor vehicle drivers, including checking the status of commercial drivers' licenses; and

(iv) to improve enforcement of hazardous material transportation regulations by encouraging more inspections of shipper facilities affecting highway transportation and more comprehensive inspection of the loads of commercial motor vehicles transporting hazardous material; and

(P) provides satisfactory assurances that the State will promote effective—

(i) interdiction activities affecting the transportation of controlled substances by commercial motor vehicle drivers and training on appropriate strategies for carrying out those interdiction activities; and

(ii) use of trained and qualified officers and employees of political subdivisions and local governments, under the supervision and direction of the State motor vehicle safety agency, in the enforcement of regulations affecting commercial motor vehicle safety and hazardous material transportation safety.

(2) If the Secretary disapproves a plan under this subsection, the Secretary shall give the State a written explanation and allow the State to modify and resubmit the plan for approval.

(3) In estimating the average level of State expenditure under paragraph (1)(D) of this subsection, the Secretary—

(A) may allow the State to exclude State expenditures for Government-sponsored demonstration or pilot programs; and

(B) shall require the State to exclude Government amounts and State matching amounts used to receive Government financing under subsection (a) of this section.

(c) USE OF GRANTS TO ENFORCE OTHER LAWS.—A State may use amounts received under a grant under subsection (a) of this section for the following activities if the activities are carried out in conjunction with an appropriate inspection of the commercial motor vehicle to enforce Government or State commercial motor vehicle safety regulations:

(1) enforcement of commercial motor vehicle size and weight limitations at locations other than fixed weight facilities, at specific locations such as steep grades or mountainous terrains where the weight of a commercial motor vehicle can significantly affect the safe operation of the vehicle, or at ports where intermodal shipping containers enter and leave the United States.

(2) detection of the unlawful presence of a controlled substance (as defined under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)) in a commercial motor vehicle or on the person of any occupant (including the operator) of the vehicle.

(3) enforcement of State traffic laws and regulations designed to promote the safe operation of commercial motor vehicles.

(d) CONTINUOUS EVALUATION OF PLANS.—On the basis of reports submitted by a State motor vehicle safety agency of a State with a plan approved under this section and the Secretary's own investigations, the Secretary shall make a continuing evaluation of the way the State is carrying out the plan. If the Secretary finds, after notice and opportunity for comment, the State plan previously approved is not being followed or has become inadequate to ensure enforcement of the regulations, standards, or orders, the Secretary shall withdraw approval of the plan and notify the State. The plan stops being effective when the notice is received. A State adversely affected by the withdrawal may seek judicial review under chapter 7 of title 5. Notwithstanding the withdrawal, the State may retain jurisdiction in administrative or judicial proceedings begun before the withdrawal if the issues involved are not related directly to the reasons for the withdrawal.

§31103. United States Government's share of costs

The Secretary of Transportation shall reimburse a State, from a grant made under this subchapter, an amount that is not more than 80 percent of the costs incurred by the State in a fiscal year in developing and implementing programs to enforce commercial motor vehicle regulations, standards, or orders adopted under this subchapter or subchapter II of this chapter. In determining those costs, the Secretary shall include in-kind contributions by the State. Amounts of the State and its political subdivisions required to be expended under section 31102(b)(1)(D) of this title may not be included as part of the share not provided by the United States Government. The Secretary may allocate among the States whose applications for grants have been approved those amounts appropriated for grants to support those programs, under criteria that may be established.

§31104. Availability of amounts

(a) GENERAL.—Subject to section 9503(c)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 9503(c)(1)), the following amounts are available from the Highway Trust Fund (except the Mass Transit Account) for the Secretary of Transportation to incur obligations to carry out section 31102 of this title:

(1) not more than $65,000,000 for the fiscal year ending September 30, 1992.

(2) not more than $76,000,000 for the fiscal year ending September 30, 1993.

(3) not more than $80,000,000 for the fiscal year ending September 30, 1994.

(4) not more than $83,000,000 for the fiscal year ending September 30, 1995.

(5) not more than $85,000,000 for the fiscal year ending September 30, 1996.

(6) not more than $90,000,000 for the fiscal year ending September 30, 1997.

(b) AVAILABILITY AND REALLOCATION OF AMOUNTS.—(1) Amounts made available under subsection (a) of this section remain available until expended. Allocations to a State remain available for expenditure in the State for the fiscal year in which they are allocated and for the next fiscal year. Amounts not expended by a State during those 2 fiscal years are released to the Secretary for reallocation.

(2) Amounts made available under section 404(a)(2) of the Surface Transportation Assistance Act of 1982 before October 1, 1991, that are not obligated on October 1, 1992, are available for reallocation and obligation under paragraph (1) of this subsection.

(c) REIMBURSEMENT FOR GOVERNMENT'S SHARE OF COSTS.—Amounts made available under subsection (a) of this section shall be used to reimburse States pro rata for the United States Government's share of costs incurred.

(d) GRANTS AS CONTRACTUAL OBLIGATIONS.—Approval by the Secretary of a grant to a State under section 31102 of this title is a contractual obligation of the Government for payment of the Government's share of costs incurred by the State in developing, implementing, or developing and implementing programs to enforce commercial motor vehicle regulations, standards, and orders.

(e) DEDUCTION FOR ADMINISTRATIVE EXPENSES.—On October 1 of each fiscal year or as soon after that date as practicable, the Secretary may deduct, from amounts made available under subsection (a) of this section for that fiscal year, not more than 1.25 percent of those amounts for administrative expenses incurred in carrying out section 31102 of this title in that fiscal year. The Secretary shall use at least 75 percent of those deducted amounts to train non-Government employees and to develop related training materials in carrying out section 31102.

(f) ALLOCATION CRITERIA.—On October 1 of each fiscal year or as soon after that date as practicable, the Secretary, after making the deduction described in subsection (e) of this section, shall allocate under criteria the Secretary establishes the amounts available for that fiscal year among the States with plans approved under section 31102 of this title. However, the Secretary may designate specific eligible States among which to allocate those amounts in allocating amounts available—

(1) for research, development, and demonstration under subsection (g)(1)(F) of this section; and

(2) for public education under subsection (g)(1)(G) of this section.

(g) SPECIFIC ALLOCATIONS.—(1) Of amounts made available under subsection (a) of this section—

(A) for each fiscal year beginning after September 30, 1992, the Secretary shall obligate at least $1,500,000 to make grants to States for training inspectors to enforce regulations prescribed by the Secretary related to the transportation of hazardous material by commercial motor vehicles;

(B) for each of the fiscal years ending September 30, 1992–1997, the Secretary may obligate not more than $2,000,000 to carry out section 31106 of this title;

(C) for each of the fiscal years ending September 30, 1993–1997, the Secretary may obligate not more than $2,000,000 to carry out section 31107 of this title;

(D) for each of the fiscal years ending September 30, 1993–1995, the Secretary shall obligate at least $4,250,000, and for each of the fiscal years ending September 30, 1996, and 1997, the Secretary shall obligate at least $5,000,000, for traffic enforcement activities related to commercial motor vehicle drivers that are carried out in conjunction with an appropriate inspection of a commercial motor vehicle for compliance with Government or State commercial motor vehicle safety regulations;

(E) for each of the fiscal years ending September 30, 1993–1995, the Secretary shall obligate at least $1,000,000 to increase enforcement of the licensing requirements of chapter 313 of this title by motor carrier safety assistance program officers and employees, including the cost of purchasing equipment for, and conducting, inspections to check the current status of licenses issued under chapter 313;

(F) for each fiscal year, the Secretary shall obligate at least $500,000 for research, development, and demonstration of technologies, methodologies, analyses, or information systems designed to carry out section 31102 of this title and that are beneficial to all jurisdictions; and

(G) for each fiscal year, the Secretary shall obligate at least $350,000 to educate the motoring public on how to share the road safely with commercial motor vehicles.

(2) The Secretary shall announce publicly amounts obligated under paragraph (1)(F) of this subsection and award those amounts competitively, when practicable, to any eligible State for up to 100 percent of the State costs or to other persons as the Secretary decides.

(3) In carrying out educational activities referred to in paragraph (1)(G) of this subsection, the Secretary shall consult with appropriate industry representatives.

(h) PAYMENT TO STATES FOR COSTS.—Each State shall submit vouchers for costs the State incurs under this section and section 31102 of this title. The Secretary shall pay the State an amount not more than the Government share of costs incurred as of the date of the vouchers.

(i) IMPROVED ALLOCATION FORMULA.—Not later than June 18, 1992, the Secretary shall prescribe regulations to develop an improved formula and process for allocating amounts made available for grants under section 31102(a) of this title among States eligible for those amounts. In prescribing those regulations, the Secretary shall—

(1) consider ways to provide incentives to States that demonstrate innovative, successful, cost-efficient, or cost-effective programs to promote commercial motor vehicle safety and hazardous material transportation safety;

(2) place special emphasis on incentives to States that conduct traffic safety enforcement activities that are coupled with motor carrier safety inspections; and

(3) consider ways to provide incentives to States that increase compatibility of State commercial motor vehicle safety and hazardous material transportation regulations with Government safety regulations and promote other factors intended to promote effectiveness and efficiency the Secretary decides are appropriate.

(j) INTRASTATE COMPATIBILITY.—Not later than September 18, 1992, the Secretary shall prescribe regulations specifying tolerance guidelines and standards for ensuring compatibility of intrastate commercial motor vehicle safety laws and regulations with Government motor carrier safety regulations to be enforced under section 31102(a) of this title. To the extent practicable, the guidelines and standards shall allow for maximum flexibility while ensuring the degree of uniformity that will not diminish transportation safety. In reviewing State plans and allocating amounts or making grants under section 153 of title 23, the Secretary shall ensure that the guidelines and standards are applied uniformly.

§31105. Employee protections

(a) PROHIBITIONS.—(1) A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because—

(A) the employee, or another person at the employee's request, has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety regulation, standard, or order, or has testified or will testify in such a proceeding; or

(B) the employee refuses to operate a vehicle because—

(i) the operation violates a regulation, standard, or order of the United States related to commercial motor vehicle safety or health; or

(ii) the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle's unsafe condition.

(2) Under paragraph (1)(B)(ii) of this subsection, an employee's apprehension of serious injury is reasonable only if a reasonable individual in the circumstances then confronting the employee would conclude that the unsafe condition establishes a real danger of accident, injury, or serious impairment to health. To qualify for protection, the employee must have sought from the employer, and been unable to obtain, correction of the unsafe condition.

(b) FILING COMPLAINTS AND PROCEDURES.—(1) An employee alleging discharge, discipline, or discrimination in violation of subsection (a) of this section, or another person at the employee's request, may file a complaint with the Secretary of Labor not later than 180 days after the alleged violation occurred. On receiving the complaint, the Secretary shall notify the person alleged to have committed the violation of the filing of the complaint.

(2)(A) Not later than 60 days after receiving a complaint, the Secretary shall conduct an investigation, decide whether it is reasonable to believe the complaint has merit, and notify the complainant and the person alleged to have committed the violation of the findings. If the Secretary decides it is reasonable to believe a violation occurred, the Secretary shall include with the decision findings and a preliminary order for the relief provided under paragraph (3) of this subsection.

(B) Not later than 30 days after the notice under subparagraph (A) of this paragraph, the complainant and the person alleged to have committed the violation may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of objections does not stay a reinstatement ordered in the preliminary order. If a hearing is not requested within the 30 days, the preliminary order is final and not subject to judicial review.

(C) A hearing shall be conducted expeditiously. Not later than 120 days after the end of the hearing, the Secretary shall issue a final order. Before the final order is issued, the proceeding may be ended by a settlement agreement made by the Secretary, the complainant, and the person alleged to have committed the violation.

(3)(A) If the Secretary decides, on the basis of a complaint, a person violated subsection (a) of this section, the Secretary shall order the person to—

(i) take affirmative action to abate the violation;

(ii) reinstate the complainant to the former position with the same pay and terms and privileges of employment; and

(iii) pay compensatory damages, including back pay.

(B) If the Secretary issues an order under subparagraph (A) of this paragraph and the complainant requests, the Secretary may assess against the person against whom the order is issued the costs (including attorney's fees) reasonably incurred by the complainant in bringing the complaint. The Secretary shall determine the costs that reasonably were incurred.

(c) JUDICIAL REVIEW AND VENUE.—A person adversely affected by an order issued after a hearing under subsection (b) of this section may file a petition for review, not later than 60 days after the order is issued, in the court of appeals of the United States for the circuit in which the violation occurred or the person resided on the date of the violation. The review shall be heard and decided expeditiously. An order of the Secretary subject to review under this subsection is not subject to judicial review in a criminal or other civil proceeding.

(d) CIVIL ACTIONS TO ENFORCE.—If a person fails to comply with an order issued under subsection (b) of this section, the Secretary shall bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred.

§31106. Commercial motor vehicle information system program

(a) DEFINITION.—In this section, "commercial motor vehicle" means a self-propelled or towed vehicle used on highways in intrastate or interstate commerce to transport passengers or property, if the vehicle—

(1) has a gross vehicle weight rating of at least 10,001 pounds;

(2) is designed to transport more than 15 passengers, including the driver; or

(3) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and that material is transported in a quantity requiring placarding under regulations the Secretary prescribes under section 5103.

(b) INFORMATION SYSTEM.—(1) In cooperation with the States, the Secretary may establish as part of the motor carrier safety information network system of the Department of Transportation and similar State systems, an information system to serve as a clearinghouse and depository of information related to State registration and licensing of commercial motor vehicles and the safety fitness of the commercial motor vehicle registrants. The Secretary shall include in the system information on the safety fitness of each of the registrants and other information the Secretary considers appropriate, including information on vehicle inspections and out-of-service orders.

(2) The operation of the information system established under paragraph (1) of this subsection shall be paid for by a schedule of user fees. The Secretary may authorize the operation of the information system by contract, through an agreement with one or more States, or by designating, after consulting with the States, a third party that represents the interests of the States.

(3) The Secretary shall prescribe standards to ensure—

(A) uniform information collection and reporting by the States necessary to carry out this section; and

(B) the availability and reliability of the information to the States and the Secretary from the information system.

(c) DEMONSTRATION PROJECT.—The Secretary shall make grants to States to carry out a project to demonstrate ways of establishing an information system that will link the motor carrier safety information network system of the Department and similar State systems with the motor vehicle registration and licensing systems of the States. The project shall be designed—

(1) to allow a State when issuing license plates for a commercial motor vehicle to establish through use of the information system the safety fitness of the person seeking to register the vehicle; and

(2) to decide on types of sanctions that may be imposed on the registrant, or the types of conditions or limitations that may be imposed on the operations of the registrant, to ensure the safety fitness of the registrant.

(d) REVIEW OF STATE SYSTEMS.—Not later than December 18, 1992, the Secretary, in cooperation with the States, shall review State motor vehicle registration systems related to license tags for commercial motor vehicles to decide whether those systems can be used in carrying out this section.

(e) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section.

(f) REPORT TO CONGRESS.—Not later than January 1, 1995, the Secretary shall submit a report to Congress on the cost, benefits, and feasibility of the information system established under subsection (b) of this section. If the Secretary decides that the system would be beneficial on a nationwide basis, the Secretary shall include in the report recommendations on legislation to implement a nationwide system.

(g) AUTHORIZATION OF APPROPRIATIONS.—Amounts necessary to carry out this section may be made available to the Secretary under section 31104(g)(1)(B) of this title.

§31107. Truck and bus accident grant program

(a) STATE GRANTS.—The Secretary of Transportation shall make grants to States that agree to adopt or have adopted the recommendations of the National Governors' Association related to police accident reports for truck and bus accidents. The Secretary may make a grant under this section only to assist a State in carrying out those recommendations, including—

(1) assisting the State in designing appropriate forms;

(2) drafting instruction manuals;

(3) training appropriate State and local officers on matters, including training on accident investigation techniques to decide on the probable cause of truck and bus accidents;

(4) analyzing and evaluating safety information to develop recommended changes to existing safety programs necessary to address more effectively the causes of truck and bus accidents; and

(5) other activities the Secretary decides are appropriate to carry out this section.

(b) COORDINATION WITH OTHER PROGRAMS.—The Secretary shall coordinate grants made under this section with highway safety programs under section 402 of title 23. The Secretary may require that the information from police reports for truck and bus accidents be included in reports made to the Secretary under the uniform information collection and reporting program under section 402.

(c) AUTHORIZATION OF APPROPRIATIONS.—Amounts necessary to carry out this section may be made available to the Secretary under section 31104(g)(1)(C) of this title.

§31108. Authorization of appropriations

Not more than $49,317,000 may be appropriated to the Secretary of Transportation for *the fiscal year ending September 30, 1992, to carry out the safety duties and powers of the Federal Highway Administration.*

SUBCHAPTER II—LENGTH AND WIDTH LIMITATIONS

§31111. Length limitations

(a) DEFINITIONS.—In this section—

(1) "maxi-cube vehicle" means a truck tractor combined with a semitrailer and a separable property-carrying unit designed to be loaded and unloaded through the semitrailer, with the length of the separable property-carrying unit being not more than 34 feet and the length of the vehicle combination being not more than 65 feet.

(2) "truck tractor" means—

(A) a non-property-carrying power unit that operates in combination with a semitrailer or trailer; or

(B) a power unit that carries as property only motor vehicles when operating in combination with a semitrailer in transporting motor vehicles.

(b) GENERAL LIMITATIONS.—(1) Except as provided in this section, a State may not prescribe or enforce a regulation of commerce that—

(A) imposes a vehicle length limitation of less than 45 feet on a bus, of less than 48 feet on a semitrailer operating in a truck tractor-semitrailer combination, or of less than 28 feet on a semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination, on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (f) of this section) and those classes of qualifying Federal-aid Primary System highways designated by the Secretary of Transportation under subsection (e) of this section;

(B) imposes an overall length limitation on a commercial motor vehicle operating in a truck tractor-semitrailer or truck tractor-semitrailer-trailer combination;

(C) has the effect of prohibiting the use of a semitrailer or trailer of the same dimensions as those that were in actual and lawful use in that State on December 1, 1982; or

(D) has the effect of prohibiting the use of an existing semitrailer or trailer, of not more than 28.5 feet in length, in a truck tractor-semitrailer-trailer combination if the semitrailer or trailer was operating lawfully on December 1, 1982, within a 65-foot overall length limit in any State.

(2) A length limitation prescribed or enforced by a State under paragraph (1)(A) of this subsection applies only to a semitrailer or trailer and not to a truck tractor.

(c) MAXI-CUBE AND VEHICLE COMBINATION LIMITATIONS.—A State may not prohibit a maxi-cube vehicle or a commercial motor vehicle combination consisting of a truck tractor and 2 trailing units on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (f) of this section) and those classes of qualifying Federal-aid Primary System highways designated by the Secretary under subsection (e) of this section.

(d) EXCLUSION OF SAFETY AND ENERGY CONSERVATION DEVICES.—Length calculated under this section does not include a safety or energy conservation device the Secretary decides is necessary for safe and efficient operation of a commercial motor vehicle. However, such a device may not have by its design or use the ability to carry cargo.

(e) QUALIFYING HIGHWAYS.—The Secretary by regulation shall designate as qualifying Federal-aid Primary System highways those highways of the Federal-aid Primary System in existence on June 1, 1991, that can accommodate safely the applicable vehicle lengths provided in this section.

(f) EXEMPTIONS.—(1) If the chief executive officer of a State, after consulting under paragraph (2) of this subsection, decides a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is not capable of safely accommodating a commercial motor vehicle having a length described in subsection (b)(1)(A) of this section or the motor vehicle combination described in subsection (c) of this section, the chief executive officer may notify the Secretary of that decision and request the Secretary to exempt that segment from either or both provisions.

(2) Before making a decision under paragraph (1) of this subsection, the chief executive officer shall consult with units of local government in the State in which the segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is located and with the chief executive officer of any adjacent State that may be directly affected by the exemption. As part of the consultations, consideration shall be given to any potential alternative route that serves the area in which the segment is located and can safely accommodate a commercial motor vehicle having a length described in subsection (b)(1)(A) of this section or the motor vehicle combination described in subsection (c) of this section.

(3) A chief executive officer's notification under this subsection must include specific evidence of safety problems supporting the officer's decision and the results of consultations about alternative routes.

(4)(A) If the Secretary decides, on request of a chief executive officer or on the Secretary's own initiative, a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is not capable of safely accommodating a commercial motor vehicle having a length described in subsection (b)(1)(A) of this section or the motor vehicle combination described in subsection (c) of this section, the Secretary shall exempt the segment from either or both of those provisions. Before making a decision under this paragraph, the Secretary shall consider any possible alternative route that serves the area in which the segment is located.

(B) The Secretary shall make a decision about a specific segment not later than 120 days after the date of receipt of notification from a chief executive officer under paragraph (1) of this subsection or the date on which the Secretary initiates action under subparagraph (A) of this paragraph, whichever is applicable. If the Secretary finds the decision will not be made in time, the Secretary immediately shall notify Congress, giving the reasons for the delay, information about the resources assigned, and the projected date for the decision.

(C) Before making a decision, the Secretary shall give an interested person notice and an opportunity for comment. If the Secretary exempts a segment under this subsection before the final regulations under subsection (e) of this section are prescribed, the Secretary shall include the exemption as part of the final regulations. If the Secretary exempts the segment after the final regulations are prescribed, the Secretary shall publish the exemption as an amendment to the final regulations.

(g) ACCOMMODATING SPECIALIZED EQUIPMENT.—In prescribing regulations to carry out this section, the Secretary may make decisions necessary to accommodate specialized equipment, including automobile and vessel transporters and maxi-cube vehicles.

§31112. Property-carrying unit limitation

(a) DEFINITIONS.—In this section—

(1) "property-carrying unit" means any part of a commercial motor vehicle combination (except the truck tractor) used to carry property, including a trailer, a semitrailer, or the property-carrying section of a single unit truck.

(2) the length of the property-carrying units of a commercial motor vehicle combination is the length measured from the front of the first property-carrying unit to the rear of the last property-carrying unit.

(b) GENERAL LIMITATIONS.—A State may not allow by any means the operation, on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways and those classes of qualifying Federal-aid Primary System highways designated by the Secretary of Transportation under section 31111(e) of this title, of any commercial motor vehicle combination (except a vehicle or load that cannot be dismantled easily or divided easily and that has been issued a special permit under applicable State law) with more than one property-carrying unit (not including the truck tractor) whose property-carrying units are more than—

(1) the maximum combination trailer, semitrailer, or other type of length limitation allowed by law or regulation of that State before June 2, 1991; or

(2) the length of the property-carrying units of those commercial motor vehicle combinations, by specific configuration, in actual, lawful operation on a regular or periodic basis (including continuing seasonal operation) in that State before June 2, 1991.

(c) SPECIAL RULES FOR WYOMING, OHIO, AND ALASKA.—In addition to the vehicles allowed under subsection (b) of this section—

(1) Wyoming may allow the operation of additional vehicle configurations not in actual operation on June 1, 1991, but authorized by State law not later than November 3, 1992, if the vehicle configurations comply with the single axle, tandem axle, and bridge formula limits in section 127(a) of title 23 and are not more than 117,000 pounds gross vehicle weight;

(2) Ohio may allow the operation of commercial motor vehicle combinations with 3 property-carrying units of 28.5 feet each (not including the truck tractor) not in actual operation on June 1, 1991, to be operated in Ohio on the 1-mile segment of Ohio State Route 7 that begins at and is south of exit 16 of the Ohio Turnpike; and

(3) Alaska may allow the operation of commercial motor vehicle combinations that were not in actual operation on June 1, 1991, but were in actual operation before July 6, 1991.

(d) ADDITIONAL LIMITATIONS.—(1) A commercial motor vehicle combination whose operation in a State is not prohibited under subsections (b) and (c) of this section may continue to operate in the State on highways described in subsection (b) only if at least in compliance with all State laws, regulations, limitations, and conditions, including routing-specific and configuration-specific designations and all other restrictions in force in the State on June 1, 1991. However, subject to regulations prescribed by the Secretary under subsection (g)(2) of this section, the State may make minor adjustments of a temporary and emergency nature to route designations and vehicle operating restrictions in effect on June 1, 1991, for specific safety purposes and road construction.

(2) This section does not prevent a State from further restricting in any way or prohibiting the operation of any commercial motor vehicle combination subject to this section, except that a restriction or prohibition shall be consistent with this section and sections 31113(a) and (b) and 31114 of this title.

(3) A State making a minor adjustment of a temporary and emergency nature as authorized by paragraph (1) of this section or further restricting or prohibiting the operation of a commercial motor vehicle combination as authorized by paragraph (2) of this subsection shall advise the Secretary not later than 30 days after the action. The Secretary shall publish a notice of the action in the Federal Register.

(e) LIST OF STATE LENGTH LIMITATIONS.—(1) Not later than February 16, 1992, each State shall submit to the Secretary for publication a complete list of State length limitations applicable to commercial motor vehicle combinations operating in the State on the highways described in subsection (b) of this section. The list shall indicate the applicable State laws and regulations associated with the length limitations. If a State does not submit the information as required, the Secretary shall complete and file the information for the State.

(2) Not later than March 17, 1992, the Secretary shall publish an interim list in the Federal Register consisting of all information submitted under paragraph (1) of this subsection. The Secretary shall review for accuracy all information submitted by a State under paragraph (1) and shall solicit and consider public comment on the accuracy of the information.

(3) A law or regulation may not be included on the list submitted by a State or published by the Secretary merely because it authorized, or could have authorized, by permit or otherwise, the operation of commercial motor vehicle combinations not in actual operation on a regular or periodic basis before June 2, 1991.

(4) Except as revised under this paragraph or paragraph (5) of this subsection, the list shall be published as final in the Federal Register not later than June 15, 1992. In publishing the final list, the Secretary shall make any revisions necessary to correct inaccuracies identified under paragraph (2) of this subsection. After publication of the final list, commercial motor vehicle combinations prohibited under subsection (b) of this section may not operate on the Dwight D. Eisenhower System of Interstate and Defense Highways and other Federal-aid Primary System highways designated by the Secretary except as published on the list. The list may be combined by the Secretary with the list required under section 127(d) of title 23.

(5) On the Secretary's own motion or on request by any person (including a State), the Secretary shall review the list published under paragraph (4) of this subsection. If the Secretary decides there is reason to believe a mistake was made in the accuracy of the list, the Secretary shall begin a proceeding to decide whether a mistake was made. If the Secretary decides there was a mistake, the Secretary shall publish the correction.

(f) LIMITATIONS ON STATUTORY CONSTRUCTION.—This section may not be construed—

(1) to allow the operation on any segment of the Dwight D. Eisenhower System of Interstate and Defense Highways of a longer combination vehicle prohibited under section 127(d) of title 23;

(2) to affect in any way the operation of a commercial motor vehicle having only one property-carrying unit; or

(3) to affect in any way the operation in a State of a commercial motor vehicle with more than one property-carrying unit if the vehicle was in actual operation on a regular or periodic basis (including seasonal operation) in that State before June 2, 1991, that was authorized under State law or regulation or lawful State permit.

(g) REGULATIONS.—(1) In carrying out this section only, the Secretary shall define by regulation loads that cannot be dismantled easily or divided easily.

(2) Not later than June 15, 1992, the Secretary shall prescribe regulations establishing criteria for a State to follow in making minor adjustments under subsection (d) of this section.

§31113. Width limitations

(a) GENERAL LIMITATIONS.—(1) Except as provided in subsection (e) of this section, a State (except Hawaii) may not prescribe or enforce a regulation of commerce that imposes a vehicle width limitation of more or less than 102 inches on a commercial motor vehicle operating on—

(A) a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (e) of this section);

(B) a qualifying Federal-aid highway designated by the Secretary of Transportation, with traffic lanes designed to be at least 12 feet wide; or

(C) a qualifying Federal-aid Primary System highway designated by the Secretary if the Secretary decides the designation is consistent with highway safety.

(2) Notwithstanding paragraph (1) of this subsection, a State may continue to enforce a regulation of commerce in effect on April 6, 1983, that applies to a commercial motor vehicle of more than 102 inches in width, until the date on which the State prescribes a regulation of commerce that complies with this subsection.

(3) A Federal-aid highway (except an interstate highway) not designated under this subsection on June 5, 1984, may be designated under this subsection only with the agreement of the chief executive officer of the State in which the highway is located.

(b) EXCLUSION OF SAFETY AND ENERGY CONSERVATION DEVICES.—Width calculated under this section does not include a safety or energy conservation device the Secretary decides is necessary for safe and efficient operation of a commercial motor vehicle.

(c) SPECIAL USE PERMITS.—A State may grant a special use permit to a commercial motor vehicle that is more than 102 inches in width.

(d) STATE ENFORCEMENT.—Consistent with this section, a State may enforce a commercial motor vehicle width limitation of 102 inches on a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under subsection (e) of this section) or other qualifying Federal-aid highway designated by the Secretary.

(e) EXEMPTIONS.—(1) If the chief executive officer of a State, after consulting under paragraph (2) of this subsection, decides a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is not capable of safely accommodating a commercial motor vehicle having the width provided in subsection (a) of this section, the chief executive officer may notify the Secretary of that decision and request the Secretary to exempt that segment from subsection (a) to allow the State to impose a width limitation of less than 102 inches for a vehicle (except a bus) on that segment.

(2) Before making a decision under paragraph (1) of this subsection, the chief executive officer shall consult with units of local government in the State in which the segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is located and with the chief executive officer of any adjacent State that may be directly affected by the exemption. As part of the consultations, consideration shall be given to any potential alternative route that serves the area in which the segment is located and can safely accommodate a commercial motor vehicle having the width provided for in subsection (a) of this section.

(3) A chief executive officer's notification under this subsection must include specific evidence of safety problems supporting the officer's decision and the results of consultations about alternative routes.

(4)(A) If the Secretary decides, on request of a chief executive officer or on the Secretary's own initiative, a segment of the Dwight D. Eisenhower System of Interstate and Defense Highways is not capable of safely accommodating a commercial motor vehicle having a width provided in subsection (a) of this section, the Secretary shall exempt the segment from subsection (a) to allow the State to impose a width limitation of less than 102 inches for a vehicle (except a bus) on that segment. Before making a decision under this paragraph, the Secretary shall consider any possible alternative route that serves the area in which the segment is located.

(B) The Secretary shall make a decision about a specific segment not later than 120 days after the date of receipt of notification from a chief executive officer under paragraph (1) of this subsection or the date on which the Secretary initiates action under subparagraph (A) of this paragraph, whichever is applicable. If the Secretary finds the decision will not be made in time, the Secretary immediately shall notify Congress, giving the reasons for the delay, information about the resources assigned, and the projected date for the decision.

(C) Before making a decision, the Secretary shall give an interested person notice and an opportunity for comment. If the Secretary exempts a segment under this subsection before the final regulations under subsection (a) of this section are prescribed, the Secretary shall include the exemption as part of the final regulations. If the Secretary exempts the segment after the final regulations are prescribed, the Secretary shall publish the exemption as an amendment to the final regulations.

§31114. Access to the Interstate System

(a) PROHIBITION ON DENYING ACCESS.—A State may not enact or enforce a law denying to a commercial motor vehicle subject to this subchapter or subchapter I of this chapter reasonable access between—

(1) the Dwight D. Eisenhower System of Interstate and Defense Highways (except a segment exempted under section 31111(f) or 31113(e) of this title) and other qualifying Federal-aid Primary System highways designated by the Secretary of Transportation; and

(2) terminals, facilities for food, fuel, repairs, and rest, and points of loading and unloading for household goods carriers, motor carriers of passengers, or any truck tractor-semitrailer combination in which the semitrailer has a length of not more than 28.5 feet and that generally operates as part of a vehicle combination described in section 31111(c) of this title.

(b) EXCEPTION.—This section does not prevent a State or local government from imposing reasonable restrictions, based on safety considerations, on a truck tractor-semitrailer combination in which the semitrailer has a length of not more than 28.5 feet and that generally operates as part of a vehicle combination described in section 31111(c) of this title.

§31115. Enforcement

On the request of the Secretary of Transportation, the Attorney General shall bring a civil action for appropriate injunctive relief to ensure compliance with this subchapter or subchapter I of this chapter. The action may be brought in a district court of the United States in any State in which the relief is required. On a proper showing, the court shall issue a temporary restraining order or preliminary or permanent injunction. An injunction under this section may order a State or person to comply with this subchapter, subchapter I, or a regulation prescribed under this subchapter or subchapter I.

SUBCHAPTER III—SAFETY REGULATION

§31131. Purposes and findings

(a) PURPOSES.—The purposes of this subchapter are—

(1) to promote the safe operation of commercial motor vehicles;

(2) to minimize dangers to the health of operators of commercial motor vehicles and other employees whose employment directly affects motor carrier safety; and

(3) to ensure increased compliance with traffic laws and with the commercial motor vehicle safety and health regulations and standards prescribed and orders issued under this chapter.

(b) FINDINGS.—Congress finds—

(1) it is in the public interest to enhance commercial motor vehicle safety and thereby reduce highway fatalities, injuries, and property damage;

(2) improved, more uniform commercial motor vehicle safety measures and strengthened enforcement would reduce the number of fatalities and injuries and the level of property damage related to commercial motor vehicle operations;

(3) enhanced protection of the health of commercial motor vehicle operators is in the public interest; and

(4) interested State governments can provide valuable assistance to the United States Government in ensuring that commercial motor vehicle operations are conducted safely and healthfully.

§31132. Definitions

In this subchapter—

(1) "commercial motor vehicle" means a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle—

(A) has a gross vehicle weight rating of at least 10,001 pounds;

(B) is designed to transport more than 15 passengers including the driver; or

(C) is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103.

(2) "employee" means an operator of a commercial motor vehicle (including an independent contractor when operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who—

(A) directly affects commercial motor vehicle safety in the course of employment; and

(B) is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of the employment by the Government, a State, or a political subdivision of a State.

(3) "employer"—

(A) means a person engaged in a business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it; but

(B) does not include the Government, a State, or a political subdivision of a State.

(4) "interstate commerce" means trade, traffic, or transportation in the United States between a place in a State and—

(A) a place outside that State (including a place outside the United States); or

(B) another place in the same State through another State or through a place outside the United States.

(5) "intrastate commerce" means trade, traffic, or transportation in a State that is not interstate commerce.

(6) "regulation" includes a standard or order.

(7) "State" means a State of the United States, the District of Columbia, and, in sections 31136 and 31140–31142 of this title, a political subdivision of a State.

(8) "State law" includes a law enacted by a political subdivision of a State.

(9) "State regulation" includes a regulation prescribed by a political subdivision of a State.

(10) "United States" means the States of the United States and the District of Columbia.

§31133. General powers of the Secretary of Transportation

(a) GENERAL.—In carrying out this subchapter and regulations prescribed under section 31102 of this title, the Secretary of Transportation may—

(1) conduct inspections and investigations;

(2) compile statistics;

(3) make reports;

(4) issue subpenas;

(5) require production of records and property;

(6) take depositions;

(7) hold hearings;

(8) prescribe recordkeeping and reporting requirements;

(9) conduct or make contracts for studies, development, testing, evaluation, and training; and

(10) perform other acts the Secretary considers appropriate.

(b) CONSULTATION.—In conducting inspections and investigations under subsection (a) of this section, the Secretary shall consult, as appropriate, with employers and employees and their authorized representatives and offer them a right of accompaniment.

(c) DELEGATION.—The Secretary may delegate to a State receiving a grant under section 31102 of this title those duties and powers related to enforcement (including conducting investigations) of this subchapter and regulations prescribed under this subchapter that the Secretary considers appropriate.

§31134. Commercial Motor Vehicle Safety Regulatory Review Panel

(a) ESTABLISHMENT AND GENERAL DUTY.—The Secretary of Transportation shall establish the Commercial Motor Vehicle Safety Regulatory Review Panel. The Panel shall analyze and review State laws and regulations under sections 31140 and 31141 of this title.

(b) SPECIFIC DUTIES.—The Panel shall—

(1) carry out those duties and powers designated to be carried out by the Panel under sections 31140 and 31141 of this title;

(2) conduct a study to—

(A) evaluate the need, if any, for additional assistance from the United States Government to the States to enable them to enforce the regulations prescribed by the Secretary under section 31136 of this title; and

(B) decide on other methods of furthering the purposes of this subchapter; and

(3) make recommendations to the Secretary based on the results of the study conducted under clause (2) of this subsection.

(c) COMPOSITION, APPOINTMENT, AND TERMS.—(1) The Panel shall be composed of 15 members as follows:

(A) the Secretary or the Secretary's delegate.

(B) 7 individuals appointed by the Secretary from among individuals who represent the interests of States and political subdivisions of States and whose names have been submitted to the Secretary by the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Public Works and Transportation of the House of Representatives.

(C) 7 individuals appointed by the Secretary from among individuals who represent the interests of business, consumer, labor, and safety groups and whose names have been submitted to the Secretary by the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Public Works and Transportation of the House of Representatives.

(2) The Secretary shall select the individuals to be appointed under this subsection on the basis of their knowledge, expertise, or experience related to commercial motor vehicle safety. Half of the appointments shall be made from names submitted by the Committee on Commerce, Science, and Transportation of the Senate, and the other half from names submitted by the Committee on Public Works and Transportation of the House of Representatives. Each of these committees shall submit to the Secretary the names of 20 individuals qualified to serve on the Panel.

(3) The term of each member of the Panel appointed under paragraph (1)(B) and (C) of this subsection is 7 years.

(4) A vacancy on the Panel shall be filled in the way the original appointment was made. The vacancy does not affect the Panel's powers.

(d) CHAIRMAN, QUORUM, MEETINGS, AND PAY.—(1) The Secretary is the Chairman of the Panel.

(2) Eight members of the Panel are a quorum, but the Panel may establish a lesser number as a quorum to hold hearings, take testimony, and receive evidence.

(3) The Panel shall meet at the call of the Chairman or a majority of its members.

(4) Members of the Panel shall serve without pay, except that they shall receive per diem and travel expenses under section 5703 of title 5.

(e) PERSONNEL, OFFICE SPACE, AND SUPPORT SERVICES.—On request of the Panel, the Secretary shall—

(1) detail personnel of the Department of Transportation to the Panel as necessary to assist the Panel in carrying out its duties and powers; and

(2) provide office space, supplies, equipment, and other support services to the Panel as necessary for the Panel to carry out its duties and powers.

(f) HEARINGS AND OTHER ACTIONS.—To carry out the duties and powers of the Panel under this subchapter, the Panel or any member authorized by the Panel may hold hearings, sit and act at times and places, take testimony, and take other actions the Panel or the member considers advisable. A member of the Panel may administer oaths to witnesses appearing before the Panel or the member.

(g) TEMPORARY AND INTERMITTENT SERVICES.—Subject to regulations the Panel may prescribe, the Chairman may procure the temporary or intermittent services of experts or consultants under section 3109 of title 5.

§31135. Duties of employers and employees

Each employer and employee shall comply with regulations on commercial motor vehicle safety prescribed by the Secretary of Transportation under this subchapter that apply to the employer's or employee's conduct.

§31136. United States Government regulations

(a) MINIMUM SAFETY STANDARDS.—Subject to section 30103(a) of this title, the Secretary of Transportation shall prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that—

(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely;

(2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely;

(3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and

(4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.

(b) ELIMINATING AND AMENDING EXISTING REGULATIONS.—The Secretary may not eliminate or amend an existing motor carrier safety regulation related only to the maintenance, equipment, loading, or operation (including routing) of vehicles carrying material found to be hazardous under section 5103 of this title until an equivalent or more stringent regulation has been prescribed under section 5103.

(c) PROCEDURES AND CONSIDERATIONS.—(1) A regulation under this section shall be prescribed under section 553 of title 5 (without regard to sections 556 and 557 of title 5).

(2) Before prescribing regulations under this section, the Secretary shall consider, to the extent practicable and consistent with the purposes of this chapter—

(A) costs and benefits; and

(B) State laws and regulations on commercial motor vehicle safety, to minimize their unnecessary preemption.

(d) EFFECT OF EXISTING REGULATIONS.—If the Secretary does not prescribe regulations on commercial motor vehicle safety under this section, regulations on commercial motor vehicle safety prescribed by the Secretary before October 30, 1984, and in effect on October 30, 1984, shall be deemed in this subchapter to be regulations prescribed by the Secretary under this section.

(e) WAIVERS.—After notice and an opportunity for comment, the Secretary may waive any part of a regulation prescribed under this section as it applies to a person or class of persons, if the Secretary decides that the waiver is consistent with the public interest and the safe operation of commercial motor vehicles. Under this subsection, the Secretary shall waive the regulations prescribed under this section as they apply to schoolbuses (as defined in section 30125(a) of this title) unless the Secretary decides that making the regulations applicable to schoolbuses is necessary for public safety, considering all laws of the United States and States applicable to schoolbuses. A waiver under this subsection shall be published in the Federal Register, with the reasons for the waiver.

(f) LIMITATIONS ON MUNICIPALITY AND COMMERCIAL ZONE EXEMPTIONS AND WAIVERS.—(1) The Secretary may not—

(A) exempt a person or commercial motor vehicle from a regulation related to commercial motor vehicle safety only because the operations of the person or vehicle are entirely in a municipality or commercial zone of a municipality; or

(B) waive application to a person or commercial motor vehicle of a regulation related to commercial motor vehicle safety only because the operations of the person or vehicle are entirely in a municipality or commercial zone of a municipality.

(2) If a person was authorized to operate a commercial motor vehicle in a municipality or commercial zone of a municipality in the United States for the entire period from November 19, 1987, through November 18, 1988, and if the person is otherwise qualified to operate a commercial motor vehicle, the person may operate a commercial motor vehicle entirely in a municipality or commercial zone of a municipality notwithstanding—

(A) paragraph (1) of this subsection;

(B) a minimum age requirement of the United States Government for operation of the vehicle; and

(C) a medical or physical condition that—

(i) would prevent an operator from operating a commercial motor vehicle under the commercial motor vehicle safety regulations in title 49, Code of Federal Regulations;

(ii) existed on July 1, 1988;

(iii) has not substantially worsened; and

(iv) does not involve alcohol or drug abuse.

(3) This subsection does not affect a State commercial motor vehicle safety law applicable to intrastate commerce.

§31137. Monitoring device and brake maintenance regulations

(a) USE OF MONITORING DEVICES.—If the Secretary of Transportation prescribes a regulation about the use of monitoring devices on commercial motor vehicles to increase compliance by operators of the vehicles with hours of service regulations of the Secretary, the regulation shall ensure that the devices are not used to harass vehicle operators. However, the devices may be used to monitor productivity of the operators.

(b) BRAKES AND BRAKE SYSTEMS MAINTENANCE REGULATIONS.—Not later than December 31, 1990, the Secretary shall prescribe regulations on improved standards or methods to ensure that brakes and brake systems of commercial motor vehicles are maintained properly and inspected by appropriate employees. At a minimum, the regulations shall establish minimum training requirements and qualifications for employees responsible for maintaining and inspecting the brakes and brake systems.

§31138. Minimum financial responsibility for transporting passengers

(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability and property damage for the transportation of passengers for compensation by motor vehicle in the United States between a place in a State and—

(1) a place in another State;

(2) another place in the same State through a place outside of that State; or

(3) a place outside the United States.

(b) MINIMUM AMOUNTS.—The level of financial responsibility established under subsection (a) of this section for a motor vehicle with a seating capacity of—

(1) at least 16 passengers shall be at least $5,000,000; and

(2) not more than 15 passengers shall be at least $1,500,000.

(c) EVIDENCE OF FINANCIAL RESPONSIBILITY.—(1) Subject to paragraph (2) of this subsection, financial responsibility may be established by evidence of one or a combination of the following if acceptable to the Secretary of Transportation:

(A) insurance, including high self-retention.

(B) a guarantee.

(C) a surety bond issued by a bonding company authorized to do business in the United States.

(2) A person domiciled in a country contiguous to the United States and providing transportation to which a minimum level of financial responsibility under this section applies shall have evidence of financial responsibility in the motor vehicle when the person is providing the transportation. If evidence of financial responsibility is not in the vehicle, the Secretary of Transportation and the Secretary of the Treasury shall deny entry of the vehicle into the United States.

(d) CIVIL PENALTY.—(1) If, after notice and an opportunity for a hearing, the Secretary of Transportation finds that a person (except an employee acting without knowledge) has knowingly violated this section or a regulation prescribed under this section, the person is liable to the United States Government for a civil penalty of not more than $10,000 for each violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation shall impose the penalty by written notice. In determining the amount of the penalty, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(3) The Secretary of Transportation may compromise the penalty before referring the matter to the Attorney General for collection.

(4) The Attorney General shall bring a civil action in the appropriate district court of the United States to collect a penalty referred to the Attorney General for collection under this subsection.

(5) The amount of the penalty may be deducted from amounts the Government owes the person. An amount collected under this section shall be deposited in the Treasury as miscellaneous receipts.

(e) NONAPPLICATION.—This section does not apply to a motor vehicle—

(1) transporting only school children and teachers to or from school;

(2) providing taxicab service, having a seating capacity of not more than 6 passengers, and not being operated on a regular route or between specified places; or

(3) carrying not more than 15 individuals in a single, daily round trip to and from work.

§31139. Minimum financial responsibility for transporting property

(a) DEFINITIONS.—In this section—

(1) "farm vehicle" means a vehicle—

(A) designed or adapted and used only for agriculture;

(B) operated by a motor private carrier (as defined in section 10102 of this title); and

(C) operated only incidentally on highways.

(2) "interstate commerce" includes transportation between a place in a State and a place outside the United States, to the extent the transportation is in the United States.

(3) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

(b) GENERAL REQUIREMENT AND MINIMUM AMOUNT.—(1) The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability, property damage, and environmental restoration for the transportation of property for compensation by motor vehicle in the United States between a place in a State and—

(A) a place in another State;

(B) another place in the same State through a place outside of that State; or

(C) a place outside the United States.

(2) The level of financial responsibility established under paragraph (1) of this subsection shall be at least $750,000.

(c) REQUIREMENTS FOR HAZARDOUS MATTER AND OIL.—(1) The Secretary of Transportation shall prescribe regulations to require minimum levels of financial responsibility sufficient to satisfy liability amounts established by the Secretary covering public liability, property damage, and environmental restoration for the transportation by motor vehicle in interstate or intrastate commerce of—

(A) hazardous material (as defined by the Secretary);

(B) oil or hazardous substances (as defined by the Administrator of the Environmental Protection Agency); or

(C) hazardous wastes (as defined by the Administrator).

(2)(A) Except as provided in subparagraph (B) of this paragraph, the level of financial responsibility established under paragraph (1) of this subsection shall be at least $5,000,000 for the transportation—

(i) of hazardous substances (as defined by the Administrator) in cargo tanks, portable tanks, or hopper-type vehicles, with capacities of more than 3,500 water gallons;

(ii) in bulk of class A explosives, poison gas, liquefied gas, or compressed gas; or

(iii) of large quantities of radioactive material.

(B) The Secretary of Transportation by regulation may reduce the minimum level in subparagraph (A) of this paragraph (to an amount not less than $1,000,000) for transportation de-

scribed in subparagraph (A) in any of the territories of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands if—

(i) the chief executive officer of the territory requests the reduction;

(ii) the reduction will prevent a serious disruption in transportation service and will not adversely affect public safety; and

(iii) insurance of $5,000,000 is not readily available.

(3) The level of financial responsibility established under paragraph (1) of this subsection for the transportation of a material, oil, substance, or waste not subject to paragraph (2) of this subsection shall be at least $1,000,000. However, if the Secretary of Transportation finds it will not adversely affect public safety, the Secretary by regulation may reduce the amount for—

(A) a class of vehicles transporting such a material, oil, substance, or waste in intrastate commerce (except in bulk); and

(B) a farm vehicle transporting such a material or substance in interstate commerce (except in bulk).

(d) Foreign Motor Carriers and Private Carriers.—Regulations prescribed under this section may allow foreign motor carriers and foreign motor private carriers (as those terms are defined in section 10530 of this title) providing transportation of property under a certificate of registration issued under section 10530 to meet the minimum levels of financial responsibility under this section only when those carriers are providing transportation for property in the United States.

(e) Evidence of Financial Responsibility.—(1) Subject to paragraph (2) of this subsection, financial responsibility may be established by evidence of one or a combination of the following if acceptable to the Secretary of Transportation:

(A) insurance.

(B) a guarantee.

(C) a surety bond issued by a bonding company authorized to do business in the United States.

(D) qualification as a self-insurer.

(2) A person domiciled in a country contiguous to the United States and providing transportation to which a minimum level of financial responsibility under this section applies shall have evidence of financial responsibility in the motor vehicle when the person is providing the transportation. If evidence of financial responsibility is not in the vehicle, the Secretary of Transportation and the Secretary of the Treasury shall deny entry of the vehicle into the United States.

(f) Civil Penalty.—(1) If, after notice and an opportunity for a hearing, the Secretary of Transportation finds that a person (except an employee acting without knowledge) has knowingly violated this section or a regulation prescribed under this section, the person is liable to the United States Government for a civil penalty of not more than $10,000 for each violation. A separate violation occurs for each day the violation continues.

(2) The Secretary of Transportation shall impose the penalty by written notice. In determining the amount of the penalty, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(3) The Secretary of Transportation may compromise the penalty before referring the matter to the Attorney General for collection.

(4) The Attorney General shall bring a civil action in the appropriate district court of the United States to collect a penalty referred to the Attorney General for collection under this subsection.

(5) The amount of the penalty may be deducted from amounts the Government owes the person. An amount collected under this section shall be deposited in the Treasury as miscellaneous receipts.

(g) Nonapplication.—This section does not apply to a motor vehicle having a gross vehicle weight rating of less than 10,000 pounds if the vehicle is not used to transport in interstate or foreign commerce—

(1) class A or B explosives;

(2) poison gas; or

(3) a large quantity of radioactive material.

§31140. Submission of State laws and regulations for review

(a) Laws and Regulations in Effect Before April 29, 1986.—A State that had in effect a State law or regulation on commercial motor vehicle safety before April 29, 1986, and wants to enforce the law or regulation after October 29, 1989, shall submit a copy of the law or regulation to the Secretary of Transportation and the Commercial Motor Vehicle Safety Regulatory Review Panel.

(b) Laws Enacted and Regulations Issued After April 29, 1986.—A State that enacts a State law or issues a regulation on commercial motor vehicle safety after April 29, 1986, shall submit a copy of the law or regulation to the Secretary and the Panel immediately after the enactment or issuance.

(c) Initial Guidelines.—The Secretary shall prescribe initial guidelines to assist the States in compiling and submitting State laws and regulations and other information under this section.

(d) Additional Information.—As soon as practicable but not later than a date the Panel may establish, a State that submits a State law or regulation under this section to the Panel shall—

(1) indicate in writing to the Panel whether the law or regulation—

(A) has the same effect as a regulation prescribed by the Secretary under section 31136 of this title;

(B) is less stringent than that regulation; or

(C) is additional to or more stringent than that regulation; and

(2) submit to the Panel other information the Panel or the Secretary may require to carry out this subchapter.

§31141. Review and preemption of State laws and regulations

(a) Preemption After Decision.—After October 29, 1989, a State may not enforce a State law or regulation on commercial motor vehicle safety that the Secretary of Transportation decides under this section may not be enforced.

(b) Analysis and Decisions by the Panel.—(1) The Commercial Motor Vehicle Safety Regulatory Review Panel annually shall analyze State laws and regulations and decide which of those laws and regulations are related to commercial motor vehicle safety.

(2) Not later than one year after the date the Secretary prescribes a regulation under section 31136 of this title or one year after the date the Panel decides under paragraph (1) of this subsection that a State law or regulation is related to commercial motor vehicle safety, whichever is later, the Panel shall—

(A) decide whether the State law or regulation—

(i) has the same effect as the regulation prescribed by the Secretary;

(ii) is less stringent than that regulation; or

(iii) is additional to or more stringent than that regulation;

(B) decide, for each State law or regulation that the Panel decides is additional to or more stringent than the regulation prescribed by the Secretary, whether—

(i) the State law or regulation has no safety benefit;

(ii) the State law or regulation is incompatible with the regulation prescribed by the Secretary; or

(iii) enforcement of the State law or regulation would cause an unreasonable burden on interstate commerce; and

(C) notify the Secretary of the Panel's decisions under this subsection.

(c) Review and Decisions by Secretary.—(1) The Secretary shall review each State law and regulation on commercial motor vehicle safety. Not later than 18 months after the date the Panel notifies the Secretary of a decision under subsection (b) of this section, the Secretary shall—

(A) conduct a regulatory proceeding to decide under this subsection whether the State law or regulation may be enforced; and

(B) prescribe a final regulation.

(2) If the Secretary decides a State law or regulation has the same effect as a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may be enforced after October 29, 1989.

(3) If the Secretary decides a State law or regulation is less stringent than a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may not be enforced after October 29, 1989.

(4) If the Secretary decides a State law or regulation is additional to or more stringent than a regulation prescribed by the Secretary under section 31136 of this title, the State law or regulation may be enforced after October 29, 1989, unless the Secretary also decides that—

(A) the State law or regulation has no safety benefit;

(B) the State law or regulation is incompatible with the regulation prescribed by the Secretary; or

(C) enforcement of the State law or regulation would cause an unreasonable burden on interstate commerce.

(5)(A) In deciding about a State law or regulation under this subsection, the Secretary shall give great weight to the corresponding decision made by the Panel about that law or regulation under subsection (b) of this section.

(B) In deciding under paragraph (4) of this subsection whether a State law or regulation will cause an unreasonable burden on interstate commerce, the Secretary may consider the effect on interstate commerce of implementation of that law or regulation with the implementation of all similar laws and regulations of other States.

(d) Waivers.—(1) A person (including a State) may petition the Secretary for a waiver of a decision of the Secretary that a State law or regulation may not be enforced under this section. The Secretary shall grant the waiver, as expeditiously as possible, if the person demonstrates to the satisfaction of the Secretary that the waiver is consistent with the public interest and the safe operation of commercial motor vehicles.

(2) Before deciding whether to grant or deny a petition for a waiver under this subsection, the Secretary shall give the petitioner an opportunity for a hearing on the record.

(e) Consolidating Proceedings.—The Secretary may consolidate regulatory proceedings under this section if the Secretary decides that the consolidation will not adversely affect a party to a proceeding.

(f) Written Notice of Decisions.—Not later than 10 days after making a decision under subsection (c) of this section that a State law or regulation may not be enforced, the Secretary shall give written notice to the State of that decision.

(g) JUDICIAL REVIEW AND VENUE.—(1) Not later than 60 days after the Secretary makes a decision under subsection (c) of this section, or grants or denies a petition for a waiver under subsection (d) of this section, a person (including a State) adversely affected by the decision, grant, or denial may file a petition for judicial review. The petition may be filed in the court of appeals of the United States for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business.

(2) The court has jurisdiction to review the decision, grant, or denial and to grant appropriate relief, including interim relief, as provided in chapter 7 of title 5.

(3) A judgment of a court under this subsection may be reviewed only by the Supreme Court under section 1254 of title 28.

(4) The remedies provided for in this subsection are in addition to other remedies provided by law.

(h) EXTENSIONS OF DEADLINE.—(1) The Secretary may extend, for a period of not more than 12 months, the deadline of October 29, 1989, referred to in subsections (a) and (c) of this section and section 31140(a) of this title. On request of a State that is considering enacting a State law or prescribing a State regulation that may be enforced under this section, the Secretary—

(A) shall extend the deadline for that State for the period the State requests (but not more than 12 months); and

(B) may extend the deadline for that State, in addition to the extension under clause (A) of this paragraph, for a period of not more than 12 more months if the additional extension is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles.

(2) The total periods of extensions under this subsection for a State may not be more than 24 months.

(i) INITIATING REVIEW PROCEEDINGS.—To review a State law or regulation on commercial motor vehicle safety under this section, the Secretary may initiate a regulatory proceeding on the Secretary's own initiative or on petition of an interested person (including a State).

§31142. Inspection of vehicles

(a) INSPECTION OF SAFETY EQUIPMENT.—On the instruction of an authorized enforcement official of a State or of the United States Government, a commercial motor vehicle is required to pass an inspection of all safety equipment required under part 393 of title 49, Code of Federal Regulations.

(b) INSPECTION OF VEHICLES AND RECORD RETENTION.—The Secretary of Transportation shall prescribe regulations on Government standards for inspection of commercial motor vehicles and retention by employers of records of an inspection. The standards shall provide for annual or more frequent inspections of a commercial motor vehicle unless the Secretary finds that another inspection system is as effective as an annual or more frequent inspection system. Regulations prescribed under this subsection are deemed to be regulations prescribed under section 31136 of this title.

(c) PREEMPTION.—(1) Except as provided in paragraph (2) of this subsection, this subchapter and section 31102 of this title do not—

(A) prevent a State or voluntary group of States from imposing more stringent standards for use in their own periodic roadside inspection programs of commercial motor vehicles;

(B) prevent a State from enforcing a program for inspection of commercial motor vehicles that the Secretary decides is as effective as the Government standards prescribed under subsection (b) of this section;

(C) prevent a State from enforcing a program for inspection of commercial motor vehicles that meets the requirements for membership in the Commercial Vehicle Safety Alliance, as those requirements were in effect on October 30, 1984; or

(D) require a State that is enforcing a program described in clause (B) or (C) of this paragraph to enforce a Government standard prescribed under subsection (b) of this section or to adopt a provision on inspection of commercial motor vehicles in addition to that program to comply with the Government standards.

(2) The Government standards prescribed under subsection (b) of this section shall preempt a program of a State described in paragraph (1)(C) of this subsection as the program applies to the inspection of commercial motor vehicles in that State. The State may not enforce the program if the Secretary—

(A) decides, after notice and an opportunity for a hearing, that the State is not enforcing the program in a way that achieves the objectives of this section; and

(B) after making a decision under clause (A) of this paragraph, provides the State with a 6-month period to improve the enforcement of the program to achieve the objectives of this section.

(d) INSPECTION TO BE ACCEPTED AS ADEQUATE IN ALL STATES.—A periodic inspection of a commercial motor vehicle under the Government standards prescribed under subsection (b) of this section or a program described in subsection (c)(1)(B) or (C) of this section that is being enforced shall be recognized as adequate in every State for the period of the inspection. This subsection does not prohibit a State from making random inspections of commercial motor vehicles.

(e) EFFECT OF GOVERNMENT STANDARDS.—The Government standards prescribed under subsection (b) of this section may not be enforced as the standards apply to the inspection of commercial motor vehicles in a State enforcing a program described in subsection (c)(1)(B) or (C) of this section if the Secretary decides that it is in the public interest and consistent with public safety for the Government standards not to be enforced as they apply to that inspection.

(f) APPLICATION OF STATE REGULATIONS TO GOVERNMENT-LEASED VEHICLES AND OPERATORS.—A State receiving financial assistance under section 31102 of this title in a fiscal year may enforce in that fiscal year a regulation on commercial motor vehicle safety adopted by the State as the regulation applies to commercial motor vehicles and operators leased to the Government.

§31143. Investigating complaints and protecting complainants

(a) INVESTIGATING COMPLAINTS.—The Secretary of Transportation shall conduct a timely investigation of a nonfrivolous written complaint alleging that a substantial violation of a regulation prescribed under this subchapter is occurring or has occurred within the prior 60 days. The Secretary shall give the complainant timely notice of the findings of the investigation. The Secretary is not required to conduct separate investigations of duplicative complaints.

(b) PROTECTING COMPLAINANTS.—Notwithstanding section 552 of title 5, the Secretary may disclose the identity of a complainant only if disclosure is necessary to prosecute a violation. If disclosure becomes necessary, the Secretary shall take every practical means within the Secretary's authority to ensure that the complainant is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss because of the disclosure.

§31144. Safety fitness of owners and operators

(a) PROCEDURE.—(1) In cooperation with the Interstate Commerce Commission, the Secretary of Transportation shall prescribe regulations establishing a procedure to decide on the safety fitness of owners and operators of commercial motor vehicles, including persons seeking new or additional operating authority as motor carriers under sections 10922 and 10923 of this title. The procedure shall include—

(A) specific initial and continuing requirements to be met by the owners, operators, and persons to prove safety fitness;

(B) a means of deciding whether the owners, operators, and persons meet the safety fitness requirements under clause (A) of this paragraph; and

(C) specific time deadlines for action by the Secretary and the Commission in making fitness decisions.

(2) Regulations prescribed under this subsection supersede all regulations of the United States Government on safety fitness and safety rating of motor carriers in effect on October 30, 1984.

(b) FINDINGS AND ACTION ON APPLICATIONS.—The Commission shall—

(1) find an applicant for authority to operate as a motor carrier unfit if the applicant does not meet the safety fitness requirements established under subsection (a) of this section; and

(2) deny the application.

§31145. Coordination of Governmental activities and paperwork

The Secretary of Transportation shall coordinate the activities of departments, agencies, and instrumentalities of the United States Government to ensure adequate protection of the safety and health of operators of commercial motor vehicles. The Secretary shall attempt to minimize paperwork burdens to ensure maximum coordination and to avoid overlap and the imposition of unreasonable burdens on persons subject to regulations under this subchapter.

§31146. Relationship to other laws

Except as provided in section 31136(b) of this title, this subchapter and the regulations prescribed under this subchapter do not affect chapter 51 of this title or a regulation prescribed under chapter 51.

§31147. Limitations on authority

(a) TRAFFIC REGULATIONS.—This subchapter does not authorize the Secretary of Transportation to prescribe traffic safety regulations or preempt State traffic regulations. However, the Secretary may prescribe traffic regulations to the extent their subject matter was regulated under parts 390–399 of title 49, Code of Federal Regulations, on October 30, 1984.

(b) REGULATING THE MANUFACTURING OF VEHICLES.—This subchapter does not authorize the Secretary to regulate the manufacture of commercial motor vehicles for any purpose, including fuel economy, safety, or emission control.

SUBCHAPTER IV—MISCELLANEOUS

§31161. Procedures to ensure timely correction of safety violations

(a) DEFINITION.—Section 31132(1) of this title applies to this section.

(b) GENERAL.—Not later than August 3, 1991, the Secretary of Transportation shall prescribe regulations establishing procedures to ensure the proper and timely correction of commercial motor vehicle safety violations noted during an inspection carried out with money authorized under subchapter I of this chapter.

(c) VERIFICATION PROGRAM.—The regulations shall establish a verification program for United States Government inspectors and States participating under subchapter I of this chapter to ensure that commercial motor vehicles and their operators found in violation of safety requirements have been brought into compliance with those requirements. The regulations shall include—

(1) a nationwide system for random reinspection of the commercial motor vehicles and their

operators that have been declared out-of-service because of those safety violations, with the main purpose of the system being to verify that the violations have been corrected on a timely basis;

(2) a program of accountability for correcting all safety violations that shall provide that—

(A) the operator of a commercial motor vehicle for which a safety violation has been noted shall be issued a form prescribed by the Secretary;

(B) the person making the repairs necessary to correct the violation shall certify on the form the making of repairs and the date, location, and time of the repairs;

(C) the motor carrier responsible for the commercial motor vehicle or operator shall certify on the form that, based on the carrier's knowledge, the repairs necessary to correct the violation have been made; and

(D) appropriate State penalties shall be imposed for a false statement on the form or a failure to return the form to the appropriate State entity; and

(3) a system for ensuring that appropriate State penalties are imposed for failure to correct any of those safety violations.

§31162. Compliance review priority

If the Secretary of Transportation identifies a pattern of violations of State or local traffic safety laws or regulations or commercial motor vehicle safety regulations, standards, or orders among drivers of commercial motor vehicles employed by a particular motor carrier, the Secretary or a State representative shall ensure that the motor carrier receives a high priority for review of that carrier's compliance with applicable United States Government and State commercial motor vehicle safety regulations.

CHAPTER 313—COMMERCIAL MOTOR VEHICLE OPERATORS

Sec.

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§31301. Definitions

In this chapter—

(1) "alcohol" has the same meaning given the term "alcoholic beverage" in section 158(c) of title 23.

(2) "commerce" means trade, traffic, and transportation—

(A) in the jurisdiction of the United States between a place in a State and a place outside that State (including a place outside the United States); or

(B) in the United States that affects trade, traffic, and transportation described in subclause (A) of this clause.

(3) "commercial driver's license" means a license issued by a State to an individual authorizing the individual to operate a class of commercial motor vehicles.

(4) "commercial motor vehicle" means a motor vehicle used in commerce to transport passengers or property that—

(A) has a gross vehicle weight rating of at least 26,001 pounds or a lesser gross vehicle weight rating the Secretary of Transportation prescribes by regulation, but not less than a gross vehicle weight rating of 10,001 pounds;

(B) is designed to transport at least 16 passengers including the driver; or

(C) is used to transport material found by the Secretary to be hazardous under section 5103 of this title, except a vehicle—

(i) not satisfying the weight requirements of subclause (A) of this clause;

(ii) transporting material listed as hazardous under section 306(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and not otherwise regulated by the Secretary or transporting a consumer commodity or limited quantity of hazardous material as defined in section 171.8 of title 49, Code of Federal Regulations; and

(iii) not given a waiver of this exception (individually or as part of a class of motor vehicles) by the Secretary in the interest of safety.

(5) except in section 31306, "controlled substance" has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(6) "driver's license" means a license issued by a State to an individual authorizing the individual to operate a motor vehicle on highways.

(7) "employee" means an operator of a commercial motor vehicle (including an independent contractor when operating a commercial motor vehicle) who is employed by an employer.

(8) "employer" means a person (including the United States Government, a State, or a political subdivision of a State) that owns or leases a commercial motor vehicle or assigns employees to operate a commercial motor vehicle.

(9) "felony" means an offense under a law of the United States or a State that is punishable by death or imprisonment for more than one year.

(10) "hazardous material" has the same meaning given that term in section 5102 of this title.

(11) "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on public streets, roads, or highways, but does not include a vehicle, machine, tractor, trailer, or semitrailer operated only on a rail line or custom harvesting farm machinery.

(12) "serious traffic violation" means—

(A) excessive speeding, as defined by the Secretary by regulation;

(B) reckless driving, as defined under State or local law;

(C) a violation of a State or local law on motor vehicle traffic control (except a parking violation) and involving a fatality; and

(D) any other similar violation of a State or local law on motor vehicle traffic control (except a parking violation) that the Secretary designates by regulation as serious.

(13) "State" means a State of the United States and the District of Columbia.

(14) "United States" means the States of the United States and the District of Columbia.

§31302. Limitation on the number of driver's licenses

An individual operating a commercial motor vehicle may have only one driver's license at any time, except during the 10-day period beginning on the date the individual is issued a driver's license.

§31303. Notification requirements

(a) VIOLATIONS.—An individual operating a commercial motor vehicle, having a driver's license issued by a State, and violating a State or local law on motor vehicle traffic control (except a parking violation) shall notify the individual's employer of the violation. If the violation occurred in a State other than the issuing State, the individual also shall notify a State official designated by the issuing State. The notifications required by this subsection shall be made not later than 30 days after the date the individual is found to have committed the violation.

(b) REVOCATIONS, SUSPENSIONS, AND CANCELLATIONS.—An employee who has a driver's license revoked, suspended, or canceled by a State, who loses the right to operate a commercial motor vehicle in a State for any period, or who is disqualified from operating a commercial motor vehicle for any period, shall notify the employee's employer of the action not later than 30 days after the date of the action.

(c) PREVIOUS EMPLOYMENT.—(1) Subject to paragraph (2) of this subsection, an individual applying for employment as an operator of a commercial motor vehicle shall notify the prospective employer, at the time of the application, of any previous employment as an operator of a commercial motor vehicle.

(2) The Secretary of Transportation shall prescribe by regulation the period for which notice of previous employment must be given under paragraph (1) of this subsection. However, the period may not be less than the 10-year period ending on the date of the application.

§31304. Employer responsibilities

An employer may not knowingly allow an employee to operate a commercial motor vehicle in the United States during a period in which the employee—

(1) has a driver's license revoked, suspended, or canceled by a State, has lost the right to operate a commercial motor vehicle in a State, or has been disqualified from operating a commercial motor vehicle; or

(2) has more than one driver's license (except as allowed under section 31302 of this title).

§31305. General driver fitness and testing

(a) MINIMUM STANDARDS FOR TESTING AND FITNESS.—The Secretary of Transportation shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle. The regulations—

(1) shall prescribe minimum standards for written and driving tests of an individual operating a commercial motor vehicle;

(2) shall require an individual who operates or will operate a commercial motor vehicle to take a driving test in a vehicle representative of the type of vehicle the individual operates or will operate;

(3) shall prescribe minimum testing standards for the operation of a commercial motor vehicle and may prescribe different minimum testing standards for different classes of commercial motor vehicles;

(4) shall ensure that an individual taking the tests has a working knowledge of—

(A) regulations on the safe operation of a commercial motor vehicle prescribed by the Secretary and contained in title 49, Code of Federal Regulations; and

(B) safety systems of the vehicle;

(5) shall ensure that an individual who operates or will operate a commercial motor vehicle carrying a hazardous material—

(A) is qualified to operate the vehicle under regulations on motor vehicle transportation of hazardous material prescribed under chapter 51 of this title; and

(B) has a working knowledge of—

(i) those regulations;

(ii) the handling of hazardous material;

(iii) the operation of emergency equipment used in response to emergencies arising out of the transportation of hazardous material; and

(iv) appropriate response procedures to follow in those emergencies;

(6) shall establish minimum scores for passing the tests;

(7) shall ensure that an individual taking the tests is qualified to operate a commercial motor vehicle under regulations prescribed by the Secretary and contained in title 49, Code of Federal Regulations, to the extent the regulations apply to the individual; and

(8) may require—

(A) issuance of a certification of fitness to operate a commercial motor vehicle to an individual passing the tests; and

(B) the individual to have a copy of the certification in the individual's possession when the individual is operating a commercial motor vehicle.

(b) Requirements for Operating Vehicles.—(1) Except as provided in paragraph (2) of this subsection, an individual may operate a commercial motor vehicle only if the individual has passed written and driving tests to operate the vehicle that meet the minimum standards prescribed by the Secretary under subsection (a) of this section.

(2) The Secretary may prescribe regulations providing that an individual may operate a commercial motor vehicle for not more than 90 days if the individual—

(A) passes a driving test for operating a commercial motor vehicle that meets the minimum standards prescribed under subsection (a) of this section; and

(B) has a driver's license that is not suspended, revoked, or canceled.

(3) Paragraph (1) of this subsection becomes effective on the date the Secretary shall establish by regulation. The date shall be as soon as practicable but not later than April 1, 1992.

§31306. Alcohol and controlled substances testing

(a) Definition.—In this section, "controlled substance" means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) specified by the Secretary of Transportation.

(b) Testing Program for Operators of Commercial Motor Vehicles.—(1)(A) In the interest of commercial motor vehicle safety, the Secretary of Transportation shall prescribe regulations not later than October 28, 1992, that establish a program requiring motor carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of operators of commercial motor vehicles for the use of alcohol or a controlled substance in violation of law or a United States Government regulation.

(B) When the Secretary of Transportation considers it appropriate in the interest of safety, the Secretary may prescribe regulations for conducting periodic recurring testing of operators of commercial motor vehicles for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(2) In prescribing regulations under this subsection, the Secretary of Transportation—

(A) shall require that post-accident testing of an operator of a commercial motor vehicle be conducted when loss of human life occurs in an accident involving a commercial motor vehicle; and

(B) may require that post-accident testing of such an operator be conducted when bodily injury or significant property damage occurs in any other serious accident involving a commercial motor vehicle.

(c) Testing and Laboratory Requirements.—In carrying out subsection (b) of this section, the Secretary of Transportation shall develop requirements that shall—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimens;

(2) for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—

(A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this section, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing;

(B) the minimum list of controlled substances for which individuals may be tested; and

(C) appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this section;

(3) require that a laboratory involved in testing under this section have the capability and facility, at the laboratory, of performing screening and confirmation tests;

(4) provide that any test indicating the use of alcohol or a controlled substance in violation of law or a Government regulation be confirmed by a scientifically recognized method of testing capable of providing quantitative information about alcohol or a controlled substance;

(5) provide that each specimen be subdivided, secured, and labeled in the presence of the tested individual and that a part of the specimen be retained in a secure manner to prevent the possibility of tampering, so that if the individual's confirmation test results are positive the individual has an opportunity to have the retained part tested by a 2d confirmation test done independently at another certified laboratory if the individual requests the 2d confirmation test not later than 3 days after being advised of the results of the first confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations that may be necessary and in consultation with the Secretary of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (except information about alcohol or a controlled substance) of employees, except that this clause does not prevent the use of test results for the orderly imposition of appropriate sanctions under this section; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(d) Testing as Part of Medical Examination.—The Secretary of Transportation may provide that testing under subsection (a) of this section for operators subject to subpart E of part 391 of title 49, Code of Federal Regulations, be conducted as part of the medical examination required under that subpart.

(e) Rehabilitation.—The Secretary of Transportation shall prescribe regulations establishing requirements for rehabilitation programs that provide for the identification and opportunity for treatment of operators of commercial motor vehicles who are found to have used alcohol or a controlled substance in violation of law or a Government regulation. The Secretary shall decide on the circumstances under which those operators shall be required to participate in a program. This section does not prevent a motor carrier from establishing a program under this section in cooperation with another motor carrier.

(f) Sanctions.—The Secretary of Transportation shall decide on appropriate sanctions for a commercial motor vehicle operator who is found, based on tests conducted and confirmed under this section, to have used alcohol or a controlled substance in violation of law or a Government regulation but who is not under the influence of alcohol or a controlled substance as provided in this chapter.

(g) Effect on State and Local Government Regulations.—A State or local government may not prescribe or continue in effect a law, regulation, standard, or order that is inconsistent with regulations prescribed under this section. However, a regulation prescribed under this section may not be construed to preempt a State criminal law that imposes sanctions for reckless conduct leading to loss of life, injury, or damage to property.

(h) International Obligations and Foreign Laws.—In prescribing regulations under this section, the Secretary of Transportation—

(1) shall establish only requirements that are consistent with international obligations of the United States; and

(2) shall consider applicable laws and regulations of foreign countries.

(i) Other Regulations Allowed.—This section does not prevent the Secretary of Transportation from continuing in effect, amending, or further supplementing a regulation prescribed before October 28, 1991, governing the use of alcohol or a controlled substance by commercial motor vehicle employees.

(j) Application of Penalties.—This section does not supersede a penalty applicable to an operator of a commercial motor vehicle under this chapter or another law.

§31307. Minimum training requirements for operators of longer combination vehicles

(a) Definition.—In this section, "longer combination vehicle" means a vehicle consisting of a truck tractor and more than one trailer or semitrailer that operates on the Dwight D. Eisenhower System of Interstate and Defense Highways with a gross vehicle weight of more than 80,000 pounds.

(b) Not later than December 18, 1994, the Secretary of Transportation shall prescribe regulations establishing minimum training requirements for operators of longer combination vehicles. The training shall include certification of an operator's proficiency by an instructor who has met the requirements established by the Secretary.

§31308. Commercial driver's license

After consultation with the States, the Secretary of Transportation shall prescribe regulations on minimum uniform standards for the issuance of commercial drivers' licenses by the States and for information to be contained on each of the licenses. The standards shall require at a minimum that—

(1) an individual issued a commercial driver's license pass written and driving tests for the operation of a commercial motor vehicle that comply with the minimum standards prescribed by the Secretary under section 31305(a) of this title;

(2) the license be tamperproof to the maximum extent practicable; and

(3) the license contain—

(A) the name and address of the individual issued the license and a physical description of the individual;

(B) the social security account number or other number or information the Secretary decides is appropriate to identify the individual;

(C) the class or type of commercial motor vehicle the individual is authorized to operate under the license;

(D) the name of the State that issued the license; and

(E) the dates between which the license is valid.

§31309. Commercial driver's license information system

(a) GENERAL REQUIREMENT.—The Secretary of Transportation shall make an agreement under subsection (b) of this section for the operation of, or establish under subsection (c) of this section, an information system that will serve as a clearinghouse and depository of information about the licensing, identification, and disqualification of operators of commercial motor vehicles. The Secretary shall consult with the States in carrying out this section.

(b) STATE AGREEMENTS.—If the Secretary decides that an information system used by a State or States about the driving status of operators of motor vehicles or another State-operated information system could be used to carry out this section, and the State or States agree to the use of the system for carrying out this section, the Secretary may make an agreement with the State or States to use the system as provided in this section and section 31311(c) of this title. An agreement made under this subsection shall contain terms the Secretary considers necessary to carry out this chapter.

(c) ESTABLISHMENT BY SECRETARY.—If the Secretary does not make an agreement under subsection (b) of this section, the Secretary shall establish an information system about the driving status and licensing of operators of commercial motor vehicles as provided in this section.

(d) CONTENTS.—(1) At a minimum, the information system under this section shall include for each operator of a commercial motor vehicle—

(A) information the Secretary considers appropriate to ensure identification of the operator;

(B) the name, address, and physical description of the operator;

(C) the social security account number of the operator or other number or information the Secretary considers appropriate to identify the operator;

(D) the name of the State that issued the license to the operator;

(E) the dates between which the license is valid; and

(F) whether the operator had a commercial motor vehicle driver's license revoked, suspended, or canceled by a State, lost the right to operate a commercial motor vehicle in a State for any period, or has been disqualified from operating a commercial motor vehicle.

(2) Not later than December 31, 1990, the Secretary shall prescribe regulations on minimum uniform standards for a biometric identification system to ensure the identification of operators of commercial motor vehicles.

(e) AVAILABILITY OF INFORMATION.—(1) On request of a State, the Secretary or the operator of the information system, as the case may be, may make available to the State information in the information system under this section.

(2) On request of an employee, the Secretary or the operator of the information system, as the case may be, may make available to the employee information in the information system about the employee.

(3) On request of an employer or prospective employer of an employee and after notification to the employee, the Secretary or the operator of the information system, as the case may be, may make available to the employer or prospective employer information in the information system about the employee.

(4) On the request of the Secretary, the operator of the information system shall make available to the Secretary information about the driving status and licensing of operators of commercial motor vehicles (including information required by subsection (d)(1) of this section).

(f) FEE SYSTEM.—If the Secretary establishes an information system under this section, the Secretary shall establish a fee system for using the information system. Fees collected under this subsection in a fiscal year shall equal as nearly as possible the costs of operating the information system in that fiscal year. The Secretary shall deposit fees collected under this subsection in the Highway Trust Fund (except the Mass Transit Account).

§31310. Disqualifications

(a) BLOOD ALCOHOL CONCENTRATION LEVEL.—In this section, the blood alcohol concentration level at or above which an individual when operating a commercial motor vehicle is deemed to be driving under the influence of alcohol is .04 percent.

(b) FIRST VIOLATION OR COMMITTING FELONY.—(1) Except as provided in paragraph (2) of this subsection and subsection (c) of this section, the Secretary of Transportation shall disqualify from operating a commercial motor vehicle for at least one year an individual—

(A) committing a first violation of driving a commercial motor vehicle under the influence of alcohol or a controlled substance;

(B) committing a first violation of leaving the scene of an accident involving a commercial motor vehicle operated by the individual; or

(C) using a commercial motor vehicle in committing a felony (except a felony described in subsection (d) of this section).

(2) If the vehicle involved in a violation referred to in paragraph (1) of this subsection is transporting hazardous material required to be placarded under section 5103 of this title, the Secretary shall disqualify the individual for at least 3 years.

(c) SECOND AND MULTIPLE VIOLATIONS.—(1) Subject to paragraph (2) of this subsection, the Secretary shall disqualify from operating a commercial motor vehicle for life an individual—

(A) committing more than one violation of driving a commercial motor vehicle under the influence of alcohol or a controlled substance;

(B) committing more than one violation of leaving the scene of an accident involving a commercial motor vehicle operated by the individual;

(C) using a commercial motor vehicle in committing more than one felony arising out of different criminal episodes; or

(D) committing any combination of single violations or use described in clauses (A)-(C) of this paragraph.

(2) The Secretary may prescribe regulations establishing guidelines (including conditions) under which a disqualification for life under paragraph (1) of this subsection may be reduced to a period of not less than 10 years.

(d) CONTROLLED SUBSTANCE VIOLATIONS.—The Secretary shall disqualify from operating a commercial motor vehicle for life an individual who uses a commercial motor vehicle in committing a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(e) SERIOUS TRAFFIC VIOLATIONS.—(1) The Secretary shall disqualify from operating a commercial motor vehicle for at least 60 days an individual who, in a 3-year period, commits 2 serious traffic violations involving a commercial motor vehicle operated by the individual.

(2) The Secretary shall disqualify from operating a commercial motor vehicle for at least 120 days an individual who, in a 3-year period, commits 3 serious traffic violations involving a commercial motor vehicle operated by the individual.

(f) STATE DISQUALIFICATION.—Notwithstanding subsections (b)-(e) of this section, the Secretary does not have to disqualify an individual from operating a commercial motor vehicle if the State that issued the individual a license authorizing the operation has disqualified the individual from operating a commercial motor vehicle under subsections (b)-(e). Revocation, suspension, or cancellation of the license is deemed to be disqualification under this subsection.

(g) OUT-OF-SERVICE ORDERS.—(1)(A) To enforce section 392.5 of title 49, Code of Federal Regulations, the Secretary shall prescribe regulations establishing and enforcing an out-of-service period of 24 hours for an individual who violates section 392.5. An individual may not violate an out-of-service order issued under those regulations.

(B) The Secretary shall prescribe regulations establishing and enforcing requirements for reporting out-of-service orders issued under regulations prescribed under subparagraph (A) of this paragraph. Regulations prescribed under this subparagraph shall require at least that an operator of a commercial motor vehicle who is issued an out-of-service order to report the issuance to the individual's employer and to the State that issued the operator a driver's license.

(2) Not later than December 18, 1992, the Secretary shall prescribe regulations establishing sanctions and penalties related to violations of out-of-service orders by individuals operating commercial motor vehicles. The regulations shall require at least that—

(A) an operator of a commercial motor vehicle found to have committed a first violation of an out-of-service order shall be disqualified from operating such a vehicle for at least 90 days and liable for a civil penalty of at least $1,000;

(B) an operator of a commercial motor vehicle found to have committed a 2d violation of an out-of-service order shall be disqualified from operating such a vehicle for at least one year and not more than 5 years and liable for a civil penalty of at least $1,000; and

(C) an employer that knowingly allows or requires an employee to operate a commercial motor vehicle in violation of an out-of-service order shall be liable for a civil penalty of not more than $10,000.

§31311. Requirements for State participation

(a) GENERAL.—To avoid having amounts withheld from apportionment under section 31314 of this title, a State shall comply with the following requirements:

(1) The State shall adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the Secretary of Transportation under section 31305(a) of this title.

(2) The State may issue a commercial driver's license to an individual only if the individual passes written and driving tests for the operation of a commercial motor vehicle that comply with the minimum standards.

(3) The State shall have in effect and enforce a law providing that an individual with a blood alcohol concentration level at or above the level established by section 31310(a) of this title when operating a commercial motor vehicle is deemed to be driving under the influence of alcohol.

(4) The State shall authorize an individual to operate a commercial motor vehicle only by issuing a commercial driver's license containing the information described in section 31308(3) of this title.

(5) At least 60 days before issuing a commercial driver's license (or a shorter period the Secretary prescribes by regulation), the State shall notify the Secretary or the operator of the information system under section 31309 of this title, as the case may be, of the proposed issuance of the license and other information the Secretary may require to ensure identification of the individual applying for the license.

(6) Before issuing a commercial driver's license to an individual, the State shall request from any other State that has issued a commercial driver's license to the individual all information about the driving record of the individual.

(7) Not later than 30 days after issuing a commercial driver's license, the State shall notify the Secretary or the operator of the information system under section 31309 of this title, as the case may be, of the issuance.

(8) Not later than 10 days after disqualifying the holder of a commercial driver's license from operating a commercial motor vehicle (or after revoking, suspending, or canceling the license) for at least 60 days, the State shall notify the Secretary or the operator of the information system under section 31309 of this title, as the case may be, and the State that issued the license, of the disqualification, revocation, suspension, or cancellation.

(9) If an individual operating a commercial motor vehicle violates a State or local law on motor vehicle traffic control (except a parking violation) and the individual has a driver's license issued by another State, the State in which the violation occurred shall notify a State official designated by the issuing State of the violation not later than 10 days after the date the individual is found to have committed the violation.

(10) The State may not issue a commercial driver's license to an individual during a period in which the individual is disqualified from operating a commercial motor vehicle or the individual's driver's license is revoked, suspended, or canceled.

(11) The State may issue a commercial driver's license to an individual who has a commercial driver's license issued by another State only if the individual first returns the driver's license issued by the other State.

(12) The State may issue a commercial driver's license only to an individual who operates or will operate a commercial motor vehicle and is domiciled in the State, except that, under regulations the Secretary shall prescribe, the State may issue a commercial driver's license to an individual who operates or will operate a commercial motor vehicle and is not domiciled in a State that issues commercial drivers' licenses.

(13) The State shall impose penalties the State considers appropriate and the Secretary approves for an individual operating a commercial motor vehicle when the individual—

(A) does not have a commercial driver's license;

(B) has a driver's license revoked, suspended, or canceled; or

(C) is disqualified from operating a commercial motor vehicle.

(14) The State shall allow an individual to operate a commercial motor vehicle in the State if—

(A) the individual has a commercial driver's license issued by another State under the minimum standards prescribed by the Secretary under section 31305(a) of this title;

(B) the license is not revoked, suspended, or canceled; and

(C) the individual is not disqualified from operating a commercial motor vehicle.

(15) The State shall disqualify an individual from operating a commercial motor vehicle for the same reasons and time periods for which the Secretary shall disqualify the individual under section 31310(b)–(e) of this title.

(16)(A) Before issuing a commercial driver's license to an individual, the State shall request the Secretary for information from the National Driver Register maintained under chapter 303 of this title (after the Secretary decides the Register is operational) on whether the individual—

(i) has been disqualified from operating a motor vehicle (except a commercial motor vehicle);

(ii) has had a license (except a license authorizing the individual to operate a commercial motor vehicle) revoked, suspended, or canceled for cause in the 3-year period ending on the date of application for the commercial driver's license; or

(iii) has been convicted of an offense specified in section 30304(a)(3) of this title.

(B) The State shall give full weight and consideration to that information in deciding whether to issue the individual a commercial driver's license.

(17) The State shall adopt and enforce regulations prescribed by the Secretary under section 31310(g)(1)(A) and (2) of this title.

(b) State Satisfaction of Requirements.—A State may satisfy the requirements of subsection (a) of this section that the State disqualify an individual from operating a commercial motor vehicle by revoking, suspending, or canceling the driver's license issued to the individual.

(c) Notification.—Not later than 30 days after being notified by a State of the proposed issuance of a commercial driver's license to an individual, the Secretary or the operator of the information system under section 31309 of this title, as the case may be, shall notify the State whether the individual has a commercial driver's license issued by another State or has been disqualified from operating a commercial motor vehicle by another State or the Secretary.

§31312. Grants for testing and ensuring the fitness of operators of commercial motor vehicles

(a) Basic Grants.—(1) The Secretary of Transportation may make a grant to a State under this subsection if the State—

(A) makes an agreement with the Secretary—

(i) to adopt and carry out in the fiscal year in which the grant is made a program for testing and ensuring the fitness of individuals who operate commercial motor vehicles under the minimum standards prescribed by the Secretary under section 31305(a) of this title; and

(ii) to require that operators of commercial motor vehicles have passed written and driving tests that meet the minimum standards; and

(B) has in effect and enforces in that fiscal year a law providing that an individual with a blood alcohol concentration of at least .10 percent when operating a commercial motor vehicle is deemed to be driving under the influence of alcohol.

(2) A State may—

(A) administer driving tests referred to in paragraph (1) of this subsection and section 31311(a) of this title; or

(B) make an agreement, approved by the Secretary, for the tests to be administered by a person (including a department, agency, or instrumentality of a local government) that meets minimum standards the Secretary prescribes by regulation if—

(i) the agreement allows the Secretary and the State each to conduct random examinations, inspections, and audits of the testing without prior notification; and

(ii) the State annually conducts at least one onsite inspection of the testing.

(3) The Secretary shall decide on the amount of a grant in a fiscal year to be made under this subsection to a State eligible to receive the grant in the fiscal year. However—

(A) a grant to a State under this subsection shall be at least $100,000 in a fiscal year; and

(B) to the extent each State grant under this subsection is more than $100,000 in a fiscal year, the Secretary shall ensure that those States are treated equitably.

(4) A State receiving a grant under this subsection may use the amounts provided under the grant only to test operators of commercial motor vehicles.

(5) There is available to the Secretary to carry out this subsection $_________ from amounts made available under section 31104 of this title for the fiscal year ending September 30, 19__.

(b) Supplemental Grants.—(1) The Secretary may make a grant under this subsection in a fiscal year to a State eligible to receive a grant under subsection (a) of this section in that fiscal year. A grant made under this subsection shall be used for testing operators of commercial motor vehicles.

(2) Amounts of grants under this subsection shall be distributed among the States eligible to receive grants under subsection (a) of this section in the fiscal year on the basis of the number of written and driving tests administered, and the number of drivers' licenses for the operation of commercial motor vehicles issued, in the prior fiscal year.

(3) There is available to the Secretary to carry out this subsection $_________ from amounts made available under section 31104 of this title for the fiscal year ending September 30, 19__.

(c) Maintenance of Expenditures.—The Secretary may make a grant to a State under this section only if the State agrees that the total expenditure of amounts of the State and political subdivisions of the State, exclusive of United States Government amounts, for testing operators of commercial motor vehicles will be maintained at a level at least equal to the average level of that expenditure for its last 2 fiscal years before October 27, 1986.

(d) Availability of Amounts.—(1) Amounts made available to a State under this section remain available for obligation by the State for the fiscal year for which the amounts are made available. Any of those amounts not obligated before the last day of that fiscal year are no longer available for obligation by the State and are available to the Secretary to carry out this chapter.

(2) Amounts made available to the Secretary under this section remain available until expended.

(e) Grants as Contractual Obligations.—Approval by the Secretary of a grant to a State under this section is a contractual obligation of the Government for payment of the amount of the grant.

(f) Testing and Fitness Program Studies.—In this section, development of a program for testing and ensuring the fitness of individuals who operate commercial motor vehicles includes studies of—

(1) the number of vehicles that will need to be tested under the program in a calendar year;

(2) facilities at which testing of those individuals could be conducted; and

(3) additional resources (including personnel) that will be necessary to conduct the testing.

§31313. Grants for issuing commercial drivers' licenses and complying with State participation requirements

(a) General Authority.—The Secretary of Transportation may make a grant under this section to a State in a fiscal year if the State makes an agreement with the Secretary to participate in that fiscal year in the commercial driver's license program established by this chapter and the information system required by this chapter and to comply with the requirements of section 31311(a) of this title.

(b) Amounts of Grants.—The Secretary shall decide on the amount of a grant in a fiscal year to be made under this section to a State eligible to receive the grant in the fiscal year. However—

(1) a grant to a State under this section shall be at least $100,000 in a fiscal year; and

(2) to the extent each State grant under this section is more than $100,000 in a fiscal year, the Secretary shall ensure that those States are treated equitably.

(c) Limitation on Use.—A State receiving a grant under this section may use the amounts provided under the grant only for issuing commercial drivers' licenses and complying with the requirements of section 31311(a) of this title.

(d) Availability of Amounts.—(1) Amounts made available to a State under this section remain available for obligation by the State for the fiscal year for which the amounts are made available. Any of those amounts not obligated before the last day of that fiscal year are no longer available for obligation by the State and are available to the Secretary to carry out this chapter.

(2) Amounts made available to the Secretary under this section remain available until expended.

(e) Grants as Contractual Obligations.—Approval by the Secretary of a grant to a State under this section is a contractual obligation of the United States Government for payment of the amount of the grant.

(f) Authorization.—There is available to the Secretary to carry out this section $________ from amounts made available under section 31104 of this title for the fiscal year ending September 30, 19__.

§31314. Withholding amounts for State noncompliance

(a) First Fiscal Year.—The Secretary of Transportation shall withhold 5 percent of the amount required to be apportioned to a State under section 104(b)(1), (2), (5), and (6) of title 23 on the first day of the fiscal year after the first fiscal year beginning after September 30, 1992, throughout which the State does not comply substantially with a requirement of section 31311(a) of this title.

(b) Second Fiscal Year.—The Secretary shall withhold 10 percent of the amount required to be apportioned to a State under section 104(b)(1), (2), (5), and (6) of title 23 on the first day of each fiscal year after the 2d fiscal year beginning after September 30, 1992, throughout which the State does not comply substantially with a requirement of section 31311(a) of this title.

(c) Availability for Apportionment.—(1) Amounts withheld under this section from apportionment to a State before October 1, 1995, remain available for apportionment to the State as follows:

(A) If the amounts would have been apportioned under section 104(b)(5)(B) of title 23 but for this section, the amounts remain available until the end of the 2d fiscal year following the fiscal year for which the amounts are authorized to be appropriated.

(B) If the amounts would have been apportioned under section 104(b)(1), (2), or (6) of title 23 but for this section, the amounts remain available until the end of the 3d fiscal year following the fiscal year for which the amounts are authorized to be appropriated.

(2) Amounts withheld under this section from apportionment to a State after September 30, 1995, are not available for apportionment to the State.

(d) Apportionment After Compliance.—(1) If, before the last day of the period for which amounts withheld under this section from apportionment are to remain available for apportionment to a State under subsection (c)(1) of this section, the State substantially complies with all of the requirements of section 31311(a) of this title for a period of 365 days, the Secretary, on the day following the last day of that period, shall apportion to the State the withheld amounts remaining available for apportionment to that State.

(2) Amounts apportioned under paragraph (1) of this subsection remain available for expenditure until the end of the 3d fiscal year following the fiscal year in which the amounts are apportioned. Amounts not obligated at the end of that period lapse or, for amounts apportioned under section 104(b)(5) of title 23, lapse and are available for projects under section 118(b) of title 23.

(e) Lapse.—If, at the end of the period for which amounts withheld under this section from apportionment are available for apportionment to a State under subsection (c)(1) of this section, the State has not substantially complied with all of the requirements of section 31311(a) of this title for a 365-day period, the amounts lapse or, for amounts withheld from apportionment under section 104(b)(5) of title 23, the amounts lapse and are available for projects under section 118(b) of title 23.

§31315. Waiver authority

After notice and an opportunity for comment, the Secretary of Transportation may waive any part of this chapter or a regulation prescribed under this chapter as it applies to a class of individuals or commercial motor vehicles if the Secretary decides the waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles. A waiver under this section shall be published in the Federal Register with reasons for the waiver.

§31316. Limitation on statutory construction

This chapter does not affect the authority of the Secretary of Transportation to regulate commercial motor vehicle safety involving motor vehicles with a gross vehicle weight rating of less than 26,001 pounds or a lesser gross vehicle weight rating the Secretary decides is appropriate under section 31301(4)(A) of this title.

§31317. Procedure for prescribing regulations

Regulations prescribed by the Secretary of Transportation to carry out this chapter (except section 31307) shall be prescribed under section 553 of title 5 without regard to sections 556 and 557 of title 5.

CHAPTER 315—MOTOR CARRIER SAFETY

Sec.
31501. Definitions.
31502. Requirements for qualifications, hours of service, safety, and equipment standards.
31503. Research, investigation, and testing.
31504. Identification of motor vehicles.

§31501. Definitions

In this chapter—

(1) "migrant worker" means an individual going to or from employment in agriculture as provided under section 3121(g) of the Internal Revenue Code of 1986 (26 U.S.C. 3121(g)) or section 203(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)).

(2) "motor carrier", "motor common carrier", "motor private carrier", "motor vehicle", and "United States" have the same meanings given those terms in section 10102 of this title.

(3) "motor carrier of migrant workers"—

(A) means a person (except a motor common carrier) providing transportation referred to in section 10521(a) of this title by a motor vehicle (except a passenger automobile or station wagon) for at least 3 migrant workers at a time to or from their employment; but

(B) does not include a migrant worker providing transportation for migrant workers and their immediate families.

§31502. Requirements for qualifications, hours of service, safety, and equipment standards

(a) Application.—This section applies to transportation—

(1) described in sections 10521 and 10522 of this title; and

(2) to the extent the transportation is in the United States and is between places in a foreign country, or between a place in a foreign country and a place in another foreign country.

(b) Motor Carrier and Private Motor Carrier Requirements.—The Secretary of Transportation may prescribe requirements for—

(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and

(2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.

(c) Migrant Worker Motor Carrier Requirements.—The Secretary may prescribe requirements for the comfort of passengers, qualifications and maximum hours of service of operators, and safety of operation and equipment of a motor carrier of migrant workers. The requirements only apply to a carrier transporting a migrant worker—

(1) at least 75 miles; and

(2) across the boundary of a State, territory, or possession of the United States.

(d) Considerations.—Before prescribing or revising any requirement under this section, the Secretary shall consider the costs and benefits of the requirement.

§31503. Research, investigation, and testing

(a) General Authority.—The Secretary of Transportation may investigate and report on the need for regulation by the United States Government of sizes, weight, and combinations of motor vehicles and qualifications and maximum hours of service of employees of a motor carrier subject to subchapter II of chapter 105 of this title and a motor private carrier. The Secretary shall use the services of each department, agency, or instrumentality of the Government and each organization of motor carriers having special knowledge of a matter being investigated.

(b) Use of Services.—In carrying out this chapter, the Secretary may use the services of a department, agency, or instrumentality of the Government having special knowledge about safety, to conduct scientific and technical research, investigation, and testing when necessary to promote safety of operation and equipment of motor vehicles. The Secretary may reimburse the department, agency, or instrumentality for the services provided.

§31504. Identification of motor vehicles

(a) General Authority.—The Secretary of Transportation may—

(1) issue and require the display of an identification plate on a motor vehicle used in transportation provided by a motor private carrier and a motor carrier of migrant workers subject to section 31502(c) of this title, except a motor contract carrier; and

(2) require each of those motor private carriers and motor carriers of migrant workers to pay the reasonable cost of the plate.

(b) Limitation.—A motor private carrier or a motor carrier of migrant workers may use an identification plate only as authorized by the Secretary.

CHAPTER 317—PARTICIPATION IN INTERNATIONAL REGISTRATION PLAN AND INTERNATIONAL FUEL TAX AGREEMENT

Sec.
31701. Definitions.
31702. Working group.
31703. Grants.
31704. Vehicle registration.
31705. Fuel use tax.
31706. Enforcement.
31707. Limitations on statutory construction.
31708. Authorization of appropriations.

§31701. Definitions

In this chapter—

(1) "commercial motor vehicle", with respect to—

(A) the International Registration Plan, has the same meaning given the term "apportionable vehicle" under the Plan; and

(B) the International Fuel Tax Agreement, has the same meaning given the term "qualified motor vehicle" under the Agreement.

(2) "fuel use tax" means a tax imposed on or measured by the consumption of fuel in a motor vehicle.

(3) "International Fuel Tax Agreement" means the interstate agreement on collecting and distributing fuel use taxes paid by motor carriers, developed under the auspices of the National Governors' Association.

(4) "International Registration Plan" means the interstate agreement on apportioning vehicle registration fees paid by motor carriers, developed by the American Association of Motor Vehicle Administrators.

(5) "Regional Fuel Tax Agreement" means the interstate agreement on collecting and distributing fuel use taxes paid by motor carriers in the States of Maine, Vermont, and New Hampshire.

(6) "State" means the 48 contiguous States and the District of Columbia.

§31702. Working group

(a) ESTABLISHMENT.—Not later than June 15, 1992, the Secretary of Transportation shall establish a working group of State and local government officials, including representatives of the National Governors' Association, the American Association of Motor Vehicle Administrators, the National Conference of State Legislatures, the Federation of Tax Administrators, and the Board of Directors for the International Fuel Tax Agreement, and a representative of the Regional Fuel Tax Agreement.

(b) PURPOSES.—The purposes of the working group are—

(1) to propose procedures to resolve disputes among States participating in the International Registration Plan and among States participating in the International Fuel Tax Agreement, including designating the Secretary or any other person to resolve the disputes; and

(2) to provide technical assistance to States participating or seeking to participate in the International Registration Plan or the International Fuel Tax Agreement.

(c) CONSULTATION REQUIREMENT.—In carrying out subsection (b) of this section, the working group shall consult with members of the motor carrier industry.

(d) REPORT.—(1) Not later than December 18, 1993, the working group shall submit a report to—

(A) the Secretary;

(B) the Committee on Commerce, Science, and Transportation of the Senate;

(C) the Committee on Public Works and Transportation of the House of Representatives;

(D) the Committee on the Judiciary of the House of Representatives;

(E) the States participating in the International Registration Plan; and

(F) the States participating in the International Fuel Tax Agreement.

(2) The report shall contain a detailed statement of the working group's findings and conclusions and its joint recommendations about the matters referred to in subsection (b) of this section. After submitting the report, the working group periodically may review and modify the findings and conclusions and the joint recommendations as appropriate and submit a report containing the modifications to the Secretary and the committees specified in paragraph (1) of this subsection.

(e) RELATIONSHIP TO OTHER LAWS.—The Federal Advisory Committee Act (5 App. U.S.C.) does not apply to the working group.

§31703. Grants

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make grants to States and appropriate persons to facilitate participation in the International Registration Plan and the International Fuel Tax Agreement and to make administrative improvements in any other base State fuel use tax agreement in existence as of January 1, 1991. A grant may include amounts for technical assistance, personnel training, travel costs, and technology and equipment associated with the participation.

(b) CONTRACTUAL OBLIGATION.—Approval by the Secretary of a grant with amounts made available under this section is a contractual obligation of the United States Government for payment of the Government's share of the grant.

§31704. Vehicle registration

After September 30, 1996, a State that is not participating in the International Registration Plan may not establish, maintain, or enforce a commercial motor vehicle registration law, regulation, or agreement that limits the operation in that State of a commercial motor vehicle that is not registered under the laws of the State, if the vehicle is registered under the laws of a State participating in the Plan.

§31705. Fuel use tax

(a) REPORTING REQUIREMENTS.—After September 30, 1996, a State may establish, maintain, or enforce a law or regulation that has a fuel use tax reporting requirement (including any tax reporting form) only if the requirement conforms with the International Fuel Tax Agreement.

(b) PAYMENT.—After September 30, 1996, a State may establish, maintain, or enforce a law or regulation that provides for the payment of a fuel use tax only if the law or regulation conforms with the International Fuel Tax Agreement as it applies to collection of a fuel use tax by a single base State and proportional sharing of fuel use taxes charged among the States where a commercial motor vehicle is operated.

(c) LIMITATION.—If the International Fuel Tax Agreement is amended, a State not participating in the Agreement when the amendment is made is not subject to the conformity requirements of subsections (a) and (b) of this section in regard to the amendment until after a reasonable time, but not earlier than the expiration of—

(1) the 365-day period beginning on the first day that States participating in the Agreement are required to comply with the amendment; or

(2) the 365-day period beginning on the day the relevant office of the State receives written notice of the amendment from the Secretary of Transportation.

(d) NONAPPLICATION.—This section does not apply to a State that was participating in the Regional Fuel Tax Agreement on January 1, 1991, and that continues to participate in that Agreement after that date.

§31706. Enforcement

(a) CIVIL ACTIONS.—On request of the Secretary of Transportation, the Attorney General may bring a civil action in a court of competent jurisdiction to enforce compliance with sections 31704 and 31705 of this title.

(b) VENUE.—An action under this section may be brought only in the State in which an order is required to enforce compliance.

(c) RELIEF.—Subject to section 1341 of title 28, the court, on a proper showing—

(1) shall issue a temporary restraining order or a preliminary or permanent injunction; and

(2) may require by the injunction that the State or any person comply with sections 31704 and 31705 of this title.

§31707. Limitations on statutory construction

Sections 31704 and 31705 of this title do not limit the amount of money a State may charge for registration of a commercial motor vehicle or the amount of any fuel use tax a State may impose.

§31708. Authorization of appropriations

(a) FISCAL YEAR 1992.—(1) Not more than the following amounts may be appropriated from the Highway Trust Fund (except the Mass Transit Account) for the fiscal year ending September 30, 1992:

(A) $1,000,000 for activities of the working group under section 31702 of this title.

(B) $5,000,000 for grants under section 31703 of this title.

(2) Amounts authorized under paragraph (1) of this subsection are subject to the obligation limitation in section 1002 of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 104(note)) for the fiscal year ending September 30, 1992.

(b) FISCAL YEARS 1993-1997.—From amounts made available under section 31104 of this title, the Secretary of Transportation shall provide the following amounts for each of the fiscal years ending September 30, 1993-1997:

(1) $1,000,000 for activities of the working group under section 31702 of this title.

(2) $5,000,000 for grants under section 31703 of this title.

(c) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section remain available until expended.

PART C—INFORMATION, STANDARDS, AND REQUIREMENTS

CHAPTER 321—GENERAL

Sec.
32101. Definitions.
32102. Authorization of appropriations.

§32101. Definitions

In this part (except chapter 329)—

(1) "bumper standard" means a minimum performance standard that substantially reduces—

(A) the damage to the front or rear end of a passenger motor vehicle from a low-speed collision (including a collision with a fixed barrier) or from towing the vehicle; or

(B) the cost of repairing the damage.

(2) "insurer" means a person in the business of issuing, or reinsuring any part of, a passenger motor vehicle insurance policy.

(3) "interstate commerce" means commerce between a place in a State and—

(A) a place in another State; or

(B) another place in the same State through another State.

(4) "make", when describing a passenger motor vehicle, means the trade name of the manufacturer of the vehicle.

(5) "manufacturer" means a person—

(A) manufacturing or assembling passenger motor vehicles or passenger motor vehicle equipment; or

(B) importing motor vehicles or motor vehicle equipment for resale.

(6) "model", when describing a passenger motor vehicle, means a category of passenger motor vehicles based on the size, style, and type of a make of vehicle.

(7) "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.

(8) "motor vehicle accident" means an accident resulting from the maintenance or operation of a passenger motor vehicle or passenger motor vehicle equipment.

(9) "multipurpose passenger vehicle" means a passenger motor vehicle constructed on a truck chassis or with special features for occasional off-road operation.

(10) "passenger motor vehicle" means a motor vehicle designed to carry not more than 12 individuals, but does not include—

(A) a motorcycle; or

(B) a truck not designed primarily to carry its operator or passengers.

(11) "passenger motor vehicle equipment" means—

(A) a system, part, or component of a passenger motor vehicle as originally made;

(B) a similar part or component made or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a passenger motor vehicle; or

(C) a device made or sold for use in towing a passenger motor vehicle.

(12) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(13) "United States district court" means a district court of the United States, a United States court for Guam, the Virgin Islands, and American Samoa, and the district court for the Northern Mariana Islands.

§32102. Authorization of appropriations

The following amounts may be appropriated to the Secretary of Transportation for the National Highway Traffic Safety Administration to carry out this part:

(1) $6,485,000 for the fiscal year ending September 30, 1992.

(2) $6,731,430 for the fiscal year ending September 30, 1993.

(3) $6,987,224 for the fiscal year ending September 30, 1994.

(4) $7,252,739 for the fiscal year ending September 30, 1995.

CHAPTER 323—CONSUMER INFORMATION

Sec.

32301. Definitions.
32302. Passenger motor vehicle information.
32303. Insurance information.
32304. Information and assistance from other departments, agencies, and instrumentalities.
32305. Personnel.
32306. Investigative powers.
32307. Prohibitions, penalty, and enforcement.

§32301. Definitions

In this chapter—

(1) "crashworthiness" means the protection a passenger motor vehicle gives its passengers against personal injury or death from a motor vehicle accident.

(2) "damage susceptibility" means the susceptibility of a passenger motor vehicle to damage in a motor vehicle accident.

§32302. Passenger motor vehicle information

(a) INFORMATION PROGRAM.—The Secretary of Transportation shall maintain a program for developing the following information on passenger motor vehicles:

(1) crashworthiness.

(2) damage susceptibility.

(3) the degree of difficulty of diagnosis and repair of damage to, or failure of, mechanical and electrical systems.

(4) vehicle operating costs dependent on the characteristics referred to in clauses (1)-(3) of this subsection, including insurance information obtained under section 32303 of this title.

(b) DISTRIBUTION BY SECRETARY.—To assist a consumer in buying a passenger motor vehicle, the Secretary shall distribute to the public information developed under subsection (a) of this section. The information shall be in a simple and understandable form that allows comparison of the characteristics referred to in subsection (a)(1)-(3) of this section among the makes and models of passenger motor vehicles. The Secretary may require passenger motor vehicle dealers to distribute the information to prospective buyers.

(c) DISTRIBUTION BY DEALERS.—The Secretary shall prescribe regulations that require dealers to distribute to prospective buyers information the Secretary develops and provides to the dealers that compares insurance costs for different makes and models of passenger motor vehicles based on crashworthiness and damage susceptibility.

§32303. Insurance information

(a) GENERAL REPORTS AND INFORMATION REQUIREMENTS.—(1) In carrying out this chapter, the Secretary of Transportation may require an insurer, or a designated agent of the insurer, to make reports and provide the Secretary with information. The reports and information may include accident claim information by make, model, and model year of passenger motor vehicle about the kind and extent of—

(A) physical damage and repair costs; and

(B) personal injury.

(2) In deciding which reports and information are to be provided under this subsection, the Secretary shall—

(A) consider the cost of preparing and providing the reports and information;

(B) consider the extent to which the reports and information will contribute to carrying out this chapter; and

(C) consult with State authorities and public and private agencies the Secretary considers appropriate.

(3) To the extent possible, the Secretary shall obtain reports and information under this subsection on a voluntary basis.

(b) REQUESTED INFORMATION ON CRASHWORTHINESS, DAMAGE SUSCEPTIBILITY, AND REPAIR AND PERSONAL INJURY COST.—When requested by the Secretary, an insurer shall give the Secretary information—

(1) about the extent to which the insurance premiums charged by the insurer are affected by crashworthiness, damage susceptibility, and the cost of repair and personal injury, for each make and model of passenger motor vehicle; and

(2) available to the insurer about the effect of crashworthiness, damage susceptibility, and the cost of repair and personal injury for each make and model of passenger motor vehicle on the risk incurred by the insurer in insuring that make and model.

(c) DISCLOSURE.—In distributing information received under this section, the Secretary may disclose identifying information about a person that may be an insured, a claimant, a passenger, an owner, a witness, or an individual involved in a motor vehicle accident, only with the consent of the person.

§32304. Information and assistance from other departments, agencies, and instrumentalities

(a) AUTHORITY TO REQUEST.—The Secretary of Transportation may request information necessary to carry out this chapter from a department, agency, or instrumentality of the United States Government. The head of the department, agency, or instrumentality shall provide the information.

(b) DETAILING PERSONNEL.—The head of a department, agency, or instrumentality may detail, on a reimbursable basis, personnel to assist the Secretary in carrying out this chapter.

§32305. Personnel

(a) GENERAL AUTHORITY.—In carrying out this chapter, the Secretary of Transportation may—

(1) appoint and fix the pay of employees without regard to the provisions of title 5 governing appointment in the competitive service and chapter 51 and subchapter III of chapter 53 of title 5; and

(2) make contracts with persons for research and preparation of reports.

(b) STATUS OF ADVISORY COMMITTEE MEMBERS.—A member of an advisory committee appointed under section 325 of this title to carry out this chapter is a special United States Government employee under chapter 11 of title 18.

§32306. Investigative powers

(a) GENERAL AUTHORITY.—In carrying out this chapter, the Secretary of Transportation may—

(1) inspect and copy records of any person at reasonable times;

(2) order a person to file written reports or answers to specific questions, including reports or answers under oath; and

(3) conduct hearings, administer oaths, take testimony, and require (by subpena or otherwise) the appearance and testimony of witnesses and the production of records the Secretary considers advisable.

(b) WITNESS FEES AND MILEAGE.—A witness summoned under subsection (a) of this section is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(c) CIVIL ACTIONS TO ENFORCE.—A civil action to enforce a subpena or order of the Secretary under subsection (a) of this section may be brought in the United States district court for the judicial district in which the proceeding by the Secretary is conducted. The court may punish a failure to obey an order of the court to comply with the subpena or order of the Secretary as a contempt of court.

(d) CONFIDENTIALITY OF INFORMATION.—Information obtained by the Secretary under this section related to a confidential matter referred to in section 1905 of title 18 may be disclosed only to another officer or employee of the United States Government for use in carrying out this chapter. This subsection does not authorize information to be withheld from a committee of Congress authorized to have the information.

§32307. Prohibitions, penalty, and enforcement

(a) PROHIBITIONS.—A person may not—

(1) fail to provide the Secretary of Transportation with information requested by the Secretary in carrying out this chapter; or

(2) fail to comply with applicable regulations prescribed by the Secretary in carrying out this chapter.

(b) CIVIL PENALTY.—(1) A person that violates subsection (a) of this section is liable to the United States Government for a civil penalty of not more than $1,000 for each violation. Each failure to provide information or comply with a regulation in violation of subsection (a) is a separate violation. The maximum penalty under this subsection for a related series of violations is $400,000.

(2) The Secretary may compromise the amount of a civil penalty imposed under this section.

(3) In determining the amount of a penalty or compromise, the appropriateness of the penalty or compromise to the size of the business of the person charged and the gravity of the violation shall be considered.

(4) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(c) CIVIL ACTIONS TO ENFORCE.—(1) The Attorney General may bring a civil action to enjoin a violation of subsection (a) of this section.

(2) When practicable, the Secretary shall—

(A) notify a person against whom an action under this subsection is planned;

(B) give the person an opportunity to present that person's views; and

(C) give the person a reasonable opportunity to comply.

(3) The failure of the Secretary to comply with paragraph (2) of this subsection does not prevent a court from granting appropriate relief.

(d) VENUE AND SERVICE.—A civil action under this section may be brought in the United States district court for the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found. A subpoena for a witness in the action may be served in any judicial district.

CHAPTER 325—BUMPER STANDARDS

Sec.

32501. Purpose.
32502. Bumper standards.
32503. Judicial review of bumper standards.
32504. Certificates of compliance.

32505. Information and compliance requirements.
32506. Prohibited acts.
32507. Penalties and enforcement.
32508. Civil actions by owners of passenger motor vehicles.
32509. Information and assistance from other departments, agencies, and instrumentalities.
32510. Annual report.
32511. Relationship to other motor vehicle standards.

§32501. Purpose

The purpose of this chapter is to reduce economic loss resulting from damage to passenger motor vehicles involved in motor vehicle accidents by providing for the maintenance and enforcement of bumper standards.

§32502. Bumper standards

(a) GENERAL REQUIREMENTS AND NONAPPLICATION.—The Secretary of Transportation shall prescribe by regulation bumper standards for passenger motor vehicles and may prescribe by regulation bumper standards for passenger motor vehicle equipment manufactured in, or imported into, the United States. A standard does not apply to a passenger motor vehicle or passenger motor vehicle equipment—

(1) intended only for export;

(2) labeled for export on the vehicle or equipment and the outside of any container of the vehicle or equipment; and

(3) exported.

(b) LIMITATIONS.—A standard under this section—

(1) may not conflict with a motor vehicle safety standard prescribed under chapter 301 of this title;

(2) may not specify a dollar amount for the cost of repairing damage to a passenger motor vehicle; and

(3) to the greatest practicable extent, may not preclude the attachment of a detachable hitch.

(c) EXEMPTIONS.—For good cause, the Secretary may exempt from any part of a standard—

(1) a multipurpose passenger vehicle; or

(2) a make, model, or class of a passenger motor vehicle manufactured for a special use, if the standard would interfere unreasonably with the special use of the vehicle.

(d) COST REDUCTION AND CONSIDERATIONS.—When prescribing a standard under this section, the Secretary shall design the standard to obtain the maximum feasible reduction of costs to the public, considering—

(1) the costs and benefits of carrying out the standard;

(2) the effect of the standard on insurance costs and legal fees and costs;

(3) savings in consumer time and inconvenience; and

(4) health and safety, including emission standards.

(e) PROCEDURES.—Section 553 of title 5 applies to a standard prescribed under this section. However, the Secretary shall give an interested person an opportunity to make oral and written presentations of information, views, and arguments. A transcript of each oral presentation shall be kept. Under conditions prescribed by the Secretary, the Secretary may conduct a hearing to resolve an issue of fact material to a standard.

(f) EFFECTIVE DATE.—The Secretary shall prescribe an effective date for a standard under this section. That date may not be earlier than the date the standard is prescribed nor later than 18 months after the date the standard is prescribed. However, the Secretary may prescribe a later date when the Secretary submits to Congress and publishes the reasons for the later date. A standard only applies to a passenger motor vehicle or passenger motor vehicle equipment manufactured on or after the effective date.

(g) RESEARCH.—The Secretary shall conduct research necessary to carry out this chapter.

§32503. Judicial review of bumper standards

(a) FILING AND VENUE.—A person that may be adversely affected by a standard prescribed under section 32502 of this title may apply for review of the standard by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 59 days after the standard is prescribed.

(b) NOTIFYING SECRETARY.—The clerk of the court shall send immediately a copy of the petition to the Secretary of Transportation. The Secretary shall file with the court a record of the proceeding in which the standard was prescribed.

(c) ADDITIONAL PROCEEDINGS.—(1) On request of the petitioner, the court may order the Secretary to receive additional evidence and evidence in rebuttal if the court is satisfied the additional evidence is material and there were reasonable grounds for not presenting the evidence in the proceeding before the Secretary.

(2) The Secretary may modify findings of fact or make new findings because of the additional evidence presented. The Secretary shall file a modified or new finding, a recommendation to modify or set aside a standard, and the additional evidence with the court.

(d) SUPREME COURT REVIEW AND ADDITIONAL REMEDIES.—A judgment of a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28. A remedy under this section is in addition to any other remedies provided by law.

§32504. Certificates of compliance

Under regulations prescribed by the Secretary of Transportation, a manufacturer or distributor of a passenger motor vehicle or passenger motor vehicle equipment subject to a standard prescribed under section 32502 of this title shall give the distributor or dealer at the time of delivery a certificate that the vehicle or equipment complies with the standard.

§32505. Information and compliance requirements

(a) GENERAL AUTHORITY.—(1) To enable the Secretary of Transportation to decide whether a manufacturer of passenger motor vehicles or passenger motor vehicle equipment is complying with this chapter and standards prescribed under this chapter, the Secretary may require the manufacturer to—

(A) keep records;

(B) make reports;

(C) provide items and information, including vehicles and equipment for testing at a negotiated price not more than the manufacturer's cost; and

(D) allow an officer or employee designated by the Secretary to inspect vehicles and relevant records of the manufacturer.

(2) To enforce this chapter, an officer or employee designated by the Secretary, on presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, may inspect a facility in which passenger motor vehicles or passenger motor vehicle equipment is manufactured, held for introduction in interstate commerce, or held for sale after introduction in interstate commerce. An inspection shall be conducted at a reasonable time, in a reasonable way, and with reasonable promptness.

(b) POWERS OF SECRETARY AND CIVIL ACTIONS TO ENFORCE.—(1) In carrying out this chapter, the Secretary may—

(A) inspect and copy records of any person at reasonable times;

(B) order a person to file written reports or answers to specific questions, including reports or answers under oath; and

(C) conduct hearings, administer oaths, take testimony, and require (by subpena or otherwise) the appearance and testimony of witnesses and the production of records the Secretary considers advisable.

(2) A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(3) A civil action to enforce a subpena or order of the Secretary under this subsection may be brought in the United States district court for the judicial district in which the proceeding by the Secretary was conducted. The court may punish a failure to obey an order of the court to comply with the subpena or order of the Secretary as a contempt of court.

(c) CONFIDENTIALITY OF INFORMATION.—(1) Information obtained by the Secretary under this chapter related to a confidential matter referred to in section 1905 of title 18 may be disclosed only—

(A) to another officer or employee of the United States Government for use in carrying out this chapter; or

(B) in a proceeding under this chapter.

(2) This subsection does not authorize information to be withheld from a committee of Congress authorized to have the information.

(3) Subject to paragraph (1) of this subsection, the Secretary, on request, shall make available to the public at cost information the Secretary submits or receives in carrying out this chapter.

§32506. Prohibited acts

(a) GENERAL.—Except as provided in this section, a person may not—

(1) manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, a passenger motor vehicle or passenger motor vehicle equipment manufactured on or after the date an applicable standard under section 32502 of this title takes effect, unless it conforms to the standard;

(2) fail to comply with an applicable regulation prescribed by the Secretary of Transportation under this chapter;

(3) fail to keep records, refuse access to or copying of records, fail to make reports or provide items or information, or fail or refuse to allow entry or inspection, as required by this chapter or a regulation prescribed under this chapter; or

(4) fail to provide the certificate required by section 32504 of this title, or provide a certificate that the person knows, or in the exercise of reasonable care has reason to know, is false or misleading in a material respect.

(b) NONAPPLICATION.—Subsection (a)(1) of this section does not apply to—

(1) the sale, offer for sale, or introduction or delivery for introduction in interstate commerce of a passenger motor vehicle or passenger motor vehicle equipment after the first purchase of the vehicle or equipment in good faith other than for resale (but this clause does not prohibit a standard from requiring that a vehicle or equipment be manufactured to comply with the standard over a specified period of operation or use); or

(2) a person—

(A) establishing that the person had no reason to know, by exercising reasonable care, that the vehicle or equipment does not comply with the standard; or

(B) holding, without knowing about a noncompliance and before that first purchase, a certificate issued under section 32504 of this title stating that the vehicle or equipment complies with the standard.

(c) IMPORTING NONCOMPLYING VEHICLES AND EQUIPMENT.—(1) The Secretaries of Transportation and the Treasury may prescribe joint regulations authorizing a passenger motor vehicle or passenger motor vehicle equipment not complying with a standard prescribed under section 32502 of this title to be imported into the United States subject to conditions (including providing a bond) the Secretaries consider appropriate to ensure that the vehicle or equipment will—

(A) comply, after importation, with the standards prescribed under section 32502 of this title;

(B) be exported; or

(C) be abandoned to the United States Government.

(2) The Secretaries may prescribe joint regulations that allow a passenger motor vehicle or passenger motor vehicle equipment to be imported into the United States after the first purchase in good faith other than for resale.

(d) LIABILITY UNDER OTHER LAW.—Compliance with a standard under this chapter does not exempt a person from liability provided by law.

§32507. Penalties and enforcement

(a) CIVIL PENALTY.—(1) A person that violates section 32506(a) of this title is liable to the United States Government for a civil penalty of not more than $1,000 for each violation. A separate violation occurs for each passenger motor vehicle or item of passenger motor vehicle equipment involved in a violation of section 32506(a)(1) or (4) of this title—

(A) that does not comply with a standard prescribed under section 32502 of this title; or

(B) for which a certificate is not provided, or for which a false or misleading certificate is provided, under section 32504 of this title.

(2) The maximum civil penalty under this subsection for a related series of violations is $800,000.

(3) The Secretary of Transportation imposes a civil penalty under this subsection. The Attorney General or the Secretary, with the concurrence of the Attorney General, shall bring a civil action to collect the penalty.

(b) CRIMINAL PENALTY.—A person knowingly and willfully violating section 32506(a)(1) of this title after receiving a notice of noncompliance from the Secretary shall be fined under title 18, imprisoned for not more than one year, or both. If the person is a corporation, the penalties of this subsection also apply to a director, officer, or individual agent of the corporation who, with knowledge of the Secretary's notice, knowingly and willfully authorizes, orders, or performs an act that is any part of the violation.

(c) CIVIL ACTIONS TO ENFORCE.—(1) The Secretary or the Attorney General may bring a civil action to enjoin a violation of this chapter or the sale, offer for sale, introduction or delivery for introduction in interstate commerce, or importation into the United States, of a passenger motor vehicle or passenger motor vehicle equipment that is found, before the first purchase in good faith other than for resale, not to comply with a standard prescribed under section 32502 of this title.

(2) When practicable, the Secretary shall—

(A) notify a person against whom an action under this subsection is planned;

(B) give the person an opportunity to present that person's views; and

(C) except for a knowing and willful violation, give the person a reasonable opportunity to comply.

(3) The failure of the Secretary to comply with paragraph (2) of this subsection does not prevent a court from granting appropriate relief.

(d) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating an injunction or restraining order issued under subsection (c) of this section, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(e) VENUE.—A civil action under subsection (a) or (c) of this section may be brought in the United States district court for the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found. A subpena for a witness in the action may be served in any judicial district.

§32508. Civil actions by owners of passenger motor vehicles

When an owner of a passenger motor vehicle sustains damages as a result of a motor vehicle accident because the vehicle did not comply with a standard prescribed under section 32502 of this title, the owner may bring a civil action against the manufacturer to recover the damages. The action may be brought in the United States District Court for the District of Columbia or in the district court for the judicial district in which the owner resides. The action must be brought not later than 3 years after the date of the accident. The court shall award costs and a reasonable attorney's fee to the owner when a judgment is entered for the owner.

§32509. Information and assistance from other departments, agencies, and instrumentalities

(a) GENERAL AUTHORITY.—The Secretary of Transportation may request information necessary to carry out this chapter from a department, agency, or instrumentality of the United States Government. The head of the department, agency, or instrumentality shall provide the information.

(b) DETAILING PERSONNEL.—The head of a department, agency, or instrumentality may detail, on a reimbursable basis, personnel to assist the Secretary in carrying out this chapter.

§32510. Annual report

Not later than March 31 of each year, the Secretary of Transportation shall submit to Congress and the President a report on the progress in carrying out section 32501 of this title. The report shall include—

(1) a statement of the cost savings resulting from carrying out this chapter; and

(2) recommendations for legislative or other action the Secretary decides may be appropriate.

§32511. Relationship to other motor vehicle standards

(a) PREEMPTION.—Except as provided in this section, a State or a political subdivision of a State may prescribe or enforce a bumper standard for a passenger motor vehicle or passenger motor vehicle equipment only if the standard is identical to a standard prescribed under section 32502 of this title.

(b) ENFORCEMENT.—This chapter and chapter 301 of this title do not affect the authority of a State to enforce a bumper standard about an aspect of performance of a passenger motor vehicle or passenger motor vehicle equipment not covered by a standard prescribed under section 32502 of this title if the State bumper standard—

(1) does not conflict with a standard prescribed under chapter 301 of this title; and

(2) was in effect or prescribed by the State on October 20, 1972.

(c) ADDITIONAL AND HIGHER STANDARDS OF PERFORMANCE.—The United States Government, a State, or a political subdivision of a State may prescribe a bumper standard for a passenger motor vehicle or passenger motor vehicle equipment obtained for its own use that imposes additional or higher standards of performance than a standard prescribed under section 32502 of this title.

CHAPTER 327—ODOMETERS

Sec.

32701. Findings and purposes.
32702. Definitions.
32703. Preventing tampering.
32704. Service, repair, and replacement.
32705. Disclosure requirements on transfer of motor vehicles.
32706. Inspections, investigations, and records.
32707. Administrative warrants.
32708. Confidentiality of information.
32709. Penalties and enforcement.
32710. Civil actions by private persons.
32711. Relationship to State law.

§32701. Findings and purposes

(a) FINDINGS.—Congress finds that—

(1) buyers of motor vehicles rely heavily on the odometer reading as an index of the condition and value of a vehicle;

(2) buyers are entitled to rely on the odometer reading as an accurate indication of the mileage of the vehicle;

(3) an accurate indication of the mileage assists a buyer in deciding on the safety and reliability of the vehicle; and

(4) motor vehicles move in, or affect, interstate and foreign commerce.

(b) PURPOSES.—The purposes of this chapter are—

(1) to prohibit tampering with motor vehicle odometers; and

(2) to provide safeguards to protect purchasers in the sale of motor vehicles with altered or reset odometers.

§32702. Definitions

In this chapter—

(1) "auction company" means a person taking possession of a motor vehicle owned by another to sell at an auction.

(2) "dealer" means a person that sold at least 5 motor vehicles during the prior 12 months to buyers that in good faith bought the vehicles other than for resale.

(3) "distributor" means a person that sold at least 5 motor vehicles during the prior 12 months for resale.

(4) "leased motor vehicle" means a motor vehicle leased to a person for at least 4 months by a lessor that leased at least 5 vehicles during the prior 12 months.

(5) "odometer" means an instrument for measuring and recording the distance a motor vehicle is driven, but does not include an auxiliary instrument designed to be reset by the operator of the vehicle to record mileage of a trip.

(6) "repair" and "replace" mean to restore to a sound working condition by replacing any part of an odometer or by correcting any inoperative part of an odometer.

(7) "title" means the certificate of title or other document issued by the State indicating ownership.

(8) "transfer" means to change ownership by sale, gift, or other means.

§32703. Preventing tampering

A person may not—

(1) advertise for sale, sell, use, install, or have installed, a device that makes an odometer of a motor vehicle register a mileage different from the mileage the vehicle was driven, as registered by the odometer within the designed tolerance of the manufacturer of the odometer;

(2) disconnect, reset, alter, or have disconnected, reset, or altered, an odometer of a motor vehicle intending to change the mileage registered by the odometer;

(3) with intent to defraud, operate a motor vehicle on a public street, road, or highway if the person knows that the odometer of the vehicle is disconnected or not operating; or

(4) conspire to violate this section or section 32704 or 32705 of this title.

§32704. Service, repair, and replacement

(a) ADJUSTING MILEAGE.—A person may service, repair, or replace an odometer of a motor ve-

hicle if the mileage registered by the odometer remains the same as before the service, repair, or replacement. If the mileage cannot remain the same—

(1) the person shall adjust the odometer to read zero; and

(2) the owner of the vehicle or agent of the owner shall attach a written notice to the left door frame of the vehicle specifying the mileage before the service, repair, or replacement and the date of the service, repair, or replacement.

(b) Removing or Altering Notice.—A person may not, with intent to defraud, remove or alter a notice attached to a motor vehicle as required by this section.

§32705. Disclosure requirements on transfer of motor vehicles

(a) Written Disclosure Requirements.—(1) Under regulations prescribed by the Secretary of Transportation, a person transferring ownership of a motor vehicle shall give the transferee a written disclosure—

(A) of the cumulative mileage registered by the odometer; or

(B) that the mileage is unknown if the transferor knows that the mileage registered by the odometer is incorrect.

(2) A person making a written disclosure required by a regulation prescribed under paragraph (1) of this subsection may not make a false statement in the disclosure.

(3) A person acquiring a motor vehicle for resale may accept a disclosure under this section only if it is complete.

(4) The regulations prescribed by the Secretary shall provide the way in which information is disclosed and retained under this section.

(b) Mileage Statement Requirement for Licensing.—(1) A motor vehicle the ownership of which is transferred may not be licensed for use in a State unless the transferee, in submitting an application to a State for the title on which the license will be issued, includes with the application the transferor's title and, if that title contains the space referred to in paragraph (3)(A)(iii) of this subsection, a statement, signed and dated by the transferor, of the mileage disclosure required under subsection (a) of this section. This paragraph does not apply to a transfer of ownership of a motor vehicle that has not been licensed before the transfer.

(2)(A) Under regulations prescribed by the Secretary, if the title to a motor vehicle issued to a transferor by a State is in the possession of a lienholder when the transferor transfers ownership of the vehicle, the transferor may use a written power of attorney (if allowed by State law) in making the mileage disclosure required under subsection (a) of this section. Regulations prescribed under this paragraph—

(i) shall prescribe the form of the power of attorney;

(ii) shall provide that the form be printed by means of a secure printing process (or other secure process);

(iii) shall provide that the State issue the form to the transferee;

(iv) shall provide that the person exercising the power of attorney retain a copy and submit the original to the State with a copy of the title showing the restatement of the mileage;

(v) may require that the State retain the power of attorney and the copy of the title for an appropriate period or that the State adopt alternative measures consistent with section 32701(b) of this title, after considering the costs to the State;

(vi) shall ensure that the mileage at the time of transfer be disclosed on the power of attorney document;

(vii) shall ensure that the mileage be restated exactly by the person exercising the power of attorney in the space referred to in paragraph (3)(A)(iii) of this subsection;

(viii) may not require that a motor vehicle be titled in the State in which the power of attorney was issued;

(ix) shall consider the need to facilitate normal commercial transactions in the sale or exchange of motor vehicles; and

(x) shall provide other conditions the Secretary considers appropriate.

(B) Section 32709(a) and (b) applies to a person granting or granted a power of attorney under this paragraph.

(3)(A) A motor vehicle the ownership of which is transferred may be licensed for use in a State only if the title issued by the State to the transferee—

(i) is produced by means of a secure printing process (or other secure process);

(ii) indicates the mileage disclosure required to be made under subsection (a) of this section; and

(iii) contains a space for the transferee to disclose the mileage at the time of a future transfer and to sign and date the disclosure.

(B) Subparagraph (A) of this paragraph does not require a State to verify, or preclude a State from verifying, the mileage information contained in the title.

(c) Leased Vehicles.—(1) For a leased vehicle, the regulations prescribed under subsection (a) of this section shall require written disclosure about mileage to be made by the lessee to the lessor when the lessor transfers ownership of the leased vehicle.

(2) Under those regulations, the lessor shall provide written notice to the lessee of—

(A) the mileage disclosure requirements of subsection (a) of this section; and

(B) the penalties for failure to comply with those requirements.

(3) The lessor shall retain the disclosures made by a lessee under paragraph (1) of this subsection for at least 4 years following the date the lessor transfers the vehicle.

(4) If the lessor transfers ownership of a leased vehicle without obtaining possession of the vehicle, the lessor, in making the disclosure required by subsection (a) of this section, may indicate on the title the mileage disclosed by the lessee under paragraph (1) of this subsection unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.

(d) State Alternate Vehicle Mileage Disclosure Requirements.—The requirements of subsections (b) and (c)(1) of this section on the disclosure of motor vehicle mileage when motor vehicles are transferred or leased apply in a State unless the State has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary. The Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary decides that the requirements are not consistent with the purpose of the disclosure required by subsection (b) or (c), as the case may be.

(e) Auction Sales.—If a motor vehicle is sold at an auction, the auction company conducting the auction shall maintain the following records for at least 4 years after the date of the sale:

(1) the name of the most recent owner of the motor vehicle (except the auction company) and the name of the buyer of the motor vehicle.

(2) the vehicle identification number required under chapter 301 or 331 of this title.

(3) the odometer reading on the date the auction company took possession of the motor vehicle.

(f) Application and Revision of State Law.—(1) Except as provided in paragraph (2) of this subsection, subsections (b)–(e) of this section apply to the transfer of a motor vehicle after April 28, 1989.

(2) If a State requests, the Secretary shall assist the State in revising its laws to comply with subsection (b) of this section. If a State requires time beyond April 28, 1989, to revise its laws to achieve compliance, the Secretary, on request of the State, may grant additional time that the Secretary considers reasonable by publishing a notice in the Federal Register. The notice shall include the reasons for granting the additional time. In granting additional time, the Secretary shall ensure that the State is making reasonable efforts to achieve compliance.

§32706. Inspections, investigations, and records

(a) Authority to Inspect and Investigate.—Subject to section 32707 of this title, the Secretary of Transportation may conduct an inspection or investigation necessary to carry out this chapter or a regulation prescribed or order issued under this chapter. The Secretary shall cooperate with State and local officials to the greatest extent possible in conducting an inspection or investigation. The Secretary may give the Attorney General information about a violation of this chapter or a regulation prescribed or order issued under this chapter.

(b) Entry, Inspection, and Impoundment.—(1) In carrying out subsection (a) of this section, an officer or employee designated by the Secretary, on display of proper credentials and written notice to the owner, operator, or agent in charge, may—

(A) enter and inspect commercial premises in which a motor vehicle or motor vehicle equipment is manufactured, held for shipment or sale, maintained, or repaired;

(B) enter and inspect noncommercial premises in which the Secretary reasonably believes there is a vehicle or equipment involved in a violation of this chapter;

(C) inspect that vehicle or equipment; and

(D) impound for not more than 72 hours for inspection a vehicle or equipment that the Secretary reasonably believes is involved in a violation of this chapter.

(2) An inspection or impoundment under this subsection shall be conducted at a reasonable time, in a reasonable way, and with reasonable promptness. The written notice may consist of a warrant issued under section 32707 of this title.

(c) Reasonable Compensation.—When the Secretary impounds for inspection a motor vehicle (except a vehicle subject to subchapter II of chapter 105 of this title) or motor vehicle equipment under subsection (b)(1)(D) of this section, the Secretary shall pay reasonable compensation to the owner of the vehicle or equipment if the inspection or impoundment results in denial of use, or reduction in value, of the vehicle or equipment.

(d) Records and Information Requirements.—(1) To enable the Secretary to decide whether a dealer or distributor is complying with this chapter and regulations prescribed and orders issued under this chapter, the Secretary may require the dealer or distributor—

(A) to keep records;

(B) to provide information from those records if the Secretary states the purpose for requiring the information and identifies the information to the fullest extent practicable; and

(C) to allow an officer or employee designated by the Secretary to inspect relevant records of the dealer or distributor.

(2) This subsection and subsection (e)(1)(B) of this section do not authorize the Secretary to require a dealer or distributor to provide information on a regular periodic basis.

(e) Administrative Authority and Civil Actions to Enforce.—(1) In carrying out this chapter, the Secretary may—

(A) inspect and copy records of any person at reasonable times;

(B) order a person to file written reports or answers to specific questions, including reports or answers under oath; and

(C) conduct hearings, administer oaths, take testimony, and require (by subpena or otherwise) the appearance and testimony of witnesses and the production of records the Secretary considers advisable.

(2) A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(3) A civil action to enforce a subpena or order of the Secretary under this subsection may be brought in the United States district court for the judicial district in which the proceeding by the Secretary was conducted. The court may punish a failure to obey an order of the court to comply with the subpena or order of the Secretary as a contempt of court.

(f) PROHIBITIONS.—A person may not fail to keep records, refuse access to or copying of records, fail to make reports or provide information, fail to allow entry or inspection, or fail to permit impoundment, as required under this section.

§32707. Administrative warrants

(a) DEFINITION.—In this section, "probable cause" means a valid public interest in the effective enforcement of this chapter or a regulation prescribed under this chapter sufficient to justify the inspection or impoundment in the circumstances stated in an application for a warrant under this section.

(b) WARRANT REQUIREMENT AND ISSUANCE.—(1) Except as provided in paragraph (4) of this subsection, an inspection or impoundment under section 32706 of this title may be carried out only after a warrant is obtained.

(2) A judge of a court of the United States or a State court of record or a United States magistrate may issue a warrant for an inspection or impoundment under section 32706 of this title within the territorial jurisdiction of the court or magistrate. The warrant must be based on an affidavit that—

(A) establishes probable cause to issue the warrant; and

(B) is sworn to before the judge or magistrate by an officer or employee who knows the facts alleged in the affidavit.

(3) The judge or magistrate shall issue the warrant when the judge or magistrate decides there is a reasonable basis for believing that probable cause exists to issue the warrant. The warrant must—

(A) identify the premises, property, or motor vehicle to be inspected and the items or type of property to be impounded;

(B) state the purpose of the inspection, the basis for issuing the warrant, and the name of the affiant;

(C) direct an individual authorized under section 32706 of this title to inspect the premises, property, or vehicle for the purpose stated in the warrant and, when appropriate, to impound the property specified in the warrant;

(D) direct that the warrant be served during the hours specified in the warrant; and

(E) name the judge or magistrate with whom proof of service is to be filed.

(4) A warrant under this section is not required when—

(A) the owner, operator, or agent in charge of the premises consents;

(B) it is reasonable to believe that the mobility of the motor vehicle to be inspected makes it impractical to obtain a warrant;

(C) an application for a warrant cannot be made because of an emergency;

(D) records are to be inspected and copied under section 32706(e)(1)(A) of this title; or

(E) a warrant is not constitutionally required.

(c) SERVICE AND IMPOUNDMENT OF PROPERTY.—(1) A warrant issued under this section must be served and proof of service filed not later than 10 days after its issuance date. The judge or magistrate may allow additional time in the warrant if the Secretary of Transportation demonstrates a need for additional time. Proof of service must be filed promptly with a written inventory of the property impounded under the warrant. The inventory shall be made in the presence of the individual serving the warrant and the individual from whose possession or premises the property was impounded, or if that individual is not present, a credible individual except the individual making the inventory. The individual serving the warrant shall verify the inventory. On request, the judge or magistrate shall send a copy of the inventory to the individual from whose possession or premises the property was impounded and to the applicant for the warrant.

(2) When property is impounded under a warrant, the individual serving the warrant shall—

(A) give the person from whose possession or premises the property was impounded a copy of the warrant and a receipt for the property; or

(B) leave the copy and receipt at the place from which the property was impounded.

(3) The judge or magistrate shall file the warrant, proof of service, and all documents filed about the warrant with the clerk of the district court of the United States for the judicial district in which the inspection is made.

§32708. Confidentiality of information

(a) GENERAL.—Information obtained by the Secretary of Transportation under this chapter related to a confidential matter referred to in section 1905 of title 18 may be disclosed only—

(1) to another officer or employee of the United States Government for use in carrying out this chapter; or

(2) in a proceeding under this chapter.

(b) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

§32709. Penalties and enforcement

(a) CIVIL PENALTY.—(1) A person that violates this chapter or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of not more than $2,000 for each violation. A separate violation occurs for each motor vehicle or device involved in the violation. The maximum penalty under this subsection for a related series of violations is $100,000.

(2) The Secretary of Transportation shall impose a civil penalty under this subsection. The Attorney General shall bring a civil action to collect the penalty. Before referring a penalty claim to the Attorney General, the Secretary may compromise the amount of the penalty. Before compromising the amount of the penalty, the Secretary shall give the person charged with a violation an opportunity to establish that the violation did not occur.

(3) In determining the amount of a civil penalty under this subsection, the Secretary shall consider—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(b) CRIMINAL PENALTY.—A person that knowingly and willfully violates this chapter or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 3 years, or both. If the person is a corporation, the penalties of this subsection also apply to a director, officer, or individual agent of a corporation who knowingly and willfully authorizes, orders, or performs an act in violation of this chapter or a regulation prescribed or order issued under this chapter.

(c) CIVIL ACTIONS BY ATTORNEY GENERAL.—The Attorney General may bring a civil action to enjoin a violation of this chapter or a regulation prescribed or order issued under this chapter. The action may be brought in the United States district court for the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found. A subpena for a witness in the action may be served in any judicial district.

(d) CIVIL ACTIONS BY STATES.—(1) When a person violates this chapter or a regulation prescribed or order issued under this chapter, the chief law enforcement officer of the State in which the violation occurs may bring a civil action—

(A) to enjoin the violation; or

(B) to recover amounts for which the person is liable under section 32710 of this title for each person on whose behalf the action is brought.

(2) An action under this subsection may be brought in an appropriate district court of the United States or in a State court of competent jurisdiction. The action must be brought not later than 2 years after the claim accrues.

§32710. Civil actions by private persons

(a) VIOLATION AND AMOUNT OF DAMAGES.—A person that violates this chapter or a regulation prescribed or order issued under this chapter, with intent to defraud, is liable for 3 times the actual damages or $1,500, whichever is greater.

(b) CIVIL ACTIONS.—A person may bring a civil action to enforce a claim under this section in an appropriate district court of the United States or in another court of competent jurisdiction. The action must be brought not later than 2 years after the claim accrues. The court shall award costs and a reasonable attorney's fee to the person when a judgment is entered for that person.

§32711. Relationship to State law

Except to the extent that State law is inconsistent with this chapter, this chapter does not—

(1) affect a State law on disconnecting, altering, or tampering with an odometer with intent to defraud; or

(2) exempt a person from complying with that law.

CHAPTER 329—AUTOMOBILE FUEL ECONOMY

Sec.

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§32901. Definitions

(a) GENERAL.—In this chapter—

(1) "alcohol" means a mixture containing 85 percent or more methanol, ethanol, or other alcohols by volume, in any combination.

(2) "alcohol powered automobile" means an automobile designed to operate only on alcohol.

(3) except as provided in section 32908 of this title, "automobile" means a 4-wheeled vehicle that is propelled by fuel, or by alcohol or natural gas, manufactured primarily for use on public streets, roads, and highways (except a vehicle operated only on a rail line), and rated at—

(A) not more than 6,000 pounds gross vehicle weight; or

(B) more than 6,000, but less than 10,000, pounds gross vehicle weight, if the Secretary of Transportation decides by regulation that—

(i) an average fuel economy standard under this chapter for the vehicle is feasible; and

(ii) an average fuel economy standard under this chapter for the vehicle will result in significant energy conservation or the vehicle is substantially used for the same purposes as a vehicle rated at not more than 6,000 pounds gross vehicle weight.

(4) "automobile manufactured by a manufacturer" includes every automobile manufactured by a person that controls, is controlled by, or is under common control with the manufacturer, but does not include an automobile manufactured by the person in a model year that is exported not later than 30 days after the end of that model year.

(5) "average fuel economy" means average fuel economy determined under section 32904 of this title.

(6) "average fuel economy standard" means a performance standard specifying a minimum level of average fuel economy applicable to a manufacturer in a model year.

(7) "dual energy automobile" means an automobile that—

(A) is capable of operating on alcohol and gasoline or diesel fuel;

(B) provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the United States Government, when operating on alcohol as when operating on gasoline or diesel fuel;

(C) for model years 1993–1995, and if the Administrator of the Environmental Protection Agency decides to extend the application of this subclause, for an additional period ending not later than the end of the last model year to which section 32905(b) and (d) of this title applies, provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Government, when operating on a mixture of alcohol and gasoline or diesel fuel containing exactly 50 percent gasoline or diesel fuel as when operating on gasoline or diesel fuel; and

(D) for a passenger automobile, meets the minimum driving range prescribed under subsection (b) of this section.

(8) "fuel" means—

(A) gasoline;

(B) diesel oil; or

(C) other liquid or gaseous fuel that the Secretary decides by regulation to include in this definition as consistent with the need of the United States to conserve energy.

(9) "fuel economy" means the average number of miles traveled by an automobile for each gallon of gasoline (or equivalent amount of other fuel) used, as determined by the Administrator under section 32904(c) of this title.

(10) "import" means to import into the customs territory of the United States.

(11) "manufacture" (except under section 32902(d) of this title) means to produce or assemble in the customs territory of the United States or to import.

(12) "manufacturer" means—

(A) a person engaged in the business of manufacturing automobiles, including a predecessor or successor of the person to the extent provided under regulations prescribed by the Secretary; and

(B) if more than one person is the manufacturer of an automobile, the person specified under regulations prescribed by the Secretary.

(13) "model" means a class of automobiles as decided by regulation by the Administrator after consulting and coordinating with the Secretary.

(14) "model year", when referring to a specific calendar year, means—

(A) the annual production period of a manufacturer as decided by the Administrator, including January 1 of that calendar year; or

(B) that calendar year if the manufacturer does not have an annual production period.

(15) "natural gas dual energy automobile" means an automobile that—

(A) is capable of operating on natural gas and on gasoline or diesel fuel;

(B) provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Government, when operating on natural gas as when operating on gasoline or diesel fuel; and

(C) for a passenger automobile, meets the minimum driving range prescribed under subsection (b) of this section.

(16) "natural gas powered automobile" means an automobile designed to operate only on natural gas.

(17) "passenger automobile" means an automobile that the Secretary decides by regulation is manufactured primarily for transporting not more than 10 individuals, but does not include an automobile capable of off-highway operation that the Secretary decides by regulation—

(A) has a significant feature (except 4-wheel drive) designed for off-highway operation; and

(B) is a 4-wheel drive automobile or is rated at more than 6,000 pounds gross vehicle weight.

(b) MINIMUM DRIVING RANGES FOR DUAL ENERGY PASSENGER AUTOMOBILES.—(1) Not later than April 14, 1990, the Secretary shall prescribe by regulation the minimum driving range that dual energy automobiles that are passenger automobiles must meet when operating on alcohol, and that natural gas dual energy automobiles that are passenger automobiles must meet when operating on natural gas, to be dual energy automobiles or natural gas dual energy automobiles under sections 32905 and 32906 of this title. A determination whether a dual energy automobile or natural gas dual energy automobile meets the minimum driving range requirement under this paragraph shall be based on the combined Environmental Protection Agency city/highway fuel economy as determined for average fuel economy purposes for those automobiles.

(2)(A) The Secretary may prescribe a lower range for a specific model than that prescribed under paragraph (1) of this subsection. A manufacturer may petition for a lower range than that prescribed under paragraph (1) for a specific model.

(B) If the Secretary prescribes a minimum driving range of 200 miles for dual energy automobiles under paragraph (1) of this subsection, subparagraph (A) of this paragraph does not apply to dual energy automobiles.

(C) The minimum driving range prescribed for dual energy automobiles under subparagraph (A) of this paragraph or paragraph (1) of this subsection must be at least 200 miles.

(3) In prescribing a minimum driving range under paragraph (1) of this subsection and in taking an action under paragraph (2) of this subsection, the Secretary shall consider the purpose of section 3 of the Alternative Motor Fuels Act of 1988 (Public Law 100–494, 102 Stat. 2442), consumer acceptability, economic practicability, technology, environmental impact, safety, drivability, performance, and other factors the Secretary considers relevant.

§32902. Average fuel economy standards

(a) NON-PASSENGER AUTOMOBILES.—At least 18 months before the beginning of each model year, the Secretary of Transportation shall prescribe by regulation average fuel economy standards for automobiles (except passenger automobiles) manufactured by a manufacturer in that model year. Each standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year. The Secretary may prescribe separate standards for different classes of automobiles.

(b) PASSENGER AUTOMOBILES.—Except as provided in this section, the average fuel economy standard for passenger automobiles manufactured by a manufacturer in a model year after model year 1984 shall be 27.5 miles a gallon.

(c) AMENDING PASSENGER AUTOMOBILE STANDARDS.—(1) Subject to paragraph (2) of this subsection, the Secretary of Transportation may prescribe regulations amending the standard under subsection (b) of this section for a model year to a level that the Secretary decides is the maximum feasible average fuel economy level for that model year. Section 553 of title 5 applies to a proceeding to amend the standard. However, any interested person may make an oral presentation and a transcript shall be taken of that presentation.

(2) If an amendment increases the standard above 27.5 miles a gallon or decreases the standard below 26.0 miles a gallon, the Secretary of Transportation shall submit the amendment to Congress. The procedures of section 551 of the Energy Policy and Conservation Act (42 U.S.C. 6421) apply to an amendment, except that the 15 calendar days referred to in section 551(c) and (d) of the Act (42 U.S.C. 6421(c), (d)) are deemed to be 60 calendar days, and the 5 calendar days referred to in section 551(f)(4)(A) of the Act (42 U.S.C. 6421(f)(4)(A)) are deemed to be 20 calendar days. If either House of Congress disapproves the amendment under those procedures, the amendment does not take effect.

(d) EXEMPTIONS.—(1) Except as provided in paragraph (2) of this subsection, on application of a manufacturer that manufactured (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year 2 years before the model year for which the application is made, the Secretary of Transportation may exempt by regulation the manufacturer from a standard under subsection (b) or (c) of this section. An exemption for a model year applies only if the manufacturer manufactures (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year. The Secretary may exempt a manufacturer only if the Secretary—

(A) finds that the applicable standard under those subsections is more stringent than the maximum feasible average fuel economy level that the manufacturer can achieve; and

(B) prescribes by regulation an alternative average fuel economy standard for the passenger automobiles manufactured by the exempted manufacturer that the Secretary decides is the maximum feasible average fuel economy level for the manufacturers to which the standard applies.

(2) Notwithstanding paragraph (1) of this subsection, an importer registered under section 30141(c) of this title may not be exempted as a manufacturer under paragraph (1) for a motor vehicle that the importer—

(A) imports; or

(B) brings into compliance with applicable motor vehicle safety standards prescribed under chapter 301 of this title for an individual under section 30142 of this title.

(3) The Secretary of Transportation may prescribe an alternative average fuel economy standard applicable to an individually exempted manufacturer, to all automobiles to which this subsection applies, or to classes of passenger automobiles, as defined under regulations of the Secretary, manufactured by exempted manufacturers.

(4) The Secretary of Transportation may prescribe the contents of an application for an exemption.

(e) EMERGENCY VEHICLES.—(1) In this subsection, "emergency vehicle" means an automobile manufactured primarily for use—

(A) as an ambulance or combination ambulance-hearse;

(B) by the United States Government or a State or local government for law enforcement; or

(C) for other emergency uses prescribed by regulation by the Secretary of Transportation.

(2) A manufacturer may elect to have the fuel economy of an emergency vehicle excluded in applying a fuel economy standard under subsection (a), (b), (c), or (d) of this section. The election is made by providing written notice to the Secretary of Transportation and to the Administrator of the Environmental Protection Agency.

(f) CONSIDERATIONS ON DECISIONS ON MAXIMUM FEASIBLE AVERAGE FUEL ECONOMY.—When deciding maximum feasible average fuel economy under this section, the Secretary of Transportation shall consider technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy.

(g) REQUIREMENTS FOR OTHER AMENDMENTS.—(1) The Secretary of Transportation may prescribe regulations amending an average fuel economy standard prescribed under subsection (a) or (d) of this section if the amended standard meets the requirements of subsection (a) or (d), as appropriate.

(2) When the Secretary of Transportation prescribes an amendment under this section that makes an average fuel economy standard more stringent, the Secretary shall prescribe the amendment (and submit the amendment to Congress when required under subsection (c)(2) of this section) at least 18 months before the beginning of the model year to which the amendment applies.

(h) LIMITATIONS.—In carrying out subsections (c), (f), and (g) of this section, the Secretary of Transportation—

(1) may not consider the fuel economy of alcohol powered automobiles or natural gas powered automobiles; and

(2) shall consider dual energy automobiles and natural gas dual energy automobiles to be operated only on gasoline or diesel fuel.

(i) SECRETARY OF ENERGY COMMENTS.—(1) Before issuing a notice proposing to prescribe or amend an average fuel economy standard under subsection (a) or (c) of this section, the Secretary of Transportation shall give the Secretary of Energy at least 10 days from the receipt of the notice during which the Secretary of Energy may, if the Secretary of Energy concludes that the proposed standard would adversely affect the conservation goals of the Secretary of Energy, provide written comments to the Secretary of Transportation about the impact of the standard on those goals. To the extent the Secretary of Transportation does not revise a proposed standard to take into account comments of the Secretary of Energy on any adverse impact of the standard, the Secretary of Transportation shall include those comments in the notice.

(2) Before taking final action on a standard or an exemption from a standard under this section, the Secretary of Transportation shall notify the Secretary of Energy and provide the Secretary of Energy a reasonable time to comment.

(j) CONSULTATION.—The Secretary of Transportation shall consult with the Secretary of Energy in carrying out this section and section 32903 of this title.

§32903. Credits for exceeding average fuel economy standards

(a) EARNING AND PERIOD FOR APPLYING CREDITS.—When the average fuel economy of passenger automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard under section 32902(b)-(d) of this title (determined by the Secretary of Transportation without regard to credits under this section), the manufacturer earns credits. The credits may be applied to—

(1) any of the 3 consecutive model years immediately before the model year for which the credits are earned; and

(2) to the extent not used under clause (1) of this subsection, any of the 3 consecutive model years immediately after the model year for which the credits are earned.

(b) PERIOD OF AVAILABILITY AND PLAN FOR FUTURE CREDITS.—(1) Except as provided in paragraph (2) of this subsection, credits under this section are available to a manufacturer at the end of the model year in which earned.

(2)(A) Before the end of a model year, if a manufacturer has reason to believe that its average fuel economy for passenger automobiles will be less than the applicable standard for that model year, the manufacturer may submit a plan to the Secretary of Transportation demonstrating that the manufacturer will earn sufficient credits under this section within the next 3 model years to allow the manufacturer to meet that standard for the model year involved. Unless the Secretary finds that the manufacturer is unlikely to earn sufficient credits under the plan, the Secretary shall approve the plan. Those credits are available for the model year involved if—

(i) the Secretary approves the plan; and

(ii) the manufacturer earns those credits as provided by the plan.

(B) If the average fuel economy of a manufacturer is less than the applicable standard under section 32902(b)-(d) of this title after applying credits under subsection (a)(1) of this section, the Secretary of Transportation shall notify the manufacturer and give the manufacturer a reasonable time (of at least 60 days) to submit a plan.

(c) DETERMINING NUMBER OF CREDITS.—The number of credits a manufacturer earns under this section equals the product of—

(1) the number of tenths of a mile a gallon by which the average fuel economy of the passenger automobiles manufactured by the manufacturer in the model year in which the credits are earned exceeds the applicable average fuel economy standard under section 32902(b)-(d) of this title; times

(2) the number of passenger automobiles manufactured by the manufacturer during that model year.

(d) APPLYING CREDITS FOR PASSENGER AUTOMOBILES.—The Secretary of Transportation shall apply credits to a model year on the basis of the number of tenths of a mile a gallon by which the manufacturer involved was below the applicable average fuel economy standard for that model year and the number of passenger automobiles manufactured that model year by the manufacturer. Credits applied to a model year are no longer available for another model year. Before applying credits, the Secretary shall give the manufacturer written notice and reasonable opportunity to comment.

(e) APPLYING CREDITS FOR NON-PASSENGER AUTOMOBILES.—Credits for a manufacturer of automobiles that are not passenger automobiles are earned and applied to a model year in which the average fuel economy of that class of automobiles is below the applicable average fuel economy standard under section 32902(a) of this title, to the same extent and in the same way as provided in this section for passenger automobiles.

(f) REFUND OF COLLECTED PENALTY.—When a civil penalty has been collected under this chapter from a manufacturer that has earned credits under this section, the Secretary of the Treasury shall refund to the manufacturer the amount of the penalty to the extent the penalty is attributable to credits available under this section.

§32904. Calculation of average fuel economy

(a) METHOD OF CALCULATION.—(1) The Administrator of the Environmental Protection Agency shall calculate the average fuel economy of a manufacturer subject to—

(A) section 32902(a) of this title in a way prescribed by the Administrator; and

(B) section 32902(b)-(d) of this title by dividing—

(i) the number of passenger automobiles manufactured by the manufacturer in a model year; by

(ii) the sum of the fractions obtained by dividing the number of passenger automobiles of each model manufactured by the manufacturer in that model year by the fuel economy measured for that model.

(2)(A) In this paragraph, "electric vehicle" means a vehicle powered primarily by an electric motor drawing electrical current from a portable source.

(B) If a manufacturer manufactures an electric vehicle, the Administrator shall include in the calculation of average fuel economy under paragraph (1) of this subsection equivalent petroleum based fuel economy values determined by the Secretary of Energy for various classes of electric vehicles. The Secretary shall review those values each year and determine and propose necessary revisions based on the following factors:

(i) the approximate electrical energy efficiency of the vehicle, considering the kind of vehicle and the mission and weight of the vehicle.

(ii) the national average electrical generation and transmission efficiencies.

(iii) the need of the United States to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity.

(iv) the specific patterns of use of electric vehicles compared to petroleum-fueled vehicles.

(b) SEPARATE CALCULATIONS FOR PASSENGER AUTOMOBILES MANUFACTURED DOMESTICALLY AND NOT DOMESTICALLY.—(1) In this subsection—

(A) a passenger automobile is deemed to be manufactured domestically in a model year if at least 75 percent of the cost to the manufacturer is attributable to value added in the United States or Canada, unless the assembly of the automobile is completed in Canada and the automobile is imported into the United States more than 30 days after the end of the model year; and

(B) the fuel economy of a passenger automobile that is not manufactured domestically is deemed to be equal to the average fuel economy of all passenger automobiles that are not manufactured domestically.

(2)(A) Except as provided in paragraphs (4) and (5) of this subsection, the Administrator shall make separate calculations under subsection (a)(1)(B) of this section for—

(i) passenger automobiles manufactured domestically by a manufacturer (or included in this category under paragraph (3) of this subsection); and

(ii) passenger automobiles not manufactured domestically by that manufacturer (or excluded from this category under paragraph (3) of this subsection).

(B) Passenger automobiles described in subparagraph (A)(i) and (ii) of this paragraph are deemed to be manufactured by separate manufacturers under this chapter.

(3)(A) A manufacturer may submit to the Secretary of Transportation for approval a plan, *including supporting material, stating the actions and the dates when the actions will be taken, that will ensure that the automobile type or types referred to in subparagraph (B) of this paragraph will be manufactured domestically before the end of the 4th model year covered by the plan. The Secretary promptly shall consider and act on the plan. The Secretary shall approve the plan unless—*

(i) the Secretary finds that the plan is inadequate to meet the requirements of this paragraph; or

(ii) the manufacturer previously has submitted a plan approved by the Secretary under this paragraph.

(B) If the plan is approved, the Administrator shall include under paragraph (2)(A)(i) and exclude under paragraph (2)(A)(ii) of this subsection, for each of the 4 model years covered by the plan, not more than 150,000 passenger automobiles manufactured by that manufacturer but not qualifying as domestically manufactured if—

(i) the model type or types involved previously have not been manufactured domestically;

(ii) at least 50 percent of the cost to the manufacturer of each of the automobiles is attributable to value added in the United States or Canada;

(iii) the automobiles, if their assembly was completed in Canada, are imported into the United States not later than 30 days after the end of the model year; and

(iv) the automobile model type or types are manufactured domestically before the end of the 4th model year covered by the plan.

(4)(A) A manufacturer may file with the Secretary of Transportation a petition for an exemption from the requirement of separate calculations under paragraph (2)(A) of this subsection if the manufacturer began automobile production or assembly in the United States—

(i) after December 22, 1975, and before May 1, 1980; or

(ii) after April 30, 1980, if the manufacturer has engaged in the production or assembly in the United States for at least one model year ending before January 1, 1986.

(B) The Secretary of Transportation shall grant the exemption unless the Secretary finds that the exemption would result in reduced employment in the United States related to motor vehicle manufacturing during the period of the exemption. An exemption under this paragraph is effective for 5 model years or, if requested by the manufacturer, a longer period provided by the Secretary in the order granting the exemption. The exemption applies to passenger automobiles manufactured by that manufacturer during the period of the exemption.

(C) Before granting an exemption, the Secretary of Transportation shall provide notice of, and reasonable opportunity for, written or oral comment about the petition. The period for comment shall end not later than 60 days after the petition is filed, except that the Secretary may extend the period for not more than another 30 days. The Secretary shall decide whether to grant or deny the exemption, and publish notice of the decision in the Federal Register, not later than 90 days after the petition is filed, except that the Secretary may extend the time for decision to a later date (not later than 150 days after the petition is filed) if the Secretary publishes notice of, and reasons for, the extension in the Federal Register. If the Secretary does not make a decision within the time provided in this subparagraph, the petition is deemed to have been granted. Not later than 30 days after the end of the decision period, the Secretary shall submit a written statement of the reasons for not making a decision to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

(5)(A) A person adversely affected by a decision of the Secretary of Transportation granting or denying an exemption may file, not later than 30 days after publication of the notice of the decision, a petition for review in the United States Court of Appeals for the District of Columbia Circuit. That court has exclusive jurisdiction to review the decision and to affirm, remand, or set aside the decision under section 706(2)(A)–(D) of title 5.

(B) A judgment of the court under this subparagraph may be reviewed by the Supreme Court under section 1254 of title 28. Application for review by the Supreme Court must be made not later than 30 days after entry of the court's judgment.

(C) A decision of the Secretary of Transportation on a petition for an exemption under this paragraph may be reviewed administratively or judicially only as provided in this paragraph.

(6) Notwithstanding section 32903 of this title, during a model year when an exemption under this paragraph is effective for a manufacturer—

(A) credit may not be earned under section 32903(a) of this title by the manufacturer; and

(B) credit may not be made available under section 32903(b)(2) of this title for the manufacturer.

(c) TESTING AND CALCULATION PROCEDURES.—The Administrator shall measure fuel economy for each model and calculate average fuel economy for a manufacturer under testing and calculation procedures prescribed by the Administrator. However, except under section 32908 of this title, the Administrator shall use the same procedures for passenger automobiles the Administrator used for model year 1975 (weighted 55 percent urban cycle and 45 percent highway cycle), or procedures that give comparable results. A measurement of fuel economy or a calculation of average fuel economy (except under section 32908) shall be rounded off to the nearest .1 of a mile a gallon. The Administrator shall decide on the quantity of other fuel that is equivalent to one gallon of gasoline. To the extent practicable, a fuel economy test shall be carried out with emissions tests under section 206 of the Clean Air Act (42 U.S.C. 7525).

(d) EFFECTIVE DATE OF PROCEDURE OR AMENDMENT.—The Administrator shall prescribe a procedure under this section, or an amendment (except a technical or clerical amendment) in a procedure, at least 12 months before the beginning of the model year to which the procedure or amendment applies.

(e) REPORTS AND CONSULTATION.—The Administrator shall report measurements and calculations under this section to the Secretary of Transportation and shall consult and coordinate with the Secretary in carrying out this section.

§32905. Manufacturing incentives for alternative fuel automobiles

(a) ALCOHOL POWERED AUTOMOBILES.—For any model of alcohol powered automobile manufactured by a manufacturer after model year 1992, the fuel economy measured for that model shall be based on the fuel content of the alcohol used to operate the automobile. A gallon of alcohol used to operate an alcohol powered automobile is deemed to contain .15 gallon of fuel.

(b) DUAL ENERGY AUTOMOBILES.—For any model of dual energy automobile manufactured by a manufacturer in model years 1993–2004, the Administrator of the Environmental Protection Agency shall measure the fuel economy for that model by dividing 1.0 by the sum of—

(1) .5 divided by the fuel economy measured under section 32904(c) of this title when operating the model on gasoline or diesel fuel; and

(2) .5 divided by the fuel economy measured under subsection (a) of this section when operating the model on alcohol.

(c) NATURAL GAS POWERED AUTOMOBILES.—For any model of natural gas powered automobile manufactured by a manufacturer after model year 1992, the Administrator shall measure the fuel economy for that model based on the fuel content of the natural gas used to operate the automobile. One hundred cubic feet of natural gas is deemed to contain .823 gallon equivalent of natural gas. A gallon equivalent of natural gas is deemed to have a fuel content of .15 gallon of fuel.

(d) NATURAL GAS DUAL ENERGY AUTOMOBILES.—For any model of natural gas dual energy automobile manufactured by a manufacturer in model years 1993–2004, the Administrator shall measure the fuel economy for that model by dividing 1.0 by the sum of—

(1) .5 divided by the fuel economy measured under section 32904(c) of this title when operating the model on gasoline or diesel fuel; and

(2) .5 divided by the fuel economy measured under subsection (c) of this section when operating the model on natural gas.

(e) FUEL ECONOMY CALCULATIONS.—The Administrator shall calculate the manufacturer's average fuel economy under section 32904(a)(1) of this title for each model described under subsections (a)–(d) of this section by using as the denominator the fuel economy measured for each model under subsections (a)–(d).

(f) EXTENDING APPLICATION OF SUBSECTIONS (b) AND (d).—Not later than December 31, 2001, the Secretary of Transportation shall—

(1) extend by regulation the application of subsections (b) and (d) of this section for not more than 4 consecutive model years immediately after model year 2004 and explain the basis on which the extension is granted; or

(2) publish a notice explaining the reasons for not extending the application of subsections (b) and (d) of this section.

(g) STUDY AND REPORT.—Not later than September 30, 2000, the Secretary of Transportation, in consultation with the Secretary of Energy and the Administrator, shall complete a study of the success of the policy of subsections (b) and (d) of this title, and submit to the Committees on Commerce, Science, and Transportation and Governmental Affairs of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the results of the study, including preliminary conclusions on whether the application of subsections (b) and (d) should be extended for up to 4 more model years. The study and conclusions shall consider—

(1) the availability to the public of alcohol powered automobiles, natural gas powered automobiles, and alternative fuels;

(2) energy conservation and security;

(3) environmental considerations; and

(4) other relevant factors.

§32906. Maximum fuel economy increase for alternative fuel automobiles

(a) MAXIMUM INCREASES.—(1)(A) For each of the model years 1993–2004 for each category of automobile, the maximum increase in average fuel economy for a manufacturer attributable to dual energy automobiles and natural gas dual energy automobiles is 1.2 miles a gallon.

(B) If the application of section 32905(b) and (d) of this title is extended under section 32905(f) of this title, for each category of automobile the maximum increase in average fuel economy for a manufacturer for each of the model years 2005–2008 attributable to dual energy automobiles and natural gas dual energy automobiles is .9 mile a gallon.

(2) In applying paragraph (1) of this subsection, the Administrator of the Environmental Protection Agency shall determine the increase in a manufacturer's average fuel economy attributable to dual energy automobiles and natural gas dual energy automobiles by subtracting from the manufacturer's average fuel economy calculated under section 32905(e) of this title the

number equal to what the manufacturer's average fuel economy would be if it were calculated by the formula in section 32904(a)(1) of this title by including as the denominator for each model of dual energy automobile or natural gas dual energy automobile the fuel economy when the automobiles are operated on gasoline or diesel fuel. If the increase attributable to dual energy automobiles and natural gas dual energy automobiles for any model year described—

(A) in paragraph (1)(A) of this subsection is more than 1.2 miles a gallon, the limitation in paragraph (1)(A) applies; and

(B) in paragraph (1)(B) of this subsection is more than .9 mile a gallon, the limitation in paragraph (1)(B) applies.

(b) OFFSETS.—Nothwithstanding this section and sections 32901(b) and 32905 of this title, if the Secretary of Transportation reduces the average fuel economy standard for passenger automobiles for any model year below 27.5 miles a gallon, an increase in average fuel economy for passenger automobiles of more than .7 mile a gallon to which a manufacturer of dual energy automobiles or natural gas dual energy automobiles would otherwise be entitled is reduced by an amount equal to the amount of the reduction in the standard. However, the increase may not be reduced to less than .7 mile a gallon.

§32907. Reports and tests of manufacturers

(a) MANUFACTURER REPORTS.—(1) A manufacturer shall report to the Secretary of Transportation on—

(A) whether the manufacturer will comply with an applicable average fuel economy standard under section 32902 of this title for the model year for which the report is made;

(B) the actions the manufacturer has taken or intends to take to comply with the standard; and

(C) other information the Secretary requires by regulation.

(2) A manufacturer shall submit a report under paragraph (1) of this subsection during the 30 days—

(A) before the beginning of each model year; and

(B) beginning on the 180th day of the model year.

(3) When a manufacturer decides that actions reported under paragraph (1)(B) of this subsection are not sufficient to ensure compliance with that standard, the manufacturer shall report to the Secretary additional actions the manufacturer intends to take to comply with the standard and include a statement that those actions are sufficient to ensure compliance.

(4) This subsection does not apply to a manufacturer for a model year for which the manufacturer is subject to an alternative average fuel economy standard under section 32902(d) of this title.

(b) RECORDS, REPORTS, TESTS, INFORMATION, AND INSPECTION.—(1) Under regulations prescribed by the Secretary or the Administrator of the Environmental Protection Agency to carry out this chapter, a manufacturer shall keep records, make reports, conduct tests, and provide items and information. On request and display of proper credentials, an officer or employee designated by the Secretary or Administrator may inspect automobiles and records of the manufacturer. An inspection shall be made at a reasonable time and in a reasonable way.

(2) The district courts of the United States may—

(A) issue an order enforcing a requirement or request under paragraph (1) of this subsection; and

(B) punish a failure to obey the order as a contempt of court.

§32908. Fuel economy information

(a) DEFINITIONS.—In this section—

(1) "automobile" includes an automobile rated at not more than 8,500 pounds gross vehicle weight regardless of whether the Secretary of Transportation has applied this chapter to the automobile under section 32901(a)(3)(B) of this title.

(2) "dealer" means a person residing or located in a State, the District of Columbia, or a territory or possession of the United States, and engaged in the sale or distribution of new automobiles to the first person (except a dealer buying as a dealer) that buys the automobile in good faith other than for resale.

(b) LABELING REQUIREMENTS AND CONTENTS.—(1) Under regulations of the Administrator of the Environmental Protection Agency, a manufacturer of automobiles shall attach a label to a prominent place on each automobile manufactured in a model year. The dealer shall maintain the label. The label shall contain the following information:

(A) the fuel economy of the automobile.

(B) the estimated annual fuel cost of operating the automobile.

(C) the range of fuel economy of comparable automobiles of all manufacturers.

(D) a statement that a booklet is available from the dealer to assist in making a comparison of fuel economy of other automobiles manufactured by all manufacturers in that model year.

(E) the amount of the automobile fuel efficiency tax imposed on the sale of the automobile under section 4064 of the Internal Revenue Code of 1986 (26 U.S.C. 4064).

(F) other information required or authorized by the Administrator that is related to the information required by clauses (A)-(D) of this paragraph.

(2) The Administrator may allow a manufacturer to comply with this subsection by—

(A) disclosing the information on the label required under section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232); and

(B) including the statement required by paragraph (1)(E) of this subsection at a time and in a way that takes into account special circumstances or characteristics.

(3) For alcohol powered automobiles and natural gas powered automobiles manufactured after model year 1992, the fuel economy of those automobiles under paragraph (1)(A) of this subsection is the fuel economy for those automobiles when operated on alcohol or natural gas, as the case may be, measured under section 32905 (a) or (c) of this title, multiplied by .15. Each label required under paragraph (1) of this subsection for those dual energy automobiles or natural gas dual energy automobiles shall—

(A) indicate the fuel economy of the automobile when operated on gasoline or diesel fuel;

(B) clearly identify the automobile as a dual energy automobile or natural gas dual energy automobile;

(C) clearly identify the fuels on which the automobile may be operated; and

(D) contain a statement informing the consumer that the additional information required by subsection (c)(2) of this section is published and distributed by the Secretary of Energy.

(c) FUEL ECONOMY INFORMATION BOOKLET.—(1) The Administrator shall prepare the booklet referred to in subsection (b)(1)(D) of this section. The booklet—

(A) shall be simple and readily understandable;

(B) shall contain information on fuel economy and estimated annual fuel costs of operating automobiles manufactured in each model year; and

(C) may contain information on geographical or other differences in estimated annual fuel costs.

(2)(A) For dual energy automobiles and natural gas dual energy automobiles manufactured after model year 1992, the booklet published under paragraph (1) shall contain additional information on—

(i) the energy efficiency and cost of operation of those automobiles when operated on gasoline or diesel fuel as compared to those automobiles when operated on alcohol or natural gas, as the case may be; and

(ii) the driving range of those automobiles when operated on gasoline or diesel fuel as compared to those automobiles when operated on alcohol or natural gas, as the case may be.

(B) For dual energy automobiles, the booklet published under paragraph (1) also shall contain—

(i) information on the miles a gallon achieved by the automobiles when operated on alcohol; and

(ii) a statement explaining how the information made available under this paragraph can be expected to change when the automobile is operated on mixtures of alcohol and gasoline or diesel fuel.

(3) The Secretary of Energy shall publish and distribute the booklet. The Administrator shall prescribe regulations requiring dealers to make the booklet available to prospective buyers.

(d) DISCLOSURE.—A disclosure about fuel economy or estimated annual fuel costs under this section does not establish a warranty under a law of the United States or a State.

(e) VIOLATIONS.—A violation of subsection (b) of this section is—

(1) a violation of section 3 of the Automobile Information Disclosure Act (15 U.S.C. 1232); and

(2) an unfair or deceptive act or practice in or affecting commerce under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), except sections 5(m) and 18 (15 U.S.C. 45(m), 57a).

(f) CONSULTATION.—The Administrator shall consult with the Federal Trade Commission and the Secretaries of Transportation and Energy in carrying out this section.

§32909. Judicial review of regulations

(a) FILING AND VENUE.—(1) A person that may be adversely affected by a regulation prescribed in carrying out section 32901–32904 or 32908 of this title may apply for review of the regulation by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business.

(2) A person adversely affected by a regulation prescribed under section 32912(c)(1) of this title may apply for review of the regulation by filing a petition for review in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business.

(b) TIME FOR FILING AND JUDICIAL PROCEDURES.—The petition must be filed not later than 59 days after the regulation is prescribed, except that a petition for review of a regulation prescribing an amendment of a standard submitted to Congress under section 32902(c)(2) of this title must be filed not later than 59 days after the end of the 60-day period referred to in section 32902(c)(2). The clerk of the court shall send immediately a copy of the petition to the Secretary of Transportation or the Administrator of the Environmental Protection Agency, whoever prescribed the regulation. The Secretary or the Administrator shall file with the court a record of the proceeding in which the regulation was prescribed.

(c) ADDITIONAL PROCEEDINGS.—(1) When reviewing a regulation under subsection (a)(1) of this section, the court, on request of the petitioner, may order the Secretary or the Administrator to receive additional submissions if the court is satisfied the additional submissions are material and there were reasonable grounds for not presenting the submissions in the proceeding before the Secretary or Administrator.

(2) The Secretary or the Administrator may amend or set aside the regulation, or prescribe a new regulation because of the additional submissions presented. The Secretary or Administrator shall file an amended or new regulation and the additional submissions with the court. The court shall review a changed or new regulation.

(d) SUPREME COURT REVIEW AND ADDITIONAL REMEDIES.—A judgment of a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28. A remedy under subsections (a)(1) and (c) of this section is in addition to any other remedies provided by law.

§32910. Administrative

(a) GENERAL POWERS.—(1) In carrying out this chapter, the Secretary of Transportation or the Administrator of the Environmental Protection Agency may—

(A) inspect and copy records of any person at reasonable times;

(B) order a person to file written reports or answers to specific questions, including reports or answers under oath; and

(C) conduct hearings, administer oaths, take testimony, and subpena witnesses and records the Secretary or Administrator considers advisable.

(2) A witness summoned under paragraph (1)(C) of this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(b) CIVIL ACTIONS TO ENFORCE.—A civil action to enforce a subpena or order of the Secretary or Administrator under subsection (a) of this section may be brought in the United States district court for the judicial district in which the proceeding by the Secretary or Administrator was conducted. The court may punish a failure to obey an order of the court to comply with the subpena or order of the Secretary or Administrator as a contempt of court.

(c) DISCLOSURE OF INFORMATION.—The Secretary and the Administrator shall disclose information obtained under this chapter (except information obtained under section 32904(c) of this title) under section 552 of title 5. However, the Secretary or Administrator may withhold information under section 552(b)(4) only if the Secretary or Administrator decides that disclosure of the information would cause significant competitive damage. A matter referred to in section 552(b)(4) and relevant to an administrative or judicial proceeding under this chapter may be disclosed in that proceeding. A measurement or calculation under section 32904(c) of this title shall be disclosed under section 552 of title 5 without regard to section 552(b).

(d) REGULATIONS.—The Administrator may prescribe regulations to carry out duties of the Administrator under this chapter.

§32911. Compliance

(a) GENERAL.—A person commits a violation if the person fails to comply with this chapter and regulations and standards prescribed and orders issued under this chapter (except sections 32902, 32903, 32908(b), and 32917(b) and regulations and standards prescribed and orders issued under those sections). The Secretary of Transportation shall conduct a proceeding, with an opportunity for a hearing on the record, to decide whether a person has committed a violation. Any interested person may participate in a proceeding under this subsection.

(b) AUTOMOBILE MANUFACTURERS.—A manufacturer of automobiles commits a violation if the manufacturer fails to comply with an applicable average fuel economy standard under section 32902 of this title. Compliance is determined after considering credits available to the manufacturer under section 32903 of this title. If average fuel economy calculations under section 32904(c) of this title indicate that a manufacturer has violated this subsection, the Secretary shall conduct a proceeding, with an opportunity for a hearing on the record, to decide whether a violation has been committed. The Secretary may not conduct the proceeding if further measurements of fuel economy, further calculations of average fuel economy, or other information indicates a violation has not been committed. The results of the measurements and calculations and the information shall be published in the Federal Register. Any interested person may participate in a proceeding under this subsection.

§32912. Civil penalties

(a) GENERAL PENALTY.—A person that violates section 32911(a) of this title is liable to the United States Government for a civil penalty of not more than $10,000 for each violation. A separate violation occurs for each day the violation continues.

(b) PENALTY FOR MANUFACTURER VIOLATIONS OF FUEL ECONOMY STANDARDS.—Except as provided in subsection (c) of this section, a manufacturer that violates a standard prescribed for a model year under section 32902 of this title is liable to the Government for a civil penalty of $5 multiplied by each .1 of a mile a gallon by which the applicable average fuel economy standard under that section exceeds the average fuel economy—

(1)(A) calculated under section 32904(a)(1)(A) of this title for automobiles to which the standard applies manufactured by the manufacturer during the model year;

(B) multiplied by the number of those automobiles; and

(C) reduced by the credits available to the manufacturer under section 32903 of this title for the model year; and

(2)(A) calculated under section 32904(a)(1)(B) of this title for passenger automobiles manufactured by the manufacturer during the model year;

(B) multiplied by the number of those automobiles; and

(C) reduced by the credits available to the manufacturer under section 32903 of this title for the model year.

(c) HIGHER PENALTY AMOUNTS.—(1)(A) The Secretary of Transportation shall prescribe by regulation a higher amount for each .1 of a mile a gallon to be used in calculating a civil penalty under subsection (b) of this section, if the Secretary decides that the increase in the penalty—

(i) will result in, or substantially further, substantial energy conservation for automobiles in model years in which the increased penalty may be imposed; and

(ii) will not have a substantial deleterious impact on the economy of the United States, a State, or a region of a State.

(B) The amount prescribed under subparagraph (A) of this paragraph may not be more than $10 for each .1 of a mile a gallon.

(C) The Secretary may make a decision under subparagraph (A)(ii) of this paragraph only when the Secretary decides that it is likely that the increase in the penalty will not—

(i) cause a significant increase in unemployment in a State or a region of a State;

(ii) adversely affect competition; or

(iii) cause a significant increase in automobile imports.

(D) A higher amount prescribed under subparagraph (A) of this paragraph is effective for the model year beginning at least 18 months after the regulation stating the higher amount becomes final.

(2) The Secretary shall publish in the Federal Register a proposed regulation under this subsection and a statement of the basis for the regulation and provide each manufacturer of automobiles a copy of the proposed regulation and the statement. The Secretary shall provide a period of at least 45 days for written public comments on the proposed regulation. The Secretary shall submit a copy of the proposed regulation to the Federal Trade Commission and request the Commission to comment on the proposed regulation within that period. After that period, the Secretary shall give interested persons and the Commission an opportunity at a public hearing to present oral information, views, and arguments and to direct questions about disputed issues of material fact to—

(A) other interested persons making oral presentations;

(B) employees and contractors of the Government that made written comments or an oral presentation or participated in the development or consideration of the proposed regulation; and

(C) experts and consultants that provided information to a person that the person includes, or refers to, in an oral presentation.

(3) The Secretary may restrict the questions of an interested person and the Commission when the Secretary decides that the questions are duplicative or not likely to result in a timely and effective resolution of the issues. A transcript shall be kept of a public hearing under this subsection. A copy of the transcript and written comments shall be available to the public at the cost of reproduction.

(4) The Secretary shall publish a regulation prescribed under this subsection in the Federal Register with the decisions required under paragraph (1) of this subsection.

(5) An officer or employee of a department, agency, or instrumentality of the Government violates section 1905 of title 18 by disclosing, except in an in camera proceeding by the Secretary or a court, information—

(A) provided to the Secretary or the court during consideration or review of a regulation prescribed under this subsection; and

(B) decided by the Secretary to be confidential under section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 796(d)).

(d) WRITTEN NOTICE REQUIREMENT.—The Secretary shall impose a penalty under this section by written notice.

§32913. Compromising and remitting civil penalties

(a) GENERAL AUTHORITY AND LIMITATIONS.—The Secretary of Transportation may compromise or remit the amount of a civil penalty imposed under section 32912(a) or (b) of this title. However, the amount of a penalty imposed under section 32912(b) may be compromised or remitted only to the extent—

(1) necessary to prevent the insolvency or bankruptcy of the manufacturer of automobiles;

(2) the manufacturer shows that the violation was caused by an act of God, a strike, or a fire; or

(3) the Federal Trade Commission certifies under subsection (b)(1) of this section that a reduction in the penalty is necessary to prevent a substantial lessening of competition.

(b) PENALTY REDUCTION BY COMMISSION.—(1) A manufacturer liable for a civil penalty under section 32912(b) of this title may apply to the Commission for a certification that the penalty should be reduced to prevent a substantial lessening of competition in the segment of the motor vehicle industry subject to the standard that was violated. The Commission shall make the certification when it finds that reduction is necessary to prevent the lessening. The Commission shall state in the certification the maximum amount by which the penalty may be reduced.

(2) An application under this subsection must be made not later than 30 days after the Secretary decides that the manufacturer has violated section 32911(b) of this title. To the maximum extent practicable, the Commission shall

make a decision on an application by the 90th day after the application is filed. A proceeding under this subsection may not delay the manufacturer's liability for the penalty for more than 90 days after the application is filed.

(3) When a civil penalty is collected in a civil action under this chapter before a decision of the Commission under this subsection is final, the payment shall be paid to the court in which the action was brought. The court shall deposit the payment in the general fund of the Treasury on the 90th day after the decision of the Commission becomes final. When the court is holding payment of a penalty reduced under subsection (a)(3) of this section, the Secretary shall direct the court to remit the appropriate amount of the penalty to the manufacturer.

§32914. Collecting civil penalties

(a) CIVIL ACTIONS.—If a person does not pay a civil penalty after it becomes a final order of the Secretary of Transportation or a judgment of a court of appeals of the United States for a circuit, the Attorney General shall bring a civil action in the appropriate district court of the United States to collect the penalty. The validity and appropriateness of the final order imposing the penalty is not reviewable in the action.

(b) PRIORITY OF CLAIMS.—A claim of a creditor against a bankrupt or insolvent manufacturer of automobiles has priority over a claim of the United States Government against the manufacturer for a civil penalty under section 32912(b) of this title when the creditor's claim is for credit extended before a final judgment (without regard to section 32913(b)(1) and (2) of this title) in an action to collect under subsection (a) of this section.

§32915. Appealing civil penalties

Any interested person may appeal a decision of the Secretary of Transportation to impose a civil penalty under section 32912(a) or (b) of this title, or of the Federal Trade Commission under section 32913(b)(1) of this title, in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. A person appealing a decision must file a notice of appeal with the court not later than 30 days after the decision and, at the same time, send a copy of the notice by certified mail to the Secretary or the Commission. The Secretary or the Commission promptly shall file with the court a certified copy of the record of the proceeding in which the decision was made.

§32916. Reports to Congress

(a) ANNUAL REPORT.—Not later than January 15 of each year, the Secretary of Transportation shall submit to each House of Congress, and publish in the Federal Register, a report on the review by the Secretary of average fuel economy standards prescribed under this chapter.

(b) JOINT EXAMINATIONS AFTER GRANTING EXEMPTIONS.—(1) After an exemption has been granted under section 32904(b)(4) of this title, the Secretaries of Transportation and Labor shall conduct annually a joint examination of the extent to which section 32904(b)(4)—

(A) achieves the purposes of this chapter;

(B) improves fuel efficiency (thereby facilitating conservation of petroleum and reducing petroleum imports);

(C) has promoted employment in the United States related to automobile manufacturing;

(D) has not caused unreasonable harm to the automobile manufacturing sector in the United States; and

(E) has permitted manufacturers that have assembled passenger automobiles deemed domestically manufactured under section 32904(b)(1)(A) of this title thereafter to assemble in the United States passenger automobiles of the same model that have less than 75 percent of their value added in the United States or Canada, together with the reasons.

(2) The Secretary of Transportation shall include the results of the examination under paragraph (1) of this subsection in each report submitted under subsection (a) of this section more than 180 days after an exemption has been granted under section 32904(b)(4) of this title, or submit the results of the examination directly to Congress before the report is submitted when circumstances warrant.

§32917. Standards for executive agency automobiles

(a) DEFINITION.—In this section, "executive agency" has the same meaning given that term in section 105 of title 5.

(b) FLEET AVERAGE FUEL ECONOMY.—(1) The President shall prescribe regulations that require passenger automobiles leased for at least 60 consecutive days or bought by executive agencies in a fiscal year to achieve a fleet average fuel economy (determined under paragraph (2) of this subsection) for that year of at least the greater of—

(A) 18 miles a gallon; or

(B) the applicable average fuel economy standard under section 32902(b) or (c) of this title for the model year that includes January 1 of that fiscal year.

(2) Fleet average fuel economy is—

(A) the total number of passenger automobiles leased for at least 60 consecutive days or bought by executive agencies in a fiscal year (except automobiles designed for combat-related missions, law enforcement work, or emergency rescue work); divided by

(B) the sum of the fractions obtained by dividing the number of automobiles of each model leased or bought by the fuel economy of that model.

§32918. Preemption

(a) GENERAL.—When an average fuel economy standard prescribed under this chapter is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation on fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard under this chapter.

(b) REQUIREMENTS MUST BE IDENTICAL.—When a requirement under section 32908 of this title is in effect, a State or a political subdivision of a State may adopt or enforce a law or regulation on disclosure of fuel economy or fuel operating costs for an automobile covered by section 32908 only if the law or regulation is identical to that requirement.

(c) STATE AND POLITICAL SUBDIVISION AUTOMOBILES.—A State or a political subdivision of a State may prescribe requirements for fuel economy for automobiles obtained for its own use.

CHAPTER 331—THEFT PREVENTION

Sec.

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§33101. Definitions

In this chapter—

(1) "covered major part" means a major part selected under sections 33102(d)(1)(B) and 33103 of this title for coverage by the vehicle theft prevention standard prescribed under section 33102.

(2) "existing line" means a line introduced into commerce before January 1, 1983.

(3) "first purchaser" means the person making the first purchase other than for resale.

(4) "line" means a name that a manufacturer of motor vehicles applies to a group of motor vehicle models of the same make that have the same body or chassis, or otherwise are similar in construction or design.

(5) "major part" means—

(A) the engine;

(B) the transmission;

(C) each door to the passenger compartment;

(D) the hood;

(E) the grille;

(F) each bumper;

(G) each front fender;

(H) the deck lid, tailgate, or hatchback;

(I) each rear quarter panel;

(J) the trunk floor pan;

(K) the frame or, for a unitized body, the supporting structure serving as the frame; and

(L) any other part of a passenger motor vehicle that the Secretary of Transportation by regulation specifies as comparable in design or function to any of the parts listed in subclauses (A)-(K) of this clause.

(6) "major replacement part" means a major part—

(A) not installed in or on a motor vehicle at the time of its delivery to the first purchaser; and

(B) the equitable or legal title to which has not been transferred to a first purchaser.

(7) "model year" has the same meaning given that term in section 32901(a)(14) of this title.

(8) "new line" means a line introduced into commerce after December 31, 1982.

(9) "passenger motor vehicle" does not include a multipurpose passenger vehicle (including a vehicle commonly known as a "passenger van").

(10) "vehicle theft prevention standard" means a minimum performance standard for identifying major parts of new motor vehicles and major replacement parts by inscribing or affixing numbers or symbols on those parts.

§33102. Theft prevention standard

(a) GENERAL.—The Secretary of Transportation by regulation shall prescribe a vehicle theft prevention standard that conforms to the requirements of this chapter.

(b) APPLICATION.—(1) The standard shall apply to—

(A) the covered major parts that manufacturers install in passenger motor vehicles in lines designated under section 33103 of this title as high theft lines; and

(B) the major replacement parts for the major parts described in clause (A) of this paragraph.

(2) The standard may apply only to—

(A) major parts that manufacturers install in passenger motor vehicles having a model year designation later than the calendar year in which the standard takes effect; and

(B) major replacement parts manufactured after the standard takes effect.

(c) STANDARD REQUIREMENTS.—The standard shall be practicable and provide relevant objective criteria.

(d) LIMITATIONS ON MAJOR PART AND REPLACEMENT PART STANDARDS.—(1) For a major part installed by the manufacturer of the motor vehicle, the standard may not require—

(A) a part to have more than one identification; or

(B) a motor vehicle to have identification of more than 14 of its major parts.

(2) For a major replacement part, the standard may not require—

(A) identification of a part not designed as a replacement for a major part required to be identified under the standard; or

(B) the inscribing or affixing of identification except a symbol identifying the manufacturer and a common symbol identifying the part as a major replacement part.

(e) RECORDS AND REPORTS.—This chapter does not authorize the Secretary to require a person to keep records or make reports, except as provided in sections 33103(c), 33105(c), 33106(a), and 33112 of this title.

§33103. Designation of high theft vehicle lines and parts

(a) DESIGNATION, NONAPPLICATION, SELECTION, AND PROCEDURES.—(1) For purposes of the standard under section 33102 of this title, the following are high theft lines:

(A) a passenger motor vehicle line determined under subsection (b) of this section to have had a new passenger motor vehicle theft rate in the 2-year period covering calendar years 1983 and 1984 greater than the median theft rate for all new passenger motor vehicles in that 2-year period.

(B) a passenger motor vehicle line initially introduced into commerce in the United States after December 31, 1982, that is selected under paragraph (3) of this subsection as likely to have a theft rate greater than the median theft rate referred to in clause (A) of this paragraph.

(C) subject to paragraph (2) of this subsection, a passenger motor vehicle line having (for existing lines) or likely to have (for new lines) a theft rate below the median theft rate referred to in clause (A) of this paragraph, if the major parts in the vehicles are selected under paragraph (3) of this subsection as interchangeable with the majority of the major parts that are subject to the standard and are contained in the motor vehicles of a line described in clause (A) or (B) of this paragraph.

(2) The standard may not apply to any major part of a line described in paragraph (1)(C) of this subsection if all the passenger motor vehicles of lines that are, or are likely to be, below the median theft rate, and that contain parts interchangeable with the major parts of the line involved, account (for existing lines), or the Secretary of Transportation determines they are likely to account (for new lines), for more than 90 percent of the total annual production of all lines of that manufacturer containing those interchangeable parts.

(3) The lines, and the major parts of the passenger motor vehicles in those lines, that are to be subject to the standard may be selected by agreement between the manufacturer and the Secretary. If the manufacturer and the Secretary disagree on the selection, the Secretary shall select the lines and parts, after notice to the manufacturer and opportunity for written comment, and subject to the confidentiality requirements of this chapter.

(4) To the maximum extent practicable, the Secretary shall prescribe reasonable procedures designed to ensure that a selection under paragraph (3) of this subsection is made at least 6 months before the first applicable model year beginning after the selection.

(5) A manufacturer may not be required to comply with the standard under a selection under paragraph (3) of this subsection for a model year beginning earlier than 6 months after the date of the selection.

(b) DETERMINING THEFT RATE FOR PASSENGER VEHICLES.—(1) In this subsection, "new passenger motor vehicle thefts", when used in reference to a calendar year, means thefts in the United States in that year of passenger motor vehicles with the same model-year designation as that calendar year.

(2) Under subsection (a) of this section, the theft rate for passenger motor vehicles of a line shall be determined by a fraction—

(A) the numerator of which is the number of new passenger motor vehicle thefts for that line during the 2-year period referred to in subsection (a)(1)(A) of this section; and

(B) the denominator of which is the sum of the respective production volumes of all passenger motor vehicles of that line (as reported to the Administrator of the Environmental Protection Agency under chapter 329 of this title) that are of model years 1983 and 1984 and are distributed for sale in commerce in the United States.

(3) Under subsection (a) of this section, the median theft rate for all new passenger motor vehicle thefts during that 2-year period is the theft rate midway between the highest and the lowest theft rates determined under paragraph (2) of this subsection. If there is an even number of theft rates determined under paragraph (2), the median theft rate is the arithmetic average of the 2 adjoining theft rates midway between the highest and the lowest of those theft rates.

(4) In consultation with the Director of the Federal Bureau of Investigation, the Secretary periodically shall obtain from the most reliable source accurate and timely theft and recovery information and publish the information for review and comment. To the greatest extent possible, the Secretary shall use theft information reported by United States Government, State, and local police. After publication and opportunity for comment, the Secretary shall use the theft information to determine the median theft rate under this subsection. The Secretary and the Director shall take any necessary actions to improve the accuracy, reliability, and timeliness of the information, including ensuring that vehicles represented as stolen are really stolen.

(5) In calculating the median theft rate, the Secretary shall include the theft rates of lines exempted from the initial selection of high theft lines required to have been made not later than October 25, 1985, under section 603(a)(3) of the Motor Vehicle Information and Cost Savings Act (Public Law 92–513, 86 Stat. 947), as added by section 101(a) of the Motor Vehicle Theft Law Enforcement Act of 1984 (Public Law 98–547, 98 Stat. 2757).

(c) PROVIDING INFORMATION.—The Secretary by regulation shall require each manufacturer to provide information necessary to select under subsection (a)(3) of this section the high theft lines and the major parts to be subject to the standard.

(d) APPLICATION.—Except as provided in section 33105 of this title, the Secretary may not make the standard inapplicable to a line that has been subject to the standard.

§33104. Cost limitations

(a) MAXIMUM MANUFACTURER COSTS.—The standard under section 33102 of this title may not impose—

(1) on a manufacturer of motor vehicles, compliance costs of more than $15 a motor vehicle; or

(2) on a manufacturer of major replacement parts, compliance costs for each part of more than the reasonable amount (but less than $15) that the Secretary of Transportation specifies in the standard.

(b) COSTS INVOLVED IN ENGINES AND TRANSMISSIONS.—For a manufacturer engaged in identifying engines or transmissions on October 25, 1984, in a way that substantially complies with the standard—

(1) the costs of identifying engines and transmissions may not be considered in calculating the manufacturer's costs under subsection (a) of this section; and

(2) the manufacturer may not be required under the standard to conform to any identification system for engines and transmissions that imposes greater costs on the manufacturer than are incurred under the identification system used by the manufacturer on October 25, 1984.

(c) COST ADJUSTMENTS.—(1) In this subsection—

(A) "base period" means calendar year 1984.

(B) "price index" means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Secretary of Labor.

(2) At the beginning of each calendar year, as necessary data become available from the Bureau of Labor Statistics, the Secretary of Labor shall certify to the Secretary of Transportation and publish in the Federal Register the percentage difference between the price index for the 12 months before the beginning of the calendar year and the price index for the base period. For model years beginning in that calendar year, the amounts specified in subsection (a) of this section shall be adjusted by the percentage difference.

§33105. Exemption for passenger motor vehicles equipped with anti-theft devices

(a) DEFINITIONS.—In this section—

(1) "anti-theft device" means a device to reduce or deter theft that—

(A) is in addition to the theft-deterrent devices required by motor vehicle safety standard numbered 114 in section 571.114 of title 49, Code of Federal Regulations;

(B) the manufacturer believes will be effective in reducing or deterring theft of motor vehicles; and

(C) does not use a signaling device reserved by State law for use on police, emergency, or official vehicles, or on schoolbuses.

(2) "standard equipment" means equipment already installed in a motor vehicle when it is delivered from the manufacturer and not an accessory or other item that the first purchaser customarily has the option to have installed.

(b) GRANTING EXEMPTIONS AND LIMITATIONS.—(1) A manufacturer may petition the Secretary of Transportation for an exemption from a requirement of a standard prescribed under section 33102 of this title for a line of passenger motor vehicles equipped as standard equipment with an anti-theft device that the Secretary decides is likely to be as effective in reducing and deterring motor vehicle theft as a device required by the standard.

(2) For model year 1987, the Secretary may grant an exemption for not more than 2 lines of a manufacturer. For each subsequent model year, the Secretary may grant an exemption for not more than 2 additional lines of a manufacturer. An additional exemption does not affect an exemption previously granted.

(c) PETITIONING PROCEDURE.—A petition must be filed not later than 8 months before the start of production for the first model year covered by the petition. The petition must include—

(1) a detailed description of the device;

(2) the reasons for the manufacturer's conclusion that the device will be effective in reducing and deterring theft of motor vehicles; and

(3) additional information the Secretary reasonably may require to make the decision described in subsection (b)(1) of this section.

(d) DECISIONS AND APPROVALS.—The Secretary shall make a decision about a petition filed under this section not later than 120 days after the date the petition is filed. A decision approving a petition must be based on substantial evidence. The Secretary may approve a petition in whole or in part. If the Secretary does not make a decision within the 120-day period, the petition shall be deemed to be approved and the manufacturer shall be exempt from the standard for the line covered by the petition for the subsequent model year.

(e) RESCISSIONS.—The Secretary may rescind an exemption if the Secretary decides that the anti-theft device has not been as effective in reducing and deterring motor vehicle theft as compliance with the standard. A rescission may be effective only—

(1) for a model year after the model year in which the rescission occurs; and

(2) at least 6 months after the manufacturer receives written notice of the rescission from the Secretary.

§33106. Monitoring compliance of manufacturers

(a) RECORDS, REPORTS, INFORMATION, AND INSPECTION.—To enable the Secretary of Transportation to decide whether a manufacturer of motor vehicles containing a part subject to a standard prescribed under section 33102 of this title, or a manufacturer of major replacement parts subject to the standard, is complying with this chapter and the standard, the Secretary may require the manufacturer to—

(1) keep records;

(2) make reports;

(3) provide items and information; and

(4) allow an officer or employee designated by the Secretary to inspect the vehicles and parts and relevant records of the manufacturer.

(b) ENTRY AND INSPECTION.—To enforce this chapter, an officer or employee designated by the Secretary, on presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, may inspect a facility in which motor vehicles containing major parts subject to the standard, or major replacement parts subject to the standard, are manufactured, held for introduction into interstate commerce, or held for sale after introduction into interstate commerce. An inspection shall be conducted at a reasonable time, in a reasonable way, and with reasonable promptness.

(c) CERTIFICATION OF COMPLIANCE.—(1) A manufacturer of a motor vehicle subject to the standard, and a manufacturer of a major replacement part subject to the standard, shall provide at the time of delivery of the vehicle or part a certification that the vehicle or part conforms to the applicable motor vehicle theft prevention standard. The certification shall accompany the vehicle or part until its delivery to the first purchaser. The Secretary by regulation may prescribe the type and form of the certification.

(2) This subsection does not apply to a motor vehicle or major replacement part that is—

(A) intended only for export;

(B) labeled only for export on the vehicle or replacement part and the outside of any container until exported; and

(C) exported.

(d) NOTIFICATION OF ERROR.—A manufacturer shall notify the Secretary if the manufacturer discovers that—

(1) there is an error in the identification (required by the standard) applied to a major part installed by the manufacturer in a motor vehicle during its assembly, or to a major replacement part manufactured by the manufacturer; and

(2) the motor vehicle or major replacement part has entered interstate commerce.

§33107. Prohibited acts

(a) GENERAL.—A person may not—

(1) manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, a motor vehicle or major replacement part subject to a standard prescribed under section 33102 of this title, unless it conforms to the standard;

(2) fail to comply with a regulation prescribed by the Secretary of Transportation under this chapter;

(3) fail to keep specified records, refuse access to or copying of records, fail to make reports or provide items or information, or fail or refuse to allow entry or inspection, as required by this chapter; or

(4) fail to provide the certification required by section 33106(c) of this title, or provide a certification that the person knows, or in the exercise of reasonable care has reason to know, is false or misleading in a material respect.

(b) NONAPPLICATION.—Subsection (a)(1) of this section does not apply to a person establishing that in the exercise of reasonable care the person did not have reason to know that the motor vehicle or major replacement part was not in conformity with the standard.

§33108. Civil penalty and enforcement

(a) PENALTY AND CIVIL ACTIONS TO COLLECT.—(1) A person that violates section 33107 of this title is liable to the United States Government for a civil penalty of not more than $1,000 for each violation. The failure of more than one part of a single motor vehicle to conform to an applicable standard under section 33102 of this title is only a single violation. The maximum penalty under this subsection for a related series of violations is $250,000.

(2) The Secretary of Transportation imposes a civil penalty under this section. The Secretary may compromise the amount of a penalty.

(3) In determining the amount of a civil penalty or compromise, the Secretary shall consider the size of the person's business and the gravity of the violation.

(4) The Attorney General shall bring a civil action to collect a civil penalty imposed under this section.

(5) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(b) CIVIL ACTIONS TO ENFORCE.—(1) The Attorney General may bring a civil action to enjoin a violation of this chapter or the sale, offer for sale, introduction or delivery for introduction in interstate commerce, or importation into the United States, of a passenger motor vehicle containing a major part, or of a major replacement part, that is subject to the standard and is determined before the sale of the vehicle or part to a first purchaser not to conform to the standard.

(2)(A) When practicable, the Secretary—

(i) shall notify a person against whom an action under this subsection is planned;

(ii) shall give the person an opportunity to present that person's views; and

(iii) except for a knowing and willful violation, shall give the person a reasonable opportunity to comply.

(B) The failure of the Secretary to comply with subparagraph (A) of this paragraph does not prevent a court from granting appropriate relief.

(c) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating an injunction or restraining order issued under subsection (b) of this section, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(d) VENUE.—A civil action under subsection (a) or (b) of this section may be brought in the United States district court for the judicial district in which the violation occurred or the defendant resides, is found, or transacts business. Process in the action may be served in any other judicial district in which the defendant resides or is found. A subpoena for a witness in the action may be served in any judicial district.

§33109. Confidentiality of information

(a) GENERAL.—Information obtained by the Secretary of Transportation under this chapter related to a confidential matter referred to in section 1905 of title 18 may be disclosed only—

(1) to another officer or employee of the United States Government for use in carrying out this chapter; or

(2) in a proceeding under this chapter (except a proceeding under section 33103(a)(3)).

(b) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

§33110. Judicial review

A person that may be adversely affected by a regulation prescribed under this chapter may obtain judicial review of the regulation under section 32909 of this title. A remedy under this section is in addition to any other remedies provided by law.

§33111. Preemption of State and local law

When a motor vehicle theft prevention standard prescribed under section 33102 of this title is in effect, a State or political subdivision of a State may not have a different motor vehicle theft prevention standard for a motor vehicle or major replacement part.

§33112. Insurance reports and information

(a) PURPOSES.—The purposes of this section are—

(1) to prevent or discourage the theft of motor vehicles, particularly those stolen for the removal of certain parts;

(2) to prevent or discourage the sale and distribution in interstate commerce of used parts that are removed from those vehicles; and

(3) to help reduce the cost to consumers of comprehensive insurance coverage for motor vehicles.

(b) DEFINITIONS.—In this section—

(1) "insurer" includes a person (except a governmental authority) having a fleet of at least 20 motor vehicles that are used primarily for rental and are not covered by a theft insurance policy issued by an insurer of passenger motor vehicles.

(2) "motor vehicle" includes a truck, a multipurpose passenger vehicle, and a motorcycle.

(c) ANNUAL INFORMATION REQUIREMENT.—(1) An insurer providing comprehensive coverage for motor vehicles shall provide annually to the Secretary of Transportation information on—

(A) the thefts and recoveries (in any part) of motor vehicles;

(B) the number of vehicles that have been recovered intact;

(C) the rating rules and plans, such as loss information and rating characteristics, used by the insurer to establish premiums for comprehensive coverage, including the basis for the premiums, and premium penalties for motor vehicles considered by the insurer as more likely to be stolen;

(D) the actions taken by the insurer to reduce the premiums, including changing rate levels for comprehensive coverage because of a reduction in thefts of motor vehicles;

(E) the actions taken by the insurer to assist in deterring or reducing thefts of motor vehicles; and

(F) other information the Secretary requires to carry out this chapter and to make the report and findings required by this chapter.

(2) The information on thefts and recoveries shall include an explanation on how the information is obtained, the accuracy and timeliness of the information, and the use made of the information, including the extent and frequency of reporting the information to national, public, and private entities such as the Federal Bureau of Investigation and State and local police.

(d) REPORTS ON REDUCED CLAIMS PAYMENTS.—An insurer shall report promptly in writing to the Secretary if the insurer, in paying a claim under an adjustment or negotiation between the insurer and the insured for a stolen motor vehicle—

(1) reduces the payment to the insured by the amount of the value, salvage or otherwise, of a recovered part subject to a standard prescribed under section 33102 of this title; and

(2) the reduction is not made at the express election of the insured.

(e) GENERAL EXEMPTIONS.—The Secretary shall exempt from this section, for one or more years, an insurer that the Secretary decides should be exempted because—

(1) the cost of preparing and providing the information is excessive in relation to the size of the insurer's business; and

(2) the information from that insurer will not contribute significantly to carrying out this chapter.

(f) SMALL INSURER EXEMPTIONS.—(1) In this subsection, "small insurer" means an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including a pooling arrangement established under State law or regulation for the issuance of motor vehicle insurance, account for—

(A) less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers in the United States; and

(B) less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers in any State.

(2) The Secretary shall exempt by regulation a small insurer from this section if the Secretary finds that the exemption will not significantly affect the validity or usefulness of the information collected and compiled under this section, nationally or State-by-State. However, the Secretary may not exempt an insurer under this paragraph that is considered an insurer only because of subsection (b)(1) of this section.

(3) Regulations under this subsection shall provide that eligibility as a small insurer shall be based on the most recent calendar year for which adequate information is available, and that, once attained, the eligibility shall continue without further demonstration of eligibility for one or more years, as the Secretary considers appropriate.

(g) PRESCRIBED FORM.—Information required by this section shall be provided in the form the Secretary prescribes.

(h) PERIODIC COMPILATIONS.—Subject to section 552 of title 5, the Secretary periodically shall compile and publish information obtained by the Secretary under this section, in a form that will be helpful to the public, the police, and Congress.

(i) CONSULTATION.—In carrying out this section, the Secretary shall consult with public and private agencies and associations the Secretary considers appropriate.

§33113. Voluntary vehicle identification standards

(a) ELECTION TO INSCRIBE OR AFFIX IDENTIFYING MARKS.—The Secretary of Transportation by regulation may prescribe a vehicle theft prevention standard under which a person may elect to inscribe or affix an identifying number or symbol on major parts of a motor vehicle manufactured or owned by the person for purposes of section 511 of title 18 and related provisions. The standard may include provisions for registration of the identification with the Secretary or a person designated by the Secretary.

(b) STANDARD REQUIREMENTS.—The standard under this section shall be practicable and provide relevant objective criteria.

(c) VOLUNTARY COMPLIANCE.—Compliance with the standard under this section is voluntary. Failure to comply does not subject a person to a penalty or enforcement under this chapter.

(d) COMPLIANCE WITH OTHER STANDARDS.—Compliance with the standard under this section does not relieve a manufacturer from a requirement of a standard prescribed under section 33102 of this title.

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PART A—AIR COMMERCE AND SAFETY

SUBPART I—GENERAL

CHAPTER 401—GENERAL PROVISIONS

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§40101. Policy

(a) ECONOMIC REGULATION.—In carrying out subpart II of this part and those provisions of subpart IV applicable in carrying out subpart II, the Secretary of Transportation shall consider the following matters, among others, as being in the public interest and consistent with public convenience and necessity:

(1) assigning and maintaining safety as the highest priority in air commerce.

(2) before authorizing new air transportation services, evaluating the safety implications of those services.

(3) preventing deterioration in established safety procedures in air transportation and air commerce.

(4) the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices.

(5) coordinating transportation by, and improving relations among, air carriers, and encouraging fair wages and working conditions.

(6) placing maximum reliance on competitive market forces and on actual and potential competition—

(A) to provide the needed air transportation system; and

(B) to encourage efficient and well-managed air carriers to earn adequate profits and attract capital, considering material differences between interstate air transportation and foreign air transportation.

(7) developing and maintaining a sound regulatory system that is responsive to the needs of the public and in which decisions are reached promptly to make it easier to adapt the air transportation system to the present and future needs of—

(A) the commerce of the United States;

(B) the United States Postal Service; and

(C) the national defense.

(8) encouraging air transportation at major urban areas through secondary or satellite airports if consistent with regional airport plans of regional and local authorities, and if endorsed by appropriate State authorities—

(A) encouraging the transportation by air carriers that provide, in a specific market, transportation exclusively at those airports; and

(B) fostering an environment that allows those carriers to establish themselves and develop secondary or satellite airport services.

(9) preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation.

(10) avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that may allow at least one air carrier or foreign air carrier unreasonably to increase rates, reduce services, or exclude competition in air transportation.

(11) maintaining a complete and convenient system of continuous scheduled interstate air transportation for small communities and isolated areas with direct financial assistance from the United States Government when appropriate.

(12) encouraging, developing, and maintaining an air transportation system relying on actual and potential competition—

(A) to provide efficiency, innovation, and low rates; and

(B) to establish the variety and quality of, and rates for, air transportation services.

(13) encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry.

(14) promoting, encouraging, and developing civil aeronautics and a viable, privately-owned United States air transport industry.

(15) strengthening the competitive position of air carriers to at least ensure equality with foreign air carriers, including giving air carriers the opportunity to maintain and increase their profitability in foreign air transportation.

(b) ALL-CARGO AIR TRANSPORTATION CONSIDERATIONS.—In carrying out subpart II of this part and those provisions of subpart IV applicable in carrying out subpart II, the Secretary of Transportation shall consider the following matters, among others and in addition to the matters referred to in subsection (a) of this section, as being in the public interest for all-cargo air transportation:

(1) encouraging and developing an expedited all-cargo air transportation system provided by private enterprise and responsive to—

(A) the present and future needs of shippers;

(B) the commerce of the United States; and

(C) the national defense.

(2) encouraging and developing an integrated transportation system relying on competitive market forces to decide the extent, variety, quality, and price of services provided.

(3) providing services without unreasonable discrimination, unfair or deceptive practices, or predatory pricing.

(c) GENERAL SAFETY CONSIDERATIONS.—In carrying out subpart III of this part and those provisions of subpart IV applicable in carrying out subpart III, the Administrator of the Federal Aviation Administration shall consider the following matters:

(1) the requirements of national defense and commercial and general aviation.

(2) the public right of freedom of transit through the navigable airspace.

(d) SAFETY CONSIDERATIONS IN PUBLIC INTEREST.—In carrying out subpart III of this part and those provisions of subpart IV applicable in carrying out subpart III, the Administrator shall consider the following matters, among others, as being in the public interest:

(1) regulating air commerce in a way that best promotes its development and safety and fulfills national defense requirements.

(2) promoting, encouraging, and developing civil aeronautics.

(3) controlling the use of the navigable airspace and regulating civil and military operations in that airspace in the interest of the safety and efficiency of both of those operations.

(4) consolidating research and development for air navigation facilities and the installation and operation of those facilities.

(5) developing and operating a common system of air traffic control and navigation for military and civil aircraft.

(6) providing assistance to law enforcement agencies in the enforcement of laws related to regulation of controlled substances, to the extent consistent with aviation safety.

(e) INTERNATIONAL AIR TRANSPORTATION.—In formulating United States international air transportation policy, the Secretaries of State and Transportation shall develop a negotiating policy emphasizing the greatest degree of competition compatible with a well-functioning international air transportation system, including the following:

(1) strengthening the competitive position of air carriers to ensure at least equality with foreign air carriers, including giving air carriers the opportunity to maintain and increase their profitability in foreign air transportation.

(2) freedom of air carriers and foreign air carriers to offer rates that correspond to consumer demand.

(3) the fewest possible restrictions on charter air transportation.

(4) the maximum degree of multiple and permissive international authority for air carriers so that they will be able to respond quickly to a shift in market demand.

(5) eliminating operational and marketing restrictions to the greatest extent possible.

(6) integrating domestic and international air transportation.

(7) increasing the number of nonstop United States gateway cities.

(8) opportunities for carriers of foreign countries to increase their access to places in the United States if exchanged for benefits of similar magnitude for air carriers or the traveling public with permanent linkage between rights granted and rights given away.

(9) eliminating discrimination and unfair competitive practices faced by United States airlines in foreign air transportation, including—

(A) excessive landing and user fees;

(B) unreasonable ground handling requirements;

(C) unreasonable restrictions on operations;

(D) prohibitions against change of gauge; and

(E) similar restrictive practices.

(10) promoting, encouraging, and developing civil aeronautics and a viable, privately-owned United States air transport industry.

§40102. Definitions

(a) GENERAL DEFINITIONS.—In this part—

(1) "aeronautics" means the science and art of flight.

(2) "air carrier" means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.

(3) "air commerce" means foreign air commerce, interstate air commerce, the transportation of mail by aircraft, the operation of aircraft within the limits of a Federal airway, or the operation of aircraft that directly affects, or may endanger safety in, foreign or interstate air commerce.

(4) "air navigation facility" means a facility used, available for use, or designed for use, in aid of air navigation, including—

(A) a landing area;

(B) a light;

(C) apparatus or equipment for distributing weather information, signaling, radio-directional finding, or radio or other electromagnetic communication; and

(D) another structure or mechanism for guiding or controlling flight in the air or the landing and takeoff of aircraft.

(5) "air transportation" means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.

(6) "aircraft" means any contrivance invented, used, or designed to navigate, or fly in, the air.

(7) "aircraft engine" means an engine used, or intended to be used, to propel an aircraft, including a part, appurtenance, and accessory of the engine, except a propeller.

(8) "airman" means an individual—

(A) in command, or as pilot, mechanic, or member of the crew, who navigates aircraft when under way;

(B) except to the extent the Administrator of the Federal Aviation Administration may provide otherwise for individuals employed outside the United States, who is directly in charge of inspecting, maintaining, overhauling, or repairing aircraft, aircraft engines, propellers, or appliances; or

(C) who serves as an aircraft dispatcher or air traffic control-tower operator.

(9) "airport" means a landing area used regularly by aircraft for receiving or discharging passengers or cargo.

(10) "all-cargo air transportation" means the transportation by aircraft in interstate air transportation of only property or only mail, or both.

(11) "appliance" means an instrument, equipment, apparatus, a part, an appurtenance, or an accessory used, capable of being used, or intended to be used, in operating or controlling aircraft in flight, including a parachute, communication equipment, and another mechanism installed in or attached to aircraft during flight, and not a part of an aircraft, aircraft engine, or propeller.

(12) "cargo" means property, mail, or both.

(13) "charter air carrier" means an air carrier holding a certificate of public convenience and necessity that authorizes it to provide charter air transportation.

(14) "charter air transportation" means charter trips in air transportation authorized under this part.

(15) "citizen of the United States" means—

(A) an individual who is a citizen of the United States;

(B) a partnership each of whose partners is an individual who is a citizen of the United States; or

(C) a corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

(16) "civil aircraft" means an aircraft except a public aircraft.

(17) "civil aircraft of the United States" means an aircraft registered under chapter 441 of this title.

(18) "conditional sales contract" means a contract—

(A) for the sale of an aircraft, aircraft engine, propeller, appliance, or spare part, under which the buyer takes possession of the property but title to the property vests in the buyer at a later time on—

(i) paying any part of the purchase price;

(ii) performing another condition; or

(iii) the happening of a contingency; or

(B) to bail or lease an aircraft, aircraft engine, propeller, appliance, or spare part, under which the bailee or lessee—

(i) agrees to pay an amount substantially equal to the value of the property; and

(ii) is to become, or has the option of becoming, the owner of the property on complying with the contract.

(19) "conveyance" means an instrument, including a conditional sales contract, affecting title to, or an interest in, property.

(20) "Federal airway" means a part of the navigable airspace that the Administrator designates as a Federal airway.

(21) "foreign air carrier" means a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation.

(22) "foreign air commerce" means the transportation of passengers or property by aircraft for compensation, the transportation of mail by aircraft, or the operation of aircraft in furthering a business or vocation, between a place in the United States and a place outside the United States when any part of the transportation or operation is by aircraft.

(23) "foreign air transportation" means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft.

(24) "interstate air commerce" means the transportation of passengers or property by aircraft for compensation, the transportation of mail by aircraft, or the operation of aircraft in furthering a business or vocation—

(A) between a place in—

(i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) a State and another place in the same State through the airspace over a place outside the State;

(iii) the District of Columbia and another place in the District of Columbia; or

(iv) a territory or possession of the United States and another place in the same territory or possession; and

(B) when any part of the transportation or operation is by aircraft.

(25) "interstate air transportation" means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft—

(A) between a place in—

(i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) the District of Columbia and another place in the District of Columbia; or

(iv) a territory or possession of the United States and another place in the same territory or possession; and

(B) when any part of the transportation is by aircraft.

(26) "intrastate air carrier" means a citizen of the United States undertaking by any means to provide only intrastate air transportation.

(27) "intrastate air transportation" means the transportation by a common carrier of passengers or property for compensation, entirely in the same State, by turbojet-powered aircraft capable of carrying at least 30 passengers.

(28) "landing area" means a place on land or water, including an airport or intermediate landing field, used, or intended to be used, for the takeoff and landing of aircraft, even when facilities are not provided for sheltering, servicing, or repairing aircraft, or for receiving or discharging passengers or cargo.

(29) "mail" means United States mail and foreign transit mail.

(30) "navigable airspace" means airspace above the minimum altitudes of flight prescribed by regulations under subparts I and III of this part, including airspace needed to ensure safety in the takeoff and landing of aircraft.

(31) "navigate aircraft" and "navigation of aircraft" include piloting aircraft.

(32) "operate aircraft" and "operation of aircraft" mean using aircraft for the purposes of air navigation, including—

(A) the navigation of aircraft; and

(B) causing or authorizing the operation of aircraft with or without the right of legal control of the aircraft.

(33) "person", in addition to its meaning under section 1 of title 1, includes a body politic and a trustee, receiver, assignee, and other similar representative.

(34) "predatory" means a practice that violates the antitrust laws as defined in the first section of the Clayton Act (15 U.S.C. 12).

(35) "propeller" includes a part, appurtenance, and accessory of a propeller.

(36) "public aircraft"—

(A) means an aircraft—

(i) used only for the United States Government; or

(ii) owned and operated (except for commercial purposes), or exclusively leased for at least 90 continuous days, by a government (except the United States Government), including a State, the District of Columbia, or a territory or possession of the United States, or political subdivision of that government; but

(B) does not include a government-owned aircraft transporting passengers or property for commercial purposes.

(37) "rate" means a rate, fare, or charge for air transportation.

(38) "spare part" means an accessory, appurtenance, or part of an aircraft (except an aircraft engine or propeller), aircraft engine (except a propeller), propeller, or appliance, that is to be installed at a later time in an aircraft, aircraft engine, propeller, or appliance.

(39) "State authority" means an authority of a State designated under State law—

(A) to receive notice required to be given a State authority under subpart II of this part; or

(B) as the representative of the State before the Secretary of Transportation in any matter about which the Secretary is required to consult with or consider the views of a State authority under subpart II of this part.

(40) "territory or possession of the United States" means—

(A) the Canal Zone, but this definition does not affect the jurisdiction of the President over air navigation in the Canal Zone; and

(B) any other territory or possession of the United States.

(41) "ticket agent" means a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation.

(42) "United States" means the States of the United States, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace.

(b) Limited Definition.—In subpart II of this part, "control" means control by any means.

§40103. Sovereignty and use of airspace

(a) Sovereignty and Public Right of Transit.—(1) The United States Government has exclusive sovereignty of airspace of the United States.

(2) A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation shall consult with the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals.

(b) Use of Airspace.—(1) The Administrator of the Federal Aviation Administration shall develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. The Administrator may modify or revoke an assignment when required in the public interest.

(2) The Administrator shall prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for—

(A) navigating, protecting, and identifying aircraft;

(B) protecting individuals and property on the ground;

(C) using the navigable airspace efficiently; and

(D) preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.

(3) To establish security provisions that will encourage and allow maximum use of the navigable airspace by civil aircraft consistent with national security, the Administrator, in consultation with the Secretary of Defense, shall—

(A) establish areas in the airspace the Administrator decides are necessary in the interest of national defense; and

(B) by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate, and control with available facilities in those areas.

(4) Notwithstanding the military exception in section 553(a)(1) of title 5, subchapter II of chapter 5 of title 5 applies to a regulation prescribed under this subsection.

(c) Foreign Aircraft.—A foreign aircraft, not part of the armed forces of a foreign country, may be navigated in the United States as provided in section 41703 of this title.

(d) Aircraft of Armed Forces of Foreign Countries.—Aircraft of the armed forces of a foreign country may be navigated in the United States, including the Canal Zone, only when authorized by the Secretary of State.

(e) No Exclusive Rights at Certain Facilities.—A person does not have an exclusive right to use an air navigation facility on which Government money has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if—

(1) it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and

(2) allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

§40104. Promotion of civil aeronautics and air commerce

The Administrator of the Federal Aviation Administration shall encourage the development of civil aeronautics and air commerce in and outside the United States. In carrying out this section, the Administrator shall take action that the Administrator considers necessary to establish, within available resources, a program to distribute civil aviation information in each region served by the Administration. The program shall provide, on request, informational material and expertise on civil aviation to State and local school administrators, college and university officials, and officers of other interested organizations.

§40105. International negotiations, agreements, and obligations

(a) Advice and Consultation.—The Secretary of State shall advise the Administrator of the Federal Aviation Administration and the Secretaries of Transportation and Commerce, and consult with them as appropriate, about negotiations for an agreement with a government of a foreign country to establish or develop air navigation, including air routes and services. The Secretary of Transportation shall consult with the Secretary of State in carrying out this part to the extent this part is related to foreign air transportation.

(b) Actions of Secretary and Administrator.—(1) In carrying out this part, the Secretary of Transportation and the Administrator—

(A) shall act consistently with obligations of the United States Government under an international agreement;

(B) shall consider applicable laws and requirements of a foreign country; and

(C) may not limit compliance by an air carrier with obligations or liabilities imposed by the government of a foreign country when the Secretary takes any action related to a certificate of public convenience and necessity issued under chapter 411 of this title.

(2) This subsection does not apply to an agreement between an air carrier or an officer or representative of an air carrier and the government of a foreign country, if the Secretary of Transportation disapproves the agreement because it is not in the public interest. Section 40106(b)(2) of this title applies to this subsection.

(c) Consultation on International Air Transportation Policy.—In carrying out section 40101(e) of this title, the Secretaries of State and Transportation, to the maximum extent practicable, shall consult on broad policy goals and individual negotiations with—

(1) the Secretaries of Commerce and Defense;

(2) airport operators;

(3) scheduled air carriers;

(4) charter air carriers;

(5) airline labor;

(6) consumer interest groups;

(7) travel agents and tour organizers; and

(8) other groups, institutions, and governmental authorities affected by international aviation policy.

(d) Congressional Observers at International Aviation Negotiations.—The President shall grant to at least one representative of each House of Congress the privilege of attending international aviation negotiations as an observer if the privilege is requested in advance in writing.

§40106. Emergency powers

(a) Deviations From Regulations.—Appropriate military authority may authorize aircraft of the armed forces of the United States to deviate from air traffic regulations prescribed under section 40103(b) (1) and (2) of this title when the authority decides the deviation is essential to the national defense because of a military emergency or urgent military necessity. The authority shall—

(1) give the Administrator of the Federal Aviation Administration prior notice of the deviation at the earliest practicable time; and

(2) to the extent time and circumstances allow, make every reasonable effort to consult with the Administrator and arrange for the deviation in advance on a mutually agreeable basis.

(b) Suspension of Authority.—(1) When the President decides that the government of a foreign country is acting inconsistently with the Convention for the Suppression of Unlawful Seizure of Aircraft or that the government of a foreign country allows territory under its jurisdiction to be used as a base of operations or training of, or as a sanctuary for, or arms, aids, or abets, a terrorist organization that knowingly uses the unlawful seizure, or the threat of an unlawful seizure, of an aircraft as an instrument of policy, the President may suspend the authority of—

(A) an air carrier or foreign air carrier to provide foreign air transportation to and from that foreign country;

(B) a person to operate aircraft in foreign air commerce to and from that foreign country;

(C) a foreign air carrier to provide foreign air transportation between the United States and another country that maintains air service with the foreign country; and

(D) a foreign person to operate aircraft in foreign air commerce between the United States and another country that maintains air service with the foreign country.

(2) The President may act under this subsection without notice or a hearing. The suspension remains in effect for as long as the President decides is necessary to ensure the security of aircraft against unlawful seizure. Notwithstanding section 40105(b) of this title, the authority of the President to suspend rights under this subsection is a condition to a certificate of public convenience and necessity, air carrier operating certificate, foreign air carrier or foreign aircraft permit, or foreign air carrier operating specification issued by the Secretary of Transportation under this part.

(3) An air carrier or foreign air carrier may not provide foreign air transportation, and a person may not operate aircraft in foreign air commerce, in violation of a suspension of authority under this subsection.

§40107. Presidential transfers

(a) General Authority.—The President may transfer to the Administrator of the Federal Aviation Administration a duty, power, activity, or facility of a department, agency, or instrumentality of the executive branch of the United States Government, or an officer or unit of a department, agency, or instrumentality of the executive branch, related primarily to selecting, developing, testing, evaluating, establishing, operating, or maintaining a system, procedure, facility, or device for safe and efficient air navigation and air traffic control. In making a transfer, the President may transfer records and property and make officers and employees from the department, agency, instrumentality, or unit available to the Administrator.

(b) During War.—If war occurs, the President by executive order may transfer to the Secretary of Defense a duty, power, activity, or facility of the Administrator. In making the transfer, the President may transfer records, property, officers, and employees of the Administration to the Department of Defense.

§40108. Training schools

(a) Authority To Operate.—The Administrator of the Federal Aviation Administration may operate schools to train officers and employees of the Administration to carry out duties, powers, and activities of the Administrator.

(b) Attendance.—The Administrator may authorize officers and employees of other departments, agencies, or instrumentalities of the United States Government, officers and employees of governments of foreign countries, and individuals from the aeronautics industry to attend those schools. However, if the attendance of any of those officers, employees, or individuals increases the cost of operating the schools, the Administrator may require the payment or transfer of amounts or other consideration to offset the additional cost. The amount received may be credited to the appropriation current when the expenditures are or were paid, the appropriation current when the amount is received, or both.

§40109. Authority to exempt

(a) Air Carriers and Foreign Air Carriers Not Engaged Directly in Operating Aircraft.—(1) The Secretary of Transportation may exempt from subpart II of this part—

(A) an air carrier not engaged directly in operating aircraft in air transportation; or

(B) a foreign air carrier not engaged directly in operating aircraft in foreign air transportation.

(2) The exemption is effective to the extent and for periods that the Secretary decides are in the public interest.

(b) Safety Regulation.—The Administrator of the Federal Aviation Administration may grant an exemption from a regulation prescribed in carrying out sections 40103(b)(1) and (2), 40119, 44901, 44903, 44906, and 44935–44937 of this title when the Administrator decides the exemption is in the public interest.

(c) Other Economic Regulation.—Except as provided in this section, the Secretary may exempt to the extent the Secretary considers necessary a person or class of persons from a provision of chapter 411, sections 41301–41306, 41308–41310(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41709, 41711, 41712, and 41731–41742, chapter 419, subchapter II of chapter 421, and section 46301(b) of this title, or a regulation or term prescribed under any of those provisions, when the Secretary decides that the exemption is consistent with the public interest.

(d) Labor Requirements.—The Secretary may not exempt an air carrier from section 42112 of this title. However, the Secretary may exempt from section 42112(b)(1) and (2) an air carrier not providing scheduled air transportation, and the operations conducted during daylight hours by an air carrier providing scheduled air transportation, when the Secretary decides that—

(1) because of the limited extent of, or unusual circumstances affecting, the operation of the air carrier, the enforcement of section 42112(b)(1) and (2) of this title is or would be an unreasonable burden on the air carrier that would obstruct its development and prevent it from beginning or continuing operations; and

(2) the exemption would not affect adversely the public interest.

(e) Maximum Flying Hours.—The Secretary may not exempt an air carrier under this section from a provision referred to in subsection (c) of this section, or a regulation or term prescribed under any of those provisions, that sets maximum flying hours for pilots or copilots.

(f) Smaller Aircraft.—(1) An air carrier is exempt from section 41101(a)(1) of this title, and the Secretary may exempt an air carrier from another provision of subpart II of this part, if the air carrier—

(A)(i) provides passenger transportation only with aircraft having a maximum capacity of 55 passengers; or

(ii) provides the transportation of cargo only with aircraft having a maximum payload of less than 18,000 pounds; and

(B) complies with liability insurance requirements and other regulations the Secretary prescribes.

(2) The Secretary may increase the passenger or payload capacities when the public interest requires.

(3)(A) An exemption under this subsection applies to an air carrier providing air transportation between 2 places in Alaska, or between Alaska and Canada, only if the carrier is authorized by Alaska to provide the transportation.

(B) The Secretary may limit the number or location of places that may be served by an air carrier providing transportation only in Alaska under an exemption from section 41101(a)(1) of this title, or the frequency with which the transportation may be provided, only when the Secretary decides that providing the transportation substantially impairs the ability of an air carrier holding a certificate issued by the Secretary to provide its authorized transportation, including the minimum transportation requirement for Alaska specified under section 41732(b)(1)(B) of this title.

(g) Emergency Air Transportation by Foreign Air Carriers.—(1) To the extent that the Secretary decides an exemption is in the public interest, the Secretary may exempt by order a foreign air carrier from the requirements and limitations of this part for not more than 30 days to allow the foreign air carrier to carry passengers or cargo in interstate air transportation in certain markets if the Secretary finds that—

(A) because of an emergency created by unusual circumstances not arising in the normal course of business, air carriers holding certificates under section 41102 of this title cannot accommodate traffic in those markets;

(B) all possible efforts have been made to accommodate the traffic by using the resources of the air carriers, including the use of—

(i) foreign aircraft, or sections of foreign aircraft, under lease or charter to the air carriers; and

(ii) the air carriers' reservations systems to the extent practicable;

(C) the exemption is necessary to avoid unreasonable hardship for the traffic in the markets that cannot be accommodated by the air carriers; and

(D) granting the exemption will not result in an unreasonable advantage to any party in a labor dispute where the inability to accommodate traffic in a market is a result of the dispute.

(2) When the Secretary grants an exemption to a foreign air carrier under this subsection, the Secretary shall—

(A) ensure that air transportation that the foreign air carrier provides under the exemption is made available on reasonable terms;

(B) monitor continuously the passenger load factor of air carriers in the market that hold certificates under section 41102 of this title; and

(C) review the exemption at least every 30 days to ensure that the unusual circumstances that established the need for the exemption still exist.

(3) The Secretary may renew an exemption (including renewals) under this subsection for not more than 30 days. An exemption may continue for not more than 5 days after the unusual circumstances that established the need for the exemption cease.

(h) NOTICE AND OPPORTUNITY FOR HEARING.—The Secretary may act under subsections (d) and (f)(3)(B) of this section only after giving the air carrier notice and an opportunity for a hearing.

§40110. General procurement authority

(a) GENERAL.—In carrying out this part, the Administrator of the Federal Aviation Administration may—

(1) acquire, to the extent that amounts are available for obligation, services or an interest in property, including an interest in airspace immediately adjacent to and needed for airports and other air navigation facilities owned by the United States Government and operated by the Administrator;

(2) dispose of an interest in property for adequate compensation; and

(3) construct and improve laboratories and other test facilities.

(b) DUTIES AND POWERS.—When carrying out subsection (a) of this section, the Administrator of the Federal Aviation Administration—

(1) is the senior procurement executive referred to in section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) for approving the justification for using procedures other than competitive procedures, as required under section 303(f)(1)(B)(iii) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)(iii)); and

(2) may—

(A) lease an interest in property for not more than 20 years;

(B) consider the reasonable probable future use of the underlying land in making an award for a condemnation of an interest in airspace;

(C) construct, or acquire an interest in, a public building (as defined in section 13 of the Public Buildings Act of 1959 (40 U.S.C. 612)) only under a delegation of authority from the Administrator of General Services;

(D) use procedures other than competitive procedures, as provided under section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)); and

(E) dispose of property under subsection (a)(2) of this section, except for airport and airway property and technical equipment used for the special purposes of the Administration, only under title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.).

§40111. Multiyear procurement contracts for services and related items

(a) GENERAL AUTHORITY.—Notwithstanding section 1341(a)(1)(B) of title 31, the Administrator of the Federal Aviation Administration may make a contract of not more than 5 years for the following types of services and items of supply related to those services for which amounts otherwise would be available for obligation only in the fiscal year for which appropriated:

(1) operation, maintenance, and support of facilities and installations.

(2) operation, maintenance, and modification of aircraft, vehicles, and other highly complex equipment.

(3) specialized training requiring high quality instructor skills, including training of pilots and aircrew members and foreign language training.

(4) base services, including ground maintenance, aircraft refueling, bus transportation, and refuse collection and disposal.

(b) REQUIRED FINDINGS.—The Administrator may make a contract under this section only if the Administrator finds that—

(1) there will be a continuing requirement for the service consistent with current plans for the proposed contract period;

(2) providing the service will require a substantial initial investment in plant or equipment, or will incur a substantial contingent liability for assembling, training, or transporting a specialized workforce; and

(3) the contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

(c) CONSIDERATIONS.—When making a contract under this section, the Administrator shall be guided by the following:

(1) The part of the cost of a plant or equipment amortized as a cost of contract performance may not be more than the ratio between the period of contract performance and the anticipated useful commercial life (instead of physical life) of the plant or equipment, considering the location and specialized nature of the plant or equipment, obsolescence, and other similar factors.

(2) The Administrator shall consider the desirability of—

(A) obtaining an option to renew the contract for a reasonable period of not more than 3 years, at a price that does not include charges for nonrecurring costs already amortized; and

(B) reserving in the Administrator the right, on payment of the unamortized part of the cost of the plant or equipment, to take title to the plant or equipment under appropriate circumstances.

(d) ENDING CONTRACTS.—A contract made under this section shall be ended if amounts are not made available to continue the contract into a subsequent fiscal year. The cost of ending the contract may be paid from—

(1) an appropriation originally available for carrying out the contract;

(2) an appropriation currently available for procuring the type of service concerned and not otherwise obligated; or

(3) amounts appropriated for payments to end the contract.

§40112. Multiyear procurement contracts for property

(a) GENERAL AUTHORITY.—Notwithstanding section 1341(a)(1)(B) of title 31 and to the extent that amounts otherwise are available for obligation, the Administrator of the Federal Aviation Administration may make a contract of more than one but not more than 5 fiscal years to purchase property, except a contract to construct, alter, or make a major repair or improvement to real property or a contract to purchase property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies.

(b) REQUIRED FINDINGS.—The Administrator may make a contract under this section if the Administrator finds that—

(1) the contract will promote the safety or efficiency of the national airspace system and will result in reduced total contract costs;

(2) the minimum need for the property to be purchased is expected to remain substantially unchanged during the proposed contract period in terms of production rate, procurement rate, and total quantities;

(3) there is a reasonable expectation that throughout the proposed contract period the Administrator will request appropriations for the contract at the level required to avoid cancellation;

(4) there is a stable design for the property to be acquired and the technical risks associated with the property are not excessive; and

(5) the estimates of the contract costs and the anticipated savings from the contract are realistic.

(c) REGULATIONS.—The Administrator shall prescribe regulations for acquiring property under this section to promote the use of contracts under this section in a way that will allow the most efficient use of those contracts. The regulations may provide for a cancellation provision in the contract to the extent the provision is necessary and in the best interest of the United States. The provision may include consideration of recurring and nonrecurring costs of the contractor associated with producing the item to be delivered under the contract. The regulations shall provide that, to the extent practicable—

(1) to broaden the aviation industrial base—

(A) a contract under this section shall be used to seek, retain, and promote the use under that contract of subcontractors, vendors, or suppliers; and

(B) on accrual of a payment or other benefit accruing on a contract under this section to a subcontractor, vendor, or supplier participating in the contract, the payment or benefit shall be delivered in the most expeditious way practicable; and

(2) this section and regulations prescribed under this section may not be carried out in a way that precludes or curtails the existing ability of the Administrator to provide for—

(A) competition in producing items to be delivered under a contract under this section; or

(B) ending a prime contract when performance is deficient with respect to cost, quality, or schedule.

(d) CONTRACT PROVISIONS.—(1) A contract under this section may—

(A) be used for the advance procurement of components, parts, and material necessary to manufacture equipment to be used in the national airspace system;

(B) provide that performance under the contract after the first year is subject to amounts being appropriated; and

(C) contain a negotiated priced option for varying the number of end items to be procured over the period of the contract.

(2) If feasible and practicable, an advance procurement contract may be made to achieve economic-lot purchases and more efficient production rates.

(e) CANCELLATION PAYMENT AND NOTICE OF CANCELLATION CEILING.—(1) If a contract under this section provides that performance is subject to an appropriation being made, it also may provide for a cancellation payment to be made to the contractor if the appropriation is not made.

(2) Before awarding a contract under this section containing a cancellation ceiling of more than $100,000,000, the Administrator shall give written notice of the proposed contract and cancellation ceiling to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives. The contract may not be awarded until the end of the 30-day period beginning on the date of the notice.

(f) ENDING CONTRACTS.—A contract made under this section shall be ended if amounts are not made available to continue the contract into a subsequent fiscal year. The cost of ending the contract may be paid from—

(1) an appropriation originally available for carrying out the contract;

(2) an appropriation currently available for procuring the type of property concerned and not otherwise obligated; or

(3) amounts appropriated for payments to end the contract.

§40113. Administrative

(a) GENERAL AUTHORITY.—The Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may take action the Secretary or Administrator, as appro-

priate, considers necessary to carry out this part, including conducting investigations, prescribing regulations, standards, and procedures, and issuing orders.

(b) HAZARDOUS MATERIAL.—In carrying out this part, the Secretary has the same authority to regulate the transportation of hazardous material by air that the Secretary has under section 5103 of this title. However, this subsection does not prohibit or regulate the transportation of a firearm (as defined in section 232 of title 18) or ammunition for a firearm, when transported by an individual for personal use.

(c) GOVERNMENTAL ASSISTANCE.—The Secretary (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may use the assistance of the Administrator of the National Aeronautics and Space Administration and any research or technical department, agency, or instrumentality of the United States Government on matters related to aircraft fuel and oil, and to the design, material, workmanship, construction, performance, maintenance, and operation of aircraft, aircraft engines, propellers, appliances, and air navigation facilities. Each department, agency, and instrumentality may conduct scientific and technical research, investigations, and tests necessary to assist the Secretary or Administrator of the Federal Aviation Administration in carrying out this part. This part does not authorize duplicating laboratory research activities of a department, agency, or instrumentality.

(d) INDEMNIFICATION.—The Administrator of the Federal Aviation Administration may indemnify an officer or employee of the Administration against a claim or judgment arising out of an act that the Administrator decides was committed within the scope of the official duties of the officer or employee.

§40114. Reports and records

(a) WRITTEN REPORTS.—(1) Except as provided in this part, the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) shall make a written report of each proceeding and investigation under this part in which a formal hearing was held and shall provide a copy to each party to the proceeding or investigation. The report shall include the decision, conclusions, order, and requirements of the Secretary or Administrator as appropriate.

(2) The Secretary (or the Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator) shall have all reports, orders, decisions, and regulations the Secretary or Administrator, as appropriate, issues or prescribes published in the form and way best adapted for public use. A publication of the Secretary or Administrator is competent evidence of its contents.

(b) PUBLIC RECORDS.—Except as provided in subpart II of this part, copies of tariffs and arrangements filed with the Secretary under subpart II, and the statistics, tables, and figures contained in reports made to the Secretary under subpart II, are public records. The Secretary is the custodian of those records. A public record, or a copy or extract of it, certified by the Secretary under the seal of the Department of Transportation is competent evidence in an investigation by the Secretary and in a judicial proceeding.

§40115. Withholding information

(a) OBJECTIONS TO DISCLOSURE.—(1) A person may object to the public disclosure of information—

(A) in a record filed under this part; or

(B) obtained under this part by the Secretary of Transportation or State or the United States Postal Service.

(2) An objection must be in writing and must state the reasons for the objection. The Secretary of Transportation or State or the Postal Service shall order the information withheld from public disclosure when the appropriate Secretary or the Postal Service decides that disclosure of the information would—

(A) prejudice the United States Government in preparing and presenting its position in international negotiations; or

(B) have an adverse effect on the competitive position of an air carrier in foreign air transportation.

(b) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

§40116. State taxation

(a) DEFINITION.—In this section, "State" includes the District of Columbia, a territory or possession of the United States, and a political authority of at least 2 States.

(b) PROHIBITIONS.—Except as provided in subsection (c) of this section and section 40117 of this title, a State or political subdivision of a State may not levy or collect a tax, fee, head charge, or other charge on—

(1) an individual traveling in air commerce;

(2) the transportation of an individual traveling in air commerce;

(3) the sale of air transportation; or

(4) the gross receipts from that air commerce or transportation.

(c) AIRCRAFT TAKING OFF OR LANDING IN STATE.—A State or political subdivision of a State may levy or collect a tax on or related to a flight of a commercial aircraft or an activity or service on the aircraft only if the aircraft takes off or lands in the State or political subdivision as part of the flight.

(d) UNREASONABLE BURDENS AND DISCRIMINATION AGAINST INTERSTATE COMMERCE.—(1) In this subsection—

(A) "air carrier transportation property" means property (as defined by the Secretary of Transportation) that an air carrier providing air transportation owns or uses.

(B) "assessment" means valuation for a property tax levied by a taxing district.

(C) "assessment jurisdiction" means a geographical area in a State used in determining the assessed value of property for ad valorem taxation.

(D) "commercial and industrial property" means property (except transportation property and land used primarily for agriculture or timber growing) devoted to a commercial or industrial use and subject to a property tax levy.

(2)(A) A State, political subdivision of a State, or authority acting for a State or political subdivision may not do any of the following acts because those acts unreasonably burden and discriminate against interstate commerce:

(i) assess air carrier transportation property at a value that has a higher ratio to the true market value of the property than the ratio that the assessed value of other commercial and industrial property of the same type in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(ii) levy or collect a tax on an assessment that may not be made under clause (i) of this subparagraph.

(iii) levy or collect an ad valorem property tax on air carrier transportation property at a tax rate greater than the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(B) Subparagraph (A) of this paragraph does not apply to an in lieu tax completely used for airport and aeronautical purposes.

(e) OTHER ALLOWABLE TAXES AND CHARGES.—Except as provided in subsection (d) of this section, a State or political subdivision of a State may levy or collect—

(1) taxes (except those taxes enumerated in subsection (b) of this section), including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and

(2) reasonable rental charges, landing fees, and other service charges from aircraft operators for using airport facilities of an airport owned or operated by that State or subdivision.

(f) PAY OF AIR CARRIER EMPLOYEES.—(1) In this subsection—

(A) "pay" means money received by an employee for services.

(B) "State" means a State of the United States, the District of Columbia, and a territory or possession of the United States.

(C) an employee is deemed to have earned 50 percent of the employee's pay in a State or political subdivision of a State in which the scheduled flight time of the employee in the State or subdivision is more than 50 percent of the total scheduled flight time of the employee when employed during the calendar year.

(2) The pay of an employee of an air carrier having regularly assigned duties on aircraft in at least 2 States is subject to the income tax laws of only the following:

(A) the State or political subdivision of the State that is the residence of the employee.

(B) the State or political subdivision of the State in which the employee earns more than 50 percent of the pay received by the employee from the carrier.

§40117. Passenger facility fees

(a) DEFINITIONS.—In this section—

(1) "airport", "commercial service airport", and "public agency" have the same meanings given those terms in section 47102 of this title.

(2) "eligible agency" means a public agency that controls a commercial service airport.

(3) "eligible airport-related project" means a project—

(A) for airport development or airport planning under subchapter I of chapter 471 of this title;

(B) for terminal development described in section 47109(d) of this title;

(C) for airport noise capability planning under section 47505 of this title;

(D) to carry out noise compatibility measures eligible for assistance under section 47504 of this title, whether or not a program for those measures has been approved under section 47504; and

(E) for constructing gates and related areas at which passengers board or exit aircraft.

(4) "passenger facility fee" means a fee imposed under this section.

(5) "passenger facility revenue" means revenue derived from a passenger facility fee.

(b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may authorize under this section an eligible agency to impose a passenger facility fee of $1, $2, or $3 on each paying passenger of an air carrier or foreign air carrier boarding an aircraft at an airport the agency controls to finance an eligible airport-related project, including making payments for debt service on indebtedness incurred to carry out the project, to be carried out in connection with the airport or any other airport the agency controls.

(2) A State, political subdivision of a State, or authority of a State or political subdivision that is not the eligible agency may not regulate or prohibit the imposition or collection of a passenger facility fee or the use of the passenger facility revenue.

(3) A passenger facility fee may be imposed on a passenger of an air carrier or foreign air carrier originating or connecting at the commercial service airport that the agency controls.

(c) APPLICATIONS.—(1) An eligible agency must submit to the Secretary an application for

authority to impose a passenger facility fee. The application shall contain information and be in the form that the Secretary may require by regulation.

(2) Before submitting an application, the eligible agency must provide reasonable notice to, and an opportunity for consultation with, air carriers and foreign air carriers operating at the airport. The Secretary shall prescribe regulations that define reasonable notice and contain at least the following requirements:

(A) The agency must provide written notice of individual projects being considered for financing by a passenger facility fee and the date and location of a meeting to present the projects to air carriers and foreign air carriers operating at the airport.

(B) Not later than 30 days after written notice is provided under subparagraph (A) of this paragraph, each air carrier and foreign air carrier operating at the airport must provide to the agency written notice of receipt of the notice. Failure of a carrier to provide the notice may be deemed certification of agreement with the project by the carrier under subparagraph (D) of this paragraph.

(C) Not later than 45 days after written notice is provided under subparagraph (A) of this paragraph, the agency must conduct a meeting to provide air carriers and foreign air carriers with descriptions of projects and justifications and a detailed financial plan for projects.

(D) Not later than 30 days after the meeting, each air carrier and foreign air carrier must provide to the agency certification of agreement or disagreement with projects (or total plan for the projects). Failure to provide the certification is deemed certification of agreement with the project by the carrier. A certification of disagreement is void if it does not contain the reasons for the disagreement.

(3) After receiving an application, the Secretary shall provide notice and an opportunity to air carriers, foreign air carriers, and other interested persons to comment on the application. The Secretary shall make a final decision on the application not later than 120 days after receiving it.

(d) LIMITATIONS ON APPROVING APPLICATIONS.—The Secretary may approve an application that an eligible agency has submitted under subsection (c) of this section to finance a specific project only if the Secretary finds, based on the application, that—

(1) the amount and duration of the proposed passenger facility fee will result in revenue (including interest and other returns on the revenue) that is not more than the amount necessary to finance the specific project; and

(2) each project is an eligible airport-related project that will—

(A) preserve or enhance capacity, safety, or security of the national air transportation system;

(B) reduce noise resulting from an airport that is part of the system; or

(C) provide an opportunity for enhanced competition between or among air carriers and foreign air carriers.

(e) LIMITATIONS ON IMPOSING FEES.—(1) An eligible agency may impose a passenger facility fee only—

(A) if the Secretary approves an application that the agency has submitted under subsection (c) of this section; and

(B) subject to terms the Secretary may prescribe to carry out the objectives of this section.

(2) A passenger facility fee may not be collected from a passenger—

(A) for more than 2 boardings on a one-way trip or a trip in each direction of a round trip;

(B) for the boarding to an eligible place under subchapter II of chapter 417 of this title for which essential air service compensation is paid under subchapter II; and

(C) for a project the Secretary does not approve under this section before October 1, 1992, if—

(i) during the fiscal years ending September 30, 1991, and 1992, the total amount available for obligation under section 48103 of this title is less than $3,700,000,000;

(ii) during the fiscal year ending September 30, 1991, the total amount available for obligation under subchapter II of chapter 417 of this title is less than $26,600,000; or

(iii) during the fiscal year ending September 30, 1992, the total amount available for obligation under subchapter II of chapter 417 of this title is less than $38,600,000.

(f) LIMITATIONS ON CONTRACTS, LEASES, AND USE AGREEMENTS.—(1) A contract between an air carrier or foreign air carrier and an eligible agency made at any time may not impair the authority of the agency to impose a passenger facility fee or to use the passenger facility revenue as provided in this section.

(2) A project financed with a passenger facility fee may not be subject to an exclusive long-term lease or use agreement of an air carrier or foreign air carrier, as defined by regulations of the Secretary.

(3) A lease or use agreement of an air carrier or foreign air carrier related to a project whose construction or expansion was financed with a passenger facility fee may not restrict the eligible agency from financing, developing, or assigning new capacity at the airport with passenger facility revenue.

(g) TREATMENT OF REVENUE.—(1) Passenger facility revenue is not airport revenue for purposes of establishing a rate, fee, or charge under a contract between an eligible agency and an air carrier or foreign air carrier.

(2) An eligible agency may not include in its rate base the part of the capital costs of a project paid for by using passenger facility revenue to establish a rate, fee, or charge under a contract between the agency and an air carrier or foreign air carrier.

(3) For a project for terminal development, gates and related areas, or a facility occupied or used by at least one air carrier or foreign air carrier on an exclusive or preferential basis, a rate, fee, or charge payable by an air carrier or foreign air carrier using the facilities must at least equal the rate, fee, or charge paid by an air carrier or foreign air carrier using a similar facility at the airport that was not financed with passenger facility revenue.

(h) COMPLIANCE.—(1) As necessary to ensure compliance with this section, the Secretary shall prescribe regulations requiring recordkeeping and auditing of accounts maintained by an air carrier or foreign air carrier and its agent collecting a passenger facility fee and by the eligible agency imposing the fee.

(2) The Secretary periodically shall audit and review the use by an eligible agency of passenger facility revenue. After review and a public hearing, the Secretary may end any part of the authority of the agency to impose a passenger facility fee to the extent the Secretary decides that the revenue is not being used as provided in this section.

(3) The Secretary may set off amounts necessary to ensure compliance with this section against amounts otherwise payable to an eligible agency under subchapter I of chapter 471 of this title if the Secretary decides a passenger facility fee is excessive or that passenger facility revenue is not being used as provided in this section.

(i) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section. The regulations—

(1) may prescribe the time and form by which a passenger facility fee takes effect; and

(2) shall—

(A) require an air carrier or foreign air carrier and its agent to collect a passenger facility fee that an eligible agency imposes under this section;

(B) establish procedures for handling and remitting money collected;

(C) ensure that the money, less a uniform amount the Secretary determines reflects the average necessary and reasonable expenses (net of interest accruing to the carrier and agent after collection and before remittance) incurred in collecting and handling the fee, is paid promptly to the eligible agency for which they are collected; and

(D) require that the amount collected for any air transportation be noted on the ticket for that air transportation.

§40118. Government-financed air transportation

(a) TRANSPORTATION BY AIR CARRIERS HOLDING CERTIFICATES.—A department, agency, or instrumentality of the United States Government shall take necessary steps to ensure that the transportation of passengers and property by air is provided by an air carrier holding a certificate under section 41102 of this title if—

(1) the department, agency, or instrumentality—

(A) obtains the transportation for itself or in carrying out an arrangement under which payment is made by the Government or payment is made from amounts provided for the use of the Government; or

(B) provides the transportation to or for a foreign country or international or other organization without reimbursement;

(2) the transportation is authorized by the certificate or by regulation or exemption of the Secretary of Transportation; and

(3) the air carrier is—

(A) available, if the transportation is between a place in the United States and a place outside the United States; or

(B) reasonably available, if the transportation is between 2 places outside the United States.

(b) TRANSPORTATION BY FOREIGN AIR CARRIERS.—This section does not preclude the transportation of passengers and property by a foreign air carrier if the transportation is provided under a bilateral or multilateral air transportation agreement to which the Government and the government of a foreign country are parties if the agreement—

(1) is consistent with the goals for international aviation policy of section 40101(e) of this title; and

(2) provides for the exchange of rights or benefits of similar magnitude.

(c) PROOF.—The Comptroller General shall allow the expenditure of an appropriation for transportation in violation of this section only when satisfactory proof is presented showing the necessity for the transportation.

(d) TRANSPORTATION BY FOREIGN AIR CARRIERS.—Notwithstanding subsections (a) and (c) of this section, any amount appropriated to the Secretary of State, the Director of the United States Information Agency, the Director of the United States International Development Cooperation Agency, or the Director of the Arms Control and Disarmament Agency may be used to pay for the transportation of an officer or employee of the Department of State or one of those agencies, a dependent of the officer or employee, and accompanying baggage, by a foreign air carrier when the transportation is between 2 places outside the United States.

(e) RELATIONSHIP TO OTHER LAWS.—This section does not affect the application of the antidiscrimination provisions of this part.

§40119. Security and research and development activities

(a) GENERAL REQUIREMENTS.—The Administrator of the Federal Aviation Administration

shall conduct research (including behavioral research) and development appropriate to develop, modify, test, and evaluate a system, procedure, facility, or device to protect passengers and property against acts of criminal violence and aircraft piracy.

(b) DISCLOSURE.—(1) Notwithstanding section 552 of title 5, the Administrator shall prescribe regulations prohibiting disclosure of information obtained or developed in carrying out security or research and development activities under section 44501(a) or (d), 44502(a)(1) or (3), (b), or (c), 44504, 44505, 44507, 44508, 44511, 44512, 44513, 44901, 44903(a), (b), (c), or (e), 44905, 44912, 44935, 44936, or 44938(a) or (b) of this title if the Administrator decides disclosing the information would—

(A) be an unwarranted invasion of personal privacy;

(B) reveal a trade secret or privileged or confidential commercial or financial information; or

(C) be detrimental to the safety of passengers in air transportation.

(2) Paragraph (1) of this subsection does not authorize information to be withheld from a committee of Congress authorized to have the information.

(c) TRANSFERS OF DUTIES AND POWERS PROHIBITED.—Except as otherwise provided by law, the Administrator may not transfer a duty or power under this section to another department, agency, or instrumentality of the United States Government.

§40120. Relationship to other laws

(a) NONAPPLICATION.—Except as provided in the International Navigational Rules Act of 1977 (33 U.S.C. 1601 et seq.), the navigation and shipping laws of the United States and the rules for the prevention of collisions do not apply to aircraft or to the navigation of vessels related to those aircraft.

(b) EXTENDING APPLICATION OUTSIDE UNITED STATES.—The President may extend (in the way and for periods the President considers necessary) the application of this part to outside the United States when—

(1) an international arrangement gives the United States Government authority to make the extension; and

(2) the President decides the extension is in the national interest.

(c) ADDITIONAL REMEDIES.—A remedy under this part is in addition to any other remedies provided by law.

Subpart II—Economic Regulation

CHAPTER 411—AIR CARRIER CERTIFICATES

Sec.
41101. Requirement for a certificate.
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§41101. Requirement for a certificate

(a) GENERAL.—Except as provided in this chapter or another law—

(1) an air carrier may provide air transportation only if the air carrier holds a certificate issued under this chapter authorizing the air transportation;

(2) a charter air carrier may provide charter air transportation only if the charter air carrier holds a certificate issued under this chapter authorizing the charter air transportation; and

(3) an air carrier may provide all-cargo air transportation only if the air carrier holds a certificate issued under this chapter authorizing the all-cargo air transportation.

(b) THROUGH SERVICE AND JOINT TRANSPORTATION.—A citizen of the United States providing transportation in a State of passengers or property as a common carrier for compensation with aircraft capable of carrying at least 30 passengers, under authority granted by the appropriate State authority—

(1) may provide transportation for passengers and property that includes through service by the citizen over its routes in the State and in air transportation by an air carrier or foreign air carrier; and

(2) subject to sections 41309 and 42111 of this title, may make an agreement with an air carrier or foreign air carrier to provide the joint transportation.

(c) PROPRIETARY OR EXCLUSIVE RIGHT NOT CONFERRED.—A certificate issued under this chapter does not confer a proprietary or exclusive right to use airspace, an airway of the United States, or an air navigation facility.

§41102. General, temporary, and charter air transportation certificates of air carriers

(a) ISSUANCE.—The Secretary of Transportation may issue a certificate of public convenience and necessity to a citizen of the United States authorizing the citizen to provide any part of the following air transportation the citizen has applied for under section 41108 of this title:

(1) air transportation as an air carrier.

(2) temporary air transportation as an air carrier for a limited period.

(3) charter air transportation as a charter air carrier.

(b) FINDINGS REQUIRED FOR ISSUANCE.—(1) Before issuing a certificate under subsection (a) of this section, the Secretary must find that the citizen is fit, willing, and able to provide the transportation to be authorized by the certificate and to comply with this part and regulations of the Secretary.

(2) In addition to the findings under paragraph (1) of this subsection, the Secretary, before issuing a certificate under subsection (a) of this section for foreign air transportation, must find that the transportation is consistent with the public convenience and necessity.

(c) TEMPORARY CERTIFICATES.—The Secretary may issue a certificate under subsection (a) of this section for interstate air transportation (except the transportation of passengers) or foreign air transportation for a temporary period of time (whether the application is for permanent or temporary authority) when the Secretary decides that a test period is desirable—

(1) to decide if the projected services, efficiencies, methods, and rates and the projected results will materialize and remain for a sustained period of time; or

(2) to evaluate the new transportation.

(d) FOREIGN AIR TRANSPORTATION.—The Secretary shall submit each decision authorizing the provision of foreign air transportation to the President under section 41307 of this title.

§41103. All-cargo air transportation certificates of air carriers

(a) APPLICATIONS.—A citizen of the United States may apply to the Secretary of Transportation for a certificate authorizing the citizen to provide all-property air transportation. The application must contain information and be in the form the Secretary by regulation requires.

(b) ISSUANCE.—Not later than 180 days after an application for a certificate is filed under this section, the Secretary shall issue the certificate to a citizen of the United States authorizing the citizen, as an air carrier, to provide any part of the all-cargo air transportation applied for unless the Secretary finds that the citizen is not fit, willing, and able to provide the all-cargo air transportation to be authorized by the certificate and to comply with regulations of the Secretary.

(c) TERMS.—The Secretary may impose terms the Secretary considers necessary when issuing a certificate under this section. However, the Secretary may not impose terms that restrict the places served or rates charged by the holder of the certificate.

(d) EXEMPTIONS AND STATUS.—A citizen issued a certificate under this section—

(1) is exempt in providing the transportation under the certificate from the requirements of—

(A) section 41101(a)(1) of this title and regulations or procedures prescribed under section 41101(a)(1); and

(B) other provisions of this part and regulations or procedures prescribed under those provisions when the Secretary finds under regulations of the Secretary that the exemption is appropriate; and

(2) is an air carrier under this part except to the extent the carrier is exempt under this section from a requirement of this part.

§41104. Additional limitations and requirements of charter air carriers

(a) RESTRICTIONS.—The Secretary of Transportation may prescribe a regulation or issue an order restricting the marketability, flexibility, accessibility, or variety of charter air transportation provided under a certificate issued under section 41102 of this title only to the extent required by the public interest. A regulation prescribed or order issued under this subsection may not be more restrictive than a regulation related to charter air transportation that was in effect on October 1, 1978.

(b) ALASKA.—An air carrier holding a certificate issued under section 41102 of this title may provide charter air transportation between places in Alaska only to the extent the Secretary decides the transportation is required by public convenience and necessity. The Secretary may make that decision when issuing, amending, or modifying the certificate. This subsection does not apply to a certificate issued under section 41102 to a citizen of the United States who, before July 1, 1977—

(1) maintained a principal place of business in Alaska; and

(2) conducted air transport operations between places in Alaska with aircraft with a certificate for gross takeoff weight of more than 40,000 pounds.

(c) SUSPENSIONS.—(1) The Secretary shall suspend for not more than 30 days any part of the certificate of a charter air carrier if the Secretary decides that the failure of the carrier to comply with the requirements described in sections 41110(e) and 41112 of this title, or a regulation or order of the Secretary under section 41110(e) or 41112, requires immediate suspension in the interest of the rights, welfare, or safety of the public. The Secretary may act under this paragraph without notice or a hearing.

(2) The Secretary shall begin immediately a hearing to decide if the certificate referred to in paragraph (1) of this subsection should be amended, modified, suspended, or revoked. Until the hearing is completed, the Secretary may suspend the certificate for additional periods totaling not more than 60 days. If the Secretary decides that the carrier is complying with the requirements described in sections 41110(e) and 41112 of this title and regulations and orders under sections 41110(e) and 41112, the Secretary

immediately may end the suspension period and proceeding begun under this subsection. However, the Secretary is not prevented from imposing a civil penalty on the carrier for violating the requirements described in section 41110(e) or 41112 or a regulation or order under section 41110(e) or 41112.

§41105. Transfers of certificates

(a) GENERAL.—A certificate issued under section 41102 of this title may be transferred only when the Secretary of Transportation approves the transfer as being consistent with the public interest.

(b) CERTIFICATION TO CONGRESS.—When a certificate is transferred, the Secretary shall certify to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives that the transfer is consistent with the public interest. The Secretary shall include with the certification a report analyzing the effects of the transfer on—

(1) the viability of each carrier involved in the transfer;

(2) competition in the domestic airline industry; and

(3) the trade position of the United States in the international air transportation market.

§41106. Airlift service

(a) GENERAL.—(1) Except as provided in subsection (b) of this section, the transportation of passengers or property by transport category aircraft in interstate air transportation obtained by the Secretary of Defense or the Secretary of a military department through a contract of at least 31 days for airlift service in the United States may be provided only by an air carrier that—

(A) has aircraft in the civil reserve air fleet or offers to place the aircraft in that fleet; and

(B) holds a certificate issued under section 41102 of this title.

(2) The Secretary of Transportation shall act as expeditiously as possible on an application for a certificate under section 41102 of this title to provide airlift service.

(b) EXCEPTION.—When the Secretary of Defense decides that no air carrier holding a certificate under section 41102 is capable of providing, and willing to provide, the airlift service, the Secretary of Defense may make a contract to provide the service with an air carrier not having a certificate.

§41107. Transportation of mail

When the United States Postal Service finds that the needs of the Postal Service require the transportation of mail by aircraft in foreign air transportation or between places in Alaska, in addition to the transportation of mail authorized under certificates in effect, the Postal Service shall certify that finding to the Secretary of Transportation with a statement about the additional transportation and facilities necessary to provide the additional transportation. A copy of each certification and statement shall be posted for at least 20 days in the office of the Secretary. After notice and an opportunity for a hearing, the Secretary shall issue a new certificate under section 41102 of this title, or amend or modify an existing certificate under section 41110(a)(2)(A) of this title, to provide the additional transportation and facilities if the Secretary finds the additional transportation is required by the public convenience and necessity.

§41108. Applications for certificates

(a) FORM, CONTENTS, AND PROOF OF SERVICE.—To be issued a certificate of public convenience and necessity under section 41102 of this title, a citizen of the United States must apply to the Secretary of Transportation. The application must—

(1) be in the form and contain information required by regulations of the Secretary; and

(2) be accompanied by proof of service on interested persons as required by regulations of the Secretary and on each community that may be affected by the issuance of the certificate.

(b) NOTICE, RESPONSE, AND ACTIONS ON APPLICATIONS.—(1) When an application is filed, the Secretary shall post a notice of the application in the office of the Secretary and give notice of the application to other persons as required by regulations of the Secretary. An interested person may file a response with the Secretary opposing or supporting the issuance of the certificate. Not later than 90 days after the application is filed, the Secretary shall—

(A) provide an opportunity for a public hearing on the application;

(B) begin the procedure under section 41111 of this title; or

(C) dismiss the application on its merits.

(2) An order of dismissal issued by the Secretary under paragraph (1)(C) of this subsection is a final order and may be reviewed judicially under section 46110 of this title.

(3) If the Secretary provides an opportunity for a hearing under paragraph (1)(A) of this subsection, an initial or recommended decision shall be issued not later than 150 days after the date the Secretary provides the opportunity. The Secretary shall issue a final order on the application not later than 90 days after the decision is issued. However, if the Secretary does not act within the 90-day period, the initial or recommended decision on an application to provide—

(A) interstate air transportation is a final order and may be reviewed judicially under section 46110 of this title; and

(B) foreign air transportation shall be submitted to the President under section 41307 of this title.

(4) If the Secretary acts under paragraph (1)(B) of this subsection, the Secretary shall issue a final order on the application not later than 180 days after beginning the procedure on the application.

(5) If a citizen applying for a certificate does not meet the procedural schedule adopted by the Secretary in a proceeding, the Secretary may extend the period for acting under paragraphs (3) and (4) of this subsection by a period equal to the period of delay caused by the citizen. In addition to an extension under this paragraph, an initial or recommended decision under paragraph (3) of this subsection may be delayed for not more than 30 days in extraordinary circumstances.

(c) PROOF REQUIREMENTS.—(1) A citizen applying for a certificate must prove that the citizen is fit, willing, and able to provide the transportation referred to in section 41102 of this title and to comply with this part.

(2) A person opposing a citizen applying for a certificate must prove that the transportation referred to in section 41102(b)(2) of this title is not consistent with the public convenience and necessity. The transportation is deemed to be consistent with the public convenience and necessity unless the Secretary finds, by a preponderance of the evidence, that the transportation is not consistent with the public convenience and necessity.

§41109. Terms of certificates

(a) GENERAL.—(1) Each certificate issued under section 41102 of this title shall specify the type of transportation to be provided.

(2) The Secretary of Transportation—

(A) may prescribe terms for providing air transportation under the certificate that the Secretary finds may be required in the public interest; but

(B) may not prescribe a term preventing an air carrier from adding or changing schedules, equipment, accommodations, and facilities for providing the authorized transportation to satisfy business development and public demand.

(3) A certificate issued under section 41102 of this title to provide foreign air transportation shall specify the places between which the air carrier is authorized to provide the transportation only to the extent the Secretary considers practicable and otherwise only shall specify each general route to be followed. The Secretary shall authorize an air carrier holding a certificate to provide foreign air transportation to handle and transport mail of countries other than the United States.

(4) A certificate issued under section 41102 of this title to provide foreign charter air transportation shall specify the places between which the air carrier is authorized to provide the transportation only to the extent the Secretary considers practicable and otherwise only shall specify each geographical area in which, or between which, the transportation may be provided.

(b) MODIFYING TERMS.—(1) An air carrier may file with the Secretary an application to modify any term of its certificate issued under section 41102 of this title to provide interstate or foreign air transportation. Not later than 60 days after an application is filed, the Secretary shall—

(A) provide the carrier an opportunity for an oral evidentiary hearing on the record; or

(B) begin to consider the application under section 41111 of this title.

(2) The Secretary shall modify each term the Secretary finds to be inconsistent with the criteria under section 40101(a) and (b) of this title.

(3) An application under this subsection may not be dismissed under section 41108(b)(1)(C) of this title.

§41110. Effective periods and amendments, modifications, suspensions, and revocations of certificates

(a) GENERAL.—(1) Each certificate issued under section 41102 of this title is effective from the date specified in it and remains in effect until—

(A) the Secretary of Transportation suspends or revokes the certificate under this section;

(B) the end of the period the Secretary specifies for an air carrier having a certificate of temporary authority issued under section 41102(a)(2) of this title; or

(C) the Secretary certifies that transportation is no longer being provided under a certificate.

(2) On application or on the initiative of the Secretary and after notice and an opportunity for a hearing or, except as provided in paragraph (4) of this subsection, under section 41111 of this title, the Secretary may—

(A) amend, modify, or suspend any part of a certificate if the Secretary finds the public convenience and necessity require amendment, modification, or suspension; and

(B) revoke any part of a certificate if the Secretary finds that the holder of the certificate intentionally does not comply with this chapter, sections 41308–41310(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41709, 41711, 41712, and 41731–41742, chapter 419, subchapter II of chapter 421, and section 46301(b) of this title, a regulation or order of the Secretary under any of those provisions, or a term of its certificate.

(3) The Secretary may revoke a certificate under paragraph (2)(B) of this subsection only if the holder of the certificate does not comply, within a reasonable time the Secretary specifies, with an order to the holder requiring compliance.

(4) A certificate to provide foreign air transportation may not be amended, modified, suspended, or revoked under section 41111 of this title if the holder of the certificate requests an oral evidentiary hearing or the Secretary finds, under all the facts and circumstances, that the hearing is required in the public interest.

(b) ALL-CARGO AIR TRANSPORTATION.—The Secretary may order that a certificate issued

under section 41103 of this title authorizing all-cargo air transportation is ineffective if, after notice and an opportunity for a hearing, the Secretary finds that the transportation is not provided to the minimum extent specified by the Secretary.

(c) FOREIGN AIR TRANSPORTATION.—(1) Notwithstanding subsection (a)(2)-(4) of this section, after notice and a reasonable opportunity for the affected air carrier to present its views, but without a hearing, the Secretary may suspend or revoke the authority of an air carrier to provide foreign air transportation to a place under a certificate issued under section 41102 of this title if the carrier—

(A) notifies the Secretary, under section 41734(a) of this title or a regulation of the Secretary, that it intends to suspend all transportation to that place; or

(B) does not provide regularly scheduled transportation to the place for 90 days immediately before the date the Secretary notifies the carrier of the action the Secretary proposes.

(2) Paragraph (1)(B) of this subsection does not apply to a place provided seasonal transportation comparable to the transportation provided during the prior year.

(d) TEMPORARY CERTIFICATES.—On application or on the initiative of the Secretary, the Secretary may—

(1) review the performance of an air carrier issued a certificate under section 41102(c) of this title on the basis that the air carrier will provide innovative or low-priced air transportation under the certificate; and

(2) amend, modify, suspend, or revoke the certificate or authority under subsection (a)(2) or (c) of this section if the air carrier has not provided, or is not providing, the transportation.

(e) CONTINUING REQUIREMENTS.—After notice and an opportunity for a hearing, the Secretary shall amend, modify, suspend, or revoke any part of a certificate issued under section 41102 of this title if the Secretary finds that the air carrier—

(1) is not fit, willing, and able to continue to provide the transportation authorized by the certificate and to comply with this part and regulations of the Secretary; or

(2) does not file reports necessary for the Secretary to decide if the carrier is complying with the requirements of clause (1) of this subsection.

(f) ILLEGAL IMPORTATION OF CONTROLLED SUBSTANCES.—The Secretary—

(1) in consultation with appropriate departments, agencies, and instrumentalities of the United States Government, shall reexamine immediately the fitness of an air carrier that—

(A) violates the laws and regulations of the United States related to the illegal importation of a controlled substance; or

(B) does not adopt available measures to prevent the illegal importation of a controlled substance into the United States on its aircraft; and

(2) when appropriate, shall amend, modify, suspend, or revoke the certificate of the carrier issued under this chapter.

(g) RESPONSES.—An interested person may file a response with the Secretary opposing or supporting the amendment, modification, suspension, or revocation of a certificate under subsection (a) of this section.

§41111. Simplified procedure to apply for, amend, modify, suspend, and transfer certificates

(a) GENERAL REQUIREMENTS.—(1) The Secretary of Transportation shall prescribe regulations that simplify the procedure for—

(A) acting on an application for a certificate to provide air transportation under section 41102 of this title; and

(B) amending, modifying, suspending, or transferring any part of that certificate under section 41105 or 41110(a) or (c) of this title.

(2) Regulations under this section shall provide for notice and an opportunity for each interested person to file appropriate written evidence and argument. An oral evidentiary hearing is not required to be provided under this section.

(b) WHEN SIMPLIFIED PROCEDURE USED.—The Secretary may use the simplified procedure to act on an application for a certificate to provide air transportation under section 41102 of this title, or to amend, modify, suspend, or transfer any part of that certificate under section 41105 or 41110(a) or (c) of this title, when the Secretary decides the use of the procedure is in the public interest.

(c) CONTENTS.—(1) To the extent the Secretary finds practicable, regulations under this section shall include each standard the Secretary will apply when—

(A) deciding whether to use the simplified procedure; and

(B) making a decision on an action in which the procedure is used.

(2) The regulations may provide that written evidence and argument may be filed under section 41108(b) of this title as a part of a response opposing or supporting the issuance of a certificate.

§41112. Liability insurance and financial responsibility

(a) LIABILITY INSURANCE.—The Secretary of Transportation may issue a certificate to a citizen of the United States to provide air transportation as an air carrier under section 41102 of this title only if the citizen complies with regulations and orders of the Secretary governing the filing of an insurance policy or self-insurance plan approved by the Secretary. The policy or plan must be sufficient to pay, not more than the amount of the insurance, for bodily injury to, or death of, an individual or for loss of, or damage to, property of others, resulting from the operation or maintenance of the aircraft under the certificate. A certificate does not remain in effect unless the carrier complies with this subsection.

(b) FINANCIAL RESPONSIBILITY.—To protect passengers and shippers using an aircraft operated by an air carrier issued a certificate under section 41102 of this title, the Secretary may require the carrier to file a performance bond or equivalent security in the amount and on terms the Secretary prescribes. The bond or security must be sufficient to ensure the carrier adequately will pay the passengers and shippers when the transportation the carrier agrees to provide is not provided. The Secretary shall prescribe the amounts to be paid under this subsection.

CHAPTER 413—FOREIGN AIR TRANSPORTATION

Sec.	
41301.	*Requirement for a permit.*
41302.	*Permits of foreign air carriers.*
41303.	*Transfers of permits.*
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41309.	*Cooperative agreements and requests.*
41310.	*Discriminatory practices.*

§41301. Requirement for a permit

A foreign air carrier may provide foreign air transportation only if the foreign air carrier holds a permit issued under this chapter authorizing the foreign air transportation.

§41302. Permits of foreign air carriers

The Secretary of Transportation may issue a permit to a person (except a citizen of the United States) authorizing the person to provide foreign air transportation as a foreign air carrier if the Secretary finds that—

(1) the person is fit, willing, and able to provide the foreign air transportation to be authorized by the permit and to comply with this part and regulations of the Secretary; and

(2)(A) the person is qualified, and has been designated by the government of its country, to provide the foreign air transportation under an agreement with the United States Government; or

(B) the foreign air transportation to be provided under the permit will be in the public interest.

§41303. Transfers of permits

A permit issued under section 41302 of this title may be transferred only when the Secretary of Transportation approves the transfer because the transfer is in the public interest.

§41304. Effective periods and amendments, modifications, suspensions, and revocations of permits

(a) GENERAL.—The Secretary of Transportation may prescribe the period during which a permit issued under section 41302 of this title is in effect. After notice and an opportunity for a hearing, the Secretary may amend, modify, suspend, or revoke the permit if the Secretary finds that action to be in the public interest.

(b) SUSPENSIONS AND RESTRICTIONS.—Without a hearing, but subject to the approval of the President, the Secretary—

(1) may suspend summarily the permits of foreign air carriers of a foreign country, or amend, modify, or limit the operations of the foreign air carriers under the permits, when the Secretary finds—

(A) the action is in the public interest; and

(B) the government, an aeronautical authority, or a foreign air carrier of the foreign country, over the objection of the United States Government, has—

(i) limited or denied the operating rights of an air carrier; or

(ii) engaged in unfair, discriminatory, or restrictive practices that have a substantial adverse competitive impact on an air carrier related to air transportation to, from, through, or over the territory of the foreign country; and

(2) to make this subsection effective, may restrict operations between the United States and the foreign country by a foreign air carrier of a third country.

(c) ILLEGAL IMPORTATION OF CONTROLLED SUBSTANCES.—The Secretary—

(1) in consultation with appropriate departments, agencies, and instrumentalities of the Government, shall reexamine immediately the fitness of a foreign air carrier that—

(A) violates the laws and regulations of the United States related to the illegal importation of a controlled substance; or

(B) does not adopt available measures to prevent the illegal importation of a controlled substance into the United States on its aircraft; and

(2) when appropriate, shall amend, modify, suspend, or revoke the permit of the carrier issued under this chapter.

(d) RESPONSES.—An interested person may file a response with the Secretary opposing or supporting the amendment, modification, suspension, or revocation of a permit under subsection (a) of this section.

§41305. Applications for permits

(a) FORM, CONTENTS, NOTICE, RESPONSE, AND ACTIONS ON APPLICATIONS.—(1) A person must apply in writing to the Secretary of Transportation to be issued a permit under section 41302 of this title. The Secretary shall prescribe regulations to require that the application be—

(A) verified;

(B) in a certain form and contain certain information;

(C) served on interested persons; and

(D) accompanied by proof of service on those persons.

(2) When an application is filed, the Secretary shall post a notice of the application in the office of the Secretary and give notice of the application to other persons as required by regulations of the Secretary. An interested person may file a response with the Secretary opposing or supporting the issuance of the permit. The Secretary shall act on an application as expeditiously as possible.

(b) TERMS.—The Secretary may impose terms for providing foreign air transportation under the permit that the Secretary finds may be required in the public interest.

§41306. Simplified procedure to apply for, amend, modify, and suspend permits

(a) REGULATIONS.—The Secretary of Transportation shall prescribe regulations that simplify the procedure for—

(1) acting on an application for a permit to provide foreign air transportation under section 41302 of this title; and

(2) amending, modifying, or suspending any part of that permit under section 41304(a) or (b) of this title.

(b) NOTICE AND OPPORTUNITY TO RESPOND.—Regulations under this section shall provide for notice and an opportunity for each interested person to file appropriate written evidence and argument. An oral evidentiary hearing is not required to be provided under this section.

§41307. Presidential review of actions about foreign air transportation

The Secretary of Transportation shall submit to the President for review each decision of the Secretary to issue, deny, amend, modify, suspend, revoke, or transfer a certificate issued under section 41102 of this title authorizing an air carrier, or a permit issued under section 41302 of this title authorizing a foreign air carrier, to provide foreign air transportation. The President may disapprove the decision of the Secretary only if the reason for disapproval is based on foreign relations or national defense considerations that are under the jurisdiction of the President. The President may not disapprove a decision of the Secretary if the reason is economic or related to carrier selection. A decision of the Secretary—

(1) is void if the President disapproves the decision and publishes the reasons (to the extent allowed by national security) for disapproval not later than 60 days after it is submitted to the President; or

(2)(A) takes effect as a decision of the Secretary if the President does not disapprove the decision not later than 60 days after the decision is submitted to the President; and

(B) when effective, may be reviewed judicially under section 46110 of this title.

§41308. Exemption from the antitrust laws

(a) DEFINITION.—In this section, "antitrust laws" has the same meaning given that term in the first section of the Clayton Act (15 U.S.C. 12).

(b) EXEMPTION AUTHORIZED.—When the Secretary of Transportation decides it is required by the public interest, the Secretary, as part of an order under section 41309 or 42111 of this title, may exempt a person affected by the order from the antitrust laws to the extent necessary to allow the person to proceed with the transaction specifically approved by the order and with any transaction necessarily contemplated by the order.

(c) EXEMPTION REQUIRED.—In an order under section 41309 of this title approving an agreement, request, modification, or cancellation, the Secretary, on the basis of the findings required under section 41309(b)(1), shall exempt a person affected by the order from the antitrust laws to the extent necessary to allow the person to proceed with the transaction specifically approved by the order and with any transaction necessarily contemplated by the order.

§41309. Cooperative agreements and requests

(a) FILING.—An air carrier or foreign air carrier may file with the Secretary of Transportation a true copy of or, if oral, a true and complete memorandum of, an agreement (except an agreement related to interstate air transportation), or a request for authority to discuss cooperative arrangements (except arrangements related to interstate air transportation), and any modification or cancellation of an agreement, between the air carrier or foreign air carrier and another air carrier, a foreign carrier, or another carrier.

(b) APPROVAL.—The Secretary of Transportation shall approve an agreement, request, modification, or cancellation referred to in subsection (a) of this section when the Secretary finds it is not adverse to the public interest and is not in violation of this part. However, the Secretary shall disapprove—

(1) or, after periodic review, end approval of, an agreement, request, modification, or cancellation, that substantially reduces or eliminates competition unless the Secretary finds that—

(A) the agreement, request, modification, or cancellation is necessary to meet a serious transportation need or to achieve important public benefits (including international comity and foreign policy considerations); and

(B) the transportation need cannot be met or those benefits cannot be achieved by reasonably available alternatives that are materially less anticompetitive; or

(2) an agreement that—

(A) is between an air carrier not directly operating aircraft in foreign air transportation and a common carrier subject to subtitle IV of this title; and

(B) governs the compensation the common carrier may receive for the transportation.

(c) NOTICE AND OPPORTUNITY TO RESPOND OR FOR HEARING.—(1) When an agreement, request, modification, or cancellation is filed, the Secretary of Transportation shall give the Attorney General and the Secretary of State written notice of, and an opportunity to submit written comments about, the filing. On the initiative of the Secretary of Transportation or on request of the Attorney General or Secretary of State, the Secretary of Transportation may conduct a hearing to decide whether an agreement, request, modification, or cancellation is consistent with this part whether or not it was approved previously.

(2) In a proceeding before the Secretary of Transportation applying standards under subsection (b)(1) of this section, a party opposing an agreement, request, modification, or cancellation has the burden of proving that it substantially reduces or eliminates competition and that less anticompetitive alternatives are available. The party defending the agreement, request, modification, or cancellation has the burden of proving the transportation need or public benefits.

(3) The Secretary of Transportation shall include the findings required by subsection (b)(1) of this section in an order of the Secretary approving or disapproving an agreement, request, modification, or cancellation.

§41310. Discriminatory practices

(a) PROHIBITION.—An air carrier or foreign air carrier may not subject a person, place, port, or type of traffic in foreign air transportation to unreasonable discrimination.

(b) REVIEW AND NEGOTIATION OF DISCRIMINATORY FOREIGN CHARGES.—(1) The Secretary of Transportation shall survey charges imposed on an air carrier by the government of a foreign country or another foreign entity for the use of airport property or airway property in foreign air transportation. If the Secretary of Transportation decides that a charge is discriminatory, the Secretary promptly shall report the decision to the Secretary of State. The Secretaries of State and Transportation promptly shall begin negotiations with the appropriate government to end the discrimination. If the discrimination is not ended in a reasonable time through negotiation, the Secretary of Transportation shall establish a compensating charge equal to the discriminatory charge. With the approval of the Secretary of State, the Secretary of the Treasury shall impose the compensating charge on a foreign air carrier of that country as a condition to accepting the general declaration of the aircraft of the foreign air carrier when it lands or takes off.

(2) The Secretary of the Treasury shall maintain an account to credit money collected under paragraph (1) of this subsection. An air carrier shall be paid from the account an amount certified by the Secretary of Transportation to compensate the air carrier for the discriminatory charge paid to the government.

(c) ACTIONS AGAINST DISCRIMINATORY ACTIVITY.—(1) The Secretary of Transportation may take actions the Secretary considers are in the public interest to eliminate an activity of a government of a foreign country or another foreign entity, including a foreign air carrier, when the Secretary, on the initiative of the Secretary or on complaint, decides that the activity—

(A) is an unjustifiable or unreasonable discriminatory, predatory, or anticompetitive practice against an air carrier; or

(B) imposes an unjustifiable or unreasonable restriction on access of an air carrier to a foreign market.

(2) The Secretary of Transportation may deny, amend, modify, suspend, revoke, or transfer under paragraph (1) of this subsection a foreign air carrier permit or tariff under section 41302, 41303, 41304(a), 41504(c), 41507, or 41509 of this title.

(d) FILING OF, AND ACTING ON, COMPLAINTS.—(1) An air carrier or a department, agency, or instrumentality of the United States Government may file a complaint under subsection (c) of this section with the Secretary of Transportation. The Secretary shall approve, deny, or dismiss the complaint, set the complaint for a hearing or investigation, or begin another proceeding proposing remedial action not later than 60 days after receiving the complaint. The Secretary may extend the period for acting for additional periods totaling not more than 30 days if the Secretary decides that with additional time it is likely that a complaint can be resolved satisfactorily through negotiations with the government of the foreign country or foreign entity. The Secretary must act not later than 90 days after receiving the complaint. However, the Secretary may extend this 90-day period for not more than an additional 90 days if, on the last day of the initial 90-day period, the Secretary finds that—

(A) negotiations with the government have progressed to a point that a satisfactory resolution of the complaint appears imminent;

(B) an air carrier has not been subjected to economic injury by the government or entity as a result of filing the complaint; and

(C) the public interest requires additional time before the Secretary acts on the complaint.

(2) In carrying out paragraph (1) of this subsection and subsection (c) of this section, the Secretary of Transportation shall—

(A) solicit the views of the Secretaries of Commerce and State and the United States Trade Representative;

(B) give an affected air carrier or foreign air carrier reasonable notice and an opportunity to *submit written evidence and arguments within the time limits of this subsection; and*

(C) submit to the President under section 41307 or 41509(f) of this title actions proposed by the Secretary of Transportation.

(e) REVIEW.—(1) The Secretaries of State, the Treasury, and Transportation and the heads of other departments, agencies, and instrumentalities of the Government shall keep under review, to the extent of each of their jurisdictions, each form of discrimination or unfair competitive practice to which an air carrier is subject when providing foreign air transportation. Each Secretary and head shall—

(A) take appropriate action to eliminate any discrimination or unfair competitive practice found to exist; and

(B) request Congress to enact legislation when the authority to eliminate the discrimination or unfair practice is inadequate.

(2) The Secretary of Transportation shall report to Congress annually on each action taken under paragraph (1) of this subsection and on the continuing program to eliminate discrimination and unfair competitive practices. The Secretaries of State and the Treasury each shall give the Secretary of Transportation information necessary to prepare the report.

(f) REPORTS.—Not later than 30 days after acting on a complaint under this section, the Secretary of Transportation shall report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on action taken under this section on the complaint.

CHAPTER 415—RATES

Sec.

41501. Establishing reasonable rates, classifications, rules, practices, and divisions of joint rates for foreign air transportation.
41502. Establishing joint rates for through routes with other common carriers.
41503. Establishing joint rates for through routes provided by State authorized carriers.
41504. Tariffs for foreign air transportation.
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41510. Required adherence to foreign air transportation tariffs.
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§41501. Establishing reasonable rates, classifications, rules, practices, and divisions of joint rates for foreign air transportation

Every air carrier and foreign air carrier shall establish, comply with, and enforce—

(1) reasonable rates, classifications, rules, and practices related to foreign air transportation; and

(2) for joint rates established for foreign air transportation, reasonable divisions of those rates among the participating air carriers or foreign air carriers without unreasonably discriminating against any of those carriers.

§41502. Establishing joint rates for through routes with other common carriers

(a) JOINT RATES.—An air carrier may establish reasonable joint rates with another common carrier for through service provided under section 41101(b) of this title. However, an air carrier not directly operating aircraft in air transportation (except an air express company) may not establish under this section a joint rate for the transportation of property with a common carrier subject to subtitle IV of this title.

(b) RATES, CLASSIFICATIONS, RULES, AND PRACTICES AND DIVISIONS OF JOINT RATES.—For through service by an air carrier and a common carrier subject to subtitle IV of this title, the participating carriers shall establish—

(1) reasonable rates and reasonable classifications, rules, and practices affecting those rates or the value of the transportation provided under those rates; and

(2) for joint rates established for the through service, reasonable divisions of those joint rates among the participating carriers.

(c) STATEMENTS INCLUDED IN TARIFFS.—An air carrier and a common carrier subject to subtitle IV of this title that are participating in through service and joint rates shall include in their tariffs, filed with the Secretary of Transportation, a statement showing the through service and joint rates.

§41503. Establishing joint rates for through routes provided by State authorized carriers

Subject to sections 41309 and 42111 of this title, a citizen of the United States providing transportation under section 41101(b) of this title may make an agreement with an air carrier or foreign air carrier for joint rates for that transportation. The joint rates agreed to must be the lowest of—

(1) the sum of the applicable rates for—

(A) the part of the transportation provided in the State and approved by the appropriate State authority; and

(B) the part of the transportation provided by the air carrier or foreign air carrier;

(2) a joint rate established and filed under section 41504 of this title; or

(3) a joint rate prescribed by the Secretary of Transportation under section 41507 of this title.

§41504. Tariffs for foreign air transportation

(a) FILING AND CONTENTS.—In the way prescribed by regulation by the Secretary of Transportation, every air carrier and foreign air carrier shall file with the Secretary, publish, and keep open to public inspection, tariffs showing the rates for the foreign air transportation provided between places served by the carrier and provided between places served by the carrier and places served by another air carrier or foreign air carrier with which through service and joint rates have been established. A tariff—

(1) shall contain—

(A) to the extent the Secretary requires by regulation, a description of the classifications, rules, and practices related to the foreign air transportation;

(B) a statement of the rates in money of the United States; and

(C) other information the Secretary requires by regulation; and

(2) may contain—

(A) a statement of the rates in money that is not money of the United States; and

(B) information that is required under the laws of a foreign country in or to which the air carrier or foreign air carrier is authorized to operate.

(b) CHANGES.—(1) Except as provided in paragraph (2) of this subsection, an air carrier or foreign air carrier may change a rate or a classification, rule, or practice affecting that rate or the value of the transportation provided under that rate, specified in a tariff of the carrier for foreign air transportation only after 30 days after the carrier has filed, published, and posted notice of the proposed change in the same way as required for a tariff under subsection (a) of this section. However, the Secretary may prescribe an alternative notice requirement, of at least 25 days, to allow an air carrier or foreign air carrier to match a proposed change in a passenger rate or a charge of another air carrier or foreign air carrier. A notice under this paragraph must state plainly the change proposed and when the change will take effect.

(2) If the effect of a proposed change would be to begin a passenger rate that is outside of, or not covered by, the range of passenger rates specified under section 41509(e)(2)-(4) of this title, the proposed change may be put into effect only on the expiration of 60 days after the notice is filed under regulations prescribed by the Secretary.

(c) REJECTION OF CHANGES.—The Secretary may reject a tariff or tariff change that is not consistent with this section and regulations prescribed by the Secretary. A tariff or change that is rejected is void.

§41505. Uniform methods for establishing joint rates, and divisions of joint rates, applicable to commuter air carriers

(a) DEFINITION.—In this section, "commuter air carrier" means an air carrier providing transportation under section 40109(f) of this title that provides at least 5 scheduled roundtrips a week between the same 2 places.

(b) GENERAL.—Except as provided in subsection (c) of this section, when the Secretary of Transportation prescribes under section 41508 or 41509 of this title a uniform method generally applicable to establishing joint rates and divisions of joint rates for and between air carriers holding certificates issued under section 41102 of this title, the Secretary shall make that uniform method apply to establishing joint rates and divisions of joint rates for and between air carriers and commuter air carriers.

(c) NOTICE REQUIRED BEFORE MODIFYING, SUSPENDING, OR ENDING TRANSPORTATION.—A commuter air carrier that has an agreement with an air carrier to provide transportation for passengers and property that includes through service by the commuter air carrier over the commuter air carrier's routes and air transportation provided by the air carrier shall give the air carrier and the Secretary at least 90 days' notice before modifying, suspending, or ending the transportation. If the commuter air carrier does not give that notice, the uniform method of establishing joint rates and divisions of joint rates referred to in subsection (b) of this section does not apply to the commuter air carrier.

§41506. Rate division filing requirements for foreign air transportation

Every air carrier and foreign air carrier shall keep currently on file with the Secretary of Transportation, if the Secretary requires, the established divisions of all joint rates for foreign air transportation in which the carrier participates.

§41507. Authority of the Secretary of Transportation to change rates, classifications, rules, and practices for foreign air transportation

(a) GENERAL.—When the Secretary of Transportation decides that a rate charged or received by an air carrier or foreign air carrier for foreign air transportation, or a classification, rule, or practice affecting that rate or the value of the transportation provided under that rate, is or will be unreasonably discriminatory, the Secretary may—

(1) change the rate, classification, rule, or practice as necessary to correct the discrimination; and

(2) order the air carrier or foreign air carrier to stop charging or collecting the discriminatory

rate or carrying out the discriminatory classification, rule, or practice.

(b) WHEN SECRETARY MAY ACT.—The Secretary may act under this section on the Secretary's own initiative or on a complaint filed with the Secretary and only after notice and an opportunity for a hearing.

§41508. Authority of the Secretary of Transportation to adjust divisions of joint rates for foreign air transportation

(a) GENERAL.—When the Secretary of Transportation decides that a division between air carriers, foreign air carriers, or both, of a joint rate for foreign air transportation is or will be unreasonable or unreasonably discriminatory against any of those carriers, the Secretary shall prescribe a reasonable division of the joint rate among those carriers. The Secretary may order the adjustment in the division of the joint rate to be made retroactively to the date the complaint was filed, the date the order for an investigation was made, or a later date the Secretary decides is reasonable.

(b) WHEN SECRETARY MAY ACT.—The Secretary may act under this section on the Secretary's own initiative or on a complaint filed with the Secretary and only after notice and an opportunity for a hearing.

§ 41509. Authority of the Secretary of Transportation to suspend, cancel, and reject tariffs for foreign air transportation

(a) CANCELLATION AND REJECTION.—(1) On the initiative of the Secretary of Transportation or on a complaint filed with the Secretary, the Secretary may conduct a hearing to decide whether a rate for foreign air transportation contained in an existing or newly filed tariff of an air carrier or foreign air carrier, a classification, rule, or practice affecting that rate, or the value of the transportation provided under that rate, is lawful. The Secretary may begin the hearing at once and without an answer or another formal pleading by the air carrier or foreign air carrier, but only after reasonable notice. If, after the hearing, the Secretary decides that the rate, classification, rule, or practice is or will be unreasonable or unreasonably discriminatory, the Secretary may cancel or reject the tariff and prevent the use of the rate, classification, rule, or practice.

(2) With or without a hearing, the Secretary may cancel or reject an existing or newly filed tariff of a foreign air carrier and prevent the use of a rate, classification, rule, or practice when the Secretary decides that the cancellation or rejection is in the public interest.

(3) In deciding whether to cancel or reject a tariff of an air carrier or foreign air carrier under this subsection, the Secretary shall consider—

(A) the effect of the rate on the movement of traffic;

(B) the need in the public interest of adequate and efficient transportation by air carriers and foreign air carriers at the lowest cost consistent with providing the transportation;

(C) the standards prescribed under law related to the character and quality of transportation to be provided by air carriers and foreign air carriers;

(D) the inherent advantages of transportation by aircraft;

(E) the need of the air carrier and foreign air carrier for revenue sufficient to enable the air carrier and foreign air carrier, under honest, economical, and efficient management, to provide adequate and efficient air carrier and foreign air carrier transportation;

(F) whether the rate will be predatory or tend to monopolize competition among air carriers and foreign air carriers in foreign air transportation;

(G) reasonably estimated or foreseeable future costs and revenues for the air carrier or foreign air carrier for a reasonably limited future period during which the rate would be in effect; and

(H) other factors.

(b) SUSPENSION.—(1)(A) Pending a decision under subsection (a)(1) of this section, the Secretary may suspend a tariff and the use of a rate contained in the tariff or a classification, rule, or practice affecting that rate.

(B) The Secretary may suspend a tariff of a foreign air carrier and the use of a rate, classification, rule, or practice when the suspension is in the public interest.

(2) A suspension becomes effective when the Secretary files with the tariff and delivers to the air carrier or foreign air carrier affected by the suspension a written statement of the reasons for the suspension. To suspend a tariff, reasonable notice of the suspension must be given to the affected carrier.

(3) The suspension of a newly filed tariff may be for periods totaling not more than 365 days after the date the tariff otherwise would go into effect. The suspension of an existing tariff may be for periods totaling not more than 365 days after the effective date of the suspension. The Secretary may rescind at any time the suspension of a newly filed tariff and allow the rate, classification, rule, or practice to go into effect.

(c) EFFECTIVE TARIFFS AND RATES WHEN TARIFF IS SUSPENDED, CANCELED, OR REJECTED.—(1) If a tariff is suspended pending the outcome of a proceeding under subsection (a) of this section and the Secretary does not take final action in the proceeding during the suspension period, the tariff goes into effect at the end of that period subject to cancellation when the proceeding is concluded.

(2)(A) During the period of suspension, or after the cancellation or rejection, of a newly filed tariff (including a tariff that has gone into effect provisionally), the affected air carrier or foreign air carrier shall maintain in effect and use—

(i) the corresponding seasonal rates, or the classifications, rules, and practices affecting those rates or the value of transportation provided under those rates, that were in effect for the carrier immediately before the new tariff was filed; or

(ii) another rate provided for under an applicable intergovernmental agreement or understanding.

(B) If the suspended, canceled, or rejected tariff is the first tariff of the carrier for the covered transportation, the carrier, for the purpose of operations during the period of suspension or pending effectiveness of a new tariff, may file another tariff containing a rate or another classification, rule, or practice affecting the rate, or the value of the transportation provided under the rate, that is in effect (and not subject to a suspension order) for any air carrier providing the same transportation.

(3) If an existing tariff is suspended or canceled, the affected air carrier or foreign air carrier, for the purpose of operations during the period of suspension or pending effectiveness of a new tariff, may file another tariff containing a rate or another classification, rule, or practice affecting the rate, or the value of the transportation provided under the rate, that is in effect (and not subject to a suspension order) for any air carrier providing the same transportation.

(d) RESPONSE TO REFUSAL OF FOREIGN COUNTRY TO ALLOW AIR CARRIER TO CHARGE A RATE.—When the Secretary finds that the government or an aeronautical authority of a foreign country has refused to allow an air carrier to charge a rate contained in a tariff filed and published under section 41504 of this title for foreign air transportation to the foreign country—

(1) the Secretary, without a hearing—

(A) may suspend any existing tariff of a foreign air carrier providing transportation between the United States and the foreign country for periods totaling not more than 365 days after the date of the suspension; and

(B) may order the foreign air carrier to charge, during the suspension periods, rates that are the same as those contained in a tariff (designated by the Secretary) of an air carrier filed and published under section 41504 of this title for foreign air transportation to the foreign country; and

(2) a foreign air carrier may continue to provide foreign air transportation to the foreign country only if the government or aeronautical authority of the foreign country allows an air carrier to start or continue foreign air transportation to the foreign country at the rates designated by the Secretary.

(e) STANDARD FOREIGN FARE LEVEL.—(1)(A) In this subsection, "standard foreign fare level" means—

(i) for a class of fares existing on October 1, 1979, the fare between 2 places (as adjusted under subparagraph (B) of this paragraph) filed for and allowed by the Civil Aeronautics Board to go into effect after September 30, 1979, and before August 13, 1980 (with seasonal fares adjusted by the percentage difference that prevailed between seasons in 1978), or the fare established under section 1002(j)(8) of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 731), as added by section 24(a) of the International Air Transportation Competition Act of 1979 (Public Law 96-192, 94 Stat. 46); or

(ii) for a class of fares established after October 1, 1979, the fare between 2 places in effect on the effective date of the establishment of the new class.

(B) At least once every 60 days for fuel costs, and at least once every 180 days for other costs, the Secretary shall adjust the standard foreign fare level for the particular foreign air transportation to which the standard foreign fare level applies by increasing or decreasing that level by the percentage change from the last previous period in the actual operating cost for each available seat-mile. In adjusting a standard foreign fare level, the Secretary may not make an adjustment to costs actually incurred. In establishing a standard foreign fare level and making adjustments in the level under this paragraph, the Secretary may use all relevant or appropriate information reasonably available to the Secretary.

(2) The Secretary may not decide that a proposed fare for foreign air transportation is unreasonable on the basis that the fare is too low or too high if the proposed fare is neither more than 5 percent higher nor 50 percent lower than the standard foreign fare level for the same or essentially similar class of transportation. The Secretary by regulation may increase the 50 percent specified in this paragraph.

(3) Paragraph (2) of this subsection does not apply to a proposed fare that is not more than—

(A) 5 percent higher than the standard foreign fare level when the Secretary decides that the proposed fare may be unreasonably discriminatory or that suspension of the fare is in the public interest because of an unreasonable regulatory action by the government of a foreign country that is related to a fare proposal of an air carrier; or

(B) 50 percent lower than the standard foreign fare level when the Secretary decides that the proposed fare may be predatory or discriminatory or that suspension of the fare is required because of an unreasonable regulatory action by the government of a foreign country that is related to a fare proposal of an air carrier.

(f) SUBMISSION OF ORDERS TO PRESIDENT.—The Secretary shall submit to the President an order made under this section suspending, canceling, or rejecting a rate for foreign air transportation, and an order rescinding the effective-

ness of such an order, before publishing the order. Not later than 10 days after its submission, the President may disapprove the order on finding disapproval is necessary for United States foreign policy or national defense reasons.

(g) Compliance as Condition of Certificate or Permit.—This section and compliance with an order of the Secretary under this section are conditions to any certificate or permit held by an air carrier or foreign air carrier. An air carrier or foreign air carrier may provide foreign air transportation only as long as the carrier maintains rates for that transportation that comply with this section and orders of the Secretary under this section.

§41510. Required adherence to foreign air transportation tariffs

(a) Prohibited Actions by Air Carriers, Foreign Air Carriers, and Ticket Agents.—An air carrier, foreign air carrier, or ticket agent may not—

(1) charge or receive compensation for foreign air transportation that is different from the rate specified in the tariff of the carrier that is in effect for that transportation;

(2) refund or remit any part of the rate specified in the tariff; or

(3) extend to any person a privilege or facility, related to a matter required by the Secretary of Transportation to be specified in a tariff for foreign air transportation, except as specified in the tariff.

(b) Prohibited Actions by Any Person.—A person may not knowingly—

(1) pay compensation for foreign air transportation of property that is different from the rate specified in the tariff in effect for that transportation; or

(2) solicit, accept, or receive—

(A) a refund or remittance of any part of the rate specified in the tariff; or

(B) a privilege or facility, related to a matter required by the Secretary to be specified in a tariff for foreign air transportation of property, except as specified in the tariff.

§41511. Special fares for foreign air transportation

(a) Free and Reduced Fares.—This chapter does not prohibit an air carrier or foreign air carrier, under terms the Secretary of Transportation prescribes, from issuing or interchanging tickets or passes for free or reduced-fare foreign air transportation to or for the following:

(1) a director, officer, or employee of the carrier (including a retired director, officer, or employee who is receiving retirement benefits from an air carrier or foreign air carrier).

(2) a parent or the immediate family of such an officer or employee or the immediate family of such a director.

(3) a widow, widower, or minor child of an employee of the carrier who died as a direct result of a personal injury sustained when performing a duty in the service of the carrier.

(4) a witness or attorney attending a legal investigation in which the air carrier is interested.

(5) an individual injured in an aircraft accident and a physician or nurse attending the individual.

(6) a parent or the immediate family of an individual injured or killed in an aircraft accident when the transportation is related to the accident.

(7) an individual or property to provide relief in a general epidemic, pestilence, or other emergency.

(8) other individuals under other circumstances the Secretary prescribes by regulation.

(b) Space-Available Basis.—Under terms the Secretary prescribes, an air carrier or foreign air carrier may grant reduced-fare foreign air transportation on a space-available basis to the following:

(1) a minister of religion.

(2) an individual who is at least 60 years of age and no longer gainfully employed.

(3) an individual who is at least 65 years of age.

(4) an individual who has severely impaired vision or hearing or another physical or mental handicap and an accompanying attendant needed by that individual.

CHAPTER 417—OPERATIONS OF CARRIERS

SUBCHAPTER I—REQUIREMENTS

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SUBCHAPTER I—REQUIREMENTS

§41701. Classification of air carriers

The Secretary of Transportation may establish—

(1) reasonable classifications for air carriers when required because of the nature of the transportation provided by them; and

(2) reasonable requirements for each class when the Secretary decides those requirements are necessary in the public interest.

§41702. Interstate air transportation

An air carrier shall provide safe and adequate interstate air transportation.

§41703. Navigation of foreign civil aircraft

(a) Permitted Navigation.—A foreign aircraft, not part of the armed forces of a foreign country, may be navigated in the United States only—

(1) if the country of registry grants a similar privilege to aircraft of the United States;

(2) by an airman holding a certificate or license issued or made valid by the United States Government or the country of registry;

(3) if the Secretary of Transportation authorizes the navigation; and

(4) if the navigation is consistent with terms the Secretary may prescribe.

(b) Requirements for Authorizing Navigation.—The Secretary may authorize navigation under this section only if the Secretary decides the authorization is—

(1) in the public interest; and

(2) consistent with any agreement between the Government and the government of a foreign country.

(c) Providing Air Commerce.—The Secretary may authorize an aircraft permitted to navigate in the United States under this section to provide air commerce in the United States. However, the aircraft may take on for compensation, at a place in the United States, passengers or cargo destined for another place in the United States only if—

(1) specifically authorized under section 40109(g) of this title; or

(2) under regulations the Secretary prescribes authorizing air carriers to provide otherwise authorized air transportation with foreign registered aircraft under lease or charter to them without crew.

(d) Permit Requirements Not Affected.—This section does not affect section 41301 or 41302 of this title. However, a foreign air carrier holding a permit under section 41302 does not need to obtain additional authorization under this section for an operation authorized by the permit.

§41704. Transporting property not to be transported in aircraft cabins

Under regulations or orders of the Secretary of Transportation, an air carrier shall transport as baggage the property of a passenger traveling in air transportation that may not be carried in an aircraft cabin because of a law or regulation of the United States. The carrier is liable to pay an amount not more than the amount declared to the carrier by that passenger for actual loss of, or damage to, the property caused by the carrier. The carrier may impose reasonable charges and conditions for its liability.

§41705. Discrimination against handicapped individuals

In providing air transportation, an air carrier may not discriminate against an otherwise qualified individual on the following grounds:

(1) the individual has a physical or mental impairment that substantially limits one or more major life activities.

(2) the individual has a record of such an impairment.

(3) the individual is regarded as having such an impairment.

§41706. Prohibitions against smoking on scheduled flights

(a) General.—An individual may not smoke in the passenger cabin or lavatory of an aircraft on a scheduled airline flight segment in air transportation or intrastate air transportation that is—

(1) between places in a State of the United States, the District of Columbia, Puerto Rico, or the Virgin Islands;

(2) between a place in any jurisdiction referred to in clause (1) of this subsection (except Alaska and Hawaii) and a place in any other of those jurisdictions; or

(3)(A) scheduled for not more than 6 hours' duration; and

(B)(i) between a place referred to in clause (1) of this subsection (except Alaska and Hawaii) and Alaska or Hawaii; or

(ii) between Alaska and Hawaii.

(b) Regulations.—The Secretary of Transportation shall prescribe regulations necessary to carry out this section.

§41707. Incorporating contract terms into written instrument

To the extent the Secretary of Transportation prescribes by regulation, an air carrier may incorporate by reference in a ticket or written instrument any term of the contract for providing interstate air transportation.

§41708. Reports

(a) Application.—To the extent the Secretary of Transportation finds necessary to carry out

this subpart, this section and section 41709 of this title apply to a person controlling an air carrier or affiliated (within the meaning of section 11343(c) of this title) with a carrier.

(b) REQUIREMENTS.—The Secretary may require an air carrier or foreign air carrier—

(1)(A) to file annual, monthly, periodical, and special reports with the Secretary in the form and way prescribed by the Secretary; and

(B) to file the reports under oath;

(2) to provide specific answers to questions on which the Secretary considers information to be necessary; and

(3) to file with the Secretary a copy of each agreement, arrangement, contract, or understanding between the carrier and another carrier or person related to transportation affected by this subpart.

§41709. Records of air carriers

(a) REQUIREMENTS.—The Secretary of Transportation shall prescribe the form of records to be kept by an air carrier, including records on the movement of traffic, receipts and expenditures of money, and the time period during which the records shall be kept. A carrier may keep only records prescribed or approved by the Secretary. However, a carrier may keep additional records if the additional records do not impair the integrity of the records prescribed or approved by the Secretary and are not an unreasonable financial burden on the carrier.

(b) INSPECTION.—(1) The Secretary at any time may—

(A) inspect the land, buildings, and equipment of an air carrier or foreign air carrier when necessary to decide under subchapter II of this chapter or section 41102, 41103, or 41302 of this title whether a carrier is fit, willing, and able; and

(B) inspect records kept or required to be kept by an air carrier, foreign air carrier, or ticket agent.

(2) The Secretary may employ special agents or auditors to carry out this subsection.

§41710. Time requirements

When a matter requiring action of the Secretary of Transportation is submitted under section 40109 (a) or (c)-(h), 41309, or 42111 of this title and an evidentiary hearing—

(1) is ordered, the Secretary shall make a final decision on the matter not later than the last day of the 12th month that begins after the date the matter is submitted; or

(2) is not ordered, the Secretary shall make a final decision on the matter not later than the last day of the 6th month that begins after the date the matter is submitted.

§41711. Air carrier management inquiry and cooperation with other authorities

In carrying out this subpart, the Secretary of Transportation may—

(1) inquire into the management of the business of an air carrier and obtain from the air carrier, and a person controlling, controlled by, or under common control with the carrier, information the Secretary decides reasonably is necessary to carry out the inquiry;

(2) confer and hold a joint hearing with a State authority; and

(3) exchange information related to aeronautics with a government of a foreign country through appropriate departments, agencies, and instrumentalities of the United States Government.

§41712. Unfair and deceptive practices and unfair methods of competition

On the initiative of the Secretary of Transportation or the complaint of an air carrier, foreign air carrier, or ticket agent, and if the Secretary considers it is in the public interest, the Secretary may investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation. If the Secretary, after notice and an opportunity for a hearing, finds that an air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice or unfair method of competition, the Secretary shall order the air carrier, foreign air carrier, or ticket agent to stop the practice or method.

§41713. Preemption of authority over rates, routes, and service

(a) DEFINITION.—In this section, "State" means a State, the District of Columbia, and a territory or possession of the United States.

(b) PREEMPTION.—(1) Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law or regulation related to a rate, route, or service of an air carrier that may provide air transportation under this subpart.

(2) Paragraph (1) of this subsection does not apply to air transportation provided entirely in Alaska unless the transportation is air transportation (except charter air transportation) provided under a certificate issued under section 41102 of this title.

(3) This subsection does not limit a State, political subdivision of a State, or political authority of at least 2 States that owns or operates an airport served by an air carrier holding a certificate issued by the Secretary of Transportation from carrying out its proprietary powers and rights.

SUBCHAPTER II—SMALL COMMUNITY AIR SERVICE

§41731. Definitions

(a) GENERAL.—In this subchapter—

(1) "eligible place" means a place in the United States that—

(A) was an eligible point under section 419 of the Federal Aviation Act of 1958 before October 1, 1988;

(B) received scheduled air transportation at any time after January 1, 1990; and

(C) is not listed in Department of Transportation Orders 89-9-37 and 89-12-52 as a place ineligible for compensation under this subchapter.

(2) "enhanced essential air service" means scheduled air transportation to an eligible place of a higher level or quality than basic essential air service described in section 41732 of this title.

(3) "hub airport" means an airport that each year has at least .25 percent of the total annual boardings in the United States.

(4) "nonhub airport" means an airport that each year has less than .05 percent of the total annual boardings in the United States.

(5) "small hub airport" means an airport that each year has at least .05 percent, but less than .25 percent, of the total annual boardings in the United States.

(b) LIMITATION ON AUTHORITY TO DECIDE A PLACE NOT AN ELIGIBLE PLACE.—The Secretary of Transportation may not decide that a place described in subsection (a)(1) of this section is not an eligible place on the basis of a passenger subsidy at that place or on another basis that is not specifically stated in this subchapter.

§41732. Basic essential air service

(a) GENERAL.—Basic essential air service provided under section 41733 of this title is scheduled air transportation of passengers and cargo—

(1) to a hub airport that has convenient connecting or single-plane air service to a substantial number of destinations beyond that airport; or

(2) to a small hub or nonhub airport, when in Alaska or when the nearest hub airport is more than 400 miles from an eligible place.

(b) MINIMUM REQUIREMENTS.—Basic essential air service shall include at least the following:

(1)(A) for a place not in Alaska, 2 daily round trips 6 days a week, with not more than one intermediate stop on each flight; or

(B) for a place in Alaska, a level of service at least equal to that provided in 1976 or 2 round trips a week, whichever is greater, except that the Secretary of Transportation and the appropriate State authority of Alaska may agree to a different level of service after consulting with the affected community.

(2) flights at reasonable times considering the needs of passengers with connecting flights at the airport and at rates that are not excessive compared to the generally prevailing rates of other air carriers for like service between similar places.

(3) for a place not in Alaska, service provided in an aircraft with an effective capacity of at least 15 passengers if the average daily boardings at the place in any calendar year from 1976-1986 were more than 11 passengers unless—

(A) that level-of-service requirement would require paying compensation in a fiscal year under section 41733(d) or 41734 (d) or (e) of this title for the place when compensation otherwise would not have been paid for that place in that year; or

(B) the affected community agrees with the Secretary in writing to the use of smaller aircraft to provide service to the place.

(4) service accommodating the estimated passenger and property traffic at an average load factor, for each class of traffic considering seasonal demands for the service, of not more than—

(A) 50 percent; or

(B) 60 percent when service is provided by aircraft with more than 14 passenger seats.

(5) service provided in aircraft with at least 2 engines and using 2 pilots, unless scheduled air transportation has not been provided to the place in aircraft with at least 2 engines and using 2 pilots for at least 60 consecutive operating days at any time since October 31, 1978.

(6) service provided by pressurized aircraft when the service is provided by aircraft that regularly fly above 8,000 feet in altitude.

§41733. Level of basic essential air service

(a) DECISIONS MADE BEFORE OCTOBER 1, 1988.—For each eligible place for which a decision was made before October 1, 1988, under section 419 of the Federal Aviation Act of 1958, establishing the level of essential air transportation, the level of basic essential air service for that place shall be the level established by the Secretary of Transportation for that place by not later than December 29, 1988.

(b) DECISIONS NOT MADE BEFORE OCTOBER 1, 1988.—(1) The Secretary shall decide on the level of basic essential air service for each eligible place for which a decision was not made before October 1, 1988, establishing the level of essential air transportation, when the Secretary receives notice that service to that place will be provided by only one air carrier. The Secretary shall make the decision by the last day of the 6-month period beginning on the date the Secretary receives the notice. The Secretary may impose notice requirements necessary to carry out this subsection. Before making a decision, the Secretary shall consider the views of any interested community and the appropriate State authority of the State in which the community is located.

(2) Until the Secretary has made a decision on a level of basic essential air service for an eligible place under this subsection, the Secretary, on petition by an appropriate representative of the place, shall prohibit an air carrier from ending, suspending, or reducing air transportation to that place that appears to deprive the place of basic essential air service.

(c) AVAILABILITY OF COMPENSATION.—(1) If the Secretary decides that basic essential air *service will not be provided to an eligible place without compensation, the Secretary shall provide notice that an air carrier may apply to provide basic essential air service to the place for compensation under this section. In selecting an applicant, the Secretary shall consider, among other factors—*

(A) the demonstrated reliability of the applicant in providing scheduled air service;

(B) the contractual and marketing arrangements the applicant has made with a larger carrier to ensure service beyond the hub airport;

(C) the interline arrangements that the applicant has made with a larger carrier to allow passengers and cargo of the applicant at the hub airport to be transported by the larger carrier through one reservation, ticket, and baggage check-in;

(D) the preferences of the actual and potential users of air transportation at the eligible place, giving substantial weight to the views of the elected officials representing the users; and

(E) for an eligible place in Alaska, the experience of the applicant in providing, in Alaska, scheduled air service, or significant patterns of non-scheduled air service under an exemption granted under section 40109(a) and (c)–(h) of this title.

(2) Under guidelines prescribed under section 41737(a) of this title, the Secretary shall pay the rate of compensation for providing basic essential air service under this section and section 41734 of this title.

(d) COMPENSATION PAYMENTS.—The Secretary shall pay compensation under this section at times and in the way the Secretary decides is appropriate. The Secretary shall end payment of compensation to an air carrier for providing basic essential air service to an eligible place when the Secretary decides the compensation is no longer necessary to maintain basic essential air service to the place.

(e) REVIEW.—The Secretary shall review periodically the level of basic essential air service for each eligible place. Based on the review and consultations with an interested community and the appropriate State authority of the State in which the community is located, the Secretary may make appropriate adjustments in the level of service.

§41734. Ending, suspending, and reducing basic essential air service

(a) NOTICE REQUIRED.—An air carrier may end, suspend, or reduce air transportation to an eligible place below the level of basic essential air service established for that place under section 41733 of this title only after giving the Secretary of Transportation, the appropriate State authority, and the affected communities at least 90 days' notice before ending, suspending, or reducing that transportation.

(b) CONTINUATION OF SERVICE FOR 30 DAYS AFTER NOTICE PERIOD.—If at the end of the notice period under subsection (a) of this section the Secretary has not found another air carrier to provide basic essential air service to the eligible place, the Secretary shall require the carrier providing notice to continue to provide basic essential air service to the place for an additional 30-day period or until another carrier begins to provide basic essential air service to the place, whichever occurs first.

(c) CONTINUATION OF SERVICE FOR ADDITIONAL 30-DAY PERIODS.—If at the end of the 30-day period under subsection (b) of this section the Secretary decides another air carrier will not provide basic essential air service to the place on a continuing basis, the Secretary shall require the carrier providing service to continue to provide service for additional 30-day periods until another carrier begins providing service on a continuing basis. At the end of each 30-day period, the Secretary shall decide if another carrier will provide service on a continuing basis.

(d) CONTINUATION OF COMPENSATION AFTER NOTICE PERIOD.—If an air carrier receiving compensation under section 41733 of this title for providing basic essential air service to an eligible place is required to continue to provide service to the place under this section after the 90-day notice period under subsection (a) of this section, the Secretary shall continue to pay that compensation after the last day of that period. The Secretary shall pay the compensation until the Secretary finds another carrier to provide the service to the place or the 90th day after the end of that notice period, whichever is earlier. If, after the 90th day after the end of the 90-day notice period, the Secretary has not found another carrier to provide the service, the carrier required to continue to provide that service shall receive compensation sufficient—

(1) to pay for the fully allocated actual cost to the carrier of performing the basic essential air service that was being provided when the 90-day notice was given under subsection (a) of this section plus a reasonable return on investment that is at least 5 percent of operating costs; and

(2) to provide the carrier an additional return that recognizes the demonstrated additional lost profits from opportunities foregone and the likelihood that those lost profits increase as the period during which the carrier is required to provide the service continues.

(e) COMPENSATION TO AIR CARRIERS ORIGINALLY PROVIDING SERVICE WITHOUT COMPENSATION.—If the Secretary requires an air carrier providing basic essential air service to an eligible place without compensation under section 41733 of this title to continue providing that service after the 90-day notice period required by subsection (a) of this section, the Secretary shall provide the carrier with compensation after the end of the 90-day notice period that is sufficient—

(1) to pay for the fully allocated actual cost to the carrier of performing the basic essential air service that was being provided when the 90-day notice was given under subsection (a) of this section plus a reasonable return on investment that is at least 5 percent of operating costs; and

(2) to provide the carrier an additional return that recognizes the demonstrated additional lost profits from opportunities foregone and the likelihood that those lost profits increase as the period during which the carrier is required to provide the service continues.

(f) FINDING REPLACEMENT CARRIERS.—When the Secretary requires an air carrier to continue to provide basic essential air service to an eligible place, the Secretary shall continue to make every effort to find another carrier to provide at least that basic essential air service to the place on a continuing basis.

(g) TRANSFER OF AUTHORITY.—If an air carrier, providing basic essential air service under section 41733 of this title between an eligible place and an airport at which the Administrator of the Federal Aviation Administration limits the number of instrument flight rule takeoffs and landings of aircraft, provides notice under subsection (a) of this section of an intention to end, suspend, or reduce that service and another carrier is found to provide the service, the Secretary shall require the carrier providing notice to transfer any operational authority the carrier has to land or take off at that airport related to the service to the eligible place to the carrier that will provide the service, if—

(1) the carrier that will provide the service needs the authority; and

(2) the authority to be transferred is being used only to provide air service to the eligible place.

§41735. Enhanced essential air service

(a) PROPOSALS.—(1) A State or local government may submit a proposal to the Secretary of Transportation for enhanced essential air service to an eligible place for which basic essential air service is being provided under section 41733 of this title. The proposal shall—

(A) specify the level and type of enhanced essential air service the State or local government considers appropriate; and

(B) include an agreement related to compensation required for the proposed service.

(2) The agreement submitted under paragraph (1)(B) of this subsection shall provide that—

(A) the State or local government or a person pay 50 percent of the compensation required for the proposed service and the United States Government pay the remaining 50 percent; or

(B)(i) the Government pay 100 percent of the compensation; and

(ii) if the proposed service is not successful for at least a 2-year period under the criteria prescribed by the Secretary under paragraph (3) of this subsection, the eligible place is not eligible for air service or air transportation for which compensation is paid by the Secretary under this subchapter.

(3) The Secretary shall prescribe by regulation objective criteria for deciding whether enhanced essential air service to an eligible place under this section is successful in terms of—

(A) increasing passenger usage of the airport facilities at the place; and

(B) reducing the amount of compensation provided by the Secretary under this subchapter for that service.

(b) DECISIONS.—Not later than 90 days after receiving a proposal under subsection (a) of this section, the Secretary shall—

(1) approve the proposal if the Secretary decides the proposal is reasonable; or

(2) if the Secretary decides the proposal is not reasonable, disapprove the proposal and notify the State or local government of the disapproval and the reasons for the disapproval.

(c) COMPENSATION PAYMENTS.—(1) The Secretary shall pay compensation under this section when and in the way the Secretary decides is appropriate. Compensation for enhanced essential air service under this section may be paid only for the costs incurred in providing air service to an eligible place that are in addition to the costs incurred in providing basic essential air service to the place under section 41733 of this title. The Secretary shall continue to pay compensation under this section only as long as—

(A) the air carrier maintains the level of enhanced essential air service;

(B) the State or local government or person agreeing to pay compensation under this section continues to pay the compensation; and

(C) the Secretary decides the compensation is necessary to maintain the service to the place.

(2) The Secretary may require the State or local government or person agreeing to pay compensation under this section to make advance payments or provide other security to ensure that timely payments are made.

(d) REVIEW.—(1) The Secretary shall review periodically the enhanced essential air service provided to each eligible place under this section.

(2) For service for which the Government pays 50 percent of the compensation, based on the review and consultation with the affected community and the State or local government or person paying the remaining 50 percent of the compensation, the Secretary shall make appropriate adjustments in the type and level of service to the place.

(3) For service for which the Government pays 100 percent of the compensation, based on the review and consultation with the State or local government submitting the proposal, the Secretary shall decide whether the service has succeeded for at least a 2-year period under the criteria prescribed under subsection (a)(3) of this

section. If unsuccessful, the place is not eligible for air service or air transportation for which compensation is paid by the Secretary under this subchapter.

(e) ENDING, SUSPENDING, AND REDUCING AIR TRANSPORTATION.—An air carrier may end, suspend, or reduce air transportation to an eligible place below the level of enhanced essential air service established for that place by the Secretary under this section only after giving the Secretary, the affected community, and the State or local government or person paying compensation for that service at least 30 days' notice before ending, suspending, or reducing the service. This subsection does not relieve the carrier of an obligation under section 41734 of this title.

§41736. Air transportation to noneligible places

(a) PROPOSALS AND DECISIONS.—(1) A State or local government may propose to the Secretary of Transportation that the Secretary provide compensation to an air carrier to provide air transportation to a place that is not an eligible place under this subchapter. Not later than 90 days after receiving a proposal under this section, the Secretary shall—

(A) decide whether to designate the place as eligible to receive compensation under this section; and

(B)(i) approve the proposal if the State or local government or a person is willing and able to pay 50 percent of the compensation for providing the transportation, and notify the State or local government of the approval; or

(ii) disapprove the proposal if the Secretary decides the proposal is not reasonable under paragraph (2) of this subsection, and notify the State or local government of the disapproval and the reasons for the disapproval.

(2) In deciding whether a proposal is reasonable, the Secretary shall consider, among other factors—

(A) the traffic-generating potential of the place;

(B) the cost to the United States Government of providing the proposed transportation; and

(C) the distance of the place from the closest hub airport.

(b) APPROVAL FOR CERTAIN AIR TRANSPORTATION.—Notwithstanding subsection (a)(1)(B) of this section, the Secretary shall approve a proposal under this section to compensate an air carrier for providing air transportation to a place in the 48 contiguous States or the District of Columbia and designate the place as eligible for compensation under this section if—

(1) at any time before October 23, 1978, the place was served by a carrier holding a certificate under section 401 of the Federal Aviation Act of 1958;

(2) the place is more than 50 miles from the nearest small hub airport or an eligible place;

(3) the place is more than 150 miles from the nearest hub airport; and

(4) the State or local government submitting the proposal or a person is willing and able to pay 25 percent of the cost of providing the compensated transportation.

(c) LEVEL OF AIR TRANSPORTATION.—(1) If the Secretary designates a place under subsection (a)(1) of this section as eligible for compensation under this section, the Secretary shall decide, not later than 6 months after the date of the designation, on the level of air transportation to be provided under this section. Before making a decision, the Secretary shall consider the views of any interested community, the appropriate State authority of the State in which the place is located, and the State or local government or person agreeing to pay compensation for the transportation under subsection (b)(4) of this section.

(2) After making the decision under paragraph (1) of this subsection, the Secretary shall provide notice that any air carrier that is willing to provide the level of air transportation established under paragraph (1) for a place may submit an application to provide the transportation. In selecting an applicant, the Secretary shall consider, among other factors—

(A) the factors listed in section 41733(c)(1) of this title; and

(B) the views of the State or local government or person agreeing to pay compensation for the transportation.

(d) COMPENSATION PAYMENTS.—(1) The Secretary shall pay compensation under this section when and in the way the Secretary decides is appropriate. The Secretary shall continue to pay compensation under this section only as long as—

(A) the air carrier maintains the level of air transportation established by the Secretary under subsection (c)(1) of this section;

(B) the State or local government or person agreeing to pay compensation for transportation under this section continues to pay that compensation; and

(C) the Secretary decides the compensation is necessary to maintain the transportation to the place.

(2) The Secretary may require the State or local government or person agreeing to pay compensation under this section to make advance payments or provide other security to ensure that timely payments are made.

(e) REVIEW.—The Secretary shall review periodically the level of air transportation provided under this section. Based on the review and consultation with any interested community, the appropriate State authority of the State in which the community is located, and the State or local government or person paying compensation under this section, the Secretary may make appropriate adjustments in the level of transportation.

(f) WITHDRAWAL OF ELIGIBILITY DESIGNATIONS.—After providing notice and an opportunity for interested persons to comment, the Secretary may withdraw the designation of a place under subsection (a)(1) of this section as eligible to receive compensation under this section if the place has received air transportation under this section for at least 2 years and the Secretary decides the withdrawal would be in the public interest. The Secretary by regulation shall prescribe standards for deciding whether the withdrawal of a designation under this subsection is in the public interest. The standards shall include the factors listed in subsection (a)(2) of this section.

(g) ENDING, SUSPENDING, AND REDUCING AIR TRANSPORTATION.—An air carrier providing air transportation for compensation under this section may end, suspend, or reduce that transportation below the level of transportation established by the Secretary under this section only after giving the Secretary, the affected community, and the State or local government or person paying compensation under this section at least 30 days' notice before ending, suspending, or reducing the transportation.

§41737. Compensation guidelines, limitations, and claims

(a) COMPENSATION GUIDELINES.—(1) The Secretary of Transportation shall prescribe guidelines governing the rate of compensation payable under this subchapter. The guidelines shall be used to determine the reasonable amount of compensation required to ensure the continuation of air service or air transportation under this subchapter. The guidelines shall—

(A) provide for a reduction in compensation when an air carrier does not provide service or transportation agreed to be provided;

(B) consider amounts needed by an air carrier to promote public use of the service or transportation for which compensation is being paid; and

(C) include expense elements based on representative costs of air carriers providing scheduled air transportation of passengers, property, and mail on aircraft of the type the Secretary decides is appropriate for providing the service or transportation for which compensation is being provided.

(2) Promotional amounts described in paragraph (1)(B) of this subsection shall be a special, segregated element of the compensation provided to a carrier under this subchapter.

(b) REQUIRED FINDING.—The Secretary may pay compensation to an air carrier for providing air service or air transportation under this subchapter only if the Secretary finds the carrier is able to provide the service or transportation in a reliable way.

(c) CLAIMS.—Not later than 15 days after receiving a written claim from an air carrier for compensation under this subchapter, the Secretary shall—

(1) pay or deny the United States Government's share of a claim; and

(2) if denying the claim, notify the carrier of the denial and the reasons for the denial.

(d) AUTHORITY TO MAKE AGREEMENTS AND INCUR OBLIGATIONS.—(1) The Secretary may make agreements and incur obligations from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to pay compensation under this subchapter. An agreement by the Secretary under this subsection is a contractual obligation of the Government to pay the Government's share of the compensation.

(2) Not more than $38,600,000 is available to the Secretary out of the Fund for each of the fiscal years ending September 30, 1992–1998, to incur obligations under this section. Amounts made available under this section remain available until expended.

§41738. Fitness of air carriers

Notwithstanding section 40109(a) and (c)–(h) of this title, an air carrier may provide air service to an eligible place or air transportation to a place designated under section 41736 of this title only when the Secretary of Transportation decides that—

(1) the carrier is fit, willing, and able to perform the service or transportation; and

(2) aircraft used to provide the service or transportation, and operations related to the service or transportation, conform to the safety standards prescribed by the Administrator of the Federal Aviation Administration.

§41739. Air carrier obligations

If at least 2 air carriers make an agreement to operate under or use a single carrier designator code to provide air transportation, the carrier whose code is being used shares responsibility with the other carriers for the quality of transportation provided the public under the code by the other carriers.

§41740. Joint proposals

The Secretary of Transportation shall encourage the submission of joint proposals by 2 or more air carriers for providing air service or air transportation under this subchapter through arrangements that maximize the service or transportation to and from major destinations beyond the hub.

§41741. Insurance

The Secretary of Transportation may pay an air carrier compensation under this subchapter only when the carrier files with the Secretary an insurance policy or self-insurance plan approved by the Secretary. The policy or plan must be sufficient to pay for bodily injury to, or death of, an individual, or for loss of or damage to property of others, resulting from the operation of aircraft, but not more than the amount of the policy or plan limits.

§41742. Ending effective date

This subchapter is not effective after September 30, 1998.

CHAPTER 419—TRANSPORTATION OF MAIL

Sec.

41901. General authority.
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41903. Duty to provide certain transportation of mail.
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41910. Weighing mail.
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§41901. General authority

(a) TITLE 39.—The United States Postal Service may provide for the transportation of mail by aircraft in interstate air transportation under section 5402(d) and (f) of title 39.

(b) AUTHORITY TO PRESCRIBE RATES.—Except as provided in section 5402 of title 39, on the initiative of the Secretary of Transportation or on petition by the Postal Service or an air carrier, the Secretary shall prescribe and publish—

(1) after notice and an opportunity for a hearing on the record, reasonable rates of compensation to be paid by the Postal Service for the transportation of mail by aircraft in foreign air transportation or between places in Alaska, the facilities used in and useful for the transportation of mail, and the services related to the transportation of mail for each carrier holding a certificate that authorizes that transportation;

(2) the methods used, whether by aircraft-mile, pound-mile, weight, space, or a combination of those or other methods, to determine the rates of compensation for each air carrier or class of air carriers; and

(3) the effective date of the rates.

(c) OTHER TRANSPORTATION.—In prescribing rates under subsection (b) of this section, the Secretary may include transportation other than by aircraft that is incidental to transportation of mail by aircraft or necessary because of emergency conditions related to aircraft operations.

(d) AUTHORITY TO PRESCRIBE DIFFERENT RATES.—Considering conditions peculiar to transportation by aircraft and to particular air carriers or classes of air carriers, the Secretary may prescribe different rates under this section for different air carriers or classes of air carriers and for different classes of service. In prescribing a rate for a carrier under this section, the Secretary shall consider, among other factors, the following:

(1) the condition that the carrier may hold and operate under a certificate authorizing the transportation of mail only by providing necessary and adequate facilities and service for the transportation of mail.

(2) standards related to the character and quality of service to be provided that are prescribed by or under law.

(e) STATEMENTS ON RATES.—A petition for prescribing a reasonable rate of compensation under this section must include a statement of the rate the petitioner believes is reasonable.

(f) STATEMENTS ON REQUIRED SERVICES.—The Postal Service shall introduce as part of the record in every proceeding under this section a comprehensive statement of the services to be required of the air carrier and other information the Postal Service has that the Secretary considers material to the proceeding.

(g) EXPIRATION DATE.—The authority of the Secretary under this part and section 5402 of title 39 providing for the transportation of mail by aircraft between places in Alaska expires on the date specified in section 5402(f) of title 39.

§41902. Schedules for certain transportation of mail

(a) REQUIREMENT.—Except as provided in section 41906 of this title and section 5402 of title 39, an air carrier may transport mail by aircraft in foreign air transportation or between places in Alaska only under a schedule designated or required to be established under subsection (c) of this section for the transportation of mail.

(b) STATEMENTS ON PLACES AND SCHEDULES.—Every air carrier shall file with the Secretary of Transportation and the United States Postal Service a statement showing—

(1) the places between which the carrier is authorized to provide foreign air transportation;

(2) the places between which the carrier is authorized to transport mail entirely in one State;

(3) the places between which the carrier is authorized to transport mail in Alaska;

(4) every schedule of aircraft regularly operated by the carrier between places described in clauses (1)-(3) of this subsection and every change in each schedule; and

(5) for each schedule, the places served by the carrier and the time of arrival at, and departure from, each place.

(c) DESIGNATING AND ADDITIONAL SCHEDULES.—The Postal Service may—

(1) designate any schedule of an air carrier filed under subsection (b)(4) of this section for the transportation of mail between the places between which the carrier is authorized by its certificate to transport mail; and

(2) require the carrier to establish additional schedules for the transportation of mail between those places.

(d) CHANGING SCHEDULES.—A schedule designated or required to be established for the transportation of mail under subsection (c) of this section may be changed only after 10 days' notice of the change is filed as provided in subsection (b)(4) of this section. The Postal Service may disapprove a proposed change in a schedule or amend or modify the schedule or proposed change.

(e) ORDERS.—An order of the Postal Service under this section may become effective only after 10 days after the order is issued. A person adversely affected by the order may appeal the order to the Secretary before the end of the 10-day period under regulations the Secretary prescribes. If the public convenience and necessity require, the Secretary may amend, modify, suspend, or cancel the order. Pending a decision about the order, the Secretary may postpone the effective date of the order.

(f) PROCEEDINGS PREFERENCES.—The Secretary shall give preference to a proceeding under this section over all other proceedings before the Secretary under this subpart.

§41903. Duty to provide certain transportation of mail

(a) AIR CARRIERS.—Subject to subsection (b) of this section, an air carrier authorized by its certificate to transport mail by aircraft in foreign air transportation or between places in Alaska shall—

(1) provide facilities and services necessary and adequate to provide that transportation; and

(2) transport mail between the places authorized in the certificate for transportation of mail when required, and under regulations prescribed, by the United States Postal Service.

(b) MAXIMUM MAIL LOAD.—The Secretary of Transportation may prescribe the maximum mail load for a schedule or for an aircraft or type of aircraft for the transportation of mail by aircraft in foreign air transportation or between places in Alaska. If the Postal Service tenders to an air carrier mail exceeding the maximum load for transportation by the carrier under a schedule designated or required to be established for the transportation of mail under section 41902(c) of this title, the carrier, as nearly in accordance with the schedule as the Secretary decides is possible, shall—

(1) provide facilities sufficient to transport the mail to the extent the Secretary decides the carrier reasonably is able to do so; and

(2) transport that mail.

§41904. Noncitizens transporting mail to or in foreign countries

When the United States Postal Service decides that it may be necessary to have a person not a citizen of the United States transport mail by aircraft to or in a foreign country, the Postal Service may make an arrangement with the person, without advertising, to provide the transportation.

§41905. Regulating air carrier transportation of foreign mail

An air carrier holding a certificate that authorizes foreign air transportation and transporting mail of a foreign country shall transport that mail under the control of, and subject to regulation by, the United States Government.

§41906. Emergency mail transportation

(a) CONTRACT AUTHORITY.—In an emergency caused by a flood, fire, or other disaster, the United States Postal Service may make a contract without advertising to transport mail by aircraft to or from a locality affected by the emergency when the available facilities of persons authorized to transport mail to or from the locality are inadequate to meet the requirements of the Postal Service during the emergency. The contract may be only for periods necessary to maintain mail service because of the inadequacy of the facilities. Payment for transportation provided under the contract shall be made at rates provided in the contract.

(b) TRANSPORTATION NOT AIR TRANSPORTATION.—Transportation provided under a contract made under subsection (a) of this section is not air transportation within the meaning of this part.

§41907. Rates for foreign transportation of mail

(a) LIMITATIONS.—When air transportation is provided between the United States and a foreign country both by aircraft owned or operated by an air carrier holding a certificate under chapter 411 of this title and by aircraft owned or operated by a foreign air carrier, the United States Postal Service may not pay to or for the account of the foreign air carrier a rate of compensation for transporting mail by aircraft between the United States and the foreign country that the Postal Service believes will result (over a reasonable period determined by the Postal Service considering exchange fluctuations and other factors) in the foreign air carrier receiving a rate of compensation for transporting the mail that is higher than the rate—

(1) the government of a foreign country or foreign postal administration pays to air carriers for transporting mail of the foreign country by aircraft between the foreign country and the United States; or

(2) determined by the Postal Service to be comparable to the rate the government of a foreign country or foreign postal administration pays to air carriers for transporting mail of the foreign country by aircraft between the foreign country and an intermediate country on the route of the air carrier between the foreign country and the United States.

(b) CHANGES.—The Secretary of Transportation shall act expeditiously on proposed

changes in rates for transporting mail by aircraft in foreign air transportation. When prescribing those rates, the Secretary shall consider—

(1) the rates paid for transportation of mail under the Universal Postal Union Convention as ratified by the United States Government;

(2) the rate-making elements used by the Universal Postal Union in prescribing its airmail rates; and

(3) the competitive disadvantage to United States flag air carriers resulting from foreign air carriers receiving Universal Postal Union rates for transporting United States mail and national origin mail of their own countries.

§41908. Rates for transporting mail of foreign countries

(a) RATE DETERMINATIONS.—The United States Postal Service shall determine the rates that an air carrier holding a certificate that authorizes foreign air transportation must charge a government of a foreign country or foreign postal administration for transporting mail of the foreign country. The Postal Service shall put those rates into effect under the postal convention regulating postal relations between the United States and the foreign country or as provided under this section.

(b) CHANGES.—The Postal Service may authorize an air carrier holding a certificate that authorizes foreign air transportation, under limitations the Postal Service prescribes, to change the rates the carrier charges a government of a foreign country or foreign postal administration for transporting mail of the foreign country in the foreign country or between the foreign country and another foreign country.

(c) COLLECTING COMPENSATION.—(1) When an air carrier holding a certificate that authorizes foreign air transportation transports mail of a foreign country—

(A) under an arrangement with a government of a foreign country or foreign postal administration made or approved under this section, the carrier must collect its compensation for the transportation from the foreign country under the arrangement; and

(B) without having an arrangement with a government of a foreign country or foreign postal administration consistent with this section, the compensation collected by the United States Government for the transportation shall be for the account of the air carrier.

(2) An air carrier holding a certificate that authorizes foreign air transportation is not entitled to receive compensation from both a government of a foreign country or foreign postal administration and the United States Government for transporting the same mail of the foreign country.

§41909. Duty to oppose unreasonable Universal Postal Union rates

The Secretary of State and the United States Postal Service shall—

(1) take appropriate action to ensure that the rates paid for transporting mail under the Universal Postal Union Convention are not higher than reasonable rates for transporting mail; and

(2) oppose any existing or proposed Universal Postal Union rate that is higher than a reasonable rate for transporting mail.

§41910. Weighing mail

The United States Postal Service may weigh mail transported by aircraft and make statistical and administrative computations necessary in the interest of mail service. When the Secretary of Transportation decides that additional or more frequent weighings of mail are advisable or necessary to carry out this part, the Postal Service shall provide the weighings, but it is not required to provide them for continuous periods of more than 30 days.

§41911. Evidence of providing mail service

When and in the form required by the United States Postal Service, an air carrier transporting or handling—

(1) United States mail shall submit evidence, signed by an authorized official, that the transportation or handling has been provided; and

(2) mail of a foreign country shall submit evidence, signed by an authorized official, of the amount of mail transported or handled and the compensation payable and received for that transportation or handling.

§41912. Effect on foreign postal arrangements

This part does not—

(1) affect an arrangement made by the United States Government with the postal administration of a foreign country related to the transportation of mail by aircraft; or

(2) impair the authority of the United States Postal Service to make such an arrangement.

CHAPTER 421—LABOR-MANAGEMENT PROVISIONS

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SUBCHAPTER I—EMPLOYEE PROTECTION PROGRAM

§42101. Definitions

(a) GENERAL.—In this subchapter—

(1) "eligible protected employee" means a protected employee who is deprived of employment, or whose compensation is reduced, because of a qualifying dislocation.

(2) "major contraction" means a reduction (except as provided in subsection (b) of this section) of at least 7.5 percent in the number of full-time employees of an air carrier within a 12-month period, except for employees deprived of employment because of a strike or whose employment is ended for cause.

(3) "protected employee" means an individual who on October 24, 1978, was employed for at least 4 years by an air carrier holding a certificate under section 41102 of this title, but does not include a director or officer of a corporation.

(4) "qualifying dislocation" means a bankruptcy or major contraction of an air carrier holding a certificate under section 41102 of this title when the Secretary of Transportation finds the bankruptcy or contraction occurred after December 31, 1978, and before January 1, 1989, the major cause of which was the change in regulatory structure provided by the Airline Deregulation Act of 1978.

(b) MAJOR CONTRACTION.—The Secretary may find a reduction of less than 7.5 percent of the number of full-time employees is part of a major contraction if the Secretary decides another reduction is likely to occur within a 12-month period that, when included with the first reduction, will result in a total reduction of more than 7.5 percent.

§42102. Payments to eligible protected employees

(a) AUTHORITY TO PAY AND APPLICATIONS FOR PAYMENTS.—Subject to amounts provided in an appropriation law, the Secretary of Labor shall make monthly assistance payments, moving expense payments, and reimbursement payments as provided under this section to an eligible protected employee whose employment is not ended for cause. The employee must apply to receive the payments and cooperate with the Secretary in finding other employment.

(b) NUMBER AND AMOUNT OF PAYMENTS.—(1) Subject to amounts provided in an appropriation law, an eligible protected employee shall receive 72 monthly assistance payments. However, an eligible protected employee deprived of employment may not receive a payment after obtaining other employment. For each class or craft of protected employees, the Secretary of Labor, after consulting with the Secretary of Transportation, shall prescribe by regulation guidelines for computing the amount of each monthly assistance payment to be made to a member of the class or craft and what percentage of salary that payment represents.

(2) The amount of a monthly payment payable under paragraph (1) of this subsection to an eligible protected employee shall be reduced—

(A) by unemployment compensation the employee receives; or

(B) if the employee does not accept reasonably comparable employment, to an amount the employee would be entitled to receive if the employee had accepted the employment.

(3) If accepting comparable employment to avoid a reduction in the monthly assistance payment under paragraph (2) of this subsection would force an eligible protected employee to relocate, the employee may decide not to relocate. Instead of the payments provided under this section, the employee may receive the lesser of 3 payments or the maximum number of payments that remain to be paid under paragraph (1) of this subsection.

(c) MOVING EXPENSES AND REIMBURSEMENTS.—(1) Subject to amounts provided in an appropriation law, an eligible protected employee who relocates shall receive—

(A) reasonable moving expense payments to move the employee and the employee's immediate family; and

(B) reimbursement payments for a loss incurred in selling the employee's principal place of residence for less than fair market value or in cancelling a lease on, or contract to buy, the residence.

(2) The Secretary of Labor shall decide on the amount of the moving expenses and the fair market value of the residence.

§42103. Duty to hire protected employees

(a) REHIRING PROTECTED EMPLOYEES.—A protected employee of an air carrier regulated by the Secretary of Transportation who was furloughed or whose employment was ended by the carrier (except for cause) before October 23, 1988, is entitled to be the first employed in the occupational specialty of the employee, regardless of the employee's age, by any other air carrier holding a certificate under section 41102 of this title before October 24, 1978. However, the air carrier may recall its furloughed employees before hiring a protected employee of another air carrier regulated by the Secretary who was furloughed or whose employment was ended by the other carrier (except for cause) before October 23, 1988. An employee hired by an air carrier under this section retains seniority and recall rights with the air carrier that furloughed or ended the employment of the employee.

(b) DUTIES OF SECRETARY OF LABOR.—The Secretary of Labor—

(1) shall establish and publish periodically a list of jobs available with an air carrier holding a certificate under section 41102 of this title that includes necessary information and detail;

(2) shall assist eligible protected employees to find other employment;

(3) shall encourage negotiations between air carriers and representatives of employees on rehiring practices and seniority; and

(4) may require an air carrier to file with the Secretary information necessary to carry out this section.

§42104. Congressional review of regulations

(a) DEFINITION.—In this section, "legislative day" means a calendar day on which both Houses of Congress are in session.

(b) SUBMISSION TO CONGRESS.—The Secretary of Labor may not prescribe a regulation under this subchapter until 30 legislative days after the regulation is submitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives.

(c) EFFECTIVENESS OF REGULATIONS.—A proposed regulation under this subchapter shall be submitted to Congress and becomes effective only if, during the period of 60 legislative days after the regulation is submitted to Congress, either House does not pass a resolution disapproving the regulation. However, if Congress adopts a resolution approving the regulation during the 60-day period, the regulation is effective on that date.

§42105. Airline Employees Protective Account

The Department of Labor has an Airline Employees Protective Account consisting of amounts appropriated to it. An amount necessary to carry out this subchapter, including administrative expenses, may be appropriated to the Account annually.

§42106. Ending effective date

This subchapter is not effective after the last day the Secretary of Labor must make a payment under this subchapter.

SUBCHAPTER II—MUTUAL AID AGREEMENTS AND LABOR REQUIREMENTS OF AIR CARRIERS

§42111. Mutual aid agreements

An air carrier that will receive payments from another air carrier under an agreement between the air carriers for the time the one air carrier is not providing foreign air transportation, or is providing reduced levels of foreign air transportation, because of a labor strike must file a true copy of the agreement with the Secretary of Transportation and have it approved by the Secretary under section 41309 of this title. Notwithstanding section 41309, the Secretary shall approve the agreement only if it provides that—

(1) the air carrier will receive payments of not more than 60 percent of direct operating expenses, including interest expenses, but not depreciation or amortization expenses;

(2) benefits may be paid for not more than 8 weeks, and may not be for losses incurred during the first 30 days of a strike; and

(3) on request of the striking employees, the dispute will be submitted to binding arbitration under the Railway Labor Act (45 U.S.C. 151 et seq.).

§42112. Labor requirements of air carriers

(a) DEFINITIONS.—In this section—

(1) "copilot" means an employee whose duties include assisting or relieving the pilot in manipulating an aircraft and who is qualified to serve as, and has in effect an airman certificate authorizing the employee to serve as, a copilot.

(2) "pilot" means an employee who is—

(A) responsible for manipulating or who manipulates the flight controls of an aircraft when under way, including the landing and takeoff of an aircraft; and

(B) qualified to serve as, and has in effect an airman certificate authorizing the employee to serve as, a pilot.

(b) DUTIES OF AIR CARRIERS.—An air carrier shall—

(1) maintain rates of compensation, maximum hours, and other working conditions and relations for its pilots and copilots who are providing interstate air transportation in the 48 contiguous States and the District of Columbia to conform with decision number 83, May 10, 1934, National Labor Board, notwithstanding any limitation in that decision on the period of its effectiveness;

(2) maintain rates of compensation for its pilots and copilots who are providing foreign air transportation or air transportation only in one territory or possession of the United States; and

(3) comply with title II of the Railway Labor Act (45 U.S.C. 181 et seq.) as long as it holds its certificate.

(c) MINIMUM ANNUAL RATE OF COMPENSATION.—A minimum annual rate under subsection (b)(2) of this section may not be less than the annual rate required to be paid for comparable service to a pilot or copilot under subsection (b)(1) of this section.

(d) COLLECTIVE BARGAINING.—This section does not prevent pilots or copilots of an air carrier from obtaining by collective bargaining higher rates of compensation or more favorable working conditions or relations.

SUBPART III—SAFETY

CHAPTER 441—REGISTRATION AND RECORDATION OF AIRCRAFT

Sec.

44101. Operation of aircraft.
44102. Registration requirements.
44103. Registration of aircraft.
44104. Registration of aircraft components and dealers' certificates of registration.
44105. Suspension and revocation of aircraft certificates.
44106. Revocation of aircraft certificates for controlled substance violations.
44107. Recordation of conveyances, leases, and security instruments.
44108. Validity of conveyances, leases, and security instruments.
44109. Reporting transfer of ownership.
44110. Information about aircraft ownership and rights.
44111. Modifications in registration and recordation system for aircraft not providing air transportation.
44112. Limitation of liability.

§44101. Operation of aircraft

(a) REGISTRATION REQUIREMENT.—Except as provided in subsection (b) of this section, a person may operate an aircraft only when the aircraft is registered under section 44103 of this title.

(b) EXCEPTIONS.—A person may operate an aircraft in the United States that is not registered—

(1) when authorized under section 40103(d) or 41703 of this title;

(2) when it is an aircraft of the national defense forces of the United States and is identified in a way satisfactory to the Administrator of the Federal Aviation Administration; and

(3) for a reasonable period of time after a transfer of ownership, under regulations prescribed by the Administrator.

§44102. Registration requirements

(a) ELIGIBILITY.—An aircraft may be registered under section 44103 of this title only when the aircraft is—

(1) not registered under the laws of a foreign country and is owned by—

(A) a citizen of the United States;

(B) an individual citizen of a foreign country lawfully admitted for permanent residence in the United States; or

(C) a corporation not a citizen of the United States when the corporation is organized and doing business under the laws of the United States or a State, and the aircraft is based and primarily used in the United States; or

(2) an aircraft of—

(A) the United States Government; or

(B) a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of a State, territory, or possession.

(b) DUTY TO DEFINE CERTAIN TERM.—In carrying out subsection (a)(1)(C) of this section, the Secretary of Transportation shall define "based and primarily used in the United States".

§44103. Registration of aircraft

(a) GENERAL.—(1) On application of the owner of an aircraft that meets the requirements of section 44102 of this title, the Administrator of the Federal Aviation Administration shall—

(A) register the aircraft; and

(B) issue a certificate of registration to its owner.

(2) The Administrator may prescribe the extent to which an aircraft owned by the holder of a dealer's certificate of registration issued under section 44104(2) of this title also is registered under this section.

(b) CONTROLLED SUBSTANCE VIOLATIONS.—(1) The Administrator may not issue an owner's certificate of registration under subsection (a)(1) of this section to a person whose certificate is revoked under section 44106 of this title during the 5-year period beginning on the date of the revocation, except—

(A) as provided in section 44106(e)(2) of this title; or

(B) that the Administrator may issue the certificate to the person after the one-year period beginning on the date of the revocation if the Administrator decides that the aircraft otherwise meets the requirements of section 44102 of this title and that denial of a certificate for the 5-year period—

(i) would be excessive considering the nature of the offense or the act committed and the burden the denial places on the person; or

(ii) would not be in the public interest.

(2) A decision of the Administrator under paragraph (1)(B)(i) or (ii) of this subsection is within the discretion of the Administrator. That decision or failure to make a decision is not subject to administrative or judicial review.

(c) CERTIFICATES AS EVIDENCE.—A certificate of registration issued under this section is—

(1) conclusive evidence of the nationality of an aircraft for international purposes, but not conclusive evidence in a proceeding under the laws of the United States; and

(2) not evidence of ownership of an aircraft in a proceeding in which ownership is or may be in issue.

(d) CERTIFICATES AVAILABLE FOR INSPECTION.—An operator of an aircraft shall make available for inspection a certificate of registration for the aircraft when requested by a United States Government, State, or local law enforcement officer.

§44104. Registration of aircraft components and dealers' certificates of registration

The Administrator of the Federal Aviation Administration may prescribe regulations—

(1) in the interest of safety for registering and identifying an aircraft engine, propeller, or appliance; and

(2) in the public interest for issuing, suspending, and revoking a dealer's certificate of registration under this chapter and for its use by a person manufacturing, distributing, or selling aircraft.

§44105. Suspension and revocation of aircraft certificates

The Administrator of the Federal Aviation Administration may suspend or revoke a certificate of registration issued under section 44103 of this title when the aircraft no longer meets the requirements of section 44102 of this title.

§44106. Revocation of aircraft certificates for controlled substance violations

(a) DEFINITION.—In this section, "controlled substance" has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(b) REVOCATIONS.—(1) The Administrator of the Federal Aviation Administration shall issue an order revoking the certificate of registration for an aircraft issued to an owner under section 44103 of this title and any other certificate of registration that the owner of the aircraft holds under section 44103, if the Administrator finds that—

(A) the aircraft was used to carry out, or facilitate, an activity that is punishable by death or imprisonment for more than one year under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance); and

(B) the owner of the aircraft permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in clause (A) of this paragraph.

(2) An aircraft owner that is not an individual is deemed to have permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in paragraph (1)(A) of this subsection only if a majority of the individuals who control the owner of the aircraft or who are involved in forming the major policy of the owner permitted the use of the aircraft knowing that the aircraft was to be used for the activity described in paragraph (1)(A).

(c) ADVICE TO HOLDERS AND OPPORTUNITY TO ANSWER.—Before the Administrator revokes a certificate under subsection (b) of this section, the Administrator shall—

(1) advise the holder of the certificate of the charges or reasons on which the Administrator bases the proposed action; and

(2) provide the holder of the certificate an opportunity to answer the charges and state why the certificate should not be revoked.

(d) APPEALS.—(1) A person whose certificate is revoked by the Administrator under subsection (b) of this section may appeal the revocation order to the National Transportation Safety Board. The Board shall affirm or reverse the order after providing notice and a hearing on the record. In conducting the hearing, the Board is not bound by the findings of fact of the Administrator.

(2) When a person files an appeal with the Board under this subsection, the order of the Administrator revoking the certificate is stayed. However, if the Administrator advises the Board that safety in air transportation or air commerce requires the immediate effectiveness of the order—

(A) the order remains effective; and

(B) the Board shall dispose of the appeal not later than 60 days after notification by the Administrator under this paragraph.

(3) A person substantially affected by an order of the Board under this subsection may seek judicial review of the order under section 46110 of this title. The Administrator shall be made a party to that judicial proceeding.

(e) ACQUITTAL.—(1) The Administrator may not revoke, and the Board may not affirm a revocation of, a certificate of registration under this section on the basis of an activity described in subsection (b)(1)(A) of this section if the holder of the certificate is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity.

(2) If the Administrator has revoked a certificate of registration of a person under this section because of an activity described in subsection (b)(1)(A) of this section, the Administrator shall reissue a certificate to the person if the person—

(A) subsequently is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity; and

(B) otherwise meets the requirements of section 44102 of this title.

§44107. Recordation of conveyances, leases, and security instruments

(a) ESTABLISHMENT OF SYSTEM.—The Administrator of the Federal Aviation Administration shall establish a system for recording—

(1) conveyances that affect an interest in civil aircraft of the United States;

(2) leases and instruments executed for security purposes, including conditional sales contracts, assignments, and amendments, that affect an interest in—

(A) a specifically identified aircraft engine having at least 750 rated takeoff horsepower or its equivalent;

(B) a specifically identified aircraft propeller capable of absorbing at least 750 rated takeoff shaft horsepower;

(C) an aircraft engine, propeller, or appliance maintained for installation or use in an aircraft, aircraft engine, or propeller, by or for an air carrier holding a certificate issued under section 44705 of this title; and

(D) spare parts maintained by or for an air carrier holding a certificate issued under section 44705 of this title; and

(3) releases, cancellations, discharges, and satisfactions related to a conveyance, lease, or instrument recorded under clause (1) or (2) of this subsection.

(b) GENERAL DESCRIPTION REQUIRED.—A lease or instrument recorded under subsection (a)(2) (C) or (D) of this section only has to describe generally the engine, propeller, appliance, or spare part by type and designate its location.

(c) ACKNOWLEDGMENT.—Except as the Administrator otherwise may provide, a conveyance, lease, or instrument may be recorded under subsection (a) of this section only after it has been acknowledged before—

(1) a notary public; or

(2) another officer authorized under the laws of the United States, a State, the District of Columbia, or a territory or possession of the United States to acknowledge deeds.

(d) RECORDS AND INDEXES.—The Administrator shall—

(1) keep a record of the time and date that each conveyance, lease, and instrument is filed and recorded with the Administrator; and

(2) record each conveyance, lease, and instrument filed with the Administrator, in the order of their receipt, and index them by—

(A) the identifying description of the aircraft, aircraft engine, or propeller, or location specified in a lease or instrument recorded under subsection (a)(2) (C) or (D) of this section; and

(B) the names of the parties to each conveyance, lease, and instrument.

§44108. Validity of conveyances, leases, and security instruments

(a) VALIDITY BEFORE FILING.—Until a conveyance, lease, or instrument executed for security purposes that may be recorded under section 44107(a) (1) or (2) of this title is filed for recording, the conveyance, lease, or instrument is valid only against—

(1) the person making the conveyance, lease, or instrument;

(2) that person's heirs and devisees; and

(3) a person having actual notice of the conveyance, lease, or instrument.

(b) PERIOD OF VALIDITY.—When a conveyance, lease, or instrument is recorded under section 44107 of this title, the conveyance, lease, or instrument is valid from the date of filing against all persons, without other recordation, except that—

(1) a lease or instrument recorded under section 44107(a)(2) (A) or (B) of this title is valid for a specifically identified engine or propeller without regard to a lease or instrument previously or subsequently recorded under section 44107(a)(2) (C) or (D); and

(2) a lease or instrument recorded under section 44107(a)(2) (C) or (D) of this title is valid only for items at the location designated in the lease or instrument.

(c) APPLICABLE LAWS.—(1) The validity of a conveyance, lease, or instrument that may be recorded under section 44107 of this title is subject to the laws of the State, the District of Columbia, or the territory or possession of the United States at which the conveyance, lease, or instrument is delivered, regardless of the place at which the subject of the conveyance, lease, or instrument is located or delivered. If the conveyance, lease, or instrument specifies the place at which delivery is intended, it is presumed that the conveyance, lease, or instrument was delivered at the specified place.

(2) This subsection does not take precedence over the Convention on the International Recognition of Rights in Aircraft (4 U.S.T. 1830).

(d) NONAPPLICATION.—This section does not apply to—

(1) a conveyance described in section 44107(a)(1) of this title that was made before August 22, 1938; or

(2) a lease or instrument described in section 44107(a)(2) of this title that was made before June 20, 1948.

§44109. Reporting transfer of ownership

(a) FILING NOTICES.—A person having an ownership interest in an aircraft for which a certificate of registration was issued under section 44103 of this title shall file a notice with the Secretary of the Treasury that the Secretary requires by regulation, not later than 15 days after a sale, conditional sale, transfer, or conveyance of the interest.

(b) EXEMPTIONS.—The Secretary—

(1) shall prescribe regulations that establish guidelines for exempting a person or class from subsection (a) of this section; and

(2) may exempt a person or class under the regulations.

§44110. Information about aircraft ownership and rights

The Administrator of the Federal Aviation Administration may provide by regulation for—

(1) endorsing information on each certificate of registration issued under section 44103 of this title and each certificate issued under section 44704 of this title about ownership of the aircraft for which each certificate is issued; and

(2) recording transactions affecting an interest in, and for other records, proceedings, and details necessary to decide the rights of a party related to, a civil aircraft of the United States, aircraft engine, propeller, appliance, or spare part.

§44111. Modifications in registration and recordation system for aircraft not providing air transportation

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

(b) AUTHORITY TO MAKE MODIFICATIONS.—The Administrator of the Federal Aviation Administration shall make modifications in the system for registering and recording aircraft necessary to make the system more effective in serving the needs of—

(1) buyers and sellers of aircraft;

(2) officials responsible for enforcing laws related to the regulation of controlled substances (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)); and

(3) other users of the system.

(c) NATURE OF MODIFICATIONS.—Modifications made under subsection (b) of this section—

(1) may include a system of titling aircraft or registering all aircraft, even aircraft not operated;

(2) shall ensure positive, verifiable, and timely identification of the true owner; and

(3) shall address at least each of the following deficiencies in and abuses of the existing system:

(A) the registration of aircraft to fictitious persons.

(B) the use of false or nonexistent addresses by persons registering aircraft.

(C) the use by a person registering an aircraft of a post office box or "mail drop" as a return address to evade identification of the person's address.

(D) the registration of aircraft to entities established to facilitate unlawful activities.

(E) the submission of names of individuals on applications for registration of aircraft that are not identifiable.

(F) the ability to make frequent legal changes in the registration markings assigned to aircraft.

(G) the use of false registration markings on aircraft.

(H) the illegal use of "reserved" registration markings on aircraft.

(I) the large number of aircraft classified as being in "self-reported status".

(J) the lack of a system to ensure timely and adequate notice of the transfer of ownership of aircraft.

(K) the practice of allowing temporary operation and navigation of aircraft without the issuance of a certificate of registration.

(d) REGULATIONS.—(1) The Administrator of the Federal Aviation Administration shall prescribe regulations to carry out this section and provide a written explanation of how the regulations address each of the deficiencies and abuses described in subsection (c) of this section. In prescribing the regulations, the Administrator of the Federal Aviation Administration shall consult with the Administrator of Drug Enforcement, the Commissioner of Customs, other law enforcement officials of the United States Government, representatives of State and local law enforcement officials, representatives of the general aviation aircraft industry, representatives of users of general aviation aircraft, and other interested persons.

(2) Regulations prescribed under this subsection shall require that—

(A) each individual listed in an application for registration of an aircraft provide with the application the individual's driver's license number; and

(B) each person (not an individual) listed in an application for registration of an aircraft provide with the application the person's taxpayer identifying number.

§44112. Limitation of liability

(a) DEFINITIONS.—In this section—

(1) "lessor" means a person leasing for at least 30 days a civil aircraft, aircraft engine, or propeller.

(2) "owner" means a person that owns a civil aircraft, aircraft engine, or propeller.

(3) "secured party" means a person having a security interest in, or security title to, a civil aircraft, aircraft engine, or propeller under a conditional sales contract, equipment trust contract, chattel or corporate mortgage, or similar instrument.

(b) LIABILITY.—A lessor, owner, or secured party is liable for personal injury, death, or property loss or damage on land or water only when a civil aircraft, aircraft engine, or propeller is in the actual possession or control of the lessor, owner, or secured party, and the personal injury, death, or property loss or damage occurs because of—

(1) the aircraft, engine, or propeller; or

(2) the flight of, or an object falling from, the aircraft, engine, or propeller.

CHAPTER 443—INSURANCE

Sec.

44301. Definitions.
44302. General authority.
44303. Coverage.
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44305. Insuring United States Government property.
44306. Premiums and limitations on coverage and claims.
44307. Revolving fund.
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§44301. Definitions

In this chapter—

(1) "American aircraft" means—

(A) a civil aircraft of the United States; and

(B) an aircraft owned or chartered by, or made available to—

(i) the United States Government; or

(ii) a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of the State, territory, or possession.

(2) "insurance carrier" means a person authorized to do aviation insurance business in a State, including a mutual or stock insurance company and a reciprocal insurance association.

§44302. General authority

(a) INSURANCE AND REINSURANCE.—(1) Subject to subsection (b) of this section, the Secretary of Transportation may provide insurance and reinsurance against loss or damage arising out of any risk from the operation of an American aircraft or foreign-flag aircraft—

(A) in foreign air commerce; or

(B) between at least 2 places, all of which are outside the United States.

(2) An aircraft may be insured or reinsured for not more than its reasonable value as determined by the Secretary. Insurance or reinsurance may be provided only when the Secretary decides that the insurance cannot be obtained on reasonable terms from an insurance carrier.

(b) PRESIDENTIAL APPROVAL.—The Secretary may provide insurance or reinsurance under subsection (a) of this section only with the approval of the President. The President may approve the insurance or reinsurance only after deciding that the continued operation of the American aircraft or foreign-flag aircraft to be insured or reinsured is necessary to carry out the foreign policy of the United States Government.

(c) CONSULTATION.—The President may require the Secretary to consult with interested departments, agencies, and instrumentalities of the Government before providing insurance or reinsurance under this chapter.

(d) ADDITIONAL INSURANCE.—With the approval of the Secretary, a person having an insurable interest in an aircraft may insure with other underwriters in an amount that is more than the amount insured with the Secretary. However, the Secretary may not benefit from the additional insurance. This subsection does not prevent the Secretary from making contracts of coinsurance.

§44303. Coverage

The Secretary of Transportation may provide insurance and reinsurance authorized under section 44302 of this title for the following:

(1) an American aircraft or foreign-flag aircraft engaged in aircraft operations the President decides are necessary to carry out the foreign policy of the United States Government.

(2) property transported or to be transported on aircraft referred to in clause (1) of this section, including—

(A) shipments by express or registered mail;

(B) property owned by citizens or residents of the United States;

(C) property—

(i) imported to, or exported from, the United States; and

(ii) bought or sold by a citizen or resident of the United States under a contract putting the risk of loss or obligation to provide insurance against risk of loss on the citizen or resident; and

(D) property transported between—

(i) a place in a State or the District of Columbia and a place in a territory or possession of the United States;

(ii) a place in a territory or possession of the United States and a place in another territory or possession of the United States; or

(iii) 2 places in the same territory or possession of the United States.

(3) the personal effects and baggage of officers and members of the crew of an aircraft referred to in clause (1) of this section and of other individuals employed or transported on that aircraft.

(4) officers and members of the crew of an aircraft referred to in clause (1) of this section and other individuals employed or transported on that aircraft against loss of life, injury, or detention.

(5) statutory or contractual obligations or other liabilities, customarily covered by insurance, of an aircraft referred to in clause (1) of this section or of the owner or operator of that aircraft.

§44304. Reinsurance

(a) GENERAL AUTHORITY.—To the extent the Secretary of Transportation is authorized to provide insurance under this chapter, the Secretary may reinsure any part of the insurance provided by an insurance carrier. The Secretary may reinsure with, transfer to, or transfer back to, the carrier any insurance or reinsurance provided by the Secretary under this chapter.

(b) PREMIUM LEVELS.—The Secretary may provide reinsurance at premiums not less than, or obtain reinsurance at premiums not higher than, the premiums the Secretary establishes on similar risks or the premiums the insurance carrier charges for the insurance to be reinsured by the Secretary, whichever is most advantageous to the Secretary. However, the Secretary may make allowances to the insurance carrier for expenses incurred in providing services and facilities that the Secretary considers good business practice, except for payments by the carrier for the stimulation or solicitation of insurance business.

§44305. Insuring United States Government property

With the approval of the President, a department, agency, or instrumentality of the United States Government may obtain insurance under this chapter, except for insurance on valuables subject to sections 1 and 2 of the Government Losses in Shipment Act (40 U.S.C. 721, 722). With that approval, the Secretary of Transportation may provide the insurance without premium at the request of the Secretary of Defense or the head of a department, agency, or instrumentality designated by the President when the Secretary of Defense or the designated head agrees to indemnify the Secretary of Transportation against all losses covered by the insurance. The Secretary of Defense and any designated head may make indemnity agreements with the Secretary of Transportation under this section.

§44306. Premiums and limitations on coverage and claims

(a) PREMIUMS BASED ON RISK.—To the extent practical, the premium charged for insurance or reinsurance under this chapter shall be based on consideration of the risk involved.

(b) TIME LIMITS.—The Secretary of Transportation may provide insurance and reinsurance under this chapter for a period of not more than

60 days. The period may be extended for additional periods of not more than 60 days each only if the President decides, before each additional period, that the continued operation of the aircraft to be insured or reinsured is necessary to carry out the foreign policy of the United States Government.

(c) MAXIMUM INSURED AMOUNT.—The insurance policy on an aircraft insured or reinsured under this chapter shall specify a stated amount that is not more than the value of the aircraft, as determined by the Secretary. A claim under the policy may not be paid for more than that stated amount.

§44307. Revolving fund

(a) EXISTENCE, DISBURSEMENTS, APPROPRIATIONS, AND DEPOSITS.—(1) There is a revolving fund in the Treasury. The Secretary of the Treasury shall disburse from the fund payments to carry out this chapter.

(2) Necessary amounts to carry out this chapter may be appropriated to the fund. The amounts appropriated and other amounts received in carrying out this chapter shall be deposited in the fund.

(b) INVESTMENT.—On request of the Secretary of Transportation, the Secretary of the Treasury may invest any part of the amounts in the revolving fund in interest-bearing securities of the United States Government. The interest on, and the proceeds from the sale or redemption of, the securities shall be deposited in the fund.

(c) EXCESS AMOUNTS.—The balance in the revolving fund in excess of an amount the Secretary of Transportation determines is necessary for the requirements of the fund and for reasonable reserves to maintain the solvency of the fund shall be deposited at least annually in the Treasury as miscellaneous receipts.

(d) EXPENSES.—The Secretary of Transportation shall deposit annually an amount in the Treasury as miscellaneous receipts to cover the expenses the Government incurs when the Secretary of Transportation uses appropriated amounts in carrying out this chapter. The deposited amount shall equal an amount determined by multiplying the average monthly balance of appropriated amounts retained in the revolving fund by a percentage that is at least the current average rate payable on marketable obligations of the Government. The Secretary of the Treasury shall determine annually in advance the percentage applied.

§44308. Administrative

(a) COMMERCIAL PRACTICES.—The Secretary of Transportation may carry out this chapter consistent with commercial practices of the aviation insurance business.

(b) ISSUANCE OF POLICIES AND DISPOSITION OF CLAIMS.—(1) The Secretary may issue insurance policies to carry out this chapter. The Secretary may prescribe the forms, amounts insured under the policies, and premiums charged. The Secretary may change an amount of insurance or a premium for an existing policy only with the consent of the insured.

(2) For a claim under insurance authorized by this chapter, the Secretary may—

(A) settle and pay the claim made for or against the United States Government; and

(B) pay the amount of a judgment entered against the Government.

(c) UNDERWRITING AGENT.—(1) The Secretary may, and when practical shall, employ an insurance carrier or group of insurance carriers to act as an underwriting agent. The Secretary may use the agent to adjust claims under this chapter, but claims may be paid only when approved by the Secretary.

(2) The Secretary may pay reasonable compensation to an underwriting agent for servicing insurance the agent writes for the Secretary. Compensation may include payment for reasonable expenses incurred by the agent but may not include a payment by the agent for stimulation or solicitation of insurance business.

(3) Except as provided by this subsection, the Secretary may not pay an insurance broker or other person acting in a similar capacity any consideration for arranging insurance when the Secretary directly insures any part of the risk.

(d) BUDGET.—The Secretary shall submit annually a budget program for carrying out this chapter as provided for wholly owned Government corporations under chapter 91 of title 31.

(e) ACCOUNTS.—The Secretary shall maintain a set of accounts. The Comptroller General shall audit those accounts under chapter 35 of title 31. Notwithstanding chapter 35, the Comptroller General shall allow credit for expenditures under this chapter made consistent with commercial practices in the aviation insurance business when shown to be necessary because of the business activities authorized by this chapter.

§44309. Civil actions

(a) DISPUTED LOSSES.—A person may bring a civil action against the United States Government when a loss insured under this chapter is in dispute. A civil action involving the same matter (except the action authorized by this subsection) may not be brought against an agent, officer, or employee of the Government carrying out this chapter. To the extent applicable, the procedure in an action brought under section 1346(a)(2) of title 28 applies to an action under this subsection.

(b) VENUE AND JOINDER.—(1) A civil action under subsection (a) of this section may be brought in the United States District Court for the District of Columbia or in the district court of the United States for the judicial district in which the plaintiff or the agent of the plaintiff resides if the plaintiff resides in the United States. If the plaintiff does not reside in the United States, the action may be brought in the United States District Court for the District of Columbia or in the district court of the United States for the judicial district in which the Attorney General agrees to accept service.

(2) An interested person may be joined as a party to a civil action brought under subsection (a) of this section initially or on motion of either party to the action.

(c) TIME REQUIREMENTS.—When an insurance claim is made under this chapter, the period during which, under section 2401 of title 28, a civil action must be brought under subsection (a) of this section is suspended until 60 days after the Secretary of Transportation denies the claim. The claim is deemed to be administratively denied if the Secretary does not act on the claim not later than 6 months after filing, unless the Secretary makes a different agreement with the claimant when there is good cause for an agreement.

(d) INTERPLEADER.—(1) If the Secretary admits the Government owes money under an insurance claim under this chapter and there is a dispute about the person that is entitled to payment, the Government may bring a civil action of interpleader against the persons that may be entitled to payment. The action may be brought in the United States District Court for the District of Columbia or in the district court of the United States for the judicial district in which any party resides.

(2) The district court may order a party not residing or found in the judicial district in which the action is brought to appear in a civil action under this subsection. The order shall be served in a reasonable manner decided by the district court. If the court decides an unknown person might assert a claim under the insurance that is the subject of the action, the court may order service on that person by publication in the Federal Register.

(3) Judgment in a civil action under this subsection discharges the Government from further liability to the parties to the action and to all other persons served by publication under paragraph (2) of this subsection.

§44310. Ending effective date

The authority of the Secretary of Transportation to provide insurance and reinsurance under this chapter is not effective after September 30, 1992.

CHAPTER 445—AVIATION FACILITIES AND RESEARCH

Sec.

44501. Plans and policy.
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44513. Regional centers of air transportation excellence.
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§44501. Plans and policy

(a) LONG RANGE PLANS AND POLICY REQUIREMENTS.—The Administrator of the Federal Aviation Administration shall make long range plans and policy for the orderly development and use of the navigable airspace, and the orderly development and location of air navigation facilities, that will best meet the needs of, and serve the interests of, civil aeronautics and the national defense, except for needs of the armed forces that are peculiar to air warfare and primarily of military concern.

(b) AIRWAY CAPITAL INVESTMENT PLAN.—The Administrator of the Federal Aviation Administration shall review, revise, and publish a national airways system plan, known as the Airway Capital Investment Plan, before the beginning of each fiscal year. The plan shall set forth—

(1) for a 10-year period, the research, engineering, and development programs and the facilities and equipment that the Administrator considers necessary for a system of airways, air traffic services, and navigation aids that will—

(A) meet the forecasted needs of civil aeronautics;

(B) meet the requirements that the Secretary of Defense establishes for the support of the national defense; and

(C) provide the highest degree of safety in air commerce;

(2) for the first and 2d years of the plan, detailed annual estimates of—

(A) the number, type, location, and cost of acquiring, operating, and maintaining required facilities and services;

(B) the cost of research, engineering, and development required to improve safety, system capacity, and efficiency; and

(C) personnel levels required for the activities described in subclauses (A) and (B) of this clause;

(3) for the 3d, 4th, and 5th years of the plan, estimates of the total cost of each major program for the 3-year period, and additional major research programs, acquisition of systems and facilities, and changes in personnel levels that may be required to meet long range objectives and that may have significant impact on future funding requirements; and

(4) a 10-year investment plan that considers long range objectives that the Administrator considers necessary to—

(A) ensure that safety is given the highest priority in providing for a safe and efficient airway system; and

(B) meet the current and projected growth of aviation and the requirements of interstate commerce, the United States Postal Service, and the national defense.

(c) ANNUAL REPORT.—Not later than April 1 of each year, the Secretary of Transportation shall report to Congress on the operations of the national airways system during the prior fiscal year. The report shall include a review of the operations of the Federal Aviation Administration, including—

(1) a detailed report on programs intended to improve the safety of flight operations and the capacity and efficiency of the national airways system;

(2) significant problems encountered in the programs;

(3) a summary of amounts committed in each major program area; and

(4) a report on amounts appropriated but not expended for the programs.

(d) NATIONAL AVIATION RESEARCH PLAN.—(1) The Administrator of the Federal Aviation Administration shall prepare and publish annually a national aviation research plan and submit the plan to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives. The plan shall be submitted not later than the date of submission of the President's budget to Congress.

(2)(A) The plan shall describe, for a 15-year period, the research, engineering, and development that the Administrator of the Federal Aviation Administration considers necessary—

(i) to ensure the continued capacity, safety, and efficiency of aviation in the United States, considering emerging technologies and forecasted needs of civil aeronautics; and

(ii) to provide the highest degree of safety in air travel.

(B) The plan shall cover all research conducted under sections 40119, 44504, 44505, 44507, 44511–44513, and 44912 of this title and shall identify complementary and coordinated research efforts that the Administrator of the National Aeronautics and Space Administration conducts with amounts specifically appropriated to the Administration. For projects for which the Administrator of the Federal Aviation Administration anticipates requesting an appropriation, the plan shall include—

(i) for the first 2 years of the plan, detailed annual estimates of the schedule, cost, and work-force levels for each research project, including a description of the scope and content of each major contract, grant, or interagency agreement;

(ii) for the 3d, 4th, and 5th years of the plan, estimates of the total cost of each major project and any additional major research projects that may be required to meet long-term objectives and that may have significant impact on future appropriations requirements;

(iii) for the 6th and subsequent years of the plan, the long-term objectives the Administrator of the Federal Aviation Administration considers necessary to ensure that aviation safety will be given the highest priority; and

(iv) details of a program to disseminate to the private sector the results of aviation research conducted by the Administrator of the Federal Aviation Administration, including any new technologies developed.

(3) Subject to section 40119(b) of this title and regulations prescribed under section 40119(b), the Administrator of the Federal Aviation Administration shall submit to the committees named in paragraph (1) of this subsection an annual report on the accomplishments of the research completed during the prior fiscal year. The report shall be submitted with the plan required under paragraph (1) and be organized to allow comparison with the plan in effect for the prior fiscal year.

§44502. Air navigation facilities

(a) GENERAL AUTHORITY.—(1) The Administrator of the Federal Aviation Administration may—

(A) acquire, establish, improve, operate, and maintain air navigation facilities; and

(B) provide facilities and personnel to regulate and protect air traffic.

(2) The cost of site preparation work associated with acquiring, establishing, or improving an air navigation facility under paragraph (1)(A) of this subsection shall be charged to amounts available for that purpose appropriated under section 48101(a) of this title. The Secretary of Transportation may make an agreement with an airport owner or sponsor (as defined in section 47102 of this title) so that the owner or sponsor will provide the work and be paid or reimbursed by the Secretary from the appropriated amounts.

(3) The Secretary of Transportation may authorize a department, agency, or instrumentality of the United States Government to carry out any duty or power under this subsection with the consent of the head of the department, agency, or instrumentality.

(b) CERTIFICATION OF NECESSITY.—Except for Government money expended under this part or for a military purpose, money may be expended to acquire, establish, build, operate, repair, alter, or maintain an air navigation facility only if the Administrator of the Federal Aviation Administration certifies in writing that the facility is reasonably necessary for use in air commerce or for the national defense. An interested person may apply for a certificate for a facility to be acquired, established, built, operated, repaired, altered, or maintained by or for the person.

(c) ENSURING CONFORMITY WITH PLANS AND POLICIES.—(1) To ensure that conformity with plans and policies for, and allocation of, airspace by the Administrator of the Federal Aviation Administration under section 40103(b)(1) of this title, a military airport, military landing area, or missile or rocket site may be acquired, established, or built, or a runway may be altered substantially, only if the Administrator of the Federal Aviation Administration is given reasonable prior notice so that the Administrator may advise the appropriate committees of Congress and interested departments, agencies, and instrumentalities of the Government on the effect of the acquisition, establishment, building, or alteration on the use of airspace by aircraft. A disagreement between the Administrator of the Federal Aviation Administration and the Secretary of Defense or the Administrator of the National Aeronautics and Space Administration may be appealed to the President for a final decision.

(2) To ensure conformity, an airport or landing area not involving the expenditure of Government money may be established or built, or a runway may be altered substantially, only if the Administrator of the Federal Aviation Administration is given reasonable prior notice so that the Administrator may provide advice on the effects of the establishment, building, or alteration on the use of airspace by aircraft.

(d) PUBLIC USE AND EMERGENCY ASSISTANCE.—(1) The head of a department, agency, or instrumentality of the Government having jurisdiction over an air navigation facility owned or operated by the Government may provide, under regulations the head of the department, agency, or instrumentality prescribes, for public use of the facility.

(2) The head of a department, agency, or instrumentality of the Government having jurisdiction over an airport or emergency landing field owned or operated by the Government may provide, under regulations the head of the department, agency, or instrumentality prescribes, for assistance, and the sale of fuel, oil, equipment, and supplies, to an aircraft, but only when necessary, because of an emergency, to allow the aircraft to continue to the nearest airport operated by private enterprise. The head of the department, agency, or instrumentality shall provide for the assistance and sale at the prevailing local fair market value as determined by the head of the department, agency, or instrumentality. An amount that the head decides is equal to the cost of the assistance provided and the fuel, oil, equipment, and supplies sold shall be credited to the appropriation from which the cost was paid. The balance shall be credited to miscellaneous receipts.

(e) CONSENT OF CONGRESS.—Congress consents to a State making an agreement, not in conflict with a law of the United States, with another State to develop or operate an airport facility.

(f) TRANSFERS OF INSTRUMENT LANDING SYSTEMS.—An airport may transfer, without consideration, to the Administrator of the Federal Aviation Administration an instrument landing system (and associated approach lighting equipment and runway visual range equipment) that conforms to performance specifications of the Administrator if a Government airport aid program, airport development aid program, or airport improvement project grant was used to assist in purchasing the system. The Administrator shall accept the system and operate and maintain it under criteria of the Administrator.

§44503. Reducing nonessential expenditures

The Secretary of Transportation shall attempt to reduce the capital, operating, maintenance, and administrative costs of the national airport and airway system to the maximum extent practicable consistent with the highest degree of aviation safety. At least annually, the Secretary shall consult with and consider the recommendations of users of the system on ways to reduce nonessential expenditures of the United States Government for aviation. The Secretary shall give particular attention to a recommendation that may reduce, with no adverse effect on safety, future personnel requirements and costs to the Government required to be recovered from user charges.

§44504. Improved aircraft, aircraft engines, propellers, and appliances

(a) DEVELOPMENTAL WORK AND SERVICE TESTING.—The Administrator of the Federal Aviation Administration may conduct or supervise developmental work and service testing to improve aircraft, aircraft engines, propellers, and appliances.

(b) RESEARCH.—The Administrator shall conduct or supervise research—

(1) to develop technologies and analyze information to predict the effects of aircraft design, maintenance, testing, wear, and fatigue on the life of aircraft and air safety;

(2) to develop methods of analyzing and improving aircraft maintenance technology and practices, including nondestructive evaluation of aircraft structures;

(3) to assess the fire and smoke resistance of aircraft material;

(4) to develop improved fire and smoke resistant material for aircraft interiors;

(5) to develop and improve fire and smoke containment systems for inflight aircraft fires;

(6) to develop advanced aircraft fuels with low flammability and technologies that will contain aircraft fuels to minimize post-crash fire hazards; and

(7) to develop technologies and methods to assess the risk of and prevent defects, failures, and malfunctions of products, parts, processes,

and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances that could result in a catastrophic failure of an aircraft.

(c) Authority To Buy Items Offering Special Advantages.—In carrying out this section, the Administrator, by negotiation or otherwise, may buy or exchange experimental aircraft, aircraft engines, propellers, and appliances that the Administrator decides may offer special advantages to aeronautics.

§44505. Systems, procedures, facilities, and devices

(a) General Requirements.—(1) The Administrator of the Federal Aviation Administration shall—

(A) develop, alter, test, and evaluate systems, procedures, facilities, and devices, and define their performance characteristics, to meet the needs for safe and efficient navigation and traffic control of civil and military aviation, except for needs of the armed forces that are peculiar to air warfare and primarily of military concern; and

(B) select systems, procedures, facilities, and devices that will best serve those needs and promote maximum coordination of air traffic control and air defense systems.

(2) The Administrator may make contracts to carry out this subsection without regard to section 3324(a) and (b) of title 31.

(3) When a substantial question exists under paragraph (1) of this subsection about whether a matter is of primary concern to the armed forces, the Administrator shall decide whether the Administrator or the Secretary of the appropriate military department has responsibility. The Administrator shall be given technical information related to each research and development project of the armed forces that potentially applies to, or potentially conflicts with, the common system to ensure that potential application to the common system is considered properly and that potential conflicts with the system are eliminated.

(b) Research on Human Factors and Simulation Models.—The Administrator shall conduct or supervise research—

(1) to develop a better understanding of the relationship between human factors and aviation accidents and between human factors and air safety;

(2) to enhance air traffic controller, mechanic, and flight crew performance;

(3) to develop a human-factor analysis of the hazards associated with new technologies to be used by air traffic controllers, mechanics, and flight crews;

(4) to identify innovative and effective corrective measures for human errors that adversely affect air safety; and

(5) to develop dynamic simulation models of the air traffic control system and airport design and operating procedures that will provide analytical technology—

(A) to predict airport and air traffic control safety and capacity problems;

(B) to evaluate planned research projects; and

(C) to test proposed revisions in airport and air traffic control operations programs.

(c) Research on Developing and Maintaining a Safe and Efficient System.—The Administrator shall conduct or supervise research on—

(1) airspace and airport planning and design;

(2) airport capacity enhancement techniques;

(3) human performance in the air transportation environment;

(4) aviation safety and security;

(5) the supply of trained air transportation personnel, including pilots and mechanics; and

(6) other aviation issues related to developing and maintaining a safe and efficient air transportation system.

§44506. Air traffic controller performance research

(a) Research on Effect of Automation on Performance.—To develop the means necessary to establish appropriate selection criteria and training methodologies for the next generation of air traffic controllers, the Administrator of the Federal Aviation Administration shall conduct research to study the effect of automation on the performance of the next generation of air traffic controllers and the air traffic control system. The research shall include investigating—

(1) methods for improving and accelerating future air traffic controller training through the application of advanced training techniques, including the use of simulation technology;

(2) the role of automation in the air traffic control system and its physical and psychological effects on air traffic controllers;

(3) the attributes and aptitudes needed to function well in a highly automated air traffic control system and the development of appropriate testing methods for identifying individuals with those attributes and aptitudes;

(4) innovative methods for training potential air traffic controllers to enhance the benefits of automation and maximize the effectiveness of the air traffic control system; and

(5) new technologies and procedures for exploiting automated communication systems, including Mode S Transponders, to improve information transfers between air traffic controllers and aircraft pilots.

(b) Research on Human Factor Aspects of Automation.—The Administrators of the Federal Aviation Administration and National Aeronautics and Space Administration may make an agreement for the use of the National Aeronautics and Space Administration's unique human factor facilities and expertise in conducting research activities to study the human factor aspects of the highly automated environment for the next generation of air traffic controllers. The research activities shall include investigating—

(1) human perceptual capabilities and the effect of computer-aided decision making on the workload and performance of air traffic controllers;

(2) information management techniques for advanced air traffic control display systems; and

(3) air traffic controller workload and performance measures, including the development of predictive models.

§44507. Civil aeromedical research

The Civil Aeromedical Institute established by section 106(j) of this title may—

(1) conduct civil aeromedical research, including research related to—

(A) the protection and survival of aircraft occupants;

(B) medical accident investigation and airman medical certification;

(C) toxicology and the effects of drugs on human performance;

(D) the impact of disease and disability on human performance;

(E) vision and its relationship to human performance and equipment design;

(F) human factors of flight crews, air traffic controllers, mechanics, inspectors, airway facility technicians, and other individuals involved in operating and maintaining aircraft and air traffic control equipment; and

(G) agency work force optimization, including training, equipment design, reduction of errors, and identification of candidate tasks for automation;

(2) make comments to the Administrator of the Federal Aviation Administration on human factors aspects of proposed air safety regulations;

(3) make comments to the Administrator on human factors aspects of proposed training programs, equipment requirements, standards, and procedures for aviation personnel;

(4) advise, assist, and represent the Federal Aviation Administration in the human factors aspects of joint projects between the Administration and the National Aeronautics and Space Administration, other departments, agencies, and instrumentalities of the United States Government, industry, and governments of foreign countries; and

(5) provide medical consultation services to the Administrator about medical certification of airmen.

§44508. Research advisory committee

(a) Establishment and Duties.—(1) There is a research advisory committee in the Federal Aviation Administration. The committee shall—

(A) provide advice and recommendations to the Administrator of the Federal Aviation Administration about needs, objectives, plans, approaches, content, and accomplishments of the aviation research program carried out under sections 40119, 44504, 44505, 44507, 44511–44513, and 44912 of this title;

(B) assist in ensuring that the research is coordinated with similar research being conducted outside the Administration; and

(C) review the operations of the regional centers of air transportation excellence established under section 44513 of this title.

(2) The Administrator may establish subordinate committees to provide advice on specific areas of research conducted under sections 40119, 44504, 44505, 44507, 44511–44513, and 44912 of this title.

(b) Members, Chairman, Pay, and Expenses.—(1) The committee is composed of not more than 30 members appointed by the Administrator from among individuals who are not employees of the Administration and who are specially qualified to serve on the committee because of their education, training, or experience. In appointing members of the committee, the Administrator shall ensure that the regional centers of air transportation excellence, universities, corporations, associations, consumers, and other departments, agencies, and instrumentalities of the United States Government are represented.

(2) The Administrator shall designate the chairman of the committee.

(3) A member of the committee serves without pay. However, the Administrator may allow a member, when attending meetings of the committee or a subordinate committee, travel or transportation expenses as authorized under section 5703 of title 5.

(c) Support Staff, Information, and Services.—The Administrator shall provide support staff for the committee. On request of the committee, the Administrator shall provide information, administrative services, and supplies that the Administrator considers necessary for the committee to carry out its duties and powers.

(d) Nonapplication.—Section 14 of the Federal Advisory Committee Act (5 App. U.S.C.) does not apply to the committee.

(e) Use and Limitation of Amounts.—(1) Not more than .1 percent of the amounts made available to conduct research under sections 40119, 44504, 44505, 44507, 44511–44513, and 44912 of this title may be used by the Administrator to carry out this section.

(2) A limitation on amounts available for obligation by or for the committee does not apply to amounts made available to carry out this section.

§44509. Demonstration projects

The Secretary of Transportation may carry out under this chapter demonstration projects that the Secretary considers necessary for research and development activities under this chapter.

§44510. Airway science curriculum grants

(a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation Administration may make competitive grant agreements with institutions of higher education having airway science curricula for the United States Government's share of the allowable direct costs of the following categories of items to the extent that the items are in support of airway science curricula:

(1) the construction, purchase, or lease with an option to purchase, of buildings and associated facilities.

(2) instructional material and equipment.

(b) COST GUIDELINES.—The Administrator shall establish guidelines to determine the direct costs allowable under a grant to be made under this section. The Government's share of the allowable cost of a project assisted by a grant under this section may not be more than 50 percent.

§44511. Aviation research grants

(a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation Administration may make grants to institutions of higher education and nonprofit research organizations to conduct aviation research in areas the Administrator considers necessary for the long-term growth of civil aviation.

(b) APPLICATIONS.—An institution of higher education or nonprofit research organization interested in receiving a grant under this section may submit an application to the Administrator. The application must be in the form and contain the information the Administrator requires.

(c) SOLICITATION, REVIEW, AND EVALUATION PROCESS.—The Administrator shall establish a solicitation, review, and evaluation process that ensures—

(1) providing grants under this section for proposals having adequate merit and relevancy to the mission of the Administration;

(2) a fair geographical distribution of grants under this section; and

(3) the inclusion of historically black institutions of higher education and other minority nonprofit research organizations for grant consideration under this section.

(d) RECORDS.—Each person receiving a grant under this section shall maintain records that the Administrator requires as being necessary to facilitate an effective audit and evaluation of the use of money provided under the grant.

(e) ANNUAL REPORT.—The Administrator shall submit an annual report to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on carrying out this section.

§44512. Catastrophic failure prevention research grants

(a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation Administration may make grants to institutions of higher education and nonprofit research organizations—

(1) to conduct aviation research related to the development of technologies and methods to assess the risk of, and prevent, defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances that could result in a catastrophic failure of an aircraft; and

(2) to establish centers of excellence for continuing the research.

(b) SOLICITATION, APPLICATION, REVIEW, AND EVALUATION PROCESS.—The Administrator shall establish a solicitation, application, review, and evaluation process that ensures providing grants under this section for proposals having adequate merit and relevancy to the research described in subsection (a) of this section.

§44513. Regional centers of air transportation excellence

(a) GENERAL AUTHORITY.—The Administrator of the Federal Aviation Administration may make grants to institutions of higher education to establish and operate regional centers of air transportation excellence. The locations shall be distributed in a geographically fair way.

(b) RESPONSIBILITIES.—(1) The responsibilities of each center established under this section shall include—

(A) conducting research on—

(i) airspace and airport planning and design;

(ii) airport capacity enhancement techniques;

(iii) human performance in the air transportation environment;

(iv) aviation safety and security;

(v) the supply of trained air transportation personnel, including pilots and mechanics; and

(vi) other aviation issues related to developing and maintaining a safe and efficient air transportation system; and

(B) interpreting, publishing, and disseminating the results of the research.

(2) In conducting research described in paragraph (1)(A) of this subsection, each center may make contracts with nonprofit research organizations and other appropriate persons.

(c) APPLICATIONS.—An institution of higher education interested in receiving a grant under this section may submit an application to the Administrator. The application must be in the form and contain the information that the Administrator requires by regulation.

(d) SELECTION CRITERIA.—The Administrator shall select recipients of grants under this section on the basis of the following criteria:

(1) the extent to which the needs of the State in which the applicant is located are representative of the needs of the region for improved air transportation services and facilities.

(2) the demonstrated research and extension resources available to the applicant to carry out this section.

(3) the ability of the applicant to provide leadership in making national and regional contributions to the solution of both long-range and immediate air transportation problems.

(4) the extent to which the applicant has an established air transportation program.

(5) the demonstrated ability of the applicant to disseminate results of air transportation research and educational programs through a statewide or regionwide continuing education program.

(6) the projects the applicant proposes to carry out under the grant.

(e) EXPENDITURE AGREEMENTS.—A grant may be made under this section in a fiscal year only if the recipient makes an agreement with the Administrator that the Administrator requires to ensure that the recipient will maintain its total expenditures from all other sources for establishing and operating the center and related research activities at a level at least equal to the average level of those expenditures in the 2 fiscal years of the recipient occurring immediately before November 5, 1990.

(f) GOVERNMENT'S SHARE OF COSTS.—The United States Government's share of a grant under this section is 50 percent of the costs of establishing and operating the center and related research activities that the grant recipient carries out.

(g) ALLOCATING AMOUNTS.—The Administrator shall allocate amounts made available to carry out this section in a geographically fair way.

§44514. Flight service stations

(a) HOURS OF OPERATION.—(1) The Secretary of Transportation may close, or reduce the hours of operation of, a flight service station in an area only if the service provided in the area after the closing or during the hours the station is not in operation is provided by an automated flight service station with at least model 1 equipment.

(2) The Secretary shall reopen a flight service station closed after March 24, 1987, but before July 15, 1987, as soon as practicable if the service in the area in which the station is located has not been provided since the closing by an automatic flight service station with at least model 1 equipment. The hours of operation for the reopened station shall be the same as were the hours of operation for the station on March 25, 1987. After reopening the station, the Secretary may close, or reduce the hours of operation of, the station only as provided in paragraph (1) of this subsection.

(b) MANNED AUXILIARY STATIONS.—(1) The Secretary and the Administrator of the Federal Aviation Administration shall establish a system of manned auxiliary flight service stations. The manned auxiliary flight service stations shall supplement the services of the planned consolidation to 61 automated flight service stations under the flight service station modernization program. A manned auxiliary flight service station shall be located in an area of unique weather or operational conditions that are critical to the safety of flight.

(2) Not later than May 4, 1991, the Secretary and the Administrator shall submit to Congress a report on the plan and schedule for carrying out this subsection.

CHAPTER 447—SAFETY REGULATION

Sec.

44701. General requirements.
44702. Issuance of certificates.
44703. Airman certificates.
44704. Type certificates, production certificates, and airworthiness certificates.
44705. Air carrier operating certificates.
44706. Airport operating certificates.
44707. Examining and rating air agencies.
44708. Inspecting and rating air navigation facilities.
44709. Amendments, modifications, suspensions, and revocations of certificates.
44710. Revocations of airman certificates for controlled substance violations.
44711. Prohibitions and exemption.
44712. Emergency locator transmitters.
44713. Inspection and maintenance.
44714. Aviation fuel standards.
44715. Controlling aircraft noise and sonic boom.
44716. Collision avoidance systems.
44717. Aging aircraft.
44718. Structures interfering with air commerce.
44719. Standards for navigational aids.
44720. Meteorological services.
44721. Aeronautical maps and charts.
44722. Annual report.

§44701. General requirements

(a) PROMOTING SAFETY.—The Administrator of the Federal Aviation Administration shall promote safe flight of civil aircraft in air commerce by prescribing—

(1) minimum standards required in the interest of safety for appliances and for the design, material, construction, quality of work, and performance of aircraft, aircraft engines, and propellers;

(2) regulations and minimum standards in the interest of safety for—

(A) inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances;

(B) equipment and facilities for, and the timing and manner of, the inspecting, servicing, and overhauling; and

(C) a qualified private person, instead of an officer or employee of the Administration, to examine and report on the inspecting, servicing, and overhauling;

(3) regulations required in the interest of safety for the reserve supply of aircraft, aircraft en-

gines, propellers, appliances, and aircraft fuel and oil, including the reserve supply of fuel and oil carried in flight;

(4) regulations in the interest of safety for the maximum hours or periods of service of airmen and other employees of air carriers; and

(5) regulations and minimum standards for other practices, methods, and procedure the Administrator finds necessary for safety in air commerce and national security.

(b) Prescribing Minimum Safety Standards.—The Administrator may prescribe minimum safety standards for—

(1) an air carrier to whom a certificate is issued under section 44705 of this title; and

(2) operating an airport serving any passenger operation of air carrier aircraft designed for at least 31 passenger seats.

(c) Reducing and Eliminating Accidents.—The Administrator shall carry out this chapter in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation. However, the Administrator is not required to give preference either to air transportation or to other air commerce in carrying out this chapter.

(d) Considerations and Classification of Regulations and Standards.—When prescribing a regulation or standard under subsection (a) or (b) of this section or section 44702–44716 of this title, the Administrator shall—

(1) consider—

(A) the duty of an air carrier to provide service with the highest possible degree of safety in the public interest; and

(B) differences between air transportation and other air commerce; and

(2) classify a regulation or standard appropriate to the differences between air transportation and other air commerce.

(e) Exemptions.—The Administrator may grant an exemption from a requirement of a regulation prescribed under subsection (a) or (b) of this section or section 44702–44716 of this title if the Administrator finds the exemption is in the public interest.

§44702. Issuance of certificates

(a) General Authority and Applications.—The Administrator of the Federal Aviation Administration may issue airman certificates, type certificates, production certificates, airworthiness certificates, air carrier operating certificates, airport operating certificates, air agency certificates, and air navigation facility certificates under this chapter. An application for a certificate must—

(1) be under oath when the Administrator requires; and

(2) be in the form, contain information, and be filed and served in the way the Administrator prescribes.

(b) Considerations.—When issuing a certificate under this chapter, the Administrator shall—

(1) consider—

(A) the duty of an air carrier to provide service with the highest possible degree of safety in the public interest; and

(B) differences between air transportation and other air commerce; and

(2) classify a certificate according to the differences between air transportation and other air commerce.

(c) Prior Certification.—The Administrator may authorize an aircraft, aircraft engine, propeller, or appliance for which a certificate has been issued authorizing the use of the aircraft, aircraft engine, propeller, or appliance in air transportation to be used in air commerce without another certificate being issued.

(d) Delegation.—(1) Subject to regulations, supervision, and review the Administrator may prescribe, the Administrator may delegate to a qualified private person, or to an employee under the supervision of that person, a matter related to—

(A) the examination, testing, and inspection necessary to issue a certificate under this chapter; and

(B) issuing the certificate.

(2) The Administrator may rescind a delegation under this subsection at any time for any reason the Administrator considers appropriate.

(3) A person affected by an action of a private person under this subsection may apply for reconsideration of the action by the Administrator. On the Administrator's own initiative, the Administrator may reconsider the action of a private person at any time. If the Administrator decides on reconsideration that the action is unreasonable or unwarranted, the Administrator shall change, modify, or reverse the action. If the Administrator decides the action is warranted, the Administrator shall affirm the action.

§44703. Airman certificates

(a) General.—The Administrator of the Federal Aviation Administration shall issue an airman certificate to an individual when the Administrator finds, after investigation, that the individual is qualified for, and physically able to perform the duties related to, the position to be authorized by the certificate.

(b) Contents.—(1) An airman certificate shall—

(A) be numbered and recorded by the Administrator of the Federal Aviation Administration;

(B) contain the name, address, and description of the individual to whom the certificate is issued;

(C) contain terms the Administrator decides are necessary to ensure safety in air commerce, including terms on the duration of the certificate, periodic or special examinations, and tests of physical fitness;

(D) specify the capacity in which the holder of the certificate may serve as an airman with respect to an aircraft; and

(E) designate the class the certificate covers.

(2) A certificate issued to a pilot serving in scheduled air transportation shall have the designation "airline transport pilot" of the appropriate class.

(c) Appeals.—(1) An individual whose application for the issuance or renewal of an airman certificate has been denied may appeal the denial to the National Transportation Safety Board, except if the individual holds a certificate that—

(A) is suspended at the time of denial; or

(B) was revoked within one year from the date of the denial.

(2) The Board shall conduct a hearing on the appeal at a place convenient to the place of residence or employment of the applicant. The Board is not bound by findings of fact of the Administrator of the Federal Aviation Administration but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law. At the end of the hearing, the Board shall decide whether the individual meets the applicable regulations and standards. The Administrator is bound by that decision.

(d) Restrictions and Prohibitions.—The Administrator of the Federal Aviation Administration may—

(1) restrict or prohibit issuing an airman certificate to an alien; or

(2) make issuing the certificate to an alien dependent on a reciprocal agreement with the government of a foreign country.

(e) Controlled Substance Violations.—The Administrator of the Federal Aviation Administration may not issue an airman certificate to an individual whose certificate is revoked under section 44710 of this title except—

(1) when the Administrator decides that issuing the certificate will facilitate law enforcement efforts; and

(2) as provided in section 44710(e)(2) of this title.

(f) Modifications in System.—(1) The Administrator of the Federal Aviation Administration shall make modifications in the system for issuing airman certificates necessary to make the system more effective in serving the needs of pilots and officials responsible for enforcing laws related to the regulation of controlled substances (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)). The modifications shall ensure positive and verifiable identification of each individual applying for or holding a certificate and shall address at least each of the following deficiencies in, and abuses of, the existing system:

(A) the use of fictitious names and addresses by applicants for those certificates.

(B) the use of stolen or fraudulent identification in applying for those certificates.

(C) the use by an applicant of a post office box or "mail drop" as a return address to evade identification of the applicant's address.

(D) the use of counterfeit and stolen airman certificates by pilots.

(E) the absence of information about physical characteristics of holders of those certificates.

(2) The Administrator of the Federal Aviation Administration shall prescribe regulations to carry out paragraph (1) of this subsection and provide a written explanation of how the regulations address each of the deficiencies and abuses described in paragraph (1). In prescribing the regulations, the Administrator of the Federal Aviation Administration shall consult with the Administrator of Drug Enforcement, the Commissioner of Customs, other law enforcement officials of the United States Government, representatives of State and local law enforcement officials, representatives of the general aviation aircraft industry, representatives of users of general aviation aircraft, and other interested persons.

§44704. Type certificates, production certificates, and airworthiness certificates

(a) Type Certificates.—(1) The Administrator of the Federal Aviation Administration shall issue a type certificate for an aircraft, aircraft engine, or propeller, or for an appliance specified under paragraph (2)(A) of this subsection when the Administrator finds that the aircraft, aircraft engine, propeller, or appliance is properly designed and manufactured, performs properly, and meets the regulations and minimum standards prescribed under section 44701(a) of this title. On receiving an application for a type certificate, the Administrator shall investigate the application and may conduct a hearing. The Administrator shall make, or require the applicant to make, tests the Administrator considers necessary in the interest of safety.

(2) The Administrator may—

(A) specify in regulations those appliances that reasonably require a type certificate in the interest of safety;

(B) include in a type certificate terms required in the interest of safety; and

(C) record on the certificate a numerical specification of the essential factors related to the performance of the aircraft, aircraft engine, or propeller for which the certificate is issued.

(b) Production Certificates.—The Administrator shall issue a production certificate authorizing the production of a duplicate of an aircraft, aircraft engine, propeller, or appliance for which a type certificate has been issued when the Administrator finds the duplicate will conform to the certificate. On receiving an application, the Administrator shall inspect, and

may require testing of, a duplicate to ensure that it conforms to the requirements of the certificate. The Administrator may include in a production certificate terms required in the interest of safety.

(c) AIRWORTHINESS CERTIFICATES.—(1) The registered owner of an aircraft may apply to the Administrator for an airworthiness certificate for the aircraft. The Administrator shall issue an airworthiness certificate when the Administrator finds that the aircraft conforms to its type certificate and, after inspection, is in condition for safe operation. The Administrator shall register each airworthiness certificate and may include appropriate information in the certificate. The certificate number or other individual designation the Administrator requires shall be displayed on the aircraft. The Administrator may include in an airworthiness certificate terms required in the interest of safety.

(2) A person applying for the issuance or renewal of an airworthiness certificate for an aircraft for which ownership has not been recorded under section 44107 or 44110 of this title must submit with the application information related to the ownership of the aircraft the Administrator decides is necessary to identify each person having a property interest in the aircraft and the kind and extent of the interest.

§44705. Air carrier operating certificates

The Administrator of the Federal Aviation Administration shall issue an air carrier operating certificate to a person desiring to operate as an air carrier when the Administrator finds, after investigation, that the person properly and adequately is equipped and able to operate safely under this part and regulations and standards prescribed under this part. An air carrier operating certificate shall—

(1) contain terms necessary to ensure safety in air transportation; and

(2) specify the places to and from which, and the airways of the United States over which, a person may operate as an air carrier.

§44706. Airport operating certificates

(a) GENERAL.—The Administrator of the Federal Aviation Administration shall issue an airport operating certificate to a person desiring to operate an airport—

(1) that serves an air carrier operating aircraft designed for at least 31 passenger seats;

(2) that the Administrator requires to have a certificate; and

(3) when the Administrator finds, after investigation, that the person properly and adequately is equipped and able to operate safely under this part and regulations and standards prescribed under this part.

(b) TERMS.—An airport operating certificate issued under this section shall contain terms necessary to ensure safety in air transportation. Unless the Administrator decides that it is not in the public interest, the terms shall include conditions related to—

(1) operating and maintaining adequate safety equipment, including firefighting and rescue equipment capable of rapid access to any part of the airport used for landing, takeoff, or surface maneuvering of an aircraft; and

(2) friction treatment for primary and secondary runways that the Secretary of Transportation decides is necessary.

(c) EXEMPTIONS.—The Administrator may exempt from the requirements of this section, related to firefighting and rescue equipment, an operator of an airport described in subsection (a) of this section having less than .25 percent of the total number of passenger boardings each year at all airports described in subsection (a) when the Administrator decides that the requirements are or would be unreasonably costly, burdensome, or impractical.

§44707. Examining and rating air agencies

The Administrator of the Federal Aviation Administration may examine and rate the following air agencies:

(1) civilian schools giving instruction in flying or repairing, altering, and maintaining aircraft, aircraft engines, propellers, and appliances, on the adequacy of instruction, the suitability and airworthiness of equipment, and the competency of instructors.

(2) repair stations and shops that repair, alter, and maintain aircraft, aircraft engines, propellers, and appliances, on the adequacy and suitability of the equipment, facilities, and materials for, and methods of, repair and overhaul, and the competency of the individuals doing the work or giving instruction in the work.

(3) other air agencies the Administrator decides are necessary in the public interest.

§44708. Inspecting and rating air navigation facilities

The Administrator of the Federal Aviation Administration may inspect, classify, and rate an air navigation facility available for the use of civil aircraft on the suitability of the facility for that use.

§44709. Amendments, modifications, suspensions, and revocations of certificates

(a) REINSPECTION AND REEXAMINATION.—The Administrator of the Federal Aviation Administration may reinspect at any time a civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, or reexamine an airman holding a certificate issued under section 44703 of this title.

(b) ACTIONS OF THE ADMINISTRATOR.—The Administrator may issue an order amending, modifying, suspending, or revoking—

(1) any part of a certificate issued under this chapter if—

(A) the Administrator decides after conducting a reinspection, reexamination, or other investigation that safety in air commerce or air transportation and the public interest require that action; or

(B) the holder of the certificate has violated an aircraft noise or sonic boom standard or regulation prescribed under section 44715(a) of this title; and

(2) an airman certificate when the holder of the certificate is convicted of violating section 13(a) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742j-1(a)).

(c) ADVICE TO CERTIFICATE HOLDERS AND OPPORTUNITY TO ANSWER.—Before acting under subsection (b) of this section, the Administrator shall advise the holder of the certificate of the charges or other reasons on which the Administrator relies for the proposed action. Except in an emergency, the Administrator shall provide the holder an opportunity to answer the charges and be heard why the certificate should not be amended, modified, suspended, or revoked.

(d) APPEALS.—(1) A person adversely affected by an order of the Administrator under this section may appeal the order to the National Transportation Safety Board. After notice and an opportunity for a hearing, the Board may amend, modify, or reverse the order when the Board finds—

(A) if the order was issued under subsection (b)(1)(A) of this section, that safety in air commerce or air transportation and the public interest do not require affirmation of the order; or

(B) if the order was issued under subsection (b)(1)(B) of this section—

(i) that control or abatement of aircraft noise or sonic boom and the public health and welfare do not require affirmation of the order; or

(ii) the order, as it is related to a violation of aircraft noise or sonic boom standards and regulations, is not consistent with safety in air commerce or air transportation.

(2) The Board may modify a suspension or revocation of a certificate to imposition of a civil penalty.

(3) When conducting a hearing under this subsection, the Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(e) EFFECTIVENESS OF ORDERS PENDING APPEAL.—When a person files an appeal with the Board under subsection (d) of the section, the order of the Administrator is stayed. However, if the Administrator advises the Board that an emergency exists and safety in air commerce or air transportation requires the order to be effective immediately—

(1) the order is effective; and

(2) the Board shall make a final disposition of the appeal not later than 60 days after the Administrator so advises the Board.

(f) JUDICIAL REVIEW.—A person substantially affected by an order of the Board under this section, or the Administrator when the Administrator decides that an order of the Board will have a significant adverse effect on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence

§44710. Revocations of airman certificates for controlled substance violations

(a) DEFINITION.—In this section, "controlled substance" has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(b) REVOCATION.—(1) The Administrator of the Federal Aviation Administration shall issue an order revoking an airman certificate issued an individual under section 44703 of this title after the individual is convicted, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), of an offense punishable by death or imprisonment for more than one year if the Administrator finds that—

(A) an aircraft was used to commit, or facilitate the commission of, the offense; and

(B) the individual served as an airman, or was on the aircraft, in connection with committing, or facilitating the commission of, the offense.

(2) The Administrator shall issue an order revoking an airman certificate issued an individual under section 44703 of this title if the Administrator finds that—

(A) the individual knowingly carried out an activity punishable, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), by death or imprisonment for more than one year;

(B) an aircraft was used to carry out or facilitate the activity; and

(C) the individual served as an airman, or was on the aircraft, in connection with carrying out, or facilitating the carrying out of, the activity.

(3) The Administrator has no authority under paragraph (1) of this subsection to review whether an airman violated a law of the United States or a State related to a controlled substance.

(c) ADVICE TO HOLDERS AND OPPORTUNITY TO ANSWER.—Before the Administrator revokes a certificate under subsection (b) of this section, the Administrator must—

(1) advise the holder of the certificate of the charges or reasons on which the Administrator relies for the proposed revocation; and

(2) provide the holder of the certificate an opportunity to answer the charges and be heard why the certificate should not be revoked.

(d) APPEALS.—(1) An individual whose certificate is revoked by the Administrator under subsection (b) of this section may appeal the revocation order to the National Transportation Safety Board. The Board shall affirm or reverse the order after providing notice and an opportunity for a hearing on the record. When conducting the hearing, the Board is not bound by findings of fact of the Administrator but shall be bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(2) When an individual files an appeal with the Board under this subsection, the order of the Administrator revoking the certificate is stayed. However, if the Administrator advises the Board that safety in air transportation or air commerce requires the immediate effectiveness of the order—

(A) the order remains effective; and

(B) the Board shall make a final disposition of the appeal not later than 60 days after the Administrator so advises the Board.

(3) An individual substantially affected by an order of the Board under this subsection, or the Administrator when the Administrator decides that an order of the Board will have a significant adverse effect on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(e) ACQUITTAL.—(1) The Administrator may not revoke, and the Board may not affirm a revocation of, an airman certificate under subsection (b)(2) of this section on the basis of an activity described in subsection (b)(2)(A) if the holder of the certificate is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity.

(2) If the Administrator has revoked an airman certificate under this section because of an activity described in subsection (b)(2)(A) of this section, the Administrator shall reissue a certificate to the individual if—

(A) the individual otherwise satisfies the requirements for a certificate under section 44703 of this title; and

(B)(i) the individual subsequently is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity; or

(ii) the conviction on which a revocation under subsection (b)(1) of this section is based is reversed.

(f) WAIVERS.—The Administrator may waive the requirement of subsection (b) of this section that an airman certificate of an individual be revoked if—

(1) a law enforcement official of the United States Government or of a State requests a waiver; and

(2) the Administrator decides that the waiver will facilitate law enforcement efforts.

§44711. Prohibitions and exemption

(a) PROHIBITIONS.—A person may not—

(1) operate a civil aircraft in air commerce without an airworthiness certificate in effect or in violation of a term of the certificate;

(2) serve in any capacity as an airman with respect to a civil aircraft, aircraft engine, propeller, or appliance used, or intended for use, in air commerce—

(A) without an airman certificate authorizing the airman to serve in the capacity for which the certificate was issued; or

(B) in violation of a term of the certificate or a regulation prescribed or order issued under section 44701(a) or (b) or 44702–44716 of this title;

(3) employ for service related to civil aircraft used in air commerce an airman who does not have an airman certificate authorizing the airman to serve in the capacity for which the airman is employed;

(4) operate as an air carrier without an air carrier operating certificate or in violation of a term of the certificate;

(5) operate aircraft in air commerce in violation of a regulation prescribed or certificate issued under section 44701(a) or (b) or 44702–44716 of this title;

(6) operate a seaplane or other aircraft of United States registry on the high seas in violation of a regulation under section 3 of the International Navigational Rules Act of 1977 (33 U.S.C. 1602);

(7) violate a term of an air agency or production certificate or a regulation prescribed or order issued under section 44701(a) or (b) or 44702–44716 of this title related to the holder of the certificate;

(8) operate an airport without an airport operating certificate required under section 44706 of this title or in violation of a term of the certificate; or

(9) manufacture, deliver, sell, or offer for sale any aviation fuel or additive in violation of a regulation prescribed under section 44714 of this title.

(b) EXEMPTION.—On terms the Administrator of the Federal Aviation Administration prescribes as being in the public interest, the Administrator may exempt a foreign aircraft and airmen serving on the aircraft from subsection (a) of this section. However, an exemption from observing air traffic regulations may not be granted.

§44712. Emergency locator transmitters

(a) INSTALLATION.—An emergency locator transmitter must be installed on a fixed-wing powered civil aircraft for use in air commerce.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply to—

(1) turbojet-powered aircraft;

(2) aircraft when used in scheduled flights by scheduled air carriers holding certificates issued by the Secretary of Transportation under subpart II of this part;

(3) aircraft when used in training operations conducted entirely within a 50 mile radius of the airport from which the training operations begin;

(4) aircraft when used in flight operations related to design and testing, the manufacture, preparation, and delivery of the aircraft, or the aerial application of a substance for an agricultural purpose;

(5) aircraft holding certificates from the Administrator of the Federal Aviation Administration for research and development;

(6) aircraft when used for showing compliance with regulations, crew training, exhibition, air racing, or market surveys; and

(7) aircraft equipped to carry only one individual.

(c) REMOVAL.—The Administrator shall prescribe regulations specifying the conditions under which an aircraft subject to subsection (a) of this section may operate when its emergency locator transmitter has been removed for inspection, repair, alteration, or replacement.

§44713. Inspection and maintenance

(a) GENERAL EQUIPMENT REQUIREMENTS.—An air carrier shall make, or cause to be made, any inspection, repair, or maintenance of equipment used in air transportation as required by this part or regulations prescribed or orders issued by the Administrator of the Federal Aviation Administration under this part. A person operating, inspecting, repairing, or maintaining the equipment shall comply with those requirements, regulations, and orders.

(b) DUTIES OF INSPECTORS.—The Administrator of the Federal Aviation Administration shall employ inspectors who shall—

(1) inspect aircraft, aircraft engines, propellers, and appliances designed for use in air transportation, during manufacture and when in use by an air carrier in air transportation, to enable the Administrator to decide whether the aircraft, aircraft engines, propellers, or appliances are in safe condition and maintained properly; and

(2) advise and cooperate with the air carrier during that inspection and maintenance.

(c) UNSAFE AIRCRAFT, ENGINES, PROPELLERS, AND APPLIANCES.—When an inspector decides that an aircraft, aircraft engine, propeller, or appliance is not in condition for safe operation, the inspector shall notify the air carrier in the form and way prescribed by the Administrator of the Federal Aviation Administration. For 5 days after the carrier is notified, the aircraft, engine, propeller, or appliance may not be used in air transportation or in a way that endangers air transportation unless the Administrator or the inspector decides the aircraft, engine, propeller, or appliance is in condition for safe operation.

(d) MODIFICATIONS IN SYSTEM.—(1) The Administrator of the Federal Aviation Administration shall make modifications in the system for processing forms for major repairs or alterations to fuel tanks and fuel systems of aircraft not used to provide air transportation that are necessary to make the system more effective in serving the needs of users of the system, including officials responsible for enforcing laws related to the regulation of controlled substances (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)). The modifications shall address at least each of the following deficiencies in, and abuses of, the existing system:

(A) the lack of a special identification feature to allow the forms to be distinguished easily from other major repair and alteration forms.

(B) the excessive period of time required to receive the forms at the Airmen and Aircraft Registry of the Administration.

(C) the backlog of forms waiting for processing at the Registry.

(D) the lack of ready access by law enforcement officials to information contained on the forms.

(2) The Administrator of the Federal Aviation Administration shall prescribe regulations to carry out paragraph (1) of this subsection and provide a written explanation of how the regulations address each of the deficiencies and abuses described in paragraph (1). In prescribing the regulations, the Administrator of the Federal Aviation Administration shall consult with the Administrator of Drug Enforcement, the Commissioner of Customs, other law enforcement officials of the United States Government, representatives of State and local law enforcement officials, representatives of the general aviation aircraft industry, representatives of users of general aviation aircraft, and other interested persons.

§44714. Aviation fuel standards

The Administrator of the Federal Aviation Administration shall prescribe—

(1) standards for the composition or chemical or physical properties of an aircraft fuel or fuel additive to control or eliminate aircraft emissions the Administrator of the Environmental Protection Agency decides under section 231 of the Clean Air Act (42 U.S.C. 7571) endanger the public health or welfare; and

(2) regulations providing for carrying out and enforcing those standards.

§44715. Controlling aircraft noise and sonic boom

(a) STANDARDS AND REGULATIONS.—(1) To relieve and protect the public health and welfare from aircraft noise and sonic boom, the Administrator of the Federal Aviation Administration shall prescribe—

(A) standards to measure aircraft noise and sonic boom; and

(B) regulations to control and abate aircraft noise and sonic boom.

(2) The Administrator of the Federal Aviation Administration may prescribe standards and regulations under this subsection only after consulting with the Administrator of the Environmental Protection Agency. The standards and regulations shall be applied when issuing, amending, modifying, suspending, or revoking a certificate authorized under this chapter.

(3) An original type certificate may be issued under section 44704(a) of this title for an aircraft for which substantial noise abatement can be achieved only after the Administrator of the Federal Aviation Administration prescribes standards and regulations under this section that apply to that aircraft.

(b) CONSIDERATIONS AND CONSULTATION.—When prescribing a standard or regulation under this section, the Administrator of the Federal Aviation Administration shall—

(1) consider relevant information related to aircraft noise and sonic boom;

(2) consult with appropriate departments, agencies, and instrumentalities of the United States Government and State and interstate authorities;

(3) consider whether the standard or regulation is consistent with the highest degree of safety in air transportation or air commerce in the public interest;

(4) consider whether the standard or regulation is economically reasonable, technologically practicable, and appropriate for the applicable aircraft, aircraft engine, appliance, or certificate; and

(5) consider the extent to which the standard or regulation will carry out the purposes of this section.

(c) PROPOSED REGULATIONS OF ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY.—The Administrator of the Environmental Protection Agency shall submit to the Administrator of the Federal Aviation Administration proposed regulations to control and abate aircraft noise and sonic boom (including control and abatement through the use of the authority of the Administrator of the Federal Aviation Administration) that the Administrator of the Environmental Protection Agency considers necessary to protect the public health and welfare. The Administrator of the Federal Aviation Administration shall consider those proposed regulations and shall publish them in a notice of proposed regulations not later than 30 days after they are received. Not later than 60 days after publication, the Administrator of the Federal Aviation Administration shall begin a hearing at which interested persons are given an opportunity for oral and written presentations. Not later than 90 days after the hearing is completed and after consulting with the Administrator of the Environmental Protection Agency, the Administrator of the Federal Aviation Administration shall—

(1) prescribe regulations as provided by this section—

(A) substantially the same as the proposed regulations submitted by the Administrator of the Environmental Protection Agency; or

(B) that amend the proposed regulations; or

(2) publish in the Federal Register—

(A) a notice that no regulation is being prescribed in response to the proposed regulations of the Administrator of the Environmental Protection Agency;

(B) a detailed analysis of, and response to, all information the Administrator of the Environmental Protection Agency submitted with the proposed regulations; and

(C) a detailed explanation of why no regulation is being prescribed.

(d) CONSULTATION AND REPORTS.—(1) If the Administrator of the Environmental Protection Agency believes that the action of the Administrator of the Federal Aviation Administration under subsection (c)(1)(B) or (2) of this section does not protect the public health and welfare from aircraft noise or sonic boom, consistent with the considerations in subsection (b) of this section, the Administrator of the Environmental Protection Agency shall consult with the Administrator of the Federal Aviation Administration and may request a report on the advisability of prescribing the regulation as originally proposed. The request, including a detailed statement of the information on which the request is based, shall be published in the Federal Register.

(2) The Administrator of the Federal Aviation Administration shall report to the Administrator of the Environmental Protection Agency within the time, if any, specified in the request. However, the time specified must be at least 90 days after the date of the request. The report shall—

(A) be accompanied by a detailed statement of the findings of the Administrator of the Federal Aviation Administration and the reasons for the findings;

(B) identify any statement related to an action under subsection (c) of this section filed under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

(C) specify whether and where that statement is available for public inspection; and

(D) be published in the Federal Register unless the request proposes specific action by the Administrator of the Federal Aviation Administration and the report indicates that action will be taken.

(e) SUPPLEMENTAL REPORTS.—The Administrator of the Environmental Protection Agency may request the Administrator of the Federal Aviation Administration to file a supplemental report if the report under subsection (d) of this section indicates that the proposed regulations under subsection (c) of this section, for which a statement under section 102(2)(C) of the Act (42 U.S.C. 4332(2)(C)) is not required, should not be prescribed. The supplemental report shall be published in the Federal Register within the time the Administrator of the Environmental Protection Agency specifies. However, the time specified must be at least 90 days after the date of the request. The supplemental report shall contain a comparison of the environmental effects, including those that cannot be avoided, of the action of the Administrator of the Federal Aviation Administration and the proposed regulations of the Administrator of the Environmental Protection Agency.

(f) EXEMPTIONS.—An exemption from a standard or regulation prescribed under this section may be granted only if, before granting the exemption, the Administrator of the Federal Aviation Administration consults with the Administrator of the Environmental Protection Agency. However, if the Administrator of the Federal Aviation Administration finds that safety in air transportation or air commerce requires an exemption before the Administrator of the Environmental Protection Agency can be consulted, the exemption may be granted. The Administrator of the Federal Aviation Administration shall consult with the Administrator of the Environmental Protection Agency as soon as practicable after the exemption is granted.

§44716. Collision avoidance systems

(a) DEVELOPMENT AND CERTIFICATION.—The Administrator of the Federal Aviation Administration shall—

(1) complete the development of the collision avoidance system known as TCAS–II so that TCAS–II can operate under visual and instrument flight rules and can be upgraded to the performance standards applicable to the collision avoidance system known as TCAS–III;

(2) develop and carry out a schedule for developing and certifying TCAS–II that will result in certification not later than June 30, 1989; and

(3) submit to Congress monthly reports on the progress being made in developing and certifying TCAS–II.

(b) INSTALLATION AND OPERATION.—The Administrator shall require by regulation that, not later than 30 months after the date certification is made under subsection (a)(2) of this section, TCAS–II be installed and operated on each civil aircraft that has a maximum passenger capacity of at least 31 seats and is used to provide air transportation of passengers, including intrastate air transportation of passengers. The Administrator may extend the deadline in this subsection for not more than 2 years if the Administrator finds the extension is necessary to promote—

(1) a safe and orderly transition to the operation of a fleet of civil aircraft described in this subsection equipped with TCAS–II; or

(2) other safety objectives.

(c) OPERATIONAL EVALUATION.—Not later than December 30, 1990, the Administrator shall establish a one-year program to collect and assess safety and operational information from civil aircraft equipped with TCAS–II for the operational evaluation of TCAS–II. The Administrator shall encourage foreign air carriers that operate civil aircraft equipped with TCAS–II to participate in the program.

(d) AMENDING SCHEDULE FOR WINDSHEAR EQUIPMENT.—The Administrator shall consider the feasibility and desirability of amending the schedule for installing airborne low-altitude windshear equipment to make the schedule compatible with the schedule for installing TCAS–II.

(e) DEADLINE FOR DEVELOPMENT AND CERTIFICATION.—(1) The Administrator shall complete developing and certifying TCAS–III as soon as possible.

(2) Necessary amounts may be appropriated from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to carry out this subsection.

(f) INSTALLING AND USING TRANSPONDERS.—The Administrator shall prescribe regulations requiring that, not later than December 30, 1990, operating transponders with automatic altitude reporting capability be installed and used for aircraft operating in designated terminal airspace where radar service is provided for separation of aircraft. The Administrator may provide for access to that airspace (except terminal control areas and airport radar service areas) by nonequipped aircraft if the Administrator finds the access will not interfere with the normal traffic flow.

§44717. Aging aircraft

(a) REGULATORY PROCEEDING.—Not later than April 25, 1992, the Administrator of the Federal Aviation Administration shall begin a regulatory proceeding to prescribe regulations that ensure the continuing airworthiness of aging aircraft.

(b) REQUIREMENTS AND PROCEDURES.—Regulations prescribed under subsection (a) of this section—

(1) at least shall require the Administrator to make inspections, and review the maintenance and other records, of each aircraft an air carrier uses to provide air transportation that the Administrator decides may be necessary to enable the Administrator to decide whether the aircraft is in safe condition and maintained properly for operation in air transportation;

(2) at least shall require an air carrier to demonstrate to the Administrator, as part of the inspection, that maintenance of the aircraft's age-sensitive parts and components has been adequate and timely enough to ensure the highest degree of safety;

(3) shall require the air carrier to make available to the Administrator the aircraft and any records about the aircraft that the Administrator requires to carry out a review; and

(4) shall establish procedures to be followed in carrying out an inspection.

(c) WHEN AND HOW INSPECTIONS AND REVIEWS SHALL BE CARRIED OUT.—(1) Inspections and reviews required under subsection (b)(1) of this section shall be carried out as part of each heavy maintenance check of the aircraft conducted after the 14th year in which the aircraft has been in service.

(2) Inspections under subsection (b)(1) of this section shall be carried out as provided under section 44701(a)(2)(B) and (C) of this title.

(d) AIRCRAFT MAINTENANCE SAFETY PROGRAMS.—Not later than April 25, 1992, the Administrator shall establish—

(1) a program to verify that air carriers are maintaining their aircraft according to maintenance programs approved by the Administrator;

(2) a program—

(A) to provide inspectors and engineers of the Administration with training necessary to conduct auditing inspections of aircraft operated by air carriers for corrosion and metal fatigue; and

(B) to enhance participation of those inspectors and engineers in those inspections; and

(3) a program to ensure that air carriers demonstrate to the Administrator their commitment and technical competence to ensure the airworthiness of aircraft that the carriers operate.

(e) FOREIGN AIR TRANSPORTATION.—(1) The Administrator shall take all possible steps to encourage governments of foreign countries and relevant international organizations to develop standards and requirements for inspections and reviews that—

(A) will ensure the continuing airworthiness of aging aircraft used by foreign air carriers to provide foreign air transportation to and from the United States; and

(B) will provide passengers of those foreign air carriers with the same level of safety that will be provided passengers of air carriers by carrying out this section.

(2) Not later than September 30, 1994, the Administrator shall report to Congress on carrying out this subsection.

§44718. Structures interfering with air commerce

(a) NOTICE.—By regulation or by order when necessary, the Secretary of Transportation shall require a person to give adequate public notice, in the form and way the Secretary prescribes, about building or altering a structure, or proposing to build or alter a structure, when the notice will promote—

(1) safety in air commerce; and

(2) the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports.

(b) STUDIES.—(1) Under regulations prescribed by the Secretary, if the Secretary decides that building or altering a structure may result in an obstruction of the navigable airspace or an interference with air navigation facilities and equipment or the navigable airspace, the Secretary shall conduct an aeronautical study to decide the extent of any adverse impact on the safe and efficient use of the airspace, facilities, or equipment. In conducting the study, the Secretary shall consider factors relevant to the efficient and effective use of the navigable airspace, including—

(A) the impact on arrival, departure, and en route procedures for aircraft operating under visual flight rules;

(B) the impact on arrival, departure, and en route procedures for aircraft operating under instrument flight rules;

(C) the impact on existing public-use airports and aeronautical facilities;

(D) the impact on planned public-use airports and aeronautical facilities; and

(E) the cumulative impact resulting from the proposed building or alteration of a structure when combined with the impact of other existing or proposed structures.

(2) On completing the study, the Secretary shall issue a report disclosing completely the extent of the adverse impact on the safe and efficient use of the navigable airspace that the Secretary finds will result from building or altering the structure.

(c) BROADCAST APPLICATIONS AND TOWER STUDIES.—In carrying out laws related to a broadcast application and conducting an aeronautical study related to broadcast towers, the Administrator of the Federal Aviation Administration and the Federal Communications Commission shall take action necessary to coordinate efficiently—

(1) the receipt and consideration of, and action on, the application; and

(2) the completion of any associated aeronautical study.

§44719. Standards for navigational aids

The Secretary of Transportation shall prescribe regulations on standards for installing navigational aids, including airport control towers. For each type of facility, the regulations shall consider at a minimum traffic density (number of aircraft operations without consideration of aircraft size), terrain and other obstacles to navigation, weather characteristics, passengers served, and potential aircraft operating efficiencies.

§44720. Meteorological services

(a) RECOMMENDATIONS.—The Administrator of the Federal Aviation Administration shall make recommendations to the Secretary of Commerce on providing meteorological services necessary for the safe and efficient movement of aircraft in air commerce. In providing the services, the Secretary shall cooperate with the Administrator and give complete consideration to those recommendations.

(b) PROMOTING SAFETY AND EFFICIENCY.—To promote safety and efficiency in air navigation to the highest possible degree, the Secretary shall—

(1) observe, measure, investigate, and study atmospheric phenomena, and maintain meteorological stations and offices, that are necessary or best suited for finding out in advance information about probable weather conditions;

(2) provide reports to the Administrator to persons engaged in civil aeronautics that are designated by the Administrator and to other persons designated by the Secretary in a way and with a frequency that best will result in safety in, and facilitating, air navigation;

(3) cooperate with persons engaged in air commerce in meteorological services, maintain reciprocal arrangements with those persons in carrying out this clause, and collect and distribute weather reports available from aircraft in flight;

(4) maintain and coordinate international exchanges of meteorological information required for the safety and efficiency of air navigation;

(5) in cooperation with other departments, agencies, and instrumentalities of the United States Government, meteorological services of foreign countries, and persons engaged in air commerce, participate in developing an international basic meteorological reporting network, including the establishment, operation, and maintenance of reporting stations on the high seas, in polar regions, and in foreign countries;

(6) coordinate meteorological requirements in the United States to maintain standard observations, to promote efficient use of facilities, and to avoid duplication of services unless the duplication tends to promote the safety and efficiency of air navigation; and

(7) promote and develop meteorological science and foster and support research projects in meteorology through the use of private and governmental research facilities and provide for publishing the results of the projects unless publication would not be in the public interest.

§44721. Aeronautical maps and charts

(a) PUBLICATION.—The Administrator of the Federal Aviation Administration may arrange for the publication of aeronautical maps and charts necessary for the safe and efficient movement of aircraft in air navigation, using the facilities and assistance of departments, agencies, and instrumentalities of the United States Government as far as practicable.

(b) INDEMNIFICATION.—The Government shall make an agreement to indemnify any person that publishes a map or chart for use in aeronautics from any part of a claim arising out of the depiction by the person on the map or chart of a defective or deficient flight procedure or airway if the flight procedure or airway was—

(1) prescribed by the Administrator;

(2) depicted accurately on the map or chart; and

(3) not obviously defective or deficient.

§44722. Annual report

Not later than January 1 of each year, the Secretary of Transportation shall submit to Congress a comprehensive report on the safety enforcement activities of the Federal Aviation Administration during the fiscal year ending the prior September 30th. The report shall include—

(1) a comparison of end-of-year staffing levels by operations, maintenance, and avionics inspector categories to staffing goals and a statement on how staffing standards were applied to make allocations between air carrier and general aviation operations, maintenance, and avionics inspectors;

(2) schedules showing the range of inspector experience by various inspector work force categories, and the number of inspectors in each of the categories who are considered fully qualified;

(3) schedules showing the number and percentage of inspectors who have received mandatory training by individual course, and the number of inspectors by work force categories, who have received all mandatory training;

(4) a description of the criteria used to set annual work programs, an explanation of how these criteria differ from criteria used in the prior fiscal year and how the annual work programs ensure compliance with appropriate regulations and safe operating practices;

(5) a comparison of actual inspections performed during the fiscal year to the annual work programs by field location and, for any field location completing less than 80 percent of its planned number of inspections, an explanation of why annual work program plans were not met;

(6) a statement of the adequacy of Administration internal management controls available to ensure that field managers comply with Administration policies and procedures, including those on inspector priorities, district office coordination, minimum inspection standards, and inspection followup;

(7) the status of efforts made by the Administration to update inspector guidance documents and regulations to include technological, management, and structural changes taking place in the aviation industry, including a listing of the backlog of all proposed regulatory amendments;

(8) a list of the specific operational measures of effectiveness used to evaluate—

(A) the progress in meeting program objectives;

(B) the quality of program delivery; and

(C) the nature of emerging safety problems;

(9) a schedule showing the number of civil penalty cases closed during the 2 prior fiscal years, including the total initial and final penalties imposed, the total number of dollars collected, the range of dollar amounts collected, the average case processing time, and the range of case processing time;

(10) a schedule showing the number of enforcement actions taken (except civil penalties) during the 2 prior fiscal years, including the total number of violations cited, and the number of cited violation cases closed by certificate suspensions, certificate revocations, warnings, and no action taken; and

(11) schedules showing the safety record of the aviation industry during the fiscal year for air carriers and general aviation, including—

(A) the number of inspections performed when deficiencies were identified compared with inspections when no deficiencies were found;

(B) the frequency of safety deficiencies for each air carrier; and

(C) an analysis based on data of the general status of air carrier and general aviation compliance with aviation regulations.

CHAPTER 449—SECURITY

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SUBCHAPTER I—REQUIREMENTS

§44901. Screening passengers and property

(a) GENERAL REQUIREMENTS.—The Administrator of the Federal Aviation Administration shall prescribe regulations requiring screening of all passengers and property that will be carried in a cabin of an aircraft in air transportation or intrastate air transportation. The screening must take place before boarding and be carried out by a weapon-detecting facility or procedure used or operated by an employee or agent of an air carrier, intrastate air carrier, or foreign air carrier.

(b) AMENDING REGULATIONS.—Notwithstanding subsection (a) of this section, the Administrator may amend a regulation prescribed under subsection (a) to require screening only to ensure security against criminal violence and aircraft piracy in air transportation and intrastate air transportation.

(c) EXEMPTIONS AND ADVISING CONGRESS ON REGULATIONS.—The Administrator—

(1) may exempt from this section air transportation operations, except scheduled passenger operations of an air carrier providing air transportation under a certificate issued under section 41102 of this title or a permit issued under section 41302 of this title; and

(2) shall advise Congress of a regulation to be prescribed under this section at least 30 days before the effective date of the regulation, unless the Administrator decides an emergency exists requiring the regulation to become effective in fewer than 30 days and notifies Congress of that decision.

§44902. Refusal to transport passengers and property

(a) MANDATORY REFUSAL.—The Administrator of the Federal Aviation Administration shall prescribe regulations requiring an air carrier, intrastate air carrier, or foreign air carrier to refuse to transport—

(1) a passenger who does not consent to a search under section 44901(a) of this title establishing whether the passenger is carrying unlawfully a dangerous weapon, explosive, or other destructive substance; or

(2) property of a passenger who does not consent to a search of the property establishing whether the property unlawfully contains a dangerous weapon, explosive, or other destructive substance.

(b) PERMISSIVE REFUSAL.—Subject to regulations of the Administrator, an air carrier, intrastate air carrier, or foreign air carrier may refuse to transport a passenger or property the carrier decides is, or might be, inimical to safety.

(c) AGREEING TO CONSENT TO SEARCH.—An agreement to carry passengers or property in air transportation or intrastate air transportation by an air carrier, intrastate air carrier, or foreign air carrier is deemed to include an agreement that the passenger or property will not be carried if consent to search the passenger or property for a purpose referred to in this section is not given.

§44903. Air transportation security

(a) DEFINITION.—In this section, "law enforcement personnel" means individuals—

(1) authorized to carry and use firearms;

(2) vested with the degree of the police power of arrest the Administrator of the Federal Aviation Administration considers necessary to carry out this section; and

(3) identifiable by appropriate indicia of authority.

(b) PROTECTION AGAINST VIOLENCE AND PIRACY.—The Administrator shall prescribe regulations to protect passengers and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence or aircraft piracy. When prescribing a regulation under this subsection, the Administrator shall—

(1) consult with the Secretary of Transportation, the Attorney General, the heads of other departments, agencies, and instrumentalities of the United States Government, and State and local authorities;

(2) consider whether a proposed regulation is consistent with—

(A) protecting passengers; and

(B) the public interest in promoting air transportation and intrastate air transportation;

(3) to the maximum extent practicable, require a uniform procedure for searching and detaining passengers and property to ensure—

(A) their safety; and

(B) courteous and efficient treatment by an air carrier, an agent or employee of an air carrier, and Government, State, and local law enforcement personnel carrying out this section; and

(4) consider the extent to which a proposed regulation will carry out this section.

(c) SECURITY PROGRAMS.—(1) The Administrator shall prescribe regulations under subsection (b) of this section that require each operator of an airport regularly serving an air carrier holding a certificate issued by the Secretary of Transportation to establish an air transportation security program that provides a law enforcement presence and capability at each of those airports that is adequate to ensure the safety of passengers. The regulations shall authorize the operator to use the services of qualified State, local, and private law enforcement personnel. When the Administrator decides, after being notified by an operator in the form the Administrator prescribes, that not enough qualified State, local, and private law enforcement personnel are available to carry out subsection (b), the Administrator may authorize the operator to use, on a reimbursable basis, personnel employed by the Administrator, or by another department, agency, or instrumentality of the Government with the consent of the head of the department, agency, or instrumentality, to supplement State, local, and private law enforcement personnel. When deciding whether additional personnel are needed, the Administrator shall consider the number of passengers boarded at the airport, the extent of anticipated risk of criminal violence or aircraft piracy at the airport or to the air carrier aircraft operations at the airport, and the availability of qualified State or local law enforcement personnel at the airport.

(2)(A) The Administrator may approve a security program of an airport operator, or an amendment in an existing program, that incorporates a security program of an airport tenant (except an air carrier separately complying with part 108 or 129 of title 14, Code of Federal Regulations) having access to a secured area of the airport, if the program or amendment incorporates—

(i) the measures the tenant will use, within the tenant's leased areas or areas designated for the tenant's exclusive use under an agreement with the airport operator, to carry out the security requirements imposed by the Administrator on the airport operator under the access control system requirements of section 107.14 of title 14, Code of Federal Regulations, or under other requirements of part 107 of title 14; and

(ii) the methods the airport operator will use to monitor and audit the tenant's compliance with the security requirements and provides that the tenant will be required to pay monetary penalties to the airport operator if the tenant fails to carry out a security requirement under a contractual provision or requirement imposed by the airport operator.

(B) If the Administrator approves a program or amendment described in subparagraph (A) of this paragraph, the airport operator may not be found to be in violation of a requirement of this subsection or subsection (b) of this section when the airport operator demonstrates that the tenant or an employee, permittee, or invitee of the tenant is responsible for the violation and that the airport operator has complied with all measures in its security program for securing compliance with its security program by the tenant.

(d) AUTHORIZING INDIVIDUALS TO CARRY FIREARMS AND MAKE ARRESTS.—With the approval of the Attorney General and the Secretary of State, the Secretary of Transportation may authorize an individual who carries out air transportation security duties—

(1) to carry firearms; and

(2) to make arrests without warrant for an offense against the United States committed in the presence of the individual or for a felony under

the laws of the United States, if the individual reasonably believes the individual to be arrested has committed or is committing a felony.

(e) EXCLUSIVE RESPONSIBILITY OVER PASSENGER SAFETY.—The Administrator has the exclusive responsibility to direct law enforcement activity related to the safety of passengers on an aircraft involved in an offense under section 46502 of this title from the moment all external doors of the aircraft are closed following boarding until those doors are opened to allow passengers to leave the aircraft. When requested by the Administrator, other departments, agencies, and instrumentalities of the Government shall provide assistance necessary to carry out this subsection.

§44904. Domestic air transportation system security

(a) ASSESSING THREATS.—The Administrator of the Federal Aviation Administration and the Director of the Federal Bureau of Investigation jointly shall assess current and potential threats to the domestic air transportation system. The assessment shall include consideration of the extent to which there are individuals with the capability and intent to carry out terrorist or related unlawful acts against that system and the ways in which those individuals might carry out those acts. The Administrator and the Director jointly shall decide on and carry out the most effective method for continuous analysis and monitoring of security threats to that system.

(b) ASSESSING SECURITY.—In coordination with the Director, the Administrator shall carry out periodic threat and vulnerability assessments on security at each airport that is part of the domestic air transportation system. Each assessment shall include consideration of—

(1) the adequacy of security procedures related to the handling and transportation of checked baggage and cargo;

(2) space requirements for security personnel and equipment;

(3) separation of screened and unscreened passengers, baggage, and cargo;

(4) separation of the controlled and uncontrolled areas of airport facilities; and

(5) coordination of the activities of security personnel of the Administration, the United States Customs Service, the Immigration and Naturalization Service, and air carriers, and of other law enforcement personnel.

(c) IMPROVING SECURITY.—The Administrator shall take necessary actions to improve domestic air transportation security by correcting any deficiencies in that security discovered in the assessments, analyses, and monitoring carried out under this section.

§44905. Information about threats to civil aviation

(a) PROVIDING INFORMATION.—Under guidelines the Secretary of Transportation prescribes, an air carrier, airport operator, ticket agent, or individual employed by an air carrier, airport operator, or ticket agent, receiving information (except a communication directed by the United States Government) about a threat to civil aviation shall provide the information promptly to the Secretary.

(b) FLIGHT CANCELLATION.—If a decision is made that a particular threat cannot be addressed in a way adequate to ensure, to the extent feasible, the safety of passengers and crew of a particular flight or series of flights, the Administrator of the Federal Aviation Administration shall cancel the flight or series of flights.

(c) GUIDELINES ON PUBLIC NOTICE.—(1) Not later than May 15, 1991, the President shall develop guidelines for ensuring that public notice is provided in appropriate cases about threats to civil aviation. The guidelines shall identify officials responsible for—

(A) deciding, on a case-by-case basis, if public notice of a threat is in the best interest of the United States and the traveling public;

(B) ensuring that public notice is provided in a timely and effective way, including the use of a toll-free telephone number; and

(C) canceling the departure of a flight or series of flights under subsection (b) of this section.

(2) The guidelines shall provide for consideration of—

(A) the specificity of the threat;

(B) the credibility of intelligence information related to the threat;

(C) the ability to counter the threat effectively;

(D) the protection of intelligence information sources and methods;

(E) cancellation, by an air carrier or the Administrator, of a flight or series of flights instead of public notice;

(F) the ability of passengers and crew to take steps to reduce the risk to their safety after receiving public notice of a threat; and

(G) other factors the Administrator considers appropriate.

(d) GUIDELINES ON NOTICE TO CREWS.—Not later than May 15, 1991, the Administrator shall develop guidelines for ensuring that notice in appropriate cases of threats to the security of an air carrier flight is provided to the flight crew and cabin crew of that flight.

(e) LIMITATION ON NOTICE TO SELECTIVE TRAVELERS.—Notice of a threat to civil aviation may be provided to selective potential travelers only if the threat applies only to those travelers.

(f) RESTRICTING ACCESS TO INFORMATION.—In cooperation with the departments, agencies, and instrumentalities of the Government that collect, receive, and analyze intelligence information related to aviation security, the Administrator shall develop procedures to minimize the number of individuals who have access to information about threats. However, a restriction on access to that information may be imposed only if the restriction does not diminish the ability of the Government to carry out its duties and powers related to aviation security effectively, including providing notice to the public and flight and cabin crews under this section.

(g) DISTRIBUTION OF GUIDELINES.—The guidelines developed under this section shall be distributed for use by appropriate officials of the Department of Transportation, the Department of State, the Department of Justice, and air carriers.

§44906. Foreign air carrier security programs

(a) GENERAL.—(1) The Administrator of the Federal Aviation Administration shall continue in effect the requirement of section 129.25 of title 14, Code of Federal Regulations, that a foreign air carrier must adopt and use a security program approved by the Administrator. The Administrator may approve a security program of a foreign air carrier under section 129.25 only if the Administrator decides the security program provides passengers of the foreign air carrier a level of protection similar to the level those passengers would receive under the security programs of air carriers serving the same airport. The Administrator shall require a foreign air carrier to use procedures equivalent to those required of air carriers serving the same airport if the Administrator decides that the procedures are necessary to provide a level of protection similar to that provided passengers of the air carriers serving the same airport.

(2) Not later than May 15, 1991, the Administrator shall prescribe regulations to carry out paragraph (1) of this subsection.

(b) ENSURING COMPLIANCE.—Not later than November 16, 1991, the Administrator shall ensure that a security program of a foreign air carrier approved by the Administrator before November 16, 1990, meets the requirements of subsection (a) of this section.

§44907. Security standards at foreign airports

(a) ASSESSMENT.—(1) At intervals the Secretary of Transportation considers necessary, the Secretary shall assess the effectiveness of the security measures maintained at—

(A) a foreign airport—

(i) served by an air carrier;

(ii) from which a foreign air carrier serves the United States; or

(iii) that poses a high risk of introducing danger to international air travel; and

(B) other foreign airports the Secretary considers appropriate.

(2) The Secretary of Transportation shall conduct an assessment under paragraph (1) of this subsection—

(A) in consultation with appropriate aeronautic authorities of the government of a foreign country concerned and each air carrier serving the foreign airport for which the Secretary is conducting the assessment;

(B) to establish the extent to which a foreign airport effectively maintains and carries out security measures; and

(C) by using a standard that will result in an analysis of the security measures at the airport based at least on the standards and appropriate recommended practices contained in Annex 17 to the Convention on International Civil Aviation in effect on the date of the assessment.

(3) Each report to Congress required under section 44938(b) of this title shall contain a summary of the assessments conducted under this subsection.

(b) CONSULTATION.—In carrying out subsection (a) of this section, the Secretary of Transportation shall consult with the Secretary of State—

(1) on the terrorist threat that exists in each country; and

(2) to establish which foreign airports are not under the de facto control of the government of the foreign country in which they are located and pose a high risk of introducing danger to international air travel.

(c) NOTIFYING FOREIGN AUTHORITIES.—When the Secretary of Transportation, after conducting an assessment under subsection (a) of this section, decides that an airport does not maintain and carry out effective security measures, the Secretary of Transportation, after advising the Secretary of State, shall notify the appropriate authorities of the government of the foreign country of the decision and recommend the steps necessary to bring the security measures in use at the airport up to the standard used by the Secretary of Transportation in making the assessment.

(d) ACTIONS WHEN AIRPORTS NOT MAINTAINING AND CARRYING OUT EFFECTIVE SECURITY MEASURES.—(1) When the Secretary of Transportation decides under this section that an airport does not maintain and carry out effective security measures—

(A) the Secretary of Transportation shall—

(i) publish the identity of the airport in the Federal Register;

(ii) have the identity of the airport posted and displayed prominently at all United States airports at which scheduled air carrier operations are provided regularly; and

(iii) notify the news media of the identity of the airport;

(B) each air carrier and foreign air carrier providing transportation between the United States and the airport shall provide written notice of the decision, on or with the ticket, to each passenger buying a ticket for transportation between the United States and the airport;

(C) notwithstanding section 40105(b) of this title, the Secretary of Transportation, after consulting with the appropriate aeronautic authori-

ties of the foreign country concerned and each air carrier serving the airport and with the approval of the Secretary of State, may withhold, revoke, or prescribe conditions on the operating authority of an air carrier or foreign air carrier that uses that airport to provide foreign air transportation; and

(D) the President may prohibit an air carrier or foreign air carrier from providing transportation between the United States and any other foreign airport that is served by aircraft flying to or from the airport with respect to which a decision is made under this section.

(2)(A) Paragraph (1) of this subsection becomes effective—

(i) 90 days after the government of a foreign country is notified under subsection (c) of this section if the Secretary of Transportation finds that the government has not brought the security measures at the airport up to the standard the Secretary used in making an assessment under subsection (a) of this section; or

(ii) immediately on the decision of the Secretary of Transportation under subsection (c) of this section if the Secretary of Transportation decides, after consulting with the Secretary of State, that a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from the airport.

(B) The Secretary of Transportation immediately shall notify the Secretary of State of a decision under subparagraph (A)(ii) of this paragraph so that the Secretary of State may issue a travel advisory required under section 44908(a) of this title.

(3) The Secretary of Transportation promptly shall submit to Congress a report (and classified annex if necessary) on action taken under paragraph (1) or (2) of this subsection, including information on attempts made to obtain the cooperation of the government of a foreign country in meeting the standard the Secretary used in assessing the airport under subsection (a) of this section.

(4) An action required under paragraph (1)(A) and (B) of this subsection is no longer required only if the Secretary of Transportation, in consultation with the Secretary of State, decides that effective security measures are maintained and carried out at the airport. The Secretary of Transportation shall notify Congress when the action is no longer required to be taken.

(e) SUSPENSIONS.—Notwithstanding sections 40105(b) and 40106(b) of this title, the Secretary of Transportation, with the approval of the Secretary of State and without notice or a hearing, shall suspend the right of an air carrier or foreign air carrier to provide foreign air transportation, and the right of a person to operate aircraft in foreign air commerce, to or from a foreign airport when the Secretary of Transportation decides that—

(1) a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from that airport; and

(2) the public interest requires an immediate suspension of transportation between the United States and that airport.

(f) CONDITION OF CARRIER AUTHORITY.—This section is a condition to authority the Secretary of Transportation grants under this part to an air carrier or foreign air carrier.

§44908. Travel advisory and suspension of foreign assistance

(a) TRAVEL ADVISORIES.—On being notified by the Secretary of Transportation that the Secretary of Transportation has decided under section 44907(d)(2)(A)(ii) of this title that a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from a foreign airport that the Secretary of Transportation has decided under section 44907 of this title does not maintain and carry out effective security measures, the Secretary of State—

(1) immediately shall issue a travel advisory for that airport;

(2) shall publish the advisory in the Federal Register; and

(3) shall publicize the advisory widely.

(b) SUSPENDING ASSISTANCE.—The President shall suspend assistance provided under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) or the Arms Export Control Act (22 U.S.C. 2751 et seq.) to a country in which is located an airport with respect to which section 44907(d)(1) of this title becomes effective if the Secretary of State decides the country is a high terrorist threat country. The President may waive this subsection if the President decides, and reports to Congress, that the waiver is required because of national security interests or a humanitarian emergency.

(c) ACTIONS NO LONGER REQUIRED.—An action required under this section is no longer required only if the Secretary of Transportation has made a decision as provided under section 44907(d)(4) of this title. The Secretary shall notify Congress when the action is no longer required to be taken.

§44909. Passenger manifests

(a) AIR CARRIER REQUIREMENTS.—(1) Not later than March 16, 1991, the Secretary of Transportation shall require each air carrier to provide a passenger manifest for a flight to an appropriate representative of the Secretary of State—

(A) not later than one hour after that carrier is notified of an aviation disaster outside the United States involving that flight; or

(B) if it is not technologically feasible or reasonable to comply with clause (A) of this paragraph, then as expeditiously as possible, but not later than 3 hours after the carrier is so notified.

(2) The passenger manifest shall include the following information:

(A) the full name of each passenger.

(B) the passport number of each passenger, if required for travel.

(C) the name and telephone number of a contact for each passenger.

(3) In carrying out this subsection, the Secretary of Transportation shall consider the necessity and feasibility of requiring air carriers to collect passenger manifest information as a condition for passengers boarding a flight of the carrier.

(b) FOREIGN AIR CARRIER REQUIREMENTS.—The Secretary of Transportation shall consider imposing a requirement on foreign air carriers comparable to that imposed on air carriers under subsection (a)(1) and (2) of this section.

§44910. Agreements on aircraft sabotage, aircraft hijacking, and airport security

The Secretary of State shall seek multilateral and bilateral agreement on strengthening enforcement measures and standards for compliance related to aircraft sabotage, aircraft hijacking, and airport security.

§44911. Intelligence

(a) DEFINITION.—In this section, "intelligence community" means the intelligence and intelligence-related activities of the following units of the United States Government:

(1) the Department of State.

(2) the Department of Defense.

(3) the Department of the Treasury.

(4) the Department of Energy.

(5) the Departments of the Army, Navy, and Air Force.

(6) the Central Intelligence Agency.

(7) the National Security Agency.

(8) the Defense Intelligence Agency.

(9) the Federal Bureau of Investigation.

(10) the Drug Enforcement Administration.

(b) POLICIES AND PROCEDURES ON REPORT AVAILABILITY.—Not later than May 15, 1991, the head of each unit in the intelligence community shall prescribe policies and procedures to ensure that intelligence reports about international terrorism are made available, as appropriate, to the heads of other units in the intelligence community, the Secretary of Transportation, and the Administrator of the Federal Aviation Administration.

(c) UNIT FOR STRATEGIC PLANNING ON TERRORISM.—The heads of the units in the intelligence community shall consider placing greater emphasis on strategic intelligence efforts by establishing a unit for strategic planning on terrorism.

(d) DESIGNATION OF INTELLIGENCE OFFICER.—At the request of the Secretary, the Director of Central Intelligence shall designate at least one intelligence officer of the Central Intelligence Agency to serve in a senior position in the Office of the Secretary.

(e) WRITTEN WORKING AGREEMENTS.—Not later than May 15, 1991, the heads of units in the intelligence community, the Secretary, and the Administrator shall review and, as appropriate, revise written working agreements between the intelligence community and the Administrator.

§44912. Research and development

(a) PROGRAM REQUIREMENT.—(1) The Administrator of the Federal Aviation Administration shall establish and carry out a program to accelerate and expand the research, development, and implementation of technologies and procedures to counteract terrorist acts against civil aviation. The program shall provide for developing and having in place, not later than November 16, 1993, new equipment and procedures necessary to meet the technological challenges presented by terrorism. The program shall include research on, and development of, technological improvements and ways to enhance human performance.

(2) In designing and carrying out the program established under this subsection, the Administrator shall—

(A) consult and coordinate activities with other departments, agencies, and instrumentalities of the United States Government doing similar research;

(B) identify departments, agencies, and instrumentalities that would benefit from that research; and

(C) seek cost-sharing agreements with those departments, agencies, and instrumentalities.

(3) In carrying out the program established under this subsection, the Administrator shall review and consider the annual reports the Secretary of Transportation submits to Congress on transportation security and intelligence.

(4) The Administrator may—

(A) make grants to institutions of higher learning and other appropriate research facilities with demonstrated ability to carry out research described in paragraph (1) of this subsection, and fix the amounts and terms of the grants; and

(B) make cooperative agreements with governmental authorities the Administrator decides are appropriate.

(b) REVIEW OF THREATS.—(1) Not later than May 15, 1991, the Administrator shall complete an intensive review of threats to civil aviation, with particular focus on—

(A) explosive material that presents the most significant threat to civil aircraft;

(B) the minimum amounts, configurations, and types of explosive material that can cause, or would reasonably be expected to cause, catastrophic damage to commercial aircraft in service and expected to be in service in the 10-year period beginning on November 16, 1990;

(C) the amounts, configurations, and types of explosive material that can be detected reliably by existing, or reasonably anticipated, near-term explosive detection technologies;

(D) the feasibility of using various ways to minimize damage caused by explosive material that cannot be detected reliably by existing, or reasonably anticipated, near-term explosive detection technologies;

(E) the ability to screen passengers, carry-on baggage, checked baggage, and cargo; and

(F) the technologies that might be used in the future to attempt to destroy or otherwise threaten commercial aircraft and the way in which those technologies can be countered effectively.

(2) The Administrator shall use the results of the review under this subsection to develop the focus and priorities of the program established under subsection (a) of this section.

(c) SCIENTIFIC ADVISORY PANEL.—The Administrator shall establish a scientific advisory panel, as a subcommittee of the Research, Engineering and Development Advisory Committee, to review, comment on, advise on the progress of, and recommend modifications in, the program established under subsection (a) of this section, including the need for long-range research programs to detect and prevent catastrophic damage to commercial aircraft by the next generation of terrorist weapons. The panel shall consist of individuals with scientific and technical expertise in—

(1) the development and testing of effective explosive detection systems;

(2) aircraft structure and experimentation to decide on the type and minimum weights of explosives that an effective technology must be capable of detecting;

(3) technologies involved in minimizing airframe damage to aircraft from explosives; and

(4) other scientific and technical areas the Administrator considers appropriate.

§44913. Explosive detection

(a) DEPLOYMENT AND PURCHASE OF EQUIPMENT.—(1) A deployment or purchase of explosive detection equipment under section 108.7(b)(8) or 108.20 of title 14, Code of Federal Regulations, or similar regulation is required only if the Administrator of the Federal Aviation Administration certifies that the equipment alone, or as part of an integrated system, can detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material that would likely be used to cause catastrophic damage to commercial aircraft. The Administrator shall base the certification on the results of tests conducted under protocols developed in consultation with expert scientists outside of the Administration. Those tests shall be completed not later than April 16, 1992.

(2) Before completion of the tests described in paragraph (1) of this subsection, but not later than April 16, 1992, the Administrator may require deployment of explosive detection equipment described in paragraph (1) if the Administrator decides that deployment will enhance aviation security significantly. In making that decision, the Administrator shall consider factors such as the ability of the equipment alone, or as part of an integrated system, to detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material that would likely be used to cause catastrophic damage to commercial aircraft. The Administrator shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives of a deployment decision made under this paragraph.

(3) This subsection does not prohibit the Administrator from purchasing or deploying explosive detection equipment described in paragraph (1) of this subsection.

(b) GRANTS.—The Secretary of Transportation may provide grants to continue the Explosive Detection K-9 Team Training Program to detect explosives at airports and on aircraft.

§44914. Airport construction guidelines

In consultation with air carriers, airport authorities, and others the Administrator of the Federal Aviation Administration considers appropriate, the Administrator shall develop guidelines for airport design and construction to allow for maximum security enhancement. In developing the guidelines, the Administrator shall consider the results of the assessment carried out under section 44904(a) of this title.

§44915. Exemptions

The Administrator of the Federal Aviation Administration may exempt from sections 44901, 44903(a)-(c) and (e), 44906, 44935, and 44936 of this title airports in Alaska served only by air carriers that—

(1) hold certificates issued under section 41102 of this title;

(2) operate aircraft with certificates for a maximum gross takeoff weight of less than 12,500 pounds; and

(3) board passengers, or load property intended to be carried in an aircraft cabin, that will be screened under section 44901 of this title at another airport in Alaska before the passengers board, or the property is loaded on, an aircraft for a place outside Alaska.

SUBCHAPTER II—ADMINISTRATION AND PERSONNEL

§44931. Director of Intelligence and Security

(a) ORGANIZATION.—There is in the Office of the Secretary of Transportation a Director of Intelligence and Security. The Director reports directly to the Secretary.

(b) DUTIES AND POWERS.—The Director shall—

(1) receive, assess, and distribute intelligence information related to long-term transportation security;

(2) develop policies, strategies, and plans for dealing with threats to transportation security;

(3) make other plans related to transportation security, including coordinating countermeasures with appropriate departments, agencies, and instrumentalities of the United States Government;

(4) serve as the primary liaison of the Secretary to the intelligence and law enforcement communities; and

(5) carry out other duties and powers the Secretary decides are necessary to ensure, to the extent possible, the security of the traveling public.

§44932. Assistant Administrator for Civil Aviation Security

(a) ORGANIZATION.—There is an Assistant Administrator for Civil Aviation Security. The Assistant Administrator reports directly to the Administrator of the Federal Aviation Administration and is subject to the authority of the Administrator.

(b) DUTIES AND POWERS.—The Assistant Administrator shall—

(1) on a day-to-day basis, manage and provide operational guidance to the field security resources of the Administration, including Federal Security Managers as provided by section 44933 of this title;

(2) enforce security-related requirements;

(3) identify the research and development requirements of security-related activities;

(4) inspect security systems;

(5) report information to the Director of Intelligence and Security that may be necessary to allow the Director to carry out assigned duties and powers;

(6) assess threats to civil aviation; and

(7) carry out other duties and powers the Administrator considers appropriate.

(c) REVIEW AND DEVELOPMENT OF WAYS TO STRENGTHEN SECURITY.—The Assistant Administrator shall review and, as necessary, develop ways to strengthen air transportation security, including ways—

(1) to strengthen controls over checked baggage in air transportation, including ways to ensure baggage reconciliation and inspection of items in passenger baggage that could potentially contain explosive devices;

(2) to strengthen control over individuals having access to aircraft;

(3) to improve testing of security systems;

(4) to ensure the use of the best available x-ray equipment for air transportation security purposes; and

(5) to strengthen preflight screening of passengers.

§44933. Federal Security Managers

(a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—(1) The Administrator of the Federal Aviation Administration shall establish the position of Federal Security Manager at each airport in the United States at which the Administrator decides a Manager is necessary for air transportation security. The Administrator shall designate individuals as Managers for, and station those Managers at, those airports. The Administrator may designate a current field employee of the Administration as a Manager. A Manager reports directly to the Assistant Administrator for Civil Aviation Security.

(2) Not later than November 16, 1991, the Administrator shall station an individual as Manager at each airport in the United States that the Secretary of Transportation designates as a category X airport.

(b) DUTIES AND POWERS.—The Manager at each airport shall—

(1) receive intelligence information related to aviation security;

(2) ensure, and assist in, the development of a comprehensive security plan for the airport that—

(A) establishes the responsibilities of each air carrier and airport operator for air transportation security at the airport; and

(B) includes measures to be taken during periods of normal airport operations and during periods when the Manager decides that there is a need for additional airport security, and identifies the individuals responsible for carrying out those measures;

(3) oversee and enforce the carrying out by air carriers and airport operators of United States Government security requirements, including the security plan under clause (2) of this subsection;

(4) serve as the on-site coordinator of the Administrator's response to terrorist incidents and threats at the airport;

(5) coordinate the day-to-day Government aviation security activities at the airport;

(6) coordinate efforts related to aviation security with local law enforcement; and

(7) coordinate activities with other Managers.

(c) LIMITATION.—A Civil Aviation Security Field Officer may not be assigned security duties and powers at an airport having a Manager.

§44934. Foreign Security Liaison Officers

(a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—(1) The Administrator of the Federal Aviation Administration shall establish the position of Foreign Security Liaison Officer for each airport outside the United States at which the Administrator decides an Officer is necessary for air transportation security. In coordination with the Secretary of State, the Administrator shall designate an Officer for each of those airports.

(2) Not later than November 16, 1992, and in coordination with the Secretary, the Administrator shall designate an Officer for each of those airports where extraordinary security measures are in place. The Secretary shall give high priority to stationing those Officers.

(b) DUTIES AND POWERS.—An Officer reports directly to the Assistant Administrator for Civil

Aviation Security. The Officer at each airport shall—

(1) serve as the liaison of the Assistant Administrator to foreign security authorities (including governments of foreign countries and foreign airport authorities) in carrying out United States Government security requirements at that airport; and

(2) to the extent practicable, carry out duties and powers referred to in section 44933(b) of this title.

(c) COORDINATION OF ACTIVITIES.—The activities of each Officer shall be coordinated with the chief of the diplomatic mission of the United States to which the Officer is assigned. Activities of an Officer under this section shall be consistent with the duties and powers of the Secretary and the chief of mission to a foreign country under section 103 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4802) and section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

§44935. Employment standards and training

(a) EMPLOYMENT STANDARDS.—Not later than August 13, 1991, the Administrator of the Federal Aviation Administration shall prescribe standards for the employment and continued employment of, and contracting for, air carrier personnel and, as appropriate, airport security personnel. The standards shall include—

(1) minimum training requirements for new employees;

(2) retraining requirements;

(3) minimum staffing levels;

(4) minimum language skills; and

(5) minimum education levels for employees, when appropriate.

(b) REVIEW AND RECOMMENDATIONS.—In coordination with air carriers, airport operators, and other interested persons, the Administrator shall review issues related to human performance in the aviation security system to maximize that performance. When the review is completed, the Administrator shall recommend guidelines and prescribe appropriate changes in existing procedures to improve that performance.

(c) SECURITY PROGRAM TRAINING, STANDARDS, AND QUALIFICATIONS.—The Administrator—

(1) may train individuals employed to carry out a security program under section 44903(c) of this title; and

(2) shall prescribe uniform training standards and uniform minimum qualifications for individuals eligible for that training.

(d) EDUCATION AND TRAINING STANDARDS FOR SECURITY COORDINATORS, SUPERVISORY PERSONNEL, AND PILOTS.—(1) Not later than May 15, 1991, the Administrator shall prescribe standards for educating and training—

(A) ground security coordinators;

(B) security supervisory personnel; and

(C) airline pilots as in-flight security coordinators.

(2) The standards shall include initial training, retraining, and continuing education requirements and methods. Those requirements and methods shall be used annually to measure the performance of ground security coordinators and security supervisory personnel.

§44936. Employment investigations and restrictions

(a) EMPLOYMENT INVESTIGATION REQUIREMENT.—(1) The Administrator of the Federal Aviation Administration shall require by regulation that an employment investigation, including a criminal history record check, shall be conducted, as the Administrator decides is necessary to ensure air transportation security, of each individual employed in, or applying for, a position in which the individual has unescorted access, or may permit other individuals to have unescorted access, to—

(A) aircraft of an air carrier or foreign air carrier; or

(B) a secured area of an airport in the United States the Administrator designates that serves an air carrier or foreign air carrier.

(2) An air carrier, foreign air carrier, or airport operator that employs, or authorizes or makes a contract for the services of, an individual in a position described in paragraph (1) of this subsection shall ensure that the investigation the Administrator requires is conducted.

(b) PROHIBITED EMPLOYMENT.—(1) Except as provided in paragraph (3) of this subsection, an air carrier, foreign air carrier, or airport operator may not employ, or authorize or make a contract for the services of, an individual in a position described in subsection (a)(1) of this section if—

(A) the investigation of the individual required under this section has not been conducted; or

(B) the results of that investigation establish that, in the 10-year period ending on the date of the investigation, the individual was convicted of—

(i) a crime referred to in section 46306, 46308, 46312, 46314, or 46315 or chapter 465 of this title or section 32 of title 18;

(ii) murder;

(iii) assault with intent to murder;

(iv) espionage;

(v) sedition;

(vi) treason;

(vii) rape;

(viii) kidnapping;

(ix) unlawful possession, sale, distribution, or manufacture of an explosive or weapon;

(x) extortion;

(xi) armed robbery;

(xii) distribution of, or intent to distribute, a controlled substance; or

(xiii) conspiracy to commit any of the acts referred to in clauses (i)-(xii) of this paragraph.

(2) The Administrator may specify other factors that are sufficient to prohibit the employment of an individual in a position described in subsection (a)(1) of this section.

(3) An air carrier, foreign air carrier, or airport operator may employ, or authorize or contract for the services of, an individual in a position described in subsection (a)(1) of this section without carrying out the investigation required under this section, if the Administrator approves a plan to employ the individual that provides alternate security arrangements.

(c) FINGERPRINTING AND RECORD CHECK INFORMATION.—(1) If the Administrator requires an identification and criminal history record check, to be conducted by the Attorney General, as part of an investigation under this section, the Administrator shall designate an individual to obtain fingerprints and submit those fingerprints to the Attorney General. The Attorney General may make the results of a check available to an individual the Administrator designates. Before designating an individual to obtain and submit fingerprints or receive results of a check, the Administrator shall consult with the Attorney General.

(2) The Administrator shall prescribe regulations on—

(A) procedures for taking fingerprints; and

(B) requirements for using information received from the Attorney General under paragraph (1) of this subsection—

(i) to limit the dissemination of the information; and

(ii) to ensure that the information is used only to carry out this section.

(3) If an identification and criminal history record check is conducted as part of an investigation of an individual under this section, the individual—

(A) shall receive a copy of any record received from the Attorney General; and

(B) may complete and correct the information contained in the check before a final employment decision is made based on the check.

(d) FEES AND CHARGES.—The Administrator and the Attorney General shall establish reasonable fees and charges to pay expenses incurred in carrying out this section. The employer of the individual being investigated shall pay the costs of a record check of the individual. Money collected under this section shall be credited to the account in the Treasury from which the expenses were incurred and are available to the Administrator and the Attorney General for those expenses.

(e) WHEN INVESTIGATION OR RECORD CHECK NOT REQUIRED.—This section does not require an investigation or record check when the investigation or record check is prohibited by a law of a foreign country.

§44937. Prohibition on transferring duties and powers

Except as specifically provided by law, the Administrator of the Federal Aviation Administration may not transfer a duty or power under section 44903(a), (b), (c), or (e), 44906(a)(1) or (b), 44912, 44935, 44936, or 44938(b)(3) of this title to another department, agency, or instrumentality of the United States Government.

§44938. Reports

(a) TRANSPORTATION SECURITY.—Not later than December 31 of each year, the Secretary of Transportation shall submit to Congress a report on transportation security with recommendations the Secretary considers appropriate. The report shall be prepared in conjunction with the annual report the Administrator of the Federal Aviation Administration submits under subsection (b) of this section, but may not duplicate the information submitted under subsection (b) or section 44907(a)(3) of this title. The Secretary may submit the report in classified and unclassified parts. The report shall include—

(1) an assessment of trends and developments in terrorist activities, methods, and other threats to transportation;

(2) an evaluation of deployment of explosive detection devices;

(3) recommendations for research, engineering, and development activities related to transportation security, except research engineering and development activities related to aviation security to the extent those activities are covered by the national aviation research plan required under section 44501(d) of this title;

(4) identification and evaluation of cooperative efforts with other departments, agencies, and instrumentalities of the United States Government;

(5) an evaluation of cooperation with foreign transportation and security authorities;

(6) the status of the extent to which the recommendations of the President's Commission on Aviation Security and Terrorism have been carried out and the reasons for any delay in carrying out those recommendations;

(7) a summary of the activities of the Director of Intelligence and Security in the 12-month period ending on the date of the report;

(8) financial and staffing requirements of the Director;

(9) an assessment of financial and staffing requirements, and attainment of existing staffing goals, for carrying out duties and powers of the Administrator related to security; and

(10) appropriate legislative and regulatory recommendations.

(b) SCREENING AND FOREIGN AIR CARRIER AND AIRPORT SECURITY.—The Administrator shall submit annually to Congress a report—

(1) on the effectiveness of procedures under section 44901 of this title;

(2) that includes a summary of the assessments conducted under section 44907(a)(1) and (2) of this title; and

(3) that includes an assessment of the steps being taken, and the progress being made, in ensuring compliance with section 44906 of this title for each foreign air carrier security program at airports outside the United States—

(A) at which the Administrator decides that Foreign Security Liaison Officers are necessary for air transportation security; and

(B) for which extraordinary security measures are in place.

(c) DOMESTIC AIR TRANSPORTATION SYSTEM SECURITY.—The Administrator shall submit to Congress an annual report for each of the calendar years 1991 and 1992 on the progress being made, and the problems occurring, in carrying out section 44904 of this title. The report shall include recommendations for improving domestic air transportation security.

(d) PLAN ON SECURITY MANAGERS AND LIAISON OFFICERS.—Not later than May 15, 1991, the Administrator shall submit to Congress a plan to carry out the requirements of sections 44933 and 44934 of this title. The plan shall include a schedule for carrying out and assessing personnel and financial needs.

CHAPTER 451—ALCOHOL AND CONTROLLED SUBSTANCES TESTING

Sec.
45101. Definition.
45102. Alcohol and controlled substances testing program.
45103. Prohibited service.
45104. Testing and laboratory requirements.
45105. Rehabilitation.
45106. Relationship to other laws, regulations, standards, and orders.

§45101. Definition

In this chapter, "controlled substance" means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) specified by the Administrator of the Federal Aviation Administration.

§45102. Alcohol and controlled substances testing programs

(a) PROGRAM FOR EMPLOYEES OF AIR CARRIERS AND FOREIGN AIR CARRIERS.—(1) In the interest of aviation safety, the Administrator of the Federal Aviation Administration shall prescribe regulations not later than October 28, 1992, that establish a program requiring air carriers and foreign air carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions (as decided by the Administrator) for the use of alcohol or a controlled substance in violation of law or a United States Government regulation.

(2) When the Administrator considers it appropriate in the interest of safety, the Administrator may prescribe regulations for conducting periodic recurring testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(b) PROGRAM FOR EMPLOYEES OF THE FEDERAL AVIATION ADMINISTRATION.—(1) The Administrator shall establish a program of preemployment, reasonable suspicion, random, and post-accident testing for the use of alcohol or a controlled substance in violation of law or a Government regulation for employees of the Administration whose duties include responsibility for safety-sensitive functions.

(2) When the Administrator considers it appropriate in the interest of safety, the Administrator may prescribe regulations for conducting periodic recurring testing of employees of the Administration responsible for safety-sensitive functions for use of alcohol or a controlled substance in violation of law or a Government regulation.

(c) SANCTIONS.—In prescribing regulations under the programs required by this section, the Administrator shall require, as the Administrator considers appropriate, the suspension or revocation of any certificate issued to an individual referred to in this section, or the disqualification or dismissal of the individual, under this chapter when a test conducted and confirmed under this chapter indicates the individual has used alcohol or a controlled substance in violation of law or a Government regulation.

§45103. Prohibited service

(a) USE OF ALCOHOL OR A CONTROLLED SUBSTANCE.—An individual may not use alcohol or a controlled substance after October 28, 1991, in violation of law or a United States Government regulation and serve as an airman, crewmember, airport security screening contract employee, air carrier employee responsible for safety-sensitive functions (as decided by the Administrator of the Federal Aviation Administration), or employee of the Administration with responsibility for safety-sensitive functions.

(b) REHABILITATION REQUIRED TO RESUME SERVICE.—Notwithstanding subsection (a) of this section, an individual found to have used alcohol or a controlled substance after October 28, 1991, in violation of law or a Government regulation may serve as an airman, crewmember, airport security screening contract employee, air carrier employee responsible for safety-sensitive functions (as decided by the Administrator), or employee of the Administration with responsibility for safety-sensitive functions only if the individual completes a rehabilitation program described in section 45105 of this title.

(c) PERFORMANCE OF PRIOR DUTIES PROHIBITED.—An individual who served as an airman, crewmember, airport security screening contract employee, air carrier employee responsible for safety-sensitive functions (as decided by the Administrator), or employee of the Administration with responsibility for safety-sensitive functions and who was found by the Administrator to have used alcohol or a controlled substance after October 28, 1991, in violation of law or a Government regulation may not carry out the duties related to air transportation that the individual carried out before the finding of the Administrator if the individual—

(1) used the alcohol or controlled substance when on duty;

(2) began or completed a rehabilitation program described in section 45105 of this title before using the alcohol or controlled substance; or

(3) refuses to begin or complete a rehabilitation program described in section 45105 of this title after a finding by the Administrator under this section.

§45104. Testing and laboratory requirements

In carrying out section 45102 of this title, the Administrator of the Federal Aviation Administration shall develop requirements that—

(1) promote, to the maximum extent practicable, individual privacy in the collection of specimens;

(2) for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—

(A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this chapter, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing;

(B) the minimum list of controlled substances for which individuals may be tested; and

(C) appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this chapter;

(3) require that a laboratory involved in controlled substances testing under this chapter have the capability and facility, at the laboratory, of performing screening and confirmation tests;

(4) provide that all tests indicating the use of alcohol or a controlled substance in violation of law or a United States Government regulation be confirmed by a scientifically recognized method of testing capable of providing quantitative information about alcohol or a controlled substance;

(5) provide that each specimen be subdivided, secured, and labeled in the presence of the tested individual and that a part of the specimen be retained in a secure manner to prevent the possibility of tampering, so that if the individual's confirmation test results are positive the individual has an opportunity to have the retained part tested by a 2d confirmation test done independently at another certified laboratory if the individual requests the 2d confirmation test not later than 3 days after being advised of the results of the first confirmation test;

(6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations that may be necessary and in consultation with the Secretary of Health and Human Services;

(7) provide for the confidentiality of test results and medical information (except information about alcohol or a controlled substance) of employees, except that this clause does not prevent the use of test results for the orderly imposition of appropriate sanctions under this chapter; and

(8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

§45105. Rehabilitation

(a) PROGRAM FOR EMPLOYEES OF AIR CARRIERS AND FOREIGN AIR CARRIERS.—The Administrator of the Federal Aviation Administration shall prescribe regulations establishing requirements for rehabilitation programs that at least provide for the identification and opportunity for treatment of employees of air carriers and foreign air carriers referred to in section 45102(a)(1)(A) of this title who need assistance in resolving problems with the use of alcohol or a controlled substance in violation of law or a United States Government regulation. Each air carrier and foreign air carrier is encouraged to make such a program available to all its employees in addition to the employees referred to in section 45102(a)(1)(A). The Administrator shall decide on the circumstances under which employees shall be required to participate in a program. This subsection does not prevent an air carrier or foreign air carrier from establishing a program under this subsection in cooperation with another air carrier or foreign air carrier.

(b) PROGRAM FOR EMPLOYEES OF THE FEDERAL AVIATION ADMINISTRATION.—The Administrator shall establish and maintain a rehabilitation program that at least provides for the identification and opportunity for treatment of employees of the Administration whose duties include responsibility for safety-sensitive functions who need assistance in resolving problems with the use of alcohol or a controlled substance.

§45106. Relationship to other laws, regulations, standards, and orders

(a) EFFECT ON STATE AND LOCAL GOVERNMENT LAWS, REGULATIONS, STANDARDS, OR ORDERS.—A State or local government may not prescribe, issue, or continue in effect a law, regulation, standard, or order that is inconsistent with regulations prescribed under this chapter. However, a regulation prescribed under this chapter does not preempt a State criminal law that imposes sanctions for reckless conduct leading to loss of life, injury, or damage to property.

(b) INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS.—(1) In prescribing regulations under this chapter, the Administrator of the Federal Aviation Administration—

(A) shall establish only requirements applicable to foreign air carriers that are consistent with international obligations of the United States; and

(B) shall consider applicable laws and regulations of foreign countries.

(2) The Secretaries of State and Transportation jointly shall request the governments of foreign countries that are members of the International Civil Aviation Organization to strengthen and enforce existing standards to prohibit crewmembers in international civil aviation from using alcohol or a controlled substance in violation of law or a United States Government regulation.

(c) OTHER REGULATIONS ALLOWED.—This section does not prevent the Administrator from continuing in effect, amending, or further supplementing a regulation prescribed before October 28, 1991, governing the use of alcohol or a controlled substance by airmen, crewmembers, airport security screening contract employees, air carrier employees responsible for safety-sensitive functions (as decided by the Administrator), or employees of the Admininstration with responsibility for safety-sensitive functions.

CHAPTER 453—FEES

Sec.
45301. Authority to impose fees.
45302. Fees involving aircraft not providing air transportation.
45303. Maximum fees for private person services.

§45301. Authority to impose fees

(a) GENERAL AUTHORITY.—The Secretary of Transportation may impose a fee for an approval, test, authorization, certificate, permit, registration, transfer, or rating related to aviation that has not been approved by Congress only when the fee—

(1)(A) was in effect on January 1, 1973; and

(B) is not more than the fee in effect on January 1, 1973, adjusted in proportion to changes in the Consumer Price Index of All Urban Consumers published by the Secretary of Labor between January 1, 1973, and the date the fee is imposed; or

(2) is imposed under section 45302 of this title.

(b) NONAPPLICATION.—This section does not apply to a fee for a test, authorization, certificate, permit, or rating related to an airman or repair station administered or issued outside the United States.

§45302. Fees involving aircraft not providing air transportation

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

(b) GENERAL AUTHORITY AND MAXIMUM FEES.—The Administrator of the Federal Aviation Administration may impose fees to pay for the costs of issuing airman certificates to pilots and certificates of registration of aircraft and processing forms for major repairs and alterations of fuel tanks and fuel systems of aircraft. The following fees may not be more than the amounts specified:

(1) $12 for issuing an airman's certificate to a pilot.

(2) $25 for registering an aircraft after the transfer of ownership.

(3) $15 for renewing an aircraft registration.

(4) $7.50 for processing a form for a major repair or alteration of a fuel tank or fuel system of an aircraft.

(c) ADJUSTMENTS.—The Administrator shall adjust the maximum fees established by subsection (b) of this section for changes in the Consumer Price Index of All Urban Consumers published by the Secretary of Labor.

(d) CREDIT TO ACCOUNT AND AVAILABILITY.—Money collected from fees imposed under this section shall be credited to the account in the Treasury from which the Administrator incurs expenses in carrying out chapter 441 and sections 44701–44716 of this title (except sections 44701(c), 44703(f)(2), and 44713(d)(2)). The money is available to the Administrator to pay expenses for which the fees are collected.

§45303. Maximum fees for private person services

The Administrator of the Federal Aviation Administration may establish maximum fees that private persons may charge for services performed under a delegation to the person under section 44702(d) of this title.

SUBPART IV—ENFORCEMENT AND PENALTIES

CHAPTER 461—INVESTIGATIONS AND PROCEEDINGS

Sec.
46101. Complaints and investigations.
46102. Proceedings.
46103. Service of notice, process, and actions.
46104. Evidence.
46105. Regulations and orders.
46106. Enforcement by the Secretary of Transportation and Administrator of the Federal Aviation Administration.
46107. Enforcement by the Attorney General.
46108. Enforcement of certificate requirements by interested persons.
46109. Joinder and intervention.
46110. Judicial review.

§46101. Complaints and investigations

(a) GENERAL.—(1) A person may file a complaint in writing with the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) about a person violating this part or a requirement prescribed under this part. Except as provided in subsection (b) of this section, the Secretary or Administrator shall investigate the complaint if a reasonable ground appears to the Secretary or Administrator for the investigation.

(2) On the initiative of the Secretary of Transportation or the Administrator, as appropriate, the Secretary or Administrator may conduct an investigation, if a reasonable ground appears to the Secretary or Administrator for the investigation, about—

(A) a person violating this part or a requirement prescribed under this part; or

(B) any question that may arise under this part.

(3) The Secretary of Transportation or Administrator may dismiss a complaint without a hearing when the Secretary or Administrator is of the opinion that the complaint does not state facts that warrant an investigation or action.

(4) After notice and an opportunity for a hearing and subject to section 40105(b) of this title, the Secretary of Transportation or Administrator shall issue an order to compel compliance with this part if the Secretary or Administrator finds in an investigation under this subsection that a person is violating this part.

(b) COMPLAINTS AGAINST MEMBERS OF ARMED FORCES.—The Secretary of Transportation or Administrator shall refer a complaint against a member of the armed forces of the United States performing official duties to the Secretary of the department concerned for action. Not later than 90 days after receiving the complaint, the Secretary of that department shall inform the Secretary of Transportation or Administrator of the action taken on the complaint, including any corrective or disciplinary action taken.

§46102. Proceedings

(a) CONDUCTING PROCEEDINGS.—Subject to subchapter II of chapter 5 of title 5, the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may conduct proceedings in a way conducive to justice and the proper dispatch of business.

(b) APPEARANCE.—A person may appear and be heard before the Secretary and the Administrator in person or by an attorney. The Secretary may appear and participate as an interested party in a proceeding the Administrator conducts under section 40113(a) of this title.

(c) RECORDING AND PUBLIC ACCESS.—Official action taken by the Secretary and Administrator under this part shall be recorded. Proceedings before the Secretary and Administrator shall be open to the public on the request of an interested party unless the Secretary or Administrator decides that secrecy is required because of national defense.

(d) CONFLICTS OF INTEREST.—The Secretary, the Administrator, or an officer or employee of the Administration may not participate in a proceeding referred to in subsection (a) of this section in which the individual has a pecuniary interest.

§46103. Service of notice, process, and actions

(a) DESIGNATING AGENTS.—(1) Each air carrier and foreign air carrier shall designate an agent on whom service of notice and process in a proceeding before, and an action of, the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may be made.

(2) The designation—

(A) shall be in writing and filed with the Secretary or Administrator; and

(B) may be changed in the same way as originally made.

(b) SERVICE.—(1) Service may be made—

(A) by personal service;

(B) on a designated agent; or

(C) by certified or registered mail to the person to be served or the designated agent of the person.

(2) The date of service made by certified or registered mail is the date of mailing.

(c) SERVING AGENTS.—Service on an agent designated under this section shall be made at the office or usual place of residence of the agent. If an air carrier or foreign air carrier does not have a designated agent, service may be made by posting the notice, process, or action in the office of the Secretary or Administrator.

§46104. Evidence

(a) GENERAL.—In conducting a hearing or investigation under this part, the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may—

(1) subpena witnesses and records related to a matter involved in the hearing or investigation from any place in the United States to the designated place of the hearing or investigation;

(2) administer oaths;

(3) examine witnesses; and

(4) receive evidence at a place in the United States the Secretary or Administrator designates.

(b) COMPLIANCE WITH SUBPENAS.—If a person disobeys a subpena, the Secretary, the Administrator or a party to a proceeding before the Secretary or Administrator may petition a court of the United States to enforce the subpena. A judicial proceeding to enforce a subpena under this section may be brought in the jurisdiction in which the proceeding or investigation is conducted. The court may punish a failure to obey an order of the court to comply with the subpena as a contempt of court.

(c) DEPOSITIONS.—(1) In a proceeding or investigation, the Secretary or Administrator may order a person to give testimony by deposition and to produce records. If a person fails to be deposed or to produce records, the order may be enforced in the same way a subpena may be enforced under subsection (b) of this section.

(2) A deposition may be taken before an individual designated by the Secretary or Administrator and having the power to administer oaths.

(3) Before taking a deposition, the party or the attorney of the party proposing to take the deposition must give reasonable notice in writing to the opposing party or the attorney of record of that party. The notice shall state the name of the witness and the time and place of taking the deposition.

(4) The testimony of a person deposed under this subsection shall be under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent. Each deposition shall be filed promptly with the Secretary or Administrator.

(5) If the laws of a foreign country allow, the testimony of a witness in that country may be taken by deposition—

(A) by a consular officer or an individual commissioned by the Secretary or Administrator or agreed on by the parties by written stipulation filed with the Secretary or Administrator; or

(B) under letters rogatory issued by a court of competent jurisdiction at the request of the Secretary or Administrator.

(d) WITNESS FEES AND MILEAGE AND CERTAIN FOREIGN COUNTRY EXPENSES.—A witness summoned before the Secretary or Administrator or whose deposition is taken under this section and the individual taking the deposition are each entitled to the same fee and mileage that the witness and individual would have been paid for those services in a court of the United States. Under regulations of the Secretary or Administrator, the Secretary or Administrator shall pay the necessary expenses incident to executing, in another country, a commission or letter rogatory issued at the initiative of the Secretary or Administrator.

(e) DESIGNATING EMPLOYEES TO CONDUCT HEARINGS.—When designated by the Secretary or Administrator, an employee appointed under section 3105 of title 5 may conduct a hearing, subpena witnesses, administer oaths, examine witnesses, and receive evidence at a place in the United States the Secretary or Administrator designates. On request of a party, the Secretary or Administrator shall hear or receive argument.

§46105. Regulations and orders

(a) EFFECTIVENESS OF ORDERS.—Except as provided in this part, a regulation prescribed or order issued by the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) takes effect within a reasonable time prescribed by the Secretary or Administrator. The regulation or order remains in effect under its own terms or until superseded. Except as provided in this part, the Secretary or Administrator may amend, modify, or suspend an order in the way, and by giving the notice, the Secretary or Administrator decides.

(b) CONTENTS AND SERVICE OF ORDERS.—An order of the Secretary or Administrator shall include the findings of fact on which the order is based and shall be served on the parties to the proceeding and the persons affected by the order.

(c) EMERGENCIES.—When the Administrator is of the opinion that an emergency exists related to safety in air commerce and requires immediate action, the Administrator, on the initiative of the Administrator or on complaint, may prescribe regulations and issue orders immediately to meet the emergency, with or without notice and without regard to this part and subchapter II of chapter 5 of title 5. The Administrator shall begin a proceeding immediately about an emergency under this subsection and give preference, when practicable, to the proceeding.

§46106. Enforcement by the Secretary of Transportation and Administrator of the Federal Aviation Administration

The Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may bring a civil action against a person to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part. The action may be brought in the district court of the United States for the judicial district in which the person does business or the violation occurred.

§46107. Enforcement by the Attorney General

(a) CIVIL ACTIONS TO ENFORCE SECTION 40106(b).—The Attorney General may bring a civil action against a person to enforce section 40106(b) of this title. The action may be brought in the district court of the United States for the judicial district in which the person does business or the violation occurred.

(b) CIVIL ACTIONS TO ENFORCE THIS PART.—(1) On request of the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator), the Attorney General may bring a civil action—

(A) to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part; and

(B) to prosecute a person violating this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part.

(2) The costs and expenses of a civil action shall be paid out of the appropriations for the expenses of the courts of the United States.

(c) PARTICIPATION OF SECRETARY OR ADMINISTRATOR.—On request of the Attorney General, the Secretary or Administrator, as appropriate, may participate in a civil action under this part.

§46108. Enforcement of certificate requirements by interested persons

An interested person may bring a civil action against a person to enforce section 41101(a)(1) of this title. The action may be brought in the district court of the United States for the judicial district in which the defendant does business or the violation occurred.

§46109. Joinder and intervention

A person interested in or affected by a matter under consideration in a proceeding before the Secretary of Transportation or civil action to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part may be joined as a party or permitted to intervene in the proceeding or civil action.

§46110. Judicial review

(a) FILING AND VENUE.—Except for an order related to a foreign air carrier subject to disapproval by the President under section 41307 or 41509(f) of this title, a person disclosing a substantial interest in an order issued by the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) under this part may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued. The court may allow the petition to be filed after the 60th day only if there are reasonable grounds for not filing by the 60th day.

(b) JUDICIAL PROCEDURES.—When a petition is filed under subsection (a) of this section, the clerk of the court immediately shall send a copy of the petition to the Secretary or Administrator, as appropriate. The Secretary or Administrator shall file with the court a record of any proceeding in which the order was issued, as provided in section 2112 of title 28.

(c) AUTHORITY OF COURT.—When the petition is sent to the Secretary or Administrator, the court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order and may order the Secretary or Administrator to conduct further proceedings. After reasonable notice to the Secretary or Administrator, the court may grant interim relief by staying the order or taking other appropriate action when good cause for its action exists. Findings of fact by the Secretary or Administrator, if supported by substantial evidence, are conclusive.

(d) REQUIREMENT FOR PRIOR OBJECTION.—In reviewing an order under this section, the court may consider an objection to an order of the Secretary or Administrator only if the objection was made in the proceeding conducted by the Secretary or Administrator or if there was a reasonable ground for not making the objection in the proceeding.

(e) SUPREME COURT REVIEW.—A decision by a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28.

CHAPTER 463—PENALTIES

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§46301. Civil penalties

(a) GENERAL PENALTY.—(1) A person is liable to the United States Government for a civil penalty of not more than $1,000 for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, section 41301–41306, 41308–41310(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41709, 41711, 41712, or 41731–41742, chapter 419, subchapter II of chapter 421, chapter 441 (except section 44109), or section 44701(a) or (b), 44702–44716, 44901, 44903(b) or (c), 44905, 44906, 44907(d)(1)(B), 44909(a), 44912–44915, or 44932–44938 of this title;

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies;

(C) any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title; or

(D) a regulation of the United States Postal Service under this part.

(2) A person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman) is liable to the Government for a civil penalty of not more than $10,000 for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117) or section 44701(a) or (b), 44702–44716, 44901, 44903(b) or (c), 44905, 44906, 44912–44915, or 44932–44938 of this title; or

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(3) A civil penalty of not more than $10,000 may be imposed for each violation under paragraph (1) of this subsection related to—

(A) the transportation of hazardous material; or

(B) the registration or recordation under chapter 441 of this title of an aircraft not used to provide air transportation.

(4) A separate violation occurs under this subsection for each day the violation continues or, if applicable, for each flight involving the violation.

(b) Smoke Alarm Device Penalty.—(1) A passenger may not tamper with, disable, or destroy a smoke alarm device located in a lavatory on an aircraft providing air transportation or intrastate air transportation.

(2) An individual violating this subsection is liable to the Government for a civil penalty of not more than $2,000.

(c) Procedural Requirements.—(1) The Secretary of Transportation may impose a civil penalty for the following violations only after notice and an opportunity for a hearing:

(A) a violation of subsection (b) of this section or chapter 411, section 41301–41306, 41308–41310(a), 41501, 41503, 41504, 41506, 41510, 41511, 41701, 41702, 41705–41709, 41711, 41712, or 41731–41742, chapter 419, or subchapter II of chapter 421 of this title.

(B) a violation of a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(C) a violation of any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title.

(D) a violation under subsection (a)(1) of this section related to the transportation of hazardous material.

(2) The Secretary shall give written notice of the finding of a violation and the civil penalty under paragraph (1) of this subsection.

(d) Administrative Imposition of Penalties.—(1) In this subsection—

(A) "flight engineer" means an individual who holds a flight engineer certificate issued under part 63 of title 14, Code of Federal Regulations.

(B) "mechanic" means an individual who holds a mechanic certificate issued under part 65 of title 14, Code of Federal Regulations.

(C) "pilot" means an individual who holds a pilot certificate issued under part 61 of title 14, Code of Federal Regulations.

(D) "repairman" means an individual who holds a repairman certificate issued under part 65 of title 14, Code of Federal Regulations.

(2) The Administrator of the Federal Aviation Administration may impose a civil penalty for a violation of chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), chapter 441 (except section 44109), or section 44701(a) or (b), 44702–44716, 44901, 44903(b) or (c), 44905, 44906, 44907(d)(1)(B), 44912–44915, or 44932–44938 of this title or a regulation prescribed or order issued under any of those provisions. The Administrator shall give written notice of the finding of a violation and the penalty.

(3) In a civil action to collect a civil penalty imposed by the Administrator under this subsection, the issues of liability and the amount of the penalty may not be reexamined.

(4) Notwithstanding paragraph (2) of this subsection, the district courts of the United States have exclusive jurisdiction of a civil action involving a penalty the Administrator initiates if—

(A) the amount in controversy is more than $50,000;

(B) the action is in rem or another action in rem based on the same violation has been brought;

(C) the action involves an aircraft subject to a lien that has been seized by the Government; or

(D) another action has been brought for an injunction based on the same violation.

(5)(A) The Administrator may issue an order imposing a penalty under this subsection against an individual acting as a pilot, flight engineer, mechanic, or repairman only after advising the individual of the charges or any reason the Administrator relied on for the proposed penalty and providing the individual an opportunity to answer the charges and be heard about why the order shall not be issued.

(B) An individual acting as a pilot, flight engineer, mechanic, or repairman may appeal an order imposing a penalty under this subsection to the National Transportation Safety Board. After notice and an opportunity for a hearing on the record, the Board shall affirm, modify, or reverse the order. The Board may modify a civil penalty imposed to a suspension or revocation of a certificate.

(C) When conducting a hearing under this paragraph, the Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(D) When an individual files an appeal with the Board under this paragraph, the order of the Administrator is stayed.

(6) An individual substantially affected by an order of the Board under paragraph (5) of this subsection, or the Administrator when the Administrator decides that an order of the Board will have a significant adverse impact on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(7)(A) The Administrator may impose a penalty on an individual (except an individual acting as a pilot, flight engineer, mechanic, or repairman) only after notice and an opportunity for a hearing on the record.

(B) In an appeal from a decision of an administrative law judge as the result of a hearing under subparagraph (A) of this paragraph, the Administrator shall consider only whether—

(i) each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;

(ii) each conclusion of law is made according to applicable law, precedent, and public policy; and

(iii) the judge committed a prejudicial error that supports the appeal.

(C) Except for good cause, a civil action involving a penalty under this paragraph may not be initiated later than 2 years after the violation occurs.

(8) The maximum civil penalty the Administrator or Board may impose under this subsection is $50,000.

(9) This subsection applies only to a violation occurring after August 25, 1992.

(e) Penalty Considerations.—In determining the amount of a civil penalty under subsection (a)(3) of this section related to transportation of hazardous material, the Secretary shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(3) other matters that justice requires.

(f) Compromise and Setoff.—(1)(A) The Secretary may compromise the amount of a civil penalty imposed for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), or section 44701(a) or (b), 44702–44716, 44901, 44903(b) or (c), 44905, 44906, 44907(d)(1)(B), 44912–44915, or 44932–44938 of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) of this subparagraph applies.

(B) The Postal Service may compromise the amount of a civil penalty imposed under subsection (a)(1)(D) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(g) Judicial Review.—An order of the Secretary imposing a civil penalty may be reviewed judicially only under section 46110 of this title.

(h) Nonapplication.—(1) This section does not apply to the following when performing official duties:

(A) a member of the armed forces of the United States.

(B) a civilian employee of the Department of Defense subject to the Uniform Code of Military Justice.

(2) The appropriate military authority is responsible for taking necessary disciplinary action and submitting to the Secretary (or the Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator) a timely report on action taken.

§46302. False information

(a) Civil Penalty.—A person that, knowing the information to be false, gives, or causes to be given, under circumstances in which the information reasonably may be believed, false information about an alleged attempt being made or to be made to do an act that would violate section 46502(a), 46504, 46505, or 46506 of this title, is liable to the United States Government for a civil penalty of not more than $10,000 for each violation.

(b) Compromise and Setoff.—(1) The Secretary of Transportation may compromise the amount of a civil penalty imposed under subsection (a) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

§46303. Carrying a weapon

(a) Civil Penalty.—An individual who, when on, or attempting to board, an aircraft in, or in-

tended for operation in, air transportation or intrastate air transportation, has on or about the individual or the property of the individual a concealed dangerous weapon that is or would be accessible to the individual in flight is liable to the United States Government for a civil penalty of not more than $10,000 for each violation.

(b) COMPROMISE AND SETOFF.—(1) The Secretary of Transportation may compromise the amount of a civil penalty imposed under subsection (a) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the individual liable for the penalty.

(c) NONAPPLICATION.—This section does not apply to—

(1) a law enforcement officer of a State or political subdivision of a State, or an officer or employee of the Government, authorized to carry arms in an official capacity; or

(2) another individual the Administrator of the Federal Aviation Administration by regulation authorizes to carry arms in an official capacity.

§46304. Liens on aircraft

(a) AIRCRAFT SUBJECT TO LIENS.—When an aircraft is involved in a violation referred to in section 46301(a)(1)(A)–(C), (2), or (3) of this title and the violation is by the owner of, or individual commanding, the aircraft, the aircraft is subject to a lien for the civil penalty.

(b) SEIZURE.—An aircraft subject to a lien under this section may be seized summarily and placed in the custody of a person authorized to take custody of it under regulations of the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator). A report on the seizure shall be submitted to the Attorney General. The Attorney General promptly shall bring a civil action in rem to enforce the lien or notify the Secretary or Administrator that the action will not be brought.

(c) RELEASE.—An aircraft seized under subsection (b) of this section shall be released from custody when—

(1) the civil penalty is paid;

(2) a compromise amount agreed on is paid;

(3) the aircraft is seized under a civil action in rem to enforce the lien;

(4) the Attorney General gives notice that a civil action will not be brought under subsection (b) of this section; or

(5) a bond (in an amount and with a surety the Secretary or Administrator prescribes), conditioned on payment of the penalty or compromise, is deposited with the Secretary or Administrator.

§46305. Actions to recover civil penalties

A civil penalty under this chapter may be collected by bringing a civil action against the person subject to the penalty, a civil action in rem against an aircraft subject to a lien for a penalty, or both. The action shall conform as nearly as practicable to a civil action in admiralty, regardless of the place an aircraft in a civil action in rem is seized. However, a party may demand a jury trial of an issue of fact in an action involving a civil penalty under this chapter (except a penalty imposed by the Secretary of Transportation that formerly was imposed by the Civil Aeronautics Board) if the value of the matter in controversy is more than $20. Issues of fact tried by a jury may be reexamined only under common law rules.

§46306. Registration violations involving aircraft not providing air transportation

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

(b) GENERAL CRIMINAL PENALTY.—Except as provided by subsection (c) of this section, a person shall be fined under title 18, imprisoned for not more than 3 years, or both, if the person—

(1) knowingly and willfully forges or alters a certificate authorized to be issued under this part;

(2) knowingly sells, uses, attempts to use, or possesses with the intent to use, such a certificate;

(3) knowingly and willfully displays or causes to be displayed on an aircraft a mark that is false or misleading about the nationality or registration of the aircraft;

(4) obtains a certificate authorized to be issued under this part by knowingly and willfully falsifying or concealing a material fact, making a false, fictitious, or fraudulent statement, or making or using a false document knowing it contains a false, fictitious, or fraudulent statement or entry;

(5) owns an aircraft eligible for registration under section 44102 of this title and knowingly and willfully operates, attempts to operate, or allows another person to operate the aircraft when—

(A) the aircraft is not registered under section 44103 of this title or the certificate of registration is suspended or revoked; or

(B) the owner knows or has reason to know that the other person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

(6) knowingly and willfully operates or attempts to operate an aircraft eligible for registration under section 44102 of this title knowing that—

(A) the aircraft is not registered under section 44103 of this title;

(B) the certificate of registration is suspended or revoked; or

(C) the person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

(7) knowingly and willfully serves or attempts to serve in any capacity as an airman without an airman's certificate authorizing the individual to serve in that capacity;

(8) knowingly and willfully employs for service or uses in any capacity as an airman an individual who does not have an airman's certificate authorizing the individual to serve in that capacity; or

(9) operates an aircraft with a fuel tank or fuel system that has been installed or modified knowing that the tank, system, installation, or modification does not comply with regulations and requirements of the Administrator of the Federal Aviation Administration.

(c) CONTROLLED SUBSTANCE CRIMINAL PENALTY.—(1) In this subsection, "controlled substance" has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(2) A person violating subsection (b) of this section shall be fined under title 18, inprisoned for not more than 5 years, or both, if the violation is related to transporting a controlled substance by aircraft or aiding or facilitating a controlled substance violation and the transporting, aiding, or facilitating—

(A) is punishable by death or imprisonment of more than one year under a law of the United States or a State; or

(B) provided is related to an act punishable by death or imprisonment for more than one year under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance).

(3) A term of imprisonment imposed under paragraph (2) of this subsection shall be served in addition to, and not concurrently with, any other term of imprisonment imposed on the individual.

(d) SEIZURE AND FORFEITURE.—(1) The Administrator of Drug Enforcement or the Commissioner of Customs may seize and forfeit under the customs laws an aircraft whose use is related to a violation of subsection (b) of this section, or to aid or facilitate a violation, regardless of whether a person is charged with the violation.

(2) An aircraft's use is presumed to have been related to a violation of, or to aid or facilitate a violation of—

(A) subsection (b)(1) of this section if the aircraft certificate of registration has been forged or altered;

(B) subsection (b)(3) of this section if there is an external display of false or misleading registration numbers or country of registration;

(C) subsection (b)(4) of this section if—

(i) the aircraft is registered to a false or fictitious person; or

(ii) the application form used to obtain the aircraft certificate of registration contains a material false statement;

(D) subsection (b)(5) of this section if the aircraft was operated when it was not registered under section 44103 of this title; or

(E) subsection (b)(9) of this section if the aircraft has a fuel tank or fuel system that was installed or altered—

(i) in violation of a regulation or requirement of the Administrator of the Federal Aviation Administration; or

(ii) if a certificate required to be issued for the installation or alteration is not carried on the aircraft.

(3) The Administrator of the Federal Aviation Administration, the Administrator of Drug Enforcement, and the Commissioner shall agree to a memorandum of understanding to establish procedures to carry out this subsection.

(e) RELATIONSHIP TO STATE LAWS.—This part does not prevent a State from establishing a criminal penalty, including providing for forfeiture and seizure of aircraft, for a person that—

(1) knowingly and willfully forges or alters an aircraft certificate of registration;

(2) knowingly sells, uses, attempts to use, or possesses with the intent to use, a fraudulent aircraft certificate of registration;

(3) knowingly and willfully displays or causes to be displayed on an aircraft a mark that is false or misleading about the nationality or registration of the aircraft; or

(4) obtains an aircraft certificate of registration from the Administrator of the Federal Aviation Administration by—

(A) knowingly and willfully falsifying or concealing a material fact;

(B) making a false, fictitious, or fraudulent statement; or

(C) making or using a false document knowing it contains a false, fictitious, or fraudulent statement or entry.

§46307. Violation of national defense airspace

A person that knowingly or willfully violates section 40103(b)(3) of this title or a regulation prescribed or order issued under section 40103(b)(3) shall be fined under title 18, imprisoned for not more than one year, or both.

§46308. Interference with air navigation

A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person—

(1) with intent to interfere with air navigation in the United States, exhibits in the United States a light or signal at a place or in a way likely to be mistaken for a true light or signal established under this part or for a true light or signal used at an air navigation facility;

(2) after a warning from the Administrator of the Federal Aviation Administration, continues to maintain a misleading light or signal; or

(3) knowingly interferes with the operation of a true light or signal.

§46309. Concession and rate violations

(a) Criminal Penalty for Offering, Granting, Giving, or Helping To Obtain Concessions and Lower Rates.—An air carrier, foreign air carrier, ticket agent, or officer, agent, or employee of an air carrier, foreign air carrier, or ticket agent shall be fined under title 18 if the air carrier, foreign air carrier, ticket agent, officer, agent, or employee—

(1) knowingly and willfully offers, grants, or gives, or causes to be offered, granted, or given, a rebate or other concession in violation of this part; or

(2) by any means knowingly and willfully assists, or willingly allows, a person to obtain transportation or services subject to this part at less than the rate lawfully in effect.

(b) Criminal Penalty for Receiving Rebates, Privileges, and Facilities.—A person shall be fined under title 18 if the person by any means—

(1) knowingly and willfully solicits, accepts, or receives a rebate of a part of a rate lawfully in effect for the foreign air transportation of property, or a service related to the foreign air transportation; or

(2) knowingly solicits, accepts, or receives a privilege or facility related to a matter the Secretary of Transportation requires be specified in a currently effective tariff applicable to the foreign air transportation of property.

§46310. Reporting and recordkeeping violations

(a) General Criminal Penalty.—An air carrier or an officer, agent, or employee of an air carrier shall be fined under title 18 for intentionally—

(1) failing to make a report or keep a record under this part;

(2) falsifying, mutilating, or altering a report or record under this part; or

(3) filing a false report or record under this part.

(b) Safety Regulation Criminal Penalty.—An air carrier or an officer, agent, or employee of an air carrier shall be fined under title 18, imprisoned for not more than 5 years, or both, for intentionally falsifying or concealing a material fact, or inducing reliance on a false statement of material fact, in a report or record under section 44701(a) or (b) or 44702–44716 of this title.

§46311. Unlawful disclosure of information

(a) Criminal Penalty.—The Secretary of Transportation, the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator, or an officer or employee of the Secretary or Administrator shall be fined under title 18, imprisoned for not more than 2 years, or both, if the Secretary, Administrator, officer, or employee knowingly and willfully discloses information that—

(1) the Secretary, Administrator, officer, or employee acquires when inspecting the records of an air carrier; or

(2) is withheld from public disclosure under section 40115 of this title.

(b) Nonapplication.—Subsection (a) of this section does not apply if—

(1) the officer or employee is directed by the Secretary or Administrator to disclose information that the Secretary or Administrator had ordered withheld; or

(2) the Secretary, Administrator, officer, or employee is directed by a court of competent jurisdiction to disclose the information.

(c) Withholding Information From Congress.—This section does not authorize the Secretary or Administrator to withhold information from a committee of Congress authorized to have the information.

§46312. Transporting hazardous material

A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person, in violation of a regulation or requirement related to the transportation of hazardous material prescribed by the Secretary of Transportation under this part—

(1) willfully delivers, or causes to be delivered, property containing hazardous material to an air carrier or to an operator of a civil aircraft for transportation in air commerce; or

(2) recklessly causes the transportation in air commerce of the property.

§46313. Refusing to appear or produce records

A person not obeying a subpena or requirement of the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) to appear and testify or produce records shall be fined under title 18, imprisoned for not more than one year, or both.

§46314. Entering aircraft or airport area in violation of security requirements

(a) Prohibition.—A person may not knowingly and willfully enter, in violation of security requirements prescribed under section 44901, 44903(b) or (c), or 44906 of this title, an aircraft or an airport area that serves an air carrier or foreign air carrier.

(b) Criminal Penalty.—(1) A person violating subsection (a) of this section shall be fined under title 18, imprisoned for not more than one year, or both.

(2) A person violating subsection (a) of this section with intent to commit, in the aircraft or airport area, a felony under a law of the United States or a State shall be fined under title 18, imprisoned for not more than 10 years, or both.

§46315. Lighting violations involving transporting controlled substances by aircraft not providing air transportation

(a) Application.—This section applies only to aircraft not used to provide air transportation.

(b) Criminal Penalty.—A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if—

(1) the person knowingly and willfully operates an aircraft in violation of a regulation or requirement of the Administrator of the Federal Aviation Administration related to the display of navigation or anticollision lights;

(2) the person is knowingly transporting a controlled substance by aircraft or aiding or facilitating a controlled substance offense; and

(3) the transporting, aiding, or facilitating—

(A) is punishable by death or imprisonment for more than one year under a law of the United States or a State; or

(B) is provided in connection with an act punishable by death or imprisonment for more than one year under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance).

§46316. General criminal penalty when specific penalty not provided

(a) Criminal Penalty.—Except as provided by subsection (b) of this section, when another criminal penalty is not provided under this chapter, a person that knowingly and willfully violates this part, a regulation prescribed or order issued by the Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) under this part, or any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title shall be fined under title 18. A separate violation occurs for each day the violation continues.

(b) Nonapplication.—Subsection (a) of this section does not apply to chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), chapter 445, and sections 44701(a) and (b), 44702–44716, 44901, 44903(b) and (c), 44905, 44906, 44912–44915, and 44932–44938 of this title.

CHAPTER 465—SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES

Sec.

46501. Definitions.
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46503. Death penalty sentencing procedure for aircraft piracy.
46504. Interference with flight crew members and attendants.
46505. Carrying a weapon or explosive on an aircraft.
46506. Application of certain criminal laws to acts on aircraft.
46507. False information and threats.

§46501. Definitions

In this chapter—

(1) "aircraft in flight" means an aircraft from the moment all external doors are closed following boarding—

(A) through the moment when one external door is opened to allow passengers to leave the aircraft; or

(B) until, if a forced landing, competent authorities take over responsibility for the aircraft and individuals and property on the aircraft.

(2) "special aircraft jurisdiction of the United States" includes any of the following aircraft in flight:

(A) a civil aircraft of the United States.

(B) an aircraft of the armed forces of the United States.

(C) another aircraft in the United States.

(D) another aircraft outside the United States—

(i) that has its next scheduled destination or last place of departure in the United States, if the aircraft next lands in the United States;

(ii) on which an individual commits an offense (as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft) if the aircraft lands in the United States with the individual still on the aircraft; or

(iii) against which an individual commits an offense (as defined in subsection (d) or (e) of article I, section I of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation) if the aircraft lands in the United States with the individual still on the aircraft.

(E) any other aircraft leased without crew to a lessee whose principal place of business is in the United States or, if the lessee does not have a principal place of business, whose permanent residence is in the United States.

(3) an individual commits an offense (as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft) when the individual, when on an aircraft in flight—

(A) by any form of intimidation, unlawfully seizes, exercises control of, or attempts to seize or exercise control of, the aircraft; or

(B) is an accomplice of an individual referred to in subclause (A) of this clause.

§46502. Aircraft piracy

(a) In Special Aircraft Jurisdiction.—(1) In this subsection—

(A) "aircraft piracy" means seizing or exercising control of an aircraft in the special aircraft jurisdiction of the United States by force, violence, threat of force or violence, or any form of intimidation, and with wrongful intent.

(B) an attempt to commit aircraft piracy is in the special aircraft jurisdiction of the United States although the aircraft is not in flight at the time of the attempt if the aircraft would have been in the special aircraft jurisdiction of

the United States had the aircraft piracy been completed.

(2) An individual committing or attempting to commit aircraft piracy—

(A) shall be imprisoned for at least 20 years; or

(B) if the death of another individual results from the commission or attempt, shall be put to death or imprisoned for life.

(b) Outside Special Aircraft Jurisdiction.—(1) An individual committing an offense (as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft) on an aircraft in flight outside the special aircraft jurisdiction of the United States and later found in the United States—

(A) shall be imprisoned for at least 20 years; or

(B) if the death of another individual results from the commission or attempt, shall be put to death or imprisoned for life.

(2) This subsection applies only if the place of takeoff or landing of the aircraft on which the individual commits the offense is located outside the territory of the country of registration of the aircraft.

§46503. Death penalty sentencing procedure for aircraft piracy

(a) Government Stipulations.—An individual convicted of violating section 46502 of this title may not be sentenced to death if the United States Government stipulates that at least one of the mitigating factors specified in subsection (c)(1) of this section exists or none of the aggravating factors specified in subsection (c)(2) of this section exists. If the Government does not stipulate, the judge presiding at the trial or accepting the guilty plea of the individual shall hold a separate hearing to decide on the punishment to be imposed.

(b) Punishment Hearings.—(1) The hearing under this section shall be conducted—

(A) before the jury that found the defendant guilty;

(B) before a jury impaneled for the hearing when—

(i) the defendant was convicted by a guilty plea;

(ii) the defendant was convicted by a judge without a jury; or

(iii) the jury finding the defendant guilty was discharged by the judge for good cause; or

(C) before the judge, on motion of the defendant and with the approval of the judge and the Government.

(2) At the hearing, the judge shall disclose to the defendant or counsel for the defendant all material contained in any presentence report, except material the judge decides is required to be withheld to protect human life or national security. Presentence information withheld from the defendant may not be considered in deciding whether the factors specified in subsection (c) of this section exist.

(3) Information relevant to the mitigating factors specified in subsection (c)(1) of this section may be presented by the Government or the defendant without regard to the rules governing the admissibility of evidence at criminal trials. The burden of establishing the existence of a mitigating factor specified in subsection (c)(1) is on the defendant.

(4) Information relevant to the aggravating factors specified in subsection (c)(2) of this section is admissible only under rules governing the admissibility of evidence at criminal trials. The burden of establishing the existence of an aggravating factor specified in subsection (c)(2) is on the Government.

(5) The Government and the defendant may rebut information presented at the hearing. They shall be given an opportunity to present arguments on the adequacy of the information to establish the existence of the factors specified in subsection (c) of this section.

(c) Mitigating and Aggravating Factors.—(1) The judge may not impose the death penalty on a defendant if the jury or, if there is no jury, the judge finds under this section that at the time of the violation of section 46502 of this title—

(A) the defendant was not yet 18 years of age;

(B) the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was impaired significantly, but the capacity was not impaired sufficiently to be a defense to prosecution;

(C) the defendant was under unusual and substantial duress, but the duress was not sufficient to be a defense to prosecution;

(D) the defendant was a principal (as defined in section 2(a) of title 18) in a violation committed by another individual, but the participation of the defendant was relatively minor, although not sufficiently minor to be a defense to prosecution; or

(E) the defendant reasonably could not have foreseen that the conduct of the defendant in the violation would cause or create a grave risk of causing death to another individual.

(2) If none of the factors specified in paragraph (1) of this subsection exists, the judge shall impose the death penalty on the defendant if the jury or, if there is no jury, the judge finds under this section that—

(A) the death of another individual resulted from the violation after the defendant had seized or exercised control of the aircraft; or

(B) the death of another individual resulted from the violation and—

(i) the defendant has been convicted of another United States or State offense (committed before or at the time of the violation) for which punishment of life imprisonment or death could be imposed;

(ii) the defendant has been convicted of at least 2 United States or State offenses with a penalty of more than one year of imprisonment (committed on different occasions before the time of the violation) that involved inflicting serious bodily injury on another individual;

(iii) in committing the violation, the defendant knowingly created a grave risk of death to an individual in addition to the individual whose death resulted from the violation; or

(iv) the defendant committed the violation in an especially heinous, cruel, or depraved manner.

(d) Death Penalty Requirements.—(1) If the jury or, if there is no jury, the judge finds by a preponderance of the information that none of the mitigating factors specified in subsection (c)(1) of this section exists and that at least one of the aggravating factors specified in subsection (c)(2) of this section exists, the judge shall impose the death penalty on the defendant. If the jury or judge finds that at least one of the mitigating factors specified in subsection (c)(1) exists, or that none of the aggravating factors specified in subsection (c)(2) exists, the judge may not impose the death penalty on the defendant but shall impose another penalty provided for the defendant's violation of section 46502 of this title.

(2) The jury or, if there is no jury, the judge shall return a special verdict containing findings on whether each of the factors specified in subsection (c) of this section exists.

§46504. Interference with flight crew members and attendants

An individual on an aircraft in the special aircraft jurisdiction of the United States who, by assaulting or intimidating a flight crew member or flight attendant of the aircraft, interferes with the performance of the duties of the member or attendant or lessens the ability of the member or attendant to perform those duties, shall be fined under title 18, imprisoned for not more than 20 years, or both. However, if a dangerous weapon is used in assaulting or intimidating the member or attendant, the individual shall be imprisoned for any term of years or for life.

§46505. Carrying a weapon or explosive on an aircraft

(a) Definition.—In this section, "loaded firearm" means a starter gun or a weapon designed or converted to expel a projectile through an explosive, that has a cartridge, a detonator, or powder in the chamber, magazine, cylinder, or clip.

(b) General Criminal Penalty.—An individual shall be fined under title 18, imprisoned for not more than one year, or both, if the individual—

(1) when on, or attempting to get on, an aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about the individual or the property of the individual a concealed dangerous weapon that is or would be accessible to the individual in flight;

(2) has placed, attempted to place, or attempted to have placed a loaded firearm on that aircraft in property not accessible to passengers in flight; or

(3) has on or about the individual, or has placed, attempted to place, or attempted to have placed on that aircraft, an explosive or incendiary device.

(c) Criminal Penalty Involving Disregard for Human Life.—An individual who willfully and without regard for the safety of human life, or with reckless disregard for the safety of human life, violates subsection (b) of this section, shall be fined under title 18, imprisoned for not more than 5 years, or both.

(d) Nonapplication.—Subsection (b)(1) of this section does not apply to—

(1) a law enforcement officer of a State or political subdivision of a State, or an officer or employee of the United States Government, authorized to carry arms in an official capacity;

(2) another individual the Administrator of the Federal Aviation Administration by regulation authorizes to carry a dangerous weapon in air transportation or intrastate air transportation; or

(3) an individual transporting a weapon (except a loaded firearm) in baggage not accessible to a passenger in flight if the air carrier was informed of the presence of the weapon.

§46506. Application of certain criminal laws to acts on aircraft

An individual on an aircraft in the special aircraft jurisdiction of the United States who commits an act that—

(1) if committed in the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18) would violate section 113, 114, 661, 662, 1111, 1112, 1113, or 2111 or chapter 109A of title 18, shall be fined under title 18, imprisoned under that section or chapter, or both; or

(2) if committed in the District of Columbia would violate section 9 of the Act of July 29, 1892 (D.C. Code § 22-1112), shall be fined under title 18, imprisoned under section 9 of the Act, or both.

§46507. False information and threats

An individual shall be fined under title 18, imprisoned for not more than 5 years, or both, if the individual—

(1) knowing the information to be false, willfully and maliciously or with reckless disregard for the safety of human life, gives, or causes to be given, under circumstances in which the information reasonably may be believed, false information about an alleged attempt being made or to be made to do an act that would violate section 46502(a), 46504, 46505, or 46506 of this title; or

(2)(A) threatens to violate section 46502(a), 46504, 46505, or 46506 of this title, or causes a threat to violate any of those sections to be made; and

(B) appears ready and willing to carry out the threat.

PART B—AIRPORT DEVELOPMENT AND NOISE

CHAPTER 471—AIRPORT DEVELOPMENT

SUBCHAPTER I—AIRPORT IMPROVEMENT

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SUBCHAPTER I—AIRPORT IMPROVEMENT

§47101. Policies

(a) GENERAL.—It is the policy of the United States Government—

(1) that the safe operation of the airport and airway system is the highest aviation priority;

(2) that aviation facilities be constructed and operated to minimize current and projected noise impact on nearby communities;

(3) to give special emphasis to developing reliever airports;

(4) that appropriate provisions should be made to make the development and enhancement of cargo hub airports easier;

(5) to encourage the development of transportation systems that use various modes of transportation in a way that will serve the States and local communities efficiently and effectively;

(6) that airport development projects under this subchapter provide for the protection and enhancement of natural resources and the quality of the environment of the United States;

(7) that airport construction and improvement projects that increase the capacity of facilities to accommodate passenger and cargo traffic be undertaken to the maximum feasible extent so that safety and efficiency increase and delays decrease;

(8) to ensure that nonaviation usage of the navigable airspace be accommodated but not allowed to decrease the safety and capacity of the airspace and airport system;

(9) that artificial restrictions on airport capacity—

(A) are not in the public interest;

(B) should be imposed to alleviate air traffic delays only after other reasonably available and less burdensome alternatives have been tried; and

(C) should not discriminate unjustly between categories and classes of aircraft; and

(10) that special emphasis should be placed on converting appropriate former military air bases to civil use and identifying and improving additional joint-use facilities.

(b) CONSISTENCY WITH AIR COMMERCE AND SAFETY POLICIES.—Each airport and airway program should be carried out consistently with section 40101 (a), (b), and (d) of this title to foster competition, prevent unfair methods of competition in air transportation, maintain essential air transportation, and prevent unjust and discriminatory practices, including as the practices may be applied between categories and classes of aircraft.

(c) ADEQUACY OF NAVIGATION AIDS AND AIRPORT FACILITIES.—This subchapter should be carried out to provide adequate navigation aids and airport facilities for places at which scheduled commercial air service is provided. The facilities provided may include—

(1) reliever airports; and

(2) heliports designated by the Secretary of Transportation to relieve congestion at commercial service airports by diverting aircraft passengers from fixed-wing aircraft to helicopter carriers.

(d) MAXIMUM USE OF SAFETY FACILITIES.—This subchapter should be carried out consistently with a comprehensive airspace system plan, giving highest priority to commercial service airports, to maximize the use of safety facilities, including installing, operating, and maintaining, to the extent possible with available money and considering other safety needs—

(1) electronic or visual vertical guidance on each runway;

(2) grooving or friction treatment of each primary and secondary runway;

(3) distance-to-go signs for each primary and secondary runway;

(4) a precision approach system, a vertical visual guidance system, and a full approach light system for each primary runway;

(5) a nonprecision instrument approach for each secondary runway;

(6) runway end identifier lights on each runway that does not have an approach light system;

(7) a surface movement radar system at each category III airport;

(8) a taxiway lighting and sign system;

(9) runway edge lighting and marking; and

(10) radar approach coverage for each airport terminal area.

(e) COOPERATION.—To carry out the policy of subsection (a)(5) of this section, the Secretary of Transportation shall cooperate with State and local officials in developing airport plans and programs that are based on overall transportation needs. The airport plans and programs shall be developed in coordination with other transportation planning and considering comprehensive long-range land-use plans and overall social, economic, environmental, system performance, and energy conservation objectives. The process of developing airport plans and programs shall be continuing, cooperative, and comprehensive to the degree appropriate to the complexity of the transportation problems.

(f) CONSULTATION.—To carry out the policy of subsection (a)(6) of this section, the Secretary of Transportation shall consult with the Secretary of the Interior and the Administrator of the Environmental Protection Agency about any project included in a project grant application involving the location of an airport or runway, or a major runway extension, that may have a significant effect on—

(1) natural resources, including fish and wildlife;

(2) natural, scenic, and recreation assets;

(3) water and air quality; or

(4) another factor affecting the environment.

§47102. Definitions

In this subchapter—

(1) "air carrier airport" means a public airport regularly served by—

(A) an air carrier certificated by the Secretary of Transportation under section 41102 of this title (except a charter air carrier); or

(B) at least one air carrier—

(i) operating under an exemption from section 41101(a)(1) of this title that the Secretary grants; and

(ii) having at least 2,500 passenger boardings at the airport during the prior calendar year.

(2) "airport"—

(A) means—

(i) an area of land or water used or intended to be used for the landing and taking off of aircraft;

(ii) an appurtenant area used or intended to be used for airport buildings or other airport facilities or rights of way; and

(iii) airport buildings and facilities located in any of those areas; and

(B) includes a heliport.

(3) "airport development" means the following activities, if undertaken by the sponsor, owner, or operator of a public-use airport:

(A) constructing, repairing, or improving a public-use airport, including—

(i) removing, lowering, relocating, marking, and lighting an airport hazard; and

(ii) preparing a plan or specification, including carrying out a field investigation.

(B) acquiring for, or installing at, a public-use airport—

(i) a navigation aid or another aid (including a precision approach system) used by aircraft for landing at or taking off from the airport, including preparing the site as required by the acquisition or installation;

(ii) safety or security equipment the Secretary requires by regulation for, or approves as contributing significantly to, the safety or security of individuals and property at the airport;

(iii) equipment to remove snow, to measure runway surface friction, or for aviation-related weather reporting; and

(iv) firefighting and rescue equipment at an airport that serves scheduled passenger operations of air carrier aircraft designed for more than 20 passenger seats.

(C) acquiring an interest in land or airspace, including land for future airport development, that is needed—

(i) to carry out airport development described in subclause (A) or (B) of this clause; or

(ii) to remove or mitigate an existing airport hazard or prevent or limit the creation of a new airport hazard.

(D) acquiring land for, or constructing, a burn area training structure on or off the airport to provide live fire drill training for aircraft rescue and firefighting personnel required to receive the training under regulations the Secretary prescribes, including basic equipment and minimum structures to support the training

under standards the Administrator of the Federal Aviation Administration prescribes.

(4) "airport hazard" means a structure or object of natural growth located on or near a public-use airport, or a use of land near the airport, that obstructs or otherwise is hazardous to the landing or taking off of aircraft at or from the airport.

(5) "airport planning" means planning as defined by regulations the Secretary prescribes and includes integrated airport system planning.

(6) "amount made available under section 48103 of this title" means the amount authorized for grants under section 48103 of this title as reduced by any law enacted after September 3, 1982.

(7) "commercial service airport" means a public airport in a State that the Secretary determines has at least 2,500 passenger boardings each year and is receiving scheduled passenger aircraft service.

(8) "integrated airport system planning" means developing for planning purposes information and guidance to decide the extent, kind, location, and timing of airport development needed in a specific area to establish a viable, balanced, and integrated system of public-use airports, including—

(A) identifying system needs;

(B) developing an estimate of systemwide development costs;

(C) conducting studies, surveys, and other planning actions, including those related to airport access, needed to decide which aeronautical needs should be met by a system of airports; and

(D) standards prescribed by a State, except standards for safety of approaches, for airport development at nonprimary public-use airports.

(9) "landed weight" means the weight of aircraft transporting only cargo in intrastate, interstate, and foreign air transportation, as the Secretary determines under regulations the Secretary prescribes.

(10) "passenger boardings"—

(A) means revenue passenger boardings on an aircraft in service in air commerce as the Secretary determines under regulations the Secretary prescribes; and

(B) includes passengers who continue on an aircraft in international flight that stops at an airport in the 48 contiguous States for a nontraffic purpose.

(11) "primary airport" means a commercial service airport the Secretary determines to have more than 10,000 passenger boardings each year.

(12) "project" means a project, separate projects included in one project grant application, or all projects to be undertaken at an airport in a fiscal year, to achieve airport development or airport planning.

(13) "project cost" means a cost involved in carrying out a project.

(14) "project grant" means a grant of money the Secretary makes to a sponsor to carry out at least one project.

(15) "public agency" means—

(A) a State or political subdivision of a State;

(B) a tax-supported organization; or

(C) an Indian tribe or pueblo.

(16) "public airport" means an airport used or intended to be used for public purposes—

(A) that is under the control of a public agency; and

(B) of which the area used or intended to be used for the landing, taking off, or surface maneuvering of aircraft is publicly owned.

(17) "public-use airport" means—

(A) a public airport; or

(B) a privately-owned airport used or intended to be used for public purposes that is—

(i) a reliever airport; or

(ii) determined by the Secretary to have at least 2,500 passenger boardings each year and to receive scheduled passenger aircraft service.

(18) "reliever airport" means an airport the Secretary designates to relieve congestion at a commercial service airport and to provide more general aviation access to the overall community.

(19) "sponsor" means—

(A) a public agency that submits to the Secretary under this subchapter an application for financial assistance; and

(B) a private owner of a public-use airport that submits to the Secretary under this subchapter an application for financial assistance for the airport.

(20) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and Guam.

§47103. National plan of integrated airport systems

(a) GENERAL REQUIREMENTS AND CONSIDERATIONS.—The Secretary of Transportation shall maintain the plan for developing public-use airports in the United States, named "the national plan of integrated airport systems". The plan shall include the kind and estimated cost of eligible airport development the Secretary of Transportation considers necessary to provide a safe, efficient, and integrated system of public-use airports adequate to anticipate and meet the needs of civil aeronautics, to meet the national defense requirements of the Secretary of Defense, and to meet identified needs of the United States Postal Service. Airport development included in the plan may not be limited to meeting the needs of any particular classes or categories of public-use airports. In maintaining the plan, the Secretary of Transportation shall consider the needs of each segment of civil aviation and the relationship of each airport to—

(1) the rest of the transportation system in the particular area;

(2) forecasted technological developments in aeronautics; and

(3) forecasted developments in other modes of intercity transportation.

(b) SPECIFIC REQUIREMENTS.—In maintaining the plan, the Secretary of Transportation shall—

(1) to the extent possible and as appropriate, consult with departments, agencies, and instrumentalities of the United States Government, with public agencies, and with the aviation community;

(2) consider tall structures that reduce safety or airport capacity; and

(3) make every reasonable effort to address the needs of air cargo operations, Short Takeoff and Landing/Very Short Takeoff and Landing aircraft operations, and rotary wing aircraft operations.

(c) AVAILABILITY OF DOMESTIC MILITARY AIRPORTS AND AIRPORT FACILITIES.—To the extent possible, the Secretary of Defense shall make domestic military airports and airport facilities available for civil use. In advising the Secretary of Transportation under subsection (a) of this section, the Secretary of Defense shall indicate the extent to which domestic military airports and airport facilities are available for civil use.

(d) PUBLICATION.—The Secretary of Transportation shall publish the status of the plan every 2 years.

§47104. Project grant authority

(a) GENERAL AUTHORITY.—To maintain a safe and efficient nationwide system of public-use airports that meets the present and future needs of civil aeronautics, the Secretary of Transportation may make project grants under this subchapter from the Airport and Airway Trust Fund.

(b) INCURRING OBLIGATIONS.—The Secretary may incur obligations to make grants from amounts made available under section 48103 of this title as soon as the amounts are apportioned under section 47114(c) and (d)(2) of this title.

(c) EXPIRATION OF AUTHORITY.—After September 30, 1992, the Secretary may not incur obligations under subsection (b) of this section, except for obligations of amounts remaining available after that date under section 47117(b) of this title.

§47105. Project grant applications

(a) SUBMISSION AND CONSULTATION.—(1) An application for a project grant under this subchapter may be submitted to the Secretary of Transportation by—

(A) a sponsor; or

(B) a State, as the only sponsor, for an airport development project benefitting at least 2 airports in the State or for airport planning for similar projects for at least 2 airports in the State if—

(i) the sponsor of each airport gives written consent that the State be the applicant;

(ii) the Secretary is satisfied there is administrative merit and aeronautical benefit in the State being the sponsor; and

(iii) an acceptable agreement exists that ensures that the State will comply with appropriate grant conditions and other assurances the Secretary requires.

(2) Before deciding to undertake an airport development project at an airport under this subchapter, a sponsor shall consult with the airport users that will be affected by the project.

(3) This subsection does not authorize a public agency that is subject to the laws of a State to apply for a project grant in violation of a law of the State.

(b) CONTENTS AND FORM.—An application for a project grant under this subchapter—

(1) shall describe the project proposed to be undertaken;

(2) may propose a project only for a public-use airport included in the current national plan of integrated airport systems;

(3) may propose airport development only if the development complies with standards the Secretary prescribes or approves, including standards for site location, airport layout, site preparation, paving, lighting, and safety of approaches; and

(4) shall be in the form and contain other information the Secretary prescribes.

(c) STATE STANDARDS FOR AIRPORT DEVELOPMENT.—The Secretary may approve standards (except standards for safety of approaches) that a State prescribes for airport development at nonprimary public-use airports in the State. On approval under this subsection, a State's standards apply to the nonprimary public-use airports in the State instead of the comparable standards prescribed by the Secretary under subsection (b)(3) of this section. The Secretary, or the State with the approval of the Secretary, may revise standards approved under this subsection.

(d) CERTIFICATION OF COMPLIANCE.—The Secretary may require a sponsor to certify that the sponsor will comply with this subchapter in carrying out the project. The Secretary may rescind the acceptance of a certification at any time. This subsection does not affect an obligation or responsibility of the Secretary under another law of the United States.

(e) NOTIFICATION.—The sponsor of an airport for which an amount is apportioned under section 47114(c) of this title shall notify the Secretary of the fiscal year in which the sponsor intends to submit a project grant application for the apportioned amount. The notification shall be given by the time and contain the information the Secretary prescribes.

§47106. Project grant application approval conditioned on satisfaction of project requirements

(a) PROJECT GRANT APPLICATION APPROVAL.—The Secretary of Transportation may approve an application under this subchapter for a project grant only if the Secretary is satisfied that—

(1) the project is consistent with plans (existing at the time the project is approved) of public agencies authorized by the State in which the airport is located to plan for the development of the area surrounding the airport;

(2) the project will contribute to carrying out this subchapter;

(3) enough money is available to pay the project costs that will not be paid by the United States Government under this subchapter;

(4) the project will be completed without unreasonable delay; and

(5) the sponsor has authority to carry out the project as proposed.

(b) AIRPORT DEVELOPMENT PROJECT GRANT APPLICATION APPROVAL.—The Secretary may approve an application under this subchapter for an airport development project grant for an airport only if the Secretary is satisfied that—

(1) the sponsor, a public agency, or the Government holds good title to the areas of the airport used or intended to be used for the landing, taking off, or surface maneuvering of aircraft, or that good title will be acquired;

(2) the interests of the community in or near which the project may be located have been given fair consideration; and

(3) the application provides touchdown zone and centerline runway lighting, high intensity runway lighting, or land necessary for installing approach light systems that the Secretary, considering the category of the airport and the kind and volume of traffic using it, decides is necessary for safe and efficient use of the airport by aircraft.

(c) ENVIRONMENTAL REQUIREMENTS.—(1) The Secretary may approve an application under this subchapter for an airport development project involving the location of an airport or runway or a major runway extension—

(A) only if the sponsor certifies to the Secretary that an opportunity for a public hearing was given to consider the economic, social, and environmental effects of the location and the location's consistency with the objectives of any planning that the community has carried out;

(B) only if the chief executive officer of the State in which the project will be located certifies in writing to the Secretary that there is reasonable assurance that the project will be located, designed, constructed, and operated in compliance with applicable air and water quality standards, except that the Administrator of the Environmental Protection Agency shall make the certification instead of the chief executive officer if—

(i) the State has not approved any applicable State or local standards; and

(ii) the Administrator has prescribed applicable standards; and

(C) if the application is found to have a significant adverse effect on natural resources, including fish and wildlife, natural, scenic, and recreation assets, water and air quality, or another factor affecting the environment, only after finding that no possible and prudent alternative to the project exists and that every reasonable step has been taken to minimize the adverse effect.

(2) The Secretary may approve an application under this subchapter for an airport development project that does not involve the location of an airport or runway, or a major runway extension, at an existing airport without requiring an environmental impact statement related to noise for the project if—

(A) completing the project would allow operations at the airport involving aircraft complying with the noise standards prescribed for "stage 2" aircraft in section 36.1 of title 14, Code of Federal Regulations, to replace existing operations involving aircraft that do not comply with those standards; and

(B) the project meets the other requirements under this subchapter.

(3) At the Secretary's request, the sponsor shall give the Secretary a copy of the transcript of any hearing held under paragraph (1)(A) of this subsection.

(4)(A) Notice of certification or of refusal to certify under paragraph (1)(B) of this subsection shall be provided to the Secretary not later than 60 days after the Secretary receives the application.

(B) The Secretary shall condition approval of the application on compliance with the applicable standards during construction and operation.

(5) The Secretary may make a finding under paragraph (1)(C) of this subsection only after completely reviewing the matter. The review and finding must be a matter of public record.

(d) GENERAL AVIATION AIRPORT PROJECT GRANT APPLICATION APPROVAL.—(1) In this subsection, "general aviation airport" means a public airport that is not an air carrier airport.

(2) The Secretary may approve an application under this subchapter for an airport development project included in a project grant application involving the construction or extension of a runway at a general aviation airport located on both sides of a boundary line separating 2 counties within a State only if, before the application is submitted to the Secretary, the project is approved by the governing body of each village incorporated under the laws of the State and located entirely within 5 miles of the nearest boundary of the airport.

(e) WITHHOLDING APPROVAL.—(1) The Secretary may withhold approval of an application under this subchapter for amounts apportioned under section 47114(c) and (e) of this title for violating an assurance or requirement of this subchapter only if—

(A) the Secretary provides the sponsor an opportunity for a hearing; and

(B) not later than 180 days after the later of the date of the application or the date the Secretary discovers the noncompliance, the Secretary finds that a violation has occurred.

(2) The 180-day period may be extended by—

(A) agreement between the Secretary and the sponsor; or

(B) the hearing officer if the officer decides an extension is necessary because the sponsor did not follow the schedule the officer established.

(3) A person adversely affected by an order of the Secretary withholding approval may obtain review of the order by filing a petition in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the project is located. The action must be brought not later than 60 days after the order is served on the petitioner.

§47107. Project grant application approval conditioned on assurances about airport operations

(a) GENERAL WRITTEN ASSURANCES.—The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that—

(1) the airport will be available for public use on reasonable conditions and without unjust discrimination;

(2) air carriers making similar use of the airport will be subject to substantially comparable charges—

(A) for facilities directly and substantially related to providing air transportation; and

(B) regulations and conditions, except for differences based on reasonable classifications, such as between—

(i) tenants and nontenants; and

(ii) signatory and nonsignatory carriers;

(3) the airport operator will not withhold unreasonably the classification or status of tenant or signatory from an air carrier that assumes obligations substantially similar to those already imposed on air carriers of that classification or status;

(4) a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport, with a right given to only one fixed-base operator to provide services at an airport deemed not to be an exclusive right if—

(A) the right would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and

(B) allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator;

(5) fixed-base operators similarly using the airport will be subject to the same charges;

(6) an air carrier using the airport may service itself or use any fixed-base operator allowed by the airport operator to service any carrier at the airport;

(7) the airport and facilities on or connected with the airport will be operated and maintained suitably, with consideration given to climatic and flood conditions;

(8) a proposal to close the airport temporarily for a nonaeronautical purpose must first be approved by the Secretary;

(9) appropriate action will be taken to ensure that terminal airspace required to protect instrument and visual operations to the airport (including operations at established minimum flight altitudes) will be cleared and protected by mitigating existing, and preventing future, airport hazards;

(10) appropriate action, including the adoption of zoning laws, has been or will be taken to the extent reasonable to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations;

(11) each of the airport's facilities developed with financial assistance from the United States Government and each of the airport's facilities usable for the landing and taking off of aircraft always will be available without charge for use by Government aircraft in common with other aircraft, except that if the use is substantial, the Government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facility used;

(12) the airport owner or operator will provide, without charge to the Government, property interests of the sponsor in land or water areas or buildings that the Secretary decides are desirable for, and that will be used for, constructing at Government expense, facilities for carrying out activities related to air traffic control or navigation;

(13) the airport owner or operator will maintain a schedule of charges for use of facilities and services at the airport—

(A) that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection; and

(B) without including in the rate base used for the charges the Government's share of costs for any project for which a grant is made under this subchapter or was made under the Federal Airport Act or the Airport and Airway Development Act of 1970;

(14) the project accounts and records will be kept using a standard system of accounting that

the Secretary, after consulting with appropriate public agencies, prescribes;

(15) the airport owner or operator will submit any annual or special airport financial and operations reports to the Secretary that the Secretary reasonably requests;

(16) the airport owner or operator will maintain a current layout plan of the airport that meets the following requirements:

(A) the plan will be in a form the Secretary prescribes;

(B) the Secretary will approve the plan and any revision or modification before the plan, revision, or modification takes effect;

(C) the owner or operator will not make or allow any alteration in the airport or any of its facilities if the alteration does not comply with the plan the Secretary approves, and the Secretary is of the opinion that the alteration may affect adversely the safety, utility, or efficiency of the airport; and

(D) when an alteration in the airport or its facility is made that does not conform to the approved plan and that the Secretary decides adversely affects the safety, utility, or efficiency of any property on or off the airport that is owned, leased, or financed by the Government, the owner or operator, if requested by the Secretary, will—

(i) eliminate the adverse effect in a way the Secretary approves; or

(ii) bear all cost of relocating the property or its replacement to a site acceptable to the Secretary and of restoring the property or its replacement to the level of safety, utility, efficiency, and cost of operation that existed before the alteration was made;

(17) each contract and subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, and related services will be awarded in the same way that a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.) or an equivalent qualifications-based requirement prescribed for or by the sponsor; and

(18) the airport and each airport record will be available for inspection by the Secretary on reasonable request.

(b) WRITTEN ASSURANCES ON USE OF REVENUE.—(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—

(A) the airport;

(B) the local airport system; or

(C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

(2) Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

(3) This subsection does not prevent the use of a State tax on aviation fuel to support a State aviation program or the use of airport revenue on or off the airport for a noise mitigation purpose.

(c) WRITTEN ASSURANCES ON ACQUIRING LAND.—(1) In this subsection, land is needed for an airport purpose (except a noise compatibility purpose) if—

(A)(i) the land may be needed for an aeronautical purpose (including runway protection zone) or serves as noise buffer land; and

(ii) revenue from interim uses of the land contributes to the financial self-sufficiency of the airport; and

(B) for land purchased with a grant the owner or operator received not later than December 30, 1987, the Secretary of Transportation or the department, agency, or instrumentality of the Government that made the grant was notified by the owner or operator of the use of the land and did not object to the use and the land is still being used for that purpose.

(2) The Secretary of Transportation may approve an application under this subchapter for an airport development project grant only if the Secretary receives written assurances, satisfactory to the Secretary, that if an airport owner or operator has received or will receive a grant for acquiring land and—

(A) if the land was or will be acquired for a noise compatibility purpose—

(i) the owner or operator will dispose of the land at fair market value at the earliest practicable time after the land no longer is needed for a noise compatibility purpose;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be paid to the Secretary for deposit in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) or, as the Secretary prescribes, reinvested in an approved noise compatibility project; or

(B) if the land was or will be acquired for an airport purpose (except a noise compatibility purpose)—

(i) the owner or operator, when the land no longer is needed for an airport purpose, will dispose of the land at fair market value or make available to the Secretary an amount equal to the Government's proportional share of the fair market value;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be reinvested, on application to the Secretary, in another eligible airport development project the Secretary approves under this subchapter or paid to the Secretary for deposit in the Fund if another eligible project does not exist.

(3) Proceeds referred to in paragraph (2)(A)(iii) and (B)(iii) of this subsection and deposited in the Airport and Airway Trust Fund are available as provided in subsection (f) of this section.

(d) ASSURANCES OF CONTINUATION AS PUBLIC-USE AIRPORT.—The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a privately owned public-use airport only if the Secretary receives appropriate assurances that the airport will continue to function as a public-use airport during the economic life (that must be at least 10 years) of any facility at the airport that was developed with Government financial assistance under this subchapter.

(e) WRITTEN ASSURANCES OF OPPORTUNITIES FOR SMALL BUSINESS CONCERNS.—The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that the airport owner or operator will take necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all businesses at the airport selling consumer products to the public are small business concerns (as defined by regulations of the Secretary) owned and controlled by a socially and economically disadvantaged individual (as defined in section 47113(a) of this title).

(f) AVAILABILITY OF AMOUNTS.—An amount deposited in the Airport and Airway Trust Fund under—

(1) subsection (c)(2)(A)(iii) of this section is available to the Secretary of Transportation to make a grant for airport development or airport planning under section 47104 of this title;

(2) subsection (c)(2)(B)(iii) of this section is available to the Secretary—

(A) to make a grant for a purpose described in section 47115(b) of this title; and

(B) for use under section 47114(d)(2) of this title at another airport in the State in which the land was disposed of under subsection (c)(2)(B)(ii) of this section; and

(3) subsection (c)(2)(B)(iii) of this section is in addition to an amount made available to the Secretary under section 48103 of this title and not subject to apportionment under section 47114 of this title.

(g) ENSURING COMPLIANCE.—(1) To ensure compliance with this section, the Secretary of Transportation—

(A) shall prescribe requirements for sponsors that the Secretary considers necessary; and

(B) may make a contract with a public agency.

(2) The Secretary of Transportation may approve an application for a project grant only if the Secretary is satisfied that the requirements prescribed under paragraph (1)(A) of this subsection have been or will be met.

(h) MODIFYING ASSURANCES AND REQUIRING COMPLIANCE WITH ADDITIONAL ASSURANCES.—Before modifying an assurance required of a person receiving a grant under this subchapter and in effect after December 29, 1987, or to require compliance with an additional assurance from the person, the Secretary of Transportation must—

(1) publish notice of the proposed modification in the Federal Register; and

(2) provide an opportunity for comment on the proposal.

(i) RELIEF FROM OBLIGATION TO PROVIDE FREE SPACE.—When a sponsor provides a property interest in a land or water area or a building that the Secretary of Transportation uses to construct a facility at Government expense, the Secretary may relieve the sponsor from an obligation in a contract made under this chapter, the Airport and Airway Development Act of 1970, or the Federal Airport Act to provide free space to the Government in an airport building, to the extent the Secretary finds that the free space no longer is needed to carry out activities related to air traffic control or navigation.

(j) USE OF REVENUE IN HAWAII.—(1) In this subsection—

(A) "duty-free merchandise" and "duty-free sales enterprise" have the same meanings given those terms in section 555(b)(8) of the Tariff Act of 1930 (19 U.S.C. 1555(b)(8)).

(B) "highway" and "Federal-aid system" have the same meanings given those terms in section 101(a) of title 23.

(2) Notwithstanding subsection (b)(1) of this section, Hawaii may use, for a project for construction or reconstruction of a highway on a

Federal-aid system that is not more than 10 miles by road from an airport and that will facilitate access to the airport, revenue from the sales at off-airport locations in Hawaii of duty-free merchandise under a contract between Hawaii and a duty-free sales enterprise. However, the revenue resulting during a Hawaiian fiscal year may be used only if the amount of the revenue, plus amounts Hawaii receives in the fiscal year from all other sources for costs Hawaii incurs for operating all airports it operates and for debt service related to capital projects for the airports (including interest and amortization of principal costs), is more than 150 percent of the projected costs for the fiscal year.

(3)(A) Revenue from sales referred to in paragraph (2) of this subsection in a Hawaiian fiscal year that Hawaii may use may not be more than the amount that is greater than 150 percent as determined under paragraph (2).

(B) The maximum amount of revenue Hawaii may use under paragraph (2) of this subsection is $250,000,000.

(4) If a fee imposed or collected for rent, landing, or service from an aircraft operator by an airport operated by Hawaii is increased during the period from May 4, 1990, through December 31, 1994, by more than the percentage change in the Consumer Price Index of All Urban Consumers for Honolulu, Hawaii, that the Secretary of Labor publishes during that period and if revenue derived from the fee increases because the fee increased, the amount under paragraph (3)(B) of this subsection shall be reduced by the amount of the projected revenue increase in the period less the part of the increase attributable to changes in the Index in the period.

(5) Hawaii shall determine costs, revenue, and projected revenue increases referred to in this subsection and shall submit the determinations to the Secretary of Transportation. A determination is approved unless the Secretary disapproves it not later than 30 days after it is submitted.

(6) Hawaii is not eligible for a grant under section 47115 of this title in a fiscal year in which Hawaii uses under paragraph (2) of this subsection revenue from sales referred to in paragraph (2). Hawaii shall repay amounts it receives in a fiscal year under a grant it is not eligible to receive because of this paragraph to the Secretary of Transportation for deposit in the discretionary fund established under section 47115.

(7)(A) This subsection applies only to revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990, through December 30, 1994, and to amounts in the Airport Revenue Fund of Hawaii that are attributable to revenue before May 4, 1990, on sales referred to in paragraph (2).

(B) Revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990, through December 30, 1994, may be used under paragraph (2) in any Hawaiian fiscal year, including a Hawaiian fiscal year beginning after December 31, 1994.

§47108. Project grant agreements

(a) OFFER AND ACCEPTANCE.—On approving a project grant application under this subchapter, the Secretary of Transportation shall offer the sponsor a grant to pay the United States Government's share of the project costs allowable under section 47110 of this title. The Secretary may impose terms on the offer that the Secretary considers necessary to carry out this subchapter and regulations prescribed under this subchapter. An offer shall state the obligations to be assumed by the sponsor and the maximum amount the Government will pay for the project from the amounts authorized under chapter 481 of this title (except sections 48102(e), 48106, and 48107). At the request of the sponsor, an offer of a grant for a project that will not be completed in one fiscal year shall provide for the obligation of amounts apportioned or to be apportioned to a sponsor under section 47114(c) of this title for the fiscal years necessary to pay the Government's share of the cost of the project. An offer that is accepted in writing by the sponsor is an agreement binding on the Government and the sponsor. The Government may pay or be obligated to pay a project cost only after a grant agreement for the project is signed.

(b) INCREASING GOVERNMENT'S SHARE UNDER THIS SUBCHAPTER OR CHAPTER 475.—(1) Except as provided in paragraph (2) of this subsection, when an offer has been accepted, the amount stated in the offer as the maximum amount the Government will pay for an airport development project receiving assistance under a grant approved under this subchapter or chapter 475 of this title may be increased by not more than 15 percent.

(2)(A) For a project receiving assistance under a grant approved under this subchapter before October 1, 1987, the amount may be increased by not more than—

(i) 10 percent for an airport development project, except a project for acquiring an interest in land; and

(ii) 50 percent of the total increase in allowable project costs attributable to acquiring an interest in land, based on current creditable appraisals.

(B) An increase under subparagraph (A) of this paragraph may be paid only from amounts the Government recovers from other grants made under this subchapter.

(c) INCREASING GOVERNMENT'S SHARE UNDER AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970.—For a project receiving assistance under a grant made under the Airport and Airway Development Act of 1970, the maximum amount the Government will pay may be increased by not more than 10 percent. An increase under this subsection may be paid only from amounts the Government recovers from other grants made under the Act.

(d) CHANGING WORKSCOPE.—With the consent of the sponsor, the Secretary may amend a grant agreement made under this subchapter to change the workscope of a project financed under the grant if the amendment does not result in an increase in the maximum amount the Government may pay under subsection (b) of this section.

§47109. United States Government's share of project costs

(a) GENERAL.—Except as provided in subsections (b) and (c) of this section, the United States Government's share of allowable project costs is—

(1) 75 percent for a project at a primary airport having at least .25 percent of the total number of passenger boardings each year at all commercial service airports; and

(2) 90 percent for a project at any other airport.

(b) INCREASED GOVERNMENT SHARE.—If, under subsection (a) of this section, the Government's share of allowable costs of a project in a State containing unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) of more than 5 percent of the total area of all lands in the State, is less than the share applied on June 30, 1975, under section 17(b) of the Airport and Airway Development Act of 1970, the Government's share under subsection (a) of this section shall be increased by the lesser of—

(1) 25 percent;

(2) one-half of the percentage that the area of unappropriated and unreserved public lands and nontaxable Indian lands in the State is of the total area of the State; or

(3) the percentage necessary to increase the Government's share to the percentage that applied on June 30, 1975, under section 17(b) of the Act.

(c) LIMITATION.—Notwithstanding subsections (a) and (b) of this section, the Government's share of project costs allowable under section 47110(d) of this title may not be more than 75 percent.

§47110. Allowable project costs

(a) GENERAL AUTHORITY.—Except as provided in section 47111 of this title, the United States Government may pay or be obligated to pay, from amounts appropriated to carry out this subchapter, a cost incurred in carrying out a project under this subchapter only if the Secretary of Transportation decides the cost is allowable.

(b) ALLOWABLE COST STANDARDS.—A project cost is allowable—

(1) if the cost necessarily is incurred in carrying out the project in compliance with the grant agreement made for the project under this subchapter, including any cost a sponsor incurs related to an audit the Secretary requires under section 47121(b) or (d) of this title;

(2) if the cost is incurred—

(A) after the grant agreement is executed and is for airport development or airport planning carried out after the grant agreement is executed; or

(B) after June 1, 1989, by the airport operator (regardless of when the grant agreement is executed) as part of a Government-approved noise compatibility program (including project formulation costs) and is consistent with all applicable statutory and administrative requirements;

(3) to the extent the cost is reasonable in amount;

(4) if the cost is not incurred in a project for airport development or airport planning for which other Government assistance has been granted; and

(5) if the total costs allowed for the project are not more than the amount stated in the grant agreement as the maximum the Government will pay (except as provided in section 47108(b) of this title).

(c) CERTAIN PRIOR COSTS AS ALLOWABLE COSTS.—The Secretary may decide that a project cost under subsection (b)(2)(A) of this section incurred after May 13, 1946, and before the date the grant agreement is executed is allowable if it is—

(1) necessarily incurred in formulating an airport development project, including costs incurred for field surveys, plans and specifications, property interests in land or airspace, and administration or other incidental items that would not have been incurred except for the project; or

(2) necessarily and directly incurred in developing the work scope of an airport planning project.

(d) TERMINAL DEVELOPMENT COSTS.—The Secretary may decide that the cost of terminal development (including multi-modal terminal development) in a nonrevenue-producing public-use area of a commercial service airport is allowable for an airport development project at the airport—

(1) if the sponsor certifies that the airport, on the date the grant application is submitted to the Secretary, has—

(A) all the safety equipment required for certification of the airport under section 44706 of this title;

(B) all the security equipment required by regulation; and

(C) provided for access, to the area of the airport for passengers for boarding or exiting aircraft, to those passengers boarding or exiting aircraft, except air carrier aircraft;

(2) if the cost is directly related to moving passengers and baggage in air commerce within the airport, including vehicles for moving pas-

sengers between terminal facilities and between terminal facilities and aircraft; and

(3) under terms necessary to protect the interests of the Government.

(e) LETTERS OF INTENT.—(1) The Secretary may issue a letter of intent to the sponsor stating an intention to obligate from future budget authority an amount, not more than the Government's share of allowable project costs, for an airport development project (including costs of formulating the project) at a primary or reliever airport. The letter shall establish a schedule under which the Secretary will reimburse the sponsor for the Government's share of allowable project costs, as amounts become available, if the sponsor, after the Secretary issues the letter, carries out the project without receiving amounts under this subchapter.

(2) Paragraph (1) of this subsection applies to a project—

(A) about which the sponsor notifies the Secretary, before the project begins, of the sponsor's intent to carry out the project;

(B) that will comply with all statutory and administrative requirements that would apply to the project if it were carried out with amounts made available under this subchapter; and

(C) the Secretary decides will enhance systemwide airport capacity significantly and meets the criteria of section 47115(d) of this title.

(3) Issuance of a letter under paragraph (1) of this subsection is not an obligation of the Government under section 1501 of title 31, and the letter is not deemed to be an administrative commitment for financing. An obligation or administrative commitment may be made only as amounts are provided in authorization and appropriation laws.

(4) The total estimated amount of future Government obligations covered by all outstanding letters of intent under paragraph (1) of this subsection may not be more than the amount authorized to carry out section 48103 of this title, less an amount reasonably estimated by the Secretary to be needed for grants under section 48103 that are not covered by a letter.

(f) NONALLOWABLE COSTS.—Except as provided in subsection (d) of this section, a cost is not an allowable airport development project cost if it is for—

(1) constructing a public parking facility for passenger automobiles;

(2) constructing, altering, or repairing part of an airport building, except to the extent the building will be used for facilities or activities directly related to the safety of individuals at the airport;

(3) decorative landscaping; or

(4) providing or installing sculpture or art works.

§47111. Payments under project grant agreements

(a) GENERAL AUTHORITY.—After making a project grant agreement under this subchapter and consulting with the sponsor, the Secretary of Transportation may decide when and in what amounts payments under the agreement will be made. Payments totaling not more than 90 percent of the United States Government's share of the project's estimated allowable costs may be made before the project is completed if the sponsor certifies to the Secretary that the total amount expended from the advance payments at any time will not be more than the cost of the airport development work completed on the project at that time.

(b) RECOVERING PAYMENTS.—If the Secretary determines that the total amount of payments made under a grant agreement under this subchapter is more than the Government's share of the total allowable project costs, the Government may recover the excess amount. If the Secretary finds that a project for which an advance payment was made has not been completed within a reasonable time, the Government may recover any part of the advance payment for which the Government received no benefit.

(c) PAYMENT DEPOSITS.—A payment under a project grant agreement under this subchapter may be made only to an official or depository designated by the sponsor and authorized by law to receive public money.

(d) WITHHOLDING PAYMENTS.—(1) The Secretary may withhold a payment under a grant agreement under this subchapter for more than 180 days after the payment is due only if the Secretary—

(A) notifies the sponsor and provides an opportunity for a hearing; and

(B) finds that the sponsor has violated the agreement.

(2) The 180-day period may be extended by—

(A) agreement of the Secretary and the sponsor; or

(B) the hearing officer if the officer decides an extension is necessary because the sponsor did not follow the schedule the officer established.

(3) A person adversely affected by an order of the Secretary withholding a payment may apply for review of the order by filing a petition in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the project is located. The petition must be filed not later than 60 days after the order is served on the petitioner.

§47112. Carrying out airport development projects

(a) CONSTRUCTION WORK.—The Secretary of Transportation may inspect and approve construction work for an airport development project carried out under a grant agreement under this subchapter. The construction work must be carried out in compliance with regulations the Secretary prescribes. The regulations shall require the sponsor to make necessary cost and progress reports on the project. The regulations may amend or modify a contract related to the project only if the contract was made with actual notice of the regulations.

(b) PREVAILING WAGES.—A contract for more than $2,000 involving labor for an airport development project carried out under a grant agreement under this subchapter must require contractors to pay labor minimum wage rates as determined by the Secretary of Labor under the Act of March 3, 1931 (known as the Davis-Bacon Act) (40 U.S.C. 276a—276a-5). The minimum rates must be included in the bids for the work and in the invitation for those bids.

(c) VETERANS' PREFERENCE.—(1) In this subsection—

(A) "disabled veteran" has the same meaning given that term in section 2108 of title 5.

(B) "Vietnam-era veteran" means an individual who served on active duty (as defined in section 101 of title 38) in the armed forces for more than 180 consecutive days, any part of which occurred after August 4, 1964, and before May 8, 1975, and who was separated from the armed forces under honorable conditions.

(2) A contract involving labor for carrying out an airport development project under a grant agreement under this subchapter must require that preference in the employment of labor (except in executive, administrative, and supervisory positions) be given to Vietnam-era veterans and disabled veterans when they are available and qualified for the employment.

§47113. Minority and disadvantaged business participation

(a) DEFINITIONS.—In this section—

(1) "small business concern"—

(A) has the same meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632); but

(B) does not include a concern, or group of concerns controlled by the same socially and economically disadvantaged individual, that has average annual gross receipts over the prior 3 fiscal years of more than $14,000,000, as adjusted by the Secretary of Transportation for inflation.

(2) "socially and economically disadvantaged individual" has the same meaning given that term in section 8(d) of the Act (15 U.S.C. 637(d)) and relevant subcontracting regulations prescribed under section 8(d), except that women are presumed to be socially and economically disadvantaged.

(b) GENERAL REQUIREMENT.—Except to the extent the Secretary decides otherwise, at least 10 percent of amounts available in a fiscal year under section 48103 of this title shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

(c) UNIFORM CRITERIA.—The Secretary shall establish minimum uniform criteria for State governments and airport sponsors to use in certifying whether a small business concern qualifies under this section. The criteria shall include on-site visits, personal interviews, licenses, analyses of stock ownership and bonding capacity, listings of equipment and work completed, resumes of principal owners, financial capacity, and type of work preferred.

(d) SURVEYS AND LISTS.—Each State or airport sponsor annually shall survey and compile a list of small business concerns referred to in subsection (b) of this section and the location of each concern in the State.

§47114. Apportionments

(a) DEFINITION.—In this section, "amount subject to apportionment" means the amount newly made available under section 48103 of this title for a fiscal year.

(b) APPORTIONMENT DATE.—On the first day of each fiscal year, the Secretary of Transportation shall apportion the amount subject to apportionment for that fiscal year as provided in this section.

(c) AMOUNTS APPORTIONED TO SPONSORS.—(1)(A) The Secretary shall apportion to the sponsor of each primary airport for each fiscal year an amount equal to—

(i) $7.80 for each of the first 50,000 passenger boardings at the airport during the prior calendar year;

(ii) $5.20 for each of the next 50,000 passenger boardings at the airport during the prior calendar year;

(iii) $2.60 for each of the next 400,000 passenger boardings at the airport during the prior calendar year; and

(iv) $.65 for each additional passenger boarding at the airport during the prior calendar year.

(B) Not less than $300,000 nor more than $16,000,000 may be apportioned under subparagraph (A) of this paragraph to an airport sponsor for a primary airport for each fiscal year.

(2)(A) The Secretary shall apportion to the sponsors of airports served by aircraft providing air transportation of only cargo with a total annual landed weight of more than 100,000,000 pounds for each fiscal year an amount equal to 3 percent of the amount subject to apportionment each year (but not more than $50,000,000), allocated among those airports in the proportion that the total annual landed weight of those aircraft landing at each of those airports bears to the total annual landed weight of those aircraft landing at all those airports. However, not more than 8 percent of the amount apportioned under this paragraph may be apportioned for any one airport.

(B) Landed weight under subparagraph (A) of this paragraph is the landed weight of aircraft landing at each of those airports and all those airports during the prior calendar year.

(3) The total of all amounts apportioned under paragraphs (1) and (2) of this subsection

may not be more than 49.5 percent of the amount subject to apportionment for a fiscal year. If this paragraph requires reduction of an amount that otherwise would be apportioned under this subsection, the Secretary shall reduce proportionately the amount apportioned to each sponsor of an airport under paragraphs (1) and (2) until the 49.5 percent limit is achieved.

(d) AMOUNTS APPORTIONED TO STATES.—(1) In this subsection—

(A) "area" includes land and water.

(B) "population" means the population stated in the latest decennial census of the United States.

(2) The Secretary shall apportion to the States 12 percent of the amount subject to apportionment for each fiscal year as follows:

(A) one percent of the apportioned amount to Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(B) except as provided in paragraph (3) of this subsection, 49.5 percent of the apportioned amount for airports, except primary airports and airports described in section 47117(e)(1)(C) of this title, in States not named in clause (A) of this paragraph in the proportion that the population of each of those States bears to the total population of all of those States.

(C) except as provided in paragraph (3) of this subsection, 49.5 percent of the apportioned amount for airports, except primary airports and airports described in section 47117(e)(1)(C) of this title, in States not named in clause (A) of this paragraph in the proportion that the area of each of those States bears to the total area of all of those States.

(3) An amount apportioned under paragraph (2) of this subsection for an airport in—

(A) Alaska may be made available by the Secretary for a public airport described in section 47117(e)(1)(C)(ii) of this title to which section 15(a)(3)(A)(II) of the Airport and Airway Development Act of 1970 applied during the fiscal year that ended September 30, 1981; and

(B) Puerto Rico may be made available by the Secretary for a primary airport and an airport described in section 47117(e)(1)(C) of this title.

(e) ALTERNATIVE APPORTIONMENT FOR ALASKA.—(1) Instead of apportioning amounts for airports in Alaska under subsections (c) and (d) of this section, the Secretary may apportion amounts for those airports in the way in which amounts were apportioned in fiscal year 1980 under section 15(a) of the Act. However, in apportioning amounts for a fiscal year under this subsection, the Secretary shall apportion—

(A) for each primary airport at least as much as would be apportioned for the airport under subsection (c)(1) of this section; and

(B) a total amount at least equal to the minimum amount required to be apportioned to airports in Alaska in fiscal year 1980 under section 15(a)(3)(A) of the Act.

(2) This subsection does not prohibit the Secretary from making project grants for airports in Alaska from the discretionary fund under section 47115 of this title.

(f) REDUCING APPORTIONMENTS.—An amount that would be apportioned under this section (except subsection (c)(2)) in a fiscal year to the sponsor of an airport having at least .25 percent of the total number of boardings each year in the United States and for which a fee is imposed in the fiscal year under section 40117 of this title shall be reduced by an amount equal to 50 percent of the projected revenues from the fee in the fiscal year but not by more than 50 percent of the amount that otherwise would be apportioned under this section.

§47115. Discretionary fund

(a) EXISTENCE AND AMOUNTS IN FUND.—The Secretary of Transportation has a discretionary fund. The fund consists of—

(1) amounts subject to apportionment for a fiscal year that are not apportioned under section 47114(c)–(e) of this title; and

(2) 25 percent of amounts not apportioned under section 47114 of this title because of section 47114(f).

(b) AVAILABILITY OF AMOUNTS.—Subject to subsection (c) of this section and section 47117(e) of this title, the fund is available for making grants for any purpose for which amounts are made available under section 48103 of this title that the Secretary considers most appropriate to carry out this subchapter. However, 50 percent of amounts not apportioned under section 47114 of this title because of section 47114(f) and added to the fund is available for making grants for projects at small hub airports (as defined in section 41731 of this title).

(c) MINIMUM PERCENTAGE FOR PRIMARY AND RELIEVER AIRPORTS.—At least 75 percent of the amount in the fund and distributed by the Secretary in a fiscal year shall be used for making grants—

(1) to preserve and enhance capacity, safety, and security at primary and reliever airports; and

(2) to carry out airport noise compatibility planning and programs at primary and reliever airports.

(d) CONSIDERATIONS.—In selecting a project for a grant to preserve and enhance capacity as described in subsection (c)(1) of this section, the Secretary shall consider—

(1) the effect the project will have on the overall national air transportation system capacity;

(2) the project benefit and cost; and

(3) the financial commitment from non-United States Government sources to preserve or enhance airport capacity.

(e) WAIVING PERCENTAGE REQUIREMENT.—If the Secretary decides the Secretary cannot comply with the percentage requirement of subsection (c) of this section in a fiscal year because there are insufficient qualified grant applications to meet that percentage, the amount the Secretary determines will not be distributed as required by subsection (c) is available for obligation during the fiscal year without regard to the requirement.

§47116. Small airport fund

(a) EXISTENCE AND AMOUNTS IN FUND.—The Secretary of Transportation has a small airport fund. The fund consists of 75 percent of amounts not apportioned under section 47114 of this title because of section 47114(f).

(b) DISTRIBUTION OF AMOUNTS.—The Secretary may distribute amounts in the fund in each fiscal year for any purpose for which amounts are made available under section 48103 of this title as follows:

(1) one-third for grants to sponsors of public-use airports (except commercial service airports).

(2) two-thirds for grants to sponsors of each commercial service airport that each year has less than .05 percent of the total boardings in the United States in that year.

(c) AUTHORITY TO RECEIVE GRANT NOT DEPENDENT ON PARTICIPATION IN BLOCK GRANT PILOT PROGRAM.—An airport in a State participating in the State block grant pilot program under section 47128 of this title may receive a grant under this section to the same extent the airport may receive a grant if the State were not participating in the program.

§47117. Use of apportioned amounts

(a) GRANT PURPOSE.—Except as provided in this section, an amount apportioned under section 47114(c)(1) or (d)(2) of this title is available for making grants for any purpose for which amounts are made available under section 48103 of this title.

(b) PERIOD OF AVAILABILITY.—An amount apportioned under section 47114 of this title is available to be obligated for grants under the apportionment only during the fiscal year for which the amount was apportioned and the 2 fiscal years immediately after that year. If the amount is not obligated under the apportionment within that time, it shall be added to the discretionary fund.

(c) PRIMARY AIRPORTS.—(1) An amount apportioned to a sponsor of a primary airport under section 47114(c)(1) of this title is available for grants for any public-use airport of the sponsor included in the national plan of integrated airport systems.

(2) A sponsor of a primary airport may make an agreement with the Secretary of Transportation waiving any part of the amount apportioned for the airport under section 47114(c)(1) of this title if the Secretary makes the waived amount available for a grant for another public-use airport in the same State or geographical area as the primary airport.

(d) STATE USE.—An amount apportioned to a State under—

(1) section 47114(d)(2)(A) of this title is available for grants for airports located in the State; and

(2) section 47114(d)(2)(B) or (C) of this title is available for grants for airports described in section 47114(d)(2)(B) or (C) and located in the State.

(e) SPECIAL APPORTIONMENT CATEGORIES.—(1) The Secretary shall use amounts made available under section 48103 of this title for each fiscal year as follows:

(A) at least 10 percent for grants for reliever airports.

(B) at least 10 percent for grants for airport noise compatibility planning under section 47505(a)(2) of this title and for carrying out noise compatibility programs under section 47504(c)(1) of this title.

(C) at least 2.5 percent for grants for—

(i) nonprimary commercial service airports; and

(ii) public airports (except commercial service airports) that were eligible for United States Government assistance from amounts apportioned under section 15(a)(3) of the Airport and Airway Development Act of 1970, and to which section 15(a)(3)(A)(I) or (II) of the Act applied during the fiscal year that ended September 30, 1981.

(D) at least .5 percent for integrated airport system planning grants to planning agencies designated by the Secretary and authorized by the laws of a State or political subdivision of a State to do planning for an area of the State or subdivision in which a grant under this chapter is to be used.

(E) at least 1.5 percent for the fiscal year ending September 30, 1992, to sponsors of current or former military airports designated by the Secretary under section 47118(a) of this title for grants for developing current and former military airports to improve the capacity of the national air transportation system.

(2) A grant from the amount apportioned under section 47114(e) of this title may not be included as part of the 2.5 percent required to be used for grants under paragraph (1)(C) of this subsection.

(3) If the Secretary decides that an amount required to be used for grants under paragraph (1) of this subsection cannot be used for a fiscal year because there are insufficient qualified grant applications, the amount the Secretary determines cannot be used is available during the fiscal year for grants for other airports or for other purposes for which amounts are authorized for grants under section 48103 of this title.

(f) LIMITATION FOR COMMERCIAL SERVICE AIRPORT IN ALASKA.—The Secretary may not make a grant for a commercial service airport in Alas-

ka of more than 110 percent of the amount apportioned for the airport for a fiscal year under section 47114(e) of this title.

(g) DISCRETIONARY USE OF APPORTIONMENTS.—(1) Subject to paragraph (2) of this subsection, if the Secretary finds, based on the notices the Secretary receives under section 47105(e) of this title or otherwise, that an amount apportioned under section 47114 of this title will not be used for grants during a fiscal year, the Secretary may use an equal amount for grants during that fiscal year for any of the purposes for which amounts are authorized for grants under section 48103 of this title.

(2) The Secretary may make a grant under paragraph (1) of this subsection only if the Secretary decides that—

(A) the total amount used for grants for the fiscal year under section 48103 of this title will not be more than the amount made available under section 48103 for that fiscal year; and

(B) the amounts authorized for grants under section 48103 of this title for later fiscal years are sufficient for grants of the apportioned amounts that were not used for grants under the apportionment during the fiscal year and that remain available under subsection (b) of this section.

(h) LIMITING AUTHORITY OF SECRETARY.—The authority of the Secretary to make grants during a fiscal year from amounts that were apportioned for a prior fiscal year and remain available for approved airport development project grants under subsection (b) of this section may be impaired only by a law enacted after September 3, 1982, that expressly limits that authority.

§47118. Designating current and former military airports

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall designate not more than 8 current or former military airports for which grants may be made under section 47117(e)(1)(E) of this title. The Secretary shall designate at least 2 of the airports not later than May 5, 1991, and shall designate the remaining airports not later than September 30, 1992.

(b) SURVEY.—Not later than September 30, 1991, the Secretary shall complete a survey of current and former military airports to identify which airports have the greatest potential to improve the capacity of the national air transportation system. The survey shall identify the capital development needs of those airports to make them part of the system and which of those qualify for grants under section 47104 of this title.

(c) CONSIDERATIONS.—In carrying out this section, the Secretary shall consider only current or former military airports that, when at least partly converted to civilian commercial or reliever airports as part of the national air transportation system, will enhance airport and air traffic control system capacity in major metropolitan areas and reduce current and projected flight delays.

(d) GRANTS.—Grants under section 47117(e)(1)(E) of this title may be made for an airport designated under subsection (a) of this section for the 5 fiscal years following the designation. If an airport does not have a level of passengers getting on aircraft during that 5-year period that qualifies the airport as a small hub airport (as defined on January 1, 1990) or reliever airport, the Secretary may redesignate the airport for grants for additional fiscal years that the Secretary decides.

(e) TERMINAL BUILDING FACILITIES.—Notwithstanding section 47109(c) of this title, not more than $5,000,000 for each airport from amounts the Secretary distributes under section 47115 of this title for a fiscal year is available to the sponsor of a current or former military airport the Secretary designates under this section to construct, improve, or repair a terminal building facility, including terminal gates used for revenue passengers getting on or off aircraft. A gate constructed, improved, or repaired under this subsection—

(1) may not be leased for more than 10 years; and

(2) is not subject to majority in interest clauses.

§47119. Terminal development costs

(a) REPAYING BORROWED MONEY.—An amount apportioned under section 47114 of this title and made available to the sponsor of an air carrier airport at which terminal development was carried out after June 30, 1970, and before July 12, 1976, is available to repay immediately money borrowed and used to pay the costs for terminal development at the airport, if those costs would be allowable project costs under section 47110(d) of this title if they had been incurred after September 3, 1982. An amount is available for a grant under this subsection—

(1) only if—

(A) the sponsor submits the certification required under section 47110(d) of this title;

(B) the Secretary of Transportation decides that using the amount to repay the borrowed money will not defer an airport development project outside the terminal area at that airport; and

(C) amounts available for airport development under this subchapter will not be used for additional terminal development projects at the airport for at least 3 years beginning on the date the grant is used to repay the borrowed money; and

(2) subject to the limitations in subsection (b)(1) and (2) of this section.

(b) AVAILABILITY OF AMOUNTS.—In a fiscal year, the Secretary may make available—

(1) to a sponsor of a primary airport, any part of amounts apportioned to the sponsor for the fiscal year under section 47114(c)(1) of this title to pay project costs allowable under section 47110(d) of this title;

(2) to a sponsor of a nonprimary commercial service airport, not more than $200,000 of the amount that may be distributed for the fiscal year from the discretionary fund to pay project costs allowable under section 47110(d) of this title; or

(3) not more than $25,000,000 to pay project costs allowable for the fiscal year under section 47110(d) of this title for projects at commercial service airports that were not eligible for assistance for terminal development during the fiscal year ending September 30, 1980, under section 20(b) of the Airport and Airway Development Act of 1970.

§47120. Grant priority

In making a grant under this subchapter, the Secretary of Transportation may give priority to a project that is consistent with an integrated airport system plan.

§47121. Records and audits

(a) RECORDS.—A sponsor shall keep the records the Secretary of Transportation requires. The Secretary may require records—

(1) that disclose—

(A) the amount and disposition by the sponsor of the proceeds of the grant;

(B) the total cost of the plan or program for which the grant is given or used; and

(C) the amounts and kinds of costs of the plan or program provided by other sources; and

(2) that make it easier to carry out an audit.

(b) AUDITS AND EXAMINATIONS.—The Secretary and the Comptroller General may audit and examine records of a sponsor that are related to a grant made under this subchapter.

(c) AUTHORITY OF COMPTROLLER GENERAL.—When an independent audit is made of the accounts of a sponsor under this subchapter related to the disposition of the proceeds of the grant or related to the plan or program for which the grant was given or used, the sponsor shall submit a certified copy of the audit to the Comptroller General not more than 6 months after the end of the fiscal year for which the audit was made. Not later than April 15 of each year, the Comptroller General shall report to Congress describing the results of each audit conducted or reviewed by the Comptroller General under this section during the prior fiscal year. The Comptroller General shall prescribe regulations necessary to carry out this subsection.

(d) AUDIT REQUIREMENT.—The Secretary may require a sponsor to conduct an appropriate audit as a condition for receiving a grant under this subchapter.

(e) ANNUAL REVIEW.—The Secretary shall review annually the recordkeeping and reporting requirements under this subchapter to ensure that they are the minimum necessary to carry out this subchapter.

(f) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize the Secretary or the Comptroller General to withhold information from a committee of Congress authorized to have the information.

§47122. Administrative

(a) GENERAL.—The Secretary of Transportation may take action the Secretary considers necessary to carry out this subchapter, including conducting investigations and public hearings, prescribing regulations and procedures, and issuing orders.

(b) CONDUCTING INVESTIGATIONS AND PUBLIC HEARINGS.—In conducting an investigation or public hearing under this subchapter, the Secretary has the same authority the Secretary has under section 46104 of this title. An action of the Secretary in exercising that authority is governed by the procedures specified in section 46104 and shall be enforced as provided in section 46104.

§47123. Nondiscrimination

The Secretary of Transportation shall take affirmative action to ensure that an individual is not excluded because of race, creed, color, national origin, or sex from participating in an activity carried out with money received under a grant under this subchapter. The Secretary shall prescribe regulations necessary to carry out this section. The regulations shall be similar to those in effect under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). This section is in addition to title VI of the Act.

§47124. Agreements for State and local operation of airport facilities

(a) GOVERNMENT RELIEF FROM LIABILITY.—The Secretary of Transportation shall ensure that an agreement under this subchapter with a State or a political subdivision of a State to allow the State or subdivision to operate an airport facility in the State or subdivision relieves the United States Government from any liability arising out of, or related to, acts or omissions of employees of the State or subdivision in operating the airport facility.

(b) AIR TRAFFIC CONTROL CONTRACT PROGRAM.—The Secretary shall—

(1) continue, for contract towers existing on December 30, 1987, the low activity (Visual Flight Rules) level I air traffic control contract program established under subsection (a) of this section; and

(2) extend the program to other towers as practicable.

§47125. Conveyances of United States Government land

(a) CONVEYANCES TO PUBLIC AGENCIES.—Except as provided in subsection (b) of this section, the Secretary of Transportation shall request the head of the department, agency, or instrumentality of the United States Government own-

ing or controlling land or airspace to convey a property interest in the land or airspace to the public agency sponsoring the project or owning or controlling the airport when necessary to carry out a project under this subchapter at a public airport, to operate a public airport, or for the future development of an airport under the national plan of integrated airport systems. The head of the department, agency, or instrumentality shall decide whether the requested conveyance is consistent with the needs of the department, agency, or instrumentality and shall notify the Secretary of that decision not later than 4 months after receiving the request. If the head of the department, agency, or instrumentality decides that the requested conveyance is consistent with its needs, the head of the department, agency, or instrumentality, with the approval of the Attorney General and without cost to the Government, shall make the conveyance. A conveyance may be made only on the condition that the property interest conveyed reverts to the Government, at the option of the Secretary, to the extent it is not developed for an airport purpose or used consistently with the conveyance.

(b) NONAPPLICATION.—Except as specifically provided by law, subsection (a) of this section does not apply to land or airspace owned or controlled by the Government within—

(1) a national park, national monument, national recreation area, or similar area under the administration of the National Park Service;

(2) a unit of the National Wildlife Refuge System or similar area under the jurisdiction of the United States Fish and Wildlife Service; or

(3) a national forest or Indian reservation.

§47126. Criminal penalties for false statements

A person (including an officer, agent, or employee of the United States Government or a public agency) shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person, with intent to defraud the Government, knowingly makes—

(1) a false statement about the kind, quantity, quality, or cost of the material used or to be used, or the quantity, quality, or cost of work performed or to be performed, in connection with the submission of a plan, map, specification, contract, or estimate of project cost for a project included in a grant application submitted to the Secretary of Transportation for approval under this subchapter;

(2) a false statement or claim for work or material for a project included in a grant application approved by the Secretary under this subchapter; or

(3) a false statement in a report or certification required under this subchapter.

§47127. Ground transportation demonstration projects

(a) GENERAL AUTHORITY.—To improve the airport and airway system of the United States consistent with regional airport system plans financed under section 13(b) of the Airport and Airway Development Act of 1970, the Secretary of Transportation may carry out ground transportation demonstration projects to improve ground access to air carrier airport terminals. The Secretary may carry out a demonstration project independently or by grant or contract, including an agreement with another department, agency, or instrumentality of the United States Government.

(b) PRIORITY.—In carrying out this section, the Secretary shall give priority to a demonstration project that—

(1) affects an airport in an area with an operating regional rapid transit system with existing facilities reasonably near the airport;

(2) includes connection of the airport terminal to that system;

(3) is consistent with and supports a regional airport system plan adopted by the planning agency for the region and submitted to the Secretary; and

(4) improves access to air transportation for individuals residing or working in the region by encouraging the optimal balance of use of airports in the region.

§47128. State block grant pilot program

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall prescribe regulations to carry out a State block grant pilot program. The regulations shall provide that the Secretary may designate not more than 3 qualified States to assume administrative responsibility for all airport grant amounts available under this subchapter, except for amounts designated for use at primary airports.

(b) APPLICATIONS AND SELECTION.—A State wishing to participate in the program must submit an application to the Secretary. The Secretary shall select a State on the basis of its application only after—

(1) deciding the State has an organization capable of effectively administering a block grant made under this section;

(2) deciding the State uses a satisfactory airport system planning process;

(3) deciding the State uses a programming process acceptable to the Secretary;

(4) finding that the State has agreed to comply with United States Government standard requirements for administering the block grant; and

(5) finding that the State has agreed to provide the Secretary with program information the Secretary requires.

(c) SAFETY AND SECURITY NEEDS AND NEEDS OF SYSTEM.—Before deciding whether a planning process is satisfactory or a programming process is acceptable under subsection (b)(2) or (3) of this section, the Secretary shall ensure that the process provides for meeting critical safety and security needs and that the programming process ensures that the needs of the national airport system will be addressed in deciding which projects will receive money from the Government.

(d) ENDING EFFECTIVE DATE AND REPORT.—(1) This section is effective only through September 30, 1992.

(2) The Secretary shall conduct an on-going review of the program and not later than January 31, 1992, shall submit to Congress a report on the results of the review and recommendations for further action.

§47129. Annual report

Not later than April 1 of each year, the Secretary of Transportation shall submit to Congress a report on activities carried out under this subchapter during the prior fiscal year. The report shall include—

(1) a detailed statement of airport development completed;

(2) the status of each project undertaken;

(3) the allocation of appropriations; and

(4) an itemized statement of expenditures and receipts.

SUBCHAPTER II—SURPLUS PROPERTY FOR PUBLIC AIRPORTS

§47151. Authority to transfer an interest in surplus property

(a) GENERAL AUTHORITY.—Subject to sections 47152 and 47153 of this title, a department, agency, or instrumentality of the executive branch of the United States Government or a wholly owned Government corporation may give a State, political subdivision of a State, or tax-supported organization any interest in surplus property—

(1) that the Secretary of Transportation decides is—

(A) desirable for developing, improving, operating, or maintaining a public airport (as defined in section 47102 of this title);

(B) reasonably necessary to fulfill the immediate and foreseeable future requirements for developing, improving, operating, or maintaining a public airport; or

(C) needed for developing sources of revenue from nonaviation businesses at a public airport; and

(2) if the Administrator of General Services approves the gift and decides the interest is not best suited for industrial use.

(b) ENSURING COMPLIANCE.—Only the Secretary may ensure compliance with an instrument giving an interest in surplus property under this subchapter. The Secretary may amend the instrument to correct the instrument or to make the gift comply with law.

(c) DISPOSING OF INTERESTS NOT GIVEN UNDER THIS SUBCHAPTER.—An interest in surplus property that could be used at a public airport but that is not given under this subchapter shall be disposed of under other applicable law.

§47152. Terms of gifts

Except as provided in section 47153 of this title, the following terms apply to a gift of an interest in surplus property under this subchapter:

(1) A State, political subdivision of a State, or tax-supported organization receiving the interest may use, lease, salvage, or dispose of the interest for other than airport purposes only after the Secretary of Transportation gives written consent that the interest can be used, leased, salvaged, or disposed of without materially and adversely affecting the development, improvement, operation, or maintenance of the airport at which the property is located.

(2) The interest shall be used and maintained for public use and benefit without unreasonable discrimination.

(3) A right may not be vested in a person, excluding others in the same class from using the airport at which the property is located—

(A) to conduct an aeronautical activity requiring the operation of aircraft; or

(B) to engage in selling or supplying aircraft, aircraft accessories, equipment, or supplies (except gasoline and oil), or aircraft services necessary to operate aircraft (including maintaining and repairing aircraft, aircraft engines, propellers, and appliances).

(4) The State, political subdivision, or tax-supported organization accepting the interest shall clear and protect the aerial approaches to the airport by mitigating existing, and preventing future, airport hazards.

(5) During a national emergency declared by the President or Congress, the United States Government is entitled to use, control, or possess, without charge, any part of the public airport at which the property is located. However, the Government shall—

(A) pay the entire cost of maintaining the part of the airport it exclusively uses, controls, or possesses during the emergency;

(B) contribute a reasonable share, consistent with the Government's use, of the cost of maintaining the property it uses nonexclusively, or over which the Government has nonexclusive control or possession, during the emergency; and

(C) pay a fair rental for use, control, or possession of improvements to the airport made without Government assistance.

(6) The Government is entitled to the nonexclusive use, without charge, of the landing area of an airport at which the property is located. The Secretary may limit the use of the landing area if necessary to prevent unreasonable interference with use by other authorized aircraft. However, the Government shall—

(A) contribute a reasonable share, consistent with the Government's use, of the cost of maintaining and operating the landing area; and

(B) pay for damages caused by its use of the landing area if its use of the landing area is substantial.

(7) The State, political subdivision, or tax-supported organization accepting the interest shall release the Government from all liability for damages arising under an agreement that provides for Government use of any part of an airport owned, controlled, or operated by the State, political subdivision, or tax-supported organization on which, adjacent to which, or in connection with which, the property is located.

(8) When a term under this section is not satisfied, any part of the interest in the property reverts to the Government, at the option of the Government, as the property then exists.

§47153. Waiving and adding terms

(a) GENERAL AUTHORITY.—(1) The Secretary of Transportation may waive, without charge, a term of a gift of an interest in property under this subchapter if the Secretary decides that—

(A) the property no longer serves the purpose for which it was given; or

(B) the waiver will not prevent carrying out the purpose for which the gift was made and is necessary to advance the civil aviation interests of the United States.

(2) The Secretary of Transportation shall waive a term under paragraph (1) of this subsection on terms the Secretary considers necessary to protect or advance the civil aviation interests of the United States.

(b) WAIVERS AND INCLUSION OF ADDITIONAL TERMS ON REQUEST.—On request of the Secretary of Transportation or the Secretary of a military department, a department, agency, or instrumentality of the executive branch of the United States Government or a wholly owned Government corporation may waive a term required by section 47152 of this title or add another term if the appropriate Secretary decides it is necessary to protect or advance the interests of the United States in civil aviation or for national defense.

CHAPTER 473—INTERNATIONAL AIRPORT FACILITIES

Sec.
47301. Definitions.
47302. Providing airport and airway property in foreign territories.
47303. Training foreign citizens.
47304. Transfer of airport and airway property.
47305. Administrative.
47306. Criminal penalty.

§47301. Definitions

In this chapter—

(1) "airport property" means an interest in property used or useful in operating and maintaining an airport.

(2) "airway property" means an interest in property used or useful in operating and maintaining a ground installation, facility, or equipment desirable for the orderly and safe operation of air traffic, including air navigation, air traffic control, airway communication, and meteorological facilities.

(3) "foreign territory" means an area—

(A) over which no government or a government of a foreign country has sovereignty;

(B) temporarily under military occupation by the United States Government; or

(C) occupied or administered by the Government or a government of a foreign country under an international agreement.

(4) "territory outside the continental United States" means territory outside the 48 contiguous States and the District of Columbia.

§47302. Providing airport and airway property in foreign territories

(a) GENERAL AUTHORITY.—Subject to the concurrence of the Secretary of State and the consideration of objectives of the International Civil Aviation Organization—

(1) the Secretary of Transportation may acquire, establish, and construct airport property and airway property (except meteorological facilities) in foreign territory; and

(2) the Secretary of Commerce may acquire, establish, and construct meteorological facilities in foreign territory.

(b) SPECIFIC APPROPRIATIONS REQUIRED.—Except for airport property transferred under section 47304(b) of this title, an airport (as defined in section 40102(a) of this title) may be acquired, established, or constructed under subsection (a) of this section only if amounts have been appropriated specifically for the airport.

(c) ACCEPTING FOREIGN PAYMENTS.—The Secretary of Transportation or Commerce, as appropriate, may accept payment from a government of a foreign country or international organization for facilities or services sold or provided the government or organization under this chapter. The amount received may be credited to the appropriation current when the expenditures are or were paid, the appropriation current when the amount is received, or both.

§47303. Training foreign citizens

Subject to the concurrence of the Secretary of State, the Secretary of Transportation or Commerce, as appropriate, may train a foreign citizen in a subject related to aeronautics and essential to the orderly and safe operation of civil aircraft. The training may be provided—

(1) directly by the appropriate Secretary or jointly with another department, agency, or instrumentality of the United States Government;

(2) through a public or private agency of the United States (including a State or municipal educational institution); or

(3) through an international organization.

§47304. Transfer of airport and airway property

(a) GENERAL AUTHORITY.—When requested by the government of a foreign country or an international organization, the Secretary of Transportation or Commerce, as appropriate, may transfer to the government or organization airport property and airway property operated and maintained under this chapter by the appropriate Secretary in foreign territory. The transfer shall be on terms the appropriate Secretary considers proper, including consideration agreed on through negotiations with the government or organization.

(b) PROPERTY INSTALLED OR CONTROLLED BY MILITARY.—Subject to terms to which the parties agree, the Secretary of a military department may transfer without charge to the Secretary of Transportation airport property and airway property (except meteorological facilities), and to the Secretary of Commerce meteorological facilities, that the Secretary of the military department installed or controls in territory outside the continental United States. The transfer may be made if consistent with the needs of national defense and—

(1) the Secretary of the military department finds that the property or facility is no longer required exclusively for military purposes; and

(2) the Secretary of Transportation or Commerce, as appropriate, decides that the transfer is or may be necessary to carry out this chapter.

(c) CANAL ZONE AND REPUBLIC OF PANAMA.—(1) The Secretary of Transportation may provide, operate, and maintain facilities and services for air navigation, airway communications, and air traffic control in the Canal Zone and the Republic of Panama subject to—

(A) the approval of the Secretary of Defense; and

(B) each obligation assumed by the United States Government under an agreement between the Government and the Republic of Panama.

(2) The Secretary of a military department may transfer without charge to the Secretary of Transportation property located in the Canal Zone or the Republic of Panama when the Secretary of Transportation decides that the transfer may be useful in carrying out this chapter.

(3) Subsection (b) of this section (related to the Secretary of Transportation) and section 47302(a) and (b) of this title do not apply in carrying out this subsection.

(d) RETAKING PROPERTY FOR MILITARY REQUIREMENT.—(1) When necessary for a military requirement, the Secretary of a military department immediately may retake property (with any improvements to it) transferred by the Secretary under subsection (b) or (c) of this section. The Secretary shall pay reasonable compensation to each person (or its successor in interest) that made an improvement to the property that was not made at the expense of the Government. The Secretary or a delegate of the Secretary shall decide on the amount of compensation.

(2) On the recommendation of the Secretary of Transportation or Commerce, as appropriate, the Secretary of a military department may decide not to act under paragraph (1) of this subsection.

§47305. Administrative

(a) GENERAL AUTHORITY.—The Secretary of Transportation shall consolidate, operate, protect, maintain, and improve airport property and airway property (except meteorological facilities), and the Secretary of Commerce may consolidate, operate, protect, maintain, and improve meteorological facilities, that the appropriate Secretary has acquired and that are located in territory outside the continental United States. In carrying out this section, the appropriate Secretary may—

(1) adapt the property or facility to the needs of civil aeronautics;

(2) lease the property or facility for not more than 20 years;

(3) make a contract, or provide directly, for facilities and services;

(4) make reasonable charges for aeronautical services; and

(5) acquire an interest in property.

(b) CREDITING APPROPRIATIONS.—Money received from the direct sale or charge that the Secretary of Transportation or Commerce, as appropriate, decides is equivalent to the cost of facilities and services sold or provided under subsection (a)(3) and (4) of this section is credited to the appropriation from which the cost was paid. The balance shall be deposited in the Treasury as miscellaneous receipts.

(c) USING OTHER GOVERNMENT FACILITIES AND SERVICES.—To carry out this chapter and to use personnel and facilities of the United States Government most advantageously and without unnecessary duplication, the Secretary of Transportation or Commerce, as appropriate, shall request, when practicable, to use a facility or service of an appropriate department, agency, or instrumentality of the Government on a reimbursable basis. A department, agency, or instrumentality receiving a request under this section may provide the facility or service.

(d) ADVERTISING NOT REQUIRED.—Section 3709 of the Revised Statutes (41 U.S.C. 5) does not apply to a lease or contract made by the Secretary of Transportation or Commerce under this chapter.

§47306. Criminal penalty

A person that knowingly and willfully violates a regulation prescribed by the Secretary of Transportation to carry out this chapter shall be fined under title 18, imprisoned for not more than 6 months, or both.

CHAPTER 475—NOISE

SUBCHAPTER I—NOISE ABATEMENT

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47502. Noise measurement and exposure systems and identifying land use compatible with noise exposure.

47503. Noise exposure maps.
47504. Noise compatibility programs.
47505. Airport noise compatibility planning grants.
47506. Limitations on recovering damages for noise.
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SUBCHAPTER I—NOISE ABATEMENT

§47501. Definitions

In this subchapter—

(1) "airport" means a public-use airport as defined in section 47102 of this title.

(2) "airport operator" means—

(A) for an airport serving air carriers that have certificates from the Secretary of Transportation, any person holding an airport operating certificate issued under section 44706 of this title; and

(B) for any other airport, the person operating the airport.

§47502. Noise measurement and exposure systems and identifying land use compatible with noise exposure

After consultation with the Administrator of the Environmental Protection Agency and United States Government, State, and interstate agencies that the Secretary of Transportation considers appropriate, the Secretary shall by regulation—

(1) establish a single system of measuring noise that—

(A) has a highly reliable relationship between projected noise exposure and surveyed reactions of individuals to noise; and

(B) is applied uniformly in measuring noise at airports and the surrounding area;

(2) establish a single system for determining the exposure of individuals to noise resulting from airport operations, including noise intensity, duration, frequency, and time of occurrence; and

(3) identify land uses normally compatible with various exposures of individuals to noise.

§47503. Noise exposure maps

(a) SUBMISSION AND PREPARATION.—An airport operator may submit to the Secretary of Transportation a noise exposure map showing the noncompatible uses in each area of the map on the date the map is submitted, a description of estimated aircraft operations during 1985, and how those operations will affect the map. The map shall—

(1) be prepared in consultation with public agencies and planning authorities in the area surrounding the airport; and

(2) comply with regulations prescribed under section 47502 of this title.

(b) REVISED MAPS.—If a change in the operation of an airport will establish a substantial new noncompatible use in an area surrounding the airport, the airport operator shall submit a revised noise exposure map to the Secretary showing the new noncompatible use.

§47504. Noise compatibility programs

(a) SUBMISSIONS.—(1) An airport operator that submitted a noise exposure map and related information under section 47503(a) of this title may submit a noise compatibility program to the Secretary of Transportation after—

(A) consulting with public agencies and planning authorities in the area surrounding the airport, United States Government officials having local responsibility for the airport, and air carriers using the airport; and

(B) notice and an opportunity for a public hearing.

(2) A program submitted under paragraph (1) of this subsection shall state the measures the operator has taken or proposes to take to reduce existing noncompatible uses and prevent introducing additional noncompatible uses in the area covered by the map. The measures may include—

(A) establishing a preferential runway system;

(B) restricting the use of the airport by a type or class of aircraft because of the noise characteristics of the aircraft;

(C) constructing barriers and acoustical shielding and soundproofing public buildings;

(D) using flight procedures to control the operation of aircraft to reduce exposure of individuals to noise in the area surrounding the airport; and

(E) acquiring land, air rights, easements, development rights, and other interests to ensure that the property will be used in ways compatible with airport operations.

(b) APPROVALS.—(1) The Secretary shall approve or disapprove a program submitted under subsection (a) of this section (except as the program is related to flight procedures referred to in subsection (a)(2)(D) of this section) not later than 180 days after receiving it. The Secretary shall approve the program (except as the program is related to flight procedures referred to in subsection (a)(2)(D)) if the program—

(A) does not place an unreasonable burden on interstate or foreign commerce;

(B) is reasonably consistent with achieving the goal of reducing noncompatible uses and preventing the introduction of additional noncompatible uses; and

(C) provides for necessary revisions because of a revised map submitted under section 47503(b) of this title.

(2) A program (except as the program is related to flight procedures referred to in subsection (a)(2)(D) of this section) is deemed to be approved if the Secretary does not act within the 180-day period.

(3) The Secretary shall submit any part of a program related to flight procedures referred to in subsection (a)(2)(D) of this section to the Administrator of the Federal Aviation Administration. The Administrator shall approve or disapprove that part of the program.

(c) GRANTS.—(1) The Secretary may incur obligations to make grants from amounts available under section 48103 of this title to carry out a project under a part of a noise compatibility program approved under subsection (b) of this section. A grant may be made to—

(A) an airport operator submitting the program;

(B) a unit of local government in the area surrounding the airport, if the Secretary decides the unit is able to carry out the project;

(C) an airport operator or unit of local government referred to in clause (A) or (B) of this paragraph to carry out any part of a program developed before February 18, 1980, or before implementing regulations were prescribed, if the Secretary decides the program is substantially consistent with reducing existing noncompatible uses and preventing the introduction of additional noncompatible uses and the purposes of this chapter will be furthered by promptly carrying out the program; and

(D) an airport operator or unit of local government referred to in clause (A) or (B) of this paragraph to soundproof a building in the noise impact area surrounding the airport that is used primarily for educational or medical purposes and that the Secretary decides is adversely affected by airport noise.

(2) An airport operator may agree to make a grant made under paragraph (1)(A) of this subsection available to a public agency in the area surrounding the airport if the Secretary decides the agency is able to carry out the project.

(3) The Government's share of a project for which a grant is made under paragraph (1) of this subsection is the greater of—

(A) 80 percent of the cost of the project; or

(B) the Government's share that would apply if the amounts available for the project were made available under subchapter I of chapter 471 of this title for a project at the airport.

(4) The provisions of subchapter I of chapter 471 of this title related to grants apply to a grant made under this chapter, except—

(A) section 47109(a) and (b) of this title; and

(B) any provision that the Secretary decides is inconsistent with, or unnecessary to carry out, this chapter.

(d) GOVERNMENT RELIEF FROM LIABILITY.—The Government is not liable for damages from aviation noise because of action taken under this section.

§47505. Airport noise compatibility planning grants

(a) GENERAL AUTHORITY.—The Secretary of Transportation may make a grant to a sponsor of an airport to develop, for planning purposes, information necessary to prepare and submit—

(1) a noise exposure map and related information under section 47503 of this title, including the cost of obtaining the information; or

(2) a noise compatibility program under section 47504 of this title.

(b) AVAILABILITY OF AMOUNTS AND GOVERNMENT'S SHARE OF COSTS.—A grant under subsection (a) of this section may be made from amounts available under section 48103 of this title. The United States Government's share of the grant is the percent for which a project for airport development at an airport would be eligible under section 47109(a) and (b) of this title.

§47506. Limitations on recovering damages for noise

(a) GENERAL LIMITATIONS.—A person acquiring an interest in property after February 18, 1980, in an area surrounding an airport for which a noise exposure map has been submitted under section 47503 of this title and having actual or constructive knowledge of the existence of the map may recover damages, for noise attributable to the airport only if, in addition to any other elements for recovery of damages, the person shows that—

(1) after acquiring the interest, there was a significant—

(A) change in the type or frequency of aircraft operations at the airport;

(B) change in the airport layout;

(C) change in flight patterns; or

(D) increase in nighttime operations; and

(2) the damages resulted from the change or increase.

(b) CONSTRUCTIVE KNOWLEDGE.—Constructive knowledge of the existence of a map under sub-

section (a) of this section shall be imputed, at a minimum, to a person if—

(1) before the person acquired the interest, notice of the existence of the map was published at least 3 times in a newspaper of general circulation in the county in which the property is located; or

(2) the person is given a copy of the map when acquiring the interest.

§47507. Nonadmissibility of noise exposure map and related information as evidence

No part of a noise exposure map or related information described in section 47503 of this title that is submitted to, or prepared by, the Secretary of Transportation and no part of a list of land uses the Secretary identifies as normally compatible with various exposures of individuals to noise may be admitted into evidence or used for any other purpose in a civil action asking for relief for noise resulting from the operation of an airport.

§47508. Noise standards for air carriers and foreign air carriers providing foreign air transportation

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall require each air carrier and foreign air carrier providing foreign air transportation to comply with noise standards—

(1) the Secretary prescribes for new subsonic aircraft under regulations of the Secretary in effect on January 1, 1977; or

(2) of the International Civil Aviation Organization that are substantially compatible with standards of the Secretary for new subsonic aircraft under regulations of the Secretary at parts 36 and 91 of title 14, Code of Federal Regulations, prescribed between January 2, 1977, and January 1, 1982.

(b) COMPLIANCE AT PHASED RATE.—The Secretary shall require each air carrier and foreign air carrier providing foreign air transportation to comply with the noise standards at a phased rate similar to the rate for aircraft registered in the United States.

(c) NONDISCRIMINATION.—The requirement for air carriers providing foreign air transportation may not be more stringent than the requirement for foreign air carriers.

SUBCHAPTER II—NATIONAL AVIATION NOISE POLICY

§47521. Findings

Congress finds that—

(1) aviation noise management is crucial to the continued increase in airport capacity;

(2) community noise concerns have led to uncoordinated and inconsistent restrictions on aviation that could impede the national air transportation system;

(3) a noise policy must be carried out at the national level;

(4) local interest in aviation noise management shall be considered in determining the national interest;

(5) community concerns can be alleviated through the use of new technology aircraft and the use of revenues, including those available from passenger facility fees, for noise management;

(6) revenues controlled by the United States Government can help resolve noise problems and carry with them a responsibility to the national airport system;

(7) revenues derived from a passenger facility fee may be applied to noise management and increased airport capacity; and

(8) a precondition to the establishment and collection of a passenger facility fee is the prescribing by the Secretary of Transportation of a regulation establishing procedures for reviewing airport noise and access restrictions on operations of stage 2 and stage 3 aircraft.

§47522. Definitions

In this subchapter—

(1) "air carrier", "air transportation", and "United States" have the same meanings given those terms in section 40102(a) of this title.

(2) "stage 3 noise levels" means the stage 3 noise levels in part 36 of title 14, Code of Federal Regulations, in effect on November 5, 1990.

§47523. National aviation noise policy

(a) GENERAL REQUIREMENTS.—Not later than July 1, 1991, the Secretary of Transportation shall establish by regulation a national aviation noise policy that considers this subchapter, including the phaseout and nonaddition of stage 2 aircraft as provided in this subchapter and dates for carrying out that policy and reporting requirements consistent with this subchapter and law existing as of November 5, 1990.

(b) DETAILED ECONOMIC ANALYSIS.—The policy shall be based on a detailed economic analysis of the impact of the phaseout date for stage 2 aircraft on competition in the airline industry, including—

(1) the ability of air carriers to achieve capacity growth consistent with the projected rate of growth for the airline industry;

(2) the impact of competition in the airline and air cargo industries;

(3) the impact on nonhub and small community air service; and

(4) the impact on new entry into the airline industry.

(c) RECOMMENDATIONS TO CONGRESS.—Not later than July 1, 1991, the Secretary shall submit to Congress recommendations on—

(1) the need for changes in the standards and procedures governing the rights of State and local governments, including airport authorities, to restrict aircraft operations to limit aircraft noise;

(2) the need for changes in the standards and procedures governing civil actions by persons adversely affected by aircraft noise;

(3) the need for changes in the standards and procedures for United States Government regulation of airspace (including the pattern of operations for the air traffic control system) to take better account of environmental effects;

(4) the need for changes in the Government program providing assistance for noise abatement planning and programs, including the need for greater incentives or mandatory requirements for local restrictions on the use of land affected by aircraft noise;

(5) whether any changes in policy recommended in clauses (1)-(4) of this subsection should be carried out through regulatory, administrative, or legislative action; and

(6) specific legislative proposals necessary to carry out the national aviation noise policy.

§47524. Airport noise and access restriction review program

(a) GENERAL REQUIREMENTS.—The national aviation noise policy established under section 47523 of this title shall provide for establishing by regulation a national program for reviewing airport noise and access restrictions on the operation of stage 2 and stage 3 aircraft. The program shall provide for adequate public notice and opportunity for comment on the restrictions.

(b) STAGE 2 AIRCRAFT.—Except as provided in subsection (d) of this section, an airport noise or access restriction may include a restriction on the operation of stage 2 aircraft proposed after October 1, 1990, only if the airport operator publishes the proposed restriction and prepares and makes available for public comment at least 180 days before the effective date of the proposed restriction—

(1) an analysis of the anticipated or actual costs and benefits of the existing or proposed restriction;

(2) a description of alternative restrictions;

(3) a description of the alternative measures considered that do not involve aircraft restrictions; and

(4) a comparison of the costs and benefits of the alternative measures to the costs and benefits of the proposed restriction.

(c) STAGE 3 AIRCRAFT.—(1) Except as provided in subsection (d) of this section, an airport noise or access restriction on the operation of stage 3 aircraft not in effect on October 1, 1990, may become effective only if the restriction has been agreed to by the airport proprietor and all aircraft operators or has been submitted to and approved by the Secretary of Transportation after an airport or aircraft operator's request for approval as provided by the program established under this section. Restrictions to which this paragraph applies include—

(A) a restriction on noise levels generated on either a single event or cumulative basis;

(B) a restriction on the total number of stage 3 aircraft operations;

(C) a noise budget or noise allocation program that would include stage 3 aircraft;

(D) a restriction on hours of operations; and

(E) any other restriction on stage 3 aircraft.

(2) Not later than 180 days after the Secretary receives an airport or aircraft operator's request for approval of an airport noise or access restriction on the operation of a stage 3 aircraft, the Secretary shall approve or disapprove the restriction. The Secretary may approve the restriction only if the Secretary finds on the basis of substantial evidence that—

(A) the restriction is reasonable, nonarbitrary, and nondiscriminatory;

(B) the restriction does not create an unreasonable burden on interstate or foreign commerce;

(C) the restriction is not inconsistent with maintaining the safe and efficient use of the navigable airspace;

(D) the restriction does not conflict with a law or regulation of the United States;

(E) an adequate opportunity has been provided for public comment on the restriction; and

(F) the restriction does not create an unreasonable burden on the national aviation system.

(3) Paragraphs (1) and (2) of this subsection do not apply if the Administrator of the Federal Aviation Administration, before November 5, 1990, has formed a working group (outside the process established by part 150 of title 14, Code of Federal Regulations) with a local airport operator to examine the noise impact of air traffic control procedure changes at the airport. If an agreement on noise reductions at that airport is made between the airport proprietor and an air carrier or air carriers that are a majority of the air carriers using the airport, this subsection applies only to a local action to enforce the agreement.

(4) The Secretary may reevaluate an airport noise or access restriction previously agreed to or approved under this subsection on request of an aircraft operator able to demonstrate to the satisfaction of the Secretary that there has been a change in the noise environment of the affected airport that justifies a reevaluation. The Secretary shall establish by regulation procedures for conducting a reevaluation. A reevaluation—

(A) shall be based on the criteria in paragraph (2) of this subsection; and

(B) may be conducted only after 2 years after a decision under paragraph (2) of this subsection has been made.

(d) NONAPPLICATION.—Subsections (b) and (c) of this section do not apply to—

(1) a local action to enforce a negotiated or executed airport noise or access agreement between the airport operator and the aircraft operators in effect on November 5, 1990;

(2) a local action to enforce a negotiated or executed airport noise or access restriction agreed to by the airport operator and the aircraft operators before November 5, 1990;

(3) an intergovernmental agreement including an airport noise or access restriction in effect on November 5, 1990;

(4) a subsequent amendment to an airport noise or access agreement or restriction in effect on November 5, 1990, that does not reduce or limit aircraft operations or affect aircraft safety;

(5)(A) an airport noise or access restriction adopted by an airport operator not later than October 1, 1990, and stayed as of October 1, 1990, by a court order or as a result of litigation, if any part of the restriction is subsequently allowed by a court to take effect; or

(B) a new restriction imposed by an airport operator to replace any part of a restriction described in subclause (A) of this clause that is disallowed by a court, if the new restriction would not prohibit aircraft operations in effect on November 5, 1990; or

(6) a local action that represents the adoption of the final part of a program of a staged airport noise or access restriction if the initial part of the program was adopted during 1988 and was in effect on November 5, 1990.

(e) GRANT LIMITATIONS.—Beginning on the 91st day after the Secretary prescribes a regulation under subsection (a) of this section, a sponsor of a facility operating under an airport noise or access restriction on the operation of stage 3 aircraft that first became effective after October 1, 1990, is eligible for a grant under section 47104 of this title and is eligible to impose a passenger facility fee under section 40117 of this title only if the restriction has been—

(1) agreed to by the airport proprietor and aircraft operators;

(2) approved by the Secretary as required by subsection (c)(1) of this section; or

(3) rescinded.

§47525. Decision about airport noise and access restrictions on certain stage 2 aircraft

The Secretary of Transportation shall conduct a study and decide on the application of section 47524(a)–(d) of this title to airport noise and access restrictions on the operation of stage 2 aircraft with a maximum weight of not more than 75,000 pounds. In making the decision, the Secretary shall consider—

(1) noise levels produced by those aircraft relative to other aircraft;

(2) the benefits to general aviation and the need for efficiency in the national air transportation system;

(3) the differences in the nature of operations at airports and the areas immediately surrounding the airports;

(4) international standards and agreements on aircraft noise; and

(5) other factors the Secretary considers necessary.

§47526. Limitations for noncomplying airport noise and access restrictions

Unless the Secretary of Transportation is satisfied that an airport is not imposing an airport noise or access restriction not in compliance with this subchapter, the airport may not—

(1) receive money under subchapter I of chapter 471 of this title; or

(2) impose a passenger facility fee under section 40117 of this title.

§47527. Liability of the United States Government for noise damages

When a proposed airport noise or access restriction is disapproved under this subchapter, the United States Government shall assume liability for noise damages only to the extent that a taking has occurred as a direct result of the disapproval. The United States Claims Court has exclusive jurisdiction of a civil action under this section.

§47528. Prohibition on operating certain aircraft not complying with stage 3 noise levels

(a) PROHIBITION.—Except as provided in subsection (b) of this section and section 47530 of this title, a person may operate after December 31, 1999, a civil subsonic turbojet with a maximum weight of more than 75,000 pounds to or from an airport in the United States only if the Secretary of Transportation finds that the aircraft complies with the stage 3 noise levels.

(b) WAIVERS.—(1) If, not later than July 1, 1999, at least 85 percent of the aircraft used by an air carrier to provide air transportation comply with the stage 3 noise levels, the carrier may apply for a waiver of subsection (a) of this section for the remaining aircraft used by the carrier to provide air transportation. The application must be filed with the Secretary not later than January 1, 1999, and must include a plan with firm orders for making all aircraft used by the carrier to provide air transportation comply with the noise levels not later than December 31, 2003.

(2) The Secretary may grant a waiver under this subsection if the Secretary finds it would be in the public interest. In making the finding, the Secretary shall consider the effect of granting the waiver on competition in the air carrier industry and on small community air service.

(3) A waiver granted under this subsection may not permit the operation of stage 2 aircraft in the United States after December 31, 2003.

(c) SCHEDULE FOR PHASED-IN COMPLIANCE.—The Secretary shall establish by regulation a schedule for phased-in compliance with subsection (a) of this section. The phase-in period shall begin on November 5, 1990, and end before December 31, 1999. The regulations shall establish interim compliance dates. The schedule for phased-in compliance shall be based on—

(1) a detailed economic analysis of the impact of the phaseout date for stage 2 aircraft on competition in the airline industry, including—

(A) the ability of air carriers to achieve capacity growth consistent with the projected rate of growth for the airline industry;

(B) the impact of competition in the airline and air cargo industries;

(C) the impact on nonhub and small community air service; and

(D) the impact on new entry into the airline industry; and

(2) an analysis of the impact of aircraft noise on individuals residing near airports.

(d) ANNUAL REPORT.—Beginning with calendar year 1992—

(1) each air carrier shall submit to the Secretary an annual report on the progress the carrier is making toward complying with the requirements of this section and regulations prescribed under this section; and

(2) the Secretary shall submit to Congress an annual report on the progress being made toward that compliance.

(e) HAWAIIAN OPERATIONS.—(1) In this subsection, "turnaround service" means a flight between places only in Hawaii.

(2)(A) An air carrier or foreign air carrier may not operate in Hawaii, or between a place in Hawaii and a place outside the 48 contiguous States, a greater number of stage 2 aircraft with a maximum weight of more than 75,000 pounds than it operated in Hawaii, or between a place in Hawaii and a place outside the 48 contiguous States, on November 5, 1990.

(B) An air carrier that provided turnaround service in Hawaii on November 5, 1990, using stage 2 aircraft with a maximum weight of more than 75,000 pounds may include in the number of aircraft authorized under subparagraph (A) of this paragraph all stage 2 aircraft with a maximum weight of more than 75,000 pounds that were owned or leased by that carrier on that date, whether or not the aircraft were operated by the carrier on that date.

(3) An air carrier may provide turnaround service in Hawaii using stage 2 aircraft with a maximum weight of more than 75,000 pounds only if the carrier provided the service on November 5, 1990.

§47529. Nonaddition rule

(a) GENERAL LIMITATIONS.—Except as provided in subsection (b) of this section and section 47530 of this title, a person may operate a civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds that is imported into the United States after November 4, 1990, only if the aircraft—

(1) complies with the stage 3 noise levels; or

(2) was purchased by the person importing the aircraft into the United States under a written contract made before November 5, 1990.

(b) EXEMPTIONS.—The Secretary of Transportation may provide an exemption from subsection (a) of this section to permit a person to obtain modifications to an aircraft to meet the stage 3 noise levels.

(c) AIRCRAFT DEEMED NOT IMPORTED.—In this section, an aircraft is deemed not to have been imported into the United States if the aircraft—

(1) was owned on November 5, 1990, by—

(A) a corporation, trust, or partnership organized under the laws of the United States or a State (including the District of Columbia);

(B) an individual who is a citizen of the United States; or

(C) an entity that is owned or controlled by a corporation, trust, partnership, or individual described in subclause (A) or (B) of this clause; and

(2) enters the United States not later than 6 months after the expiration of a lease agreement (including any extension) between an owner described in clause (1) of this subsection and a foreign air carrier.

§47530. Nonapplication of sections 47528(a)–(d) and 47529 to aircraft outside the 48 contiguous States

Sections 47528(a)–(d) and 47529 of this title do not apply to aircraft used only to provide air transportation outside the 48 contiguous States. A civil subsonic turbojet aircraft with a maximum weight of more than 75,000 pounds that is imported into a noncontiguous State or a territory or possession of the United States after November 4, 1990, may be used to provide air transportation in the 48 contiguous States only if the aircraft complies with the stage 3 noise levels.

§47531. Penalties for violating sections 47528–47530

A person violating sections 47528, 47529, or 47530 of this title or a regulation prescribed under those sections is subject to the same civil penalties and procedures under chapter 463 of this title as a person violating section 44701(a) or (b) or 44702–44716 of this title.

§47532. Judicial review

An action taken by the Secretary of Transportation under section 47528–47531 of this title is subject to judicial review as provided under section 46110 of this title.

§47533. Relationship to other laws

Except as provided by section 47524 of this title, this subchapter does not affect—

(1) law in effect on November 5, 1990, on airport noise or access restrictions by local authorities;

(2) any proposed airport noise or access restriction at a general aviation airport if the airport proprietor has formally initiated a regulatory or legislative process before October 2, 1990; or

(3) the authority of the Secretary of Transportation to seek and obtain legal remedies the Secretary considers appropriate, including injunctive relief.

PART C—FINANCING

CHAPTER 481—AIRPORT AND AIRWAY TRUST FUND AUTHORIZATIONS

Sec.

48101. Air navigation facilities.
48102. Research and development.
48103. Airport planning and development and noise compatibility planning and programs.
48104. Certain direct costs and joint air navigation services.
48105. Weather reporting services.
48106. Airway science curriculum grants.
48107. Civil aviation security research and development.
48108. Availability and uses of amounts.
48109. Submission of budget information and legislative recommendations and comments.

§48101. Air navigation facilities

(a) AUTHORIZATION OF APPROPRIATIONS.—Not more than a total of $5,500,000,000 may be appropriated to the Secretary of Transportation for the fiscal years ending September 30, 1991, and 1992, out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to acquire, establish, and improve air navigation facilities under section 44502(a)(1)(A) of this title.

(b) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section remain available until expended.

§48102. Research and development

(a) AUTHORIZATION OF APPROPRIATIONS.—Not more than the following amounts may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 1992, out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to carry out sections 44504, 44505, 44507, 44509, and 44511–44513 of this title:

(1) $135,800,000 for air traffic control projects and activities;

(2) $19,100,000 for air traffic control advanced computer projects and activities;

(3) $3,400,000 for navigation projects and activities;

(4) $9,700,000 for aviation weather projects and activities;

(5) $16,500,000 for aviation medicine projects and activities;

(6) $70,100,000 for aircraft safety projects and activities; and

(7) $5,400,000 for environmental projects and activities.

(b) AVAILABILITY FOR AVIATION RESEARCH GRANTS.—At least 3 percent of the amounts made available under subsection (a) of this section for a fiscal year shall be available to the Administrator of the Federal Aviation Administration to make grants under section 44511 of this title.

(c) TRANSFERS BETWEEN CATEGORIES.—(1) Not more than 10 percent of the net amount authorized for a category of projects and activities in a fiscal year under subsection (a) of this section may be transferred to or from that category in that fiscal year.

(2) The Secretary may transfer more than 10 percent of an authorized amount to or from a category only after—

(A) submitting a written explanation of the proposed transfer to the Committees on Science, Space, and Technology and Appropriations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate; and

(B) 30 days have passed after the explanation is submitted or each Committee notifies the Secretary in writing that it does not object to the proposed transfer.

(d) AIRPORT CAPACITY RESEARCH AND DEVELOPMENT.—(1) Of the amounts made available under subsection (a) of this section, at least $25,000,000 may be appropriated each fiscal year for research and development under section 44505(a) and (c) of this title on preserving and enhancing airport capacity, including research and development on improvements to airport design standards, maintenance, safety, operations, and environmental concerns.

(2) The Secretary shall submit to the Committees on Science, Space, and Technology and Public Works and Transportation of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on expenditures made under paragraph (1) of this subsection for each fiscal year. The report shall be submitted not later than 60 days after the end of the fiscal year.

(e) AIR TRAFFIC CONTROLLER PERFORMANCE RESEARCH.—Necessary amounts may be appropriated to the Secretary out of amounts in the Fund available for research and development to conduct research under section 44506 of this title.

(f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection (a) of this section remain available until expended.

§48103. Airport planning and development and noise compatibility planning and programs

Not more than a total of $13,916,700,000 is available to the Secretary of Transportation for the fiscal years ending September 30, 1982–1992, out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to make grants for airport planning and airport development under section 47104 of this title, airport noise compatibility planning under section 47505(a)(2) of this title, and carrying out noise compatibility programs under section 47504(c) of this title.

§48104. Certain direct costs and joint air navigation services

(a) AUTHORIZATION OF APPROPRIATIONS.—Except as provided in this section, the balance of the money available in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) may be appropriated out of the Fund for—

(1) direct costs the Secretary of Transportation incurs to flight check, operate, and maintain air navigation facilities referred to in section 44502(a)(1)(A) of this title safely and efficiently; and

(2) the costs of services provided under international agreements related to the joint financing of air navigation services assessed against the United States Government.

(b) LIMITATION.—The amount that may be appropriated out of the Fund for the fiscal year ending September 30, 1992, may not be more than an amount equal to—

(1) 75 percent of the amount made available under sections 106(k) and 48101–48103 of this title for that fiscal year; less

(2) the amount made available under sections 48101–48103 of this title for that fiscal year.

§48105. Weather reporting services

The Secretary of Transportation may expend from amounts available under section 48104 of this title not more than $35,389,000 for the fiscal year ending September 30, 1992, to reimburse the Secretary of Commerce for the cost of providing weather reporting services.

§48106. Airway science curriculum grants

Amounts are available from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to carry out section 44510 of this title. The amounts remain available until expended.

§48107. Civil aviation security research and development

After the review under section 44912(b) of this title is completed, necessary amounts may be appropriated to the Administrator of the Federal Aviation Administration out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to make grants under section 44912(a)(4)(A).

§48108. Availability and uses of amounts

(a) AVAILABILITY OF AMOUNTS.—Amounts equal to the amounts authorized under sections 48101–48105 of this title remain in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) until appropriated for the purposes of sections 48101–48105.

(b) LIMITATIONS ON USES.—(1) Amounts in the Fund may be appropriated only to carry out a program or activity referred to in this chapter.

(2) Amounts in the Fund may be appropriated for administrative expenses of the Department of Transportation or a component of the Department only to the extent authorized by section 48104 of this title.

(c) LIMITATION ON OBLIGATING OR EXPENDING AMOUNTS.—In a fiscal year beginning after September 30, 1992, the Secretary of Transportation may obligate or expend an amount appropriated out of the Fund under section 48104 of this title only if a law expressly amends section 48104.

§48109. Submission of budget information and legislative recommendations and comments

When the Administrator of the Federal Aviation Administration submits to the Secretary of Transportation, the President, or the Director of the Office of Management and Budget any budget information, legislative recommendation, or comment on legislation about amounts authorized in section 48101 or 48102 of this title, the Administrator concurrently shall submit a copy of the information, recommendation, or comment to the Speaker of the House of Representatives, the Committees on Public Works and Transportation and Appropriations of the House, the President of the Senate, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate.

PART D—MISCELLANEOUS

CHAPTER 491—BUY-AMERICAN PREFERENCES

Sec.
49101. Buying goods produced in the United States.
49102. Restricting contract awards because of discrimination against United States goods or services.
49103. Contract preference for domestic firms.
49104. Restriction on airport projects using products or services of foreign countries denying fair market opportunities.
49105. Fraudulent use of "Made in America" label.

§49101. Buying goods produced in the United States

(a) PREFERENCE.—The Secretary of Transportation may obligate an amount that may be appropriated to carry out section 106(k), 44502(a)(2), or 44509, subchapter I of chapter 471 (except sections 47106(g) and 47127), or chapter 493 (except sections 49302(e), 49306, and 49307) of this title or subtitle B of title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, 104 Stat. 1388–353) for a project only if steel and manufactured goods used in the project are produced in the United States.

(b) WAIVER.—The Secretary may waive subsection (a) of this section if the Secretary finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) the steel and goods produced in the United States are not produced in a sufficient and rea-

sonably available amount or are not of a satisfactory quality;

(3) when procuring a facility or equipment under subchapter I of chapter 471 (except sections 47106(g) and 47127) or chapter 493 (except sections 49302(e), 49306, and 49307) of this title—

(A) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the facility or equipment; and

(B) final assembly of the facility or equipment has occurred in the United States; or

(4) including domestic material will increase the cost of the overall project by more than 25 percent.

(c) LABOR COSTS.—In this section, labor costs involved in final assembly are not included in calculating the cost of components.

§49102. Restricting contract awards because of discrimination against United States goods or services

A person or enterprise domiciled or operating under the laws of a foreign country may not make a contract or subcontract under subtitle B of title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, 104 Stat. 1388–353) if the government of that country unfairly maintains, in government procurement, a significant and persistent pattern of discrimination against United States goods or services that results in identifiable harm to United States businesses, that the President identifies under section 305(g)(1)(A) of the Trade Agreements Act of 1979 (19 U.S.C. 2515(g)(1)(A)).

§49103. Contract preference for domestic firms

(a) DEFINITIONS.—In this section—

(1) "domestic firm" means a business entity incorporated, and conducting business, in the United States.

(2) "foreign firm" means a business entity not described in clause (1) of this subsection.

(b) PREFERENCE.—Subject to subsections (c) and (d) of this section, the Administrator of the Federal Aviation Administration may make, with a domestic firm, a contract related to a grant made under section 44511, 44512, or 44513 of this title that, under competitive procedures, would be made with a foreign firm, if—

(1) the Administrator decides, and the Secretary of Commerce and the United States Trade Representative concur, that the public interest requires making the contract with the domestic firm, considering United States international obligations and trade relations;

(2) the difference between the bids submitted by the foreign firm and the domestic firm is not more than 6 percent;

(3) the final product of the domestic firm will be assembled completely in the United States; and

(4) at least 51 percent of the final product of the domestic firm will be produced in the United States.

(c) NONAPPLICATION.—Subsection (b) of this section does not apply if—

(1) compelling national security considerations require that subsection (b) of this section not apply; or

(2) the Trade Representative decides that making the contract would violate the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party.

(d) APPLICATION TO CERTAIN GRANTS.—This section applies only to a contract related to a grant made under section 44511, 44512, or 44513 of this title for which—

(1) an amount is authorized by section 47702(a), (b), or (d) of this title to be made available; and

(2) a solicitation for bid is issued after November 5, 1990.

(e) REPORT.—The Administrator shall submit a report to Congress on—

(1) contracts to which this section applies that are made with foreign firms in the fiscal years ending September 30, 1991, and September 30, 1992;

(2) the number of contracts that meet the requirements of subsection (b) of this section, but that the Trade Representative decides would violate the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party; and

(3) the number of contracts made under this section.

§49104. Restriction on airport projects using products or services of foreign countries denying fair market opportunities

(a) DEFINITION AND RULES FOR CONSTRUING SECTION.—In this section—

(1) "project" has the same meaning given that term in section 47102 of this title.

(2) each foreign instrumentality and each territory and possession of a foreign country administered separately for customs purposes is a separate foreign country.

(3) an article substantially produced or manufactured in a foreign country is a product of the country.

(4) a service provided by a person that is a national of a foreign country or that is controlled by a national of a foreign country is a service of the country.

(b) LIMITATION ON USE OF AVAILABLE AMOUNTS.—(1) An amount made available under subchapter I of chapter 471 of this title (except sections 47106(g) and 47127) may not be used for a project that uses a product or service of a foreign country during any period the country is on the list maintained by the United States Trade Representative under subsection (d)(1) of this section.

(2) Paragraph (1) of this subsection does not apply when the Secretary of Transportation decides that—

(A) applying paragraph (1) to the product, service, or project is not in the public interest;

(B) a product or service of the same class or type and of satisfactory quality is not produced or offered in the United States, or in a foreign country not listed under subsection (d)(1) of this section, in a sufficient and reasonably available amount; and

(C) the project cost will increase by more than 20 percent if the product or service is excluded.

(c) DECISIONS ON DENIAL OF FAIR MARKET OPPORTUNITIES.—Not later than 30 days after a report is submitted to Congress under section 181(b) of the Trade Act of 1974 (19 U.S.C. 2241(b)), the Trade Representative, for a construction project of more than $500,000 for which the government of a foreign country supplies any part of the amount, shall decide whether the foreign country denies fair market opportunities for products and suppliers of the United States in procurement or for United States bidders. In making the decision, the Trade Representative shall consider information obtained in preparing the report and other information the Trade Representative considers relevant.

(d) LIST OF COUNTRIES DENYING FAIR MARKET OPPORTUNITIES.—(1) The Trade Representative shall maintain a list of each foreign country the Trade Representative finds under subsection (c) of this section is denying fair market opportunities. The country shall remain on the list until the Trade Representative decides the country provides fair market opportunities.

(2) The Trade Representative shall publish in the Federal Register—

(A) annually the list required under paragraph (1) of this subsection; and

(B) any modification of the list made before the next list is published.

§49105. Fraudulent use of "Made in America" label

If the Secretary of Transportation decides that a person intentionally affixed a "Made in America" label to goods sold in or shipped to the United States that are not made in the United States, the Secretary shall declare the person ineligible to receive a contract or grant from the United States Government related to a contract made under subtitle B of title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, 104 Stat. 1388–353) for not less than 3 nor more than 5 years. The Secretary may bring a civil action to enforce this section in any district court of the United States.

SUBTITLE VIII—PIPELINES

CHAPTER	Sec.
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603. USER FEES	60301
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CHAPTER 601—SAFETY

Sec.
60101. Definitions.
60102. General authority.
60103. Standards for liquefied natural gas pipeline facilities.
60104. Requirements and limitations.
60105. State certifications.
60106. State agreements.
60107. State grants.
60108. Inspection and maintenance.
60109. Financial responsibility for liquefied natural gas facilities.
60110. Pipeline facilities hazardous to life and property.
60111. One-call notification systems.
60112. Technical safety standards committees.
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60117. Enforcement.
60118. Actions by private persons.
60119. Civil penalties.
60120. Criminal penalties.
60121. Annual reports.
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§60101. Definitions

In this chapter—

(1) "existing liquefied natural gas facility"—

(A) means a liquefied natural gas facility for which an application to approve the site, construction, or operation of the facility was filed before March 1, 1978, with—

(i) the Federal Energy Regulatory Commission (or any predecessor); or

(ii) the appropriate State or local authority, if the facility is not subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.); but

(B) does not include a facility on which construction is begun after November 29, 1979, without the approval.

(2) "gas" means natural gas, flammable gas, or toxic or corrosive gas.

(3) "gas pipeline facility" includes a pipeline, a right of way, a facility, a building, or equipment used in transporting gas or treating gas during its transportation.

(4) "hazardous liquid" means—

(A) petroleum or a petroleum product; and

(B) a substance the Secretary of Transportation decides may pose an unreasonable risk to life or property when transported by a hazardous liquid pipeline facility in a liquid state (except for liquefied natural gas).

(5) "hazardous liquid pipeline facility" includes a pipeline, a right of way, a facility, a building, or equipment used or intended to be used in transporting hazardous liquid.

(6) "interstate gas pipeline facility"—

(A) means a gas pipeline facility—

(i) used to transport gas; and

(ii) subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.); but

(B) does not include a gas pipeline facility transporting gas from an interstate gas pipeline in a State to a direct sales customer in that State buying gas for its own consumption.

(7) "interstate hazardous liquid pipeline facility" means a hazardous liquid pipeline facility used to transport hazardous liquid in interstate or foreign commerce.

(8) "interstate or foreign commerce"—

(A) related to gas, means commerce—

(i) between a place in a State and a place outside that State; or

(ii) that affects any commerce described in subclause (A)(i) of this clause; and

(B) related to hazardous liquid, means commerce between—

(i) a place in a State and a place outside that State; or

(ii) places in the same State through a place outside the State.

(9) "intrastate gas pipeline facility" means—

(A) a gas pipeline facility and transportation of gas within a State not subject to the jurisdiction of the Commission under the Natural Gas Act (15 U.S.C. 717 et seq.); and

(B) a gas pipeline facility transporting gas from an interstate gas pipeline in a State to a direct sales customer in that State buying gas for its own consumption.

(10) "intrastate hazardous liquid pipeline facility" means a hazardous liquid pipeline facility that is not an interstate hazardous liquid pipeline facility.

(11) "liquefied natural gas" means natural gas in a liquid or semisolid state.

(12) "liquefied natural gas accident" means a release, burning, or explosion of liquefied natural gas from any cause, except a release, burning, or explosion that, under regulations prescribed by the Secretary, does not pose a threat to public health or safety, property, or the environment.

(13) "liquefied natural gas conversion" means conversion of natural gas into liquefied natural gas or conversion of liquefied natural gas into natural gas.

(14) "liquefied natural gas pipeline facility"—

(A) means a gas pipeline facility used for transporting or storing liquefied natural gas, or for liquefied natural gas conversion, in interstate or foreign commerce; but

(B) does not include any part of a structure or equipment located in navigable waters (as defined in section 3 of the Federal Power Act (16 U.S.C. 796)).

(15) "municipality" means a political subdivision of a State.

(16) "new liquefied natural gas pipeline facility" means a liquefied natural gas pipeline facility except an existing liquefied natural gas pipeline facility.

(17) "person", in addition to its meaning under section 1 of title 1 (except as to societies), includes a State, a municipality, and a trustee, receiver, assignee, or personal representative of a person.

(18) "pipeline facility" means a gas pipeline facility and a hazardous liquid pipeline facility.

(19) "pipeline transportation" means transporting gas and transporting hazardous liquid.

(20) "State" means a State of the United States, the District of Columbia, and Puerto Rico.

(21) "transporting gas"—

(A) means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in interstate or foreign commerce; but

(B) does not include gathering gas in a rural area outside a populated area designated by the Secretary as a nonrural area.

(22) "transporting hazardous liquid"—

(A) means the movement of hazardous liquid by pipeline, or the storage of hazardous liquid incidental to the movement of hazardous liquid by pipeline, in or affecting interstate or foreign commerce; but

(B) does not include moving hazardous liquid through—

(i) gathering lines in a rural area;

(ii) onshore production, refining, or manufacturing facilities; or

(iii) storage or in-plant piping systems associated with onshore production, refining, or manufacturing facilities.

§60102. General authority

(a) Minimum Safety Standards.—The Secretary of Transportation shall prescribe minimum safety standards for pipeline transportation and for pipeline facilities. The standards—

(1) apply to transporters of gas and hazardous liquid and to owners and operators of pipeline facilities;

(2) may apply to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities; and

(3) may include a requirement that all individuals responsible for the operation and maintenance of pipeline facilities be tested for qualifications and certified to operate and maintain those facilities.

(b) Practicability and Safety Needs Standards.—A standard prescribed under subsection (a) of this section shall be practicable and designed to meet the need for gas pipeline safety and for safely transporting hazardous liquid. Except as provided in section 60103 of this title, when prescribing the standard the Secretary shall consider—

(1) relevant available—

(A) gas pipeline safety information; or

(B) hazardous liquid pipeline information;

(2) the appropriateness of the standard for the particular type of pipeline transportation or facility;

(3) the reasonableness of the standard; and

(4) the extent to which the standard will contribute to public safety.

(c) Public Safety Program Requirements.—(1) The Secretary shall include in the standards prescribed under subsection (a) of this section a requirement that an operator of a gas pipeline facility participate in a public safety program that—

(A) notifies an operator of proposed demolition, excavation, tunneling, or construction near or affecting the facility;

(B) requires an operator to identify a pipeline facility that may be affected by the proposed demolition, excavation, tunneling, or construction, to prevent damaging the facility; and

(C) the Secretary decides will protect a facility adequately against a hazard caused by demolition, excavation, tunneling, or construction.

(2) To the extent a public safety program referred to in paragraph (1) of this subsection is not available, the Secretary shall prescribe standards requiring an operator to take action the Secretary prescribes to provide services comparable to services that would be available under a public safety program.

(3) The Secretary may include in the standards prescribed under subsection (a) of this section a requirement that an operator of a hazardous liquid pipeline facility participate in a public safety program meeting the requirements of paragraph (1) of this subsection or maintain and carry out a damage prevention program that provides services comparable to services that would be available under a public safety program.

(d) Facility Operation Information Standards.—The Secretary shall prescribe minimum standards requiring an operator of a pipeline facility to which this chapter applies to maintain, to the extent practicable, information related to operating the facility and, when requested, to provide the information to the Secretary and an appropriate State official. The information shall include—

(1) the business name, address, and telephone number, including an operations emergency telephone number, of the operator;

(2) accurate maps and a supplementary geographic description that show the location in the State of—

(A) major gas pipeline facilities of the operator, including transmission lines and significant distribution lines; and

(B) major hazardous liquid pipeline facilities of the operator;

(3) a description of—

(A) the characteristics of the operator's pipelines in the State; and

(B) products transported through the operator's pipelines in the State;

(4) the manual that governs operating and maintaining pipeline facilities in the State;

(5) an emergency response plan describing the operator's procedures for responding to and containing releases, including—

(A) identifying specific action the operator will take on discovering a release;

(B) liaison procedures with State and local authorities for emergency response; and

(C) communication and alert procedures for immediately notifying State and local officials at the time of a release; and

(6) other information the Secretary considers useful to inform a State of the presence of pipeline facilities and operations in the State.

(e) Pipe Inventory Standards.—The Secretary shall prescribe minimum standards requiring an operator of a pipeline facility to which this chapter applies to maintain for the Secretary, to the extent practicable, an inventory with appropriate information about the types of pipe used for the transmission of gas or hazardous liquid, as appropriate, in the operator's system and additional information, including the material's history and the leak history of the pipe. The inventory—

(1) for a gas pipeline facility, shall exclude equipment used with the compression of gas; and

(2) for a hazardous liquid pipeline facility, shall exclude equipment associated only with the pipeline pumps or storage facilities.

(f) Standards as Accommodating "Smart Pigs".—The Secretary shall prescribe minimum safety standards requiring that the design and construction of a new gas pipeline transmission facility or hazardous liquid pipeline facility, and the required replacement of an existing gas pipeline transmission facility, hazardous liquid pipeline facility, or equipment, be carried out, to the extent practicable, in a way that accommodates the passage through the facility of an instrumented internal inspection device (commonly referred to as a "smart pig").

(g) Effective Dates.—A standard prescribed under this section is effective on the 30th day after the Secretary prescribes the standard. However, the Secretary for good cause may prescribe a different effective date when required because of the time reasonably necessary to comply with the standard. The different date must be specified in the regulation prescribing the standard.

(h) Safety Condition Reports.—(1) The Secretary shall prescribe regulations requiring each operator of a pipeline facility (except a master meter) to submit to the Secretary a written report on any—

(A) condition that is a hazard to life or property; and

(B) safety-related condition that causes or has caused a significant change or restriction in the operation of a pipeline facility.

(2) The Secretary must receive the report not later than 5 working days after a representative of a person to which this section applies first establishes that the condition exists. Notice of the condition shall be given concurrently to appropriate State authorities.

(i) CARBON DIOXIDE REGULATION.—The Secretary shall regulate carbon dioxide transported by a hazardous liquid pipeline facility. The Secretary shall prescribe regulations related to hazardous liquid to ensure the safe transportation of carbon dioxide by such a facility.

§60103. Standards for liquefied natural gas pipeline facilities

(a) LOCATION STANDARDS.—The Secretary of Transportation shall prescribe minimum safety standards for deciding on the location of a new liquefied natural gas pipeline facility. In prescribing a standard, the Secretary shall consider the—

(1) kind and use of the facility;

(2) existing and projected population and demographic characteristics of the location;

(3) existing and proposed land use near the location;

(4) natural physical aspects of the location;

(5) medical, law enforcement, and fire prevention capabilities near the location that can cope with a risk caused by the facility; and

(6) need to encourage remote siting.

(b) DESIGN, INSTALLATION, CONSTRUCTION, INSPECTION, AND TESTING STANDARDS.—The Secretary of Transportation shall prescribe minimum safety standards for designing, installing, constructing, initially inspecting, and initially testing a new liquefied natural gas pipeline facility. When prescribing a standard, the Secretary shall consider—

(1) the characteristics of material to be used in constructing the facility and of alternative material;

(2) design factors;

(3) the characteristics of the liquefied natural gas to be stored or converted at, or transported by, the facility; and

(4) the public safety factors of the design and of alternative designs, particularly the ability to prevent and contain a liquefied natural gas spill.

(c) NONAPPLICATION.—(1) Except as provided in paragraph (2) of this subsection, a design, location, installation, construction, initial inspection, or initial testing standard prescribed under this chapter after March 1, 1978, does not apply to an existing liquefied natural gas pipeline facility if the standard is to be applied because of authority given—

(A) under this chapter; or

(B) under another law, and the standard is not prescribed at the time the authority is applied.

(2)(A) Any design, installation, construction, initial inspection, or initial testing standard prescribed under this chapter after March 1, 1978, may provide that the standard applies to any part of a replacement component of a liquefied natural gas pipeline facility if the component or part is placed in service after the standard is prescribed and application of the standard—

(i) does not make the component or part incompatible with other components or parts; or

(ii) is not impracticable otherwise.

(B) Any location standard prescribed under this chapter after March 1, 1978, does not apply to any part of a replacement component of an existing liquefied natural gas pipeline facility.

(3) A design, installation, construction, initial inspection, or initial testing standard does not apply to a liquefied natural gas pipeline facility existing when the standard is adopted.

(d) OPERATION AND MAINTENANCE STANDARDS.—The Secretary of Transportation shall prescribe minimum operating and maintenance standards for a liquefied natural gas pipeline facility. In prescribing a standard, the Secretary shall consider—

(1) the conditions, features, and type of equipment and structures that make up or are used in connection with the facility;

(2) the fire prevention and containment equipment at the facility;

(3) security measures to prevent an intentional act that could cause a liquefied natural gas accident;

(4) maintenance procedures and equipment;

(5) the training of personnel in matters specified by this subsection; and

(6) other factors and conditions related to the safe handling of liquefied natural gas.

(e) EFFECTIVE DATES.—A standard prescribed under this section is effective on the 30th day after the Secretary of Transportation prescribes the standard. However, the Secretary for good cause may prescribe a different effective date when required because of the time reasonably necessary to comply with the standard. The different date must be specified in the regulation prescribing the standard.

(f) CONTINGENCY PLANS.—A new liquefied natural gas pipeline facility may be operated only after the operator submits an adequate contingency plan that states the action to be taken if a liquefied natural gas accident occurs. The Secretary of Energy or appropriate State or local authority shall decide if the plan is adequate.

(g) EFFECT ON OTHER STANDARDS.—This section does not preclude applying a standard prescribed under section 60102 of this title to a gas pipeline facility (except a liquefied natural gas pipeline facility) associated with a liquefied natural gas pipeline facility.

§60104. Requirements and limitations

(a) OPPORTUNITY TO PRESENT VIEWS.—The Secretary of Transportation shall give an interested person an opportunity to make oral and written presentations of information, views, and arguments when prescribing a standard under this chapter.

(b) NONAPPLICATION.—A design, installation, construction, initial inspection, or initial testing standard does not apply to a pipeline facility existing when the standard is adopted.

(c) PREEMPTION.—A State authority may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.

(d) CONSULTATION.—(1) When continuity of gas service is affected by prescribing a standard or waiving compliance with standards under this chapter, the Secretary of Transportation shall consult with and advise the Federal Energy Regulatory Commission or a State authority having jurisdiction over the affected gas pipeline facility before prescribing the standard or waiving compliance. The Secretary shall delay the effective date of the standard or waiver until the Commission or State authority has a reasonable opportunity to grant an authorization it considers necessary.

(2) In a proceeding under section 3 or 7 of the Natural Gas Act (15 U.S.C. 717b or 717f), each applicant for authority to import natural gas or to establish, construct, operate, or extend a gas pipeline facility subject to an applicable safety standard shall certify that it will design, install, inspect, test, construct, operate, replace, and maintain a gas pipeline facility under those standards and plans for inspection and maintenance under section 60108 of this title. The certification is binding on the Secretary of Energy and the Commission except when an appropriate enforcement agency has given timely written notice to the Commission that the applicant has violated a standard prescribed under this chapter.

(e) LOCATION AND ROUTING OF FACILITIES.—This chapter does not authorize the Secretary of Transportation to prescribe the location or routing of a pipeline facility.

§60105. State certifications

(a) GENERAL REQUIREMENTS AND SUBMISSION.—Except as provided in this section and sections 60111 and 60118 of this title, the Secretary of Transportation may not prescribe or enforce safety standards and practices for an intrastate pipeline facility or intrastate pipeline transportation if the safety standards and practices are regulated by a State authority (including a municipality if the standards and practices apply to intrastate gas pipeline transportation), and the authority submits to the Secretary annually a certification for the facilities and transportation that complies with subsections (b) and (c) of this section.

(b) CONTENTS.—Each certification submitted under subsection (a) of this section shall state that the State authority—

(1) has regulatory jurisdiction over the standards and practices to which the certification applies;

(2) has adopted, by the date of certification, each applicable standard prescribed under this chapter or, if a standard under this chapter was prescribed not later than 120 days before certification, is taking steps to adopt that standard;

(3) is enforcing each adopted standard through ways that include inspections conducted by State employees meeting the qualifications the Secretary prescribes under section 60107(d)(1)(C) of this title;

(4) is encouraging and promoting programs designed to prevent damage by demolition, excavation, tunneling, or construction activity to the pipeline facilities to which the certification applies;

(5) may require record maintenance, reporting, and inspection substantially the same as provided under section 60114 of this title;

(6) may require that plans for inspection and maintenance under section 60108(a) and (b) of this title be filed for approval; and

(7) may enforce safety standards of the authority under a law of the State by injunctive relief and civil penalties substantially the same as provided under sections 60117 and 60119(a)(1) and (b)–(f) of this title.

(c) REPORTS.—(1) Each certification submitted under subsection (a) of this section shall include a report that contains—

(A) the name and address of each person to whom the certification applies that is subject to the safety jurisdiction of the State authority;

(B) each accident or incident reported during the prior 12 months by that person involving a fatality, personal injury requiring hospitalization, or property damage or loss of more than $5,000 (even if the person sustaining the fatality, personal injury, or property damage or loss is not subject to the safety jurisdiction of the authority), any other accident the authority considers significant, and a summary of the investigation by the authority of the cause and circumstances surrounding the accident or incident;

(C) the record maintenance, reporting, and inspection practices conducted by the authority to enforce compliance with safety standards prescribed under this chapter to which the certification applies, including the number of inspections of pipeline facilities the authority made during the prior 12 months; and

(D) any other information the Secretary requires.

(2) The report included in the first certification submitted under subsection (a) of this

section is only required to state information available at the time of certification.

(d) APPLICATION.—A certification in effect under this section does not apply to safety standards prescribed under this chapter after the date of certification. This chapter applies to each applicable safety standard prescribed after the date of certification until the State authority adopts the standard and submits the appropriate certification to the Secretary under subsection (a) of this section.

(e) MONITORING.—The Secretary may monitor a safety program established under this section to ensure that the program complies with the certification. A State authority shall cooperate with the Secretary under this subsection.

(f) REJECTIONS OF CERTIFICATION.—If after receiving a certification the Secretary decides the State authority is not enforcing satisfactorily compliance with applicable safety standards prescribed under this chapter, the Secretary may reject the certification, assert United States Government jurisdiction, or take other appropriate action to achieve adequate enforcement. The Secretary shall give the authority notice and an opportunity for a hearing before taking final action under this subsection. When notice is given, the burden of proof is on the authority to demonstrate that it is enforcing satisfactorily compliance with the prescribed standards.

§60106. State agreements

(a) GENERAL AUTHORITY.—If the Secretary of Transportation does not receive a certification under section 60105 of this title, the Secretary may make an agreement with a State authority (including a municipality if the agreement applies to intrastate gas pipeline transportation) authorizing it to take necessary action. Each agreement shall—

(1) establish an adequate program for record maintenance, reporting, and inspection designed to assist compliance with applicable safety standards prescribed under this chapter; and

(2) prescribe procedures for approval of plans of inspection and maintenance substantially the same as required under section 60108(a) and (b) of this title.

(b) NOTIFICATION.—Each agreement shall require the State authority to notify the Secretary promptly of a violation or probable violation of an applicable safety standard discovered as a result of action taken in carrying out an agreement under this section.

(c) MONITORING.—The Secretary may monitor a safety program established under this section to ensure that the program complies with the agreement. A State authority shall cooperate with the Secretary under this subsection.

(d) ENDING AGREEMENTS.—The Secretary may end an agreement made under this section when the Secretary finds that the State authority has not complied with any provision of the agreement. The Secretary shall give the authority notice and an opportunity for a hearing before ending an agreement. The finding and decision to end the agreement shall be published in the Federal Register and may not become effective for at least 15 days after the date of publication.

§60107. State grants

(a) GENERAL AUTHORITY.—If a State authority files an application not later than September 30 of a calendar year, the Secretary of Transportation shall pay not more than 50 percent of the cost of the personnel, equipment, and activities the authority reasonably requires during the next calendar year—

(1) to carry out a safety program under a certification under section 60105 of this title or an agreement under section 60106 of this title; or

(2) to act as an agent of the Secretary on interstate gas pipeline transmission facilities or interstate hazardous liquid pipeline facilities.

(b) PAYMENTS.—After notifying and consulting with a State authority, the Secretary may withhold any part of a payment when the Secretary decides that the authority is not carrying out satisfactorily a safety program or not acting satisfactorily as an agent. The Secretary may pay an authority under this section only when the authority ensures the Secretary that it will provide the remaining costs of a safety program and that the total State amount spent for a safety program (excluding grants of the United States Government) will at least equal the average amount spent—

(1) for a gas safety program, for the fiscal years that ended June 30, 1967, and June 30, 1968; and

(2) for a hazardous liquid safety program, for the fiscal years that ended September 30, 1978, and September 30, 1979.

(c) APPORTIONMENT AND METHOD OF PAYMENT.—The Secretary shall apportion the amount appropriated to carry out this section among the States. A payment may be made under this section in installments, in advance, or on a reimbursable basis.

(d) ADDITIONAL AUTHORITY AND CONSIDERATIONS.—(1) The Secretary may prescribe—

(A) the form of, and way of filing, an application under this section;

(B) reporting and fiscal procedures the Secretary considers necessary to ensure the proper accounting of money of the Government; and

(C) qualifications for a State to meet to receive a payment under this section, including qualifications for State employees who perform inspection activities under section 60105 or 60106 of this title.

(2) The qualifications prescribed under paragraph (1)(C) of this subsection may—

(A) consider the experience and training of the employee;

(B) order training or other requirements; and

(C) provide for approval of qualifications on a conditional basis until specified requirements are met.

§60108. Inspection and maintenance

(a) PLANS.—(1) Each person transporting gas or hazardous liquid or owning or operating an intrastate gas pipeline facility or hazardous liquid pipeline facility shall carry out a current written plan (including any changes) for inspection and maintenance of each facility used in the transportation and owned or operated by the person. A copy of the plan shall be kept at any office of the person the Secretary of Transportation considers appropriate. The Secretary also may require a person transporting gas or hazardous liquid or owning or operating a pipeline facility to which this chapter applies to file a plan for inspection and maintenance for approval.

(2) If the Secretary or a State authority responsible for enforcing standards prescribed under this chapter decides that a plan required under paragraph (1) of this subsection is inadequate for safe operation, the Secretary or authority shall require the person to revise the plan. Revision may be required only after giving notice and an opportunity for a hearing. A plan required under paragraph (1) must be practicable and designed to meet the need for pipeline safety and must include terms designed to enhance the ability to discover safety-related conditions described in section 60102(h)(1) of this title. In deciding on the adequacy of a plan, the Secretary or authority shall consider—

(A) relevant available pipeline safety information;

(B) the appropriateness of the plan for the particular kind of pipeline transportation or facility;

(C) the reasonableness of the plan; and

(D) the extent to which the plan will contribute to public safety.

(3) A plan required under this subsection shall be made available to the Secretary or State authority on request under section 60114 of this title.

(b) INSPECTION AND TESTING.—(1) The Secretary shall inspect and require appropriate testing of a pipeline facility to which this chapter applies that is not covered by a certification under section 60105 of this title or an agreement under section 60106 of this title. The Secretary shall decide on the frequency and type of inspection and testing under this subsection on a case-by-case basis after considering the following:

(A) the location of the pipeline facility.

(B) the type, size, age, manufacturer, method of construction, and condition of the facility.

(C) the nature and volume of material transported through the facility.

(D) the pressure at which that material is transported.

(E) climatic, geologic, and seismic characteristics (including soil characteristics) and conditions of the area in which the facility is located.

(F) existing and projected population and demographic characteristics of the area in which the facility is located.

(G) the frequency of leaks.

(H) other factors the Secretary decides are relevant to the safety of pipeline facilities.

(2) To the extent and in amounts provided in advance in an appropriation law, the Secretary shall decide on the frequency of inspection under paragraph (1) of this subsection. However, an inspection must occur at least once every 2 years. The Secretary may reduce the frequency of an inspection of a master meter system.

(3) Testing under this subsection shall use the most appropriate technology practicable.

(c) OFFSHORE PIPELINE FACILITIES IN GULF OF MEXICO.—(1)(A) Not later than one year after the Secretary establishes standards under subparagraph (C) of this paragraph, or May 16, 1992, whichever occurs first, the operator of each offshore pipeline facility (except hazardous liquid gathering lines of not more than 4-inch nominal diameter) in the Gulf of Mexico and its inlets shall inspect the facility and report to the Secretary on any part of the facility that is exposed or is a hazard to navigation. This subparagraph applies only to a facility that is between the mean high water mark and the point at which the subsurface is under 15 feet of water, as measured from mean low water. An inspection that occurred after October 3, 1989, may be used for compliance with this subparagraph if the inspection conforms to the requirements of this subparagraph.

(B) The Secretary may extend the time period specified in subparagraph (A) of this paragraph if the operator of a facility satisfies the Secretary that the operator has made a good faith effort, with reasonable diligence, but has been unable to comply by the end of that period. The maximum extension is—

(i) 6 months for an offshore natural gas pipeline facility; and

(ii) one year for an offshore hazardous liquid pipeline facility.

(C) Not later than May 16, 1991, the Secretary shall establish standards on what is an exposed offshore pipeline facility and what is a hazard to navigation under this subsection.

(2)(A) The Secretary shall establish by regulation a program requiring an offshore pipeline facility operator described in paragraph (1)(A) of this subsection to report a potential or existing navigational hazard involving that pipeline facility to the Secretary through the appropriate Coast Guard office.

(B) The operator of an offshore pipeline facility described in paragraph (1)(A) of this subsection that discovers any part of the pipeline facility that is a hazard to navigation shall mark the location of the hazardous part with a

Coast-Guard-approved marine buoy or marker and immediately shall notify the Secretary as provided by the Secretary under subparagraph (A) of this paragraph. A marine buoy or marker used under this subparagraph is deemed a pipeline sign or right-of-way marker under section 60120(c) of this title.

(3) Not later than May 16, 1993, on the basis of experience with the inspections under paragraph (1) of this subsection and any other information available to the Secretary, the Secretary shall establish a mandatory, systematic, and, where appropriate, periodic inspection program of offshore pipeline facilities in the Gulf of Mexico and its inlets.

(4) The Secretary shall require by regulation that each offshore pipeline facility that is subject to inspection under paragraph (1) of this subsection and is exposed, and each pipeline facility that is a hazard to navigation, is buried not later than 6 months after the date the condition of the facility is reported to the Secretary. The Secretary may extend that 6-month period for a reasonable period to ensure compliance with this paragraph.

§60109. Financial responsibility for liquefied natural gas facilities

(a) NOTICE.—When the Secretary of Transportation believes that an operator of a liquefied natural gas facility does not have adequate financial responsibility for the facility, the Secretary may issue a notice to the operator about the inadequacy and the amount of financial responsibility the Secretary considers adequate.

(b) HEARINGS.—An operator receiving a notice under subsection (a) of this section may have a hearing on the record not later than 30 days after receiving the notice. The operator may show why the Secretary should not issue an order requiring the operator to demonstrate and maintain financial responsibility in at least the amount the Secretary considers adequate.

(c) ORDERS.—After an opportunity for a hearing on the record, the Secretary may issue the order if the Secretary decides it is justified in the public interest.

§60110. Pipeline facilities hazardous to life and property

(a) GENERAL AUTHORITY.—After notice and an opportunity for a hearing, the Secretary of Transportation may decide a pipeline facility is hazardous if the Secretary decides the facility is—

(1) hazardous to life or property; or

(2) constructed or operated, or a component of the facility is constructed or operated, with equipment, material, or a technique the Secretary decides is hazardous to life or property.

(b) CONSIDERATIONS.—In making a decision under subsection (a) of this section, the Secretary shall consider, if relevant—

(1) the characteristics of the pipe and other equipment used in the facility, including the age, manufacture, physical properties, and method of manufacturing, constructing, or assembling the equipment;

(2) the nature of the material the facility transports, the corrosive and deteriorative qualities of the material, the sequence in which the material are transported, and the pressure required for transporting the material;

(3) the aspects of the area in which the facility is located, including climatic and geologic conditions and soil characteristics;

(4) the population density and population and growth patterns of the area;

(5) any recommendation of the National Transportation Safety Board made under another law; and

(6) other factors the Secretary considers appropriate.

(c) CORRECTIVE ACTION ORDERS.—If the Secretary decides under subsection (a) of this section that a pipeline facility is hazardous, the Secretary shall order the operator of the facility to take necessary corrective action.

(d) WAIVER OF NOTICE AND HEARING IN EMERGENCY.—The Secretary may waive the requirements for notice and an opportunity for a hearing under this section and issue expeditiously an order under this section if the Secretary decides failure to issue the order expeditiously will result in likely serious harm to life or property. An order under this subsection shall provide an opportunity for a hearing as soon as practicable after the order is issued.

§60111. One-call notification systems

(a) MINIMUM REQUIREMENTS.—The Secretary of Transportation shall prescribe regulations providing minimum requirements for establishing and operating a one-call notification system for a State to adopt that will notify an operator of a pipeline facility of activity in the vicinity of the facility that could threaten the safety of the facility. The regulations shall include the following:

(1) a requirement that the system apply to all areas of the State containing underground pipeline facilities.

(2) a requirement that a person intending to engage in an activity the Secretary decides could cause physical damage to an underground facility must contact the appropriate system to establish if there are underground facilities present in the area of the intended activity.

(3) a requirement that all operators of underground pipeline facilities participate in an appropriate one-call notification system.

(4) qualifications for an operator of a facility, a private contractor, or a State or local authority to operate a system.

(5) procedures for advertisement and notice of the availability of a system.

(6) a requirement about the information to be provided by a person contacting the system under clause (2) of this subsection.

(7) a requirement for the response of the operator of the system and of the facility after they are contacted by an individual under this subsection.

(8) a requirement that each State decide whether the system will be toll free.

(9) a requirement for sanctions substantially the same as provided under sections 60117, 60119, and 60120 of this title.

(b) GRANTS.—The Secretary may make a grant to a State under this section to develop and establish a one-call notification system consistent with subsection (a) of this section.

(c) APPORTIONMENT.—When apportioning the amount appropriated to carry out section 60107 of this title among the States, the Secretary—

(1) shall consider whether a State has adopted or is seeking adoption of a one-call notification system under this section; and

(2) shall withhold part of a payment under section 60107 of this title when the Secretary decides a State has not adopted, or is not seeking adoption of, a one-call notification system.

(d) RELATIONSHIP TO OTHER LAWS.—This section and regulations prescribed under this section do not affect the liability established under a law of the United States or a State for damage caused by an activity described in subsection (a)(2) of this section.

§60112. Technical safety standards committees

(a) ORGANIZATION.—The Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee are committees in the Department of Transportation.

(b) COMPOSITION AND APPOINTMENT.—(1) The Technical Pipeline Safety Standards Committee is composed of 15 members appointed by the Secretary of Transportation after consulting with public and private agencies concerned with the technical aspect of transporting gas or operating a gas pipeline facility. Each member must be experienced in the safety regulation of transporting gas and of gas pipeline facilities or technically qualified, by training, experience, or knowledge in at least one field of engineering applicable to transporting gas or operating a gas pipeline facility, to evaluate gas pipeline safety standards.

(2) The Technical Hazardous Liquid Pipeline Safety Standards Committee is composed of 15 members appointed by the Secretary after consulting with public and private agencies concerned with the technical aspect of transporting hazardous liquid or operating a hazardous liquid pipeline facility. Each member must be experienced in the safety regulation of transporting hazardous liquid and of hazardous liquid pipeline facilities or technically qualified, by training, experience, or knowledge in at least one field of engineering applicable to transporting hazardous liquid or operating a hazardous liquid pipeline facility, to evaluate hazardous liquid pipeline safety standards.

(3) The members of each committee are appointed as follows:

(A) 5 individuals selected from departments, agencies, and instrumentalities of the United States Government and of the States.

(B) 4 individuals selected from the natural gas or hazardous liquid industry, as appropriate, after consulting with industry representatives, at least 3 of whom must be currently in the active operation of natural gas pipelines or hazardous liquid pipeline facilities, as appropriate.

(C) 6 individuals selected from the general public.

(4) Two of the individuals selected for each committee under paragraph (1)(A) of this subsection must be State commissioners. The Secretary shall consult with the national organization of State commissions (referred to in section 10344(f) of this title) before selecting those 2 individuals.

(c) COMMITTEE REPORTS ON PROPOSED STANDARDS.—(1) The Secretary shall give to—

(A) the Technical Pipeline Safety Standards Committee each standard proposed under this chapter for transporting gas and for gas pipeline facilities; and

(B) the Technical Hazardous Liquid Pipeline Safety Standards Committee each standard proposed under this chapter for transporting hazardous liquid and for hazardous liquid pipeline facilities.

(2) Not later than 90 days after receiving the proposed standard, the appropriate committee shall prepare a report on the technical feasibility, reasonableness, and practicability of the proposed standard. The Secretary shall publish each report, including minority views. The report if timely made is part of the proceeding for prescribing the standard. The Secretary is not bound by the conclusions of the committee. However, if the Secretary rejects the conclusions of the committee, the Secretary shall publish the reasons.

(3) The Secretary may prescribe a standard after the end of the 90-day period.

(d) PROPOSED COMMITTEE STANDARDS.—The Technical Pipeline Safety Standards Committee may propose to the Secretary a safety standard for transporting gas and for gas pipeline facilities. The Technical Hazardous Liquid Pipeline Safety Standards Committee may propose to the Secretary a safety standard for transporting hazardous liquid and for hazardous liquid pipeline facilities.

(e) MEETINGS.—Each committee shall meet with the Secretary at least twice annually. Each committee proceeding shall be recorded. The record of the proceeding shall be available to the public.

(f) PAY AND EXPENSES.—The Secretary may establish the pay for each member of a committee for each day (including travel time) when performing duties of the committee. However, a member may not be paid more than the daily equivalent of the maximum annual rate of basic pay payable under section 5376 of title 5. A member is entitled to reimbursement for expenses under section 5703 of title 5. This subsection does not apply to members regularly employed by the Government. A payment under this subsection does not make a member an officer or employee of the Government.

§60113. Public education programs

Under regulations the Secretary of Transportation prescribes, each person transporting gas shall carry out a program to educate the public on the possible hazards associated with gas leaks and the importance of reporting gas odors and leaks to the appropriate authority. The Secretary may develop material suitable for use in the program.

§60114. Administrative

(a) GENERAL AUTHORITY.—To carry out this chapter, the Secretary of Transportation may conduct investigations, make reports, issue subpenas, conduct hearings, require the production of records, take depositions, and conduct research, testing, development, demonstration, and training activities. The Secretary may not charge a tuition-type fee for training State or local government personnel in the enforcement of regulations prescribed under this chapter.

(b) RECORDS, REPORTS, AND INFORMATION.—To enable the Secretary to decide whether a person transporting gas or hazardous liquid or operating a pipeline facility is complying with this chapter and standards prescribed or orders issued under this chapter, the person shall—

(1) maintain records, make reports, and provide information the Secretary requires; and

(2) make the records, reports, and information available when the Secretary requests.

(c) ENTRY AND INSPECTION.—An officer, employee, or agent of the Secretary, on display of proper credentials to the individual in charge, may enter premises to inspect the records and property of a person at a reasonable time and in a reasonable way to decide whether a person is complying with this chapter and standards prescribed or orders issued under this chapter.

(d) CONFIDENTIALITY OF INFORMATION.—Information related to a confidential matter referred to in section 1905 of title 18 that is obtained by the Secretary or an officer, employee, or agent of the Secretary in carrying out this section may be disclosed only to another officer or employee concerned with carrying out this chapter or in a proceeding under this chapter.

(e) USE OF ACCIDENT REPORTS.—(1) Each accident report made by an officer, employee, or agent of the Secretary may be used in a judicial proceeding resulting from the accident. The officer, employee, or agent may be required to testify in the proceeding about the facts developed in investigating the accident. The report shall be made available to the public in a way that does not identify an individual.

(2) Each report related to research and demonstration projects and related activities is public information.

(f) TESTING FACILITIES INVOLVED IN ACCIDENTS.—The Secretary may require testing of a part of a pipeline facility subject to this chapter that has been involved in or affected by an accident only after—

(1) notifying the appropriate State official in the State in which the facility is located; and

(2) attempting to negotiate a mutually acceptable plan for testing with the owner of the facility and, when the Secretary considers appropriate, the National Transportation Safety Board.

(g) PROVIDING SAFETY INFORMATION.—On request, the Secretary shall provide the Federal Energy Regulatory Commission or appropriate State authority with information the Secretary has on the safety of material, operations, devices, or processes related to pipeline transportation or operating a pipeline facility.

(h) COOPERATION.—The Secretary may—

(1) advise, assist, and cooperate with other departments, agencies, and instrumentalities of the United States Government, the States, and public and private agencies and persons in planning and developing safety standards and ways to inspect and test to decide whether those standards have been complied with;

(2) consult with and make recommendations to other departments, agencies, and instrumentalities of the Government, State and local governments, and public and private agencies and persons to develop and encourage activities, including the enactment of legislation, that will assist in carrying out this chapter and improve State and local pipeline safety programs; and

(3) participate in a proceeding involving safety requirements related to a liquefied natural gas facility before the Commission or a State authority.

(i) PROMOTING COORDINATION.—After consulting with appropriate State officials, the Secretary shall establish procedures to promote more effective coordination between departments, agencies, and instrumentalities of the Government and State authorities with regulatory authority over pipeline facilities about responses to a pipeline accident.

(j) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

§60115. Compliance and waivers

(a) GENERAL REQUIREMENTS.—A person transporting gas or hazardous liquid or owning or operating a pipeline facility shall—

(1) comply with applicable safety standards prescribed under this chapter, except as provided in this section;

(2) prepare and carry out a plan for inspection and maintenance required under section 60108(a) and (b) of this title; and

(3) allow access to or copying of records, make reports and provide information, and allow entry or inspection required under section 60114(a)-(d) of this title.

(b) COMPLIANCE ORDERS.—The Secretary of Transportation may issue orders directing compliance with this chapter or a regulation prescribed under this chapter. An order shall state clearly the action a person must take to comply.

(c) WAIVERS BY SECRETARY.—On application of a person transporting gas or hazardous liquid or operating a pipeline facility, the Secretary by order may waive compliance with any part of an applicable standard prescribed under this chapter on terms the Secretary considers appropriate, if the waiver is not inconsistent with pipeline safety. The Secretary shall state the reasons for granting a waiver under this subsection. The Secretary may act on a waiver only after notice and an opportunity for a hearing.

(d) WAIVERS BY STATE AUTHORITIES.—If a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect, the State authority may waive compliance with a safety standard to which the certification or agreement applies in the same way and to the same extent the Secretary may waive compliance under subsection (c) of this section. However, the authority must give the Secretary written notice of the waiver at least 60 days before its effective date. If the Secretary makes a written objection before the effective date of the waiver, the waiver is stayed. After notifying the authority of the objection, the Secretary shall provide a prompt opportunity for a hearing. The Secretary shall make the final decision on granting the waiver.

§60116. Judicial review

(a) REVIEW OF REGULATIONS AND WAIVER ORDERS.—(1) Except as provided in subsection (b) of this section, a person adversely affected by a regulation prescribed under this chapter or an order issued about an application for a waiver under section 60115(c) or (d) of this title may apply for review of the regulation or order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 89 days after the regulation is prescribed or order is issued. The clerk of the court immediately shall send a copy of the petition to the Secretary of Transportation.

(2) A judgment of a court under paragraph (1) of this subsection may be reviewed only by the Supreme Court under section 1254 of title 28. A remedy under paragraph (1) is in addition to any other remedies provided by law.

(b) REVIEW OF FINANCIAL RESPONSIBILITY ORDERS.—(1) A person adversely affected by an order issued under section 60109 of this title may apply for review of the order by filing a petition for review in the appropriate court of appeals of the United States. The petition must be filed not later than 60 days after the order is issued. Findings of fact the Secretary makes are conclusive if supported by substantial evidence.

(2) A judgment of a court under paragraph (1) of this subsection may be reviewed only by the Supreme Court under section 1254(1) of title 28.

§60117. Enforcement

(a) CIVIL ACTIONS.—On the request of the Secretary of Transportation, the Attorney General may bring a civil action to enforce this chapter or a regulation prescribed or order issued under this chapter. The court may award appropriate relief, including punitive damages.

(b) JURY TRIAL DEMAND.—In a trial for criminal contempt for violating an injunction issued under this section, the violation of which is also a violation of this chapter, the defendant may demand a jury trial. The defendant shall be tried as provided in rule 42(b) of the Federal Rules of Criminal Procedure (18 App. U.S.C.).

(c) EFFECT ON TORT LIABILITY.—This chapter does not affect the tort liability of any person.

§60118. Actions by private persons

(a) GENERAL AUTHORITY.—(1) A person may bring a civil action for an injunction against another person (including the United States Government and other governmental authorities to the extent permitted under the 11th amendment to the Constitution) for a violation of this chapter or a regulation prescribed or order issued under this chapter. However, the person—

(A) may bring the action only after 60 days after the person has given notice of the violation to the Secretary of Transportation or to the appropriate State authority (when the violation is alleged to have occurred in a State certified under section 60105 of this title) and to the person alleged to have committed the violation;

(B) may not bring the action if the Secretary or authority has begun and diligently is pursuing an administrative proceeding for the violation; and

(C) may not bring the action if the Attorney General of the United States, or the chief law enforcement officer of a State, has begun and diligently is pursuing a judicial proceeding for the violation.

(2) The Secretary shall prescribe the way in which notice is given under this subsection.

(3) The Secretary, with the approval of the Attorney General, or the Attorney General may intervene in an action under paragraph (1) of this subsection.

(b) COSTS AND FEES.—The court may award costs, reasonable expert witness fees, and a reasonable attorney's fee to a prevailing plaintiff in a civil action under this section. The court may award costs to a prevailing defendant when the action is unreasonable, frivolous, or meritless. In this subsection, a reasonable attorney's fee is a fee—

(1) based on the actual time spent and the reasonable expenses of the attorney for legal services provided to a person under this section; and

(2) computed at the rate prevailing for providing similar services for actions brought in the court awarding the fee.

(c) STATE VIOLATIONS AS VIOLATIONS OF THIS CHAPTER.—In this section, a violation of a safety standard or practice of a State is deemed to be a violation of this chapter or a regulation prescribed or order issued under this chapter only to the extent the standard or practice is not more stringent than a comparable minimum safety standard prescribed under this chapter.

(d) ADDITIONAL REMEDIES.—A remedy under this section is in addition to any other remedies provided by law. This section does not restrict a right to relief that a person or a class of persons may have under another law or at common law.

§60119. Civil penalties

(a) GENERAL PENALTIES.—(1) A person that the Secretary of Transportation decides, after written notice and an opportunity for a hearing, has violated section 60115(a) of this title or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of not more than $10,000 for each violation. A separate violation occurs for each day the violation continues. The maximum civil penalty under this paragraph for a related series of violations is $500,000.

(2) A person violating a standard or order under section 60103 or 60109 of this title is liable to the Government for a civil penalty of not more than $50,000 for each violation. A penalty under this paragraph may be imposed in addition to penalties imposed under paragraph (1) of this subsection.

(b) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under this section, the Secretary shall consider—

(1) the nature, circumstances, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on ability to continue doing business;

(3) good faith in attempting to comply; and

(4) other matters that justice requires.

(c) COLLECTION AND COMPROMISE.—(1) The Secretary may request the Attorney General to bring a civil action to collect a civil penalty imposed under this section.

(2) The Secretary may compromise the amount of a civil penalty imposed under this section before referral to the Attorney General.

(d) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(e) DEPOSIT IN TREASURY.—Amounts collected under this section shall be deposited in the Treasury as miscellaneous receipts.

(f) PROHIBITION ON MULTIPLE PENALTIES FOR SAME ACT.—Separate penalties for violating a regulation prescribed under this chapter and for violating an order under section 60110 or 60115(b) of this title may not be imposed under this chapter if both violations are based on the same act.

§60120. Criminal penalties

(a) GENERAL PENALTY.—A person willfully and knowingly violating section 60115(a) of this title or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 5 years, or both.

(b) PENALTY FOR DAMAGING OR DESTROYING FACILITY.—A person willfully and knowingly damaging or destroying, or attempting to damage or destroy, an interstate transmission facility or interstate hazardous liquid pipeline facility shall be fined under title 18, imprisoned for not more than 15 years, or both.

(c) PENALTY FOR DAMAGING OR DESTROYING SIGN.—A person willfully and knowingly defacing, damaging, removing, or destroying a pipeline sign or right-of-way marker required by a law or regulation of the United States shall be fined under title 18, imprisoned for not more than one year, or both.

§60121. Annual reports

(a) SUBMISSION AND CONTENTS.—The Secretary of Transportation shall submit to Congress not later than April 15 of each year a report on carrying out this chapter for the prior calendar year for gas and a report on carrying out this chapter for the prior calendar year for hazardous liquid. Each report shall include the following information about the prior year for gas or hazardous liquid, as appropriate:

(1) a thorough compilation of the leak repairs, accidents, and casualties and a statement of cause when investigated and established by the National Transportation Safety Board.

(2) a list of applicable pipeline safety standards prescribed under this chapter including identification of standards prescribed during the year.

(3) a summary of the reasons for each waiver granted under section 60115(c) and (d) of this title.

(4) an evaluation of the degree of compliance with applicable safety standards, including a list of enforcement actions and compromises of alleged violations by location and company name.

(5) a summary of outstanding problems in carrying out this chapter, in order of priority.

(6) an analysis and evaluation of—

(A) research activities, including their policy implications, completed as a result of the United States Government and private sponsorship; and

(B) technological progress in safety achieved.

(7) a list, with a brief statement of the issues, of completed or pending judicial actions under this chapter.

(8) the extent to which technical information was distributed to the scientific community and consumer-oriented information was made available to the public.

(9) a compilation of certifications filed under section 60105 of this title that were—

(A) in effect; or

(B) rejected in any part by the Secretary and a summary of the reasons for each rejection.

(10) a compilation of agreements made under section 60106 of this title that were—

(A) in effect; or

(B) ended in any part by the Secretary and a summary of the reasons for ending each agreement.

(11) a description of the number and qualifications of State pipeline safety inspectors in each State for which a certification under section 60105 of this title or an agreement under section 60106 of this title is in effect and the number and qualifications of inspectors the Secretary recommends for that State.

(12) recommendations for legislation the Secretary considers necessary—

(A) to promote cooperation among the States in improving—

(i) gas pipeline safety; or

(ii) hazardous liquid pipeline safety programs; and

(B) to strengthen the national gas pipeline safety program.

(b) SUBMISSION OF ONE REPORT.—The Secretary may submit one report to carry out subsection (a) of this section.

§60122. Authorization of appropriations

(a) GAS.—Not more than $_________ may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 19__, to carry out this chapter (except sections 60107, 60108(b), and 60111(b)) related to gas.

(b) HAZARDOUS LIQUID.—Not more than $_________ may be appropriated to the Secretary for the fiscal year ending September 30, 19__, to carry out this chapter (except sections 60107, 60108(b), and 60111(b)) related to hazardous liquid.

(c) STATE GRANTS.—(1) Not more than $_________ may be appropriated to the Secretary for the fiscal year ending September 30, 19__, to carry out section 60107 of this title.

(2) At least 5 percent of amounts appropriated to carry out United States Government grants-in-aid programs for a fiscal year are available only to carry out section 60107 of this title related to hazardous liquid.

(3) Not more than 20 percent of a pipeline safety program grant under section 60107 of this title may be allocated to indirect expenses.

(d) INSPECTORS.—Not more than $_________ may be appropriated to the Secretary for the fiscal year ending September 30, 19__, to retain the 16 additional inspectors and necessary support staff hired in the fiscal years ending September 30, 1989, and 1990, to carry out inspections under section 60108(b) of this title.

(e) GRANTS FOR ONE-CALL NOTIFICATION SYSTEMS.—Not more than $_________ may be appropriated to the Secretary for the fiscal year ending September 30, 19__, to carry out section 60111(b) of this title. Amounts under this subsection remain available until expended.

(f) CREDITING APPROPRIATIONS FOR EXPENDITURES FOR TRAINING.—The Secretary may credit to an appropriation authorized under subsection (a) or (b) of this section amounts received from sources other than the Government for reimbursement for expenses incurred by the Secretary in providing training.

(g) AVAILABILITY OF UNUSED AMOUNTS FOR GRANTS.—(1) The Secretary shall make available for grants to States amounts appropriated for each of the fiscal years that ended September 30, 1986, and 1987, that have not been expended in making grants under section 60107 of this title.

(2) A grant under this subsection is available to a State that after December 31, 1987—

(A) undertakes a new responsibility under section 60105 of this title; or

(B) implements a one-call damage prevention program established under State law.

(3) This subsection does not authorize a State to receive more than 50 percent of its allowable pipeline safety costs from a grant under this chapter.

(4) A State may receive not more than $75,000 under this subsection.

(5) Amounts under this subsection remain available until expended.

CHAPTER 603—USER FEES

Sec.
60301. User fees.

§60301. User fees

(a) SCHEDULE OF FEES.—The Secretary of Transportation shall prescribe a schedule of fees for all natural gas and hazardous liquids transported by pipelines subject to chapter 601 of this title. The fees shall be based on usage (in reasonable relationship to volume-miles, miles, revenues, or a combination of volume-miles, miles, and revenues) of the pipelines. The Secretary shall consider the allocation of resources of the Department of Transportation when establishing the schedule.

(b) IMPOSITION AND TIME OF COLLECTION.—A fee shall be imposed on each person operating a gas pipeline transmission facility, a liquefied natural gas pipeline facility, or a hazardous liquid pipeline facility to which chapter 601 of this title applies. The fee shall be collected before the end of the fiscal year to which it applies.

(c) MEANS OF COLLECTION.—The Secretary shall prescribe procedures to collect fees under this section. The Secretary may use a department, agency, or instrumentality of the United States Government or of a State or local government to collect the fee and may reimburse the department, agency, or instrumentality a reasonable amount for its services.

(d) USE OF FEES.—A fee collected under this section—

(1)(A) related to a gas pipeline facility may be used only for an activity related to gas under chapter 601 of this title; and

(B) related to a hazardous liquid pipeline facility may be used only for an activity related to hazardous liquid under chapter 601 of this title; and

(2) may be used only to the extent provided in advance in an appropriation law.

(e) LIMITATIONS.—Fees prescribed under subsection (a) of this section shall be sufficient to pay for the costs of activities described in subsection (d) of this section. However, the total amount collected for a fiscal year may not be more than 105 percent of the total amount of the appropriations made for the fiscal year for activities to be financed by the fees.

CHAPTER 605—INTERSTATE COMMERCE REGULATION

Sec.
60501. Secretary of Energy.
60502. Federal Energy Regulatory Commission.
60503. Effect of enactment.

§60501. Secretary of Energy

Except as provided in section 60502 of this title, the Secretary of Energy has the duties and powers related to the transportation of oil by pipeline that were vested on October 1, 1977, in the Interstate Commerce Commission or the chairman or a member of the Commission.

§60502. Federal Energy Regulatory Commission

The Federal Energy Regulatory Commission has the duties and powers related to the establishment of a rate or charge for the transportation of oil by pipeline or the valuation of that pipeline that were vested on October 1, 1977, in the Interstate Commerce Commission or an officer or component of the Interstate Commerce Commission.

§60503. Effect of enactment

The enactment of the Act of October 17, 1978 (Public Law 95–473, 92 Stat. 1337), the Act of January 12, 1983 (Public Law 97–449, 96 Stat. 2413), and the Act enacting this section does not repeal, and has no substantive effect on, any right, obligation, liability, or remedy of an oil pipeline, including a right, obligation, liability, or remedy arising under the Interstate Commerce Act or the Act of August 29, 1916 (known as the Pomerene Bills of Lading Act), before any department, agency, or instrumentality of the United States Government, an officer or employee of the Government, or a court of competent jurisdiction.

SUBTITLE IX—COMMERCIAL SPACE TRANSPORTATION

CHAPTER Sec.
701. COMMERCIAL SPACE LAUNCH ACTIVITIES 70101

CHAPTER 701—COMMERCIAL SPACE LAUNCH ACTIVITIES

Sec.
70101. Findings and purposes.
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70104. Restrictions on launches and operations.
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70114. Disclosing information.
70115. Enforcement and penalty.
70116. Consultation.
17. Relationship to other executive agencies, laws, and international obligations.
70118. Authorization of appropriations.

§70101. Findings and purposes

(a) FINDINGS.—Congress finds that—

(1) the peaceful uses of outer space continue to be of great value and to offer benefits to all mankind;

(2) private applications of space technology have achieved a significant level of commercial and economic activity and offer the potential for growth in the future, particularly in the United States;

(3) new and innovative equipment and services are being sought, produced, and offered by entrepreneurs in telecommunications, information services, and remote sensing technologies;

(4) the private sector in the United States has the capability of developing and providing private satellite launching and associated services that would complement the launching and associated services now available from the United States Government;

(5) the development of commercial launch vehicles and associated services would enable the United States to retain its competitive position internationally, contributing to the national interest and economic well-being of the United States;

(6) providing launch services by the private sector is consistent with the national security and foreign policy interests of the United States and would be facilitated by stable, minimal, and appropriate regulatory guidelines that are fairly and expeditiously applied;

(7) the United States should encourage private sector launches and associated services and, only to the extent necessary, regulate those launches and services to ensure compliance with international obligations of the United States and to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States;

(8) space transportation, including the establishment and operation of launch sites and complementary facilities, the providing of launch services, the establishment of support facilities, and the providing of support services, is an important element of the transportation system of the United States, and in connection with the commerce of the United States there is a need to develop a strong space transportation infrastructure with significant private sector involvement; and

(9) the participation of State governments in encouraging and facilitating private sector involvement in space-related activity, particularly through the establishment of a space transportation-related infrastructure, including launch sites, complementary facilities, and launch site support facilities, is in the national interest and is of significant public benefit.

(b) PURPOSES.—The purposes of this chapter are—

(1) to promote economic growth and entrepreneurial activity through use of the space environment for peaceful purposes;

(2) to encourage the United States private sector to provide launch vehicles and associated services by—

(A) simplifying and expediting the issuance and transfer of commercial launch licenses; and

(B) facilitating and encouraging the use of Government-developed space technology;

(3) to provide that the Secretary of Transportation is to oversee and coordinate the conduct of commercial launch operations, issue and transfer commercial launch licenses authorizing those operations, and protect the public health and safety, safety of property, and national security and foreign policy interests of the United States; and

(4) to facilitate the strengthening and expansion of the United States space transportation infrastructure, including the enhancement of United States launch sites and launch-site support facilities, with Government, State, and private sector involvement, to support the full range of United States space-related activities.

§70102. Definitions

In this chapter—

(1) "citizen of the United States" means—

(A) an individual who is a citizen of the United States;

(B) an entity organized or existing under the laws of the United States or a State; or

(C) an entity organized or existing under the laws of a foreign country if the controlling interest (as defined by the Secretary of Transportation) is held by an individual or entity described in subclause (A) or (B) of this clause.

(2) "executive agency" has the same meaning given that term in section 105 of title 5.

(3) "launch" means to place or try to place a launch vehicle and any payload—

(A) in a suborbital trajectory;

(B) in Earth orbit in outer space; or

(C) otherwise in outer space.

(4) "launch property" means an item built for, or used in, the launch preparation or launch of a launch vehicle.

(5) "launch services" means—

(A) activities involved in the preparation of a launch vehicle and payload for launch; and

(B) the conduct of a launch.

(6) "launch site" means the location on Earth from which a launch takes place (as defined in a license the Secretary issues or transfers under this chapter) and necessary facilities.

(7) "launch vehicle" means—

(A) a vehicle built to operate in, or place a payload in, outer space; and

(B) a suborbital rocket.

(8) "payload" means an object that a person undertakes to place in outer space by means of a launch vehicle, including components of the vehicle specifically designed or adapted for that object.

(9) "person" means an individual and an entity organized or existing under the laws of a State or country.

(10) "State" means a State of the United States, the District of Columbia, and a territory or possession of the United States.

(11) "third party" means a person except—

(A) the United States Government or the Government's contractors or subcontractors involved in launch services;

(B) a licensee or transferee under this chapter;

(C) a licensee's or transferee's contractors, subcontractors, or customers involved in launch services; or

(D) the customer's contractors or subcontractors involved in launch services.

(12) "United States" means the States of the United States, the District of Columbia, and the territories and possessions of the United States.

§70103. General authority

(a) GENERAL.—The Secretary of Transportation shall carry out this chapter.

(b) FACILITATING COMMERCIAL LAUNCHES.—In carrying out this chapter, the Secretary shall—

(1) encourage, facilitate, and promote commercial space launches by the private sector; and

(2) take actions to facilitate private sector involvement in commercial space transportation activity, and to promote public-private partnerships involving the United States Government, State governments, and the private sector to build, expand, modernize, or operate a space launch infrastructure.

(c) EXECUTIVE AGENCY ASSISTANCE.—When necessary, the head of an executive agency shall assist the Secretary in carrying out this chapter.

§70104. Restrictions on launches and operations

(a) LICENSE REQUIREMENT.—A license issued or transferred under this chapter is required for the following:

(1) for a person to launch a launch vehicle or to operate a launch site in the United States.

(2) for a citizen of the United States (as defined in section 70102(1)(A) or (B) of this title) to launch a launch vehicle or to operate a launch site outside the United States.

(3) for a citizen of the United States (as defined in section 70102(1)(C) of this title) to launch a launch vehicle or to operate a launch site outside the United States and outside the territory of a foreign country unless there is an agreement between the United States Government and the government of the foreign country providing that the government of the foreign country has jurisdiction over the launch or operation.

(4) for a citizen of the United States (as defined in section 70102(1)(C) of this title) to launch a launch vehicle or to operate a launch site in the territory of a foreign country if there is an agreement between the United States Government and the government of the foreign country providing that the United States Government has jurisdiction over the launch or operation.

(b) COMPLIANCE WITH PAYLOAD REQUIREMENTS.—The holder of a launch license under this chapter may launch a payload only if the payload complies with all requirements of the laws of the United States related to launching a payload.

(c) PREVENTING LAUNCHES.—The Secretary of Transportation shall establish whether all required licenses, authorizations, and permits required for a payload have been obtained. If no license, authorization, or permit is required, the Secretary may prevent the launch if the Secretary decides the launch would jeopardize the public health and safety, safety of property, or national security or foreign policy interest of the United States.

§70105. License applications and requirements

(a) APPLICATIONS.—A person may apply to the Secretary of Transportation for a license or transfer of a license under this chapter in the form and way the Secretary prescribes. Consistent with the public health and safety, safety of property, and national security and foreign policy interests of the United States, the Secretary, not later than 180 days after receiving an application, shall issue or transfer a license if the Secretary decides in writing that the applicant complies, and will continue to comply, with this chapter and regulations prescribed under this chapter. The Secretary shall inform the applicant of any pending issue and action required to resolve the issue if the Secretary has not made a decision not later than 120 days after receiving an application.

(b) REQUIREMENTS.—(1) Except as provided in this subsection, all requirements of the laws of the United States applicable to the launch of a launch vehicle or the operation of a launch site are requirements for a license under this chapter.

(2) The Secretary may prescribe—

(A) any term necessary to ensure compliance with this chapter, including on-site verification that a launch or operation complies with representations stated in the application;

(B) an additional requirement necessary to protect the public health and safety, safety of property, national security interests, and foreign policy interests of the United States; and

(C) by regulation that a requirement of a law of the United States not be a requirement for a license if the Secretary, after consulting with the head of the appropriate executive agency, decides that the requirement is not necessary to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States.

(3) The Secretary may waive a requirement for an individual applicant if the Secretary decides that the waiver is in the public interest and will not jeopardize the public health and safety, safety of property, and national security and foreign policy interests of the United States.

(c) PROCEDURES AND TIMETABLES.—The Secretary shall establish procedures and timetables that expedite review of a license application and reduce the regulatory burden for an applicant.

§70106. Monitoring activities

(a) GENERAL REQUIREMENTS.—A licensee under this chapter must allow the Secretary of Transportation to place an officer or employee of the United States Government or another individual as an observer at a launch site the licensee uses, at a production facility or assembly site a contractor of the licensee uses to produce or assemble a launch vehicle, or at a site at which a payload is integrated with a launch vehicle. The observer will monitor the activity of the licensee or contractor at the time and to the extent the Secretary considers reasonable to ensure compliance with the license or to carry out the duties of the Secretary under section 70104(c) of this title. A licensee must cooperate with an observer carrying out this subsection.

(b) CONTRACTS.—To the extent provided in advance in an appropriation law, the Secretary may make a contract with a person to carry out subsection (a) of this section.

§70107. Effective periods, and modifications, suspensions, and revocations, of licenses

(a) EFFECTIVE PERIODS OF LICENSES.—The Secretary of Transportation shall specify the period for which a license issued or transferred under this chapter is in effect.

(b) MODIFICATIONS.—On the initiative of the Secretary or on application of the licensee, the Secretary may modify a license issued or transferred under this chapter if the Secretary decides the modification will comply with this chapter.

(c) SUSPENSIONS AND REVOCATIONS.—The Secretary may suspend or revoke a license if the Secretary decides that—

(1) the licensee has not complied substantially with a requirement of this chapter or a regulation prescribed under this chapter; or

(2) the suspension or revocation is necessary to protect the public health and safety, the safety of property, or a national security or foreign policy interest of the United States.

(d) EFFECTIVE PERIODS OF MODIFICATIONS, SUSPENSIONS, AND REVOCATIONS.—Unless the Secretary specifies otherwise, a modification, suspension, or revocation under this section takes effect immediately and remains in effect during a review under section 70110 of this title.

(e) NOTIFICATION.—The Secretary shall notify the licensee in writing of the decision of the Secretary under this section and any action the Secretary takes or proposes to take based on the decision.

§70108. Prohibition, suspension, and end of launches and operation of launch sites

(a) GENERAL AUTHORITY.—The Secretary of Transportation may prohibit, suspend, or end immediately the launch of a launch vehicle or the operation of a launch site licensed under this chapter if the Secretary decides the launch or operation is detrimental to the public health and safety, the safety of property, or a national security or foreign policy interest of the United States.

(b) EFFECTIVE PERIODS OF ORDERS.—An order under this section takes effect immediately and remains in effect during a review under section 70110 of this title.

§70109. Preemption of scheduled launches

(a) GENERAL.—With the cooperation of the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration, the Secretary of Transportation shall act to ensure that a launch of a payload is not preempted from access to a United States Government launch site or launch property, except for imperative national need, when a launch date commitment from the Government has been obtained for a launch licensed under this chapter. A licensee or transferee preempted from access to a launch site or launch property does not have to pay the Government any amount for launch services attributable only to the scheduled launch prevented by the preemption.

(b) IMPERATIVE NATIONAL NEED DECISIONS.—In consultation with the Secretary of Transportation, the Secretary of Defense or the Administrator shall decide when an imperative national need requires preemption under subsection (a) of this section. That decision may not be delegated.

(c) REPORTS.—In cooperation with the Secretary of Transportation, the Secretary of Defense or the Administrator, as appropriate, shall submit to Congress not later than 7 days after a decision to preempt under subsection (a) of this section, a report that includes an explanation of the circumstances justifying the decision and a schedule for ensuring the prompt launching of a preempted payload.

§70110. Administrative hearings and judicial review

(a) ADMINISTRATIVE HEARINGS.—The Secretary of Transportation shall provide an opportunity for a hearing on the record to—

(1) an applicant under this chapter, for a decision of the Secretary under section 70105(a) of this title to issue or transfer a license with terms or deny the issuance or transfer of a license;

(2) an owner or operator of a payload under this chapter, for a decision of the Secretary under section 70104(c) of this title to prevent the launch of the payload; and

(3) a licensee under this chapter, for a decision of the Secretary under—

(A) section 70107(b) or (c) of this title to modify, suspend, or revoke a license; or

(B) section 70108(a) of this title to prohibit, suspend, or end a launch or operation of a launch site licensed by the Secretary.

(b) JUDICIAL REVIEW.—A final action of the Secretary under this chapter is subject to judicial review as provided in chapter 7 of title 5.

§70111. Acquiring United States Government property and services

(a) GENERAL REQUIREMENTS AND CONSIDERATIONS.—(1) The Secretary of Transportation shall facilitate and encourage the acquisition by the private sector and State governments of—

(A) launch property of the United States Government that is excess or otherwise is not needed for public use; and

(B) launch services, including utilities, of the Government otherwise not needed for public use.

(2) In acting under paragraph (1) of this subsection, the Secretary shall consider the commercial availability on reasonable terms of sub-

stantially equivalent launch property or launch services from a domestic source.

(b) PRICE.—(1) In this subsection, "direct costs" means the actual costs that—

(A) can be associated unambiguously with a commercial launch effort; and

(B) the Government would not incur if there were no commercial launch effort.

(2) In consultation with the Secretary, the head of the executive agency providing the property or service under subsection (a) of this section shall establish the price for the property or service. The price for—

(A) acquiring launch property by sale or transaction instead of sale is the fair market value;

(B) acquiring launch property (except by sale or transaction instead of sale) is an amount equal to the direct costs, including specific wear and tear and property damage, the Government incurred because of acquisition of the property; and

(C) launch services is an amount equal to the direct costs, including the basic pay of Government civilian and contractor personnel, the Government incurred because of acquisition of the services.

(c) COLLECTION BY SECRETARY.—The Secretary may collect a payment under this section with the consent of the head of the executive agency establishing the price. Amounts collected under this subsection shall be deposited in the Treasury. Amounts (except for excess launch property) shall be credited to the appropriation from which the cost of providing the property or services was paid.

(d) COLLECTION BY OTHER GOVERNMENTAL HEADS.—The head of a department, agency, or instrumentality of the Government may collect a payment for an activity involved in producing a launch vehicle or its payload for launch if the activity was agreed to by the owner or manufacturer of the launch vehicle or payload.

§70112. Liability insurance and financial responsibility requirements

(a) GENERAL REQUIREMENTS.—(1) When a license is issued or transferred under this chapter, the licensee or transferee shall obtain liability insurance or demonstrate financial responsibility in amounts to compensate for the maximum probable loss from claims by—

(A) a third party for death, bodily injury, or property damage or loss resulting from an activity carried out under the license; and

(B) the United States Government against a person for damage or loss to Government property resulting from an activity carried out under the license.

(2) The Secretary of Transportation shall determine the amounts required under paragraph (1)(A) and (B) of this subsection, after consulting with the Administrator of the National Aeronautics and Space Administration, the Secretary of the Air Force, and the heads of other appropriate executive agencies.

(3) For the total claims related to one launch, a licensee or transferee is not required to obtain insurance or demonstrate financial responsibility of more than—

(A)(i) $500,000,000 under paragraph (1)(A) of this subsection; or

(ii) $100,000,000 under paragraph (1)(B) of this subsection; or

(B) the maximum liability insurance available on the world market at reasonable cost if the amount is less than the applicable amount in clause (A) of this paragraph.

(4) An insurance policy or demonstration of financial responsibility under this subsection shall protect the following, to the extent of their potential liability for involvement in launch services, at no cost to the Government:

(A) the Government.

(B) executive agencies and personnel, contractors, and subcontractors of the Government.

(C) contractors, subcontractors, and customers of the licensee or transferee.

(D) contractors and subcontractors of the customer.

(b) RECIPROCAL WAIVER OF CLAIMS.—(1) A license issued or transferred under this chapter shall contain a provision requiring the licensee or transferee to make a reciprocal waiver of claims with its contractors, subcontractors, and customers, and contractors and subcontractors of the customers, involved in launch services under which each party to the waiver agrees to be responsible for property damage or loss it sustains, or for personal injury to, death of, or property damage or loss sustained by its own employees resulting from an activity carried out under the license.

(2) The Secretary of Transportation shall make, for the Government, executive agencies of the Government involved in launch services, and contractors and subcontractors involved in launch services, a reciprocal waiver of claims with the licensee or transferee, contractors, subcontractors, and customers of the licensee or transferee, and contractors and subcontractors of the customers, involved in launch services under which each party to the waiver agrees to be responsible for property damage or loss it sustains, or for personal injury to, death of, or property damage or loss sustained by its own employees resulting from an activity carried out under the license. The waiver applies only to the extent that claims are more than the amount of insurance or demonstration of financial responsibility required under subsection (a)(1)(B) of this section. After consulting with the Administrator and the Secretary of the Air Force, the Secretary of Transportation may waive, for the Government and a department, agency, and instrumentality of the Government, the right to recover damages for damage or loss to Government property to the extent insurance is not available because of a policy exclusion the Secretary of Transportation decides is usual for the type of insurance involved.

(c) DETERMINATION OF MAXIMUM PROBABLE LOSSES.—The Secretary of Transportation shall determine the maximum probable losses under subsection (a)(1)(A) and (B) of this section associated with an activity under a license not later than 90 days after a licensee or transferee requires a determination and submits all information the Secretary requires. The Secretary shall amend the determination as warranted by new information.

(d) ANNUAL REPORT.—(1) Not later than November 15 of each year, the Secretary of Transportation shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report on current determinations made under subsection (c) of this section related to all issued licenses and the reasons for the determinations.

(2) Not later than May 15 of each year, the Secretary of Transportation shall review the amounts specified in subsection (a)(3)(A) of this section and submit a report to Congress that contains proposed adjustments in the amounts to conform with changed liability expectations and availability of insurance on the world market. The proposed adjustment takes effect 30 days after a report is submitted.

(e) LAUNCHES INVOLVING GOVERNMENT FACILITIES AND PERSONNEL.—The Secretary of Transportation shall establish requirements consistent with this chapter for proof of financial responsibility and other assurances necessary to protect the Government and its executive agencies and personnel from liability, death, bodily injury, or property damage or loss as a result of a launch or operation of a launch site involving a facility or personnel of the Government. The Secretary may not relieve the Government of liability under this subsection for death, bodily injury, or property damage or loss resulting from the willful misconduct of the Government or its agents.

(f) COLLECTION AND CREDITING PAYMENTS.—The head of a department, agency, or instrumentality of the Government shall collect a payment owed for damage or loss to Government property under its jurisdiction or control resulting from an activity carried out under a license issued or transferred under this chapter. The payment shall be credited to the current applicable appropriation, fund, or account of the department, agency, or instrumentality.

§70113. Paying claims exceeding liability insurance and financial responsibility requirements

(a) GENERAL REQUIREMENTS.—(1) To the extent provided in advance in an appropriation law or to the extent additional legislative authority is enacted providing for paying claims in a compensation plan submitted under subsection (d) of this section, the Secretary of Transportation shall provide for the payment by the United States Government of a successful claim (including reasonable litigation or settlement expenses) of a third party against a licensee or transferee under this chapter, a contractor, subcontractor, or customer of the licensee or transferee, or a contractor or subcontractor of a customer, resulting from an activity carried out under the license issued or transferred under this chapter for death, bodily injury, or property damage or loss resulting from an activity carried out under the license. However, claims may be paid under this section only to the extent the total amount of successful claims related to one launch—

(A) is more than the amount of insurance or demonstration of financial responsibility required under section 70112(a)(1)(A) of this title; and

(B) is not more than $1,500,000,000 (plus additional amounts necessary to reflect inflation occurring after January 1, 1989) above that insurance or financial responsibility amount.

(2) The Secretary may not provide for paying a part of a claim for which death, bodily injury, or property damage or loss results from willful misconduct by the licensee or transferee. To the extent insurance required under section 70112(a)(1)(A) of this title is not available to cover a successful third party liability claim because of an insurance policy exclusion the Secretary decides is usual for the type of insurance involved, the Secretary may provide for paying the excluded claims without regard to the limitation contained in section 70112(a)(1).

(b) NOTICE, PARTICIPATION, AND APPROVAL.—Before a payment under subsection (a) of this section is made—

(1) notice must be given to the Government of a claim, or a civil action related to the claim, against a party described in subsection (a)(1) of this section for death, bodily injury, or property damage or loss;

(2) the Government must be given an opportunity to participate or assist in the defense of the claim or action; and

(3) the Secretary must approve any part of a settlement to be paid out of appropriations of the Government.

(c) WITHHOLDING PAYMENTS.—The Secretary may withhold a payment under subsection (a) of this section if the Secretary certifies that the amount is not reasonable. However, the Secretary shall deem to be reasonable the amount of a claim finally decided by a court of competent jurisdiction.

(d) SURVEYS, REPORTS, AND COMPENSATION PLANS.—(1) If as a result of an activity carried out under a license issued or transferred under this chapter the total of claims related to one launch is likely to be more than the amount of *required insurance or demonstration of financial responsibility, the Secretary shall—*

(A) survey the causes and extent of damage; and

(B) submit expeditiously to Congress a report on the results of the survey.

(2) Not later than 90 days after a court determination indicates that the liability for the total of claims related to one launch may be more than the required amount of insurance or demonstration of financial responsibility, the President, on the recommendation of the Secretary, shall submit to Congress a compensation plan that—

(A) outlines the total dollar value of the claims;

(B) recommends sources of amounts to pay for the claims;

(C) includes legislative language required to carry out the plan if additional legislative authority is required; and

(D) for a single event or incident, may not be for more than $1,500,000,000.

(3) A compensation plan submitted to Congress under paragraph (2) of this subsection shall—

(A) have an identification number; and

(B) be submitted to the Senate and the House of Representatives on the same day and when the Senate and House are in session.

(e) CONGRESSIONAL RESOLUTIONS.—(1) In this subsection, "resolution"—

(A) means a joint resolution of Congress the matter after the resolving clause of which is as follows: "That the Congress approves the compensation plan numbered ________ submitted to the Congress on ________ ___, 19___.", with the blank spaces being filled appropriately; but

(B) does not include a resolution that includes more than one compensation plan.

(2) The Senate shall consider under this subsection a compensation plan requiring additional appropriations or legislative authority not later than 60 calendar days of continuous session of Congress after the date on which the plan is submitted to Congress.

(3) A resolution introduced in the Senate shall be referred immediately to a committee by the President of the Senate. All resolutions related to the same plan shall be referred to the same committee.

(4)(A) If the committee of the Senate to which a resolution has been referred does not report the resolution within 20 calendar days after it is referred, a motion is in order to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of the plan.

(B) A motion to discharge may be made only by an individual favoring the resolution and is highly privileged (except that the motion may not be made after the committee has reported a resolution on the plan). Debate on the motion is limited to one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order. A motion to reconsider the vote by which the motion is agreed to or disagreed to is not in order.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed and another motion to discharge the committee from another resolution on the same plan may not be made.

(5)(A) After a committee of the Senate reports, or is discharged from further consideration of, a resolution, a motion to proceed to the consideration of the resolution is in order at any time, even though a similar previous motion has been disagreed to. The motion is highly privileged and is not debatable. An amendment to the motion is not in order. A motion to reconsider the vote by which the motion is agreed to or disagreed to is not in order.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph is limited to not more than 10 hours, to be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(6) The following shall be decided in the Senate without debate:

(A) a motion to postpone related to the discharge from committee.

(B) a motion to postpone consideration of a resolution.

(C) a motion to proceed to the consideration of other business.

(D) an appeal from a decision of the chair related to the application of the rules of the Senate to the procedures related to resolution.

(f) APPLICATION.—This section applies to a license issued or transferred under this chapter for which the Secretary receives a complete and valid application not later than November 15, 1993.

§70114. Disclosing information

The Secretary of Transportation, an officer or employee of the United States Government, or a person making a contract with the Secretary under section 70106(b) of this title may disclose information under this chapter that qualifies for an exemption under section 552(b)(4) of title 5 or is designated as confidential by the person or head of the executive agency providing the information only if the Secretary decides withholding the information is contrary to the public or national interest.

§70115. Enforcement and penalty

(a) PROHIBITIONS.—A person may not violate this chapter, a regulation prescribed under this chapter, or any term of a license issued or transferred under this chapter.

(b) GENERAL AUTHORITY.—(1) In carrying out this chapter, the Secretary of Transportation may—

(A) conduct investigations and inquiries;

(B) administer oaths;

(C) take affidavits; and

(D) under lawful process—

(i) enter at a reasonable time a launch site, production facility, assembly site of a launch vehicle, or site at which a payload is integrated with a launch vehicle to inspect an object to which this chapter applies or a record or report the Secretary requires be made or kept under this chapter; and

(ii) seize the object, record, or report when there is probable cause to believe the object, record, or report was used, is being used, or likely will be used in violation of this chapter.

(2) The Secretary may delegate a duty or power under this chapter related to enforcement to an officer or employee of another executive agency with the consent of the head of the agency.

(c) CIVIL PENALTY.—(1) After notice and an opportunity for a hearing on the record, a person the Secretary finds to have violated subsection (a) of this section is liable to the United States Government for a civil penalty of not more than $100,000. A separate violation occurs for each day the violation continues.

(2) In conducting a hearing under paragraph (1) of this subsection, the Secretary may—

(A) subpena witnesses and records; and

(B) enforce a subpena in the appropriate district court of the United States.

(3) The Secretary shall impose the civil penalty by written notice. The Secretary may compromise or remit a penalty imposed, or that may be imposed, under this section.

(4) The Secretary shall recover a civil penalty not paid after the penalty is final or after a court enters a final judgment for the Secretary.

§70116. Consultation

(a) MATTERS AFFECTING NATIONAL SECURITY.—The Secretary of Transportation shall consult with the Secretary of Defense on a matter under this chapter affecting national security. The Secretary of Defense shall identify and notify the Secretary of Transportation of a national security interest relevant to an activity under this chapter.

(b) MATTERS AFFECTING FOREIGN POLICY.—The Secretary of Transportation shall consult with the Secretary of State on a matter under this chapter affecting foreign policy. The Secretary of State shall identify and notify the Secretary of Transportation of a foreign policy interest or obligation relevant to an activity under this chapter.

(c) OTHER MATTERS.—In carrying out this chapter, the Secretary of Transportation shall consult with the head of another executive agency—

(1) to provide consistent application of licensing requirements under this chapter;

(2) to ensure fair treatment for all license applicants; and

(3) when appropriate.

§70117. Relationship to other executive agencies, laws, and international obligations

(a) EXECUTIVE AGENCIES.—Except as provided in this chapter, a person is not required to obtain from an executive agency a license, approval, waiver, or exemption to launch a launch vehicle or operate a launch site.

(b) FEDERAL COMMUNICATIONS COMMISSION AND SECRETARY OF COMMERCE.—This chapter does not affect the authority of—

(1) the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 et seq.); or

(2) the Secretary of Commerce under the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4201 et seq.).

(c) STATES AND POLITICAL SUBDIVISIONS.—A State or political subdivision of a State—

(1) may not adopt or have in effect a law, regulation, standard, or order inconsistent with this chapter; but

(2) may adopt or have in effect a law, regulation, standard, or order consistent with this chapter that is in addition to or more stringent than a requirement of, or regulation prescribed under, this chapter.

(d) CONSULTATION.—The Secretary of Transportation is encouraged to consult with a State to simplify and expedite the approval of a space launch activity.

(e) FOREIGN COUNTRIES.—The Secretary of Transportation shall—

(1) carry out this chapter consistent with an obligation the United States Government assumes in a treaty, convention, or agreement in force between the Government and the government of a foreign country; and

(2) consider applicable laws and requirements of a foreign country when carrying out this chapter.

(f) LAUNCH NOT AN EXPORT.—A launch vehicle or payload that is launched is not, because of the launch, an export for purposes of a law controlling exports.

(g) NONAPPLICATION.—This chapter does not apply to—

(1) a launch, operation of a launch vehicle or launch site, or other space activity the Government carries out for the Government; or

(2) planning or policies related to the launch, operation, or activity.

§70118. Authorization of appropriations

Not more than $________ may be appropriated to the Secretary of Transportation for the fiscal year ending September 30, 19__, to carry out this chapter.

SUBTITLE X—MISCELLANEOUS

CHAPTER *Sec.*

801. BILLS OF LADING 80101
803. CONTRABAND 80301
805. MISCELLANEOUS 80501

CHAPTER 801—BILLS OF LADING

Sec.
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§80101. Definitions

In this chapter—

(1) "consignee" means the person named in a bill of lading as the person to whom the goods are to be delivered.

(2) "consignor" means the person named in a bill of lading as the person from whom the goods have been received for shipment.

(3) "goods" means merchandise or personal property that has been, is being, or will be transported.

(4) "holder" means a person having possession of, and a property right in, a bill of lading.

(5) "order" means an order by indorsement on a bill of lading.

(6) "purchase" includes taking by mortgage or pledge.

(7) "State" means a State of the United States, the District of Columbia, and a territory or possession of the United States.

§80102. Application

This chapter applies to a bill of lading when the bill is issued by a common carrier for the transportation of goods—

(1) between a place in the District of Columbia and another place in the District of Columbia;

(2) between a place in a territory or possession of the United States and another place in the same territory or possession;

(3) between a place in a State and a place in another State;

(4) between a place in a State and a place in the same State through another State or a foreign country; or

(5) from a place in a State to a place in a foreign country.

§80103. Negotiable and nonnegotiable bills

(a) NEGOTIABLE BILLS.—(1) A bill of lading is negotiable if the bill—

(A) states that the goods are to be delivered to the order of a consignee; and

(B) does not contain on its face an agreement with the shipper that the bill is not negotiable.

(2) Inserting in a negotiable bill of lading the name of a person to be notified of the arrival of the goods—

(A) does not limit its negotiability; and

(B) is not notice to the purchaser of the goods of a right the named person has to the goods.

(b) NONNEGOTIABLE BILLS.—(1) A bill of lading is nonnegotiable if the bill states that the goods are to be delivered to a consignee. The indorsement of a nonnegotiable bill does not—

(A) make the bill negotiable; or

(B) give the transferee any additional right.

(2) A common carrier issuing a nonnegotiable bill of lading must put "nonnegotiable" or "not negotiable" on the bill. This paragraph does not apply to an informal memorandum or acknowledgment.

§80104. Form and requirements for negotiation

(a) GENERAL RULES.—(1) A negotiable bill of lading may be negotiated by indorsement. An indorsement may be made in blank or to a specified person. If the goods are deliverable to the order of a specified person, then the bill must be indorsed by that person.

(2) A negotiable bill of lading may be negotiated by delivery when the common carrier, under the terms of the bill, undertakes to deliver the goods to the order of a specified person and that person or a subsequent indorsee has indorsed the bill in blank.

(3) A negotiable bill of lading may be negotiated by a person possessing the bill, regardless of the way in which the person got possession, if—

(A) a common carrier, under the terms of the bill, undertakes to deliver the goods to that person; or

(B) when the bill is negotiated, it is in a form that allows it to be negotiated by delivery.

(b) VALIDITY NOT AFFECTED.—The validity of a negotiation of a bill of lading is not affected by the negotiation having been a breach of duty by the person making the negotiation, or by the owner of the bill having been deprived of possession by fraud, accident, mistake, duress, loss, theft, or conversion, if the person to whom the bill is negotiated, or the person to whom the bill is subsequently negotiated, gives value for the bill in good faith and without notice of the breach of duty, fraud, accident, mistake, duress, loss, theft, or conversion.

(c) NEGOTIATION BY SELLER, MORTGAGOR, OR PLEDGOR TO PERSON WITHOUT NOTICE.—When goods for which a negotiable bill of lading has been issued are in a common carrier's possession, and the person to whom the bill has been issued retains possession of the bill after selling, mortgaging, or pledging the goods or bill, the subsequent negotiation of the bill by that person to another person receiving the bill for value, in good faith, and without notice of the prior sale, mortgage, or pledge has the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation.

§80105. Title and rights affected by negotiation

(a) TITLE.—When a negotiable bill of lading is negotiated—

(1) the person to whom it is negotiated acquires the title to the goods that—

(A) the person negotiating the bill had the ability to convey to a purchaser in good faith for value; and

(B) the consignor and consignee had the ability to convey to such a purchaser; and

(2) the common carrier issuing the bill becomes obligated directly to the person to whom the bill is negotiated to hold possession of the goods under the terms of the bill the same as if the carrier had issued the bill to that person.

(b) SUPERIORITY OF RIGHTS.—When a negotiable bill of lading is negotiated to a person for value in good faith, that person's right to the goods for which the bill was issued is superior to a seller's lien or to a right to stop the transportation of the goods. This subsection applies whether the negotiation is made before or after the common carrier issuing the bill receives notice of the seller's claim. The carrier may deliver the goods to an unpaid seller only if the bill first is surrendered for cancellation.

(c) MORTGAGEE AND LIEN HOLDER RIGHTS NOT AFFECTED.—Except as provided in subsection (b) of this section, this chapter does not limit a right of a mortgagee or lien holder having a mortgage or lien on goods against a person that purchased for value in good faith from the owner, and got possession of the goods immediately before delivery to the common carrier.

§80106. Transfer without negotiation

(a) DELIVERY AND AGREEMENT.—The holder of a bill of lading may transfer the bill without negotiating it by delivery and agreement to transfer title to the bill or to the goods represented by it. Subject to the agreement, the person to whom the bill is transferred has title to the goods against the transferor.

(b) COMPELLING INDORSEMENT.—When a negotiable bill of lading is transferred for value by delivery without being negotiated and indorsement of the transferor is essential for negotiation, the transferee may compel the transferor to indorse the bill unless a contrary intention appears. The negotiation is effective when the indorsement is made.

(c) EFFECT OF NOTIFICATION.—(1) When a transferee notifies the common carrier that a nonnegotiable bill of lading has been transferred under subsection (a) of this section, the carrier is obligated directly to the transferee for any obligations the carrier owed to the transferor immediately before the notification. However, before the carrier is notified, the transferee's title to the goods and right to acquire the obligations of the carrier may be defeated by—

(A) garnishment, attachment, or execution on the goods by a creditor of the transferor; or

(B) notice to the carrier by the transferor or a purchaser from the transferor of a later purchase of the goods from the transferor.

(2) A common carrier has been notified under this subsection only if—

(A) an officer or agent of the carrier, whose actual or apparent authority includes acting on the notification, has been notified; and

(B) the officer or agent has had time, exercising reasonable diligence, to communicate with the agent having possession or control of the goods.

§80107. Warranties and liability

(a) GENERAL RULE.—Unless a contrary intention appears, a person negotiating or transferring a bill of lading for value warrants that—

(1) the bill is genuine;

(2) the person has the right to transfer the bill and the title to the goods described in the bill;

(3) the person does not know of a fact that would affect the validity or worth of the bill; and

(4) the goods are merchantable or fit for a particular purpose when merchantability or fitness would have been implied if the agreement of the parties had been to transfer the goods without a bill of lading.

(b) SECURITY FOR DEBT.—A person holding a bill of lading as security for a debt and in good faith demanding or receiving payment of the debt from another person does not warrant by the demand or receipt—

(1) the genuineness of the bill; or

(2) the quantity or quality of the goods described in the bill.

(c) DUPLICATES.—A common carrier issuing a bill of lading, on the face of which is the word "duplicate" or another word indicating that the bill is not an original bill, is liable the same as a person that represents and warrants that the bill is an accurate copy of an original bill properly issued. The carrier is not otherwise liable under the bill.

(d) INDORSER LIABILITY.—Indorsement of a bill of lading does not make the indorser liable for failure of the common carrier or a previous indorser to fulfill its obligations.

§80108. Alterations and additions

An alteration or addition to a bill of lading after its issuance by a common carrier, without authorization from the carrier in writing or noted on the bill, is void. However, the original terms of the bill are enforceable.

§80109. Liens of common carriers

A common carrier issuing a negotiable bill of lading has a lien on the goods covered by the bill for—

(1) charges for storage, transportation, and delivery (including demurrage and terminal charges), and expenses necessary to preserve the goods or incidental to transporting the goods after the date of the bill; and

(2) other charges for which the bill expressly specifies a lien is claimed to the extent the charges are allowed by law and the agreement between the consignor and carrier.

§80110. Duty to deliver goods

(a) GENERAL RULES.—Except to the extent a common carrier establishes an excuse provided by law, the carrier must deliver goods covered by a bill of lading on demand of the consignee named in a nonnegotiable bill or the holder of a negotiable bill for the goods when the consignee or holder—

(1) offers in good faith to satisfy the lien of the carrier on the goods;

(2) has possession of the bill and, if a negotiable bill, offers to indorse and give the bill to the carrier; and

(3) agrees to sign, on delivery of the goods, a receipt for delivery if requested by the carrier.

(b) PERSONS TO WHOM GOODS MAY BE DELIVERED.—Subject to section 80111 of this title, a common carrier may deliver the goods covered by a bill of lading to—

(1) a person entitled to their possession;

(2) the consignee named in a nonnegotiable bill; or

(3) a person in possession of a negotiable bill if—

(A) the goods are deliverable to the order of that person; or

(B) the bill has been indorsed to that person or in blank by the consignee or another indorsee.

(c) COMMON CARRIER CLAIMS OF TITLE AND POSSESSION.—A claim by a common carrier that the carrier has title to goods or right to their possession is an excuse for nondelivery of the goods only if the title or right is derived from—

(1) a transfer made by the consignor or consignee after the shipment; or

(2) the carrier's lien.

(d) ADVERSE CLAIMS.—If a person other than the consignee or the person in possession of a bill of lading claims title to or possession of goods and the common carrier knows of the claim, the carrier is not required to deliver the goods to any claimant until the carrier has had a reasonable time to decide the validity of the adverse claim or to bring a civil action to require all claimants to interplead.

(e) INTERPLEADER.—If at least 2 persons claim title to or possession of the goods, the common carrier may—

(1) bring a civil action to interplead all known claimants to the goods; or

(2) require those claimants to interplead as a defense in an action brought against the carrier for nondelivery.

(f) THIRD PERSON CLAIMS NOT A DEFENSE.—Except as provided in subsections (b), (d), and (e) of this section, title or a right of a third person is not a defense to an action brought by the consignee of a nonnegotiable bill of lading or by the holder of a negotiable bill against the common carrier for failure to deliver the goods on demand unless enforced by legal process.

§80111. Liability for delivery of goods

(a) GENERAL RULES.—A common carrier is liable for damages to a person having title to, or right to possession of, goods when—

(1) the carrier delivers the goods to a person not entitled to their possession unless the delivery is authorized under section 80110(b)(2) or (3) of this title;

(2) the carrier makes a delivery under section 80110(b)(2) or (3) of this title after being requested by or for a person having title to, or right to possession of, the goods not to make the delivery; or

(3) at the time of delivery under section 80110(b)(2) or (3) of this title, the carrier has information it is delivering the goods to a person not entitled to their possession.

(b) EFFECTIVENESS OF REQUEST OR INFORMATION.—A request or information is effective under subsection (a)(2) or (3) of this section only if—

(1) an officer or agent of the carrier, whose actual or apparent authority includes acting on the request or information, has been given the request or information; and

(2) the officer or agent has had time, exercising reasonable diligence, to stop delivery of the goods.

(c) FAILURE TO TAKE AND CANCEL BILLS.—Except as provided in subsection (d) of this section, if a common carrier delivers goods for which a negotiable bill of lading has been issued without taking and canceling the bill, the carrier is liable for damages for failure to deliver the goods to a person purchasing the bill for value in good faith whether the purchase was before or after delivery and even when delivery was made to the person entitled to the goods. The carrier also is liable under this paragraph if part of the goods are delivered without taking and canceling the bill or plainly noting on the bill that a partial delivery was made and generally describing the goods or the remaining goods kept by the carrier.

(d) EXCEPTIONS TO LIABILITY.—A common carrier is not liable for failure to deliver goods to the consignee or owner of the goods or a holder of the bill if—

(1) a delivery described in subsection (c) of this section was compelled by legal process;

(2) the goods have been sold lawfully to satisfy the carrier's lien;

(3) the goods have not been claimed; or

(4) the goods are perishable or hazardous.

§80112. Liability under negotiable bills issued in parts, sets, or duplicates

(a) PARTS AND SETS.—A negotiable bill of lading issued in a State for the transportation of goods to a place in the 48 contiguous States or the District of Columbia may not be issued in parts or sets. A common carrier issuing a bill in violation of this subsection is liable for damages for failure to deliver the goods to a purchaser of one part for value in good faith even though the purchase occurred after the carrier delivered the goods to a holder of one of the other parts.

(b) DUPLICATES.—When at least 2 negotiable bills of lading are issued in a State for the same goods to be transported to a place in the 48 contiguous States or the District of Columbia, the word "duplicate" or another word indicating that the bill is not an original must be put plainly on the face of each bill except the original. A common carrier violating this subsection is liable for damages caused by the violation to a purchaser of the bill for value in good faith as an original bill even though the purchase occurred after the carrier delivered the goods to the holder of the original bill.

§80113. Liability for nonreceipt, misdescription, and improper loading

(a) LIABILITY FOR NONRECEIPT AND MISDESCRIPTION.—Except as provided in this section, a common carrier issuing a bill of lading is liable for damages caused by nonreceipt by the carrier of any part of the goods by the date shown in the bill or by failure of the goods to correspond with the description contained in the bill. The carrier is liable to the owner of goods transported under a nonnegotiable bill (subject to the right of stoppage in transit) or to the holder of a negotiable bill if the owner or holder gave value in good faith relying on the description of the goods in the bill or on the shipment being made on the date shown in the bill.

(b) NONLIABILITY OF CARRIERS.—A common carrier issuing a bill of lading is not liable under subsection (a) of this section—

(1) when the goods are loaded by the shipper;

(2) when the bill—

(A) describes the goods in terms of marks or labels, or in a statement about kind, quantity, or condition; or

(B) is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load, and count", or words of the same meaning; and

(3) to the extent the carrier does not know whether any part of the goods were received or conform to the description.

(c) LIABILITY FOR IMPROPER LOADING.—A common carrier issuing a bill of lading is not liable for damages caused by improper loading if—

(1) the shipper loads the goods; and

(2) the bill contains the words "shipper's weight, load, and count", or words of the same meaning indicating the shipper loaded the goods.

(d) CARRIER'S DUTY TO DETERMINE KIND, QUANTITY, AND NUMBER.—(1) When bulk freight is loaded by a shipper that makes available to the common carrier adequate facilities for weighing the freight, the carrier must determine the kind and quantity of the freight within a reasonable time after receiving the written request of the shipper to make the determination. In that situation, inserting the words "shipper's weight" or words of the same meaning in the bill of lading has no effect.

(2) When goods are loaded by a common carrier, the carrier must count the packages of goods, if package freight, and determine the kind and quantity, if bulk freight. In that situation, inserting in the bill of lading or in a notice, receipt, contract, rule, or tariff, the words "shipper's weight, load, and count" or words indicating that the shipper described and loaded the goods, has no effect except for freight concealed by packages.

§80114. Lost, stolen, and destroyed negotiable bills

(a) DELIVERY ON COURT ORDER AND SURETY BOND.—If a negotiable bill of lading is lost, stolen, or destroyed, a court may order the common carrier to deliver the goods if the person claiming the goods gives a surety bond, in an amount approved by the court, to indemnify the carrier or a person injured by delivery against liability under the outstanding original bill. The court also may order payment of reasonable costs and attorney's fees to the carrier. A voluntary surety bond, without court order, is binding on the parties to the bond.

(b) LIABILITY TO HOLDER.—Delivery of goods under a court order under subsection (a) of this section does not relieve a common carrier from liability to a person to whom the negotiable bill has been or is negotiated for value without notice of the court proceeding or of the delivery of the goods.

§80115. Limitation on use of judicial process to obtain possession of goods from common carriers

(a) ATTACHMENT AND LEVY.—Except when a negotiable bill of lading was issued originally on delivery of goods by a person that did not have the power to dispose of the goods, goods in the possession of a common carrier for which a negotiable bill has been issued may be attached through judicial process or levied on in execution of a judgment only if the bill is surrendered to the carrier or its negotiation is enjoined.

(b) DELIVERY.—A common carrier may be compelled by judicial process to deliver goods under

subsection (a) of this section only when the bill is surrendered to the carrier or impounded by the court.

§80116. Criminal penalty

A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person—

(1) violates this chapter with intent to defraud; or

(2) knowingly or with intent to defraud—

(A) falsely makes, alters, or copies a bill of lading subject to this chapter;

(B) utters, publishes, or issues a falsely made, altered, or copied bill subject to this chapter; or

(C) negotiates or transfers for value a bill containing a false statement.

CHAPTER 803—CONTRABAND

Sec.
80301. Definitions.
80302. Prohibitions.
80303. Seizure and forfeiture.
80304. Administrative.
80305. Availability of certain appropriations.
80306. Relationship to other laws.

§80301. Definitions

In this chapter—

(1) "aircraft" means a contrivance used, or capable of being used, for transportation in the air.

(2) "vehicle" means a contrivance used, or capable of being used, for transportation on, below, or above land, but does not include aircraft.

(3) "vessel" means a contrivance used, or capable of being used, for transportation in water, but does not include aircraft.

§80302. Prohibitions

(a) DEFINITION.—In this section, "contraband" means—

(1) a narcotic drug (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)), including marihuana (as defined in section 102 of that Act (21 U.S.C. 802)), that—

(A) is possessed with intent to sell or offer for sale in violation of the laws and regulations of the United States;

(B) is acquired, possessed, sold, transferred, or offered for sale in violation of those laws;

(C) is acquired by theft, robbery, or burglary and transported—

(i) in the District of Columbia or a territory or possession of the United States; or

(ii) from a place in a State, the District of Columbia, a territory or possession of the United States, or the Canal Zone, to a place in another State, the District of Columbia, a territory or possession, or the Canal Zone; or

(D) does not bear tax-paid internal revenue stamps required by those laws or regulations;

(2) a firearm involved in a violation of chapter 53 of the Internal Revenue Code of 1986 (26 U.S.C. 5801 et seq.);

(3) a forged, altered, or counterfeit—

(A) coin or an obligation or other security of the United States Government (as defined in section 8 of title 18); or

(B) coin, obligation, or other security of the government of a foreign country;

(4) material or equipment used, or intended to be used, in making a coin, obligation, for other security referred to in clause (3) of this subsection; or

(5) a cigarette involved in a violation of chapter 114 of title 18 or a regulation prescribed under chapter 114.

(b) PROHIBITIONS.—A person may not—

(1) transport contraband in an aircraft, vehicle, or vessel;

(2) conceal or possess contraband on an aircraft, vehicle, or vessel; or

(3) use an aircraft, vehicle, or vessel to facilitate the transportation, concealment, receipt, possession, purchase, sale, exchange, or giving away of contraband.

§80303. Seizure and forfeiture

The Secretary of the Treasury or the Governor of Guam or of the Northern Mariana Islands as provided in section 80304 of this title, or a person authorized by another law to enforce section 80302 of this title, shall seize an aircraft, vehicle, or vessel involved in a violation of section 80302 and place it in the custody of a person designated by the Secretary or appropriate Governor, as the case may be. The seized aircraft, vehicle, or vessel shall be forfeited, except when the owner establishes that a person except the owner committed the violation when the aircraft, vehicle, or vessel was in the possession of a person who got possession by violating a criminal law of the United States or a State. However, an aircraft, vehicle, or vessel used by a common carrier to provide transportation for compensation may be forfeited only when—

(1) the owner, conductor, driver, pilot, or other individual in charge of the aircraft or vehicle (except a rail car or engine) consents to, or knows of, the alleged violation when the violation occurs;

(2) the owner of the rail car or engine consents to, or knows of, the alleged violation when the violation occurs; or

(3) the master or owner of the vessel consents to, or knows of, the alleged violation when the violation occurs.

§80304. Administrative

(a) GENERAL.—Except as provided in subsections (b) and (c) of this section, the Secretary of the Treasury—

(1) may designate officers, employees, agents, or other persons to carry out this chapter; and

(2) shall prescribe regulations to carry out this chapter.

(b) IN GUAM.—The Governor of Guam—

(1) or officers of the government of Guam designated by the Governor shall carry out this chapter in Guam;

(2) may carry out laws referred to in section 80306(b) of this title with modifications the Governor decides are necessary to meet conditions in Guam; and

(3) may prescribe regulations to carry out this chapter in Guam.

(c) IN NORTHERN MARIANA ISLANDS.—The Governor of the Northern Mariana Islands—

(1) or officers of the government of the Northern Mariana Islands designated by the Governor shall carry out this chapter in the Northern Mariana Islands;

(2) may carry out laws referred to in section 80306(b) of this title with modifications the Governor decides are necessary to meet conditions in the Northern Mariana Islands; and

(3) may prescribe regulations to carry out this chapter in the Northern Mariana Islands.

(d) CUSTOMS LAWS ON SEIZURE AND FORFEITURE.—The Secretary, or the Governor of Guam or of the Northern Mariana Islands as provided in subsections (b) and (c) of this section, shall carry out the customs laws on the seizure and forfeiture of aircraft, vehicles, and vessels under this chapter.

§80305. Availability of certain appropriations

Appropriations for enforcing customs, narcotics, counterfeiting, or internal revenue laws are available to carry out this chapter.

§80306. Relationship to other laws

(a) CHAPTER AS ADDITIONAL LAW.—This chapter is in addition to another law—

(1) imposing, or authorizing the compromise of, fines, penalties, or forfeitures; or

(2) providing for seizure, condemnation, or disposition of forfeited property, or the proceeds from the property.

(b) LAWS APPLICABLE TO SEIZURES AND FORFEITURES.—To the extent applicable and consistent with this chapter, the following apply to a seizure or forfeiture under this chapter:

(1) provisions of law related to the seizure, forfeiture, and condemnation of vehicles and vessels violating the customs laws.

(2) provisions of law related to the disposition of those vehicles or vessels or the proceeds from the sale of those vehicles or vessels.

(3) provisions of law related to the compromise of those forfeitures or claims related to those forfeitures.

(4) provisions of law related to the award of compensation to an informer about those forfeitures.

CHAPTER 805—MISCELLANEOUS

Sec.
80501. Damage to transported property.
80502. Transportation of animals.
80503. Payments for inspection and quarantine services.
80504. Medals of honor.

§80501. Damage to transported property

(a) CRIMINAL PENALTY.—A person willfully damaging, or attempting to damage, property in the possession of an air carrier, motor carrier, or rail carrier and being transported in interstate or foreign commerce, shall be fined under title 18, imprisoned for not more than 10 years, or both. In a criminal proceeding under this section, a shipping document for the property is prima facie evidence of the places to which and from which the property was being transported.

(b) PROHIBITION AGAINST MULTIPLE PROSECUTIONS FOR SAME ACT.—A person may not be prosecuted for an act under this section when the person has been convicted or acquitted on the merits for the same act under the laws of a State, the District of Columbia, or a territory or possession of the United States.

§80502. Transportation of animals

(a) CONFINEMENT.—(1) Except as provided in this section, a rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel transporting animals from a place in a State, the District of Columbia, or a territory or possession of the United States through or to a place in another State, the District of Columbia, or a territory or possession, may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.

(2) Sheep may be confined for an additional 8 consecutive hours without being unloaded when the 28-hour period of confinement ends at night. Animals may be confined for—

(A) more than 28 hours when the animals cannot be unloaded because of accidental or unavoidable causes that could not have been anticipated or avoided when being careful; and

(B) 36 consecutive hours when the owner or person having custody of animals being transported requests, in writing and separate from a bill of lading or other rail form, that the 28-hour period be extended to 36 hours.

(3) Time spent in loading and unloading animals is not included as part of a period of confinement under this subsection.

(b) UNLOADING, FEEDING, WATERING, AND REST.—Animals being transported shall be unloaded in a humane way into pens equipped for feeding, water, and rest for at least 5 consecutive hours. The owner or person having custody of the animals shall feed and water the animals. When the animals are not fed and watered by the owner or person having custody, the rail carrier, express carrier, or common carrier (except by air or water), the receiver, trustee, or lessee of one of those carriers, or the owner or master of a vessel transporting the animals—

(1) shall feed and water the animals at the reasonable expense of the owner or person hav-

ing custody, except that the owner or shipper may provide food;

(2) has a lien on the animals for providing food, care, and custody that may be collected at the destination in the same way that a transportation charge is collected; and

(3) is not liable for detaining the animals for a reasonable period to comply with subsection (a) of this section.

(c) NONAPPLICATION.—This section does not apply when animals are transported in a vehicle or vessel in which the animals have food, water, space, and an opportunity for rest.

(d) CIVIL PENALTY.—A rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel that knowingly and willfully violates this section is liable to the United States Government for a civil penalty of at least $100 but not more than $500 for each violation. On learning of a violation, the Attorney General shall bring a civil action to collect the penalty in the district court for the judicial district in which the violation occurred or the defendant resides or does business.

§80503. Payments for inspection and quarantine services

(a) GENERAL.—(1) In this subsection—

(A) "private aircraft" means a civilian aircraft not being used to transport passengers or property for compensation.

(B) "private vessel" means a civilian vessel not being used—

(i) to transport passengers or property for compensation; or

(ii) in fishing or fish processing operations.

(2) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451), the owner, operator, or agent of a private aircraft or private vessel may pay not more than $25 for the services of an officer or employee of the Department of Agriculture, the Customs Service, the Immigration and Naturalization Service, or the Public Health Service (including an independent contractor performing an inspection service for the Public Health Service) when the services are performed on a Sunday, holiday, or from 5 p.m. through 8 a.m. on a weekday, and are related to the aircraft's or vessel's arrival in, or departure from, the United States. However, the owner, operator, or agent does not have to pay for the services from 5 p.m. through 8 a.m. on a weekday when an officer or employee on regular duty is available at the place of arrival or departure to perform services.

(3) The head of a department, agency, or instrumentality of the United States Government providing services under paragraph (2) of this subsection shall collect the amount paid for the services and deposit the amount in the Treasury. The amount shall be credited to the appropriation of the department, agency, or instrumentality against which the expense of those services was charged.

(b) LIMITATIONS ON REIMBURSEMENT.—(1) An owner or operator of an aircraft is required to reimburse the head of a department, agency, or instrumentality of the Government for the expenses of performing an inspection or quarantine service related to the aircraft at a place of inspection during regular service hours on a Sunday or holiday only to the same extent that an owner or operator makes reimbursement for the service during regular service hours on a weekday. The head of the department, agency, or instrumentality may not assess an owner or operator of an aircraft for administrative overhead expenses for inspection or quarantine service provided by the department, agency, or instrumentality at an entry airport.

(2) This subsection does not require reimbursement for costs incurred by the Secretary of the Treasury in providing customs services described in section 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(1)).

§80504. Medals of honor

(a) MEDALS.—The President may prepare and give a bronze medal of honor with emblematic devices to an individual who by extreme daring endangers that individual's life in trying to prevent, or save the life of another in, a grave accident in the United States involving a rail carrier providing transportation in interstate commerce or involving a motor vehicle on the public streets, roads, or highways. The President may give a medal only when sufficient evidence that the individual deserves the medal has been filed under regulations prescribed by the President.

(b) RIBBONS, KNOTS, AND ROSETTES.—The President may give an individual who receives a medal a ribbon to be worn with the medal and a knot or rosette to be worn in place of the medal. The President shall prescribe the design for the ribbon, knot, and rosette. If the ribbon is lost, destroyed, or made unfit for use and the individual receiving the medal is not negligent, the President shall issue a new ribbon without charge to the individual.

(c) AVAILABILITY OF APPROPRIATIONS.—Appropriations made to the Secretary of Transportation are available to carry out this section.

PORTS OF ENTRY

Sec. 2. (a) The definitions in section 40102(a) of title 49, United States Code, apply to this section.

(b)(1) The Secretary of the Treasury may—

(A) designate ports of entry in the United States for civil aircraft arriving in the United States from a place outside the United States and property transported on that aircraft;

(B) detail to ports of entry officers and employees of the United States Customs Service the Secretary considers necessary;

(C) give an officer or employee of the United States Government stationed at a port of entry (with the consent of the head of the department, agency, or instrumentality of the Government with jurisdiction over the officer or employee) duties and powers of officers or employees of the Customs Service;

(D) by regulation, apply to civil air navigation the laws and regulations on carrying out the customs laws, to the extent and under conditions the Secretary considers necessary; and

(E) by regulation, apply to civil aircraft the laws and regulations on entry and clearance of vessels, to the extent and under conditions the Secretary considers necessary.

(2) A person violating a customs regulation prescribed under paragraph (1)(A)-(D) of this subsection or a public health or customs law or regulation made applicable to aircraft by a regulation under paragraph (1)(A)-(D) is liable to the Government for a civil penalty of $5,000 for each violation. An aircraft involved in the violation may be seized and forfeited under the customs laws. The Secretary of the Treasury may remit or mitigate a penalty and forfeiture under this paragraph.

(3) A person violating a regulation made applicable under paragraph (1)(E) of this subsection or an immigration regulation prescribed under paragraph (1)(E) is liable to the Government for a civil penalty of $5,000 for each violation. The Secretary of the Treasury or the Attorney General may remit or mitigate a penalty under this paragraph.

(4) In addition to any other penalty, when a controlled substance described in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is found on, or to have been unloaded from, an aircraft to which this subsection applies, the owner of, or individual commanding, the aircraft is liable to the Government for the penalties provided in section 584 for each violation unless the owner or individual, by a preponderance of the evidence, demonstrates that the owner or individual did not know, and by exercising the highest degree of care and diligence, could not have known, that a controlled substance was on the aircraft.

(5) If a violation under this subsection is by the owner or operator of, or individual commanding, the aircraft, the aircraft is subject to a lien for the penalty.

(c)(1) The Secretary of Agriculture by regulation may apply laws and regulations on animal and plant quarantine (including laws and regulations on importing, exporting, transporting, and quarantining animals, plants, animal and plant products, insects, bacterial and fungus cultures, viruses, and serums) to civil air navigation to the extent and under conditions the Secretary considers necessary.

(2) A person violating a law or regulation made applicable under paragraph (1) of this subsection is liable for the penalties provided under that law or regulation.

(d) A decision to remit or mitigate a civil penalty under this section is final. When libel proceedings are pending during a proceeding to remit or mitigate a penalty, the appropriate Secretary shall notify the Attorney General of the remission or mitigation proceeding.

(e)(1) An aircraft subject to a lien under this section may be seized summarily by and placed in the custody of a person authorized by regulations of the appropriate Secretary or the Attorney General. A report of the case shall be sent to the Attorney General. The Attorney General shall bring promptly a civil action in rem to enforce the lien or notify the appropriate Secretary that the action will not be brought.

(2) An aircraft seized under this section shall be released from custody when—

(A) the civil penalty or amount not remitted or mitigated is paid;

(B) the aircraft is seized under process of a court in a civil action in rem to enforce the lien;

(C) the Attorney General gives notice that a civil action will not be brought under paragraph (1) of this subsection; or

(D) a bond is deposited with the appropriate Secretary or the Attorney General in an amount and with a surety the appropriate Secretary or the Attorney General prescribes, conditioned on payment of the penalty or amount not remitted or mitigated.

(f) A civil penalty under this section may be collected by bringing a civil action against the person subject to the penalty, a civil action in rem against an aircraft subject to a lien for a penalty, or both. The action shall conform as nearly as practicable to a civil action in admiralty, regardless of the place an aircraft in a civil action in rem is seized. However, a party may demand a trial by jury of an issue of fact if the value of the matter in controversy is more than $20. An issue of fact tried by jury may be reexamined only under common law rules.

(g) Necessary amounts may be appropriated to allow the head of a department, agency, or instrumentality of the Government to acquire space at a public airport (as defined in section 47102 of title 49) when the head decides the space is necessary to carry out inspections, clearance, collection of taxes or duties, or a similar responsibility of the head, related to transporting passengers or property in air commerce. The head must consult with the Secretary of Transportation before making a decision on space.

MASS TRANSPORTATION EXEMPTION

Sec. 3. Chapter 105 of title 49, United States Code, is amended as follows:

(1) Insert immediately after section 10530 the following new section:

"§10531. Mass transportation exemption

"(a) DEFINITIONS.—The definitions in section 5302 of this title apply to this section.

"(b) PETITION FOR GRANTING EXEMPTIONS.—A State or local governmental authority may petition the Interstate Commerce Commission for an exemption from the jurisdiction of the Commission under this subchapter for mass transportation the authority provides or has provided to it by contract. Not later than 180 days after the Commission receives a petition and after notice and a reasonable opportunity for a proceeding, the Commission shall exempt the State, local governmental authority, or contractor unless the Commission finds that—

"(1) the public interest would not be served by an exemption;

"(2) the exemption would result in an unreasonable burden on interstate or foreign commerce; or

"(3) a State or local governmental authority may not regulate the mass transportation to be exempt under this section.

"(c) APPLICATION OF OTHER LAWS.—All applicable laws of the United States related to safety and to representation of employees for collective bargaining purposes, retirement, annuities, and unemployment systems, and all other laws related to employee-employer relations, apply to a State or local governmental authority that was granted, or whose contractor was granted, an exemption under this section.

"(d) CHANGING AND REVOKING EXEMPTIONS.—The Commission may change or revoke an exemption if it finds that new evidence, material error, or changed circumstances exist that materially affect the original order. The Commission may act on its own initiative or on application of an interested party.".

(2) Insert immediately below item 10530 in the analysis of the chapter the following new item:
"10531. Mass transportation exemption.".

CONFORMING PROVISIONS

SEC. 4. (a) Section 401 of the Federal Election Campaign Act of 1971 (2 U.S.C. 451) is amended by striking "Civil Aeronautics Board" and "Board or Commission" and substituting "Secretary of Transportation" and "Secretary under subpart II of part A of subtitle VII of title 49, United States Code, or such Commission,", respectively.

(b) Title 5, United States Code, is amended as follows:

(1) In section 5109, add at the end of the section the following new subsection:

"(c)(1) The position held by a fully experienced and qualified railroad safety inspector of the Department of Transportation shall be classified in accordance with this chapter, but not lower than GS–12.

"(2) The position held by a railroad safety specialist of the Department shall be classified in accordance with this chapter, but not lower than GS–13.".

(2) In section 5315, strike—

"Administrator of the St. Lawrence Seaway Development Corporation."

and substitute—

"Administrator of the Saint Lawrence Seaway Development Corporation.".

(3) In section 8172, strike "Secretary of the Treasury" and substitute "Secretary of Transportation".

(c) Section 6001(1) of title 18, United States Code, is amended by striking "the Civil Aeronautics Board,".

(d) Chapter 33 of title 28, United States Code, is amended as follows:

(1) Insert immediately after section 537 the following new section:

"§538. Investigation of aircraft piracy and related violations

"The Federal Bureau of Investigation shall investigate any violation of section 46314 or chapter 465 of title 49.".

(2) In the analysis, insert immediately after item 537 the following new item:

"538. Investigation of aircraft piracy and related violations.".

(e) Title 31, United States Code, is amended as follows:

(1) Subtitle V is amended by adding at the end of the subtitle the following new chapter:

"CHAPTER 77—LOAN REQUIREMENTS

"Sec.
"7701. Taxpayer identifying number.

"§7701. Taxpayer identifying number

"(a) In this section—

"(1) 'included Federal loan program' has the same meaning given that term in section 6103(l)(3)(C) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(l)(3)(C)).

"(2) 'taxpayer identifying number' means the identifying number required under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109).

"(b) The head of an agency administering an included Federal loan program shall require a person applying for a loan under the program to provide that person's taxpayer identifying number.".

(2) The analysis of subtitle V is amended by adding immediately after item 75 the following new item:
"77. Loan Requirements .... 7701".

(f) Title 39, United States Code, is amended as follows:

(1) In section 5007—

(A) insert the subsection designation "(a)" at the beginning of the text of the section; and

(B) add at the end of the section the following new subsection:

"(b)(1) In this subsection, 'air carrier' and 'aircraft' have the same meanings given those terms in section 40102(a) of title 49.

"(2) An air carrier engaged in transporting mail shall carry without charge on any plane it operates those agents and officers of the Postal Service traveling on official business related to transporting mail by aircraft, as prescribed by regulations of the Secretary of Transportation, on exhibiting credentials.".

(2) Amend section 5402 as follows:

(A) In subsection (a), strike "section 1302" and substitute "section 40101(a)".

(B) In subsection (b), strike "sections 1371(k) and 1386(b)", "sections 1301–1542", and "sections 1371–1386" and substitute "sections 40109(a) and (c)–(h) and 42112", "part A of subtitle VII", and "chapters 411 and 413", respectively.

(C) In subsection (d)—

(i) insert "determine rates and" after "may"; and

(ii) strike "and overseas".

(D) In subsection (e)—

(i) strike "'overseas air transportation',"; and

(ii) strike "section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)" and substitute "section 40102(a) of title 49".

(g) Section 382 of the Energy Policy and Conservation Act (42 U.S.C. 6362) is amended as follows:

(1) Strike subsection (a) and substitute the following:

"(a) In this section, 'agency' means—

"(1) the Department of Transportation with respect to part A of subtitle VII of title 49, United States Code;

"(2) the Interstate Commerce Commission;

"(3) the Federal Maritime Commission; and

"(4) the Federal Power Commission.".

(2) In subsection (b), strike "subsection (a)(1)" and substitute "subsection (a)".

(h) The Act of April 22, 1908 (45 U.S.C. 51 et seq.), is amended by inserting immediately after section 4 the following new section:

"SEC. 4A. A regulation, standard, or requirement in force, or prescribed by the Secretary of Transportation under chapter 201 of title 49, United States Code, or by a State agency that is participating in investigative and surveillance activities under section 20105 of title 49, is deemed to be a statute under sections 3 and 4 of this Act.".

(i) Title 49, United States Code, is amended as follows:

(1) In section 102, redesignate subsection (e), as enacted by section 1(b) of the Act of January 12, 1983 (Public Law 97–449, 96 Stat. 2414), as subsection (f).

(2) Amend section 106 as follows:

(A) In subsection (f), strike "Secretary shall" and substitute "Secretary of Transportation shall".

(B) Subsection (g) is amended to read as follows:

"(g) DUTIES AND POWERS OF ADMINISTRATOR.—(1) Except as provided in paragraph (2) of this subsection, the Administrator shall carry out—

"(A) duties and powers of the Secretary of Transportation under subsection (f) of this section related to aviation safety (except those related to transportation, packaging, marking, or description of hazardous material) and stated in sections 308(b), 1132(c) and (d), 40101(c), 40103(b), 40106(a), 40108, 40109(b), 40113(a), (c), and (d), 40114(a), 40119, 44501(a), (b), and (d), 44502(a)(1), (b), and (c), 44504–44508, 44511–44513, 44701–44716, 44718(c), 44721(a), 44901, 44902, 44903(a)–(c) and (e), 44906, 44912, 44935–44937, and 44938(a) and (b), chapter 451, sections 45302, 45303, 46104, 46301, 46303(c), 46304–46308, 46310, 46311, and 46313–46317, chapter 465, and sections 47504(b)(related to flight procedures), 47506(a), 48102(d)(2), and 48107 of this title; and

"(B) additional duties and powers prescribed by the Secretary of Transportation.

"(2) In carrying out sections 40119, 44901, 44903(a)–(c) and (e), 44906, 44912, 44935–44937, 44938(a) and (b), and 48107 of this title, paragraph (1)(A) of this subsection does not apply to duties and powers vested in the Director of Intelligence and Security by section 44931 of this title.".

(C) In subsection (k), insert "to the Secretary of Transportation" immediately after "appropriated".

(3A) In section 108(a)—

(A) strike—

"(a) Except when operating as a service in the Navy, the"

and substitute—

"(a)(1) The"; and

(B) add at the end of subsection (a) the following new paragraph:

"(2) Notwithstanding paragraph (1) of this subsection, the Coast Guard, together with the duties and powers of the Coast Guard, shall operate as a service in the Navy as provided under section 3 of title 14.".

(3B)(A) In section 110(a), strike "St. Lawrence" and substitute "Saint Lawrence".

(B) In the analysis of chapter 1, strike—

"110. St. Lawrence Seaway Development Corporation."

and substitute—

"110. Saint Lawrence Seaway Development Corporation.".

(4)(A) Chapter 3 is amended by inserting immediately after section 303 the following new section:

"§303a. Development of water transportation

"(a) POLICY.—It is the policy of Congress—

"(1) to promote, encourage, and develop water transportation, service, and facilities for the commerce of the United States; and

"(2) to foster and preserve rail and water transportation.

"(b) DEFINITION.—In this section, 'inland waterway' includes the Great Lakes.

"(c) REQUIREMENTS.—The Secretary of Transportation shall—

"(1) investigate the types of vessels suitable for different classes of inland waterways to promote, encourage, and develop inland waterway transportation facilities for the commerce of the United States;

"(2) investigate water terminals, both for inland waterway traffic and for through traffic by water and rail, including the necessary docks, warehouses, and equipment, and investigate railroad spurs and switches connecting with those water terminals, to develop the types most appropriate for different locations and for transferring passengers or property between water carriers and rail carriers more expeditiously and economically;

"(3) consult with communities, cities, and towns about the location of water terminals, and cooperate with them in preparing plans for terminal facilities;

"(4) investigate the existing status of water transportation on the different inland waterways of the United States to learn the extent to which—

"(A) the waterways are being used to their capacity and are meeting the demands of traffic; and

"(B) water carriers using those waterways are interchanging traffic with rail carriers;

"(5) investigate other matters that may promote and encourage inland water transportation; and

"(6) compile, publish, and distribute information about transportation on inland waterways that the Secretary considers useful to the commercial interests of the United States.".

(B) The analysis of chapter 3 is amended by inserting immediately after item 303 the following new item:

"303a. Development of water transportation.".

(5) Amend section 329 as follows:

(A) In subsection (b)(1)—

(i) strike "title VII of the Federal Aviation Act of 1958 (49 U.S.C. 1441 et seq.)" and substitute "chapter 11 of this title";

(ii) strike "and overseas" and "or overseas" wherever it appears; and

(iii) strike "section 419 of the Federal Aviation Act of 1958" and substitute "subchapter II of chapter 417 of this title".

(B) In subsection (d), strike "the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.)" and substitute "part A of subtitle VII of this title".

(6) In section 331(b), strike "services, supplies, and facilities provided under subsection (a)(1), (2), and (3) of this section" and substitute "medical treatment provided under subsection (a)(1) of this section and for supplies and services provided under subsection (a)(2) and (3) of this section".

(7)(A) Sections 334 and 335 are repealed.

(B) Items 334 and 335 in the analysis of chapter 3 are repealed.

(8)(A) Chapter 3 is amended by adding immediately after section 336 the following:

"§337. Budget request for the Director of Intelligence and Security

"The annual budget the Secretary of Transportation submits shall include a specific request for the Office of the Director of Intelligence and Security. In deciding on the budget request for the Office, the Secretary shall consider recommendations in the annual report submitted under section 44938(a) of this title.

"SUBCHAPTER III—MISCELLANEOUS

"§351. Judicial review of actions in carrying out certain transferred duties and powers

"(a) JUDICIAL REVIEW.—An action of the Secretary of Transportation in carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89-670, 80 Stat. 931), or an action of the Administrator of the Federal Railroad Administration, the Federal Highway Administration, or the Federal Aviation Administration in carrying out a duty or power specifically assigned to the Administrator by that Act, may be reviewed judicially to the same extent and in the same way as if the action had been an action by the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer or assignment.

"(b) APPLICATION OF PROCEDURAL REQUIREMENTS.—A statutory requirement related to notice, an opportunity for a hearing, action on the record, or administrative review that applied to a duty or power transferred by the Act applies to the Secretary or Administrator when carrying out the duty or power.

"(c) NONAPPLICATION.—This section does not apply to a duty or power transferred from the Interstate Commerce Commission to the Secretary under section 6(e)(1)–(4) and (6)(A) of the Act.

"§352. Authority to carry out certain transferred duties and powers

"In carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89-670, 80 Stat. 931), the Secretary of Transportation and the Administrators of the Federal Railroad Administration, the Federal Highway Administration, and the Federal Aviation Administration have the same authority that was vested in the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer. An action of the Secretary or Administrator in carrying out the duty or power has the same effect as when carried out by the department, agency, or instrumentality.

"§353. Toxicological testing of officers and employees

"(a) COLLECTING SPECIMENS.—When the Secretary of Transportation or the head of a component of the Department of Transportation conducts post-accident or post-incident toxicological testing of an officer or employee of the Department, the Secretary or head shall collect the specimen from the officer or employee as soon as practicable after the accident or incident. The Secretary or head shall try to collect the specimen not later than 4 hours after the accident or incident.

"(b) REPORTS.—The head of each component shall submit a report to the Secretary on the circumstances about the amount of time required to collect the specimen for a toxicological test conducted on an officer or employee who is reasonably associated with the circumstances of an accident or incident under the investigative jurisdiction of the National Transportation Safety Board.

"(c) NONCOMPLIANCE NOT A DEFENSE.—An officer or employee required to submit to toxicological testing may not assert failure to comply with this section as a claim, cause of action, or defense in an administrative or judicial proceeding.".

(B) The analysis of chapter 3 is amended by adding immediately after item 336 the following:

"337. Budget request for the Director of Intelligence and Security.

"SUBCHAPTER III—MISCELLANEOUS

"351. Judicial review of actions in carrying out certain transferred duties and powers.

"352. Authority to carry out certain transferred duties and powers.

"353. Toxicological testing of officers and employees.".

(9) In sections 502(e)(2) and 10321(d)(3), insert "judge" after "United States magistrate".

(10) Section 10362(b)(5) is amended to read as follows:

"(5) prescribe regulations that contain standards for the computation of subsidies for rail passenger transportation (except passenger transportation compensation disputes subject to the jurisdiction of the Commission under sections 24308(a) and 24903(c)(2) of this title) that are consistent with the compensation principles described in the final system plan established under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and that avoid cross-subsidization among commuter, intercity, and freight rail transportation;".

(11) In sections 10363(c) and 10383(c), strike "rate for GS-18" and substitute "maximum rate payable under section 5376 of title 5".

(12) In section 10501(d)—

(A) strike "procedures of this title" and substitute "procedures of this subtitle"; and

(B) strike "provided in this title" and substitute "provided in this subtitle".

(13) In section 10504—

(A) strike "local public body" wherever it appears and substitute "local governmental authority";

(B) strike "rail mass transportation" wherever it appears and substitute "mass transportation";

(C) in subsection (a)(1)(A), strike "section 1608(c)(2)" and substitute "section 5302(a)"; and

(D) in subsection (a)(2), strike "section 1608(c)(5)" and substitute "section 5302(a)".

(14) In section 10526(a)—

(A) in clause (8)(B), strike "Civil Aeronautics Board or its successor agency" and substitute "Secretary of Transportation";

(B) in clause (10), strike "work." and substitute "work;";

(C) in clause (13), strike "or"; and

(D) in clause (14), strike "title." and substitute "title; or".

(15) In section 10701a(b)(3), strike "policy of this title" and substitute "policy of this subtitle".

(16) In section 10705a(g)(3)—

(A) before clause (A), strike "provision of this title" and substitute "provision of this subtitle"; and

(B) in clause (A), strike "service over any rate" and substitute "service over any route".

(17) In section 10707(d)—

(A) in paragraph (2), strike "under this title" and substitute "under this subtitle"; and

(B) in paragraph (3), strike "title" wherever it appears and substitute "subtitle".

(18) In section 10707a(b)(1), strike "paragraph (2)" and substitute "paragraph (3)".

(19) In section 10731(e), strike "provision of this title" and substitute "provision of this subtitle".

(20) In section 10749(b)(2), strike "Civil Aeronautics Board under the Federal Aviation Act of 1958 (49 App. U.S.C. 1301 et seq.)" and substitute "Secretary of Transportation under part A of subtitle VII of this title".

(21) In section 10751(b), strike "purposes of this title" and substitute "purposes of this subtitle".

(22) In section 10905(d)(1) and (e), strike "government authority" and substitute "governmental authority".

(23) In section 10910—

(A) in subsection (a)(1), strike "government authority" and substitute "governmental authority"; and

(B) in subsection (g)(1), strike "provisions of this title" and substitute "provisions of this subtitle".

(24) In section 10924(e), insert "of" after "protection".

(25) In the analysis of chapter 111—

(A) in item 11128, strike "Water" and substitute "War"; and

(B) in item 11142, strike "systems" and substitute "system".

(26) In section 11162(a), strike "proceedings under this title" and substitute "proceedings under this subtitle".

(27) In section 11163, strike "purposes of this title" and substitute "purposes of this subtitle".

(28) In section 11166(a), strike "pursuant to this title" and substitute "under this subtitle".

(29) In section 11167, strike "under this title" and substitute "under this subtitle".

(30) In section 11501(b)(3)(A), strike "title" and substitute "subtitle".

(31) In section 11909(b), strike "1966,," and substitute "1966,".

(j) Effective January 1, 1999, the following sections of title 49, United States Code, as enacted by section 1 of this Act, are amended as follows:

(1) In sections 41107, 41901(b)(1), 41902(a), and 41903, strike "transportation or between places in Alaska" wherever it appears and substitute "transportation".

(2) Strike section 41901(g).

(3) In section 41902(b)—

(A) strike clause (3); and

(B) in clause (4), strike "clauses (1)–(3)" and substitute "clauses (1) and (2)".

(k) Section 5109 of title 49, United States Code, as enacted by section 1 of this Act, is effective November 16, 1992.

(l) The Act of June 29, 1940 (ch. 444, 54 Stat. 686), is amended as follows:

(1) Except as provided in paragraphs (2) and (3) of this subsection, strike "Administrator" wherever it appears and substitute "Secretary".

(2) In subsection (a) of the first section, strike "'Administrator' means the Administrator of the Federal Aviation Agency" and substitute "'Secretary' means the Secretary of Transportation".

(3) In section 4(a), strike "Administrator, and any Federal Aviation Agency" and substitute "Secretary, and any Department of Transportation".

(4) In section 6, strike "United States commissioner" wherever it appears and substitute "United States magistrate judge".

(m) The Act of September 7, 1950 (ch. 905, 64 Stat. 770), is amended as follows:

(1) Except as provided in paragraph (2) of this subsection, strike "Administrator" wherever it appears and substitute "Secretary".

(2) In the first section, strike "Administrator of the Federal Aviation Agency" and "'Administrator'" and substitute "Secretary of Transportation" and "'Secretary'", respectively.

(3) In sections 4 and 8(a), strike "Federal Aviation Agency" and substitute "Department of Transportation".

(4) In section 8(d), strike "United States Commissioner" wherever it appears and substitute "United States magistrate judge".

(n) Section 101(1st complete par. on p. 646) of the Act of August 30, 1964 (Public Law 88–507, 78 Stat. 646), is amended by striking "Administrator of the Federal Aviation Agency" and substituting "Secretary of Transportation".

(o) Section 9111 of the Anti-Drug Abuse Act of 1988 (Public Law 100–690, 102 Stat. 4531) is amended as follows:

(1) In the introductory language of subsection (b)(1), strike "Subsection (b) of section 10530 of such title is amended by striking out paragraph (1) and inserting in lieu thereof the following new paragraph:" and substitute "Subsection (b)(1) of section 10530 of title 49 is amended to read as follows:".

(2) In subsection (b)(2), strike "Such subsection" and substitute "Subsection (b) of section 10530".

(3) In the introductory language of subsection (f)(1), strike "Subsection (g) of such section is amended by striking out paragraph (1) and inserting in lieu thereof the following:" and substitute "Subsection (g)(1) of section 10530 of title 49 is amended to read as follows:".

(4) In subsection (f)(2), strike "Such subsection" and substitute "Subsection (g) of section 10530".

(p) Section 4007(e) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 Stat. 2153) is amended by inserting "and section 31307 of title 49, United States Code" immediately after "this section".

(q) The revision of regulations, referred to in section 32705(b)(2)(A) of title 49, United States Code, as enacted by section 1 of this Act, that is required by section 7 of the Independent Safety Board Act Amendments of 1990 (Public Law 101–641, 104 Stat. 4657) shall be prescribed not later than May 28, 1991.

(r) Section 165 of the Surface Transportation Assistance Act of 1982 (Public Law 97–424, 96 Stat. 2136) is amended as follows:

(1) In subsections (a) and (d), strike "the Urban Mass Transportation Act of 1964,".

(2) In subsection (b)—

(A) after the semicolon at the end of clause (2), add "or"; and

(B) strike clause (3).

CONFORMING CROSS-REFERENCES

Sec. 5. (a) Sections 551(1)(H) and 701(b)(1)(H) of title 5, United States Code, are amended by striking "or sections 1622," and substituting "subchapter II of chapter 471 of title 49; or sections".

(b) Title 10, United States Code, is amended as follows:

(1) In section 2640—

(A) in subsections (a)(1)(A) and (d)(1)(B)(i), strike "title VI of the Federal Aviation Act of 1958 (49 U.S.C. App. 1421 et seq.)" and substitute "chapter 447 of title 49"; and

(B) in subsection (i), strike "sections 101(3), 101(5), 101(10), and 101(15), respectively, of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(3), 1301(5), 1301(10), and 1301(15))" and substitute "section 40102(a) of title 49".

(2) In section 9511(1), strike "section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)" and substitute "section 40102(a) of title 49".

(3) In section 9512(b)(4), strike "section 501 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1401)" and substitute "section 44103 of title 49".

(c) Section 1110(a) of title 11, United States Code, is amended by striking "section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)", "subsection B(4) of the Ship Mortgage Act, 1920 (46 U.S.C. 911(4))", and "Civil Aeronautics Board" and substituting "section 40102(a) of title 49", "section 30101 of title 46", and "Secretary of Transportation", respectively.

(d) The last sentence of section 82 of title 14, United States Code, is amended to read as follows: "Nothing in this title shall be deemed to limit the authority granted by chapter 167 of title 10 or part A of subtitle VII of title 49.".

(e) Title 18, United States Code, is amended as follows:

(1) In section 31, strike "the Federal Aviation Act of 1958, as amended" and substitute "sections 40102(a) and 46501 of title 49".

(2) In the last sentence of sections 112(e), 878(d), 1116(c), and 1201(e), strike "section" and all that follows and substitute "section 46501(2) of title 49.".

(3) In section 511(c)—

(A) in clause (1), strike "the National Traffic and Motor Vehicle Safety Act of 1966, or the Motor Vehicle Information and Cost Savings Act" and substitute "chapter 301 and part C of subtitle VI of title 49"; and

(B) in clause (2), strike "section 2 of the Motor Vehicle Information and Cost Savings Act" and substitute "section 32101 of title 49".

(4) In section 512(a)(2)(A), strike "the National Traffic and Motor Vehicle Safety Act of 1966" and substitute "chapter 301 of title 49".

(5) In section 553(c)—

(A) in clause (1), strike "section 2 of the Motor Vehicle Information and Cost Savings Act" and substitute "section 32101 of title 49"; and

(B) in clause (4), strike "section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301)" and substitute "section 40102(a) of title 49".

(6) In section 831(c)(1), strike "section 101 of the Federal Aviation Act of 1958 (49 U.S.C. 1301)" and substitute "section 46501 of title 49".

(7) In section 844(g)(2)(B), strike "the Hazardous Materials Transportation Act (49 App. U.S.C. 1801, et seq.)" and substitute "chapter 51 of title 49".

(8) In section 1201(a)(3), strike "section" and all that follows and substitute "section 46501 of title 49;".

(9) In section 1366(c), strike "interstate transmission facilities, as defined in section 2 of the Natural Gas Pipeline Safety Act of 1968" and substitute "an interstate gas pipeline facility as defined in section 60101 of title 49".

(10) In section 2318(c)(1), strike "section 101 of the Federal Aviation Act of 1958" and substitute "section 46501 of title 49".

(11) In section 2516(1)(j), strike "section" and all that follows and substitute "section 60120(b) (relating to destruction of a natural gas pipeline) or 46502 (relating to aircraft piracy) of title 49;".

(12) In section 3663(a)(1), strike "under subsection (h), (i), (j), or (n) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472)" and substitute "section 46312, 46502, or 46504 of title 49".

(f) Title 23, United State Code, is amended as follows:

(1) In section 103(e)(4)(L)—

(A) in clause (i), strike "the Urban Mass Transportation Act of 1964" and substitute "chapter 53 of title 49"; and

(B) in clause (ii), strike "section 3(e)(4) of the Urban Mass Transportation Act of 1964" and substitute "section 5323(a)(1)(D) of title 49".

(2) In section 142—

(A) in subsection (a)(2), strike "the Federal Transit Act" and substitute "chapter 53 of title 49";

(B) in subsection (h), strike "the Urban Mass Transportation Act of 1964, as amended" and substitute "chapter 53 of title 49"; and

(C) in subsection (i), strike "section 3(e)(4) of the Urban Mass Transportation Act of 1964, as amended," and substitute "section 5323(a)(1)(D) of title 49".

(3) In section 157(a)(2) and (3)(A), strike "section 404 of the Surface Transportation Assistance Act of 1982" and substitute "section 31104 of title 49".

(g) The Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) is amended as follows:

(1) In section 4064(b)(1)(B), strike "section 501 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001)" and substitute "section 32901 of title 49, United States Code,".

(2) In section 4261 (e) and (f)(2), strike "the Airport and Airway Improvement Act of 1982" and substitute "section 44509 or 44913(b) or subchapter I of chapter 471 of title 49, United States Code,".

(3) In section 9502(d)(1)(B), strike "the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 et seq.)," and substitute "part A of subtitle VII of title 49, United States Code,".

(h) Title 31, United States Code, is amended as follows:

(1) In section 3711(c)(2), strike "section 6 of the Act of March 2, 1893 (45 U.S.C. 6), section 4 of the Act of April 14, 1910 (45 U.S.C. 13), section 9 of the Act of February 17, 1911 (45 U.S.C. 34), and section 25(h) of the Interstate Commerce Act (49 App. U.S.C. 26(h))" and substitute "section 21302 of title 49 for a violation of chapter 203, 205, or 207 of title 49 or a regulation or requirement prescribed or order issued under any of those chapters".

(2) In section 3726(b)(1), strike "the Federal Aviation Act of 1958" and substitute "section 40102(a) of title 49".

(i) Section 210(a)(4) of title 35, United States Code, is amended by striking "section 106(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1395(c); 80 Stat. 721)" and substituting "section 30168(e) of title 49".

(j) Title 39, United States Code, is amended as follows:

(1) In section 3401 (b) and (c), strike "section 1376" and substitute "section 41901".

(2) In section 5005(b)(3), strike "section 101 of the Federal Aviation Act of 1958" and substitute "section 40102(a) of title 49".

(3) In section 5401(b), strike "sections 1301–1542" and substitute "part A of subtitle VII".

(k) Section 2101(14)(C) of title 46, United States Code, is amended by striking "section 104 of the Hazardous Materials Transportation Act (49 App. U.S.C. 1803)" and substituting "section 5103(a) of title 49".

(l) Title 49, United States Code, is amended as follows:

(1) In section 103(c)(1), strike "section 6(e)(1), (2), and (6)(A) of the Department of Transportation Act (49 App. U.S.C. 1655(e)(1), (2), and (6)(A))" and substitute "section 20134(c) and chapters 203–211 of this title, and chapter 213 of this title in carrying out chapters 203–211".

(2) In section 104(c)(2), strike "31" and substitute "315".

(3) In section 105(d), strike "the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.)" and substitute "chapter 301 of this title".

(4) In section 106—

(A) in subsection (h), strike "Section 103 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1303)" and substitute "Section 40101(d) of this title"; and

(B) in subsection (j), strike "section 312(e) of the Federal Aviation Act of 1958" and substitute "section 44507 of this title".

(5) In section 109(a) and (b), insert "App." immediately after "(46".

(6) In section 302(b), strike "Subtitle I and chapter 31 of subtitle II of this title and the Department of Transportation Act (49 App. U.S.C. 1651 et seq.)" and substitute "This subtitle and chapters 221 and 315 of this title".

(7) In section 306(b), strike "section 332 or 333 of this title, section 211 or 216 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721, 726), title V or VII of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq., 851 et seq.), or section 4(i) or 5 of the Department of Transportation Act (49 App. U.S.C. 1653(i), 1654)" and substitute "section 332 or 333 or chapter 221 or 249 of this title, section 211 or 216 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 721, 726), or title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.)".

(8) In section 321, strike "section 101(2), (4), and (8) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1301(2), (4), (8))" and substitute "section 40102(a) of this title".

(9) In section 501—

(A) in subsection (a)(2), strike "section 3101" and substitute "section 31501";

(B) in subsection (a)(3), strike "section 3102(c)" and substitute "section 31502(c)"; and

(C) strike subsection (b) and substitute the following:

"(b) APPLICATION.—This chapter only applies in carrying out sections 20302(a)(1)(B) and (C), (2), and (3), (c), and (d)(1) and 20303 and chapters 205 (except section 20504(b)), 211, 213 (in carrying out those sections and chapters), and 315 of this title.".

(10) In section 507(c), strike "section 3102 of this title or the Motor Carrier Safety Act of 1984" and "such section or Act" and substitute "subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title" and "any of those provisions", respectively.

(11) In section 521(b)—

(A) in paragraph (1)(A), strike "section 3102 of this title or the Motor Carrier Safety Act of 1984 or section 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986" and "such sections or Act" and substitute "a provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), 31310(g)(1)(A), or 31502 of this title" and "any of those provisions", respectively;

(B) in paragraph (2)(A), strike "pursuant to section 3102 of this title or the Motor Carrier Safety Act of 1984" and substitute "under subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title";

(C) in paragraph (2)(B), strike "section 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986" and substitute "section 31302, 31303, 31304, 31305(b), or 31310(g)(1)(A) of this title";

(D) in paragraph (3), strike "section 3102 of this title or the Motor Carrier Safety Act of 1984 or section 12002, 12003, 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986" and substitute "subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), or 31502 of this title";

(E) in paragraph (5)(A), strike "section 3102 of this title or the Motor Carrier Safety Act of 1984 or section 12002, 12003, 12004, or 12005(b) of the Commercial Motor Vehicle Safety Act of 1986" and "such sections or Act" and substitute "a provision of subchapter III of chapter 311 (except sections 31138 and 31139) or section 31302, 31303, 31304, 31305(b), or 31502 of this title" and "any of those provisions", respectively;

(F) in paragraph (6)(A), strike "section 3102 of this title, the Motor Carrier Safety Act of 1984", "such section or Act", and "liable" and substitute "subchapter III of chapter 311 (except sections 31138 and 31139) or section 31502 of this title", "any of those provisions", and "subject", respectively;

(G) in paragraph (6)(B)(i), strike "section 12002, 12003(b), 12003(c), 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986" and substitute "section 31302, 31303(b) or (c), 31304, 31305(b), or 31310(g)(1)(A) of this title";

(H) in paragraph (6)(B)(ii), strike "section 12019 of such Act", "section 12003(a) of such Act", and "such section 12003(a)" and substitute "section 31301 of this title", "section 31303(a) of this title", and "section 31303(a)", respectively;

(I) in paragraph (12), strike "any provision of the Hazardous Materials Transportation Act (49 U.S.C. App. 1801–1812)" and "such Act" and substitute "chapter 51 of this title" and "chapter 51", respectively; and

(J) in paragraph (13), strike "section 204 of the Motor Carrier Safety Act of 1984" and substitute "section 31132 of this title".

(12) In section 526, strike "this chapter, section 3102 of this title, or the Motor Carrier Safety Act of 1984, a person that knowingly and willfully violates a provision of this chapter or such section or Act, or a regulation or order of the Secretary of Transportation under this chapter or such section or Act" and substitute "a provision of this chapter, subchapter III of chapter 311 (except sections 31138 and 31139), or section 31502 of this title, a person that knowingly and willfully violates any of those provisions or a regulation or order of the Secretary of Transportation under any of those provisions".

(13) In section 10102(9), strike "the Federal Aviation Act of 1958" and substitute "part A of subtitle VII of this title".

(14) In section 10322(a), strike "subtitle" wherever it appears and substitute "title".

(15) In sections 10364(a) and 10385(a), strike "section 5 of title 41" and substitute "section 3709 of the Revised Statutes (41 U.S.C. 5)".

(16) In sections 10527(a), strike "subchapter" and substitute "title".

(17) In section 10528, strike "subchapter" and "subtitle" wherever either word appears and substitute "title".

(18) In section 10529(a), strike "(12 U.S.C. 1141j(a))" and substitute "(12 U.S.C. 1141j(a)))".

(19) In sections 10542(a)(2) and 10544(d)(1)(B), insert "App." immediately after "(46" wherever it appears.

(20) In section 10561(b)(1), strike "chapter 20" and substitute "part A of subtitle VII".

(21) In section 10703(a)(4)—

(A) in paragraph (D)(ii), insert "App." immediately after "(46" wherever it appears; and

(B) in paragraph (E), strike "(46 U.S.C. 801 et seq.)" and "(46 U.S.C. 843–848)" and substitute "(46 App. U.S.C. 801 et seq.)" and "(46 App. U.S.C. 843 et seq.)", respectively.

(22) In section 10721(a)(1), strike "Section 5 of title 41" and substitute "Section 3709 of the Revised Statutes (41 U.S.C. 5)".

(23) In section 10735(b)(1), strike "under this title" and substitute "under this subtitle".

(24) In section 10903(b)(2), strike "section 11347 of this title and section 405(b) of the Rail Passenger Service Act (45 U.S.C. 565(b))" and substitute "sections 11347 and 24706(c) of this title".

(25) In section 10922—

(A) in subsection (c)(1)(E), strike "provisions of section 12(f) of the Urban Mass Transportation Act of 1964" and substitute "section 10531 of this title";

(B) in subsection (c)(2)(D), strike "subtitle" wherever it appears and substitute "title";

(C) in subsection (c)(4)(C) and (j)(1), strike "subchapter" wherever it appears and substitute "title"; and

(D) in subsection (j)(2)(C), strike "subtitle" and substitute "title".

(26) In section 10927(a)(1), insert "section" before "10923".

(27) In section 10935(a) and (e)(3), strike "subchapter" and substitute "title".

(28) In section 11125(b)(2)(A), strike "the Federal Railroad Safety Act of 1970 (45 U.S.C. 431 et seq.)" and substitute "chapter 201 of this title".

(29) In section 11126(a), strike "11501(c)" and substitute "11501(f)".

(30) In section 11303(a), strike "the Ship Mortgage Act, 1920" wherever it appears and substitute "chapter 313 of title 46".

(31) In section 11347, strike "section 405 of the Rail Passenger Service Act (45 U.S.C. 565)" and substitute "sections 24307(c), 24312, and 24706(c) of this title".

(32) In section 11348(a), strike "section 504(f)," and substitute "sections 504(f) and".

(33) In section 11504(b)(2), strike "section 204 of the Motor Carrier Safety Act of 1984 (49 App. U.S.C. 2503)" and substitute "section 31132 of this title".

(34) In section 11701(a), strike "section 10530 of this subtitle" and substitute "section 10530 of this title".

LEGISLATIVE PURPOSE AND CONSTRUCTION

Sec. 6. (a) Sections 1–4 of this Act restate, without substantive change, laws enacted before August 27, 1992, that were replaced by those sections. Those sections may not be construed as making a substantive change in the laws replaced. Laws enacted after August 26, 1992, that are inconsistent with this Act supersede this Act to the extent of the inconsistency.

(b) A reference to a law replaced by sections 1–4 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

(c) An order, rule, or regulation in effect under a law replaced by sections 1–4 of this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

(d) An action taken or an offense committed under a law replaced by sections 1–4 of this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

(e) An inference of legislative construction is not to be drawn by reason of the location in the United States Code of a provision enacted by this Act or by reason of a caption or catch line of the provision.

(f) If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this Act is held invalid in any of its applications, the provision remains valid for all valid applications that are severable from any of the invalid applications.

REPEALS

Sec. 7. (a) The repeal of a law by this Act may not be construed as a legislative implication that the provision was or was not in effect before its repeal.

(b) The laws specified in the following schedule are repealed, except for rights and duties that matured, penalties that were incurred, and proceedings that were begun before the date of enactment of this Act:

Schedule of Laws Repealed

Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
1864 July 2	216	15	13	362	45	83
1873 Mar. 3	226	2(words after 2d semicolon)	17	508		
1874 June 20	331		18	111	45	83
June 22	414		18	200	45	89
1879 Mar. 3	183	1(4th par. on p. 420)	20	420	45	90
1887 Feb. 4	104	25	24	379	49 App.	26
Mar. 3	345		24	488	45	94, 95
1893 Mar. 2	196		27	531	45	1–7
1896 Apr. 1	87		29	85	45	6
1897 Mar. 3	386	(proviso under heading "Transportation and Recruiting, Marine Corps").	29	663	45	91
1901 Mar. 3	831	(last proviso of last par. under heading "Pay Department")	31	1023	45	92
1903 Mar. 2	976		32	943	45	10
1905 Feb. 23	744		33	743	49 App.	1201–1203
1906 June 29	3594		34	607	45	71–74
June 30	P.R. 46		34	838	45	35
1907 Mar. 4	2939		34	1415	45	61–64b
1908 May 27	200	1(6th par. last sentence under heading "Interstate Commerce Commission", 1st complete par. on p. 325).	35	325	45	36, 37
1909 Mar. 4	299	1(6th par. last sentence under heading "Interstate Commerce Commission").	35	965	45	37
1910 Apr. 14	160		36	298	45	11–16
May 6	208		36	350	45	38–43
1911 Feb. 17	103		36	913	45	22–29, 31–34
1915 Mar. 4	169		38	1192	45	23, 30
1916 May 4	109		39	61	45	63
Aug. 29	415		39	538	49 App.	81–124
1920 Feb. 28	91	441, 500	41	498, 499	49 App.	26, 142

Schedule of Laws Repealed—Continued

Statutes at Large

Date	*Chapter or Public Law*	*Section*	*Statutes at Large*		*U.S. Code*	
			Volume	*Page*	*Title*	*Section*
1921						
Mar. 4	*161*	*1(last proviso in par. under heading "Transportation Facilities on Inland and Coastal Waterways").*	*41*	*1392*	*49 App.*	*141*
Dec. 15	*1*	*1(last par. under heading "Board of Mediation and Conciliation").*	*42*	*328*	*45*	*126*
1924						
June 7	*355*		*43*	*659*	*45*	*22, 23, 25, 27*
1927						
Mar. 4	*510*		*44*	*1446*	*49 App.*	*102*
1929						
Feb. 28	*369*		*45*	*1404*	*49 App.*	*173*
1931						
Feb. 14	*189*		*46*	*1162*	*49 App.*	*231*
1934						
June 13	*498*		*48*	*954*	*49 App.*	*264*
June 19	*654*		*48*	*1113*	*49 App.*	*171–173a, 175, 179–184*
	656	*2*	*48*	*1116*	*49 App.*	*181*
1935						
Aug. 7	*455*		*49*	*540*	*49 App.*	*231*
1937						
Aug. 26	*818*		*50*	*835*	*49 App.*	*26*
1939						
June 27	*244*		*53*	*855*	*49 App.*	*751–757*
Aug. 9	*618*		*53*	*1291*	*49 App.*	*781–789*
	633	*1(1st. par. under heading "Civil Aeronautics Authority.")*	*53*	*1302*	*49 App.*	*682*
1940						
Apr. 22	*124*		*54*	*148*	*45*	*24–34*
July 2	*526*		*54*	*735*	*49 App.*	*485*
Sept. 18	*722*	*14(b)*	*54*	*919*	*49 App.*	*26*
1941						
June 28	*258*	*201(last par. under heading "Civil Aeronautics Board")*	*55*	*282*	*49 App.*	*422a*
1942						
July 24	*522*		*56*	*704*	*49 App.*	*752*
1943						
May 7	*94*	*(par. under heading "Office of Administrator of Civil Aeronautics").*	*57*	*80*	*49 App.*	*758*
June 10	*121*		*57*	*150*	*49 App.*	*752*
1944						
June 30	*333*		*58*	*648*	*49 App.*	*757*
July 1	*373*	*813(5th, 6th complete pars. on p. 718)*	*58*	*718*	*49 App.*	*177, 181*
Oct. 3	*479*	*13(g)*	......		*50 App.*	*1622*
1946						
Aug. 8	*911*		*60*	*944*	*49 App.*	*603*
1947						
May 27	*85*		*61*	*120*	*45*	*24–26*
July 30	*404*	*2*	*61*	*678*	*50 App.*	*1622*
Aug. 4	*471*		*61*	*743*	*49 App.*	*643*

Schedule of Laws Repealed—Continued

Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
1948						
Apr. 17	192		62	173	49 App.	1101, 1102, 1106, 1108, 1109
June 16	473		62	450	49 App.	1151, 1151(note), 1152–1159a, 1160
	482		62	470	49 App.	524
June 19	523		62	493	49 App.	401, 523
June 25	646	4	62	986	45	87
June 29	713		62	1093	49 App.	452
	738		62	1111	49 App.	1116
July 1	792		62	1216	49 App.	452, 459, 551
1949						
July 25	359		63	478	49 App.	1111
July 26	362		63	480	49 App.	622
	363		63	480	49 App.	1114
Aug. 12	423		63	603	49 App.	1113
Aug. 15	426		63	605	49 App.	1109
Aug. 30	520		63	678	49 App.	427
Oct. 1	589		63	700	50 App.	1622–1622c
Oct. 25	724		63	903	49 App.	1105
Oct. 26	751		63	925	49 App.	1104
1950						
Feb. 9	5		64	4	49 App.	1107
Mar. 18	72	6, 7	64	28	49 App.	1102, 1108
Aug. 3	517		64	395	49 App.	622
Aug. 5	591		64	414	49 App.	177, 181
Aug. 8	643		64	417	49 App.	457
Aug. 9	655		64	427	49 App.	781
Sept. 9	938		64	825	49 App.	701–705
Sept. 27	1055		64	1071	49 App.	1104
Sept. 29	1107		64	1079	49 App.	460
Sept. 30	1117		64	1090	49 App.	1181–1185
1951						
Jan. 9	1214		64	1237	49 App.	1109
June 14	123		65	65	49 App.	401, 711–722
Oct. 11	495	3, 4	65	407	49 App.	177, 560
Oct. 31	655	55(b)	65	729	49 App.	787
1952						
June 28	485	1(5)	66	286	49 App.	485
July 14	740		66	628	49 App.	401, 491, 622
1953						
July 8	181		67	140	49 App.	1116
Aug. 8	379		67	489	49 App.	176

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Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
1955 May 19	41		69	49	49 App.	481
Aug. 3	494		69	441	49 App.	1101–1103, 1104, 1105, 1107, 1108, 1111
1956 July 20	650		70	591	49 App.	481
	655		70	594	49 App.	722
Aug. 1	816		70	784	49 App.	483
	852	22	70	911	49 App.	789
1957 June 13	85–50		71	69	49 App.	1201–1203
Aug. 14	85–135		71	352	45	6, 13, 34, 63
Aug. 26	85–166		71	415	49 App.	481
Sept. 7	85–307		71	629	49 App.	1324(note)
1958 Apr. 9	85–373		72	84	49 App.	486
Apr. 11	85–375		72	86	45	9
July 7	85–507	21(b)(3), (c)	72	337, 338	49 App.	457, 603
Aug. 23	85–726	(less 613(a), (b), 1402(a), (e)–(g), 1404, 1406, 1411)	72	731	49 App.	1301–1308, 1321–1325, 1341–1346, 1347–1356, 1357–1359, 1371, 1372–1376, 1377–1389, 1401–1406, 1421–1434, 1441–1443, 1461–1463, 1471–1474, 1481, 1482, 1483–1490, 1501–1515, 1516–1518, 1531–1542, 1551
1959 Mar. 18	86–3	21	73	13	49 App.	1324(note)
June 25	86–70	39	73	150	49 App.	1324(note)
June 29	86–72		73	155	49 App.	1101, 1102, 1104, 1106, 1108, 1109, 1112
July 8	86–81		73	180	49 App.	1403, 1404
Aug. 11	86–154		73	333	49 App.	1743
Aug. 25	86–199		73	427	49 App.	1485
Sept. 21	86–295		73	572	49 App.	1105
1960 June 29	86–546	1	74	255	49 App.	1486
July 12	86–624	37	74	421	49 App.	1324(note)
	86–627		74	445	49 App.	1373
July 14	86–661		74	527		
Sept. 13	86–758		74	901	49 App.	1378, 1378(note)
	86–762		74	903	45	38, 42, 43
1961 July 20	87–89		75	210	49 App.	1542

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Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Volume	Page	Title	Section
Sept. 5	87–197		75	466	49 App.	1301, 1472, 1511
Sept. 13	87–221		75	494	15	1281, 1282
	87–225		75	497	49 App.	1486
Sept. 20	87–255		75	523	49 App.	1101–1106, 1108–1110, 1112, 1509
Oct. 4	87–367	103(2), (6), (15), 205	75	787, 788, 791	49 App.	1322, 1343, 1343(note)
1962						
July 10	87–528		76	143	49 App.	1301, 1371, 1371(note), 1376, 1387, 1471, 1472
Oct. 15	87–810		76	921	49 App.	1323, 1441, 1472, 1505
	87–820		76	936	49 App.	1324(note), 1380
1964						
Mar. 11	88–280		78	158	49 App.	1101–1106, 1107a, 1108–1111, 1113, 1120
June 30	88–346		78	236	49 App.	1403, 1406, 1406(note)
July 2	88–349	2	78	239	49 App.	1114
July 9	88–365		78	302	49 App.	1601, 1601(note), 1602, 1603, 1604, 1605–1625
Aug. 14	88–426	305(16)	78	424	49 App.	1321, 1341, 1342
1965						
Aug. 10	89–117	304(b), 1109	79	475, 507	49 App.	1605, 1608
Sept. 30	89–220	13	.....		49 App.	1643
Nov. 8	89–348	1(6)	79	1310	49 App.	1539
1966						
June 13	89–447		80	199	49 App.	1542
Sept. 8	89–562		80	715	49 App.	1602, 1603, 1605, 1607a(note), 1607b, 1607c, 1608–1611
Sept. 9	89–563	(less 401)	80	718	15	1301–1303, 1321–1323, 1381, 1381(note), 1391–1403, 1403(note), 1404–1431
Oct. 13	89–647		80	894	49 App.	1104, 1105
Oct. 15	89–670	1–8(a), (f), (i), 9, 10(e), 13–16	80	931, 943, 944, 948, 949	15	1404
					49 App.	1376, 1651, 1651(note), 1652, 1653, 1654, 1655–1657, 1659
					50	123
1967						
May 25	90–19	20	81	25	49 App.	1602, 1603, 1605, 1606, 1608–1610
June 28	90–34		81	81	49 App.	1604
Dec. 1	90–169		81	526	49 App.	1604
1968						
Apr. 10	90–283		82	72	15	1410
July 21	90–411		82	395	49 App.	1431

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Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code	
			Vol-ume	Page	Title	Section
July 24	90–423	1(f)	82	424	49 App.	1642
Aug. 1	90–448	701–704	82	534	49 App.	1603, 1604, 1605, 1608
Aug. 12	90–481		82	720	49 App.	1671, 1671(note), 1672–1686
Sept. 26	90–514		82	867	49 App.	1301, 1371, 1371(note)
Oct. 12	90–568		82	1003	49 App.	1324(note)
1969						
Aug. 20	91–62		83	103	49 App.	1377, 1377(note), 1378
Dec. 24	91–152	306	83	392	49 App.	1603, 1604
Dec. 26	91–169		83	463	45	61, 61(note), 62–64b
1970						
May 21	91–258	31, 51, 52(a), (b)(4), (6), (c), (d), 53, 209	84	234, 235, 236, 252	49 App.	1101–1103, 1104–1106, 1107a–1120, 1354, 1430, 1430(note), 1432, 1509, 1622, 1701(note), 1731, 1741, 1742(note)
May 22	91–265		84	262	15	1381(note), 1391, 1401, 1408, 1409, 1426, 1431
Sept. 8	91–399		84	837	49 App.	1542
Oct. 13	91–444	1(b)	84	915	49 App.	1642
Oct. 14	91–449		84	921	49 App.	1301, 1472
Oct. 15	91–453	1–9, 13, 14	84	962, 969	49 App.	1601(note), 1601a, 1602, 1602(note), 1603–1605, 1610–1612
Oct. 16	91–458		84	971	45	421, 421(note), 431–441, 443, 444
Oct. 27	91–513	1102(r)	84	1294	49 App.	787
Oct. 30	91–518	(less 404(f), 901)	84	1327	45	501, 501(note), 501a, 502, 521, 522, 541–545, 546, 547, 548, 561–566, 581–591, 601, 602, 642–644, 646–649, 651–658
Dec. 23	91–569		84	1499	49 App.	1512, 1512(notes)
Dec. 29	91–596	31	84	1619	49 App.	1421
Dec. 31	91–604	11(b)	84	1705	49 App.	1421, 1430
1971						
Nov. 18	92–159	2	85	481	49 App.	1429
Nov. 27	92–174		85	491	49 App.	1429, 1430(note), 1432, 1711–1713, 1714, 1715, 1717
1972						
Mar. 22	92–259		86	95	49 App.	1374, 1461, 1482, 1482(note)

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Statutes at Large

Date	*Chapter or Public Law*	*Section*	*Statutes at Large*		*U.S. Code*	
			Volume	*Page*	*Title*	*Section*
June 22	*92–316*		*86*	*227*	*45*	*543, 543(note), 545, 546, 548, 562, 563, 565, 601, 602, 602(note), 644, 645*
Aug. 22	*92–401*		*86*	*616*	*49 App.*	*1674, 1674(note), 1682, 1684*
Oct. 20	*92–513*	*(less 501(related to §511), 511, 614)*	*86*	*947*	*15*	*1901, 1901(note), 1911–1922, 1941–1949, 1961–1964, 1981, 1981(note), 1982–1991, 2001–2010, 2012, 2021–2033*
Oct. 25	*92–548*		*86*	*1159*	*15*	*1381(note), 1409, 1410*
	92–556		*86*	*1170*	*49 App.*	*1324(note)*
Oct. 27	*92–574*	*7(b)*	*86*	*1239*	*49 App.*	*1431*
1973 *June 18*	*93–44*		*87*	*88*	*49 App.*	*1513, 1701(note), 1711, 1712, 1714, 1716, 1717*
Aug. 13	*93–87*	*138, 164, 301*	*87*	*270, 281, 295*	*49 App.*	*1602a, 1603, 1603(note), 1607d(note), 1608(note), 1612*
Aug. 14	*93–90*		*87*	*305*	*45*	*421(note), 441(note)*
					49 App.	*1762*
Nov. 3	*93–146*		*87*	*548*	*45*	*501(note), 502, 543, 543(note), 545, 546, 548, 561–564, 601, 602, 641*
1974 *Jan. 2*	*93–236*	*303(e)(words "title VII of the Railroad Revitalization and Regulatory Reform Act of 1976 or of").*			*45*	*743*
	93–239	*4*	*87*	*1048*	*49 App.*	*1421*
Aug. 5	*93–366*		*88*	*409*	*49 App.*	*1301(note), 1301, 1356, 1357, 1471, 1472, 1473, 1487, 1511, 1514–1516*
Aug. 22	*93–383*	*813*	*88*	*737*	*49 App.*	*1602, 1602a, 1602a(note)*
Aug. 30	*93–403*		*88*	*802*	*49 App.*	*1671(note), 1674, 1684*
Oct. 27	*93–492*	*(less 108)*	*88*	*1470*	*15*	*1381(note), 1391, 1392, 1393, 1397–1399, 1401, 1402, 1408, 1409, 1409(note), 1410–1411, 1411(note), 1412–1420, 1424, 1961–1964*
Oct. 28	*93–496*		*88*	*1526*	*45*	*501(note), 544, 545, 563, 564, 601, 602, 641, 644, 645(note)*
					49 App.	*302, 1643, 1653*

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Statutes at Large

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			Volume	Page	Title	Section
Nov. 26	93–503	(less 105)	88	1565	49 App.	1601b, 1601b(note), 1602–1604b, 1605(note), 1611
1975 Jan. 2	93–604	702	88	1964	49 App.	1537
	93–608	1(20), (21)	88	1970	49 App.	1343, 1603
Jan. 3	93–623	(less 6)	88	2102	49 App.	1151(note), 1159a, 1159b, 1373, 1376, 1377, 1472, 1517
	93–633		88	2156	45	39, 421(note), 437, 438, 440, 440(note)
					49 App.	1471, 1472, 1653, 1761, 1762, 1801, 1801(note), 1802–1813, 1901, 1901(note), 1902–1907
1974 Jan. 4	93–650		89	2–1	49 App.	1602, 1602a, 1602a(note)
1975 May 26	94–25		89	90	45	501(note), 543, 545, 548, 563, 564, 601, 602, 621
					49 App.	1653
July 19	94–56		89	263	45	421(note), 440
					49 App.	1812
Aug. 9	94–90		89	439	49 App.	1531(note), 1536, 1542
Dec. 22	94–163	301(less "Secs. 501(related to §511), 511")	89	901	15	2001–2010, 2012
1976 Feb. 5	94–210	701–706(a), (c)–(i), 707, 803, 808, 901–904	90	119, 124, 130, 143, 147	45	543, 545, 546, 562–564, 743, 745(note), 851–855
					49 App.	1613, 1653, 1654, 1654(note)
July 8	94–346		90	815	15	1392, 1409
	94–348		90	817	45	6, 13, 34, 61–63a, 64a, 421(note), 431, 431(note)
					49 App.	26, 1653
July 12	94–353		90	871	49 App.	1346a, 1348(note), 1356a, 1358, 1371, 1432, 1701, 1701(note), 1702(note), 1704, 1711–1715, 1715(note), 1716–1720, 1724(note), 1728–1730, 1742

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July 14	94–364		90	981	15	1901(note), 1921, 1941, 1949, 1963, 1982–1985, 1987, 1988, 1990–1991
July 31	94–374		90	1065	49 App.	1542
Sept. 30	94–436	5(related to title VII)	90	1399	45	743
Oct. 11	94–474		90	2068	49 App.	1801(note), 1805, 1812
	94–477		90	2073	49 App.	1671, 1671(note), 1672, 1674, 1680, 1683–1686
	94–481		90	2080	49 App.	1907
Oct. 19	94–555	101–108, 216(e), 217, 219(a), 220(h), 301	90	2613, 2627, 2629, 2630	45	501(note), 543, 545, 546, 563, 601, 602, 641, 641(note), 854
					49 App.	1653, 1654(note)
1977						
Aug. 4	95–91	305, 306, 402(b)	91	580, 584	15	2002
					42	7155, 7172
Nov. 9	95–163	(less 19)	91	1278	49 App.	1301, 1302, 1371, 1373, 1373(note), 1376(note), 1388, 1401, 1421, 1421(note), 1430, 1482, 1531–1533, 1535, 1537, 1542
Nov. 16	95–187		91	1385	49 App.	1613
1978						
Mar. 8	95–241		92	119	49 App.	1401
Mar. 14	95–245		92	156	49 App.	1388, 1388(note)
Mar. 27	95–251	2(a)(12)	92	183	49 App.	1655
Sept. 11	95–363		92	597	49 App.	1901(note), 1907
Sept. 30	95–403		92	863	49 App.	1812
Oct. 5	95–421		92	923	45	501(note), 521(note), 541, 541(note), 545, 545a, 546a, 562, 563, 601, 602, 646, 853, 854
					49 App.	1653
Oct. 7	95–426	706	92	992	49 App.	1518
Oct. 17	95–473	4(c)	92	1470	49	101(note prec.)

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AMENDMENT NO. 3438

Mr. FORD. Mr. President, I send an amendment on behalf of Senator Kennedy to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. KENNEDY, proposes an amendment numbered 3438.

Mr. FORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 872, beginning with "(1)(A)" in line 37, strike through line 12 on page 873 and substitute the following: "(1) Amtrak or a rail carrier (including a terminal company) shall provide fair and equitable arrangements to protect the interests of its employees affected by a discontinuance of intercity rail passenger service, including a discontinuance of service provided by a rail carrier under a facility or service agreement under section 24308(a) of this title under a modification or ending of the agreement or because Amtrak begins providing that service. Arrange-".

On page 873, between lines 22 and 23, insert the following:

"(2) With respect to Amtrak's obligations under this subsection and in an agreement to carry out this subsection involving only Amtrak and its employees, a discontinuance of intercity rail passenger service does not include an adjustment in frequency, or seasonal suspension of intercity rail passenger trains that causes a temporary suspension of transportation, unless the adjustment or suspension reduces passenger train operations on a particular route to fewer than 3 round trips a week at any time during a calendar year."

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3438) was agreed to.

AMENDMENT NO. 3439

(Purpose: To make clarifying and technical amendments)

Mr. FORD. Mr. President, on behalf of Senator Hollings, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. HOLLINGS (for himself and Mr. DANFORTH), proposes an amendment numbered 3439.

Mr. FORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Amend the committee amendment in the nature of a substitute as follows:

(1) On page 895, line 27, strike "maintain" and substitute "cause to be maintained".

(2) On page 895, line 30, strike "maintain" and substitute "cause to be maintained".

(3) On page 895, line 34, immediately before the period, insert the following: "in obtaining the information required by this subsection".

(4) On page 896, line 13, strike "in paragraph (2)" and substitute "under paragraph (2)".

(5) On page 897, line 6, immediately after "initial decision", insert the following: "(through testing, inspection, investigation, or research carried out under this chapter, examining communications under section 30166(f) of this title, or otherwise)".

(6) On page 897, line 21, immediately after "subsection", insert "that".

(7) On page 900, strike lines 31 and 32 and substitute the following: "the tire for remedy during a subsequent 60-day period that begins only after the owner or purchaser receives notification that a replacement will be available during the subsequent period. If tires are available".

(8) On page 900, line 36, immediately before "motor", insert "defective or noncomplying".

(9) On page 904, line 34, strike "except" and substitute "other than".

(10) On page 907, lines 12 and 15, immediately before "production", insert "annual".

(11) On page 908, line 24, immediately after "event", insert "not under the control of the manufacturer".

(12) On page 909, line 8, immediately before the period, insert a comma and the following: "including the amendment of March 26, 1991 (56 Fed. Reg. 12472), to Standard 208, extending the requirements for automatic crash protection, with incentives for more innovative automatic crash protection, to trucks, buses, and multipurpose passenger vehicles".

(13) On page 909, line 35, strike "department" and substitute "departments".

(14) On page 909, line 38, immediately before "appropriations", insert "available".

(15) On page 911, line 19, immediately before the comma, insert "under this subsection".

(16) On page 912, strike lines 33–35 and substitute the following:

"(2) the vehicle is imported after January 31, 1990; and".

(17) On page 913, line 34, strike "(2)".

(18) On page 913, line 36, strike "the" and substitute "that".

(19) On page 914, line 1, strike "the" and substitute "that".

(20) On page 915, strike lines 38–41 and substitute the following: "inspection, an importer may release the vehicle only after—

"(A) an inspection showing the motor vehicle complies with applicable vehicle safety standards prescribed under this chapter for which the inspection was made; and

"(B) release of the vehicle by the Secretary.".

(21) On page 923, line 5, immediately after "(C)", interest "selling or otherwise".

(22) On page 996, line 25, immediately after "require", insert "passenger motor vehicle".

(23) On page 1011, line 15, strike "involved in" and substitute "that is an object of".

(24) On page 1011, line 19, strike "involved in" and substitute "an object of".

(25) On page 1016, line 32, immediately before "gasoline", insert "on".

(26) On page 1017, line 14, immediately after "meets", insert "or exceeds".

(27) On page 1018, lines 3 and 4, strike "as decided by the Administrator, including" and substitute a comma and the following: "as decided by the Administrator, that includes".

(28) On page 1018, line 16, immediately after "meets", insert "or exceeds".

(29) On page 1024, lines 39 and 40, strike "dates when the actions will be taken, that will ensure that the automobile type or types" and substitute "deadlines for taking the actions, that will ensure that the model or models".

(30) On page 1025, line 12, strike "type or types" and substitute "or models".

(31) On page 1025, line 20, strike "automobile model type or types" and substitute "model or models".

(32) On page 1029, line 38, strike "that" and substitute "about whether".

(33) On page 1031, line 13, strike "those".

(34) On page 1033, line 41, immediately after "552(b)(4)", insert "of title 5".

(35) On page 1052, strike lines 14 and 15 and substitute the following:

"(3) preventing deterioration in established safety procedures, recognizing the clear intent, encouragement, and dedication of Congress to further the highest degree of safety in air transportation and air commerce, and to maintain the safety vigilance that has evolved in air transportation and air commerce and has come to be expected by the traveling and shipping public.".

(36) On page 1052, line 25, immediately after "considering", insert "any".

(37) On page 1053, line 20, strike "may" and substitute "would tend to".

(38) On page 1053, line 30, strike "establish the variety and quality of, and" and substitute "decide on the variety and quality of, and determine".

(39) On page 1053, lines 38 and 39, strike "giving air carriers the opportunity" and substitute "the attainment of the opportunity for air carriers".

(40) On page 1055, lines 7 and 8, strike "giving air carriers the opportunity" and substitute "the attainment of the opportunity for air carriers".

(41) On page 1110, line 22, strike "law or regulation" and substitute "law, regulation, or other provision having the force and effect of law".

(42) On page 1123, line 7, strike "entirely in one State".

(43) On page 1127, line 18, strike "whose compensation is reduced" and substitute "who is adversely affected related to compensation".

(44) On page 1127, lines 26 and 27, strike "holding a certificate under section 41102 of this title" and substitute "that held a certificate under section 401 of the Federal Aviation Act of 1958".

(45) On page 1128, line 6, strike "a 12-month period" and substitute "the 12-month period in which the first reduction occurs".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3439) was agreed to.

ON H.R. 1537—TITLE 49 RECODIFICATION

Mr. HOLLINGS. Mr. President, today I offer, on behalf of myself and the ranking Republican of the Commerce Committee, Senator DANFORTH, a clarifying amendment to the amendment on H.R. 1537 now before the Senate. Our amendment makes certain technical changes to the recodification of title 49 embodied in the pending amendment, which deals with transportation statutes within the jurisdiction of the commerce Committee. I appreciate the efforts of my colleague and chairman of the Judiciary Committee, Senator BIDEN, in working with us to bring this amendment before the Senate, and I urge the support of my colleagues. At this point, I ask unanimous consent that an explanation of our amendment be included in the RECORD immediately following my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXPLANATION OF THE AMENDMENTS TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO THE BILL, H.R. 1537

Amendments (1)–(4): Section 30117: Amendments (1)–(3) conform the language of the bill more closely to the language of existing law. Amendment (4) makes a grammatical clarification.

Amendments (5), (6); Section 30118: Amendment (5) conforms the language of the bill more closely to the language of existing law. Amendment (6) makes a grammatical clarification.

Amendments (7), (8): Section 30120: Amendment (7) conforms the language of the bill more closely to the language of existing law. Amendment (8) adds words for further clarity.

Amendment (9); Section 30123: Amendment (9) makes a grammatical clarification.

Amendments (10)–(14): Section 30127: Amendments (10)–(12) and (14) conform the language of the bill more closely to the language of existing law. Amendment (13) corrects a typographical error.

Amendment (15): Section 30141: Amendment (15) inserts language to provide for further clarity and to conform more closely with existing law.

Amendment (16): Section 30142: Amendment (16) revises clause (2) to provide for the specific date on which the regulations were made effective, thus specifying the date on which vehicles may be imported under the section.

Amendments (17)–(19): Section 30143: Amendment (17) corrects a cross-reference. Amendments (18) and (19) make grammatical clarifications.

Amendment (20): Section 30146: Amendment (20) reorganizes the language of the provision into subclauses (A) and (B) for further clarity.

Amendment (21): Section 30168: Amendment (21) conforms the language of the bill ore closely to the language of existing law.

Amendment (22): Section 32302: Amendment (22) inserts words for clarity and to more closely conform to the language of existing law.

Amendments (23), (24): Section 32706: Amendments (23) and (24) conform the language of the bill more closely to the language of existing law.

Amendments (25)–(28): Section 32901: Amendments (25)–(28) conform the language of the bill more closely to the language of existing law.

Amendments (29)–(31): Section 32904: Amendments (29)–(31) make changes to provide for consistency in the chapter and with the definition of "model". Amendment (29) also clarifies further the text of the bill.

Amendment (32): Section 32907: Amendment (32) makes grammatical clarification.

Amendment (33): Section 32908: Amendment (33) makes a grammatical clarification.

Amendment (34): Section 32910: Amendment (34) adds a reference to title 5 for further clarification.

Amendments (35)–(40): Section 40101: Amendments (35)–(40) conform the language of the bill more closely to the language of existing law.

Amendment (41): Section 41713: Amendment (41) conforms the language of the bill more closely to the language of existing law.

Amendment (42): Section 41902: Amendment (42) conforms the language of the bill more closely to the language of existing law.

Amendments (43)–(45): Section 42101: Amendment (43) conforms the language of the bill more closely to the language of existing law. Amendment (44) changes the reference to a provision of law to conform with the historical nature of the reference. Amendment (45) further clarifies the text of the bill and more closely conforms to the intent of the underlying provision which was the basis of the codified provision.

The PRESIDING OFFICER. Without objection the committee amendment is agreed to.

The bill is deemed read for the third time and passed.

So the bill H.R. 1537, as amended, was deemed read the third time and passed.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDING THE WILD AND SCENIC RIVERS ACT

Mr. FORD. Mr. President, I ask unanimous consent the Energy Committee be discharged from further consideration of H.R. 5021, relating to New River, WV; the Senate proceed to its immediate consideration; the bill be read a third time and passed; that the motion to reconsider be laid upon the table; that any statements relative to the passage of this item be inserted at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 5021) was deemed to have been read three times and passed.

AMENDMENT TO TITLE 11 UNITED STATES CODE

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H.R. 4363, a bill to exclude from the estate of the debtor certain interest in liquid and gaseous hydrocarbons received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4363) to amend title 11 of the United States Code to exclude from the estate of the debtor certain interests in liquid and gaseous hydrocarbons.

AMENDMENT NO. 3440

(Purpose: To encourage innovation and productivity, stimulate trade, and promote the competitiveness and technological leadership of the United States)

Mr. FORD. Mr. President, on behalf of Senator Leahy and Senator THURMOND, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD], for Mr. LEAHY, for himself, Mr. THURMOND, and Mr. BROWN, proposes an amendment numbered 3440.

Mr. FORD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following:

SEC. _____. NATIONAL COOPERATIVE RESEARCH EXTENSION ACT OF 1992.

(a) SHORT TITLE.—This section be cited as the "National Cooperative Research Act Extension of 1992".

(b) JOINT VENTURES.—The National Cooperative Research Act of 1984 (15 U.S.C. 4301 et seq.) is amended—

(1) by inserting after section 1 the following:

"SEC. 1A. FINDINGS AND PURPOSE.

"(a) The Congress finds that—

"(1) technological innovation and its profitable commercialization are critical components of the United States ability to raise the living standards of Americans and to compete in world markets;

"(2) cooperative arrangements among nonaffiliated firms in the private sector are often essential for successful technological innovation and commercialization; and

"(3) the antitrust laws may inhibit cooperative innovation arrangements because of uncertain legal standards and the threat of private treble damage litigation.

"(b) It is the purpose of this Act to promote innovation, facilitate trade, and strengthen the competitiveness of the United States in world markets by clarifying the applicability of the rule of reason standard and establishing a procedure under which firms may notify the Department of Justice and Federal Trade Commission of their cooperative ventures and thereby qualify for a single-damage limitation on civil antitrust liability.";

(2) in section 2(a)(6) by—

(A) striking "and development" and inserting ", development, or production";

(B) redesignating subparagraphs (D) and (E) as subparagraphs (E) and (G), respectively;

(C) inserting after subparagraph (C) the following new subparagraph:

"(D) the production or testing of any product, process, or service,";

(D) striking "or" after the comma in subparagraph (E), as redesignated;

(E) inserting after subparagraph (E), as redesignated, the following:

"(F) the collection, exchange, and analysis of production information related to activity of the joint production venture, or";

(F) striking "and (D)" and inserting "(D), (E), and (F)" in subparagraph (G), as redesignated; and

(G) by amending the matter following subparagraph (G) to read as follows:

"and may include the establishment and operation of facilities for the conducting of research, development or production; the integration of existing facilities where those facilities are used for the production or processing of a new product or technology pursuant to the joint venture; and the prosecuting of applications for the patents and the granting of licenses for the results of such venture, but does not include any activity described in subsection (b).";

(3) in section 2(b)—

(A) in the matter before paragraph (1) by striking "and development" and inserting ", development, or production";

(B) in paragraph (1) by striking "conduct the research and development that is the" and inserting "carry out the";

(C) in paragraph (2)—

(i) by striking "production or" each place it appears; and

(ii) by striking "other than the marketing of proprietary information developed through such venture, such as patents and trade secrets, and" and inserting the following: "other than—

"(A) the marketing of proprietary information, such as patents and trade secrets, developed through such venture formed before enactment of the National Cooperative Research Act Extension of 1992,‘ or

"(B) the licensing, conveying, or transferring of intellectual property, such as patents and trade secrets, developed through such venture formed after enactment of the National Cooperative Research Act Extension of 1992, and"; and

(D) in paragraph (3)(B) by striking "and development" and inserting ", development, or production";

(4) in section 3 by—

(A) striking "and development" the first place it appears and inserting ", development, or production"; and

(B) striking "and development" the second place it appears and inserting ", development, product, process, or service";

(5) in section 4 by striking "and development" and inserting ", development, or production" each place it appears in subsections (a)(1), (b)(1), (c)(1), and (e);

(6) in section 4(e), by—

(A) inserting a dash after "if";

(B) designating the matter after such dash as paragraph (1);

(C) striking the period at the end of paragraph (1) as designated by subparagraph (B) and inserting "; and"; and

(D) adding at the end thereof the following:

"(2) in the case of a claim against a joint venture for production, the joint venture satisfies the requirements of section 7.";

(7) in section 5(a) by striking "and development" and inserting ", development, or production";

(8) in section 6 in the section heading by striking "and development" and inserting ", development, or production";

(9) in section 6—

(A) in subsection (a) by inserting "and, after enactment of the National Cooperative Research Act Extension of 1992, any party to a joint production venture, acting on such venture's behalf, may, not later than 90 days after entering into a written agreement to form such venture," after "whichever is later";

(B) in subsection (a)(1) by striking "identities of the parties to such venture, and" and inserting "identity of each party to such venture, including, in the case of a corporation, the nation in which it is incorporated and the location of its principal executive offices, and the nation of incorporation and the location of the principal executive offices of any corporation that directly or indirectly owns or controls a majority of the shares of such corporation, and "; and

(C) in subsections (d)(2) and (e) by striking "and development" and inserting ", development, or production" each place it appears; and

(10) by adding at the end thereof the following new section:

"APPLICABILITY TO JOINT VENTURES FOR PRODUCTION

"SEC. 7. (a) IN GENERAL.—Section 4 of this Act applies to a joint venture for production only if the joint venture—

"(1) provides substantial benefits to the United States economy including, but not limited to, increased skilled job opportunities in the United States, investments in long-term production facilities in the United States, participation of United States entities in the joint venture, or the ability of the United States entities to access and commercialize technological innovations or to realize production efficiencies; and

"(2)(A) whose principal facilities for the production of a product, process, or service are located within the United States or its territories; or

"(B) whose principal facilities for the production of a product, process, or service are located within a country whose antitrust law accords national treatment to United States entities that are parties to joint ventures for production.

"(b) MEANING OF NATIONAL TREATMENT.—For the purposes of this section, a foreign country accords national treatment to United States entities that are parties to joint ventures for production if it accords treatment no less favorable with respect to the application of its antitrust laws to United States participants in joint ventures for production than would be accorded to its domestic participants in joint ventures for production in like circumstances.

"REPORTS ON JOINT VENTURES AND UNITED STATES COMPETITIVENESS

"SEC. 8. (a) PURPOSE.—The purpose of the reports required by this section is to inform Congress and the American people of the effect of this Act on the competitiveness of the United States in key technologies and areas of production.

"(b) ANNUAL REPORT BY THE FEDERAL TRADE COMMISSION.—Within 1 year after the date of enactment of this subsection, and by that date in each succeeding year, the Commission shall submit to Congress a report including—

"(1) a list of joint ventures filing under this Act during the preceding 12-month period, including the purpose of each joint venture and the identity of each party to the joint venture as described in accordance with section 6(a)(1); and

"(2) a list of enforcement actions, if any, brought against joint ventures filing under the Act by the Department of Justice and the Federal Trade Commission during the preceding 12-month period for violations of the antitrust laws.

"(c) TRIENNIAL REPORT BY THE SECRETARY OF COMMERCE.—The Secretary of Commerce shall submit to Congress a triennial report, the first report to be submitted within 3 years after the date of enactment of this subsection, that includes—

"(1) a description of the industrial technologies most commonly pursued by joint ventures for research and development for which filings were made under this Act during the preceding 3-year period, and an analysis of the trends in the competitiveness of United States industry in those technologies;

"(2) a description of the areas of production most commonly engaged in by joint ventures for production for which filings were made under this Act during the preceding 3-year period, and an analysis of the trends in the competitiveness of United States industry in those production areas; and

"(3) an update of the report submitted by the Secretary under subsection (d) to reflect changes in foreign laws or practices.

"(d) REVIEW OF FOREIGN LAWS.—Within 1 year after the date of enactment of this subsection, the Secretary of Commerce shall submit to Congress a report on the treatment of United States corporations or other business entities under the laws relating to joint research and development and joint production ventures, or similar arrangements, of each foreign nation or community of nations whose corporations or other business entities have filed under this Act.

"(e) INTERAGENCY COOPERATION.—The Federal Trade Commission, the Office of the United States Trade Representative, and the Office of Science and Technology Policy, as well as other Federal departments and agencies, shall provide such information and assistance in the preparation of the reports under subsections (c) and (d) as the Secretary of Commerce may request.".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3440) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 4363), as amended, was passed.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

KENAI NATIVES LAND SETTLEMENT

Mr. FORD. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H.R. 6072 relating to the Kenai natives and land settlement just received from the House; that the bill be read a third time, passed, and the motion to reconsider be laid upon the table; that any statements relative to the passage of this item be inserted at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 6072) was deemed to have been read three times and passed.

Mr. CHAFEE. Mr. President, H.R. 6072 calls for the Secretary of Interior to conduct expedited negotiations for a land exchange at the Kenai National Wildlife Refuge in Alaska. This bill would affect the management of the National Wildlife System, which is within the jurisdiction of the Environment and Public Works Committee. I would like to clarify several points regarding this legislation with my colleague from Alaska, Senator STEVENS.

First, my understanding of the bill is that the Secretary of Interior is required to consider, but is not bound by, an independent third-party appraisal which assigns economic value to recreational and habitat values. Is that correct?

Mr. STEVENS. Yes Senator, that is correct.

Mr. CHAFEE. Second, the bill is not intended to resolve the issue of what value may be directly attributed to the removal of patent restrictions under section 22(g) of the Alaska Native Claims Settlement Act; nor does this legislation require the Secretary to propose the removal of any such restrictions.

Mr. STEVENS. The Senator is correct.

Mr. CHAFEE. Finally, this legislation deals with a single land exchange negotiation and is neither intended to serve nor shall it serve as a precedent for future land exchange negotiations. Is this the Senator's understanding?

Mr. STEVENS. Yes Senator, H.R. 6072 deals only with land exchange negotiations regarding the Kenai Native Corporation in Alaska. These negotiations have a long and tortured history. The problems are unique to this particular land exchange and the proposed legislation is tailored to address this particular land exchange.

CEDAR RIVER WATERSHED

Mr. FORD. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further consideration of H.R. 5605, relating to the Cedar River Watershed; that the Senate proceed to its immediate consideration; that the bill be deemed read a third time and passed; that the motion to reconsider be laid upon the table, and any statements relative to the passage of these items appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 5605) was deemed to have been read three times and passed.

INDIANA DUNES LAKESHORE BOUNDARY MODIFICATION

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 1216.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 1216) entitled "An Act to modify the boundaries of the Indiana Dunes Lakeshore, and for other purposes," with the following amendments:

(1) Page 1, beginning on line 13, strike out [September 1991, and numbered 62680039-A] and insert in lieu thereof the following "October 1992, and numbered 626-80,039-C".

(2) Page 2, after line 3, strike out the line in the proposed table relating to the map dated September 1991 and insert the following:

"Dated October 1992, No. 626-80,039-C October 1, 1991".

(3) Page 5, strike out line 8 and insert in lieu thereof the following:

"(b) Before acquiring lands or interests in lands in Unit I-M (as designated on the map referred to in the first section of this Act) the Secretary shall consult with the Commissioner of the Indiana Department of Transportation to determine what lands or interests in lands are required by the State of Indiana for improvements to State Road 49 and reconstruction and relocation of the interchange with State Road 49 and U.S. 20 so that the acquisition by the Secretary of lands or interests in land in Unit I-M will not interfere with planned improvements to such interchange and State Road 49 in the area.".

Mr. FORD. Mr. President, I move that the Senate concur in the amendment of the House.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELIEF OF KRISHANTHI SAVA KOPP

Mr. FORD. Mr. President, I ask unanimous consent the Judiciary Committee be discharged from further consideration of H.R. 5749, a relief bill; that the Senate proceed to its immediate consideration; the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the bill (H.R. 5749) was deemed to have been read three times and passed.

THOMAS PAINE MEMORIAL

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 6165, regarding a Thomas Paine memorial.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows

A bill (H.R. 6165) to amend certain provisions of law relating to establishment, in the District of Columbia or its environs, of a memorial to honor Thomas Paine.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. SYMMS. Mr. President, I ask unanimous consent that the program for the "Visionaries of World Peace Colloquia" symposium which was held in New York City at the United Nations in honor of the 250th birthday of Thomas Paine be added to the RECORD at this point in my remarks. I do this for the review of our colleagues and those future researchers of the historical significance of this great agitator of freedom.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THOMAS PAINE—THE 250TH ANNIVERSARY OF HIS BIRTH

The Visionaries of World Peace Series of Colloquia under the auspices of University for Peace, United Nations, in conjunction with Peace Studies Unit, United Nations Secretariat celebrate Thomas Paine, The 250th Anniversary of His Birth 1737–1987—United Nations Headquarters, New York City Thursday, 10 December 1987.

President of the Colloquium: Dr. Rodrigo Carazo, former President of the Republic of Costa Rica, and currently President of the Council, University for Peace.

Host: United Nations Secretariat; Ms. Robin Ludwig, Chief, Peace Studies Unit

Inaugural Session: Chairman: Dr. Rodrigo Carazo

Program Specialist: Professor Bernard Vincent

9:30–10:00 AM—Registration

10:00 AM—Ms. Robin Ludwig—WELCOME

10:05 AM—Mr. Leo Zonneveld, President, United Teilhard Trust "The Series 'Visionaries of World Peace'"

10:10 AM—Dr. Rodrigo Carazo—Official opening

10:15 AM—Mr. Michael Foot, M.P., House of Commons President, Thomas Paine Society, U.K. "Thomas Paine and the Democratic Revolution"

10:40 AM—Dr. Ian Dyck, Asst. Professor of History, University of Lethbridge (Alberta, Canada) "Thomas Paine: World Citizen in the Age of Nationalism"

11:05 AM—Coffee/Tea Break

11:25 AM—Mr. David Braff, Historian (Owner, Braff & Company Public Relations) "Thomas Paine: The Forgotten Founding Father"

11:50 AM—Eric Foner, Professor of History, Columbia University, New York City "Tom Paine & American Radicalism During the American Revolution"

12:15 PM—Mr. Charels Francisco, Actor/Author "Thomas Paine: A Most Uncommon Man"

12:40-1:00 PM—Panel Discussion: Rodrigo Carazo, Michael Foot, Ian Dyck, David Braff, Eric Foner, Charles Francisco, Florence Stapleton

1:00-3:00 PM—Lunch break

Plenary Session: Chairman: Mr. Leo Zonneveld

Program Specialist: Dr. Ian Dyck

3:00 PM—Bernard Vincent, Professor of American History & Civilization, University of Orleans (France) "From Social to International Peace: The Realistic Utopias of Thomas Paine"

3:25 PM—Mr. Clive Phillpot, Director of the Library The Museum of Modern Art, New York City "In the Footsteps of Thomas Paine: His Early Life"

3:45 PM—Mr. Paul O'Dwyer, Civil Liberties Lawyer (Winner of the 1987 Thomas Paine Award presented by the Emergency Civil Liberties Committee) "Thomas Paine Never Died"

4:10 PM—Coffee/Tea break

4:25 PM—Sean Wilentz, Professor of History, Princeton University, Princeton, New Jersey "Paine's Legacy"

4:50 PM—Mr. David Henley, Researcher "Thomas Paine: An Emerging Portrait"

5:15 PM—Dr. Robert Muller, former Assistant Secretary-General of the United Nations, and currently Chancellor of the University for Peace. "Remarks on the Present State of the World Inspired by the Philosophy of Thomas Paine"

5:40-6:00—Panel Discussion: Leo Zonneveld, Bernard Vincent, Clive Phillpot, Sean Wilentz, Paul O'Dwyer, David Henley, Robert Muller

6:00 PM—Dr. Rodrigo Carazo—Closing of the Colloquium

Program supported by the Thomas Paine National Historical Association of New Rochelle, New York, U.S.A., and the Thomas Paine Society in Nottingham, U.K.

Secretariat: United Teilhard Trust, Hanegevecht 7,2811 AC, Reeuwijk, The Netherlands

Organization & Coordination: United Teilhard Trust, 360 Central Park West, #14C, New York, New York, 10025, U.S.A.

THE VISIONARIES OF WORLD PEACE SERIES OF COLLOQUIA

Visionaries of World Peace embraces a series of Colloquia under the auspices of the University for Peace, aimed at honoring the world's greatest peace prophets. The series was inaugurated in 1983 with a Colloquium on the great philosopher, Pierre Teilhard de Chardin. Held at United Nations Headquarters, it presented a powerful and in-depth study of the meaning of Teilhard's life and work for world peace, as seen by 20 specialists who came together from all over the planet.

The University of Peace is an international institution devoted to the promotion of peace through education and research. Its activities are rooted in the principles of the Charter of the United Nations and the Universal Declaration of Human Rights. Approved by the U.N. General Assembly in 1980, its creation responds to one of the most pressing needs of modern times: the maintenance of peace and the establishment of a more equitable and stable world system.

The Proceedings of the Visionaries of World Peace Colloquia are published and distributed worldwide to Governments, Universities, and Learned Institutions by, and on behalf of the University for Peace. The Teilhard papers were edited and published by Leo Zonneveld in The Netherlands under the title Humanity's Quest for Unity.

The University for Peace celebrates the 250th anniversary of the birth of Thomas Paine in this Colloquium, organized by the United Teilhard Trust. The many impressive activities of this man were aimed to point out the reality of human brotherhood, which he saw envisaged in a great republic of all the nations of the world. His idea of having an organization like the United Nations dates back to the year 1800. Thomas Paine even designed a flag for it which became known as the "Rainbow."

On this day of the Thomas Paine Colloquium, 10 December 1987, the President of the Republic of Costa Rica, the country in which the University for Peace is headquartered, receives the Nobel Prize for Peace.

Mr. SYMMS. Mr. President, I also wish to welcome Senator DIXON as the 79th cosponsor of Senate Concurrent Resolution 110, the legislation to authorize a memorial to Thomas Paine on the Grounds of the U.S. Capitol.

Even though we passed H.R. 1628, an authorization for a memorial on a prominent, but not-specified site on a recent evening, I am happy to bring to the attention of the Congress the continued growth of the coalition of Members who wish to honor in a very visible and appropriate manner the man who made the term "the United States of America" popular.

In that light, Mr. President, I have spoken with a number of Senators and have received support for my proposed Senate concurrent resolution from them. It is my understanding from the office of my House partner in this matter, Representative NITA LOWEY, that there is support in the House as well. I ask unanimous consent that the draft resolution, as it stands today be printed at this point in the RECORD. I do not wish to introduce it at this time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DRAFT—S. CON. RES. —

Whereas the Congress should recognize the seminal role Thomas Paine played in the founding of our Nation as well as his advocacy for individual rights and liberty worldwide;

Whereas even before 1774, when he emigrated to Pennsylvania at the urging of Benjamin Franklin, he was unafraid to challenge conventional wisdom;

Whereas his clarion call for independence, Common Sense, in which he made the first call for a written Constitution to protect the civil, religious, and property rights of people of all races and his stirring and motivational works contained in The American Crisis series have alone earned Thomas Paine the right to be recognized in a prominent, appropriate, and distinguished location in the capital of the Nation he helped establish;

Whereas Thomas Paine, at risk to his own life, pleaded for the life of King Louis XVI before the French National Convention because the King had once aided America to gain her independence (partly at Thomas Paine's instigation) and further, at the same time, pleaded for the inclusion of the American model of a constitutional form of representative government in direct opposition to the ensuing Reign of Terror;

Whereas his stature is further enhanced by his work as a fundraiser for the American Revolution, abolitionist, soldier, the first Congressionally appointed Secretary of State, and advocate for the development of the western States; and

Whereas the Congress has passed legislation authorizing the private sector to honor Thomas Paine with an outdoor statue and an exhibit in the United States Capitol would be an appropriate honor for Thomas Paine: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That—

(1) the statue of Thomas Paine, sculpted by Gutzon Borgium, to be presented by the Thomas Paine National Historical Association for the United States Capitol Art Collection, shall be accepted in the name of the United States, and the gratitude of the Congress is tendered to the Association; and

(2) the Thomas Paine National Historical Association is authorized to temporarily place in the rotunda of the United States Capitol the statue of Thomas Paine referred to in paragraph (1), and to hold appropriate ceremonies in honor thereof, in consultation with the Architect of the Capitol and the Congress, upon the presentation of the statue.

Mr. SYMMS. Mr. President, I have already spoken with the Architect of the Capitol this morning, and he reaffirmed his support of placing a statue of Mr. Paine in the Capitol as described in this draft resolution.

I would also ask unanimous consent that a copy of the letters that the Architect and I have received from our friend, Hon. Fred Schwengel, past-president and now chairman of the board of the congressional chartered U.S. Capitol Historical Association be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CAPITOL
HISTORICAL SOCIETY,
Washington, DC, September 30, 1992.

Senator STEVE SYMMS,
U.S. Senate.

Dear STEVE: Your proposal to authorize the placement of Gutzon Borglum's masterwork of Thomas Paine in the Capitol Building while awaiting the future unveiling of the Memorial outside on public land, which you led through Congress is, if I may say so, wonderful. I want you to know that I get to enjoy, on a daily basis the presence of an exquisite replica of Borglum's famous "seated Lincoln", which resides in my office.

If Congress takes advantage of the Thomas Paine National Historical Association's offer to donate an original of the famous Paine work to the Capitol Arts Collection, I will be able to enjoy Paine's and Borglum's tangible presence and patriotic spirit when I am in the Capitol Building, which as you know, I continue to visit on a frequent basis.

I believe that there will be strong support for your proposal, not only in the historical community, of which I am certain, but also in Congress. If 77 Senators could cosponsor your legislation to place a Paine statue by an unspecified sculptor on Capitol grounds in face of serious objections of violating Capitol grounds policy and setting a potentially unfortunate precedent, as George White rightly warned, I can see no opposition to your proposal for a statue of Thomas Paine in the Capitol Building by one of America's very greatest historical artists, being offered at no cost to the taxpayer, to the Capitol Art Collection. I, for one, am looking forward to congratulating you personally at a glorious dedication ceremony honoring Paine and Borglum in the Rotunda.

Sincerely,

FRED SCHWENGEL,
Chairman.

U.S. CAPITOL
HISTORICAL SOCIETY,
Washington, DC, September 29, 1992.

Hon. GEORGE M. WHITE, FAIA,
Architect of the Capitol,
U.S. Capitol.

DEAR GEORGE: First, let me congratulate those involved and offer my sincere thanks to those Members of Congress, the Thomas Paine National Historical Association, the Organization of American Historians, and especially their former president Professor Thomas A. Clark, for bringing to fruition the necessary authorizing legislation to place Thomas Paine before the American people in their Nation's Capitol. I was an early and strong supporter of this historic legislative effort and enjoy seeing a job well done.

Second, I personally endorse the proposal to allow placement inside the Capitol Building of Gutzon Borglum's (one of America's very greatest sculptors) magnificent statue of Thomas Paine. This accomodation will allow the American people to enjoy Thomas Paine until such time as the above mentioned authorization process brings us to the actual day of unveiling outside on public grounds the memorial to Paine in Washington.

As I wrote to Senator Symms in August 1991 during the 101st Congress. "I shall pursue with all the intelligence and energy I have to do the appropriate honor to Thomas Paine." The subsequent co-sponsorship of 204 Representatives and 78 Senators show that I was right in my early enthusiasm.

There is now an opportunity to not only exhibit such a work inside the Capitol Building, but also to have the added satisfaction of highlighting the last commission and masterwork of Gutzon Borglum portraying Paine pleading for the life of Louis XVI as a representative before the National Convention, thus putting his own life in jeopardy. Borglum felt, with many others, that this was the most noble episode of Paine's public service, because he advocated rights, even for a king who had been instrumental to the success of our own Revolution. Borglum's master work will eloquently present this epochal drama to the Members, staff, and visitors in our Capitol Building while another drama of realizing a long overdue Memorial to Thomas Paine takes place outside. Placing Borglum's Thomas Paine inside the Capitol at this time is an opportunity that should not be lost.

Sincerely,

FRED SCHWENGEL,
Chairman.

GUTZON BORGLUM—ARTIST AND PATRIOT

(By Willadene Price)

GUTZON'S LEGACY TO AMERICA

The controversial Thomas Paine was the latest character to take form in the ranch studio. Gutzon had been commissioned by the French-American Thomas Paine Memorial Commission, which was headed by former premier Edouard Herriot, to complete the eight-foot statue in time for an unveiling in France on the 29th of January, the two-hundredth anniversary of Paine's birth. With work on the mountain closed down, Lincoln did much to help his father get the plaster cast ready to be sent to France to the famous foundry of Rudier where it was to be cast in bronze and coated with gold.

Gutzon was looking forward to the Paine dedication with more than his usual enthusiasm because Helen Keller, who had a deep sympathy for the much-maligned author of The American Crisis, was going to participate. Gutzon arrived in Paris several days ahead to oversee the casting of the statue. There were delays at the foundry and the Committee encountered difficulties in their negotiations with the French Government so at the last minute Gutzon had to wire Miss Keller, who was in England, that the ceremony had been postponed. He invited her and her companion, Miss Polly Thomson, to come to France anyway and attend a dinner on the 29th in memory of Paine, and they accepted.

Gutzon was touched by Miss Keller's greeting. "Meeting you," she said, "is like a visit from the gods. I admire you not only because you are a great artist, but also because you think greatly through your marbles. When skill and daring imagination meet a masterpiece is born. In your statue of Thomas Paine you are preaching anew the liberty that shall reshape civilization."

When Miss Keller expressed to Gutzon a long-cherished desire to visit the Rodin museum and touch the Rodin masterpieces, Gutzon quickly responded with, "Tomorrow. of you wish, I will go with you to the museum and show the masterpieces to you."

Next day Gutzon secured the permission of the Department of Beaux Arts to allow Miss Keller to touch the statues. At the museum Gutzon led Miss Keller first to Victor Hugo. Her hand gently descended from the great forehead over the cheeks and the nose and the beard and then she spoke of the trouble she sensed within the mighty man. She moved reluctantly from Hugo to Balzac and on to Clemenceau. Her hands played over the bowed head of the Thinker. "What loneliness must have enveloped the first thinker as he reached toward the unknown!" she exclaimed. She lingered and lingered over The Hand of God, and at a statue of a figure bent in desperation, she said, "He is weeping in my hand."

That evening Gutzon wrote to Mary. "I shall never forget that soul-stirring hour with Helen Keller."

There were delays and delays over Paine and long after Gutzon returned home he was still trying to get the statue placed. Then the Nazis came and Gutzon didn't know that ill fate had befallen Paine. The story came to light long after Gutzon's death. For some unknown reason, the storm troopers who raided Rudiers did not push open the dusty, cobweb-covered door to the little room where Paine was stored, and when the war was over Rudier found Paine right where he had been left. On January 29, 1948, the gilded statue was unveiled in a park opposite the American building of the City University.

[EXCERPT FROM LETTER DATED SEPTEMBER 18, 1794, FROM JAMES MONROE, MINISTER TO FRANCE, TO THOMAS PAINE WHILE BEING HELD HOSTAGE AND THREATENED WITH DEATH BY THE LEADERS OF THE "REIGN OF TERROR" FOR HAVING DEFENDED THE LIFE OF LOUIS XVI BECAUSE THE KING HAD AIDED THE AMERICAN REVOLUTIONARY CAUSE AND FOR HAVING ADVOCATED THE AMERICAN CONSTITUTIONAL MODEL OF REPRESENTATIVE GOVERNMENT IN DIRECT DEFIANCE TO THE "TERROR".]

Is it necessary for me to tell you how much all your countrymen, I speak of the great mass of people, are interested in your welfare? They have not forgotten the history of their own Revolution and the difficult scenes through which they passed; nor do they review its several stages without reviving in their bosoms a due sensibility of the merits of those who served them in that great and arduous conflict. The crime of ingratitude has not yet stained, and I trust never will stain, our national character. You are considered by them as not only having rendered important service in our own Revolution, but as being, on a more extensive scale, the friend of human rights, and a distinguished and able advocate in favor of public liberty. To the welfare of Thomas Paine, the Americans are not, nor can they be, indifferent.

Mr. President, I appreciate the indulgence of the Senate and yield the floor.

The PRESIDING OFFICER. Without objection, the bill is read three times and passed.

The bill (H.R. 6165) was deemed read the third time and passed.

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORIZING THE PRESENTATION OF A PROGRAM ON THE CAPITOL GROUNDS

Mr. FORD. I ask unanimous consent that the Committee on Rules and Administration be discharged from further consideration of House Congressional Resolution 367, to authorize the presentation of a program on the Capitol Grounds; that the Senate proceed to its immediate consideration; and that the concurrent resolution be deemed agreed to, and the motion to reconsider laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 367) was agreed to.

THE CALENDAR

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the following calendar numbers en bloc; that amendments, where indicated, be deemed agreed to; that the joint resolutions be deemed read for a third time, passed; that the preambles be deemed agreed to; and the motion to reconsider be laid upon the table. The calendar numbers are as follows: 789, 795, and 797 through and including 803.

The PRESIDING OFFICER. Without objection, it is so ordered.

The joint resolutions (S.J. Res. 789, S.J. Res. 795, S.J. Res . 797, and S.J. Res. 798 thru S.J. Res. 803) were considered and passed as follows:

NATIONAL ENDOMETRIOSIS AWARENESS WEEK

The joint resolution (S.J. Res. 321) designating the week beginning March 21, 1993, as "National Endometriosis Awareness Week", was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 321

Whereas endometriosis is a chronic, debilitating disease that currently affects 5,000,000 women and 10 men in the United States;

Whereas endometriosis does not discriminate among socioeconomic groups or ethnic or religious backgrounds;

Whereas endometriosis can affect the entire body by causing fatigue, flu-like symptoms, urological, bowel, heart, and respiratory problems, and thyroid disorders;

Whereas millions of dollars are spent every year on surgeries, gynecological care, and drugs for women with endometriosis;

Whereas endometriosis affects not only the woman who has the disease, but also her spouse, family, and career;

Whereas many working hours are lost every year due to endometriosis;

Whereas there is no guarantee that a hysterectomy, a bilateral salpingo-oophorectomy, which is the removal of the fallopian tubes and ovaries, pregnancy, or even menopause will cure endometriosis; and

Whereas there is a great need for an increase in the awareness of endometriosis, and for education, support, and funds for research concerning the disease: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning March 21, 1993, is designated as "National Endometriosis Awareness Week". The President is authorized and requested to issue a proclamation calling on the people of the United States to observe the week with appropriate ceremonies and activities.

HIRE A VETERAN WEEK

The joint resolution (S.J. Res. 336) designating the week beginning November 8, 1992, as "Hire a Veteran Week," was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 336

Whereas the people of the United States have a deep appreciation and respect for the men and women who serve the United States in the Armed Forces;

Whereas, although veterans possess special qualities and skills which make them ideal candidates for employment, many veterans encounter difficulties in securing employment;

Whereas military spending cuts and reductions-in-force in the Armed Forces will send tens of thousands of veterans looking for employment in the job market;

Whereas it would be inconsiderate and contrary to the economic competitiveness of the United States to neglect the post-military needs of the men and women who served the United States in the Armed Forces; and

Whereas the Department of Veterans Affairs, the Department of Labor, the Office of Personnel Management, and many State and local governments administer veterans programs and have veterans employment representatives both to ensure that veterans receive the services to which they are entitled and to promote employer interest in hiring veterans: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning November 8, 1992, is hereby designated as "Hire a Veteran Week", and the President is authorized and requested to issue a proclamation calling upon employers, labor organizations, veterans organizations, and Federal, State, and local governmental agencies to lend their support to the campaign to increase employment of the men and women who have served the United States in the Armed Forces.

BRAILLE LITERACY WEEK

The joint resolution (H.J. Res. 353) designating the week beginning January 3, 1993 as "Braille Literacy Week," was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

H.J. RES. 353

Whereas Braille, the system of dots used by the blind to read and write, is a truly elegant and effective medium of literacy;

Whereas blind and visually impaired individuals must be afforded the opportunity to achieve literacy so that they can compete in employment, succeed in education, and live independent, fruitful lives;

Whereas recording devices, reading machines such as the optacon, and computer-screen access programs have enabled blind individuals to gain access to a wide variety of printed material but cannot replace a medium such as Braille which allows a blind individual to read and write independently;

Whereas the teaching of Braille has been woefully neglected over the past several decades; and

Whereas many States have acted or are acting to ensure that blind and visually impaired school age students are taught Braille if it is judged the appropriate medium to provide such students with the opportunity to achieve literacy: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION AND PRESIDENTIAL PROCLAMATION.

That the week beginning January 3, 1993, is designated as "Braille Literacy Week". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities, including educational activities to celebrate the contributions of the inventor of Braille, Louis Braille, who was born on January 4, 1809, and to heighten public awareness of both the importance of Braille literacy among children and adults who are blind and the great need for the production of the wide variety of commonly available print documents in Braille.

SEC. 2. STATE AND LOCAL PROCLAMATIONS.

The Governor of each State, the chief executive of the District of Columbia and each territory of the United States, and the chief executive of each political subdivision of each State or territory is urged to issue a proclamation (or other appropriate official statement) calling upon the people of such State, the District of Columbia, or such territory or political subdivision to observe the week beginning January 3, 1993, in the manner described in section 1.

RELIGIOUS FREEDOM DAY

The joint resolution (H.J. Res. 457) designating January 16, 1993, as "Religious Freedom Day", was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

H.J. RES. 457

Whereas December 15, 1991, is the 200th anniversary of the completion of the ratification of the Bill of Rights;

Whereas the first amendment to the Constitution of the United States guarantees religious liberty to the people of the United States;

Whereas millions of people from all parts of the world have come to the United States fleeing religious persecution and seeking freedom to worship;

Whereas in 1777 Thomas Jefferson wrote the bill entitled "A Bill for Establishing Religious Freedom in Virginia" to guarantee freedom of conscience and separation of church and state;

Whereas in 1786, through the devotion of Virginians such as George Mason and James Madison, the General Assembly of Virginia passed such bill;

Whereas the Statute of Virginia for Religious Freedom inspired and shaped the guarantees of religious freedom in the first amendment;

Whereas the Supreme Court of the United States has recognized repeatedly that the Statute of Virginia for Religious Freedom was an important influence in the development of the Bill of Rights;

Whereas scholars across thee United States have proclaimed the vital importance of such statute and leaders in fields such as law and religion have devoted time, energy, and resources to celebrating its contribution to international freedom; and

Whereas America's First Freedom Center, located in Richmond, Virginia, plans a permanent monument to the Statute of Virginia for Religious Freedom, accompanied by educational programs and commemorative activities for visitors from around the world: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That January 16, 1993, is designated as "Religious Freedom Day", and the President is authorized and requested to issue a proclamation calling on the people of the United States to join together to celebrate their religious freedom and to observe the day with appropriate ceremonies and activities.

IRISH-AMERICAN HERITAGE MONTH

The joint resolution (H.J. Res. 500) designating March 1993 as "Irish-American Heritage Month", was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

H.J. RES. 500

Whereas by 1776 nearly 300,000 natives of Ireland had emigrated to the colonies that would become the United States;

Whereas following the victory at Yorktown over the English, a French Major General reported that the Congress owed its existence, and America possible owed its preservation, to the fidelity of the Irish;

Whereas at least 8 signers of the Declaration of Independence were of Irish origin;

Whereas 18 Presidents have proudly proclaimed their Irish-American heritage;

Whereas 200 years ago, Irish-born James Hoban and Irish immigrants assisted in the construction of the United States Capitol;

Whereas 190 years ago, Irish-born John Barry was the first naval hero of the American Revolution and became known as the "Father of the United States Navy";

Whereas 180 years ago, Commodore Oliver Perry, an Irish-American, achieved his major naval victory in the Battle of Lake Erie;

Whereas 50 years ago, the USS Sullivans was commissioned as a naval memorial to the famed Irish-American Sullivan brothers who made the ultimate sacrifice for democracy and freedom in the world; and

Whereas the governors and mayors of 37 states and cities have designated March 1992 as "Irish-American Heritage Month": Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That March 1993 is designated as "Irish-American Heritage Month", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the month with appropriate ceremonies and activities.

NATIONAL MILITARY FAMILIES RECOGNITION DAY

The joint resolution (H.J. Res. 503) acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 23, 1992, as "National Military Families Recognition Day", was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

H.J. RES. 503

Whereas the Congress recognizes and supports the Department of Defense policies to recruit, train, equip, retain, and field a military force that is capable of preserving peace and protecting the vital interests of the United States and its allies.

Whereas military families shoulder the responsibility of providing emotional support for their service members;

Whereas, in times of war and military action, military families have demonstrated their patriotism through their steadfast support and commitment to the Nation;

Whereas the emotional and mental readiness of the United States military personnel around the world is tied to the well-being and satisfaction of their families;

Whereas the quality of life that the Armed Forces provide to military families is a key factor in the retention of military personnel;

Whereas the people of the United States are truly indebted to military families for facing adversities, including extended separations from their service members, frequent household moves due to reassignments, and restrictions on their employment and educational opportunities.

Whereas 72 percent of officers and 54 percent of enlisted personnel in the Armed Forces are married;

Whereas families of active duty military personnel (including individuals other than spouses or children) account for more than 2,815,000 of the more than 4,880,000 individuals in the active duty community, and spouses and children of members of the Reserves in paid status account for more than 1,320,000 of the more than 2,470,000 individuals in the Reserves community;

Whereas spouses, children, and other dependents living abroad with members of the Armed Forces total nearly 450,000 and these family members at times face feelings of cultural isolation and financial hardship;

Whereas the significantly reduced global military tensions after the end of the cold war have led to a down-sizing of the national defense and a refocusing of national priorities to strengthening the American economy and competitiveness in the global marketplace;

Whereas the Congress is grateful for such sacrifices and is committed to assisting the service members and their families who undergo the transition from active duty to civilian life; and

Whereas military families are devoted to the overall mission of the Department of Defense and have accepted the role of the United States as the military leader and protector of the free world: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) the Congress acknowledges and appreciates the commitment and devotion of present and former military families and the sacrifices that such families have made on behalf of the nation; and

(2) November 23, 1992, is designated as "National Military Families Recognition Day". The President is authorized and requested to issue a proclamation calling on the people of the United States to observe the day with appropriate programs, ceremonies, and activities.

COUNTRY MUSIC MONTH

The joint resolution (H.J. Res. 520) to designate the month of October 1992 as "Country Music Month", was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

H.J. RES. 520

Whereas country music derives its roots from the folk songs of our Nation's workers, captures the spirit of our religious hymns, reflects the sorrow and joy of our traditional ballads, and echoes the drive and soulfulness of rhythm and blues;

Whereas country music has played an integral part in our Nation's history, accompanying the growth of the United States and reflecting the ethnic and cultural diversity of our people;

Whereas country music embodies the spirit of America and the deep and genuine feelings individuals experience throughout their lives;

Whereas the distinctively American refrains of country music have been performed for audiences throughout the world, striking a chord deep within the hearts and souls of its fans; and

Whereas the month of October 1992 marks the twenty-eighth annual observance of Country Music Month: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of October 1992 be designated as "Country Music Month" and that the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such month with appropriate ceremonies and activities.

NATIONAL FIREFIGHTERS DAY

The joint resolution (H.J. Res. 523) designating October 8, 1992, as "National Firefighters Day", was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

H.J. RES. 523

Whereas there are over 2,000,000 professional firefighters in the United States;

Whereas firefighters respond to more than 2,300,000 fires and 8,700,000 emergencies other than fires each year;

Whereas fires annually cause nearly 6,000 deaths and $10,000,000,000 in property damage;

Whereas firefighters have given their lives and risked injury to preserve the lives and protect the property of others;

Whereas the contributions and sacrifices of valiant firefighters often go unreported and are inadequately recognized by the public; and

Whereas the work of firefighters deserves the attention and gratitude of all individuals in the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 8, 1992, is designated as "National Firefighters Day". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe the day with appropriate ceremonies and activities.

NATIONAL WOMEN AND GIRLS IN SPORTS DAY

The joint resolution (H.J. Res. 546) designating February 4, 1993, and February 3, 1994, as "National Women and Girls in Sports Day", was considered, ordered to a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

H.J. RES. 546

Whereas women's athletics is one of the most effective avenues available for women of the United Stats to develop self-discipline, initiative, confidence, and leadership skills;

Whereas sport and fitness activities contribute to emotional and physical well-being;

Whereas women need strong bodies as well as strong minds;

Whereas the history of women in sports is rich and long, but there has been little national recognition of the significance of women's athletic achievements;

Whereas the number of women in leadership positions as coaches, officials, and administrators has declined drastically since the passage of title IX of the Education Amendments of 1972;

Whereas there is a need to restore women to leadership positions in athletics to ensure a fair representation of the abilities of women and to provide role models for young female athletes;

Whereas the bonds built between women through athletics help to break down the social barriers of racism and prejudice;

Whereas the communication and cooperation skills learned through athletic experience play a key role in the contributions of an athlete at home, at work, and to society;

Whereas women's athletics has produced such winners as Flo Hyman, whose spirit, talent, and accomplishments distinguished her above others and exhibited the true meaning of fairness, determination, and team play;

Whereas parents feel that sports are equally important for boys and girls and that sports and fitness activities provide important benefits to girls who participate;

Whereas early motor skill training and enjoyable experiences of physical activity strongly influence lifelong habits of physical fitness;

Whereas the performances of female athletes in the Olympic games are a source of inspiration and pride to the United States;

Whereas the athletic opportunities for male students at the collegiate and high school levels remain significantly greater than those for female students; and

Whereas the number of funded research projects focusing on the specific needs of women athletes is limited and the information provided by the projects is imperative to the health and performance of future women athletes: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) February 4, 1993, and February 3, 1994, are designated as "National women and Girls in Sports Day"; and

(2) the President is authorized and requested to issue a proclamation calling on local and State jurisdictions, appropriate Federal agencies, and the people of the United States to observe the day with appropriate ceremonies and activities.

MEASURES INDEFINITELY POSTPONED

Mr. FORD. Mr. President, I ask unanimous consent that the Calendar Nos. 786, 787, 788, 790 through and including 794, and 796, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL MEDICAL STAFF SERVICES AWARENESS WEEK

WORLD POPULATION AWARENESS WEEK

NATIONAL WALKING WEEK

AMERICAN WINE APPRECIATION WEEK

EDUCATION FIRST WEEK

NATIONAL OCCUPATIONAL THERAPY DAY

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of: H.J. Res. 399 to designate the week of Nov. 1, 1992, as National Medical Staff Services Awareness Week; H.J. Res. 458 to designate the week beginning Oct. 24, 1992, as World Population Awareness Week; H.J. Res. 489 to designate Feb. 21, 1993 through Feb. 27, 1993 as American Wine Appreciation Week; H.J. Res. 547 to designate May 2, 1993 through May 8, 1993, as National Walking Week; H.J. Res. 543 to designate Nov. 30, 1992 through Dec. 6, 1992 as Education First Week; H.J. Res. 471 to designate Sept. 16, 1992 as National Occupational Therapy Day; now at the desk from the House; and that the joint resolutions be deemed read three times, passed, the preambles be agreed to; and the motion to reconsider laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SEYMOUR. Mr. President, I rise today to voice my strong support for this resolution declaring the week of February 21–27, 1993, as American Wine Appreciation Week.

Virtually every State has an active wine industry, and a majority of Americans approve of and enjoy wine as a part of their diet. In fact, grapes are the single largest fruit crop in this country. And 85 percent of all wine consumed in the United States is produced by the more than 1,200 wineries operating in 46 States.

Western culture, tradition, and religions have traditionally viewed wine as the "Fruit of the Vine," God's gift to mankind. The history of winegrape growing in the world dates back over 7,000 years. Moreover, winegrape growing and wine production have been a significant part of America's agricultural industry since the founding of our Nation. Thomas Jefferson himself was a passionate advocate of winegrowing on these shores.

Today, winemaking affords a special value to the American farmer as one of the few agricultural enterprises that can be profitably operated as a family farm without subsidy. Vineyards and wineries typically are family farms. In fact, the American wine industry is comprised of thousands of family-owned farms, many of which are passed on from generation to generation, sustaining responsible preservation of our agricultural resources.

Mr. President, the wine industry is a pillar of our economy, generating $8 billion in sales annually, sustaining 200,000 jobs nationwide and providing $1 billion annually in government taxes and fees. We must also underscore the fact that wine produced in the United States accounts for an increasing percentage of U.S. exports, helping to reduce our trade deficit.

It is the American consumer, Mr. President, who ultimately is the enthusiastic beneficiary of the fruit of the American vine. It is clear that wine has fulfilled a valued role in a wide variety of our nation's cultural, religious, and familial traditions and deserves our recognition.

Mr. President, I urge my colleagues to join with me in support of this resolution.

The joint resolutions (H.J. Res. 399, H.J. Res. 458, H.J. Res. 489, H.J. Res. 547, H.J. Res. 543, and H.J. Res 471) were deemed read the third time and passed.

NATIONAL RED RIBBON WEEK FOR A DRUG FREE AMERICA

NATIONAL VISITING NURSES ASSOCIATIONS WEEK

NATIONAL REFUGEE DAY

BE KIND TO ANIMALS AND NATIONAL PET WEEK

NATIONAL GOOD TEEN DAY

NEUROFIBROMATOSIS AWARENESS MONTH

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of H.J. Res. 467 to designate Oct. 24, 1992 through Nov. 1, 1992 as National Red Ribbon Week for a Drug Free America; H.J. Res. 484 to designate the week of Feb. 14 through Feb. 20, 1993 as National Visiting Nurses Associations Week; S.J. Res. 323 to designate Oct. 30, 1992 as National Refugee Day; H.J. Res. 429 to designate May 2 through May 8, 1993 as Be Kind to Animals and National Pet Week; H.J. Res. 409 to designate Jan. 16, 1993 as National Good Teen Day; H.J. Res. 422 to designate May 1992 as Neurofibromatosis Awareness Month, that the Senate proceed to their immediate consideration en bloc; that the joint resolutions be deemed read for the third time, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The joint resolutions (H.J. Res. 467, H.J. Res. 484, S.J. Res. 323, H.J. Res. 429, H.J. Res. 409, and H.J. Res. 422) were deemed read the third time and passed.

S.J. RES. 323

Whereas in the past decade, the plight of refugees world wide has been deepening as the world refugee population has more than doubled from 7,300,000 to 16,000,000;

Whereas more than 80 percent of these refugees are women and children;

Whereas one-third of the refugee population is found in Africa where the host countries have the weakest infrastructure and are the least able to sustain such large numbers of destitute people in flight;

Whereas the United States has always played a leading role in refugee matters worldwide;

Whereas the origins of the United States as a land of refuge for those escaping persecution and the development of the United States as a Nation of immigrants gives the country a deep understanding of and sympathy for the plight of the 16,000,000 refugees in the world;

Whereas refugees who have come to the United States have made significant contributions to the country;

Whereas the United States has consistently been a leader in the world community to expand the effort to help the needy population of refugees and has worked to find both short-term and long-term solutions to the refugee crisis; and

Whereas the current world refugee situation requires that the United States continue to be a leader in refugee affairs and in the efforts to meet the growing challenges of the refugee crisis: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) October 30, 1992, is designated as "Refugee Day"; and

(2) the President is authorized and requested to issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

Passed the Senate October 8 (legislative day, September 30), 1992.

Attest:

Secretary.

RELIEF OF WILLIAM A. CASSITY

Mr. FORD. Mr. President, I ask unanimous consent that H.R. 1101, an act for the relief of William A. Cassity be discharged from the Committee on Armed Services, and be referred to the Judiciary Committee.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FORD. I now ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 1101; that the Senate proceed to its immediate consideration; that the bill be deemed read the third time, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 1101) was deemed read the third time and passed.

NATIONAL CHILD PROTECTION ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3390, the National Child Protection Act of 1992, introduced earlier today by

Senator BIDEN; that the bill be deemed read three times, passed, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 3390) was deemed read the third time and passed.

S. 3390

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1 SHORT TITLE.

This Act may be cited as the "National Child Protection Act of 1992".

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to establish a national system through which child care organizations may obtain the benefit of a nationwide criminal background check to determine if persons who are current or prospective child care providers have committed child abuse crimes or other serious crimes;

(2) to establish minimum criteria for State laws and procedures that permit child care organizations to obtain the benefit of nationwide criminal background checks to determine if persons who are current or prospective child care providers have committed child abuse crimes or other serious crimes;

(3) to provide procedural rights for persons who are subject to nationwide criminal background checks, including procedures to challenge and correct inaccurate background check information;

(4) to establish a national system for the reporting by the States of child abuse crime information; and

(5) to document and study the problem of child abuse by providing statistical and informational data on child abuse and related crimes to the Department of Justice and other interested parties.

SEC. 3. DEFINITIONS.

For the purposes of this Act—

(1) the term "authorized agency" means a division or office of a State designated by a State to report, receive, or disseminate information under this Act;

(2) the term "background check crime" means a child abuse crime, murder, manslaughter, aggravated assault, kidnapping, arson, sexual assault, domestic violence, incest, indecent exposure, prostitution, promotion of prostitution, and a felony offense involving the use or distribution of a controlled substance;

(3) the term "child" means a person who is a child for purposes of the criminal child abuse law of a State;

(4) the term "child abuse" means the physical or mental injury, sexual abuse or exploitation, neglectful treatment, negligent treatment, or maltreatment of a child by any person in violation of the criminal child abuse laws of a State, but does not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty;

(5) the term "child abuse crime" means a crime committed under any law of a State that establishes criminal penalties for the commission of child abuse by a parent or other family member of a child or by any other person;

(6) the term "child abuse crime information" means the following facts concerning a person who is under indictment for, or has been convicted of, a child abuse crime: full name, race, sex, date of birth, height, weight, a brief description of the child abuse crime or offenses for which the person has been arrested or is under indictment or has been convicted, the disposition of the charge, and any other information that the Attorney General determines may be useful in identifying persons arrested for, under indictment for, or convicted of, a child abuse crime;

(7) the term "child care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children;

(8) the term "domestic violence" means a felony or misdemeanor involving the use or threatened use of force by—

(A) a present or former spouse of the victim;

(B) a person with whom the victim shares a child in common;

(C) a person who is cohabiting with or has cohabited with the victim as a spouse; or

(D) any person defined as a spouse of the victim under the domestic or family violence laws of a State;

(9) the term "exploitation" means child pornography and child prostitution;

(10) the term "mental injury" means harm to a child's psychological or intellectual functioning, which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors or by a change in behavior, emotional response, or cognition;

(11) the term "national criminal background check system" means the system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification;

(12) the term "negligent treatment" means the failure to provide, for a reason other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of a child;

(13) the term "physical injury" includes lacerations, fractured bones, burns, internal injuries, severe bruising, and serious bodily harm;

(14) the term "provider" means

(A) a person who—

(i) is employed by or volunteers with a qualified entity;

(ii) who owns or operates a qualified entity; or

(iii) who has or may have unsupervised access to a child to whom the qualified entity provides child care; and

(B) a person who—

(i) seeks to be employed by or volunteer with a qualified entity;

(ii) seeks to own or operate a qualified entity; or

(iii) seeks to have or may have unsupervised access to a child to whom the qualified entity provides child care;

(15) the term "qualified entity" means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides child care or child care placement services, including a business or organization that licenses or certifies others to provide child care or child care placement services;

(16) the term "sex crime" means an act of sexual abuse that is a criminal act;

(17) the term "sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children or incest with children; and

(18) the term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific.

SEC. 4. REPORTING BY THE STATES.

(a) IN GENERAL.—An authorized criminal justice agency of a State shall report child abuse crime information to, or index child abuse crime information in, the national criminal background check system.

(b) PROVISION OF STATE CHILD ABUSE CRIME RECORDS THROUGH THE NATIONAL CRIMINAL BACKGROUND CHECK SYSTEM.—(1) Not later than 180 days after the date of enactment of this Act, the Attorney General shall—

(A) investigate the criminal records of each State and determine for each State a timetable by which the State should be able to provide child abuse crime records on an on-line capacity basis through the national criminal background check system;

(B) establish guidelines for the reporting or indexing of child abuse crime information, including guidelines relating to the format, content, and accuracy of child abuse crime information and other procedures for carrying out this Act; and

(C) notify each State of the determinations made pursuant to subparagraphs (A) and (B).

(2) The Attorney General shall require as a part of the State timetable that the State—

(A) achieve, by not later than the date that is 3 years after the date of enactment of this Act, at least 80 percent currency of final case dispositions in computerized criminal history files for all identifiable child abuse crime cases in which there has been an event of activity within the last 5 years;

(B) continue to maintain at least 80 percent currency of final case dispositions in all identifiable child abuse crime cases in which there has been an event of activity within the preceding 5 years; and

(C) take steps to achieve full disposition reporting, including data quality audits and periodic notices to criminal justice agencies identifying records that lack final dispositions and requesting those dispositions.

(c) LIAISON.—An authorized agency of a State shall maintain close liaison with the National Center on Child Abuse and Neglect, the National Center for Missing and Exploited Children, and the National Center for the Prosecution of Child Abuse for the exchange of technical assistance in cases of child abuse.

(d) ANNUAL SUMMARY.—(1) The Attorney General shall publish an annual statistical summary of the child abuse crime information reported under this Act.

(2) The annual statistical summary described in paragraph (1) shall not contain any information that may reveal the identity of any particular victim or alleged violator.

(e) ANNUAL REPORT.—The Attorney General shall publish an annual summary of each State's progress in reporting child abuse crime information to the national criminal background check system.

(f) STUDY OF CHILD ABUSE OFFENDERS.—(1) Not later than 180 days after the date of enactment of this Act, the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall begin a study based on a statistically significant sample of convicted child abuse offenders and other relevant information to determine—

(A) the percentage of convicted child abuse offenders who have more than 1 conviction for an offense involving child abuse;

(B) the percentage of convicted child abuse offenders who have been convicted of an offense involving child abuse in more than 1 State;

(C) whether there are crimes or classes of crimes, in addition to those defined as background check crimes in section 3, that are indicative of a potential to abuse children; and

(D) the extent to which and the manner in which instances of child abuse form a basis for convictions for crimes other than child abuse crimes.

(2) Not later than 1 year after the date of enactment of this Act, the Administrator shall submit a report to the Chairman of the Committee on the Judiciary of the Senate and the Chairman of the Committee on the Judiciary of the House of Representatives containing a description of and a summary of the results of the study conducted pursuant to paragraph (1).

SEC. 5. BACKGROUND CHECKS.

(a) In General.—(1) A State may have in effect procedures (established by or under State statute or regulation) to permit a qualified entity to contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether there is a report that a provider is under indictment for, or has been convicted of, a background check crime.

(2) The authorized agency shall access and review State and Federal records of background check crimes through the national criminal background check system and shall respond promptly to the inquiry.

(b) Guidelines.—(1) The Attorney General shall establish guidelines for State background check procedures established under subsection (a), which guidelines shall include the requirements and protections of this Act.

(2) The guidelines established under paragraph (1) shall require—

(A) that no qualified entity may request a background check of a provider under subsection (a) unless the provider first completes and signs a statement that—

(i) contains the name, address, and date of birth appearing on a valid identification document (as defined by section 1028(d)(1) of title 18, United States Code) of the provider;

(ii) the provider is not under indictment for, and has not been convicted of, a background check crime and, if the provider is under indictment for or has been convicted of a background check crime, contains a description of the crime and the particulars of the indictment or conviction;

(iii) notifies the provider that the entity may request a background check under subsection (a);

(iv) notifies the provider of the provider's rights under subparagraph (B); and

(v) notifies the provider that prior to the receipt of the background check the qualified entity may choose to deny the provider unsupervised access to a child to whom the qualified entity provides child care;

(B) that each State establish procedures under which a provider who is the subject of a background check under subsection (a) is entitled—

(i) to obtain a copy of any background check report and any record that forms the basis for any such report; and

(ii) to challenge the accuracy and completeness of any information contained in any such report or record and obtain a prompt determination from an authorized agency as to the validity of such challenge;

(C) that an authorized agency to which a qualified entity has provided notice pursuant to subsection (a) make reasonable efforts to complete research in whatever State and local recordkeeping systems are available and in the national criminal background check system and respond to the qualified entity within 15 business days;

(D) that the response of an authorized agency to an inquiry pursuant to subsection (a) inform the qualified entity that the background check pursuant to this section—

(i) may not reflect all indictments or convictions for a background check crime; and

(ii) may not be the sole basis for determining the fitness of a provider;

(E) that the response of an authorized agency to an inquiry pursuant to subsection (a) be limited to the conviction or pending indictment information reasonably required to accomplish the purposes of this Act;

(F) that the qualified entity may choose to deny the provider unsupervised access to a child to whom the qualified entity provides child care on the basis of a background check under subsection (a) until the provider has obtained a determination as to the validity of any challenge under subparagraph (B) or waived the right to make such challenge; and

(G) that each State establish procedures to ensure that any background check under subsection (a) and the results thereof shall be requested by and provided only to—

(i) qualified entities identified by States;

(ii) authorized representatives of a qualified entity who have a need to know such information;

(iii) the provider who is the subject of a background check;

(iv) law enforcement authorities; or

(v) pursuant to the direction of a court of law;

(H) that background check information conveyed to a qualified entity pursuant to subsection (a) shall not be conveyed to any person except as provided under subparagraph (G);

(I) that an authorized agency shall not be liable in an action at law for damages for failure to prevent a qualified entity from taking action adverse to a provider on the basis of a background check;

(J) that a State employee or a political subdivision of a State or employee thereof responsible for providing information to the national criminal background check system shall not be liable in an action at law for damages for failure to prevent a qualified entity from taking action adverse to a provider on the basis a background check; and

(K) that a State or Federal provider of criminal history records, and any employee thereof, shall not be liable in an action at law for damages for failure to prevent a qualified entity from taking action adverse to a provider on the basis of a criminal background check, or due to a criminal history record's being incomplete.

(c) Equivalent Procedures.—(1) Notwithstanding anything to the contrary in this section, the Attorney General may certify that a State licensing or certification procedure that differs from the procedures described in subsections (a) and (b) shall be deemed to be the equivalent of such procedures for purposes of this Act, but the procedures described in subsections (a) and (b) shall continue to apply to those qualified entities, providers, and background check crimes that are not governed by or included within the State licensing or certification procedure.

(2) The Attorney General shall by regulation establish criteria for certifications under this subsection. Such criteria shall include a finding by the Attorney General that the State licensing or certification procedure accomplishes the purposes of this Act and incorporates a nationwide review of State and Federal records of background check offenses through the national criminal background check system.

(d) Regulations.—(1) The Attorney General may by regulation prescribe such other measures as may be required to carry out the purposes of this Act, including measures relating to the security, confidentiality, accuracy, use, misuse, and dissemination of information, and audits and recordkeeping.

(2) The Attorney General shall, to the maximum extent possible, encourage the use of the best technology available in conducting background checks.

SEC. 6. FUNDING FOR IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.

(a) Use of Formula Grants for Improvements in State Records and Systems.—Section 509(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

(A) in paragraph (2) by striking "and" after the semicolon;

(B) in paragraph (3) by striking the period and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(4) the improvement of State record systems and the sharing of all of the records described in paragraphs (1), (2), and (3) and the records required by the Attorney General under section 914 of the National Child Protection Act of 1992 with the Attorney General for the purpose of implementing the National Child Protection Act of 1992.".

(b) Additional Funding Grants for the Improvement of Child Abuse Crime Information.—(1) The Attorney General shall, subject to appropriations and with preference to States that as of the date of enactment of this Act have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used—

(A) for the computerization of criminal history files for the purposes of this Act;

(B) for the improvement of existing computerized criminal history files for the purposes of this Act;

(C) to improve accessibility to the national criminal background check system for the purposes of this Act; and

(D) to assist the State in the transmittal of criminal records to, or the indexing of criminal history record in, the national criminal background check system for the purposes of this Act.

(2) There are authorized to be appropriated for grants under paragraph (1) a total of $20,000,000 for fiscal years 1993, 1994, and 1995.

(c) Withholding State Funds.—Effective 1 year after the date of enactment of this Act, for a fiscal year the Attorney General may reduce by up to 25 percent the the amount allocated that exceeds the allocation to a State for fiscal year 1993 under title I of the Omnibus Crime Control and Safe Streets Act of 1968 of a State that is not in compliance with the timetable established for that State under section 4 of this Act.

Passed the Senate October 8 (legislative day, September 30), 1992.

Attest:

Secretary.

Mr. BIDEN. Mr. President, I rise today in support of the National Child Protection Act. This legislation is to confront what I believe is one of the most threatening dangers confronting the Nation—the tragedy of child abuse.

While many abused children are victimized in their homes, there is a large and growing number of children being victimized outside the home.

Today, about 6 million preschool children are in a day care program for some or all of their day. By 1995, at least 8 million preschoolers will be in day care.

This rapidly growing rise in children being cared for outside their homes must be met by an expanded national effort to protect these children. This is the goal of the National Child Protection Act.

Eleven months ago, the Senate Judiciary Committee convened a hearing to discuss this proposal—with television personality and child abuse activist Ms. Oprah Winfrey, and several child abuse experts. Ms. Winfrey brought to the committee a plan that was the foundation for the National Child Protection Act.

The idea behind the National Child Protection Act is simple: We must do everything we can to detect convicted criminals before they are hired as child care workers, not after another tragedy takes place.

If enacted, this act will help build the State and national systems necessary to prevent convicted criminals from being hired as child care workers. In just the past year, similar systems in just 6 states identified more than 6,200 individuals—convicted of serious criminal offenses, such as sex offenses, child abuse, violent crimes, and felony drug charges—seeking jobs as child care providers.

As I said when I introduced this legislation, I would like to credit Senator DECONCINI, who in 1984, along with Congressman GEORGE MILLER, wrote the first law calling for national criminal background checks for child care workers. In addition, Senator SPECTER was also involved in developing such systems when he proposed the Juvenile Detention Employees Act of 1983.

The Crime Control Act of 1990—signed into law last year—extended similar background check requirements for Federal day care services. Senator REID and I wrote this legislation, which is helping to protect the thousands of children served every day in Federal agencies' day care centers. Today, we must have such a system available to all.

Today, I am pleased that the Senate is passing the National Child Protection Act. It is still my hope that, however difficult I know it will be, this legislation will be passed by the House of Representatives. I urge all Senators who have supported this legislation to assist my efforts.

Finally, I wish to thank Ms. Oprah Winfrey, for this legislation is due, in great amount, to her time, efforts, and energy on behalf of all of America's children.

COLORADO WILDERNESS ACT OF 1992

Mr. FORD. Mr. President, I ask the Chair lay before the Senate a message from the House on S. 1029, the Colorado wilderness bill, and I move to concur in the amendment of the House with a Wirth-Brown substitute amendment; that the motion be agreed to; the motion to reconsider be laid upon the table; and that any statements relative to the passage of this item appear at the appropriate place in the RECORD as though read.

Mr. BROWN. Reserving the right to object, Mr. President, I will not object. But I simply wanted to state that this measure provides enormous protection for Colorado's water, as well as enormous protection for the trust in the public land.

The amendment to S. 1029 offered tonight represents a step forward for Colorado. This bill achieves what is important to Colorado—it protects over 600,000 acres of new wilderness areas, and yet explicitly protects access to and the use of existing water rights in these areas. The bill is essentially silent on the issue of the existence of Federal reserved water rights for these areas. However, the issue of the existence of such a right is moot, because the bill provides that no one can assert such a right, and no court or agency could ever consider in any fashion such a claim. This ensures that wilderness status will not ever result in an encroachment on Colorado's ability to use its interstate water allocations. And even more important is the way it addresses the difficult issue of downstream wilderness study areas, where some might argue that there could be a conflict with upstream water development and use. Where this potential conflict exists, the areas are not classified as wilderness areas, to ensure that there will be no effect on existing and future water use. In order to make this intent crystal clear, there is also an explicit disclaimer of a Federal reserved water right for these areas, and the existence of these areas cannot be used as a basis to affect upstream activities as a part of any administrative or regulatory program.

I would not have supported this amendment if it did not represent a complete and absolute protection of both Colorado's ability to develop and use water allocated to it and existing, absolute and conditional water rights. The only—let me repeat—the only restriction in this regard is that you cannot build new or expanded water projects in these areas. Without this assurance, Colorado would not have any additional wilderness areas.

It is extraordinary and I think without equal in this Nation. This measure is a product of the work on behalf of the senior Senator from Colorado, and I think represents the compromise that reaches out to preserve the best. I yield, and withdraw my reservation.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1029) entitled "An Act to designate certain lands in the State of Colorado as components of the National Wilderness Preservation System, and for other purposes", do pass with the following amendment:

Strike out all after the resolving clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Colorado Wilderness Act of 1992".

SEC. 2. ADDITIONS TO THE WILDERNESS PRESERVATION SYSTEM.

(a) ADDITIONS.—The following lands in the State of Colorado are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System:

(1) Certain lands in the Gunnison Basin Resource Area administered by the Bureau of Land Management which comprise approximately 3,800 acres, as generally depicted on a map entitled "American Flats Additions to the Big Blue Wilderness—Proposal", dated June 1992, and which are hereby incorporated in and shall be deemed to be a part of the wilderness area designated by Public Law 96-560 and renamed "Uncompahgre Wilderness" by section 3(f) of this Act.

(2) Certain lands in the Gunnison Resource Area administered by the Bureau of Land Management which comprise approximately 600 acres, as generally depicted on a map entitled "Bill Hare Gulch and Larson Creek Addition to the Big Blue Wilderness—Proposal", dated June 1992, and which are hereby incorporated in and shall be deemed to be a part of the wilderness area designated by Public Law 96-560 and renamed "Uncompahgre Wilderness" by section 3(f) of this Act.

(3) Certain lands in the Pike and San Isabel National Forests which comprise approximately 46,910 acres, as generally depicted on a map entitled "Buffalo Peaks Wilderness—Proposal", dated June 1992, and which shall be known as the Buffalo Peaks Wilderness.

(4) Certain lands in the Gunnison National Forest (renamed as the Ute National Forest by section 3(f) of this Act) and in the Bureau of Land Management Powderhorn Primitive Area which comprise approximately 60,100 acres as generally depicted on a map entitled "Powderhorn Wilderness—Proposal", dated June 1992, and which shall be known as the Powderhorn Wilderness.

(5) Certain lands in the Routt National Forest which comprise approximately 20,020 acres, as generally depicted on a map entitled "Davis Peak Additions to the Mount Zirkel Wilderness Proposal", dated June 1992, and which are hereby incorporated in and shall be deemed to be a part of the Mount Zirkel Wilderness designated by Public Law 88-555.

(6) Certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests (renamed the Ute National Forest by section 3(f) of this Act) which comprise approximately 30,700 acres as generally depicted on a map entitled "Fossil Ridge Wilderness Proposal", dated June 1992, and which shall be known as the Fossil Ridge Wilderness Area.

(7) Certain lands in the San Isabel National Forest which comprise approximately 22,040 acres as generally depicted on a map entitled "Greenhorn Mountain Wilderness—Proposal", dated June 1992, and which shall be known as the Greenhorn Mountain Wilderness.

(8) Certain lands within the Pike and San Isabel National Forests which comprise approximately 13,830 acres, as generally depicted on a map entitled "Lost Creek Wilderness Proposal",

dated June 1992, which are hereby incorporated in and shall be deemed to be a part of the Lost Creek Wilderness designated by Public Law 96-560: Provided, That the Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary") is authorized to acquire, only by donation or exchange, various mineral reservations held by the State of Colorado within the boundaries of the Lost Creek Wilderness additions designated by this Act.

(9) Certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests (renamed the Ute National Forest by section 3(f) of this Act) which comprise approximately 5,500 acres, as generally depicted on a map entitled "Oh-Be-Joyful Addition to the Raggeds Wilderness—Proposal", dated June 1992, and which are hereby incorporated in and shall be deemed to be a part of the Raggeds Wilderness designated by Public Law 96-560.

(10) Certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests (renamed the Ute National Forest by section 3(f) of this Act) which comprise approximately 28,262 acres, as generally depicted on a map entitled "Roubideau Wilderness—Proposal", dated June 1992, and which shall be known as the Roubideau Wilderness.

(11) Certain lands in the Rio Grande National Forest which comprise approximately 212,360 acres, as generally depicted on a map entitled "Sangre de Cristo Wilderness—Proposal", dated June 1992, and which shall be known as the Sangre de Cristo Wilderness. Any non-Federal lands or interests therein within the Como Lake and Blanca Peak areas, as generally depicted on a map entitled "Como Lake and Blanca Peak Areas", dated June 1992, which hereafter may be acquired by the United States shall be added to the Sangre de Cristo Wilderness and managed accordingly, and if all such lands and interests are so acquired, such areas shall be so added and managed in their entirety.

(12) Certain lands in the Routt National Forest which comprise approximately 47,690 acres, as generally depicted on a map entitled "Service Creek Wilderness Proposal", dated June 1992, which shall be known as the Sarvis Creek Wilderness.

(13) Certain lands in the San Juan National Forest which comprise approximately 32,800 acres as generally depicted on a map entitled "South San Juan Expansion Wilderness—Proposal", (V-Rock Trail and Montezuma Peak), dated June 1992, and which are hereby incorporated in and shall be deemed to be a part of the South San Juan Wilderness designated by Public Law 96-560.

(14) Certain lands in the San Isabel National Forest which comprise approximately 18,130 acres as generally depicted on a map entitled "Spanish Peaks Wilderness—Proposed", dated June 1992, and which shall be known as the Spanish Peaks Wilderness.

(15) Certain lands in the White River National Forest which comprise approximately 8,330 acres, as generally depicted on a map entitled "Spruce Creek Additions to the Hunter-Fryingpan Wilderness—Proposal", dated June 1992, and which are hereby incorporated in and shall be deemed to be a part of the Hunter Fryingpan Wilderness designated by Public Law 95-327: Provided, That no right, or claim of right, to the diversion and use of the waters of Hunter Creek, the Fryingpan or Roaring Fork Rivers, or any tributaries of said creeks or rivers, by the Fryingpan-Arkansas Project, Public Law 87-590, and the reauthorization thereof by Public Law 93-493, as modified as proposed in the September 1959 report of the Bureau of Reclamation entitled "Ruedi Dam and Reservoir, Colorado", and as further modified and described in the description of the proposal contained in the final environmental statement for said project, dated April 16, 1975, under the laws of the State of Colorado, shall be prejudiced, expanded, diminished, altered, or affected by this Act. Nothing in this Act shall be construed to expand, abate, impair, impede, or interfere with the construction, maintenance, or repair of said Fryingpan-Arkansas Project facilities, nor the operation thereof, pursuant to the Operating Principles, House Document 187, Eighty-third Congress, and pursuant to the water laws of the State of Colorado: Provided further, That nothing in this Act shall be construed to impede, limit, or prevent the use of the Fryingpan-Arkansas Project of its diversion systems to their full extent.

(16) Certain lands in the Arapaho National Forest which comprise approximately 24,250 acres, as generally depicted on a map entitled "Byers Peak Wilderness—Proposal", dated June 1992, and which shall be known as Byers Peak Wilderness.

(17) Certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests (renamed the Ute National Forest by section 3(f) of this Act) and in the Bureau of Land Management Montrose District which comprise approximately 17,000 acres, as generally depicted on a map entitled "Tabeguache Wilderness—Proposal", dated June 1992, and which shall be known as the Tabeguache Wilderness.

(18) Certain lands in the San Juan National Forest which comprise approximately 28,740 acres, as generally depicted on a map entitled "Weminuche Wilderness Additions—Proposed", dated June 1992, and which are hereby incorporated in and shall be deemed to be a part of the Weminuche Wilderness designated by Public Law 93-632.

(19) Certain lands in the Rio Grande National Forest which comprise approximately 23,800 acres, as generally depicted on a map entitled "Wheeler Additions to the La Garita Wilderness—Proposal", dated June 1992, and which shall be incorporated into and shall be deemed to be a part of the La Garita Wilderness.

(20) Certain lands in the Arapaho National Forest which comprise approximately 16,580 acres, as generally depicted on a map entitled "Williams Fork Wilderness—Proposal", dated September 1992, and which shall be known as the Williams Fork Wilderness.

(21) Certain lands in the Arapaho National Forest which comprise approximately 6,400 acres, as generally depicted on a map entitled "Bowen Gulch Additions to Never Summer Wilderness—Proposal", dated June 1992, which are hereby incorporated into and shall be deemed to be a part of the Never Summer Wilderness.

(b) MAPS AND DESCRIPTIONS.—As soon as practicable after the date of enactment of this Act, the appropriate Secretary shall file a map and a legal description of each area designated as wilderness by this Act with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives. Each map and description shall have the same force and effect as if included in this Act, except that the Secretary is authorized to correct clerical and typographical errors in such legal descriptions and maps. Such maps and legal descriptions shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture and the Office of the Director of the Bureau of Land Management, Department of the Interior, as appropriate.

SEC. 3. ADMINISTRATIVE PROVISIONS.

(a) IN GENERAL.—(1) Subject to valid existing rights, lands designated as wilderness by this Act shall be managed by the Secretary of Agriculture or the Secretary of the Interior (in the case of the portion of Powderhorn Wilderness managed by the Bureau of Land Management) in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act, except that, with respect to any wilderness areas designated by this Act, any reference in the Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

(2) Administrative jurisdiction over those lands designated as wilderness pursuant to paragraphs (1), (2), and (11) of section 2(a) of this Act, and which, as of the date of enactment of this Act, are administered by the Bureau of Land Management, is hereby transferred to the Forest Service.

(b) GRAZING.—Grazing of livestock in wilderness areas designated by this Act, where established prior to the date of enactment of this Act, shall be administered in accordance with the provisions of section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)), as further interpreted by section 108 of Public Law 96-560, and, as regards wilderness managed by the Bureau of Land Management, the guidelines set forth in Appendix A of House Report 101-405 of the 101st Congress.

(c) STATE JURISDICTION.—As provided in section 4(d)(7) of the Wilderness Act (16 U.S.C. 1133(d)(7)), nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State of Colorado with respect to wildlife and fish in Colorado.

(d) CONFORMING AMENDMENT.—Section 2(e) of the Endangered American Wilderness Act of 1978 (92 Stat. 41) is amended by striking "Subject to" and all that follows through "System.".

(e) BUFFER ZONES.—Congress does not intend that the designation by this Act of wilderness area areas in the State of Colorado creates or implies the creation of protective perimeters or buffer zones around any wilderness area. The fact that non-wilderness activities or uses can be seen or heard from within a wilderness area shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

(f) WILDERNESS NAME CHANGE.—The wilderness area designated as "Big Blue Wilderness" by section 102(a)(1) of Public Law 96-560, and the additions thereto made by paragraphs (1) and (2) of section 2(a) of this Act, shall hereafter be known as the Uncompahgre Wilderness. Any reference to the Big Blue Wilderness in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Uncompahgre Wilderness.

(g) NATIONAL FOREST ADDITIONS.—(1) Except for lands within the Powderhorn Wilderness, any lands designated as wilderness by this Act which as of the date of enactment of this Act were managed by the Secretary of the Interior as public lands (as defined in the Federal Land Policy and Management Act of 1976), are hereby transferred to the jurisdiction of the Secretary of Agriculture, and shall be added to and managed as part of the National Forest System, and the boundaries of the adjacent National Forests are hereby modified to include such lands.

(2) For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of affected National Forests, as modified by this subsection, shall be considered to be the boundaries of such National Forests as of January 1, 1965.

(3) Nothing in this subsection shall affect valid existing rights of any person under any authority of law.

(4) Authorizations to use lands transferred by this subsection which were issued prior to the date of enactment of this Act, shall remain subject to the laws and regulations under which they were issued, to the extent consistent with this Act. Such authorizations shall be administered by the Secretary of Agriculture. Any renewal or extension of such authorizations shall be subject to the laws and regulations pertain-

ing to the Forest Service, Department of Agriculture, and applicable law, including this Act. The change of administrative jurisdiction resulting from the enactment of this subsection shall not in itself constitute a basis for denying or approving the renewal or reissuance of any such authorization.

SEC. 4. WILDERNESS RELEASE.

(a) REPEAL OF WILDERNESS STUDY PROVISIONS.—Sections 105 and 106 of the Act of December 22, 1980 (P.L. 96–560), are hereby repealed.

(b) INITIAL PLANS.—Section 107(b)(2) of the Act of December 22, 1980 (Public Law 96–560) is amended by striking out ", except those lands remaining in further planning upon enactment of this Act, areas listed in sections 105 and 106 of this Act, or previously congressional designated wilderness study areas,".

SEC. 5. FOSSIL RIDGE RECREATION MANAGEMENT AREA.

(a) ESTABLISHMENT.—(1) In order to conserve, protect, and enhance the scenic, wildlife, recreational, and other natural resource values of the Fossil Ridge area, there is hereby established the Fossil Ridge Recreation Management Area (hereinafter referred to as the "recreation management area").

(2) The recreation management area shall consist of certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests, Colorado, (renamed the Ute National Forest by section 3(f) of this Act) which comprise approximately 43,900 acres as generally depicted as "Area A" on a map entitled "Fossil Ridge Wilderness Proposal", dated June 1992.

(b) ADMINISTRATION.—The Secretary of Agriculture shall administer the recreation management area in accordance with this section and the laws and regulations generally applicable to the National Forest System.

(c) WITHDRAWAL.—Subject to valid existing rights, all lands within the recreation management area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, and patent under the mining laws, and from disposition under the mineral and geothermal leasing laws, including all amendments thereto.

(d) TIMBER HARVESTING.—No timber harvesting shall be allowed within the recreation management area except for any minimum necessary to protect the forest from insects and disease, and for public safety.

(e) LIVESTOCK GRAZING.—The designation of the recreation management area shall not be construed to prohibit, or change the administration of, the grazing of livestock within the recreation management area.

(f) DEVELOPMENT.—No developed campgrounds shall be constructed within the recreation management area. After the date of enactment of this Act, no new roads or trails may be constructed within the recreation management area.

(g) OFF-ROAD RECREATION.—Motorized travel shall be permitted within the recreation management area only on those designated trails and routes existing as of July 1, 1991.

SEC. 6. BOWEN GULCH PROTECTION AREA.

(a) ESTABLISHMENT.—(1) There is hereby established in the Arapaho National Forest, Colorado, the Bowen Gulch Protection Area (hereinafter in this Act referred to as the "protection area").

(2) The protection area shall consist of certain lands in the Arapaho National Forest, Colorado, which comprise approximately 11,600 acres as generally depicted as "Area A" and "Area B" on a map entitled "Bowen Gulch Additions to Never Summer Wilderness Proposal", dated September 1992.

(b) ADMINISTRATION.—The Secretary shall administer the protection area in accordance with this section and the laws and regulations generally applicable to the National Forest System.

(c) WITHDRAWAL.—Subject to valid existing rights, all lands within the protection area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, and patent under the mining laws, and from disposition under the mineral and geothermal leasing laws, including all amendments thereto.

(d) DEVELOPMENT.—No developed campgrounds shall be constructed within the protection area. After the date of enactment of this Act, no new roads or trails may be constructed within the protection area.

(e) TIMBER HARVESTING.—No timber harvesting shall be allowed within the protection area except for any minimum necessary to protect the forest from insects and disease, and for public safety.

(f) MOTORIZED TRAVEL.—Motorized travel shall be permitted within the protection area only on those designated trails and routes existing as of July 1, 1991, and only during periods of adequate snow cover. At all other times, mechanized, non-motorized travel shall be permitted within the protection area.

(g) MANAGEMENT PLAN.—During the preparation of the revision of the Land and Resource Management Plan for the Arapaho National Forest, the Forest Service shall develop a management plan for the protection area, after providing for public consultation.

SEC. 7. PIEDRA AREA.

Subject to valid existing rights, the area of approximately 56,000 acres in the San Juan National Forest, as generally depicted on a map entitled "Piedra Area" dated June 1992, is hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the mining laws; and from disposition under the mineral and geothermal leasing laws, including all amendments thereto. Until Congress determines otherwise, such area shall be managed by the Secretary of Agriculture so as to maintain its presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System. Livestock grazing in such area shall be permitted and managed to the same extent and in the same manner as on the date of enactment of this Act. Mechanized travel within such area shall be permitted only on those designated trails and routes existing on July 1, 1991. No motorized travel shall be permitted on Forest Service trail number 535 except during periods of adequate snow cover.

SEC. 8. OTHER LANDS.

Nothing in this Act shall affect ownership or use of lands or interests therein not owned by the United States or access to such lands available under other applicable law.

SEC. 9. WATER.

(a) RESERVATION.—With respect to each wilderness area designated by this Act, Congress hereby reserves a quantity of water sufficient to fulfill the purposes for which such area is designated. The priority date of such reserved rights shall be the date of enactment of this Act.

(b) IMPLEMENTATION.—The Secretary of Agriculture, the Secretary of the Interior, and all other officers of the United States shall take all steps necessary to protect the rights reserved by subsection (a), including the filing of claims for quantification of such rights in any present or future appropriate stream adjudication in the courts of the State of Colorado in which the United States has been or is hereafter properly joined in accordance with section 208 of the Act of July 10, 1952 (66 Stat. 5460; 43 U.S.C. 666), commonly referred to as the "McCarran Amendment".

(c) CONSTRUCTION.—(1) Nothing in this Act shall be construed as a relinquishment or reduction of any water rights reserved, appropriated, or otherwise secured by the United States in the State of Colorado on or before the date of enactment of this Act.

(2) Nothing in this Act or in any previous Act designating any lands as wilderness shall be construed as limiting, altering, modifying, or amending any of the interstate compacts or equitable apportionment decrees that allocate water among and between the State of Colorado and other States.

(3) Nothing in this Act shall be construed as establishing a precedent with regard to any future designations, including designations of wilderness, or as constituting an interpretation of any other Act or designations made pursuant thereto.

AMENDMENT NO. 3441

Amendment in the nature of a substitute to S. 1029:

Strike all after the enacting clause and insert the following:

TITLE I.—THE COLORADO WILDERNESS ACT OF 1992

SECTION 1. SHORT TITLE.

This Act may be cited as the Colorado Wilderness Act of 1992"

SEC. 2. ADDITIONS TO THE WILDERNESS PRESERVATION SYSTEM.

(a) ADDITIONS.—The following lands in the State of Colorado are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System:

(1) Certain lands in the Gunnison Basin Resource Area administered by the Bureau of Land Management which comprise approximately 3,600 acres, as generally depicted on a map entitled "American Flats Additions to the Big Blue Wilderness—Proposal", dated October, 1992, and which are hereby incorporated in and shall be deemed to be a part of the wilderness area designated by Public Law 96–560 and renamed "Uncompahgre Wilderness" by section 3(f) of this Act.

(2) Certain lands in the Gunnison Resource Area administered by the Bureau of Land Management which comprise approximately 600 acres, as generally depicted on a map entitled "Bill Hare Gulch and Larson Creek Addition to the Big Blue Wildnerness—Proposal", dated October 1992, and which are hereby incorporated in and shall be deemed to be a part of the wilderness area designated by Public Law 96–560 and renamed "Uncompahgre Wilderness" by section 3(f) of this Act.

(3) Certain lands in the Pike and San Isabel National Forests which comprise approximately 40,300 acres, as generally depicted on a map entitled "Buffalo Peaks Wilderness—Proposal", dated October 1992, and which shall be known as the Buffalo Peaks Wilderness.

(4) Certain lands in the Gunnison National Forest and in the Bureau of Land Management Powderhorn Primitive Area which comprise approximately 60,100 acres as generally depicted on a map entitled "Powderhorn Wilderness—Proposal", dated October 1992, and which shall be known as the Powderhorn Wilderness.

(5) Certain lands in the Routt National Forest which comprise approximately 19,750 acres, as generally depicted on a map entitled "Davis Peak Additions to the Mount Zirkel Wilderness Proposal", dated October 1992, and which are hereby incorporated in and shall be deemed to be a part of the Mount Zirkel Wilderness designated by Public Law 88–555.

(6) Certain lands in the Grand Mesa. Uncompahgre, and Gunnison National For-

ests which comprise approximately 32,000 acres as generally depicted on a map entitled "Fossil Ridge Wilderness Proposal", dated October 1992, and which shall be known as the Wven and Tim Wirth Wilderness Area.

(7) Certain lands in the San Isabel National Forest which comprise approximately 22,040 acres as generally depicted on a map entitled "Greenhorn Mountain Wilderness—Proposal", dated October 1992, and which shall be known as the Greenhorn Mountain Wilderness.

(8) Certain lands within the Pike and San Isabel National Forests which comprise approximately 13,830 acres, as generally depicted on a map entitled "Lost Creek Wilderness Proposal", dated October 1992, which are hereby incorporated in and shall be deemed to be a part of the Lost Creek Wilderness designated by Public Law 96-560: *Provided*, That the Secretary of Agriculture (herinafter in this Act referred to as the "Secretary") is authorized to acquire, only by donation or exchange, various mineral reservations held by the State of Colorado within the boundaries of the Lost Creek Wilderness additions designated by this Act.

(9) Certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests which comprise approximately 5,500 acres, as generally depicted on a map entitled "Oh-Be-Joyful Addition to the Raggeds Wilderness—Proposal", dated October 1992, and which are hereby incorporated in and shall be deemed to be a part of the Raggeds Wilderness designated by Public Law 96-560.

(10) Certain lands in the Rio Grande National Forest which comprise approximately 209,580 acres, as generally depicted on a map entitled "Sangre de Cristo Wildernsss—Proposal", dated October 1992, and which shall be known as the Sangre de Cristo Wilderness.

(11) Certain lands in the Routt National Forest which comprise approximately 44,500 acres, as generally depicted on a map entitled "Service Creek Wilderness Proposal", dated October 1992, which shall be known as the Sarvis Creek Wilderness: *Provided*, That the Secretary is authorized to acquire by purchase, donation, or exchange, lands or interests therein within the boundaries of the Sarvis Creek Wilderness only with the consent of the owner thereof.

(12) Certain lands in the San Juan National Forest which comprise approximately 30,700 acres as generally depicted on a map entitled "South San Juan Expansion Wilderness—Proposal" (V-Rock Trail and Montezuma Peak), dated October 1992, and which are hereby incorporated in and shall be deemed to be a part of the South San Juan Wilderness designated by Public Law 96-560.

(13) Certain lands in the White River National Forest which comprise approximately 8,330 acres, as generally depicted on a map entitled "Spruce Creek Additions to the Hunter-Fryingpan Wilderness—Proposal", dated October 1992, and which are hereby incorporated in and shall be deemed to be a part of the Hunter Fryingpan Wilderness designated by Public Law 95-327: *Provided*, That no right, or claim of right, to the diversion and use of the waters of Hunter Creek, the Fryingpan or Roaring Fork Rivers, or any tributaries of said creeks or rivers, by the Fryingpan-Arkansas Project, Public Law 87-590, and the reauthorization thereof by Public Law 93-193, as modified as proposed in the September 1959 report of the Bureau of Reclamation entitled "Ruedi Dam and Reservoir, Colorado", and as further modified and described in the description of the proposal contained in the final environmental statement for said project, dated April 16, 1975, under the laws of the State of Colorado, shall be prejudiced, expanded, diminished, altered, or affected by this Act. Nothing in this Act shall be construed to expand, abate, impair, impede, or interfere with the construction, maintenance, or repair of said Fryingpan-Arkansas Project facilities, nor the operation thereof, pursuant to the Operating Principles, House Document 187, Eighty-third Congress, and pursuant to the water laws of the State of Colorado: *Provided further*, That nothing in this Act shall be construed to impede, limit, or prevent the use of the Fryingpan-Arkansas Project of its diversion systems to their full extent.

(14) Certain lands in the Arapaho National Forest which comprise approximately 7,630 acres, as generally depicted on a map entitled "Byers Peak Wilderness—Proposal", dated October 1992, and which shall be known as the Byers Peak Wilderness.

(15) Certain lands in the Arapaho National Forest which comprise approximately 12,300 acres, as generally depicted on a map entitled "Vasquez Peak Wilderness—Proposal", dated October 1992, and which shall be known as the Vasquez Peak Wilderness;

(16) Certain lands in the San Juan National Forest which comprise approximately 28,740 acres, as generally depicted on a map entitled "Weminuche Wilderness Additions—Proposed", dated October 1992, and which are hereby incorporated in and shall be deemed to be a part of the Weminuche Wilderness designated by Public Law 93-632.

(17) Certain lands in the Rio Grande National Forest which comprise approximately 23,800 acres, as generally depicted on a map entitled "Wheeler Additions to the La Garita Wilderness—Proposal", dated October 1992, and which shall be incorporated into and shall be deemed to be a part of the La Garita Wilderness.

(18) Certain lands in the Arapaho National Forest which comprise approximately 12,100 acres, as generally depicted on a map entitled "Williams Fork Wilderness—Proposal", dated October 1992, and which shall be known as the Farr Wilderness.

(19) Certain lands in the Arapaho National Forest which comprise approximately 6,700 acres, as generally depicted on a map entitled "Bowen Gulch Additions to Never Summer Wilderness—Proposal", dated October 1992, which are hereby incorporated into and shall be deemed to be a part of the Never Summer Wilderness.

(b) Maps and Descriptions.—As soon as practicable after the date of enactment of this Act, the appropriate Secretary shall file a map and a legal description of each area designated as wilderness by this Act with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives. Each map and description shall have the same force and effect as if included in this Act, except that the Secretary is authorized to correct clerical and typographical errors in such legal descriptions and maps. Such maps and legal descriptions shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture and the Office of the Director of the Bureau of Land Management, Department of the Interior, as appropriate.

SEC. 3. ADMINISTRATIVE PROVISIONS.

(a) In General.—(1) Subject to valid existing rights, lands designated as wilderness by this Act shall be managed by the Secretary of Agriculture or the Secretary of the Interior (in the case of the portion of Powderhorn Wilderness managed by the Bureau of Land Management) in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act, except that, with respect to any wilderness areas designated by this Act, any reference in the Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

(2) Administrative jurisdiction over those lands designated as wilderness pursuant to paragraph (2) of section 2(a) of this Act, and which, as of the date of enactment of this Act, are administered by the Bureau of Land Management, is hereby transferred to the Forest Service.

(b) Grazing.—Grazing of livestock in wilderness areas designated by this Act shall be administered in accordance with the provisions of section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)), as further interpreted by section 108 of Public Law 96-560, and, as regards wilderness managed by the Bureau of Land Management, the guidelines set forth in Appendix A of House Report 101-405 of the 101st Congress.

(c) State Jurisdiction.—As provided in section 4(d)(7) of the Wilderness Act (16 U.S.C. 1133(d)(7)), nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State of Colorado with respect to wildlife and fish in Colorado.

(d) Conforming Amendment.—Section 2(e) of the Endangered American Wilderness Act of 1978 (92 Stat. 41) is amended by striking "Subject to" and all that follows through "System".

(e) Buffer Zones.—Congress does not intend that the designation by this Act of wilderness area areas in the State of Colorado creates or implies the creation of protective perimeters or buffer zones around any wilderness area. The fact that non-wilderness activities or uses can be seen or heard from within a wilderness area shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

(f) Wilderness Name Change.—The wilderness area designated as "Big Blue Wilderness" by section 102(a)(1) of Public Law 96-560, and the additions thereto made by paragraphs (1) and (2) of section 2(a) of this Act, shall hereafter be known as the Uncompahgre Wilderness. Any reference to the Big Blue Wilderness in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Uncompahgre Wilderness.

(g)(1) For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of affected National Forests, as modified by this subsection, shall be considered to be the boundaries of such National Forests as of January 1, 1965.

(2) Nothing in this subsection shall affect valid existing rights of any person under any authority of law.

(3) Authorizations to use lands transferred by this subsection which were issued prior to the date of enactment of this Act, shall remain subject to the laws and regulations under which they were issued, to the extent consistent with this Act. Such authorizations shall be administered by the Secretary of Agriculture. Any renewal or extension of such authorizations shall be subject to the laws and regulations pertaining to the Forest Service, Department of Agriculture, and applicable law, including this Act. The change of administrative jurisdiction resulting from the enactment of this subsection shall not in itself constitute a basis for denying or approving the renewal or reissuance of any such authorization.

SEC. 4. WILDERNESS RELEASE.

(a) Repeal of Wilderness Study Provisions.—Sections 105 and 106 of the Act of December 22, 1980 (P.L. 96-560), are hereby repealed.

(b) Initial Plans.—Section 107(b)(2) of the Act of December 22, 1980 (P.L. 96-560) is amended by striking our ", except those lands remaining in further planning upon enactment of this Act, areas listed in section 105 and 106 of this Act, or previously congressional designated wilderness study areas,".

SEC. 5. FOSSIL RIDGE RECREATION MANAGEMENT AREA.

(a) Establishment.—(1) In order to conserve, protect, and enhance the scenic, wildlife, recreational, and other natural resource values of the Fossil Ridge area, there is hereby established the Fossil Ridge Recreation Management Area (hereinafter referred to as the "recreation management area").

(2) The recreation management area shall consist of certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests, Colorado, which comprise approximately 43,900 acres as generally depicted as "Area A" on a map entitled "Fossil Ridge Wilderness Proposal", dated June 1992.

(b) Administration.—The Secretary of Agriculture shall administer the recreation management area in accordance with this section and the laws and regulations generally applicable to the National Forest System.

(c) Withdrawal.—Subject to valid existing rights, all lands within the recreation management area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, and patent under the mining laws, and from disposition under the mineral and geothermal leasing laws, including all amendments thereto.

(d) Timber Harvesting.—No timber harvesting shall be allowed within the recreation management area except for any minimum necessary to protect the forest from insects and disease, and for public safety.

(e) Livestock Grazing.—The designation of the recreation management area shall not be construed to prohibit, or change the administration of, the grazing of livestock within the recreation management area.

(f) Development.—No developed campgrounds shall be constructed within the recreation management area. After the date of enactment of this Act, no new roads or trails may be constructed within the recreation management area.

(g) Off-Road Recreation.—Motorized travel shall be permitted within the recreation management area only on those designated trails and routes existing as of July 1, 1991.

SEC. 6. BOWEN GULCH PROTECTION AREA

(a) Establishment.—(1) There is hereby established in the Arapaho National Forest, Colorado, the Bowen Gulch Protection Area (hereinafter in this Act referred to as the "protection area").

(2) The protection area shall consist of certain lands in the Arapaho National Forest, Colorado, which comprise approximately 11,600 acres as generally depicted as "Area A" and "Area B" on a map entitled "Bowen Gulch Additions to Never Summer Wilderness Proposal", dated June 1992.

(b) Administration.—The Secretary shall administer the protection area in accordance with this section and the laws and regulations generally applicable to the National Forest System.

(c) Withdrawal.—Subject to valid existing rights, all lands within the protection area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, and patent under the mining laws, and from disposition under the mineral and geothermal leasing laws, including all amendments thereto.

(d) Development.—No developed campgrounds shall be constructed within the protection area. After the date of enactment of this Act, no new roads or trails may be constructed within the protection area.

(e) Timber Harvesting.—No timber harvesting shall be allowed within the protection area except for any minimum necessary to protect the forest from insects and disease, and for public safety.

(f) Motorized Travel.—Motorized travel shall be permitted within the protection area only on those designated trails and routes existing as of July 1, 1991, and only during periods of adequate snow cover. At all other times, mechanized, non-motorized travel shall be permitted within the protection area.

(g) Management Plan.—During the preparation of the revision of the Land and Resource Management Plan for the Arapaho National Forest, the Forest Service shall develop a management plan for the protection area, after providing for public consultation.

SEC. 7. OTHER LANDS.

Nothing in this Act shall affect ownership or use of lands or interests therein not owned by the United States or access to such lands available under other applicable law.

SEC. 8. WATER.

(a) Findings, Purpose, and Definitions.—(1) Congress finds that—

(A) the lands designated as wilderness by this Act are located at the headwaters of the streams and rivers on those lands, with few, if any, actual or proposed water resource facilities located upstream from such lands and few, if any, opportunities for diversion, storage, or other uses of water occurring outside such lands that would adversely affect the wilderness values of such lands; and

(B) the lands designated as wilderness by this Act are not suitable for use for development of new water resource facilities, or for the expansion of existing facilities; and

(C) therefore, it is possible to provide for proper management and protection of the wilderness value of such lands in ways different from those utilized in other legislation designating as wilderness lands not sharing the attributes of the lands designated as wilderness by this Act.

(2) The purpose of this section is to protect the wilderness values of the lands designated as wilderness by this Act by means other than those based on a federal reserved water rights.

(3) As used in this section, the term "water resource facility" means irrigation and pumping facilities, reservoirs, water conservation works, aqueducts, canals, ditches, pipelines, wells, hydropower projects, and transmission and other ancillary facilities, and other water diversion, storage, and carriage structures.

(b) Restrictions on Rights and Disclaimer of Effect.—(1) Neither the Secretary, nor any other officer, employee, representative, or agent of the United States, nor any other person, shall assert in any court or agency, nor shall any court or agency consider any claim to or for water or water rights in the State of Colorado, which is based on any construction of any portion of this Act, or the designation of any lands as wilderness by this Act, as constituting an express or implied reservation of water or water rights.

(2) (A) Nothing in this Act shall constitute or be construed to constitute either an express or implied reservation of any water or water rights with respect to the Piedra, Roubideau, and Tabeguache areas identified in section 9 of this Act, or the Bowen Gulch Protection Area or the Fossil Ridge Recreation Management Area identified in sections 5 and 6 of this Act.

(B) Nothing in this Act shall be construed as a creation, recognition, disclaimer, relinquishment, or reduction of any water rights of the United States in the State of Colorado existing before the date of enactment of this Act, except as provided in subsection (g)(2) of this section.

(C) Except as provided in subsection (g) of this section, nothing in this Act shall be construed as constituting an interpretation of any other Act or any designation made by or pursuant thereto.

(D) Nothing in this section shall be construed as establishing a precedent with regard to any future wilderness designations.

(c) New or Expanded Projects.—(1) Notwithstanding any other provision of law, on and after the date of enactment of this Act neither the President nor any other officer, employee, or agent of the United States shall fund, assist, authorize, or issue a license or permit for the development of any new water resource facility within the areas described in sections 2, 5, 6 and 9 of this Act or the enlargement of any water resource facility within the areas described in sections 2, 5, 6 and 9 of this Act.

(d) Access and Operation.—(1) Subject to the provisions of this subsection (d), the Secretary shall allow reasonable access to water resource facilities in existence on the date of enactment of this Act within the areas described in sections 2, 5, 6 and 9 of this Act, including motorized access where necessary and customarily employed on routes existing as of the date of enactment of this Act.

(2) Existing access routes within such areas customarily employed as of the date of enactment of this Act may be used, maintained, repaired, and replaced to the extent necessary to maintain their present function, design, and serviceable operation, so long as such activities have no increased adverse impacts on the resources and values of the areas described in sections 2, 5, 6 and 9 of this Act than existed as of the date of enactment of this Act.

(3) Subject to the provisions of subsections (c) and (d), the Secretary shall allow water resource facilities existing on the date of enactment of this Act within areas described in sections 2, 5, 6 and 9 of this Act to be used, operated, maintained, repaired, and replaced to the extent necessary for the continued exercise, in accordance with Colorado state law, of vested water rights adjudicated for use in connection with such facilities by a court of competent jurisdiction prior to the date of enactment of this Act; Provided that the impact of an existing facility on the water resources and values of the area shall not be increased as a result of changes in the adjudicated type of use of such facility as of the date of enactment of this Act.

(4) Water resource facilities, and access routes serving such facilities, existing within the areas described in sections 2, 5, 6 and 9 of this Act on the date of enactment of this Act shall be maintained and repaired when and to the extent necessary to prevent increased adverse impacts on the resources and values of the areas described in sections 2, 5, 6 and 9 of this Act.

(e) Except as provided in subsections (c) and (d) of this section, the provisions of this

Act related to the areas described in sections 2, 5, 6, and 9 of this Act, and the inclusion in the National Wilderness Preservation System of the areas described in section 2 of this Act, shall not be construed to affect or limit the use, operation, maintenance, repair, modification, or replacement of water resource facilities in existence on the date of enactment of this Act within the boundaries of the areas described in sections 2, 5, 6 and 9 of this Act.

(f) MONITORING AND IMPLEMENTATION.—The Secretaries of Agriculture and the Interior shall monitor the operation of and access to water resource facilities within the areas described in sections 2, 5, 6 and 9 of this Act and take all steps necessary to implement the provisions of this section.

(g) INTERSTATE COMPACTS AND NORTH PLATTE RIVER.—(1) Nothing in this Act, and nothing in any previous Act designating any lands as wilderness, shall be construed as limiting, altering, modifying, or amending any of the interstate compacts or equitable apportionment decrees that apportion water among and between the State of Colorado and other States. Except as expressly provided in this section, nothing in this Act shall affect or limit the development or use by existing and future holders of vested water rights of Colorado's full apportionment of such waters.

(2) Notwithstanding any other provision of law, neither the Secretary nor any other officer, employee, or agent of the United States, or any other person, shall assert in any court or agency of the United States or any other jurisdiction any rights, and no court or agency of the United States shall consider any claim or defense asserted by any person based upon such rights, which may be determined to have been established for waters of the North Platte River for purposes of the Platte River Wilderness Area established by Public Law 98-550, located on the Colorado-Wyoming state boundary, to the extent such rights would limit the use or development of water within Colorado by present and future holders of vested water rights in the North Platte River and its tributaries, to the full extent allowed under interests compact or United States Supreme Court equitable decree. Any such rights shall be exercised as if junior to, in a manner so as not to prevent, the use or development of Colorado's full entitlement to interstate waters of the North Platte River and its tributaries within Colorado allowed under interstate compact or United States Supreme Court equitable decree.

SEC. 9. PIEDRA, ROUBIDEAU, AND TABEGUACHE AREAS.

(a) AREAS.—The provisions of this section shall apply to the following areas:

(1) Certain lands in the San Juan National Forest, comprising approximately 50,100 acres as generally depicted on the map entitled "Piedra Area" dated October, 1992; and

(2) Certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests, comprising approximately 18,000 acres, as generally depicted on the map entitled "Roubideau Area" dated October, 1992; and

(3) Certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests and in the Montrose District of the Bureau of Land Management, comprising approximately 20,480 acres, as generally depicted on the map entitled "Tabeguache Area" dated October, 1992.

(b) MANAGEMENT.—(1) Subject to valid existing rights, the areas described in subsection (a) are withdrawn from all forms of location, leasing, patent, disposition, or disposal under the public land, mining, and mineral and geothermal leasing laws of the United States.

(2) The areas described in subsection (a) shall not be subject to any obligation to further study such lands for wilderness designation.

(3) Until Congress determines otherwise, and subject to the provisions of section 8 of this Act, activities within such areas shall be managed by the Secretary of Agriculture and Secretary of the Interior so as to maintain the areas' presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System.

(4) Livestock grazing in such areas shall be permitted and managed to the same extent and in the same manner as of the date of enactment of this Act. Except as provided by this Act, mechanized or motorized travel shall not be permitted in such areas; Provided, That the Secretary may permit motorized travel on trail number 535 in the San Juan National Forest during periods of adequate snow cover.

(c) DATA COLLECTION.—The Secretary of Agriculture and the Secretary of the Interior, in consultation with the Colorado Water Conservation Board, shall compile data concerning the water resources of the areas described in subsection (a), and existing and proposed water resource facilities affecting such values.

SEC. 10. SPANISH PEAKS FURTHER PLANNING AREA STUDY.

(a) REPORT.—Not later than three years from the date of enactment of this Act, the Secretary shall report to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate on the status of private property interests located within the Spanish Peaks further planning area of the Pike-San Isabel National Forest in Colorado.

(b) Contents of Report. The report required by this section shall identify the location of all private property situated within the exterior boundaries of the Spanish Peaks area; the nature of such property interests; the acreage of such private property interests; and the Secretary's views on whether the owners of said properties would be willing to enter into either a sale or exchange of these properties at fair market value if such a transaction became available in the near future.

(c) No authorization of eminent domain. Nothing contained in this Act authorizes, and nothing in this Act shall be construed to authorize, the acquisition of real property by eminent domain.

(d) For a period of three years from the date of enactment of this Act, the Secretary shall manage the Spanish Peaks Further Planning Area as provided by the Colorado Wilderness Act of 1980.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

EXTENDING THE PROVISIONS OF SENATE RESOLUTION 106 OF THE 101ST CONGRESS

EXTENDING THE PROVISIONS OF SENATE RESOLUTION 105 OF THE 101ST CONGRESS, THE SENATE ARMS CONTROL OBSERVER GROUP RESOLUTION

Mr. FORD. Mr. President, on behalf of the two leaders I send two resolutions to the desk and ask that they be considered en bloc, agreed to, and the motion to reconsider the passage of the resolutions, en bloc, be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolutions (S. Res. 365 and S. Res. 366) were deemed read the third time and passed.

THE CHILDREN'S BICYCLE HELMET SAFETY ACT OF 1992

Mr. FORD. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of S. 2592, the Children's Bicycle Helmet Safety Act of 1992; that the Senate then proceed to its immediate consideration.

THE PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2952) to establish a grant program under the National Highway Traffic Safety Administration for the purpose of promoting the use of bicycle helmets by individuals under the age of 16.

THE PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3442

(Propose: To make an amendment in the nature of a substitute)

Mr. SIMPSON. Mr. President, I send a substitute amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON], for Mr. DANFORTH, proposes an amendment numbered 3442.

Mr. SIMPSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Children's Bicycle Helmet Safety Act of 1992".

SEC. 2. FINDINGS.

The Congress finds that—

(1) 90 million Americans ride bicycles and 20 million ride a bicycle more than once a week;

(2) between 1984 and 1988, 2,985 bicyclists in the United States died from head injuries and 905,752 suffered head injuries that were treated in hospital emergency rooms;

(3) 41 percent of bicycle-related head injury deaths and 76 percent of bicycle-related head injuries occurred among American children under age 15;

(4) deaths and injuries from bicycle accidents cost society $7.6 billion annually; and a child suffering from a head injury, on aver-

age, will cost society $4.5 million over the child's lifetime;

(5) universal use of bicycle helmets in the United States would have prevented 2,600 deaths from head injuries an 757,000 injuries; and

(6) only 5 percent of children in the Nation who ride bicycles wear helmets.

SEC. 3. ESTABLISHMENT OF PROGRAM.

The administrator of the National Highway Traffic Safety Administration may, in accordance with section 4, make grants to States and State political subdivisions for programs that require or encourage individuals under the age of 16 to wear approved bicycle helmets. In making those grants, the Administrator shall allow grantees to use wide discretion in designing programs that effectively promote increased bicycle helmet use.

SEC. 4. PURPOSES FOR GRANTS.

A grant made under section 3 may be used by a grantee to—

(1) enforce a law that requires individuals under the age of 16 to wear approved bicycle helmets on their heads while riding on bicycles;

(2) assist individuals under the age of 16 to acquire approved bicycle helmets;

(3) develop and administer a program to educate individuals under the age of 16 and their families on the importance of wearing such helmets in order to improve bicycle safety; or

(4) carry out any combination of the activities described in paragraphs (1), (2), and (3).

SEC. 5. STANDARDS.

(a) IN GENERAL.—Bicycle helmets manufactured 9 months or more after the date of the enactment of this Act shall conform to—

(1) any interim standard described under subsection (b), pending the establishment of a final standard pursuant to subsection (c); and

(2) the final standard, once it has been established under subsection (c).

(b) INTERIM STANDARDS.—The interim standards are as follows:

(1) The American National Standards Institute standard designated as "Z90.4-1984".

(2) The Snell Memorial Foundation standard designated as "B-90".

(3) Any other standard that the Consumer Product Safety Commission determines is appropriate.

(c) FINAL STANDARD.—Not later than 60 days after the date of the enactment of this Act, the Consumer Product Safety Commission shall begin a proceeding under section 553 of title 5, United States Code, to—

(1) review the requirements of the interim standards set forth in subsection (a) and establish a final standard based on such requirements;

(2) include in the final standard a provision to protect against the risk of helmets coming off the heads of bicycle riders;

(3) include in the final standard provisions that address the risk of injury to children; and

(4) include additional provisions as appropriate.

Sections 7 and 9 of the Consumer Product Safety Act (15 U.S.C. 2056 and 2058) shall not apply to the proceeding under this subsection and section 11 of such Act (15 U.S.C. 2060) shall not apply with respect to any standard issued under such proceeding. The final standard shall take effect 1 year from the date it is issued.

(d) FAILURE TO MEET STANDARDS.—

(1) FAILURE TO MEET INTERIM STANDARD.—Until the final standard takes effect, a bicycle helmet that does not conform to an interim standard as required under subsection (a)(1) shall be considered in violation of a consumer product safety standard promulgated under the Consumer Product Safety Act.

(2) STATUS OF FINAL STANDARD.—The final standard developed under subsection (c) shall be considered a consumer product safety standard promulgated under the Consumer Product Safety Act.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

For the National Highway Traffic Safety Administration to carry out the grant program authorized by this Act, there are authorized to be appropriated $2,000,000 for fiscal year 1993, $3,000,000 for fiscal year 1994, and $4,000,000 for fiscal year 1995.

SEC. 7. DEFINITION.

In this Act, the term "approved bicycle helmet" means a bicycle helmet that meets—

(1) any interim standard described in section 5(b), pending establishment of a final standard under section 5(c); and

(2) the final standard, once it is established under section 5(c).

SEC. 8. FASTENER QUALITY ACT AMENDMENTS.

(a) REFERENCES. Whatever in this section an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Fastener Quality Act (15 U.S.C. 5401 et seq.).

(b) TECHNICAL AMENDMENTS.—

(1) DEFINITIONS.—Section 3(8) (15 U.S.C. 5402(8)) is amended by striking "Standard" and inserting "Standards".

(2) INSPECTION AND TESTING.—Section 5(b)(1) (15 U.S.C. 5404(b)(1) is amended by striking "section 6; unless" and inserting "section 6, unless".

(c) IMPORTERS AND PRIVATE LABEL DISTRIBUTORS.—Section 7(c)(2) (15 U.S.C. 5406(c)(2)) is amended by inserting "to the same" before "extent".

(d) CLARIFYING AMENDMENTS.—

(1) Section 5(a)(1)(B) (15 U.S.C. 5404(a)(1)(B) is amended by striking "subsections (b) and (c)" and inserting "subsections (b), (c), and (d)".

(2) Section 5(a)(2)(A)(i) (15 U.S.C. 5404(a)(2)(A)(i)) is amended by striking "subsections (b) and (c)" and inserting "subsections (b), (c), and (d)".

(3) Section 5(c)(4) (15 U.S.C. 5404(C)(4)) is amended by inserting "except as provided in subsection (d)," before "state".

(4) Section 5 (15 U.S.C. 5404) is amended by inserting at the end of the following new subsection:

"(d) ALTERNATIVE PROCEDURE FOR CHEMICAL CHARACTERISTICS.—Notwithstanding the requirements of subsections (b) and (c), a manufacturer shall be deemed to have demonstrated, for purposes of subsection (a)(1), that the chemical characteristics of a lot conform to the standards and specifications to which the manufacturer represents such lot has been manufactured if the following requirements are met:

"(1) The coil or heat number of metal from which such lot was fabricated has been inspected and tested with respect to its chemical characteristics by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6.

"(2) Such laboratory has provided to the manufacturer, either directly or through the metal manufacturer, a written inspection and testing report, which shall be in a form prescribed by the Secretary by regulation, listing the chemical characteristics of such coil or heat number.

"(3) The report described in paragraph (2) indicates that the chemical characteristics of such coil or heat number conform to those required by the standards and specifications to which the manufacturer represents such lot has been manufactured.

"(4) The manufacturer demonstrates that such lot has been fabricated from the coil or heat number of metal to which the report described in paragraphs (2) and (3) relates.

In prescribing the form of report required by subsection (c), the Secretary shall provide for an alternative to the statement required by subsection (c)(4), insofar as such statement pertains to chemical characteristics, for cases in which a manufacturer elects to use the procedure permitted by this subsection.".

The amendment (No. 3442) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 2952), as amended, was passed.

Mr. FORD. Mr. President, while we are waiting to close, I yield the floor.

Mr. WIRTH addressed the Chair.

The PRESIDING OFFICER (Mr. CRANSTON). The Senator from Colorado.

COLORADO WILDERNESS ACT OF 1992

Mr. WIRTH. Thank you Mr. President. I want to thank the Senator from Colorado for his help on the wilderness bill. We have come a long way. This has been in the works for 12 years, like wilderness bills tend to do. A lot of wilderness disappears over the period of time as well, which is a shame.

I hope we can figure out a way to finish this off. It has been going on—as the Senator from Wyoming pointed out, a wilderness bill brings everybody and their cousin out objecting to it from every possible corner.

I have often thought, and I would address this to the Senator from Wyoming, that if we examine the budget resolution and tax bills as carefully as wilderness bills are examined, we would probably be in a lot healthier state financially and economically in the United States of America.

This is a labor of so many people, and I want to thank the staff of the Senator from Colorado, Senator BROWN, and thank Jim Martin, and Russ Shay, and the able help of Barney White the last few days in getting this done.

This has been long, arduous, and extremely difficult. But I think we have cut the kind of a balance that is appropriate to do. It is very, very difficult indeed.

I also want to thank the distinguished Senator from Wyoming for his kind remarks earlier this evening. I have enjoyed working with him over the years, and I am sure that we will have the opportunity either in the Rock Moutnai region or in Washington to be extending that working relationship.

Mr. President, I yield the floor.

APPOINTMENTS BY THE MAJORITY LEADER

The PRESIDING OFFICER. The Chair, in behalf of the majority leader, pursuant to the provisions in House Concurrent Resolution 192, 102d Congress, second session, announces the appointment of the following Senators to the Joint Committee on the Organization of Congress: The Senator from Oklahoma [Mr. BOREN], chairman; the Senator from Tennessee [Mr. SASSER]; the Senator from Kentucky, [Mr. FORD]; the Senator from Nevada [Mr. REID]; the Senator from Maryland [Mr. SARBANES]; and the Senator from Arkansas [Mr. PRYOR].

PATENT AND TRADEMARK OFFICE AUTHORIZATION

The test of the bill (S. 3325) to authorize appropriations for the Patent and Trademark Office in the Department of Commerce for fiscal year 1993, to provide that States are subject to suit for certain infringements of patents and plant variety protections, and infringements of trademarks, and for other purposes, as passed by the Senate on October 5, 1992, is as follows:

S. 3325

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—PATENT AND TRADEMARK OFFICE AUTHORIZATION

SEC. 101. SHORT TITLE.

This title may be cited as the "Patent and Trademark Office Authorization Act of 1992".

SEC. 102. AUTHORIZATION OF AMOUNTS AVAILABLE TO THE PATENT AND TRADEMARK OFFICE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated only to the extent provided in an appropriations Act to the Patent and Trademark Office for fiscal year 1993 $99,000,000 for salaries and necessary expenses which shall be derived from deposits in the Patent and Trademark Office Fee Surcharge Fund established under section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508), as amended by the Patent and Trademark Office Authorization Act of 1991 (Public Law 102-204).

(b) REVENUES.—There are authorized to be available, to the extent provided in advance in appropriations Acts, the revenues collected during fiscal year 1993 from fees under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 et seq.).

SEC. 103. AMOUNTS AUTHORIZED TO BE CARRIED OVER.

Amounts appropriated or made available pursuant to this title shall remain available until expended.

SEC. 104. USE OF EXCHANGE AGREEMENTS RELATING TO AUTOMATIC DATA PROCESSING RESOURCES PROHIBITED.

The Commissioner of Patents and Trademarks may not, during fiscal year 1993, enter into any agreement for the exchange of items or services (as authorized under section 6(a) of title 35, United States Code) related to automatic data processing resources (including hardware, software and related services, and machine readable data). The preceding sentence shall not apply to an agreement relating to data for automation programs which is entered into with a foreign government or with an international intergovernmental organization.

SEC. 105. PATENT INFORMATION DISSEMINATION.

Section 11 of the Patent and Trademark Office Authorization Act of 1991 (35 U.S.C. 41 note) is amended—

(1) in the first sentence of subsection (b) by striking out "October 1, 1992" and inserting in lieu thereof "October 1, 1993"; and

(2) in subsection (e)—

(A) by striking out "1 year" and inserting in lieu thereof "2 years"; and

(B) by adding at the end thereof the following: "Such report shall include information which identifies and evaluates alternative formats and methods for organizing patent information on CD-ROMs.".

SEC. 106. REPORT TO CONGRESS.

No later than March 31, 1993, the Commissioner of Patents and Trademarks shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report comparing fees for use of the international and national stages of the Patent Cooperation Treaty currently required by the Patent and Trademark Office, the European Patent Office, and the Japanese Patent Office, estimating the average cost to the Patent and Trademark Office of providing each such service and the corresponding services for national cases, and describing the method by which the Patent and Trademark Office calculates fee levels for such services.

SEC. 107. ACCEPTANCE OF LATE PAYMENT OF MAINTENANCE FEES.

Section 41(c)(1) of title 35, United States Code, is amended in the first sentence by inserting after "section" the following: "which is made within twenty-four months after the six-month grace period if the delay is shown to the satisfaction of the Commissioner to have been unintentional, or at any time".

SEC. 108. PATENT EVALUATION.

The Commissioner of Patents and Trademarks is authorized to enter into agreements with the Technology Administration of the Department of Commerce establishing a program to evaluate patents in high technology fields for the purpose of identifying industry trends, technological needs and commercial applications. Assistance for the program shall be authorized through the 1995 fiscal year. There are authorized to be appropriated such sums as may be necessary to establish a program under this section.

SEC. 109. EFFECTIVE DATE.

The provisions of and amendments made by this title shall be effective on and after the date of the enactment of this Act.

TITLE II—PATENT AND PLANT VARIETY PROTECTION REMEDY CLARIFICATION

SEC. 201. SHORT TITLE.

This title may be cited as the "Patent and Plant Variety Protection Remedy Clarification Act".

SEC. 202. LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS FOR INFRINGEMENT OF PATENTS.

(a) LIABILITY AND REMEDIES.—(1) Section 271 of title 35, United States Code, is amended by adding at the end the following:

"(h) As used in this section, the term 'whoever' includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.".

(2) Chapter 29 of title 35, United States Code, is amended by adding at the end the following new section:

"§ 296. Liability of States, instrumentalities of States, and State officials for infringement of patents

"(a) IN GENERAL.—Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his official capacity, shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for infringement of a patent under section 271, or for any other violation under this title.

"(b) REMEDIES.—In a suit described in subsection (a) for a violation described in that subsection, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any private entity. Such remedies include damages, interest, costs, and treble damages under section 284, attorney fees under section 285, and the additional remedy for infringement of design patents under section 289.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 29 of title 35, United States Code, is amended by adding at the end the following new item:

"Sec. 296. Liability of States, instrumentalities of States, and State officials for infringement of patents.".

SEC. 203. LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS FOR INFRINGEMENT OF PLANT VARIETY PROTECTION.

(a) INFRINGEMENT OF PLANT VARIETY PROTECTION.—Section 111 of the Plant Variety Protection Act (7 U.S.C. 2541) is amended—

(1) by inserting "(a)" before "Except as otherwise provided"; and

(2) by adding at the end thereof the following new subsection:

"(b) As used in this section, the term 'perform without authority' includes performance without authority by any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this Act in the same manner and to the same extent as any nongovernmental entity.".

(b) LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS FOR

INFRINGEMENT OF PLANT VARIETY PROTECTION.—Chapter 12 of the Plant Variety Protection Act (7 U.S.C. 2561 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 130. LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS FOR INFRINGEMENT OF PLANT VARIETY PROTECTION.

"(a) Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his official capacity, shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity, for infringement of plant variety protection under section 111, or for any other violation under this title.

"(b) In a suit described in subsection (a) for a violation described in that subsection, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any private entity. Such remedies include damages, interest, costs, and treble damages under section 124, and attorney fees under section 125.".

SEC. 204. EFFECTIVE DATE.

The amendments made by this title shall take effect with respect to violations that occur on or after the date of the enactment of this Act.

TITLE III—TRADEMARK REMEDY CLARIFICATION

SEC. 301. SHORT TITLE.

This title may be cited as the "Trademark Remedy Clarification Act".

SEC. 302. REFERENCE TO THE TRADEMARK ACT OF 1946.

Except as otherwise expressly provided, whenever in this title an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946).

SEC. 303. LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS.

(a) LIABILITY AND REMEDIES.—Section 32(1) of the Act (15 U.S.C. 1114(1)) is amended by adding at the end thereof the following:

"As used in this subsection, the term 'any person' includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this Act in the same manner and to the same extent as any nongovernmental entity.".

(b) LIABILITY OF STATES, INSTRUMENTALITIES OF STATES, AND STATE OFFICIALS.—The Act is amended by inserting after section 39 (15 U.S.C. 1121) the following new section:

"SEC. 40. (a) Any State, instrumentality of a State or any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity for any violation under this Act.

"(b) In a suit described in subsection (a) for a violation described in that subsection, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any person other than a State, instrumentality of a State, or officer or employee of a State or instrumentality of a State acting in his or her official capacity. Such remedies include injunctive relief under section 34, actual damages, profits, costs and attorney's fees under section 35, destruction of infringing articles under section 36, the remedies provided for under sections 32, 37, 38, 42 and 43, and for any other remedies provided under this Act.".

(c) FALSE DESIGNATION OF ORIGIN AND FALSE DESCRIPTIONS FORBIDDEN.—Section 43(a) of the Act (15 U.S.C. 1125(a)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by inserting "(1)" after "(a)"; and

(3) by adding at the end thereof:

"(2) As used in this subsection, the term 'any person' includes any State, instrumentality of a State or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this Act in the same manner and to the same extent as any nongovernmental entity.".

(d) DEFINITION.—Section 45 of the Act (15 U.S.C. 1127) is amended by inserting after the fourth undesignated paragraph the following:

"The term 'person' also includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this Act in the same manner and to the same extent as any nongovernmental entity.".

SEC. 304. EFFECTIVE DATE.

The amendments made by this title shall take effect with respect to violations that occur on or after the date of the enactment of this Act.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. McCathran, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Environment and Public Works.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:17 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 6168. A bill to amend the Airport and Airway Improvement Act of 1982 to authorize appropriations, and for other purposes.

At 2:57 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 5377) to amend the Cash Management Improvement Act of 1990 to provide adequate time for implementation of that act, and for other purposes.

MEASURES REFERRED

The following bills, previously received from the House of Representatives for concurrence, were read the first and second times by unanimous consent, and referred as indicated:

H.R. 1637. An act to make improvements in the Black Lung Benefits Act; to the Committee on Labor and Human Resources.

H.R. 2890. An act to amend title XIX of the Social Security Act to establish limits on the prices of prescription drugs procured by the Department of Veterans Affairs or purchased by certain clinics and hospitals, and for other purposes; to the Committee on Finance.

H.R. 3088. An act to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to authorize funds received by States and units of local government to be expended to improve the quality and availability of DNA records; to authorize the establishment of a DNA identification index; and for other purposes; to the Committee on the Judiciary.

H.R. 3161. An act to authorize functions and activities under the Federal Property and Administrative Services Act of 1949, to amend laws relating to Federal procurement, and for other purposes; to the Committee on Governmental Affairs.

H.R. 3627. An act to authorize the Air Force Association to establish a memorial in the District of Columbia or its environs; to the Committee on Energy and Natural Resources.

H.R. 3703. An act to authorize the conveyance to the Columbia Hospital for Women of certain parcels of land in the District of Columbia, and for other purposes; to the Committee on Governmental Affairs.

H.R. 4797. An act to direct the United States Sentencing Commission to make sentencing guidelines for Federal criminal cases that provide sentencing enhancements for hate crimes; to the Committee on the Judiciary.

H.R. 5192. An act to amend title 38, United States Code, to make improvements to veterans health programs; to the Committee on Veterans Affairs.

H.R. 5304. An act to provide that a State court may not modify an order of another State court requiring the payment of child support unless the recipient of child support payments resides in the State in which the modification is sought, or consents to seeking the modification in such other State court; to the Committee on the Judiciary.

H.R. 5874. An act to establish a Wetlands Center at the Port of Brownsville, Texas, and for other purposes; to the Committee on Environment and Public Works.

H.R. 5938. An act to amend the Public Health Service Act to establish the authority for the regulation of mammography services and radiological equipment, and for other purposes; to the Committee on Labor and Human Resources.

H.R. 6124. An act to amend the Food, Agriculture, Conservation, and Trade Act of 1990, to improve health care services and educational services through telecommunications, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 6127. An act to amend the Perishable Agricultural Commodities Act, 1930, to prescribe conditions under which a transferee shall be deemed to have received trust assets with notice of the breach of the trust, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 6162. An act to designate an area for which environmental and other streambank restoration measures are authorized as the "Joseph G. Minish Passaic River Waterfront Park and Historic Area"; to the Committee on Environment and Public Works.

H.R. 6163. An act to designate certain Federal buildings; to the Committee on Environment and Public Works.

The following concurrent resolutions, previously received from the House of Representatives for concurrence, were read, and referred as indicated:

H. Con. Res. 89. A concurrent resolution expressing the sense of the Congress that expert testimony concerning the nature and effect of domestic violence, including descriptions of the experiences of battered women, should be admissible when offered in State court by a defendant in a criminal case; to the Committee on the Judiciary.

H. Con. Res. 353. A concurrent resolution expressing the sense of the Congress that the United States should assume a strong leadership role in implementing the decisions made at the Earth Summit by developing a national strategy in implementing Agenda 21 and other Earth Summit agreements through domestic policy and foreign policy, by cooperating with all countries to identify and initiate further agreements to protect the global environment, and by supporting and participating in a high-level United Nations Sustainable Development Commission; to the Committee on Foreign Relations.

REPORTS OF COMMITTEES

The following reports of committee were submitted:

By Mr. BIDEN, from the Committee on the Judiciary, without amendment:

S. 2043. A bill to prohibit certain motor fuel marketing practices (Rept. No. 102–458).

By Mr. JOHNSTON from the Committee on Energy and Natural Resources:

Report to accompany the bill (S. 2549) to establish the Hudson River Artists National Historical Park in the State of New York, and for other purposes (Rept. No. 102–459).

Report to accompany the bill (H.R. 1096) to authorize appropriations for programs, functions, and activities for the Bureau of Land Management for fiscal years 1992, 1993, 1994, and 1995; to improve the management of the public lands; and for other purposes (Rept. No. 102–460).

Report to accompany the bill (H.R. 4276) to amend the Historic Sites, Buildings, and Antiquities Act to place certain limits on appropriations for projects not specifically authorized by law, and for other purposes (Rept. No. 102–461).

Report to accompany the bill (H.R. 2321) to establish the Dayton Aviation Heritage National Historical Park in the State of Ohio, and for other purposes (Rept. No. 102–462).

Report to accompany the bill (H.R. 3011) to amend the National Trails System Act to designate the American Discovery Trail for study to determine the feasibility and desirability of its designation as a national trail (Rept. No. 102–463).

Report to accompany the bill (H.R. 2109) to direct the Secretary of the Interior to conduct a study of the feasibility of including Revere Beach, located in the city of Revere, Massachusetts, in the National Park System (Rept. No. 102–464).

Report to accompany the bill (S. 2353) to provide for a land exchange with the city of Tacoma, Washington (Rept. No. 102–465).

Report to accompany the bill (H.R. 2502) to establish the Jemez National Recreation Area in the State of New Mexico, and for other purposes (Rept. No. 102–466).

Report to accompany the bill (H.R. 3638) making technical amendments to the law which authorizes modification of the boundaries of the Alaska Maritime National Wildlife Refuge (Rept. No. 102–467).

Report to accompany the bill (S. 2890) to provide for the establishment of the Civil Rights in Education: Brown v. Board of Education National Historic Site in the State of Kansas, and for other purposes (Rept. No. 102–468).

Report to accompany the bill (S. 1925) to remove a restriction from a parcel of land owned by the City of North Charleston, South Carolina, in order to permit a land exchange, and for other purposes (Rept. No. 102–469).

Report to accompany the bill (S. 2021) to amend the Wild and Scenic Rivers Act by designating a segment of the Rio Grande in New Mexico as a component of the National Wild and Scenic Rivers System, and for other purposes (Rept. No. 102–470).

Report to accompany the bill (S. 3217) to amend the Wild and Scenic Rivers Act to designate segments of the Great Egg Harbor River and its tributaries in the State of New Jersey as components of the National Wild and Scenic Rivers System, and for other purposes (Rept. No. 102–471).

Report to accompany the bill (H.R. 3665) to establish the Little River Canyon National Preserve in the State of Alabama (Rept. No. 102–472).

Report to accompany the bill (H.R. 1592) to increase the size of the Big Thicket National Preserve in the State of Texas by adding the Village Creek Corridor unit, the Big Sandy Corridor unit, the Canyonlands unit, the Sabine River Blue Elbow unit, and addition to the Lower Neches Corridor unit (Rept. No. 102–473).

Report to accompany the bill (H.R. 2444) to revise the boundaries of the George Washington Birthplace National Monument (Rept. No. 102–474).

Report to accompany the bill (S. 2006) to establish the Fox River National Heritage Corridor in Wisconsin, and for other purposes (Rept. No. 102–475).

Report to accompany the bill (H.R. 2244) to require the construction of a memorial on Federal land on the District of Columbia or its environs to honor members of the Armed Forces who served in World War II and to commemorate United States participation in that conflict (Rept. No. 102–476).

Report to accompany the bill (S. 2045) to authorize a study of the prehistoric Casas Grandes Culture in the State of New Mexico, and for other purposes (Rept. No. 102–477).

Report to accompany the bill (S. 3100) to authorize and direct the Secretary of the Interior to convey certain lands in Cameron Parish, Louisiana, and for other purposes (Rept. No. 102–478).

Report to accompany the bill (S. 2544) to establish in the Department of the Interior the Colonial New Mexico Preservation Commission, and for other purposes (Rept. No. 102–479).

Report to accompany the bill (S. 1664) to establish the Keweenaw National Historical Park, and for other purposes (Rept. No. 102–480).

Report to accompany the bill (H.R. 2141) to establish the Snake River Birds of Prey National Conservation Area in the State of Idaho, and for other purposes (Rept. No. 102–481).

By Mr. NUNN, from the Committee on Armed Services:

Special Report entitled "Report on the Conduct of Proceedings for the Selection of Officers for Promotion in the U.S. Air Force" (Rept. No. 102–482).

By Mr. BENTSEN, from the Committee on Finance:

Special Report entitled "Finance Committee Allocation of Budget Totals—Fiscal Year 1993 (Rept. No. 102–483).

By Mr. GLENN, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:

S. 2801. A bill to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 to improve the effectiveness of administrative review of employment discrimination claims made by Federal employees, and for other purposes (Rept. No. 102–484).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. NUNN, from the Committee on Armed Services:

The following-named officer for appointment to the grade of lieutenant general while assigned to a position of importance and responsibility under Title 10, United States Code, Section 601:

Maj. Gen. Stephen B. Croker, [redacted], U.S. Air Force.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SHELBY:

S. 3372. A bill to provide graduates of the Small Business Administration's Minority Small Business and Capital Ownership Development Program with opportunities to compete for certain contracts under limited circumstances; to the Committee on Small Business.

By Mr. MOYNIHAN:

S. 3373. A bill to provide for the collection and dissemination of information on injuries, death, and family dissolution due to bullet-related violence, and to develop options and recommendations as to how to reduce, and, if possible, eliminate, bullet-related injury, death, and social impacts, and for other purposes; to the Committee on Finance.

By Mr. SEYMOUR:

S. 3374. A bill to amend the Federal Water Pollution Control Act to assess, conduct research on, and protect the water quality of Lake Tahoe, and for other purposes; to the

Committee on Environment and Public Works.

By Mr. DURENBERGER:

S. 3375. A bill to amend the National Labor Relations Act to provide for expedited adjudication of unfair labor practice charges, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. PRYOR:

S. 3376. A bill to amend Title 39, United States Code, to improve the civil and criminal penalties aimed at deceptive practices and mail fraud, and for other purposes; to the Committee on the Judiciary.

By Mr. RIEGLE:

S. 3377. A bill to amend the Social Security Act to provide improved services to beneficiaries under such Act, and for other purposes; to the Committee on Finance.

S. 3378. A bill to establish an Office of Outreach Coordination in the Social Security Administration to coordinate the delivery of services to homeless individuals, to provide grants to local governments and nonprofit organizations to provide outreach to such individuals, and for other purposes; to the Committee on Finance.

By Mr. DASCHLE:

S. 3379. A bill to amend the Internal Revenue Code of 1986 to encourage the production of certain bio-additive and ethanol fuels, and for other purposes; to the Committee on Finance.

S. 3380. A bill to amend title 10, United States Code, to remove a restriction on the requirement for the Secretary of the Air Force to dispose of real property at deactivated intercontinental ballistic missile facilities to adjacent landowners; to the Committee on Armed Services.

By Mr. PACKWOOD (for himself and Mr. DOLE):

S. 3381. A bill to amend the Internal Revenue Code of 1986 to provide that certain disabled taxpayers may compute their medical expense deduction without regard to income from the forced sale of assets to pay medical bills; to the Committee on Finance.

By Mr. HOLLINGS:

S. 3382. A bill to amend the Stevenson-Wydler Technology Innovation Act of 1980 in order to provide expanded assistance to industry efforts to develop critical civilian technologies and to improve the economic competitiveness of the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. MACK (for himself and Mr. GRAHAM):

S. 3383. A bill to provide for enhanced Federal hazard mitigation assistance; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. WIRTH (for himself and Mr. SIMPSON):

S. 3384. A bill to establish more effective policies and programs for the early stabilization of world population through the worldwide expansion of reproductive choice; to the Committee on Foreign Relations.

By Mr. BINGAMAN:

S. 3385. A bill to improve the performance of the Departments of Defense and Energy in assisting American industry, especially small businesses, with the commercialization in the global marketplace of products derived from federally funded research and development; to the Committee on Commerce, Science, and Transportation.

By Mr. LIEBERMAN (for himself and Mr. KASTEN):

S. 3386. A bill to amend the Small Business Act to provide increased opportunities for private firms by requiring Federal agencies into contracts with qualified private sector firms for goods and services, and for other purposes; to the Committee on Small Business.

By Mr. HATCH (for himself, Mr. DOLE, Mr. CHAFEE, and Mr. DANFORTH):

S. 3387. A bill to improve the health care delivery system and ensure access to affordable quality health care through reduced liability costs and improved quality of care, and for other purposes; to the Committee on the Judiciary.

By Mr. SHELBY:

S. 3388. A bill to provide graduates of the Small Business Administration's Minority Small Business and Capital Ownership Development Program with opportunities to compete for certain contracts under limited circumstances; considered and passed.

By. Mr. KERRY:

S. 3389. A bill to amend the Securities Exchange Act of 1934 to prohibit certain transactions with respect to managed accounts; considered and passed.

By Mr. BIDEN:

S. 3390. A bill to protect the rights of children; considered and passed.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HEFLIN:

S. Res. 357. A resolution to amend the Standing Rules of the Senate to require that a financial impact statement be included in the report accompanying each bill or joint resolution reported by any committee (except those by the Committee on Appropriations), showing the financial impact that any Federal mandates in the bill or joint resolution would have on States and local governments; to the Committee on Rules and Administration.

By Mr. DOLE:

S. Res. 358. A resolution to establish a bipartisan group of Senators to be known as the Senate GATT Negotiations Observer Group; to the Committee on Rules and Administration.

By Mr. DOLE:

S. Res. 359. A resolution tendering the thanks of the Senate to the Vice President for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

By Mr. MITCHELL:

S. Res. 360. A resolution tendering the thanks of the Senate to the President pro tempore for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

By Mr. DOLE:

S. Res. 361. A resolution to commend the exemplary leadership of the Majority Leader; considered and agreed to.

By Mr. MITCHELL:

S. Res. 362. A resolution to commend the exemplary leadership of the Republican Leader; considered and agreed to.

By Mr. MITCHELL (for himself and Mr. DOLE):

S. Res. 363. A resolution to amend paragraph 5 of Rule XXIX of the Standing Rules of the Senate relating to confidential business and proceedings; considered and agreed to.

S. Res. 364. A resolution to authorize document production by and representation of committee, Member, and employees of the Senate in United States v. John M. Kent, Sr., et al.; considered and agreed to.

By Mr. FORD (for Mr. MITCHELL (for himself and Mr. DOLE)):

S. Res. 365. A resolution extending the provisions of Senate Resolution 105 of the One Hundred First Congress, the Senate Arms Control Observer Group Resolution; considered and agreed to.

S. Res. 366. A resolution extending the provisions of Senate Resolution 106 of the One Hundred First Congress (agreed to April 13, 1989); considered and agreed to.

By Mr. JOHNSTON:

S. Con. Res. 142. A concurrent resolution directing the Clerk of the House of Representatives to make additional corrections in the enrollment of H.R. 429; considered and agreed to.

S. Con. Res. 143. A concurrent resolution to correct the enrollment of S. 1671; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MOYNIHAN:

S. 3373. A bill to provide for the collection and dissemination of information on injuries, death, and family dissolution due to bullet-related violence, and to develop options and recommendations as to how to reduce, and, if possible, eliminate, bullet-related injury, death, and social impacts, and for other purposes; to the Committee on Finance.

BULLET DEATH, INJURY, AND FAMILY DISSOLUTION CONTROL ACT

• Mr. MOYNIHAN. Mr. President, I rise to introduce the Bullet Death, Injury, and Family Dissolution Control Act of 1992. Its purpose is to collect data about the nature and magnitude of bullet-related death and injury, and to develop options about how to reduce, and if possible, eliminate, bullet-related injury, death, and the associated negative impacts on the American family and society. This bill represents a new approach for protecting U.S. citizens from gun violence. It seems to me we must view the public health impact of bullets—death and injury—much as we view an epidemic. Look at the data.

In 1989, 34,776 lost their lives in the United States from bullets, 14,464 were murdered, 18,178 committed suicide, the rest died from accidents or legal intervention—shot by a policeman or such. Although no national statistics are kept on bullet-related injuries, studies suggest they are from two to five times more frequent than deaths; up to 175,000 bullet injuries per year.

Homicide is the second leading cause of death in the 15- to 34-year-old age bracket, surpassed only by unintentional events like automobile crashes. It is the leading cause of death for black males aged 15 to 34. The lifetime risk of death from homicide in United States males is 1 in 164, about the same as the risk of battle death faced by United States servicemen from all forces serving in Vietnam. For black males the lifetime risk of death from homicide is 1 in 28, twice the risk of battle death faced by marines serving in Vietnam. Almost all homicides are caused by bullets.

Consider, in 1989 a total of 17,277 black males in the 15 to 34 year age group died in the United States. Homicides accounted for 6,031 of the total deaths; 4,804 were murdered by bullets or 80 percent. That same year a total of 52,148 white males in the 15 to 34 year age group died in the United States. Of these, homicides accounted for 4,464 of the total deaths among these young white males; 3,126 were killed by bullets, over 75 percent. We have an epidemic of death by bullets. For black males it is pure carnage; 10 times the white rate.

The 1985 report from the National Academy of Sciences Committee on Trauma Research notes there is no central, responsible agency for this particular trauma, relatively little funding available for this line of inquiry and large gaps in research programs to reduce injury. Some epidemiologists have recognized the devastation of firearms. Again, gun control has been the focus. As noted by Susan Baker and her colleagues in the book "Epidemiology and Health Policy" edited by Sol Levine and Abraham Lilienfeld:

There is a correlation between rates of private ownership of guns and gun-related death rates;

Guns cause two-thirds of family homicides;

Small easily concealed weapons comprise the majority of guns used for homicides, suicides and unintentional death.

Baker states:

> These facets of the epidemiology of firearm-related deaths and injuries have important implications. Combined with their lethality, the widespread availability of easily concealed handguns for impetuous use by people who are angry, drunk, or frightened appears to be a major determinant of the high firearm death rate in the United States. Each contributing factor has implications for prevention. Unfortunately, issues related to *gun control* have evoked such *strong sentiments* that epidemiologic data are rarely employed to good advantage (emphasis added).

Certainly, the strong sentiments about gun control have made the subject difficult for the epidemiologists. But, it might also be they are looking at the wrong interaction. Couldn't we focus on the bullets and not the guns, avoid some of the strong sentiments and even save lives?

Let us look at our experience with controlling epidemics. Although the science of epidemiology traces its roots to antiquity—Hippocrates stressed the importance of considering environmental influences on human diseases—the first modern epidemiology study was conducted by the James Lind in 1747. His efforts led to the eventual control of scurvy. It was not until 1795 that the British Navy accepted his analysis and required limes in shipboard diets. Most solutions are not perfect. Disease is rarely eliminated. But might epidemiology be applied in the case of bullets to reduce suffering? I think so.

In 1854 John Snow and William Farr collected data that clearly showed cholera was caused by contaminated drinking water. Snow removed the handle of the Broad Street pump in London to prevent people from drawing water from this contaminated water source and the disease stopped in this population. His observations led to a legislative mandate that all London water companies filter their water by 1857. Cholera epidemics subsided. Now treatment of sewage prevents cholera from entering our rivers and lakes, and disinfection of drinking water makes water distribution systems uninhabitable for *cholera vibrio*, identified by Robert Koch as the causative agent in 1883, 26 years after Snow's study.

In 1900, Walter Reed identified mosquitoes as the carriers of yellow fever. Subsequent, mosquito control efforts by another U.S. Army doctor, William Gorgas, enabled the United States to complete the Panama Canal. The French failed because their workers were too sick from yellow fever to work. Now that it is known that yellow fever is caused by a virus, vaccines are used to eliminate the spread of the disease.

These pioneering epidemiology success stories showed the world that epidemics require an interaction between three things: the host [the person who becomes sick, in the case of bullets, the victim]; the agent [the cause of sickness or the bullet]; and the environment [the setting in which the sickness occurs or in the case of bullets, violent behavior]. Interrupt this epidemiological triad and you reduce or eliminate disease and injury.

How might this knowledge apply to the control of bullet-related injury and death? Again, we're talking about something different from gun control. There is a precedent. In the middle of this century it was recognized that epidemiology could be applied to automobile death and injury. From a governmental perspective, this hypothesis was first adopted in 1959, late in the administration of Governor Averell Harriman in New York State. In the 1960 Presidential campaign I drafted a statement on the subject which was released by Senator John F. Kennedy as part of a general response to enquiries from the American Automobile Association. Then Senator Kennedy stated:

> Traffic accidents constitute one of the greatest, perhaps the greatest of the nation's public health problems. They waste as much as 2 percent of our gross national product every year and bring endless suffering. The new highways will do much to control the rise of the traffic toll, but by themselves they will not reduce it. A great deal more investigation and research is needed. Some of this has already begun in connection with the highway program. It should be extended until highway safety research takes its place as an equal of the many similar programs of health research which the federal government supports.

Experience in the 1950's and early 1960's prior to passage of the Motor Vehicle Safety Act, showed that traffic safety enforcement campaigns designed to change human behavior did not improve traffic safety. In fact the death and injury toll mounted. I was Assistant Secretary of Labor in the mid-1960's when Congress was developing the Motor Vehicle Safety Act, and I was called to testify.

It was clear to me and others that motor vehicle injuries and deaths could not be limited by regulating driver behavior. Nonetheless, we had an epidemic on our hands and we needed to do something about it. My friend William Haddon, the first Administrator of the National Highway Traffic Safety Administration, recognized that automobile fatalities were caused by a second collision. In the first collision the automobile strikes some object. When energy is transferred to the interior of the car, a second collision occurs as the driver and occupants strike the steering wheel, dashboard and other structures in the passenger compartment. The second collision is the agent of injury to the host, the car's occupant. Efforts to make automobiles crashworthy follow examples used to control infectious disease epidemics. Reduce or eliminate the agent of injury. Seat belts, padded dashboards, and air bags are all specifically designed to reduce, if not eliminate, injury caused by the agent of automobile injuries, energy transfer to the human body during the second collision. In fact, we've done nothing revolutionary. All of the technology used to date to make cars crashworthy, including air bags, was developed prior to 1970.

Experience shows the approach worked. Sure it could have worked better, but it worked. Had we been able to totally eliminate the agent, the second collision, the cure would have been complete. Nonetheless, by just focussing on simple, achievable remedies we reduced the traffic death and injury epidemic by 30 percent. Some 15,000 lives saved and 100,000 injuries avoided each year.

We can apply our experience to the epidemic of murder and injury from bullets. The environment in which these deaths and injuries occur is complex. Many factors likely contribute to the rise in bullet-related injury. Here is an important similarity with the situation we faced 25 years ago regarding automobile safety. We simply cannot do much to change the environment [violent behavior] in which gun-related injury occurs, nor do we know how. We can, however, do something about the agent causing the injury—bullets. Ban them! At lest the rounds used disproportionately to cause death and injury (i.e., .25 caliber, .32 caliber, and 9 millimeter bullets). These three rounds compose 13 percent of licensed guns in New York City, yet they are involved in one-third of all homicides. They aren't used for sport or hunting. They are used for violence. There are come 200 million firearms in circulation. The pistol is a simple machine, and with minimal care it remains working for centuries. However, we have only a four year supply of bullets. Some 2 billion cartridges are used each year. At any given time there are some 7.5 billion rounds in factory, commercial, or household inventory.

In all cases, except pistol whipping, gun-related injuries are not caused by the gun but by bullets, the agent involved in the second collision. As I've said before, would this end the problem of handgun killings? No. But it just might reduce it. A 30-percent reduction in bullet-related deaths, for instance, would save over 10,000 lives each year. And, prevent up to 50,000 wounds.

Water treatment efforts to reduce typhoid fever in the United States took about 60 years. Slow sand filters are installed in certain cities in the 1880's and water chlorination treatment began in the 1910's. The death rate from Typhoid in Albany NY, prior to 1889 when the municipal water supply was treated by sand filtration was about 100 fatalities per 100,000 people per year. The rate dropped to about 25 typhoid deaths per year after 1889, and dropped again to about 10 typhoid deaths per year after 1915 when chlorination was introduced. By 1950, the death rate from typhoid fever had dropped to zero. It will likely take longer than 60 years to eliminate bullet-related death and injury, but we need to start with achievable measures to break the deadly interactions between people, bullets and violent behavior.

The bill I introduce today begins the process. It requires the collection of systematic information about the nature and magnitude of bullet-related death and injury and it begins to control the agent of disease, the bullet, through taxation of those rounds used disproportionately in crime—the .25 caliber, .32 caliber, and 9 mm rounds.

More importantly, it recognizes the epidemic nature of the problem, building on the June 10, 1992, issue of the Journal of the American Medical Association which is devoted entirely to papers on the subject of violence, principally violence associated with firearms. An editorial signed by our former Surgeon General C. Everett Koop and George D. Lundberg, M.D., is titled "Violence in America: A Public Health Emergency." Their proposition is admirably succinct.

Regarding violence in our society as purely a sociologic matter, or one of law enforcement, has led to unmitigated failure. It is time to test further whether violence can be amenable to medical/public health interventions.

We believe violence in America to be a public health emergency, largely unresponsive to methods thus far used in its control. The solutions are very complex, but possible. We urge all persons in authority to take the following actions:

1. Support additional major research on the causes, prevention, and cures of violence.
2. Stimulate the education of all Americans about what is now known and what can now be done to address this emergency.
3. Demand legislation intended to reverse the upward trend of firearm injuries and deaths, the end result that is most out of control.

PROPOSED NEW LEGISLATION

Automobiles, intended to be a means of transportation, when used inappropriately frequently become lethal weapons and kill human beings. Firearms are intended to be lethal weapons. When used inappropriately in peace time, they, too, frequently kill human beings.

In the state of Texas in 1990, deaths from firearms, for the first time in many decades, surpassed deaths from motor vehicles, 3443 to 3309, respectively, as the leading cause of injury mortality. In the 1970s and 1980s, defining motor vehicle casualties as a public health issue and initiating intervention activity succeeded in reversing the upward trend of such fatalities, without banning or confiscating automobiles. We believe that comparable results can be anticipated by similarly treating gunshot wound casualties. But the decline in fatalities will not occur overnight and will require a major coordinated effort.

Mr. President, it is time to join the medics and control the epidemic of bullet-related violence. I urge my colleagues to support this bill and ask unanimous consent that the text be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3373

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Bullet Death, Injury, and Family Dissolution Control Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) the rate of bullet-related deaths in the United States is unacceptably high and growing;

(2) injury and death is greatest in young males, and particularly young black males;

(3) epidemiology can be used to study bullet-related death and injury and to evaluate control options;

(4) bullet-related death and injury has placed increased stress on the American family resulting in increased welfare expenditures under title IV of the Social Security Act;

(5) bullet-related death and injury has contributed to the increase in medicaid expenditures under title XIX of the Social Security Act;

(6) bullet-related death and injury has contributed to increased supplemental security income benefits under title XVI of the Social Security Act;

(7) a tax on the sale of bullets will help control bullet-related death and injury;

(8) there is no central responsible agency for trauma, there is relatively little funding available for the study of bullet-related death and injury, and there are large gaps in research programs to reduce injury;

(9) current laws and programs relevant to the loss of life and productivity from bullet-related trauma are inadequate to protect the citizens of the United States; and

(10) increased research in bullet-related violence is needed to better understand the causes of such violence, to develop options for controlling such violence, and to identify and overcome barriers to implementing effective controls.

SEC. 3. PURPOSES.

It is the purpose of this Act—

(1) to increase the tax on the sale of .25 and .32 caliber and .9 millimeter bullets (except with respect to any sale to law enforcement agencies), as a means to reduce the epidemic of bullet-related death and injury;

(2) to undertake a nationally coordinated effort to survey, collect, inventory, synthesize, and disseminate adequate data and information for—

(A) understanding the full range of bullet-related death and injury, including impacts on the family structure and increased demands for benefit payments under provisions of the Social Security Act;

(B) assessing the rate and magnitude of change in bullet-related death and injury over time;

(C) educating the public about the extent of bullet-related death and injury; and

(D) expanding the epidemiologic approach to evaluate efforts to control bullet-related death and injury and other forms of violence;

(3) to develop options for controlling bullet-related death and injury;

(4) to build the capacity, and encourage responsibility, at the individual, group, community, State and Federal levels, for control and elimination of bullet-related death and injury; and

(5) to promote a better understanding of the utility of the epidemiologic approach for evaluating options to control or reduce death and injury from nonbullet-related violence.

SEC. 4. DEFINITIONS.

For purposes of this Act:

(1) The term "epidemiology" means a study of all elements contributing to the occurrence or nonoccurrence of a disease in a human population.

(2) The term "bullet-related death and injury" means death, physical or mental injury, and weakening of the family structure due to the use of bullets.

TITLE I—NATIONAL CENTER FOR BULLET DEATH AND INJURY CONTROL

SEC. 101. NATIONAL CENTER FOR BULLET DEATH AND INJURY CONTROL.

(a) ESTABLISHMENT.—There is established within the Department of Health and Human Services a National Center for Bullet Death and Injury Control (hereinafter referred to as the "Center").

(b) PURPOSE.—The Center shall conduct research into, and provide leadership and coordination for—

(1) the understanding and promotion of knowledge about the epidemiologic basis for bullet-related death and injury within the United States,

(2) developing technically sound approaches for controlling, and eliminating, bullet-related deaths and injuries,

(3) building the capacity for implementing the options, and for expanding the ap-

proaches, to controlling death and disease from bullet-related trauma, and

(4) educating the public about the nature and extent of bullet-related violence.

(c) FUNCTIONS.—The functions of the Center shall be—

(1) to summarize and to enhance the knowledge of the distribution, status, and characteristics of bullet-related death and injury;

(2) to conduct research and to prepare, with the assistance of State public health departments—

(A) statistics on bullet-related death and injury;

(B) studies of the epidemic nature of bullet-related death and injury; and

(C) factors, including the legal status and applicable laws, socioeconomic and other factors, bearing on the control of bullets and the eradication of the bullet-related epidemic;

(3) to publish information about bullet-related death and injury and guides for the practical use of epidemiological information, including publications that synthesize information relevant to national goals of understanding the bullet-related epidemic and methods for its control;

(4) to identify socioeconomic groups, communities, and geographic areas in need of study, to develop a strategic plan for research necessary to comprehend the extent and nature of bullet-related death and injury, and to determine what options exist to reduce or eradicate such death and injury;

(5) to provide for the conduct of epidemiologic research on bullet-related injury and death through grants, contracts, cooperative agreements, or otherwise, by Federal, State, and private agencies, institutions, organizations, and individuals;

(6) to make recommendations to the Congress and to Federal, State and local agencies on the technical management of data collection, storage and retrieval necessary to collect, evaluate, analyze and disseminate information about the extent and nature of the bullet-related epidemic of death and injury as well as options for its control;

(7) to make recommendations to the Congress, Federal, State and local agencies, organizations, and individuals about options for actions to eradicate or reduce the epidemic of bullet-related injury and death;

(8) to provide training and technical assistance to Federal, State, and local agencies regarding the collection and interpretation of bullet-related data; and

(9) to research and explore bullet-related death and injury and options for its control.

(d) ADVISORY BOARD.—

(1) IN GENERAL.—The Center shall have an independent advisory board to assist in setting the policies for, and directing, the Center.

(2) MEMBERSHIP.—The advisory board shall consist of 7 members, including—

(A) 1 representative from the Centers for Disease Control;

(B) 1 representative from the Bureau of Alcohol, Tobacco and Firearms;

(C) 1 representative from the Department of Justice;

(D) 1 member from the Drug Enforcement Agency; and

(E) 3 epidemiologists from universities or nonprofit organizations.

(3) TERMS.—Members of the advisory board shall serve for terms of 5 years, and may serve more than 1 term.

(4) COMPENSATION OF MEMBERS.—Each member of the advisory board that is not otherwise in the Federal Government service shall, to the extent provided for in advance in appropriations Acts, be paid actual travel expenses and per diem in lieu of subsistence expenses in accordance with section 5703 of title 5, United States Code, when such member is away from the member's usual place of residence.

(5) CHAIRMAN.—The members of the advisory board shall select 1 member to serve as chairman.

(e) CONSULTATION.—The Center shall conduct its duties under this section in consultation with the Centers for Disease Control and in cooperation with the Bureau of Alcohol, Tobacco, and Firearms, and the Department of Justice.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $10,000,000 for fiscal year 1993, $25,000,000 for fiscal year 1994, and $50,000,000 for each of fiscal years 1995, 1996, and 1997 for the purpose of carrying out the provisions of this section.

TITLE II—INCREASE IN EXCISE TAX ON CERTAIN BULLETS

SEC. 201. INCREASE IN TAX ON CERTAIN BULLETS.

(a) IN GENERAL.—Section 4181 of the Internal Revenue Code of 1986 (relating to the imposition of tax on firearms, etc.) is amended by adding at the end the following new flush sentence:

"In the case of .25 or .32 caliber or 9 millimeter ammunition, the rate of tax under this section shall be 1,000 percent."

(b) EXEMPTION FOR LAW ENFORCEMENT PURPOSES.—Section 4182 of the Internal Revenue Code of 1986 (relating to exemptions) is amended by adding at the end the following new subsection:

"(d) LAW ENFORCEMENT.—The last sentence of section 4181 shall not apply to any sale (not otherwise exempted) to, or for the use of, the United States (or any department, agency, or instrumentality thereof) or a State or political subdivision thereof (or any department, agency, or instrumentality thereof)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 1992.•

By Mr. SEYMOUR:

S. 3374. A bill to amend the Federal Water Pollution Control Act to assess, conduct research on, and protect the water quality of Lake Tahoe, and for other purposes; to the Committee on Environment and Public Works.

LAKE TAHOE WATER QUALITY PROTECTION ACT

• Mr. SEYMOUR. Mr. President, I rise today to introduce the Lake Tahoe Water Quality Protection Act of 1992.

Lake Tahoe, located on the California/Nevada border, is one of the largest subalpine lakes in the Western Hemisphere. The lake and the region exhibit a combination of ecological, environmental, and resource values that are truly unique.

In 1980, the States of California and Nevada, with approval from the U.S. Congress, entered into the Tahoe regional compact. This agreement recognizes that the Federal Government, the States of California and Nevada and the local governments all have a continuing interest and responsibility to preserve and protect the unique environmental qualities of the Tahoe Basin.

Additionally, the Tahoe regional compact set up a framework in which the Federal Government can assist local governments in fulfilling their responsibilities under the agreement.

Finally, the compact established the Tahoe Regional Planning Agency [TRPA], and granted this agency the ability to conduct water quality planning for Lake Tahoe under section 208 of the Clean Water Act.

Despite a prohibition on wastewater discharges into Lake Tahoe, there are still a number of threats to the lake's water quality. Among these are inadequate or deteriorating wastewater facilities, the lack of wastewater retention basins, stormwater and nonpoint sources of pollution, and ground water contamination.

Given these threats, there is a clear need for continuing and expanded watershed management and pollution prevention programs to further protect the lake's water quality. The bill I am introducing today establishes a Federal grant assistance partnership between the Environmental Protection Agency and the TRPA to accomplish the following three objectives.

First, funding and authority is granted to the TRPA to conduct water quality assessment and watershed management research for both surface and ground waters. Included in this research is a comprehensive study of pollution prevention measures.

Second, the bill authorizes funding for the construction of wastewater treatment, transport, and retention facilities that are deemed necessary to protect the lake.

Third, the bill authorizes funding for nonpoint source and stormwater control measures.

I view this legislation as an important starting point for dealing with the threats to Lake Tahoe's environment. I look forward to working with the Nevada delegation during the 103d Congress to craft comprehensive legislation that protects the Lake Tahoe Basin's water quality.•

By Mr. DURENBERGER:

S. 3375. A bill to amend the National Labor Relations Act to provide for expedited adjudication of unfair labor practice charges, and for other purposes; to the Committee on Labor and Human Resources.

JUSTICE FOR PERMANENTLY DISPLACED STRIKING WORKERS ACT OF 1992

• Mr. DURENBERGER. Mr. President, I rise today to introduce a bill, the Justice for Permanently Displaced Striking Workers Act of 1992, that will facilitate the adjudication of unfair labor practice charges at the National Labor Relations Board [NLRB or Board]. This is important legislation that I hope my colleagues will study over our adjournment period so we may quickly act upon it when we reconvene early next year.

Mr. President, the current system that we have created for processing unfair labor practice claims is burdensome for the parties, untimely, and therefore fails to provide meaningful relief to the participants of labor disputes. The bill that I offer today addresses that problem, and, in my view, goes a long way toward vindicating the rights of striking workers.

I would like to take a moment to review with my colleagues some background on labor law and the manner in which unfair labor practice charges are processed at the Board.

THE RIGHT TO ENGAGE IN COLLECTIVE BARGAINING

Under the National Labor Relations Act [NLRA or the act], employees have the right to join together for "mutual aid and protection," which includes the right to engage in collective bargaining with their employer. The right to engage in collective bargaining is "protected concerted activity" under the act.

The NLRA establishes this employee right, and provides protection for employees so they may engage in collective bargaining. The NLRA also imposes a corresponding mutual obligation on employers to engage in collective bargaining with employees. Under section 8(a)(5) of the NLRA, it is an unfair labor practice for an employer to fail to bargain in good faith with the certified representative of its employees.

The NLRA protects the employees' right to strike. When the strike concerns wages, hours or terms and conditions of employment, the strike is termed an "economic strike." In that case, workers may strike, and an employer has the right to remain open for business, utilizing permanent replacement if necessary. That has been the law since 1938.

Aside from an economic strike, however, there is another type of strike, called an unfair labor practice strike. When employees strike in protest over an employer's unfair labor practice, termed an "unfair labor practice strike," an employer may not permanently replace its workers. Rather, upon receipt of an unconditional offer to return to work, an employer must reinstate striking workers, or backpay liability begins to accrue from that point forward.

Mr. President, current law already protects union members from employers that intend to provoke a strike. Employers can permanently replace economic strikers, but they cannot permanently replace unfair labor practice strikers.

The problem is that when organized labor alleges that unfair labor practices have occurred, the NLRB takes too long to vindicate their rights. Because in real life, what happens is that employers permanently replace workers, the workers claim that they are engaged in an unfair labor practice strike, and then the litigation begins before the NLRB. While the litigation continues, workers remain on strike. When the litigation drags on for months, if not years, union members are left on the street.

If the workers prevail, the Board or the court reinstate them with backpay, but that can be a hollow victory when it takes over 2 years to litigate a case to completion. I should note that as cases drag on, employers incur substantial backpay liability, so the business community often finds itself in a difficult dilemma of continuing to operate with replacements or hiring back the strikers.

It is often said that justice delayed is justice denied, and this certainly holds true for those who face delays before the NLRB. In order to understand the extent of the problem, we need to examine the process of adjudication before the Board.

Mr. President, the process begins when an employee files an unfair labor practice charge with one of the 33 regional offices of the NLRB. The NLRB Regional Office investigates the charge and, if found to be meritorious, the regional office will issue a complaint.

The case either settles at this point, or the regional office litigates the case before an Administrative Law Judge [ALJ]. Most of the cases settle without litigation, and according to a recent General Accounting Office [GAO] report, one half of such cases were resolved in 50 days or less. See "National Labor Relations Board: Action Needed to Improve Case-Processing Time at Headquarters," GAO/HRD-91-29, January 1991. This is the good news. The bad news follows.

The Administrative Law Judge then must issue his or her opinion. The median time to obtain a decision when unfair labor practice cases were litigated before an ALJ was about 11 months. "GAO Report," at 16. This is a substantial period of time for individuals who are on strike and doing without their weekly pay.

But the process does not end here. Instead, the process has just begun. Either party may appeal the ALJ's decision to the full National Labor Relations Board [NLRB] in Washington, DC. And I think the American people know how efficient we are in Washington, DC.

There are five NLRB members who most often sit in three judge panels to decide cases. The parties file briefs for the Board members to read, and the Board members review the briefs and issue their opinion. As we shall see, this can be quite a lengthy process.

The parties can appeal the Board's decision to the U.S. circuit court of appeals, as happened with about 13 percent of the cases in 1989, and then, if they so desire, they can appeal to the U.S. Supreme Court.

Although the courts have backlogs, that is a matter for another day. I have attempted to reduce our Federal court backlog by increasing alternative dispute resolution. For instance, during the floor debate on the family leave bill, I offered an amendment to mandate arbitration to enforce rights created under the bill. I lost that battle, but I will continue to try to decrease the delays in our Federal courts.

Mr. President, as I indicated, that is a matter for another day. Today, I would like to focus this body's attention on the delays associated with the National Labor Relations Board when the decisions are appealed from the ALJ to the Board.

As I mentioned earlier, there is some good news at the regional level for parties who file unfair labor practice [ULP] charges. About 95 percent of the charges are resolved at the regional office level without the case going to the NLRB in Washington, DC, and most ULP cases were resolved without litigation. One half of ULP cases were resolved in about 50 days or less. Finally, the median time to obtain a decision when ULP cases were litigated before an ALJ was about 11 months. Although not perfect, these numbers at the local level suggest that there is some hope for the system as a whole.

But Mr. President, the NLRB takes too long to adjudicate unfair labor practice charges. Consider the following statistics compiled by GAO:

In 1988, 30 percent of the ULP cases decided had been at the Board more than 2 years, and 15 percent had been at the Board over 4 years.

In 1989, 21 percent of the ULP cases decided had been at the Board more than 2 years, and 10 percent had been at the Board over 4 years.

Mr. President, imagine if you were a striking union member whose case were pending at the NLRB. You spent 11 months litigating the case at the local level before an Administrative Law Judge, and your case were one of the 10 percent at the Board that was over 4 years old. How can we expect union members to wait that long without an answer? How can we expect union members to wait 4 years for the NLRB to vindicate their federally protected right to engage in collective bargaining? The answer is that we simply cannot ask any individual to wait that long to receive justice.

The statistics during the 1980's are astonishing. I ask my colleagues to note that from 1984 to 1989: The Board took more than 2 years to decide 20 percent of the cases appealed to it; and the Board took from 3 to 7 years to decide 11 percent of the cases.

I think that anyone who sees the duration that it takes for working men and women to receive justice from our system would recognize that our system needs to be changed. We need the Board to be more responsive to cases where unfair labor practice charges are filed and where permanent replacements have been hired. Otherwise, our workers lose faith in the system.

Note the timeframe for the Board to decide contested unfair labor practice cases. According to the GAO, between 1984 and 1989, 26 percent of the cases took between 1 and 3 years for the NLRB to decide. In absolute numbers, this constituted 991 cases. That is a very long time for the Board to adjudicate unfair labor practice claims.

And another 200 cases, or 5 percent of the cases, took between 3 and 4 years to resolve. Again, I believe that the American people can expect better from our Government, and the working men and women who have their cases stalled at the Board demand more.

ACTION IS REQUIRED

Mr. President, after examining these timeframes, I think it is obvious that we cannot expect working men and women to file unfair labor practice charges, to be permanently replaced by owners of their company, and then wait over 2 years for the NLRB to vindicate their rights. In my view, that does not seem reasonable at all.

I propose an expedited review procedure for the adjudication of unfair labor practice charges. This new process would provide an opportunity for Administrative Law Judges and the NLRB in Washington DC to engage in a meaningful review of the case, while at the same time, assuring that the system vindicates the rights of deserving working men and women in America.

Under the Durenberger proposal, the expedited adjudication process would apply in cases where a collective bargaining agreement has expired, a party to the agreement alleges that another party to the labor contract has failed to engage in good faith bargaining as required by the National Labor Relations Act, and an employer has hired permanent replacements.

In this situation, the Administrative Law Judge would be required to hold a hearing within 60 days after the Board's regional office files a complaint. After the hearing has occurred and the parties have filed their briefs, the ALJ would have no more than 60 days to file his or her opinion.

As we noted before, though, the problem is not limited to the ALJ's. In fact, most of the problem is at the Board level here in Washington, DC. Accordingly, my proposal also places constraints on the NLRB.

A party would have 30 days to file briefs appealing the ALJ's decision, and 15 days to file briefs in opposition to the petitioner's brief. Thereafter, the Board would have 90 days to issue a decision in the case. That period could be extended 30 days if oral arguments were scheduled. The Board rarely hears oral arguments, but the law should remain sufficiently flexible that the Board may hear such arguments if it so chooses.

If the ALJ's or the Board fail to comply with these requirements, the bill requires them to submit the reasons for the delay to the Senate Labor and Human Resources Committee and publish such reasons in the Federal Register.

Mr. President, I am loathe to place strict time requirements on administrative agencies. In my view, Congress should not micromanage executive and independent agencies. But at the same time, I believe that the American people have a right to demand that their Government be responsive to their needs. When union members go on strike, they cannot wait 3, 4 or 5 years for the Board to determine whether an unfair labor practice has taken place. The American people expect more from their Government.

Mr. President, the system has let our people down. We have to restore meaningful redress to our organized workforce. I ask my colleagues to support this expedited review of unfair labor practice charges where a labor contract has expired and permanent replacements have been hired.●

By Mr. PRYOR:

S. 3376. A bill to amend title 39, United States Code, to improve the civil and criminal penalties aimed at deceptive practices and mail fraud, and for other purposes; to the Committee on the Judiciary.

CONSUMER MAIL FRAUD PROTECTION ACT OF 1992

●Mr. PRYOR. Mr. President, today I rise to introduce the Consumer Mail Fraud Protection Act of 1992 legislation which will go a long way in protecting the American public from the unscrupulous criminals who continue to rob through the mails.

Last month, in a hearing before the Special Committee on Aging, my colleagues and I learned about the widespread schemes these postal pirates operate. Thousands upon thousands of Americans lose their money, dignity, and self-respect daily. From mail order fraud to guaranteed giveaways, the hearing provided a necessary opportunity to expose some of these clever gimmicks.

Mr. President, Minnesota Attorney General Hubert H. Humphrey III, brought five large sacks of mail to our hearing. I have one of them here on the floor today. If you can imagine four other bags, just like this one, you will begin to get an idea of the magnitude of this problem. Incredibly, the mail contained in the five sacks represents the questionable solicitations received by just one individual during a 12-month period.

Mr. President, I believe this problem is best attacked in two ways. First and foremost, we must continue to educate people to be more suspicious of these questionable claims. The public has got to remember that old adage—if it sounds too good to be true, it probably is. Most of the time, you won't receive what you've been offered, and if you do, it's likely to be worth far less than what you paid.

Our hearing was just the beginning in what I hope will be a series of educational forums to warn consumers, particularly the elderly, about the various types of plans to defraud. Unfortunately, there have been far too many senior citizens taken in by these shady deals, and much too often, they lose a substantial part of their life savings.

The second approach to fighting this problem includes plugging loopholes in existing laws, giving law enforcement officials the tools they need, and increasing the penalties for such consumer mail fraud activity to make it much less attractive. As clever as many of the criminals have become, education alone will not fully protect people against these crimes. Because of limits on its authority to investigate and prosecute these con artists, the Postal Inspection Service has been somewhat restricted in its efforts. The legislation I am introducing today addresses these shortcomings.

First, this bill addresses what I believe is the best way to discourage these scams—taking the profits out of the business. By providing the Inspection Service with the authority to seize the ill-gotten gains of these perpetrators, the financial incentives of this business are removed. If the criminals know that they will lose all of their profits, they are certainly less likely to engage in this type of illegal activity.

Second, this bill provides subpoena authority for documents and testimony which will cut down on the delays in obtaining the necessary injunctions to stop the operation of the schemes. By shortening the time it takes to shutdown these operations, we can limit the number of victims and again, remove still more of the incentives behind the activity.

Additionally and perhaps most importantly, this bill will require mail solicitations to include the name and principal place of business of the person or persons actually responsible for sending it. Too many times, these criminals hide behind some harmless sounding name with a private post office box as their address. Our constituents might be less likely to send money to these fraudulent organizations if they knew who was actually operating them. Also, this requirement will highlight groups who simultaneously operate many different schemes.

The bill also contains more than a dozen other provisions which are all designed to stop these criminals and protect the unwary public. Some of these include detailing mail of the criminals and adding criminal penalties where only civil penalties currently exist.

Mr. President, one thing is four sure: This billion dollar industry continues to take advantage of unsuspecting Americans. In the past, I have introduced legislation such as the Deceptive Mailings Prevention Act in 1989 and amendments to improve the false representations statute back in 1982. However, as we have seen new mail fraud scams change to circumvent the law, our approaches must adopt as well. Mr. President, that is why this bill provides the necessary tools to those responsible for enforcement.

I plan to hold hearings early next year on this legislation in the Governmental Affairs Subcommittee on Federal Services, Post Office and Civil Service. I invite my colleagues to study this proposal and join me in working towards solutions to the consumer fraud problems which continue to plague our society.●

By Mr. RIEGLE:

S. 3377. A bill to amend the Social Security Act to provide improved services to beneficiaries under such act, and for other purposes; to the Committee on Finance.

SOCIAL SECURITY BILL OF RIGHTS

● Mr. RIEGLE. Mr. President, I rise today to introduce legislation designed to improve the delivery of services to people who receive benefits under the Social Security Act. I have called this bill the Social Security bill of rights because I want to bring attention to what I think is a crucial need: Guaranteeing the millions of people who rely on Social Security a system that is convenient to use, prompt in its delivery of service, and responsive to their concerns.

The Social Security bill of rights seeks to establish a minimum level of service quality in the system and to remove some of the barriers people have encountered when enrolling in these programs. The legislation also makes other benefit programs—outside of Social Security, yet crucial for many Social Security beneficiaries—more available to people who need them. Let me briefly describe some of the rights I believe beneficiaries should have.

THE RIGHT TO A CONVENIENT SYSTEM

Title I of the Social Security bill of rights grants beneficiaries the right to a system that is easy to use and accessible. First, beneficiaries have the right to a convenient Social Security Administration [SSA]. To assure convenience, the Social Security bill of rights establishes a one-stop shopping program for benefits.

Many Social Security beneficiaries qualify for a number of different benefit programs, either under the Social Security Act or other laws. A low-income senior citizen, for example, may get Social Security retirement benefits and may qualify for Supplemental Security Income [SSI] benefits. This same individual might also be eligible for the Low-Income Home Energy Assistance Program [LIHEAP], the Medicaid and food stamps. Under current practice, SSI and Food Stamp applications are available at a local Social Security office. But LIHEAP applications in most States are available at either a community action agency or a local social services office—not at the Social Security office. Similarly, Medicaid applications are only available in State welfare offices. Social Security offices are currently required to accept food stamp applications, but many offices have not complied with this requirement.

I believe that the people in need of these progams—senior citizens, the disabled, and people with low incomes—should not have to go to different places to obtain benefits to which they are entitled. This is inconvenient, confusing, and ultimately discourages many people from applying for benefits that they need. What complicates this problem even more is the fact that many of these people do not have access to adequate public transportation—some have difficulty getting to just one office, much less several offices.

Under the Social Security bill of rights SSA field offices would distribute and accept applications for the Medicaid and LIHEAP programs—a one-stop shopping system. To facilitate the system, SSA will establish a training program for its workers so that they may provide accurate information and advice on completing the forms. The actual processing of the applications will continue to be handled by the agencies responsible for it under current law. These agencies will also continue to accept applications directly.

THE RIGHT TO OUTREACH SERVICES

Many homebound senior citizens are eligible for programs like food stamps, LIHEAP, and Mediaid. Unfortunately, they do not have the ability to get to a local Social Security office or a local welfare office to find out about, and apply for these benefit programs. That is why the Social Security bill of rights would create an outreach program for homebound seniors. SSA would work with local area agencies for the aging—the entities that provide services to seniors under the Older Americans Act—to identify who these homebound seniors are. SSA personnel will then visit these seniors to explain to them what benefit programs may be helpful to them and to help them apply for benefits.

THE RIGHT TO UNDERSTANDABLE INFORMATION

Mr. President, according to an American Association of Retired Persons report, illiteracy and reading comprehension problems pose a significant barrier to getting benefits for older persons who do not speak English. Information about benefit programs as well as current outreach efforts are primarily aimed at the English speaking population. Seniors advocates in several States have noted a shortage of bilingual personnel in local Social Security offices despite large non-English speaking populations in that area. This situation discourages people from getting benefits for which they qualify.

My legislation requires Social Security offices to provide materials in other languages where a significant number of people in the area served by the office do not speak English. The level of bilingual services required in this legislation is the same one that exists under the Food Stamp Program. This legislation would extend this to all Social Security Act programs. It is my hope that all Social Security offices will have bilingual personnel and applications on the premises to serve those people who do not use English as their first language within 180 days of enactment of this legislation.

THE RIGHT TO WORK

Mr. President, people who receive Social Security Disability Insurance benefits [SSDI] want to work. One man told me that he actually wants to pay taxes—think about it, someone who yearns to file an IRS 1040 form. But this gentleman, like many disabled people on SSDI, chose not to work because under the SSDI Program he could lose his medical benefits if he earned more than $500 in a month.

The Social Security bill of rights creates a right to work by extending the work incentives provisions of the Supplemental Security Income [SSI] Program to the SSDI Program. Experience with this provision of SSI has shown that, for most disabled people, continued access to Medicaid health insurance coverage is the most important factor in their successful return to work. This program gives SSI beneficiaries the confidence that attempting to work will not disqualify them for benefits in the future should that work attempt fail. People on SSDI should have the same protection.

Mr. President, this provision is particularly timely now that the Americans with Disabilities Act [ADA] is in full effect. This landmark legislation guarantees that a person with a disability will not be discriminated against in employment and that that person will have access to public places, including the workplace. But without an incentive to seek work, the promise and the dream of the ADA will go unfulfilled for millions.

PHASEOUT OF THE ONE-THIRD REDUCTION RULE

Mr. President, the Supplemental Security Income Program has protected millions of blind, aged, and disabled people from destitution by giving them with the means to live independent lives. SSA recently completed a comprehensive examination of the SSI Program called the SSI Modernization Project. The project convened a panel of experts to assess the SSI Program and make recommendations for improvements.

One of the key goals identified by the modernization project is included in this legislation—the repeal of the one-third reduction rule. The regular SSI Federal benefit standard for 1992 is $422 for an individual and $633 for a couple—this translates into $5,064 and $7,596 per year, respectively. The Federal poverty level is $6,810 for individuals and $9,190 for couples. SSI recipients are living below the poverty level—and remember, these are low-income blind, aged, and disabled people—this Nation's most vulnerable citizens.

Under current law, SSI recipients face a penalty for living in the home of another person, whether that person is a friend or family member. Their benefits are subject to a one-third reduction—33 percent—for in-kind support and maintenance. In-kind support is not cash income, but is actual food, clothing, or shelter that is given to the recipient. SSA does not determine the actual value of any support received, it simply assumes that the total amount is one-third.

The modernization project's panel of experts identified several problems with the so-called one-third reduction rule. First, it pushes people who are already living below the poverty level even deeper into poverty. Second, the rule is demeaning. When a peson applies for SSI, or when their eligibility is redetermined, they have to answer a battery of personal questions about their living arrangements—questions about household operating expenses and any help the household gets to meet expenses. One recipient testified before the experts that she was afraid to accept gifts from caregivers for fear that it would place her in violation of the rule. Statements are also obtained from other household members who are not receiving SSI benefits. This intrusion is unwarranted.

Finally, the one-third reduction rule is a disincentive to families helping each other. Informal caregiving from friends and relatives provides valuable assistance to SSI recipients—particularly for the elderly. The rule only places a greater financial burden on the families of these recipients. What's more, the rule encourages moving the recipient out of the home and away from the people who can give them the greatest support because SSI recipients who live in public housing are not subject to the rule, but those whose family members help them with housing costs receive a reduced benefit because of that help.

The one-third reduction rule also poses administrative problems. The modernization panel heard testimony from field office employees who reported that the information gathering and decision-making process for determining in-kind support is a highly subjective process and is one of the most time-consuming and complex tasks they face. Even the most experienced employees have trouble with it.

Mr. President, my legislation will gradually repeal the one-third reduction rule by reducing the percentage of the reduction from the current 33⅓ percent to 25 percent in 1993; and to 15 percent in 1994. After 1994, the rule would be completely repealed. This reform will ease the burden that the present rule places on the families of beneficiaries and the people who administer the program.

DEMONSTRATIONS PROJECTS TO IMPROVE SERVICE

There are two demonstration projects in this bill that I believe would improve the disability determination system. The first would eliminate, on an experimental basis, the reconsideration level in the disability determination appeals process. Under the current system, State agencies are responsible for making disability determinations. If an individual's initial application is denied, they may file for a reconsideration of the ruling. The reconsideration is performed by the same State agency that conducted the initial review. Needless to say, very few decisions are overturned at that point. Under my demonstration project, the States will no longer have to conduct the reconsideration, freeing up State personnel to conduct initial review. Those denied cases will proceed directly to the hearing level. It is my hope that this will result in a decrease in the backlogs at the initial determination levels.

The second demonstration project would explore changing the orientation of the current SSDI Program from an early retirement system for people too disabled to continue working to a system designed to meet the needs of disabled workers. Under the current system, an individual applying for disability benefits is only evaluated from the narrow perspective of establishing the existence of a medical disability. An applicant has an incentive to heighten the severity of the disabling conditions while the administrators have an incentive to minimize existing maladies. Under current practice, a very complex determination is made with regard to the severity and duration of the disabling condition, and then a decision is made regarding whether a benefit is either awarded or denied.

The demonstration project I am proposing would alter the incentives contained in the current program by integrating a vocational rehabilitation evaluation into the initial and ongoing determination process. Prospective beneficiaries would be assessed based upon their rehabilitation potential as well as their disability.

Mr. President, the Social Security bill of rights will result in better delivery of services and benefits to millions. People who have low incomes; people with disabilities; the elderly—these people have a right to government services that respect their individual needs. I know that the Senate will not be able to address this legislation during this Congress. It is may hope that my colleagues will study this proposal carefully during the adjournment. I welcome their comments and suggestions. I plan to talk to my constituents in Michigan about it and I would ask my colleagues to do the same. Next year when we return, I hope we can work together to give Social Security beneficiaries a program to be proud of.•

By Mr. RIEGLE:

S. 3378. A bill to establish an Office of Outreach Coordination in the Social Security Administration to coordinate the delivery of services to homeless individuals, to provide grants to local governments and nonprofit organizations to provide outreach to such individuals, and for other purposes; to the Committee on Finance.

HOMELESSNESS OUTREACH ACT OF 1992

• Mr. RIEGLE. Mr. President, I rise today to introduce legislation designed to help ease the burden for those disabled Americans who are homeless. The Homeless Outreach Act creates a grant program to provide funding to local governments and nonprofit organizations to locate homeless people and assist them with applying for benefits under the Social Security Act.

The scope of the outreach envisioned by this legislation is very broad. Grantees would make regular visits to soup kitchens, shelters, street sites and day centers where people who are homeless gather. Since many of the grantees are local nonprofit organizations who work with homeless people on a daily basis, locating potentially eligible individuals should be done quite effectively. The grantees would provide homeless individuals with applications for supplemental security income [SSI], food stamps, and Social Security disability insurance benefits [SSDI] and help these people get through the application process.

To handle the administration of this outreach grant program, this legislation creates an Office of Outreach Coordination within the Social Security Administration. This office will establish the guidelines for awarding grants and will provide technical assistance to Social Security Administration field offices on the grant program.

Mr. President, homeless people—particularly those who are mentally ill—need this legislation. These people cannot easily walk into a Social Security office and apply for benefits because, quite frankly, many would not be able to get past the security guard at the door. This legislation gives those organizations most familiar with the homeless people living in their areas the ability to help these people get benefits. The homeless person will not have to face a huge and confusing bureaucracy to get benefits; they can turn to a trusted social worker for help.

This legislation also contains some special procedures for handling the applications of homeless persons. It would require SSA to reach a decision on a homeless person's application within 60 days of receipt. For those homeless applicants who face the denial of benefits for failure to file complete information, SSA must attempt to locate the individual before denying them benefits and assist them in filing the correct information. The legislation would also require SSA to promulgate regulations to ensure that homeless individuals have access to presumptive disability payments under the SSI Program.

Mr. President, we are coming to the end of the current session and I know there will not be any action on this bill this year. I urge my colleagues to study the proposal during the adjournment. I intend to move forward with this initiative in the next Congress. I believe this program will help improve the lives of some of the most vulnerable people in our society.•

By Mr. DASCHLE:

S. 3379. A bill to amend the Internal Revenue Code of 1986 to encourage the production of certain bio-additive and ethanol fuels, and for other purposes; to the Committee on Finance.

ALCOHOL FUEL CREDIT

• Mr. DASCHLE. Mr. President, I am pleased that before adjourning for the year the Senate has passed a comprehensive energy bill, and a major urban aid package that contains strong economic stimulus measures. Both bills are important to rural America and include provisions that hold great promise for a particular interest of mine, alternative energy development.

Unfortunately, however, as much as I support these bills, they miss a significant opportunity to further diversify our energy sources, and promote economic development and a healthier environment. Therefore, I would like to take a moment to outline for the Senate the opportunities lost and the challenges ahead.

Today I am introducing legislation pertaining to renewable liquid fuels, including ethanol. While I understand that the Senate will be adjourning shortly and that no action on this measure is possible this year, I think it is important that senators focus on the issues that this bill raises. Specifically, the bill follows up on commitments made by the President last week.

As I am sure everyone in this chamber is aware, an ongoing dispute between the Bush Administration and the agriculture and ethanol communities over the implementation of the Clean Air Act has received considerable attention lately. The substance of this dispute is extremely important, and I regret that policy considerations seem to have been overwhelmed by short-term political exigencies in its resolution.

The debate over the role ethanol should play under the Clean Air Act Amendments was joined in February 1992 when EPA released draft rules for the reformulated gasoline program. Since that time, the domestic industry and farm organizations have been locked in a disagreement with the Environmental Protection Agency about how ethanol affects pollution. Meanwhile, the President and his political advisors, evidently paralyzed by indecision about how not to offend influential political interests, have sat by wringing their hands as farm organizations, oil lobbyists and environmental groups have thrown barbs at each other.

On October 1, 1 week before adjournment, the President announced a solution to this impasse. The solution was one part regulatory fix, another part legislative changes, and a third part vague promises.

The President seemed to put forth a reasonable package that would help ensure ethanol a role in the reformulated gasoline program, as was the intent of Congress, while maintaining the environmental integrity of the Clean Air Act. It was not what any one group wanted, but it was a reasonable, workable solution.

Now, 1 week later, on the eve of adjournment, some cynics speculate that the President's announcement might have been an election-year maneuver on which he may or may not follow through. I hope this isn't the case.

Most of what the President announced will have to be accomplished through regulatory changes, but he also made a strong case for specific new legislative initiatives. I had hoped that, despite the late hour, strong advocacy by the President and his top policy advisors would lead to the incorporation of these provisions into the Energy Bill that passed this body earlier today. But that did not happen.

Now it is time to look ahead. The bill I am introducing today concerns the legislative commitments made by the President.

In his ethanol pronouncement on October 1, the President made three commitments: first, to support a provision of mine in the Energy bill that would allow a partial excise tax exemption for ethanol blends of two levels below 10 percent; second, to support making the alcohol blender credit nontaxable for blenders of ETBE; and, finally, to support the addition of biodiesel to the fuels that are eligible for the blender credit. This is a solid package that will allow ethanol and other renewable liquid fuels to be used in better ways and used more profitably, for the benefit of air quality, our energy independence, and the farm sector.

The first part of this package, allowing a prorated partial excise tax exemption at two levels below 10 percent, passed today as a part of the Energy bill. This will be important in letting ethanol play a prominent role in the carbon monoxide abatement program that goes into effect this fall. It could also help ethanol blends play a more useful role in the reformulated gasoline program that begins in 1995.

As I said, I had hoped that the other two provisions endorsed by the President could have been added to the Energy bill, as well. However, when I raised the subject of these provisions at the energy tax conference Saturday night, it was apparent that these ethanol provisions were not an Administration priority. This was an opportunity lost—something I very much regret.

Maybe it was the short time frame. Or maybe the headlines generated by the announcement were more important than actually getting these provisions into law. I do not know. But I do know that I do not intend to allow the commitments made to farmers in America on October 1, 1992 to be forgotten after the election-year hoopla fades. Call this bill a reminder.

The bill I am introducing today has three major provisions. First, it would provide that the alcohol fuel blender credit set forth under Internal Revenue Code Section 40 may offset the Alternative Minimum Tax, or [AMT]. Like many independent oil and gas producers, blenders of renewable fuels often find themselves in an AMT position and, therefore, unable to benefit from the economic incentive that the blender credit was intended to provide. Consistent with the policy behind the Alternative Minimum Tax, the provision in the bill is limited so that the taxpayer cannot reduce AMT tax liability by more than 50%.

This provision was a part of the Senate Energy bill, but it was deleted in conference, for reasons unknown. The Joint Committee on Taxation estimated that the provision would cost $11 million over 5 years.

Second, the bill would provide a tax credit for biodiesel fuels. This is accomplished through an amendment to the current-law Section 40 blender tax credit. Biodiesel is an exciting new technology that has tremendous promise for expanding the use of renewable fuels. In South Dakota, we have been running two buses on biodiesel for most of the last year, with remarkable success. Bus performance is better, pollution is down, and no modifications are needed to a diesel engine to run on the fuel, which can be used either "neat"—100 percent biodiesel—or as a diesel blend.

Finally, the bill would partially repeal the requirement under Internal Revenue Code Section 87 that the blender tax credit be included in gross income. No income inclusion would be required with respect to any portion of the blender credit that is attributable to a bio-additive or alcohol used to produce ethyl tertiary butyl ether or any other ether derived from an eligible alcohol.

This Senator has fought for ETBE development for years now. In 1990, the Internal Revenue Service ruled that the ethanol used in ETBE manufacture is eligible for the blender tax credit. This ruling effectively commercialized ETBE manufacture. Unfortunately, the relative economics of ethanol and methanol still have locked ethanol out of the ether market.

There are many reasons why ETBE should become a mainstream player in the oxygenated fuels business. First, its chemical properties overcome the principal objections that are often heard about splash-blended ethanol. Specifically, ETBE has a remarkably low vapor pressure—4 lbs. per square inch—and will help refiners meet Federal volatility standards. Second, ETBE, either straight or preblended, is fully pipeline fungible, whereas ethanol and ethanol blends usually need to be shipped in segregated storage.

ETBE will also give refiners a choice of feedstocks when making ethers. The choice will be made based on the relative availability, price, and/or performance of ethanol and methanol as a feedstock. This competition will be good for consumers.

In summary, I look forward to working with either President Bush or President Clinton to implement the commitments President Bush made last week. From a tax standpoint, this bill is what we need to do, and I intend to re-introduce it as soon as the 103d Congress convenes.

I ask unanimous consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3379

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ALCOHOL FUELS CREDIT MAY OFFSET MINIMUM TAX.

(a) In General.—Subsection (c) of section 38 of the Internal Revenue Code of 1986 (relating to limitation based on amount of tax) is amended by adding at the end the following new paragraph:

"(3) Alcohol fuels credit may offset minimum tax.—

"(A) In general.—The amount determined under paragraph (1)(A) shall be reduced by the lesser of—

"(i) the portion of the alcohol fuels credit determined under section 40(a) not used against the normal limitation, or

"(ii) 50 percent of the taxpayer's tentative minimum tax for the taxable year.

"(B) Portion of the alcohol fuels credit not used against normal limitation.—For purposes of subparagraph (A), the portion of the alcohol fuels credit determined under section 40(a) not used against the normal limitation is the excess (if any) of—

"(i) the portion of the credit under subsection (a) which is attributable to such alcohol fuels credit, over

"(ii) the limitation of paragraph (1) (without regard to this paragraph), reduced by the portion of the credit under subsection (a) which is not so attributable."

(b) Effective Date.—

(1) In general.—The amendment made by this section shall apply to taxable years beginning after September 30, 1992.

(2) Exception.—The amendment made by this section shall not apply to—

(A) any credit which was determined in a taxable year, or

(B) the portion of any credit which is carried back to a taxable year,

beginning on or before September 30, 1992.

SEC. 2. TAX CREDIT FOR BIODIESEL FUELS.

(a) In General.—Section 40 of the Internal Revenue Code of 1986 (relating to credit for alcohol used as a fuel) is amended by adding at the end the following new subsection:

"(i) Special Rules for Biodiesel.—

"(1) In general.—In the case of a bio-additive used to produce diesel fuel (as defined in section 4092(a))—

"(A) the bio-additive shall be treated in the same manner as alcohol for purposes of this section, and

"(B) subsection (h) shall apply in computing the amount of any credit under this section with respect to the bio-additive.

"(2) Bio-additive.—For purposes of this subsection, the term 'bio-additive' mean any liquid which is derived from biological sources, including vegetable oils and animal fats (or their esters, fatty acids, or other derivatives)."

(b) Effective Date.—The amendment made by this section shall apply to bio-additives produced, and sold or used, in taxable years beginning after December 31, 1992.

SEC. 3. REPEAL OF ALCOHOL FUEL CREDIT INCOME INCLUSION FOR BIO-ADDITIVES AND CERTAIN ETHANOLS.

(a) In General.—Section 87 of the Internal Revenue Code of 1986 (relating to inclusion in income of the alcohol fuels credit) is amended by adding at the end the following new subsection:

"(b) Exception for Bio-Additives and Certain Ethanol-Based Ethers.—Subsection (a) shall not apply to any portion of the alcohol fuel credit determined for the taxable year under section 40(a) which is attributable to—

"(1) a bio-additive (as defined in section 40(i)(2)), or

"(2) ethanol which is used to produce ethyl tertiary butyl ether or any other ether derived from ethanol in a chemical reaction in which there is no significant loss in the energy content of the ethanol."

(b) Conforming Amendment.—Section 87 of such Code is amended by striking "Gross" and inserting:

"(a) In General.—Gross".

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.●

By Mr. DASCHLE:

S. 3380. A bill to amend title 10, United States Code, to remove a restriction on the requirement for the Secretary of the Air Force to dispose of real property at deactivated intercontinental ballistic missile facilities to adjacent landowners; to the Committee on Armed Services.

DISPOSITION OF REAL PROPERTY AT MISSILE SITES

● Mr. DASCHLE. Mr. President, the Air Force is in the process of deactivating the Minuteman II [MMII] missile system at Ellsworth Air Force Base in South Dakota to meet the requirements of the Strategic Arms Reduction Treaty recently ratified by the Senate. The MMII missile system at Ellsworth includes 150 launch facilities [LF's] and 15 launch control facilities [LCF's] located in western South Dakota. The deactivation period is expected to take approximately 3½ to 4½ years, and Air Force officials anticipate that property at the LF's and LCF's will be available for disposal in the next 3 to 5 years.

Although some of the deactivated LF's and LCF's may be retained by the Air Force for follow-on requirements, it is expected that the Air Force will dispose of most of the property at the sites through sales to surrounding landowners. Many of these landowners are the previous landowners or descendants of previous landowners who were forced to sell their land to the Air Force nearly 30 years ago.

Surrounding landowners will have the first option to reacquire the property at LF's and LCF's if the sites meet the criteria of title 10, United States Code, section 9781. Section 9781 gives surrounding landowners the first option to reacquire the property at the missile sites if, first, the surrounding landowners pay fair market value as established by Government appraisal; second, the surrounding landowners pay the cost of a land survey, if required; and finally, the land was acquired from one ownership and the fee land surrounding the site is still held in one ownership.

Most of the LF's and LCF's at Ellsworth meet this criteria, and Air Force officials have assured me that surrounding landowners will indeed have the first option to reacquire the property at these sites. However, it has been brought to my attention that several sites are surrounded by more than one landowner. As a result, these sites currently do not meet the criteria of section 9781, and the property would be subject to disposal by the General Services Administration [GSA], which would offer the property to other government agencies. If no government agency were interested in the property, it would be sold through a competitive bidding process.

Mr. President, I strongly believe that surrounding landowners should have the first option to reacquire property at all LF's and LCF's. Thirty years ago, the landowners of western South Dakota were forced to sell their land to the Air Force, and they did so for the defense of our country. They have sacrificed more than land during that time, and these surrounding landowners deserve the option of buying that land back before GSA offers it to other government agencies.

The bill I am introducing today would require the Air Force to dispose of all LF's and LCF's it does not retain for follow-on requirements and to give surrounding landowners the option to acquire property at these sites before it is routed through GSA. I look forward to working during the next session of Congress with my colleagues on this and other related efforts to protect the rights of the landowners in western South Dakota affected by the Minuteman II missile system.•

By Mr. PACKWOOD (for himself and Mr. DOLE):

S. 3881. A bill to amend the Internal Revenue Code of 1986 to provide that certain disabled taxpayers may compute their medical expense deduction without regard to income from the forced sale of assets to pay medical bills; to the Committee on Finance.

MEDICAL DEDUCTION FOR CERTAIN DISABLED TAXPAYERS

Mr. PACKWOOD. Mr. President, today I am introducing legislation, along with Senator DOLE, to prevent individuals who are permanently and totally disabled from being unfairly penalized when they sell real estate to pay for devasting medical expenses.

Unfortunately, when the real estate is sold, the gain from the sale reduces the amount of medical expenses that can be deducted. That is because the Tax Code only allows a deduction for medical expenses in excess of 7.5 percent of someone's adjusted gross income [AGI], and real estate gains are included in AGI.

Permanently and totally disabled individuals often have large medical expenses each year, which drain their savings and eventually force them sell off assets that they own. Many times, someone's life savings is invested in one or two assets, usually a home or another parcel of real estate.

This problem was raised with me during the recent House-Senate conference on the urban aid tax bill (H.R. 11), and Senator DOLE and I sought to provide relief for disabled individuals with large medical bills. I regret that our proposal did not get included in the bill because it was a "late starter." Thus, we are introducing this legislation today so that the proposal may be considered in the future.

Our bill gives a permanently and totally disabled individual relief from the 7.5 percent limitation on medical expenses for up to $250,000 of real estate gains. The person's medical expenses must be more than 25 percent of his or her income, without regard to the real estate gain, and this relief will only apply once every 5 years.

Once again, I hope we can consider this issue quickly next year and provide much needed relief to disabled individuals, effective for tax year 1992.

By Mr. HOLLINGS:

S. 3382. A bill to amend the Stevenson-Wydler Technology Innovation Act of 1980 in order to provide expanded assistance to industry efforts to develop critical civilian technologies and to improve the economic competitiveness of the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

CIVILIAN TECHNOLOGY ACT

Mr. HOLLINGS. Mr. President, I am pleased today to introduce the Civilian Technology Act of 1992, a bill to establish an independent government Civilian Technology Corporation [CTC] to support the efforts of American industry in the development of key technologies of the future. The idea for a CTC comes from a distinguished bipartisan panel of experts from the National Academies of Engineering and Sciences, chaired by Dr. Harold Brown, the former president of the California Institute of Technology and former Secretary of Defense. The creation of a CTC is a concept worth pursuing as another step in our efforts to enhance U.S. technology competitiveness.

THE NEED FOR A STRONGER NATIONAL TECHNOLOGY POLICY

Mr. President, my colleagues know that I have long supported a stronger national civilian technology policy. The Nation's economic future and standard of living depend on whether we can develop, commercialize, and manufacture new technologies and products.

However, we are not doing as well as we should, despite the good efforts of our companies. A 1990 report by the Department of Commerce [DOC] found that, by the year 2000, worldwide sales of products based on 12 key emerging technologies may reach $1 trillion per year. However, in the same report, DOC found that the United States is losing, or losing badly, relative to Japan and Europe in many of these 12 technologies. The United States is not benefiting from the economic well-being and jobs that can result from these new technologies. At a time when other governments help their companies develop risky but potentially very valuable new technologies, the U.S. Government continues to neglect investment in civilian research and development [R&D] and new civilian technologies.

Just last month the National Science Board [NSB], the official board of directors for the National Science Foundation, issued a major report supporting this conclusion. Entitled "The Competitive Strength of U.S. Industrial Science and Technology: Strategic Issues," the NSB report concludes:

> Many observers have commented that the competitive strength of U.S. industrial science and technology is declining. U.S. industry already has lost its leadership in several technologies that are critical to industrial performance, and it is weak or losing competitive strength in others. During the mid-1980s, U.S. investment in R&D increased at a sluggish pace, and the Nation's nondefense R&D expenditures did not increase as rapidly as those of many major foreign competitors. The Nation also has experienced relatively slow-paced product development and commercialization, since the results of U.S. R&D are not brought to market as effectively as those of foreign competitors. Compared to other countries, a high fraction of U.S. government expenditures go to defense, rather than commercial R&D * * *.
>
> [Our] findings lead to significant apprehension about the present trajectory of U.S. industrial R&D and to the conclusion that stronger Federal leadership is needed in setting the course of U.S. technological competitiveness. Implementation of a national technology policy, including establishment of a rationale and guidelines for Federal action, should receive the highest priority.

Clearly more must be done to direct Federal efforts toward strengthening U.S. technology competitiveness.

REPORT OF THE PANEL ON THE GOVERNMENT ROLE IN CIVILIAN TECHNOLOGY

Mr. President, as part of the 1988 Omnibus Trade and Competitiveness Act, I authored a provision establishing a true civilian technology agency, DOC's National Institute of Standards and Technology [NIST]. Knowing that debate should and would continue over U.S. civilian technology policy, I also authored a provision in the 1988 law asking the National Academies of Engineering and Sciences for a review of industry-government cooperation in civilian research and technology transfer. I wanted to know why U.S. industry-government cooperation in areas such as agriculture and aeronautics had worked so well, while other efforts had been less successful. In particular, I wanted to know what lessons could be drawn from the history of U.S. technology programs, as well as to have the benefit of the National Academies' recommendations regarding ways to improve the effectiveness and efficiency of cooperative arrangements.

In response to this provision, Dr. Robert White, president of the National Academy of Engineering, and others at the National Academies formed the Brown committee, formally called the Panel on the Government Role in Civilian Technology. The panel included distinguished experts, both Republicans and Democrats, from industry, academia, and labor. Several on the panel had served previously in senior government positions. I believe that Dr. Brown and his colleagues have done an excellent job in answering the questions that we asked, and I thank them for their valuable March 1992 report, "The Government Role in Civilian Technology: Building a New Alliance."

In that report, the panel first reviewed existing Federal research and technology policies. Dr. Brown and his colleagues reached this conclusion:

> Although the nation's technological performance, relative to its past, is strong, this does not mean that U.S. policy should continue unaltered. The technological competence of our trading partners continues to increase. We need a better balance in technology policy, one that includes support not only for basic research but also for pre-commercial R&D. Moreover, the ability of U.S.

> companies to adopt new technologies, an important part of economic growth, is weak. As in pre-commercial R&D, market failure is evident in this stage of the technology development process. The federal government should act to address this deficiency.
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> The most important reason for a new technology policy, one that builds on our comparative strength in research and innovation, centers on productivity. Long-term productivity growth rates remain lower for this country than for our foreign competitors. The United States needs to improve its performance in all areas that promote productivity growth. Investment in civilian technology to achieve higher rates of technology commercialization and adoption is one part of the solution. We should move quickly to achieve this goal.

The report clearly concludes that pre-commercial R&D must be increased and that investment in civilian technology must be enhanced to ensure that U.S. technology competitiveness is promoted.

Second, the panel listed the guidelines that it believed make industry-government research ventures effective. The report listed six such guidelines: First, include cost-sharing provisions, so that industry helps to pay for research projects; second, have the private companies initiate and design the research ventures; third, insulate the ventures as much as possible from political concerns; fourth include a diversified set of R&D objectives; fifth, ensure that proposed projects undergo rigorous project evaluation and review; and sixth be open to foreign firms which substantially contribute to the U.S. economy.

Finally, the panel recommended two steps to strengthen government technology programs. "The first step in building a new alliance between government and industry in civilian technology is action to strengthen federal programs that facilitate private sector research and development, and the transfer or adoption of technology." The panel specifically recommended the following: First, reaffirming the role of the Defense Advanced Research Projects Agency [DARPA] in dual-use technology development; second, selecting a small number of the 700 Federal laboratories to work with private firms; third, expanding the scope of selected mission agency R&D programs to include pre-commercial projects; fourth, increasing funding for the Small Business Innovation Research Program: fifth, evaluating NIST's promising new Advanced Technology Program; and sixth, creating a new DOC Industrial Extension Service to speed technology adoption by U.S. industry.

The panel next recommended the creation of a new government entity, the CTC.

> A new technology strategy for the post-Cold War era must include more than revisions in current federal programs . . . The most appropriate way to promote any substantial federal investment in pre-commercial R&D is through creation of a Civilian Technology Corporation (CTC). The goal of a CTC would be to increase the rate at which products and processes are commercialized in the United States. This objective can be met by stimulating investment in the pre-commercial stage of technology development with high social rates of return, where firms cannot appropriate sufficient benefits of R&D work. Higher levels of investment at this stage of the innovation process will, over the long term, translate into stronger U.S. performance in technology commercialization.
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> The CTC would be a quasi-governmental organization, funded through a one-time, $5 billion congressional appropriation. A board of directors, appointed by the President and subject to Senate confirmation, would manage the Corporation. The performance and operation of the CTC would undergo an independent, thorough review after the fourth and tenth years of operation.

Based on the panel's report, and in close consultation with Dr. Brown, I have drafted the Civilian Technology Act of 1992—a bill to create the CTC.

THE CIVILIAN TECHNOLOGY ACT

The bill I am introducing today would create the CTC as a government corporation, under a board of directors appointed by the President and subject to Senate confirmation. The CTC would be able to assist industry in four main ways.

Matching grants to industry. These funds would help companies to develop promising new technologies.

Loans, loan guarantees, and equity investments. This section includes provisions to ensure that the government is protected against losses while funding efforts to promote new technologies.

A Critical Technology Investment Company Program, based on a proven, existing model, the Small Business Administration's [SBA] Small Business Investment Company [SBIC] Programs. Under this approach, the CTC would support private venture capital firms that in turn would invest in companies. The CTC effort would complement the SBA program, for, while SBICs support many different kinds of businesses, the CTC program would invest only in technology companies.

Matching grants to State organizations. These funds would help them to support technology development.

The panel has recommended a one-time appropriation of $5 billion to fund the CTC. By introducing this bill, I hope to spur discussion as to what amount of funding is appropriate for Government support of industry-led technology. Clearly, we cannot afford to add $5 billion to the Nation's already oversized Federal deficit. Instead, we must shift funds within the Government's existing $70 billion annual R&D budget, which includes the $40 billion per year we now spend on defense R&D. I look forward to continued discussion on this important issue of resource allocation.

NEXT STEPS

Mr. President, I remain a strong supporter of NIST and its programs, and I continue to believe that, with expanded resources, NIST and its parent organization, DOC's technology administration, can serve as a full-fledged civilian technology agency. I also believe that the panel's report focuses on other initiatives that can be pursued to promote the development of U.S. civilian technology. The report deserves careful consideration, both for its recommendation of an independent corporation and for its views on the larger question of how the Government can best support industry's technology efforts.

Given the importance of this report and its recommendations on the future of U.S. technology competitiveness, I am introducing this CTC bill today. I will seek comments on the bill from a wide range of parties, and I will continue the dialog next Congress on this legislation, and other technology policy and financing proposals worthy of consideration.

Mr. President, Americans must strengthen the role of Government in supporting industrial technology and must build a broad consensus on policies and programs; our economic future depends on these efforts. Dr. Brown and his colleagues have performed a major service by presenting their report and recommendations, and I look forward to continuing to work with them, Dr. White, and our colleagues to make our national economy stronger and more prosperous.

I ask unanimous consent that both a list of the panel's members and the text of the bill be printed in the RECORD at the conclusion of my statement.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 3382

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civilian Technology Act of 1992".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS. Congress finds and declares the following:

(1) The rapid development and commercialization of advanced civilian technologies, including both product and process technologies, are vital to the Nation's long-term standard of living, quality of jobs, economic competitiveness, and well-being.

(2) The United States excels in scientific research and new inventions, but often lags behind foreign competitors in its ability to turn research results and inventions rapidly into successful commercial products and to reap the jobs and national wealth that such commercialization brings.

(3) The reasons for this lag include—

(A) the natural tendency of firms to underinvest in the development of promising but initially risky new technologies, on the grounds that an individual firm may not be able to capture all of the benefits of its investment in such technologies;

(B) the frequent unavailability in the United States of long-term capital to help innovative firms fund the development and commercialization of complex new technologies; and

(C) the direct and indirect support companies in other industrialized countries receive when their governments target and support the development of key technologies and industries.

(4) While tax incentives aid those established firms which generate revenues, these incentives give less help to innovative new firms which create new products and jobs but often lack initial revenues. Tax incentives also lack an ability to focus on the technologies which the National Critical Technologies Panel identifies as most important to the Nation's future.

(5) The Federal Government spends over $70 billion annually on research and development, but to date less than 1 percent of that funding is used with the primary purpose of assisting general industry to improve its technology and competitiveness.

(6) The Nation would benefit from expanded Federal support for industry-led efforts to speed the development and commercialization of critical civilian technologies.

(7) Any such expanded Federal support should follow guidelines which have ensured successful industry-government research collaboration in the past. Such guidelines include responding to industry's proposals rather than having government choose specific projects; requiring industry to share costs; supporting a wide portfolio of projects and avoiding too much focus on one or two areas; and taking steps to ensure that projects which receive government assistance are selected on the basis of technical and business merit and through rigorous project evaluations and review.

(b) PURPOSE.—In order to promote the rapid development and commercialization of new technologies vital to the Nation's long-term standard of living, economic competitiveness, and well-being, it is the purpose of Congress in this Act to establish an independent Civilian Technology Corporation, associated with the Department of Commerce, to assist industry-led technology projects.

SEC. 3. AMENDMENT TO THE STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT.

The Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.) is amended by adding at the end the following new title:

"TITLE III—ASSISTANCE TO INDUSTRY-LED CIVILIAN TECHNOLOGY DEVELOPMENT ACTIVITIES

"SEC. 301. STATEMENT OF POLICY AND PURPOSE.

"(a) STATEMENT OF POLICY.—Just as the Federal Government has a responsibility to support basic research in science and engineering that will greatly benefit the Nation over the long term, the Federal Government also has a responsibility to participate with the private sector in the development and commercialization of critical civilian technologies which have the potential to contribute to a broad range of commercial and government applications. In many cases these technologies have evolved from Government-funded basic research, but technical uncertainties are not sufficiently overcome to permit full development and commercialization.

"(b) PURPOSE.—It is the purpose of this title to establish an independent corporation, with appropriate support from the Department of Commerce, in order to provide financial and other assistance to industry-led projects to accelerate the development and commercialization of critical civilian technologies.

"SEC. 302. DEFINITIONS.

"As used in this title, the term—

"(1) 'Articles' means—

"(A) articles of incorporation for an incorporated company; and

"(B) the functional equivalent of such articles of incorporation, or similar documents specified by the Corporation, for a company that is not incorporated.

"(2) 'Board' means the Board of Directors of the Corporation.

"(3) 'Chairman' means the Chairman of the Board.

"(4) 'Conditional interest-free loan' means an interest-free loan which the Corporation makes to a joint venture or individual firm for the purpose of technology development or commercialization and which need not be repaid if, in the judgment of the Corporation, the project for which the loan is made does not generate revenues which equal or exceed the amount of the loan.

"(5) 'Corporation' means the Civilian Technology Corporation established by section 303.

"(6) 'Critical civilian technology' means a technology which has potential civilian commercial applications and which is either—

"(A) identified as a national critical technology pursuant to section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683); or

"(B) eligible for assistance under section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n).

"(7) 'Critical technology investment company' means a venture capital company which—

"(A) provides financial assistance to qualified joint ventures and qualified individual firms for the purpose of assisting the development or commercialization of critical civilian technologies; and

"(B) is eligible to be licensed by the Corporation under section 308.

"(8) 'Joint venture' has the meaning given that term in section 28(j)(1) of the National Institute of Standards and Technology Act (15 U.S.C. 278n(j)(1)).

"(9) 'Licensee' means a critical technology investment company licensed under section 308.

"(10) 'Preferred securities' means preferred stock in a licensee, or a preferred limited partnership interest or other similar security (as defined by the Corporation by regulation) in a licensee, that is senior in priority for all purposes to all other non-Federal equity interests in a licensee.

"(11) 'Private equity capital' means the paid-in capital and paid-in surplus of a licensee organized as a corporation, or the partnership capital of a licensee organized as an unincorporated partnership, that is derived from non-Federal sources.

"(12) 'Qualified', as used with respect to a joint venture or individual firm, means a joint venture or individual firm whose principal business is research on, or the development or manufacture of, products that the Corporation after consultation with appropriate Federal agencies determines are a critical civilian technology.

"(13) 'University sponsored licensee' means a licensee in which a single university or consortium of universities has a majority ownership interest.

"(14) 'Venture capital' means consideration for such common stock, preferred stock, or other financing with subordination or non-amortization characteristics as the Corporation determines to be substantially similar to equity financing.

"SEC. 303. ESTABLISHMENT AND MISSION.

"(a) ESTABLISHMENT.—(1) There is established on the date of enactment of this title, as an independent instrumentality of the United States, the Civilian Technology Corporation. The office of the Corporation shall be located in the District of Columbia.

"(2) Upon the Corporation's request, the Secretary may provide office space, administrative and other services, technical assistance, and detailees to the Corporation.

"(b) MISSION.—(1) The Corporation shall, in accordance with this title, assist industry to develop and commercialize within the United States the new critical civilian technologies necessary for the Nation's long-term standard of living, economic competitiveness, and well-being. The Corporation shall encourage and assist industry-led technology development proposals, and shall ensure that costs in any project it assists are shared between industry and the Corporation.

"(2) When dealing with manufacturing technologies and other process technologies, the Corporation shall, to the maximum extent practicable, encourage and support the development, commercialization, and domestic production of technologies which—

"(A) will bring United States firms to world-class levels of productivity and quality; and

"(B) are skill-enhancing and safe.

"(c) TYPES OF ASSISTANCE.—Assistance from the Corporation under this title shall include—

"(1) critical civilian technology development awards to qualified joint ventures and qualified individual firms;

"(2) loan guarantees and loans (including conditional interest-free loans) made directly by the Corporation to qualified joint ventures and qualified individual firms, and equity investments, for the development or commercialization of critical civilian technologies;

"(3) financial support to critical technology investment companies for the purpose of helping those investment companies make venture capital investments in qualified joint ventures and qualified individual firms for the development or commercialization of critical civilian technologies; and

"(4) financial and other assistance to State governments and organizations chartered by State governments which assist qualified joint ventures and qualified individual firms in the States to accelerate the development and commercialization of new critical civilian technologies.

"(d) OTHER ASSISTANCE.—In addition to the types of assistance listed in subsection (c), the Corporation also may provide business information and advice to joint ventures and individual firms, including information on—

"(1) opportunities for firms to form mutually beneficial cooperative arrangements and business alliances; and

"(2) sources of financial assistance other than the Corporation.

"(e) CRITICAL CIVILIAN TECHNOLOGIES.—In making awards, loans, and loan guarantees, and specifying the activities of critical technology investment companies which receive assistance from the Corporation, the Corporation shall, as appropriate, support industry-led projects to develop and commercialize critical civilian technologies. The Corporation shall not support efforts unrelated to the development and commercialization of critical civilian technologies.

"(f) FUNDING DECISIONS.—The Corporation shall make its funding decisions by reviewing proposals through competitive, merit-based processes and the rigorous review and evaluation of those proposals.

"SEC. 304. BOARD OF DIRECTORS.

"(a) Composition of the Board.—The powers of the Corporation shall be vested in a Board of Directors consisting of five members, of whom—

"(1) three full-time members shall be appointed by the President, by and with the advice and consent of the Senate; and

"(2) two members, who shall serve as non-voting ex-officio members, shall be the Secretary (or in Secretary's absence, the Deputy Secretary of Commerce) and the Director of the Office of Science and Technology Policy.

"(b) BOARD MEMBERS APPOINTED BY THE PRESIDENT.—Of the three Board members appointed by the President, one shall be a representative of business, one shall be a representative of labor, and one shall be a representative of the general public. Each such member shall serve for a term of 7 years, but may continue in office after the expiration of his or her term until a successor has been appointed and confirmed. If an individual is appointed to fill a vacancy occurring prior to the expiration of the term of his or her predecessor, that individual shall serve only for the unexpired portion of the term of the predecessor. No more than two of the voting members appointed by the President shall be members of the same political party. Each member so appointed shall receive a salary at the rate provided for under section 5315 of title 5, United States Code, for level IV of the Executive Schedule.

"(c) APPOINTMENT OF CHAIRMAN.—The President shall appoint the Chairman of the Board from among the three voting members appointed by the President.

"(d) REMOVAL FROM OFFICE.—A member of the Board may be removed from office by the President only for neglect of duty or malfeasance in office.

"(e) MEETINGS; QUORUM; VOTING; BYLAWS.—The Board shall meet at any time pursuant to the call of the Chairman and as may be provided by the bylaws of the Corporation, but not less than quarterly. A majority of the Board shall constitute a quorum, and any action by the Board shall be effective by majority vote of all members of the Board. The Board shall adopt, and may from time to time amend, such bylaws as are necessary for the proper management and functioning of the Corporation.

"(f) OFFICERS AND EMPLOYEES.—(1) The Chairman shall be the chief executive officer of the Corporation, and shall be responsible for the management and direction of the Corporation.

"(2) The Board shall establish the offices of the Corporation and shall appoint and define the duties of the offices of the Corporation (including a General Counsel and a Chief Financial Officer).

"(3) The Chairman shall, without regard to the provisions of Civil Service laws applicable to officers and employees of the United States, appoint such employees as are necessary for the transaction of the Corporation's business, fix their compensation, define their duties, and provide a system of organization. The Chairman may discharge officers and employees. No officer or employee shall be appointed or dismissed by reason of his or her political affiliation.

"(g) CONFLICTS OF INTEREST.—No member of the Board, officer, attorney, agent, or employee of the Corporation shall participate, directly or indirectly, in the deliberation upon or in the determination of any question affecting his or her personal interests, or the interests of any corporation, partnership, or other business entity in which he or she is directly or indirectly interested.

"SEC. 305. GENERAL POWERS OF THE CORPORATION.

"The Corporation shall have the power—

"(1) to adopt, alter, and use a corporate seal;

"(2) to make contracts;

"(3) to sue and be sued, to complain and defend, in any court of competent jurisdiction, State or Federal;

"(4) to prescribe, amend, and repeal, by its Board, bylaws, rules, and regulations governing the manner in which its general business may be conducted and the powers granted to it by law may be exercised;

"(5) to make use of the United States mails in the same manner and upon the same conditions as the executive departments of the Federal Government;

"(6) to acquire and dispose of property;

"(7) to accept donations of services or property;

"(8) to determine the character and necessity of obligations and expenditures;

"(9) to retain and invest funds without fiscal year limitation;

"(10) to use the services of other Federal agencies on a reimbursable basis; and

"(11) to do all other acts and things which are necessary to the conduct of its business and the exercise of all the rights and powers granted to it.

"SEC. 306. TECHNOLOGY DEVELOPMENT AWARDS.

"(a) IN GENERAL.—The Corporation may, subject to the availability of appropriations, provide direct financial awards to qualified joint ventures and qualified individual firms within the United States for the purpose of supporting industry-led projects to develop critical civilian technologies. Such awards may be in the form of grants, cooperative agreements, or contracts.

"(b) REQUIREMENT. In making technology development awards under this section, the Corporation shall follow the statutory requirements which apply to the Department of Commerce's Advanced Technology Program, as set forth in section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n).

"(c) COMMERCE DEPARTMENT.—The Corporation may, if it so wishes, contract with the Department of Commerce's Advanced Technology Program to manage, in whole or in part, the Corporation's technology development awards program.

"SEC. 307. LOAN GUARANTEES, LOANS, AND EQUITY INVESTMENTS.

"(a) IN GENERAL.—The Corporation is authorized, subject to the terms and conditions described in this section, to assist qualified joint ventures and qualified individual firms to develop and commercialize critical civilian technologies by—

"(1) providing loan guarantees;

"(2) providing direct loans (including conditional interest-free loans):

"(3) taking warrants and voting and non-voting equity in qualified joint ventures and qualified individual firms; and

"(4) providing combinations of the types of assistance listed in paragraphs (1), (2), and (3).

"(b) FINANCING.—(1) Amounts appropriated to the Corporation for the purpose of carrying out this section shall be placed in a Corporation revolving fund, and money for direct loans and equity investments shall come from that revolving fund. The Corporation shall ensure that the revolving fund, or Corporation investments made under section 312(c), maintain financial reserves adequate to cover the coasts associated with direct loans and loan guarantees (as the term 'costs' is defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)).

"(2) In addition to terms and conditions set under subsection (e), the Corporation may set such terms and conditions for loan guarantees, direct loans, and equity investments as it deems appropriate, including terms regarding interest rates, origination fees, collateral, royalties, and warrants. Repaid loans, as well as any interest, royalties, capital gains, warrant income, or proceeds from collateral received by the Corporation, shall be placed in the revolving fund.

"(3) Loan guarantees made by the Corporation shall be guaranteed both as to interest and to principal.

"(4) After the Corporation receives appropriations for the purpose of carrying out this section, the Board shall ensure that the Corporation's financial activities under this section are, over the long term, self-sustaining.

"(c) ELIGIBILITY.—A qualified joint venture or qualified individual firm may receive a loan guarantee, direct loan (including a conditional interest-free loan), or equity investment under this section only if, in the judgment of the Corporation, the joint venture or individual firm—

"(1) meets the requirements set forth in section 28(d)(9) of the National Institute of Standards and Technology Act (15 U.S.C. 278n(d)(9));

"(2) will use the loan or loan guarantee to speed the development and commercialization of one or more critical civilian technologies which offer substantial economic promise; and

"(3) presents a sound business plan for the development and commercialization of the technology or technologies.

"(d) LIMITS ON THE AMOUNT OF ASSISTANCE.—(1) The amount of assistance provided by the Corporation to a qualified joint venture or qualified individual firm under this section shall be based on an independent determination by the Corporation of the need of the joint venture or firm.

"(2) The aggregate amount of assistance given under this section to, or in connection with, any one joint venture or individual firm and its subsidiary and affiliated joint ventures or firms shall not exceed 50 percent of the cost of the technology project in question.

"(e) TERMS AND CONDITIONS FOR LOANS AND LOAN GUARANTEES. —(1) Each loan or loan guarantee made under this section may be made for a period not exceeding 10 years.

"(2)(A) Each direct loan shall be made at an interest rate equal to the Government borrowing rate plus an insurance surcharge of up to 2 percent.

"(B) Each loan to be guaranteed shall bear interest at a rate determined by the Corporation to be reasonable, taking into account the current average yield on outstanding obligations of the United States whose remaining periods to maturity are comparable to the maturity of such loan.

"(3) The Corporation may not guarantee a loan unless it determines that the terms, conditions, and security (if any), and the schedule and amount of repayments with respect to the loan, are sufficient to protect the financial interests of the Corporation and are otherwise reasonable.

"(4) The Corporation shall be entitled to recover from a joint venture or individual firm for a loan guarantee under this section the amount of any payment made by the Corporation pursuant to such guarantee upon the failure of the joint venture or firm to pay when due the principal of and interest on the loan with respect to which the guarantee was made, unless the Corporation for good cause waives the right of recovery. The

Corporation shall be subrogated to all of the rights under such loan of the person who received such guarantee payment.

"(5) Any loan guarantee by the Corporation under this title shall be incontestable—

"(A) in the hands of a joint venture or individual firm on whose behalf such guarantee is made unless the joint venture or firm engaged in fraud or misrepresentation in securing such guarantee; and

"(B) as to any person (or that person's successor in interest) who engaged in fraud or misrepresentation in making or contracting to make such loan.

"(6) The Corporation may guarantee short-term obligations incurred for the purpose of obtaining temporary funds with a view to refinancing from time to time so long as the entire term does not exceed that specified under paragraph (1) and the borrower continues to be eligible for assistance.

"(f) EXAMINATION OF APPLICANTS.—Every applicant for a loan or loan guarantee by the Corporation under this section shall, as a condition precedent thereto, consent to such examinations as the Corporation may require for the purposes of this section and agree that upon request, reports of examinations by constituted authorities may be furnished by such authorities to the Corporation.

"SEC. 308. ASSISTANCE TO CRITICAL TECHNOLOGY INVESTMENT COMPANIES.

"(a) IN GENERAL.—(1) The Corporation is authorized to provide financial assistance to critical technology investment companies licensed under this section, for the purpose of stimulating and expanding the flow of private capital to qualified joint ventures and qualified individual firms in order to help them finance the development and commercialization of critical civilian technologies.

"(2) Each critical technology investment company licensed under this section may provide venture capital to qualified joint ventures and qualified individual firms, in such manner and under such terms as the licensee may fix in accordance with the regulations of the Corporation. Venture capital provided to incorporated qualified joint ventures and individual firms may be provided directly or in cooperation with other investors, incorporated or unincorporated, through agreements to participate on an immediate basis.

"(3) Each licensee may make loans, directly or in cooperation with other lenders, incorporated or unincorporated, through agreements to participate on an immediate or deferred basis, to qualified joint ventures and qualified individual firms to provide such ventures and firms with funds needed for sound financing related to development or utilization of critical civilian technologies.

"(4) This section shall be carried out in a manner that will ensure the maximum participation of private financial sources and ensure prudent diversification and sound management of operations.

"(b) REQUIREMENTS AND AUTHORITIES.—Except as provided in subsections (c) and (d) of this section, the Corporation shall, in providing financial assistance to licensees under the provisions of this section, follow the statutory requirements and use the statutory authorities which apply to the Small Business Administration's Small Business Investment Program, as set forth in subchapter 14B of title 15, United States Code (15 U.S.C. 681 et seq.). Any amendments to subchapter 14B enacted after the date of enactment of this title shall not apply to this section unless explicitly provided for in statute.

"(c) ADDITIONAL AUTHORITIES.—In addition to the authorities provided to the Corporation under subsection (b) of this section, the Corporation is authorized to—

"(1) purchase nonparticipating preferred securities from licensed critical technology investment companies as one way to provide financial assistance to those companies;

"(2) issue trust certificates representing ownership of all or a fractional part of preferred securities issued by licensees and guaranteed by the Corporation under this section, with such trust certificates based on and backed by a trust or pool approved by the Corporation and composed of preferred securities and such other contractual obligations as the Corporation may undertake to facilitate the sale of such trust certificates;

"(3) guarantee, upon such terms and conditions as are deemed appropriate, the timely payment of the principal of and interest on trust certificates issued by the Corporation or his agent for purposes of this section, provided that such guarantee shall be limited to the extent of the redemption price of and dividends on the preferred securities, plus any related contractual obligations, which compose the trust or pool; and

"(4) issue its own rules and regulations concerning how it will carry out this section under the applicable requirements and authorities.

"(d) OTHER PROVISIONS.—(1) Amounts received by the Corporation from the payment of dividends and the redemption of preferred securities pursuant to this section, and fees paid to the United States by a licensee pursuant to this section, shall be deposited in an account established by the Corporation and shall be available solely for carrying out this section, to the extent provided in advance in appropriations Acts.

"(2) Nothing in this section or in any other provision of law imposes any liability on the United States or the Corporation with respect to any obligations entered into, or stocks issued, or commitments made by any licensee operating under this section.

"SEC. 309. ASSISTANCE TO STATE TECHNOLOGY DEVELOPMENT PROGRAMS.

"(a) IN GENERAL.—The corporation may provide financial, technical, and business assistance to programs run by or chartered by State governments for the purpose of accelerating the development and commercialization of critical civilian technologies, including technologies developed by universities and colleges within the States. Such State technology development programs may—

"(1) directly fund critical civilian technology development projects at qualified joint ventures and qualified individual firms; and

"(2) when appropriate, assist intermediary organizations, including universities, to develop new critical civilian technologies to the point where qualified joint ventures and qualified individual firms will invest in their further development and commercialization.

"(b) FINANCIAL ASSISTANCE.—(1) The Corporation may make awards for up to 3 years to any State technology development program which meets the eligibility requirements of paragraph (2). State programs which win awards may reapply if they still meet eligibility requirements. Any financial assistance from the Corporation to State technology development programs shall be made only through a competitive, merit-reviewed process.

"(2) A State technology development program must meet the following requirements before it shall be eligible to apply for and receive financial assistance under this section:

"(A) at least one-third of the cost of the proposal to which such assistance applies must be provided by such State program; and

"(B) the State program must demonstrate that any technology or intellectual property developed under the program shall be made available only to joint ventures and individual firms which legally commit to manufacture substantially in the United States any products resulting from any project funded in whole or in part by Federal funds provided under this section.

"SEC. 310. CRIMINAL PROVISIONS.

"(a) WILLFUL MISREPRESENTATIONS TO THE CORPORATION.—Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for any person any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Corporation, or for the purpose of obtaining money, property, or anything of value, under this title, shall be punished by a fine under title 18, United States Code, or by imprisonment of not more than 5 years, or both.

"(b) COUNTERFEITING AND OTHER MISHANDLING OF OBLIGATIONS.—Whoever—

"(1) falsely makes, forges, or counterfeits any obligation or coupon in limitation of or purporting to be an obligation or coupon issued by the Corporation;

"(2) passes, utters, or publishes, or attempts to pass, utter, or publish, any false, forged, or counterfeited obligation or coupon purporting to have been issued by the Corporation, knowing the same to be false, forged, or counterfeited;

"(3) falsely alters any obligation or coupon issued or purporting to have been issued by the Corporation;

"(4) passes, utters, or publishes, or attempts to pass, utter, or publish, as true any falsely altered or spurious obligation or coupon issued or purporting to have been issued by the Corporation, knowing the same to be falsely altered or spurious; or

"(5) willfully violates any other provision of this title, shall be punished by a fine under title 18, United States Code, or by imprisonment for not more than 5 years, or both.

"(C) DEFRAUDING THE CORPORATION, ITS AUDITORS, OR THE PUBLIC.—Whoever, being connected in any capacity with the Corporation—

"(1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to the Corporation or pledged or otherwise entrusted to it;

"(2) with intent to defraud the Corporation or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Corporation, makes any false entry in any book, report, or statement of or to the Corporation, or, without being duly authorized, draws any order or issues, puts forth, or assigns any obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof;

"(3) with intent to defraud, participates, shares, or receives directly or indirectly any money, profit, property, or benefit through any transaction, loan, commission, contract, or any other act of the Corporation; or

"(4) gives any unauthorized information concerning any future action or plan of the Corporation which might affect the value of securities, or, having such knowledge, invests or speculates, directly or indirectly, in the securities or property of any joint venture or individual firm receiving loans or other assistance from the Corporation,

shall be punished by a fine under title 18, United States Code, or by imprisonment of not more than 5 years, or both.

"(d) USE OF WORDS 'CIVILIAN TECHNOLOGY CORPORATION' BY OTHERS.—No individual, association, partnership, corporation, or other person shall use the words 'Civilian Technology Corporation' or a combination of those three words, as the name or a part thereof under which such individual, association, partnership, corporation, or other person does business. Every individual, association, partnership, corporation, and other person violating this prohibition shall be guilty of a misdemeanor and shall be punished by a fine under title 18, United States Code, imprisonment of not more than 1 year, or both.

"(e) INVESTIGATIONS.—The Corporation may make such investigations as the Corporation deems necessary to determine whether a technology development award recipient, a loan guarantee recipient, a licensee, or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of this title, or of any regulation under this title or any order issued under this title.

"SEC. 311. ADMINISTRATIVE PROVISIONS.

"(a) REGULATIONS.—The Corporation may issue such regulations as it deems necessary or appropriate to carry out the purposes and provisions of this title.

"(b) INTERACTIONS WITH INDUSTRY, LABOR, AND OTHERS.—The Federal Advisory Committee Act (5 App. U.S.C.) shall not apply to the Corporation or its operations or its interactions with industry, labor, and others.

"(c) RELATIONS WITH DEPARTMENT OF COMMERCE.—The Corporation may request such advice, information, and assistance from the Department of Commerce as the Corporation deems appropriate, and the Secretary is authorized to provide such advice, information, and assistance.

"(d) ANTITRUST SAVINGS CLAUSE.—This title shall not be construed to modify, impair, or supersede the operation of the antitrust laws. For purposes of this section, the term 'antitrust laws' has the meaning given the term 'antitrust Acts' in section 4 of the Federal Trade Commission Act (15 U.S.C. 44).

"(e) CONFLICTS OF INTEREST.—The Corporation shall be an agency for purposes of title 18, United States Code, and its officers and employees shall be subject to the requirements of title 18. Any individual who, pursuant to a contract or any other arrangement, performs functions or activities for the Corporation under the direct supervision of an officer or employee of the Corporation, shall be deemed to be an employee for the purposes of title 18, and this title.

"(f) ANNUAL AUDIT AND REPORT.—(1) The Corporation shall prepare and submit annually a report to Congress containing a full and detailed account of operations under this title. Such report shall include an audit setting forth the amount and type of disbursements, receipts, and losses sustained by the Federal Government as a result of such operations during the preceding fiscal year, together with an estimate of the total disbursements, receipts, and losses which the Federal Government can reasonably expect to incur as a result of such operations during the then current fiscal year.

"(2) In the annual report submitted under paragraph (1), the Corporation shall also include full and detailed accounts relative to the following matters:

"(A) The Corporation's plans to support a broad range of critical civilian technologies and to provide assistance, directly or indirectly, to qualified joint ventures and qualified individual firms in all regions of the Nation, including steps taken to accomplish that goal.

"(B) Steps taken by the Corporation to maximize repayment and recoupment of Corporation funds incident to the inauguration and administration of the loan, loan guarantee, and licensee programs, and to ensure compliance with statutory and regulatory standards relating thereto.

"(C) An accounting by the Treasury Department with respect to tax revenues accruing to the Federal Government from joint ventures and individual firms receiving assistance under this title.

"(D) An accounting by the Treasury Department with respect to both tax losses and increased tax revenues related to licensee financing of both individual and corporate business taxpayers.

"(E) Recommendations with respect to program changes, statutory changes, and other matters, including tax incentives to improve and facilitate the operations of Corporation programs as well as licensees and to encourage the use of licensees' financing facilities by qualified joint ventures and qualified individual firms.".

"(g) INDEPENDENT REVIEWS.—After the fourth year of the Corporation's operation, and again after its tenth year of operation, the Secretary shall contract with one or more appropriate organizations for independent, thorough reviews of the Corporation's operations, activities, and effectiveness. The Secretary shall transmit these independent reviews to the President and Congress.

"SEC. 312. AUTHORIZATION OF APPROPRIATIONS AND FINANCIAL MANAGEMENT.

"(a) AUTHORIZATIONS OF APPROPRIATIONS.—Effective October 1, 1992, there are authorized to be appropriated to the Corporation—

"(1) $2,000,000,000 for the purpose of carrying out sections 306 and 309 and for supporting the Corporation's administrative costs (except those administrative costs associated with the programs established under sections 307 and 308);

"(2) $2,500,000,000 for the purpose of carrying out section 307, in accordance with the provisions of section 504(b) of the Credit Reform Act of 1990; and

"(3) $500,000,000 for the purpose of carrying out section 308, in accordance with the provisions of section 504(b) of the Credit Reform Act of 1990.

"(b) ADMINISTRATIVE COSTS.—Of the amount authorized to be appropriated under subsection (a)(2) and (3), not more than $5,000,000 for each fiscal year shall be available for administrative expenses to carry out the programs established under sections 307 and 308.

"(c) FUNDS ON DEPOSIT.—All moneys of the Corporation not otherwise employed may be deposited with the Treasurer of the United States, subject to check by authority of the Corporation, or in any Federal Reserve bank. The Corporation may reimburse such Federal Reserve banks for their services in such manner as may be agreed upon.

"(d) EXEMPTION FROM TAXATION.—The Corporation, its capital, reserves, and surplus, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, commonwealth, or possession of the United States, or by any State, county, municipality, or local taxing authority; except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value that any other real property is taxed.".

SEC. 4. CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 4 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703) is amended by adding at the end the following new paragraphs:

"(14) 'Director' means the Director of the National Institute of Standards and Technology.

"(15) 'Institute' means the National Institute of Standards and Technology.

"(16) 'Assistant Secretary' means the Assistant Secretary of Commerce for Technology Policy.".

(b) REDESIGNATIONS.—The Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3701 et seq.) is amended—

(1) by inserting immediately after section 4 the following new title heading:

"TITLE I—DEPARTMENT OF COMMERCE AND RELATED PROGRAMS";

(2) by redesignating sections 5 through 10 as sections 101 through 106, respectively;

(3) by redesignating sections 11 through 15 as sections 201 through 205, respectively;

(4) by redesignating sections 16 through 18 as sections 107 through 109, respectively;

(5) by striking section 19;

(6) by redesignating section 20 as section 110;

(7) by redesignating section 21 as section 206;

(8) by inserting immediately after section 110 (as redesignated by paragraph (6) of this subsection) the following new title heading:

"TITLE II—FEDERAL TECHNOLOGY TRANSFER";

(9) in section 4—

(A) by striking "section 5" each place it appears and inserting in lieu thereof "section 101";

(B) in paragraphs (4) and (6), by striking "section 6" and "section 8" each place they appear and inserting in lieu thereof "section 103" and "section 105", respectively; and

(C) in paragraph (13), by striking "section 6" and inserting in lieu thereof "section 102";

(10) in section 206 (as redesignated by paragraph (7) of this subsection)—

(A) by striking "section 11(b)" and inserting in lieu thereof "section 201(b)"; and

(B) by striking "section 6(d)" and inserting in lieu thereof "section 102(d)"; and

(11) by adding at the end of section 201 (as redesignated by paragraph (3) of this subsection) the following new subsection:

"(h) ADDITIONAL TECHNOLOGY TRANSFER MECHANISMS.—In addition to the technology transfer mechanisms set forth in this section and section 202, the heads of Federal departments and agencies also may transfer technologies through the technology transfer, extension, and deployment programs of the Department of Commerce and the Department of Defense.".

PANEL ON THE GOVERNMENT ROLE IN CIVILIAN TECHNOLOGY

Harold Brown (*Chairman*), Chairman, Foreign Policy Institute, The Johns Hopkins University School of Advanced International Studies (former Secretary of Defense [1977–1981]; former President of the California Institute of Technology [1969–1977])

John A. Armstrong, Vice President for Science and Technology, IBM Corporation; member of the National Advisory Committee on Semi-conductors (former Chairman of the Advisory Committee for Physics of the National Science Foundation [1981–1983])

Harvey J. Berger, M.D., Chairman and Chief Executive Officer, ARIAD Pharmaceuticals, Inc. and Adjunct Professor at the University of Pennsylvania (former President, Research and Development Division, Centocor, Inc. [1986–1991])

C. Fred Bergsten, Director, Institute for International Economics (former Assistant Secretary of the Treasury for International Affairs [1977–1981]; Chairman, Competitiveness Policy Council [1991–])

William F. Brinkman, Executive Director, Research, Physics Division, AT&T Bell Laboratories (former Vice President of Research at Sandia National Laboratories [1984–1987])

Dennis Chamot, Executive Assistant to the President, Department for Professional Employees, AFL–CIO; member of the National Research Council's Commission on Engineering and Technical Systems.

Richard N. Cooper, Maurits Boas Professor of Intentional Economics Center for International Affairs, Harvard University; Chairman of Board of Directors of the Federal Reserve Bank of Boston (former Under Secretary for Economic Affairs at the State Department [1977–1981])

John M. Deutch, Institute Professor, Massachusetts Institute of Technology; member of the Defense Science Board (former Provost of Massachusetts Institute of Technology [1985–1991]; former Under Secretary of Energy [1979–1980])

Kenneth Flamm, Senior Fellow, Foreign Policy Studies Program, The Brookings Institution

Edward A. Frieman, Director, Scripps Institution of Oceanography (former Director of Energy Research in the Department of Energy [1979–1981])

Paul W. MacAvoy, Williams Brothers Professor, School of Organization and Management, Yale University (former member of the President's Council of Economic Advisors [1975–1976])

David C. Mowery, Associate Professor, Walter A. Haas School of Business, University of California at Berkeley

William J. Perry, Chairman and Chief Executive Officer, Technology Strategies and Alliances; member of the Defense Science Board (former Under Secretary of Defense for Research and Engineering [1977–1981])

Henry B. Schacht, Chairman and Chief Executive Officer, Cummins Engine Company; Trustee of the Committee for Economic Development and the Ford Foundation (former member of the President's Commission for a National Agenda for the Eighties [1979–1980])

Hubert J.P. Schoemaker, Chairman and Chief Executive Officer. Centocor, Inc.

STAFF

John S. Wilson, Study Director

Edward P. Moser, Staff Assistant (1991)

Alfreda B. McElwaine, Project Assistant (1991)

Vincent J. Ruddy, Summer Associate (1990)

By Mr. MACK (for himself and Mr. GRAHAM):

S. 3383. A bill to provide for enhanced Federal hazard mitigation assistance; to the Committee on Banking, Housing, and Urban Affairs.

FEDERAL HAZARD MITIGATION ASSISTANCE

• Mr. MACK. Mr. President, I rise today to introduce legislation to help ease the bureaucratic tragedy for Saga Bay home owners that has been compounding the tragedy of Hurricane Andrew.

Once again, confusing Government regulation has trampled on people's lives, dashing their dreams as home owners and decreasing the value of their private property. Many home owners in south Florida that have had their houses destroyed are now being told that they need to raise their houses to a level above the flood plain in order to rebuild. This will cost the average home owner around $20,000 to raise their house about 5 to 7 feet. This is $20,000 that is not covered by insurance and is a tremendous burden on many people who are currently without homes, some of whom have lost their source of income to the storm. Home owners in Saga Bay and surrounding areas worked hard to save for their homes. They've invested hard earned money, purchased insurance, and worked to improve their neighborhood under certain rules. What has happened to them is wrong. They deserve a solution to their problem so they can begin rebuilding their lives, their homes, and their neighborhood.

This legislation allows the President more flexibility in dealing with hazard mitigation under the provisions in the Stafford Act. The hazard mitigation section of the Stafford Act has been interpreted as only allowing for public mitigation actions, for example levies or dams. The Stafford Act hazard mitigation provision has not been used to help raise individual houses above the flood plain after they have been destroyed by more than 50 percent.

This language would allow the President the flexibility to contribute up to 75 percent of the cost of hazard mitigation for individual homes—where cost effective—and when it would substantially reduce the risk of future damage, hardship, loss or suffering in any area affected by a major disaster. This authority is critical when dealing with a large number of homes that were destroyed by more than 50 percent and therefore have to meet new flood plain elevation standards.

This language provides the additional flexibility necessary to deal with rebuilding a community after a major disaster. I urge my colleagues to support passage of this bill.•

By Mr. WIRTH (for himself and Mr. SIMPSON):

S. 3384. A bill to establish more effective policies and programs for the early stabilization of world population through the worldwide expansion of reproductive choice; to the Committee on Foreign Relations.

INTERNATIONAL POPULATION STABILIZATION AND REPRODUCTIVE CHOICE ACT OF 1992

Mr. WIRTH. Mr. President, it is my pleasure to join with my distinguished colleague from Wyoming, Senator SIMPSON, in introducing the International Population Stabilization and Reproductive Choice Act of 1992. A similar bill was introduced last year, but working with the Senator from Wyoming, we have developed new legislation to lay the groundwork for progressive and much-needed policy changes in international population stabilization.

In many cases, petty politics has kept us from looking at and seriously addressing the No. 1 problem facing the globe—and that is uncontrolled population growth. An enormous amount of resources were used to bring an end of the cold war—and thankfully that has happened. But now we must realize that our national security is not defined by our relationship with the Soviet Union; 5, 10 and 20 years ago we were concerned that we were going to blow ourselves off the face of the globe—now we must handle the problem of population inflation so we do not grow beyond its capacity.

Of all the challenges facing us in this country and around the world, none compares to that of rapid population growth. All of our efforts to promote national and international security, to protect the environment, to promote economic development around the world—all of these efforts are compromised by the staggering rate of growth in human numbers.

Every minute of every hour of every day, 170 people are added to the planet. That's 235,000 people joining us here on Earth each day; 235,000 people—and the United States keeps falling further and further behind in its commitments to international population programs and is no longer the leader it used to be in putting forward progressive and sensible population programs.

Recent events have thrust before us the horrific face of poverty, starvation, and suffering. Even the immediate needs of the Somalians and the Sudanese seem immense—even before we address the long-term needs. Coupled with the high rate of global population growth, the task of providing even hope—let alone food and economic opportunity—seems overwhelming.

On the environmental front, population is a major, if not the dominant force for global ecological decline. From decertification to deforestation, the linkage is clear. We know what to do, too—but we need to do it.

The triad of population growth, environmental degradation, and pervasive poverty threaten us and our planet as never before. That is why we are introducing the International Population Stabilization and Reproductive Choice Act of 1992. This is a first step in the international effort for population stabilization at or below 10 billion people.

What we have learned in the two decades since population was given a separate line item in the budget—which occurred after intense work by Congressman George Bush—is that some family planning programs work very well. The expanded delivery of community-based family planning services, child mortality programs, education programs—particularly for young girls—the expansion of economic, social and political opportunity for women all around the globe are all a part of the equation to slow population growth.

Our bill helps to bridge the gap and fulfill some of the unmet needs for family planning services. This bill lays the groundwork for comprehensive population and foreign assistance policies.

First, our bill calls for the provision of a variety of voluntary family planning programs by U.S. population experts. For too long, population programs have been tied up with terrible stories of coercive practices in other nations. This legislation makes it clear that the United States will not support any program that is not entirely voluntary.

The expansion of access to a diverse set of family planning programs is critical in meeting a variety of needs in different countries. In addition, the bill gives special emphasis for reaching out to young adults approaching the childbearing age.

U.S. foreign policy should include an explicit aim to reduce the rate of infant mortality in all countries by one-third by the year 2000. One of the reasons fertility rates are so high in less developed nations is due to the fact that parents assume that some of their offspring will die. This is a terrible reality—we must reduce infant and child mortality rates to give parents confidence that their children will survive.

This is a very brief summary of this forward-looking legislation. It is a little unusual to introduce legislation not only this late in a Congress, but when I have chosen to not return to the Senate next year. The gentleman from Wyoming and I believe it is important to lay out this blueprint to be used to build on for the next Congress. His commitment to population stabilization is deep, and our joint effort exemplifies the need to cross the political spectrum and move forward with effective public policy.

Mr. SIMPSON. Mr. President, today I join with my friend and colleague from Colorado in introducing this legislation. Senator WIRTH and I have been able—after some months of serious negotiations, to identify areas of common interest and concern. We have crafted a bill that we hope will serve as a legislative starting point and a policy focal point for U.S. assistance to foreign governments and private organizations working to improve the quality of human life and halt the degradation of the environment created by overpopulation of this planet.

I approach this issue, Mr. President, primarily from the perspective of environmental protection. It may possibly surprise some governmental groups to hear that! But this is serious business. I serve on the Environment and Public Works Committee, and we have done some marvelous work in the past few years to address a number of domestic environmental problems—the Clean Air Act, on which I worked closely with the Senator from Colorado, the Clean Water Act, now RCRA—all of this with an eye toward doing something about maintaining the livability of planet Earth.

But the fact is, Mr. President, the largest environmental problems we face are not in this country but in the Third World where a burgeoning population is causing natural resource damage at an unprecedented rate. Deforestation caused by the simple and basic search for firewood and raw materials for charcoal have denuded millions of acres of land in the Southern Hemisphere. Slash and burn agriculture practiced by hoards of desperate people is removing the worlds largest carbon dioxide sink, depleting soil nutrients, releasing more carbon dioxide into the atmosphere along with other pollutants and causing errosion that is scarring the land and polluting rivers and streams. One of the most credible ways to begin to address these critical environmental problems is through responsible population control worldwide.

There are currently 5.4 billion people on the Earth. In 1950, there were only 2.5 billion. If current birth and death rates continue, the world's population will double again in just 40 years. Despite some progress in reducing fertility rates, birthrates in developing countries are declining too slowly to prevent a cataclysmic near tripling of the human race before stabilization can occur. It does indeed seem frivolus to me that we worry so much about bovine explusions of methane gas and fertilizer contents, when we have not even begun to consider the far more urgent and fundamental problem of how many footprints can this Earth accommodate. Every year over 95 million people—about the population of Mexico—are added to the world's population. Every month the equivalent of another Los Angeles is added.

There many pressing reasons beyond a concern for the environment for the United States to take a renewed interest in global population issues. Unchecked population growth has and will continue to have direct consequences for the global economy and for international standards of living. Rapid population growth impedes worldwide economic progress by keeping people in many countries too poor to buy more than basic necessities. Growth in the number of people is overrunning the creation of schools to educate them and the jobs to employ them. In Mexico, 1 million new workers enter the labor force each year but only 200,000 new jobs are created. And Mr. President, this translates directly into ever greater pressure for increased immigration into the United States.

Furthermore, Mr. President, population pressures undermine the future prospects of many countries so important to the United States. Key United States allies such as Egypt, Pakistan, and the Phillipines have population doubling times of 30 years or less.

Some 95 percent of the world population growth is taking place in the less developed countries of Africa, Asia and Latin America where it aggravates widespread poverty as well as rapid environmental degradation.

Fortunately, the urgency is catching on. Today 130 governments support organized family planning services, up from just 21 governments in 1965. And the United Nations recognizes family planning as a basic human right. Thanks in large measure to international bilateral and multilateral population assistance programs, over 50 percent of the world's childbearing-aged couples now use modern contraception.

But that is not enough to significantly arrest the pace at which humanity is consuming or destroying our natural resources through sheer force of numbers. That is why I join today with my colleague from Colorado, Senator WIRTH, in introducing this legislation. It is our aim to call attention to this singular issue, to give it focus, to make it a vital part of U.S. foreign aid and development assistance programs. This legislation calls upon the United States to resume its position of moral leadership in global efforts to achieve responsible and sustainable population growth levels, and to back that leadership up with specific commitments to core population planning activities. No other environmental issue can even match the need to act in this area.

Next year, when we will be without the presence of Senator WIRTH in this sphere, and I do hope my colleagues will share with me their ideas and concerns, and assist me in molding this bill into something that can achieve the support of a majority of Senators in this body.

By Mr. BINGAMAN:

S. 3385. A bill to improve the performance of the Departments of Defense and Energy in assisting American industry, especially small businesses, with the commercialization in the global marketplace of products derived from federally funded research and development; to the Committee on Commerce, Science, and Transportation.

SMALL BUSINESS TECHNOLOGY TRANSFER ACT

• Mr. BINGAMAN. Mr. President, I have come to the conclusion that we need to improve the performance of the Departments of Defense and Energy in assisting American industry, especially small businesses, with the commercialization in the global marketplace of products derived from federally funded research and development. The vision behind the National Competitiveness Technology Transfer Act of 1989 has not yet been realized, and I believe that additional statutory provisions are required to significantly hasten the day when that vision is fully implemented.

I therefore introduce today the Small Business Technology Transfer Act of 1992.

The Small Business Technology Transfer Act of 1992 amends the Stevenson-Wydler Act to provide that small businesses who propose cooperative research and development agreements with government-owned, contractor-operated laboratories [GOCO's] will have streamlined technology transfer procedures similar to those available to small businesses who enter into such agreements with government-owned, government-operated laboratories. Like them, CRADA's between GOCO's and small business would have to be approved or disapproved within 30 days of submission.

The Small Business Technology Transfer Act of 1992 further recognizes that to implement the small business preference provisions of the Stevenson-Wydler Act with respect to GOCO's, small businesses simply cannot afford the advance payments, the product liability burdens, and the up-front costs which can justifiably be imposed on larger, richer industrial partners.

The Small Business Technology Transfer Act of 1992 also furthers the implementation of Section 3136 of the National Defense Authorization Act for fiscal years 1993 and 1994. Although section 3136 makes clear that all atomic energy research and development activities program funds are available for, shall be used for, cooperative research and development agreements and the like, the Department of Energy refuses to use those funds for technology transfer. Despite the language of section 3136, the Department's apparent position is that all such agreements should be funded from a line-item set aside for centrally managed technology partnerships.

But the Small Business Technology Transfer Act of 1992 envisages both the centrally managed partnerships and lab-managed partnerships, which would be funded out of any appropriate programmatic funds available to the labs. Essentially, I am seeking to change the culture of self-sufficiency within the labs and push them in the direction of cooperating with industry whenever DOE's mission needs overlap with industry's efforts to remain competitive; environmental clean-up technology is just one example of this overlap. The Small Business Technology Transfer Act of 1992 therefore encourages DOE to do both the centrally managed partnerships and the lab managed partnerships. In order to implement the clear mandate of section 3136, the bill asserts that the Secretary of Energy should require a minimum of 10 percent of such funds to be used for dual-use technology partnerships over the next 2 years.

Section 4 of the bill responds to testimony received by the Senate Armed Services Committee by several experts, including the President's Science & Technology Advisor, to the effect that national laboratory directors should be encouraged to use laboratory-directed research and development [LDRD] funds for collaborative arrangements with industry. Dr. Bromley made the point that many of the key R&D programs eventually pursued by our laboratories are first developed during the LDRD stage. If our labs are to be relevant to the needs of American industry, he argued persuasively that industry needs to be involved in the development of laboratory R&D at the LDRD stage. Section 4 authorizes and encourages laboratory directors to use LDRD for such partnerships with industry.•

By Mr. LIEBERMAN (for himself and Mr. KASTEN):

S. 3386. A bill to amend the Small Business Act to provide increased opportunities for private firms by requiring Federal agencies to enter into contracts with qualified private sector firms for goods and services, and for other purposes; to the Committee on Small Business.

SMALL BUSINESS OPPORTUNITY AND FAIR COMPETITION ACT

• Mr. LIEBERMAN. Mr. President, when the last White House Conference on Small Business convened in 1986, America's leading small business owners adopted a platform on major issues facing their commercial enterprises. Of the hundreds of issues considered and the 60 which made the final list, near the top of the list was a call for an end to unfair competition by Government agencies.

Unfortunately, that recommendation has not received adequate attention. Despite a lot of talk, there has been little action to stem the tide of Government competition with the U.S. business community, particularly small businesses. The bill I am introducing today, along with Senator KASTEN of Wisconsin, tries to address one part of this issue.

The "Small Business Opportunity and Fair Competition Act" amends the Small Business Act by making the chief counsel of advocacy in the Small Business Administration a focal point for identifying instances where the Federal Government can increase its reliance on the private sector, particularly small businesses. Moreover, it adds oversight of Government competition to the responsibilities of the procurement center representatives. The PCR's will be a watchdog to make certain small business has an opportunity to be contractors on work that would otherwise be conducted in-house. This will be done by evaluating proposed acquisition of equipment and capabilities in Government agencies that can be obtained through service contracts from the private sector. The PCR's can also respond to complaints about unfair Government competition. This approach of emphasizing the use of small business should also save the Government money.

Finally, this legislation creates a demonstration program to create more contracting opportunities in one area that deserves attention, the field of surveying and mapping. This is an activity within the Government in which there is a significant opportunity for increased contracting. Under this demonstration program the SBA Administrator is to publish an inventory of activities in each agency and develop a plan for increasing the contract opportunities for private firms.

Mr. President, the Federal Government's current policy and procedure for contracting out—OMB Circular A-76—has not been effective. Our bill provides the small business community a better opportunity to have its views and capabilities known, through the Small Business Administration.

I would welcome the support of my colleagues for this effort to demonstrate the ability of small businesses, first in surveying and mapping and ultimately in other businesses and professions.•

By Mr. HATCH (for himself, Mr. DOLE, Mr. CHAFEE, and Mr. DANFORTH):

S. 3387. A bill to improve the health care delivery system and ensure access to affordable quality health care through reduced liability costs and improved quality of care, and for other purposes; to the Committee on the Judiciary.

HEALTH CARE LIABILITY REFORM AND QUALITY OF CARE IMPROVEMENT ACT OF 1992

Mr. HATCH. Mr. President, I am pleased to introduce today, along with my colleagues Senators DOLE, CHAFEE, and DANFORTH, the administration's Health Care Liability Reform and Quality of Care Improvement Act of 1992. I commend the President for sending forward this important health care legislation. The President recognizes that medical liability has been a tremendous barrier to access to health care for the American people and has greatly contributed to health care cost growth.

From 1984 to 1989, doctor's medical insurance premiums more than doubled from $2.7 billion to $5.6 billion due in large part to awards given in malpractice suits. As a result, physicians today order many tests and procedures not because they are essential for good medical diagnosis or evaluation, but simply as protection against lawsuits. These costs are, in turn, passed onto the American consumer. Moreover, the specter of litigation has weakened the doctor-patient relationship, which should be built on trust.

This tremendous increase in medical insurance premiums has also reduced

Americans' access to health care. Many physicians wanting to pay lower premiums have decided to no longer practice in high risk specialty areas. Also, we find that the higher premiums have caused a severe shortage of doctors in rural parts of this country. It is no wonder that we find that women who live in rural areas have a tough time finding obstetrical care.

This legislation will help rein in runaway medical costs and ensure access to affordable quality health care. It will eliminate the wide variation among States' product liability laws by providing the States incentives to adopt the following reforms:

This bill would enact a system of nonbinding arbitration for all suits that arise out of federally-funded or regulated health care and treatment. This would include Medicare, Medicaid, the Federal Employees Benefits Program, military retiree insurance and all private plans covered by the Employee Retirement Income Security Act. Providing such an alternative to litigation holds much promise in the way of lowering costs and providing fair compensation quickly. Also, it may prove to be an effective method for screening out frivolous lawsuits.

In the area of tort reform, the bill would put a $250,000 cap on noneconomic damages while allowing full recovery on economic damages. It would also prevent double recoveries by reducing awards by the amounts paid from other sources to compensate for the injury. Furthermore, it would provide for the elimination of joint and several liability for damages and permit judgments to be paid off in periodic payments rather than in a lump sum.

In the area of quality reform, it would improve the performance in oversight of physicians by State Medical Boards, require continuing medical education when sanctioned by the Medical Board and provide for cooperation with Federal efforts to learn the effectiveness of different medical treatments.

This proposal provides considerable latitude for States to pursue their own approaches to quality improvement and the elimination of negligence in health care. It would also require the Attorney General to implement many of these reforms to cases brought against the Federal Government.

Mr. President, I believe it is essential that this legislation be considered carefully over the recess period and enacted early next year. I invite the comments and support of all interested parties.

I ask unanimous consent that the transmittal letter, dated July 2, 1992, be placed in the RECORD along with the text of the bill and a section-by-section summary.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 3387

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

This Act may be cited as the "Health Care Liability Reform and Quality of Care Improvement Act of 1992."

TITLE I—FINDINGS AND PURPOSE

SEC. 101. FINDINGS.—The Congress finds that:

(a) The Federal Government is a direct provider of health care to many Americans; a source of payment for the health care of a much larger number of Americans through Medicare, Medicaid and other programs; and a promoter of quality assurance efforts. As a result, the Federal Government has a major interest in health care issues, including the availability, cost, and quality of health care.

(b) The rising costs of malpractice insurance, litigation, and liability are contributing significantly to increases in the cost of health care. These and other health care liability problems have adversely affected health care consumers and created tensions among the medical and legal professions, the insurance industry and consumers.

(c) The fear of medical malpractice liability has caused some health care providers to practice unnecessary defensive medicine, adding to health care costs.

(d) This fear of liability and the increased costs adversely impact the ability of health care professionals to continue to practice in high risk specialty areas and certain geographic areas of the country.

(e) More effective quality assurance activities would reduce the incidence of health care injuries, reduce the incidence of medical malpractice, and consequently reduce medical liability.

(f) Improving the effectiveness of the civil judicial system would not only deter frivolous actions that increase health care costs but would result in fair and expeditious compensation for meritorious claims of health care malpractice.

SEC. 102. PURPOSE.—It is the purpose of this Act to:

(a) Provide incentives to States to enact health care liability tort reforms and establish alternative dispute resolution mechanisms to achieve efficient, cost effective and expeditious disposition of health care disputes;

(b) Provide incentives to States to adopt quality assurance reforms to reduce the incidence of malpractice;

(c) Incorporate these reforms on the Federal level through amendments to the Federal Tort Claims Act; and

(d) Authorize and require non-binding arbitration of health care liability claims between patients and providers who are Federal employees, receive Federal funds or participate in an employee benefit plan or health insurance network for the provision of health care, notwithstanding conflicting State law, and thereby encourage the fair, cost effective and expeditious resolution of claim against health care providers.

TITLE II—HEALTH CARE LIABILITY REFORMS

SEC. 201. DEFINITIONS.—For purposes of Titles II, III and IV:

(a) The term "economic damages" means health care treatment and medical expenses, lost wages and income, lost employment, burial expenses, and other pecuniary losses incurred by an individual as a result of negligence in the provision of health care services as determined by State law;

(b) The term "non-economic damages" means physical and emotional pain, suffering, physical impairment, emotional distress, mental anguish, disfigurement, loss of enjoyment, and loss of companionship, services, consortium and other non-pecuniary losses incurred by an individual as a result of negligence in the provision of health care services as determined by State law;

(c) The term "health care provider" means any individual and any organization or institution that is engaged in the provision of medical care and treatment, and is required by State or Federal law or regulation to be licensed or certified to engage in the delivery of such health care services;

(d) The term "health care liability action" means a civil action or proceeding in any judicial tribunal or any arbitration proceeding, brought pursuant to State law against a health care provider, alleging that injury was suffered by the plaintiff as the result of any act or omission by a health care provider without regard to the theory of liability asserted in the action. This term excludes civil penalty actions by any State or State agency or officer or by the United States or by any Federal agency or officer;

(e) The term "injury" means an injury, illness, disease, or other harm suffered by an individual as a result of the provision of medical care and treatment by a health care provider;

(f) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Island, American Samoa, the Northern Mariana Islands, the Trust Territories of the Pacific Islands, and any other territory or possession of the United States;

(g) The term "Secretary" means the Secretary of Health and Human Services;

(h) The term "person" means any individual, corporation, company, association, firm partnership, society, joint stock company, or any other entity, including any governmental entity; and

(i) The term "court" mean a court of competent jurisdiction or an arbitration panel.

SEC. 202. IN GENERAL.—To receive a Notification of compliance with this Title pursuant to Section 209, the States shall enact, adopt, of otherwise have in effect no later than three years from the date of enactment of this Act the health care liability reforms set forth in Sections 203 through 208.

SEC. 203 JOINT AND SEVERAL LIABILITY.—(a) In any health care liability action, the liability of each defendant for non-economic damages shall be several only and shall not be joint. Each defendant shall be liable only for the amount of non-economic damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be rendered against that defendant for that amount.

(b) Subsection (a) shall not apply with respect to those persons participating in joint conduct in a common scheme by two or more persons who consciously and deliberately agreed to jointly participate in such conduct with actual knowledge of the wrongfulness of the conduct resulting in a tortious act and where such acts proximately caused the injury complained of by the plaintiff and for which one or more of such persons is found liable for damages.

SEC. 204. LIMITATION ON NON-ECONOMIC DAMAGES.—(a) Non-economic damages may not be awarded in an amount in excess of $250,000 in any health care liability action. The Secretary, for good cause, may waive the requirement of this Section in Determining a State's compliance with this Act pursuant to Section 209.

(b) For purposes of this Section, in addition to the parties within the purview of Section 201(d), "any health care liability action" includes all actions (including multiple actions) for damages, and includes all plaintiffs and all defendants in such actions, which arise out of or were caused by the same personal injury or death, whether or not each defendant is a health care provider.

(c) Cost-of-living. The amount described in subsection (a) shall be adjusted every three years to reflect changes in the cost-of-living index utilized by the Secretary in determination of adjustment in old age, survivors, and disability insurance benefits. The first such adjustment shall be made three years after the date of the enactment of this Act.

SEC. 205. COLATERIAL SOURCE BENEFITS.—(a) Except as provided in subsection (c), the total amount of damages received by a plaintiff shall be reduced, in accordance with subsection (b), by any other payment which has been made or which will be made to such plaintiff to compensate such plaintiff for an injury, including payments under—

(1) Federal or State disability or sickness programs;

(2) Federal, State, or private health insurance programs;

(3) private disability insurance programs;

(4) employer wage continuation programs; and

(5) any other source of payment intended to compensate such plaintiff for such injury.

(b) The amount by which an award of damages to a plaintiff for an injury shall be reduced under subsection (a) shall be—

(1) the total amount of any payments (other than such award) which have been made or which will be made to such plaintiff to compensate such plaintiff for such injury, less

(2) the cost incurred by such plaintiff (or by the spouse, parent, or legal guardian of such plaintiff) to secure the payments described in clause (1).

(c) Subsection (a) shall not apply to any payment which the individual is required by law or contract to repay out of any damages recovered from a negligent health care provider.

SEC. 206. PERIODIC PAYMENT OF JUDGMENTS.—(a) In any health care liability action subject to this Act in which damages for future economic damages are awarded, no health care provider shall be required to pay for such future damages in a single, lump-sum payment but shall be permitted to make periodic payments based on when the damages are found by the court to be likely to occur or at the time such damages accrue.

(b) The court may require such health care provider to purchase an annuity or fund a reversionary trust to make such periodic payments, if the court finds a reasonable basis for concluding that the health care provider may be unable to or will not make the periodic payments.

(c) The judgment of the court awarding such periodic payments may not be reopened at any time to contest, amend, or modify the schedule or amount of the payments in the absence of fraud or any ground permitting relief to be granted after entry of a final judgment.

(d) This subsection shall not be construed to preclude a settlement providing for a single, lump-sum payment.

SEC. 207. ALTERNATIVE DISPUTE RESOLUTION MECHANISMS.

(a) In General. It is declared to be the policy of the United States to encourage—

(1) the creation, adoption, and use of alternative dispute resolution mechanisms to achieve the fair, cost effective and expeditious disposition of civil disputes;

(2) the modification of procedural and evidentiary rules to the extent feasible to accommodate such alternative dispute resolution techniques; and

(3) acceptance of non-binding arbitration of health care liability claims as specified in Title III of this Act.

(b) Alternative Dispute Resolution Mechanisms.

(1) The State shall establish at least one alternative dispute resolution mechanism. The Secretary, for the purpose of determining compliance under Section 209, shall deem a State to be in compliance with the requirements of this Section if the State has in effect at least one mediation or pretrial screening panel alternative dispute resolution mechanism specified in regulations issued by the Secretary in consultation with the Attorney General, or if the State has in effect another alternative dispute resolution mechanism which the Secretary, in consultation with the Attorney General, finds to be equally effective in deterring frivolous actions and resulting in fair and expeditious compensation for meritorious claims. The Secretary, in consultation with the Administrative Conference of the United States and the Attorney General, shall promulgate regulations that specify the Secretary's criteria for evaluating the effectiveness of these mechanisms.

(2) The time period during which a proceeding pursuant to this Section is pending prior to institution of a civil action shall not be included or counted in determining whether any statute of limitations bars a health care liability action.

SEC. 208. QUALITY ASSURANCE REFORM.

(a) Promote State Cooperation with Federal Effectiveness Research Efforts.

The State, through the appropriate health authority, shall cooperate with Federal research efforts with respect to patient outcomes, clinical effectiveness and clinical practice guidelines.

(b) Improve the Performance of State Medical Boards.

(1) Each State, through the appropriate health authority, shall collect, analyze and supply the Secretary with information and data, as specified in regulations to be promulgated by the Secretary, on staffing, revenue, disciplinary actions, expenditures, caseloads of the State Medical Board, and use of continuing medical education programs in order to demonstrate that the State medical boards meet performance criteria established by the Secretary in regulations.

(2) Each State, through the appropriate health authority, shall impose a requirement on the State Medical Board to require a physician disciplined by the State Medical Board to take a certain number of continuing education courses as the board requires, with educational outcome measures required, in the subject areas in which the board determines that the physician's knowledge is deficient.

(c) Alternative Programs.

The Secretary, for purposes of determining compliance under Section 209 of the Act, shall deem a State in compliance with the requirements of this Section if the State has in effect, instead of the programs described in subsection (b), a program to reduce the incidence of negligence which the Secretary finds to be at least as effective in reducing the incidence of negligence as compliance with the Secretary's standards promulgated under Section 208(b). The Secretary shall promulgate regulations that specify the Secretary's criteria for evaluating the effectiveness of alternatives to Section 208(b), including, for example:

(1) Requirements for risk management systems to be carried out by institutions providing health care in the State;

(2) Quality assurance systems, administered by the State or professional bodies, that review the quality of care rendered by the physicians of the State; or

(3) State programs for the promulgation of standards of care in areas of medical practice in which the risk of negligence is greatest, and assurance of satisfactory levels of compliance with such standards.

SEC. 209. STATE IMPLEMENTATION OF HEALTH CARE LIABILITY REFORMS.—(A) IMPLEMENTATION.

(1) The States shall have three years from the effective date of this Act in which to enact, adopt, or otherwise comply with the provisions as set forth in Sections 202 through 208 of this Act.

(2) DEMONSTRATION PROJECT. The Secretary shall deem a State to be in compliance with the requirements of Sections 203, 204, 205, 206 and 207 if a State enacts and places into effect within three years after the effective date of this Act a system, approved by the Secretary, for prompt payment of those economic damages not payable by State, Federal or private health or disability insurance; wage continuation; or any other source of payment intended to compensate an injured person. The system shall provide for agreements to be reached for payment of those economic damages without any determination of fault and in lieu of any health care liability action between the persons making and receiving these payments related to the provision of the health care at issue. The Secretary shall approve no more than three States' applications under this Section. Applications for approval shall be considered in accordance with regulations to be issued by the Secretary in consultation with the Attorney General. Approval under this subsection will not relieve a State from the duty to comply with Section 208.

(b) Notification.

(1) Notification by the State shall be submitted to the Secretary, with a Certification by the Chief Executive Officer of the State that, on the date the Notification is submitted, the State has enacted, adopted, or otherwise has in effect the health care liability reforms set forth in this Act.

(2) the Notification shall be accompanied by documentation to support the Certification required by this subsection, including copies of relevant State statutes, rules, procedures, regulations, judicial decisions, State constitutional provisions, and opinions of the State Attorney General.

(3) The Notification shall contain such other information, be in such form, and be submitted in such manner, as the Secretary may require.

(c) Review of Notification.

(1) Within 90 days after receiving a Notification under subsection (b), the Secretary shall review the Notification and determine whether the Notification demonstrates that the State has enacted, adopted, or otherwise has in effect the health care liability reforms set forth in this Act.

(2) If the Secretary determines that the Notification makes such a demonstration, the Secretary shall approve the Notification.

(3) If, after reviewing a Notification under this subsection, the Secretary determines that the Notification does not make the demonstration required under such subsection, the Secretary shall, within 15 days

after making such determination, provide the State that submitted such Notification with a written notice specifying such determination and containing recommendations for revisions that would cause the Notification of the State to be approved.

(4) Within 30 days after receiving a revised Notification, the Secretary shall review the revised Notification and determine whether the Notification demonstrates that the State had enacted, adopted, or otherwise has in effect the health care liability reforms set forth in this Act. If the Secretary determines that the revised Notification makes such a demonstration, the Secretary shall approve the revised Notification and determine the State to be in compliance with the provisions of this Title.

(d) Non-Compliance.

(1) If a State fails to submit to the Secretary a Notification or revised Notification pursuant to this Section, the Secretary shall, within 15 days after the time period under Section (b)(1) expires, send the State written notice of determination of non-compliance.

(2) If, during the time period determined by the Secretary under subsection (c), the Secretary determines that a revised Notification does not demonstrate that the State has enacted, adopted, or otherwise implemented the health care liability reforms set forth in this Act, and that the State's revised Notification is not approved, or if a determination of non-compliance is made pursuant to this Section, the Secretary shall, within 15 days after making such determination, provide the State with written notice of non-compliance. Such notice shall specify the determination of the Secretary and the reasons therefor.

(3) If, during any time period after a Notification is approved under subsection (c) the Secretary determines that the State does not currently have in effect the health care liability reforms upon which the Notification was approved, the Secretary shall within 30 days of making such determination provide the State with written notice of such determination and withdraw the approval of the Notification. Such notice shall specify the determination of the Secretary and the reasons therefor.

(e) Consultation With the Attorney General.

In making determinations of compliance or non-compliance pursuant to this Act, the Secretary shall consult with the Attorney General with respect to any issues or tort law or policy.

(f) Effect of Non-compliance.

If a State has been determined to be in non-compliance in accordance with the provisions of this Section, the Secretary shall cause publication of a notice of non-compliance in the Federal Register. Sixty days after publication of the notice, the provisions of Sections 203, 204, 205, and 206 shall apply to all health care liability actions upon claims accruing more than three years after the effective date of this Act and which arise, in whole or in part, out of an injury caused by a health care provider who is entitled to any payment for the health care out of which the claim arose pursuant to the provisions of 5 U.S.C. Chapter 89, 10 U.S.C. §§1079 or 1086, 38 U.S.C. §1728, or Title XVIII, or XIX of the Social Security Act (42 U.S.C. §1395 et seq. or 42 U.S.C. §1396 *et seq.*).

(g) Incentive Program

(1) Withholding of Funds for Non-Compliance.

If a notice of non-compliance for a State has been published pursuant to subsection (f), there shall be withheld, beginning on the first fiscal year following the notice of non-compliance and continuing each fiscal year thereafter until the notice of non-compliance has been rescinded, the amount that would otherwise be allocated to such State for each account in the domestic discretionary appropriations category as defined in Section 250(c)(4)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, provides that this subsection does not apply to accounts authorized by the following provisions: §301 of the Public Health Service Act (42 U.S.C. §241); §317 of the Public Health Service Act (42 U.S.C. §247b); §329 of the Public Health Service Act (42 U.S.C. §254b); §330 of the Public Health Service Act (42 U.S.C. §254c); §340 of the Public Health Service Act (42 U.S.C. §256); §2 of the Employment Security Administrative Financing Act of 1954 (42 U.S.C. §1101); or §17 of the Child Nutrition Act of 1966 (42 U.S.C. §1786).

(2) Funds to be Allocated After Compliance.

If before such withheld funds would otherwise expire the notice of non-compliance is rescinded, such funds may be obligated by the responsible Federal agency for allocation to such State.

SEC. 210. WAIVER.—In the case of any experimental, pilot, or demonstration project, as defined by regulations promulgated by the Secretary in coordination with the Attorney General, which, in the judgment of the Secretary, is likely to assist in promoting the objectives of this Act, in a State or States, the Secretary may waive compliance with any of the requirements in this Title to the extent and for the period the Secretary finds necessary to enable such State or States to carry out such project.

SEC. 301.—PURPOSE.—The purpose of this title is to ensure that recipients and providers of health care obtain the benefits of a system for submission to non-binding arbitration of health care liability claims and to establish a fair, efficient, and inexpensive mechanism for resolution through arbitration of health care liability claims.

SEC. 302. APPLICABILITY.—The provisions of this Title shall apply to all health care liability claims that accrue more than one year after the effective date of this Act and which arise in whole, or in part, out of health care either—

(a) Provided by a health care provider who is entitled to any payment for the health care out of which the claim arose pursuant to the provisions of—

(i) 5 U.S.C. Chapter 89, 10 U.S.C. §§1079 or 1086, 38 U.S.C. §1728, Title XVIII or XIX of the Social Security Act (42 U.S.C. §1395 et seq. or 42 U.S.C. §1396 et seq.); or

(ii) any "employee benefit plan" as defined by 29 U.S.C. §1002(3), any "multiple employer welfare arrangement" as defined by 29 U.S.C. §1002(40) or under any law providing for "health insurance networks," if such plan, arrangement or network is established by a person or entity engaged in, or an organization representing employees engaged in, interstate commerce or in any industry or activity affecting commerce; or

(b) for which a remedy is provided pursuant to the provisions of the Federal Tort Claims Act.

SEC. 303. PREEMPTION.

(a) To the extent set forth in this Title, this Title governs any civil action brought against a health care provider, on any theory, for alleged injuries arising out of medical care and treatment, regardless of whether the theory is a theory predicated upon lack of due care, intentional conduct, strict liability or any other theory.

(b)(1) To the extent set forth in this Title, this Title supersedes any State or Federal law, including any State law enacted pursuant to Section 207, regarding recovery of economic and non-economic damages. Any issue arising under this Title that is not governed by any such rule of law shall be governed by applicable State or Federal law.

(2) To the extent set forth in this Title, the provisions of this Title govern any proceeding seeking recovery of economic and non-economic damages which is within the purview of the Federal Tort Claims Act.

(3) This Act shall not preempt or otherwise govern any civil action arising out of health care provided by a health care provider, regardless of whether said provider receives Federal funding pursuant to any Federal act or is federally regulated, if the liability for the injury would not be determined pursuant to the Federal Tort Claims Act or if the health care was not provided by a person entitled to payment therefor, in whole or in part pursuant to the provisions of—

(i) 5 U.S.C. Chapter 89, 10 U.S.C. §§1079 or 1086, 38 U.S.C. §1728, Title XVIII or XIX of the Social Security Act (42 U.S.C. §1395 et seq. or 42 U.S.C. §1396 et seq.); or

(ii) any "employee benefit plan" as defined by 29 U.S.C. §1002(3), any "multiple employer welfare arrangement" as defined by 29 U.S.C. §1002(40) or under any law providing for "health insurance networks," if such plan, arrangement or network is established by a person or entity engaged in, or an organization representing employees engaged in, interstate commerce or in any industry or activity affecting commerce.

SEC. 304. REQUIREMENT FOR NON-BINDING ARBITRATION.—Health care providers and all other persons shall submit any claims of health care liability to non-binding arbitration. Failure of a plaintiff to submit a health care liability claim to non-binding arbitration shall be a complete defense to a health care liability action.

SEC. 305. ARBITRATION PROCEDURES.—(a) Establishment of Arbitration Process.

(1) Each State is encouraged to establish a non-binding arbitration process, including an arbitration panel consisting of one or more non-judicial arbitrators. The arbitration panel may include at least one health care professional. If a State does not have in effect a non-binding arbitration process, the arbitration shall be conducted in accordance with regulations to be issued by the Secretary. Each State which does not have an arbitration process meeting or exceeding the minimum requirements set forth in this Title shall be specified in such regulation.

(2) The Attorney General shall by regulation establish an arbitration process that shall apply to claims within the purview of the Federal Tort Claims Act. The regulations shall provide for an arbitration process to commence upon completion of the administrative claim process specified pursuant to 28 U.S.C. §§2672, 2675.

(3) State non-binding arbitration processes and regulations issued by the Secretary and the Attorney General shall provide that when a determination is reached by the arbitration panel—

(A) any party may give notice that it intends to accept that determination, while the other parties remain free to reject the determination and to commence a civil action. If all parties reject the determination, no costs or attorney's fees shall be assessed against any party;

(B) A plaintiff who rejects the determination and fails to obtain a final judgment that is at least ten percent greater than the determination shall pay the defendant's reasonable costs and reasonable attorney's fees incurred after the rejection of the determination; and

(C) A defendant who rejects the determination and fails to obtain a final judgment that is at least ten percent less than the determination shall pay the plaintiff's reasonable costs and reasonable attorney's fees incurred after rejection of the determination.

(b) Panel Chairperson. If the panel consists of more than one member, a member of the panel shall be selected to be chairperson; the chairperson shall decide all prehearing procedures.

(c) Time. Unless extended by the panel and by agreement of the parties, the arbitration panel shall issue a final determination as to liability, and damages if applicable, within six months from the date upon which all defendants have been served with the notice of claim.

(d) Assessment of costs. The award shall include an assessment of costs, including the arbitrators' fees, and shall specify which party or parties shall pay those costs.

SEC. 306. AMOUNT OF AWARDS.—In making a determination to award damages, if any, in any arbitration proceeding pursuant to this Title, the arbitrators shall ascertain damages as provided by applicable State and Federal law. If the plaintiff fails to pay the costs of the arbitration proceeding in accordance with an award requiring the plaintiff to pay such an award, the defendant shall pay all such costs. Upon payment of such costs by a defendant, the defendant shall be subrogated to the right to be reimbursed for the award of costs and shall have all rights to the award to the same extent that the arbitration panel would be entitled to obtain payment of an award for costs pursuant to this Title.

SEC. 307. IMMUNITY OF ARBITRATORS.—An arbitrator shall have absolute and complete immunity from any suit directly or indirectly arising from any arbitral activity.

SEC. 308. LIMITATIONS.—The time for commencement of an arbitration proceeding shall be the period specified by applicable State or Federal law for commencement of a suit for damages predicated upon a claim of medical negligence.

SEC 309. APPLICABILITY TO THE UNITED STATES.—

(a) APPLICABILITY.—The provisions of 28 U.S.C. §§2671 through 2680 shall apply to a health care liability action predicated upon an act or omission of any officer or employee of any Federal agency acting within the scope of his or her office or employment.

(b) ATTORNEY'S FEES.—Title 28 of the United States Code is amended by adding a new Section 2412a following 28 U.S.C. §2412 as follows:

"Award of Attorney's Fees in Health Care Proceedings Involving the United States.

"(a) Except as otherwise specifically provided by statute, attorney's fees may be awarded against the United States in accordance with subsection (b) in a health care liability action brought pursuant to the Federal Tort Claims Act where an arbitration proceeding has resulted in a determination that at least one party has accepted.

"(b) The following standards shall apply to the award of any attorney's fees pursuant to this Section:

"(1) Attorney's fees may be awarded only to a prevailing party in the litigation, subject to paragraphs (2) and (3). The prevailing party shall be entitled to attorney's fees from the non-prevailing party with respect to and only to the extent that such party prevails on any claim advanced during the litigation, except that the sum of entitled attorney's fees shall not exceed the attorney's fees of the non-prevailing party with regard to such claim.

"(2) In determining the amount of attorney's fees for a private party, the court shall take into account the degree of success obtained by that party relative to its original claim or claims, the prevailing market rates in the area for the kind and quality of the legal services furnished, and any other factors relevant to whether an award of attorney's fees would be reasonable and, if so, what a reasonable amount of attorney's fees would be.

"(3) In determining the amount of attorney's fees of the United States, the court shall determine the number of hours spent by the attorneys employed by the United States on the litigation multiplied by the salaries and benefits paid those attorneys, and an amount for overhead, computed as an hourly rate.

"(c) A party seeking an award of attorney's fees under this Section shall file an application for fees within thirty days of final judgment in the action. The application shall show that the party is eligible to receive an award under this Section and the amount sought, including an itemized statement from any attorney appearing on behalf of the party which sets forth the actual time expended and the rate at which fees are computed. Within thirty days after service of the fee application upon the party against whom the fees are sought to be awarded, that party may file a response setting forth its reasons why an award of fees would not be reasonable or why the amount of fees should be reduced. Where an award of attorney's fees is sought against any party, the attorney for that party shall submit a statement of the total amount of attorney's fees incurred in the litigation in order that the court may determine that the fees sought in the application do not exceed the amount of fees incurred by that party.

"(d) As provided in appropriation acts, awards of attorney's fees received by an agency on behalf of the United States pursuant to this Section shall be credited to an appropriate account of that agency. To the extent provided in advance in appropriation acts, such amounts shall be available only to pay awards of attorney's fees against that agency on behalf of the United States made pursuant to this Section. Each such agency is authorized to pay any shortfall caused if amounts credited to such account are insufficient to pay amounts awarded against such agency on behalf of the United States from funds currently available in such account.

"(e) For the purposes of this Section:

"(1) 'final judgment' means a judgment that is final and not appealable; and

"(2) 'prevailing party' means a party to an action who obtains a favorable final judgment other than by settlement, exclusive of interest, on all or a portion of the claims asserted during the litigation.".

TITLE IV—FEDERAL IMPLEMENTATION OF HEALTH CARE LIABILITY REFORMS

SEC. 401. LIMITATION ON LIABILITY.—(a) Section 2674 of Title 28, United States Code, is amended by inserting "(a)" at the beginning of the Section, and by adding at the end of the Section the following new subsections:

"(b)(1) Except as provided in paragraph (2) of this subsection, in any health care liability action the United States shall not be found jointly and severally liable for non-economic damages, but shall be liable, if at all, only for those non-economic damages directly attributable to its pro-rata share of fault or responsibility for the injury, and not for non-economic damages attributable to the pro-rata share of fault or responsibility of any other person (without regard to whether that person is a party to the action) for the injury, including any person bringing the action.

"(2) This subsection shall not apply as between the United States and any person with which it is acting in concert where the concerted action proximately caused the injury for which either the United States or that person is found liable.

"(3) For the purposes of this subsection "concerted action" and "acting in concert" mean the conscious acting together in a common scheme of two or more persons who consciously and deliberately agreed to jointly participate in such conduct with actual knowledge of the wrongfulness of the conduct resulting in a tortious act and where such acts proximately caused the injury complained of by the plaintiff and for which one or more of such persons is found liable for damages.

"(c)(1) Except as provided in subsection (3), the total amount of damages received by an individual shall be reduced, in accordance with subparagraph (2), by any other payment which has been made or which will be made to such individual to compensate such individual for an injury, including payments under—

(i) Federal or State disability or sickness programs;

(ii) Federal, State, or private health insurance programs;

(iii) private disability insurance programs;

(iv) employer wage continuation programs; and

(v) any other source of payment intended to compensate such individual for such injury.

"(2) The amount by which an award of damages to an individual for an injury shall be reduced under subparagraph (1) shall be—

(i) the total amount of any payments (other than such award) which have been made or which will be made to such individual to compensate such individual for such injury, less

(ii) the amount paid by such individual (or by the spouse, parent, or legal guardian of such individual) to secure the payments described in clause (i).

"(3) Subsection (1) shall not apply to any payment which the individual is required by contract or law to repay out of any damages recovered from a negligent health care provider.

"(d)(1) No damages, other than damages for economic loss, shall be awarded in excess of $250,000 in any health care liability action against the United States.

(b) For purposes of this Section, in addition to the parties within the purview of Section 201(d) of the Health Care Liability Reform and Quality of Care Improvement Act of 1992, any "health care liability action" includes all actions (including multiple actions) for damages, and includes all plaintiffs and all defendants in such actions, which arise out of or were caused by the same personal injury or death, whether or not each defendant is a health care provider.

(c) Cost-of-Living. The amount described in subsection (a), adding 28 U.S.C. §2674(d)(1), shall be adjusted every three years to reflect changes in the cost-of-living index. The first such adjustment shall be made three years after the date of the enactment of this Act.

For purposes of this subsection, the "cost-of-living index" means the cost of living index utilized by the Secretary in determination of adjustment in Old Age, Survivors, and Disability Insurance benefits."

SEC. 402. PERIODIC PAYMENTS OF JUDGMENTS.—(a) Chapter 171 of title 28, United States Code, is amended by adding the following new Section 2681:

"§2681. Periodic payment of judgments.

In any health care liability action subject to this chapter in which the damages for future economic loss exceed $100,000, the court shall, at the request of the United States, enter an order providing that damages for future economic loss be paid in whole or in part by periodic payments based on when the damages are found likely to occur rather than by a single lump-sum payment. The court shall make findings of fact as to the dollar amount, frequency and duration of the periodic payments. The United States at its discretion may pay the judgment periodically or purchase an annuity or fund a reversionary trust for the same purpose. The judgment of the court shall be final, and shall not be reopened at any time to contest, amend, or modify the schedule or amount of such payments in the absence of fraud or any ground permitting relief to be granted after entry of a final judgment."

(b) The table of Sections of chapter 171 of title 28, United States Code, is amended by adding at the end thereof the following new item:

§2681. Periodic payments of judgments."

SEC. 403. APPLICABILITY OF AMENDMENTS.

(a) State alternative dispute resolution procedures shall not be applicable to the United States.

(b) For the purposes of Title IV, the term "plaintiff" means any person who has allegedly suffered injury from professional services provided by a health care provider and who brings a health care liability action or who brings such an action on behalf of any person who has allegedly suffered injury from such professional services or who brings such an action because a person allegedly suffered injury from such services.

(c) The amendments made by this Title shall apply to all actions filed on or after, and all administrative claims pending on or presented on or after, the date of enactment of this Act.

TITLE V—CONSTRUCTION OF PROVISIONS

SEC. 501. IN GENERAL.—Nothing in this Act shall be construed—

(a) To waive or affect any defense of sovereign immunity asserted by any State under any law or by the United States;

(b) To preempt State choice-of-rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(c) To affect the right of any court to transfer venue, to apply the law of a foreign nation, or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum;

(d) To create or vest jurisdiction in the district courts of the United States over any health care liability action subject to this Act (which is not otherwise properly in Federal district court); or

(e) To prevent the States from enacting, adopting, or otherwise having in effect more comprehensive or additional health care liability reforms than those set forth in this Act.

SEC. 502. SEVERABILITY.—If any provision of this Act or the amendments made by this Act or the application of the provision to any person or circumstance is held invalid, the remainder of this Act and such amendments and the application of the provision to any other person or circumstance shall not be affected by that invalidation.

SEC. 503. EFFECTIVE DATE.—This Act shall become effective on its date of enactment.

RELEASE FROM THE WHITE HOUSE

To the Congress of the United States:

I am pleased to transmit today for your immediate consideration and enactment the "Health Care Liability Reform and Quality of Care Improvement Act of 1992." Also transmitted is a section-by-section analysis.

This legislative proposal would assist in stemming the rising costs of health care caused by medical professional liability. During recent years, the costs of defensive medical practice and of litigation related to health care disputes have had a substantial impact on the affordability and availability of quality medical care. The bill attacks these very serious problems.

The bill would establish incentives for States to adopt within 3 years quality assurance measures and tort reforms. In addition, the health care reforms would apply to medical care and treatment funded through specific Federal programs pertaining to health care and employee benefits and to claims under the Federal Tort Claims Act. The tort reforms include: (1) a reasonable cap on non-economic damages; (2) the elimination of joint and several liability for those damages; (3) prohibiting double recoveries by plaintiffs; and (4) permitting health care providers to pay damages for future costs periodically rather than in a lump sum.

Last year I recommended enactment of the "Health Care Liability Reform and Quality of Care Improvement Act of 1991." The enclosed bill includes the core provisions of that bill and expands its scope to ensure that treatment under federally funded health care and Federal employee benefit programs is subject to key reforms regardless of State action. Claims arising from such health care would first be considered through a fair system of nonbinding arbitration, in an effort to resolve the claims without litigation.

I urge the prompt and favorable consideration of this proposal, which would complement the other initiatives the Administration is undertaking regarding malpractice and quality of care.

GEORGE BUSH.

THE WHITE HOUSE, *July 2, 1992.*

HEALTH CARE LIABILITY REFORM AND QUALITY OF CARE IMPROVEMENT ACT OF 1992

SECTION-BY-SECTION ANALYSIS

Analysis of Titles

I. Findings and Purpose.
II. Health Care Liability Reforms.
III. Non-Binding Arbitration.
IV. Federal Implementation of Health Care Liability Reforms.
V. Construction of Provisions.

INTRODUCTION

This bill, the "Health Care Liability Reform and Quality of Care Improvement Act of 1992," sets forth health care liability reforms, provides incentives to the States to implement these reforms, implements mandatory non-binding arbitration of claims, and enacts health care liability reform at the Federal level. The analysis below summarizes and explains the provisions of the Act.

Title I—Findings and Purpose

Sections 101 and 102 set out the findings and purposes of the Act.

Title II—Health Care Liability Reforms

Section 201 sets out definitions of certain terms used in the Act. A key term tied to the application of many provisions of the Act is "health care provider." The definition is intended to broadly include within its sweep all professionals, regardless of their role, engaged in health care activities of any kind.

The term "health care liability action" is intended to cover all judicial proceedings of any kind that may relate to the remedial purposes of the Act. The term is broadly defined to exclude circumvention by artful pleading. It includes health care liability civil actions or proceedings of any kind regardless of the theory of liability (negligence, strict liability, statutory, constitutional or otherwise) pursued.

States must enact health care liability reforms meeting the criteria of Title II to be in compliance with the provisions of this Title.

Section 203 eliminates the application of joint and several liability to non-economic damages in all health care liability actions subject to the Act, except for persons jointly engaged in conscious and deliberate conduct with actual knowledge of its wrongfulness. Subsection (a) requires that the trier of fact determine the percentage of each person's responsibility for the harm for which the action was brought. States may desire to consider whether the limitation on joint and several liability should be applied to economic as well as non-economic damages.

Section 204 imposes a $250,000 cap on all non-economic damages, including pain and suffering, emotional distress, mental anguish, disfigurement, loss of enjoyment, companionship and services, with a cost of living adjustment as provided in subsection (c). The Secretary of Health and Human Services is empowered to waive the cap requirement "for good cause." The waiver authority is intended to be used sparingly to ensure that non-economic damages are limited within reasonable bounds. The decision of a State Supreme Court declaring a State statute implementing the provision to violate a State constitution may constitute "good cause."

The cap applies to all health care liability actions that arise out of or were caused by the same personal injury or death. For purposes of Section 204, health care liability action is defined (Section 204(b)) to include all medical negligence/malpractice actions for damage and to apply to all plaintiffs and defendants in such actions.

Section 205 prevents double recoveries. The Section reduces awards by the amounts paid (or payable in the future) from other sources to compensate for the injury.

Section 206 provides that no health care provider shall be required to pay damages awarded for future economic loss in a single, lump-sum payment. Instead, payments may be made periodically over the time that the loss is found to be likely to occur. If the court has a reasonable basis for believing that the defendant may not make the periodic payments, subsection (b) authorizes the court to require the purchase of an annuity or the funding of a reversionary trust to make such periodic payments.

Subsection (c) provides that the court order making such periodic payments is final and may be reopened only upon a showing of fraud (the term "fraud" is intended to adopt the term "fraud" as it is applied in the courts) or any ground permitting relief to be granted after entry of a final judgment, pursuant to the standard set forth in Rule 60 of the Federal Rules of Civil Procedures. Therefore, a structured judgment may be reopened only if a party establishes actual and material dishonesty, *i.e.*, intentional perversion of truth for the purpose of inducing the surrender of a legal right. The Section also provides that it shall not be construed to preclude settlements providing for a single, lump-sum payment in order to avoid limiting the parties' power to reach accommodations to encourage out-of-court settlements.

Section 207 encourages utilization of Alternative Dispute Resolution ("ADR") mechanisms. Subsection (b) provides that the States must have in effect within three years after the enactment of the Act an ADR mechanism, at least as effective in deterring frivolous actions and resulting in fair and expeditious compensation as mediation or pretrial screening panel mechanisms to be specified in regulations. This Section is applicable to proceedings that are not within the ambit of the mandatory nonbinding arbitration proceedings which Title III establishes.

Sample specifications of an ADR pre-trial screening mechanism are set forth in the Appendix.

Section 208 specifies that to comply with the Act, the States must cooperate with certain Federal research efforts and improve the performance of State medical boards. The process of improving performance would begin with the collection of data on the activity of the boards. This would allow States to know where their performance stands relative to the Secretary's standards. However, States could also achieve compliance by taking actions that the Secretary finds are at least as effective as compliance with standards promulgated for State medical boards. In order to reduce the burden on States pursuing alternative approaches to meeting the quality assurance requirements, subsection (c) requires the Secretary to issue regulations specifying criteria for evaluating the effectiveness of risk management systems for institutions; quality assurance systems; and State programs for promulgation of standards of care in selected areas of medical practice as alternatives to compliance with subsection (b). Activity is already underway in these areas.

Section 209 provides that the States shall establish plans for State implementation to comply with the provisions as set forth in Sections 202 through 208 of the Act.

Section 209(a)(2) authorizes demonstration projects in three States, in lieu of enactment of provisions in keeping with Sections 203 through 207. The demonstration projects would provide for prompt payment of economic damages (not otherwise payable) by agreement, without any determination of fault and in lieu of any health care liability action.

Subsection (b) specifies the Notification procedure by which the State shall certify and document that it has health care liability reforms meeting the Act's criteria in effect.

Subsection (c) provides that the Secretary shall review each Notification and if the Notification demonstrates that the State has in effect such health care liability reforms, the Secretary shall approve the Notification. If the Notification is not approved, the Subsection provides for the submission of a revised Notification and approval process.

Careful review of Notifications is key to ensuring that the Act is implemented according to its terms. Accordingly, the Secretary is vested with discretion to require information to be supplemented in addition to the information required to be submitted with a certification.

Subsection (d) provides that upon a determination of noncompliance, the Secretary shall provide written notice of such determination and the reasons therefor. If the Secretary determines that, after approval, the State does not have currently in effect the health care liability reforms upon which the Notification approval was based, the Secretary shall give notice of such determination and withdraw approval of the Notification.

Subsection (e) is included to ensure coordination by the Secretary with the Attorney General on questions of tort law and/or policy arising in the course of resolution by the Secretary of whether a determination of compliance or noncompliance shall be made.

Subsection (f) sets out the effects of noncompliance. The health care reforms of Sections 203 through 206 (joint and several liability limitation on non-economic damages, reform of the collateral source rule, and periodic payment of judgments) will apply to all health care liability actions arising more than three years after the effective date of the Act and that arise, in whole or in part, from an injury caused by a health care provider who is entitled to any payment for the health care pursuant to specified Federal health care enactments or the Federal Employee Health Benefits program.

The Incentive Program is set forth in subsection (g). Under this subsection, all Federal domestic discretionary appropriations, except funding for seven specified accounts, will be withheld from States which do not implement the health care liability reforms. Those excepted accounts are the Women, Infant and Children program; the Healthy Start program; the Immunizations program; the Community Health Centers program; the Homeless Health Centers program; the Migrant Health Centers program; and the Unemployment Compensation Administrative Expenses program. The monies will be withheld beginning the fiscal year following the publication of the notice of non-compliance. Whenever the Secretary rescinds a notice of noncompliance, the Federal agencies may obligate the funds for that entire fiscal year to the extent that the funds have not otherwise expired. If a notice of non-compliance is not rescinded before the funds expire, those funds will revert to the general fund of the Treasury.

Section 210 provides that the Secretary may waive this Act's requirements if the State has in place an experimental, pilot, or demonstration project, as defined by regulations promulgated by the Secretary, that, in the judgment of the Secretary, promotes the objectives of the Act.

Title III—Non-Binding Arbitration

Title III enacts a system of mandatory non-binding arbitration between providers and recipients of health care services. Under this system, non-binding arbitration for alleged injuries arising out of health care and treatment will be utilized notwithstanding any contrary provisions of State law.

Under Section 302, the non-binding arbitration system will apply to (1) health care funded, in whole or in part, under the CHAMPUS program (10 U.S.C. §§1079 or 1086), CHAMPVA (38 U.S.C. §1728), Medicare, Medicaid; and (2) health care provided to persons eligible for payment for the health care (a) pursuant to the Federal Employees Health Benefits program, (b) as a result of participation in an "employee benefit plan," or (c) as a result of participation in a multiple employer welfare arrangement as defined in the Employee Retirement Income Security Act (ERISA). The bill also provides for non-binding arbitration for disputes related to health care where the health care costs are reimbursable pursuant to any law providing for health insurance networks.

Section 303 preempts and supersedes any State law to the extent set forth in this Title.

Section 304 requires resort by the parties to non-binding arbitration. Failure to submit a claim to non-binding arbitration shall be a complete defense to a subsequent health care liability action.

Section 305 provides for the establishment of an arbitration process. States are encouraged to establish arbitration processes consistent with the provisions of the Section. If a State does not have an arbitration process in effect, the Secretary is authorized to provide for an arbitration procedure by regulation. The Attorney General is to establish an arbitration system for claims within the purview of the Federal Tort Claims Act. Any system established pursuant to this Section shall require that if a party rejects an award that another party accepts and fails to obtain an outcome in subsequent proceedings that is at least ten percent more favorable, the party that rejected the award shall pay the opposing parties' reasonable costs and attorney's fees incurred subsequent to the rejection.

Section 306 provides that the arbitration award shall be made in accordance with applicable State and Federal law. "State and Federal law" includes the reforms that Title II enacts. In addition, Section 306 provides for payment of arbitration fees.

Section 307 assures that arbitrators shall have absolute and complete immunity from suit.

State or Federal statutes of limitations are preserved pursuant to Section 308.

Section 309 applies the non-binding arbitration system to claims within the purview of the Federal Tort Claims Act.

Title IV—Federal Implementation of Health Care Liability Reforms

Federal health care liability reforms will be implemented pursuant to Title IV. These reforms amend the Federal Tort Claims Act.

Under Section 401, joint and several liability is limited similarly as in Section 203. The Section also limits the collateral source rule in a manner similar to Section 205. Section 401 places a cap of $250,000 on the amount of non-economic damages that can be awarded against the United States. This Section is the analogue of Section 204.

Section 402 amends the Federal Tort Claims Act by authorizing periodic payment of judgments. This Section is similar to Section 206.

The court would make the determination as to the amount, frequency and duration of the payments, and the United States could then make the payments periodically, either by periodic payments directly out of the Judgment Fund or by purchasing an annuity or funding a reversionary trust to make the payments.

Section 403 provides that Title IV is intended to apply to all actions filed on or after, and all administrative claims pending on or after, the enactment of the Act.

Title II's Alternative Dispute Resolution procedures are not to be applied to the United States. The Federal Tort Claims Act already has in place a well functioning system of low-cost alternative dispute resolution, which will be supplemented by title III.

Title V—Construction of Provisions

Section 501 provides that the Act does not waive or affect sovereign immunity defenses, preempt State choice-of-law rules regarding claims by foreign nationals, and create or vest jurisdiction in Federal courts.

Section 501 also makes it clear that the Act sets forth the acceptable level of compliance with respect to health care liability reforms. However, the States may, if they determine to do so, implement additional or supplemental health care liability reforms that limit liability or otherwise supplement the requirements that the Act imposes.

Section 502 is a severability clause that would preserve the balance of the Act if any portion of it is held to be invalid.

Section 503 provides that the Act shall become effective on the date of enactment.

APPENDIX

Sample Specifications Establishing An Effective State Pre-trial Screening Panel

(1) A Panel shall have at least three members and may sit as a single body or in smaller units of at least three members. Each Panel shall include at least one licensed or certified health care professional representative to be agreed upon by the parties, one person admitted to practice law in the State in which the Panel sits, and may include such other members as the Attorney General of such State may provide. Wherever practicable, a representative from each health care specialty involved in a dispute under this section shall be appointed to the Panel hearing such case, except that not more than three health care professionals shall serve on any Panel.

(2) Claims alleging professional negligence shall be decided according to the law of the State in which a Panel sits. The Panel shall, whenever practicable, decide a claim within 6 months after the date on which the claim is filed with the Panel. One continuance, not to exceed 90 days, may be granted to any party upon a showing that extraordinary circumstances and the interests of justice warrant the continuance. A Panel may dismiss any claim or defense it determines to be frivolous and impose administrative costs (not to exceed $10,000) upon a party whose claim or defense is so dismissed.

(3) After hearing all the evidence presented by the parties, a Panel shall decide whether or not the person alleging injury established professional negligence and, if so, whether that injury resulted from such negligence. Not later than 30 days after the conclusion of the hearing of the evidence (unless a delay is necessary due to extraordinary circumstances), a Panel shall transmit a written decision to the parties. The decision shall include a statement of the findings of fact and conclusions of law on which the Panel based its decision. A party to a claim decided by a Panel shall be entitled to file an action in the court of appropriate jurisdiction. The entire written record of the Panel proceedings, including the determination made, shall be admissible in a trial of such an action.

ADDITIONAL COSPONSORS

S. 39

At the request of Mr. REID, his name was added as a cosponsor of S. 39, a bill to amend the National Wildlife Refuge Administration Act.

S. 492

At the request of Mr. SIMON, the name of the Senator from North Dakota [Mrs. BURDICK] was added as a cosponsor of S. 492, a bill to amend the National Labor Relations Act to give employers and performers in the live performing arts, rights given by section 8(e) of such Act to employers and employees in similarly situated industries, to give to such employers and performers the same rights given by section 8(f) of such Act to employers and employees in the construction industry, and for other purposes.

S. 1159

At the request of Mr. REID, his name was added as a cosponsor of S. 1159, a bill to provide for the labeling or marking of tropical wood and tropical wood products sold in the United States.

S. 1931

At the request of Mr. KERRY, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of S. 1931, a bill to authorize the Air Force Association to establish a memorial in the District of Columbia or its environs.

At the request of Mr. GORE, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 1931, supra.

S. 2667

At the request of Mr. HEFLIN, the names of the Senator from Kansas [Mrs. KASSEBAUM], the Senator from Tennessee [Mr. SASSER], and the Senator from Mississippi [Mr. LOTT] were added as cosponsors of S. 2667, a bill to amend the Federal Food, Drug, and Cosmetic Act to clarify the application of the Act with respect to alternate uses of new animal drugs and new drugs intended for human use.

S. 2810

At the request of Mr. GRASSLEY, the names of the Senator from California [Mr. SEYMOUR], the Senator from Vermont [Mr. JEFFORDS], the Senator from Idaho [Mr. SYMMS], the Senator from Michigan [Mr. RIEGLE], and the Senator from Georgia [Mr. FOWLER] were added as cosponsors of S. 2810, a bill to recognize the unique status of local exchange carriers in providing the public switched network infrastructure and to ensure the broad availability of advanced public switched network infrastructure.

At the request of Mr. GORE, the name of the Senator from Montana [Mr. BAUCUS] was added as a cosponsor of S. 2810, supra.

S. 2835

At the request of Mr. HATCH, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 2835, a bill to amend the Federal Food, Drug, and Cosmetic Act to establish provisions regarding the composition and labeling of dietary supplements.

S. 2949

At the request of Mr. KENNEDY, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 2949, a bill to amend the Public Health Service Act to provide for the conduct of expanded research and the establishment of innovative programs and policies with respect to traumatic brain injury, and for other purposes.

S. 3241

At the request of Mr. HOLLINGS, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 3241, a bill to award a congressional gold medal to John Birks "Dizzy" Gillespie.

SENATE JOINT RESOLUTION 293

At the request of Mr. SASSER, the names of the Senator from Maine [Mr. COHEN], and the Senator from Florida [Mr. GRAHAM] were added as cosponsors of Senate Joint Resolution 293, a joint resolution designating the week beginning November 1, 1992, as "National Medical Staff Services Awareness Week."

SENATE JOINT RESOLUTION 342

At the request of Mr. SPECTER, the name of the Senator from Missouri [Mr. BOND] was added as a cosponsor of Senate Joint Resolution 342, a joint resolution designating May 2, 1993, through May 8, 1993, as "National Walking Week."

SENATE JOINT RESOLUTION 344

At the request of Mr. WELLSTONE, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of Senate Joint Resolution 344, a joint resolution to prohibit the proposed sale to Saudi Arabia of F-15 aircraft.

SENATE CONCURRENT RESOLUTION 137

At the request of Mr. WELLSTONE, the name of the Senator from Iowa [Mr. HARKIN] was added as a cosponsor of Senate Concurrent Resolution 137, a concurrent resolution to express the sense of Congress that the Comptroller General of the United States should conduct a study of the economic impacts of Order No. 636 of the Federal Energy Regulatory Commission on residential, commercial, and other end-users of natural gas, and that the Federal Energy Regulatory Commission should refrain from processing restructuring proceedings pursuant to the order during the 60-day period after the submittal to Congress of the results of the study.

SENATE RESOLUTION 109

At the request of Mr. REID, his name was added as a cosponsor of Senate Resolution 109, a resolution exercising the right of the Senate to change the rules of the Senate with respect to the "fast track" procedures for trade implementation bills.

SENATE CONCURRENT RESOLUTION 142—DIRECTING THE CLERK OF THE HOUSE TO MAKE CORRECTIONS IN THE ENROLLMENT OF H.R. 429

Mr. FORD (for Mr. JOHNSTON) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 142

Resolved by the House of Representative (the Senate Concurring), That in the enrollment of the bill (H.R. 429) to amend certain Federal reclamation laws to improve enforcement of acreage limitations, and for other purposes, the Clerk of the House of Representatives shall make the following additional corrections:

In section 3004(b), delete "eighteen" and insert in lieu thereof "twenty-two".

Amend section 212 to read as follows:

SEC. 212. CROPS FOR WHICH AN ACREAGE REDUCTION PROGRAM IS IN EFFECT.

Notwithstanding any other provision of law relating to a charge for irrigation water supplied to crops for which an acreage reduction program is in effect, until the construction costs of the facilities authorized by this title are repaid, the Secretary is directed to charge an acreage reduction program crop production charge equal to 10 percent of full cost for all water delivered by the Central Utah Water Project, as defined in section 202 of the Reclamation Reform Act of 1982 (43 U.S.C. 390bb), for the delivery of project water used in the production of any crop of an agricultural commodity for which an acreage reduction program is in effect under the provision of the Agricultural Act of 1949, as amended, if the total supply of such commodity for the marketing years in which the bulk of the crop would normally be marketed is in excess of the normal supply as determined by the Secretary of Agriculture. The Secretary of the Interior shall announce the amount of the acreage reduction program crop production charge for the succeeding year on or before July 1 of each year.

SENATE RESOLUTION 357—REQUIRING FINANCIAL IMPACT STATEMENT IN THE REPORT ON A BILL

Mr. HEFLIN submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 357

Resolved, That paragraph 11 of rule XXVI of the Standing Rules of the Senate is amended—

(1) in subparagraph (c) by striking "(a) and (b)" and inserting "(a), (b), and (c)";

(2) by redesignating subparagraph (c) as subparagraph (d); and

(3) by inserting after subparagraph (b) the following:

"(c) Each such report (except those by the Committee on Appropriations) shall also contain—

"(1) an evaluation, made by such committee, of the financial impact that any Federal mandates in the bill or joint resolution would have on State and local governments; or

"(2) in lieu of such evaluation, a statement of the reasons why compliance by the committee with the requirements of clause (1) is impracticable.".

Mr. HEFLIN. Mr. President, I rise today to submit a resolution which I hope my colleagues will study over the next few months because I plan to reintroduce it and push for its enactment when the 103d Congress convenes in January. This resolution would amend the Standing Rules of the Senate to require that a financial impact statement be included in the report accompanying each bill reported by a Senate committee, showing the financial impact which any Federal mandates in the bill would have on State and local governments. I know that my colleagues are all acutely aware of the very serious budget problems facing many of our 50 States and local governments therein and that they share my belief that Congress must not take lightly legislative decisions which impact their budgets.

As we all know, Federal funds to State and local governments have declined precipitously since the early 1980's. Funding from the Environmental Protection Agency for water and sewer projects declined from $365 million to $230 million. Job training funds declined from $6.5 billion to $2.5 billion. The Community Development Block Grant Program which provided $3.7 billion to communities in 1981 was whittled away at for years and has only now caught up with its 1981 level of funding. Of course, that does not include an adjustment for inflation. Meanwhile, the Urban Development Action Grant Program has been totally eliminated. Also abandoned is the Revenue Sharing Program which in 1981 provided $4.5 billion to State and local governments in flexible funding to meet the types of Federal Government mandates which have other levels of governments in a State of near-rebellion today.

Currently, the Senate requires that any committee reporting out a bill or resolution provide an estimate of the cost of Federal money incurred in carrying out that bill or resolution. I think we would all agree that this information has become indispensable in conducting the business of the Senate and has become an important tool in trying to encourage responsible and informed policymaking. Likewise, the resolution I submit today will provide information necessary to more fully assess the ramifications of proposals pending in the Congress and serve to remind us all that nothing is free. Increased information, accountability and responsibility will be encouraged by a proposal of this type and I hope my colleagues will share my belief that such a proposal would be in the best interests of the various levels of government in our country and a step toward sounder economic ground for the people of the United States.

SENATE RESOLUTION 358—ESTABLISHING THE SENATE GATT NEGOTIATIONS OBSERVER GROUP

Mr. DOLE (for himself and Mr. PRESSLER) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 358

Resolved,

SHORT TITLE

SECTION 1. This resolution may be referred to as the "Senate GATT Negotiations Observer Group Resolution".

ESTABLISHMENT

SEC. 2. (a) There is established a bipartisan group of Senators to be known as the Senate GATT Negotiations Observer Group (hereafter in this resolution referred to as the "Observer Group"), which shall consist of ten Senators as follows:

(1) the Majority Leader and Minority Leader of the Senate, each serving ex officio; and

(2) eight Senators appointed as follows:

(A) Four Senators appointed by the Majority Leader from among Members of the majority party.

(B) Four Senators appointed by the Minority Leader from among the Members of the minority party.

(b)(1) The Chairman of the Observer Group shall be designated by the Majority Leader from among the individuals recommended for appointment under subsection (a)(2)(A).

(2) The Co-Chairman of the Observer Group shall be designated by the Minority Leader from among the individuals recommended for appointment under subsection (a)(2)(B).

(c) Any vacancy occurring in the membership of the Observer Group shall be filled in the same manner in which the original appointment was made.

DUTIES

SEC. 3. The duties of the Observer Group shall be to monitor the conclusion of the Uruguay round of GATT negotiations.

STAFF; TRAVEL

SEC. 4. (a) The Observer Group is authorized, from funds made available under section 6, to employ such staff (including consultants at a daily rate of pay) in the manner and at a rate not to exceed that allowed for employees of a standing committee of the Senate under paragraph (3) of section 105(e) of the Legislative Branch Appropriation Act, 1968 (2 U.S.C. 61–1(e)), and to incur such expenses as may be necessary or appropriate to carry out its duties and functions.

(b)(1) The Chairman and Co-Chairman shall jointly appoint and fix the compensation of appropriate staff personnel to serve the Observer Group, including clerical staff as deemed necessary. The staff appointments shall be made in writing to the Secretary of the Senate.

(2) In addition to the staff personnel described in paragraph (1), the Chairman and Co-Chairman each are authorized to designate one professional staff member who shall serve all of the members of the Observer Group and shall carry out such other functions as their respective Chairman or Co-Chairman may specify.

(c) The Majority Leader and the Minority Leader may each designate one staff member as liaison to serve the Observer Group, and such personnel may be referred to as leadership staff. Funds necessary to compensate leadership staff shall be transferred from the funds made available under section 6(b) of this resolution to the respective account from which such designated staff member is paid.

(d) All foreign travel of the Observer Group shall be authorized jointly by the Majority and Minority Leaders, upon the recommendation of both the Chairman and Co-Chairman. Participation by staff members in authorized foreign travel by the Observer Group, access to all official activities and functions by the Observer Group during such travel, and access to all classified briefings and information made available to the Observer Group during such travel, shall be limited exclusively to delegation members with appropriate clearances.

No travel or other funding shall be authorized by any committee of the Senate for the use of staff, other than delegation staff, in regard to the activities described in this subsection, without the written authorization of the Majority and the Minority Leader to the chairman of such committee.

(e)(1) Except as provided in paragraph (2), of the Members of the Senate, only Senators appointed as members of the Observer Group may participate in official travel and activities of the Observer Group.

(2) In the event that either the Majority Leader or Minority Leader of the Senate does not travel on an official trip of the Observer Group, then that Leader may designate one other Senator of his party who is not a member of the Observer Group to travel and participate in the activities of the Observer Group in his stead, except that the Leader shall not designate a Senator under this paragraph if more than four other members of the Observer Group from that Leader's party will participate in that trip.

ACCESS TO AND STORAGE OF DOCUMENTS

SEC. 5. (a) The Observer Group should make arrangements with the Executive Branch to provide, on a confidential basis, access to the record of any dialogue or negotiations that may take place relating to the conclusion of the Uruguay round.

FUNDS

SEC. 6. (a) The expenses of the Observer Group shall be paid from the contingent fund of the Senate, out of the account of Miscellaneous Items, upon vouchers approved jointly by the Chairman and Co-Chairman (except that vouchers shall not be required for the disbursement of salaries of employees who are paid at an annual rate). For any fiscal year, not more than $200,000 shall be expended for staff (including consultants) and for expenses (excepting expenses incurred for foreign travel).

(b) In addition to the amount referred to in section 6(a), for any fiscal year, not more than $80,000 shall be expended from the contingent fund of the Senate, out of the account of Miscellaneous Items, for leadership staff as designated in section 4(c) for salaries and expenses (excepting expenses incurred for foreign travel).

(c)(1) of the amount authorized in section 6(a), an amount not to exceed $27,500 may be spent by the Observer Group, with the prior approval of the Committee on Rules and Administration, to procure the temporary services (not in excess of one year) or intermittent services, including related and necessary expenses, of individual consultants, or organizations thereof, to make studies or advise the Observer Group.

(2) Such services in the cases of individuals or organizations may be procured by contract as independent contractors or, in the case of individuals, by employment at daily rates of compensation not in excess of the per diem equivalent to the highest gross rate of compensation which may be paid to a regular employee of a standing committee of the Senate. Such contracts shall not be subject to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5) or any other provisions of law requiring advertising.

(3) The Observer Group shall submit to the Committee on Rules and Administration information bearing on the qualifications of each consultant whose services are procured pursuant to this subsection, including organizations, and such information shall be retained by the Observer Group and shall be made available for public inspection upon request.

TERMINATION DATE

SEC. 7. The provisions of this resolution shall terminate upon the adjournment sine die of the One Hundred Third Congress.

Mr. DOLE. Mr. President, I send to the desk a resolution to establish the GATT Negotiations Observer Group.

Mr. President, our Nation faces new challenges and new opportunities in the global marketplace. The opportunities for Americans are obvious—the expansion of markets for American products and the creation of new industries, new technologies, and new jobs for all Americans.

But, the challenges that our Nation faces from international competitors are many. To meet them and ensure that our Nation remains the largest exporter in the world, the ongoing GATT negotiations will take on an ever-growing importance.

The Uruguay round of the GATT negotiations have been ongoing for over 4 years and are at a critical juncture. The key to resolving the impasse lies with completion of an agricultural sector agreement.

In fact, agriculture will be the primary topic of discussion during the weekend GATT meetings of Ambassador Hills with the chief negotiators of some of the European Community.

My colleague from South Dakota, Senator PRESSLER, suggested this resolution and I think it is a good idea.

We need to establish a bipartisan group of Senators with the expertise to monitor future negotiations and review the process. This will not be an easy task; it will demand a comprehensive knowledge of international law and treaties and a thorough understanding of international trade.

I believe that the best way to monitor these difficult and complex negotiations will be to establish a GATT Observer Group consisting of Senators with the necessary expertise in international law and trade.

When the Senate was faced with reviewing the arms control agreements, we established the Arms Control Observer Group. This group monitored the arms control process with all the knowledge and diligence that its national security implications warranted.

The Senate will ultimately vote on the agreement. The knowledge that the Observer Group will obtain through their review of the negotiations will ensure that the agreement represents the best interest of the United States. I am sure that the GATT Negotiations Observer Group will protect our position in the international marketplace with the same dedication.

SENATE OBSERVER GROUP FOR THE GATT NEGOTIATIONS

Mr. PRESSLER. Mr. President, I want to thank the minority leader for introducing a Senate resolution on my behalf calling for the establishment of a Senate observer group to attend the GATT negotiations. As I said on the floor earlier this week, the establishment of such a group would send a meaningful message to the other GATT countries that the United States is intent on achieving fair revision of the GATT.

On September 30, I wrote to the majority and minority leaders suggesting the establishment of a Senate observer group for the Uruguay round GATT negotiations. I know it is late in the session and that it may not be possible to establish the group this year. However, if we are unable to do so, I do hope the establishment of an observer group will be one of the first items of business for the Senate when the 103d Congress convenes next January.

I want to thank the minority leader for following up on my request so quickly. I think he would agree with me that a new GATT agreement that ensures freer and fairer trade could bring tremendous benefits to American agriculture by opening more world markets to U.S. farmers and ranchers.

SENATE RESOLUTION 359—TENDERING THE THANKS OF THE SENATE TO THE VICE PRESIDENT

Mr. DOLE (for himself and Mr. MITCHELL) submitted the following resolution; which was considered and agreed to:

S. RES. 359

Resolved, That the thanks of the Senate are hereby tendered to the Honorable Dan Quayle, Vice President of the United States and President of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the second session of the One Hundred Second Congress.

SENATE RESOLUTION 360—TENDERING THE THANKS OF THE SENATE TO THE PRESIDENT PRO TEMPORE

Mr. MITCHELL (for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 360

Resolved, That the thanks of the Senate are hereby tendered to the Honorable Robert C. Byrd, President pro tempore of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the second session of the One Hundred Second Congress.

SENATE RESOLUTION 361—COMMENDING THE LEADERSHIP OF THE MAJORITY LEADER

Mr. DOLE submitted the following resolution; which was considered and agreed to:

S. RES. 361

Resolved, That the thanks of the Senate are hereby tendered to the distinguished Majority Leader, the Senator from Maine, the Honorable George J. Mitchell, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the second session of the 102d Congress.

SENATE RESOLUTION 362—COMMENDING THE LEADERSHIP OF THE REPUBLICAN LEADER

Mr. MITCHELL submitted the following resolution; which was considered and agreed to:

S. Res. 362

Resolved, That the thanks of the Senate are hereby tendered to the distinguished Majority Leader, the Senator from Kansas, the Honorable Robert Dole, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the second session of the 102d Congress.

SENATE RESOLUTION 363—TO AMEND THE STANDING RULES OF THE SENATE

Mr. MITCHELL (for himself and Mr. DOLE) submitted the following bill; which was considered and agreed to:

S. Res. 363

Whereas, it is the fundamental policy of the Senate to favor openness and public access to information;

Whereas, notwithstanding the Senate's policy of openness, committees, subcommittees, and offices of the Senate at times properly treat their business and proceedings as confidential in order to effectively perform their functions, and to protect the privacy and other interests of individuals and organizations who provide information or are the subject of inquiry;

Whereas, when it is determined that a committee, subcommittee, or office of the Senate should treat a proceeding or matter as confidential, a breach of that confidentiality is destructive of mutual trust and respect, reflects poorly on the institution, and may seriously harm the privacy and other interests of individuals and organizations;

Whereas, the Standing Rules of the Senate should explicitly prohibit the unauthorized disclosure of the confidential business and proceedings of the committees, subcommittee, and offices of the Senate: Now therefore be it

Resolved, That paragraph 5 of Rule XXIX of the Standing Rules of the Senate is amended by—

(1) Striking "or officer" and inserting", officer, or employee";

(2) inserting ", including the business and proceedings of the committees, subcommittees and offices of the Senate," after "proceedings of the Senate"; and

(3) inserting "or employee" after "if an officer".

SENATE RESOLUTION 365—EXTENDING THE PROVISIONS OF SENATE RESOLUTION 105 OF THE 101ST CONGRESS, THE SENATE ARMS CONTROL OBSERVER GROUP RESOLUTION

Mr. FORD (for Mr. MITCHELL, for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to.

S. Res. 365

Resolved, That the provisions of Senate Resolution 105 of the One Hundred First Congress (agreed to April 13, 1989) (as extended by Senate Resolution 358 of the One Hundred First Congress (agreed to October 28, 1990) shall remain in effect until March 31, 1993.

SENATE RESOLUTION 366—EXTENDING THE PROVISIONS OF SENATE RESOLUTION 106 OF THE 101ST CONGRESS (AGREED TO APRIL 13, 1989)

Mr. FORD (for Mr. MITCHELL, for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to.

S. Res. 366

Resolved, That section 9 of Senate Resolution 106 of the One Hundred First Congress (agreed to April 13, 1989) (as amended by Senate Resolution 351 of the One Hundred First Congress (agreed to October 27, 1990)) is amended by striking "upon" through "Congress" and inserting in lieu thereof "on March 31, 1993".

AMENDMENTS SUBMITTED

EXCHANGE OF CERTAIN LANDS IN COLORADO

BROWN AMENDMENT NO. 3434

Mr. SIMPSON (for Mr. BROWN) proposed an amendment to the bill (H.R. 1182) to authorize and direct the exchange of lands in Colorado, as follows:

On page 13, line 18, strike "of" and insert in lieu thereof, "after".

On page 14, beginning on line 2, strike, "No such provision of water to the United States shall in any way be construed to constitute an abandonment of such water by the Counties".

SENSE OF THE SENATE WITH RESPECT TO REGULATIONS OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

HATCH AMENDMENT NO. 3435

Mr. SIMPSON (for Mr. HATCH) proposed an amendment to the concurrent resolution (S. Con. Res. 17) expressing the sense of the Congress with respect to certain regulations of the Occupational Safety and Health Administration, as follows:

On page 2, beginning on line 3, strike out "before the expiration of the One Hundred Second Congress" and insert in lieu thereof "within one year of passage of this resolution"

EXTENSION OF OLESTRA PATENTS

GLENN (AND OTHERS) AMENDMENT NO. 3436

Mr. FORD (for Mr. GLENN, for himself Mr. RIEGLE, Mr. LEVIN, Mr. DECONCINI, Mr. HATCH, and Mr. ADAMS) proposed an amendment to the bill (S. 1506) to extend the terms of the olestra patents, and for other purposes, as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. PATENT EXTENSION.

That the Secretary of Commerce, acting through the Commissioner of Patents shall, when United States Patent Number 3,892,824 (relating to the drugs S-2-(3-aminopropylamino) ethyl dihydrogen phosphorothioate (Ethiofos) and S-3-(3-methylaminopropylamino) propyl dihydrogen phosphorothioate, including hydrates and alkali metal salts thereof) expires, or as soon thereafter as possible, extend such patent for three years, with all the rights pertaining thereto.

SEC. 2. STATUTORY EXTENSION OF PATENT TERMS.

(a) IN GENERAL.—The Congress finds that, in the future, any bill providing for the extension of the term of a patent should not be approved by the Congress unless the requirements set forth in subsection (b) or (c) are met.

(b) REQUESTS BASED ON DELAY IN PREMARKET APPROVAL.—When the basis for a bill providing for a patent extension is delay in premarket regulatory approval of a patented invention, the following requirements should be met before the bill is approved by the Congress:

(1) GOVERNMENTAL MISCONDUCT.—(A) Delay in the approval process must have been beyond the control of the patent holder and directly caused by governmental misconduct.

(B) For purposes of this paragraph, governmental misconduct is established by presentation of adequate proof of—

(i) dishonest or deceitful conduct,

(ii) vindictive or retaliatory action, or

(iii) serious failure to perform governmental duties or comply with governmental standards,

by the Federal Government.

(C) Unusual or unexpected delay alone does not constitute governmental misconduct for purposes of this paragraph.

(2) UNJUSTIFIED INJURY TO THE PATENT HOLDER.—The governmental misconduct under paragraph (1) must have caused a substantial inequity to the patent holder who, without the extension of the patent term, will suffer material harm directly attributable to the delay in the approval process. The unjustified harm to the patent holder if relief is not granted must outweigh any harm to the public (such as through higher prices) or to competitors that will result from extension of the patent.

(3) EXPIRED PATENTS.—Expired patents shall not be revived and extended, except under the most extraordinary and compelling circumstances. In no such case shall an extension be granted unless the patent holder exercised due diligence to prevent the invention from entering the public domain.

(4) INTERVENING RIGHTS.—In the event extraordinary circumstances justify the revival and extension of an expired patent, intervening rights shall be extended to persons using the subject matter of the patent after its expiration. Such rights shall not be provided in the case of statutory extension of unexpired patents, except that, in a case in which extreme injustice would result from the failure to provide such rights, they may be extended to persons who have, in good faith expectation of the expiration of the patent, made substantial preparation for use of the subject matter of the patent after its expiration.

(c) OTHER REQUESTS.—When the basis for a bill providing for a patent term extension is other than delay in premarket regulatory approval, the following requirements should be met before the bill is approved by the Congress:

(1)(A) Either governmental misconduct (as described in subsection (b)(1)), or action or inaction by the United States Government, contributed substantially to significant injury to the patent rights of the person requesting extension of the patent.

(B) For purposes of subparagraph (A), the action or inaction by the Government need not constitute governmental misconduct (as described in subsection (b)(1)), but must be of such a nature as to create a moral or ethical obligation on the part of the Government to provide relief to a person whose patent rights have been substantially injured by the action or inaction by the Government. Such action or inaction may include altering, by statute or rule, the regulatory approval procedures, standards, or requirements in a case in which there has been material reliance by an applicant on the prior procedures, standards, or requirements.

(2) The requirements set forth in paragraphs (2) through (4) of subsection (b) are met, except that—

(A) the reference in subsection (b)(2) to "governmental misconduct" shall be deemed to include, as applicable, the action or inaction by the Government described in paragraph (1) of this subsection; and

(B) the reference in subsection (b)(2) to "delay in the approval process" shall be deemed to refer to "governmental misconduct", which shall be deemed to include, as applicable, the action or inaction by the Government described in paragraph (1) of this subsection.

(d) LACK OF DUE DILIGENCE.—Notwithstanding the preceding provisions of this section, in no case should the Congress approve a bill providing for the extension of the term of a patent in the case of delay attributable to a lack of due diligence by the patent holder.

SEC. 3. PATENT EXTENSION FOR NONSTEROIDAL ANTI-INFLAMMATORY DRUGS.

(a) IN GENERAL.—The term of United States patent numbered 3,793,457 shall be extended for a period of 2 years beginning on the date of its expiration.

(b) LIMITATION ON RIGHTS.—The rights derived from any patent which is extended by this section shall be limited during the period of such extension to any use for which the subject matter of the patent was approved by the Food and Drug Administration before the date of the enactment of this Act.

SEC. 4. PATENT TERM EXTENSION FOR OLESTRA.

(a) IN GENERAL.—The terms of United States patents numbered 4,005,195, 4,005,196, and 4,034,083 (and any reissues of such patents) shall each be extended for a period beginning on the date of its expiration through December 31, 1997.

(b) POST-MARKET SURVEILLANCE.—At the time that the owner of record of the patent requests that the Commissioner of Patents and Trademarks certify its patent extension, it shall submit with such request a statement from the Commissioner of the Food and Drug Administration indicating that the Food and Drug Administration and the proposed marketing entity for olestra have agreed upon a post-market surveillance program which shall provide data regarding the influence of olestra-containing products upon the overall dietary intake of fats. Such data shall be subject to the usual standards of professional peer review. At the end of the study period, such data shall be submitted to the Food and Drug Administration for review. Such study data shall be in a format which shall be made available to Congress for public review. The requirements of this section shall not in any manner preempt the authority of the Food and Drug Administration to request and to receive any other information it deems necessary in the course of its ongoing regulatory activities.

SEC. 5. EXTENSION OF PATENT FOR INSIGNIA.

A certain design patent numbered 29,611, which was issued by the United States Patent Office on November 8, 1898, which is the insignia of the United Daughters of the Confederacy, and which was renewed and extended for a period of 14 years by the Act entitled "An Act granting an extension of patent to the United Daughters of the Confederacy", approved November 11, 1977 (Public Law 95-168; 91 Stat. 1349), is renewed and extended for an additional period of 14 years beginning on the date of the enactment of this Act, with all the rights and privileges pertaining to such patent.

SEC. 6. PATENT TERM EXTENSIONS FOR AMERICAN LEGION.

(a) BADGE OF AMERICAN LEGION.—The term of a certain design patent numbered 54,296 (for the badge of the American Legion) is renewed and extended for a period of 14 years beginning on the date of the enactment of this Act, with all the rights and privileges pertaining to such patent.

(b) BADGE OF AMERICAN LEGION WOMEN'S AUXILIARY.—The term of a certain design patent numbered 55,398 (for the badge of the American Legion Women's Auxiliary) is renewed and extended for a period of 14 years beginning on the date of the enactment of this Act, with all the rights and privileges pertaining to such patent.

(c) BADGE OF SONS OF THE AMERICAN LEGION.—The term of a certain design patent numbered 92,187 (for the badge of the Sons of the American Legion) is renewed and extended for a period of 14 years beginning on the date of the enactment of this Act, with all the rights and privileges pertaining to such patent.

SEC. 7. INTERVENING RIGHTS.

The renewals and extensions of the patents under sections 5 and 6 shall not result in infringement of any such patent on account of any use of the subject matter of the patent, or substantial preparation for such use, which began after the patent expired but before the enactment of this Act.

CACHE LA POUDRE RIVER NATIONAL WATER HERITAGE AREA

BROWN AMENDMENT NO. 3437

Mr. FORD (for Mr. BROWN) proposed an amendment to the bill (S. 1174) to establish the Cache La Poudre River National Water Heritage Area in the State of Colorado, as follows:

In section 3(a), strike paragraph (6) in its entirety and insert in lieu thereof the following:

"(6) an evaluation of the demonstration project undertaken by the Secretary pursuant to subsection (d), including recommendations for the disposition of any lands acquired pursuant to such project;".

At the end of section 3, insert the following new subsection:

(d) DEMONSTRATION PROJECT.—(1) In furtherance of the purposes of this Act, the Secretary, in consultation with the Cache La Poudre River Heritage Commission established by section 4, is authorized to undertake a demonstration project to evaluate the potential of using voluntary land exchanges within the Cache La Poudre River floodplain (hereinafter referred to as the "floodplain") as a means to provide for the long-term preservation and management of the lands within the floodplain.

(2) During the period of the study, the Secretary or the head of a Federal agency is authorized to acquire lands within the floodplain in Larimer and Weld Counties in the State of Colorado only through voluntary land exchanges: *Provided*, That such land exchanges shall be on an equal value basis, and shall be conducted in accordance with applicable law.

(3) Lands acquired pursuant to this subsection shall be managed in a manner that does not preclude the implementation of any management alternative identified in the study of alternatives or the Greenway Plan referred to in subsection (a).

(3) Where appropriate, the Secretary shall seek to enter into memoranda of agreement with other Federal agencies to manage land administered by such agencies within the floodplain, consistent with the purposes of this Act.

CODIFICATION OF TRANSPORTATION STATUTES

KENNEDY AMENDMENT NO. 3438

Mr. FORD, (for Mr. KENNEDY) proposed an amendment to the bill (H.R. 1537) to revise, codify, and enact without substantive change certain general and permanent laws, related to transportation, as subtitles II, III, and V-X of title 49, United States Code, "Transportation", and to make other technical improvements in the Code, as follows:

On page 872, beginning with "(1)(A)" in line 37, strike through line 12 on page 873 and substitute the following: "(1) Amtrak or a rail carrier (including a terminal company) shall provide fair and equitable arrangements to protect the interests of its employees affected by a discontinuance of intercity rail passenger service, including a discontinuance of service provided by a rail carrier under a facility or service agreement under section 24308(a) of this title under a modification or ending of the agreement or because Amtrak begins providing that service. Arrange-".

On page 873, between lines 22 and 23, insert the following:

"(2) With respect to Amtrak's obligations under this subsection and in an agreement to carry out this subsection involving only Amtrak and its employees, a discontinuance of intercity rail passenger service does not include an adjustment in frequency, or seasonal suspension of intercity rail passenger trains that causes a temporary suspension of transportation, unless the adjustment or suspension reduces passenger train operations on a particular route to fewer than 3 round trips a week at any time during a calendar year.".

HOLLINGS (AND DANFORTH) AMENDMENT NO. 3439

Mr. FORD (for Mr. HOLLINGS, for himself and Mr. DANFORTH) proposed an amendment to the bill H.R. 1537, supra, as follows:

Amend the committee amendment in the nature of a substitute as follows:

(1) On page 895, line 27, strike "maintain" and substitute "cause to be maintained".

(2) On page 895, line 30, strike "maintain" and substitute "cause to be maintained".

(3) On page 895, line 34, immediately before the period, insert the following: "in obtaining the information required by this subsection".

(4) On page 896, line 13, strike "in paragraph (2)" and substitute "under paragraph (2)".

(5) On page 897, line 6, immediately after "initial decision", insert the following: "(through testing, inspection, investigation, or research carried out under this chapter, examining communications under section 30166(f) of this title, or otherwise)".

(6) On page 897, line 21, immediately after "subsection", insert "that".

(7) On page 900, strike lines 31 and 32 and substitute the following: "the tire for remedy during a subsequent 60-day period that begins only after the owner or purchaser receives notification that a replacement will be available during the subsequent period. If tires are available".

(8) On page 900, line 36, immediately before "motor", insert "defective or noncomplying".

(9) On page 904, line 34, strike "except" and substitute "other than".

(10) On page 907, lines 12 and 15, immediately before "production", insert "annual".

(11) On page 908, line 24, immediately after "event", insert "not under the control of the manufacturer".

(12) On page 909, line 8, immediately before the period, insert a comma and the following: "including the amendment of March 26, 1991 (56 Fed. Reg. 12472), to Standard 208, extending the requirements for automatic crash protection, with incentives for more innovative automatic crash protection, to trucks, buses, and multipurpose passenger vehicles".

(13) On page 909, line 35, strike "department" and substitute "departments".

(14) On page 909, line 38, immediately before "appropriations", insert "available".

(15) On page 911, line 19, immediately before the comma, insert "under this subsection".

(16) On page 912, strike lines 33–35 and substitute the following:

"(2) the vehicle is imported after January 31, 1990; and".

(17) On page 913, line 34, strike "(2)".

(18) On page 913, line 36, strike "the" and substitute "that".

(19) On page 914, line 1, strike "the" and substitute "that".

(20) On page 915, strike lines 38–41 and substitute the following: "inspection, an importer may release the vehicle only after—

"(A) an inspection showing the motor vehicle complies with applicable vehicle safety standards prescribed under this chapter for which the inspection was made; and

"(B) release of the vehicle by the Secretary.".

(21) On page 923, line 5, immediately after "(C)", interest "selling or otherwise".

(22) On page 996, line 25, immediately after "require", insert "passenger motor vehicle".

(23) On page 1011, line 15, strike "involved in" and substitute "that is an object of".

(24) On page 1011, line 19, strike "involved in" and substitute "an object of".

(25) On page 1016, line 32, immediately before "gasoline", insert "on".

(26) On page 1017, line 14, immediately after "meets", insert "or exceeds".

(27) On page 1018, lines 3 and 4, strike "as decided by the Administrator, including" and substitute a comma and the following: "as decided by the Administrator, that includes".

(28) On page 1018, line 16, immediately after "meets", insert "or exceeds".

(29) On page 1024, lines 39 and 40, strike "dates when the actions will be taken, that will ensure that the automobile type or types" and substitute "deadlines for taking the actions, that will ensure that the model or models".

(30) On page 1025, line 12, strike "type or types" and substitute "or models".

(31) On page 1025, line 20, strike "automobile model type or types" and substitute "model or models".

(32) On page 1029, line 38, strike "that" and substitute "about whether".

(33) On page 1031, line 13, strike "those".

(34) On page 1033, line 41, immediately after "552(b)(4)", insert "of title 5".

(35) On page 1052, strike lines 14 and 15 and substitute the following:

"(3) preventing deterioration in established safety procedures, recognizing the clear intent, encouragement, and dedication of Congress to further the highest degree of safety in air transportation and air commerce, and to maintain the safety vigilance that has evolved in air transportation and air commerce and has come to be expected by the traveling and shipping public.".

(36) On page 1052, line 25, immediately after "considering", insert "any".

(37) On page 1053, line 20, strike "may" and substitute "would tend to".

(38) On page 1053, line 30, strike "establish the variety and quality of, and" and substitute "decide on the variety and quality of, and determine".

(39) On page 1053, lines 38 and 39, strike "giving air carriers the opportunity" and substitute "the attainment of the opportunity for air carriers".

(40) On page 1055, lines 7, and 8, strike "giving air carriers the opportunity" and substitute "the attainment of the opportunity for air carriers".

(41) On page 1110, line 22, strike "law or regulation" and substitute "law, regulation, or other provision having the force and effect of law".

(42) On page 1123, line 7, strike "entirely in one State".

(43) On page 1127, line 18, strike "whose compensation is reduced" and substitute "who is adversely affected related to compensation".

(44) On page 1127, lines 26 and 27, strike "holding a certificate under section 41102 of this title" and substitute "that held a certificate under section 401 of the Federal Aviation Act of 1958".

(45) On page 1128, line 6, strike "a 12-month period" and substitute "the 12-month period in which the first reduction occurs".

EXCLUSION OF DEBTOR INTEREST IN LIQUID AND GASEOUS HYDROCARBONS

LEAHY (AND OTHERS) AMENDMENT NO. 3440

Mr. FORD (for Mr. LEAHY, for himself, Mr. THURMOND, and Mr. BROWN) proposed an amendment to the bill (H.R. 4363) to amend title 11 of the United States Code to exclude from the estate of the debtor certain interests in liquid and gaseous hydrocarbons; as follows:

At the appropriate place in the bill, insert the following:

SEC. _____. NATIONAL COOPERATIVE RESEARCH EXTENSION ACT OF 1992.

(a) SHORT TITLE.—This section be cited as the "National Cooperative Research Act Extension of 1992".

(b) JOINT VENTURES.—The National Cooperative Research Act of 1984 (15 U.S.C. 4301 et seq.) is amended—

(1) by inserting after section 1 the following:

"SEC. 1A. FINDINGS AND PURPOSE.

"(a) The Congress finds that—

"(1) technological innovation and its profitable commercialization are critical components of the United States ability to raise the living standards of Americans and to compete in world markets;

"(2) cooperative arrangements among nonaffiliated firms in the private sector are often essential for successful technological innovation and commercialization; and

"(3) the antitrust laws may inhibit cooperative innovation arrangements because of uncertain legal standards and the threat of private treble damage litigation.

"(b) It is the purpose of this Act to promote innovation, facilitate trade, and strengthen the competitiveness of the United States in world markets by clarifying the applicability of the rule of reason standard and establishing a procedure under which firms may notify the Department of Justice and Federal Trade Commission of their cooperative ventures and thereby qualify for a single-damage limitation on civil antitrust liability.";

(2) in section 2(a)(6) by—

(A) striking "and development" and inserting ", development, or production";

(B) redesignating subparagraphs (D) and (E) as subparagraphs (E) and (G), respectively;

(C) inserting after subparagraph (C) the following new subparagraph:

"(D) the production or testing of any product, process, or service,";

(D) striking "or" after the comma in subparagraph (E), as redesignated;

(E) inserting after subparagraph (E), as redesignated, the following:

"(F) the collection, exchange, and analysis of production information related to activity of the joint production venture, or";

(F) striking "and (D)" and inserting "(D), (E), and (F)" in subparagraph (G), as redesignated; and

(G) by amending the matter following subparagraph (G) to read as follows:

"and may include the establishment and operation of facilities for the conducting of research, development or production; the integration of existing facilities where those facilities are used for the production or processing of a new product or technology pursuant to the joint venture; and the prosecuting of applications for the patents and the granting of licenses for the results of such venture, but does not include any activity described in subsection (b).";

(3) in section 2(b)—

(A) in the matter before paragraph (1) by striking "and development" and inserting ", development, or production";

(B) in paragraph (1) by striking "conduct the research and development that is the" and inserting "carry out the";

(C) in paragraph (2)—

(i) by striking "production or" each place it appears; and

(ii) by striking "other than the marketing of proprietary information developed through such venture, such as patents and trade secrets, and" and inserting the following: "other than—

"(A) the marketing of proprietary information, such as patents and trade secrets, developed through such venture formed before enactment of the National Cooperative Research Act Extension of 1992, or

"(B) the licensing, conveying, or transferring of intellectual property, such as patents and trade secrets, developed through such venture formed after enactment of the National Cooperative Research Act Extension of 1992, and"; and

(D) in paragraph (3)(B) by striking "and development" and inserting ", development, or production";

(4) in section 3 by—

(A) striking "and development" the first place it appears and inserting ", development, or production"; and

(B) striking "and development" the second place it appears and inserting ", development, product, process, or service";

(5) in section 4 by striking "and development" and inserting ", development, or production" each place it appears in subsections (a)(1), (b)(1), (c)(1), and (e);

(6) in section 4(e), by—

(A) inserting a dash after "if";

(B) designating the matter after such dash as paragraph (1);

(C) striking the period at the end of paragraph (1) as designated by subparagraph (B) and inserting "; and"; and

(D) adding at the end thereof the following:

"(2) in the case of a claim against a joint venture for production, the joint venture satisfies the requirements of section 7.";

(7) in section 5(a) by striking "and development" and inserting ", development, or production";

(8) in section 6 in the section heading by striking "and development" and inserting ", development, or production";

(9) in section 6—

(A) in subsection (a) by inserting "and, after enactment of the National Cooperative Research Act Extension of 1992, any party to a joint production venture, acting on such venture's behalf, may, not later than 90 days after entering into a written agreement to form such venture," after "whichever is later";

(B) in subsection (a)(1) by striking "identities of the parties to such venture, and" and inserting "identity of each party to such venture, including, in the case of a corporation, the nation in which it is incorporated and the location of its principal executive offices, and the nation of incorporation and the location of the principal executive offices of any corporation that directly or indirectly owns or controls a majority of the shares of such corporation, and"; and

(C) in subsections (d)(2) and (e) by striking "and development" and inserting ", development, or production" each place it appears; and

(10) by adding at the end thereof the following new section:

"APPLICABILITY TO JOINT VENTURES FOR PRODUCTION

"SEC. 7. (a) IN GENERAL.—Section 4 of this Act applies to a joint venture for production only if the joint venture—

"(1) provides substantial benefits to the United States economy including, but not limited to, increased skilled job opportunities in the United States, investments in long-term production facilities in the United States, participation of United States entities in the joint venture, or the ability of the United States entities to access and commercialize technological innovations or to realize production efficiencies; and

"(2)(A) whose principal facilities for the production of a product, process, or service are located within the United States or its territories; or

"(B) whose principal facilities for the production of a product, process, or service are located within a country whose antitrust law accords national treatment to United States entities that are parties to joint ventures for production.

"(b) MEANING OF NATIONAL TREATMENT.—For the purposes of this section, a foreign country accords national treatment to United States entities that are parties to joint ventures for production if it accords treatment no less favorable with respect to the application of its antitrust laws to United States participants in joint ventures for production than would be accorded to its domestic participants in joint ventures for production in like circumstances.

"REPORTS ON JOINT VENTURES AND UNITED STATES COMPETITIVENESS

"SEC. 8. (a) PURPOSE.—The purpose of the reports required by this section is to inform Congress and the American people of the effect of this Act on the competitiveness of the United States in key technologies and areas of production.

"(b) ANNUAL REPORT BY THE FEDERAL TRADE COMMISSION.—Within 1 year after the date of enactment of this subsection, and by that date in each succeeding year, the Commission shall submit to Congress a report including—

"(1) a list of joint ventures filing under this Act during the preceding 12-month period, including the purpose of each joint venture and the identity of each party to the joint venture as described in accordance with section 6(a)(1); and

"(2) a list of enforcement actions, if any, brought against joint ventures filing under the Act by the Department of Justice and the Federal Trade Commission during the preceding 12-month period for violations of the antitrust laws.

"(c) TRIENNIAL REPORT BY THE SECRETARY OF COMMERCE.—The Secretary of Commerce shall submit to Congress a triennial report, the first report to be submitted within 3 years after the date of enactment of this subsection, that includes—

"(1) a description of the industrial technologies most commonly pursued by joint ventures for research and development for which filings were made under this Act during the preceding 3-year period, and an analysis of the trends in the competitiveness of United States industry in those technologies;

"(2) a description of the areas of production most commonly engaged in by joint ventures for production for which filings were made under this Act during the preceding 3-year period, and an analysis of the trends in the competitiveness of United States industry in those production areas; and

"(3) an update of the report submitted by the Secretary under subsection (d) to reflect changes in foreign laws or practices.

"(d) REVIEW OF FOREIGN LAWS.—Within 1 year after the date of enactment of this subsection, the Secretary of Commerce shall submit to Congress a report on the treatment of United States corporations or other business entities under the laws relating to joint research and development and joint production ventures, or similar arrangements, of each foreign nation or community of nations whose corporations or other business entities have filed under this Act.

"(e) INTERAGENCY COOPERATION.—The Federal Trade Commission, the Office of the United States Trade Representative, and the Office of Science and Technology Policy, as well as other Federal departments and agencies, shall provide such information and assistance in the preparation of the reports under subsections (c) and (d) as the Secretary of Commerce may request.".

COLORADO WILDERNESS ACT

WIRTH AMENDMENT NO. 3441

Mr. FORD (for Mr. WIRTH) proposed an amendment to the amendment of the House to the bill (S. 1029) to designate certain lands in the State of Colorado as components of the National Wilderness Preservation System, and for other purposes as follows:

Strike all after the enacting clause and insert the following:

Title 1: The Colorado Wilderness Act of 1992

SECTION 1. SHORT TITLE.

This Act may be cited as the "Colorado Wilderness Act of 1992".

SEC. 2. ADDITIONS TO THE WILDERNESS PRESERVATION SYSTEM.

(a) ADDITIONS.—The following lands in the State of Colorado are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System:

(1) Certain lands in the Gunnison Basis Resource Area administered by the Bureau of Land Management which comprise approximately 3,600 acres, as generally depicted on a map entitled "American Flats Additions to the Big Blue Wilderness—Proposal", dated October 1992, and which are hereby incorporated in and shall be deemed to be a part of the wilderness area designated by Public Law 96-560 and renamed "Uncompahgre Wilderness" by section 3(f) of this Act.

(2) Certain lands in the Gunnison Resource Area administered by the Bureau of Land Management which comprise approximately 600 acres, as generally depicted on a map entitled "Bill Hare Gulch and Larson Creek Addition to the Big Blue Wilderness—Proposal", dated October 1992, and which are hereby incorporated in and shall be deemed to be a part of the wilderness area designated by Public Law 96-560 and renamed "Uncompahgre Wilderness" by section 3(f) of this Act.

(3) Certain lands in the Pike and San Isabel National Forest which comprise approximately 40,300 acres, as generally depicted on a map entitled "Buffalo Peaks Wilderness—Proposal", dated October 1992, and which shall be known as the Buffalo Peaks Wilderness.

(4) Certain lands in the Gunnison National Forest and in the Bureau of Land Management Powderhorn Primitive Area which comprise approximately 60,100 acres as generally depicted on a map entitled "Powderhorn Wilderness—Proposal", dated October 1992, and which shall be known as the Powderhorn Wilderness.

(5) Certain lands in the Routt National Forest which comprise approximately 19,750 acres, as generally depicted on a map entitled "Davis Peak Additions to the Mount

Zirkel Wilderness Proposal", dated October 1992, and which are hereby incorporated in and shall be deemed to be a part of the Mount Zirkel Wilderness designated by Public Law 88-555.

(6) Certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests which comprise approximately 32,000 acres as generally depicted on a map entitled "Fossil Ridge Wilderness Proposal", dated October 1992, and which shall be known as the When and Tim Wirth Wilderness Area.

(7) Certain lands in the San Isabel National Forest which comprise approximately 22,040 acres as generally depicted on a map entitled "Greenhorn Mountain Wilderness—Proposal", dated October 1992, and which shall be known as the Greenhorn Mountain Wilderness.

(8) Certain lands within the Pike and San Isabel National Forest which comprise approximately 13,830 acres, as generally depicted on a map entitled "Lost Creek Wilderness Proposal", dated October 1992, which are hereby incorporated in and shall be deemed to be a part of the Lost Creek Wilderness designated by Public Law 96-560: *Provided*, That the Secretary of Agriculture (hereinafter in this Act referred to as the "Secretary") is authorized to acquire, only by donation or exchange, various mineral reservations held by the State of Colorado within the boundaries of the Lost Creek Wilderness additions designated by this Act.

(9) Certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests which comprise approximately 5,500 acres, as generally depicted on a map entitled "Oh-Be-Joyful Addition to the Raggeds Wilderness—Proposal", dated October 1992, and which are hereby incorporated in and shall be deemed to be a part of the Raggeds Wilderness designated by Public Law 96-560.

(10) Certain lands in the Rio Grande National Forest which comprise approximately 209,580 acres, as generally depicted on a map entitled "Sangre de Cristo Wilderness—Proposal", dated October 1992, and which shall be known as the Sangre de Cristo Wilderness.

(11) Certain lands in the Routt National Forest which comprise approximately 44,500 acres, as generally depicted on a map entitled "Service Creek Wilderness Proposal", dated October 1992, which shall be known as the Sarvis Creek Wilderness. *Provided*, that the Secretary is authorized to acquire by purchase, donation, or exchange, lands or interests therein within the boundaries of the Sarvis Creek Wilderness only with the consent of the owner thereof.

(12) Certain lands in the San Juan National Forest which comprise approximately 39,700 acres as generally depicted on a map entitled "South San Juan Expansion Wilderness—Proposal", (V-Rock Trail and Montezuma Peak), dated October 1992, and which are hereby incorporated in and shall be deemed to be a part of the South San Juan Wilderness designated by Public Law 96-560.

(13) Certain lands in the White River National Forest which comprise approximately 8,330 acres, as generally depicted on a map entitled "Spruce Creek Additions to the Hunter-Fryingpan Wilderness—Proposal", dated October 1992, and which are hereby incorporated in and shall be deemed to be a part of the Hunter Fryingpan Wilderness designated by Public Law 95-327: *Provided*, That no right, or claim of right, to the diversion and use of the waters of Hunter Creek, the Fryingpan or Roaring Fork Rivers, or any tributaries of said creeks or rivers, by the Fryingpan-Arkansas Project, Public Law 87-590, and the reauthorization thereof by Public Law 93-193, as modified as proposed in the September 1959 report of the Bureau of Reclamation entitled "Ruedi Dam and Reservoir, Colorado", and as further modified and described in the description of the proposal contained in the final environmental statement for said project, dated April 16, 1975, under the laws of the State of Colorado, shall be prejudiced, expanded, diminished, altered, or affected by this Act. Nothing in this Act shall be construed to expand, abate, impair, impede, or interfere with the construction, maintenance, or repair of said Fryingpan-Arkansas Project facilities, nor the operation thereof, pursuant to the Operating Principles. House Document 187, Eighty-third Congress, and pursuant to the water laws of the State of Colorado: *Provided further*, That nothing in this Act shall be construed to impede, limit, or prevent the use of the Fryingpan-Arkansas Project of its diversion systems to their full extent.

(14) Certain lands in the Arapaho National Forest which comprise approximately 7,630 acres, as generally depicted on a map entitled "Byers Peak Wilderness—Proposal", dated October 1992, and which shall be known as Byers Peak Wilderness.

(15) certain lands in the Arapaho National Forest which comprise approximately 12,300 acres, as generally depicted on a map entitled "Vasquez Peak Wilderness—Proposal", dated October 1992, and which shall be known as the Vasquez Peak Wilderness;

(16) Certain lands in the San Juan National Forest which comprise approximately 28,740 acres, as generally depicted on a map entitled "Weminuche Wilderness Additions—Proposed", dated October 1992, and which are hereby incorporated in and shall be deemed to be a part of the Weminuche Wilderness designated by Public Law 93-632.

(17) Certain lands in the Rio Grande National Forest which comprise approximately 23,800 acres, as generally depicted on a map entitled "Wheeler Additions to the La Garita Wilderness—Proposal", dated October 1992, and which shall be incorporated into and shall be deemed to be a part of the La Garita Wilderness.

(18) Certain lands in the Arapaho National Forest which comprise approximately 12,100 acres, as generally depicted on a map entitled "Williams Fork Wilderness—Proposal", dated and which shall be known as the Farr Wilderness.

(19) Certain lands in the Arapaho National Forest which comprise approximately 6,700 acres, as generally depicted on a map entitled "Bowen Gulch Additions to Never Summer Wildnerss—Proposal", dated October 1992, which are hereby incorporated into and shall be deemed to be a part of the Never Summer Wilderness.

(b) MAPS AND DESCRIPTIONS.—As soon as practicable after the date of enactment of this Act, the appropriate Secretary shall file a map and a legal description of each area designated as wilderness by this Act with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the United States House of Representatives. Each map and description shall have the same force and effect as if included in this Act, except that the Secretary is authorized to correct clerical and typographical errors in such legal descriptions and maps. Such maps and legal descriptions shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture and the Office of the Director of the Bureau of Land Management, Department of the Interior, as appropriate.

SEC. 3. ADMINISTRATIVE PROVISIONS.

(a) IN GENERAL.—(1) Subject to valid existing rights, lands designated as wilderness by this Act shall be managed by the Secretary of Agriculture or the Secretary of the Interior (in the case of the portion of Powderhorn Wilderness managed by the Bureau of Land Management) in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act, except that, with respect to any wilderness areas designated by this Act, any reference in the Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

(2) Administrative jurisdiction over those lands designated as wilderness pursuant to paragraph (2) of section 2(a) of this Act, and which, as of the date of enactment of this Act, are administered by the Bureau of Land Management, is hereby transferred to the Forest Service.

(b) GRAZING.—Grazing of livestock in wilderness areas designated by this Act shall be administered in accordance with the provisions of section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)), as further interpreted by section 108 of Public Law 96-560, and, as regards wilderness managed by the Bureau of Land Management, the guidelines set forth in Appendix A of House Report 101-405 of the 101st Congress.

(c) STATE JURISDICTION.—As provided in section 4(d)(7) of the Wilderness Act (16 U.S.C. 1133(d)(7)), nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State of Colorado with respect to wildlife and fish in Colorado.

(d) CONFORMING AMENDMENT.—Section 2(e) of the Endangered American Wilderness Act of 1978 (92 Stat. 41) is amended by striking "Subject to" and all that follows through "System.".

(e) BUFFER ZONES.—Congress does not intend that the designation by this Act of wilderness areas in the State of Colorado creates or implies the creation of protective perimeters or buffer zones around any wilderness area. The fact that non-wilderness activities or uses can be seen or heard from within a wilderness areas shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

(f) WILDERNESS NAME CHANGE.—The wilderness area designated as "Big Blue Wilderness" by section 102(a)(1) of Public Law 96-560, and the additions thereto made by paragraphs (1) and (2) of section 2(a) of this Act, shall hereafter be known as the Uncompahgre Wilderness. Any reference to the Big Blue Wilderness in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Uncompahgre Wilderness.

(g)(1) For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of affected National Forests, as modified by this subsection, shall be considered to be the boundaries of such National Forests as of January 1, 1965.

(2) Nothing in this subsection shall affect valid existing rights of any person under any authority of law.

(3) Authorizations to use lands transferred by this subsection which were issued prior to the date of enactment of this Act, shall remain subject to the laws and regulations under which they were issued, to the extent consistent with this Act. Such authorizations shall be administered by the Secretary of Agriculture. Any renewal or extension of such authorizations shall be subject to the laws and regulations pertaining to the For-

est Service, Department of Agriculture, and applicable law, including this Act. The change of administrative jurisdiction resulting from the enactment of this subsection shall not in itself constitute a basis for denying or approving the renewal or reissuance of any such authorization.

SEC. 4. WILDERNESS RELEASE.

(a) Repeal of Wilderness Study Provisions.—Sections 105 and 106 of the Act of December 22, 1980 (P.L. 96-560), are hereby repealed.

(b) Initial Plans.—Section 107(b)(2) of the Act of December 22, 1980 (P.L. 96-560) is amended by striking out ", except those lands remaining in further planning upon enactment of this Act, areas listed in sections 105 and 106 of this Act, or previously congressional designated wilderness study areas,".

SEC. 5. FOSSIL RIDGE RECREATION MANAGEMENT AREA.

(a) Establishment.—(1) In order to conserve, protect, and enhance the scenic, wildlife, recreational, and other natural resource values of the Fossil Ridge area, there is hereby established the Fossil Ridge Recreation Management Area (hereinafter referred to as the "recreation management area").

(2) The recreation management area shall consist of certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests, Colorado, which comprise approximately 43,900 acres as generally depicted as "Area A" on a map entitled "Fossil Ridge Wilderness Proposal", dated June 1992.

(b) Administration.—The Secretary of Agriculture shall administer the recreation management area in accordance with this section and the laws and regulations generally applicable to the National Forest System.

(c) Withdrawal.—Subject to valid existing rights, all lands within the recreation management area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, and patent under the mining laws, and from disposition under the mineral and geothermal leasing laws, including all amendments thereto.

(d) Timber Harvesting.—No timber harvesting shall be allowed within the recreation management area except for any minimum necessary to protect the forest from insects and disease, and for public safety.

(e) Livestock Grazing.—The designation of the recreation management area shall not be construed to prohibit, or change the administration of, the grazing of livestock within the recreation management area.

(f) Development.—No developed campgrounds shall be constructed within the recreation management area. After the date of enactment of this Act, no new roads or trails may be constructed within the recreation management area.

(g) Off-Road Recreation.—Motorized travel shall be permitted within the recreation management area only on those designated trails and routes existing as of July 1, 1991.

SEC. 6. BOWEN GULCH PROTECTION AREA.

(a) Establishment.—(1) There is hereby established in the Arapaho National Forest, Colorado, the Bowen Gulch Protection Area (hereinafter in this Act referred to as the "protection area").

(2) The protection area shall consist of certain lands in the Arapaho National Forest, Colorado, which comprise approximately 11,600 acres as generally depicted as "Area A" and "Area B" on a map entitled "Bowen Gulch Additions to Never Summer Wilderness Proposal", dated June 1992.

(b) Administration.—The Secretary shall administer the protection area in accordance with this section and the laws and regulations generally applicable to the National Forest System.

(c) Withdrawal.—Subject to valid existing rights, all lands within the protection area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, and patent under the mining laws, and from disposition under the mineral and geothermal leasing laws, including all amendments thereto.

(d) Development.—No developed campgrounds shall be constructed within the protection area. After the date of enactment of this Act, no new roads or trails may be constructed within the protection area.

(e) Timber Harvesting.—No timber harvesting shall be allowed within the protection area except for any minimum necessary to protect the forest from insects and disease, and for public safety.

(f) Motorized Travel.—Motorized travel shall be permitted within the protection area only on those designated trails and routes existing as of July 1, 1991, and only during periods of adequate snow cover. At all other times, mechanized, non-motorized travel shall be permitted within the protection area.

(g) Management Plan.—During the preparation of the revision of the Land and Resource Management Plan for the Arapaho National Forest, the Forest Service shall develop a management plan for the protection area, after providing for public consultation.

SEC. 7. OTHER LANDS.

Nothing in this Act shall affect ownership or use of lands or interests therein not owned by the United States or access to such lands available under other applicable law.

SEC. 8 WATER.

(a) Findings, Purpose, and Definitions.—(1) Congress finds that—

(A) the lands designated as wilderness by this Act are located at the headwaters of the streams and rivers on those lands, with few, if any, actual or proposed water resource facilities located upstream from such lands and few, if any, opportunities for diversion, storage, or other uses of water occurring outside such lands that would adversely affect the wilderness values of such lands; and

(B) the lands designated as wilderness by this Act are not suitable for use for development of new water resource facilities, or for the expansion of existing facilities; and

(C) therefore, it is possible to provide for proper management and protection of the wilderness values of such lands in ways different from those utilized in other legislation designating as wilderness lands not sharing the attributes of the lands designated as wilderness by this Act.

(2) the purpose of this section is to protect the wilderness values of the lands designated as wilderness by this Act by means other than those based on a federal reserved water right.

(3) As used in this section, the term "water resource facility" means irrigation and pumping facilities, reservoirs, water conservation works, aqueducts, canals, ditches, pipelines, wells, hydropower projects, and transmission and other ancillary facilities, and other water diversion, storage, and carriage structures.

(b) Restriction on Rights and Disclaimer of Effect.—(1) Neither the Secretary, nor any other officer, employee, representative, or agent of the United States, nor any other person, shall assert in any court or agency, nor shall any court or agency consider any claim to or for water or water rights in the State of Colorado, which is based on any construction of any portion of this Act, or the designation of any lands as wilderness by this Act, as constituting an express or implied reservation of water or water rights.

(2) (A) Nothing in this Act shall constitute or be construed to constitute either an express or implied reservation of any water or water rights with respect to the Piedra, Roubideau, and Tabeguache areas identified in section 9 of this Act, or the Bowen Gulch Protection Area or the Fossil Ridge Recreation Management Area identified in sections 5 and 6 of this Act.

(B) Nothing in this Act shall be construed as a creation, recognition, disclaimer, relinquishment, or reduction of any water rights of the United States in the State of Colorado existing before the date of enactment of this Act, except as provided in subsection (g)(2) of this section.

(C) Except as provided in subsection (g) of this section, nothing in this Act shall be construed as constituting an interpretation of any other Act or any designation made by or pursuant thereto.

(D) Nothing in this section shall be construed as establishing a precedent with regard to any future wilderness designations.

(c) New or Expanded Projects.—Notwithstanding any other provision of law, on and after the date of enactment of this Act neither the President nor any other officer, employee, or agent of the United States shall fund, assist, authorize, or issue a license or permit for the development of any new water resource facility within the areas described in sections 2, 5, 6 and 9 of this Act or the enlargement of any water resource facility within the areas described in sections 2, 5, 6 and 9 of this Act.

(d) Access and Operation.—(1) Subject to the provisions of this subsection (d), the Secretary shall allow reasonable access to water resource facilities in existence on the date of enactment of this Act within the areas described in sections 2, 5, 6 and 9 of this Act, including motorized access where necessary and customarily employed on routes existing as of the date of enactment of this Act.

(2) Existing access routes within such areas customarily employed as of the date of enactment of this Act may be used, maintained, repaired, and replaced to the extent necessary to maintain their present function, design, and serviceable operation, so long as such activities have no increased adverse impacts on the resources and values of the areas described in sections 2, 5, 6 and 9 of this Act than existed as of the date of enactment of this Act.

(3) Subject to the provisions of subsections (c) and (d), the Secretary shall allow water resource facilities existing on the date of enactment of this Act within areas described in sections 2, 5, 6 and 9 of this Act to be used, operated, maintained, repaired, and replaced to the extent necessary for the continued exercise, in accordance with Colorado state law, of vested water rights adjudicated for use in connection with such facilities by a court of competent jurisdiction prior to the date of enactment of this Act; Provided that the impact of an existing facility on the water resources and values of the area shall not be increased as a result of changes in the adjudicated type of use of such facility as of the date of enactment of this Act.

(4) Water resource facilities, and access routes serving such facilities, existing within the areas described in sections 2, 5, 6, and 9 of this Act on the date of enactment of this

Act shall be maintained and repaired when and to the extent necessary to prevent increased adverse impacts on the resources and values of the areas described in sections 2, 5, 6, and 9 of this Act.

(e) Except as provided in subsections (c) and (d) of this section, the provisions of this Act related to the areas described in sections 2, 5, 6, and 9 of this Act, and the inclusion in the National Wilderness Preservation System of the areas described in section 2 of this Act, shall not be construed to affect or limit the use, operation, maintenance, repair, modification, or replacement of water resource facilities in existence on the date of enactment of this Act within the boundaries of the areas described in sections 2, 5, 6, and 9 of this Act.

(f) Monitoring and Implementation.—The Secretaries of Agriculture and the Interior shall monitor the operation of and access to water resource facilities within the areas described in sections 2, 5, 6, and 9 of this Act and take all steps necessary to implement the provisions of this section.

(g) Interstate Compacts and North Platte River.—(1) Nothing in this Act, and nothing in any previous Act designating any lands as wilderness, shall be construed as limiting, altering, modifying, or amending any of the interstate compacts or equitable apportionment decrees that apportion water among and between the State of Colorado and other States. Except as expressly provided in this section, nothing in this Act shall affect or limit the development or use by existing and future holders of vested water rights of Colorado's full apportionment of such waters.

(2) Notwithstanding any other provision of law, neither the Secretary nor any other officer, employee, or agent of the United States, or any other person, shall assert in any court or agency of the United States or any other jurisdiction any rights, and no court or agency of the United States shall consider any claim or defense asserted by any person based upon such rights, which may be determined to have been established for waters of the North Platte River for purposes of the Platte River Wilderness Area established by Public Law 98–550, located on the Colorado-Wyoming state boundary, to the extent such rights would limit the use or development of water within Colorado by present and future holders of vested water rights in the North Platte River and its tributaries, to the full extent allowed under interstate compact or United States Supreme Court equitable decree. Any such rights shall be exercised as if junior to, in a manner so as not to prevent, the use or development of Colorado's full entitlement to interstate waters of the North Platte River and its tributaries within Colorado allowed under interstate compact or United States Supreme Court equitable decree.

SEC. 9. PIEDRA, ROUBIDEAU, AND TABEGUACHE AREAS.

(a) Areas.—The provisions of this section shall apply to the following areas:

(1) Certain lands in the San Juan National Forest, comprising approximately 50,100 acres as generally depicted on the map entitled 'Piedra Area'' dated October, 1992; and

(2) Certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests, comprising approximately 18,000 acres, as generally depicted on the map entitled ''Roubideau Area'' dated October, 1992; and

(3) Certain lands in the Grand Mesa, Uncompahgre, and Gunnison National Forests and in the Montrose District of the Bureau of Land Management, comprising approximately 20,480 acres, as generally depicted on the map entitled ''Tabeguache Area'' dated October, 1992.

(b) Management.—(1) Subject to valid existing rights, the areas described in subsection (a) are withdrawn from all forms of location, leasing, patent, disposition, or disposal under the public land, mining, and mineral and geothermal leasing laws of the United States.

(2) The areas described in subsection (a) shall not be subject to any obligation to further study such lands for wilderness designation.

(3) Until Congress determines otherwise, and subject to the provisions of section 8 of this Act, activities within such areas shall be managed by the Secretary of Agriculture and Secretary of the Interior so as to maintain the areas' presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System.

(4) Livestock grazing in such areas shall be permitted and managed to the same extent and in the same manner as of the date of enactment of this Act. Except as provided by this Act, mechanized or motorized travel shall not be permitted in such areas; *Provided*, That the Secretary may permit motorized travel on trail number 535 in the San Juan National Forest during periods of adequate snow cover.

(c) Data Collection.—The Secretary of Agriculture and the Secretary of the Interior, in consultation with the Colorado Water Conservation Board, shall compile data concerning the water resources of the areas described in subsection (a), and existing and proposed water resources facilities affecting such values.

SEC. 10. SPANISH PEAKS FURTHER PLANNING AREA STUDY.

(a) Report.—Not later than three years from the date of enactment of this Act, the Secretary shall report to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate on the status of private property interests located within the Spanish Peaks further planning area of the Pike-San Isabel National Forest in Colorado.

(b) Contents of Report.—The report required by this section shall identify the location of all private property situated within the exterior boundaries of the Spanish Peaks area; the nature of such property interests; the acreage of such private property interests; and the Secretary's views on whether the owners of said properties would be willing to enter into either a sale or exchange of these properties at fair market value if such a transaction became available in the near future.

(c) No Authorization of Eminent Domain.—Nothing contained in this Act authorizes, and nothing in this Act shall be construed to authorize, the acquisition of real property by eminent domain.

(d) For a period of three years from the date of enactment of this Act, the Secretary shall manage the Spanish Peaks Further Planning Area, as provided by the Colorado Wilderness Act of 1980.

CHILDREN'S BICYCLE HELMET SAFETY ACT

DANFORTH AMENDMENT NO. 3442

Mr. SIMPSON (for Mr. Danforth) proposed an amendment to the bill (S. 2952) to establish a grant program under the National Highway Traffic Safety Administration for the purpose of promoting the use of bicycle helmets by individuals under the age of 16, as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Children's Bicycle Helmet Safety Act of 1992''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) 90 million Americans ride bicycles and 20 million ride a bicycle more than once a week;

(2) between 1984 and 1988, 2,985 bicyclists in the United States died from head injuries and 905,752 suffered head injuries that were treated in hospital emergency rooms;

(3) 41 percent of bicycle-related head injury deaths and 76 percent of bicycle-related head injuries occurred among American children under age 15;

(4) deaths and injuries from bicycle accidents cost society $7.6 billion annually; and a child suffering from a head injury, on average, will cost society $4.5 million over the child's lifetime;

(5) universal use of bicycle helmets in the United States would have prevented 2,600 deaths from head injuries and 757,000 injuries; and

(6) only 5 percent of children in the Nation who ride bicycles wear helmets.

SEC. 3. ESTABLISHMENT OF PROGRAM.

The Administrator of the National Highway Traffic Safety Administration may, in accordance with section 4, make grants to States and State political subdivisions for programs that require or encourage individuals under the age of 16 to wear approved bicycle helmets. In making those grants, the Administrator shall allow grantees to use wide discretion in designing programs that effectively promote increased bicycle helmet use.

SEC. 4. PURPOSES FOR GRANTS.

A grant made under section 3 may be used by a grantee to—

(1) enforce a law that requires individuals under the age of 16 to wear approved bicycle helmets on their heads while riding on bicycles;

(2) assist individuals under the age of 16 to acquire approved bicycle helmets;

(3) develop and administer a program to educate individuals under the age of 16 and their families on the importance of wearing such helmets in order to improve bicycle safety; or

(4) carry out any combination of the activities described in paragraphs (1), (2), and (3).

SEC. 5. STANDARDS.

(a) In General.—Bicycle helmets manufactured 9 months or more after the date of the enactment of this Act shall conform to—

(1) any interim standard described under subsection (b), pending the establishment of a final standard pursuant to subsection (c); and

(2) the final standard, once it has been established under subsection (c).

(b) Interim Standards.—The interim standards are as follows:

(1) The American National Standards Institute standard designated as ''Z90.4–1984''.

(2) The Snell Memorial Foundation standard designated as ''B–90''.

(3) Any other standard that the Consumer Product Safety Commission determines is appropriate.

(c) FINAL STANDARD.—Not later than 60 days after the date of the enactment of this Act, the Consumer Product Safety Commission shall begin a proceeding under section 553 of title 5, United States Code, to—

(1) review the requirements of the interim standards set forth in subsection (a) and establish a final standard based on such requirements;

(2) include in the final standard a provision to protect against the risk of helmets coming off the heads of bicycle riders;

(3) include in the final standard provisions that address the risk of injury to children; and

(4) include additional provisions as appropriate. Sections 7 and 9 of the Consumer Product Safety Act (15 U.S.C. 2056 and 2058) shall not apply to the proceeding under this subsection and section 11 of such Act (15 U.S.C. 2060) shall not apply with respect to any standard issued under such proceeding. The final standard shall take effect 1 year from the date it is issued.

(d) FAILURE TO MEET STANDARDS.—

(1) FAILURE TO MEET INTERIM STANDARD.—Until the final standard takes effect, a bicycle helmet that does not conform to an interim standard as required under subsection (a)(1) shall be considered in violation of a consumer product safety standard promulgated under the Consumer Product Safety Act.

(2) STATUS OF FINAL STANDARD.—The final standard developed under subsection (c) shall be considered a consumer product safety standard promulgated under the Consumer Product Safety Act.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

For the National Highway Traffic Safety Administration to carry out the grant program authorized by this Act, there are authorized to be appropriated $2,000,000 for fiscal year 1993, $3,000,000 for fiscal year 1994, and $4,000,000 for fiscal year 1995.

SEC. 7. DEFINITION.

In this Act, the term "approved bicycle helmet" means a bicycle helmet that meets—

(1) any interim standard described in section 5(b), pending establishment of a final standard under section 5(c); and

(2) the final standard, once it is established under section 5(c).

SEC. 8. FASTENER QUALITY ACT AMENDMENTS.

(a) REFERENCES.—Whenever in this section an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Fastener Quality Act (15 U.S.C. 5401 et seq.).

(b) TECHNICAL AMENDMENTS.—

(1) DEFINITIONS.—Section 3(8) (15 U.S.C. 5402(8)) is amended by striking "Standard" and inserting "Standards".

(2) INSPECTION AND TESTING.—Section 5(b)(1) (15 U.S.C. 5404(b)(1) is amended by striking "section 6; unless" and inserting "section 6, unless".

(c) IMPORTERS AND PRIVATE LABEL DISTRIBUTORS.—Section 7(c)(2) (15 U.S.C. 5406(c)(2)) is amended by inserting "to the same" before "extent".

(d) CLARIFYING AMENDMENTS.—

(1) Section 5(a)(1)(B) (15 U.S.C. 5404(a)(1)(B) is amended by striking "subsections (b) and (c)" and inserting "subsections (b), (c), and (d)".

(2) Section 5(a)(2)(A)(i) (15 U.S.C. 5404(a)(2)(A)(i)) is amended by striking "subsections (b) and (c)" and inserting "subsections (b), (c), and (d)".

(3) Section 5(c)(4) (15 U.S.C. 5404(c)(4)) is amended by inserting "except as provided in subsection (d)," before "state".

(4) Section 5 (15 U.S.C. 5404) is amended by inserting at the end the following new subsection:

"(d) ALTERNATIVE PROCEDURE FOR CHEMICAL CHARACTERISTICS.—Notwithstanding the requirements of subsections (b) and (c), a manufacturer shall be deemed to have demonstrated, for purposes of subsection (a)(1), that the chemical characteristics of a lot conform to the standards and specifications to which the manufacturer represents such lot has been manufactured if the following requirements are met:

"(1) The coil or heat number of metal from which such lot was fabricated has been inspected and tested with respect to its chemical characteristics by a laboratory accredited in accordance with the procedures and conditions specified by the Secretary under section 6.

"(2) Such laboratory has provided to the manufacturer, either directly or through the metal manufacturer, a written inspection and testing report, which shall be in a form prescribed by the Secretary by regulation, listing the chemical characteristics of such coil or heat number.

"(3) The report described in paragraph (2) indicates that the chemical characteristics of such coil or heat number conform to those required by the standards and specifications to which the manufacturer represents such lot has been manufactured.

"(4) The manufacturer demonstrates that such lot has been fabricated from the coil or heat number of metal to which the report described in paragraphs (2) and (3) relates.

In prescribing the form of report required by subsection (c), the Secretary shall provide for an alternative to the statement required by subsection (c)(4), insofar as such statement pertains to chemical characteristics, for cases in which a manufacturer elects to use the procedure permitted by this subsection.".

NOTICES OF HEARINGS

SELECT COMMITTEE ON POW/MIA AFFAIRS

Mr. KERRY. Mr. President, the Select Committee on POW/MIA Affairs, pursuant to discussions in previous organizational meetings, has scheduled hearings on October 15 and 16 to examine the satellite imagery and covert opertions in regard to the investigation of POW/MIA's. The hearings will begin at 9:30 a.m., and will take place in room 216 of the Hart Senate Office Building. For additional information, please call 224-2306.

ADDITIONAL STATEMENTS

LONG-TERM CARE INSURANCE

• Mr. PRYOR: Mr. President, I rise today to express my disappointment that the Congress did not enact legislation this year to provide protections for consumers who purchase long-term care insurance. It is truly unfortunate that we did not take action on this no-cost initiative that would strengthen the long-term care insurance market and go far to help older Americans.

During this session of Congress, we have seen an ongoing debate on health care reform, including insurance market reform. Long-term care, including reform of the long-term care insurance market, should not be left out in this debate.

Over the past few years, we have seen numerous reports citing problems in the private long-term care insurance market. A number of hearings addressing the problem have been held in both the Senate and the House. Bills which would go far to solve these market problems have been introduced and debated. Unfortunately, once again, the 102d Congress has spent too much time addressing problems and too little time solving problems. As a result, we have not even taken modest steps toward meeting the overwhelming long-term care needs of our Nation.

In 1991, a bipartisan coalition of 21 Senators joined me in sponsoring legislation that would require basic consumer protections for long-term care insurance. Soon afterward, Chairman BENTSEN introduced legislation that would clarify the tax treatment and provide consumer protections for this type of insurance. I was pleased to be a cosponsor of Chairman BENTSEN'S bill. In 1992, Senators KENNEDY and HATCH, along with the members of the Labor and Human Resources Committee, worked together to have their Committee pass their own version of a long-term care consumer protections bill. I believe they, in particular, should be recognized for their hard and constructive work in this area.

Mr. President, despite the work of all these members, we were unsuccessful in passing and enacting a long-term care insurance reform measure. We have been told that one of the primary reasons why we were unable to move this through the Congress was that our measure did not include tax clarifications. I supported the inclusion of these clarifications in a consumer protections bill. Unfortunately, although proposals to clarify the tax treatment of these policies have been before the Congress for over three years, we still have no estimate of the cost of any of these tax proposals. Although we do need a cost estimate to move forward on the tax proposals, I do not believe the consumer protection provisions of this legislation should be held hostage by the lack of a cost estimate.

As Chairman of the Aging Committee, I want to ensure that abuses that have plagued the Medigap market are not repeated in the long-term care market. None of us want to see those horrors repeated. Unfortunately, an opportunity to prevent this has passed us by in this Congress.

Our legislative efforts this year represent a commitment to ensuring that consumers can have confidence in the private long-term care insurance market. Mr. President, I look forward to working with my colleagues next year to enact legislation that makes progress toward our ultimate goal of protecting the chronically ill of all generations from the catastrophic costs of long-term care. Actions speak louder than words, and it is my hope and belief that the words of this year will be replaced by action next year.•

KEEPING IT SAFE FOR SERBIA

• Mr. SYMMS. Mr. President, in light of the situation in what was Yugoslavia, I insert an important article relating to events in that area in the RECORD. The article is written by Charles Brown, of the well-respected human rights group Freedom House. It appeared in the September–October, 1992 issue of Freedom Review.

Before the Serbia-Slovenia war, before the Serbia-Croatia war, and before the Serbia-Bosnia-Herzegovina war, there was the Serbian campaign to "Serbianize" the autonomous province of Kosova. Kosova is 90 percent Albanian, 10 percent Serb.

In May of this year, Charles Brown visited Kosova as part of a delegation sponsored by the Congressional Human Rights Foundation. His article details the "Serbianization" of Kosova, and the peaceful struggle of its inhabitants to resist this Serb campaign.

In May, the underground Kosova Government held elections. Over 90 percent of the population voted. Luckily for Kosova, the world media was there and abuse by Serbian secret police and military units was limited. However, when the newly elected officials tried to convene parliament for the first time since Serbia abolished the Kosovan Parliament in 1989, its officials were arrested or told to leave town.

I believe this article has great symbolic value over the future of the region. If the West ignores Kosova and other potential hot-spots, the war will spread. If we do not take a stand against aggression, and instead waffle as we have done over other parts of former Yugoslavia, the murder and repression may continue.

The article follows:

THE CASE OF KOSOVO: KEEPING IT SAFE FOR SERBIA

(By Charles J. Brown)

(As the international community struggles to find a way to end the Yugoslav civil war, there is growing concern that the conflict could spread beyond Bosnia and Croatia to Kosovo, an overwhelmingly Albanian ethnic enclave in southern Serbia, thus starting a much broader Balkan War. From Kosovo, a report on the Albanians' effort to escape Serbian oppression and obtain self-rule.)

Like most hotels, the Grand Hotel in Prishtina (capital of the formerly autonomous Kosovo region forcibly incoporated by Serbia in 1989) publishes a brochure touting its ideal location, banquet facilities, and many amenities. Missing from the brochure, however, are the hotel's newest guests—the Serbian military officers, secret police, and irregular militia who spend much of their time lounging around its large and spartan lobby, smoking Western cigarettes and drinking Turkish coffee while waiting for the latest directive from Belgrade. Serbian-owned and -operated, the Grand Hotel Prishtina has become home for those sent to convert Kosovo from an overwhelmingly Albanian ethnic enclave (Albanians make up 90 percent of the population) into a stronghold of Serbian nationalism.

I was in Kosovo in late May, part of an eight-person delegation sponsored by the Congressional Human Rights Foundation. We came to observe the clandestine presidential and parliamentary elections called by the Albanian opposition and, if necessary, to witness any attempt by the residents of the Grand Hotel to stop the elections from taking place. In light of Serbian-sponsored violence in Croatia and Bosnia-Hercegovina, we feared the elections could provoke further violence in the ongoing Yugoslav civil war.

INTRANSIGENT ON KOSOVO

What makes Serbs so intransigent on Kosovo—and thus so dangerous—is the region's role in the development of Serbian nationalist ideology. In 1389, on a large plain west of modern Prishtina known as Kosovo Polje, a Serbian army under Tsar Lazar was routed by Ottoman forces, thus ending the medieval Serbian Empire. The defeat became a defining moment in the development of modern Serbian nationalism, producing extensive poetry and song cycles about the heroism of its participants. On at least three occasions in the late nineteenth and early twentieth centuries, Serbia fought to regain Kosovo, finally succeeding in the Second Balkan War of 1913.

Although Kosovo remained part of Serbia after the founding of Yugoslavia in 1918, its ethnic make-up grew increasingly Albanian. When Josip Broz Tito and his Communist Partisans emerged victorious at the end of World War II, they acknowledged this demographic shift by creating the Autonomous Region of Kosovo. Although cosmetic changes in 1963 and 1968 gave Albania Communists some authority over internal affairs, the region remained under Serbia's control.

The rules changed in 1974, when Tito proposed a new constitution that he hoped would alleviate the growth of nationalism throughout Yugoslavia. In an effort to weaken Serbian chauvinism and placate growing Albanian nationalism, Kosovo was given status and power virtually equivalent to that of the existent six Yugoslav republics (but maintained its position as part of Serbia). For the first time, Albanians—albeit Communists—controlled the region.

To Serbian nationalists, Albanian predominance over the cradle of Serbian civilization was intolerable. Kosovo became a focal point of Serbian irredentism, fueled in part by the sporadic attempts of Albanian nationalists to make Kosovo a full republic (and thus an equal to Serbia within the Yugoslav federation). The Serbs found their champion in Serbian President Slobodan Milosevic, who in early 1989 abolished most of the privileges granted to Kosovo in 1974 and reestablished direct Serbian control over the region.

When Kosovo's parliament refused to ratify these changes, it was abolished and its leaders arrested. Parliamentarians who managed to avoid arrest fled the country to form a government-in-exile. In Prishtina, public protests intensified, often culminating in violent clashes between rock-throwing Albanians and Serbian policy units. In February 1989 Serbian authorities declared a state of emergency. In March, riot police opened fire on crowds in Prishtina, killing at least twenty-four civilians.

On 28 June 1989, over one million Serbs gathered at Kosovo Polje to hear Milosevic commemorate the 600th anniversary of "the tragedy whose spirit has permeated the entire Serbian culture." In an apparent reference to the recent annexation of Kosovo, Milosevic noted that the anniversary came "at a time when Serbia after many decades has regained its state, national and spiritual integrity," and pledged that never again would anyone "beat the Serbs." Back in Belgrade, radical nationalists began to organize paramilitary units (similar to those now fighting in Croatia and Bosnia) to "defend" Kosovo.

THE ALBANIAN OPPOSITION

Despite the establishment of a police state and an exponential growth in extrajudicial violence, the Albanian opposition continues to advocate non-violence in its pursuit of independence. Gazmend Pula is a good example. Gazmend holds a Master's degree in electrical engineering from George Washington University. Under normal circumstances, he probably would have been content teaching at the University of Prishtina. Instead, he risks repeated arrests and beatings to head the Kosovo Helsinki Committee (or Kosovo Watch), gathering concrete evidence of human rights violations. In the process, he has lost his privacy, his job, and the ability to support his family.

Soon after arriving in Kosovo, I met Gazmend in an office well-concealed amidst the labyrinth of streets and alleys that make up the Albanian ghetto of Prishtina. As the evening call to prayer rang out from a nearby mosque, Gazmend and several other Watch members talked about Milosevic's campaign to "Serbianize" their homeland.

In a region where annual per capita income is below $400.00 and many Kosovars struggle to find jobs in even the best of circumstances, tens of thousands of Albanians have lost their jobs on the grounds of "disloyalty." Gazmend thinks that the Serbian authorities hope to use these jobs—many of which are managerial or technical—to lure Serbs back to Kosovo, slowly but surely tilting the ethnic mix until it favors the Serbs. "They may be abolishing apartheid in South Africa, but it's making a comeback here in Kosovo," Gazmend said.

Serbianization also has affected education. At the University of Prishtina (once the center of Albanian culture in Yugoslavia and an evident source of pride for Gazmend and the other professors with whom we met), enrollment has been cut from 7,000 to 3,000, with half of the remaining slots reserved for Serbs. Over eight hundred Albanian professors have been fired, and classes now are conducted in Serbo-Croatian. According to Eshref Ademaj, a Professor of Mathematics and Chairman of the Association of University Professors, "each year only 1,000 Serbs in all of Kosovo apply to the university. Why do Serbs need 500 extra slots? Meanwhile, 14,000 Albanian must fight for 1,500 positions. We are denied access to all university buildings, including the library and the experimental facilities."

Kosovo Watch also keeps tabs on the residents of the Grand Hotel. Interrogations, beating, and arrest continue unabated. Using Serbian government statistics, Gazmend estimates that since 1981, 600,000 Albanians have been questioned, harassed, or jailed by Serbian authorities. If his figures are correct, almost one out of three Kosovar Albanians has been suspected of opposing Serbian power.

Although Kosovo Watch plays an important role in publicizing the plight of Kosovar Albanians, its efforts are secondary to the Albanian struggle to make Kosovo an independent state. Central to this effort is the Democratic League of Kosovo (LDK). Founded in 1990 by Ibrahim Rugova, a professor at the University of Prishtina and President of the Kosovo Writers Association, the LDK is a coalition of pro-democratic activists.

Everywhere we went, long lines of Albanians, Turks, Muslim Slavs, Croats, Gypsies, and even a few Serbs patiently waited to vote. In every precinct save one, over ninety percent of those eligible voted. In Istok, a small village at the foot of the mountains between Kosovo and Montenegro, 667 of the 672 residents registered had voted by 3:30 P.M. When asked about the remaining five, one of the local electoral commissioners said that "they had things to do this morning, but we're expecting them any minute now."

Although the presence of the international media helped stunt Serbian efforts to stop the election, the army and police managed to harass voters and interfere with the electoral process in a number of locations. Dozens of polling places were closed or surrounded, blank ballots and campaign literature were seized, and poll workers were arrested. Two members of our delegation were held for several hours when they tried to investigate conditions in the town of Prizern.

For the most part, however, the electoral commissions were prepared for everything the Serbs threw at them. In those precincts where polling places had been shut down, secondary sites—usually private homes—were used. Additional ballots were made available to those precincts that needed them. Volunteers stepped in to take the places of those arrested. Observers were posted on the routes to each polling place in order to warn against police raids. While it may seem odd to label as "clandestine" an election where over 750,000 people voted, it best describes the manner in which the Kosovars were able to stage the election without provoking large-scale Serbian military intervention.

The LDK is now ready for phase three: the formation of a parliament inside Kosovo under the leadership of the new President, Ibrahim Rugova. Although the races for parliament were hotly contested (490 candidates ran for one hundred seats). Rugova was the sole candidate for President. I caught up to him on election day at LDK headquarters, a building located only a few hundred meters from the back door of the central police station in Prishtina. He was elated at the overwhelming response he had received that morning when he had gone to vote, and optimistic that elections would proceed peacefully. "I am sure there will be problems," he told the delegation, "but democracy is a concrete step. The elections can only help us realize the independence of Kosovo. Now we will work here in Kosovo as a government."

In late June, Rugova attempted to convene parliament in Prishtina. Serbian police and military faces surrounded the city and used a copy of the LDK'S published list of parliamentarians to arrest or turn away those who tried to attend, thus preventing the parliament from obtaining a quorum. Rugova and the LDK have not yet decided when or where to make a second attempt.

Rugova's determination to form a government undoubtedly will be viewed as a provocation by Serbian authorities—perhaps enough of one to provoke military intervention. While such a move would not be surprising in light of Serbia's reaction to similar steps toward independence by Slovenia, Croatia, and Bosnia-Hercegovina, it will present the international community with a new dilemma.

DEMOGRAPHICS AND BOUNDARIES

Until now, victims of Serbian aggression have benefited (at least in theory) from a pledge by Lord Carrington, the European Community mediator, that any solution of the Yugoslav crisis must conform to existing borders. In Croatia and Bosnia, the international community has refused to acknowledge Serbian arguments that demographics—the presence of Serb populations in certain regions of both republics—should be more important than historical boundaries.

But in Kosovo, the tables are turned. If Carrington's formula is used, the region will stay under Serbian control, its 2 million-strong Albanian majority condemned to live in a police state that employs the tactics of apartheid.

The solution—and even it may not avoid bloodshed—lies in Tito's 1974 effort to grant Kosovo a modicum of autonomy. The international community should recognize that Kosovo's de facto existence as an independent unit within the old Yugoslavia is a sufficient basis upon which to recognize its right to independence.

Such an act may further anger the Serbs, but short of military intervention, it is the only way to offer protection to the fledgling democracy now being built in Kosovo. If the West instead chooses to continue ignoring the crisis, the residents of the Grant Hotel Prishtina will not hesitate to act in their stead.

Charles J. Brown is administrative director of the Washington Office of Freedom House. He is the co-author of The Politics of Psychiatry in Revolutionary Cuba (Freedom House/Transaction Books, 1991).●

RESOLUTION TO DELAY THE PROPOSED F-15 SALE TO SAUDI ARABIA

● Mr. WELLSTONE. Mr. President, last Thursday, I introduced a joint resolution to delay the proposed sale of 72 sophisticated F-15 aircraft by the Bush administration to the Kingdom of Saudi Arabia.

Mr. President, 2 years ago President Bush told this Congress that "it would be tragic if the nations of the Middle East and the Persian Gulf were now, in the wake of the war, to embark on a new arms race." But since making that statement, the administration has sold, or allowed the sale, of record-setting levels of arms to the region. At a time when the rest of the world's weapons sales have declined sharply, the administration has dramatically increased arms sales to the Middle East—at a rate three times higher than that of its nearest competitor, the former Soviet Union.

The Saudi F-15 sale is the most troubling recent example of these accelerated efforts. If it goes forward, the sale will have serious negative consequences for arms control in the Middle East, particularly the negotiations on arms transfers among the region's five major arms suppliers, who make between 85-90 percent of all sales to the region. After announcements by the administration of this sale and the F-16 sale to Taiwan, the fourth round of these talks, scheduled for this fall, were postponed and will probably not go forward until sometime next year.

In discussions with my colleagues on both sides of the aisle over the last few days, I have been struck by how many have serious concerns about this sale, particularly in the absence of any legislative effort or vehicle in the Senate—such as a resolution of disapproval—that might serve to focus that opposition. But despite these concerns, this $9 billion sale to Saudi Arabia looks like it will not be blocked or delayed by the Congress in the waning days of the session because, as the administration had hoped, most members are engaged in other urgent matters and have not had time to focus on the sale.

As I stated to the Senate Foreign Relations Committee in the only open Senate hearing on the sale at the end of last week, I believe that the administration's failure to provide sufficient notice, or to consult in a timely manner with the Senate Foreign Relations or House Foreign Affairs Committees, contrary to both tradition and legal requirements, should prompt a serious effort by the Congress to postpone the sale under the timetable proposed by the administration. By my calculation, if the administration had provided the typical 50-day consultation period, that period, ironically, would have ended on election day, November 3, 1992. Instead, the administration has chosen to try to slip the sale through despite numerous expressions of concern and opposition from members in both Houses, with very little advance notice. As Chairman PELL pointed out during the hearing last week, President Bush did not formally notify this sale to Congress until September 14. Thus, the statutory 30-day notification period will expire after we adjourn.

I had hoped that in the closing days of this session, the committee might act upon this or other legislation which would at least delay final action on the sale until we return early next year and until we have been given an opportunity to thoughtfully consider the important foreign policy and national security implications of the sale. The administration has bypassed both the traditional 20-day "pre-notification" period, and the legal 30-day notification period. I do not believe this action should be allowed to stand without some sort of congressional response. These weapons, the most sophisticated aircraft ever transferred by the U.S. Government, are a major advance over the current F-15 Cs and Ds in the current Saudi arsenal. For example, they will carry fuel tanks that give them a much greater range than current Saudi Aircraft. They will reportedly carry larger weapons payloads, have better radar capabilities, will be better able to target enemy planes operating at night, and will carry sophisticated laser or electo-optically guided Maverick air-to-ground missiles for improved performance. Though the administration has emphasized the technical differences between the U.S. and export versions of the ground-attack F–15, they are significant and should not be dismissed too quickly. Even if one concedes certain similarities, we must keep in mind that the two are built on the same airframe, and many of the "bells and whistles" could easily be attached later—as they were to earlier versions of the F–15 we sold to Saudi Arabia. There kinds of routine "upgrades" occur all the time up here, are notified to the appropriate committees, and are usually approved with little fanfare.

Let me be clear. As I have said before, I oppose this sale because I believe it would represent a major escalation of the arms race in the Middle East. Contrary to the assertions of the administration, I do not believe the sale would advance the national security interests of the United States, nor would it do anything to protect the long-term job security of American aerospace workers.

I am astounded that the administration has decided to move forward on this sale in the wake of its arms control pronouncements during the Persian Gulf War. At the height of the war, then Secretary of State Baker told the House Foreign Affairs Committee, "The time has come to try to change the destructive pattern of military competition and proliferation in the Middle East, and to reduce the arms flow into an area that is already over-militarized."

Instead, since the Gulf War, the United States has sold billions of new weapons to buyers in the region—most estimates suggest it is about $20 billion. Instead of pursuing a non-proliferation policy in this region, we have become a major contributor to the Middle East arms race.

I believe the sale will only provide an added impetus to other Middle Eastern nations to acquire more weapons to counter what they would view as a new Saudi threat. Unless we slow and then stop this arms race, United States troops could soon face the troops of Libya, Iran, Iraq, Syria, or another Middle East nation armed with the deadliest and most destructive high-technology weaponry available in international arms markets, bent on achieving their own territorial ambitions by force.

How can we argue with a straight face to other countries that they ought to limit their dangerous arms transfers while we are a leader in arms sales? How can we tell the cash-strapped nations of Russia and China to restrain their sales under such conditions? And how can we expect our close allies, including Britain and France, to work with us in developing a responsible arms control regime if we proceed with unrestrained sales? Obviously, we cannot. Those who argue that if we don't sell these weapons, others will, overlook the fact that the administration has resisted using these talks as a forum to discuss regional limits on the F–15 or other similar offensive aircraft. With such supplier-imposed limits, that issue of competitive advantage would be rendered moot.

I had expected a full and vigorous debate on this issue in the Senate, and have been deeply disappointed that this debate has not happened. Last November, nearly two-thirds of the members of the Senate expressed concern about the sale, and noted their profound anxiety that such a sale was being contemplated while the Middle East peace talks continued.

In fact, after waiting to see if members of the committee who might be concerned about the sale would act, I considered introducing a resolution of disapproval myself on the sale. But I recognize that with the time constraints imposed upon us by the administration, and considering the situation in the House, there is now no chance that such a resolution would be acted upon by the committee or by the full Senate—much less of its being enacted into law.

Since we were moving rapidly toward adjournment, I believed that the only responsible alternative available to us was to delay the sale until the appropriate committees of the Congress were able to consider it fully in the next Congress. Since I understand the first planes are not scheduled to be placed into service until after 1995, there is absolutely no reason not to delay the sale until at least March 1, 1993 while the appropriate Senate and House committees are given an opportunity to consider it.

I know that the Foreign Relations Committee will not act this session to delay this ill-conceived arms sale until a more thorough analysis can be made of its destructive implications for future Middle East conventional arms control efforts. I believe that is a serious mistake, and I urge the President to reconsider the sale, or at least hold it in abeyance, in light of his numerous commitments to pursue arms control, not massive arms sales, to the Middle East. I intend to work with interested colleagues early next year on legislation to tighten arms export control and notification requirements, so that we do not have a repeat of this episode on future arms sales.•

CONGRESSIONAL CALL TO CONSCIENCE

• Mr. GRASSLEY. Mr. President, I am proud to rise today as a cochair of the Congressional Call to Conscience. For the past 16 years, the Call to Conscience has worked to bring attention to Soviet refusenik cases and urge the Soviet Union to grant them freedom.

For decades, those identified as Jews in the former Soviet Union were denied emigration, and risked imprisonment, torture, or loss of employment. Today, largely due to the tenacity of Congress and the Bush and Reagan administrations, the Jewish people are allowed to worship openly in accordance with their faith, and most are free to emigrate. Since the fall of the Berlin Wall, more than 400,000 have moved to Israel.

Despite this progress, our work is far from over. Hundreds of thousands of others are still waiting to leave the former Soviet Union. Jews and other minorities have begun to find themselves endangered by a surge in extreme nationalism, and anti-Semitic and pro-Fascist groups and newspapers have begun to appear across Russia. Also, those remaining are still being prosecuted by the laws of the Soviet Union, even though these laws should no longer be valid.

One of the realities facing the countries that used to make up the Soviet Union is that legal reform has failed to keep pace with market reform. These new countries have failed to implement new legal safeguards to protect their citizens from being convicted of Soviet crimes which should have no applicability in ex-Soviet countries.

Just last week, Mark Glizer, a 37-year-old engineer who was convicted in June of speculation under a 1990 Soviet law, was finally released from prison following the reduction of his sentence on August 31 by a Moscow city court decision on appeal. Speculation is the economic crime of selling something for a profit in a Communist country. Glizer had been sentenced to 5 years in a strict regime labor camp for allegedly introducing a potential buyer of a car to a friend found guilty of selling the car for a profit. However, the Moscow-based Soviet American Bureau on Human Rights, after investigating the case, determined that Mr. Glizer was arrested because he located not a buyer, but merely a leaser for his friend's car.

Mr. Glizer had no previous criminal record. He had been employed for over 20 years at the Lenin Komsomol Automobile Factory where he started as an apprentice and eventually was promoted to head the quality control department of the factory. Mr. Glizer was the sole supporter of his wife and son, his ailing 82-year-old father, and his 41-year-old handicapped brother. During his 11 months in confinement, Mr. Glizer was not allowed to meet with his wife or son.

Although everyone who has followed this case is relieved to learn of Mr. Glizer's release, the fact that the court reduced Mr. Glizer's sentence rather than overturning his sentence sets a dangerous precedent by upholding this outdated criminal law. At the time of the trial of May 1992, the Russian speculation statute, article 154 of RSFSR Criminal Code, had been repealed and the Soviet law of October 31, 1990, had expired on its terms. Furthermore, the CIS agreement signed on December 8, 1991, expressly prohibits the enforcement of Soviet law in the territory of Russia.

Glizer's attorneys, A.P. Fokov of Moscow and William M. Cohen of the Center for Human Rights Advocacy in Boulder, CO, argued that speculation is no longer a crime in Russia; therefore, under article 6 of the RSFSR criminal code, pending charges of speculation against Glizer should have been dismissed. However, in reducing Glizer's sentence to less than the 1 year he was incarcerated from his arrest in July 1991 until his release this week, the Moscow city court affirmed the validity of convicting Russian citizens of speculation for engaging in profit-making activity. The court expressly stated that the Soviet law on speculation is still in effect.

This decision sets a dangerous precedent by upholding the conviction of a crime which is no longer in effect. The threat of continued prosecution of such Soviet-era, anti-free-market crimes is likely to further deter Western investment in Russia at a time when Russia is seeking massive aid from the United States and other countries. Although the past few years have been a triumphant time for Soviet Jewry, it is imperative that we in the Senate work to tie economic aid to progress in creating democratic institutions and to reform of the Russian criminal justice system to protect human rights under the rule of law.•

COLLEGE OF PHYSICIANS

• Mr. WOFFORD. Mr. President, I too rise saluting the American College of Physicians for joining the fight for comprehensive reform of our health care system. This group of 77,000 physicians has proposed a detailed and well-conceived plan for universal coverage, high quality care, and serious cost control.

This is the second important group of physicians to endorse the idea of a national health care budget to control skyrocketing health care costs. Earlier this year, the American College of Family Physicians made a similar proposal.

Recently, one Pennsylvania doctor spoke to me about the misimpression that physicians and other medical professionals are opposed to comprehensive health care reform. The truth is that physicians see clearly the inadequacies in our current system. They are burdened with paperwork and bureaucracy that forces them to spend less and less time providing care to their patients.

That is why the American College of Physicians has also proposed to simplify the administrative nightmare that is so frustrating for physicians and patients alike. This can yield us significant savings—some have estimated up to $100 billion per year—that we can recapture and use towards the delivery of medical services.

Physicians know all too well that the complex maze of public and private health insurance does not adequately serve the health care needs of Americans. In addition to proposing a national budget to bring costs down, the college advocates the extension of health insurance to all Americans, making available a comprehensive set of benefits, and the development of practice guidelines to improve medical effectiveness.

Their plan also addresses the need to achieve a balance between generalists and specialists and to expand the availability of primary and preventive medical services.

This comprehensive reform proposal crafted after much study by the American College of Physicians is more evidence of the growing consensus for fundamental change in our health care system—especially on the need for serious cost controls.

Doctors are the core of our health care system and I am delighted that the American College of Physicians has added their suggestions to the health care debate.

I look forward to expanding on these ideas with members of the college and other physicians as we continue to hammer out a unique American plan that will turn the right to affordable health care into a reality for all Americans. I urge my colleagues to consider the recommendations set forth in this important new proposal.•

(At the request of Mr. DOLE, the following statement was ordered to be printed in the RECORD.)

IRRESPONSIBLE CONGRESS? HERE'S TODAY'S BOXSCORE

• Mr. HELMS. Mr. President, the Federal debt run up by the U.S. Congress stood at $4,060,002,182,483.19 as of the close of business on October 6, 1992.

Anybody familiar with the U.S. Constitution knows that no President can spend a dime that has not first been authorized and appropriated by the Congress of the United States.

During fiscal year 1991, it cost the American taxpayers $286,022,000,000 just to pay the interest on Federal spending approved by Congress—spending over and above what the Federal Government collected in taxes and other income. Averaged out, this amounts to $5.5 billion every week, or $785 million every day, just to pay the interest on the existing Federal debt.

On a per capita basis, every man, woman and child owes $15,806.35—thanks to the big spenders in Congress for the past half century. Paying the interest on this massive debt, averaged out, amounts to $1,127.85 per year for each man, woman and child in America—or, to look at it another way, for each family of four, the tab—to pay the interest alone—comes to $4,511.40 per year.

What would America be like today if there had been a Congress that had the courage and the integrity to operate on a balanced budget?•

THE FREEDOM SUPPORT ACT

• Mr. LEAHY. Mr. President, last week, Congress passed the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act, to provide additional assistance to aid the people of the independent States of the former Soviet Union. The fiscal 1993 Foreign Operations Appropriations Act appropriates the funds to carry out programs authorized in the Freedom Support Act.

The Freedom Support Act conference report provides the administration with new flexibility to deal with the constantly changing situation in the former Soviet Union, and it establishes a number of new requirements. I would like to highlight several of these provisions.

First, the conference report strengthens the direct credit program operated by the Commodity Credit Corporation to continue its support of exports of U.S. agricultural commodities. The report requires that the Secretary undertake the same evaluation of credit worthiness for participation in the direct credit program as is current law in the credit guarantee program. This amendment prohibits the Department of Agriculture from making credits available to any country that the Secretary of Agriculture determines can not adequately repay the debt. This standard is a prudent safeguard to ensure that the U.S. taxpayer is not left holding the bag for loans that cannot be repaid.

In considering this legislation, Congress rejected attempts by the administration to weaken credit worthiness provisions. Mr. President, the direct credit and credit guarantee programs are to be commercial programs, not foreign aid.

Second, the conference report modifies the Senate provision which amends the Food for Progress program in order to encourage private voluntary organizations and cooperatives to become more directly involved in the development of private sector agriculture and agribusiness in the independent States of the former Soviet Union. I strongly urge the administration to actively seek out projects with these organizations to assist in the transportation and distribution of food, and to support agricultural development projects that will strengthen private sector agriculture in the former Soviet Union.

Third, the conference report largely adopts the Senate provisions to add new priorities to the emerging democracies export credit guarantee program. I expect that the Department will use this program for eligible projects that encourage the privatization of the agricultural sector in emerging democracies, including the former Soviet Union.

Fourth, the conference report sets threshold levels for processed and high-value agricultural products in the export enhancement program and export credit guarantee program. I expect the Department to take steps to encourage the foreign countries that benefit from these programs to include dairy products in their allocations under these programs. Aggressive use of these programs to promote dairy product exports could send a strong signal to the European Community and to United States markets overseas that the United States is a serious player in the world dairy market.

In addition, I am encouraged that the Agency for International Development has entered into an agreement with CARE to send $14 million of whole and skim milk powder to the independent States of the former Soviet Union in order to meet urgent humanitarian needs, particularly feeding programs for lactating mothers and infants, as well as the poor generally. There is virtually no social safety net in Russia, and this program will help the weakest and most defenseless. I urge the U.S. Department of Agriculture to make these purchases as soon as possible. This commodity import program was initiated as part of the fiscal year 1992 Foreign Operations Appropriations Act. Section 592 of the fiscal year 1993 Foreign Operations Appropriations Act funds this program at $50 million. I expect that the administration will make purchases under this program in the first half of the fiscal year in order to meet food needs through the winter.

Finally, the conference report includes a general authority for agribusiness centers in the former Soviet Union. The fiscal 1993 foreign operations appropriations also provides funding for these agribusiness centers in the new independent republics. The purposes of this program include, among others, the enhancement of the ability of farmers and agribusiness practitioners to meet the needs of the people of the independent States, and assistance in their transition to a free market system. I believe that these centers should include projects to improve private and cooperative dairy farms and dairy processing facilities in the independent States of the former Soviet Union. Currently, Geonomics Institute, a Vermont organization, is conducting a similar project in Estonia to privatize and commercialize that country's dairy industry, using a grant from the Agency for International Development.•

(At the request of Mr. DOLE, the following statement was ordered to be printed in the RECORD.)

VIOLATION OF HUMAN RIGHTS IN KASHMIR

• Mr. HELMS. Mr. President, all of us are, or should be, greatly concerned about the blatant violation of basic human rights in Kashmir. While the situation in that region of the subcontinent is complicated, and while there have been serious abuses on all sides of this tragic ethnic conflict, it is increasingly clear that not nearly enough is being done by the Government of India to solve this decades-long dispute.

The state of affairs in Kashmir has deteriorated to the point that in this year's Foreign Operations appropriations bill the House of Representatives voted to cut $24 million from India's funding, but that provision was subsequently dropped on the Senate side. New Delhi has a tendency to dismiss any action by this body that does not directly impact its pocketbook.

This time India has gotten off nearly scot free, and I believe it's time to put New Delhi on notice: Momentum is building; you have a chance to clean up your act and end your abuse of human rights. Those who sponsor antigovernment terrorists in India must do likewise. Next year the U.S. Senate will not be so restrained.•

(At the request of Mr. MITCHELL, the following statement was ordered to be printed in the RECORD.)

NEED TO BETTER PROTECT OUR PENSIONS

• Mr. SANFORD. Mr. President, in late July 1991, I held a hearing in Kannapolis, NC, to investigate the impact of life insurance company failures on the pensions of working Americans. At the hearing, business executives, pension fund experts, and the president of the National Association of Insurance Commissioners testified to the outrageous conduct and greed that led to the plundering and loss of hard-earned employee pensions while the Government agencies responsible for overseeing pension reversions claimed to lack the necessary authority to act.

Tragically, the consequences of the thoughtless actions of corporate raiders and ineffective Government supervision came to impact the pensions of the retired workers of Cannon Mills living in Kannapolis, NC, and across the United States. During the hearing, these retired workers spoke with pride of their 30, 40, even 50, years of service to Cannon Mills. These hardworking men and women had possessed the foresight in the late 1940's and early 1950's to provide for their retirement needs by enrolling in the company's pension plan. Regrettably in the 1980's, unbeknownst to the Cannon employees and retirees, the barbarians were at the gates of Kannapolis threatening these workers' years of hard work and planning.

In a scenario too often seen in the 1980's, a corporate raider targeted an overfunded pension fund in order to line his pockets and to provide capital for yet another LBO. In the Cannon Mills case, the excess funds were pocketed and the pension fund liabilities were placed into annuities purchased from the Executive Life Insurance Co. of California. The workers understood and depended upon the annuity certificates to pay at the same level as outlined by the former pension plan. In April 1991, Executive Life Insurance of California was placed into conservatorship. 60 percent of its portfolio had been invested in high-risk junk bonds. Benefit payments to pensioners were cut by 30 percent. David Murdock, the corporate raider, claimed to have fulfilled the ERISA mandated fiduciary duty to safeguard the employee pension fund at the time the pension funds were invested in the Executive Life annuities. The Pension Benefit Guaranty Corporation [PBGC] maintained it had no responsibility for pension plans converted into annuities and refused to exercise its lawful authority to reinstitute the plan. Both Murdock and the PBGC asserted the reduced benefit payments due to the insurance company failure were State government problems.

Meanwhile, retired workers that relied upon pension checks to provide a needed supplement to their social security checks went without food and fuel as the bankruptcy court and State governments haggled over whom would get paid first. The delay in disbursing the benefits created hardships and burdens for these men and women—burdens they had carefully and thoughtfully planned to avoid.

Many of the legal loopholes that permitted the unfortunate events in Kannapolis and other American communities still exist. The need to prevent future loss of worker pension funds remains due to the absence of clearly defined rules governing pension asset reversions, lax enforcement of present laws, and the potential crisis facing PBGC and State guaranty funds as these funds attempt to cope with the growing number of bankrupt businesses with underfunded pension plans.

In general, much tighter rules are necessary before pension fund reversions are permitted. Presently, the regulations governing a sponsor's fiduciary responsibility to the pension plan's participants do not require the appointment of an alternate fiduciary should the sponsor have a substantial interest in a proposed pension fund reversion. The rules also fail to mandate adequate notice to the pension participants and certainly do not provide the participants with a forum to express their opinions over a proposed reversion.

In addition to mandating the pension plan participants be provided with information explaining the proposed reversion, the Senate must consider extending other protections to the pension fund and its participants. Placing a moratorium on pension reversions for 5 years following a corporate takeover would eliminate the temptation to raid pepsin funds for short term financial gain. By extending the statute of limitations on actions arising under ERISA and allowing for punitive damages and attorney's fees in cases brought for breaches of fiduciary duties, the Senate would enable workers to enforce the obligations the plan sponsors owe to them.

Senate action needs to impress upon the agencies in charge of pension supervision the seriousness of their responsibilities. During the go-go 1980's, both the PBGC and the Department of Labor were remiss in their obligations to oversee the Cannon Mill pension revision and others. Unfortunately, the PBGC and pensioners are already under stress due to the failure to prevent the investment of pension assets in high-risk businesses like Executive Life.

The failure to enforce the law combined with the present state of the economy has created a greater threat to pensions. The PBGC's guaranty fund is already overextended and some believe another thrift-like crisis looms in the future. The PBGC's guaranty fund is used to make up shortfalls in a stressed or underfunded pension fund. In bankruptcies involving underfunded pension plans the PBGC is treated as an unsecured creditor to the debtor. Unsecured creditors are rarely paid the full amount owed them. With the increased number and size of bankruptcies over the last decade, the PBGC may not have the funds to meet its obligations. The solution may be to give the PBGC and pensioners a higher priority in bankruptcy. In any event, an incentive needs to be created so that employers do not keep pension plans underfunded. Any incentive needs to be carefully applied by scrupulous and fair agency action.

I invite my distinguished colleagues in the Senate to work with me on the issue of pension protection. I have been working on legislation to address a number of these issues. I believe this is and will increasingly become a critical issue for working people throughout America. I hope that next year a comprehensive pension protection bill can be enacted. Our efforts in the Senate must focus on preventing the excesses of the 1980's from occurring again by making clear to the pension plan sponsors their obligations to American workers. The Congress needs to mandate and broaden the authority of the Federal agencies charged with supervising pension fund reversions. As we enter into a period of invigorated leadership, on the threshold of the 21st century, let us once again renew our commitment to the working men and women of this country by recognizing their contributions to America's 20th century prominence by protecting all they have earned for their futures.•

WOODROW WILSON BRIDGE OPENINGS—H.R. 5617

• Mr. SARBANES. Mr. President, I rise to express my support for H.R. 5617, providing for congressional approval of a Governing International Fishery Agreement. This legislation contains an amended version of a measure I introduced earlier in this session of Congress, along with my colleagues, Senators ROBB, WARNER, and MIKULSKI, to help address the serious traffic problems at the Woodrow Wilson Bridge associated with the drawbridge opening schedule.

As anyone who commutes to work in the Washington metropolitan area or who travels on Interstate 95 knows, the Woodrow Wilson Bridge is one of the most heavily traveled bridges and one of the worst bottlenecks on the Interstate Highway System. Originally designed some 30 years ago to carry 75,000 vehicles a day, it now averages over 160,000 vehicles daily—far exceeding the bridge's capacity—and this burden is expected to grow in the next 20 years to nearly 250,000. There is no reasonable alternative route for motorists and the bridge is the site of severe congestion, long traffic backups, and frequent accidents.

Drawbridge openings on this vital link in our transportation network—particularly those which occur during peak traffic hours—exacerbate this traffic problem. Traffic can backup for miles—not only on the beltway, but on adjacent roads as well—and it often takes 20 to 30 minutes or even more before the queue dissipates. Each time the bridge opens, lives and commerce are disrupted and the safety of motorists is placed at risk. One has to balance the impact of those few boats desiring to sail up the Potomac, against the more than 160,000 vehicles each day on the eastern seaboard's main north-south route. I want to underscore that the bridge clearance currently allows passage of almost all of the pleasure boats which are docked on the Potomac upstream from the structure. Only boats with mast or stack heights greater than 50 feet require an opening of the draw span.

In the past few years, commuters, State transportation directors, members of the Maryland and Virginia congressional delegations, and others have repeatedly appealed to the U.S. Coast Guard, which is responsible for regulating the drawbridge opening schedule, to restrict openings to hours when vehicle traffic is at its lowest volume. The Coast Guard's response was to issues a series of temporary regulations which experimented with different opening schedules, but in fact represented very little change from the status quo. Despite overwhelming support for a more restrictive opening schedule on the bridge, the Coast Guard's regulations still provide a broad window for passage of recreational and commercial vessels during daytime and evening hours.

In an effort to seek a more acceptable solution to the drawbridge problem, I have worked for many months with members of our area congressional delegation, State highway officials, representatives of the motoring and boating community, and others to develop an alternative drawbridge opening schedule which is included in this legislation. While this alternative schedule is perhaps not as restrictive in openings as some of us would have liked, it strikes a more reasonable balance between the needs of the motoring and boating public than any schedule the Coast Guard has tested to date and, as such, represents a major step forward in addressing the drawbridge's operation.

What does this provision do? First, it specifically prohibits any bridge openings during the peak commuting hours of 5 a.m. to 10 a.m. and 2 p.m. to 8 p.m. On weekends, openings would be prohibited during the busy traffic hours of 2 p.m. to 7 p.m. Second, the total number of openings during the high traffic volume daylight hours would be significantly curtailed because those large recreational sailboats which require openings, and which comprise the vast majority of the openings, would be allowed to pass only when accompanied by a commercial vessel or in the early morning hours on weekends, when traffic is lighter. Third, it requires that vessel operators provide significant advance notice of potential openings so that the public can adjust their schedules and travel plans accordingly. The motoring public will also have the benefit of advance warning signs now in place along the Capital Beltway made available through funding from the Intermodal Surface Transportation Efficiency Act of 1991. In addition, the Washington Post has agreed to make up-to-date bridge opening information available through its Post-Haste service.

The alternative schedule has been endorsed by the transportation planning board of the Metropolitan Washington Council of Governments, the Greater

Washington Board of Trade, AAA-Potomac, Robinson Marine Terminals, State and local transportation departments, and others. In the State of Maryland, the entire Maryland congressional delegation, Governor Schaefer, the county commissioners of Charles County, Prince Georges County Executive Parris Glendening, local chambers of commerce have joined together in supporting the curtailed openings of the drawspan. I ask unanimous consent that letters from a number of these individuals and organizations be included in the RECORD immediately following my statement.

This schedule, along with the new notice program, should be a significant help in alleviating the disruptions and traffic problems associated with the bridge openings. I am pleased that it has been included in this measure and I want to particularly commend my colleagues Senator ROBB and Congressman HOYER who were instrumental in helping to craft the legislative provisions establishing the schedule.

The letters follows:

STATE OF MARYLAND
EXECUTIVE DEPARTMENT,
Washington, DC, September 25, 1992.

Hon. Paul S. Sarbanes,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR SARBANES: Thank you for your effort to restrict openings of the Woodrow Wilson Bridge to hours when vehicle traffic is at its lowest volume.

I support your efforts, and was also pleased to learn your amendment requires advance notification for all bridge openings.

Advance notification is very important to the Maryland Department of Transportation's statewide communter alert program. As you know, there have been fatal accidents on the bridge when the drawbridge has been raised. If the State Highway Administration can alert all motorist, we should see increased safety at the drawbridge.

The State has long sought to reduce the number of openings and limit them to the hours when auto travel is the lightest. Your personal interest in this issue is greatly appreciated. Through your efforts, the traveling public will see some relief from this problem.

If I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,

WILLIAM DONALD SCHAEFER,
Governor.

Alexandria, VA., September 24, 1992.

Re Woodrow Wilson Bridge.

Hon. STENY H. HOYER,
House of Representatives,
Washington, DC.

Hon. CHARLES S. ROBB,
U.S. Senate,
Washington, DC.

Hon. Paul S. Sarbanes,
U.S. Senate,
Washington, DC.

GENTLEMEN: We very much appreciate the diligent efforts of you and your most capable staff to arrive at compromise language regarding the opening of the Woodrow Wilson bridge drawspan. We understand that the attached language is acceptable to all concerned Members of Congress and that the language will be included in the Coast Guard Reauthorization Bill going to the Senate floor in lieu of the language in section (a)(3) of the Senate staff draft dated September 17, 1992. We are pleased with the compromise language and will support the bill.

In addition, we wish to inform you that in order to improve the flow of information to the public on the status of the bridge, The Washington Post will include bridge information in its Post-Haste service. Post-Haste is a free telephone information service of The Washington Post which includes listings for subjects such as sports scores, weather, stock market quotes, etc. This recorded information can be continually updated.

The Post-Haste message will contain the basic schedule for when the bridge can open and any information available concerning specific scheduled openings. On the latter point, we will continue to work with Virginia, Maryland and District of Columbia officials to improve the availability of information concerning openings necessitated by the passage of vessels not arriving or departing from Robinson Terminal.

Inclusion of bridge information in the Post-Haste service will begin in a few days. Thank you again for your time and concern on this issue.

Sincerely,

JAMES G. BOATNER,
President.

RESOLUTION SUPPORTING A COMPROMISE AGREEMENT ON THE OPENING SCHEDULE FOR THE WOODROW WILSON BRIDGE

Whereas, the National Capital Region Transportation Planning Board, hereinafter called "Board", has responsibilities under the provisions of the Federal Aid Highway Act of 1962, and the Urban Mass Transportation Act of 1964, as amended, for developing and carrying out a comprehensive, continuing, and coordinated transportation planning process for the metropolitan area; and

Whereas, the Woodrow Wilson Bridge represents a critical link in the region's transportation system, and the bridge experiences severe congestion problems today and must accommodate additional traffic in the future; and

Whereas, the current opening schedule for the bridge has been the subject of extensive discussion and negotiation aimed at reducing the traffic disruption caused by openings of the bridge; and

Whereas, Senator Paul Sarbanes' office has asked the Board to support the attached compromise agreement on the opening schedule; and

Whereas, the compromise agreement appears to achieve a reasonable balance between the requirements of highway and river traffic: Now, therefore, be it

Resolved, That the Transportation Planning Board supports the attached compromise agreement and urges the U.S. Coast Guard to give it full consideration in the regulatory process leading to the adoption of a permanent schedule.

THE GREATER WASHINGTON
BOARD OF TRADE,
Washington, DC, April 24, 1992.

Rear Adm. W.T. LELAND,
Commander, Fifth Coast Guard District,
Portsmouth, VA.

DEAR ADMIRAL LELAND: The Greater Washington Board of Trade is the regional chamber of commerce for the National Capital area, and our organization represents two-thirds of the region's private sector work force. I am writing to express our concerns regarding the Coast Guard's proposed rule-making governing the openings of the Woodrow Wilson Bridge drawspan, including the most recent temporary final rule which was published in the Federal Register on March 18, 1992.

As you know, for some time, we have been urging the Coast Guard to restrict openings of the Woodrow Wilson Bridge in order to help alleviate the severe traffic congestion and frequent accidents on the bridge. Since it was first constructed some 30 years ago, highway traffic across the bridge has grown significantly. Originally designed to carry 75,000 cars, trucks and buses daily, it now averages over 160,000 vehicles a day. That is nearly 60 million vehicles a year!

The area Congressional Delegation recently sent a letter to you in support of a permanent solution to the drawspan problem. We strongly support the Delegation's compromise and believe this to be a major step in the right direction in addressing the drawbridge's operation. (A copy of the compromise is attached). Limiting the openings of the bridge during the peak rush hours (5–10 a.m. and 2–8 p.m.) will help alleviate the disruptions and highway traffic problems associated with bridge openings.

It is worthy to note that the Wilson Bridge is a major link in the region's transportation system and it is vital to the region's commerce. Not only do the region's workers use this major link to travel to and from work, but the region's firms conduct business over this facility throughout the day—business representatives traveling to appointments, and trucks delivering goods. Delays of this commerce through bridge openings means lost dollars to our businesses, and therefore bridge openings should be minimized.

The compromise schedule has the endorsement of a wide range of organizations and we believe the proposed schedule strikes a more reasonable balance between the needs of the motoring public and those of marine modes of transportation than any schedule tested to date. We urge you, prior to adopting final regulations, to test this proposed schedule and notification process. We appreciate your attention to this matter and look forward to working with you to achieve a solution to the Woodrow Wilson Bridge problem and other transportation issues confronting our region.

Sincerely,

JOHN R. TYDINGS. •

FROM HERE TO ETERNITY

• Mr. SYMMS. Mr. President, my friend, Owen Frisby, recently sent me the transcript of a speech Paul Harvey delivered at the Radio Television New Directors Association Meeting in San Antonio, TX, on September 26, 1992. Owen pointed out that the last half of the speech, entitled "Shop Talk," is a poignant message about the evolution of journalistic freedom and responsibility. I insert the transcript of Mr. Harvey's speech at this point in the RECORD:

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

SPEECH BY PAUL HARVEY

This is a message from here to eternity. It is addressed to the late Mr. William Paley.

Dear Sir: You know most all there is of the history of broadcasting: you wrote much of it. Now, for the first time, you are going to learn the rest of the story. The year was 1942.

From Kalamazoo, Michigan you received an acetate recording. It said: "Mr. Paley, sir, you are listening to the radio voice of tomorrow." The even-then stentorian voice of that wet-eared kid from Kalamazoo went on to say Elmer Davis was leaving for the OWI.

In another office on another floor of the cavernous building somebody called a production something-or-other presented a mimeographed five-minute undated newscast and suggested it be rehearsed aloud. Then, polished, it would be recorded for management to hear.

"First let me hear a run-through," he said. The eager-to-please lad, reading the copy cold, did well—he thought. But the round-faced somebody-from production said "That was very good * * * except * * *"

Then followed several corrections in pronunciation.

"The network preferred cosmopolitan pronunciations of such words as 'eye-ther' and 'neye-ther'" he explained. "And when you mention the concert at Carnegie Hall, it is 'car-nay-gee' and the violinist's name is 'yee-hoo-dee-main-wine.'" "But," the lad dared to interrupt, "I've heard it 'Yehudi Menuin.'" "A frequent mistake," the solicitous coach explained.

"But he is well known to us at CBS and he prefers 'yee-hoo-dee main wine.'"

Well, Mr. Paley, sir * * *

You never knew until this moment how your junior executives in those days purposed to sabotage any outsider. Even, and perhaps especially, when the referral came from you.

It was much later that this particular lad learned, to his dark disillusion, that the program people—after recording such an audition—would laugh uproariously as the hustled hopeful utterly innocently made a fool of himself.

You later wrote a kind letter to Kalamazoo, Mr. Paley. You said your people had determined that the young man was "not ready for New York." Mr Paley. Sir, he is not yet ready.

He is a softball pitcher, Sir. He never would have the right stuff for hardball.

Today, half a hundred years later, the kid from Kalamazoo has long since outdistanced any bitterness. Time flows in only one direction.

And today—at this ceremonial occasion—he closes the book on yesterday as he accepts with very special significance an award from his peers in the name of The Legend—Paul White.

And now, Mr. Paley, Sir, now you know The rest of the story.

SHOP TALK

Newswomen and newsmen since I last addressed your RINDA you have moved mountains.

Your graphic coverage of Tiananmen Square brought a dynasty to penitence. Penetrating the world's curtains of bamboo and iron and its walls of stone and its dark ignorance you made it possible to overthrow communism; you made it harder to overthrow Yeltsin. You've "done good."

Your coverage of the war in the Persian Gulf—particularly CNN's two-way window on Baghdad—elevated electronic media to a new level of maturity. Uncovering scandals in Washington you, more than any other factor, inspired the now inevitable housecleaning in Congress. You've "done good!"

However * * *

Before I return in another ten years I charge you with some new responsibilities:

Georgie Anne Geyer says, "Much of the American media has become a coliseum where ambitious journalists decide who is to be thrown to the lions today. And most of the journalists involved love it. If we can't bring someone down, destroy his or her reputation and leave blood all over the floor, then journalism is no fun anymore."

Gigi and I get no pleasure from criticizing colleagues but when the watchdog becomes an attack dog one way or another he is going to be de-fanged.

There is a lot of self-righteousness in our business as we condemn lawmakers for vested interests and ignore the similar vulnerability of opinion makers.

I once dared to propose publicly that journalists publish their stock portfolios and report any other investments or affiliations which might relate to subjects on which they write.

From the editor of one powerful publication, I received a scathing denunciation. How dare I suggest that any of us might be corruptible!

It was not much later that a Wall Street Journal writer was caught profiting from stocks he promoted and journalist Izzy Stone was exposed as a paid agent of the KGB.•

HANDGUNS

• Mr. SIMON. Mr. President, everywhere you turn recently, there is another news story about the increasing number of gun owners in America. The reason given for the rising sales is always the same: The new owners need the guns to arm themselves in the war against crime. Mr. President, the problem is that America is armed. And as a recent Chicago Tribune editorial noted, "the more weapons that get into circulation, the more this war escalates."

The facts speak for themselves: The increasing numbers of murders in the United States is accounted for by the rise in deaths caused by handguns. Furthermore, guns bought for self-protection and kept in the home are 43 times more likely to kill a family member or friend than to kill an intruder—New England Journal of Medicine, June 1986. Additionally, in 1990, there were only 209 justifiable homicides out of a total of 10,567 handgun murders in the United States—FBI Uniform Crime Reports.

If these guns are not used to kill an intruder, who is at risk? More often than not, it is the very family members the gun owner wants to protect: the children. According to the Centers for Disease Control, more than 1.2 million elementary school children who are latch-key kids have access to guns in their homes. A study of 266 accidental shootings of children under the age of 17 revealed that 50 percent of the accidents occurred in the victims' homes, and 38 percent occurred in the home of a friend or relative. The handguns used in the shootings were most often found in the bedroom, 45 percent—Center to Control Handgun Violence. Furthermore, the odds that a suicidal teenager will commit suicide increase 75 times when a gun is kept in the home. The bottom line is that in 1989 alone, 1,380 children and teenagers committed suicide with guns; 2,367 children and teenagers were murdered with guns; and 567 died in unintentional shootings—National Center for Health Statistics.

Without a doubt, handguns are a major component of the increasing crime and violence in our Nation. The control of these handguns, not the proliferation, is a necessary part of any solution. As Baltimore County Police Chief Neil Behan notes: "If guns were the answer to the threat of violent crime, we'd sell them at police headquarters."

Mr. President, I ask that the Chicago Tribune editorial be printed in its entirety at this point in the record.

The editorial follows:

[From the Chicago Tribune, Sept. 14, 1992]

HANDGUNS KILL MORE THAN THEY PROTECT

There's a sad fallacy in the argument being pushed by gun merchants and their allies that Americans need to arm themselves in the war on crime. The problem is, the nation is armed. And the more weapons that get into circulation, the more this war escalates.

Handguns are protection. This notion is demolished by the fact that the entire increase in murders, whether measured nationally or locally in recent years, is accounted for by the rise in handgun deaths. It's crushed by the fact that handgun owners are 43 times more likely to kill themselves or a family member than to shoot a criminal. And by the fact that the U.S., with extraordinary access to guns, has by far the highest murder rate among developed nations. By the fact that shootings have only soared with the surge in handgun possession. By the fact that suicide is five times more common in homes with guns. By the fact that handguns and other concealable weapons have no real purpose except to kill people.

Firearms were used last year to murder more than 16,000 Americans, a record number. At least 80 percent were killed with handguns. There's every indication that the toll will grow again this year.

In Chicago, murders are running ahead of 1991's unprecedented rate. Over the Labor Day weekend, 28 people died and dozens more were wounded by gunfire in one of the bloodiest holidays in city history.

While police attribute much of the shooting surge to street-gang battles over narcotics and turf, they point out these fights wouldn't be nearly so deadly if it weren't for the rapid proliferation of handguns and concealable assault weapons.

The crossfire is becoming increasingly indiscriminate. From just last weekend's shootings: A 10-year-old picnicker sipping water from a drinking fountain; an 8-year-old boy sitting on his own from porch; the unborn infant of a pregnant girl.

Across the nation, handgun homicides have risen 45 percent over the past five years. Meanwhile, Congress and the Bush administration still dither over the rather meek gun-control measure known as the Brady Bill, which would apply a national waiting period and background checks to handgun purchases.

Sure, stricter handgun control won't by itself stop the spiral of crime and violence. It has to be done in tandem with a concerted assault on the social problems that breed violence—a comprehensive effort that includes interventions like the city-state experiment in counseling for gang members and troubled families that has just been announced in Chicago.

But handguns are a major part of the problem. Their control has to be part of any solution.

As one police officer noted recently, we've yet to see a drive-by stabbing.●

TRIBUTE TO CONGRESSMAN STEVE SOLARZ

● Mr. D'AMATO. Mr. President, as we pay tribute to our colleagues who are leaving the Congress at the close of this session, I want to make special mention of a friend who has served the people of New York with distinction, and has worked to improve the lives of millions of people around the world. I'm speaking of Congressman STEVE SOLARZ.

STEVE was elected to the House in 1974, after serving in the New York State Assembly. He quickly became one of the hardest working Members of the other body, and its foremost expert on foreign affairs. In fact, just before STEVE spoke on the floor this weekend, in what was to be perhaps the last floor speech of his career, the ranking Democrat on the Foreign Affairs Committee, LEE HAMILTON, said of STEVE: "His knowledge of foreign policy is second to no one in this entire city and in this entire country."

STEVE has left an almost immeasurable mark on foreign affairs, especially when it comes to democracy and human rights.

If South Africa has made great strides in throwing off the evil cloak of Apartheid, it is due in part to the fact that STEVE sponsored the first sanctions legislation in the Congress.

If the people of the Philippines and Poland live under democracy rather than tyranny, it is due in part to STEVE SOLARZ's tireless efforts to oust dictatorships and fan the winds of freedom in these countries.

If Israel enjoys relative safety and security, it is due in part to the many years that STEVE SOLARZ has spent spearheading American efforts to provide the Jewish State with critical military and economic assistance.

And if the world is a safer place today because Saddam Hussein is not armed with nuclear weapons, it is due in large part to STEVE SOLARZ's courageous and passionate sponsorship of last year's resolution authorizing the President to use force in the Persian Gulf.

STEVE's accomplishments in the arena of foreign affairs are well known, even legendary. But I don't want to leave the impression that he ignored the needs of his constituents in Brooklyn—for he did not.

STEVE and I worked closely on a number of projects of enormous importance to Brooklyn's neighborhoods. From preserving the historic Coney Island and Brighton Beaches, to marshalling Federal resources to aid emerging small businesses in Boro Park, to bringing hundreds of ship repair jobs to Brooklyn's working waterfront, STEVE SOLARZ has always been there when the people of his district needed him the most.

As many of you know, the New York State redistricting process was very unkind to STEVE SOLARZ. With his district sliced up into six pieces, STEVE decide to not run in a bitter race against any of his incumbent colleagues, and instead chose the newly created 12th District, which was created so that the Latino community could elect someone of their choice. I don't think this is the time or place to discuss the Voting Rights Act and its application to New York City, but suffice it to say that I was saddened by the outcome of STEVE's race. The people of the 12th District would have been well served by STEVEN, and all of us from New York will suffer in his absence.

I know I speak for my colleagues in the Senate, on both sides of the aisle, when I tell STEVE SOLARZ that his contributions to the Congress and the country will not soon be forgotten, and when I wish him all the best in his future endeavors.●

INDIAN AGRICULTURAL RESOURCES MANAGEMENT ACT

● Mr. INOUYE. Mr. President, I rise today in reference to S. 2977, a bill to establish a program within the Bureau of Indian Affairs, to improve the management of rangelands and farmlands and the production of agricultural resources on Indian lands, as passed by the Senate on the evening of October 2, 1992.

Mr. President, the Senate Select Committee on Indian Affairs has worked with various Indian interest groups over the past 3 years and have continued to work with these groups until the final hour of the passage of this bill by the Senate Friday evening, October 2, 1992. Recognition is especially deserved for the intertribal Agriculture Council [IAC], a nationally based Indian organization whose membership includes over 55 tribes with significant agricultural interests. Throughout the development of this legislation, the Intertribal Agriculture Council kept its membership, and indeed all of Indian country, informed of the legislation through open forums, direct mail-outs, newsletters, and presentations scheduled during meetings of the National Congress of American Indians and other national Indian organization meetings.

Mr. President, S. 2977 is a necessary means to an end for Indian people in terms of providing grass-roots economic development on Indian reservations—food on the table and money in the pocket. History tells us that without the Indians' knowledge of the land and agriculture, the early settlers never would have made it through those first winters, whether they were in Massachusetts or Virginia. It was Indian agriculture that fed General Washington's soldiers at Valley Forge. It was the bounty of the New World that provided and continues to provide the peoples of the Earth with a vast array of produce not known until European contact was established with the American Indian some 500 years ago.

The results of this contact have not been kind to the American Indian. It has been estimated that through communicable diseases alone the Indian population in the New World was diminished by 90 percent. In the early 19th century, this Nation adopted a policy of uprooting the Indians from their homelands and removing them westward—west of the Mississippi River—where they would remain unmolested by the influx of European immigrants. But the lands they occupied were too tempting—too necessary for the westward expansion of this Nation—and a policy of establishment of reservations quickly followed.

The ceding of Indian lands for the use and development of the non-Indian immigrants was carried out by the Government of the United States through the negotiation of treaties. Nearly 400 treaties with Indian nations were formally ratified by the U.S. Senate. Nearly 400 more such treaties were negotiated by the Executive Branch of the Government, but were never submitted to the Senate for ratification.

Mr. President, out of this treaty process, the Indians reserved to themselves the lands we know of today as Indian reservations. Statutes and legal opinions have been written describing this process as setting aside the public lands of the United States for the benefit of the Indians. While the origin of title is a fine legal distinction, no matter which view of the issue is taken, it is out of this treaty process that the trust responsibility for Indian lands and resources arises. No matter which view is ascribed to, no one would question that the reservations were established for the purpose of establishing Indian homelands—lands upon which the Indian people could reside, develop and maintain a viable economy to enable them to be self-sustaining. Our failure in meeting this purpose is well known in the Congress and by the public at large.

This is what the trust responsibility is all about. And this is what S. 2977, the Indian Agricultural Resources Management Act of 1992 is all about. It is an effort to provide the resources, training and wherewithal necessary to vitalize the Indian agricultural economy so that the 33,000 Indian families now attempting to support themselves through agricultural endeavors can be self-sustaining; so that countless thousands of individual Indian land owners can derive a reasonable return from their lands; and so the governments of the Indian tribes which derive a substantial portion of their income from tribal lands can obtain reasonable returns from leases to aid in their operations.

MR. PRESIDENT, on Monday morning, October 5, 1992, 3 days after the Senate passed S. 2977 by unanimous consent, I received a letter from The Hon. W. Lee Rawls, Assistant Attorney General of the United States, expressing the strong opposition of the Department of Justice to this bill. The definition of the trust responsibility of the United States to the American Indians as described in this letter is shocking.

These standards can briefly be summarized as follows:

First, The Federal Government has no general trust obligation to use its funds to make improvements upon or develop Indian lands or resources—Cases cited.

Second, There is no general fiduciary duty to make Indian reservation lands productive of income—Case cited.

Third, Little weight is to be given to comparison of resources or efforts devoted to management or development of comparable programs for management or development of Federally owned lands. One reason for this, as apparently given by one court, is because Indians are a people of varying culture—Case cited.

Fourth, the Federal Government is held to an arbitrary, capricious, abuse of discretion standard of care in the management of Indian lands—Case cited.

Mr. President, this last statement is, very simply, a misrepresentation of the court decision in the *Mitchell* case. The full phrase from which the Justice Department quote was taken is described in a Library of Congress report on the Federal trust responsibility as follows:

> The Court applied what it termed to be the normal standard of fiduciary obligations for government trustees, "were their actions in good faith and within the realm of their acceptable discretion, or were they arbitrary, capricious, an abuse of discretion, or contrary to law." (CRS Report 89-379 A at page 14, citing *U.S.* v. *Mitchell*, 664 F.2d 265, 274.)

I have not taken the time to look up each of the cases cited in the Justice Department letter. But I must advise the Congress that the standard asserted with apparent approval in the fourth paragraph does an injustice to the court, the Congress and the Executive Branch.

It is within this correspondence and its interpretation of the trust responsibility, that we, as members of the Congress, must take issue. We cannot allow ourselves to be persuaded by an obvious and patent misrepresentation of the law. We cannot allow standards such as these to dictate our legislative efforts on behalf of the American Indians.

Mr. President, we need to continue to educate ourselves within the Federal Government. This fact will hit home, as it did me, once you review the statements duly signed within the correspondence received from the Department of Justice. It reflects the paternalism of the past that supported keeping American Indians as dependent wards of the Government.

The Justice Department's comments lead one to believe that the Government has no responsibility to assist our First Americans in regaining any place within American society. Perhaps the Justice Department should visit with American Indians on reservations and learn from first-hand experience rather than through history books.

Mr. President, the Select Committee on Indian Affairs will revisit this legislation to establish the Indian Agricultural Resources Management Act in the 103d Congress. In order for this bill to receive wide circulation, I am requesting consent to include in the RECORD, a copy of the letter of October 5, 1992, from Assistant Attorney General Rawls to me expressing the intent of the Department of Justice to recommend a veto of S. 2977, and a copy of a letter from Vice Chairman McCain and myself to Assistant Attorney General Rawls expressing our views.

I ask that this correspondence be printed at the conclusion of these remarks. I also ask that a copy of S. 2977, as it was passed by the Senate on October 2, 1992, also be printed in full immediately following this correspondence.

The material follows:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, October 5, 1992.

Hon. DANIEL K. INOUYE
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This provides the views of the Department of Justice on S. 2977, the "Indian Agricultural Resources Management Act of 1992." In addition to the concerns raised in the Department of the Interior's report, we have concerns about the bill's potential to cause litigation, especially as it relates to the United States' trust responsibility. The Department of Justice joins the Department of the Interior in strongly opposing this bill.

Notwithstanding the disclaimer in section 503 to the effect that S. 2977 shall not be construed to diminish or expand the trust responsibility of the United States, the thrust of S. 2977 is to expand the Secretary of the Interior's trust management responsibilities with respect to Indian rangelands and farmlands. Indeed, section 101(a)(4) of S. 2977 states: "Existing Federal laws do not sufficiently assure the adequate and necessary trust management of Indian rangelands and farmlands." In our opinion, S. 2977, if enacted, will serve to generate a substantial amount of breach of trust litigation.

Perhaps the most significant finding is contained in section 101(a)(5) which states:

"The Federal investment in, and the management of Indian rangelands and farmlands is significantly below the level of investment in, and management of, rangelands and farmlands under the administration of the Bureau of Lands Management, Bureau of Reclamation, the National Forest Service, and private landowners."

This finding must be read together with section 102(5), which states that one purpose of S. 2977 is to:

"Provide for the development and management of Indian rangelands and farmlands at a level commensurate with the level of development and management afforded to federally owned or controlled lands."

This latter provision is significant for two reasons. First, the federal government has no general trust obligation to use its funds to make improvements upon or develop Indian lands or resources. *Gila River Pima-Maricopa Indian Community* v. *United States*, 231 Ct. Cl. 193, 212–213, 684 F.2d 852, 863–864 (1982); *White Mountain Apache Tribe of Arizona* v. *United States*, 11 Cl. Ct. 614, 650 (1987). Second, section 102(5) imposes a different standard of care upon the United States as trustee than that developed by case law. In the context of timber resource management, for example, it has been held that the defendant is obligated to manage Indian timber resources "* * * prudently in a manner consistent with the economic, social and technological constraints of the times and circumstances". *Navajo Tribe* v. *United States*, 9 Cl. Ct. 336, 367 (1986), appeal dism'd (Fed. Cir. Jan. 13, 1987).[1] In *Navajo*, the Claims Court ruled that in assessing the adequacy of defendant's management of the Navajo forest, "little weight" was to be given to the Navajo Tribe's comparison of the National Forest Service's contemporaneous management of Southwest National Forests with the Bureau of Indian Affairs' management of the Navajo commercial forest (9 Cl. Ct.) at 372, n. 23. In large part, this was because the Forest Service was not required to deal with "peoples of varying cultures" in the implementation of its forest management plans. In sum, such a novel standard of care probably will serve to generate litigation addressing the issue of whether such a standard should be applied by the courts to the government's management of other types of Indian natural resources.

We also note that the definition of "agricultural resource" in section 103(1) encompasses "all the benefits derived from agricultural land and enterprises * * *" This definition is very sweeping. Similarly, the term "agricultural product" is very broadly defined. Such broad definitions not only complicate the Secretary's management burdens, but potentially may conflict with, or even be diametrically opposed to, the standard of care imposed by the bill. Again, this is because a comparative analysis with management of comparable lands owned or managed by the federal government (see section 203(b)(2)) does not take into account the need for Interior to manage Indian farmlands and rangelands in such a way as to preserve uses tied to cultural or religious values (see section 103(2)(B) and 3(D)). Thus, these broad definitions will undoubtedly give rise to breach of trust litigation.

Section 103(4) defines the term "land management activity" very sweepingly. This section imposes very significant management burdens on the Secretary, including the provision of educational and technical assistance. Again, such burdens will inevitably breed litigation.

Section 202 represents a radical departure from existing law by requiring the Secretary to comply with "* * * tribal laws pertaining to Indian agricultural lands, including laws regulating the environment or historic or cultural preservation", and requires the Secretary to "* * * cooperate with the enforcement of such laws on Indian agricultural lands * * *." Cooperation includes "appearance in tribal forums." In general, in the absence of specific congressional sanction, federal officials are not subject to the jurisdiction of tribal courts. E.g., *United States* v. *White Mountain Apache Tribe*, 784 F.2d 917, 921 (9th Cir. 1984); *United States* v. *Yakima Tribal Court of Yakima Indian Nation*, 794 F.2d 1402, 1407–1408 (9th Cir. 1986; but see *United States* v. *Plainbull*, 957 F.2d 724 (9th Cir. 1992). Section 202 may well be construed as effecting a waiver of the federal government's sovereign immunity. In addition, it may be construed as authorizing tribal courts to review actions of the Secretary. These concerns would be dealt with by adding a new subsection (c) to section 202 which would read as follows:

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[1] We also note that the Court of Claims has stated that the federal government is held to an "arbitrary, capricious, abuse of discretion" standard of care. *Mitchell* v. *United States*, 229 Ct. Cl. 1, 16, 664 F.2D 265, 275 (1981), aff'd, 463 U.S. 206 (1983).

"(c) This section does not constitute a waiver of the sovereign immunity of the United States. Moreover, this section does not authorize tribal courts to review actions of the Secretary.

Section 204 relates to leasing of Indian rangelands and farmlands. We note that section 204(1) does not require that the Secretary obtain (or even attempt to obtain) the consent of any or all of the heirs who own a given tract of land before the Secretary leases or permits it. This provision may give rise to potential Fifth Amendment takings claims. Moreover, under section 204(3) a tribal government may determine how long the renewal period of a lease or permit can be. Such authorized tribal control over the management of lands belonging to individual Indians may also generate claims of constitutional takings. Cf. *United Nuclear Corporation* v. *17 Cl. Ct. 768 (1989)*, rev'd and remanded, 912 F.2d 1432 (Fed. Cir. 1990) (Secretary of Interior's refusal to approve mining plan submitted by lessee mining company without approval of Navajo Tribe held to constitute Fifth Amendment taking of mining company's leasehold interest).

It would seem that in developing regulations to implement the act (section 501), the Secretary of the Interior should, to the maximum extent possible, incorporate the provisions of 25 C.F.R. Parts 162 and 166 (relating to leasing, permitting and grazing on Indian lands) so that management of the leasing of Indian lands is not subject to two sets of potentially conflicting regulations.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

W. Lee Rawls,
Assistant Attorney General.

U.S. Senate,
Select Committee on Indian Affairs,
Washington, DC, October 6, 1992.

Hon. W. Lee Rawls,
Assistant Attorney General, Office of Legislative Affairs—DOJ 1601
U.S. Department of Justice, Washington, DC.

Dear General Rawls: Thank you for your letter of Monday, October 5, 1992, advising us of the concerns of the Department of Justice with respect to S. 2977, the "Indian Agricultural Resources Management Act of 1992". Unfortunately, your letter was received too late in the legislative process for the Committee to respond. The bill, with the amendment offered by Senator McCain, passed the Senate late Friday evening, October 2, 1992. With the veto threat hanging over the bill, it was not possible to obtain floor time in the House before adjournment.

Your letter first cites as an issue of concern the language in Section 101(a)(4) of the Findings that: "Existing Federal laws do not sufficiently assure the adequate and necessary trust management of Indian rangelands and farmlands." No attempt is made to refute or deny this finding. There is simply an assertion that this language "will serve to generate a substantial amount of breach of trust litigation." We must say that the analysis of the trust responsibility that is set forth in the Department's letter would appear to conclusively prove the accuracy of this finding. But, in addition, this is simply a "finding". The provision in Section 503 would appear to address the fear of the Department with respect to litigation flowing from this Act based on the trust responsibility. That Section provides in full as follows:

"SEC. 503. Nothing in this Act shall be construed to diminish or expand the trust responsibility of the United States toward Indian trust lands or natural resources, or any legal obligation or remedy resulting therefrom."

Most important, however, is the fact that the concern of the Department on this issue was never brought to the Committee's attention. The Department never corresponded with the Committee on this point, and it was not addressed in the statement of the Department of the Interior which was cleared by the OMB for presentation. While we do not believe it would have been necessary, had the issue been brought to our attention, it might easily have been resolved.

The second concern could not so easily have been resolved. This concern also addresses the Findings provisions. This involves the Finding in Section 101(a)(5) that:

"The Federal investment in, and the management of Indian rangelands and farmlands is significantly below the level of investment in, and management of, rangelands and farmlands under the administration of the Bureau of Lands Management, Bureau of Reclamation, the National Forest Service, and private landowners."

The Justice Department reads this finding together with Section 102(5), which states that one of the purposes of S. 2977 is to:

"Provide for the development and management of Indian rangelands and farmlands at a level commensurate with the level of development and management afforded to federally owned or controlled lands."

One of the purposes of the bill is indeed to increase the resources available to the Indian rangeland and farmland programs. Reference to the level of resources made available to the development and management of comparable Federally owned and managed resources seems to be a reasonable goal and provides an objective criteria for guidance in the formulation of policies regarding Indian agricultural lands.

But again, most importantly, this concern was never brought to the attention of the Committee or the Congress. There was no reference to this concern in the testimony of the Department of the Interior.

Of greatest concern is the analysis of the "trust responsibility" that immediately follows. Presumably these standards are cited because the Justice Department finds them to be an acceptable definition of the trust. These "standards" can briefly be summarized as follows:

1. The Federal government has no general trust obligation to use its funds to make improvements upon or develop Indian lands or resources—Cases cited.

2. There is no general fiduciary duty to make Indian reservation lands productive of income.—Case cited.

3. "Little weight" is to be given to comparision of resources or efforts devoted to management or development of comparable programs for management or development of Federally owned lands. One reason for this, as apparently given by the court, is because Indians are a "people of varying culture"—Case cited.

4. The Federal government is held to an "arbitrary, capricious, abuse of discretion" standard of care or management of Indian lands—Case cited.

The only positive note in this litany of case law recital is the reference to *Navajo Tribe* v. *U.S.*—citation omitted—which, in reference to tribal timber resources, found the Government to be obligated to manage Indian timber resources "* * * prudently in a manner consistent with the economic, social and technological constraints of the times and circumstances." We frankly are at somewhat of a loss to understand just what this means. We would think that if we had included such language in S. 2977, the Department would have had concerns about the vagueness and uncertainty of the meaning of the terms. As a standard to be achieved by the legislation it most certainly leaves much to be desired, and very frankly would be unacceptable.

The next area of concern involves Section 202(b) which describes certain authorities of tribal governments that shall be recognized. Two elements of concern are expressed. The Department describes as a "radical departure from existing law" the notion that the Secretary of the Interior, in his administration of rangeland and farmland programs, should comply with or adhere to "* * * tribal laws pertaining to agricultural land, including laws regulating the environment or historic or cultural preservation". First we would note that the President has signed into law a number of recent Acts of the Congress which clearly establish the rights of tribal governments to regulate various environmental matters within their respective reservations. Second, even in a case that is generally condemned by the Indian people, *Brendale* v. *Confederated Tribes of the Yakima Nation*—citation omitted—the Supreme Court recognized the inherent right of Indian tribal governments to adopt and enact zoning and land use laws over lands within their jurisdiction.

If there is any "radical departure" that is relevant to this section, it is the notion that the Secretary of the Interior, in his management of Indian trust lands, is not bound by tribal zoning or land use laws. It would indeed be a strained construction of the law to accept the proposition that within the limits of their jurisdiction, the tribal governments can regulate the use of lands owned by non-Indians and/or held in fee patent status, but they cannot regulate the use or development or individual Indian trust lands. If the Secretary has not previously recognized such tribal authority, then certainly the provisions of this section are much needed.

The second area of concern expressed with respect to Section 202(b) is that the bill directs the Secretary to cooperate in the enforcement of such laws, including upon request "appearance in tribal forums". In our view, this is an extremely reasonable provision. Certainly one would not argue that a Bureau of Indian Affairs police officer could witness an offense and cite a person into court on a criminal charge, but could then refuse with impunity to appear in court to provide testimony or assist in the enforcement of the law. In this case the bill would require Departmental employees to appear in tribal court to provide testimony or otherwise assist in the enforcement of laws regarding trespass actions, violations of lease requirements, non-compliance with conservation requirements, and other matters.

The Department argues that this provision might be construed as effecting a waiver of the Federal Government's sovereign immunity. To the extent this issue raises a concern, the amendment proposed by the Department would have been acceptable if it had been received on time. However, we frankly do not believe this is a problem, since waivers of immunity must usually be expressly stated and nothing in this section even remotely suggests such a waiver.

The final area of concern identified by the Department of Justice involves Section 204 of the bill. This section relates to the leasing of lands that are held by individual Indians in trust allotted or restricted fee patent status. Numerous concerns are raised with respect to this section of the amended bill.

First, the letter cites Section 204(b)(3), as passed by the Senate, and asserts:

"* * * that the new version of Section 204 does not require that either an Indian tribe or the Secretary obtain (or even attempt to obtain) the consent of any or all of the heirs who own a given tract of land before the Secretary leases or permits it."

This assertion is simply incorrect. First, Section 204(b) does not vest any authority in an Indian tribe to lease individually-owned land. The authority to enter into leases remains with the Secretary. It does vest in the tribes the authority to adopt a resolution that would modify or waive the "notice" requirements of the existing Code of Federal Regulations—but this authority applies only to highly fractionated heirship lands (one such allotment is known to have over 550 individual ownership interests), and additionally applies only if the tribal resolution provides an alternative means of notification. Such alternative means, such as posting of property or publication of notice in newspapers of local circulation, are commonly recognized in the laws of the United States and the states, and have generally been found to meet the test of "due process".

It is also stated that Section 204(b) authorizes tribal control over the management of lands belonging to individual Indians. This statement, too, is simply incorrect. The responsibility for leasing or permitting continues to be vested in the Secretary. The section does, however, authorize tribes to adopt resolutions that would provide a "preference" for Indian farmers or ranchers in the leasing or permitting of Indian allotments. But the section also provides that the owners of a 50 percent interest in an allotment may opt to exempt their allotment from the application of such a preference. In addition, there is a requirement that the land owner or owners receive "fair market value" for their lands. This eliminates any question of a Fifth Amendment taking.

Finally, it is stated that subsection (c)(2) of Section 204 authorizes the owners of a majority interest in any trust or restricted land to enter into an agricultural lease which is binding on the owners of the minority interest in such land without the consent of the latter, and that this too raises a Fifth Amendment taking issue. This section was added to address the contention of the Bureau of Indian Affairs that Section 204 of the bill, as it was introduced, would deprive individual owners of their right to negotiate their own leases. While we did not agree with that interpretation, we added the new subsection (c)(2) to make clear that nothing in the Section was intended to deprive individual owners of their existing right to negotiate their own leases.

It does not appear that there are any specific provisions in existing law that define the degree of ownership interest that is necessary to effectuate a binding lease on a parcel of trust land. The Bureau of Indian Affairs, as a matter of administrative practice, has for many years granted leases when the owners of 60 percent of the ownership interest have executed a lease. Section 204(c) would recognize such authority in the individual owners, but decreases the ownership interest that must consent to 51 percent.

In order to assure protection to the owners of a minority interest in the property, the authority vested in the majority owners to lease their property under Section 204(c) requires that the owners of the minority interest receive fair market value for their interest. This requirement should avoid any Fifth Amendment taking issue.

Finally, we would note that the provisions of Section 204 are designed to facilitate the leasing of Indian trust lands and obtain a fair market value return for the individual owners. Some modification of current BIA practices and procedures appears to be necessary to bring a reasonable return on their land holdings to many Indian allottees.

Recently, in Oklahoma, the BIA adopted the position that it will not grant a lease of allotted or restricted land without the consent of 100 percent of the ownership interests. As a consequence, some 60,000 acres of trust or restricted land in the State lie idle, earning nothing for their owners. Nationwide, some 1.1 million acres of trust lands lie idle. It is difficult to argue that some streamlining of this process that would enable lands to be leased would constitute a Fifth Amendment taking, but when the land lies idle the United States somehow or other is deemed to be meeting its trust responsibility.

With this response and analysis to guide you, we would hope the Department would reconsider its position on this legislation in the next Congress.

Sincerely,

JOHN MCCAIN,
Vice Chairman.
DANIEL K. INOUYE,
Chairman.

S. 2977

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Indian Agricultural Resources Management Act of 1992".

(b) TABLE OF CONTENTS.—

TITLE I—GENERAL PROVISIONS

Sec. 101. Findings.
Sec. 102. Purposes.
Sec. 103. Definitions.

TITLE II—RANGELAND AND FARMLAND ENHANCEMENT

Sec. 201. Management of Indian rangelands and farmlands.
Sec. 202. Indian participation in land management activities.
Sec. 203. Comparative analysis of Indian rangeland and farmland management programs.
Sec. 204. Leasing of Indian rangelands and farmlands.

TITLE III—EDUCATION IN AGRICULTURE AND NATURAL RESOURCE MANAGEMENT

Sec. 301. Establishment of Indian and Alaska Native agriculture and natural resources management education assistance program.
Sec. 302. Postgraduation recruitment, education and training programs.
Sec. 303. Cooperative agreement between the Department of the Interior and Indian tribes.
Sec. 304. Obligated service; breach of contract.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

Sec. 401. Authorizations.

TITLE V—MISCELLANEOUS

Sec. 501. Regulations.
Sec. 502. Severability.
Sec. 503. Trust responsibility.
Sec. 504. Miscellaneous.

TITLE I—GENERAL PROVISIONS

SEC. 101. FINDINGS.

(a) FINDINGS.—The Congress finds and declares that—

(1) Indian rangelands and farmlands are renewable and manageable natural resources that are among the most valuable Indian assets and are vital to the economic and social welfare of individual Indians and Indian tribes.

(2) Increased development and intensive management of Indian rangelands and farmlands will produce increased economic returns, enhance Indian self-determination, promote employment opportunities, and improve the social and economic well-being of Indian and surrounding communities.

(3) The United States has a trust responsibility to protect, conserve and enhance Indian rangelands and farmlands consistent with its fiduciary obligation and its unique relationship with Indian tribes and extends to all Federal agencies.

(4) Existing Federal laws do not sufficiently assure the adequate and necessary trust management of Indian rangelands and farmlands.

(5) The Federal investment in, and the management of Indian rangelands and farmlands is significantly below the level of investment in, and management of, rangelands and farmlands under the administration of the Bureau of Lands Management, Bureau of Reclamation, the National Forest Service, and private landowners.

(6) The beneficial use of Indian rangelands and farmlands by Indians is in serious decline throughout Indian country.

(7) Despite the Federal policy of Indian self-determination, Federal laws and policies have limited the authority and ability of tribal governments and Indian communities to develop land-based programs on the basis of local priorities.

SEC. 102. PURPOSES.

The purposes of this Act are to:

(1) Promote and increase and enable the opportunities for Indian use of their own resources so as to use Indian natural and human resources to achieve tribal goals, to decrease idle or underutilized land, reverse the damaging long-term losses in productivity and land values, and increase local employment opportunities, community income, and social stability.

(2) Safeguard the investments made in Indian rangelands and farmlands and agricultural enterprises and provide adequate, sta-

ble, and secure authority for the protection, conservation, utilization, and enhancement of Indian rangeland and farmland resources.

(3) Support and improve tribal self-determination by authorizing and facilitating the active tribal participation in the management decisionmaking processes on the allocation and use of local natural resources.

(4) Improve Indian access to Federal agriculture, rural development and related programs which are available to the American society at large through the various departments of the Federal Government.

(5) Provide for the development and management of Indian rangelands and farmlands at a level at least commensurate with the level of development and management afforded to federally owned or controlled lands.

(6) Meet the trust responsibility of the United States and promote self-determination of Indian tribes by managing Indian rangelands and farmlands and related renewable resources in a manner consistent with identified tribal goals and priorities, and nationally adopted multiple use and sustained yield principles.

(7) Increase the educational and training opportunities available to Indian people and communities in the practical, technical and professional aspects of agriculture, natural resources, and land management to improve local expertise and technical abilities and create a cadre of professional Indian agriculture resource managers who can provide leadership to the tribal, Federal and private sectors on Indian land and resource management issues.

SEC. 103. DEFINITIONS.

For the purposes of this Act:

(1) The term "agricultural land" means Indian land, excluding Indian forest land, that is used for the production of agricultural products, and lands occupied by industries that support the agricultural community, regardless of whether a formal inspection and land classification has been taken.

(2) The term "agricultural resource" means—

(A) all the primary means of production, including the land, soil, water, air, plant communities, watersheds, climate, human resources, natural physical attributes and man-made developments which together comprise the agricultural community; and

(B) all the benefits derived from agricultural land and enterprises, including cultivated and gathered food products, fibers, horticultural products, dyes, cultural or religious condiments, medicines, water, cultivated fisheries, wildlife, recreation, aesthetic and other traditional values of agriculture and rangelands.

(3) The term "agricultural product" means—

(A) crops grown under cultivated conditions whether used for personal consumption, subsistence, or sold for commercial benefit;

(B) domestic livestock including cattle, sheep, goats, horses, buffalo, swine, Alaska reindeer, fowl, cultivated fish, or other animals specifically raised and utilized for food, fiber, or as a beast of burden;

(C) forage, hay, fodder, feed grains, crop residues and other items grown or harvested for the feeding and care of livestock, sold for commercial profit, or used for other purposes;

(D) naturally occurring noncultivated plants and animals gathered for commercial sale, personal use, cultural or religious activities or for other purposes such as use in teas, medicines, as herbs or spices, for decoration, or for traditional purposes; and

(E) other marketable or traditionally used materials authorized for removal from agricultural lands.

(4) The term "land management activity" means all activities, accomplished in support of the management of Indian agricultural land, including but not limited to—

(A) preparation of inventories and management plans;

(B) agricultural land and infrastructure development, and the application of accepted soil or range management techniques to improve or restore the productive capacity of the land;

(C) protection against agricultural pests, including development, implementation, and evaluation of integrated pest management programs to control noxious weeds, undesirable vegetation, vertebrate or invertebrate agricultural pests;

(D) administration and supervision of agricultural leasing and permitting activities, including determination of proper land use and proper stocking rates of livestock, appraisal, advertisement, negotiation, contract preparation, collecting, recording, and distributing lease rental receipts;

(E) technical assistance to individuals and tribes engaged in agricultural production or agribusiness; and

(F) educational assistance in agriculture, natural resources, land management and related fields of study including direct assistance to community, tribal and land grant colleges in developing and implementing curriculum for vocational, technical and professional course work.

(5) The term "farmland" means Indian land, excluding Indian forest land, that is used for production of food, feed, fiber, forage and oil seed crops, or other agricultural products, and may be either dryland or irrigated.

(6) The term "rangeland" means Indian land, excluding Indian forest land, on which the native vegetation is predominantly grasses, grass-like plants, forbs or shrubs suitable for grazing or browsing use, and includes lands revegetated naturally or artificially to provide a forage cover that is managed like native vegetation. Rangelands include natural grasslands, savannahs, shrublands, most deserts, tundra, alpine communities, coastal marshes and wet meadows.

(7) The term "forest land" means Indian forest land as defined in section 304(3) of Public Law 101-630.

(8) The term "Indian" means a Native American or Alaska Native who is a member of an Indian tribe, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(9) The term "Indian tribe" means any Indian tribe, band, nation, rancheria, pueblo, or other organized dependent Indian group or community, including any Alaska Native village or regional or village corporation as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(10) The term "Indian land" means land that is—

(A) held in trust by the United States for an Indian or Indian tribe;

(B) owned by an Indian or Indian tribe and is subject to restrictions against alienation; or

(C) dependent Indian communities.

(11) The term "landowner" means the Indian or Indian tribe that—

(A) owns such land, or

(B) is the beneficiary of the trust under which such land is held by the United States.

(12) The term "Secretary" means the Secretary of the Interior, except where otherwise specifically designated.

(13) The term "Indian enterprise" means an enterprise—

(A) which—

(i) is engaged in construction (within the meaning of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)), and is entirely owned by Indians, or Indian tribes, that receive 100 percent of the profits of the enterprise; and

(ii) is engaged in any business other than construction and at least 51 percent of the enterprise is owned by Indians, or Indian tribes, that receive not less than 51 percent of the profits of the enterprise; or

(B) which—

(i) is entirely owned by an Indian tribe; or

(ii) has an Indian owner who—

(I) acts as the chief executive officer of the enterprise; and

(II) has the experience and training to manage, and does in fact manage, day-to-day activities of the enterprise.

TITLE II—RANGELAND AND FARMLAND ENHANCEMENT

SEC. 201. MANAGEMENT OF INDIAN RANGELANDS AND FARMLANDS.

(a) MANAGEMENT ACTIVITIES.—The Secretary shall manage or administer the Indian rangeland and farmland programs authorized under existing law, either directly or through cooperative agreements, self-determination contracts, compacts and grants under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.), or such other legal mechanisms as are appropriate.

(b) MANAGEMENT OBJECTIVES.—Indian rangeland and farmland management activities shall be designed to achieve the following objectives—

(1) to protect, conserve, utilize, and enhance rangelands and farmlands in a perpetually productive state through the application of sound agronomic and economic principles to the planning, development, inventorying, classification, and management of agricultural resources;

(2) to increase production and expand the diversity and availability of agricultural products for subsistence, income, and employment of Indians and Alaska Natives, through the development of agricultural resources;

(3) to manage agricultural resources to protect and enhance other values such as wildlife, fisheries, cultural resources, recreation, and regulate water runoff and minimize soil erosion;

(4) to enable farmers and ranchers to maximize the potential benefits available to them through their land by providing technical assistance, training and education in conservation practices, management and economics of agribusiness, sources and use of credit, marketing of agricultural products, and other applicable subject areas;

(5) to develop Indian rangelands and farmlands and associated value-added industries of Indians and Indian tribes to promote self-sustaining communities, and so that Indians may receive from their trust lands not only lease value, but also the benefit of the labor and profit that such land is capable of producing; and

(6) to assist trust and restricted landowners in leasing their farmland and rangeland for a reasonable annual return, consistent with prudent management and conservation practices, and community goals as ex-

pressed in the tribal management plans and appropriate tribal ordinances.

(c) MANAGEMENT PLANS.—To achieve the objectives set forth in subsections (a) and (b), the Secretary, with full and active consultation with, and policy direction from, the tribe or tribes to be served and consistent with his trust responsibility, shall immediately embark on a reservation-by-reservation agricultural land resource management planning program encompassing or reflecting the following:

(1) A closed-term three-year effort conducted at the local tribe and agency level working through the governments of the tribes and in public meetings to determine and document the specific agriculture and land resource goals and desires of the local tribe and community.

(2) The defined goals as the basis in creating a ten-year agriculture program and land management plans to attain the goals defined for community lands and reservations by using public meetings, existing surveys, reports, local knowledge of the land and resources available from Federal agencies, tribal community colleges, and land grant institutions.

(3) A mechanism for assuring that the result of this three-year program will be specific, documented agriculture and land management programs, created and approved by the effected tribe or tribes, which address specific community concerns for land use and development. The individual reservation or tribal agricultural management planning documents will provide the direction to the Bureau of Indian Affairs and the tribes in the management and administration of the Indian owned agricultural trust resources. These program documents will also provide the basis for the application of Indian self-determination contracting of Agriculture and Natural Resource Programs under the Indian Self-Determination and Education Assistance Act.

(4) The contract and grant provisions of the Indian Self-Determination and Education Assistance Act shall be applicable to the development of these management plans.

SEC. 202. INDIAN PARTICIPATION IN LAND MANAGEMENT ACTIVITIES.

(a) TRIBAL RECOGNITION.—The Secretary shall recognize tribal governments as the governmental entities with the authority to enact and enforce, for lands under their jurisdiction, land use planning, zoning, and other land use ordinances and shall conduct all land management activities in accordance with tribal goals and objectives as set forth in the land management plans and tribal laws and ordinances.

(b) TRIBAL LAWS.—Unless otherwise prohibited by Federal law, the Secretary shall comply with tribal laws pertaining to Indian agricultural lands, including zoning and land use laws, and laws regulating the environment or historic or cultural preservation, and shall cooperate with the enforcement of such laws on Indian agricultural lands. Such cooperation shall include—

(1) assistance in the enforcement of such laws;

(2) provision of notice of such laws to persons or entities undertaking activities on Indian agricultural lands; and

(3) upon request of an Indian tribe, an appearance in tribal forums.

(c) WAIVER OF REGULATIONS.—In any case in which a regulation or administrative policy of the Department of the Interior conflicts with or impedes—

(1) meeting the objectives of the management plan provided for in section 201; or

(2) conflicts with a tribal law,

the Secretary shall waive the application of such regulation or administrative policy unless such waiver would constitute a violation of a Federal statute or judicial decision, or would conflict with his general trust responsibility under Federal law.

SEC. 203. COMPARATIVE ANALYSIS OF INDIAN RANGELAND AND FARMLAND MANAGEMENT PROGRAMS.

(a) COMPARATIVE ANALYSIS.—Within 90 days after the date of enactment of this Act, the Secretary shall assemble a Task Force consisting of appropriate officials of Indian tribal governments, the Bureau of Indian Affairs, the Bureau of Land Management, the United States Park Service, the Inter-Tribal Agriculture Council, the Southwest Inter-Tribal Agriculture Council, and such other nongovernmental persons or entities as the Secretary may deem appropriate to develop a comparative analysis of Federal investment and management efforts for Indian agricultural trust lands as compared to federally owned lands managed by other Federal agencies or instrumentalities. The Secretary shall request the Secretary of Agriculture to make available on a nonreimbursable basis appropriate personnel from the Department of Agriculture to assist in the development of such analysis.

(b) PURPOSES.—The purposes of the comparative analysis and the Survey Instrument shall be—

(1) to establish a comprehensive assessment of the needs for management improvement, funding, and development needs for each reservation with Indian rangeland and farmland;

(2) to establish a comparison of management and funding provided to comparable lands owned or managed by the Federal Government through Federal agencies other than the Bureau of Indian Affairs;

(3) to identify and to recommend mitigation measures for any obstacles to Indian access to Federal or private programs relating to agriculture or related rural development programs available to the American public at large; and

(4) to provide guidance in the development of the management plans required under the provisions of section 201 of this Act.

(c) IMPLEMENTATION.—Within six months from the date of enactment of this Act, the Secretary shall provide the Committee on Interior and Insular Affairs of the House of Representatives and the Select Committee on Indian Affairs of the Senate with a status report on the development of the comparative analysis required by this section, and shall file a final report with the Congress not more than nine months from the date of enactment of this Act.

SEC. 204. LEASING OF INDIAN RANGELANDS AND FARMLANDS.

(a) AUTHORITY OF THE SECRETARY.—The Secretary—

(1) is authorized to approve any agricultural lease or permit with a tenure up to ten years, or a tenure longer than ten years but not to exceed 25 years unless authorized by other Federal law, when, in the opinion of the Secretary, such lease or permit requires substantial investment in development of the lands and/or crops by the lessee and such longer tenure is determined by the Secretary to be in the best interest of the landowners;

(2) is authorized to lease or permit agricultural lands at rates less than the Federal appraisal when such action would be in the best interest of the landowner, and in such instances, when such land has been satisfactorily advertised for lease, the highest responsible bid shall be accepted; and

(3) is authorized to waive or modify the requirement that a lessee post a surety or performance bond on agricultural leases and permits issued by the Secretary.

(b) AUTHORITY OF THE TRIBE.—When authorized by an appropriate tribal resolution establishing a general policy for leasing of Indian agricultural lands, the Secretary—

(1) shall provide a preference to Indian operators in the issuance and renewal of agriculture leases and permits, so long as the lessor receives fair market value for his property;

(2) shall waive or modify the requirement that a lessee post a surety or performance bond on agricultural leases and permits issued by the Secretary, provided that nothing in this paragraph shall be construed to restrict the discretion currently vested in the Secretary to waive or modify the bond requirements in the absence of a tribal resolution to the contrary; and

(3) when such tribal resolution sets forth a tribal definition of what constitutes "highly fractionated undivided heirship lands" and adopts an alternative plan for providing notice to owners, the Secretary is authorized to waive or modify the general notice provisions and negotiate and lease or permit such highly fractionated undivided interest heirship lands in order to prevent waste, reduce idle land acreage and ensure income.

(c) RIGHTS OF INDIVIDUAL LAND OWNERS.—(1) Nothing in this section shall be construed as limiting or altering the authority or right of an individual allotee in the use of his or her own land or to enter into an agricultural lease of the surface interest of his or her allotment under any other provision of law.

(2) The owners of a majority interest in any trust or restricted land (meaning an interest greater than 50 percent of the legal or beneficial title) are authorized to enter into an agricultural lease of the surface interest of a trust or restricted allotment, and such lease shall be binding upon the owners of the minority interests in such land, provided that the terms of the lease provide such minority interests with not less than fair market value for such land.

(3) The provisions of subsection (b) shall not be applicable to any parcel of trust or restricted land if the owners of 50 percent of the legal or beneficial interest in such land file with the Secretary a written objection to the application of all or any part of such tribal rules to the leasing of such parcel of land.

TITLE III—EDUCATION IN AGRICULTURE AND NATURAL RESOURCE MANAGEMENT

SEC. 301. ESTABLISHMENT OF INDIAN AND ALASKA NATIVE AGRICULTURE AND NATURAL RESOURCES MANAGEMENT EDUCATION ASSISTANCE PROGRAM.

(a) NATURAL RESOURCES INTERN PROGRAM.—(1) Notwithstanding the provisions of title 5 of the United States Code governing appointments in the competitive service, the Secretary shall establish and maintain in the Bureau of Indian Affairs or other appropriate office or bureau within the Department of the Interior at least 20 natural resources intern positions in addition to the forestry intern positions authorized in section 314(a) of Public Law 101-630 for Indian and Alaska Native students enrolled in an agriculture or natural resources study program.

(2) For purposes of this subsection, the term—

(A) "natural resources intern" means an Indian or Alaska Native who—

(i) is attending an approved postsecondary school in a full-time agriculture or natural resource related field; and

(ii) is appointed to one of the natural resources intern positions established under paragraph (1);

(B) "natural resources intern program" means positions established pursuant to paragraph (1) for natural resources interns; and

(C) "agriculture or natural resources study program" includes, but is not limited to, agricultural engineering, agricultural economics, animal husbandry, animal science, biological sciences, fishery management, geographic information systems, horticulture, range management, soil science, veterinary science, and wildlife biology.

(3) The Secretary shall pay, by reimbursement or otherwise, all costs for tuition, books, fees and living expenses incurred by a natural resources intern while attending an approved postsecondary or graduate school in a full-time natural resources study program.

(4) A natural resources intern shall be required to enter into an obligated service agreement to serve as an employee in a professional natural resources position with the Department of the Interior or other Federal agency, an Indian tribe, or a tribal natural resource related enterprise for one year for each year of education for which the Secretary pays the intern's educational costs under paragraph (3) of this subsection.

(5) A natural resources intern shall be required to report for service with the Bureau of Indian Affairs or other bureau or agency sponsoring his internship, or to a designated work site, during any break in attendance at school of more than three weeks duration. Time spent in such service shall be counted toward satisfaction of the intern's obligated service agreement under paragraph (4).

(b) COOPERATIVE EDUCATION PROGRAM.—(1) The Secretary shall maintain, through the Bureau of Indian Affairs, a cooperative education program for the purpose, among other things, of recruiting Indian and Alaska Native students who are enrolled in secondary schools, tribally controlled community colleges, and other postsecondary or graduate schools, for employment in professional natural resource related positions with the Bureau of Indian Affairs or other Federal agency providing Indian natural resource related services, Indian tribal governments, or tribal natural resource related enterprises.

(2) The cooperative educational program under paragraph (1) shall be modeled after, and shall have essentially the same features as, the program in effect on the date of enactment of this Act pursuant to chapter 308 of the Federal Personnel Manual of the Office of Personnel Management.

(3) The cooperative educational program shall include, among others, the following:

(A) The Secretary shall continue the established specific programs in agriculture and natural resources education at Southwestern Indian Polytechnic Institute (SIPI) and at Haskell Indian Junior College.

(B) The Secretary shall develop and maintain a cooperative program with the tribally controlled community colleges to coordinate course requirements, texts, and provide direct technical assistance so that a significant portion of the college credits in both the Haskell and SIPI programs can be met through local program work at participating community colleges.

(C) Working through tribally controlled community colleges and in cooperation with land grant institutions, the Secretary shall implement an informational and educational program to provide practical training and assistance in creating or maintaining a successful agricultural enterprise, assessing sources of commercial credit, developing markets and other subjects of interest to the rural community.

(D) Working through tribally controlled community colleges and in cooperation with land grant institutions, the Secretary shall implement research activities to improve the basis for determining appropriate management measures to apply to Indian resource management.

(4) Under the cooperative agreement program under paragraph (1), the Secretary shall pay all costs for tuition, books, and fees of an Indian or Alaska Native student who—

(A) is enrolled in a course of study at an education institution with which the Secretary has entered into a cooperative agreement; and

(B) is interested in a career with the Bureau of Indian Affairs, an Indian tribe or a tribal enterprise in the management of Indian rangelands, farmlands, or other natural resource assets.

(5) Financial need shall not be a requirement to receive assistance under the cooperative agreement program that is to be maintained under this subsection.

(6) A recipient of assistance under the cooperative education program under this subsection shall be required to enter into an obligated service agreement with the Secretary to serve as a professional in a natural resource related activity with the Bureau of Indian Affairs, or other Federal agency providing natural resource related services to Indians or Indian tribes, an Indian tribe, or a tribal natural resource related enterprise, for one year for each year for which the Secretary pays the recipients educational costs pursuant to paragraph (3).

(c) SCHOLARSHIP PROGRAM.—(1) The Secretary is authorized to grant scholarships to Indians and Alaska Natives enrolled in accredited natural resource related programs for postsecondary and graduate programs of study as full-time students.

(2) A recipient of a scholarship under paragraph (1) shall be required to enter into an obligated service agreement with the Secretary in which the recipient agrees to accept employment for one year for each year the recipient received a scholarship, following completion of the recipient's course of study, with—

(A) the Bureau of Indian Affairs or other agency of the Federal Government providing natural resource related services to Indians or Indian tribes;

(B) a natural resource program conducted under a contract, grant, or cooperative agreement entered into under the Indian Self-Determination and Education Assistance Act;

(C) an Indian enterprise engaged in a natural resource related business; or

(D) an Indian tribe's natural resource related program.

(3) The Secretary shall not deny scholarship assistance under this subsection solely on the basis of an applicant's scholastic achievement if the applicant has been admitted to and remains in good standing in an accredited postsecondary or graduate institution.

(d) EDUCATIONAL OUTREACH.—The Secretary shall conduct, through the Bureau of Indian Affairs, and in consultation with other appropriate local, State and Federal agencies, and in consultation and coordination with Indian tribes, a natural resource education outreach program for Indian and Alaska Native youth to explain and stimulate interest in all aspects of management and careers in Indian natural resources.

(e) ADEQUACY OF PROGRAMS.—The Secretary shall administer the programs described in this section until a sufficient number of Indians and Alaska Natives are trained to ensure that there is an adequate number of qualified, professional Indian natural resource managers to manage the Bureau of Indian Affairs natural resource programs and programs maintained by or for Indian tribes.

SEC. 302. POSTGRADUATION RECRUITMENT, EDUCATION AND TRAINING PROGRAMS.

(a) ASSUMPTION OF LOANS.—The Secretary shall establish and maintain a program to attract Indian and Alaska Native professional natural resource technicians who are graduates of a course of postsecondary or graduate education for employment in either the Bureau of Indian Affairs natural resource programs or, subject to the approval of the tribe, in tribal natural resource programs. According to such regulations as the Secretary may prescribe, such program shall provide for the employment of Indian and Alaska Native professional natural resource technicians in exchange for the Secretary's assumption of the employee's outstanding student loans. The period of employment shall be determined by the amount of the loan that is assumed.

(b) POSTGRADUATE INTERGOVERNMENTAL INTERNSHIPS.—For the purposes of training, skill development and orientation of Indian, Alaska Native, and Federal natural resource management personnel, and the enhancement of tribal and Bureau of Indian Affairs natural resource programs, the Secretary shall establish and actively conduct a program for the cooperative internship of Federal, Indian and Alaska Native natural resource personnel. Such program shall—

(1) for agencies within the Department of the Interior—

(A) provide for the internship of Bureau of Indian Affairs, Alaska Native, and Indian natural resource employees in the natural resource related programs of other agencies of the Department of the Interior; and

(B) provide for the internship of natural resource personnel from the other Department of the Interior agencies within the Bureau of Indian Affairs, and, with the consent of the tribe, within tribal natural resource programs;

(2) for agencies not within the Department of the Interior, provide, pursuant to an interagency agreement, internships within the Bureau of Indian Affairs and, with the consent of the tribe, within a tribal natural resource program of other natural resource personnel of such agencies who are above their sixth year of Federal service;

(3) provide for the continuation of salary and benefits for participating Federal employees by their originating agency;

(4) provide for salaries and benefits of participating Indian and Alaska Native natural resource employees by the host agency; and

(5) provide for a bonus pay incentive at the conclusion of the internship for any participant.

(c) CONTINUING EDUCATION AND TRAINING.—The Secretary shall maintain a program within the Trust Services Division of the Bureau of Indian Affairs for the ongoing education and training of Bureau of Indian Affairs, Alaska Native, and Indian natural resource personnel. Such program shall provide for—

(1) orientation training for Bureau of Indian Affairs natural resource personnel in tribal-Federal relations and responsibilities;

(2) continuing technical natural resource education for Bureau of Indian Affairs, Alaska Native, and Indian natural resource personnel; and

(3) development training of Indian and Alaska Native personnel in natural resource based enterprises and marketing.

SEC. 303. COOPERATIVE AGREEMENT BETWEEN THE DEPARTMENT OF THE INTERIOR AND INDIAN TRIBES.

(a) COOPERATIVE AGREEMENTS.—

(1) To facilitate the administration of the programs and activities of the Department of the Interior, the Secretary is authorized to negotiate and enter into cooperative agreements with Indian tribes to—

(A) engage in cooperative manpower and job training;

(B) develop and publish cooperative environmental education and natural resource planning materials; and

(C) perform land and facility improvements, and other activities related to land and natural resource management and development.

The Secretary may enter into such agreements when the Secretary determines the interest of Indians and Indian tribes will be benefited.

(2) In such cooperative agreements, the Secretary is authorized to advance or reimburse funds to contractors from any appropriated funds available for similar kinds of work or by furnishing or sharing materials, supplies, facilities or equipment without regard to the provisions of section 3324, title 31, United States Code, relating to the advance of public moneys.

(b) SUPERVISION.—In any agreement authorized by this section, Indian tribes and their employees may perform cooperative work under the supervision of the Department of the Interior in emergencies or otherwise as mutually agreed to, but shall not be deemed to be Federal employees other than for the purposes of section 2671 through 2680 of title 28, United States Code, and section 8101 through 8193 of title 5, United States Code.

(c) SAVINGS CLAUSE.—Nothing in this Act shall be construed to limit the authority of the Secretary to enter into cooperative agreements otherwise authorized by law.

SEC. 304. OBLIGATED SERVICE; BREACH OF CONTRACT.

(a) OBLIGATED SERVICE.—Where an individual enters into an agreement for obligated service in return for financial assistance under any provision of this title, the Secretary shall adopt such regulations as are necessary to provide for the offer of employment to the recipient of such assistance as required by such provision. Where an offer of employment is not reasonably made, the regulations shall provide that such service shall no longer be required.

(b) BREACH OF CONTRACT; REPAYMENT.—Where an individual fails to accept a reasonable offer of employment in fulfillment of such obligated service or unreasonably terminates or fails to perform the duties of such employment, the Secretary shall require a repayment of the financial assistance provided, pro rated for the amount of time of obligated service that was performed, together with interest on such amount which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS

SEC. 401. AUTHORIZATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

TITLE V—MISCELLANEOUS

SEC. 501. REGULATIONS.

Except as otherwise provided by this Act, the Secretary is directed to promulgate final regulations for the implementation of this Act within eighteen months from the date of enactment of this Act. All regulations promulgated pursuant to this Act shall be developed by the Secretary with the participation of the affected Indian tribes.

SEC. 502. SEVERABILITY.

If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision or circumstance and the remainder of this Act shall not be affected thereby.

SEC. 503. TRUST RESPONSIBILITY.

Nothing in this Act shall be construed to diminish or expand the trust responsibility of the United States toward Indian trust lands or natural resources, or any legal obligation or remedy resulting therefrom.

SEC. 504. MISCELLANEOUS.

(a) DISCLAIMER.—Nothing in this Act shall be construed to supersede or limit the authority of other Federal, State or local agencies otherwise authorized by law to provide services to Indian landowners.

(b) DISCLAIMER.—Nothing in this Act shall be construed as vesting the governing body of an Indian tribe with any authority which is not authorized by the constitution and bylaws or other organizational document of such tribe.•

CURTIS HAND CENTER

• Mr. SARBANES. Mr. President, I want to thank the distinguished chairman, Senator INOUYE, and the other conferees on the fiscal 1993 Defense appropriations for including language on the Curtis Hand Center at Union Memorial Hospital.

Following World War II, Union Memorial Hospital in Baltimore began developing a hand surgery division under the guidance of Dr. Raymond Curtis, a major in the Army Medical Corps. In 1975 the hospital formally established the Raymond M. Curtis Hand Center which includes a surgical unit, a microsurgical laboratory, and a rehabilitation unit.

Mr. President, the center's relationship with the Army Medical Corps has continued through the years. I understand that Union Memorial has trained every Army hand surgeon since World War II without any cost to the Department of Defense. The commitment to providing this important service has continued under the current leadership of the center.

While the programs and reputation of the Curtis Center have continued to grow, the available space has not. Mr. President, I am hopeful that, based on this report language, the Department of Defense will review its longstanding relationship with the Curtis Hand Center to determine if it is appropriate to provide Federal funding for its expansion efforts.•

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

• Mr. SANFORD. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee received a request for a determination under rule 35 for Paul Donovan, a member of the staff of Senator KENNEDY, to participate in the European Community Visitors Program in Belgium, France, and Ireland, sponsored by the European Parliament—Commission of the European Communities, from November 14–28, 1992.

The committee has determined that participation by Mr. Donovan in this program, at the expense of the European Parliament—Commission, is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Andrew S. Morton, a member of the staff of Senator LUGAR, to participate in a program in Germany, sponsored by Haus Rissen, International Institute for Politics and Economics, from August 11–19, 1992.

The committee determined that participation by Mr. Morton in this program, at the expense of Haus Rissen, was in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Mark Ashby, a member of the staff of Senator BREAUX, to participate in a program in Chile, sponsored by the Chilean American Chamber of Commerce, from August 30–September 3, 1992.

The committee has determined that participation by Mr. Ashby in this program, at the expense of the Chilean American Chamber of Commerce, is in the interest of the Senate and the United States.•

HONORING LUBAVITCHER REBBE MENACHEM MENDEL SCHNEERSON

• Mr. D'AMATO. Mr. President, as we celebrate the holiday of Yom Kippur and its hopeful symbolism for renewal, I am reminded that a recent evening in Washington celebrated the birthday and National Education Day honoring Lubavitcher Rebbe Menachem Mendel Schneerson of Brooklyn, NY.

I was honored by the invitation to represent the Senate by offering remarks on that occasion; first, because the Grande Rebbe resides in New York and second, because-a-world-wide confederation of Lubavitcher had convened for that dinner.

The principle address that night was given by Elie Wiesel, in a modulated and humble tone which bespoke the reverence and regard he has for the zeal and mission which the Grande Rebbe has exemplified for so many decades in so many lands.

Mr. President, I want to share those remarks with our colleagues and, through the pages of our RECORD, with the audience of the world.

The remarks follow:

ELIE WIESEL

My good friend and associate, Ron Perelman, distinguished members of the Senate including Senator D'Amato and Senator Moynihan, and members of the House, all the Shluchim of Chabad, friends of Lubavitch: It is for me a very special moment to be with you and together celebrate the Rebbe.

Why is it so special? First of all because it is the Rebbe, second because it is of you. If I were to be able to collect all the passions, all the affection and admiration that are in this room for the Rebbe, I think I would be lifted to the 7th Heaven and be able to bring the prayer of Tfilo L'Moishe that you just recited, to Hakodesh Boruch Hu Himself. The fact that you are so close to a man who has done so much speaks well of him and speaks well of you.

Some of you know of my admiration, not only for the Rebbe, but also for his work in the field of education. The fact that he knew whom to send where, to G–d forsaken places, simply to bring a word of faith and the word of the Law to youngsters who otherwise would have been lost, is to me probably one of the elements that give hope to a generation.

I imagine, Rabbi Avramel Shemtov, you asked me to give the toast to the Rebbe because you know how fond I am of him. You know that I am not a Hassid of Lubavitch, I still am a Hassid of Wizsnitz, but you also know how I feel about the Rebbe.

Second, you know I am a Hassid, and being a Hassid, I cannot not tell you a Hassidic story tonight, since we are coming closer to Shabbat HaGodol, the sabbath before Passover.

The story is about a Hassidic master call Reb Naftoli of Ropshitz; he was a great speaker with a great sense of humor. One Shabbot HaGodol, the great Shabbos before Passover, he came home from the synagogue. Customarily, the Rabbi of the town must make a speech of that Sabbath about the mitzvah of charity to help poor people who did not have money to celebrate the Seder, to prepare the Passover meal.

So he spoke and spoke: when he came home and his wife asked him: "Nu, how was it?"—which means that the Rebbetzin did not go to Shul that week. He answered it was okay. "Well, did you do anything?" "Did you accomplish anything, she asked?". He said "Only half." She said "What do you mean?" He said, "I managed to convince the poor to receive".

The Rebbe manages to convince the rich to give and the teachers to teach, and the students to study. The Rebbe manages to do things that normal human beings wouldn't even dare to dream of undertaking.

But what is it about this extraordinary teacher, extraordinary master, that makes his *greatness* so special, so unique? Was he elected? Again, we may surprise you, my friends, who are not from Lubavitch, and are not from the Jewish faith. In the Jewish tradition, greatness is not acquired by election. Moses wasn't elected. Had Moses had to have run for election, he would have failed. Moses was a poor speaker, and he was always angry. No, not a good candidate.

All the other leaders that we had, no one was really elected. The election came from above. A kind of democracy, a new age democracy. Someone who feels on his or her shoulders the weight of centuries, the weight of a tradition of morality: that person is a leader and that person is great. And the Rebbe, who is a scion, going back to the Old Rebbe, the Alter Rebbe, Reb Schneur Zalman of Liadi, going back the Besht, going back to King David; that greatness, therefore, has a very special dimension.

How does one measure greatness? I mean, what criteria does one use in evaluating human greatness? In the case of the Lubavitcher Reebe Shlita, the answer is easily obtained. All one has to do is to see the impact he has already left and will continue to leave for many, many years, on the surface of the soul of the people who had the privilege of meeting him, of listening to his words and receiving the Blessing of his prayers and his teachings. I know of no one who has left Rebbe, even for a moment, without being deeply affected, if not changed, by their encounter. I hope I will always be able to remember what I felt when I was first introduced into this study, some thirty years ago, and what we said to one another.

It lasted a very long time, and I came back again and again. But I know that moment, the first moment, was a privilege, a very privileged one, and it remains as such in my memory. I recall every question and every answer on both sides. Time in his presence began running at a different pace. In his presence you feel inspired, you feel self-examined, you are made to wonder about the quest for meaning which ought to be yours. In his presence you come closer in touch with your inner center of gravity.

But what is great about the Rebbe is that not only those who met him are affected, but even those who didn't. Somehow the presence of the man in our midst sends out an emanation, an emanation of mystical quality that touches people who have never heard of him, and this, probably more than anything else, is what makes the Rebbe so unique.

Simple stories are sometimes related but ours have common roots in and therefore a common link to the Rebbe and his teachings. What is true of the individual also applies to the community.

It is due to his influence, to his presence, that Jewish awareness and Jewish education have reached unprecedented heights on almost every continent. Is there a place under the sun that the Chabad emissaries have not carried his work of tolerance rooted in Ahavas Yisroel, in the love for Israel, which really, by extension, means love for humanity? From Australia to Morocco, from Persia to Nepal to Nebraska; from Triblisi to Utal to Tokyo to Alaska to Connecticut. Wherever Jews dwell and work, they somehow become exposed to the Lubavitcher Rebbe.

Thanks to him, a Jew, anywhere and everywhere, cannot but feel that he or she belongs to an ancient people whose tradition emphasizes the greatness of its task more than the prerogatives of its condition. thanks to the Rebbe, a Jew becomes a better Jew, thus a better human being, thus making fellow human beings more human, more hospitable, open to a greater sense of generosity. So this is where the Rebb's greatness also lies.

Tolerance as a way leading to authenticity. I can be a good Jew if I do so wish, and if I wish to be a better Jew, it's the human being in me who is Jewish, who wants to be a better human being. And if I am a good Jew, a Christian will be a better Christian. It is my responsibility, therefore, not only for myself, but for our surroundings. It is that lesson of humility which carries its own weight of responsibility that we receive from the Rebbe.

Now some of use were lucky and we were at his farbrengen, we have heard his lessons, we have joined him in study, in song. We have seen him with his disciples, we have witnessed his accomplishments. And therefore, Ron and I feel, with a deep sense of devotion, affection and admiration, that we should lift our glasses to say 'Le Chaim' to this generation's Admor, whose life and work have been a Blessing to so many of us, indeed to all of Israel and the world.

So, to the Rebbe in Brooklyn, what could we say except, we are your disciples, we are your followers because like you, and with you, we believe in study, we believe in prayer. We believe in prayer as a link between one human being and the other. We believe in study as a link between one generation and the other. And we believe in an added measure of solidarity that should always be present in whatever we do for ourselves, for our people, and for each other.

When we are with the Rebbe we lift a small cup and we say: LeChaim, and the Rebbe answers: LeChaim. Let us imagine, therefore that we are tonight at 770 Eastern Parkway, and we see the Rebbe, and as you heard tonight he needs us. And therefore we say with more vigor and with more fervor: LeChaim Rebbe!•

A TESTIMONIAL TO MARTY RUSSO

• Mr. SIMON. Mr. President. I am glad to join my friends of Local Lodge 2600 of the International Association of Machinist and Aerospace Workers in honoring my colleague, Representative MARTY RUSSO, for his many years of public service. I am certain that he is greatly appreciative of the plaque that was given to him that reads:

> Presented to Congressman Marty Russo for 18 years of dedication to public service, his inspiring leadership, his unwavering humanity, and his ever present voice of social conscience and justice. For fighting the formidable fight against: politics without principle; pleasure without conscience; wealth without work; knowledge without character; business without morality; science without humanity; and worship without sacrifice; presented on behalf of the members of Local Lodge 2600 of the International Association of Machinist and Aerospace Workers in heartfelt appreciation of your leadership that this country so desperately needs.

It has been a pleasure and I consider it an honor to have worked with MARTY for the past years. He and I came into the House of Representatives in 1975 and have served together for the past 18 years. We have worked on a number of initiatives together for Illinois and the Nation. We in Congress will miss his commitment, his leadership, and his humor.•

A TIME TO HEAL: ANGOLA AFTER THE ELECTIONS

• Mr. DeCONCINI. Mr. President, last week I spoke on this floor—on the occasion of its first democratic elections—about the significant changes occurring in Angola. In that statement, I chronicled the three goals of United States policy toward Angola—ceasefire, free and fair elections, and national reconciliation—and promised to more fully explore the final goal in a later statement. It is for that reason that I rise to speak today.

By most accounts of international observers, the elections which were held on September 29 and 30 for President and the national assembly appear to have been remarkably free and fair. Understandably, some problems occurred with the balloting, but these were problems associated with the difficult logistics, not because of fraud or intimidation on the part of any of the parties.

With achievement of the ceasefire of May 31, 1991, the groundwork was laid for the next stage in Angola's evolution toward democracy. A multiparty system, featuring systematic free and fair elections, has been established and tested. However, it is still too early to determine whether the people of Angola have initiated a true democratic system that will continue to expand and prosper. What is certain, is that the country has begun to take the necessary steps forward, and I applaud the Angolan people for their patience and diligence in this effort.

The final step for the Angolan people now is to ensure there is a recommitment—on behalf of all parties—to national reconciliation. All Angolans need to put the past behind them and enter into a new era characterized by a commitment to cooperation. There has been too much bloodshed; too many lives have been lost; and too much progress has been made to allow partisan political divisions within Angola to inhibit the democratization process.

Jonas Savimbi's comments over the weekend, combined with the UNITA military's decision to suspend its participation in the newly formed national army, are unhelpful at best, and potentially destabilizing at worst. Even the most veiled threats of returning to the military option can be explosive and counterproductive at this sensitive time. Dr. Savimbi has strongly protested the early election returns in both a public forum and to the National Electoral Council [NEC]. Any charges of electoral irregularities, however, should be brought to the attention of the U.N. observers and the NEC—along with the evidence to substantiate the allegations—as provided for in the electoral law.

Reports coming out of Angola suggest that, on balance, the elections have been free and fair. No major violations have been recorded by the 800 international observers present in-country over the past several weeks. In particular, the Washington-based International Foundation for Electoral Systems [IFESS] sent 39 delegates to 8 provinces to observe the election process. Not one person has publicly reported a major violation of Angolan electoral law. Of course, this is not to say that there were no improprieties. However, to quote one of the delegates, "It would have been very difficult, almost impossible, for there to have been any massive fraud [in the Angolan elections]."

It is troubling to this Senator to imagine that Angola might again be plunged into war after coming so far down the road to peace. That is not what was envisioned as national reconciliation. True national reconciliation means the binding of wounds and working together to rebuild a war-torn nation. It also means accepting the will of the people. If the people have spoken and voted in favor of one party or person over another, it is the responsibility of the other parties to the contest to gracefully accede to the decision of the electorate, strengthen their own party, and plan to fight—at the polling place—another day.

Mr. President, I will reiterate what I stated last week, and remind Dr. Savimbi and others who would question the outcome elections, that the United States and other countries are as tired of the conflict within Angola as the people of Angola themselves. The international community will not tolerate any actions that might threaten democracy in Angola. In our rapidly changing world, we can no longer afford to promote movements that seek governmental change through military means. We will certainly not support the activities of any group that is stalling a country's progress toward democratization after the people have spoken in a free, democratic election.

I urge those at the highest levels of the Angolan parties—especially the MPLA and UNITA—to consider the opportunity which has been placed before them. The final step in Angola's democratic evolution is within reach. If Angola is to obtain development, trade, and investment assistance from the rest of the world, as well as embark on a path to prosperity and growth, it must abandon the hostility of the past and embrace the concept of national reconciliation.

The final results of the elections have yet to be announced. Perhaps there will have to be a runoff between the two highest vote getters. Regardless of the outcome, however, the winners and losers must remember that they are all Angolans and that they share a common destiny.

Mr. President, in conclusion I applaud the leadership of the Senator from Kansas, Mrs. KASSEBAUM, for introducing the resolution on the Angolan elections. I would bring to the attention of my colleagues the final clause which urges the leadership of a new, free, peaceful Angola to embrace the concept of national reconciliation so that Angola can continue on its path toward prosperity. •

SCHOOL HEALTH SERVICES

• Mr. DURENBERGER. Mr. President, I rise today to express my support for comprehensive health care services in schools. One vehicle for supporting these programs is the Maternal and Child Health Block Grant, which is the only Federal program targeted specifically at mothers and children. This program is especially helpful to uninsured, underinsured, and Medicaid-insured families in rural and inner-city areas. The grant program provides funds to States to develop programs to improve the health of children, using a variety of approaches that allow for differences within and between each State.

Since the 1930's, this program has provided resources to support basic school health programs in most States, including health education, access to health services in schools, and to ensure a safe and healthy environment. Reaching children in school is critical to their ability to learn and to provide access to health education and primary and preventive health services. There is growing evidence that communities are enthusiastic about making health and social services available in schools.

Mr. BENTSEN. Mr. President, I share the Senator's concern about providing access to health care services to our children in schools. The distinguished Senator from Minnesota and I were instrumental in establishing the current Maternal and Child Health Block Grant in the early 1980's, providing important flexibility to States to design effective programs targeted to women and children.

Mr. DURENBERGER. Mr. President, I hope that the distinguished chairman of the Finance Committee will work with me next year to design an effective program that meets the needs of States and communities attempting to establish comprehensive school health programs. My goal is to encourage communities to design school health programs that can become self-sufficient through collection of third-party payments, including Medicaid. In addition, I would like to encourage the development of managed-care programs that can serve children in schools.

Mr. BENTSEN. Mr. President, I applaud the intentions of my distinguished colleague from Minnesota to help communities ensure greater access to health care through their schools. I look forward to hearing his ideas about how to do so and hope that we can work together to meet this important objective.●

CONDUCT OF PROCEEDINGS FOR THE SELECTION OF OFFICERS FOR PROMOTION IN THE U.S. AIR FORCE

● Mr. NUNN. Mr. President, I have filed a report by the Armed Services Committee on the conduct of proceedings for the selection of officers for promotion in the U.S. Air Force. the report documents serious systemic deficiencies in the procedures used in the past by the Air Force to select officers for promotion. These failures included:

First, failure to issue implementing regulations required by applicable statutes and Department of Defense directives to ensure the fair operation of the selection board process;

Second, use of a preselection process that improperly excluded 90 percent or more of eligible officers from consideration by statutory selection boards;

Third, improper communication to selection boards of priority lists prepared by senior officers; and

Fourth, improper communications between the Air Force leadership and selection board members.

Mr. President, as a result of the committee's oversight in this area, Congress enacted legislation reforming the promotion selection process in section 504 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190). On February 4, 1992, the Department of Defense revised DOD Directive 1320.12, "Defense Officer Promotion Program," to incorporate the changes required by law.

Every military officer should know that the committee will continue to oversee the integrity of the central feature of the officer promotion system—the impartial use of selection boards to recommend officers for promotion—to ensure this is preserved. I insert a copy of the report in the RECORD at the conclusion of my remarks.

Mr. President, I want to also include a joint statement by myself and Senator WARNER on the action taken by the Armed Services Committee on the nomination of Maj. Gen. Thomas J. Hickey, U.S. Air Force, retired, be included in the RECORD following the report.

The material follows:

REPORT ON THE CONDUCT OF PROCEEDINGS FOR THE SELECTION OF OFFICERS FOR PROMOTION IN THE U.S.AIR FORCE

(Mr. Nunn, from the Committee on Armed Services, submitted the following report:)

The selection of officers for promotion in the armed forces through the grade of major general and rear admiral is governed by statutory procedures. The central feature of these procedures is the use of impartial boards of officers, known as selection boards, to recommend officers for promotion. The composition and conduct of these boards is carefully guided by laws and regulations designed to ensure the fairness and impartiality of board proceedings. The range of actions that may be taken by the senior leadership before, during, and after the board proceedings is likewise circumscribed to preclude improper interference with the integrity of the selection process.

The fair and impartial conduct of the selection process is a matter of great concern to the Committee. The integrity of the selection process is essential to the integrity of the officer corps. Adherence to established laws and regulations is necessary to ensure that the best qualified officers are selected for promotion, and that the officer corps has confidence in the integrity of the selection process.

During the Committee's review of certain Air Force nominations during the 101st Congress, the Committee received information which indicated the possibility of serious and systemic deficiencies in the procedures used by the Air Force to recommend officers for selection to general officer positions. The Committee brought these matters to the attention of the Department of Defense. The Deputy Secretary of Defense ordered an examination of officer selection procedures throughout the Department of Defense. The results of that review were provided to the Committee, and considered during Committee proceedings in 1991 on November 19, 20, 21, 25, and 26. A staff report (Sen. Print 102–54) was issued on November 26, 1991. The Committee considered the issues raised by the DoD report and staff report on October 6, 1992, and adopted this report.

The reviews by the Department of Defense and the Committee identified the following systemic deficiencies in the Air Force officer selection process:

(1) Failure to issue implementing regulations required by applicable statutes and Department of Defense Directives to ensure the fair operation of the selection board process.

(2) Use of a preselection process that improperly excluded ninety percent or more of the eligible officers from consideration by statutory selection boards.

(3) Improper communication to selection boards of "priority lists" prepared by senior officers.

(4) Improper communications between the Air Force leadership and selection board members.

In addition, these reviews identified deficiencies in specific cases that are described in this report.

Part I of this report sets forth the statutory and regulatory background of the current promotion selection process. Part II describes the events resulting in the Committee's inquiries and a review by the Department of Defense. Part III analyzes the deficiencies in Air Force procedures disclosed a review by the Department of Defense. Part II analyzes the deficiencies in Air Force procedures disclosed as a result of the Committee's inquiries and the Department's review.

I. STATUTORY AND REGULATORY BACKGOUND

The promotion selection process

The promotion of military officers through the grade of major general and rear admiral relies on a merit-based system, the centerpiece of which is the selection board process. The sole exception involves officers nominated under the President's power under Article II of the Constitution to make nonstatutory nominations, an authority that is rarely invoked.

Under current law, 10 U.S.C. 612, each selection board must consist of at least five officers, all of whom must be serving in a grade higher than the officers under consideration by the board. To ensure that the selection process is not dominated by a small group of officers, the law provides that "[n]o officer may be a member of two successive selection boards * * * for the consideration of officers of the same competitive category and grade." 10 U.S.C. 612(b). To emphasize the solemnity of the board's responsibilities, a statute requires that each member "swear that he will perform his duties as member of the board without prejudice or partiality and having in view both the special fitness of officers and the efficiency of his armed force." 10 U.S.C. 613.

To encourage candid discussions free from outside interference, the law prohibits disclosure of a board's deliberations "to any person not a member of the board," subject only to very limited exceptions. 10 U.S.C. 618(f).

The board must submit a written report, signed by each member, certifying that the board has "carefully considered the record of each officer" under consideration, and that those recommended by the board "are best qualified for promotion." 10 U.S.C. 617.

Prior to submission of the board's report to the President, it is reviewed by the Secretary of the Military Department concerned, the Chairman of the Joint Chiefs of Staff, and the Secretary of Defense. These individuals are not authorized to interfere with the legitimate exercise of discretion by the selection board or to make any changes in the recommendations of the board. The Service Secretary may return the report to the board for further consideration only if there has been a violation of law, regulations, or guidelines. Neither the Service Secretary, nor any other official who reviews the board's report, may add a name to, or delete a name from, the list recommended by the board. Only the President may remove a name from a list recommended by the board. 10 U.S.C. 618.

1987 investigation into improper communications with selection boards

In 1987, the Armed Services Committee conducted an inquiry into irregularities associated with the 1987 Marine Corps major general promotion list. One of the key problems arising out of the 1987 inquiry involved verbal communications by the Secretary of the Navy and the Commandant of the Marine Corps to the President of the selection board. The verbal communications resulted in two additional names being added to the board's original eight selections.

The Committee's report of the Marine Corps major general board (S. Exec. Rept. No. 3, 100th Cong., 1st Sess. (1987)) commented specifically on the relationship between oral communications and fairness of the selection process:

> The Committee observes that if an officer's selection is influenced by actions or oral communications of senior officials occurring outside the authorized selection board process, then other officers under consideration, who must rely on the authorized board process, may be denied a fair and equitable opportunity to be selected.

The report outlined the proper procedure for communicating information to a selection board:

> Opinions, in writing, by a Service Secretary or a Service Chief, with respect to

personnel under their authority, can be made part of an officer's military records jacket at any time prior to a board convening and then can be given such consideration and accorded such weight as individual board members desire. That procedure maintains the spirit of fairness and objectivity which is so essential to the promotion selection process.

The Committee emphasized the importance of following such established procedures when dealing with the views of senior officials:

The exceptional weight that can be attributed to a Secretary's (or Chief's) views requires equally exceptional care in the manner those views are conveyed to board members.

Corrective action directed by the Secretary of Defense in response to the 1987 investigation

In a letter to the Committee dated July 7, 1987, Secretary of Defense Weinberger assured the Committee that he had taken vigorous action to prevent recurrence of the problems associated with the Marine Corps major general board:

As regards the Service Secretaries and other senior officials, we have * * * acted to prevent the problems in this case recurring in the future. After receiving the General Counsel's report of inquiry, I directed prompt issuance of guidance for the military departments to prevent a recurrence of the unfortunate confluence of events which necessitated review of the board proceedings in this case. * * *

This guidance * * * fully and systematically addresses the confusion which complicated these board proceedings, by providing that, in the future:

Service Secretaries may not add authorizations to a promotion board after it convenes without my approval;

Service Secretaries and other persons must communicate their views regarding individual officers to a promotion board, if at all, in writing through means which will assure that their views are neither misrepresented nor misunderstood; and

Each board member has a right to relief from board service if he or she believes that any person has acted to limit the board's discretion, and a duty to report that matter to appropriate Service or DOD officials.

These provisions provide clear guidance for the future to prevent any circumstance in which the independence or integrity of a board proceeding could be questioned. * * *

As a result of the Secretary's action, an amendment to DOD Directive 1320.12 was issued on June 3, 1987 to ensure the integrity of the promotion process by regulating the flow of information to a selection board. A key feature of the amended directive was the requirement that: "[a]ll communications intended to express the views of the Service Secretary, the senior uniformed member of the Service concerned, or other superior authority to the members of a selection board shall be put *in writing, furnished to each member, and made a part of the board record.*" (emphasis added).

The Committee's report on the Marine Corps major general board took special note of the Secretary's action:

[T]he Secretary of Defense [has] directed that guidance, uniformly applicable to all three military departments, be promulgated by the Department of Defense to ensure that in the future all communications between a Service Secretary or senior uniformed officers and a selection board be *in writing, be furnished to all members of the board, and be made a part of the official record. . . . (emphasis added).*

On June 3, 1987, the Deputy Secretary of Defense issued revised guidance to the military departments concerning the officer selection process, which embodied the directions of the Secretary of Defense and incorporated additional safeguards against attempts to manipulate or interfere with promotion selection board procedures. * * *

The June 3, 1987 amendments to DOD Directive 1320.12 included the following changes to ensure the integrity of the promotion process by regulating the flow of information to a selection board.

—A requirement that the Service Secretary provide "written instructions to promotion selection boards."

—A limitation requiring that "[a]ll communications intended to express the views of the Service Secretary, the senior uniformed member of the Service concerned, or other superior authority to the members of a selection board shall be put in writing, furnished to each member, and made a part of the board record."

—A prohibition against providing favorable information or opinion regarding officers to be considered by the board except by means of a letter filed in the officer's official military records or a written communication provided to each member and made a part of the board record.

—A prohibition against furnishing unfavorable information "except as expressly authorized under regulations prescribed by the Secretary concerned."

The Directive was further amended on November 29, 1989 to include:

—Rules governing modification or withdrawal of instructions to a board.

—A restriction providing that "[c]ommunications regarding particular officers are expressly forbidden, unless unusual circumstances exist that would preclude an officer's performance from being documented in the official record (i.e., sensitive classified mission, etc.)".

—Procedures for receiving unsolicited favorable opinions.

—A requirement for guidelines relating to the needs of the service for particular skills.

These amendments did not relax any of the restrictions imposed in June 1987.

Both the 1987 and 1989 amendments to DOD Directive 1320.12 required the Military Departments to provide the Office of the Secretary of Defense with implementing instructions within 120 days.

II. BACKGROUND TO COMMITTEE'S REVIEW OF AIR FORCE PROMOTION SELECTION PRACTICES

Development of information indicating irregularities in Air Force selection board procedures

In 1990, during the Committee's review of certain Air Force nominations for promotion to brigadier general, the Committee received indications that adverse information concerning certain nominees, which was not part of the nominees' military records, had been provided to one member of the selection board. However, this adverse information had not been communicated in writing to all members of the selection board as required by the amendments to DOD Directive 1320.12 that had been directed by the Secretary of Defense in response to the 1987 investigation of the Marine Corps major general board.

On June 28, 1990, the Committee asked the Department of Defense to determine the manner in which the information was handled with respect to the 1990 Air Force brigadier general selection board in light of the requirements of DOD Directive 1320.12.

The Secretary of the Air Force responded for the Department of Defense on August 3, 1990. In response to the Committee's questions, the Secretary noted that certain adverse information relating to two nominees was provided to the President of the board but not to the other members of the board.

The Air Force response, and the Committee's review of applicable Air Force regulations, indicated that the Air Force had failed to implement both the 1987 and 1989 amendments to DOD Directive 1320.12. On September 28, 1990, the Committee asked the Secretary of Defense to review pending Air Force nominations to determine whether the nominees were selected in accordance with applicable DOD Directives, and to advise the Committee of the actions taken by the Air Force to implement DOD Directive 1320.12.

While the Committee's request was under consideration by the Department of Defense, the Committee discussed the Air Force promotion system with General Merril P. McPeak during review of his nomination to be Air Force Chief of Staff. In testimony before the Committee on October 24, 1990, General McPeak provided a candid, forthright assessment of deficiencies in the system. In addition to describing the failure to implement applicable rules restricting provision of information to selection boards, General McPeak noted the following additional deficiencies in Air Force procedures:

(1) A preselection process not authorized by Air Force regulations which reduced the number of candidates that would be considered by a general officer selection board through the elimination of about 90 percent of the eligible officers prior to convening of the centralized selection board.

(2) Improper briefings of the Secretary and the Chief of Staff of the preliminary decisions of selection boards prior to final action by the boards.

On October 25, 1990, the Committee brought these matters to the attention of the Secretary of Defense.

Review of the officer promotion process by the Assistant Secretary of Defense (Force Management and Personnel)

Deputy Secretary of Defense Atwood, by memorandum dated November 7, 1990, directed Christopher Jehn, the Assistant Secretary of Defense (Force Management and Personnel), "to review the officer promotion programs and promotion board procedures in each of the Military Departments." The Atwood memorandum stated that the purpose of the review was to determine whether existing regulations and procedures—

(1) are in compliance with statutory requirements,

(2) foster a climate of fair and equitable consideration of officers eligible for promotion, and

(3) ensure the independence and integrity of promotion boards.

The OSD review covered the 1987–90 time period, and focused on the fiscal year 1990 cycle of promotion boards. The review consisted of an examination of regulations and related documents, formal presentations by the Services, and interviews with randomly selected board members and support personnel. The review of the Air Force process, for example, included interviews of 10 officers. The purpose of the review was to identify systemic problems, and it was not designed to specifically address the validity of each board conducted within that period. Therefore, the deficiencies in Air Force procedures described in Part III of this report should be regarded as examples, and not as a comprehensive listing of all irregularities that may have occurred during that period.

On March 15, 1991, Deputy Secretary Atwood forwarded the results of the OSD review to the Committee. Additional material was provided to the Committee on April 25 by Assistant Secretary of Defense Jehn. The Committee submitted follow-up questions on May 20, and material was submitted to the Committee on June 19 by Assistant Secretary of Defense Jehn and on July 10 by Air Force Secretary Rice. References in this report to the "OSD Review" pertain to material contained in the March 15 letter from Deputy Secretary Atwood and the letters from Assistant Secretary Jehn dated April 25 and June 19, 1991.

III. ANALYSIS

Irregularities identified as a result of the Committee's inquiries concerning Air Force promotion practices

The information provided by the Department of Defense in response to the Committee's inquiries established that there were serious, significant deficiencies in Air Force promotion practices.

1. Failure to issue required implementing regulations

According to Deputy Secretary Atwood, the OSD review "revealed, in the case of general officer promotions, a failure on the part of the Air Force to ensure strict adherence to required procedures." The OSD review noted that "the lack of a governing Air Force regulation may account for an insufficient awareness of the various provisions of DOD [Directive] 1320.12 which contributed to irregularities, both real and perceived, in general officer promotions."

The failure of the Air Force to implement the regulation was not the result of an administrative oversight with respect to a routine matter. The Air Force actively participated in the development of the 1987 changes to the DOD Directive, and specifically objected to coverage by the regulation of general officer selection boards. The Air Force also proposed striking out the language which included "the senior uniformed member of the service concerned [and] other superior military authorit[ies]" in the requirement that all communications from the leadership in writing. The Air Force comments were not accepted by the Deputy Secretary of Defense when the 1987 changes were issued. After the amended Directive was issued, the Air Force: (1) failed to issue a regulation governing the conduct of general officer selection boards; (2) failed to incorporate the changes into the existing regulation governing field grade officer selection boards; and (3) failed to incorporate the limitations on communications into the Letters of Instructions provided to selection boards.

The failure of the Air Force to fully implement the DOD Directive persisted for years—even after the Committee brought the Directive to the attention of the Air Force on June 28, 1990.

As the Committee noted in its report on the National Defense Authorization Act of Fiscal Years 1992 and 1993 (S. Rept. 102-113):

> The failure of a Military Department to implement a DOD Directive on a timely basis is inexcusable in any case. When it involves a directive that the Secretary has issued to address problems of abuse in the promotion selection process, the failure is intolerable.

The failure to implement the Directive meant that the Air Force provided no guidance to the officer corps in general, or selection boards in particular, as to the strict prohibitions set forth in the amended DOD Directive.

2. Use of a preselection process to improperly exclude eligible officers from consideration by selection boards

When a selection board is convened, the board must consider each officer in and above the promotion zone for the grade and competitive category under consideration (10 U.S.C. 619(c)). There are a number of very limited exceptions, including authorization for the Service Secretary "by regulation" to "prescribe procedures to limit the officers to be considered * * * for promotion to the grade of brigadier general or rear admiral (lower half) * * * to those officers who are determined to be exceptionally well qualified for promotion * * *.

According to the OSD review, the Air Force employed a preselection process without issuing the statutorily required regulations. The Air Force routinely used such unauthorized preselection boards to exclude eligible officers from consideration without prescribing the required procedures.

The OSD review determined that "[t]hese screening boards normally eliminated from consideration by the statutory board approximately 90 percent of those officers who would otherwise have been eligible for consideration by the statutory board."

The OSD review noted that "[n]o formal means were to advise eligibles of the brigadier general pre-screening process." The effect was that thousands of officers who reasonably could have believed that their nonselection for promotion resulted from the decision of a statutory selection board had, in fact, been eliminated from consideration through unauthorized procedures before the statutory board ever met.

According to the OSD review, the Air Force used a three-tier pre-selection process to screen out candidates prior to convening statutory brigadier general selection boards. The first tier consisted of Initial Screening Boards established primarily at major command levels, which eliminated 90 percent of the eligible officers from further consideration. The second tier involved a Central Screening Board, which eliminated about 50 percent of those recommended by the Initial Screening Boards. The final tier was the statutory selection board, which considered the remaining eligible officers.

The Initial Screening Boards were established at each of the major commands and at Headquarters, Air Force. As a result, eligible officers did not compete against their peers throughout the Air Force, as contemplated by the statutory centralized selection process. Instead, they were screened out through a procedure in which they unknowingly competed only against officers within their own command.

The Initial Screening Board at a major command consisted of general officers appointed by the major command commander. Thus, officers eligible for promotion who reasonably expected that they would be considered by a selection board convened by the Service Secretary, as required by law, were instead eliminated from consideration by screening boards appointed by commanders in the field.

An Initial Selection Board convened at a major command was allowed to forward no more than 15 percent of the eligible officers for centralized screening. The Headquarters Initial Selection Board was allowed to forward no more than 10 percent of the eligible officers for centralized screening.

The effect of the Initial Screening Board process was that at least 85 percent of the colonels assigned to the major commands, and at least 90 percent of the colonels assigned to Headquarters, Air Force, were improperly precluded from competing against their peers elsewhere in the Air Force before a central promotion board.

The balkanization of the Initial Screening Board process into separate boards for each major command, and a separate board for the headquarters organizations, meant that an officer could be eliminated even though the officer was better qualified than an officer in another command who was selected. The potential for unfair treatment was magnified with respect to smaller commands, in which the 15 percent limitation meant that in absolute numbers, fewer officers in the smaller commands, as compared to larger commands, were eligible for selection. Thus, an officer at a smaller command who might rank well within the top 15 percent of Air Force colonels on a Service-wide basis, could be excluded from further consideration because of the limited number of selections available to that officer's command. In addition, officers in headquarters, commands, which were subject to a 10 percent limitation, were at a disadvantage compared to their counterparts in major commands, which could forward 15 percent of their eligibles.

The second tier—the Central Screening Board—considered all eligible officers forwarded by the Initial Screening Boards. The Central Screening Board not only considered the military records of eligible officers, it also had access to a "closed" evaluation form—an evaluation that was not made available to the officer being evaluated. Although the closed form was authorized by regulation, the Central Screening Boards were not so authorized.

The Central Screening Board was composed of general officers from the major commands, the Air Force Secretariat, the Air Staff, and Joint Agencies. The president was appointed by the Secretary of the Air Force, and the members were appointed by the Chief of Staff of the Air Force. The Central Screening Board was permitted to forward up to half of the eligibles it considered to the Final (statutory) Selection Board.

The third tier, the Final (statutory) Selection Board, had access to the officer's military records, the "priority lists" submitted by major commanders and other selected officials, and the closed form evaluations.

According to the OSD review, the statutory selection board "considered all eligibles forwarded by the CSB [Central Selection Board], plus a small number of other eligibles identified by the commanders who did not score through the CSB." The "other eligibles" consisted of officers who were not forwarded by the Central Selection Board but who were identified on "priority lists" submitted by the commanders of major commands and other selected officials after they were notified of the results of the Central Selection Board. The priority list system served as a supplement to the screening process, and enabled those permitted to submit priority lists to ensure that favored candidates were not eliminated from consideration by the screening process. These "priority lists" are discussed in more detail in section 3, below.

Statutory screening boards, which are authorized to narrow the field, have a less stringent selection standard than regular (i.e., final) selection boards. Regular selection boards may recommend only those "best qualified" for promotion. The statutory standard for screening boards—"exceptionally well qualified"—permits the final board to select the "best qualified" from a wider field—those found by a screening board to be "exceptionally well qualified." The Air Force, which did not have a regulation governing its screening boards, did not use the "exceptionally well qualified" standard. This was improper, because officers who might have been forwarded under an "exceptionally well qualified" standard were eliminated under the percentage quotas assigned to the screening boards.

The problems caused by failure to use the statutory criteria were compounded because the screening boards operated with virtually no written guidance, other than the limitations on the percentage that could be forwarded. As a result, the Initial Screening Boards could operate without regulations requiring the safeguards applicable to statutory selection boards, such as: (1) the requirement that no officer may be a member of two successive boards for the consideration of officers of the same competitive category and grade; (2) the requirement that eligible officers be provided with at least 30 days notice of the convening of a board and provided an opportunity to send a written communication to the board; (3) the requirement for Secretarial guidance, including guidance to ensure appropriate consideration of joint duty assignments; (4) the prohibitions against reviewing authorities adding to or deleting from the recommendations of selection boards; and (5) limitations on communications to selection boards. As a result, officers who reasonably believed that their records were considered in accordance with such safeguards were eliminated by screening boards in which such safeguards were not required to be observed.

In summary, instead of an authorized screening process with centralized selection using a statutory standard, the Air Force used an unauthorized process in which 90 percent or more of the eligible officers were eliminated by decentralized boards using an improper standard without regulations requiring the statutory safeguards applicable to regular selection boards.

3. Improper communication of "priority lists" to selection boards

The OSD review found that since the 1960's, the Air Force "allowed certain senior officers and civilian officials to provide to general officer promotion boards a list of eligible officers recommended for promotion. * * * These * * * Priority Lists * * * were the personal choices for promotion of the officials who prepared the lists, and proposed for promotion a small subset of the eligible officers."

The OSD review observed that the "use of these lists was not addressed in regulation and was not common knowledge outside the general officer management community." According to the OSD review, "[e]ligible officers were not made aware of the priority list system."

Officials permitted to submit a priority list were allowed to designate no more than 4 percent of the eligible officers in their command. Priority lists consisted of a rank ordering of certain candidates by the commander. There was no narrative information. Thus, the list did not provide selection boards with any information about the military record of an officer. The information communicated by the list—the presence or absence of a name, and the relative order of names on the list—was significant, however, because the list communicated the views of the major commanders and other senior officials as to who should be selected.

As noted in the OSD review, use of such lists violated the 1989 amendments to DOD Directive 1320.12, which generally prohibited "communications regarding particular officers" (subject to very limited exceptions). A March 6, 1991 Air Force memorandum, included as an enclosure to the OSD review, explained that the Deputy Chief of Staff for Personnel briefed the Secretary of the Air Force on the use of priority lists after the 1987 amendments to DOD Directive 1320.12. He did not brief the Secretary after the 1989 changes, which expressly prohibited communication of information such as priority lists to selection boards.

In addition to violating the 1989 changes to the DOD Directive, the use of priority lists compounded the problems noted in section 2, above, concerning the use of unauthorized screening procedures. The priority lists were prepared by the major commanders and other selected officials after they were notified of the results of the Central Screening Board. As a result, an officer who had not been selected by the Central Screening Board could nonetheless be considered by the final, statutory board if fortunate enough to be placed on a commander's priority list. Thus, even if the preselection process had been properly structured under 10 U.S.C. 619(c)(2) "to limit the officers to be considered by a selection board * * * to those officers who are determined to be exceptionally well qualified for promotion," the statutory process would have been undermined by the use of priority lists to circumvent the statutory standard.

In summary, the use of priority lists improperly communicated the views of the senior leadership about particular officers to selection boards. In addition, the priority lists enabled the leadership to circumvent the preselection process. None of this was made known to eligible officers, who could reasonably believe that they were being considered for promotion on the basis of their official military records.

4. Improper communications between the Air Force leadership and selection board members

The OSD review noted that a board president had specific conversations with the Service Secretary and Chief of Staff during the 1989 brigadier general promotion board. According to the OSD review, these communications "did not comport with paragraph G.2. of DODD 1320.12 in that these communications were not in writing, were not provided to each board member, and were not made part of the board record."

The review also noted that, as a general practice, "prior to the signing of the board report by promotion board members, the results of general officer promotion boards were routinely provided to both the Chief of Staff and the Service Secretary." These oral reports not only created the opportunity for improper verbal communications of the views of the Air Force leadership in violation of DOD Directive 1320.12, but also were contrary to 10 U.S.C 617(a),which requires the board to provide the Secretary with a "written report, signed by each member of the board."

In response to a follow-up question by the Committee, the Air Force described the following incident, which illustrates the problems created by improper communications during a board's proceedings. A board was convened to select 32 officers for promotion to major general out of 102 eligibles. The board conducted a trial run, followed by a discussion, and "an initial review and scoring of the candidates." The board then adjourned for the evening.

When the board president reviewed the results, he found that Brigadier General "XYZ" was not among the top 32 in the order of merit, despite the fact that he had scored well in the trial run. According to the Air Force report, "[t]here had been some discussion of this officer's performance among some of the members after the trial run."

That evening, the board president had a "courtesy visit" with the Chief of Staff, during which he asked whether the Chief of Staff was satisfied with the performance of Brigadier General "XYZ" and whether the Chief of Staff agreed with the Vice chief's decision to place Brigadier General "XYZ" on the "priority list" that the Vice Chief had submitted to the selection board. The Chief of Staff noted his satisfaction with Brigadier General "XYZ's" performance and his agreement with the placement of Brigadier General "XYZ" on the Vice Chief's priority list.

The next day, the board president advised the board of his concern that there was an "anomaly or disconnect" in the scoring. He also advised the board that "the Chief agreed with the Vice Chief's placement of BG XYZ on the priority list.

The OSD review provides further details: "The Air Force informs us that prior to the convening of a promotion board, neither the CSAF [Chief of Staff of the Air Force] nor other senior officials conveyed their views about individual officers to [the Deputy Chief of Staff for Personnel]. In the course of working general officer assignments and related personnel matters with the senior staff, [the Deputy Chief of Staff for Personnel] became aware of how the senior staff regarded some officers. *If asked for comment, [the Deputy Chief of Staff for Personnel] provided his assessment of how the officer was viewed by the CSAF or another senior officer.* If he did not know enough to form an opinion, he declined to offer one." (emphasis added).

The March 6 Air Force memorandum observes that on one occasion, the Deputy Chief of Staff for Personnel "spoke to a full board from his own personal knowledge about an officer he believed had an integrity problem. He believed he had a personal responsibility to inform the board that the officer under consideration had lied to him and therefore lacked integrity." The OSD review notes that although the Deputy Chief of Staff for Personnel had advised the officer's supervisor of his concern, he had taken no action before or after the selection board to document this concern in an official record that would be properly before a selection board. The DOD letter also notes that the particular officer was not selected for promotion. The officer was not aware of, nor did he have an opportunity to rebut, this adverse information.

An additional difficulty is presented by the role of the Deputy Chief of Staff for Personnel in the "scoring" process. A statutory selection board determines which officers are selected through the assignment by board members of numerical scores to each eligible officer. Those who score highest, up to the number of eligibles the board is authorized to recommend, are selected. In the Air Force, the Deputy Chief of Staff for Personnel assisted the board in the conduct of "trial scores". The purpose was to promote discussion about the attributes that would make an officer worthy of selection. The "trial" scoring involved use of selected records of eligible officers, not hypothetical candidates. The discussion that followed involved consideration of the merits of an officer's records. The participation of the Deputy Chief of Staff for Personnel in these discussions constituted improper communication of the views of a senior officer about a particular eligible candidate in violation of DOD Directive 1320.12.

According to the March 6, 1991 Air Force memorandum, the Deputy Chief of Staff for Personnel "had full access to all boards, and considered it part of his role as DCS/Personnel to be there." The memorandum notes that earlier in his career, as a board member, he had observed previous Deputy Chiefs of Staff for Personnel "in the [selection] board room" and believed that "this was expected of the DCS/Personnel as part of his job, and indeed, that it would have been noted and questioned by board members if he were not present for a board."

The OSD review did not address the issue of whether it was appropriate for the Deputy Chief of Staff for Personnel to personally provide administrative support to selection boards. Because he was viewed by other members of the board as a representative of the senior leadership, he should not have been placed in that position. Even if it had been proper for him to provide administrative support to the boards, it was essential that he perform such tasks in a manner consistent with applicable law and regulations. In communicating unfavorable information to the board about a specific officer, he acted contrary to the position of trust which had provided him with access to the board's deliberations.

5. Improper communications by board members during board proceedings

The March 6, 1991 Air Force memorandum, summarizing information provided by the Deputy Chief of Staff for Personnel, noted that "[b]oard presidents from time to time have contacted officials outside the board structure concerning an eligible officer." In one case, "a board president called a CINC to clarify the ranking of an eligible officer on the CINC's PL [priority list]." In another instance, "contact was made with a commander to ascertain the meaning of remarks on a closed form" (i.e., the evaluation form that was not provided to the eligible officer).

The OSD review notes:

> [T]he Air Force conducted general officer boards in a manner that afforded the board members—who were all general officers—a significant degree of autonomy. Although the board recorders and support personnel limited access to the boardroom area and attempted to monitor the use of the telephones in the board room area, the board members had the opportunity to initiate and receive communications about any subject including eligible officers.

In the absence of a regulation limiting communications, there was no express limitation on the manner in which board members, exercising their "autonomy," could communicate with outside officials during board deliberations. This created the opportunity for violations of the prohibitions against such communications.

6. Improper increase in the number of officers authorized to be selected for promotion

DOD Directive 1320.12 provides that after a board is convened, the Service Secretary may not increase the number of officers authorized to be selected without the written approval of the Secretary of Defense. The purpose of this provision is to prevent a recurrence of the action taken with respect to the 1987 Marine Corps major general board, when the number of authorized selections was increased, after the board had made its initial decisions, to facilitate the selection of a candidate who was not initially selected by the board.

The OSD review determined that in 1988, after a board convened, the Secretary of the Air Force authorized an increase in the number of selections without the approval of the Secretary of Defense. According to the March 6, 1991 Air Force memorandum, this occurred when the Secretary and Chief of Staff were briefed on the results of a board, before the board adjourned, by the President of the board and the Deputy Chief of Staff for Personnel. The briefing took place before the board itself was informed of the order of merit that resulted from the scores they gave the candidates. During the briefing, the leadership was informed that a particular officer was placed below the cutoff point during rescoring procedures used to break a tie for the last remaining position to be selected. The "cutoff point" is the position on the order of merit list that separates those officers selected for promotion (above the cutoff point) from those officers who are not selected (below the cutoff point).

After hearing the briefing, the Chief of Staff suggested, and the Secretary agreed, to increase the number of eligible selections in order to include the officer who otherwise would not have been selected. According to the Air Force memorandum, the Deputy Chief of Staff for Personnel was not aware that such an action was impermissible without approval by the Secretary of Defense, and no one on his staff raised an objection. Although this was in clear violation of the changes in DOD Directive 1320.12 issued in 1987 to prevent manipulation of selection board results by the leadership, the change was approved by the Air Force leadership and the officer was selected and promoted.

7. Manipulation of the scoring process

The Air Force general officer promotion process used a scoring system to rank in order the candidates under consideration. When there was not a clear break point at the selection cut off line (i.e., between those who would be selected and those who would not be selected), the Air Force used a procedure involving repetitive rescoring of those in the group just above and below the cut off line. The OSD review documented the manner in which this process could be manipulated to favor a particular officer. As noted above in the context of improper discussions between the leadership and board members, there was one incident in which a particular officer was scored below the group eligible for additional scoring. In that instance, the board President "expanded" the size of the group eligible for additional scoring, which resulted in an additional opportunity for that officer to be considered. That officer, who would not have been selected had the normal scoring process been followed, received a score upon rescoring that improved his position relative to other eligible officers, resulting in his selection.

The improvement in that officer's relative position upon rescoring necessarily resulted in a lowering of another officer's relative position. Since the board was given a fixed number of selections, manipulation of the scoring process not only resulted in the selection of an officer who would not have been selected under normal procedures, it also resulted in the nonselection of an officer who would have been selected had regular procedures been followed.

Such manipulated rescoring undermines the integrity of the promotion process because it provides discretion for the board's results to be altered to the advantage of a particular officer not initially selected and to the disadvantage of an officer initially selected. The Air Force has subsequently eliminated any rescoring that is not needed to break a tie at the cutoff point.

8. Selection of field grade officers

The OSD review did not find similar systemic problems with respect to selection for grades O-6 and below:

> The review determined that the existence of governing regulations, the training and use of full-time recorders, and control of access to board areas made the field grade process less vulnerable to "ad hoc" action and inappropriate influences than was the case in general officer promotion boards.

The Committee notes that none of the information provided by OSD or the Air Force documents any incidents of inappropriate communications to a field grade selection board. The Committee also notes, however, that the OSD review was designed to identify systemic problems and involved the interview of only a handful of board members and support personnel. As a result, it did not serve as a comprehensive review of selection boards that have met since the 1987 amendments were issued to DOD Directive 1320.12. The continuing failure of the Air Force to implement the prohibitions on communications in its filed grade regulation means that the Air Force continues to be unnecessarily vulnerable to violations in individual cases.

9. Failure of the Air Force to undertake timely review and corrective action

In response to the Committee's questions in the summer of 1990 about a specific selection board, the Air Force noted on August 3, 1990 that adverse information concerning two officers was provided to the President of the board but not to the other members of the board. The response, however, did not reflect that this procedure was in violation of the requirement in DOD Directive 1320.12 to provide such information to all board members. Instead, the response implied that the Secretary acted under statutory authority:

> Under Section 615(a) of Title 10 [of] the United States Code[,] the Secretaries of the Military Departments are responsible for determining the information to be provided to promotion selection boards and for establishing the procedures by which the boards are provided the information. This would include policies concerning information on providing potentially adverse information to selection boards about individuals considered for promotion.

This response fails to take into account the Air Force's own 1987 review of DOD Directive 1320.12, which concluded that the amended Directive established mandatory procedural requirements for the conduct of selection boards.

In response to the Committee's specific question as to the regulatory basis for providing a document to the board President that was not made available to each member of the board, the Air Force letter asserted that the Secretary had statutory authority for his action:

> In performing his statutory responsibilities under Section 615(a) of Title 10 the Secretary decided to show the material to the President of the Board and allow the President an input as to whether the information should or should not be provided to the members of the board.

This response fails to note that while the Secretary has general statutory authority to provide information to selection boards, he has no authority to disregard limitations established by his superior, the Secretary of Defense. Moreover, if is inconsistent with the Air Force's own 1987 review of the DOD Directive, which noted that it would be improper for the board President to screen adverse information for purposes of deciding what information should be provided to the board.

On February 7, 1990, the Air Force provided a report to the Secretary of Defense on matters related to the Air Force's selection board problems. The Air Force acknowledged that the Service had used a variety of unauthorized practices, such as nonregulatory preselection boards, briefings for the senior leadership before boards adjourned, improper access to the selection board by the Deputy Chief of Staff for Personnel while the board was in session, and submission to boards of priority lists from certain commanders. The Air Force acknowledged that these practices were inconsistent with the Defense Officer Personnel Management Act and the 1987 and 1989 amendments to DOD Directive 1320.12, but attempted to deflect criticism from the Air Force by stating:

> The Air Force, *like the other Services*, gave insufficient recognition to these changes and did not issue the implementing regulations required by DOD Directive 1320.12; until recently DOD took no steps to ensure that such regulations were issued. (emphasis added).

Subsequently, the Committee asked the Department of Defense whether the systemic deficiencies in the Air Force selection board system were present in the systems managed by any other Military Departments. DOD advised the Committee on June 19, 1991 that the OSD review had not encountered the problems exhibited by the Air Force in any of the other Services, and that the review "did not find systemic deficiencies in the implementation of DODD 1320.12 by other Services."

An additional problem with the Air Force response is the implication that the Air Force problems were somehow excused because "DOD took no steps to ensure that such regulations were issued." The Department of Defense necessarily and properly operates on the premise that orders will be obeyed. While OSD always retains ultimate responsibility for the performance of the mission, and should institute appropriate oversight procedures to monitor the performance of subordinate organizations, it is inappropriate for a Military Department to imply that OSD is responsible for the Military Department's failings when the Military Department has been given clear instructions to implement an important administrative matter.

In material provided to the Secretary of Defense on March 6, 1991, the Air Force provided the following description of the Air Force's reaction to the changes proposed in the 1987 amendments to DOD Directive 1320.12:

> [The Deputy Chief of Staff for Personnel] recalls that when DOD Directive 1320.12 was changed in 1987, he believed it was intended to correct problems that the Navy had experienced with its promotion boards, and he did not believe that any of those problems existed with Air Force boards. He did not believe that any Air Force Secretary or Chief of Staff had ever interfered with the selection process or that they ever would. He and his staff disagreed with the general officer provisions of DODD 1320.12 circulated in May 1987 on the basis that there was no need for them. In the Air Force's view, the system had worked effectively and fairly for over twenty years.

This explanation, however, is incomplete. As noted in Part II of this report, the Air Force actively participated in the development of DOD Directive 1320.12, opposed inclusion of general officers, reviewed the Directive in detail after it was issued, and nonetheless failed to issue appropriate implementing regulations.

After the OSD review documented the numerous deficiencies in Air Force practice, the Air Force provided additional views to the Committee. In a letter dated April 9, 1991, the Air Force acknowledged the failure to issue implementing regulations, but provided the following explanation:

> The Air Force did not issue the required implementing regulations, relying in part on the erroneous assumption that an expanded 1987 Secretarial Memorandum of Instruction to the Board would be sufficient. The sensitive 'close-hold' aura that had traditionally surrounded general officer matters seems to have allowed the incorrect view to develop that regulations spelling out procedures were unnecessary.

The implication is that the Air Force was in technical noncompliance by not issuing a regulation, but that there was coverage in the "expanded" Secretarial Memorandum of Instruction. This response was incomplete. The Secretarial Memorandum of Instruction referred to the provisions of the DOD Directive concerning the duties of the board President, the general requirement for board members to act without prejudice, and the responsibility to report misconduct; but it made no reference whatsoever to the central provisions of the 1987 amendments—the restrictions on communications to the board concerning particular officers.

As noted above, the Air Force—for more than three years—failed to implement the 1987 amendments to the DOD Directive designed to address the potential for abuses in the promotion selection process. It has still not issued an implementing instruction for field grade promotions. These failures were harmful to the Air Force in general and to the officers eligible for promotion in particular. Thousands of officers were improperly excluded from consideration by statutory selection boards through use of an unauthorized selection process. Other officers were unfairly disadvantaged because they were not included on unauthorized "priority lists" used to communicate the preferences of selected leaders to promotion boards. The process was particularly unfair to those officers who—unbeknownst to them—were the object of particular communications or victims of manipulation of the scoring process.

In a large organization, such as the Air Force, there will be occasional failures to properly implement laws and regulations. The test of an organization's effectiveness is its willingness to promptly recognize such failures, take corrective action, and ensure that there is a thorough assessment of accountability and responsibility for the failures. In this case, the Air Force compounded the deficiencies in the promotion process by the failure to take timely action when the problems were brought to the attention of the civilian leadership.

IV. SUMMARY OF FINDINGS

The DOD review identified systemic deficiencies in the Air Force selection process. These deficiencies included the following:

(1) Failure to issue implementing regulations required by applicable statutes and Department of Defense Directives to ensure the fair operation of the selection board process.

(2) Use of a preselection process that improperly excluded 90 percent or more of the eligible officers from consideration by statutory selection boards.

(3) Improper communication to selection boards of "priority lists" prepared by senior officers.

(4) Improper communications between the Air Force leadership and selection board members.

In addition, the DOD review identified specific instances in which the following deficiencies occurred:

(1) Improper communications by board members with outside personnel during board proceedings.

(2) Improper increase in the number of officers authorized to be selected for promotion.

(3) Manipulation of the scoring process used by selection boards to determine which officers would be recommended for promotion.

V. OBSERVATIONS

The integrity of the selection board process

The integrity and fairness of the selection board process traditionally have been major concerns of the Committee on Armed Services. The Committee has acted through legislation, review of nominations, and oversight to ensure that the procedures used for selection boards are fair to the officer corps and are designed and conducted to select the best qualified officers for promotion.

The relationship between the integrity of the selection process and the integrity of the officer corps was underscored during recent Committee hearings. General Gordon R. Sullivan, Chief of Staff of the Army, noted that:

> There is a direct link between the integrity of the selection board process and the integrity of our officer corps. The link lies in the confidence our officer corps has in the objectivity and professional ethic of the board. Our selections must be fair, impartial, and based upon demonstrated potential instead of subjective criteria, and they must be seen as such by our officer corps.

General Carl E. Mundy, Jr., Commandant of the Marine Corps, similarly observed that:

> Integrity is the basis for the special trust and confidence reposed in the officer corps. * * * Any breach of integrity in the selection process jeopardizes this special trust and confidence.

The Air Force process for selection of general officers

The Air Force used a promotion selection system that did not properly implement the statutory and regulatory standards and procedures established to ensure the integrity of the promotion selection process.

The starting point was an unauthorized preselection process in which 90 percent or more of the eligible officers were improperly excluded form consideration by the statutory selection boards. The preselection process employed an improper standard, precluded officers from competing against their counterparts on a Service-wide basis, failed to provide regulatory guidance incorporating the safeguards applicable to statutory boards, provided major commanders and other senior officials with the means to circumvent the process through use of priority lists, and operated without the knowledge of the officers under consideration.

The 10 percent who were considered by statutory boards were considered under procedures involving unauthorized use of "priority lists" to improperly communicate the choices of selected leaders to the statutory boards. The procedures were further tainted by incidents involving improper communications to the boards by the Air Force leadership, unauthorized increase in the number of officers selected for promotion, and manipulation of the scoring process.

The process provided the commanders of major commands and other selected officers with multiple opportunities to directly communicate their preferences about specific individuals to selection boards. Rather than relying on the official records and evaluations of eligible officers, the Air Force used a system in which a commander of a major command could convene an Initial Screening Board at the command level, circumvent the screening board process through submission of a priority list, and signal specific preferences to the statutory board by the relative placement of officers on a priority list. Within the board, preferences could be further communicated through discussion with the Deputy Chief of Staff for Personnel about the views of the senior leadership, direct communications from board members to persons outside the board, and personal discussion between the board President and the Air Force leadership. The system was further subject to compromise through the addition of names after the board had made its initial selection and through the use of "rescoring" to include officers who otherwise would not have been selected and to exclude officers who had been selected.

These problems were compounded by the failure of the Air Force to make these procedures known to eligible officers. Thus, officers who reasonable believed they were reviewed under a statutory process were, instead, reviewed by a separate process known only to insiders.

Legislative action

In response to the problem identified as a result of the Committee's inquiries and the OSD review, the Committee initiated legislation to better ensure the integrity of the promotion selection process, which is set forth in section 504 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102-190). The legislation: (1) requires the Secretary of Defense to prescribe uniform regulations governing information furnished to selection boards; (2) provides that any communication to a selection board, including any member of the board, must be in writing, furnished to all board members, and made a part of the selection board's record; (3) ensures that the information provides to boards about an officer consists only of material from the officer's official military personnel file, information provided to the board by the officer concerned, or other substantiated, relevant information, identified and forwarded under uniforms procedures established by the Secretary of Defense that could reasonably and materially affect the deliberations of the selection board; (4) ensures that eligible officers receive notice of and an opportunity to respond to the information about them that will be considered by the board; (5) restricts disclosure of the board's results to anyone outside the board until the members have completed and signed their final report; (6) prohibits improper influence on the board; (7) precludes use of a preselection process except under carefully limited procedures; and (8) provides eligible officers with notice of and an opportunity to response to any information that is transmitted by a Service Secretary as part of a recommendation that an officer be removed from a selection board list.

Administrative action

As a result of the review initiated by the committee, the Air Force has issued a regulation governing general officer selection boards. The Air Force no longer uses a preselection process for promotion to brigadier, general, and has eliminated the use of priority lists. It has also eliminated the "closed form" evaluation process, thereby ensuring that eligible officers have an opportunity to review and comment on information about them that will be provided to selection boards.

In addition, the Department of Defense has revised DOD Directive 1320.12 "Defense Officer Personnel Program," to implement the reforms mandated by section 504 of the National Defense Authorization Act of Fiscal Years 1992 and 1993.

JOINT STATEMENT BY SENATORS SAM NUNN AND JOHN WARNER ON THE CONDUCT OF PROCEEDINGS FOR THE SELECTION OF OFFICERS FOR PROMOTION IN THE U.S. AIR FORCE

The fair and impartial conduct of the selection process for promotion of officers in the armed forces has been a matter of great concern to the Armed Services Committee. In 1987, the committee conducted a detailed review of problems associated with the 1987 Marine Corps Major General Selection Board, and received assurances from Secretary Weinberger that regulatory guidance had been issued to preclude a recurrence of the actions that undermined the fairness of that board.

Subsequently, during the Committee's review of certain Air Force nominations during the 101st Congress, the Committee received information which indicated that the Air Force had not implemented the regulatory guidance directed by Secretary Weinberger. Detailed reviews of this information by the Department of Defense and the Committee revealed systemic deficiencies in the Air Force selection process. These deficiencies are described in a Report which the Committee has filed with the Senate.

During the period in which the Committee considered the deficiencies in the Air Force promotion process reported by the Department of Defense, the Committee also considered the nomination of then Lieutenant General Thomas J. Hickey, U.S. Air Force, to be retired in the grade of lieutenant general. General Hickey had a distinguished record in combat and in a variety of positions in the Air Force. He served as Deputy Chief of Staff for Personnel at a time when the Air Force failed to implement a number of key directives of vital importance to the fairness and integrity of the promotion selection process.

In considering General Hickey's nomination, the Committee took into account not only his record of service, but also the fact that he did not alone bear responsibility for the defects in the promotion selection process. Other military and civilian officials also failed to ensure that the process was in compliance with laws and regulations. However, the Committee determined that the Deputy Chief of Staff for Personnel—as a three-star officer serving in a position of importance and responsibility—had a vital responsibility to ensure that the promotion process was conducted in accordance with applicable laws and regulations. The serious deficiencies described in the committee's report show that this vital responsibility was not adequately executed. Therefore, the Committee voted not to approve his retirement in the grade of lieutenant general.

We know that General Hickey, his family, and his friends will be extremely disappointed with the outcome of the committee's action. We wish the committee could have acted otherwise and approved General Hickey for confirmation as a lieutenant general on the retired list. However, the Armed Services Committee and the Senate have a responsibility to require that officials we confirm to positions of importance and responsibility are accountable for the high trust we place in them. We owe such responsibility to our men and women in uniform whose careers and lives are affected by the actions of such individuals.•

TRIBUTE TO CONGRESSMAN RAY MCGRATH

• Mr. D'AMATO. Mr. President, As we draw close to the completion of this session, I would like to take a few moments to express my gratitude to a New York colleague from the other body, who is retiring this year. Over nearly three decades, Congressman RAY MCGRATH and I have shared a commitment to public service from our humble beginnings as summer employees of the town of Hempstead to our respective careers in Washington.

At the town level, we spent thousands of hours trying to improve essential government services. In Albany, we fought for a fair share of State revenue for schools, highways, and social services. In Congress, we continue to this day in our efforts to protect New York from inequitable Federal tax policies and unfair competition from foreign manufacturers. As fellow Republicans, we have also weathered countless political storms.

My colleagues, I think that you all recognize the special friendships that boost our spirits when we suffer a personal loss, political cheap shot, or legislative defeat. RAY MCGRATH has been like a brother to me at those times. He has never backed off in a struggle. On a personal level, RAY's oldest son and I share the same birthday, and we share many happy memories of family occasions.

I know that I can speak for my constituents on Long Island and throughout our State when I thank RAY for his service as a member of the House Ways and Means Committee. Whether he was fighting for preservation of the State and local tax deduction or for a single taxpayer, RAY jumped into the fray with both feet. The people of New York's 5th District have lost a tireless and caring advocate.

Again I deeply value RAY's friendship and support over the years. I wish RAY, his lovely wife Sheri, and his fine sons, Tim, Tony, and Peter well in the years ahead.•

OXAPROZIN

• Mr. SIMON. Mr. President, I would like to extend my appreciation to my esteemed colleague and friend from Arizona for assurances regarding legislation, likely to be introduced next year, that would reinstate a patent on Oxaprozin, an antiarthritic drug manufactured by Searle in Illinois. Specifically, my colleague has agreed to hold a hearing on this issue during the 103d session.

As my colleague knows, the House and Senate have spent much time considering a patent extension bill for a similar drug, called Ansaid. The House also examined another drug from the same class, called Lodine. The rationale for these two extensions has focused on particular circumstances that occurred at FDA delaying the market approval for the drugs. Since Oxaprozin falls within the same category of antiarthritic drugs as Ansaid and Lodine, and since it has been subject to similar—if not longer—delays, I believe Searle's product should receive the same treatment that they do.

I fully understand that my colleague from Arizona has made no commitment about whether a bill reinstating and extending a patent on Oxaprozin would pass, or even whether he would support such a bill. Rather, he has agreed to hold a hearing on the merits of the legislation.

Mr. DECONCINI. That is correct. While I offer no opinion at the present time on the merits of a private patent extension for Oxaprozin, I understand the Senator's concerns and would be happy to honor his request to conduct a hearing on Oxaprozin, should legislation be introduced.

Mr. SIMON. Thank you, I appreciate my colleague's cooperation and look forward to discussing this with him next year.•

S. 1696, THE MONTANA NATIONAL FOREST MANAGEMENT ACT OF 1992

• Mr. CRAIG. Mr. President, I have raised an objection to having the Montana wilderness bill brought up for consideration today because I have some serious concerns about certain provisions contained in the bill. It is not my intent to meddle in the affairs of other Senators in matters related to their State. However, the Montana wilderness bill contains provisions which will have a very direct impact on my State of Idaho.

I have always believed the congressional delegation from a State should decide the areas and number of acres to be designated as wilderness in that State. I strongly hold this belief because I do not want other Members of Congress telling Idaho how to resolve any wilderness allocation for our State.

There are only two States remaining that have not passed statewide wilderness bills to resolve RARE II recommendations. These States are Idaho and Montana. As a result my legislative decisions that are made for Montana, there will be a direct and lasting impact on Idaho. It is for this reason that I am concerned with this bill, and specifically with four of its provisions.

The Senate approved updated release language for the roadless areas not being designated as wilderness in this bill. The other body substantially weakened the Senate language. Now the senior Senator from Montana is proposing a substitute bill with language that differs from the previously passed language. This substitute bill has never been evaluated through a hearing by the appropriate committee. On first blush, it appears this language is similar to the House language, but it is impossible to know if the House will accept or act on this amendment. It appears that the Baucus proposal is entirely different from the compromise bill that was worked out between the two Montana Senators and passed by this body last March. This release language is completely unacceptable to me, and cannot be allowed to become the precedent that would face Idaho in the future.

My second area of concern is the water rights language. The Senate has taken the position in previous wilderness bills that the particular water rights language for a State is the decision of the Senators from that State. In recent years, this body had allowed the Senators from Arizona, Nevada, Colorado and Montana to decide the water language that is acceptable to them. When this language happened to be what the other body wanted they approved it. When the language was not acceptable to the House, as is the case Montana and Colorado, the House either killed the bill or amended it so it was unrecognizable. Now at this late hour the Senior Senator from Montana is proposing completely new language. As is the case with the release language, this all important water language has not had a hearing in the Senate. Neither has it been reviewed by the western water user interests that would be affected.

Third, I am very concerned what effect the proposed Montana Ecosystem and Economics Study would have on Idaho and other Western States. Although the study being proposed by Senator BAUCUS apparently is to stop at the Montana border, I do not believe that is possible, given the type of study that is contemplated. As proponents of ecosystem management often point out, ecosystems are not defined by political boundaries. For instance, neither bears nor caribou confine their roaming within a given State's boundaries. Water flows freely from Montana to Idaho. Thus by its very nature, this study would include Idaho. I do not believe a study with such potential scope is proper in a state wilderness bill. Again, this issue has had no hearing in the Senate, nor have Idahoans had an opportunity to consider its effect on them.

It is my hope that such a study is not a thinly veiled attempt to rewrite the National Forest Management Act, nor to launch on a new round of nationwide wilderness designations. Existing land and resource management plans that were completed by the Forest Service must have an opportunity to work. The time has come to manage our Federal lands, not launch into an endless round of new studies. The Senate need to give any new proposals to allocate land uses careful consideration. This has not happened to this proposal.

My final concern is the designation given to one of areas. The proposal of the senior Senator from Montana would designate components of "The Great Divide Wilderness." I do not believe there is currently any wilderness with this name. However, it appears this may be an effort to create new wilderness areas along the continental divide that could stretch from Canada to Mexico. Although I would not object to Montana designating wilderness areas within their State, I do have a tremendous concern when areas are designated that may have a direct effect on areas in Idaho.

These are matters that simply cannot be raised and adequately addressed on the last day of a session. I have no choice but object.•

THE JUSTICE IMPROVEMENTS ACT OF 1992

• Mr. BIDEN. Mr. President, I am pleased that last night the Senate took action and passed the Justice Improvements Act of 1992, which I sponsored along with my distinguished colleague, Senator THURMOND of South Carolina. Each of its provisions will assist our criminal justice system. Here, I will comment briefly on just three of them.

First, the act includes the National Child Protection Act of 1991.

In our modern society, parents who work must have access to quality child care for their young children in facilities that are managed and staffed by individuals who have the best interests of children uppermost in their minds. Fortunately, the vast majority of caregivers in child care facilities throughout the country do genuinely care for the children in their charge.

Regrettably, however, abuses of children by employees of child care providers do occur. Some such incidents of child abuse by the operators of child care facilities have been widely publicized, and have created great anxiety in the minds of many parents.

What is more, the United States has as yet established no national mechanisms for background checks for prospective employees, to ensure that those hired in child care facilities do not have criminal records of child abuse or other serious crimes before they are hired.

The National Child Protection Act of 1991 authorizes the Attorney General to establish a national criminal background check system, so that child care managers will be able to access State and Federal information on whether or not prospective employees have criminal records of child abuse or other serious crimes. It provides the means to deal with both the reality of abuse and, by providing some assurances to parents, with the anxiety parents face when trying to locate quality child care for their children.

This legislation could not have seen its way to enactment without the dedication, commitment, and perseverance of Oprah Winfrey, who has made the reduction of child abuse in our society one of her highest priorities. She conceived the idea for the legislation, assisted in its drafting, testified on its behalf, and publicized the issue so that the Nation's attention might be trained on the problem.

The children and the parents of America owe a debt of gratitude to Ms. Winfrey for her commitment to this issue, and for her giving of her time, talent, and resources to it. It has been my personal pleasure to work with her on this legislation, and I look forward to working with her again in the future, as we search for other appropriate means to reduce the incidence of child abuse in our society.

Second, the Justice Improvements Act also includes important new help to stop credit card fraud. The Consumer Protection Against Credit Card Fraud Act of 1991 is the first law aimed at punishing laundering of credit card slips.

The losses from credit card fraud are enormous. According to an estimate of the Federal Trade Commission, telemarketing fraud—much of which involves credit cards—produced losses in 1989 in excess of $1 billion.

Today, we are facing a new generation of credit card fraud. The phony solicitation of credit cards over the phone and the laundering of credit card receipts have replaced the counterfeiting and alteration outlawed in the first credit card fraud law enacted in 1984. By clarifying and expanding existing law so that it covers telemarketing fraud and the laundering of credit card receipts, we can assist prosecutors in shutting down these new scams.

Specifically, this bill amends existing law to cover three new offenses not covered by current law. First, it outlaws solicitations for the purchase of a credit card without the authorization of the credit card company. Second, it prohibits the fraudulent taking of payment via credit card for goods or services that are either never delivered or far inferior to those that were promised. Third, it criminalizes the laundering of credit card receipts.

Thousands of consumers are victimized by credit card fraud every year. Frequently, the perpetrators of credit card fraud prey on the elderly and their fears of insufficient savings. Sometimes, the individuals are already struggling with a poor credit history or no credit history at all.

The Consumer Protection Against Credit Card Fraud Act of 1991 is a victory for everyone who loses by credit card fraud—the banks, the credit card companies, and, most importantly, the consumer. By updating current law, we ensure that prosecutors have the tools that they need to help the victims of these fraudulent schemes.

Third, the Justice Improvements Act includes an important provision requiring that notice be given when violent criminals are released from prison.

Increasingly, State and local law enforcement officers are faced with challenges that they are ill-equipped to address, simply because they lack the right information. Recently, for example, Mr. James Allen Red Dog was paroled to my home State of Delaware, after serving a dozen years in prison for armed robbery. Local authorities were never informed, however, that Mr. Red Dog was under Federal supervision. Not long after, Mr. Red Dog was arrested in Delaware for murder, rape, and kidnapping.

This bill would ensure that State and local law enforcement officials will be informed should a violent criminal be paroled to their State by Federal authorities. The bill requires the U.S. Bureau of Prisons to notify the chief law enforcement officer of the State and local jurisdiction that a prisoner on parole, probation, or supervised release will be moving to their area. This new requirement will provide local law enforcement with important information to help them combat crime: When a convicted Federal felon is released onto the streets, the State and local police will now know about it.•

RETIREMENT OF THE HONORABLE FRANK HORTON

• Mr. D'AMATO. Mr. President, I rise to salute a good friend of mine and a great Congressman who has decided to end his 30-year career in the House of Representatives with the adjournment of the 102d Congress. FRANK HORTON, chairman of the Bipartisan New York Congressional Delegation, ranking minority member of the House Government Operations Committee, has ably served the citizens of upstate New York and this country for three decades.

For 30 years FRANK HORTON cared. He cared about issues of Government management especially, and that has been the focus of his legislative work in the House. The Inspectors General Act, the Paperwork Reduction Act, the Office of Federal Procurement Policy Act, the Competition in Contracting Act, and the Chief Financial Officers Act all bear his mark.

He cared about the State of New York. I know. I worked with him on many things. Together, we created New York's only national forest—the Finger Lakes National Forest. We pushed through Congress legislation to create a national park dedicated to women's rights in Seneca Falls, which is the birthplace of women's rights. We worked on important navigational projects on Lake Ontario. His skill as a legislator in the House I know well.

Our delegation in Congress, disagreeing from time to time on diverse issues, was united on one thing—its unanimous admiration for FRANK HORTON and his selection as chairman of the bipartisan delegation, though a Republican in a Democratic controlled delegation. He cared about the individual, the older American who ran up against an unresponsive Federal bureaucracy when a Social Security check was late or did not arrive. He cared about the small businessman, the farmer, the teacher. In fact, it was for the people, his people—the citizens of New York's 29th Congressional District—that he cared most deeply.

And he represented them as he represented all of the interests involved with his work—professionally and with the highest degree of integrity and character. FRANK HORTON, I salute you and the people of New York salute you. Congratulations on a job well done and best wishes to you and your wife Nancy in your pursuit of new endeavors.•

HIGH-SPEED RAIL SHOULD PLAY A GREATER ROLE IN OUR NATIONAL TRANSPORTATION POLICY

• Mr. LAUTENBERG. Mr. President, as we move to adjourn, I would like to lay out some ideas for consideration by my colleagues for the next Congress, focusing on a key, but often neglected, area of transportation: High-speed rail. In doing so, my premise is simple. We need to do more to develop and promote high-speed rail in this country.

There are a host of compelling reasons to invest more in our transportation infrastructure. Infrastructure serves as a base for economic growth, with every dollar invested resulting in about two dollars in growth in gross domestic product. It is a major factor in our economic competitiveness. Compared to our major economic competitors, we are falling far behind, ranking 55th among developed countries in per capita infrastructure spending. Japan is investing about 23 times what we are, and Germany 15 times as much. That spending is an investment in their economic future. Our relative disinvestment shortchanges ours.

To revitalize our economy, we need to invest in our physical and human resources to a much greater extent than has been true for the past decade. Transportation is one of these areas. Within the field of transportation, we also need to reevaluate priorities, and act on a plan to make more efficient use of existing and future resources. Clearly, greater development and use of high-speed rail can play a major role in such a plan of action.

With a growing consensus on the economic importance of increased investment in our transportation infrastructure, I want to focus attention on the need for an improved high-speed rail network in this country.

As chairman of the Senate Transportation Appropriations Subcommittee, I spend considerable time and effort looking at the country's transportation needs. I hear from citizens, State and local officials, chambers of commerce, and colleagues from just about every State. I've worked to provide a balance in the Federal transportation budget. Under the Reagan and Bush administrations, infrastructure investment has been totally inadequate. This partly explains our declining productivity.

Recently, we have taken some steps forward, including recent funding initiatives in high-speed rail. The fiscal year 1993 transportation appropriations bill, which has now been signed by the President, contains significant funding for passenger rail service. The conference report rejected the drastic cuts proposed by both the administration and the House, and retained the amounts that I worked to secure in the Senate.

The 1993 bill provides $496 million for Amtrak operating and capital expenses, as opposed to the $405 million proposed by the House, and the meager $197 million requested by President Bush. Importantly, the bill that we sent to the President contains $204.1 million for the Northeast corridor improvement project, to continue ongoing safety and communications upgrades throughout the corridor, as well as to advance the electrification of the New York to Boston corridor that I first secured funding for 3 years ago. Unfortunately, neither the House nor the administration would have provided one dime for this important project.

I am proud of the balance reflected in the funding for passenger rail. But, the question before us, as we look ahead to the 103d Congress and perhaps a new administration, is, what more can and should we be doing to promote and develop high speed rail in this country?

Few can dispute that our national rail system is inferior in scope and priority to those of other nations. The French TGV carries passengers at speeds approaching 200 miles per hour, and has become a model for the world. Throughout Europe and in Japan, passenger rail service is recognized as an integral part of a balanced transportation network, and receives funding accordingly.

France has invested about $10 billion in its TGV system, and will invest an estimated $35 billion in its expansion. Germany recently put $5 billion into rehabilitating its existing rail lines, and will be spending $20 billion to develop and implement high-speed intercity express service connecting major cities throughout the country. Overall, it is estimated that the European Community will spend approximately $120 billion for the various high-speed rail systems under development. Excluding rail car acquisition, Japan has spent more than $45 billion on its "Shinkansen" high-speed system.

Meanwhile, the Congress has had to fight each year just to hold off Reagan and Bush administration attempts to eliminate Amtrak. There's been no receptivity at the White House for efforts to move ahead to modernize rail service or introduce new technology to increase our efficiency.

In a comparison with other major national rail systems in the country, it's clear that Amtrak is doing more with less, at least as far as money is concerned. In 1990, Amtrak had a systemwide revenue-to-cost ratio of 0.77. VIA, Canada's rail system, had a ratio of only 0.27; the French SNCF, 0.73; and DB in Germany, 0.62.

While Amtrak can be justifiably proud of its cost efficiency, it is a system that is far less than what it should be. It is a system that is far less than what the people and the businesses in our country deserve. At a time when we are working to improve air quality problems; when our roads are clogged; when delays at airports are unacceptably long; when the capacity of our air traffic control system is being taxed to its limits, and our economy is stagnant, we should move aggressively to make high-speed rail part of the solution to these problems.

However, Federal policy has been terribly skewed, away from rail and toward other modes, particularly the automobile and aviation. While those means of transportation are indispensible to our overall network, investment in new rail systems should be a priority as well.

The Reagan and Bush administrations have consistently proposed budgets that would have ended intercity passenger service in the United States. Since fiscal year 1980, congressional appropriations for Amtrak have exceeded administration requests by more than $3.8 billion while staying within transportation budget limits. Clearly, if the Reagan and Bush administrations had had their way, Amtrak—the Nation's only intercity passenger rail network—would long ago have ceased to exist. That's wrongheaded. But, that's been the administration's plan. In testimony before my Transportation Appropriations Subcommittee, the Federal Railroad Administrator, the administration's top railroad official, said so.

In an April 19, 1990 hearing, I asked FRA Administrator Gilbert E. Carmichael about President Bush's consistent recommendation to eliminate support for rail passenger service. I asked him, "How would you run Amtrak without Federal support, beginning October 1? What would you do?"

His response was, "On zero budget? I would shut her down."

Mr. President, no bones about it. That was President Reagan's policy. And that's been President Bush's policy. They not only dug their heads in the sand about the importance of new, high technology rail systems to enhance our competitiveness. They would have shut down our national passenger rail system completely. In stark contrast to President Bush's policies, Bill Clinton has put forward a plan for investing in our future that prominently includes enhanced rail service and technology. He knows the importance of investing in our transportation system if we are to regain our footing in the global economy. It's critical to our future.

The impact of eliminating passenger rail service would not only be felt in urban areas, but could bring our country to a halt. There are dozens of towns in rural areas whose only intercity public transportation is provided by Amtrak. Without it, they would be cut off from opportunities outside of their small communities. I remember my predecessor as chairman of the Transportation Appropriations Subcommittee, Mark Andrews of North Dakota, saying that, when the snow's blowing sideways, the trains are the only things that run. The importance of rail service to rural America is evident. So we are not just dealing with an urban problem. We are dealing with a national problem central to our future economic growth.

We need to maintain that service, and make progress in bringing high-speed rail to this country. The closest that we come to having a true high-speed rail system is in the Northeast corridor. Since 1976, we've invested about $2.5 billion in the Northeast corridor improvement project, or NECIP. Critics in the administration may not consider that to have been a worthwhile expenditure, but let's look at what we've gotten from that investment. Clearly, the northeast corridor, even with an inadequate budget, plays a vital role in the regional and national transportation network. It shows that, given even moderate—that is to say, not truly high-speed—rail service, people will take the train, easing the burden on roads and airways and improving productivity.

Each year, about 11 million intercity passengers use the Corridor. Sixty-five million commuters depend on the Corridor to get to work every day. Over 40 percent of those traveling between New York and Washington on business use Amtrak. If there were no Amtrak service connecting New York and Washington, about 40 more shuttle flights, mostly in peak periods, would be required. There simply is not the capacity, either in the air or on the ground at the region's airports, to handle that sort of increase. If anything, the aviation system would benefit from a greater shift of passengers to the rails.

For years, growing concerns about congestion at Boston's Logan Airport have led to discussion of building another airport in the Boston area. Given environmental, noise, and financial concerns, it's very questionable that such an airport could be built. But, the real question is, should one be built?

Today, unlike New York and Washington, intercity rail service between New York and Boston is not really competitive with air shuttles. It now takes 4–5 hours by train. However, that scenario is changing.

Three years ago, in putting together the Senate transportation appropriations bill, I worked to come up with funding to begin the job of electrifying the Northeast corridor between New Haven, CT and Boston. This effort includes not just electrification, but also other track and station modifications, all of which will result in a trip of 3 hours or less by the end of the decade. With that service, rail will become a real, even a preferred, option for Boston-New York travelers. This improvement, which will cost less than $1 billion in total, will help ease the burden on the region's aviation system, and help eliminate the need for another airport in Boston—an airport that would easily cost several billion dollars, if it proved feasible at all.

Mr. President, a truly balanced national transportation system must include high speed rail. To accomplish this goal, we need to revise national policy and funding priorities.

A basic premise of a national transportation policy should be efficiency. A sound policy should promote more efficient use of fuel, of existing infrastructure, and of time, all of which can make us more productive and competitive.

High-speed rail is a basic ingredient of an efficient, productive and competitive transportation policy. To identify and realize the benefits of high speed rail, we need to develop a national high-speed rail transportation plan—and implement that plan as quickly as possible. This should be a plan with the vision of the Interstate Highway System of the 1950's, and we should marshal our resources to develop it, just as we did with our highway system. This should be a plan that utilizes the latest technologies to achieve our national goals.

The contents of this plan should include, at a minimum:

A designation of priority corridors for which high speed rail could provide an efficient and effective transportation alternative;

An identification and commitment for the financing needed to acquire or preserve the necessary rights-of-way and to construct the rail, power and related facilities;

The financial incentives to challenge American business, in collaboration with others, to produce the most technologically advanced, high quality, durable rolling stock and infrastructure; and

A realistic, detailed plan for the long-term financing of operating deficits.

There is no mode of transportation that is unsubsidized. We have invested billions of general taxpayer dollars into the air traffic control system that allows airlines to fly throughout the country. Study after study has shown that highway users don't pay the full costs that they impose on the Nation's roads. But, for some reasons, the Reagan and Bush administrations have continually focused on the relatively small subsidy that Amtrak receives. The reality is, like other modes, rail service in the United States, as is true internationally, requires operating assistance. In face, Amtrak's rate of subsidy is considerably less than for major systems in Europe and Japan. As we have done for other modes, we should put into place a continuing, stable source of funding to ensure that high-speed rail service plays a part in a balanced national transportation system.

With regard to Federal investment, through the enactment of the Intermodal Surface Transportation Efficiency Act of 1991, or ISTEA, we took important steps in the direction of a balanced system. Transportation planners now have unprecedented flexibility in the use of traditionally highway-only moneys, and can now use them for either highways or transit. At my request, the Senate version of ISTEA included intercity passenger rail as an eligible use of funds. I will be working in the next Congress to expand on the advances made in ISTEA.

We clearly have to also look at expanded Federal funding. In this Congress, I joined efforts to break down the budgetary firewalls that have prevented us from making necessary investments in our future. Unfortunately, in spite of the pressing needs facing us at home, President Bush could not see his way clear to put America first. With the elimination of these barriers next year, there will be a tremendous opportunity to shift funds away from the bloated defense budget and to make investments in our future, which are so critically needed for a strong economy. We've shortchanged critical infrastructure needs, including transportation. As we review national priorities next year, I will be working hard to see that transportation is viewed as a priority and that we direct more funds to the maintenance and expansion of our passenger rail network.

Additionally, I believe that we should take a comprehensive look at other steps, such as the availability of tax-exempt bonds or incentives for capital investment, that the Federal Government could use to encourage the development of high-speed rail. Earlier this year, I voted against an amendment to raise the State tax exempt bond cap for a project in Texas which the State had not included in its bond plans. I did so not because I wanted to preclude such an option for financing, but because I believed that the measure provided a tax subsidy for one project in the absence of a national policy. I argued then and now that we should look comprehensively at our policies for promoting high-speed rail, rather than deal piecemeal with specific projects. With a comprehensive review, we could better determine how to help not only needs in Texas, but other efforts to develop high-speed rail in our country. I look forward to this discussion in the next Congress and with the next President, whomever that may be.

How do we provide a balance between modes of transportation? To do that, we have to recognize the roles the various modes best play. The advent of commercial aviation linked distant locations in a way never before imagined, and opened up whole new areas of economic opportunity. Our aviation system allows people to get from the East Coast to the West Coast in a matter of hours. A businessperson can have a morning meeting in Chicago, and be in New York for a late lunch. That role—the closing of great distances—has made an enormous contribution to our economy.

Today, aircraft manufacturers are moving away from the old mainstays of the aircraft industry—small planes such as the Boeing 707 and 727 that carried passengers a relatively short distance, and toward the construction of larger, more efficient planes, to take people long distances. Our policies in airport and air traffic control investment should mirror those efforts. In fact, a chief executive of a major U.S. airline has told Congress that, given the condition of the airline industry, he'd just as soon get out of the short haul business.

For city pairs within 200–300 miles, high-speed rail would often provide the most efficient means of travel. Currently, Amtrak's metroliners travel at top speeds of 125 miles per hour. With new equipment to be tested early next year, Amtrak expects to show that speeds of about 150 miles per hour can be safely achieved. At speeds like that, we are talking about getting from downtown Washington to midtown Manhattan in 2½ hours or less. With that type of service, studies project a major shift in passengers from the air to the ground. That would free up congested airways and airports to more efficiently provide long-haul service.

We cannot and should not preclude choice in mode of transportation. I do not believe that even an aggressive policy of high-speed rail between close city pairs would eliminate the need for air shuttle service between such cities. Nor does a proaviation policy with regard to long-haul service eliminate the need for some sort of companion rail service. Today, Amtrak's cross-country trains are booked well in advance, even though one could fly in far less time. And, major investments in rail and aviation would not eliminate the critical need to maintain our system of interstate highways, which plays such a vital role not only in the movement of people, but of commerce.

But, I believe that we should adopt a policy that actively promotes greater balance and more efficient use of resources. When the 103d Congress convenes next year, I will work to put this subject on the agenda, and to develop a national transportation policy that can move us forward.

DISTURBING NEWS FROM HUNGARY

• Mr. SIMON. Mr. President, many of us are acquainted with the charitable work done by George Soros, a New York businessman and philanthropist. He has established foundations in several East European countries, contributed greatly to the establishment of a new university in Czechoslovakia, and generally been an active and skillful advocate of economic and political reform in Eastern Europe.

Much of his effort has been focused on his native Hungary. Yet for all his efforts, some in the Hungarian Parliament have taken to attacking his foundation and Mr. Soros personally. The ugliness of anti-Semitism, sadly, is being used by those who seek to discredit George Soros. It is incredible after all these years, after the Holocaust, after centuries of intolerance, hate and scapegoating in Europe, that anti-Semitism and ethnic intolerance is still with us.

I commend the letter written by Mr. Soros—printed as an op-ed in the New York Times of October 5—to the Prime Minister of Hungary to my colleagues. It is sober reading. Our relations with the new democracies in Eastern Europe are very important, but it is clear to me that good relations will be based on internal tolerance and domestic civility inside each of the now-free nations of Eastern Europe.

I ask that the article from the New York Times by Mr. Soros be printed in the RECORD in full.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times Oct. 5, 1992]

TERMITES ARE DEVOURING HUNGARY

(By George Soros)

Disturbed by recent events in Hungary, I recently wrote the following letter to Prime Minister Jozsef Antall:

In recent months, a series of articles, published in several Hungarian newspapers, attacked me as well as the foundation I established in Hungary. Most of these articles appeared in a newspaper edited by the vice president of the ruling party, Hungarian Democratic Forum (H.D.F.). The authors are not private individuals, they are members of Parliament, and one of them is a vice president of the party. If these attacks were limited to personal insults and slander, I would not feel compelled to turn to you. My intentions and my actions have always been open to scrutiny. It is not the Government's role to defend me. However, what we are dealing with here is more than mere insult.

Leading members of your party have accused me of nothing less than taking part in an international anti-Hungarian conspiracy whose origins can be traced to Israel and whose goal is to extinguish the Hungarian people's national spirit, making them susceptible to foreign domination. Other participants in this conspiracy are, according to them, Jews throughout the world, Hungarian Jews, capitalists, liberals and Communists, as well as "cosmopolitans" and Freemasons. To prove that these astonishing allegations were actually made, please allow me to cite from some of them.

In the July 9 edition of Hungarian Forum, the party weekly, Istvan Csurka [vice president of the Hungarian Democratic Forum and a well-known playwright] writes: "George Soros is toying with the idea of leaving [Hungary], but no one should be fooled by this—if Soros does in fact leave, it won't be because he was insulted by the anti-Semitic extreme right, but because official policy in Jerusalem has—perhaps—changed."

"Termites Are Devouring Our Nation—Reflections on the Soros Regime, the Soros Empire" is the title of an article by Gyula Zacsek, an H.D.F. member of Parliament (Hungarian Forum, Sept. 3, 1992). Mr. Zacsek's premise is that "the bouquet of terms—Communism, liberalism, cosmopolitan and anti-Semitism—is inescapable." He claims, moreover, that "in Hungary, the role played jointly by Communists and Jews in their pursuit of power is unquestionable."

Following this article, Mr. Zacsek addressed an open letter to me, which clearly states that he considers Jews foreign elements in Hungary: "I understand and respect your pride in acknowledging your Jewishness," he writes, "though I do not understand what it means to be a 'Hungarian Jew,' just as I wouldn't understand what it would mean if someone claimed to be a Hungarian-German or a Hungarian-Vietnamese or a German-Spaniard. Unless, of course, he was referring to a bilingual dictionary!"

According to Mr. Zacsek, "the change in political system [the demise of the Communist regime in 1989] began as a consciously planned, well-thought-out course of action—a self-engineered coup by cosmopolitans." In other words, the Communist leadership was cosmopolitan, the dissidents were cosmopolitans, and these cosmopolitan elements conspired to preserve each other's power. "The Soros Foundation was a vital tool and resource in laying the groundwork for this transition," Mr. Zacsek asserts elsewhere.

The motivating force behind the Central European University that I established is explained by Mr. Zacsek in the following manner: "Once again the time has come for all the people in the region to subscribe to uniform ideas. The Communist ideologues told us exactly the same thing." And "if this can not be implemented with two-week study courses, let's try it with a one-year program, and if even that doesn't work, let the tanks roll again."

Toward the end of his article, Gyula Zacsek writes this about me: "Naturally, after all of this, it's not at all surprising that [Soros] is being expelled from Romania and Slovakia; perhaps he won't wait until the same happens to him in Hungary." His information is incorrect: I have been expelled from neither Romania nor Slovakia; there would be no legal basis for such action. It is true, however, that the nationalist press in both these countries has savagely attacked me as a Hungarian agent.

I can only regret that Mr. Zacsek enthusiastically supports the Slovak and Romanian nationalists attacks against me and, through me, the attacks aimed at all Hungarians. But it is no accident that rabid nationalists and narrow-minded populists in all three countries consider me their enemy. My foundations seek to promote open societies while they, under the guise of nationalism, are interested in creating closed societies. In order for them to succeed, they need first and foremost an enemy against which they can then mobilize an entire nation, and if there isn't an enemy about, they must invent one.

This is an extremely dangerous process whose ultimate consequences we have already experienced in the Nazi era, and can once again witness in the former Yugoslavia. That is why I take these accusations very seriously, despite the fact that their manner and content are beneath contempt.

In Romania and Slovakia they revile me as a Hungarian agent, in Hungary as a cosmopolitan and a Jew. I accept all three labels—Hungarian, cosmopolitan, Jew—with pride, but I reject with every fiber of my being the ideology which attacks me for it.

I am aware that a representation of the Ministry of Culture and Education has, on one occasion, dissociated himself from these views. However, it seems that this was not sufficient, since the attacks have not ceased. I should like to know the official position of the ruling party, the Hungarian Democratic Forum, and that of the Hungarian Government. I need this clarification because my foundations have frequent contacts with Government agencies and officials. I would greatly appreciate it if you could give me reassuring answers to the following questions:

1. Do you find acceptable the statement that the expression "Hungarian Jewish" can be considered meaningful only when referring to a "bilingual dictionary," that is to say that if one is Jewish, one is alien to Hungarian nationality?

2. Do you find acceptable the statement by Istvan Csurka, the vice president of the Hungarian Democratic Forum, that Hungarian Jews and the Jews of the world participate in an international conspiracy against Hungary?

3. Do you find acceptable the statement that the Soros Foundation is participant in this conspiracy and its activities have been designed to preserve and promote the power of Communists and Jews in Hungary?

4. Do you find it acceptable that a member of your party and a member of Parliament suggests that I leave the country voluntarily rather than wait to be asked to leave?

I have never sought recognition for my philanthropic activities and I am not seeking such recognition now. I am prompted to write to you by my deep concern for the future of democracy and open society in Hungary. I regret having to burden you with my letter. As I consider these questions to be matters of public concern, I intend to make public both my letter and your reply.

New York, Sept. 14, 1992.

In his reply, which I received on Sept. 30, the Prime Minister did not substantively address my questions but referred to previous public statements in which he had distanced himself from statements by Mr. Csurka.•

NATIONAL PRAYER BREAKFAST

• Mr. STEVENS. Mr. President, as this Congress draws to a close and I reflect back on the year, I have to say one of the great highlights for me personally has been the fellowship I have enjoyed each Wednesday at the Senate's weekly prayer breakfast. I had the honor with Senator HOWELL HEFLIN of leading the group and of hosting the 40th annual National Prayer Breakfast here in Washington. With the help of Senator HEFLIN and the chairman of the House Prayer Breakfast, Congressman CHARLIE STENHOLM, we hosted 4,000 people from every walk of life, from every State in the Union, and from over 140 countries at that annual event.

We were honored to have with us President and Mrs. Bush, Vice President and Mrs. Quayle, Ratu Sir Kamisese Mara of Fiji, members of the Cabinet and Diplomatic Corps, as well as many of our friends and colleagues from both the House and the Senate. My good friends, Senator LARRY CRAIG and Congressman SONNY MONTGOMERY offered remarks from the Senate and House prayer groups, and Senator AL GORE read a passage from the New Testament.

We gave special recognition to representatives that came from prayer groups in our State legislatures from across the country. Senator JOSEPH PITTS from Pennsylvania was the most senior legislator who was able to join us for this special occasion, and he blessed us with a reading from the Old Testament.

From a prebreakfast prayer delivered by Ms. Shoshana Cardin to the reflections of my good friend, Maestro Mstislav Rostropovich, we were blessed with messages that gave us hope and inspired our faith. The music was downright heavenly from the touching performance of the Savoogna Eskimo Singers from my home State to the stunning performance of Ms. Cissy Houston to the beautiful voices of the West Point Choir.

Mr. President, as the request of the National Prayer Breakfast Committee, I request that the transcript of the proceedings from this year's National Prayer Breakfast be printed in the RECORD at the conclusion of my remarks. I would also like to express my deepest appreciation for the efforts of the Senate chaplain, Rev. Halverson, and Doug Coe in organizing the National Prayer Breakfast and in serving as the Senate's spiritual leaders as we seek God's guidance and pray for His wisdom. May the good Lord grant them both good health and long lives, so they can continue to guide the Senate as it seeks to do what is best for this great Nation.

The transcript follows:

PROCEEDINGS

SENATOR TED STEVENS: Let me welcome you to the 40th Annual National Prayer Breakfast. I am Ted Stevens, one of Alaska's Senators and Chairman of the Senate Prayer Breakfast.

Ms. Shoshana Cardin, Chairman of the National Conference on Soviet Jewry and the Conference of Presidents of Major Jewish Organizations, will offer our pre-breakfast prayer. Following Ms. Cardin, the West Point Choir will sing for us as you enjoy your breakfast. Again, I welcome you all.

MS. CARDIN: Thank you, Senator. Good morning. Oh, God and God of our ancestors, we thank You for this privilege of free assembly in this great democracy of ours, for the freedom to practice our faith and express our appreciation for Your bountiful goodness and wonders, not only today but all our days.

We pray, oh Lord, that you bless our leadership, President and Mrs. Bush, Vice President and Mrs. Quayle and their families with health and strength, that You endow our President with the vision and courage so necessary in addressing today's complex challenges, encouraging democracy and ensuring the new world order.

In our bible we read the days of creation concluded with, "Bay ar adenoi ky tov"—and the Lord saw that it was good, not very good, not perfect, but good, a recognition that we, oh Lord, Your children, have the responsibility to help perfect this very imperfect world.

As we commit ourselves to this continuing task, we pray, oh Lord, shamor tze anu, o vo anu, l'achiem vo sholom, ma ato va adolom. Safeguard our going and our coming, for life and for peace, for now and for eternity. Amen.

SENATOR STEVENS: Thank you very much.

(West Point chorus song.)

CADET JERRY SIVES: Thank you, ladies and gentlemen. We are Six Pack, six guys who like to do a little singing and a lot of hanging out together.

We're very grateful to be here this morning to be able to share in Christ with you and to share some of our music with you.

We have a tradition in Six Pack that before we do each rehearsal and before we do each performance, we like to have a short prayer. Last night, Don had a short verse that he shared with the rest of us that we'd like to share with you now.

CADET DON WILLIAMS: Thank you. I used to have this memorized, but I'm so nervous because there's a million people out there.

The Ephesians 5:18 and 19 says, "Speak to one another with psalms, hymns and spiritual songs. Sing and make music in your hearts to the Lord, always giving thanks to God the Father for everything, in the name of our Lord, Jesus Christ.

This next song we'd like to sing for you is a common prayer at the end of any prayer. It's called "Amen" by Glad.

(Song.)

CADET SIVES: Thank you very much, ladies and gentlemen. We are so honored to be with so many people this morning who love and worship the Lord. You know that by keeping the commandments we are able to find true happiness in our lives. We would like to sing a song for you now as our closing number that speaks about this happiness. It's by a group called the Cathedral Quartet, entitled "Feelin' Mighty Fine".

(Song.)

SENATOR STEVENS: The Vice President of the United States and Mrs. Quayle.

(Applause.)

SENATOR STEVENS: Ladies and gentlemen, the President of the United States and Mrs. Bush.

(Applause.)

SENATOR STEVENS: Please be seated. Thank you for welcoming our honored guests.

We have some singers for you but before they sing, Congressman Sonny Montgomery of Mississippi will present an opening prayer. Our singers have traveled thousands of miles from a small island in the Bering Sea, off the coast of Russia. They're 70 miles from Russia and they're 160 miles from the coast of my state of Alaska. These singers come from the Alaskan native village of Savoonga to sing for us. Their village has approximately 500 people, no automobiles, no running water. Their men hunt for subsistence and their ladies keep busy making beautiful Alaskan native crafts. These singers will sing "How Great Thou Art" in Alaska-Siberian Ubic and then in English. We ask that you remain seated for the prayer and enjoy the songs.

REPRESENTATIVE MONTGOMERY: Good morning and let us pray. Good Lord, thank you for this new day and for giving us the opportunity to gather this morning to express our love for you and for our neighbor. To our friends from overseas, welcome to our country. We are proud that you are part of this great National Prayer Breakfast.

In 1991, the world changed so much for the better. Many people in our lands can now worship without fear. Please give them the strength and courage to keep these new freedoms.

Bless our President and Barbara Bush, and thank you for helping our President work through the many problems he faces each day.

Bless Vice President and Marilyn Quayle plus the Congress and all the officials in our great government. Lord, Bless this food to the nourishment of our bodies, and let us remember that every good and perfect gift comes from You.

Amen, amen.

(Savoonga Singers.)

(Applause.)

SENATOR STEVENS: Thank you all very much. That was very lovely.

Mr. President, Mrs. Bush, Mr. Vice President, Mrs. Quayle, distinguished heads of state, honored guests and friends, coming from all walks of life, every political persuasion in every corner of our globe, we have gathered together today to pray and to thank our God. The book of Matthew tells us that where two or three are gathered in God's name, He is among them. And where two or three agree in prayer, our Father in heaven will answer those prayers.

We have much for which to be thankful: a world earnestly seeking peace, the end of walls separating mankind, the rebirth of democratic freedoms, and most of all, our United Nations forces have returned after liberating Kuwait.

Our prayers offered here in this room a year ago have been answered. But while we may differ on issues of policy and politics, foreign affairs and business and commerce, our faith in our God unites us. As we come closer together and our world is at peace, God will listen. Ask and it will be given you, seek and you shall find. Knock and it will be opened to you.

Now I would like to introduce to you those seated at the head table whose names do not appear on your program. First on my right, a lady who needs no introduction. To me, I believe that when our good Lord thought of the words "wife, mother and family", he though of our nation's First Lady, Barbara Bush.

(Applause.)

Thank you very much. Those of us in the Senate truly love Barbara Bush. She has been involved with our wives now for many years. She is totally one of us.

On my left, the loverly and gracious wife of our Vice President, Marilyn Quayle.

(Applause.)

Now I ask that you hold your applause until I finish introducing the remainder of those at the head table who are not listed in your program. Beginning at my far left, Mrs. Tipper Gore, wife of Senator Al Gore.

Mrs. Mike Heflin, wife of Senator Howell Heflin.

And Mrs. Cindy Stenholm, wife of Congressman Charlie Stenholm.

And Mrs. Galina Vyezniskaya, wife of Maestro Rostopovich.

Mrs. Suzanne Craig, wife of Senator Larry Craig.

Mrs. Alma Powell, the wife of General Colin Powell.

My wife, Catherine Stevens. Now join me in welcoming the true powers of Washington.

(Applause.)

Next I'm honored to introduce A Head of state, a friend of all. He has traveled thousands of miles to be with us this morning, Prime Minister Sir Ratu Kamisese Mara of Fiji. Mr. Prime Minister.

(Applause.)

I ask this morning that we give special recognition to the state legislators who have come to be with us, despite the fact that our State Legislatures are in session. They represent prayer groups from almost all of our state governments. Will those legislators who represent state prayer groups, please stand?

(Applause.)

The House and Senate Prayer Group sponsor this breakfast. I ask now that you welcome my good friend, the Honorable Larry Craig of Idaho, who will speak for the Senator Prayer Group.

Senator Craig: Mr. President, Mr. Vice President, Chairman Ted, good morning to everyone and especially to our international friends. I'm deeply honored to have been asked to speak on behalf of the United States Senate and its members who participate in the Senate Prayer Breakfast.

This morning's gathering is one of the largest assemblies of love, fellowship and prayer I believe the world has seen. Let me tell you, my wife, Suzanne, and I are deeply honored, humbled and pleased to be among all of you.

In the early 1940's, members of the U.S. Senate gathered to consider the spiritual problems they were experiencing with warfare and to pray together about it. The Senate Prayer Breakfast was born.

Later, Senator Frank Carlson of Kansas met with President Eisenhower and found the common denominator that brought this nation's leaders together in fellowship through prayer. The National Prayer Breakfast movement, which today spans the globe, has resulted from that effort.

Thousands of people here this morning, from over 150 countries, should serve as testimony to the never-ending power of love and values of fellowship spoken clearly to us by our Lord Jesus Christ.

Well, I'm a veteran of both the House and the Senate Prayer Breakfasts. Every morning, while the Senate is in session, Senator Ted Stevens and Senator Howell Heflin, our current leaders, bring us together in fellowship. This fellowship results in stronger bonds between people of different political opinions and religious beliefs. Our isms are checked outside the door as we meet to share what oftentimes comes to be an expression of very personal beliefs and ideas. We open with prayer and we close with prayer.

The Prayer Breakfast has helped me personally to disagree without being disagreeable and to remember that what unites mankind is much stronger than that which pulls us apart or divides us. That unifying force is the power of love of our fellow man.

It is my pleasure to bring greetings from this unique body of men and women who are responsible for the genesis of thousands of similar groups throughout the world.

Let me close with Romans 14:13, which speaks of love and consideration for your brother. "Let us not therefore judge one another anymore, but judge rather that no man put a stumbling block or have occasion to fall in front of his brother."

Now it is my pleasure to introduce the Chairman of the U.S. House of Representatives Prayer Breakfast. For 10 years I had the privilege of attending this Prayer Breakfast and sharing with this gentleman. He is a Democrat and I'm a Republican. Our states are divided by a thousand miles and many different opinions. But we are united in friendship. We believe in our Lord and we believe in the love that He has asked us to expend.

Ladies and gentlemen, from the 17th Congressional District of Texas, the president of the House Prayer Breakfast, Congressman Charlie Stenholm.

Representative Stenholm: Thank you, Larry, Mr. President, Mr. Vice President, distinguished guests, one and all. In the words of St. Paul, "Grace and peace to you from God our Father and the Lord, Jesus Christ."

I thank God for you because of His grace given you in Jesus Christ. I appeal to you, brothers and sisters, in the name of our Lord, Jesus Christ, that all of you agree with one another so that there may be no divisions among you and that you may be perfectly united in mind and in thought.

From the reports you hear on the news, it may be difficult for you to believe that Members of the Congress of the United States ever agree with one another on anything, or find it possible ever to be perfectly united in mind and thought, as St. Paul admonished us to do. But it is my pleasure and privilege to bring you greetings this morning from the House of Representatives Prayer Breakfast Group, where we try to take those instructions seriously. Like St. Paul, I greet you in the name of Christ with thanksgiving for everyone gathered here from all across the world and from many different walks of life.

I want to share with you the good news of God's work in our House Prayer Group. Looking out across this impressive crowd this morning, I am reminded of the Prophet Isaiah's words when he said, "My house will be called a house of prayer for all nations." This room may normally be a ballroom, but this morning it is definitely a house of prayer for all nations, and it is a wonderful sight.

Normally on Thursday mornings at this hour I am seated in a little room in the Capitol Building with about 40 or 50 colleagues. We meet without fanfare, simply to find fellowship with each other and to share each other's burdens and joys and to pray.

I have to tell you that prayer is something I don't totally understand, even though I am convinced of its power. The Holy Spirit, as the Bible says, guides us in our prayers. It is a lot like the wind that sweeps across the rolling plains of west Texas. The wind itself is invisible, but its effects are undeniable.

The hostages, for whose release we praised God this year, have all told us about the power which sustained them through their long lonely years. Those who were able to link hands in prayer while in their cells, which they called the Church of the Locked Door, have testified that the strength that they gained from each other and from the Holy Comforter was what kept them alive.

In the House Prayer Breakfast Group, we have seen the power of prayer in the Holy Spirit at work as well. Through the report which we affectionately call, the "Sick and Wounded Report", given every week by General Sonny Montgomery, we share our daily concerns with and for our fellowman. Through Jake Pickle's colorful explanations of the background of the hymns we sing, we lift our voices in praise and gain a sense of how God has worked through the lives and experiences of past believers. Through the message brought by a different Member of Congress each week, alternating between Democrat and Republican, we learn something of our colleagues' own spiritual journeys.

I personally have felt the impact that fellowship and prayer can have on those of us who meet together. As a conservative farmer from the rural southwest, it's not always obvious to me how I might relate to a liberal New Yorker. When we sit together on Thursdays, however, all the other labels are left at the door and we are transformed into simply being two men seeking fellowship and God's guidance. Even when we leave the room and we reattach our labels, something of that connection through fellowship remains with us.

Just as we Representatives meet every Thursday morning, asking God to direct us while we debate the laws of our land, I ask that you pray for us, as we make those decisions so that our words and deeds may always be pleasing to Him.

It is now my privilege to introduce to you Ms. Sissy Houston, who will bring us her rendition of "Sweet Hour of Prayer". While many people may be tempted to boast of a successful recording career, Grammy Award nominations or numerous other awards, I suspect that the one which may be most special to Sissy was being named Mother of the Year in 1991. While we don't know about her other children, we do know that Sissy did a marvelous job of raising and training her daughter, Whitney.

May I now introduce Ms. Sissy Houston?

(Ms. Houston's song.)

(Applause.)

Senator Stevens: Thank you very much, Sissy. My grandmother used to say, when you hear a good song, your heart sings. Our hearts were singing with you.

Next, we are honored by a former Senator. As a matter of fact, he is the President of the Senate, a friend and a true believer, the Vice President of the United States, the Honorable Dan Quayle.

Vice President Quayle: Thank you, Ted, Mr. President. Thank you very much, Senator Stevens, Mr. President, Barbara, Marilyn, Maestro Rostropovich, ladies and gentlemen.

As we welcome our international friends and guests to the National Prayer Breakfast, let us just stop for a moment and think what has happened in the world this past year. We welcome this day of prayer to once again give thanks to our Lord for the wonderful blessings that he has bestowed upon us. In the words of the 77th Psalm, Verse 14, "You are the God who does marvelous deeds, the Lord who brings nations to acknowledge your power."

Indeed he does. For the most dramatic events of our lifetime, the rebirth of nations long covered by darkness, the reunion of East and West upon their shared heritage, this was not done by the force of arms. This was brought by the force of faith. It began when a group of Polish workers insisted upon erecting a cross at their shipyard. It drew strength from those who fell, martyrs, like Father Populiuscko, who, even in death, could not be silenced.

Last summer, Marilyn and I and two of our children, prayed at his grave and now we witness his victory. Like many before him, he taught the most profound lesson of our time, that faith, family and freedom are intertwined. Destroy any one and the others are threatened as well. Strengthen anyone and the others revive along with it.

That's why the bogus messiahs of this century tried to shackle religion and ruin family life, because they knew their monster states could never enslave believing families. Now, bells rings out again from the ancient churches in the Kremlin, voicing to the heavens their prayers of thanksgiving.

Yet even at this season of rejoicing, there is still danger. People of faith should not ignore it. For the totalitarianisms of this century, evil as they were, were only symptoms of a deeper malady in the western world. It was an emptiness of the spirit that, by denying humanity's creator, denied human limits and human dignity as well. That denial built the extermination camps and the Gulag. That denial remains amid the rubble of empires. It persists in our own institutions and distorts the face of our culture. My friends, it challenges all of us. For the spiritual vacuum at the heart of what Paul Johnson called modern times will be filled one way or another, filled either by a revival of faith or by some new fanaticism, promising heaven on earth.

Now, after all we have seen, after all we have been given, after so much has been done for us, surely we should now be the people with hope, with confidence in the Lord's governance of world affairs.

Thank you and God bless you.

SENATOR STEVENS: Representative Joseph Pitts of Pennsylvania has the most seniority of all state legislators who answered our invitation to join this breakfast. We've asked him to share a passage of the Old Testament with us at this time.

REPRESENTATIVE PITTS: Mr. President, Mrs. Bush, Mr. Vice President, Mrs. Quayle, distinguished guests and friends. When I asked my colleagues in the State House Fellowship Group in Pennsylvania what I should read this morning, we concluded that as state legislators, grappling with issues and ethical concerns in matters of public policy, we often find values, meaning and guidance in reading the Old Testament. The Scriptures are a place we can go, not only in our personal lives, but in our corporate lives, to rediscover God as individuals, as communities and as a nation.

We selected these verses from the Book of Psalms, chapters 33 and 145, some selected verses, beginning at verse 8.

"Let all the earth fear the Lord. Let all the people of the world revere Him, for He spoke and it came to be.

He commanded and it stood firm.

The Lord foils the plans of the nations. He thwarts the purposes of the peoples. But the plans of the Lord stand firm forever. The purposes of His heart through all generations.

Blessed is the nation whose God is the Lord, the people He has chosen for His inheritance.

From Heaven, the Lord looks down and sees all mankind. From His dwelling place, He watches all who live on earth, He who forms the hearts of all, who considers everything they do.

No king is saved by the size of His army, no warrior escapes by His great strength.

But the eyes of the Lord are on those who fear Him, on those whose hope is in His unfailing love."

And from 145:

"The Lord is gracious and compassionate, slow to anger and rich in love. The Lord is good to all. He has compassion on all He has made.

The Lord is faithful to all His promises and loving toward all He has made. He upholds all those who fall and lifts up all who are bowed down.

The Lord is near to all who call on Him, to all who call on Him in truth.

He fulfills the desires of those who fear Him. He hears their cry and saves them."

SENATOR STEVENS: Thank you, Representative Pitts. Let me now present to you another friend and member of the Prayer Group, the Honorable Al Gore of Tennessee, who will read to us from the New Testament.

SENATOR GORE: Mr. President and Mrs. Bush and Mr. Vice President and Mrs. Quayle, distinguished quests and ladies and gentlemen. In three of the four Gospels of the New Testament, there is a simple story about an unfaithful servant. The master of the house leaves on a journey and puts his servant in charge of the house with instructions. He says "If while I'm gone vandals come and ransack my house or thieves come and steal by belongings, it will not be a good enough excuse for you to say, I was sleeping."

We are gathered here from nations all over the face of God's Earth. The Earth is the Lord's and the fullness thereof. The vandalism of God's Earth on a global scale calls us out to watch, to bear witness and to respond. In Matthew, chapter 24, verse 43, Christ says, "If the good man of the house had known in what watch the thief would come, he would have watched and would not have suffered his house to be broken up. Therefore, be ye also ready."

In Luke, chapter 12, verses 54 through 57, "When you see a cloud rise out of the west, straightway ye say there cometh a shower, and so it is. And when you see the south wind blow, yea say, there will be heat, and it cometh to pass. Ye hypocrites, ye can discern the face of the sky and of the Earth, but how is it that ye do not discern this time. Yea, and why even of yourselves judge ye not what is right?"

And in Mark, chapter, 13, verses 34 through 37, "For the son of man is as a man taking a far journey, who left his house, and gave authority to his servants, and to every man his work, and commanded the porter to watch. Watch ye therefore: for ye know not when the master of the house cometh, at even, or at midnight, or at the cockcrowing or in the morning, lest coming suddenly he find you sleeping. And what I say unto you, I say unto all: Watch."

SENATOR STEVENS: Thank you very much, Senator Gore.

On August 19th of last year, dark clouds literally hung over Red Square in Moscow. It was the first day of the feast of the Transfiguration for Russian Orthodox true believers, and one of the first days for open religious freedom in the capital of the Soviet Union. A coup, a military coup was underway. As the Patriarch of the Orthodox Church, Alexi II was addressing his religious bloc in the square, Soviet tanks rolled into that square, threatening the protectors of the Russian White House in which Boris Yeltsin, the first elected leader of Russia, and the Russian Parliament, were meeting.

That night, cellist was in Paris. He went to the airfield, bought a ticket for Tokyo on a flight he knew stopped in Moscow. Upon arrival in Moscow, he went right to the Russian White House and joined Mr. Yeltsin. And he joined Father Burkov. And together they gave out 2,000 bibles to young soldiers in tanks. Only one of those soldiers refused to accept a Bible. That, to me, was a trip of faith, taken by Mstislav—we call him Slava—Rostropovich. He returned to the country of his birth to defend freedom. And we have asked Maestro Rostropovich—Slava—the music director of our National Symphony Orchestra now and for the past 15 years, as a true believer—to be our speaker, to give you our message today.

Ladies and gentlemen, I present to you a great patriot and a good friend, Slava Rostropovich.

MAESTRO ROSTROPOVICH: Mr. President, Mrs. Bush, Mr. Vice President and Mrs. Quayle, Chairman and Mrs. Stevens, Honorable Members of Congress, Honorable ladies and gentlemen, my good friends. The more I immerse myself in my music, the more certain I am that sound is a bridge between our real world and the world into which we all will eventually pass, a Godly world, a spiritual world.

Perhaps an oblique proof of this is the existence of sound in all of the different religious temples and churches. I have heard the choirs in the Greek and Russian Orthodox, the organs in Catholic and Protestant, the cantors in the Jewish and the drums in the Buddhist. Sometimes, in some rare cases in my imagination, together with the music rising out of the silence, I would experience an emotional communique with my departed friends.

This is what happened on the evening of August 19th of last year. I had learned of the putsch in Moscow and was waiting in my Paris apartment for the broadcast of the press conference of the junta leading the coup. Watching and listening, I was horrified. I understood that the cursed terror that had reigned in my country for over 70 years was returning. I closed my eyes, then felt in my inner being the sounds of the music of the 8th Symphony of Dimitry Shostakovich. The music was quiet, devastating, evocative of the inhuman suffering of its composer.

What I feared was a return of the time when that music was written: the time of lies, of deceit, of trampled human dignity. I understood in that mystic moment that I was being summoned by a power it was useless to resist.

The next morning I flew to Moscow and went to the Parliament building, the Russian White House, where I spent the following three days. During those three days, like never before in my life, I felt in me the spirit of Christ.

During that first night, while waiting for the imminent attack, we were sure of the inevitability of death. There were over 30,000 unarmed people defending those of us who had voluntarily locked ourselves in the Parliament Building. But what were those numbers to the combined forces of the KGB, the Army and the Militia united as they were by the presence of their Ministers in the junta?

It poured rain all night and fog shrouded the roof-tops. As we learned later, the attack had been planned by helicopters, depositing their forces on the roof of the White House. But the fog and the gusting wind aborted that plan. The junta could not know that they had planned the overthrow for the Holy Feast of the Transfiguration. I am SO certain that we had been saved only through the intervention of God. God did not loose yet greater suffering on a people tortured by their merciless history.

When I left the White House at 3 o'clock in the morning, amid the constant expectation of attack, to walk among the volunteer defenders surrounding the building, I saw many, many, many with symbols of their faith, using them as defense and salvation. In the silence of the night, broken by the sound of moving tank threads, the aura of faith was almost palpable. That moment and the salvation of all of us and of the future of the country, came only from God.

There are not words enough to cover the spectrum of emotion I felt during those three days, these happiest days: as they were days of closeness with God, an almost physical awareness of His power. Days of a unity of Faith with my people.

Thank you very much.

SENATOR STEVENS: Thank you, Slava. When I first heard that story of the beginning of the Feast of the Transfiguration and the power of those true believers standing in the square to stop the tank, I thought it was a story that should be shared with all of you.

Now let me ask you to welcome a true warrior, a man who led our military forces as we won the Cold War, and led them through a shooting war in the Persian Gulf, working with the United Nations. A man who has helped make our world a more peaceful place to live, the Chairman of our Joint Chiefs of Staff, General Colin Powell, will offer for us a prayer for the Armed Services.

GENERAL POWELL: Thank you, Senator Stevens. President and Mrs. Bush, Vice President and Mrs. Quayle, distinguished international visitors, ladies and gentlemen. Last year at this time, America was at war. Dr. Antonia Novella, the Surgeon General, opened last year's breakfast by asking for God's blessing on the men and women of our Armed Forces as they went in harm's way. Last year, 8,000 miles from here half a million G.I.s and their colleagues from many, many other countries carried the heavy burden of war. They also sought God's blessings. In their own individual way, in groups around tanks and airplanes, in foxholes and on board ships, these men and women steeled themselves with faith for the coming battles. And now, thank God, the war is over. We are at peace.

And with the end of that other war, the Cold War, we stand at the threshold of what promises to be an exciting future, a future where freedom, democracy and peace will reign. Yet as we move toward that brighter future, we must not forget that still today at 1,000 campfires around the world, the men and women of your Armed Forces stand guard. On the cold snow covered DMZ in Korea, in Guantanamo Bay, in southern Turkey, afloat in the Mediterranean, in the Persian Gulf, all across the world, soldiers and sailors and airmen and marines and coast guardsmen silently keep their watch.

Please join me in a prayer for their service, their sacrifice and for their safety.

Heavenly Father, we are grateful beyond all bounds for your mercy and your loving kindness in caring for and protecting the men and women of our Armed Forces. In Operation Desert Storm our men and women went to war, as Abraham Lincoln went to war with their faith as their might. And in that faith, they dared to do their duty as they understood it. But Father, without your sure presence among them, we know that victory would never have come.

We pray again for those who did not live to see that victory and are now with you. We know that the battle for peace is never without cost, but we are human and we hurt as only humans can hurt when we lose loved ones. We pray that you will be with all the families and friends who have suffered loss. Comfort them and give them strength as they go on with their lives. And let them always remember with pride the selfless sacrifice of their fallen comrades and loved ones.

Above all, Heavenly Father, we now pray for peace. As the aircraft we built to carry our troops to war instead now carry food and medicine to our former enemies, we pray for that day when no American shall ever again have to go into war. We long for peace and for the time when every man and every woman in the world shall love his brother and his sister as Your precepts command. But we know that the road to peace is a hard road and a dangerous road. We have walked many a mile upon that road and we know that many miles may yet be ahead.

So Father, we ask your strong presence with our men and women who travel that road all around the world. Be with them, sustain them, give them the strength to do their duty despite the intensity of the trial. As we have seen from Operation Desert Storm, your presence among them surpasses the strength of 10,000 battalions.

Accept our eternal gratitude for Your love and kindness and for Your watching, caring presence in our midst today. Guide us today and tomorrow.

And Father, thank you for giving us this beloved country, which You have blessed and which we are proud to call America. Thank you.

SENATOR STEVENS: And now I call upon the Co-Chairman of the Senate Prayer Group, Senator Howell Heflin.

SENATOR HEFLIN: Last April I had the privilege of representing the Senate Prayer Breakfast at the dedication of the Camp David chapel, which serves as a house of worship for the presidential party and over 200 permanent residents, most of whom are Naval and Marine security personnel and their families. In the worship service our nation's highest leaders were co-mingled with average people like foresters, sailors and marines. The forester's wife might be seated next to the First Lady, and a Marine gunnery sergeant might stare at the President as he passes the collection plate.

When the President rose to give his remarks at the dedication service, a young mother took her crying baby out of the chapel. The President remarked that the first crying baby to be removed from the chapel just happened to be his grandson.

In 1789, George Washington in his inaugural address, said "It would be peculiarly improper to omit in this first official act my fervent supplications to that Almighty Being who rules over the universe. It is my hope that His benediction may consecrate to the liberties and happiness of the people of the United States, a government instituted by themselves."

Some 200 years later, in 1989, the second George to occupy the office, made his first act as president a prayer. "Heavenly Father, we bow our heads and thank you for your love. Accept our thanks for the peace that yields this day. Make us strong to do your will and write on our hearts these words: Use power to help people. There is but one use of power and it is to serve the people. Help us to remember it, Lord."

This National Prayer Breakfast has a meaningful international attendance. Let me mention another George, King George VI of Great Britain. During a World War II broadcast he encouraged his countrymen by invoking words from Louise Haskin's poem, "The Gate of the Year":

I said to the man who stood at the gate of the year
"Give me light that I may tread safely into the unkown."
And he replied "Go out into the darkness
And put your hand in the hand of God.
That to you shall be better than light,
And safer than a known way."

Throughout our history, we have been fortunate to have leaders who have sought God's guidance. How comforting it is to know that so many of our great leaders, including our President, Geoge Bush, have placed their full confidence in His power. It is my high privilege and distinct honor to present such a leader, the President of the United States.

PRESIDENT BUSH. Thank you all very, very much. Please be seated. Slava, thank you. Thank you, Senator Heflin for such a lovely introduction. Dan and Marilyn, the Vice President and Mrs. Quayle; members of my Cabinet; Members of Congress, all so many here today; General Powell; our host, Ted Stevens, to our dear friend, Billy Graham, and all gathered, let me first just say a special greeting to Prime Minister Kamisese Mara of Fiji. This is not his first time here, and I am sure it won't be his last. He is an inspiration to all of us who know him and consider him a friend, as I do.

And May I salute our other friends from overseas? and those who serve in the state legislatures. We are glad you all are here.

Four principles, four ideals, really inspire America and I think they are all here this morning, reflected in one way or another —freedom, family, and faith that Dan Quayle talked about and to that I would add fellowship. So many people, brought together by a shared spirit, the simple joy of praying to God.

Slava, that was a tremendously moving story and one of the most dramatic moments in recent history. And if sound has anything to do with entry into heaven, I believe you can choose the fluffiest, most generous cloud in the firmament when you get there. Thank you for your inspiring message. You reminded us all of the powerful role that prayer has played in the unprecedent events of the past year.

When I last stood here, as Colin reminded us, we were at war. Compelled by a deep need for God's wisdom, we began to pray. And we prayed for God's protection in what we undertook, for God's love to fill hearts and for God's peace to be the moral north star that guided us.

Abraham Lincoln said "I've been driven many times to my knees by the overwhelming conviction that I have nowhere else to go." And in his example, we came together for a special national day of prayer. Americans of every credit turned to our greatest power to bring us peace, "peace which passeth all understanding". At the end of the war, we prayed as one during our national days of thanksgiving.

Let us pray today that as a people we will continue to bring the power of prayer to bear on all the challenges we confront. Let us pray that we will strengthen the values that this great land was founded on, that we will reverse any threat of moral decline, and that we will dedicate ourselves to the ethic of service, of being what I call a point of light to someone else, someone in need.

In this work, we are not without inspiration. We need look no further than the handful of men who became heroes by their courage their strength and, above all, their faith—the last of whom returned in December. I'm talking about our hostages. In brutalizing conditions, as we've heard this morning, they prayed together daily in what they called the Church of the Locked Door. They unwove floor mats in order to make rosaries. And these men who every day lived the story of Job treasured their first book, the Bible. And when Terry Anderson was released, one of the first things he did was to thank strangers across the world who had prayed that he be set free. Your prayers made a big difference, said this man, who imprisoned had rediscovered the faith that sets and keeps men free.

There's another story from last year's news that tells of the transformation of faith. While it's a story familiar to all of you, it's intensely personal to Barbara and me and to others in this room. We lost a dear friend last March, Lee Atwater, a restless, fiercely-driven, fun-loving good old boy from South Carolina, who rode life as hard and fast as he could. But he also lived a kind of miracle because his illness reintroduced him to something he had put aside, his own faith. And in his last months, he worked intensely to come to grips with his faith. Through reading the Bible and through prayer, he learned that, as he put it, "what was missing in society was what was missing in me, a little heart and a lot of brotherhood."

He was so right. Prayer has a place, not only in the life of every American, but also in the life of our nation. For we are truly one nation, under God.

May God bless this very special gathering. For those of you who have come from overseas, for those of you from across our land, for those of you right here in the nation's capitol, thank you for participating in this celebration of faith. Thank you very much.

(Applause.)

SENATOR STEVENS: Thank you very much, Mr. President.

Now we have asked West Point Cadet Doug McInvail to lead us in song, "Amazing Grace". He wants to sing the first verse alone, and then asks us to join with him and the choir for the second and third verses. I ask that you please stand for this song.

(Song—"Amazing Grace")

SENATOR STEVENS. Amen. Thank you very much. This is the first year in the history of the Prayer Breakfast that the United States Military Academy Choir from West Point has been with us. We want to thank the Commandant of the United States Military Academy, General Howard Graves, for allowing them to join us and thank them all.

Immediately following this closing song, one of the participants in the first Prayer Breakfast, which was conducted during the administration of President Dwight D. Eisenhower, Dr. Billy Graham, will lead us in a closing prayer. We hope that you will remain standing for the song and the prayer.

(Song—"America the Beautiful".)

REVEREND GRAHAM: President and Mrs. Bush, Vice President and Mrs. Quayle, Senator Stevens. This has been a marvelous and wonderful Prayer Breakfast, in which all of our hearts have been stirred.

The theme seems to have been peace. And the greatest peace was bought for us 2,000 years ago at the cross, where Jesus Christ reached out with one hand and took the hand of man, and the other hand of the Father, and brought us together—if we put faith and our confidence in Him.

And so we do have the possibility of peace. We sang that song a moment ago, "Amazing Grace". Did you know that the man who wrote it was a very wicked man? He was a slave trader. And one night coming back from Africa there was a storm on board that almost overwhelmed his ship. He thought he was going to die. He fell down on his knees. He received Christ into his heart. He felt the peace of God "that passeth understanding". And he went back to England and helped lead the cause to free the slaves. He became a great Anglican clerygman and wrote many songs. That's what Christ can do for us today.

Our Father and our God, once again, you have brought us together to look to You and to praise You for the freedoms we have in this great nation. We thank Thee for those people that gave their lives this past year to help keep us free and to bring peace to the world, especially that part of the world that has seen so much war, that part of the world where the Bible was born, where it was written, where Christ lived and died.

And today we would like to pray especially for President and Mrs. Bush, Vice President and Mrs. Quayle and their families.

We also commit to you the leaders of Congress as they deliberate the matters of State of this year. We pray for the leaders of our Armed Forces. We thank You that we, as a Nation, are once again at Peace. And, we pray that our own hearts may also be at peace because of our faith in You.

Thank you for promising peace to those who put their trust and confidence in You. We pray that as we repent our sins and put our faith in Jesus Christ, You will prepare us for that eternity that lies ahead of us all.

Now the grace of our Lord Jesus Christ, the love of God the fellowship of Holy Ghost be with us all forevermore. Amen.

SENATOR STEVENS: Thank you, Dr. Graham. Vaya con Dios. God go with you all.●

TRIBUTE TO HON. JAMES H. SCHEUER

• Mr. D'AMATO. Mr. President, I rise to pay tribute to a departing Member of the other body, the dean of the New York City congressional delegation, Representative JIM SCHEUER of New York. Representative SCHEUER has served New York City for 20 years in the House, and he has distinguished himself again and again as a fighter for New York's people and their best interests.

Mr. President, JIM SCHEUER is a legislator who has consistently placed principle above politics. He is perhaps best known for his work on behalf of the environment. As chairman of the House Subcommittee on the Environment, and the founder of extraparliamentary environmental organizations, Representative SCHEUER has been a pioneer in this field. He called public attention to issues such as biodiversity, energy efficiency, global warming, the protection of our forests—long before it was fashionable to do so.

JIM SCHEUER has always brought a global vision to the job of public service. He has led a crusade against overpopulation in the developing world. He has fought for human rights abroad, and championed the cause of Soviet Jews who wished to emigrate to the West. Because of his efforts, and the efforts of others, Russian Jews have emigrated to Israel in record numbers.

He will be sorely missed by the Nation, by the House and the Senate, and by the people of New York.●

TRIBUTE TO MORTON H. HALPERIN

• Mr. BIDEN. Mr. President, at the end of this month the American Civil Liberties Union will be saying goodbye to an outstanding American with a distinguished record of service to this country's great tradition of protecting civil rights and civil liberties of all individuals. At that time, Morton H. Halperin will leave the ACLU to accept a position with the Carnegie Endowment for International Peace, as well as a position as Baker professor in the Elliot School of International Affairs at George Washington University.

I am sure that we have not seen the last of Mort Halperin here in the Congress—he will remain as dedicated and as passionate in his championing of the causes of civil rights and individual liberties in his new position as he has been in the past—but this transition makes a highly suitable time to note his tremendous contributions to those causes.

Mort Halperin has made an indelible impression on the lives of many, including myself. He is that truly rare creature—especially rare in Washington, perhaps, but certainly not only here—for whom there is never any conflict between principle and practice.

This is not because he is ever prepared to sacrifice his principles, but because he is never prepared to hold his principles aloof from the hurly-burly that so often surrounds civil rights. He is never content with principles as a pose, but only content with a principled and practical conclusion to any negotiation in which he participates.

Fortunately, for him and for us, he has a reflexive, instinctive ability to reach that kind of conclusion, time after time, to some of the knottiest controversies any of us ever encountered. And he does it without falling into the habits that too often snare those who take up civil liberties as moral trophy-hunters—

He is never content to be simply a cheerleader working the crowd from the sidelines without taking any risks himself;

He is never satisfied to simply bloody the other side with a blunt instrument without gaining any ground;

And he always wants something more than to leave the other guy guilt-ridden but still in possession of the field.

When the chips are down, what works is what Mort does—as long, of course, as what works is right. And how he gets things done is as unusual in this town as what he gets done. In a place where shouts often substitute for arguments, Mort never raises his voice, and while it is obvious he has an absolute passion for civil liberties, when he speaks it is always with the voice of reason.

He would rather persuade you than overwhelm you—not least, of course, because he understands very well that when you have come round to his point of view, you will be mightily impressed with the originality of your own thinking, and you will defend that idea as vigorously as you would defend anything else that belongs to you.

Given his abilities and his achievements among us, I used to wonder why Mort has not become a lawyer,

But I realized, finally, that he is a bit like the famous Professor Kittridge of Harvard. When a student asked Kittridge why he had never taken a Ph.D. in his field of English literature, the professor simply smiled and said, "But who would have examined me?"

None of us, certainly, would relish trying to examine the Halperin intellect or its command of civil-rights law. But there's nothing pointy-headed about the way Mort pursues his work. There's nobody in Washington smarter than he is, but there is equally nobody more down to earth in pursuing a goal, and he has all the tools for that kind of work.

He is, very simply, a man of good judgment, about both principles and people, and he has a first-rate command of the political process that aims at blending those two elements into results that are both desirable and workable.

He knows all the angles, and he plays them all, but he plays them straight. None of us has ever known a more honest man—but neither has any of us ever known a man more clearly focused on his goals or more clever at achieving them.

For Mort is, above all, a master tactician of the moral realm, and his preeminent skill is winning the big battles, outflanking and outmaneuvering the apparently unbeatable foe at the head of small, ragtag, apparently hopeless armies—for, as we have all learned, that "apparently" can be a formidable weapon in the highly-skilled hands of a Mort Halperin.

I have no doubt there are people all over this town who are still trying to figure out how they lost a fight against such "apparently" insignificant opposition.

It is simply beyond imagination that anyone could have done more than Mort for civil liberties. It has been our good fortune, as well as the great good luck of the American people, to have had Mort Halperin as our "Horatio at the Bridge" for civil liberties.

It has been our good fortune to have found in Mort Halperin the Humanitarian, but supremely practical, man once described by the writer Aldous Huxley—

"A man may have strong humanitarian and democratic principles," Huxley said, "But if he happens to have been brought up as a bath-taking, shirt-changing lover of fresh air, he will have to overcome certain physical repugnances before he can bring himself to put these principles into practice."

I have no doubt that Mort has had to wrinkle his nose more than once as he has made his way through the political stockyards here in Washington, but he never avoided the occasion, no matter how aromatic he may have found it; he never hesitated to get his hands dirty, even as he never sacrificed his principles; and he has left the political air forever fresher everywhere he has passed.

He has been my friend, and he has been the best friend to civil liberties in our time,

And so, I am sure, he will remain.•

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

• Mr. CHAFEE. Mr. President, yesterday the Senate approved H.R. 2130, a bill authorizing appropriations for the National Oceanic and Atmospheric Administration. This morning I received a letter from William K. Reilly, the Administrator of the Environmental Protection Agency, in which he comments on this legislation, referring specifically to title V.

I would ask that this letter be included in the RECORD, and that the Environmental Protection Agency consider this letter, as will as a colloquy among Senators HOLLINGS, MOYNIHAN, and myself, as it implements this legislation.

The letter follows:

U.S. ENVIRONMENTAL
PROTECTION AGENCY,
Washington, DC, October 8, 1992.

Hon. JOHN H. CHAFEE,
U.S. Senate,
Washington, DC.

DEAR JOHN: Thank you for requesting my views on legislation recently approved by the House of Representatives, H.R. 2130, a bill to authorize appropriations for the National Oceanic and Atmospheric Administration. Title V of this bill establishes a comprehensive national program for monitoring of the nation's coastal ecosystems, which is to be jointly implemented by the Under Secretary of Commerce for Oceans and Atmosphere and the Administrator of the Environmental Protection Agency.

The bill specifies that "primary leadership for the monitoring program activities conducted by the Environmental Protection Agency, pursuant to this section, shall be located at the Environmental Research Laboratory in Narragansett, Rhode Island."

I interpret this language to mean that headquarters for the monitoring program, which will be established pursuant to this legislation, will be located at the EPA laboratory currently located in Narragansett. The personnel primarily responsible for implementing the program, of course, would be located at the laboratory. Such implementation would ordinarily include:

Developing and implementing intensive coastal water quality monitoring programs in accordance with the legislation;

Identifying and analyzing the status of environmental quality in the Nation's coastal ecosystems;

Assessing ambient water quality, benthic environmental quality, and the health and quality of living organisms; and

Identifying sources of environmental degradation affecting the Nation's coastal ecosystems.

Personnel located at the program headquarters in Narragansett would also have a role in providing the scientific basis for the development of coastal water quality monitoring guidelines. Such guidelines, which will be developed by EPA, should provide for uniformity, establish scientifically valid monitoring methods, and identify appropriate indicators of the health and quality of coastal ecosystems.

Please let me know if I can be of any further assistance.

Sincerely yours,

WILLIAM K. REILLY.•

HUMAN RIGHTS VIOLATIONS IN KASHMIR

• Mr. SYMMS. Mr. President, in its report, the Subcommittee on Foreign Operations has issued strong language deploring the Indian Government's massive human rights violations in Kashmir. This is an important step forward in the fight to protect human rights in Kashmir. I stand today to commend my colleagues for making this important statement.

The statement calls on India to cease its abuse of human rights and dignity in Kashmir. This is an important message of our resolve that these state-sponsored abuses end—a message which must be heard loud and clear in New Delhi.

The committee report states concern for "The persistent reports of widespread human rights abuses" in Kashmir. Indeed, credible reports of human rights atrocities in Kashmir are increasing and the evidence of this abuse by Indian forces is undeniable.

During the past 2 years, many of the most respected human rights organizations in the world—including Amnesty International, Asia Watch, and Freedom House—have all issued incredible reports detailing the abuse of Kashmiri civilians by Indian military forces. Indigenous Indian human rights groups have issued reports which have reached the same conclusions.

Mr. President, the details of their reports are both gruesome and saddening. For example, Amnesty International reported that gang-rapes by Indian soldiers of Kashmiri women are widespread. These rapes are perpetrated against both young girls and older women—often in front of their children. They are acts of pure hatred and violence which cannot be justified by the Indian Government as having a military purpose. There is no military purpose for rape.

Amnesty and others have documented how Indian forces have committed summary executions of Kashmiri civilians with total impunity. They shoot into unarmed crowds of demonstrators and fire on funeral processions. They use scorched Earth tactics to terrorize entire villages into submission—Indian soliders actually lock Kashmiri civilians in their homes, and then set the buildings on fire, cremating the inhabitants alive.

The atrocities are intolerable, and the committee rightly calls on India to "Investigate reports of human rights violations and to prosecute individuals responsible. . ." This statement is particularly appropriate in light of the fact that in the 3 years that India has waged its campaign of genocide—despite the widespread evidence described by the committee of state-sponsored atrocities in Kashmir—Indian soldiers are not brought to the bar for justice.

The reason for this is that Indian soldiers are exempted from prosecution by special laws designed to facilitate and encourage their abuses. Laws such as the "Jammu and Kashmir Armed Forces Special Powers Act", and the ironically titled "Jammu and Kashmir Public Safety Act" give Indian soldiers: shoot-to-kill powers; the right to detain civilians without warrant or charge; the right to extract confessions through brutal torture. And the laws guarantee Indian soldiers complete immunity from prosecution for these crimes. The committee rightly calls for an end to this practice, and for India to begin investigating and punishing the perpetrators of these atrocities. The call for an independent investigation is especially significant, and I know many in this body hope it is adopted by the Indian authorities.

The committee also justly states that "The government of India should ensure that the rights of detainees are fully protected * * *" This is indeed a top priority, because India's record of protecting prisoner rights has been atrociously inadequate.

I draw your attention, Mr. President, to the Amnesty International report of March 1992. In that report, Amnesty International states:

> Torture is routine (in Kashmir). Every day in police cells and military barracks throughout the land, pain and indignity are deliberately inflicted by paid agents of the state. On men, women and even children. They are beaten senseless, given electric shocks or have their limbs crushed by heavy rollers. Sexual torture, including rape, is common.

Mr. President, in Kashmir the rights of detainees are not protected. Each day, India violates the dignity and human rights of Kashmiri civilians through brutal acts of torture and abuse. India has institutionalized the use of torture in its campaign to suppress the people of Kashmir.

The committee's report is a strong call for an end to this abuse. And to ensure that this abuse ceases, and that the victims of India's atrocities get proper care and treatment, the committee rightly calls on India to grant "the International Red Cross * * * prompt access to all detainees."

Unfortunately, Mr. President, India has consistently blocked access of human rights and humanitarian organizations such as the International Committee of the Red Cross to Kashmir. India has consistently denied humanitarian aid and medical attention to the victims of its atrocities. Incidents have been documented in which Indian soldiers have attacked ambulances carrying victims of government abuses in which Indian patrols have burst into hospitals and clinics, molesting and killing patients, doctors and medical staff. Indian soldiers have also harassed doctors and their families for providing medical care to the victims of their abuse.

India has tried its best to hide these facts from the outside world. Perhaps that is why they deny access to the Red Cross, and human rights observers—they fear that by allowing the Red Cross and other groups access to Kashmir those groups will bring to light the extent of their abuses.

Mr. President, the committee report makes a strong statement that these abuses must end. It calls on India to take immediate steps to curtail the abuses; it calls on India to investigate, prosecute, and punish its officials and agents who encourage and commit these crimes; it calls on India to cease the rampant use of torture of political detainees; calls on India to cease its efforts to interfere with the provision of humanitarian aid to the victims of its atrocities.

In sum, it is a strong statement—a statement that sends New Delhi an indisputable message: that the U.S. Senate takes India's abuses in Kashmir very seriously; that the U.S. Government will not stand by in silence while India massacres the Kashmiri people; that we expect immediate action to bring these abuses to an end. In view of this, I believe that it is appropriate for the Subcommittee on Near Eastern and South Asian Affairs to hold hearings on these issues in the upcoming year.

Mr. President, I commend the committee for its important statement, and register my support for it.•

CHILDHOOD IMMUNIZATION

• Mr. SIMON. Mr. President, in an era in which safe and effective vaccines against childhood diseases are readily available, it is unconscionable that these diseases continue to cut a wide swath through our society. In 1963, fewer than 1,600 cases of measles were reported. According to the Centers for Disease Control, almost 27,000 children contact measles in 1990, and 90 of these children died as a result.

In 1989, there were 4,157 reported cases of whooping cough, a dramatic increase from the 1,730 cases reported in 1980. CDC says that because so many cases of whooping cough go unreported, the actual number of cases may be far greater than these numbers indicate.

Mr. President, I could recite similar figures for mumps, rubella, hemophilus influenza type b, and the other diseases of childhood. But the point is that all of these diseases are easily preventable. We have the vaccines. We need the will and the resources to deliver them.

The fact that delivering appropriate vaccines to all children would prevent disease and death should be quite compelling enough to cause it to happen. But if we need more incentive, we should remind ourselves that childhood immunization is among the most cost-effective of preventive health measures. For every dollar spent on immunization, we save $10 to $14 in health care costs.

Mr. President, today's issue of the Washington Post contains an article by columnist Michael Kinsley that captures precisely the urgency of this matter and the steps that should be taken now to reduce the toll of disease and death that childhood disease can bring. Mr. President, I ask unanimous consent that Mr. Kinsley's article be printed in its entirety in the CONGRESSIONAL RECORD, and I commend it to my colleagues.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Oct. 8, 1992]

CHEAP SHOTS: HOW CAN BUSH SCRIMP ON SOMETHING LIKE CHILD VACCINATIONS?

(By Michael Kinsley)

A vaccine against measles has been available since 1963. By the early 1980s, the disease was practically wiped out in the United States. But since 1989 we've suffered a measles epidemic: more than 70,000 cases and 100 deaths. Half the deaths were of young children, and the cause was their failure to be vaccinated.

Less than half of all inner-city children get the vaccinations recommended for them by their second birthday. In polio vaccinations of 1-year-olds, the United States ranks 17th in the world, behind places like Albania, China, Pakistan, Mexico and Poland.

George Bush mocks Bill Clinton's notion of government spending as an investment. But childhood vaccination clearly is a social investment—not just in the goody-goody sense that nobody wants children to die, or even in the sense that shots are a health care bargain compared with the price of treating the disease. Immunization of individuals protects all of us from catching the disease. And yet, like so many other social investments, our vaccination infrastructure has been crumbling.

There are various causes. The price of vaccines has skyrocketed—part of the larger health care cost explosion. A dose of measles-mumps-rubella vaccine that cost $2.71 in 1980 is more than $15 today. Meanwhile, fewer families have health insurance and fewer insurance plans cover vaccinations. Along with the growth of childhood poverty, this has put increased pressure on community health centers and public health clinics, whose budgets have not kept up.

So children dying needlessly of preventable diseases is another aspect of the general decline of national well-being that snuck up on us while we were partying in the 1980s. And the vaccination scandal is characteristic of the Reagan-Bush years in a second way: We have been led by people with no faith in the power of government to do good. They believe their own rhetoric about government not being the answer. They don't believe it enough to prune entitlements for the middle class. But that's cynicism, not faith. They do believe their rhetoric enough to sit on their hands when a new social problem cries out for action.

The Bush response to the childhood vaccination crisis will be familiar to students of Bush's approach to other problems. As with the S&Ls, as with the deficit, as with Saddam Hussein, there were people who issued warnings early on and were ignored. As with health care reform and parental leave, Bush's own proposals have only come in response to goading from the Democrats. As with drugs, Bush's approach has featured occasional public relations frenzies alternating with periods of calm.

In his first budget (fiscal 1990), Bush actually proposed a small cut in child immunization funds, from $142 million to $138 million. After Congress got through, the figure was $158 million. The next year, Bush tried for another cut to $152 million but Congress insisted on an increase to $217 million. The next year Bush saw the light and proposed $257 million; Congress appropriated $297 million. For fiscal '93, with the election approaching, Bush bid $349 million and Congress actually sliced that by a few million (because Bush wanted to take the money from other programs, such as low-income heating assistance).

In June 1991, the President invited an audience of children into the Rose Garden to hear him declare that he was sending "SWAT teams" to six cities to study the vaccination problem. This was odd, since his own Department of Health and Human Services had just sent him a report analyzing the problem and proposing a $90 million emergency solution. Bush decided against that. In fact, at the time of the ceremony Bush was proposing to spend less on vaccinations than both Houses of Congress had already cleared.

Eleven months later, last May, Bush was back in the Rose Garden announcing a new nationwide campaign for immunizing 2-year-olds. This is more than three years into his term and about as long into the measles epidemic (which is already waning).

I don't begin to know what is the "right" amount our government should be spending on child vaccinations. (The American Academy of Pediatrics says it's $487 million.) And I don't pretend to suppose that throwing money at the problem is the entire answer. But I do feel, as a citizen of the richest country in the world, that this is a problem I shouldn't have to worry about. And I wish we had a President who would take whatever action, and spend whatever money, is necessary to solve it. Quickly, not after years of prodding. Perhaps that makes me a Democrat.

Is there anyone who thinks that poor kids shouldn't get vaccinated? Is there anyone sick and tired of seeing his tax dollars going to wasteful, overpaid bureaucrats who fritter away their days inoculating children against disease? Is there anyone who believes this is a matter best left to the private sector? That tax cuts can take care of it? That "a thousand points of light" will shine it away? That giving shots to 2-year-olds only encourages welfare dependency? That preventing the spread of measles and polio is European-style "social engineering"?

Let those people vote for George Bush.•

THE ROADRUNNER LITTLE LEAGUE JUNIOR ALL STARS

• Mr. DOMENICI. Mr. President, with the World Series just around the corner, I want to take a moment to talk baseball on the floor of the Senate. You have not seen a team from New Mexico in the World Series for one very good reason: We do not have a major league baseball team in New Mexico. However, I want to assure you that we take baseball very seriously in my State.

Because we have no major league team in New Mexico, we therefore follow our local teams very closely and with the same passion that larger cities devote to the major leagues. We follow the farm team for the Dodgers, the Albuquerque Dukes—a team I pitched for many years ago—and we follow our college, high school, and, yes, little league teams with pride.

With that in mind, I would like to take a moment to bring to the attention of the Senate an outstanding little league team from my hometown of Albuquerque, NM. The Roadrunner Little League's Junior All Star Team has just won the title of State champions in the 13-year age group. This team went undefeated in district and State tournament play, and became New Mexico's representative to the regional championships in Green Valley, AZ.

Although they were eliminated in the tournament by the Arizona team which eventually became the national champions, I wanted to take this opportunity to congratulate them for their outstanding play. The team's final All Star record was 10 wins and 2 losses.

The members of the 1992 team are: Ambrose Alday, Brad Beitler, Matt Byers, Kyle Evans, John Gabaldon, Kyle Halle, Chris Jackson, Chad Montouri, Steve Otero, Jason Padilla, Tod Piskorski, Tim Sturdy, Bret Winfield, and Chris Wilken. The team was coached by John Cronican, Bryce Gilbert, and Darry Cox.

I salute the players and coaches of the Roadrunner Junior All Stars, and I am pleased to bring their accomplishments to the attention of the Senate.•

PERU

• Mr. DURENBERGER. Mr. President, I rise to reflect on recent events in Peru and United States policy responses to them. The suspension of democracy in Peru last April raised many concerns here and abroad about the future of democracy not only in Peru but also throughout Latin America.

The United States and the international community denounced the "auto-golpe" or "self-coup". The people of Peru, on the other hand, seem to have overwhelmingly supported it.

Notwithstanding our condemnation of President Fujimori's actions, we nevertheless expressed some appreciation of the difficult circumstances presented President Fujimori by Peru's exceptionally violent terrorist insurgency as well as an essentially nonfunctioning state system.

Mr. President, I believe it is imperative that in considering the post-coup options, we develop a more thorough understanding of Peruvian reality.

Recent testimony before a subcommittee of the House Foreign Affairs Committee provides some insight into Peru's lack of a functioning, modern state and democracy as we generally understand it. I would like to quote at some length the testimony of Lt. Gen. William Odom, who has some expertise on the matter.

"The weak and corrupt character of the Peruvian state is so great that we should be surprised that the Sendero Luminoso did not overthrow it some time ago. There is virtually no Peruvian state. Rather, cliques of oligarchic elites manipulates the shell of a state to their private advantages.

"A modern state, as most Americans conceive it, has the administrative capacity to provide a modicum of law and order countrywide, a strong capacity to tax, a reasonably responsive system of courts, and various other such structures so common in North American and European states.

"The state in Peru hardly deserves the name. It cannot effectively collect taxes, deliver law and order, provide legal services, roads, schools, public health service, sanitation, etc. At the same time, the state owns more than 200 major businesses, such a large part of the industrial and commercial sectors that free enterprise can hardly be said to exist.

"The Peruvian economy is only slightly less statist than the old Communist systems in East Europe. In the agrarian sector, the state owns virtually all the land, and the peasants' use and holding are not based on a solid legal footing * * *."

I would suggest to my colleagues that it would be useful for us to consider that Fujimori's actions in suspending democracy, while objectionable on the face of it, may have been necessary in order to save the country, not only from Sendero, but from itself.

I hasten to add, however, that the jury is still out on that question. Much will depend on where Fujimori takes the country next.

The recent capture of Sendero leader Abimael Guzman gives the government and people of Peru an enormous boost in their efforts to contain and hopefully defeat Sendero Luminoso. Fujimori understandably points to Guzman's capture as a vindication of his suspension of democracy.

If he now takes the country on the road to building a better democracy, he will capitalize on a great opportunity. If, however, he moves to consolidate his authoritarian rule, he risks losing all he might otherwise have gained.

The elections that have been scheduled for November 22 will be an important test. It is important that Peru build a new democracy better than its predecessor.

On the economic front, Mr. President, Peru is making good progress on implementing significant economic liberalization policies, including slashing import tariffs, reducing the deficit, and attempting to cut the size of government. During his recent visit to the United States for meetings with the IMF, Peruvian Finance Minister Carlos Bolona emphasized that Peru continues to successfully pay down its international debt, despite its external economic problems. Indeed, Peru remains on schedule to repay its arrears to multilateral lending institutions.

During his visit, Mr. Bolona also stressed Peru's ongoing efforts to privatize the heavily statist economy. I would also remind my colleagues of the vote of confidence in Minister Bolona's efforts from the Inter-American Development Bank, which recently approved a $220 million loan. Peru faces an uphill economic battle, and they are making some sound decisions under very difficult circumstances.

Regarding the Sendero insurgency, Mr. President, there can be no doubt whatsoever of the overriding imperative of defeating these Maoist terrorists. Assistant Secretary of State Bernie Aronson has referred to Sendero's potential for destruction as the third holocaust, after the Nazis and the Khmer Rouge. Failing to win the battle against Sendero would deprive Peru of any hope for the future.

There are many paths to this objective. It is not my intention here to discuss at any length what road Peru should take. I would, however, call to my colleagues' attention the September 23, 1992 hearing of the Western Hemisphere Subcommittee of the House Foreign Affairs Committee, during which this very question was among the main issues discussed.

In conclusion, Mr. President, let me note that Peru confronts myriad challenges—defeating the Sendero Luminoso; eliminating the causes that gave rise to that movement; establishing a fully functioning democracy; building effective institutions of state; eradicating drug trafficking; and many others. It is in our interest to help the people of Peru meet these challenges.

We should be willing to work together with President Fujimori, even more so if the Peruvian people rally around a course of action under his leadership. It is folly for us to completely write off Peru because it does not meet some standards or criteria set out in foreign aid legislation—criteria, I might add, that Peru probably couldn't have met prior to the coup.

Mr. President, we should work with Peru to help that country build a better, more stable and prosperous future. We must be creative and flexible in our approach, and not bound by unrealistic expectations. Combating Sendero Luminoso and creating a real democracy and a market economy are not easy jobs. It will require time, resources, and creativity in order to meet these challenges.•

CLARIFYING INTENT OF SECTION 6 OF S. 1392

• Mr. McCAIN. Mr. President, as a principal sponsor of S. 1392, I wish to clarify the intent of section 6(b), regarding criminal contempt actions. As a result of this section, the FTC would have only two manners in which to obtain authority to bring criminal contempt actions: First, to the extent that current law allows a court to appoint an FTC lawyer as an attorney for the United States under rule 42(b) of the Federal Rules of Criminal Procedure, and second, to the extent that an FTC lawyer is appointed as a special assistant U.S. attorney pursuant to this section.•

FAIR USE AND MUSICAL PARODIES

• Mr. LEAHY. Mr. President, the Senate yesterday approved a bill originally introduced by Senator SIMON and me to amend the fair use section of the Copyright Act with respect to the use of unpublished materials.

It has come to my attention that another fair use issue—concerning parody and, in particular, musical political satire—may warrant attention in the next Congress. From Mark Russell to the Capitol Steps to the countless Gridiron-type parody shows in communities across our Nation, musical political satire is part of a grand American heritage.

The issue is raised by a recent court decision that could chill musical political satire. That case, Acuff-Rose Music versus Campbell (6th Cir., Aug. 17, 1992), appears to take such a narrow view of fair use in the context of musical parody that political satirists could start to find themselves in court more than on stage.

Political speech—including political satire—is at the core of our right to freedom of expression. The first amendment prohibits the Government from restricting speech, particularly when the speech is offensive. It protects the rights of all Americans to speak their views and to voice their displeasure with the Government. Parody is one of the most effective means for communicating that displeasure and restrictions on the art form should be carefully scrutinized.

Of course, I am and always have been a committed defender of the rights of copyright holders and am keenly aware that we cannot afford to open the fair use door too wide. But an inquiry into the issue of fair use and parody may well be appropriate in light of the Acuff-Rose case. I look forward to exploring this issue in the next Congress.•

MENTAL ILLNESS AWARENESS WEEK

• Mr. SIMON. Mr. President, October 4–10, 1992, has been designated by the Congress as Mental Illness Awareness Week. For the last several years, I have introduced a resolution in the Senate each year to set aside a week to increase our understanding of the heavy burden mental illness places on society and to sensitize all Americans to the crucial need to combat the stigma that those with mental illness and their families must endure.

Mr. President, mental illness is truly an epidemic in the United States. At least 1 of every 5 Americans will suffer a period of mental illness during their lifetimes. The National Institute of Mental Health estimates that approximately 50 million Americans have diagnosable mental disorders.

Youth is no protection against mental illness. At least 1 out of 8 children will suffer an episode of mental illness during adolescence. Among the elderly, mental illness is even more prevalent. An estimated one-third of older American have significant symptoms of mental disorders.

Mr. President, if mental illness is the primary epidemic, the stigma that comes with it is the secondary epidemic. It is a more insidious epidemic, with both overt and subtle negative effects. It is true that the law of the land prevents discrimination against persons with mental illness, but few of us would deny that the powerful stigma associated with mental disorders often interferes with the delivery of services and therapy that are essential to allow persons with mental illness to recover and lead productive lives. Scientific and medical advances help us understand and treat the first epidemic. Any ground we win in the battle against the second is hard fought.

Mr. President, I was honored to participate in a hearing chaired by the distinguished senior Senator from Massachusetts last month at which several witnesses courageously told of their struggles against mental illness. One of them was Rod Steiger, one of the finest actors of our time.

Mr. Steiger spoke eloquently of his 10-year battle against serious depression and especially of his early reluctance to seek help. He knew that the minute he asked for help his relationships with friends, professional colleagues, and the public would be jeopardized because of the stigma associated with mental illness.

The most revealing moment of Mr. Steiger's testimony came, I believe, in his response to my question about whether he would recommend that others who suffer from mental illness "go public." His answer was predictably honest and direct. He said, in effect, that he thought others should do so only if they have the security—financial and otherwise—to face down the misconceptions and prejudices of others and to cope with the difficulties the stigma inevitably will create.

Mr. President, I know it is a small step for the Congress to set aside this week as Mental Illness Awareness Week. But I regard it as more than a mere gesture. I hope it will help bring to all Americans a new awareness and empathy that will help lead to real advances in both our understanding of mental illness and our efforts to erase the misconceptions and prejudices that lead to the stigmatization of those who suffer from mental disorders and their families.•

THE ANTIDUMPING STATUTE

• Mr. SASSER. Mr. President, earlier this week, my colleague from New York spoke extensively about our antidumping statute and the need to amend it. The Senator has deep convictions and is serious about his strongly held beliefs. Nevertheless, I feel compelled to set the record straight for myself, the people of Tennessee, and the people of America.

First and foremost, the Senator's amendments to the energy bill and the tax bill are private relief measures. The beneficiary, Smith Corona Corp., announced, in July, its planned shutdown of its New York assembly operation, the lay-off of 875 workers, and its relocation to Mexico. This was reaffirmed most recently in Smith Corona's September 28, 1992 Form 10-K.

No matter what happen to my distinguish colleague's measure, it will not bring back or save those 875 jobs. But, enactment of his proposal will threaten 800 high paying highly skilled Tennessee jobs. The paradox is that the Senator says the issue is jobs but is willing to sacrifice Tennessee jobs without a guarantee of saving even one New York job.

My colleague has called Smith Corona's shut-down, in New York a tragedy. I agree. But it was not unexpected because Smith Corona transferred its production base to Singapore in the late 1980's. Consequently, the Cortland, NY factory became an industrial dinosaur with too much capacity and too little production.

Despite its claims, Smith Corona is not the last American factory of the last American manufacturer of consumer typewriters. Brother Industries has manufactured portable electric typewriters in Bartlett, TN, for more than 6 years. The Commerce Department has intensively and exhaustively investigated this factory and concluded that it is not a screwdriver or snap together operation. The Court of International Trade recently ruled that the Bartlett factory was a manufacturing facility.

The tragedy is that Brother, with 650 manufacturing workers in Tennessee, receives absolutely no credit or recognition for the large and substantial risks taken to establish a U.S. manufacturing presence and to compete head-to-head in the Untied States with Smith Corona. What is most ironic is that, as Brother moved its production base to the United States, Smith Corona started moving out. As a result, Brother's United States-manufactured typewriters must now compete against an imported product from Smith Corona's Singapore factory.

While relocating its manufacturing base to Singapore, Smith Corona has increasingly sought to restrain competition by expanding the antidumping duty order restrictions on Brother and other manufacturers. At every turn, Smith Corona has misused the administrative and legal process—including this Congress.

It has tied up the Commerce Department with endless charges and petitions, most of which stem from nothing more than Smith Corona's unfounded belief that they are somehow entitled to special treatment. All of this has been in total disregard for U.S. trade laws, and Commerce Department regulations and policies. Moreover, Smith Corona's charges have been regularly found without any basis. Smith Corona's machinations are nothing but a crass attempt to gain a competitive advantage by using the Commerce Department and the courts.

To camouflage this dismal record, Smith Corona claims that it has won with an affirmative decision eight different times. No facts or specifics are provided. Despite this claim, the facts show that Brother has won a series of affirmative Commerce Department decisions showing no or de minimis dumping margins.

The problem is that when Brother wins, Smith Corona cries foul and tries to change the law. Why cannot Smith Corona play under the same set of rules as Brother and live with the Commerce Department and Court of International Trade decisions?

One frequently heard allegation is that Brother is guilty of predatory pricing. As we all know, predatory pricing is selling at a low price—perhaps even below production cost—to increase market share. A trip to a local retail store will demonstrate this charge is totally specious. Smith Corona's Singapore-manufactured portable electric typewriters are regularly sold below $100, often below $95, and sometimes even below $90. In contrast, the competing Brother model is retail priced at approximately $110. If anything, the low-ball prices are those of Smith Corona. But that is to be expected because, as the Commerce Department has found, Smith Corona is dumping typewriters from its Singapore factory.

Further evidence that Smith Corona's predatory pricing charges a fiction can be seen from a comparison of market share. For the past 4 years, Smith Corona has consistently claimed 50 percent or more of the portable electric typewriter and personal word processor market, compared to Brother's 25 to 30-percent market share. If Brother was engaged in predatory pricing, presumably Smith Corona would have lost market share.

Another curious charge is that Brother is selling below cost. There is no evidence to support this allegation. In fact, when Smith Corona formally raised such a charge several years ago, Commerce rejected it outright after reviewing Brother's cost data. Moreover, the below cost sales charge does not make much sense. A company, whether it is Brother or Smith Corona, cannot remain in business long if it is regularly selling below its own costs.

Smith Corona counters these facts by claiming that Brother's U.S. sales are subsidized by sales in a protected home market. Attempts to tie the below cost sales charge to the protected home market theory cannot be squared with the facts. The profits on sales of a few thousand Brother home market typewriters each year cannot conceivably subsidize losses on Brother sales in the United States. The money is simply not there.

Another commonly made charge is that Brother has been a continuous dumper and has never been forced to comply with the dumping orders. This charge is not only false but is also an insult to the Commerce Department, which has regularly conducted administrative reviews of Brother.

For 4 years running, from May 1981–April 1985, Brother was found to have a zero or de minimis dumping margin. In the following year, May 1985–April 1986—the most recent year for which results have been scrutinized by the Court of International Trade for accuracy—Brother's dumping margin was 2.33 percent, almost all of which resulted from the rapid appreciation of the yen following the September 1985 Plaza Accords.

One year later, beginning in June 1987, Brother began manufacturing portable electric typewriters in the United States and stopped importing. The facts show that Brother has been carefully investigated by Commerce with few, if any, less than fair value sales being found. These results hardly justify the statement that the dumpers have never been forced to comply with the dumping orders.

Apart from dumping, many of the charges by Smith Corona have centered on Brother's alleged circumvention of the *Portable Electric Typewriters From Japan* antidumping duty order. To start with, there is no cause and effect relationship, as Smith Corona has alleged, between passage of the anticircumvention provision in the Omnibus Trade and Competitiveness Act of 1988 and the establishment of the Brother Tennessee factory. In fact, the factory had already been producing portable electric typewriters for fourteen months when the provision was enacted.

While acknowledging Brother's U.S. presence, Smith Corona degrades the Bartlett factory by labeling it a phantom factory. Presumably, this means that the 650 Americans who work there are phantom workers. If anything, Brother's Bartlett factory is a good example of a modern, well-designed facility, occupying 185,000 square feet. Both the Court of International Trade and the Commerce Department have made glowing comments about the factory. For example, Commerce has written:

> Brother has invested significantly in its U.S. production facilities, both in terms of capital and labor. Brother has made investment in plant and equipment indicative of the magnitude of its U.S. operations. We also note that Brother has a U.S. production work force that is significant in size which, in conjunction with its substantial capital investments, is a further indication of sufficient production activity.

For those still in doubt, Brother will provide a plant tour. Seeing is believing. The screwdriver factory charges trumpeted by Smith Corona are solely designed to distract the listener from the facts and to create undeserved sympathy for Smith Corona.

Another of Smith Corona's false contentions is that Brother's Tennessee factory consists of only temporary assembly jobs. This is an insult to the hard working Tennesseans who have built their lives around the Brother plant. It is utter nonsense to call these people—as well as those working for the various parts suppliers in neighboring States—temporary workers.

Further evidence of Brother's strong commitment to Tennessee is the steady growth, over the past 6 years, in manufacturing jobs. As production has expanded and new products have been introduced, Brother has gradually added jobs reaching the level of 650 manufacturing workers. My colleague from New York justifiably feels concerned about the workers in his own State. But it is insulting to the good people of Tennessee to degrade their positions and jobs. If this private interest legislation had been enacted, their jobs would have been in jeopardy. Yet, there is no guarantee that even one New York job would be saved by his amendments.

We have also heard the bogus charge that Brother simply transplanted its assembly line from Japan to Tennessee. The facts are to the contrary. The $21 million investment and employment of 650 workers should dispel all doubts about the Bartlett factory. And, if that is not persuasive enough, the Commerce Department, which has visited the factory and exhaustively investigated it, has written:

> Brother makes considerable component purchases from U.S. and third country suppliers, and adds value through the fabrication and assembly process. In addition to the purchase of raw material, Brother adds value through assembly, engineering, labor and quality control. For example, the purchase of a circuit board from a U.S. supplier represents more than a purchase of a plastic board, it also represents Brother's fabrication of that plastic into a component assigned to function in a completed PET.

As we all recognize, the real issue should be people and jobs, not special interest profits. Smith Corona has made this a personal battle, specifically targeting Brother. None of us would deny that the anticircumvention provision should be scrutinized. And, if it needs changing, we should change it.

However, this is not the way to legislate. The proposal of my colleague from New York amounts to disparaging hard-working Tennesseans who produce well respected products which are sold at competitive prices.•

TRIBUTE TO CARLTON LARSON

• Mr. CONRAD. Mr. President, I rise today to share with my colleagues a significant accomplishment of one of my young constituents. Carlton Larson of Dickinson High School in Dickinson, ND, is the winner of the seventh annual national Citizen Bee competition conducted by the Close Up Foundation.

The Citizen Bee is an intense competition involving written and oral exams on current world events, American history, geography, government, and economics. This year more than 130,000 students from 3,700 high schools throughout 50 States, the District of Columbia, Guam, the Virgin Islands, and the Department of Defense Dependent Schools took part in the competition. In the 2-day national final competition in Washington, DC, Carlton was joined by 123 other national finalists. These students answered questions that I am certain would be difficult for most adults and probably most Members of Congress. To all of those who competed and particularly the finalists, I extend my heartiest congratulations for all of their hard work and effort. I ask unanimous consent that a list of all the finalists be printed at the end of my statement.

With so much attention focused on the ills of American education, it is a pleasure for me to bring to my colleagues' attention Carlton Larson and his accomplishment, as well as the other talented students who took part in the Close Up Foundation's Citizen Bee. The students are not the only hard working participants in the Citizen Bee, their parents and teachers and the staff of the Close Up Foundation also have dedicated many hours to the various levels of competition. In particular, I want to express my gratitude to the parents of these students. The support and the active role they have taken in their children's education shows and undoubtedly has made a difference in their children's success.

There are many others who should be thanked as well; however, I want to recognize the commitment of the local, State and national sponsors who helped to make this educational opportunity possible, particularly American Honda Foundation, KPMG Peat Markwick, and Kraft General Foods. I also proudly mention the North Dakota sponsors—the North Dakota Department of Public Instruction, American Legion Lloyd Spetz Post No. 1, Community Access TV, Inc., North Dakota Bar Foundation, Inc., North Dakota Heritage Center, Alex Stern Family Foundation, Super Valu Stores, Inc., Bismarck, TMI Systems Design Corp., Dickinson, United Printing, and U.S. WEST.

To conclude, Mr. President, I know all of my colleagues join me in expressing congratulations to Carlton. He and his parents should be very proud of his outstanding accomplishment. I know my colleagues join me in wishing him and the other Citizen Bee finalists continued success in their educational and civic pursuits.

CITIZEN BEE NATIONAL FINALISTS

Alabama: Nathan Good, Madison; Mary Mitchem, Montgomery; Anthony Rickey, Huntsville.

Alaska: Matthew Wright, Anchorage; Anna Lee Hewko, Eagle River.

Arizona: Sumit Daftuar, Mesa; Lance Jolley, Mesa.

Arkansas: Rocky Tsai, Fayetteville; Robert Frazier, Malvern.

Northern California: Jonathan D. Matthews, Kentfield.

Southern California: John T. O'Rourke, La Canada; Mark A. Palomera, El Monte; Jasan Barkham, Los Angeles.

Colorado: Brad Q. Boyd, Delta; Kristen S. Malinowski, Heritage.

Connecticut: Derek Mello, Bristol; Christopher Borowski, Shelton.

Delaware: Eric Pusey, Dover; Frank Yoon, Wilmington.

Department of Defense Dependent Schools—Europe: Fay Yarbrough, Osterholtz, Germany.

District of Columbia: David Reich.

Florida: Marcos Cornillot, Miami; David Sutton, Fort Lauderdale; Thomas Pindur, Candler.

Georgia: Justin Label, Alpharetta; James E. Aquirre, Columbus.

Guam: Billyscott Bernardo, Mangilao; Rayesh Sharma, Agana.

Hawaii: William Cobb, Kailua; James Nakayama, Hilo.

Idaho: Christine Bettis, Boise; Stephen Jenkins, Boise.

Illinois: Michael P. Ryan, Oak Park; Bryan P. Duray, Northlake.

Indiana: David Ralston, Newburgh; Christopher Wachs, Mishiwaka.

Iowa: Nathan Smith, Mt. Ayr; Shane Bodrero, Davenport; Anne Pitts, West Des Moines.

Kansas: Cyrus C. Mody, Lawrence; Casey Markee, Towanda.

Kentucky: Joe Wong, Winchester; Mike Walker, Winchester.

Louisiana: Micheal C. Aguillard, Lafayette; John Ranken, Baton Rouge.

Maine: Chesley Homan, Augusta; Sean Kearns, Kennebunk.

Maryland: Kieu Luu, Greenbelt; Vishnumohan Jejjala, Frederick.

Massachusetts: Michael H. Shannon, Reading; Johnny G. Su, Northborough.

Michigan: Maya Kobersy, Sterling Heights; Christopher Barkan, Redford; Bill Craighead, Birmingham; Enrico Sobong, East Grand Rapids.

Minnesota: B.J. Priester, St. Paul; Daniel Heider, St. Paul; Jared J. Abbot, Bemidji.

Mississippi: Stephen Commiskey, Jackson; Stephen Gent, Gulfport.

Missouri: Andrew Tellez, Florissant; Aaron Whitmer, Piedmont.

Montana: Marcus Bartlette, Chinook; Brian Popiel, Bozeman.

Nebraska: Beth Kirschbaum, Omaha; Jonathan Rehm, Lincoln.

Nevada: Dean Armstong, Las Vegas; Jordan Siegel, Reno.

New Hampshire: Mark Laliberte, Manchester; Rob Pelkey, Concord.

New Jersey: Ryan B. Caveney, Millburn; Matthew S. Purdue, Tuckerton.

New Mexico: Shelly Lee, Deming; Brian Haines, Las Cruces.

New York: Joshua Kamens, Queens; Michael R. Vaas, Adams; Jason A. Randa, Houghton: Giancarlo DiPerro, Lake Ronkonkoma.

North Carolina: George Roussios, Asheville; James Newlin, Graham; Amy Coulter, Canton.

North Dakota: Carlton F.W. Larson, Dickinson; Max M. Schanzenbach, Jamestown.

Ohio: Joshua Huck, Broadview Heights; Brent Marinelli, The Plains; Matthew W. Shepherd, Tiffin; Matthew P. Gillingham, Wyoming; Kimberly J. Paulus, Carroll; Zachary T. Talarek, Elyria.

Oklahoma: De Vu, Oklahoma City; Michael Cress, Choctaw; Willis Jones, Stigler.

Oregon: Morgan Allen, Albany; David Owen, Chiloquin.

Pennsylvania: David Shannon, Portage; Melissa Nibert, Clymer; Brian Dougherty, Shippensburg.

Rhode Island: Travis Glasson, Providence; Allan Shaw, Woonsocket.

South Carolina: John C. Phillips, Jr., Spartanburg; Dennis W. Jowers, Anderson.

South Dakota: Jason Stverak, Rapid City; Chad Pekron, De Smet.

Tennessee: Brad Endicott, Clarksville; John Henderson, Clarksville.

Texas: Chris Kratovil, Irving; Massoud Javadl, Houston; Pete Ferrier, Houston; Naresh Desireddi, Austin.

U.S. Virgin Islands: Marcotte Anderson, St. Thomas.

Utah: James Melton, Jr., South Jordan; Michael Hoggan, Salt Lake City.

Vermont: Tim Richmond, Jericho Center; Ben Gutman, Burlington.

Virginia: Zachary Devore, Harrisonburg; Frances Dabney, Lynchburg.

Washington: Joshua Greene, Kennewick; Matthew Buffaloe, Kennewick.

West Virginia: Matthew Minney, Glenville.

Wisconsin: Bryan Lauer, Wauwatosa; Joshua Radl, Oshkosh.

Wyoming: Marie Kopack, Rock Springs; Zeke Paxton, Gillette.•

MENTAL ILLNESS AWARENESS WEEK

• Mr. HARKIN. Mr. President, we are approaching the end of Mental Illness Awareness Week, and I would like to take this opportunity to express my support for the activities planned during this week as well as my gratitude for the year-round efforts of many individuals and organizations that provide advocacy services to Americans with mental illness.

We know that mental illness is actually a spectrum of diseases that affects more than 31 million Americans, including 3 million children. It costs American businesses over $130 billion a year. Yet, four out of five people who need treatment for mental illnesses don't get it.

What's worse, Mr. President, is the human toll: People turned down for jobs, turned away from housing, turned out from insurance companies, and denied the opportunity to rebuild their lives in the community. All because of fear, ignorance, stigmas, and patronizing attitudes about what mental illness is. Just because a person suffers from a disability does not mean he or she should suffer a loss of dignity.

We've begun to change those patronizing attitudes, particularly with the enactment of the Americans With Disabilities Act. I've said many times that the day Congress passed the ADA was the proudest day of my public life. The ADA says no to fear, no to exclusion, no to stigmas, and yes to inclusion, yes to empowerment, and yes to opportunity. It tears down the barriers and opens the doors of opportunity for all people with disabilities, including hidden disabilities. There are those who tried to exclude mental illnesses from the ADA, but the whole disability community came together and said no. Now it's the law. Attitudinal barriers have begun to fall in the marketplace and in the workplace.

We know that we can't just pass a law and expect attitudes to change overnight. It's going to take time, but the principles underlying the ADA have laid the groundwork for a national disability policy based on inclusion, not exclusion.

Mr. President, this national disability policy is already coming together. Here are a few examples where we can see this new attitude.

The newly adopted Rehabilitation Act Amendments of 1992 were drafted recognizing that families and natural supports can play an important role in the success of vocational rehabilitation, if the individual with a disability requests, desires, or needs such supports. The Rehab Act also more clearly adopts the philosophy of the ADA and increases vocational training eligibility for people with mental illnesses. Too often under the old law, people with severe mental illnesses were presumed to be too disabled for training, and they were excluded from treatment. The new law presumes that people with mental illnesses can learn the job skills and training they need, just like everybody else.

With regard to health care, most insurance plans do not sufficiently cover mental health services. In addition, preexisting condition clauses turn jobs into prisons, by requiring that an individual with a mental illness stay in their present job to ensure continued coverage of their mental health care needs.

That too has begun to change. Health care reform will be a long, uphill fight, but we've already seen legislation that not only outlaws preexisting conditions, but ensures that any reform will cover treatment for mental illness just like any other illness.

The spirit of the ADA is reaching out to medical research, as well. Starting next year, the National Institute of Mental Health [NIMH] will no longer be treated as the poor cousin of the National Institutes of Health [NIH]. The transfer of NIMH to NIH will help us to better use science to address individual, family, and national needs.

Mr. President, the future of our Nation's disability policy depends on individuals and organizations, as well as the Government, working together to bring the principles of the Americans with Disabilities Act into every aspect of society. During Mental Illness Awareness Week, I hope we can keep in mind the hopes and dreams of those persons possessing the "hidden disability," mental illness.•

U.N. CONFERENCE ON ENVIRONMENT AND DEVELOPMENT

• Mr. GORE. Mr. President, I rise today to introduce into the RECORD a report compiled by my distinguished colleague from Rhode Island, Senator JOHN CHAFEE and the U.N. Conference on Environment and Development, the Earth summit, held in Rio de Janeiro in June of this year. I would like to express my sincere gratitude to the members of the delegation. All members dedicated themselves to understanding the many and complicated issues that were on the agenda at the Rio Conference and in the negotiations preceding the Conference. And I would particularly like to recognize the leadership of my good friend Senator CLAIBORNE PELL. As a member of the United States' delegation to the Stockholm Conference on the Human Environment 20 years ago, his guidance, understanding and vision were unparalleled.

The Earth summit was truly a watershed event. Never before had so many world leaders come together—compelled by common concerns and determined to bind together in a common commitment to action. The concerns? Around the globe the manifestations of our failure to meet pressing human needs are evident. Every day, some 40,000 children under the age of 5 die from preventable disease; every year, workers around the world fall ill and die because of unhealthy working conditions while many others—unable to find employment—suffer another kind of death. At the same time, the natural resources upon which any effort to address these problems depends are in grave jeopardy—soils have become salinized and unable to bear crops; forests are disappearing at an unprecedented rate; species are being driven to extinction 1,000 times faster than at any time since the age of the dinosaurs; the air is laden with noxious chemicals and fresh and ocean water resources have been poisoned.

To most of the leaders gathered in Rio, the imperative was clear: We need to find ways of promoting economic growth and development that are not destructive of the environment. Unfortunately, however, this message was lost on George Bush. Alone among the industrialized nations of the world, the United States took the position that no commitment to action was necessary. On climate change—we alone refused to agree to binding action to reduce greenhouse gas emissions. On biodiversity—we virtually ignored the negotiations and then stonewalled the world because the final text contained provisions that were not to our liking. On forests—we claimed that implementing sustainable management practices was a priority for us, but then insisted that only tropical forests were in trouble so the burden should fall on developing countries.

In obstructing progress on these issues, the President not only failed to appreciate the magnitude of the environment and development problems we face, but also was blind to the magnitude of the economic opportunity that taking these problems on will afford. The fact of the matter is that stemming greenhouse gas emissions can be done most effectively by improving efficiency in every sector of the economy and improved efficiency means less waste, enhanced productivity, and improved competitiveness. And, the continued growth of one of our most promising industries—the biotechnology industry—is dependent upon preservation of biodiversity around the world. Contrary to the administration's rhetoric, the agreements that were being negotiated as part of the UNCED process were critical to, not antithetical to, our economic interests.

Our trading partners were well aware of this. They are gearing up to capture the huge markets that are opening for products and processes that promote environmentally sound economic development. The market for those technologies is at $200 billion per year and growing. If the United States remains on the sidelines on international environmental issues, we risk having these markets closed to U.S. firms.

Perhaps even more disturbing than the President's failure to promote our economic interests in Rio, was his utter failure to represent the real concerns and aspirations of the American people. Citizens around the world travelled to Rio to express their own commitment to action. U.S. citizens were there by the thousands also. They were parents concerned about their children's future; they were children committed to cleaning up the environment and to preventing further destruction. They had hoped that their President would amplify their voices. Instead he stifled them.

Largely because of the President's intransigence, many of the agreements concluded in Rio are only nonbinding statements of policy and intention. However, the seeds of hope were sown in Rio. The world will move forward. It is my most sincere hope that the United States will again lead the community of nations as it struggles to address these pressing problems. Our children's future, our ability to live in peace and to prosper with our neighbors, and the health and vitality of our planet depend on it.

The report follows:

UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT—RIO DE JANEIRO, JUNE 3-14

(A report by Senators Al Gore, Chairman and John Chafee, Vice Chairman of the Official Senate Delegation, September 18, 1992.

(Members of Official Senate Delegation: Senators Gore, Chafee, Baucus, Graham, Kerry, Lautenberg, Pell, Pressler, Symms, Wellstone, and Wirth)

I. BACKGROUND

A. United Nations Conference on Environment and Development

In December of 1989, the United Nations General Assembly adopted Resolution 44/228, calling for a major, comprehensive international conference on the global environment and development, to be held in Rio De Janeiro, Brazil, in June, 1992. the United nations Conference on Environment and Development (UNCED) was established by the resolution to build upon and commemorate the 20th anniversary of the United Nations Conference on the Human Environment, held in Stockholm in 1972. The Stockholm conference led to a Declaration of Principles (the Stockholm Declaration) to preserve and enhance the human environment.

The central purpose of the UNCED was to identify how to address increasingly severe global environment and development problems. The conference would confront the pollution and degradation of land, water and air resources threatening to intensify as world population increases—eventually more than doubling—into the next century. And, the conference would recognize that at the same time, current development patterns are widening the gulf between rich and poor and that anticipated population growth would be most pronounced in those regions of the world with the fewest economic opportunities. The goal of UNCED therefore was to bring together heads of state to begin to chart a course for development that would better meet the needs of people around the world while preserving the natural resource base on which sustained development depends. UNCED was and continues to be referred to as the "Earth Summit".

Maurice Strong, a Canadian businessman who had served as Secretary General of the Stockholm Conference in 1972, was selected to serve as Secretary General of the UNCED. Headquartered in Geneva, the Secretariat played a key role in managing and moving forward the UNCED's ambitious agenda. As outlined in the Resolution establishing the UNCED, the primary issues to be addressed included:

Improving the environment of the poor in urban and rural areas;

Protecting human health and improving quality of life;

Protection of the atmosphere by combating climate change, depletion of the ozone layer and transboundary air pollution;

Protection of the quality and supply of freshwater resources;

Protection of the oceans and other seas;

Protection and management of land resources, including combating desertification, deforestation, and drought;

Conservation of biological diversity and environmentally sound management of bioetechnology;

Environmentally sound waste management.

To undertake the task of crafting agreements and charting an international strategy to deal with these issues, a "preparatory committee", or Prepcom, was engaged and made open to all members of the United Nations. Most nations did take part. The Prepcom held four meetings, each lasting approximately one month, with the first in Nairobi, Kenya, in August 1990. Two subsequent meetings were held in Geneva during 1991 and a final session in New York, March 2-April 4, 1992. Tommy Koh, a former Ambassador from Singapore to the United States, chaired the Prepcom and deftly guided the negotiators from some 178 nations to agreement on action plans.

Three key documents resulted from the UNCED process:

"Agenda 21"—comprising some 40 chapters—is a comprehensive but non-legally binding action program designed to reconcile the goals of continued economic development and environmental preservation to ensure that human needs are met in a sustainable fashion.

The "Rio Declaration on Environment and Development" sets out 27 Principles that identify rights and obligations to guide world leaders in "Working towards international agreements with respect to the interests of all and [to] protect the integrity of the global environmental and developmental system."

The "Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests" is a non-legally binding statement addressing the multiple uses and functions of forest resources.

Negotiations were also carried out on simultaneous but separate tracks on two major international conventions, which were presented for signature at UNCED: a global climate change convention and a biological diversity convention.

B. Climate change convention

The negotiating process aimed at producing a draft convention on climate change in time to be presented for signature at the Earth Summit was initiated pursuant to UN General Assembly resolution 45/212, which was adopted on December 21, 1990. The Intergovernmental Negotiating Committee (INC) created by the resolution held five negotiating sessions: in Chantilly, Virginia, February 4-14, 1991; Geneva, Switzerland, June 19-29, 1991; Nairobi, Kenya, September 9-20, 1991; Geneva, December 9-20, 1991; and New York

City during the last two weeks of February, 1992. Some 130 nations participated in the sessions, in addition to more than a dozen affected United Nations agencies and non-governmental organizations (NGOs).

The INC negotiations were supported by the findings of the Intergovernmental Panel on Climate Change (IPCC) which was established in November 1988 by the United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO) "to carry out internationally coordinated scientific assessments of the magnitude, timing and potential impact of climate change." The role of the IPCC was reinforced by UN General Assembly Resolution 43/53, adopted in December, 1988, which further clarified the IPCC's objectives, and called upon all relevant organizations and programmes of the United Nations system to support the IPCC's work. The IPCC divided its work among three working groups:

Working Group I, dealing with the science of climate change, chaired by the United Kingdom;

Working Group II, dealing with the environmental and socio-economic impacts of climate change, chaired by the (former) Soviet Union;

Working Group III, the Response Strategies Working Group chaired by the United States;

and submitted its findings to the U.N. General Assembly in the fall of 1990. The major conclusions reported by the IPCC included the following:

There is a natural greenhouse effect that keeps the planet warmer than it otherwise would be;

Anthropogenic emissions of greenhouse gases as substantially increasing and will enhance the greenhouse effect, resulting on average in an additional warming of the Earth's surface;

An effective doubling of carbon dioxide in the atmosphere will produce a global mean temperature increase in the range of 1.5 degrees C to 4.5 degrees C, however, the precise timing, magnitude and regional impact of this increase cannot be predicted with certainty;

Global mean surface air temperature has increased by 0.3 to 0.6 degrees C over the last 100 years. This magnitude of warming is consistent with predictions from global climate general circulation models of anthropogenically induced changes, but is also within the range of natural variability.

The goal of the INC was to produce a framework convention on climate change, "containing appropriate commitments, and any related instruments as might be agreed upon." The Framework Convention was adopted at the conclusion of the fifth negotiating session in February, 1992, and by June 14, the convention had been signed by 153 nations including the U.S. Although specific commitments to targeted reductions in greenhouse gas emissions were sought by many parties to the negotiations, the United States and some other countries successfully resisted inclusion of these throughout the negotiating process.

C. Biological Diversity Convention

The Biologically Diversity Convention, completed on May 22, 1992, and presented for signature at the Rio conference, was the result of four years of negotiations under the auspices of the United Nations Environment Program. This process began on May 25, 1989, with the adoption of Resolution 15/34 by the Governing Council of UNEP, which called for the development of a legal instrument to protect the diverse biological resources of the planet. Dr. Mostafa Tolba, the Executive Director of UNEP convened an ad hoc working group of legal and technical experts, "with a mandate to negotiate an international legal instrument for the conservation of the biological diversity of the planet." In May, 1991, the UNEP Governing Council changed the name of the negotiating body to the Intergovernmental Negotiating Committee on Biological Diversity, in part, to create a structure resembling the climate change negotiations.

Two working groups were established within the Intergovernmental Negotiating Committee to faciliate the negotiating process:

Working Group I, to examine issues such as habitat preservation, global lists of key biological diversity areas, general obligations, principles, and in situ and ex situ preservation of species; and

Working Group II, to take up such issues as financial resources, information and data, access to genetic resources, and technology transfer.

A special group to formulate and agree upon definitions was formed directly under the chairman.

Five formal negotiating sessions were held: in Nairobi, Kenya, February 1991; Madrid, Spain, June 1991; Geneva, Switzerland, November 25–December 4, 1991; Nairobi, February 6–14, 1992; and again in Nairobi, May 1992. Negotiations on the Convention on Biological Diversity were concluded on May 22, 1992 and by June 14 the Convention had been signed by 153 States.

II. SUBSTANTIVE ANALYSIS OF THE RIO AGREEMENTS

A. Agenda 21

A full listing of the issues addressed in Agenda 21 is provided as an addendum to this report. This analysis will highlight those issues that were particularly prominent in the UNCED discussions. By way of a general comment, it should be noted that Agenda 21 puts forth several themes and action items that, if fully implemented, could prove to be quite significant for domestic and international policy. For example, governments are called on to devise national sustainable development strategies. This undertaking could involve a review of—and highlight necessary changes in—a wide range of social, environmental and economic policies. In addition, a greater role for women at the national, regional and international levels in the design and implementation of development strategies is called for, while governments are urged to decentralize decision-making processes and afford rural, local and indigenous groups a greater opportunity for input in decisions that affect them. Governments are also called on to undertake environmental impact assessments of their own activities that may have significant environmental consequences and to facilitate community access to information important to human health or the environment.

1. Chapter 33. Financial Resources and Mechanisms:

Noting that a "substantially increased effort" is required of both developed and developing countries to finance the implementation of Agenda 21, it was agreed that:

In general, financing will "come from a country's own public and private sectors";

However, developed countries reaffirmed their previously undertaken "commitments to reach the accepted United Nations target of 0.7 percent of GNP [gross national product] for ODA [overseas development assistance]". It should be noted that the US * * * not previously undertaken this UN commitment. Therefore, use of the word "reaffirm" appears to exclude the US from the terms of this provision;

Developed countries agree to "make their best efforts to increase their level of ODA."

In addition to calling for increased funding, this chapter of Agenda 21 also identified mechanisms that could be used to provide the necessary financial and technical support. The mechanisms identified included:

The multilateral development banks, in particular, the World Bank's International Development Association (IDA); the regional and subregional development banks; and the Global Environment Facility. With regard to IDA, the document states that, among various issues and options that nations will consider in the forthcoming replenishment talks, "special consideration should be given to the statement made by the President of the International Bank for Reconstruction and Development at the Conference in plenary meeting." This statement is intended to lend support for—without expressly accepting at this time—Lewis Preston's suggestion in his address in Rio that, in addition to maintaining funding for IDA in real terms, countries should provide an additional "Earth Increment" to help the poorest countries meet the objectives of Agenda 21. With regard to the GEF, a restructuring is called for that will "ensure a governance that is transparent and democratic in nature," as well as leave open the possibility that scope of the GEF could be expanded to include global environmental problems in addition to the four that are currently within the GEF's purview.

The relevant specialized agencies, other United Nations bodies and other international organizations;

Multilateral institutions for capacity-building and technical cooperation;

Bilateral assistance programs;

Debt relief;

Private funding;

Investment;

Various forms of new and innovative financing.

Several specific pledges of assistance to fund Agenda 21 were made in Rio. The Japanese, for example, announced an increase in environmentally-related aid from $3.1 billion during the last three years to more than $7 billion during the next five years. The European Community as a whole pledged $4 billion as an "initial commitment" while member states such as Germany and the United Kingdom pledged to support an increase in GEF funds from the current $1.5 billion to $2 to $3 billion. Chapter 33 calls on other developed countries also to make financial commitments and to report on plans to meet those commitments at the UN General Assembly this fall.

To ensure that funds will be used in the most efficient and effective manner toward the objectives of Agenda 21, developing nations are called upon to "begin to draw up national plans for sustainable development". These plans will be reviewed and figure significantly into the decisions of potential multilateral lenders in their Consultative meetings with individual developing countries. And, these plans will help ensure that proposed development projects will be carried out in an environmentally and economically sound manner.

2. Chapter 38. International Institutional Arrangements:

This Chapter suggests means by which the activities of various intergovernmental and United Nations agencies with competence in the areas of environment and development may be better coordinated in order to further the objectives of Agenda 21. It was generally agreed by all parties that the focus here should be on better coordination among existing bodies rather than the creation of wholly new institutions. In this regard, a strengthened role for UNEP and UNDP in such areas as environmental monitoring and assessment; information exchange; and the building of technical and institutional capacity in the developing countries was called for.

The Chapter does, however, call for a new organization that will be a part of a pre-existing United Nations' body. This new organization—the Sustainable Development Commission—is proposed to be established within the UN Economic and Social Council. The structure and function of the Sustainable Development Commission has not yet been fully detailed. Rather, final decisions are to be taken at the General Assembly in the fall of this year. It is anticipated, however, that the Commission will be the primary body for monitoring and assessing progress in the implementation of Agenda 21, the Rio Declaration, and the Statement of Principles on Forests. To this end, it will call for reports from governments and undertake its own studies and assessments.

3. Chapter 34. Access to Environmentally Sound Technology:

The activities proposed in this Chapter aim at "improving conditions and processes on information, access to and transfer of technology," particularly to developing countries, in order to promote sustainable development. Issues relating to the protection of intellectual property rights and to the terms of technology transfer, in particular, whether transfer would be on "preferential and concessional" terms, proved particularly contentious. The final document recognizes the importance of protecting intellectual property rights while calling on governments to identify and reduce barriers to access to technology. In addition, transfer on preferential and concessional terms is recognized as at least one option that may be pursued by parties to a transfer agreement.

In furtherance of the objectives of this Chapter, governments undertake to:

Develop international information networks which link national, subregional, regional and international systems;

Formulate policies and programs for the effective transfer of technologies that are in the public domain;

Encourage public and private sector creation of and enhance access to environmentally sound technologies;

Establish a collaborative network of research centers;

Build technology assessment capacity for the management of environmentally sound technology, including by conducting environmental impact and risk assessments;

Promote long-term collaborative arrangements, including joint ventures, between enterprises of developed and developing countries for the development of environmentally sound technologies.

B. Rio Declaration

This document was originally intended to be an "Earth Charter"—a more hopeful and less contentious document, with the moral power of the Universal Declaration on Human Rights—to mark the beginning of a global partnership among nations to work toward sustainable patterns of development. Opposition to a document of this import by some countries, including the US, however, combined with persistent calls by the developing nations for a recognition by the developed countries of: their disproportionate contribution to global environmental problems; a need to change consumption patterns in the North to stem further environmental destruction; and a need for developed countries to provide increased technical and financial assistance to the developing world, resulted in an impasse in the negotiations to produce an "Earth Charter". It is hoped, however, that the international community will continue talks aimed at producing an Earth Charter. In his Plenary address at the Earth Summit, Canadian Prime Minister Brian Mulroney suggested that the Rio Declaration be embraced pending the negotiation of an Earth Charter, which he called for by 1995, the fiftieth anniversary of the United Nations. This suggestion was positively received by many heads of state, although the US is expected to resist further discussion of the matter.

It should be noted that the Rio Declaration was drafted by Chairman Tommy Koh as an attempt to reconcile contentious issues. Many countries, however, expressed concern with regard to various provisions of the draft. The US, for example, opposed recognition in Principle 3 of a "right to development" on the grounds that, unless it were expressed in a more qualified fashion, this right could be used by countries to justify infractions of human rights or other rights and obligations. In addition, Israel objected to Principle 23 which calls on governments to protect the environment and natural resources "of people under oppression, domination and occupation". In the end it was decided that all countries would refrain from insisting on changes and that the document would be agreed to in the form presented by Chairman Koh. Several countries, including the US, issued interpretative statements expressing their respective understandings of the document's import.

C. Statement of Principles on Forests

It was originally anticipated that a legally binding convention on the preservation of forests would be negotiated and agreed to in Rio. Discussions toward that end proved highly contentious, however, as the US initially insisted that the treaty should only apply to tropical forests, and as several developing countries resisted binding commitments on the grounds that they pose a threat to sovereignty and would unduly impede necessary development. Efforts to incorporate language calling for the negotiation of a legal instrument in the non-legally binding Statement that was ultimately agreed to also failed.

The Statement of Principles does recognize that forests should be "sustainably managed to meet the social, economic, ecological, cultural and spiritual human needs of present and future generations." The statement also calls on all countries to take action "towards reforestation, afforestation and forest conservation," and to carry out environmental impact assessments where government actions are likely to have significant adverse impacts on important forest resources. Failure to agree on what is entailed in "substainable management" and to call for future talks aimed at producing a legal instrument that would define such key terms has raised concerns among many negotiators that the Statement will not prove effective in preserving forest ecosystems.

D. Framework Convention on Climate Change

The objective of the Convention as specified in Article 2 is to achieve "stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system." Article 2 further specifies that such stablization "should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner." Toward this end, the Parties to the Convention undertake the commitments described below. Because developed, industrialized countries are responsible for the greatest share of anthropogenic greenhouse gas emissions and are best able, financially and technically, to stem those emissions, the undertakings called for in the Convention differ for developed and developing country Parties.

Undertakings pertaining to both developed and developing country Parties:

Publish national inventories of anthropogenic emissions of greenhouse gas emissions as well as programs to mitigate and facilitate adaptation to climate change. Note that, pursuant to Article 12 of the Convention, the report required of developed country Parties is expected to be detailed in nature while only a general description is required of developing country Parties. In addition, an initial report is required of developed country Parties within six months of the entry into force of the Convention while the timetable for developing country reports is three years from entry into force;

Promote and cooperate in the development and transfer of technologies that control or reduce emissions of greenhouse gases;

Promote and cooperate in research, educational initiatives, and exchange of information relevant to climate change.

Undertakings pertaining only to developed country Parties:

Adopt national policies on the mitigation of climate change, "by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs;"

Communicate to the Conference of Parties detailed information on policies and measures relevant to the mitigation of climate change as well as on "resulting projected anthropogenic emissions by sources and removal by sinks of greenhouse gases . . . with the aim of returning individually or jointly to their 1990 levels of these anthropogenic emissions";

Provide new and additional financial resources and facilitate the transfer of technology to developing country Parties to support their compliance with their obligations under the treaty. Pursuant to Articles 11 and 21, the Global Environment Facility will function as the mechanism for the provision of such resources and technology.

Throughout the negotiations on the Convention, the United States, alone among industrialized countries, opposed the incorporation of binding commitments to reduce greenhouse gas emissions. All other industrialized countries had either individually or jointly made commitments to reduce emissions and argued for the inclusion in the Convention of a commitment by developed countries to stabilize emissions of carbon dioxide, the primary greenhouse gas, at 1990 levels by the year 2000. In the face of persistent US opposition, these countries expressed a willingness during the course of the negotiations to accept more flexible language that would call for a stabilization of a combination of greenhouse gases and that would allow emissions to be offset by greenhouse sinks such as forests. But, the United States maintained its opposition. As a result, other industrialized countries—anxious to ensure that the US, the largest single source of greenhouse gas emissions, would become a Party to the Convention—ultimately accepted language that was devoid of binding commitments to reduce emissions. Some of these countries, however, later reaffirmed their commitments to reducing emissions by signing at the Earth Summit not only the Climate Convention but also a separate resolution which included the targets and timetables the U.S. opposed.

Because of the lack of binding commitments by developed countries to reduce emissions, Malaysia did not sign the Convention.

It should be noted, however, that the treaty does provide for a review of the adequacy of the undertakings in addressing climate change. Based on the review, the Parties are bound to take "appropriate action." Presumably, such action would include a binding commitment to reduce emissions. In addition, the White House has likened the Convention to the Vienna Convention on the Protection of the Stratospheric Ozone Layer. It is therefore fair to expect that follow-on Protocols, that will add binding commitments to the Convention, will be pursued—just as the Montreal Protocol and London Amendments added binding measures to the original framework outlined in the Vienna Convention.

Action to begin to implement the provisions of the treaty is expected to be undertaken before it actually takes full force and effect (upon ratification by 50 Parties). In particular, President Bush, in his Plenary address at the UNCED, called for the preparation of national plans by January 1, 1993, and the European Community has similarly expressed a commitment to proceed rapidly to ratification and to the preparation of national plans.

E. Convention on Biological Diversity

As outlined in Article 1, the objectives of the Convention are: "the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources." Toward these ends, the Convention specifies actions aimed at conserving plant and animal biodiversity and at facilitating access to and transfer of relevant technology.

Conservation Provisions:

Parties to the Convention undertake the following measures to conserve or ensure the sustainable use of biological diversity. Note that while the commitments are legally binding, they are qualified, and Parties are bound to fulfill them only "as far as possible and as appropriate:"

Develop national strategies for conservation and sustainable use of biological diversity, including the establishment of a system of protected areas as well as the establishment of ex-situ conservation facilities, and incorporate biodiversity considerations into national decision-making;

Identify and monitor particularly important components of biological diversity and any activities that are likely to have significant adverse impacts on biodiversity;

Promote research, training and educational programs supporting conservation and sustainable use of biodiversity;

Adopt means to regulate, manage or control risks to biological diversity and human health associated with the use and release of living modified organisms;

Respect and preserve knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biodiversity;

Introduce procedures requiring environmental impact assessments of proposed projects that are likely to have significant adverse effects on biodiversity;

Promote exchange of information and notification of activities under the Contracting Party's jurisdiction or control which are likely to significantly affect adversely the biodiversity of other States or areas such as the high seas that are beyond the limits of national jurisdiction;

Promote emergency response procedures for activities or events which present a grave or imminent danger to biodiversity.

Provisions Regarding Access to Technology:

Facilitate access to technologies, including biotechnology, through legislative, administrative or other policy measures as appropriate, particularly to Contracting Parties that are developing countries and that provide genetic resources that are used in those technologies;

Cooperate with other contracting parties, subject to national legislation and international law, in order to ensure that intellectual property rights are supportive of and do not run counter to the objectives of the Convention;

In conjunction with other Contracting Parties, determine how to establish a clearinghouse mechanism to promote and facilitate technical and scientific cooperation;

Promote the establishment of joint research programs and joint ventures for the development of relevant technologies, including biotechnology.

The Convention also calls on Contracting Parties to provide financial support and incentives necessary for achievement of the Convention objectives. In this regard, developed country Parties undertake to provide new and additional financial resources to support the participation of developing country Parties. While the Convention notes that such funds may be made available on a bilateral basis, it is anticipated that the primary financial mechanism will be the Global Environment Facility, as indicated in Articles 21 and 39. Language in Article 39 that calls for a full restructuring of the GEF, however, raised a concern among some industrialized countries, including the United States, that the Convention could be construed as contemplating some other financial mechanism, or a modification to the GEF that was not in accord with the modifications that were otherwise under way. Most countries that expressed this concern noted in separate statements upon signing the Convention in Rio that they understood the language to call for the use of the GEF as the primary financial mechanism.

The United States was alone among industrialized countries in declining to sign the Convention. In addition to our concern with regard to the GEF, we also took issue with provisions of the treaty dealing with intellectual property protections and with the treatment of modified living organisms. With regard to intellectual property protection, the White House believed the treaty could be read as calling for the subversion of such protections in order to facilitate the objective of transferring relevant technologies. Other countries did not share this concern, noting that, for example, Article 16 specifies that "In the case of technology subject to patents and other intellectual property rights, such access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights."

On the issue of the treatment of modified living organisms, the United States disagreed with other countries that "means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts", as called for in Article 8 of the Convention, were necessary.

While in Rio, William Reilly, Administrator of the Environmental Protection Agency and Head of the United States Delegation, worked with other parties through the intercession of the Brazilian government to "fix" the provisions of the Convention that were of concern to the White House. Reilly's memo to Domestic Policy Advisor Clayton Yeutter on this subject and Yeutter's immediate rejection of the overture were leaked to the media, however. These events, together with a memo that had earlier leaked from Vice President Quayle's office that was highly critical of the biodiversity negotiations, as well as lingering resentment over the US insistence in the climate negotiations that binding commitments to reduce emissions of greenhouse gas emissions be deleted, led to a collapse of the effort to modify the treaty talks and to the generation of significant, adverse publicity concerning the role of the United States at the Rio Summit.●

TELEMARKETING AND CONSUMER FRAUD

● Mr. COHEN. Mr. President, I rise today to speak about the issue of consumer fraud and the elderly, including scams that are perpetrated through telemarketing.

Yesterday, the Senate passed S. 1392, the Telemarketing and Consumer Fraud and Abuse Prevention Act. The legislation is now before the House of Representatives for consideration, and I hope it will approve this legislation and send it to the President for his signature.

I am pleased that the Congress is addressing the issue of consumer fraud, which is of critical importance to thousands of citizens nationwide who are being victimized by scam artists. On September 24, the Senate Special Committee on Aging, of which I am ranking member, held a hearing to highlight several types of scams being perpetrated against elderly citizens across the country.

The Committee heard compelling testimony from victims of this fraud, as well as attorneys general, consumer groups, and the U.S. Postal Service.

One of the most disturbing types of fraudulent activity that we heard about are so-called guaranteed prize giveaways. These schemes often include boiler room telemarketing operations that sell merchandise or request an advance fee in order to receive a major award. Using sucker lists with the names, addresses and telephone numbers of senior citizens, these scam artists trap seniors in their web of deception with promises of huge case awards or other prizes. After the customers send their money in, the prize never materializes or is just junk, and the customer's money is long gone.

Many States are prosecuting these operators for unfair and deceptive trade practices, but as we heard at the hearing, much more needs to be done, for as soon as they shut down in one State, they soon appear in another.

Telemarketing is just the tip of the iceberg in the scam business. These snake-oil salesmen have devised numerous ways to defraud the American public and, in particular, our older population. The Aging Committee has investigated other areas of growing concern—living trusts, home repair fraud, and mail order fraud.

The living trust scam involves the tactics of groups like the American Association for Senior Citizens, which has been charged with unfair and deceptive trade practices in a number of States, including my own State of Maine. While living trusts, if established properly, are a legitimate device used in estate-planning, the AASC and other organizations have been charged with misrepresenting the costs of probate and pressuring seniors into paying thousands of dollars for living trusts that sometimes are drafted improperly, making them worthless.

The Committee found a growing incidence of home repair scams run by unscrupulous contractors who lure senior citizens into taking out second mortgages to pay for inferior services and products. Some senior citizens signed repair contracts, secured by the second mortgages, that required interest payments as high as 25 to 30 percent. Tragically, this practice has led to home foreclosures against many senior citizens.

Finally, the committee found that mail order fraud occurred on a large scale when the Hill Brothers shoe company of Lynchburg, VA, took in hundreds of thousands of dollars in shoe orders but never delivered the shoes nor provided refunds. Over 10,000 people have lost their hard-earned money as a result. Despite Federal laws already in place to protect against mail order fraud, thousands of needy senior citizens are out of luck and will probably never get their money back.

Senator PRYOR and I will continue to hold hearings aimed at highlighting various kinds of scams that prey on the elderly. One of our main goals is to bring attention to existing and emerging fraudulent activities targeting our senior citizens in order to alert them to the dangers inherent in many of these offers, which often sound so legitimate and at times even too good to be true.

Further, we hope to assess and evaluate what the States are doing to combat these types of fraud and what role the Federal Government should play to prevent and shut down these scams. Testimony provided at the hearing pointed out the need for greater education, increased enforcement and enhanced statutory authority. As the Florida attorney general stated in congressional testimony last spring, these unscrupulous operators will be stopped only through cooperation and coordination by State and Federal administrative and law enforcement agencies.

The legislation approved by the Senate is designed to deal with the problem of a $40 billion a year industry—the fraudulent telemarketing operators.

Now we need to take this issue a step further and address the consumer fraud problem on all fronts, so that unscrupulous operators who defraud the American people can finally be stopped from continuing their heinous activities.•

THE SITUATION IN BURMA

• Ms. MIKULSKI. Mr. President, I would like to take this opportunity to remind the U.S. Senate of a deplorable situation in a small country in Southeast Asia that is being virtually ignored by the rest of the world. I am speaking about Burma, now known as Myanmar.

Myanmar's military government announced recently that it would lift the state of martial law, which has robbed the Burmese people of the most basic of human freedoms. Normally, that would be seen as good news. Unfortunately, however, the government's credibility is not the best—we remember all too well that the army promised free elections in 1990 and then promptly ignored the results.

Over the past few years, the military regime which has ruled Burma for over 3 decades has continued its abhorrent and unrelenting abuse of the basic human rights of the country's citizens. It has continued to ignore the pleas of the United Nations and the rest of the world for the restoration of democracy. And it has blatantly continued to participate in the manufacture and distribution of opium and heroin, exporting the majority of these narcotics to the United States and using the profits to buy weapons from China.

In 1990, there was a momentary glimmer of hope as democratic elections were held and the overwhelming majority of Burmese people voted for representatives of the National League for Democracy. This hope, however, quickly turned to disappointment as the State Law and Order Restoration Council [SLORC] moved violently to suppress the democratic uprising. To this day, the regime continues to hold under house arrest the freely elected leader of Burma, Aung San Suu Kyi, one of the most courageous and remarkable women in the world. In 1991, she was awarded the Nobel Peace Prize but was not permitted to attend the ceremony, forced to remain in custody as a political prisoner of the SLORC.

The human rights abuses in Burma are so atrocious and pervasive that hundreds of thousands of Burmese have fled to Bangladesh, far and away the poorest country in Asia, just to escape the constant threat of torture, rape, murder, and slave labor. And although all those who oppose the SLORC are subject to these abuses, the Burmese Muslims have been a frequent target as the SLORC has undertaken an ethnic cleansing of the country. Muslims have lived in this region of Southeast Asia since the 12th century. They are as much a part of the culture and heritage of modern-day Burma as any other ethnic class. It is time once and for all to put an end to the practice of ethnic cleansing, whether it be in Burma, Bosnia, or any other country around the world.

Mr. President, we must not just sit back and let the situation in Burma continue. We must aggressively push for the release of Aung San Suu Kyi and all other political prisoners. The United States will soon be sending a new Ambassador to Burma. I urge my colleagues to join me in strongly encouraging him to use that position to push for the return of democracy and an end to the human rights abuses in Burma.•

THE YEAR OF THE INDIAN

• Mr. HARKIN. Mr. President, we are all aware of the impact that native Americans have had throughout the history of our Nation. We also recognize that now is the time to express our appreciation for their contributions to our way of life.

When the first Europeans came to the new world, they encountered native Americans with a long history of living with what nature provided. Now we should look to that model as we try to deal with the environmental issues facing us.

The contributions native Americans have made to our Nation can be easily noted. The name Iowa, as well as many other State and city names, can be traced back to native Americans. Their heritage is a fundamental part of our history. I am grateful that their culture has been preserved through the many trials of the past two centuries.

In Iowa, we honor our relationship with native Americans, and we recognize their contribution to our society. That is why I am proud to announce that Iowa has declared 1992, the Year of the Indian. I ask that all Iowans, and all Americans, salute native Americans, help celebrate their culture, and express appreciation for their many contributions to America's history.

I ask that a copy of this proclamation be printed in the RECORD.

The proclamation follows:

PROCLAMATION

Whereas, when Europeans arrived in the New World, they found Native Americans with a rich heritage living in harmony with their environment; and

Whereas, the name "Iowa" comes from the native people of our state and Iowa's Indian heritage is a fundamental part of our history; and

Whereas, we are grateful that Iowa's Indian people have preserved their culture, heritage and tribal traditions through the tumultuous change of the past two centuries; and

Whereas, in Iowa, we respect and honor our relationship with Native Americans and Indian tribes in our state and recognize their contribution to our society as well as their right to exist as sovereign entities; and

Whereas, a year-long celebration is an appropriate tribute to the Indian people of Iowa and to all Native Americans throughout our nation:

Now, therefore, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim 1992 as the "Year of the Indian" in Iowa, and call upon all Iowans to salute the Indian people of Iowa, express appreciation for their contributions to our way of life and celebrate their cultural heritage.•

RETIREMENT OF THE HONORABLE DAVID MARTIN

Mr. D'AMATO. Mr. President, as the 102d Congress comes to an end, I want to pause to pay tribute to one of my dearest friends, DAVID O'B. MARTIN, who is leaving the House of Representatives after distinguishing himself for the past 12 years as a Representative from that portion of the Empire State which we refer to as the "North Country."

Tribute has already been paid to DAVE MARTIN by his House colleagues from both parties. Those tributes reflect the widespread respect in which he is held by men and women from across the political spectrum.

DAVE MARTIN came to the House in 1981 as the North Country Congressman. He brought with him the strong values of a family with a long record of public service in New York.

Those of us who know DAVE MARTIN know that he is a man of his word, a man of the highest integrity, and a man who has contributed much to the House of Representatives and to his constituency. He has distinguished himself as a member of the House Armed Services Committee and the Permanent Select Committee on Intelligence. He has set a standard for excellence and for responsible representation. His service in the Congress is marked by his commitment to doing what is right, not what is necessarily politically popular at the moment. He is the kind of man our forefathers had hoped would be drawn into our representative democracy.

I have had the honor and privilege of working with DAVE MARTIN on hundreds of projects from Watertown to Malone to Plattsburgh, from Lowville to Gouverneur to Rouses Point during the past 12 years. He is not only a colleague, but a friend where judgment and guidance has been reliable and "good as gold." Likewise, our staffs have a long history of working together on projects that would benefit our mutual constituencies. His staff led by "the Dear", Cary Brick, represents the same high level of professionalism and public service so ably demonstrated by DAVE MARTIN himself.

It is with considerable sadness that I see DAVE MARTIN leave the Congress, but I have nothing but the highest regard and respect for him as he reached the decision that he has met the goals that he established for himself in 1981. Clearly, DAVE MARTIN could have stayed in the House of Representatives as long as he wanted, and while the institution would be a better one had he decided to stay a bit longer, it is a better one for his having served here at all.

I shall miss his advice and counsel as a Representative, but I shall always treasure him as a fellow New Yorker and a friend.

CONGRESSIONAL ACTION ON COMPETITIVENESS

• Mr. BAUCUS. Mr. President, I rise today to speak about one of the most important issues facing the U.S. Government today—our long-term economic performance and our position in the international economy.

We have been over this ground numerous times in recent years. U.S. productivity growth is lagging. We need policies to raise the national savings rate and rate of investment. Government policies should be crafted to support a strong system for technology development and application. Recent performance in education and worker training has left much to be desired. In trade policy, we need to work for free trade while ensuring that foreign markets are open to U.S. exports.

LEGISLATIVE ACCOMPLISHMENTS IN THE SENATE'S SECOND SESSION

This session, the Senate has taken some action intended to address these issues.

The highway bill of 1991 is an important step in the rebuilding of America's transportation infrastructure. The bill authorized $155.3 billion over 6 years, to be spent on the Nation's highways, mass transit systems, and other transportation projects. This public investment augments private sector productivity, and thus contributes to our economic growth and international competitiveness.

This session has also seen legislation relating to the funding of research and development. The High Performance Computing Act doubles funding for Federal R&D into computer and networking technologies, including national data networks. The American Technology Preeminence Act allocates funds for R&D into the precompetitive technologies that support industry's efforts to develop new products and markets.

The end of the cold war and the rise of international economic competition has significant implications for our national system for R&D. In this session, the Senate has begun to address this problem. The defense appropriations bill focuses R&D funding on those technologies which will be critical for conversion of defense industries to the civilian sector.

In further support of high-technology ventures, the Senate has made it easier for companies to cooperate in exceptionally risky production ventures. The National Cooperative Research Act Extension extends the relaxation of antitrust regulations created through cooperative research and development agreements. This initiative reduces companies' potential liability in antitrust litigation, and this makes them more willing to undertake the kind of cooperation that has helped so many Japanese firms.

The Senate has continued to fund the Defense Advanced Research Projects Agency [DARPA], which contributes to U.S. technological preeminence in a variety of ways. Perhaps most notably, DARPA funds the Sematech consortium, which has helped the American semiconductor industry to stabilize its competitive position in the face of severe pressure from abroad. Sematech provides a good example of what industry and Government, working together, can accomplish for the good of the Nation.

I think it is fair to say that this body understands the importance of technology to the Nation's future. I support all the efforts we have worked on in this session, and expect that our technology policy will receive comprehensive attention soon.

The higher education bill addresses some of our concerns about education. By making Government-guaranteed, low-interest loans to needy students, the bill will help young Americans make the most of their potential.

The Senate has been fairly active on international issues. Extending fast-track negotiating authority for GATT and the North American Free Trade Agreement helps us work toward free trade worldwide. Likewise, approving most-favored-nation status for China and Russia expands our trading network, fosters world growth, and ultimately expands the markets available to American companies.

To ensure that American companies can take advantage of the markets the above agreements are meant to open, I have sponsored the Trade Agreements Compliance Act. The act makes it easier and quicker for companies to initiate a review of allegations that other nations are reneging on trade agreements. Countries which do not fulfill the terms of agreements reached with the United States thus face a more credible and effective threat of retaliation.

We have also passed legislation to reauthorize the Export-Import Bank. The financing it provides helps American firms win export orders and penetrate the global marketplace. The Jobs Through Exports Act ensures that the foreign aid we distribute to our allies boosts the U.S. economy as well. The Senate has ratified a number of bilateral economic treaties, with countries such as Russia and Czechoslovakia. These treaties make provision for mutual investment; such investment is an essential motor for U.S. exports.

The tax bill contains provisions which will improve the performance of U.S. companies. One of my provisions attempts to simplify the tax regulations applying to small businesses. I have also inserted a provision to simplify the treatment of exchange rates in translating foreign taxes, and one that seeks to allow American mutual funds to compete abroad more effectively.

I think this list of bills and provisions makes it clear that we recognize many of the elements of the competitiveness problem. And despite continual accusations of gridlock, we have managed to pass some legislation intended to make a difference on this front. However, much remains to be done. Early next session I plan to resume efforts to pass critical tax, trade, and other legislation.

The Senate, the Government and indeed the Nation as a whole need to move beyond talk about international competition, and come up with a wide-ranging and coherent plan to attack our problems. I firmly believe that we can solve our problems, but we need to think carefully and prepare to make the sacrifices that will be necessary to set the country on the right track again.•

PUBLIC INVESTMENT FOR ECONOMIC RECOVERY

• Mr. BIDEN. Mr. President, on the front page of today's New York Times is a report that the financial experts on Wall Street increasingly agree that a public investment infrastructure program is necessary to revive economic growth.

Last spring, I introduced a plan for increased investment in our neglected infrastructure to put people back to work and strengthen the struggling recovery from recession. I took my proposal to my home State of Delaware. The Chamber of Commerce, labor unions, and local public officials all gave this plan their endorsement, showing the seriousness of the economic problems we are facing.

Still, I knew that many experts continued to argue that increased public spending in this era of deficits would raise fears of inflation in the financial community. Interest rates would rise in response, they said, and instead of aiding recovery we would harm prospects for future growth. This is a serious concern.

However, the effect of interest rate cuts by the Federal Reserve was blunted by the accumulated debt of the 1980's. Restructuring of American businesses, adjusting to international competition, arrested the job creation we used to expect in periods of recovery. And accumulating problems overseas would weaken the demand for our exports.

Without help in the form of public investment—investment that everyone agrees is long overdue—we may see only prolonged stagnation.

Mr. President, this article shows that even the most conservative financial experts are persuaded that business-as-usual is not an adequate response to our economic problems. When Congress returns next year, one of the first items of business will be the development of an economic stimulus program, including a job creation program like I have proposed. As this article shows, the need for this type of stimulus is increasingly clear.

I ask that the article from today's New York Times be printed at the conclusion of my remarks.

The article follows:

[From the New York Times, Oct. 8, 1992]

OLD IDEA GAINS NEW RESPECT: SPENDING WAY OUT OF SLUMP

Slowly, with many misgivings, Federal spending on public works is gaining a new respectability among economists, Wall Street traders and some corporate executives as a last-resort formula for generating jobs and ending the nation's economic stagnation.

In their view, other prescriptions have failed, and now with unemployment remaining stubbornly at 7.5 percent or more, they are concerned that the recovery may not take place without special help from the Government.

The new adherents are, in effect, putting aside years of opposition to increased public spending as unaffordable because it would add to the already huge Federal budget deficit and drive up the inflation rate, hurting the economy rather than helping it.

The position seems closer to that of the Democratic candidate for President, Bill Clinton, who has said some Government investment is needed to help the economy, than it is to that of President Bush, who is counting on the economy to pick up without extra Government spending.

The link between at least a temporary shot of more spending—on highways, transit systems, education and the like—and adding to the deficits has not changed. But an extensive range of interviews in recent days reveals a developing new attitude that says a rising deficit is a lesser evil until the weak economy can be revived—though those who have adopted it insist that the deficit be retackled later.

"The basic view that is emerging is, 'don't just stand there, do something,'" said Richard B. Hoey, chief economist at Dreyfus Inc. He said he had opposed extra Government spending because of the deficit but now believes, like many other recent converts, that because the economy is so weak the deficit can rise without pushing up the inflation rate.

Mr. Hoey said he was not certain that more public spending would produce the desired recovery. But particularly in view of the persistent unemployment, he said he came to the conclusion that it was worth a try.

Some, like Robert Giordano, chief economist at Goldman, Sachs, said they came painfully and reluctantly over the last few months to the position that the economy would not begin to grow again without Government spending.

"People are missing the boat," Mr. Giordano said. "If I were a policy maker, I would definitely have short-term fiscal stimulus, but I would couple this with a program that assured that the deficit expansion would be reversed later on, when the economy was stronger."

Some economists continue to believe that even a temporary spending increase is harmful, among them Alan Greenspan, chairman of the Federal Reserve, and Charles L. Schultze, a senior fellow at the Brookings Institution and a top economist in the Carter Administration.

But the unmistakable trend is toward greater tolerance. Henry Kaufman, an economist and Wall Street money manager, said he believed the economy was so weak that even bond-market traders, who are hurt by inflation, were finally willing to tolerate some deficit spending. The threat of inflation eating away at the value of investments has been a principal objection to budget deficits.

ADJUSTING TO CLINTON

Others, like Lawrence A. Kudlow, chief economist at Bear, Stearns, said they were adjusting to the possibility that Bill Clinton might be elected President, as the public opinion polls now suggest, and will be under pressure to engage in public-works spending because job and wage stagnation are so widespread.

Mr. Kudlow, a conservative Republican and a Reagan Administration official, had made television appearances as recently as the Republican convention in August in which he called for rapid deficit reduction as a cure for the economy. Now he said that while he would still prefer to stimulate the economy through tax incentives like an investment tax credit or a lower capital gains tax, he was bowing to circumstances and supports deficit public spending as an acceptable policy for the moment.

"The public pressure for economic growth will lead Clinton to activist risk taking," Mr. Kudlow said. "I don't think the Government money is going to be well spent. I would prefer targeted tax credits. But I am a realist and I see that Clinton will be elected, and I am coming to grips with it. I am taking off my economist hat, and my ideological hat, and putting myself in the shoes of the frustrated American voter who wants change."

The Clinton camp, however, generally avoids the subject of deficit spending as an economic pump-priming device, fearful of the Republican charge that Democrats are chronic spenders. President Bush has been campaigning for deficit reduction through tax and spending cuts. Mr. Bush also publicly endorses the view of the Federal Reserve, and others, that the economy will recover on its own in 1993, once individuals and companies reduce their debts and spend again. Mr. Clinton neither attacks nor endorses this proposition.

BALANCING ACT SEEN

"Governor Clinton is going to have to balance the need for action to get the economy moving against the need to also send strong signals of fiscal responsibility and commitment to reduce the deficit," said Gene

Sperling, the campaign's economic coordinator.

Ross Perot, the third Presidential candidate, favored rapid deficit reduction originally but has since hedged this view. John P. White, a Kodak executive who wrote Mr. Perot's deficit reduction plan, in a television appearance Sunday endorsed temporary deficit spending to accelerate the economy. Mr. White also endorsed Mr. Clinton this week.

Some economists, like Robert Gordon of Northwestern University, who until last spring opposed added spending, are now developing theories and strategies to justify it. "It is hard now to find many economists who would not say that to kick-start the economy you need spending," Mr. Gordon said. He argued that without greater demand for products—a demand supplied temporarily by Government spending—investment and production would remain weak among manufacturers.

Virtually all economists, whether they favor or oppose public spending, agree on one point: When such spending or tax cuts fail to drive up the deficit, they are not much of a stimulant for the economy. The problem is that shifting spending from one area to another to avoid deficits generally fails to provide many new jobs.

If Federal funds are taken from weapons making, for example, and spent on highway construction, the net number of new jobs is often marginal at best, economists say. Similarly, if money is taken from one family's pockets through higher taxes and given to another as unemployment pay, the net increase in consumer spending is thought to be negligible.

Only through deficit spending—the creation, in effect, of new money—is fresh economic activity created without canceling what already exists, economists say. That trade-off to achieve economic growth was considered acceptable in the post-World War II period. But a huge increase in the deficit from $74 billion in 1980 to more than $380 billion now has made the problem especially difficult.

The great concern was that injecting new money into the economy—even for such much-needed items as waste disposal or to fix deteriorating bridges—would raise the risk of higher inflation and a weaker dollar, and also of saddling coming generations with an intolerable debt to repay.

For these reasons, Mr. Kaufman, who through most of the 1980's was the much-admired chief economist at Salomon Brothers, was an outspoken opponent of deficit spending. But more than three years of recession or weak economic growth altered his view in late summer. The nation's bond markets "might be willing to tolerate a modest public-spending program, with strict sunset provisions, to encourage a somewhat faster recovery," he said in a recent speech.

Others on Wall Street are also changing their views, largely because the Federal Reserve's repeated reductions in interest rates have failed to reawaken the economy. "There is a shift in Wall Street that says we must give the economy a boost before we worry again about cutting the deficit," said David Jones, chief economist at Aubrey G. Lanston, a bond trading house. Mr. Jones lists himself among the recent converts.

In general, corporate America remains more cautious. Jerry Jasinowski, president of the National Association of Manufacturers, says his members are not ready for deficit spending yet. "Business continues to be scared to death about a big fiscal package that would worsen the deficit," Mr. Jasinowski said, adding, however, that executives were debating the issue.

But some have, in effect, joined the Government spenders. Allen Henry, president of the Harris Corporation's electronics systems sector, for example, endorses the spending indirectly.

He and other military contractors argue that a transition to the production of civilian products is difficult to make in a weak economy unless the Federal Government is the main customer. The Government, in effect, must finance the transition while also maintaining a high level of military purchases.

"You cannot diversify that quickly on your own and be profitable," Mr. Henry said. His company simultaneously makes electronic equipment for warplanes and a $1.7 billion air traffic control system for the Federal Aviation Administration.

The impetus for the attitude change on the deficit came in March, when two Nobel laureates in economics, Robert Solow and James Tobin, collected more than 90 signatures of prominent economists on a petition that called for $50 billion a year in Federal assistance to state and local governments, the money to be used primarily for public works. Later, the petition said, when economic recovery was under way, the deficit could be cut through military spending cutbacks and higher taxes.•

NORTHWESTERN UNIVERSITY'S MARCHING WILDCATS: THE NATION'S BEST

• Mr. SIMON. Mr. President, the Northwestern University Wildcat Marching Band, under the direction of Stephen Peterson, has been selected as the country's premier college marching band. Northwestern University has been awarded the ninth annual Louis Sudler Trophy, an award determined by directors from over 600 bands with teams in the National Collegiate Athletic Association and by 100 prominent sportswriters.

This Louis Sudler commendation, named after the founder of the award and the executive chairperson of the John Philip Sousa Foundation and a long-time Chicagoan, honors a band each year for its superior marching program. On behalf of the 11.5 million residents in the State of Illinois, I am pleased to take this opportunity to recognize these tremendously talented and gifted musicians and directors for their sterling accomplishments and dedication. Louis Sudler set a standard of excellence that Director Peterson's troops have met with distinction.

In Louis Sudler's words, this award goes each year to the collegiate band that best exemplifies the high standards he described in this way:

> Demonstrate the highest marching standards, innovative marching routines and ideas and make important contributions to the advancement of the performance standards of college marching bands over several years.

Since the 1880's, the band has been a cherished part of Northwestern and its community, Evanston, and the Marching Wildcats have now obtained the global recognition that few university marching bands will ever achieve.

We salute the Northwestern University Marching Wildcats. Their perseverance and creativity will always be a source of pride for the Land of Lincoln.•

BANKRUPTCY AMENDMENTS OF 1992

• Mr. SIMON. Mr. President, last night the Senate passed S. 1985, the Bankruptcy Amendments of 1992. Section 310 of S. 1985 would remedy a serious problem affecting a number of airports around the country which serve airlines which are undergoing bankruptcy proceedings. Often, these airlines have leased scarce airport gates, terminal areas, and other airport facilities. The Bankruptcy Code now provides that a bankrupt party must assume or reject existing leases within 60 days, or within such additional time as the court, for cause, sets within the initial 60-day period. These time limits in the code have been routinely ignored, and courts have granted numerous extensions of time to bankruptcy trustees beyond that contemplated in the code. Debtors frequently improperly attempt to delay the assumption or rejection until a plan of confirmation is assured.

Section 310 of S. 1985 would permit a bankruptcy court to grant an extension beyond 270 days of the date of the order of relief only if it finds that the extension does not cause substantial harm to the airport operator or airline passengers. In making the finding, the court must consider the level of use of the airport facilities, the existence of competing demand for such facilities, the size and complexity of the case, and air carrier competition at the airport.

The 270-day time limit should not be interpreted as a blanket authorization to bankruptcy trustees to delay a decision on the assumption or rejection of leases for airport property until 270 days have elapsed. Only in an unusually complicated case could a trustee justify delaying a decision for the full 270-day period.

Although section 310 of S. 1985 would authorize a bankruptcy court to grant an extension to a trustee beyond the 270-day limit, the court should carefully consider the public interest factors set forth in section 310 before granting an extension. The 270-day limit in section 310 should provide ample time for trustees to make a determination to accept or reject an unexpired lease or executory contract, and courts should be conservative in granting extensions beyond the initial 270-day period.

The reference in section 310 of the bill to related facility is intended to encompass facilities such as airline maintenance bases, hangars, cargo handling facilities, and fueling facilities leased to airlines. These installations facilitate the operation of an airline at the airport.•

FAILURE OF THE 102D CONGRESS TO PASS FLOOD INSURANCE REFORM LEGISLATION

• Mr. KERRY. Mr. President, it is with deep regret that today I inform my colleagues that the 102d Congress will adjourn sine die without passage of flood insurance reform legislation. The tremendous need for flood insurance reform is plainly evident. Yet we have failed to act and, in our inaction, have acted contrary to common sense and incontrovertible evidence. We have lost a significant opportunity to act positively, thoughtfully, and in the best interests of public policy and the American taxpayer.

I want to offer my perspective on this failure. Before I do so, I want to serve notice to my colleagues that flood insurance reform will be one of my highest priorities when the 103d Congress convenes in January.

I also would like to extend my sincere thanks to the distinguished Housing and Urban Affairs Subcommittee chairman and original co-sponsor of the flood insurance reform legislation I introduced, Senator CRANSTON, for his support and assistance in trying to find an accord, with special thanks extended to his superb staff for their continued assistance and cooperation in this endeavor.

For some time, I have been concerned about the National Flood Insurance Program, on fiscal grounds, and in terms of loss of human life and property. The House of Representatives shared this concern, and passed a sweeping reform bill by a 388 to 18 vote—a resounding mandate for flood insurance reform. Yet in the Senate we have experienced discord throughout the debate regarding this legislation. Several of my distinguished colleagues have said that we have rushed blindly through the process, that we haven't given due consideration to all potential outcomes—whether economic, social or environmental—and that additional study is needed.

These assertions simply are not accurate. The provisions contained within the House bill, H.R. 1236, and in the two bills I introduced, S. 1650 and S. 2907, were based upon several objective studies conducted over the past 3 years by the General Accounting Office [GAO], the Federal Interagency Floodplain Management Task Force, the National Academy of Sciences, and internal reports prepared by the Federal Emergency Management Agency [FEMA].

In addition, over the past 4 years Congress has convened 12 separate hearings on flood insurance, touching on virtually every aspect of this important program. Furthermore, discussions have contained on the staff level among congressional staff and individuals and groups affected by the flood insurance program. I do not believe anyone has been "left out of the loop." Let me reassure my colleagues that no one will be excluded in future flood insurance deliberations.

I find this impasse hard to accept. I think it is particularly unfortunate, and very hard to explain, why—at a time of serious public discontent with Government because it seems to be mired in gridlock on so many important issues—an argument is being made that Congress should not act when it is clear that Congress has done its homework and knows what it needs to know to pass responsible reform legislation. Continued avoidance and inactivity only will fester public disillusionment with this institution.

Mr. President, I also am profoundly discouraged that we have let slip by an opportune moment to reestablish the fundamental quid pro quo premise of the flood insurance program.

The National Flood Insurance Program was created to alleviate the Federal taxpayer burden of paying for ever-increasing disaster relief expenditures in areas damaged, often repeatedly, by floods. In exchange for affordable flood insurance, communities were required to plan and develop regulations and building standards in order to reduce future losses. Unfortunately, this quid pro quo has never been carried out adequately. Communities have been allowed to develop in flood and erosion-prone areas, almost as if hurricanes, floods, or property destroying erosion won't occur. But as we have painfully been reminded these past months, these activities of nature do occur.

In 1968, Congress clearly declared its intent when it passed the National Flood Insurance Act. The original congressional declaration of purpose stated, and I quote:

> * * * flood insurance can promote the public interest by providing appropriate protection against the perils of flood losses and encouraging sound land use by minimizing exposure of property to flood losses.

Elsewhere, it added:

> * * * It is the further purpose * * * to encourage State and local governments to make appropriate land use adjustments to constrict the development of land which is exposed to flood damages and minimize damage caused by flood losses.

Interestingly, and at times in some amusement, I have listened to arguments quite contradictory to this stated intend which claim that flood insurance has no relationship—either implicit or explicit—to land management. Mr. President, in light of the original congressional intent these claims are clearly baseless. Flood insurance is not, nor has it ever been, an entitlement program. It was never seen and should not now be seen as only a benefit provided by Government. A public benefit was to be derived by the creation of this subsidized benefit to individuals. This should remain—this must remain—the program's premise.

As a result of this missed opportunity to reestablish this quid pro quo, we also have passed on an opportunity to assure and enhance one of the most important attributes of the flood insurance program: Namely, its ability to reduce Federal expenditures on disaster relief.

Over the past 2 months, we have witnessed with frightening clarity the return of hurricane season. No longer can the National Hurricane Center's predictions of increased catastrophic storms—storms that will result in "frequent multibillion dollar losses having a national impact on the economy—be dismissed as mere fabrications. No, hurricanes are real and devastating in their consequences. While prospects for recovery in Florida, Louisiana, Kauai, and Guam are guardedly optimistic, the costs will be staggering, especially for the Federal Government. Yet we still are allowing people to rebuild in the same locations with the same risk.

Valuable lessons have been learned from this wrenching series of disasters. We have learned that although we now can predict catastrophic storms more accurately, the ability of the Federal Government to respond after disasters is limited, disjointed and in dire need of reorganization. We also have learned, through the vivid images of entire communities reduced to ruin, that construction standards and building codes devised to withstand hurricanes—often considered appropriate minimal substitutes for sensible land use and hazard management—demand reevaluation, and certainly require more vigilant enforcement.

With genuine interest, I am awaiting the upcoming release of a GAO report requested by my distinguished colleague from Maryland, Senator MIKULSKI, detailing FEMA's response to the crisis in south Florida, and will read it closely to see how overall FEMA reforms may augment flood insurance reform.

The tremendous growth in development in the Nation's coastal zone since 1970—growth which now puts over 44 million people and trillions of dollars of property at risk—has created an unprecedented financial liability for the Federal Government. On September 18, Congress passed an emergency supplemental appropriation bill that totaled $11 billion; the largest single expenditure on disaster assistance in U.S. history. Unquestionably, considering the magnitude of these disasters, this response was compassionate. The fact that all of this money will be deficit financed, adding to our $4 trillion national debt, was seldom mentioned.

Ill-advised coastal and floodplain development imposes attendant financial burdens in excess of flood-related losses. The scale of these costs is now apparent. Repairs to public infrastructure—roads, bridges, sewer, and water utilities, schools, hospitals—are expensive and slow to occur. Additional costs for vital public services such as military and national guard assistance, and fire, police, and other emergency services quickly consume hundreds of millions of dollars.

Of course, our coastal environment also suffers from loss of fish and wildlife habitat, reduced water quality, and lost recreational opportunities. The disruption of the Biscayne Bay ecosystem in Florida and losses in fishery resources in Louisiana and the Gulf of Mexico illustrate these losses. What will it cost to restore them? We probably will never know.

Congress cannot afford to ignore this reality. If experience is an indicator of the future, and our future is the one forecast by the National Hurricane Center, Congress should act responsibly now to develop appropriate alternatives to offset or control expenditures for disaster relief; costs that are sure to grow. But this year we have chosen not to act. Rather, the Senate has chosen by inaction—by default—to allow the floor insurance program to function contrary to its intended purpose: By acting as a financial safety net for unwise development in hazardous coastal and flood plain areas. In so doing we have once again set the stage for repeated disasters.

The last thing this country needs at this juncture is for a program that was purposely designed to lessen federal expenditures for disaster assistance to end up contributing—perhaps significantly—to greater expenditure for that purpose. But that is exactly where we are headed with this program. This course must be redirected.

I also find it unfortunate that, despite strong evidence of widespread noncompliance by federally-regulated lending institutions with the mandatory purchase requirement for flood insurance, some Senators have chosen to ignore this noncompliance and not to act to assure compliance with the law. Noncompliance with this requirement—which has been law since 1973—is rampant, severely undercutting the financial integrity of the flood insurance fund. Of the 11 million properties that are located in special flood hazard areas, only 1.9 million—or roughly 17 percent—actually carry flood insurance in force. In some communities, the percentage of those properties required to carry flood insurance which actually do carry insurance is as low as eight percent.

The arguments posited by lenders for this terribly low compliance rate are without support. Charges were made that compliance provisions in S. 2907 would be onerous, costly, and misdirected. Lenders would have us believe that the problem will clear itself up through the normal course of business when that is demonstrably not the case. They claim that they simply haven't the administrative capacity to comply with the law although lenders routinely enforce requirements of their own for other types of insurance.

This recalcitrant attitude must change or be changed. Studies indicate that properties insured for flood risks are four times more likely to experience damage by floods than by any other insured risk. Noncompliance cripples the financial stability of the flood insurance fund, expands the exposed risk to the Federal Government, and ultimately results in Federal, State, and local governments spending more on disaster relief than would be necessary if flood insurance were in place. As the events of the past 4 weeks dramatically illustrate, these costs can be enormous.

Lenders should recognize, as they willingly do for other types of insurance, that flood insurance will help to protect their collateral. Now that Congress has failed to act, it has been discomforting to hear lenders recant recent efforts to comply with the mandatory purchase requirement. To dispel any doubt, let me state clearly that obtaining compliance with the mandatory purchase requirement will be a primary concern when this subject is taken up in the next Congress. I would suggest to lenders the wisdom, in the meantime, of acting expeditiously to bring their portfolios into compliance with the law.

The overextension or undercapitalization of the flood insurance fund concerns me very greatly. The Federal Emergency Management Agency [FEMA] indicates the flood insurance fund carries approximately $220 billion worth of policies, but has only $390 million in reserves. Furthermore, under the present premium structure, total average premium revenues amount to roughly $650 million. FEMA testified during a hearing held on July 27, 1992, that if the program were to be actuarially sound it would need at least $3.5 billion in reserves. FEMA also estimates that just one catastrophic storm could produce flood-related losses as high as $3 billion. Considering these alarming facts, I do not see how anyone plausibly can contend that the flood insurance fund is not at risk.

Several factors contribute to the underfunding in addition to the low purchase requirement compliance rate previously referenced. Subsidized premiums for structures built prior to establishment of FEMA construction standards—nearly half of all insured properties—still exist today. Premium computations only account for average loss years and do not account for catastrophic loss scenarios. And the flood insurance fund is plagued by adverse selection whereby the normal "pooled risk" of the policy base is undermined by the predominance of high-risk properties (which, not surprisingly, file the majority of damage claims).

Importantly, risks due to coastal erosion still are not included in the premium structure, despite the fact that the 1968 Flood Insurance Act called for FEMA to identify both flood and erosion risks and to promulgate regulations to constrict development in hazardous erosion areas. I know of no other insurance program that dismisses a known risk of this magnitude. A private sector insurance program that did this would soon bankrupt the insurance company or would be dropped altogether by the industry.

Can we afford to continue to gamble when the odds are against us? Flood damages from these recent hurricanes are estimated to be relatively small—approximately $150 million. However, these estimates are less a vindication of the stability of the flood insurance fund, and more illustrative of the abnormal characteristics of these storms. Compared to other hurricanes on record, these storms were relatively "dry" with the majority of damage wind-related. In addition, accompanying storm surges were unusually low, especially for Hurricane Andrew. Also, massive flood losses were avoided when these storms stayed clear of densely populated urban centers including Miami, New Orleans and Honolulu.

Fortunately, the flood insurance fund should be able to cover anticipated insurance claims from these storms, but this will not always be the case. The fund remains vulnerable to a catastrophic storm; a storm such as Hurricane Camille, which hit the Gulf coast in 1969 packing winds over two hundred miles per hour with a storm surge of 30 feet. And who will make up the difference if the flood insurance fund runs short and FEMA's $1 billion in borrowing authority is insufficient? The answer, of course, is your constituents and mine—the taxpayers.

The safety and soundness of the fund cannot be left to dumb luck. The Federal Government no longer can afford to ignore the fact that we are at the edge of the cliff. This burgeoning liability must be addressed, and it will be addressed next year.

From the time flood insurance legislation was first introduced, my intention was to provide a balanced comprehensive reform package, but to do so in a manner sensitive to the social and economic impacts on those who are most affected by the flood insurance program. Throughout, I continued to reexamine this legislation and its subsequent revisions with my colleagues in order to try to resolve their differences.

I believe firmly this legislation contained the essential elements needed for substantive flood insurance reform including increased compliance provisions, new opportunities for risk reduction and cost containment through mitigation activities such as elevation and relocation, and increased incentives to improve community participation in the flood insurance program. A strong consensus for comprehensive flood insurance reform did emerge as our conversations and work continued, and is a positive note as we look to the future.

As other Senators are aware, sections of this legislation pertaining to identification and management of coastal erosion hazards were controversial. I understand the controversiality, but I also know that erosion is a real, evident, and destructive natural occurrence and one which must be addressed if we are to have a sound, effective flood insurance program. To better inform my colleagues that erosion is not some distant or remote hazard, I ask unanimous consent that the article entitled, "Slowly sinking into sea" that appeared in the August 11, 1992, edition of the Washington Times be included in its entirety in the RECORD following the conclusion of my remarks.

To resolve concerns expressed by coastal communities, property advocates and other groups, tremendous efforts were made to refine significantly the erosion management provisions. Stringent requirements in the House bill were replaced by a voluntary community erosion management program. Under the erosion program outlined in S. 2907, communities that choose to establish and enforce programs to regulate construction in identified erosion hazard areas—a process not unlike the current floodplain management process—would be eligible for reduced premium rates and Upton/Jones assistance to relocate or demolish buildings threatened by erosion. Also of importance, existing State erosion management programs would be left intact and an appeals process for erosion hazard area determinations would be added.

Significantly, the most controversial issues regarding erosion management were removed. S. 2907 did not include mandatory erosion setbacks, federal construction standards, or prohibitions on new construction. There would have been no cancellation of existing flood insurance policies or "taking" of private property. Admittedly, flood insurance would not have been available for new construction in the greatest erosion hazard areas, but why should the Federal Government offer subsidized insurance for construction in an area that would otherwise be uninsurable in the private market? To perpetuate this practice simply would be illogical and counter to the conservative fiscal principles reflected in S. 2907.

This legislation would have restored common sense to the flood insurance program. It would have recaptured the original quid pro quo of the program and rewarded communities for actively managing for coastal and floodplain hazards. Frankly, for coastal communities dependent on seasonal tourism, fisheries, or retirees, it is in their own best interest to protect and manage the very resources—the beaches, dunes, and wetlands—that support their local economies.

Stated in its simple essence, this reform effort would have restored personal responsibility and public accountability to the process of deciding where we build, and what we insure. It would have reaffirmed the fundamental role of government to protect the health, safety and financial welfare of all of its citizens.

However, here we are at the end of the 102d Congress and it is evident that there will be no flood insurance reform in this Congress. Despite the efforts at compromise, despite good faith negotiations with my colleagues, despite compelling evidence supporting reform, we could not reach an agreement, and I am sincerely disappointed by this outcome. Yet valuable insights were gained concerning the flood insurance program and how it may best be reformed. The resolve to carry this debate forward has not ebbed and I urge my colleagues to join me next year to carry on this effort.

I hope Senators will be able next year to put aside the concerns of narrow special interests and consider the paramount national interest in controlling disaster relief deficit spending. If we approach this important issue in this manner, I have every reason to hope our efforts can succeed next year. It is a mission I accept with the greatest seriousness and commitment, and I solicit and welcome the assistance of all members and staff who contributed so much this year to our efforts.

The article follows:

[From the Washington Times, August 11, 1992]

SLOWLY SINKING INTO SEA

(By Lisa Yungmann)

HOLLAND ISLAND, MD.—Thirty years ago, there were 60 houses, 1,000 people and three graveyards on the Chesapeake Bay island. Today it is uninhabited, with barely enough land left to hold one abandoned house and half a graveyard.

Holland Island is now a place where residents of nearby islands go to take wood from abandoned houses and shops.

The shrinking of the Chesapeake Bay's islands is not a new phenomenon. From 1850 to 1950, four once-populated islands disappeared from the Bay and five others were abandoned.

But the pace has dangerously quickened in recent years because of a rising sea and shoreline erosion aggravated by pollution. Most Holland Island is underwater, and scientists fear the Bay's remaining islands may be next.

While the Bay's shore is eroding by about 8 feet a year in some areas, the water level is rising 3 millimeters a year, one of the highest rates on the Atlantic Coast, say University of Maryland professors Michael Kearney and Cort Stevenson. They say pollutants in the Bay have weakened the composition of its shores, chipping away at and sinking the land.

Mr. Kearney, a geography professor at the College Park campus, says that although the sea-level rise seems too small to have any dramatic effect, "the coast is so flat and low, any rise in sea level moves the shoreline a big distance inland."

Areas that are eroding most quickly have the fastest-growing populations, so most people either don't care about or ignore the rapidly fading shorelines, Mr. Kearney says. He says Queen Anne's County, which includes Kent Island, is expected to double in population by 2020, but erosion in that county is "high to severe," claiming as much as 15 feet per year in some places.

Both professors say more people near the Bay need to be aware of what is happening. Residents of neighboring states and the District need to know that when they dump things in gutters or spray their lawns with pesticides, they are adding to the pollution in the Bay and the erosion of its islands, says Mr. Stevenson, a marine scientist at the university's Horn Point Lab in Cambridge.

But on Smith Island, one of the Eastern Shore's oldest seafood areas, people are all too aware of the problem. Some say that the battle to save their island is overwhelming and that they are close to giving up.

Janice Marshall, 30, a lifelong resident of the Smith Island town of Tylerton, has seen the shoreline creep at least 60 feet closer since she was a child.

Battered bicycles, rusty washing machines and tattered mufflers are piled on what was once a rock-lined bank. The junk was put there by locals hoping to shelter the island's western shore from the Chesapeake's waters.

As the shoreline inches into town, young people move to the mainland, schools close and the last grocery store goes out of business, the fight to save her home is coming to an end, she says.

"I'm so sick of going in front of boards," Mrs. Marshall says. "What does it matter? We're going to be gone in a few years anyway."•

RACHEL GILBERT—FIGHTING FOR REAL REPRESENTATION

• Mr. SYMMS. Mr. President, this year Idaho is proud to have a tough, creative conservative as a candidate for Representative in Idaho's first district, which I represented for 8 years before I came to the Senate.

That candidate is Rachel Gilbert, a savvy, experienced former State senator who loves the State of Idaho so much that she has promised she won't move to Washington if she is elected to the House.

Mr. President, Rachel Gilbert has a great idea, and I think it will prove to be very popular with the 103d Congress. Ms. Gilbert believes that Members of Congress should be able to keep their families at home, instead of uprooting them from their neighborhoods, schools, churches, and friends to move inside the beltway. She also proposes to allow Representatives to vote from their home district offices, just the way they do now in the well of the House chamber—by means of an electronic device.

Mr. President, Rachel Gilbert's proposal could bring a whole new breed of American to the Congress—men and women of the finest quality, many of whom wouldn't dream of running for Congress now because they would have to move their families to Washington. And, Mr. President, I must remind my colleagues that not everybody in this country is dying to live in the Nation's Capital.

Mr. President, I commend Rachel Gilbert's plan to my colleagues—and to their challengers—for their consideration. It is about time the folks back home really got some power in this country, and Rachel Gilbert's plan would guarantee that Washington would have less power, and the home folks would get a break from the monopoly beltway mentality of Washington.

Mr. President, I ask that two articles be inserted in the RECORD at the end of my remarks. The first is an article by Ralph Smeed, my friend and valued adviser who writes a regular column for the Idaho Press-Tribune. The second is the op-ed piece from the Wall Street Journal of July 14, 1992 to which Ralph Smeed's article refers. It was written by Dr. Christopher Manion, a political scientist who joined my staff this past summer.

Mr. President, I encourage all my friends and colleagues to consider seriously Rachel Gilbert's plan for Congress to come home. It would be a shot in the arm for a more representative Congress and revitalized America.

I thank the Chair.

The articles follow:

[From the Idaho Press-Tribune, Sept. 27, 1992]

GILBERT'S "LESS GOVERNMENT" PLAN

(By Ralph Smeed)

Idaho just may be coming of age. That is to say, conservatives in particular. Time was when the media liberals could, and still do by the way, say: "You conservatives know what your are against, but you don't know what you are for." Of course that is not so, but there is at least a little truth in it.

Comes now Rachel Gilbert, the Republican conservative candidate for Idaho's 1st Congressional District. She has a brand new idea for the people back home to regain proper influence on Big Brother Federal Government. But first a little background.

Most incumbent members of Congress seem to think "reform" means using every phony scheme to perpetuate themselves using taxpayer money, to plan their retirements with sweetheart pension deals and to keep their campaign fund for personal use.

According to the *Wall Street Journal* they cultivate contacts and cast votes designed ". . . to create post-Congress jobs as million-dollar lobbyists. With funding and encouragement from special interest groups they . . . keep the party going. As one outsider put it, they knew when they came here that Washington was a sewer; the trouble is they wind up treating it like a hot-tub."

Gilbert is one of Idaho's most courageous political leaders and is well-known as being "for" the small homeowner, taxpayer and small businessman. She has a decades-long and health history of distrust of big government. Her leadership and support for the 1 Percent Tax Limit Initiative, for example, is not the only thing she is "for," but it's a good one. That is, for people who want less government.

Last week she announced yet another plan to rein-in big government. Time alone will tell if the liberal media will give it the rather obvious publicity it deserves, but here it is in part:

"The plan is simple," explained Gilbert. Today congressmen vote ". . . by inserting a card into an electronic device on the house floor. A simple rule change would allow members to cast their votes, not only from Washington, DC., but from their home (state) district offices. The votes would be monitored day after day, by constituents and the local media. . . .

"The incumbents and special interest groups would no longer be insulated from the (voters) back home."

Gilbert went on: "Congressmen who make a living spending taxpayers' money spend most of their time with special-interest groups getting briefed, wined, and dined, and taken to the ever-present fund-raisers. Their staffs enjoy a similar, pampered treatment" (with employee salaries of $118,500 and down).

She added that Rep. Larry LaRocco is already a pro as an "insider" and a member of the overwhelmingly Democrat majority.

"People who would run for these offices, but are unwilling to move their families, leave their friends and communities to live in a city with the highest murder rate in the Nation, would be able to hold office and live at home and go about the business of cleaning house.

"Just think," said Gilbert, "about the many other (advantages). The local media, not the national media, would be the first in line with the news. (Voter) could drive to their representatives' home offices and not have to take time off from work, fly to Washington, pay expensive hotel rates, and hire high-priced lobbyists.

"The real debate would be held in the (home) districts, not in the back rooms of the Capitol or on an empty House floor."

"So far LaRocco has adamantly refused to debate his challenger, except for one lone shot at it, while Dirk Kempthome, GOP candidate for U.S. Senate, has eight debates scheduled with Democrat Congressman Dick Stallings. And so far, sad to say, the liberal media is happy to leave that advantage to the benefit of the very liberal LaRocco.

"Larry is not a fool," said Gilbert, ". . . the (big labor unions), Joseph Seagrams & Sons, American Banker's Association, Trial Lawyers, . . . and other PACs have already given him $254,468 in special-interest money."

"Reform is needed and needed now to stop (politicians) from milking the system for their own benefit," Gilbert said. She credited an opinion article in the *Wall Street Journal* for the innovative idea entitled "Congress Come Home."

Given this clown's fantastically left-liberal record and wild monetary mismanagement—Gilbert's and the *WSJ's* conservative play should get a big play in the press. But if past is prologue, it won't

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[From the Wall Street Journal, July 14, 1992]

CONGRESS, COME HOME

(By Christopher Manion)

The next time you see your congressman, ask him where he and his family live. Most likely he'll say "Washington," and that answer explains the dismal condition of Congress as it lurches, panic-stricken, toward elections this fall.

To most representatives, "reform" has meant using every dodge to perpetuate themselves using taxpayer money, and to plan retirements designed to maximize sweetheart pension deals and to keep their "campaign" funds for personal use. They cultivate contacts (and cast votes) designed to create post-Congress jobs as million-dollar lobbyists. With encouragement and funding from the special-interest groups, they do everything they can to keep the party going. As one insider put it, they knew when they came here that Washington was a sewer; the trouble is, they wind up treating it like a hot tub.

If Congress can't put its own house in order, the American people will have to. They can do it under a Choice in Representation plan that allows them to elect representatives who, instead of moving to Washington, would live in their districts. There, they would do the people's business—and much of their congressional voting. It's easy. It's legal. It would break the back of the Washington power lobby. And it's the only way that the folks back home can rein in a Congress totally out of control.

The plan is simple: The member now votes by inserting a card into a voting machine on the floor. A simple rules change would let representatives vote that way not only in Washington, but from their home district offices. There they could explain each vote to constituents and the local media; there, day after day, the local folks could see how much time the member makes for them vs. how much he spends with donors and lobbyists.

Widespread support for term limits reflects the electorate's desire to rein Congress in, but too many good people are unwilling to serve even for those few years. They do not want to uproot their families, leave their friends, churches, schools and neighborhoods behind, and move to the nation's capital, where police and firefighter unions run ads trumpeting "the highest murder rate in America," where there are more lawyers than people, where housing prices are astronomical, and where the public schools are among the worst in the country. In fact, the only people who move to Washington willingly seem to be the fortune-hunters, professional politicians, bureaucrats, foreign diplomats, lobbyists and special-interest groups that make their living spending other people's money.

They're the ones your representative spends most of his time with; day after day they brief him, lobby him, take him and his staff to lunches, dinners and the ever-present fund-raisers. If you want to exercise your constitutional right to petition your government, you'll have to take time off from work, pay round-trip air fare and sky-high hotel rates, and try to get onto your congressman's schedule. Most likely, if you can't spend thousands of dollars on a lobbyist (usually a former member or staffer), you won't be able to see the member personally. He'll be too busy "doing the nation's business."

Most voters don't realize how little time the average member spends on the floor of the House. Most of the time he watches the proceedings on his office TV set like any C-SPAN junkie. At night he goes to a home that is as insulated from the real world as his office is. His family lives among neighbors who make their living spending taxes, not paying them; his children usually go to private schools (and in Washington these can cost as much as an Ivy League education). When the representative loses or retires, he will most likely stay in Washington and lobby. "Home" for him has become a campaign state of mind.

The average member today spends about three weeks in Washington for every week at home. With the adoption of the Choice in Representation initiative, that ratio could easily be reversed. Mothers of families who have balanced budgets for years would be able to serve in Congress without leaving their friends, neighbors and even their children behind. Such no-nonsense representatives should know all about putting the House in order.

Apart from voting, the average member's presence is most "required" in Washington for committee and subcommittee hearings. There were more than 5,300 such meetings in the 101st Congress (1989-90), most orchestrated dog-and-pony shows with professional witnesses and pre-ordained outcomes. A new Congress could easily organize the few necessary hearings with the same efficiency that businesses in every congressional district use to organize their affairs.

In such a regimen, the average representative could easily accomplish his Washington work in one week per month. A modest dormitory for members would eliminate the need for buying a house in Washington (they wouldn't even need a pay raise). Members who had acquired a disdain for their district and the interests of their constituents, or who were reluctant to move "home," would have to change or, more likely, retire (or lose). In the meantime, a new breed of representatives could go to work on the nation's agenda.

For them, cleaning up the mess in Washington would be hard enough. They shouldn't be forced to live in it too.

(Mr. Manion recently joined the staff of Sen. Steve Symms (R., Idaho).

CONGRATULATIONS TO HELEN MACK CHANG

• Mr. JEFFORDS. Mr. President, most Americans have not heard of Helen Mack Chang, or her sister Myrna. And many are not even aware that Guatemala is struggling to dig out from under a legacy of repression and abuse of human rights. But yesterday, the international community learned the name of Helen Mack. It was announced in Stockholm, Sweden that she has been awarded the 1992 Right Livelihood Award, also known as the Alternative Nobel Prize, "for outstanding courage and persistence in seeking to bring to justice the high-level murderers of her sister, which have inspired the whole Central American region, and ignited a national campaign in Guatemala against the current impunity of political killings." On December 9, the Swedish Parliament will present the award to Helen Mack and the three other 1992 recipients.

Mr. President, I have the honor of knowing Helen Mack. In June 1991, when I was in Guatemala to observe the political and human rights situation in the country, I had dinner with Helen and her parents. Mr. and Mrs. Mack are very soft-spoken people who have worked hard to build a business in their adopted country, staying far away from politics. Helen is a business administrator, working in housing and education projects. Their warmth and strength impressed me greatly and I resolved to help them in any way I could.

Myrna's family was generally aware of Myrna's work at AVANCSO, a social research organization which she cofounded. But they had no idea that her study of the displaced population in Guatemala's hinterlands might be dangerous work.

When Myrna was brutally murdered on September 11, 1990, it came as a terrible shock. But instead of submitting to the terror by keeping their heads down to avoid further attacks, the Mack family, including Myrna's teenage daughter, Lucky, spoke out. They insisted that this was not a common crime and that it be properly investigated. It quickly became apparent that there would be no real attempt made to identify Myrna's murderers. The explanations of the murder and excuses for the shoddy investigation that were given by the police, the military and even by President Cerezo were infuriating. But Helen and her family quickly realized that Myrna's fate had been shared by many Guatemalans, and that their loved ones urged the Macks not to give up the fight. So they resolved to continue their up-hill struggle and to fight against impunity, to poke the lion, as Helen calls it. They hope to bring Myrna's killers to justice, for her sake and for those of so many other Guatemalans.

I would like to congratulate the Swedish parliament for this selection. Helen represents the courage that we all hope that we have—the courage to face injustice, even when it comes at great risk to us and our loved ones. Helen insists that this award is not for her, but "for the thousands of mothers, sisters, wives and children of people who have suffered the pain of death without receiving justice." And truly, Myrna's case has taken on a symbolic meaning beyond anything the Macks ever envisioned. But it is only thanks to Helen's courage and perseverance that the fight goes on. And one day, justice will be done, maybe too late for Myrna, but when it does come, it will be due in part to Helen's efforts.

Mr. President, I join many others in sending Helen heartfelt congratulations, and I urge my colleagues to take note of the example she sets for us all.•

PLEDGE OF ALLEGIANCE COMMEMORATIVE COIN

• Mr. HARKIN. Mr President, I am disappointed that the Congress has not passed the Pledge of Allegiance to the Flag Commemorative Coin Act. Profits from those coins would have been gone to the Capitol Historical Society, a congressionally charted, nonprofit organization under the able guidance of our former colleague, Fred Schwengel.

The Pledge of Allegiance to the Flag, 100 years after its creation, still has tremendous meaning to our democracy. Each morning, the 33-word pledge is said in almost every classroom in our Nation. Those 33 words are fundamental to our definition as a nation.

I believe that we need to do more not only to take the Pledge, but work to better understand the full meaning of the Pledge of Allegiance.

I also believe that we need to increase our efforts to increase our understanding of the Congress. This institution is unique. For over 200 years, the Congress has served the Nation. Almost everyone has objected to some measure or other passed by the Congress. The parliamentary processes of the House and the Senate can be very complex. The parliamentary procedures may not be helpful towards reaching a quick result. There are many inefficiencies. But, there is a need to look at and appreciate the protections that are built into the process. For 200 years, the Congress has been crucial to our nation's democracy. Those who work in the Capitol often cease to fully appreciate the tremendous wealth of history that is represented in the Capitol Building. As we approach the millennium, I hope that it will stand proud long into the future.

I would like to work with my colleagues to work to increase our efforts to help the American people learn about the meaning of the Pledge of Allegiance and the history of the Congress.•

S. 776, THE NATIONAL ENERGY POLICY ACT ENERGY CONSERVATION REBATES

• Mr. BRADLEY. Mr. President, one element of the national energy strategy concerns rebates made by gas and electric utilities to consumers for energy efficient equipment. This legislation makes these rebates tax exempt again, as they were prior to an IRS ruling in 1989.

In granting this preferred tax status to rebates for conservation equipment, it is the intent of Congress to promote the efficient use of energy. In considering rebate programs, it is necessary to analyze the impact of the program on the ultimate consumption on primary energy. Since rebates can significantly affect the fuel choice decisions of consumers, local regulatory authorities should attempt to distinguish between true energy conservation measures and promotional programs that might actually increase energy consumption and consumer energy bills.

Mr. President, the goal is energy conservation, pure and simple. This is not some loophole or taxpayer giveaway. If we are to give tax-free assistance, it must meet a clear test of public interest and public good.•

RETIREMENT OF DR. JANELLE KRUEGER

• Mr. McCAIN. Mr. President, the State of Arizona and the American nursing community recently lost one of the finest leaders in nursing education, when Dr. Janelle Krueger retired. On June 30, 1992, Dr. Krueger, who had become a friend and adviser to me on nursing issues, retired from her position as dean of the Arizona State University College of Nursing.

Throughout her distinguished career, she played an integral part in encouraging research in nursing as well as strengthening the development of educational programs to further the education of professional nurses. In addition, she worked diligently to make professional nursing education programs available to those residing and practicing in the rural parts of Arizona. During her tenure at Arizona State University, the college of nursing's recruitment and retention efforts resulted in nearly doubling the enrollment of minority nursing candidates.

Dr. Krueger completed a 3-year nursing diploma program in 1948 at St. Luke's Hospital in Cleveland, OH. Her first nursing position was as a public health nurse in Washington, DC.'s Department of Public Health. From Washington, she traveled west to Colorado, where she became Director of Nursing for the Boulder City County Health Department. During this time, she received her B.S. and M.S. degrees, and a doctorate in sociology. Then, she traveled to the State of Arizona, where she was a faculty member at the University of Arizona from 1969 to 1977 and then went on to become director of the Western Interstate Commission for Higher Education, where she assisted nurses in designing and conducting research and using their findings to improve nursing practice in the clinical setting. Following a 6 year stint at the University of Colorado, she came back to Arizona to become dean of the College of Nursing at Arizona State University.

While officially retired, I know that Dr. Krueger will continue to influence the lives of Arizona's and America's nurses—both through the research and publications she produced, as well as through the path she forged during her career. She has been a strong advocate for nursing research, practice, and education. I have no doubt that she will continue to contribute to the advancement of professional nursing in her retirement, just as she did during her career. I, for one, look forward to continuing to learn about nursing and its needs from my friend, as she enters a new phase of her life. •

THE CONTINUING TRAGEDY IN BURMA

• Mr. MOYNIHAN. Mr. President, as the Senate prepares to adjourn, I would like to take just a few moments to remind my colleagues of the continuing human rights crisis in Burma.

Burma has suffered three decades of darkness—and never worse than now. Since 1988, the Senate has strongly supported efforts to isolate the regime in Rangoon, and has sought greater pressure on the junta by the administration.

As we close this Congress, we can proudly acknowledge the bipartisan support in the Congress for the democratic forces fighting for change in Burma, and our great respect for Aung San Suu Kyi, the truly elected leader of Burma. She has suffered house arrest now for more than 3 years. And her victory in the elections in 1990 has been quashed by the ruling military junta. But her victory of spirit and her support by the people of Burma and of the world continue as strong as ever. She and the enslaved people of Burma are in our thoughts always.

We can proudly point to the determination of the U.S. Senate not to allow a policy of business as usual with the regime. When the administration found itself unable to take the actions that the Foreign Relations Committee unanimously agreed necessary to avoid any misunderstanding in our resolute condemnation of the regime—we prevented the sending of any new Ambassador to Rangoon. And none ought go until ever firmer actions are taken against this odious regime in Rangoon. A U.N. arms embargo ought to be imposed. No foreign aid ought to be sent—it only serves to support the regime. And it is long past time that we downgraded our diplomatic relations with Rangoon. There is nothing to discuss with these thugs.

We can hope that Japan, the European Community, and Australia will stand resolute in their efforts to bring democratic change to Burma. And we can likewise hope that the nations of ASEAN and China will stop the efforts at accommodation and profit, and will think of the people of Burma, all the people of Burma, no matter their ethnicity.

Arms sales must stop. Whether from China or Poland. Can it really be that President Bush approved the sales by Poland to Burma of helicopters as reported by the Polish Foreign Ministry? If it was so, we can only hope that it was a misunderstanding. The world must shut off the flow of arms to Burma. That means China. The world must isolate the regime. Again, that means China and ASEAN. The world must prevent the continuation of the type of hell in Burma that has only rarely been seen in the history of mankind. The people of Burma will not forgive us, nor will we be able to forgive ourselves. •

MARINE MAMMAL HEALTH AND STRANDING RESPONSE

• Mr. LAUTENBERG. Mr. President, I rise today to support title III to H.R. 5617. Title III contains the text of S. 1898, the Marine Mammal Health and Stranding Response Act, which I introduced last year. Title III would amend the Marine Mammal Protection Act of 1972, to establish a program for responding to unusual marine mammal mortality events and to provide guidance and quality control for marine mammal tissue banking and analysis. The effective coordination of stranding responses will help save marine mammals and standardized tissue sampling and analysis will help determine the cause of marine mammal strandings and possibly prevent them.

Title III responds to the serious incidences of marine mammal strandings. In 1987 and 1988 we witnessed a die-off of Bottlenose dolphin and strandings of these animals on the shores of my State of New Jersey and other east coast States. The sight of dead and sick marine mammals on our shores was heartwrenching. It made many wonder why these beautiful creatures died and if this mysterious affliction would threaten other marine life and even beachgoers. Studies of the marine mammal tissue from these stranded marine mammals showed high levels of toxic contaminants. These contaminants may have played a role in weakening the immune systems of these marine mammals and made them susceptible to illness which led to their stranding. No conclusions could be drawn from these studies because we did not have an adequate baseline to compare contaminant levels found in the tissues of these stranded marine mammals.

Title III will address this problem by establishing a marine mammal tissue bank. While always tragic, strandings and unusual mortality events can be used as learning tools to diagnose the health of the marine mammal populations. If the marine mammal is still alive or recently dead, tissues can be collected for analysis. Tissue analysis may lead to a diagnosis of the problems which lead to the marine mammal strandings. It is not enough, however, to just ensure tissues are collected. Since the start of the stranding networks, tissues have been collected. Individual participants, however, have used various methods of collection, preparation, storage and examination of these tissues. Title III will require NOAA to issue recommended guidelines for collection, preparation and tissue analysis techniques. Thus data from one stranding event can be compared to data from another event, and all these can be referenced to standard samples taken from healthy marine mammals.

The 1987–88 Atlantic Bottlenose dolphin die-off and the Exxon Valdez oil spill of 1989 showed that responses to unexpected events affecting marine mammals that cause at least partial die-offs of marine mammal populations have been uncoordinated. Title III calls for a more effective response to unusual mortality events. It will accomplish this by having NOAA establish a scientific working group that will: first, determine when an unusual mortality event is occurring; second, determine the point at which an unusual mortality event is concluded; third, develop a contingency plan which allows for a coordinated response to an event; and fourth, identify individuals or organizations that can assist NOAA in a coordinated and effective response. Contingency plans will permit the coordination of efforts so as to most effectively use scarce resources, maximize the chances for identifying causes of unusual mortality events, and improve efforts to save the marine mammals once stranded.

I want to thank Senator HOLLINGS and the Commerce Committee for their efforts to see that the Marine Mammal Stranding Act is enacted.

Mr. President, Title III will strengthen efforts to protect the health of this Nation's magnificent marine mammals. Title III has received the support of the administration and the environmental community. I urge my colleagues to support this legislation.•

COAL RETIREES' HEALTH CARE

• Mr. GLENN. Mr. President, the Senate has grappled with many difficult issues during this session of Congress. But the coal industry retiree health benefits package before us today has been among the most contentious matters facing legislators this year.

The goal of this package is fundamental: To ensure health care coverage to tens of thousands of retired coal miners and their families—not just because it's a good idea, but because it's a promise that we must keep—a promise to workers who lived up to their commitment to supply our Nation's energy needs. As the so-called Dole Commission said, the commitment to provide them with health care benefits should now be honored.

There are more than 8,000 retired miners, spouses, and dependents in Ohio who are relying on this commitment. Ensuring the solvency of the benefit trust funds is critical to these Ohioans. We cannot turn our backs on them.

The difficult part is determining how to pay for it. The legislation before us today has changed significantly in this respect over the past year. The key difference is in how the bill will pay for so-called "orphan miners," meaning those whose companies are out of business. Originally, the legislation included a broad industrywide fee in order to keep up with the ongoing health costs of these retirees. But this has been changed at the urging of the administration so that premium payments will be made only by those for whom the retirees worked.

This applies to companies that may no longer be in mining, such as LTV. The liability of these companies reaches back to their subsidiaries such as Pittston's subsidiary, Burlington Air Express.

Because we are only talking about a small number of companies here, the impact on some of them will be severe. I have actively worked with my colleagues in the Senate to assess the best means of cushioning the impact on these companies. While no provision has been included in the legislation before us, I look forward to continuing to work with my colleagues in the coming Congress to address this concern. Since the true liability of many companies will not be clear until October 1993, we will be in a better position in the coming Congress to determine what type of legislative solution may be necessary.

Finally, Mr. President, on behalf of the 8,000 retirees and their families in Ohio, I want to commend my distinguished friend from West Virginia, Mr. ROCKEFELLER, for all of his fine work and dedication on this difficult issue. •

SUPPLEMENTAL COMPACT BETWEEN NEW JERSEY AND PENNSYLVANIA CONCERNING THE DELAWARE RIVER PORT AUTHORITY

• Mr. LAUTENBERG. Mr. President, I am pleased that the Senate yesterday approved H.R. 5452, important legislation to help promote economic development in New Jersey and Pennsylvania. In July, I joined my colleagues from New Jersey and Pennsylvania in sponsoring the Senate companion to this bill.

The legislation approves a change in an existing compact between New Jersey and Pennsylvania to allow the Delaware River Port Authority, or DRPA, which owns and operates four bridges between the two States, in addition to the PATCO high-speed line, to allocate some of its financial resources for needed economic development efforts in the region. The types of projects that will be eligible for funding would include investments in manufacturing, port-oriented development, foreign trade zone site development and research, and other commercial, industrial, and recreational activities.

Currently, the DRPA serves communities in southern New Jersey and the Philadelphia area of Pennsylvania. In New Jersey, its jurisdiction includes Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem counties.

The DRPA's primary responsibility will continue to be the operation and maintenance of its bridges and high-speed line. However, with approval of this compact modification, the authority could, after meeting those responsibilities, make important investments to help stimulate the regional economy.

The New Jersey Legislature approved the legislation to amend the existing compact in January 1992. Pennsylvania followed suit in April 1992.

I point out, Mr. President, that this legislation does not call for any increase in the fees paid on the DRPA's bridges or high-speed line. It retains the existing Federal requirement that tolls be just and reasonable.

With approval of this legislation, Congress signed off on the changes to the existing compact, and will now allow the Delaware River Port Authority to expand its role, to the benefit of citizens throughout southern New Jersey and adjacent communities in Pennsylvania.

LESSONS OF THE AMERICAN EXPERIENCE

• Mr. LIEBERMAN. Mr. President, since the close of the Second World War, the great debate between the virtues of democracy and the alleged benefits of Soviet-style totalitarianism has engaged the hearts and minds of Europeans, east and west. It was, at times, a contentious and deadly struggle. As we all are aware, in some parts of Eastern and Central Europe that struggle continues. Within Western Europe, however, the great debate took another form: whether to form a federal structure and European Union. Throughout these remarkable changes, what remained constant was the power and influence of the American experience as a unique, hard fought, now more than 200-year-old effort to craft a federal system on the principles of individual rights and democratic institutions.

This broad issue was addressed recently at the Wilton Park Conference on "Federalism, Integration and Disintegration in Europe," hosted in the United Kingdom by the British Foreign and Commonwealth Office. Neil Proto, a member of the Connecticut bar, a partner in the Washington, DC, law firm of Verner, Liipfert, Bernhard, McPherson & Hand and an adjunct professor of public policy at Georgetown's graduate school, presented a thoughtful and intellectually engaging paper on the "Lessons of the American Experience" with federalism. It makes clear, in a compelling manner, that preservation of the idea upon which America was founded, individual rights and liberty and its protection by the Supreme Court has been fundamental to the proper functioning of federalism. It also makes clear how difficult a task this has been and the troublesome effects on federalism when the Court has failed to preserve this idea. Mr. President, I commend Mr. Proto's paper to my colleagues as an important, carefully crafted explication of how we have come to where we are today and why the Supreme Court continues to be essential to the proper functioning of federalism. There are lessons here for us, too, to ponder and to heed.

Mr. President, I ask that the text of Mr. Proto's paper be printed in the RECORD immediately following my remarks.

The text follows:

LESSONS OF THE AMERICAN EXPERIENCE

(By Neil Thomas Proto[1])

I. INTRODUCTION

It is with the seemingly uncharacteristic humility of an American that I approach this assigned task.

The notion of federalism, and the federal-state relationship—what you refer to as "subsidiarity"—is an integral part of America's tradition and, in important ways, an essential and contentiously debated aspect of our current Presidential election. In many respects, it always has been. It is as much on our mind as it is on yours.

The humility that I sense comes in part from the fact that, as individual nations, European thought and experience tempered the early formation of the United States. Notions about the rule of law found their origins in Anglo-Saxon traditions and practice: John Locke and Sir William Blackstone's Commentaries were the primary source for the legal training of America's first lawyers and jurists and political leaders.

As you all also know, the American Revolution, including those years when it was translated into the written documents that formed our government and principles of law, found considerable support from the military acumen of the Marquis de LaFayette and from the political thought of Rosseau and Montesquieu. To this day, the insights and eloquence of deTocqueville's description of American democracy, written in the 1830's, retain their power in American political and cultural literature.

There is much, too, in the special traditions of your individual nations, in their support for human rights and individual liberty, in the fierce independence and commitment to national cultures and territorial integrity that have been examples and inspirations to the world, including to those within the United States. The effort you are now engaged in—to unite Europe, to forge—in unprecedented ways—common notions of civility and practical means of governance, to seek unity and a workable form of federalism, calls strongly on those special traditions. It is a commendable, if not vital effort, and I want to make clear at the outset, that any form of governance that is based on those special traditions—many of which we derive from and share with you—should be encouraged and welcomed.

The humility I bring to this assigned task, however, also is constrained by other factors:

The effort of America to forge a Union; to take 13 originally independent colonies and now 50 united states and to craft a system of federalism and democracy and liberty has been a unique and formidable accomplishment. It has been tempered by dark, and unenviable moments—some of which, too, are part of the lessons from our experience that I will discuss—but we are now more than 200 years old; and those seeking liberty and opportunity still enter our doorstep, often at great physical and political peril. We, too, have much to offer by way of example and inspiration.

I am also constrained by a second factor: namely, the other characteristics in the European experience; those characteristics that have spawned radical ideologies and the harsh and systematic oppression of liberty and human dignity. For hundreds of years, the nations of Europe have been engaged in warfare; sometimes localized and twice global. The ominous figures of Franco and Salazar, Mussolini and Hitler; and the ideologies of Marx, Lenin and Engles still find poignant reverberations in contemporary society. We, in America, have felt those characteristics and their reverberations.

When our first President, George Washington, spoke in his Farewell Address to the nation in 1796, he spoke about the history of Europe and the caution America should exercise in becoming entangled in European affairs. The passage of time and the evolution of circumstances has severely dimmed America's caution but not the legitimacy of Washington's underlying view of Europe's history.

The challenge to Europe in going forward is substantial. Unity of the grand geographical and functional nature you now seek is not in your collective tradition, except as part of monarchies or dictatorship. The means you chose for meeting such a grand challenge are among the most difficult forms of governance, as both our experiences have demonstrated.

It is with this perspective in mind that I offer some thoughts on the lessons of the American Experience.

II. THE LESSONS

1. The Value of the Idea

America was founded on an idea: the idea of individual liberty and equality. It was an idea deeply reflective of the 18th Century Enlightenment; and embodied, first and foremost, in our Declaration of Independence, when we said:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are life, liberty and the pursuit of happiness."

It was this Idea—the Idea of individual equality and liberty—that moved men to unite in common venture. It was a transcendent idea, not empirical. There had been no comparable experience from which we could take comfort. Human history could not justify the Declaration of Independence.

Upon this Idea, however, we founded a Republic that, in geographic terms, was more than 1,000 miles in length—twice the distance between London and the eastern most perimeter of Germany. We did it in 1787.

What we did not do was merely to unify 13 colonies. The common value that we shared—what moved men—was not to declare the existence of a "United" States but to declare the principles upon which it was founded and must strive to attain.

I cannot emphasize strongly enough the importance of the timing and nature of this idea. We would be a different nation, and I believe our practice of federalism would be dramatically different, if we sought to forge a common venture in politics and government today. The power of the Reagan-Thatcher-Kohl notion of the free-enterprise system and the so-called virtues of the "market forces" have elevated a set of values that appeals to the baser, more self-centered motives of mankind. These are not the values of the Enlightenment or, to me, the values upon which nations endure or men are moved to do good.

The Idea—the existence of the Idea and the means for assuring its attainment—is fundamental to understanding the practice of federalism in America. In order to do so, we must return to our Constitution; to the Amendments we enacted to protect individual rights—what we refer to as the Bill of Rights—and to the most important institution we created to preserve the Idea and to give meaning to federalism: the Supreme Court of the United States.

2. The Protection of Individual Rights Against the Action of Government

Throughout the debate over the ratification of our Constitution there existed a deeply-rooted, strongly held belief in the need to add to the Constitution a Bill of Rights: an enunciation of the restrictions imposed on government in order to protect and enhance individual rights, liberty, life and property. Such an effort sought, in large measure to further transform the principles and rights reflected in the Declaration of Independence into the daily governance of America.

Within a few years twelve such Amendments were added to our Constitution. There are now 27. These Amendments include individual, federally recognized rights directly applicable to the people.

Two of the founders of our nation took the lead in proposing these original Amendments—this Bill of Rights—James Madison and Thomas Jefferson. But it was Jefferson, then serving as Ambassador to France, who understood which institution would now emerge as the guarantor of those federal rights in the context of the federal-state relationship.

The "legal check." on the power of government, Jefferson said, has been "put into the hands of the judiciary."

It was among our First President's most important tasks. In 1789, President George Washington wrote "that the due administration of justice is the firmest pillar of good government * * * [T]he judicial department is essential to the happiness of our country and the stability of its political system."

The remaining, central question confronting the framers of our Constitution was how to enforce and compel obedience to the Bill of Rights set forth in our Constitution. We chose to do so through the federal judiciary by declaring it to be paramount over *all* the individuals within the nation, and *all* the state legislature and governors that compose it.

In Article VI, Section 2 of the United States Constitution, it is provided that:

"This Constitution and the laws of the United States, which shall be made in pursuance thereof * * * shall be the Supreme Law of the land; and the judges in every state shall be bound thereby; anything in the * * * laws of any state to the contrary notwithstanding."

What this means, simply put, is that federal law, as declared and enforced by federal courts, is the supreme law of the United States and that, as a legal and binding matter, the Supreme Court and the federal judicial system can—as it has on many occasions—protect the rights of individuals against the actions of state legislatures and state governors. And, any final decision of the highest court in any state can be reviewed by the Supreme Court of the United States.

With important exceptions—reflected in our history—this principle has endured and become settled to the proper functioning federalism.

Oliver Wendell Homles, who was a member of the Supreme Court from 1902 through 1932, and one of our most highly respected jurists makes the follow observation:

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[1] Neil Proto is President of the American Friends of Wilton Park. He is a partner in the Washington, D.C. law firm of Verner, Liipfert, Bernhard, McPherson and Hand and an Adjunct Professor in Public Policy at Georgetown University's Graduate School. This paper was presented to the Wilton Park Conference on Federalism, Integration and Disintegration in Europe.

"I do not think the United States would come to an end if we lost our power to declare an Act of [the federal] Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several states."

At stake for Holmes was, in large measure, the need to preserve the idea of freedom and liberty and individual rights upon which the nation was founded and federalism defined.

3. The Practice: The Enduring Fight to Preserve the Idea

As a practical matter, how has this worked? How has the Idea of individual rights and the American commitment to preserve it provided a lesson of enduring consequence concerning federalism?

As part of the answer to that question, I would like to state a proposition that has resonance in the American experience. Prejudice and discrimination, based on nationality, race, religion or gender, or the deliberate repression or denigration of political views that are not shared by the majority are more frequently and intensely felt on the state and local level. I believe it is fair to say that also is European experience.

There have been exceptions to this proposition, as we both are aware. But those exceptions often have evolved from the failure of national governments and courts of law to intercede promptly and to declare forcefully that individual rights and unpopular political views are legitimately held against the will of the majority, even when that will is expressed through state government.

As America grew geographically, and in population and diversity, this proposition was severely challenged. The challenge has centered on matters of race, nationality and gender±.

As you all are aware, the history of the United States—including during its time as colonies—has been tempered by war and organized violence within its own boundaries. From its earliest days, America was prepared to engage those who challenged its territorial integrity, particularly when that challenge was on the geographic periphery of its boundaries.

Prior to the American Revolution, we organized militia to confront the French and hostile native American tribes in the northwestern most part of the colonies. Shortly after the Revolution, we were prepared to fight the French and Spanish in the southeastern United States; what is today Louisiana, Mississippi, Alabama and Florida. We fought the Mexican and French governments on the Western periphery of the nation; what is today Texas, Arizona, New Mexico and California.

Throughout America's entire movement westward in the 19th Century—well beyond the confines of its original colonial boundaries—it was frequently engaged in military conflict on its periphery, mostly against native Americans. We did it with an arrogance and a certain conceit about who we were and what was important to us.

But we learned early on—and supported it with force—that the geographic periphery of the nation, including areas clearly not within our formal authority—were as vital to our integrity and purpose as those geographic areas at the heart of the nation. We did so largely because we believed in the Idea upon which we were founded.

But the greatest challenge to America—reflective of both its darkest and most humiliating characteristics and, in some ways, its brightest, shining moments—was our Civil War.

There were many, complex reasons for the Civil War but in the end, it was really an intense, bloody conflict over the intellectual soul of the nation's reason for being; that is, "What did the Declaration of Independence mean? When it spoke to the Idea—that all men are created equal and endowed by their Creator with certain inalienable rights—did it include Negro slaves?"

As you all may be aware, for decades prior to 1861—when the Civil War began—our political institutions—Congress and the President—sought, through compromise and accommodation, to avoid confronting the meaning of the Idea embodied in the Declaration of Independence. They were unable to do so. The states of the south asserted their own independence. They spoke of state's rights. In some respects these efforts at accommodation, and their failure, may be instructive to your own efforts in the former Yugoslavia—which sits squarely within the heart of the European Union.

An opportunity existed within the United States—in 1857, before the Civil War began—for the Supreme Court of the United States to reaffirm the Idea embodied in the Declaration of Independence. Its role in defining the federal-state relationship and in exercising the power granted to it to do so was undisputed. To its discredit, the Court failed to understand and seize upon the opportunity.

In what we in America refer to as the *Dred Scott Decision*, our Supreme Court was confronted with a fugitive slave whose owner wanted him returned. The slave's defense was that he was a free man; the owner's position was that the slave was mere property.

The Supreme Court concluded that Dred Scott was property. In doing so the Court failed—as did our political institutions—to declare as the law of the land the Idea upon which the nation was founded. It was a dark moment in American history. The preservation of the state's rights were more important than the individual rights upon which federalism was based.

But it was not a cause lost to those who continued to believe in the Idea.

In November 1863, toward the close of our Civil War, President Abraham Lincoln stood amidst the solemnity and death of the battlefield at Gettysburg. He was there to dedicate this site of War as a cemetery. And, as he had throughout his life as a public servant, he sought to reawaken the Idea that was the basis for America's founding.

"Fourscore and seven years ago," Lincoln began, "our fathers brought forth upon this continent a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal."

He then ended his speech with a call for a renewed dedication to the Idea. He said:

"It is . . . for us to be here dedicated to the great task remaining before us . . . that we here highly resolve that the dead shall not have died in vain, that the nation shall, under God, have a new birth of freedom, and that the government of the people, by the people, and for the people, shall not perish from the earth."

Within less than a decade after President Lincoln's speech, the nation approved three new Amendments to our Constitution—to that section we originally called our Bill of Rights.

Those three Amendments not only made slavery a violation of our Constitution; they also made clear that the fundamental basis for the federal-state relationship was the dignity and equality and protection of the individual; his life, liberty and property and without regard to his race, religion or national origin. We had fought a War to preserve the Idea.

It has been more than 100 years since this reaffirmation of the Idea and its relationship to federalism was made. It has not been a settled path.

In the early years of this century, as millions of Europeans sought to enter the United States, ethnic and political prejudice against those immigrants emerged with great power. This was particularly so among state legislatures, state governors and state courts. Much of this prejudice emerged in the infamous and shameful prosecution of two men, Bartolomeo Sacco and Nicola Vanzetti, accused of bank robbery and murder in the State of Massachusetts. Their real crime, as described by one of our former Supreme Court Justices, was that "both were of alien blood, [with an] imperfect knowledge of English, . . . unpopular social views, and . . . opposition to the [first world] War." They were unjustly convicted and sentenced to death; their individual rights under our federal Constitution deliberately ignored by state officials in order to satisfy local bigotry.

On five occasions, Justices of our Supreme Court were asked to stop the execution of Sacco and Vanzetti because of the prejudicial conduct of the state governor and the state courts. They refused. The primary reason given was the need to protect the state's right to conduct its own affairs. It was a sad moment; an enduring stain on the Courts history. It failed to vindicate the fundamental Idea for federalism: the protection of individual rights and unpopular political views.

More recently, when our political institutions—federal and state—were unable to agree on the preservation of the Idea, the Supreme Court was the institution that provided definition to the federal-state relationship.

We experienced this in the 1950's and 1960's, when the nation was confronted with massive resistance—some very violent—to the integration of public schools by African-Americans over the objection of state legislatures, local Boards of Education and state governors. It was the Supreme Court that ruled, and has consistently sought to enforce since that time, that state legislatures and governors must affirmatively guarantee the individual, federal right of all Americans to the equal protection of the law.

The lesson is clear: in the United States, when the federal judiciary, particularly the Supreme Court, has declined to protect individual or minority rights against the actions of state legislatures and governors or the popular will, the effect has been to move the nation away from the fundamental Idea upon which it was founded.

III. CONCLUSION

I have two closing thoughts:

Following the drafting of our Constitution in 1787, it was submitted to each of the 13 states for individual ratification. That debate, within the various states, was strongly affected by publication and dissemination of a pamphlet and series of writings entitled "The Federalist Papers". They were written by three individuals who were members of the Constitutional Convention and later prominent members of America's first government: James Madison, as a member of Congress; Alexander Hamilton, as Secretary of the Treasury; and John Jay, as the First Chief Justice of the Supreme Court.

The Federalist Papers reflected an effort by those national figures who believed in

Federalism to engage with opponents of ratification in a spirited, intellectual and political debate within the various states.

These Papers—and the manner of their use—made the debate over the fate of the Constitution and the principles that tempered Federalism truly a national debate. It meant, too, that those with confidence in the practical virtue of a federal system could, in turn, be engaged and challenged about the merits of these principles.

The Federalist Papers have retained their intellectual power. They continue to be cited by our Supreme Court as an authoritative source for interpreting the meaning of the Constitution and the hopes of those who wrote and approved it.

I cannot urge you strongly enough to assure that those among you that believe in the virtues of federalism, and the values and special tradition that it reflects, not leave the fate of the European Union to those who seek comfort in the parochialism of states' rights, or, as you refer to it, "subsidiarity." Your grand vision needs forceful and clear advocates.

Finally, I would like to end where I began.

Some time ago, the British philosopher Alfred North Whitehead, spoke with admiration about the meaning of the American experience. He said:

"The men who founded your republic had an uncommonly clear grasp of the general ideas that they wanted to put in here, then left the working out of the details to later interpreters, which has been, on the whole, remarkably successful. I know of only three times in the Western world when statesmen consciously took control of historic destinies: Periclean Athens, Rome under Augustus, and the founding of your American republic."

I believe that today Europe is on the verge of a similar historic destiny. I hope that, in the end, the philosophic successor to Lord Whitehead will speak not of three but of four times in the Western world when statesmen consciously took control of historic destinies; and that when it is so proclaimed, we can all truly celebrate the founding and the success of the European Union.•

H.R. 5716, REAUTHORIZATION OF THE OFFICE OF JUSTICE PROGRAMS

• Mr. BIDEN. Mr. President, yesterday the Senate passed H.R. 5716, a bill to reauthorize the Office of Justice Programs [OJP]. This Program forms the sole link between the Federal Government and the State and local law enforcement agencies that fight the scourge of crime everyday.

This bill reauthorizes these offices for 2 years.

While this bill has only the necessary interim effect to keep these valuable programs going for the next 2 years, it is clear to me that the office is in need of many improvements. This office should be beholden only to the needs of the front lines and not subject to inside the beltway political bickering. Earlier this year I held hearings on the reauthorization of the Office of Justice Programs which were helpful and insightful; yet they yielded one undeniable fact—the Office needs to be more responsive to the needs of law enforcement.

During this Congress, I had intended to introduce a reauthorization package for the Office of Justice Programs. But the gridlock over the crime bill hindered any attempt to restructure this office and better aid law enforcement throughout the country.

During the 103d Congress I plan to introduce a reauthorization bill—based on the hearings held by the Judiciary Committee—that will ensure that the Office of Justice Programs rises above politics and helps the Nation's crime fighters in the most efficient manner possible.•

CAREFUL USE OF NATURAL RESOURCES

• Mr. CRAIG. Mr. President, I was recently reminded of a letter from one of my constituents, James Collard, Sr., of Cascade, ID. In his letter, James focused on one of Idaho's—and the Nation's—most important industries; mining. As he says, "new wealth has come from the ground as a natural resource. These resources were placed there for our careful use, and locking them up helps nobody." James makes two very valid points.

I am delighted that after the dust settled and the House and Senate passed the conference report to H.R. 5503, I can tell James that the 1872 mining law is still intact—with one exception. That exception is the $100 holding fee. Frankly, this provision should not have passed, either. A successful effort was made to modify this provision to allow a miner with 10 or fewer producing claims—generating gross receipts between $1,500 and $800,000—or with claims being actively explored to choose between paying the $100 fee per claim directly to the U.S. Treasury or spending the same amount on assessment work for each claim. Unfortunately, to my constituents, this is a long way of saying that the small or recreational miner still has to pay the $100 holding fee. What this means is that many small miners will go out of business, and recreational miners will find a new hobby/pastime. It means that those individuals willing to take a chance on exploration and development will not take that risk any more. They cannot afford to.

But, things could have been worse, much worse. Overall, I am pleased that the conference committee, in its wisdom, knows what James Collard knows: That our natural resources are here for our careful use, and locking them up helps nobody.•

H.R. 5826, PUBLIC SAFETY OFFICERS' BENEFITS

• Mr. BIDEN. Mr. President, the Senate has acted to pass H.R. 5862, a bill that is, unfortunately, vitally necessary to some of our Nation's law enforcement officers.

I say "unfortunately" because every year too many police officers are killed in the line of duty. Survivors of these officers are paid a one-time benefit to help cover costs—and while this may help somewhat, there is not enough money in the Treasury to cover the cost of losing a loved one.

Mr. President, each year too many of our police officers are permanently disabled in the line of duty, and can never work again. H.R. 5826 would increase the one-time benefit paid to these public safety officers who have been permanently and totally disabled so that it is equal to the benefits paid to survivors.

Permanent and total disability brings with it an immeasurable amount of costs—chief among them, medical bills. By increasing the benefit paid to these officers, the Federal Government can help to defray the burden of multiple bills.

As a Nation, we call on these courageous men and women to place their lives in the line of fire every day, to protect us and our children from the scourge of crime and drugs. And now, as a nation, we can help to repay these brave souls by increasing their disability benefits.•

TRIBUTE TO THE SENATE STAFF IN THE 102D CONGRESS

Mr. MITCHELL. Mr. President, as the 102d Congress prepares to adjourn, I want to mention and to thank members of the Senate staff for the assistance they have given me and my colleagues throughout the year.

Staff play an invaluable, albeit often invisible role in the operations of the Senate. From the basic operation of the service department to the daily assistance on legislative matters, staff often work long and unpredictable hours. Their family lives suffer and their social lives must often be put on hold.

All of us depend on staff for information, for assistance with constituents, for the smooth running of our offices here and in our home States. We all depend on the officers and staff of the Senate for the smooth operations of the institution in which we have the honor to serve.

I begin by expressing my gratitude for the invaluable services of the Secretary of the Senate, Walter "Joe" Stewart. His effectiveness and his efficiency are so well known and so well appreciated that they are almost legend. When Democrats regained control of the Senate in 1987, majority leader ROBERT BYRD appointed Joe Stewart to this position. I am glad he did. I am equally appreciative that Joe Stewart agreed to stay as Secretary when I became leader. He is ably assisted by Assistant Secretary Jeri Thomson, and by Michelle Haynes, Dot Svendson, Muriel Anderson, Barbara Muller, and Ray Strong.

With great pleasure I thank the Sergeant at Arms, Martha Pope. She has been with me many years as a legislative assistant, legislative director, administrative assistant, chief of staff to the majority leader, and now in the office she currently holds and I depend on her counsel a great deal. She is the first woman in the history of the Senate to serve as Sergeant at Arms, and she's doing an excellent job. I am sure that Ms. Pope would be the first to acknowledge that much credit for the effectiveness of her office goes to her deputy, Robert Bean. Mr. Bean is the glue that holds the office together, and Ms. Pope and I commend him for it. We also commend their able and energetic assistants, Patty McNally, Loretta Fuller, Christina Krasow, Phil Potenziano, Whitney Williams, Andrew Phillips, Patrick Hynes, Alvin Spriggs, Pete Beatty, and Betty Bunch.

I and my Democratic colleagues are fortunate to have Abby Saffold serving as secretary for the majority. Her competence and her professionalism are exceeded only by her pleasantness. To know her is to like her, and to work with her is a delight. Likewise, she is fortunate to have the assistance of such capable people as Jerri Davis, Maura Farley, and Sue Spatz.

The assistant secretary for the majority, Martin Paone, works closely with the Democratic floor staff and performs his important duties with an enthusiasm and a sense of loyalty that may be equaled, but never surpassed. I thank him for his outstanding work.

Charles Kinney is a top-notch professional whose superior knowledge of Senate floor procedure has been a great help to me and every other member of this Chamber. Working with him on the Democratic floor staff are Lula David and Art Cameron whose dedicated work is fundamental to the effectiveness of the Senate. Nancy Iacomini and Brad Austin lend their valuable support to the floor operation.

Every Democratic Senator is well aware and appreciative of the staff of the Democratic Cloakroom: Lenny Oursler, Kathy Drummond, Gary Myrick, and Paul Cloutier. They make the life and work of Senate Democrats much easier and more productive. They have important jobs, tough jobs, filled with demands and pressures of many sorts and varieties. They are equal to these challenges, and I am grateful.

Mr. President, the U.S. Senate is well known for its complex rules and procedures. A person with extensive knowledge of those rules and the ability to interpret them is vital for the functioning of this Chamber. We are fortunate that we have such a person serving as Senate Parliamentarian, Alan Frumin. We are fortunate that he is assisted by Kevin Kayes, Jim Weber, Beth Smerko, and his executive assistant Sally Goffinet.

The Senate doorkeepers, directed by Arthur Curran and Don Larson, are with us each hour we are in session. Their long hours are always noted, while their work is deeply appreciated.

I also want to recognize the important work performed by the Official Reporters of Debates: chief reporter Chick Reynolds, the assistant chief reporter Scott Sanborn, morning business editor Mark Lacovara and his assistant Ken Dean, and the official reporters of debates, Frank Smonskey, Ron Kavulick, Jerry Linnell, Raleigh Milton, Joel Breitner, Mary Jane McCarthy, and Paul Nelson. All have my deep gratitude for jobs well done.

Americans listening to the Senate hear the voices of legislative clerk William Farmer and his assistant, Scott Bates when calling the roll and preforming other essential duties. Bill clerk Kathie Alvarez and her assistant Mary Anne Moore; journal clerks William Lackey, Dave Tinsley and Patrick Keating; enrolling clerk Brian Hallen and his assistant, Tom Lundregan; executive clerk Gerry Hackett and his assistant, Dave Marcos; and Daily Digest editor Tom Pellikaan and his assistants Linda Sebold and Kimberly Longsworth, all have my thanks for their dedication to and competence in performing some of the most exacting but crucial day-to-day tasks in the Senate.

I want to give special attention to Katie-Jane Teel and her staff of expert captioners, who are completing their first year of providing closed captions of Senate proceedings. They are the very best in their field and the high praise they have received from the hearing impaired community is the best recognition of their contribution to making the Senate accessible to all Americans.

The work of Barry Wolk and his printing services staff, Tom McGlinn, John Steen and Kurt Stelter; the superintendent of the document room, Jeanie Bowles, and her staff; Mike DiSilvestro and his staff, are all fundamental to the effective workings of the Senate, and I commend them for it.

I want to give special attention to and to give a special thanks to those young Americans who are also vital to the effective workings of the U.S. Senate—the Senate pages. While performing important services for the Senate, these young men and women are learning how their Federal Government operates. I thank them for their energy, their zeal, and their hard work. I wish each and every one of them the very best in what I know will be very rewarding futures.

The staff director of the Democratic Policy Committee is the able and talented Monica Healy. She became staff director just a year and a half ago, and has already made the committee into an important instrument for developing and promoting the Senate Democratic message. Monica brings a tireless devotion to her position.

The Democratic Policy Committee, with Senator DASCHLE's able leadership, has become an important vehicle for bringing Democrats together on key issues such as the economy, health care, education and the environment. Greg Billings, the Deputy Director, is very conscientious about making sure that Senate Democrats are kept informed on the Senate's business. Garth Neuffer, DPC's senior media advisor, has been a major force behind our efforts to get the word out about the Senate Democratic agenda through press events, issue documents, and other promotional efforts.

Kris Balderston, with his strong people and organization skills, has been very effective in implementing our outreach efforts and helping promote the Democratic agenda. Michael Werner has been especially diligent and effective in helping to organize Senate Democrats around a consensus health care bill. Dave Corbin has done a great job in developing creative, user friendly reports on the economy and other issues of importance to working Americans and their families. Tony Morgan has recently become the economist for DPC and I look forward to working with him.

Mary Ann Hill, Paul Carliner, Amy Pressman, Leah Titerence, and Chris Moseley are diligent in keeping Senators and Senate offices informed about key Democratic initiatives and legislative activity on the floor of the Senate. Mary Ann also worked tirelessly to get the Senate Office of Fair Employment Practices up and running and Paul Carliner ably assisted me as we moved the energy legislation through the Congress. Kelly Paisly, Von Brown, Julie Cote, Tricia Moreis, and Russ Dunn have all lent important support to the DPC operations.

DPC has a good team that works hard to ensure that we get our DPC publications out in a timely manner. Marian Betram, Marguerite Beck Rex, and Doug Connolly help oversee the effort. Lynn Terpstra, Clare Amoruso, Colleen Brady Stephenson, Lauren Burke, Victoria Thomas, and Michael Mozdan are all instrumental to this effort. Lisa Plante and Jeff Pray are two new additions to the DPC staff who run the DPC-TV station.

Mr. President, I also want to take this opportunity to call attention to and to express my appreciation of the Republican counterparts to the Democratic staff. I especially commend Shelia Burke, chief of staff to the Republican leader, and James Whittinghill; they are worthy counterparts, but more importantly, they are professionals. The work and the cooperation of the secretary for the minority, Howard O. Greene, and his assistant, John Doney, Elizabeth Greene of the Republican floor staff, and the staff of the Republican Cloakroom also constitite formidable parts of the loyal opposition, and their efforts are also recognized. All of them are always courteous and helpful. I thank them and all the other staff on the other side of the aisle. At times, such as during close votes and intense debates, I wish that they were not quite as good as they are in their work, but I do want them to know that we, on this side, are aware of and appreciate their dedication and cooperation.

Mr. President, the Senate could not function without the support and services of many other offices. I wish now to recognize and thank them for the important work they do.

One of the most difficult and complicated jobs around here is ensuring the safety of this great, historic building and the people who work in it, while protecting the democratic rights of the American people. The American people not only have the right to see their government in action, they have the right to petition it, and to protest against it. Placed in the middle of this most difficult position in the U.S. Capitol police force headed by Chief Gary Abrecht and his assistant Chief Robert Langley. I thank them for the professional way in which they perform their important and sometimes dangerous duties.

I commend the staff of the Service Department under the able and dedicated leadership of Russell Jackson. These dedicated men and women are here early in the morning and late at night, when the Senate is in session and when it is not, making sure that Senate publications are ready the next day. I call special attention to their tireless efforts in ensuring that the publications of my Democratic Policy Committee are always prompt and timely. I happen to know that the Policy Committee has placed some extraordinary demands on them—and they always come through.

Officers and staff who are not always visible, but whose daily work is essential to the institution's operations are the acting director of the computer center, Mike Bartell, postmaster Gayle Cory, director of telecommunications Robert McCormick, the director of the photo studio Alan Porter, and director of the cabinet shop Don Gardner, and all of their staffs. The acknowledgement also goes to the financial management team of Chris Dey, Ray Payne, Richard Zelkowitz, Amy Blanchard, and Alan Block. They may not always get the recognition they deserve for their outstanding work in their very demanding jobs, but all of them are appreciated more than they will ever know.

Also, I would like to commend those who keep this building so clean and well maintained under the leadership of Karen Ellis, Phyllis Timms, and Ross Thomas.

Mr. President, 2 years ago, when I gave a similar talk, I pointed out that former Senate Majority Leader Lyndon Johnson was fond of saying, "information is power." I also explained that while I always understood what he meant by the phrase, it is as majority leader that I have come to truly and fully appreciate what he meant. Two more years as Senate majority leader have not diminished, but enhanced this perspective as I am even more grateful for the Senate's information support systems. There is the Congressional Research Service—whose reports, issue briefs and other publications are well known and heavily utilized by every Member of this Chamber and their staffs. The ability of CRS to retrieve information, find the smallest fact, research the most important questions, and provide prompt, timely analysis on difficult issues makes them essential to the effective workings of the U.S. Senate.

I thank the Congressional Budget Office for its important and timely work. In this era of budget deficits and budget restraints, CBO's prompt, but thorough analysis of the costs of pending legislation and its analysis of historical and programmatic trends have become a vital part of the legislative process.

The Senate Library staff are remarkable for the effectiveness, the resourcefulness, and the speed with which they fulfill the research demands of the Senate. Senate Librarian Roger Haley, assistants Ann Womeldorf, Greg Harness, Donnee Gray, and all the others on his talented, hard-working staff are commended.

Mr. President, it is said that the "past is prolog." If that is the case, the Members of this Chamber could not have better resources to call upon for knowledge of the future as well as the past than Senate historian Dr. Richard Baker and his talented staff. I thank them for their work in carefully, tenaciously, and meticulously documenting the history of this Chamber.

The Reverend Dr. Richard Halverson, the Senate Chaplain, is truly appreciated. The 60th Chaplain of the Senate is a spiritual leader whose kindness and thoughtful words inspire us all. While the Members of this Chamber are not always able to perform the miracles for which he often prays, I thank him for at least making the request. He provides kind and guiding words every morning the Senate is in session, comfort when it is needed, and inspiration in good times and bad.

Attending to our physical needs and problems is Dr. Robert Krasner and his fine, competent, and ever pleasant medical staff.

Also attending to our physical needs, albeit in different ways, are the outstanding staffs of the Senate restaurants. I thank them for the food they prepare and their service.

I express my utmost and personal gratitude to Shirley Herath, "Irish" McLain, and Ruby Paone who manage the Senate reception room. Their friendliness and cooperation is well known and needs no elaboration, but it does deserve a thank you.

Those who work in the Senate press galleries, including Bob Peterson, Jim Talbert, Maurice Johnson, Larry Janezich, and their deputies perform a valuable service in assisting the media in following the activities in this Chamber, and I thank them for it.

The staff of the recording studio's broadcast control perform the important chore of helping to bring the workings of the U.S. Government into the homes of the American people. Their coverage of the deliberations of the Chamber enables the American people to follow the workings of their Government, and I thank them for it.

Finally, Mr. President, I express my deep appreciation for my own staff who have served me so splendidly and so tirelessly for the past 2 years. I begin by recognizing and commending my Senate leadership staff headed by my chief of staff, John Hilley. His calm demeanor under extraordinary demands, his ability to make the complex seem so simple, and his political sagacity make him an excellent chief of staff.

Also making my life and work as Senate majority leader much easier and more comfortable are the other dedicated professionals in the majority leader's office. These include Lisa Nolan, whose disciplined, orderly thinking and behavior are not only needed and utilized, they are blessings in an office where chaos constantly beckons.

My executive assistant, Pat Sarcone, is always there when I need her—indeed, she is the miracle worker that every office needs. She handles every demand and every task, no matter how difficult, with a professional style and with an infectious positive attitude. I know of no person who has not found it a pleasure to work with her.

I also commend the work and loyalty of special assistant Alice Aughtry and staff assistant Ross LaJeunesse for performing many of the needed tasks in the leader's office.

My communications office is under the direction of the very capable and talented Diane Dewhirst. Ms. Dewhirst works tirelessly to promote the Senate Democratic agenda, and she works splendidly with the press so that the public may be better informed on the workings of the Senate. Her capable assistants, Mary Helen Fuller, Jim Manley, Kevin McNanus, Chris Deckel, Clare Flood, Kevin Kelleher, and Mark Marchione work hard as well to make sure the communications office serves its important purpose—which it does.

I am deeply indebted to and grateful for the staffers in my personal office. Without them, I would not be where I am, and I applaud them. They are a talented, loyal group of men and women who do an excellent job in serving both the State of Maine and the United States.

I begin by commending the work of my administrative assistant, Mary McAleney. An organizer, a troubleshooter, a counselor, and much more, Ms. McAleney is everything a Senator wants in an AA. I thank her for all her work and dedication.

My legislative staff is superior. I thank each and every one of them for the excellent work they do. Bobby Rozen's knowledge of tax and banking issues cannot be matched; I depend on him a lot and he never lets me down. Anita Jensen has been with me since the beginning. She brings an institutional knowledge and grasp of issues that is rare in the Senate. She does an excellent job as my staff person on the Judiciary Committee, as well as being the in-house expert on many social issues of the day. Grace Reef is truly "amazing Grace" as she handles issues as diverse as roads and bridges to housing and welfare—and does it all superbly. Chris Williams has been a major force behind my effort to ensure that every American has access to affordable, quality health care. Kim Wallace deals with appropriations, budget, education and many other important issues, and is a joy to know—if Will Rogers never met a person he did not like, I never met a person who did not like Kim. Rich Arenberg has worked for me for a long time in several different positions; he is currently doing an excellent job as my Special Assistant for National Security Affairs. I rely on Bob Carolla for many and various issues, defense conversion and economic development issues for the State of Maine. Steve Hart works on veterans, agriculture, forestry preservation issues—issues that are very important to Maine; this year he has worked on veterans' health care issues obtaining some funds for Vietnam veterans. Sandy Brown handles Maine and appropriations and is a very important liaison with my field staff on economic development projects as well as handling national arts issues. Seth Brewster and Peggy Dorothy, who work on trade and labor issues respectively, are completing their first year with me, and have already proven themselves to be very capable Senate staffers. Barry Valentine does important and excellent work by staffing me on the MIA/POW issue. Research assistant Kelly Riordian and speech writer Lee Lockwood work with the legislative staff to provide them with the background and reference they need on various issues and policies.

I am grateful for my capable foreign policy staff; their expert knowledge of defense issues and international affairs has been crucial to me during this session of Congress. I have relied on them constantly, and I have never been disappointed. Sarah Sewell, who covers Europe and the Middle East, has been with me for a long time, and I have always appreciated her work. Much of what she works on, such as Russian Aid and START Treaty are important, not only for the United States, but for much of the world. Ed King covers Asia and Central America. I valued his crucial work on the two votes on China-MFN status—although we were not successful, we fought the good fight for the right reasons. Brett O'Brien handles defense issues. His knowledge of the defense industry is especially needed and is being heavily utilized as we seek to balance the needs of our national defense and our domestic priorities in a changing world.

Kate Kimball, who deals with clean air and solid waste issues was a major force behind the passage of the Clean Air Act. This session she assisted with passage of key legislation, the Federal facilities bill and legislation to speed up transfer of contaminated Federal property. Also working for me on environmental issues—an area that I'm deeply concerned about—are two outstanding members of the Environment and Public Works staff, Jeff Peterson and Bob Davison. Jeff handles clean water issues; no one could be more concerned with protecting the quality and safety of our waters, and his work reflects it. No one could be more concerned with protecting our precious environment than Bob who handles wetlands and fisheries; to him belongs the delicate task of balancing environmental concerns against developmental ones.

I also express my deep appreciation for all those who perform the essential day-to-day tasks that keep the office functioning. Office manager Donna Beck takes care of those important office financial matters and responds to constituent requests. Donna's assistant, Sally Ehrenfried, trains and supervises the interns, and fills in wherever my office staff needs her. They not only provide the tools, they are the people who make an office function.

Performing the important tasks of answering constituent phone calls and letters so that I can stay in contact with the people of my State are Alice Steward, who I'm glad returned to my staff to oversee my legislative correspondents, Heidi Heal Bonner, Deb Cotter, Claude Berube, Chris Mann, Jim St. John, and Trey Kelleter. Staff assistants include Jill Ward, Amelia Johnson, Ashley Abbot, and Alexia Pappas. They are the eyes and ears and the voices to the many hundreds of people who, in one way or another, contact me each day.

Janie O'Connor is my liaison with visitors, especially tour and student groups, from my State who stop by to say hello. Her nearly 12 years experience has made her the best tour guide on the Hill. Diane Smith is responsible for my Maine schedule. She has the difficult job of balancing the many requests placed upon the majority leader against the time I am able to be in the State; she can schedule 12 hours of work into a 10 hour day and still leave time for a quick lunch. Jeff Hecker works long and hard to make sure that our new computer system is up and running. Faye Johnson ably runs the CMS system.

My Maine press Secretary David Bragdon, and his assistant, John Dougherty make sure the people of Maine are fully aware of our legislative efforts.

And a special thanks to my driver, Willie Allen, who cheerfully and ably ensures that I meet the hectic schedule demands of majority leader.

My office could not function without the splendid assistance of all those interns who come and pass through its doors. I assure each one of them that I and the rest of my staff truly appreciated their assistance throughout the year, and I wish each one of them future success and happiness.

Ensuring that the citizens of Maine have access to their Federal Government are my field staff. Under the superb supervision of Larry Beniot, this dedicated group of men and women includes Jeff Porter, Sharon Sudbay, Margaret Kneeland, Judy Cadorette, Ann Marie Paquette, Jan Welch, Joan Pederson, Sue Gurney, Tom Bertocci, Clyde MacDonald, Margaret Samways, Jeannie Hollingsworth, Elaine Huber-Neville, Mary Leblanc, and Marcia Gartley. Whether it be finding a lost Social Security check, making a little league keep its tax exempt status, working with leaders of a community to develop a grant proposal, or representing me at meetings and functions, they are my eyes and ears and representatives to the people in Maine. I thank them for the important work they do each and every day.

Mr. President, there are many other people who contribute to the productive workings of the U.S. Senate. While time does not permit me to thank everyone by name, each has my most profound and sincere appreciation for the work they do for this body. As a former Senate staffer myself, I know the tendency to feel underappreciated for all those long, hard hours of work that they put in. But I assure them that they are not under-appreciated. It has been together, working as a team, that we have made a difference—that together we made the 102d Congress a most successful Congress.

THANKING DEPARTING SENATORS

Mr. FORD. Mr. President, we are about to close. Many fine words have been said today about those colleagues who will not be returning in the next session of the Congress: Senator ADAMS, Senator CRANSTON, Senator DIXON, Senator GARN, Senator RUDMAN, Senator SYMMS, and Senator WIRTH.

I cannot equal those words of my colleagues in praise of those who will not be with us in the 103d Congress. I found each of them to be my friend. I found each of them to make a special contribution to the Senate. I think each is unique in their own way. They brought a variety of thought, a variety of positions, and gave us an opportunity to look at the issues that we face in this country squarely and to make what I feel are better determinations as we came to the compromise from their thoughts.

So I will miss them, the Senate will miss them, and the country will miss them. Let us hope that those who will replace them will be as dedicated and as diligent and as thoughtful as those Senators I just mentioned.

I could not let this moment pass, Mr. President, without thanking them for their major contributions.

And before I quit, and we are about to close, I think maybe I will make one or two more statements.

The PRESIDING OFFICER. The Chair, in his capacity as the Senator from California, thanks the Senator from Kentucky for his joint work on behalf of myself and the other Senators.

Mr. FORD. I thank the Chair. I have been doing little work here, kind of reading some papers. You find that a Senator comes in and says, "Can I get an agreement to build such-and-such?" And, lo and behold, it appears. If it does not, we fuss and fume a little bit and people go back and scramble, and that is the staff.

This is a well-oiled operation. And it is only that way because we have some of the most tremendous people that work for us here in the Senate, from the pages to the doorkeepers, to those that make the computers work—and they spit out the information that we need. I cannot thank them enough.

I just want to say to each and every one of them it has been a pleasure. I hope the Lord is willing for us all to meet here again on January 5, and that we have another opportunity to work together to do those things that we feel that are in the best interests.

I have never had one of these individuals fuss, complain, or say anything about the long hours and the drudgery which they go through. They are a special kind, and in a special place.

So I am pleased that I can say a few kind words. I wish I could paint a word picture as to how I really feel about these individuals, but I hope they understand that I do appreciate their efforts, and the Senate is much better off because of them, and hopefully in the future we will be able to make improvement on the foundations that we have laid this year.

Mr. SIMPSON. Mr. President, I want to echo what my friend from Kentucky says. You do not realize it until you become part of the leadership—and Senator FORD and I have been privileged to be that—what we owe to this fine staff.

I wonder if they ever run down. And yet I know they do, because we pressed them throughout the entire night the other evening, through the entire night, while the rest of us were resting, except one, and the person in the chair, in shifts. This entire staff was up the entire night at a time when it is so stressful. In any event, it is extraordinary to me that we make demands and they respond with patience and grace.

They are very skilled. And they are so attuned, so dedicated to this institution, and I marvel at their acumen, and careful and meticulous attention to detail that they force upon us to make this institution work as it does. And it works beautifully as an institution, and the mechanics and the rest of it is politics and government. That is tough to work sometimes. It has been going like that for over 200 years. They make this remarkable body function, and I really truly do salute them.

I say again what the Senator from Kentucky has said; we have just completed in the last few hours a tremendous amount of work, which this staff will be working on for days to come, and it was more than usual, because of the delays that occurred in these last hours, but what we did tonight, what we call wrap up, occurs every day. It just does not happen. It is a result of negotiations, and phone calls, and directions, and complaints, and scripts, and an incredible amount of floor duties that these people do and how they assist. They are really the unsung heroes.

I particularly want to thank the Republican and Democratic floor staff, Charles Kinney, Marty Paone, Lula Davis, and Elizabeth Greene, and Bobbie Holsclaw, and the majority secretary's office, Abby Saffold, and on our side, Howard Greene. And I want to recommend and commend our Cloakroom staffs on both sides, John Doney, Dave Schiappa, Brad Holsclaw, Laura Dove, special thanks to Martha Pope, who I knew in my first months in this remarkable body and have watched her succeed in every aspect of her life, and I am very proud to see what she does.

Loretta Symms, another splendid woman, who is of great help. These people are very courteous and kind and very wonderful to us. I want to commend the rest of the staff of the Sergeant at Arms, the Reading Clerks, the Journal Clerks, the Bill Clerk, Parliamentarians, the Reporters of Debates. I thank those who watch the doors in this very special place that you give us in which to do our work. You do not get the official credit, but we know that you indeed make this place operate.

And finally, the Republican leader's office, I mention Sheila Burke, who all of you know as a special person and the way she handles her duties. Jim Whittinghill, and his complete accessibility; Bob Dove, Al Lehn, who is working, leaving to work with Senator SYMMS and the people who assist there, Pam and Clarkson, Walt Riker, and Pat Wade, and Jon Lynn Kerchner, and Jim McMillan, and Marilyn, Vicki Stack, Joyce, Pat, Ellie, Nina Olvieda, Kerry Timchuk, Kathy Ormiston, and the rest of the excellent staff.

That sounds trite when we do that. You think, well, what does it all mean? It means that we thank you, and I have not the words to quite say it either as my colleague from Kentucky has said. I have enjoyed working with him as always, and we do, I think, both dedicate ourselves to trying to see that this operation works properly. And I have been very privileged to work with the Senator from Kentucky for several years now in that capacity. I enjoy it very much. And I trust him when we work together, and enjoy that. Even though we do get a little rambunctious from time to time, it passes. That is part of our personality. Of course, I am looking forward with bated breath to next year.

To our colleague in the chair, good luck, and Godspeed.

ADJOURNMENT SINE DIE

Mr. FORD. Mr. President, if there is no further business, and no Senator is seeking recognition, I now ask unanimous consent that the Senate stand adjourned sine die in accordance with the provisions of House Concurrent Resolution 384.

There being no objection, the Senate, at 9:46 p.m., adjourned sine die in accordance with the provisions of House Concurrent Resolution 384, until 12 noon, January 5, 1993.

NOMINATIONS

Executive nominations received by the Senate October 8, 1992:

ENVIRONMENTAL PROTECTION AGENCY

RAY E. WITTER, OF MISSOURI, TO BE A MEMBER OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD FOR A TERM OF 5 YEARS. (NEW POSITION)

CONFIRMATIONS

Executive Nominations Confirmed by the Senate October 8, 1992:

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

SHIRLEY CHILTON-O'DELL, OF CALIFORNIA, TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD FOR A TERM EXPIRING SEPTEMBER 25, 1994.

STEPHEN NORRIS, OF VIRGINIA, TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD FOR A TERM EXPIRING OCTOBER 11, 1994.

FEDERAL LABOR RELATIONS AUTHORITY

TONY ARMENDARIZ, OF TEXAS, TO BE A MEMBER OF THE FEDERAL LABOR RELATIONS AUTHORITY FOR A TERM OF 5 YEARS EXPIRING JULY 29, 1997.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

BROOK HEDGE, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF 15 YEARS.

LEE F. SATTERFIELD, OF THE DISTRACT OF COLUMBIA, TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOR THE TERM OF 15 YEARS.

DEPARTMENT OF STATE

EDWARD S. WALKER, JR., OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE THE DEPUTY REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS, WITH THE RANK AND STATUS OF AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY.

PAUL S. SARBANES, OF MARYLAND, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE 47TH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

THE FOLLOWING NAMED PERSONS TO BE REPRESENTATIVES AND ALTERNATE REPRESENTATIVES OF THE UNITED STATES OF AMERICA TO THE 47TH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS:

REPRESENTATIVES:

EDWARD JOSEPH PERKINS, OF OREGON.

ALEXANDER FLETCHER WATSON, OF MASSACHUSETTS.

LARRY PRESSLER, OF SOUTH DAKOTA.

GLORIA ESTEFAN, OF FLORIDA.

ALTERNATE REPRESENTATIVES:

IRVIN HICKS, OF MARYLAND.

SHIRIN R. TAHIR-KHELI, OF PENNSYLVANIA.

PARKER G. MONTGOMERY, OF NEW YORK.

PREZELL RUSSELL ROBINSON, OF NORTH CAROLINA.

MARGARETTA F. ROCKEFELLER, OF NEW YORK.

POSTAL RATE COMMISSION

WAYNE ARTHUR SCHLEY, OF ALASKA, TO BE A COMMISSIONER OF THE POSTAL RATE COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING OCTOBER 14, 1994.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

THE JUDICIARY

TIMOTHY K. LEWIS, OF PENNSYLVANIA, TO BE U.S. CIRCUIT JUDGE FOR THE THIRD CIRCUIT.

URSULA MANCUSI UNGARO, OF FLORIDA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA.

JOHN W. SEDWICK, OF ALASKA, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF ALASKA.

KATHRYN H. VRATIL, OF KANSAS, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF KANSAS.

PAUL J. BARBADORO, OF NEW HAMPSHIRE, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW HAMPSHIRE.

STEVEN J. MCAULIFFE, OF NEW HAMPSHIRE, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW HAMPSHIRE.

DISTRICT COURT OF GUAM

JOHN S. UNPINGCO, OF GUAM, TO BE JUDGE FOR THE DISTRICT COURT OF GUAM FOR THE TERM OF 10 YEARS.

NATIONAL INSTITUTE FOR LITERACY

JOHN CORCORAN, OF CALIFORNIA, TO BE A MEMBER OF THE NATIONAL INSTITUTE BOARD FOR THE NATIONAL INSTITUTE FOR LITERACY FOR A TERM OF 3 YEARS.

JIM EDGAR, OF ILLINOIS, TO BE A MEMBER OF THE NATIONAL INSTITUTE BOARD FOR THE NATIONAL INSTITUTE FOR LITERACY FOR A TERM OF 3 YEARS.

JON DEVEAUX, OF NEW YORK, TO BE A MEMBER OF THE NATIONAL INSTITUTE BOARD FOR THE NATIONAL INSTITUTE FOR LITERACY FOR A TERM OF 3 YEARS.

RONALD M. GILLUM, OF MICHIGAN, TO BE A MEMBER OF THE NATIONAL INSTITUTE BOARD FOR THE NATIONAL INSTITUTE FOR LITERACY FOR A TERM OF 3 YEARS.

BADI G. FOSTER, OF ILLINOIS, TO BE A MEMBER OF THE NATIONAL INSTITUTE BOARD FOR THE NATIONAL INSTITUTE FOR LITERACY FOR A TERM OF 3 YEARS.

DEPARTMENT OF JUSTICE

ANNETTE L. KENT, OF HAWAII, TO BE U.S. MARSHAL FOR THE DISTRICT OF HAWAII FOR THE TERM OF 4 YEARS.

MISSISSIPPI RIVER COMMISSION

BRIG. GEN. PAT M. STEVENS IV [redacted] U.S. ARMY, FOR APPOINTMENT AS A MEMBER AND PRESIDENT OF THE MISSISSIPPI RIVER COMMISSION, UNDER THE PROVISIONS OF SECTION 2 OF AN ACT OF CONGRESS, APPROVED 28 JUNE 1879 (21 STAT. 37) (33 USC 642).

BRIG. GEN. ALBERT J. GENETTI, JR. [redacted] U.S. ARMY, TO BE A MEMBER OF THE MISSISSIPPI RIVER COMMISSION, UNDER THE PROVISIONS OF SECTION 2 OF AN ACT OF CONGRESS, APPROVED 28 JUNE 1879 (21 STAT. 37) (33 USC 642).

DEPARTMENT OF COMMERCE

EDWARD ERNEST KUBASIEWICZ, OF VIRGINIA, TO BE AN ASSISTANT COMMISSIONER OF PATENTS AND TRADEMARKS.

DEPARTMENT OF STATE

DAVID J. DUNFORD, OF ARIZONA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE SULTANATE OF OMAN.

WILLIAM ARTHUR RUGH, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE UNITED ARAB EMIRATES.

JOHN CAMERON MONJO, OF MARYLAND, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE ISLAMIC REPUBLIC OF PAKISTAN.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE TRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be lieutenant general

MAJ. GEN. STEPHEN B. CROKER, [redacted] U.S. AIR FORCE.

MESSAGES RECEIVED FROM THE HOUSE SUBSEQUENT TO SINE DIE ADJOURNMENT

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

Under the authority of the order of January 3, 1991, the Secretary of the Senate, on November 9, 1992, subsequent to sine die adjournment, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills and joint resolution:

H.R. 2321. An act to establish the Dayton Aviation Heritage National Historical Park in the State of Ohio, and for other purposes;

H.R. 2324. An act to amend title 28, United States Code, with respect to witness fees;

H.R. 2448. An act to provide for the minting of medals in commemoration of Benjamin Franklin and to enact a fire service bill of rights;

H.R. 3665. An act to establish the Little River Canyon National Preserve in the State of Alabama;

H.R. 4016. An act to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to require the Federal Government, before termination of Federal activities on any real property owned by the Government, to identify real property where no hazardous substance was stored, released, or disposed of;

H.R. 5258. An act to provide for the withdrawal of most-favored-nation status from Serbia and Montenegro and to provide for the restoration of such status if certain conditions are fulfilled;

H.R. 5337. An act to amend the Rural Electrification Act of 1936 to improve the provision of electric and telephone service in rural areas, and for other purposes;

H.R. 5483. An act to modify the provisions of the Education of the Deaf Act of 1986, and for other purposes; and

H.J. Res. 542. Joint resolution designating the week beginning November 8, 1992, as "Hire a Veteran Week".

Under the authority of the order of January 3, 1991, the enrolled bill, H.R. 2448, was signed on November 9, 1992, subsequent to the sine die adjournment of the Congress by the Vice President.

Under the authority of the order of January 3, 1991, the remaining enrolled bills and joint resolution were signed on November 9, 1992, subsequent to the sine die adjournment of the Congress, by the President pro tempore [Mr. BYRD].

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on October 14, 1992, subsequent to the sine die adjournment of the Congress, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills and joint resolutions:

S. 1145. An act to amend the Ethics in Government Act of 1978 to remove the limitation on the authorization of appropriations for the Office of Government Ethics;

S. 1146. An act to establish a national advanced technician training program, utilizing the resources of the Nation's 2-year associate-granting colleges to expand the pool of skilled technicians on strategic advanced-technology fields, to increase the productivity of the Nation's industries, and to improve the competitiveness of the United States in international trade, and for other purposes;

S. 1181. An act for the relief of Christy Carl Hallien of Arlington, TX;

S. 1530. An act to authorize the integration of employment, training, and related services provided by Indian tribal governments;

S. 1583. An act to increase the safety to humans and the environment from the transportation by pipeline of natural gas and hazardous liquids, and for other purposes;

S. 2044. An act to assist Native Americans in assuring the survival and continuing vitality of their language;

S. 2201. An act to authorize the admission to the United States of certain scientists of the Commonwealth of Independent States and the Baltic States as employment-based immigrants under the Immigration and Nationality Act, and for other purposes;

S. 2322. An act to amend title 38, United States Code, to increase, effective as of December 1, 1992, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans;

S. 2625. An act to designate the United States courthouse being constructed at 400 Cooper Street in Camden, NJ, as the "Mitchell H. Cohen United States Courthouse";

S. 2661. An act to authorize the striking of a medal commemorating the 250th anniversary of the founding of the American Philosophical Society and the birth of Thomas Jefferson;

S. 2834. An act to designate the United States Post Office Building located at 100 Main Street, Millsboro, DE, as the "John J. Williams Post Office Building";

S. 2875. An act to amend the National School Lunch Act and the Child Nutrition Act of 1966 to better assist children in homeless shelters, to enhance competition among infant formula manufacturers and to reduce the per unit costs of infant formula for the special supplemental food program for women, infant, and children [WIC], and for other purposes;

S. 3006. An act to provide for the expeditious disclosure of records relevant to the assassination of President John F. Kennedy;

H.R. 240. An act for the relief of Rodgito Keller;

H.R. 776. An act to provide for improved energy efficiency;

H.R. 1101. An act for the relief of William A. Cassity;

H.R. 1216. An act to modify the boundaries of the Indiana Dunes National Lakeshore, and for other purposes;

H.R. 2042. An act to authorize appropriations for activities under the Federal Fire Prevention and Control Act of 1974, and for other purposes;

H.R. 2156. An act for the relief of William A. Proffitt;

H.R. 2859. An act to direct the Secretary of the Interior to conduct a study of the historical and cultural resources in the vicinity of the city of Lynn, MA, and make recommendations on the appropriate role of the Federal Government in preserving and interpreting such historical and cultural resources;

H.R. 3635. An act to amend the Public Health Service Act to revise and extend the programs of block grants for preventive health and health services, and for other purposes;

H.R. 3638. An act making technical amendments to the law which authorizes modifications of the boundaries of the Alaska Maritime National Wildlife Refuge;

H.R. 4398. An act to remove outdated limitations on the acquisition or construction of branch buildings by Federal Reserve banks which are necessary for bank branch expansion of the acquisition or construction is approved by the Board of Governors of the Federal Reserve System;

H.R. 4489. An act to provide for a land exchange with the city of Tacoma, Washington;

H.R. 4771. An act to designate the facility under construction for use by the United States Postal Service at FM 1098 Loop in Prairie View, Texas, as the "Esel D. Bell Post Office Building";

H.R. 4841. An act granting the consent of the Congress to the New Hampshire-Maine Interstate School Compact;

H.R. 4844. An act to restore Olympic National Park and the Elwha River ecosystem and fisheries in the State of Washington;

H.R. 4999. An act to authorize additional appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House;

H.R. 5006. An act to authorize appropriations for fiscal year 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, to provide for defense conversion, and for other purposes;

H.R. 5013. An act to provide the conservation of wild exotic birds, to provide for the Great Lakes Fish and Wildlife Tissue Bank, to reauthorize the Fish and Wildlife Conservation Act of 1980, to reauthorize the African Elephant Conservation Act, and for other purposes;

H.R. 5021. An act to amend the Wild and Scenic Rivers Act for the purpose of determining the eligibility and suitability of designating a segment of the New River as a national wild and scenic river;

H.R. 5061. An act to establish the Dry Tortugas National Park in the State of Florida;

H.R. 5122. An act relating to the settlement of the water rights claims of the Jicarilla Apache Tribe;

H.R. 5164. An act for the relief of Craig B. Sorenson and Nita M. Sorenson;

H.R. 5222. An act to designate the Federal building and United States courthouse located at 204 South Main Street in South Bend, IN, as the "Robert A. Grant Federal Building and United States Courthouse";

H.R. 5291. An act to provide for the temporary use of certain lands in the city of South Gate, CA, for elementary school purposes;

H.R. 5328. An act to amend title 35, United States Code, with respect to the late payment of maintenance fees;

H.R. 5419. An act to amend the Marine Mammal Protection Act of 1972 to authorize the Secretary of State to enter into international agreements to establish a global moratorium to prohibit harvesting of tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals, and for other purposes;

H.R. 5431. An act to designate the Federal Building located at 200 Federal Plaza in Peterson, NJ, as the "Robert A. Poe Federal Building";

H.R. 5452. An act granting consent to the Congress to a supplemental compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey concerning the Delaware River Port Authority;

H.R. 5453. An act to designate the Central Square facility of the United States Postal Service in Cambridge, MA, as the "Clifton Merriman Post Office Building";

H.R. 5479. An act to designate the facility of the United States Postal Service located at 1100 Wythe Street in Alexandria, VA, as the "Helen Day United States Post Office Building";

H.R. 5491. An act to designate the Department of Veterans Affairs medical center in Marlin, TX, as the "Thomas T. Connally Department of Veterans Affairs Medical Center";

H.R. 5572. An act to designate May of each year as "Asian/Pacific American Heritage Month";

H.R. 5575. An act to authorize certain additional uses of the Library of Congress Special Facilities Center, and for other purposes;

H.R. 5602. An act granting the consent of the Congress to the Interstate Rail Passenger Network Compact;

H.R. 5605. An act to authorize and direct land ownership consolidation in the Cedar River Watershed, Mt. Baker-Snoqualmie National Forest, WA;

H.R. 5749. An act for the relief of Krishanthi Sava Kopp;

H.R. 5998. An act for the relief of the Wilkenson County School District, in the State of Mississippi;

H.R. 6000. An act to redesignate Springer Mountain National Recreation Area as "Ed Jenkins National Recreation Area";

H.R. 6072. An act to direct expedited negotiated settlement of the land rights of the Kenai Natives Association, Inc., under section 14(h)(3) of the Alaska Native Claims Settlement Act, by directing land acquisition and exchange negotiations by the Secretary of the Interior and certain Alaska Native corporations involving lands and interests in lands held by the United States and such corporation;

H.R. 6165. An act to amend certain provisions of law relating to establishment, in the District of Columbia or its environs, of a memorial to honor Thomas Paine;

H.R. 6179. An act to amend the Wild and Scenic Rivers Act;

H.R. 6183. An act to amend the Public Health Service Act to provide protections from legal liability for certain health care professionals providing services pursuant to such Act;

H.R. 6184. An act to amend the National Trails System Act to designate the American Discovery Trail for study to determine the feasibility and desirability of its designation as a national trail;

S.J. Res. 218. Joint resolution designating the calendar year 1993, as the "Year of American Craft: A Celebration of the Creative Work of the Hand";

S.J. Res. 252. Joint resolution designating the week of April 18 through 24, 1993, as "National Credit Education Week";

S.J. Res. 305. Joint resolution to designate October 1992 as "Polish-American Heritage Month"; and

S.J. Res. 319. Joint resolution to designate the second Sunday in October of 1992 as "National Children's Day".

Under the authority of the order of the Senate of January 3, 1991, the enrolled bills and joint resolutions were signed on October 14, 1992, subsequent to the sine die adjournment of the Congress, by the President pro tempore [Mr. BYRD].

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on October 16, 1992, subsequent to the sine die adjournment of the Congress, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills and joint resolutions:

S. 225. An act to expand the boundaries of the Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park, VA;

S. 758. An act to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of patents and plant variety protections, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private entity;

S. 2532. An act to support freedom and open markets in the independent states of the former Soviet Union, and for other purposes;

H.R. 707. An act to amend the Commodity Exchange Act to improve the regulation of futures and options traded under rules and regulations of the Commodity Futures Trading Commission; to establish registration standards for all exchange floor traders; to restrict practices which may lead to the abuse of outside customers of the marketplace; to reinforce development of exchange audit trails to better enable the detection and prevention of such practices; to establish higher standards for service on governing boards and disciplinary committees of self-regulatory organizations, to enhance the international regulation of futures trading; to regularize the process of authorizing appropriations for the Commodity Futures Trading Commission; and for other purposes;

H.R. 939. An act to amend title 38, United States Code, with respect to housing loans for veterans;

H.R. 1252. An act to authorize the State Justice Institute to analyze and disseminate information regarding the admissibility and quality of testimony of witnesses with expertise relating to battered women, and to develop and disseminate training materials to increase the use of such experts to provide testimony in criminal trials of battered women, particularly in cases involving indigent women;

H.R. 1253. An act to amend the State Justice Institute Act of 1984 to carry out research, and to develop judicial training curricula relating to child custody litigation;

H.R. 2109. An act to direct the Secretary of the Interior to conduct a study of the feasibility of including Revere Beach, located in the city of Revere, MA, in the National Park System;

H.R. 2181. An act to permit the Secretary of the Interior to acquire by exchange, lands in the Cuyahoga National Recreation Area that are owned by the State of Ohio;

H.R. 2263. An act to amend chapter 45 of title 5, United States Code, to authorize awards for cost savings disclosures;

H.R. 2431. An act to amend the Wild and Scenic Rivers Act by designating a segment of the Lower Merced River in California as a component of the National Wild and Scenic Rivers System;

H.R. 2660. An act to authorize appropriations for the United States Holocaust Memorial Council, and for other purposes;

H.R. 2896. An act to authorize the Secretary of the Interior to revise the boundaries of the Minute Man National Historical Park in the State of Massachusetts, and for other purposes;

H.R. 3118. An act to designate Federal Office Building Number 9 located at 1900 E Street, Northwest, in the District of Columbia, as the "Theodore Roosevelt Federal Building";

H.R. 3336. An act for the relief of Florence Adeboyeku;

H.R. 3475. An act to assist business in providing women with opportunities in apprenticeship and nontraditional occupations;

H.R. 3598. An act to amend title 49, United States Code, to provide for verification of weights, and for other purposes;

H.R. 3673. An act to authorize a research program through the National Science Foundation on the treatment of contaminated water through membrane processes;

H.R. 3818. An act to designate the building located at 80 North Hughey Avenue in Orlando, FL, as the "George C. Young United States Courthouse and Federal Building";

H.R. 4059. An act to amend the Agricultural Trade Development and Assistance Act of 1954 to authorize additional functions within the Enterprise for the American Initiative, and for other purposes;

H.R. 4250. An act to authorize appropriations for the National Railroad Passenger Corporation, and for other purposes;

H.R. 4281. An act to designate the Federal building and courthouse to be constructed at 5th and Ross Streets in Santa Ana, CA, as the "Ronald Reagan Federal Building and Courthouse";

H.R. 4412. An act to amend title 17, United States Code, relating to fair use and copyrighted works;

H.R. 4539. An act to designate the general mail facility of the United States Postal Service in Gulfport, MS, as the "Larkin I. Smith General Mail Facility" and the building of the United States Postal Service in Poplarville, MS, as the "Larkin I. Smith Post Office Building";

H.R. 4542. An act to prevent and deter auto theft;

H.R. 4773. An act to provide for the reporting of pregnancy success rates of assisted reproductive technology programs and for the certification of embryo laboratories;

H.R. 4996. An act to extend the authorities of the Overseas Private Investment Corporation, and for other purposes;

H.R. 5008. An act to amend title 38, United States Code, to reform the formula for payment of dependency and indemnity compensation to survivors of veterans dying from service-connected causes, to increase the rate of payments for benefits under the Montgomery GI bill, and for other purposes;

H.R. 5095. An act to authorize appropriations for fiscal year 1993 for intelligence and intelligence-related activities of the United States Government and the Central Intelligence Agency Retirement and Disability System, to revise and restate the Central Intelligence Agency Retirement Act of 1964 for certain employees, and for other purposes;

H.R. 5482. An act to revise and extend the program of the Rehabilitation Act of 1973, and for other purposes;

H.R. 5686. An act to make technical amendments to certain Federal Indian statutes;

H.R. 5716. An act to extend for two years the authorizations for appropriations for certain programs under title I of the Omnibus Crime Control and Safe Streets Act of 1968;

H.R. 5739. An act to reauthorize the Export-Import Bank of the United States;

H.R. 5751. An act to provide for the distribution within the United States of certain materials prepared by the United States Information Agency;

H.R. 5763. An act to provide equitable treatment to producers of sugarcane subject to proportionate shares;

H.R. 5809. An act to authorize the Secretary of the Interior to construct and operate an interpretive center for the Ridgefield National Wildlife Refuge in Clark County, WA;

H.R. 5831. An act to designate the Federal Building located at Main and Church Streets in Victoria, TX, as the "Martin Luther King, Jr. Federal Building";

H.R. 5853. An act to designate segments of the Great Egg Harbor river and its tributaries in the State of New Jersey as components of the National Wild and Scenic Rivers System;

H.R. 5862. An act to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to ensure an equitable and timely distribution of benefits to public safety officers;

H.R. 5923. An act for the relief of Anna C. Massari;

H.R. 5954. An act to amend the Food, Agriculture, Conservation, and Trade Act of 1990 to improve health care services and educational services through telecommunications, and for other purposes;

H.R. 6014. An act to designate certain land in the State of Missouri owned by the United States and administered by the Secretary of Agriculture as part of the Mark Twain National Forest;

H.R. 6022. An act to amend the Fair Credit Reporting Act to require the inclusion in consumer reports of information provided to consumer reporting agencies regarding the failure of a consumer to pay overdue child support;

H.R. 6047. An act to amend the United States Information and Educational Exchange Act of 1948, the Foreign Service Act of 1980, and other provisions of law to make certain changes in administrative authorities;

H.R. 6049. An act to amend the Congressional Award Act to revise and extend authorities for the Congressional Award Board;

H.R. 6050. An act to facilitate recovery from recent disasters by providing greater flexibility for depository institutions and their regulators, and for other purposes;

H.R. 6128. An act to amend the United States Warehouse Act to provide for the use of electronic cotton warehouse receipts, and for other purposes;

H.R. 6129. An act to amend the Consolidated Farm and Rural Development Act to establish a program to aid beginning farmers and ranchers to improve the operation of the Farmers Home Administration, and to amend the Farm Credit Act of 1971, and for other purposes;

H.R. 6133. An act to enable the United States to maintain its leadership in land remote sensing by providing data continuity for the Landsat program, to establish a new national land remote sensing policy, and for other purposes;

H.R. 6164. An act to amend the John F. Kennedy Center Act to authorize appropriations for maintenance, repair, alteration, and other services necessary for the John F. Kennedy Center for the Performing Arts;

H.R. 6180. An act to authorize appropriations for the National Telecommunications and Information Administration, and for other purposes;

H.R. 6181. An act to amend the Federal Food, Drug, and Cosmetic Act to authorize human drug application, prescription drug establishment, and prescription drug product fees, and for other purposes;

H.R. 6182. An act to amend the Public Health Service Act to establish the authority for the regulation of mammography services and radiological equipment, and for other purposes;

H.R. 6185. An act to implement the recommendations of the Federal Courts Study Committee, and for other purposes;

H.R. 6191. An act to protect the public interests and the future development of pay-per-call technology by providing for the regulation and oversight of the applications and growth of the pay-per-call industry, and for other purposes;

H.J. Res. 271. Joint resolution authorizing the Go For Broke National Veterans Association Foundation to establish a memorial in the District of Columbia or its environs to honor Japanese-American patriotism in World War II;

H.J. Res. 353. Joint resolution designating the week beginning January 3, 1993, as "Braille Literacy Week";

H.J. Res. 399. Joint resolution designating the week beginning November 1, 1992, as "National Medical Staff Services Awareness Week";

H.J. Res. 429. Joint resolution designating May 2, 1993, through May 8, 1993, as "Be Kind to Animals and National Pet Week";

H.J. Res. 457. Joint resolution designating January 16, 1993, as "Religious Freedom Day";

H.J. Res. 458. Joint resolution designating the week beginning October 25, 1992, as "World Population Awareness Week";

H.J. Res. 467. Joint resolution designating October 24, 1992, through November 1, 1992, as "National Red Ribbon Week for a Drug-Free America";

H.J. Res. 471. Joint resolution designating October 14, 1992, as "National Occupational Therapy Day";

H.J. Res. 484. Joint resolution designating the week beginning February 14, 1993, as "National Visiting Nurse Associations Week";

H.J. Res. 489. Joint resolution designating February 21, 1993, through February 27, 1993, as "American Wine Appreciation Week", and for other purposes;

H.J. Res. 500. Joint resolution designating March 1993 as "Irish-American Heritage Month";

H.J. Res. 503. Joint resolution acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 23, 1992, as "National Military Families Recognition Day";

H.J. Res. 520. Joint resolution to designate the month of October 1992 as "Country Music Month";

H.J. Res. 523. Joint Resolution designating October 8, 1992, as "National Firefighters Day";

H.J. Res. 529. Joint resolution supporting the planting of 500 redwood trees from California in Spain in commemoration of the quincentenary of Christopher Columbus and designating the trees as a gift to the people of Spain;

H.J. Res. 543. Joint resolution designating November 30, 1992, through December 6, 1992, as "National Education First Week";

H.J. Res. 547. Joint resolution designating May 2, 1993, through May 8, 1993, as "National Walking Week"; and

H.J. Res. 563. Joint resolution providing for the convening of the One Hundred Third Congress.

Under the authority of the order of the Senate of January 3, 1991, the enrolled bills and joint resolutions were signed on October 16, 1992, subsequent to the sine die adjournment of the Congress by the President pro tempore [Mr. BYRD].

ENROLLED BILL SIGNED

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on October 19, 1992, subsequent to the sine die adjournment of the Congress, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bill:

H.R. 5334. An act to amend and extend certain laws relating to housing and community development, and for other purposes.

Under the authority of the order of the Senate of January 3, 1991, the enrolled bill was signed on October 20, 1992, subsequent to the sine die adjournment of the Congress, by the President pro tempore [Mr. BYRD].

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on October 20, 1992, subsequent to the sine die adjournment of the Congress, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills and joint resolutions:

S. 347. An act to amend the Defense Production Act of 1950 to revitalize the defense industrial base of the United States, and for other purposes;

S. 474. An act to prohibit sports gambling under State law;

S. 759. An act to amend certain trademark laws to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of trademarks, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private entity;

S. 775. An act to improve the compensation of certain veterans for exposure to ionizing radiation, to improve the administration of veterans benefits programs, and for other purposes;

S. 893. An act to amend title 18, United States Code, to impose criminal sanctions for violation of software copyright;

S. 1002. An act to impose a criminal penalty for flight to avoid payment of arrearages in child support;

S. 1439. An act to authorize and direct the Secretary of the Interior to convey certain lands in Livingston Parish, LA;

S. 1569. An act to implement the recommendations of the Federal Courts Study Committee, and for other purposes;

S. 1577. An act to amend the Alzheimer's Disease and Related Dementias Services Research Act of 1986 to reauthorize the act, and for other purposes;

S. 1623. An act to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes;

S. 1664. An act to establish the Keweenaw National Historical Park, and for other purposes;

S. 1671. An act to withdraw certain public lands and to otherwise provide for the operation of the Waste Isolation Pilot Plant in Eddy County, NM, and for other purposes;

S. 2481. An act to amend the Indian Health Care Improvement Act to authorize appropriations for Indian health programs, and for other purposes;

S. 2679. An act to promote the recovery of Hawaii tropical forests, and for other purposes;

S. 2890. An act to provide for the establishment of the Brown v. Board of Education National Historic Site in the State of Kansas, and for other purposes;

S. 2941. An act to provide the Administrator of the Small Business Administration continued authority to administer the Small Business Innovation Research Program, and for other purposes;

S. 3134. An act to expand the production and distribution of educational and instructional video programming and supporting educational materials for preschool and elementary school children as a tool to improve school readiness, to develop and distribute educational and instructional video programming and support materials for parents, child care providers, and educators of young children, to expand services provided by Head Start programs, and for other purposes;

S. 3144. An act to amend title 10, United States Code, to improve the health care system provided for members and former members of the Armed Forces and their dependents, and for other purposes;

S. 3224. An act to designate the United States Courthouse to be constructed in Fargo, ND, as the "Quentin N. Burdick United States Courthouse";

S. 3279. An act to extend the authorization of use of official mail on the location and recovery of missing children, and for other purposes;

S. 3309. An act to amend the Peace Corps Act to authorize appropriations for the Peace Corps for fiscal year 1993 and to establish a Peace Corps foreign exchange fluctuations account, and for other purposes;

S. 3312. An act entitled the "Cancer Registries Amendment Act";

S. 3327. An act to amend the Agricultural Adjustment Act of 1938 to permit the acre-for-acre transfer of an acreage allotment or quota for certain commodities, and for other purposes;

H.R. 429. An act to authorize additional appropriations for the construction of the Buffalo Bill Dam and Reservoir, Shoshone Project, Pick-Sloan Missouri Basin Program, WY;

H.R. 2130. An act to authorize appropriations for the National Oceanic and Atmospheric Administration, and for other purposes;

H.R. 5432. An act to designate the Federal building and United States courthouse located at the corner of College Avenue and Mountain Street in Fayetteville, AR, as the "John Paul Hammerschmidt Federal Building and United States Courthouse";

H.R. 6125. An act to enhance the financial safety and soundness of the banks and associations of the Farm Credit System, and for other purposes;

H.R. 6138. An act to amend the Consolidated Farm and Rural Development Act;

H.R. 6167. An act to provide for the conservation and development of water and related resources, to authorize the United States Army Corps of Engineers civil works program to construct various projects for improvements to the Nation's infrastructure, and for other purposes;

S.J. Res. 166. Joint resolution designating the week of October 4 through 10, 1992, as "National Customer Service Week";

S.J. Res. 304. Joint resolution designating January 3, 1993, through January 9, 1993, as "National Law Enforcement Training Week";

S.J. Res. 309. Joint resolution designating the week beginning November 8, 1992, as "National Women Veterans Recognition Week";

S.J. Res. 318. Joint resolution designating November 13, 1992, as "Vietnam Veterans Memorial 10th Anniversary Day";

H.J. Res. 409. Joint resolution designating January 16, 1993, as "National Good Teen Day"; and

H.J. Res. 546. Joint resolution designating February 4, 1993, and February 3, 1994, as "National Women and Girls in Sports Day".

Under the authority of the order of the Senate of January 3, 1991, the enrolled bills and joint resolutions were signed on October 20, 1992, subsequent to the sine die adjournment of the Congress, by the President pro tempore [Mr. BYRD].

ENROLLED BILL SIGNED

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on October 21, 1992, subsequent to the sine die adjournment of the Congress, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bill:

H.R. 11. An act to amend the Internal Revenue Code of 1986 to provide tax incentives for the establishment of tax enterprise zones, and for other purposes.

Under the authority of the order of the Senate of January 3, 1991, the enrolled bill was signed on October 22, 1992, subsequent to the sine die adjournment of the Congress by the President pro tempore [Mr. BYRD].

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

Under the authority of the order of the Senate of January 3, 1991, the Secretary of the Senate, on October 23, 1992, subsequent to the sine die adjournment of the Congress, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills and joint resolution:

S. 2572. An act to authorize an exchange of lands in the States of Arkansas and Idaho;

S. 2984. An act granting the consent of Congress to a supplemental compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey concerning the Delaware River Port Authority;

H.R. 2032. An act to amend the Act of May 15, 1965, authorizing the Secretary of the Interior to designate the Nez Perce National Historical Park in the State of Idaho, and for other purposes;

H.R. 2152. An act to enhance the effectiveness of the United Nations international driftnet fishery conservation program;

H.R. 5193. An act to amend title 38, United States Code, to improve health care services for women veterans, to expand authority for health care sharing agreements between the Department of Veterans Affairs and the Department of Defense, to revise certain pay authorities that apply to Department of Veterans Affairs nurses, to improve preventive health services for veterans, to establish discounts on pharmaceuticals purchased by the Department of Veterans Affairs, to provide for a Persian Gulf War Veterans Health Registry, and to make other improvements in the delivery and administration of health care by the Department of Veterans Affairs;

H.R. 5194. An act to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to authorize appropriations for fiscal years 1993, 1994, 1995, and 1996, and for other purposes;

H.R. 5617. An act to provide Congressional approval of a Governing International Fishery Agreement, and for other purposes;

H.R. 6135. An act to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, research and program management, and Inspector General, and for other purposes;

H.R. 6168. An act to amend the Airport and Airway Improvement Act of 1982 to authorize appropriations, and for other purposes;

H.R. 6187. An act to amend the Foreign Assistance Act of 1961 with respect to international narcotics control programs and activities, and for other purposes; and

H.J. Res. 422. Joint resolution designating November 1992 as "Neurofibromatosis Awareness Month".

Under the authority of the order of the Senate of January 3, 1991, the enrolled bills and joint resolution were signed on October 23, 1992, subsequent to the sine die adjournment of the Congress by the President pro tempore [Mr. BYRD].

ENROLLED BILLS AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that he had presented to the President of the United States the following enrolled bills and joint resolutions:

On October 9, 1992:

S. 1880. An act to amend the District of Columbia Spouse Equity Act of 1988.

S. 3007. An act to authorize financial assistance for the construction and maintenance of the Mary McLeod Bethune Memorial Arts Center.

S. 3095. An act to restore and clarify the Federal relationship with the Jena Band of Choctaws of Louisiana.

S.J. Res. 287. Joint resolution to designate the week of October 4, 1992, through October 10, 1992, as "Mental Illness Awareness Week."

On October 15, 1992:

S. 1145. An act to amend the Ethics in Government Act of 1978 to remove the limitation on the authorization of appropriations for the Office of Government Ethics.

S. 1146. An act to establish a national advanced technician training program, utilizing the resources of the Nation's 2-year associate-granting colleges to expand the pool of skilled technicians in strategic advanced-technology fields, to increase the productivity of the Nation's industries, and to improve the competitiveness of the United States in international trade, and for other purposes.

S. 1181. An act for the relief of Christy Carl Hallien of Arlington, Texas.

S. 1530. An act to authorize the integration of employment, training, and related services by Indian tribal governments.

S. 1583. An act to increase the safety to humans and the environment from the transportation by pipeline of natural gas and hazardous liquids, and for other purposes.

S. 2044. An act to assist native Americans in assuring the survival and continuing vitality of their languages.

S. 2201. An act to authorize the admission to the United States of certain scientists of the Commonwealth of Independent States and the Baltic States as employment-based immigrants under the Immigration and Nationality Act, and for other purposes.

S. 2322. An act to amend title 38, United States Code, to increase, effective as of December 1, 1992, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans.

S. 2625. An act to designate the United States courthouse being constructed at 400 Cooper Street in Camden, New Jersey, as the "Mitchell H. Cohen United States Courthouse."

S. 2661. An act to authorize the striking of a medal commemorating the 250th anniversary of the founding of the American Philosophical Society and the birth of Thomas Jefferson.

S. 2834. An act to designate the United States Post Office building located at 100 Main Street, Millsboro, Delaware, as the "John J. Williams Post Office Building."

S. 2875. An act to amend the National School Lunch Act and the Child Nutrition Act of 1966 to better assist children in homeless shelters, to enhance competition among infant formula manufacturers and to reduce the per unit costs of infant formula for the special supplemental food program for women, infants, and children [WIC], and for other purposes.

S. 3006. An act to provide for the expeditious disclosure of records relevant to the assassination of President John F. Kennedy.

S.J. Res. 218. Joint resolution designating the calendar year, 1993, as the "Year of American Craft: A Celebration of the Creative Work of the Hand."

S.J. Res. 252. Joint resolution designating the week of April 18 through 25, 1993, as "National Credit Education Week."

S.J. Res. 305. Joint resolution to designate October 1992 as "Polish-American Heritage Month."

S.J. Res. 319. Joint resolution to designate the second Sunday in October of 1992 as "National Children's Day."

S. 225. An act to expand the boundaries of the Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park, Virginia.

On October 16, 1992:

S. 2532. An act to support freedom and open markets in the independent states of the former Soviet Union, and for other purposes.

On October 19, 1992:

S. 758. An act to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of patents and plant variety protections, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private entity.

On October 20, 1992:

S. 347. An act to amend the Defense Production Act of 1950 to revitalize the defense industrial base of the United States, and for other purposes.

S. 474. An act to prohibit sports gambling under State law.

S. 759. An act to amend certain trademark laws to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of trademarks, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private entity.

S. 775. An act to improve the compensation of certain veterans for exposure to ionizing radiation, to improve the administration of veterans benefits programs, and for other purposes.

S. 893. An act to amend title 18, United States Code, to impose criminal sanctions for violation of software copyright.

S. 1002. An act to impose a criminal penalty for flight to avoid payments of arrearages in child support.

S. 1439. An act to authorize and direct the Secretary of the Interior to convey certain lands in Livingston Parish, Louisiana.

S. 1569. An act to implement the recommendations of the Federal Courts Study Committee, and for other purposes.

S. 1577. An act to amend the Alzheimer's Disease and Related Dementias Services Research Act of 1986 to reauthorize the act, and for other purposes.

S. 1623. An act to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes.

S. 1664. An act to establish the Keweenaw National Historical Park, and for other purposes.

S. 1671. An act to withdraw certain public lands and to otherwise provide for the operation of the Waste Isolation Pilot Plant in Eddy County, New Mexico, and for other purposes.

S. 2418. An act to amend the Indian Health Care Improvement Act to authorize appropriations for Indian health programs, and for other purposes.

S. 2679. An act to promote the recovery of Hawaii tropical forests, and for other purposes.

S. 2890. An act to provide for the establishment of the Brown v. Board of Education National Historic Site in the State of Kansas, and for other purposes.

S. 2941. An act to provide the Administrator of the Small Business Administration continued authority to administer the Small Business Innovation Research Program, and for other purposes.

S. 3134. An act to expand the production and distribution of educational and instructional video programming and supporting educational materials for preschool and elementary school children as a tool to improve school readiness, to develop and distribute educational and instructional video programming and support materials for parents, child care providers, and educators of young children, to expand services provided by Head Start programs, and for other purposes.

S. 3144. An act to amend title 10, United States Code, to improve the health care system provided for members and former members of the Armed Forces and their dependents, and for other purposes.

S. 3224. An act to designate the United States Courthouse to be constructed in Fargo, North Dakota, as the "Quentin N. Burdick United States Courthouse."

S. 3279. An act to extend the authorization of use of official mail in the location and recovery of missing children, and for other purposes.

S. 3309. An act to amend the Peace Corps Act to authorize appropriations for the Peace Corps for fiscal year 1993 and to establish a Peace Corps foreign exchange fluctuations account, and for other purposes.

S. 3312. An act entitled the "Cancer Registries Amendment Act."

S. 3327. An act to amend the Agricultural Adjustment Act of 1938 to permit the acre-for-acre transfer of an acreage allotment or quota for certain commodities, and for other purposes.

S.J. Res. 166. Joint resolution designating the week of October 4 through 10, 1992, as "National Customer Service Week."

S.J. Res. 304. Joint resolution designating January 3, 1993, through January 9, 1993, as "National Law Enforcement Training Week."

S.J. Res. 309. Joint resolution designating the week beginning November 8, 1992, as "National Women Veterans Recognition Week."

S.J. Res. 318. Joint resolution designating November 13, 1992, as "Vietnam Veterans Memorial 10th Anniversary Day."

On October 26, 1992:

S. 2572. An act to authorize an exchange of lands in the State of Arkansas and Idaho.

S. 2964. An act granting the consent of the Congress to a supplemental compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey concerning the Delaware River Port Authority.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-4012. A communication from the Comptroller of the Department of Defense, transmitting, pursuant to law, notice of violations of the Antideficiency Act; to the Committee on Appropriations.

EC-4013. A communication from the Assistant Secretary of Defense, transmitting, pursuant to law, the annual report on research, development, test and evaluation activities conducted under the Biological Defense Research Program for fiscal year 1991; to the Committee on Armed Services.

EC-4014. A communication from the Secretary of the Air Force, transmitting, pursuant to law, notice of increased cost of a major defense acquisition program over the Program Acquisition Unit Cost as reflected in the baseline Selected Acquisition Report; to the Committee on Armed Services.

EC-4015. A communication from the Executive Office of the President, Director of the Office of Management and Budget, transmitting, pursuant to law, a report on the enactment of appropriations legislation; to the Committee on Budget.

EC-4016. A communication from the Under Secretary for Oceans and Atmosphere, Department of Commerce, transmitting, pursuant to law, the "Biennial Report to the Congress on Coastal Zone Management, Volume I: Executive Summary: September 1992"; to the Committee on Commerce, Science, and Transportation.

EC-4017. A communication from the Deputy Associate Director for Collection and Disbursement, Department of the Interior, transmitting, pursuant to law, notice of intent to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC-4018. A communication from the Secretary of Energy, transmitting, pursuant to law, the Report of the Demonstration Project on Mandatory Interim Energy Conservation Performance Standards for Federal Residential Buildings; to the Committee on Energy and Natural Resources.

EC-4019. A communication from the Acting Assistant General Counsel, Department of Energy, transmitting, pursuant to law, notice of a meeting related to the International Energy Program; to the Committee on Energy and Natural Resources.

EC-4020. A communication from the Acting Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, notice of a deletion concerning the White River Basin Study; to the Committee on Environment and Public Works.

EC-4021. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "The AHCPR's Program of Patient Outcomes Research and Related Activities"; to the Committee on Finance.

EC-4022. A communication from the Secretary of Labor, transmitting, pursuant to law, the eighth annual report prepared in accordance with Section 216 of the Caribbean Basin Economic Recovery Act; to the Committee on Finance.

EC-4023. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements other than treaties entered into by the United States in the 60-day period prior to October 8, 1992; to the Committee on Foreign Relations.

EC-4024. A communication from the Acting Assistant Secretary (Legislative Affairs), transmitting, a draft of proposed legislation to provide for the adjudication of certain claims against Iraq and for other purposes; to the Committee on Foreign Relations.

EC-4025. A communication from the President of the United States, transmitting, pursuant to law, the final report of the White House Conference on Indian Education, recommendations, and an executive summary; to the Select Committee on Indian Affairs.

EC-4026. A communication from the National Commander of American Ex-Prisoners of War, transmitting, pursuant to law, the 1992 audit report of the American Ex-Prisoners of War as of August 31, 1992; to the Committee on Judiciary.

EC-4027. A communication from the Commissioner of the Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration, Department of Education, transmitting, pursuant to law, the annual report of Supported Employment Activities for fiscal year 1991; to the Committee on Labor and Human Resources.

EC-4028. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "Head Start Research and Evaluation: A Blueprint for the Future"; to the Committee on Labor and Human Resources.

EC-4029. A communication from the Secretary of Education, transmitting, pursuant to law, notice of final priorities—Early Education Program for Children with Disabilities; to the Committee on Labor and Human Resources.

EC-4030. A communication from the Secretary of Education, transmitting, pursuant to law, a report entitled "Vocational Education in the United States: 1969-1990"; to the Committee on Labor and Human Resources.

EC-4031. A communication from the Director of the Congressional Budget Office, transmitting, pursuant to law, the Final Sequestration Report for fiscal year 1993; pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, referred jointly to the Committee on Appropriations, the Committee on Budget, the Committee on Agriculture, Nutrition and Forestry, the Committee on Armed Services, the Committee on Banking, Housing and Urban Affairs, the Committee on Commerce, Science and Transportation, the Committee on Energy and Natural Resources, the Committee on Environment and Public Works, the Committee on Finance, the Committee on Foreign Relations, the Committee on Governmental Affairs, the Committee on the Judiciary, the Committee on Labor and Human Resources, the Committee on Rules and Administration, the Committee on Small Business, the Committee on Veterans Affairs, the Select Committee on Indian Affairs, and the Select Committee on Intelligence.

EC-4032. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the cumulative report on budget rescissions and deferrals dated October 1, 1992; pursuant to the order of January 30, 1992, as modified by the order of April 11, 1986, referred jointly to the Committee on Appropriations, the Committee on Budget, the Committee on Agriculture, Nutrition and Forestry, the Committee on Environment and Public Works, the Committee on Foreign Relations, and the Committee on Labor and Human Resources.

EC-4033. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, notice of a violation of the Antideficiency Act; to the Committee on Appropriations.

EC-4034. A communication from the Assistant Secretary of Energy (Environmental Restoration and Waste Management), transmitting, pursuant to law, notice of delay of submission of a report to the Congress on the management of environmental restoration and waste management activities at Department of Energy facilities; to the Committee on Armed Services.

EC-4035. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the 20th report on United States costs in the Persian Gulf conflict and foreign contributions to offset such costs; to the Committee on Armed Services.

EC-4036. A communication from the Chief of the Programs and Legislation Division (Office of Legislative Liaison), Department of the Air Force, transmitting, pursuant to law, notice of an extension of an F-15 Full Scale Development contract; to the Committee on Armed Services.

EC-4037. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report to Congress on direct spending or receipts legislation; to the Committee on the Budget.

EC-4038. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report to Congress on direct spending or receipts legislation; to the Committee on the Budget.

EC-4039. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on appropriations legislation within 5 days of enactment; to the Committee on Budget.

EC-4040. A communication from the Director, Office of Management and Budget, Executive Office of the President, a report to Congress on direct spending or receipts legislation; to the committee on the Budget.

EC-4041. A communication from the Secretary of Transportation, transmitting, pursuant to law, notice of action on the Murtala Muhammed International Airport [LOS], Lagos, Nigeria; to the Committee on Commerce, Science and Transportation.

EC-4042. A communication from the Secretary of Transportation, transmitting pursuant to law, a report entitled "Driving Under the Influence: A Report to Congress on Alcohol Limits; to the Committee on Commerce, Science, and Transportation.

EC-4043. A communication from the Assistant Secretary of Energy (Conservation and Renewable Energy), transmitting, pursuant to law, notice of delay of submission of a report on the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989; to the Committee on Energy and Natural Resources.

EC-4044. A communication from the Deputy Associate Director (Collection and Disbursement), Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of intent to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC-4045. A communication from the Chairman of the United States Nuclear Regulatory Commission, transmitting, pursuant to law, a report to Congress on Abnormal Occurrences at licensed nuclear facilities for the period April through June 1992; to the Committee on Environment and Public Works.

EC-4046. A communication from the Deputy Inspector General, Inspector General, Department of Defense, transmitting, pursuant to law, the Army Audit Agency report on the review of the Superfund Financial Transaction for fiscal year 1991; to the Committee on Environment and Public Works.

EC-4047. A communication from the Acting Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, notice of a Presidential determination authorizing the use of $1,500,000 from the United States Emergency Refugee and Migration Assistance Fund; to the Committee on Foreign Relations.

EC-4048. A communication from the Under Secretary of State (Political Affairs), transmitting, pursuant to law, notice of a determination concerning the transfer of Foreign Assistance Funds under the Fishermen's Protective Act; to the Committee on Foreign Relations.

EC-4049. A communication from the Acting Assistant Secretary of State (Legislative Affairs), transmitting, pursuant to law, notice of a Presidential determination concerning peacekeeping operations in Nagorno-Karabakh; to the Committee on Foreign Relations.

EC-4050. A communication from the Director of the Federal Domestic Volunteer Agency, transmitting, pursuant to law, a final regulation to exempt a system of records from certain provisions of the Privacy Act of 1974; to the Committee on Governmental Affairs.

EC-4051. A communication from the Manager, Employee Benefits, Air Force Morale, Welfare, Recreation and Services Agency (Retirement Plan Administrator), Department of the Air Force, transmitting, pursuant to law, the annual report on the Air Force Nonappropriated Fund Retirement Plan for Civilian Employees; to the Committee on Governmental Affairs.

EC-4052. A communication from the Secretary of Education, transmitting, pursuant to law, notice of final regulations—Institutional Eligibility under the Higher Education Act of 1965; to the Committee on Labor and Human Resources.

EC-4053. A communication from the President of the United States, transmitting, pursuant to law, notice of suspension of certain provisions of the Davis-Bacon Act within a limited geographic area; to the Committee on Labor and Human Resources.

EC-4054. A communication from the Secretary of Labor, transmitting, pursuant to law, a report entitled "Homeless Veterans Reintegration Project Evaluation Study"; to the Committee on Veterans Affairs.

EC-4055. A communication from the Acting Director, Office of Personnel Management, transmitting, pursuant to law, the annual report to Congress on Veterans' Employment in the Federal Government dated October 1, 1990 through September 30, 1991; to the Committee on Veterans' Affairs.

EC-4056. A communication from the Secretary of Defense, transmitting, pursuant to law, the 1992 Joint Military Net Assessment; to the Committee on Armed Services.

EC-4057. A communication from the Assistant Secretary of Treasury (Legislative Affairs), transmitting, pursuant to law, a copy of an amendment to the Iraqi Sanctions Regulations; to the Committee on Banking, Housing, and Urban Affairs.

EC-4058. A communication from the First Vice President and Vice Chairman of the Export-Import Bank of the United States, transmitting, pursuant to law, a report with respect to a transaction involving United States exports to Australia; to the Committee on Banking, Housing, and Urban Affairs.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate, and referred or ordered to lie on the table as indicated:

POM-491. A joint resolution adopted by the Legislature of the State of California; to the Committee on Agriculture, Nutrition, and Forestry:

"SENATE JOINT RESOLUTION NO. 30

"Whereas, By the enactment of Resolution Chapter 128 of the Statutes of 1987 (Assembly Concurrent Resolution 25) and other measures, the Legislature has long recognized the importance of providing to highway travelers information on points of interest and the availability of facilities and services; and

"Whereas, Tourists traveling California's rural highways would benefit from information regarding nearby small businesses and attractions which do not have their own outdoor advertising facilities on the highways; and

"Whereas, The Federal Highway Administration, in its Manual on Uniform Traffic Control Devices, authorizes the states to establish a tourist-oriented directional sign program to provide business identification and directional information for small businesses, including those offering seasonal agricultural products, and to guide travelers on rural highways to these services and activities; and

"Whereas, a tourist-oriented directional sign program is required to be adopted by the Legislature prior to implementation; and

"Whereas, The information provided by a tourist-oriented directional sign program to the traveling public in rural areas would be a great assistance to travelers and significantly benefit rural economic development; and

"Whereas, There is presently no program in California for providing this kind of information to the traveling public; and

"Whereas, A study has been conducted under a Phase I grant through the Small Business Innovative Research Program of the United States Department of Agriculture which demonstrated the benefits, to small businesses in Oregon and Washington, of a tourist-oriented directional sign program; and

"Whereas, That program also makes available Phase II grants for purposes of administering the development of a tourist-oriented directional sign program plan in a state such as California; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly*, That the Legislature of the State of California respectfully memorializes the President and Congress of the United States to direct the United States Department of Agriculture to award a Phase II grant for the purpose of developing a tourist-oriented directional sign program plan for rural highways in California; and be it further

"*Resolved*, That the development of a tourist-oriented directional sign program plan in California under a Phase II grant be accomplished in consultation with the Department of Transportation of the State of California; and be it further

"*Resolved*, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the United States Secretary of Agriculture."

POM-492. A joint resolution adopted by the Legislature of the State of California; to the Committee on Agriculture, Nutrition, and Forestry.

"SENATE JOINT RESOLUTION NO. 51

"Whereas, The nation's forests face an emergency situation due to the volume of dead fuel, which threatens green timber, wildlife habitat, water quality, and residential structures; and

"Whereas, Congress is considering legislation concerning stewardship of national forests and or funding for pest prevention; and

"Whereas, Short- and long-term solutions must be found in order to effectively foster healthy conditions in all forests; and

"Whereas, A need exists to develop a method built on the foundation of a forest health management model; and

"Whereas, A model would assist the United States Forest Service in examining the utility of stewardship contracts in improving the management of forests on particularly sensitive forest lands; and

"Whereas, Lake Tahoe is an outstanding national resource that is experiencing continued degradation of its water quality, to the detriment of the residents of the Lake Tahoe Basin, the States of California and Nevada, and the nation as a whole; and

"Whereas, The use, beauty, and enjoyment of Lake Tahoe is being imperiled by the degradation of forest health in the Lake Tahoe Basin due to the extremely high mortality of trees caused by drought and insect infestation; and

"Whereas, The Task Force on Bark Beetle Remediation of the California Senate has recommended that the Tahoe Basin be used as a scale model for the development of forest health management improvement objectives for particularly sensitive, previously damaged lands by the United States Forest Service, which would impact favorably on forest land management in California and in the rest of the United States; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly*, That the Legislature of the State of California respectfully memorializes the Congress of the United States to enact legislation to designate the Lake Tahoe Basin Management Unit as a working model for other forests, as a means to develop a forest health management plan which provides for the following:

"(a) Designation of the Lake Tahoe Basin Management Unit as a model for forest health management and forest land stewardship, and provision of funds for this purpose from appropriate federal programs.

"(b) Initiation and administration by the Forest Service of a model program for purposes of developing a national forest health maintenance plan.

"(c) Development by the Forest Service of short-term and long-term management plans for thinning and sanitation of dead and diseased trees on national forest lands for the purposes of fire hazard reduction and pest management, including the use of prescribed burning and the restocking of a diversity of native species consistent with environmental and watershed protections.

"(d) Consultation by the Forest Service with the Tahoe Regional Planning Agency, the California State Water Resources Control Board, and other appropriate agencies in California and Nevada, to assure that all Forest Service activities are consistent with the highest degree of water quality and other environmental protections, and to assure that those activities assist the Tahoe Regional Planning Agency in achieving and maintaining the environmental threshold carrying capacities adopted by the agency pursuant to the Tahoe Regional Planning Compact.

"(e) Assistance by the Forest Service in the development of noncommercial forest land management plans within the stewardship plan areas.

"(f) Provision for individuals or other private landowners to enter into a stewardship agreement with the Forest Service for the maintenance of healthy forest lands.

"(g) Stewardship contracting authority for the Pacific Southwest Region (Region 5) of the Forest Service; and be in further

"*Resolved*, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of Agriculture, to the Chief of the United States Forest Service, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-493. A joint resolution adopted by the Legislature of the State of California; to the Committee on Agriculture, Nutrition, and Forestry.

"SENATE JOINT RESOLUTION NO. 57

"Whereas, The Special Supplemental Food Program for Women, Infants, and Children (WIC Program) is an extremely cost-effective, preventive program which provides important supplemental food assistance, nutrition education, health information and referral for low-income women and children; and

"Whereas, Federal and private studies have shown that the WIC Program saves, for each dollar spent, up to $4.21 in health care costs in the first 60 days of a child's life, plus another $3.50 over a child's first 18 years; and

"Whereas, Federal funding is not allocated in proportion to need, resulting in the average state serving 55 percent of its WIC target population, but in California serving only 35 percent of its target population; and

"Whereas, Nearly half of all states serve 50 percent or more of the eligible children in their WIC target population, seven states serve less than 40 percent of eligible children, including California, which at 23 percent, has the lowest service rate of any state in the nation; and

"Whereas, California received 14.7 percent of all births in the nation in 1990, but only 10 percent of allocated federal WIC funds; and

"Whereas, The current federal funding formula for WIC used by the United States Department of Agriculture contains 1980, rather than 1990, census data; and

"Whereas, Less than 2 percent of the $2.6 billion appropriated for WIC is set aside to address caseload imbalances, preventing California and other states from adequately addressing the inequities noted above, now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly*, That the Legislature of the State of California respectfully memorializes the Congress of the United States to amend the federal funding formula for the WIC Program to ensure that it: (1) either allocates newly appropriated growth funds to the most underfunded states or bases allocations on the estimated number of eligible women, infants, and children; (2) addresses the serious underallocation of funds to states, like California, that are serving far below the national average of individuals eligible for WIC funding; and (3) permits states to use WIC grants for two years or carry forward up to 5 percent of the food funds from one fiscal year to the next, allowing more prudent expenditure of those funds; and be it further

"*Resolved*, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of Agriculture, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-494. A joint resolution adopted by the Legislature of the State of California; to the Committee on Armed Services:

"SENATE JOINT RESOLUTION NO. 48

"Whereas, Proposed military budget reductions have targeted the 143rd Evacuation Hospital of the California Army National Guard at the Los Alamitos Armed Forces Reserve Center in southern California; and

"Whereas, Loss of the 143rd Evacuation Hospital will directly impact the citizens of California, and will not achieve the cost savings that are expected by Congress; and

"Whereas, The 143rd Evacuation Hospital is a 400-bed field hospital capable of treating all classes of patients, and has recently been equipped with state-of-the-art deployable medical systems equipment. The entire unit is transportable, and is located on an airfield to permit rapid deployment; and

"Whereas, The 143rd Evacuation Hospital is California's most important medical asset in response to disasters. In 1989, the unit was mobilized for the Loma Prieta Earthquake at 8:00 p.m. on a weeknight. Before dawn the next morning the hospital was mobilized, equipped, and transported to the scene; and

"Whereas, More recently, the 143rd Evacuation Hospital designed and built a permanent field hospital site on the Armed Forces Reserve Center airfield. This deployable medical systems facility will provide support to all southern California residents in the event of a major disaster. Casualties would be flown from affected areas by military helicopters, stabilized by the evacuation hospital, then loaded on fixed-wing military aircraft for long-range evacuation to hospitals unaffected by the disaster; and

"Whereas, This disaster support area concept is the basis for many community, county, and state disaster plans; and

"Whereas, Humanitarian support has been provided for wildlife operations, Diablo Canyon, floods, prison strikes, and Mediterranean fruit fly missions. Other unit activities include community support to Red Cross health fairs, city athletic events, and community disaster planning assistance; and

"Whereas, The 143rd Evacuation Hospital is the only California Army Reserve National Guard asset trained and equipped with deployable medical systems equipment. The entire Armed Forces Reserve Center Disaster Support Area plan is predicated on the 143rd Evacuation Hospital's existence. the unit's location on the airfield permits its rapid deployment anywhere in the state. Without the 143rd Evacuation Hospital, the Governor has lost his most important military asset to the health and welfare of the people of the state; and

"Whereas, The proposed military budget reductions are intended to reduce costs to the taxpayer, but the loss of the 143rd Evacuation Hospital will be counterproductive to this effort. Most of the services provided to other National Guard units, including, but not limited to, aviation physicals, periodic physicals, and medical evaluations and consults will have to be obtained by contract with civilian health care providers. These contract expenses and the associated administrative burden will not be cost-effective. In 1990, the 143rd Evacuation Hospital provided in excess of 2,000 physical examinations and medical evaluations. When combined with other medical support provided for both the military and humanitarian missions, the cost savings to the taxpayer is substantial; and

"Whereas, The 143rd Evacuation Hospital is unique in that it has a positive budget impact, and no other California National Guard unit possesses the features and capabilities of the 143rd Evacuation Hospital, nor is as vitally important to the needs of the residents of California; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly*, That the Legislature and citizens of the State of California strongly urge the President of the United States, the Secretary of Defense, and the Congress of the United States to take action to prevent the elimination of the 143rd Evacuation Hospital; and be it further

"*Resolved*, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United

States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Secretary of Defense of the United States and to the Governor and the Adjutant General of the State of California."

POM-495. A joint resolution adopted by the Legislature of the State of California; to the Committee on Armed Services:

"SENATE JOINT RESOLUTION NO. 47

"Whereas, The State of California has implemented a statewide, mandatory job training and education program known as the Greater Avenues for Independence (GAIN) program, for all recipients of assistance under the Aid to Families with Dependent Children (AFDC) program; and

"Whereas, GAIN is a program designed to end long-term dependency, and over 90,000 AFDC recipients have obtained employment through the GAIN program in just three years; and

"Whereas, Almost two-thirds of those eligible for GAIN services do not have a high school education, and require basic education skills to establish basic literacy and enter the job market; and

"Whereas, Eighty-five percent of persons eligible for GAIN services have received AFDC previously, indicating the need for fundamental intervention to break the cycle of dependency and create economic competitiveness; and

"Whereas, Current funding restrictions have resulted in six counties closing intake and 34 counties restricting intake; and

"Whereas, According to the Legislative Analyst's office, due to continued funding shortages, GAIN has been able to serve less than 50 percent of eligible recipients; and

"Whereas, Lengthy waiting lists for GAIN services now exist throughout the state; and

"Whereas, An educated and employed citizenry is a benefit to the State of California, and contributes to economic prosperity; and

"Whereas, The federal government has available over one billion dollars for the federal Job Opportunity and Basic Skills (JOBS) program that funds programs like GAIN, but states will not be able to fully access these moneys due to existing federal-state matching requirements; and

"Whereas, Due to state fiscal constraints, states will continue to be unable to utilize all the federal job training funds set aside for AFDC recipients; and

"Whereas, California has the existing programmatic framework to serve eligible AFDC recipients if funds are made available; and

"Whereas, Legislation is under consideration by Congress which would provide full funding for state programs such as GAIN; now, therefore, be it

"*Resolved by the Senate and the Assembly of the State of California, jointly*, That the Legislature of the State of California respectfully memorializes the Congress of the United States to immediately pass legislation that provides full funding for the Job Opportunity and Basic Skills program without additional state matching requirements; and be it further

"*Resolved*, That the Legislature of the State of California encourages the Congress of the United States to act quickly on this issue to allow states to budget these additional training funds in the next fiscal year; and be it further

"*Resolved*, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-496. A concurrent resolution adopted by the Legislature of the State of Louisiana; to the Committee on Appropriations:

"SENATE CONCURRENT RESOLUTION NO. 6

"Whereas, Louisiana has often been the target of powerful hurricanes that move out of the Gulf of Mexico and inflict tremendous damage on the southern part of our state; and

"Whereas, the threat and power of Hurriance Andrew required the rapid evacuation of a large number of citizens in Louisiana's southern parishes; and

"Whereas, the evacuation of these citizens created traffic problems on most of the highways leading north out of South Louisiana; and

"Whereas, the vast majority of these evacuation routes are two-lane highways; and

"Whereas, the winds associated with Hurriance Andrew inflicted tremendous damage to the property of the citizens of South Louisiana; and

"Whereas, various fishing industries in South Louisiana were devastated by Hurriance Andrew: Now therefore, be it

"*Resolved*, That the Constitutional Convention of Louisiana of 1992 memorializes Congress and the President of the United States to provide federal aid for the following:

"(1) Shrimpers, oyster fishermen, crab fishermen, livestock farmers, commercial fishermen, crawfishermen, shrimp processors, oyster processors, crab processors, crawfish processors, and shrimp dealers in those South Louisiana parishes that have been declared federal disaster areas.

"(2) Hurricane protection levees, floodgates, locks, dams, and weirs in Terrebonne Parish for the South Terrebonne Tidewater Conservation and Management District.

"(3) Feasibility studies for evacuation routes from Lafourche Parish, Terrebonne Parish, St. Mary Parish, Iberia Parish, Jefferson Parish, St. Bernard Parish, Plaquemines Parish, Lafayette Parish, Vermilion Parish, Acadia Parish, Allen Parish, Ascension Parish, Avoyelles Parish, Beauregard Parish, Bienville Parish, Bossier Parish, Caddo Parish, Calcasieu Parish, Caldwell Parish, Cameron Parish, Catahoula Parish, Claiborne Parish, Concordia Parish, DeSoto Parish, East Baton Rouge Parish, East Carroll Parish, East Feliciana Parish, Evangeline Parish, Franklin Parish, Grant Parish, Iberville Parish, Jackson Parish, Jefferson Davis Parish, LaSalle Parish, Lincoln Parish, Livingston Parish, Madison Parish, Morehouse Parish, Natchitoches Parish, Orleans Parish, Ouachita Parish, Pointe Coupee Parish, Rapides Parish, Red River Parish, Richland Parish, Sabine Parish, St. Helena Parish, St. James Parish, St. Landry Parish, St. Martin Parish, St. Tammany Parish, Tangipahoa Parish, Tensas Parish, Union Parish, Vernon Parish, Washington Parish, Webster Parish, West Baton Rouge Parish, West Carroll Parish, West Feliciana Parish, Winn Parish, Louisiana Highways 27 and 82 in Cameron Parish, St. John the Baptist Parish, St. Charles Parish, and Assumption Parish.

"(4) Four-laning Louisiana Highway 1 from Grande Isle to Golden Meadow.

"(5) Four-laning or relocation of Louisiana Highways 1 and 308 from Larose to Raceland at U.S. Highway 90.

"(6) Any other evacuation route projects deemed feasible.

"(7) Hurriance protection levees and an evacuation route from Lafitte to Larose.

"Be it further resolved, That a copy of this Resolution shall be transmitted to the President of the United States, the Secretary of the United States Senate and the Clerk of the United States House of Representatives, and to each member of the Louisiana congressional delegation."

POM-497. Joint resolution adopted by the Legislature of the State of California; to the Committee on Banking, Housing and Urban Affairs:

"SENATE JOINT RESOLUTION NO. 45

"Whereas, It is extremely important that the State of California and the federal government continue to demand a safe and sound banking system in this country; and

"Whereas, The Legislature of the State of California reaffirms and restates its strong support for a safe and sound banking system in California; and

"Whereas, California's financial institutions must meet certain safety and soundness standards enforced by federal and state regulators, and know that they must either strengthen or maintain their financial condition; and

"Whereas, Many California businesses, agricultural concerns, and private citizens are experiencing difficulties obtaining nonresidential loans today; and

"Whereas, Credit worthy borrowers, especially those credit worthy businesses that employ thousands of Californians, should not be prevented from obtaining loans; and

"Whereas, In late 1991 the Congress found that:

"(1) During the past year and half a credit crunch of crisis proportions has taken hold of the economy and grown increasingly severe, particularly for real estate;

"(2) To date the credit crisis has shown no sign of improvement with its effects being felt broadly throughout the nation as business failures soar, financial institutions weaken, real estate values decline, and state and local property tax bases further erode;

"(3) Approximately two hundred billion dollars ($200,000,000,000) of the nearly four hundred billion dollars ($400,000,000,000) in commercial real estate loans now held by commercial banks are coming due within the next two years;

"(4) Banks for a variety of reasons, are reluctant to renew these maturing real estate loans; and

"(5) Many regulatory practices encourage banks to reduce their real estate lending without regard to long-term historical risk; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly*, That the Legislature of the State of California respectfully memorializes the President, the Congress, and the Treasury Department to find and implement immediate solutions to resolving what is popularly known as the "credit crunch," while at the same time maintaining reasonable and consistently enforced safety and soundness laws and regulations.

"These solutions should center around, but not be limited to, such things as: (1) regulatory agencies judging individual financial institutions on their financial strength and ability to make a profit, rather than viewing all of them as potential problem institutions similar to bankrupt savings and loans; (2) having federal regulators work with, not against, those financial institutions that are financially sound and have a history of making prudent loans; (3) encouraging pension funds to do more investing in real estate while at the same time maintaining the prudent expert standard; and (4) "credit crises" related solutions that are listed in Subtitle J, Sense of the Congress Regarding the Credit Crisis, Sec. 456. (b)(2)(A-D), of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991 which do the following:

"(A) Strengthen the secondary market for commercial real estate debt and equity by removing arbitrary obstacles to private forms of credit enhancement.

"(B) Restore balance to the regulatory environment by considering the impact of risk-based capital standards on commercial multifamily and single-family real estate; ending market-to-market, liquidation-based, appraisals; encouraging loan renewals; and, fully communicating the supervisory policy to bank examiners in the field.

"(C) Rationalize the tax system for real estate owners and operators by modifying the passive loss rules and encouraging loan restructures; and be it further

"*Resolved*, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of the Treasury, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-498. Joint resolution adopted by the Legislature of the State of California; to the Committee on Commerce, Science, and Transportation:

"SENATE JOINT RESOLUTION NO. 38

"Whereas, Six million dolphins are known to exist in the eastern tropical Pacific Ocean, and similar dolphin populations exist in all other oceans of the world; and

"Whereas, In recent years purse seine nets in the eastern tropical Pacific Ocean and large-scale pelagic drift nets in other oceans have drowned thousands of dolphins and other marine mammals annually in the pursuit of tuna; and

"Whereas, The United States supports the United Nations General Assembly Resolution 44/225, which recommends, worldwide, a 50-percent reduction of all large-scale pelagic drift net fishing on the high seas by June 30, 1992, and a moratorium on all pelagic drift net fishing by December 31, 1992, because of the high rate of marine mammal mortality associated with this method of fishing; and

"Whereas, The United States has been instrumental in reducing dolphin mortality associated with the international tuna purse seine fleet in the eastern tropical Pacific Ocean from 400,000 in 1972 to 25,000 in 1991, in part by encouraging bilateral agreements requiring 100 percent observer coverage on all vessels capable of setting purse seine nets in the eastern tropical Pacific Ocean; and

"Whereas, All United States tuna processors in 1990 voluntarily stopped purchasing any tuna or tuna products caught in association with dolphins in the eastern tropical Pacific Ocean or by drift nets anywhere in the world, and this action has led the federal government to set forth labeling standards for "dolphin safe" tuna products; and

"Whereas, A multinational agreement, based on the United States Marine Mammal Protection Act, is the optimum method to ensure worldwide dolphin protection; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly*, That the Legislature respectfully memorializes the Congress and the President of the United States to amend the Marine Mammal Protection Act to prohibit the importation of tuna caught by nations which do not have 100-percent Inter-America Tropical Tuna Committee (ITTC) certified observer coverage on vessels capable of using large-scale purse seines; and be it further

"*Resolved*, That the California Legislature memorializes the Congress and the President of the United States to enact legislation to immediately require the Secretary of State to enter into negotiations with all foreign nations fishing in, and importing fish caught in, the eastern tropical Pacific Ocean in order to reach a multinational agreement coordinated by the ITTC, or similar international entity, to supersede the General Agreement on Trades and Tariffs, and to govern the worldwide fishing of tuna and which will do all of the following:

"(a) Require a worldwide ban on the use of large-scale drift nets.

"(b) Require 100-percent Inter-America Tropical Tuna Commission certified observer coverage on all vessels capable of using large-scale purse seine nets for the taking of tuna in the eastern tropical Pacific Ocean and all other oceans in association with dolphins in which tuna fishing occurs.

"(c) Prohibit the use of explosives to separate tuna from dolphins.

"(d) Prohibit the use of purse seine sets at night to harvest tuna.

"(e) Limit the incidental take of marine mammals per vessel in an amount not to exceed the 1991 average incidental take of marine mammal per United States vessel.

"(f) Require a financial commitment from all tuna fishing nations for funding research and development of alternative fishing technologies which reduce, with the goal of zero, dolphin mortality associated with the harvesting of tuna; and be it further

"*Resolved*, That the California Legislature respectfully memorializes the Congress and the President of the United States to authorize the appropriation of funds in the 1992–93 fiscal year in the amount of five million dollars ($5,000,000) for the research and development of alternative fishing technologies which electronically or otherwise locate tuna not associating with dolphins and make the practice of setting nets on dolphins obsolete; and be it further

"*Resolved*, That the Secretary of the Senate transmit copies of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Secretary of Commerce, to the Chairperson of the National Marine Fisheries Service, to the Chairpersons of the Senate Committees on Commerce and State, to the Chairperson of the House of Representatives Committee on Merchant Marine and Fisheries, and to the Chairperson of the House of Representatives Committee on Energy and Commerce."

POM-499. Joint resolution adopted by the Legislature of the State of California; to the Committee on Commerce, Science, and Transportation:

"SENATE JOINT RESOLUTION NO. 39

"Whereas, The United States Clean Air Act of 1990, the United States Intermodal Surface Transportation Efficiency Act of 1991, the California Transportation Blueprint for the 21st century, and other state and federal policies, individually and collectively, emphasize the importance of public transportation as an alternative to growing numbers of single-occupant private vehicles and their adverse effect on air quality; and

"Whereas, The United States Department of Transportation requires the state to enforce a maximum vehicle axle weight limit established by the Federal-Aid Highway Act of 1956, and any failure by a state to adequately enforce vehicle axle weight limits may result in a reduction of federal funds authorized for allocation to the state; and

"Whereas, The State of California has enacted statutes which establish a maximum vehicle axle weight for trucks and passenger buses to comply with federal law and to prevent premature deterioration of highway pavement and structures; and

"Whereas, The Federal Transit Administration approves the design of public transit buses that are purchased with federal financial assistance, including safety ratings for vehicle axles and for gross weight of the vehicle and passengers; and

"Whereas, There are two applicable federal standards, one pertaining to the maximum weight for vehicle axles and the other pertaining to the design and safety weight limits for federally funded transit vehicles; and

"Whereas, Public transit buses currently offered by domestic manufacturers and approved by the Federal Transit Administration, when laden with required operational and safety equipment and a full load of passengers, will be in violation of both the federal and California statutes limiting the weight on rear axles; and

"Whereas, It is a common practice for public transit operators in California and throughout the nation to carry on busy routes full loads of seated and standing passengers within design and safety weight limits; and

"Whereas, The California Highway Patrol has commenced enforcement of the maximum vehicle axle weight limits for public transit buses carrying full passenger loads and has, in some cases, required passengers to get off crowded and heavily loaded buses, necessitating those passengers to wait for another bus; and

"Whereas, Achieving efficiency in transit service means that buses must operate at the highest possible passenger load, and California law penalizes, by loss of state transit assistance funds and Transportation Development Act funds, any operator that does not meet operating efficiency standards based upon the total operating cost per revenue vehicle hour and minimum recovery of operating costs through the farebox; and

"Whereas, In order to comply with maximum vehicle axle weight limits, public transit operators in California and throughout the nation would be required to operate additional buses and incur higher costs without carrying any additional passengers; and

"Whereas, Public transit operators in California are currently unable to comply with maximum axle weight limit laws without incurring substantial additional operating costs and violating state efficiency and farebox recovery standards; and

"Whereas, The protection of passengers, the preservation of highway pavement, and the safeguard of public funds through efficient transit operation are each of important public concern; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly*, That state and federal standards and policies should encourage the availably and operation of safe and efficient public transportation to meet mobility and air quality goals; and be it further

"*Resolved*, That the Legislature of the State of California respectfully requests the Congress of the United States and the United States Department of Transportation to address the disparity between vehicle axle weight limit standards and the design and safety weight limits for federally funded transit vehicles, and to resolve the weight limit issues for passenger buses so public transit operators can continue to serve the maximum number of passengers, in an economically efficient manner, without jeopardizing passenger safety or the integrity of road highway systems; and be it further

"*Resolved*, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the United States Secretary of Transportation."

POM-500. Joint resolution adopted by the Legislature of the State of California; to the Committee on Commerce, Science, and Transportation:

"SENATE JOINT RESOLUTION NO. 44

"Whereas, A 1978 study by the Department of Transportation, as required by Chapter 954 of the Statutes of 1976, determined that unmarked utility power lines constitute a hazard to aircraft, especially helicopters, resulting in accidents that are commonly known as wirestrikes; and

"Whereas, According to the National Transportation Safety Board, between 1985 and 1990, there were 71 helicopter accidents due to wirestrikes, and these accidents resulted in 35 deaths and 27 serious injuries; and

"Whereas, Five people were killed while investigating an oil spill in a January 11, 1992, wirestrike accident over the Carquinez Strait in the San Francisco Bay Area in the same location where two persons were killed in a 1974 wirestrike accident; and

"Whereas, Public safety dictates the need for helicopters to operate at low altitudes in areas with many aerial wires for investigations, emergency rescues, fire fighting, law enforcement, and other activities; and

"Whereas, The successful performance of these public safety missions is dependent on a safe environment for the helicopter, and a safe environment requires the distinct marking of wires; and

"Whereas, Much of this essential helicopter work is done over terrain and in visibility conditions that tend to mask wires; and

"Whereas, The location of a wire, not just its height or length of span, should also be considered in determining a hazard; and

"Whereas, The Federal Aviation Administration (FAA) is responsible for operation of the air traffic and airways service system, regulation of aviation safety and security, provision of technological assistance to airports, and formulation and coordination of national and international aviation-related policy; and

"Whereas, The FAA developed guidelines on obstruction marking and lighting, entitled "Objects Affecting Navigable Airspace," in Part 77 of the Federal Aviation Regulations in 1965, and these guidelines have not been revised since 1972; and

"Whereas, New technology, such as microwave towers, has been introduced since 1972, and the regulations regarding obstruction marking and lighting are seriously outdated; now, therefore, be it

"*Resolved, by the Senate and Assembly of the State of California, jointly*, That the Legislature of the State of California hereby memorializes the Federal Aviation Administration to update Part 77 of the Federal Aviation Regulations, relating to objects affecting navigable airspace, especially with regard to the prevention of wirestrike accidents; and be it further

"*Resolved*, That the FAA use the knowledge and expertise of the helicopter pilot community and utilities to immediately identify and mark specific locations that pose a danger to pilots; and be further

"*Resolved*, That the FAA conduct research, and make recommendations, on new safety technologies that could be used to avert wirestrike accidents; and be it further

"*Resolved*, That the FAA distribute and explain these guidelines and findings to the helicopter pilot community, to state and local governments, and to utility companies that construct or alter power lines; and be it further

"*Resolved*, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, to the Secretary of the United States Department of Transportation, to the Administrator of the Federal Aviation Administration, and to each Senator and Representative from California in the Congress of the United States."

POM-501. Joint resolution adopted by the Legislature of the State of California; to the Committee on Commerce, Science, and Transportation:

SENATE JOINT RESOLUTION NO. 53

"Whereas, United States products and technology are facing strong competition in the global marketplace thereby increasing the importance of innovation in maintaining and enhancing the competitiveness of American businesses worldwide; and

"Whereas, One of the most important aspects of product and technology development and advancement is testing; and

"Whereas, A well-structured testing program produces high quality, reliable, and competitive products and technology in areas including aeropropulsion, energy, environmental and waste management, natural hazards, and building safety construction; and

"Whereas, There is currently no large scale multipurpose multiagency testing facility in the United States committed to product development and demonstration; and

"Whereas, There has been relatively little comprehensive testing in the United States of the capacity of buildings and infrastructures to withstand severe environmental challenges including earthquakes; and

"Whereas, To best achieve cost savings, there should be a large scale centralized testing center with the equipment and facilities to test products and technology in a wide range of industries and product lines; and

"Whereas, The siting of a National Testing Center will require a suitable location with adequate infrastructure and support services, proximity to industry, business, transportation, and universities, a large accessible labor pool, a cadre of experienced personnel with demonstrated capabilities in product testing, and a commitment of resources from the national, state and local governments; and

"Whereas, The State of California would particularly benefit from the location of a National Testing Center within its boundaries because of its unique natural hazards, its acute environmental issues, the burden placed on its transportation system, its singular energy needs, its limited water resources, its highly advanced and specialized industries, and its need to transform its defense industrial base; and

"Whereas, A number of locations in the State of California amply satisfy all of the foregoing requirements; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature respectfully memorializes the Congress of the United States to establish a National Testing Center located in the State of California; and be it further

"*Resolved*, That the Secretary of the Senate transmit a copy of this resolution to the President and Vice President of the United States, the Director of the National Institute of Standards and Technology, the Secretary of Transportation, the Secretary of Energy, the Administrator of the National Aeronautics and Space Administration, the Director of the Federal Emergency Management Agency, the Director of the National Science Foundation, the Director of the United States Geological Survey, the Administrator of the Environmental Protection Agency, the Director of the Office of Technology Assessment, the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Governor of the State of California."

POM-502. Joint resolution adopted by the Legislature of the State of California; to the Committee on Environment and Public Works:

"SENATE JOINT RESOLUTION NO. 43

"Whereas, Airports and highways in California, which are in part supported by federal tax money, are experiencing severe and increasing traffic congestion; and

"Whereas, The southern California association of Governments has predicted an increase in air traffic of 50 percent over the next 20 years in the southern California area; and

"Whereas, The San Francisco Airports Commission anticipates an increase in air travel passengers of 71 percent by 2006, which would result in an addition 329 flights per day, together with the additional noise from those 329 aircraft, over the San Francisco Bay area; and

"Whereas, Nearly 40 percent of commercial air carrier flights from the San Francisco International Airport go directly to the Los Angeles area; and

"Whereas, The Department of Transportation of the State of California has predicted that vehicle miles traveled on state highways will increase by 52 percent over the next 20 years; and

"Whereas, Numerous studies have indicated that the development of high speed train systems could relieve both air and highway traffic congestion; and

"Whereas, The National Research Council recently released a report concluding that the benefits of high speed train systems may justify financial support from federal highway and airport trust funds; and

"Whereas, The Commission on California State Government Organization and Economy, commonly known as the Little Hoover Commission, has recommended that the California Legislature support the use of federal highway trust funds for the development of a high speed passenger train system in California; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly*, That the Legislature of the State of California respectfully memorializes the President and Congress of the United States to support and enact legislation to authorize federal highway trust funds to be used for the development of a high speed passenger train system in California; and be it further

"*Resolved*, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the United States Secretary of Transportation."

POM-503. Resolution adopted by the General Assembly of the State of New Jersey; to the Committee on Finance:

"ASSEMBLY RESOLUTION NO. 83

"Whereas, The Omnibus Budget Reconciliation Act of 1990 requires state and local employees who are earning in excess of $100 per year, and who are neither covered by a state and local retirement system nor a voluntary agreement, to pay Social Security withholding taxes; and

"Whereas, The Omnibus Budget Reconciliation Act of 1990 makes election workers who earn in excess of $100 per year liable for Social Security withholding taxes; and

"Whereas, A majority of election workers in New Jersey are retired senior citizens who participate in the operation of general elections more out of civic duty than as a result of the remuneration provided; and

"Whereas, The effect of deducting Social Security taxes from the already low pay of election workers has further depleted the critically deficient number of election workers, as well as created a time consuming and expensive burden on local boards of election; and

"Whereas, Given the effect of Social Security tax extension has had and will continue to have on the recruitment and retention of election workers, and considering the small amount of revenue this tax extension derives, it is incumbent on the Congress to take steps to ensure election workers' continued participation in the democratic process by increasing the Social Security tax exemption for election workers; now, therefore, be it

"*Resolved by the General Assembly of the State of New Jersey:*

"1. The Congress of the United States is respectfully memorialized to increase the Social Security tax exemption for election workers from the current $100 per year to $1,000 per year, as contained in the Older Americans Act Amendments presently before the Congress.

"2. Duly authenticated copies of this resolution shall be transmitted to the presiding officers of the United States Senate and House of Representatives and to every member of Congress from the State of New Jersey."

POM-504. Joint resolution adopted by the Legislature of the State of California; to the Committee on Finance:

"SENATE JOINT RESOLUTION NO. 37

"Whereas, The limits on resources for the purposes of determining eligibility for benefits under the federal Supplemental Security Income program, two thousand dollars ($2,000) for an individual recipient, and three thousand dollars ($3,000) for a married couple, do not reflect adequate consideration of typical and sudden expenses, including, but not limited to, home maintenance and taxes, automotive insurance, maintenance, or replacement, and appliance maintenance or replacement; and

"Whereas, A senior citizen with income exceeding allowable resources must spend down or bury savings; and

"Whereas, Noncompliance notices based on computations of minor monthly or intermittent fluctuations in income create unnecessary administrative costs to government agencies, and hardship to recipients of federal Supplemental Security Income program benefit; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly*, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to enact legislation to adjust the Supplemental Security Income program resource limits to five thousand dollars ($5,000) for individual recipients and to seven thousand five hundred dollars ($7,500) for married couples, and which would require the computations used to determine compliance with those limits shall be based on the average amount of funds in a recipient's applicable accounts over a significant period of time, such as one year; and be it further

"*Resolved*, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-505. Joint resolution adopted by the Legislature of the State of Alaska; to the Committee on Finance:

"JOINT RESOLUTION

"Whereas the past year's fluctuations in prices and supply patterns for oil once again demonstrate that the access of the United States to this vital strategic resource is vulnerable to concerted political action by governments in the Middle East; and

"Whereas, in 1990, the reliance of the United States on imported oil increased to 47 percent, the highest percentage in nine years, and with the demand in the United States for oil increasing at an average rate of three percent each year for the past five years, this reliance on imported oil will increase because the domestic oil exploration and production capability of the United States has seriously eroded; and

"Whereas, until 1986, the United States had successfully increased its import of petroleum products from its neighbors in the Western Hemisphere and decreased its imports from the volatile Middle East, but this positive trend has been reversed, and Middle East imports of crude oil to the United States continue to increase; and

"Whereas the energy crisis of the 1970's taught the United States that manipulation of the world oil market by sovereign governments can run counter to the interests of the geographical neighbors that, like Mexico and Canada, share similar forms of democratic government; and

"Whereas, since the United States will need to rely on foreign sources of oil for the foreseeable future and the oil situations and long-term energy interests of Venezuela and the United States are complementary, the United States and Venezuela should continue to be important commercial partners for many years under fair conditions of trade; and

"Whereas Canada, Mexico, Venezuela, and the United States are long-standing energy trading partners who share a history of working together in successful oil and gas exploration and development and who share the fluctuations of a rapidly changing energy environment; and

"Whereas Canada, Mexico, Venezuela, and the United States share a common vision of the future in which a sound energy industry in each of the countries is able to provide the energy security needed to ensure the health and vitality of the entire economy of the American nations; and

"Whereas the governments of the United States, Canada, Mexico, and Venezuela are striving to improve the overall well-being of all of their citizens while providing rich opportunities for individual freedom and growth, and it is natural for their representatives to explore options that will increase the energy security of the Western Hemisphere; and

"Whereas the Energy Council, of which Alaska is a member, actively supports and promotes the concept of an energy alliance among the nations of the Western Hemisphere;

"*Be it resolved*, that in recognition of the long-standing trading history with Canada, Mexico, and Venezuela and, in order to plan for increased security of the people and economies of the United States, Canada, Mexico, and Venezuela, the Alaska State Legislature urges the President of the United States and the United States Congress to engage in formal talks with the governments of Canada, Mexico, and Venezuela, as well as with other interested American countries, to develop a Pan-American energy alliance to provide reciprocal energy security measures for the nations of the Western Hemisphere; and be it

"*Further resolved*, that the Alaska State Legislature supports the efforts and work of the Energy Council to promote a Pan-American energy alliance and urges Governor Hickel and the current administration of the state to participate in these efforts.

"Copies of this resolution shall be sent to the Honorable George Bush, President of the United States; the Honorable Dan Quayle, Vice-President of the United States and President of the U.S. Senate; the Honorable Robert C. Byrd, President Pro Tempore of the U.S. Senate; the Honorable George J. Mitchell, Majority Leader of the U.S. Senate; the Honorable Thomas S. Foley, Speaker of the U.S. House of Representatives; to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress; and to Lori Cameron, Executive Director of the Energy Council."

POM-506. Joint resolution adopted by the Legislature of the State of California; to the Committee on Foreign Relations:

ASSEMBLY JOINT RESOLUTION NO. 58

"Whereas, The United States and Mexico have long-held close economic ties that serve to strengthen their economic positions within an ever-more competitive international system; and

"Whereas, Canada, the United States, and Mexico have entered into historic discussions to negotiate a North American Free Trade Agreement (NAFTA); and

"Whereas, The California-Mexico border region is in severe need of infrastructure development, including affordable housing, roads, sewage treatment plants, water reclamation facilities, telecommunications facilities, and deep water ports; and

"Whereas, Economic recession in the United States and 10 years of economic stagnation in Mexico has caused a lack of funds to pay for these infrastructure projects; and

"Whereas, The United States, particularly California and the states of the Southwest, would be benefited by infrastructure development in the border region; and

"Whereas, The proposed NAFTA is expected to increase the need for infrastructure because of increased trade opportunities; and

"Whereas, The California-Mexico relationship is expected to expand whether or not a free trade agreement is ratified; and

"Whereas, The creation of a North American Development Bank and Adjustment Fund would facilitate increased investment in targeted sectors of the Mexican economy and structural adjustment in Canada, the United States, and Mexico; and

"Whereas, This institution would serve two functions: (1) as a regional investment bank, it would lend funds to finance long-term development projects; and (2) as an adjustment fund, it would provide short- to medium-term assistance to facilitate the reallocation of resources required to generate productivity increases in the region; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly*, That the Legislature of the State of California hereby respectfully memorializes the President and the Congress of the United States to enter into an agreement for the creation of a North American Development Bank and Adjustment Fund; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, each Senator and Representative in the Congress of the United States, the President of Mexico, the members of the Mexican Congress, the United States Trade Representative, and the Governors of California, Nevada, Arizona, New Mexico, and Texas."

POM-507. Joint resolution adopted by the Legislature of the State of California; to the Committee on Foreign Relations:

"SENATE JOINT RESOLUTION NO. 58

"Whereas, The Republic of Bosnia-Herzegovina is internationally recognized as an independent state and is a member of the United Nations, and a participant in the Conference on Security and Cooperation in Europe; and

"Whereas, Attempts to bring about a permanent cessation of hostilities precipitated by the warring factions in the former Yugoslavia states in Bosnia-Herzegovina through negotiations have repeatedly failed; and

"Whereas, Horrible atrocities are being committed by various forces involved in this conflict against the civilian population, including the practice of "ethnic-cleansing"; and

"Whereas, The United States and other Contracting Parties to the International Convention of the Prevention and Punishment of the Crime of Genocide may, under Article VIII, "call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide" or any of the other "Acts Constituting Genocide" enumerated in Article III; and

"Whereas, Officials of the International Committee of the Red Cross have been denied access to prison camps and internment camps throughout Bosnia-Herzegovina and throughout other republics of the former Yugoslavia even though these officials are entitled access to these camps under Article 143 of the 1949 Geneva Convention; and

"Whereas, United Nations and Red Cross relief convoys carrying much needed supplies of food and medicine are being repeatedly blocked and in some cases have been attacked; and

"Whereas, The Security Council of the United Nations voted unanimously to dispatch additional forces to reopen Sarajevo's airport, and the delivery of supplies of humanitarian assistance to the city's beleaguered population is taking place under the protection of these forces but with great difficulty; and

"Whereas, The Security Council of the United Nations also endorsed the cease-fire plan negotiated by the European Community Envoy that would place all heavy weapons in the possession of factions in Bosnia-Herzegovina under international supervision; and

"Whereas, The Government of Bosnia-Herzegovina has issued urgent appeals for immediate assistance from the international community; and

"Whereas, The situation in Sarajevo and elsewhere in Bosnia-Herzegovina has reached a critical point requiring immediate and decisive action by the international community; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly*, That the Legislature of the State of California respectfully memorialize the President and the Congress of the United States to immediately call for an emergency meeting of the United Nations Security Council in order to authorize, under Article 42 of the Charter of the United Nations, all necessary means, including the use of multilateral military force under a Security Council mandate, giving particular consideration to the possibility of demonstrations of force, to give effect to Security Council decisions to ensure the provision of humanitarian relief in Bosnia-Herzegovina and to gain access for United Nations and International Red Cross personnel to refugee and prisoner-of-war camps in the former Yugoslavia; and be it further

"*Resolved*, That, during the meeting, the Security Council of the United Nations should do all of the following:

"(a) Develop the means by which to implement the July 17, 1992, cease fire plan sponsored by the United Nations, which includes placing heavy weapons belonging to all factions in Bosnia-Herzegovina under United Nations supervision; and

"(b) Review the effects on Bosnia-Herzegovina of the arms embargo imposed on all states in the former Yugoslavia pursuant to United Nations Security Council Resolution 713 and determine whether the termination or suspension of the application of that resolution to Bosnia-Herzegovina could result in increased security for the civilian population of that country; and

"(c) Convene a tribunal to investigate allegations of war crimes and crimes against humanity committed within the territory of the former Yugoslavia and to accumulate evidence, charge, and prepare the basis for trying individuals believed to have committed such crimes; and be it further

"*Resolved*, That the California Legislature resolves all of the following:

"(a) The California Legislature strongly supports the measures announced by the President on August 6, 1992; and

"(b) No United States military personnel shall be introduced into combat or potential combat situations without clearly defined objectives and sufficient resources to achieve those objectives; and

"(c) The California Legislature supports the use of American funds as may be necessary for United States participation in humanitarian relief and multilateral military force activities, pursuant to any mandates as may be adopted by the United Nations Security Council, consistent with the terms of this resolution; and be it further

"*Resolved*, That the Congress of the United States, when requested to do so by the President, should promptly consider authorization for any use of United States military forces pursuant to, and only pursuant to, the United Nations authorization described above; and be it further

"*Resolved*, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-508. Joint resolution adopted by the Legislature of the State of California; to the Committee on the Judiciary:

"SENATE JOINT RESOLUTION NO. 1

"Whereas, The First Congress of the United States of America at its First Session, in both houses by a constitutional majority of two-thirds thereof, adopted the following proposition to amend the Constitution of the United States of America in the following words, to wit:

"The Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring*, that the following Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution, viz.;

"Articles in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

"Article the second—No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened."; and

Whereas, This proposed amendment will be valid as part of the Constitution of the United States when ratified by the legislatures of three-fourths of the several states; and

Whereas, This proposed amendment has already been ratified by the legislatures of the following states: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly*, That this proposed amendment to the Constitution of the United States of America be and the same is hereby ratified by the Legislature of the State of California; and be it further

Resolved, That the Secretary of the Senate transmit certified copies of this resolution to the Archivist of the United States, Washington, D.C., the President of the United

States Senate, and the Speaker of the House of Representatives of the United States, with the request that it be printed in full in the CONGRESSIONAL RECORD."

POM–509. Joint resolution adopted by the Legislature of the State of California; to the Committee on the Judiciary:

"SENATE JOINT RESOLUTION NO. 56

"Whereas, The State of California has had a significant increase in crimes of violence and drug trafficking offenses committed with firearms; and

"Whereas, The State of California has significantly increased criminal penalties for the possession or use of firearms in crimes of violence and drug trafficking; and

"Whereas, The State of California is experiencing unparalleled fiscal problems which preclude even greater state efforts to prosecute and incarcerate crimes of violence and drug trafficking; and

"Whereas, At least 70 percent of the individuals who are in the state prison system could be prosecuted under federal law for their crimes; and

"Whereas, Since 1968, the federal Gun Control Act has provided a jurisdictional basis to prosecute individuals in federal court for crimes of violence and drug trafficking offenses committed with firearms; and

"Whereas, Notwithstanding the enactment of federal statutes since the enactment of the Gun Control Act of 1968, that impose heavy criminal penalties for persons who supply weapons knowing the weapons will be used in crimes of violence or drug trafficking, or individuals with serious criminal records who possess firearms, there has been a lack of federal prosecutorial effort to incarcerate dangerous criminals who are subject to the foregoing criminal penalties; and

"Whereas, The federal government has cut back on criminal justice assistance to cover state incarceration costs; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly*, That the Legislature of the State of California respectfully memorializes the President of the United States to direct the United States Department of Justice to prosecute under federal law all individuals who violate the Gun Control Act of 1968, as amended (P.L. 90–618), prohibiting, among other things:

"(a) The use of a firearm during, or in relation to, any crime of violence or drug trafficking crime.

"(b) Violations of the Armed Career Criminal Act of 1984.

"(c) Traveling with a firearm in interstate commerce with intent to commit a felony.

"(d) Supplying firearms to others knowing that they will be used in drug trafficking offenses or crimes of violence.

"(e) Knowingly supplying firearms to prohibited persons.

"(f) Trafficking in stolen or obliterated firearms; and be it further

"*Resolved*, That the Secretary of the Senate transmit copies of this resolution to the President and the Vice President of the United States, to the United States Attorney General, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM–510. Joint resolution adopted by the Legislature of the State of California; to the Committee on Labor and Human Resources:

"SENATE JOINT RESOLUTION NO. 55

"Whereas, Manufacturing firms in the United States need to maintain and enhance the quality of their products, the rate of their productivity, and the intensity of their competitiveness in order to face the tremendous economic challenges of the 1990's; and

"Whereas, California's 48,500 small and midsized firms, comprising more than 13 percent of those in the United States, need to upgrade their manufacturing capabilities, implement quality control methods, and improve workforce training in order to maintain and enhance their performance as intermediate supplies to larger firms and to continue to provide jobs; and

"Whereas, Today, there are more than 25 industrial extension programs in other states whose primary function is to help small and midsized businesses, particularly manufacturers, adopt new technologies; and

"Whereas, There is a critical need for California to develop initiatives and programs to advance its critical growth sectors in technology and to revitalize its basic manufacturing sectors, especially through assistance to small- and medium-sized companies; and

"Whereas, The Agricultural Experiment Station and Cooperative Extension Program administered by the University of California have long provided the link for individuals, families, and communities to benefit directly from university agricultural research in the application of new knowledge and research-based technologies to improve practice and productivity; and

"Whereas, The University of California has (1) unique resources in the fields of engineering, business, and management with programs and centers of expertise that aim to expand research frontiers and transfer technology to the private sector, (2) extension programs in business, engineering, and manufacturing, and (3) access to the advanced technologies and facilities of national laboratories; and

"Whereas, The California Community Colleges and the California State University campuses offer geographically accessible resources and opportunities for developing industrial engineering technology to the state's manufacturing community; and

"Whereas, A vehicle is needed to provide access by the manufacturing community to the expertise and resources of the University of California and other public institutions of higher education of the state in a uniform manner; and

"Whereas, Federal support for manufacturing and industrial expansion will increase as funds historically expended on defense programs are redirected to industrial development programs which will, in turn, lead to a national competition for state leveraged programs in manufacturing expansion; and

"Whereas, The University of California is proposing to establish a Manufacturing Extension Program by forming an active statewide network of outreach specialists to work closely with manufacturing firms to solve production problems, enhance quality and productivity, introduce new technology, and improve employee training; and

"Whereas, The University of California proposes to seek federal support for the Manufacturing Extension Program from funds reallocated from defense programs and other programs: Now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly*, That, in order to restore and maintain California's economic progress, to maintain and enhance the quality, productivity, and competitiveness of California's small and midsized manufacturing companies, and to permit those companies to compete effectively for federal support, the Legislature of the State of California endorses efforts to establish the Manufacturing Extension Program of the University of California; and be it further

"*Resolved*, That the Legislature of the State of California respectfully requests the President and Congress of the United States to support the effort of the University of California to establish a manufacturing extension program for purposes of restoring and maintaining California's economic progress, maintaining and enhancing the quality, productivity, and competitiveness of small and midsized manufacturing companies, enabling the manufacturing extension program to compete effectively for federal support, and permitting those companies to benefit accordingly; and be it further

"*Resolved*, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives of the United States, and to each Senator and Representative from California in the Congress of the United States."

POM–511. Joint resolution adopted by the Legislature of the State of California; to the Committee on Labor and Human Resources:

"SENATE JOINT RESOLUTION NO. 50

"Whereas, The preservation of human lives and the extinction of fires are two of the primary roles of the professional firefighter, and the ability to save human lives and fight fires has been made more difficult by the construction of highrise buildings which require firefighters to rely on fire service aerial devices to perform their jobs; and

"Whereas, The failure of fire service aerial devices used to fight fires has caused numerous fatalities and serious injuries to firefighters and the general public; and

"Whereas, Fire service aerial device failures are caused by poor engineering, manufacturing defects, loss of integrity because of use, poor maintenance, and operator error; and

"Whereas, The testing, inspection, and certification of all fire service aerial devices is urgently needed to protect the safety of firefighters and the general public from injuries and fatalities caused by the failure of fire service aerial devices; and

"Whereas, Federal occupational safety and health regulations governing safety factors for fire departments have not been significantly revised since 1980; now, therefore, be it

"*Resolved by the Senate and the Assembly of the State of California, jointly*, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to enact legislation that would require the Department of Labor to promulgate occupational safety and health regulations requiring the testing, inspection, and certification of fire service aerial devices on an annual basis; and be it further

"*Resolved*, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, to the Secretary of Labor, and to each Senator and Representative from California in the Congress of the United States."

POM–512. A joint resolution adopted by the Legislature of the State of California; to the Committee on Labor and Human Resources:

"SENATE JOINT RESOLUTION NO. 46

"Whereas, After the longest peacetime economic expansion in the U.S. history, the United States has fallen on economic hard times with the recession extending from months into years and Corporate America continuing to lay off thousands of workers; and

"Whereas, Defense spending soared in the 80's to record high levels; however, with the end of the Cold War, defense spending is now being reduced by billions in the 90's; and

"Whereas, The private sector cannot make a sufficient impact on unemployment because the demand for products and services is reduced during a recession; and

"Whereas, Congress authorized an Emergency Employment Act Program in 1971 that employed about 400,000 people until its termination in 1973; and

"Whereas, In 1977, Congress drastically expanded the existing modest Public Service Employment Program during a high unemployment period to fund 725,000 jobs and thousands of unemployed persons filled jobs that provided pay checks in an amount higher than their unemployment insurance benefit checks; and

"Whereas, In 1992 with persistently high unemployment, Congress could reinstate the Public Employment Program as authorized by the federal Emergency Employment Act of 1971 which could put thousands of people to work within a few weeks of its inception; and

"Whereas, Reinstatement of the jobs program could assist cities and counties, provide essential services by generating taxes, offsetting public assistance costs, and reducing the rapidly rising number of homeless people, and lend self-esteem and dignity to those jobless individuals; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California petition the President and the Congress of the United States to reinstate the Public Employment Program, as authorized by the federal Emergency Employment Act of 1971; and be it further

"*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-513. A joint resolution adopted by the Legislature of the State of California; to the Committee on Labor and Human Resources:

"SENATE JOINT RESOLUTION NO. 32

"Whereas, Every 12 minutes a woman dies of breast cancer in the United States; and

"Whereas, One in nine American women can expect to develop breast cancer in her lifetime, and it is estimated that breast cancer will take the lives of over 46,000 American women in 1992; and

"Whereas, In California, one in 10 women can expect to develop breast cancer in her lifetime, and it is estimated that breast cancer will take the lives of 4,695 women in California in 1992; and

"Whereas, The incidence rate in California is lower than the national average of 110 per 100,000, while, in some regions of this state, the incidence rate is as high as 124 per 100,000; and

"Whereas, Unless we take steps to reverse the trend, one in seven women could expect to develop breast cancer in her lifetime by the end of the decade; and

"Whereas, Despite advancements in detection and treatment methods, the incidence of breast cancer is on the rise; and

"Whereas, Breast cancer is increasingly being diagnosed among younger women for whom mammography screening is not an effective diagnostic tool; and

"Whereas, Despite 20 years of research, experts still do not understand the cause of breast cancer, nor do they know how to prevent breast cancer; and

"Whereas, According to the National Cancer Institute, the United States lost ground during the 1980's in federal cancer research funding, experiencing an overall reduction of 6 percent in constant dollars, with cuts as high as 34 percent in some cancer research programs; and

"Whereas, Although the incidence rate of breast cancer is lower among African-American women as compared to Anglo-American women, the death rate among African-American women is higher; and

"Whereas, Latino, Asian, and Pacific Islander women face significant cultural barriers to adequate breast care and cancer prevention efforts; and

"Whereas, The survival rate in the first five years for women diagnosed in the earliest stages of breast cancer is over 90 percent, but, the rate of survival drops sharply every five years thereafter; and

"Whereas, Without adequate health care, the 2.7 million uninsured women in California face the harsh risk of discovering breast cancer only in the more advanced and deadly stages of development; and

"Whereas, While mammography screening plays a vital role in early diagnosis, it by no means displaces or in any way mitigates the vital need for research into the prevention and cure of breast cancer; and

"Whereas, In 1990, only 5 percent of all federal cancer research dollars were earmarked for breast cancer research; and

"Whereas, Increased federal and state commitments to breast cancer prevention and cure will, in the long run, not only save millions of women's lives but also reduce the economic costs associated with the disease; and

"Whereas, The recent tide of public activism focusing attention on breast cancer and the need to accelerate the investigation into the cause, cure, and prevention of disease must be matched by state and federal commitments to these ends; and

"Whereas, The Legislature of the State of California pledges to enact state legislation in response to this epidemic that will advance the cause of finding a cure and developing cost-effective prevention methods; and

"Whereas, The Legislature of the State of California urges the executive branch of the State of California to also recognize breast cancer as an epidemic and to take all appropriate steps and administrative actions to advance the causes of finding a cure and effective prevention measures; and

"Whereas, The Legislature of the State of California supports congressional intent that the initiatives undertaken in response to this national health emergency not replace current expenditures for breast cancer research activities; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California, in order to give breast cancer prevention and cure the research priority they deserve, a priority that will save millions of lives and reduce health care costs, declares breast cancer a disease of epidemic proportions in both California and the United States and urges that state and federal governments recognize it as a public health emergency; and be it further

"*Resolved,* That the Legislature of the State of California strongly urges the United States Congress to enact legislation recommending that the Secretary of Health and Human Services declare breast cancer a public health emergency for the purpose of accelerating investigation into the cause, treatment, and prevention of the cause of the emergency, and urge the President of the United States to sign the legislation into law; and be it further

"*Resolved,* That the Secretary of the Senate transmit copies of this resolution to each Member of the California Senate and the California Assembly, to the Governor of the State of California, to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the President pro Tempore of the United States Senate, to each Senator and Representative from California in the Congress of the United States, to the Chief Clerk of the United States House of Representatives, to the Secretary of the United States Senate, and to the presiding officer of each of the other states in the Union."

POM-514. A joint resolution adopted by the Legislature of the State of California; to the Committee on Labor and Human Resources:

"ASSEMBLY JOINT RESOLUTION NO. 43

"Whereas, Mergers, takeovers, and buyouts in the business community are current and ongoing; and

"Whereas, Those mergers, takeovers, and buyouts have created severe disturbances in the lives and welfare of those who receive retirement pensions and health benefits from the involved companies; and

"Whereas, The capture of pension fund assets, including health benefit funds, by those business entities has caused erosion of pension plan members' incomes and the diminution or outright loss of medical coverage; and

"Whereas, Both pensions and medical coverage have been honorably earned by years of loyal service; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly,* That the Legislature of the State of California hereby respectfully memorializes the President and the Congress of the United States to enact appropriate legislation to provide guidelines, rules, and restrictions to govern and protect pension fund assets, including health benefit funds, against inappropriate capture and use, other than for the benefit and well-being of beneficiaries and survivors, and to protect the pension plan incomes and medical coverage of retirees, beneficiaries, and survivors, which have been bargained for in good faith during working years, from erosion or abbreviation; and be it further

"*Resolved,* That the Chief Clerk of the Assembly transmit copies of this measure to the President and Vice President of the United States, the Speaker of the House of Representatives, the Chairpersons of the House and Senate Committees on Aging, and to each Senator and Representative from California in the Congress of the United States."

POM-515. A joint resolution adopted by the Legislature of the State of California; to the Committee on Veterans' Affairs:

"SENATE JOINT RESOLUTION NO. 31

"Whereas, California is home to over 2.8 million men and women who unselfishly served in the American Armed Services during times of conflict and war; and

"Whereas, Over 400,000 California veterans depend on the Martinez Veterans' Hospital for their general medical services, surgical, psychiatric, and ambulatory care; and

"Whereas, The Martinez Veterans' Hospital serves California veterans from as far north as the Oregon border, and as far east as the Nevada state line; and

"Whereas, The current travel time for veterans living in the far northern Sacramento Valley is over three hours to the Martinez Veterans' Hospital; and

"Whereas, On August 9, 1991, the federal Department of Veterans Affairs announced plans to close the Martinez Veterans' Hospital within 180 days; and

"Whereas, Following the hospital's closure, the nearest facility available to northern California veterans will be located in the City of Palo Alto, well over four hours from the far reaching portions of the Sacramento Valley; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly*, That the Legislature of the State of California proclaims that closure of the Martinez Veterans' Hospital seriously threatens the delivery of needed health care services to thousands of California veterans; and be it further

"*Resolved*, That the Legislature of the State of California respectively memorializes the President and the Congress of the United States of America to take emergency action to secure adequate funding to ensure that California veterans will not suffer a loss in quantitative or qualitative medical care as a result of the Martinez closure; and be it further

"*Resolved*, That the Legislature of the State of California respectively memorializes the President of the United States of America to implement procedures through the federal Department of Veterans Affairs to permit veterans currently receiving medical care at the Martinez facility to receive the needed medical care at local health facilities within their own communities, until a time in which a replacement facility is completed; and be it further

"*Resolved*, That the Legislature of the State of California respectively memorializes the President and the Congress of the United States of America to enact and execute a development schedule for the construction and completion of a replacement facility of sufficient size and capability to provide the highest quality medical care for the increasing population of northern California veterans in need of such care; and be it further

"*Resolved*, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, and each Senator and Representative from California in the Congress of the United States."

POM-516. A resolution adopted by the City Council of the City of Seattle expressing the city's deep concern about the need for a national policy of preserving ancient forests in the Pacific Northwest, including the forests of eastern and western Washington and Oregon, northwestern California, and the Sierra Nevada of California; to the Committee on Energy and Natural Resources.

ADDITIONAL STATEMENTS

MORTON HALPERIN—ABLE DEFENDER OF THE CONSTITUTION

• Mr. KENNEDY. Mr. President, earlier this year, Dr. Morton K. Halperin announced that he was stepping down as director of the Washington office of the American Civil Liberties Union to accept an appointment as a senior associate at the Carnegie Endowment for International Peace. On September 30, Senators and Representatives joined many of his friends at a reception to pay tribute to his outstanding work for more than a decade in preserving and protecting the Constitution and the rights and liberties of the American people.

Mort Halperin's wise counsel has been enormously helpful on a broad variety of legislative initiatives to make America a land of justice for all. He played an indispensable role in the enactment of the Grove City College Act in 1988 and the Civil Rights Act of 1991. On every civil liberties issue in the past decade, Mort has been there. Millions of Americans are better off today because of his work at the ACLU.

Mort knows how to write good laws—and how to stop bad laws. Some of his most impressive contributions have come in making a strong case against unwise and unfair proposals, and persuading Congress to reject them. In so many ways, he has been the 101st Senator on civil liberties.

When the Supreme Court first struck down the Texas flagburning law, only a handful of elected officials defended the Court's action at first. But through Mort's tireless work and the outstanding effort of the ACLU, the misguided attempt to amend the first amendment was defeated.

Under the guise of fighting crime, the Reagan and Bush administrations have waged a 12-year battle to subvert civil liberties, repeal the exclusionary rule, and deny habeas corpus. But Congress has held those efforts at bay, and the leadership of Mort Halperin and the ACLU was a significant factor in that result.

Prior to his appointment at the ACLU, Mort had a distinguished career in national security. After receiving his doctorate from Yale at the age of 23, he taught at Harvard, before serving in the Defense Department and on the National Security Council from 1966 through 1969. He is the author of more than a dozen books.

Now, as Mort moves from the ACLU to the Carnegie Endowment, I expect that we will be seeing a little less of him at the Senate Judiciary Committee, but a lot more of him at the Senate Foreign Relations Committee. I wish him every success, and I am proud to take this opportunity to commend him for all he has done to make America a better and fairer land.•

RURAL HEALTH CARE CONCERNS

• Mr. GORTON. Mr. President, as we face the health care crisis in America, it is essential that we include the medical and health care concerns of our rural areas. In Washington State alone, over 33 percent of the population resides in rural areas. These people deserve access to the best possible health care. One step I have taken to address this need is to cosponsor S. 1125, the Rural Primary Care Act, a bill that provides incentives to attract more health care professionals to rural America.

Recently, I contacted people in Washington's rural communities to ask for their opinion on S. 1125 and to solicit their advice on different ways to attract and encourage health care professionals to practice in their areas. Most respondents supported the efforts and incentives offered by S. 1125. However, they voiced their concern that health care professionals, in spite of the incentives, may choose to practice in urban areas where they would be virtually assured that their practice will thrive.

I have listened to these concerns and recognize that while S. 1125 is a positive step in the right direction, it is only one of many that need to be taken in order to assure the best possible health care at reasonable prices to everyone in America, including rural areas. In the upcoming session I will work diligently to address the health care crisis in America. I am committed to building on the strong points of existing plans, such as S. 1125, and to introducing or supporting legislation that creates a comprehensive health care package for the American people.

To achieve real solutions we must work together. And, with the help of constituent input, I look forward to representing Washington State's particular needs as we address this issue.•

THE YEAR OF THE WOMAN

• Mr. SARBANES. Mr. President, it is indeed fitting that 1992 has been called the Year of the Woman. Women now constitute 52 percent, or a clear majority, of our Nation's citizens who are eligible to vote. While, regrettably, voter turnout rates have declined for both women and men since the 1960's, since 1980, women have voted at a higher rate than men, reversing a pattern which had existed for much of the time since women were extended the vote in 1920.

I am very pleased to note that this year a record number of women are running for congressional seats, with 11 women candidates for the U.S. Senate and 106 women candidates for the House of Representatives. As you know, only 3 percent of current Senate seats are held by women and only 7 percent of House seats. This is in stark contrast to not only many of the industrial countries of the West, but also to nations of the Third World. For example, the percentage of women in the national parliament of Norway is 34.4 percent, in Sweden 38.1 percent, Finland 31.5 percent, Italy 12.9 percent, The Netherlands 20 percent, Tanzania 10.7 percent, and Mexico 14.7 percent. Nations as diverse as India, Pakistan, Iceland, England, the Philippines, Sri Lanka, and Norway have had women as heads of state. The increased political activity of women in our country is long overdue and is a reflection of the transformation of women in the electorate. My own State of Maryland serves as a good example of this transformation, and we take great pride in having Senator BARBARA MIKULSKI as one of only three women currently serving in the U.S. Senate.

Mr. President, the need for more women in elected office at all levels is especially apparent when you consider the enormous obstacles encountered by those of us who have attempted during the 102d Congress to enact legislation of vital importance to women. Recently, I joined with a number of my colleagues in efforts to increase funding for breast cancer research during Senate floor consideration of the fiscal year 1993 appropriations bill for the Department of Labor, Health and Human Services, and Education. The breast cancer rate in this country has increased dramatically, with 1 in 9 women today expected to develop breast cancer in her lifetime, as opposed to 1 in 20 in 1961. Despite this, we were unable to pass several measures which would have increased funding for breast cancer research. I am, however, pleased that related legislation that I joined in sponsoring, the Mammography Quality Standards Act, passed the Senate on October 9, 1992.

I am deeply concerned that several other measures of vital importance to women have been prevented from moving forward in the 102d Congress because of opposition from the White House and its allies in the Congress. These measures include the Violence Against Women Act, which I joined in cosponsoring, and the reauthorization of the National Institutes of Health—legislation to reauthorize and strengthen research programs on breast cancer, cancers of the reproductive system, osteoporosis, and other diseases. This measure also includes provisions to ensure that women and minorities are included in appropriate clinical research conducted by NIH.

It is especially disappointing that President Bush chose once again to veto the Family and Medical Leave Act. This legislation, which would provide for 12 weeks of unpaid leave for employees to care for a seriously ill child, spouse, or parent, or in the event of the birth or adoption of a child, is long overdue—our Nation is the only industrialized country without a national family leave policy. In fact, almost every country in the world has a national parental leave requirement, including our most successful economic competitors in Western Europe and Asia, and these nations typically have requirements which go beyond those of the legislation we have considered this Congress with respect to leave duration and income replacement. For example, in Europe, 5 to 6 months of paid leave is the norm for new mothers, and even Japan, which is often behind European nations in terms of labor standards, provides 12 to 14 weeks of partially paid leave with full job guarantees. I strongly supported the Senate's successful effort to override the veto of the Family and Medical Leave Act and deeply regret that the House of Representatives subsequently failed to override the veto on September 30, 1992.

The Congress has been blocked repeatedly from moving forward on legislation to ensure women of their reproductive rights. I joined with many of my colleagues in efforts to overturn regulations issued in 1988 by the Department of Health and Human Services which prohibit workers at family planning clinics from counseling women facing unintended pregnancies, on abortion. The legislation I joined in introducing would require family planning grantees to provide pregnant women, on request, information and counseling on all legal and medical options. Exemptions from these provisions are included for providers who object to providing such information on the grounds of religious beliefs or moral convictions and family planning clinics are required to comply with applicable parental notification laws within the State in which the clinic is located. Nevertheless, the administration opposed this legislation and it was subsequently vetoed by President Bush. While the Senate voted, 73-26, to override this veto on September 25, 1992, the House later failed on October 2 in its attempt to override. Opposition from the White House also blocked both the House and the Senate from moving forward on the Freedom of Choice Act, which I have cosponsored, and in the end, prevented either body of Congress from even bringing this legislation to the floor for consideration.

Finally, I note that legislation to establish the equal rights amendment has once again languished in the Congress. As a longtime supporter of the ERA, I was privileged to serve during the 92d Congress on the subcommittee of the House Committee on the Judiciary which set the equal rights amendment on the path toward congressional approval and near-adoption nearly 21 years ago. Again, my own State of Maryland was at the forefront of these efforts, and was one of the first to ratify the ERA following its approval by Congress in 1972, and 1 of only 16 States to have included an equal rights provision in its own constitution.

Mr. President, women of today are becoming more fully engaged in the political process in an effort to overcome inadequacies in our society that have denied them fair and equal opportunities in all aspects of their lives. Not surprisingly, the evolution of legislation affecting the rights and interests of women has tended to parallel the advancement in the status of women. While we have been unable in the 102d Congress to enact several very important initiatives which would further the status of women in our society, I am committed to a continuing effort to promote legislation to remedy inequities in public policy, eliminate economic disparities that handicap women, and update existing programs to reflect the changes in women's lifestyles and needs. As we look toward the 103d Congress, I urge all of my colleagues to join me in this very important task.•

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, PERMITTING ACCEPTANCE OF A GIFT OF EDUCATIONAL TRAVEL FROM A FOREIGN ORGANIZATION

• Mr. SANFORD. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee received a request for a determination under rule 35 for Faye Drummond, a member of the staff of Senator MOYNIHAN, to participate in a program in Czechoslovakia, sponsored by the University of Bratislava, from October 16 to 18, 1992.

The committee has determined that participation by Ms. Drummond in this program, at the expense of the University of Bratislava, is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for T. Scott Bunton, a member of the staff of Senator KERRY, to participate in a program in Japan, sponsored by the Japan Center for International Exchange [JCIE], from December 6 to 12, 1992.

The committee has determined that participation by Mr. Bunton in this program, at the expense of the JCIE, is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Anthony H. Cordesman, a member of the staff of Senator MCCAIN, to participate in a program in China, sponsored by the Chinese People's Institute of Foreign Affairs, from November 28 to December 12, 1992.

The committee has determined that participation by Mr. Cordesman in this program, at the expense of the Chinese People's Institute of Foreign Affairs, is in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Lisa Stocklan, a member of the staff of Senator SMITH, to participate in a program in Taiwan, sponsored by the Chung Yuan Christian University, from October 12 to 18, 1992.

The committee determined that participation by Ms. Stocklan in this program, at the expense of Chung Yuan Christian University, was in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Drew Bolin, a member of the staff of Senator BROWN, to participate in a program in Taiwan, sponsored by the Chung Yuan Christian University, from October 11 to 18, 1992.

The committee determined that participation by Mr. Bolin in this program, at the expense of the Chung Yuan Christian University, was in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Katherine Brunett, a member of the staff of Senator SIMPSON, to participate in a program in Taiwan, sponsored by the Chung Yuan Chirstian University, from October 12 to 18, 1992.

The committee determined that participation by Ms. Brunett in this program, at the expense of the Chung Yuan Christian University, was in the interest of the Senate and the United States.

The select committee received a request for a determination under rule 35 for Sam Spina, a member of the staff of Senator GORTON, to participate in a program in Taiwan, sponsored by the Chung Yuan Christian University, from October 13 to 18, 1992.

The committee has determined that participation by Mr. Spina in this program, at the expense of the Chung Yuan Christian University, is in the interest of the Senate and the United States.•

THE HOLE IN THE WALL GANG CAMP

• Mr. KENNEDY. Mr. President, I want to take this opportunity to praise a unique and inspiring camp for young people with cancer, leukemia, and other serious diseases.

The camp, called the Hole in the Wall Gang Camp, was founded by Paul Newman in 1988 and is located in Ashford, CT. It is designed as a wild West hideout, and is named for the legendary hideout in Mr. Newman's famous movie, "Butch Cassidy and the Sundance Kid."

The camp is designed to meet the medical, physical, and emotional needs of these young victims of serious diseases. In keeping with the generous vision that conceived the camp, there is no cost to the campers.

The camp is fully equipped with state-of-the-art medical facilities. In many cases, it is the only opportunity for these youngsters to be away from their hospitals. In creating the camp, Mr. Newman recognized that the intensive continuing medical care that the patients need is depriving them of their childhood. The Hole in the Wall Gang Camp is an impressive means to fill that gap.

I commend Mr. Newman for his innovative leadership and for the extraordinary difference that the Hole in the Wall Gang Camp is making in the lives of these deserving children and their families. I ask unanimous consent that articles from the New York Times magazine and the Reader's Digest on the camp may be printed in the RECORD.

[From the New York Times Magazine, Sept. 6, 1992]

HUGGING LIFE

(By Calvin Trillin, staff writer for The New Yorker)

On my first morning at the Hole in the Wall Gang Camp, Joe Frustaci, the woodworking director, stepped up to the dining-hall microphone after breakfast to read a poem that had been written on the back of a wooden heart by Shawn Valdez, a 9-year-old camper who has spent about half his life under treatment for leukemia. The poem was for a counselor named Wendy Whitehill—Shawn's favorite person at the camp, unless you count Tadger, who lives in the woods rather than in the camp itself and may well be a bear.

Shawn—a dark, frail-looking little boy with large brown eyes—wasn't facing the microphone. He was sitting on Wendy's lap, with his arms around her neck. What Shawn had written on the heart was:

Wendy
I love your golden hair
Gold as a sunrise
I love the way your blood
warms me up like two eskimoes
snuggling.
I love your smile from
ear to ear
I love every
thing about you.
SHAWN.

I met Wendy a few minutes later. Actually, her hair didn't look quite as gold as a sunrise to me, but that may have been because of the light we were in. I said, "Shawn seems to find you an acceptable person."

She smiled and nodded. One of the things that had most struck her about the camp, she said, was the widespread presence of "unconditional love." Partly because all of the campers have been treated for diseases frightening enough to make schoolmates hesitant or even hostile, unconditional love is more or less camp policy. Children hug counselors. Counselors hug children. When Huggy Bear—a bear suit inhabited by an adult, often Robert (Woody) Wilkins, the camp director—delivers the mail from Tadger every morning at breakfast, he hugs everybody in sight. When a counselor is sitting down he is likely to have a camper in his lap.

The Hole in the Wall Gang Camp, which was founded and continues to be energized by the actor Paul Newman, is an unconditional sort of place. It looks like the camp that summer-camp kids have always dreamed of when they were not dreaming of being back home in their own beds, just down the hall from their parents—a shrewdly designed, dazzlingly equipped Wild West hideout in eastern Connecticut. The theater resembles the sort of place where dancing girls are about to appear on the stage to be hooted at by rowdies who have just come off a cattle drive. The lake is so well stocked that fish that really want to get caught may have to take a number.

Visitors nearly always remark that the children enjoying these facilities—who range in age from 7 to 15—look sort of, well, normal. The camp is specifically for children with cancer or serious blood disorders; what's wrong with them is on the inside. You might notice a child who is temporarily bald from the effects of chemotherapy or one whose growth has been stunted by the side effects of radiation or one who looks particularly thin; there might be a hemophilic boy (virtually all hemophiliacs are boys) who is in a wheelchair because he had a bleed into his spinal cord that couldn't be stopped. Some of the campers tire easily and some were in the hospital when other children their age were developing the hand-eye coordination it takes to look good on the tennis court.

But a dance I went to at the camp seemed at first glance to vary from a dance at an ordinary camp mainly in that campers and counselors and staff members were dancing without regard to age or size or gender, the way people sometimes do in the later stages of a particularly joyous wedding reception—including a boy in a wheelchair whose derring-do must by now have inspired some medical center to post a sign saying "No Wheelie-Popping in Blood Lab Area." After the dance, a swarm of children, still excited, burst into the infirmary to take care of whatever medical procedure—an infusion of clotting factor a fistful of pills, a battery-driven pump designed to rid the body of excess iron—it takes to get them through the night.

By necessity, the Hole in the Wall Gang Camp is run largely through the infirmary. The closest thing to an admissions director is Sue Johnson, the head nurse, whose pool of applicants is gathered mainly through tertiary-care medical centers. She figures out, for instance, how many hemophiliacs can come to camp in any one session, since the constant need for factor makes them labor-intensive campers. (The diseases themselves impose a certain amount of racial and ethnic balance. Sickle-cell anemia afflicts mainly black people, and sicklers, as they're often called, tend to make up about a tenth of the children at the camp. One of the blood diseases, thalassemia, is so strongly associated with families of Italian and Greek origin that it is sometimes called Mediterranean anemia.) But the infirmary, a rough-wood building in the Western style, is not labeled "The Infirmary"; a sign outside says "The O.K. Corral." Nobody working there wears a white coat. At the camp, medical treatment is supposed to be the engine that doesn't call attention to itself—like the legendary assembly of pipes and cables and computers under Disney World.

Paul Newman thought of the camp as a place where children would be able to escape doctors and hospitals for a while and just be campers. It savors the sort of traditions found in conventional camps. If someone is caught leaving the dining hall through the

In door rather than the Out door, for instance, he has to stand in the middle of the dining hall and pantomime the words to the bushy-tail song. When Newman visits the camp—he has built a cabin across the lake, and he's normally around for at least a day or two each 10-day session—he always seems to stroll out through the In door, and he is caught by a pack of alert campers every time. Then he has to stand in the middle of the room, doing the appropriate motions, while everyone sings:

Paul, Paul.
Shake your bushy tail
Shake your bushy tail
Wrinkle up your little nose.
Stick your head between your toes
Shake your bushy tail.

As far as I could tell, the only reminder of medicine in the regular camp program is a form of action painting that children in arts and craft like to do with syringes. Dahlia Lithwick, one of two former counselors who have put together a book of writings by Shawn Valdez and other campers called "I Will sing Life: Voices From the Hole in the Wall Gang Camp," told me that the older girls in her cabin always spent the conventional amount of time discussing who might be going to the dance with whom. On the other hand, she thinks that campers tend to see their counselors as grown-ups who, unlike parents, don't have to be protected—campers are likely to have spent a lot of time seeing parents with what Shawn's mother calls in the book "tear eyes"—so the question asked a counselor after the dance could be, "I don't want to freak you out, but why do you think God picked me to die?"

The counselor asked such a question will more than likely be freaked out. Although a few of the counselors have had childhood cancer themselves, the camp, which had its first summer in 1988, hasn't been in operation long enough to produce a supply of counselors from former campers. Most of the counselors are college students who have led relatively protected lives, and most of them arrive, in the words of a letter quoted in Newman's introduction for "I Will Sing Life," with "a natural terror of disease, and a couple of books about coping with grief bought in a panic the previous week."

For them, the experience of being at the camp tends to be intense, partly because of the constant juxtaposition of the constant juxtaposition life-threatening illness and problems like who is going to the dance with whom. When Huggy Bear comes through the dining hall, the counselors who jump up to get hugged are partly just joining in, the way they join in the bushy-tail song and the dancing, but some of them may well feel the need of some hugging.

The Hole in the Wall Gang Camp is not, in fact, a camp for dying children. The overwhelming majority of campers, Sue Johnson says, "have a lot to put up with, but they're not terminal." According to Carroll W. Brewster, a former college president who is the executive director of the Hole in the Wall Gang Fund, "the theory is that every child here is going to be an adult and needs a good childhood to become one"—meaning that the camp sees its business as returning to the campers some of the childhood they've lost to illness and treatment.

On the theory that the proper work of childhood is learning and having fun, the camp concentrates on the equivalent of putting the children back to work—teaching horseback riding even if the hemophiliacs have to be given a shot of factor before getting on the horse, for instance, or letting everyone go swimming even if the tendency of sicklers to be thrown into a pain crisis by a chill means that the pool has to be particularly warm and a gazebo next to it is outfitted with heat lamps in the ceiling.

The heated gazebo is known locally as the Pearson French-Fryer Warmer, after Howard A. Pearson, the Yale pediatrician who molded Newman's vision into what became the Hole in the Wall Game Camp. When Newman was casting around for advice on how to establish a camp in Connecticut for children with cancer, Pearson was the chairman of pediatrics at Yale Medical School and the Yale-New Haven Hospital. His advice seemed to extend naturally into participation. Pearson has been the medical director at the camp from the beginning. He also served for a couple of years as executive director of the Hole in the Wall Gang Fund, which annually raises the $2 million it takes to run a camp that has dazzling equipment but not fees. He's a low-key, grandfatherly man—not the sort of person who finds being a camp doctor beneath the station of an eminent professor who this year is also the president-elect of the American Academy of Pediatrics.

It was Pearson who recommended that children with blood disorders as well as children with cancer be part of the camp mix. Partly because so much of childhood cancer is leukemia, there has always been a strong overlap in pediatrics between oncology and hematology. Pearson's own research interest is genetic blood disorders. Although the camp now has a couple of special sessions for campers with a single ailment—one for sickle-cell, one for immunological, disorders, including HIV infection—Pearson says that a mix is salutary for the general sessions, partly because there is something about any serious disease or its treatment that can make someone with another serious disease count his blessings.

In fact, the camp is one place where a child who has had cancer may have reason to feel in an enviable position, although I suspect that would be a hard proposition to sell to a 10-year-old who's in the middle of an intense course of chemotherapy. The campers who have had a diagnosis of cancer—normally about two-thirds of the 120 children in a regular session—have almost all been through chemotherapy, and some of them have also had surgery and radiation. But the ones who have completed their treatment are likely to lead lives that are not dominated or shortened by disease: the cure rate for the most common type of childhood leukemia is now approaching 80 percent.

That's not true of the sicklers, who are never through with the pain crises and whose bodies tend to give out in their 40's or 50's. Because of considerable progress in recent years in the treatment of hemophilia—mainly the invention of a process to manufacture clotting factor, making constant blood transfusions unnecessary—it appeared for a while that many hemophiliacs would have to face futures of only inconvenience and enormous expense rather than inevitable crippling and early death. But until 1985, the factor supply was not screened for HIV, so about half of the hemophiliacs at the Hole in the Wall Gang Camp are HIV positive.

Although Tadger has never been seen—he is said to be extremely shy—he can be counted on to answer a letter overnight. The campers rarely trouble Tadger with mentions of disease or doctors or hospitals. They tend to tell him that he shouldn't be so shy, or reassure him that they love him, or thank him for the little gifts he sometimes sends. During my stay at the camp, one boy wrote, "I have to tell you that your friend the white bear went out the wrong door, and he had to shake his bushy tail." Hole in the Wall Gang campers aren't embarrassed about mentioning their illness, given the company. "All the kids there have learned to live through things," one of the authors of "I Will Sing Life" wrote about the camp. "We know we're normal people." Apparently, though, the younger children tend not to dwell on the subject—not even in what's called Cabin Chat, a quite time before bed, when the counselors and the campers talk by the light of a single candle.

I sat in on Cabin Chat one night in a cabin of older boys. Everyone was asked to write down on a piece of paper something, important or trivial, that he would have changed if he'd had the power to change it—the loaded assignment was from a robust-looking counselor who had himself had childhood cancer—and then to toss the paper into a hat. The one piece of paper pulled out said, "Cancer was both the best thing and the worst thing that ever happened to me."

Everyone seemed to agree that the worst thing about having cancer was a drug called prednisone, a steroid that makes some people terribly angry and some people depressed and everybody enormously hungry. A lot of the campers found something good to say about having had cancer, although a certain amount of that had the sound of bravura or rationalization. There was talk about the interesting people they met; a couple of boys mentioned that cancer enabled them to come to the Hole in the Wall Gang Camp.

A boy who was still undergoing treatment seemed less certain about the good things, but finally he said, "I believe I'm tougher than any other kid in my school, at least mentally."

That led to a discussion about who could make it through cancer treatment and who couldn't. There was considerable feeling that the school bullies, who thought they were so tough, could never make it through.

"No, they'd make it," the toughest boy in his school said. "What choice would they have? Die? We didn't have any choice."

[From the New York Times Magazine, Oct. 4, 1992]

LETTER TO THE EDITOR

(By Joan Kasper, New York, NY)

HUGGING LIFE

I read with a very personal interest Calvin Trillin's article "Hugging Life" (Sept. 6).

My niece, Anique, contracted AIDS through a contaminated blood transfusion she received two days after her birth, in 1980. Naturally, her life centered around doctors, drugs, treatment, etc. It wasn't until her first stay at the Hole in the Wall Gang Camp, in the summer of 1990, that she found a window of escape, albeit temporary, from her illness.

I took Anique to camp last year, and from the moment we drove into the grounds I was caught up in the atmosphere of laughter and gaiety. And yes, there are unlimited amounts of unconditional love. Paul Newman has created an extraordinary environment for these children.

My niece attended the camp for the past three summers. We were told last February that she had only weeks to live, yet the prospect of going this year loomed ahead. The session began on June 20, and even though she had to travel three days cross-country by motor home and was in a wheelchair, Anique was there. Her week at the camp was her last one, though, and she died on her way home, just one day after leaving camp. Our family is somewhat consoled and will forever be grateful that her last days were spent as she wanted them to be—with the Hole in the Wall Gang.

[From Reader's Digest, March 1990]

THE HOLE IN THE WALL GANG SUMMER CAMP

(By Per Ola and Emily d'Aulaire)

Soon after Matthew Calone complained of intense groin pain in February 1988, physicians determined that the eight-year-old's abdominal cavity was riddled with fast-growing lymphoma tumors. Chemotherapy and surgery eliminated the growths, but Matt came down with a critical infection and spent three months in the hospital.

By the time Matt returned to school, chemotherapy had left him pale and bald. He gamely tried to explain to the other kids what had happened. But when Matt came down with hepatitis, a sever inflammation of the liver, it seemed that the spirit had been kicked out of him.

Then in June 1989, Matt had the opportunity to spend almost two weeks at a very special summer camp in the Connecticut woods. Just like a lot of sick kids who have been protected and coddled by worried parents, Matt was physically cautious at first. Carefully his counselors pushed him to be more adventurous. Soon he was camping overnight in a tent by a roaring river, even wading in the chilly water. He and his tent mates dried off around a campfire, roasted marshmallows and sang songs. Back at camp, Matt played baseball and basketball, and went horseback riding and fishing.

Today Matt's old self-confidence is back. "You wouldn't know he was once so sick," says his father. "The camp helped him get back on his feet, square off and face the world."

What is this magic place? It's the Hole in the Wall Gang Camp located on the border of Ashford and Eastford, Conn., where youngsters with life-threatening illnesses don't have to sit on the sidelines. Here, children with hemophilia and sickle-cell anemia romp with those suffering from leukemia, lymphoma and bone cancer. Some have had legs and arms amputated. Others are bound to wheelchairs and intravenous feeding pumps. But at Hole in the Wall, there's no need for a kid to explain why a tube is sticking out of his chest, why his limb is missing or his head is bald. No apologies are required if a child has to stop for a quick nap. And if it's necessary to swallow six different pills with dinner each day, no big deal. Half the other kids do it too.

INSPIRED VISION

There are many cancer camps for children, but most "borrow" existing facilities for a few weeks during or after the regular camp sessions. Hole in the Wall is the only one built expressly for these kids and their special needs.

Oddly, the saga of the camp began with salad dressing. In 1982, Paul Newman and a friend, author A. E. Hotchner, established Newman's Own Foods to market the actor's personal recipe, the profits to be earmarked for charity. The salad dressing was such a hit that the company branched into spaghetti sauce, popcorn and lemonade. Soon the profits to be given away reached millions.

Newman's Own received scores of letters asking for help from parents of kids with cancer, but tax rules prohibit the firm from making donations to individuals. Newman began pondering other ways to help these children. Then, in 1986, he had an inspiration: why not build a place for kids too sick to go to ordinary camps? He'd name it for the ragtag bandits known as the Hole in the Wall Gang from his film "Butch Cassidy and the Sundance Kid."

With characteristic verve, Newman kicked the plan into action. Dr. Howard Pearson, professor of pediatrics at Yale University's School of Medicine and an authority on children's cancer and blood diseases, agreed to act as medical adviser. The Newman group purchased a 300-acre farm, complete with 47-acre pond, in the northeastern corner of the state. Thomas Beeby, dean of Yale's School of Architecture, designed the camp.

Paul Newman gave over $8 million of the $17 million the camp cost to build and fund. The balance came from private contributors, large and small. Barbers staged benefit "cut-a-thons." School children held car washes. Developer Simon Konover, donating the construction-management services, put up the buildings. A consortium of swimming-pool contractors installed, for free, a $250,000 heated Olympic-sized pool. Thirty-five volunteer Seabees from the U.S. Naval Submarine Base in Groton built a footbridge, a floating dock and trails.

When the first children arrived in June 1988, they found a camp that looked like a frontier town straight out of the Old West. They hardly noticed that the walkways ended in access ramps, that forest trails were smooth enough for wheelchairs and motorized golf carts, that washrooms contained emergency buttons that could summon instant aid.

Fifteen log cabins, each designed to house eight campers and three counselors, circled a wide field where a helicopter could land in an emergency. The infirmary, in a row of false-front wooden buildings, looked more like a rural post office than a sophisticated medical facility.

THE OTHER SIDE

Some campers were timid when they arrived, more accustomed to doctors' offices than the woods. But they soon got over it.

One young girl, on crutches and wearing a baseball hat, clung to her father as he started to leave on opening day last summer. "You'll make friends here," he assured her. "These kids know what you're going through." Aquatics director Joanne Prague asked if she'd like to swim. The girl looked to her father for approval. He nodded and gave her a farewell kiss. At the pool, the girl took off the cap—to reveal a bald head—and with Prague's help was soon floating in the water. "The good thing about not having any hair," she told another swimmer as they chatted later, "is that your head dries very quickly."

Last summer 456 children, ages seven to 17, came to Hole in the Wall. This summer the hope is to handle almost 600 campers. The camp is free. Parents are only expected to pay for transportation.

Although those with active cancer or blood disease get preference, there are also campers who have been in remission long enough to be considered cured. Explains Pearson, who lives at the camp in the summer: "It's encouraging to the others to be with campers who have been through it and come out on the other side."

Some of the campers have afflictions so unusual that doctors generally encounter them only in medical textbooks—like the nine-year-old girl with a genetic blood disease who will never grow bigger than a three-year-old. Though she had to report to the infirmary for a weekly dose of intravenous gamma globulin, she was very much a part of camp, joining in raucous song in the mess hall, being zipped around in a golf cart or riding happily on a counselor's shoulders.

"These kids never complain," marvels a camp worker. "They're always smiling. They really live when they're here. It's magic and you feel it."

STUDIES IN COURAGE

The 60 staff members at Hole in the Wall are a unique breed too. Many are medical students; some are teachers on summer break. All develop close bonds with these remarkable kids.

In 1988 after Hertz Nazaire, who had sickle-cell anemia, returned home from camp, he lost his mother in an automobile accident. Hospitalized for depression, he did not respond to treatment—until counselor Shellye Jones visited him.

"I sang camp songs," says Jones. "Pretty soon he was smiling. The doctor said it was the first time since he'd been admitted." In 1989 the boy was back at camp, cheerful and full of energy.

Wherever possible, independence is encouraged, and campers often try things at Hole in the Wall that they wouldn't at home. Billy Disney, 13, from Trumbull, Conn., has thalassemia, a severe anemia, and needs medications infused all night through a needle and a battery-driven pump. At camp he learned how to insert the needle himself, an accomplishment that gave him new freedom. "I can stay overnight at friends' houses now," he says.

"They push themselves harder here," explains Pearson. "As a result, they may respond better to treatment. I have a gut feeling that camping does more for these kids than simply let them have a wonderful time."

Eric Druten, from Prairie Village, Kan., had suffered a malignant brain tumor and was not expected to live. Surgery and radiation saved his life but left him depressed and withdrawn. Then the teenager attended Hole in the Wall. "This is a place where you forget to feel sorry for yourself," he says. "You see others in worse condition than you are. I suddenly realized just how lucky I was."

When Eric returned to Kansas City, his parents held a fund-raiser that brought in enough to fly eight kids, including Eric, from the Kansas City area to camp last summer. Eric's father, an executive, was so grateful for his son's turnaround that he spent a week at the camp as a volunteer, mowing lawns and doing odd jobs.

Stephanie Bloom is one of eight counselors who are ex-cancer patients. Now a nursing-school student, Bloom has been in remission for four years and looks the picture of health. Campers are surprised to discover that she once battled the deadly disease. One camper told her, "You don't know how I feel." Bloom shot back, "Oh, yes I do. When I had chemo—" "You had chemo?" Immediately the youngster opened up and began chattering about her experiences.

The children also support each other. One camper with a brain tumor had tremendous difficulty speaking, taking minutes to utter the simplest sentence. At mealtime, when campers stood up to make announcements, a hundred other kids sat absolutely still as they waited for him to have his say. "The special fraternity these kids develop moves me," says Pearson. "These are studies in courage."

Inevitably, there are times when disease is stronger than attitude or technology. Philip Gildersleeve, 14, had neuroblastoma, a cancer of the adrenal gland. An outgoing boy, he played the piano, was expert at cribbage; he even conned Shellye Jones into teaching him to drive the golf carts. The last night of camp, Philip talked to counselor Beth Ryan about how rare it was to find friends like those he had made at Hole in the Wall. He then drew her a picture of a sailboat setting out to sea.

"It was as if he knew he wasn't going to make it," says Bloom. Three weeks later Philip died.

GREAT HUGS

Newman continues to support Hole in the Wall, but the program depends heavily on contributors and volunteers. Meanwhile, the staff is gearing up to use the facility year-round. More sessions are planned, for children with other severe diseases, and for brothers and sisters of campers.

Yet summer camp will continue to be what Pearson calls "the jewel in the crown." And what a jewel it is, providing memories that will sustain these children for a lifetime, however brief that lifetime.

These memories culminate in the award ceremony on the final night of each camp session. There campers receive prizes for such accomplishments as the most fish caught in a single day, top attendance at the 7 a.m. polar-bear swims, best ghost stories.

Last year ten-year-old Pam Pease, who has leukemia, arrived at camp from Jacksonville, Fla., in a wheelchair after having spent much of the previous winter with her legs and feet in casts. Normally reluctant to walk on her own, on awards night she left her wheelchair outside.

She applauded vigorously when her friends' names were called and they hurried up to the stage. Then the master of ceremonies called out Pam's name. A counselor leaned forward to give her a hand, but Pam waved her aside. With a quick tug to tighten the strap of her leg braces, she pulled herself out of her seat and walked haltingly toward the stage steps. Grabbing onto the railing, she slowly pulled herself up, one step at a time, while the audience held its breath. Then she made her way, unaided, across the stage to receive her prize—a certificate commending her for "great hugs."

The crowd went wild with applause. No one seemed to notice that by the end of the evening every camper had received an award.•

TRIBUTE TO DAVID BEN-RAFAEL

• Mr. LAUTENBERG. Mr. President, as the Jewish people begin a new year in the Jewish Calendar, they approach it with a degree of optimism rarely seen in Jewish history. For too many years the Jewish people looked ahead with significant trepidation as the next year or a new decade or a new century approached. They face the questions of simple survival or freedom or when there might be a Jewish homeland so people can pray in Jerusalem or when peace will come.

Many of those questions have been answered but one that still remains is peace. The people of Israel yearn to have the assurance that their children can live their lives to the fullness of their years without fear of violence or assault.

Even though the State of Israel was established as a sovereign nation, the Jewish homeland is still not at peace. Its citizens remain subject to attack by terrorists whether on their own soil or while in other parts of the world. What the Israeli people wish for in this new year is the day when peace will come to the land of Israel and her citizens.

The peace negotiations, though far from conclusive, are supporting that wish. And while the path to peace may be arduous and tortuous, we are constantly reminded of the necessity to pursue peace. The price for instability and hostility is so dear. We need only remember the terrorist attack on the Israeli Embassy in Buenos Aires a mere 6 months ago when, in a moment of terrorist horror, many innocent lives were lost. On March 17, a car carrying a bomb was driven into the entrance of the Buenos Aires Israel Embassy Building where it exploded. The explosion caused two-thirds of the embassy to collapse. The bombing killed more than 30 people and injured more than 200 individuals who happened to be near the embassy at the time of the explosion.

One of those innocent victims was a member of a family with whom I have had a close and warm relationship with for more than 20 years. Helen and Ralph Goldman's son, David Ben-Rafael was one of those individuals who was tragically killed in the bombing.

David Ben-Rafael was chief deputy and second in command of the Israeli Embassy. Mr. Ben-Rafael was a vibrant, intelligent man. Born David Goldman and raised in New York and graduated with a bachelor's degree in international relations at George Washington University in Washington, DC, his love for Israel led him to emigrate to Israel in 1971 and adopt a Hebrew name. Mr. Ben-Rafael secured a law degree at Hebrew University in Jerusalem in 1975.

In 1979, Mr. Ben-Rafael joined the Foreign Ministry and then served as secretary of information at the London Embassy. Later he held the position of Israel's consul in Chicago. In October, he was named to the Buenos Aires Israeli Embassy position.

Mr. President, this shocking incident and others like it must galvanize the United States and the international community to continue our resolve to combat and eradicate terrorism. Much of the world condemned this intolerable terrorist act and all should join in seeking an end to crimes of hate which only leave despair, devastation, and death in their wake.

I extend my heartfelt condolences to Mr. Ben-Rafael's wife Alisa, their children Noa and Jonathan and his father and mother. David Ben-Rafael was a special man who left a lasting mark on the people whom he touched throughout his life.

All of us wish Israel and her people a peaceful new year in which we will all see a resolution of the centuries old disputes that have plagued that region of the world.•

THE JAPAN-AMERICA STUDENT CONFERENCE

• Mr. PELL. Mr. President, this past summer marked the 58th anniversary of an exceptional cross-cultural program, the Japan-America Student Conference. Over the more than half century since its founding, the conference has proved to be an extraordinary instrument for the promotion of cultural understanding, and today I salute its founders, participants and sponsors, who have insured its survival notwithstanding the vicissitudes of history.

The conference was conceived in 1934 by a small group of Japanese students who were distressed at the deteriorating relations between the United States and Japan. An initial mission of four student emissaries visited American college campuses early in the year. They encountered similar interest on the part of American students, 77 of whom returned to Japan to begin the first conference.

Although their first efforts at peacemaking ultimately failed, they had begun a process that was to continue through 1940, and resume on an intermittent basis in 1947 after the hiatus of the Pacific War. Since 1964, the conference has convened annually.

In July of this year, 40 American students were joined by an equal number of Japanese for the 44th conference here in Washington. After 2 weeks of meetings and discussions, some of which took place on Capitol Hill, the group moved to Tennessee for a week and then spent their final week in Colorado Springs.

The participants receive an intensive introduction to the values and cultures of the two countries. Topics cover a broad range of critical and controversial issues, including bilateral trade problems, the challenge of race relations and environmental policies.

Discussions encompass ethical questions, as perceived from contrasting cultural viewpoints, in such areas as the public responsibility of the media and of the medical and legal professions.

The conference is a self-perpetuating institution. The students themselves are responsible for planning and staging the sessions. Each year, 10 American and 10 Japanese students are elected at the end of the session to plan and organize the next year's meeting. Already, the nucleus group elected at Colorado Springs is at work planning for the 45th conference which will be held in Tokyo next year.

The Japan-America Student Conference has proven over its long history to be an effective force for developing tomorrow's leaders. The roster of those who have gone on to make significant contributions in fields of international relations, academic and business is impressive.

One of the alumni is the current Prime Minister of Japan, Kiichi Kiyazawa, who recently said:

> As one whose first involvement in Japan-United States relations was under the auspices of the Japan-America Student Conference in 1939, I can tell you honestly that it was one of the formative events of my lifetime.

The Japan-America Student Conference has indeed achieved venerable standing as an institution committed to molding future generations to a tradition of peace and understanding across the Pacific. I salute the conference and commend those who are responsible for its continuing good work.•

JUSTICE FOR PERMANENTLY DISPLACED STRIKING WORKERS ACT

• Mr. DURENBERGER. Mr. President, on October 8, 1992, I introduced the Justice for Permanently Displaced Striking Workers Act of 1992, S. 3375. This important piece of legislation provides for expedited adjudication of unfair labor practice charges under the National Labor Relations Act when striking workers are permanently replaced.

When I introduced the bill, I neglected to ask that the entire bill be printed in the CONGRESSIONAL RECORD. Accordingly, in order to more provide my colleagues with an opportunity to study this proposal during the adjournment period, I now ask that the entire text of S. 3375 be printed in the RECORD.

The text is as follows:

S. 3375

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Justice for Permanently Displaced Striking Workers Act of 1992".

SEC. 2. FINDING.

Congress finds that the lack of timely adjudication of unfair labor practice charges in connection with labor disputes where permanent replacements have been utilized poses an obstacle to continued stable labor relations in this country.

SEC. 3. FACILITATE ADJUDICATION OF UNFAIR LABOR PRACTICE CHARGES.

(a) PRIORITY OF CASES.—Section 10(m) of the National Labor Relations Act (29 U.S.C. 160(m)) is amended—

(1) by striking out "(a)(3) or (b)(2)" and inserting in lieu thereof "(a)(3), (a)(5), (b)(2), or (b)(3)"; and

(2) by adding at the end thereof the following new sentence: "In cases where a collective bargaining agreement has expired and a person alleges that a party to a collective bargaining agreement has failed to negotiate in good faith as required by the Act, and where permanent replacements have been hired, an expedited investigation and adjudication procedure shall be available as described in subsection (n).

(b) TIMETABLE FOR ADJUDICATION.—Section 10 of such Act (29 U.S.C. 160) is amended by adding at the end thereof the following new subsection:

"(n)(1) In cases described in the last sentence of subsection (m), administrative law judges shall have 60 days in which to hold a hearing after a complaint has been filed under this section. After such hearing has occurred and the parties have filed their briefs with respect to such, the administrative law judge involved shall have not more than 60 days to issue a decision with respect to such case.

"(2) A party in a case described in paragraph (1) shall have 30 days in which to file a brief with the Board containing exceptions to the decision of an administrative law judge under such paragraph. Other parties shall have 15 days in which to file their briefs in response to such exceptions.

"(3) The Board shall have 90 days after the date on which a brief has been filed under paragraph (1), to issue a decision in the case. Such period may be extended for an additional 30 days if an oral argument is scheduled.

"(4) By mutual agreement of the parties, the timetables contained in paragraphs (1) through (3) may be extended as agreed upon.

"(5) If the administrative law judge fails to meet any deadline contained in this subsection, the administrative law judge shall notify the parties, the National Labor Relations Board, and the Committee on Labor and Human Resources of the Senate and explain the reasons for the delay. The notification and reasons for the delay shall be submitted by the administrative law judge for publication in the Federal Register.

"(6) If the National Labor Relations Board fails to meet any deadline in this subsection, the Chairman of the National Labor Relations Board shall notify the Committee on Labor and Human Resources of the Senate and explain the reasons for the delay. The notification and reasons for the delay shall be submitted by the National Labor Relations Board for publication in the Federal register.".•

A TRIBUTE TO THE SAFE STREETS CAMPAIGN OF TACOMA

• Mr. ADAMS. Mr. President, I rise today to recognize the outstanding efforts of the Tacoma-Pierce County Safe Streets Campaign. I also want to congratulate the program on being named a winner in the 1992 Innovations in State and Local Government Awards Program.

Mr. President, 4 years ago, the streets of Tacoma were overrun by the plague of drugs and gang-related violence. The citizens of Tacoma sat by while drug dealers conducted sales in open-air markets, crack houses invaded their neighborhoods and the general condition and morale of the city began to erode.

During the fall of 1988, leaders of the Tacoma community gathered together and decided that they had had enough, and the safe streets campaign was born. The response from the community to the program was remarkable, as over 2,000 residents of Pierce County packed into Henry Foss High School for the first gathering of the program. What became immediately evident was that the citizens of Tacoma clearly had the willpower and the strength to take back their streets.

Mr. President, the safe streets campaign is not just another bureaucratic response to a pressing problem within our society. This program has been fueled from the start by the energy and initiative of the citizens of Tacoma who are fed up with the violence and drugs that plague the communities of our great Nation. The people of Tacoma have sent the message that they will not tolerate this type of crime and disintegration, but rather will fight it and defeat it through unity and collective action.

The foundation of safe streets is the 75,000 persons who have joined the campaign through block-by-block organizing. The war is waged on a block-by-block basis—through the establishment of phone trees, neighborhood watches, graffiti removal teams, and community development programs. The campaign organizes the people to take a common responsibility for their neighborhoods and encourages individuals to contribute to the fight against the drugs and violence on their blocks.

The program also organizes outreach activities for at-risk youth, affording them better alternatives to the temptations of the street. Midnight basketball leagues, art classes, and outdoor excursions to the Olympic Mountains offer constructive opportunities to which the children can devote their energies. In addition, the substance abuse prevention partnership educates children about the dead end life of gangs and drugs.

The accomplishments of the safe streets campaign are extraordinary. Emergency calls to 911 dropped by over 25,000 in the first year following the creation of the program. The drug house elimination effort has eradicated 250 crack houses in the past 2 years. In addition, the number of drive-by shootings has been nearly halved, wile gang-related graffiti has been virtually eliminated. Most importantly, safe streets has mobilized over 100,000 Pierce County residents to participate in the effort.

One Tacoma resident states:

> We are learning to be neighbors again. A lot of people sleep better. We feel free to come and go. We had a "don't get involved, mind your own business" attitude; we thought that that would keep us out of trouble. We were wrong. If people work together, they can do anything.

Mr. President, I hope that cities throughout our Nation can benefit from the successes of the safe streets campaign. Already, communities within Baltimore, Cincinnati, Birmingham, and Oakland have sought out the assistance of the program. The war against crime can succeed only if urban communities like Tacoma stand up for themselves and take their neighborhoods back from the control of drug pushers and gang members.

I extend my congratulations to the safe streets campaign, and my thanks to Lyle Quasim and Mayor Karen Vialle, whose inexhaustible energy and dedication have fueled the program from its beginning. I ask that an article on Safe Streets from Parkland magazine be entered into the RECORD.

The article follows:

STOP! DON'T TURN YOUR BACK ON PARKLAND!

(By Alice Gordon)

Lawlessness prowls the streets, seeking the next victim. Vandalism and robbery is happening in your block. The graffiti down the street is announcing a "gang war" . . . is it a joke? Guns are easy to get at the local high school. A steady stream of "customers" visit a rented home to deal for illegal drugs that were produced there, using costly, sophisticated equipment. Vacant property is cultivated for growing marijuana, and there is more inside the house next door. We're talking about New York or Los Angeles, right? Wrong! It is happening here—today—in Parkland. Sometimes with fatal results.

DRUGS, CRIME, VIOLENCE IN PARKLAND

Can you recall your reaction when you read about such things in the papers a few years ago? You probably threw your hands in the air and said, "I told ya so! The youth of this world have gone to pot. I'm sure glad I'm not a part of it." Then, satisfied you had done everything you should, you turned your back and went about your own business.

That's what we used to say, and do, but we can no longer turn our backs and walk away. Now we must pay attention to the criminal activity and violent behavior which have come into our neighborhoods. If we don't, even those of us who have not yet been affected by it, will someday be directly threatened in a public place, on the street, or even in our own home.

Although crime and other problems tend to grow as population increases, another factor is lack of concern. If a community tolerates lawlessness, it draws in others who thrive in a lawless environment. Compare today's surroundings with those of a few years ago. The people knew one another. They were aware of what was happening, who was away from home, who needed help. The neighbors were much more likely to become aware if there was a problem. Today, with a much more mobile society, there is less opportunity to get to know your neighbors; to develop a caring attitude toward the community as a whole. It is easier to ignore the problem or figure you can, as an individual, do nothing to solve the problems. And, as an individual, you might be right. These are big, difficult problems to solve.

Fortunately, there is a program designed to bring peace and responsibility back to our neighborhoods. It is called Safe Streets.

If you want to be part of the solution to the crime problem, call the Safe Streets office at 272-6824: You will be put in touch with a group of volunteers who are organizing the Safe Streets program for Parkland.

The system works on a block-by-block saturation method. Currently, there are several blocks in the Parkland area which are in the Safe Streets program. Ideally, the blocks are adjoining so each block can support the other in driving criminal activity out. As more and more blocks are added, this interaction builds a spirit of community—the strongest force in keeping crime out of the neighborhood.

Too often we think the law enforcement agencies should take care of crime prevention. However, they cannot prevent crime. And, they do not have enough staff or resources to deal quickly with every problem. They need our help.

Some problems are actually found more often in semi-rural areas, such as ours, than in the cities. Parkland has a large number of low-rent properties, some in secluded locations. These make ideal "crack houses" where drug sales can be made with less fear of observation. These locations may also be used for the manufacture of illegal drugs, since the renter can use the location for a short time and then move on. Rental properties also make good locations for both indoor and outdoor growing of marijuana. Vacant lots can be inconspicuously cultivated.

It is only when neighbors and landlords are concerned enough to observe and report suspicious activity that the police can go into action. The people in a neighborhood are the only ones familiar enough with the routine to quickly pick up on changes like increased traffic to a particular location, newly planted areas and greatly increased electrical utilization (a sign indoor growing equipment may be in use).

How do you know what to look for? Who do you talk to about suspicious activities in your area? That's where the Safe Streets program can help, but you have to be willing to get involved.

New members come to Safe Streets with a variety of problems. Some have a crack house next door. For others, someone has persuaded their child to become a grade-school pusher, a seven-year-old selling drugs to his school chums. Some are residents whose homes have been robbed.

"Unfortunately," says Cheryl Byers, Safe Streets coordinator for Parkland/Spanaway, "if you go out and invite residents to an organizational meeting, the people just won't come out. It seems it must come down to not only a tragedy, but a personal tragedy, before people decide they had better do something. The victim of crime is usually ready to join up."

At their first meeting, interested residents are shown a video tape that explains the program and gives several ideas on how they can make their own neighborhood streets safer. Safe Streets has several systems of operation, depending on the neighborhood and insight from the Pierce County Sheriffs' Department. The sheriff and police work together with Safe Streets to get the neighborhood "cleaned up."

Generally, the first step is to observe activities that take place in the neighborhood. Members of Safe Streets keep a record of suspicious events. This standard form will be helpful should police be called to enter in on a situation. The form calls for information like date and time of the observation; style, make, color, year and license number of any car involved; whether or not the suspicious-looking person is a repeat visitor; a description of the person observed; if any weapons are observed; and a description and pattern of the activity of the suspicious-looking person.

The plan is to observe and record events, especially those that are repeated and suspicious. Since the program is developed on a block-by-block basis, most of the time more than one neighbor can observe what is taking place. Just to be sure, the first observer may call others living nearby to also record what is happening. This is important, as multiple observation of the same behavior builds a much stronger case for deputies who are investigating the problem. The forms will be used to present a written record of events. As you can see, there would be several observers turning in reports, and as much as you may think "one person doesn't count," this is the time where individuals, acting together, make the system work!

After several such observations, the sheriff can seek a search warrant and advance an investigation toward closing down a crack house and eliminating other unlawful activities. "The people of Parkland can become an extension of the Pierce County Sheriffs' Department," says an officer on the video tape that introduces Safe Streets. "The best protection against crime is a good neighbor. Law enforcement officers cannot prevent crime. They can only act after crime has been committed." That is where the average citizen comes in. He or she witnesses the crime.

What else does the Safe Streets organization do? For one thing, their members assist one another, and the community as a whole, by cleaning up vacant lots and run-down buildings. This not only gives the area a better look, but also eliminates structures which would be attractive for criminal use. They paint over graffiti that gang members use to deface buildings and bridges, and that serve as the gang's "bulletin board" to make announcements of upcoming fights and threats.

Another part of the Safe Streets program is to present Rental Industry Seminars. These presentations cover such subjects as tenant screening, techniques, landlord/tenants rights and responsibilities, and proper evictions. Many people in our area rent their homes out without any training on how to be a good landlord, and learn the hard way about problems which can develop. PL&W Co. urges landlords to attend one of these seminars. Call 272-6824 for information on future Rental Industry Seminars.

Some people here in Parkland have basically become prisoners in their own homes. They are surrounded by criminal activities and fear for their lives with every move they make. Their block, as a whole, did not suddenly go "sour." It probably started with one home, an outbuilding, perhaps a vacant lot, where drug users and gangs could somehow proceed with their activities in relative comfort. Once the comfort is destroyed—police cruising the area after neighbors have reported suspicious activities—the gang will seek another place for their activities. As one drug dealer put it, "When it gets too hot, we're out of there!"

The job of Safe Streets members is to make it Hot!!!

Don't turn you back on Parkland.

PRECONTRIBUTION GAIN ON PARTNERSHIP DISTRIBUTIONS

• Mr. REID. Mr. President, it has been brought to my attention that the conference agreement on H.R. 776, the Energy Policy Act of 1992, includes a revenue-raising provision on the taxation of partnership distributions that was included at the last minute without due consideration of the retroactive impact on the current law rules.

The claim was made by some that this provision was necessary to close a so-called loophole, but the committee reports on this provision are devoid of any indication that this is anything other than a plain revenue raiser. In fact, the provision simply substitutes a per se rule for a more than adequate regulatory rule that was confirmed under final Treasury regulations just last week—preliminary regulations having been issued nearly a year and half ago. Taxpayers would normally be entitled to transition relief where they have acted in reliance on existing tax rules, and this oversight should be corrected at the earliest opportunity next year.●

PAUL TULLY—AMERICAN POLITICS AT ITS BEST

● Mr. KENNEDY. Mr. President, with the untimely death of Paul Tully at 48 last month, American politics lost one of its greatest practitioners and American democracy lost one of its most tireless and committed advocates.

Paul Tully believed deeply in this country, and he dedicated his life to progress toward the great ideals that make America America. All of us who admired him and worked with him will miss him in the years ahead and the battles still to come.

His life is an inspiration to all who knew him, and America is a better land for millions of our fellow citizens because of all that Paul Tully was able to accomplish in the brief time he had on Earth.

A memorial service was held for Paul at Washington National Cathedral on September 30. I ask that the texts of the tributes at the service and other articles about his life and career may be printed in the RECORD.

The material follows:

[Memorial Service for Paul R. Tully, Washington National Cathedral, Sept. 30, 1992]

FROM "THE WISDOM OF SOLOMON," CHAPTER 3 (1–3); CHAPTER 4 (7–8; 13–15)

(Read by Carl Wagner)

But the souls of the righteous are in the hand of God, and no torment shall touch them.
In the eyes of the foolish they seem to have died, and their departure was thought to be a disaster;
And their going from us to be their destruction; but they are at peace.

* * * * *

The righteous though they have died early, will be at rest.
For old age is not honored for length of time or measured by number of years, but understanding is gray hair for anyone.

* * * * *

Being perfected in a short time, they fulfilled long years,
For their souls were pleasing to the Lord. Therefore He took them quickly from the midst of wickedness. Yet the people saw and did not understand or take such a thing to heart,
That God's Grace and Mercy are with His elect, and He watches over His Holy Ones.

PSALM 46—RESPONSIVE READING LED BY JIMMY TULLY

God is our refuge and our strength, a very present help in trouble.

Therefore we will not fear though the earth be moved, and though the mountains be toppled into the depths of the sea.

Though its waters rage and foam, and though the mountains tremble at its tumult.

The Lord of Hosts is with us; the God of Jacob is our stronghold.

There is a river whose streams make glad the City of God, the holy habitation of the Most High.

God is in the midst of her; she shall not be overthrown; God shall help her at the break of day.

The nations make much ado, and the kingdoms are shaken; God has spoken, and the earth shall melt away.

The Lord of hosts is with us; the God of Jacob is our stronghold.

Come now and look upon the words of the Lord, what awesome things he has done on earth.

It is He who makes war to cease in all the world; He breaks the bow, and shatters the spear, and burns the shields with fire.

* * * * *

I'd just like to take a moment to say goodbye to Paul. I spent forty-five years with him, and his whole family is here. Not his political family—his family. He protected me my entire life and I will miss him. But I think the right way to hold a memorial to this guy is, come November, to win this thing.

REMARKS OF GINA GLANZ

Each of us, in our own way, will mourn the death of Paul and celebrate the life of Paul. For me, I will always remember that Paul was buried on Rosh Hashanah, the Jewish New Year. Reflections of the past year will be filled with him and of the year to come will have a certain emptiness.

I have always believed that part of Paul's large Irish heart was Jewish. In the Jewish faith, the most important person in the community is the teacher. In fact, rabbi means "my teacher." To thousands and thousands of organizers, and to all those organizers who are here today, he indeed was their rabbi.

He would go anywhere, any time, for any number of people, to share his wisdom. He would excite them; he would educate them; he would entertain them. He unselfishly shared his enormous talent with others, because he had an abiding faith that every new generation of organizers created new opportunities for progressive politics and policies.

I will read a Meditation which is part of the Rosh Hashanah Service, and I will always remember him by it.

We pause in reverence before the gift of self:
The vessel shatters, the divine spark shines through,
And our solitary self becomes a link in Israel's golden chain.
For what we are, we are by sharing. And as we share
We move toward the light.
We pause in reverence before the mystery of presence:
The near and far reality of God.
Not union, but communion is our aim.
And we approach the mystery
With Deeds. Words lead us to the edge of action.
But it is deeds that bring us closer to the God of light.
May we find our life so precious
That we cannot but share it with the other,
That light may shine brighter than a thousand suns,
With the presence among us of the God of light.

As we enter the Jewish New Year, if each of us will find time to share our knowledge of politics, of organizing, of message with others—we can carry Paul's legacy on. We can help ensure that future generations of dedicated organizers will make the world the better place Paul so wanted it to be.

REMARKS OF SENATOR EDWARD M. KENNEDY

Jessica and Miranda, members of the Tully family, friends of Paul Tully—and Fellow Lettuce-Boycotters:

Who can ever forget that night—3 a.m., Convention Hall, Miami Beach, 1972—Paul was there for George McGovern. I had met Paul briefly in 1968, but I first got to know him then.

We had a lot of 3 a.m.s in 1980 as well. Paul always had one more telephone call for me to make, to one more prospective delegate, in one more time zone.

As Supreme Court Justice Oliver Wendell Holmes once said of his generation's experience in the Civil War, "Through our great good fortune in our youth, our hearts were touched with fire."

So it was with Paul Tully. From the time he was touched with fire by Robert Kennedy until that sad night last week in Little Rock, Paul Tully lit up this world with an intensity and purpose that few have ever matched or exceeded.

It seems so unjust that once again, someone so full of talent and commitment should be taken so suddenly, so young, so in the prime of life. Perhaps a furious primary election campaign is taking place in heaven at this very moment, and Robert Kennedy sent out an urgent call last week: "I need Paul Tully."

I also know that up there, Paul Tully's Steamfitter grandfather and his Plumber father and George Meany are glad to see him too, for now they can organize all the celestial workers.

Those of us who are left to do Paul's work here on earth carry many warm and loving memories with us.

When I first began to plan for 1980, Steve Smith told me that he had checked around, and that Paul was everybody's choice to be part of my Presidential campaign.

After the first meeting, some said they had listened hard, but wondered if Paul was speaking a foreign language. Actually, as his friends knew, it was just Tully-talk. You had to watch him and listen to him at the same time to comprehend his full meaning.

The truth is—I always understood him. But then again—people say I speak that way too.

Paul had a unique personality that all of us came to love. My Senate colleagues thought Damon Runyon was organizing my campaign.

And what a job he did. He had played tackle at Yale, and he kept on playing tackle all his life.

He said that he always worked for the most progressive candidate in a race, and that he always started looking around for a Presidential candidate about the time of the midterm convention. I'm just glad he came to Memphis in 1978.

I was ready to sail against the wind—and so was Paul.

He did outstanding work in that campaign. No one ever did it better—or against greater odds—from Iowa to Pennsylvania, to Ohio and on to the Convention.

My father always taught us, "When the going gets tough, the tough get going." I must say, in 1980, I made the going plenty tough for Paul. And it was Paul who kept us going.

If the rest of my campaign had been as good as Paul, we would have had eight years in the White House. I wish I could have seen it—Paul Tully meets Rose Garden.

But, of course, it never would have happened. As Paul liked to say, "I work for change. That's my life. I organize. I don't do governments."

But in a very special sense, he did do America—because his fight was not just for a victory of party, but for ideals of compassion and decency that he held fiercely, despite the tides and fashions of the moment.

He did far more for great endeavors ranging from economic justice to civil rights than most Senators ever do. He kept the Democratic faith, when so many around him were doubting it.

And in his politics, he always practiced what he sought for his country.

He was years ahead of others on the role of women in campaigns and public life. If 1992 is the Year of the Woman because of Anita Hill, it is also because of Paul Tully.

Everything he touched he left better than he found it. Fritz Mondale treasured him too, the way all of us did. Paul had a reservoir of enthusiasm that overflowed any project, and brought everyone else along.

He called countless younger people to his side and to his cause. So many of you are here today—a last assembly of Tully's Legion—ready to go forth again and do the work he loved. You are his legacy, his gift to the future. Because of you, his influence will be felt across years and decades of this nation's public life—this nation, which is a very real sense, was brilliantly mapped in Paul Tully's very singular mind.

He knew America in detail and in breath—almost precinct by precinct. And yet he also had the view from the mountaintop. He knew America the way Einstein knew the cosmos.

He had an encyclopedic understanding, wise counsel, unique insight, and a rare genius.

If they gave out a Most Valuable Player Award in the Democratic Party, he would win it every four years.

Most of all, we remember the utter unselfishness of the man. He was never in anything for himself, but always for the good of others—his family, his friends, his party, his country, his planet.

As I said in the most difficult days of 1980, our work together had become a campaign of the heart. Paul Tully had a heart as big as all of politics, and now his loss has broken our hearts as well.

What grace there was in this rumpled man, what gentleness there was just beneath the toughness.

He was the loyalest of individuals—to the truth and to his friends.

Before he left us, he knew that at long last, 1992 was the year when we were going to do it right. And we are. We are going to win this battle, and now we have a new reason—we are going to win this one for Paul Tully and the newer world he sought.

And next January, when President Bill Clinton takes the oath of office, the spirit of Paul Tully will be at his side, applauding but restless, and already beginning to plan the re-election campaign.

So let me recall some words that my brothers loved, that I quoted in 1980, and that inspired Paul Tully all his life:

"I am a part of all that I have met . . .

"Though much is taken, much abides;

"That which we are, we are;

"One equal temper of heroic hearts,

"Made weak by time and fate, but strong in will

"To strive, to seek, to find, and not to yield."

Perhaps Paul Tully lived with such depth of feeling that he could not also have length of years.

"Some men see things as they are and say why. I dream things that never were and say why not."

That was Robert Kennedy, but it was Paul Tully too. And we miss them both all the more.

REMARKS OF TERESA VILMAIN

When Jessica and Miranda asked me to say a few words today I found it a rather difficult task. For me to say just a few words, Paul would have been shocked.

I worked with Paul in the 1980 presidential campaign when he took one of his many trips down Grand Avenue. And we made him an honorary Iowan.

He was a complicated man. I had the unique opportunity to witness, not just his product, as he called it, but when he allowed himself that one hour of down time each week. It was remarkable.

I would like to share a conversation I had with Paul a couple of years ago. And wherever he is I think he'd approve. Most of us thought that his true passions in life were politics, general elections and the Democratic Party. Let me let you in on a little secret. It was really watching China Beach with Dana Delaney.

I asked him one week at the beginning of the show, when you leave this earth how would you like to be remembered? In typical Paul fashion it took him at least two and a half hours to answer the question. I forgot I even asked it. "How would I like to be remembered?" he said. "Two simple ways. That I did moral work and that I was loved." Jessica and Miranda, your father's two hopes have certainly been fulfilled. You were always his two favorite pizza pies. I miss you Paul.

REMARKS OF RONALD H. BROWN

This is the first time in almost four years when I have had something important to do, that I haven't been able to call Paul Tully ahead of time and ask him what he thought I should say. So I sat yesterday and wondered, what would he have suggested for today? And then it came to me, I almost heard his voice, imagined him waving his hand and turning back to his work, muttering "Say whatever you want, they're all Democrats; there aren't any persuadables in that crowd. Make sure they all vote—and tell them to get back to work, it is day 35."

Now mourning always involves telling stories and reminiscing. And with Paul there is no shortage of material. I've known Paul Tully for more than a decade, and worked very closely with him for the past four years. The decision to hire him as Political Director was probably the most important, and surely the best, that I made. Much of what we are now doing is straight out of the Tully playbook; and this election is unfolding much the way Mr. Tully said it would.

Like most of you I have been collecting and exchanging Tully stories since the day I met him. We all have our favorites.

Once, I was headed late for a formal dinner and found I had left the studs for my shirt at home. I asked Patty McHugh to go down to the political division to see if someone might have an extra set. When Paul stopped laughing at the request, he responded by rummaging through his desk until he found what he was looking for. He thrust a handful of paper clips at Patty, saying: "tell him to use those—they work for me."

I read about how the RNC had these 7:30 a.m. meetings—that idea didn't last long at the DNC. The first day was easy—Paul was still up from the night before. The next day he arrived right on schedule for his idea of an early morning meeting—1 p.m.

A great game was to watch when Paul juggled two passions. During a dinner when he was arguing politics and eating Chinese food, a well-intentioned waiter came by and started to clear away the unfinished dishes. Paul stopped his monologue just long enough to say this to the waiter: "Touch the plate, lose the arm."

Now Paul Tully was not the easiest person to get along with. Some things mattered hugely to him; other things didn't—like what he called "glue politics." And when something didn't matter to Paul, it was not easy to get his attention on it. It was as if he thought what we called stubbornness was a virtue—he called it focus.

And Paul was not always the easiest person to understand. As Carl Wagner said the other day, it was as if Paul had written a great book, but hadn't gotten around to numbering the pages yet—the ideas were all there, but sometimes it took a little reordering.

And yet, we gather today shaken to our cores by the loss of this man. What are we feeling? What is it?

First, Paul was life—he breathed, saw, laughed, growled, paced, waved, drove every moment home. Watching Paul enter an office was like watching a thunderstorm arrive. I once sat in a meeting with Pamela Harriman where, while other people were pulling up extra chairs, Paul pulled up an extra table.

It is almost impossible to think of Paul without seeing him—it was certainly impossible to talk to him on the phone without having a clear vision of what he was doing—you'd hear him waving, using his own sign language . . . always in motion.

Indeed, the word animated could have been invented for Paul Tully.

Paul understood, appreciated and loved to experience many things the way most of us learn to relish one thing. He loved movies, art, flowers, architecture, football, music, cooking, cities, civil war histories, spreadsheets, memories of Jones Beach days as a child—a public beach he liked to point out—and his daughters, his daughters.

And he loved politics. More interesting to him than fiction, more important to him than science, more beautiful to him than nature—he strove to make America live up to its promise by making democracy work better. That meant listening to the gentle conversation of voters' aspirations, mastering the technology of contemporary politics, building coalitions. That meant patiently organizing people and ideas. That meant reminding this Party that our roots are grounded in the struggles of working families, the principles of equality and justice, and the possibilities of progress for all of our people.

These past few days, so remarkable in their sadness, as we have gathered our strength and ordered our emotions and feelings, we have stood together as a family in a broken circle. What we have shared, and what has passed between us, contains enormous inspiration, reassurance and strength. But let us also be wiser as well as stronger. Let us remember that as important as elections are, we must all learn to take better care of ourselves—especially those among us who spend so much time, and so many nights, away from home. Your contributions are precious to our country; your lives are precious to us. Take care of them. Please.

Paul Tully is gone. But, look in a hundred campaigns today, look in a thousand faces around this country—look at each other—and you will see the men and women Paul Tully trained and Paul Tully inspired. Paul often described himself as an organizer. The definition of a good organizer is someone who can leave a place and have left others to carry on the work. Paul Tully was just such an organizer, and we are the people to carry on his work. That's why, heartbroken though we are, we must go back to work. After all, it's day 35, there's message to make and a base to turn out. And we must march on.

REMARKS OF JESSICA AND MIRANDA TULLY

Friends. Our father approached parenthood like he approached a lot of things. Uniquely. We all know he was wholly and passionately dedicated to making the country a little more tolerable for the working class men and women of this country. Miranda and I cut our teeth on the journey for social justice. And I know that is the connection that binds all of us here today.

However, this has meant that we have waited, Miranda and I, have waited endlessly for him in offices, on birthdays, after school, on Father's Day, on Christmas, on New Year's, and until 2 in the morning sometimes. But we are different and stronger people because of this. He loved us as he came home from the DNC and after that, from NCEC, and cooked dinner for us, at 11:30 at night sometimes.

He loved us as he pointed out the historical significance of this building and the beauty of those flowers and that music. He loved us as he proclaimed himself Mister Wonderful. And made that fish kiss. And now he leaves us. Waiting. The order has been erupted.

Indeed, a portion of his life's work will be realized in November. But it is up to us to decide what to do with it afterwards. Or, will we know what to do with it? Our family buried our dad, a New Yorker, here in the nation's capital for a reason. Let his memory guide us toward making this country work again. And toward all of us laying down our political swords once in a while to venture out into the sunshine or the starry sky and to fully enjoy each moment we have on this great mother earth.

We love you Dad.

STATEMENT OF GOVERNOR BILL CLINTON, SEPTEMBER 24, 1992

Hillary and I are deeply saddened by the loss of Paul Tully. He was a dear friend and trusted advisor.

Paul had one of the nation's greatest political minds—and one of its biggest hearts. He dedicated his life to improving the lives of others.

Our prayers are with him, his family and all of those who loved him. We're really going to miss him.

REMARKS OF CONGRESSMAN RICHARD A. GEPHARDT, HOUSE OF REPRESENTATIVES, SEPTEMBER 25, 1992

FOR TULLY

Mr. Speaker, I rise with great sadness to inform my colleagues that a good friend of mine, and a good friend of the Democratic Party, Paul Tully, passed away yesterday.

Paul Tully was in politics for all the right reasons. Not for money, and not for power, but because he believed that politics was the vehicle for changing and lifting the lives of every American.

Nobody worked harder in the last four years to elect a Democratic President than Paul Tully. And I think this year, his work was about to pay off.

But even if it doesn't, it's hard to accept the fact that Paul won't be staying up all night on November Third, following the computers, listening for targeted precincts, shouting at the television, and waiting to see whether the voters—people Paul Tully admired and studied so well—did what he expected them to do behind the drawn curtain of democracy.

Paul leaves behind two daughters. He leaves behind a generation of Democratic activists, friends and colleagues at the Democratic National Committee, allies in Governor Clinton's campaign, partners from the civil rights and women's movements, respectful adversaries, and countless people who just enjoyed being around him.

There are a lot of people who say today, "I do politics because of Paul Tully." And now, for them—for all of us—there is a hole in our hearts. And as sorry we are to know Paul is gone, we are grateful that he passed our way.

REMARKS OF CONGRESSMAN BILL RICHARDSON, HOUSE OF REPRESENTATIVES, SEPTEMBER 28, 1992

TRIBUTE TO A MAN OF POLITICS

Mr. Speaker, at this very moment in Little Rock, Arkansas, and in Washington, DC, practitioners of politics toil away on behalf of their Presidential candidates, Bill Clinton and George Bush. The giant on the Republican side was Lee Atwater. The giant on the Democratic side was Paul Tully. Both have passed away.

Although their tactics were different, both men were campaign strategists of the utmost degree. Paul Tully cared deeply about government. He cared about people. He worked in every President campaign since 1968.

Charts, maps, demographics, polling, statistics, fundraising—every day these words emanated from Paul's lips. He was a good, decent man that cared about people, about education, about health care.

It is ironic, Mr. Speaker, that Paul Tully toiled in four losing Presidential campaigns, but regrettably, one of the greatest tragedies of his death will be that Paul Tully needed 40 more days to see his candidate, Governor Bill Clinton, win in November.

Sometimes many downgrade the practitioners of politics, those young men and women toiling away in President Bush's headquarters and in Governor Clinton's headquarters, as unimportant, but they are not. Politics is a noble art, and one of the most noble practitioners, Paul Tully, left us most regrettably last week.

STATEMENT BY DEMOCRATIC PARTY CHAIRMAN RONALD H. BROWN, SEPTEMBER 24, 1992

It is with the deepest sadness that we announce the passing of Democratic National Committee (DNC) Political Director Paul Tully last night in Little Rock, Arkansas.

It is difficult for me to express my personal loss of a dear friend and colleague of over twelve years. My first act as Party Chairman was to recruit Paul whom I consider a political genius. His work over the last four years has only reinforced that assessment.

Those of us who have had the honor, privilege and unique joy of working with Paul mourn the passing of a man whose heart and soul reflected the ideals, values and aspirations of this great country and the Democratic party.

There will only be one Paul Tully. Pacing, driven, and full of joy, Paul's commitment to our Party and more importantly, to making this great nation even greater was a fire that burned bright and long. Amidst all of our sadness, we can take some solace in knowing that Tully's fire—the Tully spirit—will live on in the hundreds upon thousands of people whom he has touched.

The bitter irony of his passing—so close to the realization of his life's work—is perhaps the hardest thing to swallow. Each day, we renew our commitment to his mission.

Our thoughts and prayers go out to his family. Paul, we know you will be watching and cheering with us come November. Thank you and God bless you.

BIOGRAPHY OF PAUL TULLY

Paul Tully was the Director of Political Operations for the Democratic National Committee (DNC) since the beginning of Chairman Brown's term in 1989. He coordinated Democratic general election strategy at the local, state and national levels, and supervised DNC political programs. In 1988, Mr. Tully served as Political Director in Senator Gary Hart's and Governor Michael Dukakis' primary campaigns.

In addition to the numerous senate and gubernatorial campaigns he managed, Mr. Tully worked on every Presidential election since 1968 as political director or part of the political staff. He was the Executive Director of Senator Kennedy's PAC, the Fund for the Democratic Majority. Mr. Tully also had served as a creative consultant with MTM television productions in Hollywood.

He was a graduate of Yale College and the University of Pennsylvania Law School.

While at the DNC, Mr. Tully led the party's presidential campaign preparation effort, and oversaw the integration of the DNC's political program with the Clinton campaign.

He was born in New York City in 1944 and grew up in Long Island. He is survived by two daughters Jessica, and Miranda Tully, one brother Jim Tully and one sister Patricia McDermott.

STATEMENT BY DEMOCRATIC PARTY VICE CHAIR CARMEN O. PEREZ

I cannot express what a grave loss this has been for the Democratic Party and the national political community. Paul Tully's political savvy and his commitment to Democratic Party politics was unmatched. His leadership was instrumental in revitalizing the Party, and in focusing our strategy back to the grass roots level.

Paul Tully practiced the politics of inclusion and empowerment. He sincerely believed in the diversity of the Democratic Party and in bringing people into the political process. His commitment and outreach to the Hispanic community has helped Latinos become politically involved at all levels, and has brought the issue of Hispanic political participation to the forefront of the national political debate.

I sincerely extend my deepest condolences to his family.

[From Hotline, Sept. 25, 1992]

PAUL TULLY: VETERAN DEM STRATEGIST DIES IN LITTLE ROCK

DNC political dir. Paul Tully, who worked in every pres. election since 1968, died in his hotel room in Little Rock yesterday. He was 48 years old. Boston Globe's Chris Black: "The unexpected death of the heavyset chain smoking strategist, who brought passionate commitment and depth of knowledge to national politics, shocked and saddened the political community. . . . Politics was his love, and he devoted his life to the cause of electing liberal Democrats to public office . . . with an unparalleled Rolodex of contacts throughout the nation and encyclopedic knowledge of Democratic constituencies" (9/25).

N.Y. Times' Robin Toner: "One of his party's pre-eminent strategists . . . among the most impassioned and intense of a generation of Democratic political professionals who devoted much of their lives to regaining the White House. . . . He was known in political circles for his blunt assessments, his fierce partisanship and his love of the game" (9/25).

W. Post's J.Y. Smith: "A rotund, curly-haired, coffee-drinking chain-smoker who could be brilliant and inarticulate at the same time. . . . One of Washington's most respected political operatives . . . He cut his teeth on the old politics of coalition. But colleagues credited him with an equal mastery of the new politics of communication: polls, issues, focus groups, regional differences in the electorate, what it takes to get people interested, how to engage them in the process" (9/25).

W. Times' Moss: "a chain-smoking former collegiate defensive tackle with a disheveled appearance who had an intense approach to modern politics" (9/25).

ABC's Schneider: "A key aide to Bill Clinton and the whole Democratic party has died—Paul Tully. He was the political director of the Democratic National Party. He was just 48 years old" ("GMA," ABC, 9/25).

DNC Chair Ron Brown: "My first act as Party Chairman was to recruit Paul whom I considered a political genius. His work over the last four years has only reinforced that assessment. . . . There will only be one Paul Tully. Pacing, driven, and full of joy . . . The bitter irony of his passing—so close to the realization of his life's work—is perhaps the hardest thing to swallow" (DNC release, 9/24).

Bill Clinton: "Paul had one of the nation's greatest political minds, and one of its biggest hearts."

Clinton Strategist James Carville: "This guy's whole life was Democratic presidential politics. He had worked for four years on this—he had every map, every target, he probably knew the name of every swing voter in the country" (N.Y. Times, 9/25).

Sen. Ted Kennedy (D-MA): "Paul Tully was a great friend of the Kennedy family and one of the Democratic Party's most valuable resources. He had an encyclopedic understanding of American politics and his wise counsel, unique insights and remarkable personality will be deeply missed."

Dem Strategist John Sasso: "All he wanted was to elect a Democratic president. He gave up everything in his life to help the Democratic Party" (Boston Globe, 9/25).

Bush-Quayle Political Dir. Mary Matalin: "Paul Tully was an outstanding professional who cared passionately about his party. He was in this business for all the right reasons. He had a soul" (W. Post, 9/25).

[From "Hotline," Sept. 29, 1992]

PAUL TULLY: MORE REMEMBRANCES

Boston Globe's Tom Oliphant writes of Tully's first presidential campaign, working as a "grunt" for RFK. After '68, "While his party appeared to go astray, Tully never did as he matured from a world-class tactician and organizer into one of political liberalism's most creative thinkers. . . . When Tully died, people wept in board rooms, newsrooms, on Capitol Hill, at a candlelight vigil on the banks of the Arkansas River and on the meaner streets of politics" (9/27).

W. Post's Dan Balz recounts his dinner with Tully the night before he died: "As always, he was provocative, enlightening—and exhausting." Tully once told Balz, "'I don't do government, I do politics.' It wasn't meant to denigrate the business of governing, but only to suggest that to him there was something equally ennobling about the art of fighting and winning elections. . . . Gruff, ebullient, bearish, upbeat, insightful, partisan" (9/26).

Mark Shields: "Since 1968, Paul Tully had practiced politics working almost non-stop to put a Democrat in the White House. But he was not really a political pro. Paul Tully was a committed, smart, tough, insightful, and passionate amateur. . . . As Peter Hart put it so well, 'In a world full of mercenaries, Paul Tully was a missionary.' In the words of his friend Mike Ford, 'Paul Tully truly did a noble politics'" ("Capital Gang," CNN, 9/26).

Newsweek's Joe Klein: "He left the way his peers fear most—alone, in a hotel room, too young. . . . He loved the game so he sometimes couldn't find words fast enough, antic scenarios dissolved into unintelligence gasps—but his friends understood, and will miss him fiercely" (10/5 issue).

L.A. Times: "In his more than 20 years as a political strategist, Paul Tully . . . repeatedly saw Democratic presidential candidates go down to defeat. The experience did not dishearten him; rather it fostered an understanding of political realities that he sought to impart to the Clinton campaign" (9/29).

Boston Herald's Helen Kennedy: "Tully once explained that his strategy was to work for the most progressive candidate who had a chance of winning. He had little choice: liberal politics ran in his blood" (9/25).

N.Y. Newsday's Myron Waldman: "One of the brightest and most popular political operatives in the business" (9/25).

House Maj. Leader Richard Gephardt: "It's hard to accept the fact that Paul won't be staying up all night on November 3rd, following the computers, listening for targeted precincts, shouting at the television . . . There are a lot of people who say today, 'I do politics because of Paul Tully.' And now, for them—for all of us—there is a hole in our hearts. And as sorry as we are to know Paul is gone, we are grateful that he passed our way" (Spoken on House floor, 9/25).

The memorial service will be held tomorrow, 9/30, at 1:00pm at the National Cathedral in DC.

[From the Associated Press, Sept. 25, 1992]

DEMOCRATIC POLITICAL OPERATIVE DIES

LITTLE ROCK, AR.—Paul Tully, political director of the Democratic National Committee, was found dead Thursday in his hotel room, authorities said. He was 48.

Pulaski County Coroner Steve Nawojczyk said Tully appeared to have died of natural causes, probably a heart attack or stroke.

Tully, who had been directing state-by-state targeting for the Clinton campaign, was a beefy, intense, chain-smoking political operative who had moved in and out of top Democratic campaigns for more than a decade.

Bill Clinton called Tully "a dear friend and trusted adviser."

In 1980, Tully was a key aide for the presidential bid of Sen. Edward M. Kennedy, D-Mass., and was political director for Walter F. Mondale's 1984 presidential campaign.

In 1988, Tully was political director for Gary Hart's presidential bid and assumed the same post in the Dukakis campaign after Hart's effort collapsed.

Tully was one of two aides who resigned from the Dukakis campaign in the controversy over the disclosure of a videotape that showed Delaware Sen. Joseph Biden and British politician Neil Kinnock making the same speech.

Biden, who drew heavily from Kinnock's text without attribution, ultimately withdrew from the presidential race.

John Sasso, Dukakis' campaign manager, admitted passing the tape to a New York Times reporter. Tully admitted falsely telling Time magazine that the Dukakis campaign had not helped spread information about Biden's use of Kinnock's speech.

Tully moved to the Democratic National Committee after Ron Brown became chairman in 1989.

Tully was apparently stricken while getting ready for bed Wednesday night, Nawojczyk said. His body was found by a maid in his hotel room late Thursday afternoon, the coroner said.

[From the Boston Globe, Sept. 25, 1992]

PAUL TULLY, AT 48; KEY STRATEGIST FOR CLINTON, THE DEMOCRATIC PARTY

(By Chris Black)

LITTLE ROCK, AR.—Paul Tully, one of the nation's top Democratic political operatives and a major figure in the Clinton-Gore presidential campaign, died yesterday of natural causes, officials said, possibly a heart attack. He was 48.

Mr. Tully was found in his hotel room in downtown Little Rock, two blocks from the Clinton-Gore national campaign headquarters, late yesterday afternoon. The unexpected death of the heavyset, chain smoking strategist, who brought passionate commitment and depth of knowledge of national politics, shocked and saddened the political community.

He was a lawyer who displayed little interest in practicing law. Politics was his love, and he devoted his life to the cause of electing liberal Democrats to public office.

"Our ideals would make us social workers except we like to score," he once said of his predilection for electoral politics.

In a statement, Sen Edward M. Kennedy said, "Paul Tully was a great friend of the Kennedy family and one of the Democratic Party's most valuable resources. He had an encyclopedic understanding of American politics and his wise counsel, unique insights and remarkable personality will be deeply missed." Mr. Tully was a highly regarded operative in national campaigns with an unparalleled Rolodex of contacts throughout the nation and encyclopedic knowledge of Democratic constituencies.

He most recently worked as the political director of the Democratic National Committee. He moved to Little Rock after the party's national convention to work full time on the Clinton campaign. He insisted that he be given no title but was a powerful presence as a kind of political guru with a depth of knowledge of politics that few could approach.

He spent the last four years piecing together the organizational structure that would enable the 1992 Democratic presidential nominee to reap the benefits of a coordinated Democratic campaign in each state.

He operated from what had been the editor-in-chief's plush office at the Clinton-Gore national campaign headquarters in the former Arkansas Gazette building, supervising the Democratic campaign effort and drawing on decades of experiences to help make decisions on targeting resources.

Mr. Tully was born in the Bronx, the grandson of a Russian immigrant. His family was among the first to move from the city to Levittown, N.Y., the massive postwar suburban community on Long Island, in 1948.

His father was a union plumber and his mother was active in school district politics on Long Island. He went to Yale University and the University of Pennsylvania Law School.

Like many in his generation, he became active in politics during the civil rights movement. During the summer of 1964, he went to Mississippi with other college volunteers to help blacks register to vote. He soon turned to electoral politics for his life's work.

In 1968, he went to work on the presidential campaign of Robert F. Kennedy. Four years later, he worked for George McGovern, in 1976 for Morris Udall, in 1980 for Edward M. Kennedy and in 1984 for Walter F. Mondale.

He began the 1988 campaign season as a top operative for Gary Hart, but when Hart withdrew from the race, longtime friend John Sasso recruited him to be the political director of the Dukakis campaign. Mr. Tully resigned from the campaign in the fall of 1987, the same day as Sasso, the Dukakis' campaign manager, after he admitted he lied to Time Magazine about the fact that Sasso was the source of a videotape that showed rival candidate Joe Biden using the speech of a British Labor Party leader without attribution.

In retrospect, analysts viewed his resignation as significant to Dukakis' eventual defeat as the loss of Sasso, Dukakis' most trusted aide.

Sasso spoke yesterday about the irony of Mr. Tully dying just 40 days before the day when he may have realized his dream to see a Democrat back in the White House.

"It's a very, very sad day," said Sasso. "All he wanted was to elect a Democratic president. He gave up everything in his life to help the Democratic Party."

[From The Boston Globe, Sept. 27, 1992]

A RIGHTER OF WRONGS

(By Thomas Oliphant)

WASHINGTON.—Like the American government, American politics has largely lost its way for the past quarter-century.

The government and politics have often forgotten their most important customers—the people who try to live off their paychecks and pensions and the people to whom life has been haphazardly cruel.

Since the late 1960s, government has been too much about deals, about marking time, about accommodating big shots, and politics has been too much about the same things, as well as about lowest-common-denominator marketing, fear and hate.

In this rough, however, there have been diamonds, and one of the most lustrous died unexpectedly in Little Rock on Thursday, just as the dream to which he literally gave his life looked as if it might finally come true.

Paul Tully—just 48 when he died—was one of the few people who, in the middle of the Reagan era, figured out that a Democratic majority nonetheless lurked. Bill Clinton's plan for this fall's general election is a direct offspring of Tully's earlier thinking. When his huge heart gave out in his hotel room, Tully was the guy in Little Rock who had done the all-important targeting strategy for the general election—the aiming of the campaign's resources at the states most likely to constitute a majority in the Electoral College.

The plumber's son from New York embodied the purpose of politics: helping ordinary people and righting wrongs. To those whose curse it is to follow this game, it was no surprise that one of the classiest expressions of sadness at his death came from Mary Mattalin of the Bush campaign, who also came up the hard way. "He was in this business for all the right reasons," she said. "He had a soul."

Did he ever. Tully was the political director of the Democratic National Committee. His first presidential campaign as a young man was in 1968, as a grunt for Robert Kennedy. What Kennedy produced in that thrilling spring was what Tully fought for in every spring and fall thereafter: a politics that tried to build a bridge of economic and social justice across the country's racial divide, that offered hope and solid opportunity to white plumbers, black schoolteachers, Hispanic farm-workers and lonely grandmothers.

While his party appeared to go astray, Tully never did as he matured from a world-class tactician and organizer into one of political liberalism's most creative thinkers.

Like many of his pals, he could have made zillions peddling influence; one of the best-kept Tully secrets was that he had degrees from Yale and the University of Pennsylvania's law school. Unlike most of his pals, his idea of off-season work was training community organizers and helping in labor union struggles. I never saw him smile more wickedly than after he had politically busted Eastern Airlines boss Frank Lorenzo in his union-busting chops.

He was in the middle of every presidential fight after 1968; his candidates are a roster of what might have been in the era of conservative ascendancy: McGovern, Udall, Kennedy, Mondale, Hart, Dukakis.

Tully was no Clinton guy originally (Mario Cuomo was more to his taste), but when Clinton came to the party for help in his dark days after the primaries ended, Tully was ready. He'd been selling his plan for more than three years to anyone who would listen. On the two coasts and in the upper Midwest, Tully saw a Democratic majority for a campaign that reached out to the economic concerns of ordinary worried Americans.

As it turned out, Clinton has been the right vehicle, but Tully personified the revived Democratic Party in a position to help him. He was never happier in his life than he was the last few weeks.

When Tully died, people wept in board rooms, newsrooms, on Capitol Hill, at a candlelight vigil on the banks of the Arkansas River and on the meaner streets of politics.

Paul Tully's life embodied that haunting challenge from Robert Kennedy in 1968: that all of us can make a difference and that each of us should try.

[From the Boston Herald, Sept. 25, 1992]

PAUL TULLY, AT 48, DNC POLITICAL DIRECTOR

(By Helen Kennedy)

Paul Tully of Washington, DC, the political director of the Democratic National Committee and a key party strategist who was working on his seventh presidential campaign, was found dead yesterday in his hotel room in Little Rock, Ark.

Mr. Tully, 48, a former aide to Sen. Edward Kennedy and Gov. Michael Dukakis, apparently died of natural causes, probably a heart attack or a stroke, officials said.

Mr. Tully, who made headlines in 1988 when he was forced to resign from Dukakis' presidential campaign because of his involvement in the infamous "attack video" that drove a rival candidate from the race, was apparently stricken while getting ready for bed Wednesday night, said Pulaski County Coroner Steve Nawojczyk.

In a statement, Bill Clinton called Tully "a dear friend and trusted adviser. Paul had one of the nation's greatest political minds and one of its biggest hearts."

Over the years, the chain-smoking ex-linebacker worked on countless campaigns for liberal candidates, including Eugene McCarthy, Robert Kennedy, Allard Lowenstein, Morris Udall, George McGovern and Edward M. Kennedy.

"Paul Tully was a great friend of the Kennedy family and one of the Democratic Party's most valuable resources," Kennedy said last night.

Mr. Tully once explained that his strategy was to work for the most progressive candidate who had a chance of winning. He had little choice: liberal politics ran in his blood.

The great-grandson of a charter member of the Steamfitters Union and the son of a union plumber, Mr. Tully was born in the Bronx. After World War II, his family was among the first to move to Levittown, a sprawling Long Island suburban community.

Mr. Tully won a scholarship to Yale University, where he played tackle on the football team quarterbacked by Brian Dowling, who was later immortalized as "B.D." in classmate Garry Trudeau's comic strip "Doonesbury."

Even before he graduated in 1968, Mr. Tully became involved in the anti-war movement, working first for McCarthy and then for Robert Kennedy. After Kennedy's assassination, Mr. Tully went to the University of Pennsylvania, where he earned a law degree and got married.

In 1980, Mr. Tully was a key aide to Sen. Edward M. Kennedy during his presidential bid and later was a top adviser to former Sen. Gary Hart before he dropped from the race.

In 1988, Mr. Tully was national political director for Dukakis' campaign, but was forced to resign after it was revealed that campaign manager John Sasso distributed the notorious "attack video" that showed Delaware Sen. Joseph Biden had plagiarized an English politician's speech.

Mr. Tully had told Time magazine that the Dukakis campaign had not helped spread the information that forced Biden from the race.

Mr. Tully is survived by two daughters, Jessica and Miranda; a brother, Jim; and one sister, Patricia McDermott.

[From the Washington Post, Sept. 25, 1992]

PAUL TULLY, AIDE TO CLINTON, DNC OFFICIAL, DIES AT 48

(By J.Y. Smith)

Paul Tully, 48, director of political operations for the Democratic National Committee and a key aide in the presidential campaign of Gov. Bill Clinton, died yesterday at a hotel in Little Rock, Ark.

Pulaski County Coroner Steve Nawojczyk said the cause of death appeared to be a heart attack or a stroke.

One of Washington's most respected political operatives, Mr. Tully worked in every presidential campaign since 1968. His roots were in the liberal wing of the Democratic Party, and candidates with whom he has been closely associated included some of its most prominent spokesmen: Sen. Edward M. Kennedy of Massachusetts, former senators Gary Hart of Colorado, Walter F. Mondale of Minnesota and George McGovern of South Dakota, and former governor Michael S. Dukakis of Massachusetts.

He cut his teeth on the old politics of coalition. But colleagues credited him with an equal mastery of the new politics of communication: polls, issues, focus groups, regional differences in the electorate, what it takes to get people interested, how to engage them in the process.

Both traditions were evident in Mr. Tully's work since 1989, when he became political director at the DNC. With Ron Brown, the party chairman, he was credited with putting the Democratic Party in its best position in years to fight a national election. Part of the job concerned such things as focus groups, and part of it was easing the strains among coalitions that had pulled the party apart in the past.

In the Clinton campaign, Mr. Tully was responsible for coordinating strategy at the local, state and national levels. Clinton described him yesterday as "a dear friend and trusted adviser."

A resident of Washington at the time of his death, Mr. Tully was born in New York City. He graduated from Yale and received a law degree at the University of Pennsylvania.

A rotund, curly-haired, coffee-drinking chain-smoker who could be brilliant and inarticulate at the same time, he cut a traditional figure in politics. Although he seemed to know everything about the United States, he was a big-city easterner at heart.

In 1988, when he went to work for Hart and moved to Denver for a brief period, friends reminded him that he had previously described Colorado as being "so far west it's not even on the map." Mr. Tully replied with a call to action that captured the essence of his career.

"This isn't about where you live," he said. "This is about change—about taking power away from the other guy. If that's what matters to you, it doesn't matter what town you live in."

In 1988, Mr. Tully was one of two people who resigned from the Dukakis campaign in a dispute in the primary about the release of a videotape showing Sen. Joseph R. Biden Jr. (D-Del.) giving a speech, part of which was taken from Neil Kinnock, then the leader of the British Labor Party.

John Sasso, the Dukakis campaign manager, admitted giving the tape to a New York Times reporter. Mr. Tully had told Time magazine that the Dukakis campaign had nothing to do with spreading the story.

Mr. Tully's marriage ended in divorce.

On hearing of his death, Mary Matalin, deputy campaign manager for President Bush, offered this tribute across the divide of political rivalry: "Paul Tully was an outstanding professional who cared passionately about his party. He was in this business for all the right reasons. He had a soul."

Survivors include two children, Jessica and Miranda Tully, both of New York City.

[From the Washington Post, Sept. 26, 1992]

THE VORACIOUS DEMOCRAT: PAUL TULLY'S HUNGER FOR POLITICS

(By Dan Balz)

LITTLE ROCK, AR.—On the night before he died, Paul Tully was in exceptional form: a vodka and tonic, a cranberry juice, a succession of cigarettes, a platter of Mexican food, an array of maps and statistics, and two hours of nonstop analysis of the presidential campaign he was trying to win for the Democrats. As always, he was provocative, enlightening—and exhausting.

We hooked up late Wednesday after he had spent another long day in Bill Clinton's headquarters. As we settled into the restaurant booth, he announced to our waitress in typical fashion: "I have an enormous thirst and an enormous appetite."

Tully was a man of prodigious appetites, but none larger than his passion for politics. His death of a probable heart attack on Thursday cost the Democrats what party Chairman Ronald H. Brown called "the smartest political strategist I have ever known." No one in the party had worked longer or harder to give the Democrats a chance of recapturing the White House this November.

Yet even in Washington, he was hardly a household name. In this era of political operatives as public personalities, he was an insider's insider. The public never knew him. Hardly anyone in Democratic politics didn't. At the relatively young age of 48, he was a veteran of 24 years in presidential campaigns, the political director of the Democratic National Committee and a key architect of the Democrats' 1992 campaign strategy.

Friends called him an original. Tully once said, "I don't do government, I do politics." It wasn't meant to denigrate the business of governing, but only to suggest that to him there was something equally ennobling about the art of fighting and winning elections. He was serious about that business and didn't like people who weren't.

"There was no ulterior motive for him," Brown said. "It wasn't about personal glory. . . . It wasn't about a job down the line. It was about making a difference in the country."

"He didn't define his ego in terms of his notoriety," said Carl Wagner, his closest friend and a fellow political consultant. "He didn't come to politics with his wallet out. Believe it or not, he was driven by his heart."

Gruff, ebullient, bearish, upbeat, insightful, partisan, sometimes unintelligible, he was loved and remembered by those who worked with him for his belief in the cause. "In a business of mercenaries, he was a missionary," said Peter Hart, the Democratic pollster.

Tully was obsessed with politics—to the exclusion of almost everything else. He carried too much weight on his large frame, smoked too many cigarettes, slept too little, pushed himself too hard. He was a man of late nights, slow mornings and no weekends.

"He'd walk into a 7-Eleven at 11 o'clock at night and get the first edition of the morning paper and six cups of coffee to go," Wagner said.

Wagner recalls a night Tully came for dinner, late as usual. Wagner and his wife had already eaten, but Tully said not to worry. He called a pizza parlor. "The biggest," he said, "without anchovies." He called for coffee. He laid out his latest spreadsheets of political data on Wagner's table.

"Pretty soon it was 2 a.m.," Wagner said. "The pizza was gone. The coffee was gone. The spreadsheets were still there."

Tully devoured data. He could read a poll for weeks, sifting and thinking and analyzing the entrails. He would argue about it, he would order more details when something looked odd. His office walls were papered with computer-generated maps showing county-by-county voting patterns, media markets by "persuadable voters," ad buys by candidates, electoral scenarios.

He knew precincts in Pittsburgh and how the vote had changed from one election to another. He knew where Democrats lived in the Detroit suburbs and what they looked like and where they worked and how much they made and how the party could get them back.

Tully knew the players from state to state, their histories and their battles and their weaknesses. When old wounds threatened to upset the progress of Clinton's campaign this fall, others with less experience would ask him to broker a tribal dispute. A few phone calls and an hour or so later, Tully would announce with a grunt, "Done."

He was Brown's first pick in 1989 when he began to build a staff at the Democratic National Committee. The two constructed a strategy for winning in 1992; Tully was one of the most persistent voices in forcing Democrats to keep their focus on economics and the middle class and not on issues that had divided the party in other elections.

A week after the Persian Gulf War ended and President Bush was at 90 percent in the polls, Tully passed my house one Sunday afternoon heading to his office. At the time, there was hardly a political analyst in the country who gave the Democrats a shot at defeating Bush—except Tully.

"Remember Churchill," he said to me that day, recalling that the British voters had turned out their prime minister in 1945 after World War II. Then he got that impish look on his face. "Now all we've got to do is find our Clement Attlee."

In the summer of 1991, when the Democrats were having trouble finding not only their Attlee but anyone to run for president, Tully was plotting victory. "The only question is, is there an audience out there to listen to an alternative?" he asked rhetorically. Based on his own analysis of polling and economic data, he was convinced there was, and like a circuit-riding preacher, he took his spreadsheets and his maps to any party gathering that would have him to convince the doubters.

He was sent to Little Rock to help integrate the operations of the DNC with the Clinton campaign and died in the hotel room that had become his temporary home. On the night before his heart attack, for the first time in the campaign, he sounded cautiously confident the Democrats could win. But he died 40 days short of knowing whether it would happen. For that as much as anything, his Democratic friends were grieving today.

"It's not like politics was good to him," Wagner said. "He was on the downside of the curve in this town. It's not like these were the salad days for a liberal Democrat."

[From the Washington Times, Sept. 25, 1992]

DEMOCRATIC STRATEGIST PAUL TULLY DIES AT 48 IN LITTLE ROCK HOTEL ROOM

(By J. Jennings Moss)

Paul Tully, Democratic National Committee political director and architect of a strategy to make the party competitive again in presidential elections, died Wednesday.

Mr. Tully, 48, was found dead in his Little Rock, Ark., hotel room late yesterday afternoon. Authorities said Mr. Tully probably died of either a heart attack or a stroke.

The longtime political operative had been heading up the state-by-state targeting effort for Bill Clinton's presidential campaign, which is headquartered in the Arkansas capital.

DNC Chairman Ron Brown, in a statement, called Mr. Tully "a political genius . . . whose heart and soul reflected the ideals, values and aspirations of this great country and the Democratic Party."

Around Washington, Mr. Tully was an imposing figure—a chain-smoking former collegiate defensive tackle with a disheveled appearance who had an intense approach to modern politics.

"I come out of that urban, union, ethnic environment. That's what's inside me," he said in a 1984 interview with The Washington Post. "And growing up in Levittown [Long Island, N.Y.] in the McCarthy days with a bunch of conservatives running things, I was raised with a much different attitude toward authority figures than most American kids are taught."

An unabashed liberal, Mr. Tully became politically active in the anti-Vietnam War movement before his 1968 graduation from Yale University and has worked on every presidential campaign since. He later received a law degree from the University of Pennsylvania.

He rose in stature with each election and was political director for both Walter Mondale in 1984 and Michael Dukakis in 1988.

But the post with the Dukakis campaign ended in scandal. He and campaign manager John Sasso resigned after admitting to leaking a videotape that showed Delaware Sen. Joseph R. Biden, Jr., a Dukakis rival, giving a speech strikingly similar to the one from British politician Neil Kinnock without attribution. The incident helped push Mr. Biden from the Democratic race.

After Mr. Dukakis' defeat, Mr. Brown became party chairman and appointed Mr. Tully as one of his top deputies.

In the 1984 Post interview, Mr. Tully described himself as a "constituency-oriented economic Democrat" who worked for the "most progressive candidate who has a chance of winning."

When he took the job at the DNC, his goal was different—laying the groundwork so that any Democrat the party nominated would have a good chance of being elected.

Mr. Tully devised a strategy of targeting states based on their value in the Electoral College, using resources carefully, getting a nominee quickly and coordinating the presidential campaign with state and congressional races. Analysts credit such an approach to helping the Democrats this year.

[From The New York Times, Sept. 25, 1992]

PAUL TULLY IS DEAD AT 48; TOP DEMOCRATIC STRATEGIST

(By Robin Toner)

WASHINGTON.—Paul Tully, the political director of the Democratic National Committee and one of his party's pre-eminent strategists, was found dead in Little Rock Ark., today. He was 48 years old.

Coroner Steve Nawojczyk of Pulaski County said Mr. Tully's body was found about 3 P.M. today by a maid at the hotel where he was living in Little Rock. Pending results of an autopsy, the coroner said Mr. Tully appeared to have died of natural causes.

Mr. Tully was among the most impassioned and intense of a generation of Democratic political professionals who devoted much of their lives to regaining the White House. He worked in every Presidential election since 1968.

He had moved to Little Rock this fall to aid in Gov. Bill Clinton's drive for the White House. Ronald H. Brown, the chairman of the Democratic National Committee, said in a statement tonight: "There will be only one Paul Tully. Pacing, driven, and full of joy, Paul's commitment to our party and, more importantly, to making this great nation even greater was a fire that burned bright and long."

In a statement, Mr. Clinton said, "Paul had one of the nation's greatest political minds, and one of its biggest hearts."

Mr. Tully was a fixture in Democratic Presidential politics, working for Senator Edward M. Kennedy in 1980, for Walter F. Mondale in 1984, for former Senator Gary Hart's first Presidential campaign in 1987, and, briefly, as a top aide to Michael S. Dukakis. Mr. Tully resigned from that campaign along with John Sasso, the campaign manager, after Mr. Sasso acknowledged giving reporters a videotape that showed Senator Joseph R. Biden Jr. using parts of another politician's speech. The disclosure helped set off the collapse of Mr. Biden's Presidential campaign.

Mr. Tully was convinced that 1988 was a winnable election for the Democrats, and he spent much of the next four years arguing that a new Democratic majority was emerging in the country; at the Democratic National Committee, he led the party's efforts to prepare for this campaign, and oversaw the integration of those efforts with the Clinton campaign.

ECONOMY AS ISSUE

Even at the height of Mr. Bush's popularity after the Persian Gulf war in 1991, when many Democrats considered this election an almost certain defeat, Mr. Tully made the rounds of party gatherings with his slide shows and his charts, arguing that Mr. Bush had serious vulnerabilities. He was known in political circles for his blunt assessments, his fierce partisanship and his love of the game. At a time when many analysts still believed that the 1992 election would be heavily influenced by foreign policy and the ability to serve as Commander in Chief, Mr. Tully declared, "This is about money in my pocket, prices for the essentials of life, the level of fear on the block."

James Carville, the senior strategist for the Clinton campaign, said: "This guy's whole life was Democratic Presidential politics. He had worked for four years on this—he had every map, every target, he probably knew the name of every swing voter in the country."

Mr. Tully was born in New York City, grew up on Long Island, and was a graduate of Yale College and the University of Pennsylvania Law School.

He is survived by two daughters, Jessica and Miranda Tully; a brother, Jim Tully, and a sister, Patricia McDermott.

[From Newsday, Sept. 25, 1992]

PAUL TULLY, 48, CLINTON ADVISER

(By Myron S. Waldman)

WASHINGTON.—Paul Tully, who had taken a leave of absence as political director of the Democratic National Committee to work in Bill Clinton's campaign, died in Little Rock, Ark., yesterday.

Mr. Tully, a burly Long Island native who had been involved in Democratic presidential campaigns since 1968 and who was one of the brightest and most popular political operatives in the business, apparently died while he was getting ready for bed. He was 48.

The Pulaski County, Ark., coroner's office said there was no evidence of foul play.

Dee Dee Myers, a spokeswoman for the Clinton campaign, said that Mr. Tully was found yesterday afternoon in his hotel room by a maid. He had not been missed at campaign headquarters because he had been scheduled to fly back home to Washington yesterday.

Clinton issued this statement yesterday on Mr. Tully's death: "Hillary and I are deeply saddened by the loss of Paul Tully. He was a dear friend and trusted adviser. Paul had one of the nation's greatest political minds—and one of its biggest hearts. He dedicated his life to improving the lives of others. Our prayers are with him, his family and all of those who loved him."

Mr. Tully, a native of Levittown, was a Democrat who prided himself on fighting for the downtrodden and battling for liberal causes. He worked for Eugene McCarthy, the late Allard Lowenstein, former Rep. Morris Udall, Sen. Edward Kennedy, Walter Mondale, former Sen. Gary Hart and Michael Dukakis.

He worked all hours and all days, chain-smoked, drank coffee constantly and ignored all theories of nutrition.

Mr. Tully's ability to plot presidential campaign strategy, to interpret polling data and at the Democratic National Committee to fashion a strategy for victory in 1992 was widely admired.

"Paul did targeting [of individual states]," Myers said. "That was his genius. He knew more about it than any person in this country."

Mr. Tully went to Yale University, where he played defensive tackle on the football team.

Later, Mr. Tully received a law degree, married and moved to Philadelphia. He never left politics.

His marriage ended in divorce. He is survived by two grown daughters, Jessica and Miranda.

"He died 40 days before he was about to achieve what he worked so hard for, of what he was such a large part of," Myers said—what she believes will be a Democratic presidential victory. Funeral plans were incomplete.

[From the Baltimore Sun, Sept. 26, 1992]

THE LATE PAUL TULLY PLAYED BIG-LEAGUE POLITICS

(By Jack Germond and Juks Witcover)

WASHINGTON.—Mothers don't raise their sons to be political operatives. Running campaigns is considered sort of a grubby business.

But it doesn't have to be, as Paul Tully, who died in Little Rock the other night, demonstrated with such zest and gusto in campaign after campaign.

Mr. Tully was indeed one of a kind, a big man with large appetites for food and drink and conversation into the wee hours, usually but not always about politics.

He would swap stories by the hour, gesturing expansively, using extravagant language, punctuating his conversation by asking repeatedly and rhetorically, "Awright," to be certain his listeners were still with him. His syntax, or lack of same, was notorious and could be baffling to those who met him for the first time and hadn't learned to decipher the waves of the arms.

But he was capable of making insightful points in clear terms. This, for example, is Mr. Tully talking after the 1988 campaign about the growing role of the press as a moral arbiter in American politics:

"Quantity change quality. There are now so many outlets, so much coverage and so much inquiry . . . you are doing your work around the beast. The problem used to be how to feed it and feed it in a way that's conveying information that you want—your message, right?

"It's a delivery mechanism, got a big mouth and power, but how to feed it? . . . Well, now it's developed taste and standards and spits stuff back at you.

"It's not just the size of the thing. It's a new layer that's got a very specific kind of appetite. It's got even more demands. And it's got its new, evolved self-defined role.

'We've got standards and [if] that little [bleep] Quayle don't make the standards, we're going to rip his head off.' "

For more than 20 years, he steadfastly pursued the same goal: He wanted to elect a Democratic president who could do the things he thought needed to be done to establish some equity in our society.

His preference was for the most liberal Democrat in the field—a predilection that meant he worked at various times for Robert F. Kennedy, Eugene McCarthy, George McGovern, Morris Udall, Edward M. Kennedy, Walter F. Mondale, Gary Hart and Michael S. Dukakis.

In a sense, Bill Clinton, for whom Mr. Tully was working when he died at 48, was an odd fit because the Arkansas governor was so determined not to be seen as the most liberal candidate in the field.

At the outset, he was wary about the governor. But he can remember standing in the back of the room in Chicago late in 1991 listening to Mr. Clinton deliver the speech to Democratic state party chairmen that made him the early favorite of the insiders.

When Mr. Clinton finished and the audience erupted into applause, Mr. Tully turned to a reporter friend, grinning broadly and said: "Now that was a general election message. That was big-league politics."

If he had any personal agenda, it was a secret well-kept from his friends. Mr. Tully, the son of working-class parents who went to Yale and University of Pennsylvania law school, then chose politics over the law, was not a man you could see taking some cushy spot in a Democratic administration. It was the business of getting a Democrat there that obsessed him.

Mr. Tully was intrigued by the process and how it could be refined. Over the past four years, as political director for the Democratic National Committee, he had focused on building "the coordinated campaign"—one in which presidential and state candidates performed many functions jointly—in as many states as possible to make the DNC a serious player in electing a Democratic president.

He had also become fascinated by computers. Returning to Washington late one night this spring after seeing his favorite Red Sox defeat the Orioles, he headed for the office to "run some numbers"—meaning to test his theories on where the votes might be in this campaign, depending on how it played out.

Mr. Tully was not a one-dimensional political fanatic. He made a point of getting the Tuesday editions of the *New York Times* so he could read the science section.

He listened to classical music while cooking for himself at his apartment on Capitol Hill. He loved to talk about sports and movies. But mostly Paul Tully played big league politics.

[From The Los Angeles Times, Sept. 29, 1992]

TULLY'S LEGACY

In his more than 20 years as a political strategist. Paul Tully, the Democratic Party national political director who died last week at age 48, repeatedly saw Democratic presidential candidates go down to defeat. The experience did not dishearten him; rather it fostered an understanding of political realities that he sought to impart to the Clinton campaign. . . . As the national party's chief liaison to Clinton's Little Rock operation, Tully stressed that the Arkansas governor's big lead in the polls should not be taken for granted. "Remember, it was not so long ago that [Clinton had] high negatives and low support levels," he noted in an interview shortly before his death from a probable heart attack. . . . Tully, whom Democratic National Committee Chairman Ronald H. Brown called "the smartest political strategist I have ever known," saw Clinton's main challenge as providing recent converts to his banner with "confirming evidence" to support him. Only such efforts, he believed, could turn "newer and weaker Clinton voters into firm Clinton voters" and assure the Democratic victory Tully had long awaited.

[From the National Journal, Oct. 3, 1992]

A DEMOCRAT WHO NEVER SAID NEVER

(By James A. Barnes)

Only a few weeks after he had settled into the political director's office at the Democratic National Committee (DNC) in April 1989, Paul R. Tully was already focused on winning back the White House. Although he didn't underestimate the difficulty of that task, he steadfastly insisted that the goal was attainable.

"The metaphor for all this is getting the rock up the hill," Tully said in an interview at the time. "There were 4.3 million new Democratic voters in 1988 from 1984. That was for real—real voters!" Tully always liked to punctuate his thoughts, leaving little room for doubt about his convictions.

When he died of a heart attack on Sept. 24, Tully, 48, as much as any Democrat, had devoted the past three and a half years to getting that rock up to the top of the hill in 1992. He has left behind a sophisticated analysis of how and where swing voters could be won over by a Democratic candidate, a network of skilled state campaign operatives to harvest those votes in the closing stages of the 1992 campaign and a deep sense of loss within his party and the Washington political community.

A Brooklyn native and son of working-class Irish parents, Tully was a fixture on the Democratic presidential campaign circuit ever since he volunteered for Robert F. Kennedy in 1968. In George McGovern's 1972 campaign, Tully was an advance man, a good fit for a former offensive lineman on Yale University's football team who also had a law degree from the University of Pennsylvania.

"He didn't work in politics indiscriminately," said Carl R. Wagner, a Democratic strategist (and veteran of the McGovern effort) who was one of Tully's closest friends. "Politics was a means to pursue a set of values—it wasn't a business to Paul. His interest was seizing control of government and bringing it to bear on the needs of people who were otherwise unspoken for."

Tully's résumé of presidential candidates reflected his liberal sensitivities: Robert Kennedy, McGovern, Eugene J. McCarthy, Morris K. Udall, Edward M. Kennedy, Walter F. Mondale, Gary Hart and Michael S. Dukakis. At the time of his death, Tully was in Little Rock, Ark., advising Bill Clinton's campaign and helping to integrate its functions with those of the DNC.

By the latter stage of his career, Tully had earned a reputation as a first-rate political operative. "I remember conversations of how pleased people were," recalled Washington lawyer Jonathan Sallet, a former adviser to Hart, of the reaction when Tully joined the Coloradan's brief 1987 campaign. "People said, 'This is for real—we have Paul Tully.' "

Perhaps Tully's most difficult campaign was the one he waged against a tidal wave of skepticism in Washington among reporters, and more than a few Democrats, to persuade them—in the wake of America's success in the Persian Gulf war—that President Bush could still be defeated. Undeterred, Tully would dissect Bush's potential vulnerabilities from the entrails of public opinion polls and 0precinct returns for anyone who cared to listen. At the time, it seemed as though Tully was operating on little more than blind faith and the coffee and cigarettes that were his constant companions.

"In the beginning of 1991, I stopped in to see him," recalled Ted Devine, a Democratic strategist who worked with Tully in the Mondale and Dukakis campaigns and managed Nebraska Sen. Robert Kerrey's presidential campaign this year. "He spent an hour on the charts from 1988, about what had happened, the polls. . . . Listening to him talk, all I can think of to describe it is evangelical."

There was no higher calling, as far as Tully was concerned. Even though his contacts and skills could have afforded him a much more comfortable life as a professional political consultant, he chose to deal with the headaches of a party apparatus that had lost three consecutive presidential races.

"In a profession filled with many mercenaries, Paul Tully was a true missionary," said Democratic pollster Peter D. Hart, who worked with Tully in the Ted Kennedy and Mondale campaigns. "We earn money for what we do; he didn't. He did the hard work, the inside work for which you get less glory and less pay."

One enduring and selfless aspect of Tully's career was his willingness to travel anywhere to run training sessions for would-be Democratic political organizers. No group was too small.

"I would get phone calls—'Well, don't you want to go to Bozeman?' " recalled Gina Glantz, who worked with Tully on the Ted Kennedy and Mondale campaigns and in between elections often accompanied him to his hands-on political seminars.

"He was always someone who reminded us that we had a moral responsibility to train others," added Glantz, who's a partner in Martin & Glantz, a public affairs firm in Mill Valley, Calif. "It was important to him because it is the lifeblood of progressive politics—people who want to be involved because they care about something."

"There is probably not a state in this country that you could go to and not find somebody who was trained by Paul Tully or who called Paul on a regular basis," Wendy R. Sherman, a partner in the Democratic political consulting firm of Doak, Shrum, Harris, Sherman & Donilon, said.

Reporters also depended on Tully's insights and encyclopedic recall of recent election statistics. Political reporter Jack W. Germond, for example, learned of Tully's death from Pennsylvania, where he was working on a story about the presidential campaign. He had telephoned Tully for information about the 1988 returns from Philadelphia's black wards. "I'll bet there were a lot of reporters who were planning to talk to Tully in the next few days to get their facts straight," Germond said.

Despite Tully's gruff exterior, his friends recalled a complex and private man with cultivated tastes in classical music and literature. And though his most striking characteristic may have been a pol's cynical sense of humor, that's not what Stephen Robbins, his boss in the McGovern campaign and a lawyer in the Sacramento (Calif.) firm of Robbins & Livingston, remembers most. "He had a very, very vulnerable commitment to a better society," Robbins said. "In fact, his heart was made of mush."

His heart, maybe, but not his will. That was indomitable.

[From Time, Oct. 5, 1992]

MILESTONES

Died. Paul Tully, 48, director of political operations for the Democratic National Committee; in Little Rock, Arkansas. A top party strategist, Tully was working with the Clinton campaign. He previously served on the primary election bids of Gary Hart and Michael Dukakis. D.N.C. chairman Ron Brown called Tully a "political genius."

[From Newsweek, Oct. 5, 1992]

(By Joe Klein)

Died: Paul Tully was a lovely pol. He ate too much, smoked too much, barreled about like a madman in a lather. He left the way his peers fear most—alone, in a hotel room, too young. It was in Little Rock, where Tully—who had done this with vast enthusiasm but no luck since 1968—was giving Bill Clinton his almost phrenological sense of the electorate. "He probably knew the name of every swing voter in the country," said James Carville. In Iowa once, legend has it, Tully denied an activist a lawn sign, "because his neighbors think he's a jerk." He loved the game so he sometimes couldn't find words fast enough, antic scenarios dissolving into unintelligible gasps—but his friends understood, and will miss him fiercely. He was 48.

[From the Washington Post, June 21, 1984]

PRINCE OF PLANKS; PAUL TULLY, MONDALE'S PLATFORM BUILDER

(By T.R. Reid)

The drafting of the Democratic Party's 1984 platform is essentially a function of Paul Tully's thumb.

Tully, 40, a rotund, curly-haired, chain-smoking, coffee-swilling political veteran—a Central Casting archetype of the harried campaign operative—is Walter F. Mondale's main man this week as the Democrats put together their platform.

Hour after hour, the 15-member drafting committee wades through amendments and amended amendments from Gary Hart's five delegates and Jesse Jackson's two delegates. With each new proposal, the delegates debate perfunctorily while Tully and his staff, sitting on the sidelines, figure out what's up. Then Tully gives the signal—thumbs up, thumbs down, or sometimes just a discreet nod of the head.

The eight Mondale delegates cast their votes, and the issue is settled.

It's June and it's a leap year, after all, and under those circumstances a Democratic Platform Committee is Tully's natural habitat. He worked the platform for the antiwar campaign in 1968, for Morris Udall in 1976, for Edward M. Kennedy in 1980.

But this year things are different, which accounts for the leprechaun smile gracing Tully's large face. "It's nice like this when you have the votes," he says happily.

Those eight delegates include members of Congress and other important party poohbahs; but this week, their votes are all firmly in Tully's hand.

Just once has a Mondalite tried to ignore the signal. When Hart's people proposed language endorsing a particular tax bill, Sen. Daniel Patrick Moynihan (D-N.Y.), a Mondale delegate, noted that he was a cosponsor of that bill. Moynihan voted for Hart's proposal.

Tully, who once was—and is still built like—a defensive tackle, came blitzing up from the staff table for an earnest chat with the senator. After a moment, Moynihan sheepishly looked down his glasses and asked permission to reverse his vote. Mondale won again.

Over the years Tully has worked on countless campaigns for liberal causes and candidates, including Gene McCarthy, Robert Kennedy, Allard Lowenstein, Udall, George McGovern and Edward Kennedy.

"The way it works is, about the time of the midterm election, I start looking around for the candidate I'm going to work for for the president," Tully explained yesterday, casually flicking the ashes from his Marlboro into the nearest styrofoam cup.

"Literally, the way it works, I will always work for the most progressive candidate who has a chance of winning. . . . Like in '76 I worked for Udall and not Fred Harris because that was a choice between some small shot at winning and no shot all all."

The notion of not working in a liberal's campaign has never occurred to Tully. Liberal politics, trade unions, organizing the downtrodden—they are all in his blood.

Born in 1944 in Long Island's Levittown, Tully was the grandson of a charter member of the Steamfitters Union and the son of a plumber. "My father was an officer in George Meany's own local of the Plumbers Union," he says with pride.

"I come out of that urban, union, ethnic environment. That's what's inside me," he said. "And growing up in Levittown in the McCarthy days with a bunch of conservatives running things, I was raised with a much different attitude toward authority figures than most American kids are taught."

The drafting of a platform may sound like an excursion into deepest ennui, but in fact, like all Washington dramas, the platform committee is rich with intriguing scenes and characters.

There is Rep. Claude Pepper (D-Fla.), a Mondale man, who first served on a platform committee 44 years ago and is still at it today at the age of 83.

During a debate on foreign policy, Pepper politely pointed out that one of Gary Hart's vaunted "new ideas" sounded exactly like a proposal set forth by Secretary of State Cordell Hull in 1936.

The platform committee is also the only place in town where one can hear the "Rainbow Coalition" rhetoric of Jesse Jackson delivered in an easy, lilting Irish brogue—by Paul O'Dwyer, the New York liberal who is one of Jackson's two delegates on the drafting unit.

But Tully—as the Mondale campaign's political director—has been the leading player. He is a perfect specimen of a classic Washington genus: the dedicated political pro.

As an undergraduate at Yale, Tully played tackle on the football team quarterbacked by "B.D.," Brian Dowling, and rendered immortal by classmate Garry Trudeau in his comic strip "Doonesbury."

Even before he had graduated in 1968, Tully was at work in the antiwar movement. Unlike some others of his generation, he directed his considerable energies through the established political process, trying to make first McCarthy and then Robert Kennedy the Democratic presidential nominee.

After that fateful year, Tully took a law degree at Penn and settled down, sort of, in Philadelphia, where he lives with his wife and 3-year-old daughter in the respites between campaigns.

The respites have been growing shorter as presidential campaigns get longer and as more and more people come around pleading for the kind of polished professional campaign direction that Tully and his ilk can provide.

When the 1984 campaign was starting to take shape two years ago, most Democrats, figured, correctly, that Tully would be a Kennedy man again. When Kennedy withdrew, a half-dozen other Democrats stopped in Philadelphia—where Tully was running political training programs for citizen action coalitions from around the country—to recruit him.

"Basically, my problem with Hart was that I figured out he's not my kind of Democrat," Tully says.

"The process guys, they're worried about whether the system is fair, whether everybody had the right to be involved, all that stuff.

"I'm much more a constituency-oriented economic Democrat. Who benefits from the policies? Who loses? That's always my test. And that's what Mondale is."

By February 1983, Mondale's people had corralled Tully into part-time work. Within a month, he was the full time political director of the campaign, and he's been there ever since, winning broad respect from reporters and his fellow politicos for telling the truth whether Mondale was winning or losing.

But now, for the first time since the McGovern drive in 1972, Tully has (apparently) won a Democratic nomination. And there is on the horizon the prospect of snagging the White House in November.

The Mondale people are already making lists of which campaign aide will get what government job. But Tully is having none of that.

"I work for change. That's my life," he says. "I organize. I don't do governments."•

MSUSA'S 25TH ANNIVERSARY

• **Mr. DURENBERGER.** Mr. President, on November 6, 1992, the Minnesota State University Student Association [MSUSA] will celebrate its 25th anniversary of representing Minnesota State university students.

MSUSA is an advocate organization which was formed in 1967 as an informal coalition of student leaders. Today, it represents more than 66,000 students at Minnesota's State universities in Bemidji, Mankato, Minneapolis/St. Paul, Moorhead, St. Cloud, Marshall, and Winona.

MSUSA is an independent, nonprofit corporation funded and operated by students. In order to fulfill its main objectives—affordable, quality, and accessible State university education—students have taken an activist approach to establish affordable tuition, child care facilities, increase the minimum and student work study wages, simplify transfer between institutions, improve cultural diversity, advocate fair State and Federal financial aid programs including the Higher Education Reauthorization Act.

In assisting State university students achieve their goals and voicing their concerns, MSUSA provides liaisons to the Governor's office, the legislature, the State University Board, the Minnesota Higher Education Board, the Minnesota Higher Education Coordinating Board, the Inter-Faculty Organization, Congress, and the Federal Department of Education.

But perhaps one of MSUSA's most outstanding accomplishments, among many, is the Penny fellowship, which encourages students take a leadership role in serving their communities. Other noteworthy programs include the MSUSA newspaper, the Monitor, which has the largest circulation of any State system student organization; the MSUSA cultural diversity project; and the MSUSA Federal Credit Union, which is the only systemwide student credit union in the country.

Finally, Mr. President, I would like to recognize and congratulate the current officers of MSUSA, who are: Steven B. Carswell, State chair from Winona State University; Leroy L. McClelland, State vice chair from Mankato State University; Jill F. Peterson, State treasurer from St. Cloud State University; and Frank X. Viggiano, executive director from Metropolitan State University. Their hard work on behalf of Minnesota students has led them to many successes, and I am sure their continuing effort will mean a better-educated and a more productive Minnesota.•

REPORT ON THE IMPLEMENTATION OF THE HUMANITARIAN AND TECHNICAL ASSISTANCE PROGRAM TO THE NEW INDEPENDENT STATES OF THE FORMER SOVIET UNION

• Mr. LEAHY. Mr. President, last April, when the Senate passed House Joint Resolution 456—Public Law 102-266—the continuing resolution for the Foreign Aid Program for fiscal 1992, I requested a report from the administration which summarized the U.S. Government efforts to provide humanitarian and technical assistance to the new Independent States of the former Soviet Union. I have received that report from the Department of State, and I feel that the information contained in the report would be very helpful to all Senators, their staffs, businesses, nongovernmental organizations, academic institutions, and other interested parties.

This report can serve as an information resource to help us work with the executive branch to meet the challenges presented by the breakup of the Soviet Union. The report was compiled from written documentation provided to the State Department by the various agencies involved in the assistance program.

The report consists of three parts. Part I outlines progress to date in providing humanitarian assistance during operation provide hope phases I and II. Part II describes the sources of funding for the aid program through fiscal 1992. Part III identifies the specific activities of each Government agency involved in the assistance program including AID, USDA, Commerce Department, DOD, EPA, Exim Bank, OPIC, Peace Corps, TDP, Transportation Department, and USIA. This section identifies contact points in each agency for programs in the NIS.

It is my hope that Members and others interested in this program will use this report as a tool to review our assistance program as it was implemented through fiscal 1992. Also, it is useful for examining the structure that is in place to implement the program which we funded with $417 million for fiscal 1993.

Mr. President, I ask that the report be printed in the CONGRESSIONAL RECORD in its entirely.

The material follows:

SUMMARY OF EFFORTS IN THE ASSISTANCE PROGRAM FOR THE NEW INDEPENDENT STATES (NIS)

Information available as of September 24 was used in this report.

I. HUMANITARIAN ASSISTANCE EFFORTS

Overview

The United States government's humanitarian assistance program links the efforts of the Departments of State, Defense, and Agriculture and the Agency for International Development, with various national and international private voluntary organizations, to meet the emergency needs of the people of the New Independent States. The U.S. humanitarian assistance program, run by the State Department's Deputy Coordinator, Commonwealth of Independent States Assistance (D/CISA), accomplishes two goals: it provides needed help to millions of people (our childhood innoculation program in Central Asia alone is reaching 520,000 people); and it confirms for the peoples of the NIS the fact that Americans are not their enemy. Throughout 1992, the humanitarian assistance program has provided both privately collected and excess U.S. government food and medical supplies to all 12 states of the NIS. Efforts are already underway to organize the next big push for provision of assistance during the upcoming winter of 1992–93.

Specific humanitarian efforts

In addition to transportation assistance provided to the United States Department of Agriculture (USDA) to support its $165 million grant food aid program, D/CISA has worked with U.S. private voluntary organizations and utilized excess defense stocks in order to leverage an additional $165 million in emergency assistance. USDA has delivered, or is in the final stages of delivering, approximately 138,910 tons of humanitarian food assistance via private voluntary organizations and agencies of the Russian and Belarus governments. Independent of the USDA program, D/CISA has delivered some 53,000 metric tons of food valued conservatively at $40 million. D/CISA has also delivered some 2,400 tons of medicines and medical consumables worth about $125 million, and has another 500 tons in the pipeline.

Operation Provide Hope began with the winter 1992 airlift of emergency food and medical supplies to cities in 11 of the 12 NIS (the exception was Georgia). Operation Provide Hope II involved the surface delivery of excess DoD medical and food stocks from Western Europe to all 12 NIS. This operation is virtually complete. Provide Hope II began in June with the airlift of 100 metric tons of high-value medicines and medical supplies to four very needy locations: Yerevan, Baku, Tbilisi, and Minsk. Having delivered these items by air, Provide Hope II then shifted to surface deliveries. Over 19,000 tons of bulk rations (valued at about $34 million) were moved from military depots in Western Europe to 21 locations in the NIS, as well as 1,600 tons of medicines and medical consumables valued at $30.6 million. These supplies have gone into institutions (i.e., orphanages, hospitals, etc.) and storage facilities for subsequent distribution. Officers and enlisted personnel from the On-Site Inspection Agency, assisted by CARE representatives, handled distribution and monitoring.

Specific USDA contributions to food assistance for the NIS include:

Agreements for Food for Progress donations of $20 million to Georgia, $15 million to Armenia, and $10 million to Kyrgyzstan. After freight costs have been deducted, these expenditures will provide 90,000 tons of wheat for Armenia and 56,000 tons of wheat for Kyrgyzstan.

Under Public Law 480 Title I, USDA has also negotiated concessional sales of feed grains and oilseed meal worth $24 million to Belarus and feed grains worth $10 million to Moldova. Belarus will receive 90,000 tons of feed grains and 50,000 tons of oilseed meal; Moldova will receive 70,000 tons of feed grains.

In fiscal 1992, under Section 416(b) USDA donated 21,000 tons of butter to the Government of Russia, and 5,000 tons of butter oil to the Government of Belarus.

Commercial agricultural commodity registrations to the NIS facilitated by the Export Credit Guarantee Program (GSM-102) in fiscal 1992 had, as of mid-September, totaled $2.46 billion, including $1.82 billion under the allocation to the USSR made prior to its collapse in December 1991. An additional $100 million out of fiscal 1992 authority was extended to Russia on September 14. In addition, a direct sale of 35,000 tons of CCC-owned butter was negotated with Russia.

Because of civil unrest in Georgia during Operation Provide Hope I, U.S. military transport planes were unable to land in Georgia's capital, Tbilisi. Because of improvements in the situation there, the U.S. has been able to provide the following types of humanitarian assistance to Georgia:

500 tons of DoD bulk rations during Provide Hope II;

20 tons (valued at over $5.8 million) of medicines, medical supplies, and insulin by air;

133 tons of medical consumables were sent by rail during Provide Hope II;

Medical equipment for two Georgian hospitals, drawn from a deactivated U.S. Army hospital in Europe.

The U.S. also is sending Georgia 100,000 tons of wheat through a transfer of funds from the PL-480 program to the Food for Progress program. DoD transportation funds are being used to ship the grain.

Planning has begun for Operation Provide HOPE III, and participants are in the process of identifying additional DoD bulk rations which are being declared excess. The plan is to move the material this fall before the onset of winter, and a team is in Moscow working jointly with the Russian government, the European Community, the Japanese Government, and CARE to create a rational targeting plan.

In September 1992, USDA announced its specific programs for FY 1993 humanitarian assistance programs for Russia. These include $800 million in the Export Credit Guarantee Program—of which $500 million will be operational October 1 with the remainder available on January 1, 1993. Russia will also receive $250 million in humanitarian food assistance.

II. SOURCES OF TECHNICAL ASSISTANCE FUNDING

In addition to its multilateral assistance efforts with the World Bank and the International Monetary Fund, the U.S. government is financing bilateral technical assistance through a variety of funding mechanisms. These include:

$85 million in Economic Support Funds.—Currently several U.S. government agencies are in the process of implementing this first funding allocation for NIS assistance with Economic Support Funds (ESF) reprogrammed from other countries. AID serves as the principal implementing agency for this funding—with policy and program guidance from the Coordinator's office. These funds are being used primarily to develop and administer programs to provide business assistance; training for managers; energy, housing, financial, and conversion advisors; and improvements in the healthcare and food industries. AID has transferred funding to agencies such as Commerce, Agriculture, Treasury, and USIA to finance their NIS assistance programs.

$150 million in Reprogrammed Economic Support Funds.—In its FY 1992 Foreign Operation Appropriations, the Congress provided certain authorities for technical assistance for the NIS but did not appropriate new money. D/CISA has worked with the Coordinator for NIS Assistance, Acting Secretary Lawrence Eagleburger and the Deputy Coordinators to identify sources for funding and to identify programs to be implemented with $150 million FY92 reprogrammed economic support funds.

Nunn-Lugar Funding.—Legislation passed during 1992 authorized the use of $400 million of DoD monies to facilitate weapons destruction in the NIS and to prevent weapons proliferation. The first approved program plan for this funding obligates $170 million to provide fissile material storage containers, nuclear weapons accident response equipment, assistance in improving material control and accountability systems for fissile materials and to assist with destruction of chemical weapons and to finance the international science centers in Russia and Ukraine. In addition, $100 million has been authorized to finance transportation costs of humanitarian assistance to the NIS, and approximately 50 percent of this funding has already been used to finance food and medical assistance.

Other Agency Funding.—Various government agencies are providing assistance to the NIS from their own departmental budgets. For example, the Departments of Agriculture, Labor, Commerce, and Energy, and the Environmental Protection Agency have implemented projects using funds from their own budgets.

Credit and Credit Guarantee Programs.—U.S. government credit and credit guarantee programs aim to promote involvement of private U.S. companies in trade and investment with the emerging market economies of the NIS. The Export-Import Bank offers short and medium-term trade credit insurance and working capital guarantees. The Overseas Private Investment Corporation (OPIC) has three programs to encourage US private investment in the NIS—these include financing investment projects through loans and/or loan guarantees; investment insurance; the investor services. In addition, U.S. credit guarantee programs can be used to help maintain commercial sales previously financed by cash transactions, as has been done with the USDA's Commodity Credit Guarantee Program (GSM-102).

III. SPECIFIC USG AGENCY ACTIVITIES

The Agency for International Development (AID)

AID serves as the primary implementing agency for the initial $85 million in assistance to the NIS. Working with policy and program guidance from the State Department and in coordination with other government agencies, AID is using these funds to develop and implement programs to promote democratic institution building, market economic reform, provide business assistance; training for managers and scientists; energy, housing, defense conversion, and financial advisors; and improvements in the healthcare and food industries. In some of the cases listed below, AID's role has been to tranfer funds to other agencies for project implementation. The following programs are being implemented with the first $85 million in FY92 Economic Support Funds:

Democratic Initiatives ($14.9m).—includes training for scientists, managers, and government officials; business assistance from retired U.S. executives; support for networking between private U.S. companies and volunteer organizations with NIS groups.

Participants: Participating organizations include the Department of Commerce, the United States Information Agency (USIA), the International Executive Service Corps (a private AID contractor), the Citizens Democracy Corps, and selected private volunteer organizations and non-governmental organizations.

Status: Primary components of this program are the Special American Business Internship Training Program (SABIT), the USIA Public Administration Program, the Citizens Democracy Corps, and the Private Volunteer Organization (PVO) Development Program. The SABIT program—which aims to link NIS business managers and scientists with private U.S. firms—has completed two selection rounds for managers and one for scientists. The first 300 interns, financed with AID-transferred funds, are due in the U.S. in September. USIA is sponsoring a number of programs to assist both high level and local NIS governmental officials in establishing executive organizations and understanding executive operations. USIA is also subsidizing publication of books and pamphlets on democractic governments, market economies, and public policy analysis on the reform process. IESC and the Citizens Democracy Corps have established offices in the NIS and are advising on economic reforms, democratic institution building, and defense conversion. The Experiment in International Living (EIL) has been designated the lead institution for coordinating all U.S.-based PVO activities in the NIS. To date, we have received grant proposals from 62 US PVOs. Funding for this program also supported an Emergency Immunization Program begun in selected states of the NIS in summer 1992.

Energy Efficiency and Market Reform ($15.6m).—includes programs for energy efficiency; nuclear power safety; coal, oil, and gas production and delivery systems; energy pricing policy; and energy related environmental problems.

Status: Regional surveys/assessments have been completed for energy heating systems in Russia, Ukraine, Armenia, Kazakhstan, Belarus, and Kyrgyzstan. Pilot projects with U.S. technical advisors are underway in these six states; these advisors have identified and are installing low-cost equipment and instrumentation to improve energy efficiency this winter. Senior energy officials from Kazakhstan and Kyrgystan came to the U.S. during June and July to visit energy facilities and meet with private US energy companies. Partners in Economic Reform (PIER) has received a grant for coal mining management/safety and sent a team to Ukraine and Russia this summer. DOE and the Nuclear Regulatory Commission will receive money from AID to support the nuclear reactor safety initiative that was announced at the May 1992 Lisbon Conference.

Health Care Improvements ($15m).—includes programs to promote trade and investment in the health sector and alternative health care financing systems, establish partnerships between U.S. hospitals and NIS groups to improve hospital administration, and improvements in pharmaceutical production.

Status: The first hospital partnership is underway between Norfolk, VA and the Moscow Children's Hospital with a grant of $1.5 million. The American International Health Alliance has been selected to manage the remainder of the program, and ten other partnerships have been or are being initiated this fall. After completing an initial audit, U.S. pharmaceutical manufacturers will be working with plants in Russia to improve pharmaceutical production. The Department of Commerce, the Trade and Development Program (TDP) and the Overseas Private Investment Corporation (OPIC) have received AID funds to support increased trade and investment in the NIS pharmaceutical and medical industries. Commerce is sponsoring the first medical equipment, supplies, and pharmaceutical trade mission to the NIS during October 11–19, 1992, and TDP and OPIC have completed their initial visits.

Private Sector/Defense Conversion ($12.5m)—provides support for privatization efforts, creation of an NIS Business Information Center in the U.S. Department of Commerce, placement of defense conversion advisors, and funding for OPIC investment missions and TDP feasibility studies.

Status: This project supports general privatization efforts such as providing funds to equip the Russian Ministry of Privatization with computers and other office equipment, and to expand the International Finance Corporation's demonstration auctions of state-controlled shops in three cities in Russia and Ukraine. Advisors are also helping to facilitate development of privatization laws, to support business investment and to develop investment support facilities in selected cities. Two teams of defense conversion advisors are currently assisting defense firms in Nizhniy Novgorod, Russia and Kharkov, Ukraine. To develop private sector programs, AID has transferred funds to the Department of Commerce to support the Business Information Service for the NIS (BISNIS) and a program to assist consortia of U.S. businesses to establish offices in the NIS and to encourage US exports. TDP is using AID funding to support feasibility studies in infrastructure industrial sectors such as energy and transportation. OPIC is organizing trade and investment missions and providing funding for feasibility studies.

Food System Restructuring ($6m)—finances USDA programs for improving food storage and distribution and developing food policies.

Status: We are designing a completed project that will break down the initial $6 million as follows: $1.25 million transferred to USDA to fund the Armenian Extension

Service Activity; $3 million to fund unsolicited proposals in the area of storage; $1 million for an additional unsolicited proposal; and approximately $650,000 for two storage teams that visited Russia and Ukraine in July and August.

Democratic Pluralism ($8m)—This project focuses on four areas—political and social processes, development of an independent media, rule of law activities, and public administration assistance. The key participants in the project are the International Republican Institute, the National Democratic Institute, the American Bar Association (ABA), the AFL–CIO, and the International Foundation for Electoral Systems. The ABA is responding to requests from Armenian, Belarus, and Uzbekistan for technical assistance on constitutional reform and drafting new legislation. The National Democratic Institute has provided advisors for political party development and civil education in Russia and is sending field staff to Ukraine and Central Asia this fall. An election monitoring team organized by the International Republican Institute provided assistance to the Azerbaijan elections in May. In addition, grants are pending for media development, labor union development, and election reform.

Housing Sector Reform ($5m)—funds long- and short-term advisors for housing and land ownership policies.

Status: Survey teams have completed assessments of housing and urban development conditions in Russia, Ukraine, Armenia, and Kazakhstan as well as in the seven cities targetted in this program. Short-term consultant assignments addressing housing law, private management of public housing, land registration and taxation, housing privatization, and general housing and land development have been completed. Temporary housing advisors are working in three republics, and seven of twelve long term resident advisors for housing issues were in place by the end of August.

Economic Restructuring/Financial Sector ($4m)—provides funding for the Department of the Treasury for financial sector resident advisors in central banks and Ministries of Finance in four former Soviet republics. The next tranche of funds under this project will be used for assistance in bank training, financial sector reform, and additional advisory and restructuring projects.

Status: Short-term Treasury advisors have provided assistance to the Russian Ministry of Finance and the National Bank of Ukraine and the Ukrainian Ministry of Finance. Treasury is recruiting long term advisors for Russia, Ukraine, Kazakhstan, and Belarus. Additional assistance will be designed in areas mentioned above.

Eurasia Foundation ($4m)—provides assistance for private sector development. The Foundation is intended to be an independent, grant-giving foundation which will use public and private resources to foster the process of economic and political reform in the NIS.

Status: The project to establish the foundation—which is dedicated to providing technical assistance to private organizations in the areas of management training, private sector development, and democratization—is on hold by the Congress pending naming of the Board of Directors for the Foundation.

Other AID programs that do not involve ESF money include:

The Farmer-to-Farmer Program: This three year, $30 million program is administered with money from PL 480. It engages US farmers and agricultural experts as volunteers who can transfer their technologies, knowledge, and skills to farmers and agribusinesses in the NIS. It focuses on meat, dairy, vegetable oil, wheat, feed grains, and fruit and vegetable sectors with emphasis on distribution, processing, marketing and the general promotion of agribusiness development. Under the first phase, AID committed $4 million to Volunteers in Overseas Cooperative Assistance (VOCA) for a two year program focusing on Russia, Ukraine, Kazakhstan, and Armenia. VOCA intends to place 238 advisors in these republics by end of 1993. The remaining $26 million, the second phase, was dedicated to grants to be awarded on a competitive basis. The selected grantees are Agricultural Cooperative Development International, VOCA, Land O' Lakes, Tri-Valley Growers, Citizens Network, and Winrock International. This second phase will place approximately 1500 volunteers in agribusiness, credit, and processing areas at sites in all 12 states of the NIS.

Disaster Assistance: $19.7 million in funding is being used to provide medical supplies, an emergency immunization program, and to finance Project HOPE's child immunization and pharmaceutical project. This program is referred to in the President's Medical Initiative. Vaccines and supplies from U.S. manufacturers will be obtained to immunize 225,000 children in the NIS. The project targets Russia and Ukraine, but Armenia is also expected to participate. (AID also is working to assure that 520,000 children in Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan receive immunization against measles, polio, DPT, and tuberculosis by the end of calendar year 1992.)

CAST: AID has also committed $2 million in development assistance funds to the Cooperation in Applied Science and Technology (CAST) program. This project—administered by the National Research Council of the National Academy of Sciences—aims to link defense-related scientists with U.S. firms to conduct joint research in the US, and the emphasis is on helping NIS scientists apply their skills to activities benefiting the civil sector.

POC—Malcolm Butler, chief AID/NIS Task Force, (202) 647–0269.

The Department of Agriculture (USDA)

USDA is involved in several technical assistance programs—all with a private sector focus—designed to address the range of problems affecting food supply in the NIS. For the distribution and marketing of food aid deliveries to the NIS, it has relied primarily on private voluntary organizations. USDA is providing the following programs:

USDA's Agricultural Marketing Service is working to promote the development and expansion of modern wholesale markets in the NIS, particularly in Moscow and Kiev.

USDA is planning to set a "model farm" community near St. Petersburg pursuant to a personal request to Secretary Madigan from Mayor Sobchak and then-President Gorbachev. This will link American farming families with Russian farmers to teach farm management and farmgate marketing techniques.

USDA has placed a senior expansion advisor and a public policy specialist in Yerevan, Armenia for three years to assist in creating a legal framework for Armenia's agricultural policy reforms. AID is providing funding for this program.

Executives from American agribusiness firms will work with counterpart organizations in the former Soviet Union under the Loaned Executive Program. Site selection teams have visited Novosibirsk, Russia; Minsk, Belarus; and Alma Ata, Kazakhstan to identify potential NIS agribusiness firms, and selection of US executive participants is underway.

So far in 1992, USDA has selected candidates for the Cochran Fellowship Program in the states of Russia, Ukraine, Kazakhstan, and Belarus. The Fellowship provides short-term training in areas such as agricultural development, trade, agribusiness, management, and marketing. Agriculturalists and administrators from the public and private sectors will visit the U.S. to participate in field observations and industry visits and to receive on-the-job training and attend university courses. This program is open to all twelve of the NIS and will be implemented in Kyrgyzstan and Armenia in 1992 with the others to follow in calendar 1993 at the latest.

On August 3, USDA published a formal announcement soliciting proposals for the Russian Far East Assessment project, which will evaluate the agribusiness potential in that region. Contracts will be awarded by September 30, and assessment teams should go out in November.

USDA is providing short-term credit for purchases of agricultural commodities through its Commodity Credit Guarantee Program. In the future, USDA plans to provide credit guarantees for agricultural facilities. In fiscal years 1991 and 1992, $4.85 billion has been announced to purchase agricultural commodities, and an additional $800 million has already been announced for fiscal 1993.

USDA is implementing a pilot Credit Guarantees for Facilities Program (GSM-104) as authorized under Section 1542 of the Farm Bill.

USDA, pursuant to requests from the Ministries of Agriculture in Russia and Kazakhstan, is recruiting agricultural policy specialists to be detailed to Moscow and Alma Ata as advisors to the respective Ministers of Agriculture.

USDA has been unable to meet requests for assistance in establishing agricultural extension services from Kazakhstan, Uzbekistan, and Russia because of unavailability of funding. The requests from Kazakhstan and Uzbekistan date back to September 1991, and the U.S. Government announced its intention to meet those requests at the January 1992 Washington Conference on Aid to the NIS.

USDA has expanded its Moscow embassy staff from three to four agricultural officers and has received approval to place agricultural officers in Alma Ata and Kiev. Constraints in the Foreign Agricultural Service's budget for field operations has delayed placement of the two officers in Alma Ata and Kiev indefinitely.

POC—Thomas Pomeroy, Coordinator of Eastern Europe and Former Soviet Secretariat, (202) 720–0368.

The Department of Commerce

Commerce is engaged in a number of programs designed to foster development of private sector trade and investment in the NIS and to educate NIS business managers on how to operate in a market-oriented economy.

Commerce established the Business Development Committee with Russia to promote U.S. exports and investment in the NIS and to facilitate contacts between U.S. and Russian business organizations. The Committee has several working groups and, after the U.S.-Russia Summit in June 1992, established a defense conversion sub-group to assist in conversion efforts.

Commerce organized the U.S.-Russian Business Summit during June 1992, which coincided with Russian President Boris Yeltsin's state visit to Washington.

The Consortia of American Business in the NIS (CABNIS) has been established to provide financial assistance to American companies interested in opening offices in the NIS. Commerce is also working to develop small business centers in the NIS.

On June 16, 1992 Commerce opened the Business Information Service for the NIS (BISNIS). BISNIS serves as an information center for U.S. and NIS firms looking for new business relationships.

At the request of the Secretary of State, Commerce published the Study of Barriers to Trade and Investment in the NIS. Based on discussions with the U.S. business community, the study is used to devise policies to facilitate U.S. private investment in the NIS.

Commerce is trying to organize business and investment missions to the NIS by emphasizing missions targeting specific industrial sectors.

Commerce's International Trade Administration is administering the Special American Business Internship Training Program (SABIT). SABIT is directed at NIS business managers and scientific workers: to date, over 300 internships have been awarded, and less than 10 percent of the program's original $2 million in funding for FY92 remains. The first interns, who will work with their host firms in the U.S. for three to six months, began arriving in late August with the bulk arriving during September and October.

Commerce is expanding its foreign commercial service staffs and offices in the NIS. A full service post is available in Moscow with two other posts in Kiev and St. Petersburg.

POC—Franklin Vargo, Deputy Assistant Secretary for Europe, (202) 377-5638.

The Department of Defense (DoD)

DoD has participated in programs aimed at reducing the large military-industrial complex in the NIS and at providing humanitarian assistance. Legislation passed during 1992 authorized the use of $400 million in DoD funding to facilitate weapons destruction in the NIS and to prevent weapons proliferation. To date, $170 million has been obligated to provide storage containers for nuclear weapons materials, nuclear weapons accident response equipment, assistance in improving material control and accountability systems for fissile materials and to assist with the destruction of chemical weapons and to finance the international science centers in Moscow and Ukraine. In addition $100 million has been authorized to provide transportation for humanitarian assistance to the NIS. To date, approximately half of that funding has been used to finance transportation for Operations Provide HOPE I and II, which provided excess DoD food and medicine, USDA grant commodities, and privately donated humanitarian assistance.

DoD is also engaged in the following initiatives:

International Military Education and Training: During FY 92, funding levels for Russia and Ukraine are $160,000 and $75,000 respectively.

Submarine Dismantlement/Port Modernization: DoD officers have met with CIS naval officials and US and Russian businessmen who want US support in dismantling formerly Soviet nuclear submarines. OSD and the US Navy are trying to determine if the US could help in this effort.

Civil-Military Relations: In its exchanges with NIS military officials, DoD has emphasized the importance of civilian control over the military. The Defense Policy Board Task Force is developing a book on the military in a democracy.

Bilateral and Multilateral (through NATO) military-to-military contacts: Through bilateral and multilateral defense and direct military-to-military meetings, U.S. officers are discussing the role of the military in democratic societies, military justice, military budgeting, disaster assistance, and military medicine.

POC—Eric Edelman, Assistant Deputy Under Secretary of Defense for Russian, Eurasian and East European Affairs, (703) 697-7202.

The Department of Energy (DoE)

DoE is engaged in projects with the NIS on nuclear weapons destruction, environmental restoration and waste management, nuclear reactor safety, fusion research, and energy efficiency. DoE also participates in the international review of the Soviet RBMK nuclear reactor. It is involved in the creation of the international science and technology centers in Russia and Ukraine. Victor Alessi, Director of DoE's Office of Arms Control and Nonproliferation, will serve on the Board of Directors of the Moscow Center. DoE's Lawrence Livermore Laboratories currently is working on a project examining the potential for commercialization of dual use technologies: Livermore teams have visited 16 research organizations doing optical and laser research and DoE has provided grants to 10 of these organizations to do technical evaluation projects.

DoE's intra-agency coordinating group is considering several future projects such as studies on energy use in the NIS, establishment of a center in Moscow to find superior technologies of interest to the U.S., development of investment and trade regimes with the West, cooperative fusion research, and training programs in conventional fuels for scientists.

POC—John J. Easton, Assistant Secretary, Office of Domestic and International Energy Policy, (202) 586-5800.

The Environmental Protection Agency (EPA)

EPA has no separate technical assistance program but is carrying out the following programs in the NIS, which are covered under 30 EPA cooperative programs developed under the auspices of existing environmental agreements with the states of the former USSR:

Environmental Education and Information Center: EPA and the Ukrainian Ministry of Environmental Protection (MEP) are establishing an environmental education and information center in Kiev in the Ivan Mohyla Academy, a new private university. The Center will be open to the public free of charge, and the MEP will provide office premises, staff, and other resources. EPA will assist the Center with advice on provision of expertise and training, toxic release inventory and community right-to-know programs, technology information clearinghouses, computer-based teaching programs and other educational software, and publications and library materials.

Methane Recovery: Recovery of methane gas from leaking gas pipelines and coal mines with potential for U.S. private investment.

The Moscow Energy Efficiency Center: This office will provide policy analysis and recommendations and identify investment opportunities in the energy sector;

Integrated Resources Planning (IRP) for electric utilities: This project would bring Russian officials to the U.S. to discuss development of an IRP for Moscow and create IRP teaching capabilities in a Moscow university.

Air emissions control technology: EPA is conducting demonstrations in Russia and Ukraine of low-cost retrofit technology for power plants that would reduce nitrogen oxide and sulfur dioxide emissions by 50-90 percent.

POC—Sandy Vogelgesang, Principal Deputy Asst Administrator for the Office of International Activities, (202) 260-4870.

Export-Import Bank of the United States (Eximbank)

Eximbank currently is able to provide varying forms of financing for U.S. exports to Russia, Ukraine, Kazakhstan, Uzbekistan, and Belarus. In Russia, Eximbank now offers short- and medium-term insurance, loans, and guarantee support when the Russian Bank of Foreign Trade commits the full faith and credit of the Russian government. Eximbank offers short-term insurance for projects with Belarus, Kazakhstan, Uzbekistan, and Ukraine, when backed up by the full faith and credit of the respective national governments. Particular areas of interest for project financial support include the automotive, energy, and housing industries. For FY 1992, Eximbank support for U.S. export projects totals over $197 million.

POC: Thomas Moran, Vice President for Europe and Canada Division, (202) 566-8813.

The Department of the Interior

Several of the Department's subordinate agencies currently are engaged in NIS assistance/research projects totaling over $1 million. The Department has financed these projects from its own funding, but hopes to obtain AID or other outside funding to expand its projects for FY 1993. The Department of Interior's current programs with the NIS include:

U.S. Geological Survey: USGS is engaged in several joint research projects with various states NIS, some of which date back to projects initiated with the government of the Former Soviet Union. These projects include mineral resource studies, energy resource studies, scientific cooperation in geodesy and cartography, water resources research, and earthquake studies were carried.

U.S. Fish and Wildlife Service: USFWS is conducting joint research in the NIS on animal and bird populations and is providing training to NIS specialists and veterinarians in environmental education and wildlife disease diagnosis and treatment.

Bureau of Land Management: BLM is conducting a Paired Ecosystem Project with five Russian laboratories to measure global climate change at five paired monitoring sites in different climate zones in Eurasia and North America.

Minerals Management Service: MMS is engaged in two studies with the Far East Division of the Russian Academy of Sciences. The first is an exchange of Arctic scientific information and is being led in the US by MMS offices in the State of Alaska. MMS and the State of Hawaii are jointly funding the second project, which involves undersea investigations offshore of Johnson Island and the Northern Mariana Islands.

National Park Service: NPS is working with Russian officials in technical exchanges which deal with shared cultural themes in US and Russian history and in developing the Beringia International Heritage Park.

Bureau of Mines: USBM has expanded its Minerals Availability System database to include those of the Former Soviet Union. The Department hopes to use this information to stimulate interest in mineral trade with the NIS.

POC—Suzanne Rooney, Special Assistant to the Secretary, (202) 208-3181.

The Department of Labor

Labor is funding a project with Comprehensive Personnel Services of Sacramento, California to conduct human resource surveys at two or three defense-industrial facilities in St. Petersburg. These surveys will subsequently be used to promote business opportunities to potential US investors who may be interested in the St. Petersburg region.

In late 1992 or early 1993, the Bureau of Labor Statistics and Eurostat will co-sponsor a seminar for statistical agencies from the NIS on the development and use of statistics to measure economic performance. Resources for this project will be provided to BLS under the Foreign Assistance Act for Statistics Training in Czechoslovakia and the former Soviet Union.

Labor is also developing plans for a possible exchange of information between its Veterans Employment and Training Service (VETS) and Russian counterpart agencies on transition of military officers to civilian occupations.

POC—Shellyn Gae McCaffrey, Deputy Undersecretary for International Labor Affairs, (202) 523-6043.

The Overseas Private Investment Corporation (OPIC)

OPIC has signed bilateral agreements—required to facilitate insurance and financing—with ten of the NIS, and the remaining republics, Azerbaijan and Uzbekistan, are expected to sign agreements shortly. Specific OPIC programs include:

Loans and Loan Guarantees: During FY93, OPIC expects to provide loan financing to 3–5 projects sponsored by US firms.

Investor Financing: OPIC currently is evaluating proposals for 55 projects valued at over $2 billion.

Investment Insurance: For FY92, OPIC is considering political risk coverage for 9 private investment projects with potential total investment substantially higher.

Insurance Registrations: More than 325 private investment projects have registered for OPIC insurance.

Feasibility Studies: OPIC is involved in feasibility studies, project profiles, and investment missions in health and private sector development programs.

Mission to Russia: In June 1992, OPIC sponsored a visit to Russia by 53 US business leaders to discuss potential joint venture partners.

POC—Howard L. Hills, General Counsel, (202) 457-7200.

The Peace Corps

The Peace Corps is meeting the needs of the NIS for technical assistance and plans to place 250 Volunteers in the NIS by the end of 1992. Peace Corps has established two posts in Russia (in Saratov and Vladivostok), and posts in Ukraine, Uzbekistan, and Armenia have staff on site and programming underway in anticipation of the arrival of Volunteers in mid-November and December. Assessment visits are planned for Kyrgyzstan and Kazakhstan in October, Byelarus in November, and Turkmenistan and Tajikistan in December. Volunteers will work primarily in Small Enterprise Development (SED) to assist in the transition to a market economy. There also may be English language programs. Specific Peace Corps activities in the NIS include:

Russia: 100 SED volunteers will be placed in Russia, about evenly divided between the Volga River region (Saratov) and the Far East (Vladivostok). The Volunteers will create small business centers (SBCs) which will support Volunteer advisors assigned to communities within each region. Each SBC will be located in an oblast capital or economic center and will have up to four volunteers. Volunteers are scheduled to arrive November 20. A central support office to coordinate field programs will be located in Moscow.

Ukraine: 60 SED volunteers will be placed in Ukraine. Thirty volunteers will be divided into three man teams which will be assigned to municipal governments in ten oblast capitals, while 28 volunteers will be assigned individually to other towns. Two volunteers will be assigned to Ukraine's State Committee for the Promotion of Small Business Entrepreneurship. The Volunteers are scheduled to arrive in early December.

Armenia: Armenia's program will have both SED (15) and Teachers of English as a Foreign Language (TEFL) (25) Volunteers. Volunteers are expected to begin arriving in early December.

Uzbekistan: Staff in Uzbekistan currently is developing both SED and TEFL projects. Programming specifics should be completed by October 15. Fifty Volunteers are scheduled to arrive in late December.

The Peace Corps will place an initial 175 Volunteers in five more former Soviet republics during 1993: Kyrgyzstan, Kazahstan, Belarus, Turkmenistan, and Tajikistan. A second cycle of 250 Volunteers will be placed in the first five posts in the latter part of 1993.

POC—Jerry W. Leach, Eurasia Regional Director, (202) 606-3862.

Trade and Development Program (TDP)

TDP has committed approximately $6 million to finance projects in the NIS during FY92. To date, approximately $3 million have been obligated to finance studies in energy, aviation (air traffic control and cargo management), and housing. TDP is also providing partial funding for the establishment of agribusiness centers in Russia and Ukraine to provide training on US agricultural equipment and technologies.

Proposals for future NIS programs, valued at over $10 million, that are currently under review include studies on pharmaceutical plant modernization, defense conversion, information processing systems, energy and customs operations modernization.

POC—Daniel Stein, Regional Director for the NIS, (703) 875-4357.

The Department of Transportation (DoT)

DoT is developing strategies to address specific needs in transportation management, creating a regulatory framework and training to build infrastructure within the transportation sector. It is also maintaining close contact with US transport industry representatives, AID, the World Bank, and the European Bank for Reconstruction and Development (EBRD). DoT's various components are working on the following areas:

Civil Aviation: FAA is cooperating with Russia to implement the Global Navigation System, which will use the US Global Positioning System and the Russian military system. Implementation of this program will provide safety and efficiency benefits for all users. The FAA is working to expand air routes to the Russian Far East and open better routes throughout Russia. The FAA is also helping to integrate air traffic control procedures for civil and military aviation and to modernize the air traffic management system. FAA is negotiating a bilateral airworthiness agreement for aircraft certification to allow for import/export of aircraft and aviation products. FAA is also developing a security training program for international participation and has discussed potential involvement with NIS representatives.

Highways and Roads: The Federal Highway Administration (FHWA) is cooperating with the IBRD and the EBRD on transportation policies for the NIS. FHWA is also participating in a World Bank road rehabilitation and maintenance project in Russia. This project will tap into resources and assistance from federal and state transportation agencies and departments, trade associations, and academic and professional institutions.

Maritime Projects: The Coast Guard is continuing various cooperative arrangements with NIS organizations regarding search and rescue (SAR), pollution control, and radionavigation efforts in the Bering Sea. The Coast Guard is helping providing assistance to Russia to help it become an active participant in the automated mutual assistance vessel rescue system. In addition, the Coast Guard has offered slots at the Coast Guard Academy to NIS candidates.

Railroads: The Administrator of the Federal Railroad Administration (FRA) and his Russian counterpart have agreed on eight areas for S&T cooperation. FRA has also submitted proposals for training programs for senior railway managers emphasizing privatization, free market concepts, and railroad management.

Institution Building: DoT proposes to establish a Transportation Planning Unit (TPU) within the Russian Ministry of Transportation to improve transportation policy-making. DoT's Federal Transit Administration will provide technical assistance to NIS cities to measure the environmental impacts of various transportation projects. DoT aims to identify NIS transportation sector officials who plan to visit the US and offer them the opportunity to observe the US transportation sector at the federal, state, and private sector levels.

POC—Jeffrey N. Shane, Assistant Secretary for Policy and International Affairs, (202) 366-4450

The Department of the Treasury

Treasury has led U.S. participation in the G–7 effort to fashion a $24 billion bilateral and multilateral assistance program for the NIS states and has been the lead agency in developing approaches to restructure the external debt of the former Soviet Union. Treasury has urged early and effective action in the International Monetary Fund, the World Bank, and the European Bank for Reconstruction and Development to assure an effective assistance effort from the international financial institutions.

Treasury has financed discussions with NIS officials to identify specific assistance requirements and sent a short-term advisor to Moscow to discuss tax policies. It is also planning to send longer term financial advisors to Russia, Ukraine, Kazakhstan, and Belarus. These advisors would be located in the respective capitals and would advise government officials on budgeting, tax, and banking policies.

POC—John R. Hauge, Deputy Assistant Secretary for Eastern Europe and the Former Soviet Union Policy, (202) 622-0153

The United States Information Agency (USIA)

USIA is emphasizing democracy building and economic reform, financing its programs from its own budget and through monies transferred from AID. Its FY92 budget for activities to the NIS was $39 million, and USIA plans to increase that figure during FY93.

USIA currently has 27 employees serving at three posts (Moscow, St. Petersburg, and Kiev) and hopes to open posts in Yerevan, Armenia; Minsk, Belarus; Alma Ata, Kazakhstan; and Tashkent, Uzbekistan by the end of the fiscal year. Its major activities include visitor exchanges; American professionals in residence; Voice of America broadcasts in Russian, Ukrainian, Azerbaijani, Armenian, Georgian, and Uzbek; media programs; book translations in history, economics, literature, and law; and student/faculty exchanges between American and NIS universities. USIA is also commissioning several pamphlets to discuss the nature of democracies and market economies. To date, USIA's Sister Cities Program has linked 51 Russian cities and 93 cities throughout the NIS with American cities.

POC—Peter J. Antico, Coordinator for USIA Assistance for EE and NIS, (202) 619-6096

Organizations Engaged in Discussions With NIS Officials

Several agencies have engaged in informal discussions with visiting NIS delegations or have participated in formal conferences that have led to information exchanges or proposals for potential assistance programs. These include:

Small Business Administration.—has briefed on its activities to visit officials who make such requests and provides referrals to other government organizations such as Commerce and OPIC.

POC—Mary Brennan Lukens, (202) 205-6657

Securities and Exchange Commission (SEC).—has participated in discussions with the European Bank for Reconstruction and Development on technical assistance issues. Officials from the Russian government and representatives from St. Petersburg's stock exchange have attended SEC's International Institute for Securities Market Development.

POC—James R. Doty, (202) 272-3171

Federal Reserve.—Several Federal Reserve officials, including Chairman Alan Greenspan, have visited the NIS to identify potential areas for technical assistance programs. The Federal Reserve also has participated in IMF missions to discuss monetary policy, money markets, debt management, banking supervision, and payment clearing systems.

POC—Charles J. Siegman, (202) 452-3308.

Federal Communications Commission.—expects to participate in US government-sponsored seminars on telecommunications, broadcasting, and spectrum management.

POC—Walda W. Roseman, (202) 632-0935

Office of Personnel Management.—is discussing a project with USIA to finance a number of senior NIS officials' attendance at the Federal Executive Institute in Virginia.

POC—Dinah Lin Cheng, (202) 606-0961

Congressional Research Service (CRS).—The Joint Committee on the Library approved a program for Russia in January 1992 which would involve an exchange of legislative documents and cooperation between the staffs of CRS and the Russian Supreme Soviet. The program, which resulted from a request by current First Deputy Chairman of the Russian Supreme Soviet Sergey Filatov back in September 1991, will be financed by private funds from the Ford Foundation and the John D. and Catherine T. MacArthur Foundation.

Since the initial request by Filatov, CRS and the Russian Supreme Soviet have exchanged delegations twice. A CRS-Russian Federation Conference on the Separation of Powers occurred in Moscow in June 1992. Most recently, the CRS and the Parliamentary Center of the Russian Supreme Soviet signed a cooperation agreement in June 1992: the agreement currently is awaiting approval by the Joint Committee of the Library and the Russian Supreme Soviet.

POC—William H. Robinson, Deputy Director of the Congressional Research Service, (202) 707-5776.•

BASHING AMERICA'S LAWYERS

• Mr. HOLLINGS. Mr. President, in recent days it has become somewhat fashionable to bash America's lawyers and our legal system. For example, President Bush stated that he was prepared to "get in the ring" with the trial lawyers. In the Senate's recent debate on whether to consider Federal product liability legislation, many allegations were made about how greedy lawyers were running around clogging up the courts.

I have come across two articles by Howard Nations which appeared recently in the Trial and Trial Lawyers Forum magazines. In these articles, Mr. Nations cites a long string of distinguished service to America by the legal profession, and the benefits we now enjoy because America's lawyers have been willing to step forward and fight for individual rights and liberties, for equal justice under the law, for health and safety, for those catastrophically injured, and the like. As he points out, George Washington and Abraham Lincoln were lawyers, as were those great defenders of our individual rights and liberties, Thomas Jefferson and James Madison. Franklin D. Roosevelt and Patrick Henry were lawyers, and so is Barbara Jordan. The list of lawyers and their contributions to our American society goes on and on, and continues to this day.

In addition, Mr. Nations discusses a number of the recent claims made in the current effort to federalize our tort law. For the information of the Senate, I ask Mr. Nations' articles be printed in the RECORD. I urge my colleagues to take a moment to review these thoughts, for they surely help to bring some context to the current onslaught on our legal profession.

The articles follow:

TRIBUTE TO LAWYERS—"THE FIRST THING WE DO, LET'S KILL ALL THE LAWYERS."

(By Howard Nations)

The great trial lawyer Daniel Webster said, "Justice is the greatest concern of man on earth." There is no greater professional calling than to stand as a lawyer at the bar of justice and define and defend the rights of citizens. Lawyers play many vital roles in the world, but none is more important than preserving and protecting citizens' rights. Since lawyers play such a critical role in our democracy, why is lawyer bashing so prevalent, and how should we respond to it?

The nature of the judicial system and our adversarial role in it explain why we will never be loved by the public. If enduring lawyer bashing is the price we must pay for protecting individual freedoms, so be it. But we must not allow the demeaning of lawyers to interfere with our professional obligations by reducing our zeal in representing clients.

One danger of lawyer bashing is the effect it can have on us as individual lawyers and on the profession as a whole. If we lose our professional self-respect, the entire country loses because our effectiveness in the democratic process is damaged.

For us to maintain our self-respect, it is critical that we understand the role our lawyer ancestors played in establishing and defending democracy. As lawyers, we are the beneficiaries of a rich and unceasing heritage of championing citizens' rights. Reducing that effectiveness is a major goal of our detractors since the power of the people has always been tied inextricably to the influence of lawyers. As Alexis de Tocqueville said in Democracy in America in 1835, "I cannot believe that a republic could subsist at the present time if the influence of lawyers in public business did not increase in proportion to the power of the people."

Today we are engaged in a major struggle over whether power in America will remain with the people or continue to shift to corporations and the government. Individual freedoms can be taken from the people only by reducing the power of lawyers.

As part of this struggle, we are confronting in America today a well-orchestrated campaign of lawyer bashing designed to silence us and limit our ability to stand between the abuses of government power and corporate power inflicted upon ordinary citizens. The effects of this corrosive campaign resound in the legislative halls, the voting booth, and the jury box.

Since, as Shakespeare said, "What's past is prologue," every trial lawyer should understand our past and present roles in society to better meet our obligations to the citizens of tomorrow. When we think of those who preceded us in this noble profession, we become imbued with the spirit, the virtues, and the values we are called upon to preserve.

As to our predecessors' accomplishments, greatness was their hallmark. The mantle we have inherited from them should be passed to our successors draped in greater dignity than when we received it. Even a cursory review of America's history reveals a common thread: Our legal predecessors have steadfastly refused to stand silent when individual liberties were imperiled, regardless of the source or the enormity of the threat.

Who are some of these exemplary lawyers?

We see them occupying the presidency. They are leading America through the formative years of our Republic: nearly all of our first 16 presidents—from Washington through Lincoln—were lawyers. Thomas Jefferson and James Madison were lawyers. So too John Adams, James Monroe, John Quincy Adams, Andrew Jackson, and Martin Van Buren. As George Bush, the 41st president, occupies the White House today, 26 of his predecessors were lawyers.

We see him addressing the delegates of the Second Virginia Convention, with the battle cry, "Is life so dear or peace so sweet as to be purchased at the price of chains and slavery? Forbid it, Almighty God. I know not what course others may take, but as for me, give me liberty or give me death!" His name is Patrick Henry and he is a lawyer.

We see him with quill in hand at Monticello and in Philadelphia and Washington as he painstakingly crafts the rights of America's citizens in the Declaration of Independence. His name is Thomas Jefferson and he is a lawyer.

We see him at his desk drafting "The Federalist Papers" to guide the land he loves toward constitutional law. We also see him helping to frame the Bill of Rights—the credo of American freedom. His name is James Madison and he is a lawyer.

We see him leading the country in its moment of gravest internal peril and despair. And we see him signing the Emancipation Proclamation, moving America closer to giving real meaning to the Jeffersonian ideal of "equal justice for all." His name is Abraham Lincoln and he is a lawyer.

We see him shepherding the country through the Great Depression, impervious to his own physical disability. Boldly he lifts our spirits and girds our strength, all the while reminding us that "the only thing we have to fear is fear itself." His name is Franklin Delano Roosevelt and he is a lawyer.

We see her mesmerizing the 1976 Democratic National Convention as its keynote speaker. She captures the hearts and minds of those who hear her extolling the virtues of democracy and individual freedom in the corridors of Congress. Her name is Barbara Jordan and she is a lawyer.

We see him both as advocate and distinguished jurist passionately reminding us all that justice is color-blind and that all citizens, regardless of race, creed, or color, are equal under the law. His name is Thurgood Marshall and his is a lawyer.

We see him, the son of tenant farmers, as he emerges from rural Alabama to become one of the country's great and courageous civil rights lawyers. Undaunted by death threats to himself and his family, he persists in bringing the Ku Klux Klan, skinheads, and other hate groups to the bar of justice. His name is Morris Dees and he is a lawyer.

We see him testifying on Capitol Hill, demanding that the safety and health of U.S. citizens not be jeopardized in the name of corporate profit and greed, or political expediency. Committed to making government officials and institutions truly serve the people, and railing against actions and decisions arrived at in secret, he is the consummate consumer advocate. His name is Ralph Nader and he is a lawyer.

We see them representing the widow and the orphan and the catastrophically injured, whose future quality of life rests on their lawyers' unstinting dedication to justice. We listen as these lawyers teach us how justice can best be achieved in the face of overwhelming odds, doing battle with corporate America. We watch in awe as they show us how a modern-day David, armed only with a stone of justice, can bring down today's Goliaths, manufacturers of defective and dangerous products. Their names are Scott Baldwin; Robert Cartwright, Sr.; Roxanne Barton Conlin; Bob Gibbins; Joe Jamail; Ted Koskoff; Joe Tonahill—among others across the nation. Their names are legion and they are lawyers.

Where would America be today if these lawyers had been successfully silenced?

They are our inspiration, our leaders, and role models * * * and our friends. By their actions and their deeds, by the example of their lifelong mission and accomplishments, they remind us of the mantle of responsibility we ourselves carry as lawyers.

Lawyers are the linchpin of the democratic process and the front-line defenders of democracy. The question inevitably arises, then, Why has lawyer bashing become something of a national pastime? Try "politics."

The centerpiece of the power struggle to subjugate individual freedoms is the Bush administration's "Agenda for Civil Justice in America." It is a thinly disguised effort to continue the shift of power from individual citizens to government and corporations. The stakes are huge.

To win this power struggle, President Bush and Vice President Quayle must squelch the power of lawyers to defend individual rights. They proceed by discrediting, defaming, and demeaning lawyers. Easy access to the mass media certainly helps.

A year ago, Bush's official spokesman, Marlin Fitzwater, at a White House press conference pointed the way. "We should blast lawyers at every opportunity," he bluntly stated. Quayle chairs Bush's Council on Competitiveness, whose very purpose is to blame lawyers for the alleged inability of U.S. companies to successfully compete with foreign firms. Over the next few months, we will hear Bush and Quayle continue to blame lawyers for most of society's ills. Their reelection strategy makes lawyers the Willie Hortons of the 1992 presidential campaign.

DEMAGOGUES AND TYRANTS

In the face of this onslaught, it has never been more important for us to maintain our self-esteem—both individually and as a profession. We must remember that our predecessors essentially fought the same battles. The discrediting, defaming, and demeaning of lawyers has been the method of choice for charlatans and demagogues and tyrants over the years.

In 17th-century England, Oliver Cromwell, set on thwarting individual freedoms, decreed that no more than three barristers could congregate outside of court. Cromwell recognized that the greatest threat to his autocratic rule was the collective commitment of the London Society of Barristers to the universal principles of freedom established in 1215 with the signing of the Magna Charta.

In 20th-century Europe, Adolf Hitler, probably the most heinous and destructive dictator in all of world history, let his views on lawyers be known. "I shall not rest until every German sees that it is a shameful thing to be a lawyer," he proclaimed. Hitler saw the need to destroy lawyers as a predicate to destroying the rights of other individuals.

Silencing lawyers to subjugate human freedom has been attempted for centuries, but it has been successfully resisted in America by strong-willed citizens aided by lawyers who sought to protect them through the Constitution and Bill of Rights. With each attack, our predecessors at law emerged—like the phoenix from the ashes—to redefine individual rights and freedoms.

Today, we need to be wary of mass-media campaigns that threaten lawyers and therefore the rights of citizens. We must prevail like those who prevailed before us because we are right, because our mission is just, and because the freedom that we protect is synonymous with individual rights for every citizen.

As a society, what alternatives do we face if lawyers can no longer protect citizens' rights?

What a travesty if those who would undo our civil justice system were to prevail now at the very moment when many nations of the world are consciously choosing to emulate the United States and its democratic institutions! In the name of a distorted view of "international business competitiveness," Americans would lose the very protections and symbols that make our great nation the exemplar of freedom for the world. This must not occur, and it will not occur as long as the legal profession vigilantly stands guard at the gates of democracy to uphold the rights of our citizens.

Apart from remembering our predecessors at law, we must do more. We must bring our individual and concerted talents to bear to defend freedom with pro bono efforts on behalf of the disadvantaged. We must fight with indignant advocacy for those harmed by defective products as with renewed commitment for every citizen and every tort victim whose civil rights or civil liberties are threatened.

In the name of "reform," today's demagogues seek to defile our civil justice system by deforming established tort law and attacking lawyers, judges, and jurors. Their ultimate goal is to abrogate individual rights and liberties of ordinary citizens, consumers, and tort victims. The rights they seek to abolish through such attacks are the bedrock of our democracy. As Newsweek magazine stated, "The war against the lawyers is at bottom a camouflaged aggression against the [American] jury system."

ACCEPT THE CHALLENGE

The detractors of our distinguished profession quote with glee Shakespeare's famous phrase from Henry VI, "The first thing we do, let's kill all the lawyers." As has often been demonstrated over the centuries, Shakespeare was right. If tyranny is to prevail, tyrants must first kill all the lawyers. Equally relevant today, if demagoguery is to prevail, those who would abolish the rights of citizens through attacks on the justice system must discredit, defame, and demean lawyers.

Our detractors who attempt to use Shakespeare's quote pejoratively against our profession either don't understand the context or deliberately distort it. The famous quote is spoken by Dick the Butcher, a follower of anarchist Jack Cade—"the head of an army of rabble and demagogues, pandering to the ignorant"—seeking to overthrow the government. The admonition that the first thing any demagogue must do to despoil individual freedom is to "kill all the lawyers" is nothing less than a supreme compliment to our profession.

Accept the compliment as a challenge. Let us conduct ourselves to ensure that, as long as juries and the bench and trial bar continue to breathe life into the common law and Constitution, the principles upon which our democracy is based will be safely preserved. They will continue to carry the indelible imprimatur of a legal system proven to be open and just and fair, and will be guarded by the true sentinels of freedom, our nation's trial lawyers.

TRIAL LAWYERS FORUM

The President of the United States is the world's most important decision maker. Since it is not possible for him to be an expert on every topic for which he makes crucial decisions, it is incumbent upon those who advise the President to do so wisely and with accurate information. This is an obligation that the advisers owe both to the President and to the American public whose lives are greatly influenced by the President's decisions.

In that regard, the President and Vice President of the United States owe an obligation to the American public to be certain that the information they disseminate, particularly through speeches and press releases, accurately reflects the truth. This is especially important when speeches are given by the President and Vice President to mold public opinion and affect the passage of legislation. Considering this premise, it is relevant to review the information being disseminated by the White House in an effort to pass federal preemptive legislation and to reform the civil justice system in America.

The President is currently placing the power of the Executive Office behind the implementation of the Agenda for Civil Justice Reform in America, which is predicated on A Report from the President's Council on Competitiveness. This report, upon which the President bases his call for federal reform of America's product liability laws, deserves careful scrutiny by those of us who represent the victims of defective products.

Additionally, the report is the frequently cited cornerstone of the Bush/Quayle policy of lawyer bashing. Bush's proposed federal tort reform legislation will combine with the Agenda for Civil Justice Reform in America to further shift power away from individual citizens and toward America's corporations and their insurance companies. As the 1992 presidential campaign heats up, we will witness the further implementation of a well-devised scheme designed to undermine the lawyers who represent individuals against the power establishment by destroying the image of lawyers with the public, the press, and legislators. The success of this diabolical scheme requires us to examine closely the data that underlie the premises of the Council's report and the Bush/Quayle policy of lawyer bashing.

The report is replete with gross misinformation based on totally fallacious data. Not surprisingly, the Council that issued the report is chaired by Dan Quayle, the point man of the Bush/Quayle attack on the rights of individual citizens under the guise of salvaging America's competitive business position in the world. Perusal of the data demonstrates the incompetence of their research, the malicious nature of their campaign against lawyers, or both.

Quayle Fiction No. 1: A Report from the President's Council on Competitiveness states:

> Businesses and governments spend more than 80 billion dollars a year on direct litigation costs.[1]

In the accompanying "Memorandum for the President," Quayle advises the President of the United States that:

> Each year the United States spends an estimated 300 billion dollars as an indirect cost of the civil justice system.[1]

Fact: The most authoritative scientific study, by the RAND Institute for Civil Justice, estimates the cost of the entire civil justice system to be between 29 and 36 billion dollars a year, with total tort compensation estimated at 14 to 16 billion.[2]

Of all the Quayle rhetoric and misinformation, this point is the most egregious and unsupported but also the most enlightening about the extent to which the Council will go to fallaciously support their preordained agenda.

The first inquiry is: How was the 80-billion-dollar-a-year direct cost of litigation determined? The best available research indicates that empirical data supporting this figure is without terrestrial origin. In fact, the article in Forbes magazine, that great unbiased pinnacle of journalistic integrity, relies on data from Peter Huber, a hired gun for the manufacturing and insurance interests. Huber adopted the figure from an unsubstantiated statement by Robert Malott, a prominent Republican fundraiser and the Business Roundtable's point man on product liability.[3] Malott made his statement at a 1986 Business Roundtable discussion of product liability among business executives. He stated without source or citation; "It's estimated that insurance liability costs industry about 80 billion dollars a year, roughly the equivalent of the profitability of the top 200 corporations in the United States."[4]

It appears that Malott was addressing the cost of product liability, but when Huber adopted Malott's 80-billion-dollar figure, he applied it as an estimate of the direct cost of all tort litigation. When the Council on Competitiveness and the Vice President adopted these figures from Huber through Forbes magazine, they applied the 80 billion dollars as the cost to the United States of all civil litigation.

If this appears to be a slipshod method upon which to determine America's product liability laws and the rights of American citizens injured by defective products, consider how Huber made the astounding conversion from the malleable 80-billion-dollar direct cost figure to calculate the 300-billion-dollar indirect cost to the American economy of tort litigation.

Huber multiplies Malott's unsubstantiated 80-billion-dollar estimate by three and a half and rounds off to 300 billion to arrive at the indirect cost of the tort system.[5] Astonishingly, Huber arrives at the three-and-a-half multiplier from an editorial in the Journal of the American Medical Association that refers to the cost of defensive medicine expenditures by physicians surveyed in 1984. The study found that physicians who reported an average increase of $1,300 in the cost of their malpractice insurance also reported changes in their medical practices that were worth an additional $4,600 per physician per year. From this finding, the authors of the study calculated that each $1.00 of malpractice risk, as gauged by insurance premiums, induces $3.50 in defensive medicine expenditures.

In a quantum leap into the abyss of nonsequiturs, Huber uses this figure from a 1984 study of physicians' defensive medicine expenditures to justify multiplying Malott's fictional 80-billion-dollar figure by three and a half to arrive at the indirect cost of all tort litigation to America.[6] The fact that 3.5 times 80 billion is 280 billion does not deter Huber from rounding the number up to 300 billion. After all, what's an additional 20 billion dollars a year when every figure in the calculation is equally without relevant basis? Nowhere in the *Report from the President's Council on Competitiveness* is there a discussion of the accuracy of Malott's 80-billion-dollar guess, Huber's three-and-a-half multiplier, or any other aspect of the 300-billion-dollar sham estimate. Even Huber, when confronted with the fallacious nature of his 300-billion-dollar calculation, backed away, stating: "Nobody knows what the indirect cost is. What I said was that if the same multiplier operates in other areas, it's 300 billion. If they don't, it's not."[7]

Thus, despite the fact that both the 80-billion and the 300-billion-dollar calculations are totally unsubstantiated and wholly lacking in credibility, the Vice President of the United States and the President's Council on Competitiveness cite both figures as authoritative in the report as a basis upon which they plan to reform the civil justice system in America. The fact that these figures are much higher than the figures obtained in carefully conducted systematic studies does not appear to bother Huber, Quayle, or the Council.

Has the Council accepted these mythical figures because of an absence of a more accurate analysis of the cost of America's tort system? The fact is that accurate reports and studies are available but were willfully ignored by Quayle and the Council. In analyzing the intent and accuracy of the *Report from the President's Council on Competitiveness*, we must realize that rather than accepting the estimates of the RAND Institute for Civil Justice, which were determined in a careful, systematic, and scientific study, the Council chose to dignify Huber's absurd and disavowed 300-billion-dollar figure by publishing it in an executive branch document under the imprimatur of the Vice President of the United States. The RAND Institute, which conducted a survey that included court costs, legal fees, the value of lost work, insurance claims processing, and total tort compensation payments, has estimated the cost of the civil justice system to be between 29 and 36 billion dollars a year, with total tort compensation estimated at 14 to 16 billion.[8]

Quayle Fiction No. 2: Quayle and other lawyer bashers in government, industry, and the media frequently support their allegation that America has too many lawyers by stating that America has 70 percent of the world's lawyers.

Fact: America has 25-32 percent of the world's lawyers, a figure roughly proportional to America's percentage of the world's gross national product.[9]

Once again, the 70-percent figure that is bantered about so freely is without empirical origin. There is no study by any group anywhere that supplies data to support the claim that America has 70 percent of the world's lawyers. Two separate studies emerge from college campuses. The penultimate lawyer bashing report, emanating from the University of Texas and appearing in a book published by Cambridge University Press, contains a seriously flawed listing of lawyers in 34 countries as of 1983.[10] Even this heavily skewed anti-lawyer report shows America to have 45 percent of the total number of lawyers in the 34 countries surveyed.

A more recent study in 1992 by Professor Marc Galanter of the University of Wisconsin, which omits much of Latin America, Eastern Europe, the Middle East, South Asia, and Africa, where data are simply unavailable, shows 1,969,876 lawyers in the countries counted with 31.41 percent in the United States.[11] This figure is roughly proportional to America's percentage of the world's gross national product.

Quayle Fiction No. 3: Japan operates an efficient, business-oriented economy with only 5 percent as many lawyers per capita as America.

Fact: Approximately one million Japanese possess law degrees, but only 200,000 are actually involved in jobs that relate directly to the courts. This amounts to one legal practitioner for every 700 people, a ratio identical to that for the United States.[12]

Quayle and his loyal following of lawyer bashers, having the advantage of being unabused by the facts, use one of their most egregious distortions to arrive at this conclusion.

This blatant misrepresentation counts only those lawyers who are conducting trials, i.e., barristers in Japan, England, and Wales, while comparing them to the total number of persons admitted to practice law in the United States. As a result, the United States inaccurately appears to have far more lawyers per capita than the other countries. In reality, the per capita number of lawyers in Japan, England, Wales, and the United States is similar. The per capita number of legally educated Japanese, British, and Welsh who perform legal work is identical to the number for the United States: one per 700 population.[13]

An examination of the facts with respect to legal practitioners in Japan is one of the best indicators of the misinformation that Quayle is disseminating. There are 16,341 trial lawyers, public prosecutors, and judges in Japan, However, Japan also has 70,000 law graduates formally performing work that in America would be performed by lawyers, i.e., 50,000 tax attorneys who prepare tax returns, give legal advice and represent people in tax matters; 3,000 patent attorneys; and 15,800 judicial scriveners who take care of the registration and cash deposit matters before legal affairs bureaus as well as preparation of documents to be filed with courts and public prosecutors offices. In addition, several thousand Japanese law graduates work within corporations in the capacity of in-house counsel. The only lawyers counted in Quayle's calculation of "lawyers" in Japan are the 16,341 who actually participate in the trial of cases.[14]

Quayle Fiction No. 4: One of the most egregiously misleading of Quayle's statements before the American Bar Association was his claim regarding punitive damages:

Even a casual observer knows that in the last several decades punitive damages have grown dramatically in both frequency and size. What began as a sanction for the most reprehensible conduct has now become almost routine. In California, estimates are that one in every ten jury awards now includes punitive damages, in amounts averaging more than three million dollars. As these awards become more common, so do the instances of other arbitrary, even freakish, application.[13]

Fact: Blatantly absurd. Quayle's figures come from one California county where plaintiffs in business cases were awarded punitive damages on proof of intentional misconduct of the defendants. The median award in those cases was $630,000. Quayle translates this into all of California and every California jury award.

Several recent nonpartisan studies flatly contradict these statements. In 1990, an American Bar Foundation study found that punitive damages were awarded in only 4.9 percent of more than 25,000 verdicts examined. A 1989 U.S. General Accounting Office report found only 23 such verdicts out of 305 product liability cases studied, and only five survived appeals intact.[15]

The 1991 Rustad/Koenig study, the most comprehensive study ever conducted on punitive damages in product liability cases, found only 355 punitive damages verdicts in the period 1965–1990. The researchers found that the number of nonasbestos cases that include these awards is actually decreasing. Significantly, following punitive damages litigation, 82 percent of the corporations that had punitive damages awarded against them later implemented such safety related improvements as product recalls or improved warnings and instructions.[17]

A 1987 study by the RAND Institute for Civil Justice found that the average punitive damage verdict in several California jurisdictions studies was $743,000, but that figure was seriously skewed by larger awards that may or may not have actually been paid. The researchers found that the statewide median award (a far more representative number, with half the verdicts above it and half below it), was only $78,000.[18] The three-million-dollar figure cited by Quayle was an average from one California county in business cases in which plaintiffs proved intentional misconduct. The median award in those cases was $630,000.

Even a cursory examination indicates that Quayle has taken punitive damages awards in business litigation out of one California county and concluded that: "In California, estimates are that one in every ten jury awards now include punitive damages, in amounts averaging more than three million dollars." The total absurdity that one in every ten California awards carries a three-million-dollar, punitive-damages verdict is so grossly misleading to be laughable, were it not being used as a tool to decimate the individual rights of American citizens to fair compensation from America's corporate tortfessors.

Quayle Fiction No. 5: America's competitive position in international trade is hampered by the large number of tort claims filed against American manufacturers. To support this claim, Quayle states: "In 1989 nearly eighteen million new civil suits were filed in the state and federal courts."[19]

Fact: Tort cases, other than those filed in small claims, make up less than one-half of 1 percent of the total caseload in state courts and only 2.5 percent of the civil caseload.[20]

In 1989, 17,321,125 noncriminal cases were filed in the United States. This number includes every small claims complaint, divorce, debt collection, traffic violation case, contract suit, real estate case, juvenile case, and tort case. Of that number only 2.5 percent, or 447,374, represent tort cases filed in state courts, which handle 98 percent of tort litigation in America. In the same year there were 469,494 contract cases and 436,148 real estate cases. When combined with the hundreds of thousands of debt collection cases involved in the 18 million, it is obvious that litigation between businesses and litigation by businesses against individuals represent far more of the civil suits filed annually than do tort claims.[21]

Accurate records compiled by the National Center for State Courts indicate that traffic, criminal, and juvenile cases are responsible for 82 percent of the total state court caseload. Of the remaining 18 percent, the vast majority are small claims, domestic relations, estate, and contract matters. Tort cases, other than those filed in small claims, make up less than one-half of 1 percent of the total caseload in state courts and only 2.3 percent of the civil caseload.[22]

These records also reflect that business litigation is increasing at a far faster rate than Quayle's target: personal injury and wrongful death litigation. This increase obviously is a direct result of U.S. economic strife, which can be laid more accurately at the doorstep of the White House rather than on the plaintiff's bar.

Quayle Fiction No. 6: The federal courts are being overrun by product liability cases.

Fact: There were 217,879 civil suits filed in federal courts in 1990; product liability case filings accounted for less than 6 percent of the total—hardly an indication that these cases are overrunning the federal courts.[23]

Product liability filings in the federal courts, with the exception of asbestos cases, declined by more than 36 percent between 1985 and 1991. Even including asbestos cases, the total number of product liability cases filed in 1991 in federal court is the lowest annual total since 1986.[24] Tort filings in the federal courts, with the exception of asbestos, declined 13 percent between 1984 and 1991, and nearly 20 percent between 1985 and 1991. Even if asbestos cases are included, total tort filings decreased nearly 20 percent from their high in 1988 to the current low.[25]

While total civil filings increased from 15.7 million in 1986 to 17.3 million in 1989, only 34,577, or 2.16 percent of that increase, were tort cases.[26]

How serious is the effect of the distortions of the President's Council on Competitiveness in influencing legislative votes on the federal product liability bill? In May 1992 the United States Senate was called upon to vote on a procedural issue involving the President's product liability bill and the general aviation bill, both of which are designed to destroy rights of victims while protecting manufacturers of defective products from prosecution. The vote on the floor of the United States Senate was 53 to 45 to table the bills. However, since the rate was not on the merits of the bills, even some of the bills' proponents voted to table. Both U.S. senators from Texas voted with the White House position.

If we are to preserve the rights of our clients, tort victims, and consumers, we must attack these fallacious arguments that are being promulgated by the manufacturers of defective products and their liability insurance carriers and that are being afforded the dignity of the executive branch of the United States government through the office of the Vice President.

This column is offered as information to aid each of us in attempting to set the record straight while our clients' rights to seek redress in a court of law against manufacturers of defective products and other tortfessors still exist. Both the product liability bill and the aviation bill will reach the floor of the Senate for a vote on the merits during the summer of 1992. Thirty-nine U.S. senators have signed on as sponsors of the product liability bill, thirty-one Republicans and eight Democrats. Thus, the White House needs to obtain the votes of only eleven nonsponsors in order to pass this preemptive legislation.

The professional prognosticator and seer, Jeanne Dixon, included in her predictions for 1992 that "anti-lawyer riots will shake the legal profession and force drastic changes in the way attorneys do business."[27] This may prove to be true if the legal profession continues to allow Bush, Quayle, Huber, and others funded by the insurance industry and manufacturers to distort the truth in an effort to pass legislation that would decimate the rights of tort victims and consumers who seek just compensation for the wrongs done to them by America's tortfessors.

It is incumbent upon us to confront these distortions directly. We have research materials available at TTLA headquarters for the use of anyone who wishes to participate actively in fighting this battle against misinformation emanating from the White House. Please contact TTLA's communications director, Willie Chapman, at 512–476–3852 to discuss how you can help in this ongoing battle.

NOTES

[1] A REPORT FROM THE PRESIDENT'S COUNCIL ON COMPETITIVENESS: AGENDA FOR CIVIL JUSTICE REFORM IN AMERICA, 1 (Aug. 1991).

[2] Hager, Mark M., *Civil Compensation and Its Discontents: A Response to Huber*, 42 STAN. L. REV. 539 (1990).

[3] Merrion, Paul, "Fresh Faces Animate GOP Fund-Raising," Crain's Chicago Business, Aug. 15, 1988; McClenshen, "Whatever Happened to the Corporate Statesman?" Industry Week (Nov. 6, 1989).

[4] Malott, Robert, "How do You Cope When Coverage is Unaffordable or Unavailable?" Chief Executive (Summer 1986).

[5] Galanter, Marc, "Talk on Civil Justice Issues to the National Conference of Bar Presidents," Attachment 1 (Feb. 1992).

[6] Hager, supra at 549–550.

[7] Jost, Kenneth, *Tampering With Evidence*, A.B.A.J. (April 1992).

[8] Hager, Mark M., *Civil Compensation and Its Discontents: A Response to Huber*, 42 STAN. L. REV. 539 (1990).

[9] Galantar, Marc, "Talk on Civil Justice Issues to the National Conference of Bar Presidents," attachment 1 (Feb. 1992).

[10] McGee, Stephen P., Black Hole Tariffs and Endogenous Policy Theory, Chp. 8, (Cambridge University Press, 1989).

[11] Galanter, Marc, "Talk on Civil Justice Issues to the National Conference of Bar Presidents," Attachment 1 (Feb. 1992).

[12] Kitawaki, Toshikazu, Associate Professor of Law, Nihon University, Tokyo, Japan, "The Myth of Japan as a Land Without Lawyers," International bar News, pp. 13–14 (March 1987).

[13] *Id.*, Japan Federation of Bar Associations (brochure, May 1989); Miller, Richard S., *Apples vs. Persimmons—Let's Stop Drawing Inappropriate Comparison Between the Legal Professions in Japan and the United States*, 17 V.U.W.L.R. 205 (1987).

[14] *Id.*

[15] Quayle, J. Danforth, Prepared remarks delivered at the Annual Meeting of the American Bar Association, Atlanta (Aug. 13, 1991).

[16] U.S. General Accounting Office, Product Liability: Verdicts and Case Resolution in Five States (GAO/HRD–89–99)(1989).

[17] Rusted, Michael and Koenig, Thomas, "Setting the Record Straight About Skyrocketing Punitive Damage Awards in Products Liability; An Empirical Study of the Last Quarter Century of Verdicts" (Unpublished paper, prepared for the annual meeting of the Law and Society Association, Amsterdam, June 1991).

[18] *Id.*

[19] A Report from the President's Council on Competitiveness: Agenda for Civil Justice Reform in America, p. 1 (Aug. 1991).

[20] National Center for State Courts, State Court Caseload Statistics: Annual Report 1989.

[21] *Id.*

[22] *Id.*

[23] Administrative Office of the U.S. Courts, Annual Reports of the Director.

[24] *Id.*

[25] *Id.*

[26] National Center for State Courts, State Court Caseload Statistics: Annual Report 1989.

[27] Dixon, Jeanne, "Dixon Predictions: What 1992 Holds for Celebs, Politicians, The Economy, The Nation, and the World," The Capital Times, Jan. 11–12, 1992, p.1D, at 3D.•

VOICES ON THE MALL

• Mr. ADAMS. Mr. President, earlier this month the National Congress of American Indians [NCAI] sponsored an event called Voices on the Mall to call attention to the native-American perspective on the quincentennial observance of the voyage of Christopher Columbus. One particularly noteworthy speech was delivered by J.T. Goombi, a member of the Kiowa Tribe, who also serves as first vice president of NCAI. I ask that the text of that speech be made part of the RECORD at this point.

The speech follows:

VOICES ON THE MALL

(By J.T. Goombi)

Your Spanish Sails and Old World Honor
Led me on a Trail of Tears
The Travail Continued with My Children
Who Searched for Hope,
Five Hundred Years

I hear the sound of the distant drums. They beat slow and steadily across this land. They speak to our people on reservations, to our people in native villages, to those who have been lost and to those seeking their way back home.

My name is J.T. Goombi, the First Vice President of the National Congress of American Indians, of the Kiowa Tribe, a Nation within the State of Oklahoma.

I hear the drum. It is the heartbeat of the creator. It speaks to hearts and to our souls. If you close your eyes, you can hear it. It is our eternal pulse and it beats on and on. It beats the story of the American Indian—

It beats the story of an old land and an ancient people,

Of conquering Europeans with swords that rattle and horses that stomp on sacred ground,

Of missionaries speaking Spanish, French and Latin,

Of wagons rumbling across prairies,

Of train whistles and iron horses thundering through the great plain,

Of gun shots and screams at Sand Creek and Wounded Knee,

We are the National Congress of American Indians and we are a Congress of Nations. Each tribe is politically unique but we share a common history. We sometimes argue among ourselves, but our strength is in the diversity of the tribes, our common goals and our common heritage,

We are the people who survived. I am a small part of this Nation of Nations but I will speak as a representative of our history—

I am the first Indian to see a man with skin as pale as the sand and I stand and wonder if I should welcome or destroy,

I am the old woman who died on the Trail of Tears,

I am the Seminole who hid in the Everglades,

I am the Cherokee who learned to read and write,

I am the Nez Perce the army never caught,

I am the little girl killed at the Washita River,

I am the Marine at Iwo Jima,

I am the single Chippewa mother in Minneapolis,

I am the Lakota that defeated Custer,

I am the first Indian to go to college,

I am the Makah who lived his whole life before the white man came—with my fish camp in the summer and my deer camp in the winter with my family and my tribe—and it was a kind of paradise,

I hear the drum. We stand today, no longer the only governments on this continent, but certainly the oldest sovereignties. We have retained little from what we once had. But now our enemies seek to take away the only thing of value we have always had and never lost—our tribal sovereignty itself.

Our non-Indian friends don't fully understand tribal sovereignty but it is not a hard thing to know. Nothing is more endemic to a society. Only one sovereign has ever held true and pure in the history of this world—the sovereignty of the Creator, and it is to be obeyed. Our sovereignty, the sovereignty of our tribal governments, we only ask you to respect. My American friends, hear your own drums—

The sound of your own anthems and the roar of your crowds,

The quiet prayers of honest men seeking to preserve a way of life for their young,

The willingness of young men to fight a war or wage a peace,

The quest for democracy and good will,

The desire to reward acts of courage or kindness,

The search for truth and equal justice,

The civic pride of doing the right thing for your community,

The empowerment to the shadows of society that the franchise brings.

Hear the drum, America. This is what makes you great. Your noble goals, your tolerance of others and the diversity within your shores. You seek truth, self-governance, justice and democracy. Above all, you seek the right and ability to control your own destiny. And that is what sovereignty is.

We tribes endeavor to protect sovereignty as you do, not only because it is about the only thing we have left, but also because sovereignty enables us to preserve a way of life. We as Indian tribes define our sovereignty in many ways—there is no one definition of its limitations, nor its potential. But for the grace and protection of the Creator, our sovereignty is the definition of our shield—

To protect our religious and sacred sites,

To protect our burial grounds from grave-robbers,

To preserve our traditions and our culture,

To care for our elders and our young,

To provide jobs and opportunities for our people,

To make our own laws and regulate our lands,

To give pride back to our people,

And to preserve governments that pre-existed the United States by thousands of years.

Hear the drum, America. We are not so different in our goals. But you must see that the true glory of your nation lies in encouraging these magnificent differences that distinguish our people from your people. Let us determine what our sovereignty is, and respect it.

Hear the drum, America. It is our fondest wish that five hundred years from this day, we will stand on this place together, sovereign Indian nations and the United States of America.

I believe that we tribes have survived the darkest hour of our history. We have nothing to fear, for the worst has happened, we lost everything, but we survived. Our creator deemed that it be so.

And so the drum beats with a thunderous resonance, and we face the morning sunlight of the next millennium as sovereigns with strength, with unity, and with hope. We have survived the last 500 years, and we look today toward the future. As we, as Nations within the United States, define our sovereignty. We ask that you respect our definition, and support our right to control our own destinies.•

GSE LEGISLATION

• Mr. GARN. Mr. President, I want to compliment Senator RIEGLE on the development of important legislation on Government-sponsored enterprises. Under his guidance and leadership, the Banking Committee formulated a landmark bill that will ensure the safety and soundness of the housing Government-sponsored enterprises. Also, Mr. President, this legislation will serve as the catalyst for the financing of considerably more housing for those households with low- to moderate-income levels. For this the chairman should be congratulated.

I am pleased that this legislation requires a thorough investigative study into the role, structure, governance, and stockholder interests of the Federal Home Loan Banks. I am sorry, though, that we were unable to include in this bill substantive language that would address much needed reforms to the Federal Home Loan Bank System, such as those undertaken for Fannie Mae and Freddie Mac.

One set of studies of the FHLB System called for in this legislation by the

Federal Housing Finance Board, the Comptroller General of the United States, the Director of the Congressional Budget Office, and the Secretary of Housing and Urban Development will be most helpful in determining proper governance and capital standards. Also, the studies will focus on products and services, the proper relationship between the System and other government-sponsored enterprises, financial obligations, the impact that consolidation of the System would have on availability of housing credit, and the interests and investments of the System's stockholders. I am also pleased that provided in this bill is a study of the System by a study committee composed of individuals whose institutions own stock in the 12 Federal Home Loan Banks.

I would ask the Senator if I am correct in saying that it is the purpose of these studies to assist Congress in the development of legislation next year that will preserve and enhance the Federal Home Loan Bank's role as an important source of credit for housing, and to protect the financial investment of the System's member institutions?

Mr. RIEGLE. Yes, Senator GARN, if after reviewing the studies, it becomes apparent that legislation is appropriate, it would be my hope that the Congress would consider addressing these issues.•

ORANGE HAT POLITICS

• Mr. PRESSLER. Mr. President, the Metro Orange Coalition is an umbrella organization for citizen volunteers working in Washington, DC, area neighborhoods to eradicate crime and make their streets safe. The coalition organizes neighborhood residents into "Orange Hat Patrols," so-called because of the clothing they wear to make sure they are noticed while doing their work. The presence of these citizens out on the streets, observing who is there, jotting down license plate numbers, and video taping suspicious activity, effectively deters elements of the criminal drug trade from operating in patrolled neighborhoods.

According to information supplied by Mr. James Foreman, coordinator of the Metro Orange Coalition, approximately 100 patrols are operating in the Washington metropolitan area. They have not sought funding from any level of government. Instead, they have relied on the contributions of their own members and the goodwill of a few small businesses. The organizers felt it was important for neighborhood residents to provide the necessary investment to establish the patrols. It was felt, and rightly so I believe, that if neighborhood residents gave of their own resources, they would have more of a stake in the organization and a greater commitment to making sure it worked.

On Friday, October 2, 1992, I had the opportunity to go on patrol with the Orange Hats. Accompanying me were my wife, Harriet, and two members of my staff. We met Mr. Foreman in the Anacostia neighborhood of the District at about 9 p.m.

It was heartening to me to go to Anacostia and meet with citizen-members of the Orange Hat patrols. Among those we met were Joe Kersene, Ed Johnson, and a man called Papa Smurf. Seeing these citizens and their neighbors out on the streets, trying to do something to stem the flow of violence and crime in their neighborhoods, was truly inspirational. It is a sad commentary when, in our society—in this modern age with all its technology—citizens of the District feel compelled to spend their evenings patrolling their neighborhoods to keep them safe.

At one very memorable moment at the end of our neighborhood walk, the assembled group joined hands and sought the guidance of Our Heavenly Creator in carrying out their work. This was truly an inspiring moment.

Now that the Orange Hat Patrols are established as extensively as they are, a need has developed for additional assistance. Funding is needed to supply the trademark orange clothing—caps, jackets, T-shirts—walkie talkies, binoculars, video cameras, and office equipment required to carry out the coalition's mission.

During the 102d Congress, I asked the Senate Appropriations Committee and its Subcommittees on the District of Columbia and Commerce, Justice, State, and Judiciary, the Department of Justice, and the Mayor of the District of Columbia to find $25,000 that could be granted to the Metro Coalition. That small amount would go a long way toward obtaining the equipment they need to carry out their good work. This seemed to me to be a modest amount—indeed, by Washington budgetary standards, an insignificant amount—that would be routinely approved. But you would have thought I was asking for a king's ransom by the responses I received. To read them, you might conclude this meager amount was threatening the fiscal integrity of our great republic.

What we have is an example of politics at its worst. The "Iron Triangle" was at work again—a congressional committee, a District government concerned with protecting turf, and program constitutents—all had an interest in seeing that no nongovernment entity got a single crumb of the District appropriation pie. At first I though that was the problem—that I asked for only a crumb, when I should have demanded a great big slice. Maybe they concluded my request was not made seriously. Perhaps they did not think I would use my privileges under the Senate rules to threaten or actually tie up the business of the Senate over such an insignificant amount of money—and for a disenfranchised group of citizens at that.

But I do not believe that was the reason. The real reason may be that too many people in the political/governmental system refused to believe that a group of concerned citizens, who never sought nor received Government funding, and operate on a minuscule amount of money, could possibly be successful at reducing neighborhood crime—something that the District government has been incapable of doing in the last decade with millions of dollars at its disposal. Were the Orange Hats perceived as a threat to the Iron Triangle's established order?

Mr. President, I am not giving up. I will revisit this issue in the 103d Congress. I strongly believe in the work the Orange Hats are doing. My challenge will be to find the amount and type of support for the Orange Hats that will be sufficient to advance their mission throughout the District of Columbia yet not enable some jealous governmental bureaucracy to smother or co-opt them. We do not want to take a good, effective group and kill it with governmental kindness.

So, Orange Hats, until the convening of the 103d Congress, keep up the good work. Be strong and keep the faith. You are doing all of us a world of good.•

CONGRESSIONAL MEDAL OF HONOR RECIPIENTS

• Mr. COHEN. Mr. President, I would like to take this opportunity to express my support for S. 32, sponsored by Senator DOLE. Earlier this year, I requested that I be added as a cosponsor of this bill but due to a clerical error my name was never added.

S. 32 increases the rate of special pension for persons on the Congressional Medal of Honor roll, the Nation's highest military decoration awarded to Americans who have served with valiant distinction in the armed services. There are 210 living recipients of the Medal of Honor and some 60 of them are living below the poverty line.

Under title 38 of the United States Code, all living holders of the Medal of Honor receive a monthly pension. However, this pension is quite small and has not been adjusted in 12 years.

Increasing the monthly pension paid to medal recipients is a fitting gesture for those Americans who have so honorably served the United States. I believe that it is important that they should not be forgotten. These are difficult economic times for us all, but for recipients living in poverty, it must be even more difficult to feel as if their service is no longer appreciated. By increasing this pension, we say that our Nation will not let time erode the memory of true courage. We say that we understand times are tough and that the pension will go a little bit farther in helping recipients care for themselves.

We have the responsibility to make sure that those who have so valiantly served our country will not be forgotten. I believe that this is a small price to pay to see that medal recipients know service of the highest order will always be honored.•

S. 492, THE LIVE PERFORMING ARTS LABOR RELATIONS AMENDMENTS OF 1991

• Mr. LIEBERMAN. Mr. President, I am pleased that S. 492, the Live Performing Arts Labor Relations Amendments of 1991, was reported out of the Labor and Human Relations Committee this year. It is unfortunate that the actions of some Members made it difficult to bring the bill before the full Senate for debate this year. Since this bill has already cleared the Labor Committee, it is my hope that the Senate will be able to act on the bill in the 103d Congress.

S. 492 corrects several inequities in the application of Federal labor laws to performing artists. Currently, live performing artists do not have the right to organize and bargain collectively over their working conditions and wages, a right the National Labor Relations Act was designed to guarantee. Congress has already recognized that in the case of the construction and garment industries, which provide short-term, sporadic employment, additional legislation was necessary to ensure that workers received the full protection of Federal labor laws. Congress had, however, failed to act to provide live musicians and entertainers, who have similar employment patterns, with the right to choose their own representation and the right to bargain with their employers.

The Live Performing Arts Labor Relations Amendments of 1991 will enable live performers to exercise their rights to organize and participate in collective bargaining. It extends to them the same rights already provided to those in other industries characterized by short-term, transient employment, such as construction and the garment industry. I sincerely hope Congress will act on this legislation early next year.•

SENATOR JOCELYN BURDICK

• Mr. PRESSLER. Mr. President, in her short time in the Senate, JOCELYN BURDICK has inspired us all. She continued the traditions of her late husband, Senator Quentin Burdick, with honor and courage. I admire her dedication to North Dakota and all the Plains States. The determination she showed in representing North Dakota during the last few weeks of the 102d Congress reflected an uncommon ability and grace. I admire her and her late husband's work, and I wish her happiness in whatever paths she takes in the years to come.•

FIFTY YEARS OF SERVICE, SOUTH DAKOTA RURAL ELECTRIC ASSOCIATION

• Mr. PRESSLER. Mr. President, this year marks the 50th anniversary of the South Dakota Rural Electric Association. The South Dakota Rural Electric Association has made numerous contributions to South Dakota over that half century. It is difficult to commemorate the accomplishments of the SDREA in one speech, but I will try.

Without the SDREA, my family farm in Humboldt, SD, would not yet have electricity. I still remember when the rural areas of Minnehaha County where my family farm is located first got electricity. It was a remarkable occasion. Many people in urban areas take for granted amenities such as electricity and abundant, clean and safe drinking water, yet today there still are some rural Americans without these necessary services.

Mr. President, during the 1930's there was no electricity in most of rural South Dakota. Nearly 90 percent of rural South Dakotans had no access to the wonders of electricity. In 1934, only 3 percent of my State's farms were electrified. With the creation of the Rural Electrification Administration [REA], the mechanism to help provide electricity to all of South Dakota was created.

Over 50 years ago, the first rural electric cooperative in South Dakota was formed at a meeting in a general store in Burbank, SD. It was known as the Fairview Rural Electric System. Today, the cooperative is known as the Clay-Union Electric Corp., headquartered in Vermillion, SD.

In 1942, South Dakota's six existing electric cooperatives met to develop a strategy to provide electricity across rural South Dakota. At that meeting, representatives of these cooperatives decided that one unified voice was needed if they were going to achieve their goal. In December 1942, the State's electric cooperatives, then numbering eight, formed the South Dakota Rural Electric Association.

Within 3 years, the number of electric cooperatives in the State would reach 20. These cooperatives were in the process of building 26,300 miles of lines to serve 40,725 South Dakota farms. Today, 33 rural electric distribution systems serve over 250,000 people across 90 percent of South Dakota. Rural electrics serve over 80,000 farms, homes, schools, churches, irrigation systems, businesses, and other establishments across the State. These cooperatives own and maintain about 90 percent of the State's power lines.

The story of the South Dakota Rural Electric Association is truly remarkable. One speech simply cannot reflect the organization's accomplishments over the last 50 years. Mr. President, I will ask that a factsheet on South Dakota rural electric facts and several articles outlining the history of the South Dakota Rural Electric Association be printed in the RECORD at the conclusion of my remarks.

Mr. President, there is one other point I would like to reference. Last year, the television show "60 Minutes" ran a segment that was highly critical of the Rural Electrification Administration. The title of the segment—"REA—Welfare for the Wealthy"—clearly indicates the misleading tone of the segment. I was outraged by what I heard on the show and wrote to "60 Minutes" to respond to several issues raised in the segment. I will ask that my letter to "60 Minutes" also be printed in the RECORD following my remarks.

Mr. President, I raise this point, because as we celebrate 50 years of achievement by the SDREA, we must begin to focus on the next 50 years. Clearly, modern telecommunications service is vital to the future quality of rural life. We need strong rural electrics if rural Americans are to have access to the services urban Americans receive. The SDREA is committed to bringing quality telecommunications services to rural South Dakota in the same efficient, high quality manner in which it has delivered electricity over the past half century. I will continue working with the SDREA to help achieve this goal.

Mr. President, the South Dakota Rural Electric Association is committed to the goal of improving the quality of rural and small town life in South Dakota. I congratulate the South Dakota Rural Electric Association on its 50th anniversary. Their story is remarkable.

Mr. President, I ask that the documents previously referred to be printed in the RECORD.

The documents follow:

SDREA: A UNIFIED RURAL ELECTRIC VOICE

Fifty years ago, leaders of the rural electrification movement in South Dakota met to have a "Statewide Cooperative Meeting." As U.S. servicemen were fighting the Axis powers, the coops too realized they had to do their patriotic duty and sacrifice materials for building new line and developing their cooperatives. Those original six rural electric cooperatives also knew they had a war of their own to fight. Not a war of life and death, instead a war of light versus darkness. They knew that if the lights were to be turned on all across rural South Dakota, a new force would have to lead the fight.

Early in their development, South Dakota's rural electric cooperatives realized that they were going to have to work together and speak with one, unified voice if they hoped to accomplish their goals. The obvious first step for achieving this vision was to form a statewide association.

At a meeting on August 27, 1942, it was agreed that one member from each "project" (cooperative) would have one vote to represent his project. A motion was made not to incorporate at that time but five men were elected directors of the new statewide group. Those elected at the meeting were Alfred J. Pew (Whetstone), E.R. Pike (Union), K.C.

Strong (Clay-Union), R. Wennblom (Lincoln-Union), and L.W. Ellefson (Sioux Valley Empire Electric Association). At this meeting Ellefson was named the first president of SDREA. Also, the minutes of this meeting refer to the name V.T. Hanlon. He was, at the time, project manager for Lincoln-Union and active in the formation of SDREA.

In December those distribution cooperatives, now numbering eight, together formed the South Dakota Rural Electric Association (SDREA). Their hope was that by working together through their new statewide association, REC's would be able to exercise more political influence than they could muster individually.

The first statewide strategy session was held December 7, 1942. The directors were fearful that at the coming legislative session, there might be legislation that could adversely affect rural electrification in South Dakota and that a program of education should be sponsored for the members of the legislature. This was the beginning of the SDREA legislative program that continues today. The minutes of that meeting said the "legislature of South Dakota would open new problems in the form of adverse legislation to the interests of rural electrification in South Dakota and that a program of education should be sponsored for the members of the legislature."

At a meeting the next spring on March 1, 1943, a resolution was adopted, offering Governor M. Q. Sharp assistance and support in a program to develop the natural resources of the Missouri River.

By January 9, 1945, the first of many meetings was being held at the Marvin Hughit Hotel in Huron. There were now 20 rural electric cooperatives that were members of SDREA.

These 20 co-ops were in the process of building 26,300 miles of line to serve 40,725 farms. At this meeting it was agreed and voted that each electric co-cop contribute $100 to the SDREA legislative program. Also, the first legislative committee was formed and delegated to go to Pierre and get the "Model R.E.A. Bill" introduced. They also adopted a resolution in favor of "* * * the development of the Missouri River for electric power and other purposes and we direct that the delegate from this association to the next annual meeting of the NRECA request such association to go on record as favoring said project." The SDREA board knew that the Missouri River would have to play a significant role in power generation if South Dakota's electric cooperatives were to be successful in the future.

On January 10, 1946, Richard Haeder, Beadle Electric, was elected President of SDREA and in October of 1946, Richard Haeder was selected as South Dakota's first representative on the National Board.

In November of 1947, Al Hauffe, F.E.M. Electric, was elected President and served in that position until his retirement in 1970.

For nearly 10 years, SDREA was little more than a paper association without a headquarters or full-time staff. But, as the years passed and the number of member cooperatives increased the need for a more permanent organization became apparent.

SDREA BOARD OF DIRECTORS HIRED FIRST EMPLOYEES IN 1952

By 1951, SDREA had grown from a loose alliance of eight struggling, young rural electric cooperatives into a federation of 33 professionally operated electric distribution systems. In addition, the cooperatives in the eastern half of the state had formed their own generation and transmission cooperative (East River) and a second was in the works west of the Missouri (Rushmore).

As the number of cooperatives grew and increased in sophistication, so did the technical and legal problems they faced. In order to deal more effectively with the ever increasing complexities of running an REC the SDREA Board of Directors decided, at the associations ninth annual meeting in 1951, it was time to establish a permanent headquarters and hire a manager.

On April 16, 1952, the Board's decision became a reality. Huron was selected as the site of the headquarters, and Walter L. Lassen was hired as the Association's first executive manager. Mr. Lassen hired Eunice Jones as his secretary. Lassen's salary was $500 a month; Eunice's $200, and with no fringe benefits.

Together Lassen and Jones began work to form an organization which would eventually grow to a staff of 11 full-time employees and offer a wide array of services to its member systems. Through the years, the Association's activities expanded from primarily handling legislation and government relations into communications, member education and employee job, training and safety.

The idea was to provide the state's REC's with services that could be done more efficiently and economically through the statewide association than if each cooperative attempted to do it on their own.

It wasn't until 1956 that the Articles of Incorporation were officially adopted and signed by A. C. Hauffe, Harry Anderson, Carl Weerts, William Raabe, Sam Ulrikson, John Lux and William Jeremiason.

"In 1962, SDREA went to the 'Big Board'. I recall, at that time, many felt that a board this size would never operate efficiently, that unity would be impossible. Having served on this board for a number of years, and now as President, I can assure you that this board does function efficiently. Yes, we have had arguments, we have had disagreements, but because of these arguments and disagreements we have had much discussion, and because of this discussion, we have reached sound decisions," said then President Maurice Bergh at the 40th annual meeting of SDREA.

For 17 years, SDREA remained headquartered in Huron. But as time passed it was noted that the executive manager was spending a considerable amount of time commuting to Pierre to work with the state legislature and government officials. It became clear to the SDREA board that the statewide association should be headquartered closer to the states seat of government.

SDREA HEADQUARTERS MOVED TO PIERRE IN 1969

Finally, in 1968, after much deliberation, the board decided it was time to move the SDREA headquarters to Pierre. A new headquarters building was constructed at the corner of West Pleasant and Central. In May, 1969, the move was completed.

Once in its new headquarters, the SDREA staff was able to continue working on new ways of improving service to its member systems. Through SDREA, South Dakota's RECs were able to provide themselves with many advantages previously enjoyed only by much larger, privately-owned utilities.

"It may sound like I'm bragging, but as we talk about SDREA and the rural electric program in South Dakota, I think we have the right to brag a little. Those of you who remember the 'gas house gang' of the St. Louis Cardinals will recall how "Ol' Dizzy Dean" used to brag. Someone once accused him of bragging and he said "it ain't braggin' if you can produce the goods," said Bergh.

"That's how I feel abut the rural electric program in South Dakota, because we have 'produced the goods.' Tom Fennell told me a short time ago that there are seven statewide managers who got their start in South Dakota. We have South Dakota people in REA, NRECA, Basin Electric and so many other places. We also have managers, staff people and directors who have received national recognition for their work in the rural electric program. Our attorney, Mr. Flynn, is considered "Mr. REA" even in national circle," said Bergh at SDREA's 40th annual meeting.

FARMERS FOUGHT FOR CREATION OF REA

Saturday, May 11, 1935—Just another spring day to millions of Americans. The send-a-dime chain letter craze was at its height. Rear Admiral Richard E. Byrd returned from another trip to Antarctica. The Cleveland Indians and New York Giants led the major baseball leagues.

President Franklin D. Roosevelt, in a hurry to leave the White House, was headed for a weekend of fishing with political cronies at the Woodmont Rod and Gun Club near Hancock, MD. He rushed to complete some last-minute paperwork. One task was particularly pleasurable to the President. He signed Executive Order 7037, creating the Rural Electrification Administration (REA). By so doing, Roosevelt set about to right a wrong he had resented since the mid-1920s. He related a few years later that the electricity bill at his rural Warm Springs cottage in Georgia "was about four times what I paid at Hyde Park, New York."

That bill, he recalled, "started my long study of public utility charges for electric current and the whole subject of getting electricity into farm homes. So it can be said that a little cottage at Warm Springs, Georgia, was the birthplace of the Rural Electrification Administration.

"The REA"—as it affectionately became known in rural America—is now 57 years old and one of the most successful federal agencies in the federal government. And along the way it has been the catalyst for near-miraculous changes in the lifestyle and economic status of millions of Americans, changes which eventually benefited those even outside rural America. Roosevelt's hopes of bringing power to rural areas were fulfilled beyond his wildest dreams.

A DARK COUNTRYSIDE

When he created REA under authorities of the Emergency Relief Appropriations Act of 1935, only one out of every 10 farms had electric service and existing power suppliers showed little interest in providing such service, seeing it as an unprofitable venture.

Living and working conditions in most rural areas then were primitive. Farmers milked cows by hand in the dim light of lanterns. Kerosene lamps and their hated sooty chimneys provided the only light in most farm homes. Farm women were slaves to the wood range and the washboard. Children pumped water by hand and carried it by the bucketful into the house. "Bathrooms" consisted of outdoor privies—often a health hazard. All farm work had to be done by manpower, animal power and gasoline tractors. There were few industries in rural America, few occupations outside farming.

The coming of REA changed all that—gradually at first, but radically as the years went on.

CO-OPS TO THE FOREFRONT

In the early months of development of the fledgling REA, it became clear that power companies were not interested in REA's plan to construct electric lines with loan funds that were to be used on an area-wide basis. REA field personnel and the agency's engineers and planners in Washington found instead that it was nonprofit cooperatives, a familiar form of rural business enterprise, which were coming to the forefront, many of them newly organized for the REA loans.

Morris Llewellyn Cooke, a progressive Philadelphia engineer, named by Roosevelt as REA's first administrator, gradually became convinced that rural people could be educated to plan and oversee construction of electric lines and then govern and manage the operations of these new cooperative enterprises.

Out on the land, meanwhile, REA field personnel met night and day with local people, outlining procedures and principles which would become a successful pattern. Leaders of local farm organizations and county agents also helped, as rural Americans organized to obtain the long-sought power.

Rural farmers and their wives went up and down country roads, petitioning for the needed signatures of new members and to get the hard-to-come-by $5 "sign up" fee from their neighbors. Then came the long hours of mapping in the lines, acquiring needed right-of-way easements and, finally, preparing the loan application for REA.

Soon, all across the land, electric poles began to dot the landscape. Contractors' line crews, often aided by eager co-op members, cleared rights-of-way and dug holes, while others, following newly developed REA methods of streamlined construction, came behind, assembling and erecting the hardware, and stringing the lines.

How the rural people, in partnership with their government, electrified the rural areas is one of the greatest achievements of cooperative and economic democracy this nation has ever known. The patterns of this economic and social "miracle"—an intensely human story that was repeated in hundreds and hundreds of rural regions—always began with the yearnings to "get the REA." After those first hopes and stirrings, there was the cooperative commitment by these determined men and women to bring the power into their lives. The entire process, organizationally and technically, was a test of the ingenuity, resolve and skills of these rural citizens and their leaders. Most met these tests and more.

The coming of the light and power to rural areas, the first magic glow of the naked bulb in the farm home, was witnessed by farm families with awe. Even today, the recounting of that high and moving moment imparts a sense of wonder. Countless stories are still told of that night: of children, and parents too, running through their homes, turning lights on and off, of women quietly weeping to see new appliances—their electric servants—really working. Rural life and work, rural society itself, was transformed forever.

CONGRESS ASSURES PROGRESS

Bills to put REA on a more solid basis were introduced early in 1936 by Sen. George W. Norris (R-NE) and Rep. Sam Rayburn (D-TX). The Rural Electrification Act was signed into law May 21, 1936, by Roosevelt.

By 1938, hundreds of systems were under development. The typical rural electric system had built and was operating 250 miles of line with $230,000 it had borrowed from REA and then had about 800 member-consumers who had elected directors to govern the affairs of the cooperative. Its staff consisted of a manager, a bookkeeper, a line foreman and crew.

By December, 1941, just before the bombing of Pearl Harbor and the outbreak of World War II, there were nearly 775 rural electric systems operating or building in the countryside. The war effort slowed the advance of rural electrification, but at its close, new legislation was enacted by Congress to complete the job. This legislation liberalized interest rates and payback periods for REA loans, making electrification possible for even the most remote rural regions. By 1947, there were still 2.5 million farm families without light and power, but the period of rural electrification's greatest advances was about to begin. As 1948 closed, more than 40,000 consumers a month were being connected to co-op lines, and in 1949, 184,000 miles of electric lines—more than 15,000 miles a month, or 700 miles a working day—were energized. The popular success of the rural electrification program also resulted that year in Congress passing legislation to extend REA loans for telephone service. Soon, rural isolation and the old "whoop-and-holler" telephone exchange would go the way of the kerosene latern.

On rural electrification's 25th anniversary in May, 1960, electric light and power had come to virtually all of rural America; nearly 1.5 million miles of co-op electric lines were singing along America's rural roads and highways. During these early years, the REA and the rural electric systems' leaders had been preoccupied with feverish activity—building their systems, extending lines to America's most remote regions and keeping pace with new consumer "hook ups" and mounting kilowatt-hour growth for agriculture and rural industries.

NEW CHALLENGES

Throughout those first 25 years there had been a critical need for sources of wholesale power that were reliable on a long term basis for the rural electric cooperatives. Without the federal resources of hydroelectric power and the 1906 antimonopoly provision of "preference" to public bodies and nonprofit entities in the sale of this federal hydropower, rural electrification's progress would have been considerably less dramatic.

In the decades that followed, rural electric leaders brought into being generation and transmission cooperatives—power plants and networks of extra-high-voltage lines, which today reach over vast regions to meet the electric needs of the individual systems and their member-consumers, assuring a foundation for continued growth and vitality for rural America's farms, ranches, businesses and industries. America's rural electric systems continue to face challenging work—meeting the special needs of a rural America undergoing great change.

Today, these systems reach fewer than five consumers along a mile of line, all the while striving to overcome the difficult economics of vast distances and slim revenues, requiring, still, the old cooperative spirit, working in concert with REA.

As the early struggles of the rural electric co-ops stand many decades distant, the first organizing adversities and triumphs of rural electrification's pioneers are told and celebrated today against an aura of folk legend and lore.

But the old power and magic persists in present-day rural electrification—those first moving experiences enlivening and enriching an inspiring legacy which rural electric people seek to continue in meeting contemporary challenges of today and tomorrow.

RURAL ELECTRIC PROGRESS IN SOUTH DAKOTA

Over 50 years ago, the first rural electric cooperative in the state was formally organized at a meeting in this general store in Burbank, a small town near Vermillion. Known, as the Fairview Rural Electric System, first plans for this cooperative were later changed to include more farmers to make the loan from REA "feasible". This cooperative then became named Clay-Union Electric Corporation, the first in the state to get a loan from REA. Today, its head-quarters are now in Vermillion.

From a humble beginning * * *

For many years, South Dakota farmers tried to get electric service from commercial power companies. Except for a very few, they were unsuccessful in their attempts.

In 1935, President Franklin D. Roosevelt signed an executive order creating "REA"—The Rural Electrification Administration. The next year Congress passed the REA act which made a federal agency out of REA.

This was a wonderful thing for South Dakota farmers. It meant that they could do cooperatively what they could not get done by any other means.

Farmers in the southeastern corner of the state were the first to organize into cooperatives to take advantage of loans made by REA.

The first meeting to formally organize a rural electric cooperative was held in a small country general store in Burbank, near Vermillion, 50 years ago. The original charter was granted to a small group of farmers for the first rural electric system in the state on November 29, 1935.

This first attempt to electrify just a few of the farmers failed. REA would not grant a loan because too few signed for the service to make the loan possible. The predecessor of the first cooperative, Fairview Rural Electric System, was organized in 1935, but was not able to secure enough members to obtain a loan from the Rural Electrification Administration.

In 1936, this group of rural electric pioneers obtained a new corporate charter permitting a longer power line, and incorporated as the Clay-Union Electric Corporation.

Leaders of this cooperative did not give up. They recruited more members—they got a loan and lines were built.

After REA authorized a loan to Clay-Union Electric, construction of a 67 mile line began and was completed in 1937. The Clay-Union system was expanded to 136 miles by 1939, and consumers increased from 130 in 1937 to 280 in 1939.

Groups of farmers in other areas of the state did the same thing. Some, however, met more severe obstacles. Private power companies often tried to block the local cooperatives from starting and during World War II, shortages of materials often caused delays in construction.

Before the advent of REA (as afterward), South Dakota lagged behind most states in farm electrification. Long distances between farms retarded the extension of service by central station electric distribution systems. The usual situation in South Dakota before the advent of the Rural Electrification Administration in 1935 was that only a few farms surrounding a town would be electrified.

One of the things that held up rural electric cooperatives from being formed in South Dakota was the need for low-cost power to assure the banker, REA, that they could repay their loans.

During the late 1930s, slow progress in farm electrification was made in South Dakota compared with that in the United States. In fact, the number of South Dakota farms served from power lines decreased from 2939 in December, 1934, to 2500 in June, 1939. The percentage of state farms electrified, however, rose from 3 percent at the close of 1934 to 4 percent by 1936 and 5 percent at the close of 1939. This two percentage point gain in the state during the five year period contrasts with the 17 percentage point gain in the nation. The slow progress of REA projects in South Dakota during this period also contrasts with the situation in several adjacent states, and all of the state's projects were concentrated in the southeastern portion of the state. Since one of the purposes of REA was to increase quickly and greatly the number of the nation's farms receiving central station electricity, it would appear that REA was not achieving the desired results in South Dakota during the first few years of its operations. The pioneers of the rural electric cooperative movement knew they needed help to promote the cause of rural electrification in South Dakota.

In 1942, eight electric cooperatives banned together to form the South Dakota Rural Electric Association (SDREA). Those few pioneers thought they would have more political influence through their new statewide association than they would each have alone. And they were right.

Agricultural prosperity brought a burst of farm electrification in SD during the early 1940s and there was almost an explosion of electrification in the postwar era.

The 1944 Flood Control Act and authorization of Missouri River dams assured rural electric cooperatives a supply of low cost power, thereby making more rural electric cooperatives in the state possible.

From 1938–44 the following 10 cooperatives (listed in order of loan applications) were organized and received allotments from REA: Union County Electric Cooperative Lincoln Union Electric Co.; West River Electric Assn.; Sioux Valley Empire Electric Assn.; Black Hills Electric Assn., Inc.; Butte Electric Assn., Inc.; Whetstone Valley Electric Assn., Inc.; Hamlin Electric Assn., Inc. (later changed to H-D Electric Co-op); Codington Clark Electric Assn., Inc.; and James River Valley Electric Assn., (later changed to Northern Electric Cooperative, Inc.).

In addition, the Traverse Electric Cooperative of Wheaton, Minnesota, which serves South Dakota consumers was organized in this period.

From 1945–1948 the following 17 newly-organized cooperatives received their first allotments from REA: Turner-Hutchinson Electric Cooperative, Inc.; Lake Region Electric Assn., Inc.; Intercounty Electric Assn., Inc.; Tri-County Electric Assn., Inc.; Rosebud Electric Assn., Inc.; Bon Homme-Yankton Electric Assn., Inc.; McCook Electric Assn., Inc.; Ree Electric Assn., Inc.; Kingsbury Electric Cooperative, Inc.; Cam Wal Electric Cooperative, Inc.; Charles Mix Electric Assn., Inc.; Beadle Electric Assn.; Inc.; Spink Electric Assn., Inc.; Lacreek Electric Assn., Inc.; FEM Electric Assn., Inc.; Moreau-Grand Electric Assn., Inc.; and Douglas Electric Assn., Inc.

From 1949–1952 the following four newly organized cooperatives received their first allotments from REA: Central Electric Cooperative Assn., Inc. (Oahe); Grand Electric Cooperative, Inc.; Cherry-Todd Electric Cooperative, Inc. and West Central Electric Cooperative.

This completes the group of cooperatives which had received allotments up to the close of 1960. It is apparent that the period of greatest farm electrification in South Dakota, the years 1945–52, was also the period during which most REA cooperatives were organized and received initial allotments.

Electrification of farms in South Dakota has necessarily conformed to the broad procedural principles laid down for the nation by the Rural Electrification Administration.

Farm electrification moved forward in the state roughly in step with electrification in the nation after 1935. The relatively great distances between farms in South Dakota slowed electrification in the state, however, and by 1960 only 88 percent of South Dakota farms were connected with power lines, whereas 96 percent of the U.S. farms were receiving central station power.

Today almost all of South Dakota's farms are receiving central station electricity from a rural electric cooperative.

GROWTH IN THE PROGRAM

A remarkable growth in the number of rural electric members has occurred over the last 50 years in South Dakota.

In 1940, there were only 2,933 members.
In 1944, 4,612.
In 1948, 21,207.
In 1952, 60,431.
In 1956, 68,304.
In 1960, 72,826.

Today, over 80,000 members are served by South Dakota's electric cooperatives.

The tremendous growth in the number of consumers between 1939 and 1963 caused large increases in the average size of the state's rural electric cooperatives. The three projects in 1939 served about 1,000 consumers, or slightly over 300 per cooperative. The 36 borrowers in 1992 serve 82,470 members or an average of 2,356 members per cooperative.

Measured by number of members served, rural electric cooperatives in South Dakota changed from small ones in 1939 to ones of substantial size over 50 years later.

Another measure of the size of an electric cooperative is its miles of line. Total cooperative is its miles of line. Total mileage increased tremendously between 1939 and 1992. In 1939, there were 617 miles of line energized on three cooperatives with 202 miles per cooperative. This figure rose to 30,734 miles energized on the 31 co-ops representing 990 miles per project in 1950. In 1959, the number of miles energized had risen to 49,429 on 34 co-ops representing 1,450 per cooperative. Today there are over 62,000 miles of line representing 1,767 per co-op.

The great increase in number of consumers served by rural electric systems in South Dakota for the period of 1944 to today has been accompanied by a great increase in electric energy sold by the cooperatives in the state.

Although South Dakota lagged in its rural electric program during the early years, the state's rate of growth in rural electric power consumption after 1944 it exceeded the rate of growth in the nation for most periods.

WHAT RURAL ELECTRIFICATION HAS MEANT TO THE ECONOMY OF SOUTH DAKOTA

It has been estimated that for every dollar spent by rural electric cooperatives, the South Dakota farmer has spent $10 or more for wiring his farm and farm home and for electric appliances and devices.

Rural electric systems are proud to contribute to the general economy of the state by making new businesses possible by supplying them with an adequate supply of power at the lowest possible cost.

Rural electric cooperatives of the state employ 800 people. These employees live in the communities throughout the entire state.

Rural electric systems of the state are owned by those they serve. Each member-owner of a rural electric cooperative in South Dakota is therefore quite naturally a resident of the state.

The rural electric systems in South Dakota have invested more than $390 million in plants and facilities in the state. The rural electric cooperative members have spent an estimated $700 million on electric equipment and appliances since receiving electric service from their cooperative. Members are continuing to invest in more appliances and equipment each and every year—an annual shot in the arm for the state's economy.

Rural electrification represents one of the state's largest industries and supplies electricity to nearly one-third of the states residents and almost all of the state's farms and ranches.

SOUTH DAKOTA'S RURAL ELECTRIC COOPERATIVES PAY TAXES

By state law, rural electrics are required to pay two percent of their gross revenue to the state. This is allocated back to the school districts from which it was collected, thus benefiting these districts on the same basis on which the farmers in this area spent money for electricity.

This tax alone provides over $5 million for schools in the state each year.

This two percent gross revenue tax is levied rather than a real estate tax on the line equipment. Regular real estate tax decreases as the equipment depreciates. The gross revenue tax will increase thus meaning more and more income for the state's schools.

This gross revenue tax should not be confused with the regular four percent sales tax paid by the members of the cooperatives when they pay their monthly bills. This, too, is a vast source of revenue for the state.

The cooperatives also pay regular sales tax on all their equipment just as any business would.

Besides these there are the regular real estate taxes on buildings, employer taxes and licenses and use taxes on transportation equipment. Yes, rural electric cooperatives pay taxes!

ELECTRIC COOPERATIVES REPAY LOANS

To build lines and the other facilities necessary to get electricity to rural South Dakota, REA, the federal agency, loans money to rural electric cooperatives.

This money is paid back, over a fixed period, with interest, similar to a home mortgage.

No South Dakota cooperative is delinquent on the payments to REA. Many are ahead of schedule on their payments.

The relationship of REA to rural electric cooperatives has sometimes been confused.

REA is simply a "banker" for the cooperatives. Money for these loans is requested by the agency, appropriated by the Congress.

None of the employees of rural electric cooperatives are federal employees.

Directors are elected by local cooperative members at their annual meetings.

A rural electric cooperative is as much a local business as the corner grocery store. The one and only difference is that it borrows money from the government as well as private sources such as the National Utilities Cooperative Finance Corporation and CoBank.

Financial data also reflects physical growth of rural electric properties in South Dakota. The pattern of growth in loans in South Dakota is similar to that of the nation. But the upsurge of the late 1940s was greater in the state and the stabilization after 1952 was also more rapid. After 1944, loan repayments by South Dakota's electric cooperatives increased as a faster pace than in the nation.

Present status of the program:

Total number of consumers—82,470.
Miles of line—61,848.
Loans outstanding—$387,104,115.
Loans repaid—$161,658,726.
Amount of interest paid—$108,258,534.
Advance Payments—$1,862,502.

GOOD SERVICE IS OUR BUSINESS

Good electric service, 24 hours a day, 365 days a year—that's the job of rural electric cooperatives.

To provide this service, rural electrics battle against heavy odds in South Dakota, where severe winters and other weather hazards are commonplace.

To provide good service, a regular maintenance program for the lines of the cooperatives is carried out.

These lines are rebuilt when necessary, so that voltage and capacity of them is sufficient to meet the needs of the cooperatives' members. New lines are planned ahead of schedule to meet the increased needs.

Your local cooperative has a lot more invested than just the lines that bring the power. Adequate transmission lines are needed and rural electric leaders must plan years ahead to provide the lowest possible source of electricity.

When rural electrification began, there was no "book" to go by. How to get good service to the farmers had to be learned, every step of the way. Every state and district presented its own peculiar problem.

Rural electrics go one step further than just providing good electric service. They have a real interest in their members and work with them to make the most efficient and economical use of electricity.

To do this, they aid their members in installing new appliances and devices. They recommend uses of electricity that will increase production and lower labor costs on the farm and in the home.

LOOKING TO THE FUTURE

From a humble beginning in a small general store to member-owned electric cooperatives that serve 80,000 families and businesses, the story of progress of rural electric cooperatives in the state is one of accomplishment.

The proud and historic story of rural electrification in South Dakota is a testament to the members, directors and employees of rural electrification in our state.

These years of progress of rural electrification in the state—and the nation—is democracy in action.

It was started on faith. Faith of the federal government in the people—which phrased otherwise is simply faith of the people in themselves. This job was not only to get electricity on the farm. It was to get electricity at the lowest possible cost—and in abundant quantities.

The job included providing a system that would give good electric service—24 hours a day, 365 days a year.

The job was to assist in the growth and development of the areas these systems served and the entire state.

Even after 50 years of progress of rural electrification through SDREA and its 36 member-systems, the job is not done.

The rural electric cooperatives can be proud of their progress. They have upheld the trust given them by the people. The support given to them by their members has been justified.

The job of rural electrification will never be finished. The systems will have to be expanded again and again. No one has yet determined a limit of electricity that can be used efficiently on the farms.

The job ahead will not be without its obstacles. But these, too, will be overcome by the faith—and the support—of the people.

Rural electric cooperatives are of the people. They work for the people.

And therein lies all past—and future—success.

"* * * And, in the last analysis, low-cost electric power, free from private monopoly control, is itself a symbol of the people's control of their destiny, which is democracy."—Leland Olds.

Looking Ahead From a Golden Past—South Dakota Rural Electric Association Celebrates 50 Years

A golden past indeed. The electrification of our state's rural areas is recognized as one of the major factors contributing to this state's social and economic progress.

This year marks the 50th anniversary of the South Dakota Rural Electric Association. SDREA has furthered the cause of rural electrification that was launched May 11, 1935, with the signing of Executive Order 7037 by President Franklin D. Roosevelt.

That order created the Rural Electrification Administration (REA) and set up a program of loans and assistance for local organizations to overcome the conditions of a rural America then only 10 percent electrified. South Dakota had only five percent of its farms electrified at the time.

It was the initiative and work of rural people themselves, in partnership with their government, that wrote this most remarkable success story. Because of the pioneering efforts of early SDREA directors and employees, organizing and building rural utility enterprises in South Dakota became a reality. Today almost no nook or cranny of the state is without power and can look forward to a bright future thanks to its local rural electric cooperative and the statewide association.

These organizations, 36 locally-owned, nonprofit electric systems, serve more than 300,000 people and businesses in today's small towns and rural areas of South Dakota. They own and maintain about 90 percent of the state's power lines, reaching out over vast distances and difficult terrain to provide power to about one-third of the state's population.

Even with the growth and diversification of rural South Dakota, these rural electric systems still average fewer than two families along a mile of line.

While the population and business of rural South Dakota undergoes constant change, serving the countryside will always be one enormous job, requiring a reliable and adequate source of affordable financing for this capital intensive industry. REA remains the primary source, although its lending programs have changed through the years.

The revolving fund for distribution systems' loan needs has only a minimum impact on the federal budget—Congress makes up the difference between market interest rates and the rate loaned to co-ops.; the other, a program of guaranteed loans for generation and transmission systems is self-sufficient.

As SDREA marks their half century of achievement this September, they are recognizing their "birthday" in many different ways. This month's South Dakota High Liner Magazine provides you with information and stories from the state perspective, including a special feature article which traces the history of rural electrification. Another lists basic statistical and historical data on South Dakota's rural electric systems.

During September, SDREA will celebrate its 50th year of service at its annual meeting to be held in Pierre. This golden celebration will relive our past and celebrate the future that's ahead for rural electrification in South Dakota.

Here at the statewide office, we're pleased to assist in the development and promotion of rural electrification in South Dakota over the last 50 years and for the next 50 years as well.

Any way we can further information about rural electrification, provide legislative services or just backup our local cooperatives when they need help—we're here to do it.

As SDREA looks to the future from its golden past, we look forward to working with our 36 member cooperatives and their 80,000 member-owners to continue to make rural electrification a source of pride for South Dakota.

"For the past 40 years, the rural electric people of South Dakota have accepted change; they have made change work for them; they have made the rural electric program strong."—Maurice Bergh, SDREA President at the 40th Annual Meeting, September 24, 1981.

South Dakota Rural Electric Facts

Thirty-three rural electric distribution systems serve over 250,000 people across 90 percent of the land in South Dakota. Stated another way, rural electrics serve over 80,000 farms, homes, schools, churches, irrigation systems, businesses and other establishments across the state.

Rural electric systems are member-owned utilities established to provide at-cost electric service. The member-owned cooperatives are incorporated under the laws of the state of South Dakota.

Most rural electric systems are distribution systems that deliver electricity. Some are G&Ts that both generate and transmit electricity to meet the power needs of distribution of co-ops. There are 3 G&Ts, owned by their member distribution systems in South Dakota.

Although rural electric lines span over 90 percent of South Dakota's land mass, they average only 1.79 consumers per mile of line and collect annual revenue of $2,158 per mile of line. (Investor-owned utilities average 32 customers per mile of line and collect $37,800 per mile of line, and publicly owned utilities, or municipals, average 55 consumers and collect $41,400 per mile of line.)

The average investment in the distribution plant per customer for the rural electric cooperatives is $2,893. (Investor-owned utilities average $1,133 per customer and municipals, average $1,189 of plant investment per customer.)

Insured loans are made by the Rural Electrification Administration (REA) to distribution systems at a 5 percent interest rate from the REA Revolving Fund. REA requires borrowers to supplement loans with privately obtained concurrent loans; the usual ratio is 70 percent REA, 30 percent private.

Generation and transmission systems obtain money from the private money market, channeled for the most part through the Federal Financing Bank (FFB) and guaranteed by the REA Revolving Fund. In addition to the Treasury's cost of borrowing, the FFB collects a handling fee of one-eighth of one percent on all loans to G&T systems.

In 1969, rural electric systems organized the National Rural Utilities Cooperative Finance Corporation (CFC) to provide supplemental financing from private, nongovernment sources. The Bank for Cooperatives

(CoBank) also provides loans to rural electric systems.

In addition to providing electric service, many rural electrics are involved in community development and revitalization projects, e.g., small business development and jobs creation, improvement of water and sewer systems, and assistance in delivery of health care and educational services.

U.S. SENATE,
COMMITTEE ON SMALL BUSINESS,
Washington, DC, November 1, 1991.

"60 MINUTES"
Viewer Mail,
West 57th Street, New York, NY.

DEAR "60 MINUTES": Some of the issues raised in a recent program, "REA—Welfare for the Wealthy" need further clarification. You imply that "mom and pop" telephone companies have vanished. Yet there are over 1,000 small, independently-owned telephone companies and cooperatives serving communities all over the United States. Many of these companies have survived for generations and take great pride in the service they provide their customers.

Because of REA, the phones are ringing in rural America. However, the job is not done. Our society has embarked on an age of flowering technology in communications services. New services and new technologies arrive on the scene daily. Rural companies can provide the advanced services as long as REA remains strong. Keeping rural America on a par with urban America in the advancing information age will encourage rural development.

You say that the REA program is "welfare" for wealthy telephone companies. The fact of the matter is that REA telephone loans permit capital improvements to be made in telephone systems for the benefit of rural subscribers. They do not go to subsidize the revenues or profits of telephone companies. Actually, REA is one of the few government programs targeted for America's rural citizens.

You assert that REA loans go to resort areas and affluent suburban areas. Fewer than two percent of REA telephone borrowers serve suburban areas and fewer than one half of one percent serve resort areas. The fact that resorts have been built up around these small local exchange carriers points to the success of the REA telephone loan programs in encouraging rural economic development. Such growth translates into jobs and rural growth.

Modern telecommunications service is essential to the quality of rural life, and the REA's commitment to rural telecommunications has been central to the sustained vitality of rural life. The REA telephone loan program is effective, efficient, and economical. The REA telephone loan program builds America.

Sincerely,

LARRY PRESSLER,
U.S. Senator.•

COMMITMENT AND DIRECTION OF FANNIE MAE

• Ms. MIKULSKI. Mr. President, throughout the year, the employees and management of Fannie Mae have been hard at work developing steps to broaden and diversify their work force. They are determined to make Fannie Mae second to none as a working example of maximum employee opportunity regardless of sex, race, or national origin.

Recently, James A. Johnson, Fannie Mae's chairman and chief executive officer addressed all the company's employees on this issue. His remarks reflect the commitment and direction of the company in its effort to grow better and grow stronger by making sure employees have every chance to do the same. I commend his remarks to my colleagues, and I ask that the full text of Mr. Johnson's remarks be printed at this point in the RECORD.

The remarks follow:

REMARKS OF JAMES A. JOHNSON, CHAIRMAN AND CEO, FANNIE MAE

Thank you for joining us this morning. We don't hold all-employee meetings casually. I've been Chairman for a little less than two years and this is just the second meeting that we've had during that time.

We only do this when we have something important to share with you. And we do today. The subject is diversity.

I define diversity at Fannie Mae as the value we place on the differences of people who work here and our mutual respect for those differences. By valuing our differences through mutual respect, we create an environment in which each one of us can enjoy maximum opportunity, maximum growth and maximum fulfillment. And that applies to everyone, regardless of your gender, your race, your sexual orientation, your religion, or your ethnic background.

As you know from the letters I've sent you, we have set as a corporate priority, the achievement of a work force that at all levels reflects the diversity of our society and a work environment that is not only free of discrimination, but also focused on the development of all employees to reach their full potential.

Today, I will focus on senior management's commitment to our diversity goals.

Let me say I'm extremely confident that we will be successful in meeting the challenge of diversity that lies ahead. You may remember when we all gathered here on March 14, 1991, I spoke to you about one of the most important initiatives Fannie Mae has ever undertaken—our $10 billion program of "Opening Doors to Affordable Housing in the 1990s." I said then, "The challenge we face, each of us, is large and it's serious, but the goals are not beyond our reach. I know we will meet this challenge as we have met so many in the past with intelligence, commitment, a sense of fairness, and hard work * * *."

Today, we are more than meeting the $10 billion challenge. We are overwhelming it. We have more than two years left to meet our original goal and we are already more than half way there. To each of you, thank you very much.

In this magnificent performance, you have demonstrated once again, what I knew from the first day I walked through the doors of Fannie Mae. This is a company of very special people.

You are attracted to Fannie Mae and Fannie Mae is attracted to you because we share the common values of honesty, integrity, hard work, and mutual respect. Your commitment to Fannie Mae is a commitment to something larger than just your careers or material well-being. It is a commitment to having an impact on the lives of millions of people through our business of financing homes and apartments across the country. No matter how fast Fannie Mae grows, our value system will be the driving force of our success. James Conant, a great President of Harvard University, once said, "Democracy is a small, hard core of common agreement, surrounded by a rich variety of individual differences." So is Fannie Mae.

Our company's future depends on our mutual and positive response to the demands of diversity because Fannie Mae's first asset is not the mortgages we purchase, but the people we employ. Fannie Mae's work force must become more diverse, not only because it's right, but because it's good business.

The Hudson Institute's highly respected report, "Workplace 2000," shows how the American work force will change in the years ahead. It will grow more slowly, become older and more diverse. The average age in 2000 will be 39, not today's 36. Three-fifths of all women over the age of 16 will be working in the Year 2000 and minorities will make up nearly 30 percent of all new entrants into the work force, twice the current rate.

Responding to this challenge is a responsibility of leadership. Fannie Mae is the leading institution in the nation's home mortgage finance industry. We have a responsibility to lead by example.

All of our offices are located in racial, ethnic, and economically diverse metropolitan communities. But for too many of us in America, the workplace is the only truly integrated experience we have in our day-to-day lives. So, it is the workplace that offers us the greatest opportunity to learn from and expand our horizons through contact with people different than ourselves.

We have made good progress at Fannie Mae, both as individuals and as a company, in recognizing the need to accommodate our differences and work together side by side. But the work we have started is unfinished and we must finish it to fulfill our potential as a world class company.

The challenge reminds me of the words of Senator Robert Kennedy in his famous speech at the University of Capetown in South Africa in 1966. He said:

"There is no basic inconsistency between ideals and realistic possibilities, no separation between the deepest desires of heart and mind, and the rational application of human effort to human problems."

We are a company of people who bring ideals and hard-headed realism together.

We do it in the way we carry out our mission in the service of people who need affordable housing and as a profit maker for our shareholders.

We do it in the way we are fighting against discrimination in housing.

We do it through the respect we show our customers and our commitment to excellence in all that we do.

We do it in our corporate and individual giving to communities, schools and the homeless.

We do it in developing programs to expand opportunities for minority and women-owned firms, programs such as our new ACCESS initiative to help minority- and women-owned securities firms expand their business in the $1.7 trillion market for agency securities.

We also do it in reaching out to give more of our other business to minority and women-owned firms.

And we're doing it in our efforts to change what was once Fannie Mae's single-culture management to one that is truly multi-cultural.

For those of you who have been here for some time, you can recall that up until 1981, only two women had ever served on our

Board of Directors. The company, in 1981, had one woman officer and very few women in the management group. But a man of decency and vision vowed in 1981 to change that and he did. David Maxwell was not content to ignore the brainpower of half the population nor their training, experience and abilities. Today, we have three women on our board, 128 women in our 361-member management group, including 35 women officers. And Fannie Mae is stronger for it.

Before 1981, only three minority members had served on our Board of Directors and we had no minority officers or minority members of our management group. Today, we have six minority Board members and nine minority officers. Minorities represent 15 percent of our management group. And Fannie Mae is stronger for it.

I believe we have among the most diverse group of men and women of any corporate board in America. This diversity in our board room is one of the fundamental strengths of our company.

Last February, I formed our Diversity Task Force, headed by our President, Larry Small. I took that step because a number of Fannie Mae employees came to me and made the case thât we were not doing all that should be done.

The ten-member Task Force and the Task Force Advisory Group worked long and hard. Their work and the recommendations they made have become the foundation upon which we are building our action program. Not only did they provide us with their clear thinking, but their representatives visited 20 companies that have the reputation of excelling in diversity. They took what they found to be the best among all those companies and incorporated it into the recommendations they made. I'm convinced as a result that we can be among the best in corporate America.

I'd like to thank very much the members of the Task Force and Advisory Group for the work they did. They did an outstanding job.

Through the work of the Task Force and Advisory Group, we have issued a statement of corporate philosophy of diversity, which each of you received in May. That philosophy is based on respect for one another and the recognition that each person brings his or her own unique attributes to the corporation. A draft of Fannie Mae's employee Code Of Conduct was circulated with our statement of philosophy. That Code says:

"All employees must conduct themselves in a manner that shows the respect we have for each other and the value we place on civility in our work force and in our workplace."

A final Code will be circulated in early December for each employee to sign.

But issuing statements is one thing. Moving the spirit is another. It takes people to make real what is a goal on paper and we are extremely fortunate to have three people who are nurturing the spirit that moves us.

We're working with Dr. Price Cobbs, widely acknowledged as one of our country's foremost diversity management specialists. He is having a significant impact on the thinking of all of us who are working with him.

Many more of you know Leon Hollin, our new Vice President for Human Resources, and Maria Johnson, our new Vice President for Diversity. In the short time each has been with us, they have made significant contributions. Leon looks at diversity from a Human Resources and Career Development perspective. And he has a very strong and positive perspective developed during 22 years of dealing with human resources and operational issues at IBM.

Maria Johnson has been here for just three months, but I see and feel the progress she is making almost daily. Her success will be our success and it will come out of her fruitful career in employment law, employee relations, and in dealing with problems people face on their jobs. Maria's an extraordinary person and a valuable addition to Fannie Mae.

With Leon and Maria here, we are moving faster now toward our goals, but we still have a long road to travel.

I would like to share my vision of the future with you as we travel down that road together.

I see a company in which people from widely diverse backgrounds work together sharing a core of common values of honesty, integrity, hard work, and mutual respect.

The company I see is stronger and more effective and, yes, more profitable, because we are using all the human resources our society has to offer.

My vision is one in which every Fannie Mae employee will have a career plan with a path that can lead each to his or to her full potential.

Fannie Mae must be a company in which everyone is treated fairly—where if someone gains, someone else does not need to lose. We must be a company free of any form of discrimination where the only challenge a person has to face is good, hard competition.

I see a company that uses the richness of our individual differences as a positive force in our conduct with each other and those with whom we do business.

In my vision, Fannie Mae's work environment allows us to recruit the best talent and retain the best employees.

Finally, I see a company that leads by example and sets the standards for diversity in corporate America.

I think you share my vision. I certainly hope that you do. If you don't, please let me know. As a community, we will discuss our progress and we'll work out any differences that we have.

In closing, I'll make this commitment to you today. When we meet two years from now, every employee at Fannie Mae will have a career plan and a career path to follow. If we meet this diversity challenge as we've met all other challenges in the past, the only obstacles along the career path will be those self-imposed by each individual, not imposed by intolerance for our differences.

That is our challenge. Let's work together once again to overcome the obstacles. Let's work together to embrace a new standard of success at Fannie Mae.•

LIVE PERFORMING ARTS LABOR RELATIONS AMENDMENTS

• Mr. ADAMS. Mr. President, the end of a legislative session invariably results in several meritorious proposals failing to receive the consideration and debate they deserve. One such issue in the 102d Congress was S. 492, the live performing arts labor relations amendments, of which I was an original cosponsor. This proposal was first considered in Congress 10 years ago, so it can hardly be considered a new idea. S. 492 was favorably reported out of the Senate Labor and Human Resources Committee, on which I serve, on September 16, 1992.

Unfortunately, the administration chose to deliberately confuse the issues addressed in S. 492, when Secretary of Labor Martin wrote to the Senate alleging that this bill would "create a special interest exception in the law for labor organizations in the live performing arts industry." In a minority report filed by six Republican members of the Labor and Human Resources Committee, it was alleged that to reopen the National Labor Relations Act would create an unprecedented exception to sound and longstanding principles of labor law.

I find it oddly ironic that some of the very Senators who spend much of their time around here fighting to undermine current standards protecting the American worker, whether under the Davis-Bacon law, minimum wage reform, the Jones Act, civil rights legislation, and a host of other standards, now present themselves as the unselfish guardians of sound principles of labor law. The representations made in Secretary Martin's letter make me wonder whether anyone from the Department of Labor even bothered to attend the hearings on S. 492.

The inferior bargaining position occupied by musicians is a historical reality. Very few of them ever achieve the level of fame that allows them to negotiate payment levels that provide them with a living wage. In the take it or leave it world of night clubs, dance halls, lounges and bars where many of these dedicated and talented artists toil, the deplorable conditions and substandard wages they face are a national disgrace. The testimony of recording star Lee Greenwood, whose fame has allowed him to rise above the slumlike conditions too many performing artists face every day, should be read by every Member of this body.

I regret that some Members chose to block an opportunity to have the full Senate openly debate and vote on S. 492. They operated within their rights under the Senate rules, but that did not make their actions right by any standard of fairness or equity. It is axiomatic in our democratic society that justice delayed is justice denied. Our live performing musicians deserve to have their day to tell their story to the American people, and to have the elected representatives of this Nation vote whether to address their grievance, or to continue relegating them to second-class status under American labor law. We should have addressed their concerns this year, for this injustice will not quietly fade away. I sincerely hope that the 103d Congress will, at long last, address this matter.•

TRIBUTE TO DR. TERENCE M. BROWN

• Mr. PRESSLER. Mr. President, I rise today to pay tribute to Dr. Terence M. Brown. When Dr. Brown died of cancer on Sunday, October 4, 1992, my home State of South Dakota lost a very dynamic educational leader.

Dr. Brown served as the president of Northern State University [NSU] from 1982 until his death. He was committed to his goal of making NSU a high-quality school where students could get a great education. NSU is located in Aberdeen, serving nearly 3,000 students in the northeastern corner of South Dakota.

In addition, Dr. Brown was active with the South Dakota Board of Regents; served as director for the American Council of State Colleges and Universities committee on undergraduate education; and the American Council on Education Advisory Committee on self-regulation initiatives.

Many community groups also benefitted from Dr. Brown's visionary leadership. These included the Chamber of Commerce, Aberdeen Regional Airport, Aberdeen Area Resource Center for Women, Brown County United Way, and the Aberdeen Area Arts Council. He will be greatly missed.

I ask that an article from the Aberdeen American News be included in the Record.

The article follows.

Progressive S.D. Educator Dies at 50

Aberdeen.—Terence Brown, a university president who added graduate-level courses and helped change the name of his school to Northern State University, died Sunday of cancer. He was 50.

"He was a sound, traditional academician, but a real advocate of the newer technologies. He pushed this campus into the computer age," said Thomas Flickema, who has been Northern's executive vice president since Brown was granted a sabbatical in July.

Brown, who had been battling cancer for 2½ years, had been Northern's president since 1962.

Brown died about 8:30 p.m. Sunday at St. Luke's Midland Regional Medical Center in Aberdeen.

His funeral will be at 2 p.m. Wednesday at St. Mary's Catholic Church in Aberdeen. Burial will be at St. Mary's Cemetery.

Flickema said Brown was a dynamic leader.

"Tremendous changes took place under his leadership. The institution changed in terms of the nature of the faculty and of the types of programs we had," he said.

"Dramatic transformations took place on the campus. It was during his period that the Barnett (athletic) Center was built; the whole campus beautification effort was carried out."

Brown came to Northern from Arkansas State University, where he had been a vice president and an English professor.

During Brown's years, the number of NSU faculty with the highest possible advanced degree rose from less than half to nearly three-fourths. Brown recruited professors who were "consummate professionals," Flickema said, "excellent teachers who also conducted research and published the results in respected journals."

Northern's vice president for student affairs, Beth Wray, said Brown's promotion of Northern did meet with some resistance. "The changes he made weren't always popular, but he persevered."

During Brown's tenure, Northern added a master of arts in teaching and a master of business administration. The administration offering is in conjunction with the University of South Dakota.•

LIVE PERFORMING ARTS LABOR RELATIONS AMENDMENTS

• Mr. D'AMATO. Mr. President, we have now closed the final chapter on the 102d Congress. While many deserving bills passed in the Senate, many more were never acted upon. One bill that did not pass and that I supported would rectify a problem that currently impacts the collective bargaining abilities of performing artists.

As most of my colleagues know, those who perform live music generally do not spend more than a night or two at a single venue. Their employment can be sporadic and haphazard—in ways similar to how the construction and garment industries function. The only difference is that workers in these industries were granted and now enjoy certain labor protections. Live performers do not.

We have all heard the salary levels of performers like Michael Jackson, but, the overwhelming majority of performers cannot dictate their wages and working conditions and must struggle to be able to share their talents for a decent living. Without the ability to collectively bargain, these musicians can and sometimes do face a lifetime of financial instability.

To address this concern, Senator Simon and I introduced legislation, S. 492, to grant employee status and the right to organize and bargain collectively to live performing artists. This legislation would have given performing artists a chance to seek and obtain representation to ultimately be able to improve their standard of living.

While this bill was not acted upon in the 102d Congress, there is hope for the 103d Congress. The spirit of fairness behind S. 492 is such that expectation is high on passage within the next Congress. I will continue to support this legislation and look forward to its passage.•

SENATOR STEVE SYMMS

• Mr. PRESSLER. Mr. President, the Senate certainly will miss the strong voice of Senator Steve Symms. He is a dedicated spokesman for conservative principles. He speaks with conviction for the conservative viewpoint. He has been a serious legislator who has earned respect from both sides of the aisle.

Senator Symms' legislative accomplishments are impressive. He was a key legislator on numerous pieces of transportation legislation. He also has been active on a broad spectrum of environmental issues, working tirelessly to protect and advance the best interests of America. He expressed an exceptional common sense viewpoint on spending issues and is one of the most vigorous supporters of the second amendment to the U.S. Constitution.

Steve Symms has never wavered in his conservative philosophy. This dedication was especially apparent in the area of arms control. He is one of the greatest defenders of our national security.

Steve Symms is a man of courage, compassion, and ability. He is an energetic advocate for the people. He has taught us many things over the years and his presence in the Senate will be missed greatly in the years to come. I wish him all the best.•

LIVE PERFORMING ARTS LABOR RELATIONS AMENDMENTS

• Mr. AKAKA. Mr. President, on September 16, 1992, S. 492, the live performing arts labor relations amendments, was reported by the Committee on Labor and Human Resources. As an original cosponsor of this important legislation, introduced by my distinguished friend from Illinois, Senator Simon, I was grateful for the committee's favorable consideration and hopeful that the Senate would have the opportunity to act on S. 492 before adjournment. Unfortunately, opposition from the administration and a small group of Senators has denied the Senate a chance to debate the merits of this bill.

S. 492 would simply give performing artists the right to negotiate the terms of their employment through the collective bargaining process. Currently, the vast majority of performing artists working limited engagements, either individuals or groups, have restricted bargaining power to secure fair wages and proper labor conditions. Artists in this category, working at limited engagements, constitute 85 percent of the entertainment industry. Most opportunities for aspiring entertainers and musicians are in the casual engagement field. They rarely work for one employer long enough to vote for union representation or bargain for decent wages and conditions.

At committee hearings this past May, witnesses told of the difficult conditions and substandard wages encountered by professional musicians working in the entertainment industry today. Often the fame and fortune achieved by very few performing artists obscure the fact that the overwhelming majority of professional musicians and entertainers are talented, hardworking, taxpaying, middle-class Americans who struggle to make ends meet and support their families. These individuals seek the same fair and equitable treatment extended to other Americans whose talents and labor are protected by law.

Mr. President, for over a decade we have tried to secure the right to bargain for decent wages and conditions for performing artists. My former colleague, Senator Spark Matsunaga, introduced the original live performing arts amendments bill during the 98th Congress. It is unconscionable that any group of American workers should wait so long for justice and equality under our Nation's labor laws. It is my hope that the 103d Congress will address and resolve this issue early in the first session.•

CONGRATULATIONS TO MARY ANN MERTENS

• Mr. SEYMOUR. Mr. President, today I wish to pay tribute to Mary Ann Mertens of Claremont, CA, who will be installed as president of the Auxiliary to the American Dental Association [AADA] on October 20, 1992. Ms. Mertens' presidency caps a 29-year commitment to staunchly promoting dentistry and dental health awareness. It also exemplifies her belief that dentistry is a family business.

Like a majority of dental spouses, Ms. Mertens works with her husband, John, in their family dental office. In addition, they have raised two daughters. It was by combining her interests in these two areas Mrs. Mertens developed dental health education programs for school children. These programs featured puppet shows for youngsters and inservice training on dental hygiene for teachers. She has also held every leadership position including president of the auxiliary to the Tri-County Dental Association. Furthermore, she has served as president of her PTA and was named Mother of the Year in 1985 for her service and devotion.

On the national level, she has been involved in every aspect of the AADA from grassroots political activism to helping promote dental awareness in the general public. She has served as vice-president, recording secretary, and legislative committee chairman.

I congratulate Mary Ann Mertens on her presidency and for being a role model for dental spouses.•

TRIBUTE TO SENATOR WARREN RUDMAN

• Mr. PRESSLER. Mr. President, I rise to pay tribute to our colleague from New Hampshire, Senator WARREN RUDMAN, who will be retiring from the Senate at the end of this Congress. He deservedly has earned great respect in this Chamber.

Independence and steadfastness are the characteristics we readily recognize in WARREN RUDMAN. After graduating from Syracuse University in 1952, he volunteered for service in the Korean war, during which he was awarded a Bronze Star as an infantry company commander. After graduating from law school, he served 6 years as New Hampshire's attorney general—experience that served him well in his activities and assignments in the Senate.

WARREN RUDMAN has never shirked from challenging tasks. He successfully fought to preserve the Legal Services Corp., which provides legal assistance in noncriminal proceedings to persons financially unable to afford legal services. He has persevered in getting funding for the Low-Income Home Energy Assistance Program, which is of great importance to low-income families in New Hampshire and elsewhere in the colder regions of the country.

On broader fronts, Senator RUDMAN has served as vice chairman of the Senate Iran-contra Committee and accepted the thankless task of serving on the Senate Select Committee on Ethics—one of the toughest jobs in the Senate. He did a masterful job in guiding his friend and associate David Souter through Senate confirmation on appointment to the U.S. Supreme Court. WARREN RUDMAN, of course, also is well known as cosponsor of the Gramm-Rudman-Hollings budget control measure of 1985.

It is ironic that the failure to control the budget and the stalemate in which we seem to find ourselves apparently led to Senator RUDMAN's decision to retire from the Senate. I understand that, and while he will be continuing his fight on this cause away from this Chamber, he can be assured there are those of us here who will continue striving to get our fiscal house in order. It is the most important problem this Nation faces. We will greatly miss our friend and colleague. I wish him well in his new endeavors.•

PASSAGE OF S. 1709 THE FARM CREDIT SYSTEM SAFETY AND SOUNDNESS ACT OF 1992

• Mr. LEAHY. Mr. President, tonight the Senate will pass the Farm Credit System Safety and Soundness Act, the Government sponsored enterprise [GSE] reform bill for the Farm Credit System which was required under the Omnibus Budget Reconciliation Act of 1990 [OBRA].

The large losses within the savings and loan industry and the near bankruptcy of the Federal deposit insurance have raised concerns about the Government's exposure should any of these enterprises fail. Fortunately, according to these Government agency reports, the current GSE's do not now pose any significant risks of losses to the U.S. Treasury.

A GSE is a privately owned, federally chartered, financial institution that has specialized lending powers and the benefit of an implicit Federal guarantee that enhances their ability to borrow capital. Like any private financial firm, these enterprises are subject to financial risks. These include losses arising from borrowers' default, adverse changes in interest rates, poor management decisions and unfavorable business conditions. It is widely believed that a default by any GSE would reduce that market value of all GSE obligations, perhaps, significantly, and could endanger the stability of the entire financial system. This expectation demonstrates the need for Congress to act now, while there is little risk, to avoid the need to respond to a crisis at a later date.

The examinations of risk to the Government posed by the Farm Credit System revealed that the proper regulatory structure was already in place for the FCS and therefore this bill's primary focus was on repayment of the debt from the 1987 assistance. The bill ensures that the assistance provided to troubled Farm Credit System banks is repaid in full and the tab is not left to be picked by the taxpayers.

The Agricultural Credit Act of 1987 added provisions to the Farm Credit Act authorizing the Farm Credit System Financial Assistance Corporation [FAC] to issue bonds to finance assistance to financially-distressed FCS institutions, and obligating the FCS institutions to repay the principal and interest on those bonds.

The language in the bill we pass tonight clarifies and strengthens the FAC debt repayment provisions of the 1987 act. Overall, the intent of the bill is restate the FCS's obligation to repay all of FAC debt, including the Treasury-paid interest, and to permit these repayment obligations to be managed in a more businesslike manner. The managers believe this legislation satisfies the concerns and objectives that have been expressed by the Treasury and the Farm Credit Administration in the area of FAC debt repayment, and does it in a way that is less disruptive of the FCS operation and the development of the FCS financial strength, and more faithful to policy determination made by Congress in the 1987 act.

The bill requires the farm credit banks to set aside funds on a yearly basis to ensure that financial assistance is repaid to the U.S. Treasury when this debt is due. Under this framework, the FCS is required to begin immediately to build capital for the repayment of all special purpose bonds issued for financial assistance to FCS institutions and other obligations stemming from that assistance. The Farm Credit System Financial Assistance Corporation has issued approximately $1.3 billion in bonds for assistance to the Farm Credit System—all of which will be repaid, with interest.

The managers wish to clarify that the original Senate bill included two provisions which were based on recommendations by the Department of the Treasury to improve the safety and soundness of the operation of the Farm Credit System beyond debt repayment. The GSE report to Congress by Treasury, indicated that the FCS banks and associations lack consistent standards for managing the risks that they confront, and proposed a statutory mechanism to ensure that the FCS institutions establish uniform financial conditions and performance standards and require compliance with such standards by the FCS institutions. This effort would encourage greater self-discipline by FCS institutions and would reduce the risk of default in payment of FCS obligations, thereby reducing the risk to the Federal Government.

One provision in the original Senate-passed bill was structured to encourage the signing of a voluntary interbank agreement. The agreement was designed to carry out the intent of the Treasury proposal in terms of risk management, but rely on the expertise of the FCS for its precise design. Such an agreement would not undercut the mission and purpose of the Farm Credit System, but instead impose sound management practices into FCS lending objectives. These standards would be in addition to the Farm Credit Administration [FCA] minimum regulatory requirements and none of the provisions in the agreement were to interfere with the regulation of FCS by the FCA.

The managers are aware that the banks signed an agreement putting such a system of performance standards into effect as of January 1992. Recognizing that private agreements are likely to work better than Government mandates, the provision was not included in the House-passed bill nor in the bill we are passing for these reasons. However, the Senate Committee on Agriculture, Nutrition, and Forestry remains interested in the implementation of the voluntary performance standards agreement.

The second provision further attempted to protect taxpayer resources by requiring that association capital will be called upon to shore up financially weak FCS banks if the System's insurance fund has fallen below 80 percent of the secure base amount and other conditions are met.

The Treasury Department proposed a statutory change to require the associations that own a financially troubled bank which has received assistance from the Farm Credit Insurance Corporation, to subscribe additional capital in the bank. The Treasury report concludes that the associations directly benefit for the assistance provided by the Insurance Corporation, and therefore should be required to provide support to the bank in the form of additional capital. The Treasury proposal also intended to create more financial discipline on the associations themselves, as well as their bank.

In the original Senate bill, the provision on access to association capital was designed to reduce the potential of a district bank failure while its related associations were holding substantial capital. The managers note that the Insurance Fund was established to protect the taxpayer and investor, and to be utilized as the primary source of funds before any further action would be taken by the Federal Government. This provision on association capital would have acted as a further cushion, or second layer of protection to the U.S. Treasury in the event of the financial collapse of a System bank.

However, it was noted that this proposal could establish a disincentive for the associations to build capital in excess of the amount needed to meet its own minimum capital standards. Another concern was that the required purchase of additional stock in a bank could result in further weakening of the financial condition of a troubled association. Because of these concerns the provision was not included in the bill today for passage. The bill does require that GAO report to Congress the implications of allowing the insurance fund the authority to assess associations directly to ensure all FCS capital is available to prevent losses to investors and taxpayers and I would expect that the Senate Agriculture Committee would revisit this issue if evidence is presented to warrant further action.

I would like to also commend those who have worked so hard to develop a compromise solution to the Federal Intermediate Credit Bank of Jackson [FICBJ]. They have endeavored to develop a compromise which is fair to all parties and which should result, finally, in a resolution to this issue. I would however, like to address one aspect of the FICBJ settlement. A provision in the compromise makes resources of the Farm Credit Insurance Fund available to facilitate a merger should FICBJ merge with the Farm Credit Bank of Texas.

Under the bill, the Farm Credit System Insurance Corporation is directed to "expend amounts from the Farm Credit Insurance Fund to the extent necessary to facilitate the merger prescribed in the plan." The intent of the language, Mr. President, is not to provide an open-ended call of the insurance fund assets.

The bill contains a limitation on the amount of assistance which can be provided from the fund. It states that the amount of assistance shall not exceed "that required to maintain book value per share of stockholders' equity at the same value reflected on the most recent audited financial statements of the Federal Intermediate Credit Bank of Jackson and the Farm Credit Bank of Texas prior to or effective with the date of the merger." While this subsection is headed "Maintenance of Book Value," the intent of the subsection is not to direct that a specific level of assistance be provided, nor that the book value of stock be maintained on an ongoing basis with assistance, but that the assistance not exceed what would be necessary to remedy any dilution of the book value on the date of the merger. Mr. President I hope this clarifies this provision. A specific limit is important for those institutions which pay assessments to capitalize the insurance fund, and it is important from a budgetary perspective since expenditures out of the fund count as outlays of the Federal Government.

The passage of this bill and its subsequent passage in the House will conclude over 4 years of effort by both the administration and Congress on GSE reform. I urge my colleagues to support the prompt passage of this legislation.•

LEONARD PELTIER

• Mr. ADAMS. Mr. President, last November, my friend Jackson Browne, the singer and songwriter, asked me to look into the case of Leonard Peltier, a native American currently serving a sentence of life imprisonment as a result of a shootout with Federal agents that occurred near Wounded Knee on the Pine Ridge Indian Reservation in South Dakota on June 26, 1975. My lengthy statement regarding this matter was printed in the RECORD of Friday, June 26, 1992, the 17th anniversary of the date on which two FBI agents and a young native American lost their lives in what the Honorable Gerald W. Heaney of the U.S. Court of Appeals for the Eighth Circuit describes as "a deadly firefight" for which "the U.S. Government must share responsibility with the native Americans."

Unfortunately, over the past 17 years, our Federal Government has made no effort to assume any responsibility for the tragic events that occurred at Wounded Knee. On the contrary, the Government's actions before, during, and after the conviction of Leonard Peltier continue to raise questions regarding the fairness of his conviction, the adequacy of the evidence presented against him, and the justice of his continued incarceration. For those reasons, I urged President Bush to meet with the Honorable DANIEL INOUYE, chairman of the Senate Select Committee on Indian Affairs, to discuss the Peltier case. It is most regrettable that Senator INOUYE's request went unanswered, and deeply troubling for me to learn that FBI agents later questioned private citizens regarding Senator INOUYE's motives in supporting Presidential consideration of the matter.

I remain hopeful that the upcoming hearing on Leonard Peltier's request for a new trial will be granted, and the American people will at last have all the facts presented fairly before an unbiased judge and jury. The thousands of pages of documents the Federal Government, to this day, refuses to release might well contain the answers that have eluded those who feel justice was not done in this case. What possible national security grounds can be honestly invoked to withhold documents regarding the Peltier case? After 17 years, it is time for the Justice Department to come clean, and turn over all documents regarding this case.

Mr. President, even the legal systems of democratic societies sometimes err. Consider the nearly two dozen Irish citizens who have been released by Great Britain in recent months, after being erroneously tried and convicted for alleged terrorist activities on behalf of the Irish Republican Army. I believe it to be a sign of strength for a free society to admit its mistakes and take steps to rectify them. Consider as well the State of Israel, now considering the conviction rendered, based on multiple eye witness testimony, against a man who now appears to have been misidentified. If Great Britain and Israel have the self confidence to reexamine judicial decisions that might be in error, surely this great Nation can do so as well.

I do not believe the questions regarding Government conduct in the case of Leonard Peltier should stand or fall based solely on the eight circuit's decision whether to grant a new trial. The U.S. Senate has a role to play as well, and that is why I wrote to Senator Joe Biden, chairman of the Senate Judiciary Committee, on August 14, 1992, suggesting that the Subcommittee on the Constitution hold hearing on these matters. I hope that the 103d Congress will prove receptive to that suggestion. I ask that my letter to Chairman Biden, together with an editorial on the Peltier case from the Boston Globe, be printed in the Record.

The material follows.

U.S. Senate,
Washington, DC, August 14, 1992.

Hon. Joe Biden,
Chairman, Senate Committee on the Judiciary, Dirksen Building, Washington, DC.

Dear Mr. Chairman: I am writing in further reference to my letter of July 1, 1992, in which I urged that the Senate Judiciary Committee consider undertaking an inquiry into activities of the Federal Bureau of Investigation in connection with the case of Leonard Peltier. As I indicated, the ongoing refusal of the federal government to release literary thousands of pages of documents pertaining to the prosecution and conviction of Mr. Peltier continues to undermine public confidence that justice was done in this case.

Yesterday's Washington Post carried the enclosed article containing allegations of very recent and deeply troubling actions by an FBI agent whose conduct has been a source of controversy since the time of Mr. Peltier's extradition from Canada. As Judge Gerald W. Heaney, United States Senior Circuit Judge for the Eighth Circuit stated in his letter to Senator Daniel Inouye, ". . . the FBI used improper tactics in securing Peltier's extradition from Canada and in otherwise investigating and trying the *Peltier* case. Although our court decided that these actions were not grounds for reversal, they are, in my view, factors that merit consideration in any petition for leniency filed." It now appears that one consequence of Senator Inouye's decision to urge President Bush to consider reviewing the *Peltier* case has been to trigger an FBI field investigation into his motives. I hope you agree that any United States senator, and particularly the chairman of the Senate Select Committee on Indian Affairs, should be free to communicate with the President of the United States on a major public issue affecting Native Americans without having FBI agents questioning public citizens on the matter.

As one of several members of Congress who have appeared on various *amicus* briefs filed in connection with the *Peltier* case over the years, I would be most disappointed to learn that the exercise of our constitutional rights might be construed as legitimate grounds for FBI action. However, the conduct described in yesterday's *Washington Post* article appears consistent with the government conduct criticized in Judge Heaney's letter, and causes me to again urge that your committee undertake an investigation of this entire matter.

As a former United States Attorney for the Western District of Washington, I have personal knowledge of the outstanding work done by the Federal Bureau of Investigation in protecting the public safety and investigating criminal activity. However, I strongly believe that a free society must demand accountability and responsible behavior from all citizens, including FBI agents. The continuing refusal of the Federal Bureau of Investigation to release thousands of documents needed for a full and complete understanding of the tragic events that occurred on the Pine Ridge Indian Reservation over seventeen years ago is simply inexcusable.

I do not believe this nation can afford to allow the Russian KGB to set a standard for disclosure of archive materials and past activities that is more open and honest than the FBI's approach to the *Peltier* case. In addition, I strongly feel the allegations that a FBI agent interrogated a private citizen regarding the lawful and proper actions of a United States senator deserves the attention of the Senate Judiciary Committee. I would respectfully suggest that the Subcommittee on the Constitution would be a proper venue for such an inquiry.

Please feel free to contact me directly if you have any additional questions or comments regarding my interest in this matter.

Sincerely,

Brock Adams,
U.S. Senator.

Undoing a Miscarriage of Justice

Shortly before noon on June 26, 1975, two FBI agents were killed on the Pine Ridge Sioux Reservation in South Dakota. Two Native Americans, brought to trial a year later, were found not guilty of the murders. A third Native American, Leonard Peltier, was brought to trial almost a year after that and, while almost certainly as innocent as the first two men, was convicted of the murders.

Peltier, who is serving two consecutive life sentences at the federal penitentiary in Leavenworth, Kan., is now the subject of an intense effort to undo a serious miscarriage of justice—through a new trial or by a presidential commutation.

The case has attracted advocates who are passionately convinced of Peltier's innocence and, through the documentary "Incident at Oglala," have gained a national audience for their cause.

It is a case that deserves to be reopened and a cause that deserves support.

Suspicions about the government's case are immediately raised by the curious "transformation" of a red pickup truck, which agents reported chasing on the reservation, to a white-over-red van, which happened to be a vehicle used by Peltier.

Throughout the investigation, the ballistics evidence was handled in a incredibly slipshod manner. The only thing certain is that none of the shell casings found near the agents' bodies could definitely be matched to a weapon known to be used by Peltier.

It was Peltier's bad fortune that he was not tried—if he was to be tried at all—in 1976, with the two men who were found not guilty. Peltier had fled the reservation after the shooting and crossed into Canada. To win his extradition, US prosecutors relied heavily on a now-discredited affidavit from a Native American woman who placed Peltier at the scene of the shootings.

But the major issue that will be argued this fall at hearings on motions for new trial is that the prosecution has changed its theory of the case.

As Eric Seitz, a member of Peltier's defense team, explains it, the original conviction was obtained by convincing the jury that Peltier had himself shot the two agents. But as new evidence has been discovered—and some of the government's original evidence discredited—the prosecution now argues that Peltier was an aider and abetter.

Since those who aid and abet in the commission of a felony can be found equally guilty with the actual perpetrator, Peltier could still be found guilty. However, the two men with whom Peltier should have been tried in 1976 were acquitted because the jury believed they had been shooting at the agents in self-defense.

Leaving aside that an anonymous Native American has claimed to have been the actual murdered, had the judge at Peltier trial in 1977 not accepted the prosecution's argument that Peltier was the perpetrator, his attorneys could have pursued the self-defense argument that won not-guilty verdicts for the two men at the 1976 trial.

Among Peltier's strongest advocates is the author Peter Matthiessen. In an account of court hearings late last year, he described the case as "the most significant murder trial in this country since Sacco and Vanzetti."

New evidence in the case has cast doubt on the long-held belief that both Sacco and Vazetti were wrongly convicted and wrongly executed. The newly discovered evidence in the Peltier case strongly argues that he was indeed, wrongly convicted and is being held. Justice requires a new trial or a presidential commutation of his sentence.•

SENATOR LARRY PRESSLER'S ACTIVITIES IN FOREIGN RELATIONS DURING THE 102D CONGRESS

• Mr. HELMS. Mr. President, as the 102d Congress draws to a close, I feel it essential, as ranking member of the Senate Foreign Relations Committee, that the Congressional Record reflect some of the accomplishments of the distinguished Senator from South Dakota [Mr. Pressler]. Senator Pressler has been active in the work of the Foreign Relations Committee.

For example, the Foreign Relations Committee is charged with the responsibility to consider the nominations of numerous nominees to serve as ambassadors to foreign countries. One of Senator PRESSLER's goals, and one that is extremely important to his home State of South Dakota, is to seek additional markets for U.S. agricultural products.

Once confirmed, these ambassadors are in a unique position to help evaluate export opportunities for expanding markets as well as identifying export opportunities for new products. Senator PRESSLER can be counted upon to ask these nominees questions about their commitment to increasing the export of agricultural products to the countries in which they will represent the United States, as well as their willingness to help establish and promote agricultural trade missions between the United States and foreign nations.

Senator PRESSLER also has dedicated a great deal of energy to the situation in the former Yugoslavia and to the plight of the ethnic Albanians of Kosova. He has pushed numerous legislative initiatives related to this issue and has spoken on the subject here on the Senate floor many times over the past several years. Senator PRESSLER introduced S. 2376, the Former Yugoslavia Act, on March 20, 1992. While this body did not take action on that bill, it represented the kind of thorough approach he brings to his work on the Foreign Relations Committee.

The rapidly changing face of the former Soviet Union represents another area of significant activity by Senator PRESSLER. After visiting 10 of the new countries emerging from what was the Soviet Empire in July of this year, Senator PRESSLER presented the Senate with a detailed report of his conclusions and impressions of the efforts in those countries to move away from their Communist past.

With regard to the former Soviet Union, Senator PRESSLER also took a number of legislative steps to ensure that U.S. assistance to the emerging countries is not wasted, or worse yet used to prop up the remnants of the old totalitarian regime. On July 24, 1991, during Senate consideration of S. 1435, the International Security and Economic Cooperation Act of 1991, Senator PRESSLER offered amendment No. 819, which passed the Senate. The amendment placed conditions on aid to the then Soviet Union designed to ensure United States taxpayer dollars promoted the transformation of the Soviet Union to a fully democratic nation based on the principles of government by the people, respect for individual rights, and free market economic opportunity.

This year, during Senate consideration of S. 2532, the Freedom Support Act, Senator PRESSLER continued his efforts to attach conditions to United States foreign aid to Russia. Together with Senator DECONCINI, he offered an amendment to condition aid to Russia on Presidential certification that Russia is making significant progress toward removing its troops from the Baltic States. A modified version of this amendment passed the Senate on July 1, 1992 and was retained as part of the final bill passed by Congress.

On July 2, 1992, Senator PRESSLER offered another amendment expressing the sense of Congress that the governments of the Russian Federation and Commonwealth of Independent States should immediately begin negotiations toward an orderly, timely and complete withdrawal of troops from the Baltic States and that they have no long-term territorial interests in the Baltic States; such negotiations should be a top priority of the United States and should be raised in international bodies, including the Conference on Security and Cooperation in Europe; and international supervision of the withdrawal process may be necessary. This amendment also passed the Senate.

A third Pressler amendment passed by the Senate to the Freedom Support Act expressed the sense of Congress that United States policy should urge the Russian Government to remove its troops from Moldova, urge parties to abide by a cease-fire and end the economic blockade of Moldova; and an international commission should be established to monitor the withdrawal of Russian troops.

Senator PRESSLER also offered a successful amendment to S. 2532 expressing the sense of Congress that the President urge the Secretary of Treasury to instruct the United States Executive Director to the International Monetary Fund to take concrete steps to support the right of other sovereign and independent states to issue currencies independent of the Russian ruble.

Finally, during the Foreign Relations Committee markup of the bill, Senator PRESSLER offered an amendment emphasizing the important role small- and medium-sized businesses are to play in the technical and other assistance programs created by the legislation. This was a good example of the Senator's commitment to small businesses, which is also evidenced by his membership and activities on the Senate Small Business Committee.

The United Nations also is an area of great interest to Senator PRESSLER. This year, for the second time, he has been appointed by the President to serve as one of the congressional delegates to the U.N. General Assembly. On July 29, 1991, during Senate consideration of S. 1433, the Department of State authorization bill, Senator PRESSLER offered an amendment that was agreed to in the Senate regarding U.N. employment of U.S. citizens. The purpose of this amendment was to provide more value for American assessed contributions to a number of U.N. system agencies. A number of U.N. agencies use geographic formulas in their hiring practices. The amendment encourages the State Department to aggressively motivate these U.N. agencies to increase the number of U.S. citizens working in them.

On another matter related to the United Nations, during the Foreign Relations Committee's mark-up of Senate Concurrent Resolution 89, on March 4, 1992, Senator PRESSLER offered an amendment to recognize June 5, 1992 as World Environment Day. This amendment passed the committee.

As the author of the Pressler amendment restricting U.S. assistance to Pakistan, Senator PRESSLER has been actively involved in efforts to stop proliferation of nuclear weapons. The Pressler amendment, which became law in 1985, states that if the President cannot certify to Congress on a yearly basis that Pakistan does not have a nuclear weapon, United States assistance to that nation will be cut off. For several years, the administration was able to make this certification. However, in 1990, the administration was unable to make the certification. Consequently, as provided in the Pressler amendment, all foreign assistance to that country has been terminated.

In February of this year, Senator PRESSLER discovered that, notwithstanding the language of the Pressler amendment, the State Department was continuing to allow the licensing of commercial sales of military parts and technology to Pakistan. Convinced the State Department had incorrectly interpreted the Pressler amendment, over the next several months, Senator PRESSLER attempted to gain a clear understanding of how the policy had developed.

Because he was not satisfied with the responses he received from the administration, on July 30, 1992, the Foreign Relations Committee held a hearing entitled "Interpreting the Pressler Amendment: Commercial Military Sales to Pakistan." During this hearing, the committee received testimony from Senator GLENN, State Department lawyers and policymakers, and legal scholars experienced in the area of statutory interpretation. I know that Senator PRESSLER remains committed to stopping the proliferation of nuclear weapons and am certain he will continue his good work in ths area during the next Congress.

Senator PRESSLER also was actively involved in the ratification process for the Strategic Arms Reduction Treaty [START]. Under the terms of the START Treaty—ratified by the Senate on October 1, 1992—150 Minuteman II missile silo launchers in South Dakota and a similar number in Missouri must be eliminated. START requires the elimination to be carried out either through excavation or explosion. The Air Force has determined explosion would be the more cost effective means of destruction.

Ranchers in South Dakota, who have hosted these missiles since the 1960's, are concerned over the impact the destruction of the missile silos could have on their wells and the aquifers that supply their water. The Air Force prepared an environmental impact statement evaluating the potential environmental impacts associated with the deactivation of the Minuteman II's in South Dakota. In that study, the Air Force acknowledged there is some risk to the water supply in western South Dakota. After meetings with ranchers from his State and discussions with Air Force officials, Senator PRESSLER decided more needed to be done to protect the ranchers' water supplies.

When the Senate considered the START Treaty, Senator PRESSLER offered an amendment to the treaty's resolution of ratification. The amendment was designed to ensure that all possible risk associated with the deactivation of the missile silos is considered and mitigated. Senator PRESSLER's amendment declares the intention that the United States "upon the convening of a session of the Joint Compliance and Inspection Commission shall place on the agenda for discussion the elimination of ICBM silo launchers located in the United States of America in ways that would minimize the impact of such elimination on the environment, including the impact on water wells and aquifers." Senator PRESSLER's amendment passed the Senate and became part of the START Treaty's resolution of ratification.

Mr. President, these are just some examples of the way in which the senior Senator from South Dakota has contributed to the creation of America's foreign policy during the 102d Congress. He is an active member of the Foreign Relations Committee and I appreciate his efforts very much. Representing a small, rural State, he brings a unique and helpful perspective to foreign policy debates.

While he vigorously pursues global issues such as the removal of Russian troops from foreign soil, the proliferation of nuclear weapons, and the reform of the United Nations, he also can be counted on to represent actively the people of South Dakota—whether by questioning ambassadorial nominees on their understanding of and commitment to agricultural trade or through his efforts to ensure that implementation of the START Treaty does not cause unwarranted hardship for his State's ranchers. It is not always easy for our constituents to understand the importance of their Senator's service on the Foreign Relations Committee. However, by reviewing the record, it is quite clear that Senator PRESSLER not only serves the people of this country, but also the people of South Dakota in very important ways through his efforts on the committee. I commend him for his accomplishments during the 102d Congress.●

TRIBUTE TO SENATOR JAKE GARN

● Mr. PRESSLER. Mr. President, I want to pay tribute to a truly outstanding Senator who will be leaving the Senate at the end of this Congress, JAKE GARN.

It has been a great privilege for me to have served nearly 15 years here in the Senate with JAKE GARN. We both were elected to Congress in 1974—he to the Senate and I to the "other body," as we say. Since 1979, I have had the pleasure of working with him in the Senate on goals that, far more often than not, we commonly share.

If we were to speak of only one attribute of Senator GARN it would be that he is a person of great courage. In 1960, during his service in the Navy, he piloted patrol missions along the Yellow Sea and the coasts of China and Korea. He later received the "Outstanding Unit Award" and other medals from the Air Force and National Guard. Everyone will recall his serving as a member of the crew on Discovery flight 51-D that orbited the Earth 109 times at 25 times the speed of sound. Later, Senator GARN was to undergo major surgery in donating a kidney to one of his daughters.

Senator GARN brought that courage with him to the Senate. He is also tenacious, a characteristic which served his State and our Nation well. He commenced working on the central Utah water project when he was water commissioner in Salt Lake City. During his tenure in the Senate, he led the fight to get authorization and funding legislation approved for this massive project that diverts water from the Colorado to the State of Utah.

No one in the Senate has fought more successfully for our Nation's space program or worked harder to strengthen our federally insured depository institutions. I was privileged to serve with him on the Banking, Housing, and Urban Affairs Committee, where he served as chairman during the 99th Congress.

Senator GARN also is a caring person. For example, he has created an annual benefit ski event to assist in funding the Primary Children's Medical Center in Salt Lake City. Primary Children's is the only tertiary care pediatric facility in the area and it serves the entire Intermountain region. I, along with other Members of the Senate, have been proud to join Senator GARN in furthering this important cause.

In this political season, we have heard much about family values. Much can be said about Senator GARN in this respect, but it can all be summed up by pointing to the reason he is retiring from the Senate. He is leaving in order to spend more time with his family—his lovely wife Kathleen and their children. He put it this way in announcing his retirement: "Senator JAKE GARN the Senator would still like to stay, JAKE GARN husband and father is anxious that this day has finally come." Senator GARN will be greatly missed here in the Senate. I wish him all the best.●

FEDERAL RESERVE BANK BRANCH BUILDINGS

● Mr. SASSER. Mr. President, I rise in support of what should be a noncontroversial bill. The Federal Reserve System is nearing a statutory cumulative cap on bank branch building construction expenditures. This legislation raises the construction ceiling from $140 to $220 million

The current ceiling was established in 1974. This bill would allow the Fed to meet its estimated construction needs through the year 2005. Throughout the Federal Reserve System, bank branch buildings are aging and outgrowing their space. New construction and branch building expansions are consistent with branch banks' needs to modernize and to grow with their customers.

Branch banks perform services including check collection, fund transfers, and currency and coin processing. These are called price services. The law requires that the branch banks recover that portion of the construction costs attributable to priced services through increased charges to customers. Moreover, the law requires that the branch banks charge market rates for priced services.

As a result, the Congressional Budget Office informs my staff that this bill will have no effect on the Federal deficit and will not cause a problem under the Budget Act.

Mr. President, I ask to include in the RECORD a statement by Wayne D. Angell and Edward W. Kelley, Jr., members of the Board of Governors of the Federal Reserve System, before a subcommittee of the House Banking Committee on may 27, 1992.

The statement follows:

STATEMENT OF WAYNE D. ANGELL AND EDWARD W. KELLEY, JR., BEFORE THE SUBCOMMITTEE ON DOMESTIC MONETARY POLICY OF THE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

TESTIMONY ON H.R. 4398

Mr. Chairman, you have also asked for our assessment of H.R. 4398, the "Federal Reserve Bank Branch Modernization Act", a bill introduced by Mr. Erdreich on March 5, 1992. This is a much needed action which would remove outdated limitations on the acquisition or construction of branch buildings and should result in the least costly provision of space for Federal Reserve operations.

The construction, expansion, or modernization of Branch Federal Reserve Bank Buildings is authorized in Section 10 of the Federal Reserve Act. Statutory limitations included in the Act place an accumulative ceiling on branch construction. As most recently amended in 1974, the Act places an aggregate cumulative limitation of $140 million on funds that may be expended on branch construction. Recently completed branch buildings have exhausted the fund, and as a result, the Federal Reserve is unable to pursue needed branch construction projects.

A few of our Branch buildings need attention not just because they are in excess of thirty years old but more important they do not provide adequate types or amounts of space for check and cash or provide efficient building support systems. The Federal Reserve has experienced significant changes in facility requirements in recent years, primarily related to automation of check and cash, that have further exacerbated the situation. Because many of the affected areas do not lend themselves to renovation—vaults and delivery courts, for instance—efforts by Branch management to obtain needed space through leasing and renovating have only provided temporary relief. While the Federal Reserve does lease space, experience has indicated that the long term costs of leasing are higher than the costs of leasing are higher than the costs of ownership. Prior to making any decisions related to the provision of space, I want to assure you that we thoroughly analyze the discounted life cycle costs of several alternatives.

The latest analysis of projected building needs from the Reserve Banks suggests that earlier renovations, additions, or new facilities may be required in Birmingham, Nashville, Houston, San Antonio, and El Paso in the next 5 to 10 years. The remaining balance in the Branch Fund prohibits us from addressing these needs. A brief description of each Branch's needs follows.

Birmingham branch

It is projected that the current facility, constructed in 1927 with an addition constructed in 1959, will soon be unable to accommodate the anticipated facility demands and occupancy levels. The most significant deficiencies are related to inadequate and inefficient operations facilities that include the vault, cash and check processing areas, and secure and general delivery areas. Also, in recent years the basement has been damaged from a continuous influx of subsurface ground water that necessitates continuous operation of a sump pump.

Nashville branch

The existing 1958 building will soon be inadequate to accommodate facility and occupancy demands. Specifically, the vaults and secure delivery court are either currently or will soon be inadequate to accommodate volume levels.

Houston branch

The existing 1958 building is presently considered inadequately sized for the long term requirements. Specifically, the vault, cash processing, and delivery court areas are not adequate to allow efficient operations. In addition, should the Houston economy rebound to near previous levels, the Branch's activities and subsequent facility demands will further increase the pressure on the building.

San Antonio branch

While the present building, constructed in 1956, has been well maintained, the facility does not provide adequate vault, cash processing, and delivery court areas. A significant upturn in the Texas economy will require that additional space be provided.

El Paso

The present 1957 building exhibits deficiencies similar to those identified in the other branch buildings. Those deficiencies are related to vault, operations areas, and delivery courts.

Branches, even more so than head offices, are primarily engaged in providing services to financial institutions and the U.S. Treasury. These services include check collection, currency and coin processing and distribution, funds transfer services, processing of government payments, and other services. All costs to provide these services (including building costs) are recovered either as reimbursable expenses (in the case of U.S. Treasury services) or by pricing the services.

To continue providing quality financial services in the most efficient manner, it is important that our facilities remain efficient. The provisions in the proposed amendment to Section 10 would enable us to provide facilities for delivering services efficiently to the nation's financial institutions and the Treasury.

Therefore, we encourage passage of H.R. 4398 and will be glad to respond to questions you may have in this area.•

INDIAN HEALTH CARE IMPROVEMENT ACT

• Mr. INOUYE. Mr. President, as the second session of the 102d Congress drew to a close, the House and Senate passed S. 2481, a bill to amend the Indian Health Care Improvement Act. This bill is vitally important to the lives of American Indians and Alaska Natives. I am proud to have been a sponsor of the bill, and chairman of the committee having jurisdiction over the bill. I thank my colleagues for joining with me to pass S. 2481.

At the time S. 2481, as amended in conference, came before this body, I made a floor statement urging its swift passage, and described many of the bill's important provisions. I would like to take this opportunity to clarify and correct a portion of my earlier comments, regarding section 209 of the bill.

As I noted earlier, section 209 contains language to provide tribal self-determination contractors with the right of recovery for third party insurance purposes. The tribal right to recovery encompasses all expenses which arose under a program administered by the tribal health contractor, including those which arose prior to the effective date of the applicable self-determination contract. This provides an incentive for the collection of existing claims, and prevents insurance companies from receiving a windfall from past discrimination against Indian policyholders.

The effective date of this provision was incorrectly noted in my earlier statement. Section 209 of the Indian Health Care Improvement Act Amendments of 1992 takes effect November 23, 1988. November 23, 1988, is the effective date of section 206 of the act, which section 209 of the 1992 amendments clarifies, to further carry out the intent of the Congress. Although original section 206 has not raised problems for most third-party payors, in a few instances such payors have refused to meet their statutory obligation to pay, resulting in many accumulated claims. The section 209 clarifying amendment will assure that these payors do not escape their obligations under the law.

Mr. President, I am thankful for this opportunity to clarify the intent of the Congress with regard to the rights of tribal self-determination contractors who exercise their rights of recovery for third-party insurance purposes.•

SENATOR ALAN CRANSTON

• Mr. PRESSLER. Mr. President, the Senate is losing a respected and most able Senator in Senator ALAN CRANSTON. He has had a distinguished and influential career in the Senate. He provided dedicated service to the people of California and the Nation for 24 years. ALAN CRANSTON stands for causes as diverse as the large State he represents. Serving the needs and requirements of California requires a special talent, and he ably accomplished that task.

Senator CRANSTON's excellent leadership as the elected whip of his party earned my respect. He excelled at mustering the needed votes on issues important to his side. Although we fell on opposite sides of the issues on more than one occasion, I greatly admire his ability and his dedication to accomplishing his goals.

On a personal note, he joined me in January 1982 at Augustana College in Sioux Falls, SD for a hearing on the future of arms control when I was chairman and he was ranking member of the Arms Control Subcommittee. This was the first field hearing on that subject since Hubert Humphrey chaired such hearings 25 years earlier. Senator CRANSTON's personal concern for expressing his views on arms control to the people of South Dakota was greatly appreciated.

The list of Senator CRANSTON's legislative achievements is long. He was a tireless supporter of arms control. He worked hard to ensure the adoption of treaties between the United States and the Soviet Union. I worked with him on the Foreign Relations Committee and witnessed his dedicated efforts up close. We also served together on the Banking, Housing and Urban Development Committee, where he was effective in reforming the Nation's housing laws. His legislative work in that area will help to meet our future housing needs. As chairman of the Veteran Affairs Committee he has shown compassion and understanding for the education, health and housing of veterans. That is something I also greatly admire.

ALAN CRANSTON has an energy and vision that will be sorely missed in the Senate. I know he will continue to work for the causes he believes in, and I wish him all the best.•

AVOCADO PRODUCTIONS

• Mr. ADAMS. Mr. President, serving as chairman of the Senate Appropriations Subcommittee on the District of Columbia provided me with a special perspective on the difficulties that jurisdiction encounters as a result of the numerous rallies, marches, and other events that occur in the District of Columbia because this is also the seat of our National Government. My experience in reviewing the District's annual budget convinced me that in many respects, the local jurisdiction frequently serves as the involuntary host of major events that consume local resources, without providing any benefit to the city. I was, therefore, pleased to become familiar with the work of an organization that tries to leave a city better off for having hosted an event with which they are associated.

Avocado Productions of Hermosa Beach, CA, has been involved in major cultural, environmental, social change and service events for over 20 years. Those events have occurred throughout the United States, as well as in Canada, Japan, New Zealand, Mexico, and numerous other countries. The work of Avocado Productions has earned the respect of local officials in my hometown of Seattle, WA, and here in the District of Columbia.

During my tenure chairing the District of Columbia Appropriations Subcommittee, Avocado Productions played a lead role in the Earth Day 1990 rally and the candlelight vigil and rally for the UNICEF World Summit for Children in 1990. In 1991, they produced a reception for the National Organization on Fetal Alcohol Syndrome hosted by Bonnie Raitt at the Merriweather Post Pavillion. This year, Avocado Productions handled the Voters for Choice benefit concert at Constitution Hall, the National Organization for Women's March for Women's Lives and rally on the Ellipse and Mall, and the Save Our Cities, Save Our Children march and rally sponsored by the U.S. Conference of Mayors. Each of these events attracted thousands of participants, and the planning and coordination managed by Avocado Productions made each event a success.

Mr. President, the key to Avocado's success in producing major events in the District of Columbia is a direct result of the enthusiastic and inspired leadership of Mr. Tom Campbell, the founder of Avocado. Mr. Campbell earned the respect of numerous District officials for the manner in which these major events were handled. The hundreds of volunteers recruited from local colleges and organizations were responsible for crowd control during the event, and for cleaning up the grounds afterwards. These major volunteer efforts helped reduce the need for local government resources.

I want to extend my appreciation to Tom Campbell and Avocado Productions for their outstanding work here in Washington during my Senate term, and to mention several of the avocados whose dedication and talent have been part of that effort, including Mary Ahern, Cheryl Barry, Carolyn Bode, Laurel de Leo, Kay Gallin, Ruth Gribin, Ruthann Holbert, Chris Holmes, Margaret Holmes, Abbe Kaufmann, Rich Leach, Susann McMahon, Bee Oliver and Mario Romero.●

URBAN DAY SCHOOL

● Mr. KASTEN. Mr. President, I rise today to honor the outstanding educational achievement of Urban Day School in Milwaukee, WI.

For 25 years, Urban Day School has provided a terrific education for young people—based on the solid principle of strong parental involvement.

Urban Day proves what HUD Secretary Jack Kemp, Alderwoman Polly Williams and I have been saying for many years—that in education, as in most areas of human endeavor, choice works. Urban Day participates in the State-funded CHOICE program—and is currently able to offer a quality education to 200 students under this program.

In education, it is results that count. Over 90 percent of the students at Urban Day go on to complete high school—and over one-third of them continue in higher education.

I urge my colleagues to learn from this wonderful example—and support policies that enable America's parents to exercise school choice. That is the way to spark competition and promote educational excellence for all of America's children.●

U.S. FIRE ADMINISTRATION REAUTHORIZATION

● Mr. BRYAN. Mr. President, I take this opportunity to discuss further H.R. 2042, the reauthorization legislation for the U.S. Fire Administration [USFA], which was recently signed into law by the President. As my colleagues know, I introduced S. 1690, the Senate companion bill reauthorizing the USFA, which was later unanimously reported by the Commerce Committee, as amended, with language representing an agreement between House and Senate sponsors of USFA reauthorization legislation. The language of S. 1690 as reported was later incorporated into H.R. 2042, which was passed by both the Senate and the House and is now public law.

This new law provides for certain technical corrections to another fire safety measure, the Hotel Motel Fire Safety Act of 1990—1990 act—which I supported. That act was passed to promote fire safety in places of public accommodations by encouraging the installation of sprinklers and smoke detectors in such entities. The technical corrections were made to prevent any possible conflicts between the 1990 act and State and local laws regarding the fire safety guidelines to be followed by places of public accommodation, as called for in the 1990 act. I believe that these changes, which I discussed in my earlier statements on H.R. 2042, will help to ensure efficient and effective compliance with the 1990 act.

I commend the various interested parties for reaching agreement on these amendments and in working together in good faith to ensure the 1990 act's successful implementation. The National Association of State Fire Marshals, the National Fire Protection Association, and many others in the fire service community all deserve praise for their cooperative efforts and hard work in developing the necessary amendments to the 1990 act.

I also commend the American Hotel and Motel Association for their leadership in this vital area, and for demonstrating their industry's continuing commitment to the safety of their guests. In my own State of Nevada, I can cite successful cooperation with the lodging industry. As that State's former Governor, I oversaw implementation of one of the country's strictest sprinkler laws. Today, Nevada hotels and resorts are among the safest in the world as a result of that legislation. I only can hope that other industries will take their cue from the lodging industry's outstanding example in this regard.

H.R. 2042 represents an important step in fire safety, and I appreciate the efforts of all the interested groups and individuals in securing its passage.●

SENATOR ALAN DIXON

● Mr. PRESSLER. Mr. President, the Senate is losing an exceptional individual in Senator ALAN DIXON. A man of integrity, ability, and dedication, his long history of public service gives him a broad perspective on the Government's role in serving people. We can all learn from the wealth of knowledge he has acquired over the years.

ALAN DIXON is a man who can be approached at any time on any issue. He was appreciated on both sides of the political aisle. He is an excellent speaker and vigorous debater who articulately expressed the public worthiness of the causes he supports. His personable style makes him a truly enjoyable individual to be around.

As a Senator ALAN DIXON served his constituency well without conflicting with the best interests of the Nation. He stood by his convictions when it come to supporting or opposing legislation. Whether it was defense programs or environmental regulation, he took a stand and fought to the end for what he felt was right.

He applied common sense to the political process. His efforts on the Armed Services Committee proved indispensable during the post-cold war military scaling down of the military.

Concern for his home State of Illinois mingled with his desire to make sure correct decisions were made by the Pentagon when it came to changing priorities in our defense strategy.

ALAN DIXON will be missed. I am sorry to see him go and wish him well. His gentlemanly manner and warn sense of humor were highly regarded by all who worked with him here.•

SENATOR TIMOTHY WIRTH

• Mr. PRESSLER. Mr. President, the Senate is losing an exceptional individual in Senator TIM WIRTH. His dedication and ability to deal with the most complex and significant issues allowed him to stand out in the Senate after only a few years of service in this body. Standing for change, he made a significant difference in his time here in Congress.

Senator WIRTH's legislative agenda stressed the importance of looking to the future. He emphasized the development and application of new technologies, protecting the environment, and national investment to improve our international competitiveness. His concern for telecommunications issues is something I admire and share. His tenacity on this subject has helped to make our communications industry better.

TIM WIRTH is an asset to our Nation, and I am confident he will continue to play a valuable role in our Nation's leadership well into the future.•

CONGRESSIONAL PRIVATE PROPERTY VOTE INDEX

• Mr. SYMMS. Mr. President, I rise today to bring my colleagues' attention to the 1991-92 Congressional Private Property Vote Index.

First published in 1990, this index came about in response to increasing public concern over the Government's unwillingness to recognize the fifth amendment to the Constitution. Since Members of Congress are increasingly deluged with voting indexes from radical environmental groups—groups which see any vote in favor of economic development or the free market as a vote against the environment—they may forget the millions of property owners who are burdened with unnecessary Government regulation.

The Private Property Vote Index serves as a reminder to all Members of Congress that the tax-paying citizens of the United States will no longer be a silent majority. If candidates for any political office wish to get elected, they can no longer do so by pandering to extremists at the expense of the hard working Americans.

Throughout Eastern Europe and the former Soviet Union we have seen the effects of not protecting private property. These nations face environmental disasters from which recovery will be incredibly difficult. Meanwhile, private property owners in America have helped create some of the most environmentally sound land in the world, while maintaining a healthy, growing economy. A strong economy is not detrimental to the environment, as some would have us believe. Instead, it is vital to allowing our children to enjoy the natural beauty of this Nation and to providing them the financial resources to maintain that beauty.

As the sponsor of the Private Property Rights Act, I am pleased to see the publication of the Private Property Vote Index and I commend the League of Private Property Voters for compiling this information. I urge my colleagues to review this index and keep it in mind the next time they are asked to vote on a matter which may impact private property owners.

Mr. President, I ask that the full text of the 1991-92 Private Property Vote Index be printed in the RECORD.

The index follows:

1991-92 CONGRESSIONAL PRIVATE PROPERTY VOTE INDEX (INCLUDING MULTIPLE-USE VOTES)

ABOUT THIS INDEX * * *

Why a Private Property Voting Index? In a nutshell, this Index was developed because the Federal government has developed an "attitude" toward private property and private property owners that has become a serious national problem.

The U.S. government today owns more than one-third of the real estate in the U.S., and controls more than half the gross national product of the country through either direct ownership or regulation. And today, the U.S. government is perceived across much of the U.S. as an intrusive "800-lb. gorilla" with a sizable appetite for what property it doesn't own or control.

Egged on by noisy, moneyed anti-property interest groups in Washington, D.C., the U.S. government today actively condemns property to "preserve" it from private ownership, shuts down farms, businesses, and entire communities, dictates where—and often whether—ordinary Americans can graze cattle, prospect for minerals, hunt, fish, or even get into the woods, lakes, streams, or desert, paint, fix up, or even keep a summer cabin, and hauls its citizens off to prison for "environmental crimes" as diverse as filling a "wetland" hole with dirt or planting crops where they've been planted for years.

The 535 members of the U.S. Congress are the 800-lb. gorilla's keepers. They're the only ones the monster listens to—or has to. And they operate in a hothouse atmosphere of noisy, moneyed pressure groups in which only the loudest squeaking wheels get greased. Property owners have gotten short shrift from Congress because they haven't been a noisy, moneyed pressure group. for the most part, property owners aren't aware of what their Congressmen and Senators have been doing about (or to) their property and property rights, because no one's been keeping track.

It was with the idea that someone should be keeping track that the first Congressional Private Property Vote Index was developed two years ago by the National Inholders Association, a nationally-known property owner's organization.

This is the second Congressional Private Property Vote Index and the first to be published by the League of Private Property Voters. (This year, the Inholders Assn. is a cosponsor of the Index, along with a number of other organizations.) Like the 1990 Index, this 1991-92 Index presents a snapshot, in 23 key votes (13 in the house and 10 in the Senate), of the attitude of Congress as a whole, and each individual Congressman and Senator in particular, toward private property and property rights.

We're sorry to report that the snapshot is, for the most part, not a flattering one. The Congressional regard for property rights ranges, for the most part, from indifference to downright hostility, based on their votes over the past two years. On repeated occasions, Congress voted by overwhelming margins to condemn private land for everything from new parks to new natural-gas pipelines. They also voted to confiscate or devalue a wide range of private property rights, from grazing rights to mining claims to hunting rights, in that growing Federal "domain" that now covers more than one third of the United States.

The latter items are what we call the "multiple-use" votes, where Congressional decisions officially about Federal land have an impact—often devastating—on private property. Forcing the owner of a mining claim to pay rent to the U.S. government not only devalues the claim, it may put it out of business—an "inverse condemnation" of private property. Similarly, an astronomical hike in "grazing fees' paid by ranchers who own grazing rights on Federal land not only devalues the grazing rights, it makes worthless the rancher's wholly-owned "base" property—another inverse condemnation.

And sharp reductions in national forest timber harvests devalue the rights, guaranteed by a 1908 Federal law, of counties and school districts to 25% of the income from the national forests "in lieu" of collecting a property tax. (They're also an inverse condemnation action against tens of thousands of property owners in timber-dependent communities.)

We've published the 1991-92 *Index* a bit early—Congress is still in session as we print this—in order to allow you, the voters, time to use the information. We strongly recommend you take the opportunity to "talk turkey" about property rights to your Congressional and Senators before the election, and let them know you know, and are concerned, about how they voted. (We recommend letting your friends and neighbors, and the press, know, too.) Many legislators are able to vote consistently against the interests of their constituents primarily because few of their constituents are aware of it, or are complaining about it. That's something we hope this *Index*—and your efforts—can change.

Think of this *Index* as a list of targets: it identifies who the "problem children" are in Congress, the ones who will either have to change their attitude toward property rights, or be replaced in office, if the attitude of Congress as a whole is to change. You have the power—collectively—to do that, with your votes. It's important to make sure Senators and Congressmen, your own and others', know that you intend to do that: not only to vote for your own property rights at the polls, but to encourage as many others as possible to do likewise. You'll stiffen the backbone of your friends (there are some) in Congress, and you'll be confronting the rest with the beginnings of a very large, very noisy "squeaky wheel" whose concerns they can ignore only at their peril.

U.S. Senate votes

One of the difficulties in preparing a voting index for the U.S. Senate is that there are very few recorded votes on any subject. Most bills in the Senate are passed by voice vote, leaving the public unsure who (and how many) voted for or against.

Often, the only recorded votes are on arcane points of parliamentary procedure, such as whether to "table," or kill, some Senator's amendment (or sometimes an amendment to an amendment to an amendment) to a bill that will later be adopted by voice vote or even "unanimous consent." That's true of nearly all the property-rights and multiple-use votes in this *Index*.

Senators also have a habit of passing bills as "riders," or unrelated amendments to other bills; Sen. Steve Symms' landmark Private Property Rights Act got adopted as a "rider" to a big surface transportation bill, for instance, and numerous changes to Federal law affecting grazing rights, mining claims, and communities dependent on natural resources on Federal lands are enacted as "riders" to appropriations bills every year. We've tried in each case to give a "blow by blow" description of what happened, and who was trying to do what to whom.

House of Representatives votes

The House of Representatives, with its 435 often violently disagreeing members, decides a lot more issues by recorded vote than the "gentleman's club" of the Senate. The 13 key votes we've selected were fairly clear-cut expressions of Congressional intent on a wide range of property rights issues: whether to condemn private land, supersede private water rights, devalue private land with sharp increases in Federal grazing fees or sharp reductions in national forest timber sales, or eliminate hunting rights.

Many of those key votes occurred during debate on the so-called "California Desert Protection Act," a melange of two new National Parks, a new National Monument, and 8 million acres of new Wilderness Areas the House vote last fall to carve out of private and Federal lands in Southern California. The House voted on whether to reduce the amount of Wilderness (no), permit hunting in some areas (yes), condemn private land (yes), require an economic impact analysis (no), and supersede private water rights in ten states upstream on the Colorado River (yes).

The 1991-92 *Index* also includes a vote on wetlands—the only House of Representatives vote in the past two years on the controversial issue—in which the question was whether to turn the job of defining what a "wetland" was over to the Natl. academy of Sciences, a private (and sometimes biased) organization, and to leave property owners in limbo for a year and a half waiting for the Academy's decision. The House (happily) rejected that idea—but then left property owners in limbo anyway by refusing to make any decision on its own on the controversial issue.

Needed: More recorded votes

The 23 property rights-related votes in this years' *Index* are more than were published in 1990, but still not a large number. And it wasn't for lack of looking; there simply weren't very many. Too many issues are decided by the Congress on the basis of "voice votes" in which no one knows for certain who—or how many—were for or against, or even how many were in the room. Congressmen and Senators are supposed to be accountable to their constituents—but there can be no accountability when there's no record.

When you talk to your legislators (and you *will* be talking to them, right?), ask them to *demand recorded votes*, so you are able to find out who's responsible for what's happening to you and your property at the hands of the Federal government. If your legislators are serious about accountability, they should be interested in doing all they can to help.

U.S. SENATE VOTES

Senate Vote #1: Minimizing regulatory "takings" of private property by Federal agencies. This involved an attempt by Sen. Steve Symms (R–ID) to attach his precedent-setting Private Property Rights Act to another bill. Symms Private Property Rights Act would prohibit new Federal regulations from taking effect until the Attorney General certified they complied with procedures to assess their impact on, and minimize the "taking" of, private property. Symms attempt to make his Private Property Rights Act a "rider," or unrelated amendment, to a highway bill was challenged by Senate Majority Leader George Mitchell (D–ME). The recorded vote was on Mitchell's proposal June 12, 1991 to "table," or kill Symms' rider, the Senate voted "no," 44 to 55—voting, in other words, to keep Symms' Private Property Rights Act as part of the transportation bill. Good guys voted No, too.

(The Senate subsequently passed the transportation bill, with Symms "rider" attached, by voice vote, but the House deleted the "rider" when they passed the bill later in 1991. A Congressional conference committee dropped the Private Property Rights Act from the highway bill when they reconciled the Senate and House versions. The Private Property Rights Act is still active, however; it was also attached by the Senate (by voice vote) to a bill making the EPA a Cabinet department. That bill is still waiting for a House vote.)

Senate Vote #2: Patenting mining claims. Since 1872, the U.S. government has encouraged prospecting for minerals on Federal land by allowing miners to "patent," or obtain title to, land on which they've discovered and developed to a profitable level deposits of certain hard rock minerals—usually after many years (and thousands of dollars per acre) of work and investment. Sen. Dale Bumpers (D–AR) added a rider to last year's Interior Dept. appropriations bill to impose a one-year ban on using any Federal money to process mining-claim patent applications. The Senate, led by Sen. Harry Reid (D–NV), voted to "table," or kill, Bumpers' rider Sept. 13, 1991, by a narrow 47 to 46 vote. Good guys voted in favor of the miners—and in favor of killing Bumpers' rider.

Senate Vote #3: Increasing grazing fees on Federal land. Sen. James Jeffords (R–VT) added a rider to last year's Interior Dept. appropriations bill increasing fees paid by Western ranchers to graze cattle and sheep on Forest Service and Bureau of Land Management land. The higher fees stood to put many ranching families out of business—making their privately-owned land worthless, and allowing their water rights, which are private property rights, to be acquired for free by the Federal government. The Senate, led by Sen. Pete Domenici (R–NM), voted to "table," or kill Jeffords' rider Sept. 17, 1991, by a 60 to 38 vote. Good guys voted against the higher fees—and therefore in favor of tabling Jeffords' rider.

Senate Vote #4: Condemnation of private land. S. 2166, the *Natl. Energy Policy Act*, gave contractors building oil and as pipelines blanket authority to condemn rights-of-way on private land, to expedite construction of pipelines. Sen. Larry Craig (R–ID) attempted to amend the bill to require the Federal Energy Regulatory Commission to find in a separate proceeding that a specific public need was proven before any condemnation could occur. The Senate, led by Sen. J. Bennett Johnston (D–LA), voted to "table," or kill, Craig's amendment Feb. 18, 1992, by a 60 to 35 vote. On this issue, a surprising number of normally anti-private property Senators voted against condemnation (because they wanted to make it harder to build pipelines), and a number of normally pro-private property Senators voted in favor of condemnation (because they wanted to make it easier to build pipelines). The bottom line is, the vote was on whether or not to make it easier for pipeline companies to condemn private property. And the good guys were the ones who voted No.

Senate Vote #5: Increasing Federal fees for patenting mining claims. Sen. Dale Bumpers (D–AR) attempted a "rider," or unrelated amendment to the 1993 Interior Dept. appropriations bill, imposing a one-year moratorium on allowing miners to "patent," or obtain title to, lands on which they had discovered and developed profitable mineral deposits. Sen. Harry Reid (D–NV) tried to amend the rider, cancelling the moratorium on patenting, but substituting a proposal to hike recording fees for patent applications (presently $2.50 to $5 per acre) to a sum equal to "fair market value" of the land. Reid's amendment also required land no longer used for mining to be returned to the Federal government, and stiffened requirements for its reclamation. Bumpers tried to "table," or kill Reid's amendment on Aug. 6, 1992; the Senate voted "no," 45 to 50, leaving Reid's higher fees and other provisions in place. We've listed the good guys as the ones who voted No (For Reid's amendment and against Bumpers'), on the premise that Reid's proposal was the lesser of the two evils.

Senate Vote #6: Timber-dependent communities. A "rider" by Sen. Wyche Fowler (D-GA) to the 1993 Interior Dept. appropriations bill proposed to slash the national forest system budget by $35 million—to reflect, Fowler said, a 25% reduction in below-cost timber sales. The measure stood to severely harm hundreds of "inholding" communities in the West where nearly all jobs, private and public, depend on Federal timber. The Senate, led by Sen. Larry Craig (R–ID), voted to "table," or kill, Fowler's rider Aug. 5, 1992, by a 50 to 44 vote. Good guys voted Yes.

Senate Votes #7 & #8: Appeals of Forest Service decisions. The Forest Service administrative appeals process affects a wide range of private property rights: mining claims, grazing rights, and summer cabins on leased Federal land, to name a few. A logjam of appeals of Forest Service decisions, most by park and wilderness pressure groups, prompted the Forest Service to begin revision of the appeals process last year. A "rider," or unrelated amendment by Sen. Wyche Fowler (D–GA) to the 1993 Interior Dept. appropriations bill proposed to dictate the form of the new appeals process, including a mandatory's "stay," or halt to any action until an appeal was settled.

Vote #7 was on Sen. Larry Craig's (R–ID) attempt to "table," or kill Fowler's rider; the Senate voted Craig down, 38 to 57, on Aug. 6, 1992. Good guys voted yes—in favor of killing Fowler's proposal. Craig then sought to amend Fowler's rider to authorize the Chief of the Forest Service to override a "stay" on an emergency basis, and to limit "standing" to appeal only to those who file initial comments on a Forest Service decision—limiting last-minute interventions by park and wilderness pressure groups. Fowler then attempted to "table," or kill, Craig's amendment; that was Vote #8. In this vote,

the Senate sided with Craig, and voted "no," 45 to 50—in other words, voting to keep Craig's amendment. In this case, the good guys voted No—against killing Craig's amendment.

Senate Vote #9. Salvage logging in presumed spotted owl habitat. A rider by Sen. Slade Gorton (R-WA) to the 1993 Interior Dept. appropriations bill proposed to allow salvage timber sales in presumed owl "habitat" unless the Secretary of Agriculture decided the owl habitat would be "adversely affected." Gorton's rider sought to preserve a few of the Pacific Northwest's fast-disappearing jobs, and end the challenges by park and wilderness pressure groups to clean-up of dead, downed, diseased, and burned timber in national forests. The Senate, led by Sen. Brock Adams (D-WA) voted Aug. 6, 1992 to "table," or kill, Gorton's rider, by a 60 to 35 vote. Good guys voted in favor of timber jobs and communities—and against killing Gorton's rider.

Senate Vote #10: Increasing grazing fees on BLM land. A rider by Sen. James Jeffords (R-VT) to the 1993 Interior Dept. appropriations bill proposed to increase by 25% the fees paid by ranchers to graze cattle or sheep on Bureau of Land Management (BLM) land. This was almost a replay of Jeffords' proposal the previous year (Vote #3), but the vote was much narrower—just 50 to 44 in favor of "tabling," or killing Jeffords' rider. It was Sen. Robert Byrd (D-WV) who proposed the kill this time around, on Aug. 6, 1992. Good guys voted yes—in favor of killing the fee hike.

HOW THE SENATE VOTED

[Legend: S—Supported private property position; 0—Opposed private property position; ?—Did not vote]

Senator	Votes										Support of—	
	1	2	3	4	5	6	7	8	9	10	Votes cast	All votes
Private Property Position	N	Y	Y	N	N	Y	Y	N	N	Y		
Alabama:												
Heflin, H. (Democrat)	S	S	S	0	S	S	0	S	S	S	80	80
Shelby, R. (Republican)	S	S	S	0	S	S	0	S	S	S	80	80
Alaska:												
Murkowski, F. (Republican)	S	S	S	0	S	S	S	S	S	S	90	90
Stevens, T. (Republican)	S	S	S	0	S	S	S	S	S	S	90	90
Arizona:												
DeConcini, D. (Democrat)	S	S	S	S	S	?	0	S	0	S	78	70
McCain, J. (Republican)	S	S	S	0	S	S	S	S	S	S	90	90
Arkansas:												
Bumpers, D. (Democrat)	S	0	0	0	0	S	S	S	0	0	40	40
Pryor, D. (Democrat)	?	0	S	?	0	S	S	S	0	S	63	50
California:												
Cranston, A. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0
Seymour, J. (Republican)	S	?	S	0	S	S	S	S	S	S	89	80
Colorado:												
Brown, H. (Republican)	S	S	S	0	S	S	S	S	S	S	90	90
Wirth, T. (Democrat)	0	S	S	0	S	0	0	0	0	S	40	40
Connecticut:												
Dodd, C. (Democrat)	0	?	S	S	0	0	0	0	0	S	33	30
Lieberman, J. (Democrat)	0	0	0	S	0	0	0	0	0	0	10	10
Delaware:												
Biden, J. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0
Roth, W. (Republican)	S	0	S	0	0	S	0	S	0	0	40	40
Florida:												
Graham, B. (Democrat)	0	?	0	0	0	0	0	0	0	0	0	0
Mack, C. (Republican)	S	S	?	S	S	S	S	S	S	S	100	90
Georgia:												
Fowler, W. (Democrat)	S	S	0	0	0	0	0	0	0	0	20	20
Nunn, S. (Democrat)	S	?	0	0	0	0	0	0	0	0	11	10
Hawaii:												
Akaka, D. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0
Inouye, D. (Democrat)	0	S	?	?	S	0	0	0	0	S	38	30
Idaho:												
Craig, L. (Republican)	S	S	S	S	S	S	S	S	S	S	100	100
Symms, S. (Republican)	S	S	S	S	S	S	S	S	S	S	100	100
Illinois:												
Dixon, A. (Democrat)	S	0	0	0	S	0	0	0	0	0	20	20
Simon, P. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0
Indiana:												
Coats, D. (Republican)	S	0	S	S	S	S	0	S	S	0	70	70
Lugar, R. (Republican)	S	0	S	S	S	S	0	S	S	0	70	70
Iowa:												
Grassley, C. (Democrat)	S	S	S	S	S	S	S	S	0	S	90	90
Harkin, T. (Democrat)	0	?	S	?	0	?	?	?	?	?	33	10
Kansas:												
Dole, B. (Republican)	S	S	S	S	S	S	S	S	S	S	100	100
Kassebaum, N. (Republican)	S	0	S	0	S	S	0	S	S	0	60	60
Kentucky:												
Ford, W. (Democrat)	S	S	S	0	S	0	S	S	0	S	70	70
McConnell, M. (Republican)	S	S	S	0	S	S	S	S	S	S	90	90
Louisiana:												
Breaux, J. (Democrat)	S	0	S	0	S	0	0	S	0	?	44	40
Johnston, J. (Democrat)	S	0	S	0	0	S	S	S	0	S	60	60
Maine:												
Cohen, W. (Republican)	0	0	0	?	0	0	0	S	0	0	11	10
Mitchell, G. (Democrat)	0	0	0	S	0	0	0	0	0	0	10	10
Maryland:												
Mikulski, B. (Democrat)	0	0	0	S	0	0	0	0	0	S	20	20
Sarbanes, P. (Democrat)	0	0	0	S	0	0	0	0	0	0	10	10
Massachusetts:												
Kennedy, E. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0
Kerry, J. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0
Michigan:												
Levin, C. (Democrat)	0	0	0	S	0	S	0	0	0	0	20	20
Riegle, D. (Democrat)	0	0	0	S	0	S	0	0	0	0	20	20
Minnesota:												
Durenberger, D. (Republican)	S	S	S	S	S	S	S	S	0	S	90	90
Wellstone, P. (Democrat)	0	0	0	S	0	0	0	0	0	0	10	10
Mississippi:												
Cochran, T. (Republican)	S	S	S	0	S	S	S	S	S	S	90	90
Lott, T. (Republican)	S	S	S	0	S	S	S	S	S	S	90	90
Missouri:												
Bond, C. (Republican)	S	?	S	0	S	S	S	S	S	S	89	80
Danforth, J. (Republican)	0	S	S	0	S	S	S	S	S	S	80	80
Montana:												
Baucus, M. (Democrat)	0	S	S	0	S	S	0	S	0	S	60	60
Burns, C. (Republican)	S	S	S	0	S	S	S	S	S	S	90	90
Nebraska:												
Exon, J. (Democrat)	S	0	S	0	0	0	0	0	S	0	30	30
Kerrey, B. (Democrat)	0	0	S	?	0	0	0	0	0	0	11	10
Nevada:												
Bryan,R. (Democrat)	0	S	S	S	S	0	0	0	0	S	50	50
Reid, H. (Democrat)	0	S	S	0	S	0	0	0	0	S	40	40
New Hampshire:												
Rudman, W. (Republican)	0	S	0	S	S	S	S	S	S	0	70	70

HOW THE SENATE VOTED—Continued

[Legend: S—Supported private property position; 0—Opposed private property position; ?—Did not vote]

Senator	Votes										Support of—	
	1	2	3	4	5	6	7	8	9	10	Votes cast	All votes
Smith, R. (Republican)	S	S	0	S	S	0	S	S	0	0	60	60
New Jersey:												
Bradley, B. (Democrat)	0	0	0	S	0	0	0	0	0	0	10	10
Lautenberg, F. (Democrat)	0	0	0	S	0	0	0	0	0	0	10	10
New Mexico:												
Bingaman, J. (Democrat)	0	S	S	0	S	0	0	S	0	S	50	50
Domenici, P. (Republican)	S	S	S	0	S	S	S	S	S	S	90	90
New York:												
D'Amato, A. (Republican)	S	S	S	S	S	S	0	S	S	0	70	70
Moynihan, D. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0
North Carolina:												
Helms, J. (Republican)	S	S	S	S	?	?	?	?	?	?	100	40
Sanford, T. (Democrat)	0	0	S	0	0	S	0	0	0	0	20	20
North Dakota:												
Burdick, Q. (Democrat)	S	0	S	0	?	?	?	?	?	?	50	20
Conrad, K. (Democrat)	S	S	S	S	S	0	0	S	0	S	70	70
Ohio:												
Glenn, J. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0
Metzenbaum, H. (Democrat)	0	0	0	S	0	0	0	0	0	0	10	10
Oklahoma:												
Boren, D. (Democrat)	S	0	S	0	S	0	0	0	0	S	40	40
Nickles, D. (Republican)	S	S	S	0	S	S	S	S	S	S	90	90
Oregon:												
Hatfield, M. (Republican)	S	S	S	S	S	S	S	S	S	S	100	100
Packwood, B. (Republican)	S	S	S	0	S	S	S	S	S	S	90	90
Pennsylvania:												
Specter, A. (Republican)	S	S	S	S	S	0	0	0	0	0	60	60
Wofford, H. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0
Rhode Island:												
Chafee, J. (Republican)	0	S	0	S	0	S	S	0	0	0	40	40
Pell, C. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0
South Carolina:												
Hollings, E. (Democrat)	S	0	0	0	S	0	0	0	0	0	20	20
Thurmond, S. (Republican)	S	S	S	0	S	S	S	S	S	S	90	90
South Dakota:												
Daschle, T. (Democrat)	S	0	S	0	S	S	0	0	0	S	50	50
Pressler, L. (Republican)	S	0	S	0	S	S	S	S	S	S	80	80
Tennessee:												
Gore, A. (Democrat)	0	S	0	S	?	?	?	?	?	?	50	20
Sasser, J. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0
Texas:												
Bentsen, L. (Democrat)	S	0	S	0	0	S	S	S	0	S	60	60
Gramm, P. (Republican)	S	?	S	0	S	S	S	S	S	S	89	80
Utah:												
Garn, J. (Republican)	S	S	S	S	S	S	S	S	S	S	100	100
Hatch, O. (Republican)	S	S	S	S	?	?	?	?	?	?	100	40
Vermont:												
Jeffords, J. (Republican)	S	0	0	S	0	S	0	0	0	0	30	30
Leahy, P. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0
Virginia:												
Robb, C. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0
Warner, J. (Republican)	S	S	0	0	0	S	S	S	S	S	70	70
Washington:												
Adams, B. (Democrat)	0	0	S	0	0	0	0	0	0	0	20	20
Gorton, S. (Republican)	S	S	S	0	S	S	S	S	S	S	90	9
West Virginia:												
Byrd, R. (Democrat)	0	S	S	0	0	0	S	S	0	S	50	50
Rockefeller, J. (Democrat)	0	0	S	0	0	0	0	0	0	0	10	10
Wisconsin:												
Kasten, B. (Republican)	0	S	0	S	S	S	0	S	0	0	50	50
Kohl, H. (Democrat)	0	0	0	S	0	S	0	0	0	0	20	20
Wyoming:												
Simpson, A. (Republican)	S	S	S	0	S	S	S	S	S	S	90	90
Wallop, M. (Republican)	S	S	S	0	S	S	S	S	S	S	90	90

U.S. HOUSE OF REPRESENTATIVES VOTES

House Vote #1: Niobrara Wild & Scenic River designation. The Niobrara flows through largely privately-owned farmland in Nebraska. The Senate had earlier passed S. 248 by voice vote, designating the Niobrara a Wild & Scenic River, primarily because both Nebraska Senators wanted it. Because most of the land was private, designation as Wild & Scenic would allow the Natl. Park Service to condemn 100 acres per mile within ¼-mile of either side of the river. Rep. Bill Barrett (R-NE), the Congressman representing the area, proposed a substitute bill that would study the river's "suitability" rather than instantly designating it a Wild & Scenic River. The House voted "no" on Barrett's substitute bill, 109 to 233, on May 14, 1991. Good guys voted in favor of the substitute bill.

House Vote #2: Condemnation of private land. Rep. Don Young (R-AK) offered his own amendment to the Niobrara Wild & Scenic River bill that would have prohibited condemnation of private land or "interests in land" (like easements) along the new Niobrara Wild & Scenic River unless the Secretary of Interior found that use of the land had changed substantially. This means that ranchers would have been able to continue to ranch without fear of condemnation. The House rejected Young's amendment, 124 to 283, on May 14, 1991. Good guys voted to support Young and prohibit condemnation.

House Vote #3: Increasing Federal grazing fees. Increasing the fees paid by ranchers who own grazing rights on Forest Service and Bureau of Land Management (BLM) land in the West has become a perennial effort by a number of Eastern and Midwestern Congressmen. In the 1991 version, Rep. Mike Synar (D-OK) sought to amend last year's Interior Dept. appropriations bill to hike the government's fee over four years by more than 400%, from $1.97 to $8.70 per Animal Unit Month ("Federalese" for one cow and one calf grazing for one month), or to "market value," whichever might be larger four years hence. The fee hike is a property-rights issue because ranchers' grazing permits are based on their property rights in the grazing land. The fee hike stood to eliminate those rights by making it too expensive for ranchers to exercise them. The increase also stood to bankrupt thousands of ranching families and grazing-dependent communities. The House voted "yes," 232 to 192, on June 25, 1991. Good guys voted no. (The Senate subsequently cancelled the fee increase.)

House Vote #4: Increasing Federal grazing fees (again). When HR 1096, a "re-authorization" of the Bureau of Land Management, came up for a vote July 23, 1991, Synar offered his grazing fee increase amendment again. Rep. Ralph Regula (R-OH) proposed instead to hike the Animal Unit Month fee immediately to "market value" effective in 1992, but to limit fee increases or decreases to 33% in any given year. The House voted "yes," 254 to 165. Good guys voted No.

House Vote #5: Creation of the Flint Hills Prairie Natl. Monument. HR 2369 sought by Rep. Dan Glickman (D-KS) authorized the Natl. Park Service to acquire private land in Kansas to assemble the new park. The Flint Hills region of Kansas is one of two sites proposed off and on for a "tallgrass prairie preserve" by the Park Service since the 1950s (the other is in northeastern Oklahoma). The House voted in favor of acquiring the private land for the park, 284 to 110, Oct. 15, 1991. Good guys voted No.

House Vote #6: Wetlands. The only vote in the House of Representatives in the 102nd

Congress on the touchy subject of wetlands happened on Oct. 29, 1991. With support building for protection of private property rights, Rep. Wayne Gilchrest (R-MD) attempted to forestall any Congressional action. Gilchrest's amendment to HR 3543, a 1992 supplemental appropriations bill, proposed to have the Natl. Academy of Sciences, a private (and sometimes biased) organization, conduct (for $500,000) a study of "the science and methodology of wetlands definition and delineation"—leaving landowners in limbo for 18 months while Congress waited for the results. The House voted "no," 181 to 241. Good guys voted No, too. (The House has taken no other action on the wetlands problem since, however.)

House Vote #7: Substitute California Desert Wilderness bill. This was the first—and key—vote during the debate Nov. 26, 1991, on the huge complex of two new National Parks, a new Natl. Monument, and 8 million acres of Wilderness Areas proposed to be carved out of private and public lands in Southern California by HR 2929, the "California Desert Protection Act." HR 2929 proposed, among other things, to double the size of the giant Death Valley and Joshua Tree Natl. Monuments, and convert them into largely-Wilderness National Parks, effectively closing off public use and access. The substitute bill offered by Rep. Jerry Lewis (R-CA), one of the Congressman representing the area, proposed to designate 2.3 million acres of BLM land as Wilderness (about what was being recommended by BLM) rather than 8 million, and to forget about the new parks. Lewis' substitute bill included (and impacted) far less private land. The House rejected Lewis' substitute bill, 150 to 241. Good guys voted in favor of the substitute bill.

House Vote #8: Permitting hunting. Rep. Ron Marlenee (R-MT) proposed to amend HR 2929, the "California Desert Protection Act," to allow hunting to continue on the lands that would be converted into the new Mojave Natl. Monument by HR 2929. Hunting is usually prohibited in National Monuments, but the Federal, state, and private lands proposed for the new Mojave Natl. Monument had previously been open to hunting under Federal and state law. The House voted to allow hunting, 235 to 193, on Nov. 26, 1991. Good guys voted yes.

House Vote #9: Prohibiting condemnation. Rep. Tom DeLay (R-TX) tried to amend HR 2929, the "California Desert Protection Act," to allow the Secretary of Interior to acquire land for the proposed new Natl. Parks, Natl. Monument, and Wilderness Areas only from willing sellers—prohibiting, in other words, the use of condemnation to acquire land. The House rejected DeLay's proposal Nov. 26, 1991, 143 to 289—voting in favor of condemnation. Good guys voted to prohibit condemnation.

House Vote #10: Federal reserved water rights for Wilderness Areas. The idea of Federal "reserved water rights" for new Wilderness Areas is a touchy subject in the arid West, where there's often not enough water to go around and water rights—acquired under state law—are jealously guarded private property. A "reserved water right" for a Wilderness downstream can restrict, or even cut off, the water used by water-rights owners upstream—and worse still, Congress never specifies how much water the "reserved water rights" allow the Federal Wilderness managers to claim. HR 2929, the "California Desert Protection Act," claimed "reserved water rights" for all its 8 millions acres of new Wilderness. Rep. Wayne Allard (R-CO) tried to amend HR 2929 to disavow any claim to Federal "reserved water rights" on the Colorado River, which irrigates ten states and supplies drinking water to Los Angeles, Tucson, and other large cities, all upstream from the new Wilderness. The House rejected Allard's proposal 155 to 274, on Nov. 26, 1991—claiming "reserved water rights at any price" on the Colorado River. Good guys, however, voted Yes—against the water rights claim, in other words.

House Vote #11: Economic impact study of Federal control. Most far-reaching of the proposed amendments to HR 2929, the "California Desert Protection Act," was that offered by Rep. William Dannemeyer (R-CA), Dannemeyer's amendment would have made designation of any land as a National Park, Monument or Wilderness Area contingent upon an economic impact analysis finding that the environmental benefits of each Federal designation outweighed the economic costs. His proposal also would have required the Secretary of Interior to pay any person who suffered an economic loss as a result of the bill the amount of the loss. The House, perhaps predictably, voted "no" by a big margin, 110 to 316, on Nov. 26, 1991. Good guys, on the other hand, voted Yes.

House Vote #12: Increasing grazing fees (again). Rep. Charles Stenholm (D-TX) proposed to "strike," or eliminate, the provisions in the 1993 Interior Dept. appropriations bills that raised—again—the fees paid by ranchers who own grazing rights on Forest Service and Bureau of Land Management lands. The House refused, 164 to 245, on July 22, 1992. Good guys voted Yes—against raising the fees, in other words.

House Vote #13: National Forest timber harvests for timber-dependent communities. This vote concerned an amendment by Rep. Jim Jontz (D-IN) to the 1993 Interior Dept. appropriations bill. Jontz, the sponsor of repeated bills to "preserve" Federal timber as "ancient forest preserves" regardless of the economic impact on communities, had proposed to slash $16.8 million from the Forest Service's budget for preparing timber sales, on the presumption that the less money the agency had, the less timber they could sell. Rep. Norm Dicks (D-WA), offered a substitute amendment that "cut the cut" to "only" $8 million, and took the money out of timber administration rather than timber sale preparation funds. The House voted by a narrow 212 to 206 to accept Dicks' amendment, July 23, 1992. (The "amended amendment" was then adopted by voice vote.) We listed the good guys as the ones who voted Yes, on the premise that the Dicks amendment was the lesser of two evils; it's still going to hurt anyone who makes a living, and stands to devalue any property, in any area dependent on national forest timber.

HOW THE HOUSE VOTED

[Legend: S—SUPPORTED private property position; 0—OPPOSED private property position; ?—Did not vote; P—Voted "present"; C—Voted "present" to avoid conflict of interest; I—Ineligible to vote at the time; X—Speaker of the House; excused himself from voting]

Congressman	Votes													Percent support of—	
	1	2	3	4	5	6	7	8	9	10	11	12	13	Votes cast	All votes
Private Property Postion	Y	Y	N	N	N	N	Y	Y	Y	Y	Y	Y	Y		
Alabama:															
Bevill, T. (Democrat)	S	0	S	S	?	S	0	S	0	0	0	?	S	55	46
Browder, G. (Democrat)	0	0	S	S	0	S	0	S	0	0	0	0	S	38	38
Callahan, S. (Republican)	S	S	S	?	?	S	S	S	S	S	S	S	S	100	85
Cramer, B. (Democrat)	0	0	S	S	0	S	0	S	0	0	0	0	0	31	31
Dickinson, B. (Republican)	?	?	S	S	S	S	S	S	S	S	S	S	S	100	85
Erdreich, B. (Democrat)	0	0	0	0	0	0	0	S	0	0	0	0	S	15	15
Harris, C. (Democrat)	0	0	S	S	0	S	0	S	0	0	0	0	S	38	38
Alaska: Young, D. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Arizona:															
Kolbe, J. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Kyl, J. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Pastor, E. (Democrat)	I	I	I	I	0	0	0	S	0	S	0	S	S	44	44
Rhodes, J. (Republican)	S	S	?	S	S	S	S	S	S	S	S	S	S	100	92
Stump, B. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Arkansas:															
Alexander, B. (Democrat)	?	?	S	S	0	S	?	S	0	0	0	0	S	50	38
Anthony, B. (Democrat)	?	?	S	S	0	S	S	S	S	0	0	0	S	64	54
Hammerschmidt, J. (Repubican)	S	S	S	S	S	S	S	S	S	?	S	S	S	100	92
Thornton, R. (Democrat)	0	0	?	S	?	S	0	0	0	0	0	S	S	36	31
California:															
Anderson, G. (Democrat)	S	0	0	0	0	0	S	S	S	0	S	0	0	38	38
Beilenson, A. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Berman, H. (Democrat)	0	0	0	0	?	0	0	0	0	0	0	0	0	0	0
Boxer, B. (Democrat)	?	?	0	0	?	?	0	0	0	0	0	0	0	0	0
Brown, G. (Democrat)	0	0	0	0	?	0	0	0	0	0	0	0	0	0	0
Campbell, (Republican)	0	0	0	S	0	S	0	0	0	0	0	0	0	15	15
Condit, G. (Democrat)	0	0	S	S	0	S	S	S	0	0	0	S	S	54	54
Cox, C. (Republican)	0	0	0	0	0	S	S	S	S	S	S	?	S	58	54
Cunningham, R. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Dannemeyer, W. (Republican)	S	S	S	0	S	S	S	S	S	S	S	S	S	92	92
Dellums, R. (Democrat)	0	0	0	0	?	0	0	0	0	0	0	0	0	0	0
Dixon, J. (Democrat)	0	0	0	0	0	S	?	0	0	0	0	0	S	17	15
Dooley, C. (Democrat)	0	0	S	S	0	S	0	0	0	0	0	S	S	38	38
Doolittle, J. (Republican)	S	S	S	S	S	S	?	S	S	S	S	S	S	100	92

HOW THE HOUSE VOTED—Continued

[Legend: S—SUPPORTED private property position; O—OPPOSED private property position; ?—Did not vote; P—Voted "present"; C—Voted "present" to avoid conflict of interest; I—Ineligible to vote at the time; X—Speaker of the House; excused himself from voting]

Congressman	Votes													Percent support of—	
	1	2	3	4	5	6	7	8	9	10	11	12	13	Votes cast	All votes
Dornan, R. (Republican)	S	S	S	S	0	S	S	S	S	S	S	S	S	92	92
Dreier, D. (Republican)	0	0	0	S	0	S	S	S	S	S	S	S	S	69	69
Dymally, M. (Democrat)	?	0	S	0	?	0	0	0	0	0	0	?	0	10	8
Edwards, D. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Fazio, V. (Democrat)	0	0	0	0	0	S	0	0	0	0	0	S	S	23	23
Gallegly, E. (Republican)	S	S	S	S	S	S	S	S	S	0	S	S	S	92	92
Herger, W. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Hunter, D. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Lagomarsino, R. (Republican)	S	S	S	S	S	0	S	S	S	0	S	S	S	85	85
Lantos, T. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Lehman, R. (Democrat)	?	?	S	S	0	0	0	0	0	0	0	S	S	36	31
Levine, M. (Democrat)	?	?	?	0	?	?	0	0	0	0	0	S	0	13	8
Lewis, J. (Republican)	S	S	S	S	?	S	S	S	S	S	S	S	S	100	92
Lowery, B. (Republican)	S	S	S	?	S	S	S	?	?	S	S	S	S	100	77
Martinez, M. (Democrat)	0	S	S	0	0	S	S	S	0	0	0	0	0	38	38
Matsui, R. (Democrat)	0	?	0	?	0	?	0	0	0	0	0	S	0	10	8
McCandless, A. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Miller, G. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Mineta, N. (Democrat)	0	0	0	0	?	0	0	0	0	0	0	S	S	17	15
Moorhead, (Republican)	0	S	S	S	S	S	S	S	S	S	S	S	S	92	92
Packard, R. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Panetta, L. (Democrat)	0	S	S	S	0	S	0	0	S	0	0	S	0	46	46
Pelosi, N. (Democrat)	?	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Riggs, F. (Democrat)	S	S	S	S	S	0	S	S	0	S	?	S	S	75	69
Rohrabacher, D. (Republican)	S	S	0	0	S	S	S	S	S	S	S	0	0	69	69
Roybal, E. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	S	8	8
Stark, P. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Thomas, B. (Republican)	0	0	OS	?	S	S	S	S	S	S	S	S	S	83	77
Torres, E. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Waters, M. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Waxman, H. (Democrat)	0	0	0	0	0	0	?	0	0	0	0	0	0	0	0
Colorado:															
Allard, W. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Campbell (Democrat)	S	0	S	S	0	S	0	S	0	S	0	S	S	62	62
Hefley, J. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Schaefer, D. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Schroeder, (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Skaggs, D. (Democrat)	0	0	0	S	0	S	0	0	0	0	0	S	0	23	23
Connecticut:															
DeLauro, R. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Franks, G. (Republican)	S	S	S	0	S	S	S	S	S	S	S	0	0	77	77
Gejdenson, S. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Johnson, N. (Republican)	S	0	0	0	S	0	S	0	0	0	0	0	S	38	38
Kennelly, B. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Shays, C. (Republican)	0	0	0	0	0	S	0	0	0	0	0	0	0	8	8
Delaware: Carper, T. (Democrat)	0	0	0	0	0	S	0	0	0	0	0	0	?	17	15
Florida:															
Bacchus, J. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bennett, C. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Bilirakis, M. (Republican)	0	0	S	S	S	0	S	0	S	S	S	0	0	54	54
Fascell, D. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Gibbons, S. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Goss, P. (Republican)	0	0	0	0	S	0	0	0	0	S	0	0	0	15	15
Hutto, E. (Democrat)	0	0	S	S	0	S	S	S	S	0	0	S	0	54	54
Ireland, A. (Republican)	0	0	0	0	S	S	?	S	S	S	0	0	S	50	46
James, C. (Republican)	0	0	0	0	0	S	0	0	0	S	0	0	0	15	15
Johnston, H. (Democrat)	0	0	0	0	0	S	?	0	0	?	0	0	0	9	8
Lehman, W. (Democrat)	?	?	0	0	?	0	0	0	0	0	0	0	0	0	0
Lewis, T. (Republican)	0	0	S	0	S	S	0	0	S	S	S	0	0	46	46
McCollum (Republican)	0	0	S	S	S	S	0	S	0	S	0	0	0	46	46
Peterson, P. (Democrat)	0	0	S	S	0	S	S	S	0	0	0	?	?	45	38
Ros-Lehtinen, I. (Republican)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Shaw, E. (Republican)	S	S	S	S	0	S	S	S	S	S	S	S	0	85	85
Smith, L. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Stearns, C. (Republican)	S	S	S	0	S	S	S	S	0	S	S	0	S	77	77
Young, C. (Republican)	0	0	?	S	S	S	?	S	S	S	S	0	0	64	54
Georgia:															
Barnard, D. (Democrat)	0	0	0	0	0	S	0	S	0	0	0	S	S	31	31
Darden, G. (Democrat)	0	0	0	0	0	S	0	S	0	0	0	0	S	23	23
Gingrich, N. (Republican)	S	S	S	S	0	S	S	S	S	S	0	?	S	83	77
Hatcher, C. (Democrat)	?	?	S	S	0	S	0	S	0	0	0	?	S	50	38
Jenkins, E. (Democrat)	0	0	0	0	0	S	0	S	0	0	0	0	S	23	23
Jones, B. (Democrat)	0	0	0	0	0	?	0	0	0	0	0	0	0	0	0
Lewis, J. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ray, R. (Democrat)	0	0	S	S	0	S	S	S	0	0	0	?	?	45	38
Rowland, J. (Democrat)	0	0	0	0	0	S	0	S	0	0	0	S	S	31	31
Thomas, L. (Democrat)	0	0	S	S	0	S	0	S	0	0	0	?	?	36	31
Hawaii:															
Abercrombie, N. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Mink, P. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Idaho:															
LaRocco, L. (Democrat)	0	0	S	S	0	S	0	S	0	S	0	S	S	54	54
Stallings, R. (Democrat)	0	S	S	S	0	0	0	S	S	S	0	S	S	62	62
Illinois:															
Annunzio, F. (Democrat)	0	0	0	0	0	S	0	0	0	0	0	?	0	8	8
Bruce, T. (Democrat)	0	0	0	0	0	S	0	S	S	0	0	S	0	31	31
Collins, C. (Democrat)	?	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Costello, J. (Democrat)	0	S	0	0	S	S	0	S	S	0	0	0	0	38	38
Cox, J. (Democrat)	0	?	0	0	0	0	0	0	0	0	0	0	0	0	0
Crane, P. (Republican)	S	S	0	S	?	S	?	S	S	S	S	S	S	91	77
Durbin, R. (Democrat)	0	0	0	0	0	S	0	0	0	0	0	0	0	8	8
Evans, L. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Ewing, T. (Republican)	I	I	I	S	S	S	S	S	S	S	S	S	0	90	90
Fawell, H. (Republican)	0	0	0	0	0	S	0	0	0	S	0	0	0	15	15
Hastert, D. (Republican)	S	S	S	S	S	S	S	S	S	S	0	0	0	77	77
Hayes, C. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hyde, H. (Republican)	S	S	0	S	S	S	S	S	S	S	S	?	?	91	77
Lipinski, W. (Democrat)	0	0	0	0	0	S	?	0	0	0	0	0	0	8	8
Michel, R. (Republican)	S	S	S	S	S	S	?	S	S	S	S	S	S	100	92
Porter, J. (Republican)	0	0	?	0	?	S	0	0	0	S	0	0	0	18	15
Poshard, G. (Democrat)	0	S	0	0	0	S	0	S	S	0	0	0	0	31	31
Rostenkowski, D. (Democrat)	0	0	0	0	0	S	0	0	0	0	0	?	0	8	8
Russo, M. (Democrat)	0	0	0	0	0	0	?	0	0	0	0	?	0	0	0

HOW THE HOUSE VOTED—Continued

[Legend: S—SUPPORTED private property position; O—OPPOSED private property position; ?—Did not vote; P—Voted "present"; C—Voted "present" to avoid conflict of interest; I—Ineligible to vote at the time; X—Speaker of the House; excused himself from voting]

Congressman	Votes													Percent support of—	
	1	2	3	4	5	6	7	8	9	10	11	12	13	Votes cast	All votes
Sangmeister, G. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	S	0	8	8
Savage, G. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	S	8	8
Yates, S. (Democrat)	0	0	0	0	0	0	?	0	0	0	0	0	0	0	0
Indiana:															
Burton, D. (Republican)	S	S	S	S	S	S	S	S	S	S	S	0	S	92	92
Hamilton, L. (Democrat)	0	0	0	0	0	S	0	0	0	0	0	0	0	8	8
Jacobs, A. (Democrat)	0	0	0	S	0	0	0	0	0	0	0	0	0	8	8
Jontz, J. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Long, J. (Democrat)	0	0	S	S	0	S	0	0	0	0	0	S	S	38	38
McCloskey (Democrat)	0	0	0	0	0	S	0	0	0	0	0	0	0	8	8
Myers, J. (Republican)	S	S	S	S	S	S	?	S	S	S	S	0	S	92	85
Roemer, T. (Democrat)	0	0	0	0	0	S	0	S	0	0	0	0	S	23	23
Sharp, P. (Democrat)	0	0	0	0	0	S	0	0	0	0	0	0	0	8	8
Visclosky (Democrat)	S	0	0	0	0	S	0	0	0	0	0	0	S	23	23
Iowa:															
Grandy, F. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Leach, J. (Republican)	0	0	S	S	0	S	0	S	S	0	0	0	0	38	38
Lightfoot, J. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Nagle, D. (Democrat)	0	0	S	0	0	0	0	S	0	0	0	S	?	25	23
Nussle, J. (Republican)	S	S	S	S	S	S	S	S	S	S	0	S	0	85	85
Smith, N. (Democrat)	0	S	S	0	0	S	?	S	S	0	0	0	S	50	46
Kansas:															
Glickman, D. (Democrat)	0	S	0	0	0	?	0	S	0	0	0	0	0	17	15
Meyers, J. (Republican)	0	0	0	0	0	0	S	0	0	S	0	0	0	15	15
Nichols, D. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Roberts, P. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Slattery, J. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	8	8
Kentucky:															
Bunning, J. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Hopkins, L. (Republican)	?	?	S	?	?	?	S	S	S	S	S	S	S	100	62
Hubbard, C. (Democrat)	0	0	S	S	0	S	S	S	0	0	0	S	S	54	54
Mazzoli, R. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Natcher, W. (Democrat)	0	0	S	S	0	S	0	0	0	0	0	0	S	31	31
Perkins, C. (Democrat)	0	0	S	S	0	S	0	S	0	0	0	S	S	46	46
Rogers, H. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Louisiana:															
Baker, R. (Republican)	S	S	S	S	S	S	?	S	S	S	S	S	S	100	92
Hayes, J. (Democrat)	0	S	0	0	0	S	S	S	S	S	S	S	S	69	69
Holloway, C. (Republican)	?	?	S	S	?	S	S	S	S	S	S	S	S	100	77
Huckaby, J (Democrat)	0	0	0	0	0	S	0	S	0	0	0	0	S	23	23
Jefferson (Democrat)	0	0	0	0	0	0	0	S	0	0	0	0	S	15	15
Livingston (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
McCrery, J. (Republican)	?	?	0	0	S	S	S	S	S	S	0	0	S	64	54
Tauzin, W. (Democrat)	S	S	0	0	0	S	S	S	S	S	S	0	S	69	69
Maine:															
Andrews, T. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Snowe, O. (Republican)	0	0	0	0	0	0	0	S	S	0	0	0	S	23	23
Maryland:															
Bentley, H. (Republican)	S	S	S	S	S	0	S	S	S	S	S	S	S	92	92
Byron, B. (Democrat)	0	0	0	0	0	0	0	?	S	0	S	S	S	33	31
Cardin, B. (Democrat)	?	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Gilchrest, W. (Republican)	0	S	S	S	0	0	0	S	S	0	0	0	0	38	38
Hoyer, S. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	S	8	8
McMillen, T. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Mfume, K. (Democrat)	?	0	0	S	0	0	0	0	0	0	0	0	0	8	8
Morella, C. (Republican)	0	0	0	0	0	0	0	0	0	0	0	0	?	0	0
Massachusetts:															
Atkins, C. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Donnelly, B. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Early, J. (Democrat)	0	S	0	0	0	S	0	0	0	S	0	0	0	23	23
Frank, B. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Kennedy, J. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Markey, E. (Democrat)	0	?	0	0	0	0	0	0	0	0	0	0	0	0	0
Mavroules, (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Moakley, J. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Neal, R. (Democrat)	0	0	0	0	0	0	?	0	0	0	0	0	0	0	0
Olver, J. (Democrat)	I	I	0	0	0	0	0	0	0	0	0	0	0	0	0
Studds, G. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Michigan:															
Bonior, D. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	S	8	8
Broomfield, (Republican)	0	0	S	0	0	S	?	S	S	S	S	0	0	50	46
Camp, D (Republican)	S	S	S	S	S	S	S	S	0	S	0	S	S	85	85
Carr, B. (Republican)	0	0	S	S	0	S	0	S	0	0	0	S	0	38	38
Collins, B. (Democrat)	0	0	S	0	0	0	0	0	0	0	0	?	0	8	8
Conyers, J. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Davis, R. (Republican)	S	S	S	S	0	S	S	S	S	S	S	S	S	92	92
Dingell, J. (Democrat)	0	0	0	0	0	S	S	S	0	0	0	0	0	23	23
Ford, W. (Democrat)	0	0	0	0	?	0	0	?	0	0	0	0	?	0	0
Henry, P. (Republican)	0	0	0	0	0	S	S	0	0	S	0	0	0	23	23
Hertel, D. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Kildee, D. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	S	8	8
Levin, S. (Democrat)	0	0	0	0	0	S	0	0	0	0	0	0	0	8	8
Pursell, C. (Republican)	0	0	?	S	0	S	?	S	S	S	S	S	0	64	54
Traxler, B. (Democrat)	0	0	0	0	0	0	?	S	0	0	0	?	?	10	8
Upton, F. (Republican)	0	0	0	0	0	S	S	S	0	S	0	0	0	31	31
Vander Jagt, G. (Republican)	S	0	S	0	S	S	S	S	0	S	S	S	S	77	77
Wolpe, H. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Minnesota:															
Oberstar, J. (Democrat)	0	0	S	0	0	0	0	0	0	0	0	0	S	15	15
Penny, T. (Democrat)	0	S	S	0	0	S	S	S	S	0	0	0	0	46	46
Peterson, C. (Democrat)	0	0	S	S	0	S	0	S	S	0	0	S	S	54	54
Ramstad, J. (Republican)	0	0	0	0	0	S	0	S	0	S	0	0	0	23	23
Sabo, M. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	S	8	8
Sikorski, G. (Democrat)	0	0	0	0	0	0	0	S	0	0	0	0	0	8	8
Vento, B. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Weber, V. (Republican)	S	S	S	S	S	S	S	S	0	S	0	S	S	85	85
Mississippi:															
Epsy, M. (Democrat)	0	S	S	S	0	S	S	S	0	0	0	S	S	62	62
Montgomery, G. (Democrat)	S	S	S	S	0	S	S	S	0	0	0	S	S	69	69
Parker, M. (Democrat)	S	S	S	S	0	S	S	S	0	0	0	S	S	69	69
Taylor, G. (Democrat)	0	S	S	S	S	S	S	S	S	0	0	S	S	77	77
Whitten, J. (Democrat)	0	0	S	S	0	S	0	0	0	0	?	S	S	42	38
Missouri:															
Clay, W. (Democrat)	0	0	0	0	0	0	?	0	0	0	0	0	S	8	8

HOW THE HOUSE VOTED—Continued

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Congressman	Votes													Percent support of—	
	1	2	3	4	5	6	7	8	9	10	11	12	13	Votes cast	All votes
Coleman, T. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Emerson, B. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Gephardt (Democrat)	0	0	0	0	0	S	0	0	0	0	0	?	S	17	15
Hancock (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Horn, J. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Skelton, I. (Democrat)	S	0	S	0	0	S	S	S	0	S	0	S	S	62	62
Volkmer, H. (Democrat)	S	0	S	0	0	S	0	S	0	S	0	S	S	54	54
Wheat, A. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Montana:															
Marlenee, R. (Republican)	?	S	S	S	?	S	S	S	S	S	S	S	S	100	85
Williams, P. (Democrat)	0	0	S	S	0	S	0	S	0	S	0	S	S	54	54
Nebraska:															
Barrett, B. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Bereuter, D. (Republican)	0	0	S	0	0	S	S	0	0	S	0	0	S	38	38
Hoagland (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Nevada:															
Bilbray, J. (Democrat)	0	0	S	S	0	0	0	S	0	0	0	S	0	31	31
Vucanovich, B. (Republican)	S	S	S	S	?	S	S	S	S	S	S	S	S	100	92
New Hampshire:															
Swett, D. (Democrat)	0	0	0	0	0	S	0	0	0	0	0	0	0	8	8
Zeliff, B. (Republican)	S	S	0	S	S	S	S	S	0	S	0	0	0	62	62
New Jersey:															
Andrews, R. (Democrat)	0	0	S	?	0	0	?	0	0	0	0	S	S	27	23
Dwyer, B. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	S	0	8	8
Gallo, D. (Republican)	0	0	0	0	S	S	0	S	S	S	0	0	S	46	46
Guarini, F. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hughes, W. (Democrat)	0	0	0	0	0	0	0	0	0	0	?	0	0	0	0
Pallone, F. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Payne, D. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Rinaldo, M. (Republican)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Roe, R. (Democrat)	0	0	S	0	S	0	?	0	?	?	0	0	S	30	23
Roukema (Republican)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Saxton, H. (Republican)	0	0	0	0	0	0	0	S	0	0	0	0	0	8	8
Smith, C. (Republican)	0	0	0	0	0	0	0	S	0	0	0	0	0	8	8
Torricelli, R. (Democrat)	0	0	0	0	0	0	?	0	0	0	0	?	0	0	0
Zimmer, D. (Republican)	0	0	0	0	0	0	0	0	0	S	0	0	0	8	8
New Mexico:															
Richardson, B. (Democrat)	0	0	S	S	0	0	0	0	0	0	0	S	0	23	23
Schiff, S. (Republican)	S	0	S	S	S	S	S	S	0	S	0	S	S	77	77
Skeen, J. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
New York:															
Ackerman, G. (Republican)	0	0	0	?	0	0	0	0	0	0	0	0	0	0	0
Boehlert, S. (Republican)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Downey, T. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Engel, E. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Fish, H. (Republican)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Flake, F. (Democrat)	0	0	0	0	?	0	0	0	0	0	0	0	0	0	0
Gilman, B. (Republican)	0	0	0	0	S	0	0	0	0	0	S	0	0	15	15
Green, B. (Republican)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Hochbrueckner, G. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Horton, F. (Republican)	0	0	S	S	0	S	S	S	0	0	0	0	0	38	38
Houghton, A. (Republican)	S	S	S	S	S	0	S	S	S	S	S	S	S	92	92
LaFalce, J. (Democrat)	0	0	0	0	0	S	0	0	0	0	0	0	0	8	8
Lent, N. (Republican)	S	S	S	S	S	S	S	S	0	0	S	S	S	85	85
Lowey, N. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Manton, T. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Martin, D. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
McGrath, R. (Republican)	0	0	0	0	0	0	0	0	0	0	0	S	S	15	15
McHugh, M. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
McNulty, M. (Democrat)	0	0	0	0	0	0	0	S	0	0	0	0	0	8	8
Molinari S. (Republican)	S	S	S	S	S	0	S	0	S	S	0	0	0	62	62
Mrazek, R. (Democrat)	?	?	0	0	?	?	?	0	0	0	?	0	0	0	0
Nowak, H. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Owens, M. (Democrat)	0	0	0	0	?	0	0	0	0	0	0	0	0	0	0
Paxon, B. (Republican)	0	S	S	S	S	S	S	S	S	S	S	S	S	92	92
Rangel, C. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	?	0	0	0
Scheuer, J. (Democrat)	0	0	0	0	0	0	?	0	0	0	0	0	0	0	0
Schumer, C. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Serrano, J. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Slaughter (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Solarz, S. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	?	0	0	0
Solomon (Republican)	S	S	0	S	S	S	?	S	S	S	S	0	0	75	69
Towns, E. (Democrat)	0	0	0	0	0	0	?	?	0	0	0	0	0	0	0
Walsh, J. (Republican)	0	0	S	S	0	0	S	S	S	0	0	S	0	46	46
Weiss, T. (Democrat)	0	0	0	?	0	0	0	0	0	0	0	0	0	0	0
North Carolina:															
Ballenger, C. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Coble, H. (Republican)	0	S	S	S	S	S	S	S	S	S	S	S	S	92	92
Hefner, W. (Democrat)	0	0	0	0	0	S	0	S	0	0	0	0	S	23	23
Jones, W. (Democrat)	0	S	S	S	0	S	S	0	0	0	0	0	S	46	46
Lancaster (Democrat)	0	0	0	0	0	S	0	0	0	0	0	S	0	15	15
McMillan, A. (Republican)	0	0	S	0	S	S	S	S	S	S	S	0	S	69	69
Neal, S. (Democrat)	0	0	0	0	0	0	0	S	0	0	0	0	0	8	8
Price, D. (Democrat)	0	0	0	0	0	S	0	0	0	0	0	0	0	8	8
Rose, C. (Democrat)	0	0	S	S	0	S	0	0	0	0	0	0	S	31	31
Taylor, C. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Valentine, T. (Democrat)	S	S	S	S	S	S	?	S	S	0	0	S	0	75	69
North Dakota: Dorgan, B. (Democrat)	S	S	S	S	S	S	?	S	S	0	0	S	0	75	69
Ohio:															
Applegate (Democrat)	0	0	0	0	0	S	0	S	S	0	0	0	0	23	23
Boehner, J. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Eckart, D. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Feighan, E. (Democrat)	0	0	0	0	?	0	0	0	0	0	0	?	?	0	0
Gillmor, P. (Republican)	0	S	S	0	0	0	S	S	S	S	0	S	S	62	62
Gradison, B. (Republican)	S	0	0	0	S	S	S	S	0	S	0	0	S	54	54
Hall, T. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	S	S	15	15
Hobson, D. (Republican)	S	S	S	0	S	0	S	S	S	S	0	0	S	69	69
Kaptur, M. (Democrat)	?	?	0	0	0	S	0	0	0	0	0	0	S	18	15
Kasich, J. (Republican)	0	S	0	0	S	S	S	S	S	S	0	0	0	54	54
Luken, C. (Democrat)	0	0	0	0	0	S	0	0	0	0	0	0	0	8	8
McEwen, B. (Republican)	S	S	S	0	S	S	S	S	S	S	S	S	S	92	92
Miller, C. (Republican)	?	S	0	0	S	0	S	S	S	S	S	S	S	75	69
Oakar, M. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	?	S	8	8

HOW THE HOUSE VOTED—Continued

[Legend: S—SUPPORTED private property position; O—OPPOSED private property position; ?—Did not vote; P—Voted "present"; C—Voted "present" to avoid conflict of interest; I—Ineligible to vote at the time; X—Speaker of the House; excused himself from voting]

Congressman	Votes													Percent support of—	
	1	2	3	4	5	6	7	8	9	10	11	12	13	Votes cast	All votes
Oxley, M. (Republican)	S	S	S	0	S	S	S	S	S	S	0	S	S	92	92
Pease, D. (Democrat)	0	0	0	0	0	S	0	0	0	0	0	0	0	8	8
Regula, R. (Republican)	0	0	S	0	S	S	S	S	S	S	0	0	0	62	62
Sawyer, T. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Stokes, L. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Traficant, J. (Democrat)	0	0	S	0	0	S	0	0	0	0	0	0	S	23	23
Wylie, C. (Republican)	0	0	S	S	S	S	?	0	S	S	0	0	0	50	46
Oklahoma:															
Brewster, B. (Democrat)	0	0	S	S	S	S	S	S	0	0	0	S	S	62	62
Edwards, M. (Republican)	S	S	S	S	S	S	S	?	S	S	S	S	S	100	92
English, G. (Democrat)	S	0	S	S	0	S	0	S	0	0	0	S	S	54	54
Inhofe, J. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
McCurdy, D. (Democrat)	0	0	0	0	0	S	0	S	0	0	0	S	0	23	23
Synar, M. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Oregon:															
AuCoin, L. (Democrat)	0	0	S	S	0	0	0	0	0	0	0	S	S	31	31
DeFazio, P. (Democrat)	0	0	S	S	0	0	0	S	0	0	0	S	S	38	38
Kopetski, M. (Democrat)	0	0	S	S	0	0	0	S	0	0	0	S	?	33	31
Smith, B. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Wyden, R. (Democrat)	0	0	0	0	0	0	0	S	0	0	0	0	S	15	15
Pennsylvania:															
Blackwell, L. (Democrat)	I	I	I	I	I	I	0	0	0	0	0	0	0	0	0
Borski, R. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Clinger, W. (Republican)	S	0	0	0	0	S	S	S	S	S	S	0	S	62	62
Coughlin, L. (Republican)	0	0	S	0	0	0	S	S	0	0	0	?	?	27	23
Coyne, W. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Foglietta, T. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Gaydos, J. (Democrat)	0	0	S	0	0	S	?	S	0	0	0	?	0	27	23
Gekas, G. (Republican)	S	S	S	S	S	S	S	S	S	S	S	0	S	92	92
Goodling, B. (Republican)	S	S	S	0	S	S	S	S	S	S	0	S	S	85	85
Gray, W. (Democrat)	0	0	?	0	I	I	I	I	I	I	I	I	I	0	0
Kanjorski, P. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Kolter, J. (Democrat)	0	0	?	?	0	0	?	S	0	S	0	?	0	22	15
Kostmayer (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
McDade, J. (Republican)	0	S	S	0	0	S	?	S	0	S	0	0	S	50	46
Murphy, A. (Democrat)	0	S	0	0	0	0	?	S	0	0	0	0	S	25	23
Murtha, J. (Democrat)	0	0	S	S	0	S	0	0	0	0	0	0	S	31	31
Ridge, T. (Republican)	?	S	S	0	0	S	S	0	S	0	?	0	0	45	38
Ritter, D. (Republican)	0	S	0	0	0	S	0	S	S	0	0	0	S	38	38
Santorum, R. (Republican)	S	0	S	0	S	S	S	S	S	S	0	0	S	69	69
Schulze, D. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Shuster, B. (Republican)	S	S	S	0	S	S	S	S	S	S	S	S	S	92	92
Walker, R. (Republican)	S	S	0	0	S	S	S	S	S	S	S	0	S	77	77
Weldon, C. (Republican)	0	0	0	0	0	0	S	S	0	0	0	0	0	15	15
Yatron, G. (Democrat)	0	0	0	?	0	0	?	S	0	0	0	0	0	9	8
Rhode Island:															
Machtley, R. (Republican)	0	S	0	S	0	0	0	0	0	0	0	0	0	15	15
Reed, J. (Democrat)	0	0	S	0	0	0	0	?	0	0	0	0	0	8	8
South Carolina:															
Derrick, B. (Democrat)	0	0	0	0	0	S	0	S	0	0	0	0	S	23	23
Patterson, L. (Democrat)	0	0	0	0	0	S	0	S	0	0	0	0	S	23	23
Ravenel, A. (Republican)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Spence, F. (Republican)	0	0	S	S	S	0	S	S	S	S	S	S	0	69	69
Spratt, J. (Democrat)	0	0	0	0	0	0	0	S	0	0	0	0	S	15	15
Tallon, R. (Democrat)	0	0	S	0	0	0	0	S	S	0	0	?	?	27	23
South Dakota: Johnson, T. (Democrat)	0	0	S	S	0	S	0	0	0	0	0	S	S	38	38
Tennessee:															
Clement, B. (Democrat)	0	0	0	S	0	S	?	0	0	0	0	0	0	17	15
Cooper, J. (Democrat)	0	0	0	0	0	S	0	0	0	0	0	0	S	15	15
Duncan, J. (Republican)	S	S	S	0	S	S	S	S	S	S	S	0	S	85	85
Ford, H. (Democrat)	?	?	0	?	?	0	0	0	0	0	0	0	S	11	8
Gordon, B. (Democrat)	0	0	0	0	0	S	0	S	0	0	0	0	0	15	15
Lloyd, M. (Democrat)	0	0	0	0	S	S	?	S	0	0	0	0	0	25	23
Quillen, J. (Republican)	S	S	S	S	S	S	?	S	S	S	0	S	S	92	85
Sundquist, D. (Republican)	0	S	S	0	S	S	S	S	S	S	S	S	S	85	85
Tanner, J. (Democrat)	0	0	0	S	S	?	S	S	0	0	0	0	S	42	38
Texas:															
Andrews, M. (Democrat)	0	0	0	0	0	S	0	0	0	0	0	0	0	8	8
Archer, B. (Republican)	S	S	0	0	0	S	S	S	S	S	S	0	?	67	62
Armey, D. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Barton, J. (Republican)	?	?	S	S	?	S	S	S	S	S	S	S	0	90	69
Brooks, J. (Democrat)	0	0	0	0	0	S	?	S	0	0	0	0	S	25	23
Bryant, J. (Democrat)	0	0	0	0	0	0	0	S	0	0	0	0	0	8	8
Bustamante, A. (Democrat)	?	?	S	S	0	S	S	0	0	0	0	S	S	55	46
Chapman, J. (Democrat)	?	?	S	S	?	S	S	S	S	0	0	S	S	80	62
Coleman, R. (Democrat)	0	0	S	S	0	S	0	0	0	0	0	0	0	23	23
Combest, L. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
de la Garza, E. (Democrat)	0	0	S	S	0	0	?	0	0	0	0	S	S	33	31
DeLay, T. (Republican)	S	S	0	S	S	S	S	S	S	S	S	S	S	92	92
Edwards, C. (Democrat)	0	0	S	S	0	S	0	S	0	0	0	S	S	46	46
Fields, J. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Frost, M. (Democrat)	?	?	S	S	0	0	0	S	0	0	0	S	S	45	38
Geren, P. (Democrat)	?	?	S	S	0	S	S	S	0	0	0	S	0	55	46
Gonzalez, H. (Democrat)	S	S	S	S	0	0	0	0	0	0	0	0	S	38	38
Hall, R. (Democrat)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100
Johnson, S. (Republican)	I	I	S	S	S	S	S	S	S	S	S	S	S	100	100
Laughlin, G. (Democrat)	0	0	S	S	0	S	?	S	S	S	0	S	S	67	62
Ortiz, S. (Democrat)	0	0	S	S	0	S	0	S	S	0	0	S	S	54	54
Pickle, J. (Democrat)	?	?	S	S	0	S	0	S	0	S	0	S	S	64	54
Sarpalius, B. (Democrat)	0	S	S	S	0	S	S	S	0	0	0	S	S	62	62
Smith, L. (Republican)	0	0	0	0	S	0	S	S	S	S	?	0	S	50	46
Stenholm (Democrat)	S	S	S	S	0	S	S	S	S	S	S	S	S	92	92
Washington, C. (Democrat)	?	0	0	?	0	0	0	0	0	?	0	0	0	0	0
Wilson, C. (Democrat)	0	0	0	0	0	S	0	S	0	?	?	0	S	27	23
Utah:															
Hansen, J. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	?	100	92
Orton, B. (Democrat)	S	S	S	S	S	S	0	S	S	S	0	S	S	85	85
Owens, W. (Democrat)	0	0	S	S	?	0	0	S	0	S	0	S	0	42	38
Vermont: Sanders, B. (Independent)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Virginia:															
Allen, G. (Republican)	I	I	I	I	I	I	S	S	S	S	S	S	S	100	100
Bateman, H. (Republican)	S	S	S	S	S	S	S	S	0	S	S	S	S	92	92
Bliley, T. (Republican)	S	S	S	S	S	?	S	S	S	S	S	S	S	100	92

HOW THE HOUSE VOTED—Continued

[Legend: S—SUPPORTED private property position; 0—OPPOSED private property position; ?—Did not vote; P—Voted "present"; C—Voted "present" to avoid conflict of interest; I—Ineligible to vote at the time; X—Speaker of the House; excused himself from voting]

Congressman	Votes													Percent support of—	
	1	2	3	4	5	6	7	8	9	10	11	12	13	Votes cast	All votes
Boucher, R. (Democrat)	0	0	0	0	0	S	0	0	0	0	0	0	0	8	8
Moran, J. (Democrat)	0	0	S	0	S	0	0	0	0	S	0	?	0	25	23
Olin, J. (Democrat)	S	0	S	S	S	S	S	S	0	0	0	S	S	69	69
Payne, L. (Democrat)	0	S	0	0	0	S	0	S	0	0	0	0	0	23	23
Pickett, O. (Democrat)	0	0	0	0	0	S	S	S	0	0	0	S	S	38	38
Sisisky, N. (Democrat)	0	0	0	0	0	S	S	S	0	S	S	S	S	54	54
Slaughter, (Republican)	S	S	S	S	?	?	I	I	I	I	I	I	I	100	67
Wolf, F. (Republican)	S	S	S	S	S	S	S	S	0	S	S	S	S	92	92
Washington:															
Chandler, (Republican)	0	0	S	S	S	S	S	S	S	S	S	S	S	85	85
Dicks, N. (Democrat)	0	0	0	0	0	?	0	0	0	0	0	0	S	8	8
Foley, T. (Democrat)	X	X	X	X	X	X	X	X	X	X	X	X	X	n/a	0
McDermott, (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	S	8	8
Miller, J. (Republican)	0	0	0	?	S	0	0	0	0	S	0	0	S	25	23
Morrison, S. (Republican)	0	0	S	S	0	S	?	S	S	S	0	S	S	67	62
Swift, A (Democrat)	0	0	S	?	0	S	0	0	0	S	0	S	S	42	38
Unsoeld, J. (Democrat)	0	0	0	0	0	0	0	S	0	0	0	0	S	15	15
West Virginia:															
Mollohan, (Democrat)	0	0	S	S	0	0	0	S	0	0	0	0	S	31	31
Rahall, N. (Democrat)	0	0	0	0	0	0	0	S	0	0	0	0	S	15	15
Staggers, H. (Democrat)	0	0	S	S	0	S	0	S	0	0	0	S	S	46	46
Wise, B. (Democrat)	0	0	0	0	0	S	0	S	0	0	0	0	0	15	15
Wisconsin:															
Aspin, L. (Democrat)	0	0	0	0	0	S	?	0	0	0	0	0	S	17	15
Gunderson, (Republican)	0	0	S	S	0	S	S	S	0	S	0	S	0	54	54
Kleczka, G. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	?	0	0
Klug, S. (Republican)	S	0	S	0	S	S	S	S	0	S	0	0	0	54	54
Moody, J. (Democrat)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Obey, D. (Democrat)	0	0	0	0	0	0	0	0	0	0	?	0	S	8	8
Petri, T. (Republican)	0	0	0	0	0	S	0	S	S	0	0	0	0	23	23
Roth, T. (Republican)	0	S	S	S	S	S	?	S	0	0	S	S	S	75	69
Sensenbrenner, F. (Republican)	0	0	0	0	S	S	S	S	S	S	S	0	0	54	54
Wyoming: Thomas, C. (Republican)	S	S	S	S	S	S	S	S	S	S	S	S	S	100	100

THE 1991–92 CONGRESSIONAL PRIVATE PROPERTY VOTE INDEX IS CO-SPONSORED BY

Adirondack Blue Line Confederation.
Adirondack Solidarity Alliance.
American Forest Resource Alliance (AFRA).
Alaska Forest Association.
Alaska Miners Association.
Alaska Support Industry Alliance.
Alaska Wetlands Coalition.
Alliance for America.
Alta California Alliance.
American Environmental Foundation.
American Loggers Solidarity.
Blue Ribbon Coalition.
California Assn. of Four Wheel Drive Clubs Inc.
California Desert Coalition (CDC).
California Forestry Association (CFA).
California Off-Road Vehicle Association (CORVA).
California Outdoor Recreation League.
California Women in Timber.
California-Nevada Snowmobile Association.
CALLME/Maine.
Carbon County Coalition.
Carroll County Property Owners Association.
Central Adirondack Defense Committee.
Citizens Against Wilderness.
Citizens For Constitutional Property Rights Inc.
Citizens For Responsible Zoning.
Citizens Information Network.
Colorado Inholders Association.
Colorado Off Highway Users.
Columbia Gorge United (CGU).
Committee For Freedom.
Committee To Preserve Property Rights.
Communities For A Great Northwest.
Communities For A Great Oregon.
Davis Mountains Trans Pecos Heritage Association.
Defenders of Property Rights.
Eastern Oregon Mining Association.
Environmental Conservation Association (ECO).
Everglades Coordinating Council.
Fairness To Land Owners Committee (FLOC).
Family Water Alliance.
Florida Forestry Association.
Florida Land Council.
Friends of the Bow Inc.
Friends of the River (Massachusetts).
Gallatin Valley Snowmobile Association.
Gorge Resource Coalition.
Grassroots For Multiple-Use.
High Desert Multiple-Use Coalition.
International Snowmobile Council.
Jefferson County Property Rights Alliance.
Klamath Alliance For Resources and Environment.
Land Improvement Contracters Association (LICA).
Landowner Association of North Dakota.
Loggers Legal Defense Fund.
Louisiana Forestry Association.
Maine Conservation Rights Institute (MECRI).
Mason County Private Property Alliance.
Midwest Trail Riders Association.
Mississippi River Inholders Association.
Missouri Landowners.
Monroe County United.
Montana 4 x 4 Association Inc.
Montana Mining Association.
Montana Snowmobile Association.
Montana Trail-Vehicle riders.
Montana Woolgrowers.
Montanians For Multiple-Use.
Mothers Watch.
Multiple-Use Association.
Multiple-Use Land Alliance.
National Association of Mining Districts.
National Hardwood Lumber Association.
National Inholders Association.
National Outdoor Coalition.
Nevada Cattlemens Association.
Nevada Farm Bureau.
New Hampshire Landowners Alliance.
New Mexico Cattle Growers Association.
North American Wholesale Lumber Association.
Northern Resource Alliance.
Northshore Association.
Northwest Legal Foundation.
Northwest Mining Association.
Oakridge Yellow Ribbon Coalition.
Off-Road Vehicle Legislative Coalition (ORVIC).
Oregon Lands Coalition.
Oregon Women In Timber.
Oregonians For Food And Shelter.
Oregonians In Action.
Outdoors Unlimited.
Oversnow Access.
Pacific Mining Association.
Pacific NW 4 Wheel Drive Association.
Pennsylvania Landowners Association.
People For The West—Washington.
People In Need Of Employment (PINE).
Petroglyph Citizens Alliance.
Political Action League of Shrimpers.
Private Landowners of Wisconsin.
Property Rights Alliance.
Public Land Users Association.
Public Land Users Society.
Ranchers and Farmers for Protection of Property Rights.
Resource Development Council.
Riverside and Landowners Protection Coalition Inc.
Save Our Land.
Shasta Alliance For Resources and Environment (SHARE).
Society for the Protection and Care of Wildlife.
South Eastern Lumber Manufacturers.
Southern Forest Products Association.
Southern Oregon Alliance For Resources.
Stand Up, Take Action.
Stop Taking Our Property.
Take Care.
Texas Shrimp Association.
The Umbrella Group (TUG).
Tower Shrimpers.
Trail Recreation Alliance—Michigan.
Trinity County Concerned Citizens.
Trinity County Property Owners.
Tuolumne Alliance For Resources and Environment (TUCARE).
United Property Owners of Washington.
Vermont Property Rights Center.
Washington Commercial Forest Action Committee.
Washington Contract Loggers Association.
Washington County Alliance.
Washington Friends of Farms and Forests.
Washington Private Property Coalition.
Washington Property Owners Coalition.
Washington Property Rights Network.

Washington Rivers Coalition.
Washington Snowmobile Association.
Washington State Farm Bureau.
Washington Woolgrowers.
Western Forest Industries.
Western Mining Council.
Western States Petroleum Association.
Wild Rivers Conservancy Federation.
Wilderness Impact Research Foundation (WIRF).
Woods Industry Seeks Equality (WISE).
World Rockhounds Association.
Wyoming Farm Bureau.
Wyoming Public Lands Council.
Wyoming Woolgrowers Association.
Yellow Ribbon Coalition.•

TRIBUTE TO SENATOR TIM WIRTH

• Mr. KENNEDY. Mr. President, it is a privilege to join other Senators on both sides of the aisle in paying tribute to our good friend and outstanding colleague, TIM WIRTH.

In their first term, many Senators concentrate on meeting their constituents' needs, leaving the broader, national issues to others. But TIM WIRTH has done both—and done them brilliantly. He has been an outstanding U.S. Senator, and an outstanding Senator for Colorado. He has attended to his State's interests with extraordinary dedication, and he has also pursued broad concerns in the highest interests of the Nation as a whole.

He has been a special leader on environmental and energy issues. He was one of the first to draw the Nation's attention to the problems of acid rain, global deforestation, and the deterioration of the ozone layer. With the late Senator John Heinz, he pioneered the concept of using free market strategies to help business meet environmental goals. And he played a key role throughout the national energy policy debate, securing important provisions that will move the country forward in the areas of energy efficiency, conservation, and the development of renewable energy sources.

During all of TIM's 6 years in the Senate, I have had the honor of serving with him on the Armed Services Committee. He has been an effective and committed advocate for a stronger and saner national defense. Many of us have been particularly impressed with TIM's insights on the changes taking place in the post-cold war era, and the ways in which we must adjust our national security priorities. He was an early supporter of confidence-building measures to reduce the risk of unintentional conflict. We also worked well together to end the production of plutonium—and those efforts now appear to be on the verge of success.

TIM has also been the leader in the important effort to repeal the cruel regulations that deny military women the right to reproductive choice while serving our country overseas. In keeping with his environmental leadership, he has moved effectively to persuade the military to direct more attention to environmental concerns, especially in urging the shut down and clean-up of the nuclear weapons plant at Rocky Flats. And he has also been a leader in developing initiatives for converting the defense industry to civilian goals, for retraining workers, and for assisting communities endangered by defense spending cutbacks.

TIM WIRTH will be missed in the Senate, and we send our best wishes to TIM and his family in the years ahead. We will miss his warmth and good humor. His constituents in Colorado will miss the strong advocacy and talent that he used so effectively on their behalf, and the Nation will miss his leadership on the many key issues that so vitally affect our future. We all hope that, although the country is losing a Senator, it will be gaining a Cabinet officer.•

HURRICANE ANDREW AND EMERGENCY SUPPLEMENTAL APPROPRIATIONS

• Mr. JOHNSTON. Mr. President, as you know, on September 18, the Congress passed emergency legislation to provide desperately needed assistance to those living in areas devastated by Hurricane Andrew. During Senate action on this aid package, my colleagues and I succeeded in including an additional $165 million to help compensate Louisianians for damages that would not be covered under standard disaster assistance programs.

What you may not be aware of is that not all provisions of this legislation will go into effect automatically. A number of the largest and most important grants and payments are contingent upon a Presidential budget request. Over $100 million provided by the Congress will not be transferred to those who badly need this aid unless President Bush so specifies.

Among these contingent provisions are: $8.5 million, National Oceanic and Atmospheric Administration [NOAA] grant, to State of Louisiana for restoration of shellfish/finfish habitat—the President has released $5.1 million; $24.5 million, Fish and Wildlife Service grant for freshwater fish recovery; $1.5 million, USL Wetlands Center; and $1.9 million, U.S. Geological Survey, study of barrier islands.

Other grants, which will be distributed nationwide—and which Louisiana will share in include $65 million from NOAA to commercial fishermen whose livelihoods suffered due to the hurricane. The Louisiana Department of Wildlife and Fisheries estimates direct losses to commercial fishermen and seafood harvesters at over $265 million.

The Fish and Wildlife Service grant—$24.5 million—for freshwater fish recovery will be used to prepare and execute restoration plans for game fish, alligators, pelicans, fur bearers and game and nongame wildlife resources. The plans will include the construction of necessary hatchery and incubation facilities and land acquisition.

I hope the President will see fit to release total funding for these projects. With remarkable speed, the Congress passed legislation which provides comprehensive and timely assistance to the distressed people and industries of our State. Now it is up to President Bush to release the additional funding for disaster relief.

I have also attached, for the RECORD, a copy of a letter sent to the President, urging that these moneys be released.

I ask that it be printed.

The letter follows.

SEPTEMBER 21, 1992.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: H.R. 5620, legislation providing emergency funds for those living in areas devastated by Hurricane Andrew and other natural disasters, was cleared by the Congress for your approval on Friday, September 18.

This legislation includes funding for a number of important recovery initiatives for Louisiana, some of which will only be available when you submit a budget request for them. We bring these items to your attention, and urge you to act quickly to submit requests so that these funds can be made available to facilitate our state's economic recovery.

Following is a list of these priority items, and a brief summary of their purpose.

Department of Agriculture, U.S. Forest Service—$4,140,000 for grants to the affected states through the state and private forestry program, including $2.9 million as noted on page 55 of S.Rpt. 102-395 for the State of Louisiana.

These funds will enable our state's Office of Forestry to develop a timber management recovery plan to control disease and halt further losses in the 21 parishes where over $40 million in damage to commercial timber stocks occurred. The Forestry industry is Louisiana's second largest employer. Facilitating the recovery of this important sector is essential to Louisiana's economic future.

These funds will also provide assistance to the 53 communities in Louisiana where significant tree damage occurred to repair and replace damaged trees at some thirteen state owned facilities. We would note that these areas are not eligible for funds provided in this legislation under the Tree Assistance Program and that FEMA's disaster relief fund does not provide assistance to communities for maintenance or replanting damaged or destroyed tree stocks.

Department of Commerce, National Oceanic and Atmospheric Administration—$8.5 million for a grant to the Louisiana Department of Wildlife and Fisheries to restore badly damaged shellfish habitat destroyed as Hurricane Andrew moved ashore.

Preliminary estimates indicate that over $7.8 million in damages have occurred to Louisiana's saltwater fishery, excluding expected losses for shrimp which have not yet been estimated. Altogether, the total wholesale saltwater fishery losses (again excluding shrimp, which has an estimated wholesale annual value of $175 million) are expected to exceed $36 million.

It is critically important that work begin immediately to restore this valuable resource, which employs many thousands of Louisianians directly and in related industries throughout the southern region of our State. We would also note that in some cases, particularly oysters, it will take several years for a full recovery once the habitat is restored. No funds are available through the FEMA disaster relief fund for this purpose.

Department of the Interior, Fish and Wildlife Service—$24.5 million as a grant to the Louisiana Department of Wildlife and Fisheries to restore freshwater fish habitat which was severely damaged by winds and tidal surge as Hurricane Andrew made landfall.

Louisiana's Department of Wildlife and Fisheries now estimates that as many as three to four hundred million fish have been killed in the Atchafalaya Basin and elsewhere throughout southern Louisiana, constituting what many biologists believe to be the largest fish kill ever as a result of a hurricane. Altogether the total wholesale freshwater commercial loss is expected to exceed $26 million, and the total recreational loss will be more than $72 million.

Losses of this magnitude will be devastating to the economy of this area, including the many businesses and restaurants which depend on the vitality of commercial and recreational fishing. Many in this area also depend on the health of this resource to put food on the table and these fishermen and their families will suffer. It is therefore critical that every effort be made to develop and execute a sound, aggressive plan to restore this habitat as quickly as possible. No funds are available through the FEMA disaster relief fund for this purpose.

Department of the Interior, Fish and Wildlife Service—$1.5 million for the National Wetlands Center, Lafayette to assess the effects of Hurricane Andrew on Louisiana's coastal ecosystems.

Louisiana's coastal wetlands were hit hard as Hurricane Andrew moved ashore. These funds will allow important monitoring activities to begin this fall and assess the impact of the damage to these areas on migratory bird habitat as well as on forested wetlands and coastal marshes. These assessments will provide valuable baseline data for future coastal restoration projects as well as hurricane protection projects in these vulnerable areas. No FEMA assistance is available.

Department of the Interior, Geological Survey—$1.8 million to undertake a comprehensive investigation including documentation of the amount of shoreline change along Louisiana which occurred as a result of Hurricane Andrew.

This investigation is a needed follow up to the original Louisiana barrier island study undertaken by the Geological Survey which has carefully developed sound data on the shoreline and barrier islands off Louisiana's coast. Preliminary reports indicate that there has been massive erosion and degradation of the Timbalier chain and Isle Derniere, which protect ecologically and economically important wetlands from the marine environment. Beaches on these and other barrier islands reportedly have eroded more than 120 feet in 2 days, and more than 15 major hurricane channels have dissected these islands. As a result of these and other damages, the baseline established by the Survey was destroyed.

The changes which have occurred will have important consequences for planning and implementation strategies for future projects under the Coastal Wetlands Planning, Protection and Restoration Act, and will help assure that Federal and State funds committee to coastal restoration projects are directed to projects with demonstrated success. No FEMA assistance is available for this purpose.

Department of the Interior, Minerals Management Service—$1.2 million to fund the additional oversight and workload necessary to review permits, plans, pipeline repairs and inspections necessary to resume fully oil and gas production offshore Louisiana.

Of the 3852 offshore facilities in the Gulf of Mexico, 2000 were in the path of Hurricane Andrew. Fortunately, there were no reports of death or injury because of the hurricane to persons working offshore. However, there was damage to offshore structures, particularly in the Ship Shoal and south Timbalier areas south of Morgan City. Altogether, preliminary estimates indicate that 166 facilities were damaged notably. Some 20 percent of these (34) were toppled, and an additional 17 percent (28) suffered severe structural damage. In addition, 83 segments of oil and gas pipeline were damaged.

In offshore western Louisiana, production will not be resumed until pipelines have been tested for pressure integrity. These funds will enable this testing to go forward quickly and will also enable MMS to undertake an evaluation with industry of representative platform and other structural designs including engineering assessments and testing of offshore structures. No FEMA assistance is available for this purpose.

Department of the Interior, National Park Service—$300,000 to be made available as a grant to the National Trust for Historic Preservation as specified on page 55 of S. Rept. 102–395.

One of the important bases of Louisiana's economy is tourism, which in many small towns throughout South Louisiana has been attractive because of the existence of a variety of significant historic structures. According to a preliminary damage assessment report prepared by Louisiana's Office of Historic Preservation, Hurricane Andrew caused damage to national landmarks and historic districts in at least 11 parishes. In St. Martinville, 33 historic buildings sustained varying degrees of damage, including the Old Castillo Hotel which is one of the centerpieces of the historic area. Some 60 houses and 17 commercial buildings in the City of Franklin's historic district and ten landmarks were damaged, some such as the African Methodist Episcopal Church and the Old Knights of Columbus Hall severely. All 82 structures within the historic district of Morgan City suffered some degree of damage.

These funds will enable the National Trust to conduct a thorough damage assessment of historic properties harmed by Hurricane Andrew and to fund small emergency grants and technical assistance including design assistance needed to stabilize and save these important structures. If this assistance is not made available immediately, we will lose an opportunity to see that restoration of these structures is undertaken with the best technical advice to preserve their historical and architectural integrity. No funds are available for this need under the FEMA disaster relief fund.

DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION

We also note that $30 million was made available to the Department of Labor, Employment and Training Administration for the period July 1, 1992 through July 1, 1993 contingent upon the submission of an official budget request for programs to retrain those who have been thrown out of work as a result of recent natural disasters.

Louisiana's Department of Agriculture estimates that damage to our sugar crop alone will result in the loss this year of 5000 jobs in the production, processing and servicing industries. Similarly, damage to oyster beds may result in the loss of as many as three or four thousand jobs in this labor intensive industry. We do not yet have estimates on jobs losses due to damage to our important shrimp fisheries, but as noted earlier, this sector alone has an estimated wholesale value of approximately $175 million.

Even before the hurricane, some of the most severely impacted parishes faced difficult economic conditions. St. Mary Parish's unemployment rate has been over 12 percent since January of this year; Terrebonne's over 10 percent; Iberia's over 10%; Assumption's over 12%. In fact, only one of the eight most impacted parishes had an unemployment rate below the national average this year, and that parish (Lafourche) was only 0.3% below the national average before Hurricane Andrew hit.

Many workers employed in the industries damaged badly by Hurricane Andrew are unskilled and will require training and special assistance to find employment elsewhere until these sectors are revived. We urge you to release these funds as soon as possible with a set aside for Louisiana and to assist our state in every way possible in its efforts to develop and implement a retraining program.

Respectfully yours,

J. Bennett Johnston, John B. Breaux, U.S. Senate; Jerry Huckaby, Billy Tauzin, Jimmy Hayes, Jim McCrery, Bob Livingston, Richard Baker, Clyde Holloway, William Jefferson, Members of Congress.•

A RAY OF HOPE FOR NEWARK

• Mr. LAUTENBERG. Mr. President, I rise today to call my colleagues' attention to a distinguished individual who has helped bring growth, rebirth, and hope to the city of Newark: Raymond Chambers. Mr. Chambers has provided his energy and vision to create a variety of innovative projects to improve the life of Newark's citizens. The success of these projects has been felt throughout the city and created models for the Nation.

The Wall Street Journal recently published an article about Mr. Chambers which I would like to share with my colleagues. I ask that the article be printed in the Record at this time and hope that my colleagues will share in my pride in knowing this dedicated son of Newark.

The article follows:

[From the Wall Street Journal, Sept. 30, 1992]

Raymond Chambers Creates Ripple Effects in Schools, Politics and Cultural Life—Tutors and Mentors for Kids

(By Ralph T. King, Jr.)

Newark, NJ.—Raymond Chambers once did a leveraged buy-out of Gibson Greetings Inc., earning more than $100 million with a $1 million investment. Today he is leveraging souls in this downtrodden city, also with impressive results.

Mr. Chambers was born and raised in Newark, the son of a blue-collar warehouse manager. He went on to become one of the nation's wealthiest men as a pioneer in leveraged buy-outs with William E. Simon, the former Treasury secretary.

Meanwhile, in the years following Newark's bloody 1967 riots, the social fabric of Mr. Chamber's hometown disintegrated. It lost one-third of its population. Of the remaining 275,000 residents—85% black and Hispanic—more than one in four lived below the poverty line. It became a place where kids stole cars every night simply for sport and where drug addicted parents sometimes abandoned newborns in hospitals for months.

Newark's educational, cultural and political institutions, with few exceptions, had decayed to a shocking degree.

So in 1986, Mr. Chambers left the business world and waded in. His solution was to enter all three areas with big projects that would generate ripple effects beyond the scope of his resources. Mr. Chambers's use of leverage—getting projects off the ground with seed money, making some programs profit-makers that can support others, financing an effort with a highly leveraged commodity fund—offers a lesson in how philanthropy and shrewd business tactics can work together.

Since 1986 Mr. Chambers has worked full time to try to rebuild Newark, spending more than $50 million of his own money and committing another $36 million in the form of guarantees to donate the cash if no one else will. Yet, through it all, he has tried to avoid publicity. At the ground-breaking for a movie theater being built largely because of his efforts, he stood at the back of the crowd, in dark glasses, while civic leaders made speeches and took bows on the stage. He has declined many requests for interviews. For this article, he did provide background information and issued a brief statement for the record, but only because this reporter, at Mr. Chambers's suggestion, once spent five months assisting in a weekend tutoring program he sponsored.

"Ray stands out as the American businesses entrepreneur of the Reagan era who has made an investment of a scale and an intensity that I don't think anyone else has matched," says Peter Goldmark Jr., president of the Rockefeller Foundation. While the Fords and Rockefellers in their day may have had a broader impact on the social welfare of places like New York City and Detroit, he says, "Ray is unique because nobody is doing that now. I don't think there is anybody from this era in his league."

DOWN AND OUT

Mr. Chambers, 50 years old, studied at Rutgers University in Newark and trained as a tax accountant at Price Waterhouse before pursuing investments. but in his statement, he says: "I had never seen people as down and out as the people of Newark. It had gotten so bad, I didn't think I had any alternative."

The movie theater, while one of his smaller projects, gives a good insight into Mr. Chambers's techniques. Newark no loner had a single cinema in its neighborhoods, let alone a bowling alley or a skating rink. Mr. Chambers couldn't get any bank to make an ordinary construction loan to build a theater in the most blighted neighborhood, the Central Ward. Finally, Newark-based First Fidelity Bank come through, after Mr. Chambers's foundation agreed to put up a comparatively small sum, $800,000, and guarantee $3.9 million more.

Then he went about trying to find a theater operator to run it at cost. A. Alan Friedberg, chairman of Loews Theater Management Corp., a unit of Sony Corp., finally agreed. "As I thought about it, I realized I didn't want to be just another CEO interested only in profits," Mr. Friedberg told the crowd at the ceremony. Rather, profits will go to the city, which in effect donated the land, and to a fund sponsoring civic and cultural activities in the vicinity.

To Mr. Chambers, that creates a kind of social leverage that's much more important than just giving money away.

Mr. Chambers's first move in Newark gave him the credibility he needed to go further. He got involved with the Boys' and Girls' Clubs of Newark. Their new director, Barbara Wright Bell, was struggling to renovate four dilapidated facilities that were overrun by youth gangs. Mr. Chambers liked her take-charge approach and grasp of inner-city problems.

He attracted an influential board and quadrupled its budget to $1.8 million with such new funding sources as an endowment with the stock from one of his leveraged buyouts, Six Flags Corp., and a golf outing patronized by his business associates. Within 18 months, Ms. Bell had restored the clubs to mint condition and provided a haven for about 5,000 new members. Mr. Chambers now has about $10 million invested in the clubs.

With this success, Mr. Chambers won the respect of Newark Mayor Sharpe James, who now calls the organization the "jewel" of the city. After some discussion, the two men found they shared a vision of what needed to be done. "I deal with thousands of people who have money and want to help the city. Ray is unique," says Mayor James. "He doesn't come in and say you must do this and that, and he never looks or asks for anything in return."

Mr. Chambers set to work, operating through an outfit called the Amelior Foundation, of which he is chairman. Ms. Bell, as president, oversees Amelior's projects. "A movement around one man or one organization is not healthy," says Ms. Bell, 42, who learned how to get things done in the inner city from her father, an Episcopal minister. "Newark wasn't visionless before Ray came in, but he brought the vision closer to reality, pushed it more quickly and gave it more energy.

Education was their greatest concern. Newark's school system didn't work. Despite a $406 million budget, many of its 49,000 students were learning as much in the streets as in the overcrowded classrooms. Mr. Chambers was struck by an idea he had heard about on CBS's "60 Minutes." Eugene Lang, a new York businessman, had promised college scholarships to 61 Harlem sixth-graders. In the end, about half finished at least some college.

Mr. Chambers though he could do better by starting sooner, as early as first grade; by being bigger, eventually to include 1,000 youngsters (650 are enrolled to date, from first grade through junior high); and by doing more, such as matching all the students with a mentor.

A SPEECH BY TUTU

Amelior endowed the program, called Ready (Rigorous Educational Assistance for Deserving Youth), with $10 million, or $10,000 per student. Part of that is reserved for college costs, but most pays for tutoring, horizon-widening activities (from visiting New York City museums to attending a speech by South African Bishop Desmond Tutu) and parental assistance. Mr. Chambers has donated about another $10 million to various universities, partly to guarantee spaces for Ready students.

It's too early to tell now well the program will work; Ready was started in 1987, and its oldest participants are in the 11th grade. But it has done wonders for Deneane Jacobs. "I like when people say to me, 'You ain't nothing,'" says the 17-year-old, whose 10 sisters all dropped out of high school. She plans to attend college and law school and hopes to become a judge. "When I get up there working in my fine office one day, I hope they're still around. I'm going to take them up there and show them," she says. Having cured a stutter and increased her reading speed, Deneane has markedly improved her grades.

Mr. Chambers wanted to find more immediate incentives than a college education to reduce Ready's current dropout rate of 35 percent (most of these move away or never attend a single Ready session). So Amelior paid the minority-owned City National Bank $300,000 for a 20 percent stake, and set aside $500 worth of shares for each kid to "inherit" upon graduation from high school. That not only helps the kids, but helped the bank survive to continue to make loans in inner-city Newark.

Many Ready parents are unemployed single mothers with lots to worry about besides making sure their kids stay in Ready. Mr. Chambers had heard about a skills training program for welfare mothers that was trying to expand. Amelior donated $400,000 to move the Newark Business Training Institute into new facilities, including a day-care center. This year it will turn out 400 graduates, double the 1990 number, and find jobs for three-quarters of them. Two dozen Ready moms are enrolled in classes this fall.

UNIQUE FUND

Another project is the One-to-One Partnership. Mentors for Ready kids were hard to find, so, with Geoffrey Boisi, he founded One-to-One to coordinate existing mentoring groups and start new ones. Mr. Boisi, 45, a veteran of Goldman, Sachs & Co., left Goldman to run One-to-One, inspired, he says, by Mr. Chamber's example.

The two men conceived a Wall Street commodity partnership whose trading profits will mostly go to kids who satisfy One-to-One program requirements, but also cover program costs. Charity-minded investors in the One-to-One Charitable Fund L.P. will earn a modest return at best, with the rest going to One-to-One. They won't face the typically huge risks associated with commodities because of hedging and diversification.

The fund's managers are four top performers—Paul Tudor Jones's Tudor Investment Corp., Blenheim Investment Inc., J.W. Henry & Co. and Moore Capital Management Inc.—all of which have waived their fees, which generally are 3 percent of funds under management plus up to 20 percent of trading profits.

The fund started trading two months ago with the first $20 million from investors. No results are available yet. Plans to raise $100 million by June were delayed after an article on the fund in this newspaper brought an unexpected number of inquiries, raising certain legal issues. The fund was restructured into a limited partnership, and fund-raising efforts recently resumed. Meanwhile, One-to-One has set up operations in 15 cities. Its Newark affiliate has arranged 250 matches and plans 1,500 more within five years.

Next on the agenda was the city's cultural life. Newark's downtown does have a first-class museum, but little else of interest to suburban residents or office workers after hours. A New Jersey performing-arts center had been proposed by state officials for years, but the idea languished, in part because of a $150 million price. In any case, other cities were more likely sites than Newark.

Then, in 1988, Mr. Chambers made state legislators an offer they couldn't refuse. He guaranteed that private donations would be raised to match a proposed $33 million state grant. Amelior put up the first big chunk. Mr. Chambers recruited a high-powered board including Ray Vagelos of Merck & Co. and Robert Winters of Prudential Insurance Co. of America, both big corporate donors, and called on others throughout the region. Newark's big employers joined quickly, but so did ones farther afield like American Telephone & Telegraph Co. and Matsushita Electric Corp. of America. Mayor James has agreed to try to scrape together $10 million of city money.

DOWNTOWN ANCHOR

Ground is not yet broken, but the arts center is scheduled to open in 1996. Nearly half of the immediate 12-acre site is set aside for future private development; leases are eventually expected to generate revenue for the center.

With Newark's downtown soon to have an anchor, business leaders across the state seem to be taking the city, and its problems, more seriously. Blue Cross and Blue Shield of New Jersey has just completed a new high-rise headquarters here, and will relocate 2,700 employees from the suburbs. City planners have drawn up a redevelopment scheme for the adjacent riverfront. Another ripple: The center will offer extra instruction in the arts and performance space for students in public schools. Ready kids are expected to participate.

The most recent splash is in the political arena. As Newark has decayed, squabbling over the shrinking pie has increasingly divided community groups. But a campaign called Newark Fighting Back marks a new approach. Its ostensible goal is to cut drug and alcohol abuse in the city's most depressed sections, fed by a five-year, $3 million grant from the Robert Wood Johnson Foundation. But more important is the fact that nearly 100 community leaders cooperated to get the grant.

Once again, Mr. Chambers, via the Boys' and Girls' Clubs, was a key player. Several small agencies in the city wanted to go after the grant independently. The clubs' leaders, with the mayor's help, roped them in and donated staff to put the proposal together.

SOME ARE CRITICAL

There is a nascent sense among the groups that they now have sufficient mass to map out broad, long-term solutions to such complex problems as unemployment, homelessness and crime. One who signed up, Virginia Jones, representing tenants in the high-rise building where she lives, has been criticizing city officials and anti-poverty programs for years. Her beef is that the people the programs are designed to help never get consulted. Says Ms. Jones: "This Fighting Back is a start. They understand my frustration."

Some people feel the projects engineered by Mr. Chambers are misdirected. The theater ground-breaking in June was interrupted by protesters calling for long-promised repairs at a rundown city housing project. Says David Weiner of the Newark Coalition for Low-Income Housing: "This kind of project is fine as an adjunct. The problem is that it becomes the primary focus while the more serious issue, housing, becomes secondary."

Others object that the arts center is no remedy for Newark's 13% unemployment rate or growing homelessness. Says Edward Verner, who heads an association of 200 leaders of local black churches: "There are people sleeping in parks a stone's throw from where the center will be. If you are going to renaissance Newark, then renaissance the poor first."

And, to be sure, life remains miserable for many Newark residents. Ronald Graham, a 25-year-old unemployed native of Newark, regards the .45-caliber pistol he owns as a basic necessity. "To me, this is hell," he says, gazing at a nearly empty parking lot in a shopping center with many vacant storefronts.

But, if nothing else, Mr. Chambers's leveraged approach is giving many people in Newark hope—a sense, for the first time in years, that something can be done to break their cycle of poverty. Says Rep. Donald Payne, who represents Newark: "This community is blessed to have a Ray Chambers."•

NATIONAL ENERGY POLICY ACT

• Mr. RIEGLE. Mr. President, I offer these remarks to supplement the statement I made on the day the energy bill passed the Congress. My remarks focus on the international amendment to PUHCA, contained in new section 33 of that act.

A holding company may wish to acquire or retain the securities of a foreign utility company or other interest in the business of a foreign utility company through the interposition of one or more subsidiaries. It is our intent that the definition of a foreign utility company and the provisions of subsections (b) and (c)(1) permit such acquisition and maintenance of an interest directly or indirectly such as through the interposition of one or more subsidiaries. Such subsidiaries would also be considered foreign utility companies, so long as such subsidiary satisfies all criteria established in subsection (c)(3) or is a nonoperating company that merely owns the securities of a foreign utility company. This is consistent with the longstanding interpretation by the Securities and Exchange Commission that the word "acquire" includes the direct and indirect acquisition.

A holding company may wish to make foreign investments in foreign utility operations in advance of the completion of a facility or make bids or proposals to build or acquire such facilities by creation of one or more intermediate subsidiaries organized for the purpose of becoming or owning a foreign utility company in the future. The formation, acquisition or ownership of such subsidiaries or their securities by a holding company falls within the meaning of subsections (b) and (c) and is to be considered the acquisition of a foreign utility company.

Senator JOHNSTON has previously stated that it is intended that an EWG may include ancillary facilities. Similarly, it is intended that the definition of a foreign utility company includes a company owning or operating such ancillary facility.•

TRIBUTE TO SENATOR ALLAN CRANSTON

• Mr. JOHNSTON. Mr. President, ALAN CRANSTON will leave this Chamber following a long and distinguished tenure. ALAN'S dedication to issues concerning veterans, women, children, nuclear disarmament, campaign finance reform, and the environment has been exemplary. His devotion to the people of California and the Nation will be a standard that future Members of the Senate will strive to maintain.

ALAN CRANSTON and I have worked together closely to conserve the precious natural resources in California and throughout the Nation. There has been no greater advocate than ALAN to preserve public lands, create forestry preserves and wildlife refuges, and maintain the wild and scenic river systems of this Nation. His service will be remembered and sorely missed by conservationists and environmentalists.

But, most of all, I will miss ALAN CRANSTON'S personal attention to the causes most dear to him. I will miss receiving the notes typed on his old typewriter, and I will miss his counsel. My hope is that ALAN will continue to share his insight with the Senate. I wish him success and satisfaction as he embarks on a new chapter of public service.•

TRIBUTE TO SENATOR BROCK ADAMS

• Mr. JOHNSTON. Mr. President, I rise today to pay tribute to my departing colleague, BROCK ADAMS. Prior to his service in the Senate, BROCK served as a Member of the House of Representatives and as Secretary of Transportation. The Senate will sorely miss BROCK'S perspective in the future.

BROCK ADAMS has long been an advocate for the powerless and a visionary for the potential of every individual in this Nation. It was primarily through his diligence that the landmark Older Americans Act amendments were signed into law this year. BROCK'S work as chairman of the Subcommittee on Aging must be continued if we are to confront the future challenges that our population will need to address to improve our quality of life.

BROCK ADAMS is also a champion of the issues and causes which affect his great State of Washington. We worked together during this session of Congress to pass the Elwha River Ecosystem and Fisheries Restoration Act. This legislation will balance the needs of his constituents of water and power with the need to restore salmon habitats in the Elwha River Valley. Through BROCK'S persistence, future generations will continue to enjoy the treasure of salmon in the Great Northwest.

I wish BROCK the very best in all of his future endeavors. He can be proud of his contributions in this chamber.•

RETIREMENT OF SENATOR WARREN RUDMAN

• Mr. JOHNSTON. Mr. President, it is a well known fact that the Senators whom the voters of New Hampshire send to Washington are, from Norris Cotton and Styles Bridges to WARREN RUDMAN, smart, stubborn, honest, fiercely independent people who want to get the job done quickly and well because they cannot wait to get back home.

In all seriousness, what WARREN RUDMAN has accomplished in 12 years of diligent study and hard work is more than most legislators achieve in a lifetime. WARREN's service on the Ethics Committee and during the Iran-Contra hearings has deservedly won him the respect of the entire Nation, not just the citizens of New Hampshire, and I wish that everyone had been as prescient about the dangers of deficits.

I have enjoyed our long association on the Appropriations Committee; WARREN's expertise on procurement will be sorely missed as the Subcommittee on Defense attempts to responsibly downsize the defense budget.

The people of New Hampshire will have numerous opportunities to express their appreciation for what WARREN RUDMAN, has done for them. On behalf of all citizens of Louisiana, I should like to thank him for what he has done for us, and especially for saving the Legal Services Corporation. Fiat Justicia and enjoy the air and water.•

CAPE MAY COUNTY DEMOCRATIC "HUMANITARIAN AWARD OF THE YEAR" RECIPIENTS

• Mr. LAUTENBERG. Mr. President, I rise today to honor the two recipients of the Cape May County Democratic Organization's 1992 "Humanitarian Award of the Year." Mrs. Dorothy Mack and J. Franklin "Pop" Menz were presented their awards at the Fall County Democratic Dinner on October 25, 1992.

Dorothy Mack was born in Millwood, NY, on May 13, 1910 and spent her young adult life in New York. In 1949, Mrs. Mack moved to Cape May County where she immersed herself into community involvement.

She first joined the Macedonia Baptist Church in Cape May City and became a Sunday school teacher there. This led to her involvement with the Cape May and Cumberland County Church School Union. Mrs. Mack was elected assistant superintendent of the union and held this office for many years.

Mrs. Mack attended Glassboro State College and in 1974, she was selected as "outstanding secondary teacher." In 1975, the Holly Shores Girl Scout Council presented Mrs. Mack a "33 years of service" pin for her contributions as an organizer and leader while in New York and Cape May County.

Throughout her life, Mrs. Mack has proved to be an outstanding teacher as well as successful businesswoman and community leader. She owned and operated Mack's Upholstery and Slip cover and Drapery from 1955 to 1969. During that time, she taught night classes at the vocational school in Cape May. Later, she became a full-time sewing teacher.

Mrs. Mack made significant contributions to Cape May County through her strong leadership abilities. In 1974, she was appointed as the first woman to serve on the Cape May County Economic Development Commission. She was elected as trustee of the Cape May County Industrial Commission in 1976. In addition, Mrs. Mack served on the bicentennial planning committee, the Middle Township's Housing Authority as secretary-treasurer, and is a member and currently chairperson of the Cape May Human Resources Trustee Board.

Mrs. Mack has served as member and secretary of the Wildwood Independent Business Community Association. Despite her many responsibilities, she still has time to serve on the board of trustees of Atlantic Human Resources as a Cape May County Board of Chosen Freeholders Representative.

J. Franklin "Pop" Menz is also a distinguished recipient of the Humanitarian Award. Mr. Menz' outstanding charitable efforts, his commitment to working with disabled children, and above all his compassionate heart have earned him this award.

Mr. Menz turned a personal tragedy into a personal commitment to help others in need. In 1926, Mr. Menz lost his leg due to cancer. While in the hospital, Mr. Menz' grandfather gave him some land on Route 47 in Millville. Mr. Menz first used this land as a roadside stand selling hot dogs and hamburgers. The business grew substantially over the years and his roadside stand became a restaurant, he added gas pumps in 1930, bought a beer license in 1933, and offered full dinners for reasonable prices.

Mr. Menz' restaurant was not only a place of business but also a place of charity and goodwill. During the year, Mr. Menz collected unwanted toys, clothing, and food. Two weeks before the winter holidays, Mr. Menz would close his restaurant and pay his employees to sort clothing and to repair and paint toys. Needy families were invited to come and select clothing and toys appropriate to their needs. Before they left, each family was offered a bag of groceries and a ham and fruit which was supplied at Mr. Menz' own expense.

But Mr. Menz' contributions to the less fortunate do not end there. For example, an employee of Mr. Menz, who has worked for him for 29 years, recalls Mr. Menz taking $350 out of his register one night and handing it to a couple to pay rent to help them avoid being evicted. Another time he handed $60 to a couple with five children for shoes.

Mr. Menz' efforts to raise money for various causes are well recognized in his community. Mr. Menz has helped provide funds for Deborah Hospital, the American Cancer Society, the March of Dimes, Fisherman's Memorial, St. Ann's Church, and St. Raymond's School. For his continuing commitment, he has received many awards and honors from the American Cancer Society, St. Raymonds School, VFW, Villas, NJ State Fireman's Association, Deborah Hospital, and Fisherman's Memorial.

Finally, through the Elks, Mr. Menz has donated much of his time for the past 30 years to work with disabled children. He was named "Elk of the Year" in 1964–65.

Mr. President, I commend these two well deserving awardees. They have made their community a better place to live and will leave a lasting mark on Cape May and the people whom they have touched through their involvement in the community.•

RETIREMENT OF SENATOR TIM WIRTH

• Mr. JOHNSTON. Mr. President, Senator WIRTH leaves this body at the end of a relatively short, yet very distinguished career.

I have enjoyed, in particular, our association on the Energy and Natural Resources Committee, where, as chairman of the Subcommittee on Energy Regulation and Conservation, TIM has gained a reputation as one of the foremost authorities on the Nation's environment, the greenhouse effect, and other global environmental issues.

We will miss the expertise TIM added to the conservation measures of the National Energy Security Act and it is my fervent wish that his tremendous contribution to energy conservation will not end with his retirement from the Senate.

Good luck, TIM, in your continued battle for our environment. Your contribution to this body and to our committee will be sorely missed.•

RETIREMENT OF SENATOR STEVE SYMMS

• Mr. JOHNSTON. Mr. President, STEVE SYMMS will long be remembered after his absence from this body as a fierce watchdog for fiscal restraint and protector of the consumer pocketbook.

STEVE has served this body with distinction, never failing to protect the interests of his native Idaho, while fighting for the kind of fiscal budgetary restraint that seeks to keep our economy strong. His battles for lower taxes and spending have earned him awards from groups such as the Watchdog of the Treasury, Independent Business and the Freedom's Foundation.

We will feel the loss of STEVE's voice in the Senate, but I am sure he will continue to fight for Idaho and for the U.S. taxpayer.

Good luck, STEVE.•

LIVE PERFORMING ARTS LABOR RELATIONS AMENDMENTS

• Mr. HARKIN. Mr. President, I rise to encourage my colleagues to consider and approve S. 492, the live performing arts labor relations amendments.

The live performing arts labor relations amendments, which I am proud to have cosponsored in this Congress, was reportedly favorably out of the Labor and Human Resources Committee on September 16 of this year and placed on the Senate calendar on September 29. S. 492 has not moved further because of opposition by minority members of this body, who joined with the Labor Department in claiming that this bill would "create a special interest exception in the labor for labor organizations in the live performing arts industry."

As one of the 30 Senate cosponsors of S. 492, I believe that the exception created by this bill is appropriate and in fact necessary. Do not take my word for it. Listen to Mark Massagli, president of the American Federation of Musicians, who stated in testimony before the Senate Labor Committee:

> Most musicians, acting as individuals or as self-contained acts, have far, far less bargaining power (compared to the bargaining power of musicians who achieve enough fame to command high fees and good working conditions). * * * If a particular venue pays only substandard conditions, it is nearly impossible for the musicians to do anything about it. Often, no stable group of them appears at a venue long enough to vote for union representation and bargain a contract that improves wages and working conditions.

This legislation is designed simply to ensure for performing artists equal rights under our labor laws. It deserves to be passed by the Congress and signed into law.

S. 492 made significant progress in the 102d Congress. It was approved by the Senate Labor Committee and placed on the Senate calendar. I hope that the 103d Congress can build on this progress and pass the live performing arts labor relations amendments. I encourage my colleagues to support this legislation.•

EXCHANGE VISITOR AU PAIR PROGRAMS

• Mr. JEFFORDS. Mr. President, I rise to make a few comments concerning USIA's Exchange Visitor Au Pair Program.

In 1986, at the request of USIA, World Learning, then known as the Experiment in International Living, I agreed to participate in a 2-year pilot au pair exchange visitor program. The purpose of this pilot program was twofold—first, to experiment with programs designed to stem the declining participation of American host families in foreign exchange programs; and second, to develop an exchange visitor au pair program that met USIA's standards for quality exchange experiences.

In 1988, after a change in personnel in USIA's Office of General Counsel, the first question was raised regarding USIA's authority to administer an exchange visitor program containing a child care component of up to 45 hours a week. Senators LEAHY and STAFFORD among others in Congress, challenged this question and asked the American Law Division of the Congressional Research Service to analyze USIA's authority. CRS concluded that USIA was fully authorized to administer this program as formulated in the original pilot proposal.

I want to underline the fact that the hours of the child care component were not "discovered" or "found" by an oversight panel but were contained in the original proposal approved by USIA's Office of General Counsel. The purpose of the oversight panel was to evaluate the quality of the overall exchange program, including questions pertaining to the quality of the host family selection process, the orientation process for families and exchange students, the availability of support, cultural programs and program oversight. The panel's findings on these substantive matters were very positive.

In addition to the evidence provided by CRS, the U.S. Congress has now twice prohibited USIA from terminating the program. This highly unusual action reflects the view that this program meets a critical need for private exchange programs and that USIA is clearly within its authority to continue administration of this excellent program.•

RETIREMENT OF SENATOR ALAN DIXON

• Mr. JOHNSTON. Mr. President, Democrats know—and I think back to Paul Douglas and Adlai Stevenson when I say this—that being called a public servant is a compliment. Serving the people of your State, and doing your best for them legislatively is an honorable career, the highest and best use of an elected official's talents. In all the time we have served together in the Senate, AL DIXON has worked tirelessly for the good of the people of Illinois, and I am proud to have known him as a colleague.

But only the most gifted legislator can balance the needs of the Nation against the issues of concern to individual States and voters, and ensure that parochial interests do not drive the congressional engine. In 20 years of watching the Senate process first hand, I have seen few Senators who worked more diligently or painstakingly to protect the economic and social well-being of their own States while, at the same time, advancing the best interests of the United States. ALAN's efforts to promote affordable housing and to ensure good management in military procurement and the banking industry have helped all citizens, those from Louisiana as well as those from Illinois.

All Americans are in your debt for the more than 40 years of hard work and devoted service you have given the Nation. The people of Illinois will have other occasions to express their admiration and gratitude, but on behalf of the citizens of Louisiana, I wish to say "Thanks. Good job."•

RETIREMENT OF SENATOR JAKE GARN

• Mr. JOHNSTON. Mr. President, I feel it safe to say that JAKE GARN has accomplished more in 18 years and crossed more frontiers in the Senate than any other Member in the history of this body. I am referring, of course, to his work as a payload specialist and flight aboard the space shuttle *Discovery* back in 1984.

I have enjoyed immensely our long association on the Appropriations and Energy and Natural Resources Committees and will particularly miss the expertise and support he demonstrated so aptly throughout our battle to pass the National Energy Security Act.

JAKE's passion and vision in support of aviation and space flight has been equaled only by tenacious efforts on behalf of Utah. His presence will be sorely missed—the Halls of Congress will ring a little more hollow—but undoubtedly Utah will be enriched by his return.•

PREVENTIVE DIPLOMACY AND THE UNITED NATIONS

• Mr. PELL. Mr. President, the distinguished editor of Foreign Policy magazine, Mr. Charles William Maynes, who served previously as Assistant Secretary of State for International Organization Affairs, has set forth important new proposals for effective preventive diplomacy by the United Nations.

Writing in the Washington Post, October 25, 1992, Mr. Maynes calls our attention to article 34 of the U.N. Charter, which provides that the Social Security Council may investigate any conflict or situation "which might lead to international friction or give rise to a dispute * * *." He proposes that the major powers and the Social Security Council should authorize U.N. factfinding and mediation missions, and should "give the Secretary General the eyes and ears that would enhance the U.N.'s capability to intervene early and effectively in crises that threaten international peace and security."

One of Mr. Maynes' suggestions is that the Secretary General be authorized to use satellite surveillance techniques for information gathering for preventive diplomacy. He proposes that countries in a position to do so should share intelligence information with the United Nations to enable the organization to alert the world to impending military crises and humanitarian disasters.

Mr. Maynes calls our attention to the Second World Conference on Human Rights scheduled for June 1993, which offers a superb opportunity to invigorate international mechanisms for the protection of minority rights. The United Nations, like the League of Nations that preceded it, has done a good job of proclaiming human rights, but it has been ill equipped with the means to protect and strengthen those rights. The kind of monitoring and intelligence capability that Mr. Maynes suggests could help the United Nations to play this important role.

In recent statements I have noted that the time has come for a serious effort to strengthen the U.N. peacekeeping capability through measures to establish U.N. forces. President Bush and Governor Clinton have spoken in support of this concept. Mr. Maynes' article suggests some additional measures that would usefully serve the same goals.

I ask that the article by Charles William Maynes entitled "Between Inertia and the 82nd Airborne," from the October 25, 1992, Washington Post be printed in the RECORD.

The article follows:

[From the Washington Post, Oct. 25, 1992]

BETWEEN INERTIA AND THE 82ND AIRBORNE—"PREVENTIVE DIPLOMACY" BY A STRONGER U.N. COULD SAVE ETHNIC MINORITIES

(By Charles William Maynes)

The tragedies unfolding in Somalia and the former territories of Yugoslavia have revealed an uncomfortable truth about the post-Cold War world. When the international community's choices in dealing with ethnic conflicts are reduced to sending in the 101st Airborne or doing nothing, most of the time the world will do nothing. The world will continue to watch helplessly as minorities around the globe suffer persecution, unless the United Nations, led by the United States, takes action to improve the tools of preventive diplomacy.

Article 34 of the U.N. Charter provides the Security Council with an appropriate vehicle for such intervention. The article provides that the council may investigate any dispute, or any situation "which might lead to international friction or give rise to a dispute. . . ." Today the permanent members should act like the great powers they are and press the larger council to launch fact-finding and mediation missions in several parts of the world, e.g., from the Baltic states to Macedonia, where ethnic tensions are threatening to break out in open conflict.

The Security Council and the member states of the U.N. should also give the secretary general the eyes and ears that would enhance the U.N.'s ability to intervene early and effectively in crises that threaten international peace and security. As matters stand, the secretary general has no ambassadors or embassies. Without Security Council approval, he has been discouraged from deploying a fact-finding presence on the ground to investigate crises. Nor has he been permitted to take advantage of new breakthroughs in satellite intelligence.

A simple measure that authorized the secretary general to buy time regularly on the French or Russian satellite surveillance service (now available commercial) would contribute immensely to preventive diplomacy. So would weekly briefings for senior U.N. officials by the intelligence agencies of the great powers, now searching for a new mission with the end of the Cold War. There is much criticism of the U.N. for not alerting the world in time to the disaster in Somalia. But where were the intelligence agencies of the major powers? Why did they not sound the alert?

Finally, to defuse ethnic conflict, the international community must begin redefining the human rights obligations of governments. In June 1993, the U.N. will sponsor the Second World Conference on Human Rights. There's no better occasion to promote the defense of minority rights and to build on some lessons from the past.

Historically, the nation state has regarded its principal responsibility as providing a home for the dominant nationality. The central authorities obliged others to assimilate themselves into the majority culture. The legal responsibilities of nation states toward national minorities has evolved throughout the 20th century. After World War I, the peace treaties of 1919 required Poland, Czechoslovakia, Romania and Greece—all states with minority populations—to assure full protection to all inhabitants without distinction of birth and nationality, language, race or religion. (Interestingly, Iraq assumed similar obligations towards its minorities in 1932.) The League of Nations worked out a procedure to be followed in the settlement of minority disputes.

These efforts were a major step forward because they codified in law the obligation to provide protection for minorities. But there were serious flaws. The treaty provisions were vague, and they lacked sanction. And the major states, including Germany, did not feel obliged to assume the same obligations with respect to their own minorities as the smaller states had assumed toward theirs. After World War II, the U.N. placed priority on the defense of individual rights but gave less weight to minority rights.

At the 1993 conference an effort could be made to codify strong obligations of all member states—including the major states—towards minorities. Also needed are procedures to monitor publicly the record of all states in this sensitive area as well as sanctions to be applied against states that violate their international obligations. Such sanctions might include denial of access to the World Bank and other international financial institutions or suspension of their membership in international organizations.

Realistically, the world community cannot compel, without war, a large state that is determined to mistreat its minorities. But outside powers can greatly increase the costs to an abusive government. Criticism, ostracism and sanction can affect the calculus of decision-making. And most states are not large enough to defy the world indefinitely.

Greater participation of key regional powers in the work of the Security Council could be part of an international effort to protect minority rights. Among the shortcomings of the current approach to the post-Cold War security order is the dominance of four ex-colonial powers as permanent members of the Security Council. The admissions of Germany and Japan as permanent members, though deserved, will only compound the problem. If the international community is to become involved in sensitive ethnic disputes, it may make sense to approach the problem through the creation of a Security Council sub-organ that could involve key post-colonial regional powers such as Brazil and India with an ability to influence a crisis constructively.

Of course, the argument for a much greater effort at preventive diplomacy does not mean that, in confronting ethnic disorders, the world community should rule out the use of force in principle. Certainly in Bosnia-Herzegovina, the world can help even the odds by giving arms to the embattled Muslims. And in Somalia, where teenage thugs are terrorizing the population, there is a strong case for sending professional forces to restore order. But greater emphasis on preventive diplomacy can provide a needed middle ground between military involvement and inaction. It is time to recognize where our priorities should be.•

PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT

• Mr. DECONCINI. Mr. President, I am pleased to report that the President signed S. 474, the Professional and Amateur Sports Protection Act, which Congress passed prior to adjournment. During final consideration of the bill, I entered into colloquies with several of my colleagues who were concerned about the applicability of S. 474's prohibition to Wyoming's calcutta pools, and to pari-mutuel bicycle racing in New Mexico. At that time, we discussed whether it was the intent of the bill to cover such types of gambling operations. After having had a chance to further review these States' laws, it seems clear that New Mexico's pari-mutuel bicycle racing and Wyoming's calcutta wagering are exempt because they fall within S. 474's grandfather provision, section 3704. This clarification should resolve any questions regarding the applicability of the bill to the gambling activities in Wyoming and New Mexico described above.•

TRIBUTE TO SENATOR STEVE SYMMS

• Mr. KENNEDY. Mr. President, I want to pay tribute to the senior Senator from Idaho, STEVE SYMMS, who is retiring after 12 years of distinguished service in the Senate and 8 years before that in the House of Representatives.

While we found ourselves on opposite sides of many issues, I respect him for his hard work and determination on behalf of his constituents and the causes in which he believes. And I am particularly grateful to him for his skill and support in helping to guide the transportation bill so effectively and impartially through the Senate last year.

When controversy broke out on his side of the aisle over the very important interests of Massachusetts at stake, our State had a friend in Idaho. STEVE SYMMS demonstrated his capacity to rise above partisan politics by defending the need for a safe and efficient Interstate Highway System that links all of our States, even those whose citizens are represented by Democrats in Congress. He made the case, articulately and powerfully, for honoring the Federal Government's commitment to finish the job begun years ago—to have a first class highway network spanning the United States.

For his grasp of the details and the history preceding the transportation legislation of 1991, and for his able defense of the Central Artery/Third Harbor Tunnel project that will bring much-needed improvements in Boston to the most congested and dangerous segment of the Interstate System, the people of Massachusetts will always be indebted to STEVE SYMMS for his fair and impressive leadership at a critical moment for our State.

I join my colleagues in commending Senator SYMMS for his public service, and I wish him and his family well in the years ahead.•

EL CENTRO DE LA RAZA

• Mr. ADAMS. Mr. President, for over 20 years a Chicano-Latino civil rights organization know as El Centro de la Raza has played an important role in the daily struggle for justice and community development in Seattle, WA. From its humble origins in a boarded up school building on Seattle's Beacon Hill, El Centro de la Raza has grown over these two decades to provide quality child development opportunities, senior citizen services, and a wide range of recreational and educational opportunities, for Seattle's constantly growing Chicano-Latino community. Earlier this year, El Centro's significant contributions to the community were recognized by President Bush's selection of it as a recipient of his Thousand Points of Light Award.

My wife Betty and I have had several opportunities to meet with the staff of El Centro de la Raza over the past few years, and we are proud to number them among our personal friends. We have visited with them at the El Centro facility in Seattle, and have enjoyed their company here in Washington, DC.

I am particularly pleased to learn of a recent poetry and art project undertaken by El Centro de la Raza with the publication of a book entitled "Word Up." This project was the outgrowth of a series of writing workshops conducted at El Centro as part of their Hope for Youth Program.

One particularly inspiring poem included in "Word Up" was written by a young African-American named Ellis Foster. His poem entitled "Humsey Koy Mung" explains, through the medium of poetry, how a Laotian youth came to be his friend. In so doing, this art also helps us to understand the important work El Centro de la Raza has undertaken in bringing Seattle's African-American and Asian youth together in mutual respect and cooperation. I ask that Ellis Foster's poem be printed in the RECORD.

The poem follows:

HUMSEY KOY MUNG

On the first day of school
I was playing kickball
when this boy yelled "You're out!"
I hollered "No!"
For a couple of minutes
he hooted "Out! Out! Out!"
We argued until I yelled
"Yo! Boy, shut up or be stupid!"

We stopped.

When we got on the bus
he came to me and said
"Humsy koy mung"
I want to be your friend in Lao.

That's how our friendship started.

Mr. President, those of us who call Seattle, WA, our hometown know how fortunate we are to live in a community with such cultural diversity, and such a rich cross-section of languages, traditions, and racial and ethnic heritages. The very fabric of American democracy is rich in its complexity, and made stronger for having brought together so many different cultures in pursuit of a common dream. And yet we also know that the fulfillment of that dream takes effort, not just for individuals, but for all of us working together.

During my nearly 30 years in public life, and particularly during these last 6 years as a U.S. Senator, I have never found an organization more worthy of respect and admiration than El Centro de la Raza. It has been my honor to be called their Senator.•

PAT CLARK, SR.

• Mr. REID. Mr. President, today I rise to honor one of the Silver State's finest citizens, Pat Clark, Sr., of Las Vegas.

For over half a century, Pat Clark has devoted himself to the charitable, political, and business needs of Nevada.

Since he moved to Nevada in 1938, Pat Clark has gone above and beyond in helping the disadvantaged citizens of the State. For example, when "Help Them Walk Again," a nonprofit organization committed to spinal injury research and care, was created in 1982, Pat Clark did not hesitate to offer the time and money needed to make the new organization a success. This is what Joanne Toadvine, the founder of Help Them Walk Again, had to say about Pat Clark:

> In every crisis it has been Pat Clark who has always been there for us. Without him we would not be in existence and our 53 people walking now would still be prisoners in their wheelchairs and the others would still be sitting at home deteriorating.

Opportunity Village, a 34-year-old organization dedicated to helping the mentally retarded achieve social and economic self-sufficiency, launched a fundraising campaign for a desperately needed new campus. Pat Clark answered the call for help with a $250,000 donation to start them on their way.

In 1957, Pat Clark was an original founder of the Nevada Safety Council, a group devoted to promoting and ensuring safe driving in Nevada. For this service, he received their "Man of the Year Award," an honor well-deserved.

In the political arena, Mr. Clark served his community as city commissioner of Las Vegas for 8 years beginning in 1941. He was also a State delegate for three Presidential elections.

Pat Clark's business acumen and dedication to customer service have placed his Las Vegas Pontiac dealership among the top 2 percent in the Nation. His dealership is renowned for its high quality service and customer satisfaction. Pontiac honored Pat Clark in 1989, for being the largest retail volume Pontiac dealer in the Western United States. Pontiac will be honoring Pat Clark for his 50 years of service achievements later this year.

Pat Clark and his wife, Bernice, have found time to raise a large family, including four children, and four grandchildren. When not serving the needs of our State, he enjoys the beauty of Nevada by fishing, hunting, and ranching.

Mr. President, we are paying tribute to Pat Clark today and I believe we owe him our highest respect and esteem. I thank him for his exemplary service to the Silver State and for the shining example that he has set for his fellow Nevadans. I congratulate Pat Clark for his philanthropic, business, and civic service to the State of Nevada.•

TRIBUTE TO THE MOUNT RUSHMORE MOUNTAIN CO.

• Mr. PRESSLER. Mr. President, during my 18 years in the U.S. Congress, I have often boasted about South Dakota's travel and tourism industry and our State's most renowned tourist attraction, Mount Rushmore National Memorial. Today, I wish to recognize three South Dakotans who have been instrumental in making the Shrine of Democracy a national landmark. As the Mount Rushmore concessionaire, Kay Riordan-Steuerwald, Charlie Steuerwald, and Jack Riordan, of the Mount Rushmore Mountain Co., have worked to promote Mount Rushmore and make it an inviting attraction.

For over 40 years, the Mountain Co. concessionaire team has hosted millions of visitors—including many celebrities and Government officials—in their dining room and gift shop. Harriet and I have visited Mount Rushmore many times over the years. We always have been impressed with the hospitality, fine food, cleanliness, and quality of visitor services offered by Kay, Charlie, Jack and the entire Mountain Co. crew.

The Mountain Co. has a reputation for quality which is second to none among the national park concessionaires. They set the standards other concessionaires strive to attain. Their first-rate reputation did not just happen. It is a reflection of the many years of hard work and hands-on management by Kay, Charlie, and Jack.

Kay Riordan-Steuerwald has been the driving force behind the Mount Rushmore concessions since the 1950's. Her leadership of the Mountain Co. is unsurpassed in the business world. In fact, to many, Kay Riordan-Steuerwald and Mount Rushmore are synonymous.

Kay is one of South Dakota's outstanding civic leaders. Her philanthropic endeavors are numerous. Kay was a successful businesswoman long before the women's rights movement or enactment of affirmative action laws and other Government policies designed to assist women in the working world. Women today who aspire to succeed in the business world can draw valuable lessons from Kay's leadership of the Mountain Co.

In addition to their tireless efforts to ensure that visitors to Mount Rushmore have a pleasurable experience, Kay, Charlie, and Jack also are highly regarded for their dedication to community service. While I can't begin to mention all of their good works for South Dakota, I do want to remind my colleagues of the assistance they have provided to us in the U.S. Senate.

As a member of the Senate Commerce, Science, and Transportation Committee, I was privileged to appoint both Kay and Jack to serve on the U.S. Senate Travel and Tourism Industry Advisory Council. The purpose of this one-of-a-kind council is to advise the committee on legislative matters affecting the travel and tourism industry. Input from tourism leaders like Kay and Jack has been essential in the Senate's efforts to upgrade Federal tourism policy.

Mr. President, I am saddened to say that at the close of 1992, the Mountain Co. no longer will be running the concessions facility at Mount Rushmore. Their absence will leave a great void at the memorial. No one will ever forget their commitment to high quality service. For me, Mount Rushmore will never quite be the same. I am confident, however, that Kay, Charlie, and Jack will continue their active leadership in promoting South Dakota's tourism and business communities.•

NEW BEGINNINGS

• Mr. ADAMS. Mr. President, earlier this month, the Senate approved the conference report on H.R. 5677, the Labor, Health and Human Services, and Education and related agencies appropriations bill for 1993. The Senate report that accompanied that legislation contained on page 10, the following language I had requested:

> The committee is encouraged by the results of the demonstration project entitled "New Beginnings" funded through the Women's Bureau of the Department of Labor. This $10,000 pilot project in the timber-dependent community of Forks, WA, provided a 10-week program for women, assisting them in making future educational and employment choices. Testimony before the committee indicated that 23 of the 25 enrollees obtained employment or entered further vocational training after completing the program. In light of the program's demonstrated success, and evidence that other women in timber communities in the Pacific Northwest are eager to receive such assistance, the committee strongly recommends that the Department of Labor utilize the expertise of the Women's Bureau to continue and expand New Beginnings in Forks, WA, to add Grays Harbor, Skamania, and Pend Oreille Counties to the program, and to identify four similar timber communities in the State of Oregon for participation. The committee recommends that the Department of Labor dedicate up to $200,000 in existing funds to this effort.

Mr. President, I take some small measure of pride in the success of the "New Beginnings" program, because I was the initial advocate for providing Federal assistance for women in timber communities, those who were to become the new second paycheck in their households. Due to circumstances beyond the control of Federal, State, or local governments, previous timber harvest levels throughout the Pacific Northwest, and the employment that depended on those harvest levels, began to recede over the last few years. A number of those communities, such as Forks, WA, are now in the uncomfortable and challenging position of looking forward to an uncertain future where diversification and change must be confronted and accepted. Those communities deserve and expect the Federal Government to play a lead role in assisting them as they face up to that uncertain future.

What the "New Beginnings" program has demonstrated is that the great untapped resource in those communities is the talent and abilities of their own citizens. The relatively modest investment that returned such spectacular results in Forks, WA, stands out as a beacon light for those communities in Washington and Oregon where talented, dedicated individuals are looking to the future with concern. They have reason to ask, "Does my Government care about me and my family?" With "New Beginnings" the Federal Government has the opportunity to respond, "Yes, we do care, and we are willing to help."

I am hopeful that the Secretary of Labor will consider utilizing the Displaced Homemaker's Network, as well as the Women's Bureau of the Department of Labor, to move quickly to expand this successful pilot program into timber communities throughout the Pacific Northwest. For too long, those families have been the recipients of self-serving political rhetoric rather than meaningful training and information. I am hopeful that in the 103d Congress, the congressional delegations from Washington and Oregon will move forward, on a bipartisan basis, to see that the "New Beginnings" program expansion called for in the fiscal year 1993 appropriations bill is implemented in a timely fashion. This small program was a personal priority over the past few years, and I hope its demonstrated success will be sufficient to attract the support it deserves.•

FAILURE TO FUND THE RTC

• Mr. GARN. Mr. President, 18 days after taking office, President Bush put the thrift cleanup in motion by taking action that led Congress to pass the Financial Reform, Recovery, and Enforcement Act of 1989, FIRREA. After FIRREA became law, the President gave those responsible for running the cleanup four goals.

First, protect depositor accounts—the savings of ordinary working people who trusted the Government's insurance commitment and then had to rely on its promise for protection.

Second, to shut down failed thrifts at the least cost to the taxpayers. Since 1989, 725 institutions with $378 billion in assets have been transferred to the RTC. This was not a bailout. The stakeholders in those institutions, the stock and bondholders, were wiped out. They didn't get a dime.

Third, the President said, make the wrongdoers pay the price. To date, 1,300 persons have been indicted nationwide and there have been nearly 1,500 civil actions against directors, officers, accountants, and lawyers.

Fourth, restore the industry to profitability. The thrift industry, which lost $13 billion from 1988–91, has already reported $2.8 billion in profits for the first 6 months of 1992.

All of these goals are being met except one. The depositors have been protected; the failed thrifts closed; and the wrongdoers are being made to pay for what they did. However, by not funding the RTC, we are falling short in achieving the second goal—to shut down these failed thrifts at the least cost to the taxpayer. To complete the cleanup and finish the job, Congress must resume funding the RTC.

Considering the monumental task, the RTC has done a truly heroic job, but on April 1, the House of Representatives halted the RTC's funding. The Senate approved funding, but a bipartisan gridlock in the House brought the process to a standstill.

The RTC has been without funds to complete the cleanup for 6 months. It will take at least another 6 months for the 103d Congress to meet, organize and vote for RTC funding. The RTC estimates that this 1-year delay in funding, from April 1992 to April 1993, has escalated the cost of the cleanup by $2 billion. Now you and I as taxpayers have to start paying all over again for the House's failure to act.

We should learn the lessons history teaches. The thrift regulators of the 1980's repeatedly asked Congress for the funding necessary to recapitalize the insurance fund. While Congress refused to act, thrift industry losses mushroomed and the exposure of the taxpayers grew exponentially. The RTC funding impasse risks the same disastrous financial consequences.•

HEALTH CARE COSTS

• Mr. REID. Mr. President, I would like to take this opportunity to present yet another glaring example of the runaway health care costs associated with our current health care system. On April 26, of this year, one of my constituents was shot in an attempted robbery of his car wheels. He was immediately taken to the University Medical Center emergency room where he died 1½ hours later.

The total bill for his treatment during that 1½ hours was $25,515. I don't know anyone who makes $25,000 for 1½ hours of work. Included in his bill was a charge of $870 for a recovery room he did not utilize. This unfortunate man died in the emergency room and never made it to a recovery room. My constituent was insured by his employer who calculates that if the cost of this man's treatment was extended over a year, the emergency unit alone could generate $149 million per year. If this calculation is applied to the 400 rooms in the hospital, the income to the hospital for 1 year would exceed $59 billion.

Mr. President, we need to be realistic about what is happening in our country. We need to find a way to contain these high costs. We must remember that the things we talk about relating to health care, affect human beings, individuals, not just theories in medical schools across the country. I understand that this man was covered by his employer's insurance. However, had he been one of 35 million uninsured Americans, the taxpayers or his family would have been stuck with a $25,515 bill. It is imperative that we act to expedite the legislative process to accomplish the important goals of fair costs and quality care for all Americans.

I ask that a letter dated August 31, 1992, be printed in the RECORD.

The letter follows.

LAS VEGAS, NV, *August 31, 1992.*

BOARD OF TRUSTEES,
University Medical Center, Clark County Courthouse, Las Vegas, NV.

DEAR BOARD MEMBERS: I have been listening with interest to your commercial on the radio extolling the virtues of University Medical Center and ending up each statement with "that's a fact". So I would like to point out a few other "facts" about your hospital.

On April 26 of this year Mr. Francisco Dominguez one of our employees was shot in an attempted theft of his car wheels. He was taken to University Medical Center emergency room, that's a fact.

Mr. Dominguez lived for one and one half hours, his bill for treatment at your center was $25,515.15. That's a fact.

Mr. Dominguez was of Hispanic descent and his parents do not speak English. He was insured through our company, that's fact. (We trust these factors did not enter into the charge)

Included in this bill was $870.00 for a recovery room although he died in the emergency room. That's a fact.

We contacted Ms. Patricia Jarmin from the state of Nevada who very coldly told us that even though he was our employee and we paid the insurance premiums which basically settled his bill it was none of our business as we were not family members. That's a fact.

We contacted Ms. Dusty McClendon who was very charming and very sympathetic although she gave us no satisfaction. That's a fact.

We have extended this cost for one and one half hours of medical treatment and have decided that the emergency unit alone can generate $149 million per year. That's a fact.

If we can extrapolate this to the 400 rooms which you operate on an annual basis your income exceeds $59 billion per year. That's a fact.

It is hard to understand that based on these hideous charges your hospital is in a constant state of financial chaos. Your bills are historically not paid on time, including your payment to the Nevada PERS board which has run one to six months late. That's a fact.

It is very apparent that the county should not be in the hospital business but should pay other hospitals for indigent services. That's a fact.

If it sounds like we are complaining "it was meant to".

Yours very truly,

CLAIR HAYCOCK.

STRENGTHENING THE PAPERWORK REDUCTION ACT OF 1980 AND S. 1139: AN OPPORTUNITY LOST

• Mr. NUNN. Mr. President, as the 102d Congress ends, I would call to the attention of my colleagues that we failed to act on S. 1139, the Paperwork Reduction Act of 1991, which I introduced on May 22, 1991, with bipartisan support. The chairman, Mr. BUMPERS and ranking minority member Mr. KASTEN of the Committee on Small Business are the principal Democratic and Republican cosponsors. We were joined by many current and former members of the Committee on Small Business, on both sides of the aisle, and by the ranking minority member of the Committee on Governmental Affairs, Mr. ROTH.

Mr. President, I believe that we have needlessly foregone an opportunity to demonstrate in a concrete way the Senate's commitment to restraining the growth of Government paperwork burdens whch assault, on almost a daily basis, virtually all segments of the public. Calls for congressional action to restrain the growth of Government-sponsored paperwork are something we hear all too frequently. We hear it from the business community, especially the small business community. We hear it from State and local government officials. We hear it from the educational community. We hear it from providers within the health care system, and, increasingly, from individual recipients of health care, especially senior citizens. S. 1139 was an opportunity to do something that would have made a difference.

We all know that Government paperwork burdens, and Government regulation, cannot be eliminated. They are inherent to Government. Government requires information to advance the public good. We are in an information age and Government, like other segments of society, must meet the challenge of effectively managing ever increasing amounts of information. Likewise, effective management of Government programs requires regulations. If left unchecked, however, Government's appetite for information and regulation is insatiable.

Government demands for information must be moderated and rationalized. That's the fundamental objective of the Paperwork Reduction Act of 1980.

Individual agencies can avoid duplication of information requests through coordination, but such coordination does not come naturally. The burden imposed by a necessary paperwork request can be reduced, sometimes through such simple things as modifying the format in which the information is to be furnished or making the information request more understandable from the prospective of the person required to fill out the form. The Paperwork Reduction Act is designed to force agencies to consider the need and practical utility of a proposed paperwork request and to minimize the burden imposed. The act also assures that the public will have an opportunity to make its views known through a public comment process.

In shaping our bill, Mr. President, we had the benefit of a decade of experience under the Paperwork Reduction Act of 1980, which was sponsored by our former colleague, Lawton Chiles, now Governor of Florida. S. 1139 builds upon and strengthens the 1980 act. It reaffirms the fundamental purpose of the 1980 act: to minimize the Federal paperwork burdens imposed on individuals, small businesses, State and local governments, and educational and nonprofit institutions.

S. 1139 offers a series of specific amendments that reemphasize the primary responsibility of each Federal agency to scrutinize proposed paperwork requirements and to provide maximum opportunity for public participation. S. 1139 would shift to the individual agencies primary responsibility for obtaining and analyzing public comments on proposed paperwork requirements. Today, that responsibility falls to the Office of Information and Regulatory Affairs [OIRA], the focal point for the act's overall implementation within OMB. This simple change would emphasize the primary responsibility of the individual agencies to realistically assess the impact on the public of their proposed paperwork burdens.

With the public comments in hand, the agency would have to make the initial determination regarding whether the proposed paperwork burden meets the act's standards. Only then, would the proposed paperwork burden be submitted to OIRA for review.

This change would make available an additional 30 days for public review. And, it would shorten by 30 days the overall review period, by making possible concurrent assesment of public comments by the agency and OIRA.

S. 1139 would have OIRA establish standards to be used by the various agencies in estimating the burden placed on the public by a proposed paperwork requirement. We hear many complaints that agency estimates of the paperwork burdens are unrealistic in practical terms.

Our bill would also improve the process by which previously approved paperwork requirements are considered for renewal. The 1980 act requires that paperwork burdens be periodically reviewed to determine if they continue to meet the act's basic review standards.

Mr. President, these are just some of the improvements made by S. 1139. I will ask to include in the RECORD following my remarks a summary of S. 1139.

In 1980, the Chiles bill that became the Paperwork Reduction Act also enjoyed strong bipartisan support. The senior Senator from Missouri, Senator DANFORTH, served as its principal cosponsor. I am proud to say that I was an original cosponsor. Many of the cosponsors of S. 1139, on both sides of the aisle, were also cosponsors of the Chiles bill. And, Mr. President, let me remind my colleagues that the Paperwork Reduction Act of 1980 was signed into law by President Carter.

Like the Paperwork Reduction Act of 1980, S. 1139 also enjoys enthusiastic support from all segments of the business community, especially the small business community. S. 1139 is supported by the National Federation of Independent Business [NFIB], the 100 small business trade and professional associations that comprise the Small Business Legislative Council [SBLC], and National Small Business United [NSBU]. If we had been able to get to a vote on S. 1139, a vote in favor of S. 1139 would have been designated a key vote by NFIB, the U.S. Chamber of Commerce, and the National Association of Manufacturers [NAM]. S. 1139 enjoys strong support from groups, representing diverse segments of the Nation's economy: the Electronic Association [AEA], the Aerospace Industries Association [AIA], the Telecommunications Industry Association, the Independent Bankers Association, the National Association of Wholesalers and Distributors, the National Retail Council, the Associated General Contractors of America, and the American Subcontractors Association, to name but a few.

Mr. President, I will ask to include in the RECORD copies of just a sample of the many letters I have received from individual associations as well as from a letter from Paperwork Reduction Act coalition. The coalition is being cochaired by the U.S. Chamber of Commerce and the Business Council on the Reduction of Paperwork [BCORP]. Established in 1942, BCORP will celebrate its 50th anniversary this November.

Finally, Mr. President, S. 1139 enjoys the support of the administration.

With all this support, my colleagues may reasonably speculate as to why we have been unable to get any action on S. 1139 before the Committee on Governmental Affairs. What provisions of the bill make it so objectionable?

Mr. President, I believe the answer can be found in the committee's focus on the process by which the Executive Office of the President reviews proposed regulations, before they are published for public comment under the Administrative Procedure Act. The chairman of the Governmental Affairs Committee, my friend from Ohio [Mr. GLENN], fervently believes that there must be greater disclosure of all contacts between those in Government who conduct these pre-publication reviews of proposed regulations and any person in the private sector. He is particularly concerned with the role being played by the staff of the Council on Competitiveness, which is chaired by Vice President QUAYLE. The committee has expended considerable energy trying to get a clear picture of the Council's operations and its interactions with various groups inside and outside of Government. Those efforts have not produced the results the chairman had sought.

Mr. President, concerns about the President's regulatory review process under Executive Order 12291 are for me separable from the valuable enhancements to the Paperwork Reduction Act and the authorization for appropriations for OIRA, which are contained in S. 1139. The Paperwork Reduction Act already includes disclosure provisions applicable to OIRA, added by Senator Chiles, often referred to as the Sunshine Senator from the Sunshine State because of his steadfast dedication to open Government.

These statutory public disclosure requirements were supplemented in 1986 by additional public disclosure requirements suggested by my friend from Michigan [Mr. LEVIN] and by the senior Senator from Minnesota [Mr. DURENBERGER]. These additional public disclosure requirements were imposed on all of OIRA's review activities, those conducted under the authority of the Paperwork Reduction Act as well as those conducted under Executive Order 12291, by a policy directive issued by then OIRA Administrator Wendy Gramm. Those procedures are being followed by OIRA.

The effort to have substantially broader public disclosure of contacts relating to regulatory review activities has prevented Senate action on any legislation to reauthorize appropriations for OIRA or to make any amendments to the Paperwork Reduction Act. It has delayed consideration of a Presidential nominee to be OIRA Administrator. It has diverted substantial amounts of energy to various efforts to eliminate funding for OIRA and the staff of the Council on Competitiveness.

Mr. President, the objectives of the Paperwork Reduction Act of 1980 have been obscured in the smoke of this controversy over what constitutes appropriate public disclosure requirements. With S. 1139, we sought to refocus the Senate's attention on the basics of the Paperwork Reduction Act. The effort was not as successful as I would have liked, but a strong start has been made thanks to the broad support offered by the business community, especially the small business community. I intend to renew the effort in the 103d Congress.

Mr. President, I ask that the documents to which I referred be printed in the RECORD.

The documents follow:

SUMMARY OF S. 1139, THE PAPERWORK REDUCTION ACT OF 1991

The "Paperwork Reduction Act of 1991" will—

Reaffirm the fundamental purpose of the Paperwork Reduction Act of 1980: to minimize the Federal paperwork burdens imposed on individuals, small businesses, State and local governments, educational and nonprofit institutions, and Federal contractors.

Provide a five-year authorization for appropriations for the Office of Information and Regulatory Affairs (OIRA) within the White House Office of Management and Budget.

Clarify that the Act's public protections apply to all Government-sponsored paperwork, eliminating any confusion over so-called "third-party disclosures" caused by the U.S. Supreme Court's 1989 decision in *Dole* v. *United Steelworkers of America*.

Require goals for paperwork reduction on the public—a Government-wide goal of at least 5 percent and individual agency goals that aggregate to the Government-wide goal.

Build upon the fundamental responsibilities of each Federal agency to manage paperwork reduction, by requiring—

The designation of a senior agency official in a separate office, with adequately trained staff;

A thorough review of each proposed information collection request for need and practical utility, standards whose purpose is to minimize the burden on the public while enabling an agency to collect only necessary information;

Agency planning to maximize the use of information collected by the public;

Better notice and opportunity for public participation with at least a 60-day comment period for each proposed paperwork requirement;

Agency certification of compliance with public participation requirements and the standards of need and practical utility for every paperwork proposal before its submission to OIRA for clearance; and

A certification process for the renewal of a currently approved paperwork requirement which includes public participation, thorough agency analysis of alternatives, an agency determination that the paperwork requirement meets the Act's standards, and OIRA's final clearance authority.

Reduce by 30 days the time a routine proposed agency paperwork requirement spends at OIRA, while improving the overall opportunity for public participation without impairing OIRA final clearance authority.

Strengthen OIRA's paperwork control responsibilities, by—

Establishing standards under which Federal agencies more accurately estimate the burden placed upon the public by a proposed information collection request;

Coordinating with the Office of Federal Procurement Policy (OFPP) to reduce the substantial paperwork burdens associated with Government contracting; and

Providing the authority for OIRA to initiate and conduct demonstration program to test innovative approaches to minimize paperwork burden, similar to the OFPP authority to test innovative procurement practices.

Empower the public with new tools to participate in paperwork reduction by—

Requiring future legislation be thoroughly assessed before enactment to identify anticipated paperwork requirements, and that these assessments be made available to the public; and

Enabling an individual to compel the OIRA Administrator to provide a written determination whether a Federally-sponsored information collection request complies with the Act's public protection requirements, in the same manner as the OFPP Administrator must determine if an agency procurement regulation is consistent with the Government-wide Federal Acquisition Regulation (FAR).

Strengthen OIRA's leadership role in Federal statistical policy.

THE PAPERWORK REDUCTION
ACT COALITION,
September 21, 1992.

Hon. SAM NUNN,
U.S. Senate,
Washington, DC.

DEAR SENATOR NUNN: We write to urge prompt passage of S. 1139, the Paperwork Reduction Act of 1991. Our Coalition of over 50 businesses, consumers groups, and associations is providing widespread support for this bill sponsored by Senators Nunn, Bumpers and Kasten.

The Paperwork Reduction Act of 1991, which has strong bipartisan sponsorship, builds positively upon existing laws. It increases the federal government's ability to reduce the burdens of regulatory paperwork, facilitates and enhances public participation in government decisions, and strengthens Congressional oversight by affirming the "regulatory watchdog" functions of the Office of Information and Regulatory Affairs (OIRA). Taxpayers and consumers need these checks and balances to prevent waste in the government.

The Coalition endorses the five year reauthorization of appropriations to OIRA, with the Congressional clarification that the Act's protections against unnecessary paperwork extend to all government imposed paperwork demands. The business community has identified this legislation as the single most important step that the 102nd Congress could take to ensure balanced regulations; regulations that are necessary for competing in the global marketplace. The Paperwork Reduction Act of 1991 looks to the future by emphasizing that the Executive Branch systematically apply the advantages of new information technology to the development, operation, and review of government regulations.

Small businesses, in particular, are being overwhelmed by federal paperwork and regulatory burdens. At the same time, unnecessary paperwork drains state and local government's capabilities and resources to deliver services. We need to encourage reforms that will make improvements, not burdens, to the systems that are a part of our increasingly technical world.

Our Coalition strongly supports your efforts and those or your colleagues to move forward with this legislation. We stand ready to assist these efforts in any way we can.

Sincerely,

THE PAPERWORK REDUCTION
ACT COALITION.

(Membership list attached:)

Advertising Mail Marketing Association.
Aerospace Industries.
American Petroleum Institute.
American Subcontractors Association.
Arkansas Independent Bankers Association.
Associated Builders and Contractors.
Associated General Contractors.
Association of the Wall and Ceiling Industries-International.
BCORP.
California Bankers Council.
Chemical Manufacturer's Association.
Citizens for a Sound Economy.
Community Bankers Association of Georgia.
Community Bankers Association of Illinois.
Community Bankers Association of Kansas.
Community Bankers Association of Kentucky.
Community Bankers Association of Oklahoma.
Community Bankers of Florida.
Community Bankers of Louisiana.
Council on Paperwork and Regulatory Responsibility.
Dairy and Food Industries Supply Association.
Direct Selling Association.
Electronic Industries Association.
Financial Executive's Institute.
Independent Bankers Association of America.
Independent Bankers Association of Texas.
Independent Bankers of Minnesota.
Independent Community Bankers Association.
Independent Community Bankers of North Dakota.
Independent Community Bankers Association of Alabama.
Independent Dairy Foods Association.
Independent Electrical Contractors Inc.
Iowa Independent Bankers Association.
National Association of Manufacturers.
National Association of Remodeling Industry.
National Association of State Directors of Vocational Education.
National Association of Wholesaler-Distributors.
National Club Association.
National Federation of Independent Business.
National Peanut Council.
National Retail Federation.
National School Supply and Equipment Association.
National Small Business United.
National Stone Association.
National Tooling and Machining Association.
National Security Industrial Association.
Nebraska Independent Bankers Association.
Nonprescription Drug Manufacturers Association.
Opticians Association of America.
Painting and Decoration Contractors of America.
Small Business Legislative Council.
Synthetic Organic Chemical Manufacturers Association.
Telecommunications Industry Association.
U.S. Chamber of Commerce.
Virginia Association of Community Banks.
Wholesale Florists and Florist Suppliers of America.

NATIONAL FEDERATION OF
INDEPENDENT BUSINESS,
Washington, DC, September 17, 1992.

Hon. SAM NUNN,
U.S. Senate,
Washington, DC.

DEAR SENATOR NUNN: The Senate may soon be considering S. 1139, The Paperwork Reduction Act of 1991, introduced by Senators Nunn, Bumpers and Kasten. On behalf of the 550,000 small business members of the National Federation of Independent Business (NFIB), I urge your strong support for this important bill.

To the nation's small business owners, excessive government regulation and the volumes of paperwork it produces have been a consistent and expensive problem. A recent NFIB Foundation survey of over 5,000 small business owners found that government regulations hit them harder than any other problem in the past five years, moving up the list of major concerns from the 19th to the eighth position. According to the Small Business Administration, a minimum of 1.2 billion hours and $100 billion are expended by small businesses each year to comply with government paperwork.

S. 1139 will help alleviate this situation by strengthening the original Paperwork Reduction Act (PRA) and allowing for increased public participation in the regulatory process. Federal agencies will be more responsible for policing the regulatory burdens they place on the public.

In addition, a key component of this bill is its restoration of third party notifications under the paperwork reduction law. A recent Supreme Court decision, *Dole* v. *Steelworkers*, stated that the language of the original PRA did not specifically include so-called third party paperwork. Third party paperwork includes forms such as I-9 immigration forms and W-4 tax statements, which are not submitted directly to the government but are collected and retained by the employer or submitted to a third party. Inclusion of this type of paperwork, estimated to make up about a third of all government imposed paperwork, was the undisputed intent of the original authors of the PRA in 1980.

Enacting S. 1139, and restoring this important category of paperwork to coverage under the PRA, is a high priority of the small business community. NFIB was a strong supporter of the original Paperwork Reduction Act over a decade ago. We believe this bill is a reasonable and effective response to problems with the original law and the recent Supreme Court decision that weakened the Act. The vote on S. 1139 will be considered a Key Small Business Vote for the 102nd Congress.

Thank you for your consideration of this matter. If I may answer any questions or be of any assistance, please do not hesitate to contact me.

Sincerely,

JOHN J. MOTLEY III,
Vice President,
Federal Governmental Relations.

SMALL BUSINESS
LEGISLATIVE COUNCIL,
Washington, DC, September 16, 1992.

Hon. SAM NUNN,
U.S. Senate,
Washington, DC.

DEAR SENATOR NUNN: The Small Business Legislative Council (SBLC) strongly supports S. 1139, legislation to strengthen the Paperwork Reduction Act and reauthorize the Office of Information and Regulatory Affairs.

SBLC is an independent, permanent coalition of trade and professional associations that share a common concern for the future of small business. The purpose of SBLC is twofold: to maximize the influence and strength of small business on legislation and Federal policy issues of importance to the entire small business community and to disseminate information on the impact of public policy on small business. A list of SBLC members is enclosed.

Small businesses are increasingly being suffocated by excessive government paperwork. Unnecessary recordkeeping and reporting requirements directly increase their cost of doing business. All too frequently these superfluous paperwork requirements overwhelm the ability of such small businesses to identify, process, maintain, and pass on the cost to their customers.

S. 1139, the Paperwork Reduction Act of 1992, goes right to the heart of this problem. This bill reaffirms the fundamental purpose of the Paperwork Reduction Act of 1980 by establishing agency goals for paperwork reduction which aggregate to a government-wide goal of 5 percent. At the same time, the bill builds upon the responsibilities of each Federal agency to manage paperwork reduction by requiring a thorough review of each information collection request for need and practical utility, planning to maximize the use of information collected from the public, and improved opportunity for public participation. In addition, S. 1139 clarifies that the Paperwork Reduction Act's protections apply to all government-sponsored paperwork, eliminating any confusion over so-called "third-party disclosures."

Senator Bumpers, SBLC urges you to support Senator Nunn's efforts to enact the tenets of S. 1139, the Paperwork Reduction Act of 1992, before the end of the 102nd Congress.

Sincerely,

E. COLETTE NELSON,
Chairman, Procurement Committee.

Enclosure.

MEMBERS OF THE SMALL BUSINESS
LEGISLATIVE COUNCIL

Air Conditioning Contractors of America.
Alliance for Affordable Health Care.
Alliance of Independent Store Owners and Professionals.
American Animal Hospital Association.
American Association of Nurserymen.
American Bus Association.
American Consulting Engineers Council.
American Council of Independent Laboratories.
American Floorcovering Association.
American Machine Tool Distributors Association.
American Road & Transportation Builders Association.
American Society of Travel Agents, Inc.
American Sod Producers Association.
American Subcontractors Association.
American Textile Machinery Association.
American Trucking Associations, Inc.
American Warehouse Association.
Architectural Precast Association.
Associated Builders & Contractors.
Associated Equipment Distributors.
Associated Landscape Contractors of America.
Association of Small Business Development Centers.
Automotive Service Association.
Bowling Proprietors Association of America.
Building Service Contractors Association International.
Business Advertising Council.
Christian Booksellers Association.
Council of Fleet Specialists.
Electronics Representatives Association.
Florists' Transworld Delivery Association.
Helicopter Association International.
Independent Bakers Association.
Independent Medical Distributors Association.
International Association of Refrigerated Warehouses.
International Bottled Water Association.
International Communications Industries Association.
International Formalwear Association.
International Franchise Association.
Jewelers of America, Inc.
Machinery Dealers National Association.
Manufacturers Agents National Association.
Manufacturers Representatives of America, Inc.
Mechanical Contractors Association of America, Inc.
Menswear Retailers of America.
NMTBA-The Association for Manufacturing Technology.
National Association for the Self-Employed.
National Association of Brick Distributors.
National Association of Catalog Showroom Merchandisers.
National Association of Home Builders.
National Association of Investment Companies.
National Association of Passenger Vessel Owners.
National Association of Plumbing-Heating-Cooling Contractors.
National Association of Private Enterprise.
National Association of Realtors®.
National Association of Retail Druggists.
National Association of Small Business Investment Companies.
National Association of the Remodeling Industry.
National Association of Truck Stop Operators.
National Campground Owners Association.
National Candy Wholesalers Association.
National Chimney Sweep Guild.
National Coffee Service Association.
National Electrical Contractors Association.
National Electrical Manufacturers Representatives Association.
National Fastener Distributors Association.
National Food Brokers Association.
National Grocers Association.
National Independent Flag Dealers Association.
National Knitwear & Sportswear Association.
National Limousine Association.
National Lumber & Building Material Dealers Association.
National Moving and Storage Association.
National Ornamental & Miscellaneous Metals Association.
National Paperbox Association.
National Precast Concrete Association.
National Shoe Retailers Association.
National Society of Public Accountants.
National Tire Dealers & Retreaders Association.
National Tooling and Machining Association.
National Tour Association.
National Venture Capital Association.
Opticians Association of America.
Organization for the Protection and Advancement of Small Telephone Companies.
Petroleum Marketers Association of America.
Power Transmission Representatives Association.
Printing Industries of America, Inc.
Professional Plant Growers Association.
Retail Bankers of America.
SMC/Pennsylvania Small Business.
Small Business Council of America, Inc.
Society of American Florists.
Specialty Advertising Association International.
United Bus Owners of America.

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,
Washington, DC, September 18, 1992.

Hon. SAM NUNN,
U.S. Senate,
Washington, DC.

DEAR SENATOR NUNN: You may soon be asked to vote on S. 1139, the "Paperwork Reduction Act of 1991" (PRA), being offered by Senators Nunn (D-GA), Bumpers (D-AR), and Kasten (R-WI). The U.S. Chamber of Commerce Federation of local and state chambers of commerce, businesses, and associations strongly urges you to vote "YES."

Last year alone, the federal government imposed nearly five-and-a-half billion hours of paperwork on the American public. This is the equivalent of having the entire adult populations of Dallas and Houston do nothing but fill out federal forms all year. The Internal Revenue Service alone imposes more than four billion hours of paperwork per year on taxpayers. More than a billion hours of that is hoisted upon small business owners and operators—the backbone of our economy.

But it is not only business that is hampered by federal paperwork burdens. Anyone who receives Medicare or food stamps, or collects Social Security benefits, knows how true this is.

Fortunately, S. 1139 will alleviate these problems. If enacted, the PRA would:

Strengthen the public protections afforded by the original PRA and the role of the Office of Information and Regulatory Affairs (OIRA) to act as a restraint on the insatiable demands for paperwork by government agencies.

Reauthorize appropriations for OIRA for five years.

Extended the protections of the PRA to government-sponsored requirements mandating the disclosure of information by one private party to another private party (the so-called third-party disclosure requirements).

Require the establishment of a government-wide goal to reduce by at least five percent the aggregate paperwork burden existing in the prior fiscal year.

Emphasize the responsibility of agencies to solicit and carefully evaluate public comments in the formation of their information-collection requests.

Require agencies to substantiate their estimates of the paperwork burden on the public anticipated from a proposed information collection request.

Enhance the PRA's reporting requirements to distinguish between those agencies reducing unnecessary paperwork and those contributing to the mountain of paperwork being heaped upon the public, and to identify those paperwork burdens that flow directly from recently enacted congressional mandates.

Strengthen OIRA's ability to ensure an agency's compliance with the PRA.

Provide authority to test innovative approaches to government information collection activities.

Unless OIRA can continue its critical role in stemming unnecessary regulations and disclosure requirements, businesses and individuals will spend even more time and money buried in paperwork. Please vote "Yes" on S. 1139.

Sincerely,

WILLIAM T. ARCHEY,
Senior Vice President, Policy and Congressional Affairs.

NATIONAL ASSOCIATION OF MANUFACTURERS,
Washington, DC, September 8, 1992.

Hon. SAM NUNN,
U.S. Senate,
Washington, DC.

DEAR SENATOR NUNN: It is my understanding that S. 1139, the Paperwork Reduction Act of 1992, may come before the full Senate prior to the end of the 102nd Congress. The bill was offered by Senators Sam Nunn, Dale Bumpers and Bob Kasten. On behalf of the National Association of Manufacturers (NAM), I urge your strong support for their bipartisan efforts.

S. 1139 will reauthorize the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget for five years. OIRA is the primary agency statutorily charged with restraining the amount of unnecessary paperwork imposed by the federal government on the public and taxpayers.

The Nunn-Bumpers-Kasten bill will correct a Supreme Court decision that exempted more than one-third of federal paperwork from OIRA review and require agencies to substantiate their estimates of the time burden to comply with information collection requests and other paperwork. It will also establish a goal of reducing the amount of paperwork by five percent a year.

As the country is emerging from a recession, the government should be helping by reducing the amount of time it takes to comply with paperwork requirements in order to allow for more productive and efficient activities. To this end, OIRA's reauthorization is necessary since it is the government's designated watchdog in this area. The NAM urges your support for the Paperwork Reduction Act of 1992 when it comes before the full Senate.

Sincerely,

MICHAEL E. BAROODY.

BUSINESS COUNCIL ON THE REDUCTION OF PAPERWORK,
Washington, DC, September 28, 1992.

Hon. SAM NUNN,
U.S. Senate,
Washington, DC.

DEAR SENATOR NUNN: We write to enthusiastically support your efforts to pass S. 1139, the Paperwork Reduction Act of 1991.

The Business Council on the Reduction of Paperwork has been monitoring the Government's paperwork demands for 50 years. Our members are businesses of all sizes, trade and professional associations, and individuals. We believe your legislation is a significant step towards better government for our future. Our members, like the public, need relief from excessive and wasteful regulatory paperwork.

This is vitally important legislation which works positively to strengthen current law. We strongly endorse the 5-year authorization for appropriations for the Office of Information and Regulatory Affairs (OIRA) and Congressional clarification of the scope of the Act's public protections to apply to all Government-sponsored paperwork. We applaud this resolution of the confusion caused by the U.S. Supreme Court's 1989 decision in *Dole* v. *United Steelworkers of America.*

Business leaders have cited this legislation as the single most important step the 102nd Congress can take to ensure balanced regulations which will allow us to effectively compete in the global marketplace. Business, in particular small business, is being overwhelmed by the burden of federal paperwork. Unnecessary paperwork is hampering state and local governments' capabilities and resources to deliver services. The Paperwork Reduction Act of 1992 offers a basis for relief.

S. 1139 looks to the future by emphasizing the need for the Executive Branch to systematically take advantage of the information age and apply new and emerging information technology to the creation and review of regulations. The checks and balances found in this legislation are sorely needed by both taxpayers and consumers.

BCORP and its members appreciate your efforts and those of your colleagues on behalf of the Paperwork Reduction Act of 1991. We are prepared to assist you in these efforts in any way we can.

Sincerely,

JON W. VAN HORNE,
Chairman.

C.T. HOWLETT,
Chairman-Elect.

ROBERT E. COAKLEY,
Executive Director.

INDEPENDENT BANKERS ASSOCIATION OF AMERICA,
Washington, DC, September 17, 1992.

Hon. SAM NUNN,
U.S. Senate,
Washington, DC.

DEAR SENATOR NUNN: On behalf of the 6,000 members of the Independent Bankers Association of America (IBAA), I am writing to encourage you to support S. 1139, the Paperwork Reduction Act of 1991, sponsored by Senators Nunn, Bumpers and Kasten.

This bill strengthens the public protections afforded by the Paperwork Reduction Act of 1980 and reauthorizes appropriations for five years for the Office of Information and Regulatory Affairs (OIRA), which falls under the Office of Management and Budget (OMB).

IBAA strongly supports this effort to minimize the Federal paperwork burdens imposed on individuals, small businesses, state and local governments, educational and nonprofit organizations and Federal contractors.

Community banks are fighting against unnecessary regulatory paperwork burden on every possible front. S. 1139 takes positive steps in that direction. We urge your support for swift action on this bill before the end of the legislative session.

Sincerely,

GARY J. KOHN,
Legislative Counsel.

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA,
Washington, DC, September 16, 1992.

Hon. SAM NUNN,
U.S. Senate,
Washington, DC.

DEAR SENATOR NUNN: Members of the Associated General Contractors of America (AGC) strongly support and urge prompt passage of S. 1139, the Paperwork Reduction Act of 1991.

S. 1139 strengthens the public protections afforded by the Paperwork Reduction Act (PRA) and the role of the Office of Information and Regulatory Affairs (OIRA) to act as a restraint on exceeding demands for paperwork by federal government agencies. Last year alone, the federal government imposed 5.4 billion hours of paperwork on American individuals and businesses.

S. 1139 requires establishment of a government-wide goal to reduce by at least five percent the aggregate paperwork burden existing in the prior fiscal year. A summary of adding provisions of this legislation is attached for your information.

AGC contractor members agree that Congress should enact S. 1139 to reduce the federal paperwork for individuals and businesses and to minimize the government's cost of collecting, maintaining, using and disseminating information.

Thank you for the opportunity to present these views.

Sincerely,

STEPHEN E. SANDHERR,
Executive Director, Congressional Relations.

AMERICAN SUBCONTRACTORS ASSOCIATION, INC.,
Alexandria, VA, September 15, 1992.

Hon. SAM NUNN,
U.S. Senate,
Washington, DC.

DEAR SENATOR NUNN: The American Subcontractors Association commends you for your ongoing efforts to reduce unnecessary government paperwork. ASA strongly supports S. 1139, the Paperwork Reduction Act of 1992.

ASA is a national trade association with more than 7,000 firms representing all major construction trades. In addition to its individual member companies, ASA represents 20 other construction specialty trade associations with members of their own.

Reducing government paperwork burdens on our members has been a goal of ASA since it was founded more than 25 years ago. Several ASA members were among the delegates to the 1980 White House Conference on Small Business who worked to include paperwork reduction among the Congress' final recommendations. ASA was a strong proponent of the Paperwork Reduction Act of 1980. And, of course, we strongly supported the reauthorization of the Office of Information and Regulatory Affairs in 1986.

ASA believes that, as a result of the Paperwork Reduction Act, the burden of government paperwork on the public is much less than might otherwise be. Nonetheless, ASA members report they are drowning in a sea of government information requests. We believe the Paperwork Reduction Act of 1992 is needed to strengthen the existing law and to assure that OIRA remains the focal point for government paperwork reduction.

ASA supports the new goals for paperwork reduction that would be established by S. 1139. We believe this provision provides both OIRA and the individual agencies with realistic objectives on which to focus their paperwork reduction efforts.

However, we believe it would be impossible to meet these goals if the Act is not clarified to apply to so-called third-party paperwork. As employers, ASA members are particularly susceptible to such government-imposed paperwork. Any government requirement that an employer collect information from its employees or provide information to its employees, falls into this category. This includes, for example, payroll tax information, employee benefit notifications, and job site health and safety information. ASA strongly supports the provision in S. 1139 that would assure that this type of government-required paperwork is subject to the same standards of need and usefulness as paperwork submitted directly to the government.

Finally, ASA supports the provisions in S. 1139 that would increase the opportunity for public participation in the paperwork process. Those that are required to keep records and complete forms know better than anyone the amount of time it takes, and whether there is a better method to achieve the purpose of the information collection requirement.

Senator Nunn, thank you for your continuing efforts on S. 1139, the Paperwork Reduction Act of 1992. We look forward to working with you to assure that this important legislation is enacted into law as quickly as possible.

Sincerely,

WAYNE T. RUTH,
Chairman,
Government Relations Committee.•

ACTION ON PAPERWORK REDUCTION—A PRIORITY FOR SMALL BUSINESS

• Mr. BUMPERS. Mr. President, I want to associate myself with the remarks just made by my good friend from Georgia, Senator NUNN. I am pleased to be the principal Democratic cosponsor of S. 1139, the Paperwork Reduction Act of 1991. It is indeed unfortunate that we have been unable to get action on the bill, despite its bipartisan support within the Senate and its broad support within the business community, especially the small business community.

If I am returned to this body by the will of the people of Arkansas, my friend from Georgia can certainly count on me to join him in a renewed effort to enact a Paperwork Reduction Act of 1993, during the next Congress. Important things often take longer than we would like, but this Senator is willing to relentlessly pursue reforms which I believe to be important. For me, paperwork reduction is certainly such an important issue.

As chairman of the Committee on Small Business, I can attest to the importance the small business community attaches to restraining the growth of Government-sponsored paperwork and the regulations from which paperwork burdens often flow. Enactment of the Paperwork Reduction Act and a companion piece of legislation, the Regulatory Flexibility Act, were key recommendations of the 1980 White House Conference on Small Business. In the closing days of the Carter administration, the Congress and the President responded, enacting both pieces of legislation. Our former colleague from Florida, Lawton Chiles, led the way on the Paperwork Reduction Act. My friend the senior Senator from Vermont [Mr. LEAHY] led the way on the Regulatory Flexibility Act. Both of these small business initiatives enjoyed strong bipartisan support, because they reflected a commonsense approach.

The Regulatory Flexibility Act is founded on the simple principle that in fashioning regulations, Federal agencies must assess their impact on small business concerns. When the impact will be significant, a Federal agency is responsible for tailoring a generally applicable regulation to the needs of small firms or must issue separate regulatory coverage for use by small firms. The Regulatory Flexibility Act specifically gives to the Small Business Administration's Chief Counsel for Advocacy a major role in monitoring agency compliance. The Advocate's office reviews proposed regulations and the small business impact assessments relating to those regulations.

Like night follows day, regulations, even regulations honestly adjusted to minimize their adverse impact on small businesses, generally lead to increased paperwork burdens. Government not only wants to tell you what to do, but wants to hear back on how well you are complying with the regulation. Other times, agencies are just collecting information. What kills small firms, and annoys the public generally, is the cumulative effect of all these Government demands. Government regulation and Government paperwork cannot be eliminated, but there's got to be commonsense limits.

The Paperwork Reduction Act of 1990 [PRA] reflects that commonsense approach, and includes a straightforward public protection provision. If a Federal agency wants to impose a paperwork burden, it must submit its proposal for comment by the public and have it reviewed by the Office of Information and Regulatory Affairs [OIRA]. Under the PRA, OIRA can approve a paperwork requirement for up to 3 years, assigning a control number and expiration date, which must appear on the form. If an agency form does not reflect an OIRA control number or if the approval has expired, the public is free to ignore the agency's information collection request without fear of penalty.

Having a single point of review within the executive branch contributes to a more consistent application of the basic review standards included in the Paperwork Reduction Act. If an agency is to get approval for a proposed paperwork requirement, the proposal must pass muster against some pretty fundamental standards: Is the paperwork burden necessary for the proper performance of the agency's programs? Does the proposed paperwork burden have practical utility in furthering a legitimate function of the agency? Would the proposed information collection duplicate information already being collected by the Government? Is the proposed paperwork burden the least burdensome alternative?

The Congress included an opportunity for public review of a proposed Government-sponsored paperwork burden in the firm belief that business people would be in a good position to make practical suggestions on how to minimize the burden to be imposed by an otherwise legitimate information collection request. They would also be in a position to suggest how a current paperwork burden might be adjusted to meet some new Government need. Getting double duty out of one form or report makes more sense than having two.

Mr. President, agencies do not come naturally to such an approach. Each agency tends to approach its responsibilities without reference to what other agencies are doing. The president of a small bank in Arkansas showed me the reports that he had to submit to various regulatory agencies. It stood almost 4 inches high. These were not just forms, but computer printouts. To him, the most absurd thing was that he was submitting essentially the same information to several different agencies. Some were literally within blocks of each other here in Washington. Unfortunately, in carrying out their responsibilities, agencies tend to act as if they are not even part of the same Government.

Mr. President, the Paperwork Reduction Act has made a difference in restraining the growth of Federal paperwork burdens. The problem is getting Federal agencies to comply with not just the letter of the act's requirements but the spirit as well.

Throughout the 1980's, the Small Business Committee has paid close attention to overseeing the implementation of both the Paperwork Reduction Act and the Regulatory Flexibility Act. The committee, and especially the Subcommittee on Government Contracting and Paperwork Reduction, have held 10 hearings to review regulatory and paperwork burdens and the effectiveness of the implementation of the Paperwork Reduction Act and the Regulatory Flexibility Act. Over the last 4 years, the Small Business Committee and the Paperwork Reduction Subcommittee under the chairmanship of my friend, the senior Senator from Illinois, [Mr. DIXON], have been especially active in response to calls for relief from the small business community. Regulatory and paperwork burdens have clearly been on the rise, driven by a strong resurgence of regulatory activism within the agencies, under the cover of statutes which frequently must grant broad discretion concerning the details for their implementation. During the same period, the small business community has been alarmed that the principal statutory proposals to reauthorize appropriations for OIRA and to amend the Paperwork Reduction Act have strayed away from the fundamental objectives of the 1980 act and have become fixed on issues relating to disclosure of contacts between Government employees and private sector interests during regulatory reviews.

As noted in the remarks of my good friend, the senior Senator from Georgia [Mr. NUNN], the Paperwork Reduction Act already includes disclosure requirements that apply to OIRA when conducting paperwork reviews, disclosure requirements which are reasonable, practical, and working. As Senator NUNN noted, these disclosure requirements were included by Senator CHILES as part of the 1984 amendments to the Paperwork Reduction Act. Additional public disclosure procedures were adopted by OIRA in 1986, at the insistence of Senators LEVIN, RUDMAN, and DURENBURGER. They apply to OIRA's review of proposed agency regulations under the authority of Executive Order 12292. These expanded public disclosure procedures are also being voluntarily followed by OIRA when making reviews under the Paperwork Reduction Act.

Mr. President, the controversy over the adequacy of the public disclosure requirements that apply to the regulatory review process has spawned a whole host of serious problems. Reauthorization of appropriations for OIRA, which expired on September 30, 1989, has stalled. An effort was started by Members of the House to terminate funding for OIRA for fiscal year 1990. This effort was strongly opposed by the small business community and many other groups. It was strongly opposed in the Senate by many members of the Small Business Committee, including me.

OIRA has also been left without a Presidentially appointed and Senate-confirmed administrator for about 3 years, creating a serious power vacuum. Since neither nature nor politics can long tolerate a vacuum, the Competitiveness Council, headed by Vice President QUAYLE, has filled the vacuum, taking an aggressive role in regulatory review. The Competitiveness Council has not volunteered to make itself subject to OIRA's or any other type of disclosure. Oversight efforts by a number of House and Senate committees have produced little but frustration for the Representatives and Senators involved. Recently, an effort to eliminate any funding for staff to support the Competitiveness Council failed.

This ongoing controversy over what are appropriate requirements for public disclosure of contacts between Government officials and persons outside of Government during the process of reviewing a regulation before it is released for public comment have cast a huge stormcloud over all legislative efforts to strengthen the Paperwork Reduction Act. During the last Congress, the small business community sought the Small Business Committee's assistance to urge the Governmental Affairs Committee to consider a package of essential amendments to S. 1742, a bill to reauthorize appropriations for OIRA, and included a series of amendments to the Paperwork Reduction Act of 1980. We responded to their call for assistance, forwarding their package of amendments with a letter signed by 13 members of the committee.

Mr. President, I will ask that a copy of our letter of April 3, 1990, be included in the RECORD following my remarks. Senator NUNN then did his best to have these suggestions incorporated. Despite much hard work, the final product was not something that the small business community could support, although they ceased to actively oppose the enactment of S. 1742, once the administration endorsed the Governmental Affairs Committee's revised bill and negotiated the issuance of an Executive order relating to public disclosure of contacts during the prepublication review process for regulations. In the end, Mr. President, action on S. 1742 was blocked in the final hours of the 101st Congress by a series of holds placed on the bill from the Republican side of the aisle.

Early in 1991, a number of business groups, including the principal small business groups, and others wrote the President and a number of Members of the Senate urging that the starting point for legislation in the 102d Congress should be a positive bill that built upon and strengthened the Paperwork Reduction Act of 1980. S. 1139 is that positive bill.

Mr. President, I will ask to include in the RECORD a copy of the letter sent to me.

On June 25, 1991, the Committee on Small Business held a hearing on the "Implementation of the Paperwork Reduction Act of 1980 and Recommendations to Make It More Effective." Many of the witnesses offered testimony regarding S. 1139. The testimony was universally positive. Unfortunately, that hearing was the last action on S. 1139 during the 102d Congress, for the reasons previously mentioned in my remarks and those of my good friend from Georgia, Senator NUNN.

Mr. President, without vigilant congressional oversight of the implementation of the Paperwork Reduction Act, the natural tendencies of the agencies regarding regulatory and paperwork burdens will flourish. I feel confident that the Committee on Small Business will do more than its fair share to maintain such oversight. But from my viewpoint, a reaffirmation and strengthening of the Paperwork Reduction Act of 1980 along the lines proposed in S. 1139 is absolutely essential if the act is to continue to be an effective deterrent to excessive paperwork burdens. The small business community and the public deserve no less.

Mr. President, I ask that the letters to which I referred be printed in the RECORD.

The letters follow:

U.S. SENATE,
COMMITTEE ON SMALL BUSINESS,
Washington, DC, April 3, 1990.

Hon. JOHN GLENN,
Chairman,
Hon. WILLIAM V. ROTH, Jr.,
Ranking Minority Member,
Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR JOHN AND BILL: Your Committee is now considering S. 1742, the "Federal Information Resources Management Act". This bill, introduced by Senator Bingaman, makes a series of very significant amendments to the Paperwork Reduction Act of 1980 (PRA) and reauthorizes the Office of Information and Regulatory Affairs (OIRA), which serves as the focal point for the Act's implementation.

The paperwork burdens imposed by the Federal Government on individuals and businesses have consistently been a matter of substantial concern to the small business community. The enactment of the PRA and the establishment of OIRA were key recommendations of the 1980 White House Conference on Small Business. Since that time, all segments of the small business community have repeatedly called upon the Congress to preserve and strengthen the Act, and sought its vigorous implementation by the various agencies and OIRA.

As recently as last September, our Subcommittee on Government Contracting and Paperwork Reduction held a hearing to receive testimony from witnesses representing many segments of the small business community. They expressed their continued support for the Act's vigorous application to contain the Government's insatiable appetite for information and regulations. They furnished recent examples of how the act can effectively protect the public from unnecessary and unreasonable paperwork burdens by requiring agencies to seek out the least burdensome paperwork requirements when fulfilling their missions.

The small business community remains very concerned that some provisions of S.

1742 may severely curtail the protections afforded by the Act. The attached proposal, developed by the National Federation of Independent Business (NFIB) with technical assistance form our Committee staff, represents what the small business community believes are needed modifications to the text of the bill currently before your Committee. In addition NFIB, it is supported by the Small Business Legislative Council (SBLC), National Small Business United (NSBU), and many of other small business organizations that comprise their memberships. It is our understanding that major groups representing other segments of the business community also support this proposal. We believe that this proposal, which is being considered by your Committee staff in conjunction with NFIB, deserves very serious consideration by the Committee if the PRA's vitality is to be sustained.

Recently, the U.S. Supreme Court decided *Dole* v. *United Steelworkers of America*, interpreting the PRA. The Court held that neither the statute nor its legislative history supported a position that the PRA authorized the review of paperwork burdens required by the Government to be imposed by one private party on another private party. Many in the small business community assert that this decision puts substantial volumes of paperwork burden outside the Act's public protections. For example, information collection or other paperwork requirements imposed on many tiers of subcontractors by their prime contractor at the direction of a procuring agency would be totally free of any review under the Act. Our former colleague from Florida, Lawton Chiles, urged in his brief to the Court that such a limitation was not intended. Appropriate clarification of Congressional intent in this regard would seem to be warranted before final Senate action on the bill.

Further, S. 1742 establishes a set of detailed procedures for recording communications with other Government agencies and the private sector relating to OIRA's exercise of its review activities under the PRA or any other authority. It has been asserted that in their present form these requirements are so detailed that they could possibly become a real restraint on public participation in the review processes established by the Act.

Finally, we wish to commend you and Senator Bingaman for the substantial enhancements made by S. 1742 to improve the formulation and implementation of Government policies regarding overall information resources management and Federal statistical policy. If properly implemented, these enhancements will inure to the benefit of the small business community.

Sincerely,

Dale Bumpers, Chairman; Rudy Boschwitz, Ranking Minority Member; Trent Lott, Charles E. Grassley, Malcolm Wallop, Christopher S. Bond, Robert W. Kasten, Jr., Sam Nunn, Alan J. Dixon, Max Baucus, David L. Boren, John F. Kerry, Tom Harkin.

JANUARY 8, 1991.

Hon. DALE BUMPERS,
Chairman, Committee on Small Business,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Soon after the 102nd Congress turns to legislative business, we believe it must promptly consider legislation that maintains the vitality and reestablishes the full potential of the Paperwork Reduction Act of 1980.

During the last Congress, the committees of jurisdiction in both houses reported legislation which, in the view of the undersigned organizations, would have severely weakened the public protections afforded by the Act and diminished the role of the Office of Information and Regulatory Affairs (OIRA). These bills, S. 1742 and H.R. 3695, would have impaired the public's and Congress' ability to assure accountability for reasonable restraints on the growth of federal paperwork and regulatory burdens. In our view, they would have impaired any President's ability to review and coordinate the implementation of statutes and other public policy initiatives needed to minimize the public burdens of necessary paperwork and regulatory demands.

We are preparing a legislative proposal which will enhance rather than diminish the effectiveness of the Paperwork Reduction Act and OIRA. Left unrestrained, the government's historical and insatiable appetite for information and regulation leads to wasteful and unnecessary burdens upon the public. To counter that trend, we support a positive, constructive approach that builds upon current law.

Our proposal will emphasize the responsibility and accountability of each agency to achieve its mission in the least burdensome and the most economical way possible. We intend to address the present confusion over whether the public protections of the Act extend to government-sponsored requirements to disclose information to third parties. We believe they should. We believe any new legislation to amend the Act should clarify this issue. In addition, we propose to emphasize the opportunities for reducing unnecessary burdens on small businesses, universities and research institutions, and State and local governments.

Mr. Chairman, we urge you to review this proposal before you take a position on legislation to amend the Paperwork Reduction Act or reauthorize the Office of Information and Regulatory Affairs.

Sincerely yours,

BUSINESS COUNCIL ON THE REDUCTION OF PAPERWORK. CITIZENS FOR A SOUND ECONOMY. THE JOHNS HOPKINS UNIVERSITY. NATIONAL ASSOCIATION OF MANUFACTURERS. NATIONAL FEDERATION OF INDEPENDENT BUSINESS. NATIONAL SMALL BUSINESS UNITED. SMALL BUSINESS LEGISLATIVE COUNCIL. U.S. CHAMBER OF COMMERCE.•

PAPERWORK REDUCTION ACT OF 1991

• Mr. KASTEN. Mr. President, I rise today to join my colleagues, the distinguished Senator from Georgia, Senator NUNN and my chairman, Senator DALE BUMPERS from Arkansas, in expressing disappointment that the 102d Congress will adjourn without having the opportunity to pass a very important piece of legislation—the Nunn-Bumpers-Kasten Paperwork Reduction Act of 1991.

Congress has spent a numerous amount of time over the past 2 years talking about reincentivizing the economy. And just as Congress has failed to enact a significant economic growth package, it has failed to act on legislation that will curb Government overregulation that is stifling growth and strangling our small businesses—the backbone of our Nation's economy.

In the last 3 years, the pages of the Federal Register have increased from 55,000 to nearly 70,000. Each extra page of regulations imposes new requirements on businesses—and especially on small businesses.

I was a small business owner before entering public life, so I know what this means. It means more time—more work—more expense. It means you have to hire extra workers for the sole purpose of filling out forms—as opposed to producing marketable products. In a recession, this added burden becomes a very serious threat to the survival of many businesses.

Over the past 10 months, I have traveled around my State of Wisconsin holding official Senate Small Business Committtee field hearings. I heard time and time again, from the local small business men and women, that what they need is less burdensome Government regulation. Well they are right. To illustrate my point, I carried a stack of Government forms that every entrepreneur must fill out to start a dry cleaning business. This stack reaches nearly one foot high!

In 1980, we had 121,000 regulatory personnel. In the Reagan and Bush administrations, they got cut back to a level of 114,000 by 1990.

But this trend has stopped. Next year, we will see a higher level of bureaucrats than in 1980—a projected total of over 122,000.

President Bush himself says that this huge regulatory machine is costing the economy at least $185 billion per year. I understand that new estimates being formulated have increased this figure from $300 to $400 billion annually.

Again, this is sending us in the wrong direction. The President has established a counterforce that is pushing us back in the right direction—the Council on Competitiveness chaired by Vice President DAN QUAYLE.

The Vice President's Council has reported that their efforts in regulatory reform have generated and saved jobs in Wisconsin and across the country. Economists estimate these regulatory savings will save or create nearly 200,000 jobs nationally and 4,000 jobs in Wisconsin—quite a report.

Yet, despite their efforts, the Competitiveness Council has been taking some heavy hits from liberal special-interest pressure groups—a sure sign of its effectiveness. It is taking on the sacred cows of the bureaucracy—and, in some cases, prevailing.

One of the Council's crucial initiatives has been in reviving the OMB's Office of Information and Regulatory Affairs—OIRA.

OIRA was created under the Carter administration to review Government regulation and paperwork burdens. As President Carter himself put it, OIRA was formed to "regulate the regulators." It has a lot of work to do, and we in Congress ought to support that work.

Regrettably, we have not done this. Congress has left the top slot at OIRA vacant for almost 2 years—and refused to reauthorize the agency. Even the Government Affairs Committee has proposed a bill that will further weaken the President's ability to oversee and control the development of costly new regulations.

We want to reverse this. Senators NUNN and BUMPERS, and I have introduced the Paperwork Reduction Act of 1991. Our bill would move us to the opposite direction—away from the big-Government approach promoted by the Government Affairs Committee. This bill would strengthen OIRA's ability to block regulations instead of further weakening it. Senators DOLE, BENTSEN, WALLOP, BAUCUS, BOND, and DIXON have helped us build a truly bipartisan base for this legislation.

Since 1981, OIRA has been able to reduce the amount of time the public spends filling out Government paperwork by almost 600 million hours per year. Using a conservative estimate of $10 per hour, this paperwork reduction has saved the economy some $6 billion each year.

If we do not support OIRA, we will head in the opposite direction pretty fast. Without this kind of oversight, there will be no way to correct the innate tendency toward overregulation that exists in the Federal agencies. We all know about this tendency, and we all have our favorite horror stories about regulatory excess.

One of my own personal favorites is OSHA's hard hat proposal. OSHA wanted every single hard hat in America to be disinfected before use. This would have added some $60 million per year to the cost of doing business—even though there is not a single documented case of any worker catching anything from wearing a hard hat.

Any single anecdote of this kind is relatively unimportant. What is important is what it demonstrates about the regulatory mentality. If there is no counterforce representing the interests of small business and national competitiveness, the result will be economic disaster.

Our Paperwork Reduction bill is a response to the 1990 Supreme Court ruling in Dole versus United Steelworkers of America. In that ruling, the Court decided that the initial Paperwork Reduction Act of 1980 did not give OMB the power to review regulations requiring the disclosure of information to an individual or employer.

The Court limited OMB's review to those regulations that require disclosure directly to the Government. In effect, this ruling removed one-third of all Federal paperwork from OMB's review.

This paperwork bill would reaffirm the purpose of the 1980 bill—to minimize the Federal paperwork burden. The bill would strengthen OIRA's hand—and give the public an opportunity to object to unreasonable government paperwork demands.

Our objective is to reduce Government paperwork by 5-percent annually. This was the goal of the 1980 bill—and it remains necessary today.

American citizens are spending more than 5.3 billion hours per year filling out Government forms. This is enough to keep 2 million people doing nothing but filling out forms all year round. There is a clear connection between this misplaced emphasis—this bureaucratic excess at the Federal level—and today's struggling economy.

We cannot afford an overtaxed, overregulated economy. If we set bad economic policy at the Federal level, the result is the kind of stagnation and mass unemployment we are experiencing today.

Unless we change course and take a new direction, our workers and small business people will continue to get further and further behind.

There is a solution. That is why I will be back in the next 103d Congress to continue urging the enactment of valuable legislation like the Paperwork Reduction Act that will help steer our Nation toward economic prosperity and create jobs. I urge all my colleagues to join me in supporting this important piece of legislation.•

PAPERWORK REDUCTION

• Mr. ROTH. Mr. President, as a cosponsor of S. 1139, the Paperwork Reduction Act of 1991, I am a strong supporter of the need to minimize the paperwork burdens imposed by the Federal Government.

This legislation represents an important effort to deal with the issue in a reasonable and effective manner. It recognizes the legitimate information collection and documentation needs of government. At the same time, it addresses the natural tendency of Government bureaucracies to err on the side of excessive paperwork demands, even when agencies are expected to strike a balance between cost and benefit.

I had hoped that the Governmental Affairs Committee would have been able to consider and act on the bill during this past Congress. If it had, and if all of my colleagues in the Senate had been to consider the bill, I believe that a solid majority would have voted for it.

By failing to act on this much-needed legislation, the Senate has prolonged expensive and difficult paperwork burdens imposed on individuals, small businesses, educational and nonprofit institutions, State and local governments, and other persons. Also through its inaction, the Senate has perpetuated unnecessary costs on American businesses trying to compete in a global economy.

The United States is a very high-wage Nation, compared to the rest of the world. This is certainly good, because it means our workers can enjoy a high standard of living. But it does drive up the cost of our products and services in price-sensitive worldwide competition. This is a competitive disadvantage we can overcome, however, by increasing our productivity and minimizing any Government-imposed costs.

Paperwork is a major, Government-imposed cost—and one for which we should be constantly vigilant in our efforts to keep at an absolute minimum. This bill does that, by strengthening the ability of the Office of Information and Regulatory Affairs to be our paperwork watchdog. I look forward to working on this legislation when it is reintroduced next year.•

GENE BROOKS

• Mr. ADAMS. Mr. President, during my tenure as chairman of the Aging Subcommittee of the Senate Committee on Labor and Human Resources, I had the distinct honor of holding hearings on the reauthorization of the Older Americans Act, and several other legislative initiatives of interest to this Nation's senior citizens. I was most appreciative of the legislative expertise of the several advocacy groups located here in Washington, DC that focus on issues of interest to seniors. In addition, I was grateful for the opportunity to rely on the knowledge and practical advice from a number of advocates working in State and local seniors programs from around the country, and from my own State of Washington. Reflecting back on those many conversations, meetings, and hearings, I am most appreciative of the advice and counsel I received from my longtime friend, Gene Brooks.

Gene Brooks served with great distinction as Director of the Division of Aging for King County, WA. She was the founder of Senior Day at the Kingdome, an event that showcased the wide range of services available to senior citizens in the Puget Sound area. Gene's energy level was unsurpassed, and her boundless enthusiasm for her fellow citizen led her to leadership roles with the Federal Way Community Council, the Washington State Democratic Party, and with the Governor's Commission on Aging. Her popularity among county employees was recognized when Gene Brooks was selected to throw out the first pitch at a Seattle Mariner's game noting King County Employee Appreciation Day. She also served two terms as president of Senior Services of Washington.

Mr. President, my friend Gene Brooks passed away on June 30, 1992 in her hometown of Tacoma, WA. Up to the very end of her remarkable life, Gene continued to lead and inspire those who knew her. Her dedication to senior citizens was more than just a vocation: she lived with her mother Maude Knoblauch, who is a legend in her own right among senior advocates. To Gene's children Robert, Timothy, and Marianne I have already expressed my deep personal sorrow at losing such a dear and trusted friend. To the senior advocates in Washington State, and to those who knew and loved her, I want to note that the passage of the Older Americans Act Amendments of 1992 will always remain, in the heart of the subcommittee chairman, dedicated to the memory of a great American, Gene F. Brooks.•

INTERSTATE BRANCHING BY FEDERAL SAVINGS ASSOCIATIONS

• Mr. GARN. Mr. President, yesterday the President signed into law the Housing and Community Development Act of 1992. In addition to authorizing housing programs, this legislation also establishes a new office within the Department of Housing and Urban Affairs to regulate and oversee the Federal Home Loan Mortgage Corporation, Freddie Mac, and the Federal National Mortgage Corporation, Fannie Mae. Also of great importance are provisions tightening our money laundering and counterfeiting laws, as well as several provisions that provide modest relief from certain laws that were imposing impractical burdens on our financial institutions.

During Senate consideration of S. 2733, the underlying bill dealing with the Government-sponsored enterprises, an amendment was adopted that would have imposed a 15-month moratorium on interstate branching by Federal savings associations. This amendment was in response to an Office of Thrift Supervision regulation that removed a previous agency-imposed limitation on such branching.

During consideration of the moratorium provision there appeared to be confusion among some of the sponsors of the amendment as to the existing statutory branching authority of Federal thrifts, and that of national banks. There was an apparent belief that the branching authority of Federal thrifts was tied to State law, and that the Office of Thrift Supervision had exceeded its statutory authority by permitting thrifts to branch interstate.

In fact, section 5(r) of the Home Owners' Loan Act clearly and unequivocally permits Federal thrifts to branch outside of their home State, subject to several statutory conditions. Unlike national banks, the branching authority of Federal thrifts under the Home Owners' Loan Act has never been tied to State law. Under plenary authority to regulate the activities of thrifts granted to the Federal Home Loan Bank board in section 5 of the Home Owners' Loan Act, thrifts have been permitted to branch interstate since 1933. Such authority was upheld by the courts in 1982 in *Independent Bankers' Association of America* v. *Federal Home Loan Bank Board*, 557 F. Supp. 23 (D.D.C. 1982). That same year, Congress also affirmed this authority, subject to thrifts meeting a qualified thrift lender asset test under the Tax Code, as part of the Garn-St Germain Act. That provision was then re-enacted by Congress without substantive change in FIRREA in 1989 as section 5(r) of the Home Owners' Loan Act. Thus, the recent Office of Thrift Supervision rule simply permitted Federal thrifts to branch to the extent previously permitted by Congress, which was entirely consistent with that law.

Numerous studies on the effects of interstate branching indicate that it would enhance safety and soundness by facilitating geographical diversity in both the operations and loan portfolios of thrifts. These benefits promote financial stability and ultimately decrease risks to the Federal deposit insurance funds and exposure of the Nation's taxpayers.

Those who propose limiting interstate branching for Federal thrifts seek to maintain fences around their regulatory and competitive turf. The cost of this accommodation is greater risk to the insurance funds and ultimately the Nation's taxpayers. Congress rejected such a trade-off in FIRREA. We must not return to a pre-FIRREA approach where fundamental safety and soundness interests are compromised in favor of special interests.

Fortunately, the moratorium amendment was removed from the provisions of the Government-sponsored enterprise bill added to H.R. 5334. However, our work in this area is not yet finished.

The next step is to move forward to address interstate branching authority for banks. As in the case of thrifts, interstate branching would reduce operating cost, improve customer services and generally enhance the safety and soundness of the banking industry and decrease risks to the Federal Deposit Insurance Funds.•

TRIBUTE TO SENATOR BROCK ADAMS

• Mr. KENNEDY. Mr. President, with the retirement of our colleague, BROCK ADAMS, the Senate and the country are losing a dedicated leader who has served the Nation with great distinction.

My family's friendship and respect for BROCK ADAMS spans more than three decades and goes back to the earliest days of the new frontier. BROCK first met President Kennedy in the 1960 campaign. BROCK was a young lawyer managing my brother's Presidential campaign in western Washington. BROCK did an outstanding job, and my brother appointed him to the position of U.S. attorney for the Western District of Washington in 1961.

BROCK ADAMS won election to Congress in 1964, and went on to win seven consecutive terms in the House of Representatives. Among his major achievements were his leadership on transportation issues, his service as the first chairman of the newly created House Budget Committee, and the measure granting home rule to the District of Columbia—to make sure at last that the other Washington enjoys the blessings of American democracy too.

In 1977, in recognition of BROCK's leadership, President Carter chose him to be Secretary of Transportation. BROCK did his usual outstanding job, focusing national attention on a wide range of transportation issues, including airline and trucking deregulation and the need for greater fuel efficiency and greater automobile safety.

BROCK came to the Senate in 1986, and in recent years, I have had the privilege of serving with him on the Labor and Human Resources Committee. BROCK has done an exceptional job as chairman of the Subcommittee on Aging. In this Congress, for example, he oversaw the reauthorization of the Older Americans Act, and guided it skillfully through some difficult and unexpected legislative mine fields. The act has brought hope and help to senior citizens across the country, and BROCK deserves great credit for this achievement.

In addition, BROCK has made a significant difference for women's health. He has been effective in seeking higher standards for mammography facilities, increased access to health care for low-income women, and a wide range of other long overdue initiatives on health care. I also commend BROCK for his front-line role in the fight against AIDS—especially in our efforts to fund the Ryan White AIDS CARE Act.

BROCK ADAMS distinguished himself on many other issues as well. Few of us will forget his profile in courage at the beginning of this Congress, insisting that the Senate should vote on the Persian Gulf war resolution.

With BROCK's retirement, the State of Washington is losing a tireless and effective champion of the people and an outstanding Senator who established one of the most impressive records in the Nation's Capital.

I extend my best wishes to BROCK and his family in the years ahead. The people of Washington and the Nation have been well served by his leadership and statesmanship, and all of us in the Senate are grateful for his friendship.•

EXTENSIONS OF REMARKS

CENTRAL AND EASTERN EUROPE ARE UNDERGOING DRAMATIC CHANGE

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. BEREUTER. Mr. Speaker, the countries of Central and Eastern Europe are currently undergoing dramatic change. By dismantling the relics of their State-owned enterprises, the people of these countries are taking courageous and bold steps to transform their countries into newly emerging democracies with fast growing economies and private sector development.

As this development and transformation occurs, it is becomingly increasingly clear that the rapid emergence of free-market economies in Central and Eastern Europe can create almost unprecedented opportunities for U.S. companies to explore promising new areas for investment and a growing consumer market for U.S. exports. But this potential opportunity requires the American private sector to act boldly, and our Government to be supportive of their endeavor.

Mr. Speaker, this dynamic change in Central and Eastern Europe creates a significant challenge for U.S. policymakers and private sector representatives. The situation also presents us with many questions, including the two following basic questions. How should the United States respond to this remarkable change in Central and Eastern Europe? What should the United States do to encourage and foster the transformation?

More than a year ago, this Member requested an analysis from the Congressional Research Service [CRS] of one possible strategy the United States could pursue to augment the development of these newly emerging democracies while ensuring that U.S. commercial interests are significant participants in their growth. Specifically, this Member asked CRS to study the possibility and benefits of negotiating free trade agreements with some or all of the nations of Bulgaria, Czechoslovakia, Hungary, Poland, an Independent Slovenia, and a then far different and more attractive Yugoslavia.

Although CRS stated—in its September 1991 report to this Member—that free-trade agreements would be difficult to negotiate, they concluded that a "free-trade agreement that reduces nontariff barriers and liberalizes investment restrictions could be beneficial to both the United States and the five countries in the long run."

Importantly, that conclusion is similar to observations made by U.S. officials attending an West-East economic summit in May of this year. This important meeting was scheduled to discuss recent development in Eastern Europe and its implications for American business. In commenting on that conference, the U.S. Secretary of Commerce, Barbara Franklin, stated that foreign investment in these countries was one of the most important keys to their success. She wrote:

> Foreign investment contributes most to the certain of free market economies. It creates capital inflow. It helps introduce new and necessary technologies that spur economic growth. It provides needed jobs. And it helps to develop an export base vital to commercial success.

Mr. Speaker, this Member would repeat Secretary Franklin's last point because not many people understand that to promote U.S. exports to Central and Eastern Europe, we must first help those countries create a suitable environment for U.S. exports and investment in those regions. Let me explain the necessity of this investment through a specific example of a U.S. industry which stands to gain substantially with the privatization of Central and Eastern Europe.

Recently, the World Bank reported that Czechoslovakia faces a $50 billion pollution problem and that it will have to spend that much money to bring its environmental standards up to acceptable levels. In order to solve this environmental problem which affects all of Europe, Czechoslovakia will require massive foreign investment.

Currently, Western European companies are spending a great deal of money investing in the environmental problems of their central and eastern neighbors, but they are not doing it because they are generous. They are investing in these countries because they are attempting to establish an export platform—a platform of investment that will purchase goods and services from their respective countries to solve the environmental problems of their continent. Because those European companies will buy European products, trade with their new partners should produce favorable balances and surpluses.

The United States has also greatly benefited from similar investment throughout the world. Today, the United States has about 40 percent, or $78 billion, of the world's trade in environmental goods and services. From pollution control equipment to waste management consulting, the United States is the world's leader in green technology. Central and Eastern Europe provides fertile ground for U.S. environmental products and services. However, if we do not act soon and aggressively, European-based companies will devour this seemingly endless market, and U.S. companies and U.S. workers will lose a tremendous opportunity.

But Mr. Speaker, Central and Eastern Europe need more than environmental goods and services, the CRS report requested by this Member states that these countries are fertile ground for exports of U.S. manufactured computers and electronic equipment, telecommunications equipment, food processing and packaging machinery, medical equipment, alternative energy equipment, and consumer goods.

Just to whet the appetite of our business leaders, workers, and exporters, I would add that the Congressional Research Service reports that the best prospects for U.S. exports of manufactured goods to the following countries are as follows:

Bulgaria: Computers and electronic equipment, alternative energy equipment, energy and pollution control equipment, medical, food processing, and packaging equipment.

Czechoslovakia: Computers and software, pollution control equipment, telecommunications equipment, food processing and packaging machinery and equipment, and medical equipment.

Hungary: Computers and peripherals, food processing and packaging equipment, telecommunication equipment, and consumer goods.

Poland: Aircraft, telecommunications equipment, food processing and packaging machinery, and pollution control equipment.

If the United States is to insure that we capture our share of these export markets and thus create more jobs here at home, we certainly need an aggressive strategy for promoting U.S. exports to these countries.

The idea of negotiating free trade agreements with Central and Eastern European countries is one of the many important strategies the United States should carefully but aggressively consider to foster privatization, growth, and democracy while increasing our exports of manufactured goods, services, and commodities to these nations.

Several weeks ago, the President formally announced his intention to sign the North American Free Trade Agreement between the United States, Canada, and Mexico. Mexico is the third country, following Israel and Canada, to have signed a free-trade agreement with the United States. However, on September 29, 1992, the distinguished gentleman from Iowa, Mr. JIM LEACH, asked Assistant Secretary of State, Thomas Niles, whether the administration was considering additional free trade agreements with several of the countries of Central Europe. Mr. Niles responded by saying that in the President's recent campaign speech in Detroit, he proposed considering free trade agreements with a number of countries including Poland, Hungary, and Czechoslovakia.

Mr. Speaker, perhaps some Central and Eastern European countries, like Czechoslovakia, Hungary, Poland, Bulgaria, and Slovenia should be strongly considered for such free trade agreements. In many ways, these countries with their higher wages and better educated labor force are in many ways more likely candidates for free trade agreements with the United States than Mexico.

Lester Thurow writes in his important new book, "Head to Head":

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

> Middle and Eastern Europe should be fast learners when it comes to acquiring modern industrial skills. The human capital exists to support very rapid growth.

Also, Mr. Thurow states that real wages in Middle and Eastern European countries are relatively high. Therefore he writes that—

> They will not be in competition with the Third World for the very low-wage, low-skill jobs in industries such as textiles. They will be competing with midwage developing countries.

In fact, Mr. Speaker, Mr. Thurow ultimately states that the countries of Central and Eastern Europe possess the attributes which may propel the European Community to becoming the world's next economic superpower. He writes and I quote:

> Building upon the economic muscle of Germany, Western Europe is patiently engineering an economic giant. If this bioengineering can continue with the eventual addition of Middle and Eastern Europe, the House of Europe could eventually create an economy more than twice as large as Japan and the United States combined.

Mr. Speaker, this Member suggests that perhaps the United States should meet the European Community head to head and pursue an aggressive investment strategy in these countries on the backs of negotiated free trade agreements. Why not at least carefully consider the desirability of reaching across the Atlantic—right over the European Community—to embrace free trade arrangements with some of these former nations of the Warsaw Pact?

Mr. Speaker, this Member urges his fellow Members, the administration, business leaders, and scholars to seriously and expeditiously consider this important proposal. In conclusion, I would like to insert a passage from Mr. Thurow's book which clearly reveals the primacy and importance of this issue:

> BUILDING THE HOUSE OF EUROPE
>
> Europe has a chance to become, but no guarantee that it will become, the world's most rapidly growing region in the 1990s. The Germans have lifted the speed limit on their economic autobahn and when there are no speed limits the Germans like to go very fast. If Europe can put a significant part of Middle and Eastern Europe together with Western Europe in an enlarged Common Market, it can build something that no one else can build—by far the world's biggest, most self-sufficient, market—850 to 900 million people, depending upon whether Turkey is considered a European country. Even if Europe gets only part way along their economic autobahn, they will still be by far the world's largest economy.
>
> As the Europeans write the rules for their economic integration, they will essentially be in charge of writing the traffic rules for the world economy in the twenty-first century. They will be the ones who determine the nature of the vehicles on the economic autobahn and whether the traffic lights show green, red, or yellow for the expansion of world trade.
>
> In the end to all of the ex-communist economies will succeed in getting to their destinations—moving to the market and rapidly raising the living standards of their citizens. The number that does succeed will depend a great deal upon the degree of outside help.
>
> Japan and the United States may choose not to help. Japan may end up saving its resources for that moment when the communist countries of Asia also cease to exist. The United States may convince itself that its economy is too poor to help, despite the fact that its real GNP is four times as large as it was when the Marshall Plan was offered to Europe. It may ignore a region that has never been one of its prime interests.
>
> In the end Western Europe will have no choice but to help. Preventing westward migration, reducing border tensions, and lowering ethnic hatreds all demand economic success in Middle and Eastern Europe. A mixture of altruism and fear of the Russian military bear led to the original Marshall Plan. A mixture of altruism and a fear of chaos on immediate borders will lead to a similar plan for Middle and eastern Europe.
>
> For the House of Europe, the advice given to Macbeth is sound: "If it were done when 'tis done, then 'twere well/It were done quickly."

CONSOLIDATE FEDERAL LANGUAGE STUDIES: IMPERATIVES OF THE NEW ERA

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. PANETTA. Mr. Speaker, we are embarked upon a new year. It is the fifth day of the new fiscal year. It is probably the final day of the 102d Congress for this House. Three years ago, the Warsaw Pact began to crumble and 2 years ago Germany united. One year ago, the Soviet Union was dissolving. In 4 weeks we will hold national elections in which a President and a new Congress will be chosen, one to which many of us will not return.

Across the water, even as it stumbles, Europe continues to forge ahead in its struggle toward unity. Further East, Westerners and Easterners are pouring investments into ventures in Eastern Europe, Russia, and Central Asia. In the Far East, the Pacific rim nations continue to build upon their already strong trade links. We are considering joining Mexico and Canada in a new free-trade zone, and Latin America is consolidating its economic and communications links at a rapid clip. Democratization is sweeping Africa, South Africa is moving toward the free world, peace negotiations in the Middle East are proceeding with renewed hope, and the nations of South Asia are asserting their power as never before.

Hence, Mr. Speaker, today the new era is upon us. It is an era as yet undefined and unnamed. No, it will not be characterized by a new world order, but rather, as we have seen, by regional economic and military competition and ethnic disputes within and among neighboring states. It is an era in which military power will diminish as a tool of large powers, and it is an era in which economic contests will define nations' power and progress.

At the same time, the interdependence of nations grows inexorably. Our international commerce, monetary flows, trade ties, and multilateral activities with other nations are building layer upon layer of interconnecting relationships among nations. Yet, as citizens of a historically and geographically isolated giant, Americans remain far behind nearly every other nation's populace in their foreign language abilities and in their knowledge of the world around them.

Our competitive edge among nations will hinge upon our productivity, the quality or our work force, our educational systems, and our ability to compete in every economic arena. And our competitiveness will depend in no small degree upon Americans' ability to communicate in foreign languages.

The new era demands innovative thinking about our Federal institutions and our national intelligence resources in particular. On this day, as we consider the Defense appropriations conference report for fiscal year 1993, it behooves us to focus our attention on outdated national intelligence resources with a view to modernizing and streamlining our education and training resources. I will argue here today that we must also strengthen the human resources of the intelligence community and other agencies and our foreign language instruction and translation capabilities in preparation for the fast-paced changes occurring in this, the first decade of the rapidly forming new ear. Since World War II, the national security apparatus has maintained a well-funded program of instruction in languages for each of its component agencies. The logic of the preceding review leads us to the following conclusion: the Federal Government ought now to devote the same attention and resources to our language and area studies programs tailored not only to national security but also to our economic security.

Accordingly, my purpose today is to call for the transformation of the Defense Language Institute Foreign Language Center [DLI] into the national, Federal foreign language and area studies institute. I envision this institution serving as the single organization at which Federal personnel would learn foreign languages and related area issues, at which Federal Government would translate unclassified documents, and at which a wide variety of foreign language services would be performed for all Federal agencies.

The new era is typified by incredible budgetary constraints in the United States. Rightfully, American taxpayers are not only demanding of us that we cut unnecessary government costs but that we trim bureaucratic duplication as well. After careful study of DLI's capabilities and potential, and consultation with DLI administration and faculty and other public and private foreign language institutions, I have concluded that DLI's expansion and transformation into an institute serving the entire government would yield significant cost savings to the Federal Government, streamline our Federal foreign language instruction programs, and provide powerful new incentives and capabilities to our national foreign language instruction and translation apparatus.

This is the kind of bold and innovative approach required in the new era of competition. If we are to adopt fresh approaches and reforms to boost our competitiveness in all aspects of international commerce, we ought to begin by renovating and consolidating our foreign language instruction apparatus.

THE CURRENT PATCHWORK OF FEDERAL LANGUAGE PROGRAMS

I would like to turn, now, to the status of our Federal foreign language instruction programs. Their mission is to prepare Federal personnel and other Americans for the kinds of competition and engagements I have already portrayed.

Simply put, the status quo is inadequate. I have found a patchwork of programs among our agencies and a disturbing lack of coherence in language instruction. There is little coordination, though the new Center for the Advancement of Language Learning [CALL] will seek to begin to coordinate the largest language programs next year. As it is, each agency fends for itself, and there seems to be no thought given to the possibilities for extending Federal programs to institutions beyond the Federal Government in order to maximize cooperation, lend assistance, and achieve the synergy we hope to realize in the years ahead.

Let us review the programs available. Preeminent is the Defense Language Institute Foreign Language Center [DLI] at the Presidio of Monterey in California, the largest language training center in the world. I will detail its programs further below, but I would like first to iterate other Federal programs offered.

In some complement and in great duplicity of purpose with DLI, the Federal Government maintains foreign language training programs in a variety of other agencies. The Foreign Service Institute [FSI] of the Department of State, the Central Intelligence Agency [CIA], the National Security Agency [NSA], the Defense Intelligence Agency [DIA], the Department of Health and Human Services, the Peace Corps, and the U.S. Department of Agriculture all have individual foreign language training programs and capabilities to meet their respective needs for intelligence or basic language training.

The Department of Agriculture Graduate School is open to both government employees and the public. Sixty percent of its 7,264 student enrollment are from Federal agencies.

The Department of Health and Human Services trains its personnel, about 70, for specific positions.

The Department of Justice's Immigration and Naturalization Service [INS] typically places about 500 personnel in training at the Federal Law Enforcement Training Center [FLETC].

The State Department Foreign Service Institute trains approximately 1,600 foreign service officers and employees of the Agency for International Development [AID] and the U.S. Information Agency [USIA]. The State Department also has four facilities abroad.

Additionally, the Central Intelligence Agency [CIA], the National Security Agency [NSA], and the Defense Intelligence Agency [DIA] all conduct their own large foreign language training programs, including classified jargon and materials.

The Customs Department also sends about 48 personnel to DLI annually.

The Federal Communications Commission contracts out foreign language instruction for a small number of personnel.

The Peace Corps conducts all of its training in the country of assignment for its roughly 3,000 personnel.

It should be noted that the Federal Bureau of Investigation [FBI] and the Drug Enforcement Agency both use DLI for some elements of their language training.

The deficiencies of American foreign language and international education programs have long been the subject of discussion in the international community. I recall debates on this inadequacy in my service on the President's Commission on Foreign Language and International Studies in 1978.

The Commission published a report which continues to point to the very issue I am trying to address with my current proposal for DLI, and that is to develop an adequate strategy to concentrate the national effort. To this end, the Commission encouraged coordination and oversight in the Federal Government, one of my refrains.

The Commission's report is entitled "Strength Through Wisdom: A Critique of U.S. Capability." Our future strength lies, in part, in our ability to address our national security and economic needs through our capacities to understand other peoples. Foreign language proficiency in the United States is an untapped resource.

THE LOGIC OF DLI AS THE NEW FEDERAL LANGUAGE INSTITUTE

The Department of Defense is shrinking in personnel, in funding, and in certain missions. To be sure, certain intelligence requirements have dropped as well. Yet, new intelligence requirements have arisen with the birth of new nations, the proliferation of weapons across international frontiers and regions, and the waxing traffic in narcotics around the world. The probability of new, regional conflicts is rising. In response, the DLI is anticipating greater demands on its faculty for instruction in languages required for communication in each of these fields, particularly in counternarcotics.

New technology continues to arrive at DLI. The Institute anticipates receiving advanced translation and communication equipment within the year, enabling it to offer translation and communications services to any Federal agency requiring them, around the world and around the clock. The Institute possesses six transmission and receiving devices capable of teleconferencing DLI personnel with other Federal personnel throughout the United States at 60 different sites, including the National Security Agency, whose personnel are learning Ukrainian from DLI instructors across the continent.

DLI has done an outstanding job of providing expertise in languages not commonly taught in American schools and colleges. Its intensive methods have served to augment existing programs at schools around the country in more common languages, and it has reacted quickly to changes in international relations as demands for language proficiency in different languages have fluctuated.

The Institute offers courses covering the entire range of language proficiency and tailored to specialized subject areas. Courses offered include: Arabic (including major dialects), Armenian, Chinese, Czech, Slovak, Dutch, French, German, Greek, Hebrew, Italian, Japanese, Korean, Persian Farsi, Polish, Portuguese, Spanish, Russian, Tagalog, Thai, Turkish, Ukrainian, and Vietnamese. It is considering adding other Eurasian languages in light of the rise in importance of new Republics in that region. Classes are taught 7 hours per day, and range in duration from 25 to 63 weeks. From 3 to 5 hours of homework are assigned each day.

In fiscal year 1991, DLI trained 4,025 students, of which 2,548 were in the Department of the Army, 411 came from the Navy, 188 from the Marine Corps, 784 from the Air Force, and 94 from other agencies.

DLI conducts important research on techniques for language instruction with the use of computer technology and administers other DOD language resources as well as foreign language training under contract with the Department of State's Foreign Service Institute [FSI] in Washington, DC.

The Institute features 650 classrooms and 36 language labs. On its grounds are modern, award-winning dormitories, dining facilities, recreation and physical fitness centers, an academic library, a personnel administrative center, and new classroom buildings. In Aiso Library, students can view one of the 5,000 foreign television programs and films in individual carrels. The library offers more than 80,000 volumes in over 40 languages. The library subscribes to several hundred foreign language periodicals.

Many of DLI's 755 expert faculty are native speakers of the languages they teach, and a good number are also specialists in various fields in military training and intelligence. Added to the faculty are 439 civilian staff and 315 military personnel from all services.

Without exaggeration, DLI can be said to possess the finest instruction facilities in the world, using the most advanced heuristic methods. Rounding out its students' linguistic skills, the Institute also offers courses in area studies, including the history, culture, and politics of the nations in which each language is spoken.

DLI's Foreign Language Center at the Presidio of Monterey is accredited by the Western Association of Schools and Colleges. Each of its 47-week courses is equivalent to 24 semester units of most colleges' credit.

Beyond its resident training, DLI offers courses to Federal personnel the world over, serving over 200,000 students annually in over 600 different programs for personnel and their families.

Coincidentally, the Senate is giving final approval today to legislation to establish the DLI in statute and to authorize the implementation of a new personnel system for DLI's faculty. The provision, contained in the fiscal year 1993 Defense authorization bill, will allow the DOD to provide tenure to DLI's faculty, to provide tenured faculty with salaries commensurate with their experience and competence and to provide a number of other very important benefits and protections for the faculty. With the advent of this new system next year, DLI's instructors will be able to enroll in courses on instruction and additional linguistic issues in order to enhance their own performance and credentials. I am confident that the new system will only heighten the quality of an already excellent faculty.

As chairman of the Fort Ord Community Task Force, I would add that any needs DLI might have for greater space in the future would be easily remedied through the acquisition of available space at Fort Ord, located just a few miles away. Fort Ord, comprising 28,000 acres, is scheduled to close in the fall of 1995.

I would note that the DOD is preparing DLI for the addition of the latest translation and instruction technologies in fiscal year 1993 or fiscal year 1994. One of these technologies would allow DLI to receive telecommunications in one language, translate them automatically, and transmit the communication to yet another receiver. This capability will have enormous positive implications for nearly every Federal agency.

DLI is also providing foreign language training to Federal personnel involved in counter narcotics efforts, and that initiative will also include the development of new language specialties in the field of counter narcotics.

Finally, DLI has the benefit of being a neighbor of the Monterey Institute of International Studies [MIIS], also located in Monterey, CA. DLI has maintained a very positive working relationship with MIIS over the years. MIIS is currently in the process of completing work on a trade center with the latest in satellite technology and communications. Information is shared between the two institutes to improve the quality of foreign language teaching and international education in both institutions. The resources at MIIS enhance the appeal and stature of the Institute as the foremost Federal language institute.

Included in the ongoing developments at MIIS and the new trade center are a 300-seat lecture hall, fully equipped with simultaneous interpretation equipment for 5 languages. This system can be expanded to handle up to 12 languages, the only such facility west of the Mississippi River. With both MIIS and DLI located within its borders, the city of Monterey is the language-learning capital of America. MIIS now has the only 2-year MA program in conference interpretation and translation for Chinese and Japanese in the Western Hemisphere.

A FEDERAL LANGUAGE INSTITUTE

I have set forth my vision of the requisites of the new era for our national and economic security, and I have delineated the capabilities we must enhance and the programs we must undertake if we are to engage the world at large on every economic, cultural, and political front. Whether one emphasizes the positive perspective on the world's increasing interdependence or the threatening aspect of heightened economic competition, the call for improved foreign language skills among Federal personnel and other Americans is indisputable. The intelligence community, in particular, ought to join with agencies involved in commerce and trade issues to devise a coherent foreign language instruction program for Federal personnel toward these ends. Apart from the national security community's needs, which have been clearly defined and well funded, I have argued that our economic security, our ability to engage other nations competitively in all areas of commerce, would be tremendously strengthened by a streamlined, consolidated Federal foreign language program.

I have also reviewed the present status of the patchwork of Federal foreign language programs throughout the agencies as well as the resources the Defense Language Institute has to offer. From this study I have concluded that the U.S. national and economic security interests would be best served by streamlining our Federal foreign language programs and consolidating them at what is now the Defense Language Institute Foreign Language Center. While I have not yet reviewed the costs of each of the current foreign language programs for Federal agencies, the savings from such a consolidation are clear. In an era of increasing budgetary constraints, the impetus for this proposal is even stronger.

In this way, valuable resources may be concentrated in one substantial location rather than fragmented among agencies. A merged Federal foreign language program would also allow the creation of, and adherence to, coherent and efficient Federal foreign language goals.

Over the past 2 years, I have been a part of the effort to streamline the Federal Government. The Nation is facing a very fragile economy that is suffering not only the short-term effects of the current recession but also the long-term effects of the 1980's.

Our society is plagued by problems that not only reduce our economic vitality but also limit and will ultimately diminish the quality of life that our children can expect in the next century. We ought not to lose sight of our long-term goals. What we must have is leadership that has the foresight and ability to look beyond the next day's headlines. I have released a report entitled "Restoring America's Future: Preparing the Nation for the 21st Century" which attempts to address the long-term problems we will confront tomorrow while structuring an approach that will help those who are suffering today. The proposal consists of a three-pronged approach: streamlining the Government; making substantial reductions in the deficit; and making long-term investments in critical areas of our economy and society.

The country needs to consider substantial streamlining and structural reform of both the executive and legislative branches to improve the effectiveness and responsiveness of the Federal Government. Second, we must confront our budgetary problems in order to restore the Nation's saving base. The proposal would reduce the Federal debt by a trillion dollars.

Just as the imperative of foreign language proficiency will rise in the 21st century, streamlining Federal foreign language training programs fits perfectly into the preceding line of logic. Just as we are attacking problems elsewhere with imagination, we must approach this challenge in the most resourceful, responsible and effective way possible. Establishing DLI as a national center will accomplish these goals.

Mr. Speaker, the Defense Language Institute is the largest language school in the Federal Government. I have enumerated its resources above. DLI has already made arrangements with the Drug Enforcement Agency, the Customs Service, the U.S. Marshals Service, and local law enforcement agencies to provide training in Spanish for counternarcotics personnel. This is but one example of the kind of consolidation and outreach the Institute can provide.

DLI has the capability to transform the many small fragmented programs in the various Government agencies and translate them into a coherent, unified system to serve all national interests. The Institute has nearly half a century of experience in the communications field and the best-equipped language-teaching facilities in the world with the latest in audiovisual training aids. I would like now to propose the contours of the Federal language and area studies institute it ought to become.

First, the Institute should serve personnel from all Federal agencies. I recognize the need to continue to provide separate training in classified issues for personnel at the National Security Agency [NSA], the Central Intelligence Agency [CIA], the State Department, and Defense intelligence activities. Notwithstanding those small programs, however, there is no need for classified instruction for most Federal employees from all other agencies, and I would argue that most State Department, CIA, and NSA personnel do not require courses to be taught in secure environments on classified issues, particularly State Department, Peace Corps, and Agency for International Development personnel not placed in political or consular affairs positions.

I applaud the creation of the new Center for the Advancement of Language Learning [CALL], a product of the Congress' direction to the foreign language community and the recommendations of the foreign language committee. The committee itself has proposed a good many reforms in foreign language instruction and consolidation, chiefly in terms of coordinating training and testing. The Center functions primarily as a mechanism for coordination among the CIA, FSI, Defense Intelligence Agency [DIA], DLI, the NSA, and the FBI. The establishment of the Center points toward further consolidations along the lines of my proposal.

Nevertheless, while it will provide a coordination point for member agencies, CALL will not fulfill actual training and instruction requirements. There is no reason a new, single Federal language institute cannot serve each and every Federal employee requiring language studies. With its current and forthcoming technology, DLI is able to conduct courses through teleconferencing centers around the Nation and its capacity to reach every corner will only increase with each year's addition of teleconferencing centers.

Second, DLI has had its programs undercut by higher level DOD decisionmakers to the detriment of its students in every year since World War II. The United States has had a recurrent language preparedness problem during regional conflicts, including the Korean war, Vietnam war, the conflicts in Laos, Cambodia, the Middle East, Iran, Panama, and the Persian Gulf. On each occasion, the United States found that the number of instructors and students in place to teach and learn the critical languages involved was unsatisfactory.

This pattern of shortsighted program allocation must end. The Federal Language Institute ought to maintain a cadre of instructors in all languages already taught at the DLI and consider adding languages eliminated in the past several years. Two striking examples are Serbo-Croatian and Arabic. Serbo-Croatian was dropped from DLI's program by the Defense Department in 1989. Two years later, the conflict in Yugoslavia broke out. Similarly, DOD found that its supply of Arabic speakers was alarmingly short in 1990 when Iraq invaded Kuwait. Despite DLI's best efforts, the Institute was not able to bring on new instructors quickly enough for the Persian Gulf war.

These paucities of proficient speakers should be at the top of the Armed Forces' and intelligence community's concerns.

Moreover, the reductions in force [RIF's] and short-term hiring rounds practiced by DOD as it reduces, eliminates, and enlarges language programs make program and budgetary planning impossible, leave the Institute shorthanded in crises, and wreak havoc among the dedicated faculty who are either terminated or affected by the decimation of their departments. The Federal Language Institute ought not to operate in this manner. An inviolable base staff of instructors must be retained for all contingencies.

Third, while DOD will continue to provide the bulk of the personnel trained and the resources for the training, I would propose that other agencies contributing students to the Federal Institute provide matching funds in proportion to the number of personnel placed at the Institute. The Institute should also constitute a board of trustees to oversee its operations from among the DOD, the Department of State, the intelligence community, the public and private education communities, and other foreign language experts as desired.

Fourth, the Institute should and could provide training to contract and onsite teachers of foreign languages who are located elsewhere in the United States.

Fifth, the Institute could perform language needs assessments for all agencies.

Sixth, the Institute could provide assistance in training materials development, ranging from the establishment of objectives and course design to review of materials and course development. The Institute could provide computer-assisted learning techniques and course materials development to all agencies as well.

Seventh, I would expect the Institute to develop proficiency and diagnostic tests for all agencies.

Eighth, the Institute could administer proficiency tests for agency employees in person, via telephone, and via teleconferencing for all agencies.

Ninth, the Institute could provide translation services to all agencies.

Tenth, as a unique Federal institution with powerful resources, the Institute could build upon DLI's resources and outreach to act as a clearinghouse for technological developments, literature, and research. The DLI is already associated with the American Council on Teaching Foreign Languages [ACTFL], the Modern Language Association [MLA], the Computer Assisted Language Learning Consortium [CALLCO], the Defense Committee on Language Exchange [DECOLE], the Bureau of International Language Coordination of NATO [BILC], the National Advisory Council on Educational Research and Improvement [NACERI]—an American 2000 initiative, and the Federal Interagency Language Roundtable [FILR]. Through these associations, the DLI will be able to facilitate its transformation into the Federal Institute and capitalize on these associations to provide the latest information and techniques to foreign language teachers.

Eleventh, not only will the Federal Institute be capable of providing these services to other agencies, but I believe that we ought to authorize its cooperation with private ventures to enable initiatives in commerce, trade, education, and other applications.

Twelfth, the Institute should be able to work with and within the Community Learning and Information Network [CLIN], which has received the notable and strong support of Vice Presidential nominee AL GORE as well as Senator BINGAMAN. CLIN is a cooperative venture of private sector and government organizations, including the U.S. Chamber of Commerce. It features the use of teleconferencing centers in a network across the United States. DLI has 6 transmission devices for teleconferencing communications and broadcasts to over 60 sites throughout the United States. I might add that the availability of this network would also enable the Federal Institute to provide instruction to foreign language teachers at schools in every government institution and State. The American Council on Teaching Foreign Languages [ACTFL] has recommended that DLI take this step.

Thirteenth, by 1995, the Federal Institute will be able to reach schools and agencies via satellite and fiber optic technology.

I will continue to study the cost savings and other benefits likely to accrue from the consolidation of Federal language instruction activities. In the 103d Congress, I hope to work with my colleagues and the new administration to realize this vision.

In conclusion, Mr. Speaker, it is long past the time to bring our Federal Language Instruction Program into the 1990's and into accordance with the demands of our budgetary constraints. I do not make this proposal lightly. Any innovative plan requires bold leadership, but I hold that we can accomplish greater efficiencies in these programs even as we boost their resources and their applicability. The transformation of the Defense Language Institute into a Federal Language Institute handling language and area studies instruction for the Federal Government would achieve a valuable synergy from which not only governmental but private sector organizations would benefit. A Federal Language Institute will fortify our national economic security and our intelligence community's preparedness for the new age. I urge my colleagues to reflect on the wisdom of this proposal and to join with me next year to make the Federal Language Institute a reality.

A COMMUNITY PEARL—ROSA LEE SHARPE

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. PAYNE of New Jersey. Mr. Speaker, as we conclude our business for the 102d Congress I would like to take this opportunity to recognize a dear woman for her unselfish deeds. That woman is Mrs. Rosa Lee Sharpe. Earlier this year, Mrs. Sharpe was recognized by the Epsilon Gamma Zeta chapter of the Zeta Phi Beta Sorority, Inc. Each year since 1975, the sorority has selected five women to honor during the National Finer Womanhood Week.

This honor is bestowed upon women of the community who have worked toward the advancement of their city, State, and Nation, but who have not been recognized for their efforts. These women are known as Community Pearls.

Mrs. Sharpe is the mother of 7 children, 16 grandchildren, and 13 great-grandchildren. In a tribute to their mother, her children remembered that while growing up life was difficult and hard, but their mother didn't give up. Mrs. Sharpe knows the value of an education and taught her children important values and concepts, including respect, determination, hard work, and discipline. Today, all of her children are successful, leading rich and productive lives.

Her daughter, Mary Blanche Hooper of Newark, NY, is a counselor for the Newark Board of Education and a former Newark school teacher. She is a graduate of Rutgers University with a B.A. degree and has received certification in public administration from Kean College and certification in life skills education from Columbia University. Carrie Priester of Newark, NJ, has a B.S. degree in business management from Bloomfield College. She is a procurement specialist for the U.S. Postal Service where she has been employed for 23½ years. Edna Bynum of Scotch Plains, NJ, has been a security officer for the Newark Board of Education for the past 20 years. Christine Overby of Rocky Mount, NC, is employed at Abbott Laboratories as an inspector in the manufacturing department. She has been employed with the company for over 22 years. Her son, Warren Gene Sharpe of Linden, NJ, is a mail handler with the U.S. Postal Service where he has worked for the past 24 years. Rosa V. Holmes of Hillside, NJ, is a graduate of North Carolina Central University with a B.S. degree in chemistry. She has been employed by Sandoz Pharmaceuticals Corp. for the past 23 years and was recently promoted to associate director of documentation and standards in the compliance department. William Earl Sharpe is a sergeant in the U.S. Army, specializing in the finance division. He was spent 17 years in the Army and has recently ended a tour of duty in Germany. He is now stationed in Massachusetts. Earl also attended North Carolina University where he majored in accounting.

Mr. Speaker, today when we hear of family values, we must turn to families like the Sharpe family to show America we've always had strong families and these families have strong values. I am sure my colleagues will want to join me as I extend my belated congratulations and best wishes to Mrs. Rosa Lee Shape, a Community Pearl.

ENTERPRISE ZONES

HON. BILL ALEXANDER

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. ALEXANDER. Mr. Speaker, during the 102d Congress there has been a lot of discussion about enterprise zones. The stated goal for these zones is the same as the goal I have pursued for First Congressional District of Arkansas throughout my service in the Congress, to generate jobs and a better quality of life for our people.

We have made progress.

Since I began my work here, Federal investments have been made in more than 790 community, economic development, education, flood control, health care, industrial park, recreation, and transportation improvement projects benefiting the district I serve. The value of these investments exceeds $1.28 billion.

These projects have made it possible for tens of thousands of families to have access to improved education, health care, water, electricity, telephone, and sewer services.

Today thousands of workers and businesses have daily use of better highways, roads, and river ports than was the case when I first took the oath of office in 1969.

The capital investments we have made in flood control projects means that family homes, farms, businesses, and public facilities are more protected from flood damage than they have ever been.

Federally funded recreation facilities in communities, towns, and cities across the district provide more healthy and safe opportunities for children, youths, adults, and families.

Our activities in developing export opportunities and markets for Arkansas products have improved opportunities for farm and business owners, managers, and workers.

To illustrate three of the types of Federal investments which have been made in Arkansas' First Congressional District during my service, I would like to include some data tables in the RECORD at this point.

The first table summarizes some of the community and economic investments on a districtwide basis. The second table provides county-by-county totals on projects which were primarily located in a single county.

The third table compares total 1989 Federal expenditures and obligations with 1989 total personal income on a county-by-county basis.

Detailed information on the underlying data used in preparing all of these tables is available for review.

This table contains information for selected community and economic development oriented federal expenditures and obligations for First Congressional District. The "number of projects" column counts any project, regardless of how many investment increments it has received, only one time. To avoid double counting, neither the "dollar total" nor the "number of projects" columns for individual counties includes regional projects which serve more than one county:

FIRST CONGRESSIONAL DISTRICT, ARKANSAS—SUMMARY TABLE OF FEDERAL INVESTMENTS

Category	Amount	Projects
First Congressional District county-by-count summary grand total	$372,156,913	707
Regional (multi-county projects, excluding U.S. Corp of Engineers water project)	105,060,782	26
U.S. Corps of Engineers (Fiscal Years 1980–1992) (water management projects including flood control, navigation, and harbors)	364,606,000	27
Federal highway and public transportation projects—July 1982—July 1992 (Excludes U.S. Highway 63 by-pass, Jonesboro, projects included in Craighead County totals)	338,893,537	
Eaker Air Force Base, Blytheville Arkansas, (military construction funding appropriated by the Congress for Fiscal Years 1981–91)	105,950,000	35
Grand total	1,286,667,232	795

COUNTY-BY-COUNTY SUMMARY TOTALS

County	Total	Number of projects
Arkansas County	5,721,123	17
Clay County	25,633,102	38
Cleburne County	10,903,707	17
Craighead County	51,740,554	57
Crittenden County	12,907,886	45
Cross County	31,579,975	30
Fulton County	5,568,407	23
Greene County	13,413,063	28
Independence County	24,025,155	35
Izard County	8,641,303	19
Jackson County	16,283,487	32
Lawrence County	14,972,446	44
Lee County	3,876,728	15
Mississippi County	30,021,638	70
Monroe County	8,168,061	12
Phillips County	17,164,800	32
Poinsett County	13,420,992	26
Prairie County	5,554,179	7
Randolph County	4,685,658	25
Sharp County	18,952,753	30
St. Francis	14,315,147	30
Stone County	8,486,314	18
Van Buren County	16,046,750	29
Woodruff County	10,073,685	28

Note.—Data does not include all funding for: Corps of Engineers projects, activities specifically benefitting low-income persons or military expenditures for national defense, including Eaker Air Force Base. Does not include home and farm ownership assistance provided by federal programs.

Data sources: Executive Office of the President; U.S. Department of Commerce; Arkansas State Department of Highways and Transportation, and published documents of the U.S. House of Representatives.

FIRST CONGRESSIONAL DISTRICT PERSONAL INCOME COMPARED TO FEDERAL EXPENDITURES AND OBLIGATIONS

[Fiscal year 1989—in thousands of dollars]

County name	Total Federal activity	Federal acitvity as percent of personal income	Total 1989 personal income
Arkansas	372,383	121	308,485
Clay	93,237	42	221,944
Cleburne	63,824	28	228,302
Craighead	246,151	28	888,284
Crittenden	225,269	40	565,064
Cross	108,055	46	236,478
Fulton	27,171	29	94,158
Greene	121,342	34	359,883
Independence	92,692	23	394,988
Izard	41,016	29	139,121
Jackson	113,506	49	230,403
Lawrence	93,543	44	214,565
Lee	63,804	54	118,950
Mississippi	288,518	46	631,670
Monroe	75,337	58	130,918
Phillips	143,066	48	298,529
Poinsett	151,897	52	292,225
Prairie	48,493	46	104,906
Randolph	53,426	31	170,916
Sharp	57,245	37	155,665
St. Francis	114,984	41	278,113
Stone	28,366	30	95,305
Woodruff	62,041	57	108,450
Van Buren	47,020	29	164,979
Total	2,732,286	42	6,433,271

HONORING ST. MARY'S CHURCH

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. ENGEL. Mr. Speaker, for the past year, the family at St. Mary's Church in Yonkers has been hard at work preparing for the 100th anniversary of the Church of the Immaculate Conception. After cleaning the outside stone, repairing stained glass windows and enhancing the church's facilities, the day to celebrate has finally arrived.

As a Representative of the people of Yonkers, I join in congratulating St. Mary's Church for a century of service to the community. When old and new parishioners meet to celebrate the 100th anniversary, the purpose of their efforts will become clear. Through the leadership of Rev. Hugh J. Corrigan and the pastors who have served before him, St. Mary's has grown into a beacon of faith and community spirit. The people, working together, have built a strong tradition to pass on to their children and grandchildren.

That is the power of family from which our country has always drawn its strength. I thank and commend the people of St. Mary's for keeping that spirit alive in Yonkers for 100 years.

A TRIBUTE TO DANIEL L. WOODALL DURING THE FRIENDS OF LABOR CHARITY DINNER

HON. LUCIEN E. BLACKWELL

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. BLACKWELL. Mr. Speaker, on October 17, 1992, Friends of Labor will honor Mr. Daniel L. Woodall for his distinguished service as a labor leader and volunteer. His commitment, dedication, and sustained involvement in the Philadelphia community portrays an excellent role model for people in all walks of life.

Mr. Woodall began his leadership career in May of 1972 as an appointed shop steward and has served in numerous elected labor positions over the years. Some of those positions included that of a labor leader, a civil leader, and a union leader. Throughout his career, Mr. Woodall has carried forth a mission of unity for all people. Mr. Woodall's unswerving loyalty to fulfill his duties have been centered around helping those in need. Because of his many volunteer and community service efforts, Mr. Woodall has gained much respect from his family, friends, and peers.

Mr. Speaker, I invite my colleagues to join me in congratulating and extending best wishes for future success to Mr. Daniel L. Woodall for his years of dedicated service.

SALVAGING FREEDOM FOR YUGOSLAVIA

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. DYMALLY. Mr. Speaker, I wish to acknowledge the following remarks by my esteemed colleague, Senator RICHARD LUGAR of Indiana, in the Washington Times on October 5, 1992, which provide greater understanding of events in Yugoslavia.

[From the Washington Times, Oct. 5, 1992]

UNDERSTANDING EVENTS IN YUGOSLAVIA

Many commentators have cited the leadership of Prime Minister Milan Panic as a new force in Yugoslavia. Although his powers are circumscribed, he challenged Serbian President Slobodan Milosevic, fired obstructionist leaders in the Cabinet and survived parliamentary attempts by some Serbian nationalists to remove him from office

His independence and influence is demonstrable and growing. He has helped shift the tide of public opinion away from the hard-liners.

Mr. Panic predicts that the December elections will produce leaders committed to peace. Mr. Panic or a likeminded individual could become the leader who will unify and convince the divided elements of Yugoslav society to actively oppose Mr. Milosevic and his allies.

For the reasons stated above, I would like to call attention to an insightful editorial in the Washington Post on September 28, 1992, entitled "Who Speaks for Yugoslavia?"

[From The Washington Post, Sept. 28, 1992]

WHO SPEAKS FOR YUGOSLAVIA?

Panic, as in Milan Panic (and pronounced "Pahnich"), is the hope of what remains of Yugoslavia. Or does he represent one more illusion? Recruited as prime minister of the rump Yugoslavia (Serbia and Montegro), the Yugoslav-born millionaire American industrialist has launched a frontal political challenge to Serbian president Slobodan Milosevic, architect of Greater Serbia. At first dismissed as an irrelevant, outclassed amateur lacking in both intrigue and bloodiness, the gutsy, irrepressible Panic has been bringing to bear his two political assets. One is the aspirations and doubts of the growing number of Serbs who believe the Milosevic policy is folly. The other is his claim alone to be able to save Yugoslavs from the international isolation Mr. Milosevic has brought upon them.

The results after 70 days are mixed. Mr. Panic's good will and moderation are undeniable. For embracing the forward-looking peace program of the London Conference, he has won a pinch of respect from the international powers. He has provided an increasingly feasible rallying point for anti-regime Serbs, and this month he survived a no-confidence vote mustered by Milosevic nationalists in parliament. But he does not control the guns in the hands of Serbia's army or of the forces of Bosnia's Serbs. He must defend himself from charges of abandoning Serbs outside Serbia. Whether he could prevail in what may be a coming electoral showdown against Mr. Milosevic is uncertain. Suspicions linger that the Serbian president may find a way to use Mr. Panic to break the international embargo without ceding him power.

Many think the way to pick up after the Yogoslav crackup is to get rid of Slobodan Milosevic. But how is this job to be done? An invasion is out. A coup or conspiracy could yet materialize. The best solution would be a democratic choice. This is where Mr. Panic comes in with his program of, as he puts it, peace, democracy and business. He is a long shot, but he is on the move. Fearing that Mr. Panic can't handle the Milosevic juggernaut, Western countries hesitate to bet on him. As he shows himself able to demonstrate his independence and momentum, however, he deserves support. It is a gross libel on Serbs to say that Slobodan Milosevic is their true champion. The Serbia that Americans have traditionally respected and befriended—right up to this terrible current nightmare—is the one he projects.

ARE WE REALLY FINISHED?

HON. PORTER J. GOSS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. GOSS. Mr. Speaker, the Congress is due to adjourn in a few shorts hours, officially bringing this year's legislative business to a close. But are we really finished? Have we accomplished the job we were sent here to do? I don't think so, and I believe the American people would agree. Our No. 1 responsibility in this House is to properly manage the Nation's budget. By all accounts, we have failed—and failed miserably—at that task. We know that the Nation's health care system is sick and in desperate need of treatment, yet we have not even debated the issue, let alone acted on the many worthwhile programs that we have on the table. And every community in this Nation is being assaulted by the wave of violent crime, and yet this body has failed to produce legislation that will beef up our laws, bolster enforcement, and send an unmistakeable message that crime will no longer pay.

Mr. Speaker, I know many of our colleagues have already headed home, filing the 102d Congress away as a done deal and looking ahead to the 103d. But there are likely to be serious repercussions for all Americans because this institution once again chose to put off until tomorrow what we should have done today.

SAMUEL J. CAIVANO: CONSTRUCTION MAN OF THE YEAR

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. PALLONE. Mr. Speaker, on Friday, October 16, 1992, the Building Contractors Association of New Jersey will hold its annual gala dinner dance in Whippany, NJ. On that occasion, the association will honor Mr. Samuel J. Caivano of Millburn, NJ, as the Construction Man of the Year.

Mr. Caivano is the vice president of the Laborers' International Union of North America and the New York/New Jersey regional manager. He has always believed in the dignity of the construction worker, a person who, through the efforts of the international union, has been able to achieve an honest day's wages for an honest day's work. For Mr. Caivano, this effort comes from the heart, as his own roots began in labor. After graduating from Millburn High School, Mr Caivano entered the U.S. Marine Corps at the outbreak of World War II. After his years of service, he returned to Millburn, joining local 526 of the Laborers' International Union as a laborer. He had previously worked in the construction industry in New York City with two of his brothers.

After 6 years of service in local 526, Mr. Caivano was elected business manager. He was an extremely successful organizer and manager whose talents were soon recognized by the international union. In 1967, he was appointed as international representative and an organizer in the New York/New Jersey region. He served the union as representatives and international vice president and regional manager in New York and New Jersey. In 1991, he was elected to the vice presidency.

Over the years, Sam Caivano has been instrumental in developing State legislation for the benefit of all workers. In New Jersey, he worked closely with former Governor Hughes in promoting a State prevailing wage law protecting workers on public construction projects. In New York, he led the successful efforts to raise the workers' compensation benefits for workers injured while at work.

Sam Caivano is well-known for his activities in support of organized labor. He has been active in developing programs within the Laborers International Union to benefit the membership in the field and their families. He serves on the boards of numerous funds at both the State and national levels, all dedicated to the welfare and concerns of the construction laborers. He also manages to give of his time to many philanthropic endeavors serving the community.

Sam Caivano, a lifelong resident of Millburn, has been married for 38 years to Anne Caivano. The Caivanos have two grown sons, David and Richard.

In recognition of the longstanding integrity, service, and leadership that Sam Caivano has shown in making a positive impact on the construction labor movement, the Building Contractors Association of New Jersey takes great pride in paying tribute to this fine man. I am proud to add my tribute, and to share some of his accomplishments with the Members of this House.

FAIRLEIGH DICKINSON UNIVERSITY

HON. DEAN A. GALLO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. GALLO. Mr. Speaker, I would like to raise an issue of great importance to the Nation's competitiveness and the future of technology-driven industries. For years, the United States has been a leader in producing technologies that are on the leading edge, yet these technologies have been commercialized overseas. This phenomenon has effectively reduced the competitiveness of U.S. industry, and it is clear that there are problems that must be addressed if the United States is to maintain a preeminent position in world trade.

Because management skills are vital to be successful commercialization of creativity, I would like to bring my colleagues' attention to a project that was included in this year's House version of the water resources authorization bill, and should merit further consideration during the 103d Congress.

Fairleigh Dickinson University has developed a program focusing on the management of technology. This program is nationally significant in that it has successfully addressed competitiveness issues in bringing technology to the commercial market. Under the water resources authorization bill, the distinguished committee chairman included an authorization of $8.5 million in funding for the construction of a center focusing on technology management as it relates to water quality. This project would allow the university to increase its focus in this area and would serve as a national demonstration for applying technology management approaches to all technology-driven industries. Additionally, by focusing on the timely issues surrounding the management of water quality restoration technologies, FDU will be making a significant contribution in training and resources to industries dealing with water quality improvement.

Efforts to assist technology-driven industries to compete more effectively in the growing atmosphere of global competition will be extremely important to U.S. participation in the global economy. I strongly support Fairleigh Dickinson University's efforts in this area, and I plan to encourage the 103d Congress to give this project additional consideration next year.

GAO PARTISANSHIP UNACCEPTABLE

HON. C. CHRISTOPHER COX

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. COX. Mr. Speaker, during the past several years, the General Accounting Office has lost its reputation for balanced and unbiased reviews. Indeed, as the years have passed, the GAO has evolved into a partisan tool of the Democrat chairmen of the House. In 1969, 90 percent of GAO's reports were initiated by the GAO. But by 1991, more than 80 percent were undertaken directly at the request of Democrats in the House.

Unfortunately, GAO reports now seem to be timed to influence the upcoming Presidential election—in favor of Bill Clinton. The so-called watchdog has become the Democrat lapdog. A prime case in point is a forthcoming GAO report purportedly assessing the Justice Department's efforts in the investigation and prosecution of bank and thrift fraud.

The GAO has spent the past 2 years crisscrossing the country, racking up frequent flyer miles, and sampling scores of hotels as they reviewed the Justice Department's handling of bank and thrift fraud. During this period, GAO employees interviewed Department investigators, collected thousands of pages of Department documents, interviewed prosecutors, and reviewed the entire Justice Department prosecution strategy. Remarkably, after this exhaustive evaluation, after spending thousands of tax dollars, after promising a nonpartisan review, the GAO completely ignored every single piece of information gathered from the Justice Department, in a report they will release just prior to the election.

The report would have us believe it is the Justice Department—not the Congress—that is accountable for the decline of the thrift industry. Overlooking the myriad of causes of this complicated issue, the GAO report ignores the well-documented blame that Congress deserves. Maybe this is because the GAO feels reluctant to bite the hand that feeds it—the Democrat chairmen of Congress. In particular, the GAO report forgot to include:

The Democrat Speaker of the House, Jim Wright, who fought with regulators to keep open an S&L owned by his biggest contributor, resulting in the loss of $1.3 billion in taxpayers' money. The owner of the thrift got 30 years in jail. And while Jim Wright got none, his role is painfully laid out in independent counsel Phelan's detailed report to the Congress.

The finance chairman of the Democratic Congressional Campaign Committee, who raised $9 million from S&L's for Democrat candidates in the same year that Speaker Wright intervened with thrift regulators on behalf of these same institutions.

Tony Coehlo, the Democrat whip, who allowed a Texas thrift to keep their yacht in DC, which was then illegally used 11 times for Democrat fundraisers—all in violation of FEC regulations.

The Democrat chairman of the House Banking Committee, Fernand St Germain, who singlehandedly raised the contingent liability of the FSLIC by billions in 1980 by raising the insured deposit limit to $100,000. This created the business of brokered deposits, which permitted crooks to buy small institutions and create growth in paying above market interest rates.

The fact that St Germain took this action at the same time that he had unlimited free use of a U.S. Savings League lobbyist's credit card.

The Democrat Senate whip ALAN CRANSTON, who made good on the $850,000 he received from Charles Keating by intervening with regulators seeking to prevent the collapse of Lincoln Savings & Loan.

What's more, the GAO makes numerous assertions without any empirical or statistical support. For instance, the GAO states that "large numbers of investigations and cases" have been declined by U.S. attorneys. Information provided to me by the Justice Department—which I'd like to include for the RECORD—makes it clear that this statement is false. Then, the GAO changed the legal definition of the word "fraud." By so doing, the GAO was able to improperly suggest that the Department did not fulfill its legal responsibility.

Had the GAO included the facts about the progress of the financial institution program, they would have discovered that: 3,500 defendants have been charged in major financial institution fraud cases since October 1988; almost 2,800 convictions have been secured—a 95-percent conviction rate; and prosecutors have won a 77-percent incarceration rate.

Mr. Speaker, I should also note that the FBI shares my concern that the GAO's conclusions are erroneous, and their use of data misleading. I ask unanimous consent that a portion of the Department's response to the GAO report be inserted in the RECORD following my remarks.

I could go on to illustrate how the GAO report makes a mockery of the work of career professional prosecutors. I could further outline how the GAO ignored many of the root causes of the thrift crisis. And I could cite dozens of other cases of the GAO playing partisan politics with the facts. The bottom line is that the GAO itself needs major reform. Mr. Speaker, it is high time we privatize this out of control partisan bureaucracy so that the taxpayer can count on independent audits of our Government—audits unswayed by powerful House committee chairmen and their hordes of politicized committee staff.

DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, October 1, 1992.

Re Draft GAO Report on Justice Department's Financial Institution Fraud Program.

Mr. RICHARD L. FOGEL,
Assistant Comptroller General, General Government Division, General Accounting Office, Washington, DC.

DEAR MR. FOGEL: 3500 defendants charged in major financial institution fraud (FIF) cases between October 1, 1988 and August 31, 1992; almost 2800 convictions; a 95% conviction rate; a 77% incarceration rate; and more than 100% increases in productivity reported in each of FY 1991 and 1992 over FY 1989–90 combined. These objective facts, which stand as irrefutable evidence of the success of the Justice Department's anti-fraud effort, are largely ignored in your 140-page Report. The determination to criticize rather than analyze is evident throughout.

While the Report purports to focus on what Justice has done in the FIF program since the arrival of the Special Counsel, it ignores volumes of information supplied in our Reports on Attacking Financial Institution Fraud over the past two years and the extensive information supplied in response to various Congressional inquiries—all shared with GAO during the "audit" which allegedly took place as part of this Report.

We have successfully integrated and trained a record number of prosecutors in a training program completely overhauled under the supervision of the Special Counsel. Working relationships within the law enforcement community and with the regulators have never been better. Under the leadership of the Special Counsel, the Senior Interagency Group has passed the first multi-agency accord to enhance the monetary enforcement effort. Though constantly improving, the reporting mechanisms now in place for the FIF program are the most comprehensive in existence for a multi-agency enforcement program.

Yet, short shrift is given to the accomplishments of the program, and the Special Counsel. Rhetoric about unfunded budget allocations in FY 1991 abounds with nary a mention of proposed Congressional budget cuts in this program for FY 1993. Significantly, the Congressional slashing of forty-four million dollars in enhancements to combat white-collar crime (including FIF) from our FY 1992 appropriations is omitted.

By all accounts, the near-collapse of the thrift industry was the result of a series of complex factors. Yet no one has ever suggested that the work of federal prosecutors is in any way responsible for the thrift failures. Moreover, regardless of whose numbers one looks at, fraud has not yet been shown to be the "major"[1] factor in the industry's failures. Nonetheless, the Report conveys the notion that the collapse is primarily a criminal law enforcement issue. It is not. Blaming all of the S&L losses on "criminals" may be politically convenient but it is not responsible law enforcement and it is not accurate.

While fraud and real estate related fraud in particular[2] were certainly factors in some failures, it cannot fairly be said that they were the major factors in all or even a majority of the failures. Economic factors in the real estate and other markets seem to have played a far larger role than fraud.[3] Notwithstanding the unsupported assertions of the Report, the extent of fraud as a factor in S&L failures is simply not known at this time, and indeed may never be known.[4] Moreover, it cannot be responsibly inferred without empirical and anecdotal study of the reasons for all the failures.

Prosecutors are merely cleaning up a mess left by others—and they are doing a great job with the resources they have been given to convict the guilty and protect the rights of the innocent. Responsible officials within the agencies regulating the industry and those prosecuting the fallout of the collapse have resisted efforts to attribute "costs" to "fraudulent" activity until the cases are completed. Nonetheless, GAO purports to do just that at page one of the Report's Executive Summary, without the benefit of statistical or anecdotal case analysis. The "costs" of the thrift bailout have many causes, including Congressional delay in funding the RTC since April 1992.

Our "comment" on the Report is that it is simply wrong in fact and tone, the obvious product of biased reporting. Specifically:

The leadership[5] of the Department and the Special Counsel, universally praised by the professionals involved in the program, exceeds what Congress could reasonably expect given the number of overlapping but fully independent agencies that Congress legislated as part of this effort.[6]

There has been no "shift in strategy"[7] and any evolution of our efforts has been fully documented for Congress.

Ironically, having failed to identify a measurement which would support criticism of the program, GAO criticizes Justice for the absence of such a yardstick.[8] There are many measurements of our success—including the absence of any valid criticism of the program in the face of 22 months of GAO efforts to invent one.

Efforts to divert responsibility for the scarcity of IRS-CID[9] resources to Justice from Congress[10] is sophistry of the worst kind.

Recommended improvements in the program were instituted by the Special Counsel almost from the outset, without prompting or apparent interest by the GAO.

Despite the substantial time we have devoted to attempts to inform GAO in Washington, D.C. and in the field, the Report eliminates the positive in favor of the same predetermined but inaccurate criticisms the auditors brought to their work when your "audit" began in November of 1990.

In short, the Report is wrong in so many ways that it must be assumed that the inaccuracies are intentional. Release of this draft just five weeks before the Presidential election further demonstrates the absence of objectivity. Perhaps it is because of the number of times we have corrected misinformation some within GAO have supplied to Congress that you have taken this tack, but the Report simply fails to meaningfully analyze our program.

FOOTNOTES

[1] The use of the word "major" to suggest that fraud brought down the thrifts is simply not accurate based on known data. Report at page 26.

[2] At page 27 of the report, GAO provides only a partial list of the statutes applied to this area. At page 27, the description of a land flip and nominee loan transactions is both oversimplified and inaccurately limited to "conspiracy" cases.

[3] The Report at page 3 states "Criminal fraud, often involving real estate, has been a major factor in many financial institution failures."

[4] As described in our "1992 Second Quarter Report: Attacking Financial Institution Fraud," p. 31-32, the loss figure we report to Congress is not necessarily the amount of fraud charged in the particular case. GAO fails to note this potentially significant fact when it describes "loss associated with those cases" at page 24 of the GAO Report.

[5] Report at page 8.

[6] The Report omits the fact that the Brady Bank Bill, rejected by Congress, sought to streamline the regulatory function and clarify the Attorney General's role as the nation's litigator.

[7] Report at page 13.

[8] Report at page 13.

[9] Criminal Investigations Division.

[10] Report at page 15.

A SALUTE TO THE BLACK AGENDA

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. DYMALLY. Mr. Speaker, this year marks the 13th Annual Christmas Kwanza Luncheon, which will take place at the Biltmore Hotel in Los Angeles on December 14, 1992.

I propose a special salute to this dynamic local organization which was established by Dr. Thomas Kilgore, Jr. for the spiritual economic and educational development of the African-American Community of Greater Los Angeles.

This year's luncheon will be highlighted with the presentation of 150 boys who have experienced the Rites of Passage Program of the Black Agenda.

These boys come from various churches in the community and have learned what it is to pass from childhood into manhood.

Some of the distinguished members of the Black Agenda are Reverend Dr. Roy S. Petitt, the current president, Dr. Maulana Karenga, who formulated the Rites of Passage Program and of course, Bishop Trevor D. Bentley, a founding member and parliamentarian.

Again, I wish the Black Agenda great success in this luncheon and hope that these boys will continue on their path to manhood and become proper and productive citizens of their community.

The general chairman of this year's luncheon is Mr. Larkin Teasley, president of Golden State Mutual, who we thank in advance for his hard work.

SUCCESS: WITH HARD WORK, HOPE AND THE FHA

HON. CLARENCE E. MILLER

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. MILLER of Ohio. Mr. Speaker, I recently had the distinct pleasure to join a number of outstanding citizens from Morgan and Perry Counties in Ohio for ground breaking ceremonies to inaugurate a new water service and distribution system for hundreds of people residing in Appalachia, OH.

The system—the Portersville East Branch Water Co.—was formed in November, 1987 by a dedicated group of citizens and in direct response to a crisis which could only become more acute were it not fully addressed. I realize that for many in Congress it is nearly impossible to believe or accept the fact that homeowners, small businesses and even an elementary school in this Nation could be without adequate access to water. That was precisely the case for those residing in and around Portersville, OH. Without the new system being constructed as I speak, the users of this region would have had to continue to rely upon unsafe well water, or hauling water, or even upon roof runoff water.

When I learned of this situation through Paul Hinkle—president of the company—and the near desperate circumstances facing York Elementary School in Deavertown, it became apparent that Federal assistance to bring water to the area was essential. The possibility of the school being closed altogether was likely. State and Federal officials were pressing forth with plans that would have forced nearly 200 children to be bussed elsewhere for school.

Fortunately, there is a silver lining to this story. In March, 1991, the Farmers Home Administration approved a grant for $1,002,000 and a loan of $629,000 to construct a major water distribution line linking the Burr Oak water supply system to the Portersville network, thus bringing water service to more than 400 new customers throughout a 6-township region. The new system will save York Elementary School and keep it open and available for local children.

I consider myself very fortunate to have been a part of this impressive project. All those involved—people who contributed time, energy and effort on a voluntary basis—deserve the universal thanks of all of us. Those affiliated with the project have done a wonderful job.

Officers of the Portersville East Branch Water Co. are: Paul Hinkle, president; Rodney Holcomb, vice president; Steve Altier, treasurer; Gayle Bolyard, secretary; Trustees: David Kangas, W.G. Addington, Richard Mingus.

EXPLANATION OF AMENDMENT

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mrs. MORELLA. Mr. Speaker, I am pleased to have the opportunity to express my gratitude to the conferees of H.R. 5006, the Defense Authorization Act, for retaining my amendment regarding the conveyance of land from the Forest Glen Annex of Walter Reed Army Hospital to the Maryland National Park and Planning Commission.

My amendment provided for the transfer of approximately 10 acres of woodlands adjacent to Rock Creek Park in the Forest Glen area of Montgomery County, MD, to the Maryland—National Capital Park and Planning Commission. The woodlands are currently part of the Forest Glen Annex of the Walter Reed Army Hospital. This wooded area, which is adjacent to a bicycle path, is assumed by the public to be part of Rock Creek Park and is widely used by the surrounding communities.

The woodlands to be transferred were deemed to be excess to the needs of the Department of the Army. The transfer of property was discussed with the Office of the Secretary of the Army, and that Office indicated that it did not object to my amendment.

The approximately 10 acres of woodlands will serve as a buffer between the residents of the Forest Glen community and any construction of facilities by Walter Reed in the Forest Glen Annex area. The Army's willingness to transfer the woodlands and thus guarantee that no further construction would occur in this 10-acre area is critical to the concerns of the surrounding community. Passage of this amendment will afford the residents peace of mind and assurance that the environmental impact of any construction on the Forest Glen Annex of the Walter Reed Army Hospital will be minimal.

ASBESTOS COMPENSATION LEGISLATION

HON. PAT WILLIAMS

OF MONTANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. WILLIAMS. Mr. Speaker, asbestos litigation has overwhelmed the Nation's courts. Approximately, hundreds of thousands of cases arising out of asbestos-related injuries are pending nationwide. The impact of this enormous volume of litigation is devastating: Claimants must wait years for compensation if they receive it at all; companies have filed for bankruptcy and sought further legislative relief; and tens of thousands of employees are out of work. If unabated, the cost of resolving these and future claims will force other companies into bankruptcy, other employees out of work, and most importantly, future claimants may be denied the ability to recover compensation for their injuries.

Constructive attempts have been made by the courts to expedite the resolution of asbestos cases. These efforts, however, have not been effective. Injured asbestos workers and their families bear the brunt of this delay, even though they are the plaintiffs in these suits, they are the true victims of the current state of asbestos litigation. Many injured workers have died before their suits reach trial or are settled. Many leave widows and dependent children to suffer economic hardship before the extended process of disability or death claims are completed by verdict or settlement. There continues to be no effective and efficient mechanism to separate frivolous from legitimate claims.

Moreover, an unconscionable amount of fees are consuming huge chunks of any awards that plaintiffs receive. Most plaintiffs' attorneys in asbestos cases get one-third of their clients ultimate award. A Rand study indicates that as much as 65 percent of the total awards intended for asbestos victims goes to transaction costs, fees to plaintiffs' and defense lawyers, experts, and administrative personnel.

Injured asbestos workers who pursue their claims in the civil justice system face other obstacles as well. First, asbestos litigation is spread widely among a large number of Federal and State courts. Accordingly, an asbestos claim is truly a role of the dice—plaintiffs in different jurisdictions receive often vastly differing awards. Second, because of strict rules governing statute of limitations in most jurisdictions, many exposed workers have no choice but to file lawsuits simply to preserve their claims, even though they have no manifest signs of disease or impairment. These suits, prematurely compelled by the perverse incentives of State limitations statutes, compound the crowding in the courts, thus delaying compensation to plaintiffs who are seriously ill.

The courts themselves have recognized that they cannot effectively resolve these problems. In March 1991, the judicial conference of the United States, acting on a report issued by the Ad Hoc Committee on Asbestos Litigation appointed by Supreme Court Chief Justice Rehnquist in September 1990, adopted the recommendation that:

> Congress consider a national legislative scheme to come to grips with the impending disaster relating to resolution of asbestos personnel injury disputes, with the objectives of achieving timely, appropriate compensation of present and future asbestos victims and of maximizing the prospects for the economic survival and viability of defendants.

This series of factors lead to hearings this session in the Senate Judiciary Subcommittee on Courts and Administrative Practice, chaired by Senator HEFLIN, and in the House Judiciary Subcommittee on Intellectual Property and Judicial Administration, chaired by Representative HUGHES. Those hearings reinforced the ad hoc committee's recommendation that asbestos claims can only be resolved through Federal legislation.

In the 99th Congress, I introduced H.R. 3090 to provide for the compensation of individuals who are disabled as a result of occupational exposure to toxic substances and to regularize the fair, adequate, and equitable compensation of certain occupational disease victims. This legislation also recognized the equity of, and need for, a Federal contribution to the fund established within this legislation to compensate workers who also served our national security interests during World War II.

Since that time, I have been talking with both concerned labor unions and a number of asbestos companies to explore the possibility of developing legislation that will benefit workers suffering from diseases caused by their workplace. My goal is to maximize the money that goes directly to workers and not to have it frittered away by expensive litigation costs, and also to preserve worker access to the court system.

In the 103d Congress, it is my intention to explore the development of such legislation. At this point in time, I have not introduced any legislation and do not have a draft bill. At the beginning of the next Congress, I hope to continue working with the concerned parties. The essential point is that negotiations have gone on long enough; I'm hopeful of introducing compromise legislation very early in the coming Congress.

THE RESIGNATION OF FOREIGN SERVICE OFFICER GEORGE KENNEY IN PROTEST AGAINST UNITED STATES POLICY IN THE FORMER YUGOSLAVIA

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. LANTOS. Mr. Speaker, I have spoken out frequently about the lack of leadership on the part of the United States in dealing with the continuing crisis in Bosnia-Hercegovina and the other new Republics of the former Yugoslavia. I have introduced legislation and urged the administration to take stronger action—including economic, military, and political sanctions—against the military action of the former Yugoslav Army led by a Serbian officer corps, and now for all practical purposes the well-equipped army of the Republic of Serbia.

I have criticized the failure to deal strongly with so-called Serbian irregular forces in Croatia, Bosnia and other parts of former Yugoslavia because these forces are working hand-in-glove with the Serbian Government. This administration's policy has been too little, too late, too often, but in Yugoslavia, it has been disastrous. We are now looking at tens of thousands who have been killed, some 2 million who have been made refugees, and—with the advent of winter—the prospect that both of those tragic and preventable figures will increase significantly.

Last August, Mr. Speaker, a young foreign service officer, George Kenney, resigned from the Foreign Service in protest against United States policy in Bosnia-Hercegovina and the former Yugoslavia. His resignation received some attention at the time—it was reported in newspapers here in Washington and elsewhere around the country.

That resignation also was the subject of an exchange which I had last week during a hearing of the Subcommittee on Europe and the Middle East of the Foreign Affairs Committee. I discussed Mr. Kenney's resignation with Thomas Niles, the Assistant Secretary of State for European Affairs. Portions of my exchange with Mr. Niles and a response by Mr. Kenney to Mr. Niles' comments during our hearing were published in the Washington Times yesterday.

Mr. Speaker, I ask that the editorial in yesterday's Washington Times and the response of George Kenney be placed in the RECORD. I urge my colleagues to read it.

[From the Washington Times, Oct. 7, 1992]

GEORGE KENNEY, DOWN THE MEMORY HOLE

On Aug. 25, George Kenney, then the Yugoslav desk officer at the State Department, did something highly unusual in Washington: He quit on principle. He was frustrated and angry with what he has since described as the determined refusal of the United States to do anything of consequence about the slaughter in Bosnia-Herzegovina. He did not go quietly. He immediately gave an interview to The Washington Post, and he has since written op-ed articles for The Post, the New York Times and other publications, and spoken at universities, think tanks and elsewhere, in an effort to get the United States to take the war in the Balkans seriously, not only as a matter of humanitarian concern but also as a matter of U.S. national interest.

Mr. Kenney pushed hard for broader U.S. involvement while he was at the State Department. By his own count, he says, he discusses the subject with no fewer than 26 colleagues who had a direct interest in the former Yugoslavia and many others in the department who were indirectly concerned. He describes numerous meetings and discussions, as well as buttonholing department officials in the hallways, in the effort to press his case.

So he was more than a little surprised to hear tell of this exchange between Rep. Tom Lantos and Thomas Niles, the assistant secretary of state for European affairs. Mr. Niles was testifying before the House Foreign Affairs Committee's Europe subcommittee.

Mr. Lantos: "Could you characterize your appraisal of Mr. Kenney?"

Mr. Niles: "Mr. Kenney was a talented younger officer: I worked—as I say, I worked with him for seven months. He was a good colleague, someone with whom we enjoyed working, all of us at the bureau, and we regretted his decision [to resign] but certainly understood it. And I can say that Mr. Kenney's sense of frustration with developments in Yugoslavia was widely shared, certainly one that I shared."

Mr. Lantos: "His frustration was not with developments in Yugoslavia. His frustration was, in his view, the failure of American policy in Yugoslavia. There's a great deal of difference between the two."

Mr. Niles: "Again, let me answer the question. You asked about Mr. Kenney. I would only say that I understand and sympathize with Mr. Kenney's decision. I would say, however, that at no time during the period when Mr. Kenney was working on Yugoslavia as the junior of two officers working in that section—there were two officers specifically working on Yugoslavia, and he was the junior of the two—at no time during that period did Mr. Kenney come to me or to his superior or anyone else in the chain or go to the acting—or to the secretary of state above us and express dissatisfaction with the policy. Now, he may very well have felt that dissatisfaction. I was at meetings with Mr. Kenny at which our policy options were discussed, and he did not say at any time, at least while I was present, nor did he say to anyone else in the bureau, to the best of my knowledge, 'Let me tell you, this policy is wrong. We're on the wrong track. Instead of doing (whatever we were doing), you should do something else, and here are your options.' So I don't say that in the way of criticism of the man. I'm just simply telling you that, although he very obviously felt strongly that we were on the wrong track, he never told me so.

Mr. Lantos: "This came as a complete surprise to you?"

Mr. Niles: "It certainly came as a complete surprise to me when we learned that morning, as we were going to the London conference, that Mr. Kenney had resigned. Now, again, there are ways in the Department of State in which you can express your views, either in a dissent channel if you don't agree, or in the policy formation process. To the best of my knowledge, he did not do so. He has done so subsequently, and has provoked, as is appropriate in our democracy, vigorous debate about whether we're on the right track or not. And I see nothing wrong with that at all. I wish him well."

Mr. Kenney's response to Mr. Niles' assertion that "at no time" during Mr. Kenney's service did he ever "express dissatisfaction" with U.S. policy to "anyone . . . in the chain" appears on this page today, as well as Mr. Kenney's more general reflections on policy making in the State Department.

He describes wide agreement with his view among officials closest to the issue and opposition from higher-ups in the department, Mr. Niles included. The fact that Mr. Kenney's view of the Balkan war and what U.S. policy toward it should be is close to the view expressed in this space previously is not the issue. Nor, for that matter, is the fact of disagreement within the State Department. The issue is whether the public, the Congress and the debate over the former Yugoslavia are well served by the apparent effort of Mr. Niles to deny that that disagreement existed within the department and still exists.

TRUTH AS A POLICY CASUALTY

(By George Kenney)

Last Tuesday, a senior administration official lied to Congress. In testimony before the House Foreign Affairs European Subcommittee, the assistant secretary of state for European affairs, Tom Niles, said that I had never told him, or anyone at the department of state, of my objections to U.S. policy toward Yugoslavia before I resigned my commission as Foreign Service Officer on Aug. 25. Through his personal attack, Mr. Niles was trying to minimize the importance of public debate on the failure of U.S. policy.

True, I did not argue policy with Mr. Niles—he was five levels above mine in the State Department hierarchy—but I did argue policy, practically every day, with Mr. Niles' deputy assistant secretaries. I vociferously argued policy at the next level down—with my office director. I argued with senior staff in the secretary of state's Office of Policy Planning and with the senior staff to Acting Secretary Lawrence Eagleburger and Under Secretary for Political Affairs Arnold Kanter. I argued policy everywhere I found an audience. I assumed that Mr. Niles' senior staff and others talked to him about the opinions of U.S. policy found at the working level.

By my count, more than 20 State Department officials who deal with the Yugoslav crisis on nearly a full-time basis share my point of view. Through rational deliberation, all of us were drawn to the same conclusion: Only Western military intervention can solve this crisis. Against us, about half a dozen department officials supported the administration's non-interventionist approach. But Mr. Niles would rather not talk about dissent within the State Department. There he is in the distinct minority. There, his credibility is nil. I do not believe, nor does anyone who knows him, that Mr. Niles really expect current U.S. policies to produce any resolutions of the crisis. He is more intelligent than that.

Unfortunately, the State Department is highly politicized. Internal debate is stifled. There is, however, a remarkable generational division between older officers who believe that procedural protocols take priority over all else, and younger officers willing to explore policy differences in order to get to the best policy in the national interest. Younger officers tend to view their jobs in terms of long-term careers that include the possibility of other kinds of work; if the department does not satisfy professional goals, they leave, as I did. Older officers often feel, perhaps correctly, that they have no other options. They go along with the system.

Because of politicization, the State Department's professional standards—some say, and I agree, that diplomacy as a profession—have fallen. As an institution, the State Department may no longer be capable of coping with a crisis on the scale of Yugoslavia. The assistant secretary further wrecks the department's institutional legitimacy: Who will listen seriously to the State Department if it cannot tell the truth to Congress? And if it lies to Congress routinely, when will it ever distinguish between truth and falsehood? The national interest gets lost in crass political calculations. This administration's blind political arrogance is well on the way toward ruining America's ability to provide world leadership.

I do not hold Mr. Niles' lies against him. Rather, it is a reflection of the system, of the incentives and punishments that Mr. Niles faces. If Mr. Niles were removed, the same incentives and punishments would face his successor—even in a new regime of enlightened political leadership. The system should be reformed to protect internal deliberation, to provide elected officials with a broad range of policy options, and to ensure absolute transparency of information so that the public gets the truth.

The United States desperately needs a healthy debate on the Yugoslav crisis. We need to think carefully about what it means for us to deny Croatia and Bosnia, both members of the United Nations, the right of self-defense. This is unprecedented. It is a dangerous precedent. We need to ask whether, by not acting to stop genocide against Muslims in Bosnia, the West will ever stand up for its values whether we may poison our relations with the Islamic world. Americans need to ask profound questions about our responsibilities as a world power. But the administration treats these and all the issues raised by the Yugoslav crisis in the style of Groucho Marx: It asks, "Who are you going to believe, me or your own two eyes?"

THE FAMILY AND MEDICAL LEAVE ACT

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. MAZZOLI. Mr. Speaker, the Family and Medical Leave Act was the subject of recent editorials in Business Week, September 28, 1992, the Washington Post, September 30, 1992, and U.S. News & World Report, September 28, 1992.

Important highlights of those editorials are: The bill's requirements apply only to employers with 50 or more employees; providing workers leave time to attend to family responsibilities is good business practice; and, pushing the measure to become law is a push for family values.

I have always voted for passage of the Family and Medical Leave Act, and I cast my vote to override the President's veto. Like many of my colleagues, I was deeply disappointed that the veto was sustained. Furthermore, I hope to join those same colleagues in January in resurrecting a bill that is for working families and finally enacting it into law.

The text of the editorials follow:

[From Business Week, Sept. 28, 1992]

Family Leave Time Is Good Business

Tremendous demographic changes are being felt in the U.S. workplace. In many families, both parents work—women account for 45% of the work force—and often the family must cope with ailing grandparents. All this has dramatically increased employees' need for help in caring for dependents young and old. A coalition led by IBM is already tackling one aspect of the problem, the dearth of adequate child and elder care. In early September, the group, composed of 137 companies and public entities, announced that it would put up $25 million to fund child- and elder-care programs in 44 locations around the country. While this isn't a lot of money—IBM alone pledged $9 million—it marks the largest effort so far in which companies and government have acted in unison on this problem.

An even more comprehensive approach is taken by the Family & Medical Leave Act, which requires employers to offer 12 weeks per year of unpaid leave to care for a new or sick child, a parent, or spouse. Congress first passed a family-leave bill in 1990, but President Bush vetoed it on the grounds that government shouldn't mandate corporate benefits. Congress has passed such a bill once more, and the President says he will veto it again. This would be a mistake. Last year, a nonprofit group called the Families & Work Institute released the most thorough study ever done of corporate-leave policies. The survey found that 83% of companies already offer an average of 11 weeks of maternity leave. It also found that 60% offer paternity leave. In any case, unpaid leaves represent a financial hardship, so the rate is unlikely to increase dramatically. Because it applies only to companies with more than 50 employees, the current bill exempts 95% of all companies and would impose a burden only on the minority of companies that don't feel the need to match their rivals' policies. The GOP's campaign emphasis on family values would be a lot more believable if President Bush ignored ideology and signed this modest family-leave legislation.

[From the Washington Post, Sept. 30, 1992]

The Family Leave Vote

The House will have an opportunity today to break a record and enact a popular and much-needed law. The record is the president's: He has vetoed more than 30 bills during the last four years, and not one has been overridden. But his veto last week of the Family and Medical Leave Act has already been overturned by the Senate, and the final test will be in the House today. The bill is a good one; it is tied to the Republicans' theme of family values. The predictions are that there are not enough votes for an override. You would have thought that on this particular issue in this political season, a good family leave bill such as this one could draw the votes. It should.

No one, after all, can dispute the fact that as women have entered the work force in overwhelming numbers, problems that older generations did not face have arisen. The most difficult are those involving the need for some adults to stay home temporarily to care for a newborn or sick child, or a close family member who is ill. Many employers are both understanding and cooperative about granting unpaid leave in these situations, but some are inflexible and harsh. Workers are often faced with a choice between family responsibilities and keeping a job they may have had for years. The legislation at issue simply requires businesses with more than 50 employees to grant up to 12 weeks of unpaid leave for these emergency situations. Health insurance coverage would have to be continued, but the law wouldn't apply to the highest paid 10 percent of the work force, who might be difficult to replace.

The bill is not without cost to a business, but in the long run it is estimated that money would be saved because permanent replacement workers wouldn't have to be hired. The goodwill and loyalty engendered by such a family-oriented approach should also provide benefits. The president proposes, as an alternative, that tax credits be provided to businesses that voluntarily grant unpaid family leave. But that is a last-minute offer, made only last week, that has no chance of enactment this year. The House should not be distracted by this gambit.

Notwithstanding party affiliation, members should have the confidence to override this veto. Working families need this law as other generations of workers needed minimum wage, health and safety regulations and Social Security. The president should not be allowed to get away with turning his back on them.

[From U.S. News & World Report, Sept. 28, 1992]

Making Parental Leave a Right

(By David Gergen)

For 19 years, Carmen Maya worked as a pharmacy technician in a Chicago hospital. During a third pregnancy, she suffered severe swelling in her legs; then her daughter was born with Down's syndrome. The hospital granted her temporary leave, but shortly before she was to begin working again, she was fired. "It has been a nightmare. I'm used to bringing home a paycheck. Now I have to stand in welfare lines to get food for my children," this proud woman testified before a recent Senate hearing.

How many more families must be crushed before this nation treats them with minimum decency and caring? Is "family values" just a pious phrase, or can we infuse it with real meaning? How much longer must the United States be the least enlightened country in the West in nurturing family life? President Bush and Congress will soon provide answers as they wrestle over proposals for parental leave.

The problem is plain: For most of our history, women have worked at home to care for the young and the sick, but economic necessity and changing cultural standards—as well as greater opportunity—have encouraged the vast majority to take paying jobs. When a child is born, most mothers would prefer to stay home for at least a year, the minimum time thought necessary for parental bonding. But 91 percent told a survey for *Working Mother* magazine that they feel compelled by economic circumstances to go back to work. If they don't return quickly, there may be no job left. New fathers face even more resistance from employers in staying home. And most workers are expected to give the shortest possible time to tending an illness in the family. Forced to make painful choices, some employees still elect to stay home temporarily—only to become another statistic in the unemployment charts.

The same social revolution has swept across other industrialized nations, of course, and it is striking how they have reacted. "Throughout continental Europe," author Sylvia Ann Hewlett reported in a paper this summer at the Aspen Institute, "governments provide a generous package of rights and benefits to working parents when a child is born." Germany requires 14 to 19 weeks of fully paid leave. In Italy, a pregnant woman is entitled to five months' paid leave at 80 percent of her wage, followed by an additional six months at 30 percent. Sweden provides a parenting leave of 15 months that can be taken by either parent and replaces 90 percent of earnings up to a specified maximum. Those are nations that truly honor family life.

Standing alone, the United States relies instead upon a patchwork of a few state laws plus the good will of employers. Some of our biggest companies do indeed meet high standards in their leave policies, including Merck, Aetna, IBM, Johnson & Johnson and Corning. Like many other companies, Aetna has found that its program actually saves money by reducing turnover among its employees. But most companies are much less generous, especially for employees in low-wage jobs, the very people whose families need the greatest support. As many as 60 percent of American women, according to Hewlett, still have no leave benefits or job protection when they give birth.

A bipartisan majority in Congress has twice passed a parental and medical leave bill that would provide a minimum floor for American workers. A pale shadow of what most nations offer, this bill would provide a mere 12 weeks of unpaid leave and would be restricted to companies with 50 or more employees. Yet President Bush has already vetoed it once and threatens to do so again. He is right to see political motives in congressional Democrats' sending it to him again just before the election. But he is wrong to think that his own last-minute proposal—providing tax credits to companies that voluntarily provide leave—is enough. What the country needs, as Republican Rep. Marge Roukema of New Jersey says, is to enact both bills into law. The Bush idea is a good complement but a lame substitute.

The disintegration of families and the impoverishment of our children are now among the most urgent challenges facing us as a people. We won't fully solve them by enacting minimum standards for parental and medical leave, but we will make important progress. And we will become a more decent, humane society.

AMBASSADOR MAXWELL RABB INTERNATIONAL SCHOLARSHIP PROGRAM ESTABLISHED AT THE CATHOLIC UNIVERSITY OF AMERICA

HON. FRANK J. GUARINI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. GUARINI. Mr. Speaker, on September 17, I had the distinct pleasure of participating in a dinner held in Washington to announce the establishment of the Maxwell D. Rabb International Scholarship Program at the Catholic University of America. The scholarship honors an extraordinary public servant who served with special distinction as the United States Ambassador to Italy from 1981–89—longer than any American Ambassador to Italy.

The Maxwell Rabb International Scholarship Program has been established through the Italian-American Center at the Catholic University of America. It seeks to foster appreciation of Italian heritage and encourage cooperation between Italy and the United States through academic, cultural, and professional exchange. Scholarships and stipends will be offered to undergraduate and graduate students from Italy, and selected developing nations who wish to study in the United States at Catholic University. They will also be offered to Catholic University students who wish to study in Italy.

A number of prominent individuals from both Italy and the United States participated in the Rabb scholarship dinner. One of the cochairs of the dinner was former Italian Prime Minister Giulio Andreotti, who has been referred to as the most enduring political statesman from Italy in the 20th century. The other cochair was Ambassador Walter H. Annenberg, who served our Nation with special effectiveness as the Ambassador to the Court of St. James.

A number of my distinguished colleagues were in attendance. From the Senate: MAX BAUCUS, PATRICK LEAHY, ALFONSE D'AMATO, ALAN SIMPSON, JOSEPH LIEBERMAN, DENNIS DECONCINI and ROBERT PACKWOOD. From the House, I was joined by my colleague from New Jersey—MATTHEW RINALDO. The administration was represented by Energy Secretary Adm. James Watkins and the Director of the Federal Bureau of Investigation, Judge William Sessions.

Also in attendance was the former House majority whip Tony Coehlo, Italy's Ambassador to the United States, Boris Biancheri, and the former United States Ambassador to the United Nations, John Scali. Catholic University was represented by Cardinal Bernard Law of Boston, the chairman of the board of trustees; Catholic University's new president, Brother Patrick Ellis, F.S.C.; executive vice president Sister Rosemary Donley; academic vice president Monsignor John Wippel; and secretary Vincent Walter. The Italian American Center was represented by the president of the board of directors, Mr. Alexander Giacco; the vice president, Rev. Stephen Almagno; and the secretary, Rev. Monsignor William Kerr. In addition, Mario Castellani, a member of the center's board of directors, came from Italy. Leadership from the Italian-American community was represented by the chairman and the vice chairman of the National Italian-American Foundation—Frank D. Stella and Arthur J. Gajarsa, respectively—and Peter Zuzolo, national president of the order Sons of Italy in America.

Former Prime Minister Andreotti called the Rabb Scholarship Program a true bridge between the United States and Italy. Mr. Andreotti said that politics and diplomacy aren't enough to solve the world's problems. "We also need culture and religion. And there's no better place to promote culture than universities."

Cardinal Law said the Rabb scholarship is intended to do what Ambassador Rabb did so well: "Overcoming boundaries and improving the world."

I am very pleased that the outstanding contributions of my good friend, Ambassador Max Rabb, were recognized in such a substantive fashion. During this extraordinary career, Max Rabb has held many governmental posts. In 1953, he was named by President Eisenhower to the newly created post of Secretary of the Cabinet in the White House, a position he held until 1958. In 1959–60, he was chairman of the U.S. Delegation to UNESCO in Paris. He was a member of the conciliation panel at the World Bank's international center for the settlement of investment disputes, and was later a representative of the center. He was also appointed to the Presidential panel for relief assistance for India, Pakistan and Bangladesh.

Max Rabb was administrative assistant to U.S. Senator Henry Cabot Lodge from 1937 to 1943. He served in a similar post to Senator Sinclair Weeks in 1944. He also served in the Navy during World War II, and became legal and legislative counsel to the Secretary of the Navy, James Forrestal.

Ambassador Rabb has been awarded the Grand Cross of the Order of Merit of the Republic of Italy and the Grand Cross of the Order of Merit of the Knights of Malta in Rome. For his remarkable efforts in fostering Italian-American ties, he was awarded the Catholic University of America's President's Medal in 1988.

Max Rabb was honored on this night for his most distinguished tenure as our Ambassador to Italy. He was Ambassador during a very challenging period in American-Italian relations. As Ambassador, Max Rabb was an advocate for closer partnerships between Italy and the United States in business, education and culture. Because of his leadership, these relations were strengthened. Under this scholarship program, a Rabb scholar will now be able to make his or her contributions to the expansion of the partnership between our two nations.

I have watched with great interest the development of the Italian-American Center at Catholic University. It is a natural new compliment to the university, both because of Catholic University's longstanding connection with Italian-Americans, and because of the university's rich research and faculty resources. Part of the university's impressive collection includes a rare books collection from Pope Clement IX's family library. Furthermore, faculty experts specialize in the studies of Dante, Galileo, Italian immigration, art, politics, architecture, and music.

The center, located in our Nation's Capital, will fill an important void with its dedication to the appreciation, study and advancement of Italian-American heritage and culture. The center will also ensure a more visible presence for the people of Italy.

The center's combination of academic, research, cultural and international programs will make it a focal point in future American-Italian relations.

I would also like to pay tribute to the center's executive director, Bob Blancato, who has worked diligently to move the center to the point where it is today.

There was great excitement that night for Ambassador Rabb, his wife Ruth, and their family. Max is a man of unusual distinction. The Rabb scholarship is a fitting way to honor him. For the scholars who will benefit from the program, the future shines brightly.

Finally, Mr. Speaker, this center's development and its importance to the Italian-American community and to Italy will be of special importance to me in the coming years. In my new role as president of the National Italian-American Foundation, I look forward to the center's efforts to advance Italian-American heritage and culture. I also look forward to its efforts to bring about a deeper appreciation of the contributions of Italy to the United States. We are indeed fortunate to have the Italian-American Center at Catholic University.

I would like to submit for the RECORD a letter from Vice President QUAYLE, along with an article from the New York Times of September 17, 1992, that concern Ambassador Rabb and the wonderful evening that we spent together.

THE VICE PRESIDENT,
Washington, DC, September 17, 1992.

Brother PATRICK ELLIS, F.S.C.,
President, The Catholic University of America, Washington, DC.

DEAR BROTHER PATRICK: I wish I could be with you this evening to honor Max Rabb, who has so richly honored his country in a lifetime of achievement and service. We can set aside all the titles and awards for the names that mean most to him: citizen and patriot.

It's no great secret that he's also a Republican, but we won't interject partisan matters here.

His name befits the University's new International Scholarship Program, for it represents both pride in our own country and respect for the cultures and traditions of others. Max has stood both for strong beliefs and for the humane tolerance that persuades others to his conviations.

I join him in thanking all those who have made possible the International Scholarship Program. In particular, I join other friends of the University in saluting President Giulio Andreotti and Ambassador Walter Annenberg for their support for the Italian-American Center at the University. Their generous vision will directly benefit young scholars from the United States and Italy and, through them, will advance the traditional friendship and understanding between our nations.

Finally, let me take this occasion to formally welcome you, Brother Patrick, to the Washington community of which the University is so vital a part. Its tradition of learning grounded in faith, of scholarship rooted in religious commitment, is needed more than ever at a time when we see the consequences of divorcing education from ethics and confusing information with wisdom. You can be proud that the University has stood apart from academic fads to assert, in the words of Robert Frost, the truths we keep coming back and back to.

Once again, my respectful compliments to Max, my thanks to those who have made possible this occasion, and my best wishes for your presidency and for the future of CUA.

Sincerely,

DAN QUAYLE.

[From the New York Times, Sept. 17, 1992]

Maxwell M. Rabb, the former United States Ambassador to Italy, ought to be bipartisan and international. Among those expected at the "Italy America Partnership Dinner" in the Four Seasons Hotel are the Speaker of the House, Thomas S. Foley, the Washington Democrat; Senator Larry Pressler, Republican of South Dakota; Secretary of Energy James D. Watkins; Giulio Andreotti, the former prime minister of Italy, and Bernard Cardinal Law, the Archbishop of Boston.

At the dinner, the establishment of the Maxwell Rabb International Scholarship

Program at the Catholic University of America in Washington will be announced. The scholarships will be part of the school's new Italian-American Center. Funds will be provided for students from Italy to attend Catholic University and for American students to attend school in Italy. Ambassador Rabb, who served in Italy from 1981 through 1989, was instrumental in the establishment of the center.

"This has great significance, not only for me but for the very special relationship that already exists today and we hope will continue between the United States, Italy and the Vatican," Ambassador Rabb said yesterday "I am a former president of Temple Emanu-El in New York, so this is an indication of good will along both religious and political lines."

HONORING RIVERDALE TEMPLE

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. ENGEL. Mr. Speaker, it is with great pleasure that I acknowledge today the 45th anniversary of Riverdale Temple, the largest reform temple in the Bronx, with a membership of more than 700 families.

Since 1947, Riverdale Temple has been an active and vital force in the community. Through food drives and interfaith workshops, the temple has reached out to all the people and worked to improve the quality of life in its immediate neighborhood. The temple has also been a leader in the Jewish community, as the home of the largest reform religious-Hebrew school in the Bronx and through its charity events to aid Russian Jews.

Under the leadership of Rabbi Stephen D. Franklin and the board of trustees, headed by President Carolyn L. Baron, Riverdale Temple continues to carry on its rich tradition. I thank all the people who have carved out the history of Riverdale Temple and wish them "mazel tov" in the days and years ahead.

A TRIBUTE TO THE GERMANTOWN SETTLEMENT

HON. LUCIEN E. BLACKWELL

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. BLACKWELL. Mr. Speaker, I rise today to join the celebration of the Germantown Settlement, which has been a force for change in Philadelphia for the past 108 years. Since 1884, when 18 women joined together to build a nursery and kindergarten for the residents of Germantown, the Germantown Settlement has been committed to providing educational, medical, and housing services throughout the city.

In the first decades of the 20th century, the kindergarten and nursery expanded to provide emergency medical services to the Germantown community. Later, as the Great Depression left many homeless and without food, the settlement began to cater to the basic needs of the residents of the Germantown area, making certain that poor families had places to stay, providing clothing to the impoverished, and feeding hungry children. By 1960, the settlement had developed into a full-fledged human services center, sponsoring programs ranging from community self-help economic initiatives to housing developments and educational endeavors.

Mr. Speaker, the Germantown Settlement is a not-for-profit organization whose members are motivated, not by greed, but by community pride, loyalty, and selfless concern for humanity. The organization has also been dedicated to the inclusion of all Philadelphians.

Since World War II, when many men were called away to serve their country, women have played a vital role in the Germantown Settlement, and for the past 45 years, the organization has sought staff and volunteers from diverse ethnic and racial backgrounds. Mr. Speaker, the city of Philadelphia owes a great debt of gratitude to the Germantown Settlement for its tireless efforts to develop its own community. It has become a model for similar programs that are spread around the Nation. I invite my colleagues to join me in honoring a group of people who have added significantly to our city, the Germantown Settlement.

NEW JERSEY ALLIANCE FOR ACTION'S 18TH ANNUAL EAGLE AWARDS

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. PALLONE. Mr. Speaker, on Tuesday, October 20, 1992, the New Jersey Alliance for Action, Inc., will present its 18th Annual Eagle Awards dinner in a ceremony at the Hyatt Regency in New Brunswick, NJ.

Mr. Speaker, the coveted Eagle Awards are presented annually to recognize outstanding service to the people of the State of New Jersey in improving the quality of life and economic health.

This year's Commerce and Industry Award will go to the Thomas H. Kean State Aquarium in Camden, NJ, as an exciting and state-of-the-art new educational and recreational attraction for both New Jersey residents and visitors from out of state. The award will be accepted by Mr. Robert F. Mulcahy III, president and CEO of the New Jersey Sports and Exposition Authority, the agency which spearheaded construction.

The Government Award will be presented to the Honorable Sharpe James, mayor of the city of Newark, for his leadership in the revitalization of New Jersey's largest city.

The Alliance for Action Committee Award will be presented to Mr. Stephen Kukan, general manager for Area Development of Public Service Electric & Gas Co., for his service as chairman of the Alliance's annual Construction Forecast Seminars, which have become the most eagerly awaited and media-covered barometers of public and private activity in the construction industry.

Finally, the AFA Chairman's Award goes to a distinguished member of this body, the Honorable ROBERT A. ROE, Representative from New Jersey and chairman of the Public Works and Transportation Committee. Chairman ROE, who is currently the dean of our New Jersey delegation, has decided to retire after more than two decades of exemplary service to his country and State.

Mr. Speaker, I join with the New Jersey Alliance for Action in saluting all of these outstanding individuals and institutions for their well-deserved awards, and take great pride in sharing their accomplishments with the Members of this House.

TRIBUTE TO MARTY GAUDIOSE AND GREG CVETKOVIC

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. TRAFICANT. Mr. Speaker, I stand here today to honor two gentleman who have generously donated their time and effort so that others may enjoy life a little more. I am proud to be speaking of the 1992 YWCA Men of the Year: Marty Gaudiose and Greg Cvetkovic.

Messrs. Gaudiose and Cvetkovic are co-founders of the Children's Circle of Friends. The Circle, comprised of mental health facilities in Mahoning Valley, raises money for worthy programs involving mentally disabled children.

But the Circle is only the beginning of the gentlemen's involvement in their community. Their service, support and charity have been outstanding.

Mr. Gaudiose is the CEO of Mahoning County Chemical Dependency Programs, Inc., and has served as president of the Association of Ohio Substance Abuse Programs. He is a member of the Ohio Dependency Credentiality Board and has been selected to Oxford's Who's Who. Furthermore, Mr. Gaudiose has chosen to share the wisdom gleaned from his experiences. He is a part-time instructor at Youngstown State University.

Mr. Cvetkovic is the CEO of D&E Youth and Family Resource Center. In addition, he is a member of the family preservation council and the Youngtown Transitional School Board. He has served as president of the Mahoning County Administration Association as well as the county's chapter of the American Cancer Society.

Mr. Speaker, I salute these two fine gentleman for their selfless dedication to our community. Thank you for your tireless service, Marty and Greg, I am proud to call you my constituents.

CABLE TELEVISION

HON. WILLIS D. GRADISON, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. GRADISON. Mr. Speaker, the decision of Congress to enact legislation to reregulate the cable television industry, despite objections of the President, reflects the depth of feeling on the issue among consumers across the country. Escalating rates and poor service from cable companies have been an obvious and consistent cry from subscribers. The legislation drafted to address these problems was complex, with broad implications. As is often the case, the legislation contained provisions which I strongly supported and others which I would have preferred to omit. It has been a tough issue on which to vote and, in fact, one on which my votes have changed as the legislation itself has evolved and changed.

Although I opposed the regulatory provisions of the bill contained in H.R. 4850 when it was first debated in the House, I voted for the bill on the floor because of the introduction of procompetitive provisions. S. 12, which was produced in conference with the Senate, contained a major new provision, retransmission consent. This provision would require local cable companies to negotiate with local broadcasters for the right to carry the broadcaster's signal, now carried without consent or compensation, for a fee or other consideration. At the time of the vote on the conference report, claims that such compensation could reach $1 billion a year and would be passed on directly to consumers tipped my support away from S. 12 and was the major factor in my decision to vote against the conference agreement.

Since that vote, I have looked again at the provision in the light of meetings I have had with broadcasters, cable companies, and other people in my district. I now believe it isn't really clear how much money, if any, subscribers will have to pay for retransmission consent. Many broadcasters have not decided whether they will even opt for such negotiations. They may just demand that the cable companies carry their signal—which the bill allows them to do. And there are now strong indications that, despite the best negotiating skills of the broadcasters, they might not get much. Prominent cable company owners have vowed not to pay a cent for the signals. If the broadcasters decide to take their marbles and go home, they risk losing their exposure to the large viewer markets to which cable gives them access. Finally, any increase in rates for consumers would only come in an industry where, hopefully, competition will be flourishing and there would be pressure to maintain, if not lower, subscription costs. It is hard to imagine escalating rates at such a time.

In the end, I voted for the legislation, despite my concerns with its regulatory provisions which have been highlighted by the President. Like his administration, I believe the best way to ensure the development of a robust industry is through strong and fair competition which delivers the best value for money and service for its customers. In the absence of an alternative, however, I believe that this bill will provide valuable experience as this industry continues to evolve. In my view, this entire effort will prove, in time, to be a prelude to a far more complex and hard-fought debate which will focus on the provision of video programming and a host of other services brought to the home by emerging technologies in the cable, satellite, telephone, computer, and other industries.

LONG BEACH IAMA PAYS TRIBUTE TO BARRY KAMM

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. PALLONE. Mr. Speaker, on Saturday, October 17, 1992, the Italian American Memorial Association [IAMA] Banquet Hall in Long Branch, NJ, will be the site for a tribute to Mr. R. Barry Kamm.

Mr. Speaker, Barry Kamm is a life-long resident of Long Branch who has devoted countless hours—indeed years—to the betterment of our city. After graduating from Long Branch High School, Mr. Kamm started in the newspaper business some 50 years ago with the Daily Record as a rewrite man, sports writer and editor, and photographer. He also worked for such papers as the New Brunswick, NJ, Home News, the Jersey Journal of Jersey City, and was a special correspondent for the New York Times. In the early 1960's, he accepted a job in Long Branch to promote the city with photos and writing, a position he has held for some 30 years.

For the past 10 years, Mr. Kamm has written his own column, "Kamm's Corner," in Long Branch's own weekly newspaper, The Atlanticville. The column is eagerly awaited by Long Branch readers each week. Mr. Kamm has called it "the most fun I've had in the newspaper business. I get to write about everybody, and the little things, the stuff the bigger papers" are not interested in.

Barry Kamm is a member of many organizations, including the Long Branch Masons, the Green and White Association, the Harpoon and Needle Club, B'nai B'rith of Long Branch, the Long Branch Volunteer Fire Department, the Long Branch and Elberon First Aid Squads, the New Jersey Sports Writers and Press Photo Associations, the New York and National Press Photo Associations, and the Association of Aerial Photographers. He is also a charter member of the Long Branch High School Hall of Fame Committee, and was appointed by former New Jersey Governor Minor to the State Committee on Subliminal Advertising. He was the Long Branch civil defense director during the atom bomb scare days, and was instrumental in raising money and organizing on behalf of the Long Branch High School football program.

Mr. Speaker, I can think of no one else in Long Branch, the city that I call home, who is more deserving of this special honor than Mr. Barry Kamm, a man whose loyalty, devotion, and enthusiasm for our town is second to none.

H.R. 5730

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. WAXMAN. Mr. Speaker, for the second time today, we have a chance to take an important step forward ending the most serious environmental problem facing children—childhood lead poisoning.

Earlier today, the House passed the housing bill, H.R. 5334, which contains vital provisions to reduce lead exposures in residential housing. Now we have before us a second bipartisan bill, H.R. 5730, which contains provisions to reduce lead exposure from other sources, including schools, drinking water, and food.

We can't take actions to eliminate lead threats in schools and day care facilities without first inspecting for lead hazards. The bill contains a program worked out between the Energy and Commerce and the Education and Labor Committees to promote and then require these inspections.

We can't get lead out of our drinking water without new programs to reduce lead in faucets, solder, and coolers. The bill requires these actions.

We can't lower lead in the food supply without addressing packaging and ceramic ware. The bill tackles these problems for the first time.

Finally, the legislation has an extremely important provision to address new uses of lead. This program was developed over many arduous months by Chairman SWIFT and his staff.

A question has arisen regarding regulation of food. The committee does not intend to impose regulation by EPA on those products, such as foodstuffs and alcoholic beverages, which are regulated by the Food and Drug Administration or the Bureau of Alcohol, Tobacco, and Firearms. These products are exempted from new title V of the Toxic Substances Control Act.

I want to commend the efforts of my colleagues. On the Democratic side, Chairman DINGELL, Mr. SWIFT, Mr. SIKORSKI, and Mr. TOWNS showed tremendous leadership throughout consideration of H.R. 5730. On the Republican side, Mr. LENT and Mr. RITTER worked cooperatively with us to develop legislation that reduces lead risks without excessive impacts on industry.

I also want to thank members of the Education and Labor Committee, with which the Energy and Commerce Committee shares jurisdiction over the day care and school provisions in the bill. I am particularly glad that the two committees could resolve their differences in time to permit floor consideration this year.

This is sound and needed legislation that has bipartisan support. I urge its adoption.

TRIBUTE TO CORDELL HULL MARTIN

HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. HUBBARD. Mr. Speaker, I take this opportunity to pay tribute to my longtime friend, Cordell Hull Martin, a well-known and admired eastern Kentucky attorney, who died on April 8, 1992, at the University of Kentucky Medical Center in Lexington, KY.

Cordell Martin, of Hindman, KY, attended grammer school, high school, and college on the campus of Alice Lloyd College, Pippa Passes, KY. Upon completion of his undergraduate studies at Morehead State University, he became a teacher, coach, and principal in Hindman, KY, and Preston, GA.

He served his country during World War II in the U.S. Air Force and returned to his native Knott County, KY, to practice law after attending the University of Kentucky Law School.

Cordell Martin was a deacon of Ivis Bible Church in Hindman, KY, and a Gideon, as well as being actively involved on the boards of several Christian organizations such as Open Door Children's Home in Hazard, KY, Calvary College in Letcher, KY, and Cumberland Mountain Mission in Martin, KY.

I was among the 400 friends and admirers of Cordell Martin who attended his funeral on April 11 at Campbell Arts Center on the campus of Alice Lloyd College.

My wife Carol visited with the Martin family on April 10 at Ivis Bible Church.

Cordell Martin is survived by his lovely wife of almost 50 years, Mattie E. Martin; two daughters, Gwen Taylor, who is serving as a missionary in Brazil, District Judge Karen M. "Kay" Doyle of Hindman, and two sons, Graham Martin of Salyersville, KY, and Kerwyn Martin of Knoxville, TN. Survivors also include 10 grandchildren—Jeff, Karen, Karis, and Anita Taylor of Brazil; Meredith, Megan, Melinda, and Matthew Doyle of Hindman; and Erin and Todd Martin of New Albany, IN. Two brothers Champ Martin of Atlanta, GA, and Quenton Martin of Kite, KY, also survive.

My wife Carol and I extend to the family of Cordell Martin our sympathy.

HONORING THE ITALIAN CIVIC ASSOCIATION

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. ENGEL. Mr. Speaker, during this 500th anniversary of the historic voyage of Christopher Columbus, it is fitting that the Italian Civic Association in Mount Vernon is celebrating its 75th anniversary. This organization embodies the American traditions of community and discovery that began five centuries ago and continues to this day.

The members of the Italian Civic Association keep alive the spirit of their forefathers while also contributing to today's society. It is this kind of involvement that keeps our communities viable, and I commend the members of the Italian Civic Association for 75 years of such activity.

I also extend my congratulations to President Ralph Tedesco and his entire members, and wish them many more years of success.

A TRIBUTE TO BISHOP TREVOR D. BENTLEY

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. DYMALLY. Mr. Speaker, I rise today in tribute to my good friend, Bishop Trevor D. Bentley, who was recently consecrated as missionary bishop of the Old Holy Catholic Church, an ancient part of the Catholic Church, its origin in North Africa.

Bishop Bentley's title will be presiding prelate for the African-American community of the United States of America, all of the Caribbean Islands, and part of the continent of Africa. This joyful celebration took place on July 4, 1992, at the Cathedral Church of Santo Cristo in Murgeira, Portugal. Bishops from Germany, Portugal, Brazil, and Canada assisted, with Archbishop Rainer Laufess the chief consecrator. Thousands of the Portuguese faithful witnessed this consecration, it being televised nationally.

Bishop Bentley is the first African-American to be so consecrated, so it is appropriate at this time to highlight his many achievements and to extend special public recognition and commendations to him for his spiritual and civic leadership.

Educationally, Dr. Bentley graduated from Los Angeles City College with an associate of arts degree in business administration, from the University of Southern California with a bachelor of science degree in public administration, from New Brunswick Theological Seminary in New Jersey with a master of theological studies degree, and from International Seminary in Plymouth, FL, with a doctor of theology degree; he has continued his studies by completing additional courses at a variety of educational institutions.

Ordained into the Holy Orders of Deacon and Priest in the Episcopal Church of the Diocese of New York in 1967, he was also ordained to the gospel ministry at Second Baptist Church in Los Angeles in 1978.

Ecclesiastical experiences of Dr. Bentley include sub-dean and professor of theology and church history at the Providence Theological Seminary in Los Angeles, curate at St. Andrew's Episcopal Church in New York, curate at St. James Episcopal Church in Baltimore, MD, assistant to the pastor of Second Baptist Church in Los Angeles, and assistant pastor of St. Paul's Baptist Church in Montclair, NJ. He also has distinguished himself through his secular experiences as founder and president of Bentoe Enterprises Ltd., a public affairs firm, as an affiliate with the Mentem Elevas Foundation, a foundation to assist minority youth in higher education, as a teacher and adviser at Essex Community College in Newark, NJ, and as a counselor and program administrator at Compton Community College.

The many coveted awards and commendations which he has received throughout the years attest to Dr. Bentley's exemplary record of religious and community leadership. In addition, his civic commitment is attested by his affiliation with the Interdenominational Ministerial Alliance of Los Angeles, the Baptist Ministers Conference, the Baptist Ministers Fellowship, the Black-Jewish Coalition, the Clergy Mediation Council, and the National Association of Advancement for Colored People.

Mr. Speaker, for all the above achievements and others too numerous to mention, I ask my colleagues to join me in applauding Dr. Trevor Bentley.

TRIBUTE TO MARSHA FADER

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. TRAFICANT. Mr. Speaker, I rise today to recognize a woman from my 17th Congressional District who has been teaching preschoolers for over 25 years. That woman is Marsha Fader.

Mr. Speaker, Marsha Fader has an interesting idea for teaching preschoolers. She actually treats them like people with respect using positive influence. I think that what Marsha does is simply wonderful. She has a great understanding of children and how they learn.

For 25 years, Marsh Fader has been teaching preschool classes at the Jewish Community Center in Youngstown, OH, where she is the director of early childhood activities including preschool classes, summer camp, enrichment, and day care programs. Marsha is also involved in the National Association for the Education of the Young Child, and among the 450 members of its local affiliate group. Through her programs, Marsha teaches using patience, understanding, and tolerance.

Mr. Speaker later this month at the Jewish Community Center in Youngstown, Marsha will be honored for her quarter century of being an early childhood advocate. Congratulations, Marsha Fader, keep up the good work.

SUPPORT AFFORDABLE HOUSING

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. MAZZOLI. Mr. Speaker, I am pleased to lend my full support for the conference report on H.R. 5334, the Housing and Community Development Act of 1992.

The bill before us represents many hours of work by the gentleman from Texas, Mr. GONZALEZ, and his colleagues on the House Committee on Banking, Finance and Urban Affairs. H.R. 5334 demonstrates their strong commitment to addressing the very important issue of affordable housing.

The conference report reauthorizes several programs that are critical to the continued efforts on behalf of affordable housing, that are underway in my community in Louisville and Jefferson County, Ky. Those housing programs and the amounts authorized for fiscal year 1993 in H.R. 5334 include: $2 billion for the HOME Investment Partnership Program; $15 billion and $2.2 billion respectively for subsidized housing and public housing; $4 billion for the Community Development Block Grant Program; and, $987 million for McKinney Homeless Assistance Act programs.

Mr. Speaker, a lack of affordable housing is a major economic problem facing the city of Louisville, Jefferson County, and all urban areas. The city of Louisville Department of Housing and Urban Development, the city's Department of Community Services, the Jefferson County Department of Community Development, the County's Department for

Human Services, the Housing Authority of Louisville, the Housing Authority of Jefferson County, and many social service and housing organizations in Louisville and Jefferson County are laboring tirelessly in this area.

The Housing and Community Development Act of 1992 supports these efforts, and I urge my colleagues to vote for the bill.

TRIBUTE TO REPRESENTATIVES ROE, DWYER, AND RINALDO

HON. FRANK J. GUARINI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. GUARINI. Mr. Speaker, I rise to pay a special tribute to my good friends and distinguished colleagues from New Jersey—ROBERT ROE, BERNARD DWYER, and MATTHEW RINALDO. They have all served our State—and their districts—with great distinction, and I have been privileged to know them and work with them.

BOB ROE is the dean of our delegation, and has been a Member of the House since 1969. I consider him one of the most hard-working Members to serve in the House. Even before joining this distinguished body, he was already using his talents to help the people of our State. He served in the Governor's cabinet as commissioner of conservation and economic development—a department that later became New Jersey's Environmental Protection Agency. No doubt this role prepared BOB well for the chairmanship of the Public Works and Transportation Committee. BOB was elected to this important position in 1991, and used his authority to pass major pieces of legislation—such as the Intermodal Surface Transportation Efficiency Act of 1991.

Before taking the chairmanship of Public Works, BOB was chairman of the House Science, Space, and Technology Committee. His chairmanships were an indication of the trust and respect BOB has earned in his 24 years in Congress. While BOB's leadership will be greatly missed here in the House, it is the people of New Jersey who will miss his advocacy on their behalf. And I will miss his counsel and friendship. He is a great credit to our State.

BARNEY DWYER has always been a man of quiet achievement. While he has never been one to boast of his accomplishments, he certainly has many to be proud of. Like BOB ROE, he devoted himself to a life of public service long before coming to Congress. Because of his extensive State service, BARNEY was placed on the prestigious Appropriations Committee when he first came to the House of Representatives. He quietly set about helping the people of New Jersey through the appropriation process. New Jersey benefited greatly because he was there. BARNEY was also assigned to the Budget Committee, where I had the good fortune to serve with him. I witnessed firsthand his efforts to get the deficits under control and to cut spending. I will miss his achievements for them and his strong representation. I am very proud of my association with BARNEY as he has given balance and substance to our delegation.

MATTY RINALDO will be remembered for his honesty and fairness. It gives me great pride to have him as my friend. I cannot think of a single Democrat who is glad to see him leave the House of Representatives. He always did what he thought was right—and never succumbed to partisan bickering. MATTY and I have had a long association that goes back to the New Jersey State Senate. We shared a closeness then and our friendship has grown over the years. He is the ranking Member on both the Select Committee on Aging and the Energy and Commerce Subcommittee on Telecommunications and Finance. MATTY has been widely recognized for his outstanding service to his constituents, to our State, as well as to our country. His accomplishments and representation of our State will be very hard to duplicate. MATTY is greatly admired on both sides of the aisle and I share in that admiration of this outstanding public servant.

New Jersey is losing some of its best Representatives. Their combined experience will be hard to match. I feel fortunate to come from the same State as BOB, BARNEY, and MATTY. And I feel fortunate that I can call them my friends. It will be a long time before my State of New Jersey will be as well represented as it is by these Members.

IN RESPONSE TO ALLEGATIONS MADE AGAINST GOVERNOR CLINTON

HON. JAMES P. MORAN, JR.

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. MORAN. Mr. Speaker, in the 2 years that I have been privileged to serve in the U.S. House of Representatives, I have heard many outrageous allegations and many spurious claims. But never have I heard anything so outrageous, so scandalous, and so disrespectful as the diatribe I have heard during the special orders over the weekend.

Is Bill Clinton a Communist plant? Is he a Manchurian candidate trained by the KGB to infiltrate our political system first as a law professor in a major southern university, then as a candidate for Congress, then as an attorney general in Arkansas? Under this great plan hatched in the Kremlin and carried out in the streets of Arkansas, was the KGB plant then supposed to run for Governor, greatly improve the lives of his State's residents, and become recognized as one of the best Governors in the Nation? Would the Governor/KGB plant then run for President, win difficult primaries, capture his party's nomination and win on November 3?

Then what? What evils will the KGB plant inflict on the United States? Will he destroy our economic base, ship hundreds of thousands of manufacturing jobs overseas? Will he use the Agency for International Development to encourage American companies to relocate to foreign countries? Will he run up our national debt by more than $3.5 trillion and push Federal deficits of more than $300 billion per year? Will he destroy the foundations of our constitutional Government by refusing to work with the legislative branch and vetoing 36 bills in 4 years?

He would be too late. This has already been done by his predecessor, a former CIA Director and cold warrior.

The fact is that President Bill Clinton will change our country but not in the ways feared by the John Birch Society and the gentleman from California. Rather than opening California to an invasion by what remains of the Red Army, President Clinton will open the doors of hospitals across this country to the 35 million Americans who do not have health care. Rather than crippling America's economy and leading a proletariat revolution here in the United States, President Clinton will rebuild America and reinvest in our physical and human infrastructure. He will invest in our communities and establish a network of community development banks and enterprise zones. Rather than lead a revolution in our cities, President Clinton will work to make our streets safer by signing the Brady bill into law and by putting 100,000 new police officers on our streets. President Clinton will protect American families by signing the Family and Medical Leave Act into law, by cracking down on deadbeat parents, by expanding the earned income tax credit for dependent children. Finally, President Clinton will leave behind the politics of fear, exclusion, and division that are tearing our country apart.

When I heard the special orders of the weekend, I was reminded of a great folk anthem sung by Bob Dylan in the early 1960's. It was the "Talking John Birch Society Paranoid Blues." In this song, the protagonist looks up and down and all around and everywhere he looks he sees a Communist. The song was tongue in cheek and witty. Unfortunately, the special orders were not. They were vindictive, unsubstantiated, and far below the standards of comity and professionalism we in the House of Representatives should represent. We should be ashamed of the weird rantings of some of our colleagues.

TRIBUTE TO REV. RUFUS C. GOODMAN

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. PALLONE. Mr. Speaker, on Friday, October 23, 1992, the Rev. Rufus C. Goodman will be honored on the occasion of his 30th anniversary as the leader of the Mount Carmel Congregation of Neptune, NJ. This historic milestone will be marked with a banquet at Mike Doolan's Restaurant in Spring Lake Heights, NJ.

Mr. Speaker, Reverend Goodman has exemplified, over his 30 years at Mount Carmel, all of the very finest attributes of Christian service and devoted leadership. He has faithfully ministered to the needs of his congregation and the surrounding communities, and has been an inspiration to people of all ages and all faiths. Reverend Goodman has always maintained that God has been his strength. His unique gift has been to turn his inner strength outward, to bring the force of his faith to enrich the spiritual life of others.

Thus, it is out of a deep sense of gratitude, thanksgiving, and appreciation for these 30 years, the congregation of Mt. Carmel has organized this banquet in honor of Reverend Goodman.

On this special occasion, I am proud to be able to add my voice to the chorus of praise, thanks, and good will being paid to Reverend Goodman, a wonderful man, a great spiritual leader, and a positive force for the betterment of our community.

TRIBUTE TO LTC(P) MICHAEL B. SMITH

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. SMITH of New Jersey. Mr. Speaker, I rise this afternoon to pay tribute to my oldest brother, LTC(P) Michael B. Smith—we just call him Mick—on the occasion of his assuming command of the Aviation Brigade, 50th Armored Division, New Jersey Army National Guard.

A rare Sunday afternoon session of the House this week precluded me from joining family and friends at a ceremony in Ewing, NJ, officially effectuating the change of command.

Mr. Speaker, by all accounts my brother Mick is an excellent helicopter pilot—he flies Cobras, Hueys, and Loachs. Over the years he has served as an instructor pilot, got his fixed-wing rating and is an outstanding military officer. He is a master Army aviator, has flown over 4,200 accident-free hours and has received the Meritorious Service Medal, Army Commendation Medal, Army Achievement Medal, and numerous service medals and ribbons.

Mick, a graduate of Command and General Staff College, Fort Leavenworth, has served in numerous command positions, including commander of a tank unit, commander of an air cavalry unit, commander of an attack helicopter battalion, and now as commander of the Aviation Brigade.

Mick's wife Joan, his three kids, our parents and the entire family are so very proud of him.

Those of us who know him best, know that Mick is as tough as they come yet always fair. These uncommon and noble character traits were very much in evidence in Mick even from his earliest years as a kid.

My other older brother Tom—he flew fighter jets off the carrier *Enterprise* and is now a B–757 airline captain—always knew Mick as the kind of guy who stood his ground, spoke up for what he believed to be right, even if it meant standing alone. He's got backbone that just doesn't quit. To be sure, his moral courage and character left an indelible, positive impression on me.

Of course, Mick had two wonderfully dedicated and loving parents—Bern and Kay Smith—who taught the three of us more by example than by words, although we got the words too. They are especially proud of Mick.

A former varsity debater, Mick is gifted with a quick wit and logical mind. He gets respect the old fashioned way—he earns it.

I always looked up to Mick and have fond memories, especially in high school, of teachers and students saying, "Oh, you're Mickey Smith's little brother." I was so proud, it meant instant acceptance, it meant I was OK and it was always a compliment.

Looking back, Mick was ever the leader, Tom and I always, in a very real sense, following in his footsteps.

For example, Mick attained the rank of Eagle in the Boy Scouts, Tom and I soon followed him to achieve that goal.

Mick had a large newspaper route—Tom and I inherited it from him.

Mick was a superb athlete, was competitive almost to a fault, and excelled in practically every sport—and taught me everything I know about soccer and wrestling, although I always trashed him in ping-pong. Tom and I followed and remain to this day highly competitive. There was always some kind of championship going on in the Smith house.

At Newark State College—now called Kean College—Mick was captain of both the varsity soccer team and varsity tennis team—a compelling statement of his athletic ability and the esteem in which he was held by his teammates.

Mick got his BA from Newark State College and his master's degree from Jersey City State. He has taught history, special ed, coached soccer, and served first as a vice-principal at an elementary school, then as principal at a special education high school in Woodbridge Township.

Having high confidence in Mick's judgment of an applicant's character and officer potential, each year, before I make nominations to the military academies, I have tapped Mick to serve as a member of my unpaid nominating committee.

They say the apple doesn't fall far from the tree. Mick's eldest son, David, is currently in Army basic training; Alison is a freshman at Cornell, hoping to become a veterinarian; while Ryan is a sophomore at Hopewell Valley High School.

Mr. Speaker, my family and I love Mick and see in him an example of what is right and honorable and true in our Nation's military.

HONORING TEMPLE JUDEA

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. ENGEL. Mr. Speaker, it is with great pleasure that I acknowledge today the 40th anniversary of Temple Judea, a spiritual, social, and communal center located in the Pelham Parkway community.

For four decades, Temple Judea has been a leading member of the Union of American Hebrew Congress, the reform wing of Judaism. The rich traditions of the Jewish faith have been kept alive by its members, who have also contributed greatly to the communities in which they live.

I commend Rabbi Donald Milrod and the honorees at Temple Judea's anniversary luncheon for giving so much of their time and energy to benefit their neighbors and friends. Their faith is a shining example to us all.

PASSAGE OF CANCER REGISTRY LEGISLATION

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mrs. MORELLA. Mr. Speaker, I am pleased that Congress has approved S. 3312, legislation introduced by my colleagues from Vermont, Congressman SANDERS and Senator LEAHY; I am an original cosponsor of the bill. It will establish a critically needed national system of statewide cancer registries and will launch a study of breast cancer in the States with the highest breast cancer mortality rates.

Maryland leads the Nation in cancer mortality, and ranks ninth in breast cancer mortality rates. At the same time, the top 10 States with the highest age-adjusted breast cancer mortality rates lie within the north and mid-Atlantic regions. If we are to wage an effective campaign against cancer, it is critical that we establish a national system of statewide cancer registries. Many of our States lack statewide cancer registries and the State with registries are often incomplete and lacking in the resources necessary to adequately track the incidence, stage, and treatment of cancer. A complete and uniform system would allow health professionals to effectively target and evaluate cancer prevention and control efforts.

A national system of registries would also allow us to move forward with a study of the higher incidence of breast cancer in certain States. We must understand the factors behind this phenomenon in order to reverse this tragedy and prevent future cancer deaths across the country.

TRIBUTE TO ANTHONY C. JULIAN

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. TRAFICANT. Mr. Speaker, I proudly rise to pay tribute to Mr. Anthony C. Julian, the pioneer of consumer rights in my district. I stand here today to honor and commend his tireless efforts on behalf of the common man.

Mr. Julian's watchdog tendencies have spanned an entire career. He began by monitoring the accuracy and reliability of parking meters as a weightmaster for the city of Youngstown. Within 6 years he was promoted to director of consumer affairs and has served in that capacity since 1970.

Mr. Julian's accomplishments in the position are as numerous as they are noteworthy. He believed an educated consumer was a consumer less vulnerable to fraud and deceit. In response, he created the Consumer Education Information Library as well as numerous programs for television, radio, senior citizens, civic groups, and a host of others. He also created a volunteer consumer protection council. This council conducts surveys and consumer education workshops to keep the consumer alert. Mr. Julian is also responsible for the production and distribution of thousands of consumer education brochures.

Rest assured, Mr. Speaker, that these outstanding efforts have not gone unnoticed. His laurels, garnered on both a State and national level, speak for themselves: the Ohio Consumers Council Public Official Consumer of the Year, the National Bureau of Standards Certificate of Accomplishment, and the Ideal Citizen Award from the Administer of Natural Law and Order. In addition, Mr. Speaker, his skills and wisdom have been doggedly pursued. He has been appointed to a number of prestigious councils, including the American Council on Consumer Interests and the Youngstown State University General Economics Advisory Council. He has also been elected president of the Youngstown Board of Education, which he has served on since 1979.

Today Mr. Julian devotes much of his time to our community, filling such roles as coach, supporter, leader, and gentleman. Thank you for caring enough to make a difference Mr. Julian. I am proud to have you in my district.

FRANK GUARINI

HON. DEAN A. GALLO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. GALLO. Mr. Speaker, I want to join with my colleagues to recognize the significant accomplishments of the gentleman from New Jersey's 14th Congressional District, FRANK GUARINI.

FRANK came to Congress in 1979, after more than a decade of service in local and State governments.

He gained an appointment to the powerful House Ways and Means Committee and has participated in some of the most important congressional debates of the 1980's.

He has been a major booster of what I call New Jersey pride and has waged an ongoing battle for the city and State of New York over New Jersey's claims on Ellis Island and other related issues.

There are many areas of FRANK's career of service that deserve recognition, but there is one particular series of events that I recall as a prime example of his continuous efforts on behalf of the people of New Jersey and the Nation as a whole.

During the planning stages for the 100th anniversary celebration for the Statue of Liberty, I was appalled to learn that new immigrants being sworn in on Ellis Island as a symbolic reminder of our immigrant heritage would all be from New York, and not from all parts of the country, as we had been promised.

This was to be a national celebration, but we were told that Federal law prevented us from inviting anyone outside of the district court's jurisdiction. We would need an act of Congress to make an exception in this case.

I talked the matter over with FRANK, who had been waging a battle with New York over jurisdiction of the island, and he suggested that we take the matter to our colleague, the chairman of the House Judiciary Committee, Peter Rodino.

Working together in a bipartisan fashion, the three of us got the legislation through Congress and signed by President Reagan in less than 60 days.

As a result, the Ellis Island ceremonies were truly a national event, with new citizens from all parts of the country participating.

This is just one small example of the can-do spirit that FRANK GUARINI has brought to his career in public service. As a member of the Ways and Means Committee, FRANK has worked tirelessly on many of the most complex pieces of legislation in Congress, dealing with tax policy.

Yet, he also has a strong sense of the needs of his constituents and of the importance placed on issues of importance to New Jersey and the Nation.

Mr. Speaker, I, therefore, join with my colleagues in recognizing FRANK GUARINI's many accomplishments and wish him all the best in his future endeavors.

IN RECOGNITION OF GARY LYTTON AND ROOKERY BAY

HON. PORTER J. GOSS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. GOSS. Mr. Speaker, today I salute a true conservationist whose work in southwest Florida has earned national recognition. Gary Lytton, the manager of the Rookery Bay National Estuarine Research Reserve in Collier County, FL, was recently honored by the National Oceanic and Atmospheric Administration [NOAA] for excellence in estuarine reserve management. It is an honor that is certainly well deserved.

Rookery Bay is a true treasure. One of only 19 national estuarine research reserves, Rookery Bay is home to a rich diversity of outdoor life and it provides a wonderful learning and recreational experience for children, adults, sports enthusiasts, and scientists alike. It currently comprise 8,400 acres of open water, mangrove wetlands and uplands, offering a unique and undisturbed setting for wildlife and humanity to interact.

Gary Lytton's work to bring Rookery Bay up to national preeminence has been ongoing since he first came to the reserve in 1986 as an education coordinator. Through the years he expanded his responsibilities and became the driving force behind transforming the reserve from a relatively inactive site to one of the Nation's premier research and educational reserves. The education program at the reserve now serves more than 11,000 people a year; the reserve provides a training ground for State and local officials to learn about mangrove management; and it has secured more than $1.5 million in grants for its programs. NOAA's recognition of these efforts underscores the tremendous gains that have been made at Rookery Bay.

A local newspaper in the area noted in a recent editorial that NOAA's reports on Rookery Bay weren't always so glowing. But clearly Gary Lytton and his hard-working team have turned things around. As the paper said, "The award has brought honor to our entire area." In southwest Florida we know just how special Rookery Bay is. We are proud of Gary Lytton for his work in letting the Nation in on our good fortune.

ERIC MUNOZ, M.D., M.B.A., F.A.C.S., NATIONAL PUERTO RICAN COALITION 1992 LIFE ACHIEVEMENT AWARDEE

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. PAYNE of New Jersey. Mr. Speaker, I would like to bring to the attention of my colleagues an award that will be presented to one of the outstanding rising stars of New Jersey. Eric Munoz, M.D., will receive a 1992 Life Achievement Award from the National Puerto Rican Coalition.

Dr. Eric Munoz is medical director of the University of Medicine and Dentistry of New Jersey [UMDNJ] University Hospital, associate dean of clinical affairs, New Jersey Medical School, and an attending surgeon at University Hospital, Newark, NJ. Dr. Munoz was born in the Bronx, NY and grew up in a working class environment in central New Jersey. He received his undergraduate degree from the University of Virginia, his medical degree from the Albert Einstein College of Medicine and earned a master's degree in business administration from Columbia University. His clinical specialty is surgery; he was trained at Yale University, with a particular interest in trauma. Dr. Munoz has previously held academic appointments at the Yale University School of Medicine, New York Medical College and the State University of New York [SUNY], Stony Brook.

Dr. Munoz is a senior medical administrator, and is known for his expertise in health care administration, policy, financing and delivery. He has worked at a number of urban New York City teaching hospitals, and was head of research in the department of surgery at the Long Island Jewish Medical Center, a major teaching hospital in New York. He served as a commissioner on the Federal Prospective Payment Assessment Commission [ProPAC], from 1987 to 1990, which advises the U.S. Congress and Secretary of Health on Medicare health policy and payment. He has been appointed by the Governor of New Jersey to be chairman of the newly created Medical Practitioner Review Panel in New Jersey, which oversees 17,000 physicians.

Dr. Munoz is very involved in broadening health professions and educational opportunities for Hispanics and other minorities. He is a member of ASPIRA of America and serves on its national advisory panel of health career education, and on the board of directors of the National Puerto Rican Coalition, as well as a number of community activities, such as the Cub Scouts of America, board of directors of the United Way of Essex and West Hudson, and the Rotary Club of America. He is a member of the executive committee of the Newark Fighting Back, an organization established to reduce demand for illicit drugs and alcohol.

Mr. Speaker, I am sure my colleagues will want to join me as I extend my hearty congratulations and best wishes to a true community leader and member, Dr. Eric Munoz.

TRIBUTE TO BEN JONES

HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. DOWNEY. Mr. Speaker, during these final hours of the 102d Congress, I wanted to take the opportunity to pay tribute to my good friend and esteemed colleague BEN JONES. For the past 4 years, BEN ably served the people of Georgia's Fourth Congressional District. Sadly, BEN will not be returning to the House of Representatives next year and this place and all of us will be diminished by his absence.

President John F. Kennedy, in his book "Profiles in Courage," wrote:

> For without belittling the courage with which men have died, we should not forget those acts of courage with which men * * * have lived * * * A man does what he must—in spite of personal consequences, in spite of obstacles and dangers and pressures—and that is the basis of all human morality.

These words aptly describe the congressional career of BEN JONES and I have no doubt that if President Kennedy were writing his book today, he would take note of BEN's unflagging political courage. In his willingness to do the right thing regardless of the political consequences, BEN JONES is truly a profile in courage.

BEN demonstrated this courage again and again. During the furor over flag burning, he recognized that beyond the emotion of the moment, there were larger constitutional issues at stake. The politically expedient course was to remain silent. But BEN stood on the House floor and urged his colleagues to stand firm against the efforts to weaken our civil liberties. When hysterical voices attempted to destroy the National Endowment for the Arts, BEN led the charge to safeguard the NEA and to preserve the principle of artistic freedom.

It is with a sense of loss and sadness that I say goodbye to BEN JONES. But BEN will continue to serve as an inspiration for us all and his voice will continue to echo in this Chamber.

THE 25TH ANNIVERSARY OF THE LEGAL SERVICES OF THE WESTERN CAROLINAS

HON. ELIZABETH J. PATTERSON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mrs. PATTERSON. Mr. Speaker, I rise today to recognize the Legal Services Agency of the Western Carolinas on the occasion of their 25th anniversary. The Legal Services Agency of the Western Carolinas was founded under the premise of carrying out the concepts of our Constitution, which guarantees equal access to justice to all citizens. In the last 25 years, this agency has helped provide access to legal services to more than 60,000 needy residents in the upstate of South Carolina.

The success of Legal Services of the Western Carolinas can be traced to several sources, but mainly to a great staff and committed volunteers. The caseload handled by this agency could stagger much larger private law firms. But we find that the volunteers and staff—wearing the hats of lawyer, social worker, teacher, and planner—make it because they have learned to treat people as individuals, instead of as cases.

Mr. Speaker, I want to express our deep appreciation and sincere congratulations to the Legal Services Agency of the Western Carolinas, its directors, staff, and volunteers on the occasion of their silver anniversary. Thanks for a job well done.

A TRIBUTE TO RANDOLPH B. YUNKER

HON. NORMAN F. LENT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. LENT. Mr. Speaker, for the past 22 years, I have been privileged to have been served by a number of outstanding individuals on my personal staff. I want to take this opportunity to pay tribute to a fine young man who has not only given unselfishly of his time to me, but to the residents of my district as well.

For almost 6 years, Randy Yunker has served as my executive assistant in my Baldwin District Office. In that capacity, Randy has undertaken a number of responsibilities that have increased my effectiveness in helping my constituents. Randy has dealt on a daily basis with the residents I represent, helping to address the problems they have with the Federal Government or its agencies. In addition, Randy served as my personal representative with a number of important organizations on Long Island, always acting with the highest degree of professionalism and enjoying my complete trust.

I will always appreciate Randy's dedication, commitment, and loyalty. At a time when so often we focus on those who break our laws, it is only fitting that we pay tribute to those who work to make our society better. Randy Yunker has done just that, and I know that in the years to come, he will continue to serve his community and his country with the same level of integrity and dignity that he has shown me.

CONGRATULATIONS TO PASTOR MICHAEL TOBY

HON. CHET EDWARDS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. EDWARDS of Texas. Mr. Speaker, I rise today to give special tribute to Pastor Michael Toby of the First Baptist Church in Woodway, TX, which I am privileged to represent. Pastor Toby will be celebrating his 15th anniversary as pastor on Sunday, October 25, 1992.

Pastor Toby has a distinguished list of accomplishments. After he graduated from Sam Houston State University, Pastor Toby attended New Orleans Baptist Theological Seminary until 1969. In 1972 he began his education in the seminary at Southwestern Baptist Theological Seminary. He now is pastor at the First Baptist Church of Woodway where his accomplishments include over 1,000 baptisms, growth in membership from 1,050 to over 3,600. The First Baptist Church's Sunday School average attendance went from 292 to over 1,600, and he has sponsored 8 mission points in Waco, TX.

Pastor Toby has also distinguished himself in his civic service to our community. He has been a former president to the Hewitt/Woodway Rotary Club and is a member of the board of directors to Goodwill Industries, Woodway YMCA, and the Special Wish Foundation. He is a fine example of someone who is devoted to serving his community.

I extend my sincere appreciation and congratulations for his dedication to excellence and his capability of guiding his church and our community to an even brighter future. I also take note of his wife Jackie and two children, Joshua and Scott, who have also contributed to his community efforts.

I urge my colleagues to join me today in recognizing and honoring this man and his contribution to the central Texas community.

YESTERDAY'S MILITARY HEROES OUGHT NOT BE TODAY'S HOMELESS

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. RANGEL. Mr. Speaker, I rise to call to the attention of my colleagues one of our Nation's greatest failings: the plight of our homeless veterans.

As many as 250,000 men, one of every three of the single homeless men sleeping on the streets or in shelters on any given night, are veterans of the Armed Forces. An estimated 40 to 60 percent of them served during the Vietnam war. It is truly a tragedy that in our great country, many of yesterday's heroes—going back as far as World War I—are today's homeless.

These men, indeed some women veterans as well, were the subject of concern during this year's Veterans Braintrust Forum, an event which I sponsored for the fifth year this September during the 22d Annual Congressional Black Caucus Legislative Weekend.

Several panels of witnesses persented the hard facts and figures of veterans' homelessness. Federal, State, and local officials described various government programs for homeless veterans. Most inspiring were the comments from the veterans themselves, some of whom are now running programs that are benefiting hundreds of their less fortunate former brothers-in-arms.

I wish to recognize the following individuals who took the time to travel to Washington to participate in the Veterans Forum and to testify before our guests on the dais who included Veterans Braintrust executive board members and officials of the Department of Veterans Affairs:

Ms. Joan Alker, assistant director, National Coalition for the Homeless, Washington, DC; Mr. Al Peck, director, Salvation Army Borden Avenue Veterans Residence, New York City; Mr. Gerald Saunders, V–Cops/Borden Avenue Veterans Residence; Mr. Maceo May, cochairman, Swords to Plowshares, San Francisco; Mr. Arthur Barnham, Upward Bound Vets, Atlanta; Ms. Barbara Sabol, commissioner, Human Resources Administration, New York City; Adm. Benjamin P. Hacker, director, Department of Veterans Affairs, State of California; Mr. Erwin Pernick, counsel to the Secretary, U.S. Department of Veterans Affairs; Ms. Robin Higgins, Assistant Secretary, Veterans Affairs, U.S. Department of Labor, and Mr. Matt Johnston, Deputy Director, Office for Special Needs Assistance Programs, U.S. Department of Housing and Urban Development.

Joining me on the dais were: Mr. Ronald Ray, Assistant Secretary, Human Resources and Administration, Department of Veterans Affairs and head of the newly created Office of Minority Veterans Affairs and Mr. Gerald Hinch, Deputy Assistant Secretary, EEO, Department of Veterans Affairs.

From the executive board of the Veterans Braintrust: Mr. Ron Armstead and Mr. Ralph Cooper of Boston, Ms, Arlene Williams of Los Angeles, Mr. Mike Handy of New York City, Mr. Wayne Smith of Washington, Mr. Tom Wynn of Milwaukee, and Mr. Harold Bryant of East St. Louis, Mr. Arthur Wright of Seattle, Washington, Mr. Erwin Parsons of Cherrypoint MD, Representative Clarence Davis, Baltimore, Eric Glaude of New York.

Mr. Speaker, for the edification of my colleagues, I am entering the following statements, which were first presented at the Veterans Braintrust Forum on Homeless Veterans on September 25, 1992.

STATEMENT OF IRWIN PERNICK, COUNSELOR TO THE SECRETARY, AIDING AMERICA'S HOMELESS VETERANS

Mr. Chairman, I appreciate the opportunity to address this distinguished Forum on the compelling subject to homelessness among veterans. This is an issue about which Secretary Derwinski is deeply and personally concerned, and on which the Department of Veterans Affairs is committed to taking aggressive, remedial action.

As the homeless became increasingly visible in the late 1980's, VA initiated several programs to assist homeless veterans, families and survivors directly. In 1987, Congress lent major support to VA's efforts by passing legislation to launch two VA programs dedicated exclusively to the treatment and rehabilitation of homeless veterans: The HCMI Veterans Programs and the DCHV Program. Although the original authorities for these VA programs are found in earlier laws, the McKinney Act Amendments of 1988 recognized and authorized funding for both.

Each year, VA's HCMI staff locate and provide initial clinical assessments for approximately 10,000 homeless veterans. Since the beginning of the program in May 1987, more than 8,000 veterans have been referred to 200 community-based residential treatment facilities and received over 9,000 episodes of care. The ongoing national evaluation of the HCMI program, which was an integral part of the program's original design, indicate that the average age of homeless veterans seen in the program is 43, with an average income for the month prior to assessment of only $207. Almost all of the homeless veterans admitted into the HCMI Program (97%) have a psychiatric diagnosis, including substances abuse. More than 40 percent have serious medical problems. Twenty-one percent have been homeless for 2 or more years.

In an effort to widen and integrate the services offered to homeless chronically mentally ill veterans, pilot initiatives have been approved and funded at certain HCMI sites:

VA medical centers in Dallas, Texas, and Brooklyn, New York, have been designated and funded as Comprehensive Homeless Centers for veterans. These projects are designed to coordinate a full spectrum of services for homeless veterans. Emphasis is placed on providing homeless veterans with a comprehensive array of VA and non-VA services that offer long term, lasting solutions to homelessness.

The VA medical centers in New York City, Louisville, and San Francisco, among others, have established special store-front drop-in centers for homeless chronically mentally ill veterans.

The VA medical center in New Orleans has established a special sobriety maintenance program for veterans involved in the HCMI program.

VA medical center in Houston has initiated special outreach and case management services for program veterans with AIDs or testing HIV positive.

Project TORCH provides primary health care, psycho-social assesement, and treatment as well as vocational, educational and other support services. This program serves as the point of entry to the DCHV program and other VA health care programs for homeless veterans who have traditionally been reluctant to use VA services. Other DCHV sites have comparable store-front "drop-in" centers.

Staff in Veterans Benefits Administration (VBA) Regional Offices regularly visit shelters and other places where the homeless congregate in an effort to reach out personally to homeless veterans, determine their eligibility for benefits, and help them apply for and receive them.

VA has several programs and initiatives to assist homeless veterans in addition to those identified to prevent individuals from becoming homeless.

The Home Loan Improvement Act: This Act allows VA to sell, at a discount, foreclosed properties to non-profit organizations and government agencies that wil use them to shelter or house homeless veterans.

Public Law 99-570: The statute eliminated the requirement for a VA beneficiary to have a permanent, fixed address in order to receive a benefit payment check.

Expedited Claims: VBA working with VHA and the National Personnel Records Center, has established a system for expediting benefits claims for homeless persons—especially when physical examinations and medical records are required.

VA Outreach Priority: VBA continues to identify services to homeless veterans as one of its three outreach program priorities (active military pending separation, homeless and the elderly.)

VA Working Group on Homelessness: The WGH was established in 1987 and continues to be very active in assessing the needs of homeless veterans and their families and coordinating VA policy concerning the homeless. The WGH is also the sponsor of the Homeless Comprehensive Service Centers located in Dallas, Texas, and Brooklyn, New York.

Jobs for Homeless Veterans Initiative: This program links VA, Department of Labor and the Social Security Administration in a ten-city model program in which veterans' organizations will sponsor homeless persons and help them use resources for their rehabilitation with job placement as their goal.

The Department of Veterans Affairs has established national initiatives and continues in its effort to both improve the access of homeless veterans to existing VA benefits and services, and to provide them with additional direct health care services.

Although VA offers no comprehensive solution to the housing, economic and health care problems faced by homeless veterans across the nation, it has provided a rich array of effective services to many thousands of veterans.

The intensity and diversity of the services VA provides is delivered to homeless veterans through the aggressiveness of the Department's outreach efforts and, above all else, in the commitment and caring demonstrated each day by the VA professional staff.

PRESENTATION BY ROBIN L. HIGGINS, ACTING ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING

INTRODUCTION

I am pleased to be here today as the Acting Assistant Secretary for Veterans' Employment and Training;

Veterans' Employment and Training Service administers several programs to assist veterans take their rightful place in the work force; one specifically serves homeless veterans;

The program exclusively earmarked for these veterans is the Homeless Veterans Reintegration Project or HVRP, since 1988 funded by Stewart B. McKinney funds; and

Grants are competitively awarded.

This program operates currently in 12 of the largest U.S. cities.

WHAT DOES THE PROGRAM DO?

Outreach workers who are formerly homeless veterans themselves go out to where the homeless are found to inform them of the program.

Since a profile of the average veteran in the program reveals that the homeless veteran is equally likely to be black or white, many of these outreach workers are minorities and relate to the clients out of their common experience.

Linkages are formed—in fact, required—with other agencies such as the Department of Veterans Affairs and Social Service providers for identification, medical attention, and other basic needs before and during the veterans' re-entry into the job market.

Grantees provide the veterans in the program with a wide-range of employment services such as assessment, resume preparation, training, and referral to jobs.

WHAT HAVE WE ACCOMPLISHED?

For the first 3 years of operation we have: made 36,222 outreach contacts, enrolled 17,396 homeless veterans, placed 6,933 in gainful employment, and, remarkably, the cost per placement has been under $1,000 each year (which is not expensive considering the support services these veteran participants need).

PROFILE OF THE AVERAGE HOMELESS VETERAN IN HVRP

Based upon information collected by an independent evaluator the average participant in the program is: a 38 year old male, equally likely to be black or white, a noncombatant Army veteran of the Vietnam era with a high school education.

HVRP has served approximately 48% black veterans according to an independent evaluator, even though black veterans (age 38 years) comprise only 8% of the general veterans population according to the census bureau.

I'm not sure why this is, except that generally programs are located in larger cities where there is a larger concentration of minorities and poor. There is also a cluster of younger (average age 28) peacetime veterans in some of the sites.

OUR OTHER FINDINGS ABOUT HOMELESS VETERANS:

This Information Is Self-Reported

High proportion of alcohol (45%) and drug abuse (33%), or both (23%).

Post traumatic stress disorder was reported by 18% of the participants.

Most frequent reasons cited for being homeless were lack of income and substance abuse.

More educated than the average homeless person with 87% with at least a high school diploma.

Most had been on the street for about a year.

Fifteen percent were disabled.

VII. CONCLUDING COMMENTS

Let me switch gears in concluding in two ways: One of our other very successful programs is TAP—the Transition Assistance Program—where we actually go onto bases and give transition training to servicemembers up to 180 days before they get out of the military.

Early intervention is key to preventing the problems that unemployment can cause.

Once the stress of long-term unemployment begins—substance abuse, disease, hopelessness and other problems which can lead to homelessness are harder to correct. If we do it right now, we hope to avoid exacerbating this problem in the future.

STATEMENT BY BARBARA J. SABOL, ADMINISTRATOR/COMMISSIONER, HUMAN RESOURCES ADMINISTRATION, NEW YORK CITY, NY

Good afternoon, colleagues, friends, and honored guests. I am honored to have been invited by my Congressman, the Honorable Charles Rangel, of Harlem, to speak before this distinguished group and discuss a number of initiatives my agency has in place to serve homeless Veterans in New York City. I bring you greetings from a former marine who now serves in another capacity, the distinguished Mayor of the city of New York, my boss, the Honorable David N. Dinkins.

As you know, homelessness is one of our country's most tragic, complicated and perplexing public policy and social service problems. Homelessness is the result of a myriad of underlying root causes, including poverty, racism, and discrimination, neglect in the home; abuse of various kinds; failure of the school system; the health and mental health support systems, not enough affordable housing; and economy in which there are no jobs or jobs that pay substandard wages; aids, and drug and alcohol abuse—all contributing factors to homelessness.

These factors manifest themselves in despair, isolation, rejection, denial, anger, low self-esteem, surrender and a host of other harmful behaviors. Some clients are able to handle their homelessness better than others, yet for all there are unanswered questions regarding uncertain futures.

For many, homelessness forces a focus upon survival for the moment—from hour to hour, from day to day. Daily survival usually takes place in the only "home" the homeless know—city streets or a city shelter.

We have made a commitment at HRA that our shelter programs must improve so that emergency relief, which provides immediate respite from life on the streets, can become a viable part of a continuum of service delivery. To build upon and improve existing shelters so that they are cleaner, safer, and run by staff who are better trained to be able to address the needs of the homeless veteran, our Taylor initiative for homeless veterans is a part of that commitment.

Ever present among New York City's homeless has been the veteran. Although much has been written on the subject of vets who have become homeless, most veterans have heretofore been part of a greatly underserved population, who are not only combat veterans, but also are those who have not been in active combat.

What are the reasons for homelessness, for some is that an institutional lifestyle that is missing, and the inability to cope with a society without structure to dictate daily activity for others, such as the combat and combat era veterans who suffer from post traumatic stress disorder, the problems are understandably much more complex. Still others present causes exactly the same as non-veteran homeless programs.

Much like the nonveteran, the veteran's struggle with homelessness has been characterized by a lack of resources to address those needs. Above all, the need of veterans to be recognized as a separate service population has traditionally been overlooked. At HRA, we have recognized the value of helping veterans within an environment of peers, and have, with the Taylor initiative, begun to address veterans' needs within a formal service delivery framework.

As of August 1992, the New York City shelter system houses 1,085 male veterans. Of this number, 817 have honorable discharges. They have served in Vietnam, Korea, World War II, and even a few in World War I. Approximately 2% of all men across the country living in homeless shelters are veterans.

HRA has responded to the unique needs of this key service population through with the unprecedented collaboration of Federal, State, and local veteran entities, HRA developed an initiative entitled "the Taylor Plan: a continuum of care for homeless veterans in the NYC Shelter System."

The Department of Labor also assists with certifying eligible veterans for targeted job tax credits which gives tax incentives to employers, and provides linkages to the federal bonding program which bonds ex-offenders.

While I will not go into extensive detail at this forum, other components of the Taylor plan include services for elderly veterans at the Camp Laguardia Shelter; a substance abuse and mental health program at the Franklin Avenue Shelter; a comprehensive care program for HIV-ill and medically frail veterans; and a veterans center for women at the Kingsbridge Armory Shelter.

Last, but not least of the Taylor initiative includes, in Congressman Rangel's district, on 119th Street in East Harlem, city funding has provided for rehabilitation and construction of a single room occupancy facility for veterans which will be run by non-profit groups, with appendant support services.

What we are demonstrating with the Taylor initiative is that we recognize the homeless veteran as a viable part of our community who needs and deserves our commitment and targeted services. We believe that the Taylor plan is tangible evidence of HRA's commitment, and one which we hope will be replicated in other parts of the country.

STATEMENT BY BENJAMIN T. HACKER, DIRECTOR, CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS

In California it is estimated that there are 250,000 homeless, and of this total, 100,000 are veterans, 80,000 of whom served in Vietnam.

It is of interest to note that nationally the number of homeless veterans today is greater than the number of U.S. servicemen who died during the Vietnam war.

Today I want to talk about one of the most effective initiatives in the country yet engaged to confront the Homeless issue. In San Diego, California in 1988.

The Vietnam Veterans of San Diego, under the leadership of the Executive Director Robert Van Keuren and therapist John Nachison, created "Stand Down", a 3-day period of respite for homeless veterans.

Project Stand Down is a well-planned, highly organized, 3-day encampment for homeless veterans, providing them both a reprieve from the streets and a real opportunity to focus on putting their lives back in order. "Stand Down" is a military term, and refers to the relocation of combat troops from a hostile environment to a place that is safe and secure for rest and recovery.

What happens at Stand Down is nothing short of phenomenal, in providing for homeless veterans, male and female—and families, the amenities and comforts of a normal life which most Americans take for granted.

Typical sites for Stand Down include parks and fairgrounds, and school grounds, and for 3-days at no charge, veterans and their families are provided a wide assortment of services, to include: showers, haircuts, and new clothing and personal items, on-site issuance of personal ID cards, medical and dental care in a field hospital provided by the U.S. Dept. of Veterans Affairs, on-site court hearings to deal with outstanding misdemeanors and low grade felonies, so veterans can clear their records, free legal representation and assistance for criminal and civil legal problems, alcohol, drug and mental health counseling, job counseling by representatives of the California Department of Employment Development and other agencies, referrals and personal contact with a wide range of community social service agencies, food and temporary housing, access to a continuing follow-up program.

Stand Down is only three days in length, but those three days can be of unparalleled impact in helping a veteran to bridge the gap between self-empowerment and homelessness. The ID card is critical in reestablishing an identity and reaffirming for the Vet once again that "He is Somebody.".

The on-site opportunity to have outstanding legal warrants and tickets conclusively handled, in a manner that the Vet can, not only afford, but which also leaves him with his dignity intact, is a watershed event in the lives of most of the stand down participants.

The key to this process is the handling of outstanding misdemeanors through an "alternative sentencing" program. Instead of fines or jail terms, the Vet is assigned to a period of community service, which may be at the "Stand Down" site or at a local community agency, such as the Salvation Army. The relief that the veteran feels in no longer having to "look over his shoulder", but now being able to walk with pride in the knowledge that he is no longer the subject of an outstanding police warrant, is for many, a feeling that few can adequately describe.

A statistical review of some of the more significant findings from the Stand Down experience include the following general observations: though blacks represent 8 percent of the 27 million veterans in the Nation, they approximate 50 percent of those homeless veterans participating in California Stand Down programs. Included among a number of programs targeted to homeless veterans sponsored by the U.S. Dept. of Veterans Affairs, is the Domiciliary Care for Homeless Veterans Program. Thirty-eight percent of the homeless Vets participating in this program are black.

To continue with the statistical review, the average age of the Stand Down participant is 42, further confirming the fact that 82 percent of those participants reporting combat service, are from the Vietnam war era, approximately 65 percent of the Stand Down participants have an educational background that is at or less than high school. Thirty-five percent have had education beyond high school, 72 percent of the veterans had been without employment for more than 3 months, and 60 percent had been without permanent shelter for more than 3 months.

With regard to the demand for the available services provided at the Stand Down site, once again the service most frequently requested was legal. Of interest is the observation that based on the experience in California to date, black homeless are arrested or ticketed by local police at a rate far higher than that of their white counterparts.

Following legal services, the next highest demand was for dental services at 49 percent; substance abuse counseling and treatment, 37 percent; vision treatment, 30 percent; followed by emotional, podiatry, and other medical treatment in that order.

The Stand Down statistics in California reinforce those of the U.S. Department of Veterans Affairs, which show that nationally 98 percent of homeless veterans are single males; almost 80 percent suffer from alcohol dependency, half from drug dependency, and more than a third suffer from mental illness. Approximately 50 percent satisfactorily complete treatment programs.

Against the odds, San Diego's Stand Down has happened every year since 1988, and today is the largest volunteer event to help homeless veterans in the U.S. It has been replicated in Long Beach, San Francisco, and Sacramento, as well as in Denver, Colorado, and Portland, Oregon.

The success of this effort can be attributed to a number of factors, not the least of which is the strong single-minded persistence of the sponsoring private non-profit agency. In every locale in which a Stand Down Program has been attempted, there has been an outpouring of support from both government and private offices and organizations—to include VA regional offices; VA medical centers; county veterans service officers; and veteran organizations such as the Disabled American Veterans; Veterans of Foreign Wars; and the American Legion.

STATEMENT BY MACEO A. MAY, HOUSING DEVELOPMENT AND PROGRAM DIRECTOR, SWORDS TO PLOWSHARES

Mr. Chairman and members of the Committee, on behalf of the Congressional Black Caucus, Swords to Plowshares and veterans, I want to thank you for the opportunity to share some insights about a program we operate in San Francisco which has enjoyed some success in breaking the cycle of homelessness amongst veterans, and re-integrating those veterans back into the mainstream of our society. I also want to share with you some concerns and recommendations, particularly in the areas of housing and rehabilitation of black, Hispanic and other ethnic minority veterans.

WHAT IS THE PROGRAM?

The Transitional Housing Program is a four- to six-month, community-based, therapeutic, residential environment which focuses on the continuing social rehabilitation and reintegration of homeless veterans into the community and society. The program is designed to accommodate 20 homeless veterans with chronic psychological and emotional problems (oftentimes, coupled with substance abuse/addiction disorder) who demonstrate the potential to achieve and maintain functional independence and self sufficiency in the community.

WHAT DOES IT DO?

The program provides the residential stability so necessary to make anything else happen. In conjunction, it provides an extensive program of support services and in-depth therapy on site, and in conjunction with an array of community and DVA resources. Some of the more significant components of services and activities are:

Comprehensive health and medical services, primarily through cooperation and partnership with the DVA Medical Center, but also utilizing community resources where necessary.

Intensive individual and group counseling to help clients manage their condition, and re-develop important components of their lives that are necessary to facilitate self sufficiency and support.

An intense focus on substance addiction and relapse prevention.

Literacy and pre-vocational work to prepare vets for employment. This component also includes job placement.

Development of interim and long term housing after program completion.

While these are some of the more significant areas, a host of other services and activities are utilized to "prepare the veteran" for re-integration.

WHAT MAKES IT UNIQUE COMPARED TO OTHER RESIDENTIAL PROGRAMS?

The program is veteran specific—veterans are the only population served. Because of its specificity, it is the only community based program positioned to address Post Traumatic war stress and adjustments disorder conditions unique to veterans.

The program is able to bring to bear the considerable and comprehensive resources of the main organization, which enhances its ability to enable the veteran to dramatically increase his/her chances of success in and out of the program. Examples:

LEGAL

Our legal component is able to assist veterans with discharge upgrades, agent orange as well as other benefit claims/appeals, (particularly, before the Court of Veterans Appeals), and provide legal advice/referrals for family, tax, employment and landlord problems.

EMPLOYMENT

Through several employment contracts with the Dept of Labor, the State and Private Industry councils, the employment component is able to offer literacy development, testing, classroom training and job placement. The employment component has existed since 1976 and has an enviable track record in achievement of performance goals and effectiveness.

HUMAN SERVICES

Our human services component provides emergency needs services, as well as substance abuse, and emotional counseling—particularly in the areas of PTSD and adjustment disorders. This service provides an effective and viable means of aftercare and support for veterans completing our program. It also maintains a computer link with housing services within the community which enhances our ability to help veterans find housing after discharge.

The linkage and rapport we have established with the Dept of Veterans Affair's local Health Care for Homeless Veterans component exemplifies the kind of partnership we feel is necessary to comprehensively address the needs of veterans.

STATEMENT BY MR. ARTHUR BARHAM, VETERANS UPWARD BOUND PROGRAM, ATLANTA

in 1971, the Southeastern Regional Office, National Scholarship and Service Fund for Negro Students, (SERO-NSSFNS, Inc.) developed an Adult Basic Education program, for returning Vietnam Veterans that had not graduated from high school. The program uses a wholistic concept of preparing non high school graduates for a Post Secondary Education.

In 1988, the ancillary extension services developed and offered by the VUB program was developed into a formal project, funded by the U.S. Department of Labor through a grant to the City of Atlanta under the 1987 Stewart B. McKinney Homeless Assistance Act. The SERO-NSSFNS program known locally as "Atlanta Vet Reentry Project (AVRP)" is operated under a contract with the City of Atlanta. AVRP began operating in 1989 and has since served more than 1000 unemployed veterans. The project focuses on helping many disadvantaged veterans reintegrate back into the mainstream of society by securing permanent employment. The foundation of the project's operation are empowering the disadvantaged veterans grasp opportunities and master goal setting techniques for long-term success.

To further enhance the original VUB concept to serve veterans whether educationally and/or economically disadvantaged, the staff of VUB, developed and implemented a plan to provide low cost housing to veterans. "Harris House (HH)", a transitional housing endeavor, was created in 1989 through a partnership agreement between SERO-NSSFNS' VUB, and New Century Housing Corporation (NCHC). The U.S. Housing and Urban Development has provided 75% of the funding required for the development and 25% for operating the project, with the remaining funds generated from local contributions. Since its inception the project has assisted more than 100 veterans with low cost, safe housing, and the ability to maintain a stable independent living environment.

STATEMENT BY ALFRED PECK, DIRECTOR, THE SALVATION ARMY BORDEN AVENUE VETERANS RESIDENCE, LONG ISLAND NEW YORK, NY

"Can you get me into Borden Avenue?" has become the query of many of the veterans of the United States Armed Services in New York City. Borden Avenue is a New York City shelter specifically set aside for homeless veterans. The shelter is run by the Salvation Army under contract to the New York City Human Resources Administration. BAVR houses 400 men and we are always full. Word has been passed that the City's shelter for homeless veterans is "the best show in town," It is clear, safe, and air-conditioned, no small consideration during this sweltering summer. Borden Avenue is a place to start over, not a place to end up."

BAVR will be five years old on Veterans Day, 1992. It's the first, the largest and in the opinion of many, the best organized veterans shelter in the country. In 1982, the New York City's Comptroller office released a study, "Soldiers of Misfortune," which focused attention on the high percentage of veterans among the City's homeless population. The report stressed the responsibility of the Veterans Administration to reach out to these veterans most in need of assistance. It alleged that only a small percentage were receiving benefits, and that most were not aware of the benefits to which they might be entitled.

The Human Resources Administration (HRA) became the City's liaison with the Veterans Administration (VA) which, in concert with the New York State Division of Veterans Affairs (SDVA), initiated the Homeless Veterans Outreach Program. This cooperative effort provided access to benefits for shelter residents through on-site visits by VA benefits counselors and SDVA counselors, who also assist in the upgrading of discharges. HRA also designated a veterans liaison at each shelter to coordinate with the outreach team, assist in tracking applications.

Veterans began to press for a separate shelter for veterans at which services could be coordinated more directly and hence more effectively.

Many of the veterans suffer from multiple dysfunctions. Most prominently, drug and alcohol addictions, exacerbated in some cases by post traumatic stress disorder (PTSD) and other mental illness, with resulting physical health problems. These must be treated before a veteran can make a successful transition to independent living. "We can find them jobs and a place to live, but if they don't address their real problems, it's only a matter of time before they lose the job and end up back on the streets, or in some other shelter," said a social worker in the early days of the shelter.

To create an atmosphere where staff and veterans know how to proceed, BAVR has developed a two part contract that "obligates" the new arrival to a social service plan that will lead to "mutual goals" agreed to by the man and the administrators of the residence.

STATEMENT BY GERALD SAUNDERS, SERGEANT MAJOR V-COPS

I found myself homeless and fighting back the effect of Post Traumatic Stress Disorder disturbance I obtained while in combat in Vietnam. I needed a place to stay and the Borden Avenue Veteran Residence was there. I needed a way to direct my energy and give back to the community and the V-Cops gave me that opportunity.

The nights are dark in Long Island City. The summer is hot and the winter cold. But, when I put on the green shirts and the jacket of the V-Cops pride in myself is elevated. I know I will be doing something that the community respects.

We come together at the 108th precinct in Long Island City. We receive our orders for the evening and move out into the night. We want to show the community that we're not hopeless. So using the one set of skills we have all acquired, military skills, V-Cops conduct patrol on the streets of Queens much in the same fashion they would conduct military drills.

The same tactics we used in Vietnam, we use on the streets and it works.

Each V-Cop wears a green T-Shirt with yellow letters which reads "V-Cops 108th Precinct," a green baseball-style jacket which also reads "V-Cops 108th Precinct" and a black beret. Each V-Cop is assigned a partner for the night and the group travels in formation everywhere we go.

The V-Cops, unlike the Guardian Angels, work in full cooperation with the police. Although we do not carry weapons our aim is to stop a crime before it takes place. Many of the V-Cops interventions have led to arrests, according to 108th Precinct statistics.

The subways are a common place for the V-Cops to patrol. While traveling on the trains we ride two to a car, one at each end. After the train stops at the platform and the doors open each V-Cop looks out the door and raises his right arm, signaling to the other that "all is clear" in his section of the train. When the group is ready to exit the train, each V-Cop steps outside the car, raises both his arms, and turns one hundred and eighty degrees to the right. To a subway rider they look like a row of green tops spinning in unison. To a bad guy it looks like time to find a new train. To the riding public it is a signal they can relax.

This type of unity serves as an intimidation to criminals on the subways and on the streets. On a more personal level, however, it also provides me with a sense of camaraderie with the opportunity to make lasting friendships.

Community leaders have told me that the neighborhood patrols serve as an effective criminal deterrent and give residents an extra sense of security. "How do you measure something like this?", said a Community Board member who also serves as an auxiliary policeman with the 108th Precinct. "Any presence, any people on the street in this neighborhood gives people another inkling of faith." He said, "Maybe I don't have to run." "There's a perception that something's happening—and these guys are part of it."

"There's no question in my mind that their effectiveness on the street can be measured", the President of the 108th Precinct Community Council, which serves as a liaison between police and the community, once told me. The V-Cops are a physical presence out there and people are becoming accustomed to seeing them on the streets. Once the word gets out, the bad guys see these guys. They know they have radios and are able to communicate with the precinct. They serve the purpose of eyes and ears for the regular police force."

STATEMENT OF JOAN C. ALKER, ASSISTANT DIRECTOR, NATIONAL COALITION FOR THE HOMELESS

Thank you for inviting me to speak with you today. I hope you all have in front of you a copy of the Executive Summary from the National Coalition for the Homeless' report on homeless veterans, entitled "Heroes Today, Homeless Tomorrow: Homelessness Among Veterans in the United States" which we released last year on Veteran's Day. This should provide you with a basic overview of the problem and, in our view, the shamefully inadequate federal response. If you would like more information the complete report is available from our office. I wanted to take this time to say a few words about the larger social and political forces which have contributed to modern American homelessness and where we are on this issue today.

Mass homelessness has been around for some time now—more and more Americans than ever before see homeless people on their way to work or on TV. The current recession, rising unemployment, and cuts in state and local benefits have combined to drive demand for emergency services to unprecedented levels. Less than six months after the end of the Persian Gulf war, we began receiving reports of veterans of Operation Desert Storm showing up in shelters. Most providers report that the greatest increases in demand are from families, those who are recently unemployed, and those who are working but still poor. Every day thousands and thousands of men, women, and children are being turned away from shelters to make whatever makeshift arrangements they can for the night. Those who are on the streets are becoming more desperate and remaining there for longer periods of time as jobs, affordable housing, treatment options, and other services become increasingly scarce. Many homeless people and service providers are at their breaking points. It seems as though our political leaders have turned a blind eye to the despair and wasted human potential that we see on our streets.

In the past 20 years we have gone from a situation of a slight surplus of units affordable to the poorest 20% of renter households to a shortage of over 5 million in 1991. Safety net programs have been cut back, wages have stagnated, poor people have gotten poorer, and rich people have gotten richer. As a result the competition for scarce low-cost housing units among the poor has become so fierce, that any crisis or disability—the loss of a job, mental or physical illness, even a benefit check that gets lost in the mail—can push someone onto the street. In the case of veterans these factors may be directly related to their military service as is evidenced by the high percentage of homeless veterans with Post Traumatic Stress Disorder. And racism clearly play a role in homelessness—minorities are overrepresented in the homeless population at large as well as among homeless veterans although we do not know exactly by how much. A study of homeless men in Los Angeles found that homeless veterans were more likely to be black than homeless men in LA who were not veterans. And despite passage of Fair Housing legislation many years ago racial discrimination in housing remains rampant.

Yet it is important to remember that even 10 years ago we did not have these record numbers of homeless people, and that there are programs in every community that are working to get people off the street. Indeed we will hear about some of these later on this afternoon. What we are lacking is the political will to devote the resources that are needed. Most of our housing assistance does not go to poor and homeless people who need it most but rather to rich people through tax subsidies. Indeed the bottom fifth of the income distribution receives only 13% of all housing subsidies while the top fifth receives 60%. In other words for every dollar the government is spending in direct housing subsidies to the poorest 20% of the population, they are losing $4 in tax subsidies to the richest 20%.

In the course of writing our report, I had the opportunity to examine closely our government's response to the needs of homeless veterans as well as to meet many men and women who have served in the armed forces and are now homeless. Surely the epidemic of homelessness among veterans that we are seeing today must rank as one of our nation's most shameful broken promises. I hope that we can work together to create the political change that is needed to end this tragedy.

CONGRESSMAN TERRY BRUCE

HON. RICHARD J. DURBIN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. DURBIN. Mr. Speaker, the close of the 102d Congress will see the departure of many fine Congressmen who have served their districts and the Nation with distinction.

My colleague and friend, TERRY BRUCE, is such a person.

TERRY BRUCE was first elected to the Illinois State Senate in 1970 at the age of 26. During the next 14 years, he distinguished himself as a leader in many fields, particularly education. His talent and hard work resulted in his selection as majority leader of the Illinois State Senate. There were few, if any, important legislative issues considered by the Illinois General Assembly during that period which did not have TERRY BRUCE's input.

In 1984, he was elected to serve in the U.S. House of Representatives from the 19th Congressional District.

TERRY BRUCE's reputation and skill earned him a spot on the coveted Energy and Commerce Committee.

On that committee, TERRY tackled the most difficult and complex issues. He became an expert on the complexities of the Clean Air Act. He labored long and hard to find the right balance between environmental quality and economic growth. His fine work with that legislation will keep families working, businesses open, and dreams realized for generations to come. At the same time, his efforts served the legislative goal of improving air quality for decades to come in America.

TERRY BRUCE was never afraid to tackle a legislative challenge. When the Chicago & Northwestern Railway went on strike in 1991 and imperiled the entire economy of Chicago and the Midwest, TERRY BRUCE rose to the occasion. Chairman JOHN DINGELL and TERRY's colleagues on the Energy and Commerce Committee acknowledged that TERRY demonstrated extraordinary leadership in bringing that strike to a fair conclusion.

TERRY was particularly proud of his work to help the University of Illinois in his district. As a major research university, the University of Illinois relied on its congressional delegation, and its own Congressman in particular, to make certain that research opportunities from Washington were available. TERRY played a key role in securing the biotech research facility at the University of Illinois. This facility will be solving problems and improving the quality of life around the world for many years to come. TERRY BRUCE's hard work made it happen.

There are few communities in downstate Illinois which have not been touched by the legislative contributions of Congressman TERRY BRUCE. From the necessities of community life such as highways and bridges to those elements which enhance the quality of life for our families, TERRY BRUCE has made an enduring contribution to his State.

From his first campaign, his wife, Charlotte, and later his daughters, Emily and Ellen, were at his side. They passed out cookies at plant gates and worked day and night to help TERRY win many elections. Their familiar, smiling faces and hard work in every election contest were assets that money could never buy.

The good news about this tribute is that TERRY BRUCE still has many years of opportunity ahead of him. Though he was a casualty of reapportionment, his outstanding reputation, and his record of achievement leave the door wide open for future service.

TERRY BRUCE's departure from the House of Representatives is a loss for the State of Illinois and the Nation. We are fortunate that extraordinary people like TERRY BRUCE have the dedication to enter public service and the talent to make such a positive contribution to the lives of so many others.

THE UNITED STATES AND JAPAN CAN WORK TOGETHER FOR PEACE

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. STARK. Mr. Speaker, the United States should begin now to work with Japan, survivor of the only nuclear war to date, on the greatest project the world can imagine: A collectively enforced peace, and the elimination of all nuclear weapons from the face of the Earth.

Today, I am introducing legislation which sets forth a blueprint to achieve this end. Real progress can be made by 1995, the 50th anniversary of the founding of the United Nations—and the 50th remembrance of the atom bombing of Hiroshima and Nagasaki. That year also will see the nations that entered into the Nuclear Non-Proliferation Treaty in 1970 gather to renegotiate and extend it.

We can capitalize on this coincidence of events by strengthening the United Nations Charter, and at the same time agreeing that the next step in the evolution of civilization is the renouncement of nuclear weapons.

Japan, which became our close ally in the cold war struggle, is our ideal partner for leading the world in this effort. Japan is the only nation that has endured the nightmare of nuclear explosions. As the country which has suffered the most and the one which has renounced militarism, Japan has a moral authority that can draw the nations of the world together in this cause.

One could envision a world conference in Japan—at Hiroshima or Nagasaki—in which the goal is established of eliminating nuclear weapons and concrete steps are started to achieve that end.

These steps could include a greatly strengthened Nuclear Non-Proliferation Treaty, an end to nuclear testing by all nations, an improved International Atomic Energy Agency [IAEA] that would truly safeguard and monitor nuclear activities with a stronger United Nations that would back up the IAEA's inspectors—by force if necessary.

The goal of this endeavor is breathtaking. The actual steps are slow, even unexciting, and could take 20 or 30 years to fully implement. But this long journey could eventually lead to a new world, free of mutually assured destruction, free of the specter of charred cities and blackened skies, free of the horrifying possibility that civilization as we know it could end on just 20 minutes notice.

But this is more than just a noble and lofty pursuit—it is also staunchly in the national interests of the United States and other democratic countries. During the cold war, nuclear weapons worked to our strategic advantage, by deterring overwhelming Soviet superiority in tanks and manpower in Europe, the Far East, and elsewhere. But with the collapse of the USSR, we no longer need to extend a nuclear umbrella over ourselves or our allies.

Today, the leading military threat to the United States, Japan, and Europe is nuclear weapons in the hands of independent despots like Saddam Hussein. For these regimes, the bomb is their great equalizer against our conventional military superiority—the gulf war would have been very different had we faced a nuclear-armed Iraq. A strict global regime to prevent all countries from building the bomb will help us avoid a future nightmare involving nuclear blackmail. As long as it's verifiable, such an agreement will work in our strategic interests.

Over the last year, Congress and the President have taken several important steps in the right direction, including the June agreement with Russia to further reduce our respective nuclear arsenals and the recent 9-month nuclear testing moratorium and ban on testing after 1996. Additionally, the 1993 Defense authorization bill includes the Nuclear Weapons Reductions Act, which calls for additional cuts in the nuclear arsenals of all countries. Finally, pending in Congress is legislation to reduce the threat of nuclear proliferation through tightened export controls, sanctions for violators, and stronger international safeguards and inspections. These steps amount to a solid foundation for pursuing a world without nuclear weapons.

Japan, as nuclear victim and nonnuclear power, must join with the United States in leading this process. Historically, Japan seems to have been one of the few societies on earth which developed extraordinary capability in a high-technology weapon—and then essentially banned that weapon. Japan's use of firearms in the 16th and 17th centuries was at the cutting edge of mass destructions, but by the time of Commodore Perry's arrival in 1853 such weapons had been made almost taboo.

As history also shows, however, such progress toward peace must be reinforced or it can be reversed. Today, Japan and the United States often seem locked in a downward spiral of finger-pointing and name-calling. Japanese phrases like "kenbei" and "bubei" translate as contempt and even hatred of American ways, while on our side public officials who should know better crack sick jokes about World War II.

But we should remember: Trade fights come and go. Trade deficits swing from month to month, the dollar and yen shift from day to day—and in the long run history will little note nor long remember. What mankind would always remember is leadership to move the world out of the nuclear arms nightmare.

Instead of spending all our energy in trade disputes, let us commit ourselves to working on something that will be of importance for all future generations. In a partnership with Japan for arms control and peace, 1995 could be the beginning of a new age. There could be no greater way to remember those of all nations who died in the horror of World War II.

S. 1579, THE TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT

HON. NITA M. LOWEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mrs. LOWEY. Mr. Speaker, I rise in support of this legislation to regulate our Nation's pay-per-call industry. I would like to commend Chairmen Swift and Markey for their hard work on this bill, and I thank them for including my provision to stop pay-per-call companies from taking advantage of our Nation's senior citizens.

Some time ago a constituent contacted me to share her frustration at having been the victim of a 1–900 scam. She spent more than 5 minutes, at $2 a minute, trying to get information about Medicare from a private company that tried to create the impression that it was run by the Federal Government.

Although the 900 telephone line industry has brought many services to Americans, we cannot let private companies defraud unknowing citizens.

My amendment will ensure that private companies do not trick consumers into believing they are government-run or government-sponsored. It requires that 900 lines that appear as if they may be government programs or services contain a message in their opening audiotext specifying that their services are not approved or endorsed by the Federal Government.

Our Nation's senior citizens deserve the most accurate and helpful information about the programs they rely on. Passing this bill is an important step in preventing unscrupulous companies from profiting by deceiving them. I urge my colleagues to support this legislation.

DEPARTURE OF REPRESENTATIVE SID MORRISON

HON. NORMAN D. DICKS

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. DICKS. Mr. Speaker, I am addressing the House today on behalf of the entire Washington State congressional delegation in order to pay tribute to Congressman Sid Morrison, who will not be with us for the 103d Congress. Sid was first elected in 1980 and since that time has been a Representative in the truest sense of the word. He has diligently represented the views and concerns of the people of the fourth district of Washington, including the agricultural interests, small businesses, and the high technology community in the Tri-Cities. And most recently, he has served as a mediator, a broker of ideas and, at times, a referee on the contentious spotted owl/timber crisis situation that has impacted the Pacific Northwest. As we wish him well, I wanted the Members of the House to see a copy of a letter that our Washington State delegation in the House has sent to Sid, thanking him for his significant contributions to the success of our collective efforts. I am enclosing a copy of that letter for the Record.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, October 10, 1992.

DEAR SID: We are taking this opportunity, as the 102nd Congress comes to an end, to send a special note of thanks to you for the diligence, persistence and perseverance you demonstrated in guiding our delegation's efforts to achieve a balance solution to the Pacific Northwest timber supply crisis. It is fitting and necessary at this point, we believe, to recognize officially the difficult task you accepted and the conscientious work that you did in keeping our collective view fixed upon a national and reasonable solution to the Northwest's most urgent natural resource conflict. As the "convener" of an unending series of (unending) delegation meetings in 1434 Longworth, you have displayed the valuable trait of a marathon runner: an awareness that this is a long-distance race with no easy sprint to victory. It has been that recognition on your part, most especially, that has kept us moving forward through the most difficult periods of impasse and disagreement and which has resulted in significant strides toward the development of a cogent timber strategy in this 102nd Congress.

All of us owe a great debt to you, Sid, for your vision and for your strength. We will miss you for you insight and for your persistence as a convener, but most of all we will miss you as a friend. Best wishes in all your future endeavors.

Sincerely,

Tom Foley.
Al Swift.
John Miller.
Jolene Unsoeld.
Norm Dicks.
Rod Chandler.
Jim McDermott.

MUCH ADO ABOUT SOMETHING

HON. CHARLES H. TAYLOR

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. TAYLOR of North Carolina. Mr. Speaker, I am here to inform this House and the Nation about an upcoming event in Cleveland County, NC, on October 17. Our individual communities are steeped in culture, traditions, and special foods that represent the diversity and richness of our heritage. And so, on October 17, the people of the Cleveland County area will be celebrating Livermush Expo 1992.

Livermush is made by combining some of the "finer" parts of the pig, including the "snoots," together with spices and cornmeal. This wonderful cuisine was first sold commercially in the 1920's and became a staple during the Depression. Its virtues were first celebrated in October 1987 when the Cleveland County Commissioners and the Shelby City Council passed resolutions proclaiming that "livermush is the most delicious, most economical, and most versatile of meats." Well, that made what most people of the area already know official. There was nothing left to do but proclaim the first Livermush Exposition.

I have sent invitations to our national leaders, including both Presidential candidates, and some word about the excitement of the occasion is beginning to drift in.

President Bush has indicated that while he does not care for broccoli, he is certain he would love livermush. After all, pork rinds are one of his favorite foods. And if you look under the skin of any pork rind eater, you will find the makings of a livermush lover.

It has been said that Presidential candidate Bill Clinton has tried livermush but swears he didn't swallow. Its certain he would like it though, since the University of Arkansas has a few "Hawgs."

Vice President Quayle must love livermush because when asked to spell it, he wrote down "G-O-O-D-E."

And Senator Al Gore said that he may include the story of livermush in his next book on the environment since livermush is the best example of recycling he knows.

Some of you may think that this is much ado about nothing, but as this t-shirt says, the Livermush Expo 92 is "Mush Ado About Something."

Mack's Livermush of Shelby, NC, Hunter Livermush of Marion, NC, and others will be displaying their products on the 17th. Harriet Holton will demonstrate several uses of livermush, perhaps a livermush Christmas tree. They will be serving livermush at the Shelby Cafe on Main Street, and Harley Hog and the Rockers will be playing. Kids will be entertained by pot belly pigs and events at the piglet pen. Elvis is expected to make an appearance.

Everyone may not make it to Hog Heaven but it's a sow certainty that everyone will be welcomed at the October 17 Livermush Expo in Shelby, NC.

THE LOWER MISSISSIPPI DELTA DEVELOPMENT FINANCING CORPORATION ACT

HON. BILL EMERSON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. EMERSON. Mr. Speaker, I am pleased to join with my friend and colleague from Mississippi, Mr. Espy, in introducing the Lower Mississippi Delta Development Financing Corporation Act. Today represents the culmination of years of hard work, and we have an excellent product as a result. I commend Mr. Espy and others who have worked on this project for all of their fine work.

The lower Mississippi Delta region of the country consists of 219 counties and parishes that are among the Nation's poorest. When the Lower Mississippi Delta Development Commission issued its report in May 1990, the statistics were eye opening. Substantial poverty, poor health, high infant mortality, lack of education, and lack of suitable infrastructure are among the factors which have limited the opportunities available to residents of the delta region.

Despite these adverse conditions, the people of the delta prefer hope to despair. They are hard working and forthright, and they are one of the region's most tremendous resources. They did not come to the Congress looking for a handout; rather, the Congress is, by virtue of this bill, offering the region a hand up.

This bill will give the delta region the ability to help itself. The Delta Corporation is a means to provide structured seed money to this region that needs it so badly, but it is not a Federal program to continue ad infinitum. It will not be another bureaucracy; we have too many of those in this country already. This Corporation will be a private corporation operating under a Federal charter. At the end of fiscal year 1998, the Corporation will reorganize under a State charter, and it will be private in every sense of the word. With this legislation, we are helping the people of the delta to create a structure which will eventually be entirely delta-run, delta-managed, and delta-financed.

This is how the Corporation will work: The President will appoint the initial Board of Directors, with the advice and consent of the delta congressional delegation. The Board of Directors will establish bylaws, appoint officers and employees of the Corporation, and issue stock. It will possess all the powers of any ordinary private corporation: Owning and transferring real and personal property; acquiring or establishing subsidiaries; entering into contracts; et cetera. The Corporation will receive up to $100 million in Federal funding over a span of 5 years, and it will be on its own after that.

The Corporation will play an instrumental role in stimulating entrepreneurial activity and infusing capital into the delta region. It is directed by this legislation to provide technical training programs for local communities, provide regional economic research and analysis, raise funds for economic development, and work with local financial institutions to provide microloan funds, seed and venture capital, revolving loans, and other financial tools. All in all, the Corporation will create a climate in which economic development can flourish in the delta region.

I am truly excited about the potential unleashed by the Delta Corporation. This bill represents a true investment in the people of the region—not another bureaucracy, and not another Government giveaway—and our return on this investment will be manifold. The Delta Corporation will truly help folks to help themselves, and I hope to see it swiftly enacted in the 103d Congress.

THE FUTURE OF REGIONAL TRANSMISSION GROUPS

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. TOWNS. Mr. Speaker, I was disappointed that we were unable to include a regional transmission group [RTG] provision in the bill. The RTG proposal represents the consensus agreement of virtually every sector of the industry including the utilities, municipal and co-op systems, IPP's environmental groups, and others. The RTG approach, among other things, would help to meet the goal of increased transmission access through cooperative, voluntary relationships, and alternative dispute resolution mechanisms, not protracted litigation at FERC.

We should do everything possible to enact legislation quickly next session to provide these groups with the appropriate legal framework they need to operate most effectively. I consider the enactment of an RTG provision of significant importance to my constituents in New York and electric consumers all over the country. I am anxious to work with my colleagues to consider the RTG provision as early as possible in the next session.

H.R. 4016, COMMUNITY ENVIRONMENTAL RESPONSE FACILITIES

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Ms. PELOSI. Mr. Speaker, H.R. 4016, the Community Environmental Response Facilities Act would provide much-needed relief to many communities, like my district of San Francisco, affected by base closures.

The loss of jobs and capital from base closures have magnified the effects of the current recession for many people, particularly in California. In order to mitigate these effects, it is imperative that bases are cleaned up and ready for new uses within their community. H.R. 4016 would accomplish this by allowing military installations to be parceled into remediated and nonremediated areas and permit development on the remediated sections.

Such a process holds particular importance for my district in which the Presidio Army Base and Hunters Point Naval Shipyard, a Superfund site, are being closed. Allowing development to proceed on sections of Hunters Point that are free from contamination will provide much-needed economic relief for the citizens in the surrounding areas who have been hardest hit by the recession.

The opportunities that the Presidio and Hunters Point offer for the surrounding communities are tremendous. The sooner these opportunities are available, the sooner we can help rebuild our economy and local communities.

I urge my colleagues to support this important legislation

A TRIBUTE TO RONALD WHITE DURING THE FRIENDS OF LABOR CHARITY DINNER

HON. LUCIEN E. BLACKWELL

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. BLACKWELL. Mr. Speaker, I rise and ask my colleagues to join me in paying tribute to attorney Ronald White for his dedication and commitment to serving his community.

Mr. Speaker, in recognition of his community involvement which is demonstrative of his philosophy of building bridges, Attorney White will be honored by his friends and loved ones at the Friends of Labor Charity Dinner that will be held on October 17, 1992, in the great city of Philadelphia.

Mr. Speaker, I know firsthand of Attorney White's many accomplishments. He has been unselfish in sharing his many talents in an effort to strengthen and to bring about a certain bond to his community. Mr. Speaker, his allegiance is steadfast and his determination unyielding.

Mr. Speaker, Attorney White is indeed the kind of citizen about which any Representative would be proud to boast. Although several years ago, Attorney White established the law firm of White, McClellan, & Singley, he nonetheless finds the time to serve on the boards of the Community Development Corp.; Cunningham Community Center; African Americans for Cultural Development; Philadelphia Anti-Drug/Anti-Violence Network and the Philadelphia Public Defenders Association.

In addition, Mr. Speaker, his sound career as a litigator has enabled him to gain membership with prestigious boards such as the Pennsylvania Bar, Supreme Court of Pennsylvania Bar, the Federal Court Eastern District of Pennsylvania, and the U.S. Court of Appeals for the Third District.

Mr. Speaker, I invite my colleagues to join me in congratulating and extending best wishes for future success to attorney Ronald Avon White.

H.R. 5678, REGARDING FUNDING FOR AN ESTUARINE RESOURCES CENTER

HON. H. MARTIN LANCASTER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. LANCASTER. Mr. Speaker, I am pleased to rise in support of the conference report on H.R. 5678. This report allocates funds for important and deserving projects, one of which is in eastern North Carolina. The Pamlico-Tar River Foundation, a nonprofit group of over 2,000 members, and the town of Washington, N.C., are seeking to establish the North Carolina Estuarine Resources Center. The major function of this center would be to educate the residents and visitors of northeastern North Carolina about the important concerns of watershed protection.

The complex integrity of watersheds, wetlands, and estuarine systems are only now beginning to be understood, and it is imperative that new information is shared to provide insight into the vast resources in the Albemarle-Pamlico region. Decisions governing the management of these natural resources will carry significant implications, economic, ethical, and ecological, for each and every citizen in northeastern North Carolina. Therefore, public education on these issues is imperative, and a permanent educational facility located on the western side of the Albemarle-Pamlico Sounds is a necessary element.

CONFERENCE REPORT ON H.R. 11, THE REVENUE ACT OF 1992

HON. MIKE SYNAR

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. SYNAR. Mr. Speaker, early on Tuesday morning I voted against the conference report on H.R. 11, the Revenue Act of 1992, because it contains a simple, yet devastating, inherent flaw that will bust the Federal budget. While the bill provides a variety of tax benefits I support, the flaw in the legislation is that these benefits are permanent while the means to pay for them are only temporary. The ultimate result of this imbalance is an estimated $10 billion in yearly net revenue losses to the U.S. Treasury. In short, I voted "no" on this bill because it can't pay for itself and it ends up greatly increasing a deficit that already drains our economy of significant growth potential.

In the true spirit of an election year, H.R. 11 attempts to promise something to everyone in the short term and delay paying for this largess until after election day. What has been promised to everyone, and much ballyhooed by H.R. 11's supporters, are a number of politically popular, and permanently implemented, tax benefits. These include provisions which allow tax deductible contributions to individual retirement accounts [IRA's], permit deductible amortization of good will, permanently extend the low-income housing credit, repeal the luxury tax on pleasure boats and provide passive loss relief for real estate developers.

While I generally support these specific tax benefits they will eventually cost the Federal Treasury close to $10 billion per year. It is fiscally irresponsible for Congress to grant permanent tax benefits without replacing this lost revenue with the same amount of permanent new revenue offsets. Unfortunately, H.R. 11 not only fails to replace the revenue it loses, it uses a host of budgetary gimmicks to mask this failure.

First, most of the revenue raisers in the bill are only temporary. For example, the bill raises an estimated $14 billion in revenue by increasing the estimated taxes for individuals and raising taxes on securities firms' inventories. Unfortunately, the new estimated tax rules don't increase taxes, they merely accelerate collections. This produces a one-time gain in the short term and that's it. Similarly, the securities firms' tax revenue results from a one-time increase due to an inventory accounting change.

Second, because the bill attempts to be revenue neutral within the 5-year budget window, it encourages tax revenue collections within the budget window by promising increased taxpayer savings, which translates into lost tax revenues, in the years beyond the budget window. This is most evident in the bill's IRA provisions. The bill raises revenue in the short term by charging taxpayers a one-time fee for rolling over current IRA's into new H.R. 11 style IRA's. The incentive for switching to the new style IRA is the promise of greater savings to the taxpayer than those available on current IRA's.

Unfortunately, future taxpayer savings provided by the bill cost more than the current revenue provisions raise, thus making the IRA provision a money loser in the long term. This is of no concern to the bill's proponents, however, because the revenue losses are recorded outside the current budget window. In essence this provision is like a family that borrows from next month's paycheck to pay this month's bills and declares its budget balanced by only looking at this month's income and expenses.

Finally, the bill manipulates the effective dates of the IRA provisions to increase revenue estimates in the near term while pushing revenue losses outside the budget window. For example, the IRA rollovers start first which result in greater revenues from the collection of the rollover fees. However, the bill's increased deductions for the new style IRA's don't start until 1995. This has the effect of postponing a true accounting of the bill's cost past the current budget window and preserves the bill's illusion of budget neutrality.

H.R. 11 offers a number of tempting baubles in the form of politically popular tax breaks. Unfortunately, it attempts to pay for these baubles with budgetary sleight of hand that will ultimately increase the Federal deficit. I voted against H.R. 11 because real tax benefits need to be paid for with real tax revenues not accounting gimmicks.

H.R. 6168

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. OBERSTAR. Mr. Speaker, at this hour it appears unlikely that the other body will have an opportunity to pass its own bill reauthorizing the airport and airway trust fund before we adjourn. This means that important aviation programs will lapse unless the other body passes a bill previously passed by the House.

In recent months we have passed two aviation reauthorization bills. On May 19, by a vote of 410 to 2 we passed H.R. 4691, a reauthorization bill reported by the Committee on Public Works and Transportation. On Friday, October 2, in order to expedite the legislative process, we passed H.R. 6093 which was a compromise between the earlier House bill and a bill reported by the Senate Committee on Commerce, Science, and Transportation. Since then we have learned that the other body would like to see adjustments to H.R. 6093. Because it appears that there will be no opportunity for a conference to discuss these problems directly, we are this morning asking the House to pass a new bill to deal with the problems raised by the other body. We hope they will find this bill acceptable and pass it.

The major difference between the new bill and H.R. 6093 is that the new bill limits the Airport Improvement Program authorization to 1 year. Apart from this, the new bill does not make any major departures from H.R. 6093 and follows the same basic approach as the bill which the House passed in May. The bill is important legislation since if the bill is not passed, there will be no authority for new grants for airport development. In the current state of the economy the country cannot afford even a temporary shutdown in a program which sustains approximately 100,000 jobs.

Finally Mr. Speaker, I am taking this occasion to clarify the meaning of some of the provisions of the bill. First, Mr. Speaker, I wish to clarify that section 511(h)(2) of the Airport and Airway Improvement Act of 1982 [AAIA], as amended, does not apply to car rental firms doing business at an airport for the purposes of determing compliance with any requirement imposed pursuant to section 511(a)(17) of AAIA. Administration of DBE assurance for car rental firms shall be governed by section 511(h)(3) of AAIA, as amended.

In addition, I note that section 511(h)(3)(C) of AAIA, as amended, provides that nothing in the law on DBE assurance "shall require a car rental firm to change its corporate structure to provide for direct ownership arrangements." For example, a car rental firm is not required, but is permitted by the DBE assurance sections 511(a)(17) and 511(h) of the AAIA, as amended, to transfer corporate assets or engage in joint ventures, partnerships or subleases.

Mr. Speaker, this is important legislation for transportation and for jobs. I urge its immediate passage.

TRIBUTE TO REPRESENTATIVE BEN JONES

HON. JIM RAMSTAD

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. RAMSTAD. Mr. Speaker, I rise today to pay tribute to a departing colleague who will be sorely missed by every Member of this House and every person whose life he has touched. I refer to the distinguished gentleman from Georgia, [BEN JONES].

Although I have only known BEN for the last 2 years, we've had lunch together with four other colleagues virtually every Wednesday in the office of our colleague from Missouri, BILL EMERSON.

We are from the North, South, East, and West of this great country. Three Democrats, three Republicans. With different backgrounds and different legislative interests. But we share a powerful bond. We are all grateful recovering alcoholics—and BEN JONES is a special member of our fellowship.

BEN'S total honesty and disarming openness about his alcoholism and recovery have been an inspiration to each one of us and everyone else in this body. BEN'S leadership on behalf of people recovering from chemical dependency will be missed. His efforts to assist others still suffering from the ravages of alcoholism and drug addiction will also be missed.

But most of all, we will miss BEN'S daily nudges. "How ya'all doin', JIM?" he would ask daily in that distinctive dialect—reminiscent to this Minnesotan of Cooter on "Dukes of Hazard."

BEN was there in the good days and the not-so-good ones. He would always take time to listen to anyone in need of assistance or just a listening ear.

BEN, thanks for caring; thanks for sharing; thanks for leading; and thanks for listening. On behalf of Bill Emerson, Rod Chandler, and our other two Wednesday lunch members, I salute you for the hundreds of hours you spend to help other recovering people.

Although you will no longer be a Member of this body, your spirit will remain with us. We will carry on our traditions, and you will be with us always. God bless you, Ben, and our best wishes to you and Alma in your new life together.

TRIBUTE TO STAFF MEMBERS

HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. HUBBARD. Mr. Speaker, I take this opportunity to pay tribute and express appreciation to the excellent staff of the First Congressional District of Kentucky and of the Banking Subcommittee I chair.

Yes, thanks to those staff members I'm privileged to work with both in Washington and Kentucky to represent and assist the people of Kentucky's First Congressional District.

Thanks also to those staff members who work for the Subcommittee on General Oversight and Investigations of the House Banking, Finance and Urban Affairs Committee.

I express my gratitude to my longtime, efficient administrative assistant Lorraine Grant, who has served on our staff for 17 years.

Special thanks to three longtime staff members—Mary Lee Lawton, Cornelia (Neal) Henson, and Elaine Sullivant—who have worked untiringly and effectively for the people of Kentucky's First District.

Mary Lee Lawton has worked diligently in our Henderson field office for 15 years. Mary Lee has assisted multitudes of western Kentuckians in person and by telephone in a professional, helpful manner.

Cornelia (Neal) Henson has typed, produced, and processed in an efficient manner many thousands of letters to Kentuckians during her 14 years on our staff here in Washington.

Elaine Sullivant of Paducah has worked diligently for 13 years and 7 months as chief field representative for the First District of Kentucky. The thousands of Kentuckians who have called our Paducah office will miss Elaine Sullivant's friendly, excellent assistance.

Mary Martha Fortney has been on my staff for 12 years and has served so ably for 6 years as staff director of the Subcommittee on General Oversight and Investigations of the House Banking Committee.

I pay tribute to the following very efficient, hard-working staff members who have served and continue to work in our Washington office for western Kentuckians: Legislative Director Maureen Fletcher, 3½ years; chief caseworker Elwanda Newbold, 3½ years; and Cheryl McGlotten, legislative assistant, 2 years.

I express admiration and appreciation to my very excellent district staff in western Kentucky: Debbie Foy of Mayfield, 10 years; Caroline Hall of Henderson, 7½ years; Shirley Carter of Hopkinsville, 6 years; Patti Hawkins of Madisonville, 4 years; Ava Siener of Paducah, 3½ years; Malcolm West of Central City, 3 years; Raye Ann Heath and Debbie Reid, both of Symsonia, 2 years.

Special thanks also to the excellent staff of the Subcommittee on General Oversight and Investigations. I've already mentioned Mary Martha Fortney, the staff director. I also pay tribute to the subcommittee's counsel, Steve Skonberg, 1 year, 1 month; and professional staff members Sam Woodall, 2½ years, and Dave Liddle, 1 year, 8 months. Steve Skonberg, Sam Woodall, and Dave Liddle deserve compliments for their excellent work.

HONORING ROSA ROSARIO-GARCIA

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 8, 1992

Mr. ENGEL. Mr. Speaker, I take this opportunity to recognize the work of a friend and community leader, Rosa Rosario-Garcia, who is being honored by her colleagues on October 23.

Rosa has served as chairperson of the board of directors of the Hispanic Counseling Center on Long Island, which is celebrating 15 years of service to the community. It is fitting that during this gala event the Hispanic Counseling Center is saluting the effort and dedication put forth by Rosa Rosario-Garcia.

Through the work of Rosa and her colleagues, the chemically dependent, the mentally ill, and their families have been given an opportunity to reach and sustain a productive way of life. By specifically serving people with limited English-speaking ability, the Hispanic Counseling Center has reached out to a population that is often underserved or completely ignored. The center's efforts are, indeed, a model for other service providers who must help to fill this void.

For these reasons and more, I commend Rosa Rosario-Garcia for blazing this new and exciting trail. The fruits of her labor are most evident in the many lives she has touched in a positive way.

HOUSE OF REPRESENTATIVES—*Friday, October 9, 1992*

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Let us pray using the benediction from the Book of Numbers:

The Lord bless us and keep us;

The Lord make his face to shine upon us and be gracious to us;

The Lord lift up his countenance upon us, and give us peace. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from New York [Mr. SOLOMON] come forward and lead the House in the Pledge of Allegiance.

Mr. SOLOMON led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a concurrent resolution of the House of the following title:

H. Con. Res. 384. Concurrent resolution providing for the sine die adjournment of the 2d Session, 102d Congress.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 1182. An act to authorize and direct the exchange of lands in Colorado;

H.R. 1537. An act to revise, codify, and enact without substantive change certain general and permanent laws, related to transportation, as subtitles II, III, and V–X of title 49, United States Code, "Transportation", and to make other technical improvements in the Code; and

H.R. 4363. An act to amend title 11 of the United States Code to exclude from the estate of the debtor certain interests in liquid and gaseous hydrocarbons.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3489) "An act to authorize the Export Administration Act of 1979, and for other purposes."

The message also announced that the Senate agrees to the amendment of the House to the bill (S. 1029) entitled "An act to designate certain lands in the State of Colorado as components of the National Wilderness Preservation System, and for other purposes" with an amendment.

The message also announced that the Senate had passed bills, joint resolutions, and concurrent resolutions of the following titles, in which the concurrence of the House is requested:

S. 287. An act for the relief of Clayton Timothy Boyle and Clayton Louis Boyle, son and father;

S. 1174. An act to establish the Cache La Poudre River National Water Heritage Area in the State of Colorado;

S. 1506. An act to extend the terms of the olestra patents, and for other purposes;

S. 2763. An act to establish the Mike Mansfield Fellowship Program for intensive training in the Japanese language, government, politics, and economy;

S. 2952. An act to establish a grant program under the National Highway Traffic Safety Administration for the purpose of promoting the use of bicycle helmets by individuals under the age of 16;

S. 3388. An act to provide graduates of the Small Business Administration's Minority Small Business and Capital Ownership Development Program with opportunities to compete for certain contracts under limited circumstances;

S. 3389. An act to amend the Securities Exchange Act of 1934 to prohibit certain transactions with respect to managed accounts;

S. 3390. An act to protect the rights of children;

S.J. Res. 321. Joint resolution designating the week beginning March 21, 1993, as "National Endometriosis Awareness Week";

S.J. Res. 323. Joint resolution designating October 30, 1992, as "Refugee Day";

S.J. Res. 336. Joint resolution designating the week beginning November 8, 1992, as "Hire a Veteran Week";

S. Con. Res. 17. Concurrent resolution expressing the sense of Congress with respect to certain regulations of the Occupational Safety and Health Administration;

S. Con. Res. 142. Concurrent resolution directing the Clerk of the House of Representatives to make additional corrections in the enrollment of H.R. 429; and

S. Con. Res. 143. Concurrent resolution to correct the enrollment of S. 1671.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair desires to announce that pursuant to clause 4 of rule I, the Speaker signed the following enrolled bills and joint resolution on Wednesday, October 7, 1992:

S. 1880. An act to amend the District of Columbia Spouse Equity Act of 1988;

S. 3007. An act to authorize financial assistance for the construction and maintenance of the Mary McLeod Bethune Memorial Arts Center;

S. 3095. An act to restore and clarify the Federal relationship with the Jena Band of Choctaws of Louisiana; and

S.J. Res. 287. Joint resolution to designate the week of October 4, 1992, as "Mental Illness Awareness Week."

APPOINTMENT TO LIBRARY OF CONGRESS TRUST FUND BOARD

The SPEAKER. Pursuant to the provisions of 2 U.S.C. 154, as amended by section 1 of Public Law 102–246, the Chair appoints on the part of the House Mr. Robert E. Rubin, of New York, NY, to the Library of Congress Trust Fund Board for a term of 5 years.

DESIGNATION OF HON. STENY H. HOYER TO ACT AS SPEAKER PRO TEMPORE TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS FOR REMAINDER OF SECOND SESSION OF 102D CONGRESS

The SPEAKER laid before the House the following communication:

WASHINGTON, DC,
October 9, 1992.

I hereby designate the Honorable STENY H. HOYER to act as Speaker pro tempore to sign enrolled bills and joint resolutions for the remainder of the second session of the One Hundred Second Congress.

THOMAS S. FOLEY,
Speaker of the House of Representatives.

The SPEAKER. Without objection, the designation is agreed to.

There was no objection.

ANNOUNCEMENT OF NOTIFICATION OF PRESIDENT THAT TWO HOUSES HAVE COMPLETED THEIR BUSINESS OF THE SESSION AND ARE READY TO ADJOURN

The SPEAKER. The Chair wishes to announce that in lieu of the creation of a committee to wait upon the President of the United States and inform him that the two Houses have completed their business and are ready to adjourn, that a committee consisting of the majority leader and the minority leader was informally constituted to so notify the President and performed its function on October 7, 1992. The President advises that he has no further communication to make to the Congress.

☐This symbol represents the time of day during the House proceedings, e.g., ☐1407 is 2:07 p.m.

Matter set in this typeface **indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.**

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. STEARNS (at the request of Mr. MICHEL), for October 5 and the remainder of this session, on account of a death in the family.

Mr. FOGLIETTA (at the request of Mr. GEPHARDT), for October 2, on account of medical emergency.

Mr. TAUZIN (at the request of Mr. GEPHARDT), for October 6, on account of a death in the family.

Mr. MFUME (at the request of Mr. GEPHARDT), from 6 to 9 p.m. on October 5, on account of funeral attendance.

SENATE BILLS, JOINT RESOLUTIONS, AND CONCURRENT RESOLUTIONS REFERRED

Bills, joint resolutions, and concurrent resolutions of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 287. An act for the relief of Clayton Timothy Boyle and Clayton Louis Boyle, son and father; to the Committee on the Judiciary.

S. 316. An act to authorize the garnishment of Federal employees' pay, and for other purposes; to the Committee on Post Office and Civil Service.

S. 362. An act to provide Federal recognition of the Mowa Band of Choctaw Indians of Alabama; to the Committee on Interior and Insular Affairs.

S. 523. An act to authorize the establishment of the National African American Museum within the Smithsonian Institution; to the Committees on House Administration and Public Works and Transportation.

S. 533. An act to establish the Department of the Environment, provide for a Bureau of Environmental Statistics and a Presidential Commission on Improving Environmental Protection, and for other purposes; to the Committee on Government Operations.

S. 545. An act to authorize the additional use of land in Merced County, CA; to the Committee on Government Operations.

S. 568. An act to require that imports of fresh papaya meet all the requirements imposed on domestic fresh papaya; to the Committees on Agriculture and Ways and Means.

S. 591. An act to require airbags for certain newly manufactured vehicles; to the Committees on Energy and Commerce and Public Works and Transportation.

S. 811. An act to require the Secretary of Transportation to lead and coordinate Federal efforts in the development of magnetic levitation transportation technology and foster implementation of magnetic levitation and other high-speed rail transportation systems, and for other purposes; to the Committees on Energy and Commerce; Public Works and Transportation; and Science, Space, and Technology.

S. 814. An act to amend the Environmental Programs Assistance Act of 1984 to provide that for purposes of liability for damage, injury or death caused by the negligence or wrongful acts or omissions of individuals authorized by such act, the United States is liable, and for purposes of access to trade secrets and confidential business information such individuals are authorized representatives of the U.S. Environmental Protection Agency; to the Committees on Education and Labor and the Judiciary.

S. 1056. An act to provide for an architectural and engineering design competition for the construction, renovation, and repair of certain public buildings, and for other purposes; to the Committees on Government Operations and Public Works and Transportation.

S. 1174. An act to establish the Cache La Poudre River National Water Heritage Area in the State of Colorado; to the Committees on Interior and Insular Affairs.

S. 1294. An act to protect individuals engaged in a lawful hunt within a national forest, to establish an administrative civil penalty for persons who intentionally obstruct, impede, or interfere with the conduct of a lawful hunt, and for other purposes; to the Committees on Agriculture and Interior and Insular Affairs.

S. 1506. An act to extend the terms of the olestra patents and for other purposes; to the Committee on the Judiciary.

S. 1675. An act to amend title 49, United States Code, regarding the collection of certain payments for shipments via motor common carriers of property and nonhousehold goods freight forwarders, and for other purposes; to the Committee on Public Works and Transportation.

S. 1699. An act to prevent false and misleading statements in connection with offerings of Government securities; to the Committee on Energy and Commerce.

S. 1925. An act to remove a restriction from a parcel of land owned by the City of North Charleston, South Carolina, in order to permit a land exchange, and for other purposes; to the Committee on Interior and Insular Affairs.

S. 1990. An act to authorize the transfer of certain facilities and lands in the Wenatchee National Forest, WA; to the Committee on Interior and Insular Affairs.

S. 2006. An act to establish the Fox River National Heritage Corridor in Wisconsin, and for other purposes; to the Committee on Interior and Insular Affairs.

S. 2021. An act to amend the Wild and Scenic Rivers Act by designating a segment of the Rio Grande in New Mexico as a component of the National Wild and Scenic Rivers System, and for other purposes; to the Committee on Interior and Insular Affairs.

S. 2045. An act to authorize a study of the prehistoric Casas Grandes Culture in the State of New Mexico, and for other purposes; to the Committee on Interior and Insular Affairs.

S. 2499. An act for the relief of Elham Ghandour Cicippio; to the Committee on the Judiciary.

S. 2515. An act to authorize the establishment of job training programs for certain unemployed veterans, to pay certain assistance and benefits to employers of such veterans and to such veterans to defray certain costs relating to the provision of such training, and for other purposes; to the Committee on Veterans' Affairs.

S. 2544. An act to authorize the Secretary of the Interior to formulate a program for the research, interpretation, and preservation of various aspects of colonial New Mexico history, and for other purposes; to the Committee on Interior and Insular Affairs.

S. 2652. An act to provide enhanced penalties for commission of fraud in connection with the provision of or receipt of payment for health care services, and for other purposes; to the Committee on the Judiciary.

S. 2743. An act to deter and punish aggression against the newly independent countries of the defunct Socialist Federal Republic of Yugoslavia, and to promote human rights within the newly constituted Republic of Yugoslavia; to the Committee on Foreign Affairs, Banking, Finance and Urban Affairs, and Public Works and Transportation.

S. 2749. An act to grant a right of use and occupancy of a certain tract of land in Yosemite National Park to George R. Lange and Lucille F. Lange, and for other purposes; to the Committee on Interior and Insular Affairs.

S. 2763. An act to establish the Mike Mansfield Fellowship Program for intensive training in the Japanese language, government, politics, and economy; to the Committee on Foreign Affairs.

S. 2853. An act to authorize appropriations for the U.S. Office of Special Counsel, and for other purposes; to the Committee on Post Office and Civil Service.

S. 2877. An act entitled the "Interstate Transportation of Municipal Waste Act of 1992"; to the Committee on Energy and Commerce.

S. 2936. An act to amend the Competitiveness Policy Council Act to provide for reauthorization, to rename the Council, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

S. 2952. An act to establish a grant program under the National Highway Traffic Safety Administration for the purpose of promoting the use of bicycle helmets by individuals under the age of 16; to the Committees on Public Works and Transportation and Energy and Commerce.

S. 2973. An act to amend title 38, United States Code, to improve the care and services furnished to women veterans who have experienced sexual trauma while on active duty, to study the needs of such veterans, to expand and improve other Department of Veterans Affairs programs that provide care and services to women veterans, and for other purposes; to the Committee on Veterans' Affairs.

S. 2974. An act to amend title 38, United States Code, to revise certain administrative provisions relating to the U.S. Court of Veterans Appeals, and other purposes; to the Committee on Veterans' Affairs.

S. 2975. An act to provide for the settlement of the water rights claims of the Yavapai-Prescott Indian Tribe in Yavapai County, AZ, and for other purposes; to the Committee on Interior and Insular Affairs.

S. 2977. An act to establish within the Bureau of Indian Affairs a program to improve the management of rangelands and farmlands and the production of agricultural resources of Indian lands, and for other purposes; to the Committee on Interior and Insular Affairs.

S. 2984. An act to authorize financial assistance for the construction and maintenance of the Mary McLeod Bethune Memorial Fine Arts Center; to the Committee on Education and Labor.

S. 3096. An act to establish a grant program under the Administrator of the National Highway Traffic Safety Administration, for the purpose of promoting the use of bicycle helmets by children under the age of 16; to the Committees on Public Works and Transportation and Energy and Commerce.

S. 3155. An act to establish the National Indian Policy Research Institute; to the committees on Interior and Insular Affairs and Education and Labor.

S. 3157. An act to provide for a National Native American Veterans' Memorial; to the Committee on House Administration.

S. 3229. An act to protect the security of valuable goods in interstate commerce in the service of an armored car company; to the Committee on Energy and Commerce.

S. 3256. An act to amend the Public Health Service Act to authorize grants for construction at certain historically black colleges and universities and similar institutions granting biomedical graduate degrees and enrolling substantial numbers of students from disadvantaged backgrounds, including racial and ethnic minorities; to the Committee on Energy and Commerce.

S. 3275. An act to amend the Foreign Service Act of 1980 to allow additional deductions by the Agency for International Development from the salaries of Inspector General Foreign Service criminal investigators for retirement purposes, to increase the mandatory retirement age of Foreign Service criminal investigators from 55 to 57 years of age and to include administratively uncontrollable overtime as basic pay in computing the annuity of a noncommissioned Foreign Service criminal investigator; to the Committees on Foreign Affairs and Post Office and Civil Service.

S. 3325. An act to authorize appropriations for the Patent and Trademark Office in the Department of Commerce for fiscal year 1993, to provide that States are subject to suit for certain infringements of patents and plant variety protections, and infringements of trademarks, and for other purposes; to the Committee on the Judiciary.

S. 3326. An act to amend the Federal Deposit Insurance Act; to the Committee on Banking, Finance and Urban Affairs.

S. 3330. An act technical amendment of the Clayton Act; to the Committee on the Judiciary.

S. 3345. An act to designate the Gallipolis Locks and Dam, Ohio River, Ohio and West Virginia, as the "Robert C. Byrd Locks and Dam," to the Committee on Public Works and Transportation.

S. 3346. An act to establish a health registry of veterans of the Persian Gulf war, to authorize health examinations of such veterans, to coordinate and improve research on the health consequences of military service in the Persian Gulf theater of operations during the Persian Gulf war, and for other purposes; to the committees on Veterans Affairs, Armed Services, and Energy and Commerce.

S. 3362. An act to provide that the Georgia Baptist Hospital College of Nursing shall be deemed as satisfying, for academic year 1992–93, the accreditation requirements described in section 1201(a)(5) of the Higher Education Act of 1965; to the Committee on Education and Labor.

S. 3363. An act to amend the John F. Kennedy Center Act (20 U.S.C. 76h et seq.) to provide authorization of appropriations for fiscal year 1993 through 1997 for the John F. Kennedy Center for the Performing Arts, and for other purposes; to the Committee on Public Works and Transportation.

S. 3366. An act Entitled the "ADAMHA Reorganization Technical Amendments Act of 1992," to the Committee on Energy and Commerce.

S. 3367. An act to amend the Employee Retirement Income Security Act of 1974 to provide for the treatment of settlement agreements reached with the Pension Benefit Guaranty Corporation; to the Committee on Education and Labor.

S. 3369. An act to allow certain political subdivisions of the State of Arizona continued access to FBI identification records for a period of 180 days pending restoration of statutory authorization by the legislature of the State of Arizona; to the Committee on the Judiciary.

S. 3371. An act to amend the Public Health Service Act to provide for excellence in research with respect to juvenile arthritis, and for other purposes; to the Committee on Energy and Commerce.

S. 3388. An act to provide graduates of the Small Business Administration's Minority Small Business and Capital Ownership Development Program with opportunities to compete for certain contracts under limited circumstances; to the Committees on Government Operations and Small Business.

S. 3389. An act to amend the Securities Exchange Act of 1934 to prohibit certain transactions with respect to managed accounts; to the Committee on Energy and Commerce.

S. 3390. An act to protect the rights of children; to the Committee on the Judiciary.

S.J. Res. 321. Joint resolution designating the week beginning March 21, 1993, as "National Endometriosis Awareness Week"; to the Committee on Post Office and Civil Service.

S.J. Res. 323. Joint resolution designating October 30, 1992, as "Refugee Day"; to the Committee on Post Office and Civil Service.

S.J. Res. 335. Joint resolution to acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii; to the Committee on Interior and Insular Affairs.

S. Con. Res. 13. Concurrent resolution commending the President and the Armed Forces for the success of Operation Desert Storm; to the Committee on Foreign Affairs and Armed Services.

S. Con. Res. 17. Concurrent resolution expressing the sense of Congress with respect to certain regulations of the Occupational Safety and Health Administration; to the Committee on Education and Labor.

SENATE ENROLLED BILL AND JOINT RESOLUTION SIGNED

The SPEAKER announced his signature to enrolled bills and joint resolution of the Senate of the following titles.

S. 1880. An act to amend the District of Columbia Spouse Equity Act of 1988;

S. 3007. An act to authorize financial assistance for the construction and maintenance of the Mary McLeod Bethune Memorial Arts Center;

S. 3095. An act to restore and clarify the Federal relationship with the Jena Band of Choctaws of Louisiana; and

S.J. Res. 287. Joint resolution to designate the week of October 4, 1992, through October 10, 1992, as "Mental Illness Awareness Week".

SINE DIE ADJOURNMENT

Mr. JONES of Georgia. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to.

The SPEAKER. In accordance with the provisions of House Concurrent Resolution 384, the Chair declares the 2d session of the 102d Congress adjourned sine die.

Thereupon (at 10 o'clock and 4 minutes a.m.), pursuant to House Concurrent Resolution 384, the House adjourned.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4374. A letter from the Comptroller of the Department of Defense, transmitting a report of two violations of the Antideficiency Act in the Department of the Navy, pursuant to 31 U.S.C. 1517(b); to the Committee on Appropriations.

4375. A letter from the Assistant Secretary, Department of Defense, transmitting the Department's Annual Report on Research, Development, Test and Evaluation Activities conducted under the Biological Defense Research Program [BDRP], pursuant to 10 U.S.C. 2370; to the Committee on Armed Services.

4376. A letter from the Administrator, National Aeronautics and Space Administration, transmitting his determination that it is in the public interest to enter into contracts and grants with only U.S. entities to provide basic research in response to an announcement of opportunity [AO] to be issued by the Office of Aeronautics and Space Technology [OAST] for the procurement of in-space technology experiments, pursuant to 10 U.S.C. 2304(c)(7)(B); to the Committee on Armed Services.

4377. A letter from the Secretary of Education, transmitting a copy of the Biennial Report to Congress on Vocational Education Data in the Department of Education; to the Committee on Education and Labor.

4378. A letter from the Secretary of Health and Human Services, transmitting a report entitled "Head Start Research and Evaluation: A Blueprint for the Future"; to the Committee on Education and Labor.

4379. A letter from the Director, Human Resources, Department of the Army, transmitting the U.S. Army nonappropriated fund employee retirement plan's year ended September 30, 1990, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Operations.

4380. A letter from the Director, Human Resources, Department of the Army, transmitting the U.S. Army nonappropriated fund employee retirement plan's year ended September 30, 1991, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Operations.

4381. A letter from the Secretary of the Interior, transmitting the Federal Coal Management Report, fiscal year 1991, pursuant to 30 U.S.C. 208–2; to the Committee on Interior and Insular Affairs.

4382. A letter from the Secretary of Labor, transmitting the eighth report on trade and employment effects of the Caribbean Basin Economic Recovery Act, pursuant to 19 U.S.C. 2705; to the Committee on Ways and Means.

4383. A letter from the Secretary of Health and Human Services, transmitting a report on the fiscal year 1991 Low Income Home Energy Assistance Program, pursuant to 42 U.S.C. 8629(b); jointly, to the Committee on Education and Labor and Energy and Commerce.

4384. A letter from the Acting Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of Presidential Determination No. 92–47, Drawdown of Commodities and Services from the Inventory and Resources of the Department of Defense to Assist Peacekeeping Operations in Nagorno-Karabakh; jointly, to the Committees on Foreign Affairs and Appropriations.

4385. A letter from the Secretary of Transportation, transmitting notification of the actions the Secretary has taken with regard to Murtala Muhammed International Airport [LOS], Lagos, Nigeria, pursuant to section

1115(e)(3) of the Federal Aviation Act; jointly, to the Committees on Public Works and Transportation and Foreign Affairs.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. BROOKS: Committee on the Judiciary. H.R. 2355. A bill to amend title 18, United States Code, and the Export Administration Act of 1979, with respect to the prosecution of illegal boycotts against nations friendly to the United States; with an amendment (Rept. 102–1048, Pt. 1). Ordered to be printed.

Mr. BROWN: Committee on Science, Space, and Technology. H.R. 4559. A bill to enhance U.S. energy security, provide for environmental improvement, and encourage U.S. industrial competitiveness, through enhanced research and development, and for other purposes; with an amendment (Rept. 102–1049, Pt. 1). Ordered to be printed.

Mr. CONYERS: Committee on Government Operations. A report on the Quayle Council's plans for changing FDA's drug approval process: A prescription for harm (Rept. 102–1050). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII,

Mr. DAVIS (for himself and Mr. LENT) introduced a bill (H.R. 6212) to eliminate foreign shipbuilding subsidy practices and to enhance the competitiveness of the U.S. merchant marine which was referred jointly, to the Committees on Merchant Marine and Fisheries and Ways and Means.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 1110: Mr. SIKORSKI.

H.R. 4962: Mr. HOAGLAND.

H.R. 5680: Mr. SWETT.

H.R. 5812: Mr. ANDREWS of Texas and Mr. COOPER.

H.R. 5936: Mr. HUGHES.

H.R. 6075: Mr. ANDREWS of New Jersey.

H.J. Res. 455: Mr. ROTH.

H. Con. Res. 180: Mr. HOYER.

H. Res. 370: Mr. MAVROULES.

APPOINTMENTS BY THE SPEAKER AFTER SINE DIE ADJOURNMENT

Pursuant to the provisions of section 1 of House Concurrent Resolution 192, 102d Congress, and the order of the House of Monday, October 5, 1992, authorizing the Speaker and the minority leader to accept resignations and to make appointments authorized by law or by the House, the Speaker on October 9, 1992, did appoint to the Joint Committee on the Organization of the Congress the following Members of the House: Mr. HAMILTON, Indiana, chairman; Mr. OBEY, Wisconsin; Mr. SWIFT, Washington; Mr. GEJDENSON, Connecticut, Mr. SPRATT, South Carolina; and Ms. NORTON, the District of Columbia.

Pursuant to the provisions of section 301 of Public Law 100–702, and the order of the House of Monday, October 5, 1992 authorizing the Speaker and the minority leader to accept resignations and to make appointments authorized by law or by the House, the Speaker on October 9, 1992, did reappoint Ms. Laurie E. Michel of Washington, DC, to the Federal Judicial Center Foundation Board for a term of 5 years on the part of the House.

Pursuant to the provisions of section 302(a)(12) of Public Law 101–557, and the order of the House of Monday, October 5, 1992 authorizing the Speaker and the minority leader to accept resignations and to make appointments authorized by law or by the House, the Speaker on October 9, 1992, did appoint the following Member of the House to the Task Force on Aging Research: Mr. SMITH, New Jersey.

Pursuant to the provisions of House Resolution 423, 102d Congress, and the order of the House of Monday, October 5, 1992, permitting appointments authorized by law or by the House, the Speaker, majority leader, and minority leader on Friday, October 23, 1992, did jointly appoint Lt. Gen. Leonard P. Wishart (ret.) to the position of Director of Nonlegislative and Financial Services for the U.S. House of Representatives.

Pursuant to the provisions of section 204 of Public Law 98–459, and the order of the House of Monday, October 5, 1992 authorizing the Speaker and the minority leader to accept resignations and to make appointments authorized by law or by the House, the Speaker on October 29, 1992, did appoint from the private sector Mr. E. Don Yoak of Spencer, WV, to the Federal Council on the Aging on the part of the House to fill the existing vacancy thereon.

COMMUNICATION FROM HON. ROBERT H. MICHEL, MINORITY LEADER

HOUSE OF REPRESENTATIVES,
Washington, DC, October 28, 1992.

Hon. THOMAS S. FOLEY,
Speaker of the House, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to Section 1404(b)(2) of Public Law 99–661, I hereby appoint the gentleman from Arizona, Mr. Stump, to the Board of Trustees of the Barry Goldwater Scholarship and Excellence in Education Foundation to fill an existing vacancy.

Sincerely,

BOB MICHEL,
Republican Leader.

COMMUNICATION FROM THE CLERK OF THE HOUSE RECEIVED FOLLOWING THE SINE DIE ADJOURNMENT OF THE 102D CONGRESS

The following communication from the Clerk of the House was received following the sine die adjournment of the 102d Congress:

Hon. THOMAS S. FOLEY,
The Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 5 of Rule III of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on Friday, October 9, 1992 at 12:12 p.m., that the Senate passed without amendment: H.R. 3336, H.R. 6047, H.R. 5328, H.R. 6125, H.R. 5602, H.R. 5575, H.R. 6138, H.R. 6182, H.R. 3475, H.R. 5572, H.R. 1253, H.R. 1252, H.R. 6185, H.R. 6128, H.R. 4059, H.R. 6014, H.R. 5122, H.R. 5862, H.R. 5716, H.R. 5923, H.R. 5452, H.R. 5809, H.J. Res. 529, H. Con. Res. 383, H.R. 3118, H.R. 5431, H.R. 5432, H.R. 5831, H.R. 3818, H.J. Res. 563, H.R. 4281, H.R. 5222, H.R. 3673, H.R. 2660, H.R. 4489, H.R. 5617, H.R. 6133, H.R. 4844, H.R. 6191, H.R. 6049, H.R. 6187, H.R. 2448, H.R. 6135, H.R. 3598, H.R. 6164, H.R. 4412, H.R. 4999, H.R. 5853, H.J. Res. 271, H.R. 3638, H.R. 2859, H.R. 2896, H.R. 2181, H.R. 2109, H.R. 6181, H.R. 5763, H. Con. Res. 302, H. Con. Res. 371, H.R. 5453, H.R. 4539, H.R. 6022, and H.R. 5751. The Senate agreed to the following conference reports: H.R. 3635, H.R. 4250, H.R. 11, H.R. 776, and H.R. 429. The Senate agreed to the amendments of the House on the following bills: S. 2481, S. 2044, S. 1577, S. 1623, S. 1002, S. 1569, S. 2572, S. 775, S. 474, S. 1530, S. 1145, S. 3134, and S. 3312. The Senate agreed to the amendments of the House to the amendments of the Senate on the following bills: H.R. 2431, H.R. 939, H.R. 5008, H.R. 2130, H.R. 5194, and H.R. 5400.

With great respect, I am

Sincerely yours.

DONNALD K. ANDERSON,
Clerk, House of Representatives.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED AFTER SINE DIE ADJOURNMENT

Mr. ROSE, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and joint resolutions of the House of the following titles, which were thereupon signed by the Speaker:

On October 9, 1992:

H.R. 2321. An act to establish the Dayton Aviation Heritage National Historical Park in the State of Ohio, and for other purposes;

H.R. 2324. An act to amend title 28, United States Code, with respect to witness fees;

H.R. 2448. An act to provide for the minting of medals in commemoration of Benjamin Franklin and to enact a fire service bill of rights;

H.R. 3665. An act to establish the Little River Canyon National Preserve in the State of Alabama;

H.R. 4016. An act to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to require the Federal Government, before termination of Federal activities on any real property owned by the Government, to identify real property where no hazardous substance was stored, released, or disposed of;

H.R. 5258. An act to provide for the withdrawal of most favored nation status from Serbia and Montenegro and to provide for the restoration of such status if certain conditions are fulfilled;

H.R. 5337. An act to amend the Rural Electrification Act of 1936 to improve the provision of electric and telephone service in rural areas, and for other purposes;

H.R. 5483. An act to modify the provisions of the Education of the Deaf Act of 1986, and for other purposes;

H.J. Res. 542. Joint resolution designating the week beginning November 8, 1992, as "Hire a Veteran Week".

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED AFTER SINE DIE ADJOURNMENT

Mr. ROSE, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills and joint resolutions of the House of the following titles, which were thereupon signed by the Speaker pro tempore:

On October 14, 1992:

H.R. 240. An act for the relief of Rodgito Keller;

H.R. 707. An act to amend the Commodity Exchange Act to improve the regulation of futures and options traded under rules and regulations of the Commodity Futures Trading Commission; to establish registration standards for all exchange floor traders; to restrict practices which may lead to the abuse of outside customers of the marketplace; to reinforce development of exchange audit trails to better enable the detection and prevention of such practices; to establish higher standards for service on governing boards and disciplinary committees of self-regulatory organizations, to enhance the international regulation of futures trading; to regularize the process of authorizing appropriations for the Commodity Futures Trading Commission; and for other purposes;

H.R. 776. An act to provide for improved energy efficiency;

H.R. 939. An act to amend title 38, United States Code, with respect to housing loans for veterans;

H.R. 1101. An act for the relief of William A. Cassity;

H.R. 1216. An act to modify the Boundaries of the Indiana Dunes National Lakeshore, and for other purposes;

H.R. 2042. An act to authorize appropriations for activities under the Federal Fire Prevention and Control Act of 1974, and for other purposes;

H.R. 2156. An act for the relief of William A. Profitt;

H.R. 2859. An act to direct the Secretary of the Interior to conduct a study of the historical and cultural resources in the vicinity of the city of Lynn, Massachusetts, and make recommendations on the appropriate role of the Federal Government in preserving and interpreting such historical and cultural resources;

H.R. 3475. An act to assist business in providing women with opportunities in apprenticeship and nontraditional occupations;

H.R. 3598. An act to amend title 49, United States Code, to provide for verification of weights, and for other purposes;

H.R. 3638. An act making technical amendments to the law which authorizes modification of the boundaries of the Alaska Maritime National Wildlife Refuge;

H.R. 4059. An act to amend the Agricultural Trade Development and Assistance Act of 1954 to authorize additional functions within the Enterprise for the American Initiative, and for other purposes;

H.R. 4398. An act to remove outdated limitations on the acquisition or construction of branch buildings by Federal Reserve banks which are necessary for bank branch expansion if the acquisition or construction is approved by the Board of Governors of the Federal Reserve System;

H.R. 4489. An act to provide for a land exchange with the city of Tacoma, Washington;

H.R. 4539. An act to designate the general mail facility of the United States Postal Service in Gulfport, Mississippi, as the "Larkin I. Smith General Mail Facility" and the building of the United States Postal Service in Poplarville, Mississippi, as the "Larkin I. Smith Post Office Building";

H.R. 4771. An act to designate the facility under construction for use by the United States Postal Service at FM 1098 Loop in Prairie View, Texas, as the "Esel D. Bell Post Office Building";

H.R. 4773. An act to provide for the reporting of pregnancy success rates of assisted reproductive technology programs and for the certification of embryo laboratories;

H.R. 4841. An act granting the consent of the Congress to the New Hampshire-Maine Interstate School Compact;

H.R. 4844. An act to restore Olympic National Park and the Elwha River ecosystem and fisheries in the State of Washington;

H.R. 4996. An act to extend the authorities of the Overseas Private Investment Corporation, and for other purposes;

H.R. 4999. An act to authorize additional appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House;

H.R. 5006. An act to authorize appropriations for fiscal year 1993 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, to provide for defense conversion, and for other purposes;

H.R. 5013. An act to promote the conservation of wild exotic birds, to provide for the Great Lakes Fish and Wildlife Tissue Bank, to reauthorize the Fish and Wildlife Conservation Act of 1980, to reauthorize the African Elephant Conservation Act, and for other purposes;

H.R. 5021. An act to amend the Wild and Scenic Rivers Act for the purposes of determining the eligibility and suitability of designating a segment of the New River as a national wild and scenic river;

H.R. 5061. An act to establish Dry Tortugas National Park in the State of Florida;

H.R. 5122. An act relating to the settlement of the water rights claims of the Jicarilla Apache Tribe;

H.R. 5164. An act for the relief of Craig B. Sorensen and Nita M. Sorensen;

H.R. 5222. An act to designate the Federal building and United States courthouse located at 204 South Main Street in South Bend, Indiana, as the "Robert A. Grant Federal Building and United States Courthouse".

H.R. 5291. An act to provide for the temporary use of certain lands in the city of South Gate, California, for elementary school purposes;

H.R. 5328. An act to amend title 35, United States Code, with respect to the late payment of maintenance fees;

H.R. 5419. An act to amend the Marine Mammal Protection Act of 1972 to authorize the Secretary of State to enter into international agreements to establish a global moratorium to prohibit harvesting of tuna through the use of purse seine nets deployed on or to encircle dolphins or other marine mammals, and for other purposes;

H.R. 5431. An act to designate the Federal building located at 200 Federal Plaza in Paterson, New Jersey, as the "Robert A. Roe Federal Building".

H.R. 5452. An act granting consent of the Congress to a supplemental compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey concerning the Delaware River Port Authority.

H.R. 5453. An act to designate the Central Square facility of the United States Postal Service in Cambridge, Massachusetts, as the "Clifton Merriman Post Office Building".

H.R. 5479. An act to designate the facility of the United States Postal Service located at 1100 Wythe Street in Alexandria, Virginia, as the "Helen Day United States Post Office Building".

H.R. 5482. An act to revise and extend the programs of the Rehabilitation Act of 1973, and for other purposes;

H.R. 5491. An act to designate the Department of Veterans Affairs medical center in Marlin, Texas, as the "Thomas T. Connally Department of Veterans Affairs Medical Center";

H.R. 5572. An act to designate May of each year as "Asian/Pacific American Heritage Month";

H.R. 5575. An act to authorize certain additional uses of the Library of Congress Special Facilities Center, and for other purposes.

H.R. 5602. An act granting the consent of the Congress to the Interstate Rail Passenger Network Compact.

H.R. 5605. An act to authorize and direct land ownership consolidation in the Cedar River Watershed, Mt. Baker-Snoqualmie National Forest, Washington.

H.R. 5716. An act to extend for two years the authorizations for appropriations for certain programs under title I of the Omnibus Crime Control and Safe Streets Act of 1968.

H.R. 5749. An act for the relief of Krishanthi Sava Kopp.

H.R. 5751. An act to provide for the distribution within the United States of certain materials prepared by the United States Information Agency.

H.R. 5763. An act to provide equitable treatment to producers of sugarcane subject to proportionate shares.

H.R. 5809. An act to authorize the Secretary of the Interior to construct and operate an interpretive center for the Ridgefield National Wildlife Refuge in Clark County, Washington;

H.R. 5831. An act to designate the Federal Buildings located at Main and Church Streets in Victoria, Texas, as the "Martin Luther King, Jr. Federal Building";

H.R. 5853. An act to designate segments of the Great Egg Harbor River and its tributaries in the State of New Jersey as components of the National Wild and Scenic Rivers System;

H.R. 5862. An act to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to ensure an equitable and timely distribution of benefits to public safety officers.

H.R. 5923. An act for the relief of Anna C. Massari.

H.R. 5954. An act to amend the Food, Agriculture, Conservation, and Trade Act of 1990 to improve health care services and educational services through telecommunications, and for other purposes.

H.R. 5998. An act for the relief of the Wilkinson County School District, in the State of Mississippi.

H.R. 6000. An act to redesignate Springer Mountain National Recreation Area as "Ed Jenkins National Recreation Area";

H.R. 6014. An act to designate certain land in the State of Missouri owned by the United

States and administered by the Secretary of Agriculture as part of the Mark Twain National Forest;

H.R. 6022. An act to amend the Fair Credit Reporting Act to require the inclusion in consumer reports of information provided to consumer reporting agencies regarding the failure of a consumer to pay overdue child support;

H.R. 6047. An act to amend the United States Information and Educational Exchange Act of 1948, the Foreign Service Act of 1980, and other provisions of law to make certain changes in administrative authorities;

H.R. 6049. An act to amend the Congressional Award Act to revise and extend authorities for the Congressional Award Board;

H.R. 6072. An act to direct expedited negotiated settlement of the land rights of the Kenai Natives Association, Inc., under section 14(h)(3) of the Alaska Native Claims Settlement Act, by directing land acquisition and exchange negotiations by the Secretary of the Interior and certain Alaska Native corporations involving lands and interests in lands held by the United States and such corporations;

H.R. 6128. An act to amend the United States Warehouse Act to provide for the use of electronic cotton warehouse receipts, and for other purposes;

H.R. 6133. An act to enable the United States to maintain its leadership in land remote sensing by providing data continuity for the Landsat program, to establish a new national land remote sensing policy, and for other purposes;

H.R. 6164. An act to amend the John F. Kennedy Center Act to authorize appropriations for maintenance, repair, alteration, and other services necessary for the John F. Kennedy Center for the Performing Arts;

H.R. 6165. An act to amend certain provisions of law relating to establishment, in the District of Columbia or its environs, of a memorial to honor Thomas Paine;

H.R. 6179. An act to amend the Wild and Scenic Rivers Act;

H.R. 6181. An act to amend the Federal Food, Drug, and Cosmetic Act to authorize human drug application, prescription drug establishment, and prescription drug product fees, and for other purposes;

H.R. 6182. An act to amend the Public Health Service Act to establish the authority for the regulation of mammography services and radiological equipment, and for other purposes;

H.R. 6183. An act to amend the Public Health Service Act to provide protections from legal liability for certain health care professionals providing services pursuant to such Act;

H.R. 6184. An act to amend the National Trails System Act to designate the American Discovery Trail for study to determine the feasibility and desirability of its designation as a national trail; and

H.R. 6185. An act to implement the recommendations of the Federal Courts Study Committee, and for other purposes.

On October 16, 1992:

H.R. 1252. An act to authorize the State Justice Institute to analyze and disseminate information regarding the admissibility and quality of testimony of witnesses with expertise relating to battered women, and to develop and disseminate training materials to increase the use of such experts to provide testimony in criminal trials of battered women, particularly in cases involving indigent women;

H.R. 1253. An act to amend the State Justice Institute Act of 1984 to carry out research, and to develop judicial training curricula, relating to child custody litigation;

H.R. 2109. An act to direct the Secretary of the Interior to conduct a study of the feasibility of including Revere Beach, located in the city of Revere, Massachusetts, in the National Park System;

H.R. 2181. An act to permit the Secretary of the Interior to acquire by exchange lands in the Cuyahoga National Recreation Area that are owned by the State of Ohio;

H.R. 2263. An act to amend chapter 45 of title 5, United States Code, to authorize awards for cost savings disclosures;

H.R. 2431. An act to amend the Wild and Scenic Rivers Act by designating a segment of the Lower Merced River in California as a component of the National Wild and Scenic Rivers System;

H.R. 2660. An act to authorize appropriations for the United States Holocaust Memorial Council, and for other purposes;

H.R. 2896. An act to authorize the Secretary of the Interior to revise the boundaries of the Minute Man National Historical Park in the State of Massachusetts, and for other purposes;

H.R. 3118. An act to designate Federal Office Building Number 9 located at 1900 E Street, Northwest, in the District of Columbia, as the "Theodore Roosevelt Federal Building";

H.R. 3635. An act to amend the Public Health Service Act to revise and extend the program of block grants for preventive health and health services, and for other purposes;

H.R. 3336. An act for the relief of Florence Adeboyeku;

H.R. 3673. An Act to authorize a research program through the National Science Foundation on the treatment of contaminated water through membrane processes;

H.R. 3818. An act to designate the building located at 80 North Hughey Avenue in Orlando, Florida, as the "George C. Young United States Courthouse and Federal Building";

H.R. 4250. An act to authorize appropriations for the National Railroad Passenger Corporation, and for other purposes;

H.R. 4281. An act to designate the Federal building and courthouse to be constructed at Fifth and Ross Streets in Santa Ana, CA, as the "Ronald Reagan Federal Building and Courthouse;

H.R. 4412. An act to amend title 17, United States Code, relating to fair use and copyrighted works;

H.R. 4542. An act to prevent and deter auto theft;

H.R. 5008. An act to amend title 38, United States Code, to reform the formula for payment of dependency and indemnity compensation to survivors of veterans dying from service-connected causes, to increase the rate of payments for benefits under the Montgomery GI bill, and for other purposes;

H.R. 5095. An act to authorize appropriations for fiscal year 1993 for intelligence and intelligence-related activities of the U.S. Government and the Central Intelligence Agency Retirement and Disability System, to revise and restate the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, and for other purposes;

H.R. 5686. An act to make technical amendments to certain Federal Indian statutes;

H.R. 5739. An act to reauthorize the Export-Import Bank of the United States;

H.R. 6050. An act to facilitate recovery from recent disasters by providing greater flexibility for depository institutions and their regulators, and for other purposes;

H.R. 6129. An act to amend the Consolidated Farm and Rural Development Act to establish a program to aid beginning farmers and ranchers to improve the operation of the Farmers Home Administration, and to amend the Farm Credit Act of 1971, and for other purposes;

H.R. 6180. An act to authorize appropriations for the National Telecommunications and Information Administration, and for other purposes;

H.R. 6191. An act to protect the public interest and the future development of pay-per-call technology by providing for the regulation and oversight of the applications and growth of the pay-per-call industry, and for other purposes;

H.J. Res. 271. Joint resolution authorizing the Go For Broke National Veterans Association Foundation to establish a memorial in the District of Columbia or its environs to honor Japanese American patriotism in World War II;

H.J. Res. 353. Joint resolution designating the week beginning January 3, 1993, as "Braille Literacy Week";

H.J. Res. 399. Joint resolution designating the week beginning November 1, 1992, as "National Medical Staff Services Awareness Week";

H.J. Res. 429. Joint resolution designating May 2, 1993, through May 8, 1993, as "Be Kind to Animals and National Pet Week";

H.J. Res. 457. Joint resolution, designating January 16, 1993, as "Religious Freedom Day";

H.J. Res. 458. Joint resolution designating October 25, 1992, as "World Population Awareness Week";

H.J. Res. 467. Joint resolution designating October 24, 1992, through November 1, 1992, as "National Red Ribbon Week for a Drug-Free America";

H.J. Res. 471. Joint resolution designating October 14, 1992, as "National Occupational Therapy Day";

H.J. Res. 484. Joint resolution designating the week beginning February 14, 1993, as "National Visiting Nurse Associations Week".

H.J. Res. 489. Joint resolution designating February 21, 1993, through February 27, 1993, as "American Wine Appreciation Week", and for other purposes;

H.J. Res. 500. Joint resolution designating March 1993 as "Irish-American Heritage Month";

H.J. Res. 503. Joint resolution acknowledging the sacrifices that military families have made on behalf of the Nation and designating November 23, 1992, as "National Military Families Recognition Day";

H.J. Res. 520. Joint resolution to designate the month of October 1992 as "Country Music Month";

H.J. Res. 523. Joint resolution designating October 8, 1992, as "National Firefighters Day";

H.J. Res. 529. Joint resolution supporting the planting of 500 redwood trees from California in Spain in commemoration of the quincentenary of Christopher Columbus and designating the trees as a gift to the people of Spain;

H.J. Res. 543. Joint resolution designating November 30, 1992, through December 6, 1992, as "National Education First Week";

H.J. Res. 547. Joint resolution designating May 2, 1993, through May 8, 1993, as "National Walking Week"; and

H.J. Res. 563. Joint resolution providing for the convening of the first session of the One Hundred Third Congress.

On October 19, 1992:

H.R. 5334. An act to amend and extend certain laws relating to housing and community development, and for other purposes.

On October 20, 1992:

H.R. 11. An act to amend the Internal Revenue Code of 1986 to provide tax incentives for the establishment of tax enterprise zones, and for other purposes;

H.R. 429. An act to authorize additional appropriations for the construction of the Buffalo Bill Dam and Reservoir, Shoshone Project, Pick=Sloan Missouri Basin Program, Wyoming;

H.R. 2130. An act to authorize appropriations for the National Oceanic and Atmospheric Administration, and for other purposes;

H.R. 5432. An act to designate the Federal building and United States courthouse located at the corner of College Avenue and Mountain Street in Fayetteville, AR, as the "John Paul Hammerschmidt Federal Building and United States Courthouse";

H.R. 6125. An act to enhance the financial safety and soundness of the banks and associations of the Farm Credit System, and for other purposes;

H.R. 6138. An act to amend the Consolidated Farm and Rural Development Act;

H.R. 6167. An act to provide for the conservation and development of water and related resources, to authorize the U.S. Army Corps of Engineers civil works program to construct various projects for improvements to the Nation's infrastructure, and for other purposes;

H.J. Res. 409. Joint resolution designating January 16, 1993, as "National Good Teen Day"; and

H.J. Res. 546. Joint resolution designating February 4, 1993, and February 3, 1994, as "National Women and Girls in Sports Day".

On October 23, 1992:

H.R. 2152. An act to enhance the effectiveness of the United Nations international driftnet fishery conservation program;

H.R. 2032. An act to amend the Act of May 15, 1965, authorizing the Secretary of the Interior to designate the Nez Perce National Historical Park in the State of Idaho, and for other purposes;

H.R. 5193. An act to amend title 38, United States Code, to improve health care services for women veterans, to expand authority for health care sharing agreements between the Department of Veterans Affairs and the Department of Defense to revise certain pay authorities that apply to Department of veterans Affairs nurses, to improve preventive health services for veterans, to establish discounts on pharmaceuticals purchased by the Department of Veterans Affairs, to provide for a Persian Gulf War Veterans Health Registry, and to make other improvements in the delivery and administration of health care by the Department of Veterans Affairs.

H.R. 5194. An act to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to authorize appropriations for fiscal years 1993, 1994, 1995, and 1996, and for other purposes.

H.R. 5617. An act to provide Congressional approval of a Governing International Fishery Agreement, and for other purposes;

H.R. 6135. An act to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, research and program management, and Inspector General, and for other purposes;

H.R. 6168. An act to amend the Airport and Airway Improvement Act of 1982 to authorize appropriations, and for other purposes;

H.R. 6187. An act to amend the Foreign Assistance Act of 1961 with respect to international narcotics control programs and activities, and for other purposes; and

H.J. Res. 422. Joint resolution designating November 1992 as "Neurofibromatosis Awareness Month."

On October 29, 1992:

H.R. 5377. An act to amend the Cash Management Improvement Act of 1990 to provide adequate time for implementation of that Act, and for other purposes; and

H.R. 5400. An act to amend title 38, United States Code, to establish a program to provide certain housing assistance to homeless veterans, to improve certain other programs that provide such assistance, and for other purposes.

SENATE ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED AFTER SINE DIE ADJOURNMENT

The SPEAKER pro tempore announced on the following dates his signature to enrolled bills and joint resolutions of the Senate of the following titles:

On October 14, 1992:

S. 1145. An act to amend the Ethics in Government Act of 1978 to remove the limitation on the authorization of appropriations for the Office of Government Ethics;

S. 1146. An act to establish a national advanced technician training program, utilizing the resources of the Nation's two-year associate-granting colleges to expand the pool of skilled technicians in strategic advanced-technology fields, to increase the productivity of the nation's industries, and to improve the competitiveness of the United States in international trade, and for other purposes;

S. 1181. An act for the relief of Christy Carl Hallien of Arlington, Texas;

S. 1530. An act to authorize the integration of employment, training, and related services provided by Indian tribal governments;

S. 1583. An act to increase the safety to humans and the environment from the transportation by pipeline of natural gas and hazardous liquids, and for other purposes;

S. 2044. An act to assist Native Americans in assuring the survival and continuing vitality of their languages;

S. 2201. An act to authorize the admission to the United States of certain scientists of the Commonwealth of Independent States and the Baltic states as employment-based immigrants under the Immigration and Nationality Act, and for other purposes;

S. 2322. An act to amend title 38, United States Code, to increase, effective as of December 1, 1992, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans;

S. 2625. An act to designate the United States courthouse being constructed at 400 Cooper Street in Camden, New Jersey, as the "Mitchell H. Cohen United States Courthouse";

S. 2661. An act to authorize the striking of a medal commemorating the 250th anniversary of the founding of the American Philosophical Society and the birth of Thomas Jefferson;

S. 2834. An act to designate the United States Post Office Building located at 100 Main Street, Millsboro, Delaware, as the "John J. Williams Post Office Building;

S. 2875. An act to amend the National School Lunch Act and the Child Nutrition Act of 1966 to better assist children in homeless shelters, to enhance competition among infant formula manufacturers and to reduce the per unit costs of infant formula for the special supplemental food program for women, infants, and children (WFC), and for other purposes;

S. 3006. An act to provide for the expeditious disclosure of records relevant to the assassination of President John F. Kennedy;

S.J. Res. 218. Joint resolution designating the calendar year, 1993, as the "Year of American Craft: A Celebration of the Creative Work of the Hand".

S.J. Res. 252. Joint resolution designating the week of April 18 through 24, 1993, as "National Credit Education Week".

S.J. Res. 305. Joint resolution to designate October 1992 as "Polish-American Heritage Month"; and

S.J. Res. 319. Joint resolution to designate the second Sunday in October of 1992 as "National Children's Day".

On October 16, 1992:

S. 225. An act to expand the boundaries of the Fredericksburg and Spotsylvania County Battlefields Memorial National Military Park, Virginia;

S. 758. An act to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of patents and plant variety protections, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private entity; and

S. 2532. An act to support freedom and open markets in the independent states of the former Soviet Union, and for other purposes.

On October 20, 1992:

S. 347. An act to amend the Defense Production Act of 1950 to revitalize the defense industrial base of the United States, and for other purposes;

S. 474. An act to prohibit sports gambling under State law;

S. 749. An act to amend certain trademark laws to clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of trademarks, and that all the remedies can be obtained in such suit that can be obtained in a suit against a private entity;

S. 775. An act to improve the compensation of certain veterans for exposure to ionizing radiation, to improve the administration of veterans benefits programs, and for other purposes;

S. 893. An act to amend title 18, United States Code, to impose criminal sanctions for violation of software copyright;

S. 1002. An act to impose a criminal penalty for flight to avoid payment of arrearages in child support;

S. 1439. An act to authorize and direct the Secretary of the Interior to convey certain lands in Livingston Parish, Louisiana;

S. 1569. An act to implement the recommendations of the Federal Courts Study Committee, and for other purposes;

S. 1577. An act to amend the Alzheimer's Disease and Related Dementias Services Research Act of 1986 to reauthorize the Act, and for other purposes;

S. 1623. An act to amend title 17, United States Code, to implement a royalty payment system and a serial copy management system for digital audio recording, to prohibit certain copyright infringement actions, and for other purposes.

S. 1664. An act to establish the Keweenaw National Historical Park, and for other purposes;

S. 1671. An act to withdraw certain public lands and to otherwise provide for the operation of the Waste Isolation Pilot Plant in Eddy County, New Mexico, and for other purposes;

S. 2481. An act to amend the Indian Health Care Improvement Act to authorize appropriations for Indian health programs, and for other purposes;

S. 2679. An act to promote the recovery of Hawaii tropical forests, and for other purposes;

S. 2890. An act to provide for the establishment of the Brown v. Board of Education National Historic Site in the State of Kansas, and for other purposes;

S. 2941. An act to provide the Administrator of the Small Business Administration continued authority to administer the Small Business Innovation Research Program, and for other purposes;

S. 3134. An act to expand the production and distribution of educational and instructional video programming and supporting educational materials for preschool and elementary school children as a tool to improve school readiness, to develop and distribute educational and instructional video programming and support materials for parents, child care providers, and educators of young children, to expand services provided by Head Start programs, and for other purposes;

S. 3144. An act to amend title 10, United States Code, to improve the health care system provided for members and former members of the Armed Forces and their dependents, and for other purposes;

S. 3224. An act to designate the United States Courthouse to be constructed in Fargo, North Dakota the Quentin N. Burdick United States Courthouse;

S. 3279. An act to extend the authorization of official mail in the location and recovery of missing children, and for other purposes;

S. 3309. An act to amend the Peace Corps Act to authorize appropriations for the Peace Corps for fiscal year 1993 and to establish a Peace Corps foreign exchange fluctuations account, and for other purposes;

S. 3312. An act entitled the "Cancer Registries Amendment Act";

S. 3327. An act to amend the Agricultural Adjustment Act of 1938 to permit the acre-for-acre transfer of acreage allotment or quota for certain commodities, and for other purposes;

S.J. Res. 166. Joint resolution designating the week of October 4 through 10, 1992, as "National Customer Service Week";

S.J. Res. 304. Joint resolution designating January 3, 1993, through January 9, 1993, as "National Law Enforcement Training Week";

S.J. Res. 309. Joint resolution designating the week beginning November 8, 1992, as "National Women Veterans Recognition Week"; and

S.J. Res. 318. Joint resolution designating November 13, 1992, as "Vietnam Veterans Memorial 10th Anniversary Day".

On October 23, 1992:

S. 2572. An act to authorize an exchange of lands in the States of Arkansas and Idaho; and

S. 2964. An act granting the consent of the Congress to a supplemental compact or agreement between the Commonwealth of Pennsylvania and the State of New Jersey concerning the Delaware River Port Authority.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

[Submitted Oct. 14, 1992]

Mr. CONYERS: Committee on Government Operations. A report on A Strategy Gone Awry—The Administration's Response to Japan's Economic Aggression Against the United States High-Performance Computing Industry (Rept. 102–1051). Referred to the Committee of the Whole House on the State of the Union.

[Pursuant to the order of the House on Oct. 1, 1992, the following reports were filed on Oct. 16, 1992]

Mr. CONYERS: Committee on Government Operations. A report on Is Science for Sale?: Transferring Technology From Universities to Foreign Corporations (Rept. 102–1052). Referred to the Committee of the Whole House on the State of the Union.

Mr. CONYERS: Committee on Government Operations. A report on Contractor Games: Misclassifying Employees as Independent Contractors (Rept. 102–1053). Referred to the Committee of the Whole House on the State of the Union.

[Submitted Oct. 19, 1992]

Mr. CONYERS: Committee on Government Operations. A report on The Labor Department's Lax Enforcement of Wage and Hour Laws: Workers Are Being Shortchanged (Rept. 102–1054). Referred to the Committee of the Whole House on the State of the Union.

[Pursuant to the order of the House on Oct. 1, 1992, the following report was filed on Oct. 22, 1992]

Mr. CONYERS: Committee on Government Operations. A report on Payment of Legal Fees by Banking Agencies to Outside Counsel (Rept. 102–1055). Referred to the Committee of the Whole House on the State of the Union.

[Pursuant to the order of the House on Oct. 1, 1992, the following reports were filed on Oct. 29, 1992]

Mr. CONYERS: Committee on Government Operations. A report on FTS 2000: Management Reforms and Intensive Congressional Oversight Ensure Savings of $500 Million for the Taxpayers (Rept. 102–1056). Referred to the Committee of the Whole House on the State of the Union.

[Submitted Oct. 29, 1992]

Mr. CONYERS: Committee on Government Operations. A report on Fighting Inflation and Reducing the Deficit: The Role of Inflation-indexed Treasury Bonds (Rept. 102–1057). Referred to the Committee of the Whole House on the State of the Union.

Mr. CONYERS: Committee on Government Operations. A report on IRS' Tax Systems Modernization: Progress and Prospects (Rept. 102–1058). Referred to the Committee of the Whole House on the State of the Union.

Mr. CONYERS: Committee on Government Operations. A report on Fraud and Abuse in the Head Injury Rehabilitation Industry (Rept. 102–1059). Referred to the Committee of the Whole House on the State of the Union.

EXTENSIONS OF REMARKS

TRIBUTE TO DUDLEY CROSSON

HON. GEORGE (BUDDY) DARDEN

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. DARDEN. Mr. Speaker, today I would like to recognize Mr. Dudley Crosson of Carrollton, GA, who gave a total of 23 years as Carrollton's city manager. He retired from this post on September 30.

Mr. Crosson has made lasting contributions in his work as city manager of Carrollton, and the people of this community will long remember him as a man of tremendous character as well. I join the citizens of Carrollton in wishing him and his family the very best in his retirement.

At this time, I also would like to share with my colleagues an article appearing in the Carrollton Times-Georgian which tells of Mr. Crosson's career and of the community's deep appreciation for his work.

WHAT'S THE CITY TO DO?

(By Mark Griggs, Jr.)

After 23 years of helping Carrollton grow, City Manager Dudley Crosson is retiring and will now have time to do what he wants. The only thing is, he doesn't know what that is.

"Don't have anything planned," he said. "I'll wind up doing something, but I don't have anything planned."

Crosson announced his retirement, effective Sept. 30, at a City Council meeting last month. His long-time assistant, Danny Mabry, has been named as his replacement.

Former Villa Rica City Manager Bob Barr will be Mabry's assistant.

When asked this week if he would keep his hand in local government, Crosson said "I really can't say—I don't know what I'll be doing.

"I'd be willing to help them any way I could, but I can't say what I may be doing along those lines."

Crosson became city manager in 1966 and left the job in 1973 to go into banking. After serving as city manager for Douglasville for a year, he returned to Carrollton in that capacity in 1973.

He will have served a total of 23 years as Carrollton's city manager when he retires.

Among advances during Crosson's time in office, the city built a sewage treatment plant, expanded the fire and police departments, moved the police department into a new building, increased the water plant's capacity from about 1 million gallons a day to about 8 million gallons a day, West Georgia Regional Airport was built and north and south bypasses were built.

Crosson, though, said "I certainly wouldn't take any credit for it."

He said he could not say what the city's biggest accomplishment was during his tenure.

"That's hard to say. Everything we've done is important. When you build a library or something like that, its important," he said. "It would be hard for me to pick out one thing that's more important than the others."

When asked what he would miss most about the job, Crosson said "Probably just the people I've been fortunate enough to work with all these years," including people in city government and residents.

"I'll miss everything about it, but I don't know if I'll miss it enough to want to stay in it," Crosson said.

"I've enjoyed the years I've spent with the city," he said. "I think they've been mighty satisfactory, the things we've been able to accomplish."

There will be an open house at City Hall, with refreshments, from 3 to 5 p.m. Monday to honor Crosson and allow residents to tour City Hall. Monday is also his 65th birthday.

Crosson was also honored Thursday at a city employee picnic, and a roast in his honor was held Saturday night at the Ramada Inn.

Mayor Tracy Stallings, who was master of ceremonies at the roast, had this to say about Crosson when contacted last week:

"He's served with integrity, with dedication and with ability, and he has been a pioneer in the movement toward professionalization in local government in Georgia. And he's highly regarded by all of his peers and colleagues in local government throughout the state.

"He had the vision to look ahead in the future and anticipate growth and get done the things that needed to get done ... and I think he deserves credit for those, and managing the city's financial resources in a responsible manner."

And Mabry had this to say:

"I kind of view this roast as an opportunity for people in the community who have had associations with Dudley ... to get together in good natured fellowship and give Mr. Crosson an appropriate sendoff."

Mabry worked for Crosson for a total of about 10 years.

"He's kind of been a mentor to me," Mabry said. "He's afforded me every opportunity to be involved in government here in Carrollton.

"He never saw the limelight," Mabry said, but every major improvement in Carrollton over the last 25 years has had Crosson's input, and his planning helped put infrastructure in place.

"So it's been a pleasure and a privilege to work with him and I consider it one of the best learning experiences I've ever had," Mabry said.

"His mentoring and counsel to many younger members of our profession, including me, has resulted in better government in many cities and counties throughout our state.

Jack Threadgill, a retired certified public accountant who served for a while on the planning and zoning commission, is a personal friend of Crosson's and who was involved in several activities with him, also participated in the roast.

"I feel like he's had a significant influence on growth in Carrollton in his years in city government," Threadgill said.

Threadgill said Crosson thought of things others might not, like water and sewer, roads and other infrastructure improvements.

"I feel like he's always given that consideration and has given the city sound financial management," Threadgill said.

Another roaster was Toccoa City Manager Jim Calvin, a former president of the Georgia Municipal Association.

"I first met Dudley Crosson about 20 years ago when I was on the staff of the Georgia Municipal Association. Over the years I've developed a deep respect for Dudley's common sense, no nonsense approach to running government like a business," Calvin said.

"His mentoring and counsel to many younger members of our profession, including me, has resulted in better government in many cities and counties throughout our state.

"I recall many occasions when I'd ask Dudley's advice on a problem I was having. His response would usually begin with, "Son, you were dumb as hell to do it like that." This would be followed by some sage and worthy advice.

"All of us in the local government management profession will miss Dudley's wit and wisdom, and, yes, even his sarcasm."

Jim Burgess, executive director of the GMA, was also present.

"Dudley Crosson is truly a city manager's kind of city manager—the type of practical, common sense administrator that every city would like to have," Burgess said.

"He has run the city of Carrollton on a strict business basis, squeezing every cent out of every dollar to assure that Carrollton's citizens get the most for their money," he said.

"The Georgia Municipal Association sends its best wishes to Dudley Crosson on his retirement."

TRIBUTE TO HON. DANTE B. FASCELL

HON. JACK BROOKS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. BROOKS. Mr. Speaker, when the 103d Congress convenes next January, the U.S. House of Representatives will meet for the first time in 38 years without the presence of our beloved and esteemed colleague and friend, DANTE B. FASCELL of Florida.

Farewells are moments when the joy of recollection of so many good times is mixed with the sadness of the likelihood that we may not see and work with a friend and colleague as often as we have in the past. For all in this Chamber, this year brings more than its share of such moments. But among such moments this is an especially significant one, for DANTE FASCELL is an exceptionally unique and gifted public servant.

It has been my good fortune to work with DANTE FASCELL on an almost daily basis for nearly 38 years, years of triumph and tragedy for our Nation and for each of us as individuals. Through all these times—especially the

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

hard, often bitter, fights that are a part of our chosen profession—DANTE's incredible strength of character, his ebullience, his optimism, his grit and determination, his innate fairness and goodness have helped make this institution a place in which I and so many hundreds of others have been proud to serve.

The people of Florida's 19th Congressional District will miss his representation here in Washington because they have had a committed fighter who has steadfastly represented their interests on all issues of importance to south Florida.

DANTE, who ranks sixth in seniority in the House of Representatives, played a leading role in the passage of some of the most important domestic legislation in the last half of this century. Government in the sunshine, the creation of the Department of Housing and Urban Development, and congressional reform are but a few of the domestic initiatives DANTE FASCELL fought so hard for.

It was my honor and privilege to serve with DANTE FASCELL for 28 years on the House Government Operations Committee. During his tenure on that committee, DANTE served as chairman of the Legal and Monetary Affairs Subcommittee, where he compiled an outstanding record as an advocate of the people's interests. In January 1984, DANTE FASCELL resigned from the Government Operations Committee to take over the chairmanship of the House Foreign Affairs Committee.

DANTE FASCELL is recognized throughout the world as a champion of democracy and human rights. His steadfast advocacy of freedom for those who lived in the former Soviet bloc foreshadowed the fall of the Iron Curtain.

His energetic leadership of the Committee on Foreign Affairs insured Congress' active role in the formulation of U.S. foreign policy. The War Powers Act, the Inter-American Foundation, and the National Endowment for Democracy are all part of the Fascell legacy.

I will miss his wise counsel and warm friendship, but I want to wish DANTE and his lovely wife, Jeanne-Marie, all the best that life has to offer during a long and productive retirement.

At times like this it is customary to list a Member's accomplishments. DANTE's achievements are legion and I will get to them but the fundamental point I want to make first is that if not a single bill had borne his name, his presence alone would have made this a better place and our country too would have been well served.

Beyond all the concrete legacies of DANTE FASCELL's achievements lies a vast network of ways in which he has significantly improved legislation, usually in unheralded and unrecorded ways. Presidents, Speakers of the House, congressional colleagues, and scores of staff have benefited from his sage advice. But beyond that, he has enriched the lives of countless numbers of persons through thousands of acts of kindness; quiet advice given to men and women all over the Hill which have helped them craft the domestic and foreign policies of this country, deal with a family crisis, or just feel better for a friendly smile and hello.

Watching DANTE these almost four decades I have come to recognize four distinctive factors which pervade all of DANTE's work in the Congress. The first of these is a strong sense of duty. He believes that if he has the responsibility to get a job done he will get it done no matter what the obstacles. If the rules of the House, or the leadership of the House, or his own constituents or his own unerring sense of what must be done for our country tells DANTE he had a job to do, he will not rest until his responsibility has been fulfilled. This sense of duty has made him an incredibly determined person and contributed to making him one of the shrewdest and most effective legislators to be found anywhere.

A second guiding principle of DANTE's public service has been his dedication to the Constitution. Whether as the father of the War Powers Resolution or in reviewing the most innocuous of amendments the question is near off the agenda: Is it constitutional? Perhaps its the lingering curse of having become a lawyer or that sense of duty again, this time to his oath of office.

A third factor which pervades all of DANTE's work in Congress is the constant presence of another question in his mind: What is best for the country? Everyone in this Chamber has had to wrestle with such decisions, but for DANTE the question is always there in the smallest detail. If ever there has been a Member who clearly sees the big picture yet is master of every detail that Member is DANTE FASCELL. And yes, whatever is good for south Florida is what is best for the United States.

There is a fourth factor which even people who have known him for only moments recognize instantly. Call it joy or a zest for life or good humor, DANTE FASCELL enjoys people, ideas, the moment. Tragedy, defeat, betrayal seem only to strengthen rather than diminish this man's convictions about the innate goodness of life and the chance we all have to keep moving forward to build a better future.

Becoming the kind of person DANTE FASCELL is ought to be enough of an achievement for any one person but this bundle of energy or force of nature we will know as DANTE FASCELL has been busy for the last 50 years doing things. His staff know that action is his motto; he's told them thousands of times "Let's do something, even if it's wrong" Well he is done plenty and none of it is wrong.

DANTE's home is Miami, FL. When he first came to Congress he represented all of Dade County which includes Miami Beach, Hialeah and a score of suburbs of what has grown into a great metropolis. The county also contains another population center in south Dade centered around the city of Homestead and Florida City, as we in the rest of the country have come to learn in the last month as a result of the devastation of Hurricane Andrew. South Dade is an area of frame as well as the site of Homestead Air Force Base. As decades passed and new districts were drawn to accommodate Florida's growth, the part of DANTE's district in Dade shrunk to encompass the southern suburbs of Miami and the large southern part of the county. But DANTE's concern for the whole area or his vision for the future of his whole State has never lessened. DANTE also has represented another county, Monroe County, for all of his 38 years in Congress. We all know this unique area as the Florida Keys, a string of beautiful islands stretching south from the mainland toward Cuba.

DANTE FASCELL has never had Potomac fever. His heart has remained at home amid the sparkling waters, swaying palms, and biting fish of his district. Everywhere you look in south Florida you see the results of his labors. All of the infrastructure for growth and prosperity owe much to DANTE's efforts: the network of freeways; the world's largest passenger seaport; one of the world's greatest airports; and the modern bridges and roads that tie Monroe county together and to the rest of Florida. But DANTE's contributions go far beyond concrete structures. DANTE has done in Miami and in the Keys just what he has done here; he has planted ideas; stressed the need for vision; and in a thousand untraceable ways inspired others to leadership that have enriched the lives of the people of south Florida.

Economic growth and prosperity and infrastructure are all important but DANTE was one of the first in this body to recognize that the environment was vital to the future of his own community, to the lives of people and to all mankind. He began at home to help preserve and safeguard the Everglades, one of the Nation's most important natural areas. He pioneered efforts to save Florida's reefs, eventually establishing the Nation's first underwater national park, Biscayne National Park. He has acted to save endangered species such as the Florida Keys deer and to preserve the Keys unique ecology through establishment of the Florida Keys Marine Sanctuary. He has led efforts to preserve and protect important historic sites like Fort Jefferson. He has worked with local preservationists to safeguard the architectural heritage of Key West and the art deco district of Miami Beach. His efforts reached out from home toward regional and global issues. He is a leader in promoting an end to the pollution of our oceans, safeguarding marine mammals, stopping the release of ozone depleting chemicals, and establishing a global framework to evaluate and control global warming. He has prodded, pushed, and legislated to make environmental concerns a priority of U.S. foreign policy and of international development programs.

When most of us think of DANTE FASCELL, we think of foreign affairs, but before turning to his monumental achievements in that area I want to mention some noteworthy domestic achievements. DANTE and I served together for many years on the Committee on Government Operations. We had some exciting times. During his tenure on the committee DANTE was tapped by the leadership to spearhead a difficult fight to carry out one of President Johnson's major domestic priorities, the establishment of a Department of Housing and Urban Development. It was a tough fight and DANTE did it. He played a similar role in establishing the Transportation Department. As chairman of the Subcommittee on Legal and Monetary Affairs he became an expert in uncovering waste and fraud in Government spending and in finding ways in which the Government could more efficiently, and cheaply, carry out its work. He led a major effort to strengthen the Federal effort against organized crime and led efforts to streamline and improve Federal assistance for State and local policy departments. In the great fights of the 1960's to advance civil rights, his was a reasoned and moderate voice from the South which helped make possible open housing and other legal advances in the war against segregation and prejudice.

Like many before and after him DANTE's firsthand experience of war had a profound impact on him and on how he would choose to lead his life. Returning from the battlefields of North Africa and Europe, DANTE wanted to play a role in shaping the future and he has done just that.

Since DANTE first arrived in Congress in the dark early days of the cold war he has played an increasingly important role in virtually every crisis and in every important aspect of U.S. foreign policy. Long before he became chairman of the Committee on Foreign Affairs he had become a respected leader throughout the world. The chairmanship merely made him more visible here, in the real America outside the beltway.

When DANTE arrived in Washington, Miami was a small southern city with links to Cuba and the Bahamas but with only hints of the vast changes that would later make Miami in part a Latin American city, a global commercial and financial metropolis. But DANTE FASCELL knew or sensed what could happen and soon he was recognized as the House expert on the hemisphere. He was one of the first to voice concerns about the real nature of Castro and the Communist agenda he would reveal only after attaining power. He has remained a champion of Cuba's freedom for more than 30 years. It is especially fitting that in these closing days of his congressional career Congress has passed a Cuban Democracy Act.

Through the decades DANTE has focused on much more than Cuba in our own hemisphere. He was here to help launch the Inter-American Development Bank, to help shape the Alliance for Progress and all the other programs designed to alleviate poverty and spur development in the Americas. He has been a staunch supporter of efforts to strengthen the Organization of American States and the inter-American system. His voice carried enormous weight in struggles against Communist insurgences yet he never ceased trying to support a middle course for democratic reform between the compelling tyrannies of left and right.

DANTE has left two very specific institutions as a legacy to the peoples of the Americas. One is the Inter-American Foundation, a small legacy of our Government which makes grants directly to groups of poor people throughout Latin America and the Caribbean. Its focus on grassroots development was scorned by development specialists and our aid bureaucrats when DANTE first proposed the need for a new approach to dealing with the problem of poverty. Now the Inter-American Foundation is widely recognized for its pioneering work and its has inspired creation of similar institutions to deal with problems in other regions of the world. Its ideas and techniques are even being employed here at home to deal with the problems of our inner cities. A second and more recent institution inspired by DANTE is the North/South Center of the University of Miami. It is a center for research designed to promote understanding between the peoples of the Americas. But DANTE is a practical man and he is making certain that this is no ivory tower institution but one where theory will be linked to the solution of the real problems of the hemisphere.

In reviewing DANTE's achievements I am reminded of Johnny Appleseed. DANTE goes through life dropping ideas. Some he nurtures to life himself. Others are found and cared for by others and take root and grow to the credit of others. DANTE does not care about credit but he does care about the idea. Creativity and humility are not always so easily blended. When our colleague Gerald Ford became President, DANTE wrote him a letter saying that American foreign policy was ignoring the island nations of the Caribbean and that just one small step would make a big difference. From then on Presidents and Secretaries of State speak not of Latin American but of Latin America and the Caribbean. From that semantic change, and DANTE'S continual prodding, came a whole host of changes including the Caribbean Basin Initiative.

In the early 1970's DANTE FASCELL led a then-successful effort to reorient and redirect America's vast development funds into new channels to more effectively address the needs of the poorest of the poor. By the late 1980's those reforms had run out of steam and again DANTE stirred the pot pushing for a new wave of reforms even before the collapse of communism. It has been one of DANTE's greatest frustrations that he could not get the bloated air bureaucracy revitalized yet again. But DANTE while you are leaving here, we know you will not leave us alone until the job is done as I am confident it will be.

Vietnam was an agony for DANTE as it was for the Nation. He supported Johnson and he supported President Nixon, but when Nixon ordered the invasion of Cambodia, supposedly to speed the withdrawal of American troops, DANTE shared the fury of millions throughout the United States. Characteristically, FASCELL saw in what had happened a problem which he could try to fix, indeed a problem which the Constitution required him to try to fix. In DANTE's view what the President had done was not just dumb or wrong, it was unconstitutional and if it was not that then the Congress should make it illegal. He went to work quickly drafting a bill to define the respective war powers of the President and the Congress. After months of the most serious deliberation, the war powers resolution was enacted over President Nixon's veto. Years later the same concerns would lead FASCELL to insist to President Bush that legal debates aside he simply could not take America to war in the Persian Gulf without the explicit approval of Congress. Bush wisely followed that advice and Congress approved military action against Iraq.

The 38 years of DANTE FASCELL's career in Congress was during most of the cold war. DANTE played his part in all the twists and turns of that twilight struggle but characteristically he saw opportunity where others saw none. President Nixon had signed an agreement at the Conference on Security and Cooperation in Europe at Helsinki. The agreement ostensibly set up a process which would encourage progress on military, economic, and social issues between East and West. Critics saw it mostly as a mask for settling European borders in lieu of a final World War Peace Treaty. FASCELL looked at the pledges of respect for human rights as a way to legitimately allow the West to try and subvert the Soviet bloc from inside. With the support of the late Millicent Fenwick, he created the Commission on Security and Cooperation in Europe. As first Chairman of the Commission, FASCELL assured that the light of world public opinion shown on abuses of human rights and violations of political freedoms throughout the Soviet bloc. The Commission gave hope to human rights monitors behind the Iron Curtain and here at home forced administration after administration to keep the heat on the Soviets. This effort led by DANTE FASCELL was an important ingredient in the eventual collapse of the Soviet empire. Earlier in his career, FASCELL saved from extinction another important ingredient of America's strategy against communism, Radio Free Europe and Radio Liberty. It was his legislation that created the Board for International Broadcasting to bring the operation of the radios under sound and accountable management, and which secured their long-term financial stability. Now it is especially fitting that in these last few days Congress has enacted legislation introduced by DANTE FASCELL that provides aid to the democratic states which have succeeded the Soviet Union.

Arms control has been a major focus of DANTE's efforts as chairman of the Foreign Affairs Committee. He worked hard to shape our country's approach to arms control and led the fight for a comprehensive policy. His leadership has been critical in support of a wide range of arms control initiatives: Mutual reductions in strategic arms; preventing the spread of ballistic missile technology; ending the production of fissile material and controlling its disposal; furthering the end of nuclear tests; banning chemical weapons; preventing nuclear proliferation; and furthering conventional arms control in every region of the world.

Communications has always fascinated DANTE whether between two persons or two countries. He has often repeated a statement he attributes to Edward R. Murrow that the longest distance in the world is between one person's mouth and another's ear. This interest led to an interest in America's efforts to communicate with the rest of the world, both with respect to the ideological competition that was at the heart of the cold war and with regard to the revolution in communications technology that is reshaping the world economy. DANTE was among the first to fully appreciate the political impact on global affairs of the new communications technologies. He has constantly strived to make the U.S. Information Agency a full partner in foreign affairs, and been a staunch advocate of the Voice of America, Radio and TV Marti, Radio Liberty and Radio Free Europe. He has been a strong advocate of expanded exchange programs and increased language and international education in America's schools. His recognition of the importance of effective communication to diplomacy manifested itself in the creation of the U.S. Institute for Peace and in support for strengthened training in language and communications skills for American diplomats. Recognizing the importance of the technological revolution, DANTE led a successful effort to open world markets for private satellite systems and he convinced Secretary Shultz to establish a new bureau in the State Department for international telecommunications policy.

DANTE's concern for human rights was by no means limited to the Communist world. He worked closely with former Congressman Don Fraser to craft the laws which now assure human rights issues a prominent place in American foreign policy. He led a successful effort to enact a resolution heightening U.S. diplomatic concerns over torture and in these last few days he has been trying to get enacted legislation to implement the U.N. Torture Convention. Because of FASCELL's persistence a whole network of Government-funded programs now reaches across the globe to support the development of democracy. Long before President Reagan called for new U.S. efforts in this area, FASCELL came within a few votes of establishing a national institute to do what the National Endowment for Democracy and its affiliates now do.

Observers of Congress often distinguish between show horses and work horses. Usually they mean nothing complimentary when they refer to show horses, but in DANTE's case the two are applicable in the most complimentary ways. He can put on a show second to none, capturing in a phrase or a look the drama of the moment. More importantly, DANTE has never shrunk from a task most would have avoided as a thankless task or because the drudgery quotient was just too high. Perhaps the prime example of DANTE as work horse is the months he devoted to totally rewriting the Foreign Service Act to the great benefit of America's foreign policy. Similar tasks involved the Hostage Relief Act and creation of the Office of Foreign Missions designed to show unfriendly states their diplomats would receive the same courteous treatment afforded our own representatives abroad.

No list of DANTE's achievements would be complete without mentioning his support for Israel. Behind the scenes and out front he has seen a strong relationship with Israel as a cornerstone of any effective United States policy in the Middle East.

The list of DANTE FASCELL's achievements for America, at home and abroad, goes on and on. All of his achievements would not have been possible without the love and support of his family, his wife of 50 years Jeanne-Marie, and his two daughters Sandra and Toni and their families.

Tonight we honor one of the greatest legislators in the history of this body. We honor a man whose achievements far outweigh the recognition he has received. We honor a great friend, a fine human being, a great man, DANTE B. FASCELL.

DANTE B. FASCELL

HON. TOM BEVILL

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. BEVILL. Mr. Speaker, I rise to pay tribute to my good friend and colleague, DANTE FASCELL, who is retiring from the House of Representatives after serving the 19th District of Florida for 38 years.

DANTE has been one of the most distinguished and highly respected Members of Congress.

He has served his district with distinction and he has been a valuable public servant for the entire Nation.

As chairman of the Committee on Foreign Affairs, DANTE FASCELL has been a true statesman on foreign policy. He is recognized as a leader for democracy and human rights worldwide.

I have always admired DANTE FASCELL and I have enjoyed working with him over the years. He is a gentleman and a man of the highest integrity.

The Congress will miss his good works and his leadership, especially in the foreign affairs arena. But, we will not forget DANTE FASCELL. His accomplishments are part of our Nation's history and will always be remembered.

REPRESENTATIVE DANTE FASCELL

HON. WM. S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. BROOMFIELD. Mr. Speaker, it is hard to imagine a more fulfilling career than representing the people in Congress—even when you spend every year of it in the minority.

Yes, I do regret that after 36 years in Congress I never had the chance to be chairman of the Foreign Affairs Committee. But I have been fortunate enough to have served with one of the best—DANTE FASCELL.

DANTE is a "10" in anyone's book. He may not look like Bo Derek but he has been one of the most decent, thoughtful, humane committee chairmen in the history of this great institution.

Throughout the cold war, and I have been here for most of it, the Foreign Affairs Committee has been a lightning rod for any dispute in any little corner of the world. It is probably been the most contentious committee in Congress.

Yet DANTE has presided over the deliberations of this committee with dignity, with fairness, and with as much bipartisanship as you could ask of someone who long ago committed himself, body and soul, to the Democratic Party.

He has always been willing to place the national interest above the interests of his party and even his own career. It must be said, he has carried a lot of water for Republican administrations—but only when he thought that their policies were the best policies for America.

He is not a rubber stamp for any administration—Republican or Democrat. He gives every issue that comes before us a great deal of thought. You can see that in the perceptive comments he makes at the beginning of committee hearings and markups—on issues large and small.

I would like to think that his support of America's response to Saddam Hussein was his finest hour. I know personally how difficult it was for him to go against the majority of his party. I also know that he truly believed that America had no other option than to stop such blatant aggression dead in its tracks.

There may be some in DANTE's party who feel that he has been too bipartisan, that he has let Republican Members push him around. No one pushes DANTE FASCELL around.

I saw that in Moscow in the mid-1980's. DANTE and I were scheduled for a meeting with the new Soviet leader, Mikhail Gorbachev.

Just before the meeting, we were told by Soviet aides that Gorbachev would not allow our Ambassador, Arthur Hartman, to attend the meeting.

It would have been easy for DANTE, a member of the opposition party, to agree to those terms. After all, Hartman was representing a Republican President.

But DANTE put his foot down. As we stood in the anteroom in the Kremlin, you could see the grit and determination in DANTE's face. Several times the Soviet aides went into a huddle with their leader. We stood our ground.

Each time the aides came out, DANTE had the same message: no Hartman, no meeting. We wore them down. Gorby changed his mind and ended up meeting with the three of us for more than 4 hours.

In all the years I have worked with DANTE I have found him to be tough-minded, but fair. Very fair. As chairman of a committee that is potentially one of the most partisan on Capitol Hill, he has managed our business with an impartiality and a tolerance that is unsurpassed in Congress.

His spirit of bipartisanship and his sincere concern for the rights of the Republican minority have made the committee's work more enjoyable and a lot more productive.

We have flown together many times around the globe to attend international conferences and other important events. DANTE and Jeanne-Marie have been gracious hosts and, as a team, they are probably America's finest ambassadors.

It will be difficult to fill DANTE's shoes on the Foreign Affairs Committee. He is a great statesman, a warm human being, a true friend, and I will genuinely miss him.

CHAIRMAN DANTE B. FASCELL

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. HAMILTON. Mr. Speaker, I rise to join my colleagues in honoring the esteemed chairman of the Committee on Foreign Affairs, DANTE FASCELL.

It has been a pleasure for me to serve on the Committee on Foreign Affairs with Dante for 28 years. We have all learned a lot from him. DANTE can be proud of his many remarkable achievements as a tireless worker for the people of Florida, as a Member of Congress for 38 years, as a subcommittee chairman, as chairman of the Commission on Security and Cooperation in Europe and, for the last 9 years, as chairman of the Committee on Foreign Affairs.

DANTE has been an extraordinary legislator, popular with his colleagues and attentive to their interests and concerns. He has always focused on trying to achieve what was possible. He has contributed time and again to the advancement of the national interest.

DANTE has had experience in dealing with virtually every major foreign policy issue. He is a recognized expert on international communications issues. He is one of Congress' leaders and most influential voices on Latin American and Caribbean affairs. He has championed human rights and made the promotion of democracy and pluralism a high foreign policy issue.

His legislative accomplishments are impressive and the list is long. Among his most memorable legislative initiatives and achievements are:

Requiring the President to consult with Congress on actions leading to war;

Providing the Congress with review authority and procedure on major arms sales abroad;

Prohibiting discrimination in foreign commerce through the antiboycott bill;

Supporting a nuclear freeze and nuclear nonproliferation;

Writing comprehensive antiterrorism legislation;

Changing the focus of foreign aid so that it benefits the poorest people in developing countries;

Authoring the legislation establishing the Inter-American Foundation;

Playing a leading role in legislation providing economic and security assistance for Israel;

Placing and maintaining the trade embargo on Cuba;

Reorganizing and maintaining of Radio Free Europe and Radio Liberty and the United States Information Agency;

Restructuring and overhauling of the Foreign Service personnel system, and

Reviewing the effectiveness of U.S. consular services abroad. This list could go on and on.

DANTE can look back on an impressive career with a full measure of satisfaction and a sure sense of a job well done. DANTE's leadership, friendship, sense of humor and formidable energy will long be remembered and will be missed by his colleagues. These qualities have earned him enormous respect at home and abroad. We are all in his debt.

For his colleagues remaining here, the loss is the FASCELL team. Jean Marie Fascell has given so much in time and friendship to others for so many years. She has made many significant contributions to our work here. DANTE's success and his many accomplishments owe much to her.

We wish DANTE and Jean Marie well in their well-deserved retirement. I am sure that DANTE will remain active on public policy and foreign policy issues. I also hope we will continue to see them. DANTE's wise counsel and his advice will always be wanted and appreciated.

TRIBUTE TO REPRESENTATIVE DANTE FASCELL

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. LAGOMARSINO. Mr. Speaker, I am very proud to join my colleagues in paying special tribute to an outstanding Member of Congress, DANTE FASCELL of Florida.

I have been very fortunate to have served for the last 18 years in Congress and, more specifically, on the House Foreign Affairs Committee with DANTE. I have always valued his professionalism, his rationality, and his cooperative spirit in always trying to find compromises, even when such compromises seemed impossible. DANTE's success record is an impressive one. Under his stewardship as chairman, the House Foreign Affairs Committee has been a responsible, driving force in helping craft and oversee American foreign policy.

Over the years I have particularly enjoyed working with Chairman FASCELL on the arms control issue. While many a time we have disagreed about policies affecting nuclear arms reductions, chemical weapons curbs and the like, those disagreements were based on tactics, never on the strategy of supporting American national security. Whether it was on the dangerous front lines in North Africa and Italy during World War II or in presiding over the Foreign Affairs Committee in the House, DANTE FASCELL certainly deserves credit for helping keep America strong and free.

As chairman of the International Republican Institute, I am reminded daily of another great accomplishment of DANTE FASCELL, namely helping create and direct the National Endowment for Democracy. The NED embodies DANTE's leadership role in the movement to spread the fires of freedom and democracy around the globe. Recognizing that helping others help themselves achieve political liberty and economic freedom through peaceful, democratic means is a formidable weapon against communism and other forms of totalitarianism, DANTE can take pride in knowing he and the programs he has supported have been and continue to be the source of the great changes happening in Latin America, Africa, Eastern Europe, the former Soviet Union and other parts of Asia. Being able to translate a commitment and vision for democracy into constructive, successful action is a talent that DANTE FASCELL has demonstrated well.

I have a deep respect for DANTE FASCELL's responsible outlook on affairs south of our border—or perhaps looking at it from his southern Florida perspective as across the straits and Caribbean Sea. While the temptations were great, especially in the 1980's, to make the already complex and emotional debates on Central and South America even more partisan, DANTE FASCELL did not. That takes a lot of courage and responsibility. Yes, the Latin American, among other, seas upon which the ship we call the Foreign Affairs Committee sailed were rough, with an experienced captain like DANTE at the helm, the storms were successfully weathered and, in fact, great accomplishments—like peace in Nicaragua and El Salvador and the establishment of the Inter-American Foundation—were achieved.

For almost four decades, DANTE FASCELL has been a valued, effective representative of southern Florida here in the House. In addition to his impressive foreign affairs legacy he can be proud of his accomplishments on the domestic front—everything from the creation of HUD to preserving the environment of the Everglades and Florida's fragile coast. His wisdom, respect for the institution and leadership will surely be missed. Winston Churchill once said, "politics are almost as exciting as war, and quite as dangerous. In war you can only be killed once, but in politics many times." While DANTE's commitment to his country meant there was only one choice about serving in World War II, our Nation and especially this institution has benefited from DANTE's choice of getting in—and staying in—politics despite the inherent dangers described by Churchill. Thank you for your service.

I extend my very best wishes to DANTE and his better half Jeanne-Marie on a certainly well earned retirement. Good luck.

TRIBUTE TO THE HONORABLE DANTE FASCELL

HON. NEAL SMITH

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. SMITH of Iowa. I have known DANTE FASCELL since 1954 when I happen to have had the opportunity to be in the district he represents while he was running in the primary. I was impressed with the enthusiasm and the way he was able to organize others who were equally enthusiastic about his race. He has shown the same ability in all the years since I came to the Congress and he is leaving a huge legacy especially in the area of foreign affairs and more particularly his relationship with Western Hemisphere. No one has been a more effective leader in Congress with regard to the kind of activities and actions that would be helpful in cementing the relationships in this Western Hemisphere.

As chairman of the subcommittee which handles appropriations for foreign affairs, he also had an opportunity to cooperate with his foreign affairs authorizing committee in such things as the Commission on Security and Cooperation in Europe which he chaired, the National Endowment for Democracy, Inter-American Foundation, and the various activities which led up to the breaking up of the Soviet Union.

I consider him a special friend and one of the very great leaders who made a difference while I have been in Congress. Bea and I wish DANTE and Jeanne Fascell the very best.

TRIBUTE TO HON. DANTE FASCELL

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. VENTO. Mr. Speaker, I rise to recognize the tremendous service that Chairman DANTE FASCELL has accorded our Nation, serving for 38 years in the House of Representatives.

I have been pleased to serve with him for eight terms and observe his skills and talents up close. During this period, as a leading member of the Foreign Affairs Committee and finally assuming the leadership of that committee, he has demonstrated outstanding leadership. DANTE FASCELL has brought a wonderful intellect and passion to his role on the significant issues and events that have reshaped the global political maps during the past four decades. His leadership these past 10 years has been absolutely essential in avoiding a polarization within Congress when many would have pulled apart attempts at a bipartisan foreign policy. I know that my constant concerns and my colleagues' feelings about our foreign policy no doubt taxed his ability to steer a policy path that led us to the achievements and status that exist today.

Congressman FASCELL has represented his district well for nearly four decades and he did not forget from where he came. In point of fact, DANTE has a wonderful common touch with people and certainly with his fellow Members, without pretense and an intensity and sincere, natural approach with people that explains at once both his unprecedented reelection to the House an his success in working within the House and Senate. DANTE is a person comfortable and at ease with the topics, the information, and people. Congressman FASCELL radiates confidence and a can-do pragmatic approach that has spurred all of us to tackle and resolve issues that would otherwise have drifted.

I have been especially pleased in my role leading the Parks and Public Lands Subcommittee in the House to work in cooperation with DANTE FASCELLL on the Everglades and the Fort Jefferson Monument. These key park issues in Florida evoke significant concern and controversy between conflicting goals. Surely it has taken all his skills to try and steer a proper policy course. With all the tension, I have been pleased to note that DANTE has always come down on the side of conserving such resources and attempted to safeguard them for future generations.

I hope in the future years he will have good health and be able to advise the members who continue to serve in Congress and that he will be able to enjoy the wonderful environment and resources of the great State of Florida, which he has protected, from a seat on a fishing boat with good action and good company.

All the best and thanks to you and your family, DANTE. You will be missed but we will take comfort in the example you have set and the wonderful record of accomplishment you achieved.

TRIBUTE TO DANTE FASCELL

HON. ALAN WHEAT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. WHEAT. Mr. Speaker, I am proud to join in this tribute to our friend and colleague, DANTE FASCELL—a true champion of progressive change both in our country and around the world.

Although DANTE is departing the House of Representatives for a well-deserved retirement, he leaves behind a proud legacy after nearly four decades of service in the Congress.

As a proven leader in this House, DANTE left his mark on a variety of landmark initiatives that have improved countless lives both here at home and abroad.

An architect of social policy reform, DANTE led efforts to establish the Department of Housing and Urban Development [HUD] and the Department of Education.

Serving as the chairman of the House Committee on Foreign Affairs during one of the most tumultuous periods in recent world history, he also played a key role in shaping U.S. foreign policy.

Whether working to end discrimination in the United States or actively promoting human rights internationally, DANTE has been a tireless advocate for social justice.

Whether fighting to protect the Florida coastal environment or leading efforts to control the worldwide spread of military arms, DANTE has succeeded in making our country and this world a better, safer place in which to live.

I am proud to have served in Congress with DANTE FASCELL. While, technically speaking, he is retiring, I am sure that DANTE will continue to lead an active life.

I wish DANTE and his family all the best as he looks back on a long and distinguished career and looks forward to the challenges that lie ahead.

TRIBUTE TO REPRESENTATIVE DANTE FASCELL

HON. FRANK J. GUARINI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. GUARINI. Mr. Speaker, I rise to join my distinguished colleagues in paying tribute today to my good friend, a senior Member of the House, and one of our leading experts on foreign affairs—DANTE FASCELL. He has served for 38 years with distinction, dedication and leadership, making his record virtually impossible to duplicate.

DANTE has many achievements—but the one which has made us most proud as Americans is his election and tenure as chairman of the House Foreign Affairs Committee. In this capacity, DANTE has worked hard to promote freedom and democracy abroad, while at the same time protecting our own vital interests here at home. He is credited with putting in place an effective trade embargo on Cuba, bringing about the containment of nuclear arms, and controlling the sale of arms around the world. Because DANTE championed the cause of the War Powers Act, the President is now accountable to Congress if we as a nation go to war.

DANTE's efforts also contributed to the collapse of communism. While serving as Chairman of the Commission on Security and Cooperation in Europe, he helped promote democracy in what was once the Soviet Union, and the areas under its control. DANTE has always been a champion of human rights, and has fought especially hard on behalf of the people in the former Soviet bloc countries. I have no doubt that many of those citizens feel as indebted to DANTE as we do here in America.

DANTE and I have worked together for years on the Select Committee on Narcotics Abuse and Control. I saw first-hand his diligent fight to stem the flow of drugs into his home district of southern Florida. His antidrug efforts have benefitted not only his constituents—but all citizens whose communities have been invaded by drugs and crime.

I know that DANTE's vigorous leadership—both on the domestic and foreign fronts—will be sorely missed. His valuable experience will be hard to replace, and his departure will leave a void that will be extremely hard to fill.

RETIREMENT OF REPRESENTATIVE DANTE FASCELL

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Ms. PELOSI. Mr. Speaker, I rise today to join with other Members of the House in honoring our good friend and colleague, Representative DANTE FASCELL.

For 38 years, DANTE has worked diligently for the benefit of the people of Florida, the people of this Nation, and the integrity of this institution. Throughout his term of service, he has played an instrumental role in the development and passage of many of the most important bills passed by the Congress in the last half of the 20th century.

On the domestic front, among his many contributions are helping to create the Department of Housing and Urban Development and the Department of Education. He also led the successful effort to establish a national marine sanctuary to protect the fragile ecosystem of the area around the Florida Keys, preserving a national treasure for generations to enjoy.

DANTE is a tenacious fighter with a strong appreciation for the Constitution. He has worked hard and against strong odds to preserve the balance of powers by fighting for Congress' rightful role in the realm of foreign policy. DANTE is without equal in his commitment to keeping Congress involved in the foreign policy process. Without him, for example, we would not have the War Powers Act.

He has also contributed enormously to the integrity of this institution. In 1973, the Democratic Caucus adopted his amendment requiring congressional committee sessions to be open to the public, unless the members of the committee voted in public to close the session. He then moved on, successfully, to insist on the opening of House-Senate conferences. And, believing ardently that the functionings of Government by and for the people should be open to the people, he helped to pass the law to open executive agency meetings.

DANTE's passion for the democratic system has stretched well beyond the borders of this country. During his tenure in Congress, many of the major foreign policy events that will shape the 21st century world have taken place. Throughout these events, DANTE has always stood firmly for the course of action he believed would strengthen democratic movements.

DANTE's retirement will have an impact on the quality of national debate and policy. At the same time, it will have an impact on those of us continuing to serve in this institution. I will miss DANTE and wish him the best in all of his new endeavors.

HON. DANTE B. FASCELL

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. STOKES. Mr. Speaker, I want to thank the distinguished gentleman from Texas, Chairman JACK BROOKS, for reserving this time to pay tribute to our esteemed colleague and a senior Member of this body, DANTE B. FASCELL. Chairman FASCELL departs the Congress at the close of this legislative session. Today, we pause to salute a gentleman who ranks seventh in seniority in the House, and who, for the past 38 years, has represented the State of Florida and our Nation in an outstanding manner.

As we gather today, I, like my colleagues, find it difficult to sum up the legislative career and accomplishments of Chairman FASCELL. Suffice it to say that during his tenure in the House, DANTE has played a key role in the development of some of the most important legislation enacted by the Congress.

Mr. Speaker, under the chairmanship of DANTE FASCELL, the House Foreign Affairs Committee has been a major force in shaping U.S. foreign policy. He provided bipartisan leadership for the INF Treaty; measures to combat international drug trading; and for chemical and biological warfare agreements. The War Powers Act, the Inter-American Foundation, and the National Endowment for Democracy are a part of the legacy of DANTE B. FASCELL.

Chairman FASCELL is also respected and admired as a great champion of human rights around the world. Under his leadership, the Commission on Security and Cooperation in Europe which monitors compliance with the Helsinki accords, achieved international recognition and received numerous awards for its advocacy. DANTE FASCELL has also been a strong supporter of the State of Israel and he has been instrumental in changing the focus of foreign aid so that it benefits the most needy in developing countries.

Many of us are also familiar with Chairman FASCELL's diplomatic assignments. He was appointed by the President in 1969 as a member of the 24th General Assembly of the United Nations. He also served as an official congressional observer to the arms control talks in Geneva.

Mr. Speaker, when I came to Congress, DANTE FASCELL was recognized as a good leader; he was respected for his ability to be fair and nonpartisan; and he was admired by all for the level of compassion and diplomacy he brought to each assignment. More importantly, I remember that Chairman FASCELL was always available to junior Members of the House. He took the time to provide us counsel and advice, and to listen to our opinions.

I was honored years ago to serve with DANTE FASCELL on the Iran Contra panel. DANTE was vice chairman of the panel. During the extensive investigation and public hearings, I admired his dedication, leadership, and hard work. Our work also provided me an opportunity to enjoy a more personal side of a gentleman whom I consider a close friend.

Mr. Speaker, I join my colleagues today in saluting Chairman FASCELL. We extend our best wishes to his wife, Jeanne-Marie Pelot, his family. Today, we salute DANTE FASCELL and we thank him for his contributions to this body and the Nation.

CONGRESSMAN FRANK HORTON

HON. HAMILTON FISH, JR.

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. FISH. Mr. Speaker, our longtime friend and colleague, FRANK HORTON, will be retiring from the House of Representatives at the conclusion of the 102d Congress. I rise this evening in honor of FRANK HORTON, the esteemed dean of our New York delegation.

It has been a delight working with FRANK. He is one of the few Members remaining who welcomed me to my first term in the Congress. Ever since, I have been thankful for his counsel and guidance.

For 30 years, FRANK HORTON has been an outstanding asset for his New York constituency and the Nation. How fortunate that this son of Texas came North to Cornell Law School and had the wisdom to stay. I think all of us from the Empire State now consider him a native.

FRANK HORTON is first and foremost a stand up guy. There is not a devious bone in his body, no hidden personal agendas. Looking everyone straight in the eyes, as New York's dean and as ranking member of Government Operations Committee, he has been a trusted guide for men and women of fundamentally diverse ideologies and constituencies steering them toward mutual understanding and achievement.

Lasting progress in our democracy and in this body depends upon a broadening consensus. FRANK HORTON has always made the extra effort to encourage a community of purpose in our delegation and in the House, with one aim in mind—to make a better country for all our people. The list of his accomplishments is long; the Paperwork Reduction Act, his unflagging efforts for revenue sharing for which all State and local municipalities should give him thanks, his work to create the Departments of Education and Energy, his push to elevate the VA to full Cabinet status to name just a few milestones in his career. In total, his has been the work of a statesman—an Empire statesman.

I will miss FRANK and his wonderful wife, Nancy, his willingness to achieve consensus, his clarity of purpose. I will miss his quiet humor and his booming voice in the red robed New York Congressional Choir. I will miss his good judgment, manners, and fairness. We bid farewell to a wise man and friend. I wish him all the best.

A LETTER FROM THE HORTON STAFF TO HON. FRANK HORTON

HON. SHERWOOD L. BOEHLERT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. BOEHLERT. Mr. Speaker, today I would like to insert into the CONGRESSIONAL RECORD a letter to our retiring colleague, the chairman of the New York State congressional delegation, the ranking Republican on the Government Operations Committee, the ranking Republican on Post Office and Civil Service Subcommittee on Postal Operations and Services, and the ranking Republican on the Franking Commission, Congressman FRANK HORTON who is retiring after 30 years in the House.

OCTOBER 6, 1992.

DEAR CONGRESSMAN HORTON: As the 102d Congress prepares to adjourn, we the staff would like to extend to you our heartfelt thanks for the deep impression which you have made upon all of us. We have been privileged to witness the highpoints of your career, such as your chairing of the Federal Paperwork Commission; your authoring of legislation to create the Departments of Energy, Education, and Veterans Affairs; and your successful efforts to create Inspectors General for every department in the Federal Government to name just a few. We are honored to have been given the opportunity to play our part in contributing to your success.

As the Chairman of the New York Congressional Delegation and Dean of the New York State Republican Delegation, your guidance and leadership have helped to bring concerns of New York to the attention of your fellow colleagues in the Congress and to the Nation.

It would be a shame for the Congress to adjourn without letting people know of the Frank Horton that we know. Your commitment to the underdog, such as the senior citizens who experience trouble with Medicare and Social Security, the veterans who need help with their benefits, the students who want to attend the academies, or the farmers who have lost their crops make us proud to work for you. The list of the people, organizations, and groups which you have helped is as long as your distinguished career.

Indeed, as we have travelled throughout your District and in Washington, there is not a place that we can go that someone will not say how fortunate we are to work for such a wonderful Congressman. We agree.

As the final hour comes to a close and you cast your last vote in the 102d Congress, we hope you will know of our deep gratitude. On behalf of your personal staff in the 29th Congressional District of New York—Dolores Rose, Mary Pat Fitzgerald, Sheila Barker, Lois Almeter, Vivien Norman, Shirley McGrath, Art Kelly, and Hymie Klionsky; as well as from your personal staff in Washington, D.C.—Don Upson, James Ballentine, Bobby Shillinger, Elsie Anderson, Kathy Besser, Fay Maroulis, Lynda Dorman, Dan Moll, Phil Boyle, Jeff Kellmanson, and many others, we thank you very much for the high experience and the wonderful memories of working with a legend in the Congress. Thank you for the great adventure you allowed the members of your staff to share.

With deepest affection to you and Nancy from all of us,

Sincerely,

RUBY G. MOY,
Chief of Staff/Administrative Assistant.

TRIBUTE TO HON. FRANK HORTON ON THE OCCASION OF HIS RETIREMENT FROM THE HOUSE OF REPRESENTATIVES

HON. MICHAEL R. McNULTY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. McNULTY. Mr. Speaker, with the conclusion of the 102d Congress, we will lose one of our most illustrious Members when my friend and colleague, the Honorable FRANK HORTON, retires from the House of Representatives.

For 38 years, FRANK HORTON has served this House with distinction. As one who saw active service in World War II, he has always promoted the well-being of all veterans. A proud New Yorker—and a proud American—he has always sought to improve our relations with other nations.

I have the honor of serving with FRANK on the House Committee on Post Office and Civil Service and, of course, we work together as Members of the New York delegation, where he is the dean of our bipartisan delegation.

As a junior Member of the House, I am especially grateful for the friendship, support and guidance FRANK has extended to me over the last 4 years.

I shall miss him—as we all shall miss him in this House. I wish him well in all he undertakes. I know he will continue to serve the best interests of New York State and the United States of America in all his future endeavors.

I wish FRANK and Nancy all the best during the years ahead—they deserve it.

THE HON. FRANK HORTON

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. GILMAN. Mr. Speaker, I rise to join my colleagues in paying tribute to an outstanding Member of this body, one who will be sorely missed when the 103d Congress convenes in January. For those of us in the New York delegation, as well as for many other Members of this body from throughout the Nation, FRANK HORTON of New York has been an outstanding leader, a warm friend, and an exemplary legislator. He will be sorely missed.

FRANK HORTON first came to Congress 30 years ago, in 1962, during the era when John F. Kennedy was in the White House, Nelson Rockefeller was our Governor, and Jacob Javits and Kenneth Keating were our Senators. Throughout his 30 years in the House, FRANK HORTON always personified the standards of public service which that generation of leaders had set.

FRANK HORTON came to Congress in an era when the United States was united in its concern for the cold war, but differed in our view of how this international threat should best be met. It was also an era when, due in great part to this international tension, extremists of both the right and left clammored for reactionary or radical agendas which would have altered our American form of Government and which offered tempting opportunities to demagogues and opportunists. FRANK HORTON will always be remembered because he resisted extremes of both right and left, and instead guided his entire career by common sense, pragmatism, respect for the other person's point of view, compromise and—above all—a deep, abiding, and sincere patriotism.

Throughout his 30 years of service in this body, FRANK HORTON was consistent in his passion for increasing the efficiency and the accountability of our Federal bureaucracy. One of his proudest moments was the report of the Horton Commission, in the mid 1970's, which he chaired. This Commission found a "profusion of inconsistent and often conflicting laws, policies and practices" in our Federal Government, and its final report led directly to the passage of the Paperwork Reduction Act of 1980, legislation authored and steered through the Congress by FRANK HORTON.

Mr. Chairman, I have had the distinct pleasure of serving with FRANK HORTON not only as a part of our New York delegation caucus, but also as a member of the House Post Office and Civil Service Committee. I never cease to be impressed by FRANK's grasp of bureaucratic issues, his understanding of the need to cut back on needless duplication and paperwork, and his ability to see clearly solutions to our problems which seem to elude others. Two causes of FRANK's on our committee which are especially worthy of note are his efforts to have the Postal Service taken off of the Federal budget in order to insulate it from across-the-board spending cuts, and his tireless efforts to bring about long-overdue reform of the Hatch Act. While FRANK was successful in the first of these goals, he leaves this body without the second goal being achieved. It will certainly be a fitting memorial to FRANK and a tribute to the firm foundation he has planted if indeed Hatch Act reform is achieved in the next few years.

In recent years, FRANK HORTON's achievements have become even more numerous and even more impressive. It is FRANK HORTON who led the fight to place inspectors general in the various departments of the executive branch. FRANK often told us that these inspectors general have saved the taxpayers over $120 billion since he first succeeded in getting them appointed.

FRANK HORTON was also a leader in our successful efforts to have the Veterans' Affairs Administration raised to a Department with Cabinet-level status. Himself an Army veteran of World War II, FRANK certainly was prophetic in recognizing the need for this Cabinet-level agency at a time when our World War II veterans are just coming to the age when they are in need of long-term and nursing health care. The veterans of all our services knew perfectly well that they have had a firm and fast friend in FRANK HORTON.

The other items which were listed high on FRANK's agenda of priorities are problems which we in America all know we must confront, and FRANK HORTON was out in front on all of them: The need to address the problems of our global environment, underscored by FRANK's efforts to create a Cabinet-level Department of Environment; the need for fiscal restraints in our governmental practices to whittle down the Government deficit; the need to maintain a strong national defense including the need to continue SDI research and the need to stand up to aggression in the Persian Gulf and in other trouble spots throughout the world; the need to remember and reinforce the promise of our Declaration of Independence and Constitution for equality and civil rights for all; and many many challenges which we in Congress in general and in the New York delegation in particular were proud to follow FRANK's leadership.

For the past 15 elections, the people of FRANK HORTON's district kept returning him to the Congress by extremely impressive majorities. The region which sent FRANK HORTON to Congress and kept sending him back over and over is the Rochester, NY, area—an area always known for believing in common sense principles in conducting our Government and an area which richly earned a reputation before and during the Civil War as one of the strongest to condemn slavery and demand equal rights for all Americans. This part of New York State never forgot this heritage, and FRANK HORTON was always an exemplary representative of it.

In fact, FRANK served for many years as a member of the Rochester City Council after he returned from service in World War II and while he was a successful practicing attorney.

While we in the House admit readily that we will sorely miss FRANK HORTON, we must also grudgingly admit that he has certainly earned his retirement. While we know there is not doubt that his district would certainly have returned him to us, FRANK felt the time had come to spend more time with his wife Nancy, their four children, and their many loved ones.

Mr. Speaker, I invite our colleagues to join with us in wishing FRANK HORTON and his family the best of luck in coming years, and want to remind them that they will always have a welcome home here in the House of Representatives. FRANK HORTON may be leaving us, but his heart has touched all of our lives and his gracious spirit will remain even after he is gone.

IN HONOR OF HON. FRANK HORTON

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. RANGEL. Mr. Speaker, I rise to honor my long time colleague and dear friend, FRANK HORTON. I can think of no one in our delegation over the time that I have served with FRANK who represented his own district in Rochester, but the entire Empire State from Montauk Point to Niagara Falls. Like in many States, in New York there are differences between those upstate and those downstate. FRANK HORTON in years in this body never let those differences get in the way of serving all New Yorkers.

I am particularly mindful of the role that FRANK played in the financial crisis that New York City experienced in the 1970's. He realized that the city's crisis was the crisis for all

New Yorkers and played a major role in securing the support the State and the city needed from Congress. Through, Members such as Frank other Members of the House came to recognize New York was more than just a group of loud left leaning Members. Through his leadership members came to recognize that what was happening to New York City could easily happen in their city and State, and, indeed, unfortunately has.

After Congress came to the rescue, and may I remind my colleague paid back every cent of the funds advanced, FRANK and I tried to think of some way that New York could say thank you. Along with several of New York's major corporations and labor organizations we developed the New York Festival. This biennial event was an immediate success as has become a tradition for Members to have a good time with the State's leading corporations and labor groups as the hosts. Its success is in large part to the effort FRANK has put into the event.

FRANK HORTON is not a Member that you can pigeon hole. He is a Member who votes his conscience. If we look at his record one only sees the consistency of what is good for the people of western New York, New York State, and the Nation.

Among the friendliest Members of this body, it is impossible for me to remember any time FRANK was anything but genial and courteous.

This House on both sides of the aisle will miss FRANK HORTON as will New York.

REPRESENTATIVE FRANK HORTON

HON. WM. S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. BROOMFIELD. Mr. Speaker, our distinguished minority leader, BOB MICHEL, and I share a distinction that I am sure most legislators would not care to have: we have both served for 36 years in a Congress dominated by the other party.

That is something that has never happened before in the history of this Nation, and it is something that I hope never happens again—to the Republican Party, at least.

One of our fellow Republican Members, FRANK HORTON, has served almost that long in the minority. He knows how hard it is to make a significant impact in Congress when you do not have the votes either in committee or on the floor.

Despite that handicap, FRANK has been responsible for legislation that will affect the way the business of Government is conducted for years to come.

Because of his efforts on several landmark pieces of legislation, the Federal Government will be more efficient and more accountable to the American people.

These are not the kinds of bills that grab the headlines. They are mostly about the processes of Government. Yet long after today's front page crises are history, the quiet institutional reforms that FRANK has sponsored will have a profound effect on what kind of Government will serve the American people.

FRANK can be proud of a distinguished legislative career. One reason that he is such an effective legislator is that he has always had an ability to work with others. As the ranking Republican on the Government Operations Committee, he has their respect and affection of Members on both sides of the aisle.

FRANK and I have been very close friends over the years. We have walked together to the Capitol and back again to our offices in Rayburn for many thousands of rollcalls. He has been a good sounding board for many of my ideas and a good listener to many of my frustrations, and I hope I have been the same for him.

We have spend many an hour together on the House floor, listening to debates, recalling old days, wondering what the House is coming to, and just talking about things, great and small, that old friends talk about.

He and his wife Nancy have traveled on occasion to interparliamentary conferences with my wife Jane and I. FRANK has always worked hard at those meetings, and he has made a lot of friends for America. Yet the Hortons have always had time to take in the sights and share a meal with us, and their good company has made these trips a lot more enjoyable.

FRANK is not only a good friend but also a fellow Mason, and we both have been given the honor of being awarded the 33d degree as members of the northern Masonic jurisdiction of the United States of America.

He is an honest, decent, thoughtful human being. And he is one of the hardest working men I know—so much so that he is not retiring from Congress, but rather heading out in search of new ways to make a contribution to the country he loves.

I do not know where this search will lead him, but I would like to extend best wishes to both FRANK and Nancy and let them know that we will certainly miss them.

FRANK HORTON

HON. DEAN A. GALLO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. GALLO. Mr. Speaker, I want to join with my colleagues today to recognize the significant accomplishments of an esteemed Member of this body for 30 years, the gentleman from New York [Mr. HORTON].

As the ranking Republican on the Government Operations Committee, FRANK HORTON fought to cut bureaucratic redtape and to increase Government accountability. In his years in this body, he has been a man of integrity, a man willing to vote his conscience—apart from partisanship.

For years, I have had the privilege of working with Mr. HORTON through the Northeast-Midwest Congressional Coalition. The distinguished gentleman from New York has accomplished much in this endeavor, and all of us in the coalition are especially thankful for his efforts over the years.

Like myself, Mr. HORTON cares for the preservation of the environment. For the last few years, we have been working to create a Department of the Environment to ensure a clean world through education and compliance. His departure will leave a void in our continuing fight for this and other environmental measures.

Mr. Speaker, I want to take this opportunity to thank our colleagues, Mr. FISH and Mr. SCHEUER from New York, for organizing this special order.

I join with my colleagues on both sides of the aisle in recognizing the many accomplishments of the dean of the New York delegation, FRANK HORTON, and I wish him all the best in the future.

TRIBUTE TO HON. FRANK HORTON

HON. BILL GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. GREEN of New York. Mr. Speaker, I rise today to pay tribute to my colleague and the dean of the New York delegation, FRANK HORTON, who is retiring at the end of this Congress.

Our colleague from New York has been a wonderful leader and a good friend. We have worked together on numerous issues of importance to the State of New York and to our Nation. The gentleman from New York exemplifies what public service and integrity are all about.

The gentleman from New York has been a strong and consistent voice within the progressive wing of the Republican Party. I believe that the progressive Republican tradition for which he has stood—fiscal responsibility combined with compassion for those who need a helping hand—continues to define the path our Nation must take.

On a personal note, I extend my sincerest appreciation to my colleague from New York, who, in his role as a member of the executive committee of the Republican Committee on Committees, sponsored my successful effort to be assigned to the Appropriations Committee in 1981. That assignment has greatly enhanced my career in the House and has allowed me to do the work that I love.

I wish FRANK all the best in his retirement. He will be missed by all of us.

A TRIBUTE TO CONGRESSMAN FRANK HORTON

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mrs. MORELLA. Mr. Speaker, I pay tribute to a colleague and friend, Congressman FRANK HORTON, who is retiring at the end of the 102d Congress. As the dean of the New York delegation. Congressman HORTON has a long and illustrious record of accomplishments. Those of us who have worked closely with him will miss his efficient and affable leadership.

As ranking Republican on the Government Operations Committee, Congressman HORTON has worked toward improving the accountability of the executive branch and improving the efficiency of the entire government. The Whistleblower Protection Act and the Paperwork Reduction Act are the result of the countless hours he spent promoting fairness for Federal workers who expose waste and fraud and promoting recommendations for policymakers to contain paperwork costs. Congressman HORTON has also worked to place inspectors general in Federal agencies to rid them of waste.

I have had the pleasure of being a colleague of Congressman HORTON on the Post Office and Civil Service Committee, where I have appreciated his incisive intelligence, his ability to achieve results and his gentle humor. He has been a mentor and a friend.

As an experienced legislator, leader and friend, Congressman FRANK HORTON will be missed. I regret that the people of New York and this Nation will no longer have the benefit of his experience. I offer him my best wishes for success with his future plans.

TRIBUTE TO FRANK HORTON

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. DINGELL. Mr. Speaker, the U.S. House of Representatives is losing one of its most remarkable Members this year. He is a role model of what a Member of Congress should be—to his constituents, this institution, and to public service.

In his 29 years in Congress, FRANK HORTON has established a reputation as one of the hardest working Members of this body. Party labels mean very little to FRANK. In fact, he has bridged the gap between partisans more times than I can count. His low key and reasoned approach to problems has made FRANK the consummate legislative repairman. But FRANK has lots of practice in banging on the pipes of Government through his leadership on the minority side of the Government Operations Committee. His work with GAO in looking into waste fraud and abuse, within Government, and protecting the public from contaminated imported wine, fruits and vegetables is noteworthy.

One of FRANK's great accomplishments is helping to create the Northeast-Midwest Congressional Coalition, and his tireless efforts for well over a decade to create programs to stimulate industrial growth in the Midwest. Under his leadership the coalition has been successful in improving Federal aid formulas for community development block grants and food stamps. And I can tell my colleagues that the State of Michigan has provided the coalition with clean and convincing evidence that the industrial Midwest has taken a beating for many years. FRANK HORTON has also established his prominence by this hard work on the Commission on Federal Paperwork. FRANK HORTON's fair and nonpartisan approach to these problems has won the respect and admiration from both sides of the aisle.

FRANK HORTON's versatility is also evidenced by his active participation in the Environmental and Energy Study Conference, a task force on aging, the United States-Canada Interparliamentary Group, the Congressional Travel and Tourism Caucus, the House-Auto Task Force, the North Atlantic Assembly and the Commission on Congressional Mailing Standards.

I will miss FRANK HORTON. His contributions to this body and to society will always be remembered and he will always be my friend.

A TRIBUTE TO HON. FRANK HORTON

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. CLAY. Mr. Speaker, I want to use this occasion to pay a special tribute to my friend and respected colleague, FRANK HORTON, who has announced his retirement from Congress. In carving out a distinguished congressional career which has spanned four decades, FRANK operated on the basic premise that this great institution functioned most efficiently and most effectively when programs, policies and decisions were the products of constructive bipartisanship.

FRANK's congressional activities on the floor and in the committees on which he served reflected his legal training and background. His decisions were based upon his personal evaluation of the evidence. Never a naysayer, he does know when to say no, and he certainly knows how and when to say yes.

In announcing his retirement, FRANK, with characteristic candor, summed up his political philosophy this way: "Working with chairmen, ranking members, members of the committee, this is the way to get legislation through, and this is to the benefit of the people."

As chairman and a longtime member of the Post Office and Civil Service Committee, I know FRANK practices what he preaches. He has been elbow to elbow with me in the trenches in our long fight to reform the Hatch Act and provide our dedicated work force with genuine political freedom. Whenever I sought volunteers to begin the legislative fight on Hatch Act reform, FRANK always was the first to sign up. In the early hours of the current Congress, FRANK joined with me in introducing H.R. 20, the latest attempt to reform the Hatch Act.

FRANK is no Johnny-come-lately in taking a stand to improve the workplace and personnel practices for Federal employees. As a senior member of the Post Office and Civil Service Committee, FRANK fought long and hard for the enactment of the Federal Employees Pay Comparability Act which was signed into law on November 5, 1990. For FRANK, it was the right thing to do, and he has been doing the right thing on behalf of the Federal work force for years before he brought his multiple talents to the Post Office and Civil Service Committee.

As committee chairman, I like to dwell on FRANK's accomplishments on our panel where he is the ranking minority member on the Postal Operations and Services Subcommittee and a member of the Human Resources Subcommittee. On the Postal Subcommittee, he has a well deserved reputation as an expert on postal affairs and a champion of postal employees rights. He consistently has been a stalwart on civil service issues.

While FRANK undoubtedly is one of the star performers on our committee, I would be doing him a disservice if I failed to mention he is the ranking minority member on the Government Operations Committee. It was from his position on that committee that he launched one of his major accomplishments—legislation creating inspectors general in the major departments and agencies.

FRANK HORTON has served with distinction under five speakers of this body and under seven Presidents. He is especially proud of the fact that he is chairman of the New York congressional delegation, despite the fact he is among its minority members. To me, that is a demonstration of FRANK's ability to get along with people and solve problems.

FRANK has mentioned how much he has enjoyed his 30 years of service in this body. I, for one, have enjoyed every moment I have worked with him. I am going to miss him, our committee will miss him, as will all Members of the House.

I join with all Members of this House in wishing FRANK and his wonderful wife, Nancy, every happiness in the years ahead. I am looking forward to continuing our friendship.

HONORING FRANK HORTON

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. LAFALCE. Mr. Speaker, it is my great pleasure to participate in this special tribute to FRANK HORTON, a friend, a long-time colleague, and a fellow western New Yorker.

This is FRANK HORTON's 15th term in Congress, which means that when I first took my seat here in Congress in January of 1975, FRANK had already been serving in this House for 12 years. Thus, from the very outset of my tenure here in Congress, FRANK was a person I looked to for his judgment and experience. And that has not changed at all in the last 18 years in which I have been privileged to serve with him.

Others here today can better attest to FRANK's work on the Government Operations Committee, where he is the ranking Republican, and on the Post Office and Civil Service, where he presently served as the ranking minority member of the Subcommittee on Postal Operations and Services.

But, as a fellow western New Yorker, I can certainly attest to what FRANK HORTON has meant to the people he has represented over these past 30 years. FRANK has always been a conscientious, dedicated and able public servant. Whether it was adding acreage to the Green Mountain National Forest, leading the fight to protect New York State wine producers, or looking after the interests of Rochester, FRANK HORTON has always been there when the people of his district needed him. And because of his effectiveness and commitment, the voters of his district always returned him to office by large margins on election day.

But FRANK's leadership has extended far beyond the confines of his district. He has done a great job here in this House for all of western New York and, indeed, all of New York

State, especially since he became dean of the New York delegation, a rare honor for a Member of a minority party.

As someone who represents a considerable portion of Rochester, I can say with great confidence that the people of Greater Rochester and all New York State are losing a true friend and champion with his retirement. And I can also say, as someone who has served in this House for 18 years, that he certainly will be missed by his colleagues in this House. And we all wish him the very best.

TRIBUTE TO REPRESENTATIVE FRANK HORTON

HON. FRANK J. GUARINI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. GUARINI. Mr. Speaker, there are many of us leaving Congress this year—but few have served with as much distinction as my esteemed colleague and good friend from New York—FRANK HORTON. FRANK is leaving us after serving in the House for 30 years. He has been one of the most active Members I know.

After fighting for our country in World War II, FRANK decided to continue serving our country as a civilian. He was elected to the 88th Congress in 1962, and has been reelected to every Congress since then.

In 1973, FRANK was elected as the ranking Republican on the Committee on Government Operations. He has held this position ever since. He is also the ranking Republican on the Government Operations Subcommittee on Legislation and National Security.

The Government Operations Committee can claim a number of significant achievements under FRANK's tenure. To name a few, inspector general offices were established in all Federal departments, and have saved these agencies billions of dollars. The General Revenue Sharing Program was reauthorized, and provided up to $6 billion a year to support local and State governments.

FRANK also served as chairman of the Commission on Federal Paperwork, which resulted in changes that cut costs by $3.5 billion annually.

In 1986, FRANK asked the General Accounting Office to investigate reports that certain imported wine and fruit had been contaminated. These investigations proved critical to the health and safety of our Nation's consumers. Wine that was contaminated with a fatal substance known as DEG was removed from the shelves, and imported produce that had been treated with dangerous pesticides was inspected more thoroughly.

As cofounder and cochair of the Northeast-Midwest Congressional Coalition, FRANK worked diligently to stimulate industry and improve education. The coalition succeeded in redirecting $349 million into education for disadvantaged children. On behalf of our Nation's youth, I would like to thank him especially for giving children opportunities they might not otherwise have.

FRANK and I have become close friends over the years. Our country will miss his wise leadership, his constituents will miss his attention to their needs, and this entire body will miss his dedication and commitment to solving the problems of our country. I wish him well, and I look forward to our continued friendship. I know from past experience that he will be a tremendous success at whatever he pursues.

FRANK—you are one of a kind, and the House will shine less without you.

TRIBUTE TO HON. FRANK HORTON

HON. JAMES T. WALSH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. WALSH. Mr. Speaker, It is with great personal pleasure that I rise today to join my colleagues in a well deserved tribute to the dean of our delegation, Congressman FRANK HORTON.

Words can not describe the respect and admiration I have for this gentleman. When I first came to Congress in 1989, FRANK HORTON went out of his way to make me feel welcome. He assisted me in obtaining the committee assignment I desired and made himself available to the many questions this new Member had about the workings of the House. One could not have had a better friend.

Not many people know of the hectic schedule FRANK maintained around here. He arrives at work daily, promptly at 6:22 a.m., to get a head start on his mail. Before most of us arise for the day FRANK is already hard at work.

During his great career in the House FRANK HORTON has seen everything from the Great Society programs, to Vietnam, Watergate, the Reagan era, and the end of the cold war. Thirty years of distinguished service to his country.

As my neighbor in the next congressional district I have seen firsthand the hard work FRANK provided the constituents he served. He held town meetings and walked the streets of the communities on a regular basis. It is no wonder he was continually returned to this body by overwhelming margins. The people he represented knew of his dedication to their interests.

Mr. Speaker, in closing I'd like to extend my best wishes to FRANK, his wife Nancy and also to his very dedicated staff. FRANK, may your retirement years be filled with good health and happiness.

HONORING FRANK HORTON

HON. AMO HOUGHTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. HOUGHTON. Mr. Speaker, this is a hard year for the House. We are losing some of our ablest Members. Perhaps my own State—New York—is the hardest hit. Our delegation will lose 182 years of congressional experience come January.

FRANK HORTON is one of the New York Members who has decided to retire, and one whose value I know firsthand. As the dean of the New York delegation, he helped me settle in when I arrived in 1986. And now, thanks to the quirks of redistricting, a piece of his district has been attached to the area I represent.

In Washington, we all know his record. Thirty years of service to the Congress and the country. FRANK's legislative record is proof positive of his commitment to good government.

Thanks to the new district lines, however, I've also gotten to know about his work back home. In introducing myself to the people and communities FRANK represents, I've heard directly about the work FRANK's done for them. Most of it isn't flashy. It doesn't grab headlines. But it means everything to the people involved. FRANK HORTON has been the best sort of Representative for them, and that really says it all.

Washington will miss FRANK HORTON. Western New York will miss him even more.

TRIBUTE TO HON. FRANK HORTON

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. PANETTA. Mr. Speaker, I would like to join the tribute to my esteemed colleague, FRANK HORTON. I am honored to have had the opportunity to work with FRANK in this body for the past 15 years. FRANK and I have had our differences, but I have always respected his integrity and leadership on the Government Operations Committee and in the New York delegation over the last 30 years. FRANK's record of exemplary service to the people of the State of New York and this Nation stands as a reminder to the Members of this body of what can be accomplished through perseverance and dedication to the public good.

FRANK is an example of the kind of Congressman who can overcome partisan differences, who can keep his eyes on the interests and aspirations of his constituents, and play a truly constructive role in the Congress year after year. He has contributed to the works of this Congress for many years, and I am pleased to be able to offer my own tribute to his service. FRANK, I have enjoyed working with you, and I wish you and your family the very best as you embark on a fulfilling retirement.

TRIBUTE TO FRANK HORTON

HON. RALPH REGULA

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. REGULA. Mr. Speaker, I am pleased to join a Special Order for my colleague and friend from New York, FRANK HORTON. FRANK has been a first-class Member of this body.

His thoughtful, responsible leadership has served his constituents well while always recognizing the national interest.

During my first term, I had the privilege of serving with FRANK on the Government Operations Committee. I will always remember the wise counsel and hand of friendship he extended to me as a freshman Member of the Congress and the committee.

FRANK leaves this body with the respect of his colleagues and with the goodwill of many friends.

Mary joins me in wishing FRANK and Nancy good health and a life with new challenges.

TRIBUTE TO FRANK HORTON

HON. WILLIAM F. CLINGER, JR.

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. CLINGER. Mr. Speaker, when a man like FRANK HORTON decides to retire from the House of Representatives it creates a void that will be extremely tough to fill. FRANK HORTON has served here with great distinction for 30 years. That kind of knowledge, of institutional memory is priceless.

It has been my great privilege to serve on the Government Operations Committee with FRANK for the past 12 years. As the ranking member of what can be a committee where partisanship often rears its head, FRANK has demonstrated uncommon skill. The job requires many different qualities, sometimes the tact of a diplomat, at others the stubbornness of a mule, or the patience of Job. FRANK has them all in addition to a keen intelligence and a helpful sense of humor.

I owe Congressman HORTON a great deal. He has been a wonderful teacher and a good friend. Much of whatever I know about being an effective legislator I have learned from him, starting with the need for hard work. FRANK sets an example for all of us in the hard work department and, in a committee with as broad and diverse a jurisdiction as Government Operations, it means longer hours and lots of homework.

The legacy of significant legislation that FRANK HORTON has played a major role in drafting and shepherding to enactment is long and distinguished. He was a principle author of the landmark Paperwork Reduction Act. He was the driving force behind the Chief Financial Officer Act of 1990 and joined with then Chairman JACK BROOKS to author and enact the Inspector General Act of 1978, and these are just a few of his legislative accomplishments.

And FRANK HORTON is an uncommonly civil person—a southern gentleman from upstate New York by way of Louisiana. He is always an unfailingly courteous and thoughtful colleague. I will miss his wise counsel and warm friendship next year and wish FRANK and Nancy all the best for the future. They deserve nothing less.

HONORING FRANK HORTON

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mrs. SCHROEDER. Mr. Speaker, one of the most distinguished Members to ever serve in this body, FRANK HORTON, is retiring. The House of Representatives and the people of New York are losing a great Congressman, and I am losing a dear friend.

FRANK HORTON represents the best of this institution and he sets a standard that we all should shoot for. His accomplishments are a result of his genuine effort to make life better for the working man and woman. He is so practical and so sincere that you cannot help but work with him in his efforts.

I know this first hand. I have served with FRANK HORTON on the Post Office and Civil Service Committee since 1985. It has been a pleasure and an honor to work with FRANK. Together, we hammered out the Federal Employee's Whistleblower Protection Act, which drastically improved the protections for Federal employees who expose waste and fraud in the workplace. There were times when I was sure we would never pass this important law, but FRANK HORTON never gave up. If it were not for his ability to work with everyone on both sides of the issue, we would have failed.

He has an impressive record. Besides the Whistleblower Protection Act, he enacted the Paperwork Reduction Act, the Chief Financial Officer Act, and the law establishing inspectors general in Federal agencies. Federal employees all across the country know his name. He has fought for them when it was unpopular to do so. He has made the Government more efficient, less costly, and a better place to work.

I will miss FRANK HORTON. I suspect, however, that Mr. HORTON will enjoy his time away from this Chamber. We may even find him lounging at a baseball game. He certainly deserves some time off. FRANK HORTON has been an MVP in Congress for 30 years.

You have made a difference in our lives and the lives of millions of Americans, and we wish you well.

CONGRESSMAN FRANK HORTON

HON. JAMES H. (JIMMY) QUILLEN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. QUILLEN. Mr. Speaker, it is with deep sadness and profound dismay that I rise tonight to bid farewell to my very close and personal friend, the dean of the New York State congressional delegation, FRANK HORTON.

FRANK HORTON and I were sworn together on January 3, 1963, as freshman Members of the 88th Congress. Prior to that, he had served his country with pride as an Army officer during the Second World War. He later went on to a flourishing career as a lawyer and a Rochester city councilman before winning his House seat.

As Congressman, FRANK's service to his constituents has been unequalled, as has his service to the Nation as a whole. He has kept an eye on the dangerous growth of Government power during his 20 years as vice chairman of the House Government Operations Committee. His personal crusade to cut Federal Government paperwork and redtape has made life easier for millions of Americans.

Although FRANK is leaving this institution which he has served so well, I look forward to keeping in contact with him and his family in the future. Without his expertise and guidance, this body will not be the same. FRANK HORTON leaves the House with all my best wishes, and I count myself privileged to have been his colleague and his friend.

TRIBUTE TO HON. FRANK HORTON

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. CRANE. Mr. Speaker, after three decades of service in this Chamber, FRANK HORTON of New York, is stepping down to take a deserved rest. Like many other colleagues, FRANK will retire at the end of this 102d Congress. This native of Cuero, TX, has served the Rochester, NY, area since his election in 1962.

FRANK leaves here as the ranking member of the important House Government Operations Committee, an investigative unit of the House of Representatives. He has a well known record of working well with Democratic chairmen of the committee to ease the flow of the committee's work.

FRANK was a leader in gaining revenue sharing for the Nation's cities, and worked hard to see that Federal funds were distributed to older cities in the Nation's Northeast and Midwest areas.

He was a leader in having inspectors generals named to Federal agencies.

FRANK served his Nation during World War II in the Army. He went on active duty before Pearl Harbor in 1941 as a second lieutenant, and was released to inactive duty as a major in 1945 after seeing duty in North Africa and Italy.

FRANK HORTON has served his Nation in war and peace. He leaves behind him a record to be proud of. He will be missed by all of us.

HONORING FRANK HORTON

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. STOKES. Mr. Speaker, I want to thank my colleagues, the gentlemen from New York, Mr. FISH and Mr. SCHEUER, for reserving this time for us to pay tribute to our colleague and good friend, FRANK HORTON. The distinguished dean of the New York delegation departs the Congress following 30 years of exemplary service. I am honored to participate in this special order recognizing his contributions to the Congress and the Nation.

FRANK HORTON came to this institution in 1962. Many of us are familiar with FRANK's legislative accomplishments here in this body. We have admired his work as vice chairman on the Government Operations Committee and the Subcommittee on Legislation and National Security. Many of us have also noted his efforts as the ranking minority member on the Post Office and Civil Service Subcommittee on Postal Operations and Services, and as a member of the Subcommittee on Human Resources.

Mr. Speaker, we have worked closely with FRANK HORTON on the Northeast-Midwest Congressional Coalition. FRANK is the cochairman and cofounder of this group which monitors legislation and develops initiatives to stimulate industrial growth in the region. Due to his leadership, the organization has successfully improved Federal aid formulas for community development block grants and food stamps. The organization has also fought to ensure that the Northeast-Midwest region receives additional funding for elementary and secondary education.

In addition to his committee assignments, FRANK HORTON has played a key leadership role in the Congress. He serves as the New York representative on the House Republican Committee on Committees. This panel recommends committee assignments for all Republican Members of this body. In addition, he meets with other Members of the Republican leadership on a regular basis to discuss policy and legislative issues.

Mr. Speaker, I am pleased to participate in this special order because it allows us to reflect upon our friendship with the distinguished gentleman from New York over the years. He sits across this aisle from some of us, but he has been a good friend to all of us gathered here today. I am going to miss our frequent conversations standing at the doorway of the Chamber at the first voting station. Indeed, this little corner that he, CHARLIE RANGEL, BILL CLAY and I carved out for our frequent conversations will never be the same.

I will also miss FRANK HORTON's avid interest and extensive knowledge of baseball history. We spent many hours discussing the games and its greatest players. I am proud to inform my colleagues that in just a few weeks, a postal facility in my congressional district will bear the name of one of baseball's greatest legends, Luke Easter. This could not have been accomplished without the strong efforts and commitment of FRANK HORTON. I look forward to seeing him in Cleveland for the dedication.

Mr. Speaker, as he leaves this Chamber, each of us are saddened to bid farewell to a great friend, a respected colleague and an outstanding legislator. The 29th District of New York and the Nation has benefited from his service. I join my colleagues in wishing FRANK, his lovely wife, Nancy, and his family well.

A TRIBUTE TO CONGRESSMAN FRANK HORTON

HON. FRANK ANNUNZIO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. ANNUNZIO. Mr. Speaker, I rise to join my colleagues in recognizing Congressman FRANK HORTON, dean of the New York congressional delegation and Representative for the 29th District of New York for 30 outstanding years of service in the House of Representatives.

As the ranking minority member of the Government Operations Committee and its Subcommittee on Legislative and National Security, FRANK has been instrumental in securing the passage of the Whistle Blowers Protection Act and installing inspectors in a number of Federal agencies, as well as giving early support for a separate Department of Education. Additionally, FRANK is a senior member of the Committee on Post Office and Civil Service where he has made many contributions over the years benefiting Federal employees and improving the Postal Service.

Most importantly, FRANK HORTON has worked vigorously and tenaciously to increase efficiency and accountability in Government. In this regard many of his legislative objectives are now public law, including the far-reaching Paperwork Reduction Act.

As FRANK HORTON retires from Congress, I want to wish for him and Nancy an abundance of good health and happiness in the years ahead.

REPRESENTATIVE FRANK HORTON

HON. G.V. (SONNY) MONTGOMERY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. MONTGOMERY. Mr. Speaker, I want to join in this tribute to our retiring colleague from New York, FRANK HORTON. I appreciate Mr. FISH and Mr. SCHEUER taking this time to allow us to pay tribute to our friend. FRANK HORTON had been in Congress for two terms when I came to Washington in 1967. We became friends then and have enjoyed a warm relationship since that time.

He has been a member of the Government Operations Committee for nearly 20 years. During that time, FRANK has been involved in efforts to reduce the paperwork burden and has tried to help develop initiatives to make the Government run more efficiently.

As chairman of the Veterans Affairs Committee, I want to say how much we appreciate the help FRANK HORTON has given us on veterans programs. He is a World War II veteran himself and has been very supportive of efforts to improve the lives of this country's veterans over the years. I particularly want to thank FRANK for the work he did to help elevate the Veterans' Administration to a department. That has become a reality and has given veterans a seat at the Cabinet-table at the White House.

We are going to miss our friend and colleague, but I know Members on both sides of the aisle join me in saluting him on an outstanding career.

TRIBUTE TO FRANK HORTON

HON. TOM BEVILL

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. BEVILL. Mr. Speaker, it is an honor for me to join my colleagues in honoring our good friend and distinguished colleague, the dean of the New York delegation, FRANK HORTON. FRANK is retiring after 30 years of outstanding service to the people of New York's 29th Congressional District.

He has served his constituents well and he has also been an excellent public servant for our entire Nation.

I have always admired FRANK and valued his friendship and leadership here in the Congress. He is a gentleman, a man of the highest integrity and principles and I am honored to have served with him.

As the ranking Republican on the House Government Operations Committee, FRANK is highly respected for his efforts to improve the efficiency of a wide range of Government agencies.

FRANK has been wonderful to work with over the years and I will miss his companionship here in the Congress. His contributions to our Nation will long be remembered.

TRIBUTE TO HON. FRANK HORTON

HON. THOMAS J. BLILEY, JR.

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. BLILEY. Mr. Speaker, I would like to take the opportunity of this special order to say a few words about my good friend and esteemed colleague FRANK HORTON upon his retirement from the House of Representatives. I have had the great pleasure of knowing FRANK for the 12 years that I have served in the House.

As ranking minority member on the House Government Operations Committee, FRANK has led the fight in Congress for good government. The sponsor of the Paperwork Reduction Act, FRANK's leadership has had the dramatic effect of making government more user-friendly for taxpayers. As a result of his Whistleblower Protection Act, Government workers no longer need fear retribution when they report fraud and abuse.

As a fellow member of the North Atlantic Assembly delegation, I have enjoyed spending time with FRANK on our trips overseas to the NATO Assemblies. Those trips have given me the chance to get to know him far away from the pressures of Washington, and I value his friendship.

There can be no doubt that FRANK has earned his retirement after dedicating 30 years to public service. He leaves behind a long legacy of protecting the interests of New Yorkers and all Americans. We will miss his leadership in this body and his wisdom accumulated from 30 years of experience fighting for the interests of others. I wish him all the best in his future pursuits.

HONORING FRANK HORTON

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. WOLF. Mr. Speaker, I rise today to recognize the service of one of our colleagues, Representative FRANK HORTON, who is leaving the House following the conclusion of the second session of the 102d Congress.

FRANK has been an honest and hard-working representative for his constituents in the Rochester area of New York for three decades. FRANK came to Washington following service to his Nation during World War II, 15 years as an attorney in Rochester, and 6 years on the Rochester City Council.

I had the pleasure of serving with FRANK for several years on the House Post Office and Civil Service Committee. FRANK, who is the second ranking Republican on this committee, has always been a strong supporter of our Nation's fine Federal employees and their families. As the ranking Republican on the House Government Operations Committee, FRANK has made an excellent impact on Government with his work on such legislative issues as the Whistleblower Protection Act and the Chief Financial Officers Act of 1990.

FRANK has been a fine representative to his constituents and a credit to this institution. I know I join my colleagues in thanking FRANK for his 30 years of service to our Nation and wishing him well as he begins his retirement.

TRIBUTE TO HON. FRANK HORTON

HON. PATSY T. MINK

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mrs. MINK. Mr. Speaker, I rise to join my colleagues to bid farewell to the Honorable FRANK HORTON of New York who has decided to retire from this body.

When I first came to this House in 1964, FRANK was already here, carefully developing a calm and persistent legislative style that would become his trademark. FRANK always had a thoughtful and rational response to whatever the question at hand.

Being able to work with Congressman HORTON as the ranking Republican Member was one of the reasons I was pleased to join the Government Operations Committee when I returned to Congress. His leadership helped develop legislation like revenue sharing for cities which was an important landmark of cooperative efforts between the Federal Government and local governments. It is especially noteworthy that Congressman HORTON is the author of House Joint Resolution 173, which designates May 1991 and May 1992 as "Asian/Pacific American Heritage Month."

FRANK, you always reminded us that the way that the Government does its business is often as important as the business it is doing. This is at the heart of your commitment to root out fraud and Government waste, and your efforts to make sure Government programs were being implemented in accordance to law.

As we confront the difficult fiscal and budgetary challenges ahead of us, we will sorely miss your ability to look beyond the posturing that so often accompanies an agency's justifications for its activities in order to separate the chaff from the wheat. I assure you that we will carry on your work in this regard. But it will be far more difficult without your steady leadership.

Our democracy relies on people who bring a strong intellect to the issues, and who make sound judgments without being swayed by the partisan currents of the moment. FRANK is just such a person, and his willingness to break with his party and his colleagues when his understanding of the issues compelled him to take a different position on them. This is not always easy, and when someone like FRANK HORTON leaves this body we remember just how important personal integrity is to this institution.

Representative FRANK HORTON of Rochester, NY has been an inspiration for this House. His constituents know well that for the last 30 years they have continually sent someone to this institution who did an outstanding job of representing their interests—I hope they also realize that they did an enormous service for this country by sending the Members of this body such a distinguished person.

FRANK, I wish you all the best in the many years ahead of you, and I truly hope they include many visits to Hawaii. Aloha.

352D CIVIL AFFAIRS COMMAND, HUMANITARIAN RELIEF IN THE PERSIAN GULF WAR, 20 AUGUST 1990–20 JULY 1992

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. HOYER. Mr. Speaker, on October 30, 1992, the 352d Civil Affairs Command will hold a formal Desert Storm Homecoming Anniversary Ball. The 352d Civil Affairs Command is a Reserve general officer command in my district located in Prince George's County, MD. I am very proud to relate to the Congress the outstanding accomplishments of the oft decorated and highly dedicated citizen soldiers of this command during Operations Desert Shield, Desert Storm, and Desert Calm.

The outstanding accomplishments of the 352d Civil Affairs Command in the gulf war earned them recommendations for the much coveted Meritorious Unit Commendation and the Humanitarian Service Medal for their contributions to the relief and restoration of Kuwait City and the Emirate of Kuwait. Numerous members of the command were individually decorated with the Legion of Merit, the Bronze Star Medal, the Joint Service Commendation Medal, the Army Commendation Medal, the Joint Service Achievement Medal, and the Army Achievement Medal. The command is also eligible for all three Campaign Streamers issued thus far.

The command played a major role in planning civil affairs operations during Operation Desert Shield by deploying members of the command in early August 1990 to work closely with Third U.S. Army's Civil Affairs Staff and Operations and battle planning staff. Other members of the command were assigned to various staff positions at U.S. Central Command in Riyadh, Saudi Arabia, the Naval Central Command, and the U.S. Special Operations Command. In early December, at the request of the Kuwaiti Government, the command formed the Kuwait Task Force, made up of subject experts, to begin planning for the provision of emergency and restoration services following the liberation of Kuwait.

Throughout December 1990 until February 1991 the command continued to deploy troops to the desert in preparation for their mission to provide humanitarian relief to the people of Kuwait. In January 1991, Gen. Norman Schwartzkopf, unleashed the thunder and lightning of Operation Desert Storm. Shortly afterwards, members of the Command's Coalition Warfare Branch accompanied combat forces into Kuwait and Kuwait City. On February 28, 1991, the main body of the Command's Combined Civil Affairs Task Force began the treacherous journey into Kuwait, travelling over bombed out roads littered with war debris and through areas of the country not yet secured by United States and Coalition Forces. The command arrived in Kuwait City at 11:00 p.m. and brought with it a 76-truck convoy of emergency food and supplies for the people of Kuwait.

Beginning the very next morning, March 1, 1991, the Combined Civil Affairs Task Force, operating under the command of Third U.S. Army's Task Force Freedom, began relief and restoration operations for the people and country of Kuwait.

For the next 2½ months, the 550 men and women of the Combined Civil Affairs Task Force, now supplemented by the 431st Civil Affairs Company from Little Rock, AR, the 432d Civil Affairs Company from Greenbay, WI, and the Active Component's 96th Civil Affairs Battalion, Airborne, from Fort Bragg, NC, supported by a 4,500-person support force from Third U.S. Army's Task Force Freedom, toiled under the burning oil fires of Kuwait to restore those basic life-sustaining emergency services needed to revitalize this once proud and beautiful country of Kuwait. Timeliness, technical proficiency and innovation were the qualities demonstrated by the members of the Combined Civil Affairs Task Force whose herculean humanitarian efforts ensured that no further loss of life resulted from lack of essential services.

I was briefed by the Task Force at Camp Freedom at Kuwait City when the unit was in the midst of operations that helped ensure rapid restoration of electricity and other services, as well as food distribution.

To quote Ambassador Edward W. Gnehm, Ambassador to Kuwait, "The soldiers, noncommissioned officers and officers of this command have worked tirelessly and selflessly to support the reconstruction of Kuwait. They have served under conditions that were extremely austere and sometimes dangerous. Every member has shown noteworthy attention to detail and a genuine sense of urgency. Their technical expertise, organizational skills and flexibility have cut through organizational constraints and given the Kuwaiti people what they needed most: Rapid and effective help. The challenge has been formidable, but the soldiers have responded magnificently".

Mr. Speaker, as a result of the absolutely magnificent accomplishments of the soldiers of the 352d Civil Affairs Command, not one precious life was lost for lack of food; not one child thirsted for water; not one Kuwaiti citizen suffered from pestilence. Law and order was quickly restored, allowing the vulnerable citizenry the precious time necessary to recover—in peace. The once smoke-darkened Kuwaiti skys glowed with the numerous successes resulting from the untiring energy, love and devotion to duty exhibited by the brave and heroic men and women from the 352d Civil Affairs Command.

Accordingly, the men and women of the 352d Civil Affairs Command, were truly the calm after the storm. Each soldier of the command can justifiably take great personal pride in their individual and unit's gulf war accomplishments.

CPT Alberti, Jr., Paul L.
MAJ Alcan, Bruce H.
SPC Allen, Joseph E.
MAJ Allison, Kenneth J.
LTC Baker, Jr., Wilson.
CPT Barsotti, Ercole.
SFC Baylor, Angela.
COL Beasley, Michael.
COL Blount, Lawrence C.
COL Brackney, Richard C.
LTC Brooks, Mark E.
SGT Bryant, Karen D.
MAJ Bushey, Douglas J.
MAJ Caplan, Les M.
LTC Carr, James R.
1LT Closs, Carolyn R.
SPC Cooper, Leon A.
SPC Craig, Robin T.
SSG Crosse, Islyn I.
SSG Dambach, Fredrick W.
MAJ D'Angelo, Colomba A.
SFC Daugherty, Carmen Y.
MAJ Davidson, Charles H.
SPC Dominski, John A.
CPT Driessen, Robert S.
COL Duncan, Richard E.
SFC Elam, John E.
COL Elliott, Randall T.
MAJ Ettinger, William.
COL Evans, James H.
SSG Feuer, Deborah A.
SFC Fields, Henry L.
LTC Fielder, Robert E.
SFC Forte, June A.
CPT Foye, Robert L.
1LT Fraley, Derrick
CSM Freeman, William H.
SGT Fulco, Mark A.
LTC Gebhards, John E.
SFC Gedge, Donald C.
LTC George, Edward H.
COL Geyer, Richard E.
LTC Ghent, III, James R.
SGT Gibbs, Wayne W.
MAJ Gibmeyer, John F.
SPC Goard, Cynthia M.
SPC Gray, John E.
SGT Greene, Maurice L.
LTC Greenhut, Jeffrey F.
COL Gulick, James S.
1LT Hamilton, Clay M.
MAJ Harbell, John W.
MAJ Hashem, Steven S.
LTC Hirsh, Carl M.
SSG Hope, Carol A.
LTC Howton, Charles F.
LTC Huber, James P.
SGT Hyater-Davis, Yolanda A.
LTC Johnson, Theodore R.
MAJ Johnston, Gary N.
COL King, Edward A.
LTC Lambrinos, Jorge J.
COL Lange, Gary A.
MAJ Langley, Kim G.
PFC Lanier, Alfreda A.
MSG Lee, Larry L.
SPC Lenihan, Claire E.
SPC Lewis, Carolyn V.
SPC Lewis, Deborah A.
COL Lichtenstein, Jack D.
SPC Lora, Diego A.
LTC Luedeke, James A.
CPT Marsh, Scot W.
SFC McDonald, Layton D.
SGT McKenzie, Ben.
LTC McKinney, Donald C.
LTC McNaugher, Thomas L.
SGM Mead, Michael J.
LTC Meyer, Gary W.
LTC Miller, Edwin D.
CPT Miller, Jr., James M.
LTC Mitchell, David C.
BG Mooney, Jr., Howard T.
SSG Murphy, Kevin J.
MAJ Natsios, Andrew S.
COL Neale, John D.
MAJ Newcomb, Dana L.
COL Padar, George Z.
LTC Paternoster, Jr., Pete.
LTC Perl, Raphael, F.
MAJ Peters, Robert D.
SSG Philpott, Cynthia L.
SPC Poe, Jr., David C.
LTC Polk, Artie L.
SFC Popescu, Sr., John P.
SPC Reilly, Kelly M.
SGT Reilly, Kevin P.
CPT Riley, Brian T.
1TC Russell, Timothy R.
COL Sadek, Charles H.
1LT Salazar, Jeffrey A.
LTC Setzer, David A.
SSG Skidmore, Charles E.
SFC Skipwith, Jessie L.
COL Smith, Herbert J.
COL Smith, Ronald M.
SGT Smith, Teresa A.
MAJ Sternfeld, Michael D.
MAJ Thorsen, Robert H.
CPT Trail, William H.
MAJ Trombetta, Jr., Orfeo.
MAJ Ulmer, David.
SFC Venson, Sheila M.
MAJ Verrier, Fernand R.
COL Walz, Jr., Arthur H.
LTC Webber, David J.
MAJ Whidden, Stanley J.
SFC White, Gracie V.
SFC Widner, David D.
MAJ Williams, John L.
COL Wilson, Lester R.
MAJ Wilson, Thomas R.
MAJ Winder, Jr., Coulberne.
SPC Wolfgram, Franklin M.
SSG Wolfrey, Brenda L.
CPT Wolverton, Wayne A.
SSG Wright, Franklin L.
SSG Wright, Virginia D.
SFC Yost, David L.
LTC Young, Bennett H.
COL Young, Ralph H.
LTC Balazik, Joseph.
LTC Marsh, Schappi.
LTC Nicholson, Michael.
LTC Sanders, Barbara.
MAJ Thomas, George.
LTC Vannett, Lilia M.

TRIBUTE TO ALAN CRANSTON

HON. G.V. (SONNY) MONTGOMERY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. MONTGOMERY. Mr. Speaker, Senator ALAN CRANSTON has been a genuine friend to veterans and their families throughout his distinguished career. I just want to take this opportunity to thank him for his work in the Senate and for our friendship. Our two committees, the Veterans' Affairs Committee, have always worked together very closely under his leadership. Because of that, we've been able to get a lot of important legislation through the Congress.

Many of the programs administered by the VA are healthy and successful because of ALAN's efforts. There's no way I could cover all of his achievements, but many are landmark.

He's the architect of the Veterans Readjustment Counseling Program, which has grown to almost 200 vet centers since ALAN's legislation was enacted in 1979. Vietnam veterans in particular owe a great debt of gratitude to ALAN for his labors in their behalf.

He has led efforts to provide responsible education, rehabilitation, and employment benefits to veterans; he's worked to strengthen the housing program; he was instrumental in the establishment of the Court of Veterans Appeals and in getting the VA upgraded to a Cabinet Department.

As the principal Senate author of all veterans' health care legislation enacted since he came to Congress, he's been a watchdog over health care benefits. ALAN played a major role in helping thousands more veterans gain access to VA health care by increasing the emphasis on outpatient treatment, which is less costly.

His efforts were crucial in making certain that the proposal to tax veterans' disability compensation never saw the light of day, and he's been especially outspoken on budget matters and has taken OMB to task for its irresponsible proposals.

This brief summary doesn't do justice to ALAN's accomplishments. Suffice it to say that not once in his 24-year Senate career has ALAN CRANSTON ever let our veterans down. ALAN, as you head back to California, rest assured that we're going to keep watch over all your good works. Thank you for a job exceptionally well done.

TRIBUTE TO SENATOR JAKE GARN

HON. WAYNE OWENS

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. OWENS of Utah. Mr. Speaker, last night, at 9:43 p.m., one of my good friends closed out his 18 years in the U.S. Senate. Senator JAKE GARN and I have known each other for many years—we first became acquainted in 1974 when he beat me in my first race for the Senate—and from that time as political rivals, we have developed a genuine friendship.

Working with JAKE has enriched both my time and my performance in the House. On some issues, we found ourselves ideologically opposed—but on most that dealt with Utah's future well-being, we have found ourselves close allies. It is fitting that we will end this congressional session with the enactment of the Central Utah Project legislation, and, hopefully, State school lands bill of great importance to Utah, two examples of how we have been able to work so well together.

If there is a more honest man in the Senate than JAKE GARN, I have not met him. JAKE's undisputed integrity, his dedication to Utah and the United States, and his well-known impatience with the inefficiencies of our legislative system, are legendary.

He is a family man who is caring enough to give up a kidney for a daughter in need, and adventurous enough to revel in a trip into space on the space shuttle *Discovery* in 1984. He was prescient enough to see the savings and loan crisis looming on the horizon, worked as hard as anyone to prevent it, and then labored constructively to repair the damage. JAKE's assignment on the Appropriations Committee, a job he has done with quiet diligence, has meant a great deal to Utah. On a national level, he has also been one of the true champions of the space program in Congress.

Six years ago, when I returned to Congress, I expected one of my most difficult tasks would be to get along with JAKE GARN. After all, he had defeated me for the Senate years before and we came from different ends of the political spectrum. But I was absolutely wrong. To the astonishment of almost everyone, he and I have become good personal friends as well as working colleagues. We have some real idealogical differences, but we have worked together for Utah—not always with complete agreement, but with complete confidence and trust in each other.

Utah has probably never had a more effective Senator. My overriding impression of JAKE will always be of his honesty and integrity. Despite intense political pressures to do otherwise, he always played fair with me, even on very partisan issues. He has my gratitude and respect. His absence will be keenly felt. I will miss working with him in the Senate and Utah will miss his powerful voice for our interests. Marlene and I join in wishing him and Kathleen great success in this new direction their lives will be taking.

GAO AUDIT

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. SOLOMON. Mr. Speaker, the General Accounting Office has been required by law since 1987 to audit independent counsels every 6 months. Thus far, not a single such audit has appeared. If the GAO had been willing or able to do such an audit on the $35 million Iran/Contra extravaganza of Lawrence Walsh, he probably would not have been so cavalier about spending tens of millions of dollars in the pursuit of butterflies.

In a letter to congressional leaders on September 1, the Comptroller General tried to explain away the GAO's noncompliance with the law by blaming a computer snafu—the flimsiest excuse I have ever heard.

The same letter promised that the GAO would issue a report on the Walsh investigation before Congress adjourned sine die. The House adjourned for the year, and the Senate closed down last night. Still, there is no sign of an audit.

It has been clear to me all along that the GAO was stalling until Congress got out of town. And it is equally clear that assurances from the GAO have become just another way of saying, "The check is in the mail."

This entire episode is going to be recalled in detail next year when the GAO comes to Congress for funding. It is about time this agency started demonstrating the same responsiveness to individual Members of Congress that it has for the Democrat leadership.

BE STRONG, DR. ELSIE SCOTT

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. PAYNE of New Jersey. Mr. Speaker, I would like to commend the following New York Times article, "To Teach New Policing, A New Kind of Teacher," to my colleagues. It describes the work and challenges of Dr. Elsie Scott, deputy commissioner for training, New York city Police Department. Dr. Scott is a longtime friend who I can always count on to get to the heart of difficult matters in a straight-forward, professional, and non-threatening manner. She has a knack for making people truly feel that they can be integral parts of solutions.

Just recently, she served as a panelist during the Congressional Black Caucus Youth Brain Trust which I chaired. Her comments were enthusiastically received when she noted that the problems are not going to disappear and that we must all become involved in working through them, no matter now difficult or different that may be. The time has come for us to develop a stronger sense of community. Dr. Scott will do much to foster the concept.

TO TEACH NEW POLICING, A NEW KIND OF TEACHER

(By Craig Wolff)

Elise Scott, charged with changing the soul of the New York City Police Department, is a rarity in the force: black, a woman and raised in the rural South.

As deputy commissioner for training at a time when the department is undertaking the new concept of community policing, her role has taken on increased significance with the departure of Police Commissioner Lee P. Brown, the program's chief advocate, and the unruly police demonstration at City Hall last month that has raised questions about the officers' attitudes toward the communities that they police.

It is Ms. Scott's job to give the police academy curriculum its first overhaul in years and in effect, to reschool the 29,000 rank-and-file officers, who are accustomed to reacting, to spinning from one emergency call to the next. She is to help them instead become problem solvers with a strong bond to the neighborhoods they serve.

"The idea of community policing is simple," she said. "It values the community as customers. And it is a way for minorities to feel connected. It is a shame that Commissioner Brown has left, but I am confident that the work will and should continue."

DISCOURAGEMENTS

Ms. Scott admits she was discouraged by the City Hall demonstration and earlier disturbances in Washington Heights. "I thought it would take five years to institute community policing," she said. "We were doing well until all these things came up. The recent events, including the riots in Washington Heights, have really set us back in race relations and community relations in the city. To tell you the truth, I'm very depressed about the whole situation."

In trying to change the department, Ms. Scott has encountered a department bureaucracy that is often torn between keeping officers on patrol and providing the time for training. Department officials have acknowledged that without enough time or money, she is unable to send her instructors to seminars on community policing, so that even the trainers are not always trained.

Sitting in her sixth-floor office behind her big desk at the academy, on East 20th Street, the other day, she said: "things are a lot better now. But I knew coming here that I wasn't going to be readily accepted. I knew that I brought baggage with me. I'm black. I'm a woman. I'm a non-New Yorker with a Southern accent."

As she talked about her background, she gave scarcely a clue that she recognized anything uncommon in her biography—a black woman who grew up in the Deep South frightened of white police officers who is now retraining an overwhelmingly white department. "Don't make it sound so unusual," she said. "I have a missionary-type personality. You have to train people to look at each other as individuals. I have to do things to make life better for people. When you're born black, that gives you added responsibility."

Unquestionably, Ms. Scott said, she inherited her stubbornness and perseverance and some anger from her father—a Baptist minister and fighter for civil rights from Lake Providence, La., who was shot in the arm by night riders while driving the family home one night.

She remembers that once a week her father would go to the courthouse in Lake Providence to try to register himself or a member of his congregation to vote. Week after week he was turned away.

He persisted, always calling in the Justice Department when a black man or woman was harassed or beaten. Then, one night in 1962 as she and her parents and her four brothers and sisters were returning home, a car pulled alongside theirs and a shotgun was fired at them. Her father was wounded. She says her family was privately told it was a white police officer who fired the gun, and an F.B.I. agent who investigated agreed. The policeman, she said, is still a law-enforcement officer.

Her family, she said, was constantly terrified by threatening calls in the middle of the night and by crosses burned by the Ku Klux Klan on their lawn and in front of the church.

It was routine, Ms. Scott said, for the family to sit around the kitchen table and draw up plans on what the children should do if their mother and father were killed.

Ms. Scott said that as a child she had three desires. "One was to sleep peacefully," she said. "The second was to walk down the street and not have some white man harass me or expose himself to me and the third was to be anonymous, because I was always Rev. Scott's daughter."

Ms. Scott said her background will help her recognize the challenges awaiting officers on the street.

"Remember, I may not be from New York, but I know what people go through," she said. "I know what it's like to grow up with bullets all around."

Ms. Scott graduated from Southern University in Baton Rouge, La., and received graduate degrees from Atlanta University and the University of Iowa. Recruited to the National Organization of Black Law Enforcement Executives as a research manager, she became its executive director. Mr. Brown first met her when she was a graduate student and he was delivering a lecture.

The police academy curriculum already shows signs of remodeling. Inspector Thomas P. Lawless, the academy's commanding officer said that all captains and sergeants have had a one-day training session on community policing. The 3,000 officers now assigned to community policing have received five hours of orientation. And there is a community-policing task force at the academy assigned to make changes in the curriculum.

But, Ms. Scott said, "One day of orientation is not enough. We have to spend more time with cultural-awareness training. There were things said and done at the demonstration that could be interpreted as racist and that is disappointing and tells us that there is work that has to be done."

Ms. Scott said the demonstration also pointed to the need for officers to spend more than the six months they get for training before being sent into the field, something closer to the system in Israel and Japan, where police officers remain at the academy for a year. And she said it perhaps suggested that the recruiting process needed changing.

The academy has attempted to integrate community-policing training into every course, Ms. Scott said. But, she said, "I don't know if there's much more we can do because the culture is stronger than anything we can teach them in the classroom. That's why there needs to be an emphasis on in-service training."

Mr. Speaker, I am sure my colleagues will want to join me as I wish Dr. Scott the best of luck in her endeavors to teach community policing to the 29,000 rank-and-file officers of the New York City Police Department.

TRIBUTE TO CHARLES W. McDOWELL

HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. HUBBARD. Mr. Speaker, I take this opportunity to pay tribute to a highly respected Kentuckian, Charles W. McDowell, the executive director of the Kentucky Department for the Blind since its beginning in 1977, who died March 25 in Atlanta, GA, at age 55.

Charles McDowell headed the move of State services for the blind in Kentucky from a division within the department of education with a $2.8 million budget in 1977 to a department for the blind with six divisions and a $9.3 million budget in 1991. The department for the blind is part of the Cabinet for Workforce Development.

Charles McDowell also was a former mayor of Providence in Webster County in western Kentucky; a former social studies teacher at Webster County and Providence high schools; and a former instructor at Madisonville Community College.

"His first priority, both in his job and in life was that blind people would be taken care of—jobs for the blind. Our agency was always in the forefront, not only in the State, but nationwide, in technology * * * for use by blind people," said Sam Serraglio, Charles McDowell's administrative assistant in the department.

He said that Charles McDowell was recently successful in getting an appropriation for a statewide rehabilitation facility for the blind, to be located in Louisville, probably next year.

Serraglio said that Charles McDowell allowed those who worked under him to develop their skills.

Charles McDowell, who was blinded at age 13 in a hunting accident, like other blind people relied heavily on his hearing skills.

As head of the department for the blind, Charles McDowell would recite statistics to State legislators. They were provided orally to him by his assistant, and he recited them as though he was reading them.

"As he put it * * * blind people don't just develop their hearing skills, they listen more carefully than sighted people do. They listen to every word," Serraglio said.

Charles McDowell would describe in vivid detail scenes from movies he had "seen" for students and colleagues.

"He traveled on his own. Very often, around the office, we really wondered if he was totally blind. The man was remarkable," Serraglio said.

Workforce Development Cabinet Secretary William D. Huston said: "He has made a positive, lasting difference in the success of the Department and in the rehabilitative gains made by Kentuckians who are limited by blindness or severely impaired vision.

"Over the years, his leadership and inspiration have helped countless individuals become more independent, enter the workforce or contribute to society in other gainful ways. His courage will be missed."

Charles McDowell held a bachelor's degree from Murray State University and a master's degree in special education from Peabody College in Nashville.

Surviving are his wife, Lucretia "Lucy" Riddle McDowell of Frankfort, a professor at Midway College; two sons, Charles Patrick McDowell and Daniel Ryan McDowell, both of Frankfort; three brothers—Ethan McDowell of Eddyville, KY, Larry McDowell of Slaughters, KY, and Huey McDowell of Chandler, IN; and a sister—Velda King of Madisonville, KY.

It was my privilege to attend the August 14, 1971, wedding of my friends Charles and Lucy McDowell at First Baptist Church in Madisonville.

My wife, Carol, and I extend our deepest sympathy to the family of Charles W. McDowell.

IN SUPPORT OF THE CONFERENCE REPORT ON H.R. 5006, DEFENSE AUTHORIZATION FOR FISCAL YEAR 1993

HON. DAVID E. SKAGGS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. SKAGGS. Mr. Speaker, I want to state my support for the conference report on H.R. 5006, the National Defense Authorization Act for Fiscal Year 1993. I am pleased that four provisions that are important to me have been included in the conference report that we are considering today, and would like to thank and congratulate all of the conferees for their effort in completing work on this legislation before adjournment.

First, the inclusion of my amendment to deal with the problems defense nuclear workers face with the downsizing of the weapons complex is a victory for the tens of thousands of defense nuclear workers who, like their counterparts in the Department of Defense, have served their country's national security mission. It lets them know that their contribution has been respected, not just with words but with real practical assistance. This provision, included in the bill's comprehensive economic conversion package, will require the Department of Energy [DOE] to:

Minimize layoffs through the use of retraining of employees, early retirement, attrition, and other options;

Provide first preference to current nuclear workers when filling new positions—for waste cleanup, for example—in the weapons complex;

Retrain nuclear workers for work in environmental restoration and waste management activities at DOE facilities;

Provide relocation assistance to employees who choose to transfer to openings at other facilities;

Assist DOE employees who are to be laid off in obtaining employment retraining, education, and reemployment assistance; and,

Provide local impact assistance to communities affected by the restructuring plan being developed by DOE.

DOE would be required to submit to Congress a plan for carrying out this program within 180 days of enactment, and would be required to update the plan on an annual basis. The plan is to be based on consultations with representatives from State and local governments, employee unions, State and local educational institutions, community groups, and the Secretary of Labor. DOE will be required to notify the employees at the defense nuclear facilities and affected communities at least 120 days prior to any changes in its work force. This is an important step in the transition that these facilities will be undergoing, and will be welcomed by the workers, their families, and the communities they live in.

Second, I am pleased that the conferees included a provision the Senate put in its version of the bill that provides $40 million to continue reimbursing the cities of Broomfield, Thornton, Northglenn, and Westminster for the cost of the water diversion project to protect their water supplies from Rocky Flats run-off. This is important to the people of those cities who have had to live with the anxiety of wondering what plutonium and other toxics in their drinking water could do to their lives. Essentially identical language was included in the defense authorization bill for fiscal year 1992, and I'm happy to see it included in this year's bill as well.

Third, it's important that the bill contains the medical monitoring provision I sponsored in the House. It requires the Secretary of Energy, in consultation with the Secretary of Health and Human Services, the American College of Physicians and Surgeons, the National Academy of Sciences, labor organizations, and others, to initiate a medical evaluation program for current and former DOE employees who have been exposed to hazardous and radioactive substances, and provide those employees with comprehensive medical examinations to evaluate the consequences of their exposures. After being exposed to harmful substances, such as plutonium and beryllium, these workers must know that any harmful effects caused by that exposure will be discovered as soon as possible. This provision will give them that knowledge.

Passage of this provision may moot several pending workers' compensation suits across the country involving DOE workers who have been exposed to hazardous and radioactive substances at DOE facilities. If that happens, the workers' attorneys may not receive compensation they would have been entitled to under current law for handling cases they undertook because of the very concerns that prompted this legislation. That hardly seems fair, and that's why I supported language to state that reasonable attorneys' fees could still be awarded in such cases. In the end, however, the conferees could not agree on the appropriate language; this is unfortunate.

The fact that this bill does not include provisions for attorneys' fees, however, should not be construed as suggesting that the courts do not have the power to award attorneys' fees in these cases anyway. I believe that this is well within the courts' prerogative, and it is my hope that the judges in these cases will use their inherent power to award reasonable fees to the attorneys where appropriate.

Finally, I'm glad the conferees provided $2 million for site work for the redesign and development of the Fitzsimmons Army Medical Center in Aurora, CO. Hundreds of thousands of active duty and retired military personnel throughout the Rocky Mountain region rely on this important facility for medical services, and the Army relies on Fitzsimmons as its preeminent teaching institution for military medicine.

Economic analyses have shown not only that the redesign and reconstruction of Fitzsimmons is the most cost effective way to continue these critical benefits, but that the planned new replacement facility could generate savings to the Federal Government of $39 million annually. I'm disappointed that the conferees did not include $30 million, provided by the House bill, to complete design work on the new hospital, but I plan to work with members of the committee to ensure the inclusion of these critical funds in next year's bill.

Again, I support this conference report, and I urge my colleagues to do so as well.

LETTER TO SID MORRISON

HON. MIKE KOPETSKI

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. KOPETSKI. Mr. Speaker, on behalf of the Oregon Congressional delegation, I would like to enter into the extension of remarks the following letter to our colleague SID MORRISON of Washington. I am pleased to have this honor because of the attention and guidance the gentleman from Washington has shown this freshman Member from Oregon. That the gentleman chose to tackle the entrenched and difficult problem of solving the Northwest's old growth timber crisis says much about his strength of character. I have served with Mr. MORRISON for only 2 years, but I will miss him and his counsel and hope that I, in my career, can reach the standard he has set as both a legislator and a friend.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, October 9, 1992.

Hon. SID MORRISON,
Longworth House Office Building,
Washington, DC.

DEAR SID: We would like to thank you for your vision and tenacity in piloting the Northwest delegation's efforts to achieve a balanced solution to the old growth timber crisis. We want to acknowledge publicly and show our appreciation for the laborious task you accepted and the conscientious work you did in guiding our sometimes fractious group down the road to a rational and reasonable solution to the Northwest's most critical natural resource conflict. We Oregonians especially want to thank you for your understanding with regard to the unique set of problems this issue has brought to our state. As the "convener" of a seemingly endless series of Northwest delegation old growth timber meetings in your office in Longworth, you amply displayed your genuine concern for the complex differences between the two states, both of which are dramatically but distinctly affected by this issue. You carefully guided us through times of impasse and disagreement, a skill that has resulted in significant progress toward a realistic timber strategy; one that we can bring forward with us into the next Congress.

Sid, we hold in high regard your foresight and courage. Along with your colleagues from the State of Washington, we will miss your insight, counsel and persistence, but most importantly, we will also miss your consistently affable manner and friendship. We wish you all the best in your future efforts.

Sincerely,
LES AUCOIN,
PETER DEFAZIO,
RON WYDEN,
MIKE KOPETSKI,
BOB SMITH.

A TRIBUTE TO JAMES J. BINNS

HON. LUCIEN E. BLACKWELL

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. BLACKWELL. Mr. Speaker, I rise today to pay tribute to Mr. James J. Binns. On September 30, 1992, one of the most esteemed academic institutions in the Nation, LaSalle University dedicated the James J. Binns Fitness Center. I would now like to take a moment to reflect on the truly remarkable career of this great man.

James J. Binns' relationship with LaSalle University is most extensive, dating back to his graduation from LaSalle College High School in 1957. Four years later in 1961, Mr. Binns graduated magna cum laude from LaSalle University, and returned to complete his master's degree in 1992. Jimmy is also a 1961 graduate from Villanova Law School.

Indeed, Mr. Binns' professional career has been most celebrated. As a licensed practitioner of the law in Pennsylvania, Massachusetts, New York, New Jersey, the District of Columbia, and Colorado, Jimmy is a veteran of several hundred civil and criminal jury trials, and has tried more than 15 first-degree murder cases. In the early 1980's he won 51 consecutive cases defending the rights of union members against criminal charges brought as a result of a massive school strike in Philadelphia.

In 1981, he successfully represented race car driver Bobby Unser in overturning a USAC ruling, thereby enabling Unser to regain first place in the Indy 500, and become a three-time champion of that prestigious event. In addition, Mr. Speaker, Jimmy has spent the last 10 years successfully defending the World Boxing Association in 20 consecutive lawsuits, including claims brought by Muhammad Ali, Marvin Hagler, Don King, Evander Holyfield, Tim Witherspoon, and Mike Tyson. Mr. Binns also spent 7 years as chairman of the Pennsylvania Boxing Commission from 1980 to 1987.

Mr. Speaker, I am also pleased to report that Jimmy Binns has also channeled his tireless energies for his home city of Philadelphia, serving as chairman of the Organized Crime Task Force of the Citizen's Crime Commission of Philadelphia. Mr. Binns also held the distinguished position of chairman of the Judicial Selection Commission of the Philadelphia Bar Association. His other civic involvements include the Police Athletic League, the Boy Scouts of America, and the Philadelphia Charity Ball, just to name a few.

As a trustee of LaSalle University, Jimmy Binns has consistently striven to improve the quality of life at that institution for its students, faculty, and administration. In addition to his previous endowment of an athletic/academic scholarship, Mr. Binns has been a dedicated alumnus, and a strong voice for LaSalle University.

Mr. Speaker, I would now like to ask my colleagues to join me in paying our greatest tributes to Mr. James J. Binns. Thank you Jimmy, and keep up the great work.

RUSSIAN GOVERNMENT'S DEBT TO INDSPEC

HON. THOMAS M. FOGLIETTA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. FOGLIETTA. Mr. Speaker, I rise on this occasion to express my extreme concern over the Russian Government's continued failure to pay the United States employee-owned INDSPEC Chemical Corp. for services rendered.

In early 1990, the United States employee-owned INDSPEC Chemical Corp., which has traded with Russia for over 15 years, delivered resorcinol, a chemical used to manufacture tires, to the Russian Republic under a contract with a Russian Government agency. To this day, despite numerous overtures to the Russian Government, the corporation has yet to receive any of the $1.7 million owed for this product.

Last month, the Honorable Peter Aven, Russia's Minister of Foreign Economic Relations, told a representative of the INDSPEC Corporation that there was no urgency to pay this 30-month old debt because the Bush administration had told him that Russia will get United States aid without satisfying obligations to United States companies. We cannot choose to reward the Russian Government for its failure to pay United States citizens for outstanding commercial debt.

In these days of economic hardship, it is more important than ever that we look after the interests of American corporations. At a time when we are considering substantial sums of monetary aid for the former Soviet Union, it is crucial that we make it clear to them that they must honor their commercial debts.

It is one thing to owe money to other governments, but when money is owed to everyday hard-working American citizens, every effort must be made to insure that they are properly compensated for their work. Furthermore, it is vital that we impress upon the Russians the importance of paying their commercial debts as they seek to become a new partner in the free market economy. Efforts to do so can only help to improve future United States-Russian trade relations.

I urge my colleagues and the administration to help the American workers by pressuring the Russian Government to make good on their commercial debt to INDSPEC, and other United States corporations.

TRIBUTE TO HERBERT "HUB" COPE

HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. HUBBARD. Mr. Speaker, I take this opportunity to pay tribute to a longtime friend of mine, Herbert "Hub" Cope, who died at age 81 at his home in Mayfield, KY, on April 3, 1992.

From 1957 until 1983 Hub Cope was president and business agent for Local 607, Amalgamated Clothing and Textile Workers Union, at Mayfield. He was district manager for the union at least 10 years. Hub Cope was primarily responsible for Local 607's beautiful new building in Mayfield, which was completed and dedicated in 1975. In his work Hub Cope was extremely effective and efficient, assisting many hundreds of workers at Merit Clothing Co. in Mayfield. For many years Merit Clothing Co. was the largest employer in Mayfield, with as many as 2,000 employees at times during the 1970's.

A major reason for smooth working relations between Merit Clothing Co. and Amalgamated Clothing and Textile Workers Union was Hub Cope.

He was an active member of First Baptist Church in Mayfield.

A close friend of mine, Hub Cope urged me to run in 1967 for State senator in Kentucky's First Senatorial District. When he first encouraged me to consider that 1967 race I was 28 years old (1965).

Survivors include two sons, Jacob A. Cope, Lynchburg, Va., and Randle L. Cope, Mayfield; two sisters, Ernestine Williams and Maydeen Dowdy, both of Mayfield; and one grandson, Jason Cope, of Lynchburg.

He was preceded in death by his lovely wife, Ozell Cope, in 1989.

My wife Carol and I extend our deepest sympathy to the family of Herbert "Hub" Cope.

IN TRIBUTE TO FRANK MILLIKEN

HON. MARGE ROUKEMA

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mrs. ROUKEMA. Mr. Speaker, in each community in the United States there are public servants who, through their dedication and caring for their friends and neighbors, make a difference. I rise today to pay special tribute to a public servant in my own community who, after 33 years on the Ridgewood, NJ police force, has retired last week. The village of Ridgewood will miss Chief Frank Milliken for his leadership and caring.

A fifth generation resident of Ridgewood, Frank Milliken began his service to the village as a police officer in September of 1959. He quickly began to climb through the ranks of the department serving as sergeant, lieutenant, captain, and finally as chief of police beginning on July 1, 1981. Although he is young at the age of 54, he has decided that after 11 years, it is time to pass on the office to a new chief. His will be difficult shoes to fill.

Frank Milliken was a force for change in Ridgewood from the day he assumed his post. He brought the department into the modern age through the use of computers, which has increased the ability to solve crimes in a swift and competent manner. He also attended the FBI National Academy in Quantico, VA. During the intensive 11-week course, Chief Milliken acquired crime-solving skills and leadership training that he brought back to the Ridgewood department.

Frank's wife, their four children, and six grandchildren can be proud of his achievements. The families of Ridgewood can be equally proud as they have all benefited from his dedication and devotion.

Mr. Speaker, as the village of Ridgewood says a collective thanks to Chief Frank Milliken for his years of unselfish service, I ask my colleagues in the House to join in honoring this distinguished citizen.

CONGRESS AND TELECOMMUNICATIONS POLICY

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. FASCELL. Mr. Speaker, since the AT&T breakup, there has been considerable discussion as to what our Nation's telecommunication's policy should be. This is a very emotional and complicated issue. It easily explains why the Committee on Energy and Commerce and the Committee on the Judiciary have not reached an agreement on future policy.

I believe that the Congress needs to address this issue. I also believe that we can safeguard the needs and rights of consumers and, at the same time, establish a fair and level playing field. I hope that the two committees will reach a compromise and work with the Senate to present a bill that is acceptable to the President in the 103d Congress.

It is not only fair but it is essential to answer the questions and remove the uncertainty surrounding our Nation's telecommunications policy. There are many complicated issues which will not be easy to resolve, but it is in our competitive interest to set a policy to guide our Nation into the 21st century. I am not advocating action for action's sake; I am advocating sound and constructive action that will produce enormous benefits for our Nation.

OUR BLUNDERS IN YUGOSLAVIA

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. CRANE. Mr. Speaker, I would like to direct my colleagues' attention to the following commentary on the political and historical factors behind the bloody civil war currently raging in Bosnia-Hercegovina. Published in the Honolulu Advertiser, the article sheds light on how the United States and the European Community have fueled the violence in former Yugoslavia through diplomatic errors. Given the urgency and seriousness of the conflict, I strongly urge my colleagues to read this enlightening article.

[From the Honolulu Advertiser, Aug. 16, 1992]

OUR BLUNDERS IN YUGOSLAVIA

(By Robert M. Hayden)

The disgusting brutality of the Serbian campaign in Bosnia makes it easy to view the whole Bosnian tragedy as the fault of the Serbs. Yet the Bosnian war, and Serbian campaign itself, are in large measure the result of diplomatic errors by the Europeans and Americans.

If the war is to be stopped, its causes must be addressed. This will require recognition of these errors.

The most fundamental error was to accept the disintegration of Yugoslavia. It was always clear that the country would not fall apart cleanly because of the complex intermingling of nationalities there. It was a basic error of logic to suppose that if Yugoslavia could not exist as a multi-ethnic state, the various republics could.

At the level of cynical Realpolitik, the answer was simple. In the newly independent republics, state chauvinism would replace state socialism, with the majority in each state permitted to discriminate against the largest scapegoat minority under a pious cover of "democracy."

This cynical solution has been applied in Slovenia and Croatia and in the Baltic republics of the former Soviet Union. However, there was a flaw in the reasoning. What if the hated scapegoat minority rose up in arms and rebelled?

With the collapse of Yugoslavia, the most vulnerable minorities in Croatia and Bosnia were the Serbs. In both regions, Serbs were already sensitive because of the ghastly civil war of 1941-45. The then-fascist "Independent State of Croatia," which included Bosnia, implemented a policy of genocide against the Serbs. In Bosnia itself, allied Croat and Muslim forces massacred Serbs, who responded by killing Muslims.

So Serb fears of oppression and worse were understandable. They were hardly reassured by a Croatian government that today belittles the wartime genocide, or by a coalition of Muslims and Croats to separate Bosnia's Serbs from Yugoslavia.

In this context of fear, the European Community and U.S. insistence on the inviolability of borders put the Serbs of Croatia and Bosnia in the unenviable position of the Kurds in Iraq. Their rejection of the Bosnian borders was to be expected, even as the brutality of their resistance can only be condemned. But this was the first blunder: to ratify the destruction of Yugoslavia without redrawing borders.

The second blunder was the premature recognition of Bosnia before a political solution could be reached. Bosnian Serbs had clearly shown that they rejected such a state unless they could have political autonomy amounting to virtual independence.

It was clear to all who knew anything about Yugoslavia that the recognition of an independent Bosnia in these circumstances would ignite a civil war. Lord Carrington, the EC special representative to Yugoslavia, Cyrus Vance, the former U.S. secretary of state, and Warren Zimmerman, U.S. ambassador to Yugoslavia, had counseled against it. Unfortunately, they were right.

Despite the simplistic war cries of that odd couple, Margaret Thatcher and Bill Clinton, the Bosnian tragedy cannot be solved by military action. While America tries to treat the Bosnian war as an international conflict, it is in fact a civil war. The Serbs fighting the Bosnian government are Bosnian Serbs—albeit supported by Serbia—who have been incorporated into a "sovereign" Bosnia against their own will. They boycotted the referendum on Bosnian independence and did not want to secede from Yugoslavia.

Any attempt to defend the territorial integrity of Bosnia would require a long war against these Bosnian Serbs. Nor would action against Serbia help Bosnia. The United States could destroy Serbia, but that would impoverish another 10 million people, most of whom oppose the war. It would create a few million more refugees. It would not force Bosnia's Serbs to submit to a Muslim-Croat coalition government.

At this stage, any attempt to preserve Bosnia will lead to a longer, bloodier, more horrible war. A better approach would be to accept that the recognition of Bosnia with its existing boundaries was a gross error and to draw new borders, presumably accompanied by transfers of population, a "solution" patterned after the partition of India in 1947.

To save face, the United States and EC may be able to insist on the fiction of a Bosnian "state," which is actually a confederation of autonomous cantons. That temporary solution would probably soon lead to the secession of the Serbian and Croation cantons and their attachment to the mother republics.

Patterning the division of Bosnia on the partition of India is hardly a complete solution. As that experience shows, such a solution is itself grotesque and will lead only to permanent armed hostility in what used to be Yugoslavia.

But an unhappy result was foreordained once the EC and the United States gave in to Germany's insistence on the destruction of the Yugoslavia created after the German defeat in World War I and reconstituted after the German defeat in World War II.

Having rejected multinational Yugoslavia, the EC and the United States cannot create a multinational Bosnia. To attempt to do so will enlarge the Balkans tragedy.

A TRIBUTE TO KENT SUH

HON. THOMAS M. FOGLIETTA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. FOGLIETTA. Mr. Speaker, I rise to honor Mr. Kent Suh on the occasion of his installation as the president of the Korean-American Association of Greater Philadelphia.

Bringing his life savings with him, an enterprising Kent Suh arrived in the United States in 1972. He began a bicycle business while also working at a neighborhood grocery store. In 1975, he was joined by his wife and two children. Together they opened the Food Center at Willington Street and Cecil B. Moore Avenue in Philadelphia.

Throughout his entrepreneurial career, Kent Suh has remained vigilant and consistent in building bridges between his native Korean community and the African-American community. Kent Suh has demonstrated a committed interest to Korean-Americans to participate in the democratic process, to encourage better understanding of and relationships with the non-Korean and non-Asian communities in Philadelphia. These efforts have greatly enhanced intercultural appreciation between Seoul and Philadelphia.

Kent Suh has participated with the Korean Business Association for over 15 years where he has served as vice president and founder of the association's board of directors.

In 1990, he was elected secretary general and executive vice president in 1991. Now, in 1992, Kent Suh leads the helm of the organization he is so tirelessly committed to serving.

For these efforts and the many other acts of good will and coalition building, I join with his family, friends, business associates, and members of the Philadelphia community in commending Kent Suh for all of his fine achievements.

IN HONOR OF THE CALIFORNIA HIGHWAY PATROL VALLEY DIVISION HELICOPTER UNIT

HON. VIC FAZIO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. FAZIO. Mr. Speaker, I rise today to honor the California Highway Patrol Valley Division Helicopter Unit which has provided vital emergency services to the people of northern California for over 15 years.

The mission of this unit is to serve and protect the people of northern California through its varied activities in the areas of law enforcement, search and rescue, and medical emergencies. In fulfilling its mission, the Valley Division Helicopter Unit has become an important tool toward ensuring public safety, and is truly an asset to our community.

Operating out of Sacramento, which is a strategic center for northern California, the unit services 11 counties. The unit covers the heart of our region from Sierra in the north, San Joaquin in the south, Alpine in the east, and Sutter to the west.

In its role of law enforcement, the Valley Division Helicopter Unit is a welcome resource for the California Highway Patrol. In operations ranging from suspect-victim searches and ground officer backup, to overflying vehicle pursuits and monitoring traffic-related problems, the unit has served as a valuable agent for crime reduction.

As a search and rescue team, the Valley Division Helicopter Unit has done some of its most dramatic work. During the massive flooding of 1986 in the Sacramento area, the unit worked in concert with other relief and rescue units to coordinate rescues and monitor flood activities. When the Loma Prieta earthquake devastated the San Francisco Bay area, the unit was there to provide desperately needed assistance to the overburdened local law enforcement and assistance agencies. However, most of the unit's rescues are on a more personal scale, saving lost hikers or stranded survivors of accidents in isolated areas. No matter the scale of rescue, their efforts have proven invaluable in saving lives that might otherwise have been lost.

The medical service the unit provides is often an extension of its search and rescue mission. Patient transport by ambulance is often not an option, and this problem is compounded by the lack of sufficient medical facilities in some areas serviced by the unit. In the case of University of California, Davis Medical Center, the unit is utilized not only for rapid transit of patients, but for lifesaving deliveries of blood and organs. Add to this the fact that Sacramento has one of the State's highest incidences of traffic accidents. All this taken together, one can see that the unit's work truly is a matter of life and death.

While the unit has earned the thanks and praise of many people whose lives it has touched, it remains one of the great unsung heroes of our community. The people of northern California are indeed fortunate to have a public guardian in the California Highway Patrol Valley Division Helicopter Unit. I hope that my colleagues will join me in applauding its efforts.

HON. JIM MOODY: A GOOD AND FAITHFUL PUBLIC SERVANT

HON. DAVID R. OBEY

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. OBEY. Mr. Speaker, the way life is, we all too often do not express our appreciation to people in time for it to do any good, but I would like to take this opportunity to express my appreciation for the 10 years of public service JIM MOODY has provided in this body on behalf of the citizens of the Fifth District of Wisconsin.

No two persons in public life agree on every issue, but there is nothing wrong with that because as Will Rogers once said, "When two people agree on everything, one of them is unnecessary." But no one can doubt that JIM MOODY has demonstrated exceptional integrity, an exceptional commitment to the public interest, and an exceptional desire to make life better for millions of Americans and, for that matter, millions of people around the world who have never even heard of any of our names.

JIM has demonstrated in his service here a deep passion for human rights and justice. He has never compromised in the slightest on the most important issue dividing this country—race relations. And he has devoted an immense amount of time to try to bring some sense to the economic policies of this Government. JIM has been among the forefront of those fighting for balanced reductions in the deficit and he has not been afraid to take an unpopular stand in promoting that cause.

He has been of tremendous help in seeing to it that Wisconsin's legitimate interests on issues such as taxation and highway funding are taken into account by this Government. He has done his job with integrity and good humor and I will miss him.

INTRODUCTION OF AN ACT TO ELIMINATE FOREIGN SHIPYARD SUBSIDIES AND TO ENHANCE THE U.S. MERCHANT MARINE

HON. ROBERT W. DAVIS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. DAVIS. Mr. Speaker, Mr. LENT and I are introducing a bill to eliminate foreign shipyard subsidies and to enhance the U.S. Merchant Marine.

While we are extremely disappointed that we could not have been more successful in obtaining passage of maritime and shipbuilding reform this year, we wanted to provide the affected parties the opportunity to carefully review and consider the various proposals that have been woven together as a comprehensive package. This package will not please everyone—in fact I am now convinced that a bill cannot be drafted that will please everyone—even if that were a laudable goal.

Finally, I want to express my thanks to Secretary Card for his untiring efforts on this issue. No Secretary of Transportation has done more in such a short period of time to further the interest of this industry. He is to be commended. I remain convinced that this package, with only a few adjustments, would have been acceptable to an overwhelming number of our current U.S.-flag operators. I am also convinced that several of the budget problems that seemed to overtake the real issue facing the Congress will turn out to be nonissue next year.

H.R. 6212

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—FAIR TRADE FOR THE COMMERCIAL SHIPBUILDING AND REPAIR INDUSTRY

SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) in 1981, the United States Government terminated funding for the construction differential subsidy program, thereby ending direct subsidization of commercial shipbuilding in the United States;

(2) the international market for shipbuilding and ship repair continues to be distorted by a wide array of foreign subsidies including direct grants, preferential financing, equity infusions, research and development assistance, restructuring aid, special tax concessions, debt forgiveness, and other direct and indirect assistance;

(3) existing United States trade laws and trade agreements provide limited redress to domestic producers of ships for the trade-distorting subsidies and dumping practices of foreign shipbuilders; and

(4) a strong, effective multilateral agreement among all shipbuilding nations to eliminate trade-distorting practices in the shipbuilding and repair industry is the best means of providing for fair international competition, however, absent such an agreement, changes in United States trade laws are necessary to provide domestic producers of ships greater protection against unfair trade practices than is provided under current law.

(b) PURPOSE.—It is the purpose of this title to ensure fair trade in the commercial shipbuilding and repair industry by providing for effective trade remedies against subsidized and dumped foreign commercial ships.

Subtitle A—Subsidized Shipyard List and Required Vessel Entry Documentation Regarding Construction and Repair Subsidies

SEC. 111. SHORT TITLE.

This subtitle may be cited as the "Shipbuilding Trade Reform Act of 1992".

SEC. 112. LISTING OF SUBSIDIZED SHIPYARDS.

(a) ESTABLISHMENT OF LIST.—The Secretary shall establish and maintain a list of all foreign shipyards that receive or benefit from, directly or indirectly, a subsidy for the construction or repair of vessels.

(b) INVESTIGATION.—The Secretary shall conduct an investigation to decide whether there is reasonable cause to believe that a foreign shipyard receives or benefits from a subsidy for the construction or repair of vessels. That investigation shall be initiated when the Secretary has reasonable cause to believe that a shipyard receives or benefits from, directly or indirectly, a subsidy for the construction or repair of vessels—

(1) on the basis of information available to the Secretary; or

(2) on petition for an investigation from an interested party.

(c) DETERMINATION AFTER INVESTIGATION.—

(1) IN GENERAL.—Based on the investigation conducted under subsection (b), the Secretary shall make a determination as to whether a shipyard receives or benefits from, directly or indirectly, a subsidy for the construction or repair of vessels.

(2) CONSTRUCTION.—For purposes of this subtitle, a determination by the Secretary under paragraph (1) that a subsidy is being received by, or is benefiting, a foreign shipyard shall also be treated as being a determination that the subsidy is materially injuring, or is threatening material injury to, the domestic shipbuilding, ship repair, and related industries and the workers employed in such industries.

(3) NOTIFICATION AND PUBLICATION OF LISTING.—If the Secretary determines that a foreign shipyard receives or benefits from, directly or indirectly, a subsidy for the construction or repair of vessels, the Secretary shall—

(A) add the foreign shipyard to the list established under subsection (a);

(B) notify that shipyard of its inclusion on that list; and

(C) publish notice of that determination in the Federal Register.

(4) TIME LIMIT ON MAKING DETERMINATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall make a determination under this subsection within 90 days of receipt of the information or petition that serves as the basis for initiating an investigation under subsection (b), but such period may be extended by the Secretary if the Secretary considers the investigation to be extraordinarily complicated.

(B) MAXIMUM PERIOD.—A determination referred to in subparagraph (A) shall be made within the 270-day period beginning on the date of the receipt of the information or petition described in subparagraph (A).

(5) PUBLICATION OF LIST.—The Secretary shall publish the list of foreign shipyards receiving or benefiting from a subsidy for the construction or repair of vessels at least once every 6 months.

(d) EMERGENCY LISTING.—

(1) IN GENERAL.—If at any time the Secretary finds a reasonable basis to suspect that a foreign shipyard may be receiving or benefiting from a subsidy for the construction or repair of vessels, the Secretary may add that shipyard to the list established under subsection (a). The Secretary shall publish notice of that emergency listing in the Federal Register, which shall also include a schedule for investigation of the alleged subsidy.

(2) INVESTIGATION AND DETERMINATION OF EMERGENCY LISTINGS.—Within 90 days after publication of a listing under paragraph (1), the Secretary shall conclude the investigation and make a determination under subsection (c) whether the shipyard is receiving or benefiting from a subsidy for the construction or repair of vessels.

(e) REVIEW OF LISTINGS.—If a foreign shipyard that is listed under subsection (c) requests a review of that determination within 30 days after the date of the publication of the determination in the Federal Register under subsection (c)(2), the Secretary shall review that listing.

(f) SUBSEQUENT RECONSIDERATION AND REMOVAL OF LISTINGS.—

(1) RECONSIDERATION.—The Secretary may reconsider a listing under subsection (c)—

(A) on application from a foreign shipyard added to the list under subsection (c) alleging changed circumstances sufficient to warrant a reconsideration of that listing and notice of that reconsideration is published in the Federal Register; or

(B) if the Secretary receives information concerning the signing of an agreement between the United States Government and the foreign country in which the shipyard is located that provides for the immediate elimination by that country of construction and repair subsidies for vessels.

(2) RESTRICTION ON RECONSIDERATION.—A foreign shipyard may not make more than one application for reconsideration under this paragraph in any calendar year.

(3) BURDEN OF PERSUASION.—In any reconsideration under paragraph (1)(A), the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant a determination that the foreign shipyard should be removed from the list is on the applicant.

(4) REMOVAL FROM LIST.—The Secretary may remove a foreign shipyard from the listing only if—

(A) the foreign shipyard has proven that the foreign shipyard does not receive or benefit from a subsidy, directly or indirectly, for the construction or repair of vessels; or

(B) there is a signed agreement between the United States Government and the foreign country in which the shipyard is located that provides for the immediate elimination of construction and repair subsidies for vessels.

(g) PENALTIES.—

(1) PENALTY FOR FALSE INFORMATION AND RENEWAL OF SUBSIDIES.—The Secretary shall place a foreign shipyard on the list established under subsection (a) for a period of not less than 5 years if the Secretary determines—

(A) that the foreign shipyard, or government of the country in which the shipyard is located, provided the Secretary with false or misleading information during the investigation conducted under subsection (b); or

(B) after making a determination under subsections (c) or (f) that the shipyard is not subsidized, that the shipyard receives or benefits from, directly or indirectly, any new construction subsidies.

(2) PENALTIES APPLICABLE TO CERTAIN OCEAN COMMON CARRIERS AND VESSELS.—

(A) MANDATORY PENALTIES.—Subject to subparagraph (D), the Secretary shall direct the Federal Maritime Commission to take the following actions with respect to any vessel that is owned or operated by an ocean common carrier and that is documented under the laws of a country in which is located a foreign shipyard that is listed under subsection (a):

(i) The suspension of the tariffs of the ocean common carrier with respect to the vessel for transportation to, from, or through the United States and the suspension of that carrier's right with respect to the vessel to use tariffs of conferences in the United States trades of which the carrier is a member.

(ii) The suspension, in whole or in part, of the right of the ocean common carrier with respect to the vessel to operate under an agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargoes or revenue with other ocean common carriers.

(B) DISCRETIONARY PENALTIES.—Subject to subparagraph (D), the Secretary may, without further proceedings, take one or more of the following actions with respect to any affected vessel—

(i) Place limitations on the sailings of the affected vessel to or from the United States or on the amount or type of cargo carried by the affected vessel.

(ii) Direct the appropriate customs officer at any port or place of destination in the United States to refuse the clearance required by section 4197 of the Revised Statutes of the United States to the affected vessel.

(iii) Direct the appropriate customs officer to deny entry of cargo into the United States that has been transported on the affected vessel if that cargo has been transported—

(I) through a port or place in the United States; or

(II) through a foreign port or place in a country contiguous to the United States.

(iv) Direct the Secretary of the department in which the Coast Guard is operating to—

(I) to deny entry for purpose of oceanborne trade of the affected vessel to any port or place in the United States or the navigable waters of the United States; or

(II) to detain the affected vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

(C) DEFINITION OF AFFECTED VESSEL FOR PURPOSES OF SUBPARAGRAPH (B).—As used in subparagraph (B), the term "affected vessel" means a vessel—

(i) that is documented under the laws of a country in which is located a foreign shipyard that is listed under subsection (a); or

(ii) the controlling interest in which is held by a citizen or national of, or a legal entity existing under the laws of, a country in which is located a foreign shipyard that is listed under subsection (a), regardless whether the vessel is documented under the laws of that country.

(D) DURATION OF PENALTIES IMPOSED UNDER THIS PARAGRAPH.—Any penalty imposed under subparagraph (A) or (B) shall apply during any period in which a foreign shipyard located in the country concerned is listed under subsection (a) or such portion of that period that the Secretary may specify.

(3) CIVIL PENALTY FOR CERTAIN COMMON CARRIERS.—A common carrier that accepts or handles cargo under a tariff that has been suspended, or after the right of the ocean common carrier to use another tariff has been suspended, under paragraph (2)(A) is liable to the United States Government for a civil penalty of not more than $50,000 for each day that it is found to be so accepting or handling the cargo.

(h) ACTION AGAINST THE UNITED STATES GOVERNMENT.—An interested party may bring a civil action against the United States Government, in an appropriate district court of the United States, for failure of the Secretary to use due diligence to add a subsidized foreign shipyard to the list established under subsection (a).

SEC. 113. VESSEL CONSTRUCTION SUBSIDY CERTIFICATIONS.

(a) CERTIFICATION REQUIRED AT ENTRY.—The master of a vessel shall, at the time of making formal entry of the vessel under the Tariff Act of 1930, deposit with the appropriate customs officer a construction subsidy certification for the vessel.

(b) CONSTRUCTION SUBSIDY CERTIFICATIONS.—

(1) IN GENERAL.—For purposes of this section, a construction subsidy certification for a vessel is a document that—

(A) is either—

(i) issued by the Secretary under subsection (c), or

(ii) in a form that the Secretary shall prescribe and signed by either the vessel owner or person that constructed the vessel; and

(B) attests, regarding any construction carried out with respect to the vessel, that the construction meets one of the requirements set forth in paragraph (2).

(2) CERTIFICATION REQUIREMENTS.—The requirements referred to in paragraph (1)(B) are as follows:

(A) No subsidy was granted or otherwise provided with respect to the construction of the vessel.

(B) The construction was completed, and the vessel delivered to the owner, before the effective date of this subtitle.

(C) The construction was carried out under a specific contract entered into on or before August 10, 1992, and the vessel is delivered to the owner not later than 30 months from the effective date of this subtitle.

(D) The construction was carried out with the benefit of one or more subsidies that were granted or otherwise provided during the 2-year period beginning on the effective date of this subtitle, but an amount equal to the value of each subsidy has been repaid to the agency that granted or otherwise provided the subsidy.

(E) The construction was carried out with the benefit of one or more subsidies that were granted or provided on or after the effective date of this subtitle, but an amount equal to the value of each subsidy, reduced by any amount repaid under paragraph (D), has been paid to the Treasury of the United States.

(F) The construction was carried out in a foreign country which is signatory to a trade agreement with the United States that provides for the immediate elimination of subsidies for the construction and repair of vessels.

(G) The construction of the vessel was—

(i) commenced on or after the effective date of this subtitle; and

(ii) carried out in a foreign shipyard not on the list established under section 112(a).

(3) APPLICATION OF CERTIFICATION REQUIREMENTS.—With respect to vessels constructed in a foreign country which is a signatory to a trade agreement with the United States that provides for the elimination of subsidies for the construction and repair of vessels, the requirements set forth in paragraph (2) shall be applied in a manner consistent with that agreement.

(c) ISSUANCE OF CONSTRUCTION SUBSIDY CERTIFICATIONS BY THE SECRETARY.—

(1) APPLICATIONS.—The owner or lessee of a vessel, or the builder of a vessel, may apply to the Secretary for the issuance of a construction subsidy certification for that vessel. An application shall be accompanied by any documentation that the Secretary may require for purposes of establishing the eligibility of the vessel for that certification, including, if compliance with the requirement in subsection (b)(2)(D) or (E) is alleged, information regarding the amount of each construction subsidy granted or provided with respect to the vessel and the payment or repayment of amounts equal to the value of the construction subsidy.

(2) ACTION ON APPLICATIONS.—After considering the documentation submitted with an application under paragraph (1), the Secretary, within 90 days after the day on which the application was received, shall decide whether to issue or deny the construction subsidy certification. The Secretary shall make the decision publicly available.

(3) DENIAL OR CONDITION OF ISSUANCE OF CERTIFICATION.—The Secretary shall, if a construction subsidy certification for a vessel is denied under paragraph (2), provide the applicant with a written statement of the reasons for the denial or condition. The applicant may, within 14 days after the date of the written statement, request a review of the denial or condition under subsection (d)(3).

(d) DETERMINATIONS AND REVIEWS.—

(1) PRELIMINARY INVESTIGATION.—The Secretary shall—

(A) on the basis of information available to the Secretary;

(B) on the basis of information provided by the Secretary of the Treasury under section 436(e) of the Tariff Act of 1930; or

(C) upon petition therefor from an interested party;

initiate a preliminary investigation to decide whether there is reasonable cause to believe that a vessel does not meet the construction subsidy certification requirements under subsection (b).

(2) Determinations after preliminary investigations.—If the Secretary makes an affirmative decision under paragraph (1) with respect to a vessel, the Secretary shall determine whether the vessel meets any construction subsidy certification requirement under subsection (b)(2). If the Secretary makes a negative determination on the basis of failure to meet the requirement under subparagraph (D) or (E) of subsection (b)(2), the Secretary shall calculate, and set forth in the determination, the aggregate value of the subsidy or subsidies used in the construction of the vessel.

(3) Review of certification denials and conditions.—If a person whose application for a construction subsidy certification was denied or conditioned under subsection (c)(3) makes a timely request for review under that subsection, the Secretary shall review the denial or condition.

(4) Corrective actions.—If the Secretary makes a negative determination under paragraph (2), or upholds any certification denial or condition after review under paragraph (3), the Secretary shall set forth in the determination or review decision the action which must be taken in order to satisfy a requirement for construction subsidy certification for the vessel under subsection (b). The builder of the vessel shall be primarily responsible, and the vessel owner or operator secondarily responsible, for taking any corrective action. If that action is taken, the Secretary shall issue a construction subsidy certification for the vessel and that certification shall be treated as a construction subsidy certification issued under subsection (c).

(5) Consequential effects.—After a negative determination under paragraph (2), or a decision under paragraph (3) upholding a certification denial or condition, becomes final and until a construction subsidy certification for the vessel concerned is issued under paragraph (4), the vessel may not—

(A) arrive at any port or place in the United States; or

(B) remain at any port or place in the United States.

SEC. 114. VESSEL REPAIR SUBSIDY DECLARATIONS.

(a) Subsidy Declaration and Surety Requirements at Entry.—

(1) In general.—The owner or master of a vessel shall, at, or before, the time of making formal entry of a vessel under the Tariff Act of 1930, deposit with the appropriate customs officer a subsidy declaration for repairs made to that vessel since the vessel last entered the United States.

(2) Information in declaration.—The subsidy declaration made under paragraph (1) shall include a statement attesting to whether any repairs were made in a foreign shipyard since the vessel last entered the United States and, if repairs were made in a foreign shipyard, include—

(A) a list and description of each repair made;

(B) an identification of each foreign shipyard in which a repair was made and the date of that repair;

(C) the dollar value of the repair made in that shipyard; and

(D) any other information required by the Secretary.

(3) Surety requirements.—

(A) Requirement on entry.—On or before entry, the owner or master of the vessel shall file with the customs officer a bond, proof of insurance, or any other surety, as the Secretary may require, in an amount equal to the dollar value of the repairs declared under paragraph (2) that were made in a shipyard listed on the list established under section 112(a) at the time of the repair.

(B) Form of surety.—A bond, proof of insurance, or any other surety filed under paragraph (A) shall be in a form determined by the Secretary to be satisfactory to insure the financial responsibility of that vessel owner to pay for any repair subsidies. Any bond submitted under this section shall be issued by a surety company found acceptable by the Secretary.

(C) Claims against surety.—A bond, insurance, or other surety filed under paragraph (A) shall be available to pay for any repair subsidy determined by the Secretary or any penalty assessed under section 436.

(b) Application for Repair Subsidy Determination.—Within 30 days after the filing of the bond, proof of insurance or other surety under subsection (a)(3), the vessel owner may apply to the Secretary for the issuance of a repair subsidy determination for that vessel. An application shall be accompanied by any documentation that the Secretary may require for purposes of making the determination, including information regarding the amount of each repair subsidy granted and any repayment of the repair subsidy to the foreign government.

(c) Repayment of Repair Subsidy.—

(1) In general.—A vessel owner shall pay to the United States Government an amount equal to any repair subsidy from which the vessel owned by that person has received or benefited.

(2) Preliminary finding.—Within 30 days after the application, the Secretary shall make a preliminary finding as to the amount of repair subsidy which is to be paid to the Treasury of the United States. Notice of this finding shall be provided to the owner or his agent and published in the Federal Register. At any time before the preliminary finding is made, an interested party may file information with the Secretary regarding the validity or accuracy of the information provided by the vessel master or owner.

(3) Petition for review.—Unless a petition for review of that determination is received within 15 days after the date of notification under paragraph (2), from either the owner or an interested party, the finding by the Secretary is final.

(d) Final Repair Subsidy Determinations.—If the owner or interested party files a petition for review of the preliminary determination within the 15 days, the Secretary shall make a final determination within 30 days after the date the petition is filed.

(e) Forfeiture of Surety.—Unless a repair subsidy payback payment is made within 30 days of the final order, the face amount guaranteed by the bond, insurance, or other surety shall be forfeited to the United States Government.

(f) Insufficient Surety.—If the amount of the surety is insufficient to cover the amount of the repair subsidy ordered to be repaid, then the vessel may not enter or clear the United States until the full amount of the repair subsidy is paid to the United States Government.

SEC. 115. DEFINITIONS AND ADMINISTRATIVE PROVISIONS.

(a) Definitions.—As used in this subtitle:

(1) The term "construction" includes reconstruction.

(2) The term "interested party" means—

(A) a person that engages in ship construction or ship repair in the United States;

(B) a certified union or recognized union or group of workers which is representative of an industry that engages in ship construction or ship repair in the United States;

(C) a trade or business association, the members of which engage in ship construction or ship repair in the United States; and

(D) an association, a majority of whose members is composed of interested parties described in subparagraphs (A), (B), and (C) with respect to ship construction or ship repair.

(3) The term "foreign shipyard" includes a ship construction or repair facility located in a foreign country that is directly or indirectly owned, controlled, managed, or financed by a foreign shipyard that receives or benefits from a subsidy.

(4) The term "Secretary" means the Secretary of Commerce.

(5) The term "subsidy" includes, but is not limited to, any of the following:

(A) Officially supported export credits and development assistance.

(B) Direct official operating support to the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including—

(i) grants;

(ii) loans and loan guarantees other than those available on the commercial market;

(iii) forgiveness of debt;

(iv) equity infusions on terms inconsistent with commercially reasonable investment practices;

(v) preferential provision of goods and services; and

(vi) public sector ownership of commercial shipyards on terms inconsistent with commercially reasonable investment practices.

(C) Direct official support for investment in the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including the kinds of support listed in clauses (i) through (v) of subparagraph (B), and any restructuring support, except public support for social purposes directly and effectively linked to shipyard closures.

(D) Assistance in the form of grants, preferential loans, preferential tax treatment, or otherwise, that benefits or is directly related to shipbuilding and repair for purposes of research and development that is not equally open to domestic and foreign enterprises.

(E) Tax policies and practices that favor the shipbuilding and repair industry, directly or indirectly, such as tax credits, deductions, exemptions and preferences, including accelerated depreciation, if the benefits are not generally available to persons or firms not engaged in shipbuilding or repair.

(F) Any official regulation or practice that authorizes or encourages persons or firms engaged in shipbuilding or repair to enter into anticompetitive arrangements.

(G) Any indirect support directly related, in law or in fact, to shipbuilding and repair at national yards, including any public assistance favoring shipowners with an indirect effect on shipbuilding or repair activities, and any assistance provided to suppliers of significant inputs to shipbuilding, which results in benefits to domestic shipbuilders.

(H) Any export subsidy identified in the Illustrative List of Export Subsidies in the Annex to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade or any other export subsidy that may be prohibited as a result of the Uruguay Round of trade negotiations.

(6) The term "vessel" means any self-propelled, sea-going vessel—

(A) of not less than 100 gross tons, as measured under the International Convention of Tonnage Measurement of Ships, 1969; and

(B) not exempt from entry under section 441 of the Tariff Act of 1930.

(b) Hearing and Review Procedures.—The Secretary shall make determinations under sections 112(c), 113(d)(2), and 113(d) and conduct reviews under section 112 (b), (e), and (f), section 113(d)(3), and section 114(c), under the hearing procedures applied by the Secretary under section 774 of the Tariff Act of 1930 (19 U.S.C. 1677c) with respect to hearings required or permitted under title VII of the Tariff Act of 1930. A determination by the Secretary under section 112(c), 113(d)(2), or 114(d) is subject to judicial review under section 516A of the Tariff Act of 1930 (19 U.S.C. 1516a) under the applicable procedures and standards applied under that section for reviewable determinations described in subsection (a)(2)(B) of that section.

(c) Proprietary Information.—Information submitted to the Secretary in regard to the making of any determination under sections 112(c), 113(d)(2), and 114(d) and reviews conducted under section 112 (b), (e), and (f), section 113(d)(3), and section 114(c), shall be treated as proprietary if it fulfills the requirements of subsection (b) of section 777 of the Tariff Act of 1930 (19 U.S.C. 1677f(b)). Access to proprietary information under protective order shall be permitted under, and governed by, subsection (c) of such section 777.

(d) Information Used in Making Determinations or Reviews.—The Secretary shall verify all information relied upon in making any determination under sections 112(c), 113(d)(2), and 114(d) or review under section 112 (b), (e), and (f), section 113(d)(3), and section 114(c). If the Secretary is unable to verify the information submitted, the Secretary shall use the best information available as the basis for action. Whenever a party refuses or is unable to produce information requested in a timely manner and in the form provided, the Secretary shall use the best information otherwise available.

(e) Public Availability of Determinations and Review Decisions.—The Secretary shall make available for public inspection the text of all determinations and review decisions made under sections 112, 113, and 114.

(f) Special Provisions Relating to the Subsidized Shipyard List.—

(1) Statutory listings.—For purposes of section 112, unless the Secretary determines, with clear and convincing evidence, that a foreign shipyard does not receive or benefit from, directly or indirectly, subsidies, a foreign shipyard (including a shipyard in a country that was a party to negotiating a multilateral agreement for the elimination of shipbuilding subsidies in the Organization for Economic Cooperation and Development Working Party 6 on October 16, 1991) is deemed to be on the list established under that section until the earlier of the date—

(A) the Secretary publishes the list of subsidized shipyards under paragraph (2)(C); or

(B) the foreign country in which the shipyard is located signs a trade agreement with the United States that provides for the immediate elimination of subsidies for that shipyard.

(2) Time limit on initial listings.—Within 120 days after the effective date of this subtitle, the Secretary shall—

(A) conduct an investigation under section 112(b) with respect to all foreign shipyards;

(B) make a determination under section 112(c); and

(C) publish in the Federal Register a list of the foreign shipyards that have been determined to be receiving or benefiting from a subsidy for the construction or repair of vessels.

(g) Effective Date of Subtitle.—This subtitle and the amendments made by this subtitle take effect on the date of the enactment of this Act; except that—

(1) no penalty provided for under section 112(g) may be imposed before the 120th day after such date of enactment;

(2) subsection (h) (relating to civil action remedies) of section 112 takes effect on the 1st anniversary of such date of enactment; and

(3) section 114 (relating to vessel repair subsidy declarations) applies to vessel repairs made in foreign shipyards after December 31, 1993.

SEC. 116. CONFORMING AMENDMENTS.

(a) Entry Requirements for Vessels.—Section 434 of the Tariff Act of 1930 (19 U.S.C. 1934) is amended by inserting "the construction subsidy certification and the repair subsidy declaration required under sections 113 and 114 of the Shipbuilding Trade Reform Act of 1992," after "or document in lieu thereof,".

(b) Penalties for Violations of Arrival, Reporting, and Entry Requirements.—Section 436 of the Tariff Act of 1930 (19 U.S.C. 1436(a)) is amended—

(1) by redesignating paragraph (4) of subsection (a) as paragraph (7);

(2) by striking "or" at the end of paragraph (3) of subsection (a);

(3) by inserting after paragraph (3) of subsection (a) the following:

"(4) to present to a customs officer when making entry under section 434 or 435 a subsidy certification or declaration required under section 113 or 114 of the Shipbuilding Trade Reform Act of 1992 that is forged, altered, or false without revealing the facts;

"(5) to attempt to enter or clear any vessel to which a prohibition on arrival, entry, or clearance in the United States applies under section 113(d)(5) or 114(f) of the Shipbuilding Trade Reform Act of 1992;

"(6) to fail to remove promptly from the United States any vessel to which a prohibition on remaining in the United States applies under section 113(d)(5) of the Shipbuilding Trade Reform Act of 1992; or";

(4) by striking "(3)" in paragraph (7) (as redesignated by paragraph (1)) of subsection (a) and inserting "(6)"; and

(5) by adding at the end the following new subsection:

"(e) Provisions Relating to Subsidy Certifications and Declarations.—If the Secretary has reason to believe that an unlawful act under this section relating to a vessel construction subsidy certification or repair subsidy declaration required under section 113 or 114 of the Shipbuilding Trade Reform Act of 1992 has been committed, the Secretary shall—

"(1) undertake any investigation necessary to ascertain whether action authorized under this section against the master of the vessel, or the vessel, or both, is warranted; and

"(2) if the vessel involved is not covered by such a subsidy certification or declaration and the information obtained during that investigation indicates that there is reason to believe that the vessel does not meet the requisite certification or declaration requirements under such section 113 or 114, provide that information to the Secretary of Commerce.".

Subtitle B—Treatment of Vessels Under the Countervailing and Antidumping Duty Laws

SEC. 121. APPLICATION OF COUNTERVAILING AND ANTIDUMPING DUTY LAWS TO VESSELS.

(a) In General.—Subtitle D of title VII of the Tariff Act of 1930 is amended by adding after section 771B the following new section:

"SEC. 771C. SPECIAL RULES IN APPLYING TITLE TO FOREIGN-MADE VESSELS.

"(a) Definition.—The term 'vessel' means any vessel of a kind described in heading 8901 or 8902.00.00 of the Harmonized Tariff Schedule of the United States of not less than 100 gross tons, as measured under the International Convention on Tonnage Measurement of Ships, 1969.

"(b) Vessels Considered as Merchandise.—A vessel is merchandise for purposes of this title only if the construction of the vessel was carried out in a foreign country which—

"(1) is not a signatory to a trade agreement with the United States that provides for the immediate elimination of the dumping of vessels and the subsidizing of vessel construction in that country; or

"(2) is a signatory to a trade agreement described in paragraph (1) but was not, as determined by the administering authority, in compliance with its obligations under the trade agreement during the construction.

"(c) Application of Subtitles A and B.—

"(1) In general.—In applying subtitles A and B with respect to vessels constructed, reconstructed, or repaired in foreign countries—

"(A) a vessel shall be treated as sold for importation into the United States when a United States person enters into a contract for—

"(i) the construction or reconstruction of the vessel by, or the purchase (or leasing, if the equivalent of a purchase) of the vessel after construction or reconstruction from, the builder; or

"(ii) the repair of the vessel; and

"(B) a vessel sold for importation into the United States shall be treated as being offered for entry for consumption under the tariff laws at the time of its first arrival at a port or place in the United States after construction, reconstruction, or repair, regardless of where the vessel is registered or documented.

"(2) Definition.—For purposes of paragraph (1), the term 'United States person' means—

"(A) any individual or entity described in subsection (a) of section 12102 of title 46, United States Code;

"(B) any agent or other person acting on behalf of any individual or entity referred to in subparagraph (A); or

"(C) any person directly or indirectly owned or controlled by any individual or entity referred to in subparagraph (A).".

(b) Prospective Application to Contracts.—The amendments made by subsection (a) of this section apply to a vessel built or repaired under a contract entered into after the date of enactment of this Act.

TITLE II—CONTINGENCY RETAINER FLEET PROGRAM

SEC. 201. SHORT TITLE.

This title may be cited as the "Maritime Reform Act of 1992".

SEC. 202. PURPOSE OF THE MERCHANT MARINE ACT, 1936.

Section 101 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1101) is amended to read as follows:

"SEC. 101. FOSTERING DEVELOPMENT AND MAINTENANCE OF MERCHANT MARINE.

"The Secretary of Transportation shall carry out this Act in a manner that ensures the existence of an operating fleet of United States documented vessels that is—

"(1) sufficient to carry the domestic water-borne commerce of the United States and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of such domestic and foreign water-borne commerce at all times;

"(2) adequate to serve as a naval auxiliary in time of war or national emergency;

"(3) owned and operated by citizens of the United States, to the extent practicable;

"(4) composed of the best-equipped, safest, and most modern vessels;

"(5) manned with the best trained and efficient personnel who are citizens of the United States; and

"(6) supplemented by modern and efficient United States facilities for shipbuilding and ship repair.".

SEC. 203. CONTINGENCY RETAINER FLEET PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.) is amended by inserting after title III the following new title:

"TITLE IV—CONTINGENCY RETAINER FLEET PROGRAM

"SEC. 401. ESTABLISHMENT OF CONTINGENCY RETAINER FLEET.

"The Secretary of Transportation shall establish a fleet of active, militarily useful vessels to meet Department of Defense and other security requirements, enhance sealift capabilities, and maintain a presence in international commercial shipping of United States documented vessels. The fleet shall be known as the 'Contingency Retainer Fleet'.

"SEC. 402. COMPOSITION OF FLEET.

"The Fleet shall consist of privately owned United States documented vessels for which there are in effect operating agreements.

"SEC. 403. VESSELS ELIGIBLE FOR ENROLLMENT IN FLEET.

"(a) IN GENERAL.—A vessel is eligible to be enrolled in the Fleet if the Secretary decides, in accordance with this section, that it is eligible. The Secretary may decide whether a vessel is eligible to be enrolled in the Fleet only pursuant to an eligibility decision application submitted to the Secretary by the owner or operator of the vessel. The Secretary shall make such a decision by not later than 90 days after the date of submittal of an eligibility decision application for the vessel by the owner or operator of the vessel.

"(b) VESSEL ELIGIBILITY AND LISTING.—The Secretary shall decide that a vessel is eligible to be enrolled in the Fleet if—

"(1) the Secretary of Defense decides that the vessel is of a design and in a condition that is militarily useful for meeting the sealift needs of the United States during national emergencies;

"(2) the person that will be the contractor with respect to an operating agreement for the vessel agrees to enter into an operating agreement with the Secretary for the vessel under section 404;

"(3) the vessel is or will be—

"(A) built in the United States;

"(B) built in a foreign shipyard before the date of enactment of the Maritime Reform Act of 1992; or

"(C) built under a contract entered into after that date, in a foreign shipyard that on the date the contract is entered is not on the list established under section 112 of the Shipbuilding Trade Reform Act of 1992;

"(4) the person that will be a contractor with respect to an operating agreement for the vessel is a citizen of the United States; and

"(5)(A) the vessel is not more than 15 years of age on the date of submittal of an eligibility decision application for the vessel; or

"(B) if the vessel is not in existence on that date—

"(i) the person that will be the contractor with respect to an operating agreement for the vessel has entered into a binding contract with a shipyard for the delivery of a vessel that the Secretary decides will otherwise be eligible under this subsection; and

"(ii) an operating agreement for the vessel is entered into by not later than 30 months after the date of submittal of the application.

"(c) TIME LIMIT FOR SECRETARY OF DEFENSE.—The Secretary of Defense shall make a decision under subsection (b)(1) regarding a vessel within 30 days after receiving notification from the Secretary of the submittal of an eligibility decision application for the vessel.

"(d) NOTICE OF NONELIGIBILITY DECISION.—

"(1) DETERMINATION.—The Secretary shall make determinations under subsection (b)(2) through (5) for each vessel for which an eligibility decision application is submitted under this section.

"(2) WRITTEN EXPLANATION.—The Secretary shall provide to the person that submits an eligibility application for a vessel a written explanation of any decision that the vessel is not eligible for enrollment in the Fleet.

"(e) LIST OF ELIGIBLE VESSELS.—

"(1) IN GENERAL.—The Secretary shall maintain a list of vessels that the Secretary decides in accordance with this section are eligible to be enrolled in the Fleet.

"(2) REMOVAL OF VESSELS FROM LIST.—The Secretary shall remove a vessel from the list maintained under this subsection, and the vessel shall not be an eligible vessel for purposes of this title—

"(A) at any time that the conditions for eligibility under subsection (b) are not fulfilled for the vessel; or

"(B) if the status of the person who submitted an eligibility decision application for the vessel, as owner or operator of the vessel, changes and after that change—

"(i) the owner or operator of the vessel fails to submit a new eligibility decision application for the vessel; or

"(ii) such an application is not approved by the Secretary.

"SEC. 404. OPERATING AGREEMENTS, GENERALLY.

"(a) REQUIREMENT FOR ENROLLMENT OF VESSELS.—

"(1) IN GENERAL.—A vessel shall be enrolled in the Fleet only if it is an eligible vessel for which the owner or operator of the vessel applies for and enters into an operating agreement with the Secretary under this section.

"(2) OPERATING AGREEMENTS EFFECTIVE BEFORE FISCAL YEAR 2001.—The Secretary shall enter into operating agreements that are effective before October 1, 2000, to the extent that amounts are available for fiscal years ending on or before that date from appropriations or under section 407(b).

"(3) OPERATING AGREEMENTS EFFECTIVE AFTER FISCAL YEAR 2001.—The Secretary may enter into operating agreements that are effective after September 30, 2000, to the extent that amounts are available from appropriations for fiscal years beginning after that date.

"(b) PRIORITY FOR AWARDING AGREEMENTS.—The Secretary shall enter into operating agreements according to the following priority:

"(1) VESSELS UNDER ODS CONTRACTS.—For operating agreements that are effective before September 30, 2000, any vessel that is or will be owned or operated by a person that—

"(A) is a party to an operating-differential subsidy contract entered into under title VI; and

"(B) is or will be operating that vessel under that contract;

if the authority to operate the vessel under the contract is terminated under an agreement with the Secretary.

"(2) OTHER VESSELS OWNED BY CITIZENS.—To the extent that amounts are available after applying paragraph (1), any vessel that is—

"(A) owned and operated by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916; and

"(B) on the list maintained under section 403(e).

"(3) OTHER VESSELS.—To the extent that amounts are available after applying paragraphs (1) and (2), any vessel that is—

"(A) owned and operated by a person that is eligible to document a vessel under chapter 121 of title 46, United States Code; and

"(B) on the list maintained under section 403(e).

"(c) PROHIBITION ON ENTERING AGREEMENTS.—The Secretary may not enter into an operating agreement for a vessel that is—

"(1) covered by an operating-differential subsidy contract under title VI; and

"(2) not offered and accepted for enrollment in a sealift readiness program approved by the Secretary of Defense.

"(d) AGREEMENTS REQUIRED IF FUNDS AVAILABLE.—To the extent that there are vessels on the list maintained under section 403(e) that are not enrolled in the Fleet, the Secretary shall enter into operating agreements within 30 days after the availability of amounts necessary for those agreements.

"(e) EXPIRATION OF OFFERS FOR AGREEMENTS.—Unless extended by the Secretary, an offer by the Secretary to enter into an operating agreement under this section expires 120 days after the date of the offer.

"(f) TERMINATION OF AGREEMENT FOR FAILURE TO PLACE VESSEL.—An operating agreement entered into by the Secretary pursuant to subsection (b)(1), and the rights under that agreement, are terminated at the end of the 90-day period beginning on the date the agreement is entered into unless a vessel from the list maintained under section 403(e) is covered by the agreement before the end of that period.

"(g) REPAYMENT REQUIREMENT.—A person that is required under this Act or the Maritime Reform Act of 1992 to enroll in the Fleet a replacement for a vessel in the Fleet shall be liable to the United States Government for all amounts received as payments for the vessel under this title if the person does not enroll the replacement vessel within the period required by law for that enrollment.

"(h) BINDING OBLIGATION OF GOVERNMENT.—An operating agreement constitutes a contractual obligation of the United States Government to pay the amounts provided for under that agreement.

"SEC. 405. TERMS OF OPERATING AGREEMENTS.

"(a) OPERATING AGREEMENT REQUIREMENTS.—An operating agreement shall, during the effective period of the agreement, provide the following:

"(1) OPERATION AND DOCUMENTATION.—The vessel covered by the operating agreement—

"(A) shall be operated in the foreign trade or domestic trade allowed under a registry endorsement for the vessel issued under section 12105 of title 46, United States Code;

"(B) may not be operated in the coastwise trade of the United States or in mixed coastwise and foreign trade, except for coastwise trade allowed under a registry endorsement issued for the vessel under section 12105 of title 46, United States Code; and

"(C) shall be documented under chapter 121 of title 46, United States Code, by not later than the effective date of the operating agreement.

"(2) ANNUAL PAYMENTS.—The Secretary shall pay the contractor, in accordance with this subsection, the following amounts for each fiscal year in which the vessel is operated in accordance with the agreement:

"(A) For fiscal year 1994, $2,300,000.

"(B) For each fiscal year after fiscal year 1994, $2,100,000.

"(3) AVAILABILITY OF VESSEL.—

"(A) IN GENERAL.—On a request of the President during time of war or national emergency or when considered by the President, acting through the Secretary in consultation with the Secretary of Defense, to be necessary in the interest of national security, and subject to subparagraph (B), the contractor as soon as practicable shall, as specified by the Secretary—

"(i) make the vessel covered by the agreement available to the Secretary under a time charter; or

"(ii) provide space on the vessel covered by the agreement to the Secretary on a guaranteed basis.

"(B) CONDITION FOR CHARTER.—The Secretary shall allow a contractor to comply with this paragraph by providing space on a vessel under subparagraph (A)(ii) unless the Secretary determines that it is necessary in the interest of national security that the contractor make the vessel available under a time charter.

"(4) DELIVERY OF VESSEL.—The contractor shall deliver a vessel to the Secretary pursuant to a time charter under paragraph (3)(A)(i), as specified in the request for the vessel—

"(A) at the first port in the United States the vessel is scheduled to call after the date of the request;

"(B) at the port in the United States to which the vessel is nearest on the date of the request; or

"(C) in any other reasonable manner authorized by the agreement and specified in the request.

"(5) DELIVERY COSTS.—The Secretary shall reimburse the contractor for costs incurred by the contractor in delivering the vessel covered by the agreement to the Secretary in accordance with the agreement.

"(6) COMPENSATION.—The Secretary shall pay the contractor, as provided in the operating agreement, reasonable compensation at reasonable commercial rates for the period of time the vessel is chartered or the contractor provides space on the vessel under paragraph (3).

"(7) REQUIRED OPERATION.—The vessel covered by the operating agreement shall be operated for at least a minimum amount of time annually, as specified in the operating agreement.

"(8) SUBSTITUTION OF VESSELS.—The contractor may substitute for the vessel covered by the agreement another vessel on the list maintained under section 403(e).

"(b) PAYMENTS.—

"(1) IN GENERAL.—The amount required to be paid by the Secretary each year to a contractor under an operating agreement pursuant to subsection (a)(2)—

"(A) shall be paid at a pro rated amount at the beginning of each month in equal installments; and

"(B) except as provided in paragraph (2), may not be reduced by reason of operation of the vessel covered by the agreement to carry civilian or military preference cargoes under—

"(i) section 901(a), 901(b), or 901b;

"(ii) section 2631 of title 10, United States Code; or

"(iii) the Act of March 26, 1934 (48 Stat. 500).

"(2) REDUCTION FOR PREFERENCE CARGO.—A contractor with respect to a vessel may not receive any payment under this title for any day in which the vessel is engaged in transporting more than 5,000 tons of preference cargo described in paragraph (1)(B) that is bulk cargo (as defined in section 3 of the Shipping Act of 1984).

"(c) REDELIVERY OF VESSELS.—The Secretary shall, upon the termination of the need for which a vessel is delivered under an operating agreement, return the vessel to the contractor—

"(1) at a place that is mutually agreed upon by the Secretary of Defense and the contractor; and

"(2) in the condition in which it was delivered to the Secretary, excluding normal wear and tear.

"(d) TERMINATION OF OPERATING AGREEMENTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), an operating agreement entered into under this title shall terminate September 30, 2000.

"(2) EXCEPTION.—An operating agreement that is first effective after September 30, 2000, shall terminate September 30, 2007.

"(e) TRANSFER OF OPERATING AGREEMENTS.—A contractor under an operating agreement may transfer the agreement (including all rights under the agreement) to any other person that is a citizen of the United States, after notification of the Secretary in accordance with regulations prescribed by the Secretary. A person to whom an agreement is transferred may receive payments from the Secretary under the agreement only if the vessel to be covered by the agreement after the transfer is on the list maintained under section 403(e).

"SEC. 406. NONCONTIGUOUS TRADE RESTRICTIONS.

"(a) PROHIBITION.—

"(1) IN GENERAL.—Except as provided in this section, a contractor may not receive any payment under this title if—

"(A) the contractor or a related party with respect to the contractor, directly or indirectly owns, charters, or operates a vessel engaged in the transportation of cargo in noncontiguous trade, other than in accordance with a waiver under subsection (b) or (c); or

"(B) for noncontiguous trade for which there is a waiver under subsection (b) or (c), there is a—

"(i) material change in the domestic ports served from the ports permitted to be served under the waiver;

"(ii) material increase in the annual number or the frequency of sailings from the number or frequency permitted under the waiver; or

"(iii) material increase in the annual capacity utilized from the annual capacity permitted under the waiver.

"(2) LIMITATIONS ON PROHIBITION.—Paragraph (1)—

"(A) applies to a contractor only in the years specified for payments under the operating agreement entered into by the contractor;

"(B) does not apply with respect to the contract carriage of noncontainerizable or nontrailerizable cargo on barges; and

"(C) does not apply with respect to transportation of liquid fuel in bulk that is not in a container or trailer.

"(b) GENERAL WAIVER AUTHORITY.—

"(1) IN GENERAL.—Except as provided in subsection (c), the Secretary shall waive the application of subsection (a) to a contractor pursuant to an application submitted in accordance with this subsection, unless the Secretary finds that—

"(A) the waiver would result in unfair competition to any person that operates vessels as a carrier of cargo in a service exclusively in the noncontiguous trade for which the waiver is applied;

"(B) existing service in that noncontiguous trade is adequate; or

"(C) the waiver will result in prejudice to the objects or policy of this title or Act.

"(2) TERMS OF WAIVER.—Any waiver granted by the Secretary under this subsection shall state—

"(A) the domestic ports permitted to be served;

"(B) the annual number or frequency of sailings that may be provided; and

"(C) the annual volume of cargo permitted to be carried or cubic feet of barge capacity permitted to be utilized under the waiver, or for container or trailer service the annual 40-foot equivalent shipboard container or trailer capacity permitted under the waiver.

"(3) APPLICATIONS FOR WAIVERS.—An application for a waiver under this subsection may be submitted by a contractor and shall describe, as applicable, the nature and scope of—

"(A) the service proposed to be conducted in a noncontiguous trade under the waiver; or

"(B) any proposed material change or increase in a service in a noncontiguous trade permitted under an existing waiver.

"(4) ACTION ON APPLICATION AND HEARING.—

"(A) NOTICE AND PROCEEDING.—Within 30 days after receipt of an application for a waiver under this subsection, the Secretary shall—

"(i) publish a notice of the application; and

"(ii) begin a proceeding on the application under section 554 of title 5, United States Code, to receive—

"(I) evidence of the quantity and quality of the existing service in the noncontiguous trade for which the waiver is applied;

"(II) a description of the proposed service or proposed material change or increase in a previously permitted service;

"(III) the projected effect of the proposed service or proposed material change or increase in existing service; and

"(IV) recommendations on conditions that should be contained in any waiver for the proposed service or material change or increase.

"(B) INTERVENTION.—Any interested person may intervene in a proceeding under subparagraph (A).

"(C) HEARING.—Before deciding whether to grant a waiver under this subsection, the Secretary shall hold a public hearing, reasonable notice of which shall be published.

"(5) DECISION.—The Secretary shall complete all proceedings and hearings on an application under this subsection and issue a decision on the record within 180 days after receipt of the application.

"(c) EXISTING NONCONTIGUOUS TRADE OPERATORS.—

"(1) IN GENERAL.—The Secretary shall waive the application of subsection (a) to a contractor pursuant to an application submitted in accordance with this subsection if the Secretary finds that the contractor, or a related party or predecessor in interest with respect to the contractor—

"(A) engaged in bona fide operation of a vessel as a carrier of cargo by water—

"(i) in a noncontiguous trade on July 1, 1992; or

"(ii) in furnishing seasonal service in a season ordinarily covered by its operation, during the 12 calendar months preceding July 1, 1992; and

"(B) has operated in that service since that time, except for interruptions of service resulting from Operation Desert Storm or over which the contractor (or related party or predecessor in interest) had no control.

"(2) TERMS OF WAIVER.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the level of service permitted under a waiver under this subsection shall be the level of service provided by the applicant (or related party or predecessor in interest) in the relevant noncontiguous trade during the 6 calendar months preceding July 1, 1992, or in the case of seasonal service during the 12 calendar months preceding July 1, 1992, determined by—

"(i) the domestic ports called; and

"(ii) the number of sailings actually made, except as to interruptions in the service in the noncontiguous trade resulting from Operation Desert Storm or over which the applicant (or related party or predecessor in interest) had no control.

"(B) CERTAIN CONTAINERIZED VESSELS.—If an applicant under this subsection was offering service as an operator of containerized vessels in noncontiguous trades with Hawaii, Puerto Rico, and Alaska on July 1, 1992, a waiver under this subsection shall permit the applicant to conduct—

"(i) 104 sailings each year from the West Coast of the United States to Hawaii with an annual capacity allocated to the service of 75 percent of the total capacity of the vessels employed in the service;

"(ii) 156 sailings each year in each direction between the East Coast or Gulf Coast of the United States and Puerto Rico with an annual capacity allocated to the service of 75 percent of the total capacity of the vessels employed in the service; and

"(iii) 103 sailings each year in each direction between Washington and Alaska with an annual capacity allocated to the service in each direction of 100 percent of the total capacity of its vessels employed in the service on July 1, 1992.

"(C) CERTAIN TUGS AND BARGES.—If an applicant under this subsection was offering service as an operator of tugs and barges in noncontiguous trades with Hawaii, Puerto Rico, and Alaska on July 1, 1992, a waiver under this subsection shall permit the applicant to conduct—

"(i) 17 sailings each year in each direction between ports in Washington, Oregon, and Northern California and ports in Hawaii with an annual barge house cubic foot capacity and annual barge deck 40-foot equivalent unit container capacity in each direction of 100 percent of total capacity of its barges employed in the service during the 6 calendar months preceding July 1, 1992, annualized;

"(ii) 253 sailings each year in each direction between the East Coast or Gulf Coast of the United States and Puerto Rico with an annual 40-foot equivalent unit container or trailer capacity in each direction of 100 percent of the capacity of its barges employed in the service on July 1, 1992;

"(iii) 37 regularly scheduled tandem tow sailings and 10 additional single tow sailings each year in each direction between Washington and the Alaskan port range between and including Anchorage and Whittier with an annual capacity allocated to the service in each direction of 100 percent of the total capacity of its barges employed in the service on July 1, 1992;

"(iv) 8 regularly scheduled single tow sailings each year in each direction between Washington and points in Alaska (other than the port range between and including Anchorage and Whittier, except occasional deviations to discharge incidental quantities of cargo) with an annual capacity allocated to the service in each direction of 100 percent of the total capacity its barges employed in the service on July 1, 1992;

"(v) any other unscheduled contract containerizeable tug and barge service between Washington and Alaska; and

"(vi) sailings in tug and barge service in noncontiguous trade in addition to the sailings described in clauses (i) through (v), except that—

"(I) the cargo capacity actually utilized under this subparagraph in a calendar year in a service described in clause (i) or (ii) may not exceed the capacity permitted under that clause; and

"(II) the cargo capacity actually utilized under this subparagraph in a calendar year in a service described in subparagraph (iii), (iv), or (v) may not exceed the sum of the capacities permitted under those clauses.

"(D) ANNUALIZATION.—Capacity otherwise required by this paragraph to be permitted under a waiver under this subsection shall be annualized if not a seasonal service.

"(E) ADJUSTMENTS.—

"(i) IN GENERAL.—The annual capacity permitted under a waiver under this subsection shall be adjusted for each calendar year to reflect changes in the total volume of trade on the noncontiguous trade route for which the waiver is issued. Such an adjustment may not be considered to be a material change or increase in service under the waiver for purposes in subsection (b)(3)(B).

"(ii) LIMITATION.—An increase in capacity under this subparagraph shall apply only to the extent the contractor actually uses the increased capacity to carry cargo in the permitted service in the calendar year immediately following the preceding increase in gross product. However, if a contractor operating exclusively containerized vessels in that trade on July 1, 1992, carries an average load factor of at least 90 percent of permitted capacity (including the capacity, if any, both authorized and used under the previous sentence) during 9 months of any one calendar year, then in the next following calendar year and thereafter, the requirement that additional capacity shall be used in the immediately following year does not apply.

"(3) APPLICATIONS FOR WAIVERS.—For a waiver under this subsection a contractor shall submit to the Secretary an application certifying the facts required to be found under paragraph (1)(A) or (B), as applicable.

"(4) ACTION ON APPLICATION.—

"(A) NOTICE.—The Secretary shall publish a notice of receipt of an application for a waiver under this subsection within 30 days after receiving the application.

"(B) HEARING PROHIBITED.—The Secretary may not conduct a hearing on an application for a waiver under this subsection.

"(C) SUBMISSION OF COMMENTS.—The Secretary shall give every person operating a cargo vessel in a noncontiguous trade for which a waiver is applied for under this subsection and who has any interest in the application a reasonable opportunity to submit comments on the application and on the description of the service that would be permitted by any waiver that is granted by the Secretary under the application.

"(5) DECISION ON APPLICATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall complete all proceedings on an application under this subsection and issue a decision on the record within 180 days after receipt of the application.

"(B) EXPEDITED CONSIDERATION.—Subject to the time required for publication of notice and for receipt and evaluation of comments by the Secretary in accordance with this paragraph, in the case of an application for a waiver under this subsection that is submitted to the Secretary at the same time the applicant applies for inclusion of a vessel in the Fleet to be operated under the waiver, the Secretary shall complete all proceedings on an application under this subsection and issue a decision on the record by not later than the date on which the Secretary offers to enter into an operating agreement with respect to that vessel.

"(6) CHANGE OR INCREASE IN SERVICE.—Any material change or increase in a service that is subject to a waiver under this subsection is not authorize except to the extent the change or increase is permitted by a waiver under subsection (b).

"(d) ANNUAL REPORT ON WAIVERS.—Each waiver under this section shall require that the person granted the waiver submit to the Secretary each year an annual report setting forth for the service authorized by the waiver—

"(1) the ports served during the year;

"(2) the number or frequency of sailings performed during the year; and

"(3) the volume of cargo carried or cubic feet of barge capacity utilized, or, for containerized or trailer service, the annual 40-foot equivalent shipboard container or trailer capacity provided during the year.

"(e) DEFINITIONS.—In this section—

"(1) the term 'noncontiguous trade' means trade between—

"(A) the contiguous 48 States; and

"(B) Alaska, Hawaii, or Puerto Rico; and

"(2) the term 'related party' means—

"(A) a holding company, subsidiary, affiliate, or associate of a contractor; and

"(B) an officer, director, agency, or other executive of a contractor or of a person referred to in subparagraph (A).

"SEC. 407. FUNDING FOR CONTINGENCY RETAINER FLEET OPERATING AGREEMENTS.

"(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary any amounts necessary for each of fiscal years 1994 through 2000 for operating agreements.

"(b) TRANSFER OF BALANCES FROM OPERATING-DIFFERENTIAL SUBSIDY PROGRAM.—Any amounts otherwise available for operating differential subsidy contracts under title VI that are no longer required for those contracts are available, until expended, for operating agreements.

"SEC. 408. DEFINITIONS.

"In this title:

"(1) CONTRACTOR.—The term 'contractor' means an owner or operator of a vessel that enters into an operating agreement for the vessel with the Secretary.

"(2) ELIGIBILITY DECISION APPLICATION.—The term 'eligibility decision application' means an application for a decision by the Secretary under section 403 that a vessel is eligible to be enrolled in the Fleet.

"(3) ELIGIBLE VESSEL.—The term 'eligible vessel' means a vessel that the Secretary decides under section 403 is eligible to be enrolled in the Fleet.

"(4) FLEET.—The term 'Fleet' means the Contingency Retainer Fleet established under section 402.

"(5) FLEET OPERATOR.—The term 'Fleet Operator' means a person that is a party to an operating agreement with the Secretary in effect under this title.

"(6) OPERATING AGREEMENT.—The term 'operating agreement' means an operating agreement entered into by the Secretary under section 404.

"(7) SECRETARY.—The term 'Secretary' means the Secretary of Transportation.

"(8) UNITED STATES DOCUMENTED VESSEL.—The term 'United States documented vessel' means a vessel that is documented under chapter 121 of title 46, United States Code.".

(b) ELIGIBILITY OF OLDER VESSELS.—

(1) IN GENERAL.—Notwithstanding subsection (b)(5)(A) of section 403 of the Merchant Marine Act, 1936, as amended by this Act, the Secretary of Transportation shall decide that a vessel that is more than 15 years of age on the date of submittal of an eligibility decision application for the vessel under that section is eligible to be enrolled in the Contingency Retainer Fleet if—

(A) the application is submitted to the Secretary by not later than 90 days after the effective date of that section; and

(B) in the case of a vessel that is more than 25 years of age on the date of submittal of the application—

"(i) the person submitting the application agrees to acquire a replacement for the vessel from among vessels on the list maintained under section 403(e); and

(ii)(I) in the case of a vessel to be replaced with a new vessel, the person submitting the application has entered into a binding contract with a shipyard for the delivery of the replacement vessel, and an operating agreement for the vessel and the replacement vessel is entered into under title IV of that Act by not later than 30 months after the effective date of that section; or

(II) in the case of a vessel to be replaced with an existing vessel, the person submitting the application acquires the replacement vessel from among vessels on the list maintained under section 403(e), and an operating agreement for the vessel and the replacement vessel is entered into under title IV of that Act by not later than 12 months after the effective date of that section.

(2) TERMINATION OF ELIGIBILITY.—A vessel that is otherwise eligible to be enrolled in the Contingency Retainer Fleet pursuant to paragraph (1)(A) or (B), respectively—

(A) shall not be eligible to be enrolled in the Fleet if a replacement for the vessel is not delivered or acquired by the date required by that paragraph for that enrollment; and

(B) shall be removed from the list maintained under section 403(e) of the Merchant Marine Act, 1936, as amended by this Act, effective on that date.

(c) LIMITATION ON PAYMENTS.—Notwithstanding section 405(a)(2) of the Merchant Marine Act, 1936, as amended by this Act, or the terms of any operating agreement (as that term is used in that section), the United States Government is not obligated to pay, and the Secretary of Transportation may not pay, any amount pursuant to that section for any day in which a vessel that is covered by an operating agreement is under a charter to the United States Government that was entered into before the date of the enactment of this Act.

SEC. 204. OPERATING-DIFFERENTIAL SUBSIDY CONTRACTS.

(a) PROHIBITION ON NEW CONTRACTS.—Section 601 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1171) is amended by adding at the end the following:

"(c) After the effective date of this subsection, the Secretary of Transportation may not enter into any new contract under this title.".

(b) TERMINATION OF EXISTING CONTRACTS.—Notwithstanding any other provision of this Act, any contract in effect under title VI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1171 et seq.), on the day before the date of enactment of this Act—

(1) shall continue in effect under its terms and terminate as set forth in the contract, unless voluntarily terminated on an earlier date by the persons (other than the United States Government) that are parties to the contract; and

(2) may not be renewed.

(c) EXEMPTION OF BULK CARGO ODS VESSELS FROM OPERATING RESTRICTIONS.—Section 506 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1156) is amended—

(1) by inserting "(a)" after "SEC. 506."; and

(2) by adding at the end the following new subsection:

"(b) This section does not apply to any liquid or dry bulk cargo vessel for which operating-differential subsidy is required to be paid under a contract under title VI that is in force on the effective date of this subsection, effective upon the termination date of the contract (as set forth in the contract as in effect on the effective date of this subsection).".

(d) RESTRICTIONS ON OPERATIONS OF ODS VESSELS.—Title VI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1171 et seq.), as amended by this Act, is further amended by adding at the end the following:

"SEC. 616. LIMITATION ON APPLICATION OF RESTRICTIONS ON OPERATIONS.

"Sections 605(c), 804, and 805, this section, and the essential service requirements in section 601(a) and 603(a), do not apply to a contractor if—

"(1) the contractor submits an eligibility decision application to the Secretary under title IV for all of the vessels operated by the contractor under an operating-differential subsidy contract;

"(2) all of those vessels for which operating agreements are offered by the Secretary under title IV are enrolled in the Contigency Retainer Fleet; and

"(3) all of those vessels that the Secretary decides are not eligible to be enrolled in the Contingency Reserve Fleet are not eligible solely because the Secretary of Defense decided that the vessels were not militarily useful under section 403(b)(1).".

(e) TERMINATION OF OPERATING DIFFERENTIAL SUBSIDY FOR OLDER VESSELS.—Section 605(b) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1175(b)), is amended by adding the following new sentence at the end of the subsection: "After September 30, 1992, the Secretary of Transportation may not enter any new formal order under this subsection.".

SEC. 205. TRADE-IN OF OBSOLETE VESSELS.

Section 510(a)(2)(B) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1160(a)(2)(B)) is amended to read as follows: "(B) is built in the United States or is built under a contract entered into after the date of the enactment of the Maritime Reform Act of 1992 in a foreign shipyard that is not included in the list published by the Secretary of Commerce under section 112 of the Shipbuilding Trade Reform Act of 1992, and is documented under chapter 121 of title 46, United States Code.".

SEC. 206. CONSTRUCTION RESERVE FUND.

Section 511(a)(2) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1161(a)) is amended to read as follows: "(2)(A) constructed in the United States, (B) the construction of which is aided by a mortgage insured under title XI, or (C) was constructed under a contract entered into after the date of the enactment of the Maritime Reform Act of 1992 in a foreign shipyard that is not included in the list published by the Secretary of Commerce under section 112 of the Shipbuilding Trade Reform Act of 1992; and".

SEC. 207. CONSTRUCTION-DIFFERENTIAL SUBSIDY.

(a) REPEAL OF DOCUMENTATION REQUIREMENT.—Section 503 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1153) is amended by striking the second sentence.

(b) TERMINATION OF SPECIAL TAX TREATMENT OF DEPOSITS INTO RESERVE FUNDS.—Section 511(c) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1161(c)), is amended by adding at the end the following new sentence: "This subsection does not apply to amounts deposited in a construction reserve fund after the date of enactment of the Maritime Reform Act of 1992.".

(c) ELIMINATION OF CONSTRUCTION DIFFERENTIAL SUBSIDY RESTRICTIONS.—Title V of the Merchant Marine Act, 1936 (46 App. U.S.C. 1151 et seq.), as amended by this Act, is further amended by adding at the end the following:

"SEC. 512. LIMITATION ON RESTRICTIONS.

"Notwithstanding any other provision of law or contract, all restrictions and requirements under sections 503, 506, and 802 applicable to a liner vessel constructed, reconstructed, or reconditioned with the aid of construction-differential subsidy shall terminate upon the expiration of the 25-year period beginning on the date of the original delivery of the vessel from the shipyard.".

SEC. 208. DEFINITIONS APPLICABLE TO MERCHANT MARINE ACT, 1936.

Section 905 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1244), is amended—

(1) by striking subsection (a) and inserting the following:

"(a) Each of the terms 'foreign commerce' and 'foreign trade' mean—

"(1) trade between the United States and a foreign country; or

"(2) trade between foreign ports."; and

(2) by striking subsection (c) and inserting the following:

"(c) The term 'citizen of the United States' means a person eligible to own a documented vessel under chapter 121 of title 46, United States Code.".

SEC. 209. CONSTRUCTION LOAN GUARANTEES.

(a) VESSEL CONSTRUCTION REQUIREMENT.—Section 1103(b) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1273(b)) is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end the following:

"(2) The Secretary may not guarantee an obligation for a vessel under this title unless the vessel—

"(A) is built in the United States; or

"(B) is built under a contract entered into after the date of the enactment of the Maritime Reform Act of 1992 in a foreign shipyard that is not included in the list published by the Secretary of Commerce under section 112 of the Shipbuilding Trade Reform Act of 1992.".

(b) Priority Loan Guarantees for Vessels in Coastwise Trade.—Section 1103 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1273) is amended by adding at the end the following:

"(g) In guaranteeing, or committing to guarantee obligations under this title, the Secretary of Transportation shall give priority to guarantees and commitments for vessels that will be engaged in coastwise trade over guarantees and commitments for vessels that will be engaged in foreign commerce.".

(c) Repeal.—Section 1104B of the Merchant Marine Act, 1936 (46 App. U.S.C. 1274a) is repealed.

SEC. 210. GOVERNMENT-IMPELLED CARGOS.

(a) Vessels Eligible for Cargoes.—Section 901(b) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1241(b)) is amended—

(1) in paragraph (1), by striking "For purposes of this section, the term 'privately owned United States-flag commercial vessels'" and all that follows through the end of the paragraph and inserting a period; and

(2) by adding at the end the following new paragraph:

"(3) In this section and section 901b, the term 'privately owned United States-flag commercial vessel' means a privately owned vessel that is documented under chapter 121 of title 46, United States Code, that—

"(A) was built in the United States;

"(B) was documented under chapter 121 of title 46, United States Code, before the date of enactment of the Maritime Reform Act of 1992;

"(C) does not transport under section 901b or this section on any voyage more than 5,000 tons of bulk cargo (as defined in section 3 of the Shipping Act of 1984), and—

"(i) was built in a foreign shipyard before the date of enactment of the Maritime Reform Act of 1992; or

"(ii) is built under a contract entered into after the date, in a foreign shipyard that on the date the contract was entered was not on the list published under section 112 of the Shipbuilding Trade Reform Act of 1992;

"(D)(i) is built under a contract entered into after the date of enactment of the Maritime Reform Act of 1992, in a foreign shipyard that on the date the contract was entered was not on the list published under section 112 of the Shipbuilding Trade Reform Act of 1992; and

"(ii) is not more than 3 years old when documented under chapter 121 of title 46, United States Code; or

"(E) has been documented under chapter 121 of title 46, United States Code, for at least 3 years, and—

"(i) was built in a foreign shipyard before the date of enactment of the Maritime Reform Act of 1992; or

"(ii) is built under a contract entered into after that date, in a foreign shipyard that on the date the contract was entered was not on the list published under section 112 of the Shipbuilding Trade Reform Act of 1992.".

(b) Clerical Amendment.—Section 901b of the Merchant Marine Act, 1936 (46 App. U.S.C. 1241f) is amended by adding at the end the following:

"(f) For the definition of the term 'privately owned United States-flag commercial vessel', see section 901(b)(3).".

SEC. 211. REEMPLOYMENT RIGHTS FOR CERTAIN MERCHANT SEAMEN.

(a) In General.—Title III of the Merchant Marine Act, 1936 (46 App. U.S.C. 1131) is amended by inserting after section 301 the following new section:

"Sec. 302. (a) An individual who is certified by the Secretary of Transportation under subsection (c) shall be entitled to reemployment rights and other benefits substantially equivalent to the rights and benefits provided for by chapter 43 of title 38, United States Code, for any member of a Reserve component of the Armed Forces of the United States who is ordered to active duty.

"(b) An individual may submit an application for certification under subsection (c) to the Secretary of Transportation not later than 45 days after the date the individual completes a period of employment described in subsection (c)(1)(A) with respect to which the application is submitted.

"(c) Not later than 20 days after the date the Secretary of Transportation receives from an individual an application for certification under this subsection, the Secretary shall—

"(1) determine whether or not the individual—

"(A) was employed in the activation or operation of a vessel—

"(i) in the National Defense Reserve Fleet maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1744), in a period in which that vessel was in use or being activated for use under subsection (b) of that section;

"(ii) that is requisitioned or purchased under section 902 of this Act; or

"(iii) that is owned, chartered, or controlled by the United States and used by the United States for a war, armed conflict, national emergency, or maritime mobilization need (including for training purposes or testing for readiness and suitability for mission performance); and

"(B) during the period of that employment, possessed a valid license, certificate of registry, or merchant mariner's document issued under chapter 71 or chapter 73 (as applicable) of title 46, United States Code; and

"(2) if the Secretary makes affirmative determinations under paragraph (1) (A) and (B), certify that individual under this subsection.

"(d) For purposes of reemployment rights and benefits provided by this section, a certification under subsection (c) shall be considered to be the equivalent of a certificate referred to in paragraph (1) of section 2021(a) of title 38, United States Code.".

(b) Application.—The amendment made by subsection (a) shall apply to employment described in section 302(c)(1)(A) of the Merchant Marine Act, 1936, as amended by subsection (a), occurring after August 2, 1990.

(c) Employment Ending Before Enactment.—Notwithstanding subsection (b) of section 302 of the Merchant Marine Act, 1936, as amended by this Act, an individual who, in the period beginning August 2, 1990, and ending on the date of the enactment of this Act, completed a period of employment described in subsection (c)(1)(A) of that section may submit an application for certification under subsection (c) of that section with respect to that employment not later than 45 days after the date of the enactment of this Act.

(d) Regulations.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations implementing this section.

SEC. 212. VESSEL FINANCING.

(a) Elimination of Mortgagee Restrictions.—Section 31322(a) of title 46, United States Code, is amended to read as follows:

"(a) A preferred mortgage is a mortgage, whenever made, that—

"(1) includes the whole of the vessel;

"(2) is filed in substantial compliance with section 31321 of this title; and

"(3)(A) covers a documented vessel; or

"(B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter.".

(b) Elimination of Trustee Restrictions.—

(1) Repeal.—Section 31328 of title 46, United States Code, is repealed.

(2) Conforming amendment.—Section 31330(b) of title 46, United States Code, is amended in paragraphs (1), (2), and (3) by striking "31328 or" each place it appears.

(c) Removal of Mortgage Restrictions.—Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), as amended by this Act, is further amended—

(1) in subsection (c)—

(A) by striking "and sections 31322(a)(1)(D) and 31328 of title 46, United States Code,"; and

(B) in paragraph (1) by striking "mortgage," each place it appears; and

(2) in subsection (d)—

(A) in paragraph (1) by striking "transfer, or mortgage" and inserting "or transfer";

(B) in paragraph (2) by striking "transfers, or mortgages" and inserting "or transfers";

(C) in paragraph (3)(B) by striking "transfers, or mortgages" and inserting "or transfers"; and

(D) in paragraph (4) by striking "transfers, or mortgages" and inserting "or transfers";

SEC. 213. PLACEMENT OF VESSELS UNDER FOREIGN REGISTRY.

(a) In General.—Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), as amended by this Act, is further amended by adding at the end the following:

"(e) Notwithstanding subsection (c)(2), the Merchant Marine Act, 1936, or any contract entered into with the Secretary under that Act, the Secretary of Transportation shall allow a documented vessel to be placed under a foreign registry if at least one replacement vessel of a capacity that is equivalent or greater, as measured by deadweight tons, gross tons, or container equivalent units, as appropriate, is documented under chapter 121 of title 46, United States Code, by the owner of the vessel placed under foreign registry.".

(b) Application.—The amendment made by subsection (a) applies to vessels that are placed under foreign registry after the date of enactment of this Act.

SEC. 214. EFFECTIVE DATE.

The amendments made by this title are effective on the date which is 120 days after the date of enactment of this Act.

SEC. 215. REGULATIONS.

(a) In General.—The Secretary of Transportation shall prescribe regulations as necessary to carry out this title.

(b) Interim Regulations.—The Secretary of Transportation may prescribe interim regulations necessary to carry out this title and for accepting eligibility decision applications under section 403 of the Merchant Marine Act, 1936, as amended by this Act. For this purpose, the Secretary of Transportation is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All regulations prescribed under the authority of this subsection that are not earlier superseded by final rules shall expire 270 days after the date of enactment of this Act.

SEC. 216. STUDY.

(a) In General.—After providing public notice and opportunity for comment, the Secretary of Transportation shall conduct a study of—

(1) the impact of this Act on the international competitiveness of United States

documented vessels and whether this Act has had a favorable or unfavorable impact on the ability of United States documented vessels to compete successfully with foreign-flag vessels;

(2) whether continuation of the Contingency Retainer Fleet program established by this Act would assist the international competitiveness of United States documented vessels;

(3) whether the Contingency Retainer Fleet program should be continued, modified, or discontinued;

(4) alternatives that are or should be available to operators of United States documented vessels if the Contingency Retainer Fleet program is discontinued; and

(5) any other issues related to promoting the international competitiveness of United States documented vessels that the Secretary considers appropriate.

(b) REPORT.—The Secretary of Transportation shall submit to the Congress a report on the findings and conclusions of the study required by subsection (a) by not later than 4 years after the date of enactment of this Act, which shall include such recommendations as the Secretary considers appropriate.

TITLE III—AMENDMENTS RELATED TO CAPITAL CONSTRUCTION FUNDS; PHASEOUT OF DUTY ON EQUIPMENT AND REPAIRS OF VESSELS IN FOREIGN COUNTRIES

Subtitle A—Amendments Related To Capital Construction Funds

SEC. 301. AMENDMENTS OF MERCHANT MARINE ACT, 1936.

(a) CHANGES IN VESSELS TO WHICH CAPITAL CONSTRUCTION FUNDS APPLY.—

(1) The second sentence of section 607(a) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1177) is amended to read as follows: "Any agreement entered into under this section shall be for the purpose of providing replacement vessels, additional vessels, or reconstructed vessels, documented under the laws of the United States for operation in the foreign or domestic commerce of the United States or in the fisheries of the United States and shall provide for the deposit in the fund of the amounts agreed upon as necessary or appropriate to provide for qualified withdrawals under subsection (f)."

(2) Paragraph (1) of section 607(k) of such Act (defining eligible vessel) is amended to read as follows:

"(1) The term 'eligible vessel' means any vessel—

"(A) documented under the laws of the United States, and

"(B) operated in the foreign or domestic commerce of the United States or in the fisheries of the United States.

(3) Paragraph (2) of section 607(k) of such Act is amended to read as follows:

"(2) The term 'qualified vessel' means any vessel—

"(A) documented under the laws of the United States,

"(B) issued a construction subsidy certificate under section 113 of the Shipbuilding Trade Reform Act of 1992, and

"(C) which the person maintaining the fund agrees with the Secretary will be operated in the foreign or domestic commerce of the United States or in the fisheries of the United States.

Such term shall not include any towing vessel, barge, or dry or liquid bulk vessel operated in the coastwise trade other than the noncontiguous trade."

(4) Paragraph (1) of section 607(f) of such Act is amended by striking the last sentence.

(b) TREATMENT OF FUND EARNINGS.—

(1) Section 607 of such Act is amended by adding at the end thereof the following new subsection:

"(n) TAXATION OF EARNINGS ON INVESTMENTS.—

"(1) IN GENERAL.—The tax imposed by chapter 1 of the Internal Revenue Code of 1986 shall be determined—

"(A) by excluding from gross income the taxable earnings from the investment and reinvestment of amounts held in a capital construction fund, and

"(B) by increasing the tax imposed by such chapter by the product of the amount of such taxable earnings and the highest rate of tax specified in section 1 (section 11 in the case of a corporation) of such Code.

"(2) MAXIMUM RATE ON CAPITAL GAINS.—If there is a net capital gain on amounts held in a capital construction fund, the rate of tax taken into account under paragraph (1)(B) with respect to such gain shall not exceed the rate applicable to net capital gain under section 1(h) or 1201(a) of such Code, as the case may be.

"(3) COORDINATION WITH DEDUCTION FOR NET OPERATING LOSSES.—Any earnings excluded from gross income under paragraph (1) shall be excluded in determining taxable income under section 172(b)(2) of such Code.

"(4) TAXABLE EARNINGS.—For purposes of this section, the term 'taxable earnings' means net earnings determined with the following modifications:

"(A) There shall be excluded interest income exempt from taxation under section 103 of such Code.

"(B) If the person maintaining the fund is a corporation, there shall be excluded the percentage applicable under section 243(a)(1) of such Code of any dividend received by the fund with respect to which such person would (but for paragraph (1)(A)) be allowed a deduction under section 243 of such Code.

"(C) Losses from the sale or exchange of capital assets shall be allowed only to the extent of gains from such sales or exchanges."

(2) Subparagraph (D) of section 607(b)(1) of such Act is amended by inserting "reduced by the tax imposed on such receipts under subsection (n)" after "in such fund".

(3) Subparagraph (C) of section 607(d)(1) of such Act is amended by striking "shall not be taken into account" and inserting "shall be taken into account as provided in subsection (n)".

(4) Paragraph (2) of section 607(e) of such Act is amended by striking "and" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", and", and by adding at the end thereof the following new subparagraph:

"(F) the taxable earnings (as defined in subsection (n)) of the fund for any taxable year beginning after the date of the enactment of the Maritime Reform Act of 1992."

(5) Paragraph (3) of section 607(e) of such Act is amended by adding at the end thereof the following new sentence:

"Any amount included in the taxable earnings (as defined in subsection (n)) of the fund for any taxable year beginning after the date of the enactment of the Maritime Reform Act of 1992 shall not be taken into account under this paragraph."

(6) Paragraph (4) of section 607(e) of such Act is amended by adding at the end thereof the following new sentence:

"In the case of taxable years beginning after the date of the enactment of the Maritime Reform Act of 1992, any amount included in the taxable earnings (as defined in subsection (n)) of the fund shall not be taken into account under subparagraph (B), and subparagraphs (C) and (E) shall not apply."

(c) TREATMENT OF CERTAIN LEASE PAYMENTS.—

(1) Paragraph (1) of section 607(f) of such Act is amended by striking "or" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", or", and by inserting after subparagraph (C) the following new subparagraph:

"(D) the payment of amounts which reduce the principal amount (as determined under regulations) of a qualified lease of a qualified vessel or of a barge or container which is part of the complement of a qualified vessel."

(2) Paragraph (4) of section 607(g) of such Act is amended by inserting "(or to reduce the principal amount of any qualified lease)" after "indebtedness".

(3) Subsection (k) of section 607 of such Act is amended by adding at the end thereof the following new paragraph:

"(10) The term 'qualified lease' means any lease with a term of at least 5 years."

(d) AUTHORITY TO MAKE DEPOSITS FOR PRIOR YEARS BASED ON AUDIT ADJUSTMENTS.—Subsection (b) of section 607 of such Act is amended by adding at the end thereof the following new paragraph:

"(4) To the extent permitted by joint regulations, deposits may be made in excess of the limitation described in paragraph (1) (and any limitation specified in the agreement) for the taxable year if, by reason of an audit adjustment to a prior taxable year which became final during the taxable year, the amount of the deposit could have been made for such prior taxable year."

(e) TREATMENT OF CAPITAL GAINS AND LOSSES.—

(1) Paragraph (3) of section 607(e) of such Act is amended to read as follows:

"(3) The capital gain account shall consist of—

"(A) amounts representing long-term capital gains (as defined in section 1222 of such Code) on assets referred to in subsection (b)(1)(C), reduced by

"(B) amounts representing long-term capital losses (as defined in such section) on assets held in the fund."

(2) Subparagraph (B) of section 607(e)(4) of such Act is amended to read as follows:

"(B)(i) amounts representing short-term capital gains (as defined in section 1222 of such Code) on assets referred to in subsection (b)(1)(C), reduced by

"(ii) amounts representing short-term capital losses (as defined in such section) on assets held in the fund, and".

(3) Subparagraph (B) of section 607(h)(3) of such Act is amended by striking "gain" and all that follows and inserting "long-term capital gain (as defined in section 1222 of such Code), and".

(4) The last sentence of subparagraph (A) of section 607(h)(6) of such Act is amended by striking "28 percent (34 percent in the case of a corporation)" and inserting "the rate applicable to net capital gain under such section 1(h) or 1201(a), as the case may be".

(f) COMPUTATION OF INTEREST WITH RESPECT TO NONQUALIFIED WITHDRAWALS.—

(1) Subparagraph (C) of section 607(h)(3) of such Act is amended—

(A) by striking clause (i) and inserting the following new clause:

"(i) no addition to the tax shall be payable under section 6651 of such Code, and", and

(B) by striking "paid at the applicable rate (as defined in paragraph (4))" in clause (ii) and inserting "paid in accordance with section 6601 of such Code".

(2) Subsection (h) of section 607 of such Act is amended by striking paragraph (4) and by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(3) Subparagraph (A) of section 607(h)(5) of such Act, as redesignated by paragraph (2), is amended by striking "paragraph (5)" and inserting "paragraph (4)".

(g) OTHER CHANGES.—

(1) Section 607 of such Act is amended by striking "the Internal Revenue Code of 1954" each place it appears and inserting "the Internal Revenue Code of 1986".

(2) Subsection (c) of section 607 of such Act is amended by striking "interest-bearing securities approved by the Secretary" and inserting "interest-bearing securities and other income-producing assets (including accounts receivable) approved by the Secretary".

SEC. 302. AMENDMENTS OF INTERNAL REVENUE CODE OF 1986.

(a) TREATMENT OF FUND EARNINGS.—

(1) Section 7518 of the Internal Revenue Code of 1986 is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following new subsection:

"(h) TAXATION OF EARNINGS ON INVESTMENTS.—

"(1) IN GENERAL.—The tax imposed by chapter 1 shall be determined—

"(A) by excluding from gross income the earnings from the investment and reinvestment of amounts held in a capital construction fund, and

"(B) by increasing the tax imposed by such chapter by the product of the amount of such earnings and the highest rate of tax specified in section 1 (section 11 in the case of a corporation).

"(2) MAXIMUM RATE ON CAPITAL GAINS.—If there is a net capital gain on amounts held in a capital construction fund, the rate of tax taken into account under paragraph (1)(B) with respect to such gain shall not exceed the rate applicable to net capital gain under section 1(h) or 1201(a), as the case may be.

"(3) COORDINATION WITH DEDUCTION FOR NET OPERATING LOSSES.—Any earnings excluded from gross income under paragraph (1) shall be excluded in determining taxable income under section 172(b)(2).

"(4) TAXABLE EARNINGS.—For purposes of this section, the term 'taxable earnings' means net earnings determined with the following modifications:

"(A) There shall be excluded interest income exempt from taxation under section 103.

"(B) If the person maintaining the fund is a corporation, there shall be excluded the percentage applicable under section 243(a)(1) of any dividend received by the fund with respect to which such person would (but for paragraph (1)(A)) be allowed a deduction under section 243.

"(C) Losses from the sale or exchange of capital assets shall be allowed only to the extent of gains from such sales or exchanges."

(2) Subparagraph (D) of section 7518(a)(1) of such Code is amended by inserting "reduced by the tax imposed on such receipts under subsection (h)" after "in such fund".

(3) Subparagraph (C) of section 7518(c)(1) of such Code is amended by striking "shall not be taken into account" and inserting "shall be taken into account as provided in subsection (h)".

(4) Paragraph (2) of section 7518(d) of such Code is amended by striking "and" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", and", and by adding at the end thereof the following new subparagraph:

"(F) the taxable earnings (as defined in subsection (h)) of the fund for any taxable year beginning after the date of the enactment of the Maritime Reform Act of 1992."

(5) Paragraph (3) of section 7518(d) of such Code is amended by adding at the end thereof the following new sentence:

"Any amount included in the taxable earnings (as defined in subsection (h)) of the fund for any taxable year beginning after the date of the enactment of the Maritime Reform Act of 1992 shall not be taken into account under this paragraph."

(6) Paragraph (4) of section 7518(d) of such Code is amended by adding at the end thereof the following new sentence:

"In the case of taxable years beginning after the date of the enactment of the Maritime Reform Act of 1992, any amount included in the taxable earnings (as defined in subsection (h)) of the fund shall not be taken into account under subparagraph (B), and subparagraphs (C) and (E) shall not apply."

(7) Paragraph (1) of section 7518(g) of such Code is amended by striking "subsection (h)" and inserting "subsection (i)".

(b) TREATMENT OF CERTAIN LEASE PAYMENTS.—

(1) Paragraph (1) of section 7518(e) of such Code is amended by striking "or" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", or", and by inserting after subparagraph (C) the following new subparagraph:

"(D) the payment of amounts which reduce the principal amount (as determined under regulations) of a qualified lease of a qualified vessel or of a barge or container which is part of the complement of a qualified vessel."

(2) Paragraph (4) of section 7518(f) of such Code is amended by inserting "(or to reduce the principal amount of any qualified lease)" after "indebtedness".

(c) AUTHORITY TO MAKE DEPOSITS FOR PRIOR YEARS BASED ON AUDIT ADJUSTMENTS.—Subsection (a) of section 7518 of such Code is amended by adding at the end thereof the following new paragraph:

"(4) To the extent permitted by joint regulations, deposits may be made in excess of the limitation described in paragraph (1) (and any limitation specified in the agreement) for the taxable year if, by reason of an audit adjustment to a prior taxable year which became final during the taxable year, the amount of the deposit could have been made for such prior taxable year."

(d) TREATMENT OF CAPITAL GAINS AND LOSSES.—

(1) Paragraph (3) of section 7518(d) of such Code is amended to read as follows:

"(3) The capital gain account shall consist of—

"(A) amounts representing long-term capital gains (as defined in section 1222) on assets referred to in subsection (b)(1)(C), reduced by

"(B) amounts representing long-term capital losses (as defined in such section) on assets held in the fund."

(2) Subparagraph (B) of section 7518(d)(4) of such Code is amended to read as follows:

"(B)(i) amounts representing short-term capital gains (as defined in section 1222) on assets referred to in subsection (a)(1)(C), reduced by

"(ii) amounts representing short-term capital losses (as defined in such section) on assets held in the fund, and".

(3) Subparagraph (B) of section 7518(g)(3) of such Code is amended by striking "gain" and all that follows and inserting "long-term capital gain (as defined in section 1222), and".

(4) The last sentence of subparagraph (A) of section 7518(g)(6) of such Code is amended by striking "28 percent (34 percent in the case of a corporation)" and inserting "the rate applicable to net capital gain under such section 1(h) or 1201(a), as the case may be".

(e) COMPUTATION OF INTEREST WITH RESPECT TO NONQUALIFIED WITHDRAWALS.—

(1) Subparagraph (C) of section 7518(g)(3) of such Code is amended—

(A) by striking clause (i) and inserting the following new clause:

"(i) no addition to the tax shall be payable under section 6651, and", and

(B) by striking "paid at the applicable rate (as defined in paragraph (4))" in clause (ii) and inserting "paid in accordance with section 6601".

(2) Subsection (g) of section 7518 of such Code is amended by striking paragraph (4) and by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(3) Subparagraph (A) of section 7518(g)(5) of such Code, as redesignated by paragraph (2), is amended by striking "paragraph (5)" and inserting "paragraph (4)".

(f) OTHER CHANGES.—

(1) Subsection (b) of section 7518 of such Code is amended by striking "interest-bearing securities approved by the Secretary" and inserting "interest-bearing securities and other income-producing assets (including accounts receivable) approved by the Secretary".

(2) Paragraph (1) of section 7518(e) of such Code is amended by striking the last sentence.

(3) Subsection (j) of section 7518 of such Code is amended by striking "this section." and inserting "the Maritime Reform Act of 1992."

(4) Section 136 of such Code is amended by striking paragraph (4) and by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(5) Subparagraph (B) of section 543(a)(1) of such Code is amended to read as follows:

"(B) interest on amounts set aside in a capital construction fund under section 607 of the Merchant Marine Act, 1936, (46 App. U.S.C. 1177), or in a construction reserve fund under section 511 of such Act (46 App. U.S.C. 1161),".

SEC. 303. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this subtitle shall apply to taxable years beginning after the date of the enactment of this Act.

(b) DEFINITION OF QUALIFIED VESSEL.—The amendments made by paragraphs (2) and (3) of section 301(a) shall apply to withdrawals made after the 120th day after the date of the enactment of this Act for any construction or reconstruction for which the contract is entered into after such 120th day.

(c) TAXATION OF EARNINGS.—The amendments made by sections 301(b) and 302(a) shall apply to earnings after December 31, 1992, in taxable years ending after such date.

(d) CHANGES IN COMPUTATION OF INTEREST.—The amendments made by sections 301(f) and 302(e) shall apply to withdrawals made after December 31, 1992, including for purposes of computing interest on such a withdrawal for periods on or before such date.

Subtitle B—Phaseout of Duty on Equipment and Repairs of Vessels in Foreign Countries

SEC. 311. PHASEOUT OF DUTY ON EQUIPMENT AND REPAIRS OF VESSELS IN FOREIGN COUNTRIES.

(a) REDUCTION.—Effective October 1, 1993, subsection (a) of section 466 of the Tariff Act of 1930 is amended by striking "50 per centum" and inserting "25 per centum".

(b) REPEAL.—Effective October 1, 1994, section 466 of such Act is hereby repealed.

TRIBUTE TO PASTOR AND MRS. GROVER WILLCOX

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. PAYNE of New Jersey. Mr. Speaker, let me take this opportunity to bring to my colleagues attention the work of two dedicated individuals, Pastor and Mrs. Grover Willcox. Pastor and Mrs. Willcox have been toiling in the vineyards, in one capacity or another, their entire lives in an effort to make our communities and the world better places.

Forty-five years ago, they founded the Calvary Gospel Church. The church became one of the stabilizing institutions in the south ward of Newark, NJ, during the 1960's and 1970's. The church recognized the changing fabric of the community. Rather than preach the ways of the past it developed programs and policies to serve this metamorphic entity. It became a net for the community, allowing it to breathe, to grow, and change all the while helping it to retain many of its best qualities.

Pastor and Mrs. Willcox will be leaving the Calvary Gospel Church this year. They will not be retiring, but continuing with eager anticipation of the most exciting ministry of their lifetime. The Willcoxes will be working overseas. Pastor and Mrs. Willcox who are both in their seventies, will be leaving for Uganda, East Africa, to begin a new ministry under the authority of the Church of Uganda.

Mr. Speaker, I am sure my colleagues will want to join me as I extend my best wishes to Pastor and Mrs. Grover Willcox. They are true examples of the gospel phrase, "Let my work speak for me."

NO MORE U.S. TAXPAYERS' MONEY FOR EXPORTING U.S. MANUFACTURING JOBS

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. BROWN. Mr. Speaker, on this last day of session for the 102d Congress, I want to commend Congressman DAVID OBEY, Senator PAT LEAHY and their colleagues who helped produce the conference report on the fiscal year 1993 foreign operations appropriations bill. In the waning days of session, they had many complex and difficult issues to resolve, but none were more important than taking immediate action to stop the U.S. Agency for International Development [AID] and other Federal agencies from continuing to spend American taxpayers' dollars to export U.S. manufacturing jobs.

I was glad to help investigators from "60 Minutes" and the National Labor Committee in support of worker and human rights in Central America to expose AID's misguided policies less than 2 weeks ago. Those disclosures, including film of AID officials condoning and encouraging blacklisting of foreign workers who dare to stand up for their basic rights, outraged Americans from coast to coast who demanded immediate legislative action.

I very much appreciate that the members of the House and Senate Appropriations Committee recognized the need to act and that they incorporated much of my bill—the American Jobs Retention Act of 1992 (H.R. 6075)—in the conference report on the fiscal year 1993 Foreign Operations Appropriations Act.

Specifically, that legislation prohibits AID and other Federal agencies from spending any appropriated funds in three respects: First, for any financial incentive for a business in the United States to relocate offshore; second, for establishing or developing foreign export processing zones; or third, for any project of activity that contributes to the violation of internationally recognized worker rights as defined in the Trade Act of 1974, including within any foreign export processing zones.

While I doubt that this legislation, when signed into law will accomplish all that is necessary to redirect AID and other Federal agencies that are involved in dispensing U.S. foreign assistance, it will at least stop their most egregious mistakes. I have already enlisted the help of the U.S. General Accounting Office [GAO] in ferreting out the full scope and details of AID's job-exporting incentives and activities, so when their report comes back to the Congress next year, it should help lay a foundation for fundamental reform of U.S. foreign assistance programs.

H.R. 2502

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. RICHARDSON. Mr. Speaker, in the waning hours of the 102d Congress, I had great hope that we could pass a critical piece of legislation, H.R. 2502, establishing the Jemez National Recreation Area in the Jemez Mountains of the Santa Fe National Forest in New Mexico. Despite the fact that no objections were raised regarding the substance and merit of this bipartisan bill, it has been killed for this Congress.

This legislation has tremendous support in my district and the State of New Mexico. I have worked hard with local citizens and the New Mexico congressional delegation to develop a bill that everyone can support, and I will reintroduce and seek early action on this measure at the beginning of the next Congress.

H.R. 2502 is the culmination of a long process that began at the grassroots level in northern New Mexico almost 3 years ago. I want to thank my colleagues, Chairman VENTO of the National Parks and Public Lands Subcommittee, and Chairman MILLER of the Interior Committee, for their hard work and assistance with this bill.

The protection of the Jemez Mountains has long been one of my top environmental priorities. These volcanically formed mountains and valleys, mixed conifer and deciduous trees, streams, small ponds, steep canyons, and brilliantly colored rimrocks make up one of the most spectacular areas of the country. The Jemez is also one of the richest areas of biological diversity in the Southwest. The largest elk herd in New Mexico migrates through the area, and the mountains provide critical habitat for many Federal and State listed threatened, endangered, and sensitive species including the peregrine falcon, goshawk, Jemez Mountain salamander, and others.

The Jemez also contain one of the highest densities of archaeological and cultural sites in North America, estimated at 15 sites per square mile and totaling approximately 30,000 sites. This includes large ancient Pueblo Indian village sites, the largest of which contains over 1,800 rooms. The Jemez Pueblo Indians regard these mountains as the breath of life of their existence, and continue to use numerous religious sites in the Jemez.

The Jemez is also a very popular public recreation area. National forest figures show that approximately half a million people a year visit the area to camp, hike, fish, hunt, backpack, rock climb, and cross country ski. These people visit not only from around New Mexico, but around the country. The area is truly a recreation mecca.

Despite all of this, the Jemez Mountains are under assault from the reckless and irresponsible strip mining of pumice, a material used to stone wash jeans. In fact, the major pumice mining operator in the Jemez, who is not even a member of the New Mexico Mining Association, has shown nothing but blatant disregard for Federal and State environmental laws. Over the last few years, New Mexicans have become justifiably alarmed about this degradation of the Jemez, resulting in my appointment of a citizens committee to develop a proposal to create a national recreation area [NRA]. Representatives from environmental organizations, timber companies, and concerned citizens held several meetings and worked diligently to produce a viable NRA proposal.

Since then, compelling testimony has been given at two congressional hearings, I have held several town meetings in the Jemez area, and thousands of New Mexicans have called or written to express their support for an NRA in the Jemez. H.R. 2502 will provide protection for 57,000 acres of some of the most beautiful land in the country. This legislation directs the Forest Service to develop a comprehensive management plan for the recreation area that addresses issues relating to native Americans, cultural resources, wildlife, recreation, mining, and visitors. Because the Jemez Mountains are considered sacred by the Jemez Pueblo. I included language in the bill that protects the Pueblo's right to access to the area for religious and cultural activities.

In addition, I have worked hard to ensure that local land owners may continue with traditional uses of the land such as grazing, hunting, and timber harvesting. This legislation withdraws the lands within the recreation area from mining, but protects the rights of those with existing mining operations. However, under the bill they will be required to reclaim the land as close as possible to its conditions prior to mining. H.R. 2502 also provides for a more efficient, expedient process for the Secretary of Agriculture to review mining claims in the area.

In addition, no patents shall be issued for public lands in the recreation area, maintaining access and availability of these lands for the half a million citizens who visit there annually. Finally, the bill will provide much needed recreational and interpretive facilities, as well as a visitors center.

Mr. Speaker, it is critical that we look to the future and protect areas like the Jemez for our children and our children's children. This legislation will do just that. I urge my colleagues to join me in this effort.

Mr. Speaker, I insert in the RECORD the attached articles from the New Mexican and the Albuquerque Journal that chronicle the threat to the Jemez:

[From the New Mexican, May 23, 1992]

ESPAÑOLA DEVELOPER ACCUSED OF POLLUTING RIVER

(By Keith Easthouse)

An environmental group has filed notice it intends to sue an Española asphalt plant owner over what it says are repeated violations of federal environmental laws.

Gove Burnett, an attorney with New Mexico Citizens for Clean Air and Water, said Friday the 1,500 member group will sue Richard Cook, owner of Española Transit Mix Co., for allegedly discharging pollutants into the Rio Grande in violation of the federal Clean Water Act.

Burnett said the suit will also contend that Cook stockpiled dredged gravel within the channel of the Rio Grande in violation of Federal law.

Once again, Mr. Cook is exhibiting his renowned recalcitrance about environmental protection," Burnett said.

Cook was out of town Friday and could not be reached for comment.

The suit will seek a permanent injunction for any activities that violate the Clean Water Act, Burnett said.

Burnett said the suit would also seek, in accordance with the act, penalties of $10,000 a day for every day that Cook is violating the act.

As required by the act, a notice of intent to sue was filed earlier this month with the U.S. Environmental Protection Agency. The filing is required two months before an actual lawsuit is filed.

Cook has a history of problems with governmental regulators. In 1988, the EPA fined him $2,500 for violations of the Clean Water Act in connection with the asphalt plant, which also produces concrete, sand and gravel.

Last year, in an out-of-court settlement, Cook agreed to pay the New Mexico Environment Department $50,000 after he was charged with air quality permit violations at the same plant.

Since 1977, the U.S. Army Corps of Engineers has on several occasions ordered Cook to halt gravel dredging and stockpiling activities on the Rio Grande without proper federal permits.

Cook, a 65-year-old Española native, is involved in mining, housing, road construction and other ventures, and has extensive commercial holdings in the Española area. He is considered the richest man in Rio Arriba County.

Attention has focused sharply on Cook since 1988, when he staked mining claims on more than 10,000 acres in the Jemez Mountains and opened a pumice mine over the opposition of environmentalists.

He now is trying to convert 1,520 acres worth of claims—all in the Santa Fe National Forest—into private property under a procedure called "patenting." The procedure is allowed under the General Mining Law of 1872.

In an interview last year, Cook defended his environmental record, saying, "Anyone who does business today will be cited by the EPA and other regulatory agencies."

New Mexico Citizens for Clean Air and Water claimed in a statement that waste water from a gravel cleaning operation and an asphalt truck washing site at the transit mix plant have for several years washed from settling ponds directly into the Rio Grande.

According to the group, the discharges are highly acidic and in one case caused a massive fish kill.

Burnett said the discharges violate the Clean Water Act because Cook does not have a federal permit to discharge pollutants into a waterway.

The lack of a permit was confirmed by Jim Piatt of the state Environment Department's surface water bureau.

"There is an ongoing, unpermitted discharge that is high in sediments and may contain spills of compounds including oils," Piatt said.

Eric Ames, a lawyer who works with Burnett, said Cook could solve the problem by simply building a dam to prevent spillage from the settling ponds.

[From the Albuquerque Journal, June 16, 1992]

EPA ORDERS PLANT TO STOP POLLUTING RIVER

(By Ben Neary)

The U.S. Environmental Protection Agency this month ordered Española businessman Richard Cook to stop discharging pollutants into the Rio Grande at his asphalt and concrete plant along the river.

According to state and federal regulators, Cook's Española Transit Mix company has a long history of violations of the federal Clean Water Act. Just last month, a citizens group filed notice it intends to sue to force Cook to stop violating the law.

Myron Knudson, director of the EPA's Water Management Division in Dallas, wrote to Cook on June 8 informing him he faces a possible fine or other administrative penalty for violating the act.

Cook doesn't hold a National Pollutant Discharge Elimination System permit for his plant, which sits on the east bank of the Rio Grande on the north side of Española. Such permits are required for all pollutant discharges into U.S. waters and require ongoing monitoring and reporting.

In his letter this month, Knudson notes the EPA cited Cook's Española Transit Mix company last July for an unpermitted pollution discharge.

Knudson stated the EPA required Cook's company to apply for a discharge permit and begin submitting monitoring reports last summer. "To date, EPA has no records of having received this information," he wrote to cook.

Attempts to reach Cook for comment Monday were unsuccessful. Repeated attempts to reach EPA officials for comment also were unsuccessful.

The New Mexico Citizens for Clean Air and Water filed notice last month that the group intends to sue Cook to stop violations of the Clean Water Act at his plant. The business sells ready-mixed asphalt and concrete, and raw sand and gravel.

The group sent Cook formal notice May 6 that it intends to sue him under a provision that allows citizen enforcement of the law. The law requires a 60-day notice period before citizen groups can file a suit, so it can't be filed until early July.

Grove Burnett, a Glorieta lawyer representing the group, said last month the suit will ask a federal judge to impose fines of $10,000 a day against Cook, and seek an order forcing him to reimburse the group for the costs of the suit.

Jim Platt, chief of New Mexico's Surface Water Quality Bureau, told the Journal last month officials from his office, the EPA, the U.S. Army Corps of Engineers and representatives from local Indian tribes met with Cook in April to discuss discharges into the river.

"What we walked away from there with, was that he (Cook) basically told us he had no intention of changing what he was doing," Platt said then. "So it is a problem."

He was unavailable for comment Monday.

Jim Wood, with the regulatory branch of the Corps of Engineers in Albuquerque, said last month his agency has cited Cook four times for violations of the water act. One of those is pending. "We believe Mr. Cook pushed material out into the Rio Grande to create a working area (without a permit)," he said of the pending case.

Wood said it appears Cook either doesn't understand the act or feels he can work in the area without complying with it.

Wood said agency records indicate Cook first was informed of possible violations in the late 1970s, and said permit requirements have been explained to him many times.

In addition to the dredging situation, Platt said his office has monitored liquid seeping from settling ponds at Cook's plant into the Rio Grande. He said the state hasn't sued Cook to stop the unpermitted discharges because the EPA hasn't delegated enforcement of the federal water law to the state.

Platt said Española Transit Mix paid the state a $50,000 fine about a year ago for violations of air quality regulations.

Eric Ames, a lawyer in Burnett's firm, said Monday that despite the EPA's order, the firm still intends to go ahead with its suit on behalf of the New Mexico Citizens for Clean Air and Water.

[From the New Mexican, June 17, 1992]

ESPAÑOLA MAN TOLD TO HALT RIVER DUMPING

Española businessman Richard Cook has been ordered to stop discharging pollutants into the Rio Grande from his asphalt and concrete plant.

Myron Knudson of the U.S. Environmental Protection Agency in Dallas wrote Cook on June 8 saying he faces a possible fine or other administrative penalty for violating the Clear Water Act.

Cook declined to comment Tuesday.

State and federal regulators have said Cook's Española Transit Mix Co. has a long history of violations of the act.

A citizens group last month filed notice it intends to sue to force Cook to stop violating the law.

Cook doesn't hold a National Pollutant Discharge Elimination System permit for his plant.

Such permits are required for all pollutant discharges into U.S. waters and require monitoring and reporting.

Knudson said the EPA cited the company last July for an unpermitted pollution discharge.

Jim Piatt, chief of New Mexico's Surface Water Quality Bureau, said last month that officials from his office, the EPA, the U.S. Army Corps of Engineers and representatives of local Indian tribes met with Cook in April to discuss discharges into the river.

"What we walked away from there with was that he (Cook) basically told us he had no intention of changing what he was doing," Piatt said. "So it is a problem."

[From the Albuquerque Journal North, Sept. 9, 1992]

COOK TOLD TO HALT ROADWORK IN ARROYOS

(By Karen Peterson)

The U.S. Army Corps of Engineers has ordered businessman Richard Cook to stop roadwork in two La Cienega-area arroyos and remove all material blocking water flow before Monday.

Corps engineer Dan Beck said he notified the Española businessman Friday that culverts and low-water crossings on a road across the arroyos southwest of Santa Fe were inadequate for floodwater flows. By blocking the arroyos, Cook violated the national Clean Water Act, Beck said.

Cook said Tuesday he plans to redesign and then rebuild the arroyo crossings on the road serving about 175 acres of undeveloped land. Until then, Cook said, he will remove the present culverts and fill material.

The corps notified Cook last month that he could face fines of up to $10,000 a day if the crossings continued to block storm flows.

Santa Fe County officials also notified Cook in August that he was in violation of ordinances requiring county approval for the road before it could be built.

To obtain county approval, Cook must submit a plat for the land and prove that the owner has allowed the work.

Cook said the property owner Charles Williams, has sanctioned the road. Cook said he will file a plat with the county after a survey is completed.

La Cienega residents, some of whom successfully opposed a gravel pit Cook wanted to build on the property last year, complained to the corps and the county land-use office about the road and the filled arroyos.

[From the New Mexican, Sept. 10, 1992]

TIME GROWS SHORT FOR JEMEZ-PROTECTION ACT

Even though Congress is barely back from its recess, our senators and representatives can't wait to adjourn and campaign for the November elections. By this time next month, they'll be like third-graders waiting for the sound of the afternoon school bell.

This is a time when good regional legislation can be lost in the pell-mell rush to leave Washington—and that's only one reason New Mexico's senators should have acted sooner to create the Jemez National Recreation Area. It's not too late, but when it is, it will be too late to save some of our state's most precious mountainlands.

An act creating such an area, 100,000 areas in an archaeologically rich area to the south of Valle Grande and running toward Jemez Sprints, has the support of the Jemez, Picuris and San Ildefonso Pueblos, as well as the Los Alamos County Council.

It would not, despite what its opponents claim, prohibit cattle grazing. It would allow timbering on a small, local community scale. it would allow mining operations like those now being carried out by Copar Pumice Co.

However, the act would stop Copar's impending purchase of 1,500 acres of precious mountain land for $2.50 an acre—and it should. That ridiculous land price is part of the 120-year-old federal mining law under which so much of the American West has been despoiled. If Congress fails to create this recreation area before adjournment, Copar will take title to that land for the price of a used car.

The House of Representatives already has passed the Jemez Mountain Recreation Area act introduced by Rep. Bill Richardson. The same bill was introduced in the Senate by Sen. Jeff Bingaman. It's the one the Senate should pass.

However, Legislative aides to New Mexico's other Senator Pete Domenici, want to weaken that legislation, leaving the Jemez Mountains vulnerable mine-scarring, overtimbering and other effects of commercial exploitation. Domenici and Bingaman sit on the Senate Energy and Natural Resource committee, whose staff would draft and write any amendments to the act. Domenici however, is a minority-party member, Bingaman, as a member of the Senate majority should be exerting considerably more influence to push this legislation through Congress.

It's not asking that much. Most recreation-area laws put twice as much acreage under federal protection. Richard son's request for 100,000 acres is a reasonable one, which may be one reason it went unopposed by the rest of New Mexico's House delegation and gained quick approval of the lower chamber.

Bingaman, Domenici and Richardson plan to meet tomorrow in an attempt to reach a agreement on the bill. Such agreement is long overdue.

The Jemez Mountains already are under heavy stress from pumice mining, from timbering and from 600,000 people a year using it as a recreation area. Some cyanide-leach gold mining operations also are poised to pounce on those stately mountains.

The Jemez National Recreation Area act would stave off reckless use of an important part of the range. Once again we urge Sen. Domenici to lose no more time moving this act forward in its original form.

[From the Santa Fe New Mexican, Sept. 14, 1992]

FEDS, COUNTY PREPARED TO MAKE LIFE HOT FOR COOK

(By Rebecca Roybal)

The U.S. Army Corps of Engineers has ordered Española businessman Richard Cook to stop construction in two arroyos in La Cienega.

Meanwhile, Santa Fe County land use director Gilbert Chavez said the county will take legal action against Cook if he doesn't obtain a permit for a road Cook built over the two arroyos.

Cook has irritated both government agencies by building a road more than three weeks ago across two arroyos behind The Downs at Santa Fe County officials said he needs a county permit to build a road. The Corps of Engineers said he disrupted water flow in the arroyos when he put in culverts to carry water under the road. The Corps also said the culverts are too small.

Cook said last week that after he obtains a county permit for the road, he will replace the culverts in the arroyos with larger cement pipes called low-water crossings.

Reynaldo Romero, mayordomo of the La Cienega Ditch Association, said that because the culverts installed by Cook are so small, they could be washed away, causing the springs to be contaminated with sediment. The springs supply water to some wells and for irrigation, Romero said.

In a letter to Cook, Army Corps of Engineers district engineer Michael DeBow said, "I must order you to immediately cease and desist from any further filling or construction in Arroyo del Chamiso and Arroyo Hondo.

"The fill that you have discharged into these arroyos must be removed so that it will not restrict the passage of expected high flows. Please remove these materials by Sept. 14."

The letter said Cook is in violation of the Clean Water Act, and that "legal or administrative action could result in a fine of up to $25,000 per day and/or imprisonment."

Cook said in a telephone interview last week that he had not yet received the letter from the Corps, but said he is willing to comply with their demands.

Cook said he will apply for the county permit when his surveyor completes a required plat of the area. He said he does not know when that will be.

Chavez said Cook should have obtained the permit two weeks ago.

"I'm tired of waiting around for Cook to come in," Chavez said.

[From The New Mexican, Sept. 17, 1992]

MINE OWNER SEEKS OK TO OPEN NEW JEMEZ MINE

(By Keith Easthouse)

An Española businessman is seeking U.S. Forest Service permission to quadruple the size of his pumice mining operation in the Jemez Mountains.

Richard Cook, owner of Copar Pumice Company, wants to open a new .35-acre mine two miles west of his existing mine, a 33-acre site that went into operation in the late 1980s.

The new mine off State Road 4 west of the Valle Grande would be located in the heart of the proposed Jemez Mountains National Recreation Area. It would also be near a subdivision and the federally protected East Fork of the Jemez River.

Contacted by telephone Wednesday, Cook said he has submitted an operating plan for the new mine, with the Jemez District of the Santa Fe National Forest. Like the existing mine, the new one would be a strip mine.

"It's an extension of the same mine," Cook said. He added that he hopes to start mining at the new site by 1994.

The proposal was sharply criticized by environmentalists, who said it demonstrated the need for members of the New Mexico congressional delegation to settle their differences and create a national recreation area in the Jemez Mountains.

"This is a real clear indication of why an NRA is necessary," said Henry Oat of the East Fork Preservation Coalition. "We need to prevent this kind of piecemeal destruction of the Jemez Mountains."

Cook responded that the new mine would create more jobs.

Rep. Bill Richardson, D-N.M., carried a bill establishing a 100,000-acre NRA through the House last November. But the bill has stalled in the Senate, where it is being sponsored by Sen. Jeff Bingaman, D-N.M. and opposed by Sen. Pete Domenici, R-N.M.

Richardson accused Cook of "perpetrating an egregious insult to the people of northern New Mexico.

"Passing my bill is the only way to stop these excesses and preserve these beautiful mountains," Richardson said.

A national recreation area could not stop Cook from expanding his mine because he's already staked a valid mining claim at the site. Under the 1872 Mining Law, anyone with a valid mining claim can mine public lands.

Oat said a national recreation area would allow the Forest Service to impose stricter land restoration requirements on Cook, and possibly reduce the size of the mine.

He also said that if an NRA is established, the Forest Service would compile an environmental impact statement for the proposed mine and that process typically takes over a year.

Repeated attempts to reach the Forest Service official handling Cook's application were unsuccessful.

According to Oat, the public will be given a chance to comment on Cook's operating plan in October and the Forest Service is planning a tour of the site in early November.

Oat said Cook deliberately submitted his operating plan before an NRA was established in an attempt to avoid restrictions.

Cook, however, said Oat was, "just blowing a lot of smoke."

"The NRA won't make any difference whatsoever," Cook said. "We're submitting this long in advance so we can go through all the regulations."

Donna Smith, a resident of the Sierra de los Pinos subdivision near the proposed new mine site, said she was in shock about Cook's proposal.

"I just learned about it this morning," said Smith, who supports Richardson's NRA bill. "Everybody here is real upset."

[From the Albuquerque Journal, Sept. 17, 1992]

COPAR SEEKS 135 MORE ACRES

(By Ben Neary)

Copar Pumice Co. has filed a plan to mine on an additional 1.35 acres of federal land in the Jemez Mountains.

Company president Richard Cook of Española said Wednesday his company filed the plan because he expects pumice deposits on an existing 33-acre mine site will only last through next year.

Cook said he expects to be mining in the new area in 1994.

Repeated attempts to reach officials with the Jemez Ranger District were unsuccessful Tuesday and Wednesday.

Cook has applied to convert mining claims on 1,520 acres of federal land to private ownership under a provision of the federal mining law. The 135-acre site is on the land he seeks to acquire, and Cook said it borders the 33-acre site where Copar has been mining for the last few years.

Pumice is coarse, volcanic rock used in construction materials and for such things as making stone-washed fabrics.

Environmental groups recently lost a lawsuit in which they asserted the Forest Service erred when it approved mining on the 33 acres. The groups claimed the federal agency failed to consider the cumulative effect of the mining and other activities in the area, including timber harvesting.

Concern over the prospect that Cook could get ownership of the 1,520 acres has prompted members of New Mexico's congressional delegation to sponsor legislation to create a national recreation area in the Jemez.

The House passed a bill last year sponsored by Rep. Bill Richardson, D-N.M., that would prevent Cook from getting ownership of the land and require that any land mined in the area under pre-existing claims be returned to its premining condition. Sen. Jeff Bingaman, D-N.M., has sponsored identical legislation in the Senate.

However, Sen. Pete Domenici, R-N.M., has said he sees problems with the bill. He has said he will sponsor an amendment under which miners could still get ownership of land for mining, but would have to return it to the federal government when they're finished. Negotiations among the congressional staff members are continuing.

Henry Oat, spokesman for the East Fork Preservation Coalition, said Wednesday a Forest Service official told him this week the 135-acre site is two miles west of Copar's existing 33-acre mine, on the north side of the highway.

Oat speculated that Cook filed his operating plan now to get classified as an existing operation in case the recreation area legislation passes, so he wouldn't have to reclaim sites to their original condition.

Cook denied that, saying, "Henry's wrong, as usual." He said the only purpose in filing the mining plan now is to give the Forest Service time to work on it.

Cook said the market for pumice looks good these days. He said that if production and growth continue at the same rate he expects to be able to double his work force of 50 in a few years.

Oat said his group is still considering the ramifications of the proposed operation. "I think it's pretty obvious that an environmental impact statement will be required on this," he said.

TRIBUTE TO LT. GEN. LAVERN WEBER (RETIRED)

HON. G.V. (SONNY) MONTGOMERY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. MONTGOMERY. Mr. Speaker, LaVern Weber is retiring from his position as executive director of the National Guard Association of the United States after more than 8 years of service. I want to pay tribute to Vern for his many years of dedicated service to the National Guard, the National Guard Association and to this country.

Born and raised in Oklahoma, LaVern Weber enlisted in the U.S. Marine Corps in 1942 and saw service during World War II. He attended Marine Corps Officer Candidate School and received a commission as a second lieutenant in 1945. After the war, he began service in the National Guard in 1948 when he became a member of the Oklahoma National Guard. He was called to active duty with Oklahoma's famed 45th (Thunderbird) Infantry Division and served as a battalion S–3—operations and training officer—in Korea during the war.

After his return from Korea, he served in various staff assignments, rising to be the division chief of staff. In 1965, the Governor appointed him to be the adjutant general of the Oklahoma National Guard and concurrent promotion to the rank of major general.

While serving as the adjutant general, he played an increasing role in National Guard affairs at the national level. He served in various positions within the National Guard Association from 1965 until 1971. He also served on the Army Reserve Forces Policy and later the Defense Department's Reserve Forces Policy Board.

In 1971 Vern was named by the President to be the director of the Army National Guard in the National Guard Bureau. The National Guard Bureau is the agency within the Pentagon that is the official channel of communications between the Departments of the Army and Air Force and the 54 States and territories which command the National Guard. In 1974, he was appointed as the Chief of the National Guard Bureau and was reappointed in 1978 for an additional 4-year term. In 1979, LaVern Weber was promoted to the rank of lieutenant general while serving as the chief of the National Guard Bureau. He was the first National Guard officer and the first Guard Bureau Chief to attain three star rank. At the completion of his term in the Guard Bureau, he was reassigned as the Deputy Commanding General for Mobilization at Headquarters, U.S. Forces Command.

LaVern Weber retired from military service in 1984 after 42 years of service. Still wanting to serve the National Guard, he began working the next day as the executive director of the National Guard Association. In this position he has served for over 8 years and will officially retire February 1, 1993.

During his tenure as chief of the National Guard Bureau, Vern was instrumental in the National Guard becoming a full partner as a result of the total force policy promulgated in 1973 as the military policy of the future. This was most evident when in 1991 during Desert Storm, the National Guard units were mobilized and deployed as a vital part of our military strategy.

As executive director of the National Guard Association, Vern has served during some of the most historic events in modern history. Events such as the Berlin wall coming down, the demise of the Soviet Union, the end of the cold war and the winning of the Persian Gulf war. Through the association, many task forces and study groups were created to provide additional views on issues of concern for our military and the Congress. They are too many to list, but a few of note were tactical fighter, tracked vehicle, drug interdiction and the force structure task forces.

During his tenure, the association has been instrumental in passage of legislation which improved the lot of National Guardsmen, such as the Montgomery GI bill, incapacitation pay, commissary privileges, survivor benefit program, and VA home loans for reservists.

During the mid-1980's, several Governors threatened to withhold consent for National Guard units to be deployed overseas for training. Together with the association, I introduced an amendment to preclude the Governors from playing politics with Guard training. This did not resolve the issue. Two Governors filed suit in Federal court to overturn the amendment as unconstitutional. It was the Guard Association who helped at every level of the fight right up to the Supreme Court. In June 1990, the Supreme Court ruled unanimously 9–0 to uphold the constitutionality of the amendment and lock in place the right of Congress to determine national training.

In the last few years, a new threat to the National Guard has arisen. As the pressures to reduce the DOD budget have increased, Pentagon planners have attempted to reduce our reserves in order to preserve more active duty forces. Vern Weber has been one of the leaders to work with the Congress to define an alternative force structure with more reliance upon the Guard and Reserves. This struggle is not over and I know he will continue to help where he can.

Wherever he is, whether on his farm in Oklahoma or here in the Washington DC area, I know he will still be working to improve the National Guard. Vern Weber has been one of the stalwarts of the National Guard for over 40 years. He has been helpful and has accomplished much in his years of leadership. I have known him as a friend and a fighter for the National Guard. I will miss him dearly. I wish him well in retirement and thank him for his devotion to the National Guard.

BROADCAST PIONEER STANLEY HUBBARD

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. RICHARDSON. Mr. Speaker, Stanley S. Hubbard is one of America's true broadcasting pioneers. Having always been on the cutting edge of new ideas and technologies, it should come as no surprise to those in the broadcast industry that Mr. Hubbard is once again on the verge of another broadcasting venture: Direct Broadcast Satellites [DBS].

I would like to insert in the RECORD an article about Stanley Hubbard's dream for the future: "Throwing Cable a Curve Ball." If the past can predict anything about the future, then Mr. Hubbard and the television consumers he hopes to serve have much to look forward to.

I insert the article in the RECORD:

THROWING CABLE A CURVE BALL

(By David Blemesderfer)

Stanley S. Hubbard has a grand vision for the future of the American television industry. It's a vision based on his latest broadcasting venture: direct broadcast satellites (DBS), or satellite-to-home broadcasting, which he plans to have up and running by early 1994.

In Hubbard's not-so-distant future, napkin-size satellite dishes will be as commonplace in U.S. homes as VCRs, picking up more than 100 channels of programming provided, via satellite, by his United States Satellite Broadcasting (USSB) company and Hughes Communications' DirectTv Venture. Viewers will be able to choose from pay-per-view movies, subscription TV fare, sports, special-interest offerings and free mass-entertainment programming—all with a laser disc-quality picture and compact disc-quality sound.

A pipe dream? Some may say so, given the many failed attempts to get satellite-to-home broadcasting off the ground in the U.S. Communications Satellite Corp. (Comsat) ended a highly touted satellite venture in 1984 after being unable to find partners; United Satellite Communications, which relied on large, professionally installed dishes, had fewer than 10,000 subscribers when it filed for bankruptcy in 1985; and Sky Cable, a joint venture promising 100-plus channels of programing, became DirectTv when it ended in June 1991.

Although satellite television is popular in Britain and Japan, its widespread adoption in the U.S. has been hindered in part by the presence of cable TV in about 60 percent of U.S. homes. Other reasons: the high cost of satellite-receiving equipment—often more than $2,000—and the large size of the antenna—typically 10 feet or more in diameter.

Hubbard, owner of Twin Cities-based Hubbard Broadcasting Inc., a television and radio station group, has himself experienced a series of setbacks in this DBS ambitions, dating back to 1981 when he applied for his DBS license. At that time, he was promoting a three-channel, advertiser supported service that would broadcast programs directly to homes as well as to affiliated local television stations.

It took Hubbard until 1984 to get final DBS authorization from the Federal Communications Commission (FCC), and by then he had modified his plan to offer six channels of programing via two satellites that would be supported by a combination of pay and advertising dollars. His projected start date was 1988, but he ran into difficulties obtaining financing.

But Hubbard remained an undaunted DBS believer. In June 1991, USSB put down $50 million on an in-excess-of $100 million deal with General Motors' California-based Hughes Communications Inc. for the purchase of 5 to 16 transponders (signal emitters) on a satellite to be designed, built and launched by Hughes Aircraft—part of a $600 million investment for Hughes. Hubbard's partners in the deal include Nationwide Mutual Insurance, the Pittway Corp. Fire alarm company, and media investor Burt Harris. Projected launch date is December 1993, with service starting by early 1994.

All of Hubbard's delays in getting to this point may have turned out to be a blessing in disguise. Recent advances in satellite technology have made DBS a much more feasible alternative that it was just a few short years ago. The development of digital-compression technology has made it possible to squeeze four TV channels—or eight movies—into the space previously contained by one. Instead of Hubbard's five transponders beaming just five channels, they can beam a minimum of 20.

At the same time, advances have been made in the development of high-powered satellites that can send stronger digitized signals from a much higher spectrum of the electromagnetic frontier. And while most existing satellite systems broadcast on C-band frequencies, DBS systems use higher radio frequencies on an FCC-allocated portion of the Ku-band known as the Broadcast Satellite Service (BSS) band. The BSS standard calls for wider spacing of satellites, which reduces interference from neighboring satellites and thus makes it easier for small dishes to discriminate between them.

All that will be needed to pick up Hubbard's DBS signal is a decoder box and a flat dish just 18 inches in diameter, available at retail electronics stores for a starting price (including remote control) of about $700. Viewers will simply hook the dish up to their television, and point it out the window.

Once those dishes are up, Hubbard plans to offer viewers a wide range of programming choices on between 20 and 25 channels, with digital-quality audio and video—including high-definition television (HDTV) capabilities. He promises at least one free, advertiser-supported channel; at least eight channels of pay-per-view movies; and subscription channels similar to such current cable stations as Home Box Office (HBO).

Hubbard also promises new mass entertainment programming created specifically for his DBS service, as well as what could become his most distinctive offering: niche, or "affinity," programming. Niche programming is special programming offered to any group linked by a common interest, be it religious, ethnic, cultural or any other affiliation. Since Hubbard's satellite will cover the entire country, small pockets throughout the U.S. can be grouped together to form a viable viewing base.

If Hubbard's DBS venture proves a success, it will be just the next in a long string of pioneer broadcasting efforts in the Hubbard family, dating back to Hubbard's father, Stanley Eugene (S.E.) Hubbard, founder of Hubbard Broadcasting.

As Hubbard tells it, his father was experimenting with television as early as 1938. After World War II, he applied to the FCC for a television license amid much skepticism of the new broadcasting medium. "You could not get people to put money into television at that time," says S.S. Hubbard. "People said TV would never work."

But TV did work, and Hubbard Broadcasting Inc. grew into a large and profitable communications conglomerate. Corporate Report Minnesota magazine estimates that the privately owned company generated $180 million in 1989 revenue from its properties, which include ABC affiliate KSTP-TV and KSTP AM and FM in the Twin Cities; four television stations in smaller Minnesota towns; three in New Mexico; one in St. Petersburg, Florida; CONUS 24-hour news satellite network; and USSB.

S.S. Hubbard, 59, became president of the family company in 1967, and was named CEO by the board in 1983. He has since been grooming his own children to take over the business. Daughter Ginny, 29, is general manager of KSTP AM; daughter Julie, 24, is assistant to the president, daughter Kari, 32, is director of the Hubbard Foundation, a charitable organization; and sons Stan, 31, and Rob, 27, are actively involved with the CONUS and USSB operations.

Like his father's application for a television license, Hubbard's application to the FCC for a DBS license in 1981 came amid much skepticism within the broadcasting industry. There were only 13 applicants, and just eight passed initial FCC scrutiny. By 1984, half had bowed out, including CBS and NBC parent RCA.

It's a decision those networks may come to regret, says Hubbard. Because once DBS takes off, he foresees network television stations decreasing in number in each city, providing just localized programming and moving most network programming to DBS—if the DBS operators will have them.

Hubbard also sees DBS gradually replacing cable, since it holds several likely advantages for viewers. There will be no basic monthly fee to pay, which can run more than $20 a month for cable, so eventually the investment in receiving equipment will pay for itself.

DBS also has the potential to be more price-competitive than cable. Although Hubbard and his parents will have invested about $300 million by launch date, including programming costs, without having a single subscriber, their service will be instantaneously available to every television household in the U.S. and most of Canada. With about 100 million U.S. households, that means it will cost Hubbard about $3 per home to access every home. Cable operators, by contrast, must pay hundreds of dollars per home to equip new homes with cable.

"We don't have to run any cables; we don't have to make any installations; we don't have to have trucks running around maintaining systems; we don't have to have all the local infrastructure," says Hubbard.

Hubbard says he also senses that many people are not satisfied with their current cable service. "Whenever I go around the country, whenever I tell someone about DBS, they often say the same thing: 'Does that mean I can get rid of my cable?' We're not out to get rid of anybody. We can co-exist with everybody."

Even if DBS doesn't spell the end of cable, it will certainly bring some much-needed price competition to the market, Hubbard's DBS will compete with both cable systems and other DBS operators.

Hughes has plans to broadcast 40 channels of programming, called DirecTV, from the satellite it shares with Hubbard and an additional 60 or 70 channels on a second one it plans to launch in summer 1994. DirecTV will offer pay-per-view movies, professional and college sports, cable-like channels and blocks of special-interest programming.

Hubbard may also face competition from other medium-powered DBS services that will likely beat him to the marketplace. PrimeStar, which is scheduled to reach all areas of the U.S. by mid-1993, promises seven big-city superstitions; three channels of round-the-clock, pay-per-view movies; nine audio channels; and a Japanese-language channel originating in Japan.

The main drawback of such offerings as compared to Hubbard's future DBS service is that they will use less powerful satellite and broadcast from a weaker Ku-band frequency, meaning the'll require a professionally installed dish at least 48 inches in diameter—nearly three times as large as that required to receive Hubbard's signal.

Competition could also come from other companies now vying for the remaining high-powered DBS frequencies allotted by the FCC. Hubbard explains, however, that it takes three years to build and launch a satellite, giving him and Hughes at least a three-year head start over any competing offering-enough time to develop an entrenched viewer base that will be difficult to uproot. "All the dishes are going to be pointed at this satellite," says Hubbard. "You're going to have a terrible time trying to get people to move their dishes, because what programming are you going to get that's different from what we'll be offering?"

Perhaps even more significant, Hubbard and Hughes' satellite location is considered the best of the eight orbital spots the FCC has set aside for U.S.-owned high powered DBS satellites. It provides the most uniform angle to cities across the country, reaching at least 99.7 percent of the U.S., 85 percent of the Canadian population, and northern Mexico. And only two of the other seven spots can even reach the entire U.S. Companies not acquiring one of those locations would be forced to launch multiple satellites into separate eastern and western slots to reach the whole nation.

Hubbard also takes heart in the success of DBS in Japan. Japan's government-supported broadcaster, NHK, launched a two-channel DBS satellite in 1987. More than 4 million (12 percent) of Japanese house-holds now receive the service, and that's predicted to reach 10 million by 1995.

Hubbard projects breaking even in the second year of his DBS venture, and to be profitable by 1996. He says his worst-case scenario is 10 million dishes being sold at the end of 10 years. "That would still be a fantastic business," he says. "But that's not what's going to happen."

What's going to happen, he says, is that between 40 and 45 million homes will have a dish by the end of five years. "You'll buy a dish, and your neighbor will see something they like on it and they'll buy a dish. And within the next 10 or 12 years, DBS will be the dominant means of mass communication in this country. There's no way to stop it."

S. 2936, THE COMPETITIVENESS POLICY COUNCIL REAUTHORIZATION

HON. THOMAS R. CARPER

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. CARPER. Mr. Speaker, as chairman of the subcommittee of jurisdiction, I rise in strong support of S. 2936, the Competitiveness Policy Council reauthorization bill that has been passed by the Senate, and is now before the House.

The Council's authorization expired on September 30, of this year, and its reauthorization is critical to allow its continuing efforts to recommend competitiveness strategies to the Congress and the President on trade, education, training, technology, manufacturing, corporate governance, infrastructure, and capital formation issues.

The pending authorization extends the Council for 2 years and reduces the amount of the authorization from $5 million to $2.5 million. The bill also makes a few technical changes in the Competitiveness Policy Council Act including the designation of the Council as an agency within the meaning of section 3132 of title 5, United States Code. These changes would enable the Council to establish positions in the Senior Executive Service.

The bill would also rename the Council to eliminate the confusion between it and other organizations in Washington with a similar name.

Mr. Speaker, the Council was slow to get off the ground given the extraordinary time it took to select Council members. The Council issued its first report in March 1992, setting forth a broad outline of issues the Council hopes to address in the coming years. This report has already been a great help to those both inside and outside of Government, and has been the inspiration for a number of hearings on Capitol Hill. I anticipate that future reports from the Council will serve as invaluable resources to legislators as they consider legislation affecting the competitiveness of this country.

The Council's mandate to provide the advice of experts from all walks is as valid as it was when Congress first mandated its formation in 1988. I urge my colleagûes to support this reauthorization bill.

BIOGRAPHY OF JUDGE RICHARD H. CHAMBERS

HON. CARLOS J. MOORHEAD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. MOORHEAD. Mr. Speaker, I would like to resubmit the biography of Judge Richard H. Chambers which was originally submitted for the RECORD with my remarks on September 29, 1992, 28554. The updated and corrected version of this information is as follows:

BIOGRAPHY OF JUDGE RICHARD H. CHAMBERS

Judge Chambers was appointed to the U.S. Court of Appeals for the Ninth Circuit on April 30, 1954, and entered on duty May 13, 1954. He served as chief judge from August 6, 1959, to June 30, 1976. He took senior judge status on December 31, 1976. He is a graduate of the University of Arizona, receiving an A.B. degree in 1929, and Stanford University, receiving an L.L.B. degree in 1932. During World war II he served in the U.S. Army Air Corps, 1942–45.

Judge Chambers was a member of the Judicial Conference of the United States, 1959–76; the Committee on Judicial Statistics, 1960–69; the executive committee, 1970–75; and chairman of the Committee on Pacific Ocean Territories, 1976–82.

Judge Chambers was married to the former Mary Martin, now deceased, and has two daughters: Martha Chambers Froese and Janet Chambers Crews. On September 16, 1989, he married Eileen A. Engett, his present wife. He is a member of the American Bar Association, the American Law Institute, the American Judicature Society, and the Institute of Judicial Administration.

"HAIL TO THE CANDIDATE" PUBLISHED BY THE SMITHSONIAN INSTITUTION PRESS

HON. BILL EMERSON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. EMERSON. Mr. Speaker, I rise today to pay tribute to a recent literary achievement on American political history, "Hail to the Candidate," written by Keith Melder, curator of the Smithsonian Institution, with collaborators Ralph E. Becker, Edith P. Mayo, and William L. Bird, Jr. As a lover of both history and politics, I believe this book captures the quintessence of America's 200 year fascination with Presidential campaigns. A chronicle of the changing character of American electioneering, this book captures the intensity and popularity of campaigns past and displays the array of devices candidates have used to project a positive image of themselves and negative image of their opponents.

Drawing on archival photographs and a vivid legacy of buttons, banners, sewing boxes, pipes, pitchers, snuff boxes, parade floats, bumper stickers, fliers, marching regalia, gadgets, and other novelties, Keith Melder traces the rise of political campaigns in 19th century America. From Andrew Jackson's campaign to Lincoln's, from William Henry Harrison's to Teddy Roosevelt's, large number of citizens participated in hurrah-style celebrations of democracy, unleashing deep emotions and outpourings of enthusiasm, partisanship and popular delight. Melder also shows how electioneering became more restrained and less festive and joyful as new techniques of mass communication replaced rallies and parades, campaign symbols, and political artifacts and, sadly, reduced mass participation.

Tracing the history of Presidential images from the first, sedate campaign of George Washington to the video images of Ronald Reagan and George Bush, "Hail to the Candidate" also focuses on political party appeals to women, television, and on pollsters, to describe the ever-changing political race to become President.

A vital component in piecing together this vast array of political history is the Becker Collection. Keith Melder has used more than 200 illustrations, mostly in color, capturing the carnival nature of Presidential campaigns, from a George Washington pitcher and inaugural buttons to Teddy Roosevelt's teddy bears and Jimmy Carter peanuts. He has painstakingly researched every Presidential election, including the issues, the candidates, and the parties, and has produced a beautifully written chronicle of the changing character of the election process.

The Becker Collection, over 20,000 items of political Americana, provides a wealth of election material that anyone interested in American politics will find rewarding. After reading Keith Melder's outstanding discussion of each of the Presidential campaigns, one is compelled to head right for the Smithsonian to see the Harrison snuff box from 1840, the Jefferson banner of 1800, the McKinley paper hat of 1896, and the Eisenhower stockings for women embroidered with "I like Ike."

Dr. Shirley Anne Warshaw, assistant professor at Gettysburg College, stated in her book review:

> As the era of technology has ushered in mass campaigning, we have lost a piece of our history and the grand era where everyone participated in the campaign with a button, badge, medal, lapel device, or banner on their door. We no longer sing campaign songs or repeat campaign slogans. Campaigns are now the sole province of the television camera. "Hail to the Candidate" reminds us that although television has opened the campaign and broadened our knowledge of our candidates, it has also ushered in the end of an era.

What if electioneering remains a spectator activity? For those who collect and appreciate the lively spectacle and the colorful device of traditional campaigning, the future is not especially appealing. As collector and Smithsonian Institution donor Ralph E. Becker has observed:

> Past campaigns were the grand era of the button, badge, medal, lapel device, symbols of the election process, * * * a multiassortment of paraphernalia known as political Americana. These symbols all played an emotional and essential role for almost two hundred years in broadcasting the image of the candidate and influencing the voter. Posterity is the loser in this new game of political campaigning. As the onset of a new technological era in American politics drawns, the age of 'Tippencanoe and Tyler Too' is no more.

Mr. Speaker, the Ralph E. Becker collection has been used in many major exhibitions at the Smithsonian over the past 30 years. He has been active in the Washington community and began contributing his extensive collection of political artifacts to the National Museum of American History in 1958 and received the James Smithson Silver Medal in 1975 in recognition of his generosity. He has a distinguished record with the 30th Infantry Division in the European Theater, served as an Ambassador to Honduras, was a founding trustee and general counsel for the John F. Kennedy Center appointed by President Eisenhower in 1958, and is currently serving as an honorary trustee. In 1990, I had the privilege of serving with Ralph Becker on the Eisenhower Centennial Commission. Mr. Becker served on this Commission as we sought to pay tribute to our 34th President, and honored President Eisenhower's contributions to the cultural achievements which he bestowed upon this Nation.

Even more recently, Ralph Becker has been aggressively pursuing yet another endeavor. Mr. Becker has spearheaded an ad hoc committee to recognize the contributions of President Eisenhower to our 42,795-mile System of Interstate and Defense Highways. By congressional mandate, we will soon be commemorating President Eisenhower's accomplishments in this area by officially designating our Interstate System, the Dwight D. Eisenhower Interstate System. This fitting tribute will serve as a reminder of President Eisenhower's work in developing this country's Interstate System. Mr. Becker's work in this area, as in all projects that he pursues, has been tireless.

Mr. Speaker, I commend to my colleagues the book, "Hail to the Candidate," and I applaud the diligent work of Ralph E. Becker.

TRIBUTE TO JOSEPH J. CICIPPIO

HON. JOSEPH M. McDADE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. McDADE. Mr. Speaker, I rise to pay tribute to Joseph J. Cicippio, a man of great courage and dignity. On September 12, 1986, Mr. Cicippio was seized as he walked to his job as comptroller of the American University of Beirut by terrorists who would hold him captive for 1,908 days. For more than 5 years, Mr. Cicippio endured the cruelty of his captors, who ignored every diplomatic and humanitarian effort to secure his release and the release of the other innocent people they held hostage.

In just 4 short days, citizens across the Nation will mark the 500th anniversary of the discovery of the New World, an event which changed the course of history. A vast, unexplored new land beckoned to those courageous souls who dared to set sail across the Atlantic. Some came to find new adventures, and others to find riches, but, by the time of the Puritans and Pilgrims, they mostly came to find freedom.

Our great Nation was founded on the principle of freedom, and it is a treasure cherished by our citizens today. As a young boy growing up in Norristown, PA, Joseph Cicippio, like schoolchildren across America, learned about our Founding Fathers' struggle for liberty and their painstaking efforts to create a government that would guarantee the freedom of its citizens. But on September 12, 1986—1 day before his 56th birthday—Mr. Cicippio lost his freedom, abducted by four gunmen outside his home.

For 1,908 days, Joseph Cicippio lived under the reign of hostile terrorists in Lebanon. During the more than 5 years he was held, he endured the horrible atrocities inflicted by his captors while being isolated from the outside world. During this ordeal, he did not know that four grandchildren had been born, that his eldest son Joseph, Jr. and his sister Rose had passed away. But he somehow found the strength to survive, so that one day he would be free again.

Mr. Speaker, I am honored that Joseph J. Cicippio will come to Scranton, PA, to help us mark Columbus Day. This man of strength and courage is a source of inspiration for the people of our Nation and can enlighten us all about the tremendous value of freedom.

CABLE TO CARRY CLOSED CAPTIONING

HON. DENNIS E. ECKART

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. ECKART. Mr. Speaker, I wish to clarify the meaning of two sections of the cable bill, sections 314(g)(1) and 315(b)(3)(A). The sections specify the content of the signals that cable operators are required to carry pursuant to the act. The statutory language of these sections is clear, unequivocal, consistent, and controlling. Since the joint explanatory statement of the committee of conference does not fully describe the content of the statutory language, the meaning of these sections should be interpreted using the relevant passages from the House report language which analyze identical language in the House-passed bill, H.R. 4850, which follows:

> SECTION 615
>
> Subsection (G)(1) [of section 615] requires cable systems to carry the entire primary audio, accompanying video, and line 21 closed caption transmission of each qualified local public television station, unless otherwise agreed upon by the cable operator and the station, including (to the extent technically feasible) program-related material carried in the vertical blanking interval [VBI], on subcarriers or through other enhancements of the signal, that may be necessary for receipt of programming by handicapped persons or for educational or language purposes.
>
> Public television stations have pioneered the use of broadcast spectrum to deliver closed-captioning, descriptive video and other important program-related services that serve the special needs of vision- or hearing-impaired viewers. For example, to serve visually impaired individuals, PBS uses a channel in the aural subcarrier to provide a descriptive video service, which narrates the key visual elements of programming. Similarly, PBS serves non-English speaking audiences by using a channel in the aural subcarrier to simulcast selected pro-

grams in a second language. PBS also delivers lesson plans and other data on the VBI to accompany the educational programming delivered to the Nation's schools."

SECTION 614

Subsection (b)(3)(A) [of section 614] requires that a cable system retransmit in its entirety the primary audio and video signal and the closed captioning transmission of each local commercial television station carried on the system, and, to the extent technically feasible, also retransmit any program-related material transmitted by the broadcaster on a subcarrier or in the vertical blanking interval [VBI]. The committee intends that the cable operator shall retain discretion whether or not to retransmit other material which may be transmitted in the vertical blanking interval or on subcarriers which may be unrelated to the main program service. Carriage of other program-related material in the vertical blanking interval and on subcarriers or other enhancements of the primary video and audio signal (such as teletext and other subscription and advertiser-supported information) is left to the discretion of the cable operator. The committee does not intend that this provision be used to require carriage of secondary uses of the broadcast transmission, including the lease or sale of time on subcarriers or the vertical blanking interval for the creation or distribution of material by persons or entities other than the broadcast licensee. Moreover, where appropriate and feasible, operators are free to strip signal enhancements (such as ghost-cancelling) from the broadcast signal and employ such enhancements at the system headend. It is the committee's intent that these provisions not impede the use by cable operators of technological improvements that better would facilitate the delivery of broadcast television programming to subscribers.

The committee encourages cable operators, when retransmitting a commercial or public broadcast station's signal or a cable programming service, to preserve and deliver to consumers intact all enhancements of that signal provided for the purposes of wider access for under-served audiences, including closed captioning which utilizes the VBI, and video descriptions and alternative languages which employ the separate audio program [SAP] channel. The committee also encourages cable operators to pass on to consumers without alteration similar future services which may evolve, such as program information and identification which also may be placed in the VBI.

The committee notes that television manufacturers estimate that 10 million televisions with the caption feature will be sold next year and at least 20 million per year thereafter. The committee believes it is essential that more cable television programming be accessible to people with hearing disabilities, through the greater use of the closed-captioning technology by cable programmers. It has come to the committee's attention that only 4 percent of basic cable programming and 35 percent of pay cable programming is captioned, compared with 70 percent of network television and nearly 100 percent of nationally broadcast public television programming. The committee urges the cable industry to be more responsive to serving this constituency by captioning more of its programming.

TERM LIMITS

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. MICHEL. Mr. Speaker, I rise today to inform you and my colleagues that when the House convenes for the beginning of the 103d Congress, I intend to ask for a separate roll-call vote on my reform proposal to limit the terms of committee chairman and ranking majority members to three consecutive 2-year terms.

I make this announcement today to suggest to the majority that, in addition to your own reforms, we actively work together to achieve this worthy objective as well as other reform initiatives to be presented to the new Congress.

The historic 103d class will want to make an immediate impact on the operations of this House, and I believe this term limitation will signal to the rest of the country that the Congress heard the cry for reform and will heed to their desires.

Limiting terms of committee chairmen will allow more Members to have a greater role in influencing legislation, will tell Members of the 103d class that they don't have to wait 20 years to be a chairman, and will mean a continual flow of new ideas from the different philosophical and regional interests of our parties.

I urge my majority colleagues to adopt his reform, but if they do not, Republicans will offer this term limitation on opening day.

TRIBUTE TO JAN DAVIS

HON. BUD CRAMER

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. CRAMER. Mr. Speaker, I rise today to pay a most fitting tribute to one of America's many unsung heroes, NASA astronaut Dr. Jan Davis. A true champion for education and space exploration, Dr. Davis will return to her hometown of Huntsville, AL, on October 8, 1992, for a golden homecoming.

Dr. Davis and her husband, NASA astronaut Mark Lee, were the first husband-wife team to fly in space, participating in NASA's latest successful mission aboard the space shuttle *Endeavor* in September. We, in Huntsville and in Alabama, are extremely proud of Dr. Davis and her many accomplishments. She is an extraordinary woman who has proven to be a valuable asset to NASA's team and to America's team.

A graduate of Auburn University, Dr. Davis worked for NASA's Marshall Space Flight Center as an aerospace engineer for 8 years before winning a spot in the astronaut corps. Dr. Davis did her graduate research at the University at Alabama in Huntsville, studying the long-term strength of pressure vessels due to the viscoelastic and characteristics of filament-wound composites. She holds one patent and has authored several technical papers.

In 1986, she was named as team leader in the structural analysis division, and her team was responsible for the structural analysis and verification of the Hubble space telescope [HST], the HST maintenance mission, and the advanced x-ray astrophysics facility. In 1987, she was also assigned to be the lead engineer for the redesign of the solid rocket booster external tank attach ring.

Dr. Davis became an astronaut in June 1987, and is qualified for assignment as a mission specialist on space shuttle flight crews. Her initial technical assignment was in the Astronaut Office Mission Development Branch, where she provides technical support for the tethered satellite system, the Italian upper stage, the PAM upper State, and spacelab missions. She then served as a capsule communicator [CAPCOM] in mission control communicating with shuttle crews for STS-37, 39, 40, 43, and 44. In addition to being certified as an operator of the remote manipulator system [RMS] mechanical arm, Dr. Davis is a member of the EVA cadre.

Mr. Speaker, Dr. Davis is a true American hero. She has dedicated her life to space exploration and scientific research. She has served our country well and should be commended for her hard work and great successes. For as long as we continue to have the Dr. Jan Davis of the world, America will continue to be triumphant in its endeavors.

"DOUBLE TEN": A CELEBRATION OF THE 81ST BIRTHDAY OF THE REPUBLIC OF CHINA

HON. FRANK HORTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. HORTON. Mr. Speaker, I want to offer my congratulations to the people of the Republic of China on Taiwan as they celebrate the 81st birthday of their nation. The celebration will take place on October 10 of this year, hence the name "Double Ten."

My wife Nancy and I have traveled to Taiwan in the past and met with President Lee, who is a fellow Cornell alumnus. During our trips, we have been impressed by the people of Taiwan, who are hard-working, goal-oriented, and resolved to succeeding in the world market. The people of the Republic of Taiwan are to be commended for their industriousness because that, more than anything else, is the reason for their nation's economic success.

Today, I want to offer my best wishes to my friends, the people of the Republic of China on Taiwan, for continued success as they move into the 21st century. I am confident that the next 40 years will be as successful as the last 40 years.

STUDY IN COAST GUARD AUTHORIZATION

HON. WILLIAM F. GOODLING

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. GOODLING. Mr. Speaker, I want to thank the House and Senate conferees on the

Coast Guard reauthorization bill for including a study of Coast Guard buoy chain procurement practices. I appreciate the support of Congressman DAVIS and the Merchant Marine and Fisheries Committee—not to mention the assistance of Chairman WALTER JONES—whose leadership will most certainly be missed.

I must also recognize the outstanding work of Rebecca Feemster Dye, minority counsel on Merchant Marine and Fisheries. Without her tireless efforts, we would not be able to look into this issue this year. Although a study of procurement practices is not what I had originally intended, I certainly appreciate the cooperation of Chairman HOLLINGS and Senator DANFORTH in allowing us to examine this issue more closely.

It was my constituent, William Westerhold, and several chain manufacturers located in Pennsylvania's 19th Congressional District who brought to my attention the fact that the Coast Guard is not bound by the same procurement policies as is the Department of Defense. As the Coast Guard is part of the Department of Transportation, buoy chain procurements are currently covered by the Buy American Act and the Federal acquisition regulation which are intended to level the playing field between U.S. domestic bidders and foreign bidders. However, U.S. manufacturers have been virtually shut out of the market due to predatory pricing by foreign competitors and very few U.S. manufacturers are able to regularly bid buoy chain solicitations.

I am pleased that a study was included in the Coast Guard reauthorization bill to closely examine the effect current policy has on American industry. While this is important from an economic standpoint, it is also vital that we determine the effect our dependence on foreign sources for buoy chain has on national security. I look forward to the results of this study and am pleased it was included in the conference report.

RESTRICTIVE RULES IN 102D CONGRESS SET RECORD

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. SOLOMON. Mr. Speaker, the Rules Committee majority, as an arm of the Democratic leadership in this House, has made this 102d Congress an historic one in a very negative sense of the term. According to our ongoing tabulations of order of business resolutions reported by the Rules Committee, 66 percent of these rules restricted the amendment process in this Congress, compared to only 37 percent open rules.

In the last Congress, 55 percent of the rules were restrictive, compared to 46 percent in the previous Congress. Compare these recent figures to the situation in the 95th Congress, in 1977–78, when 85 percent of the rules were open and only 15 percent were restrictive.

While other nations are beginning to breathe the free aid of democracy and open debate, the U.S. Congress is moving backward by limiting its freely elected Members' right to fully represent their constituents during the most critical stage of the legislative process.

Mr. Speaker, with a large infusion of new Members coming to the House next year, I hope you will reverse this restrictive rule policy before it become necessary for the freshmen to revolt and reassert the rights that should be theirs under our free system of government. At this point I insert the data on "Open versus Restrictive Rules." The tables follow:

OPEN VERSUS RESTRICTIVE RULES—95TH–102D CONGRESSES

Congress (years)	Total rules granted [1]	Open rules		Restrictive rules	
		No.	Percent [2]	No.	Percent [3]
95th (1977–78)	211	179	85	32	15
96th (1979–80)	214	161	75	53	25
97th (1981–82)	120	90	75	30	25
98th (1983–84)	155	105	68	50	32
99th (1985–86)	115	65	57	50	43
100th (1987–88)	123	66	54	57	46
101st (1989–90)	104	47	45	57	55
102d (1991–92)	109	37	34	72	66

[1] Total rules counted are all order of business resolutions reported from the Rules Committee which provide for the initial consideration of legislation, except rules on appropriations bills which only waive points of order. Original jurisdiction measures reported as privileged are also not counted.

[2] Open rules are those which permit any Member to offer any germane amendment to a measure so long as it is otherwise in compliance with the rules of the House. The parenthetical percentages are open rules as a percent of total rules granted.

[3] Restrictive rules are those which limit the number of amendments which can be offered, and include so-called modified open and modified closed rules, as well as completely closed rule, and rules providing for consideration in the House as opposed to the Committee of the Whole. The parenthetical percentages are restrictive rules as a percent of total rules granted.

Sources: "Rules Committee Calendars and Surveys of Activities," 95th–101st Congresses; "Notices of Action Taken," Committee on Rules, 102d Congress, through Oct. 6, 1992.

OPEN VERSUS RESTRICTIVE RULES REPORTED IN 102D CONGRESS

Rule No. H. Res.	Rule type	Bill No. and subject	House action on rule
27	C	Three resolutions on Mideast situation.	Adopted voice vote, 1/10/91.
105	MC	H.R. 1315—resolution Trust Corporation.	Adopted 272–146, 3/12/91.
111	MC	H.R. 1175—Desert Storm authorization.	Adopted 247–171, 3/13/91.
112	MC	S. 419—Resolution Trust authorization.	Adopted voice vote, 3/13/91.
114	O	H.R. 355—Reclamation drought assistance.	Adopted voice vote, 3/21/91.
123	MC	H. Con. Res. 121—Budget Resolution.	Adopted 392–9, 4/12/91.
136	O	H.R. 1455—Intelligence authorization fiscal year 1991.	Adopted voice vote, 5/1/91.
137	O	H.R. 1988—NASA authorization.	Adopted voice vote, 5/2/91.
138	O	H.R. 1236—Flood insurance mitigation.	Adopted voice vote, 5/1/91.
144	MC	H.R. 7—Brady gun bill	Adopted 405–16, 5/8/91.
147	O	H.R. 1415—State Dept. authorization.	Adopted voice vote, 5/14/91.
148	O	S. 248—Niobrara River	Adopted voice vote, 5/14/91.
156	MO	H.R. 2100—Defense authorization.	Adopted 250–56, 5/20/91.
162	MC	H.R. I—Civil rights	Adopted PQ:259–165; A:247–175; 6/4/91.
169	O	H.R. 2038—Intelligence authorization.	Adopted voice vote, 6/12/91.
170	MO	H.R. 2508—Foreign assistance authorization.	Adopted voice vote, 6/11/91.
177	MC	H.R. 2621—Foreign Operations appropriations.	Adopted 264–135, 6/19/91.
178	O	H.R. 429—Reclamation projects.	Adopted voice vote, 6/20/91.
189	MC	H.R. 2212—Regarding MFN for China.	Adopted voice vote, 7/10/91.
190	O	H.R. 2282—NSF authorization.	Adopted voice vote, 7/11/91.
191	O	H.R. 656—High Performance Computing Act.	Adopted voice vote, 7/11/91.
192	O	H.R. 1989—American technology preeminence.	Adopted voice vote, 7/11/91.
197	O	H.R. 1096—BLM authorization.	Adopted voice vote, 7/23/91.
202	MC	H.R. 2507—NIH authorization.	Adopted voice vote, 7/25/91.
203	O	H.R. 14—Flight Attendants' Duty Act.	Adopted voice vote, 8/1/91.
206	C	H.J. Res 313—Overseas base closures.	Adopted 262–161, 7/30/91.
210	C	H.R. 3201—Unemployment compensation.	Adopted voice vote, 8/2/91.
219	O	H.R. 2967—Older Americans Act amendments.	Adopted voice vote, 9/12/91.
221	MC	H.R. 3040—Unemployment insurance reform.	Adopted PQ: 214–141; A: 230–128; 9/16/91.
225	O	H.R. 1426—Lumbee Indians.	Adopted voice vote, 9/26/91.
226	O	H.R. 2900—Housing GSE's.	Adopted 405–0, 9/25/91.
227	C	S. 1722—Unemployment compensation.	Adopted PQ: 257–163; A: VV; 9/25/91.
231	O	H.R. 3039—Defense production.	Adopted voice vote 10/2/91.
240	O	H.R. 2369—Flint Hills Prairie Monument.	Adopted voice vote, 10/15/91.
241	O	H.R. 1470—Price fixing	Adopted 412–0, 10/10/91.
247	MO	H.R. 3371—Crime bill	Adopted 233–193, 10/16/91.
252	MC	H.R. 2950—Highway bill	Adopted PQ: 319–104; A: 323–102; 10/23/91.
259	MO	H.R. 3489—Export Administration.	Adopted voice vote, 10/29/91.
266	MO	H.R. 6—Financial institutions.	Adopted 210–208;10 10/31/91.
269	O	H.R. 932—MicMac Indians.	Adopted voice vote 11/12/91.
270	C	S. 1745—Civil Rights Act	Adopted 327–92, 11/7/91.
275	MC	H.R.—Family and Medical Leave Act.	Adopted 269–156; 11/13/91.
277	MC	H.R. 2094—FDIC improvement.	Adopted voice vote, 11/13/91.
278	MO	H.R. 2130—NOAA authorization.	Adopted voice vote, 11/20/91.
279	MO	H.R. 2929—California Desert Protection Act.	Adopted 269–135; 11/22/91.
280	C	H.R. 3575—Unemloyment compensation.	Adopted 391–37; 11/14/91.
283	MO	H.R. 3595—Medicaid moratorium.	Adopted 382–41, 11/19/91.
288	C	H.R. 3644—Presidential Campaign Fairness.	Adopted
289	C	H.R. 3768—FDIC improvement.	Adopted voice, 11/21/91.
299	MC	H.R. 3750—Campaign reform.	Adopted 246–180, 11/25/91.
320	MC	H.R. 3435—RTC Restructuring.	Adopted PQ: 248–144, A: VV; 11/26/91.
374	MC	H.R. 4210—Economic growth.	Adopted 244–178, 2/26/92.
375	MC	H.R. 3844—Haitian Refugee Protection Act.	Adopted Div. 45–27, 2/26/92.
386	MC	H. Con. Res. 287—Concurrent resolution on the budget.	Adopted PQ: 248–172; A: 239–182; 3/4/92.
403	MO	H.R. 3553—Higher Education Act amendments.	Adopted vice vote, 3/25/92.
410	C	H.R. 3732—Budget Process Reform Act of 1992.	Adopted PQ: 242–177; A: VV; 3/31/92.
412	C	H.R. 4704—Federal Home Loan Bank Act.	Adopted 228–193, 4/1/92.
432	O	H.R. 4364—NASA multiyear authorization 1992.	Adopted 419–0, 4/29/92.
442	MC	H.R. 3090—Family Planning Amendments Act.	Adopted 273–146, 4/30/92.
443	MC	H.R. 2056—Shipbuilding Trade Reform Act.	Adopted 290–115, 5/13/92.
444	MC	H.R. 2039—Legal Services authorization.	Adopted 238–167–1, 5/6/92.
447	MC	H.R. 4990—Budget rescission authority.	Adopted PQ:257–160; A:240–178; 5/7/92.
452	O	H.R. 4111—SBA Credit Crunch Relief Act.	Adopted voice vote, 5/13/92.
454	C	H.R. 5132—Disaster emergency supplemental.	Adopted PQ:262–139; A:298–106; 5/14/92.
457	O	H.R. 4691—Aviation reauthorization.	Adopted voice vote, 5/19/92.
459/464	MO	H.R. 776—National energy strategy.	Adopted voice vote, 5/20–21/92
474	MO	H.R. 5006—National defense authorization 1993.	Adopted 257–136, 6/3/92.
475	MC	H.R. 5260—Unemployment Compensation amendments 1992.	Adopted PQ:232–182; A:225–182; 6/9/92.
480	MC	S. 250—National Voter Registration Act.	Adopted PQ:256–163; A:264–157; 6/16/92.
482	O	H.R. 5055—Coast Guard authorization fiscal year 1993.	Adopted voice vote, 6/22/92.
483/489	MO	H.R. 4996—Jobs Thru Export Act of 1992.	Adopted voice vote, 6/17/92.
486	O	H.R. 5099—Central Valley Project Improvement Act.	Adopted voice vote, 6/17/92.
487	O	H.R. 3247—National Undersea Research Program.	Adopted voice vote, 6/29/92.
488	O	H.R. 4310—National Marine Sanctuary reauthorization.	Passed under suspension, 8/3/92.
494	O	H.R. 2637—Waste Isolation Pilot Plant Act.	Adopted voice vote, 7/21/92.

OPEN VERSUS RESTRICTIVE RULES REPORTED IN 102D CONGRESS—Continued

Rule No. H. Res.	Rule type	Bill No. and subject	House action on rule
493	O	H.R. 4484—Maritime Administration authorization.	Adopted voice vote, 9/9/92.
495	O	H.R. 5095—Intelligence authorization.	Adopted voice vote, 6/25/92.
499	MC	H.R. 5427—Legislative branch appropriations.	Adopted PQ:254–171; A:244–179; 6/24/92.
501	MC	H.R. 5368—Foreign Operations appropriations.	Adopted 246–177, 6/25/92.
503	C	H.J. Res. 517—Railroad labor-management dispute.	Adopted voice vote, 6/25/92.
510	MC	H.R. 5100—Trade Expansion Act of 1992.	Adopted PQ:247–167; A:252–163; 7/8/92.
514	C	H.J. Res. 502/H.R. 5318—Regarding MFN China..	Adopted voice vote, 7/21/92.
522	MO	H.R. 4312—Voting Rights Act.	Adopted voice vote, 7/23/92.
523	MO	H.R. 4850—Cable TV	Adopted voice vote, 7/23/92.
527	MO	H.R. 5620—Supplemental appropriations, fiscal year 1992.	Adopted PQ:207–199; A:230–174; 7/28/92.
529	O	H.R. 5679—VA/HUD appropriations, fiscal year 1993.	Adopted PQ:237–180; A:253–163; 7/29/92.
530	O	H.R. 5678—Commerce, Justice appropriations, 1993.	Adopted PQ:240–176; A:250–162; 7/30/92.
531	O	H.R. 5191—Small business equity enhancement.	Adopted voice vote, 7/30/92.
532	C	H.R. 4318—Miscellaneous tariff.	Adopted 243–150, 7/31/92.
537	MC	H.R. 5334—Housing and community development.	Adopted PQ: 244–163; A:251–154; 8/5/92.
540	O	H.R. 4394—Merchant Mariners documents.	Adopted voice vote, 9/9/92.
541	O	H.R. 5466—Airline competition.	Adopted voice vote, 8/11/92.
543	MC	H.R. 3603—Family preservation.	Adopted PQ:247–166; A:220–196; 8/6/92.
545	C	H.R. 4547—Freedom Support Act.	Adopted voice vote, 8/6/92.
551	MC	H.R. 4323—Neighborhood Schools Act.	Adopted 232–153, 8/12/92.
555	MO	H.R. 4706—Child safety and consumer product safety.	Adopted voice vote, 9/9/92.
561	O	H.R. 450—Homestead Act.	Adopted voice vote, 9/15/92.
562	O	H.R. 3724—Indian Health Care Act.	Adopted voice vote, 9/15/92.
563	MO	H.R. 5231—Competitiveness Act of 1992.	Adopted PQ:241–163; A:240–160; 9/16/92.
569	MC	H.R. 3596—Consumer Reporting Act of 1992.	Adopted voice vote, 9/24/92.
570	MO	H.R. 5754—Water Resources Development Act.	Adopted 269–141, 9/23/92.
573	MC	H.R. 3298—Farm credit bank and safety soundness.	Adopted voice vote, 9/23/92.
574	MO	H.R. 918—Mineral exploration and development.	Adopted 251–146, 10/4/92.
578	MC	H.R. 5192—Veterans health care amendments.	Adopted voice vote, 10/1/92.
580	C	H.J. Res. 553—Continuing appropriations.	Adopted PQ:231–186; A:213–204; 9/30/92.
584	MC	H.R. 1637—Black lung benefits restoration.	Adopted voice vote, 10/1/92.
589	C	S 3144—Military Health Care Act.	Adopted voice vote, 10/2/92.
590	MC	S. 1696—Montana Wilderness Act.	Adopted voice vote, 10/2/92.
593	MO	S. 2681—Hawaiian Health Care Act.	Adopted voice vote, 10/4/92.

Rule type: O—Open; C—Closed; MO—Modified Open; MC—Modified Closed.

INTERNATIONAL CONSORTIUM FOR INNOVATIVE TRANSPORTATION TECHNOLOGY [ICITT]

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. ROE. Mr. Speaker, I would like to take a brief moment to express my disappointment that the Intermodal Surface Transportation Efficiency Act [ISTEA] technical corrections bill could not be completed before the end of this Congress. Included in the House version of the bill was a project of extreme importance to the aerospace and aviation industry.

New Jersey's Stevens Institute of Technology, the Florida Institute of Technology, and the University of Limerick in Ireland were authorized to receive funding to establish the International Consortium for Innovative Transportation Technology [ICITT]. This consortium would have worked to enhance, encourage, and formalize scientific and academic interaction with the aviation industry. In so doing, the consortium would have worked to foster the development of commercial aerospace and aviation technologies and maintenance, while increasing the ability of the aviation industry to be competitive in international markets. In addition to university participation, the consortium is also supported by the Harris Corp., long a leader in air traffic control systems worldwide, and Guinness Peat Aviation in the Republic of Ireland, the largest commercial purchaser of United States-built aircraft in the world.

I am inserting an article from the Washington Post of October 1, 1992, which reports on a National Research Council conclusion that—

> Without strong cooperation between commercial interests, universities and government to define the policies with the greatest potential payoff, and to work in a concerted fashion toward their development, the U.S. standing in aeronautics will continue to erode.

While the report urges NASA to play a leading role in research efforts, I believe aviation research consortiums such as ICITT will add significantly to efforts aimed at maintaining the U.S. position as the world leader in aircraft manufacturing. This is just the type of cooperation that the ICITT would foster.

Several months ago, I described the details of this project and its participants to my colleagues. I certainly don't have to remind my colleagues of the importance of maintaining a forward-looking position in aerospace and aviation technologies. However, I must emphasize that it is imperative that we maintain both industry and university research within our country and with our friends in other countries of the world if we are to continue to effectively compete in the global aerospace markets. I urge my colleagues on both the respective authorizing and appropriation committees to provide the necessary Federal funding for the ICITT during the next session of Congress to ensure this worthy endeavor moves forward.

I thank my colleagues for their consideration.

[From the Washington Post, Oct. 1, 1992]

EMPHASIZING AERONAUTICS, NOT SPACE—NASA URGED TO SHIFT FUND TO BUTTRESS CIVIL AVIATION RESEARCH

(By Don Phillips)

The National Aeronautics and Space Administration should increase its budget for civil airliner and air traffic control research, even if it means a cutback in NASA's military and space programs, the National Research Council said yesterday.

The council, an arm of the National Academy of Sciences, said the U.S. status as the world leader in aircraft manufacturing will continue to erode if NASA does not enter into a major cooperative program with industry, universities and other government agencies to develop a new generation of airliners.

Research should continue on an efficient and environmentally acceptable supersonic transport, the council said, but emphasis should be placed on new subsonic airliners to replace the best that the United States now has to offer, such as the Boeing 747-400 and the McDonnell Douglas MD-80. The short-haul aircraft market, including helicopters and tilt-rotor craft, also should be emphasized, the report said.

If not, it said the United States will lose out to more aggressive foreign manufacturers.

"The fact that the U.S. market share in aeronautics is eroding is well documented," according to the report. "The ultimate cause of eroding market share is that, for a variety of reasons, foreign competitors are able to market products that have lower total ownership costs than U.S. products."

The council noted that the European consortium Airbus Industrie has moved into second place in the world civil aviation market behind the Boeing Co. of Seattle, dropping McDonnell Douglas to No. 3.

The council concluded: "Without strong cooperation between commercial interests, universities and government to define the policies with the greatest potential payoff, and to work in a concerted fashion toward their development, the U.S. standing in aeronautics will continue to erode."

Only NASA has the talent and experience to do the basic research and test the new concepts that will be necessary, the report said.

To do the necessary work, NASA's budget must increase, the report said. If no extra money is available, money should be shifted from "less vital" programs in NASA or from military and space-related resources.

Specifically, the council said:

NASA should take the lead in major technological development of subsonic aircraft and be the "primary contributor" to technologies that reduce environmental impact, including ozone depletion, airport noise, engine emissions and sonic booms.

NASA should enlarge its support of short-haul research, and balance rotorcraft and conventional short-haul aircraft.

NASA, the Federal Aviation Administration and the U.S. aircraft industry must work together to address the environmental problems of commercial aviation. It is "imperative" to develop better methods of measuring potential environmental damage and to begin developing engineering solutions.

NASA and the FAA should launch a program to "significantly increase" the capacity of the world-wide aviation system, beginning with the U.S. air traffic control system.

NASA must take the lead in aerodynamic research and "vastly strengthen" its aircraft propulsion research with "much greater emphasis on subsonic transport propulsion systems."

NASA should play a "major role" in the development of avionics and control systems and expand research into "the cause, nature and alleviation of human error."

ENVIRONMENTAL REPORT SUPPORTS NEED FOR STARK CARBON TAX BILL, H.R. 1086

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. STARK. Mr. Speaker, one of the most respected environmental think tanks, Worldwatch Institute, recently issued its annual "State of the World 1992: A Worldwatch Institute Report on Progress Toward a Sustainable Society." I am pleased to see their emphasis on the use of tax and economic policies to reduce greenhouse gases, more specifically, to reduce carbon emissions that contribute heavily to air pollution, acid rain, and global warming.

Last year I introduced a carbon tax bill, H.R. 1086, that would place a tax on fossil fuels based on their carbon content. It is wishful thinking to believe that appeals to our morals or conscience will lead to positive and responsible policies and actions concerning the environment. The United States is one of the largest producers of greenhouse gases, yet it lags behind the rest of the industrialized world in addressing the problem. In his report "Building a Bridge to Sustainable Energy" Worldwatch researcher Christopher Flavin describes the measures being taken in Europe to combat the problem:

> Several European countries have already enacted taxes on carbon, and the European Commission has proposed a community-wide combination energy-carbon tax equivalent to $10 per barrel of oil. Such levies could push the world into a new era in which the drive for sustainable energy is vastly accelerated.

It is time to bring our country up to this same level of thought regarding the environment. We must rethink and restructure our energy policies. A carbon tax is a good basis for a responsible energy policy that promotes the economy and the environment. It will address the issue at a basic level, money. It will compel those that cause the damage to bear the cost of repairs.

For those who think that saving the environment is too expensive, I believe that a carbon tax will have positive effects on a market economy. As stated by Lester R. Brown, president of Worldwatch:

> Taxing environmentally destructive activities, such as carbon emissions, the generation of hazardous waste, and the use of virgin materials, permits the market to operate unimpaired, taking advantage of its inherent efficiencies while steering it in an environmentally sustainable direction. For example, taxing carbon emissions discourages the use of fossil fuels, while encouraging investments in energy efficiency and renewable sources of energy.

A carbon tax will promote investment and jobs in the research and development of alternative energy and new technologies. The revenues generated by this tax could be used toward the deficit, new strategies, or environmental reconstruction.

Procrastination on this issue will only make the problems and the solutions worse. Worldwatch researcher Sandra Postel attributes the lack of attention to environmental issues to denial:

> . . . denial often runs particularly deep among those with heavy stakes in the status quo, including the political and business leaders with power to shape the global agenda.

We have the power to shape this agenda. We have the power to make the changes to insure the survival of ourselves and the environment. As Ms. Postel also says, "Extraordinary change is possible when enough courageous people grasp the need for it and become willing to act." We should be those people.

TRIBUTE TO SANTA MONICA HIGH SCHOOL ORCHESTRA—CHAMPION OF VIENNA MUSIC FESTIVAL COMPETITION

HON. MEL LEVINE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. LEVINE of California. Mr. Speaker, I rise today to pay special tribute to a group of young people that have brought great honor to their school and to our community. The 85 member orchestra of Santa Monica High School recently participated in the international youth and music festival in Vienna, one of the most prestigious musical competitions in the world, and emerged as champion. Their great achievement is heightened by the fact that they are the first regular public high school ever to earn such distinction.

The International Youth and Music Festival is run by the nonprofit Association for International Cultural Exchange and is sponsored by the city of Vienna and the Austrian Ministry of Education and Arts.

The Santa Monica High School orchestra was invited to attend the event by a talent scout in spring, 1991. Orchestra members and their families spent the following months raising the $100,000 needed to cover the cost of the 2-week long trip. The student musicians collected donations by given concerts at local venues and by playing at weddings and for community groups.

The competition began in Vienna on July 11. On that day, the Santa Monica orchestra joined 30 other musical groups for an opening concert festival. Over the next 3 days, the groups were ranked by judges and the Santa Monica High School orchestra was selected to play in the final round. The school's chamber orchestra was also chosen for the final round of competition.

On July 16, the Santa Monica group was declared the winner. In addition, the chamber group of the orchestra's best string players won special recognition for excellence. The student musicians were also bestowed with the honor of playing the final concert of the festival.

The students in the Santa Monica High School orchestra have set a fine example. They have once again demonstrated that American students are among the most talented anywhere in the world. This is a proud moment for a fine school and an outstanding group of young people and teachers.

The talented musicians of the highly lauded Santa Monica High School Orchestra are: Carolina Aguirre, Bill Alexander, Holly Axe, Allison Bagley, J.C. Beeson, Laura Benedict, Henry Bigelow, Mai Bloomfield, Laura Cannon, Christina Caro, Helen Chang, Allen Chao, Jennifer Chao, Ya Yin Chiang, Jennifer Cho, Jerel Davis, Ryan Dorin, Graham Dunn, Forest Erickson, Chester Englander, Marjan Farid, Brian Ferguson, Jamie Fisher, Nicole Flaten, Jeremy Fleider, Jaime Goodrich, Masha Gutkin, Thomas Hartman, David Hearn, Allison Hiroto, Annie Hsu, Allison Inouye, Amira Jarmakani, Nicole Johnigan, Thian Lung Jong, Lauren Keeler, Cheryl Kohfeld, Courtney Kuroda, Andrew Lee, Norman Lee, Diana Liem, Amir Marcus, Matt Marcy, Daniel Mayhew, Kevin McKeown, Christina Nagao, Miki Nakamura, Laura Novak, Kurt Outwater, Kyung Hee Park, Patrick Poon, Leanne Rocha, Anthony Rydbeck, Bryan Sanders, Hans Schoellhammer, Anna Sew Hoy, Connie Shih, Toya Smith, Daniel Stevens, Jeremy Stevens, Tahira Stewart, Catherine Sundeen, Emi Tabibian, Kaya Taylor, Glenda Tistaert, Steve Tistaert, Gabe Trop, Christine Tsau, Jerry Tseng, Stanislav Velicky, Christina Vredevoe, Ben Wang, Jane Wang, Tammy Wang, Tom Wang, Ben Wendel, Justin Wolff, Catherine Wong, Amir Yaghmai, Lance Yang, Allison Yen, and Jeff Edmons, the conductor.

I ask my colleagues to join with me in honoring these talented young men and women.

ANGELES NATIONAL FOREST CENTENNIAL

HON. CARLOS J. MOORHEAD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. MOORHEAD. Mr. Speaker, I wish to recognize the centennial of the Angeles National Forest in Los Angeles County, CA. This year long celebration has been comprised of many events, including the dedication of Muir Peak, the family meeting to honor forest service retirees, and the Big Santa Anita Historical Society Symposium to present the history of the Angeles Forest.

Founded on December 20, 1892, as the San Gabriel Timberland Reserve, the Angeles was home to the Nation's first uniformed park ranger service. The forest has endured every kind of incursion, from forest fires to gold rushes, and possesses an amazing array of natural resources. It stands a lasting reminder of the importance of preserving the beauty and inhabitants of America's wildernesses.

The Angeles attracts more than 32 million visitors annually, making it the second most popular of America's 156 national forests. It provides diversified recreation opportunities for the millions of people that live in the cities and communities of southern California. Skiing, water sports, and camping are among the activities enjoyed by the park's visitors. The Angeles also hosts a variety of agricultural research projects, as well as the Mount Wilson Observatory and the Table Mountain Jet Propulsion Laboratory. At the forefront of the effort to preserve California's wildlife, the park is home to healthy communities of several endangered species, including the Nelson big-horn sheep and the unarmored threespine stickleback fish.

None of this would be possible, however, without the efforts of the men and women of the U.S. Forest Service who see to the daily operation of the Angeles. The success of the forest and the safety of its visitors depends on many people, including rangers, biologists, fire specialists, and others. It is the dedication of these professionals that makes the splendor of the Angeles available for all to enjoy.

Mr. Speaker, the centennial of the Angeles National Forest is a historic occasion for the park and for the people of southern California.

TRIBUTE TO THE LATE FRANK KARSTEN, U.S. REPRESENTATIVE FROM MISSOURI

HON. HENRY B. GONZALEZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. GONZALEZ. Mr. Speaker, I rise in tribute to the memory of our former colleague, the late Frank Karsten, a Representative from the First District of Missouri who served in Congress from 1947 until 1969 during which time he distinguished himself in many ways, not the least of which was as a stalwart advocate of most of the Democratic legislation which was enacted during that time.

He was an assistant Democratic whip, a member of the House Ways and Means Committee, and chairman of the Subcommittee on Budget and Accounting. He was author of the Budget and Accounting Act of 1950 which modernized the Federal Government's accounting and auditing procedures, and of the Narcotics Manufacturing Act, which set up a system for licensing and controlling the manufacture of narcotic drugs. He also took the lead in revamping the handling of surety bonds for Government officials, a change that is estimated to save millions of dollars annually.

Further, he was a highly compassionate and innovative helper to the disabled.

His tenure with the Congress actually began in 1934 when he went to work for the late John J. Cochran. Cochran represented the northern St. Louis district which would eventually overwhelmingly elect, with Cochran's strong endorsement, Frank Karsten to succeed him. Karsten not only served Cochran as administrative assistant but served as staff director of two congressional committees as well.

A native of my home city of San Antonio where he was born on January 7, 1913, Frank Karsten eventually returned home to San Antonio in 1977 where he died on May 14 of this year.

Karsten was destined to be a Congressman from Missouri, instead of Texas, when his family moved from San Antonio to St. Louis in 1925. He graduated from the public schools in St. Louis. He was 20 years old when he answered a want ad in St. Louis placed by his Congressman, John Cochran, for a job in Washington. That began a long and close friendship.

When Cochran lost both of his legs to illness, Karsten designed and built a better wheelchair than what was available on the market at the time. President Franklin D. Roosevelt was so impressed, he asked Karsten to build one for him—which he did.

Karsten also designed and built an improved pair of artificial legs for Cochran. At the time there had been nothing published on artificial legs since 1840. Karsten taught Cochran how to use the new legs, and subsequently gave these instructions to the Air Force which now includes this information in its manual for disabled veterans.

After coming to Congress, Karsten also worked with the blind and helped pass legislation to eliminate barriers.

While in Washington, Karsten earned both a bachelor's degree and a doctorate of law from George Washington University. He was admitted to the District of Columbia Bar in 1946, but did not practice then because he was elected to Congress 6 months later. After he left Congress in 1969, he practiced law in Washington until he went to San Antonio in 1977.

He is survived by his wife, the former Opal Osborne, who he married in Washington in 1936; his daughter, Verne K. Brown of Houston; four grandchildren, and two great grandsons. A son, Frank Jr., preceded him in death.

He is also survived by his son-in-law, the Rev. J.W. Brown of Houston, who assisted in services for him at St. Francis Episcopal Church in San Antonio. Burial was in Mission Burial Park South.

Mr. Speaker, my fellow colleagues, I feel honored to bring to your attention the wonderful legacy which our former colleague has left to us. I wish to quote his daughter, Verne K. Brown:

> He was a caring husband and father, was interested in his constituents, and had tremendous human compassion. My father was a hero in our eyes.

MODERNIZATION OF THE WEATHER SERVICE

HON. JAMES H. SCHEUER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. SCHEUER. Mr. Speaker, my colleague from Pennsylvania [Mr. WALKER] is correct that a relocation requiring certification is linked to office moves outside the local commuting or service area, and that the Science Committee intends that the definition of "local commuting area" to be the same as that found in the Federal Personnel Manual. However, the Federal Personnel Manual and other regulations published by the Office of Personnel Management defines "local commuting area" not as a fixed distance as my colleague suggests but rather as "any population center, or two or more neighboring ones, and the surrounding localities in which people live and can reasonably be expected to travel back and forth to their usual employment." Basically, if employees at the office that is being moved are eligible for reimbursement of moving expenses by the Government, the move is a relocation outside of the local commuting area.

I also note that the act permits the NWS to transfer service responsibility to another office without going through the certification process. This is to allow discreet changes in service responsibilities may be made simply by notifying Congress in the appropriate budget justifications. However, this is not a loophole by which the NWS can transfer the bulk of its operations or staff from one of its old offices to one of its new offices without certifying that there will be no degradation of services. The Secretary of Commerce cannot escape his or her responsibility to certify that there will be no degradation of services as a result of the relocation of offices by transferring the bulk of the warning and forecast responsibilities to the new offices and simply calling it a change of operations. When the bulk of services, or equipment or staff has moved to a new office outside the local commuting or service area, that's a relocation.

Finally, the certification requirements of the act apply to all Weather Service Offices and Forecast Offices, just as the certification requirements of Public Law 100–685 which this act is amending. Two weeks ago, a Federal court in Pennsylvania ruled that the NWS' river forecast centers were forecast offices to which the certification requirements applied. No change in the scope of the law is intended. There is no reason to exclude the river forecast centers from the certification or notification requirements. The services provided to local communities by the river forecast centers are as important as the services provided by other kinds of weather offices. The loss of life in flooding is comparable to that of tornadoes and exceeds the loss of life from hurricanes. According to the Federal Emergency Management Agency, flooding causes greater economic loss annually than does other severe weather events.

LOOK GOOD * * * FEEL BETTER PROGRAM HELPS CANCER PATIENTS

HON. J. ROY ROWLAND

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. ROWLAND. Mr. Speaker, we all are well aware of the rising toll of cancer in our country. According to the American Cancer Society, approximately one of every three people in the United States will develop cancer. One of every nine women will develop breast cancer in her lifetime.

Early detection and improved methods of treatment are helping us fight this disease. Fortunately, we now have another weapon in our fight. Look good * * * feel better is a nationwide public service program that helps women learn to overcome the appearance-related side effects of radiation and chemotherapy treatment. Women are regaining not only control over their appearance but also a renewed sense of self-confidence and well-being. Sponsored by the American Cancer Society, the Cosmetic, Toiletry, and Fragrance Association Foundation, and the National Cosmetology Association, look good * * * feel better is available free of charge throughout the United States in hospitals, comprehensive cancer centers, and other community settings.

This remarkable program was profiled in the July–August 1992 issue of FDA Consumer, the magazine of the U.S. Food and Drug Administration. I am happy to commend this article and this program to the attention of my colleagues.

[From FDA Consumer, July–August, 1992]

COSMETIC HELP FOR CANCER PATIENTS

(By Cheryl Platzman Weinstock)

Sometimes the 36-year-old cancer patient lets herself remember when she had the energy to "run around with her kids like a maniac" and stay up until the early hours of the morning. That was before a recurrence of Hodgkin's disease forced her to begin the chemotherapy treatment that left her nauseated, fatigued, somewhat dispirited, and bald.

Before chemotherapy, Sharon (who asked that her last name not be used) had beautiful, jet-black hair. Now she keeps a strawberry blond wig handy for those times she says she "needs a good laugh" to help her "escape" from the side effects of chemotherapy, as well as the reality of having cancer.

"The wig has bangs coming down. I never used to wear bangs," she says. "Sometimes I put on long, dangling earrings with the wig and some of the cosmetics that they gave me when the hospital made me up. It's pretty funny because I'm not the kind of person that used to use all this stuff."

Her mother, Dorothy (who also asked that her last name not be used), helped coax Sharon from her hospital room to the "Look Good * * * Feel Better" workshop at North Shore University Hospital, Manahasset, N.Y., where she was receiving her treatment. Dorothy says her daughter was quite skeptical and felt she didn't want to be bothered with having anyone teach her individualized skin care and makeup techniques, or how to work with wigs, turbans and scarves.

But once they started working on her, "Sharon got such a kick out of it and laughed for hours afterwards. The thing a mother looks for is her child's happiness," says Dorothy. "While having your child have cancer is not a happy thing, for those moments, Sharon's smile was my smile, too."

The notion that it's hard to weather going through an arduous course of radiation or chemotherapy treatment without looking good and feeling good about oneself has gained scientific respect, according to Julia Rowland, Ph.D., director of psycho-oncology research, Georgetown University Medical Center, Washington, D.C.

"Looking good despite what we may be going through can help one take control again and can be a critical component to the healing process by providing powerful psychological benefits," says Rowland.

COURSE AVAILABLE

The "Look Good * * * Feel Better" course, available to Sharon and others around the country, was developed jointly for national use by the Cosmetic, Toiletry, and Fragrance Association (CTFA) Foundation, the National Cosmetology Association, and the American Cancer Society nearly three years ago. It's an attempt to help patients learn to minimize the side effects of cancer drugs and radiation treatment, which can cause changes in hair, complexion and nails.

"Look Good * * * Feel Better" teaches hands-on beauty techniques in group or one-on-one makeover workshops conducted by specially trained, volunteer cosmetologists in hospitals, community centers, and salons.

According to Carolyn Deaver, vice president, CTFA Foundation, the program is also operating in Australia and will be launched in Canada this year. Though the current program is geared for women, a similar program for men undergoing cancer treatment is expected to be developed.

If a patient is unable to attend a makeover workshop, there is a video and brochure available free of charge, which can be used at home.

Here are some of the problems that these programs and pamphlets tackle.

HAIR LOSS HARD TO TAKE

Drugs capable of killing cancer cells can also attack normal cells. This accounts for many of chemotherapy's unpleasant side effects.

Hair loss, although temporary, and not always a side effect of chemotherapy, is often cited by patients who experience it as the most devastating cosmetic side effect of chemotherapy.

"Every time I pass a mirror and look at my bald head," says 43-year-old Corrine Wenze of South Farmingdale, N.Y., "it's a constant reminder of my disease. Even when I look at babies I cringe because they remind me I have only about six loyal strands of my own hair."

Wenze says that when she first found out she had breast cancer she "wallowed very well by playing video games for nearly a month. I wanted to fall into a hole and disappear. I didn't believe I could have cancer.

She continues, "you know the surgeon sent me home without my breast and then sent me through cancer treatment. It wasn't until I went to the "Look Good * * * Feel Better" program that I picked up. They made me feel more cared for by caring for me and then showing me how to care for myself."

Rowland says losing one's hair if often the first overwhelming confrontation patients have with their illness. Until that point, they might have easily hidden their disease from everyone, including themselves.

According to cosmetologists, the best time to start looking for a wig is before the first chemotherapy treatment. Synthetic wigs are the easiest to maintain because they don't need to be set and are not affected by humidity like natural hair. They're also less costly than natural hair wigs.

Bijan Safai, M.D., chief of Memorial Sloan-Kettering Cancer Center's dermatology service in New York City, says that in most cases, patients' hair begins to grow back within a few weeks after their chemotherapy treatment ends. But if a wig does not fit right and exerts excessive pressure at certain points, the hair follicles at those points will die and hair will never grow back. So he recommends wigs that don't need to be glued or taped down, and that don't require elastic bands that hold them tightly against the scalp.

Frequently, the cost of a wig is reimbursable by third-party payers if it is prescribed as a "cranial prosthesis" by a physician. Other options cancer patients can consider are brightly colored scarves, turbans or hats.

William Cahan, M.D., senior attending surgeon at Memorial Sloan-Kettering, says many of his male cancer patients choose to wear hairpieces close to their natural hair color and style while undergoing cancer treatment. However, some prefer to have fun wearing hats such as French berets and beanies with propellers. Like Sharon choosing to wear a strawberry blond wig, these men seem to get through their treatment by self-kidding.

CHEMOTHERAPY DRIES SKIN

Chemotherapy is easier on the skin than on the hair. Even so, whatever a person's skin type, chemotherapy will make skin drier because the drugs interfere with oil and sweat glands. Keeping skin as moist as possible during treatment is important to keep it looking young and healthy. Moisture can also prevent cracking and chapping, which can lead to infection in the cancer patient, whose immune system is suppressed.

Cancer patients are advised never to pull, tug or scrub the face too hard. Overzealous cleansing can strip away the remaining natural oils. Soap-free face cleansers that gently cleanse makeup and oil without drying skin are preferable. Safai recommends using an antimicrobial soap, however, to effectively clean areas like the armpits and genitals, which are prone to infection.

Moisturizing day and night can slow down the skin's loss of moisture by leaving behind a filmy deposit of oil. The oil not only helps retard moisture evaporation, but also makes the surface of the skin softer and more pliable. This may be especially important for hands and soles of the feet, which may become sore and blistered. Rubber gloves should be used when doing household chores.

Cancer patients are advised to moisturize with products containing sunscreens with a sun protection factor (SPF) of at least 15 because people undergoing chemotherapy may be more sensitive to harmful ultraviolet rays. (For more on sunscreens, see "Cool Tips for Summer Safety" in the June 1992 FDA Consumer and "No Safe Tan" in the May 1991 FDA Consumer.)

Dry, chapped lips can be helped with non-pigmented lip balms or petrolatum-based products, according to Harley Haynes, M.D., a dermatologist with Brigham and Women's Hospital and Harvard Medical School. He recommends using lipstick only when the lips are in good condition. Chemotherapy may also affect the nails, retarding their growth and, in many cases, causing them to become thin and brittle and develop horizontal grooves.

It's not a good idea to cover the nails with acrylics or other types of wraps, say Haynes, since these materials can trap bacteria that may cause infection. Instead, the nail can be clipped short and moisturized with lotions. A light-color nail polish will camouflage any nail imperfections. But to prevent nails from drying out, only non-acetone-based nail polish remover should be used.

Cancer patients who have professional manicures should bring their own implements to guard against infection. Cuticles should be pushed back rather than cut.

SKIN REACTIONS TO RADIATION

Radiation treatment, unlike chemotherapy, affects only the skin that is irradiated or close to the point of irradiation. Its most common effect is a brief, intense sunburn-like reaction that causes blistering, says Alan Lorincz, M.D., professor of dermatology, University of Chicago, Pritzer School of Medicine.

Sometimes, however, a chronic skin condition may occur in which the treated skin thins and loses elasticity and may become lighter or darker. This skin needs to be treated especially gently with emollients and sunscreen products with a high sun protector factor. It can be expected to be more susceptible than the rest of the person's skin to chronic irritation and breakdown.

During chemotherapy and radiation treatment skin will, in general, become more sensitive to allergens or irritants. So cancer patients are advised not to share any of their hygiene products with anyone else and not to use old products that have changed in appearance, ardor or texture.

NOT A TIME TO EXPERIMENT

In general, it's not a good time to experiment with new brands of products, unless products usually used become irritating. Some cancer patients, however, want to experiment with cosmetics to try to camouflage certain facial effects of cancer treatment, such as skin discolorations, blotchiness, dark circles under the eyes, or loss of eyebrows and lashes. Experts advise trying out only one product at a time for several days before starting a second new product.

After taking the necessary precautions (see accompanying article), cancer patients will find that cosmetics can be important tools, says Rita Davies, a volunteer cosmetologist with the American Cancer Society.

Foundation and concealer are good for evening out skin tone. Eye crayons applied in a feathery motion can give the appearance of lashes, and brow powders can create natural-looking eyebrows. Mascara that has a wand with a small comb can help give body to remaining eyelashes.

Cosmetics can give a lift not only to the face, but to a cancer patient's outlook on life. As Rowland says, "I think we under-estimate the impact of outward appearances. If we put on a costume we feel differently about ourselves. If we put on special clothes we feel differently about ourselves. Similarly, cosmetics are a way to fortify the self during chemotherapy or radiation."

PRESCRIPTION DRUG PRICES: TOO MUCH TO SWALLOW

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. STARK. Mr. Speaker, prescription drug prices are threatening the health of Americans. Recent reports indicate that pharmaceutical corporations within the Fortune 500 averaged profit margins four times the size of the median Fortune 500 company in 1991. With extreme political pressure in 1992 to limit their profit margins, only a handful are rumored to be doing so. At the same time, America's elderly are the largest financiers of growing pharmaceutical marketing schemes.

It is enough to make you sick.

This is how it works. Pharmaceutical companies reside in an uncommon marketplace. Considering the consumer cannot usually choose the drug being prescribed, drug prices are shielded from real competition. Pharmaceutical companies pass along indirect costs that would normally be swallowed by other industries.

The burden of the price gouging is paid by individuals directly from their pocketbooks. A September 1992 Families USA Report states that the average consumer pays for 57 percent of their drug costs out-of-pocket, without help from insurance. The elderly are affected the most. Elderly Americans spend 2½ times as much on prescription drugs as the non-elderly, and pay for 64 percent of the costs out-of-pocket. From 1985–91, the top 20 elderly prescription drug prices rose 79 percent. Four of those drugs more than doubled their prices in the same time period.

Examples? How about Naprosyn? From 1985 to 1991 its price rose 10 different times, totaling a 45-percent increase. The costs of Lopressor and Persantine rose nine times, accumulating increases of 118 percent and 92 percent, respectively.

With all of these price hikes occurring, the Pharmaceutical Manufacturers Association claims that it needs millions of federally funded tax credits for R&D.

The Families USA Report shows that half of the pharmaceutical companies' annual increase in prices went to marketing and administrative costs. Why, during a period of economic crisis, where pharmaceuticals are reaping record profits, is the Federal Government allowing itself to be lobbied for millions in R&D that can instead come directly from the companies' ballooning advertising budgets?

The very drugs that may enhance or save lives are becoming too expensive to purchase. Bottom line.

American companies with American workers and federally funded dollars are ransacking American wallets and savings accounts. They are pillaging the fixed incomes of our elderly in the name of profit.

We, the Congress, cannot watch this injustice any longer. In an era that demands compassion, irresponsible acts of greed must be confronted.

The following are spreadsheets and charts drawn from Medical Advertising News, September 1992, and the Families USA Report, September 1992, which further detail the situation.

PHARMACEUTICAL SPREADSHEETS

Company	Sales worldwide (billions)	Percent change from 1990	Earnings worldwide (billions)	Percent change from 1990	R&D (billions)	Marketing, advertising, promos, and administrative (billions)
Johnson and Johnson	$12.45	10.8	$1.46	27.8	$0.98	$5.11
Bristol-Myers Squibb	9.37	10.6	2.06	17.6	.99	4.47
Smith Kline Beecham	8.76	NA	1.19	NA	.81	2.91
Merck & Co., Inc.	8.02	12.6	2.12	19.1	.98	2.57
Abbott Laboratories	6.88	11.7	1.09	12.7	.67	1.51
Roche Group	6.66	8.4	1.04	51.9	1.21	2.27
Glaxo Holdings	6.32	21.9	1.64	24.6	.88	2.29
Amer. Home Products	6.22	13.1	1.38	11.8	.43	2.97
Pfizer, Inc.	5.94	12.6	.72	NA	.76	2.74
Eli Lilly and Company	5.73	10.3	1.31	16.6	.77	1.54
Ciba-Geigy Group	5.47	8.6	.89	19.6	1.53	2.61
Hoechst Group	5.43	8.4	.89	NA	1.73	7.21
Bayer Group	5.31	7.5	1.11	NA	1.81	6.81
Eastman Kodak Co	4.92	13.1	NA	NA	NA	NA
Sandoz, Ltd.	4.48	9.6	.81	4.5	.94	3.21
Warner-Lambert Co	3.97	9.4	.03	NA	.42	2.31
Rhone-Poulenc Rorer	3.82	5.8	.33	125.5	.44	1.36
3M	3.78	7.1	1.15	NA	.91	3.32
Schering-Plough Corp.	3.61	8.8	.65	14.2	.42	1.51
Imperial Chemical	2.97	8.7	NA	NA	NA	NA
Procter and Gamble	2.88	15.1	NA	NA	NA	NA
Wellcome	2.86	15.1	.44	36.2	.41	NA
Marion Merrell Dow	2.85	15.8	.59	20.1	.39	.95
The Upjohn Co	2.74	13.9	.54	17.9	.49	1.34
American Cyanamid Co	2.64	14.1	.36	1.7	.49	1.57

TABLE 1.—OUTPATIENT PRESCRIBED MEDICINE USE, 1987

	Percent of persons with prescription medicines		Average Total cost of outpatient prescribed medicines			Percentage distribution of financing for prescribed medicines							
						Out-of-pocket		Private insurance		Medicaid		Other	
	<65	65+	<65	65+	Top 25 percent of users of all ages	<65	65+	<65	65+	<65	65+	<65	65+
All persons	50.4	80.1	$125	$311	$505	53.5	63.7	31.6	22.2	9.7	8.7	5.3	5.4
Sex:													
Male	43.2	76.5	123	296	545	51.5	61.5	32.4	25.8	7.7	4.9	8.4	7.8
Female	57.4	82.6	126	321	482	54.9	65.0	31.0	20.1	11.0	11.0	3.1	3.9
Race:													
White	53.5	80.8	127	315	510	53.9	64.9	34.1	23.3	6.8	6.5	5.3	5.3
Black	39.6	76.9	122	295	462	48.5	51.6	14.6	12.6	31.1	30.3	5.8	5.5
Other	35.4	69.1	95	221	515	58.3	56.7	18.4	7.6	18.9	27.1	4.3	8.6
Ethnicity:													
Hispanic	36.3	71.7	110	292	675	53.0	53.3	19.6	5.5	18.8	38.9	8.6	2.4

TABLE 1.—OUTPATIENT PRESCRIBED MEDICINE USE, 1987—Continued

	Percent of persons with prescription medicines		Average Total cost of outpatient prescribed medicines			Percentage distribution of financing for prescribed medicines							
						Out-of-pocket		Private insurance		Medicaid		Other	
	<65	65+	<65	65+	Top 25 percent of users of all ages	<65	65+	<65	65+	<65	65+	<65	65+
Non-Hispanic	51.8	80.3	126	311	500	53.5	64.0	32.3	22.6	9.1	8.0	5.1	5.5
Marital status:													
Married	55.5	79.6	156	312	507	53.2	62.1	37.1	28.3	3.2	4.1	6.6	5.6
Single	46.8	80.7	98	310	504	53.9	65.7	24.2	15.0	18.4	14.2	3.6	5.1
Disability status:													
Non-Disabled	49.8	77.6	115	276	479	54.3	64.4	32.8	24.7	7.8	5.3	5.1	5.6
IADL only	80.2	87.3	510	374	641	52.4	63.8	18.5	15.3	23.9	17.1	5.2	3.8
Any ADL	87.7	93.0	408	478	615	41.3	61.3	22.1	17.1	28.4	16.1	8.3	5.5
Income levels:													
Lowest quintile	47.6	82.9	157	336	532	49.4	59.4	13.1	8.9	29.7	26.8	7.8	5.0
Second quintile	48.5	79.2	117	312	513	59.2	69.7	29.1	18.0	7.3	5.6	4.4	6.8
Third quintile	51.8	81.3	132	307	494	53.2	66.8	36.7	25.0	4.5	3.4	5.6	4.8
Fourth quintile	52.8	79.9	105	306	521	53.9	61.4	40.6	33.8	1.4	1.8	4.1	3.0
Highest quintile	51.5	77.1	114	292	467	53.1	61.9	42.6	27.6	.5	3.0	3.8	7.6

Notes.—Data do not include over-the-counter or undetermined medicines prescribed by a physician. Other includes: other federal programs—CHAMPUS, CHAMPVA, Supplemental Security Income, Indian Health Service facility or contract, Intertribal Council, Alaska Native Corporation and Veteran's Administration; other state and local medical assistance such as community health centers; payments from worker's compensation; and other sources, such as automobile insurance or charity. As documented in the report, prescription drug costs have risen considerably since 1987. Additionally, an evaluation of the NMES indicates a 34 percent underreporting rate for prescription drug expenditures.

Source: Lewin-ICF analysis of 1987 National Medical Expenditure Survey.

TABLE 4A.—PRICE INCREASES OF TOP 20 BRAND NAME DRUGS FOR PERSONS UNDER AGE 65: 1985–91

Brand name	Cumulative percent increase 1985–91	Average annual percent increase 1985–91
Top 20 average	82	10
Zantac	66	9
Synthroid	110	13
Tenormin	NA	NA
Inderal	129	16
Ortho-Novum	63	9
Xanax	106	13
Naprosyn	45	6
Dyazide	65	9
Premarin	148	17
Amoxicillin	3	0
Ceclor	82	11
Cardizem	42	6
Lopressor	118	14
Motrin	8	1
Capoten	85	11
Procardia	90	11
Feldene	92	12
Clinoril	72	12
Vasotec	NA	NA
Entex LA	150	17

Note.—Generic drugs and drugs for which the sample size was not adequate were excluded in order to obtain reliable estimates. The term NA is used in cases in which the drug was not on the market for the entire period from 1985 to 1991.

Source: Compiled by Stephen W. Schondelmeyer, PRIME Institute, University of Minnesota, from data in the Master Drug Data Base by Medispan.

TABLE 4B.—PRICE INCREASES OF TOP 20 BRAND NAME DRUGS FOR PERSONS AGE 65 AND OVER: 1985–91

Brand name	Cumulative percent increase 1985–91	Average annual percent increase 1985–91
Top 20 average	79	10
Synthroid	110	13
Dyazide	65	9
Cardizem	42	6
Zantac	66	9
Procardia	90	11
Capoten	85	11
Tenormin	NA	NA
Inderal	129	16
Lanoxin	96	13
Naprosyn	45	6
Clinoril	72	12
Lopressor	118	14
Persantine	92	12
Feldene	92	12
Lasix	59	8
Aldomet	61	8
Insulin-Regular	47	7
Timoptic	31	5
Theo-Dur	56	8
Isordil	120	14

Note.—Generic drugs and drugs for which the sample size was not adequate were excluded in order to obtain reliable estimates. The term NA is used in cases in which the drug was not on the market for the entire period from 1985 to 1991.

Source: Compiled by Stephen W. Schondelmeyer, PRIME Institute, University of Minnesota, from data in the Master Drug Data Base by MediSpan.

TRIBUTE TO HON. WALTER B. JONES

HON. CHARLIE ROSE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. ROSE. Mr. Speaker, Walter B. Jones served in this Chamber for 26 years. During his tenure, Chairman Jones was the champion of agricultural programs and legislation to save one of our Nation's most precious resources—our coastal lands. He was a friend of farmers throughout America, and his wisdom, experience, and knowledge of agricultural matters and the agricultural community were always a tremendous source of insight.

The Honorable James G. Martin, Governor of North Carolina, declared September 22, 1992, as "Walter B. Jones Day," in recognition of the outstanding accomplishments of this fine North Carolinian. I too would like to honor this remarkable legislator, and exemplary statesman, as well as the legacy he has left to his fellow North Carolinians.

TRIBUTE TO HON. WALTER B. JONES

HON. J. ALEX McMILLAN

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. MCMILLAN of North Carolina. Mr. Speaker, I rise today to pay tribute to the former dean of the North Carolina congressional delegation, the Honorable Walter B. Jones.

Congressman Jones came to Congress in a special election in February 1966, and served North Carolina as the chairman of a committee that was very important to our State, the Committee on Merchant Marine and Fisheries. He also served for years on the Agriculture Committee. He served with great distinction in both regards and North Carolina will miss his leadership.

We may be seeing the end of an era where Representatives such as Walter Jones serve their constituents and States for long periods of time. Perhaps we will see more abbreviated tenures and more change in leadership of the committees in the near future.

But we know that Walter Jones wanted to serve his district and the people of North Carolina and this Nation where he could use his talents and interests the best. He did that with distinction.

His North Carolina constituents and his colleagues will miss him and we extend to his family and friends our thanks for sharing him with us.

HONORING WALTER JONES

HON. HOWARD COBLE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. COBLE. Mr. Speaker, I would like to honor the life of the late Walter Jones.

Following his funeral at the Memorial Baptist Church, Greenville, NC, I turned to Congressman CASS BALLENGER and said, "What a choir." "The Mormon Tabernacle Choir could have done no better," he replied. Walter Jones would have liked that. That choir and Rev. David Vess and Rev. E.T. Vinson saw to it that Walter's final remembrance was a fitting and appropriate one.

As was mentioned during this service, Walter Jones extended heart service not lipservice to his many constituents.

I served with Walter Jones' son in the North Carolina General Assembly and served with him in the Congress of the United States.

I am better for having known these two outstanding citizens.

TRIBUTE TO HON. WALTER B. JONES

HON. WILLIAM J. JEFFERSON

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. JEFFERSON. Mr. Speaker, I rise to honor the memory of our late colleague, the Honorable Walter B. Jones, of the First District of North Carolina. For me, he was Mr. Chairman, the leader of this body's Merchant Marine and Fisheries Committee.

Chairman Jones was a colleague and a friend. His advice to me was always encouraging and almost avuncular in tone. He was a caring man, a gentle spirit, a sensitive human being.

When I joined the Merchant Marine and Fisheries Committee at the beginning of this Congress, Chairman Jones was immediately collegial in his demeanor and concerned about my district's stake in the work of his committee. He welcomed me with an openness reserved to those far more expert in the arcane matters of the committee's jurisdiction than I was at that time. And he never wavered in his words of encouragement and in his support of my district.

Mr. Speaker, John F. Kennedy, in a speech to the Massachusetts State Legislature raised four essential questions testing a public servant's success in discharging his duties. Said the future President:

> And when at some future date the high court of history sits in judgment on each of us, recording whether in our brief span of service we fulfilled our responsibilities to the State, our success or failure, in whatever office we hold, will be measured by the answers to four questions: First, were we truly men of courage; second, were we truly men of judgment; third, were we truly men of integrity * * * finally, were we truly men of dedication?

In the short time I knew him, Walter B. Jones was a person of courage, of judgment, of integrity, and of dedication. Although there were twists and turns on the long road of his life, he was at all times material to his tenure in the House—a quintessential public servant. He shall be missed, but our lives have been enriched immeasurably by the short time he spent with us on this Earth.

TRIBUTE TO HON. WALTER B. JONES

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. CRANE. Mr. Speaker, Congress and the Nation have lost a dedicated Member of the House of Representatives with the death of our colleague, Walter B. Jones of North Carolina.

Chairman Jones served his constituents well during the 26 years he served following his special election to fill a vacancy.

For years, we often saw him wheelchair-bound as he made his way to the floor of the House or to committee meetings. But he carried on his duties as if he had no handicap. He was an inspiration to all of us as he so ably performed his congressional duties.

Farmers in his district were certainly well represented by Walter as he chaired the Tobacco and Peanuts Subcommittee of the House Agriculture Committee. While his efforts on behalf of his farmer constituents took on a high profile because of the chairmanship of the subcommittee, he never forgot the other residents of his North Carolina congressional district. And his record as chairman of the House Merchant Marine and Fisheries Committee was one of constant activity as he tried to aid an ailing merchant marine industry as well as assist the fishing community.

North Carolina and the Nation were well-served, indeed, by Chairman Walter B. Jones.

WALTER JONES ALWAYS PUT NORTH CAROLINA FIRST

HON. STEPHEN L. NEAL

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. NEAL of North Carolina. Mr. Speaker, those of us from North Carolina who served with Representative Walter B. Jones feel a particular sense of loss.

When we referred to Walter as the dean of our delegation, we were not conferring an honorary title. He was a hard-working dean. Walter prodded us, kept us informed and literally brought us together on matters of special importance to North Carolina.

Even as his health declined and he moved about in a wheelchair, Walter Jones kept abreast of the issues. He knew what was important for North Carolina, and he made sure that we knew too. Even though he provided fine national leadership as chairman of the Merchant Marine and Fisheries Committee, Walter always remembered the needs and interests of the folks back home and never failed to stand up for them. That's the way we will remember him best.

The 281,000 North Carolinians whose jobs depend on tobacco are especially indebted to Congressman Jones for his fine stewardship of the tobacco programs during the years that he was chairman of the Peanuts and Tobacco Subcommittee. Walter understood the complex farm programs and was attuned to the needs of rural America; that expertise greatly benefited the Nation, as well as his own largely rural constituency.

Representing some of the most beautiful coastal and farming areas in the Nation, Walter Jones also developed a strong concern for protecting the environment. After the *Exxon Valdez* oilspill, he led the way in passing legislation to discourage future spills and provide for cleanups. He also pushed through a bill to halt oil and gas drilling off the North Carolina Outer Banks, which were in his district. Not long ago, Walter mobilized many of us to help preservationists acquire some government-owned land to expand the Nags Head Woods nature preserve.

These are only a few of his accomplishments for North Carolina and the Nation. To those who served with Walter, he was a wonderful friend and counselor. When I was first elected to the House, Walter Jones and his administrative assistant, Floyd Lupton, were among the first people to whom I turned for advice and assistance. They were unfailingly generous and helpful. I have continued to seek their counsel over the years.

Walter Jones served his State and his country with dedication and distinction, continuing his work despite frequent physical pain and discomfort. We can all learn from his example.

TRIBUTE TO THE MEMORY OF WALTER B. JONES

HON. LUCIEN E. BLACKWELL

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. BLACKWELL. Mr. Speaker, I rise today to pay tribute to the memory of one of the greatest leaders to walk through these noble Halls.

After my election to Congress last November, I had the good fortune to join the Committee on Merchant Marine and Fisheries.

Despite the fact that my tenure on the committee has been brief, I feel that the handful of times I had the opportunity to work with Chairman Jones have been some of the most valuable times I have spent here thus far.

For more than 35 years, Walter B. Jones fought hard for his constituents in eastern North Carolina, including many of whom are economically disadvantaged minorities.

In addition, Chairman Jones' successful efforts to fight for a ban of off-shore oil drilling are still with us today. Walter Jones recognized the importance of preserving marine life, and maintaining safe and sound policies for our coastal waterways.

It is my sincere hope, that as the House welcomes its new class of Members in the next Congress, that these men and women embody the spirit of a Member like Chairman Jones.

All the Members of this House are indeed fortunate to have served with Walter Jones. I know that personally, I hope to emulate the leadership and exceptional representative qualities that made Chairman Jones such a diligent leader in this body.

God bless you Chairman Jones. You will be sorely missed.

TRIBUTE TO WALTER B. JONES

HON. H. MARTIN LANCASTER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. LANCASTER. Mr. Speaker, the life of Walter B. Jones, Member of Congress, makes me proud to be a North Carolinian and a Member of this institution.

No Member of Congress, past or present, has better exemplified that precious balance between serving the interests of those who elect us to Congress and serving the greater good of our United States. And Walter did this with good grace and abundant good humor for 26 years. His sense of humor and gentle wit were as evident at the final hearing over which he presided as chairman of the House Committee on Merchant Marine and Fisheries as they were two decades earlier when he represented his constituency on the Agriculture Subcommittee on Tobacco and Peanuts.

When he departed, he left the Committee on Merchant Marine and Fisheries with the status and reputation—if not the official designation—of a major committee. Certainly, Walter's legislative initiatives have had a major beneficial impact on the maritime industry, the

U.S. Merchant Marine, the Coast Guard, the fisheries, the environment, and the people he represented.

To name a few initiatives:

The Oil Pollution Act of 1990.

The Jones amendments to the Coastal Zone Management Act restoring States' jurisdiction over their own coastal areas.

The all-but-completed repeal of the boat-user fee.

Balance between the environment and economy in management of the Arctic National Wildlife Refuge.

Saving the coastal regions from ill-advised oil and gas drilling on the Outer Continental Shelf.

Initiating, supporting, and saving oceanographic research programs.

Supporting the United States in shipping policies.

The blossoming of the National Marine Sanctuaries Program.

Working to preserve and manage our fisheries and to preserve the way of life of our commercial fishermen and their families.

The list of national accomplishments is long.

It is good to reflect that Walter's long, lonely crusade to bring back the U.S. merchant marine fleet was totally vindicated when it became obvious during the Persian Gulf war that this vital and patriotic segment of our national defense needed more ships, as Walter had insisted for years.

As chairman of the Agriculture Subcommittee on Tobacco and Peanuts, Walter looked after the interests for many years of the farmers and agribusinesses of the greatest tobacco-producing region in the world, the people who voted for him and sent him to Congress.

As for personal service to his constituents, Walter's health problems frequently required him to get about in a wheelchair in recent years—but no one who ever asked him for help in the North Carolina First ever doubted that when it became necessary, Walter could walk on water.

Walter Jones had a great impact on me personally, as well. He was a close friend and supporter and served as both mentor and ally for more than 30 years. As a young page in the North Carolina General Assembly, I greatly admired Congressman Jones who was then a young legislator. When I arrived in Washington as a freshman Congressman 6 years ago, he took me under his wing and helped me in so many ways. I can only express my gratitude now and hope that I expressed it well enough when he was with us.

Mr. Speaker, it is my fervent hope that with the passing of Walter Jones, we will not rush to dismantle the committee that he made great, nor allow his initiatives to languish. Rather, it is my hope that we will honor his memory with vigorous, renewed efforts to accomplish the good things that he started, and to preserve the good laws and policies he left us.

[From the Raleigh (NC) News & Observer, Sept. 17, 1992]

JONES' LEGACY OF SERVICE

U.S. Rep. Walter B. Jones, North Carolina's senior congressman, who died Tuesday, at 79, wasn't a flamboyant orator, and he didn't do the kinds of flashy deeds guaranteed to make headlines. He was steadily conservative in style, although his voting record in recent years had a liberal strain. What mattered most to Jones, and to the people of his 1st District, was that he knew how to get things done for the folks back home.

That's why the voters of his district sent him to Congress 12 times, mostly by overwhelming margins. He knew them. He knew their needs. And thanks to his seniority, he knew how to fill those needs.

The Farmville Democrat was a powerful voice for the tobacco farmers of this state, and for all farmers, for they comprised a good part of his constituency. In 1981, despite a low profile and poor health, he took over the chairmanship of the House Merchant Marine and Fisheries Committee—a pertinent post considering that the Outer Banks were in his district.

In that role, Jones was credited by his colleagues with making something of a committee that had lingered in obscurity. He opposed reductions in the maritime budget proposed by the Reagan White House, and he helped draw up legislation regulating oil spills—following the infamous Exxon Valdese spill in 1989. He was a leader in efforts to block any drilling for natural gas off the North Carolina coast so long as questions remain about drilling's effects on the environment.

Jones' first priority, however, always was his duty to help his constituents. It was an old-fashioned idea that a congressman was first a public servant, not a public figure. Walter Jones nurtured that idea, and filled the role admirably.

[From the Coastland Times, Sept. 17, 1992]

WALTER

The dignity of his position warranted the title, "The Honorable Walter B. Jones, Member of the United States House of Representatives." More simply, he was "Congressman Jones." To his aides and staff he was "The Boss."

But to the people of the former First Congressional District of North Carolina he was, simply "Walter." And so he will be remembered by the people he represented in the national government.

Although he became a powerful force in the House, to the folks back home he was a friend. He believed that his primary responsibility was to represent those folks, and he put his belief into everyday practice.

There are examples of his efforts everywhere, particularly in coastal North Carolina. Every time we cross the new Washington Baum Bridge between Manteo and Nags Head, we see an example of his efforts to improve transportation in Dare County.

Owners of property on the oceanfront or in other zones where flooding could be a problem are indebted to Jones for his legislation which provided funds for moving structures out of harm's way.

The Coast Guard owes Jones much for his regular battles to protect the service from irresponsible budget slashing. Those efforts doubtless resulted in the saving of lives and successful actions against drug traffic.

The list is long, for his influence was great, and his efforts on behalf of his constituents were untiring. Withal, his work in Congress was not limited merely to the First District but to the best interests of the United States.

While Walter's seat in Congress is now empty, his place in the hearts of his constituents is secure.

[From the Elizabeth City (NC) Daily Advance, Sept. 18, 1992]

JONES MADE CAREER OF SERVING THE VOTERS

For a quarter of a century, North Carolinians in this corner of the state have turned to one man to represent them in Congress. He must have done his job pretty well, or well enough to earn the support of so many people for so long.

Walter B. Jones Sr. left that legacy to the region when he died Tuesday in a Norfolk Va., hospital. Jones, who was 79, died from complication from pneumonia from which he had been suffering since late last month.

Jones' physical condition had been deteriorating for years. In a wheel chair much of the time, the 14-term congressman was nevertheless a tireless worker for his constituents. He built his support and ultimately his Congressional career by looking after the needs of residents in the 1st District. Ironically, Jones had announced his retirement at the end of the current term.

A review of his duties and accomplishments bear out the winning strategy of how Jones made his way in Washington for 26 years.

His two key committee appointments put him in a powerful position to aid constituents in the district. First as a member of the House Agriculture Committee and chairman of the panel's subcommittee on Tobacco for many years, Jones was given leverage to respond to the issues and concerns of what is a predominantly an agrarian district—and state.

Later, he was named to the House Merchant Marine and Fisheries Committee. He became its chairman in 1981. It was in that capacity that his influence was most pronounced and effective.

Under Jones leadership the committee has been a key proponent of marine sanctuary legislation and policy to protect the country's valuable coastal and ocean areas. Among his work there was the designation of a sanctuary for the USS Monitor off the state's coast.

He was also a key force behind legislation on fisheries policy to protect and rebuild valuable fish stocks in both inland and ocean sources. That also included environmental stipulations to protect dolphin and sea turtles.

Jones also is credited with authoring legislation to reform the National Flood Insurance program, giving greater protection to coastal-dwellers.

He amended the Clean Water Act in 1988 to establish the Albemarle Sound-Pamlico Estuarine System in North Carolina. That launched the five-year, $5 million state and federal APES study for management of that system.

Jones was also instrumental in increasing the number of National Wildlife Refuges in the 1st District from seven to 11 during his tenure.

One of the crucial actions taken involving Merchant Marine was the Oil Pollution Act of 1990. The act created new standards to prevent oil spills, increased liability for those responsible and set up the industry sponsored Superfund to clean up spills.

And Jones has been a friend to the Coast Guard in helping fund its various operations like the National Strike Force and keeping area bases sufficiently funded and staffed.

The list goes on and on . . . .

Many residents close to Elizabeth City will remember the influence of Walter B. Jones in keeping the dismal Swamp Canal open and operating when the U.S. Army Corps of Engineers and others were trying to close it.

Jones never made much of a splash on major national and international issues during two and half decades in congress. His name was never mentioned on key votes.

His time spent in Washington was devoted to serving the people of the 1st District—something he did very well. His influence and effectiveness will be missed.

[From the Washington (NC) Daily News, Sept. 17, 1992]

WALTER JONES SERVED WELL FOR A PERIOD OF 26 YEARS

(By Ashley B. Futrell)

Walter B. Jones, congressman from North Carolina's First District for a period of 26 years, served his constituents well and faithfully.

In his death North Carolina has lost a leader who in his lifetime faced a lot of challenges and in each one he gave his best. He was aided by a fine staff including his chief assistant, Floyd Lupton, of Beaufort County.

Mr. Jones enjoyed a long tenure in public service. A businessman, he was mayor of Farmville, and he served in the North Carolina Senate before going to Congress. While in the Senate he distinguished himself as a man who never backed away from the political ideals in which he believed.

In Congress over those 26 years, the last few when he had to get around in a wheelchair, he still had that determination in his mind and that fight in his heart. He became chairman of the House Committee on Merchant Marine and Fisheries, and as such he wielded enormous influence.

He was also a member of the House Agricultural committee and chairman of the subcommittee on tobacco and peanuts.

So we take a look at his tenure in office and we see a man dedicated to serving in the areas which would most benefit his people. Having about half the coastal area of North Carolina in his district, Mr. Jones took a leading part in the fight against oil drilling off the coast as well as the methods proposed for saving the Hatteras lighthouse. And fishing rules and regulations were always part of his daily routine in Congress.

The death of Walter Jones ends an era. We now start a new one. What he did, what he meant, and what he truly was, shine so brightly in this hour. We've lost a good man.

[From the Virginia Pilot]

WALTER B. JONES

(David O. Loomla, Coast editor)

Wonder how 90 percent of the members of the U.S. House of Representatives manage to get reelected every two years, despite repeated scandals and deepening deficits? Just review the career of U.S. Rep. Walter B. Jones, D-N.C.

Jones, who died last week at age 79 after representing northeastern North Carolina in Raleigh and Washington for most of the past 40 years, rose to dean of North Carolina's congressional delegation by becoming king of constituent service.

"He just liked to help people," explained H.V. "Bobby" Owens Jr. of Nags Head, a close political ally for nearly 40 years.

To break political stalemates in Washington, some students of political science say, members of Congress should start showing some leadership and stop exercising followership.

That means, the academics say, members of Congress should pay less attention to changeable public opinion and pay more attention to the nation's unfinished business.

For Jones, the concerns of his constituents were the nation's unfinished business.

After all, that's the way the Founding Fathers foresaw the function of the House of Representatives. They envisioned a popularly elected legislative body that would be finely attuned and responsive to the popular will. For caution and cooler reflection, they created the U.S. Senate.

Jones was among the most senior members of the popularly responsive House. And his experience showed.

For example, when Mobil Corp. announced four Septembers ago that it planned to explore for natural gas 45 miles northeast of Cape Hatteras, Jones was regarded as a supporter of the oil industry, even a recipient of its well-lubricated political largess.

But a year later, as he prepared to run for a 13th term, the congressman attended a hearing at Manteo High School called to hear public comment on the proposed drilling project. Opponents of the project were well-organized and well-represented at the meeting and the incumbent's prospective challenger for the Democratic nomination was in attendance that evening.

Jones seated himself at a wooden table on the stage in the high school auditorium and, when introduced, promptly announced his opposition to Mobil's offshore drilling plans. The audience erupted in an ovation.

It was a characteristic Jones performance. His constituency was his audience, not Mobil Corp., not some national energy policy that encouraged domestic self-sufficiency. Jones' constituents wanted nothing of the oil company or its plans. Jones aligned himself with them.

In the process, it also should be noted, his probable opponent saw the handwriting on the wall that night in Manteo. Soon after, he withdrew from the race. Jones won renomination and re-election easily, against token Republican opposition.

Jones' record was not without some missteps. He was among members who bounced checks at the House bank before the practice was widely reported last year and the bank was dismantled. Jones wrote 63 bad checks. In April, he explained that he was not aware of the system's "unprofessional banking practices."

There were a couple of other similar incidents. But on Wednesday morning, as a funeral procession bore Walter Jones for the last time through the intersection of Budleigh Street and U.S. Route 64/264 in downtown Manteo, a knot of sidewalk admirers recalled only his personal services to them and their community.

"We've lost the best friend we've ever had," said Dottie Fry, Dare County register of deeds. "He denied no one. He answered everyone's needs."

Lois Twyne tearfully recalled when her son's need for care was tangled in red tape, and Walter Jones untangled it overnight.

"Flags for Babe Ruth leagues, the seniors center on the beach, I mean, just a phone call," Twyne said. "He was just a dear friend."

Most Americans equate politicians with selfishness. But in Manteo and around northeastern North Carolina last week, constituents of Walter Jones, trying to return endless favors, said their late congressman represented the opposite—selflessness.

[From the Virginia Pilot, Sept. 20, 1992]

CONGRESSMAN WALTER B. JONES

Representative Walter B. Jones was in politics for most of his life—a member of Farmville, NC commission in 1948 and the town's mayor from 1949 to 1952—and a member in the U.S. House of Representatives from the mid-1960's until his death last week.

Long ailing himself, Mr. Jones could do little to aid the long-ailing and bitterly divided U.S. merchant-marine industry. As chairman of the House of Representatives' Merchant Marine and Fisheries Committee, he aspired to arrest language to expand the volume of U.S. imports and exports carried by American ships included in an omnibus trade bill.

He was more successful aiding his constituents, a congressman's bread and butter business. "Helping folks is what politics is all about'" he said and believed. The folks of North Carolina's 1st District—mostly poor and rural and reaching westward from the Outer Banks—whom he knew so well agreed. "Ol' Walter," many called him, affectionately, last returning him to Congress in 1990 with 65% of the vote, the same percentage he had won in the 1988 contest.

He battled to prevent oil drilling off the Carolina coast and to strengthen all states' powers to block such activity. But he championed drilling in the Arctic National Wildlife Refuge, inviting environmentalists' criticism. He said yes to the use of force to evict Iraq from Kuwait and so deny Saddam Hussein effective control over more than half of the globe's oil reserves.

Illness, age and redistricting prodded Mr. Jones not to stand for re-election this year. His health had been fragile for many years when pneumonia fell on him at age 79. He will be remembered fondly, he served his district well.

[From the Goldsboro (NC) News-Argus, Sept. 17, 1992]

"HEART SERVICE" A FITTING TRIBUTE TO JONES

"He gave heart service, not lip service."

So spoke a constituent of Walter B. Jones who represented the First Congressional District in the U.S. House of Representatives for almost 28 years.

No finer tribute could have been paid to Walter Jones or any other member of Congress.

Mr. Jones died Tuesday after a three-week bout with pneumonia. He was 79.

"Heart service" rather than "lip service" has been the hallmark of congressional representation in that district for generations.

That was the centerpiece of the service of the late Lindsay C. Warren, Sr., the "lion of Beaufort," who served the First District as its congressman until chosen to be the nation's first comptroller general. He served in that important capacity under both Democratic and Republican administrations.

Mr. Warren was succeeded in Congress by the late Herbert C. Bonner who perpetuated the tradition of constituent service. When people living in the First District wrote their congressman, responses went out on the same day letters were received.

And they weren't "lip service" responses.

Walter Jones remained in Congress long after he could have retired with full benefits. He did so despite increasing physical disabilities. During his last term he had to rely on a wheel chair to get to and from the House chamber because of circulation problems in his legs.

Like his predecessors, Walter Jones not only looked after his constituents, he stayed abreast of matters of importance to the nation and the world.

As was the case with Lindsay Warren and Herbert Bonner, the key was maintaining a bright, efficient and dedicated staff.

The offices of Walter Jones, Herbert Bonner and Lindsay Warren were not dumping grounds for political hacks seeking compensation for services rendered on the campaign trail.

They were offices where staff members came to work early and remained until every detail had been attended to, realizing that the next day would bring its own matters demanding attention and recognizing that to put off meant to pile up.

Not only was "heart service, not lip service" a fine tribute to Walter Jones, it was a fitting description of a dedicated friend and representative of the people of the First Congressional District.

[From the Greenville (NC) Daily Reflector, Oct. 2, 1992]

WALTER B. JONES

No one will miss Walter B. Jones more than the average 1st District citizen.

The citizen, whether in Currituck, Pamlico or Pitt County, always knew Congressman Jones was there to help. For 26 years, Jones worked the system on behalf of his constituents. He chased down Social Security checks. He solved problems with the Veterans Administration.

Jones even battled the Internal Revenue Service on occasion—if that's what it took to make government work for the people who depended on him.

Congressman Jones, 79, who died Tuesday, took pride in serving the farmers and merchants and hard-working men and women of eastern North Carolina. He always spoke kindly of the people who elected him to office and never failed to answer the many letters that flooded his Washington, D.C., office.

There was nothing more important to him than the people.

Because of this belief, the congressman's constituent service grew to legendary proportions. Everyone knew the best way to solve a problem with the federal government was to ask Jones for help.

Somewhere along the way Jones the man became an institution. For someone growing up in eastern North Carolina, there were a couple of constants: tobacco was king and Jones was congressman.

But there was more to Congressman Jones than constituent service. For years he protected the agriculture interests of North Carolina and in 1981, after assuming the chairmanship of the Merchant Marine and Fisheries Committee, he turned his considerable skills to protecting the state's coastline.

He used his position to effectively top proposed off-shore drilling near the Outer Banks. He supported environmental measures to study the Pamlico-Albemarie Estuary.

Nationally, Jones fought attempts to cut the U.S. Coast Guard budget. He sought to protect the nation's dwindling merchant fleet. He supported the ever-growing aquaculture industry. The list could go on and on.

Although Jones was set to retire at the end of this year, a 1st District without Walter B. Jones will still take adjustments. Farmville—his adopted hometown and where he served as mayor—will miss him. Pitt County—which he represented in the state house and senate—will miss him.

And the state and nation will miss him. Not only because of his service to his community but because he was a kind and decent man.

Walter B. Jones cared about his community and served it well. One last time, we thank him

[From the Carteret County News-Times, Sept. 16, 1992]

WALTER B. JONES

With the death yesterday of Congressman Walter B. Jones, who represented North Carolina's First District for 26 years, we have lost a valued patron in Washington.

The dean of North Carolina's congressional delegation, Mr. Jones, 79, was elected to Congress in 1966. In the wake of redistricting last year by the General Assembly that gerrymandered the First District along racial lines and moved Carteret County and other counties that has comprised the district's home base into the Third District, Mr. Jones announced his retirement.

Mr. Jones gained stature when he became chairman in 1981 of the House Merchant Marine and Fisheries Committee, which dealt with coastal affairs ranging from the Coast Guard to commercial fishing to the nation's merchant marine. Although he was not in good health when the Merchant Marine chairmanship opened in 1981, Mr. Jones wanted the job and convinced the House leadership to let him have it.

The Almanac of American Politics, a reference book, said Mr. Jones took "an aging and often ailing committee and pumped some life and verve into it." It cited a comprehensive bill regulating oil spills completed after the Exxon Valdez oil spill off Alaska in March 1989.

Under his tenure, the committee fought efforts by the Reagan administration to cut the maritime budget and retained a close relationship with industry.

Mr. Jones relinquished the committee chairmanship to Rep. Gerry Studds of Massachusetts last week.

A strong advocate of agricultural interests in eastern North Carolina, Mr. Jones chaired two House Agricultural subcommittees earlier in his congressional career—the Cotton, Rice an Sugar subcommittee followed from 1972 to 1980 by the Tobacco and Peanut subcommittee, a position he used to continually press to maintain the tobacco price support system.

An attribute that held Congressman Jones in good stead with his constituents was his ability to gather and maintain a strong congressional staff that was responsive. Together with Floyd Lupton, his administrative assistant who retired last year, Congressman Jones championed whatever affected the First District or his constituents.

"The people in this district have known that they've had a congressman for 26 years that cared about them and loved them and he and his staff were among the best at serving the people," his son, Walter B. Jones Jr. said yesterday. "I don't think anyone can question that."

No one can, or will.

TRIBUTE TO THE HONORABLE WALTER B. JONES

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. PANETTA. Mr. Speaker, I rise to pay tribute to the late and the most Honorable Walter B. Jones, our colleague, who passed away Tuesday, September 15. I had the privilege of working closely with Walter Jones for the last 15 years of his long and venerable congressional career. His help as chairman of the House Merchant Marine and Fisheries Committee was indispensable to my effort to designate the Monterey Bay Sanctuary and in a wide range of other environmental, agricultural and fishing initiatives and programs for the central coast of California and for the Nation. Walter never said much, but he got a lot done. He got a lot done not just for the good people of North Carolina, but for the American people and our natural resources as well. Walter shepherded a great many good works through his committee with consummate skill and tact. He was a true legislative craftsman, rarely taking time to boast of his accomplishments but prodigious in his output year after year.

Walter was also a generous, patriotic, and devoted colleague of ours, devoted to his Nation, his home State of North Carolina, and his family. Yet he held a global vision, and as the chairman of the Committee on Merchant Marine and Fisheries, he strived to preserve and protect our fragile oceans and coastal environments, to give future generations the opportunity to live with their breathtaking beauty. His considerable support was crucial in passing legislation to protect the California coast and other parts of the American coastline from offshore oil drilling. His farsighted support for oceanographic research, marine mammal and environmental protection laws set an example for all to follow, ensuring that our oceans remain untainted and teeming with marine life. Selflessness was one of Walter Jones' strongest traits, devoting 43 years, over half of his life, as a servant of the public trust. He represented northeastern and coastal North Carolina for 26 years.

Walter's legacy includes more than legislation alone. I refer to his intangibles, things that cannot be easily quantified but which profoundly influenced everyone who knew him. We will not soon forget Walter's strength of character, his wisdom, his tireless pursuit of justice, and his desire to serve his fellow Americans. The people of the central coast of California join with me, with the State of North Carolina and with all Americans in praising his memory. Mr. Speaker, I would like to ask my colleagues to join me in a tribute to Walter Jones' memory. He was a great Congressman, and I will miss him.

TRIBUTE TO WALTER B. JONES

HON. HERBERT H. BATEMAN

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. BATEMAN. Mr. Speaker, I wish to express the deep sadness I feel at the loss of our esteemed colleague, Walter B. Jones, chairman of the Merchant Marine and Fisheries Committee.

I have been fortunate enough to serve on the Merchant Marine and Fisheries Committee under the distinguished leadership of Congressman Jones. Chairman Jones was dedicated to revitalizing the Merchant Marine industry, and under his leadership the House passed the Shipbuilding Trade Reform Act earlier this year. He also led committee efforts to protect the Nation's ocean and coastal resources, develop effective fisheries management policies, and strengthen the U.S. Coast Guard. Perhaps his most important achievement as chairman was the passage of the Oil Pollution Act of 1990. This bill established stricter requirements for oil carrying vessels, improved oil spill response efforts, and will certainly help protect our environment for decades to come.

I witnessed first-hand the strength and fairness with which he conducted committee business, and he will certainly be missed.

Congressman Jones' 13 consecutive terms in the House of Representatives is a testament to the faith that the citizens of the First District of North Carolina placed in him. As dean of the North Carolina congressional delegation, Walter Jones brought many improvements to his State, and especially to the outer banks which he represented.

It is sad to know that Congressman Jones was to retire at the end of this Congress, and that he will not have the opportunity to enjoy a much deserved and well earned retirement.

Walter B. Jones was a real southern gentleman. He will be sorely missed. My heart goes out to Mrs. Jones, Walter's family, and the excellent Merchant Marine Committee staff that served him so well.

TRIBUTE TO WALTER B. JONES

HON. E de la GARZA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. DE LA GARZA. Mr. Speaker, there have been many illustrious and distinguished Americans who have served in this body, but few have combined such a long and faithful representation of their congressional district with so many notable achievements as did our late colleague and my good friend, Walter Jones, to whom we pay tribute today.

It is impossible in this brief time to recognize all that Walter Jones accomplished in his years here in this body, but if there's one thing I do know it's that the usual plaudits do not nearly do him justice.

When I think of Walter Jones many words spring to mind—effective, capable, dynamic, consummate. He was all these and more.

To be a constituent of his was to be blessed with excellent political leadership, for if you had a problem or needed help, Walter Jones would move mountains to do it for you. He would do nothing less for those of us who were his friends and colleagues.

Many are the fond memories I have of our long association, and I will miss him a lot. Walter Jones was truly one of a kind.

To his family go my very deepest sympathy and prayers.

TRIBUTE TO WALTER B. JONES

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. STOKES. Mr. Speaker, I want to thank my colleagues for reserving this time to pay tribute to our dear friend and colleague, Walter B. Jones. The death of this esteemed legislator brings to a close nearly 40 years of distinguished public service to his constituency and to the Nation. I am proud to join in this special order honoring our good friend and late colleague.

Mr. Speaker, Walter Jones crusaded tirelessly on behalf of his constituents for close to four decades. As the mayor of Farmville, NC; as a member of both houses of the North Carolina Legislature; and as the U.S. Representative of North Carolina's First District since 1966, Walter Jones' career in public service is matched by few.

Although Walter Jones had been in Congress only 2 years prior to my arrival in 1969, it was clear at that point that this individual would play an integral role in this body. Rising to the chairmanship of the Committee on Merchant Marine and Fisheries, Walter Jones heightened the public's awareness of crucial maritime issues, taking an aging and often ailing committee and pumping some life and verve into it. It was Chairman Jones that worked tirelessly on a bill regulating oil spills after the *Exxon Valdez* incident off Alaska in March 1989 and it was Walter Jones who repeatedly fought efforts by the Reagan administration to cut the maritime budget.

During his tenure in Congress, it was rare that Chairman Jones spoke from the floor. Instead, the efficacy of this distinguished gentleman was evidenced through his diligent committee work on issues vital to his constituents; namely, agricultural products such as tobacco and peanuts. As a member of the Committee on Agriculture and the chairman of the Subcommittee on Peanuts and Tobacco for 8 years, Walter Jones pressed to maintain the price support system for his district which encompassed one of the poorest and most agricultural regions of North Carolina.

Mr. Speaker, we are deeply saddened at the passing of Walter Jones. His distinguished career has left an indelible mark on the U.S. Congress and his influence in this body will extend over generations of politicians yet to arrive in Washington. This institution has benefited over the years from his insight and strong leadership and his presence will certainly be missed. I wish the family of Walter B. Jones my heartfelt condolences on the loss of this exceptional individual and may they find comfort in knowing that his mark in government will be a permanent part of history.

TRIBUTE TO HON. WALTER B. JONES

HON. BILL ALEXANDER

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. ALEXANDER. Mr. Speaker, today we are gathered on the floor of this House to remember with deep appreciation our colleague, Walter Jones.

Our sympathy is with Chairman Jones' wife, Elizabeth Fischer Jones, and his children and grandchildren.

Walter Jones was elected to Congress in 1966 and has served as a distinguished Member of this body for 26 years. Prior to his arrival in Washington, he committed himself to serve as mayor of Farmville, NC from 1949 to 1953 and then as a representative in the North Carolina General Assembly and the State Senate until 1965. Walter Jones came to Congress by way of a special election on February 5, 1966. I am pleased to have served 12 terms of his 13-term tenure as a fellow Member and as a friend.

Walter Jones and I shared the same floor in the Cannon House Office Building for many years. We ran into each other frequently as we fulfilled our obligations as Members of this House Representatives.

Walter was always warm, friendly, and jovial, no matter what the circumstances.

During my time as chief deputy whip, I frequently called on Chairman Jones for his support of the Democratic position. He was always cooperative.

We miss Chairman Jones and his dedication to improving the lives of his fellow Americans, thinking not only of the people of North Carolina but the good of the Nation as well.

He was elected chairman of the Committee on Merchant Marine and Fisheries in 1981, and also served as chairman of its Subcommittee on Merchant Marine. Prior to this he worked for many years as the chairman of the House Committee on Agriculture Subcommittee on Tobacco.

Walter, as chairman of the Committee on Merchant Marine and Fisheries held a very strong and genuine concern for the sea. He was aware of my interest in the ocean as well and of my status as a professionally licensed diver. In fact, I once received a map of shipwrecks that had occurred off the Atlantic coast from Mrs. Jones. It still hangs on the wall in my office and will always serve as a reminder of my good friend.

Under his leadership the Committee on Merchant Marine and Fisheries was able to achieve many of the goals set by Chairman Jones. Some of these include:

The Oil Pollution Act of 1990 which was designed to deal with the problem of oilspills by creating new standards for the prevention of such spills, increase liability limits for those companies responsible for oilspills, and establishing a fund, financed by industry, to help compensate the victims of spills.

Passage of the Shipping Act of 1984, a major rewrite of the laws regulating the ocean transportation of goods to and from the United States. He continued these efforts by recently serving on an advisory commission which reviewed the implementation of the 1984 act and made recommendations for change.

Passage of the Foreign Shipping Practices Act that gave the Federal Maritime Commission the authority to investigate and take action against foreign policies which discriminate against U.S. carriers.

Walter Jones had many other accomplishments.

His strong advocacy of increased oceanographic research here in the United States. He managed to protect the Sea Grant Program from elimination by the administration and has been a proponent of a modern and efficient fleet of research ships for the National Oceanic and Atmospheric Administration.

Under Chairman Jones' leadership, the National Marine Sanctuary Program has grown tremendously. When Congressman Jones took over the committee, the sanctuary program consisted of three sites covering 1,350 square miles. By the end of this year, it will include 13 sites totaling nearly 11,000 square miles.

Chairman Jones aided in obtaining prohibitions in the use of large-scale drift nets in tuna fishing in order to protect dolphin and other untargeted marine fish and birds and was successful in efforts to rebuild declining striped bass stocks. In the past 4 years, Chairman Jones has won over $1 million in improvements for the National Marine Fisheries Service Laboratory in his home State of North Carolina.

I have been fortunate to serve in Congress with such a dedicated public servant.

TRIBUTE TO WALTER B. JONES

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. ANDERSON. Mr. Speaker, I rise in tribute to a friend of mine, Walter Jones, who left us Tuesday, September 15. In every man's life, he encounters a few people who are far from ordinary—men whom he feels a great sense of privilege to have the opportunity to know and to work with. Walter Jones was one of those men. His record of public service and accomplishment is open for all to see. The impatient will not make it through a reading of his rich life, the length and breadth of which would make most men blush. I had the opportunity to work with Walter on a range of legislation, ranging from the Marine Mammal Protection Act to the Oil Spill Pollution and Prevention Act. We all come here to make a difference. Walter succeeded fantastically. This Congress and the State of North Carolina have lost first, a gentleman and second, a legislator of unsurpassed commitment and dedication. I have lost a friend.

My association with Walter goes back some 24 years and our service on the Merchant Marine and Fisheries Committee together. From that starting point of a decided lack of seniority, he rose to become chairman and I his ranking majority member until I left to take the chairmanship of the Public Works Committee. I was honored to be able to rejoin Walter's committee in the 102d Congress. But what gave me even more pleasure than our official work together was the evenings we spent in conversation at his home. With the warmth of Elizabeth's presence added to his own, the evenings were always looked forward to. Friendships can be hard to hold in the House. I was lucky to have an enduring one with Walter Jones. I mourn his passing and extend my heartfelt sympathy to his wife, Elizabeth, and children. He marked a path that few men can follow. My wife Lee and I are just two of the many that will miss him.

IN HONOR OF WALTER B. JONES

HON. PORTER J. GOSS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. GOSS. Mr. Speaker, as a sophomore member, I was not as fortunate as some of the other members of this committee who had the opportunity to establish a long relationship with Chairman Jones. I only had 4 years to work with and to get to know Walter Jones, but those 4 years are filled with fond memories and much respect for an effective chairman and legislator.

Just yesterday I overheard some people talking about how much they were going to miss "the chairman." They commented on his gentle nature and shared a few humorous anecdotes. When they finished with their stories, there was a moment of awkward silence. But then someone broke the silence with the following comment that proved much comfort: "He didn't have an enemy in the world." Of course, everyone agreed.

The citizens of North Carolina, the merchant marine and the Coast Guard will miss Walter Jones' zealous representation. The members of the Merchant Marine and Fisheries Committee will miss his guidance and expertise. We will also miss his quick wit. Anyone who has ever come in contact with Walter Jones will always remember these attributes, not to mention his warm heart and endearing smile.

HONORING REPRESENTATIVE WALTER B. JONES

HON. W.G. (BILL) HEFNER

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. HEFNER. Mr. Speaker, on September 15 an important voice fell silent.

It was a voice of grace and charm, the voice of the truest of gentlemen.

It was a voice that knew the difference between speaking out, and merely being outspoken.

A voice that championed the big causes and the small, yet never betrayed a difference.

A voice of leadership and strength, that spoke only with genuine humility and thoughtfulness.

It was, in the truest sense, the voice of a man that could "talk with crowds and keep his virtue, or walk with kings nor lose the common touch."

That voice, Mr. Speaker, belonged to Congressman Walter B. Jones of North Carolina.

Walter Jones came to this House in 1966 to represent the people of the First District of North Carolina, and that is exactly what he did. His people came first, because to him they were first. And all of us who served with Walter Jones, and all who will serve after him, can take a lesson from that. If ever there was anyone who never forgot where he came from, or why he came, it was Walter Jones.

Today we honor his memory and his achievements—about which there certainly is much to be said. But I will close with my most important recollection of Walter Jones, the one I hold most vividly and closest to my heart. And that is that in all our many conversations—I had over 18 years of friendship—no negative word about another human being ever crossed his lips.

That is the mark of a special and extraordinary man. That, Mr. Speaker, was the mark of Walter Jones.

TRIBUTE TO REPRESENTATIVE WALTER JONES

HON. TIM VALENTINE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. VALENTINE. Mr. Speaker, I rise in tribute to our late colleague, and my close friend for nearly four decades, Walter Jones.

Walter Jones represented the First District of North Carolina for a quarter century. In that time, he came to be revered by the people he represented as well as by those with whom he served in the House.

For the people of eastern North Carolina who earn their livelihood from the soil or the sea, Walter Jones was a leader who put their interest first. As a senior member of the House Agriculture Committee and chairman of the House Merchant Marine and Fisheries Committee, he never lost sight of his responsibility to the farming and fishing families of the First District.

I met Walter when we both served in the North Carolina House of Representatives in 1955. Even at that early point in his political career, he was an outstanding legislator who authored the law that made automobile liability insurance a requirement in North Carolina.

When I came to the U.S. House of Representatives in 1981, I naturally looked to my longtime friend Walter Jones for guidance. He was a model Representative who used the power of his office for the betterment of both his district and our Nation.

Walter will be missed by all of us in the House and by the people of the First District, but his legacy of effective leadership will inspire those of us who served with him and those who will come after him for many years. If we all accomplish as much for our constituents as Walter did, this institution and our Nation will have been enriched.

PRAISING WALTER B. JONES

HON. CHARLES E. BENNETT

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. BENNETT. Mr. Speaker, I rise to praise the fine leadership of Chairman Walter B. Jones and to express my sadness at his passing. He and his wife have been a great team for strengthening our merchant marine and improving the environment of our Nation. My deepest sympathy goes out to her and we all join in praising the great accomplishments which Chairman Jones has brought about for our country, not only in the legislation which came from his chairmanship of the Committee on Merchant Marine and Fisheries, but in the other legislative victories that he has had for the benefit of our Nation and his constituents.

HONORING WALTER B. JONES

HON. JAMES H. (JIMMY) QUILLEN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. QUILLEN. Mr. Speaker, today I join my colleagues to honor my good friend, Walter B. Jones of North Carolina. His strong and legendary leadership in the Congress, as well as his stewardship for the interests of the people of the First District of North Carolina, will not be forgotten.

Walter was first elected in 1966 to the Congress and was elected chairman of the House Merchant Marine and Fisheries Committee in 1981. He literally took the helm as chairman to help promote beneficial laws regarding coastal areas and fisheries policy. Walter was in the forefront of efforts to prevent and assess liability for marine oilspills, oceanographic research, and environmental concerns for the protection of valuable coastal and ocean areas. His accomplishments as chairman of the Merchant Marine and Fisheries Committee in strengthening America are unparalleled.

In my 30 years in Congress, I enjoyed my association with Walter who was a steadfast and zealous Representative for his people, the voters of northeastern and coastal North Carolina. He will be deeply missed.

He was instrumental in congressional efforts to bring back a U.S.-flag merchant fleet capable of being pressed into service in an emergency, which proved to be a key component in our military readiness in the gulf war. His vision was the guiding impetus for this achievement.

It was a great pleasure to have known Walter and to have worked with him on many national and international issues, and my heartfelt sympathy goes out to his family.

TRIBUTE TO WALTER B. JONES

HON. WILLIAM J. HUGHES

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. HUGHES. Mr. Speaker, today we pay tribute to our former colleague, Walter B. Jones, who served in this House with distinction for 26 years.

In those 26 years, Walter never faltered in his beliefs, regardless of the degree of their popular appeal. He was caring and compassionate. Walter championed the causes in which he believed with tenacity, and did not yield. He cared deeply about the welfare of his constituency and his country.

Walter was certainly a friend to the Merchant Marine community. He became chairman of the Merchant Marine and Fisheries Committee in 1981 and admirably served in that capacity for 12 years. Under his leadership, the committee was an effective and able steward of its jurisdiction over the U.S. merchant marine, the U.S. Coast Guard, fisheries and wildlife management and conservation, ocean policy, marine pollution, and offshore energy resources.

His accomplishments were as numerous as they were diverse. The development and passage of the Oil Pollution Act of 1990 and the Foreign Shipping Practices Act, strident efforts to revitalize our merchant marine and modernize our fleet of oceanographic research vessels, and successful expansion of the National Marine Sanctuary Program are but a few examples.

Walter was a man of integrity who made significant contributions to his country. He was an outstanding steward of the interests of his constituents in North Carolina's First Congressional District and served the House of Representatives well. Indeed, Walter's friendship and leadership are a great loss to the Merchant Marine and Fisheries Committee and to this Congress.

TRIBUTE TO WALTER JONES

HON. ANDREW JACOBS, JR.

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. JACOBS. Mr. Speaker, we hurt, those of us who loved our colleague, Walter Jones. And that was all of us.

It would be difficult to imagine an unkind or unfriendly word from Walter. Our hearts go out to his family.

HONORING THE LATE WALTER B. JONES

HON. NITA M. LOWEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mrs. LOWEY of New York. Mr. Speaker, I rise to pay tribute to the Honorable Walter B. Jones, chairman of the House Committee on Merchant Marine and Fisheries. It was a privilege and honor to know him and to serve with him on the Merchant Marine Committee.

Chairman Jones was fair and honest and steadfast in his commitment to the things that matter in this body—integrity, dignity, and democracy. Although my time serving in the House and on the Merchant Marine Committee has been relatively brief, my memories of Chairman Jones are rich with examples of his wit, his candor, and his lack of pretense. Chairman Jones commanded the respect of his colleagues—not just because of his seniority or his chairmanship—but because of the way he did his job.

While he could break up a tense committee meeting with a humorous remark, Chairman Jones was serious about helping the First District of North Carolina. He did not take lightly the privilege of congressional service bestowed upon him 12 times by his constituents. In the midst of a grueling conference on the Oil Pollution Act of 1990, he cleverly used his position to insert a provision which delayed a questionable gas drilling project off the coast of North Carolina. Newspapers across the Tar Heel State hailed his triumph, comparing him to a nimble football halfback. Nothing pleased him more than doing right by his constituents.

Despite his declining health, Congressman Jones was an effective chairman, deeply committed to representing the interests of the marine environment and economy. He took over the leadership of the committee in 1981 at a difficult time. Over the past decade, he helped to transform the committee into one the Congress' leading advocates for environmental protection and economic growth.

Under Chairman Jones' leadership, the Merchant Marine and Fisheries Committee has energetically fulfilled its jurisdictional mandates and played a leading role in the formulation of major policy initiatives in oilspill prevention, coastal zone management, energy policy, ocean dumping, fisheries management, clean water, as well as numerous other areas.

Chairman Jones was a Congressman of the "old school," but he was open to change, and he treated all other members of his committee and this House with equanimity and respect. He welcomed me to the House and his committee, and set an example for conduct that will be missed. Walter Jones left a legacy of legislative accomplishment and personal integrity of which any Member of this House would be proud. I am honored to say that I served with him.

IN TRIBUTE TO HON. WALTER B. JONES OF NORTH CAROLINA

HON. PATSY T. MINK

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mrs. MINK. Mr. Speaker, I rise today with other Members of this House to pay special tribute to the long, distinguished service of the Honorable Walter B. Jones from the great State of North Carolina.

Walter Jones came to Congress in 1966. He was a Member of the 89th Congress class of which I was a Member also. There are only a few remaining who are still serving. We came to Washington on the coattails of Lyndon Johnson, but some like Walter Jones stayed on.

Walter Jones was chair of the House Merchant Marine and Fisheries Committee. He had charge of a wide variety of important ecological and environmental legislation.

When I returned to the House in 1990 after nearly 14 years away, I was saddened to see Walter in frail health. Despite his personal problems, he carried on his work tirelessly, and was always there to serve the needs of his colleagues and their constituencies.

My staff tells me often how his committee functions the best on Capitol Hill and how responsive and helpful his staff always is. There is not one that is surly and arrogant as so many are on other committees. It is undoubtedly to the credit of Chairman Jones that this mission of service was enshrined in his staff's job description that has given them such an enviable reputation. He leaves the House with a great void of leadership.

When I returned to the House in 1990 some of my constituents urged me to seek membership on the Merchant Marine Committee, however my colleague from Hawaii sought this assignment so I declined. I genuinely regret not having had this opportunity to serve under Chairman Jones.

The needs of my State of Hawaii required us to place great reliance on the work of this Committee, but we always knew we had a friend in Chairman Jones. We had confidence that under his guidance, our special concerns unique to an island State would be safeguarded.

His place in this House and his role as a leader of his State will be forever written in the pages of our history.

I take this time to honor his work, to honor his faith in this institution and to honor the people of the First District of North Carolina who saw fit to send him to the service of his Nation for 26 consecutive years. Aloha, Walter Jones.

IN HONOR OF THE LATE CHAIRMAN WALTER B. JONES

HON. JIM SAXTON
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Friday, October 9, 1992

Mr. SAXTON. Mr. Speaker, today I rise in honor of the late chairman, Walter B. Jones, under whose leadership the Committee on Merchant Marine and Fisheries established itself as one of the most bipartisan and dynamic organizations within Congress.

As a member of the minority party, I began my first term in 1984 and was granted my request to serve on Merchant Marine and Fisheries. In a very short period of time, I began to realize that behind the committee's success and vitality was the fairness Walter Jones extended to all the committee members—regardless of their partisan loyalties.

Issues were examined with factual integrity, regional sensitivity, and national need. The degree of expertise on committee staff is exceptional and the cooperation extended to Members has been a characteristic unique in my 8 years experience here in Congress.

However, Walter Jones will not only be missed for his fairness in leadership but also for his quick wit and sense of humor which characterized his style of southern charm and diplomacy.

It was an honor to serve with him.

MINNESOTA STATE UNIVERSITY STUDENT ASSOCIATION CELEBRATES ITS 25TH ANNIVERSARY

HON. TIMOTHY J. PENNY
OF MINNESOTA
IN THE HOUSE OF REPRESENTATIVES
Friday, October 9, 1992

Mr. PENNY. Mr. Speaker, while a student at Winona State University I participated in the Minnesota State University Student Association [MSUSA] as an officer and a concerned student. My experience in MSUSA helped prepare me for future leadership positions including being the first student on the Minnesota State University Board, a member of the Minnesota State Senate, and a Member of Congress. On November 6, 1992, MSUSA will celebrate its 25th anniversary representing Minnesota State University students at its annual fall conference. I will be addressing MSUSA at a dinner to recognize both this occasion and the fifth anniversary of the Penny Fellowship, which was created by MSUSA to encourage students to take a leadership role in serving their communities.

MSUSA was formed in 1967 as an informal coalition of student leaders to represent their peers at the seven State universities in Minnesota—Bemidji, Mankato, Metropolitan (Twin Cities), Moorhead, St. Cloud, Southwest (Marshall) and Winona. A branch campus in Akita, Japan opened in 1990. Today the association has evolved into an independent, nonprofit corporation, funded and operated by students, serving more than 66,000 students.

MSUSA has encouraged students to become active participants in the decisions that affect them, working on behalf of many valued causes over the years. State university students have worked to establish child care facilities and stabilize State tuition. They have advocated increased work-study wages, simplified transfer between State universities, improved cultural diversity, and made great strides toward fairer State and Federal financial aid programs, including the recently completed Higher Education Act reauthorization.

There are many admirable programs sponsored by this student association. MSUSA's various legislative liaisons have given students the opportunity to voice their concerns at critical points, in the decisionmaking process. The Monitor, the association's newspaper, has the largest circulation of any State system newspaper, and the MSUSA Federal Credit Union, based at Mankato State University, is the only systemwide student credit union in the country.

Mr. Speaker, I would like to finally recognize the current officers of MSUSA: Steven B. Carswell, State chair from Winona State University; Leroy L. McClelland, State vice chair from Mankato State University; Jill F. Peterson, State treasurer from St. Cloud State University; and Frank X. Viggiano, executive director from Metropolitan State University. I extend my congratulations and wish them all success on this occasion.

A TRIBUTE TO NORMA L. COWART

HON. CARROLL HUBBARD, JR.
OF KENTUCKY
IN THE HOUSE OF REPRESENTATIVES
Friday, October 9, 1992

Mr. HUBBARD. Mr. Speaker, I take this opportunity to pay tribute to my friend Norma L. Cowart, who died January 31, 1992, at age 54 of cancer.

A native of Sebree, in Webster County, KY, Norma L. Cowart was valedictorian of the Sebree High School class of 1955. She attended Western Kentucky University in Bowling Green, KY, and St. Louis School of Nursing in St. Louis, MO.

Marriage took Norma to San Diego, CA, in 1968.

From 1985 until her death Norma L. Cowart served as administrative assistant at the California School of Professional Psychology in San Diego. She was an expert in the field of mental health. Norma L. Cowart was of much help to thousands of people with whom she came in contact.

She was known and admired in Kentucky and California.

The session on March 16 of the 1992 Kentucky General Assembly was adjourned in honor of Norma L. Cowart upon a motion by State Senator Henry Lackey of Henderson, KY.

On February 4 this year, at a memorial service honoring the life of Norma L. Cowart, Dr. Thomas F. McGee, director of the California School of Professional Psychology, said at All Saints Episcopal Church in San Diego:

> When Norma Cowart became ill in the summer of 1989 she was beset by considerable pain and uncertainty. Yet she performed her work admirably and also remained available to others. As Norma grappled with a life threatening illness she taught us profound lessons about dignity, determination and quiet courage.

An active member of the California Democratic Party, Norma L. Cowart was a delegate to the California Democratic Convention in 1988 and served several years as treasurer of the Clairemont-Mesa Democratic Club in San Diego.

Norma Cowart's mother, Martine McCurry Wise of Sebree, KY, is one of my favorite constituents, a dear friend and always has been very active in my election campaigns. Martine Wise is a beloved, outstanding Kentuckian who was always so proud of her only child.

Norma Cowart's father is highly respected Herbert Melton of Sebree, who is naturally also very proud of his daughter's accomplishments.

Other survivors include Norma's husband, Richard Lee Cowart of San Diego; three sons—Mark Wheetley and Jeff Wheetley, both of Oakland, CA, and Greg Wheetley, of Hudson, FL; and two stepdaughters—Lisa Lucas of San Diego and Sue MacBride of Carlsbad, CA.

My wife Carol and I extend to the family of Norma L. Cowart our sympathy.

POST-COLD WAR ASIA-PACIFIC COOPERATION

HON. LEE H. HAMILTON
OF INDIANA
IN THE HOUSE OF REPRESENTATIVES
Friday, October 9, 1992

Mr. HAMILTON. Mr. Speaker, I would like to bring to the attention of my colleagues a recent speech delivered at the Asia Society in New York on October 1 by His Excellency, Wong Kan Seng, Foreign Minister of Singapore. This informative speech on Asia was brought to my attention by former Member of Congress, John Brademas.

The speech follows:

SPEECH BY MR. WONG KAN SENG, FOREIGN MINISTER OF SINGAPORE TO THE ASIA SOCIETY, NEW YORK, ON OCTOBER 1, 1992

POST-COLD WAR ASIA-PACIFIC COOPERATION

1. The defeat of communism and the collapse of the Soviet empire is creating a new global dynamic. World affairs will increasingly be determined by the interplay between the US, Japan and Germany. Russia and other states of the CIS still have power-

ful military forces but they are preoccupied with their internal affairs and for many years to come can at best play a secondary role on the international stage. Natural economic forces, technology and conscious policy choices are attracting other states into the orbits of the three major powers. By design or default, a more complex pattern of cooperation and competition in a regionalized world is emerging to replace Cold-War alliance systems and superpower competition as the defining architecture of a new international order.

2. Europe, Asia and the Americas are not tightly disciplined systems. Each has its own internal interplay, for instance between Britain, France and Germany within the EC. Nor will the three groupings be entirely separate or closed. Institutional links exist. NATO spans the Atlantic, just as APEC bridges the Pacific and, more tentatively, the ASEAN Post-Ministerial dialogues bring together major players in Europe, North America and Asia. There will still be global institutions such as the UN.

3. Even in the worst case of a total collapse of the Uruguay Round, there will be no sudden apocalyptic end to world trade. Stresses and strains will certainly increase and life will become less comfortable for everyone. But an outright declaration of economic war is unlikely and protectionism will only grow gradually, with a slowdown in trade occurring over several years, perhaps a decade or more. Technology and production techniques will ensure that there are seepages through even the highest "fortress" walls. It is difficult to conceive of a world in which Europe, the Americas and Asia can do entirely without each other's goods and services. But the inter-connections and interdependencies only increase the uncertainty, complexity and sensitivity of the emerging dynamic between Europe, Asia and the Americas. Even changes at the margins of these relationships can reverberate with far-reaching effect.

AMERICA AND THE ASIA-PACIFIC DYNAMIC

4. I want to focus on relations within East and Southeast Asia and between East and Southeast Asia and the US. I believe that the Asia-Pacific is an area that is both of great promise and major uncertainty. For the last two decades or so, East and Southeast Asia has been generally characterized by high growth and, barring a catastrophic event such as war, will continue to grow relatively faster than other regions well into the next century. The benefits of proximity and the high degree of economic complementarity that exists between the developed Asian countries, the NIEs and near-NIEs like Thailand and Malaysia, have engendered a natural division of labour and interdependence that will help sustain growth even in the worst case of a collapse of the Uruguay Round. There is an expanding web of cross-investments and trade in the region. There is no shortage of capital, skilled labour, technology and management talent. Huge infrastructure projects are in the pipeline that will provide a powerful economic stimulus for East and Southeast Asia, even in a world of three trading blocs.

5. The success of East and Southeast Asia has created enormous new markets and great opportunities for all. But high growth has also led to a questioning of the usefulness of a GATT-based multilateral trading system and required uncomfortable and often painful readjustments. In 1965, North America (defined as the US and Canada) accounted for 37% of world GDP. By 1990, North America's percentage declined to about 26%. Even if Mexico is added in, its share is still under 30%. East and Southeast Asia's share of world GDP has nearly doubled from below 10% in 1965 to 18% in 1990. Japan alone increased from 4.5% of world GDP in 1965 to over 13% in 1990. In the year 2000, the projected combined GDP of Japan, the Asian NIEs and ASEAN would equal that of the US, and would be about 4/5 of the EC's GDP. China's enormous potential, if realised, could eventually be as radically dislocating. In 50 years' time, China's economy would be as large as that of the US, if present growth is not disrupted by political uncertainties. All these developments present tremendous economic opportunities for the United States if it stays engaged with the East and Southeast Asian region.

THE NECESSITY AND DIFFICULTY OF ADJUSTMENT

6. Across the Pacific, states are reorienting their relationships to reflect this altered distribution of global power. None finds it easy. US-Japan relations are the best known, and the most important, of the relationships undergoing adjustment. But it is only one dimension of a broader process. China, Korea and ASEAN, among others, are looking for a new modus vivendi with each other and with the US. In the post-Cold War world, this is occurring without the benefit of a clear shared strategic vision or threat perception to focus issues and help contain economic and political stresses. It is occurring in an environment where Washington can no longer dictate outcomes on the basis of superior economic clout or strategic necessity, but where no other power or combination of powers has yet replaced America as systemic arbitrator.

7. This is a situation without precedent in the half century since the end of the Second World War. It is not at all clear how these processes will work themselves out under these unique circumstances. The equation would be simpler were the US clearly marginal. But it is not. The US is still of critical importance to even the fastest growing of the East and Southeast Asian economies. In 1990, trade with the US was 17% of total ASEAN trade; 28% of total Japanese trade; 28% of Korean trade and 11% of China's, to cite but a few examples. And, as is well known, US trade across the Pacific (including Australia and New Zealand) is now more than US trade with Europe. These trends are not likely to change soon. Clearly, the US and Asia need each other and will remain enmeshed with each other. Adjustments are nevertheless necessary. Therein lies the unique challenge.

8. Several factors differentiate US relations with East and Southeast Asia from US relations with Europe. First, relations across the Pacific lack the established institutional structures of the Atlantic. NATO helped America and Europe ride out several "crises of confidence". If NATO's usefulness in the post-Cold War world is now being questioned, the very fact that a clear multilateral structure exists is still a stabilising influence and a basis on which readjustments can be made and a US presence anchored. By contrast, in East and Southeast Asia, US leadership expressed itself in a series of bilateral arrangements which could prove more fragile in the post-Cold War world. APEC is an institution of great promise that could form the basis of a new trans-Pacific architecture. But it is still a new organization, in a delicate state of development, and will reflect as well as absorb and contain the emerging stresses and strains.

9. Second, even at the height of the Cold War, the strategic rationale of the US presence in East and Southeast Asia was never as stark or as simple as in Europe. Except perhaps in Korea, there was never a single line to be held or "wall" to come tumbling down. In Asia, the East-West ideological divide formed only an overlay on a more nuanced matrix of conflict and cooperation, as for example in the case of China-Japan relations. These complexities are now coming to the fore.

10. Finally, it is a fact that the cultural divide across the Pacific is deeper than that across the Atlantic. This is a delicate subject, but it does no one any good to deny that sensitive and primordial issues of ethnicity, culture and values exist as an inchoate undercurrent to debates on trade and other matters. Although seldom made explicit, such issues, for example, lurk just beneath the surface of questions on the "fairness" or otherwise of Japanese economic structures and practices. Race underpins the disquiet and unease with which some regard the success of East and Southeast Asian economies. It would be tragic if what is now only latent becomes overt, the more so since the West is no longer in a position to force its value system on ever more confident and economically successful Asian states.

11. These factors will complicate trans-Pacific adjustments. There is a natural tendency for Americans caught up in the hurly-burly of the daily congressional debates, blow-by-blow newscasts and electioneering of a rumbustious democracy to see key relationships bilaterally; as separate and distinct from other relationships. I want now to focus on the major countries and critical relationships and share with you my sense of the dynamics and how each relationship acts and reacts upon the other.

JAPAN

12. Japan is undeniably a major power, exercising significant and growing influence in East and Southeast Asia. This influence is now primarily economic, but Tokyo aspires to a more broadly based global role. It is clear that this cannot be gainsaid. The orderly management of international affairs requires a larger Japanese role. It is equally clear that anxieties about Japanese power envelop much of the Pacific Rim. Japan's Asian neighbours would prefer that Tokyo eschews the status of a military power. It remains to be seen whether this is possible in the long-run. In the meantime, a lack of clarity in Japan's articulation of its own interests and aspirations adds to the anxieties. The ambiguity reflects Japan's ambivalence about its own past; its factious political structures; its cumbersome decision-making processes; and, in the final analysis, the profound insecurity with which Japan, conscious of its might yet uncertain about the precise parameters of its future, regards the post-Cold War world.

13. US-Japan relations throw some of the contradictions and complexities into high relief. At once still close political-military allies but also economic rivals, Tokyo and Washington both want to preserve the positive elements of their relationship. But neither is certain how to do so and both find the process of adjustment difficult. The US and Japan were never true or equal partners. Japan was subordinate. America wants Japan to play a bigger role, but still in a way prescribed by America. This is not realistic. Japan will no longer be content to simply bankroll US leadership without due consideration of its distinct national interests. But sufficient common political and strategic ground cannot be assumed. The end of the Cold War has ushered in an era in which as-

sessments of national political and economic interests will be based on a more ambiguous and fluid calculus of costs and benefits in the context of ever more blurred distinctions between ally and adversary.

14. There are already clear differences on key issues, for instance, in the way Tokyo approaches aid to Russia and other states of the CIS. Unlike the US, Japan is not convinced it should help Russia. The economic interdependence of the US and Japan, which provided a measure of stability through mutual economic deterrence, may also loosen over time if NAFTA takes off and Japan's reorients its economic relations even more towards Asia. At the very least, the process of joint US-Japan decision-making will take more time. But publics on both sides of the Pacific are already weary of the endless debates and are getting impatient. They are not in the mood to appreciate the nuance that may henceforth be necessary.

15. Moreover, adjustments to US-Japan relations, if they are to be successful, cannot just be undertaken bilaterally. The challenge for Tokyo and Washington in the 1990s and into the next century, will be to develop a new strategic concept, appropriate to new international circumstances, but also acceptable to Japan's neighbors, in particular China and Korea. In the worst case scenario, a Japan that loses confidence in the US security umbrella, or an America that tires of providing for the defense of its economic rival, could trigger an East Asian arms race. If Japan acquires the ability to project power to protect its interests, Korea and China will react by building up their own forces. A reunified Korea will not be an insignificant military power, and China's defence modernization programme has already occasioned some concern. Other Asian states will also have no choice but to increase defence spending. American interests will certainly not be unaffected.

16. A total rupture of US-Japan relations is unlikely. The most probable prognosis is for the relationship to hold, albeit with strains and stresses. But a prolonged period of acrimony with Japan, debilitating to both sides, can also result in Japan conceiving of its political and military policy options in terms more and more distinct from America, even if it stops short of a complete break. This can itself impel a disruption of present stability and a loosening of America's relationships throughout Asia.

17. The key to avoiding such a situation is a restoration of America's economic competitiveness. Otherwise its ability to maintain healthy relations with Japan and a reassuring military presence in East and Southeast Asia will be increasingly questioned domestically. It seems inevitable that America will go through a more introspective phase, irrespective of who wins this November. But America's longterm economic health will depend not only on its ability to grapple with its domestic problems but also its ability to maintain strong links with, and take advantage of the great economic opportunities in the dynamic Asian economies, including Japan.

CHINA

18. In the longer term, China's impact could be even more significant than Japan's. In the decade since 1980, China, despite Tiananmen, grew by almost 10% annually and there are good prospects for more growth. With its huge population and resource base, China, unshackled by ideology, will become an economic force to be reckoned with. Hong Kong, Taiwan and Southeast Asia are catalysts for growth, providing effective management, capital and technology. Beijing's commitment to economic reform and development has created a strong immediate interest in maintaining a peaceful international environment. But at the same time, economic success and modernization means that the gap between Beijing's potential and its capabilities is being narrowed and will continue to narrow. China is today an important regional power with growing global influence. Chinese nationalism is a constant factor and China will increasingly have the means to assert its national interests and to react effectively if it considers those interests threatened. How it does so is a key question which will have a profound influence on China's neighbours and the US.

19. One of China's primary interests, which blends Chinese nationalism with the self-interest of China's leaders, is the preservation of a distinctively Chinese political culture, without too much influence of Western ideas and values. There are major uncertainties surrounding the transition to a post-Deng Xiaoping era. It will not be an easy succession and I do not pretend to be able to foresee the end result. But I believe the basic parameters have already been set.

20. The distinction between "reformers" and "conservatives" oversimplifies more nuanced attitudes. There is a basic consensus among all Chinese leaders on the need to continue economic reforms. There is no turning back, even if the pace may slow down. All Chinese leaders are also infused with a sense of 4,000 years of Chinese history which impels them towards strong central government and a visceral fear of disorder. No Chinese leader sees a strong correlation between economic reform and political change. The younger generation of Chinese leaders are better educated, more market-oriented and pragmatic. But they are not democrats-manque. Even a dissident like Fang Lizhi has cautioned against too quick changes. China will evolve. Change is inevitable and communist ideology no longer holds the Chinese people in thrall. But political change will come at China's own pace and while the final result may well be a looser political system, it will certainly not be a "democracy" as America understands the term. For almost a hundred years, the primary motivation of all attempts at reform in China, from that of the Kuang-hsu Emperor in 1898 through the Communist revolution of 1940 and Deng Xiaoping's "Four modernizations", has been Chinese nationalism. Unlike Russians, the Chinese have never had any ambition to be considered good Europeans or Westerners.

21. Here the dynamic of the post-Cold War world can bring American and Chinese interests into conflict. The collapse of the Soviet Union and the changed international context has removed a clear strategic rationale for close US-China relations. Tiananmen has dispelled American romanticism about the political implications of China's economic reforms. There is now a greater tendency for Americans to view China as a recalcitrant Communist state rather than a reformist one, while deepened economic relations have created new strains and issues. Simultaneously there is concern in Beijing about a unipolar world centered on Washington. The US insistence on human rights and its attempts to promote "democracy" have heightened suspicions that America is engaged in a programme of "peaceful evolution" aimed at the overthrow of the Chinese Communist Party, at the very time when the collapse of the Soviet Union has strengthened the resolve of Chinese leaders to avoid destabilising political changes.

22. This is a situation that requires sophistication, realism and patience, if US–PRC relations are not to be seriously disrupted. I do not foresee a return to a totally adversarial relationship. The US is economically important to China and there is a US$12 billion trade surplus in China's favour. China has behaved pragmatically, for example, by concluding a MOU on the monitoring and control of exports made by prison labour. It is possible for the US and China to continue to work together. But if China is continuously and clumsily harried over human rights; if there are insulting and recriminatory annual MFN battles in Congress and a persistent effort to force the pace and direction of political evolution; or worse still, if there are rash attempts to use Hong Kong or Taiwan as levers to try and force political changes on China, this will certainly give a sharper and more xenophobic edge to Chinese nationalism.

23. This has implications not just for China's relations with the US and other Western countries, but on how China ultimately relates to its neighbours like Japan, Korea, Southeast Asia and also the world. If American support for human rights goes beyond words, China can be expected to find ways to exert countervailing pressure on American interests elsewhere in the world. By the turn of the century, China's coastal regions are likely to at least become an NIE. An economy of this size will require careful interface with the international system. It is in the interest of all to keep China peacefully engaged during this formative phase, particularly since it increasingly will have the capability to try to reshape any international order it regards as threatening to Chinese interests. Even if it tries to do so peacefully, or if it fails, the very attempt will be profoundly unsettling for all.

CHINA-JAPAN RELATIONS

24. China-Japan relations are the key relationship in the Asia-Pacific after US-Japan relations. In the long run it could be even more significant. The likelihood of continuing difficulties with Washington has given both China and Japan a strong immediate incentive to maintain good, or at least reasonable, relations with each other. Beijing has muted its criticism of Japan's attempts to seek a larger political role. It needs Japan's technology and investment. Tokyo wants an insurance policy. But the relationship is not intimate and complicated by many centuries of cultural ambivalence on both sides. China is still suspicious about Japan's military ambitions and will react if there is a Japanese military build-up. Nor are the Chinese likely to allow the Japanese to monopolise a strong leadership role in Asia, a position they envisage for themselves. They may eventually challenge Japanese leadership in East and Southeast Asia, possibly in combination with Korea. On its part, Japan is concerned with China's build-up of its military capabilities and its assertion of its claims over the Senkaku Islands. Neither really relishes the ideas of being left alone to contest the other for influence in Asia.

25. Paradoxically, therefore, in the long-run both China and Japan need good relations with the US to have good relations with each other. Both would secretly prefer that the US holds the ring between them, even if neither will ever admit so openly. Chinese strategic thinkers have already informally mooted the idea of a "small triangle" of the US, China and Japan to take the place of the old "big triangle" of the US,

China and the Soviet Union. This is also in America's interests, and in the interests of the other Asian states.

26. Whether Sino-Japanese relations grow closer, or whether the two Asian giants eventually contend for influence, their neighbors will be left in an uncomfortable position with narrower policy options and being forced to make unsettling choices. Nor is either scenario likely to be beneficial to American interests. No matter who eventually emerges the victor, a competition for influence is likely to be at America's expense because both Beijing and Tokyo will seek to organize the other Asian states on their side. On the other hand, Japan can move closer to China only by emphasising its "Asianness" over the more universal values it shares with America and the broader international community. While it is natural that East and Southeast Asian countries will eventually want to find more common ground with each other, it is in no one's interest if this results in exclusionary policies. This is more likely if Sino-US or US-Japan relations sour badly.

CONCLUSION

27. The inescapable conclusion is no alternative balance in the Asia-Pacific can be as comfortable as the present one with the US as the major player. The present situation in East and Southeast Asia provides optimal conditions for growth, stability and prosperity. Although there are uncertainties in Cambodia and on the Korean Peninsula, I would venture the bold statement that at no time since the end of the Second World War have things been better in the region. I would further suggest that this current situation is not inimical to US interests, even though the day-to-day economic dislocations may be distressing to workers out of jobs and to the politicians who must face them. But if the US economy cannot afford a US role, or if US voters decide to opt out of Asia, then a new balance will have to be. Whatever happens, Singapore and our ASEAN partners will have no choice but to adapt. We have few means of influencing the great games now underway.

28. I have suggested that trans-Pacific adjustments are inevitable and will be complex. This is a counsel of realism not one of despair. To ensure that the adjustments will be minimally disruptive, a trans-Pacific effort is also required. The US economy must regain its competitiveness. No matter who wins in November, there is an urgent need for all Americans and both political parties to bite the bullet and focus on the hard issues that they have hitherto avoided: cut down on deficit spending, increase savings and investments and improve America's educational system so as to be able to compete internationally. Asia must also do what it can to facilitate this process. This means:

Firstly, keep the US engaged: Asia-Pacific cooperation must be anchored on the bedrock of a continued US diplomatic, military and economic presence. This means healthy bilateral relations with the US and open markets to prevent domestic pressures for "managed" trade from building up in America. East and Southeast Asia needs an outward-looking, self-confident US with a robust economy. America, for its own future, needs to reinvigorate its economic and strategic involvement with the dynamic Asian side of the Pacific. Asian economic dynamism, on the positive side, can both spark and spur a new era of American competitiveness.

Secondly, work for a successful Uruguay Round: East and Southeast Asia can continue to grow even if the Uruguay Round fails, but at a slower pace and with far more stresses and strains. The ideal is for Asia-Pacific growth and cooperation to be open and occur in the context of a healthy multilateral trading system which will keep the US and NAFTA engaged with the Asian side of the Pacific. There is no good substitute for GATT. The key issues in the Uruguay Round have to be settled between the US and the EC. But East and Southeast Asia can do more in terms of market access, especially in politically sensitive and symbolic areas like rice and services, if only not to give excuses for protectionism.

Thirdly, institutional creativity: The Atlantic Community, whatever its shortcomings, draws together the United States and the European powers. Asia is far more diverse. But the need for trans-regional links will take on greater urgency as the pace of geopolitical and economic changes quickens in the Asia-Pacific region. The states of East and Southeast Asia will need to find ways of promoting peace and stability, to build up mutual confidence, and to resolve conflicts of interest. The US is a significant partner in this search. Economic cooperation through APEC provides a common basis to build up trans-regional links. The ASEAN states are exploring political and security dialogues with their Dialogue Partners and other countries in the Asia-Pacific region. These are hopeful beginnings that can grow into networks and communities of interests linking the Asia-Pacific region.

29. Great changes are afoot. We should be no less ambitious in devising the political, economic and institutional solutions that will maximise the prospect that these changes will be peaceful and progressive for the peoples of the Asia-Pacific region.

MANKINDS PROGRESS IN 20TH CENTURY SHAPED BY BREAKTHROUGHS IN COMMUNICATIONS

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. FASCELL. Mr. Speaker, If there is one theme that I have consistently been interested in and championed during my 38 years in the Congress, it is communications and the free flow of information between and among the people of the world. Whether manifested in the creation of the Board for International Broadcasting [RFE/RL], Radio and TV Marti, VOA Europe, the Communications Satellite Act, the creation of the Communications and Information Policy Bureau at the State Department, or in monitoring the Helsinki accords, my interest and dedication have been consistent throughout the years.

It would seem self-evident to me how fundamental the process of communications is to the relationship between people. If I say to you that I think you are wearing a handsome yellow tie and you think that I said that you are a yellow coward, then we are going to have a problem between us. When this type of misunderstanding occurs between nations it usually leads to more than just embarrassment. I must be free to say what I think but I also must say it in such a way that you will get the proper message that I am trying to deliver. Both the speaker and the listener have a responsibility in the process of communications.

A free flow of information is a vital component of political, economic and social structure of the United States and, indeed, of the Western world as we know it. Without free access to the media of communications, both to speak and to listen, our democratic government process, our competitive free market economy, and our open and mobile structure could not exist. This may be the most important lesson that the new governments in Eastern Europe and the former Soviet Union have to learn. The Western principle of freedom of speech will have to be fully incorporated at all levels of society if they are to transition to a market economy.

In the 88th Congress as the chairman of the Subcommittee on International Organizations and Movements, I chaired the first of dozens of hearings which were entitled "Winning the Cold War: The U.S. Ideological Offensive." During this series of hearings, which extended into subsequent Congresses, we attempted to look at the role effective communications—or the lack thereof—played both in our government-to-government diplomacy and in our other relationships with other nations. This has since become known as public diplomacy. We examined the nature and scope of the ideological challenge. We reviewed and appraised the tools which the U.S. Government uses to meet that challenge, and we explored the contribution of private American citizens and organizations abroad in advancing U.S. foreign policy objectives. We were particularly looking at the area of foreign policy operations that strive to inform foreign audiences, influence their attitudes, and move them to action.

The record of these hearings are printed in eight parts in the proceedings of the Committee on Foreign Affairs, 88th Congress first session, volumes I and VI. We had an exceptional list of witnesses including such distinguished individuals as Edward R. Murrow, George Meany, J. Leonard Reinsch, Eric Sevareid, John Richardson, Averell Harriman, and Walt Rostow to name only a few. In addition to looking at the official Government public diplomacy efforts we also looked at the impact abroad of U.S. private information and mass media, the impact of the activities of private U.S. organizations, and the problems and techniques of international communications.

The 20th century breakthrough in communications technology ranks with the great forces which have shaped mankind's progress through history. Its influence on human behavior and on world affairs already exceeds that of splitting the atom. In a relatively brief span, modern communications technology has changed the way of life in all societies. It has transformed the developed societies, caused centuries old traditions and customs to be questioned in the developing societies and been both the cause and the solution of conflicts between the two societies. Later in this series of hearings we concentrated on how modern communications influenced foreign policy. (Part X of Winning the Cold War)

Within our society we have been able to assimilate the changes brought on by modern communications technology, using it to fashion a more affluent and progressive environment for our people. The impact of modern communications technology on the rest of the world has been quite different. New images and ideas began to challenge habits of thought long shaped by local traditions. When the sense of mankind's interdependence spread, with disruptive consequences for the existing order, the stage had been set for the great economic, social and political revolutions of our age. Our subcommittee found it astonishing that the United States, the country which adapted internally to the 20th century breakthrough in communications with ease and contributed so much to the development of the art and the science of communications, had not paid more attention to the impact of these developments on world affairs.

Further, the Subcommittee on International Organizations and Movements looked at the role of the behavorial sciences and the national security to determine what they tell us about human attitudes and motivations, and how this knowledge could be applied to governmental undertakings designed to carry out the foreign policy of the United States. (Part IX of our Winning the Cold War series). We found, much to our dismay, that the bulk of the foreign affairs research in the behavorial science field was being conducted by the military establishment which led us to worry about the overmilitarization of U.S. foreign policy and to call for improved coordination of Government-sponsored research in foreign affairs.

In the 92d Congress, the major communications issue was the future of Radio Free Europe and Radio Liberty. It was an open secret that the radios started in the midst of the cold war were funded by the Central Intelligence Agency. While there was much disagreement in Congress—the Senate wanted to kill the radios—about the need for such surrogate radios, we were able to reach a consensus which addressed the major concerns. There was general agreement that they were needed to further the goal of open communications between peoples. It was also generally agreed that the radios should be governed in their day-to-day operations by a public-private corporation, that they must become independent to increase their credibility. That if they reported news using the principles of a free press, the questions of credibility and interference in domestic affairs would largely take care of themselves. In the end a compromise was reached that extended the funding long enough for a Presidential commission to study the question in depth and make recommendations to the President and Congress. The enabling legislation which created the Board for International Broadcasting was eventually passed in October 1973.

During the 95th Congress as chairman of the Subcommittee on International Operations, I conducted a major review of the framework for the conduct of U.S. public diplomacy and considered alternative structures for improving the effectiveness of future U.S. programs. The Murphy Commission—Commission on the Organization of the Government for the Conduct of Foreign Policy—had accepted the Stanton panel—an earlier panel which looked at the Government information and cultural programs—recommendation that the public diplomacy function should be placed in the Department of State. While I disagreed with this recommendation, and still do, it was obvious that both the President and the Congress wanted to look at the question of restructuring our public diplomacy efforts. The position that I supported and that which was eventually adopted by the President in his reorganization plan was to leave the U.S. Information Agency as an independent agency, but to take the Cultural Affairs Bureau out of the State Department and place it into USIA and to keep the Voice of America as an integral part of USIA. If the fall of the Communist ideology, the breaking up of the former Soviet Union and the election of democratic governments should lead to the creation of a free press in the former Communist countries, then the Congress should again examine the question of the effectiveness of the United States public diplomacy structure.

The free flow of information was again challenged during the 96th Congress by proposed actions of the United Nations Education, Scientific and Cultural Organization [UNESCO] which was considering the licensing of journalists. Many of the members of UNESCO, mostly developing nations, were concerned about the impact of the modern communications upon the cultural stability—read: political stability—of their nations. Many of these nations were angry that the world press only reported on the bad stories, poverty, corruption, and so forth, and did not report any of the progress that the underdeveloped world had made. The Soviet Union and their surrogates and a small number of developed nations, where able to seize upon this frustration for political purposes. A number of members of UNESCO were seeking to control access to news coverage only to journalists that were on some accredited master list. In my 38 years in Congress this may have been the most insidious plot to control the free flow of information. Fortunately the United States, largely due to the influence of the size of our contribution to the organization, was able to table this effort. Alas, no one that I know of has yet solved the problem, if indeed, it is one, of the press covering mostly the bad stories.

To return to 1962, I would like to comment on the importance of the Communications Satellite Act of that year to the free flow of information and to the development of the telecommunications industry as we know it today. In August 1962, President Kennedy signed into law the Communications Satellite Act, maybe the most significant addition to communication law since the Communications Act of 1934. The purpose of this legislation was to create a private corporation to act as the United States participant in a commercial communications satellite system. This system is what we know today as Intelsat and the U.S. corporation created by the 1962 act, is today's Comsat. Intelsat was established in cooperation and conjunction with other countries as part of an improved global communications network. It was to be responsive to public needs and national objectives serving the communications needs of the United States and other countries and contributing to world peace and understanding.

You will recall that in the early 1960's the United States and the Soviet Union were locked in a race for space. It was recognized that whichever nation could launch a successful communications satellite would be able to dictate the future use of space for communications purposes. History shows that the United States won that race by successfully launching the AT&T Telstar satellite and thereby giving the world the technology that would make Intelsat possible. For 30 years Intelsat has handled the bulk of the satellite telecommunications traffic while the Soviet system, Intersputnik, was used mostly by the Soviet Union and the Warsaw Pact nations, handling only a small percentage of the traffic that Intelsat was carrying.

For over 30 years, Intelsat has served the world well. Bringing together both the developed and the developing world—clearly accomplishing its objective of contributing to world peace and understanding. But, having said that, the world moves on, and telecommunications technology has made possible a wide array of services that were only thought of as science fiction in 1962.

Over the last decade a debate has taken place, mostly in the United States and the Western European nations, over whether Intelsat has been responsive to public and national needs. This led the President, in 1984, to declare that it was in the U.S. national interest to permit satellite systems separate from Intelsat. In 1986, the Committee on Foreign Affairs held a series of hearings on this issue and concluded that indeed certain new telecommunications services could be provided by separate systems without harming the core of the Intelsat business. Later that year we amended the 1962 act to reflect the new realities of the communications world.

More recently, I have been active in an effort to permit separate systems to compete directly with Intelsat. Again the administration has also recognized that it is in the best interest of United States and world telecommunications consumers to have greater competition. Last year the administration notified the world that in 1997 we would remove all restrictions on separate systems and allow them to directly compete for public switched traffic which is the core of the Intelsat business. But do not cry for Intelsat. Even as you read this the new Director General is making changes in the organization that will make it more like a regular business and less like an international organization. In 5 years the concerns will likely not be about the impact of separate systems on Intelsat but whether a separate system can survive against a streamlined Intelsat. The future Congress should give particular attention to the implementation of this policy.

Mr. Speaker, in closing I want to say that I hope that future Congresses will give sufficient attention to communication and information policy. I hope that they will give adequate attention to the funding of our public diplomacy infrastructure because they are so important. In the aftermath of the fall of the Communist doctrine there is much to be done. But, there is no more important job than to secure for these nations the freedom of speech and a free press. A free press is the underpinning of any democracy, without it the other institutions of a democracy fail.

THE NEED FOR SUPERFUND REFORM

HON. MIKE SYNAR

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. SYNAR. Mr. Speaker, next year the Superfund reauthorization process will begin. I believe it will be one of the most important environmental policy debates of the 1990's.

Twelve years ago, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA] amid much hoopla and hope. We thought we had come up with a way to clean up the Love Canals of America relatively quickly and sensibly. But as we review the progress of the program to date, nearly everyone agrees that Superfund has fallen well short of our expectations.

Earlier this year, in my capacity as chairman of the Government Operations Committee's Subcommittee on Environment, Energy, and Natural Resources, I requested detailed information from EPA on the status of Superfund cleanups. We are still evaluating the data the Agency provided. But by the most optimistic count, only 149 Superfund sites have been cleaned up. Of course, the EPA Administrator has asserted that progress at Superfund sites is much greater. However, much of the most recent EPA Superfund data trumpeting progress should be viewed with considerable skepticism. For example, the Agency claims that cleanup construction is underway at 615 sites. But our limited analysis of the data provided to us by EPA appears to show that at over 200 of the 615 sites, the permanent long-term remedial actions called for by the law have not even begun. Instead, EPA is counting a variety of other interim, short-term actions, such as removal of leaking drums, as cleanup construction. These so-called removal actions are indeed important. But they are not what Congress had in mind when it required EPA to select and implement permanent cleanup remedies. To count these important, but interim, removal actions as cleanup construction is grossly misleading, and does not address the more fundamental question of how much progress has really been made in 12 years.

There are many explanations for the disappointing cleanup record. Slow program startup, lack of commitment to Superfund by the Reagan administration, EPA staff turnover, and technical and scientific uncertainties regarding cleanup standards and technology, have all contributed to some of the delays in moving cleanups forward.

It also seems clear, however, that the liability system that Congress created in Superfund to raise the cleanup funds from the private sector bears considerable responsibility for many of the problems we have seen. When we set up the current strict, joint and several liability system, Congress recognized it might be unfair in some cases. But we also thought that any concern it provoked in the private sector would be overcome by the realization that the task at hand was modest. We were wrong. The task is monumental. Instead of the few hundred sites we initially anticipated requiring Federal attention, we will likely have over 2,000 before long. Instead of a few hundred million dollars in cleanup costs, we are facing a cleanup bill of $50 billion or more. The stakes are much higher than we thought; the environmental challenge much greater; and, consequently, the incentives for responsible parties to challenge the system and to dispute potential liability are greater as well.

This is where the lawyers come in. The liability assessment process has turned out to be a bonanza for environmental lawyers. Legitimate—and some not-so-legitimate—disputes over who should pay for cleanup have had a perverse result: Prompt cleanup activity at scores of sites has been overwhelmed and stymied by the debate over liability issues.

I have recently read two studies of the Superfund cleanup process in my own State of Oklahoma. The studies were conducted by the national environmental trust fund project, primarily funded by AIG, a group of insurers seeking to reform the Superfund liability scheme. Each one offers a clue as to what's wrong with the existing program. At Compass Industries in Tulsa, the cleanup actually has moved forward smoothly, relative to other sites around the country. Although EPA named 245 potentially responsible parties [PRP's] the two major PRP's have agreed to perform the bulk of the cleanup work. However, in accordance with the law, those 2 have asked 181 others to contribute. If Compass Industries follows the pattern of many other sites, many of these 181 parties will refuse, touching off costly litigation that may go on for years.

But even though the cleanup has gone well by Superfund standards, Compass Industries does offer some examples of what plagues the current liability system. For example, in order to raise the cleanup funds, EPA needed to determine who contributed waste to the site. It took EPA 18 months to come up with all of the names of waste contributors. Unbelievably, at the end of it all, EPA's list even included individuals who had sent their pets for burial on the property which eventually became a Superfund site. Now, ultimately, these pet owners were absolved of liability. But the fact that they were named in the first place as contributors to the contamination suggests Superfund's potential for leveling massive liability on people and companies that are, by any reasonable standard, hazardous waste innocents. This potential is directly related to the strict, joint, and several liability system passed by Congress which acts retroactively and disregards fault and history in handing out cleanup bills.

A second Superfund site in Oklahoma, the Sand Springs Petrochemical Complex in Tulsa, offers evidence of a different kind of Superfund problem. Battles have raged over the proper remedy and who should pay. EPA has sued one PRP which has, in turn, filed 3 contribution actions against about 215 other PRP's. Moreover 2 of those named by the original PRP have named an additional 99 defendants. Sixty outside law firms have been brought in, along with in-house counsel for 23 companies. Today, cleanup of a portion of the site has finally begun, but progress on other cleanup actions remains stalled. This site's history graphically illustrates how lawyers and the legal issues—and the astronomical costs associated with both—can dominate the cleanup process at sites with multiple PRP's. And most Superfund sites have multiple PRP's.

Further evidence of Superfund's disappointing results is shown by the overall cleanup status of the Oklahoma sites. The 10 national priorities list sites in my State have a total of 16 operable units. In other words, 16 separate cleanup plans must be developed and carried out before the Superfund story in the State is finished. Today, only 2 of these 16 are in the final remedial action phase. I am sure my colleagues have even more devastating examples of similar problems at Superfund sites in their own backyards.

If it is clear that the liability system may be responsible for much of what ails Superfund the question is: What do we do about it?

Congress' chief concern was—and remains—the quality of human health and the environment near these dumps. We must reform Superfund to get back to that goal. We cannot continue to tolerate the waste of substantial public and private-sector dollars on noncleanup activity.

It takes far too long to move a site through the system today—10 years on average. Clearly, this is in part due to liability issues. But there are other factors at work as well, not the least of which is the fact that many sites pose scientific challenges that take years to sort out.

If we can accomplish these goals by tweaking the current system so that it move sites through the cleanup process more quickly and without as much legal wrangling, we should do so. However, if we need to restructure the liability scheme to accomplish these sound goals, then we should not shy away from doing so in the naive belief that the devil we know is better than the devil we don't know.

Clearly, the issues will take time for us to sort through and will require sufficient study. but it does appear that a system which puts a premium on assessing liability invites legal warfare, a result which is fundamentally at odds with the goals of the statute.

Some suggest that abandoning the current system would violate the polluter pays doctrine, which holds that those who create environmental problems should pay to clean them up. It is true that when we created Superfund, we operated on the sound principle that polluters should pay for their past acts. Many in Congress assumed that the polluters at issue were irresponsible companies who had dumped an indiscriminate array of toxic wastes, often at sites where such waste did not belong.

To be sure, some of these people undoubtedly have been targeted by Superfund enforcers. But increasingly, it appears as if many, if not most, of the 20,000 PRP's named so far are not the midnight dumpers Congress had in mind in 1980. Instead, they are thousands of small- and medium-sized businesses, municipalities, individuals, hospitals, and others who never broke any laws, who sent their waste where they were told—often to government-permitted facilities—and who did not and do not fit the popular definition of irresponsible polluters.

I believe strongly in the polluter pays approach to environmental law. Accountability is critical to ensuring responsible corporate behavior. But it does not serve the environment or the public to rely solely on doctrinaire notions like polluter pays if, as in the case of Superfund, or public policy objective is not being achieved.

As Congress begins the reauthorization process, we must ask ourselves whether the program we created in 1980, given what we know today about the scope and cost of the problem, is right for the 1990's and the next century.

Clearly, the Superfund status quo is unacceptable. We cannot tolerate a program which generates so few cleanups, a program which encourages the responsible Agency, EPA, to concoct all manner of public relations schemes to inflate its accomplishment, and a program which is disappointing to thousands of citizens who live near Superfund sites.

I look forward to working with my colleagues on these critical decisions as Congress undertakes the process of reauthorizing the act.

SCOPE OF THE NEW PROHIBITION ON STATE-SANCTIONED SPORTS GAMBLING

HON. JACK BROOKS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. BROOKS. Mr. Speaker, prior to final Senate passage of S. 474, the Professional and Amateur Sports Protection Act, but after final House passage, several Senators stated for the record their understanding that certain gambling activities currently lawful in Wyoming and New Mexico would continue to be lawful under the legislation.

I think it would be useful to revise and extend the remarks I made during the House debate on S. 474 October 5, to make it clear that, while the particular activities discussed in the Senate colloquies may well continue to be lawful under the legislation, this will be true only to the extent that the activities fit within one of the exceptions specified in section 3704 of the new law. The House Judiciary Committee report on H.R. 3371, the omnibus crime bill which contained the sports gambling provision, made clear that the specified exceptions to the general prohibition against State-sanctioned sports gambling are to be strictly construed. In keeping with this principle, additional specified exceptions were incorporated into the sports gambling provision during the conference on the crime bill and during subsequent Senate consideration.

There are no implied exceptions not stated in section 3704. There are no competitive sporting events—that is, in which any real-world athlete or team of athletes is competing against any other real-world athlete or team of athletes—that are not games within the meaning of section 3702. And there are no lotteries, sweepstakes, or other betting, gambling, or wagering schemes based on any such game or games, or on any athlete's performance in such games, that do not fall within the prohibition of that section.

WORKING FOR ARKANSAS' FIRST CONGRESSIONAL DISTRICT

HON. BILL ALEXANDER

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. ALEXANDER. Mr. Speaker, this is for the best people in the world: The people who live in the First Congressional District of Arkansas. I want to thank them for the opportunity to represent them for the past 24 years. We formed a partnership 24 years ago to fulfill a dream that I had for the First District. That dream encompassed three goals: Create jobs; expand domestic and international markets for our products; and improve the quality of life.

One of the biggest problems in the First Congressional District was a lack of capital. To make these goals a reality, we needed Federal investment for infrastructure, as well as other programs such as education, job training, business counseling, small business loans, health care facilities, and transportation systems. That's why I fought for a seat on the Appropriations Committee.

Together, we built a strong Federal/State/local partnership. Our efforts secured over $1.2 billion of Federal investment in many improvements including new harbor construction at Osceola, west Memphis and Helena. Numerous water and sewer systems were built throughout the district providing 66,000 more families with clean, healthy drinking water.

Over a 20-year period our partnership with Arkansas farmers resulted in important reforms in the Federal law governing rice production. In 1991 Arkansas rice production increased by 65 percent and farmer rice income increased by 96 percent.

During the past 18 years we have obtained Federal appropriations to build industrial parks, new and improved highways, airports, health facilities, and vo-tech schools. Through hard work and determination we have seen real results to make the First District a good place to live.

These many achievements have occurred despite the economic difficulties of the last decade. Today there are 13,000 more people working in manufacturing jobs in Arkansas' First District than 20 years ago. In fact, although agriculture continued to be an important factor in the region's economy, 92 percent of the personal income in the First Congressional District came from nonfarm sources by 1990.

This change is a direct result of Federal capital investment. By pumping Federal dollars into the public infrastructure, private investment has increased. It is a simple equation: when you provide roads, bridges, and harbors private industry will bring jobs to the district.

A number of Federal departments and agencies have made important contributions to this public works investment partnership. These include the Farmers Home Administration, Economic Development Administration, Federal Highway Administration, Federal Aviation Administration, Environmental Protection Agency, and Department of Housing and Urban Development.

The work of still another Federal group has been vitally important to the economic and community development of the First Congressional District. Since 1969 the U.S. Corps of Engineers has invested more than $821.9 million in water resource development and management programs in the district.

In addition to the work on the harbor projects mentioned earlier, the corps' work in flood control, river navigation, hydroelectric power generation, rural and urban water supply, and outdoor recreation has been a critical factor in allowing the communities and cities of the region to strengthen and protect their economic development.

The continuing importance of Federal Government activities to the First Congressional District is illustrated by the fact that in 1989 the value of Federal Government spending and obligations in the district equaled 42 percent of the total personal income for all 24 counties in the First District.

The First District's industrial base has been able to change and grow as a result of Federal investment in public works. Its people have benefited from education and training, increased health care, and growth in job opportunities.

Clearly, Federal investment, along with local dollars, in highways and bridges, sewer systems, water plants, industrial parks, airports, hydroelectric dams, and harbors has increased industrialization.

More investment in the infrastructure is needed. A redirection of Federal dollars toward such programs would go a long way toward increasing U.S. productivity at home and our competitiveness in world markets.

Since we embarked on our partnership 24 years ago, over $1.2 billion in capital improvements have made their way to the First District; over 66,000 rural families have clean, healthy drinking water; more than 80,000 new jobs have been created by the infusion of Federal funds; and the new energy policy means that the multi-billion-dollar fuels market will be opened up to Arkansas farmers.

As I move into the future, I look forward to working with my friends in the First Congressional District to continue their drive for more jobs, bigger markets, and further enrichment of the quality of life for our children.

PRODUCTION OF RICE IN ARKANSAS

	Area harvested (1,000 acres)	Production (1,000 cwt)		Arkansas percent of United States	Payments to growers			Estimated farm income (million)
		Arkansas	Total United States		(dlrs/cwt) rough rice price	Deficiency payment	Total payment	
1970	438	21,024	83,754	25.1	5.41	0	5.41	$113.7
1971	441	22,271	85,768	26.0	5.62	0	5.62	125.2
1972	441	21,939	85,439	25.7	7.20	0	7.20	158.0
1973	533	25,424	92,765	27.4	13.30	0	15.30	389.0

PRODUCTION OF RICE IN ARKANSAS—Continued

	Area harvested (1,000 acres)	Production (1,000 cwt)		Arkansas percent of United States	Payments to growers			Estimated farm income (million)
		Arkansas	Total United States		(dlrs/cwt) rough rice price	Deficiency payment	Total payment	
1974	710	32,760	112,394	29.1	11.40	0	11.40	373.5
1975	898	40,775	128,437	31.7	8.54	0	8.54	348.2
1976	847	40,362	115,648	34.9	7.25	1.70	8.95	361.2
1977	837	35,396	99,223	35.7	9.79	0	9.79	346.5
1978	1,090	48,505	133,170	36.4	8.47	.78	9.25	448.7
1979	1,020	44,064	131,947	33.4	10.60	0	10.60	467.1
1980	1,280	52,615	146,150	36.0	12.30	0	12.30	647.2
1981	1,540	69,610	182,742	38.1	9.37	.28	9.65	671.7
1982	1,330	57,037	153,637	37.1	8.51	2.71	11.32	645.7
1983	915	39,159	99,720	39.3	9.18	2.77	11.95	468.0
1984	1,150	52,900	138,810	38.1	8.51	3.76	12.27	649.1
1985	1,050	54,597	134,913	40.5	6.70	3.90	10.60	578.7
1986	1,020	54,060	133,356	40.5	7.20	4.70	11.90	643.3
1987	1,010	53,025	129,603	40.9	7.60	4.82	12.42	658.6
1988	1,210	64,735	159,891	40.5	6.90	4.31	11.21	725.7
1989	1,140	63,840	154,487	41.3	7.46	3.56	11.02	703.5
1990	1,200	60,000	156,088	38.4	6.75	4.16	10.91	654.6
1991[1]	1,260	66,780	154,457	43.2	7.53	3.07	10.60	707.9
1992[2]	1,320	71,280	166,662	42.8	NA	4.21	NA	NA

[1] Rough rice price estimated.

[2] Area and production estimated; deficiency payment forecast.

IN HONOR OF EVA GLADSTEIN

HON. LUCIEN B. BLACKWELL

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. BLACKWELL. Mr. Speaker, it is with great pride that I rise today to pay tribute to an individual of remarkable ability and integrity, Ms. Eva Gladstein.

Eva Gladstein has demonstrated outstanding commitment to the city of Philadelphia. She has worked tirelessly at the forefront of the community to primarily insure that all persons have access to adequate and affordable housing.

In 1973, she began her activities by uniting with other tenant activists to lobby city council for legislation that would insure tenants the right to bargain collectively with their landlords. Her involvement in community-oriented activities such as this has caused Eva Gladstein to become one of the most well-respected leaders in the city.

Ms. Gladstein has proven time and time again, that hard work and dedication to a worthy cause pays off. Eva realized the need for the restoration of dignity in the area of public housing and addressed such by becoming the cofounder of Tenants Action Group of Philadelphia [TAG], a group that has enjoyed much success over the years. In the early years of its formation, she served as a volunteer and in many ways expressed her concern for the needs of others. In 1987, she decided to concentrate fully on her efforts and thus became executive director. In this position, she has exemplified that she is a true team player and as a result has built TAG into a real success story.

Today, TAG has become a full-fledged organization with a 40-person staff and a $1.9 million operating budget. It has implemented a variety of effective programs, and has started an extremely successful subsidiary corporation referred to as Tenant's Rental Assistance Corp.

Ms. Gladstein and her colleagues at TAG have worked to fight homelessness and to provide access to fair housing. They have been instrumental in assisting tenants in bringing about prompt and adequate resolutions to their problems, and have promoted loan and grant programs. Although she is no longer an employee at TAG, she continues her affiliation as a member of its board of directors.

Mr. Speaker, Eva Gladstein is definitely an exceptional leader in the struggle for everyday people. I am extremely proud to know her. On November 20, 1992, TAG will recognize her as their guest of honor at its 19th annual banquet. I would like to ask my colleagues to join with me in personally congratulating Eva Gladstein on such achievements.

HUMAN RIGHTS AND DEMOCRACY

HON. DANTE B. FASCELL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. FASCELL. Mr. Speaker, of the many issues on which I have worked in my 38-year tenure in the House of Representatives and on its Committee on Foreign Affairs, none has been more compelling or personally gratifying than the promotion of respect for human rights and democratic ideals. The question of man's inhumanity toward his fellow man—and women—has been one which has long troubled and perplexed me. Looking back over the last four decades, I am struck that the accomplishments of which I am most proud are those that attempted to grapple with that question and that reflect, at their core, my strong belief in the inherent dignity of mankind.

During the 35 years, I served on the Committee on Foreign Affairs, the world has witnessed a remarkable transformation. In the aftermath of the greatest violation of human rights the world has even known, the Holocaust, the doctrine of totalitarianism dashed hopes for freedom throughout Eastern Europe and the Soviet Union. Early in my congressional career, in 1956, the courageous Hungarian uprising was crushed by Soviet guns. As Fidel Castro imposed communism on the island nation of Cuba, the Cuban people and their dreams of democracy were betrayed. In 1961, freedom lovers everywhere watched with horror as the Berlin Wall went up. In China, North Korea, and in Southeast Asia, communism with its denial of individual rights reigned. Throughout the 1960's, African leaders who had finally won their independence from colonial powers, denied basic civil and political rights to their citizenry. In 1968, the Prague Spring experiment of socialism with a human face came to an abrupt and brutal end when Soviet tanks rolled into Czechoslovakia. In our own hemisphere, military dictatorships in nearly every country committed massive human rights abuses, including the deaths and disappearances of thousands, under the guise of fighting communism.

It is remarkable that against this dismal backdrop, even a flicker of the flame of freedom stilled burned. The extraordinary democratic revolution that has swept across the globe in recent years—from Russia to Chile, from Nicaragua to Lithuania, from the Philippines to South Africa, from Poland to Paraguay, from Albania to Zambia—is testimony to the indomitable human spirit. From the late 1970's when Latin American dictatorships began to give way to freely elected governments to 1986, when people power ousted Philippine dictator Ferdinand Marcos in 1987 when the Chilean people rejected the military regime of Augusto Pinochet to the most dramatic event in tumultuous 1989, when the Berlin Wall—and the tyranny it represented—came tumbling down, the political landscape of the entire world has been breathtakingly altered.

As chairman of the Committee on Foreign Affairs, I was fortunate to witness these historic events and am proud of the small part that the committee's efforts may have played in nurturing support for fledging democrats and human rights activists around the world. I am particularly proud of the institutions the committee helped to create whose enduring legacy is the promotion of democracy and respect for human rights. Chief among these is the Commission on Security and Cooperation in Europe, otherwise known as the Helsinki Commission, and the National Endowment for Democracy [NED].

In August 1975, the United States, Canada, the Soviet Union and 32 European nations signed the Helsinki Final Act of the Conference on Security and Cooperation in Europe [CSCE], a blueprint for the conduct of East-West relations. It became evident that the Soviet Union and other Warsaw Pact signatories had no intention of complying with the document's human rights provisions. What also became apparent was that the United

States and its NATO allies would not push the U.S.S.R. and the East Europeans to live up to the promises they made to respect human rights and fundamental freedoms. In September 1975, a month after the signing of the Final Act, a congressional delegation, headed by Speaker Carl Albert, visited Moscow. A member of that delegation, freshman Republican Representative Millicent Fenwick, met with Soviet Jewish refuseniks and other human rights activists who urged the West not to squander the opportunity afforded by the signing of the Helsinki Final Act to press the Soviet Union and its allies to respect human rights. With that, the idea of a Helsinki monitoring commission was born.

Mrs. Fenwick, who passed away earlier this month, returned to Washington and introduced legislation to create such a commission. It was referred to the Subcommittee on Political and Military Affairs, which I chaired. After a series of public hearings before my subcommittee, during which both the human rights and East European ethnic communities expressed their strong support for the concept, Congress adopted the legislation to create a joint legislative-executive branch commission whose chief mission was to monitor and encourage compliance with the human rights and humanitarian provisions of the Helsinki accords. Despite strong opposition form Secretary of State Henry Kissinger, who urged President Ford to veto the measure, on May 12, 1976, the legislation creating the Commission—Public Law 94–304—was signed.

I chaired the Commission from 1976 until 1985, during some of the most heated moments of the cold war. During those 9 years, we fought an uphill battle within the U.S. Government and within the NATO alliance to elevate human rights to its rightful place on the East-West diplomatic agenda. The Commission spearheaded the effort to utilize the Helsinki review process to focus attention on the egregious human rights abuses of the Soviet and East European regimes. We based our efforts on the premise advanced by the late Nobel Peace laureate and human rights champion Andrei Sakharov that genuine security and lasting peace are inextricably linked to respect for human rights.

We actively endorsed and supported the Helsinki Monitors in the U.S.S.R., charter 77 in Czechoslovakia, KOR, the Workers Defense Committee in Poland and the other brave men and women who called attention to abuses of human rights and were, in fact, the precursors to the democratic civic movements of the late 1980's. Year after year, the Commission nominated the courageous members of these unofficial groups to receive the Nobel Peace Prize, we raised their cases at hearings, in letters and speeches, and attempted to draw public attention to their plight—and the causes they espoused—in congressional resolutions and at the CSCE review meetings. I served as vice chairman of the United States delegation to the 1977 Belgrade review meeting and the Madrid review meeting, which opened in November 1980 in the acrimonious aftermath of the Soviet invasion of Afghanistan, continued through the hopeful Solidarity period in Poland, its brutal suppression and the imposition of martial law there, and finally adjourned in September 1983, after having endorsed a number of Commission initiatives to promote respect for human rights, including the convening of the first CSCE experts meeting on human rights. At these meetings, the Commission worked hard to ensure that the victims of human rights abuses were not forgotten.

In the aftermath of the cold war and the breakup of the Soviet Empire, it is hard to believe that human rights and democratic reform were not always central themes in our bilateral relationships with the U.S.S.R. and other Warsaw Pact nations. Yet, all too often in the mid-1970's, human rights concerns were relegated to a back burner as more important and pressing matters, such as trade or arms control consumed U.S. negotiators. It was the persistent efforts of the Helsinki Commission and the Committee on Foreign Affairs which, through the 1970's and 1980's, passed resolution after resolution urging the President and Secretary of State to raise human rights at every meeting between the United States and the U.S.S.R. that finally resulted in this issue receiving the attention it was due.

Since the lifting of the Iron Curtain, the CSCE process has gained increased visibility and stature. The Charter of Paris for a New Europe, signed in November 1990 by the leaders of the CSCE nations who now number 51, sets out the framework for the conduct of relations in the post-cold-war period and contains ringing endorsements of democracy and human rights. Congressional participation in the revitalized CSCE and its new institutions was ensured with the creation of the CSCE Parliamentary Assembly, which held its inaugural session in July 1992 in Budapest, Hungary. As a private citizen, I will have the opportunity to continue my involvement in CSCE since I was recently nominated by the United States as one of its three human rights experts willing to make themselves available to implement the new human rights mechanism in CSCE.

Our work in CSCE is all the more rewarding when one considers that, in 1976 when the Commission began its work, none of us could have imagined the impact of our actions nor the power of the ideals we espoused. We were privileged to have the chance to lend moral support to a remarkable band of men and women who, at great personal risk, defended the fundamental rights of their fellow human beings and to be associated with so noble an endeavor. It is particularly gratifying that many of the human rights activists we defended went on to play active roles in the democratic revolutions that took place in their countries and today are leaders of their freely elected governments.

The idea of providing direct support to those who advocate respect for human rights and democratic reforms in their own countries was the premise behind the proposal to establish an Institute for International Human Rights to openly carry out programs to promote universal respect for and observance of human rights and fundamental freedoms. In March 1978, Representative Don Fraser, who authored a number of important congressional human rights initiatives, and I introduced H.R. 11326 to create just such an agency. In April 1978, we held a series of joint public hearings before Representative Fraser's Subcommittee on International Organizations and the Subcommittee on International Operations, which I chaired. The legislation received widespread support from the U.S. human rights experts who testified.

We envisioned an independent body which would make grants to indigenous human rights groups in foreign countries, sponsor conferences and seminars on human rights, support the publication and dissemination of materials on human rights, and provide assistance for research and studies on human rights. While this legislation was never enacted into law, my conviction that the U.S. Government should provide support for nongovernmental efforts to promote respect for human rights and democratic ideals remained strong. In 1983, that conviction found expression in legislation to create the National Endowment for Democracy [NED].

Based on the premise that the nongovernmental elements of civil society in our democracy—especially trade unions, business associations, and the political parties—were the best suited to help build democratic institutions in other countries and that it was in the long-term interest of the United States to nurture and support transitions to democracy around the world, the Congress passed and the President signed H.R. 2915, legislation which I proposed to create the National Endowment for Democracy—Public Law 99–164. NED's mandate was to support respect for human rights and democratic reform through grants to a wide array of indigenous nongovernmental organizations who, working with their counterparts in the United States, would build the institutions and culture necessary for democracy to take hold and flourish.

In its 9 years of existence, the National Endowment for Democracy has dispensed over $200 million in close to 80 countries including support for the banned Polish trade union Solidarity, the Chinese prodemocracy movement, the independent newspaper La Prensa in Nicaragua, and the forces supporting free election in Chile, Kuwait, and Zambia. It has established itself as an important ally of democrats around the world and enjoys broad bipartisan support in the Congress for its mission.

Mr. Speaker, in the last few years, the connection between political development and economic development has been widely recognized. Democratic political reform is now regarded as critical to ensuring long-term economic well-being in the developing world. The two go hand-in-hand. As part of the Foreign Affairs Committee's efforts over the last several years to reform the Foreign Aid Program, the committee advocated the concept that the promotion of democracy should be one of the four main objectives of U.S. foreign assistance. We endorsed a program to actively promote respect for human rights and democracy both tying a country's level of foreign assistance to its commitment to respect human rights and by using foreign aid to fund political development programs. This initiative was first found in H.R. 2655, the committee's 1988 comprehensive rewrite of foreign aid legislation. While this bill was not enacted, I am heartened to see that the Agency for International Development, which administers our foreign assistance programs, endorsed this concept in its December 1990 paper on democracy and currently spends about $200 million a year in its human rights and democratic initiatives program. The concept of using foreign assistance funds to conduct programs to promote respect for human rights and democratic reform was first incorporated into the law in 1976 when the Foreign Affairs Committee adopted Representative Fraser's amendment to the Foreign Assistance Act of 1961, and added section 116(e) creating a human rights fund Public Law 95–88.

Congress also initiated the concept of conditioning—or prohibiting—foreign assistance to a government based on that government's human rights record. Starting in 1973, Congress enacted a number of legislative provisions intended to assure that U.S. foreign policy formulation and practice include consideration of the status of human rights in other countries. Congress has written general human rights provisions into bilateral and multilateral foreign assistance legislation—sections 502B and 116 of the Foreign Assistance Act of 1961—and it has restricted or cut off assistance to a number of individual countries on human rights grounds. Congress also imposed human rights conditions on economic benefits such as most-favored-nation [MFN] trading status and loans in the international financial institutions.

Congress also took the lead in ensuring that the promotion of human rights would be institutionalized with the State Department. We established an Assistant Secretary of State for Human Rights and Humanitarian Affairs—section 624(f) (1) and (2) of the Foreign Assistance Act of 1961. We mandated the annual country reports on human rights practices prepared by the Department of State and submitted to the Committee on Foreign Affairs and its Senate counterpart, the Committee on Foreign Relations, on the status of human rights in every country of the world—section 502B of the Foreign Assistance Act of 1961.

At times, Mr. Speaker, other measures have been necessary to ensure that the issue of human rights receives the attention it warrants from the administration. Bipartisan support is very helpful to the success of any such effort to promote democracy and respect for human rights. In 1984, together with Republican Senator Charles Percy, who chaired the Senate Foreign Relations Committee, I introduced and the Congress passed House Joint Resolution 605, the congressional resolution on torture—Public Law 98–447. That measure attempted to provide guidelines to U.S. policymakers and offered specific instructions to U.S. diplomats on how to implement policy in opposition to the deplorable practice of torture in foreign countries. It was an effort to have the State Department deal with one of the most egregious human rights violations in a consistent and comprehensive manner, regardless of where these abuses were committed. I regret to say that, 8 years after the passage of this resolution, U.S. diplomats in many countries still do not address this issue in as vigorous a fashion as it merits.

Country-specific legislation, which cuts off or limits assistance to a particular country, gained popularity in the late 1970's when it became apparent that the generic human rights provisions in the law were not being implemented. In fact, no administration—Democrat or Republican—has ever invoked section 502B of the Foreign Assistance Act of 1961, which prohibits security assistance to any country "the government of which engages in a consistent pattern of gross violations of internationally recognized human rights," although military aid has been suspended by the executive branch on human rights grounds. Since 1973, Congress has adopted country-specific human rights conditions on United States policy toward and assistance to Chile, South Korea, Uganda, Cambodia, El Salvador, Argentina, South Africa, Pakistan, Nicaragua, Haiti, Liberia, Kenya, Ethiopia, Guatemala, Peru, Iraq, China, and Cuba.

On a personal note, I have long been interested in the plight of the beleaguered Cuban people. Because so many victims of Castro's repressive policies sought refuge in my congressional district, I was personally touched by their suffering. One of my first foreign policy initiatives in the Congress was legislation I introduced in 1961, when the true nature of Castro's regime became known, to exclude representatives of the Cuban Government from inter-American meetings (H. Con. Res. 216). Since then, I have made it my duty to speak out forcefully and frequently on the plight of the Cuban people. In 1988, Representative BILL BROOMFIELD, the ranking minority member on the Foreign Affairs Committee, and I flew to Geneva to lobby the 44th session of the U.N. Commission on Human Rights to investigate Cuban human rights abuses. Earlier this year, Congress adopted the Cuba Democracy Act, H.R. 4618, which I cosponsored with Representative ROBERT TORRICELLI, chairman of the Subcommittee on Western Hemisphere Affairs, and which promotes a peaceful transition to democracy in Cuba—Public Law 102–484. With the worldwide demise of communism, an enlightened public opinion in this country and abroad, and the courageous efforts of democratic activists inside Cuba who yearn to be free, the downfall of the Cuban Communist regime is inevitable. Just as Communists around the world have been defeated at the ballot box, the ultimate weapon of democracy, I am confident that Castro and his cronies will also be defeated in the near future.

As I look around the world in the fall of 1992, I realize that Cuba joins an ever-shrinking number of countries whose governments continue to deny their peoples' hopes for liberty and democracy. Yet, while the number of repressive governments may be dwindling, far too many people still live under the yoke of tyranny. In looking toward the future, it is imperative that the United States be vigilant in its support for democratic change everywhere, not just where it is politically convenient. After all, aspirations for freedom are universal: all people, regardless of race, sex, nationality, religion, historical tradition or cultural differences, share the desire to be treated with dignity and respect, and to participate in decisions affecting their lives. The right to freedom of thought, speech, travel, to be free from torture and arbitrary arrest, and to practice one's religion freely should be granted to all people. All governments should be held to the same standards, those which are embodied in the Universal Declaration of Human Rights, the International Covenants on Human Rights, and reaffirmed in a number of regional treaties. While the realization of these lofty goals in such places as China, Iraq, Saudi Arabia, and Cuba may be difficult and take time, we should not hesitate to support them. The truly remarkable progress made in Eastern Europe and the former Soviet Union in just 17 years, from 1975 when the Helsinki Final Act was signed to now, offers great inspiration and encouragement.

The United States has a large inventory of weapons in its diplomatic arsenal to promote increased respect for human rights and political reform. Public statements by high-level U.S. officials, including the President and Secretary of State indicating our commitment to a new world order that includes respect for civil and political rights and the rule of law in all countries of the world should be made. Foreign assistance and economic benefits should always be conditioned on a government's demonstrated commitment to respect human rights and promote democratization. Diplomatic representations to governments to release political prisoners, end the practice of torture, and allow greater freedom of the press, assembly, association, movement, and religion should be made. Just as the human rights issue was incorporated into every bilateral diplomatic meeting between the United States and the Soviet Union during the last decade, it should also become a regular aspect of our bilateral relationships with every other offending nation.

The United States can also help build or strengthen democratic institutions and more tolerant attitudes by providing direct support through the National Endowment for Democracy to fledging law associations, educational centers, independent journals, human rights groups, and other indigenous elements of civil society; by assisting governments interested in administrative and judicial reform with technical expertise; through the scholarship and exchange programs of the U.S. Information Agency; and through expanded coverage of human rights and democracy issues by the Voice of America.

In my retirement, I plan to continue my involvement in the promotion of respect for human rights and democratic reform. I am very proud of the committee's and the Congress' contribution to the enormous global effort in behalf of human rights and democracy and look forward to being involved as a private citizen in the future.

SALUTING SISTER JOAN FOLEY AND THE CONNECTIONS JOB DEVELOPMENT PROGRAM

HON. C.W. BILL YOUNG

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. YOUNG of Florida. Mr. Speaker, I rise today to bring to the attention of my colleagues a remarkable program which is bringing together employers and those who are seeking entry-level jobs in Pinellas County, FL, which I am privileged to represent.

The Connections Job Development Program, developed and administered by Sister

Joan Foley of the Roman Catholic Medical Mission Sisters, is a job referral clearinghouse serving unskilled and minimally skilled workers. This program has placed almost 80 workers in this year alone, and has done an outstanding job in providing assistance to those who have a real need for assistance in obtaining employment. The program has succeeded through a combination of support from the community and the persistence of the program's staff.

Sister Joan Foley's dedication to assisting those in our community who come to her needing assistance is displayed through her excellent followup, and has been a key factor in helping her clients achieve self-sufficiency.

Mr. Speaker, I commend the Connections Job Development Program and Sister Joan Foley for providing a much-needed service and, following my remarks, I would like to include for the benefit of my colleagues an article about her work.

[From the Tampa Tribune, July 25, 1992]

MAKING CONNECTIONS, NUN HELPS PUT JOBS TOGETHER

(By Tim McLaughlin)

NEW PORT RICHEY.—Hit by the recession and a burgeoning number of people looking for jobs, Florida is often not the hoped for promise land many think of when they move here searching for work.

The state's unemployment rate was 7.9 percent, while in Pasco County, it was 8.5 percent in May.

But Sister Joan Foley, a Roman Catholic Medical Mission Sister, is trying to alleviate some of the heartache of joblessness by running a free employment service that links workers with employers.

Her not-for-profit Connections Job Development Program is designed primarily for those seeking entry-level jobs—positions in restaurants, fast-food eateries, nursing homes and similar businesses that need unskilled or minimally skilled workers.

Since January, the program has helped nearly 80 people find jobs, a fact that thrills Sister Joan.

"I feel that the person has gained so much; that his or her dignity has increased and I feel great about that," she says. "I think they have learned something in the process and I feel privileged that we've been part of that process of helping them get back in the mainstream of life.

"I especially like to work with those who are homeless, or just about homeless, or the working poor," says the nun who moved to Pasco County in June 1989, after working at the Free Clinic in St. Petersburg for a year and a half.

Her devotion to aiding the poor began during the 16 years she spent in Pakistan as a medical technologist at a hospital run by the Medical Mission Sisters.

Even though she attended Catholic schools growing up, she did not consider becoming a nun until after graduating from college in Virginia.

SISTERLY DESIRE

After graduating, she worked as a laboratory technician at Georgetown Medical School for a year.

"It was during that time that I had this great desire to become a sister and it scared me to death because I had this active social life," Sister Joan says. "But I really had this desire to consecrate my life to God."

A film about the Medical Missions Sisters she had seen in high school helped influence her decision.

"I guess what impressed me the most was that it was a way for women to contribute," she says.

After 2½ years with the Medical Missions Sisters in Philadelphia, she went to Pakistan in 1958.

I fell in love with the country and the people," she recalls. "I saw so much development while I was there, it was tremendous."

In Pakistan, she became interested in helping people become more self-reliant. She brought that interest to Pasco County when she moved there in 1989.

"I found that there weren't any programs to help people in self-reliance," she says. "The basis of this program is to help people work toward self-reliance, dignity and hope by connecting with jobs."

A computer database allows the Connections staff to match applicants with available positions. Connections has 280 employers on file and since January has listed 144 available positions. In addition, 258 applicants are listed and categorized according to their three main job preferences.

The Connections staff contacts employers in the area each week to inquire about job openings and then tries to match clients in the files with those jobs.

Sheryl Chausse, 24, of New Port Richey had been looking for work for nearly two months before going to the Connections office in December. The program placed her as a companion for an older woman and recently found housekeeping work for her.

In an effort to make candidates more marketable the Connections staff interviews applicants extensively to assess their skills, thereby better matching individuals to job requirements.

In addition, the Connections staff verifies references before sending an applicant to a business and then provides follow-up after placement to try to enhance job retention and satisfaction.

Occasionally, the Connections staff will see an applicant who is not ready for a job. This may be because of problems with alcohol or drug dependency, or because the applicant has no marketable job skills.

REFERRALS

Those with alcohol or drug problems are referred to rehabilitation programs and when they are ready will continue with the job referral process. If an applicant is totally unskilled, Connections refers them to the Private Industry Council, which provides training for low-income people.

Rosemary Brando, manager of Bill's Lighthouse Restaurant in Tarpon Springs, has hired three employees through the Connections program and finds the quality of the candidates comparable with those recruited through other means.

Job search support groups organized by Connections meet twice a month at the program's office in the former Queen of Peace church on Washington Street in New Port Richey. As many as 14 people attend the meetings to help each other cope with the frustrations of unemployment and job hunting.

Funding for Connections comes in part from Catholic pastors in the area, who help with Sister Joan's salary which, although small, allows her to pay living expenses.

The Medical Missions Sisters gave her a grant she used to buy a computer for her record keeping and to hire two workers to help her volunteer staff.

To reinforce contacts, mailers describing the program are sent to area businesses.

Connections also advertises its services through social assistance organizations, including the Florida Department of Health and Rehabilitative Services, the Salvation Army, Paso County Social Services, the Human Development Council and the St. Vincent De Paul Society.

Sister Joan says she knows how important the assistance provided by these organizations is in helping people get back on their feet.

"They do a wonderful job with direct service—meaning food, money for rent," she says. "But then I say, 'Let us help them to make the next step, which is toward self sufficiency by getting that job.' And it helps them [the disadvantaged] to know that at least somebody's trying to help them on the second step."

STAFF APPRECIATION

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. ROYBAL. Mr. Speaker, as I prepare to retire after 30 years as a Member of the U.S. House of Representatives, and some 43 years of total public service, I want to take this opportunity to express my deep appreciation to the many professional staff members who have worked in my congressional offices, and on the committees which I have served on as member or chairman.

In expressing my sincere thanks to these dedicated and hard working public servants, I look back at some of my most memorable accomplishments while in Congress. I realize that without the assistance and loyal efforts of these individuals, these victories would not have been possible.

I am especially grateful to these professionals for the many legislative victories we achieved. Among these successes are the first funding of America's AIDS research and treatment programs; the first funding of our country's expanding Alzheimer's Disease Center, and Alzheimer's research, education, and care efforts; the original enactment and continuing appropriations for our nationwide bilingual education program which continues to enrich the educational opportunities of all; the authorization and funding of the multibillion dollar Los Angeles metro rail rapid transit system—not only one of the largest public works projects in U.S. history, but an essential element to business expansion, job development and a strong, healthy economic future for people throughout the Los Angeles basin; and, the introduction of comprehensive health insurance, to assure that every American has the right to affordable quality health and long-term care, and is protected against the devastating costs of acute and chronic illness, and nursing home care.

Other important accomplishments of past years include the Congregate Housing Services Program, emphasizing the provision of in-home services for the elderly; establishment of the Aging Center of Mental Health at the National Institute of Mental Health; adoption of the Bilingual Voting Rights Act; increased funding for the tuberculosis program; additional emphasis and appropriations for minority health; expansion of programs for the developmentally disabled; funding for programs of the elderly blind; substantially increased support for the Center For Disease Control Laboratories and other facilities, as well as the Public Health Service, migrant health centers, and community-based organizations for direct AIDS outreach programs; creating scholarship programs for minority students; working toward providing housing, employment, and tax services for the elderly; establishing and serving as first chairman of the congressional Hispanic caucus; greatly expanding Customs officer staffing for west coast air and sea port facilities in order to expedite handling of fast-growing passenger and cargo traffic; the improvement of law enforcement in order to enable the Customs Service to better interdict and stop the flow of illegal drugs to our country; the construction of the long-needed new Federal building and court house in Los Angeles; increasing appropriations so that government can collect from those who evade taxes; securing protection for the Postal Service program which allows nonprofit mailers to continue to provide information on cancer, heart disease, disaster relief, and other health, educational, charitable, and scientific subjects of interest to the American public.

Mr. Speaker, as an additional expression of my appreciation for the efforts of the many individuals who have worked for me over the years, I would like to include in the CONGRESSIONAL RECORD at this point, the names of these outstanding public employees: Jorge Lambrinos, Christinia Mendoza, Rick Gonzalez, Joel Lane, Kathleen Sengstock, Darryl Stephens; Magdalena Prado, Mercy Cavazos, Eva Garcia, Henry Lozano, Rita Moreno, Alvin Parra, Betsy Phillips, Bill Smith, Aubrey A. (Tex) Gunnels, Jenny Mummert, Richard Veloz, Valerie Batza Soroka, Austin Hogan, Mary Wunderlich, Paul Ceja, Jose Vazquez, Carolyn Griffith, Stephanie Jones, Alexis Brown, Claudia Ocampo, Meredith Jones, Jennifer Johnson, Gladys Rodriguez, Ted Kimmerly, Kathy Gardner-Cravedi, Melanie Modlin, Jeff Kincheloe, Dan Maldonado, Harry Pachon, Nancy Naylor, Myrna Diaz, Rich Terlep, Anna Marie Lamberti, Maria Torres-Ysita Schwinberg, Ruben Rivas, Edgar Rivas, Mary Ruth Joyner, Gale Smith, Irene Bueno, Andy Araujo, Julia Metcalfe, Linda Olivas-Miramontes, Linda Gabriel, Gary Christopherson, Nancy Smith, Diana Jones, Denise Flaim, Mary Hanlon, Brian Lutz, Fernando Torres-Gil, Manuel Miranda, Judith Lee, Peter Reinecke, Yvonne Santa Anna, Amy Melnick, Sam Seidel, Marjorie Wampler, David Boubion, Anthony Knettel, Roger Thomas, Allen Johnston, Lowell Arye, Esther Urbano, Deborah Weisberg, Alberto Alvarado, Paula Campos, Brent Jaquet, Diane Lewis, Manuel Meneses, Lupe Morales, Leonard Palace, Consuelo Rodriguez, Helen Romero, Ann Salecker, Ellen (Nell) Sandridge, Beverly Segal, David Soble, Barbara Sterling, Baltazar Yanez, Michael Tirado, Edward Avila, Clara Ignatius, Enger Johnson, Viveca Meyer, Carmen Navarro, Edward Gordon Pell, Lawrence Redmond, Julia Beryl Zafren, Sandra Cahill, Ada Blevins, Mary Thiel, Elaine Sierra, Carol Galloway, Donna Shelby, Michael Fuentes, and the many other dedicated congressional employees who have worked in my offices since January 1963, when I was first sworn in as a Member of Congress from California.

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT—SAFETY FLARES

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. ROE. Mr. Speaker, we have already enacted into law in the Intermodal Surface Transportation Efficiency Act of 1991 and reaffirmed in the report on the Intermodal Surface Transportation Technical Corrections Act that section 1041(b) of ISTEA states that section 393.95 of title 49 of the code of Federal Regulations shall be applied so as to provide that fusees-flares be approved as alternative emergency warning devices with reflective triangles. It is the purpose of this language to remove any ambiguities which might result from the use of the term "reflecting signs".

MORAL PRINCIPLE IN THE YUGOSLAV CRISIS

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. DYMALLY. Mr. Speaker, I would like to acknowledge the recent remarks of Dimitrij Rupel, the Minister of Foreign Affairs of the Republic of Slovenia, which was published in several leading American newspapers.

Even before his official nomination, Dr. Rupel earned the title of Slovenian Foreign Minister, due to his efforts to run a more independent foreign policy than his predecessors and to obtain international recognition for Slovenian sovereignty and independence.

Born in 1946, Dr. Rupel studied sociology and literature and received his Ph.D. in sociology in 1976 from Brandeis University, Boston, MA. For over a decade he taught at the department of sociology, political sciences and journalism—now called department of social sciences—of the University of Ljubljana, as an associate professor of sociology.

Dr. Rupel entered politics in 1989 as cofounder of the Slovenian Democratic Union, an opposition party, and became its first president. Earlier he was editor of the student newspaper Tribune and of magazines Problemi and Nova Revija, all with distinct dissident reputations.

Dr. Rupel, if I may add, is the author of several novels. I commend his remarks to the rest of my colleagues.

MORAL PRINCIPLE IN THE YUGOSLAV CRISIS

(By Dimitrij Rupel)

To distant observers the conflict in Bosnia and Herzegovina has become an evening news cliche, a small island of chaos wherein the new world order seeks to find its footing. However, the stakes in this "provincial clash" are greater than they may seem.

Inept resolution of this crisis would mean that the utilization of violence as a political principle will find new adherents wherever the relationships of ethnic identity, nationalism and constitutional democracy are at issue. Resolution of the conflict in Yugoslavia, one may argue, calls into question the very nature of "provinciality" as the modern world seeks to find workable new models for dealing with intractable hostilities.

Resolution of this crisis will create more than a mere footnote to the aftermath of the Cold War. The means by which peace is restored to Bosnia and Herzegovina will become a pattern for regions in the world where similar conflicts are either latent or already in full bloom.

The choices before us are stark in their implications and their simplicity. We can be guided by the "perverted principle" whereby terror and human misery are justified by the simple fact of military victory.

Continued human suffering in Bosnia and Herzegovina underline the saliency of moral principle as a catalyst for action. However academic the debate over the resolution of territorial demands may appear to be, however archaic the argument for moral principle as a guiding force may seem, the magnitude of this human tragedy makes it clear that moral responsibility for the outcome will fall squarely on the international community.

Morality as a basis for political action is often invoked as an afterthought, too rarely as a forethought. Yet there is much historical evidence that can compel us to seek a just and moral solution to the Yugoslavian crisis.

America achieved independence through a struggle over a moral cause—democracy—and it was the moral cause—abolition—that justified the victory of the Union over the secessionist Confederacy.

It was a moral cause—constitutional democracy—that gave my nation, Slovenia, authority to declare its independence from centralized communist rule. Our actions would have been justified even in the absence of the European community's Badinter Commission, which recognized that Yugoslavia was in a state of genuine dissolution and that its constituent republics were not merely in pursuit of rogue secession.

All but the most intransigent partisans agree that the killing in Bosnia and Herzegovina must be stopped. The costs of inaction can be measured in the twisted inspiration that terror, "ethnic cleansing" and concentration camps offer to chauvinists anywhere in the world. Borrowing the words of President Bush, the potency of the situation demands quick and moral resolution "no matter what it takes."

Escalation of the conflict—the downing of the UN relief plane and the attack on the UNPROFOR supply convoy—has already reached outrageous proportions. The agreement between the Bosnian Croats and Moslems, concluded in secrecy on August 27 and made public on September 8, bodes poorly for resolution from within: resident Serbs will be excluded from any future participation in the government of Bosnia and Herzegovina for the mere fact of their ethnic origin and regardless of their civic allegiance.

These increasingly desperate actions are ominous demonstrations of the "perverted principle" at work, and provide a moral imperative to the international community to act without further delay.

At the London Conference, Slovenia proposed a four-point framework for resolving this human tragedy. Our proposal calls for:

1. Immediate and effective humanitarian assistance to all endangered populations;

2. The establishment of "safe zones" in which endangered populations could seek peaceful haven and to which refugees could return. Among those most in need of such

refuge are Bosniacs (i.e. Bosnian Moslems) and non-partisan refugees of all ethnic groups;

3. Negotiations among the three constituent nations of Bosnia and Herzegovina, to establish the territorial and political sovereignty of Bosnia and Herzegovina and to guarantee the autonomy of its constituent administrative units;

4. Legal status and political support for the Bosniacs. Both Serbs and Croats enjoy the full support of their respective ethnic states; without such support the Bosniacs will remain at a disadvantage in any political outcome.

So that the "perverted principle" does not undermine these negotiations, the international community must ensure that negotiations do not favor de facto gains extorted by partisan military action to date. The threat of economic, diplomatic and military isolation must be held out as a real consequence of any failure of foreign armed forces and heavy artillery to be withdrawn from Bosnia and Herzegovina.

Support must also be ensured for the UN Secretary General's "Agenda for Peace" proposal, restoring the status quo ante with regard to military gains by Serbian and Montenegrin forces. In the meantime, the world must follow the United Nations' lead excluding Serbia and Montenegro (and their common state, the "Federal Republic of Yugoslavia"), from all international organizations, pending achievement of legal status and conformation to rules set forth by the European Community for recognition.

The United States must ultimately decide its own course of action. However, Americans would do well to recall the words of Thomas Paine, who argued in "The Rights of Man" that "My country is the world, and my religion is to do good." The immorality of the Yugoslavian conflict is clear, while the moral imperative—and suffering humanity—await resolution.

ADOPTION OF SPECIAL NEEDS CHILDREN

HON. ED PASTOR

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. PASTOR. Mr. Speaker, as the 102d Congress comes to a close, I wish to pay tribute to an organization in my district which is committed to helping special needs children and their families.

The Aid to Adoption of Special Kids, AASK-Arizona, located in Phoenix, AZ, is a licensed private, nonprofit adoption and child placement agency. An affiliate of AASK-America, it is dedicated to the placement of special needs children into permanent, loving homes. Since its inception in 1988, the agency has strived to build and preserve families through adoption, specialized foster care, postplacement support and community consultation.

There is a special group of children who require our special care and attention. They tend to be older, school-age children, some from minority families, while others in tight-knit sibling groups. Many of these children are either physically or mentally challenged, and others have emotional problems. Some of these special needs children are drug or alcohol exposed infants or toddlers, premature infants who require intensive care services following birth, children with medical complications or chronic illness, or children infected with the HIV virus.

These children live in foster homes, group homes or institutions. Most have never had the stability and security of a permanent family. All of these children desperately need and want families and homes of their own.

Providing services to over 400 families and children per year, AASK-Arizona helps families to assist their special needs children to develop to their fullest potential. By providing healthy, nurturing families especially prepared to address the challenges these children present, the ultimate intervention for these children usually mean adoption or specialized foster care services which result in permanent, stable placements within their birth, extended or adoptive homes. The responsible and caring placement of these special needs children prevents their neglect, abuse and exploitation. It also establishes a sound family environment, prevents inappropriate institutionalization, improves their development, and leads to their economic self-sufficiency.

The American family is struggling to survive under enormous pressures today. Families who adopt children, particularly special needs children, often feel these pressures heightened as they face challenges unique to those building families in this way.

I salute AASK-Arizona—and similar organizations across the country—which continues to look beyond the typical, the normal, the acceptable, and the expected in seeking the unique and quality services so rightly deserved by these very special children and their supportive families.

TRIBUTE TO THE NATIONAL ITALIAN-AMERICAN FOUNDATION

HON. FRANK J. GUARINI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. GUARINI. Mr. Speaker, on October 3, I had the distinct privilege to participate in the 17th annual National Italian-American Foundation gala dinner at the Washington Hilton Hotel. On that occasion, nearly 3,000 people from around the country and abroad filled the hotel, making it the largest of NIAF's gala dinners.

First Lady Barbara Bush, as well as Gov. Bill Clinton, addressed the crowd. Also in attendance were actress Sophia Loren, baseball legend Joe DiMaggio, and a distinguished group of special guests from the entertainment, sports, business, political, and cultural worlds.

The dinner brought increased attention to the accomplishments of Italian-Americans and Italians, which is especially appropriate since we are celebrating the 1992 Columbus Quincentenary. NIAF founding chairman and inspirational leader Jeno F. Paulucci, one of the country's most successful entrepreneurs, was honored this year with a Lifetime Achievement Award for Humanitarian Service. Sophia Loren received NIAF's Quincentenary Award, and Cesare Romiti, CEO of Fiat SPA, received NIAF's Lifetime Achievement Award in Business.

Other distinguished guests at the event included NIAF Chairman Frank D. Stella; U.S. Ambassador to Italy, Peter Secchia; Italy's Ambassador to the United States, Boris Biancheri; His Eminence James Cardinal Hickey; the Secretary of Health and Human Services, Dr. Louis Sullivan; the Director of the FBI, Judge William Sessions; the president of the Motion Picture Association, Jack Valenti; the commissioner of the National Football League, Paul Tagliabue; actor Paul Sorvino; comedian Fred Travelena; author Gay Talese, and Olympic Gold Medalist Mark Lenzi.

My distinguished colleague and good friend from New Jersey, BOB TORRICELLI, served with great effectiveness as the 1992 dinner chair. Representative NANCY PELOSI, who chaired the 1991 gala, was also in attendance, as were Representatives DANTE FASCELL, LARRY LAROCCO, JOHN LAFALCE, LEON PANETTA, and TOM FOGLIETTA. Another distinguished colleague who was there was my good friend FRANK ANNUNZIO, one of the founders of the National Italian-American Foundation. FRANK ANNUNZIO has made enduring contributions to NIAF over its 17-year history, especially with respect to its education programs. As he was to the House of Representatives, FRANK ANNUNZIO was an enormous resource to NIAF and he will be missed. From the Senate, PAT LEAHY of Vermont attended the dinner. We were also joined by the distinguished former chairman of the House Judiciary Committee, Peter Rodino.

In Mrs. Bush's remarks at the dinner, she said that Italian-Americans embody the "finest values any people could have—hard work, loyalty, openness, warmth, and a deep deep love of family, friends and God. Italian Americans are so good at holding on to their heritage and embracing this country at the same time."

Governor Clinton said:

> Italian-Americans have brought excellence to every area of our national life; to politics and business; to entertainment and the arts; to sports and law; to education and to plain old time-honored hard work.

The dinner was the highlight of a weekend which featured important conferences on diverse topics, including the Columbus Quincentenary, Tourism in Italy, and the Right to Die proposal, which was sponsored by NIAF's Medical Council and the National Italian American Bar Association.

Furthermore, on October 3, the NIAF Board of Directors elected its new officers for the next 3 years. Elected as chairman was Frank Stella of Detroit. Elected as vice chairman was Arthur J. Gajarsa of Washington, DC. Also elected as vice chairman was Joseph Maselli of New Orleans. I was honored by being elected president. The senior vice president is Dr. Ken Ciongoli of Vermont. Secretary is Agnes Vaghi of Maryland, treasurer is Donald Santarelli of Washington, DC, and general counsel in Janice Zarro of Washington, DC.

A distinguished board of directors was also chosen, and a complete list of members follows. Elected to the board of directors were Lee Iacocca, chairman and CEO of Chrysler Corp. and Louis G. Rosetti, president and CEO of Rosetti Architects. They join Stephen

R. Aiello; Thomas V. Angott; Hon. FRANK ANNUNZIO; D.F. Antonelli, Jr.; Joseph E. Antonini; Alfred A. Checchi; Dr. A. Kenneth Ciongoli; Arthur J. Decio; Joseph V. DelRaso; John A. DiBiaggio; Edward DiLoreto; Hon. PETE V. DOMENICI; Lucy A. Falcone; Hon. DANTE B. FASCELL; Hon. VIC FAZIO; Robert A. Georgine; Nicholas A. Gordano; Richard A. Grasen; Hon. FRANK J. GUARINI; Antonio M. Marinelli; Dr. Rocco L. Martino; Gary S. Messina; Mario V. Mirabelli; Hon. CONSTANCE A. MORELLA; Mario T. Noto; Paul F. Oreffice; Jeno F. Palucci; Leandro P. Rizzuto; Hon. Peter W. Rodino, Jr.,; Gilbert Simonetti, Jr.; Dr. Aileen Riotto Sirey; Agnes E. Vaghi; Jack Valenti; Frank Visco; Salvatore J. Zizza.

NIAF is also well served by a network of distinguished regional vice presidents who are as follows: Frank M. Grazioso, New England; Salvatore M. Salibello, upper mid-Atlantic; Matthew J. DiDomenico, Sr., lower mid-Atlantic; Stephanie L. Razzano, National Capital; Hon. John Gale, southeast; Eugene R. Casagrande, D.D.S., southwest; George J. Silvestri, Jr., mid-Pacific; Michael A. Rivisto, northwest; and Francesco Nicotra, Italy.

I would also like to pay tribute to the great NIAF staff, led by longtime Executive Director Alfred M. Rotondaro, who provides leadership, director and vision for the foundation.

In just 17 years, NIAF has emerged as the national advocacy organization for the more than 15 million Italian-Americans. Its mission is to help Italian-Americans preserve the values and accomplishments of their heritage, and to ensure that the American public is aware of the contributions that Italians and their descendants have made to the United States throughout its history.

NIAF funds cultural and educational programs and projects, awards scholarships and internships, and monitors the media to ensure a fair and balanced portrayal of Italian-Americans. NIAF also works with other Italian-American organizations to sponsor exchange programs and conferences. NIAF has emerged as a critical liaison between Italy and the United States culturally, politically and economically.

There is a growing sense of enthusiasm about NIAF and its future. Its programs have brought it much success, especially the scholarship program, the Media Institute, and the Public Policy Institute, which is committed to advocating service in the executive and judiciary for qualified Italian-Americans.

As a result of NIAF's special weekend, we have developed a new spirit and a plan of action for a brighter and more productive future. NIAF is the leading voice of the Italian-American community, and will continue to make a difference in the lives of Italian-Americans—and in the lives of all Americans.

HONORING ADOLPH GALLUCCIO, SUE AMORESANO, AND JIM SINFOROSA

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. ROE. Mr. Speaker, I take great pleasure in rising today to pay tribute to three outstanding citizens of my Eighth Congressional District in New Jersey. Adolph Galluccio, Sue Amoresano, and Jim Sinforosa will be honored at the Third Annual Inter County Business Association Dinner on Sunday, November 1, 1992 at the Cotillion Restaurant in Garfield, NJ.

The Inter County Business Association is a nonprofit organization established by its founders to give and sponsor educational lectures, and to actively participate in the members' communities and churches with fundraisers for charitable causes. Members include individuals from Passaic and Bergen Counties with their own professional practice or business and professionals who are employed by others. Their motto is: Learn, Earn, and Give.

Programs such as the Passaic County Partnership for Training, Work, and Rehabilitation and the Paterson Community Partnership are fine examples not only of the association's work but of what can be accomplished when bright and successful people turn their attention toward creating opportunities for others. A great deal of discussion is given to what can or should be done. This group is speaking volumes with their action.

This year they will honor three outstanding members who have contributed tremendously to their communities and the association.

Adolph Galluccio was born and raised in Paterson, NJ where he attended public school and the Oakland Military Academy. After receiving an undergraduate degree from Hartwick College, he went on to graduate from Seton Hall Law School in 1964 and was the recipient of the Bureau of National Affairs Award in Washington, DC. For the past 27 years, he has been a partner in the law firm of Browne & Galluccio in Paterson.

Adolph has been an active volunteer performing many charitable works and serving on community committees. He has served on the board of directors at Paterson Catholic High School and is a volunteer lecturer at Ramapo High School in Franklin Lakes. He has participated extensively in charitable activities throughout the Paterson Diocese, including the board of Eva's Kitchen, the Cursillo Movement, and as president of the Good Timers at Blessed Sacrament Roman Catholic Church in Riverside which he has attended his whole life. Adolph has also worked with the Diabetes Association and Tomorrow's Children Fund. In addition, he is chairman of the Fund Raising Committee for the city of Paterson's 200th anniversary.

Married for 31 years to the former Dorothy D'argenio, he has four children; Michael, Terri-Lynne Bowers DeFino, Karen, and Mark. He has also been blessed with four grandchildren; Jamie, Scott, Christofer, and Grace.

Sue Amoresano was born in Pine Mountain Valley, GA. After several years working in the banking industry, she owned and operated a branch office of ADP Insurance Associates in Paterson. Currently she is director of the office of special events for the city of Paterson's Department of Community Development.

Sue is involved in a multitude of civic organizations including: Hillcrest Civic Association, Joseph W. Pizza Civic Association, Ladies Auxiliary of St. Joseph's Rest Home, Xaverian Fathers of Wayne Missionaries, Passaic County Round Table, and Gateway Tourism Council. She is also an active supporter of St. Gerard's Roman Catholic Church in Paterson serving on their fundraising committee, as a eucharistic minister, and commissioner to the community Policing Pilot Program in Paterson.

Sue is very involved in the bicentennial celebrations surrounding the city of Paterson, serving on the Paterson 200 Committee's finance and fundraising committees and acting as coordinator of bicentennial celebrations for the city of Paterson. In addition, she works with underprivileged senior citizens and is presently coordinating an Adopt a Grandparent program.

She has two daughters Anna Marie and Lisa and one grandson Justin.

James Sinforosa has been a lifelong resident of Haledon, NJ and currently works for Kaytes Ford in Butler. He is the past president and currently on the board of directors of the Passaic County Council on Alcoholism and Drug Prevention. He has also coordinated and participated in many fundraisers for organizations such as: Pompton Valley Christian Association Food Pantry, American Heart Association, Toys for Tots, St. John's Cathedral in Paterson, and St. Gerard's Roman Catholic Church, also in Paterson.

James is a parishioner at St. Paul's Roman Catholic Church in Haledon and has two daughters, Monica and Nadine.

Mr. Speaker, it is organizations such as the Inter County Business Association and citizens such as Adolph Galluccio, Sue Amoresano, and James Sinforosa that highlight what is best about our Nation. Individuals banding together to lend their talents and experience in the assistance of others.

Mr. Speaker, I am proud to represent the Eighth Congressional District of New Jersey and such exemplary constituents as these. They are truly examples to which we all can aspire.

TRIBUTE TO DEREK WALCOTT

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. DYMALLY. Mr. Speaker, I rise to pay homage to one of the most magnificent bards of the English language. The Nobel Prize Committee has acknowledged what the people of the Caribbean have long known—that Derek Walcott is one of the great writers of the 20th century. This modern day Homer is a man whose lyrical poetry has inspired people around the world.

The Swedish Academy of Letters in awarding him the world's most prestigious honor, the Nobel Prize for Literature, said that "in him, West Indian Culture has found its great poet." A previous Nobel Laureate, Joseph Brodsky, called Walcott the best poet the English language has today.

It is a matter of great encouragement that Derek Walcott's writing gets better with age. Critics have hailed as his greatest work his latest work, an epic poem which the 62-year-old writer published in 1990. "Omeros" is a 64-chapter masterpiece that the Los Angeles Times said "weaves his many strands into a whole" and "blends elements of the Odysseus legend and the turbulent West Indian world.

Derek Walcott was born in St. Lucia and made his debut at the age of 18 with his first book "25 Poems." In 1962 he published his most widely acclaimed collection of poems: "Green Night." In addition to his poetry Walcott has been honored as a playwright. He received an Obie Award in 1970 for "Dream on Monkey Mountain." In that play as one observer noted "he tapped into a mythical source * * * about identity and going back to your roots that's close in its own way to Shakespearean Theatre."

In addition to his writing Derek Walcott is a distinguished teacher of poetry and creative writing at Boston University where he is one of the most sought after instructors on the campus.

I am proud, Mr. Speaker, that my final remarks on the floor of this great House are in tribute to this great teacher and poet who shares my Caribbean ancestry.

CONGRESS HAS FAILED TO LEARN THE LESSONS OF THE 1980'S

HON. DAVID DREIER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. DREIER of California. Mr. Speaker, 18 days after taking office, President Bush put the thrift cleanup in motion by taking action that led Congress to pass the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. After FIRREA became law, the President established four goals for those responsible for the cleanup:

First, protect depositor accounts. Preserve the savings of ordinary working people who trusted the Government's insurance commitment and then had to rely on its promise for protection.

Second, shut down failed thrifts at the lowest cost to the taxpayers. Since 1989, 725 institutions with $378 billion in assets have been transferred to the RTC. This was not a bailout. The stakeholders in these institutions, the stock and bondholders, were wiped out. They didn't get a dime.

Third, make the wrongdoers pay the price. To date, 1,300 persons have been indicted nationwide and there have been nearly 1,500 civil actions against directors, officers, accountants, and lawyers.

Fourth, restore the industry to profitability. The thrift industry, which lost $13 billion from 1988–91, has already reported $2.8 billion in profits for the first 6 months of 1992. This means there is now more money available to strengthen the insurance fund and provide low-cost mortgages to middle-income families.

All of these goals are being met except one. The depositors have been protected, the failed thrifts closed, and the wrongdoers are being made to pay for what they did. However, by not funding the RTC, we are falling short in achieving the second goal—shutting down these failed thrifts at the least cost to the taxpayers. Completing the cleanup and finishing the job requires the cooperation of Congress. But, like many of the President's other domestic initiatives, Congress has chosen to be obstructionist.

On April 1, 1992, the House of Representatives halted the RTC's funding. The agency has been without funds to complete the cleanup for 6 months. It will take at least another 6 months for the 103d Congress to meet, organize and vote for RTC funding. This 1-year delay in funding has escalated the cost of the cleanup by an estimated $2 billion. Now the taxpayers have to start paying all over again because the congressional leadership refuses to act.

Congress continues to ignore the lessons history teaches. The thrift regulators of the 1980's repeatedly asked Congress for the authority to recapitalize the insurance fund, at first with industry funds only. Congress refused to act, thrift industry losses mushroomed and the exposure to the taxpayers grew exponentially. Without RTC funding, Congress is risking the same disastrous financial consequences.

PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT—A CLARIFICATION

HON. JOHN BRYANT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. BRYANT. Mr. Speaker, prior to the Senate's vote last month on the Professional and Amateur Sports Protection Act, S. 474, some Senators stated their understanding that certain activities currently lawful in Wyoming and New Mexico would continue to be lawful under the legislation. These colloquies occurred after the House already had passed the bill. As far as I am concerned the particular activities discussed will continue to be lawful under the bill only because—and only to the extent that—they were lawful as of October 2, 1991, and were conducted during the period specified in section 3704(a)(2).

Wyoming specifically allowed Calcutta wagering by certain entities, and other specified activities, well before October 2, 1991, pursuant to Wyoming Code section 6–7–101 through 103. That law was amended most recently in March 1991. The New Mexico statute authorizing parimutuel bicycle wagering was adopted in April 1991 and became effective on July 1, 1991, and likewise was implemented prior to October 2, 1991. The sports pools, sport tabs and fantasy leagues authorized by Montana in the spring of 1991, likewise will continue to be legal—because, and only because, the requirements of section 3704(a)(2) are satisfied. The legislation operates prospectively, not retrospectively, and these States came in under the wire with these games.

No activities that otherwise fall within the sweeping proscription of section 3702 will be lawful under the legislation in these or any other States if authorized by statute or a State-tribal compact after October 2, 1991, or August 31, 1990, in the case of State or tribal lotteries, unless specifically and expressly exempted by section 3704, regardless of the nature of the sports activity involved or the type of wagering. There are no implied exemptions not stated in section 3704. There are no competitive sporting events—events in which the performance of any real world athlete or team of such athletes is measured against the performance of any other real world athlete or team of such athletes—that are not games within the meaning of section 3702. And there are no lotteries, sweepstakes, or other betting, gambling or wagering schemes based on any such game or games, or on any such athlete's performance or performances therein, that do not fall within the prohibition of that section.

CONFERENCE REPORT ON H.R. 5504

HON. BOB LIVINGSTON

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. LIVINGSTON. Mr. Speaker, the conference report on H.R. 5504, the fiscal year 1993 Defense Appropriations Act, expressed the concern of the conferees over the general decline in the health of the American shipbuilding industry. As one of the provisions for defense conversion, the conferees directed that $15 million be utilized to establish and implement viable opportunities for conversion of the defense-oriented shipbuilding industry to market driven commercial production activities, help maintain the defense industrial base, and further the development and maintenance of an adequate merchant marine.

This action by the conferees was ostensibly based on requests by leading U.S. shipyards, corporations, and other organizations, including the American Bureau of Shipping, for applied research and development funding to assist them in undertaking construction in the United States of the largest passenger ship in the world: the Phoenix World City. This ship would be the first large passenger ship built in this country in over 40 years, and, it is projected to be the first of a fleet of three such ships which will fly the American flag and operate, manned by American crews, on both coasts and in Hawaii. While the impact of this national project will be nationwide, a number of yards in my State of Louisiana and along the gulf coast are already actively involved and thousands of Louisiana shipyard workers could directly benefit from the R&D program earmarked in H.R. 5504 and the possible construction work that could follow.

This project may have important economic significance not only for the shipbuilding industry, but for corporations across the Nation, for our merchant marine, and for domestic ports and tourism. I believe it was the intention of the conferees that these funds be utilized to help bring the American shipbuilding industry to a point at which this major passenger ship construction project can be realized in U.S. shipyards and the industry thereby positioned to address other commercial opportunities that will surely follow.

TRIBUTE TO CONGRESSMAN WILLIAM L. DICKINSON UPON HIS RETIREMENT FROM THE UNITED STATES CONGRESS HON. RICHARD T. SCHULZE

HON. RICHARD T. SCHULZE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

November 2, 1992

Mr. SCHULZE. Mr. Speaker, the 103d Congress of the United States will see many new faces this January. While this is probably a good thing, it does not come without a great cost in the form of lost institutional memory. Upon his retirement from this honored institution, my very good friend, Congressman William L. Dickinson, will take with him 28 years of reflection on historic legislation and stories about how this nation's governing body has performed.

Perhaps no aspect of the legacy Bill leaves behind is grander than that of cofounder of the Congressional Sportsmen's Caucus. This body was formed with the express mission of conserving America's great heritage of outdoor life, wildlife in all its variety, wildlife habitat, the environment and preserving the role and tradition of the hunter in wildlife management. His inspirational leadership in this cause has rallied over 138 Members of Congress to forge a committed alliance which champions wildlife and the environment. Many generations of outdoor enthusiasts will benefit from Bill's pioneering vision of the Congressional Sportsman's Caucus.

Bill's contribution to his country does not end as a chief defender of the environment; Bill is ever vigilant in the matter of America's national defense. He cares deeply about his country and about the individual soldiers who willingly place their lives at the threshold of death to preserve the liberties that resonate in the soul of every worthy American. As Commander in Chief, President Ronald Reagan could not have revitalized the American military machine without the assistance of Congress. As the ranking Republican on the House Armed Services Committee, Bill worked in close harmony with President Reagan to achieve the miracle of the 1980's—a turnaround military force unprecedented in human history. In its hopeless effort to keep pace with this American headway, the cold war Union of the Soviet Socialist Republics crumpled under the weight of its own false premises. Despite the opposition's clamor to change the course of these great events by sapping the defense budget and paying for pork instead of power, Bill Dickinson clung to the wheel of the ship of state, staying the course which lead America into safer harbors.

Mr. Speaker, America owes Bill a great deal of thanks for his service. I thank the good people of Alabama for sending him here. My grandchildren, and all generations hence, shall profit from the rich heritage of a blossoming environment in a world rich with the promise of peace. Thank you Bill Dickinson.

EXTENSION OF THRIFT CAPITAL DEDUCTION TO ENCOURAGE CREDIT AVAILABILITY

HON. BILL McCOLLUM

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. McCOLLUM. Mr. Speaker, yesterday the President signed H.R. 5334, the Housing and Community Development Act of 1992. Section 953 of the law authorizes the Office of Thrift Supervision to extend the time by which thrifts must deduct from capital their investments in certain subsidiaries. The Director of the OTS will be able to establish an alternative schedule for the deduction of investments in subsidiaries engaged in activities not permissible for a national bank, thus allowing the institutions more time to divest themselves of these subsidiaries. Although it is narrower than a similar amendment I successfully offered to banking legislation last fall, only to see it stripped out in the final version, this provision is very important in light of the current economic conditions affecting the market for the sale of these subsidiaries.

Under the former law, thrifts were required to deduct from capital at least 25 percent of their investment in these subsidiaries. The deduction increased to 40 percent on November 1, 1992. The full amount of the investments had to be deducted by July 1, 1994. For certain thrifts, section 953 authorizes the OTS to delay the 40 percent deduction until July 1, 1994, and the full deduction until July 1, 1996.

Thrifts are eligible for this extension only if they are adequately capitalized or are in compliance with an approved capital restoration plan and not critically undercapitalized. In addition, the OTS must determine that the extension would not constitute an unsafe or unsound practice, would not increase the risk to the deposit insurance fund, and would not be likely to result in the association's being in an unsafe or unsound condition.

Opportunity for relief under the new authority becomes effective now that the bill has been enacted. However, because the existing deduction requirement is scheduled to increase to 40 percent within a few days, there will not be enough time for institutions to make application to the OTS and for the OTS to process the applications for the extension before November 1. Congress did not intend that institutions eligible for the extension be required to increase their capital deduction on November 1, only to reduce the deduction later after the OTS has had an opportunity to review applications under the new law. The OTS should therefore allow a limited, temporary reprieve for institutions making application under the new law while the OTS reviews the applications.

In correspondence to Members of Congress, OTS Director Timothy Ryan has noted that in normal times the separate subsidiary capitalization requirement would be sufficient incentive for most thrifts to get out of the real estate development business by divesting themselves of such subsidiaries. However, these are not normal times. Severe liquidity constraints in many real estate markets have dried up the pool of potential buyers of such companies. As a result, thrifts have had to hold on to these assets, resulting in a severe contraction in the overall lending capacity of these institutions. Furthermore, without the extension provided in the new provision, many thrifts with real estate subsidiaries would have been forced to sell the subsidiaries at extremely depressed prices in a market that is already severely depressed.

This provision will allow certain thrifts additional time to sell real estate assets in a more orderly fashion and hopefully in a less distressed market. This will encourage such institutions to resume normal lending operations and will help alleviate credit constrictions that some sectors of our economy are facing.

This provision carefully balances prudent capital requirements and responsiveness to the very real problem of credit availability.

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1991

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 29, 1992

Mr. ROE. Mr. Speaker, H.R. 2950, the Intermodal Surface Transportation Efficiency Act of 1991, contains provisions that authorize funding for certain construction, reconstruction, equipment, and programmatic costs associated with the development of university research institutes contained in the legislation Pub. L. 102–240.

In reviewing the issues of intent of our Committee in the funding of these institutes, I wish to clarify for the record that it was the Congressional intent that the enactment into public law on December 18, 1991, should serve as the commencement date for reimbursement of funds expended for the construction, reconstruction, equipment, and programmatic costs of these institutes. In addition, given the high expectations we have for these institutes to accomplish their mission of applied research, development, and transfer of technology, we need to provide adequate research facilities. Therefore, the Committee's intent was that up to 50-percent of the funding provided could be used for purposes of construction, reconstruction, and equipment from the date of enactment of the legislation.

Mr. Speaker, I salute the efforts of our university research institutes and urge them to continue to make gains in the improvement of our nation's infrastructure for many years to come.

IT'S TIME FOR FUNDAMENTAL REFORM OF SUPERFUND

HON. NORMAN F. LENT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. LENT. Mr. Speaker, in 1980, I participated in drafting what many viewed as the most important environmental law ever enacted: the Comprehensive Environmental Response, Compensation, and Liability Act, also known as Superfund. The law represented an ambitious and worthy effort to clean up the Nation's worst hazardous waste sites. When the 103d Congress convenes next January, one of the issues it will be faced with is the reauthorization of Superfund. I will not be here to participate in that process, but I can tell my colleagues who will be that this is a law crying out for fundamental reform.

More than a decade after its creation, it is a sad fact that the Superfund Program Congress envisioned is increasingly seen as the largest, costliest, and least effective environmental cleanup program in our history.

Despite 12 years and repeated attempts by the Environmental Protection Agency [EPA] to jump start Superfund, it is clear that the law is just not working. Consider just one example out of hundreds around the country—the Shore Realty site in my home district on Long Island. The site was placed on the national priorities list [NPL] in 1984. While a large settlement was recently reached with many parties to design the final cleanup, much of the previous decade has been consumed by litigation over who should pay the bill. The private lawyers and State and Federal environmental enforcers think the Superfund process has worked well. They would, because they've been kept quite busy. But others in the community are victims of a process which places a higher premium on pointing the finger than isolating the contaminated soil in a way that protects the public's health.

The root cause of Superfund's ineffectiveness is its fundraising mechanism, a strict retroactive liability system founded on the concept that individual polluters should pay the cost of cleanup. In 1980, this notion seemed appropriate because Congress believed the number of individual polluters responsible for our hazardous waste problems to be relatively small, and thought that identifying the culprits would be easy.

Based on those assumptions, a system for establishing individual liability on a site-by-site basis—making polluters pay—seemed the fairest and most efficient means to raise money for cleanup, without penalizing the taxpayers. Even in 1986, when I participated in efforts to fine tune Superfund to promote more settlements and accelerate cleanups, Congress still believed that the liability system could work. At that point, we assumed the EPA's inefficient management practices had prevented Superfund from working properly. In reality, however, the true scope and severity of America's hazardous waste problems goes much deeper. This is not just a management problem. What we are faced with is a law that is fundamentally flawed.

Very simply, there are more sites to clean up than anyone expected, and accurately and completely reconstructing records for disposal activities which occurred 20, 30, 40 or more years ago—in order to assign responsibility for cleanup—is painstaking and often impossible. As a result, disputes over who should pay at each site are common.

Perhaps these disputes would not be of much consequence except for one fact: under a key provision of Superfund's liability system, any one potentially responsible party [PRP] can be held accountable for the entire cost of the cleanup at a site, regardless of what or how much waste they contributed. With potentially massive liability staring them in the face, many PRP's feel they have an obligation to employees and shareholders to find the maximum number of other parties to share the financial burden. The result is cascades of lawsuits as EPA sues PRP's, PRP's sue EPA, PRP's sue other PRP's, and PRP's sue their insurers.

Consequently, Superfund's liability system, instead of generating maximum dollars for prompt cleanup, creates a bottomless pit of litigation which continually drains resources from our economy and does nothing to improve our environment.

While few people dispute that certain PRP's were negligent in their past waste management practices, we now know that many Superfund sites did not result from irresponsible or careless behavior, but were instead the unintended byproduct of decades of technological and industrial advancement. At the Shore Realty site, the owner targeted by the State did not contribute a drop of pollution to the site. He merely acquired it for real estate development.

Where there was irresponsible behavior at Superfund sites, it was often by operators who are no longer around to pay for cleanup. Instead, the check is being handed to scores of businesses who disposed of their waste at the site. And in some cases, the people who now find themselves hit with Superfund liability sent their wastes to facilities recommended by EPA or State officials. Their view is that they handled their waste properly, they sent it to where the Government told them to, and asking them years later to fork over tens of millions to clean up the site is patently unfair. And they're right.

Over the past decade, more than 20,000 PRP's have been caught in Superfund's liability vortex, including small businesses, local governments, schools, hospitals, and even individuals. They are held retroactively liable for past disposal activities that were legal at the time. At one site in Connecticut alone, EPA recently named 1,294 PRP's who must now sort out cleanup responsibilities and cost allocation. In 9 years at Shore Realty, 257 PRP's, 208 law firms, and 442 insurance companies have spent countless millions—probably approaching what will eventually be spent on cleanup—on litigation with EPA, the State, and one another. This is a tragic waste of limited private and public resources. Every penny spent on lawyers is one less penny spent on the environment. You can bet our German, Japanese, and other international competitors are laughing all the way to the bank.

The liability debate is not an abstract public policy exercise. Those trapped in the liability mess are offered two equally distasteful, but all too real, choices—accept potentially devastating—and often unfair—liability or plunge into protracted, costly litigation. For many, the economic impact of either choice can be severe—budget deficits declining property values, reduced capital investment, and stalled development.

From an environmental perspective, Superfund's cleanup record speaks for itself. Despite expenditures of almost $11 billion in public funds, and unknown billions in private-sector money, fewer than 10 percent of the over 1,200 sites on the EPA's priority list have been completely cleaned up. With approximately 100 new sites being added to the list each year, estimates are that complete cleanup could take decades and cost billions of additional dollars.

The challenge facing the next Congress will be how to reform Superfund so it achieves its original goals. It is clear to me that Superfund's liability system cannot function as an efficient fundraising tool because it intrinsically encourages prolonged wrangling over who pays, rather than moving to rapid, cost-effective cleanup. Without correcting this basic error in the program's design, Superfund's defects cannot be eliminated.

Many of those who will serve in the next Congress will have campaigned on a change agenda. They will have told voters that they are problem solvers, people not captured by special interests or the ideological dogma of the right or the left. I hope so. The country will not be served by a Superfund reauthorization debate where old, shopworn slogans are trotted out by business and environmentalists. The challenge is to come up with a practical solution and pass it.

In 1986, we tried piecemeal reform. The record tells us this effort did not work. We need to think bigger. Of all the ideas I have seen recently, the proposal to create a larger Superfund and eliminate retroactive liability for Superfund sites before a certain date appears to offer the greatest hope of recasting Superfund into a commonsense cleanup program that works. It deserves serious consideration by the Congress.

My final advice to my colleagues on this issue is simple: keep asking yourself what will work, not that will satisfy special interest groups or ideologies. If you stay focused on practical solutions, I am confident we will see enacted a new Superfund which finally gives the American people what they expect—fast, efficient, long-term cleanup.

SUPERFUND REAUTHORIZATION

HON. W.J. (BILLY) TAUZIN

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, October 9, 1992

Mr. TAUZIN. Mr. Speaker, 12 years ago, Congress enacted what may have been the most ambitious and far-reaching environmental law in America's history. Since the passage of the Comprehensive Environmental Response, Compensation, and Liability Act [CERCLA], commonly known as Superfund, it has been controversial. But there has been one constant: few of those who have had direct experience with the law like it, and even fewer think it is working as Congress originally hoped.

In 12 years, only 7 percent of the more than 1,200 sites on the national priorities list [NPL] have been completely cleaned up. This is a depressing record. At the rate we're going, Superfund cleanups will be continuing well into the 21st century. It has become clear that Superfund's cleanup mission has been obscured by innumerable, often legitimate, disputes between and among Federal and State agencies, private parties, environmental activists, citizens, lawyers, and consultants over who should pay, which remedies should be chosen, and what cleanup levels should be achieved.

In the next Congress, we will begin the Superfund reauthorization process. I intend to be a major participant in that debate and expect to introduce legislation to reform the program. For now, I would like to lay out my thoughts on what is wrong with Superfund and suggest a few principles around which reform of the statute should focus.

THE LIABILITY SYSTEM

The dominant characteristic of Superfund is the financing of cleanup. At some point in the process, EPA or the State agency proceeds against some number of potentially responsible parties [PRP's] to pay for cleanup. The fundraising device used by Superfund is retroactive, strict, joint and several liability for all parties connected to a site: owners, operators, transporters, and generators of toxic wastes. In 12 years, we have learned that this fundraising system has several profound consequences which appear to directly affect Superfund's ability to achieve its goals.

First, most parties, faced with cleanup costs averaging over $26 million per site, immediately hire lawyers, who then play a major role in the process. The Superfund process has become characterized by repeated disputes over who will pay for cleanup, disputes which usually result in several major lawsuits at each site. The litigation mentality which permeates the process is fundamentally inconsistent with achieving prompt cleanup.

Second, there is a strong sense among participants that Superfund is unfair. And this view powerfully influences behavior of many parties. Under Superfund's retroactive, joint and several liability system, companies are liable if they deposited waste at the site at any time in the past (whether it was legal at the time or not), and they are liable for the whole cleanup amount, even if they deposited only a fraction of the total waste.

Some call this the polluter pays doctrine of Superfund. To many, it is the essence of the law. But I think we must question the practical applicability of the doctrine in this case. Most of us think of corporate polluters as people who did something wrong—the midnight dumpers who acted under cover of darkness and outside the law. But the truth is most PRP's do not fall into this category. I suspect there are few Members of this House who have not heard from some law-abiding constituent—probably even scores of them—who acted legally and responsibly, sent their wastes where they were supposed to send it, only to discover years later that they are, in the eyes of Superfund, toxic criminals and evil polluters. An entire universe of responsible, law-abiding businesses have been labeled as polluters.

In fact, many people incorrectly think you are only liable for Superfund cleanups if you sent hazardous wastes like barrels of toxic drums to a site. But the touchstone of Superfund liability is whether the waste you contributed to a site contains a hazardous substance. If so, you're on the hook. Thus, if you sent a newspaper to a site—not what we normally regard as a heinous act of corporate pollution—you are potentially liable because the ink contains a hazardous substance. It may seem absurd—and it is—but that is how the law was written. And there is one more absurd wrinkle: if you purchased property which turns out to be contaminated by the activities of previous owners, you are a polluter in the eyes of Superfund even though you didn't have anything whatsoever to do with the presence of hazardous waste or hazardous substances at the site.

I hope when we begin the reauthorization debate, we look beyond the slogan and at the reality of who we have tagged as polluters.

Third, in practice EPA tends to target large, deep pocket PRP's to finance cleanup rather than truly casting as broad a net as possible to ensure that all parties pay their fair share. In some respects, this is understandable: EPA's imperative is to raise enough money to do the cleanup. It cares little from whence the money comes. But this approach has serious consequences. A joint letter from Congressmen DINGELL, SWIFT, LENT, and RITTER to EPA in March 1991, expressed the concern that EPA's approach "may be creating a series of disincentives to settlement at Superfund sites and may also be generating unnecessary litigation among PRP's." Later, the letter said the policy can create unfair results as some PRP's not targeted by EPA "escape liability entirely because the time and effort required to pursue them to judgment may exceed their likely share of the costs."

The joint letter also pointed out the other unhappy byproduct of EPA's selective policy: an explosion in litigation as those targeted by EPA pursue private contribution litigation against others. In fact, this is precisely how even a small company with a tiny share of the waste becomes a likely target for payment. Not surprisingly, the payments assessed of small PRPs by larger ones, both for cleanup and for legal expenses incurred by the PRP group, are large enough to be a severe hardship on a small firm.

Fourth, the disputes between EPA and PRP's are not the only hallmarks at Superfund sites. Among PRP's themselves, there is constant debate over how to fairly divide up responsibility—and these can hold up agreement with EPA. Issues such as volume versus toxicity—one company may have deposited waste in less volume than another, but its waste is far more toxic—and culpability (one PRP argues that it obeyed the rules of the time, while concurrently arguing that a transporter shall bear more responsibility because it knew of negligent disposal practices by the operator), as well as the extent of testing to be performed and the nature of the cleanup remedies to recommend add together to prolong intra-PRP disputes and delay cleanup at many sites.

There are other Superfund problems, such as difficult scientific questions and EPA personnel turnover, but the liability system is by far the biggest.

REFORM INITIATIVES

To be sure, Congress and EPA have tried to improve the program—and to some degree it is better. In 1986, Congress gave EPA de minimis settlements, and nonbinding allocations of responsibility.

Beyond these tools, the current regime at EPA has attempted to use its enforcement powers more aggressively, to some positive effect. There are more settlements with PRP's, resulting in more work commitments. But it remains to be seen whether this translates into faster cleanup work or lower overall transaction costs. In fact, the use of "enforcement first," as it is known, may be the single greatest reason for the proliferation of their party lawsuits which have received so much press and congressional attention in the past 2 years.

TRANSACTION COSTS

One of the most obvious collateral effects of Superfund is the creation of massive transaction costs, especially in the private sector. The RAND Institute for Civil Justice recently reported aggregate transaction cost data for five Fortune 100 companies of 21 percent for all toxic wastesites between 1986 and 1989, but between 30 and 40 percent at multiparty sites. The National Paint and Coatings Association survey of its members, mostly smaller businesses, reported average transaction costs of 77 percent. And this does not include the nearly $500 million a year RAND found that insurers were spending on Superfund, nearly half of which was spent to defend PRP's in their disputes with EPA.

Any way you look at it then, diversion of corporate resources to fundamentally unproductive activity related to Superfund liability are high, especially for a country already facing competitive challenges from abroad.

CLEANUP STANDARDS—HOW CLEAN IS CLEAN

The Superfund law that was enacted in 1980 did not contain any detailed statutory standards for cleanups. The 1986 amendments pointedly increased the detail and complexity of statutory cleanup standards. Overall, the 1986 changes established two important principles for cleanup standards: permanence and ARAR's

Regarding permanence, section 121 of the law requires as a general rule that remedial actions which achieve permanence are preferred over those that do not. In practice, this philosophy may be used as a blanket defense to objections that proposed remedial actions go far beyond steps needed to reduce actual risks to acceptable levels.

Regarding ARAR's, section 121 also requires that remedial actions achieve cleanup levels that meet all legally applicable or relevant and appropriate standards under any Federal environmental law and any State environmental or facility siting standard that is more stringent than Federal law. This means that cleanups must be designed to meet standards that may far exceed levels necessary to protect human health and the environment. For instance, "recommended maximum contaminant levels" under the Safe Drinking Water Act arguably, are applicable or relevant and appropriate. RMCL's generally are set at lowest detectable levels, and in some cases at zero—a level that in almost all instances is impossible to achieve and unnecessary for protectiveness at many Superfund sites.

Permanence and ARAR's, taken together, may result in many extreme, and very expensive Superfund remedies that go far beyond what is required to protect the environment and public health. One of the issues we must examine, therefore, is whether we need to change the current standards in the law so remedy selection is based more on comprehensive, site-specific, risk-based decisions rather than generic cleanup standards in the statute.

TAX ISSUES

Another critical area for us to explore during Superfund reauthorization—and one directly related to liability—is the Superfund taxing scheme. According to the IRS, annual Superfund taxes totaled $1.1 billion in 1989. About $570.5 million of this was generated by the petroleum tax in CERCLA. Another $246 million—in 1990—came from the chemical feedstock tax. Of this, about $49 million was paid by petroleum companies. Finally, petroleum companies pay about $24 million to Superfund through the corporate environmental tax. In other words, Superfund taxes paid by petroleum activities alone come to about $643 million—56 percent of all the money raised by Superfund taxes.

I believe this may represent an unfair and unjustifiable tax burden on this important American industry. To the extent this industry is concentrated in producing States like Louisiana, it may mean that Superfund indirectly hinders our economic growth. This is a source of special concern since I believe that the problem of cleaning old hazardous waste sites is a societal problem, not one which should be borne disproportionately by a single industry. It may be that the petroleum and chemical industries produced many of the substances which gave rise to the Superfund sites. But it is equally true that society at large—every small business, every individual, and every town—benefitted from the products and technological advances associated with these products.

I am also troubled because it appears that the current tax scheme may result in a massive shifting of resources from States like Louisiana to other States, with some States receiving a large percentage of Superfund dollars and major contributing States with significant toxic waste problems receiving comparatively little. Redressing this inequity is one of my major goals in Superfund reauthorization.

SUPERFUND'S ALLEGED BENEFITS

In recent years, as debate over Superfund has stepped up, some of its defenders have argued that the law's defects discussed above are overwhelmed by positive benefits, chiefly that the law as constituted creates incentives for due care and for voluntary clean up of non-NPL sites. But the evidence supporting these claims is very thin as of now, and it is critical that new data be developed on both points. At the same time, we need to examine whether the existing system creates some harmful side effects. For example, what is the financial impact of Superfund on large and small business PRP's of having delays? Do companies choose not to locate new facilities in otherwise attractive locations due to a fear of becoming a PRP by mere ownership?

CONCLUSION

Superfund is a troubled program. I believe the case for fundamentally overhauling it is compelling, though precisely how to go about it is still an open question. At the least, though, we should be guided by a few clear principles:

First, we need a liability system that minimizes the battles over cleanup and cost allocation. It is difficult to think how we can get there without rethinking retroactive, strict, joint and several liability.

Second, we need to address the issue of how clean is clean. We cannot keep pouring tens of millions of dollars into cleanups to extract the last drop of pollution. We need to put in place rational, definable cleanup standards so we don't always require gold-plated cleanups.

Third, we need to reevaluate the tax structure to eliminate any inequities that exist regarding the generation and spending of Superfund dollars.

Fourth, we need a system which moves much faster, which minimizes the delays and transaction costs associated with the current approach. Again, it is hard to see how to get there from here without overhauling the existing liability system.

Fifth, we need to insure that each region of the country is receiving its fair share of Superfund cleanup spending.

I look forward to addressing all of these issues early next year.